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Thursday
June 1, 1989

federal register

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Briefing on How To Use the Federal Register—
For information on briefing in Washington, DC, see
announcement on the inside cover of this issue.

federal register

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: June 15; at 9:00 a.m.

WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street, NW., Washington, DC

RESERVATIONS: 202-523-5240

Regulation Identifier Numbers (RINs)

Agencies have begun including a Regulation Identifier Number in the headings of their **Federal Register** documents. RINs also appear in entries listed in the *Unified Agenda of Federal Regulations*, which is published in the **Federal Register** in April and October of each year. Assigning RINs makes it easier for the public and agency managers to track the entries at the various stages of their development.

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Federal Register

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Thursday, June 1, 1989

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 27 and 28

(CN-89-001)

Revisions of User Fees for Cotton Classification, Testing and Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Agricultural Marketing Service (AMS) is adopting without change the increases in user fees charged for cotton classification, testing and standards which were proposed in the regulatory revision published in the *Federal Register* on April 17, 1989. The user fee increases are needed to cover the costs of providing these services. The new fees are effective on July 1, 1989, to be in effect at the beginning of the classing season.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Garry L. Lewicki, (202) 447-2145.

SUPPLEMENTARY INFORMATION: A proposed rule detailing the increases in the user fees charged for cotton classification, testing and standards was published on April 17 in the *Federal Register* (54 FR 15210). Pursuant to a correction published in the *Federal Register* on April 24, 1989, (54 FR 16438-T), a fifteen day comment period was provided for interested persons to respond to the proposed rule; no comments were received.

Therefore, AMS is adopting without change these increases in user fees.

This final rule has been reviewed in accordance with Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "non-major" since it does not meet the criteria

for a major regulatory action as stated in the order.

The Administrator, Agricultural Marketing Service (AMS), has certified that this action will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because: (1) The fee increases merely reflect a minimal increase in the cost-per-unit currently borne by those entities utilizing the services; (2) the cost increase will not affect competition in the marketplace; (3) the use of classification and testing services and the purchase of standards is voluntary.

The information collection requirements contained in this final rule have been previously approved by the Office of Management and Budget and assigned OMB control numbers under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Fees for the Classification Under the Cotton Statistics and Estimates Act of 1927

The user fee charged to cotton producers for manual classification services under the Smith-Doxey amendment to the Cotton Statistics and Estimates Act (7 U.S.C. 473a) was \$1.03 during the 1988 harvest season (53 FR 20089) as determined using the formula provided in the Uniform Cotton Classing Fees Act of 1987. The charges cover salaries, cost of equipment and supplies, and other overhead and include administrative and supervisory costs. This final rule increases the user fee for manual classification charged to producers from \$1.03 per bale to \$1.23 per bale. This new fee was calculated by using the 1988 base fee adjusted for the rate of inflation, the projected size of the crop and the addition of a surcharge necessary to maintain an adequate operating reserve. The 1988 base fee is \$1.15 per bale. A 4.1 percent, or five cents per bale, increase due to the Implicit Price Deflator of the Cross National Product is added to the \$1.15 resulting in a 1989 base fee of \$1.20 per bale. The 1989 crop is currently estimated at 12,700,000 running bales. The base fee is decreased two percent based on the estimated size of the crop (one percent for every 100,000 bales or portion thereof above the base of 12,500,000 bales). This percentage factor amounts to a two cents per bale

reduction and is subtracted from the base fee of \$1.20 per bale resulting in a fee of \$1.18 per bale. A five-cent surcharge is added to the \$1.18 per bale fee since the projected operating reserve is less than 25 percent. The projected operating reserve is 16 percent. This would establish the 1989 season fee at \$1.23 per bale. No further adjustments are warranted under the formula.

Therefore, the fee for this service in \$28.909 during the 1989 harvest season is \$1.23 per bale. The additional fee for High Volume Instrument (HVI) classification remains 50 cents per bale and the fee for HVI classification during the 1989 harvest season is revised to \$1.73 per bale. As provided for in the Uniform Cotton Classing Fees Act of 1987, a 5 cent per bale discount continues to be applied to voluntary centralized billing and collecting agents.

The fee for a manual review classification in \$28.911 is also increased from \$1.03 to \$1.23 per bale since the fee for review classification is the same as the original classification fee. For the same reason the fee for HVI review classification is increased from \$1.53 to \$1.73 per bale.

Fees for Cotton Standards

Practical forms of the cotton standards are prepared and sold by the Cotton Division offices in Memphis, Tennessee, under the authority of the United States Cotton Standards Act (7 U.S.C. 51 *et seq.*). The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35) directs that the price for standards will cover, as nearly as practicable, the costs of providing the standards.

This final rule increases the fees listed in §§ 28.123 and 28.151 for practical forms of the cotton standards, including both grade and staple standards for American Upland cotton, American Pima cotton and for cotton linters. The fees need to be adjusted due to increased costs for salaries and preparation, delivery, and postage of the standards. Current and estimated demand for the standards has also been factored into the fee revision since per unit costs are directly related to volume.

The fees for American Upland cotton grade standards are increased from \$100.00 to \$110.00 f.o.b. Memphis, Tennessee, or overseas air freight collect. The price is increased from \$104.00 to \$114.00 for domestic surface delivery and from \$140.00 to \$150.00 for

Fees for Classification Services Under the United States Cotton Standards Act

The fee in § 28.117 for each new memorandum or certificate issued in substitution for a prior one increases from \$4.00 per sheet to \$4.50. The additional hourly fee charged for Form C determinations in §§ 28.120 and 28.149 increases from \$18.00 per hour or each portion thereof to \$20.00 per hour, or each portion thereof, plus traveling expenses and subsistence or per diem. The fee in § 28.122 for a complete practical classing examination for cotton or cotton linters increases from \$125.00 to \$135.00 and the fee for

These fees have been reviewed and the fees in § 27.80 for initial classification is increased from \$1.20 per bale to \$1.30 per bale; the fee for review classification is increased from \$1.40 per bale to \$1.50 per bale. All supervision fees are increased by 20 cents. Pursuant to § 27.85, fees for withdrawal of requests or applications for review, after such services have been started, are the same as the fees in § 27.80 for services completed, so such charges are increased by this rule. Fees for certificates which appear in § 27.81 increases from 60 cents to 65 cents per certificate.

The fees for fiber and processing tests in § 28.958, except items 1.0, 5.0, 7.0, 7.1, 8.0, 8.1, 9.0, 15.0, 18.0, and 19.0, are increased as follows:

Item No.	Fee	
	Current	Proposed
1.0a.....	84.00	84.00
1.0b.....	88.00	88.00
1.0c.....	84.00	84.00
1.0d.....	124.00	124.00
2.0a.....	15.00	17.00
2.0b.....	18.00	18.00
2.0c.....	15.00	17.00
2.0d.....	25.00	27.00
2.1a.....	23.00	25.00
2.1b.....	25.00	27.00
2.1c.....	23.00	25.00
2.1d.....	37.00	39.00
3.0.....	95.00	105.00
3.1.....	15.00	17.00
4.0.....	25.00	30.00
4.1.....	12.00	15.00
5.0.....	1.60	1.80
6.0.....	1.08	1.10
7.0.....	8.50	8.50
7.1.....	5.50	5.50
8.0.....	8.75	8.75
8.1.....	5.50	5.50
9.0a.....	8.75	8.75
9.0b.....	6.50	6.50
9.0c.....	5.50	5.50
10.0.....	0.55	0.65
10.1.....	0.30	0.35
11.0.....	10.00	12.00
Minimum.....	50.00	60.00
12.0.....	6.00	6.50
13.0a.....	65.00	70.00
13.0b.....	103.00	108.00
13.0c.....	125.00	130.00
13.1a.....	48.00	52.00
13.1b.....	70.00	74.00
13.1c.....	97.00	101.00
13.2.....	117.00	122.00
14.0a.....	22.00	24.00
14.0b.....	27.00	29.00
14.0c.....	32.00	34.00
15.0a.....	7.50	7.50
15.0b.....	13.00	13.00
16.0.....	14.00	15.00
17.0.....	4.50	5.00
Minimum.....	22.50	25.00
18.0.....	25.00	25.00
19.0.....	80.00	80.00
20.0.....	105.00	110.00
20.1.....	80.00	85.00
21.0.....	95.00	100.00
22.0.....	140.00	145.00
23.0.....	200.00	210.00
24.0.....	220.00	230.00
25.0.....	29.00	31.00
25.1.....	40.00	42.00
26.0a.....	75.00	80.00
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27.0.....	11.00	12.00
28.0.....	4.50	5.00
28.1.....	6.50	7.50
29.0.....	17.00	18.00
29.1.....	29.00	31.00
30.0.....	12.00	14.00
Minimum.....	36.00	42.00
31.0.....	2.50	3.00
32.0.....	3.00	3.50
33.0.....	1.10	1.25
33.1.....	12.00	15.00

**Cotton, Classification, Samples,
Micronaire, Spot markets.**

Effective date: July 1, 1989	Dollars each box or roll			
	Domestic shipments		Shipments delivered outside the continental United States	
	I.o.b. Memphis, Tenn.	Surface delivery	Air freight collect	Air parcel post delivered
Grade standards:				
American Upland.....	\$110.00	\$114.00	\$110.00	\$150.00
American Pima.....	140.00	144.00	140.00	180.00
Standards for length of staple:				
American Upland (prepared in one pound rolls for each length).....	16.00	18.00	16.00	30.00
American Pima (prepared in one pound rolls for each length).....	17.00	19.00	17.00	31.00

7. Sections 28.148 and 28.149 are revised to read as follows:

§ 28.148 Fees and costs; classification; review; other.

The fee for the classification, comparison, or review of linters with respect to grade, staple, and character or any of these qualities shall be at the rate of \$1.30 for each bale or sample involved. The provisions of §§ 28.115 through 28.128 relating to other fees and costs shall, so far as applicable apply to services performed with respect to linters.

§ 28.149 Fees and costs; Form C determination.

For samples submitted for Form C determinations, the party requesting the classification shall pay the fees prescribed in this subpart and, in addition, a fee of \$20.00 per hour, or each portion thereof, plus the necessary traveling expenses and subsistence, or per diem in lieu of subsistence, incurred on account of each request, in accordance with the fiscal regulations of the Department applicable to the Division employee supervising the sampling.

8. Section 28.151 is revised to read as follows:

§ 28.151 Cost of practical forms for linters, period effective.

Practical forms of the official cotton linters standards of the United States will be furnished to any person subject to the applicable terms and conditions specified in § 28.105; *Provided*, That no practical form of any of the official cotton linters standards of the United States for grade shall be considered as representing any such standards after the date of its cancellation in accordance with this subpart, or, in any event, after the expiration of 12 months following the date of its certification. The cost of the practical forms of cotton linters standards of the United States shall be as follows:

	Dollars each box or roll			
	Domestic shipments		Shipments delivered outside the continental United States	
	f.o.b. Memphis, Tenn.	Surface delivery	Air freight collect	Air parcel post delivered
Linters Grade Standards (8 sample box for each grade).....	\$110.00	\$114.00	\$110.00	\$150.00
Linters Staple Standards (prepared in one pound rolls for each length).....	18.00	20.00	18.00	32.00

9. The authority citation of Subpart B of Part 28 continues to read as follows:

Authority: Sec. 205, 60 Stat. 1090, as amended (7 U.S.C. 1624).

10. Section 28.184 is revised to read as follows:

§ 28.184 Cotton linters; general.

Requests for the classification or comparison of cotton linters pursuant to this subpart and the samples involved shall be submitted to the Cotton Division. All samples classed shall be on the basis of the official cotton linters standards of the United States. The fee for classification or comparison and the issuance of a memorandum showing the results of such classification or comparison shall be \$1.30 per sample.

11. The authority citation for Subpart D of Part 28 continues to read as follows:

Authority: Sec. 3a, 50 Stat. 62, as amended (7 U.S.C. 473a); Sec. 3c, 50 Stat. 62 (7 U.S.C. 473c); unless otherwise noted.

12. Paragraph (b) of § 28.909 is revised to read as follows:

§ 28.909 Costs.

(b) The cost of manual cotton classification service to producers is \$1.23 per sample.

13. Paragraph (b) of § 28.910 is revised to read as follows:

§ 28.910 Classification of samples and issuance of classification data.

(b) Upon request of an owner of cotton for which classification memoranda have been issued under this subpart, a new memorandum shall be issued for the business convenience of such owner without the reclassification of the cotton. Such rewritten memorandum shall bear the date of its issuance and the date or inclusive dates of the original classification. The fee for a new memorandum shall be \$4.50 per sheet.

14. Section 28.911 is revised to read as follows:

§ 28.911 Review classification.

A producer may request one manual or one High Volume Instrument (HVI) review classification for each bale of eligible cotton. The fee for manual review classification is \$1.23 per sample. The fee for HVI review classification is \$1.73 per sample. Samples for review classification must be drawn by gins or warehouses licensed pursuant to § 28.20-28.22, or by employees of the United States Department of Agriculture. Each sample for review classification shall be taken, handled, and submitted according to § 28.908 and to supplemental instructions issued by the Director or an authorized representative of the Director. Costs incident to sampling, tagging, identification, containers, and shipment

for samples for review classification shall be assumed by the producer. After classification, the samples shall become the property of the Government unless the producer requests the return of the samples. The proceeds from the sale of samples that become Government property shall be used to defray the costs of providing the services under this subpart. Producers who request return of their samples after classing will pay a fee of 30 cents per sample in addition to the fee established above in this section.

15. The authority citation for Subpart E of Part 28 continues to read as follows:

Authority: Sec. 3c, 50 Stat. 62; 7 U.S.C. 473c; sec. 3d, 55 Stat. 131 (7 U.S.C. 473d).

16. Section 28.956 is revised to read as follows:

§ 28.956 Prescribed fees.

Fees for fiber and processing tests shall be assessed as listed below:

Item No.	Kind of test	Fee per test
1.0	Calibration cotton for use with High Volume Instruments, per 5 pound package:	
	a. f.o.b. Memphis, Tennessee.....	\$84.00
	b. By surface delivery within continental United States.	88.00
	c. By air freight collect outside continental United States.	84.00

Item No.	Kind of test	Fee per test	Item No.	Kind of test	Fee per test	Item No.	Kind of test	Fee per test
2.0	d. By air parcel post delivery outside continental United States.	124.00	8.0	Pressley strength of ginned cotton lint by flat bundle method for either zero or 1/4-inch gage as specified by applicant. Reporting the average strength as based on 6 specimens from a blended sample, per sample.	8.75	13.2	c. Other cotton wastes, per sample.	101.00
	Furnishing international calibration cotton standards with standard values for micronaire reading and fiber strength at zero and 1/4-inch gage and Fibrograph length:						Fiber length array of cotton samples, including purified or absorbent cotton. Reporting the average percentage of fibers by weight in each 1/4-inch group, average length and average length variability as based on 3 specimens from a blended sample.	122.00
	a. f.o.b. Memphis, Tennessee 1/4-lb. sample.	17.00	8.1	Pressley strength of ginned cotton lint by flat bundle method for either zero or 1/4-inch gage as specified by applicant. Reporting the strength as based on 2 specimens for each unblended sample, per sample.	5.50	14.0	Fiber Length and Length Distribution of cotton samples by the Almeter method. Reporting the upper 25 percent length, mean length, coefficient of variation, and short fiber percentages by weight, number of tuft in each 1/4-inch group, as based on 2 specimens from a blended sample.	
	b. By surface delivery within continental United States, 1/4-lb. sample.	18.00					a. Report percentages of fiber by weight only.	24.00
	c. By air freight collect outside continental United States, 1/4-lb. sample.	17.00	9.0	Stelometer strength and elongation of ginned cotton lint by the flat bundle method for 1/4-inch gage. Reporting the average strength and elongation:			b. Report percentages of fiber by weight and number or tuft.	29.00
	d. By air parcel post delivery outside continental United States, 1/4-lb. sample.	27.00		a. Based on 8 specimens from each blended sample, per sample.	8.75		c. Report percentages of fiber by weight, number and tuft.	34.00
2.1	Furnishing international calibration cotton standards with standard values for micronaire reading only:			b. Based on 4 specimens from each blended sample, per sample.	6.50	15.0	Foreign matter content of cotton samples. Reporting data on the non-lint content as based on the Shirley Analyzer separation of lint and foreign matter:	
	a. f.o.b. Memphis, Tennessee 1-lb. sample.	25.00		c. Based on 2 specimens from each blended sample, per sample.	5.50		a. For samples of ginned lint or comber noils, per 100-gram specimen.	7.50
	b. Surface delivery within continental United States, 1-lb. sample.	27.00	10.0	Micronaire readings on ginned lint. Reporting the micronaire based on 2 specimens per sample.	.65		b. For samples of ginning and processing wastes other than comber noils, per 100-gram specimen.	13.00
	c. By air freight collect outside continental United States, 1-lb. sample.	25.00	10.1	Micronaire reading based on 1 specimen per sample.	.35	16.0	Neps content of ginned cotton lint. Reporting the neps per 100 square inches as based on the web prepared from a 3-gram specimen by using accessory equipment with the mechanical fiber blender, per sample.	15.00
	d. By air parcel post delivery outside continental United States, 1-lb. sample.	39.00	11.0	Fiber maturity and fineness of ginned cotton lint by the Caustic method. Reporting the average maturity, fineness, and micronaire reading as based on 2 specimens from a blended sample, per sample.	12.00		Minimum fee.....	25.00
3.0	Furnishing color standards, including a set of standard tiles and a master diagram for use in calibrating Nickerson-Hunter Cotton Colorimeters, per set.	105.00				17.0	Sugar content of cotton. Reporting the percent sugar content as based on a quantitative analysis of reducing substances (sugars) on cotton fibers, per sample.	5.00
3.1	Furnishing replacement calibration tiles for above sets, each tile.	17.00					Minimum fee.....	25.00
4.0	Furnishing a Colorimeter calibration sample box containing 8 cotton samples with color values Rd and +b plotted on a color diagram based on the Nickerson-Hunter Cotton Colorimeter, per box.	30.00	12.0	Fiber fineness and maturity of ginned cotton lint by the IIC-Shirley Fineness/Maturity Tester method, reporting the average micronaire, maturity ratio, percent mature fibers and fineness (linear density) based on 2 specimens from a blended sample, per sample.	60.00	18.0	Miniature carded cotton spinning test. Reporting data on tenacity (centinewtons per tex) of 22's yarn and HVI data (see item 5.0). Based on the processing of 50 grams of cotton in accordance with special procedures per sample.	25.00
4.1	Furnishing new Colorimeter readings on samples in calibration boxes returned for check readings, per 6-sample box.	15.00			6.50	19.0	Two-pound cotton carded yarn spinning test available to cotton breeders only. Reporting data on yarn skein strength, yarn appearance, yarn neps and the classification and the fiber length of the cotton as well as comments on any unusual processing performance as based on the processing of 2 pounds of cotton in accordance with standard procedures into two standard carded yarn numbers employing a standard twist multiplier, per sample.	80.00
5.0	High Volume Instrument (HVI) measurement. Readings micronaire, length, length uniformity, 1/4-inch gage strength, color and trash content. Based on a 6 oz. (170 g) sample, per sample.	1.60						
6.0	Color of ginned cotton lint. Reporting data on the reflectance and yellowness in terms of Rd and b values as based on the Nickerson-Hunter Cotton Colorimeter on samples which measure 5x6 1/4 inches and weigh approximately 50 grams, per sample.	1.10						
7.0	Fiber length of ginned cotton lint by Fibrograph method. Reporting the average length and average length uniformity as based on 4 specimens from a blended sample, per sample.	8.50						
7.1	Fiber length of ginned cotton lint by Fibrograph method. Reporting the average length and average length uniformity as based on 2 specimens from each unblended sample.	5.50						

Item No.	Kind of test	Fee per test	Item No.	Kind of test	Fee per test	Item No.	Kind of test	Fee per test
20.0	Cotton carded yarn spinning test. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps, and classification, and fiber length as well as comments summarizing any unusual observations as based on the processing of 6 pounds of cotton in accordance with standard laboratory procedures at one of the standard rates of carding 6 1/2, 9 1/2 or 12 1/2 pounds-per-hour into two of the standard carded yarn number of 8s, 14s, 22s, 36s, 44s, or 50s, employing a standard twist multiplier unless otherwise specified, per sample.	110.00	25.0	Processing and testing of additional yarn. Any carded or combed yarn number processed in connection with spinning tests including either additional yarn numbers or additional twist multipliers employed on the same yarn numbers, per additional lot of yarn.	31.00	33.0	Furnishing additional copies of test reports. Include extra copies in addition to the 2 copies routinely furnished in connection with each test item, per additional sheet.	1.25
20.1	Cotton carded yarn spinning test (open-end) for short staple (31/32nd inches and shorter) cottons. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps and classification and fiber length as well as comments summarizing any unusual observations as based on the processing of 6 pounds of cotton in accordance with standard laboratory procedures at a carding rate of 12 1/2 pounds-per-hour into 6's using a silver weight of 60 grains per yard; a rotor speed of 45,000 RPM; and opening roll speed of 7,200 RPM; a twist multiple of 4.5; and rotor diameter of 46 millimeters.	85.00	25.1	Processing and furnishing of additional yarn: Any yarn number processed in connection with spinning tests. Approximately 300 yards on each of 16 paper tubes for testing by the applicant, per additional lot of yarn.	42.00	33.1	Furnishing a certified relisting of test results. Includes samples or sub-samples selected from any previous tests, per sheet.	15.00
21.0	Spinning potential tests. Determining the finest yarn which can be spun with no ends down and reporting spinning potential yarn number. This test requires an additional 4 pounds of cotton, per sample.	100.00	26.0	Twist in yarns by direct-counting method. Reporting direction of twist and average turns per inch of yarn:	60.00	34.0	Classification of ginned cotton lint is available in connection with other fiber tests, under the provisions of 7 CFR 28, § 28.56, at the fees prescribed by 7 CFR 28, § 28.116. Classification includes grade, staple, and micronaire reading based on a 6 oz. (170 g) sample.	
22.0	Cotton combed yarn spinning test. Reporting data on waste extracted, yarn skein strength, yarn appearance, yarn neps, and classification, and fiber length as well as comments summarizing any unusual observations as based on the processing of 8 pounds of cotton in accordance with standards procedures at one of the standard rates of carding of 4 1/2, 6 1/2, or 9 1/2 pounds-per-hour into two of the standard combed yarn numbers of 22s, 36s, 44s, 50s, 60s, 80s, or 100s employing a standard twist multiplier unless otherwise specified, per sample.	145.00	27.0	a. Single yarns based on 40 specimens per lot of yarn. b. Plied or cabled yarns based on 10 specimens, per lot of yarn.	23.00			
23.0	Cotton carded and combed yarn spinning test. Reporting the results as based on the processing of 10 pounds of cotton into two of the standard carded and two of the standard combed yarn numbers employing the same carding rate and the same yarn numbers for both the carded and the combed yarns, per sample.	210.00	28.0	Skein strength of yarn. Reporting data on the strength and the yarn numbers based on 25 skeins from yarn furnished by the applicant per sample.	12.00			
24.0	Cotton carded and combed yarn spinning test. Reporting the results as based on the processing of 9 pounds of cotton into two of the standard combed yarn numbers employing different carding rates and/or yarn numbers for the carded and the combed yarns, per sample.	230.00	29.0	Appearance grade of yarn furnished on bobbins by applicant. Reporting the appearance grade in accordance with ASTM standards as based on yarn wound from one bobbin, per bobbin.	5.00			
			29.1	Furnishing yarn wound on boards in connection with yarn appearance tests.	7.50			
			29.2	Strength of cotton fabric. Reporting the average warp and filling strength by the grab method as based on 5 breaks for both warp and filling of fabric furnished by the applicant, per sample.	18.00			
			29.3	Cotton fabric analysis. Reporting data on the number of warp and filling threads per inch and weight per yard of fabric as based on at least three (3) 6x6-inch specimens of fabric which were processed or furnished by the applicant, per sample.	31.00			
			30.0	Chemical finishing test on finished drawing sliver. The Ahba Texomat Dyer is used for scouring, bleaching and dyeing of a 3-gram sample. Color measurements are made on the unfinished, bleached and dyed cotton samples, using a Hunterlab Colorimeter, Model 25 M-3. The color values are reported in terms of reflectance (Rd), yellowness (+b) and blueness (-b). Minimum fee	14.00			
			31.0	Furnishing copies of test data worksheets. Includes individual observations and calculations which are not routinely furnished to the applicant, per sheet.	42.00			
			32.0	Furnishing identified cotton samples. Includes samples of ginned lint stock at any stage of processing or testing, waste of any type, yarn or fabric selected and identified in connection with fiber and/or spinning tests, per identified sample.	3.00			
					3.50			

J. Patrick Boyle,
Administrator.
May 30, 1989.
[FR Doc. 89-13173 Filed 5-31-89; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 51

[Docket No. FV-89-207]

Inspection and Certifying Services

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action establishes a voluntary user fee service of document review and certification related to the destruction of imported Chilean produce which occurred during the period March 13, 1989, through April 28, 1989. This action will facilitate the Chilean compensation program for the benefit of United States importers and others in the domestic marketing and distribution chain.

EFFECTIVE DATE: Effective on May 23, 1989. The expiration date of this regulation is September 1, 1989.

FOR FURTHER INFORMATION CONTACT: Charles R. Brader, Director, Fruit and Vegetable Division, AMS, P.O. Box 96456, Room 2077-South, Washington, DC 20090-6456 or call (202) 447-4722.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been designated as "nonmajor."

Pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This service is performed on a voluntary basis upon the request of applicants. This rule will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses.

On April 18, 1989, the Government of Chile issued Decree Number 58 which provides for compensation for Chilean fruit destroyed in March and April 1989. For compensation claims to be recognized by Chilean authorities, Decree Number 58 requires the submission of documents which evidence destruction of such fruit. In order to facilitate the Chilean compensation program for the benefit of United States importers and others in the domestic marketing and distribution chain, the Agricultural Marketing Service (AMS) will review and certify relevant documents as a user fee service pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*). The AMS certification program will be limited to certifying that the documents reviewed by the agency, which are to be submitted to the Chilean government as evidence of destruction of dumping, constitute the kinds of documents that would be accepted in a USDA proceeding. The certification statement will not attest to the authenticity or reliability of the documents, or that destruction by dumping actually occurred. In certifying documents submitted under this rule, AMS will generally apply the criteria found in 7 CFR 46.22 and 46.23, which are applicable in USDA proceedings relating to the destruction of fresh produce, insofar as those criteria are relevant to the destruction of Chilean produce.

This service will be available to all applicants in accordance with these regulations. However, AMS expects that it will receive most requests for service through the American Produce Association, which represents the major U.S. importers of Chilean produce and which has taken steps to make its services with regard to the Chilean indemnification program available to all financially interested parties. All documents reviewed by AMS will be returned directly to the applicant and AMS will not arrange for any additional processing of documents by the Chilean authorities.

Because of the very short time frame involved, AMS will review and certify documents on an overtime basis based upon existing staffing capabilities. The fee will be \$37 per hour. This fee has been calculated based on existing hourly fees and overtime charges for

inspection services performed in accordance with the regulations in Part 51.

Pursuant to 5 U.S.C. 553, it is found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register. This determination is made because of the very short time frame resulting from the June 30, 1989, expiration date of Chilean Decree Number 58. Accordingly, all documents must be processed in advance of that date. For the same reason, it is impractical for the agency to follow the procedures set forth in Executive Order 12291.

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 51

Fresh fruits, vegetables, and other products; Inspection, certification, and standards.

PART 51—[AMENDED]

For reasons set forth in the preamble, 7 CFR Part 51 is amended to read as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended; 7 U.S.C. 1622, 1624, unless otherwise noted.

2. The Subpart—Regulations is amended by adding the following undesignated center heading and §§ 51.63–51.77 to read as follows:

Subpart—Regulations

Document Certification Service

- 51.63 Certification of documents.
- 51.64 Documents which may be certified.
- 51.65 Filing of application.
- 51.66 When application may be rejected.
- 51.67 When application may be withdrawn.
- 51.68 Authority to request certification service.
- 51.69 Order of certification service.
- 51.70 Financial interest of official.
- 51.71 Certification of documents.
- 51.72 Issuance of certifications or denial thereof.
- 51.73 Issuance of corrected certifications.
- 51.74 Disposition of certifications.
- 51.75 Resubmission of rejected documents.
- 51.76 Fees charged for document certification.
- 51.77 Payment of fees charged for document certification.

Subpart—Regulations

Document Certification Service

§ 51.63 Certification of documents.

Certification of documents regarding destruction by dumping of grapes grown in Chile during the 1988–89 season and imported into the United States during the period March 13, 1989 through April 28, 1989 will be made in accordance with §§ 51.64 through 51.77.

§ 51.64 Documents which may be certified.

The types of documents which may be certified are those referenced in 7 CFR 46.23 and shall include:

- (a) USDA inspection certificates;
- (b) A state, county, or municipal certificate;
- (c) A certificate issued by a commercial inspection agency; or
- (d) An inspection certificate of a disinterested party which shall include such information as required by 7 CFR 46.23(c), insofar as such information is relevant to the destruction of produce from Chile.

§ 51.65 Filing of application.

An application for document review and certification shall be regarded as filed only when received at the office of the Director, Fruit and Vegetable Division, AMS, P.O. Box 96456, Room 2077-South, Washington, DC 20090-6456. A record showing the date and time of filing shall be made and kept in such office.

§ 51.66 When application may be rejected.

An application may be rejected by the Department for the failure of the applicant:

- (a) To observe the regulations of this part,
- (b) To furnish necessary information,
- (c) To pay for previous certification services rendered, or
- (d) When it appears that to perform the certification service would not be to the best interest of the Government.

Such applicant shall be notified promptly of the reason for such rejection and may resubmit the application after correction of all deficiencies.

§ 51.67 When application may be withdrawn.

An applicant may be withdrawn by the applicant at any time before the certification is performed: *Provided*, That the applicant shall pay any expenses which have been incurred by the Department in connection with such application.

§ 51.68 Authority to request certification service.

Proof of the interest of an applicant in the certification involved, or of the authority of any person applying for the certification service on behalf of another may be required, at the discretion of the reviewing and certifying official.

§ 51.69 Order of certification service.

Certification shall be performed, insofar as practicable, in the order in which applications are received.

§ 51.70 Financial interest of official.

No official shall review documents concerning any product in which the official is directly or indirectly financially interested.

§ 51.71 Certification of documents.

Certification of documents shall be issued in a manner approved by the Administrator.

§ 51.72 Issuance of certifications or denial thereof.

(a) A separate certification of documents shall be issued for each document reviewed. The document review shall be conducted in accordance with the applicable provisions of 7 CFR 46.22 and 46.23. The person signing and issuing the certificate shall be one of the following:

- (1) The official who performed the document review; or
- (2) Any other official of the Department who has been authorized by the Administrator to act in a supervisory capacity with respect to the service.

(b) Upon review of documents submitted for certification, certification may be denied if the documents fail to meet the requirements for certification contained in these regulations. The applicant shall be promptly notified of such a denial.

§ 51.73 Issuance of corrected certifications.

A corrected certification may be issued if errors in any pertinent information require the issuance of a corrected certification. Whenever a corrected certification is issued, such certification shall supersede the certification which was issued in error and the superseded certification shall become null and void after the issuance of the corrected certification.

§ 51.74 Disposition of certifications.

The original document certification shall be affixed on each document reviewed and shall be delivered or mailed promptly to the applicant or to a person designated by the applicant. No copies of such documents shall be retained by the agency.

§ 51.75 Resubmission of rejected documents.

Any document submitted for certification which is rejected by the certifying official may be resubmitted after correction of all deficiencies.

§ 51.76 Fees charged for document certification.

Fees for document certification shall be made according to the following schedule:

- (a) Document certification per applicant request—\$37 per hour
- (b) Resubmission of rejected document certification per applicant request—\$37 per hour.
- (c) Costs including travel incurred by the agency in providing the document certification service may be charged to the applicant. Any charges shall be included with the fee for certification on the bill furnished the applicant.

§ 51.77 Payment of fees charged for document certification.

The fees and charges for document certification services shall be paid by the applicant to the Director, Fruit and Vegetable Division, AMS, P.O. Box 96456, Room 2077-South, Washington, DC 20090-6456, with a check made payable to the Agricultural Marketing Service.

Dated: May 23, 1989.

Kenneth C. Clayton,
Acting Administrator, Agricultural Marketing Service.

[FR Doc. 89-13055 Filed 5-31-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1135

[DA-89-021]

Milk in the Southwestern Idaho-Eastern Oregon Marketing Area; Order Suspending Certain Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action continues to suspend for the months of June through November 1989 portions of the Southwestern Idaho-Eastern Oregon Federal milk order that have been suspended since December 1988. The suspended provisions relate to the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. The action was requested by a cooperative association that represents a majority of the producers supplying the market to prevent uneconomic movements of milk. **EFFECTIVE DATE:** June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION:

Prior document in this proceeding: Notice of Proposed Suspension: Issued April 25, 1989; published April 28, 1989 (54 FR 18298).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. This action lessens the regulatory impact of the order on certain milk handlers and tends to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and of the order regulating the handling of milk in the Southwestern Idaho-Eastern Oregon marketing area.

Notice of proposed rulemaking was published in the Federal Register on April 28, 1989 (54 FR 18298) concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views and arguments thereon. No comments opposing the suspension were received.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of June through November 1989 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1135.13, paragraphs (f) (3), (4), (5), and (6).

Statement of Consideration

This action continues to remove for the months of June through November 1989 the limit on the amount of producer milk that a cooperative association or other handler may divert from pool plants to nonpool plants. The provisions,

which have been suspended since December 1988, provide that a cooperative association may divert up to 80 percent of its total member milk received at all pool plants or diverted therefrom during any month. Similarly, the operator of a pool plant may divert up to 80 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during any month.

Dairymen's Creamery Association, Inc. (DCA), an association of producers that supplies much of the market's fluid milk needs and handles much of the market's reserve milk supplies, requested the suspension. DCA indicated that operation of the 80-percent diversion limit would mean that over 2,000,000 pounds of milk must be unloaded and re-loaded each month at the Meridian, Idaho, pool supply plant to be transferred to nonpool manufacturing plants. According to the cooperative such unnecessary handling would be undertaken for the sole purpose of meeting the delivery requirements of the order. The cooperative stated that such unnecessary unloading and re-loading takes employees' time, increases the exposure of milk to contamination, and requires additional cleaning of lines and tanks.

Western Dairymen Cooperative, Inc. (WDCI) filed comments supporting the requested suspension. WDCI stated that the suspension would greatly reduce hauling costs, as well as reducing the cost of operating the supply plant.

For the year preceding April 1989, producer milk pooled under the Southwestern Idaho-Eastern Oregon milk order increased 22 percent over production levels of the previous year. Although receipts of producer milk used in Class I have also increased, they have done so at a much slower rate. Consequently, the percentage of milk produced in the market that is surplus to the market's fluid milk needs has increased significantly in the past year.

Given the marked increase in the volume of producer milk pooled under the order, the requested suspension will allow the pooling of producers who stand ready to supply the fluid milk requirements of the marketing area to be handled without undue expense. There is no indication that the suspension would encourage association with the order of the milk of producers who are not bona fide suppliers of the bottling needs of the market.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary and contrary to the public interest in that:

- (a) The suspension is necessary to reflect current marketing conditions and

to assure orderly marketing in the marketing area in that without extensive, unnecessary and expensive hauling and handling, substantial quantities of milk from producers who regularly supply the market would be excluded from the marketwide pool, thereby causing a disruption in the orderly marketing of milk;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties and they were afforded opportunity to file written data, views or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the Federal Register.

List of Subjects in 7 CFR Part 1135

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the following provisions in § 1135.13 of the Southwestern Idaho-Eastern Oregon order are hereby suspended for the months of June through November 1989:

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. The authority citation for 7 CFR Part 1135 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 1135.13 [Temporarily suspended in part]

2. In § 1135.13, paragraphs (f) (3), (4), (5), and (6) are suspended.

Signed at Washington, DC, on: May 26, 1989.

Jo Ann R. Smith,
Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89-13031 Filed 5-31-89; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Parts 563c and 571

[No. 89-1490]

RIN 3068-AA62

Investment Portfolio Policy and Accounting Guidelines

Dated: May 19, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule; final statement of policy.

SUMMARY: The Federal Home Loan Bank Board ("Bank Board," "Board" or "FHLBB") is amending its regulations governing institutions chartered by the Board or insured ("insured institution" or "insured institutions") by the Federal Savings and Loan Insurance Corporation ("FSLIC") by amending its rules and by adopting a Statement of Policy that clarifies and re-emphasizes that the securities activities of an insured institution must be conducted in a safe and sound manner, must be in compliance with an approved and documented investment policy and strategies, and must be accounted for in accordance with generally accepted accounting principles ("GAAP"). Insured institutions must comply with the documentation requirements on August 30, 1989. As existing GAAP literature addresses the proper accounting for securities activities, the Board will continue to challenge accounting for securities activities not properly reported in accordance with GAAP.

The final rule requires separate accounting for and disclosure of securities held for investment, held for sale, and held for trading, consistent with the requirements of GAAP. The final Statement of Policy reiterates the need for the safe and sound investment of an institution's funds and requires an insured institution's board of directors to review and approve the institution's investment policy and strategies and to monitor the institution's compliance with the approved investment policy and strategies. The Statement of Policy reiterates the requirement that securities activity be recorded in accordance with GAAP; requires management of an institution to support its classification of and accounting for securities via appropriate documentation; requires auditors to document their concurrence or lack thereof with management's classification and accounting; and offers guidance on the factors to be considered by management and its auditors in carrying out their respective responsibilities.

EFFECTIVE DATE: June 1, 1989. Pre-existing GAAP requirements are unaffected by this Statement of Policy. Insured institutions must comply with the documentation requirements of an investment policy and strategies and board of director reviews on August 30, 1989. For further discussion, see section II.F. Effective Date of the Supplementary Information and § 571.19(e) Effective Date of the Statement of Policy.

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SUPPLEMENTARY INFORMATION: With the increased investment powers of savings institutions and the proliferation of different types of securities,¹ some insured institutions have expanded their investment activity to include a variety of securities and portfolio strategies as an alternative or as an adjunct to traditional lending activities. The extent, volume, and nature of the activity of purchasing, originating, and selling securities has led to questions regarding the appropriate and consistent accounting for and financial statement presentation of such securities in accordance with GAAP, and the institutional safety and soundness implications of such accounting. As a result, the Board on June 9, 1988, proposed to amend its regulations and to adopt a Statement of Policy regarding investment portfolio policies and accounting guidelines applicable to institutions that are chartered by the Board or the accounts of which are insured by the FSLIC. See Board Res. No. 88-460, 51 FR 23244 (June 21, 1988).

The Board invited comments on the proposed Statement of Policy and the proposed rule at the time they were issued. (The comment period was subsequently extended to September 20, 1988.) In addition, the Board conducted a public hearing on September 22, 1988, on the proposed Statement of Policy and proposed rule. Many commentators responded with letters addressing the issues covered by the proposals and suggested modifications to some of the provisions of the proposed Statement of Policy and proposed rule.

The Board has carefully studied the issues raised by the commentators in determining whether and in what manner to proceed with an investment portfolio policy and any related accounting guidelines. Accordingly, today the Board is issuing its Statement of Policy and related regulations with respect to investment portfolio policy and accounting guidelines.

¹ "Securities", as used throughout this preamble, refers generically to investment securities, high yield corporate debt securities, loans, mortgage-backed securities, and derivative securities.

The Board notes that the Administrative Procedures Act (the "APA"), 5 U.S.C. 553(b)(3)(A), exempts general policy statements and interpretative rules from notice and comment requirements. Certain portions of the final Statement of Policy differ significantly from the proposed Statement of Policy. However, as permitted by section 553(b)(3)(A) of the APA, the Board has not submitted the revised portions for public comment before adopting this final Statement of Policy.

This preamble will first review the comments received on the proposed Statement of Policy and proposed rule. An overview of the final Statement of Policy and final rule is then provided.

I. Summary of Comments

The Board received 188 comment letters on its proposal. Of these, 144 letters were received from insured institutions, 19 letters from thrift industry trade and accounting associations, 14 letters from broker/dealers, investment advisors and mortgage product companies, two letters from accounting firms, three letters from law firms representing unnamed clients, one letter from an individual and five letters from members of Congress either forwarding letters from their insured institution constituents (which letters are included in the summary as insured institutions) or commenting on the concerns of the Congressional representatives.

The letters responded to concerns in seven general areas. These areas of concern are: (1) The impact on the industry of the proposed rule and proposed Statement of Policy; (2) the proposed policy and strategies requirements; (3) the extent of the board of directors' involvement in the management of institutions; (4) various issues regarding GAAP, notably the definitions of and relevance of certain terms and concepts such as "intent" and "ability to hold"; (5) the documentation requirements; (6) the impact of accounting for mutual fund investments; and (7) the effective date. These comments have been carefully considered by the Board in issuing this final rule and final Statement of Policy. The comments received on each of these areas are specifically addressed below.

A. Impact of Rule and Statement of Policy on the Industry

Eighty seven respondents commented on the anticipated overall impact the proposed rule and proposed Statement of Policy would have on the savings and loan industry. Many commentators perceived the proposed rule and the

proposed Statement of Policy as an overreaction to industry abuses that would result in excessive and costly regulation. Commentators observed that the Board's existing regulations, examination procedures, and the existing supervisory monitoring system can be used to correct perceived abuses. They contended that the powers currently available to the Board should be exercised rather than imposing additional, burdensome, and redundant regulations. In addition to being burdensome and disruptive, commentators argued that the proposed Statement of Policy would not necessarily promote the safety and soundness of insured institutions or the thrift industry.

Sixty seven commentators charged that the proposed Statement of Policy failed to take into account the dynamic investing environment that has developed since deregulation of interest rates and the resulting frequent, and sometimes volatile, swings in interest rates. Commentators expressed the belief that the proposal limited management's flexibility and discouraged or deterred the prudent use of modern portfolio management techniques. Respondents speculated that insured institutions that actively manage risk will be discouraged from doing so for fear of creating a sale or trading portfolio (with the attendant accounting implications) when their intent was only to better position the investment portfolio against interest rate risk. Commentators suggested that, as a reaction to a Statement of Policy of this nature, insured institutions may take insufficient interest rate risks, e.g., by withdrawing from the market or resorting to U.S. government securities, thereby diminishing profitability. Respondents argued that the Board's intent of limiting speculative excesses and promoting board of director involvement could have the opposite effect, resulting instead in board of director complacency and assumption of insufficient rate risk.

Another industry-wide effect anticipated by commentators was the increased dependence by insured institutions on expert investment advisors for purposes of drafting the investment policies and strategies and advising on investment transactions. Respondents noted that thrifts may not find these expert services affordable. Similarly, respondents argued, small thrifts generally will not have the resources to hire support personnel to effect the myriad of requirements in the proposed Statement of Policy. Thus, respondents contended there would be a

disproportionate economic impact on smaller insured institutions. Certain commentators suggest that small thrifts should have less detailed compliance requirements.

Commentators speculated that the adoption of the proposed Statement of Policy would have a potentially detrimental impact on the earnings and image of insured institutions and would erode investor support and confidence in the insured institutions. Respondents suggested that these anticipated market perceptions may result in a diminished capability of thrifts to raise capital in the financial markets at a time when significant infusions of new capital are sorely needed. Thus, the reduced ability to attract outside capital could create more risk to the FSLIC. The proposed Statement of Policy was, therefore, perceived as potentially lowering the value of a thrift charter vis-a-vis a bank charter.

In addition, commentators noted that the accounting implications of a transaction are often a primary consideration for entering into a transaction. Therefore, numerous transactions considered beneficial by the respondents may not be consummated because insured institutions would be more concerned about the accounting impact of the transactions rather than the economic benefits of the transactions.

B. Implementation and Documentation of Investment Policy and Strategies

Comments were received from 35 respondents regarding the proposed policy and investment strategies requirements. Most commentators agreed that thrifts should have a clear, written statement of overall policy from which to make portfolio management decisions and that the investment policy should address the overall mission of the insured institution. Some commentators noted, however, that the cost to create a written policy may be excessive and wasteful.

Commentators argued that the proposed Statement of Policy did not reflect modern portfolio theory. Concerns were expressed by commentators that the proposed Statement of Policy envisioned a neatly written, specific plan for all scenarios of business cycles, i.e., rising and falling interest rate environments, with strategies for management to follow in each cycle. Respondents observed that portfolio management does not operate in this fashion; a job specific investment policy would not provide sufficient latitude for necessary investment activities in an ever-changing financial environment. Rather, respondents

believed the investment policy should be sufficiently broad to permit management to manage the portfolio, to react to changing market conditions on a timely basis, to take advantage of investment opportunities, and to adjust the portfolio to reflect exposure to interest rate risk through restructuring and hedging. Commentators expressed the belief that the proposed Statement of Policy would hinder the flexibility deemed necessary to manage interest rate risk in a safe and sound manner. Thus, respondents believed, following the policy strictly could be economically detrimental to the investment activities of insured institutions.

In addition, respondents commented that volatile markets may make the best plan obsolete in a short period. Commentators suggested that the focus of the policy should center on the overall investment results to be achieved; hence, strategies should not be developed for each type of instrument.

With regard to the items listed in the proposed Statement of Policy for consideration in developing the investment policy, critics charged that the proposed list ignored credit risk and ratings mix, instrument mix, and risk concentrations. Other respondents feared that a board of directors might address only the factors listed in the proposed Statement of Policy and might ignore other relevant investment and market factors. An additional criticism levied by critics was that numerous factors that affect portfolio management could not possibly be foreseen and, therefore, could not be discussed in the investment policy. Thus, critics argued, there will be a need for numerous revisions to the investment policy and frequent board approvals resulting in loss of valuable management and board of director productivity.

C. Board of Directors' Responsibilities

Seventy five respondents addressed the role of the board of directors and the role of management in the establishment of the investment policy and strategies. Commentators perceived the proper role of the board of directors of an insured institution as setting only the broad policies by which the insured institution should conduct its operations. According to this reasoning, the board of directors should then appropriately delegate to management the responsibility for operating the insured institution on a daily basis. These commentators indicated that it is the responsibility of the board of directors to monitor the performance of the insured institution (and management and any outside consultants) and to

ensure that appropriate internal controls and procedures are implemented.

The proposed Statement of Policy is perceived by these commentators as creating a new level of board of director involvement, a level that moves beyond the normal oversight role of the board of directors and into the daily financial decisions of an insured institution. (This perception was heightened by the perceived excessive documentation requirements of the proposed Statement of Policy.) Respondents believed that the existing system of checks and balances between the board of directors and management would be compromised by the increased oversight requirements of the proposed Statement of Policy and that the board of directors would be less able to provide overall guidance when forced to focus on the daily investment activities of the institution.

In keeping with their belief that it is management's responsibility to operate an institution in accordance with the broad policies established by the board of directors, the commentators noted that the board of directors' involvement in the daily operations of an institution would create an inflexible situation whereby the board must act without regard to management's expertise or effectiveness. Other respondents commented that management may hesitate to act on legitimate investment strategies until the board of directors approved such activities, thus delaying or preventing a timely, responsible action to fluctuating market conditions. Commentators indicated that a board of directors typically does not have sufficient time or expertise to develop strategies that set out the manner in which the investment policy is to be carried out. The respondents argued that the board of directors often do not have a thorough knowledge of the investment function or specific securities. Thus, their involvement in guiding such activities is inappropriate. Respondents urged that the final Statement of Policy clarify that the board of directors is ultimately responsible for compliance while management has the responsibility for: (1) Execution of investment transactions in accordance with the board of directors policy; and (2) the proper reporting of investment activities to the board of directors. Commentators also suggested that the board of directors' responsibility for oversight of the investment portfolio be delegated to an investment committee of the board of directors, similar to any other specialized function of the board, e.g., pension and compensation committee, audit committee, etc.

An additional concern expressed by many commentators was that the proposed Statement of Policy would place directors in a position of liability beyond the present standard of care under the business judgment rule. Commentators suggested that increasing the board's responsibilities and the attendant legal liability could make it more difficult to obtain director and officer liability insurance at reasonable costs and would deter competent persons from participating on the boards of directors of insured institutions. Finally, several commentators cited various existing regulations that set forth board of directors' responsibilities regarding the oversight of an insured institution and suggested that a consistent approach be established in the final Statement of Policy.

D. Reporting in Accordance With GAAP

Comments directed at various aspects of GAAP and the Board's authority to promulgate GAAP were received from 145 respondents. At the outset, one commentator wished for the Board to make it clear in the final Statement of Policy that trading is a permissible activity for thrifts so long as the accounting for the activity conforms with GAAP. Another commentator observed that GAAP presently limits the use of amortized cost for investments to *bona fide* investment activity. The general areas of comment are discussed separately below.

1. Authority to Promulgate GAAP

Twenty nine commentators perceived the Board as promulgating GAAP in the proposed Statement of Policy and believed that the Board is not empowered to promulgate GAAP. Respondents believed the Board, while properly having input to the promulgation of GAAP, should let the accounting profession define what constitutes "held for investment", "held for sale", and "held for trading". Once GAAP is established by the accounting profession, commentators suggested the Board could offer guidance. Other commentators stressed that the Board is not an appropriate source for clarification of GAAP. Respondents stated that any attempt by the Board would result in the creation of regulatory accounting principles ("RAP"), could result in disparities in accounting amongst financial industries, and may result in noncompliance with the Competitive Equality Banking Act of 1987 ("CEBA").

Commentators noted that the Financial Accounting Standards Board ("FASB") is currently working on a financial instruments project to address

many concerns regarding the accounting for financial instruments. Commentators also cited the work of the American Institute of Certified Public Accountants ("AICPA") Savings and Loan Committee on a proposed Statement of Position with respect to accounting for securities activities of thrifts. Forty seven commentators believed that the Board should wait until these accounting bodies established appropriate accounting standards and definitions of concepts regarding accounting for securities.

Six commentators further noted that the banking agencies have adopted the Federal Financial Institutions Examination Council's ("FFIEC") document regarding securities transactions, the Supervisory Policy Statement on the Selection of Securities Dealers and Unsuitable Investment Practices (the "Appendix") and urged the Board to consider adopting that document. Adoption of the FFIEC document, commentators contended, would place the Board in conformity with banking agencies (and Bank RAP), and would be consistent with the letter and spirit of section 402 of CEBA.

Three commentators noted that there is a misguided belief that thrifts and banks should follow the same accounting principles. They indicated that the differences between these institutions should lead to different accounting practices, where appropriate such as investment transactions, to reflect these differences.

2. Intent and Ability

Forty two commentators specifically addressed the definition of the concepts "intent" and "ability to hold for the foreseeable future". The comments on these concepts were diverse with most of the remarks directed to the concept of "intent"; however, many remarks directed at "intent" appeared equally attributable to "ability to hold". The comments ranged from the belief that any attempt to define the terms is fruitless as any definition would be arbitrary or subjective, would be unworkable and would create more problems than would be solved, to the notion that the concepts are essential to the accounting for securities but greater clarity of definition is needed. The latter commentators suggested that, without adequate definitions, the proposed Statement of Policy would lend itself to the same abuses and inconsistent reporting as practice currently exists.

Commentators suggested guidance should be developed to distinguish between trading for the purpose of short-term gains ("gains trading") and sales for prudent asset/liability

management. Additional guidance was believed by some commentators to be necessary to ensure consistent application by boards of directors, management, independent accountants, and Federal Home Loan Bank System supervisory personnel and examiners.

Certain commentators believed that intent is difficult to prove but that the Board should encourage proper documentation of intent as current GAAP hinges on the factors of intent and ability to hold. One commentator believed documented intent is a strong indication of management's commitment to follow GAAP; undeclared and undocumented intent should be a strong indication of a lack of commitment to GAAP by management. The proposed Statement of Policy was perceived by some commentators as greatly expanding the meaning and scope of the concepts of "intent" and "ability to hold". Commentators believed that the expanded concepts give rise to a presumption of trading where intent is not documented. The proposed Statement of Policy was perceived by other commentators as emphasizing form of documentation over the economic substance of securities transactions. (See discussion under the caption E. "Documentation Requirements", infra.) Respondents suggested economic substance should be the controlling criteria for recording transactions.

The proposed Statement of Policy was also perceived by commentators to stress the consistency of securities activity with stated investment policies. Commentators argued that the real world changes quicker than statements of policy and strategies can be revised and approved by boards of directors. Insured institutions, respondents argued, must react to the changing financial markets to operate prudently and profitably.

Respondents expressed concerns that the concepts reflected in the proposed Statement of Policy were too rigid and specific when viewed from a "passage of time" perspective; the rationale for owning a security can change based upon fluctuating market conditions over time. There may have been a documented, valid intent to hold a security when the security was purchased or originated; yet, if a liquidity need arises or if a perception of prepayment risk exists, respondents argued that the insured institution should be able to restructure its portfolio without invalidating its previously stated intent and without

jeopardizing the classification * of and accounting for other similar securities.

Many commentators were concerned that the guidance offered on both intent and ability to hold was subjective and had no relevance to actual investment decisions. These commentators argued that a determination of intent is a matter of perception and does not require a subsequent, confirming event. Other commentators believed that subsequent events should be reviewed to confirm that the intent was to invest in a security for investment, for sale, or for trading purposes. These commentators argued that a presumption of trading arising from the lack of documentation of intent is not realistic.

Commentators argued that the classification of transactions should be based on substantive facts and circumstances. They argued that there should not be a presumption of trading, but, rather, that the concepts of intent and ability to hold should guide the classification of and accounting for securities. The overall concern of respondents was that if one or more of the factors identified as a presumption of trading are present, the security will be classified as a trading asset by examiners regardless of management's stated intent to hold to maturity. If the activities considered to be presumptions of trading are to survive in the final Statement of Policy, commentators suggested that the Statement of Policy should discuss the relative weight to be applied to the factors listed in the proposed Statement of Policy. Further, the final Statement of Policy should specify under what circumstances the "taint" of the presumption of trading could be removed.

Other commentators stressed that intent should be documented at the origination of the securities transaction and the security classified accordingly as held for investment, held for sale, or held for trading for accounting purposes. In contrast, certain commentators believed that the intent documented at the acquisition of or origination of a security (and used to classify the security for accounting purposes) may become a poor determinate of classification at a later review date. These commentators believed appropriate classification only becomes apparent through time.

* "Classification", as used throughout this preamble, refers to the balance sheet classification of securities and does not refer to classification of assets under 12 CFR 561.16c, "Classification of Certain Assets". Furthermore, "classification" as used throughout this statement of policy, does not refer to a classification of assets that falls within the arbitration process mandated by the CEBA.

With respect to the ability-to-hold determination, one commentator believed that the financial strength of the insured institution should be considered as well as the ability to access alternative sources of funds through alternative markets. The commentator believed consideration should be given to the regulatory capital position of the insured institution and other regulatory and external market limitations. Further, the commentator believed strong thrifts should not be confined to specific definitions. A commentator suggested that a system of permissible investment be driven by the regulatory capital position of the insured institution.

A general observation offered by one commentator was that the proposed Statement of Policy would help sharpen management's thinking and planning with respect to management's intent and ability to hold securities. Another commentator believed that supervisory personnel should be able to make determinations of investment, sale, or trading classifications without specific definitions.

3. Disparity Between Economics and Accounting

In embracing GAAP as it exists in current literature, commentators suggested that the Board supports accounting conventions that may bear no relationship to economic reality. Although one commentator believed that GAAP has kept pace with the development of securities and related activities, most commentators argued that GAAP has not kept pace with the rapid changes in the securities market or, stated differently, that newly developed financial instruments have stretched the limitations of the current accounting model, which is based on historical cost. A commentator believed that the Board will be continually behind the industry in maintaining the policy statement due to the development of new financial instruments and financing techniques.

4. Move Toward Market Accounting

Seventeen respondents perceived the proposed statement of policy as a move to mark-to-market ("market") accounting. Three respondents presented favorable remarks regarding the perceived adoption of market accounting, regarding such accounting as the best tool for evaluating the true financial health of a thrift. Conversely, fourteen respondents expressed concerns that market adjustments that occur at specific points in time can result in significant fluctuations in income between periods and would

have a potentially deleterious impact on capital. Respondents argued that extensive market accounting will discourage positive risk management efforts and only encourage short-term profit motives driven by interest rate swings.

One commentator argued that the use of market accounting would encourage sound economic management by equalizing the accounting for securities gains and losses, if market accounting is not applied selectively. The commentator believed that selective application would not lead to accounting consistency and, therefore, to the objective of fair and comparable reporting. The commentator believed that the true thrift mission is to provide a safe depository for savings by creating a credit risk, rate risk controlled interest margin for the insured institution.

Many commentators believed that it is appropriate to sell at a gain to take advantage of market circumstances. Therefore, these commentators suggested that prudent, timely sales by an investor will essentially replicate market accounting. Conversely, respondents noted that the Board, in adoption of GAAP, is focusing only on the market value changes of assets and ignoring the market value changes of liabilities. Thus, these respondents noted that the economic condition of thrifts would be misrepresented. The respondents believed this inconsistent treatment of balance sheet items may result in a less accurate representation of the financial condition of a thrift than cost basis accounting. Commentators, therefore, urged that the accounting treatment should mirror economic reality whenever possible.

5. Presumption of Trading

The Board received numerous comments regarding the Board's conclusion that certain securities activities are generally indicative of trading activities and should be recorded as such. Certain commentators believed the automatic classification of the "six deadly sins"³ as trading is not warranted. While certain transactions are speculative by their nature, e.g., arbitrage, futures and "when issued" securities, commentators believed specific reasons may exist in a

³ This term refers to the six securities transactions referred to in the Board's proposed Statement of Policy at 12 CFR 571.19(d)(4)(i)(D) (1)-(6) and Section I of the Appendix to the document prepared by the Federal Financial Institutions Examination Council ("FFIEC") entitled Supervisory Policy Statement on the Selection of Securities Dealers and Unsuitable Investment Practices ("FFIEC Policy Statement").

particular market environment to justify entering into certain of the transactions identified in the proposed Statement of Policy as indicative of trading. These respondents also noted that the list of transactions may not be complete.

E. Documentation Requirements

While two respondents favored the documentation requirements, forty two commentators expressed concern. The commentators who expressed concern believed that while the Board may have the authority to require documentation, the proposed Statement of Policy creates excessive documentation requirements. Respondents charged that the documentation requirements will be cumbersome to implement and will require hundreds of hours to develop, implement, assess, and revise investment policies and strategies. On an ongoing basis, respondents argued that a requirement to document the rationale for investment decisions and to document the transactions entered into is also burdensome. As a result of the documentation requirements, commentators contended management will spend less time monitoring financial markets and prudently managing their portfolio and will spend more time documenting strategies and transactions, thereby diverting energy from productive endeavors. Further, commentators argued, management will have to expand the reports to the board of directors regarding investment activity and deviations from investment policies and strategies.

A commentator believed that much of the documentation required is not necessary for purposes of supporting a sound investment policy. Some respondents believed that only strategies should be documented, with documentation of individual transactions limited to identification, at the time of the transaction, to the applicable strategy. The documentation requirement was considered by commentators to be especially onerous in a volatile market when a large volume of transactions would be performed. Such a volume of transactions may appear to deviate from the thrift's stated investment policy or strategies. Concern also was expressed by critics that the documentation requirements would be disproportionately burdensome on small insured institutions and would tax the lesser financial and personnel resources available to smaller thrifts. Thus, commentators urged that a cost/benefit analysis be made to determine if the documentation requirement (in its proposed form) is warranted and in the best interests of thrifts or the FSLIC.

Four commentators noted that deviations, and the reasons therefor, from an investment policy should be documented in writing by management and that the proposed Statement of Policy should permit such documentation by exception. One commentator urged that the documentation by exception procedure included in the proposed rule should be clarified and strengthened in the final Statement of Policy. Another commentator believed more guidance is needed to state how frequently an insured institution may change its overall investment policy before the insured institution is presumed to be trading.

Concern was expressed by commentators that such documentation would result in extended examinations by independent accountants and by Bank System examiners, causing additional costs to insured institutions. Further, commentators argued, the documentation would provide a trail for auditors and examiners to question management decisions. The commentators suggested that, without careful training of auditors and examiners, the documentation may be misinterpreted and improperly result in misclassification of activities as sale or trading and that, in the case of abusive or incompetent management, the documentation will likely be untruthful or wrong and, therefore, a useless exercise.

Finally, some commentators expressed concern that, in the event of spurious lawsuits, plaintiffs will have access to detailed records and the documentation will serve as a trail of management intent and actions from which claims for trading losses may be made. Such claims may have nothing to do with the sound management of insured institutions. Thus, it was contended by these respondents that the documentation will only provide plaintiffs with data that could be misinterpreted and used wrongfully against management.

F. Mutual Funds

In response to the Board's proposed rule and Statement of Policy, numerous comments were received regarding the appropriate accounting for investments in mutual funds. Thirty commentators noted that under the Uniform Accounting Standards Regulation adopted by the Board on December 21, 1987, amortized cost accounting for mutual funds qualifying as liquid assets may be used until December 31, 1993. The commentators believed the use of the lower of cost or market accounting for mutual funds threatens the utility of

mutual funds as a viable alternative to directly investing in complex financial markets. Mutual funds are attractive to certain insured institutions due to their liquidity, the professional advice and professional management of the funds, and the perceived safety of the funds. Thus, mutual funds are considered by these respondents to be a cost-effective manner of managing thrift assets. Commentators stated that to require lower of cost or market accounting for these investments would remove those benefits from thrifts. One commentator argued that amortized cost should be used on the basis that thrifts are accomplishing through mutual funds what they could otherwise achieve directly in the financial markets; thus, the Emerging Issues Task Force Consensus No. 86-40 should be set aside. The commentators requested the delay of lower of cost or market accounting for all mutual funds until December 31, 1993.

G. Effective Date

Thirty nine commentators urged that the final Statement of Policy should be adopted prospectively, not retroactively. A variety of options were presented by respondents as to the implementation of the Statement of Policy. Suggested specific dates suggested by respondents included no later than January 1, 1989, July 1, 1989, and January 1, 1990. Suggested time periods ranged from six months to two years after adoption of the final Statement of Policy, six months or the next fiscal year, fiscal years beginning ninety (90) days after adoption of the final Statement of Policy, and the first fiscal year beginning six months after adoption of the Statement of Policy.

Other commentators suggested that the Statement of Policy be applied prospectively to transactions entered into after the effective date of the Statement of Policy and that the current portfolio be grandfathered as to its classification and accounting. Some commentators suggested, in a less specific manner, that insured institutions be permitted a phase-in period or transition period for compliance with the Statement of Policy. The purpose of a phase-in period or transition rules would be to permit boards of directors and management adequate time to put the necessary systems and documentation in place to achieve compliance with the Statement of Policy. One respondent suggested a phase-in period of two years.

Two commentators suggested that, since the issue is being addressed by the AICPA Savings and Loan Committee,

the Board should coordinate implementation of its Statement of Policy with the AICPA. This would ensure the uniformity with the accounting profession mandated by CEBA.

II. Summary of the Statement of Policy

The extensive comments received, described above, have provided useful insights and guidance to the Board in considering the issues presented by the proposed Statement of Policy and in developing a final version of the Statement of Policy that reflects an appropriate approach to both the accounting and the safety and soundness concerns addressed in the Statement of Policy. The Board's initial goal in proposing the Statement of Policy, and its intention in now finalizing the proposal, is to insure that insured institutions account for securities transactions in accordance with GAAP and that management of an institution have in place appropriate policies, procedures, and documentation to direct and reflect the institution's securities transactions, consistent with safe and sound operations of the institution and prudent business practices, and to support adequately the accounting treatment of a transaction that the institution seeks. The following sections discuss the Board's final Statement of Policy in detail, and in so doing, address the issues and concerns raised by the commentators.

A. Implementation and Documentation of Investment Policy and Strategies

In its Statement of Policy, the Board envisions that an insured institution, with the assistance of management and qualified consultants, if needed, will adopt a written investment policy to set forth the broad direction that the institution's board of directors believes to be an appropriate investment course for the institution, given the present financial position of the institution and the current and reasonably anticipated economic environment. This investment policy would consider, among other things, the institution's business plan, its plans for growth, and the current economic environment in which the institution operates including a range of reasonably foreseeable economic environments,⁴ types of securities, and

⁴ The "range of reasonably foreseeable economic environments" would consider, *inter alia*, the magnitude of fluctuations of interest rates in recent years, significant economic events and conditions on the local, regional, and national level that may affect the decision of the institution to engage in securities transactions, and the experience of the management of the institution in dealing with significant economic events of the past and the

safety and soundness considerations pertaining to the institution. The Board envisions that significant changes in the investment policy of the institution that may be dictated by changing market conditions or a change in perception by the institution's board of directors regarding the institution's investment goals would be documented and would be unusual.

The Board's Statement of Policy requires the institution to develop investment strategies that set out, in reasonable detail, the manner in which the investment policy is to be implemented. The investment strategies are to address, *inter alia*, considerations such as the type, nature, dollar amount and maturity of each group of instruments to be invested in and the acceptable range of interest rate risk for each type of security. The Board believes that documented investment strategies should be in sufficient detail to permit management and its consultants, if any, to determine the direction of periodic (daily, weekly, monthly, etc.) investment activity envisioned by the board of directors. Management's investment strategies should be long-term in nature and, therefore, should only be modified in unusual circumstances.

Management's strategies should include planned management responses to rising and falling interest rate environments and to other external factors that past history and current events support as being reasonable. The strategies should address the range of external factors for which the strategies would continue to be valid and should also justify the boundary or boundaries beyond which the probabilities of specific events occurring are remote based on past history and current events. The range with respect to interest rates, for example, would thus have an upper limit and a lower limit. For events within the reasonably foreseeable range, investment strategies for securities that are accounted for as held for investment should prescribe sales of investment securities.

ability to apply that experience to future events. Given the need to demonstrate a positive intent to hold to maturity to justify the use of amortized cost accounting for securities, the range should include external market events that history and current events support as having a better than remote chance of occurrence. The range utilized by the institution need not include remotely possible interest rates or economic conditions and events, but should address the widest range within which the institution would expect to conduct its operations over the lives of the assets held. When conditions move to the extremes of potentially possible conditions, an institution generally should re-evaluate its financial position and evaluate the need to re-position itself (assets and liabilities) for the significant changes encountered

Accordingly, sales of investment securities within the range should be extremely rare⁵ and the reasons for the sales must be documented adequately and on a timely basis. If management believes that an event has occurred that is outside the limits of the reasonably foreseeable range and is thereby motivated to sell such securities, management must document its belief that such a remotely possible event has occurred in order to justify the continued use of amortized cost accounting.

In considering the structure outlined above, the Board focused on the recurrent, regulatory themes of safety and soundness, a director's duty of care, and the need for institutions to have sound internal controls. The Board believes that the establishment, documentation, and periodic review of an institution's overall investment policy and specific strategies in consideration of a reasonable range of economic and changing interest rate environments is critical to setting management's operational orientation and in ensuring such operations are carried out in a safe and sound manner. The establishment of strategies in changing interest rate environments is consistent with modern portfolio theory, and the Board does not believe that management's investment flexibility is limited by requiring the establishment, documentation, and periodic review of investment policies and strategies. Rather, the Board believes that such requirements merely reflect safe and sound business practices by an institution in evaluating its current investment and potential investment opportunities. The Board acknowledges that some strategies will, in the course of normal operations, be reviewed subsequent to their enactment and may require adjustment. This is considered appropriate as a responsible self-evaluation of management plans in a changing economic environment.

In proposing items to be considered in developing and documenting such policies and strategies, the Board intends for its list of factors to be a component of, but not the definitive source for, all factors to be considered. Thus, as stated in the proposed Statement of Policy, the Board envisions that this list be used as a starting point with additional factors considered as appropriate.

⁵ Within the range of reasonably foreseen events, the Board would consider the number of occurrences of sales of securities held for investment to be essentially non-existent and the dollar amount of such sales, if any, would be negligible.

In light of these considerations, and with this explanation of their intended scope, the Board has determined to adopt the investment policy and strategies requirements substantially as proposed in the Statement of Policy.

B. Board of Directors' Responsibilities

The Statement of Policy requires the board of directors of an insured institution to review and approve the investment policy. In addition, the Statement of Policy requires the board of directors, or an investment committee thereof, periodically to review the institution's investment strategies and activities for consistency with the approved investment policy and strategies. Such review should encompass any significant deviations from the institution's investment policy and strategies, the reasons for the deviations and the basis for the alternative investment activities, including, among other considerations, the amount, nature, type, maturity, interest rate risk, etc., of alternative investments as contrasted with the originally planned investment activities. This review should be documented in the minutes of any meetings of the board of directors or an investment committee during which the review is conducted. Such review is not intended to impose an exceptional new burden on an institution's board of directors but, rather, to fulfill the board of directors' existing, basic fiduciary duty to supervise adequately the actions of management regarding investment activities and to safeguard and account properly for the assets of the insured institution.

For example, R-Memorandum 62, "Director Responsibilities: FHLBB Guidelines; Procedures for Obtaining Information to Support Directors' Decisions" (R-62), dated April 19, 1988, states:

The duty of care includes the responsibility of the directors to select and retain competent management; to oversee the activities of the institution by attending directors' meetings; to require that adequate and reliable information is provided upon which they can make decisions; to carefully review the documentation which is provided; to make the necessary policy decisions upon which management is to operate the institution; to monitor the activities that are delegated to the officers of the institution to insure that the board of directors' policies are being carried out; and to establish controls to assure themselves that the institution is being operated in a safe and sound manner and in compliance with law and regulations. "Directors who willingly allow others to make major decisions affecting the future of the corporation wholly without supervision or oversight may not defend on their lack of

knowledge, for that ignorance itself is a breach of fiduciary duty." *Joy v. North*, 692 F.2d 880, 896 (2nd Cir. 1982).

The Bank Board believes that an institution's directors must have a reasonable level of understanding of the investment policies and strategies adopted and approved, including the uses, risks, and rewards of various securities and securities strategies. This does not mean that directors must become experts in these areas, but the Board does not support the complete reliance by a board of directors upon management or outside consultants, if any, and believes such complete reliance relinquishes a board of directors' responsibilities to oversee the safe and sound operations of their institution. Accordingly, the Board has determined to retain its requirement that the board of directors review and approve the securities activities⁶ as consistent with the investment policy and strategies of the institution and as properly recorded in accordance with GAAP. The Board realizes that not all directors may be best qualified to perform such a review. As a result, the Board's Statement of Policy permits an investment committee of the board of directors to perform the appropriate reviews.

Further, as cited in R-Memorandum 70, "Use of Investment Consultants," dated March 16, 1988, to the extent an independent consultant is utilized by the insured institution to accomplish these requirements, management has the responsibility to oversee the activities of the consultant to ensure that the consultant's actions are consistent with the investment policy and strategies of the insured institution and management's actions. The ultimate responsibility for the oversight of investment consultants lies with the institution's board of directors.

C. Reporting in Accordance with GAAP

1. General

Management has the basic responsibility to assure that an institution properly classifies and accounts for the securities transactions entered into and held at any financial reporting date. The Statement of Policy and regulations that the Board has determined to adopt are intended to provide guidance regarding the proper classification of and accounting for securities held for investment, for sale, and for trading. The Board believes that the Statement of Policy and the amendment to the regulations constitute

⁶ Securities activities may be approved based on a summary report of transactions.

"specific principles or procedures on particular accounting or reporting matters as the Corporation may require by regulation or otherwise". See 12 CFR 563.23-3(a) (1987). The final Statement of Policy thus sets an enforceable standard for the classification of and accounting for securities held for investment, held for sale, or held for trading by insured institutions.

2. Authority to Promulgate GAAP

Through the adoption of the final Statement of Policy, the Board does not intend to preempt the accounting standards setting bodies of their function in the setting of appropriate accounting standards for certain investment securities. As stated in the proposed Statement of Policy, the Board believed the encapsulation of GAAP was merely a summary of current authoritative accounting literature.

As a part of the comment process on the proposed Statement of Policy, the staff of the Financial Accounting Standards Board sent a letter to the Board dated September 20, 1988. In return, the Board posed certain questions to the FASB staff, to which the FASB staff responded in a letter dated December 21, 1988. (See 54 FR 11736 (March 22, 1989) for copies of these letters.) The letters explained the FASB staff's position and upheld the clear delineation of accounting among securities held for investment (until maturity), held for sale, and held for trading. Further, the Chief Accountant of the SEC set forth the SEC staff's position regarding the appropriate accounting for certain securities in an April 14, 1989 letter to the Chairman of the Accounting Standards Executive Committee of the AICPA. The Board believes its Statement of Policy is consistent with the views expressed by the FASB staff and the SEC staff in their respective correspondence. Accordingly, the Board does not believe it is preempting the accounting standards setting bodies when setting forth its requirement that institutions comply with the delineations within current GAAP literature and the requirement that institutions document investment policy and strategies.

The Board realizes that GAAP, specifically, accounting for securities, as currently defined and interpreted by the FASB staff, may change through the due process of the accounting standards setting bodies. When these bodies promulgate new generally accepted accounting principles, the Board, consistent with its requirements, will adopt the new principles. Until such time, the Board will continue to apply

and uphold current authoritative literature.

3. Intent and Ability

In summarizing the current accounting treatment from the relevant accounting literature in the preamble to the proposed Statement of Policy, the Board focused on the two significant factors used in determining the appropriate classification of and accounting for securities held for investment, for sale, and for trading, i.e., the intent and ability to hold the securities consistent with the institution's strategies. As stated in the preamble to the proposed Statement of Policy, the AICPA Audit and Accounting Guide for Savings and Loan Associations ("S&L Audit Guide") refers to these factors in the context of determining whether an estimated allowance for loss in value of securities held must be recorded, i.e., whether there is impairment of a security that requires recognition.⁷ The AICPA Industry Audit Guide, Audits of Banks ("Bank Audit Guide") refers to these factors in the same context⁸ and in the context of the proper classification of and accounting for securities.⁹ In neither the S&L Audit Guide nor the Bank Audit Guide are the terms "intent" and "ability to hold" substantially discussed.

The Board's Statement of Policy provides guidance on the application of these terms in determining the appropriate classification of and accounting for securities held by an insured institution for investment, for sale and for trading. In setting forth the guidance regarding the concepts of intent and ability to hold, the Board originally focused on an accounting concept of foreseeable future. Statement of Financial Accounting Standards No. 65 "Accounting for Certain Mortgage Banking Activities" ("SFAS No. 65") requires that a mortgage loan or mortgage-backed security shall not be classified as a long-term investment unless the institution " . . . has both the ability and intent to hold the loan or security for the foreseeable future or until maturity." ¹⁰ In drafting the proposed Statement of Policy, the Board believed that the terms "for the foreseeable future" and "until maturity" as used in SFAS No. 65 were mutually exclusive terms. After discussion with members of the FASB staff and the staff

⁷ AICPA Audit and Accounting Guide for Savings and Loan Associations (1979), Chapter 3, "Accounting Principles and Auditing Procedures", page 21.

⁸ AICPA Industry Audit Guide, Audits of Banks (1983), Chapter 5, "Investment Securities, Accounting", page 30.

⁹ *Id.* at p. 32.

¹⁰ See SFAS No. 65, paragraph 8.

of the Securities and Exchange Commission ("SEC"), the Board acknowledges the FASB staff's interpretation that the terms are not mutually exclusive, but, in fact, are to be applied consistently.¹¹ Therefore, an institution must have the positive intent and ability to hold securities to maturity, not just a current lack of intent to sell, in order to account for the securities at amortized cost.

In light of the guidance provided by the FASB staff in its letters to the Board, the Board believes that guidance on the concepts of intent and ability to hold to maturity is appropriate based on the significant changes that have occurred in the financial markets in the 1980's. The Board believes that the guidance provided, while certainly not all inclusive, will provide management and its auditors with assistance in carrying out their respective responsibilities to ensure that securities activities are classified and accounted for appropriately.

The use of amortized cost accounting for securities is appropriate only when institutions meet the criteria expressed in authoritative accounting literature. Specifically, the use of amortized cost is based upon certain assumptions, i.e., principally, that the entire principal amount is assured of being recovered. Where the established accounting criteria are not met, using amortized cost is inappropriate.

In evaluating the intent of an institution with respect to its security practices, a positive intent to hold to maturity, not just the current lack of intent to dispose, must be present for a security to be deemed for investment purposes. This does not imply that an institution may never sell securities from the investment portfolio. Significant events that were not reasonably foreseen when a security was acquired or originated may affect the institution's intent and/or ability to hold that security until maturity, although such instances should be extremely rare.¹² A positive intent to hold a security until maturity is presumed to exist only if management's strategies, as supported by its actions, proscribe the sale of securities due to changes in external factors that are reasonably foreseen. Amortized cost is appropriate only when all future events that can be foreseen, and that will lead to a sale, are

¹¹ See 54 FR 11736 (March 22, 1989) for the September 21, 1988 FASB letter.

¹² Within the range of reasonably foreseen events, the Board would consider the number of occurrences of sales of securities held for investment to be essentially non-existent and the dollar amount of such sales, if any, would be negligible.

not considered to be more than remotely possible. If an event in the future has a reasonable possibility of occurring, and that event may lead to a sale, then the institution must use either market accounting or the lower of cost or market accounting. The use of market accounting or the lower of cost or market accounting depends upon, respectively, whether the security is held for the purpose of realizing a holding gain on the assets held for indefinite periods of time (held for sale) or earning a dealer's spread between the bid and asked prices (held for trading).¹³

It is management's responsibility to support the asset valuation method it believes appropriate for particular securities transactions. Documentation of management's strategies and subsequent actions consistent with such strategies is an essential element in supporting a valuation method.¹⁴ Such documentation of strategies should clearly demonstrate, for example, management's positive intent to hold a security to maturity and the ability to hold the security to maturity if a security is to be recorded using amortized cost. Where such documentation exists and management's past and subsequent actions support the course of action set forth in the strategy, the Board will presume that the requisite intent exists. However, subsequent management actions must bear out the presumption.

Where circumstances occur that are outside the range of reasonably foreseeable events, the Board ordinarily would not consider the use of a particular valuation method to be placed in jeopardy if sales of investment securities occurs.¹⁵ However, it is the

¹³ These definitions are drawn from a letter, dated December 21, 1988, to the Federal Home Loan Bank Board from the staff of the Financial Accounting Standards Board ("FASB"). See 54 FR 11736 (March 22, 1989) for the text of the letter.

¹⁴ It is the duty of the independent accountant to verify (and document) that management's choice of an asset valuation method is proper.

¹⁵ In this regard, the Board is aware that legislation will be passed in 1989 that will require institutions to meet significant new and restructured capital requirements. The imposition of such new requirements could be considered a remote event if the new legislation's capital requirement could not have been reasonably foreseen at the time the institution acquired securities for its investment portfolio. If such is the case, and if the institution adopts a new business plan and investment policy (as a necessary and/or justifiable response to the new legislation) and that plan calls for the reduction of assets to meet the new capital requirements, investment securities could be sold pursuant to a corresponding investment policy without jeopardizing the accounting for other securities held to maturity.

responsibility of management to document that its actions with respect to securities accounted for under a particular valuation method are in response to the unforeseen events and that such unforeseen events are outside the range of reasonably foreseeable economic events based upon past history and current events.

The Board notes the practice of securitization of certain assets, e.g., securitizing of loans by FNMA, FHMLC and GNMA, and that commentators expressed concern that securitization of assets may be considered as an activity that would preclude the use of amortized cost in accounting for the FNMA, FHMLC or GNMA securities, for example. The securitizing of an asset, in the case of federally-backed certificates, is generally performed for two purposes: (1) To reduce exposure to credit losses, and (2) to enhance liquidity. The Board does not believe that merely securitizing assets (or a significant volume of securitization) must, by itself, constitute an activity that precludes the use of amortized cost accounting. The securitization of assets may serve as an indicator that the institution intends to use the security for purposes that would be inconsistent with a positive intent to hold the security to maturity. Where the institution uses the security for purposes inconsistent with holding the security to maturity, e.g., to take advantage of the liquidity enhancement feature, the Board believes that the use of amortized cost accounting would not be appropriate. The Board will challenge the use of amortized cost accounting in those instances. Certainly, the sale of a security will negate a stated positive intent to hold to maturity in the absence of a remotely possible event.

The Board emphasizes that, where management intends to engage in securitization of assets, the investment strategies should address, *inter alia*, the assets to be securitized, the intended use of the security, the circumstances under which the security would be utilized for liquidity purposes, for example, or sold. Management's subsequent actions must support the stated strategy where a security is to be accounted for using amortized cost.

In analyzing ability to hold, the proposed Statement of Policy addressed not only an institution's financial ability but also its regulatory ability to hold securities in compliance with applicable regulations, e.g., regulatory capital requirements, liquidity, loans-to-one borrower limitations, equity risk limitations, growth limitations, investment authorities, etc. These considerations continue to be valid in

assessing the appropriateness of recording securities investments on a historical cost basis.

4. Disparity Between Economics and Accounting

The Board appreciates the number of comments received regarding the inconsistencies between accounting and economic results, the inconsistency between market and lower of cost or market accounting, and the impact the adoption of the final rule and final Statement of Policy could have on the asset/liability management of institutions. The Board continues to be frustrated by the pace at which the accounting setting bodies develop guidance reflective of economic transactions and, specifically, sophisticated securities activities. Thus, the Board again takes the opportunity to encourage the accounting standards setting bodies to quicken their deliberations on these significant issues. To the extent that financial statements are intended to present fairly the activities of an entity, it is difficult to accept an outdated accounting convention that differs significantly from the economic reality of an institution. However, as stated previously, the Board recognizes the benefits of the uniform treatment and comparability that result from the application of GAAP and, while GAAP is not perfect, has adopted GAAP consistent with its mandate under the CEBA.

The Board recognizes that certain concerns expressed regarding the impact on the thrift industry exist. However, the Board continues to believe that the safe and sound management of an institution is of pre-eminent concern. Numerous commentators indicated that stricter adherence to the existing requirements for amortized cost accounting might result in institutions holding their securities in lieu of actively managing them. Active portfolio management is prudent for certain institutions for various reasons including asset/liability management. Portfolios can be actively managed by utilizing techniques such as adjusting assets or liabilities and/or hedging. However, active asset management is not consistent with the concept of intent to hold securities to maturity. Those institutions whose strategies include active asset management would be expected to account for those securities on a basis other than amortized cost.

5. Move to Market Accounting

The Statement of Policy is not an attempt to adopt market value accounting. If it were, the Bank Board

would give weight to the effect of market fluctuations in an institution's liability portfolio on determination of economic or "market" capital. Because GAAP currently precludes such consideration, the Board is restricted in its ability to adopt such an approach for financial reporting purposes.

Nonetheless, the Board may continue to consider the appropriateness of a market value concept for both assets and liabilities for use in assessing the economic position of an institution and for measuring the extent to which an institution operates in a safe and sound manner.

6. Presumption of Trading

The Board has considered the comments received with respect to the six types of transactions listed in the proposed Statement of Policy and has reviewed the proposed position that these securities activities "are presumed to indicate trading unless an institution has documentation that clearly supports the consistency of such activity with the intent to hold securities" (emphasis added). See proposed § 571.19(d)(i)(D)(1)-(6), 12 FR 23244, 23250 (June 21, 1988). The Board continues to believe that when institutions have engaged in any of the "six deadly sins", the transactions have been entered into with the intent to earn a short-term profit. Further, the Board believes that management cannot be presumed to have a positive intent to hold a security to maturity when any of the six listed transactions are present, when sales are planned or when management's past actions indicate a pattern of changing intent responsive to reasonably foreseeable events.¹⁶

GAAP as promulgated and interpreted by the FASB and its staff and set forth in this Statement of Policy encompasses the majority of these transactions. Moreover, the Federal Financial Institutions Examination Council has issued a policy statement entitled "Supervisory Policy Statement on the Selection of Securities Dealers and Unsuitable Investment Practices" ("FFIEC Policy Statement"). Specifically, section I, "Trading in the Investment Portfolio" which is included as an Appendix to this Policy Statement, provides useful guidance on the application of existing GAAP standards in this area. The first paragraph to section I expresses the similar observations and conclusions of the

¹⁶ A pattern of changing intent within reasonably foreseeable events will be presumed to eliminate the credibility of all assertions that a positive intent existed in the past or continues to exist.

Board with regard to securities transactions of some insured institutions and the accounting for those securities transactions. Accordingly, the Board adopts section I of the Appendix to the FFIEC Policy Statement for purposes of reporting to the Federal Home Loan Banks on the Thrift Financial Report. Thus, there will be a presumption of trading that will arise for any of the six listed transactions. If an institution believes it appropriate to account for assets arising from any of the six listed transactions on an amortized cost basis under their particular circumstances, documentation must exist, first, to rebut the presumption of trading and, second, to document that the criteria are met for the use of amortized cost accounting.¹⁷

D. Documentation Requirements

1. General

The Board has considered its documentation requirements in light of the comments received. The Board continues to believe that management should document: (1) Compliance of an institution's investment activities with the approved investment policy and strategies as consistent with the overall requirement of safe and sound management of the institution; and (2) compliance with GAAP. The Board also believes that auditors, in reporting upon management's financial statements, must be able to support, via documentation, their conclusions regarding concurrence with management's classification of and accounting for securities.

Further, concomitant with management's responsibility properly to classify and account for securities transactions, management has the responsibility to maintain an accurate and complete record of the transactions engaged in by the institution. See 12 CFR 563.17-1(c) for existing documentation requirements. This section would apply equally to investment activities. Such records, both on a detailed basis and in reports to the institution's board of directors and other persons, should be maintained in sufficiently concise and coherent detail to permit comprehensible review by the institution's board of directors and other persons that have legitimate access to the insured institution's records, e.g., Federal Home Loan Bank System examiners, independent accountants, etc. Such reviews necessarily evaluate the judgments of the board of directors and management in all areas of the

¹⁷ However, under GAAP, short sales must always be accounted for at market or the lower of cost or market.

institution's operations including the institution's investment activities and the application of GAAP.

The Board believes it is justified in these requirements and wishes to re-emphasize the ability of an institution to document specific transactions or groups of like securities transactions on an exception basis.

2. Small Business Concerns

The Board has considered in particular the comments regarding the potential impact of the documentation requirements on small financial institutions. The Board believes that, for the most part, small institutions would not be engaging in highly complex securities transactions such that the need for a complex investment policy statement and investment strategies would be required. However, the small institution is not relieved of the responsibility for adequate documentation pursuant to 12 CFR 563.17-1(c) where the small institution engages in securities transactions. The small institution would be required to state its investment policy and strategies with respect to its planned activities, including, but not limited to, addressing the suggested factors previously discussed in this preamble. Due to the limited nature of the small institution's activities, the Board believes the level of documentation (of the investment policy, strategies, and transactions) would be in proportion to the level and complexity of transactions consummated. Thus, the Board does not believe the documentation requirement is unduly burdensome on small institutions.

For small institutions that wish to engage in sophisticated securities transactions, the documentation requirement would serve the important function of board and management assessment of (and documentation of) the scope, the risks and the rewards of such activity before engaging in the securities transactions. The Board's concern is that many institutions, large and small, have engaged in highly complex securities transactions without the requisite assessment of the scope and the risk of the transactions. Thus, to the extent any insured institution wishes to engage in sophisticated securities transactions, there is a need systematically and thoroughly to assess the transaction and the potential impact on the institution. The documentation requirement forces a board and management consciously to consider the numerous, relevant factors and assertively state its policy and strategies. Thus, the documentation

requirement is justified for all institutions.

E. Mutual Funds

The Board appreciates the comments received but has previously addressed the accounting for mutual funds and decided thereon. Thus, the issues raised regarding mutual funds are not addressed in this final rule and final Statement of Policy.

F. Effective Date

The Board has considered the comments received urging prospective adoption of the rule and Statement of Policy and has weighed these recommendations against the Bank Board's regulatory obligations, and the conclusions of the FASB staff as set forth in their letters to the Board dated September 20, 1988, and December 21, 1988 and the SEC staff position as stated in the April 14, 1989 letter. In these letters, the FASB staff states their belief that existing GAAP literature is clear in its continuing requirement of a "positive intent to hold (securities) to maturity" (which the FASB staff believes does not equate to a current "lack of intent to sell") in order to account for securities at cost. The Board believes that, with respect to the accounting aspects of the Statement of Policy, it is simply setting forth additional clarification of the proper application of pre-existing GAAP requirements and would expect insured institutions to comply with the requirements of GAAP in documents filed with the Board. See 12 CFR 563.23-3(c), 563c.1(b)(1), and 561.13(a)(1), for example, regarding the Board's current requirements for insured institutions to report in accordance with GAAP.

In light of these regulatory responsibilities and based upon the FASB staff's reiteration of current GAAP literature and the SEC staff position, the Board will continue its practice of challenging the use of amortized cost accounting when institutions engage in significant securities activities that the Board believes are not reported consistent with GAAP. The Board recognizes there will be issues regarding the practical implementation of the Statement of Policy and the Board intends to provide additional guidance in the application of the Statement of Policy in the near future. The Board intends to proceed in a reasonable, prudent and cautious manner in light of the issues of practical implementation of the Statement of Policy. However, the Board, in response to the recommendations received, will defer adoption of the revised documentation requirements of this

Statement of Policy for investment policy and strategies and revised board of directors' reviews until August 30, 1989.

Initial Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 603, the Board is providing the following regulatory flexibility analysis:

1. *Reasons, Objectives, and Legal Basis Underlying the Rule.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION.**

2. *Small Institutions to Which the Rule Applies.* The Small Business Administration defines a small financial institution as a "commercial bank or savings and loan association, the assets of which, for the preceding fiscal year, do not exceed \$100 million." 13 CFR 121.13(a) (1987). Therefore, small entities to which the rule applies are the 1,651 insured institutions that had assets totaling \$100 million or less as of December 31, 1987.

3. *Impact of the Rule on Small Institutions.* All institutions, including small institutions, should benefit from the rule and Statement of Policy which treat all institutions identically regardless of their size for the reasons discussed herein. Further, inasmuch as the intent of the amended rules and adopted Statement of Policy is to require all institutions to adopt, maintain and document sound investment policies and strategies in proportion to their level and type of investment activity, there is no disproportionate or adverse impact on small institutions. The Board, therefore, believes that the amended rule and adopted Statement of Policy will not have a significantly disproportionate economic impact on small institutions.

4. *Overlapping or conflicting federal rules.* There are no known federal rules that duplicate, overlap, or conflict with this proposed rule.

5. *Alternatives to the Rule.* There are no alternatives that would be less burdensome than the proposed rule in addressing the concerns expressed in the **SUPPLEMENTARY INFORMATION** set forth above.

List of Subjects in 12 CFR Parts 563c and 571

Accounting, Bank deposit insurance, Reporting and recordkeeping requirements, Savings and loan associations, Securities.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

Accordingly, the Board hereby proposes to amend Parts 563c and 571, Subchapter D, Chapter V, Title 12, Code

of Federal Regulations, as set forth below.

PART 563c—ACCOUNTING REQUIREMENTS

1. The authority citation for Part 563c continues to read as follows:

Authority: Sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1484); secs. 402–403, 407, 48 Stat. 1256–1257, 1260, as amended (12 U.S.C. 1725–1726, 1730); secs. 3(b), 12–14, 23, 48 Stat. 882, 892, 894–895, 901, as amended (15 U.S.C. 78c(b), m, n, w); Reorg. Plan No. 3 of 1947, 12 FR 4961, 3 CFR, 1943–48 Comp., p. 1071.

2. Amend § 563c.102 by revising paragraph I.4.; by revising the first sentence of paragraph I.6.(a); by redesignating paragraph I.7. through 25 as the new paragraphs I.8. through 26; and by adding a new paragraph I.7. to read as follows:

§ 563c.102 Financial statement presentation.

I. Balance Sheet

4. *Trading account assets.* Include securities considered to be held for trading purposes in accordance with the Statement of Policy at § 571.19.

6. *Investment securities.* (a) Include securities considered to be held for investment purposes in accordance with the Statement of Policy at § 571.19.

7. *Assets held for sale.* Investments in assets considered to be held for sale purposes in accordance with the Statement of Policy at § 571.19 should be reported separately in the statement of financial condition.

PART 571—STATEMENTS OF POLICY

3. The authority citation for Part 571 continues to read as follows:

Authority: Sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1484); secs. 402, 403, 406, 407, 48 Stat. 1256, 1257, 1259, 1260, as amended (12 U.S.C. 1725, 1726, 1729, 1730); Reorg. Plan No. 3 of 1947, 12 FR 4961, 3 CFR, 1943–48 Comp., p. 1071.

4. Amend Part 571 by adding a new § 571.19 to read as follows:

§ 571.19 Investment portfolio policy and accounting guidelines

(a) *General.* This Statement of Policy sets forth the Federal Home Loan Bank Board's ("Board") position on the need for an institution to document prudent investment portfolio policy and strategies. It places with the institution's board of directors the responsibility for

the establishment of and ongoing monitoring of management's compliance with the institution's investment policy and strategies. The Statement of Policy reiterates the requirement that securities¹ be recorded in accordance with generally accepted accounting principles ("GAAP") and requires the management of an institution to support via documentation the appropriate classification² of and accounting for securities in accordance with generally accepted accounting principles. This documentation is then required to be reviewed by the institution's auditors for consistency with promulgated GAAP. From a regulatory standpoint, there is the need for an institution to engage in safe and sound investment of its resources.

(b) *Investment policy and strategies.*—(1) *Content of policy and strategies.* An institution must document its overall investment policy for the institution as a whole and must also document its investment strategies for each different type of security portfolio. The investment policy and strategies must distinguish between those securities activities undertaken for investment, for sale, and for trading. Generally, such activities may be differentiated based upon an institution's desire to earn an interest yield (held for investment), to realize a holding gain from assets held for indefinite periods of time (held for sale), or to earn a dealer's spread between the bid and asked prices (held for trading).³ The institution's policy should state the overall investment course reflecting, inter alia, the institution's business plan, capital adequacy, its plans for growth, and the current economic environment, including a range of reasonably foreseeable economic environments.⁴

¹ "Securities", as used throughout this Statement of Policy, refers generically to investment securities, high yield corporate debt securities, loans, mortgage-backed securities, and derivative securities.

² "Classification", as used throughout this Statement of Policy, refers to the balance sheet classification of securities and does not refer to the classification of assets for purposes of loss allowance analysis under 12 CFR 561.16c, "Classification of Certain Assets". Furthermore, "classification" as used throughout this statement of policy, does not refer to a classification of assets that falls within the arbitration process mandated by the Competitive Equality Banking Act of 1987.

³ These definitions are drawn from a letter, dated December 21, 1988, to the Federal Home Loan Bank Board from the staff of the Financial Accounting Standards Board ("FASB"). See 54 FR 11736 (March 22, 1989) for the text of the letter.

⁴ The "range of reasonably foreseeable economic environments" would consider, inter alia, the magnitude of fluctuations of interest rates in recent years, significant economic events and conditions

Continued

The investment strategies should reflect the more specific plans to carry out the investment policy by addressing the type, nature, dollar amount and anticipated maturity of each type of security that will be used to achieve the strategies. Management's strategies should include planned management responses to rising and falling interest rate environments and to other external factors that past history and current events support as being reasonable. The strategies should address the range of external factors for which the strategies would continue to be valid and should also justify the boundary or boundaries beyond which the probabilities of specific events occurring are remote based on past history and current events. The range with respect to interest rates, for example, would thus have an upper limit and a lower limit. For events within the reasonably foreseeable range, investment strategies for securities that are accounted for as held for investment should proscribe sales of investment securities. Accordingly, sales of investment securities within the range should be extremely rare⁵ and the reasons for the sales must be documented adequately and on a timely basis. If management believes that an event has occurred that is outside the limits of the reasonably foreseeable range and is thereby motivated to sell such securities, management must document its belief that such a remotely possible event has occurred in order to justify the continued use of amortized cost accounting. Furthermore, changes in policy and strategies for the institution as a whole or for a particular group of assets, e.g., from loans held for sale to loans held for investment or vice versa,

on the local, regional, and national level that may affect the decision of the institution to engage in securities transactions, and the experience of the management of the institution in dealing with significant economic events of the past and the ability to apply that experience to future events. Given the need to demonstrate a positive intent to hold to maturity to justify the use of amortized cost for securities, the range should include external market events that history and current events support as having a better than remote chance of occurrence. The range utilized by the institution need not include remotely possible interest rates or economic conditions and events, but should address the widest range within which the institution would expect to conduct its operations over the lives of the assets held. When conditions move to the extremes of potentially possible conditions, an institution generally should re-evaluate its financial position and evaluate the need to re-position itself (assets and liabilities) for the significant changes encountered.

⁵ Within the range of reasonably foreseen events, the Board would consider the number of occurrences of sales of securities held for investment to be essentially non-existent and the dollar amount of such sales, if any, would be negligible.

shall be documented and based upon sound rationale. The investment policy and strategies must, at a minimum, address the following:

- The investment policy and strategies in rising and falling interest rate environments within a reasonably foreseeable range of interest rates;
 - The institution's intent to purchase and originate securities for investment, for sale, or for trading;
 - The liquidity considerations of the institution;
 - The institution's desired rate of return on investments;
 - The institution's desired degree of interest rate risk;
 - The institution's desired asset/liability position;
 - The use of hedging techniques, if any;
 - The types of products to be originated and/or purchased;
 - The intent of the institution to build a mortgage-servicing portfolio;
 - The institution's plan for reinvestment of proceeds from sales; and
 - The characteristics of the investments originated or purchased.
- (2) *Board of directors' review and approval.* The investment policy must be reviewed and approved periodically (but no less than annually) by the institution's board of directors. Furthermore, the institution's investment strategies and securities activities must be approved no less than quarterly by the institution's board of directors or an investment committee thereof to ensure that securities activities are consistent with the investment policy and strategies of the institution. Securities activities may be approved based on a summary report of transactions.

(3) *Portfolio decisions.* An institution shall identify and determine whether securities are intended to be held for investment, for sale, or for trading at the time the securities are committed to be purchased or originated. Documentation of decisions may be made by exception when appropriate, e.g., "all adjustable rate mortgages are purchased or originated for the investment portfolio". Any exceptions to a strategy require identification and documentation at the commitment date.

(c) *Safety and soundness.* Securities activities must be conducted in a safe and sound manner and by competent personnel. Investment decisions and securities activities shall be carried out consistent with the investment policy and strategies that appropriately consider adequate liquidity, protection from interest rate risk, desired rate of return, asset/liability position, capital

adequacy, and management capabilities of an institution. In addition to understanding and approving the institution's investment policy and strategies, the institution's board of directors or an investment committee of the board of directors (in conjunction with the full board) has the fiduciary duty to oversee the establishment of strong internal controls, ensure that management and their investment consultants, if any, are reputable and capable, and to ensure that securities activities are consistent with the investment policy and strategies of the institution and are classified and accounted for in accordance with GAAP.

(d) *Generally Accepted Accounting Principles.* (1) Accounting guidance for securities including investment securities, high yield corporate debt securities, loans and mortgage-backed securities and their derivatives exists in various degrees of detail in the Financial Accounting Standards Board ("FASB") Statement of Financial Accounting Standards ("SFAS") No. 12, "Accounting for Certain Marketable Securities", SFAS No. 65, "Accounting for Certain Mortgage Banking Activities", SFAS No. 80, "Accounting for Futures Contracts", SFAS No. 91, "Accounting for Nonrefundable Fees and Costs Associated with Originating or Acquiring Loans and Initial Direct Costs of Leases", the September 20, 1988, and December 21, 1988, letters from the FASB staff to the Federal Home Loan Bank Board, the American Institute of Certified Public Accountants ("AICPA") Audit and Accounting Guide for Savings and Loan Associations, the AICPA's Industry Audit Guide for Audits of Banks, the April 14, 1989 letter from the Chief Accountant of the SEC to the Chairman of the Accounting Standards Executive Committee of the AICPA, and various consensus of the FASB's Emerging Issues Task Force. As stated in the FASB staff's letters to the Board, GAAP's emphasis on the intent to hold to maturity as a premise for cost accounting is well founded within existing GAAP literature promulgated by the FASB. Further, GAAP currently requires that investments held for sale are to be recorded at the lower of cost or market and investments held for trading purposes are to be valued at market.

(2) An institution's investment activities shall be classified and accounted for in accordance with GAAP. Critical to the proper classification of and accounting for securities as investments is the intent and ability of an institution to hold the securities until maturity. A positive

intent to hold to maturity, not just a current lack of intent to dispose, is necessary for securities acquired to be considered held for investment purposes. Those institutions whose strategies include active asset management would be expected to account for those securities on a basis other than amortized cost.

(3) Management is responsible for analyzing the types, extent and timing of securities activity to ascertain the appropriate classification of and accounting for securities transactions in accordance with current GAAP literature. In supporting management's intent and ability to hold securities until maturity, management must document how its sale, purchase, and origination activities support the institution's intent and ability to hold securities until maturity. Independent accountants must obtain and evaluate management's documentation and analyses and document their conclusions regarding management's compliance with GAAP. Additionally, certain transactions carry a presumption of trading; see Section I, "Trading in the Investment Portfolio" to the Appendix to the Federal Financial Institutions Examination Council ("FFIEC") policy statement entitled "Supervisory Policy Statement on the Selection of Securities Dealers and Unsuitable Investment Practices" included as an Appendix to this Statement of Policy.

(i) *Intent—(A) Sales intent.* The necessity of analyzing sales activity is considered to be minimal since sales activity will be extremely rare for securities held for investment purposes. This does not imply that an institution may never sell securities from the investment portfolio. Significant events that were not reasonably foreseen when a security was acquired or originated may affect the institution's intent and/or ability to hold a security until maturity, although such instances should be extremely rare. Where management's strategies proscribe the sales of securities due to changes in external factors that are reasonably foreseen, a positive intent to hold until maturity will be presumed to exist. Past and subsequent management actions must bear out the presumption. Accordingly, the reasons for sales of securities will need to be determined. Among the factors to be considered in analyzing sales activity include, but are not limited to, analyses of:

- (1) Whether the reason for the sale is consistent with the investment strategy;
- (2) The number of sales transactions at gains and at losses during the reporting period;

(3) The relative volume of gross gains and gross losses on sale of securities as percentages of net income and equity;

(4) The net gain or loss from sales as a percentage of income and equity;

(5) The dollar amount of securities sold compared with outstanding balances throughout the reporting period;

(6) The rapidity of turnover, including consideration of the average number of days securities are owned prior to sale;

(7) A trend indicating that sales of securities transpire largely when gains are recognized ("gains trading" or "par capping");

(B) *Originations and purchases intent.* The types and extent of originations and purchases shall also be analyzed for intent to hold until maturity. Among the factors to be considered in analyzing origination and purchase activity include, but are not limited to, analyses of:

(1) The nature of securities (type, term, duration, yield, etc.) originated and/or purchases;

(2) The means of financing the acquisition;

(3) Trends indicating that market value is consistently below cost at the time of origination and/or purchase.

(C) *Other intent.* Other securities activities that shall be considered when reviewing an institution's intent to hold securities until maturity include, but are not limited to:

(1) The period of time between sales and purchases of securities;

(2) The method by which securities are financed. The consistent funding of securities via very short-term liabilities that have not been extended in duration via interest rate swaps, options, futures, etc., may indicate that the intent to hold the securities is short-term or that the ability to hold is in doubt; and

(3) The reasons for an institution's securitization of loans. There are numerous reasons to securitize loans, one being the ability to raise debt at lower cost when collateralized by mortgage-backed securities. Securitization does not automatically portend sale or trade accounting; however, the extent of securitization should be considered in light of an institution's investment policy and strategies, activity and liquidity needs.

(ii) *Ability to hold.* In supporting and analyzing an institution's ability to hold securities until maturity, documentation shall include, but is not limited to, analyses of the following:

- (A) The availability of funding;
- (B) The ability to meet margin calls and overcollateralization requirements; and

(C) The ability of the institution to fund commitments to purchase or originate securities in light of regulatory limitations (or the non-compliance therewith), e.g., regulatory capital requirements, liquidity, loans-to-one borrower limitations, equity risk limitations, growth limitations, investment authorities, etc. In determining whether an institution's pair-off activity is considered to be investment activity (instead of trading activity), regulatory limitations shall be analyzed based upon gross commitments to purchase or originate securities adjusted for anticipated prepayments through the period of delivery.

(c) *Effective date.* The requirements for the establishment and documentation of investment policies and strategies, management and its auditors requirements to support via documentation the proper classification of and accounting for its securities activities in accordance with GAAP and board of directors' reviews are effective August 30, 1989. As authoritative GAAP literature has been in existence, the Board would expect insured institutions to properly apply the appropriate accounting principles in financial statements filed with the Board and the Board will continue its practice of challenging the reporting of securities activities not properly accounted for in accordance with GAAP.

Appendix to § 571.19

FFIEC Supervisory Policy Statement on the Selection of Securities Dealers and Unsuitable Investment Practices.

I. Trading in the Investment Portfolio

Trading in the investment portfolio is characterized by a high volume of purchase and sale activity, which when considered in light of a short holding period for securities, clearly demonstrates management's intent to profit from short-term price movements. In this situation, a failure to follow accounting and reporting standards applicable to trading accounts may result in a misstatement of the depository institution's income and a filing of false regulatory reports and other published financial data. It is an unsafe and unsound practice to record and report holdings of securities that result from trading transactions using accounting standards which are intended for investment portfolio transactions; therefore, the discipline associated with accounting standards applicable to trading accounts is necessary. Securities held in trading accounts should be marked to market, or the lower of cost or market, periodically with unrealized gains or losses recognized in current income. Prices used in periodic revaluations should be obtained from sources that are independent of the securities dealer doing business with the depository.

The following practices are considered to be unsuitable when they occur in a depository institution's investment portfolio.

A. "Gains Trading"

"Gains trading" is a securities trading activity conducted in an investment portfolio, often termed "active portfolio management." "Gains trading" is characterized by the purchase of a security as an investment and the subsequent sale of that same security at a profit within several days or weeks. Those securities initially purchased with the intent to resell are retained as investment portfolio assets if they cannot be sold at a profit. These "losers" are retained in the investment portfolio because investment portfolio holdings are accounted for at cost, and losses are not recognized unless the security is sold. "Gains trading" often results in a portfolio of securities with extended maturities, lower credit quality, high market depreciation and limited practical liquidity.

In many cases, "gains trading" has involved the trading of "when issued" securities and "pair offs" or "corporate settlements" because the extended settlement period associated with these practices allows speculators the opportunity for substantial price changes to occur before payment for the securities is due.

"When-Issued" Securities Trading

"When-issued" securities trading is the buying and selling of securities in the interim between the announcement of an offering and the issuance and payment date of these securities. A purchaser of a "when-issued" security acquires all the risks and rewards of owning a security and may sell the "when-issued" security at a profit before taking delivery and paying for it. Frequent purchases and sales of securities during the "when-issued" period generally are indications of trading activity and should not be conducted in a bank's investment portfolio.

C. "Pair-Offs"

A "pair-off" is a security purchase transaction which is closed out or sold at, or prior to, settlement date. As an example, an investment portfolio manager will commit to purchase a security; then, prior to the predetermined settlement date, the portfolio manager will "pair-off" the purchase with a sale of the same security prior to, or on, the original settlement date. Profits or losses on the transaction are settled by one party to the transaction remitting to the counter party the difference between the purchase and sale price. Like "when issued" trading, "pair-offs" permit speculation on securities price movements without paying for the securities.

D. Corporate Settlement on U.S. Government and Federal Agency Securities Purchases

Regular-way settlement for transactions in U.S. Government and Federal agency securities is one business day after the trade date. Regular-way settlement for corporate securities is five business days after the trade date. The use of a corporate settlement method (5 business days) for U.S. Government securities purchases appears to be offered by dealers in order to facilitate speculation on the part of the purchaser.

E. Repositioning Repurchase Agreements

Dealers who encourage speculation through the use of "pair-off", "when-issued" and "corporate settlement" transactions often provide the financing at settlement of purchased securities which cannot be sold at a profit. The buyer purchasing the security pays the dealer a small "margin" that is equivalent roughly to the actual loss in the security. The dealer then agrees to fund the purchase by buying the security back from the purchaser under a resale agreement. Apart from imprudently funding a longer-term, fixed-rate asset with short-term, variable-rate source funds, the purchaser acquires all the risks of ownership of a large amount of depreciated securities for a very small margin payment. Purchasing securities in these circumstances is inherently speculative and is a wholly unsuitable investment practice for depository institutions.

F. Short Sales

A short sale is the sale of a security that is not owned. The purpose of a short sale generally is to speculate on the fall in the price of the security. Short sales are speculative transactions that should be conducted in a trading account, and when conducted in the investment portfolio, they are considered to be unsuitable.

Short sales are not permissible activities for Federal credit unions.

By the Federal Home Loan Bank Board.

Nadine Y. Washington,

Assistant Secretary.

[FR Doc. 89-12928 Filed 5-31-89; 8:45 am]

[BILLING CODE 6720-01-M]

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 778

[Docket No. 90400-9100]

Removal of "Advice of the Manufacturer" Provision

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: This rule amends the Export Administration Regulations by removing and reserving § 778.6, "Advice of the Manufacturer." This section had required exporters of goods capable of sensitive nuclear uses to request a written statement from the manufacturer specifying whether a validated license is required for export. The Department has determined that the practical utility of the letter of inquiry and the manufacturer's advice was minimal because § 778.6 stated that "notwithstanding the advice provided by the manufacturer, the exporter remains responsible for filing an export license application for any export subject to § 778.3." Section 778.3

contains provisions on licensing requirements for export of commodities and technical data with sensitive end-uses.

EFFECTIVE DATE: This rule is effective June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Vincent Greenwald, Office of Technology and Policy Analysis, Bureau of Export Administration, Telephone: (202) 377-3858.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.
 2. This rule removes a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection had been approved by the Office of Management and Budget under control number 0694-0034. This action will reduce the paperwork burden imposed on the public.
 3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.
 4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.
 5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.
- Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Vincent Greenwald, Regulations Branch, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of

Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 778

Exports, Nuclear energy, Reporting and recordkeeping requirements.

Accordingly, Part 778 of the Export Administration Regulations is amended as follows:

PART 778—(AMENDED)

1. The authority citation for Part 778 continues to read as follows:

Authority: Pub. L. 96-72, 83 Stat. 503 (50 U.S.C. app. 2401 et seq.), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 98-64 of July 12, 1985 and by Pub. L. 100-418 of August 23, 1988; E.O. 12523 of July 12, 1985 (50 FR 28767, July 16, 1985); Pub. L. 95-223 of December 26, 1977 (50 U.S.C. 1701 et seq.); E.O. 12382 of September 9, 1986 (50 FR 36661, September 10, 1986) as affected by notice of September 4, 1986 (51 FR 31825, September 8, 1986); Pub. L. 90-440 of October 2, 1966 (22 U.S.C. et seq.); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 778.6 (Removed and reserved)

2. Section 778.6 is removed and reserved.

Dated: May 25, 1989.

James M. Lohmeyer,
Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-12946 Filed 5-31-89; 8:45 am]
BILLING CODE 3010-07-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 529

Certain Other Dosage Form New Animal Drugs Not Subject to Certification; Isoflurane

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Anaquest, Division of BOC, Inc., providing for use of isoflurane for induction and maintenance of general anesthesia in dogs.

EFFECTIVE DATE: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Marcia K. Larkins, Center for Veterinary Medicine (HFV-112), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-3430.

SUPPLEMENTARY INFORMATION:

Anaquest, Division of BOC, Inc., 100 Mountain Ave., Murray Hill, NJ 07974, has filed a supplement to NADA 135-773 for AErrane™ (isoflurane), an inhalation anesthetic. The supplement is for induction and maintenance of general anesthesia in dogs. The NADA was originally approved for induction and maintenance of general anesthesia in horses. The supplemental NADA is approved and the regulations are amended in 21 CFR 529.1186(c) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 529

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 529 is amended as follows:

PART 529—CERTAIN OTHER DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 529 continues to read as follows:

Authority: Sec. 512(f), 82 Stat. 347 (21 U.S.C. 360b(f)); 21 CFR 5.10 and 5.63.

2. Section 529.1186 is amended by revising paragraph (c) to read as follows:

§ 529.1186 Isoflurane.

(c) *Conditions of use*—(1) *Amount*—(i) *Horses:* For induction of surgical anesthesia: 3 to 5 percent isoflurane

(with oxygen) for 5 to 10 minutes. For maintenance of surgical anesthesia: 1.5 to 1.8 percent isoflurane (with oxygen).

(ii) *Dogs:* For induction of surgical anesthesia: 2 to 2.5 percent isoflurane (with oxygen) for 5 to 10 minutes. For maintenance of surgical anesthesia: 1.5 to 1.8 percent isoflurane (with oxygen).

(2) *Indications for use:* For induction and maintenance of general anesthesia in horses and dogs.

(3) *Limitations.* Administer by inhalation; not for use in horses or dogs sensitive to halogenated agents; increasing depth of anesthesia may increase hypotension and respiratory depression; use less than usual amounts of nondepolarizing relaxants; use with vaporizers producing predictable percentage concentrations; not for use in horses intended for food; Federal law restricts this drug to use by or on the order of a licensed veterinarian.

Dated: May 23, 1989.

Genaki B. Oweat,
Director, Center for Veterinary Medicine.
[FR Doc. 89-12951 Filed 5-31-89; 8:45 am]
BILLING CODE 4160-01-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 289

Availability of DoD Directives, DoD Instructions, DoD Publications, and Changes

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: This rule updates DoD procedures on the availability of DoD Directives, DoD Instructions, DoD publications, and changes. It covers revisions on the availability of DoD Directives and Instructions, and publications to the public and U.S. Government Agencies other than the Department of Defense and the increase in subscription cost.

EFFECTIVE DATE: May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Linda M. Bynum, Directives Division, Correspondence and Directives Directorate, Washington Headquarters Services, Washington, DC 20301-1155, telephone (202) 687-4111.

SUPPLEMENTARY INFORMATION: On November 20, 1986, the Department of

Defense Published a revision (51 FR 41962) of 32 CFR Part 289. This revision updates the ordering and subscription services rendered by the Navy Publishing and Printing Services.

List of Subjects in 32 CFR Part 289

DoD Directives System issuances, Availability to the public, Freedom of information.

Accordingly, Part 289 of Title 32 is revised to read as follows:

PART 289—AVAILABILITY OF DoD DIRECTIVES, DoD INSTRUCTIONS, DoD PUBLICATIONS, AND CHANGES

Sec.

289.1 Subscription service for DoD directives and instructions.

289.2 Ordering individual copies of DoD directives and instructions.

289.3 Ordering complete sets of DoD directives and instructions.

289.4 Ordering individual copies of DoD publications.

Authority: 10 U.S.C. 133, 31 U.S.C. 483a

§ 289.1 Subscription services for DoD directives and instructions.

(a) DoD Directives, Instructions, and changes published in the Number Index section of DoD 5025.1-I, DoD Directives System Annual Index (except those issuances identified as classified) are available to the public and U.S. Government Agencies on a subscription basis for \$16.00 a year. DoD Components must obtain DoD Directives and Instructions from their own publications channels.

(b) An annual subscription consists of one copy of each newly released and revised DoD Directive and Instruction published under the subject groups that are specified in a given subscription. Subscriptions are accepted for one or more subject groups. The subject groups are as follows:

- 1000 Manpower, Reserve Affairs, and Personnel
- 2000 International Programs and Security Assistance
- 3000 Planning, Research and Development, Intelligence, Space Systems and Programs
- 4000 Logistics, Acquisition, and Resources Management
- 5000 General Administration
- 5025.1-I DoD Directives System Annual Index
- 6000 Safety, Health, and Medical
- 7000 Comptrollership

(c) Subscription orders may be placed with the Director, Navy Publishing and Printing Service, Building 4, Section D, 700 Robbins Avenue, Philadelphia, PA 19111. Orders must be in writing, accompanied by a certified check or money order for \$16.00 payable to Navy Publishing and Printing Service.

§ 289.2 Ordering individual copies of DoD Directives and Instructions.

(a) DoD Directives, Instructions, and changes published in the Number Index section of DoD 5025.1-I, DoD Directives System Annual Index (except those issuances identified as classified) are available to the public and U.S. Government Agencies without charge. DoD Components must obtain DoD Directives and Instructions from their own publications channels.

(b) Orders for individual copies are limited to five copies per line item. Written requests for individual copies should be submitted to the Commanding Officer, ATTN: Code 1053, Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, Pennsylvania 19120-5099. Urgent requests may be submitted by TELEX and telegraph. The TELEX number is 834295 and the Western Union telegraph number is (710) 670-1685. The commercial telephone number is (215) 697-3321. All requests must include personal or organization name and complete mailing address (street address or P.O. box number, city, state, zip code, and country, if applicable).

§ 289.3 Ordering complete sets of DoD directives and instructions.

This service is no longer available.

§ 289.4 Ordering individual copies of DoD Publications.

(a) Requests for DoD publications and changes listed in the Number Index section of DoD 5025.1-I (except those publications identified as classified) should be forwarded to the various sources that are identified in the Availability Column of the DoD Publications subsection of DoD 5025.1-I. A fee will be charged for DoD Publications ordered from the National Technical Information Service, Springfield, Virginia.

(b) DoD 5025.1-I, DoD Directives System Annual Index, is available at cost from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161. This publication also may be ordered from the Naval Publications and Forms Center, 5801 Tabor Avenue, Philadelphia, PA 19120-5099.

P.H. Means,
OSD Federal Register Liaison Officer,
Department of Defense,
May 25, 1989.

[FR Doc. 89-12944 Filed 5-31-89; 8:45 am]
BILLING CODE 3010-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 05-89-08]

Special Local Regulations for Marine Events, American Diabetes Association, Choptank River Swim, Choptank River Bridge, Cambridge, MD

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Permanent special local regulations are adopted for the American Diabetes Association Triathlon. This event will consist of approximately 400 swimmers racing across the Choptank River. The swim course will begin at the sandy beach on the west side of the Gateway Marina entrance on the north shore of the Choptank River and end at Great Marsh Point on the opposite shore. These regulations restrict vessel navigation in the regulated area during the swim portion of the Triathlon. Notice of the precise date and times the regulations are effective will be published in the Local Notice to Mariners and by Federal Register Notice. These special local regulations are considered necessary to control vessel traffic and to provide for the safety of life and property on the navigable waters within the immediate vicinity of this event.

DATE: This rule is effective June 1, 1989.

Compliance with these regulations will be required at different dates and times. The Fifth Coast Guard District Commander will publish notices in the Local Notice to Mariners and Federal Register announcing the times and date when these regulations are in effect.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION: The Coast Guard published a notice of proposed rulemaking in the Federal Register on March 13, 1989 (54 FR 10374). Interested persons were requested to submit comments. No comments were received.

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz,

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project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Comments and Final Rule

No comments were received in response to the notice of proposed rulemaking. After publication of the notice of proposed rulemaking, the sponsor advised the Coast Guard that the finish line had been changed to Great Marsh Point. The regulated area in §100.512(a)(1) has been revised to reflect this change. The swim portion of the American Diabetes Association Triathlon will consist of approximately 400 swimmers racing across the Choptank River. The swim course will begin at the sandy beach on the west side of the Gateway Marina entrance on the north shore of the Choptank River and end at Great Marsh Point on the opposite shore. It is necessary to close a portion of the Choptank River to all traffic except participants for the safety of those competing in the event.

Economic Assessment and Certification

These regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because closure of the waterway is not anticipated for any extended period, commercial marine traffic will not be inconvenienced significantly. The economic impact of these regulations is expected to be so minimal that a full regulatory evaluation is unnecessary. Accordingly, the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction (COMDTINST) M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

PART 100—(AMENDED)

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A new § 100.512 is added to read as follows:

§ 100.512 American Diabetes Association Reach the Beach Triathlon, Choptank River, Cambridge, Maryland.

(a) *Definitions*—(1) *Regulated area*. The waters of the Choptank River between the Choptank River Bridge and a line drawn from the northern shore, at latitude 38°35'37" North, longitude 76°03'08" West, to the southwestern shore, at latitude 38°35'31" North, longitude 76°04'52" West.

(2) *Coast Guard Patrol Commander*. The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer of the Coast Guard who has been designated by the Commander, Group Baltimore.

(b) *Special local regulations*. (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a) of this section but may not block a navigable channel.

(c) *Effective period*. The Commander, Fifth Coast Guard District, will publish a notice in the *Federal Register* and the Fifth Coast Guard District Local Notice to Mariners announcing the times and date this section is in effect.

Dated: May 18, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89-12948 Filed 5-31-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD 05-89-35]

Special Local Regulations for Marine Events, American Diabetes Association, Choptank River Swim, Choptank River Bridge, Cambridge, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation of 33 CFR 100.512.

SUMMARY: This notice implements 33 CFR 100.512 for the swim portion of the American Diabetes Association Triathlon. The event will be held on June 4, 1989 in the Choptank River. The swim portion of the Triathlon will consist of approximately 400 swimmers racing across the Choptank River. The course will begin at the sandy beach on the west side of the Gateway Marina entrance on the north shore of the Choptank River and end at Great Marsh Point on the opposite shore. These regulations restrict vessel navigation in the regulated area during the swim portion of the Triathlon.

EFFECTIVE DATE: The regulations in 33 CFR 100.512 are effective from 7:00 a.m. to 10:30 a.m. on June 4, 1989.

FOR FURTHER INFORMATION CONTACT: Billy J. Stephenson, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

Mr. Fletcher Hanks, Race Chairman for American Diabetes Association Choptank River swim, submitted an application on March 21, 1989 requesting permission to hold the swim portion of this Triathlon on June 4, 1989. Since a portion of the Choptank River must be closed to traffic during this portion of the event, the special local regulations in 33 CFR 100.512 are implemented.

Date: May 18, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89-12949 Filed 5-31-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3578-4]

Approval and Promulgation of Implementation Plan, State of New Mexico, Bernalillo County; Particulate Matter (PM₁₀) Group II Area

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This Federal Register notice approves a revision to the New Mexico State Implementation Plan (SIP) that commits the Albuquerque Environmental Health Department to conduct particulate matter ambient air monitoring, data analyses, reporting, and submittal of control strategies (if any necessary) for Bernalillo County which was identified as particulate matter (PM₁₀) Group II area in the *Federal Register* notice of August 7, 1987 (52 FR 29383). This revision is partially in response to the requirements of the PM₁₀ National Ambient Air Quality Standards that were promulgated by the EPA in the *Federal Register* notice of July 1, 1987 (52 FR 24634). This action today only approves the Bernalillo County PM₁₀ Group II SIP (committal SIP), including the City of Albuquerque. The EPA will publish its action on the remainder of PM₁₀ SIP (countywide regulatory requirements) under a separate notice at a later date.

Today's notice is published to advise the public that the EPA is approving the Bernalillo County PM₁₀ Group II SIP. The rationale for this approval is contained in this notice.

DATE: This action will be effective on (July 31, 1989, unless notice is received within 30 days that adverse or critical comments will be submitted. If the effective date is delayed, timely notice will be published in the *Federal Register*.

ADDRESSES: Copies of the City's submittal and other information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-hours before the visiting day.

SIP New Source Section, Air Programs Branch, Air, Pesticides and Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 655-7214.

Air Pollution Control Division, The Albuquerque Environmental Health Department, The City of Albuquerque, P.O. Box 1293, Albuquerque, New Mexico 87103, Telephone: (505) 768-2600.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E.; SIP New Source Section, Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone: (214) 655-7214.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act requires the EPA Administrator to set and periodically reexamine national ambient air quality standards. Section 108 of the Act directs the Administrator to identify widespread pollutants that endanger public health or welfare and to issue air quality criteria for them. The intent of these air quality criteria is to reflect the latest scientific information useful in indicating the kind and extent of all identifiable effects on public health or welfare that may be expected from the presence of a pollutant in the ambient air. In addition, section 109 requires the Administrator to establish "primary" standards to protect public health and "secondary" standards to protect public welfare for pollutants identified under section 108. Once the Federal standards have been set, section 110 of the Act requires that States submit State Implementation Plans (SIP), which contain control measures needed to attain the health based standards within specific statutory deadlines and to attain standards for welfare effects within a reasonable time.

Statutory Requirements

The Clean Air Act (amended August 1977) establishes a joint State and Federal program to control air pollution. Under sections 108 and 109 of the Act, the EPA is responsible for issuing air quality criteria and promulgating National Ambient Air Quality Standards (NAAQS). The States have primary responsibility for implementing the NAAQS. Under section 110 of the Act, each State must develop and submit to EPA a plan that provides for attainment and maintenance of each NAAQS as expeditiously as practicable within three years of the approved date of SIP. The State is required to adopt and submit a SIP revision to the EPA within nine months after the promulgation or revision of a primary NAAQS. The EPA must review each SIP and approve or disapprove its provisions. If the State fails to submit a plan, or the EPA finds

the plan inadequate, a Federal program may be instituted in place.

In fulfilling the requirements of the Act, the EPA promulgated the particulate matter (PM₁₀) rules on July 1, 1987. The PM₁₀ rules replaced the former standards for total suspended particulate matter (TSP) with a new indicator that includes particulate matters with the aerodynamic diameters less than or equal to a nominal 10 micrometers (PM₁₀) as measured by a reference method established by the EPA. The new 24-hour primary (health-based) standards limit PM₁₀ to 150 micrograms per cubic meter of air. In addition to the 24-hour standard, a new annual standard is set at 50 micrograms per cubic meter.

PM₁₀ SIP Requirements

The EPA implemented the PM₁₀ NAAQS under section 110 of the Act. The States and EPA began developing a monitoring network in 1983 to determine the concentrations of PM₁₀ at various locations. Initially, the network targeted areas with high concentrations of total suspended particulates (TSP). Since the quantity of good quality ambient PM₁₀ data was limited, yet the States had a significant amount of TSP data, EPA developed a procedure for determining the probability that an area would violate the PM₁₀ NAAQS. The EPA has placed all the counties in the nation into three groups based on their probability of violating the PM₁₀ NAAQS. Under this scheme, the area of each state was classified as Group I, II, or III. The Group I areas are those areas with a high probability of not attaining the standards. Group II are those areas where existing air quality data are not sufficient to determine if they are attaining the standards, and Group III areas are those with a high probability of attaining the NAAQS without revisions to the existing control strategies. The list of PM₁₀ Group I and Group II areas was published in the *Federal Register* notice of August 7, 1987 (52 FR 29383).

The States are required to submit SIPs for all areas in Group II within nine months of NAAQS promulgation, but these SIPs need not contain full control strategies and demonstrations of attainment and maintenance. Instead, States may submit "committal" SIPs that supplement the existing SIPs with enforceable commitments to: (a) Gather ambient PM₁₀ data, at least to an extent consistent with minimum EPA requirements and guidance; (b) Analyze and verify the ambient PM₁₀ data and report 24-hour PM₁₀ NAAQS exceedances to the Regional Office

within 45 days of each exceedance; (c) When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available or when an annual arithmetic mean above the level of the annual PM₁₀ NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the Regional Office; (d) within 30 days of the notification referred to in (c) above, or within 37 months of promulgation, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM₁₀ standards, and immediately notify the Regional Office; and (e) Within 6 months of the notification referred to in (d) above, adopt and submit to EPA a PM₁₀ control strategy that assures attainment as expeditiously as practicable but no later than three years from approval of the committal SIP.

State Submission

The EPA has identified six Group II areas in the State of New Mexico; namely, Bernalillo, Dona Ana, Grant, Sandoval, Santa Fe, and Taos counties. The PM₁₀ Group II SIP revision submitted by the New Mexico State Environmental Improvement Division included all counties listed by the EPA except for Bernalillo County for the reason described below. The New Mexico Air Quality Control Act (NMAQCA) allows, by ordinance, "A" class counties and any municipality within an "A" class county to create municipal, county, or joint air quality board to administer and enforce the provisions of the NMAQCA. The City of Albuquerque and Bernalillo County have jointly established such a board for administration and enforcement of NMAQCA because Bernalillo County is an "A" class county. The Albuquerque Environmental Health Department is the regulatory and administrative agency for implementing and enforcing the air quality control regulations of the City of Albuquerque and Bernalillo County Air Quality Control Board. Therefore, the Albuquerque Environmental Health Department has submitted a PM₁₀ Group II SIP for Bernalillo County that is further discussed below.

On December 7, 1988, the Governor of New Mexico submitted a SIP revision for Bernalillo County in compliance with the requirements of the PM₁₀ program (52 FR 24634) to fulfill the specific provisions of the PM₁₀ Group II areas. Before the Governor's submission, the Albuquerque and Bernalillo County Air Quality Control Board adopted this plan revision on November 9, 1988. The PM₁₀ Group II SIP revision contained (1) area

description, (2) monitoring and quality assurance plan, (3) commitments on the procedures and milestones for meeting the Federal mandate, and (4) a letter of commitment from the Director of the Albuquerque Environmental Health Department. The Director's letter fully commits the Department to comply with the PM₁₀ Group II requirements, and the content of this letter is stated below:

This letter is in reference to the PM₁₀ Group II SIP requirements particularly as pertains to Bernalillo County. In response to the requirements of the July 1, 1987 Federal Register notice on PM₁₀, the Albuquerque Environmental Health Department has prepared a Committal SIP for all of Bernalillo County which has been classified Group II for this pollutant. As expressed in the attached SIP revision, the Department is committing to carry out all required actions such as monitoring, reporting, emission inventory development and other tasks necessary to satisfy the SIP requirements for PM₁₀ Group II areas.

The specific commitments for monitoring, data analysis, and reporting of the PM₁₀ Group II area are given in the SIP and quoted as follows:

Commitments for the Bernalillo County Group Area

For PM₁₀ II SIP purposes the Department commits to the following actions as specified in "Requirements For Group II Areas" in the Federal Register, 52 FR No. 128, pp. 24681 (July 1, 1987).

A. Monitoring: As mentioned previously, the Department will monitor at Site ZZO during every other 24 hour period. Data collection has already begun on December 1, 1987. All data are and will continue to be collected and analyzed as expeditiously as possible. All monitoring is and will continue to be performed in accordance with standard procedures delineated in 40 CFR Part 53, "Ambient Air Monitoring Reference and Equivalent Methods", and 40 CFR Part 58, "Ambient Air Quality Surveillance for Particulate Matter." In addition, as a means to assess other potential attainment problems and establish an understanding of the local PM₁₀ fraction of the total TSP sites 22K, 22E, 22L, and 22N will be monitored every sixth day in accordance of the 40 CFR Part 53 Reference Methods as well as the Quality Surveillance requirements of 40 CFR Part 58 cited above for ZZO.

B. Exceedances: The Department will analyze the data and report any exceedances of the annual or 24-hour PM₁₀ NAAQS to EPA Region VI within 45 days of the exceedance.

C. Nonattainment Acknowledgement: The Department will follow the provisions of Section 2 of the PM₁₀ SIP Development Guideline (June 1987) and subsequent supplements to determine the attainment status of the Group II area based on PM₁₀ monitoring data. When it is determined per the above guideline that an area is in nonattainment of the 24-hour or annual PM₁₀ NAAQS, the Department will acknowledge the nonattainment status and promptly notify EPA Region VI.

D. SIP Adequacy Determination: Within 30 days of a notification to EPA Region VI of a nonattainment determination, or by August 31, 1990, whichever comes first, the Department will determine whether the measures in the existing SIP will assure timely attainment and maintenance of the 24-hour and annual average PM₁₀ NAAQS and promptly notify EPA Region VI. In making this determination, the Department will consider the following factors:

1. Air quality data will be analyzed to determine if attainment can be demonstrated in accordance with 40 CFR Part 50, Appendix K or the "Guideline on Exceptions to Data Requirements for Determining Attainment of Particulate Matter Standards" in the absence of adequate PM₁₀ data.

2. The existing control strategy will be reviewed to ensure it is fully implemented and enforced. This will include a determination as to whether the provisions of AQCR No. 19—Breakdown, Abnormal Operation Conditions, or Scheduled Maintenance are adequate to prevent circumvention of particulate matter emission limitations.

3. Emission inventories and source limitations will be evaluated to determine if increases from actual to allowable emissions could cause exceedances of the PM₁₀ NAAQS. The Department will prepare the necessary emission inventory to make this determination using the guidance provided in EPA PM₁₀ SIP Development Guidelines, June 1987 and subsequent supplements. This will be completed by August 31, 1990 as indicated in the work schedule in Appendix C.

E. Control Strategy: The Department will adopt and submit to EPA Region VI a PM₁₀ control strategy within 6 months of the SIP adequacy notification required in Item D above. The control strategy will assure attainment of the PM₁₀ NAAQS as expeditiously as practicable but no later than 3 years from the date EPA approves this PM₁₀ committal SIP revision. The Department may request an additional 2 years to reach attainment for any Group II site where monitoring data has demonstrated a nonattainment situation. The control strategy will be developed in accordance with PM₁₀ SIP Development Guideline, EPA-450/2-88-001, June 1987 and subsequent supplements.

Today's action only approves the PM₁₀ Group II SIP (committal SIP) for the Bernalillo County. The EPA will publish its action on the remainder of the PM₁₀ SIP (Countywide regulatory requirements) under a separate notice at a later date.

Final Action

The EPA has reviewed the Department's submittal and determined that the Department commitments and procedures are adequate for monitoring, data analysis, reporting, and subsequently submitting a SIP revision (if any required) for the PM₁₀ Group II area. In addition, the EPA finds that the Department commitments are in conformance with the specific

requirements of the PM₁₀ Group II areas of the July 1, 1987 Federal Register notice (52 FR 24634). However, the EPA wants to clarify paragraph E of the Department commitments, as quoted in this notice, that refers to the possibility of Department requesting extension under section 110(e) of the Clean Air Act beyond the maximum three year period allowed in section 110(a)(2)(A) of the Act. Section 110(e) of the Act allows the Administrator of EPA to grant a two year extension to the State in certain cases if the requirements of this section of the Act are satisfied by the State. The Administrator can not grant any extension solely by a request unless the conditions specified under Section 110(e) are completely and clearly supported by actual data, documentation, and other evidence that the area in question can not attain the PM₁₀ NAAQS within the three year period. Therefore, the EPA, with clarification stated above, is approving the PM₁₀ Group II SIP for Bernalillo County.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of publication unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on July 31, 1989.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 31, 1989. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

Under 5 U.S.C. section 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities (See 46 FR 8709).

Incorporation by reference of the New Mexico State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

This rulemaking is issued under the authority of section 110 of the Clean Air Act, 42 U.S.C. 7410.

Lists of Subjects in 40 CFR Part 52

Air pollution control and Particulate matter.

Date: May 19, 1989.

Joseph D. Winkle,
Acting Regional Administrator.

PART 52—[AMENDED]

Title 40, Part 52 of the Code of Federal Regulations is being amended as follows:

Subpart GG—New Mexico

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. A new § 52.1638 is added to read as follows:

§ 52.1638 Bernalillo County particulate matter (PM₁₀) Group II SIP commitments.

(a) On December 7, 1988, the Governor of New Mexico submitted a revision to the State Implementation Plan (SIP) for Bernalillo County that contained commitments, from the Director of the Albuquerque Environmental Health Department, for implementing all of the required activities including monitoring, reporting, emission inventory, and other tasks that may be necessary to satisfy the requirements of the PM₁₀ Group II SIPs. The City of Albuquerque and Bernalillo County Air Quality Control Board adopted this SIP revision on November 9, 1988.

(b) The Albuquerque Environmental Health Department has committed to comply with the PM₁₀ Group II State Implementation Plan (SIP) requirements, as articulated in the Federal Register notice of July 1, 1987 (52 FR 24670), for Bernalillo County as provided in the County's PM₁₀ Group II SIP. In addition to the SIP, a letter from the Director of the Albuquerque Environmental Health Department, dated November 17, 1988, stated that:

(1) This letter is in reference to the PM₁₀ Group II SIP requirements particularly as pertains to Bernalillo County. In response to the requirements of the July 1, 1987 Federal Register notice on PM₁₀, the Albuquerque Environmental Health Department has prepared a Committal SIP for all of Bernalillo County which has been classified Group II for this pollutant.

(2) As expressed in the attached SIP revision, the Department is committing to carry out all required actions such as monitoring, reporting, emission

inventory development and other tasks necessary to satisfy the SIP requirements for PM₁₀ Group II areas.

[FR Doc. 89-12983 Filed 5-31-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3579-2; KY-037]

Approval and Promulgation of Implementation Plans; Kentucky: Stack Height Review

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves a declaration by Kentucky that recent revisions to EPA's stack height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP). The State was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that Kentucky has satisfied its obligations under section 406 of the Clean Air Act Amendments of 1977 to review its SIP with respect to EPA's revised stack height regulations. No emission limitations were affected by stack height credit above GEP or any other dispersion technique with the possible exception of the Ashland Oil, Inc., oil refinery in Catlettsburg. The analysis for this source will be done in a subsequent notice.

EFFECTIVE DATE: This action will be effective on July 3, 1989.

ADDRESSES: Copies of the materials submitted by Kentucky may be examined during normal business hours at the following locations:

Public Information Reference Unit,
Library Systems Branch,
Environmental Protection Agency, 401
M Street, S.W., Washington, D.C.
20460

Air Programs Branch, Region IV,
Environmental Protection Agency, 345
Courtland Street, N.E., Atlanta,
Georgia 30365

Mr. William C. Eddins, Director,
Division for Air Quality, Natural
Resources and Environmental
Protection Cabinet, Frankfort Office
Park, 18 Reilly Road, Frankfort,
Kentucky 40601

FOR FURTHER INFORMATION CONTACT:
Beverly T. Hudson, EPA Region IV Air
Programs Branch, at the above listed
address, telephone (404) 347-2864 or FTS
257-2864.

SUPPLEMENTARY INFORMATION: On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credit and other dispersion techniques as required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, 719 F.2d 438. On October 11, 1983, the court issued its decision, ordering EPA to reconsider portions of the stack height regulations, reversing certain portions, and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S. Ct. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate implementing its decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms, including "excessive concentration," "dispersion techniques," "nearby," and other important concepts, and modify some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of P.L. 95-95, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credit above CEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation, as required by statute.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 m in height and sources with emissions of sulfur dioxide (SO₂) in excess of 5,000 tons per year. These limits correspond to the *de minimis* CEP stack height and the *de minimis* SO₂ emission exemption from prohibited dispersion techniques. Sources were exempted from further

review if they fell under the grandfathering clause (i.e., in existence before December 31, 1970), if their stack height was less than *de minimis* stack height (65m), or if their actual height was less than the calculated Good Engineering Practice (GEP) stack height.

The remaining sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory. Kentucky has concluded that its SIP includes provisions that limit stack height credits and dispersion techniques in accordance with the revised EPA stack height regulations. They also found that no emission limitations have been affected by stack height credits above CEP or any other prohibited dispersion techniques. Kentucky has indicated that the documentation is available for review at the State office (listed above).

On March 27, 1987, Kentucky submitted for EPA's approval documentation for Good Engineering Practice (GEP) Stack Height. EPA proposed to approve the declaration on March 14, 1989 (54 FR 10567). At that time, the public was invited to submit written comments on the proposed action. However, no comments were received. EPA is therefore approving the State's declaration that no emission limitations were affected by stack height credit above CEP or any other dispersion technique with the possible exception of the Ashland Oil, Inc., oil refinery in Catlettsburg and the two sources identified below.

On January 22, 1988, the U.S. Court of Appeals for the District of Columbia issued its decision in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988), regarding the Environmental Protection Agency's (EPA's) stack height regulations (50 FR 27892, July 8, 1985): the court upheld most of the rules, but certain provisions were remanded to the EPA for further consideration. Accordingly, EPA is not acting on two sources (Big Rivers-Green #1 & 2, Kentucky Utilities-Ghent #3 & 4) because they currently receive credit under one of the provisions remanded to EPA. Kentucky and EPA will review these sources for compliance with any revised requirements when EPA completes rulemaking to respond to the *NRDC* remand.

EPA Review. EPA has reviewed Kentucky's submittal and concurs with the conclusion that no revisions to Kentucky's existing source emission limitations are necessary as a result of EPA's revised stack height regulations. Kentucky has therefore met its obligations under section 406 of P.L. 95-95 for existing source emission

limitations. (EPA approved Kentucky's stack height rules for new sources on September 4, 1987 (52 FR 33592).)

Final Action. EPA approves the declaration by Kentucky that recent revisions to EPA's stack height regulations do not necessitate SIP revisions for specific sources in this State. EPA proposed to approve the declaration on March 14, 1989 (54 FR 10567). The declaration does not apply to the two sources mentioned above and the Ashland Oil, Inc., an oil refinery in Catlettsburg. The analysis for this last source will be handled in a subsequent notice. Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 31, 1989. This action may not be challenged later in proceedings to enforce its requirements (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subject in 40 CFR Part 52

Air Pollution Control, Intergovernmental relations, Particulate matter, Sulfur oxides.

Dated: May 11, 1989.

Joe R. Franzmathes,
Regional Administrator.

Part 52 of Chapter I, title 40, Code of Federal Regulations, is amended as follows:

Subpart S—Kentucky

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.933 is added to read as follows:

§ 52.933 Control Strategy: Sulfur oxides and particulate matter.

In a letter dated March 27, 1987, the Kentucky Department for Natural Resources and Environmental Protection certified that no emission limits in the State's plan are based on dispersion techniques not permitted by EPA's stack height rules. This certification does not apply to: Big Rivers-Green #1 & 2, Kentucky Utilities-Ghent #3 & 4, and Ashland Oil, Inc.-Catlettsburg.

[FR Doc. 89-12932 Filed 5-31-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

(FRL-3578-3)

Approval and Promulgation of Implementation Plans; Ohio

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of denial of petition for reconsideration of the Muskingum River approval.

SUMMARY: On May 20, 1988 (53 FR 18087), the USEPA published a final notice approving a revision to the Ohio State Implementation Plan (SIP) for sulfur dioxide (SO₂) for the Ohio Power, Muskingum River Power Plant, located in Morgan and Washington Counties, Ohio. On July 18, 1988, the Natural Resources Defense Council, Inc. (NRDC) submitted to USEPA, a petition for reconsideration of that final decision. After careful review of that petition and of the D.C. Circuit Court's opinion in *Natural Resources Defense Council, Inc. v. Thomas*, 845 F.2d 1088 (May 3, 1988), USEPA has concluded that the petition should be denied. This conclusion is based on USEPA's judgment that the Muskingum SIP revision submitted by the State of Ohio, on the basis of block averaging SO₂ data, is consistent with the existing SO₂ National Ambient Air Quality Standards (NAAQS). In addition, NRDC's petition did not present any new information warranting reconsideration of USEPA's prior decision. This response does not address NRDC's petition to conduct rulemaking regarding the proper interpretation of the existing NAAQS for sulfur oxides. That issue is being considered separately as part of the ongoing review of the SO₂ NAAQS.

ADDRESSES: Copies of the Muskingum River SIP revision and other materials relating to the SIP revision under reconsideration are available for inspection at the following addresses: U.S. Environmental Protection Agency, Region V, Air and Radiation Branch (5AR-26), 230 South Dearborn Street, Chicago, Illinois 60604; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; Ohio Environmental Protection Agency, Office of Air Pollution Control, 1800 Watermark Drive, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Robert Miller, (312) 353-0396.

SUPPLEMENTARY INFORMATION:

Background

USEPA's May 20, 1988, notice approving revised emission limits for the

Muskingum plant constituted a modification of the prior emission limitation of 6.48 pounds of SO₂ per million British Thermal Units (lb/MMBTU), and replaced that limit with two separate emission limits for the plant. That revision was submitted by the State of Ohio on April 8 and October 8, 1982, to replace the prior federally promulgated limit.

The two new emission limits are 8.8 lb/MMBTU to protect the primary standard, with a compliance date of June 17, 1980, and 7.6 lb/MMBTU to protect the secondary standard, with a compliance date of July 1, 1989. Modeling and monitoring data were submitted by the State of Ohio to demonstrate that this revision would not interfere with attainment and maintenance of the SO₂ NAAQS. The data comprising that attainment demonstration were based on the use of block averaging for the 3-hour and 24-hour standards. USEPA reviewed the revised limits and demonstration, and proposed to approve them on September 25, 1984 (49 FR 37644). Comments received on that proposal included those from NRDC arguing that USEPA could not approve the revision since it was based on block averaging data, and did not consider running average data.

After reviewing all comments, USEPA approved the revision in a notice published on May 20, 1988. On the averaging convention issue, USEPA referred to a March 28, 1988, memorandum "Block Averages in Implementing SO₂ NAAQS", signed by Gerald Emison, Director of the Office of Air Quality Planning and Standards, and concluded that Ohio's submission was adequate and consistent with the existing SO₂ standards. 53 FR 18089.

D.C. Circuit Court Decision in NRDC v. Thomas

On May 1, 1988, the Administrator of USEPA signed the *Federal Register* notice announcing the final approval of the Muskingum River SIP revision. Two days later, on May 3, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its opinion in *NRDC v. Thomas*, 845 F.2d 1088 (D.C. Cir. 1988). That case involved a challenge by NRDC to the March 28, 1988, Emison memorandum regarding the use of block averages in implementing the SO₂ NAAQS. The memo stated that "block averages are the proper interpretation" of the standard, and reminded recipients that "States will continue to be permitted to develop requirements that are more stringent than Federal requirements".

In response to NRDC's contention that the memo was impermissible, final Agency action revising the NAAQS, the

Court concluded that while the memo was, in fact, final action, the issue was not ripe for review. The case was dismissed on the basis of lack of ripeness for review, and because the petitioners failed to show any impact on their day-to-day affairs. Moreover, in dicta, the Court stated "that block averages are a proper practice". 845 F.2d at 1094.¹

NRDC's Petition for Reconsideration

On July 18, 1988, NRDC submitted a Petition for Reconsideration to USEPA requesting that the Agency reevaluate its decision to approve the Muskingum River SIP revision. NRDC's petition focused on the use of block averages in approving the SIP revision, and argued that: (1) the existing SO₂ NAAQS are not restricted to block averages, and (2) that the decision to base approval of the Muskingum River SIP revision on block averages violates the May 3, 1988, decision of the U.S. Court of Appeals for the District of Columbia Circuit in *NRDC v. Thomas*.

NRDC's petition also requested that USEPA conduct rulemaking regarding whether the existing SO₂ NAAQS can properly be interpreted as a block standard. That aspect of the petition is being considered in connection with the Agency's review of the SO₂ NAAQS, and thus will not be disposed of here.²

Criteria for Reconsideration

NRDC seeks reconsideration of "the Agency's determination that the existing SO₂ NAAQS are block average standards" and of USEPA's "approval of the (Muskingum River) SIP revision that is premised on USEPA's 'block average' construction of the SO₂ NAAQS" (Pet. at 1).

NRDC does not specify any statutory basis for its petition. Presumably, the request for reconsideration was made pursuant to section 4(d) of the Administrative Procedure Act (APA).³

¹ The Court also stated that the status quo recognized in its prior decision in *PPG Industries v. Costle*, 659 F.2d 1239 (1981), included allowing or even encouraging use of running averages, as well.

² On April 28, 1988 (53 FR 14926), EPA proposed not to revise the SO₂ NAAQS. In that notice, comment was solicited on the possibility of adding a 1-hour primary standard and on revising the Significant Harm Levels. EPA also stated that the SO₂ standards were intended to be interpreted as block standards, and an evaluation of the health data indicated no need to change that position. In September 1988, a clarifying notice was issued stating that the Agency's solicitation of comment included the question of whether it is appropriate to interpret the current standard using block averages. 53 FR 36587 (September 21, 1988).

³ Section 4(d) of the APA, 5 U.S.C. § 553(e), states: "Each agency shall give an interested person the right to petition for the issuance, amendment, or repeal of a rule."

because the Clean Air Act provision allowing for reconsideration of certain agency rules is inapplicable here.⁴

As a result, USEPA is treating it as a petition under the APA. The criteria for evaluating petitions for reconsideration under the APA provide that USEPA reconsider a rule if a person raising an objection can demonstrate (1) that it was impracticable to raise the objection during the comment period, or that the grounds for such objection arose after the comment period but within the time specified for judicial review (*i.e.*, within 60 days after publication of the final rulemaking notice in the *Federal Register*, see section 307(b)(1), 42 U.S.C. 7607(b)(1)); and (2) that the objection is of central relevance to the outcome of the rule. See *Denial of Petition to Revise NSPS for Stationary Gas Turbines*, 45 FR 81853-54, and decisions cited therein.

Discussion

NRDC makes two arguments in its request for reconsideration of the Muskingum River SIP revision. The first argument, discussed in more detail below, is not based on new information, and thus does not justify administrative reconsideration. NRDC's second argument, while arguably incorporating new information, is not an adequate basis for granting reconsideration. Thus, neither of the issues raised in NRDC's petition meet the criteria for reconsideration under section 4(d) of the APA.

A. NRDC argues that the existing SO₂ NAAQS are not restricted to block averages

NRDC argues first that USEPA "lacks the authority to determine compliance with the existing SO₂ NAAQS based solely on an evaluation of 'block average' air quality information." NRDC Petition at 2.

This position is contradicted by the Court's opinion in *NRDC v. Thomas* *supra*. The D.C. Circuit stated that the status quo recognized in *PPG Industries, Inc. v. Costle*, 659 F.2d 1239 (1981), established that "block averages are a proper practice". 845 F.2d at 1094. Furthermore, the Court stated that USEPA must not act inconsistently with the D.C. Circuit's prior opinion in *PPG Industries*, which held that in order to require running averages, rulemaking would be required. 659 F.2d at 1250.

In this instance Ohio chose to submit a SIP revision based on a block average interpretation of the standard. As the

court stated in *NRDC v. Thomas*, block averages are a proper practice for determining average SO₂ concentrations in air samples. The Agency may of course challenge any part of the submission it finds to be inadequate or unlawful, but may not specifically require running averages as a part of that evaluation. As a result, Ohio's submission here, having met all the other requirements for SIP approval, was fully approvable based on the use of block averages.

B. NRDC argues that the Muskingum River SIP revision approval violates the May 3, 1988, decision of the D.C. Circuit

NRDC's second argument in support of reconsideration is that the decision to approve the Muskingum River SIP revision on the basis of block averages is in violation of the May 3, 1988, D.C. Circuit Court's decision *NRDC v. Thomas*. NRDC states that the decision, which dismissed NRDC's petition for review of an internal Agency memorandum on the subject of the correct averaging time to be used in interpreting the SO₂ NAAQS, found the "declaration that 'block averages are the proper interpretation' of the SO₂ NAAQS to be an invalid departure from the USEPA practice recognized by the D.C. Circuit in *PPG Industries*." NRDC Petition at 5.

USEPA did not address the *NRDC v. Thomas* decision in the Muskingum River SIP revision notice, because the notice was prepared and signed by the Administrator before the D.C. Circuit opinion was issued. However, USEPA does not believe that the decision requires alteration of its approval of the SIP revision. Approval was based on longstanding Agency policy permitting use of block averages in implementing the SO₂ NAAQS.

NRDC v. Thomas involved a petition to review a memorandum written by a subordinate Agency official concerning the appropriate averaging method to be used in implementing the SO₂ NAAQS.⁵ The Court declined to require USEPA to conduct a rulemaking on the averaging method issue. 845 F.2d 1093. The Court interpreted *PPG Industries* as establishing that the status quo regarding averaging methods allowed the use of either block or running averages until the Agency conducted a rulemaking establishing one method for exclusive use, but that without a formal rulemaking USEPA could not mandate

the use of running averages. Although USEPA is addressing this issue in connection with its review of the SO₂ standards, no final rulemaking has yet been issued on this question.

With regard to the Emison memorandum in particular, the Court in *NRDC v. Thomas* expressed concern that it may have been an attempt to change the status quo without affording the protection of notice-and-comment rulemaking procedures. However, that was not the intent of the memorandum and staff paper on which it was based. It was intended to confirm the status quo after *PPG Industries*, under which an attainment demonstration may rely on block averages. The memorandum also provided that "States will continue to be permitted to develop requirements that are more stringent than Federal requirements, as provided by Section 116 of the Act" thus specifically allowing use of running averages. The memorandum focused on (and rejected) the contention the USEPA could not approve a demonstration based on block averages alone.

Thus, under both the *NRDC v. Thomas* and *PPG Industries* cases, the State of Ohio was free to submit the Muskingum River SIP revision using either block or running averages. Ohio's choice of block averages, and USEPA's approval, are entirely consistent with those decisions. However, if USEPA required Ohio to resubmit the SIP revision using running averages, that would conflict with the Court's holdings.

In conclusion, USEPA does not believe that NRDC has raised any issue necessitating reconsideration of the Agency's decision approving the Muskingum River SIP revision. The petition for reconsideration is therefore denied.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by July 31, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).) Under Executive Order 12291, today's action is not "Major". It has not been submitted to the Office of Management and Budget (OMB) for review.

List of Subject in 40 CFR Part 52

Environmental protection, Air pollution control, Sulfur oxides, Intergovernmental Offices.

Dated: May 18, 1989

Valdas V. Adamkus,
Regional Administrator.

[FR Doc. 89-12933 Filed 5-31-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 228

[FRL-3562-1]

Ocean Dumping; Proposed Designation of Site

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA today designates two ocean dredged material disposal sites (ODMDS) known as the Western ODMDS and Eastern ODMDS located offshore of Nome, Alaska for the disposal of dredged material removed from the Nome channel and harbor area. This action is necessary to provide acceptable ocean dumping sites for the current and future disposal of dredged material. This site designation is for an indefinite period of time, but the sites are subject to continuing monitoring to insure that unacceptable, adverse environmental impacts do not occur.

EFFECTIVE DATE: This designation shall become effective on July 3, 1989.

ADDRESSES: John Malek, Ocean Dumping Coordinator, Region X, WD-138.

The file supporting this designation is available for public inspection at the following locations:

EPA Public Information Reference Unit (PIRU), Room 2904 (rear), 401 M Street SW, Washington, DC.

EPA Region X, 1200 Sixth Avenue, Seattle, Washington.

U.S. Army Corps of Engineers, North Pacific Division, U.S. Custom House, 220 Northwest Eighth, Portland, Oregon.

U.S. Army Corps of Engineers, Alaska District, Building 21-700, Elmendorf AFB, Alaska.

FOR FURTHER INFORMATION CONTACT: John Malek, 206/442-1286.

SUPPLEMENTARY INFORMATION:

A. Background

Section 102(c) of the Marine Protection, Research, and Sanctuaries Act of 1972, as amended, 33 U.S.C. 1401 *et seq.* ("the Act"), gives the Administrator the authority to designate sites where ocean dumping may be permitted. On October 1, 1986, the Administrator delegated the authority to designate ocean dumping sites to the Regional Administrator of the Region in which the site is located. This site designation is being made pursuant to that authority.

The EPA Ocean Dumping Regulations (40 CFR Chapter I, Subchapter H, § 228.4) state that ocean dumping site will be designated by publication in Part 228. A list of "Approved and Final

Ocean Dumping Sites" was published on January 11, 1977 (42 FR 2461 *et seq.*) and was last extended on August 24, 1984 (49 FR 33647 *et seq.*). That list established these sites as interim sites.

B. EIS Development

Section 102(c) of the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*, (NEPA) requires that Federal agencies prepare an Environmental Impact Statement (EIS) on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment. The object of NEPA is to build into agency decision-making processes careful consideration of all environmental aspects of proposed actions. While NEPA does not apply to EPA activities of this type, EPA has voluntarily committed to prepare EIS's in connection with ocean dumping site designations such as this. 39 FR 16188 (May 7, 1974).

EPA has prepared a Draft and Final EIS entitled "Environmental Impact Statement (EIS) for Nome, Alaska, Dredged Material Disposal Site Designation". Four reviewers submitted comments on the draft EIS, which EPA assessed and responded to in the final EIS. Comments that could not be appropriately treated as text changes were addressed point by point in the final EIS following the letters of comment. On May 25, 1984, a notice of availability of the Final EIS for public review and comment was published in the *Federal Register* (49 FR 22123). One reviewer submitted comments after the close of the public comment period concerning the potential effects of dredged material disposal on existing mineral leases and mining operations. The comment was considered in preparing this rulemaking notice. Because of the dynamic environment of the two proposed sites, it is unlikely that dredged material disposal would cause a significant adverse effect. Comments were also received after the close of the public comment period from the Corps of Engineers concerning the proposal to de-designate the Western ODMDS. Coordination continued with the Corps regarding this issue and resulted in this final rulemaking notice to designate both sites. Coordination has included the City of Nome.

The action discussed in the Final EIS is designation for continuing use of an ocean disposal site for dredged material. The purpose of the designation is to provide an environmentally acceptable location of ocean disposal. The appropriateness of ocean disposal is determined on a case-by-case basis as

part of the process of issuing permits for ocean disposal.

The EIS discussed the need for the action and examines ocean disposal sites and alternatives to the proposed action, including land-based disposal options.

The EIS presented the information needed to evaluate the suitability of ODMDS areas for final designation and is based on a disposal site environmental study. The study and final designation process are being conducted in accordance with the Act, the Ocean Dumping Regulations, and other applicable Federal environmental legislation.

This final rulemaking notice fills the same role as the Record of Decision required under regulations promulgated by the Council on Environmental Quality for agencies subject to NEPA.

C. Site Designation

On September 23, 1988, EPA proposed designation of these sites for the continuing disposal of dredged materials from Nome harbor. The public comment period on this proposed action closed November 7, 1988. One letter of comment was received from the U.S. Department of the Interior, Minerals Management Service (MMS), on December 29, 1988. The letter noted several events that had occurred since the final EIS was filed by EPA in 1984 and requested that EPA consider updating the EIS. Specifically, MMS cited the apparently elevated concentrations of mercury in Norton Sound sediments. A response was provided to MMS by letter dated February 21, 1989. That letter acknowledged the serious concerns raised by MMS regarding the quality of sediments throughout Norton Sound. However, these concerns were judged to be more appropriately handled as a part of site management rather than site designation. As stated elsewhere in this rule, site designation does not constitute or imply approval of actual disposal of materials at sea. Accordingly, updating of the final EIS was determined to be unnecessary. On February 27, 1989, following coordination with the Corps of Engineers, a letter was sent to the District Engineer of the Alaska District advising him that sediments from Nome harbor may be unacceptable for unrestricted disposal and recommending that a sediment testing program be jointly developed to address this situation. Coordination to develop this testing plan is proceeding. Dredged sediments found to be unsuitable for unrestricted ocean disposal will not be disposed of at either Nome site.

⁴ EPA approval of a revision to a State Implementation Plan is not governed by the rulemaking provisions of section 307(d) of the Clean Air Act, but by the provisions of the APA.

⁵ The Emison memorandum at issue in *NRDC v. Thomas* could have had no effect on Ohio's SIP revision submission, as it was not issued until 4 years after Ohio had submitted the revision, and 2 years after USEPA had proposed to approve the revision.

The sites are located adjacent to shore, west and east of the entrance channel to Nome harbor and occupy a total area of about 0.67 square nautical miles. Water depths within the areas range from 1 meter along the shoreline boundary to maximum depths of 11 and 12 meters along the southern boundary of the Western and Eastern ODMDS respectively. The coordinates of the sites are as follows:

The Western ODMDS is located adjacent to the west of the entrance channel to the Nome, Alaska, harbor. It abuts the shore and extends seaward covering an area of 0.30 square nautical miles. Its corner coordinates are:

64°30'04"N., 165°25'52"W.;
64°29'18"N., 165°26'04"W.;
64°29'13"N., 165°25'22"W.;
64°29'54"N., 165°24'45"W.;

The Eastern ODMDS is located adjacent to the east of the entrance channel to the Nome, Alaska, harbor. It abuts the shore and extends seaward covering an area of 0.37 square nautical miles. Its corner coordinates are:

64°29'54"N., 165°24'41"W.;
64°29'45"N., 165°23'27"W.;
64°28'57"N., 165°23'29"W.;
64°29'07"N., 165°24'25"W.;

If at any time disposal operations at either site cause unacceptable adverse impacts, further use of the site will be restricted or terminated.

D. Regulatory Requirements

Five general criteria are used in the selection and approval of ocean disposal sites for continuing use. Sites are selected so as to minimize interference with other marine activities, to keep any temporary perturbations from the dumping from causing impacts outside the disposal site, and to permit effective monitoring to detect any adverse impacts at an early stage. Where feasible, locations off the Continental Shelf are chosen. If at any time disposal operations at an interim site cause unacceptable adverse impacts, the use of that site will be terminated as soon as suitable alternate disposal sites can be designated. The general criteria are given in § 228.5 of the EPA Ocean Dumping Regulations, and § 228.6 lists eleven specific factors used in evaluating a proposed disposal site to assure that the general criteria are met.

The sites, as discussed below under the eleven specific factors, are acceptable under the five general criteria, except for the preference for sites located off the Continental Shelf. EPA has determined, based on the information presented in the Draft and Final EIS, that a site off the Continental

Shelf is not feasible and that no environmental benefit would be obtained by selecting such a site instead of this action. Historical use at the existing sites has not resulted in substantial adverse effects to living resources of the ocean or to other uses of the marine environment.

The characteristics of the sites are reviewed below in terms of the eleven factors.

1. Geographical Position, Depth of Water, Bottom Topography, and Distance From Coast. 40 CFR 228.6(a)(1)

Geographical positions and distances from the coast for each site are given above. Water depth at the sites ranges from 1 to 12 meters. Bottom topography is similar at both sites. Slope gradient is 1:120 to about —13 meters.

2. Location in Relation to Breeding, Spawning, Nursery, Feeding, or Passage Areas of Living Resources in Adult and Juvenile Phases. 40 CFR 228.6(a)(2)

Breeding, spawning, nursery, and/or passage activities of commercially important finfish and shellfish species typical of the Norton Sound all occur on a seasonal basis in or near the proposed sites. The two sites comprise a small portion of the available habitat of the Sound. No unique breeding, spawning, nursery, or passage areas for living resources occur in the sites. Feeding of Gray Whales may reach to within about 770 meters of Nome's shoreline. Anticipated disposal volumes represent about 2 percent of natural annual sediment transport for the Norton Sound area. Accordingly, any impacts would be of very short duration and minor in nature.

3. Location in Relation to Beaches and Other Amenity Areas. 40 CFR 228.6(a)(3)

Both sites adjoin the shore at their northern boundary. Thus, they are in close proximity to the beaches on either side of the entrance channel to Nome harbor.

4. Types and Quantities of Wastes Proposed To Be Disposed of, and Proposed Methods of Release, Including Methods of Packing the Waste, If Any. 40 CFR 228.6(a)(4)

Sediments from operations and maintenance dredging of the Nome harbor have been deposited annually in either site since 1923. It is expected that disposal of project sands and silts from the turning basin and entrance channel will continue to occur during summer months at an estimated annual volume of 13,000 cubic yards. The interim sites are immediately adjacent to the

dredging areas and their use will minimize transport time. All dredged material disposed at the sites must comply with the requirements of EPA's Ocean Dumping Regulations.

5. Feasibility of Surveillance and Monitoring. 40 CFR 228.6(a)(5)

Surveillance and monitoring of the sites can be accomplished because of the proximity to shore and the shallow depths of the sites. Monitoring by EPA, the Corps of Engineers, and permittees, as required, will occur as long as the site is used. If evidence of significant environmental effects is found, EPA will take appropriate action to alter or terminate disposal practices at the site(s).

6. Dispersal, Horizontal Transport and Vertical Mixing Characteristics of the Area, Including Prevailing Current Direction, and Velocity. 40 CFR 228.6(a)(6)

Littoral drift will be a primary force causing dispersion of material at the sites. Except for a small portion of their outer limits in mid-summer, the sites are in a single mixed zone. Both sites are in a highly dynamic environment with an estimated 650,000 cubic yards of sediments transported annually under natural conditions. Transport direction appears to be predominantly easterly, but has been interrupted by construction of a 2,600-foot long breakwater/port facility. Plans exist to increase the length of the breakwater to a total of 3,500 linear feet in the future. Disposal at the eastern or western site would occur to complement littoral drift patterns and prevent significant build-up or erosion of sediments.

7. Existence and Effects of Current and Previous Discharges and Dumping in the Area (Including Cumulative Effects). 40 CFR 228.6(a)(7)

The sites have been used for dredged material disposal annually since 1923. There has been no indication that these disposal events have materially altered the characteristics of the sites.

8. Interference With Shipping, Fishing, Recreation, Mineral Extraction, Desalination, Fish and Shellfish Culture, Areas of Special Scientific Importance, and Other Legitimate Uses of the Ocean. 40 CFR 228.6(a)(8)

Ice forms in Norton Sound during the winter months, restricting all commercial and recreational vessel traffic. The sites lie outside the navigation channel. While there is need for navigation coordination during dredging and disposal, these operations

are not expected to interfere with commercial shipping in the area. Some restrictions on recreational activities may be necessary in the vicinity of dredging and disposal activities. The sites do not uniquely support fisheries, but commercial and subsistence shellfishing do exist. Accordingly, fishing and fish and shellfish culture could be affected at the site during and immediately after disposal operations. Significant interference with these activities is not expected. No interference with mineral extraction, desalination, areas of special scientific importance, or other legitimate uses of the ocean are anticipated.

9. The Existing Water Quality and Ecology of the Site as Determined by Available Data or By Trend Assessment of Baseline Surveys. 40 CFR 228.6(a)(9)

Evaluation of existing information indicates that disposal of dredged sediments from Nome harbor will have minimal impact on the water quality and ecology of the sites. The area is a dynamic, high-energy environment; water quality parameters (concentrations of dissolved nutrients, trace metals, dissolved oxygen, pH, etc.) and biological characteristics (planktonic and benthic communities) are not expected to be significantly altered by dredging or disposal activities. Temporary reductions in water quality and minor, temporary disruptions to biological communities within the sites during and after disposal will occur.

10. Potentiality for the Development or Recruitment of Nuisance Species in the Disposal Site. 40 CFR 228.6(a)(10)

There appears to be little, if any, potential for development or recruitment of nuisance species in the disposal sites.

11. Existence At or In Close Proximity to the Site of Any Significant Natural or Cultural Features of Historical Importance. 40 CFR 228.6(a)(11)

There are no known cultural or historic properties in close proximity of the Nome sites that could be affected by disposal activities.

E. Action

The EIS concluded that either or both of the sites may be appropriately designated for use. The sites are compatible with the general criteria and specific factors used for site evaluation. Designation of the Eastern site was specifically proposed as this site was most frequently used. Because of considerations for littoral drift, which may be affected by the current or

proposed to be expanded breakwater, designation of the Western site is also proposed. Determination whether a particular year's dredged material would go to the Western or Eastern site will be made on a case-by-case basis by the Corps of Engineers, with review by EPA.

The designation of the Western and Eastern ODMDS as EPA approved Ocean Dumping Sites is being published as final rulemaking. Management of the sites will be delegated to the Regional Administrator of EPA Region X.

It should be emphasized that, when an ocean dumping site is designated, such a designation does not constitute or imply EPA's approval of actual disposal of material at sea. Before ocean dumping of dredged material at the site may commence, the Corps of Engineers must evaluate a permit application according to EPA's ocean dumping criteria. EPA will make an independent evaluation of the permit application and has the right to disapprove the actual dumping if it determines that environmental concerns under the Act have not been met.

F. Regulatory Assessments

Under the Regulatory Flexibility Act, EPA is required to perform a Regulatory Flexibility Analysis for all rules which may have a significant impact on a substantial number of small entities. EPA has determined that this action will not have a significant impact on small entities since the site designation will only have the effect of providing a disposal option for dredged material. Consequently, this does not necessitate preparation of a Regulatory Flexibility Analysis.

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. This action will not result in an annual effect on the economy of \$100 million or more or cause any other effects which would result in its being classified by the Executive Order as a "major" rule. Consequently, this rule does not necessitate preparation of a Regulatory Impact Analysis.

This Final Rule does not contain any information collection requirements subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 228

Water pollution control.

Dated: April 10, 1989.

Ralph R. Bauer,
Acting Regional Administrator for Region X.

In consideration of the foregoing, Part 228 of Subchapter H of Chapter I of Title 40 is amended as set forth below.

PART 228—[AMENDED]

1. The authority citation for Part 228 continues to read as follows:

Authority: 33 U.S.C. sections 1412 and 1418.

2. Section 228.12 is amended by removing from paragraph (a)(3) "Nome—West Site and Nome—East Site", and adding paragraphs (b)(36) and (b)(37) to read as follows:

§ 228.12 Delegation of management authority for ocean dumping sites.

• • • • •

(b) • • •
(36) Nome—West Site—Region X.

Location: 64° 30' 04" N., 165° 25' 52" W.;
64° 29' 18" N., 165° 26' 04" W.; 64° 29' 13" N.,
165° 25' 22" W.; 64° 29' 54" N., 165° 24' 45" W.

Size: 0.30 square nautical miles.
Depth: Ranges from 1–11 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restrictions: Disposal shall be limited to dredged material from Nome, Alaska, and adjacent areas. Use will be coordinated with the City of Nome prior to dredging. Preference will be given to placing any material in the inner third of the site to supplement littoral drift, as needed.

(37) Nome—East Site—Region X.
Location: 64° 29' 54" N., 165° 24' 41" W.;
64° 29' 45" N., 165° 23' 27" W.; 64° 28' 57" N.,
165° 23' 29" W.; 64° 29' 07" N., 165° 24' 25" W.

Size: 0.37 square nautical miles.
Depth: Ranges from 1–12 meters.
Primary Use: Dredged material.
Period of Use: Continuing use.
Restrictions: Disposal shall be limited to dredged material from Nome, Alaska, and adjacent areas. Use will be coordinated with the City of Nome prior to dredging.

[FR Doc. 89-12988 Filed 5-31-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 86-29; RM-4941 and RM-5399]

Radio Broadcasting Services;
Greenup, KY and Athens, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration; correction.

SUMMARY: This action corrects the Final Rule/Reconsideration in MM Docket No. 87-29, 54 FR 18889, published May 3, 1989 [FR Doc. 89-10588].

A. The MM docket number was a typographical error. It should read "86-29."

B. The following information including amendments to the rules was inadvertently omitted:

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Ohio by adding Channel 289B1 at Athens; and

under Kentucky by removing Channel 289B1 and adding Channel 288A at Greenup.

FOR FURTHER INFORMATION CONTACT: J. Bertron Withers, Jr., Mass Media Bureau, (202) 632-7792.

Federal Communications Commission.

Douglas W. Webbink,

Acting Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-12965 Filed 5-31-89; 8:45 am]

BILLING CODE 6712-01-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 109

[Docket No. 89N-0014]

RIN 0905-AC91

Lead From Ceramic Pitchers

AGENCY: Food and Drug Administration.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to establish a regulatory limit for ceramic food-service pitchers, excluding creamers, that would limit the leaching of lead from the glazes and decorations on the food-contact surface of these pitchers to no more than 0.1 microgram per milliliter ($\mu\text{g}/\text{mL}$) of test solution. FDA is also proposing to provide that decorative ceramicware that appears to be suitable for food use will be deemed to be for food use unless it bears a conspicuous, permanent label statement molded or fired onto the ceramic piece that states that the piece is not for food use, or a hole is bored through the possible food-contact surface of the piece. FDA is proposing this provision to ensure that decorative pieces are not confused with food-contact ceramicware. Finally, by means of this notice, FDA is soliciting comments and information on several other matters, including the need to decrease leachable lead from other ceramicware (flatware, cookware, and large and small hollowware other than pitchers) and appropriate measures for achieving any needed decrease.

DATES: Written comments by July 31, 1989. Proposed compliance date for all affected products initially introduced or initially delivered for introduction in interstate commerce is 6 months after date of publication of the final regulation.

ADDRESS: Written comments to the Dockets Management Branch (HFA-

305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Terry C. Troxell, Center for Food Safety and Applied Nutrition (HFF-312), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-485-0229.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of August 10, 1979 (44 FR 47162), FDA announced the current action levels for lead that leaches from ceramic foodware. These action levels were based on the recommendations of the World Health Organization (WHO). FDA established different leachable lead action levels for ceramic foodware based on the capacity and probable use of the foodware. There are action levels for three different types of ceramic foodware in current Compliance Policy Guide (CPG) 7117.07 (Ref. 1):

(1) Flatware: an article with an internal depth of not more than 25 millimeters—an average of not more than 7.0 micrograms of lead per milliliter of leaching solution from six units examined;

(2) Small Hollowware: an article with a capacity of less than 1.1 liters—5.0 micrograms of lead per milliliter of leaching solution in any one unit; and

(3) Large Hollowware: an article with a capacity of 1.1 liters or more—2.5 micrograms of lead per milliliter of leaching solution in any one unit.

At the time the action levels were established, FDA was using recommended tolerable total lead intakes from all sources of not more than 100 micrograms per day ($\mu\text{g}/\text{day}$) for infants from birth to 6 months of age and not more than 150 $\mu\text{g}/\text{day}$ for children from 6 months to 2 years of age (44 FR 51233 at 51234; August 31, 1979).

Recent toxicology and epidemiology studies on lead have shown adverse effects in children, including deficits in intelligence and reduced stature at lead exposure levels that were once thought not to be associated with adverse effects. Therefore, several national and international organizations have lowered their tolerable levels for lead exposure for children. FDA also believes that a lower tolerable level is appropriate. Given these reductions in the tolerable levels, the agency believes that it is necessary to reduce the

exposure to lead as a contaminant of foods in situations in which current levels of exposure are high and it is practicable to reduce those levels.

In this document FDA is proposing to establish an enforcement limit for ceramic pitchers, except creamers, that is 25 to 50 times lower than the current action levels for these items. The agency has chosen to do so because these items are likely to store acidic beverages that are consumed by children in substantial amounts. The agency also believes that this proposed action will have a minimal impact on the affected industry.

Because the agency believes that reductions in lead for other types of ceramicware may also be appropriate, this notice is soliciting information on lead contamination limits for all other ceramic foodware.

II. Lead Toxicity

The primary targets for lead toxicity are the nervous system (both central and peripheral), the red blood cells and their stem cells, and the renal system. Recent information suggests significant lead toxicity at lead levels lower than those that had previously been associated with lead toxicity. For example, deficits in intelligence and behavioral dysfunction have been reported in children who have blood lead levels as low as 10 micrograms per deciliter ($\mu\text{g}/\text{dL}$) and who are otherwise asymptomatic. Several effects on heme synthesis (production of the iron-containing component of hemoglobin) have also been found at low levels. For example, the enzyme that converts protoporphyrin to heme, ferrochelatase, has been reported to be inhibited in children at blood lead levels as low as 15 $\mu\text{g}/\text{dL}$. In addition, inhibition of another heme synthetic enzyme, gamma-aminolevulinic acid dehydratase, can occur in children and adults at blood lead levels as low as 10 $\mu\text{g}/\text{dL}$. Other studies have noted that blood lead levels as low as 10 to 15 $\mu\text{g}/\text{dL}$ are associated with reduced stature and weight gain and diminished chest circumference in children, and that blood lead levels as low as 25 $\mu\text{g}/\text{dL}$ are associated with a reduction in circulation levels of the active form of vitamin D (Refs. 2 and 3).

Although some of the same adverse effects are found in adults at low blood lead levels, children are a particularly vulnerable population because these

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adverse effects will occur in them at lower blood lead levels than in adults. In addition, children are estimated to have blood lead levels four times higher than adults from ingesting equal amounts of lead. In children, for every $\mu\text{g/day}$ increase in dietary lead, blood lead has been estimated to increase 0.16 to 0.2 $\mu\text{g/dL}$ (Ref. 2). Thus, because of the potential seriousness of the adverse effects, the relatively low blood lead level at which such effects occur, and the particular sensitivity of children to low ingestion levels, FDA is reviewing lead exposure from foods, with priority given to the exposure of children. This proposal is the result of the agency's reevaluation of the toxicity of, and the exposure to, lead from food served or stored in ceramic pitchers.

III. Revised Lead Exposure Standards

Four governmental and international health organizations have adopted revised guidelines or standards for total lead exposure in the last 4 years (Ref. 2). In 1985, the Office of Drinking Water of the Environmental Protection Agency (EPA) put forth a health advisory for lead exposure based on a blood lead level of 15 to 20 $\mu\text{g/dL}$ in infants. In 1988 (53 FR 31516; August 18, 1988), EPA, based in part on its conclusion that blood lead levels of 10 to 15 $\mu\text{g/dL}$ are of concern for health effects, proposed a revised maximum contaminant level for lead of 5 $\mu\text{g/L}$ for drinking water entering the distribution system. In January 1985, the Centers for Disease Control published a revised guideline specifying that an excessive absorption of lead is that amount resulting in a blood lead level of 25 $\mu\text{g/dL}$ or more (Ref. 2). In June 1986, the Joint Expert Committee on Food Additives of the Food and Agriculture Organization/World Health Organization (FAO/WHO) established a provisional tolerable weekly intake for lead of 25 micrograms per kilogram ($\mu\text{g/kg}$) of body weight for infants and children (Ref. 4). Finally, in 1986, WHO established a blood lead level of 20 $\mu\text{g/dL}$ as the "exposure level of action" (Ref. 2).

FDA has converted these guidelines and standards into a common format of $\mu\text{g/day}$ lead intake that is useful in considering lead intake from foods for children. In performing this conversion, FDA attributed 50 percent of the total lead intake for children to food, as the available data suggest (Ref. 2). In converting the guidelines/standards expressed as $\mu\text{g lead/dL blood to } \mu\text{g/day lead intake}$, a factor of 0.16 $\mu\text{g/dL per } \mu\text{g dietary lead/day}$ was used as well as an uncertainty factor of 5. The use of an uncertainty factor is consistent

with the approach used by EPA in 1985 to arrive at exposure numbers. The range of tolerable levels derived in this way is 6 to 18 $\mu\text{g/day}$ for lead intake from food for a 10-kilogram (kg) (22-pound) child (Ref. 2). Having reviewed the adverse health effects information, along with recently adopted lead guidelines and standards of other health organizations, the agency has decided to use the 6 to 18 $\mu\text{g/day}$ range as a provisional tolerable range for lead intake from food for a 10-kg child.

The agency is using a range and considers it "provisional" because there is presently a lack of consensus within the scientific community on the threshold for lead toxicity in children. The agency believes that this range provides an appropriate guide for concern about the health effects, even though, at this time, it is not possible to establish a threshold level for lead toxicity.

Data (unpublished) from the FDA Total Diet Studies for the period July 1986 to May 1987 show that the average dietary intake of lead is 4.7 $\mu\text{g/day}$ for children 6 through 11 months old (9 kg) and 6.4 $\mu\text{g/day}$ for children 2 years old (13 kg) (Ref. 5). Thus, the Total Diet Studies indicate that average dietary lead intake for children is at the low end of the provisional tolerable range and provide a strong basis for concern about any significant additional dietary intake of lead. Based on this information, the agency finds that it is important to establish regulatory limits for levels at which lead contamination may render food injurious to health whenever it is possible to do so.

IV. Ceramic Pitchers

Ceramic pitchers used as food storage vessels are one potential food source of significant lead contamination that may result in excessive dietary lead intake.¹ The present action levels for leachable lead from large and small ceramic hollowware, including pitchers, are 2.5 $\mu\text{g/mL}$ and 5.0 $\mu\text{g/mL}$ of leaching solution, respectively. Thus, for example, if a vessel were to leach lead into a food at the 2.5 $\mu\text{g/mL}$ level, the food stored in that vessel would be contaminated with 2.5 μg of lead for each mL of fluid. Consumption of as little as 10 mL (approximately two teaspoons) per day of food with this lead level would result in ingestion of 25 μg of lead per day, which is greater than the provisional tolerable range (6 to 18 $\mu\text{g/day}$) for children.

¹ The agency is excluding ceramic creamers from the proposed regulatory limit because they are not normally used as storage vessels for acidic foods that are consumed by children.

Ceramic pitchers, excluding creamers, may be used to store acidic foods, such as orange juice, that are consumed by children. Consequently, the agency has evaluated the consumption of juices by children using Market Research Corp. of America 14-day frequency of eating data (Menu Census VI, 1977 to 1978) and the U.S. Department of Agriculture data on portion size (1977 to 1978). Of the various juices, frozen juices are consumed in the largest quantities. These surveys give mean and 90th percentile daily consumption of frozen juices (eaters only) as 72 grams (g) and 154 g, respectively, for children 6 through 23 months old, and 91 g and 185 g, respectively, for children 2 through 5 years old. Children consuming mean quantities of these juices stored in ceramic pitchers from which lead leached at the current action level could consume 180 to 455 μg per day of lead. This lead intake would be more than 10 times greater than the provisional tolerable range of 6 to 18 $\mu\text{g/day}$ (Ref. 6). Consequently, the agency tentatively concludes that the current action level is not adequate to protect the public from excessive intake of lead from food stored in ceramic pitchers, excluding creamers.

If the level at which lead leaches into juice from these ceramic pitchers were limited to 0.1 $\mu\text{g lead/mL}$ of juice, however, the daily lead intake for children consuming juice at the mean consumption rate would be 7 $\mu\text{g/day}$ for children 6 through 23 months old and 9 $\mu\text{g/day}$ for children 2 through 5 years old. At 90th percentile juice consumption rates, the lead intake would be 15 $\mu\text{g/day}$ for children 6 through 23 months old and 16 $\mu\text{g/day}$ for children 2 through 5 years old (Ref. 6).

The agency considers that these exposure levels, which are upper bound intake estimates, are within the provisional tolerable range for lead intake for food for a 10-kg child. Lead levels that exceed this level exceed the provisional tolerable range and may render the food injurious to health. Therefore, FDA is proposing to establish a binding regulatory limit of 0.1 $\mu\text{g lead/mL}$ of test solution under sections 402(a)(1) and 701(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(1) and 371(a)). If FDA decides to adopt this proposal, ceramic food-service pitchers, excluding creamers, that leach lead at levels that exceed 0.1 $\mu\text{g/mL}$ will be adulterated as a matter of law.

The agency is proposing to use analytical method AOAC/ASTM, 14th Ed., sections 25.024-25.027, (1984) to implement the proposed regulatory limit.

This method is the regulatory method used in the action levels for ceramicware (CPG 7117.07). This analytical method has a quantitation limit of 0.1 $\mu\text{g/mL}$ of leaching solution if the method's concentration step is used (Ref. 7).

The agency will continue to use this analytical method (cited in CPG 7117.07 as AOAC 12th Ed., 25.031-25.034) in enforcement actions related to the current action level guidance for leachable lead from the other ceramicware specified in CPG 7117.07 (Ref. 7).

FDA believes that a regulatory limit of 0.1 $\mu\text{g lead/mL}$ of test solution is an appropriate limit, even though the upper bound intake is close to the upper limit of the provisional tolerable range. To ensure that all pieces produced will be in compliance with the proposed limit, FDA expects that manufacturers will produce pieces that, on average, leach lead at levels significantly below the limit.

Further assurance of the adequacy of this limit derives from the fact that the leaching test exaggerates leaching by acidic foods, and that the actual lead intake from juice stored in ceramic pitchers will be less than that predicted based on leaching test results. The leaching test is conducted at room temperature (22 °C) using 4 percent acetic acid, whereas products stored in ceramic pitchers, particularly acidic juices, are likely to be less acidic than 4 percent acetic acid and refrigerated at temperatures of around 5 °C. Because the amount of lead that is leached from a ceramic storage vessel decreases with decreasing acidity of the food and decreasing storage temperature, the agency expects any amount of lead leached from ceramic pitchers that comply with the proposed regulatory limit into stored food products will be less than the amount leached during testing. Therefore, the agency believes that actual lead intakes of children from lead leached from ceramic pitchers that are in compliance with the 0.1 $\mu\text{g/mL}$ regulatory limit generally will be below the upper bound intake estimates of 15 and 16 $\mu\text{g lead/mL}$ (Ref. 6).

V. Other Ceramic Foodware

As described above, the agency has established leachable lead action levels for ceramic large hollowware, small hollowware and flatware. It has not established a leachable lead level for ceramic cookware. The agency is evaluating the leachable lead levels and the exposure resulting from common, everyday use of these articles. This review is being made in light of the most current lead toxicity information and the provisional tolerable range of 6 to 18 $\mu\text{g/}$

day for lead intake from food for a 10-kg child.

The current leachable lead action levels for ceramic flatware, small hollowware, and large hollowware were established at three different levels based on the expected level of hazard attributed to the type of ware. Because of the growing evidence of potential health hazards at much lower lead levels than those considered in the late 1970's when the current leachable lead levels were established, however, the agency believes that the current action levels for leachable lead from ceramicware (other than the pitchers addressed by this proposal) for food use may need to be reduced substantially, and that a comparable low action level may need to be established for leachable lead from ceramic cookware.

Presently, FDA has only limited data concerning the concentration of leachable lead in food, particularly hot food, stored or served in these other types of ceramic foodware. The agency is therefore requesting submission of information and data concerning the relationship between the levels of lead extracted in tests of ceramicware using the AOAC method cited above and actual food-use contamination. This correlation data should be submitted for consideration with respect to this proposal and to the review of possible hazardous lead levels from all types of ceramic foodware, including cookware.

VI. Decorative Ceramicware

Current CPG 7117.07, dated October 2, 1980 (Ref. 1), provides that ceramicware may be considered unsuitable for food use if:

- (1) [it is] made or rendered unsuitable for such purpose by some artifice such as holes bored through the potential food contact surface
- or,
- (2) [it bears] a label, incapable of obliteration, permanently affixed to the article's potential food contact surface; and if such label states that the article is 'not for food use' along with a statement of the hazard associated with the article if used for food purposes.

During the past few years, the agency has encountered decorative ceramicware articles that appeared to be suitable for food use and that leached excessive levels of heavy metals, particularly lead and cadmium. In addition to regulatory and administrative actions to remove the violative ceramicware from commercial channels, FDA reviewed the criteria for determining whether ceramicware is suitable for food use. As a result of this review, the agency has determined that

the criteria as stated in CPG 7117.07 are too general and vague and, therefore, are subject to misinterpretation.

The agency is particularly concerned about those decorative and ornamental articles of ceramicware with lead glazes or decorations on potential food-contact surfaces that, because of their shape or design, may mistakenly be used to hold food. It also is concerned that statements that identify a product as not for food use, if not permanently affixed, will fall off. The agency reiterated these concerns in a letter issued June 24, 1988, to all known ceramicware decorators, decal producers, and trade associations. This letter emphasized that decorative and ornamental ceramicware should bear conspicuous and legible permanent labeling fired into the item stating "Not for Food Use—May Poison Food" or, as an alternative, be rendered unsuitable for holding liquid foods by some means, such as drilled holes (Ref. 8).

Because of repeated incidents involving decorative ceramicware that was mistakenly used to store food and that was found to have no permanently affixed statement advising against such use, the agency has tentatively concluded that the policy established in CPG 7117.07 concerning decorative ceramicware is not sufficient to assure that decorative articles will be distinguishable from food-service articles.

Therefore, the agency is proposing to adopt a regulation that states that all decorative or ornamental ceramicware that appears to be suitable for food use (i.e., is capable of holding food and may be assumed by a consumer to be for food use) will be deemed to be intended for food use, and thus subject to the standards of adulteration for food-contact articles, unless the fact that they are not intended for food use is established in at least one of the following ways:

- (1) They bear on the external surface of the base of the article the statement "Not for Food Use—May Poison Food." The statement must be permanent, conspicuous, legible, and in a type size of not less than one eighth inch in height. The statement may be molded into the base as a part of the ceramicware or may be a decal type label fired into the surface, or;
- (2) A hole is bored through the potential food-contact surface of the decorative ceramicware to make it unsuitable for food use.

While the agency believes that an effective method must be adopted to clearly make decorative ceramicware that appears to be suitable for food use and that leaches excessive amounts of lead unsuitable for food use, the agency

will consider alternative effective approaches. Therefore, FDA is interested in obtaining information concerning the most effective method, if not those proposed, of clearly and permanently distinguishing between ceramic foodware and decorative ceramicware. In evaluating the effectiveness of any approach, the agency intends to put substantial weight on the permanence of the notice that the ceramicware is not suitable for food use. This factor is particularly important because decorative ceramicware frequently is passed from generation to generation.

VII. Request for Comments and Information

By means of this proposal, the agency is requesting comment on the following specific matters as well as any other matters that may be of particular concern to the industry or consumers:

(1) Lead toxicity and the provisional tolerable intake range;

(2) Lead exposure from use of the various kinds of ceramicware for food service;

(3) Leachability of lead from ceramicware under the normal range of actual conditions of use as compared to the leachable lead recovered by the current regulatory test method;

(4) Lowest leachable lead levels routinely attainable for ceramicware, particularly fine china, that employs lead-containing materials in the food-contact surface;

(5) The impact, including costs, of achieving these low levels;

(6) The impact, including costs, number of articles affected, and environmental effects, of the proposed regulatory limit for ceramic pitchers, excluding creamers;

(7) Availability of alternative glazes and decorations that do not contain lead, their composition, and leachability of potentially toxic substances into food or appropriate test solutions from these glazes and decorations; and

(8) The impact of the proposed requirements for decorative ceramicware that resembles foodware and contains leachable lead.

VIII. Economic Impact

In accordance with section 605(b) of the Regulatory Flexibility Act, the agency has considered the effect that this proposed rule would have on small entities including large and small businesses and has determined that the proposed action will not result in a significant impact on a substantial number of small entities. Furthermore, in accordance with Executive Order 12291, the agency has analyzed the economic

effects of this regulation and has determined that the rule, if promulgated, will not be a major rule as defined by that Order. The economic threshold assessment may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IX. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. Based on the available information, FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. The agency will reevaluate its environmental decision if new information is received suggesting that the action would have significant environmental effects.

X. Effective Date

The agency is proposing that all new ceramic food-service pitchers, excluding creamers, and all new decorative or ornamental ceramicware initially introduced or initially delivered for introduction into interstate commerce 6 months after publication in the Federal Register of any final rulemaking in this action shall comply with the regulation. The agency is also specifically requesting comment on the appropriateness of the proposed effective date for this action. All comments concerning the effective date should be accompanied by data to support or justify any change in the proposed effective date.

XI. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

(1) Compliance Policy Guide 7117.07.
(2) Memorandum of August 4, 1987, as amended January 8, 1989, by P. M. Bolger, Division of Toxicology, FDA.

(3) Agency for Toxic Substances and Disease Registry, Public Health Service, "The Nature and Extent of Lead Poisoning in Children in the United States: A Report to Congress," July 1988.

(4) Joint FAO/WHO Expert Committee on Food Additives, "Summary and Conclusions," 30th meeting, June 2 to 11, 1986.

(5) FDA's Total Diet Study for July 1988 to May 1987, unpublished.

(6) Memorandum of July 7, 1987, by G. Cramer, Division of Food Chemistry and Technology, FDA.

(7) Memorandum of June 2, 1987, by S. Capar, Division of Contaminants Chemistry, FDA.

(8) Letter of June 24, 1988, by L. R. Lake, Director, Office of Compliance, Center for Food Safety and Applied Nutrition, FDA.

Interested persons may, on or before July 31, 1989, submit to the Dockets Management Branch (address above), written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Lists of Subjects in 21 CFR Part 109

Food labeling, Food packaging, Foods, Incorporation by reference, Polychlorinated biphenyls (PCB's).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that Part 109 be amended as follows:

PART 109—UNAVOIDABLE CONTAMINANTS IN FOOD FOR HUMAN CONSUMPTION AND FOOD-PACKAGING MATERIAL

1. The authority citation for 21 CFR Part 109 is revised to read as follows:

Authority: Secs. 201, 306, 402(a), 406, 408, 409, 701, 52 Stat. 1040-1042 as amended, 1045-1048 as amended, 1049 as amended, 1055-1056 as amended, 68 Stat. 511-518 as amended, 72 Stat. 1785-1788 as amended (21 U.S.C. 321, 338, 342(a), 346, 346a, 348, 371).

2. Section 109.16 is added to Subpart A to read as follows:

§ 109.16 Lead-containing glazes and decorations on ceramicware.

(a) Lead is a toxic heavy metal that is used as a component in glazes and decorative decals on ceramics. Under certain conditions of manufacture or use, lead may leach from the glaze or decoration into food held in the ceramicware in amounts that may result in the ingestion of toxic amounts of lead.

(b) The following provisions are necessary to preclude the ingestion of toxic amounts of lead from various types of ceramicware:

(1) Decorative or ornamental ceramicware.

(i) Ceramicware that appears to be suitable for food use will be deemed to be for food use unless:

(A) It bears a conspicuous and legible permanent statement "Not For Food Use—May Poison Food" molded or fired onto the exterior surface of the base of the ceramicware. This permanent labeling must be in a type size of not less than one-eighth inch in height; or

(B) A hole is bored through the potential food-contact surface.

(ii) [Reserved]
(2) Ceramic pitchers, excluding creamers.
(i) Ceramic pitchers, excluding creamers, for food use are deemed to be adulterated under section 402(a)(1) of the act if the amount of lead that leaches from the food-contact surface of the pitcher exceeds 0.1 microgram of lead per milliliter of test solution when the pitcher is tested by the method specified in paragraph (b)(2)(ii) of this section.

(ii) The article is analyzed, utilizing the concentration step specified, by the method of analysis for lead in "Official Methods of the Association of Official Analytical Chemists," 14th Ed. (1984), sections 25.024-25.027, "Cadmium and Lead in Earthenware: Atomic Absorption Spectrophotometric Method, Final Action, AOAC/ASTM Method," which is incorporated by reference in accordance with 5 U.S.C. 552(a). Copies are available from the Association of Official Analytical Chemists, 1111 North 19th St., Suite 210, Arlington, VA 22209, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC 20408.

Dated: January 18, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-12929 Filed 5-31-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Chapter I

[FHWA Docket No. 83-7, Notice 3]

RIN 2125-AA87

Acceleration of Projects, Consolidated Rulemaking

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Withdrawal of advance notice of proposed rulemaking.

SUMMARY: The FHWA is withdrawing the advance notice of proposed rulemaking (ANPRM) on the acceleration of projects program, 48 FR

38854, August 26, 1983, and is closing Docket No. 83-7. Based on comments received and a review of current program laws and regulations, it has been determined that new regulations are unnecessary.

DATE: This withdrawal is effective June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Steiner M. Silence, Special Procedures Branch, Federal-Aid Division, (202) 366-0334; or Mr. Michael J. Laska, Office of the Chief Counsel, (202) 366-1383, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: On August 26, 1983, the FHWA published an advance notice of proposed rulemaking (ANPRM) (48 FR 38854) pursuant to section 129 of the Surface Transportation Assistance Act of 1982 (STAA 1 of 1982), Pub. L. 97-424, 96 Stat. 2097, January 8, 1983, to solicit comments to assist in the development of rules and regulations that would implement timesaving procedures developed under section 141 of the Federal-Aid Highway Act of 1976, Pub. L. 94-280, 90 Stat. 425, May 5, 1976.

Pursuant to section 141 of Pub. L. 94-280, the FHWA initiated a demonstration project in Everett, Pennsylvania, in conjunction with the Pennsylvania Department of Transportation. A final report on this project entitled, "Acceleration of Highway Projects," was transmitted to the Congress on January 16, 1981. The report documented how time was saved on the project and made several recommendations which could apply to other selected highway projects. The FHWA implemented many of the findings through advisory memoranda to its operating offices. On May 13, 1982, all FHWA offices were advised of the selection of Acceleration of Projects as a special Cost Avoidance, Reduction, and Efficiency, and Effectiveness (CARE) Program effort.

The FHWA issued a new policy on May 27, 1983 (48 FR 25181, June 6, 1983), formalizing acceleration of projects as the FAST program—to Facilitate Acceleration through Special Techniques. The policy was confined to acceleration techniques permitted under existing laws and regulations. Although some significant results were anticipated through the use of FAST procedures, further wide-spread timesavings would require changes to existing policies and regulations.

The FHWA's ANPRM advised that the FHWA was considering ways to

expedite the processing of Federal-aid highway projects by promoting wider use of findings and recommendations of the Everett, Pennsylvania demonstration project and was seeking ways to simplify, streamline, and consolidate requirements. The notice requested responses to nine questions of particular interest covering the scope and content of section 129 of STAA of 1982.

Discussion of Comments

Thirty-two replies were received in response to the advance notice: 20 from State highway agencies, 4 from counties, 3 from metropolitan planning organizations (1 planning organization sent 2 letters), 2 Federal agencies, and 1 each from a city, a consultant, and the Center for Auto Safety.

A majority of respondents indicated that the FHWA should develop procedures which would accelerate all Federal-aid highway processes rather than limiting them to a few selected projects in each State. Suggested procedures for accelerating projects most frequently made included ones that could be implemented under existing policies, regulations, and statutes; ones that would require revision to current regulation; and ones that would require statutory change. Both large and small bridge, bridge replacement, and Federal-aid urban system projects were identified as the most valuable type of project to try the acceleration techniques. Of the timesaving techniques set forth in the May 27, 1983, policy statement, greater delegations of authority, right-of-way plan preparation and design work authorization after identification of a preferred alternative, and concurrent reviews were mentioned most. Early, concurrent involvement by all parties; shorter advertisement periods; and continuing contact with affected property owners were all suggested. Since these procedures are all possible without regulatory change, we decided current public involvement procedures are sufficient. Suggested methods for assuring interagency cooperation included: joint coordination meetings, concurrent reviews, timely submission of comments and existing procedures are sufficient. Only a minority of respondents favored requiring States to accelerate projects, and a majority favored permitting each State to develop its own acceleration techniques. Although respondents favored the establishment of a general waiver, they gave few suggestions regarding what regulations should be waived or under what conditions.

FHWA Conclusions

Because of the wide range of comments received, an interoffice working group was formed in the Washington Headquarters to review the docket. Based upon the working group's report, a review of the comments received on the advance notice of proposed rulemaking, and input from other Headquarters offices, four courses of action were identified:

- (1) Develop a document explaining the flexibility which exists in all FHWA programs. *The Flexibility Document* was printed by the FHWA in July 1986.
- (2) Continue the effort to revise existing FHWA regulations to streamline the Federal-aid procedures; however, a separate "FAST regulation" was not found necessary. A number of revisions have been made, such as the "one-stop environmental processing" concept.
- (3) Pursue statutory changes which would eliminate delay and duplication in the Federal-aid process.
- (4) Continue the ongoing efforts of the various program offices to streamline their own procedures.

Section 129 requires a rule or regulation covering "alternative" procedures; however, the cumulative efforts falling under the above courses of action constitute conformance with the provision. Therefore, the FHWA is hereby withdrawing its advance notice of proposed rulemaking on the Acceleration of Projects and is closing Docket No. 83-7.

In consideration of the foregoing, the advance notice of proposed rulemaking published in the *Federal Register* on August 28, 1983 [48 FR 38854], (Docket No. 83-7) is hereby withdrawn.

The FHWA has determined that this document contains neither a major rule under Executive Order 12291 nor a significant rulemaking action under the regulatory policies and procedures of the Department of Transportation. Due to the nature of this withdrawal notice, a regulatory evaluation is not required since no economic impact is expected. Under the criteria of the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12812, and it has been determined that the withdrawal notice does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(23 U.S.C. 109, 315, and 402; 49 CFR 1.48(b))
Issued on: May 23, 1989.

R. D. Morgan,
Executive Director.

[FR Doc. 89-12955 Filed 5-31-89; 8:45 am]
BILLING CODE 4810-22-M

DEPARTMENT OF THE TREASURY**Bureau of Alcohol, Tobacco and Firearms****27 CFR Part 179**

[Notice No. 684]

Machine Guns, Destructive Devices, and Certain Other Firearms

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is proposing to amend 27 CFR 179.25 to define the term "date of manufacture" and establish a time period of 50 years before a firearm can be classified as a collector's item and removed by the Director from the scope of the National Firearms Act (NFA). For a firearm or device to be removed from the purview of the NFA, one of the statutory characteristics ATF must use is "date of manufacture" since this term is not currently defined in the regulations, industry has had little guidance as to when a particular firearm is eligible for removal from the NFA. Accordingly, ATF has determined that a definition of the term "date of manufacture" would provide such guidance.

DATE: Written comments must be received by July 31, 1989.

ADDRESS: Send written comments to: Chief, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 189, Washington, DC 20044-0189, ATTN: Notice No. 684.

FOR FURTHER INFORMATION CONTACT: J. Barry Fields, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, (202) 566-7591.

SUPPLEMENTARY INFORMATION: Section 5845(a), Title 26, U.S.C. defines certain categories of firearms. These firearms are subject to the registration and tax provisions of the NFA. However, the last sentence of this section provides for the removal of certain weapons from the definition of "firearm". It reads as follows:

The term "firearm" shall not include an antique firearm or any device (other than a machinegun or destructive device) which, although designed as a weapon, the Secretary finds by reason of the date of its manufacture, value, design, and other characteristics is primarily a collector's item and is not likely to be used as a weapon.

This provision of the statute is implemented in 27 CFR 179.25 which provides that the Director, ATF, shall make determinations concerning the classification of firearms as collector's items.

In evaluating the statutory criteria for classification of a device as a collector's item, ATF is required to find by reason of the date of manufacture, value, design, and other characteristics that the device is primarily a collector's item and is not likely to be used as a weapon. Use of the conjunctive "and" indicates that a device must satisfy all of the statutory criteria in order to be removed from the NFA as a collector's item. Thus, even if a firearm meets the requirements for value, design, and other characteristics, the Secretary may not remove the device from the purview of the NFA unless it also meets the requirement for date of manufacture.

Since neither section 5845(a) nor the implementing regulation specify the age a firearm must be before it meets the date of manufacture requirement, the industry has had little guidance as to when a particular firearm is eligible for removal from the NFA. Accordingly, ATF has determined that a definition of the term "date of manufacture" would provide such guidance.

ATF interprets the term "date of manufacture" in 26 U.S.C. 5845(a) as requiring that the date of the particular device indicate that it is primarily a collector's item. ATF believes that a recent date of manufacture would not be indicative of a device which is primarily a collector's item. If Congress had intended that new firearms be eligible for removal from the NFA, date of manufacture would not have been a statutory criterion for classifying devices as collector's items.

Accordingly, ATF believes that a date of manufacture less than 50 years before the current date would not be indicative of a device which is primarily a collector's item. ATF believes that the requirement that a firearm be at least 50 years old before it can be removed from the NFA is a reasonable interpretation of the term "date of manufacture" as it is used in section 5845(a). A firearm which is at least 50 years old is not a firearm of recent manufacture and has been in existence long enough to demonstrate whether it is of interest to collectors.

A 50 year time period also conforms with the definition of "curios and relics" appearing at 27 CFR 178.11, which establishes an age of 50 years for firearms in order for them to be recognized as curios or relics under the Gun Control Act of 1968, as amended, 18 U.S.C. Chapter 44. For purposes of the Gun Control Act, firearm curios or relics are firearms that, among other things, are of special interest to collectors by reason of some quality other than those associated with firearms intended for sporting use or as offensive or defensive weapons.

Based upon the above, ATF is proposing to amend the regulations at 27 CFR 179.25 to specify that the term "date of manufacture" as used in 26 U.S.C. 5845(a) means a date at least 50 years prior to the current date.

Executive Order 12291

In compliance with Executive Order 12291, 48 FR 13193 (1981), ATF has determined that this final rule is not a "major rule" since it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Regulatory Flexibility Act

The provisions of the Regulatory Flexibility Act relating to an initial and final regulatory flexibility analysis (5 U.S.C. 603, 604) are not applicable to this proposal because the notice of proposed rulemaking, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities. The proposal will not impose, or otherwise cause, a significant increase in reporting, recordkeeping, or other compliance

burdens on a substantial number of small entities. The proposal is not expected to have significant secondary or incidental effects on a substantial number of small entities.

Accordingly, it is hereby certified under the provisions of section 3 of the Regulatory Flexibility Act (5 U.S.C. 605(b)) that this notice of proposed rulemaking, if promulgated as a final rule, will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking has been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3504(h)). Comments on the collection of information should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 22503, attention: Desk Officer for ATF, with copies to ATF at the address previously specified. The collection of information in this regulation is in 27 CFR Part 179. This information is required by ATF to provide the public with the means to have a firearm classified as a collector's item. The respondents will be individuals who are interested in collecting firearms that are of value for reasons other than their offensive, defensive or sporting uses. Estimated total annual reporting and/or record keeping burden: 25 hours. Estimated average annual burden per respondent and/or recordkeeper: 1 hour. Estimated number of respondents and/or recordkeepers: 25. Estimated annual frequency of responses: 1.

Public Participation

ATF requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date. ATF will not recognize any material as confidential. Comments may be disclosed to the public. Any material which the commenter considers to be confidential or inappropriate for disclosure should not be included in the comment. The name of the person submitting the comment is not exempt from disclosure.

During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right, in light of all circumstances, to

determine if a public hearing is necessary.

Disclosure

Copies of this notice and the written comments will be available for public inspection during normal business hours at: ATF Reading Room, Disclosure Branch, Room 4412, Ariel Rios Federal Building, 1200 Pennsylvania Avenue NW., Washington, DC.

Drafting Information

The principal author of this notice of proposed rulemaking is J. Barry Fields, ATF Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 179

Administrative practice and procedure, Arms and munitions, Authority delegations, Claims, Customs duties and inspections, Excise taxes, Exports, Imports, Penalties, Reporting requirements, Research, Seizures and forfeitures, Transportation, and U.S. possessions.

Authority and Issuance**PART 179—MACHINE GUNS, DESTRUCTIVE DEVICES, AND CERTAIN OTHER FIREARMS**

Par. 1. The authority citation for Part 179 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Section 179.25 is amended by adding a sentence at the end of the section to read as follows: As used in this section, "date of manufacture" means a date at least 50 years prior to the current date.

Signed: April 24, 1989.

Stephen E. Higgins,
Director.

Approved: May 8, 1989.

Salvatore R. Martoche,
Assistant Secretary (Enforcement).
[FR Doc. 89-12830 Filed 5-31-89; 8:45 am]
BILLING CODE 4810-31-M

DEPARTMENT OF THE INTERIOR**Office of Surface Mining Reclamation and Enforcement****30 CFR Part 938****Pennsylvania Regulatory Program**

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule: reopening and extension of public comment period.

SUMMARY: OSMRE is reopening and extending the public comment period on a proposed amendment to the Pennsylvania permanent regulatory program (hereinafter referred to as the Pennsylvania program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment will reduce the minimum staffing level to administer the Pennsylvania program from the previously approved 405 positions to 388 positions—a difference of 17 positions. This amendment is intended to change the approved minimum staffing levels within Pennsylvania's Department of Environmental Resources (DER) to reflect the reorganization of DER bureaus and improvements in program efficiency.

This notice sets forth the times and locations that the Pennsylvania program and the proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the amendment and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m. on July 3, 1989 to ensure consideration in the rulemaking process. If requested, a public hearing on the amendment will be held at 9:00 a.m. on June 26, 1989. Requests to present testimony at the hearing must be received on or before 4:00 p.m. on June 16, 1989.

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand-delivered to Robert J. Biggl, Director, Harrisburg Field Office at the address listed below. Copies of the Pennsylvania program, the revised proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays.

Each requestor may receive, free of charge, one copy of the proposed revised amendment by contacting OSMRE's Harrisburg Field Office.

Office of Surface Mining Reclamation and Enforcement, Harrisburg Field Office, Harrisburg Transportation Center, Third Floor, Suite 3C, 4th and Market Streets, Harrisburg, Pennsylvania 17101, Telephone: (717) 782-4036.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343-5492.

Pennsylvania Department of Environmental Resources, Office of Environmental Energy Management, 10th Floor, Fulton Building, 3rd and Locust Streets, P.O. Box 2063, Harrisburg, Pennsylvania 17120, Telephone: (717) 787-4686.

A public hearing, if held, will be at the Penn Harris Motor Inn and Convention Center at the Camp Hill Bypass and U.S. Routes 11 and 15, Camp Hill, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Robert J. Biggl, Director, Harrisburg Field Office, (717) 782-4036.

SUPPLEMENTARY INFORMATION:

- I. Background on the Pennsylvania Program
- II. Submission of Amendment
- III. Public Comment Procedures

I. Background on the Pennsylvania Program

The Secretary of the Interior conditionally approved the Pennsylvania program on July 31, 1982. Information regarding general background on the Pennsylvania program including the Secretary's findings, the disposition of comments and a detailed explanation of the conditions of approval of the Pennsylvania program can be found in the July 30, 1982, *Federal Register* (47 FR 33050-33083). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 938.11, 938.12, 938.15 and 938.18.

II. Submission of Amendment

By letter dated May 7, 1985, (Administrative Record No. PA 552), the Pennsylvania DER submitted an amendment to revise the Pennsylvania program. The proposal will reduce DER's approved staffing level from 405 positions to 388 positions. OSMRE published a notice announcing receipt of this amendment and the opening of the public comment period in the June 18, 1985, *Federal Register* (50 FR 25265-25268). The public comment period ended July 18, 1985.

In November 1984, Pennsylvania combined the coal mining program which was previously housed in two bureaus (Bureau of Mining and Reclamation and Bureau of Water Quality Management) into one bureau. Pennsylvania indicated that as a result of this reorganization and other changes to improve efficiency, the State requires fewer people to administer the program.

OSMRE reviewed the proposed amendment and determined that additional information and clarification was necessary before deciding on whether to approve or disapprove the

submission. In response to OSMRE's request, Pennsylvania submitted on February 20, 1986, May 1, 1986, and August 3, 1987, workload analyses, staffing charts, and detailed narratives describing functions and responsibilities under the new DER organizational structure (Administrative Record No's. PA 596, PA 604, and PA 670). OSMRE analyzed this information and held discussions with DER on significant concerns which included staffing necessary to meet the required inspection frequencies and to handle a backlog of civil penalty cases.

III. Public Comment Procedures

OSMRE is reopening and extending the public comment period for Pennsylvania's proposed amendment in order to provide the public an opportunity to reconsider the amendment's adequacy in light of the additional information submitted by DER and changes in the scope of the State's regulatory program which have occurred since the amendment was submitted. Specifically, OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15(d). If the amendment is deemed adequate, it will become part of the Pennsylvania program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Harrisburg Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m. on June 16, 1989. If no one requests an opportunity to comment at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who

wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendments may request a meeting at the OSMRE office listed under "ADDRESSES" by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made part of the Administrative Record.

List of Subjects in 30 CFR Part 938

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Carl C. Close,

Assistant Director, Eastern Field Operations.

Date: May 22, 1989.

[FR Doc. 89-12930 Filed 5-31-89; 8:45 am]

BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 166 and 167

[CGD 83-032]

Traffic Separation Schemes and Shipping Safety Fairways Off the Coast of California

AGENCY: Coast Guard, DOT.

ACTION: Announcement of public hearings on proposed rule.

SUMMARY: On April 27, 1989, the Coast Guard published in the *Federal Register* a proposed rule entitled "Traffic Separation Schemes and Shipping Safety Fairways off the Coast of California" (54 FR 18258, corrected at 54 FR 20235, May 10, 1989). The rule proposes to modify the existing traffic separation schemes (TSS) in the approaches to San Francisco, in the Santa Barbara Channel and in the approaches to Los Angeles/Long Beach; establish new shipping safety fairways connecting the San Francisco TSS and the Santa Barbara TSS; and overlay the precautionary areas in the approaches to San Francisco and Los Angeles/Long Beach with new shipping safety fairways. The Coast Guard will hold public hearings on this proposal on the

dates and at the locations specified below. The hearings will permit the Coast Guard to gather information and views on the regulatory proposal.

DATES: See **SUPPLEMENTARY INFORMATION.**

ADDRESSES: See **SUPPLEMENTARY INFORMATION.**

FOR FURTHER INFORMATION CONTACT: Margie C. Hegy, Project Manager, Short Range Aids to Navigation Division, Office of Navigation Safety and Waterway Services (C-NSR-3), Phone (202) 267-0415.

SUPPLEMENTARY INFORMATION: The Coast Guard will hold hearings as follows:

—*Long Beach, California* Monday, July 10, 1989, 1:00-4:00 p.m. and 7:00 p.m.-12:00 a.m. at the Holiday Inn, 500 East First Street, Long Beach, CA 90802; Telephone No. (213) 435-8511.

—*Santa Barbara, California* Tuesday, July 11, 1989, 1:00-4:00 p.m. and 7:00 p.m.-12:00 a.m. at The Red Lion Inn, 633 East Cabrillo, Santa Barbara, CA 93101; Telephone No. (805) 564-4333.

—*San Francisco, California* Thursday, July 13, 1989, 7:00 p.m.-12:00 a.m. and Friday, July 14, 1989, 1:00-4:00 p.m. at the Travel Lodge, 250 Beach Street, San Francisco, CA 94133; Telephone No. (415) 392-6700.

Interested persons are invited to participate in these hearings. Those wishing to make an oral statement must register by July 7, 1989. To register, call (213) 499-5410 or write to Commander (oan), Eleventh Coast Guard District, 400 Ocean Gate, Long Beach, CA 90822-5399.

Oral statements by individuals without prior registration will be allowed only if time permits. The Coast Guard reserves the right to impose time limits on oral presentations. In the event that time constraints are imposed on speakers at the hearing, speakers may wish to make summary oral presentations and submit a written copy of their complete statement.

Date: May 26, 1989.

R. T. Nelson,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 89-12973 Filed 5-31-89; 8:45 am]

BILLING CODE 4910-14-M

PANAMA CANAL COMMISSION

35 CFR Part 133 and 135

RIN 3207-AA04

Tolls for Use of Canal and Rules for Measurement of Vessels

AGENCY: Panama Canal Commission.

ACTION: Advance notice of proposed rulemaking; request for comments; notice of hearing.

SUMMARY: The Panama Canal Commission proposes an increase of approximately 9.8% in the rates of tolls to become effective October 1, 1989. The Commission anticipates that in fiscal year 1990 it will experience a significant deficit created by a trend of traffic growth revenue inadequate to absorb cost increases due to inflation and other factors. The proposed increase is necessary to comply with the requirements that tolls be set to produce revenues sufficient to cover all costs of maintenance and operation of the Panama Canal, including capital for plant replacement, expansion and improvements. In addition, certain revisions to the rules of measurement of vessels for use of the Panama Canal are also proposed. This advance notice of proposed rulemaking announces the availability from the Commission of an analysis showing the basis and justification for the proposed changes, solicits written data, views, or arguments from interested parties, and sets the time and place for the public hearing.

DATES: Written comments must be received on or before June 22, 1989; a public hearing will be held on July 6, 1989, Washington, DC at 9:30 a.m.; requests to present oral testimony or notice of intention to present, at the hearing, data supplementary to any material already submitted must be received on or before June 26, 1989.

ADDRESSES: Comments and requests to testify or present supplementary data at the hearing may be mailed to: Michael Rhode, Jr., Assistant to the Chairman and Secretary, Panama Canal Commission, 2000 L Street NW., Suite 550, Washington, DC 20036-4996; copies of the Commission's analysis showing the basis and justification for the proposed changes are available from the Commission (at the above address); or from the Office of Financial Management, Panama Canal Commission, Balboa Heights, Republic of Panama (Telephone: 011-507-52-3194); the hearing will be held in The Westin Hotel, Sulgrave Room, 24th & M Streets, NW., Washington, DC 20037.

Oral presentations should be limited to 20 minutes. Regulations governing the content of the notice of appearance or intention to present supplementary data at the hearing appear in 35 CFR 70.8 and 70.10.

FOR FURTHER INFORMATION CONTACT: Michael Rhode, Jr., (202) 634-6441.

BEST COPY AVAILABLE

SUPPLEMENTARY INFORMATION: Section 1602 (b) of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3792(b), requires that Canal tolls be prescribed at rates calculated to produce revenues to cover, as nearly as practicable, all costs of maintaining and operating the Panama Canal and the facilities and appurtenances related thereto, and capital for plant replacement, expansion, improvements, and working capital. The rates of tolls for use of the Panama Canal were last increased on March 12, 1983, also by 9.8%, the rates placed in effect at that time have proven adequate to provide, in the aggregate, sufficient revenues to cover all operating and capital costs of the Canal through 1988, but the Commission has recorded minor deficits in the last two fiscal years.

While the deficits have been minor, they point to a trend of traffic growth revenues inadequate to absorb cost increased due to inflation and other factors. Commission projections indicate that this trend will continue and, in fact, worsen despite management efforts to reduce costs and increase productivity to the maximum extent possible. This growing imbalance between inflation and traffic growth underlies the more serious loss projected for this year and the clear need for placing a toll-rate increase in effect in fiscal year 1990.

In addition to the toll rate increase, certain revisions are recommended to the "Rules of Measurement of Vessels for the Panama Canal." These proposed changes are designed to simplify the Commission's measurement procedures and bring them in line with industry standards. These amendments would have a minimal impact on the amount of tolls collected annually.

The proposed changes would amend 35 CFR Parts 133 and 135 as follows:

- (a) Amend § 135.285 to increase the size limitation from 30 to 34 inches on manholes serving water ballast spaces.
- (b) Amend § 133.34 to eliminate the requirement that fuel carried not exceed 125 percent of the engine room for obtaining the ballast rate.
- (c) Amend § 135.352 to eliminate the requirement to separately measure the portion of engine room space dedicated to propulsion power for purposes of calculating the 125 percent factor above.

Section 1604 of the Panama Canal Act of 1979, as amended, 22 U.S.C. 3794, establishes the procedures that the Panama Canal Commission must follow in proposing a toll rate increase or changes in the rules for measurement of vessels. Those procedures have been supplemented by regulations in 35 CFR Part 70, which in addition, provide

interested parties with instructions for participating in the process governing changes in the rates of tolls or rules of measurement. The statute and regulations require this advance notice of proposed rulemaking in order for the Commission to announce the proposed changes and afford interested parties an opportunity to submit written data, views or arguments and participate in the public hearing on July 6, 1989. A written analysis is also made available to the public showing the basis and justification for the changes.

All pertinent data, views or arguments presented in writing, or orally at the hearing, will be considered, along with other relevant information, before the Commission publishes a notice of proposed rulemaking in the *Federal Register* and forwards a complete record and its final recommendation to the President of the United States. In considering the proposal, the President has the authority to approve, disapprove, or modify any recommendation of the Commission. The final rule, approved and published by the President, shall be effective no earlier than 30 days from the date of publication in the *Federal Register*.

This advance notice of proposed rulemaking does not constitute a "major rule" as defined in section 1(b) of Executive Order 12291, dated February 17, 1981. Analysis of the proposed toll increase indicates that it will not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions, or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of the United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

A review of the environmental effect of the proposed increase in the rates of tolls and the proposed measurement rule changes concludes that the proposals are not major Federal actions which will have a significant effect on the quality of the environment of a foreign nation; therefore, pursuant to Executive Order 12114, dated January 4, 1979, an environmental analysis is not required. Furthermore, the Regulatory Flexibility Act is inapplicable, since this regulation is one relating to "rates" or "practices relating" thereto (5 U.S.C. 601 (2)).

List of Subjects in 35 CFR Parts 133 and 135

Panama Canal, Vessels.

Accordingly, it is proposed that 35 CFR Parts 133 and 135 be amended to read as follows.

PART 133—TOLLS FOR USE OF CANAL

1. The authority citation for Part 133 continues to read as follows:

Authority: Issued under authority of the President by 22 U.S.C. 3791; E.O. 12215, 45 FR 36043.

2. Section 133.1 is revised to read as follows:

§ 133.1 Rates of toll.

The following rates of toll shall be paid by vessels using the Panama Canal:

(a) On merchant vessels, yachts, army and navy transports, colliers, hospital ships, and supply ships, when carrying passengers or cargo, \$2.01 per net vessel ton of 100 cubic feet each of actual earning capacity—that is, the net tonnage determined in accordance with Part 135 of this chapter.

(b) On vessels in ballast without passengers or cargo, \$1.60 per net vessel ton.

(c) On other floating craft including warships, other than transports, colliers, hospital ships, and supply ships, \$1.12 per ton of displacement.

3. Section 133.34 is revised to read as follows:

§ 133.34 Tolls for vessels in ballast.

In order for a vessel to secure the reduced rate of toll for vessels in ballast, it may not be carrying any passengers or cargo nor any fuel for its own consumption in a quantity which exceeds the spaces on the vessel which are available for the carriage of fuel (i.e., the actual volume of tanks or fixed compartments, including settling tanks, used for the storage of lubricating oil or fuel, which spaces cannot be used to stow cargo or stores and which have been certified by official marking to be spaces for the vessel's own fuel).

PART 135—RULES FOR MEASUREMENT OF VESSELS

4. The authority citation for Part 135 is revised to read as follows:

Authority: Issued under authority vested in the President by 22 U.S.C. 3791; E.O. 12215; 45 FR 36043.

5. Section 135.285 is revised to read as follows:

§ 135.285 Water ballast spaces, deducted.

(a) Water ballast spaces, other than spaces in the vessel's double bottom, shall be deducted if they are adapted and used only for water ballast, have for

entrance only ordinary circular or oval manholes whose greatest diameter does not exceed 34 inches (864 mm), and are not available for the carriage of cargo, stores, or fuel. Spaces that would otherwise qualify as water ballast except that they are also used for fuel for the vessel's own use shall be regarded as part of the vessel's fuel space as defined in § 135.390 of this part.

(b) Tonnage of tanks may be obtained by using liquid capacity times the conversion factor with one-sixth off for frames in case of peak tanks and one-twelfth off in case of wings or deep tanks when they cannot be readily measured.

6. Section 135.352 is revised to read as follows:

§ 135.352 Definition of phrase "space occupied by engine rooms".

The space occupied by engine rooms is defined as that occupied by the engine room itself and the boiler room, together with the spaces strictly required for the working of the engines and boilers. In addition to those, included are the spaces taken up by the shaft trunks in vessels with screw propellers, the spaces which enclose the funnels, and the casings necessary for the admission of light and air into the engine room to the extent that such spaces are located below the upper deck (as defined in §§ 135.61 through 135.63 of this part) or below a deck with openings. These are usually designated as tonnage openings, which may be so closed as to permit the carriage of cargo or stores under the deck or a portion thereof. This definition also covers donkey-engine and boiler spaces when the donkey-engine and boiler are situated within the boundary of the main engine room, or of the light and air casing above it and when they are used in connection with the main machinery for propelling the vessel. When the shafts of screw propellers pass through open spaces not enclosed within tunnels, the spaces allowed in lieu of tunnels must be of reasonable dimensions suitable for the vessel in question. When a portion of the space within the boundary of the engine or boiler room is occupied by a tank or tanks for the storage of fresh water, lubricating oil, or fuel, including settling tanks, the space considered to be within the engine room shall be reduced by the space taken up by such tanks. Installations not strictly required for working of the engines or boilers but that would otherwise qualify as a deduction under §§ 135.271 through 135.285 of this part may be left in and included in the engine room measurement.

Dated: May 23, 1989.

Michael Rhode, Jr.,

Assistant to the Chairman and Secretary.

[FR Doc. 89-12620 Filed 5-31-89; 8:45 am]

BILLING CODE 3640-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3597-6]

Approval and Promulgation of Implementation Plans

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rulemaking; extension of the public comment period.

SUMMARY: USEPA is giving notice that the public comment period for a notice of proposed rulemaking published February 28, 1989 (54 FR 8354), has been extended 60 days from June 1, 1989. The rulemaking action proposed to approve certain portions and disapprove other portions of the State of Michigan's May 17, 1985, revised particulate regulations submittal, with respect to Iron and Steel sources.

During the original 30-day public comment period on this notice, USEPA received comments from the Michigan Department of Natural Resources (MDNR) on April 27, 1989, seeking a 60 day public comment period extension. In addition, MDNR's letter of April 27, 1989, withdrew portions of their particulate regulations submitted on May 17, 1985. USEPA requests that MDNR, during the extension of the public comment period, clarify on a regulation by regulation and pollutant by pollutant basis what specific portions of their May 17, 1985, submittal they are withdrawing from rulemaking at this time.

DATE: Comments are now due July 31, 1989.

FOR FURTHER INFORMATION PLEASE CONTACT: Mr. Robert B. Miller, Air and Radiation Branch (5AR-26), U.S. Environmental Protection Agency, Region V, 230 South Dearborn Street, Chicago, Illinois 60604, (312) 353-0396.

Date: May 16, 1989.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 89-12990 Filed 5-31-89; 8:45 am]

BILLING CODE 5560-50-M

40 CFR Part 82

[FRL-3597-7]

Protection of Stratospheric Ozone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Advance notice of proposed rulemaking; extension of time.

SUMMARY: On April 17, 1989 (54 FR 15228) EPA published an Advance Notice of Proposed Rulemaking (ANPRM) notifying users and producers of methyl chloroform (1,1,1-trichloroethane) and carbon tetrachloride (CCl₄) that the Agency is considering the possibility of adding these two chemicals to the list of ozone-depleting chemicals already regulated by the Montreal Protocol on Substances That Deplete the Ozone Layer and the EPA rule implementing the Protocol (53 FR 30566, August 12, 1988).

The purpose of this announcement is to notify the public that the comment period for this ANPRM has been extended to July 1, 1989. The original comment period ended May 15, 1989. EPA has however, received numerous requests to extend the deadline. This extension will allow a total of 75 days in which to comment on this ANPRM.

Anyone who submitted a comment previously may submit an addendum to that written document. Please state the date on which you submitted a previous comment when you submit these additional remarks.

DATES: Public Comment: All comments on the advance notice of proposed rulemaking published April 17, 1989 (54 FR 15228) should be received by July 1, 1989.

ADDRESSES: Written comments should be sent to Docket (A-89-09), Air Docket, First Floor-Waterside Mall, Room 1500, LE131, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460. The Docket may be inspected between 8 a.m. and 3:00 p.m. on weekdays. As provided in 40 CFR Part 2, a reasonable fee may be charged for photocopying. To expedite review, it is also requested that a duplicate copy of written comments be sent to Karla Perri at the address below.

FOR FURTHER INFORMATION CONTACT: Karla Perri, Division of Global Change, OAIAP, Office of Air and Radiation, (ANR-445) U.S. EPA, 401 M St. SW., Washington, DC 20460. Telephone (202) 475-7496.

Dated: May 25, 1989.
 Don R. Clay,
*Acting Assistant Administrator for Air and
 Radiation.*
 [FR Doc. 89-12989 Filed 5-31-89; 8:45 am]
 BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Ch. I

[General Doc. No. 89-78; DA 89-581]

Inquiry Into Need for a Universal Encryption Standard for Satellite Programming

AGENCY: Federal Communications
Commission.

ACTION: Proposed rule; extension of
time.

SUMMARY: This action extends the
deadlines for filing comments and reply
comments in General Docket No. 89-78,
and inquiry into the need for a universal
encryption standard for satellite cable
programming (54 FR 18125; April 27,
1989). The additional time for filing will
enhance the ability of commenters in
general and will provide a 30-day reply
period originally allocated for review of
command.

DATES: Comments must be submitted on
or before June 19, 1989, and reply
comments on or before July 19, 1989.

ADDRESS: Federal Communications
Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT:
Jonathan D. Levy, Office of Plans and
Policy, (202) 653-5940.

SUPPLEMENTARY INFORMATION: This is a
synopsis of the Commission's Order
Extending Deadline for Filing Comments
and Reply Comments, adopted May 23,
1989 and released May 24, 1989. The full
text of this Order is available for
inspection and copying during normal
business hours in the FCC Dockets
Branch (Room 230), 1919 M Street NW.,
Washington, DC, and also may be
purchased from the Commission's copy
contractor, International Transcription
Services, (202) 857-3800, 2100 M Street
NW., Suite 140, Washington, DC 20037.

Order Extending Deadline for Filing Comments and Reply Comments

Adopted: May 23, 1989.

Released: May 24, 1989.

By the Chief, Office of Plans and Policy.

1. The Commission has received a
"Request for an Extension of Time for
Filing Comments" in the above-
captioned proceeding. General
Instrument Corporation (GIC) filed this
request on May 18, 1989, asking for an
two-week extension.

2. As a preliminary matter, it should
be noted that the published text of the
Notice of Inquiry in this proceeding
(released April 14, 1989, FCC 89-104)

contained an erroneous reply comment
deadline. An Erratum was issued on
April 18, 1989. That Erratum was
incorrectly captioned General Docket
No. 89-79. The correct docket number is
General Docket No. 89-78.

3. Good cause for an extension having
been shown, *It is ordered* That the
deadline for comments in General
Docket No. 89-78 is extended to June 19,
1989 and the deadline for reply
comments is extended to July 19, 1989.
The reply comment deadline is extended
in order to preserve the 30-day period
originally allocated for review of
comments in this proceeding by
interested parties. The additional time
for filing comments is granted on the
basis that it will enhance the ability of
commenters in general, and GIC in
particular, to submit pleadings that
include comprehensive analyses of the
issues raised in the Commission's
Notice of Inquiry in General Docket No.
89-78.

Action is taken pursuant to section
4(i) of the Communication Act of 1934,
as amended, under authority delegated
to the Chief, Office of Plans and Policy
by § 0.271 of the Commission's Rules, 47
CFR 0.271.

Federal Communication Commission.

John Haring,

Chief, Office of Plans and Policy.

[FR Doc. 89-12983 Filed 5-31-89; 8:45 am]

BILLING CODE 6712-01-M

Notices

This section of the FEDERAL REGISTER
contains documents other than rules or
proposed rules that are applicable to the
public. Notices of hearings and
investigations, committee meetings, agency
decisions and rulings, delegations of
authority, filing of petitions and
applications and agency statements of
organization and functions are examples
of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meetings

AGENCY: Advisory Council on Historic
Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that
the Advisory Council on Historic
Preservation will meet on Tuesday, June
13, 1989. The meeting will be held in
Room M09 at the Old Post Office, 1100
Pennsylvania Avenue, NW.,
Washington, DC, beginning at 8:30 a.m.

The Council was established by the
National Historic Preservation Act of
1966 (16 U.S.C. section 470) to advise the
President and the Congress on matters
relating to historic preservation and to
comment upon Federal, federally
assisted, and federally licensed
undertakings having an effect upon
properties listed in or eligible for
inclusion in the National Register of
Historic Places. The Council's members
are the Architect of the Capitol; the
Secretaries of the Interior, Agriculture,
and Treasury; The Chairman of the
National Trust for Historic Preservation;
the President of the National Conference
of State Historic Preservation Officers; a
Governor; a Mayor; and eight non-
Federal members appointed by the
President.

The agenda for the meeting includes
the following:

- I. Chairman's Welcome/Opening
- II. Council Business
- III. Executive Director's Report
- IV. Section 106 Cases
- V. Litigation
- VI. New Business
- VII. Adjourn

Note: The meetings of the Council are open
to the public. If you need special
accommodations due to a disability, please
contact the Advisory Council on Historic
Preservation, 1100 Pennsylvania Ave., NW.,
Room 809, Washington, DC, 202-786-0503, at
least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT:
Additional information concerning the
meeting is available from the Executive
Director, Advisory Council on Historic
Preservation, 1100 Pennsylvania Ave.,
NW., #809, Washington, DC 20004.

Robert D. Bush,
Executive Director.

Date: May 25, 1989.

[FR Doc. 89-12937 Filed 5-31-89; 8:45 am]

BILLING CODE 4310-10-M

Programmatic Agreement Regarding the Environmental Protection Agency's State Water Pollution Control Revolving Fund Program

AGENCY: Advisory Council on Historic
Preservation.

ACTION: Notice.

SUMMARY: The Advisory Council on
Historic Preservation proposes to
execute a Programmatic Agreement
pursuant to § 800.13 of its regulations (38
CFR Part 800) with the Environmental
Protection Agency and the National
Conference of State Historic
Preservation Officers regarding the
consideration of historic properties
under the State Water Pollution Control
Revolving Fund Program. The
Agreement will outline State Revolving
Fund Agency responsibilities for
identifying, evaluating, and assessing
effects of wastewater treatment
facilities, non-point source pollution
control projects, and estuary protection
projects on historic properties in
consultation with State Historic
Preservation Officer. It will also
establish EPA's oversight and
monitoring role in certifying State
programs and reviewing State activities,
and the Council's role in resolving
disputes and monitoring performance
under the Agreement.

DATES: Comments due: July 3, 1989.

ADDRESS: Comments should be
addressed to: Director, Office of
Program Review and Education,
Advisory Council on Historic
Preservation, Old Post Office Building,
1100 Pennsylvania Avenue, NW., Room
809, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT:
Ronald D. Anzalone, Eastern Office of
Project Review, Advisory Council on
Historic Preservation, Old Post Office
Building, 1100 Pennsylvania Avenue,
NW., Room 809, Washington, DC 20004.

Federal Register

Vol. 54, No. 104

Thursday, June 1, 1989

tel. (202) 786-0505; or John Gerba, Office
of Federal Activities, Environmental
Protection Agency, 401 M Street, SW.,
A-104, Washington, DC 20460, tel. (202)
382-5910. Copies of the draft Agreement
are available for review upon request.

Robert D. Bush,
Executive Director.

Dated: May 25, 1989.

[FR Doc. 89-12962 Filed 5-31-89; 8:45 am]

BILLING CODE 4310-10-M

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

Designation Renewal of the Enid (OK) and Erie (OH) Agencies

AGENCY: Federal Grain Inspection
Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice announces the
designation renewal of Enid Grain
Inspection Company, Inc. (Enid), and
Dennis L. Boltenhouse dba Erie Grain
Inspection Service (Erie), as official
agencies responsible for providing
official services under the U.S. Grain
Standards Act, as Amended (Act).

EFFECTIVE DATE: July 1, 1989.

ADDRESS: James R. Conrad, Chief,
Review Branch, Compliance Division,
FGIS, USDA, Room 1647 South Building,
P.O. Box 96454, Washington, DC 20090-
6454.

FOR FURTHER INFORMATION CONTACT:
James R. Conrad, telephone (202) 447-
8525.

SUPPLEMENTARY INFORMATION: This
action has been reviewed and
determined not to be a rule or regulation
as defined in Executive Order 12291 and
Departmental Regulation 1512-1;
therefore, the Executive order and
Departmental Regulation do not apply to
this action.

The Service announced that Enid's
and Erie's designations terminate on
June 30, 1989, and requested
applications for official agency
designation to provide official services
within specified geographic areas in the
January 4, 1989, Federal Register (54 FR
162). Applications were to be
postmarked by February 3, 1989. Enid
and Erie were the only applicants for
designation in their area and each
applied for designation renewal in the

entire area currently assigned to that agency. The Service announced the applicant names in the March 1, 1989, **Federal Register** (54 FR 8578) and requested comments on the applicants for designation. Comments were to be postmarked by April 17, 1989. No comments were received.

The Service evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and in accordance with section 7(f)(1)(B), determined that Enid and Erie are able to provide official services in the geographic areas for which the Service is renewing their designations. Effective July 1, 1989, and terminating June 30, 1992, Enid and Erie are designated to provide official inspection functions in their specified geographic area, as previously described in the January 4 **Federal Register**.

Interested persons may obtain official services by containing the agencies at the following telephone numbers: Enid at (405) 233-1121 and Erie at (419) 483-5366.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: May 17, 1989.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 89-13032 Filed 5-31-89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Comments on Designation Applicants in the Geographic Area Currently Assigned to the Fostoria (OH) Agency and the States of Louisiana and North Carolina

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: This notice requests comments for interested parties on the applicants for official agency designation in the geographic area currently assigned to Robert B. Whitta dba Fostoria Grain Inspection (Fostoria), Louisiana Department of Agriculture (Louisiana), and North Carolina Department of Agriculture (North Carolina).

DATE: Comments must be postmarked on or before July 17, 1989.

ADDRESS: Comments must be submitted in writing to Lewis Lebakken, Jr., RM, FGIS, USDA, Room 0628 South Building, P.O. Box 96454, Washington, DC 20090-6454.

Telemail users may respond to [LEBAKKEN/FGIS/USDA] telemail.

Telex users may respond as follows: To: Lewis Lebakken, TLX: 7607351, ANS:FGIS UC.

All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue SW., during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive order and Departmental Regulation do not apply to this action.

The Service requested applications for official agency designation to provide official services within specified geographic areas in the April 1, 1989, **Federal Register** (54 FR 13394). Applications were to be postmarked by May 3, 1989. Fostoria, Louisiana, and North Carolina were the only applicants for designation in those areas and each applied for designation renewal in the entire area currently assigned to that agency.

This notice provides interested persons the opportunity to present their comments concerning the applicants for designation. Commenters are encouraged to submit reasons for support or objection to this designation action and include pertinent data to support their views and comments. All comments must be submitted to the Resources Management Division, at the above address.

Comments and other available information will be considered in making a final decision. Notice of the final decision will be published in the **Federal Register**, and the applicant will be informed of the decision in writing.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: May 17, 1989.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 89-13033 Filed 5-31-89; 8:45 am]

BILLING CODE 3410-EN-M

Request for Designation Applicants To Provide Official Services in the Geographic Area Currently Assigned to the Amarillo (TX) Agency and the State of Wisconsin

AGENCY: Federal Grain Inspection Service (Service), USDA.

ACTION: Notice.

SUMMARY: Pursuant to the provisions of the U.S. Grain Standards Act, as Amended (Act), official agency designations shall terminate not later

than triennially and may be renewed according to the criteria and procedures prescribed in the Act. This notice announces that the designation of two agencies will terminate, in accordance with the Act, and requests applications from parties interested in being designated as the official agency to provide official services in the geographic area currently assigned to the specified agencies. The official agencies are Amarillo Grain Exchange, Inc. (Amarillo) and the Wisconsin Department of Agriculture, Trade and Consumer Protection (Wisconsin).

DATE: Applications must be postmarked on or before July 3, 1989.

ADDRESS: Applications must be submitted to James R. Conrad, Chief, Review Branch, Compliance Division, FGIS, USDA, Room 1647 South Building, P.O. Box 96454, Washington, DC 20090-6454. All applications received will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: James R. Conrad, telephone (202) 447-8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12291 and Departmental Regulation 1512-1; therefore, the Executive order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act specifies that the Administrator of the Service is authorized, upon application by any qualified agency or person, to designate such agency or person to provide official services after a determination is made that the applicant is better able than any other applicant to provide official services in an assigned geographic area.

Amarillo, located at 1300 South Johnson St. Amarillo, TX, 79101 and Wisconsin located at 801 W. Badger Road, Madison, WI, 53713, were designated under the Act as official agencies on December 1, 1988. Amarillo was designated to provide official inspection functions and Wisconsin was designated to provide official inspection and weighing functions.

The official agencies' designations terminate on November 30, 1989. Section 7(g)(1) of the Act states that designations of official agencies shall terminate not later than triennially and may be renewed according to the criteria and procedures prescribed in the Act.

The geographic area presently assigned to Amarillo, in the States of

Oklahoma and Texas, pursuant to section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation is as follows:

In Texas

Bounded on the North by the Texas-Oklahoma State line;

Bounded on the East by the eastern Red River County line; the southern Red River and Lamar County lines; the eastern, southern, and western Hunt County lines; the southern Collin County line; the eastern Dallas, Ellis, Hill, Limestone, Falls, and Milam County lines;

Bounded on the South by the southern Williamson County line; the western Bell and McLennan County lines; the southern Bosque; Hamilton, Comanche, and Brown County lines; the southern and western Coleman County line; the southern Taylor, Nolan, Mitchell, Howard, Martin, and Andrews County lines;

Bounded on the West by the western Andrews, Gaines, Yoakum, and Cochran County lines; the northern Cochran County line; the northern Hockley County line east to FM 303; FM 303 north to U.S. Route 84; U.S. Route 84 (including Sudan), southeast to FM 37; FM 37 east to FM 179; FM 179 north to FM 1914; FM 1914 east (not including Hale Center), to FM 400; FM 400 south to FM 37; FM 37 east to the Hale County line; the eastern Hale County line; the northern Crosby and Dickens County lines; the western Cottle and Childress County lines north to U.S. Route 287; U.S. Route 287 northwest to Donley County; the southern Donley and Armstrong County lines west to Prairie Dog Town Fork of the Red River; Prairie Dog Town Fork of the Red River northwest to State Route 217; State Route 217 west to FM 1062; FM 1062 west to U.S. route 385; U.S. Route 385 north to Oldham County; the southern Oldham County line; the western Oldham, Hartley, and Dallam County lines.

In addition, the area includes El Paso County.

In Oklahoma Beaver, Cimarron, and Texas Counties.

The geographic area presently assigned to Wisconsin, pursuant to Section 7(f)(2) of the Act, which may be assigned to the applicant selected for designation, is the entire State of Wisconsin, except those export port locations within the State.

Interested parties, including Amarillo and Wisconsin, are hereby given opportunity to apply for official agency designation to provide the official services in the geographic area, as specified above, under the provisions of

Section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic area is for the period beginning December 1, 1989, and ending November 30, 1992. Parties wishing to apply for designation should contact the Review Branch, Compliance Division, at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated to provide official services in a geographic area.

Pub. L. 94-582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*)

Date: May 17, 1989.

J. T. Abshier,

Director, Compliance Division.

[FR Doc. 89-13034 Filed 5-31-89; 8:45 am]

BILLING CODE 3410-EN-M

Forest Service

Recreation Residence Authorizations

AGENCY: Forest Service, USDA.

ACTION: Notice of policy revision.

SUMMARY: The Forest Service hereby gives notice that it is modifying its policy for administering privately-owned recreation residences on National Forest System lands. The modifications are necessary to implement the decision of the Assistant Secretary of Agriculture for Natural Resources and Environment on an administrative appeal of the policy which was adopted on August 16, 1988 (53 FR 30924).

EFFECTIVE DATE: This modification of policy is effective June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Single copies of the implementing directives may be obtained from the Program Support Section, Information Systems Staff, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090-6090, (202) 447-6101.

SUPPLEMENTARY INFORMATION: On August 16, 1988 (53 FR 30924), the Forest Service adopted final policy and procedures for administering special use permits that authorize privately-owned recreation residences on National Forest System lands. This policy was appealed to the Secretary of Agriculture on September 15, 1988. The appellants alleged that the process by which this policy was developed was flawed that provisions of the policy exceeded statutory limitations on recreation residence use of the National Forests, and that the appellants and the public were adversely affected by the policy.

In a decision dated February 15, 1989, the Assistant Secretary of Agriculture for Natural Resources and Environment remanded the policy to the Forest Service for restudy and reformulation and stayed the implementation of certain provisions of the policy, as follows: (1) Those nonrenewal provisions relating to or requiring a showing of higher public purpose; (2) those requiring automatic permit renewal 10 years prior to expiration unless nonrenewal has been established; (3) those requiring the offering of "in-lieu" lots to permittees who have received notice of nonrenewal or termination; and (4) those weighted against consideration of commercial uses for sites when nonrenewal of the recreation residence use is contemplated. In addition, the Assistant Secretary required that the remaining features of the final policy be designated as interim pending its reformulation following all applicable process requirements. The reformulation period was established by the decision as 18 months.

The policy adopted August 16, 1988, was issued as direction to Forest Service personnel through amendments and interim directives to Forest Service Manual Chapters 2340 and 2720 and Forest Service Handbook 2709.11—Special Uses Handbook. In compliance with the Assistant Secretary's decision, the agency is revising that direction in FSM 2340 and 2720 specifically identified and/or affected by the decision, removing section 33.2 of the Interim Directive to Chapter 30 of FSH 2709.11 which deals with calculation of annual fees where nonrenewal has been established, removing the Interim Directive to Chapter 40 of FSH 2709.11 which gave direction on continuing recreation residence use, and revising Exhibit 1 of Chapter 50 of FSH 2709.11 which displayed the term special use permit (FS-2700-18) to delete those provisions concerning renewal and nonrenewal of permits and the offering of in-lieu sites in cases of nonrenewal of permits.

As of the date of this notice, the policy and procedures governing recreation residence use that remain in effect are deemed to be interim policy and shall not remain in effect beyond September 30, 1990. As directed by the Assistant Secretary, the Forest Service has begun restudy and reformulation of the overall policy. The Agency will publish in the **Federal Register** about July 1, 1989, an Advance Notice of Proposed Policy, seeking the advice of the public on revisions to the interim policy. With this advice, the Agency will prepare and

publish for public review and comment a draft reformulated policy by October 31, 1989. Following analysis of public comment on the draft policy, a final policy will be prepared and will be published in the Federal Register with a notice of its adoption by July 1, 1990. Copies of the Federal Register notices containing the draft and final policies will be mailed to each recreation residence permittee and to individuals and organizations known to have an interest in this policy.

Date: May 22, 1989.

James C. Overbay,
Acting Chief.

[FR Doc. 89-13035 Filed 5-31-89; 8:45 am]

BILLING CODE 3410-01-M

CIVIL RIGHTS COMMISSION

District of Columbia Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the District of Columbia Advisory Committee to the Commission will convene at 2:00 p.m. and adjourn at 5:00 p.m. on Thursday, June 15, 1989, at 1121 Vermont Avenue NW., 5th floor conference room, Washington, DC 20425. The Committee will conduct planning for future activities and orientation for new members.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson James G. Banks or John I. Binkley, Director, Eastern Regional Division at (202) 523-5284, TDD (202) 376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 22, 1989.

Melvin L. Jenkins,
Acting Staff Director.

[FR Doc. 89-13009 5-31-89; 8:45 am]

BILLING CODE 6335-01-M

Ohio Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations

of the U.S. Commission on Civil Rights, that a planning meeting of the Ohio Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m., on Tuesday, June 13, 1989, at the John Weld Peck Federal building, Room 5411, 550 Main Street, Cincinnati, Ohio. The purpose of the meeting is to discuss the status of current projects and make program plans for activities in FY '90.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Donald G. Prock, or Farella E. Robinson, Civil Rights Analyst of the Central Regional Division (816) 426-5253, (TDD 816/426-5009). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, May 22, 1989.

Melvin L. Jenkins,
Acting Staff Director.

[FR Doc. 89-13010 Filed 5-31-89; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Census

Title: 1990 Census of Agriculture for American Samoa and the Commonwealth of the Northern Mariana Islands

Form Number: 90-A1(AS), 90-A1(NM)

Burden: 625 Hours

Number of Respondents: 2,500

Avg. Hours per Response: 15 Minutes

Needs and Uses: Data are used by farmers, their representatives, the government, and private organizations concerned with agriculture production. The census provides the only known source of periodic, comparable, and detailed data about production, inventories and sales. The census provides benchmark data for evaluating agricultural programs and developing by territory and smaller geographic regions

Affected Public: Farms

Frequency: One time only

Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 25, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-12938 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-07-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census

Title: Interview and Quality Control

Verification Check, Post Enumeration Survey, 1990 Decennial Census

Form Number: D-1300, D-1315

Type of Request: New

Burden: 39,575 hours

Number of Respondents: 175,000

Avg. Hours Per Response: 13.6 minutes

Needs and Uses: The Census Bureau uses data from the Post-Enumeration Survey to evaluate the completeness of the 1990 decennial census for subgroups of the population and for substate areas

Affected Public: Individuals or households

Frequency: One time only

Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 25, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-12939 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

(8103-01; 8103-02)

Export Privileges; Hon Kwan Yu

Order

In the matter of: Hon Kwan Yu, individually and doing business as, Seed H.K. Ltd., 7/F Cheung Kong Building, 661 Kings Road, North Point, Hong Kong, Respondents.

On March 10, 1989, Paul Freedenberg, then-Under Secretary for Export Administration, United States Department of Commerce, issued a final Decision and Order (final order) in the above-captioned matter. 54 FR 11427 (March 20, 1989). The final order denied the U.S. export privileges of Hon Kwan Yu, individually and doing business as Seek H.K. Ltd. (Yu), for a two-year period and imposed a \$35,000 civil penalty.

In accordance with the final order, the name Hon Kwan Yu, individually and doing business as Seek H.K. Ltd., was placed on the Table of Denial Orders. See Export Administration Bulletin, 261 (March 1989).

The final order provided that the denial period would be suspended from the time the \$35,000 civil penalty is paid until the two-year denial period ends, provided that neither Yu nor Seed H.K., Ltd. commits violations of the Export Administration Act of 1979 (50 U.S.C. app. 2401-2420 (1982 and Supp. III 1985), as amended by Pub. L. 100-418, 102 Stat. 1107 (August 23, 1988)), the Export Administration Regulations (currently codified at 15 CFR Parts 768-799), or the final order during the two-year period.

On April 10, 1989, Yu paid the \$35,000 civil penalty. Accordingly, pursuant to the final order, I hereby suspend the balance of the denial period imposed against Hon Kwan Yu, individually and doing business as Seed H.K. Ltd., effective April 10, 1989, and order that the name of Hon Kwan Yu, individually and doing business as Seek H.K. Ltd., be removed from the Table of Denial Orders.

Date: May 22, 1989.

Joan M. McEntee,

Acting Under-Secretary, Bureau of Export Administration.

Summary

Pursuant to the February 9, 1989 Recommended Decision and order of the

Administrative Law Judge, which Decision and Order is attached hereto and affirmed in principal part by me, Hon Kwan Yu, individually and doing business as Seed H.K. Ltd., both with an address of 7/F Cheung Kong Building, 661 Kings Road, North Point, Hong Kong, is, and the Respondents are collectively, assessed a civil penalty in the amount of \$35,000, to be paid within 30 days of the date hereof, and denied for a period two years from the date hereof all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States, in whole or in part, or to be exported, or that are otherwise subject to the regulations (14 CFR Parts 768 through 799); provided, however, that commencing from the date of the payment of the civil penalty herein assessed the denial of export privileges set forth shall be suspended for the balance of the two year term, and shall be terminated at the end of such period, provided that Respondents have committed no further violations of the Act, the Regulations, of the Final Order entered in this proceeding.

Discussion

In the Recommended Decision and order of February 9, 1989, the Administrative Law Judge (ALJ) apparently inadvertently misspoke himself in paragraph III of his order. In that Paragraph, the ALJ provided that the two year denial period provided for in Paragraph II would be suspended for three years. This provision is not in keeping with the general suspension provisions and is inconsistent with the rational advanced for the penalty by the ALJ on page 12 of his Recommended Decision and Order. This final Decision and Order modifies the ALJ's Order in that respect.

Paragraph III of the ALJ's Recommended Decision and Order also provides that the suspension of the denial of export privileges shall commence upon the date of this final action. In view of the fact that a civil fine has been assessed and that the ALJ has held that the suspension will be in affect only so long as, *inter alia*, there is no violation of the final Order entered in this proceeding, it is more appropriate for the suspension to begin upon payment of the fine by the Respondents. This final Order reflects this modification of the ALJ's Recommended Order.

One further issue must be disposed of in this case. That issue involves the Department's contention—raised by brief in this proceeding and by Motion for Reconsideration in *In re Behar*, 53 FR

48666 (Dec. 2, 1988)—that in a matter submitted to the ALJ for resolution pursuant to a consent agreement between the Department and the Respondent, it is inappropriate for the Administrative Law Judge to make a finding of violation of the Export Administration Act before imposing penalties for past action. In *Behar* this office held, as quoted in full on page 3 of the attached Recommended Decision and Order of the ALJ, that while a Respondent may be free to maintain in a consent pleading that the imposition of penalties does not necessarily maintain an admission of a violation of the Act, where there is to be a penalty imposed, whether a denial period with respect to export privileges, a fine, or both, there must be some finding by the Under Secretary—and hence the ALJ—of a violation of the Act to support the imposition of that penalty. In challenging that holding, the Department cites section II(i)(2) of the Export Administration Act which provides that "nothing in subsections (c), (d), (f), (h), or (h) limits * * * the authority to compromise and settle administrative proceedings with respect to violations of [the] Act or any regulation, order, or license issued under [the] Act * * *." The Departmental also cites some general authorities on compromise and settlement of claims, and relies specifically on *United States v. ITT Continental Baking Company*, 420 U.S. 160 (1975). In that case, the court made the general observation that consent degrees are like contracts, "are arrived at by negotiations between the parties and often admit no violation of law * * *." *Id* at 236. Counsel also cites *Ford Motor Company v. Federal Trade Commission*, 547 F.2d 954 (6th Cir. 1976)—for the proposition that the principal purpose of a consent order is to avoid fact-finding and the adjudicatory process—and *Coch, Administrative Law and Practice*, West Publishing Company, 1985, section 5.81—for the proposition that an agency in accepting a consent degree by the parties need not support the order by any fact-finding or conclusions of law.

The Department's arguments are correct insofar as they go, but superficial with respect to the real issue. To take Department's authority in reverse order, the *Coch* treatise does not stand for the proposition that the agency must not support an order by fact-finding or conclusions of law. With respect to *Ford Motor Company v. Federal Trade Commission*, *supra*, there are many purposes for a consent order, only one of which is the avoidance of fact-finding and the adjudicatory process.

Finally, *United States v. ITT Continental Baking Company*, *supra*, is certainly correct that consent agreements between parties often admit to no violation of law. However, that simple statement is not dispositive of the issue of whether or not a tribunal, whether judicial or administrative, may impose penalties absent a finding of violation of a particular law or regulation.

The principal starting point for a discussion of the law as it relates to consent decrees is the Meat Packers Consent Decree of 1920. That consent decree related to alleged violations of the Sherman Anti-Trust Act and the Clayton Act. In *Swift & Company v. the United States*, 276 U.S. 311 (1927), one of the Respondents attempted to vacate the consent decree entered into in 1920 by itself and others. The consent decree had been entered on the same day as the filing of the original complaint by the Government and general denials by the Respondents. The consent decree expressly provided that the Respondents did not admit to violation of either of the Acts involved, but did provide that the Government's allegations were sufficient to state a cause of action under the two Acts. The decree then went on to enjoin the Respondents, by consent, from certain future actions. In the Motion to Vacate, Swift attacked the decree upon several grounds, the main one being that the court lacked jurisdiction to render an enforceable injunction because there was no case or controversy within the meaning of Article III, Section 2 of the Constitution. The argument advanced was that since there had been no proof of facts constituting a violation to overcome the Respondent's general denial, indeed since the consent decree had specifically stipulated that there would be no such finding, technically the Court and Government petitioner had abandoned all charges that the Respondents had violated the law. Thus, Swift argued that the decree was null and void for want of adjudication.

In rejecting the Respondent's claim, a unanimous court, by Brandeis J., held that the Respondent's argument "ignores the fact that a suit for an injunction deals primarily, not with past violations, but with threatened future ones; and that an injunction may issue to prevent future wrong, although no rights had been violated." *Id.* at 328. The court implicitly accepted the claim of the petitioners that an imposition of a penalty for past acts must be based upon a finding of wrongdoing. Since the consent decree that the Department has advanced in both *Behar* and the case at bar would have imposed penalties

based on past acts rather than the approval of an injunctive order relative to future action, the Department's claim falls under the rationale of *Swift*. Section 11(i)(2) of the Export Administration Act merely gives the Department the right to compromise and settle administrative proceedings, it does not mandate that the *Swift* rationale be rejected. Indeed, as in anti-trust litigation, the Department might conceivably enter into a consent agreement with a Respondent which would call for the Department's abandonment of claims relative to past action in return for an injunctive agreement with the Respondents relative to future action.

A case which relies on *Swift* is *Securities and Exchange Commission v. Dennett*, 429 F.2d 1303, 10th Circuit 1970. In that case a defendant had challenged not a penalty for past action, and not even the general terms of the injunction to which he had agreed relative to future activity, but rather, he had challenged the wording of the final order of the court which apparently implied misconduct on his part. The Court held as follows at 1304:

We glean from defendant's brief that he is agreeable to the general injunction requiring him to obey the law but objects to the specifics of the injunction granted because it implies misconduct. The judgment granted the relief sought in the complaint. It says that the defendant does not admit to the allegations of the complaint. In effect, we have a plea of *nolo contendere* and a judgment pursuant thereto. If the defendant is innocent of the charges, as he insists, he had full opportunity to contest them. He chose not to do so and is in no position to object on the grounds that the injunction was specific rather than general.

Thus, even in a case where under the *Swift* doctrine there need not have been a finding a misconduct, the court was free to find the same. The parties to a consent agreement can always go forward on the merits if they do not like this risk. There are many reasons in an Export Administration case for agreeing to a penalty, even if it involves a finding by the Under Secretary of a violation in order to impose that penalty. Recently a Respondent has been denied export privileges for 35 years. In the face of that possibility, a future Respondent might feel that it is in his or her best interest to agree to a stipulated finding upon an agreement by Departmental counsel to recommend the imposition of a lesser penalty.

Finally, *Janus Films, Inc. v. Miller*, 801 F.2d 578 (2nd Cir. 1986) explains that one must differentiate between suits involving the public interest and those involving only private interests in

dealing with consent agreements. It is axiomatic that in a suit between private litigants the parties are free to frame consent decrees in whatever form is agreeable to themselves, subject only to the limitation of contracting for illegal purposes. In cases involving the public interest that is not the case. "The court must be satisfied of the fairness of the settlement." *Id.* at 582. In dealing with a national security program, the violation of the statute and regulations relating thereto carrying with them not only the possibility of administrative sanction but criminal penalty as well, it is incumbent upon this office to have some showing by Departmental counsel of what its case was based on, and to impose a penalty for past action only if a fair reading of the unchallenged submission constitutes a violation of the Act or Regulations. While a Respondent is free to agree that the evidence submitted to support the settlement between the parties need not be tested by the adjudicatory process, the evidence is necessary if the Under Secretary is asked to impose a penalty based on past action. Thus the holding of this office in the *Behar* decision is reaffirmed.

Finally, in this case the ALJ recommends imposition of a penalty which had apparently been agreed to by the parties before the consent process broke down. The Department complains that the penalty is not severe enough given the fact that it has been imposed pursuant to a default proceeding rather than a consent proceeding. The argument lacks merit. Presumably, the Department would not have agreed to propose an unreasonably lenient penalty to the ALJ in the consent proceeding, thus it can hardly complain now that the penalty it had agreed to propose is in fact unreasonable. That being the case, and the penalty not appearing unreasonable on its face, this Office is not inclined to modify the same.

Order

A. The decision in *In re Behar*, 53 FR 48666 (December 2, 1988), is reaffirmed.

B. On February 9, 1989 the Administrative Law Judge (ALJ) entered his Recommended Decision and Order in the captioned matter. That Decision and Order, a copy of which is attached hereto and made a part hereof has been referred to me for final action. Subject to the following modifications, I hereby affirm the Recommended Decision and Order of the ALJ:

1. Suspension of the two year denial period shall begin only after the payment in full of the \$35,000 fine assessed in this case; and

2. The suspension of the denial period shall begin upon the payment of the \$35,000 fine as above and shall be in effect for the balance of the two year period of denial provided the Respondents, or either of them, commit no further violations of the Act, the Regulations, or this final Order in this proceeding.

This constitutes final agency action in this matter.

Date March 10, 1989.

Paul Froedenberg,

Under Secretary Bureau of Export Administration.

Appearance for Respondent Stanley J. Marcuss, Esq., Arthur R. Watson, Esq., Milbank, Tweed, Hadley & McCloy, International Square Building, 1825 Eye Street NW., Washington, DC 20006. Appearance for Agency Anthony K. Hicks, Esq., Office of Chief Counsel, for Export Administration, U.S. Department of Commerce, Room H-3329, 14th & Constitution Ave. NW., Washington, DC 20230.

Preliminary Statement

This proceeding against Respondent Hon Kwan Yu, individually and doing business as Respondent Seed H.K. Ltd, began with the issuance February 9, 1988 of a charging letter by the Office of Export Enforcement ("the Agency"), Bureau of Export Administration, U.S. Department of Commerce. This charging letter was issued under the authority of the Export Administration Act of 1979 (50 U.S.C.A. app. 2401-2420), as amended (the Act"), and the Export Administration Regulations ("the Regulations")¹

The charging letter alleged that Respondents had violated Sections 387.4 and 387.6 of the Regulations in 1982-84 by reexporting six U.S.-origin computers from Hong Kong to the People's Republic of China (P.R.C.) without the required U.S. authorization.² On May 18, 1988 the original February 9, 1988 charging letter was amended by increasing from six to seven the number of such alleged unauthorized reexports.

An Order of September 30, 1988 declared Respondents to be in default

¹ The Act was reauthorized and amended by the Export Administration Amendments Act of 1985, Pub. L. 99-64, 99 Stat. 120 (July 12, 1985), and amended by the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418, 102 Stat. 1107 (August 23, 1988).

The Regulations, formerly codified at 15 CFR Parts 368-399, were redesignated as 15 CFR Parts 768-799, effective October 1, 1988 (53 FR 37751, September 28, 1988).

² As the charging letter noted (at 1 n.1), the 1982-84 period during which the alleged violations occurred included a time during 1983 when the Act had lapsed and the Regulations were maintained in effect pursuant to the authority of the International Emergency Economic Powers Act, 50 U.S.C. 1701-1706 (1982).

since, although they had been granted two extensions for filing an answer, they had not filed any. Accordingly, the Order of September 30 directed the Agency to make the submission provided for default cases by § 388.8 of the Regulations.

The Agency instead submitted a Consent Agreement, under § 388.17 of the Regulations, signed on behalf of Respondents by their Counsel (Agency's October 28, 1988 Response). In the Consent Agreement, the parties agreed to settle this matter by Respondent's paying a \$35,000 civil penalty and accepting a two-year denial of U.S. export privileges that would be suspended.

By an Order of December 7, 1988, this Tribunal directed the Agency to submit evidence that would support its charge that Respondents had violated the Regulations, citing *Behar*, 53 FR 48666 (December 2, 1988). In *Behar*, which also concerned a consent agreement under the Act and the Regulations, the Under Secretary for Export Administration stated as follows (53 FR 48666, 48667).

[I]n the imposition of civil penalties under the Export Administration Act and Regulations, a respondent may admit to certain facts for the purposes of accepting the imposition of a penalty which will bring the matter to a close, while maintaining that the admitted facts do not necessarily constitute violation of the act of [sic] the regulations. However, the ALJ, as in the case of a plea of *nolo contendere*, is free to find that the facts thus admitted constitute violations of the Export Administration Act or Regulations. Indeed, the Under Secretary's authority for imposing civil penalties in such cases is based on the finding of a violation * * *. For Export Administration Act cases in which there will be the imposition of a penalty, whether a denial period with respect to export privileges, a fine, or both, there must be some finding by the Under Secretary of a violation to support the imposition of the penalty.

In reply to the Order of December 7, the Agency stated that it had filed a motion with the Under Secretary for reconsideration of that part of *Behar* pertinent to this case (Agency's December 28, 1988 Response 3). The Agency argued that, until it obtains a ruling on that motion in *Behar*, it would be "premature for it to file the requested evidence" in this case (*id.*), and accordingly it requested a stay in the Order of December 7 until it obtains such a ruling (*id.* 4).

This Tribunal, in an Order of January 9, 1989, denied the requested stay, and instead scheduled a January 17, 1989 informal hearing. The nature and purpose of this hearing, and the reason for directing that it be a step in resolving

this case, were explained as follows (January 17 Order 1-2).

For this case, and future consent submissions, the following policy and practice is adopted. This approach is essentially similar to that which existed under Hearing Commissioner Levinson and which were followed * * * in the 1973 and 1974 era.

Upon receipt of consent agreements, an informal, tape recorded, hearing will be scheduled, usually within 10-15 days, at which the representatives of both parties may be present. It is not expected that testimony will normally be taken, however, a "paper case" consisting of documents, diagrams, records, statements and the like, along with the explanations of the representatives will be received and made a part of the record. Following receipt of these materials, the Administrative Law Judge's action, with the record, will be forwarded to the Under Secretary for the 30-day statutory review and final Agency action.

The history of review of settlement proposals by this Office reflects almost unanimous concurrence with those submissions. It is not expected that this will change. On the other hand, this Office and the Under Secretary each have the statutory responsibility to take informed actions. Not merely rubber stamp * * *. The review should be meaningful. Without some record * * * it cannot be. (footnote omitted)

Counsel for Respondents filed a letter stating that Respondents had instructed Counsel not to attend the January 17 hearing, indicating that "budgetary constraints" were the reason (Respondents' January 17, 1989 Letter). Respondents have not participated in this proceeding since the filing of that letter.

Agency Counsel did appear at the January 17 informal hearing, but declined to present evidence of Respondents' alleged violations. Agency Counsel filed a written statement setting forth its position as follows (Agency's January 17, 1989 Statement 3).

As agreed to by both the Department and Yu, the Consent Agreement does not address the issue of whether Yu in fact violated the Regulations. Accordingly, in the context of the review of the Consent Agreement in this matter and as a matter of law, the Department does not believe that that issue should be the subject of further discussion.

Based upon Agency Counsel's declining to present evidence of the alleged violations, this Tribunal issued an Order of January 19, 1989 rejecting the proposed settlement between the parties. The Order of January 19 further reinstated the Order of September 30, which had declared Respondents to be in default, and again directed the Agency to make the submission provided for default cases.

The Agency then filed a motion for default that set forth evidence to support its allegations against Respondents and proposed a ten-year denial of Respondents' U.S. export privileges (Agency's January 30, 1989 Motion). In filing this motion, the Agency expressly stated that the Agency in no way conceded any concurrence with this Tribunal's basis for rejecting the Consent Agreement (*id.* 4).

Discussion

The Agency's evidence documented its charges that in 1982-84 Respondents obtained seven computers from their U.S. manufacturer and reexported them to the P.R.C. without the required U.S. authorization. Five computers were of one type, and two of another.

For the five computers, the Agency's evidence included Respondent Yu's March 14, 1983 order for them from their U.S. manufacturer (Agency Exhibit (hereinafter "Exh.") 4), and the manufacturer's shipping document for them, dated April 7, 1983, from the United States to Hong Kong (*id.*). The manufacturer shipped these computers to Respondents under a distribution license (Agency Exh. 11, 12, 13).

From April 1983 through January 1984, according to the Agency's presentation, Respondents reexported these five computers to five different P.R.C. end users. Here the Agency's evidence consisted of the U.S. manufacturer's reports of its investigation of the situation (Agency Exh. 11, 13) and of parts of applications for U.S. authorizations, made after the reexports, in which each of the P.R.C. and users apparently affirmed its possession of one of these computers (Agency Exh. 6-10). The Agency showed that each of the five reexports required U.S. authorization for national security reasons (although a properly filed application would have benefited from a presumption of approval) (Agency Exh. 5), and showed that Respondents had not obtained the required authorization (Agency Exh. 14).

The Agency argued that each of these five reexports violated § 387.6 of the Regulations, which proscribes unauthorized exports and reexports. The Agency contended that in making each of these five reexports Respondents violated also Section 387.4, which proscribes participating in an export or reexport knowing, or having reason to know, that it is unauthorized. To show Respondents' knowledge, or reason to know, that the reexports were unauthorized, the Agency cited the invoices billing Respondents for the five computers; each invoice stated that the computer was licensed by the United

States for ultimate destination in Hong Kong, and diversion contrary to U.S. law was prohibited (Agency Exh. 6-10). The Agency cited also the certification that Respondents signed in order to become a consignee on the U.S. manufacturer's distribution license under which the five computers were shipped to Respondents; in the certification, Respondents agreed to comply with the Regulations (Agency Exh. 12).

As to the first of the remaining two computers of the other type that were the subject of the charging letter, the Agency introduced Respondents' order, dated September 10, 1982 and addressed to the U.S. manufacturer (Agency Exh. 2(a)). The Agency presented also a manufacturer's shipping document, dated October 1, 1982, showing that the order was filled by a shipment to Respondents from a West European facility of the manufacturer (Agency Exh. 2(b)).

To prove that Respondents subsequently reexported the computer to the P.R.C. at some point after December 4, 1982 (Agency Exh. 2(c)) and before some time in January 1984 (Agency Exh. 13), the Agency introduced two documents. The first was a manufacturer's report of its investigation of the situation (Agency Exh. 13); and the second was part of an application for U.S. authorization, made after the reexport, in which the P.R.C. end user apparently affirmed its possession of the computer (Agency Exh. 2(d)).

The Agency showed that reexport of the computer from Hong Kong to the P.R.C. required a U.S. authorization for national security reasons (although a properly filed application would have benefited from a presumption of approval) (Agency Exh. 3), and showed that Respondents did not obtain the required authorization (Agency Exh. 14). Therefore the Agency asserted that Respondents' reexport violated §§ 387.4 and 387.6 of the Regulations, the same two sections it named for the five reexports discussed above. To indicate that Respondents knew, or had reason to know, that the reexport was unauthorized, the Agency cited a statement on the manufacturer's invoice to Respondents to the effect that the United States had licensed the computer, ultimate destination Hong Kong, and diversion contrary to U.S. law was prohibited (Agency Exh. 2(b)).

The last of the reexports raised by the charging letter concerned the other one of this second type of computer. According to a manufacturer's report of its investigation of the situation that the Agency introduced (Agency Exh. 11), Respondents had obtained this computer from the manufacturer

pursuant to a validated license authorizing its reexport to a particular P.R.C. end user, but in 1984 had instead reexported it to a different P.R.C. end user. Apparently the originally intended end user had decided against buying the computer (*id.*).

The Agency again cited its evidence that reexport of this computer to the P.R.C. required U.S. authorization for national security reasons (although, as before, a properly filed application would have benefited from a presumption of approval) (Agency Exh. 3). Further, the Agency cited the manufacturer's report to show that no authorization had been obtained for reexporting the computer to that P.R.C. end user to which it was actually shipped (Agency Exh. 11). As with the other six reexports, the Agency charged a violation of both Sections 387.4 and 387.6.

To show Respondents' knowledge, or reason to have knowledge, that the reexport was unauthorized, the Agency noted that Respondents had received the computer initially pursuant to a validated license, which indicated that at least up to that point the computer had been subject to the Regulations. Then the Agency cited the evidence it advanced for its Section 387.4 charge for the other six reexports, and argued that Respondents therefore knew, or had reason to know, that this reexport also required U.S. authorization, especially since the computer was the same type as the computer that was involved in one of these other reexports.

Conclusion

The evidence of record sustains the allegations of the May 16, 1988 amended charging letter that Respondents during 1982-84 reexported seven U.S.-origin computers from Hong Kong to the P.R.C. without the U.S. authorization that was required. The record shows both that Respondents made these seven reexports, and also that Respondents knew, or had reason to know, that they lacked a U.S. authorization that was required. Thus each of these seven unauthorized reexports violated Section 387.4 and Section 387.6 of the Regulations.

For a sanction, the settlement arrived at in the parties' Consent Agreement—a \$35,000 civil penalty and a suspended two-year denial of U.S. export privileges—is reasonable. The violations that Respondents committed are serious; but the sanction proposed by the Agency in its default motion—ten years denial of U.S. export privileges with no suspension—seems unduly severe. The sanction arrived at through the

bargaining that produced the Consent Agreement is appropriate to serve the interests of justice here.

Order

I. Respondent Hon Kwan Yu, individually and doing business as Respondent Seed H.K. Ltd., is assessed a civil penalty of \$35,000, to be paid within thirty days of the date of the final Agency action.

II. For a period of two years from the date of the final Agency action, as modified by the suspension set forth in paragraph III below, Respondents

Hon Kwan Yu, individually and doing business as Seed H.K. Ltd., 7/F Cheung Kong Building, 661 King's Road, North Point, Hong Kong

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

III. Commencing from the date that this Order becomes effective, the denial of export privileges set forth above shall be suspended, in accordance with § 388.16 of the Regulations, for a period of three years commencing from the date that this Order becomes effective, and shall be terminated at the end of such period, provided that Respondents have committed no further violation of the Act, the Regulations, or the final Order entered in this proceeding. During the three-year suspension period, Respondents may participate in transactions involving the export of U.S.-origin commodities or technical data from the United States or abroad in accordance with the requirements of the Act and the Regulations. The provisions of Paragraphs IV to VII of this Order shall also be suspended during the three-year period.

IV. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using,

or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data. Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

V. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which any Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

VI. All outstanding individual validated export licenses in which Respondents appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondents' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VII. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VIII. This Order as affirmed or modified shall become effective upon

entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Date: February 9, 1989.

Thomas W. Hoya,
Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th and Constitution Avenue NW., Room 3898B, Washington, DC 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 388.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Attachment to Administrative Law Judge Order

Instruction for Payment of Civil Penalty

1. The civil penalty check should be made payable to: U.S. Department of Commerce.

2. The check should be mailed to: U.S. Department of Commerce, Office of the Assistant General Counsel, for Export Administration, Room H-3845, 14th Street and Constitution Avenue NW., Washington, DC 20230. Attn: Pamela P. Breed, Esq.

[FR Doc. 89-13006 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-DT-M

Automated Manufacturing Equipment Technical Advisory Committee; Closed Meeting

A meeting of the Automated Manufacturing Equipment Technical Advisory Committee will be held June 15, 1989, 9:30 a.m. in the Herbert C. Hoover Building, Room 1617F, 14th Street & Constitution Avenue NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to automated manufacturing equipment and related technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended,

that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act.

The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on 202/377-2583.

Date: May 25, 1989.

Betty Anne Ferrell, *

Director, Technical Advisory Committee Unit,
Office of Technology and Policy Analysis.

[FR Doc. 89-12977 Filed 5-3-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Export Trade Certificates of Review

AGENCY: Department of Commerce.

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which Certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from State and Federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the

applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 89-00010." A summary of the applicant follows.

Summary of the Application

Applicant: Airconditioning and Refrigeration Institute (ARI), 1501 Wilson Boulevard, Suite 600, Arlington, Virginia 22209, Contact: Renee S. Hancher, Manager of International Trade, Telephone: (703) 524-8800.

Application No.: 89-00010.

Date Deemed Submitted: May 16, 1989.

Members (in addition to applicant):

Aerofin Corporation; Airguard Industries, Inc.; Airmax, Inc.; Artesian Building Systems, Inc.; Aspen Manufacturing, Inc.; Baltimore Aircoil Company, a subsidiary of Amsted Industries, Inc.; Barber-Colman Company, Environmental Controls Division; Bard Manufacturing Company; Brookside Group, Inc.; Carnes Company, Inc.; Carrier Corporation; The Coleman Company, Inc.; Copeland Corporation; Crystal Tips, Inc.; Dunham-Bush, Inc.; Elmwood Sensors, Inc.; Furnas Electric Company; Goodman Manufacturing Corporation; Halsey Taylor Division, Household International; Heatcraft Inc.; Honeywell Inc.; Hupp, Inc.; Typhoon Air Conditioning Co.; Johnson Controls, Inc.; Control Products Division; Kysor-Warren, Sherer Division; Lake Air International Inc.; Lau Industries; Lennox International, Inc.; Mommoth, A Nortek Company; Marvair Company; Miller-Picking Corporation; Morrison Products, Inc.; NIBCO, Inc.; NORDYNE, A Nortek Company; Pennwalt Corporation, Isotron Department; Phillips Industries, Inc.; Ranco, Inc.; Rheem Manufacturing Company; SnyderGeneral Corporation; Standard Refrigeration Company; Sterling Radiator Division, Reed National Corp.; Sundstrand Heat Transfer, Inc.; Sundstrand Corp.; Superior Valve,

Division of Amcast Industrial Corp.; Titus Products, Division of Phillips Industries, Inc.; Trion, Inc.; Turbotec Products, Inc.; Vilter Manufacturing Corp.; Virginia KMP Corp.; WaterFurnace International, Inc.; York International Corp.; A.D. Auriema Inc.; and Win-Tron Electronics Ltd.

Export Trade

1. Products

Air-conditioning and refrigeration equipment, including unitary air conditioners, heat pumps (unitary, packaged terminal and water-source), packaged terminal air conditioners, liquid chillers, compressors and condensing units for air conditioners and refrigeration applications, heat exchangers, water-cooled condensers, liquid receivers and liquid coolers, unit coolers, drinking water coolers, mobile refrigeration systems, automatic commercial ice makers, commercial humidifiers, air-cooled and evaporative condensers, automatic controls for air conditioning and refrigeration equipment, flow control valves, valves and accessories, air filters, electronic air cleaners, air control/distribution devices, central station air handlers, fans and blowers and fan guards and grilles, room fan coils, room air-induction air conditioner units, air cooling and heating coils, and chemicals (refrigerants, lubricating oils, desiccants and other chemicals) used in conjunction with the refrigerating system.

2. Services

Engineering and architectural services related to Products and to turn-key contracts that substantially incorporate Products; servicing of Products; training with respect to the use of Products.

3. Technology Rights

Patents, trademarks, service marks, trade names, copyrights (including neighboring rights), trade secrets, know-how, semiconductor mask works, utility models, industrial designs, petty patents, appellations of origin, plant breeders rights and *sui generis* forms of computer software protection associated with Products or Services.

4. Export Trade Facilitation Services (as they relate to the Export of Products, Services, and Technology Rights)

Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; services related to compliance with customs requirements; transportation; trade

documentation and freight forwarding; communication and processing of export orders and sales leads; warehousing; foreign exchange; financing; and liaison with U.S. and foreign government agencies, trade associations, and banking institutions; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except: (a) The United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands); and (b) Canada.

Export Trade Activities and Methods of Operation

1. ARI and/or one or more of its Members may:

a. Engage in joint bidding or other joint selling arrangements for Products and Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and Services for the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers of Products for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products and Services;

e. Solicit non-member Suppliers to sell their Products and/or Services or offer their Export Trade Facilitation Services through the certified activities of ARI and/or its Members; provided, however, that non-member Suppliers will not participate in the full range of certified export trade activities and methods of operation under this Certificate; rather, their participation shall be limited to those activities typically associated with subcontractors;

f. License associated Technology Rights in Export Markets;

(1) *Unilateral Licensing.* ARI and/or its Members (for purposes of this section, "Licensors") may license and sub-license Technology Rights in Export Markets. Such licenses and sub-licenses may: convey exclusive or non-exclusive rights in Export Markets; impose requirements as to the prices at which Products or Services incorporating, or manufactured or produced using, Technology Rights may be sold or leased in Export Markets; impose requirements as to pricing and other

terms and conditions of sub-licenses of Technology Rights in Export Markets; restrict licensees and sub-licensees as to fields of use, or maximum sales or operations, in Export Markets; impose territorial restrictions (relating to any part of the world) on foreign licensees and sub-licensees; require the assignment back or exclusive or non-exclusive grantback of rights (in Export Markets) to all improvements in Technology Rights, whether or not such improvements fall within the field of use authorized in such license; require package licensing of Technology Rights; and require products or services (including, but not limited to, Products and Services) to be used, sold, or leased as a condition of the license of Technology Rights.

(2) *Joint and Coordinated Licensing.* Licensors may jointly establish the price and other terms and conditions upon which each Licensor's Technology Rights will be licensed or sub-licensed in Export Markets, including, without limitation, jointly determining whether such licenses or sub-licenses will include provisions specified in subparagraph (1) above. Licensors may coordinate their efforts to license or sub-license Technology Rights in Export Markets, including, without limitation, coordination of licensing for specific foreign projects, and coordination and allocation of licensing for particular foreign customers or particular Export Markets.

(3) *Cross-Licensing.* Licensors may grant cross-licenses among themselves for purposes of engaging in licensing or sub-licensing of Technology Rights in Export Markets; may jointly set the prices and other terms and conditions upon which cross-licensed Technology Rights are licensed or sub-licensed in Export Markets, including, without limitation, jointly determining whether such licenses or sub-licenses will include provisions specified in subparagraph (1) above; and may allocate among themselves all rights in Export Markets to improvements in cross-licensed Technology Rights that are to be assigned back or granted back to Licensors.

g. Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets;

h. Bring together from time to time groups of Members to plan and discuss who to fulfill the technical Product and Service requirements of specific export customers or particular Export Markets;

i. Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service,

and training centers in such markets; and

j. Operate and establish jointly owned subsidiaries or other joint venture entities, owned exclusively by Members, to export Products to Export Markets, operate warranty, service, and training centers in Export Markets, and provide Export Trade Facilitation Services, to Members.

2. ARI and/or its Members may enter into agreements wherein they agree to act in certain countries or markets as the Members' exclusive or nonexclusive Export Intermediary for Products and/or Services in that country or market. In exclusive Export Intermediary agreements, (i) ARI or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through ARI or the Member(s) acting as exclusive Export Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. ARI and/or any Member when acting as an exclusive Export Intermediary shall not unreasonably refuse to supply its services on non-discriminatory terms to those Members that are parties to the exclusive arrangement and which request such services.

3. ARI and/or its Members may exchange and discuss the following types of information solely about Export Markets:

a. Information that is already generally available to the trade or public;

b. Information about sales or marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demand in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, sources, and delivery dates of Products available from Members for export, provided, however, that exchanges of information and discussions as to Product quantity, sources, and delivery dates must be on a transaction-by-transaction basis only and involve only those Members which are participating or have a genuine

interest in participating in such transaction:

d. Information about terms, conditions, and specifications of particular contracts for sale in Export Markets to be considered and/or bid on by ARI and its Members;

e. Information about joint bidding, selling, or servicing agreements for Export Markets and allocation of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including, without limitation, transportation, intermodal shipments, insurance, inland freight to port, port storage, commission, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and

h. Information about ARI's or its Members' export operations, including without limitation sales and distribution networks established by ARI or its Members in Export Markets, and prior export sales by Members (including export price information).

4. ARI may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Service to facilitate the export of Products to Export Markets. This may be accomplished by ARI, or by agreement with Members or other parties.

5. ARI and/or its Members may meet to engage in the activities described in paragraphs one through four above.

6. ARI and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

Definitions

1. "Export Intermediary" means a person who acts as a distributor, sales representative, sales or marketing agent or broker, or who performs similar functions, including providing or arranging for the provision of Export Trade Facilitation Services.

2. "Members" means the member companies of ARI and parent companies, and export management or export trading companies representing member companies of ARI and parent companies, as listed in this notice, and subject to the provisions of this paragraph. New Members may, from

time to time, be incorporated in the Certificate pursuant to the abbreviated amendment procedure described below. An abbreviated amendment shall consist of an annual written notification to the Secretary of Commerce and the Attorney General stating changes in Membership, identifying all new Members that desire to become a Member under this Certificate pursuant to the abbreviated amendment procedure, and certifying for each new Member so identified its sales of Products in its prior fiscal year. Notice of new Members so identified shall be published in the *Federal Register*. However, ARI may withdraw one or more individual Members from the application for the abbreviated amendment. If 30 days or more following publication in the *Federal Register*, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of the new Members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate of Review to incorporate such new Members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the *Federal Register* so amend the Certificate of Review, such amendment must be sought through the nonabbreviated amendment procedure. This same procedure may be utilized by ARI to delete one or more Members from the Certificate.

3. "Supplier" means a person who produces, provides, or sells a Product, Service, and/or Export Trade Facilitation Services, whether a Member or nonmember.

Date: May 25, 1989.

George Muller,
Acting Director, Office of Export Trading,
Company Affairs.

[FR Doc. 89-12960 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-DS-M

Cornell University; Disposition of Application for Duty-Free Entry of Scientific Instruments

We have discontinued processing of Docket Number 88-228, an application for duty-free entry of a small grain thresher. The instrument was liquidated as dutiable on May 20, 1984, and no protest was filed within the one-year period allowed for protesting the liquidation. A decision on the

application would therefore serve no purpose.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-12940 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-DS-M

Applications for Duty-Free Entry of Scientific Instruments

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with subsections 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 89-144. Applicant: Cornell University, New York State College of Veterinary Medicine, Ithaca, New York 14853-6401. **Instrument:** Variable Area Gas Flowmeter-Rotameter, Model Series 2100. **Manufacturer:** KDG Flowmeters, United Kingdom. **Intended Use:** The instrument will be used for accurate measurement of respiratory gas flow rates that will allow the study of respiratory function in horses worked at varying respiratory frequencies and flow rates. Specific research will involve relation of translaryngeal pressures to airflow rate in standing and exercising horses to permit the degree of resistance to airflow of the larynx to be measured. Another example of the research concerns the study of pulmonary function in anesthetized or exercising horses. **Application Received by Commissioner of Customs:** April 27, 1989.

Docket Number: 89-145. Applicant: California Institute of Technology, Mail Code 315-8, Pasadena, CA 91125. **Instrument:** Primary Beam Transport System. **Manufacturer:** Cameca Instruments, France. **Intended Use:** The instrument will be attached to an ion microprobe and used for the isotopic and trace chemical analysis of geological and extraterrestrial materials. These studies are directed toward a better understanding of the formation of solid bodies at the earliest times in the

solar system and of the chemical and isotopic evolution of the earth's mantle. In addition, the instrument will be used for teaching graduate students in the Division of Geological and Planetary Sciences use of the instrument as part of their exposure to modern analytical techniques. **Application Received by Commissioner of Customs:** April 28, 1989.

Docket Number: 89-146. Applicant: U.S. Department of Agriculture, Agricultural Research Service, W-321 Turner Hall, 1102 S. Goodwin, Urbana, IL 61801. **Instrument:** Juice Extraction Press. **Manufacturer:** Erich Pollahne, West Germany. **Intended Use:** The instrument will be used for research involving mechanisms of resistance, dynamics of intrafield virus spread, and diagnosis and serotyping of plant viruses. Cereal breeding lines and plants from epidemiology field studies will be evaluated for the presence and concentration of plant viruses in projects to evaluate resistant and tolerant varieties and to track the incidence of virus and the rate and pattern of spread within large wheat and oat fields. This research is focused on improving the method for evaluating germ plasm response to plant virus infections and on the epidemiology of plant viruses. **Application Received by Commissioner of Customs:** May 1, 1989.

Docket Number: 89-147. Applicant: University of Hawaii, Hawaii Institute of Geophysics, 2525 Correa Road, Honolulu, HI 96822. **Instrument:** FTIR Spectrometer System, Model DA3. **Manufacturer:** BOMEM, Inc., Canada. **Intended Use:** The instrument will be used to identify and quantify a variety of geochemical, oceanographic, biochemical, and synthetic materials. Specific research projects include: Studies of marine biofouling and corrosion by examining adsorption of organic materials, such as proteins and carbohydrates, and microbes onto clean metal surfaces from seawater, and development of new methods to measure important inorganic and organic nutrients in seawater using remote, in situ techniques. In addition, the instrument will be used for educational purposes in courses in geology and geophysics. **Application Received by Commissioner of Customs:** May 1, 1989.

Docket Number: 89-148. Applicant: University of Arizona, College of Medicine, Department of Anatomy, 1501 North Campbell Avenue, Tucson, AZ 85724. **Instrument:** Electron Microscope, Model CM12/STEM. **Manufacturer:** N.V. Philips, The Netherlands. **Intended Use:** The instrument will be used for

ultrastructural studies of a variety of biological materials. These studies will be conducted to elucidate the ultrastructural changes in cells and tissues due to experimental procedures to host animals, e.g., surgery, drugs, toxins, etc. **Application Received by Commissioner of Customs:** May 5, 1989.

Docket Number: 89-149. Applicant: Knox College, E. South Street, Galesburg, IL 61401. **Instrument:** Stopped-Flow Spectrophotometer, Model SF-1B. **Manufacturer:** Hi-Tech Scientific, United Kingdom. **Intended Use:** The instrument will be used in the course Chemistry 322A Chemical Laboratory, Principles II to teach students how to gather and treat quantitative data using modern instrumentation; and how to conduct kinetic and spectroscopic experiments using modern methods and modern equipment. **Application Received by Commissioner of Customs:** May 8, 1989.

Docket Number: 89-150. Applicant: Michigan Molecular Institute, 1910 W. St. Andrews Drive, Midland, MI 48640. **Instrument:** Temperature-Pulsed Light Scattering Photometer. **Manufacturer:** DSM, The Netherlands. **Intended Use:** The instrument will be used for studies of various mixtures of polymers and solvents (e.g., polystyrene and cyclohexane, polyethylene and diphenylether, ethylene-vinyl acetate copolymer and diphenylether). Experiments will be conducted to gain knowledge about phase behavior of polymeric systems and to test various theories of it. **Application Received by Commissioner of Customs:** May 8, 1989.

Docket Number: 89-151. Applicant: University of Colorado, Institute for Arctic and Alpine Research, Boulder, Campus Box 450, Boulder, CO 80309-0450. **Instrument:** Two (2) Mass Spectrometers, Model SIRA Series II. **Manufacturer:** VG Isogas, United Kingdom. **Intended Use:** The instrument will be used to measure the stable isotope ratios of hydrogen, oxygen, carbon, nitrogen and sulfur. Initially, the instrument will be used to measure isotope ratios in ice cores, atmospheric carbon dioxide and methane, and organic materials in lake sediments. The objectives of these studies are, respectively, to reconstruct climate (temperature-using hydrogen isotopes, and evaporation conditions—using a combination of hydrogen and oxygen isotope ratios) over the past 200,000 years from a new ice core which is being recovered in Central Greenland; to help determine the magnitude of fluxes of carbon dioxide and methane to the atmosphere from the oceans and the terrestrial biota; and to use carbon

isotope ratios in lake sediment cores to reconstruct past growing conditions for aquatic and terrestrial plants in the area. In addition, the instrument will be used in teaching the following courses: Environmental Issues in the Geosciences, Isotope Geology, Isotope Hydrology and Environmental Isotope Geochemistry. **Application Received by Commissioner of Customs:** May 9, 1989.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-12941 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-DS-M

University of Chicago; Cancellation

This cancels our decision to deny Docket Number 88-095 for the reason that the applicant had failed to resubmit its application within the specified time period (54 FR 11991, March 23, 1989). We have received satisfactory evidence from the postal authorities that the applicant did not receive our original denial without prejudice to resubmission.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-12942 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-DS-M

University of Kentucky; Decision of Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington DC.

Docket Number: 88-234.

Applicant: University of Kentucky,
Lexington, KY 40536-0084

Instrument: Electron Microscope, Model S-2300-1.

Manufacturer: Hitachi Scientific, Japan.
Intended Use: See notice at 53 FR 31077, August 17, 1988.

Comments: None received.

Decision: Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with subsection 301.5(d)(2) of the regulations, at the time the foreign

instrument was ordered (March 31, 1988).

Reasons: The foreign instrument provides a resolution of 45 angstroms. The capability is pertinent to the applicant's intended purposes. We know of no domestic manufacture both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, subsection 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in the case, received no response to a formal request for quotation sent to a domestic manufacturer it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-12943 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-08-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council's Surf Clam and Ocean Quahog Committee will meet on June 2, 1989, at the Ramada Inn, 76 Industrial Highway, Essington, PA

(telephone: 215-521-9600). As a result of public hearings and written comments, the Committee will meet at 10 a.m., to consider possible adjustments to Amendment #8 to the Surf Clam and Ocean Quahog Fishery Management Plan.

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Date: May 25, 1989.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-12993 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Export Visa and Exempt Certification Requirements for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of Bangladesh

May 25, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending export visa and exempt certification requirements.

EFFECTIVE DATE: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa and exempt certification arrangement between the Governments of the United States and the People's Republic of Bangladesh is being amended to include certain part-category designations.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice, 53 FR 44937, published on November 7, 1988). Also see 53 FR 46484, published on November 17, 1988.

May 25, 1989

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

May 25, 1989.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on November 14, 1988, by the Chairman, Committee for the Implementation of Textile Agreement. This directive directed you to prohibit entry of certain cotton, wool and man-made fiber textile products, produced or manufactured in Bangladesh which were not properly visaed by the Government of the People's Republic of Bangladesh.

Effective on June 1, 1989 for goods produced or manufactured in Bangladesh and exported from Bangladesh on and after June 1, 1989, you are directed to amend the existing export visa and exempt certification requirements established in the directive of November 4, 1988 to include the following part-category designations:

Category	HTS numbers
340/640	All HTS numbers in Categories 340/640 except those in Categories 340-Y/640-Y.
340-Y/640-Y	Only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060 in Category 340-Y; and 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060 in Category 640-Y.
341	All HTS numbers in Category 341 except those in Category 341-Y.
341-Y	Only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.
647/648	All HTS numbers in Categories 647/648 except those in Categories 647-T/648-T.
647-T/648-T	Only HTS numbers 6103.23.0040, 6103.29.1020, 6103.43.1520, 6103.43.1540, 6103.49.1020, 6103.49.3014, 6112.12.0050, 6112.19.1050, 6112.20.1060, 6113.00.0045, 6203.23.0060, 6203.29.2030, 6203.43.2500, 6203.43.3500, 6203.43.4010, 6203.43.4020, 6203.49.1500, 6203.49.2010, 6203.49.2030, 6203.49.3030, 6210.40.1030, 6211.20.1525, 6211.20.3030 and 6211.33.0030 in Category 647-T; and 6104.23.0032, 6104.29.1030, 6104.29.2036, 6104.63.2010, 6104.63.2025, 6104.69.2010, 6104.69.3026, 6112.12.0060, 6112.19.1060, 6112.20.1070, 6113.00.0050, 6117.90.0046, 6204.23.0040, 6204.29.2020, 6204.29.4038, 6204.63.2000, 6204.63.3000, 6204.63.3510, 6204.63.3530, 6204.69.2510, 6204.69.2530, 6204.69.3030, 6204.69.9030, 6210.50.1030, 6211.20.1555, 6211.20.6030, 6211.43.0040 and 6217.90.0060 in Category 648-T.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa or visa waiver must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-12974 Filed 5-31-89; 8:45 am]

BILLING CODE 3510-DR-M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade: Proposed Recommencement of Trading and Proposed Amendments Relating to the Two-Year Treasury Note Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of proposed contract market rule changes.

SUMMARY: The Chicago Board of Trade ("CBT" or "Exchange") has submitted a proposal to recommence trading in the two-year Treasury note futures contract, which now is dormant within the meaning of Commission Regulation 5.2. In addition, the CBT has submitted proposed amendments to this Treasury note futures contract. The amendments would change the eligibility standards for deliverable Treasury notes so that only three recently issued two-year notes would be deliverable, decrease the contract size to \$200,000 from \$400,000 face value, allow for futures trading during an evening session, and increase the speculative limits for the contract to 5,000 contracts from 1,000 contracts in the spot month and in all futures combined. The amendments also would increase the daily price limit to one point from three-fourths of a point, change the delivery procedures to conform to those currently in effect for the CBT's actively traded Treasury bond and Treasury note futures contracts, and revise the trading month listing provisions. Finally, the CBT proposes to change the name of the contract to "Short Term Treasury Notes (2 years)."

In accordance with section 5a(12) of the Commodity Exchange Act and acting pursuant to the authority delegated by Commission Regulation 140.96, the Acting Director of the Division of Economic Analysis of the Commodity Futures Trading Commission ("Commission") has determined, on behalf of the Commission, that the proposal is of major economic significance and that, accordingly, publication of the proposal is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before July 3, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the amendments to the CBT short term Treasury Note futures contract.

FOR FURTHER INFORMATION CONTACT: Richard A. Shilts, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581 (202) 254-7304.

SUPPLEMENTARY INFORMATION: The Chicago Board of Trade two-year Treasury note futures contract is not currently listed for trading and is dormant under Commission Regulation 5.2. Under Regulation 5.2, an exchange must submit for Commission review and approval, pursuant to section 5a(12) of the Commodity Exchange Act (Act) and CFTC Regulation 1.41(b), an appropriate by law, rule, regulation or resolution to recommence trading in a dormant contract. Accordingly, the Exchange has submitted, pursuant to section 5a(12) of the Act and Commission Regulation 1.41(b), a proposal to list additional months in the contract.

With regard to the proposal to recommence trading in the contract, the CBT noted that:

... the level of issuance of (two-year) Treasury notes has been consistently high over the past few years. The dealers and investors in these issues would be well served by the availability of a viable and liquid hedging and price discovery vehicle.

The re-launched contract will become a reliable and useful hedging and pricing instrument, with the potential to serve the financial markets as the present bond and medium and long term note futures contracts already do. Almost 66% of the long open interest and 55% of the short open interest in CBOT Treasury bond futures at the end of November 1988 was held by commercial traders. In long term Treasury notes, 82% and 63% of the long and short open interests, respectively, were held by commercials. Similarly, in 5-year note futures both long and short open interest held by commercials exceeded 85%. The relaunched contract is likely to develop the same high level of commercial hedging interest.

In addition, as noted above, the Exchange has submitted for Commission approval proposed changes to the standards for deliverable notes, the contract size, speculative limits, daily price limits, delivery procedures, trading months, and the name of the contract. With respect to the proposal to specify that only recently issued two-year Treasury notes (the three most recent issues) be deliverable, rather than allowing the delivery of any Treasury note or bond with a remaining maturity of not less than one year, nine months and not more than two years, the CBT stated:

The proposed changes * * * will alter the essential nature of the contract by focusing the futures contract on the two year issue. The earlier incarnation of this contract was subject to variable pricing because other issues of longer term maturities were permitted in deliveries. With a wide selection of issues * * * each with its own conversion factor, the contract was susceptible to pricing an otherwise little followed older note or bond. The proposed changes will eliminate that problem. * * *

As a hedging vehicle with distinct pricing, two year note futures will be an important hedging tool not only for the large issuances of two year notes that also for old longer maturity Treasury instruments. Likewise, corporate borrowings in this maturity range will be easily hedged in the short term Treasury note futures contract. Additionally, with its generally low implied duration, short term Treasury note futures will at times be an attractive hedging tool for dealers and holders of seasoned securities of all types.

The Commission is seeking comment on the CBT's proposal to recommence trading in the contract and with respect to the proposed amendments.

The materials submitted by the Exchange in support of the proposed amendments may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR 145 (1987)). Requests for copies of such materials should be made to the FOIA, Privacy and Sunshine Acts Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitted written data, views or arguments on the proposed amendments should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC by the specified date.

Issued in Washington, DC on May 25, 1989.
John R. Mielke,

Acting Director, Division of Economic Analysis.

[FR Doc. 89-12934 Filed 5-31-89; 8:45 am]

BILLING CODE 8351-01-M

New York Cotton Exchange and New York Mercantile Exchange Proposed Futures Contracts

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contracts.

SUMMARY: The New York Cotton Exchange ("NYCE") has applied for designation as a contract market in foreign concentrated orange juice-2 (FCOJ-2) futures. The New York Mercantile Exchange ("NYMEX") has applied for designation as a contract market in residual fuel oil futures. The Acting Director of the Division of Economic Analysis ("Division") of the Commission, acting pursuant to the authority delegated by Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATE: Comments must be received on or before July 3, 1989.

ADDRESS: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to the NYCE FCOJ-2 futures contract or the NYMEX residual fuel oil futures contract.

FOR FURTHER INFORMATION CONTACT: Fred Linse, for the NYCE FCOJ-2

contract or Richard Shilts, for the NYMEX residual fuel oil contract, in the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions of the proposed futures contracts will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254-6314.

Other materials submitted by the NYCE and NYMEX in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR Part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Acts compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any persons interested in submitting written data, views or arguments on the terms and conditions of the proposed futures contracts, or with respect to other materials submitted by the NYCE or NYMEX in support of the applications, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC on May 25, 1989.
John R. Mielke,

Acting Director, Division of Economic Analysis.

[FR Doc. 89-12935 Filed 5-31-89; 8:45 am]

BILLING CODE 8351-01-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number:

Telephone Survey of CHAMPUS Beneficiary households; No Form; and No OMB Control Number.

Type of Request: New.

Average Burden Hours/Minutes Per Response: 4 hours.

Frequency of Response: One-time.

Number of Respondents: 900.

Annual Burden Hours: 360.

Annual Responses: 900.

Needs and Uses: ABT Associates, Inc., under a contract with the Office of the Assistant Secretary of Defense (Health Affairs), will use a telephone survey of 800 CHAMPUS beneficiary households to determine the effects of the Contracted Provider Arrangement (CPA) Demonstration of mental health benefits delivery in the Norfolk, Virginia area. Results of this survey will assist in assessing the operational effectiveness and medical efficacy of the CPA Demonstration project.

Affected Public: Individuals or households of CHAMPUS beneficiaries.

Frequency: One-time.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

Dated: May 25, 1989.

[FR Doc. 89-12945 Filed 5-31-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

May 22, 1989.

The USAF Scientific Advisory Board Arnold Engineering Development Center Advisory Group will meet on 26-27 June, 1989 at Arnold Air Force Base, Tennessee.

The purpose of this meeting will be to acquaint the new AEDC members with a mission briefing and tours of selected ground test facilities. This meeting will involve discussions of classified defense

matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 89-13007 Filed 5-31-89; 8:45 am]

BILLING CODE 3810-01-M

USAF Scientific Advisory Board; Meeting

May 22, 1989.

The USAF Scientific Advisory Board Engineering & Advisory Group will meet on 27-28 June, 1989 at University of New Mexico, Albuquerque, New Mexico.

The purpose of this meeting will be to acquaint the new E&S members with a mission briefing and to request their advice on specific AF/LEE items of interest. This meeting will involve discussions of classified defense matters listed in section 552b(c) of Title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (202) 697-4648.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 89-13008 Filed 5-31-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Meeting of the National Advisory Committee on Accreditation and Institutional Eligibility

AGENCY: National Advisory Committee on Accreditation and Institutional Eligibility.

ACTION: Notice of public meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a meeting of the National Advisory Committee on Accreditation and Institutional Eligibility. This notice also describes the functions of the Committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of its opportunity to attend.

DATES: June 27, 8:30 a.m. until 5:30 p.m. and June 28, 8:30 a.m. until 5:00 p.m.

LOCATION: The Embassy Square Suites Hotel, 2000 N Street, NW., Washington, DC 20036, 202-659-9000.

FOR FURTHER INFORMATION CONTACT: Dr. W. Stanley Kruger, National Advisory Committee on Accreditation and Institutional Eligibility, U.S. Department of Education 400 Maryland Avenue, SW. Room 3082, ROB-3, Washington, DC 20202-5152, 202-732-5661.

SUPPLEMENTARY INFORMATION: The National Advisory Committee on Accreditation and Institutional Eligibility is authorized under section 1205 of the Higher Education Act as amended by Pub. L. 96-374 (20 U.S.C. 1145). The Committee advises the Secretary of Education regarding his responsibility to publish a list of nationally recognized accrediting agencies and associations, State agencies recognized for the approval of public postsecondary vocational education, and State agencies recognized for the approval of nurse education.

The Committee also advises the Secretary of Education regarding policy concerning recognition of accrediting and State approval bodies, and concerning institutional eligibility for participation in Federally funded programs.

Agenda

The meeting on June 27-28 will be open to the public. The Advisory Committee will review petitions and interim reports by the following accrediting agencies and State approval bodies relative to continued recognition by the Secretary of Education. The Committee also will hear presentations by representatives of these petitioning agencies and any interested third parties. The following petitions and interim reports will be reviewed.

Petitions for Recognition as Nationally Recognized Accrediting Agencies and Associations

A. Petitions for Renewal of Recognition

Accrediting Commission on Education for Health Services Administration.

Accrediting Council for Continuing Education and Training, Accrediting Commission.

American Association for Marriage and Family Therapy, Commission on Accreditation for Marriage and Family Therapy Education.

American Dental Association, Commission on Dental Accreditation. American Osteopathic Association, Bureau of Professional Education.

Foundation for Interior Design and Educational Research, Committee on Accreditation.

National Council for Accreditation of Teacher Education.

National Accrediting Commission of Cosmetology Arts and Sciences [hair removal educational programs].

Society of American Foresters.

Southern Association of Colleges and Schools, Commission on Occupational Education Institutions.

B. Interim Reports

American Bar Association.

American Council of Construction Education.

Association of Theological Schools in the United States and Canada.

Commission on Opticianry Accreditation.

Middle States Association of Colleges and Schools, Commission on Higher Education.

New York State Board of Regents.

Northwest Association of Schools and Colleges, Commission on Colleges.

Southern Association of Colleges and Schools, Commission on Colleges.

Petition for Recognition as a State Agency for the Approval of Public Postsecondary Vocational Education

A. Interim Report

New York State Board of Regents.

Petition for Recognition as a State Agency for the Approval of Nurse Education

A. Petition for Renewal of Recognition

Iowa Board of Nursing.

Request by the Department of the Navy

The Advisory Committee will consider a request to the Secretary of Education by the Department of the Navy to recommend authorization by the Congress of the United States for the Naval War College, Newport, Rhode Island, to award a Masters of Science Degree in National Security and Strategic Studies.

Third Parties

The Department urges third parties interested in commenting on any of the scheduled agencies and associations to submit their comments in writing by June 12, 1989, to Mr. Steven Pappas, Chief, Accrediting Agency Evaluation Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room) 3036, ROB-3) Washington, DC 20202.

While the Committee is required to accept any written materials up through the date of its meeting, the Committee strongly urges that written comments be submitted by June 12 to facilitate the work of the Committee by providing for advance review and analysis of third party positions. All petitions, interim

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reports and third party comments received in advance of the meeting will be available for public inspection at the address noted above between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday.

Also, requests for oral presentations before the Advisory Committee should be submitted in writing to Mr. Pappas, (address above), by June 19, 1989. Requests should include the names of all persons seeking an appearance, the organization they represent and the purpose for which the presentation is requested. Time constraints may limit oral presentations.

The acceptance of written and oral third party comments is limited to issues relevant to an accrediting or State agency's compliance with the Secretary's recognition regulations (Criteria for Recognition).

A record will be made of the proceedings of the meeting and, on or before July 15, 1989, will be available for public inspection at the Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3036, ROB-3) Washington, DC between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday.

Signed in Washington, DC on May 19, 1989.

James B. Williams,
Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89-13025 Filed 5-31-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Morgantown Energy Technology Center Cooperative Agreement; Financial Assistance Award to Ohio Power Co.

AGENCY: Morgantown Energy Technology Center, Department of Energy (DOE).

ACTION: Notice of intent to award a non-competitive financial assistance cooperative agreement.

SUMMARY: Pursuant to Pub. L. 100-440, 102 Stat 1774, at 1811, and as indicated in HR Rep No 100-862, 100th Congress, 2nd Sess 61 (1988), the Department of Energy (DOE) is giving notice of its intention to make a noncompetitive financial assistance award of approximately \$2 million to the Ohio Power Company (OPCO), 1 Riverside Plaza, Columbus, OH 43215, for the initial phases of a 5-year research project, "Pressurized Fluidized Bed Combustion (PFBC) Hot Gas Cleanup

Test Program." OPCO is one of eight operating electric utility companies that make up the American Electric Power System (AEP). The American Electric Power Service Corporation (AEPSC) is the central management and engineering arm of AEP and is functioning as an agent for OPCO for purposes of this project. The proposed award is based on AEPSC's unsolicited proposal to design, procure, install, and test a hot gas clean up (HGCU) system at the OPCO 70 MW Tidd PFBC Demonstration Plant in Brilliant, Ohio. The Tidd Demonstration Plant is being supported, in part, under a DOE cooperative agreement awarded in 1987 under the Department's Clean Coal Technology Program.

In its unsolicited proposal, AEPSC proposed conducting a 5-year testing effort, estimated to cost approximately \$20 million, to evaluate up to three advanced particle control technologies on a slipstream at the Tidd Demonstration Plant. Although only \$2 million is available in Fiscal Year 1989, the proposed award to OPCO will have a 5-year project period and will include the entire proposed testing project. The FY 1989 appropriation will cover only those costs incurred during the first budget period (approximately 1 year). Thus, continuation of the project after the first budget period will depend upon the availability of future appropriated research and development funds.

The Tidd Demonstration Plant is the only available facility of adequate size in the United States where the testing AEPSC has proposed can be done. Accordingly, as authorized by 10 CFR 600.7(b)(2)(i)(d), the DOE has determined that AEPSC "has exclusive domestic capability to perform the activity successfully based upon unique equipment, proprietary data, technical expertise, or other such unique qualifications."

FOR FURTHER INFORMATION CONTACT: Clara L. Foster, I07, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 889, Morgantown, West Virginia 26507-0880, Telephone: (304) 291-4315, Cooperative Agreement No. DE-FC21-89MC26042.

Date: May 24, 1989.

Louie L. Calaway,
Director, Acquisition and Assistance Division, Morgantown Energy Technology Center.

[FR Doc. 89-13038 Filed 5-31-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ID-2401-000 et al.]

H. Peter Burg et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 26, 1989.

Take notice that the following filings have been made with the Commission:

1. H. Peter Burg

[Docket No. ID-2401-000]

Take notice that on April 12, 1989, H. Peter Burg tendered for filing an Informational Report for Automatic Authorization to hold the following interlocking positions:

Ohio Edison, Senior Vice President
Ohio Edison, Director
Penn Power, Director
Society National Bank, Director

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Consolidated Edison Company

[Docket No. ER89-433-000]

Take notice that on May 15, 1989, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing, as an initial rate schedule, an agreement to transmit power and energy for Long Island Lighting Company (LILCO). The agreement provides for the transmission of 50 MW between LILCO and the Blenheim-Gilboa Pumped storage station of the Power Authority of the State of New York at a rate of \$84.50 per megawatt per day, yielding Con Edison \$1,542,125 in annual revenues.

Con requests waiver of the notice requirements so that the Rate Schedule can be made effective as of April 1, 1989.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Westchester, RESCO Company, L.P.

[Docket No. ER89-436-000]

Take notice that on May 15, 1989, Westchester Resco Company, L.P. (Westchester Resco) tendered for filing (1) a proposed rate schedule change (designated Westchester Resco Rate Schedule FERC No. 2) consisting of a Capacity Purchase Addendum (the Capacity Addendum), dated as of March 31, 1989, providing for the sale of electric energy generating capacity by Westchester Resco to Consolidated

Edison Company of New York, Inc. (Con Ed) of a biomass fueled small power production facility (the facility) a located at Peekskill, Westchester County, New York and (2) a petition for waiver of the Commission's regulations regarding the submission of cost-of-service data and the submission of a rate change schedules not less than 60 days prior to the date on which the proposed change is to become effective.

The proposed changes would increase revenues from jurisdictional sales by \$3,300,000 for the 12 month period ending March 31, 1990. The rate schedule change modifies Westchester Resco Rate Schedule FERC No. 1 (Letter Order, Docket No. ER82-669-000 (November 18, 1982)) by providing for the purchase by Con Ed of capacity from the Facility. Under Westchester Resco Rate Schedule FERC No. 2, Con Ed is currently purchasing all of the electric energy output of the Facility net of in-plant usage.

The principal reason for the proposed change is that Westchester Resco has agreed to provide Con Ed with capacity from the Facility, and Con Ed has agreed to purchase the capacity on the terms and conditions set forth in the rate schedule change.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protect said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Castell,
Secretary.

[FR Doc. 89-13013 Filed 5-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER89-421-000 et al.]

Florida Power & Light Company et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 18, 1989.

Take notice that the following filings have been made with the Commission:

1. Florida Power & Light Company

[Docket No. ER89-421-000]

Take notice that on May 8, 1989, Florida Power & Light Company (FPL) tendered for filing the system average transmission loss percentage determination effective May 1, 1989 for use in connection with the transmission service agreements between FPL and other electric utilities. FPL states that these agreements provide for the annual updating of the transmission loss percentage.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Arkansas Power & Light Company

[Docket No. ER89-417-000]

Take notice that on May 8, 1989, Arkansas Power & Light Company (AP&L) tendered for filing an Agreement between AP&L and the Louisiana Energy and Power Authority (LEPA). The Agreement describes the procedure to be followed with respect to certain transmission service provided to LEPA by AP&L.

AP&L requests that the Commission waive any requirements with which AP&L has not already complied.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Iowa Public Service Company

[Docket No. ER89-411-000]

Take notice that on May 8, 1989, Iowa Public Service Company (IPSC) tendered for filing a Letter Agreement, dated October 12, 1989, for purchase of energy by Western Area Power Administration (Western) from IPSC.

IPSC requests that the agreement be approved retroactive to November 1, 1988, so that Western can at the earliest possible date obtain the services it is seeking pursuant to the arm's length negotiated agreements.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Puget Sound Power & Light Company

[Docket No. ER89-410-000]

Take notice that on May 2, 1989, Puget Sound Power & Light Company (Puget Sound) tendered for filing documents to the calculation of Average System Cost

(ASC) for Puget Sound for the exchange period effective October 1, 1988, through January 31, 1989. Puget Sound further states that this filing is pursuant to the revised ASC methodology which was approved by the Commission effective October 1, 1984.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Portland General Electric Company

[Docket No. ER89-412-000]

Take notice that Portland General Electric Company (PGE) on May 8, 1989, tendered for filing an Interim Agreement with the City of Pasadena which provides for the firm sale of 10 MW and the capacity/energy exchange of 10 MW during the period of November 1, 1987 through July 1, 1988. The contract capacity and energy rates are based upon PGE's incremental cost of production plus an additional amount for fixed charges (not exceeding fully distributed fixed charges) plus the costs of transmission.

PGE states the reason for the proposed Interim Agreement is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources during a period of time those resources are not required to serve its system load.

PGE requests an effective date of November 1, 1976, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon the City of Pasadena and the Oregon Public Utility Commission.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Portland General Electric Company

[Docket No. ER89-413-000]

Take notice that Portland General Electric Company (PGE) on May 8, 1989 tendered for filing an Interim Agreement with the City of Glendale which provides for the firm sale of 20 MW and the capacity/energy exchange of 20 MW during the period of July 1, 1987 through September 15, 1988. The contract capacity and energy rates are based upon PGE's incremental cost of production plus an additional amount for fixed charges (not exceeding fully distributed fixed charges) plus the costs of transmissions.

PGE states the reason for the proposed Interim Agreement is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources during a period of time those resources are not required to serve its system load.

PGE requests an effective date of July 1, 1987, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon the City of Glendale and the Oregon Public Utility Commission.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Portland General Electric Company

[Docket No. ER89-414-000]

Take notice that Portland General Electric Company (PGE) on May 8, 1989 tendered for filing an Interim Agreement with the City of Burbank which provides for the firm sale of 10 MW and the capacity/energy exchange of 10 MW during the period of November 1, 1987 through September 15, 1988. The contract capacity and energy rates are based upon PGE's incremental cost of production plus an additional amount for fixed charges (not exceeding fully distributed fixed charges) plus the costs of transmission.

PGE states the reason for the proposed Interim Agreement is to allow it to recover a portion of its fixed charges applicable to certain of its thermal generating resources during a period of time those resources are not required to serve its system load.

PGE requests an effective date of November 1, 1987, and therefore requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon the City of Burbank and the Oregon Public Utility Commission.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. American Electric Power Service Corporation

[Docket No. ER89-415-000]

Take notice that American Electric Power Service Corporation on May 8, 1989, tendered for filing Addendum IV on behalf of its affiliates, Appalachian Power Company, Columbus Southern Power Company, Indiana Michigan Power Company, Kentucky Power Company, and Ohio Power Company (AEP Parties, which are all affiliated operating subsidiaries of the American Electric Power Company.

This addendum increases the AEP Parties demand rate ceilings for (1) Limited Term Power to "up to" \$16.50 per kW-month, (2) Short Term Power to "up to" \$3.25 per kW-week ("up to" \$0.65 per kW-day), and (3) Non-Displacement Power to "up to" 40 mills per kWh. The purpose of Addendum IV is to update the peak demand rates for voluntary sales to reflect the cost of the

most recent major generating unit placed in service on the AEP System.

AEP has requested an effective date of July 9, 1989.

Copies of the filing were served upon the Kentucky Public Service Commission, the Indiana Utility Regulatory Commission, the Michigan Public Service Commission, the Public Utilities Commission of Ohio, the State Corporation Commission of Virginia, the Public Service Commission of West Virginia, and the appropriate utilities interconnected with the AEP Parties.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER89-416-000]

Take notice that on May 1, 1989, Illinois Power Company tendered as an informational filing data concerning a change in the Compensation Fee received by Illinois Power Company from Soyland Power Cooperative, Inc.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Delmarva Power & Light Company

[Docket No. ER89-418-000]

Take notice that Delmarva Power & Light Company (Delmarva) on May 8, 1989, tendered for filing proposed Supplement No. 8 to its FERC Rate Schedule No. 62. This supplement, filed at the request of the City of Seaford (Seaford), cancels the present Parallel Operation Service Agreement for one (1) 69 kV delivery point, presently located at High Street, known as "Central" substation and incorporates all service into one (1) existing 69 kV delivery point presently located at Pine Street, known as "Pine" substation.

Copies of the filing were served upon Seaford and the Delaware Public Service Commission.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Niagara Mohawk Power Corporation

[Docket No. ER89-419-000]

Take notice that on May 8, 1989, Niagara Mohawk Power Corporation filed as a supplement to Niagara Mohawk Rate Schedule No. 142, a letter agreement between Niagara Mohawk and the Long Island Lighting Company (LILCO), under which Niagara Mohawk agreed to wheel for LILCO certain additional loads ranging from a low of 125 MW to a high of 225 MW over a six-month period starting April 30, 1989 and ending October 29, 1989. No changes to the rates charged under Rate schedule

No. 142 will occur, nor are any terms and conditions affected.

Niagara Mohawk states that a copy of the filing was served on LILCO and the New York Public Service Commission.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power & Light Company

[Docket No. ER89-420-000]

Take notice that on May 8, 1989, Florida Power & Light Company (FP&L) tendered for filing the system average distribution loss percentage determination effective May 1, 1989 for use in connection with Docket No. ER89-363, Section D.4 of Attachment D to the Amended Agreement to Provide Specified Transmission Service between FP&L and Seminole Electric Cooperative, Inc. (Rate Schedule FERC No. 78).

FP&L states that Seminole has been served with a copy of this filing.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Green Mountain Power Corporation

[Docket No. ER89-425-000]

Take notice that on May 9, 1989, Green Mountain Power Corporation (GMP) tendered for filing an Agreement for the purchase of power between Green Mountain and Fitchburg Gas and Electric Light Company (FG&E) for the period November 1, 1988, through October 31, 1991.

GMP requests that the Commission waive the notice requirements in order to permit the rate schedule to become effective retroactive to November 1, 1988.

Comment date: June 1, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-12987 Filed 5-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 6310-000 et al.]

Hydroelectric Applications (Gull Industries, Inc. et al.); Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Amended Application for Major License

b. *Project No.:* 6310-000.

c. *Date Filed:* October 7, 1988.

d. *Applicant:* Gull Industries, Inc.

e. *Name of Project:* Barclay Creek Hydroelectric.

f. *Location:* On Barclay Creek, partially within Mt. Baker-Snoqualmie National Forest in Snohomish County, Washington.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:*

Mr. William True, Gull Industries, Inc., 3404 Fourth Avenue South, P.O. Box 24687, Seattle, WA 98124, 206-824-5900.

Mr. Michael Kuntz, Foster, Pepper and Shefelman, 1111 3rd Avenue, Suite 340C Seattle, WA 98101, 206-447-4400.

Mr. Harry P. Hosey, Hosey and Associates Engineering Company, 2820 Northrup Way, Suite 190, Bellevue, WA 98004, 206-827-8661.

i. *Commission Contact:* Mr. James Hunter, 202-376-1943.

j. *Comment Date:* June 30, 1989.

k. *Description of Project:* The proposed project would consist of: (1) a 6-foot-high, 60-foot-long reinforced concrete diversion weir impounding water at elevation 2,211 feet; (2) A concrete intake structure on the left bank adjacent to the weir; (3) A 40-inch-diameter, 11,000-foot-long penstock, including both buried and above-ground sections; (4) a powerhouse at elevation 810 feet containing one generating unit rated at 6.8 MW; (5) a tailrace beneath the powerhouse discharging over riprap into the creek; (6) A switchyard 250 feet south of the powerhouse; and (7) A 0.2-mile-long, 115-kV transmission line. This amendment eliminates an 800-foot-long tailrace pipe that would have crossed an active earth slide area and moves the powerhouse 250 feet upstream, limiting the bypassed anadromous reach to 200 feet. The total estimated project cost as

of December 1988 is \$14,020,790, which includes the cost of recreation facilities and side channel mitigation.

1. *Purpose of Project:* Project output would be sold to a local utility.

m. *This notice also consists of the following standard paragraphs: B, C, and D1.*

2 a. *Type of Application:* Surrender of License

b. *Project No.:* 6681-004.

c. *Date Filed:* April 24, 1989.

d. *Applicant:* F & T Services Corporation.

e. *Name of Project:* Jonesville Lock and Dam Hydro Project.

f. *Location:* On the Black River, in Catahoula and Concordia Parishes, Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Ralph L. Laukhuff, Jr., F & T Services Corporation, P.O. Box 64844, Baton Rouge, LA 70896, (504) 927-9321.

i. *FERC Contact:* Mary Nowak—(202) 376-9634.

j. *Comment Date:* June 28, 1989.

k. *Description of Project:* The license for this project was issued on March 31, 1986, for an installed total capacity of 6 megawatts. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

3 a. *Type of Application:* Surrender of License.

b. *Project No.:* 6682-004.

c. *Date Filed:* April 24, 1989.

d. *Applicant:* F & T Services Corporation.

e. *Name of Project:* Ouachita River Hydro Project.

f. *Location:* On Ouachita River, in Caldwell Parish, Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Ralph L. Laukhuff, Jr., F & T Services Corporation, P.O. Box 64844, Baton Rouge, LA 70896, (504) 927-9321.

i. *FERC Contact:* Mary Nowak—(202) 376-9634.

j. *Comment Date:* June 28, 1989.

k. *Description of Project:* The license for this project was issued on March 31, 1986, for an installed total capacity of 6 megawatts. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

4 a. *Type of Application:* Surrender of License.

b. *Project No.:* 6947-004.

c. *Date Filed:* March 4, 1988.

d. *Applicant:* F & T Services Corporation.

e. *Name of Project:* Lake Claiborne Dam.

f. *Location:* At the lake Claiborne Dam on Bayou D'Arbonne in Claiborne Parish, Louisiana.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Vincent A. Forte, 9107 Interline Ave., Baton Rouge, LA 70896, (504) 927-9321.

i. *FERC Contact:* Charles T. Raabe—(202) 376-9778.

j. *Comment Date:* June 28, 1989.

k. *Description of Project:* The project would have consisted of: (1) The existing Lake Claiborne Dam owned by the State of Louisiana, an approximately 5,500-foot-long, 52-foot-high earthfill structure; (2) an existing reservoir approximately 6,400 acres in surface area and having a storage capacity of approximately 99,500 acre-feet at the normal pool elevation of 185 (m.s.l.); (3) a proposed siphon intake structure; (4) a proposed penstock, 6 feet in diameter and approximately 250 feet long; (5) a proposed powerhouse containing a single 600-kW generating unit; (6) a proposed tailrace channel, approximately 20 feet wide and 150 feet long; (7) a proposed 200-foot-long 29-kV transmission line; and (8) appurtenant facilities.

Licensee has requested that its license be terminated due to the present economic viability of the project. The license was issued December 23, 1986 and would have expired on November 30, 2026. The licensee has not commenced construction of the project.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

5 a. *Type of Application:* Surrender of License.

b. *Project No.:* 7232-004.

c. *Date Filed:* April 24, 1989.

d. *Applicant:* Aero Construction Incorporated.

e. *Name of Project:* Columbus Lock and Dam Hydro Project.

f. *Location:* On the Tombigbee River, near Columbus, Lowndes County, Mississippi.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Ralph L. Laukhuff, Jr., Aero Construction Incorporated, P.O. Box 64844, Baton Rouge, LA 70896, (504) 927-9321.

i. *FERC Contact:* Mary Nowak—(202) 376-9634

j. *Comment date:* June 28, 1989.
 k. *Description of Project:* The license for this project was issued on March 28, 1988, for an installed total capacity of 3,600 kilowatts. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.
 l. This notice also consists of the following standard paragraphs: B, C, and D2.
 6 a. *Type of Application:* Surrender of License.
 b. *Project No.:* 7233-004.
 c. *Date Filed:* April 24, 1989.
 d. *Applicant:* Aero Construction Inc.
 e. *Name of Project:* Aberdeen Lock and Dam Hydro Project.
 f. *Location:* In Monroe County, Mississippi, on the Tombigbee River.
 g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).
 h. *Applicant Contact:* Ralph L. Laukhuff, Jr., Aero Construction Incorporated, P.O. Box 84844, Baton Rouge, LA 70896, (504) 927-9321.
 i. *FERC Contact:* Mary Nowak—(202) 376-9634.
 j. *Comment Date:* June 28, 1989.
 k. *Description of Project:* The license for this project was issued on April 22, 1986, for an installed total capacity of 3,600 kilowatts. The licensee states that it has determined that the project would be economically infeasible. No construction has commenced at the project site.
 l. This notice also consists of the following standard paragraphs: B, C, and D2.
 7 a. *Type of Application:* Surrender of license.
 b. *Project No.:* 8391-005.
 c. *Date filed:* April 21, 1989.
 d. *Applicant:* PRODEK, Inc.
 e. *Name of Project:* Silver Jack Dam.
 f. *Location:* At the Bureau of Reclamation's Silver Jack Dam, on the Cimarron River, in Gunnison County, Colorado.
 g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).
 h. *Applicant Contact:* Mr. Richard O. Newman, PRODEK, Inc., 2431 E. 81st Street, Suite 318, Tulsa, OK 74136.
 i. *FERC Contact:* Michael Spencer at (202) 376-1669.
 j. *Comment Date:* June 29, 1989.
 k. *Description of Proposed Action:* The Licensee seeks to surrender its license for the proposed run-of-the-river project that would have utilized the U.S. Bureau of Reclamation's Silver Jack Dam. The licensee states that it is not possible to complete the design and construction prior to the time when tax benefits for the project will expire.

The Licensee further states that no construction has been done.
 l. This notice also consists of the following standard paragraphs: B, C, and D2.
 8 a. *Type of Application:* Minor License.
 b. *Project No.:* 9156-002.
 c. *Date Filed:* September 1, 1988.
 d. *Applicant:* Silver Star Hydro Ltd.
 e. *Name of Project:* Sonora Peak Water Power Project.
 f. *Location:* On Silver Creek in Mono County, California within Toiyabe National Forest.
 g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).
 h. *Applicant Contact:* Dr. Roy McDonald, 1121 L Street, Suite 1000, Sacramento, California 95814, (916) 447-1423.
 i. *Commission Contact:* Nanzo T. Coley, (202) 376-9416.
 j. *Comment Date:* June 29, 1989.
 k. *Description of Project:* The applicant proposes to utilize National Forest lands under the jurisdiction of the Forest Service. The proposed project would consist of: (1) A proposed 36-inch-high, 100-foot-long diversion dam; (2) a proposed 160-foot-long, 24-inch-diameter conduit that conveys the diverted water to a proposed storage pond; (3) a proposed 400-foot-long, 20-foot-high earthen dike that would create a storage pond with a surface area of 1.3 acres and a storage capacity of 10-acre-feet at elevation 8,425 feet m.s.l.; (4) a proposed 11,140-foot-long, 24-inch-diameter penstock that would extend from the storage pond to the powerhouse; (5) a proposed powerhouse containing two generating units rated at 750 kW each; (6) a proposed 16.5-kV, 100-foot-long transmission line; and (7) appurtenant facilities. The applicant estimates that the average annual energy output would be 6,000,000 kWh.
 l. *Purpose of Project:* Energy produced at the project would be sold to the Southern California Edison Company.
 m. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.
 9 a. *Type of Application:* Major License (greater than 5 MW).
 b. *Project No.:* 9423-001.
 c. *Date filed:* January 31, 1989.
 d. *Applicant:* Summit Energy Storage, Inc.
 e. *Name of Project:* Summit Pumped Storage Hydroelectric Project.
 f. *Location:* On South Run near Norton and Wadsworth, Summit and Medina Counties, Ohio.
 g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).
 h. *Applicant Contact:* Ms. Carol Cunningham, Project Manager,

Cunningham Corporation, 21 Benedict Place, Greenwich, CT 06830, (203) 625-0503.
 i. *FERC Contact:* Michael Dees, (202) 376-9414.
 j. *Comment Date:* June 29, 1989.
 k. *Description of Project:* The unconstructed Summit Pumped Storage Hydroelectric Project will consist of: (1) An upper storage reservoir with maximum normal water level at 1,106.5 feet above m.s.l., a gross volume of 8,264 acre-feet, and a water surface area of 195 acres (at maximum normal water level); (2) a compacted fill embankment a maximum of 75 feet high and about 11,000 feet long with a 6-foot-high chain link fence above the crest; (3) a reinforced concrete intake/outfall structure located on the southeastern side of the upper reservoir equipped with coarse racks and a bulkhead gate; (4) a diversion channel, located partly around the periphery of the upper reservoir, which will divert existing streams and keep the reservoir isolated from surface run-off; (5) a water treatment plant and pumping station, located adjacent to the upper reservoir, used for treatment of purchased water; (6) a lower reservoir, which will be an existing limestone mine with initial mine floor level at 2,252 feet below ground, total mine volume of 7,760 acre-feet, a normal maximum water surface elevation at 1,125 feet below m.s.l., and gross storage capacity of 7,760 acre-feet; (7) an underground powerhouse 335 feet long, 53 feet wide, and 35 feet high (which will be excavated in rock adjacent to the southeast corner of the existing mine) and associated shafts and chambers, housing six 250-MW reversible generation/pumping units with a total installed capacity of 1,500 MW, and a generator floor level at 1,402 feet below m.s.l.; (8) a 28-foot-diameter, 7,000-foot-long reinforced concrete power tunnel, two 17.5-foot-diameter and 2,400-foot-long concrete lined penstock shafts, and six 8.5-foot-diameter, 200-foot-long steel lined penstocks, all used for transfer of water between the powerhouse and the upper reservoir; (9) surface structures, access road, lower reservoir vent stack, heavy hoist and personnel access hoist, head frames and housing, cable shaft head frames, surge shaft, switchyard and associated relay building, main control and administration building, maintenance and storage building, and visitor center; (10) recreation facilities including picnic areas, trails, for hiking, jogging and bicycling, and observation docks; (11) For 345-kV transmission lines each approximately 3 miles long;

and (12) appurtenant mechanical and electrical equipment and facilities.
 The project energy storage capacity is 15,000 MWH.
 l. This notice also consists of the following standard paragraphs: A3, A9, B, C, D1.
 10 a. *Type of Application:* Amended Application for Minor License.
 b. *Project No.:* 10502-000.
 c. *Date Filed:* April 25, 1989.
 d. *Applicant:* Garkane Power Association, Inc.
 e. *Name of Project:* Lower Boulder Creek.
 f. *Location:* On Boulder Creek within the Dixie National Forest in T33S, R4E, near Boulder in Garfield County, Utah.
 g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 781(a)-825(r).
 h. *Applicant Contact:* Mr. Glen P. Willardson, P.O. Box 790, Richfield, UT 84701, (801) 896-5403.
 i. *FERC Contact:* Ms. Julie Bernt, (202) 376-1936.
 j. *Comment Date:* June 29, 1989.
 k. *Description of Project:* The modified project would consist of: (1) A 1,500-foot-long, 28-inch-diameter steel pipeline extending from the end of the existing tailrace of the existing upstream Boulder Creek Project (Project No. 2219); (2) a powerhouse at elevation 7,500 feet msl containing two generating units each with a rated capacity of 350 kW; and (3) an 8,650-foot-long transmission line. This amendment provides for taking water from the tailrace of the existing upstream Boulder Creek Project No. 2219 instead of taking water from an open canal downstream through which water flows as it cascades from the tailrace down the mountain before returning to Boulder Creek. As a consequence of this change, the steel pipeline is 1,481 feet shorter, the generating units are rated at 350 kW instead of 450 kW each, and the transmission line is 3,370 feet longer. The average annual energy production is estimated to be 4,429 MWh and the estimated cost of the project is \$1,210,500.
 l. *Purpose of Project:* The power produced will be consumed by the applicant or sold to local power companies.
 m. This notice also consists of the following standard paragraphs: B, C and D1.
 11 a. *Type of Filing:* Preliminary Permit.
 b. *Project No.:* 10756-000.
 c. *Date Filed:* March 21, 1989.
 d. *Applicant:* Blue Diamond South Pumped Storage Power Company, Inc.
 e. *Name of Project:* Blue Diamond South Water Power Project.

f. *Location:* In Clark County, Nevada.
 g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).
 h. *Applicant Contact:* R. Steave Creamer, Creamer and Noble, Inc., 435 East Tabernacle, St. George, Utah 84770, (801) 673-4677.
 i. *Commission Contact:* Nanzo T. Coley, (202) 376-9416.
 j. *Comment Date:* June 28, 1989.
 k. *Description of Project:* The proposed project would utilize, in part, lands under the jurisdiction of the Bureau of Land Management. The proposed pumped storage project would consist of: (1) A proposed storage pond that would function as a forebay with a surface area of 52 acres and a storage capacity of 1,010 acre-feet at elevation 4,750 feet m.s.l.; (2) a proposed 144-inch-diameter, 9,300-foot-long penstock that would extend from the forebay, through the powerhouse, to the afterbay at elevation 3,350 feet, which is the same size as the forebay; (3) a proposed powerhouse with a generating capacity of 100 MW and a pumping capacity of 145 MW; (4) a proposed 5.9-mile-long, 132-kV transmission line; and (5) appurtenant facilities. The estimated average annual energy output for the project for peaking power is 219,000 MWh and the pumping power needed is 317,550 MWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be \$150,000.
 l. *Purpose of Project:* Power produced at the project would be sold to the Nevada Power Company.
 m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.
 12 a. *Type of Application:* Declaratory Order.
 b. *Project No.:* EL89-28-000.
 c. *Date Filed:* April 18, 1989.
 d. *Applicant:* Jerald V. Schwefel.
 e. *Name of Project:* Sugar River Project (WI).
 f. *Location:* Sugar River, Green County, Brownsville, Wisconsin.
 g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).
 h. *Applicant Contact:* Jerald V. Schwefel, Post Office Box 154, Brownsville, Wisconsin 53006, (414) 583-4363.
 i. *FERC Contact:* Etta Foster, (202) 376-9064.
 j. *Comment Date:* June 30, 1989.
 k. *Description of Project:* The proposed Sugar River Project, a run-of-river project, would consist of: (1) A reservoir with a surface area of 47 acres; (2) two 33.6 6-foot-long penstocks, one 16-foot-wide, the second 8-foot-wide; (3) a foot-high, 160-foot-long dam, with 1-foot flashboards; (4) a headgate, controlling water in a 3-mile raceway to the powerhouse; (5) a 6,100-foot raceway from powerhouse to Sugar River; (6) a powerhouse containing an 188-kilovoltamperes (kVA) generator and a 140-kVA generator; (7) a transmission line interconnected with the Wisconsin Power and Light Company; and (8) appurtenant facilities.
 When a Declaratory Order is filed with the Federal Energy Regulatory Commission the Federal Power Act requires the Commission to investigate and determine if the interests of interstate of foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.
 l. *Purpose of Projects:* Applicant intends to sell energy to the Broadhead Water and Light Commission.
 m. This notice also consists of the following standard paragraphs: B, C, and D2.
 13 a. *Type of Application:* Transfer of License.
 b. *Project No.:* 2411-003.
 c. *Date filed:* May 2, 1989.
 d. *Applicant:* STS Hydropower, Ltd. (licensee) and STS Hydropower, Ltd. and Dan River, Inc. (transferees).
 e. *Name of Project:* Schoolfield.
 f. *Location:* On the Dan River in the City of Danville, Virginia.
 g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)-825(r).
 h. *Applicant Contact:* Peter J. Bulandr, Vice President, STS Hydropower, Ltd., 111 Pfingsten Road, Northbrook, IL 60062, (312) 272-6520. Michael P. Regan, Associate General Counsel, Assistant Secretary, P.O. Box 261, Danville, VA 24543, (804) 799-7000.
 i. *FERC Contact:* Michael Dees, (202) 376-9414.
 j. *Comment Date:* June 30, 1989.
 k. *Description of Transfer:* On May 2, 1989, Dan River, Inc., and STS Hydropower, Ltd. filed a joint application for transfer of the license for the Schoolfield Project No. 2411 from STS Hydropower, Ltd. to STS Hydropower, Ltd. and Dan River, Inc. The proposed transfer will not result in

any change in the project. The transferees state that they would comply with all the terms and conditions of the license. The purpose of the transfer is to better protect certain riparian rights of Dan River, Inc., and the City of Danville, Virginia.

1. This notice also consists of the following standard paragraphs: B and C.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an

unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203-RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal

law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. section 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other Federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: May 25, 1989, Washington, DC
Lois D. Cashell,
Secretary.

[FR Doc. 89-13012 Filed 5-31-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP89-1424-000 et al.]

Stingray Pipeline Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Stingray Pipeline Co.

[Docket No. CP89-1424-000]

May 24, 1989.

Take notice that on May 17, 1989, Stingray Pipeline Company (Stingray), Post Office Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1424-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Pennzoil Gas Marketing Company (Pennzoil), a shipper and marketer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Stingray would perform the proposed interruptible transportation service for Pennzoil, pursuant to a transportation service agreement dated March 27, 1989. The transportation agreement is effective for a primary term of one month from the initial date of service and month-to-month thereafter until terminated by either party upon at least 30 days prior notice. Stingray proposes to transport 180,000 Dekatherms (Dth) of natural gas on a peak day; 150,000 Dth on an average day; and on an annual basis 54,750,000 Dth of natural gas for Pennzoil. Stingray proposes to receive the subject gas at various existing points of receipt on its offshore Louisiana system. Stingray will then transport and redeliver the gas less fuel used and unaccounted for line loss to Holly Beach and OXY-NGL Plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange (EHI-A330) located offshore Texas. No new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Stingray commenced such self-implementing service on April 1, 1989, as reported in Docket No. ST89-3325-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corp.

[Docket No. CP89-1373-000]

May 24, 1989.

Take notice that on May 15, 1989, Transcontinental Gas Pipe Line Company (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1373-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport gas for Industrial Energy Services Company (Shipper) under Transco's blanket certificate issued in Docket No. CP88-328-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Transco states that the total volume of gas to be transported for Shipper on a peak day will be 30,000 dt equivalent of natural gas, on an average day will be 10,000 dt equivalent of natural gas, and on an annual basis will be 3,850,000 dt equivalent of natural gas, pursuant to a service agreement dated April 1, 1989. It is stated that Transco will receive the gas at points of receipt in offshore and onshore Louisiana, offshore Texas, and onshore Mississippi and will deliver the gas at an existing point of interconnection in Clinton County, Pennsylvania. It is stated that Transco will construct no new facilities to provide this transportation service, utilizing instead existing facilities. It is stated that there is no agency relationship under which a local distribution company or an affiliate of Shipper will receive gas on behalf of Shipper. Transco states that service for Shipper commenced April 12, 1989, pursuant to the 120-day automatic authorization provided for in § 284.223(a) of the Regulations, as reported in Docket No. ST89-3389.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Texas Gas Transmission Corp.

[Docket No. CP89-1379-000]

May 24, 1989.

Take notice that on May 15, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1379-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for PPG-Industries, Inc.-Greensburg (PPG-Greenburg), under Texas Gas' blanket certificate issued in Docket No. CP88-

686-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated November 21, 1988, Texas Gas requests authorization to transport up to 3,000 MMBtu of natural gas per day for PPG-Greenburg under its IT Rate Schedule. Texas Gas states that the agreement provides for it to receive the gas at various existing points of receipt along its system and deliver the gas to existing points of delivery located in Warren County, Ohio. PPG-Greenburg estimates that the average day and annual transportation quantities would be 650 MMBtu and 237,250,000 MMBtu, respectively. Texas Gas advises that the service commenced April 1, 1989, as reported in Docket No. ST89-3015-000, under § 284.223(a) of the Commission's Regulations.

Comment date: July 10, 1989 in accordance with Standard Paragraph G at the end of the notice.

4. Texas Gas Transmission Corp.

[Docket No. CP89-1406-000]

May 24, 1989.

Take notice that on May 16, 1989, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP89-1406-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for System Supply for End-Users, Inc. (System Supply), under Texas Gas' blanket certificate issued in Docket No. CP88-686-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Pursuant to a gas transportation agreement dated November 11, 1988, Texas Gas requests authorization to transport up to 30,000 MMBtu of natural gas per day for System Supply under its IT Rate Schedule. Texas Gas states that the agreement provides for it to receive the gas at various existing points of receipt along its system and deliver the gas to existing points of delivery located in Kentucky and Tennessee. System Supply estimates that the average day and annual transportation quantities would be 20,000 MMBtu and 7,300,000 MMBtu, respectively. Texas Gas advises that the service commenced April 15, 1989, as reported in Docket No. ST89-3337-000, under § 284.223(a) of the Commission's Regulations.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. EL Paso Natural Gas Co.

[Docket No. CP89-1384-000]

[Docket No. CP89-1386-000]

[Docket No. CP89-1388-000]

[Docket No. CP89-1390-000]

May 24, 1989.

Take notice that on May 15, 1989, EL Paso Natural Gas Company (EL Paso), P.O. Box 1492, EL Paso, TX, 79978, filed in Docket Nos. CP89-1384-000, CP89-1386-000, CP89-1388-000, and CP89-1390-000,¹ requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to provide interruptible transportation service under its blanket certificate issued in Docket No. CP88-433-000, for Independents Gas Services, Meridian Oil Trading Inc., Enron Gas Marketing, Inc. and Natural Gas Processing Company, respectively (shippers), all as more fully set forth in the requests on file with the Commission and open to public inspection.

In Docket No. CP89-1384-000, EL Paso proposes to transport up to a maximum daily quantity of 52,750 MMBtu on a peak day, on an average day approximately 5,275 MMBtu and 11,925,375 MMBtu on an annual basis.

In Docket No. CP89-1386-000, EL Paso proposes to transport up to a maximum daily quantity of 94,950 MMBtu on a peak day, on an average day approximately 52,750 MMBtu and 19,253,750 MMBtu on an annual basis.

In Docket No. CP89-1388-000, EL Paso proposes to transport up to a maximum daily quantity of 3,720 MMBtu on a peak day, 1,389 MMBtu on an average day and approximately 499,610 MMBtu on an annual basis.

In Docket No. CP89-1390-000, EL Paso proposes to transport up to a maximum daily quantity of 211,000 MMBtu, 79,125 MMBtu on an average day, and approximately 288,880,625 MMBtu on an annual basis.

EL Paso explains that service commenced pursuant to § 284.223(a) of the Commission Regulations April 1, 1989, and is reported in Docket No. ST89-3274-000 for Docket No. CP89-1384-000; April 2, 1989, as reported in Docket ST89-3269-000 for Docket No. CP89-1386-000; April 2, 1989, as reported in Docket No. ST89-3268-000 for Docket No. CP89-1388-000; and April 1, 1989, as reported in Docket No. ST89-3267-000 for Docket No. CP89-1390-000.

¹ These dockets are not consolidated.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Co.

[Docket No. CP89-1419-000]

May 24, 1989.

Take notice that on May 17, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1419-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Catamount Natural Gas, Inc. (Catamount), a marketer, under its blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas on behalf of Catamount from points of receipt located in offshore Louisiana and Louisiana to points of delivery located in Louisiana and Mississippi.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Catamount would be 51,500 MMBtu equivalent, 51,500 MMBtu equivalent and 18,797,500 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89-3404, filed with the Commission on May 5, 1989, it reported that transportation service for Catamount had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Co.

[Docket No. CP89-1425-000]

May 24, 1989.

Take notice that on May 17, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1425-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of Arkla Energy Marketing Company (Arkla), a marketer, under its blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas on behalf of Arkla

from points of receipt located in offshore Louisiana, Louisiana, Texas and Mississippi to points of delivery located in Mississippi, Louisiana, Texas and Alabama.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Arkla would be 206,000 MMBtu equivalent, 206,000 MMBtu equivalent and 75,190,000 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89-3405, filed with the Commission on May 5, 1989, it reported that transportation service for Arkla had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: July 10, 1989 in accordance with Standard Paragraph G at the end of the notice.

8. Stingray Pipeline Co.

[Docket No. CP89-1426-000]

May 24, 1989.

Take notice that on May 17, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1426-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Century Offshore Management Corporation (Century or Shipper), a shipper and producer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray states that pursuant to a transportation agreement dated March 27, 1989, under its Rate Schedule ITS, it proposes to transport up to 75,000 dekatherms (dt) per day equivalent of natural gas for Century. Stingray states that it would transport the gas from various receipt points on its system as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel used and unaccounted for line loss, to Holly Beach and OXY-NGL plant, both located in Cameron Parish, Louisiana, and Stingray-HIOS Exchange (EHI-A330) located offshore Texas.

Stingray advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89-3209. Stingray further advises that it would transport 75,000 on an average day and 27,375,000 dt annually.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Stingray Pipeline Co.

[Docket No. CP89-1427-000]

May 24, 1989.

Take notice that on May 17, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP89-1427-000 a request pursuant to §§ 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms, and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Stingray proposes to transport natural gas on an interruptible basis for Associated Natural Gas, Inc. (Associated). Stingray explains that service commenced April 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3206. Stingray explains that the peak day quantity would be 100,000 Dt, the average daily quantity would be 100,000 Dt, and that the annual quantity would be 36,500,000 Dt. Stingray explains that it would receive natural gas for Associated's account at various receipt points on its offshore Louisiana system. Stingray states that it would redeliver the gas to Holly Beach and OXY-NGL Plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange located offshore Texas.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Stingray Pipeline Co.

[Docket No. CP89-1428-000]

May 24, 1989.

Take notice that on May 17, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1428-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transport service for Loutex Energy, Inc. (Loutex), a marketer, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms, and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray states that pursuant to a transportation agreement dated March 27, 1989, under its Rate Schedule ITS, it proposes to transport up to 50,000 dekatherms (dt) per day equivalent of natural gas for Loutex. Stingray states that it would transport the gas from various receipt points on its system as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel used and unaccounted for line loss, to Holly Beach and OXY-NGL plant, both located in Cameron Parish, Louisiana, and Stingray-HIOS Exchange (EHI-A330) located offshore Texas.

Stingray advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89-3324. Stingray further advises that it would transport 20,000 dt on an average day and 7,300,000 dt annually.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Stingray Pipeline Co.

[Docket No. CP89-1429-000]

May 24, 1989.

Take notice that on May 17, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251, filed in Docket No. CP89-1429-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms, and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request on file with the Commission and open to public inspection.

Stingray proposes to transport natural gas on an interruptible basis for Apache Corporation (Apache). Stingray explains that service commenced April 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3200. Stingray explains that the peak day quantity would be 75,000 Dt, the average daily quantity would be 75,000 Dt, and that the annual quantity would be 27,375,000 Dt. Stingray explains that it would receive natural gas for Apache's account at various receipt points on its Offshore Louisiana system. Stingray states that it would redeliver the gas to Holly Beach and OXY-NGL Plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange located offshore Texas.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. ANR Pipeline Co.

[Docket No. CP89-1443-000]

May 24, 1989.

Take notice that on May 18, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1443-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Loutex Energy, Inc. (Loutex), a marketer, under the blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

ANR states that pursuant to a transportation agreement dated February 6, 1989, under its Rate Schedule ITS, it proposes to transport up to 120,000 dekatherms (dt) per day equivalent of natural gas for Loutex. ANR states that it would transport the gas from receipt points in Michigan and Wisconsin, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas to multiple delivery points in Louisiana, as shown in Exhibit "B" of the agreement.

ANR advises that service under § 284.223(a) commenced April 4, 1989, as reported in Docket No. ST89-3369-000. ANR further advises that it would transport 120,000 dt on an average day and 43,800,000 dt annually.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Gas Gathering Corp.

[Docket No. CP89-1445-000]

May 24, 1989.

Take notice that on May 19, 1989, Gas Gathering Corporation (GGC), P.O. Box 519, Hammond, Louisiana 70404, filed in Docket No. CP89-1445-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Sonat Marketing Company (Sonat), a marketer, under the blanket certificate issued in Docket No. CP86-129-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

GGC states that pursuant to a transportation agreement dated May 1, 1989, under its Rate Schedule IT-1, it proposes to transport up to 10,000 MMBtu per day equivalent of natural gas for Sonat. GGC states that it would

transport the gas from a receipt point in St. Martin Parish, Louisiana, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas to a delivery point in Pointe Coupee Parish, Louisiana, which is also shown in Exhibit "A" of the agreement.

GCC advises that service under § 284.223(a) commenced May 3, 1989, as reported in Docket No. ST89-3497-000. GCC further advises that it would transport 3,000 MMBtu on an average day and 1,950,000 MMBtu annually.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Stingray Pipeline Co.

[Docket No. CP89-1363-000]

May 25, 1989.

Take notice that on May 12, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1363-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Arco Natural Gas Marketing, Inc. (Arco), a marketer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray requests authorization to transport, on an interruptible basis, up to a maximum of 150,000 dekatherms of natural gas per day for Arco from various receipt points on Stingray's system as shown on Exhibit "A" of the March 28, 1989, transportation agreement to Holly Beach and OXY-NGL plant, both located in Cameron Parish, Louisiana and Stingray-HIOS Exchange (EHI-A330) located offshore Texas. Stingray anticipates transporting, on an average day 100,000 dekatherms and an annual volume of 36,500,000 dekatherms. Stingray advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89-3147.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Stingray Pipeline Co.

[Docket No. CP89-1367-000]

May 25, 1989.

Take notice that on May 12, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas, filed in Docket No. CP89-1367-000 a request

pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for PSI, Inc. (PSI), a marketer, under the blanket certificate issued by the Commission's action Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray states that pursuant to a Transportation Agreement dated March 27, 1989 between Stingray and PSI (Transportation Agreement) it proposes to transport up to 200,000 dt per day on an interruptible basis on behalf of PSI. The Transportation Agreement provides for Stingray to receive gas from various existing points of receipt on its system. Stingray states that it will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Holly Beach and OXY-NGL Plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange (EHI-A330) located offshore Texas.

Stingray advises that service under § 284.223(a) commenced April 7, 1989, as reported in Docket No. ST90-3149. Stingray further states that it would transport on an average day 100,000 dt and 36,500,000 dt annually.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. El Paso Natural Gas Co.

[Docket No. CP89-1385-000]

May 25, 1989.

Take notice that on May 15, 1989, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP89-1385-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Trigen Resources Corporation (Trigen), under El Paso's blanket certificate issued in Docket No. CP88-433-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

El Paso requests authorization to transport, on an interruptible basis, up to a maximum of 5,275 MMBtu of natural gas per day for Trigen from any receipt point located in Arizona. El Paso anticipates transporting, on an average day 1,266 MMBtu and an annual volume of 462,000 MMBtu.

El Paso states that the transportation of natural gas for Trigen commenced

April 1, 1989, as reported in Docket ST89-3270-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to El Paso in Docket No. CP88-433-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-1392-000]

May 25, 1989.

Take notice that on May 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77152-1642, filed in Docket No. CP89-1392-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of the Town of Paris (Paris), a local distribution company of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport, on a firm basis, up to 1,047 Dt. equivalent of natural gas per day for Paris. Panhandle states that construction of facilities would not be required to provide the proposed service.

Panhandle further states that the maximum day, average day, and annual transportation volumes would be approximately 1,047 Dt. equivalent, 1,047 Dt. equivalent and 382,155 Dt. equivalent respectively.

Panhandle advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89-3197.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-1394-000]

May 25, 1989.

Take notice that on May 15, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77152-1642, filed in Docket No. CP89-1394-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of the city of Shelbyville (Shelbyville), a local distribution company of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas

Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport, on a firm basis, up to 811 Dt. equivalent of natural gas per day for Shelbyville. Panhandle states that construction of facilities would not be required to provide the proposed service.

Panhandle further states that the maximum day, average day, and annual transportation volumes would be approximately 811 Dt. equivalent, 811 Dt. equivalent and 296,015 Dt. equivalent respectively.

Panhandle advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89-3182.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

19. Trunkline Gas Co.

[Docket No. CP89-1414-000]

May 25, 1989.

Take notice that on May 17, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-1414-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Bethlehem Steel Corporation (Bethlehem), an end user, under Trunkline's blanket certificate issued in Docket No. CP86-586-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on a firm basis, up to a maximum of 15,385 dekatherms of natural gas per day for Bethlehem from a receipt point located in Jim Wells, County, Texas, to a delivery point located in Douglas County, Illinois. Trunkline anticipates transporting an annual volume of 5,615,525 dekatherms.

Trunkline states that the transportation of natural gas for Bethlehem commenced April 1, 1989, as reported in Docket No. ST89-3156-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Trunkline in Docket No. CP86-586-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-1447-000]

May 25, 1989.

Take notice that on May 19, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77152-1642, filed in Docket No. CP89-1447-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of the city of Roodhouse (Roodhouse), a local distribution company of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport, on a firm basis, up to 1361 Dt. equivalent of natural gas per day for Roodhouse. Panhandle states that construction of facilities would not be required to provide the proposed service.

Panhandle further states that the maximum day, average day, and annual transportation volumes would be approximately 1361 Dt. equivalent, 1361 Dt. equivalent and 496,765 Dt. equivalent respectively.

Panhandle advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89-3169.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

21. Natural Gas Pipeline Co. of America

[Docket No. CP89-1430-000]

May 25, 1989.

Take notice that on May 17, 1989, Natural Gas Pipeline Company of America (Natural) 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1430-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Santa Fe International Corporation (Santa Fe), under its blanket authorization issued in Docket No. CP86-582-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural would perform the proposed interruptible transportation service for Santa Fe, a producer of natural gas, pursuant to an interruptible transportation service agreement dated September 30, 1988 (#IGP-1467). The term of the transportation agreement is from the date of the contract and shall continue for a primary term ending

November 30, 1988, and shall continue for a primary term ending November 30, 1988, and shall continue month to month thereafter unless cancelled by five days prior notice by either party. Natural proposes to transport on a peak day up to 125,000 MMBtu per day; on an average day up to 75,000 MMBtu; and on an annual basis 27,375,000 MMBtu of natural gas for Santa Fe. Natural further states that consistent with its Rate Schedule ITS, Santa Fe may request and Natural may agree to accept additional quantities as overrun gas. Natural proposes to receive the subject gas at points located in Louisiana, offshore Louisiana, and offshore Texas for delivery to points located in Louisiana and offshore Texas. Natural avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Natural commenced such self-implementing service on March 29, 1989, as reported in Docket No. ST89-3556-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

22. ANR Pipeline Co.

[Docket No. CP89-1435-000]

May 25, 1989.

Take notice that on May 18, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 filed in Docket No. CP89-1435-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Marathon Oil Company, (Marathon), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP86-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport on an interruptible basis up to 12,000 dt equivalent on a peak day for Marathon, 12,000 dt equivalent on an average day and 4,380,000 dt equivalent on an annual basis. It is stated that ANR would receive the gas at designated points on ANR's system in Michigan and would deliver equivalent volumes at designated points on ANR's system in Michigan. It is asserted that the transportation would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that

the transportation service commenced April 1, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulation, as reported in Docket No. ST89-3363.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

23. ANR Pipeline Co.

[Docket No. CP89-1436-000]

May 25, 1989.

Take notice that on May 18, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1436-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Williams Gas Marketing Co. (Williams) a marketer, under ANR's blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that pursuant to an interruptible agreement dated September 22, 1988, it proposes to receive up to 1,000 dt equivalent of natural gas per day from specified points located onshore and offshore Texas and Louisiana, as well as in the states of Illinois, Indiana, Wisconsin, Kentucky, Oklahoma, Michigan and Kansas and redeliver the gas at a specified point located in Harrison County, Missouri. ANR estimates that the peak day and average day volumes would be 1,000 dt equivalent of natural gas and that the annual volumes would be 365,000 dt equivalent of natural gas. It is stated that on April 1, 1989, ANR commenced a 120-day transportation service for Williams under § 284.223(a) as reported in Docket No. ST89-3361-000.

ANR also states that no facilities need be constructed to implement the service. It is indicated that ANR would provide the service for a primary term expiring September 30, 1989, but would continue the service on a month to month basis until terminated by either party upon thirty days prior written notice to the other party. ANR proposes to charge the rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

24. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-1440-000]

May 25, 1989.

Take notice that on May 19, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77152-1642, filed in Docket No. CP89-1440-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of the village of Rossville (Rossville), a local distribution company of natural gas, under Panhandle's blanket certificate issued in Docket No. CP88-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport, on a firm basis, up to 990 Dt. equivalent of natural gas per day for Rossville. Panhandle states that construction of facilities would not be required to provide the proposed service.

Panhandle further states that the maximum day, average day, and annual transportation volumes would be approximately 990 Dt. equivalent, 990 Dt. equivalent and 361,350 Dt. equivalent respectively.

Panhandle advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89-3181.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

25. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-1484-000]

May 25, 1989.

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1484-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for American Central Gas Marketing Company (American), a marketer, under the blanket certificate issued in Docket No. CP88-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated March 30, 1989, under its Rate Schedule PT, it proposes to transport up to 200,000 dekatherms (dt) per day equivalent of natural gas for American. Panhandle states that it would transport the gas

from various receipt points on its system and deliver such gas, less fuel used and unaccounted for line loss, to Haven Pool in Reno County, Kansas.

Panhandle advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89-3177. Panhandle further advises that it would transport 75,000 dt on an average day and 27,375,000 dt annually.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

26. ANR Pipeline Co.

[Docket No. CP89-1437-000]

May 25, 1989.

Take notice that on May 18, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1437-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Meridian Oil Trading, Inc. (Meridian), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport on an interruptible basis up to 20,000 dt equivalent on a peak day for Meridian, 20,000 dt equivalent on an average day and 7,300,000 dt equivalent on an annual basis for Meridian. It is stated that ANR would receive the gas at designated points on ANR's system in Oklahoma, Kansas, Texas, Louisiana, offshore Louisiana and offshore Texas, and would deliver equivalent volumes at designated points on ANR's system in Illinois. It is asserted that the transportation would be effected using existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced April 1, 1989, under the self-implementing authorization of § 284.223 of the Commission's Regulation, as reported in Docket No. ST89-3365.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

ANR Pipeline Co.

[Docket No. CP89-1438-000]

May 25, 1989.

Take notice that on May 18, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1438-000 a request pursuant to § 157.205 of the

Commission's Regulations for authorization to provide transportation service on behalf of NML Development Corp. (NML), under ANR's blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR requests authorization to transport, on an interruptible basis, up to a maximum of 50,000 dt of natural gas per day for NML from receipt points located in offshore Louisiana to deliver points located in Louisiana. ANR anticipates transporting, on an average day 50,000 dt and an annual volume of 18,250,000 dt.

ANR states that the transportation of natural gas for NML commenced April 1, 1989, as reported in Docket No. ST89-3373-000, for a 120-day period pursuant to § 284.233(a) of the Commission's Regulations and the blanket certificate issued to ANR in Docket No. CP88-532-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

28. ANR Pipeline Co.

[Docket No. CP89-1439-000]

May 25, 1989.

Take notice that on May 18, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1439-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport gas on an interruptible basis for Cornerstone Production Corp. (Cornerstone). ANR explains that service commenced April 1, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3372-000. ANR further explains that the peak day quantity would be 150,000 dekatherms, the average daily quantity would be 150,000 dekatherms, and that the annual quantity would be 54,750,000 dekatherms. ANR explains that it would receive natural gas at existing points of receipt in the Offshore Louisiana Gathering area. ANR states that it would deliver the gas to cornerstone at existing interconnections located in the State of Louisiana.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice

29. ANR Pipeline Co.

[Docket No. CP89-1440-000]

May 25, 1989.

Take notice that on May 18, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1440-000 a request pursuant to §§ 157.205 and 284.223 (2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Unifield Natural Gas Group, L.P. (Unifield), a marketer, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

ANR states that it would transport, on an interruptible basis, up to a maximum of 6,000 dt equivalent of natural gas per day for Unifield. ANR states that it would receive the gas at existing points of receipt located in the states of Illinois, Louisiana and Oklahoma and the offshore Louisiana gathering area and redeliver the gas at existing interconnections located in the state of Michigan. ANR indicates that the total volume of gas to be transported for Unifield on a peak day would be 6,000 dt; on an average day would be 8,000 dt; and on an annual basis would be 2,190,000 dt. ANR indicates it would perform the proposed transportation service for Unifield pursuant to a service agreement dated March 3, 1989, between ANR and Unifield.

ANR states that it commenced the transportation of natural gas for Unifield on April 1, 1989, at Docket No. ST89-3374-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. ANR indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

30. ANR Pipeline Co.

[Docket No. CP89-1441-000]

May 25, 1989.

Take notice that on March 18, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1441-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in

Docket No. CP88-532-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport gas on an interruptible basis for Coastal Gas Marketing Company (Coastal). ANR explains that service commenced April 1, 1989 under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3371-000. ANR further explains that the peak day quantity would be 150,000 dekatherms, the average daily quantity would be 150,000 dekatherms, and that the annual quantity would be 54,750,000 dekatherms. ANR explains that it would receive natural gas at existing points of receipt in the State of Louisiana, offshore Louisiana and offshore Texas. ANR states that it would deliver the gas to Coastal at existing interconnections located in the State of Louisiana.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

31. United Gas Pipe Line Co.

[Docket No. CP89-1454-000]

May 25, 1989.

Take notice that on May 19, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1454-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Victoria Gas Corporation (Victoria), a marketer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated July 14, 1988, as amended, under its Rate Schedule ITS, it proposes to transport up to 103,000 MMBtu per day equivalent of natural gas for Victoria. United states that it would transport the gas from multiple receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a) commenced March 29, 1989, as reported in Docket No. ST89-3456 (filed May 10, 1989). United further advises that it would transport 103,000 MMBtu on an average day and 37,595,000 MMBtu annually.

Comment date: July 10, 1989, in accordance with Standard Paragraph C at the end of this notice

32. United Gas Pipe Line Co.

[Docket No. CP89-1456-000]

May 25, 1989

Take notice that on May 19, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1456-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Texaco Gas Marketing (Texaco), a marketer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated July 14, 1988, as amended, under its Rate Schedule ITS, it proposes to transport up to 206,000 MMBtu per day equivalent of natural gas for Texaco. United states that it would transport the gas from multiple receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to multiple delivery points shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a), commenced March 30, 1989, as reported in Docket No. ST89-3458 (filed May 10, 1989). United further advises that it would transport 206,000 MMBtu on an average day and 75,190,000 MMBtu annually.

Comment date: July 19, 1989, in accordance with Standard Paragraph C at the end of this notice.

33. United Gas Pipe Line Co.

[Docket No. CP89-1457-000]

May 25, 1989

Take notice that on May 19, 1989, United Gas Pipe Line Company, (United) P.O. Box 1478, Houston, Texas, 77251-1478 filed in Docket No. CP89-1457-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Texas Eastern Gas Service Company (TEGSC), under its blanket authorization issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United would perform the proposed interruptible transportation service for TEGSC, a marketer of natural gas,

pursuant to a gas transportation service agreement dated February 28, 1989 (Contract No. T1-21-2114). The term of the transportation agreement is for a primary term of one month from the first delivery of gas and shall continue in effect for successive one month terms thereafter until terminated upon 30 days written notice. United proposes to transport on a peak day up to 10,300 MMBtu; on an average day up to 10,300 MMBtu; and on an annual basis 3,759,500 MMBtu for TEGSC. It is stated that the receipt point is the existing interconnection between United and production facilities in West Cameron block 487, offshore Louisiana. It is further stated that the point of delivery is the existing interconnection between United and TEGSC's 20 inch line at subsea tap, West Cameron block 505, offshore Louisiana. The proposed rate to be charged is 22.75 cents per Mcf pursuant to Rate Schedule ITS. United indicates that it would be using existing facilities to provide the proposed transportation service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. United commenced such self-implementing service on March 8, 1989, as reported in Docket No. ST89-3495-000.

Comment date: July 10, 1989 in accordance with Standard Paragraph C at the end of the notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13017 Filed 5-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER89-432-000]

Florida Power & Light Co.; Filing

May 25, 1989.

Take notice that on May 11, 1989, Florida Power & Light Company (FPL) tendered for filing Amendment Number Two To The Transmission Service Agreement Between FPL and The Florida Municipal Power Agency (Rate Schedule FERC No. 84).

Under Amendment Number Two, FPL and Florida Municipal Power Agency (FMPA) have agreed to revise and amend the Agreement such that FPL may provide transmission service from an additional FMPA resource to such City's delivery point in accordance with the provisions of the Agreement.

FPL requests a waiver of the Commission's regulations be granted and Amendment Number Two be made effective on June 1, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12985 Filed 5-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. MT89-7-000]

Nora Transmission Co.; Proposed Changes in FERC Gas Tariff Pursuant To Order No. 497

May 25, 1989.

Take notice that on May 17, 1989, Nora Transmission Company tendered the following tariff sheets for filing in the captioned docket pursuant to Order No. 497 and § 250.16 of the Commission's Regulations as part of its FERC Gas Tariff, Original Volume No. 2:

Substitute Original Sheet No. 4.

Superseding Original Sheet No. 4

Substitute Original Sheet No. 5.

Superseding Original Sheet No. 5

First Revised Sheet No. 11, Superseding Original Sheet No. 11

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or a protest with the Federal Energy Regulation Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests should be filed by June 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary

[FR Doc. 89-13018 Filed 5-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-177-000]

Northern Natural Gas Co. Division of Enron Corp.; Filing

May 25, 1989

Take Notice that on May 19, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), tendered for filing the following tariff sheets to become a part of Northern Natural Gas Company's (Northern) FERC Gas Tariff, Third Revised Volume No. 1:

Sixth Revised Sheet No. 17
Third Revised Sheet No. 24b

Northern proposes to extend the availability period in which a customer may utilize the operational zone transfer to make such service available year round.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 2, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13019 Filed 5-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-206-044 and RP89-136-002]

Northern Natural Gas Co. Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

May 25, 1989

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern), on May 22, 1989, tendered for filing revised changes in its FERC Gas Tariff to correct pagination sequence errors.

The Company states that copies of the filing have been mailed to each of its customers purchasing gas and receiving transportation and gathering services under its FERC Gas Tariff and to interested State Commissions. Any person desiring to be heard or to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211). All such protests should be filed on or before June 2, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13020 Filed 5-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-262-000]

Panhandle Eastern Pipe Line Co.; Informal Settlement Conference

May 24, 1989.

Take notice that an informal settlement conference will be convened in the above proceeding on Tuesday, June 7, 1989, at 10:00 a.m. at the office of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Any party, as defined by 18 CFR 385.102(c), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact John J. Keating (202) 357-5762 or Paul Biancardi (202) 357-8517.

Lois D. Cashell,

Secretary.

[FR Doc. 89-12986 Filed 5-31-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-256-002]

West Texas Gas, Inc.; Filing

May 25, 1989

Take notice that on May 18, 1989, West Texas Gas, Inc. (WTG) filed Fifteenth Revised Sheet No. 3a to its FERC Gas Tariff, Original Volume No. 1, proposed to be effective April 1, 1989. This tariff sheet was filed by WTG to place in effect a proposed increased base tariff rate suspended by Commission order dated October 28, 1988, in Docket Nos. RP88-256-000 and 001.

Copies of the filing were served upon WTG's customers and interested state commissions.

Any persons desiring to be heard or to protest said filing should file a motion to intervene or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214 (1988)). All such motions or protests should be filed on or before June 2, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13021 Filed 5-31-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OW-FRL-3597-5]

Water Quality Criteria; Request for Comments

AGENCY: Environmental Protection Agency.

ACTION: Notice of request for comments on ambient aquatic life water quality criteria document for tributyltin.

SUMMARY: EPA announces a proposed ambient aquatic life water quality criteria document for tributyltin, now available for public comment. When published in final form, following review of public comments, water quality criteria may form the basis for enforceable State water quality standards. These criteria are published

pursuant to section 304(a)(1) of the Clean Water Act and section 9 of the Organotin Antifouling Paint Control Act of 1988.

DATES: Written comments should be submitted to the person listed directly below by July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Suzanne K.M. Marcy, U.S. Environmental Protection Agency, Office of Water Regulations and Standards, Criteria and Standards Division (WH-585), 401 M Street SW., Washington, DC 20460, Telephone #: (202) 382-7144.

Availability of Document: This notice provides a summary (see Appendix A) and requests comments on the proposed ambient water quality criteria document for tributyltin which contains proposed criteria for the protection of aquatic life and its uses. Copies of the complete criteria document may be obtained upon request, and material used to develop the criteria document may be reviewed at the office listed above. This document is also available for public inspection and copying during normal business hours at: Public Information Reference Unit, U.S. Environmental Protection Agency, Room 2404 (rear), 401 M Street SW., Washington, DC 20460. As provided in 40 CFR Part 2, a reasonable fee may be charged for copying services. Copies of this document are also available for review in the EPA Regional Office libraries.

SUPPLEMENTARY INFORMATION:

Background

Section 304(a)(1) of the Clean Water Act [33 U.S.C. 1314(a)(1)] requires EPA to publish and periodically update ambient water quality criteria. These criteria are to reflect the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life and recreation.

EPA has periodically issued ambient water quality criteria, beginning in 1973 with publication of the "Blue Book" (Water Quality Criteria 1972). In 1976, the "Red Book" (Quality Criteria for Water) was published. On November 28, 1980 (45 FR 79318), EPA announced the publication of 64 individual ambient water quality criteria documents for pollutants listed as toxic under section 307(a)(1) of the Clean Water Act. A criteria document for 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD) was published on February 15, 1984 (49 FR 5831), completing the coverage of the 85 toxic pollutants listed under Section 307(a)(1).

EPA issued nine individual water quality criteria documents on July 29, 1985 (50 FR 30784) which updated or

revised criteria previously published in the "Red Book" or in the 1980 water quality criteria documents. A revised version of the "National Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" was announced at the same time. A bacteriological ambient water quality criteria document was published on March 7, 1986 (51 FR 8012). A water quality criteria document for dissolved oxygen was published on June 24, 1986 (51 FR 22978). All of the publications cited above were summarized in "Quality Criteria for Water, 1986" which was released by the Office of Water Regulations and Standards on December 3, 1986 (51 FR 43665). Final water quality criteria documents for chlorpyrifos, nickel, pentachlorophenol, parathion, and toxaphene were also issued by EPA on December 3, 1986 (51 FR 43665). On March 2, 1987, (52 FR 6213), EPA announced the publication of revised ambient water quality criteria for zinc which updated criteria previously published in the 1980 ambient water quality document. On January 5, 1988, (53 FR 177), EPA announced the publication of revised ambient water quality criteria for selenium which also updated criteria previously published in 1980. Final documents were issued for chloride on May 26, 1988 (53 FR 19028) and for aluminum on August 30, 1988 (53 FR 33177). No previous guidance had been issued for these substances.

Proposed Criteria Document

Today EPA is announcing the proposed tributyltin (TBT) water quality criteria document for the protection of aquatic organisms; the document is now available for public comment. Tributyltin is an organotin compound that is used as an active ingredient in antifouling coatings to reduce the growth of sessile aquatic organisms on surfaces submerged in water, such as ship hulls. On January 8, 1986, EPA issued a notice of Special Review, under the Federal Insecticide, Fungicide, and Rodenticide Act, on certain pesticide products containing tributyltin used as antifoulants (51 FR 778). On October 4, 1988, EPA issued a partial conclusion of the Special Review and notice of intent to cancel registrations and deny applications for all pesticide products containing TBT as an active ingredient for use as antifoulants unless the registrations/applications comply with the specific terms and conditions provided in the notice (53 FR 39022). Specific terms and conditions established under the Act include an interim release rate restriction and certification program; this program will

expire when a final Special Review decision regarding the release of organotin into the aquatic environment is issued and takes effect. The Act also requires EPA to issue a final water quality criteria document concerning organotin compounds by March 30, 1989. The Agency chose to propose a document addressing TBT specifically because it is the most toxic form of organotin used in antifouling paints and is used in 99 percent of antifouling formulations now on the market. It is the only organotin with sufficient data available to calculate criterion values.

EPA previously issued a water quality advisory for tributyltin in September 1987. Subsequent to the last literature search cited in the criteria document, EPA continued to collect publications on the effects of tributyltin. These publications, and others identified by the public during the public comment period, will be considered during review of the document. Particular attention will be directed toward data indicating that some species of marine snails may be sensitive to concentrations of TBT which are lower than the concentration published in the advisory and the criterion continuous concentration (CCC) proposed in this criteria document. Information relevant to this sensitivity is particularly requested. EPA will review all information submitted to determine if the proposed criteria should remain as proposed or be modified.

Dated: May 19, 1989.

William A. Whittington,
Acting Assistance Administrator for Water.

Appendix A—Summary of Proposed Water Quality Criteria for Tributyltin

Freshwater Aquatic Life

The procedures described in the "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" indicate that, except possibly where a locally important species is very sensitive, freshwater aquatic organisms and their uses should not be affected unacceptably if the four-day average concentration of tributyltin does not exceed 0.028 µg/L more than once every three years on the average and if the one-hour average concentration does not exceed 0.149 µg/L more than once every three years on the average.

Saltwater Aquatic Life

The procedures described in the "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" indicate that, except possibly where a locally important species is very sensitive, saltwater aquatic organisms and their uses should not be affected unacceptably if the four-day average concentration of tributyltin does not exceed 0.010 µg/L more than once every

three years on the average and if the one-hour average concentration does not exceed 0.206 µg/L more than once every three years on the average.

Implementation

As discussed in the Water Quality Standards Regulation a water quality criterion for aquatic life has regulatory impact only after it has been adopted in State water quality standards. Such a standard specifies a criterion for a pollutant that is consistent with a particular designated use. With the concurrence of the U.S. EPA, States designate one or more uses for each body of water or segment thereof and adopt criteria that are consistent with the use(s). In each standard a State may adopt the national criterion, if one exists, or if adequately justified, a site-specific criterion. (If the site is an entire State, the site-specific criterion is also a State-specific criterion). Site-specific criteria may include not only site-specific criterion concentrations, but also site-specific, and possibly pollutant-specific, durations of averaging periods and frequencies of allowed excursions. The averaging periods of "one hour" and "four days" were selected by the U.S. EPA on the basis of data concerning how rapidly some aquatic species react to increases in the concentrations of some pollutants.

Three years is the Agency's best scientific judgment of the average amount of time aquatic ecosystems should be provided between excursions. However, various species and ecosystems react and recover at greatly differing rates. Therefore, if adequate justification is provided, site-specific and/or pollutant-specific concentrations, durations, and frequencies may be higher or lower than those given in national water quality criteria for aquatic life.

Use of criteria, which have been adopted in state water quality standards, for developing water quality-based permit limits and for designing waste treatment facilities requires selection of an appropriate wasteload allocation model. Although dynamic models are preferred for the application of these criteria limited data or other considerations might require the use of a steady-state model. Guidance on mixing zones and the design of monitoring programs is also available through the U.S. EPA.

[FR Doc. 89-12991 Filed 5-31-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Information Collection Requirement Approval by Office of Management and Budget

May 24, 1989.

The following information collection requirements have been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0040

Title: Application for Aircraft Radio Station License and Temporary Aircraft Radio Station Operating Authority

Form No.: FCC 404/404-A. The approval on form FCC 404/404-A has been extended through 4/30/92. The March 1987 edition with a previous expiration date of 3/31/89 will remain in use until updated forms are available.

OMB No.: 3060-0136

Title: Temporary Permit To Operate a General Mobile Radio Service System
Form No.: FCC 574-T. The approval on form FCC 574-T has been extended through 4/30/92. The May 1986 edition with a previous expiration date of 3/31/89 will remain in use until updated forms are available.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-12964 Filed 5-31-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL MARITIME COMMISSION

Intent To Cancel Inactive Domestic Offshore Tariffs

The Federal Maritime Commission has on file numerous tariffs of firms which appear to be inactive or no longer operating as common carriers in the domestic offshore trades. For the purpose of this Notice, a carrier is deemed to be inactive or no longer operating if it has: (1) No active phone listing at the carrier's last known address or failed to respond to telephone inquiries regarding the status of its tariffs, and (2) failed to amend its tariffs during the past twelve months.

Inactive tariffs reflect inaccurate information and they not only fail to serve the purpose for which tariffs are intended, but also operate to mislead the shipping public. Accordingly, in the absence of a showing of good cause why

such action should not be taken, the Commission proposes to cancel all domestic offshore tariffs of the carriers listed in the attached appendix.

Now, Therefore It Is Ordered, That the carriers included on the attached appendix advise the Director, Bureau of Domestic Regulation, Federal Maritime Commission, 1100 L Street NW., Washington, DC 20573, in writing, within 30 days after the publication of this Notice in the Federal Register, of any reason why the Commission should not cancel their respective domestic offshore tariffs;

It Is Further Ordered, That a copy of this Notice be sent by certified mail to the last known address of the carriers listed in the attachment;

It Is Further Ordered, That the tariffs of all carriers named in the attached appendix who fail, within the time allotted, to provide good cause for maintaining these tariffs in an active status be cancelled;

It Is Further Ordered, That this Notice be published in the Federal Register.

This Notice is issued pursuant to authority delegated to the Director, Bureau of Domestic Regulation by section 9.04 of Commission Order No. 1 (Revised) dated November 12, 1981.

Robert G. Drew,

Director, Bureau of Domestic Regulation.

Inactive Tariffs Listed by Acronym and Name Number

Acronym: AALCO Forwarding, Inc.

DBA Name: NA

Person Type: Household Goods Carrier

Street: 10983 Granada Lane

City: Overland Park

State: KS 66211

Country: United States of America

License No.: NA

Name No.: 007393

Acronym: AGRO Steamship Line, Inc.

DBA Name: NA

Person Type: Ocean Common Carrier (Vessel

Operating)

Street: 555 N.E. 15th Street, Suite PH B

City: Miami

State: FL 33142

Country: United States of America

License No.: NA

Name No.: 006619

Acronym: Alaskan & Hawaiian Transport,

Inc.

DBA Name: NA

Person Type: Non-Vessel-Operating Common

Carrier

Street: 7123 So. 188th Street

City: Kent

State: WA 98032

Country: United States of America

License No.: NA

Name No.: 006888

Acronym: American Caribbean Transport,

Inc.

DBA Name: NA

Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 3399
City: Humble
State: TX 77347
Country: United States of America
License No.: NA
Name No.: 006991
Acronym: **Andrews Forwarders, Inc.**
DBA Name: NA
Person Type: Household Goods Carrier
Street: P.O. Box 1609
City: Norfolk
State: NE 70011
Country: United States of America
License No.: NA
Name No.: 008208
Acronym: **Aquatran, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 1801 Kingwood Drive
City: Kingwood
State: TX 77339
Country: United States of America
License No.: NA
Name No.: 000266
Acronym: **Bekins International Lines, Inc.**
DBA Name: NA
Person Type: Household Goods Carrier
Street: 320 Pine Avenue, Suite 800
City: Long Beach
State: CA 90801
Country: United States of America
License No.: NA
Name No.: 000358
Acronym: **Burlington Northern Worldwide, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 1420 E. Rochelle Blvd., Suite 200
City: Irving
State: TX 75039
Country: United States of America
License No.: NA
Name No.: 008213
Acronym: **Caribbean Best Services, Inc.**
DBA Name: CBS
Person Type: Non-Vessel-Operating Common Carrier
Street: G.P.O. Box 4811
City: San Juan
State: PR 00936
Country: United States of America
License No.: NA
Name No.: 000703
Acronym: **Caribbean Pacific Lines, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 22673 S. Wilmington Avenue
City: Carson
State: CA 90745
Country: United States of America
License No.: NA
Name No.: 002853
Acronym: **Clipper Group Company.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 5716 West Manchester Avenue
City: Los Angeles
State: CA 90045
Country: United States of America

License No.: NA
Name No.: 007439
Acronym: **Cooperativa Camioneros de Arrastre Del Muelle.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: Gildita Street—Building #5, La Ceramica Industrial Park
City: Carolina
State: PR 00628
Country: United States of America
License No.: NA
Name No.: 006827
Acronym: **Crescent City Marine Ways & Dry Dock Co., Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: Suite 1480, 700 N.E. Multnomah St.
City: Portland
State: OR 97232
Country: United States of America
License No.: NA
Name No.: 000839
Acronym: **Damco International Transportation & Dist. Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 168-01 Rockaway Boulevard, Suite 203-204
City: Jamaica
State: NY 11430
Country: United States of America
License No.: NA
Name No.: 008458
Acronym: **Davidson Forwarding Company.**
DBA Name: NA
Person Type: Ocean Freight Forwarder (Independent) Household Goods Carrier
Street: 6600 Frankford Avenue
City: Baltimore
State: MD 21206
Country: United States of America
License No.: 1086
Name No.: 000819
Acronym: **Diamond Freight Consolidators, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 8432 N.W. 60th Street
City: Miami
State: FL 33166
Country: United States of America
License No.: NA
Name No.: 006756
Acronym: **E & C Trucking Corporation of New Jersey.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 96 Poiner Street
City: Newark
State: NJ 07114
Country: United States of America
License No.: NA
Name No.: 006838
Acronym: **Express Marine Transportation Company, Inc.**
DBA Name: NA
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 699 N.W. 41st

City: Seattle
State: WA 98107
Country: United States of America
License No.: NA
Name No.: 006829
Acronym: **F.W. Myers & Co., Inc.**
DBA Name: Myers Maritime Division
Person Type: Ocean Common Carrier (Vessel Operating) Non-Vessel-Operating Common Carrier
Street: C/O The Myers Group 14909 183rd Street, Second Floor
City: Jamaica
State: NY 11434
Country: United States of America
License No.: NA
Name No.: 005984
Acronym: **Florida International Forwarders, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 8725 N.W. 18th Terrace
City: Miami
State: FL 33172
Country: United States of America
License No.: NA
Name No.: 007299
Acronym: **Foreign Trade Export Packing Co.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier Ocean Freight Forwarder (Independent)
Street: 1350 Lathrop St
City: Houston
State: TX 77020
Country: United States of America
License No.: 1344
Name No.: 004620
Acronym: **Four Stars Forwarding**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 26046
City: San Diego
State: CA 92126
Country: United States of America
License No.: NA
Name No.: 008725
Acronym: **Four Winds Forwarding, Inc.**
DBA Name: NA
Person Type: Household Goods Carrier
Street: 4275 Campus Point Court
City: San Diego
State: CA 92138
Country: United States of America
License No.: NA
Name No.: 000428
Acronym: **G.F.C. Enterprises, Inc.**
DBA Name: G.F.C. Intermodal Container Line
Person Type: Non-Vessel-Operating Common Carrier
Street: 144-29 156th Street
City: Jamaica
State: NY 11434
Country: United States of America
License No.: NA
Name No.: 008204
Acronym: **Glenn-Hutchinson Incorporated**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 13737 Artesia Blvd., Suite 204
City: Cerritos

State: CA 90701
Country: United States of America
License No.: NA
Name No.: 006832
Acronym: **Gunilla Express, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 7316 N.W. 79th Terrace
City: Miami
State: FL 33166
Country: United States of America
License No.: NA
Name No.: 005895
Acronym: **Hawaii American Shipping Company**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 218
City: Saugus
State: CA 91350
Country: United States of America
License No.: NA
Name No.: 002597
Acronym: **Hoyer (USA) Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 136 Central Ave.
City: Clark
State: NY 07066
Country: United States of America
License No.: NA
Name No.: 006889
Acronym: **IML Freight, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 30277
City: Salt Lake
State: UT 84125
Country: United States of America
License No.: NA
Name No.: 008206
Acronym: **Interstate International Inc.**
DBA Name: NA
Person Type: Ocean Freight Forwarder (Independent) Household Goods Carrier, Non-Vessel-Operating Common Carrier
Street: 5801 Rolling Road
City: Springfield
State: VA 22152
Country: United States of America
License No.: 2924
Name No.: 006461
Acronym: **Island Express**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: G.P.O. Box 3433
City: San Juan
State: PR 00936
Country: United States of America
License No.: NA
Name No.: 006840
Acronym: **Island Shipping Lines, Ltd.**
DBA Name: NA
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 1026 Cabras Highway, Suite 110
City: Piti
State: GU 96925
Country: United States of America
License No.: NA

Name No.: 006084
Acronym: **J.J. Systems**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: Quintas DE H-55
City: Dorado
State: PR 00646
Country: United States of America
License No.: NA
Name No.: 006841
Acronym: **Jilly Worldwide**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 814 6th Street
City: West Babylon
State: NY 11704
Country: United States of America
License No.: NA
Name No.: 007453
Acronym: **Jupiter Steamship Corp.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 1080
City: San Juan
State: PR 00902
Country: United States of America
License No.: NA
Name No.: 006842
Acronym: **Kwik Serv Foods, Inc.**
DBA Name: C & H Foods Co.
Person Type: Non-Vessel-Operating Common Carrier
Street: 9821 California Avenue
City: South Gate
State: CA 90280
Country: United States of America
License No.: NA
Name No.: 006845
Acronym: **La Flor de Mayo Express, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier Ocean Freight Forwarder (Independent)
Street: 311 Bruckner Blvd
City: Bronx
State: NY 10454
Country: United States of America
License No.: 2662
Name No.: 001585
Acronym: **Lawton Overseas, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 809 West Street
City: Union City
State: NJ 07087
Country: United States of America
License No.: NA
Name No.: 006846
Acronym: **Linea Marlago, S.A.**
DBA Name: Linea Marlago
Person Type: Ocean Common Carrier (Vessel Operating)
Street: Av. Francisco de Miranda, Chacaito, Edif. Easo, Piso 4, Ofic 4-E, Apartado 60794
City: Carracas 1060
Country: Venezuela
License No.: NA
Name No.: 005923
Acronym: **Lyon Worldwide Shipping, Inc.**
DBA Name: NA

Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 4167
City: Bellevue
State: WA 98009
Country: United States of America
License No.: NA
Name No.: 006742
Acronym: **Mobel International, Inc.**
DBA Name: NA
Person Type: Household Goods Carrier
Street: 2165 5th Avenue South
City: St. Petersburg
State: FL 33733
Country: United States of America
License No.: NA
Name No.: 008203
Acronym: **N.T. Cargo Service**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 1390 E. Burnett Street, Suite, E.
City: Signal Hill
State: CA 90806
Country: United States of America
License No.: NA
Name No.: 007076
Acronym: **NYMARC Trading Corporation**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: Fortaleza 353, No. 3-B
City: San Juan
State: PR 00901
Country: United States of America
License No.: NA
Name No.: 006848
Acronym: **P.R. Caribbean Consolidators, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 13401
City: Santurce
State: PR 00908
Country: United States of America
License No.: NA
Name No.: 006851
Acronym: **P.R. Container Line Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 2500 83rd Street
City: North Bergen
State: NJ 07047
Country: United States of America
License No.: NA
Name No.: 006852
Acronym: **Pan American Express Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 2612 W. Division Street
City: Chicago
State: IL 60622
Country: United States of America
License No.: 000985
Acronym: **PB Marine Transport, Inc.**
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: LA Ceramica Industrial Park Calle Rosarito EF-1, P.O. Box 4837
City: Carolina
State: PR 00928

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Country: United States of America
License No.: NA
Name No.: 007131
Acronym: Polynesia Line, Ltd.
DBA Name: NA
Person Type: Ocean Common Carrier (Vessel Operating)
Street: C/O Interocean Steamship Corporation, 465 California Street
City: San Francisco
State: CA 94104
Country: United States of America
License No.: NA
Name No.: 001020
Acronym: Power Consultants International, Inc.
DBA Name: P.C.I.
Person Type: Non-Vessel-Operating Common Carrier
Street: 222 Grand Avenue
City: Englewood
State: NJ 07031
Country: United States of America
License No.: NA
Name No.: 007115
Acronym: Priority Transport, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 152-32 B Rockaway Blvd.
City: Jamaica
State: NY 11430
Country: United States of America
License No.: NA
Name No.: 006888
Acronym: Puerto Rico Express Freight Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 8622
City: Hackensack
State: NJ 08818
Country: United States of America
License No.: NA
Name No.: 006855
Acronym: Puerto Rico Express, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 4099, Garden Station
City: Bayamon
State: PR 00620
Country: United States of America
License No.: NA
Name No.: 002599
Acronym: Puerto Rico Freight Systems, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 9081
City: Santurce
State: PR 00905
Country: United States of America
License No.: NA
Name No.: 006313
Acronym: Quality Transportation Company
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: G.P.O. Box 202
City: San Juan
State: PR 00936
Country: United States of America
License No.: NA
Name No.: 006343

Acronym: S.D.C. Ocean Line, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 6040 N.W. 84th Avenue
City: Miami
State: FL 33166
Country: United States of America
License No.: NA
Name No.: 006859
Acronym: Sam's Vans, Inc.
DBA Name: NA
Person Type: Household Goods Carrier
Street: 1948 Marina Blvd.
City: San Leandro
State: CA 94577
Country: United States of America
License No.: NA
Name No.: 008216
Acronym: San Juan Freight Forwarders, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 3386
City: Carolina
State: PR 00630
Country: United States of America
License No.: NA
Name No.: 001068
Acronym: San Lorenzo Express Corporation
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 2556 W. Fullerton Avenue
City: Chicago
State: IL 60647
Country: United States of America
License No.: NA
Name No.: 001069
Acronym: Sea Trailers Express, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 4715 N.W. 72nd Avenue
City: Miami
State: FL 33166
Country: United States of America
License No.: NA
Name No.: 007824
Acronym: Seaway Express Corporation
DBA Name: NA
Person Type: Ocean Common Carrier (Vessel Operating)
Street: 7814 Eighth Avenue South
City: Seattle
State: WA 98108
Country: United States of America
License No.: NA
Name No.: 001123
Acronym: T.A.R.R. Transportation, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 13914
City: Santurce Station
State: PR 00908
Country: United States of America
License No.: NA
Name No.: 007799
Acronym: Tagship Sales International, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 350627
City: Fort Lauderdale

State: FL 33335
Country: United States of America
License No.: NA
Name No.: 006371
Acronym: Trans-Caribbean Moving & Shipping Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 4466 Park Avenue
City: Bronx
State: NY 10457
Country: United States of America
License No.: NA
Name No.: 002233
Acronym: Transcaribe Freight Corp
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: Metropolitan Ind. Park Max St. Bldg. 3, 65th Infantry, K.M.13.1
City: Carolina
State: PR 00630
Country: United States of America
License No.: NA
Name No.: 000573
Acronym: Unico Shipping Company
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 2724 N.W. 72 Avenue
City: Miami
State: FL 33122
Country: United States of America
License No.: NA
Name No.: 007281
Acronym: Unicold Corporation
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 3140 Ualena Street
City: Honolulu
State: HI 96819
Country: United States of America
License No.: NA
Name No.: 006162
Acronym: V.I. Package Express
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: G.P.O. BOX 3433
City: San Juan
State: PR 00936
Country: United States of America
License No.: NA
Name No.: 000002
Acronym: Valley Freight Systems, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 925 Market Street
City: Patterson
State: NJ 07513
Country: United States of America
License No.: NA
Name No.: 006701
Acronym: Viking Freight System, Inc.
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 411 East Plumeria Drive, Suite 100
City: San Jose
State: CA 95134
Country: United States of America

License No.: NA
Name No.: 000018
Acronym: Waterborne Marine Services
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: P.O. Box 40175 Minillas Station
City: San Juan
State: PR 00940
Country: United States of America
License No.: NA
Name No.: 002598
Acronym: Westpac Freight
DBA Name: NA
Person Type: Non-Vessel-Operating Common Carrier
Street: 1031 98th Avenue
City: Oakland
State: CA 94603
Country: United States of America
License No.: NA
Name No.: 000102

[FR Doc. 89-12931 Filed 5-31-89; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Capital Reserves Group, Inc.;
Application To Engage de novo In
Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 CFR 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of

fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated on the offices of the Board of Governors not later than June 23, 1989.

A. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222;

1. Capital Reserves Group, Inc., College Station, Texas; to engage *de novo* through its subsidiary, Reed, Seymour & Associates, Inc., College Station, Texas, in providing management services to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 25, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-12969 Filed 5-31-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices;
Acquisitions of Shares of Banks or
Bank Holding Co.

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received no later than June 14, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. March L. Dubin, and Charlotte Dubin, Baltimore, Maryland; to acquire 28.2 percent of the voting shares of ENB Financial Corporation, Elkridge, Maryland, and thereby indirectly acquire Elkridge National Bank, Elkridge, Maryland.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. The Paul E. Broadhead Revocable Trust, Meridian, Mississippi; to acquire 99.59 percent of the voting shares of Southeast Mississippi Corporation, Quitman, Mississippi, and thereby indirectly acquire Southeast Mississippi Bank, Quitman, Mississippi.

2. Edward Franklin Giunta, Tampa, Florida; to acquire an additional 61.97 percent of the voting shares of Commerce Bank of Tampa, Tampa, Florida, for a total of 62.91 percent.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. James Hall, Yorkville, Illinois; to acquire an additional 4.17 percent of the voting shares of B.O.Y. Bankcorp. Inc., Yorkville, Illinois, for a total of 24.13 percent, and thereby indirectly acquire The Bank of Yorkville, Yorkville, Illinois.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Peter J. Fiene, Gladstone, Missouri, and Patrick R. Fiene, Overland Park, Kansas; to each acquire an additional 13.7 percent of the voting shares of Gardner Bancorp. Inc., Gardner, Kansas, for a respective total of 25.9 percent, and thereby indirectly acquire First Kansas Bank & Trust Company, Gardner, Kansas.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. Joseph A. Burke, Orange, Texas, to acquire 11.98 percent; Peter F. Cloeren, Jr., Orange, Texas, to acquire 7.98 percent; Anton Dal Sasso, Orange, Texas, to acquire 7.98 percent; Michael M. Lucia, Jr., Orange, Texas, to acquire 7.98 percent; Mary Lou Mott, Beaumont, Texas, to acquire 15.97 percent; Lew C. Sheffler, Orange, Texas, to acquire 7.98 percent; William P. Sterling, Jr., Orange, Texas, to acquire 7.98 percent; Carlos Ray Vacek, Orange, Texas, to acquire 11.98 percent; and Earl C. Wright, Jr., Orange, Texas, to acquire 11.98 percent of the voting shares of Unicorp Bancshares-Texas, Inc., Orange, Texas, and thereby indirectly acquire Orange-Bank, Orange, Texas.

2. First National Bank of Artesia Employee Stock Option Plan, Artesia, New Mexico; to acquire 20.49 percent of the voting shares of First Artesia Bankshares, Inc., Artesia, New Mexico, and thereby indirectly acquire The First National Bank of Artesia, Artesia, New Mexico.

3. Frank D. Yturria, Brownsville, Texas; to acquire an additional 24.84 percent of the voting shares of TB&T Bancshares, Inc., Brownsville, Texas, for

a total of 32 percent, and thereby indirectly acquire Texas Bank and Trust of Brownsville, Brownsville, Texas.

F. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Ernest L. Go*, Hillsborough, California; to acquire 24.9 percent of the voting shares of Orient Bancorporation, San Francisco, California, and thereby indirectly acquire Bank of the Orient, San Francisco, California.

Board of Governors of the Federal Reserve System, May 24, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-12970 Filed 5-31-89; 8:45 am]

BILLING CODE 6210-01-M

First Commercial Holding Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Co.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 21, 1989.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. *First Commercial Holding Corporation*, Asheville, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of First Commercial Bank, Asheville, North Carolina.

2. *Unity Bancorp, Inc.*, Rocky Mount, North Carolina; to become a bank holding company by acquiring 100 percent of the voting shares of Unity Bank & Trust Company, Rocky Mount, North Carolina, a *de novo* bank.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *State Savings Bancorp, Inc.*, Caro, Michigan; to become a bank holding company by acquiring 100 percent of the voting shares of State Savings Bank of Caro, Caro, Michigan.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Mission Bancshares, Inc.*, Mission, Kansas; to acquire 7.19 percent of the voting shares of CNB Financial Corporation, Kansas City, Kansas, and thereby indirectly acquire City National Bank, Atchinson, Kansas; Commercial National Bank of Kansas City, Kansas City, Kansas; and The First National Bank of Overland Park, Overland Park, Kansas. The banks currently engage in the sale of credit-related life, accident, and health insurance.

2. *Mission Bancshares, Inc.*, Mission, Kansas; to merge with One Security, Inc., Kansas City, Kansas, and thereby indirectly acquire Security Bank of Kansas City, Kansas City, Kansas; and Industrial Bancshares, Inc., Kansas City, Kansas, and thereby indirectly acquire Industrial State Bank, Kansas City, Kansas. The banks currently engage in the sale of credit-related life, accident, and health insurance.

3. *Valley View Bancshares, Inc.*, Overland Park, Kansas; to increase its nonvoting equity investment from 27.3 percent to 38.0 percent of Mission Bancshares, Inc., Mission, Kansas, and thereby indirectly acquire The Mission Bank, Mission, Kansas, which currently engages in the sale of credit-related life insurance, and discount brokerage activities.

Board of Governors of the Federal Reserve System, May 25, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-12971 Filed 5-31-89; 8:45 am]

BILLING CODE 6210-01-M

Jerry G. Jackson, Trust; Correction

This notice corrects a previous Federal Register notice (FR Doc. 89-9574) published at page 16163 of the issue for Friday, April 21, 1989.

Under the Federal Reserve Bank of Kansas City, the entry for Jerry G.

Jackson, Trust is amended to read as follows:

1. *Jerry G. Jackson, Trust*, (Jerry G. Jackson, Grantor and Trustee), Stigler, Oklahoma; to acquire 86.07 percent of the voting shares of Stigler Bancorporation, Inc., Stigler, Oklahoma, and thereby indirectly acquire The First National Bank, Stigler, Oklahoma.

Comments on the application must be received by June 15, 1989.

Board of Governors of the Federal Reserve System, May 25, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-12966 Filed 5-31-89; 8:45 am]

BILLING CODE 6210-01-M

N. Dale Martin et. al.; correction

This notice corrects a previous Federal Register notice (FR Doc. 89-11553) published at page 20920 of the issue for Monday, May 15, 1989.

Under the Federal Reserve Bank of Kansas City, the entry for H. Dale Martin is amended to read as follows:

1. *H. Dale & Flora E. Martin*, Omaha, Nebraska; to acquire an additional 6.37 percent of the voting shares of Nebraska National Corporation, Omaha, Nebraska, for a total of 16.0 percent, and thereby indirectly acquire Nebraska National Bank, Omaha, Nebraska.

Comments on this application must be received by June 15, 1989.

Board of Governors of the Federal Reserve System, May 25, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-12967 Filed 5-31-89; 8:45 am]

BILLING CODE 6210-01-M

[Docket No. R-0664]

Metrocorp, Inc., East Moline, IL; Supplemental Information Regarding Hearing on Armored Car Services

On May 4, 1989, the Board ordered a formal and public administrative hearing with respect to the application of Metrocorp, Inc., East Moline, Illinois, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843 (c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to engage *de novo* through its subsidiary, Metro Armored Courier, Inc., East Moline, Illinois, in armored car services. Notice of the hearing was given by publication in the Federal Register (54 FR 20200 (1989)) and by release to the press.

The Board ordered that the hearing be held within 45 days from the date of the

Order. The time and location of the hearing were to be set by an Administrative Law Judge assigned to preside at the hearing.

The United States Office of Personnel Management, pursuant to 5 U.S.C. 3344 and 5 CFR 930.213, and with the consent of the Interstate Commerce Commission, has selected Administrative Law Judge Paul J. Clerman to conduct the proceeding. Judge Clerman has ordered the hearing to be held on Friday, June 16, 1989, at the offices of the Board, 20th and C Streets, NW., Washington, DC, commencing at 9:30 a.m.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13080 Filed 5-30-89; 8:45 pm]

BILLING CODE 6210-01-M

Edwin F. Wambsganss; Correction

This notice corrects a previous Federal Register notice (FR Doc. 89-11553) published at page 20920 of the issue for Monday, May 15, 1989.

Under the Federal Reserve Bank of Kansas City, the entry for Edwin F. Wambsganss is amended to read as follows:

1. *Edwin F. Wambsganss*, Longmont, Colorado; to acquire an additional 5.60 percent of the voting shares of Green Mountain Bancorporation, Inc., Lakewood, Colorado, for a total of 23.97 percent, and thereby indirectly acquire Green Mountain Bank, Lakewood, Colorado.

Comments on this application must be received by June 15, 1989.

Board of Governors of the Federal Reserve System, May 25, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-12968 Filed 5-31-89; 8:45 am]

BILLING CODE 6210-01-M

Vallicorp Holdings, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation

Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 14, 1989.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *ValliCorp Holdings, Inc.*, Fresno, California; to become a bank holding company by acquiring 100 percent of the voting shares of Fresno Bancorp, Fresno, California, and thereby indirectly acquire Bank of Fresno, Fresno, California; and Western Commercial, Inc., Fresno, California, and thereby indirectly acquire Fresno Bank of Commerce, Fresno, California, and Merced Bank of Commerce, N.A., Merced, California.

In connection with this application, Applicant proposes to acquire Western Commercial Leasing Company, Fresno, California, and thereby engage in the leasing of commercial, industrial and agricultural equipment which is considered personal property pursuant to § 225.25(b)(5) of the Board's Regulation Y. These activities will be conducted in the Fresno-Clovis metropolitan area and four California

counties of Fresno, Madera, Kings, and Tulare.

Board of Governors of the Federal Reserve System, May 25, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-12972 Filed 5-31-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control; Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772-67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 53 FR 46944, November 21, 1988) is amended to reflect organizational changes within the Training and Laboratory Program Office. Specifically, the name is changed to Public Health Practice Program Office, and the mission statement is revised.

Section HC-B, Organization and Functions, is hereby amended as follows:

Delete in its entirety the heading and mission statement for the *Training and Laboratory Program Office (HCH)* and substitute the following:

Public Health Practice Program Office (HCH). Through the Assistant Director for Public Health Practice, CDC: (1) Advises the Director, CDC, on matters related to public health systems, laboratory systems, and training; (2) serves as the focal point for implementing the CDC Memorandum of Understanding with the Health Care Financing Administration in its regulation of clinical laboratories; (3) promotes the development, evaluation, approval, and implementation of National Standards for laboratory practice to ensure that the quality of laboratory services is consistent with requirements for the implementation of high priority prevention and control programs; (4) fosters the development and/or improvement of methods by which the partnership of Federal, State, and local public health agencies can assure the coordinated and effective establishment of priorities and responses to public health problems; (5) serves as a CDC focus for training technology by assisting CDC components and other clients in designing, developing, delivering, and

evaluating the effectiveness of training; (6) maintains a forum for communication, coordination, collaboration, and consensus among the Centers, Institute, and Offices of CDC, public agencies, and private organizations concerned with ensuring the quality of public health practice; (7) works collaboratively with academic institutions, especially schools of public health and departments of preventive medicine, to develop and evaluate prevention practices; (8) provides a central service for consultation and the design, production, and evaluation of media and instructional services to support CDC's delivery of public health messages; (9) assists other nations in improving the training and performance of health agencies and workers; (10) in carrying out the above functions, works collaboratively with other Centers, Institute, and Offices of CDC, and where another Center, Institute, or Office has the lead responsibility, provides support to and works in conjunction with the other Center, Institute, or Office.

Effective Date: May 22, 1989.

Louis W. Sullivan,
Secretary.
[FR Doc. 89-13026 Filed 5-31-89; 8:45 am]
BILLING CODE 4160-10-M

Health Care Financing Administration; Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), *Federal Register*, Vol. 48, No. 198, pp. 46434-46448 dated Wednesday, October 12, 1983) is amended to reflect organizational title and updated functional statement changes within the Office of the Associate Administrator for Program Development, for the Bureau of Eligibility, Reimbursement and Coverage. The Bureau of Eligibility, Reimbursement and Coverage is retitled the Bureau of Policy Development. The functional statement for the Bureau is basically unchanged, however the term "reimbursement" has been replaced by the term "payment" to more accurately reflect the actual nature of the Bureau's responsibilities.

The specific changes to Part F. are described below:

- Section FQ.20.A., the title Bureau of Eligibility, Reimbursement and Coverage (FQA) is deleted. The new title is Bureau of Policy Development,

and the functional statement is revised as follows:

A. Bureau of Policy Development (FQA)

Reviews existing policy and develops new policy concerning eligibility, coverage of benefits, utilization effectiveness of providers of services, payment, limits to the costs of health care, and other administrative and technical matters for the Medicare and Medicaid programs. Develops regulations and other policy issuances for these areas. In cooperation with the Office of General Counsel, coordinates litigation affecting these programs, represents HCFA before the Office of Hearings and Appeals, Social Security Administration and the Provider Reimbursement Review Board and conducts Medicare and Medicaid hearings on behalf of the Secretary or Administrator that are not within the jurisdiction of OHA, SSA or the States.

Date: May 22, 1989.

Louis W. Sullivan,
Secretary, Department of Health and Human Services.
[FR Doc. 89-13027 Filed 5-31-89; 8:45 am]
BILLING CODE 4120-01-M

Social Security Administration; Statement of Organization, Functions and Delegation of Authority

Part S of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (HHS) covers the Social Security Administration (SSA). Notice is hereby given that Chapter S5 is being amended to redesignate the current Office of Governmental Affairs (OGA) as the Office of Public Affairs (OPA). This amendment to Chapter S5 is being made to strengthen and focus SSA's public affairs program in a single organizational entity. Because of the recent relocation of the Congressional Relations Staff from the Office of Governmental Affairs to the Office of Legislation and Congressional Affairs, the redesignation of the Office of Public Affairs is appropriate to more accurately reflect the primary function and mission of this organizational entity. The changes to be made to the *Federal Register* are as follows:

Chapter S5

Office of the Deputy Commissioner,
Policy and External Affairs
S5.00 Mission
S5.10 Organization
S5.20 Functions

Section S5.10 *The Office of the Deputy Commissioner, Policy and External Affairs—(Organization):*
Change C to read:
C. The Office of Public Affairs (S5E).
Section S5.20 *The Office of the Deputy Commissioner, Policy and External Affairs—(Functions):*

Change C to read:

C. The Office of Public Affairs (S5E).
Subchapter S5E *The Office of Governmental Affairs* Change the organizational title from the Office of Governmental Affairs to the Office of Public Affairs.

Section S5E.00 *The Office of Governmental Affairs—(Mission):*

Change the organizational title from the Office of Governmental Affairs to the Office of Public Affairs.

Section S5E.10 *The Office of Governmental Affairs—(Organization):*

Change the Section and Subsection A., B. and C. to read:

Section S5E.10 *The Office of Public Affairs—(Organization):*

OPA, under the leadership of the Associate Commissioner for Public Affairs, includes:

A. The Associate Commissioner for Public Affairs (S5E).

B. The Deputy Associate Commissioner for Public Affairs (S5E).

C. The Immediate Office of the Associate Commissioner for Public Affairs (S5E). Section S5E.20 *The Office of Governmental Affairs—(Functions):*
Change the Section and Subsections A, B, C and G to read:

Section S5E.20 *The Office of Public Affairs—(Functions):*

A. The Associate Commissioner for Public Affairs (S5E) is directly responsible to the Deputy Commissioner, Policy and External Affairs (DCPEA), for carrying out OPA's mission and provides managerial direction to the major components of OPA.

B. The Deputy Associate Commissioner for Public Affairs (S5E) assists the Associate Commissioner in carrying out his/her responsibilities and performs other duties as the Associate Commissioner may prescribe.

C. The Immediate Office of the Associate Commissioner for Public Affairs (S5E) provides the Associate Commissioner and Deputy Associate Commissioner with staff assistance on the full range of their responsibilities.

G. The Office of External Affairs (S5EM)—Change the reference in Subsection G.4.b line 4 from OGA to OPA.

Section S5R.20 *The Office of Policy—(Functions):*

F. *The Office of International Policy:*
Change Line 6 of Section F to read
"SSA's OPA, with other public and

G. *The Office of Regulations:*
Change Line 12 of Section G to read
"SSA's OPA, negotiates with other

Dated: May 22, 1989.

Louis W. Sullivan,
Secretary of Health and Human Services.
[FR Doc. 89-13028 Filed 5-31-89; 8:45 am]
BILLING CODE 4160-11-M

Alcohol, Drug Abuse, and Mental Health Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies

AGENCY: National Institute on Drug Abuse.

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11986). A similar notice listing all currently certified laboratories will be published bi-monthly, and updated to include laboratories which subsequently apply and complete the certification process. If any listed laboratory fails to maintain its certification, it will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

FOR FURTHER INFORMATION CONTACT: Division of Applied Research (formerly the Office of Workplace Initiatives), National Institute on Drug Abuse, Room 10A-53, 5600 Fishers Lane, Rockville, Maryland 20857.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Pub. L. 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections. In

accordance with Subpart C of the Guidelines, the following laboratories meet the standards set forth in the Guidelines:

(Submitted for publication in the *Federal Register* on June 1, 1989.)

American BioTest Laboratories, Inc.,
3350 Scott Boulevard, Building 15,
Santa Clara, CA 95054, 408-727-5525
American Medical Laboratories, 11091
Main Street, P.O. Box 188, Fairfax, VA
22030, 703-691-9100

Bio-Analytical Technologies, 2356 North
Lincoln Ave., Chicago, IL 60614, 312-
880-6900

Center For Human Toxicology, 417
Wakara Way, Rm. 290, University
Research Park, Salt Lake City, UT
84108, 801-581-5117

Chem-Bio Corporation, 140 E. Ryan
Road, Oak Creek WI 53154, 800-365-
3840

CompuChem Laboratories, Inc., Western
Division, 600 West North Market
Boulevard, Sacramento, CA 95834,
916-923-0840, (name changed:
formerly ChemWest, Analytical
Laboratories, Inc.)

CompuChem Laboratories, Inc., 3308
Chapel Hill/Nelson Hwy., P.O. Box
12652, Research Triangle Park, NC
27709, 919-549-8263

Doctors and Physicians Laboratory, 801
E. Dixie Ave., Leesburg, FL 32748, 904-
787-9006

Laboratory of Pathology of Seattle, Inc.,
1229 Madison Street, Suite 500,
Nordstrom Medical Tower, Seattle,
WA 98104 206-386-2672

Med Arts/South Community Hospital,
1001 Southwest 44th Street, Oklahoma
City, OK 73109, 405-636-7041

MetPath, Inc., 1355 Mittel Boulevard,
Wood Dale, IL 60191, 313-595-3888

MetPath, Inc., One Malcolm Ave.,
Teterboro, NJ 07608, 201-393-5000

MedTox Laboratories, Inc., 402 West
County Road D, St. Paul, MN 55112,
612-636-7466

National Center for Forensic Science, A
Division of Maryland Medical
Laboratory, Inc., 1901 Sulphur Spring
Road, Baltimore, MD 21227, 301-247-
9100, (name changed: formerly
Maryland Medical Laboratories, Inc.)

Nichols Institute, 7323 Engineer Road,
San Diego, CA 92111, 619-278-5900

Northwest Toxicology, Inc., 1141 East
3900 South, Salt Lake City, UT 84124,
800-322-3361

PharmChem Laboratories, Inc., 3925
Bohannon Drive, Menlo Park, CA
94025, 415-328-6200

Poisonlab, Inc., 7272 Clairemont Mesa
Road, San Diego, CA 92111, 619-279-
2600

Roche Biomedical Laboratories, 6370
Wilcox Road, Dublin, OH 43017, 614-
889-1061

SmithKline Bio-Science Laboratories,
2201 W. Campbell Park Drive,
Chicago, IL 60612, 312-885-2010,
(name changed: formerly International
Toxicology Laboratories, Inc.)

SmithKline Bio-Science Laboratories,
8000 Sovereign Row, Dallas, TX 75247,
(name changed: formerly International
Clinical Laboratories), 214-638-1301

South Bend Medical Foundation, Inc.,
530 North Lafayette Blvd., South Bend,
IN 46601, 219-234-4176

Southgate Medical Laboratory, Inc.,
21100 Southgate Park Boulevard,
Cleveland, OH 44137, 800-338-0166

Richard A. Millstein,
Deputy Director, National Institute on Drug
Abuse.

[FR Doc. 89-12962 Filed 5-31-89; 8:45 am]
BILLING CODE 4160-20-M

Advisory Committee Meeting in June

AGENCY: Alcohol, Drug Abuse, and
Mental Health Administration, HHS.

ACTION: Correction of meeting notice.

SUMMARY: Public notice was given in the *Federal Register* on May 15, 1989, Volume 54, No. 92, on page 20924 that the Drug Abuse Epidemiology and Prevention Research Review Committee would meet on June 19-22. The meetings will take place June 19-23.

Date: May 25, 1989.

Peggy W. Cockrill,
Committee Management Officer, Alcohol,
Drug Abuse, and Mental Health
Administration.

[FR Doc. 89-12976 Filed 5-31-89; 8:45 am]
BILLING CODE 4160-20-M

Advisory Committee Meeting in June

AGENCY: Alcohol, Drug Abuse, and
Mental Health Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of the forthcoming meeting of one of the agency's initial review committees in the month of June 1989. This committee will be performing initial review of applications for Federal assistance. Therefore, portions of the meeting will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d). Notice of this meeting is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Biochemistry Research Subcommittee of the Drug Abuse Biomedical Research Review Committee, NIDA

Date and Time: June 13-14: 8:30 a.m.
Place: Rockville Room, Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852

Status of Meeting: Open—June 13: 8:30-9:00 a.m. Closed—Otherwise.

Contact: Rita Liu, Room 10-42, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-2820

Purpose: The committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Substantive information, summary of the meeting, and roster of committee members may be obtained as follows: Ms. Camilla Holland, NIDA Committee Management Officer, Room 10-42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2620.

Date: May 25, 1989.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-12975 Filed 5-31-89; 8:45 am]

BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 89F-0157]

Ciba-Gelgy Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration is announcing that Ciba-Gelgy Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 2-methyl-4,6-bis[(octylthio)methyl] phenol as a stabilizer for polymers used as adhesives, gaskets, cements, repeat-use rubber articles and paper additives in contact with food.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4144) has been filed by Ciba-

Gelgy Corp., 7 Skyline Drive, Hawthorne, NY 1052-2188, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 2-methyl-4,6-bis[(octylthio)methyl] phenol as a stabilizer for polymers used as adhesives, gaskets, cements, repeat-use rubber articles and paper additives in contact with food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated: May 19, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-12979 Filed 5-31-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89F-0167]

Michelman, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Michelman, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of the partial sodium salt of ethylene-acrylic acid copolymer as an adhesive component in laminates that contact dry food.

FOR FURTHER INFORMATION CONTACT: Edward J. Machuga, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (section 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAR 9B4148) has been filed by Michelman, Inc., Cincinnati, OH 45236, proposing that § 175.105 *Adhesives* be amended to provide for the safe use of the partial sodium salt of ethylene-acrylic acid copolymer as an adhesive component in laminates that contact dry food.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and

this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated: May 19, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-12980 Filed 5-31-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

[BERC-394-FN]

Medicare Program; Additions and Deletions From the Current List of Covered Surgical Procedures for Ambulatory Surgical Centers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice.

SUMMARY: This final notice announces additions and deletions to the current list of surgical procedures for which facility services are covered when the procedures are performed in an ambulatory surgical center (ASC). We are adding one procedure and deleting 48 procedures. The changes contained in this final notice result from our consideration of the public comments received in response to a proposed notice published on August 11, 1987 and from analysis of more recent data and subsequent consultation with medical organizations and professional societies.

This notice implements section 1833(i)(1) of the Social Security Act, as amended by section 9343 of the Omnibus Budget Reconciliation Act of 1986 that requires, in part, that the list of covered ASC procedures be reviewed and updated every 2 years.

EFFECTIVE DATES: For ASC procedures that are being removed from the current list, the effective date is August 30, 1989. The effective date for procedures being added to the list is July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Rita McGrath, (301) 966-4835.

SUPPLEMENTARY INFORMATION:

1. Background

Section 934 of Pub. L. 96-499, the Omnibus Reconciliation Act of 1980, amended Title XVIII of the Social Security Act (the Act) to authorize Medicare Part B coverage for facility services furnished in connection with certain surgical procedures performed in an ambulatory surgical center (ASC).

With respect to the surgical procedures covered under this provision, section 1833(i)(1) of the Act requires the Secretary to specify, in consultation with appropriate medical organizations, surgical procedures that, although appropriately performed in an inpatient hospital setting, can also be performed safely on an ambulatory basis. The report accompanying the legislation (Report of the Committee on the Budget to Accompany H.R. 7765, H.R. Rep. No. 96-1167, 96th Cong., 2d Sess. 390 (1980)) explained that Congress intended that procedures currently performed on an ambulatory basis, especially in physicians' offices, that do not generally require the more elaborate facilities of an ASC, should not be included on the list of covered procedures.

In line with this Congressional intent, our current regulations specify the following four requirements regarding the range of covered services:

1. Procedures on the list are to be those commonly performed on an inpatient basis but which also may be safely performed in an ambulatory surgical facility (42 CFR 416.65(a)(1)).

2. The list is to exclude procedures that are commonly performed, or that may be safely performed, in physicians' offices (§ 416.65(a)(2)).

3. Procedures are limited to those requiring a dedicated operating room and generally not requiring an overnight stay (§ 416.65(a)(3)).

4. The list may not contain procedures excluded from Medicare coverage (§ 416.65(a)(4)).

The list of covered procedures merely indicates procedures for which payment may be made if performed in the ASC. It does not require that these procedures be performed in an ASC, nor is any special review or justification required if listed procedures are performed on a hospital inpatient basis. The choice of operating site remains a matter for the professional judgment of the patient's physician who appropriately may decide that a procedure on the list may be safely performed only on an inpatient basis.

Section 1833(i)(2)(A) of the Act, as amended by section 9343 of the Omnibus Budget Reconciliation Act of 1986 (Pub. L. 99-509), provides that by July 1, 1987, and annually thereafter, the Secretary must review and update ASC payment rates. In addition, section 1833(i)(1) provides that the list of procedures must have been reviewed and updated every 2 years. Since the current list of covered procedures was published April 21, 1987, we must update that list by April 21, 1989.

Currently, ASC covered procedures are classified according to a four group

payment classification system, as follows:

Group 1—\$274

Group 2—\$328

Group 3—\$351

Group 4—\$399

The ASC facility payment for all procedures in each group is at a single rate adjusted for geographic variation. This prospectively determined facility group rate does not include physicians' fees and other medical items and services (for example, prosthetic devices, except intraocular lenses) for which separate payment is authorized under other provisions of the Medicare program. Rather, the rate is a standard overhead amount which covers the cost of services such as nursing, supplies, equipment and use of the facility.

As required by section 1833(i) of the Act, we reviewed the ASC payment rates and proposed revisions to the rates and reimbursement methodology in the August 18, 1988 *Federal Register* (53 FR 31468).

Also, in accordance with section 1833(i) of the Act, the latest update to the list of covered ASC procedures was published in the *Federal Register* on April 21, 1987 (52 FR 13176). The update supplemented the original list of covered ASC procedures published on August 5, 1982 (47 FR 34099). Further, on August 11, 1987, we published a proposed notice (52 FR 29729) that announced proposed additions to and deletions from the list.

II. Provisions of the Proposed Notice

In the proposed notice, we announced proposed additions and deletions to the current list of surgical procedures for which facility services are covered when the procedures are performed in an ASC. The proposed deletions were based on analysis of new data that showed that some of the surgical procedures on the existing ASC list did not meet the criteria that they be commonly performed on an inpatient basis in hospitals or not be commonly performed in physicians' offices. In the notice, we also solicited public comments on additional procedures to be added to the current list of approved ASC procedures and specifically invited comments on extracorporeal shock wave lithotripsy.

We evaluated the usual site of service surgical procedures considered for coverage under the ASC benefit based on the Part B Medicare Data files (BMAD), which are maintained centrally as a component of the Medicare statistical system. One of the BMAD files is the procedure file, from which source data are extracted to create an array of every procedure code used by

each carrier in processing Medicare claims. The procedure file includes such data elements as frequency, submitted charges, allowed charges, and denied services. These variables can be arrayed for each procedure code by site of service (for example, physician's office, ASC, inpatient hospital, outpatient hospital) and by type of service (for example, surgical service).

The procedure file is constructed from 100 percent of the bills processed annually by carriers reporting procedures using the HCFA Common Procedure Coding System (HCPCS). The source data that we used in assessing site of service were claims processed in calendar year 1984. The 1984 file excluded claims processed by carriers servicing Texas, Utah, Michigan, Georgia, and New Jersey because in that year those carriers did not report using HCPCS codes.

When we arrayed currently covered ASC services by site of service, we found that many of them were not commonly furnished on an inpatient basis or were furnished in physicians' offices a majority of the time. Based on these data, it would be contrary to our regulations and program objectives to continue to cover them when performed in an ASC. We decided that if a procedure is performed on an inpatient basis 20 percent of the time or less, or in physicians' offices 50 percent of the time or more, it should not be covered in an ASC. Subsequently, we identified 70 procedure codes that we proposed to delete.

III. Discussion of Public Comments on the Proposed Notice

We received 927 pieces of timely correspondence, most of which expressed opposition to the deletion of one or more of the procedures from the list. Many of the general comments expressed support for ASCs.

Approximately 400 comments were deleted from urologists and their patients, all opposed to the deletion of CPT code 52000, cystourethroscopy. The next largest group writing in opposition to the deletions were practicing podiatrists and podiatric medical students, the latter sending a signed petition. The remaining comments were spread among plastic surgeons, orthopedic surgeons, ophthalmologists, otolaryngologists, thoracic surgeons, hand surgeons, obstetricians/gynecologists, pathologists, and dentists. In addition, ASCs, hospitals and a lithotripsy center submitted comments.

The commenters' objections to many of our proposed deletions were supported by our subsequent analysis of

Medicare claims data processed in calendar year 1988. As a result of the analysis of this more recent complete billing data, we are retaining 22 of the 70 CPT-4 codes originally proposed for deletion. A summary of the comments, and our responses to them, follow:

A. Impact on Rural Areas

Comment: Several commenters expressed concern that the proposal would adversely affect rural health care because (1) elderly patients would be required to travel long distances to receive services that would no longer be available locally; (2) rural hospitals would lose income which would affect their ability to provide comprehensive care; and (3) the availability of health care in rural areas would be decreased if facilities for these procedures were unavailable. Also, it was suggested that the increased cost of providing the services in an urban area would negate any advantage gained.

Response: We believe the commenters overestimate the impact of the proposed deletions on ASCs and, to some extent, misunderstand the effect of deleting the procedures. First, the deletion of 48 procedures, mostly of the integumentary system, will not have a significant financial impact on an individual ASC. This is a small number of procedures to be deleted, especially in light of the approximate 1300 procedures that were added to the list of covered ASC procedures on April 21, 1987 (52 FR 13176). Second, since the deletion of a given procedure from HCFA's list does not mean that it may no longer be performed in an ASC (although the ASC would receive no facility fee for the procedure's performance) or in a hospital outpatient department, it is incorrect to assume that elderly patients will need to travel to urban areas to receive care.

B. Impact on Hospitals

Comment: Several commenters expressed concern that if a procedure was deleted from the ASC list, then no reimbursement would be made for the procedure in the hospital outpatient department since the outpatient department is paid for ASC listed procedures using ASC reimbursement guidelines. Others believed that rural hospitals would be forced to create a separate and distinct ASC in order to be reimbursed.

Response: As noted in our response to comments on the impact of our proposal on rural areas, we believe that the commenters misunderstand the effect of deleting a procedure from the list. The deletion of a procedure simply means that an ASC will no longer receive a

facility fee for the performance of that procedure. It does not mean that hospitals will not be paid for performing the procedure in their outpatient departments. Payment for the performance of deleted procedures will be made to hospital outpatient departments on a reasonable cost basis. Hospitals do not need to build distinct and separate ASCs in order to be paid for performing procedures on the list.

C. Impact on Physicians' Offices

Comment: Some physicians expressed concern that the performance of several of the procedures proposed for deletion would be inappropriate if performed in an office setting because office surgical facilities are totally unregulated.

Response: We believe that the commenters are expressing concern that procedures performed in physicians' offices are not subject to the same quality of care and medical necessity reviews as are procedures performed in hospitals and ASCs. While that is true, we note that the deletion of a procedure from the ASC list does not mean it must be performed in a physician's office. We expect physicians to select the appropriate setting for the performance of any procedure, taking into account the circumstances of a particular patient.

Comment: Several physicians expressed concern that the performance of a procedure under general or spinal anesthesia in the office would require extensive equipping and additional special staff and that monitored anesthesia would be an additional liability.

Response: As noted above, we are not mandating that these procedures be performed in the office setting. Further, we are not precluding their performance in an ASC. The deletion of a procedure from the list simply means that the ASC will not be paid a facility fee for the performance of the procedure. The physician would continue to be paid on a reasonable charge basis regardless of the setting in which the procedure was performed (office, ASC, or hospital).

Comment: Several commenters noted that there is no additional facility fee paid to a physician's office and that the cost incurred for the performance of a procedure deleted from the ASC list would be borne directly by the physician and would result in a substantial loss each time a Medicare patient is treated. Commenters alleged that if the proposed deletions occurred, physicians would incur expenditures to (1) remodel and redesign areas in their offices; (2) maintain emergency supplies and equipment; (3) hire trained personnel; and (4) purchase sterile

equipment and supplies. It was argued that this would lead to an unnecessary duplication of services already available at ASCs.

Response: First, as noted above, HCFA does not mandate that any surgery be performed in the office. Second, our billing data indicate that most of the procedures we are deleting from the list are routinely performed in physicians' offices. Although there are undoubtedly additional costs associated with the performance of these procedures in the office, we do not believe that they result in substantial losses given the extent to which physicians already perform them without additional payments over and above their professional fees.

D. Threshold Rule

Comment: Many commenters objected to our decision to delete from the ASC list any procedure that is performed on an inpatient basis 20 percent of the time or less or in physicians' offices 50 percent of the time or more. It was argued that the threshold rule is arbitrary and that its application would reduce the cost savings associated with ASCs.

Response: We acknowledge that the threshold levels are, to some extent, judgmental and that other levels (higher, or lower) could have been selected. We decided that the fairest and least arguable level for "commonly performed in physicians' offices" would be 50 percent or higher. We rejected the application of a 50 percent level for "commonly performed on an inpatient basis" because that level would have led to a much greater number of deletions and because we recognized that in the past few years, more and more procedures that had been done on an inpatient basis are now being done on an outpatient basis. We recognize that the deletion of procedures from the list will have some effect on ASCs. However, to be consistent with Congressional intent and our regulations, we are obliged to assure that the list excludes procedures that are commonly performed in physicians' offices or not commonly performed on an inpatient basis.

We note that the threshold levels are intended to be general guidelines rather than absolute cut-off points. In some situations, we have made exceptions and not deleted procedures that would have been deleted by a strict application of the threshold rule. Such exceptions have been made in cases where the high level of ASC utilization has itself depressed the inpatient rate below the 20 percent level. In addition, some

procedures have remained on the approved list in order to maintain a clinically consistent approach. In some other cases, with borderline data, we accepted the comments of those arguing that quality of care could be threatened if the procedures were deleted from the ASC approved list.

E. Billing Data—(Deletions)

Comment: Several commenters questioned the validity of the BMAD file noting that the "place of service" indicator on a billing form may not be correctly completed since it does not affect payment. Others questioned the appropriateness of analyzing 1984 data that did not include information from all carriers.

Response: We acknowledge that the place of service indicator in the 1984 BMAD file was not validated. However, it was the best available information at the time the proposed notice was published and, to a large extent, contained information provided by physicians or their staff. Therefore, we are reasonably confident that it contained accurate information. Since the publication of the proposed notice, more recent and complete information has become available. We analyzed the 1985 and 1986 BMAD files which include information from all the carriers, and found that several of the procedures that we had proposed for deletion were not performed as frequently in physicians' offices as the 1984 BMAD file data suggested. Where these more current data were consistent with the comments we received, we retained the procedures on the list. We provide an analysis of the data and our response to comments for each of the proposed deletions in the following sections. We did not receive specific comments on every individual procedure code. However, since many of the commenters objected, in general, to the deletion of any procedures, we will provide the basis of our final decision for each of the individual procedures.

1. Integumentary System

a. *Excision of skin tags (procedure codes 11200 and 11201):* No specific comments were received on these procedures. BMAD data for 1986 indicate that these procedures are performed over 90 percent of the time in physicians' office. Therefore, they are deleted.

b. *Excision of benign lesions (procedure codes 11401, 11402, 11403, 11404, 11421, 11422, 11423, 11441, 11442, 11443, and 11444):* Several commenters objected to the proposed deletion of excisions of lesions of greater than 2.0 cm diameter. In particular, concern was expressed over the removal of larger

lesions of the face and genitalia in an office setting. MVAD data for 1988 indicate that all of the proposed deletions are performed less than 5 percent of the time on an inpatient basis and more than 60 percent of the time in physicians' offices. Therefore, they are deleted. It is possible that the commenters' views that larger lesions of the genitalia and face should not be removed in an office setting would be supported if the data were based on more precise CPT-4 codes. For instance, procedure code 11444 includes lesions of the eyelids, ears, nose, lips and mucus membranes in addition to the face. At the present time, we have no means of distinguishing the specific site of the lesions that are excised. We will explore other methods to distinguish these procedures (for example, link narrative diagnosis and procedure codes). In the interim, however, the procedures will be deleted from the list based on BMAD data for 1986.

c. *Excision of malignant lesions (procedure codes 11600, 11601, 11602, 11603, 11604, 11620, 11621, 11622, 11623, 11624, 11640, 11641, 11642, 11643, and 11644):* The most frequently received comments were from urologists who expressed opposition to the deletion of excisions of malignant lesions of the scalp, neck, hands, feet and genitalia (procedure codes 11620 through 11624) because of their concern that malignant lesions of the male genitalia cannot be easily or safely performed in an office setting. Other commenters felt that skin lesions of any size that might be malignant should remain on the list because a frozen section diagnosis might be required. BMAD data for 1986 indicate that malignant lesions are excised more frequently on an inpatient basis than are benign lesions. All of the proposed deletions are performed 55-85 percent of the time in physicians' offices. As with benign lesions, we note the difficulty in distinguishing the location of lesions through the procedure codes that combine several locations in a single code. We will explore other methods of distinguishing the precise location of the lesions. In the interim, however, the procedures will be deleted from the list based on BMAD data for 1986. We note again that the deletion of these procedures from the ASC list does not mean that they must be performed in an office setting. If a physician believes that his office is not adequately equipped or staffed to perform a given procedure safely, the physician should arrange to perform the procedure in a setting appropriate to the patient's needs.

d. *Excision of nail and nail matrix, partial or complete, for permanent*

removal (procedure code 11750): No specific comments were received on this procedure. BMAD data for 1986 indicate that it is performed over 80 percent of the time in physicians' offices. Therefore, it is deleted.

2. Musculoskeletal System

a. *Treatment of closed or open nasal fracture without manipulation (procedure code 21310):* No specific comments were received on this procedure. BMAD data for 1986 indicate that although it is performed 16 percent of the time on an inpatient basis, it is performed less than 50 percent of the time in physicians' offices. Therefore, it will not be deleted from the list.

b. *Tenotomy, hand or finger (procedure codes 26060 and 26460):* No specific comments were received. BMAD data for 1986 indicate that these procedures are performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. Therefore, they will not be deleted from the list.

c. *Tenotomy procedures, foot or toe (procedure codes 28010, 28011, 28230, 28232, 28234, and 28240):* For these and the other foot and toe procedures discussed below, many comments were received expressing concern that deleting the procedures would adversely affect quality of care. In particular, podiatrists were concerned that the deletion of a procedure from the list would force podiatrists to attempt the procedure in their offices where the appropriate staff and equipment might not be available. Commenters stated that ASCs would not permit podiatrists to use their facilities if a facility payment was not available and that many podiatrists do not have the option of using hospital outpatient departments since surgical privileges are not available to podiatrists in many parts of the country. Several orthopedic surgeons also objected to the deletion of the procedures but for different reasons. They claimed that the data were skewed by the podiatrists who frequently perform the procedures in their offices. They also indicated that for reasons of quality this was inappropriate and that the procedures can be performed safely only in an ASC or hospital. We acknowledge that podiatrists in some areas of the country may be unable to obtain surgical privileges at their local hospital, although we believe that this problem is diminishing with time. In response to the concern that the podiatrists are skewing the data, we performed a special analysis that confirmed that podiatrists perform in their offices the foot and toe procedures

proposed for deletion more frequently than other practitioners. However, we have no evidence that the quality of care provided in an office setting (by podiatrists or some orthopedic surgeons) is less than that provided in an ASC or hospital outpatient department. Also, BMAD data for 1986 indicate that all the tenotomies proposed for deletion are performed in an office setting between 54-77 percent of the time. Therefore, they are deleted.

d. *Osteotomy procedures (procedure codes 26567, 28306, 28308, 28310, and 28312)*: The comments received on the proposed deletion of osteotomy procedures were comparable to those received on tenotomies. Unlike tenotomies, however, the more recent BMAD data for 1986 indicate that, with the exception of an osteotomy of the proximal phalanx of the first toe (procedure code 28310) and osteotomy of other phalanges, any toe (procedure code 28312), all the osteotomy procedures proposed for deletion are performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. Data on procedure codes 28310 and 28312 indicate that they are performed 18 and 25 percent of the time on an inpatient basis and 54 and 51 percent of the time in physicians' offices, respectively. In light of the comments received, the more recent data, and for the sake of clinical consistency, all of the osteotomy procedures that had been proposed for deletion will be retained on the list.

e. *Fasciotomy, plantar and/or toe, subcutaneous (procedure code 282008)*: No specific comments were received on this procedure. BMAD data for 1986 indicate that it is performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. Therefore, it will not be deleted from the list.

f. *Repair of suture of tendon, foot, flexor, single (procedure code 28200)*: No specific comments were received on this procedure. BMAD data for 1986 indicate that it is performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. Therefore, it will not be deleted from the list.

g. *Capsulotomy, midtarsal (Heyman type procedure) (procedure code 28264)*: No specific comments were received on this procedure. BMAD data for 1985 indicate that it is performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. Therefore, it will not be deleted from the list.

h. *Capsulotomy for contracture, metatarsophalangeal joint (procedure*

code 28270) and interphalangeal joint (procedure code 28272): No specific comments were received on this procedure. BMAD data for 1986 indicate that these procedures are performed over 70 percent of the time in physicians' offices. Therefore, they are deleted.

i. *Hammertoe procedures (procedure code 28285 and 28286)*: No specific comments were received on this procedure. BMAD data for 1986 indicate that these procedures are performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. Therefore, they will not be deleted from the list.

3. Respiratory System

a. *Repair nasal septal perforations (procedure code 30630)*: Several commenters objected to the deletion of this procedure which, in their opinion, should not be performed in an office setting. BMAD data for 1986 support the comments, indicating that this procedure is performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. Therefore, it will not be deleted from the list.

b. *Laryngoscopy procedures (procedure code 31505, 31510, and 31525)*: Several commenters objected to the deletion of these procedures, which in their opinion, are rarely performed as office procedures and are invariably done in a surgical setting. BMAD data for 1986 indicate that laryngoscopy, indirect, with biopsy (procedure code 31510) is commonly performed on an inpatient basis and not commonly performed in physicians' offices. Therefore, (procedure code 31510) will not be deleted from the list. BMAD data for 1986 indicate that direct laryngoscopies, diagnostic (procedure code 31525) are performed 53 percent of the time in physicians' offices. However, in light of the comments received and in view of the fact that comparable procedures (for example, procedure codes 31526 and 31527) will not be deleted from the list, procedure code 31525 will not be deleted. Because the data indicate that indirect diagnostic laryngoscopies (procedure code 31505) are performed more than 79 percent of the time in physicians' offices, procedure code 31505 will be deleted from the list.

4. Digestive System

a. *Biopsy of Tongue (procedure code 41100)*: No specific comments were received on this procedure. BMAD data for 1986 indicate that it is performed less than 20 percent of the time on an

inpatient basis and less than 66 percent of the time in physicians' offices. Therefore, it will be deleted from the list.

b. *Dilation of rectal stricture under anesthesia other than local (procedure code 45910)*: Several commenters objected to the deletion of this procedure noting that anesthesia is required and that physicians' offices are not equipped to provide this service. BMAD data for 1986 support the comments, indicating that this procedure is performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. Therefore, it will not be deleted from the list.

5. Urinary System

a. *Cystourethroscopy (procedure code 52000)*: Objections to the proposed deletion of this procedure were received from more than 400 commenters who indicated that the procedure is inappropriate (particularly for male patients) for the office setting. Specifically cited reasons for opposition were (1) quality of care could not be assured in an office setting; (2) anesthesia is frequently required and should not be administered in a physician's office; and (3) greater expense to the Medicare program as a result of a shift from the ASCs to hospital outpatient departments. BMAD data for 1986 indicate that cystourethroscopy is performed more than 20 percent of the time on an inpatient basis. Although it is performed 52 percent of the time in physicians' offices, in light of the comments received, it will not be deleted from the list.

b. *Urethral dilation procedures (procedure codes 53600, 53601, 53620, 53621, 53660, 53661, and 53665)*: Many commenters objected to the deletion of these procedures claiming that our proposal was arbitrary, capricious, and inconsistent with the practice of quality medicine. Several commenters noted that the performance of procedure code 53665 required general or spinal anesthesia that would be inappropriate in an office setting. We accept that comment since it is supported by the BMAD data for 1986 and will retain procedure code 53665 on the list. However, we have not accepted the other comments since the BMAD data for 1986 indicate that between 69 percent and 98 percent of the other procedures are performed in physicians' offices. Therefore, procedure codes 53600, 53601, 53620, 53621, 53660 and 53661 are deleted from the list.

6. Female Genital System

Dilation of vagina under anesthesia (procedure code 57400): Several commenters objected to the deletion of this procedure noting that anesthesia is required and that physicians' offices are not equipped to provide this service. BMAD data for 1986 support the comments indicating that this procedure is performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. Therefore, it will not be deleted from the list.

7. Eye and Ocular Adnexa

a. *Discussion of lens capsule (procedure code 66800)*: No specific comments were received on this procedure. BMAD data for 1986 indicate that it is performed less than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physicians' offices. However, although it is not commonly performed on an inpatient basis, the data indicate that it is performed 30 percent of the time in an ASC. Therefore, it will not be deleted from the list.

b. *Excision of chalazion (procedure code 67801)*: One commenter objected to the deletion of this procedure and noted that the occurrence of a multiple lesions in an infant or child would require general anesthesia that could not be provided in a physician's office. BMAD data for 1986 indicate that this procedure is performed 87 percent of the time in physicians' offices. Therefore, it will be deleted from the list. We note that the proper procedure code for the case described by the commenter is not procedure code 67801, but procedure code 67808 (excision of chalazion under general anesthesia and/or requiring hospitalization, single or multiple). This procedure code (67808) is on the list of covered ASC procedures.

c. *Plastic repair of canaliculi (procedure code 68700)*: No specific comments were received on this procedure. BMAD data for 1986 indicate that it is performed less than 20 percent of the time on an inpatient basis and approximately 50 percent of the time in physicians' offices. Although it is not commonly performed on an inpatient basis, the data indicate that it is performed 10 percent of the time in an ASC. Therefore, it will not be deleted from the list.

d. *Probing of nasolacrimal duct with insertion of tube or stent (procedure code 68830)*: No specific comments were received on this procedure. BMAD data for 1986 indicate that it is performed 7 percent of the time on an inpatient basis and 68 percent of the time in physicians'

offices. Therefore, it will be deleted from the list.

8. Auditory System

Myringotomy including aspiration and/or eustachian tube inflation (procedure code 69420): Two commenters objected to the proposed deletion because it would then be performed as an inpatient procedure where costs would be higher. They noted that the procedure is not properly done in a physician's office, since a biopsy of the nasopharynx should be done before placing a tube in the ear of an elderly patient. It was argued that unilateral hearing loss in an elderly patient should be considered an indication of malignancy until proven otherwise. Another commenter noted that two different procedures are included under procedure code 69420 (Myringotomy and/or eustachian tube inflation) and that the former is an operating room procedure and the latter an office procedure. We believe that procedure 69420 is being performed for other indications in addition to that of hearing loss since the BMAD data for 1986 indicate that more than 84 percent are performed in physicians' offices. Also, as we noted in our response under the integumentary system, we are unable to distinguish between two procedures that are included in the description of a single CPT-4 code. In view of the high physician office frequency, this procedure will be deleted from the list.

F. Additions

In addition to the list of proposed deletions that was included in our proposed notice, we specifically requested comments on additions to the ASC list. In particular, we sought comments on the addition of extracorporeal shock wave lithotripsy (ESWL) because we had received several requests for the addition of this procedure after the close of the comment period for our proposed notice published on February 16, 1984 (49 FR 6023) on which we based our April 21, 1987 (52 FR 13176) expansion of the list of covered procedures.

1. Extracorporeal Shock Wave Lithotripsy

Comment: Commenters were divided in their recommendations for ESWL (procedure code 50590). Many of those in favor of adding the procedure to the list did not provide a specific rationale for their recommendation. On the other hand, those opposed, while fewer in number, provided specific objections to adding the procedure to the list. A State urological association indicated that the

procedure carries with it the dangers of hemorrhage and infection and that it should be considered an inpatient procedure. Another commenter indicated that the procedure should be done on an inpatient basis and an overnight stay required because of the possibility of complications and the need of close monitoring. Another indicated that ESWL was appropriate for outpatient use in younger patients with small stones.

Response: We agree with the commenters who believe that the outpatient utilization of ESWL (procedure code 50590) is only safe with a carefully selected patient population, and that it will continue to be an inpatient procedure for the majority of Medicare patients. In view of the concerns over safety that were raised by several commenters and in considering our data, which indicate that ESWL is still most often an inpatient procedure, we have decided not to add it to the list at this time. As more information and data on the safety of ESWL become available, we will continue to evaluate the appropriateness of adding this procedure to the ASC list. In addition to our concerns about safety based on the comments received, we are not yet convinced that ESWL can be categorized as a "surgical" procedure. We note that this decision does not mean that ESWL can be covered only when performed on an inpatient basis. For certain patients, ESWL can be performed safely on an outpatient basis. The choice of site remains a matter for the professional judgment of the patient's physician.

2. Dental Procedures

Comment: One commenter suggested that dental cases requiring general anesthesia should be added to the list.

Response: Section 1862(a)(12) of the Act excludes from coverage any services in connection with the care, treatment, filling, removal, or replacement of teeth or structures directly supporting the teeth. The ASC regulations at § 418.65 prohibit the inclusion of noncovered services on the list of covered services. Therefore, dental cases requiring general anesthesia cannot be added to the list.

3. Laser Procedures

Comment: Two commenters recommended adding procedures to the list that required the use of a surgical laser and specifically recommended the addition of retinal detachment repair (procedure code 67105) and prophylaxis of retinal detachment (procedure code 67145).

Response: A laser may be used for any surgical procedure on the ASC list provided that the Food and Drug Administration (FDA) has approved the use of the laser for that particular procedure. With a few exceptions, the procedures contained in CPT-4 do not specify the use of a laser. Procedure codes 67105 and 67145 are two of those exceptions. We reviewed BMAD data for 1986 that indicate that procedure code 67105 (retinal detachment repair) is performed more than 20 percent of the time on an inpatient basis and less than 50 percent of the time in physician offices. Therefore, it will be added to the list. On the other hand, procedure code 67145 (prophylaxis of retinal detachment) is performed less than 10 percent of the time on an inpatient basis and over 50 percent of the time in physician's offices. Therefore, it will not be added to the list.

4. Arthroscopy

Comment: One commenter recommended adding procedure codes 23356, 23357, and 23358 to the list.

Response: These three codes describe arthroscopic procedures of the shoulder. They were deleted from the CPT-4 in 1986 and replaced by procedure codes 29815 through 29825. Because there is not a one-to-one correlation with the new codes and we will not have a full year of data to review until BMAD data for 1987 are available, we will not add these procedures at this time. They will be considered when the list is next updated.

IV. Provisions of the Final Notice

This notice is being issued to finalize the list of proposed additions and deletions that we published on August 11, 1987. Additionally, this notice fulfills the requirements of section 1833(i)(1)(A) of the Act that the list of ASC procedures be reviewed and updated no less than every 2 years.

A. Deletions

The following 48 codes will be deleted from the current ASC list:

Integumentary System

- 11200 Excision (including simple closure or ligature strangulation), skin tags, multiple fibrocuteaneous tags, any area: up to 15
- 11201 each additional ten lesions
- 11401 Excision, benign lesion, except skin tag (unless listed elsewhere), trunk, arms or legs; lesion diameter 0.6 to 1.0 cm
- 11402 lesion diameter 1.1 to 2.0 cm
- 11403 lesion diameter 2.1 to 3.0 cm
- 11404 lesion diameter 3.1 to 4.0 cm

- 11421 Excision, benign lesion, except skin tag (unless listed elsewhere), scalp, neck, hands, feet, genitalia, lesion diameter 0.6 to 1.0 cm
- 11422 lesion diameter 1.1 to 2.2 cm
- 11423 lesion diameter 2.1 to 3.0 cm
- 11441 Excision, other benign lesion (unless listed elsewhere), face, ears, eyelids, nose, lips, mucous membrane; lesion diameter 0.6 to 1.0 cm
- 11442 lesion diameter 1.1 to 2.0 cm
- 11443 lesion diameter 2.1 to 3.0 cm
- 11444 lesion diameter 3.1 to 4.0 cm
- 11600 Excision, malignant lesion, trunk, arms, or legs; lesion diameter up to 0.5 cm
- 11601 lesion diameter 0.6 to 1.0 cm
- 11602 lesion diameter 1.1 to 2.0 cm
- 11603 lesion diameter 2.1 to 3.0 cm
- 11604 lesion diameter 3.1 to 4.0 cm
- 11620 Excision, malignant lesion, scalp, neck, hands, feet, genitalia; lesion diameter up to 0.5 cm
- 11621 lesion diameter 0.6 to 1.0 cm
- 11622 lesion diameter 1.1 to 2.0 cm
- 11623 lesion diameter 2.1 to 3.0 cm
- 11624 lesion diameter 3.1 to 4.0 cm
- 11640 Excision, malignant lesion, face, ears, eyelids, nose, lips; lesion diameter up to 0.5 cm
- 11641 lesion diameter 0.6 to 1.0 cm
- 11642 lesion diameter 1.1 to 2.0 cm
- 11643 lesion diameter 2.1 to 3.0 cm
- 11644 lesion diameter 3.1 to 4.0 cm
- 11750 Excision of nail and nail matrix, partial or complete, (eg, ingrown or deformed nail) for permanent removal

Musculoskeletal

- 28010 Tenotomy, subcutaneous, toe; single
- 28011 multiple
- 28230 Tenotomy, open, flexor; foot, single or multiple (separate procedure)
- 28232 toe, single (separate procedure)
- 28234 Tenotomy, open, extensor, foot or toe
- 28240 Tenotomy lengthening, or release, abductor hallucis muscle
- 28270 Capsulotomy for contracture; metatarsophalangeal joint, with or without tenorrhaphy, single each joint (separate procedure)
- 28272 interphalangeal joint, single, each joint (separate procedure)

Respiratory System

- 31505 Laryngoscopy, indirect (separate procedure); diagnostic

Digestive System

- 41100 Biopsy of tongue

Urinary System

- 53600 Dilatation of urethral stricture by passage of sound or urethral dilator, male; initial
- 53601 subsequent
- 53620 Dilatation of urethral stricture by passage of filiform and follower, male; initial
- 53621 subsequent
- 53660 Dilatation of female urethra including suppository and/or instillation, initial
- 53661 subsequent

Eye and Ocular Adnexa

- 67801 Excision of chalazion; multiple, same lid
- 68830 Probing of nasolacrimal duct, with or without irrigation, unilateral or bilateral; with insertion of tube or stent

Auditory System

- 69420 Myringotomy including aspiration and/or eustachian tube inflation

B. Addition

The following will be added to the ASC list under payment Group 4:

Eye and Ocular Adnexa

- 67105 Repair of retinal detachment, photocoagulation (lasar of xenon arc, one or more sessions) with drainage of subretinal fluid

V. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any final notice that will produce effects meeting one of the E.O. criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of \$100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This final notice does not meet the \$100 million criterion nor do we believe that it meets the other E.O. 12291 criteria. Therefore, this final notice is not a major rule under E.O. 12291, and a final regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians, ASCs and hospitals are treated as small entities.

Although some commenters believed that the deletion of some procedures from the list of approved ASC procedures would have an adverse effect on some ASCs and hospitals, we pointed out in our responses to these commenters that dropping the procedures does not remove coverage for these procedures. It means only that we will not pay the facility amount that had been associated with the procedure (that is, the facility payment amount for one of the four payment groups into which the procedure had been classified).

Furthermore, in almost all instances of a procedure being deleted from the list of approved ASC procedures, fewer than one percent of the procedures were being performed in an ASC. The majority of cases involving deleted procedures were being treated in a physician's office. Thus, the effect of deleting the procedures listed in this document is expected to have only a slight economic effect on ASCs.

Although the effect of deleting the procedures listed in this notice is expected to be small, there may be a slight benefit to hospital outpatient departments. Approved ASC procedures performed in a hospital outpatient setting are subject to a payment limitation of the lower of the hospital's cost or charges, or a blend of the applicable ASC facility payment amount and the lower of the hospital's costs or charges. For procedures removed from the list of approved ASC procedures, the hospital will be subject only to the lower of costs or charges. In most cases, hospital outpatient costs or charges are higher than the applicable ASC facility payment amount. The benefit to hospitals, however, is expected to be very small. First, the difference between the payment amount hospitals receive under the blend of 50 percent of the hospital's facility costs and 50 percent of the standard ASC facility amount that is in effect now and the amounts they will be paid is negligible for the procedures being deleted. Second, since most of the procedures being deleted are already performed either in a hospital outpatient setting or in a physician's office, we do not expect a significant transfer of cases

and payments from ASCs to hospital outpatient settings to occur.

For these reasons, we have determined, and the Secretary certifies, that this notice will not have a significant effect on a substantial number of small entities. Therefore, we have not prepared a regulatory flexibility analysis.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We received some comments expressing concern about the effect on rural hospitals of deleting some procedures from the list of approved ASC procedures. However, as explained in our response to these comments and in the preceding discussion, we do not expect a significant effect on any small entities to follow from this notice. Therefore, we are not preparing a rural impact statement since we have determined, and the Secretary certifies that this final notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VI. Paperwork Reduction Act

This final notice contains no information collection requirements. Therefore, it does not come under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501.)

(Sec. 1833(i)(1) of the Social Security Act (42 U.S.C. 1395(i)(1); 42 CFR 416.65))

Catalog of Federal Domestic Assistance Program No. 13.774, Medicare—Supplementary Medical Insurance Program)

Dated: April 5, 1989.

Louis B. Hays,
Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-13029 Filed 5-31-89; 8:45 am]

BILLING CODE 4120-01-M

[BPO-087-N]

Medicare Program; Meeting of the Supplemental Health Insurance Panel

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of public meeting.

SUMMARY: This notice announces a meeting of the Supplemental Health Insurance Panel for the purpose of

reviewing State Medicare supplemental health insurance programs. The Panel will determine whether such programs meet the minimum standards contained in section 1882 of the Social Security Act, as amended by the Omnibus Budget Reconciliation Act of 1987 (OBRA 87) and the Medicare Catastrophic Coverage Act of 1988 (MCCA). The meeting will be open to the public. Attendees will be seated on a first come, first served basis.

DATE: The meeting will be held on June 7, 1989 from 2:00 to 4:00 p.m., EDT.

ADDRESS: The meeting will be held at the Hyatt Regency Hotel, Cincinnati, Ohio. The room assigned is Section C.

FOR FURTHER INFORMATION CONTACT: Theresa DeGrange, (301) 966-7449.

SUPPLEMENTARY INFORMATION:

I. Purpose

The Supplemental Health Insurance Panel (Panel) was established in 1980 by section 507 of the Social Security Disability Amendments of 1980, Pub. L. 96-265, which added section 1882 to Title XVIII of the Social Security Act (the Act). This law established minimum standards for Medicare supplemental health insurance or "Medigap" policies in order to protect Medicare beneficiaries from abuses found to be prevalent in the marketing of such policies. The Panel is comprised of four State Insurance Commissioners and a chairperson. The chairperson is the Director, Bureau of Program Operations, HCFA (by delegation of authority from the Secretary of Health and Human Services). Panel meetings are open to the public. Initially, under section 1882(b)(2)(A) of the Act, State Commissioners were appointed to the Panel by the President. However, section 221(f) of the Medicare Catastrophic Coverage Act of 1988 (MCCA), Pub. L. 100-360, authorizes the Secretary to make these appointments.

The primary responsibility of the Panel is to review the States' legislative and regulatory requirements for Medicare supplemental health insurance policies to determine whether the individual State standards are equal to or more stringent than certain Federal requirements described in section 1882(b)(1) of the Act. States with Panel-approved programs are not subject to the Federal Voluntary Certification Program (VCP) for Medigap policies. There are at present 49 jurisdictions, including 46 States, that are not subject to VCP for Medigap policies. Also as specified in section 1882 of the Act, the VCP allows individual insurers in States with programs not approved by the

Panel to submit Medicare supplemental policies to the Secretary for review. Those policies found to meet or exceed the Federal minimum standards can be certified as such and bear a Federal emblem when marketed in a nonapproved State.

The initial identification of complying and noncomplying State programs was completed in 1982. Since that time the Panel's principal legal responsibility has been to assure that approved States continue to maintain programs meeting Federal standards and to review changes made by States.

Section 1882 of the Act requires the Panel to review all State Medicare supplemental health insurance regulatory programs to determine whether they meet the minimum standards contained in section 1882 of the Act as amended. The States have been asked to submit to the Panel: A description of the State's plan to incorporate the revised minimum standards under section 1882 of the Act, including timetables for both OBRA 87 and MCCA provisions; a copy of the State statute(s) to regulate health insurance policies designed to supplement Medicare; a copy of any State regulations that implement the statute(s); a copy of any material that interprets the State's statute(s) and regulations governing such policies; a copy of any pending legislation that affects such policies; and a copy of any draft State regulations that would affect this area together with an indication of the expected date of final publication of such regulation. The Panel will compare the States' submitted materials with the Federal law and the National Association of Insurance Commissioners (NAIC) Model Regulation for Medicare Supplements, formally adopted on September 20, 1988.

The Panel began making its determinations as to the status of individual State programs in a December 13, 1988 meeting. At that time 5 States were granted conditional approval. On March 21, 1989 the Panel met to continue the review process. On that occasion 8 States were granted conditional approval.

II. Agenda

The major agenda item for the meeting is the review of State programs. Agenda items are subject to change as priorities dictate.

(Catalog of Federal Domestic Assistance Program No. 13.774: Medicare-Supplementary Medical Insurance)

Dated: May 17, 1989.

Louis B. Hays.

Acting Administrator, Health Care Financing Administration.

[FR Doc. 89-13030 Filed 5-31-89; 8:45 am]

BILLING CODE 4120-03-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[UT-050-09-4132-12]

Comment Period

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of comment period.

SUMMARY: The Environmental Assessment (EA) and proposed decision are being prepared for mining exploration on the Pennell/Wolverton property that is within the Mt. Pennell Wilderness Study Area (WSA). This action is proposed under the Grandfathered Uses for the WSA. The EA will be available June 2, 1989. The comment period will end July 1, 1989. For further information, contact Roy Edmonds at (801) 896-8221. Copies of the EA will be available at the Richfield District Office, 150 East 900 North, Richfield, Utah 84701.

May 23, 1989.

Sam Rowley,

Acting District Manager, Richfield District Office.

[FR Doc. 89-13024 Filed 5-31-89; 8:45 am]

BILLING CODE 4310-00-M

[NV-050-09-4410-08]

Availability of the Draft Nellis Air Force Range Resource Plan and Environmental Impact Statement, NV

May 23, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of the draft Nellis Air Force range resource plan and environmental impact statement.

SUMMARY: Notice is hereby given that the Bureau of Land Management has released, for a 90-day public review and comment period, the Draft Nellis Air Force Range Resource Plan and Environmental Impact Statement (DRP/EIS).

The DRP/EIS was prepared as a result of the Military Lands Withdrawal Act of 1986 (Pub. L. 99-606) and as amended on June 17, 1988 (Pub. L. 100-338). This plan describes and analyzes the options for management of natural resources on

approximately 2,209,326 acres of withdrawn public lands in Nye, Lincoln, and Clark Counties, Nevada. These lands have been withdrawn for use as a high-hazard military weapons training and testing area. Resource management options are therefore limited and the DRP/EIS reflects those limitations imposed by military use of the planning area.

The DRP/EIS does not address military uses or impacts within the planning area. Those uses and impacts were addressed in two separate EISs prepared in 1981 and 1986.

DATES: Written comments on the DRP/EIS must be submitted and postmarked no later than September 1, 1989. Oral and/or written comments may also be presented at three public meetings to be held at the following times and locations:

July 18, 1989, 7:00 p.m., Lincoln County Annex, 100 South 1 West, Alamo, Nevada.

July 19, 1989, 7:00 p.m., Tonopah Convention Center, 301 Brougner, Tonopah, Nevada.

July 20, 1989, 7:00 p.m., Las Vegas District Office, 4765 Vegas Drive, Las Vegas, Nevada.

ADDRESS: Written comments should be addressed to: Curtis Tucker, Area Manager, Caliente Resource Area, P.O. Box 237, Caliente, NV 89008.

FOR FURTHER INFORMATION CONTACT: Roger Alexander, Las Vegas District Office, P.O. Box 26569, Las Vegas, NV 89126; (702) 646-8800.

SUPPLEMENTAL INFORMATION: The DRP/EIS analyzes two alternatives to resolve the following issues: Management of vegetation, wildlife habitat, wild horses and burros, and cultural resources. The two alternatives are the No-Action Alternative and BLM's Preferred Alternative.

BLM's preferred alternative focuses on wild horse management. Constraints imposed by the military use of the area restrict options for management of wildlife habitat, vegetation, and cultural resources. Wild horse numbers on the planning area would be reduced to 1,000 in an attempt to restrict wild horses to the Nevada Wild Horse Range and lessen impacts to wildlife habitat and vegetation. If monitoring indicates that the reduction in numbers is not successful in meeting management objectives, fencing is proposed to protect sensitive wildlife habitat and vegetation and to decrease military-wild horse conflicts. Protection of cultural resources is mandated by law, therefore no changes are proposed for the management of cultural resources. No

additional measures are proposed in this plan.

In addition to the issues identified above, the DRP/EIS examines the proposed designation of the Timber Mountain Caldera National Natural Landmark as an area of critical environmental concern (ACES). BLM's preferred alternative proposes the designation of 110,720 acres within the planning area as an ACEC. The proposed ACEC is already withdrawn from all forms of public land entry and BLM would not authorize or initiate any surface-disturbing activities within the ACEC. Access to the proposed ACEC is restricted and subject to Air Force authorization. This will not change if the ACEC is designated. This notice meets the requirements of 43 CFR 1610.702 for designation of ACECs.

Copies of the DRP/EIS are available for review at the following BLM offices:

Las Vegas District Office, 4765 Vegas Drive, P.O. Box 26569, Las Vegas, NV 89126.

Caliente Resource Area, P.O. Box 237, Caliente, NV 89008.

Tonopah Resource Area, P.O. Box 911, Bldg. 102, Military Circle, Tonopah, NV 89049.

Public Room, Nevada State Office, BLM, 850 Harvard Way, Reno, NV 89520.

Copies of the DRP/EIS can also be examined at public libraries throughout

Las Vegas and Clark County, Beatty, Tonopah, Pioche, the Washoe County Library in Reno, the State Library in Carson City, and the libraries at the University of Nevada-Las Vegas and the University of Nevada-Reno.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-13018 Filed 5-31-89; 8:45 am]

BILLING CODE 4310-HC-M

[WY-920-09-4111-15; WYW99761]

Proposed Reinstatement of Terminated Oil and Gas Lease; Wyoming

May 22, 1989.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2468, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW99761 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$5 per acre, or fraction thereof, per year and 16-2/3 percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this

Federal Register Notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW99761 effective February 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

David A. Pomerinke,

Acting Chief, Leasing Section.

[FR Doc. 89-12936 Filed 5-31-89; 8:45 am]

BILLING CODE 4310-22-M

[ID-060-09-4212-14]

Coeur d'Alene District, ID Noncompetitive Sale of Public Lands

AGENCY: Bureau of Land Management, Idaho.

ACTION: Notice of realty action, direct sale of public lands in Shoshone County, Idaho.

SUMMARY: The following public lands have been examined and found suitable for disposal by direct sale under section 203 of the Federal Land Policy and Management Act of 1976 (FLPMA) at not less than the appraised fair market value:

Parcel No.	Legal description	Acres	Proponent
I-25844 B	Boise Meridian, T. 48 N., R. 4 E., sec. 26,.....		
I-25498 B	Lot 18	0.90	George Bangart.
I-25502 B	Lot 19	0.70	Warren Van Zandt.
I-25500 B	Lot 29	0.39	Owen Bailey.
I-25501 B	Lot 22	0.86	Geraldine Bair.
I-25501 B	Lot 23	0.19	Del Enquist.
I-25761 B	T. 48 N., R. 5 E., sec. 9,.....		
	Tract 47	0.50	Undetermined at this time.

Publication of this notice in the Federal Register Segregates the above lands from the operation of the public land laws and the mining laws except for a direct sale pursuant to section 203 of FLPMA. The segregative effect will end upon issuance of patents or 270 days from the date of publication, whichever occurs first.

Sale Procedures

The lands are proposed to be offered for sale to the parties listed above who have occupied the area inadvertently in trespass for several years. Direct sale procedures are being used since competitive sales would not be appropriate and the public interest

would best be served by direct sale to the parties involved. Benefits of direct sales will be to resolve potential claims to title and to give consideration to the parties involved who have significant interests in the subject properties.

The sale proposal is consistent with the Bureau of Land Management's planning system. The lands are not needed for any resource program and are difficult and uneconomical to manage and are not suitable for management by another Federal department or agency.

Conveyance of the available mineral interests under section 209 of FLPMA will occur simultaneously with the sale

of each parcel. Acceptance of the direct sale offer and payment of a \$50.00 filing fee will constitute an application for conveyance of those mineral interests.

The patents, when issued, will contain a reservation to the United States for ditches and canals and will be subject to any other existing rights of record.

SUPPLEMENTARY INFORMATION: Detailed information concerning the conditions of the sales can be obtained by contacting Eric Thomson, Realty Specialist, at (208) 756-1511. For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Bureau of Land Management.

1808 North Third Street, Coeur d'Alene, Idaho 83814. Objection will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Dated: May 23, 1989.
Mert Lombard,
Acting District Manager.
[FR Doc. 89-13015 Filed 5-31-89; 8:45 am]
BILLING CODE 4310-00-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health Full Committee Meeting

Notice is hereby given that the Advisory Committee on Construction Safety and Health, established under section 107(e)(1) of the Contract Work Hours and Safety Standard Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656) will meet on June 14 and 15 in Room S-4215 of the Francis Perkins Building, Department of Labor, Washington, D.C. The meeting is open to the public and will begin at 9:00 a.m.

The agenda for this meeting includes reports from the National Institute for Occupational Safety and Health (NIOSH), workgroup reports and agency staff updates on California's state job safety and health program, cadmium and construction safety response team activity. Written data, views or comments may be submitted, preferably with 20 copies, to the Division of Consumer Affairs. Any such submissions received prior to the meeting will be provided to the members of the Committee and will be included in the record of the meeting. Anyone wishing to make an oral presentation should notify the Division of Consumer Affairs before the meeting. The request should state the amount of time desired, the capacity in which the person will appear and a brief outline of the content of the presentation.

For additional information contact: Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone 202-523-8615. An official record of the meeting will be available for public inspection at the Division of Consumer Affairs.

Signed at Washington, DC this 25th day of May, 1989.
Alan C. McMillan,
Acting Assistant Secretary.
[FR Doc. 89-12999 Filed 5-31-89; 8:45 am]
BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (National Resources Section) to the National Council on the Arts will be held on June 21, 1989, from 9:30 a.m.-6:30 p.m. in Room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 21, 1989 from 9:30 a.m.-10:00 a.m. and from 5:30 p.m.-6:30 p.m. The topics for discussion will be guidelines and policy issues.

The remaining portion of this meeting on June 21, 1989, from 10:00 a.m.-5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,
Director, Council and Panel Operations,
National Endowment for the Arts.

[FR Doc. 89-13011 Filed 5-31-89; 8:45 am]
BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-313 and 50-368]

Arkansas Power and Light Co.; Arkansas Nuclear One, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to the Operating Licenses for Arkansas Nuclear One, Units 1 and 2 (ANO-1&2), located in Russellville, Arkansas.

Environmental Assessment

Identification of Proposed Action

The action is in response to the licensee's applications for amendment dated March 20 and 24, 1985, which requested the deletion of Appendix "B" to the Technical Specifications (TSs) for both ANO-1&2. The Appendix B Environmental Technical Specifications currently contain no radiological specifications but contain only a section, 3.5 for ANO-1 and 5.9 for ANO-2, entitled, "Special Requirements." These sections discuss vegetation and erosion control of the plant site and transmission line right-of-way corridors constructed for the distribution of energy generated by ANO-1&2. The information provided in these sections was required by the NRC staff evaluations included in the ANO-1 "Environmental Report" and in NUREG-0254, "Final Environmental Statement Related to Operation of Arkansas Nuclear One, Unit 2," both of which discussed the potential for severe erosion along the proposed transmission corridors.

The Need for The Proposed Action

The amendments are proposed because the licensee considers Appendix B as currently written to be primarily descriptive in nature, discussing the environmental control of the right of way corridors related to the construction of the plant. The landscaping and planting described in the land use management section were completed during the initial construction of Unit 1. There are no "action statements" or reporting requirements, and no items in NRC regulations are addressed. Significant surveillance has been performed in the past several years to conclude that there has been no environmental damage to those areas addressed in this section. In summary, these TSs are not needed to ensure protection of the environment.

Environmental Impacts of the Proposed Action

The proposed amendments would not result in any modification of plant systems, components or procedures. Consequently, the probability of accidents has not been increased and the post-accident radiological releases will not be greater than previously determined, nor do the proposed amendments otherwise affect radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments.

With regard to potential non-radiological impacts, the proposed amendments would eliminate a listing of requirements which have already been adequately met. NRC surveys have been conducted which have verified that the licensee has constructed, planted and maintained the properties identified in Appendix B in compliance with previous commitments. The corridors, in particular, have adequate ground cover with only two slightly eroded areas, which pose no threat to either the environment or the transmission tower foundations. These surveys also revealed no indication of herbicide use. The amendments do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statements (construction permit and operating license) for ANO-1&2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a

significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this action, see the applications for amendments dated March 20 and 25, 1985 which are available for public inspection at the Commission's Public Document Room 2120 L Street, NW., Washington, DC, and at the Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801.

Dated at Rockville, Maryland this 25th day of May, 1989.

For The Nuclear Regulatory Commission.

George Dick,

Acting Director, Project Directorate—IV,
Division of Reactor Projects—III, IV, and V
and Special Projects, Office of Nuclear
Reactor Regulation.

[FR Doc. 89-12994 Filed 5-31-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-263]

Northern States Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering the issuance of an amendment to Facility Operating License No. DPR-22 granted to the Northern States Power Company (the licensee) for operation of the Monticello Nuclear Generation Plant, located at the licensee's site in Wright County, Minnesota.

Environmental Assessment

Identification of the Proposed Action

The proposed action would revise the plant Technical Specifications to extend the Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) for fuel type P8DRB265L and BP8DRB265L, and permit the plant to operate beyond the current MAPLHGR exposure limit of 40,000 MWd/MTU, to 45,000 MWd/MTU.

The proposed action is in accordance with the licensee's application dated January 31, 1989, as amended February 3, 1989.

The Need for the Proposed Action

The proposed amendment is needed so that the licensee can extend the length of the current plant operating cycle (Cycle 13) through to August 1989, and meet expected power demands during the peak load summer months of 1989.

Environmental Impact of the Proposed Action

The Commission's staff has evaluated the safety consideration associated with the proposed amendment, including the methodology used by the licensee to analyze the impact of extending the MAPLHGR, and the results of that analysis. The staff has concluded from this evaluation that reactor operation with the proposed MAPLHGR extension is acceptable in that: (1) The thermal and mechanical considerations for increasing MAPLHGR to the 45,000 MWd/MTU limit were calculated using conservative NRC-approved methodology; (2) the licensee's analytical results showed that the fuel peak clad temperature is less than 1 percent under loss-of-coolant-accident (LOCA) conditions; and (3) the proposed exposure increase (8.3 kW/ft at 45,000 MWd/MTU) meets the requirements set forth in 10 CFR 50.46 of the Commission's regulations.

The proposed amendment will have no adverse effect on the probability of any accident; does not involve any increase in fuel burnup rate or change the mix of fission products that might be released in the event of serious accident; and thus will not significantly affect the consequences of serious accidents. No changes are being made in the types or amounts of any radiological effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure.

With regard to potential nonradiological impacts of reactor operation with the requested MAPLHGR increase, the proposed change involves systems located within the restricted area, as defined in 10 CFR Part 20 of the Commission's regulations. The proposed change does not affect nonradiological plant effluents and has no other environmental impact.

The "Notice of Consideration of Issuance of Amendment and Opportunity for Hearing" in connection with this action was published in the Federal Register on February 22, 1989 (54 FR 7621). No request for hearing or petition for leave to intervene was filed following publication of this notice.

Alternative to the Proposed Action

Since the Commission has concluded there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to the operation of the Monticello Nuclear Generating Plant, dated, November 1972.

Agencies and Persons Contacted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this proposed action, see the application for amendment dated January 31, 1989 and supplement thereto dated February 3, 1989, which are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street NW., Washington, DC, and at the Minneapolis Public Library, Technology and Science Department 300 Nicollet Mall, Minneapolis, Minnesota.

Dated at Rockville, Maryland this 25th day of May 1989.

For the Nuclear Regulatory Commission,

Lawrence Yandell,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-12995 Filed 5-31-89; 8:45 am]

BILLING CODE 7590-01-M

*[Docket No. 50-397; Nuclear Project No. 2]***Washington Public Power Supply System; Environmental Assessment and Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendment to Facility Operating License No. NPF-21 issued to Washington Public Power Supply System (the licensee), for operation of Nuclear Project No. 2, located in Benton County, Washington.

*Environmental Assessment**Identification of Proposed Action*

The proposed amendment revises the battery load profiles shown in Technical Specification 3/4.8.2.1, "D.C. Sources—Operating." The surveillance requirement includes a table showing

the minimum amperage which each battery must be capable of delivering as a function of time when called upon to deliver emergency loads. The licensee has recalculated these emergency loads and the resulting battery profiles to account for current safety equipment configurations. The amendment inserts currently applicable values into the table.

In making the calculation, the licensee used a different aging factor for the 250 volt batteries than for the 24 volt and 125 volt batteries. The surveillance requirement is revised to include separate criteria applicable to the 250 volt batteries for the periodic performance discharge tests.

The proposed action is in accordance with the licensee's application for amendment dated March 18, 1988, as supplemented by letter dated April 12, 1989.

The Need for the Proposed Action

The proposed amendment is required to ensure that the batteries are capable of providing emergency loads. The periodic surveillance required by the technical specifications is intended to show that the batteries are capable of meeting the actual expected loads. The licensee has recently reevaluated emergency loads and has recomputed the battery requirements for these loads. The amendment will place these up-to-date values into the technical specifications.

Environmental Impacts of the Proposed Action

This action does not involve a change to equipment or to operating procedures. It is limited to a revision to the calculated emergency battery loads. An existing license requirement would be amended to reflect the new calculations. The staff has completed its safety evaluation of the proposed amendment and finds the change acceptable.

The proposed action does not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or

cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation of Nuclear Project No. 2, dated December 1981.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will have not significant adverse effect on the quality of the human environment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on May 18, 1988 (53 FR 17810). No request for hearing or petition for leave to intervene was filed following this notice.

For further details with respect to this action, see the application for amendment dated March 18, 1988 and supplement dated April 12, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352.

Dated at Rockville, Maryland, this 25th day of May 1989.

For the Nuclear Regulatory Commission,

George W. Knighton,

Director, Project Directorate V, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-12997 Filed 5-31-89; 8:45 am]

BILLING CODE 7590-01-M

Applied Radiant Energy Corp; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by letter dated March 23, 1989, the National Coalition to Stop Food Irradiation (NCSFI) requested the Nuclear Regulatory Commission (NRC or Commission) to initiate enforcement action involving Applied Radiant Energy Corporation (AREC) in Lynchburg, Virginia. AREC holds an NRC license to possess and use cesium sealed sources to irradiate wood impregnated with a plastic monomer to produce a polymer. The petitioner requested that the NRC suspend the use of cesium sealed sources by AREC. The basis the Petition asserts for its request is that the cesium sealed sources used by AREC are the same type of sources that are alleged to have leaked at Radiation Sterilizers Inc. in Decatur, Georgia.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The NRC will take appropriate action on NCSFI's request within a reasonable time.

A copy of the request is available for inspection in the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Dated at Rockville, Maryland this 23 day of May, 1989.

For the U.S. Nuclear Regulatory Commission,

Robert M. Bernero, Director,

Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89-12998 Filed 5-31-89; 8:45 am]

BILLING CODE 7590-01-M

*[Docket No. 50-263]***Northern States Power Co.; Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing**

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-22 issued to the Northern States Power Company (the licensee), for operation of the Monticello Nuclear Generating Plant located in Wright County, Minnesota.

The proposed amendment would change the Monticello Technical Specifications to: (1) Revise pressure-temperature limit curves to meet the requirements of Regulatory Guide 1.99, Revision 2, "Radiation Embrittlement of Reactor Vessel Materials" issued by NRC Generic Letter 88-01; (2) add a new requirement for augmented inspection of piping susceptible to intergranular stress corrosion cracking as required by NRC Generic Letter 88-11; and (3) permit the use of the "mass point" method, for Type A containment leakage rate testing, as approved by the Commission in a recent change to Appendix J of 10 CFR Part 50.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By June 30, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to

which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitation in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lawrence A. Yandell: (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this **Federal Register** notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained.

absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated March 31, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 19th day of May 1989.

For The Nuclear Regulatory Commission,
Lawrence A. Yandell,

*Acting Director, Project Directorate III-1
Division of Reactor Projects III, IV, V &
Special Projects, Office of Nuclear Reactor
Regulation.*

[FR Doc. 89-12996 Filed 5-31-89; 8:45 am]
BILLING CODE 7590-01-M

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of meetings of the Prospective Payment Assessment Commission on Tuesday and Wednesday, June 13-14, 1989, at the Omni Shoreham Hotel, 2500 Calvert Street NW., Washington, DC.

The Subcommittee on Diagnostic and Therapeutic Practices will be meeting in the Executive Room at 1:30 p.m. on June 13, 1989. The Subcommittee on Hospital Productivity and Cost-Effectiveness will convene its meeting also at 1:30 p.m. on June 13, 1989 in the Congressional Room.

The Full Commission will convene at 9:00 a.m. on June 14, 1989 in the Diplomat Room.

All meetings are open to the public.

Donald A. Young,
Executive Director.

Schedule and Location of Meetings

Omni Shoreham, 2500 Calvert Street NW., Washington, DC., 202/234-0700.

	Room
Tuesday, June 13, 1989:	
8:30 a.m.-12:15 p.m. Full Commission Executive Session.	Executive.
12:30 p.m.-1:30 p.m. Lunch/Executive Session.	Cabinet.
1:30 p.m.-5:00 p.m. Hospital Productivity and Cost-Effectiveness Subcommittee Meeting.	Congressional.
1:30 p.m.-5:00 p.m. Diagnostic and Therapeutic Practices Subcommittee Meeting.	Executive.
Wednesday, June 14, 1989:	
7:30 a.m.-8:45 a.m. Data Development and Research Subcommittee.	Cabinet.
9:00 a.m.-12:30 p.m. Full Commission Meeting.	Diplomat.
12:30 p.m.-1:30 p.m. Lunch/Executive Session.	Cabinet.
1:30 p.m.-3:30 p.m. Full Commission Meeting.	Diplomat.

[FR Doc. 89-12642 Filed 5-31-89; 8:45 am]
BILLING CODE 6820-SW-M

PACIFIC NORTHWEST ELECTRIC POWER AND CONSERVATION PLANNING COUNCIL

Northwest Conservation and Electric Power Plan Revisions to the Model Conservation Standards for New Commercial Buildings and Utility Programs

AGENCY: Pacific Northwest Electric Power and Conservation Planning Council (Northwest Power Planning Council).

ACTION: Notice of change in hearing schedule.

SUMMARY: This document changes a hearing date and time contained in document published in the *Federal Register* on May 4, 1989 at 54 FR 19273. The hearing originally scheduled in Seattle, Washington on June 12 at 1:30 p.m. is rescheduled for June 13 at 1:30 p.m. at The Edgewater, Pier 67, Seattle, Washington as part of the Council's regularly scheduled monthly meeting.

For a full copy of the proposed amendments, or for further information: Contact Judi Hertz at 851 S.W. Sixth Avenue, Suite 1100, Portland, Oregon, 97204, or at (503) 222-5161, toll free 1-800-222-3355 in Idaho, Montana, and Washington or 1-800-452-2324 in Oregon.

Edward Sheets,
Executive Director.

[FR Doc. 89-12961 Filed 5-31-89; 8:45 am]
BILLING CODE 0000-00-M

SECURITIES AND EXCHANGE COMMISSION

[Rel No. 34-26865; File No. SR-DTC-89-08]

Self-Regulatory Organizations; Depository Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change; Fee Schedule

May 23, 1989.

Pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on April 27, 1989, the Depository Trust Company ("DTC") files with the Securities and Exchange Commission a proposed rule change. The proposal amends DTC's underwriting service fee schedule. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

The proposal revises DTC fees for the distribution of securities offered in underwritings of corporate and municipal issues. Prior to the proposal, DTC charged managing underwriters \$219 for each corporate issue distributed through DTC and \$419 for each registered municipal issue distributed through DTC.¹ Under the proposal, DTC will charge \$219 for distribution of a corporate or registered municipal issue that has only one CUSIP number and \$419 for distribution of a corporate or registered municipal issue that has more than one CUSIP number. DTC believes this fee change is warranted by the lower processing costs associated with providing underwriting services for issues not having multiple CUSIP numbers. Accordingly, DTC believes the fee change is consistent with section 17A(b)(3)(D) of the Act, which requires a clearing agency to provide for the equitable allocation of reasonable dues, fees, and other charges among its participants.

The proposal also revises DTC's underwriting consultation fee. Prior to the proposal, DTC's fee for assisting managing underwriters in structuring new issues was \$500. The proposal eliminates this \$500 fee cap and permits DTC to charge consultation fees necessary to cover DTC costs in providing those services. DTC believes this change is consistent with section 17A(b)(3)(D) of the Act, because, according to DTC, its consultation

¹ DTC also charged additional fees based upon the size of the issue and to cover any "unusual expenses." DTC also attached a \$350 surcharge to issues with a put option feature. These components remain unchanged by the proposal. See DTC underwriting service fee schedule attached as Appendix A.

services often justify a charge in excess of \$500.

The foregoing change has become effective, pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Interested persons are invited to submit written data, views, and arguments concerning the submission within 21 days after the date of publication in the *Federal Register*.

Service	Fee
31. Underwritings (billed to managers of underwritings)	
a. (Corporate issues) <i>Issues having 1 CUSIP number</i>	\$219.00 plus \$3.00 per million with a total maximum fee of \$2,000.00* and any unusual expenses.
Book-entry-only issues	\$219.00* and any unusual expenses.
b. (Registered municipal issues) <i>Issues having more than 1 CUSIP number</i>	\$419.00 plus \$3.00 per million with a total maximum fee of \$2,000.00* and any unusual expenses.
Book-entry-only issues	\$419.00* and any unusual expenses.
c. Certificates of deposit	\$105.00* and any unusual expenses.

*A surcharge of \$350.00 applies to issues with a put option feature to cover the costs associated with reviewing the official statement and establishing a data base through which put periods are monitored. Issues requiring consultation and special development efforts are charged an additional surcharge [of \$500.00] to cover DTC's additional costs.

[FR Doc. 89-13003 Filed 5-31-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-26867; File No. MCC-89-03]

Self-Regulatory Organizations: Filing and Immediate Effectiveness of Proposed Rule Change by Midwest Clearing Corporation Relating to the Transfer of Residual Credit Positions via MCC's Automated Customer Account Transfer Service (ACATS)

May 23, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 26, 1989, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

Persons desiring to make written comments should file six copies thereof with the Secretary of the Commission, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Reference should be made to File No. SR-DTC-89-8.

Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change which are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those which may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the

Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of the filing (SR-DTC-89-8) and of any subsequent amendments also will be available for inspection and copying at DTC's principal office.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3.

Jonathan G. Katz,
Secretary.

Appendix A

(a) The Depository Trust Company ("DTC") is filing herewith the following changes in the fee schedule for DTC services:¹

¹ Deletions are in [brackets]; additions are italicized.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change authorizes the Midwest Clearing Corporation (MCC) to transfer residual credit positions through MCC's Automated Customer Account transfer Service (ACATS).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed rule change enhances the existing ACATS by introducing a new facility to allow a delivering MCC Participant to initiate the transfer of residual credit positions, for both cash and securities, that have accrued to an account after the account has been transferred via ACATS.

Residual credit positions tend to be created when a Record Date for a dividend or other distribution occurs before the account transfer process has been started or before it is complete. The receiving firm then obtains the dividend or interest payment after the transfer has been completed.

The ACATS enhancements allows the delivering firm to initiate the transfer of residual credit positions in a more automated format. The delivering firm will be able to stop issuing and mailing checks which might be lost in the mail or mis-routed at the receiving firm.

The proposed rule changes and

procedures also specify input and output data, as well as revised record layouts.

The proposed rule change also clarifies MCC's rules regarding both ACATS and the transfer of residual credit positions. The clarification clarifies that in cases where a Delivering Participant has made adjustments on the second business day after the Receiving Participant's receipt of the report detailing the customer account asset data to an account containing options positions, the receiving Participant does not have an additional two day review process. The proposed rule is intended to reduce risks related to the delay of the transfer of options positions.

The proposed rule change is consistent with the Securities Exchange Act of 1934 (the "Act") in that it promotes the accurate clearance and settlement of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that the proposed rule change will have an impact on or impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Participants were advised of ACATS enhancements in March, 1989. To date, no comments have been received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of the Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities & Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written

communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File Number SR-MCC-89-3 and should be submitted by June 22, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-13001 Filed 5-31-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-28868; File No. MCC-89-02]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Midwest Clearing Corporation Relating to the Limitation or Elimination of a Director's Liability in Certain Instances.

May 23, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 11, 1989, the Midwest Clearing Corporation filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

The Midwest Clearing Corporation ("MCC"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 (the "Act"), proposes the following changes to its Certificate of Incorporation and By-Laws:

Additions Italicized

Certificate of Incorporation, Article 8:

* * * as the same may be amended from time to time. *To the fullest extent that the General Corporation Law of the State of Delaware, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of Directors, no Director of the Corporation shall be liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a Director, except*

where such liability arises directly or indirectly as a result of a violation of the federal securities laws. No amendment to or repeal of this Article shall apply to or have any effect on the liability of any Director of the Corporation for or with respect to any acts or omissions of such Director occurring prior to such amendment or repeal.

By-Laws, Article 6, Section 6.1

* * * in connection with such action, suit or proceeding."

To the fullest extent that the General Corporation Law of the State of Delaware, as it exists on the date hereof or as it may hereafter be amended, permits the limitation or elimination of the liability of Directors, no Director of the Corporation shall be liable to the Corporation or its shareholders for monetary damages for breach of fiduciary duty as a Director, except where such liability arises directly or indirectly as a result of a violation of the federal securities laws. No amendment to or repeal of this Article shall apply to or have any effect on the liability of any Director of the Corporation for or with respect to any acts or omissions of such Director occurring prior to such amendment or appeal.

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposed change is based on Section 102 (b)(7) of the General Corporation Law of the State of Delaware, under which MCC is organized, which allows corporations to adopt provisions in their Certificates of Incorporation limiting or eliminating the potential monetary liability of directors under certain circumstances.

The amendment does not eliminate a Director's duty of care, which requires Directors to exercise informed business judgment in discharging their duties. Rather, the personal liability of MCC's Directors to MCC or its shareholders will be limited should they fail, through negligence or gross negligence to satisfy this duty. Under Delaware law, such limitations do not apply in the following circumstances:

(1) Breach of the duty of loyalty to MCC or its shareholders; i.e., the responsibility to conduct business in good faith and in the honest belief that the action taken is in the best interest of MCC.

(2) Acts or omissions that are not performed in good faith, or which involve intentional misconduct or violation of law.

(3) Unlawful payment of dividends or unlawful purchase or redemption of stock.

(4) Transactions from which the director derived improper personal benefits.

In addition, an provision has been included at the request of the SEC staff to expand the circumstances where the limitations do not apply to instances where liability would arise directly or indirectly as a result of a violation(s) of the Federal securities laws.

The amendment does not eliminate other equitable legal remedies, such as rescission or injunctive actions and in no way limits or eliminates a Director's direct liability under Federal securities laws. In addition, it does not eliminate the liability of officers of MCC for actions taken in the capacity, even if that individual is also a Director. This amendment does not apply to the liability of a Director for acts or omissions which may have occurred prior to its approval.

MCC believes the amendment is a necessary measure in order to help assure its ability to recruit and retain competent Directors. Without the protections offered by the proposed change, MCC believes there will be a deterrent effect upon the entrepreneurial decision-making of its Directors. In addition, due to the increased numbers and magnitude of lawsuits against directors, many other Delaware corporations have already adopted similar provisions.

The proposed rule change is consistent with section 17A of the Securities Exchange Act of 1934 in that the protections offered by the amendment help to remove impediments to attracting competent directors and thus will help assure the fair representation of shareholders in the selection of directors and administration of the affairs of MCC and will help attract directors which are representative of participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Midwest Clearing Corporation does not believe that any burdens will

be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to the appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will: (A) by order approve the proposed rule change, or (B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File No. MCC-89-2 and should be submitted by June 22, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-13000 Filed 2-31-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 35-24895]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

May 25, 1989.

Notice is hereby given that the following filing(s) has/have been made with the commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 19, 1989 the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified or any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

CSW Credit, Inc. et al. (70-7113 and 70-7218)

Central and South West Corporation ("CSW"), a registered holding company and CSW Credit, Inc. ("Credit"), its nonutility subsidiary, both located at 2121 San Jacinto Street, Suite 2400, Dallas, Texas 75201, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By prior Commission orders dated July 19, 1985, July 31, 1986 and February 8, 1988 (HCA No.s 23767, 21457 and 24575), CSW was authorized to form Credit for the purpose of factoring the accounts receivable of CSW's subsidiaries and nonassociated utilities. Credit's ratio of debt to equity was to be maintained at approximately 80% debt to 20% equity. CSW and Credit are now seeking to change such requirement to a

requirement that the equity ratio be not more than 20%.

Arkansas Power & Light Company (70-7571)

Arkansas Power & Light Company ("Arkansas"), Capital and Broadway, Little Rock, Arkansas 72201, a subsidiary of Entergy Corporation, which until May 19, 1989 was known as Middle South Utilities, Inc., and which is a registered holding company, has filed a post-effective amendment to its application pursuant to sections 9(a) and 10 of the Act.

Pursuant to authority granted in prior Commission orders, Arkansas leased a portion of the nuclear fuel, including facilities incident to its use ("Nuclear Fuel"), required for use at its Arkansas Nuclear One Generating Station ("ANO") from Russell Energy, Inc. ("Russell") (HCAR No. 21938, February 27, 1981), and from Ozark Fuel Corporation ("Ozark") (HCAR Nos. 22272, 24239, and 24502, November 13, 1981, November 19, 1986, and November 17, 1987, respectively) ("Lease Agreement"). Subsequently, in order to restructure its leasing arrangement, Arkansas was authorized to and did enter into a Fuel Lease ("Lease"), dated December 22, 1988, for its Nuclear Fuel with River Fuel Trust #1 ("Trust") (HCAR No. 24787, December 20, 1988) ("Order"). The Trust was formed under the laws of the State of New York pursuant to a Trust Agreement among Morgan Guaranty Trust Company of New York, as trustor ("Trustor"), United States Trust Company of New York, not in its individual capacity, but solely as trustee ("Trustee") and Arkansas, as beneficiary. The Trust was specifically created for this restructuring by the Trustor.

The Trust acquired the Nuclear Fuel owned by Russell and Ozark along with certain Nuclear Fuel owned by Arkansas. Promptly after such acquisition, Arkansas terminated its Lease Agreement with Russell and its Lease Agreement with Ozark. Russell then terminated its Credit Agreement with Bank of America National Trust and Savings Association, and Ozark terminated its Credit Agreement with Swiss Bank Corporation, New York Branch.

Under the terms of the Lease, the Trust makes payments to suppliers, processors and manufacturers necessary to provide Nuclear Fuel for both units of ANO, or Arkansas will make such payments and will be reimbursed by the Trust. The maximum obligation of the Trust to make payments for Nuclear Fuel initially Arkansas will not exceed \$250 million. To the extent that the cost

of Nuclear Fuel required by Arkansas exceeds the \$65 million Commitment under the Credit Agreement and the \$130 million of Secured Notes currently outstanding, as authorized in the Order, or Additional Secured Notes issued in replacement thereof, as proposed above, it is further proposed that the Trust may issue up to \$55 million of Additional Secured Notes. Additional Secured Notes are expected to be issued with the assistance of a placement agent, which is contemplated to be Merrill Lynch Capital Markets.

Pursuant to the terms of the Lease, the Trust may only issue Additional Secured Notes with the consent of Arkansas. Authorization is requested for Arkansas to consent to the issuance of Additional Secured Notes from time to time in an aggregate amount at any one time outstanding not to exceed \$185 million, as provided by the Order in all material respects, and provided that the interest rate on Additional Secured Notes and the fees paid to the placement agent in connection with the issuance thereof not be in excess of those generally obtained on the date of pricing on sales of similar notes with similar terms and conditions, including securities with the same maturity and by companies with comparable credit quality. In addition, to the extent requested by the Trustee, Arkansas would execute Supplemental Instructions to the Trustee, with respect to the issuance of the Additional Secured Notes.

System Energy Resources, Inc. (70-7604)

System Energy Resources, Inc. ("SERI"), Echelon One, 1340 Echelon Parkway, Jackson, Mississippi 39213, a subsidiary of Entergy Corporation, which until May 19, 1989 was known as Middle South Utilities, Inc., and which is a registered holding company, has filed a post-effective amendment to its application pursuant to sections 9(a) and 10 of the Act.

Pursuant to authority granted in prior Commission orders, SERI leased a portion of the nuclear fuel, including facilities incident to its use ("Nuclear Fuel"), required for use at Unit No. 1 of SERI's Grand Gulf Nuclear Generating Station ("Grand Gulf") from Port Gibson Energy, Inc. ("Gibson") (HCAR No. 24897, August 18, 1988), and from Prulease Inc. ("Prulease") (HCAR No. 24591, February 29, 1988) ("Lease Agreements"). Subsequently, in order to restructure its leasing arrangements, SERI was authorized to and did enter into a Fuel Lease ("Lease"), dated February 24, 1989, for its Nuclear Fuel for Grand Gulf with River Fuel Funding Company #3, Inc. ("Lessor"), a Delaware corporation, all of the capital

stock of which is held by United States Trust Company of New York, as trustee ("Trustee"), for River Fuel Trust #3 ("Trust"). The Trust was formed under and is governed by the laws of the State of New York, except to the extent that the General Corporation Law of the State of Delaware governs the Lessor's relationship with the Trust as its sole stockholder, pursuant to a Trust Agreement among Morgan Guaranty Trust Company of New York, as trustor ("Trustor"), the Trustee and SERI, as beneficiary. The Trust was specifically created for this restructuring by the Trustor (HCAR Nos. 24825 and 24827, February 21, 1989 and February 23, 1989, respectively) ("Orders").

Pursuant to the Orders, the Lessor acquired the Nuclear Fuel owned by Gibson and Prulease, except for certain Nuclear Fuel acquired by SERI. Promptly after such acquisition, SERI terminated its Lease Agreement with Gibson and its Lease Agreement with Prulease. Gibson then terminated its related Restated and Amended Credit Agreement with Union Bank of Switzerland, Houston Agency, and certain other banks.

Under the terms of the Lease, the Lessor makes payments to suppliers, processors and manufacturers necessary to provide Nuclear Fuel for Grand Gulf, or SERI will make such payments and will be reimbursed by the Lessor. The maximum obligation of the Lessor to make payments for Nuclear Fuel initially is \$180 million at any one time outstanding, although the Lessor may make such payments of up to \$185 million.

Pursuant to the terms of the Orders, SERI consented to allow the Lessor to finance its obligations under the Lease by entering into (i) a Credit Agreement, dated as of February 24, 1989 ("Credit Agreement"), with Union Bank of Switzerland, Houston Agency and (ii) certain secured note agreements, each dated as of February 24, 1989 ("Secured Note Agreements"), with certain institutional lenders. The Orders authorized an initial bank commitment ("Commitment") under the Credit Agreement of \$70 million, which remains unchanged under this proposal, and the initial issuance by the Lessor of \$115 million of secured notes ("Secured Notes") under the Secured Note Agreements. The Secured Notes were issued by the Lessor on February 24, 1989 in a total principal amount of \$115 million, but they mature on various dates, the final maturity date being February 15, 1997.

It is now proposed that in order to continue to finance Nuclear Fuel

required by SERI, additional secured notes ("Additional Secured Notes") would be issued by the Lessor in replacement of the Secured Notes or Additional Secured Notes which had matured. Additional Secured Notes would be issued pursuant to additional Secured Note Agreements.

In addition, the amount of Nuclear Fuel which is required to be leased by SERI may fluctuate based on the rate of burn-up of the Nuclear Fuel and the market costs of Nuclear Fuel. It is currently estimated that the total cost of Nuclear Fuel required by SERI will not exceed \$250 million. To the extent that the cost of Nuclear Fuel required by SERI exceeds the \$70 million Commitment under the Credit Agreement and the \$115 million of Secured Notes currently outstanding, as authorized by the Orders, or Additional Secured Notes issued in replacement thereof, as proposed above, it is further proposed that the Lessor may issue up to \$65 million of Additional Secured Notes. Additional Secured Notes are expected to be issued with the assistance of a placement agent, which is contemplated to be Merrill Lynch Capital Markets.

Pursuant to the terms of the Lease, the Lessor may only issue Additional Secured Notes with the consent of SERI. Authorization is requested for SERI to consent to the issuance of Additional Secured Notes from time to time in an aggregate amount at any one time outstanding not to exceed \$180 million, as provided by the Orders in all material respects, and provided that the interest rate on Additional Secured Notes and the fees paid to the placement agent in connection with the issuance thereof not be in excess of those generally obtained on the date of pricing on sales of similar notes with similar terms and conditions, including securities with the same maturity and by companies with comparable credit quality. In addition, to the extent requested by the Trustee, SERI would execute Supplemental Instructions to the Trustee, with respect to the issuance of the Additional Secured Notes.

Entergy Corporation (70-7606)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, which until May 10, 1989 was known as Middle South Utilities, Inc., and which is a registered holding company, has filed a declaration pursuant to section 12(b) of the Act and Rule 45 thereunder.

System Energy Resources, Inc. ("SERI"), a subsidiary of Entergy, was authorized by orders in a companion filing (HCAR Nos. 24825 and 24827,

February 21, 1989 and February 23, 1989, respectively) to enter into a fuel lease agreement, dated February 24, 1989, ("Lease") with River Fuel Funding Company #3, Inc. ("Lessor"), a Delaware corporation, all of the capital stock of which is owned by River Fuel Trust #3. Under the Lease SERI would lease from the Lessor nuclear fuel and facilities incident to its use ("Nuclear Fuel"), in amounts of up to \$185 million. The Nuclear Fuel will be used in Unit No. 1 of SERI's Grand Gulf Nuclear Generating Station. By post-effective amendment to that filing SERI proposed to lease, under the same terms and conditions, additional Nuclear Fuel in amounts of up to \$250 million. This matter was the subject of a notice issued by the Commission on May 25, 1989, the same date herein, and is to be granted on the same date as the date of an order herein, as a companion filing (S.E.C. File No. 70-7604).

In order to induce the Lessor to enter into the initial Lease, it was necessary for Entergy to guarantee, to the Lessor, the performance by SERI of its obligations under the Lease. Entergy was authorized to and did enter into a guaranty ("Guaranty"), dated February 24, 1989, under which Entergy guaranteed to the Lessor that SERI would perform its various obligations and covenants under the Lease. Entergy agreed that its obligations under the Guaranty would be unconditional and not subject to any set-off, counterclaim, offset or recoupment whatsoever, and that the Lessor's rights under the Guaranty would be assignable (HCAR No. 24824, February 21, 1989). Entergy now proposes to guarantee to the Lessor, on the same basis as previously approved, that SERI will perform all of its obligations under the lease in amounts of up to \$250 million, and to consent to the further assignment of the Lessor's rights under the Guarantee.

Southwestern Electric Power Company (70-7656)

Southwestern Electric Power Company ("SWEPCO"), P.O. Box 21106, Shreveport, Louisiana 71156, an electric utility subsidiary of Central and South West Corporation, a registered holding company, has filed an application under sections 9(a) and 10 of the Act.

SWEPCO requests authority to lease its railcars to nonassociated third parties from time-to-time on a short-term basis when not in use by SWEPCO through June 1, 1994. The railcars are used by SWEPCO to transport coal to its Welsh Power Plant located near Cason, Texas, and its Flint Creek Power Plant located near Gentry, Arkansas.

Lease terms will cover periods that SWEPCO does not need the railcars for its operations. Such periods will generally range from as short as the time it takes to make one trip from the locations of SWEPCO's coal sources to its generating plants to as long as two months; however, if SWEPCO were to shut down one of its generating plants, either for scheduled maintenance or for some other unforeseen reason, such periods could extend up to four months. Any leases will provide for lease rates at or near the market rates at the time of entry into such leases.

Alabama Power Company (70-7658)

Alabama Power Company ("Alabama"), 600 North 18th Street, Birmingham, Alabama 35291, a wholly-owned subsidiary of The Southern Company, a registered holding company, has filed an application pursuant to sections 2(a)(1)(D) and 9(c)(3) of the Act.

Alabama has acquired in a bankruptcy proceeding 88,205 shares of Class A Preferred Stock ("Preferred") and 137,598 shares of Common Stock ("Common") (collectively, "Stock") of Simetco, Inc. ("Simetco"), an Ohio corporation formerly known as Ohio Ferro-Alloys Corporation. All of the Stock is voting stock, and represents about 8.82% of all of the outstanding voting securities of Simetco. Alabama requests a determination that, pursuant to sections 2(a)(1)(D) and 9(c)(3) of the Act, section 9(a) of the Act will not apply to the acquisition of the Stock, and that the obligations, duties and liabilities imposed by the Act on affiliated companies are not necessary or appropriate under these circumstances.

Simetco operates a production facility ("Facility") in Mount Meigs, Alabama at which silicon metal is produced. On February 22, 1982, Alabama entered into a contract with Simetco in which it agreed to provide electric power to the Facility. In October 1982, Simetco experienced financial difficulties and failed to pay its electric bills. Subsequently, Simetco failed to pay its electric bills for power provided under later contracts with Alabama. On October 30, 1986, Simetco filed a petition in the United States Bankruptcy Court for the Northern District of Ohio ("Bankruptcy Court") for reorganization under Chapter 11 of the United States Bankruptcy Code. In the proceeding, Alabama was allowed total general unsecured claims of approximately \$5 million resulting from unpaid charges for electric power provided by Alabama to Simetco. Pursuant to a Plan of

Reorganization filed with the Bankruptcy Court and confirmed by the Court in its order, dated November 22, 1988 ("Plan") holders of general unsecured claims were distributed their *pro rata* share of 225,000 shares of Preferred and 350,995 shares of Common. As a result of this order, Alabama acquired 88,205 shares of Preferred and 137,598 shares of Common.

In order to preserve a net operating loss carry-forward for Federal income tax purposes, the Bankruptcy Court prohibited the sale, assignment, exchange, disposition or other transfer of Stock owned by a person which controls 5% or more of the voting power of Simetco for a period of 3 years from the date of acquisition. Because Alabama controls approximately 8.82% of the voting power of Simetco, Alabama is bound by this restriction.

Alabama acquired the Stock as a result of indebtedness acquired in the ordinary course of business and holds such Stock solely as a passive investment. Alabama will sell the Common as soon as the restrictions on sale lapse and market conditions permit. Alabama will not be represented on the Board of Directors of Simetco or otherwise seek to change or influence control of Simetco. In this connection, without authorization from the Commission, Alabama will not vote its Stock.

Simetco is an affiliate of Alabama as that term is defined in section 2(a)(11) of the Act, because as discussed above, Alabama controls over 5% of the voting power of Simetco. However, because Alabama is holding the Stock solely as a passive investment, acquired in the ordinary course of business and not with the purpose of changing or influencing control, Alabama requests that the Commission order, pursuant to section 9(c)(3) of the Act, that section 9(u) of the Act not apply to the acquisition of the Preferred or Common described herein. In addition, Alabama hereby requests that the Commission determine that it is not necessary or appropriate in the public interest or for the protection of investors or consumers that Simetco be subject to the obligations, duties and liabilities imposed by the Act and rules thereunder upon affiliates, or that Alabama be subject to the obligations, duties and liabilities imposed by the Act and rules thereunder as a result of Simetco being an affiliate of Alabama.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-13002 Filed 5-31-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

Customs Service

[T.D. 89-60]

Revocation of Commercial Gauger Approval of Caesar J. Thibodeaux, Inc. of Houston, TX

AGENCY: U.S. Customs Service,
Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that pursuant to § 151.13(k)(4) of the Customs Regulations, a written appeal against a proposal to revoke the commercial gauger approval of Caesar J. Thibodeaux, Inc. with prejudice, was filed with the Commissioner of Customs. Under delegated authority, the appeal was considered by the Assistant Commissioner, Office of Commercial Operations, and it has been decided to suspend the firm's public gauger approval for a period of 30 days. It has been further decided that the 30-day suspension is to be set aside and cancelled upon the successful completion of a one-year probationary period by the firm, during which time the performance of the firm under the provisions of Part 151 will be closely monitored by the U.S. Customs Service. In addition, liquidated damages in the amount of \$10,000 are being assessed under the terms of the commercial gauger bond, § 113.67 of the Customs Regulations.

The one year period specified above will commence on the date of publication of this notice.

Dated: May 25, 1989.

John B. O'Loughlin,
Director, Office of Laboratories and Scientific Services.

[FR Doc. 89-13022 Filed 5-31-89; 8:45 am]

BILLING CODE 4820-02-M

DEPARTMENT OF TRANSPORTATION

Saint Lawrence Seaway Development Corporation

Advisory Board; Meeting

Pursuant to section 10(a)(2) 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463); 5 U.S.C. App. I) notice

is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 10:00 a.m., June 27, 1989, at the Radisson-Duluth Hotel, 505 West Superior Street, Duluth, Minnesota. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meeting; Review of Programs; Business, Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than June, 20, 1989, Paul A. Maroun, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202/366-0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on May 24, 1989.

Paul A. Maroun,

Advisory Board Liaison

[FR Doc. 89-12958 Filed 5-31-89; 8:45 am]

BILLING CODE 4910-01-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition

SUMMARY: The United States Information Agency hereby modifies a notice found at 54 FR 16038 (April 20, 1989) regarding immunity from judicial seizure for the art exhibit "Mary Cassatt: The Color Prints," to include an additional item for temporary exhibition in the United States.

EFFECTIVE DATE: This modification is effective upon publication in the Federal Register.

FOR FURTHER INFORMATION CONTACT:

R. Wallace Stuart, Acting General Counsel, United States Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

SUPPLEMENTARY INFORMATION: The United States Information Agency hereby modifies a notice published at 54 FR 16038 (April 20, 1989). The notice rendered immune from judicial process certain items to be included in the exhibit entitled "Mary Cassatt: The Color Prints." This modification of

notice adds an additional item (see supplemental list number 1¹).

Dated: May 23, 1989.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 89-12958 Filed 5-31-89; 8:45 am]

BILLING CODE 8230-01-M

¹ A copy of this list may be obtained by contacting Mr. R. Wallace Stuart of the Office of the General Counsel of USIA. The telephone number is (202) 485-7979, and the address is Room 700, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547.

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, June 5, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

- 1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
- 2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Jennifer J. Johnson, Associate Secretary of the Board.

Date: May 28, 1989.
[FR Doc. 89-13081 Filed 5-26-89; 4:56 pm]
BILLING CODE 6210-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m. Tuesday, June 6, 1989.

PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: The first three items are open to the public. The last four items are closed under Exemption 10 of the Government in Sunshine Act.

MATTERS TO BE CONSIDERED:

- 1. Marine Accident Report: Striking of a Submerged Object by Bahamian Tankship ESSO PUERTO RICO, Mississippi River, Kenner, Louisiana, September 3, 1988.
- 2. Reconsideration of Probable Cause: Midair Collision of Wings West Beech C-99 and Aesthetec, Inc. Rockwell Commander 112TC, San Luis Obispo, California, August 14, 1984.
- 3. Recommendation to FAA: International Operations and Use of Ground Proximity Warning Systems (GPWS) Brazil; Azores; and Malaysia.
- 4. Opinion and Order: Administrator v. Air Maryland, Inc., Docket SE-8843; disposition of Administrator's appeal.
- 5. Opinion and Order: Administrator v. Brothers, Docket SE-8375; disposition of respondent's appeal.
- 6. Opinion and Order: Administrator v. Hembree, Docket SE-8494; disposition of Administrator's and respondent's appeal.
- 7. Opinion and Order: Administrator v. Stephens, Docket SE-8669; disposition of respondent's appeal.

Federal Register

Vol. 54, No. 104

Thursday, June 1, 1989

FOR MORE INFORMATION CONTACT: Bea Hardesty (202) 382-6525.

Bea Hardesty, Federal Register Liaison Officer, May 26, 1989.

[FR Doc. 89-13082 Filed 5-26-89; 4:57 pm]
BILLING CODE 7533-01-M

POSTAL RATE COMMISSION

Meeting

TIME AND DATE: 2:30 p.m., Wednesday, June 7, 1989.

PLACE: Hearing Room, 1333 H Street, NW., Suite 300, Washington, DC 20268.

STATUS: Open.

MATTERS TO BE CONSIDERED: To discuss a Notice of Proposed Rulemaking in Docket No. RM88-2.

CONTACT PERSON FOR MORE

INFORMATION: Charles L. Clapp, Secretary Postal Rate Commission Room 300, 1333 H Street, NW. Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp, Secretary, [FR Doc. 89-13188 Filed 5-30-89; 3:36 pm]
BILLING CODE 7715-01-M

Corrections

Federal Register

Vol. 54, No. 104

Thursday, June 1, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

GENERAL SERVICES ADMINISTRATION

41 CFR Chapters 301 and 302

[FTR 1989 Edition]

Federal Travel Regulation

Correction

In rule document 89-7115 beginning on page 20262 in the issue of Wednesday, May 10, 1989, make the following corrections:

§ 301-3.6 [Corrected]

- 1. On page 20276, in the second column, the 11th through 16th lines of text should appear at the end of the column.

§ 302-11.8 [Corrected]

- 2. On page 20339, in the second column, the first equation should be transferred to the corresponding space in the third column, under "Then:".

BILLING CODE 1505-01-D

LEGAL SERVICES CORPORATION

45 CFR Part 1633

Competitive Bidding for Grants

Correction

In proposed rule document 89-12565 beginning on page 22787 in the issue of Friday, May 26, 1989, make the following corrections:

- 1. On page 22787, in the third column, under ADDRESS, in the second line, "timothy" should be capitalized.
- 2. On page 22788, in the first column, in the second complete paragraph, in the sixth line, "anyone" should be capitalized.
- 3. On the same page, in the same column, in the same paragraph, in the last line, the telephone number should read "863-1839".

§ 1633.2 [Corrected]

- 4. On the same page, in the second column, in § 1633.2(a), in the fifth line, "responsible" should read "responsive".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 301 and 602

[T.D. 8254]

Abatement of Penalty or Addition to Tax Attributable to Erroneous Advice

Correction

In rule document 89-11611 beginning on page 21055 in the issue of Tuesday, May 16, 1989, make the following correction:

On page 21057, in the first column, in the authority citation for Part 301, in the second line, the section number should read "301.6404-3T".

BILLING CODE 1505-01-D

Register

Thursday
June 1, 1989

Part II

Department of Health and Human Services

Office of Human Development Services

Availability of FY 1989 Funds and
Request for Applications; Child Abuse
and Neglect Program; Notice

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

[Program Announcement No. 13670-891]

Availability of FY 1989 Funds and Request for Applications; Child Abuse and Neglect Program

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), HHS.

ACTION: Announcement of the availability of FY 1989 financial assistance and request for applications for research or demonstration projects under the Child Abuse Prevention and Treatment Act.

SUMMARY: The National Center on Child Abuse and Neglect (NCCAN) of the Administration for Children, Youth and Families announces the availability of funds for research on the causes, prevention, identification and treatment of child abuse and neglect and for demonstration or service programs and projects designed to prevent, identify, and treat child abuse and neglect.

DATE: The closing date for receipt of grant applications is July 21, 1989.

ADDRESS: Address applications to: FY 1989 NCCAN Research and Demonstration Program, Office of Human Development Services, Grants and Contracts Management Division, Hubert H. Humphrey Building, Room 345-F, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Barbara Bates, (202) 245-0813.

SUPPLEMENTARY INFORMATION: This announcement consists of three parts. Part I provides the necessary background information on the National Center on Child Abuse and Neglect (NCCAN) for applicants. Part II describes the priorities under which NCCAN is soliciting applications for fiscal year 1989 funding of projects. Part III provides general information and requirements for preparing and submitting applications along with the criteria for the review and evaluation of applications.

All forms and instructions necessary to submit an application are published as part of this announcement following Part III. No separate application kit is either necessary or available for submitting an application. If you have a copy of this announcement, you have all the information and forms required to submit an application.

I. Background

In 1974, the Child Abuse Prevention and Treatment Act (the Act) established the NCCAN in the Department of Health and Human Services. It is located organizationally within the Children's Bureau of the Administration for Children, Youth and Families in the Office of Human Development Services.

The National Center on Child Abuse and Neglect conducts activities designed to assist and enhance national, State and community efforts to prevent, identify and treat child abuse and neglect. These activities include: Conducting research and demonstrations; supporting service improvement projects; gathering, analyzing and disseminating information through a national clearinghouse; providing grants to eligible States for strengthening and improving child protective service programs; and coordinating Federal activities related to child abuse and neglect through an Advisory Board on Child Abuse and Neglect composed of 13 members from the general public and two members from the Federal Inter-Agency Task Force and an Inter-Agency Task Force on Child Abuse and Neglect composed of Federal agencies.

The Act has been amended several times, most recently by the Child Abuse Prevention, Adoption, and Family Services Act of 1988, Pub. L. 100-294, which was signed into law on April 25, 1988. This announcement reflects the research and demonstration priorities and solicits applications under the authority of the Act (42 USC 5101 *et seq.*) as amended.

As required by section 6(a)(2)(B) of the Act, the Office of Human Development Services (OHDS) published for public comment proposed fiscal year 1989 child abuse and neglect research and demonstration priorities in the December 30, 1988 *Federal Register* (53 FR 53065). NCCAN received 110 responses from national, State and local child welfare and human service organizations and advocacy groups, professional associations, universities, hospitals, practitioners, representatives from government offices and elected officials, and private citizens. These comments included overall support for the priority areas proposed, support and comments specific to a number of the priority areas, and suggestions for new topics. The final priorities selected for fiscal year 1989 were prepared after consideration of all comments received and are described below in Part II. The priority areas on joint police/child protective investigations, risk assessment, results of research on child

as witness projects, and professional child abuse and neglect training curricula are being carried over into FY 1990 for consideration as are the suggestions for new topics.

II. Fiscal Year 1989 Priorities for Research and Demonstration Projects

This part contains the information needed in order to successfully apply for funding. Failure to comply with the eligibility criteria and deadline for submittal of applications will result in an application being screened out and not considered for funding. The screening criteria can be found in Part III, B, Application Screening Criteria. Office of Human Development Services' experience has shown that an application which is broad and general in concept does not score as well as one which is directly responsive to the concerns of a specific priority area.

Applicants must identify the specific priority area under which they wish to have their application considered. On all applications developed jointly, one organization must be identified as the lead organization and applicant.

A. Available Funds

Approximately \$5.5 million is available for grants in FY 1989. To the extent that selected proposals exceed the amount available for funding in FY 1989, some proposals may be deferred for funding until FY 1990, subject to the availability of funds.

B. Grantee Share of the Project

There is a 25% non-Federal share matching requirement for demonstration and service programs. The non-Federal share represents 25% of total project costs. The Federal share plus the non-Federal share equals the total project costs. In other words, for every three dollars of Federal support, a minimum of one dollar must come from a source other than the Federal government. For example, if the Federal funding requested is \$100,000 per year, the cost sharing or match must be at least \$33,333 per year with a total project cost of \$133,333. There is no cost sharing or match requirement for research grants. In addition, territories are not required to provide a match for any grant proposal.

C. Grants Administrative Regulations

The non-Federal share matching requirement may be in cash or third party in-kind contributions in accordance with 45 CFR Part 74 and/or Part 92. For State and local governments, including Federally recognized Indian Tribes, 45 CFR Part 92

and selected parts of 45 CFR Part 74 are applicable. For all other applicants, 45 CFR Part 74 is applicable.

D. Research Priorities

The following research priority areas have no cost sharing requirement:

1. Family Functioning of Neglectful Families

Within the framework of families as systems, there is little information about the ways that neglectful families function in comparison with non-neglectful families. There are many issues that need to be researched within the family framework to enhance an understanding of neglectful families and provide more information for prevention and intervention strategies. There are also many methodological issues which should be addressed in developing research proposals, including the use of operational definitions and addressing potentially compounding factors in sampling and/or analysis, such as socioeconomic status, culture, and ethnicity. Additional factors to consider include family size and structure, divorce, employment, autonomy of individual family members, cohesion and adaptability of the family system, and access to and utilization of such support services as child care, respite care and other community based and related services.

Research questions proposed in this priority area are:

- Can differences in functioning be identified between neglectful and non-neglectful families?
- What are the characteristics of the men in neglectful vs. non-neglectful families? What functions do they serve in the family, and how do they impact on family functioning?
- How do mental health problems and/or substance abuse (including crack cocaine and street related drugs) relate to family functioning and neglectful families?
- How does level of family functioning relate to neglect?
- What facilitates prevention of neglect in at risk families?
- At what point in the family system is intervention most effective?
- Which intervention strategies are most effective?

NCCAN will fund studies for up to 36 months duration at a Federal level not to exceed \$150,000 per project per year.

2. Community-Based Prevention of Child Maltreatment

A number of community-based prevention strategies have been utilized, and there is the need to examine the knowledge and experience of the field to

date. Research in this priority area should include a three-part literature review and evaluation of approaches to ongoing community-based prevention of child maltreatment, as follows:

- Review and analyze literature and materials on the development of community prevention programs for child abuse and neglect and other fields with respect to the following issues: Community planning and development, planning models, effective fund-raising, types of community leadership, and prevention approaches.
- Identify and classify existing community-based prevention programs, including those developed under Children's Trust and Prevention Funds and Challenge Grants. The study should attempt to measure the program's relative effectiveness, the geographical area of the State covered, funding sources, groups targeted, and other factors.
- Synthesize materials and findings in a manual (and/or other dissemination modes) on how to plan, fund, initiate, implement and maintain community-wide prevention programs, with emphasis on empirical findings on ways of producing change.

NCCAN anticipates funding one or more 36-month projects at a Federal level not to exceed \$150,000 per project per year.

3. Prosecution of Child Maltreatment Cases

Little data have been aggregated regarding the number, type and outcomes of judicial handling of child abuse cases. NCCAN is interested in approaching this informational need in two parts. One is to carry out a study of the number and types of child abuse and neglect cases prosecuted and the outcome for the nation as a whole. The second is to address the following research questions related to sexual abuse, physical abuse, and neglect, by level of risk. An experimental or quasi-experimental design is recommended using cases matched by type of abuse, age of child, family composition, and severity of injury.

- What kinds of cases are referred for prosecution?
- Which cases that were prosecuted went to trial and were convicted?
- To what extent are criminal child abuse and neglect cases coordinated with parallel civil child abuse and neglect proceedings?
- How does early prosecutorial involvement affect conviction or reunification rates?
- How does the composition of a multidisciplinary team affect prosecutorial decision making?

• How can multidisciplinary teams be managed to maximize interagency communication between child protective services and criminal justice systems?

NCCAN plans to fund projects for a 36 month duration at a Federal level not to exceed \$150,000 per project per year.

4. Judicial Review Process

Abused and neglected children who are placed in foster care as a protective measure are thereafter covered by the provisions of the Adoption Assistance and Child Welfare Act of 1980, Pub. L. 96-272, which has a goal of permanency for the child either through rehabilitation of the child's own home or through an alternative placement.

Pub. L. 96-272 also requires periodic judicial review of foster care cases to insure that goals are met in a timely manner. Research is needed to determine how these judicial reviews are conducted in various jurisdictions and how this review process specifically addresses and contributes to treatment and rehabilitation of abusive and/or neglecting families, including support of these children in foster care. Consideration may also be given to examining all models of the review process. Questions to be addressed include:

- How do States and jurisdictions implement the judicial review process and how are the child abuse and neglect issues considered in this process (e.g., how are the frequency of the review, sources of data for the review, and progress towards goals affected by the type and severity of the incident of child abuse and neglect)?
- What are the outcomes of judicial reviews for abused and neglected children (e.g., redirection of services, increased monitoring, additional legal sanctions, reduced recidivism, length of foster care, proportion returned home or freed for adoption, etc.)?
- What are the various models of review used and what are the relationships among various types of reviews (e.g., judicial, administrative, and citizen)?
- Which review systems, alone or in combination, are the most effective in assuring permanency for abused and neglected children?

NCCAN anticipates funding projects of up to 36 months duration having a Federal level not to exceed \$150,000 per year.

5. Impact of Treatment Approaches for Intrafamilial Child Sexual Abuse

Little objective data exist on the use of incarceration and diversion programs for cases of intrafamilial sexual abuse

and how treatment approaches can be used effectively to improve outcomes for children and families. This priority proposes to support a comparative multi-site study (to include a rural site) on intrafamilial sexual abuse that would include:

- Incarceration—without treatment;
- Incarceration—with treatment;
- Diversion program—pre-trial and post-trial; and
- Probation with no formal intervention program.

The study should focus on the outcome indicators for the victim, the offender, and the family unit. In particular, the outcomes need to address recidivism, cost of the program and victim and family functioning. An advisory committee, to include juvenile/family court judges, women's groups and other appropriate professionals, is recommended. The purpose of this study is to provide information for decreasing child victimization and critical and useful information for the judiciary system to assist them in making effective sentencing decisions.

NCCAN anticipates funding 36-month projects having a Federal level not to exceed \$125,000 per project per year.

6. Status of Measurement Development in the Study of Child Abuse and Neglect

A substantial body of research knowledge has accumulated through the use, development and adaptation of an array of measurement techniques. There is the need for a state-of-the-art review of measures and instruments utilized in studies of child abuse and neglect. These measures may concern children, their families, and communities and include demographic characteristics and environmental settings; parent-child and family interactions; child social-emotional development and school performance; family strengths, needs, resources, and stress factors; social and economic support systems; and service availability and provision. This should cover psychometric properties, including validity and reliability; domains addressed for the instruments; identification of any gaps and next steps to be taken in their use; and adaptation or development of new measures. It is not intended, however, that the actual development of new measures take place at this time under this priority area.

Anticipated products from this project are a paper on the state-of-the-art of instrument development, a directory of measurements/instruments established as a computer file with a proposed strategy for ongoing maintenance, a hard copy reference directory for research applications and a manual for

practitioners, a recommended set of common data elements to be collected across studies to enable comparability, and a library set of these measures and manuals for their utilization.

NCCAN anticipates funding one project for 24 months not to exceed a Federal level of \$75,000 per year.

7. Field Initiated Research for Child Abuse and Neglect

NCCAN is interested in supporting new research initiated by researchers in the child abuse and neglect field to carry out the legislative responsibilities established for the National Center on Child Abuse and Neglect by the Child Abuse Prevention, Adoption, and Family Services Act of 1988, Pub. L. 100-294. One of these responsibilities is to conduct research on the causes, prevention, identification and treatment of child abuse and neglect, and on appropriate and effective investigative, administrative and judicial procedures in cases of child abuse. One-half the funds available for this priority area will be made available for research on prevention of child abuse and neglect.

Basic research in the behavioral and social sciences which contributes to theory development is not within the purview of this announcement. Also, it is not intended that program evaluation and demonstration projects be included in this category. Current issues having widespread impact on the field of child abuse and neglect and on the target population are of particular interest.

Secondary analyses of data from the 1986 study of the national incidence and prevalence of child abuse and neglect will also be considered. Public use data tapes and the documentation manual from this study are available from the Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington DC 20013.

Applicants should list all organizations to be involved on the project with a description of their contribution. Written assurances should be included with the application. Applicants should also show that they have the ability to gain access to necessary information, data, etc. Applicants should clearly demonstrate an in-depth understanding of the issues and problems associated with child abuse and neglect and provide an up-to-date literature review.

NCCAN will fund studies for up to 36 months duration at a Federal level not to exceed \$150,000 per project per year depending on the questions to be answered, the intensity of the effort proposed, and the generalizability of the anticipated results. Through this priority area, NCCAN seeks to provide a

comparative process for field generated topics.

8. Consortium for Longitudinal Studies of Child Maltreatment

NCCAN intends to support a consortium of longitudinal studies to address aspects of the life course of families at risk of child maltreatment. These studies are expected to contribute to the knowledge of the etiology and ecology of child maltreatment and provide new insights into prevention, treatment and the organization of protective services (both public and private).

The consortium of longitudinal studies will have two parts: (1) A central grantee to oversee methodological issues and perform data analyses, and (2) satellite grantees who will identify data sources, collect and submit data to the central grantee for analysis. A two phased funding approach is anticipated for this priority. During Phase One, NCCAN will fund a planning grant for a central grantee and up to three planning grants for satellite grantees. The central grantee is expected to provide an experimental longitudinal study design which addresses sampling, a core set of measurements, and data collection and analysis plans. The satellite grantees are expected to propose the location of sources of data, obtain agreements to participate, propose a data collection procedure and carry out pilot testing of the proposed instruments. They may propose to initiate new studies or collect data from ongoing studies compatible with the longitudinal study design. They will have the opportunity to develop their own special analyses along with those about which they collaborate with the central grantee. Federal funding for Phase Two, the implementation of a consortium of longitudinal studies, will be based on a determination of the feasibility of the total effort.

NCCAN seeks proposals for a central grantee to oversee methodological issues and support the work of satellite grantees who will collect data and turn it over to the central grantee for analysis. This grantee will be responsible for establishing an experimental design, sampling procedures, a core set of measurement instruments, and data collection procedures to be used by all the grantees.

The central grantee must demonstrate methodological expertise in every aspect of longitudinal study work including the measurement of children and family systems, psychometrics, sampling, experimental design, tracking, data storage and statistical analysis.

The choice of instruments and procedures will be decided jointly by the central and satellite grantees and their consultants and staff of NCCAN. The central grantee will be expected to have staff and consultants expert in every area of methodology and child maltreatment.

The satellite grantees will be responsible for identifying appropriate sources for subjects and controls and arranging for data collection. These grantees are expected to expand on the core data collection instruments and to perform such additional analyses as they deem appropriate. They are expected to demonstrate expertise in child maltreatment and field work. Grantees must agree to surrender their data to the central grantee and arrange for associated child protection agencies to agree to transfer data under procedures that insure anonymity of subjects.

An annotated bibliography on longitudinal studies of child maltreatment can be obtained from the Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, DC 20013.

For this particular priority area, applicants are encouraged to apply for both or either of these grants. Separate applications are required.

NCCAN will fund projects in Phase I to develop designs for the study for 12 months with a Federal level not to exceed \$60,000 for the central grantee and \$30,000 for the satellite grantees. Upon completion of Phase I, NCCAN will fund for a five year period and possibly longer pending statutory authority and availability of funds, one central grantee with a Federal level not exceeding \$100,000 per year and three satellites with a Federal share not exceeding \$33,000 per year. Additional satellite projects may be funded in the future.

E. Demonstration and Service Program Priorities

Except for territories, applicants for the following demonstration priority areas must provide a 25% non-Federal share matching requirement:

1. Utilizing Results of Demonstration Grant Clusters

Over the past several years NCCAN has funded clusters of grants relating to a common program theme in child abuse prevention and treatment. These projects are valuable to the communities they serve and for the knowledge and program expertise they have generated which can be transferred to other communities to improve child abuse and neglect services. The field needs to

become more aware of successful, relevant programs that have reasonable costs and are easily adapted and implemented.

For several of the successful cluster grant programs there has been no final effort to evaluate and synthesize the results from individual projects into a cluster report for the field, including a review of individual final reports and other materials developed by the projects which reflect information about objectives, implementation strategies, costs and outcomes. There is a need for various organizations or agencies with experts in the field, who have special interests in the subject matter either by virtue of their professional or academic experience, to distill and synthesize the significant project findings into reports to the field, including development of utilization strategies. Dissemination strategies appropriate to the needs of various user groups also need to be addressed.

Three grant clusters which have a solid body of information suitable for this analysis include:

(a) Parent Aide and Respite Care Programs:

(b) Education of School-aged Children to Prevent Child Sexual Abuse and Development of Educational Materials Geared to Preschool-aged Children and Adolescents; and

(c) Models to Assist Teenage Mothers in Preventing Child Abuse and Neglect.

NCCAN anticipates funding projects for up to 18 months with a Federal share not to exceed \$75,000.

2. Adaptation of Child Sexual Abuse Training Curricula for Demonstration with Native American Populations

Child sexual abuse is recognized as pervading modern society with estimates that, by the age of eighteen, 15-25 percent of girls and 3-10 percent of boys will be sexually abused. The Native American population is no exception.

Several curricula have been developed and used to train children, parents and teachers on: (1) How to talk about and cope with past child sexual abuse, and (2) how to prevent future child sexual abuse. Many experts believe that the manner of presentation and the environment in which the material is presented affects how children accept and incorporate the information. An educational setting is believed to be a non-threatening environment to children and a teacher is often viewed as a responsible person that the children will trust and communicate with openly. It is also important to involve the school

administration and parents to ensure their full support.

Examples of curricula recognized in the field include the following:

- *Talking About Touching. A Personal Safety Curriculum* (1984) Ruth Harms and Donna James, Seattle, Washington: Committee for Children, Grade level: 1-5;
- *Personal Safety Curriculum: Prevention of Child Sexual Abuse* (1983) Geraldine Crisci, Hadley, Massachusetts, Grade level: Preschool-6;
- *Personal Safety: Curriculum for Prevention of Child Sexual Abuse* (1982), Marlys Olson, Child Sexual Abuse Prevention Program, Tacoma, Washington: Tacoma Public Schools, Grade level: Preschool-6.

An annotated bibliography of curricula for prevention of child sexual abuse can be obtained from the Clearinghouse on Child Abuse and Neglect Information, P.O. Box 1182, Washington, DC 20013.

NCCAN is interested in funding demonstration projects to adapt existing child sexual abuse prevention training curricula for children in preschool programs through elementary school grades six on or near Indian reservations. The projects should include training for the teachers to implement the program as well as for the parents and children. Applicants shall conduct a literature survey, review the state of the art curricula, and select the curricula suitable for adaptation for the Tribe(s).

Eligibility for this priority area is limited to Federally recognized Indian Tribes, national Indian organizations, Native American colleges and universities, and other institutions of higher education which have a history of serving the educational needs of Native Americans. Applicants should include on the project as staff or in an advisory capacity selected Tribal members who are also parents. Applications must include letters of commitment from the Tribal Councils detailing their proposed involvement in the program including their agreement to work with the curriculum addressed in the application.

NCCAN will fund projects for 24 month periods having a Federal share not to exceed \$100,000 per project per year.

3. Parents' Self-help Group

From its inception, NCCAN has supported efforts of national networks of parent self-help groups that utilize techniques of self-help for the treatment of parents who abuse and neglect their children and also serve as a resource to

other troubled parents who believe that without this help they might harm their children. As these groups have expanded in the States and local communities, they have become a significant part of the intervention strategy for working with these parents and their children.

NCCAN is interested in continuing to support parent self-help programs of demonstrated effectiveness which are national in scope. These programs should include furthering the development of a national focus, public awareness, and network of parent self-help groups either by establishing new groups and/or by strengthening the capacity of existing groups.

Examples of activities that might be considered under this priority area are:

- Strengthening the relationships between parent self-help groups and public and private agencies which serve abused and neglected children in order to encourage consistent use of parent self-help as part of the intervention strategy;
- Enhancing public awareness and outreach programs to at risk families to encourage self referral;
- Increasing accessibility through recruitment and training of parents for participation in self-help groups, and transportation and staff consultation;
- Promoting the further development and expansion of local chapters which have limited resources;
- Promoting the development of State resource organizations in States that do not now have them;
- Enhancing the capacity for local chapters and State organizations to network and participate in national leadership development and agenda building;
- Supporting the preparation and dissemination of written materials for chapter leadership and development;
- Developing prototypes for varying needs (e.g., abused spouse and child, abuse by relative outside the home or stranger).

NCCAN anticipates funding one or more projects to national parent self-help organizations for up to three years for the furthering of the development and expansion of parent self-help groups at a Federal share not to exceed \$150,000 per project per year.

4. Prevention of Physical Child Abuse and Neglect

Considerable evidence is available which suggests that reports of child abuse and neglect are increasing and that the State child protective services system does not have the capacity to respond effectively. Further, while a large percentage of these reports are

unsubstantiated, a significant number of additional cases go unreported. There is the need, therefore, to once again focus on and support comprehensive community-based approaches to the prevention of child abuse and neglect capturing and utilizing the knowledge developed over the past decade.

NCCAN has supported many research and demonstration projects in prevention. Additionally, Children's Trust and Prevention Funds have been established in 48 States, and 44 States have received Challenge Grant funds to establish prevention programs in child abuse and neglect. Through these and other related efforts designed to prevent child maltreatment, a wide variety of prevention strategies are being utilized in communities across the United States. However, these are scattered and may not include the full range of components necessary to reach all children and families who may be at risk or in need of help.

NCCAN is interested in providing support for the planning and development of model comprehensive community-based physical child abuse and neglect prevention programs to address local needs in a number of urban, suburban and rural communities across the country. These model programs should be designed to minimally consist of the following components coordinated on a community-wide basis:

- Public awareness programs for citizens about positive parenting and positive family support;
- Prenatal health care and parenting education and support programs for all new parents (including home health visitor programs) that acknowledge and reinforce parental responsibility for their children;
- Support services for parents under stress that encourage parent participation (such as child care, respite care, crisis nurseries, helplines, self-help groups and other natural helping support networks in the community, provision for linkages and continuity of care and services, housing and other basic necessities, and job training);
- School-based age specific prevention education programs for all school age children;
- Coordination between child abuse and neglect services and domestic violence programs;
- Therapeutic care for victims and perpetrators of abuse; home based transition and follow-up services for children and their families;
- Projects for the prevention of alcohol and drug-related child abuse and neglect including substance abuse

as a component of parenting education and curriculum training programs.

Additional components may include the following:

- Hospital-based (or whatever health facility may be available in a rural area) information and referral services for parents of children with handicaps and children who have been neglected or abused by their parents;
- Multidisciplinary training programs for professionals involved in the planning and implementation of these model community programs;
- A community-based interdisciplinary task force, including the citizens and the private sector, to plan, develop, implement, and oversee the model community prevention program.

NCCAN will fund up to ten grants for a five year period for the planning and development of model programs for prevention of physical child abuse and neglect. Successful applicants are expected to participate in a common data collection and evaluation effort. One grantee will be selected from among the successful applicants to serve as consortium leader for the data collection, evaluation and networking effort and additional funds will be available for this effort. Applicants should state their interest in being the consortium leader and provide a brief description of their capability to do so. It is not anticipated that funds will be used for direct services. The Federal share will not exceed \$200,000 per project per year.

III. General Information and Requirements for the Application Process and Review

This part contains general information for applicants and basic requirements for submitting applications in response to this announcement. Application forms are provided along with detailed instructions for developing and assembling the application package for submittal at the end of this section.

A. General Information

1. Review Process and Funding Decisions

Applications will be reviewed and scored competitively against the published evaluation criteria (see III D of this announcement) by experts in the field, generally persons from outside of the Federal government. A formal review process established in accordance with section 6(e) of the Act will be conducted in Washington, DC. The results of this review will be a

primary factor in making funding decisions.

The Office of Human Development Services reserves the option of discussing applications with, or referring them to, other Federal or non-Federal funding sources when this is determined to be in the best interest of the Federal government or the applicant.

To the extent possible, final decisions for demonstration projects will reflect the equitable distribution of assistance among States, geographic areas of the nation, rural and urban areas, and ethnic populations. The Office of Human Development Services will also take into account the need to avoid duplication of effort in making funding decisions.

2. Executive Order 12372—Notification Process

This program is covered under Executive Order (E.O.) 12372, "Intergovernmental Review of Federal Programs," and 45 CFR Part 100, "Intergovernmental Review of Department of Health and Human Services Programs and Activities." Under the Order, States may design their own processes for reviewing and commenting on proposed Federal assistance under covered programs. All States and territories except Alaska, Idaho, Kansas, Minnesota, Nebraska, American Samoa, and Palau have elected to participate in the Executive Order process and have established Single Points of Contact (SPOCs). Applicants from these seven areas need take no action regarding E.O. 12372. Applications for projects to be administered by federally-recognized Indian Tribes are also exempt from the requirements of E.O. 12372.

Otherwise, applicants should contact their SPOC as soon as possible to alert them of the prospective application and to receive any necessary instructions. Applicants must submit any required material to the SPOC as early as possible so that the program office can obtain and review SPOC comments as part of the award process. It is imperative that the applicant submit all required materials, if any, to the SPOC and indicate the date of this submittal (or date of contact if no submittal is required) on the SF 424, item 16a.

SPOCs have 60 days from the grant application deadline date to comment on applications for financial assistance under this program. SPOCs are encouraged to eliminate the submission of routine endorsements as official recommendations. Additionally, SPOCs are requested to clearly differentiate between mere advisory comments and those official State process recommendations which they intend to

trigger the "accommodate or explain" rule.

When comments are submitted directly to OHDS, they should be addressed to: FY 1989 NCCAN Research and Demonstration Program, Office of Human Development Services, Grants and Contracts Management Division, Room 345F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201. OHDS will notify the State of any application received which has no indication that the State process has had an opportunity for review. A list of single points of contact for each State and territory is included in Appendix I of this announcement.

B. Application Screening Criteria

Applications must meet the following screening requirements or they will not be considered in the current competition; these requirements will be rigorously enforced:

1. Eligible Applicants

With the exception of priority area II.E.2 any State or local, public or nonprofit organization or agency may submit an application under this announcement.

In addition, the application must meet any eligibility requirements specific to the priority area under which it is being submitted. An application can be submitted under only one priority area; however, other applications from the same organization may be submitted separately under other priority areas.

2. Deadline for Submittal of Applications

Under this announcement, the closing date for applications is July 21, 1989.

Applications must either be hand delivered or mailed to: FY 1989 NCCAN Research and Demonstration Program, Office of Human Development Services, Grants and Contracts Management Division, Hubert H. Humphrey Building, Room 345-F, 200 Independence Avenue, SW., Washington, DC 20201. Hand-delivered applications will be accepted during the normal working hours of 9:00 a.m. to 5:30 p.m., Monday through Friday.

(a) *Deadlines.* Applications shall be considered as meeting the deadline if they are either:

- (i) Received on or before the deadline date at the address specified above, or
- (ii) Sent on or before the deadline date and received by the granting agency in time for the independent review under Chapter 1-62 of HHS Transmittal 88.01 (4/30/86). Applicants are cautioned to request a legibly dated U.S. Postal Service postmark or to obtain a legibly

dated receipt from a commercial carrier or the U.S. Postal Service as proof of mailing of the deadline date. Private metered postmarks shall not be acceptable as proof of timely mailing.

(b) *Late Applications.* Applications which do not meet the criteria in the above paragraphs are considered late applications. The granting agency shall notify each late applicant that its application will not be considered in the current competition.

(c) *Extension of Deadlines.* The Administration for Children, Youth and Families may extend the deadline for all applicants because of acts of God such as floods, hurricanes, earthquakes, etc., or when there is widespread disruption of the mail. However, if the granting agency does not extend the deadline for all applicants, it may not waive or extend the deadline for any applicant.

C. Application Requirements

1. Priority Area Responsiveness

The application must be responsive to the priority area under which it is being submitted, as identified at the top of page one of the SF 424. In order to be considered responsive, the application must address each of the minimum requirements for an application specified in the priority area description.

2. Application Form

The application must be submitted on single-sided reproduced copies of the SF 424 (revised April 1988).

3. Copies Required

Applicants must submit an original and two copies of the complete application prepared in accordance with the instructions provided. A complete application includes: the completed SF 424, a summary description of the proposed project, and the program narrative. The full application package is described in III. H. below.

4. Signature

The signature of the Certifying Representative must be handwritten (preferably in black ink) and the signer's name and title must be typed in Item 18a of the original SF 424.

5. Length

All narrative sections of the application must meet the format specifications and recommended length requirements as specified in the instructions later in this part. Appendices/attachments may consist of approximately 10 pages.

6. State Single Point of Contact

Item 16a or 16b must be completed for State Single Point of Contact (SPOC) certification as required under Executive Order 12372.

D. Evaluation Criteria

The Program Narrative Statement of the application should correspond to the evaluation criteria. The description of the four criteria below should be used as headings in developing the program narrative.

Applications will be reviewed by a panel of at least three individuals. These reviewers will comment on and score the applications, basing their comments and scoring decisions on the criteria below.

1. Objectives and Need for Assistance (25 points)

The extent to which the application reflects a good understanding of the objectives of the project; pinpoints any relevant physical, economic, social, financial, institutional, or other problems; demonstrates the need for the assistance; states the principal and subordinate objectives of the project; and provides supporting documentation or other testimonies from concerned interests other than the applicant. Relevant data based on the results of planning studies are included and/or footnoted.

Describe the specific objectives and need for the project in terms of its national or regional significance. Describe the theoretical importance of the problem or area to be addressed and how the proposed effort will impact on it. For research grant proposals: Describe the hypothesis(es) to be tested or the specific questions to be answered. For demonstration and service program grant proposals: State the goals or service objectives of the project and, where applicable (e.g., planning grant proposals for prevention of physical child abuse and neglect), give a precise location of the project or area to be served by the project. Discuss the state-of-the-art relative to the problem or area of child abuse and neglect and provide a review of the literature, including previous work of the authors(s) of the proposal.

2. Results or Benefits Expected (10 points)

The extent to which the identified results and benefits to be derived are consistent with the objectives of the proposal and there are clear and important anticipated contributions to policy, practice, theory and/or research indicated.

Describe the product(s) expected from this project and the steps to be taken for distribution of these products and findings.

3. Approach (40 points)

The extent to which the application outlines a sound and workable plan of action pertaining to the scope of the project and details how the proposed work will be accomplished; cites factors which might accelerate or decelerate the work and gives acceptable reasons for taking this approach as opposed to others; describes and supports any unusual features of the project, such as design or technological innovations, reductions in cost or time, or extraordinary social and community involvements; and provides for projections of the accomplishments to be achieved. The application lists the activities to be carried out in chronological order and shows a reasonable schedule of accomplishments and target dates. The applicant identifies the kinds of data to be collected and maintained, and discusses the criteria to be used to evaluate the results and success of the project. The applicant explains the methodology that will be used to determine if the needs identified and discussed are being met and if the results and benefits identified are being achieved. The application also lists each organization, agency, consultant, or other key individuals or groups who will work on the project along with a description of the activities and nature of their effort or contribution.

For research grant proposals: Describe the methodology including sampling, design, kinds of data to be collected, procedures for data collection, the instruments and measures to be utilized, adapted or developed and the plans for data analysis. For demonstration and service program grant proposals: Describe the design of the demonstration or training program or other appropriate techniques to be used, including measures for evaluation or assessment.

Describe the staffing pattern for the proposed project, listing key staff and consultants, their responsibilities in conjunction with this project and the time they will be committing to the project. Identify the authors of the application and their role in the proposed project. (Letters of commitment, where appropriate, must be included with the application.)

4. Staff Background and Experience (25 points)

The extent to which the resumes of the program director and key project

staff (including names, addresses, training, background and other qualifying experience) and the organization's experience demonstrate the ability to effectively and efficiently administer a project of this size, complexity and scope and reflect the ability to use and coordinate activities with other agencies for the delivery of comprehensive support services. The application describes the relationship between this project and other work planned, anticipated or underway under Federal assistance.

Describe the background experience, training and qualifications of the key staff and consultants, including any experiences working on child abuse and neglect and similar projects. (Curriculum vitae must be included with the application.) Describe the adequacy of available resources and organizational experience related to the tasks of the proposed project. (An organizational capability statement must be included with the application.) Describe any collaborative efforts with other organizations including the nature of their contribution to the project. (Letters of commitment, where appropriate, must be included with the application.)

E. The Components of the Application

A complete application consists of the following in this order:

1. Application Face Sheet, SF 424, page 1.
2. Budget Non-Construction, SF 424A, Budget Information: Section A (Budget Summary), Section B (Budget Categories), and Section E (Budget Estimates of Federal Funds Needed for Balance of the Project);
3. Budget justification (approximately three pages);
4. Project summary description with listing of key words (approximately 1 page);
5. Program Narrative (up to approximately 25 double-spaced pages), organized with sections addressing the following four areas: (1) Objectives and Need for Assistance; (2) Results or Benefits Expected; (3) Approach; and (4) Staff Background and Experience;
6. Organizational capability statement;
7. Letters of commitment;
8. SF 424B Assurances-Non Construction, Debarment, and Drug Free Workplace; HHS 596, Human Subjects Certification; and
9. Appendices/attachments, up to approximately 10 pages, may include a bibliography (approximately two pages single-spaced); curriculum vitae (approximately two pages each); and instruments/measurements.

F. Preparing the Application

1. Availability of Forms

Agencies and organizations interested in applying for grant funds should submit an application(s) on the Standard Form 424 (revised April 1988) which is included in this announcement (Appendix II).

Each application must be executed by an individual authorized to act on behalf of the applicant agency and to assume responsibility for the obligations imposed by the terms and conditions of the grant award. Applications must be prepared in accordance with the guidance provided in this announcement and the instructions in the attached application package.

2. Application Submission and Notification

Completed applications must be sent to: FY 1989 NCCAN Research and Demonstration Program, Office of Human Development Services, Grants and Contracts Management Division, HHH Building—Room 345F, 200 Independence Avenue, SW., Washington, DC 20201.

The program announcement number (13870-891) must be clearly identified on the application.

Successful applicants will be notified through a Notice of Financial Assistance Awarded. The award will state the amount of Federal funds awarded, the purpose of the grant, the terms and conditions of the grant award, the effective date of the grant, the total project period, the budget period and the amount of the non-Federal matching share. Unsuccessful applicants will be notified by letter.

3. Program Narrative

The Program Narrative is a very important part of the application. It should be clear, concise and specific to the priority area being addressed as described in Part II. The narrative should provide information on how the application meets the evaluation criteria. This narrative should be no less than 8 double-spaced pages and up to approximately 25 double-spaced pages. It should be typed on a single-side of 8½" by 11" plain white paper with 1" margins on both sides. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page one. Applicants should not submit reproductions of larger size paper reduced to meet the size requirement.

Applicants are required to follow the format described below in preparing their applications, using the four

headings for the sections of the narrative. However, the number of specific pages for each section is given as a suggestion only. The specific information to be included under each heading was discussed previously under the "Evaluation Criteria."

The four sections are:

- (1) Objectives and Need for Assistance (six pages double-spaced);
- (2) Results or Benefits Expected (two pages double-spaced);
- (3) Approach (eleven pages double-spaced);
- (4) Staff Background and Experience (six pages double-spaced).

4. Organizational Capability Statement

Applicants should provide a brief (approximately two pages double-spaced) background description of how the applicant is organized and the types and quantities of services it provides or the research capabilities it possesses. This statement may also include descriptions of current work or relevant past experience as well as the competence of the project team and its demonstrated ability to produce a final product that is comprehensible and usable.

5. Assurances and Certifications

Applicants must file a standard form 424B, Assurances-Non-Construction Programs, and Certifications Regarding Debarment and Drug-Free Workplace Requirements. These assurances are reprinted at the end of this announcement (Appendix II).

For research grants, an Assurance of Protection of Human Subjects (Form HHS 596) is also required and is reprinted in Appendix II. There is a place on this form to check that no assurance of compliance has been received and, in exceptional cases, the certification may be accepted up to 60 days after the receipt date for which the application is submitted. Where institutions do not have one on file with HHS, the certification must be submitted within 30 days of written request from HHS. If there is a question regarding the applicability of this assurance, contact the Office of Research Risks of the National Institutes of Health at (301) 496-7041.

G. The Application Package

To expedite the processing of applications, each applicant is requested to adhere to the following instructions. Each application package must include:

1. A copy of the Checklist for a Complete Application with all the items checked as being included in the application.

2. An original and two copies of the complete application. Each copy should be stapled securely (front and back if necessary) in the upper left corner. All pages of the narrative (including charts, tables, maps, exhibits, etc.) must be sequentially numbered, beginning with "Objectives and Need for Assistance" as page one. To facilitate handling, please do not use covers, binders, tabs or include extraneous materials, such as, agency promotion brochures, slides, tapes, film clips, minutes of meetings or articles of incorporation.

Do not include a self-addressed, stamped acknowledgment card. All applicants will be automatically notified of the receipt of, and the four digit identification number assigned to, their application. This number and priority area must be referred to in all subsequent communication with HHS concerning the application. After an identification number is assigned and the applicant has been notified of the number, applications are filed numerically by identification number to aid in quick retrieval. It will not be possible for HHS staff to provide a timely response to inquiries about a specific application unless the identification number and the priority area are given. Applicants should be advised that HHS staff cannot release pre-decisional information relative to an application other than that it has been received and that it is going through the review process. Once a decision is reached, the applicant will be notified as soon as possible of a acceptance or rejection of the application.

H. Checklist for a Complete Application

The Checklist below should be typed on 8½" by 11" plain white paper, completed and included in the application package.

Checklist

I have checked my application package to ensure that it includes the following:

- ___ Checklist for a Complete Application;
- ___ One original application signed in black ink and dated plus two copies;
- ___ A completed SPOC certification with the date of SPOC contact entered in item 16 page 1 of the SF 424;
- ___ Each package contains the application (original and two copies) for one priority area.
- The original and both copies of the application include the following:
 - ___ SF 424, page 1, Application Face Sheet;
 - ___ SF 424A;

BEST COPY AVAILABLE

- Budget justification;
- Summary description and key words;
- Program narrative;
- Organizational Capability Statement;
- Letters of commitment;
- SF 424B Assurances—Non-Construction, Debarment, Drug-Free Workplace, and HHS 596 Human Subjects Certification; and
- Appendices/attachments.

(Federal Catalog of Domestic Assistance Program Number 13.670, Child Abuse and Neglect Prevention and Treatment).

Dated: May 2, 1989.

Joseph Motola,
Acting Commissioner, Administration for Children, Youth and Families.

Approved: May 9, 1989.

Donna N. Givens,
Acting Assistant Secretary for Human Development Services.

Appendix I

Executive Order 12372—State Single Points of Contact

ALABAMA

Mrs. Donna J. Snowden, SPOC, Alabama State Clearinghouse, Alabama Department of Economic and Community Affairs, 3485 Norman Bridge Road, Post Office Box 2939, Montgomery, Alabama 36105-0939, Tel. (205) 284-8905

ALASKA

None

ARIZONA

Department of Commerce, State of Arizona, Janice Dunn, Arizona State Clearinghouse, 1700 West Washington, Fourth Floor, Phoenix, Arizona 85007, Tel. (602) 255-5004

ARKANSAS

Joe Gillespie, Manager, State Clearinghouse, Office of Intergovernmental Services, Department of Finance and Administration, P.O. Box 3278, Little Rock, Arkansas 72203, Tel. (501) 371-1074

CALIFORNIA

Glenn Stober, Grants Coordinator, Office of Planning and Research, 1400 Tenth Street, Sacramento, California 95814, Tel. (916) 323-7480

COLORADO

State Single Point of Contact, State Clearinghouse, Division of Local Government, 1313 Sherman Street, Room 520, Denver, Colorado 80203, Tel. (303) 866-2156

CONNECTICUT

Under Secretary, Attn: Intergovernmental Review Coordinator, Comprehensive Planning Division, Office of Policy and Management, Hartford, Connecticut 06106-4459, Tel. (203) 566-3410

DELAWARE

Francine Booth, State Single Point of Contact, Executive Department, Thomas Collins Building, Dover, Delaware 19903, Tel. (302) 736-4204

DISTRICT OF COLUMBIA

Lovetta Davis, State Single Point of Contact, Executive Office of the Mayor, Office of Intergovernmental Relations, Room 416, District Building, 1350 Pennsylvania Avenue NW, Washington, DC 20004, Tel. (202) 727-9111

FLORIDA

George H. Meier, Director of Intergovernmental Coordination, State Single Point of Contact, Executive Office of the Governor, Office of Planning and Budgeting, The Capitol, Tallahassee, Florida 32301, Tel. (904) 488-8114

GEORGIA

Charles H. Badger, Administrator, Georgia State Clearinghouse, 270 Washington Street SW, Room 606, Atlanta, Georgia 30334, Tel. (404) 656-3855

HAWAII

Harold S. Masumoto, Acting Director, Office of State Planning, Department of Planning and Economic Development, Office of the Governor, Honolulu, Hawaii 96813, Tel. (808) 548-3016 or 548-3065

IDAHO

None

ILLINOIS

Tom Berkshire, Office of the Governor, State of Illinois, Springfield, Illinois 62708, Tel. (217) 782-8639

INDIANA

Ms. Peggy Boehm, Deputy Director, State Budget Agency, 212 State House, Indianapolis, Indiana 46204, Tel. (317) 232-5604

IOWA

Stephea R. McCann, Division of Community Progress, Iowa Dept. of Economic Development, Division of Community Progress, 200 East Grand Avenue, Tel. (515) 281-3725

KANSAS

None

KENTUCKY

Robert Leonard, State Single Point of Contact, Kentucky State Clearinghouse, 2nd Floor, Capital Plaza Tower, Frankfort, KY 40601, Tel. (502) 564-2362

LOUISIANA

Colby S. La Place, Assistant Secretary, Department of Urban & Community Affairs, Office of State Clearinghouse, P.O. Box 94455, Capitol Station, Baton Rouge, Louisiana 70804, Tel. (504) 342-9790

MAINE

State Single Point of Contact, Attn: Joyce Benson, State Planning Office, State House Station #36, Augusta, Maine 04333, Tel. (207) 289-3261

MARYLAND

Guy W. Hager, Director, Maryland State Clearinghouse, Department of State Planning, 301 West Preston Street, Baltimore, Maryland 21201-2365, Tel. (301) 225-4490

MASSACHUSETTS

State Single Point of Contact, Attn: Beverly Boyle, Executive Office of Communities and Development, 100 Cambridge Street, Rm. 904, Boston, Massachusetts 02202, Tel. (617) 727-3253

MICHIGAN

Michelyn Pasteur, Deputy Director, Local Development Services, Department of Commerce, P.O. Box 30225, Lansing, Michigan 48908, Tel. (517) 373-1838
Note: Please direct correspondence and questions to: Don Bailey, Manager, Federal Project Review System, 6500 Mercantile Way, Suite 2, Lansing, MI 48911, (517) 335-1838

MINNESOTA

None

MISSISSIPPI

Marlan Baucum, Office of Federal State Programs, Department of Planning and Policy, 2000 Walter Sillers Bldg., 500 High Street, Jackson, Mississippi 39202, Tel. (601) 359-3150

MISSOURI

Lois Pohl, Federal Assistance Clearinghouse, Office of Administration, Division of General Services, P.O. Box 809—Room 460, Truman Building, Jefferson City, MO 65102, Tel. (314) 751-4834

MONTANA

Deborah Davis, State Single Point of Contact Intergovernmental Review Clearinghouse, c/o Office of the Lieutenant Governor, Capitol Station, Room 210—State Capitol, Helena, MT 59620, Tel. (406) 444-5522

NEBRASKA

None

NEVADA

Ms. Jean Ford, Director, Nevada Office of Community Services, Capitol Complex, Carson City, Nevada 89710, Tel. (702) 885-4420

Note: Please direct correspondence and questions to: John Walker, Clearinghouse Coordinator, Tel. (702) 885-4420

NEW HAMPSHIRE

John E. Dabuliewicz, Director, New Hampshire Office of State Planning, Attn: Intergovernmental Review Process, 2 1/2 Beacon Street, Concord, New Hampshire 03301, Tel. (603) 271-2155

NEW JERSEY

Mr. Barry Skokowski, Director, Division of Local Government Services, Department of Community Affairs, CN 803, 363 West State Street, Trenton, New Jersey 08625-0803, Tel. (609) 292-6613

Note: Please direct correspondence and questions to: Nelson S. Silver, State

Review Process, Division of Local Government Services—CN 803, Trenton, New Jersey 08625-0803, Tel. (609) 292-9025

NEW MEXICO

Dean Olson, Director, Management and Program Analysis Division, Department of Finance and Administration, Room 424, State Capitol Building, Santa Fe, New Mexico 87503, Tel. (505) 827-3885

NEW YORK

New York State Clearinghouse, Division of the Budget, State Capitol, Albany, NY 12224 (518) 474-1605

NORTH CAROLINA

Mrs. Chrys Baggett, Director, Intergovernmental Relations, North Carolina Department of Administration, 116 West Jones Street, Raleigh, North Carolina 27611, Tel. (919) 733-0499

NORTH DAKOTA

William Robinson, State Single Point of Contact, Office of Intergovernmental Affairs, Office of Management and Budget, 14th Floor, State Capitol, Bismarck, North Dakota 58505, Tel. (701) 224-2094

OHIO

Larry Weaver, State Single Point of Contact, State/Federal Funds Coordinator, State Clearinghouse, Office of Budget and Management, 30 East Broad Street, Columbus, OH 43266-0411, Tel. (614) 466-0898

Note: Please direct correspondence and questions to: Linda E. Wise

OKLAHOMA

Don Strain, State Single Point of Contact, Oklahoma Department of Commerce, Office of Federal Assistance Management, 6601 Broadway Extension, Oklahoma City, Oklahoma 73116, Tel. (405) 843-9770

OREGON

Attn: Delores Streete, State Single Point of Contact, Intergovernmental Relations Division, State Clearinghouse, 155 Cottage Street NE, Salem, OR 97310, (503) 373-1998

PENNSYLVANIA

Laine A. Heltebride, Special Assistant, Pennsylvania Intergovernmental Council, P.O. Box 11880, Harrisburg, Pennsylvania 17108, Tel. (717) 783-3700

RHODE ISLAND

Daniel W. Varin, Associate Director, Statewide Planning Program, Department of Administration, Division of Planning, 265 Melrose Street, Providence, Rhode Island 02907, Tel. (401) 277-2856
Note: Please direct correspondence and questions to: Review Coordinator, Office of Strategic Planning

SOUTH CAROLINA

Danny L. Cromer, State Single Point of Contact, Grant Services, Office of the Governor, 1205 Pendleton Street, Rm. 477, Columbia, South Carolina 29201, Tel. (803) 734-0435

SOUTH DAKOTA

Susan Comer, State Clearinghouse Coordinator, Office of the Governor, 500 East Capitol, Pierre, South Dakota 57501, Tel. (605) 773-3212

TENNESSEE

Charles Brown, State Single Point of Contact, State Planning Office, 500 Charlotte Avenue, 309 John Sevier Building, Nashville, Tennessee 37219, Tel. (615) 741-1676

TEXAS

Thomas C. Adams, Office of the Budget and Planning, Office of the Governor, P.O. Box 12427, Austin, Texas 78711, Tel. (512) 463-1778

UTAH

Dale Hatch, Director, Office of Planning and Budget, State of Utah, 116 State Capitol Building, Salt Lake City, Utah 84114, Tel. (801) 533-5245

VERMONT

Bernard D. Johnson, Assistant Director, Office of Policy Research and Coordination, Pavilion Office Building, 109 State Street, Montpelier, Vermont 05602, Tel. (802) 828-3326

VIRGINIA

Nancy Miller, Intergovernmental Affairs Review Officer, Department of Housing and Community Development, 205 North 4th Street, Richmond, Virginia 23219, Tel. (804) 786-4474

WASHINGTON

Catherine Townley, Coordinator, Intergovernmental Review process, Department of Community Development, Ninth and Columbia Building, Olympia,

Washington 98504-4151, Tel. (206) 753-4978

WEST VIRGINIA

Mr. Fred Cutlip, Director, Community Development Division, Governor's Office of Community and Industrial Development, Building #6, Rm. 553, Charleston, West Virginia 25305, Tel. (304) 348-4010

WISCONSIN

James P. Klausner, Secretary, Wisconsin Department of Administration, 101 South Webster—CEF 2, P.O. Box 7864, Madison, Wisconsin 53707-7864, Tel. (608) 266-1741

Note: Please direct correspondence and questions to: Thomas Krauskopf, Federal-State Relations Coordinator, Wisconsin Department of Administration

WYOMING

Ann Redman, State Single Point of Contact, Wyoming State Clearinghouse, State Planning Coordinator's Office, Capitol Building, Cheyenne, Wyoming 82002, Tel. (307) 777-7574

American Samoa

None

Guam

Michael J. Reidy, Director, Bureau of Budget and Management Research, Office of the Governor, P.O. Box 2950, Agaña, GU 96910, (671) 472-2285

VIRGIN ISLANDS

Jose L. George, Director, Office of Management and Budget No. 32 and 33 Kongens Gade, Charlotte Amalie, VI 00802 (809) 774-0750

PUERTO RICO

Ms. Patricia G. Custodio/Isael Soto Marrero, Chairman/Director, Minillas Government Center, P.O. Box 41119, San Juan, Puerto Rico 00940-9985, Tel. (809) 727-4444

NORTHERN MARIANA ISLANDS

State Single Point of Contact, Planning and Budget Office, Office of the Governor, Saipan, CM Northern, Mariana Islands 96950

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BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A — BUDGET SUMMARY						
Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B — BUDGET CATEGORIES					
6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	\$	\$	\$	\$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$

SECTION D - FORECASTED CASH NEEDS					
13. Federal	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
	\$	\$	\$	\$	\$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	\$	\$	\$	\$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	\$	\$	\$	\$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j — Show the amount of indirect cost.

Line 6k — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A (continued)

Line 7 — Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 — Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) — Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) — Enter the contribution to be made by the applicant.

Column (c) — Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) — Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) — Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 — Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 — Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 — Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 — Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 — Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 — Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 — Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 — Provide any other explanations or comments deemed necessary.

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

- Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
- Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
- Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
- Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
- Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
- Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

- Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
- Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
- Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
- Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
- Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
- Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED	

SF 424B (4-88) Back

Certification Regarding Debarment, Suspension, and Other
Responsibility Matters - Primary Covered Transactions

By signing and submitting this proposal, the applicant, defined as the primary participant in accordance with 45 CFR Part 76, certifies to the best of its knowledge and believe that it and its principals:

(a) are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal Department or agency;

(b) have not within a 3-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) are not presently indicted or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

The inability of a person to provide the certification required above will not necessarily result in denial of participation in this covered transaction. If necessary, the prospective participant shall submit an explanation of why it cannot provide the certification. The certification or explanation will be considered in connection with the Department of Health and Human Services' (HHS) determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.

The prospective primary participant agrees that by submitting this proposal, it will include the clause entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion - Lower Tier Covered Transactions," provided below without modification in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

U.S. Department of Health and Human Services
Certification Regarding
Drug-Free Workplace Requirements
Grantees Other Than Individuals

By signing and/or submitting this application or grant agreement, the grantee is providing the certification set out below.

This certification is required by regulations implementing the Drug-Free Workplace Act of 1988, 45 CFR Part 76, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when HHS determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment.

The grantee certifies that it will provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing a drug-free awareness program to inform employees about:

- (1) The dangers of drug abuse in the workplace;
- (2) The grantee's policy of maintaining a drug-free workplace;
- (3) Any available drug counseling, rehabilitation, and employee assistance programs; and,
- (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will:

- (1) Abide by the terms of the statement; and,
- (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;

(e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;

(f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted:

- (1) Taking appropriate personnel action against such an employee, up to and including termination; or
- (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

OMB No. 0925-0637

DEPARTMENT OF HEALTH AND HUMAN SERVICES PROTECTION OF HUMAN SUBJECTS ASSURANCE/CERTIFICATION/DECLARATION ☐ ORIGINAL ☐ FOLLOWUP ☐ EXEMPTION (previously undesignated)	☐ GRANT ☐ CONTRACT ☐ FELLOW ☐ OTHER ☐ New ☐ Competing continuation ☐ Noncompeting continuation ☐ Supplemental APPLICATION IDENTIFICATION NO. (if known)
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POLICY: A research activity involving human subjects that is not exempt from HHS regulations may not be funded unless an Institutional Review Board (IRB) has reviewed and approved the activity in accordance with Section 474 of the Public Health Service Act as implemented by Title 45, Part 46 of the Code of Federal Regulations (45 CFR 46—as revised). The applicant institution must submit certification of IRB approval to HHS unless the applicant institution has designated a specific exemption under Section 46.101(b) which applies to the proposed research activity. Institutions with an assurance of compliance on file with HHS which covers the proposed activity should submit certification of IRB review and approval with each application. (In exceptional cases, certification may be accepted up to 60 days after the receipt date for which the application is submitted.) In the case of institutions which do not have an assurance of compliance on file with HHS covering the proposed activity, certification of IRB review and approval must be submitted within 30 days of the receipt of a written request from HHS for certification.

1. TITLE OF APPLICATION OR ACTIVITY _____

2. PRINCIPAL INVESTIGATOR, PROGRAM DIRECTOR, OR FELLOW _____

3. FOOD AND DRUG ADMINISTRATION REQUIRED INFORMATION (see reverse side)

4. HHS ASSURANCE STATUS

☐ This institution has an approved assurance of compliance on file with HHS which covers this activity.
_____ Assurance identification number _____ IRB identification number

☐ No assurance of compliance which applies to this activity has been established with HHS, but the applicant institution will provide written assurance of compliance and certification of IRB review and approval in accordance with 45 CFR 46 upon request.

5. CERTIFICATION OF IRB REVIEW OR DECLARATION OF EXEMPTION

☐ This activity has been reviewed and approved by an IRB in accordance with the requirements of 45 CFR 46, including its relevant Subparts. This certification fulfills, when applicable, requirements for certifying FDA status for each investigational new drug or device. (See reverse side of this form.)
_____ Date of IRB review and approval. (If approval is pending, write "pending." Followup certification is required.)
(month/day/year)

☐ Full Board Review ☐ Expedited Review

☐ This activity contains multiple projects, some of which have not been reviewed. The IRB has granted approval on condition that all projects covered by 45 CFR 46 will be reviewed and approved before they are initiated and that appropriate further certification (Form HHS 596) will be submitted.

☐ Human subjects are involved, but this activity qualifies for exemption under 46.101(b) in accordance with paragraph _____ (insert paragraph number of exemption in 46.101(b), 1 through 5), but the institution did not designate that exemption on the application.

6. Each official signing below certifies that the information provided on this form is correct and that each institution assumes responsibility for assuring required future reviews, approvals, and submissions of certification.

APPLICANT INSTITUTION NAME, ADDRESS, AND TELEPHONE NO. NAME AND TITLE OF OFFICIAL (print or type) SIGNATURE OF OFFICIAL LISTED ABOVE (and date)	COOPERATING INSTITUTION NAME, ADDRESS, AND TELEPHONE NO. NAME AND TITLE OF OFFICIAL (print or type) SIGNATURE OF OFFICIAL LISTED ABOVE (and date)
--	--

HHS 596 (Rev. 1/82) (If additional space is needed, please use reverse side under "Notes.")

3. FOOD AND DRUG ADMINISTRATION REQUIRED INFORMATION (from front side)
According to 45 CFR 46.121, if an application is made to HHS requiring certification and involving use of an investigational new drug or device, additional information is required. In addition, according to 21 CFR 312.1(a)(2), 30 days must elapse between date of receipt by FDA of Form FD-1571 and use of the drug, unless the 30 day delay period is waived by FDA.

3a. INVESTIGATIONAL NEW DRUG EXEMPTION (if more than one is involved, list others below under NOTES):
SPONSOR NAME _____

DRUG NAME _____

DATE OF END OF 30-DAY EXPIRATION OR WAIVER _____ NUMBER ISSUED _____

3b. INVESTIGATIONAL DEVICE EXEMPTION:
SPONSOR NAME _____

DEVICE NAME _____

Unless notified otherwise by FDA, under 21 CFR 812.2(b) (ii) a sponsor is deemed to have an approved IDE if: (1) the IRB has agreed with the sponsor that the device is a nonsignificant risk device; and (2) the IRB has approved the study. (Check applicable box.)

☐ The IRB agrees with the sponsor that this device is a nonsignificant risk device.
OR
☐ The IDE application was submitted to FDA on (date) _____, Number issued _____.

NOTES:

HHS 596 (Rev. 1/82) BACK

☆ U.S. GOVERNMENT PRINTING OFFICE: 1985-527-481/30482

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federal register

Thursday
June 1, 1989

Part III

Department of Education

National School Volunteer Program;
Notice Inviting Applications for New
Awards for Fiscal Year 1989

DEPARTMENT OF EDUCATION

(CFDA #4.222)

National School Volunteer Program; Notice Inviting Applications for New Awards for Fiscal Year 1989.*Note to Applicants*

This notice is a complete application package. Together with the Department of Education Appropriations Act, 1989, and the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program

To support projects to conduct national school volunteer programs.

Deadline for Transmittal of Applications: July 18, 1989

Deadline for Intergovernmental Review: September 16, 1989

Available Funds: \$988,000

Estimated Range of Awards: \$50,000-\$400,000

Estimated Number of Awards: One to Four

Project Period: 12-24 Months

Applicable Regulations

The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Authority and Description of Program

This program is authorized under Pub. L. 100-438, the fiscal year 1989 appropriations act for the Department of Education, which appropriated \$988,000 for school volunteer programs.

Invitational Priorities

In accordance with 34 CFR 75.105(c)(1), the Secretary establishes two invitational priorities, as described below. However, applications proposing these types of projects will not receive an absolute or competitive preference

over applications that do not propose these types of projects.

For both types of projects, the Secretary is particularly interested in projects that are intergenerational and that target services to at-risk students, emphasize drug and alcohol abuse prevention, or promote the transfer of high technology skills from volunteers to students. Applications are invited for two types of projects:

1. *National Center:* The Secretary is interested in supporting a national center for leadership in school volunteer and partnership programs involving educators, business people, students, senior citizens, and other volunteers interested in improving elementary and secondary education. The organization would operate nationwide and have experience in assisting schools in organizing, promoting, and utilizing volunteer programs. The center would conduct the following activities: (1) Provide training in school volunteer program development; (2) conduct an annual survey of volunteer programs; and (3) evaluate volunteer programs.

2. *Partnership Projects:* The Secretary is also interested in supporting partnerships between elementary and secondary schools, State educational agencies (SEAs), local educational agencies (LEAs), or any combination of these entities, and one or more of the following entities: State or local government agencies, nonprofit organizations, institutions of higher education, and businesses. Partnerships could establish or expand school volunteer projects at the State and local level; or strengthen the capability of SEAs and nonprofit organizations to provide leadership and assistance to LEAs and nonprofit schools in the planning, operation, and improvement of school volunteer programs.

Eligible Parties

The following parties are eligible to apply for a grant under this program: SEAs, LEAs, institutions of higher education and other public and private agencies, organizations and institutions.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria—(1) Meeting the purposes of the authorizing statute. (30 points)* The Secretary reviews each application to determine how well the project will conduct national school

volunteer programs, including consideration of—

(i) The objectives of the project; and
(ii) How the objectives of the project implement national school volunteer programs.

(2) *Extent of need for the project. (15 points)* The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;
(ii) How the applicant identified those needs;
(iii) How those needs will be met by the project; and
(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation. (20 points)* The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;
(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;
(iii) How well the objectives of the project relate to the purpose of the program;
(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;
(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and
(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel. (15 points)* The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);
(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i)(A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without

regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i)(A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness. (5 points)* The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan. (5 points)* The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.

(7) *Adequacy of resources. (10 points)* The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the *Federal Register* on November 18, 1987, pages 44338-44340.

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In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.222, U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, DC 20202-0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that this address is not the same address as the one to which the applicant submits its completed application. Do not send application to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education,
Application Control Center, Attention:
(CFDA #84.222), Washington, DC 20202-4725.

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to:

U.S. Department of Education,
Application Control Center, Attention:
(CFDA #84.222), Room #3633, Regional
Office Building #3, 7th and D Streets,
SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

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(1) A private metered postmark.

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Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms:

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

PART I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

PART II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

PART III: Application Narrative. Additional Materials Estimated Public Reporting Burden. Assurances—Non-Construction Programs (Standard Form 424B). Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS-008) and instructions. Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS-009) and instructions. (NOTE: ED Form GCS-009 is intended for the use of grantees and should not be transmitted to the Department.)

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80-0004).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT U.S. Department of Education, Fund for the Improvement and Reform of Schools and Teaching, 555 New Jersey Avenue, NW., Room 522, Washington, DC 20208-5524, Telephone: (202) 357-6496.

Program Authority Department of
Education Appropriations Act, 1980, Pub. L.
100-438.

Dated: May 25, 1989.

Bruno Manno,

Acting Assistant Secretary, Office of
Educational Research and Improvement.

CFDA 84.222, National School Volunteer
Program (Fund for the Improvement and
Reform of Schools and Teaching)

BILLING CODE 4800-01-M

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction		2. DATE SUBMITTED	Applicant Identifier
Preapplication ☐ Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier
5. APPLICANT INFORMATION			
Legal Name:		Organizational Unit	
Address (give city, county, state, and zip code):		Name and telephone number of the person to be contacted on matters involving this application (give area code)	
6. EMPLOYER IDENTIFICATION NUMBER (EIN): [] [] - [] [] [] [] [] [] [] []		7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐	
8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): ☐ A. Increase Award ☐ B. Decrease Award ☐ C. Increase Duration ☐ D. Decrease Duration Other (specify):		A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify):	
9. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 2 2 2		10. NAME OF FEDERAL AGENCY: U.S. Department of Education	
TITLE: National School Volunteer Program		11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:	
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):			
13. PROPOSED PROJECT: Start Date Ending Date		14. CONGRESSIONAL DISTRICTS OF: a. Applicant b. Project	
15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?	
a. Federal	\$.00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE	
b. Applicant	\$.00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372	
c. State	\$.00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
d. Local	\$.00		
e. Other	\$.00		
f. Program Income	\$.00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?	
g. TOTAL	\$.00	☐ Yes If "Yes," attach an explanation. ☐ No	
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THIS DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED			
a. Typed Name of Authorized Representative		b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed	

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

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INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry: | Item: | Entry: |
|---|--------|--|--------|
| 1. Self-explanatory. | | 12. List only the largest political entities affected (e.g., State, counties, cities). | |
| 2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). | | 13. Self-explanatory | |
| 3. State use only (if applicable). | | 14. List the applicant's Congressional District and any District(s) affected by the program or project. | |
| 4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | | 15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. | |
| 5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. | | 16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. | |
| 6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | | 17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. | |
| 7. Enter the appropriate letter in the space provided. | | 18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) | |
| 8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
— "New" means a new assistance award.
— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. | | | |
| 9. Name of Federal agency from which assistance is being requested with this application. | | | |
| 10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | | |
| 11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. | | | |

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A — BUDGET SUMMARY						
Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$
SECTION B — BUDGET CATEGORIES						
6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)	
	(1)	(2)	(3)	(4)		
a. Personnel	\$	\$	\$	\$	\$	
b. Fringe Benefits						
c. Travel						
d. Equipment						
e. Supplies						
f. Contractual						
g. Construction						
h. Other						
i. Total Direct Charges (sum of 6a - 6h)						
j. Indirect Charges						
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$	
7. Program Income	\$	\$	\$	\$	\$	

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SECTION C - NON-FEDERAL RESOURCES				
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.	\$	\$	\$	\$
9.				
10.				
11.				
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$

SECTION D - FORECASTED CASH NEEDS					
13. Federal	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
	\$	\$	\$	\$	\$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	\$	\$	\$	\$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	\$	\$	\$	\$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

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INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j — Show the amount of indirect cost.

Line 6k — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A (continued)

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

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Part III—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the Application Notice describing the priorities and selection criteria used to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with a one-page Abstract; include statements about: (i) the need for the project; (ii) the proposed plan of operation; and (iii) the project's significance/intended outcomes.

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might be useful in reviewing the application.

Please limit the Application Narrative to no more than 15* double-spaced, typed pages (on one side only). The total application should not exceed 25 pages, including appendices.

*NOTE: Applicants submitting proposals for a National Center may require more than 15 pages for the narrative to describe their proposed center. In such cases the narrative may exceed 15 pages, but the total application, including appendices, should be limited to 40 pages.

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of

information is estimated to average 24 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850-0634, Washington, DC 20503.

(Information collection approved under OMB control number 1850-0634. Expiration date: 5/31/92.)

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OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

SF 424B (4-88) Back

**Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 *Federal Register*, require certification by grantees, prior to a award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing a drug-free awareness program to inform employees about—
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- (e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;
- (f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—
 - (1) Taking appropriate personnel action against such an employee, up to and including termination; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

ED 80-0004

[FR Doc. 89-12953 Filed 5-31-89; 8:45 am]

BILLING CODE 4000-01-C

Thursday
June 1, 1989

Part IV

Department of Education

Student Literacy Corps Program;
Applications for New Awards for Fiscal
Year 1989; Notice

federal register

DEPARTMENT OF EDUCATION

(CFDA No. 84.219)

**Student Literacy Corps Program;
Notice Inviting Applications for New
Awards for Fiscal Year (FY) 1990**

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this competition.

Purpose of Program: To promote student literacy corps projects operated by institutions of higher education (IHEs) where volunteer undergraduates will serve as unpaid literacy tutors in public community agencies.

Deadline for Transmittal of Applications: July 28, 1989.

Deadline for Intergovernmental Review: August 28, 1989.

Available Funds: \$4,940,000.

Estimated Range of Awards: Up to \$50,000.

Estimated Average Size of Awards: \$45,000.

Estimated Number of Awards: 90-110.

Note: This Department is not bound by any estimate in this notice.

Project Period: 24 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Description of Program: The Secretary of Education will make two-year non-renewable grants to eligible institutions of higher education to support literacy training at public community agency facilities. No more than \$25,000 can be expended by any IHE during the first year. To be eligible to receive a grant, an IHE must demonstrate that it has previously engaged in community service activities. Specifically, it must indicate that it has either used a portion of its allotment under Part C of Title IV of the Higher Education Act of 1965, as amended (HEA), for work study and community service learning under

section 443(b)(2)(A), or conducted a cooperative education program.

Upon request of the IHE, the Secretary may grant a waiver of the prior community service requirement described above if the IHE provides assurances that: (a)(1) It has conducted some other significant program involving community outreach and service; or (2) if it has not conducted such a program, it can demonstrate that it currently has the ability to engage in outreach efforts necessary to carry out Student Literacy Corps requirements; and (b) in the event that it receives an allotment under Part C of Title IV of the HEA, that a portion of this allotment will be used for community service learning programs.

Each IHE applicant must provide assurances in its application for Student Literacy Corps Program funds that—

(a) Its grant will be used to cover an IHE's costs of participation in the Student Literacy Corps Program for which assistance is sought, including evaluation and stipends for student coordinators, and funds made available will not be used for the payment of stipends or salaries to tutors, in accordance with the Uses of Funds provision in the authorizing legislation (20 U.S.C. 1018b);

(b) It will provide literacy tutoring services in structured classroom settings supervised by qualified personnel in one or more public community agencies in the community in which it is located which serve educationally or economically disadvantaged individuals (the term "public community agency" means an established non-Federal community agency with established programs of instruction such as those serving youth, the handicapped, disabled veterans and individuals in public institutions such as schools and prisons);

(c) It will offer one or more courses for academic credit (in such academic areas as the social sciences, economics or education) designed to combine formal study with undergraduates' experience as literacy tutors;

(d) As a condition of receiving credit for the courses of instruction referred to in paragraph (c) above, undergraduates will perform not less than six hours of voluntary, uncompensated service each week of the academic term in a public community agency as tutors in its educational or literacy programs;

(e) The tutoring service referred to in paragraph (d) above will be supplementary both to the IHE's regular academic program and the existing instructional services offered by the community service learning programs; and

(f) It will make arrangements for adequate training of volunteers, depending upon available resources, which may include the training of student coordinators to assist in the process of preparing and placing undergraduates as tutors in community service learning programs.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria—*(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of Title I, Part D of the Higher Education Act of 1965, as amended, including consideration of—

(i) The objectives of the project; and
(ii) How the objectives of the project further the purposes of Title I, Part D of the Higher Education Act of 1965, as amended.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in Title I, Part D of the Higher Education Act of 1965, as amended, including consideration of—

(i) The needs addressed by the project;
(ii) How the applicant identified those needs;
(iii) How those needs will be met by the project; and
(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (30 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;
(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;
(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under the program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (7 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and
(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and
(ii) To the extent possible, are objective and produce data that are quantifiable.

Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.

(7) *Adequacy of resources.* (3 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the *Federal Register* on November 18, 1987, pages 44338-44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA# 84.219, U.S. Department of Education, Room 4161, 400 Maryland Avenue S.W., Washington, DC 20202-0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that this address is not the same address as the one to which the applicant submits its completed application. Do Not Send Application To The Above Address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.219), Washington, DC 20202-4725.

or
(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.219), Room #3633, Regional

Office Building #3, 7th and D Streets SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative. Student Literacy Corps Program Assurances.

Assurances—Non-Construction Programs (Standard Form 424B). Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS-008) and instructions.

Certification regarding Debarment, Suspension Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (Ed Form GCS-009) and instructions. (NOTE: Ed Form GCS-009 is intended for the use of primary

participants and should not be transmitted to the Department.)

Certification Regarding Drug-Free Workplace Requirements: Grantees Other Than Individuals (ED 80-0004).

An applicant may submit information on photostatic copy of the application and budget forms, the assurances, and the certification. However, the

application form, the assurances, and the certification must each have an original signature. No grant may be awarded unless a completed application form has been received.

For Further Information: Dr. Donald N. Bigelow, Education Program Officer, Higher Education Programs, Department of Education, Room 3082, (202) 732-5596.

ROB-3, Mail Station 5131, 400 Maryland Avenue SW., Washington, DC 20202-5249.

Program Authority: 20 U.S.C. 1018-1018f.
Dated: April 21, 1989.

James B. Williams,
*Acting Assistant Secretary for Postsecondary
Education.*

BILLING CODE 4000-01-M

Appendix

APPLICATION FOR FEDERAL ASSISTANCE

APPLICATION FOR FEDERAL ASSISTANCE		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Preapplication ☒ Non-Construction ☐ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier
5. APPLICANT INFORMATION			
Legal Name:		Organizational Unit:	
Address (give city, county, state, and zip code):		Name and telephone number of the person to be contacted on matters involving this application (give area code):	
6. EMPLOYER IDENTIFICATION NUMBER (EIN): 7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐		A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify): _____	
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____		9. NAME OF FEDERAL AGENCY:	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: TITLE: Student Literacy Corps Program		U.S. Department of Education 11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:	
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):			
13. PROPOSED PROJECT:		14. CONGRESSIONAL DISTRICTS OF:	
Start Date	Ending Date	a. Applicant	b. Project
15. ESTIMATED FUNDING:		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?	
a. Federal	\$.00	a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON:	
b. Applicant	\$.00	DATE _____	
c. State	\$.00	b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372	
d. Local	\$.00	☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
e. Other	\$.00		
f. Program Income	\$.00	17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?	
g. TOTAL	\$.00	☐ Yes If "Yes," attach an explanation. ☐ No	
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED			
a. Typed Name of Authorized Representative		b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed	

Previous Editions Not Usable

Standard Form 424 (REV 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry: | Item: | Entry: |
|-------|--|-------|--|
| 1. | Self-explanatory. | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). | 13. | Self-explanatory. |
| 3. | State use only (if applicable). | 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. | 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 7. | Enter the appropriate letter in the space provided. | 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:
— "New" means a new assistance award.
— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. | | |
| 9. | Name of Federal agency from which assistance is being requested with this application. | | |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. | | |

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A — BUDGET SUMMARY						
Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$
SECTION B — BUDGET CATEGORIES						
6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)	
	(1)	(2)	(3)	(4)		
a. Personnel	\$	\$	\$	\$	\$	
b. Fringe Benefits						
c. Travel						
d. Equipment						
e. Supplies						
f. Contractual						
g. Construction						
h. Other						
i. Total Direct Charges (sum of 6a - 6h)						
j. Indirect Charges						
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$	
7. Program Income		\$	\$	\$	\$	\$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

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SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8.	\$	\$	\$	\$	
9.					
10.					
11.					
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$	
SECTION D - FORECASTED CASH NEEDS					
13. Federal	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
	\$	\$	\$	\$	\$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Years)				
	(b) First	(c) Second	(d) Third	(e) Fourth	
16.	\$	\$	\$	\$	
17.					
18.					
19.					
20. TOTALS (sum of lines 16-19)	\$	\$	\$	\$	
SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)					
21. Direct Charges:		22. Indirect Charges:			
23. Remarks					

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (e) through (g.) (continued)

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j — Show the amount of indirect cost.

Line 6k — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A (continued)

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

Instruction for Part III—Application Narrative

Before preparing the Application Narrative an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

The Narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a single page summary of the proposed project;
2. Describe the project in terms of each of the selection criteria in the order in which they are listed; and
3. Include in the Narrative, information that will assist the Secretary in reviewing the application by indicating as fully as possible how

the relevant "assurances" ("a" to "f" in the Description of the Program) will be carried out. Clearly describe the course(s) to be offered, the related training for undergraduate tutors and the duties of student coordinators, if any; explain which community agencies will be cooperating and why, with information about their programs and their clients; finally, describe the management and logistics of the proposed project, whether or not it is new, and, if it is new, how it will be combined with pre-existing projects.

Please limit the Application Narrative to no more than 15 double-spaced, typed pages (on one side only).

Public reporting burden for this collection of information is estimated to average 4 hours per response, including

the time for reviewing instructions, searching existing data sources, and gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Paperwork Reduction Project, OMB 1840-0618, Office of Management and Budget, Washington, D.C. 20503. (Information collection approved under OMB control number 1840-0618. Expiration date: March 31, 1992.)

BILLING CODE 4000-01-M

**Student Literacy Corps Program
Program Assurances**

As the duly authorized representative of the IHE applicant, I certify that the applicant will comply with all statutory and regulatory requirements applicable to this program and provide specific program assurances that:

- a. Its grant will be used to cover an IHE's costs of participation in the Student Literacy Corps Program for which assistance is sought, including evaluation and stipends for student coordinators, and funds made available will not be used for the payment of stipends or salaries to tutors, in accordance with the USES OF FUNDS provision in the authorizing legislation (20 U.S.C. 1018b);
- b. It will provide literacy tutoring services in structured classroom settings supervised by qualified personnel in one or more public community agencies in the community in which it is located which serve educationally or economically disadvantaged individuals (the term "public community agency" means an established non-Federal community agency with established programs of instruction such as those serving youth, the handicapped, disabled veterans and individuals in public institutions such as schools and prisons);
- c. It will offer one or more courses for academic credit (in such academic areas as the social sciences, economics or education) designed to combine formal study with undergraduates' experience as literacy tutors;
- d. As a condition of receiving credit for the courses of instruction referred to in paragraph (c) above, undergraduates will perform not less than six hours or voluntary, uncompensated service each week of the academic term in a public community agency as tutors in its educational or literacy programs;
- e. The tutoring service referred to in paragraph (d) above will be supplementary both to the IHE's regular academic program and the existing instructional services offered by the community service learning programs; and
- f. It will make arrangements for adequate training of volunteers, depending upon available resources, which may include the training of student coordinators to assist in the process of preparing and placing undergraduate as tutors in community service learning programs.

Signature or Authorized Certifying Official	Title
Applicant Organization	Date Submitted

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Name And Title Of Authorized Representative

Signature

Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 *Federal Register*, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing a drug-free awareness program to inform employees about—
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- (e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;
- (f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—
 - (1) Taking appropriate personnel action against such an employee, up to and including termination; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

federal register

Thursday
June 1, 1989

Part V

Department of Agriculture

Agricultural Marketing Service

7 CFR Part 29
Tobacco Inspection—Growers'
Referendum

DEPARTMENT OF AGRICULTURE
Agricultural Marketing Service

7 CFR Part 29
[TB-89-107]

Tobacco Inspection—Growers' Referendum

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of referendum.

SUMMARY: This notice announces that a referendum will be conducted by mail during the period June 5-9, 1989, for producers of flue-cured tobacco who sell their tobacco at auction in Stoneville and Madison, North Carolina, to determine producer approval of the designation of the Stoneville and Madison tobacco markets as one consolidated auction market.

DATE: The referendum will be held June 5-9, 1989.

FOR FURTHER INFORMATION CONTACT: Ernest L. Price, Director, Tobacco Division, Agricultural Marketing Service, United States Department of Agriculture, P.O. Box 96456, Washington, DC 20090-6456; Telephone Number (202) 447-2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given of a mail referendum on the designation of a consolidated auction market at Stoneville and

Madison, North Carolina. Stoneville and Madison, North Carolina, were separately designated on June 28, 1942 (7 CFR 29.8001) as flue-cured tobacco auction markets under the Tobacco Inspection Act (7 U.S.C. 511 *et seq.*). Under this Act the two markets have been receiving mandatory grading services from USDA.

On September 8, 1988, an application was made to the Secretary of Agriculture to consolidate the designated markets of Stoneville and Madison. The application, filed by warehouse operators in those markets, was made pursuant to the regulations promulgated under the Tobacco Inspection Act (7 CFR 29.1-29.3). On November 9, 1988, a public hearing was held in Madison, North Carolina, pursuant to the regulation. A Review Committee, established pursuant to § 29.3(h) of the regulations (7 CFR 29.3(h)), has reviewed and considered the application, the testimony presented at the hearing, the exhibits received in evidence, and other available information. The Committee recommended to the Secretary that the application be granted and the Secretary approved the application on May 10, 1989.

Before a new market can be officially designated, a referendum must be held to determine that a two-thirds majority of producers favor the designation. It is hereby determined that the referendum

will be held by mail during the period of June 5-9, 1989. The purpose of the referendum is to determine whether farmers who sold their tobacco on the designated markets at Stoneville and Madison are in favor of or opposed to the designation of the consolidated market for the 1989 and succeeding crop years. Accordingly, if a two-thirds majority of those tobacco producers voting in the referendum favor this consolidation, a new market will be designated as and be called Stoneville-Madison.

To be eligible to vote in the referendum a tobacco producer must have sold flue-cured tobacco on either the Stoneville or Madison, North Carolina, auction market during the 1988 marketing season. Any farmer who believes he or she is eligible to vote in the referendum but has not received a mail ballot by June 5, 1989, should immediately contact Ernest L. Price at (202) 447-2567.

The referendum will be held in accordance with the provisions for referenda of the Tobacco Inspection Act, as amended (7 U.S.C. 511d) and the regulations for such referendum set forth in 7 CFR 29.74.

Dated: May 31, 1989.
J. Patrick Boyle,
Administrator.
[FR Doc. 89-13230 Filed 5-31-89; 11:02 am]
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Reader Aids

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Federal Register
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Thursday, June 1, 1989

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23449-23630..... 1

LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.
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TABLE OF EFFECTIVE DATES AND TIME PERIODS—JUNE 1989

This table is used by the Office of the Federal Register to compute certain dates, such as effective dates and comment deadlines, which appear in agency documents. In computing these

dates, the day after publication is counted as the first day.

When a date falls on a weekend or holiday, the next Federal business day is used. (See 1 CFR 18.17)

A new table will be published in the first issue of each month.

DATE OF FR PUBLICATION	15 DAYS AFTER PUBLICATION	30 DAYS AFTER PUBLICATION	45 DAYS AFTER PUBLICATION	60 DAYS AFTER PUBLICATION	90 DAYS AFTER PUBLICATION
June 1	June 16	July 3	July 17	July 31	August 30
June 2	June 19	July 3	July 17	August 1	August 31
June 5	June 20	July 5	July 20	August 4	September 5
June 6	June 21	July 8	July 21	August 7	September 5
June 7	June 22	July 7	July 24	August 7	September 5
June 8	June 23	July 10	July 24	August 7	September 6
June 9	June 26	July 10	July 24	August 8	September 7
June 12	June 27	July 12	July 27	August 11	September 11
June 13	June 28	July 13	July 28	August 14	September 11
June 14	June 29	July 14	July 31	August 14	September 12
June 15	June 30	July 17	July 31	August 14	September 13
June 16	July 3	July 17	July 31	August 15	September 14
June 19	July 5	July 19	August 3	August 18	September 18
June 20	July 5	July 20	August 4	August 21	September 18
June 21	July 6	July 21	August 7	August 21	September 19
June 22	July 7	July 24	August 7	August 21	September 20
June 23	July 10	July 24	August 7	August 22	September 21
June 26	July 11	July 26	August 10	August 25	September 25
June 27	July 12	July 27	August 11	August 28	September 25
June 28	July 13	July 28	August 14	August 28	September 26
June 29	July 14	July 31	August 14	August 28	September 27
June 30	July 17	July 31	August 14	August 29	September 28

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Vol. 54 No. 105

Friday
June 2, 1989

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Friday
June 2, 1989

Briefing on How To Use the Federal Register—
For information on briefing in Washington, DC, see
announcement on the inside cover of this issue.

federal register

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THE FEDERAL REGISTER WHAT IT IS AND HOW TO USE IT

- FOR:** Any person who uses the Federal Register and Code of Federal Regulations.
- WHO:** The Office of the Federal Register.
- WHAT:** Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.
- WHY:** To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

- WHEN:** June 15; at 9:00 a.m.
WHERE: Office of the Federal Register,
 First Floor Conference Room,
 1100 L Street, NW., Washington, DC
RESERVATIONS: 202-523-5240

Regulation Identifier Numbers (RINs)

Agencies have begun including a Regulation Identifier Number in the headings of their **Federal Register** documents. RINs also appear in entries listed in the *Unified Agenda of Federal Regulations*, which is published in the **Federal Register** in April and October of each year. Assigning RINs makes it easier for the public and agency managers to track the entries at the various stages of their development.

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Additional information, including a list of public
laws, telephone numbers, and finding aids, appears
in the Reader Aids section at the end of this issue.

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the Reader Aids section at the end of this issue.

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Rules and Regulations

Federal Register

Vol. 54, No. 105

Friday, June 2, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 410

Training

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations under the Government Employees Training Act to (1) eliminate unnecessary reporting on training provided by Federal agencies to State and local government employees, (2) eliminate an obsolete reference to a report on cooperative education, (3) update references to certain training forms and (4) revise the regulations on training source determinations to eliminate unnecessary features dealing with agencies' determinations as to whether to use Government or non-Government sources to meet their training needs.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Frank Masterson, (202) 632-8769.

SUPPLEMENTARY INFORMATION: On January 10, 1989, OPM published proposed regulations (54 FR 822) implementing provisions of the Government Employees Training Act (5 U.S.C. 4101 *et seq.*). The comment period, which was 60 days from the date of publication, ended on March 13, 1989. Comments were received from four Federal agencies and one labor organization. Three of the agencies concurred in the proposals without change. One agency suggested that the words "from training" be added to § 410.901(b)(1)(iv) so that it would be understood that the assessments of economies and improved operations to be made under that regulation are assessments reflecting the impact of

training programs. We agree and have revised the regulations accordingly.

The labor organization questioned our proposal dealing with training source determinations, involving an amendment of 5 CFR 410.501. That proposal called for the removal of a requirement that an agency determine what it would cost to meet a new training need through in-house performance before using training from a non-Government facility. The rationale for the proposal was that an agency's decisions affecting the availability of in-house training are decisions made within the framework of agency and Office of Management and Budget policies and are separable from determinations on the use of existing training sources—determinations which are governed by the training law (5 U.S.C. 4118(b)(2)). The labor organization commented that estimating the costs of in-house performance of training need not be an undue burden and would be in the interests of economy and efficiency. It further commented that adoption of the proposal would be an abdication of OPM's responsibilities. There is nothing in what we have proposed which would prevent an agency from estimating the costs of in-house performance of training to meet a new need. An agency may feel constrained to do that within the framework of its own administrative policies or within the larger context of Executive branch policies dealing with the performance of commercial activities. All we are saying is that such determinations should be viewed as outside the purview of the training law and were unnecessarily brought within the purview of OPM's regulations issued under that law. Therefore, we are retaining our proposal to amend 5 CFR 410.501.

As a corollary to our revision of that section, a change is being made in 5 CFR 410.506(a) dealing with the waiver of a limitation on training through non-Government facilities. The organization's comments reflect puzzlement over the change proposed for § 410.506(a) and appear to suggest an inconsistency with the proposal for § 410.501. The change provides for a waiver when use of such facilities is less costly than training available from Government facilities or when training through non-Government facilities is the only available training. The underscored

condition ensures that the two sections are in harmony.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 410

Education, Government employees, Personnel Management Office, Manpower training programs, Authority delegation.

U.S. Office of Personnel Management.
Constance Homer,
Director.

Accordingly, the Office of Personnel Management amends 5 CFR Part 410 as follows:

PART 410—TRAINING

1. The authority citation for Part 410 continues to read as follows:

Authority: 5 U.S.C. 4101, *et seq.*; E.O. 11348, 3 CFR, 1987 Comp., p. 275. § 410.503 also issued under 5 U.S.C. 5364. § 410.506 and § 410.602 also issued under 5 U.S.C. 1104. § 410.902 also issued under 42 U.S.C. 4746.

2. Section 410.501 is revised to read as follows:

§ 410.501 Determining the source of training.

If adequate training is reasonably available from a Government facility to meet an agency's need, it shall use that facility. If adequate training is not reasonably available from a Government facility, the agency shall use a non-Government facility. The head of an agency will determine that adequate training is not reasonably available within the Government when either of the following conditions is met.

(a) There is no training within the agency, and reasonable inquiry has failed to disclose training elsewhere in the Government (in another agency or an interagency training facility), which would be available and adequately meet its need; or

(b) Adequate training available within the Government would be more expensive, because of the costs of

distance, time, or other factors, than training available from non-Government facilities which would adequately meet the need.

3. Section 410.506(a) is revised to read as follows:

§ 410.506 Waiver of limitations on training of employees through non-Government facilities.

(a) The head of an agency may waive the limitation in section 4106(a)(1) of title 5, United States Code, if it is in the public interest because the training from non-Government facilities is the only available training or is as effective as, and less costly than, training available from Government facilities.

4. Section 410.901 is revised to read as follows:

§ 410.901 Reports.

(a) The reports required by section 4113(b) of title 5, United States Code, and the reports required by this section shall be prepared for each fiscal year. An agency shall submit a consolidated report to OPM by the date specified each year by OPM in its notification to agencies.

(b) The consolidated report shall include:

(1) A narrative summary—
(i) Outlining, in the first report to OPM under this section, the training policies and overall program of the agency and, in each subsequent report, any major changes in policy or shifts in program emphasis;

(ii) Describing the manner in which training has aided in the accomplishment of the mission of the agency by providing skills and knowledge;

(iii) Assessing generally the value of training to the agency;

(iv) Assessing generally the extent to which economies and improved operation have resulted in the agency from training; and

(v) Providing other information which OPM may request concerning specific areas of agency training activity.

(2) A statistical summary, in the format prescribed by OPM, on employee participation and agency expenditures in training conducted through agency, interagency, and non-Government facilities.

(3) A Long-Term Training Report, OPM Form 1306, containing special information required by section 4113(b)(2) of title 5, United States Code, regarding employees receiving training by, in, or through non-Government facilities for more than 120 days.

(4) A Contributions and Awards Report, OPM Form 1307, containing

special information regarding employees who, under authority of section 4111(a) of title 5, United States Code, receive from non-Government sources contributions or awards incident to training in non-Government facilities.

(5) A report on personnel engaged in agency training activities, OPM Form 1186.

(6) Information on the number of employees failing to fulfill their obligations under section 4108 of title 5, United States Code, and a description of the action taken with respect to the recovery of the additional expenses incurred by the Government in connection with their training.

(7) Such other information as OPM may request.

(c) OPM may grant exceptions to the requirements stated in paragraphs (a) and (b) of this section.

[FR Doc. 89-13164 Filed 6-1-89; 8:45 am]

BILLING CODE 5325-01-M

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1203

RIN 3124-AA07

Procedures for Review of Rules and Regulations of the Office of Personnel Management

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is revising its regulations in this Part in plain English. In addition, the heading for this Part is changed to more accurately describe what is covered and Subpart A is eliminated since there are no other subparts. Section 1203.17 is renumbered 1203.21. Section 1203.18 is renumbered 1203.22 and amended at paragraph (c) to provide a current cite to part 1201 of this Title. These changes are the result of a thorough review of existing regulations to identify any portions that could be rewritten to be more readily understood by persons who are not practitioners in personnel administration or the law. The revised language is not intended to change the meaning or requirements of the existing sections.

EFFECTIVE DATE: June 2, 1989.

FOR FURTHER INFORMATION CONTACT: Charles J. Stanislav, (202) 653-8931.

SUPPLEMENTARY INFORMATION:
List of Subjects in 5 CFR Part 1203

Administrative practice and procedure, Civil rights, Government employees.

Accordingly, the Merit Systems Protection Board revises 5 CFR Part 1203 as follows:

PART 1203—PROCEDURES FOR REVIEW OF RULES AND REGULATIONS OF THE OFFICE OF PERSONNEL MANAGEMENT

General

Sec.
1203.1 Scope; application of Part 1201, Subpart B.

1203.2 Definitions.

Procedures for Review

1203.11 Request for regulation review.

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1203.21 Final order of the Board.

1203.22 Enforcement of order.

Authority: 5 U.S.C. 1205 (a)(4), (e), and (g).

General

§ 1203.1 Scope; application of Part 1201, Subpart B.

(a) *General.* This part applies to the Board's review, under 5 U.S.C. 1205(a)(4) and 1205(e), of any rules or regulations ("regulations") issued by the Office of Personnel Management (OPM). It applies to the Board's review of the way in which an agency implements regulations, as well as to its review of the validity of the regulation before it has been implemented.

(b) *Application of 5 CFR Part 1201, Subparts B and C.* (1) Where appropriate, and unless the Board's regulations provide otherwise, the Board may apply the provisions of 5 CFR Part 1201, Subpart B to proceedings conducted under this part. It may do so on its own motion or on the motion of a party to these proceedings.

(2) The following provisions of 5 CFR Part 1201, Subparts B and C do not apply to proceedings conducted under this part:

(i) Sections 1201.21 through 1201.27 which concern petitions for appeal of agency actions, and the pleadings that are filed in connection with those petitions; and

(ii) Sections 1201.111 through 1201.119 which concern final decisions of presiding officials, and petitions for Board review of those decisions.

§ 1203.2 Definitions.

(a) "Invalid regulation" means a regulation that has been issued by OPM, and that, on its face, would require an employee to commit a prohibited personnel practice if any agency implemented the regulation.

(b) "Invalidly implemented regulation" means a regulation, issued by OPM, whose implementation by an agency has required an employee to commit a prohibited personnel practice. A valid regulation may be invalidly implemented.

(c) "Merit system principles" are the principles stated in 5 U.S.C. 2301(b)(1) through 2301(b)(9).

(d) "Pleadings" are written submissions containing claims, allegations, arguments, or evidence. They include briefs, motions, requests for regulation review, responses, replies, and attachments that are submitted in connection with proceedings under this part.

(e) "Prohibited personnel practices" are the impermissible actions described in 5 U.S.C. 2302(b)(1) through 2302(b)(11).

(f) "Regulation review" means the procedure under which the Board, under 5 U.S.C. 1205(e), reviews regulations issued by OPM before they have been implemented, in order to determine whether the regulations would require any employee to commit a prohibited personnel practice, or reviews those regulations after they have been implemented, in order to determine whether the implementation has required any employee to commit a prohibited personnel practice.

(g) "Request for regulation review" means a request that the Board review a regulation issued by OPM.

Procedures for Review

§ 1203.11 Request for regulation review.

(a) An interested person or the Special Counsel may submit a request for regulation review.

(b) *Contents of request.* (1) Each request for regulation review must include the following information:

(i) The name, address, and signature of the requester's representative or, if the requester has no representative, of the requester;

(ii) A citation identifying the regulation being challenged;

(iii) A statement (along with any relevant documents) describing in detail the reasons why the regulation would require an employee to commit a prohibited personnel practice; or the reasons why the implementation of the regulation requires an employee to commit a prohibited personnel practice;

(iv) Specific identification of the prohibited personnel practice at issue; and

(v) A description of the action the requester would like the Board to take.

(2) If the prohibited personnel practice at issue is one prohibited by 5 U.S.C. 2302(b)(11), the request must include the following additional information:

(i) Identification of the law or regulation that allegedly would be or has been violated, and how it would be or has been violated; and

(ii) Identification of the merit system principles at issue and an explanation of the way in which the law or regulation at issue implements or directly concerns those principles.

§ 1203.12 Granting or denying the request for regulation review.

(a) The Board, in its sole discretion, may grant or deny an interested person's request for regulation review. It will grant a request for regulation review that the Special Counsel submits. It will not, however, review a regulation before its effective date.

(b) After considering the request for regulation review, the Board will issue an order granting or denying the request in whole or in part. Orders in which the Board grants the request, in whole or in part, will identify the agency or agencies involved, if any. They also will include the following:

(1) A citation identifying the regulation being challenged;

(2) A description of the issues to be addressed;

(3) The docket number assigned to the proceedings; and

(4) Instructions covering the review proceedings, including information regarding the time limits for filing submissions related to the request.

(c) All Board orders granting or denying a request for regulation review will be published in the Federal Register.

§ 1203.13 Filing pleadings.

(a) *Place to file and number of copies.* One original and three copies of each pleading must be filed with the Office of the Clerk, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., Washington, DC 20419. In addition, parties to a proceeding under this part must serve their pleadings on each other in accordance with § 1203.14 of this part. The Office of the Clerk will make all pleadings available for review by the public.

(b) *Time limits.* (1) A request for regulation review may be filed any time after the effective date of the regulation.

(2) A response to a request for regulation review, whether the response

supports or opposes the request, must be filed within the time period provided in the Board order granting the request for review.

(3) A reply to a response may be filed within 10 days after the response is filed. The reply may address only those matters raised in the response that were not addressed in the request for regulation review.

(4) Motions may be filed at any time during the regulation review. The filing of a motion will not delay the acting of the Board unless the Board orders a postponement. The Board may rule immediately on a motion for an extension of time or a continuance if circumstances make consideration of others' views regarding the motion impracticable.

(5) Submissions opposing motions must be filed within five days after the opposing party receives the motion.

(c) *Additional pleadings.* The Board will consider pleadings in addition to those mentioned above only if the Board requests them, or if it grants a request that it consider them.

(d) *Method and date of filing.* Documents may be filed with the Board either by mail addressed to the Office of the Clerk, or by personal delivery to that office. If the document was submitted by certified mail, it is considered to have been filed on the mailing date. If it was submitted by regular mail, it is presumed to have been filed five days before the Office of the Clerk receives it, in the absence of evidence contradicting that presumption. If it was delivered personally, it is considered to have been filed on the date the Office of the Clerk receives it.

(e) *Extensions of time.* The Board will grant a request for extension of time only when good cause is shown.

§ 1203.14 Serving documents.

(a) *Parties.* In every case, the person requesting regulation review must serve a copy of the request on the Director of OPM. In addition, when the implementation of a regulation is being challenged, the requester must also serve a copy of the request on the head of the implementing agency. A copy of all other pleadings must be served, by the person submitting the pleading, on each other party to the proceeding.

(b) *Method of serving documents.* Pleadings may be served on parties by mail or by personal delivery. Service by mail is accomplished by mailing the pleading to each party or representative, at the party's or representative's last known address. Service by personal delivery is accomplished by delivering the pleading to the business office or

home of each party or representative and leaving it with the party or representative, or with a responsible person at that address. Whether service is accomplished by mailing or by personal delivery, the party serving the document must submit to the Board, along with the pleading, a certificate of service as proof that the document was served on the other parties or their representatives. The certificate of service must list the names and addresses of the persons to whom the pleading was mailed or delivered, must state the date on which the pleading was mailed or delivered, must state the method (i.e., mail or personal delivery) by which service was accomplished, and must be signed by the person responsible for accomplishing service.

§ 1203.15 Review of regulations on Board's own motion.

The Board may, from time to time, review a regulation on its own motion under 5 U.S.C. 1205(e)(1)(A). When it does so, it will publish notice of the review in the Federal Register.

§ 1203.16 Proceedings.

The Board has substantial discretion in conducting a regulation review under this part. It may conduct a review on the basis of the pleadings alone, or on the basis of the pleadings along with any or all of the following:

- (a) Additional written comments;
- (b) Oral argument;
- (c) Evidence presented at a hearing; and/or
- (d) Evidence gathered through any other appropriate procedures that are conducted in accordance with law.

Order of the Board

§ 1203.21 Final order of the Board.

(a) *Invalid regulation.* If the Board determines that a regulation is invalid on its face, in whole or in part, it will require any agency affected by the order to stop complying with the regulation, in whole or in part. In addition, it may order other remedial action that it finds necessary.

(b) *Invalidly implemented regulation.* If the Board determines that a regulation has been implemented invalidly, in whole or in part, it will require affected agencies to terminate the invalid implementation.

(c) *Corrective action.* The Board may order corrective action necessary to ensure compliance with its order. The action it may order includes, but is not limited to, the following:

- (1) Cancellation of any personnel action related to the prohibited personnel practice;

- (2) Rescission of any action related to the cancelled personnel action;
- (3) Removal of any reference, record, or document within an employee's official personnel folder that is related to the prohibited personnel practice;
- (4) Award of back pay and benefits;
- (5) Award of attorney fees;
- (6) Other remedial measures to reverse the effects of a prohibited personnel practice; and
- (7) The agency's submission of a verified report of its compliance with the Board's order.

§ 1203.22 Enforcement of order.

(a) Any party may ask the Board to enforce a final order it has issued under this part. The request may be made by filing a petition for enforcement with the Office of the Clerk of the Board and by serving a copy of the petition on each party to the regulation review. The petition must include specific reasons why the petitioning party believes that there has been a failure to comply with the Board's order.

(b) The Board will take all action necessary to determine whether there has been compliance with its final order. If it determines that there has been a failure to comply with the order, it will take actions necessary to obtain compliance.

(c) Where appropriate, the Board may initiate the enforcement procedures described in 5 CFR 1201.183(c).

May 30, 1989.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 89-13088 Filed 6-1-89; 8:45 am]
BILLING CODE 7400-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 949

[Docket No. FV-AO-88-2; AMS-88-034]

RIN 0581-AA31

Irish Potatoes Grown in the High Plains Area of Texas and New Mexico; Issuance of Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes a Federal marketing order regulating the handling of Irish potatoes grown in the High Plains area of Texas and New Mexico. The order authorizes regulations to establish grade, size, quality, maturity, pack, and container requirements for potatoes grown in 21

designated counties in Texas and 10 designated counties in New Mexico. In addition, the order authorizes production and marketing research and market development projects for High Plains potatoes. The program will be administered by a committee of six producers, four handlers, and a public member, and be financed by assessments levied on potato handlers. The primary objective of the program is to improve the quality of potatoes shipped to fresh markets. This should reduce marketing losses, improve quality for consumers, and result in improved returns to producers.

EFFECTIVE DATE: June 2, 1989.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 447-2431.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing—Issued March 30, 1988, and published in the Federal Register on April 4, 1988 (53 FR 10887); Recommended Decision and Opportunity to File Written Exceptions issued January 25, 1989, and published in the Federal Register on January 31, 1989 (54 FR 4805); Secretary's Decision and Referendum Order issued April 19, 1989, and published in the Federal Register on April 25, 1989 (54 FR 17742).

Preliminary Statement

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

This order is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the "Act" and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900).

The marketing order was formulated on the record of a public hearing held at Hereford, Texas, on April 19, 1988. Notice of the hearing was published in the April 4, 1988, issue of the Federal Register. This notice set forth a proposed order submitted by the Texas-New Mexico Potato Steering Committee on behalf of potato producers and handlers in the production area. The order authorizes regulations to establish grade, size, quality, maturity, pack, and container requirements for potatoes produced in the production area. In

addition, production and marketing research and market development projects are authorized.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS) on January 25, 1989, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision providing opportunity to file written exceptions thereto by March 2, 1989. One exception was received and was discussed and ruled upon in the Secretary's Decision.

The Secretary's Decision and Referendum Order was issued April 19, 1989, and the referendum conducted May 1 through May 12, 1989. In the referendum, the marketing order was favored by more than two-thirds of the producers voting in the referendum who also represented more than two-thirds of the production represented in the referendum.

Small Business Consideration: In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. Small agricultural producers have been defined by the Small Business Administration (SBA) (13 CFR 121.2) as those having average annual gross revenues for the last three years of less than \$500,000. Small agricultural service firms, which would include handlers under this order, are defined as those with gross annual revenues of less than \$3.5 million.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders and rules issued thereunder are unique in that they are brought about through group action of essentially small entities for their own benefit. Thus, both the RFA and the Act have small entity orientation and compatibility.

There are approximately 30 handlers of potatoes in the High Plains area, who handled 2,848,000 hundredweight of potatoes for fresh market in 1988 with an estimated crop value of about \$28.3 million. While there is a variance in size of individual handler operations, most, if not all, of the handlers that would be regulated under this order would qualify as small firms under SBA's definition. In addition, there are about 110 potato growers in the High Plains area, the majority of which could be classified as small businesses.

While the order will likely impose regulations on handlers, the burden of

these regulatory requirements should not be significant compared to the benefits which should accrue to such businesses. The expected impact on persons acting in a handling capacity who could be classified as small businesses was discussed in detail in the Recommended Decision. In summary, the order should be operated in as efficient and economical a manner as will tend to effectuate the declared policy of the Act. In this way all entities, small and large, would be subject to minimal regulatory requirements under the order. In addition, the order contains the authority to exempt from regulation special purpose shipments, as well as minimum quantities, and the order will be operated in a way that would incorporate sound business practices and efficiencies which would minimize the burden on all regulated business entities.

Regulations promulgated under the order could be expected to remove from fresh market channels less desirable grades and sizes of potatoes and divert them to other outlets, such as livestock feed. An extensive cattle-feeding industry exists within the production area which could serve as an outlet for culls, or low grade potatoes. Moreover, as the lower grades and smaller sizes are removed from fresh market channels, prices to growers for the resulting higher quality supplies should increase, reflecting consumer preference for this level of quality. This should outweigh any loss to growers for cull potatoes, since such quality even on the fresh market historically returns little or nothing to the producer.

Although a somewhat larger proportion of a producer's potatoes may be marketed in secondary outlets at a lower price, the greater part of production, which includes the higher or fresh market grades, should yield a greater return. Thus, the order could be expected to have a positive impact on grower returns.

The impact of the order upon handlers is also expected to be positive. Most handlers perform their services for an established fee based on the quantity of potatoes handled for a producer. It is anticipated that most potatoes shipped to fresh market will be required to meet certain quality and size requirements. It is also expected that an expansion of existing markets and the development of new ones will result from the increase in quality.

Further, the burden placed on handlers by the order with respect to reporting and recordkeeping requirements should be negligible. Most of the information that would be reported to the committee is already

compiled by handlers for other uses and is readily available.

Reporting and recordkeeping requirements issued under comparable potato marketing order programs impose an average annual burden on each regulated handler of about four hours. It is reasonable to expect that a comparable burden may be imposed under this order on the estimated 30 handlers of High Plains potatoes.

In compliance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the reporting and recordkeeping requirements that may be imposed under this order would be submitted to the Office of Management and Budget (OMB) and would not become effective prior to OMB approval.

In determining that the order will not have a significant economic impact on a substantial number of small entities, all of the issues discussed above were considered. The order provisions have been carefully reviewed and every effort has been made to eliminate any unnecessary costs or requirements. Although the order may impose some additional costs and requirements on handlers, it is anticipated that the programs under the order will help to increase demand for potatoes grown in the High Plains area. Therefore, any additional costs should be offset by the benefits derived from expanded markets and sales benefiting handlers and producers alike.

Accordingly, it is determined that this action will not have a significant impact on small handlers or producers.

Moreover, potatoes grown in more than one State will be regulated under the order so as to effectuate the declared purposes of the Act. Thus, any marketing orders, or their equivalent, authorized under respective State statutes could not achieve the same results as an alternative to a Federal marketing order. In accordance with the principle and purpose of Executive Order 12612, consideration has been given as to whether the order will have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government.

It has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Findings and Determinations

(a) *Findings upon the basis of the hearing record.* Pursuant to the provisions of the Act and the applicable rules of practice and procedure

governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon a proposed marketing agreement and a proposed order, regulating the handling of potatoes grown in the High Plains area of Texas and New Mexico.

Upon the basis of the evidence introduced at the hearing and the record thereof, it is found that:

(1) The order, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The marketing order regulates the handling of Texas-New Mexico High Plains potatoes grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in, the marketing order upon which a hearing has been held;

(3) The marketing order is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) There are no differences in the production and marketing of Texas-New Mexico High Plains potatoes grown in the production area which makes necessary different terms and provisions applicable to different parts of such area; and

(5) All handling of Texas-New Mexico High Plains potatoes grown in the production area is in the current of interstate commerce or directly burdens, obstructs, or affects such commerce.

(b) *Additional findings.* It is necessary and in the public interest to make this order effective June 2, 1989. Any delay beyond that date would interfere with accomplishing the objectives of the order and the Act.

The provisions of this order are known to handlers. The decision of the Assistant Secretary contained all provisions of this order and was issued on April 19, 1989 (54 FR 17742). It is necessary for the order to be implemented during the 1989 season, which begins in June. At the hearing, members of the High Plains potato industry testified that the lack of consistent quality was a problem area that must be improved. Record evidence indicates that because of shipments of poor quality potatoes at the beginning of the season, prices for all High Plains potatoes tend to decline as the season progresses. Moreover, handlers who ship ungraded, unsized potatoes of questionable quality probably contribute to the generally unfavorable

image of High Plains potatoes that currently exists. Therefore, the record indicates that the need exists to regulate the marketing of High Plains potatoes through grade, size, quality, pack, container, or marking standards, thereby improving quality which promotes more orderly marketing conditions and higher returns to producers. To accomplish this objective, it is necessary to make this order effective as soon as possible to provide adequate time to appoint a committee, approve a budget, and establish an assessment rate.

In view of the foregoing, it is hereby found and determined that good cause exists for making this order effective June 2, 1989, and that it would be contrary to the public interest to delay the effective date of this order for 30 days after its publication in the Federal Register (Section 553(d) Administrative Procedure Act, 5 U.S.C. 551-559).

(c) *Determinations.* It is hereby determined that handlers who, during the period January 1, 1988, through December 31, 1988, handled not less than 50 percent of the volume of potatoes grown in the production area, refused or failed to sign the proposed marketing agreement regulating the handling of potatoes grown in the High Plains area of Texas and New Mexico; it is further determined that:

(1) The refusal or failure of such handlers to sign the proposed marketing agreement tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers of potatoes grown in the production area;

(3) The issuance of this order is favored or approved by at least two-thirds of the producers who participated in a referendum on the question of its approval and who, during the period January 1, 1988, through December 31, 1988 (which has been deemed to be a representative period), have been engaged within the High Plains area of Texas and New Mexico in the production of potatoes for fresh market, such producers having also produced for market at least two-thirds of the volume of such commodity represented in the referendum.

List of Subjects in 7 CFR Part 949

Marketing orders, Potatoes, Texas, New Mexico.

Order Relative to Handling of Irish Potatoes Produced in the High Plains Area of Texas and New Mexico

It is therefore ordered, That on and after the effective date hereof, all

handling of Irish potatoes grown in the production area shall be in conformity to, and in compliance with, the terms and conditions of the said order as follows:

The provisions of the marketing order are set forth in full herein.

Therefore, Title 7, Chapter IX is amended by adding Part 949 to read as follows:

Note: This part will appear in the annual Code of Federal Regulations.

PART 949—IRISH POTATOES GROWN IN THE HIGH PLAINS AREA OF TEXAS AND NEW MEXICO

Definitions

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949.6	Seed potatoes.
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Committee

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Expenses and Assessments

949.40	Expenses.
949.41	Budget.
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949.48	Research and development.
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Regulation

949.50	Marketing policy.
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Reports and Recordkeeping

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Miscellaneous Provisions

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949.90	Personal liability.
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949.92	Amendments.

Authority: Sec. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Definitions

§ 949.1 Secretary.

"Secretary" means the Secretary of Agriculture of the United States, or any officer or employee of the Department of Agriculture who has been delegated, or who may hereafter be delegated the authority to act for the Secretary.

§ 949.2 Act.

"Act" means Public Act No. 10, 73d Congress, as amended and as reenacted and amended by the Agricultural Marketing Agreement Act of 1937, as amended (Sec. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601 et seq.)

§ 949.3 Person.

"Person" means an individual, partnership, corporation, association, or any other business unit.

§ 949.4 Production area.

"Production area" means the counties of: Bailey, Briscoe, Castro, Cochran, Dallam, Donley, Deaf Smith, Floyd, Gaines, Hale, Hall, Hartley, Hockley, Lamb, Lubbock, Motley, Oldham, Parmer, Swisher, Terry, and Yoakum located in the State of Texas, and the counties of Chaves, Curry, De Baca, Eddy, Guadalupe, Lea, Roosevelt, Torrance, Union, and Quay located in the State of New Mexico.

§ 949.5 Potatoes.

"Potatoes" means and includes all varieties of *Solanum tuberosum*, commonly known as Irish potatoes, grown in the production area.

§ 949.6 Seed potatoes.

"Seed potatoes" or "seed" means any potatoes which have been certified by the official seed certification agency of the States of Texas or New Mexico, or other seed certification agencies recognized by the Secretary, and which bear the official tags, seals, or other

appropriate identification indicating such certification.

§ 949.7 Handler.

"Handler" is synonymous with "shipper" and means any person, except a common or contract carrier of potatoes owned by another person, who handles potatoes or causes potatoes to be handled.

§ 949.8 Handle or ship.

"Handle" or "ship" means to grade, package, sell, transport, or in any other way to place potatoes grown in the production area, of cause such potatoes to be placed, in the current of commerce within the production area or between the production area and any point outside thereof. Such term shall not include the transportation, sale, or delivery within the production area of field-run potatoes to storage or to a person for the purpose of having potatoes prepared for market.

§ 949.9 Producer.

"Producer" is synonymous with "grower" and means any person engaged in a proprietary capacity in the production of potatoes for market.

§ 949.10 Fiscal period.

"Fiscal period" means the 12-month period beginning on June 1 and ending May 31 of the following year, or such other period that may be recommended by the committee and approved by the Secretary.

§ 949.11 Committee.

"Committee" means the administrative committee known as Texas-New Mexico Potato Committee established pursuant to § 949.20.

§ 949.12 Grade, size and maturity.

"Grade" means any of the officially established grades of potatoes, "Size" means any of the officially established sizes of potatoes, and "Maturity" means any of the stages of development or condition of the outer skin (epidermis) of potatoes, as defined in the United States Standards for Potatoes issued by the United States Department of Agriculture (§§ 51.1540 to 51.1556, inclusive of this title), including amendments, modifications, or variations thereof, or, such other grades, sizes, and maturities as may be recommended by the committee and approved by the Secretary.

§ 949.13 Varieties.

"Varieties" means all classifications or subdivisions of Irish potatoes according to those definitive characteristics now or hereafter

recognized by the United States Department of Agriculture.

§ 949.14 Pack.

"Pack" means a quantity of potatoes in any type of container, which falls within specific weight limits, numerical limits, grade limits, size limits, or any combination of these recommended by the committee and approved by the Secretary.

§ 949.15 Container.

"Container" means a sack, bag, crate, box, basket, barrel, or bulk load or any other receptacle used in the packaging, transportation, sale or other handling of potatoes.

§ 949.17 District.

"District" means each of the geographic divisions of the production area initially established pursuant to § 949.23 or as reestablished pursuant to § 949.24.

§ 949.18 Export.

"Export" means the shipment of potatoes to any destination which is not within the 50 States, or the District of Columbia, of the United States.

Committee

§ 949.20 Establishment and membership.

(a) There is hereby established a committee, consisting of 11 members, to administer the terms and provisions of this part. Six members shall be producers, four members shall be handlers, and one shall be a public member. Each committee member shall have an alternate who shall have the same qualifications as the member.

(b) Each member, other than the public member, shall be an individual who is, prior to selection and during such term of office (1) a resident of the production area, and (2) a producer or handler, or an officer or employee of a producer or handler.

(c) Four members shall be producers from District 1 and two members shall be producers from District 2. Three members shall be handlers from District 1 and one member shall be a handler from District 2. Any person who operates in more than one district or is engaged in both producing and handling potatoes shall elect one classification, and one district from which to be represented on the committee.

(d) The public member shall be a resident of the production area and be neither a producer nor a handler and shall have no direct financial interest in the commercial production, financing, buying, packing or marketing of potatoes, except as a consumer, nor

shall such person be a director, officer or employee of any firm so engaged.

§ 949.21 Alternates.

An alternate member of the committee shall act in the place and stead of the member for whom such person is an alternate, during such member's absence or when designated to do so by such member. In the event both a member of the committee and that member's alternate are unable to attend a committee meeting, the member, the alternate, or the committee, in that order, may designate another alternate from the same district and the same classification (handler or producer) to serve in such member's stead. In the event of the death, removal, resignation, or disqualification of a member, that member's respective alternate shall serve until a successor of such member is selected and has qualified. The Committee may request the attendance of alternates at any or all meetings, notwithstanding the expected or actual presence of the respective members.

§ 949.22 Term of office.

(a) Except as otherwise provided in paragraph (b) of this section, the term of office of committee members and their respective alternates shall be for three years and shall begin as of January 1 and end the last day of December or for such other three-year period as the committee may recommend and the Secretary approve. Members and alternates shall serve in such capacity for the portion of the term of office for which they are selected, and until their respective successors are selected. No member or alternate may serve more than two consecutive terms on the committee unless specifically exempted from this requirement by the Secretary.

(b) The term of office of the initial members and alternates shall begin as soon as possible after the effective date of this subpart. As determined by the Secretary, approximately one-third of the initial committee members and alternates shall serve for a one-year term and approximately one-third of the initial committee members and alternates shall serve for a two-year term. The remainder of the initial committee members and alternates shall serve for a three-year term. Those members serving initial terms of one year or less may serve two additional, consecutive three-year terms.

§ 949.23 Districts.

To determine a basis for selecting committee members, the following districts of the production area are hereby initially established:

District 1: All production area counties located within the State of Texas;
District 2: All production area counties located within the State of New Mexico;

§ 949.24 Redistricting and reapportionment.

At least every five years the committee shall review the geographic distribution of potato production in the production area and, if warranted, recommend to the Secretary the reapportionment of members among districts, and the reestablishment of districts within the production area. In recommending any such changes, the Committee shall give consideration to:

- (a) Shifts in potato acreage within the districts and within the production area during recent years;
- (b) The importance of new production in its relation to existing districts;
- (c) The equitable relationship of committee membership and districts; and

(d) Other relevant factors. No change in districting or in apportionment of members within districts may become effective less than 30 days prior to the date on which terms of office begin each year and no recommendations for such redistricting or reapportionment may be made less than six months prior to such date.

§ 949.25 Nominations.

(a) Initial members. The nomination process for the initial committee shall be conducted by the Secretary. The nominations for each of the six initial producer and four initial handler members of the committee, together with the nominations for the initial alternate members for each position, shall be made as soon as practicable after the effective date of this subpart. The nominee for the initial public member shall be submitted to the Secretary not later than 90 days after the first meeting of the committee.

(b) Successor members. (1) The committee shall hold or cause to be held not later than October 1 of each year, or such other date as may be specified by the Secretary, a meeting or meetings of producers and handlers in each district for the purpose of designating at least one nominee for each position as member and for each position as alternate member of the committee. In the alternative, the committee may conduct nominations by mail in a manner recommended by the committee and approved by the Secretary.

(2) The names of nominees shall be submitted to the Secretary at such time and in such manner and form as may be prescribed;

(3) Only producers may participate in designating producer nominees and only handlers may participate in designating handler nominees to the committee;

(4) Only producers and handlers who are present at such nomination meetings, or represented at such meetings by a duly authorized employee, may participate in the nomination and election of nominees for members and their alternates.

(5) Any person who operates in more than one district or is engaged in both producing and handling potatoes shall elect the classification, and the district in which to participate in designating nominees.

(6) Regardless of the number of districts in which a person produces or handles potatoes, such persons are entitled to cast only one vote for each position to be filled in the district and classification in which the person is eligible and elects to vote in designating nominees for committee members and alternates. Such vote would be cast on behalf of the voter, the voter's agents, subsidiaries, affiliates, and representatives.

(c) The public member shall be nominated by the members of the committee. The committee may establish procedures for receiving names of persons to be considered for nomination as the public member. The name of the person nominated as the public member shall be submitted by the incumbent committee to the Secretary by November 1, or such other date recommended by the committee and approved by the Secretary, of the year the term expires together with information deemed pertinent by the committee or as requested by the Secretary.

§ 949.26 Selection.

Committee members and alternates shall be selected by the Secretary on the basis of representation provided for in § 949.20 or as modified pursuant to § 949.24.

§ 949.27 Failure to nominate.

If nominations are not made within the time and manner prescribed in § 949.25, the Secretary may, without regard to nominations, select the members and alternates on the basis of the representation provided for in § 949.20 or as modified pursuant to § 949.24.

§ 949.28 Acceptance.

Any person prior to selection as a member or alternate member of the committee shall qualify by filing with the Secretary a written acceptance

within the time period specified by the Secretary of the person's willingness to serve.

§ 949.29 Vacancies.

To fill any vacancy caused by the death, removal, resignation, or disqualification of a member or alternate, a successor for the unexpired term may be selected by the Secretary from nominations made pursuant to § 949.25, from previously unselected nominees on the current nominee list, or from other eligible persons.

§ 949.30 Expenses.

Members and alternates, when serving as members of the committee, shall serve without compensation but shall be reimbursed for such expenses authorized by the committee and necessarily incurred by them in attending committee meetings and in the performance of their duties under this part: Provided, that the committee at its discretion may request the attendance of one or more alternates at any or all meetings notwithstanding the expected, or actual, presence of the respective members and may pay expenses as aforesaid.

§ 949.31 Procedure.

(a) A majority of all members of the committee shall be necessary to constitute a quorum or to pass any motion or approve any committee action.

(b) The committee may provide for the members thereof, including the alternate members when acting as members, to vote by mail, telegraph, telephone, or other means of communication, provided that any such vote cast orally shall be confirmed promptly in writing. If any assembled meeting is held all votes shall be cast in person.

§ 949.32 Powers.

The committee shall have the following powers:

(a) To administer the provisions of this subpart as specified herein;

(b) To make rules and regulations to effectuate the terms and provisions of this subpart;

(c) To receive, investigate, and report to the Secretary complaints of violation of the provisions of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 949.33 Duties.

The committee shall have, among others, the following duties:

(a) As soon as practicable after the beginning of each term of office, to meet and organize, to select a chairman and such other officers as may be necessary, to select subcommittees, to adopt such

rules, regulations, and bylaws for the conduct of its business as it deems necessary, and to recommend nominees for the public member and alternate;

(b) To act as intermediary between the Secretary and any producer or handler;

(c) To furnish to the Secretary such available information as may be requested;

(d) To appoint such employees, agents, and representatives as it may deem necessary, to determine the compensation and define the duties of each such person, and to protect the handling of committee funds.

(e) To investigate from time to time and to assemble data on the growing, harvesting, shipping, and marketing conditions with respect to potatoes;

(f) To recommend research and development projects to the Secretary in accordance with this part;

(g) To notify handlers of each meeting of the committee to consider recommendations for regulations and of all regulatory actions taken, and to provide such notification to producers through appropriate news releases or such other means as may be available to the committee;

(h) To give the Secretary the same notice of meetings of the committee and its subcommittee(s) as is given to its members;

(i) To prepare a marketing policy;

(j) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the committee. Such minutes, books, and records shall be subject to examination at any time by the Secretary or the Secretary's authorized agent or representative. Minutes of each committee meeting shall be reported promptly to the Secretary;

(k) Prior to the beginning of each fiscal period, to submit to the Secretary a budget or projected income and expenses for such fiscal period, together with a report thereon;

(l) To prepare periodic statements of the financial operations of the committee and to make copies of each statement available to producers and handlers for examination at the office of the committee;

(m) To prepare and submit to the Secretary, an annual report, and make a copy available to each producer and grower who requests it. This annual report shall contain at least:

(1) A complete review of the regulatory operations during the fiscal period;

(2) An appraisal of the effect of such regulatory operations upon the potato industry; and

(3) Any recommendations for changes in the program.

(n) To cause the books of the committee to be audited by a certified public accountant at least once each fiscal period and at such other times as the committee may deem necessary or as the Secretary may request. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of such report shall be furnished to the Secretary. A copy of each such report shall be made available at the principal office of the committee for inspection by producers and handlers; however, confidential information shall be removed from the report; and

(o) To consult, cooperate, and exchange information with other marketing order committees and other individuals or agencies in connection with all proper activities and objectives under this part.

Expenses and Assessments

§ 949.40 Expenses.

The committee is authorized to incur such expenses as the Secretary may find are reasonable and likely to be incurred during each fiscal period for its maintenance and functioning, and for purposes determined to be appropriate for administration of this part. Handlers shall share expenses upon the basis of a fiscal period. Each handler's share of such expenses shall be proportionate to the ratio between the total quantity of potatoes handled by such handler as the first handler thereof during a fiscal period and the total quantity of potatoes handled by all handlers as first handlers thereof during such fiscal period.

§ 949.41 Budget.

Sixty days prior to the beginning of each fiscal period, or at such other time as may be specified by the Secretary, the committee shall prepare an estimated budget of income and expenditures necessary for its administration of this part. The committee may recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures. The committee shall submit such budget to the Secretary with an accompanying report showing the basis for its calculations. An amended budget may be submitted as provided in § 949.42(c).

§ 949.42 Assessments.

(a) The funds to cover the committee's expenses shall be acquired by the levying of assessments upon handlers as provided in this subpart or from voluntary contributions for projects

pursuant to § 949.48. Each person who first handles potatoes under this part shall pay assessments to the committee which assessments shall be in payment of such handler's pro rata share of the committee's expenses.

(b) Assessments shall be levied upon handlers at rates established by the Secretary. Such rates may be established upon the basis of the committee's budget, recommendations, and other available information. Such rates may be applied to specified containers used in the production area.

(c) At any time during, or subsequent to, a given fiscal period the committee may recommend the approval of an amended budget and an increase in the rate of assessment. Upon the basis of such recommendations, or other available information, the Secretary may approve an amended budget and increase the established rate of assessment.

(d) The payment of assessments for the maintenance and functioning of the committee may be required under this part throughout the period it is in effect irrespective of whether particular provisions thereof are suspended or become inoperative.

(e) The committee may impose a late payment charge or an interest charge on any handler who fails to pay any assessment in a timely manner. Such time and the rates shall be recommended by the committee and approved by the Secretary.

(f) In order to provide funds for the administration of this part before sufficient operating income is available from assessments, the committee may accept advance assessments and may also borrow money for such purpose. Advance assessments received from a handler shall be credited toward assessments levied against that handler during the fiscal year.

§ 949.43 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, such excess shall be accounted for in accordance with one of the following:

(1) If such excess is not retained in a reserve, as provided in subparagraph (2) of this paragraph, it shall be refunded proportionately to the persons from whom it was collected.

(2) The committee, with the approval of the Secretary, may carry over such excess into subsequent fiscal periods as a reserve: *Provided*, That the reserves are less than approximately two fiscal period's expenses. Such reserve funds may be used in (i) to defray expenses, during any fiscal period, prior to the time assessment income is sufficient to

cover such expenses; (ii) to cover deficits incurred during any fiscal period when assessment income is less than expenses; (iii) to defray expenses incurred during any period when any provisions of this part are suspended or are inoperative; (iv) to cover necessary expenses of liquidation in the event of termination of this part. Upon such termination, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such manner as the Secretary may determine to be appropriate. To the extent practical, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the committee pursuant to the provisions of this part shall be used solely for the purposes specified herein. The Secretary may at any time require the committee and its members to account for all receipts and disbursements.

(c) Upon the removal or expiration of the term of office of any member of the committee, such member shall account for all receipts and disbursements and deliver all property and funds in such member's possession to the committee, and shall execute such assignments and other instruments as may be necessary or appropriate to vest in the committee full title to all of the property, funds, and claims vested in such member pursuant to this part.

(d) The committee may make recommendations to the Secretary for one or more of the members thereof, or any other person, to act as a trustee for holding records, funds, or any other committee property during periods of suspension of this subpart, or during any period or periods when regulations are not in effect and, upon determining such action is appropriate, the Secretary may direct that such person or persons shall act as trustee or trustees for such committee.

Research and Development

§ 949.48 Research and development.

The committee, with the approval of the Secretary, may establish or provide for the establishment of production research, marketing research, and development projects, not including paid advertising, designed to assist, improve, or promote the marketing, distribution, consumption, or efficient production of potatoes. The expense of such projects shall be paid from funds collected pursuant to § 949.42.

Regulation

§ 949.50 Marketing policy.

Prior to beginning of each fiscal year, the committee shall submit to the

Secretary a report setting forth its marketing policy for the ensuing season. Additional reports shall be submitted if it is deemed advisable by the committee to adopt a new marketing policy because of changes in the demand or supply situation with respect to potatoes. The committee shall publicly announce the submission of each such marketing policy report and copies thereof shall be available at the committee's office for inspection by any producer or any handler. In determining each such marketing policy the committee shall give due consideration to the following:

- Supply of potatoes by grade, size, quality, and maturity in the production area;
- Estimates of supplies of potatoes in the production area and in competing areas;
- Estimates of supplies of other competing commodities;
- Market prices by grades, sizes, containers, and packs;
- Anticipated marketing problems;
- Level and trend of consumer income; and
- Other relevant factors.

§ 949.51 Recommendations for regulations.

(a) Whenever the committee's marketing policy considerations deem it advisable to regulate the handling of any variety or varieties of potatoes in a manner provided in §§ 949.53, 949.54, or 949.55 it shall recommend to the Secretary grade, size, quality, maturity, or pack regulation, or any combination thereof, or amendment thereto, or modification, suspension, or termination thereof.

(b) In arriving at its recommendations for regulation pursuant to (a) of this section, the committee shall give consideration to current information with respect to the factors affecting the supply and demand for potatoes during the period or periods when it is proposed that such regulations should be effective. With each such recommendation for regulation, the committee shall submit to the Secretary the data and information on which such recommendation is predicated and such other available information as the Secretary may request.

§ 949.53 Issuance of regulations.

(a) The Secretary shall issue regulations on the handling of potatoes whenever the Secretary finds from recommendations and information submitted by the committee, or from other available information, that such regulation would tend to effectuate the

declared policy of the act. Such regulations may:

(1) Limit the handling of particular grades, sizes, qualities, maturities, or packs of any or all varieties of potatoes, or any combination of the foregoing during any period.

(2) Limit the handling of particular grades, sizes, qualities, maturities or packs of potatoes differently, for different varieties, for different containers, for different packs, for different purposes under § 949.55, or for any combination of the foregoing, during any period.

(3) Fix the size, capacity, weight, dimensions, pack or marking of the container or containers which may be used in the packaging or handling of potatoes, or both.

(4) Establish in terms of grades, sizes, or both, minimum standards of quality and maturity during any period when season average prices are expected to exceed the parity level.

(b) The Secretary shall notify the committee of each regulation issued pursuant to this section. The committee shall give reasonable notice thereof to handlers.

(c) Nothing in this subpart shall authorize any regulation eliminating shipment of potatoes in bulk.

§ 949.54 Modification, suspension, or termination of regulations.

(a) In the event the committee at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 949.53 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the committee or from other available information, that a regulation should be modified, suspended, or terminated with respect to any or all shipments in order to effectuate the declared policy of the act, the Secretary shall modify, suspend, or terminate such regulation. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension.

§ 949.55 Handling for special purposes.

(a) Upon the basis of recommendations and information submitted by the committee, or other available information, the Secretary, may modify, suspend, or terminate requirements in effect pursuant to § 949.42 or §§ 949.51 to 949.53 inclusive,

or § 949.60 or any combination thereof, to facilitate handling of potatoes for:

- Relief or charity;
- Livestock feed;
- Export;
- Seed;
- Potatoes, other than certified seed, sold to a producer exclusively for planting within specific geographic limits;

(6) Other purposes recommended by the committee and approved by the Secretary.

(b) The committee, with the approval of the Secretary, shall prescribe rules and regulations to prevent potatoes handled pursuant to this section from entering trade channels other than those authorized by regulations and by such rules as may be necessary and incidental thereto.

Inspection

§ 949.60 Inspection and certification.

(a) During any period in which the handling of potatoes is regulated pursuant to §§ 949.53 through 949.55, inclusive, no handler shall handle potatoes unless such potatoes are inspected by an authorized representative of the Federal or a Federal-State Inspection Service and are covered by a valid inspection certificate, except when relieved of such requirements by §§ 949.54, 949.55, or 949.60(b).

(b) The committee may, with the approval of the Secretary, issue rules requiring inspection on regraded, resorted or repacked lots, or providing for special inspection requirements or relief therefrom. Such rules may provide distinctions, insofar as practical, between handling at shipping point and handling in receiving markets within the production area.

(c) Upon recommendation of the committee and approval by the Secretary, any or all potatoes so inspected and certified shall be identified by appropriate seals, stamps, or tags to be affixed to the container by the handler under the direction and supervision of a Federal or Federal-State Inspector or the committee. Master containers may bear the identification instead of the individual containers within said master container.

(d) Insofar as the requirements of this section are concerned, the length of time for which an inspection certificate is valid may be established by the committee with the approval of the Secretary.

(e) When potatoes are inspected in accordance with the requirements of this section, a copy of each inspection certificate issued shall be made

available to the committee by the inspection service.

(f) The committee may recommend and the Secretary may require that no handler shall transport or cause the transportation of potatoes by motor vehicle or by other means unless such shipment is accompanied by a copy of the inspection certificate issued thereon, or other evidence of inspection acceptable to the Secretary such as a Positive Lot Identification stamp, to indicate that such inspection has been performed. Such certificate or document shall be surrendered to such authority as may be designated.

Reports and Recordkeeping

§ 949.80 Reports and recordkeeping.

Upon request of the committee, made with the approval of the Secretary, each handler shall furnish to the committee, in such manner and form and at such time as it may prescribe, such reports and other information as may be necessary for the committee to perform its duties under this part.

(a) Such reports may include, but are not necessarily limited to, the following:

(1) The quantities of potatoes received by variety by a handler during any or all periods of a season;

(2) The quantities disposed of by the handler, segregated as to quantities subject to regulation, and where necessary, segregated as to types of outlets and special or modified regulations applicable to alternative outlets, and including quantities not subject to regulation;

(3) The date of each such disposition and the identification of the carrier transporting such potatoes;

(4) Information essential to identification of any or all specific quantities, lots, and disposition or potatoes handled under §§ 949.53 to 949.55, inclusive, which may include identification of inspection certificates, exemption certificates, certificates of privilege, or other appropriate identification, including the destination of each special shipment, where necessary.

(b) All such reports shall be held under appropriate protective classification and custody by the committee, or duly appointed employees thereof, so that the information contained therein which may adversely affect the competitive position of any handler in relation to other handlers will not be disclosed. Compilations of general reports from data submitted by handlers is authorized, subject to the prohibition of disclosure of an individual handler identity or operations.

(c) Each handler shall maintain for at least 2 succeeding years such records and documents on potatoes received by such handler as may be necessary to verify reports submitted to the committee pursuant to this section.

(d) For the purpose of assuring compliance with recordkeeping requirements and verifying reports of handlers, the Secretary and the committee, through their duly authorized employees or agents, shall have access to any premises where applicable records are located, and where potatoes are handled, and at any time during reasonable business hours shall be permitted to inspect such handler's premises and any potatoes held by such handler and examine any and all records of such persons with respect to matters within the purview of this part.

Compliance

§ 949.81 Compliance.

No person shall handle potatoes except in conformity with the provisions of this subpart and the regulations issued thereunder.

Miscellaneous Provisions

§ 949.82 Right of the Secretary.

The members of the committee (including successors and alternates) and any agent or employee appointed or employed by the committee shall be subject to removal or suspension by the Secretary at any time. Each and every order, regulation, decision, determination or other act of the committee shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the committee shall be deemed null and void, except as to acts done in reliance thereon or in compliance therewith prior to such disapproval by the Secretary.

§ 949.84 Termination or suspension.

(a) The Secretary may terminate or suspend the operation of any or all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(b) *Producer referendum.* (1) The Secretary shall terminate in accordance with section 8(c)(18)B of the Act, the provisions of this part at the end of any fiscal period whenever the Secretary finds that such termination is favored by a majority of producers, who during a representative period, as determined by the Secretary have been engaged in the production of potatoes for market: *Provided, That* such majority has, during such representative period, produced for

market more than fifty percent of the volume of such potatoes for market: *Provided further, That* termination shall be announced before the beginning of the ensuing fiscal period.

(2) The Secretary shall conduct a referendum every sixth fiscal year with the first such referendum to be conducted within six years from the effective date of this section, to ascertain whether continuance of this subpart is favored by producers. The Secretary may terminate the provisions of this part at the end of any fiscal year in which the Secretary has found that continuance of this subpart is not favored by producers who, during a representative period determined by the Secretary, have been engaged in the production for market of potatoes in the production area. Such termination of the part shall be announced on or before the end of the fiscal year.

(c) The provisions of this part shall in any event terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 949.85 Proceedings after termination.

(a) Upon the termination of the provisions of this part the then functioning members of the committee shall continue as joint trustees for the purpose of liquidating the affairs of the committee of all funds and property then in the possession of or under control of the committee, including claims for any funds unpaid or property not delivered at the time of such termination. Action by said trusteeship shall require the concurrence of a majority of the said trustees.

(b) The said trustees shall continue in such capacity until discharged by the Secretary; shall from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of said committee and of the trustees, to such person as the Secretary may direct; and shall upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in said committee or the trustees pursuant to this part.

(c) Any person to whom funds, property, or claims have been transferred or delivered by the committee or its members pursuant to this section shall be subject to the same obligations imposed upon the members of the committees and upon the said trustees.

§ 949.86 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this subpart or of any regulation issued pursuant to this subpart or the issuance of any amendments to either thereof, shall not (a) affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this subpart or any regulations issued under this subpart; or (b) release or extinguish any violation of this subpart or of any regulations issued under this subpart; or (c) affect or impair any rights or remedies of the Secretary or of any other person with respect to any such violations.

§ 949.87 Duration of immunities.

The benefits, privileges and immunities conferred upon any person by virtue of this part shall cease upon the termination of this part, except with respect to acts done under and during the existence of this part.

§ 949.88 Agents.

The Secretary may, by designation in writing, name any person, including any officer or employee of the United States, or name any agency in the United States Department of Agriculture, to act as the Secretary's agent or representative in connection with any of the provisions of this part.

§ 949.89 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States to exercise any powers granted by the Act or otherwise, or in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 949.90 Personal liability.

No member or alternate of the committee or any employee or agent thereof, shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any handler or to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate, agent, or employee, except for acts of dishonesty, willful misconduct or gross negligence.

§ 949.91 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstances or thing is held invalid, the validity of the remainder of this subpart, or the applicability thereof to any other

person, circumstances or thing shall not be affected thereby.

§ 949.92 Amendments.

Amendments to this subpart may be proposed from time to time by the committee or by the Secretary.

Signed at Washington, DC, on May 31, 1989, to become effective June 2, 1989.

Jo Ann R. Smith,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89-13243 Filed 6-1-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-57-AD; Amdt. 39-6230]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive, applicable to certain Boeing Model 747 series airplanes, which requires replacement of certain underwing fuel tank access doors with stronger, fire-resistant doors. This amendment is prompted by several incidents of door penetration by tire and engine debris, which resulted in spillage of significant quantities of fuel. This condition, if not corrected, could result in a fire.

DATES: Effective July 8, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Michael E. Dostert, Propulsion Branch, ANM-140S, telephone (206) 431-1974. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-88966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to Boeing Model 747 series airplanes, which requires that certain fuel tank

access doors be replaced with improved types with more impact resistance, was published in the *Federal Register* on September 19, 1988 (53 FR 36340). The comment period closed on November 10, 1988.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The only comments received were submitted by the Air Transport Association (ATA) of America on behalf of its member airlines. The ATA requested the proposed AD be withdrawn if the FAA planned to adopt a Federal Aviation Regulations (FAR) Part 121 rule, requiring replacement of the subject fuel tank access doors. The FAA does not concur that issuance of the proposed AD action should be deferred pending Part 121 rulemaking activity. A total of 18 fuel tank access door penetration incidents, including 3 of the inboard access doors, have been reported on Model 747 airplanes. In light of this service history and immediate safety implications, the FAA has determined that the need for timely action specific to the Model 747 airplane is appropriate.

The ATA also requested that the proposed 4-month compliance period be extended to at least one year after the effective date of the AD to allow operators to obtain parts and schedule retrofit of the fuel tank access doors. The FAA concurs in part with this request. The proposed compliance time of 4 months for replacement of the inboard fuel tank access doors and 30 months for the remaining 14 doors was established after careful consideration of the degree of risk, the number of airplanes affected, the predicted availability of parts, and the potential for disruption in operators' scheduled operations. Following issuance of the NPRM, the FAA has been advised that problems in access door production schedules have occurred, and, therefore, 8 months will be required to produce the required number of replacement doors. Accordingly, the FAA has revised paragraph A. to extend the compliance time from 4 months to 8 months for replacement of the four inboard access doors. However, the 30-month compliance time for replacement of the remaining 14 doors per airplane has not been changed.

Paragraph A. has also been revised to specify more accurately the number and location of access doors required to be replaced.

After careful review of the available data, including the comments noted above, the FAA has determined that air

safety and the public interest require the adoption of the proposed rule, with the changes noted above. The FAA has determined that these changes will neither increase the economic burden on any operator, nor increase the scope of the AD.

There are approximately 700 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 208 airplanes of U.S. registry will be affected by this AD, that it will take approximately 60 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Replacement door material costs, based on the manufacturer's kit price, are estimated to be \$600 per door (18 doors total per airplane). Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$2,745,600.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this regulation and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

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§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747-100, 747-200, 747-300, and 747-SP series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To minimize the fire hazard as a result of lower wing surface fuel tank access door penetration due to impact from low energy engine and tire debris, accomplish the following:

A. Within the next 8 months after the effective date of this AD, replace the two inboard fuel tank access doors on each lower wing skin (Nos. 644AB and 645AB) on the left wing and (Nos. 644AB and 645AB) on the right wing, with doors having impact resistance equivalent to that of 2024-T3 aluminum 0.140-inch thick, as approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region in accordance with the procedures described in Section 28-11-02 of the Boeing Model 747 Maintenance Manual. The replacement doors must also be fire resistant, as defined in the Federal Aviation Regulations, Part 1.

B. Within the next 30 months after the effective date of this AD, replace the following 14 lower wing surface fuel tank access doors, seven on the left wing (Nos. 546AB, 546BB, 552AB, 552BB, 552CB, 552DB, and 552EB), and seven on the right wing (Nos. 646AB, 646BB, 652AB, 652BB, 652CB, 652DB, and 652EB), with doors having impact resistance equivalent to that of 2024-T3 aluminum 0.140-inch thick, as approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, in accordance with the procedures described in Section 28-11-02 of the Boeing Model 747 Maintenance Manual. The replacement doors must also be fire resistant, as defined in the Federal Aviation Regulations, Part 1.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. 3707, Seattle, Washington 98124. These documents may be examined at FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office.

9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 8, 1989.

Issued in Seattle, Washington, on May 22, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-13046 Filed 6-1-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

(Airspace Docket No. 89-AWP-21)

Alteration of VOR Federal Airway; Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Federal Airway V-235 by extending the airway from Mormon Mesa, NV, to Peach Springs, AZ. A special flight rules area has been established around the Grand Canyon, CO, area. The flight-free zone restricts aircraft in the Grand Canyon area from operating below 14,500 feet mean sea level (MSL). This action provides an airway, outside of the zone, with a lower minimum en route altitude (MEA), thereby aiding pilots unable to operate at higher altitudes.

EFFECTIVE DATE: 0901 u.t.c., July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:**History**

On March 23, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of V-235 by extending the airway from Mormon Mesa, NV, to Peach Springs, AZ (54 FR 11960). Special flight rules have been established for the Grand Canyon area. This flight-free area zone restricts aircraft proceeding northbound from the Grand Canyon from operating below 14,500 feet MSL. This action provides a lower MEA between Mormon Mesa and Peach Springs. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial

changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the description of Federal Airway V-235 by extending the airway from Mormon Mesa, NV, to Peach Springs, AZ. A special flight rules area has been established around the Grand Canyon, CO, area. The flight-free zone restricts aircraft operations in certain parts of the Grand Canyon area below 14,500 MSL. This action provides an airway outside of the special flight rules area, with a lower MEA, thereby aiding pilots unable to operate at those higher altitudes.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-235 [Amended]

By removing the words "From Mormon Mesa, NV, via INT Mormon Mesa," and substituting the words "From Peach Springs, AZ, Mormon Mesa, NV, via INT Mormon Mesa"

Issued in Washington, DC, on May 22, 1989.

Original signed by William C. Davis, Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 89-13049 Filed 6-1-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

(Airspace Docket No. 89-AWP-6)

Alteration of VOR Federal Airway; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The San Jose, CA, very high frequency omni-directional radio range (VOR) has been relocated approximately 2 miles west of its current location to coordinates lat. 37°22'29" N., long. 121°56'36" W. Federal Airway V-334 is the only airway affected by the relocation and this action amends the description of that airway concurrent with the relocation of San Jose VOR.

EFFECTIVE DATE: 0901 u.t.c., July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:**The Rule**

This amendment to Part 71 of the Federal Aviation Regulations amends the description of VOR Federal Airway V-334 due to the relocation of the San Jose, CA, VOR. The airway is being realigned concurrent with the relocation of that navigational aid. This redescription does not involve a significant change in controlled airspace and is a minor technical amendment in which the public would not be particularly interested in commenting. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are

necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airway.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-334 [Revised]

From San Jose, CA; INT San Jose 025° and Sacramento, CA, 194° radials; Sacramento.

Issued in Washington, DC, on May 22, 1989.

William C. Davis,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-13048 Filed 6-1-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

(Airspace Docket No. 89-ASO-22)

Amendment to Transition Area, Vidalia, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment is editorial in nature and does not alter dimensions of the existing Vidalia, Georgia, transition area. The current description contains reference to the Onion RBN. With installation of an ILS Localizer, the

RBN now functions as an outer compass locator/LOM and the name of the RBN is now "ONYUN." This amendment changes the reference from Onion RBN to ONYUN LOM.

DATES: Effective date: 0901 u.t.c., July 27, 1989. Comments must be received on or before June 20, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-22, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James C. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:**Request for Comments on the Rule**

Although this action is in the form of a final rule, which involves an editorial change in the Vidalia, Georgia, transition area which involves changing the reference from Onion RBN to ONYUN LOM, and was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to amend the description of the Vidalia, Georgia, transition area. The reference to the Onion RBN is in error and is being corrected to the ONYUN outer compass locator/LOM. The airspace dimensions of the transition area remain unchanged. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in

FAA Handbook 7400.8E dated January 3, 1989.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to correct the description of the Vidalia, Georgia, transition area. This change is editorial in nature and does not alter the dimensions of the existing transition area. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary and contrary to the public interest.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10654; 49 U.S.C. 106(g) (Revised Public Law 97-448, January 12, 1983); 14 CFR 11.69.

2. Section 71.181 is amended as follows:

Vidalia, Georgia [Amended]

By substituting the words "ONYUN LOM" in lieu of the term "Onion RBN" where it appears in the existing description.

Issued in East Point, Georgia, on May 17, 1989.

William D. Wood,
Acting Manager, Air Traffic Division,
Southern Region.

[FR Doc. 89-13047 Filed 6-1-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 85F-0346]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame in frozen, ready-to-thaw-and-eat cheesecakes, fruit, and fruit toppings. This action is in response to a petition filed by Foodways National, Inc.

DATES: Effective June 2, 1989; written objections and requests for a hearing by July 3, 1989.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of August 23, 1985 (50 FR 34197), FDA announced that a food additive petition (FAP 5A3874) had been filed by Foodways National, Inc., P.O. Box 44, Boise, ID 83707, proposing that § 172.804 Aspartame (21 CFR 172.804) be amended to provide for the safe use of aspartame as a sweetener in frozen cheesecakes, fruit, and fruit toppings.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended in § 172.804(c) as set forth below. The agency emphasizes that the introductory paragraph of § 172.804 provides that aspartame may only be used for those purposes "for which standards of identity established under section 401 of the [Federal Food, Drug, and Cosmetic] Act do not preclude such use."

The filing notice describes the products covered in the petition as frozen cheesecakes, fruit, and fruit toppings. However, the petition further described these products as "ready to thaw and eat." The agency has included this language in the regulation to clarify

that the products covered by the regulation are not heat treated (cooked) subsequent to thawing.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before July 3, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 172.804 is amended by adding new paragraph (c)(19) to read as follows:

§ 172.804 Aspartame.

(c) . . .
(19) Frozen, ready-to-thaw-and-eat cheesecakes, fruit, and fruit toppings.

Dated: May 26, 1989.

John M. Taylor,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-13119 Filed 6-1-89; 8:45 am]

BILLING CODE 4100-01-M

21 CFR Part 172

[Docket No. 87F-0240]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame as a sweetener in frozen dairy and nondairy frostings, toppings, and fillings. This action is in response to a petition filed by the Foodways National, Inc., and the NutraSweet Co.

DATES: Effective June 2, 1989; written objections and requests for a hearing by July 3, 1989.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF-334), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-426-5487.

SUPPLEMENTARY INFORMATION: In a notice published in the Federal Register of August 21, 1987 (52 FR 31667), FDA announced that a food additive petition (FAP 7A4014) had been filed by the Foodways National, Inc., P.O. Box 10, Ontario, OR 97014; and the NutraSweet Co., 4711 Golf Rd., Skokie, IL 60076, proposing that § 172.804 Aspartame (21 CFR 172.804) be amended to provide for the safe use of aspartame as a sweetener in frozen dairy and nondairy frostings, toppings, and fillings.

FDA has evaluated data in the petition and other relevant material. The agency concludes that the proposed food additive use is safe, and that the regulations should be amended as set forth below. The agency emphasizes that the introductory paragraph of § 172.804 provides that aspartame may only be used for those purposes "for which standards of identity established under section 401 of the [Federal Food, Drug, and Cosmetic] Act do not preclude such use." Thus, for example, aspartame may not be used in sweet cocoa and vegetable fat (other than cacao fat) coating that complies with 21 CFR 163.150.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before July 3, 1989 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be

separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended. (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 172.804 is amended by adding new paragraph (c)(20) to read as follows:

§ 172.804 Aspartame.

(c) . . .
(20) Frozen dairy and nondairy frostings, toppings, and fillings.

Dated: May 26, 1989.

John M. Taylor,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-13120 Filed 6-1-89; 8:45 am]

BILLING CODE 4100-01-M

DEPARTMENT OF TRANSPORTATION Coast Guard

33 CFR Part 165

[COTP Baltimore, MD Regulation 89-02]

Security Zone Regulations: Severn River and Annapolis Harbor, Annapolis, MD

AGENCY: Coast Guard, DOT.

ACTION: Emergency rule.

SUMMARY: The Coast Guard is establishing a security zone in Severn River and Annapolis Harbor, Annapolis, Maryland. The security zone is needed to protect the participants attending the SEALINK 89 Symposium being sponsored by the Government of the United States from sabotage or other subversive acts, accidents, or other causes of a similar nature. Entry into this zone is prohibited unless authorized by the Captain of the Port or his authorized representative.

EFFECTIVE DATES: These regulations are effective from 8:00 a.m., June 12, 1989 to 11:00 a.m., June 16, 1989, unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander F.C. Buckley, at U.S.C.G. Marine Safety Office, Custom House, 40 South Gay Street, Baltimore, Maryland 21202-4022, (301) 962-5105.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of Federal Register publication. Publishing an NPRM and delaying the effective date of this security zone would be contrary to the public interest since immediate action is needed to protect the participants attending the SEALINK 89 Symposium from injury due to sabotage or other subversive acts.

Drafting Information

The drafters of this regulation are Lieutenant Commander F.C. Buckley, project officer for the Captain of the Port, Baltimore, Maryland and Lieutenant Commander R.K. Kutz, Project Attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The Coast Guard is establishing a security zone in the Severn River and Annapolis Harbor, Annapolis, Maryland, to protect the participants attending the SEALINK 89 Symposium being sponsored by the Government of the United States. The symposium will

be held at the U.S. Naval Academy between June 12 and June 15, 1989. No vessels will be allowed to navigate within the security zone around the Naval Academy except by specific permission and direction from a designated Coast Guard commissioned, warrant, or petty officer on scene. Coast Guard vessels will be on scene around the clock to notify boaters of restrictions and to enforce the security zone. To assist the public in identifying Coast Guard representatives of the Captain of the Port, these individuals will be wearing a distinctive SEALINK ballcap. Yellow buoys also will be set along the perimeter of this portion of the zone. In addition, all vessels and persons will be prevented from entering the waters below or within fifteen yards of the Annapolis Hilton Hotel, including any projections and associated structures, and the barge moored alongside the Annapolis Hilton Hotel catwalk, without the permission of the Captain of the Port or representative of the Captain of the Port.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 USC 1231; 50 USC 191; 33 CFR 1.05-1(g), 8.04-1, 8.04-8, and 160.5; 49 CFR 1.46.

2. A new § 165.T0538 is added to read as follows:

§ 165.T0538 Security Zone: Severn River and Annapolis Harbor, Annapolis, Maryland.

(a) Location. The following areas are a security zone:

(1) The waters of the Severn River and Annapolis Harbor bounded by the Naval Academy Seawall and a line connecting the following points:

Latitude	Longitude
38°58'06.1" N	76°29'15.9" W
38°58'11.0" N	76°29'18.1" W
38°58'12.4" N	76°29'13.9" W
38°58'14.0" N	76°29'04.3" W
38°58'52.8" N	76°28'32.0" W
38°58'37.1" N	76°28'49.8" W
38°58'35.8" N	76°28'02.8" W
38°58'36.9" N	76°28'04.5" W

(2) The waters below or within fifteen yards of the Annapolis Hilton Hotel, including any projections and associated structures, the waters within fifteen yards of the barge moored alongside the hotel catwalk, and the hotel catwalk itself.

(b) Representative of the Captain of the Port. A "representative of the Captain of the Port" is any uniformed United States Coast Guard commissioned, warrant, or petty officer who has been designated by the Captain of the Port, Baltimore, Maryland to act on his behalf with respect to this zone.

(c) Regulations. (1) No person or vessel may enter, remain in, or anchor in the security zone without the permission of the Captain of the Port or a representative of the Captain of the Port.

(2) Each person and vessel in the security zone shall immediately obey any direction or order of the Captain of the Port or any representative of the Captain of the Port.

(3) For further information contact the Coast Guard Marine Safety Office, Baltimore, at (301) 962-5105 or the on scene Coast Guard patrol vessels on VHF FM 16.

(4) The general regulations in section 165.33 of this part do not apply to this security zone.

(d) Effective Dates. These regulations are effective from 8:00 a.m., June 12, 1989 to 11:00 a.m., June 16, 1989, unless sooner terminated by the Captain of the Port, Baltimore, Maryland.

Dated: May 22, 1989.

J.H. Parent,
Captain, U.S. Coast Guard, Captain of the Port, Baltimore, Maryland.

[FR Doc. 89-12947 Filed 6-1-89; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 7

Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area, CA; Gold Panning Regulations

AGENCY: National Park Service, Interior.

ACTION: Final rule.

SUMMARY: On February 9, 1988, the National Park Service, Department of the Interior, published in the Federal Register (53 FR 88-3759) a proposed rule to permit the activity of gold panning within the Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area. An editorial correction was printed in the Federal Register (53 FR 88-7466) on March 8, 1988. This proposal was made available for public review and comment for a period of thirty (30) days following publication in the Federal Register, and ending on March 10, 1988. One supporting comment was received regarding the

issuance of permits to visitors who wish to participate in this activity. As a result, the final rule, except for a minor editorial change, is published unchanged from the proposed rule. It has been promulgated to permit a level of public use and enjoyment of the area resources consistent with the establishment of the Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area to provide for both preservation and recreational use.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT:

Ray C. Foust, Superintendent, Whiskeytown Unit, Whiskeytown-Shasta-Trinity NRA, P.O. Box 188, Whiskeytown, California 96095, Telephone: (916) 241-6584).

SUPPLEMENTARY INFORMATION:

Background

The Whiskeytown Unit of the Whiskeytown-Shasta-Trinity National Recreation Area is the only existing unit within the National Park System that contains a property, on the National Register of Historic Places, that commemorates the California Gold Rush. Further, a significant part of the interpreted history of the unit is related to the Gold Rush and its influences on the area during the mid-1800's. The park now allows gold panning as part of an interpretive program. However, to allow visitors to retain minimal amounts of gold as an enhancement of this experience, the National Park Service proposes this rulemaking pursuant to the Unit's enabling legislation at section 6.

The existing National Park Service (NPS) general regulations at 36 CFR 2.1(a)(1)(iv) that pertain to the preservation of natural resources restrict the possessing, removing and/or digging for any mineral resource. These provisions apply at the Whiskeytown Unit of the National Recreation Area. However, the enabling act for the Whiskeytown-Shasta-Trinity National Recreation Area, Pub. L. 89-336, section 6, provides the Secretary of the Interior with the authority to permit the removal of nonleasable minerals from lands within the recreation area in accordance with the Reclamation Act of 1939 (43 U.S.C. 387).

The regulation provides the conditions under which the recreational gold panning will be allowed. It stipulates registration requirements, locations where the activity will be allowed, and controls on the equipment, materials and methods by which the gold panning may occur.

A proposed rule was published February 9, 1988, in the Federal Register (53 FR 3759) to allow for this activity. An editorial correction was published March 8, 1988, in the Federal Register (53 FR 7466) to clarify the methods of taking gold from "any method" to "any other method." No other changes in the final rule from the proposed rule have occurred. During the 30-day comment period that expired March 10, 1988, one supporting comment was received from the Bureau of Land Management (BLM) recommending that the permit system adopted by the NPS be similar in nature to that utilized by BLM on adjacent lands.

Drafting Information

The primary authors of this regulation are Ray C. Foust, Superintendent, and T. Dwayne Collier, Chief of Visitor Services and Law Enforcement Operations, both of Whiskeytown Unit, Whiskeytown-Shasta-Trinity NRA.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

An environmental assessment of the effects of this proposed regulation was prepared and submitted to the Regional Director, Western Region, National Park Service, in July, 1987. A statement of a "Finding of No Significant Impact," in accordance with the National Environmental Policy Act (42 U.S.C. 4332), was prepared in conjunction with the environmental assessment in July, 1988.

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). While this rulemaking has no economic effect, it does relax one existing NPS regulation, 36 CFR 2.1(a)(1)(iv), that restricts the possessing, removing and/or digging for any mineral resources.

An Assessment of Actions Having An Effect On Cultural Resources was conducted in accordance with the National Historic Preservation Act, 16 U.S.C. 470, *et seq.*, it was determined that the proposed activity will not have an adverse effect on cultural resources.

List of Subjects in 36 CFR Part 7

National parks, reporting and recordkeeping requirements.

In consideration of the foregoing, 36 CFR Chapter I, Part 7 is amended as follows:

PART 7—SPECIAL REGULATIONS, AREAS OF THE NATIONAL PARK SYSTEM

1. The authority citation for Part 7 is revised to read as follows:

Authority: 16 U.S.C. 1, 3, 9a, 460(q), 462(k); Sec. 7.96 also issued under D.C. Code 8-137 (1981) and D.C. Code 40-721 (1981).

2. Section 7.91 is amended by adding a new paragraph (d) to read as follows:

§ 7.91 Whiskeytown Unit, Whiskeytown-Shasta-Trinity National Recreation Area.

(d) Gold Panning. (1) As used in this section, the term "gold panning" means the attempted or actual removal of gold from a stream by using either a metal or plastic gold pan and a trowel, spoon or other digging implement having a blade surface not exceeding 4 inches wide and 8 inches long.

(2)(i) Unless otherwise designated by the superintendent, gold panning is allowed on all streams. Streams, or portions thereof, that are designated closed to gold panning are marked on a map available for public inspection at the office of the superintendent, or by the posting of signs, or both.

(ii) Prior to engaging in gold panning, a person shall register with, and pay a special recreation permit fee to, the superintendent. The superintendent shall establish the special recreation permit fee in accordance with regulations in part 71 of this chapter.

(iii) A person may remove gold from the Unit only in accordance with these regulations.

(3) The following are prohibited:

(i) Removing gold by any method other than gold panning, including, but not limited to, the use of suction, a crevice cleaner, screen separator, view box, sluice box, rocker, dredge or any other mechanical or hydraulic device, or skin diving equipment such as a snorkel, mask or wetsuit.

(ii) Using any toxic substance or chemical, including mercury, in gold panning activities.

(iii) Conducting gold panning outside the confines of existing stream water levels, or digging into a stream bank, or digging that results in the disturbance of the ground surface or the undermining of

any vegetation, historic feature or bridge abutment.

Becky Norton Dunlop,
Assistant Secretary for Fish and Wildlife and Parks.

Date: April 24, 1989.

[FR Doc. 89-13061 Filed 6-1-89; 8:45 am]

BILLING CODE 4310-70-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3571-2]

Connecticut and Rhode Island Ozone Attainment Plans; Control of Gasoline Volatility

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving State Implementation Plan (SIP) revisions submitted by the State of Connecticut and the State of Rhode Island. These revisions will reduce emissions of volatile organic compounds from gasoline by limiting the Reid Vapor Pressure (RVP) of gasoline sold between June 30 and September 15 in 1989 and between May 1 and September 15 of each year thereafter to 9 pounds per square inch. EPA is also finding that the Connecticut and Rhode Island RVP regulations are "necessary to achieve" the national ambient air quality standard (NAAQS) for ozone and are therefore excepted from preemption under section 211 of the Clean Air Act. The intended effect of this action is to make necessary progress towards attainment of the ozone standard as expeditiously as practicable as required under the Clean Air Act.

EFFECTIVE DATE: June 30, 1989.

ADDRESSES: Copies of the submittal are available for public inspection at U.S. EPA, Room 2311, JFK Federal Building, Boston, MA 02203; the Connecticut Department of Environmental Protection, State Office Building, 165 Capitol Ave., Hartford, CT 06115; and the Rhode Island Department of Environmental Management, 291 Promenade St., Providence, RI 02908-5767.

FOR FURTHER INFORMATION CONTACT: Peter X. Hagerty, (617) 565-3224; (FTS) 835-3224 or Jennifer York, (617) 565-3220; (FTS) 835-3220.

SUPPLEMENTARY INFORMATION:

Introduction

This Federal Register notice describes EPA's decision to approve revisions to

both the Connecticut and Rhode Island SIPs which limit the volatility of gasoline from June 30 to September 15 in 1989 and from May 1 to September 15 every year thereafter. Since the Connecticut and Rhode Island regulations are very similar and the public comments received in response to EPA's Notices of Proposed Rulemaking were nearly identical, the two revisions will be discussed together in this notice. Any differences between the states in the regulations, public comments or EPA responses will be clearly identified.

The remainder of this preamble is divided into four sections. The first provides the background for this action, with respect to both chronology and the broad issues involved. The second section presents today's action and EPA's rationale. The third section summarizes the comments received on the proposed action and EPA's responses to them. The final section discusses Rhode Island's revision to the test methods section of the regulations to cure a deficiency identified and discussed in EPA's proposed rulemaking notice.

Background

On November 12, 1987, the Commissioners of the Northeast States for Coordinated Air Use Management (NESCAUM) signed a Memorandum of Understanding expressing their intention to reduce the Reid Vapor Pressure (RVP) of gasoline to 10 pounds per square inch (psi) starting in the summer of 1988 and to 9 psi in the summer of 1989 and continuing every ozone season thereafter. Since there were delays in adopting necessary regulations, the 1988 limit of 10 psi was eliminated, and Connecticut and Rhode Island passed regulations limiting the RVP of gasoline to 9 psi from May 1 to September 15 starting in 1989 and continuing each year thereafter. On November 10, 1988, Rhode Island submitted a SIP revision to EPA for approval to implement this provision. Connecticut submitted its SIP revision on January 30, 1989.

On March 16, 1989, EPA published Federal Register notices proposing approval of the Connecticut and Rhode Island SIP revisions (54 FR 11016 and 11018). EPA also proposed to find that these revisions were "necessary" to achieve the national ambient air quality standards (NAAQS) for ozone within the meaning of section 211(c)(4)(C) of the Clean Air Act (the Act), in the event that EPA subsequently took final action on federal RVP regulations.

Section 211(c)(4)(A) of the Act states that a state may not, for purposes of motor vehicle emissions control,

prescribe or attempt to enforce any control or prohibition respecting use of a fuel or fuel additive in a motor vehicle engine—"(i) if the Administrator has found that no control or prohibition under paragraph (1) is necessary and has published his finding in the Federal Register, or (ii) if the Administrator has prescribed under paragraph (1) a control prohibition applicable to such fuel or fuel additive, unless [the] state prohibition or control is identical to the prohibition or control prescribed by the Administrator." At the time of EPA's proposal on the Connecticut and Rhode Island revisions, EPA had proposed, but not taken final action, on federal RVP control regulations.

On March 22, 1989 EPA published a Federal Register notice (54 FR 11868) taking final action on national regulation of RVP, to take effect this summer. The maximum allowed summertime RVP in Connecticut and Rhode Island under the federal regulation is 10.5 psi. Under section 211(c)(4)(A) of the Act, EPA's final action preempted inconsistent state control of RVP for the purpose of motor vehicle emission control, except in California. In its final action, EPA noted that states could be exempted from preemption only if EPA finds it is "necessary" to achieve the NAAQS as provided in section 211(c)(4)(C) of the Act. EPA made specific note of the conditions for EPA approval of state RVP regulations.

Description of Today's Action

EPA today approves revisions to the Connecticut and Rhode Island SIPs which limit gasoline volatility to 9 psi between June 30 and September 15 in 1989 and between May 1 and September 15 in each year thereafter. The Connecticut and Rhode Island programs include authority for the state to issue waivers to individual suppliers if necessary to avoid supply dislocations. EPA is approving the programs as a whole, including any waivers the states might issue under this authority. This aspect of EPA's approval is discussed in full under section 9 of the next portion of this notice describing EPA's response to comments.

EPA is also explicitly finding that the Connecticut and Rhode Island revisions are "necessary to achieve" the NAAQS within the meaning of section 211(c)(4)(C) of the Act. This means that the Connecticut and Rhode Island RVP regulations are not preempted by the federal RVP regulations promulgated on March 22, 1989.

EPA's rationale for this action and its effective date are presented below. In this context many issues raised by

commenters on the proposal will be addressed. The remaining comments will be discussed in the next portion of this notice.

In approving the Connecticut and Rhode Island RVP SIP revisions, EPA must consider requirements imposed by two different sections of the Clean Air Act. As with all SIP revisions, section 110 provides the requirements for approval into the SIP. In this case, since EPA has promulgated Federal RVP regulations, section 211(c)(4)(A) preempts inconsistent state control. However, section 211(c)(4)(C) provides that the Administrator may except a state RVP control program from preemption if he finds it is "necessary" to achieve the NAAQS. Thus, the Connecticut and Rhode Island revisions must satisfy both section 110 and section 211 requirements to gain approval.

EPA has concluded that the Connecticut and Rhode Island RVP regulations are "necessary" to achieve the ozone NAAQS. In reaching this conclusion EPA has followed the test first articulated in approving the Maricopa County Arizona SIP (53 FR 17413 (May 18, 1988) and 53 FR 30228 (August 10, 1988)) and later presented in the proposed approval of the Connecticut and Rhode Island revisions. EPA stated that if, after accounting for the possible reductions from all other reasonable control measures, Connecticut and Rhode Island could demonstrate that RVP controls are still required to achieve the standard, then RVP controls are necessary within the meaning of section 211(c)(4)(C). EPA will not interpret that provision to require a state to impose more drastic measures such as driving prohibitions or source shutdowns before it can adopt its own fuel control program.

As discussed in the notice of proposed rulemaking, the record indicates that Connecticut needs VOC emission reductions on the order of at least 37% from 1987 inventory levels to achieve the standard. Connecticut reviewed approximately 15 measures suggested by EPA as reasonable in addition to RVP control to 9 psi and found that they could together potentially achieve a 24% reduction from 1987 levels. Enhancements to the state's vehicle inspection and maintenance (I/M) program could produce an additional 2% reduction. Similarly, the record indicates that Rhode Island needs VOC reductions on the order of at least 28% from 1986 inventory levels to achieve the standard. Rhode Island reviewed other reasonable measures in addition to RVP control, including an enhanced

state vehicle I/M program, and found that they could together potentially achieve a 10% reduction from 1986 levels.

As indicated in both the Connecticut and Rhode Island proposals, while EPA's regulation of gasoline to 10.5 psi reduces the emission reduction attributable to the state regulation, it does not affect the bottom line—a shortfall will still exist. EPA's technical review of the data presented in the states' submissions and by the commenters affirms the conclusion that a shortfall will exist even with the implementation of all other reasonable state and federal measures.

EPA continues to believe that the fact that the state RVP regulation might not by itself fill the shortfall and hence by itself achieve the standard does not mean the rule is not "necessary to achieve" the NAAQS. It is simple logic that "necessary" is not the same as "sufficient." EPA believes that the "necessary to achieve" standard must be interpreted to apply to measures which are needed to reduce ambient levels when no other measures that EPA or the state has found reasonable are available to achieve this reduction. Beyond such identified "reasonable" measures, EPA need look at other measures before RVP control, only if it has clear evidence that RVP control would have greater adverse impacts than those alternatives. EPA has no such evidence here. Therefore, EPA can defer to Connecticut's and Rhode Island's apparent views that RVP control is the next less costly (or is itself a reasonable) measure. Thus, EPA concludes that the Connecticut and Rhode Island RVP regulations are "necessary" to achieve the NAAQS.

Summary of Public Comments and EPA's Responses

The major issues discussed in the comments are: (1) What constitutes a finding of "necessary to achieve" the standard under section 211(c)(4)(C); (2) whether there has been an adequate technical demonstration that controlling RVP to 9 psi is "necessary" (i.e. whether the threshold for exemption from preemption has been crossed); (3) the scope of EPA's discretion assuming a finding that state RVP controls are necessary to achieve the standard; (4) what effect the 9 RVP limit in Connecticut and Rhode Island will have on the cost and supply of gasoline in those states and the Northeast generally; (5) driveability and safety concerns; (6) whether there is an ozone problem in Connecticut and Rhode Island; (7) whether the states have adequate enforcement programs; (8)

whether the states provided "reasonable opportunity" for public comment; (9) what exemptions or waivers from the state regulations should be allowed; (10) the appropriate timing for making the state regulation effective; and (11) whether EPA should withdraw or repropose these actions or reopen the public comment period in light of EPA's recent promulgation of federal RVP regulations and other alleged deficiencies in EPA's proposed actions. Each issue is explored in detail below.

1. What Constitutes a Finding of "Necessary To Achieve" the Standard Under Section 211(c)(4)(C) of the Clean Air Act?

a. Making the "Necessary" Finding Without a Demonstration of Attainment
Comments. One group of comments questioned EPA's ability to make a finding that the Connecticut and Rhode Island RVP regulations are necessary to attain the ozone standard without going through the complete planning involved in approving a state's response to EPA's finding that the current SIP is substantially inadequate to achieve the standard (the "SIP call"). Several comments stated that EPA cannot approve these states' RVP regulations as SIP revisions without finding that the SIPs as a whole achieve attainment of the NAAQS for ozone. Related comments questioned EPA's ability to determine whether these states' RVP controls are necessary without a new updated inventory of VOC sources which EPA will require from the states with ozone nonattainment areas as part of their response to the SIP calls. Finally, one comment asked how much time EPA will give states to achieve the ozone standard and how EPA can determine what is necessary to achieve the standard without knowing when the states must achieve attainment.

Response. Through its SIP calls, EPA has imposed on states like Connecticut and Rhode Island an obligation to revise their ozone SIPs and demonstrate attainment of the standard. The thrust of these comments is that EPA cannot make a finding of necessity without the states' first having gone through the new planning process and developing a new demonstration of attainment. EPA does not interpret section 211(c)(4)(C) to require a complete demonstration of attainment in order to approve a measure which will contribute to attainment.

Forcing a state to demonstrate attainment before allowing it to adopt stricter fuel controls would yield perverse results. Areas with the worst ozone nonattainment problems, which

have the most difficulty assembling a demonstration of attainment, would be disabled for perhaps several years from adopting clearly necessary RVP controls stricter than the national controls. One comment noted that Connecticut and Rhode Island so far have not been able to identify any combination of control measures which would bring the states into attainment, because the size of the VOC emission reduction necessary to do so is so large. It is precisely in areas like Connecticut and Rhode Island, with especially difficult nonattainment problems where the expeditious implementation of new controls, and hence the finding of necessity under section 211(c)(4)(C), is most appropriate.

Beyond that, it is reasonable for EPA to use the best information it now has available to determine whether these states' RVP programs will be necessary to achieve the standard without having to wait for Connecticut and Rhode Island to complete their planning response to the SIP call, including their updated inventories. As explained below, the VOC inventory and reduction figures Connecticut and Rhode Island submitted to EPA were based on reasonably reliable models EPA has used in the past. Such figures are always capable of refinement, but in the Agency's judgment the expenditure of time required to do so is not worth the marginally improved accuracy. See *Vermont Yankee Nuclear Power v. N.R.D.C.*, 435 U.S. 519, 554-555 (1978).

EPA has not yet set a date certain by which Connecticut and Rhode Island must attain the ozone standard. Congress may address the widespread nonattainment problem in the amendments to the Act now being considered. In the meantime EPA has also proposed its own policy for how to deal with SIP planning for nonattainment areas in the post-1987 period. 52 FR 45104 (November 24, 1987). The air quality analyses Connecticut and Rhode Island submitted made it clear that RVP control beyond the federal requirements will be necessary to any attainment plan, whether the attainment date that Congress or EPA selects is imminent or long-term. Moreover, there is widespread agreement among EPA and the states in the Northeast that major VOC reductions, probably exceeding the 28 to 37% estimated by EPA in this case, will be required to get close to attaining the ozone standard. Nothing in the air quality data from the summer of 1988, which have become available in quality-assured form since publication of the proposal, indicates that the reduction requirement projected by the

Connecticut and Rhode Island analyses overstate the reduction necessary to achieve the standard. Beyond that, the history of ozone planning over the last decade makes it clear that reduction targets are seldom overestimated.

Furthermore, EPA's approval of this proposal now is consistent with section 110(a)(2)(A) of the Act, which requires attainment "as expeditiously as practicable." Interpreting section 211(c)(4)(C) to require a complete attainment demonstration before EPA can approve (and a state can implement) a fuel control that the state has determined to be practicable and that would advance the attainment date would effectively put section 211(c)(4)(C) in conflict with section 110(a)(2)(A). It is doubtful that Congress intended EPA to choose an interpretation that would create such a conflict.

b. The Standard EPA Has Applied to Determine Whether Fuel Controls Are Necessary Compared with Other Controls

Comments. Several commenters maintained that EPA had not adequately analyzed whether there are other control strategies reasonably available which Connecticut and Rhode Island should implement before resorting to RVP controls inconsistent with the federal regulation. EPA will address these comments in section 2d below. Other comments concerned the standard that EPA should use to determine whether RVP controls are necessary compared to other controls. Finally, one comment suggested that EPA's approach to comparing alternative control strategies is so vague that it is necessarily arbitrary.

Response. In the proposals for this action, EPA used the approach it first announced when approving the Maricopa County Arizona SIP (53 FR 17413 (May 18, 1988); 53 FR 30228 (August 10, 1988)) to determine whether RVP controls beyond the federal program are necessary to attain the ozone standard in Connecticut and Rhode Island. Under that approach, if after accounting for the possible reductions from all other reasonable control measures, the states could demonstrate that RVP controls are still required to achieve the standard, then RVP controls are necessary within the meaning of section 211(c)(4)(C). For the reasons stated in the Arizona action and the Connecticut and Rhode Island proposals, EPA will not interpret section 211(c)(4)(C) to require a state to impose more drastic measures such as driving prohibitions or source shutdowns before

it can adopt its own fuel control program.

One comment suggested that EPA could clarify the method by which it determines whether fuel controls are necessary by ranking all possible control measures according to their cost per ton of VOC reduced each year, and approving additional fuel controls only when the state has first exhausted all controls which cost less per ton than fuel controls. EPA and the states have not developed cost figures for all the alternative controls which the agencies considered before resorting to state fuel controls. Connecticut and Rhode Island have, however, demonstrated to EPA that implementing all the control measures which EPA now believes to be reasonably available to them for VOC control (including measures that the states have already adopted and are now beginning to implement) would not achieve compliance with the ozone standard. The roster of control measures Connecticut and Rhode Island examined generally corresponds to the list of controls EPA has identified for states to implement in response to the ozone SIP calls, and represents EPA's best judgment as to the controls which could now be reasonably implemented. See EPA's proposed post-1987 ozone policy, 52 FR 45104, Appendix C. (November 24, 1987). After examining all controls EPA has determined to be reasonable, a state is free to make its own determination as to what control measures should next be employed.

Moreover, nothing in the language or purposes of section 211(c)(4)(C) suggests that EPA must buttress this judgment as to reasonable controls, a judgment which is based on the states' thoughtful analyses and EPA's expertise regarding alternative measures, with a rigorous cost-effectiveness analysis. In any event, the shortfall in available emission reductions from reasonable measures is so substantial that it is highly unlikely that a rigorous cost-effectiveness comparison would show that there are enough measures whose cost-per-ton-reduced is below that of RVP controls to make such controls unnecessary.

One comment maintained that EPA's method for determining what is necessary is too vague because it would allow EPA to approve state fuel controls "simply because alternative measures are more inconvenient, unpopular, or costly." As discussed in section 2d below, EPA examined reasonable alternative controls which Connecticut and Rhode Island could implement and determined that they would not achieve enough reductions to achieve the standard. EPA also has determined that

remaining controls such as gas rationing, driving reductions, and source shutdowns are so drastic that a state may resort to fuel controls first. This judgment concerning what is too drastic is a complicated policy determination requiring the Administrator to weigh precisely those factors which the commentor would exclude from his consideration—whether the remaining alternatives are costly or unpopular. In *Amoco Oil Co. v. Environmental Protection Agency*, 501 F.2d 722, 740-741 (D.C. Cir. 1974) the court distinguished between the factual foundation which EPA must provide in its administrative decisions and policy judgments which are an integral part of the findings Congress requires the Administrator to make under the Act:

Where by contrast, the regulations turn on choices of policy, on an assessment of risks, or on predictions dealing with matters on the frontiers of scientific knowledge, we will demand adequate reasons and explanations, but not "findings" of the sort familiar from the world of adjudication.

Id. at 741. EPA's and the states' analyses of reasonably available controls is based on a factual record supported by the best analytical tools the agencies had available to them at the time. EPA's judgment that state fuel regulation is a less drastic course than gas rationing and other unpopular controls so far not implemented in any SIP is clearly a matter on the frontier of air pollution control planning, and therefore cannot (and need not) be supported by the same technical record as, for example, EPA's determination that Connecticut needs at least 37 percent reduction from its 1987 inventory or Rhode Island needs at least a 28 percent reduction from its 1986 inventory to attain the standard.

2. *Have Connecticut, Rhode Island and EPA Made an Adequate Technical Demonstration That Controlling RVP to 9 psi is "Necessary" to Attain the NAAQS?*

a. Adequacy of Emission Inventory.

Comments. Three petroleum industry commenters argued that the emission inventories used in the technical demonstration are inadequate. They pointed out that EPA has already requested that Connecticut and Rhode Island prepare a new inventory as part of their response to the SIP call. Therefore it is argued that the states' reliance on the old inventories is inappropriate.

Response. As described in EPA's Technical Support Document (TSD) for each proposal, the emission inventories used by Connecticut and Rhode Island and reviewed by EPA are based on EPA's "Compilation of Air Pollutant

Emission Factors," known by its document number "AP-42." This document and its updates are EPA's longstanding guidance for determining emissions for inventory purposes and has served as the basis for ozone SIP inventories since the mid-1970s. Mobile source emissions were estimated using the then current version of EPA's mobile source emissions model, MOBILE3, consistent with standard EPA guidance. While EPA has called for many states, including Connecticut and Rhode Island, to update their inventories for post-1987 SIP planning purposes, the Agency has continued to use existing inventories in evaluating current control proposals. EPA expects the new Connecticut and Rhode Island inventories, not due until late 1989, to show higher emissions than the current inventory since they are expected to include more sources and improved quality assurance. Thus, if the current inventories are lacking, they understate current emissions and err such that the likely percentage reduction needed to attain the standard is also understated.

As stated in the proposals for this action, EPA believes that if there is an error in quantifying the emission reductions resulting from control to 9 psi, those reductions are understated. If the newly released mobile source emission model, MOBILE4, which includes the effects of running losses, were used, one would expect the reduction in tons of VOCs to increase significantly. Furthermore, contrary to the commenters' belief, the estimated emission reductions are based on reductions achieved during only the four and one-half months each year the regulations are effective. This approach may understate the reduction since 9 psi fuel may be in the distribution system up to two additional months on each end of the regulatory season.

Also contrary to the commenters' claim, EPA's TSDs do contain an estimate of the emission reduction achieved by going from EPA's 10.5 psi limit to the states' 9 psi limit. EPA estimated a 4% reduction from the 1987 inventory in Connecticut and a 1.2% reduction from the 1986 inventory in Rhode Island. This estimate does account for nonlinearity in emission reductions with decreasing RVP limits.

b. Appropriateness of the Modeling Demonstration

Comments. While some commenters agreed that modeling was necessary to evaluate the air quality benefit of the RVP reduction, they objected to EPA's reliance on the Regional Oxidant Model (ROM). The commenters also raised concerns about the appropriate hydrocarbon-to-nitrogen-oxides (NO_x)

ratios to be used in such modeling. A third modeling issue concerns the states' and EPA's inability to associate a quantified increment of improved air quality with the control of RVP to 9 psi.

Response. The claim that the ROM does not provide the spatial resolution needed for accurate prediction in individual urban areas loses sight of the fact that we are evaluating statewide programs. The Urban Airshed Model suggested by the commenters is appropriate for large urban areas but would have to be stretched to its limit to cover all of Connecticut. Given Rhode Island's small size, Airshed could be used for evaluating the Rhode Island program. However, having decided that the ROM is an appropriate tool to use in evaluating the Massachusetts program, consistency also favored its use in evaluating the programs in the neighboring states. Finally, the ROM is much better equipped to evaluate the longer range transport of ozone which plagues the Northeast. Caught between the two available model scales, it is EPA's technical judgment that the ROM is an appropriate tool to use in evaluating future reductions needed for Connecticut and Rhode Island.

EPA understands the concern that past strategies have focused almost exclusively on controlling VOCs instead of NO_x. As indicated in EPA's post-1987 ozone strategy, future control scenarios are likely to include NO_x. However, it is highly unlikely that NO_x control alone will suffice. The best technical information available to EPA at this time concerning the Northeast ozone problem points to the need for substantial VOC reductions and at least modest NO_x reductions in the future to attain the ozone standard.

The last modeling issue concerned the states' and EPA's inability to associate a quantified increment of improved air quality with the control of RVP to 9 psi. While such a modeling exercise would be ideal, it is unlikely that one would have much confidence in the outcome of such a sensitivity test. The atmosphere's response to emission reductions of ozone precursors is highly nonlinear such that small increments of reduction may show little or no effect on their own. However, when the reductions from the states' many strategies are aggregated, the total impact becomes quantifiable. Thus, even though Connecticut, Rhode Island and EPA cannot pinpoint where the air quality will improve by what amount on what day, we are confident that there will be a net improvement in ozone levels if Connecticut and Rhode Island were to

decrease VOC emissions by 4% and 1.2% respectively.

c. Whether the Connecticut and Rhode Island RVP Programs Will Help Attain the Ozone Standard at All

Comments. API claimed that analyses by both Connecticut and Rhode Island suggest that the states would virtually be in attainment except for the transport of ozone and its precursors from other areas and that, because of the transport problem, VOC reductions from sources in the states will have little or no effect on ozone attainment there. Under these circumstances, API claimed that EPA cannot reasonably conclude that Connecticut or Rhode Island's program is necessary, or even helpful, to attainment of the ozone standard in that state.

Response. API's concern is flawed because it acknowledges transport into the state but ignores transport out. It may be true that measures taken in Connecticut or Rhode Island will have little measurable impact within that state's borders. This is largely because these states are comparatively small. EPA has, however, consistently designed nonattainment area ozone SIPs to account for the impact an upwind area has on ozone levels in downwind areas. See Clean Air Act section 110(a)(2)(E), 42 U.S.C. section 7410(a)(2)(E). Courts have upheld EPA's interpretation on the nonattainment area controls in Part D of the Act to allow the inclusion of upwind areas which contribute to ozone violations downwind. See *State of Ohio versus Ruckelshaus*, 776 F.2d 1333 (6th Cir. 1985), cert. den. sub. nom. *Ohio versus Thomas*, 106 S.Ct. 2889 (1986), and cases cited therein at 1340. In fact, many states in the Northeast designed their 1982 ozone plans based on design values in neighboring states. On most high ozone days in the Northeast, Connecticut's emissions photochemically react into ozone somewhere over Massachusetts or Rhode Island. Similarly, Rhode Island's emissions are contributing to unhealthy ozone levels in Massachusetts or southern New Hampshire. This cross-boundary transport is precisely why EPA has turned to regional scale models to evaluate the need for control measures.

d. Consideration of Other Alternatives

Comments. Commenters expressed concern that Connecticut, Rhode Island and EPA have failed to consider other significant alternative control measures that could lead to attainment. They referenced source categories in Appendix C of EPA's proposed post-1987 ozone policy including stationary

source controls and transportation control measures.

Response. EPA believes that sufficient alternatives were considered. In the Connecticut submission EPA found consideration of the emission reduction potential of 13 different point and area source categories. Some of these categories correspond to those suggested by EPA in its proposed post-1987 ozone policy. Not surprisingly, some of the source categories are not relevant because there are no major sources in those categories in Connecticut. Connecticut also included measures not on EPA's recommended list. In most of the relevant categories the potential reductions are a very small portion (less than 1%) of the existing inventory.

API noted that some of the categories recommended by EPA were not evaluated by Connecticut but are part of the state's emission inventory. They particularly note the dry cleaning and wood furniture coating categories. EPA notes that these categories account for 0.2% and 0.1% respectively, of the Connecticut inventory. API further nominated degreasing and pharmaceutical manufacturing for consideration. Totally eliminating emissions in both these categories, which is obviously unachievable, would yield a 3.5% emission reduction. However, accommodating all of API's recommendations would produce less than an additional 4%, still far short of the 11% shortfall identified in the proposal. See Addendum to Technical Support Document dated May 5, 1989.

In the Rhode Island submission EPA found consideration of four major control measures in addition to RVP control. As discussed in the proposal, Rhode Island anticipates that enhanced plus basic I/M, Stage II, architectural coatings and consumer solvent controls could reduce emissions by about 7.5%. EPA has examined Rhode Island's 1982 SIP and believes that further reductions, not documented in its RVP SIP submission, could be achieved. These reductions would come from lowering the source size cutoff in categories currently regulated by Rhode Island (e.g. paper and fabric coating, graphic arts and other surface coating) and regulating other categories not currently covered (e.g. adhesives, miscellaneous metal coating, automobile refinishing and cutback asphalt). If Rhode Island were to achieve 70% control of these sources, EPA estimates that a 6% reduction from 1986 inventory levels could be realized. See Addendum to Technical Support Document dated May 5, 1989.

EPA's review indicates that the measures identified in the post-1987 ozone policy and suggested by some commenters are not likely to produce any more reductions in Rhode Island than we found in neighboring Connecticut or Massachusetts. In the best case this might reach 4% of the current inventory. Thus it is possible that Rhode Island could achieve up to a 10% reduction in emissions beyond that discussed in the NPR. This additional 10%, while helpful in moving toward attainment, falls far short of filling the 16% shortfall described above. See Addendum to Technical Support Document dated May 5, 1989.

With respect to transportation control measures, the commenters failed to take account of the fact that the existing Connecticut SIP already contains some of the measures suggested by EPA in its proposed post-1987 ozone strategy. The existing SIP (40 CFR 52.370 (c)(32)) includes incentives for reduction in single-passenger commuter vehicle use through carpooling, vanpooling, brokerage, extensive fringe park-and-ride facilities, express bus programs, and one of the few indirect source review programs in the country (40 CFR 52.370 (c)(6) and (c)(9)).

Rhode Island has not implemented the same kinds of transportation control measures already in place in Massachusetts and Connecticut. Based on EPA's experience with the Massachusetts and Connecticut programs, however, we expect that Rhode Island might be able to achieve an additional 2% reduction by adopting similar strategies. However, this additional reduction would still not eliminate the estimated shortfall.

While EPA recognizes that other transportation measures may be needed in Connecticut and Rhode Island, the remainder are difficult to quantify, yield small reductions individually, and, as evidenced by the public reaction to the EPA-promulgated implementation plans containing such measures in the 1970s (see H.R. Rep. No. 95-294, 95 Cong. 1st Sess., reprinted in 4 Legislative History of the Clean Air Act Amendments of 1977, at 2748-55 (1978)), generally can be expected to have more significant adverse effects on the public as a whole than RVP controls would. To be sure, if there were sufficient evidence for EPA to conclude that the states' RVP controls would result in significantly more severe impacts than other measures that neither EPA nor the states have yet identified as "reasonable" for the state to implement, then it might well be appropriate for the Agency to account for the emission reductions that those

other measures would achieve before determining the shortfall against which to judge the RVP controls. The Agency does not believe, however, that the states' RVP controls, given the lead-time provided by today's approval, would produce significantly more severe effects than such alternatives (e.g., than a trip reduction ordinance of the type that Arizona found reasonable for application in Phoenix and Tucson).

In sum, Connecticut, Rhode Island and EPA have indeed examined a broad range of potential emission reduction strategies and have still identified a significant shortfall in the level of emission reductions likely to be needed to achieve the ozone standard.

3. What is the Scope of EPA's Discretion Assuming a Finding That State RVP Controls Are Necessary To Achieve the Standard?

a. Permissible Bases for EPA's Decision to Approve State RVP Controls

Comments. Several comments asserted that even where EPA has determined that state fuel controls are necessary to achieve the standard, EPA may nevertheless disapprove those controls if EPA determines that the economic or fuel supply impacts of the state's regulation are unreasonable. These commenters suggested that EPA may give significant consideration to costs because section 211(c)(4)(C) provides that the Administrator "may" approve a SIP revision imposing state fuel controls once he makes the finding of necessity. Conversely, other commenters maintained that EPA may not disapprove the Connecticut and Rhode Island SIP revisions based on economic grounds, once EPA has made the finding of necessity.

Response. EPA believes that it must consider cost to some limited extent whenever the Administrator decides whether to make a finding under section 211(c)(4)(C) that a fuel measure is "necessary" for attainment. As discussed above, to determine whether state fuel controls are necessary, EPA must look first at whether other measures that it determines are reasonable (and, perhaps, other measures the state has adopted) will by themselves achieve timely attainment. Arguably, an alternative measure is "reasonable" only if its effects are less drastic than the effects of the fuel controls. Clearly the cost and supply impact of the state fuel controls will be a factor in any such judgment.

EPA does not interpret the use of "may" in section 211(c)(4)(C) to give the Administrator unfettered discretion to disapprove the SIP revision on economic grounds once he has made the finding

that state fuel controls are necessary to achieve the standard. Section 211(c)(4)(C) must be read in the context of the preemption created in section 211(c)(4)(A), which prohibits states from adopting inconsistent fuel controls in their SIPs, or anywhere else, for air pollution control purposes. In the face of this prohibition, the sole effect of the "may" in section 211(c)(4)(C) is to authorize the Administrator to overcome a provision (section 211(c)(4)(A)) that would otherwise bar him from approving the SIP revision. The use of "may" in section 211(c)(4)(C) does not eliminate the obligation that section 110(a)(3)(A) places on the Administrator to approve the SIP revision, provided it meets the requirements of section 110(a)(2). See *Train v. Natural Resources Defense Council, Inc.*, 421 U.S. 60, 98 (1975). Section 110(a)(2) requires the Administrator to approve a SIP revision if, among other things, it may be necessary to insure attainment and maintenance of the standard. Section 110(a)(2)(B). EPA may not consider the economic impact of a necessary SIP revision under section 110(a)(2); under that provision, it is for the state to determine what economic costs are appropriate to achieve the standards. *Union Electric Co. v. EPA*, 427 U.S. 246, 256-258 (1976). Beyond that, it would be incongruous for Congress to give EPA more discretion to reject a SIP revision for reasons unrelated to the goal of achieving the standard as quickly as possible precisely where EPA has determined that a SIP revision is necessary to achieve the standard. Therefore, once EPA makes the finding that state fuel controls are necessary to achieve the standard, a finding which includes a determination that such fuel controls are more reasonable than other available measures, EPA may not reject a state's SIP proposal simply for economic reasons.

One commenter cited *Motor Vehicle Manufacturers Association v. EPA*, 768 F.2d 385, 389-390 (D.C. Cir. 1985), for the proposition that the use of "may" under section 211 commits the decision to the discretion of the Administrator. In *MVMA* the court was examining EPA's decision to grant a waiver under section 211(f)(4) of the Act for the use of fuel additives not substantially similar to those in the fuel EPA uses to certify the emissions from automobiles. The court was not examining section 211(c)(4)(C), which allows EPA, upon making a particular finding not mentioned in section 211(f)(4), to act on a SIP revision submitted by a state after full hearing at the state level and subject to the

requirements of sections 110(a)(2) and (3)(A).

b. Intent of Federal Preemption Under section 211

Comments. Several comments insisted that EPA should disapprove the Connecticut and Rhode Island RVP controls because Congress intended to avoid a patchwork of different state fuel controls in favor of a uniformly regulated national market for fuels. These commenters expressed concern that the exception in section 211(c)(4)(C) to the rule of preemption under section 211(c)(4)(A) would eventually swallow the rule. Several comments urged EPA not to act inconsistently with its decision not to limit gasoline to 9 psi in 1989 in the federal RVP control program.

On the other hand, several comments urged EPA to support the regional approach to RVP control that the NESCAUM states are undertaking. One commenter pointed out that where Congress has not acted to address the ozone nonattainment problem, it is reasonable to let the states do all they can to attain.

Response. It is clear that section 211(c)(4)(A) indicates that Congress desired to maintain a nationally regulated market for fuels. It is equally clear that section 211(c)(4)(C) indicates Congress recognized that there will be states where the air quality problem is so severe that the interest in a nationally regulated market must bow to the need for additional state controls on fuel content. EPA has not been able to find any legislative history which illuminates with any detail beyond the language of the Act how EPA should strike this balance.

It is reasonable to infer that Congress was aware that the air quality needs of particular states might create varying fuel content requirements, and that Congress accepted that risk in favor of protecting the public health. Several commenters cited *Exxon Corp. v. City of New York*, 548 F.2d 1088 (2d Cir. 1977), as precedent that a uniformly regulated fuel market is the overriding purpose behind section 211(c)(4). In *Exxon* the court, however, was not faced with a claim for an exception to preemption under section 211(c)(4)(C), and specifically left it to EPA to determine whether such an exception is appropriate.

The Act sensibly provides for an exception from its comprehensive preemption of local regulation of motor vehicle fuels only when such regulation is a provision in a state implementation plan approved by the Administrator who has the competence to make the needed professional engineering and energy conservation decisions.

Id. at 1086. Once EPA has made a finding of necessity under section 211(c)(4)(C), it is reasonable for EPA to interpret the Act to place paramount importance on protecting public health and achieving the standard.

EPA believes that the oil industry's concern that the exception will swallow the rule is overstated. As described above, EPA will approve inconsistent state fuel controls only where the state can demonstrate that exhausting all other reasonable alternatives will not achieve the standard, taking costs into account in determining reasonableness. This demonstration is not a trivial hurdle, and it is highly unlikely that every state with an ozone nonattainment area could make such a showing. Furthermore, a state is unlikely to burden its citizens with the potentially higher cost of lower RVP fuel unless the air quality needs are compelling. Finally, regional initiatives such as NESCAUM's help avoid a wide variety of state controls. In this case, the Connecticut and Rhode Island programs are virtually identical to the Massachusetts program and thus provide consistent supply requirements over a group of contiguous states.

EPA also believes that its decision not to impose a limit of 9 psi by 1989 in EPA's RVP control program does not preclude EPA from approving the Connecticut and Rhode Island SIP proposals. When developing its federal RVP control program, EPA imposed controls across the nation, and had to determine the level of RVP control which supply sources for the entire continental United States could reasonably meet. Further, although EPA was able to make this determination as to particular regions within the country, EPA did not intend to account for the particular air quality needs of each state.

4. What Effect Will the 9 RVP Limit in Connecticut and Rhode Island Have on the Cost and Supply of Gasoline?

Comments. Several of the oil company commenters, (API, BP, Mobil) stated that if the 9 psi standard took effect in 1989 the distribution system would be strained and that there could be some significant supply dislocation and cost increases. Several other commenters were worried about possible supply problems. Several stated that even if refiners had capacity to produce 9 psi gasoline, there would be logistical problems such as the need for additional tankage for storage associated with its distribution. Also, one commenter stated that it could not ensure that imports at 9 psi would be available. Most of the oil company commenters (API, Mobil, Sun)

stated that there will be some need for capital improvements at refineries to meet the 9 psi standard. Several (API, Mobil), stated that there will likely be a cost impact to the Connecticut and Rhode Island standard and other commenters stated that they were worried about the increased cost. API stated that the estimates of increased cost do not reflect the extra cost increase that could accompany a significant supply distribution.

Proponents cited two studies as support for the position that supply is not a problem.

Response. The potential supply problems arise out of two factors. First, decreasing the volatility of gasoline requires increased refinery capacity. It is certain that implementation of 9 psi volatility in the NESCAUM states will create a refining capacity reduction in the amount of gasoline capable of being produced at each refinery. This is true of both domestic and foreign suppliers. Second, the problem may be further exacerbated by the expected increased demand in gasoline in the summer months.

Various studies have been conducted to determine how much refining capacity will be lost from implementation of 9 psi volatility in the NESCAUM states, how much demand for gasoline is likely to increase in the summer of 1989, and what effect these factors will have on gasoline supply capabilities. The two studies done for NESCAUM and the one done for EPA are inconclusive. There appear to be numerous factors which make precise prediction of these effects impossible. However, under the EPA Study (Sobotka study), estimates indicate that the volatility standard may be feasible without serious supply problems.

The Sobotka study cites the Department of Energy (DOE) as predicting that demand for gasoline should increase only in the range of 1 to 1.5 percent this summer. This estimate is also supported by other studies, including one reported at a National Petroleum Refiners Association conference. The study also estimates that approximately a 5 percent refining capacity shortfall will occur at domestic refineries because of the NESCAUM volatility regulations. The study estimates that with a 1.2 percent increase in demand for gasoline in the summer, U.S. refineries would be able to make up for a 5 percent domestic shortfall, and a 10 percent import shortfall, without construction of new facilities or installation of additional equipment. Although various factors make it impossible to accurately predict

the refining shortfall of imported gasoline, there is no strong evidence indicating that it will exceed 10 percent. Thus, the Sobotka study suggests that it is likely that the resulting refinery capacity shortfalls from a 9 psi standard in 1989 should not result in supply shortfalls.

In the unlikely event of unforeseen supply disruptions, Connecticut and Rhode Island have each assured EPA that they have the authority to take immediate steps to provide needed waivers or exceptions to the program. The States have committed to carefully monitor the supply situation this year and take appropriate action, as may be necessary, to ensure that supply problems do not occur as a result of its state RVP control program. See also the response to section 9 later in this notice for more discussion of state waivers or exceptions.

5. What Effect Will 9 RVP Gasoline Have on Driveability in Cold Weather and on Vehicle Safety?

Comments. Commenters representing petroleum interests expressed concern that the 9 RVP fuel could cause hard starting, hesitation, and stalling in the early spring and late fall. Gasoline will have to enter the distribution system in March and will not be out until October in order to comply with the regulation. Temperatures can be at or near freezing during this time of year. One commenter stated that cars that are poorly tuned and have weak batteries are more susceptible to low RVP fuel problems. They also stated that California should not be used for comparison because they have a shorter supply time since its fuel comes from refineries within the state.

Other commenters supported the use of 9 RVP fuel, claiming that driveability is not a problem because the weather in northern California is similar to the weather in New England. They also referred to the Motor Vehicle Manufacturers Association statement on the New Jersey RVP regulations, dated August 18, 1988, which stated that 9 RVP fuel would cause no driveability problems. Another commenter representing a group of automobile manufacturers indicated there should be no adverse effect from the use of 9 RVP fuel.

Two commenters stated that although fuel used now is safe because the vapors are too rich in hydrocarbons to be ignited, the reduction to 9 RVP fuel will make the vapors potentially explosive below 15 degrees Fahrenheit. Another commenter's report showed that reduction of RVP to 9 reduced fires

and problems of overpressurization, vapor lock, fuel spurring, and fuel foaming.

Response. We believe that the nature of the gasoline distribution system makes it very unlikely that 9 RVP fuel will be available to consumers in March or early April, even if the blending-down process by that time has begun to reduce RVP. Continued availability of low-RVP fuel is even less likely by late October because the blending-up process will occur rapidly at the close of the control period. Nevertheless, the experience of California, which has required 9 RVP fuel for many years, appears to demonstrate that widespread driveability or fuel safety problems will not occur in New England. We know of no evidence of extensive problems in California, despite significant operation at cool temperatures and high elevations.

As further evidence of this conclusion, one can compare the true vapor pressure (TVP) experienced in fuel tanks at different times during the year. For example, when corrected for elevation, gasoline in Billings, Montana at its January 1988 average RVP of 13.6 psi and at the historic low January temperature of -30 degrees Fahrenheit would result in a true vapor pressure of 1.0 psi. For Boston, the analogous RVP and temperature of 10.0 psi and -12 degrees would also result in a TVP of 1.0 psi. In contrast, 8.5 psi fuel at an analogous Boston April temperature of 18 degrees would result in a TVP of 1.8 psi, 80 percent higher than the winter figure. While similar analyses are not available for Hartford and Providence, winter RVP and temperature in these cities are very similar to Boston and it is reasonable to expect to find similar results. We conclude from this that if low volatility fuel were to reach consumers during very low temperature weather, any degradation in driveability or fuel safety would be no greater (and would likely be less) than that experienced currently during the winter.

Conversely, low volatility fuel should improve vehicle driveability in very hot weather by reducing the occurrence of such conditions as vapor lock and fuel foaming.

6. Is There Really a Severe Ozone Problem in Connecticut and Rhode Island or the Northeast?

Comments. A number of industry commenters, in urging EPA to disapprove the SIP revision, claimed that the air is really becoming cleaner and cleaner over time and that the ozone standard is being met more than 99% of the year. Environmental groups countered these claims with data from

1987 and 1988 which show a worsening of the ozone problem since 1986. They noted that 1988 was one of the worst ozone seasons on record across the Northeast.

Response. EPA is firmly convinced that there is a serious ozone problem in the Northeast. EPA's conviction was evidenced by last year's SIP calls to Connecticut, Rhode Island and most other Northeast states. This SIP call was based on 1985-1987 ozone monitoring data which ranked southern New England among the worst ozone nonattainment areas in the country. EPA's concern is further heightened by the 1988 ozone season. The ozone standard was exceeded more frequently, at more sites, and at higher levels in 1988 than in 1987. In fact, as one commenter noted, a 1988 EPA Region I study comparing public health risk from environmental problems in New England ranked ozone in the highest risk category ("Unfinished Business in New England: A Comparative Assessment of Environmental Problems", December 1988).

7. Have Connecticut and Rhode Island Demonstrated That They Have Adequate Enforcement Programs as Required by Section 110 of the Clean Air Act?

Comments. API correctly noted that section 110 of the Act requires that the state provide a program for enforcement of the emission limitations as well as necessary assurances that it has adequate resources to implement the plan. API noted that Connecticut and Rhode Island intend to enforce their problems through sampling at terminals, bulk plants and other primary distribution points but not at retailers. API pointed out that EPA's RVP enforcement program covers these points and also reaches all the way to retailers, and claimed that this establishes a minimum standard for effective enforcement of RVP limits that Connecticut and Rhode Island fail to meet. API further claimed that the states' regulations do not satisfy EPA's guidelines for enforceability and legal sufficiency because they currently contain no RVP recordkeeping requirements for affected gasoline storage facilities.

Response. EPA does not agree with API's enforcement concerns. EPA's decision to extend its RVP enforcement program down to the retail level reflects concern that nationally there may be the opportunity to increase the RVP of gasoline that has already left the refinery or bulk terminal by blending the gasoline with a higher RVP fuel before it reaches the retailer. This is a reasonable

concern for the national RVP program, which allows for three different RVP fuels, depending on defined geographic areas. Opportunities to blend the differing RVP gasoline en route to the retailer to yield a noncomplying fuel would exist. EPA concluded in its national rulemaking that testing at all points in the distribution system would provide the "best safeguard" against distribution of noncompliant gasoline and would result in the "greatest likelihood" of achieving environmental results. However, EPA did not conclude that its program represented a minimum standard or that anything short of this enforcement scheme would be inadequate under section 110(a)(2).

EPA does not believe that the Connecticut and Rhode Island enforcement programs must mirror the federal program. First, if the states successfully ensure that all the gasoline in bulk plants and terminals within the state are below 9 psi, the opportunities for RVP enhancement within the state will be small. Retail distributors would have to truck higher RVP gasoline into Connecticut and Rhode Island and splash blend the gasoline to accomplish this, an unlikely scenario. Second, retail outlets in Connecticut and Rhode Island will be subject to EPA's national enforcement program. If gasoline that does not comply with the states' 9 psi limit is found at retailers in the state by EPA, we will surely share such evidence with the states. Thus, while the EPA and Connecticut and Rhode Island RVP enforcement programs do not match, they do have significant overlap, provide for some inspection of retailers, and contain sufficient flexibility to adequately provide enforcement of the regulation.

EPA also disagrees with API's view that an absence of recordkeeping provisions fatally flaws the states' enforcement programs. While EPA's general enforcement guidance for all programs recommends recordkeeping provisions, EPA is not rigidly bound by such guidance. It is particularly true in this case where EPA's own RVP enforcement program does not require recordkeeping. As API noted, EPA discussed this issue in the TSD for the Connecticut proposal and concluded that it was not problematic.

Moreover, EPA notes that in the comparable arena of enforcement through Delayed Compliance Orders (DCOs), courts have held that EPA may not second guess the state's choice of enforcement mechanisms so long as the chosen system is a reasonable one. *Bethlehem Steel Corp. v. U.S. EPA*, 638 F.2d 994, 1005-1006 (7th Cir. 1980);

appealed, *Bethlehem Steel v. Gorsuch*, 726 F.2d 356 (7th Cir. 1984), reh. den., en banc, vacated on reh., 732 F.2d 97 (7th Cir. 1984), withdrawn and appealed. 742 F.2d 1028 (7th Cir. 1984).

Furthermore, even if Connecticut's and Rhode Island's enforcement schemes were inadequate to support a finding, ultimately, that the state's eventually complete ozone SIP update meets all of the requirements in section 110(a)(2), EPA could still approve the rule under section 110(a)(3). That is because, even with an inadequate enforcement program, the rule would still strengthen the pre-existing SIP and hence, under the rationale in *Michigan v. Thomas*, 805 F.2d 176, 186 (6th Cir. 1986), be approvable for that limited purpose.

8. Have Connecticut and Rhode Island Satisfied the Act's Public Notice and Hearing Requirements?

Comments. API claimed that EPA failed to address the question of whether the Connecticut and Rhode Island SIP revisions were adopted after "reasonable notice and public hearing." While acknowledging that public hearings were held, they alleged that the decision to limit RVP to 9 psi was actually made by NESCAUM some time before public hearings on the Connecticut and Rhode Island RVP regulations, and that therefore any hearings nominally provided are substantively inadequate. On the other hand, NESCAUM commented that ozone pollution problems, especially in the Northwest, are clearly regional problems and must therefore be dealt with through consistent regulations.

API also questioned whether notice and hearing was provided on the SIP revision or just a state regulation. They believe it was unclear from the public notices and materials available before the hearings that the RVP rule was actually intended to be submitted as a revision to the SIP.

Response. As to the first claim, EPA's Federal Register notice actually provides the dates of the hearings and the TSD contains an itemization of the dates the public notices were published, including an identification of the newspaper the notice was published in. Although there is no summary statement that the public participation requirements for hearing and notice were met, the record does speak to that effect.

EPA finds API's concerns that the public hearings were largely meaningless and thus not "reasonable" to be misplaced. API infers that Connecticut, Rhode Island and the other NESCAUM states had predetermined

the outcome of the hearings before and without regard to the hearings held in those states. EPA is not at all convinced that the process was predetermined. If API were aggrieved on this matter, we would have expected it to challenge the states' proceedings under state law, as API has in fact done in New York. However, no party challenged Connecticut's or Rhode Island's proceedings, including API, who was a participant.

EPA acknowledges that Connecticut and Rhode Island did initiate rulemaking on RVP control pursuant to an agreement on RVP control with the other northeast states. However, having initiated the rulemaking on that basis, the state then proceeded to promulgate the regulations through its full administrative process, giving adequate notice and opportunity for public hearing on the proposed regulations.

As a policy matter EPA agrees that the ozone problem in the Northeast is a problem of regional magnitude and has held several meetings with top EPA and State environmental officials in EPA Regions I, II, and III to determine what concerted efforts the states could take on their own to deal with issues of regional, but not necessarily national, scope. Therefore EPA believes that it is appropriate for the northeastern states to regulate ozone precursors in a consistent fashion. However, each state must provide for adequate public participation in the promulgation of individual regulations, including assessing and responding to all submitted comments, as Connecticut and Rhode Island have done in connection with their RVP regulations. As discussed more fully below, EPA reviewed the states' public participation procedures and determined that the states provided adequate opportunity for public input in connection with development of the RVP rules.

API argued specifically that the states' hearing procedures were not adequate to comply with section 110 of the Act or EPA's hearing regulations of 40 CFR section 51.102. The operative language in both the statute and the regulation is "reasonable notice and public hearing." API asserts that Connecticut and Rhode Island had predetermined its final decision on RVP regulation and thus the hearing provided was not reasonable.

However, EPA interprets the language of both the statute and the implementing regulations as requiring the state to provide, first, reasonable notice of public hearing, and second, a public hearing. EPA does not believe that the law requires the Agency to review the hearing record and determine whether

the hearing provided was itself "reasonable."

EPA's interpretation of the hearing requirement is clearly reflected in the regulations at 40 CFR 51.102. The regulations go into substantial detail on the manner in which states must provide notice of a hearing in order for that notice to be considered reasonable. See 40 CFR 51.102(d); see also 40 CFR 51.102(g)(2). However, the regulations make absolutely no mention of specific requirements for conduct of public hearings. The state need only certify that it in fact held a public hearing, which Connecticut and Rhode Island clearly did, and need not provide any detailed information on the conduct of the hearing.

This is appropriate because the reasonableness of public notice can be assessed objectively by reviewing the amount and variety of notice methods used. Assessing the reasonableness of a hearing on the other hand would be a highly subjective determination done retrospectively that would unnecessarily infringe on the state's discretion in conducting its hearings. Of course, if EPA received concrete evidence that the hearing did not provide adequate opportunity for public participation, it could find that the hearing did not meet the intent of EPA's regulation. EPA has, however, received no such evidence.

API further claimed that a state must specifically identify a proposed regulation as a future SIP revision prior to scheduling a public hearing on the regulation. However, neither the statute nor EPA's regulations contain any such explicit requirement. The purpose of a public hearing is to receive public input on the substance of proposed regulations, not on whether the state may or may not submit the regulations as a SIP revision. For years EPA has approved SIP revisions with no analysis of whether the state had publicly announced its intent to eventually submit a proposed regulation as a SIP revision at the state public hearing stage.

Generally it should be totally irrelevant to public commenters whether a regulation with which they will be required to comply as a matter of state law might also become an aspect of federal law. At the time Connecticut and Rhode Island held their public hearings on the RVP rules, prior to federal preemption, commenters should similarly have had no concern as to whether the proposed state rules would eventually become federal law as well. Only where a state regulation would otherwise be preempted by existing federal law and therefore unenforceable

would the public have a need to know that the state intended to seek federal approval of the regulation for purposes of preemption waiver in preparing comments at the state hearing level. This was not the case at the time of the state hearing on the Connecticut and Rhode Island RVP rules. Moreover, given EPA's then outstanding proposal to regulate RVP and thus preempt state RVP regulation, it should have been apparent to commenters at the time of the public hearing that Connecticut and Rhode Island would submit the rule as a SIP revision to insure enforceability in the event of EPA final RVP regulation and preemption.

9. Should Waivers or Exemptions from the State Regulations be Granted to Suppliers Who Cannot Provide 9 RVP Gasoline?

Comments. Two commenters (BP Oil and Sun) expressed concern with potential inequities resulting from supplier-specific requests for waivers. They indicated that the use of supplier-specific waiver provisions could diminish the calculated benefits of the rule by allowing higher RVP gasoline into the system, and financially disadvantage those companies which are able to comply. They also expressed concern that the use of waivers and exemptions introduces uncertainties about whether the volatility regulations will be applied fairly and equitably to all gasoline suppliers, because the Connecticut and Rhode Island regulations do not include explicit provisions for the states to follow in considering applications for waivers or exemptions from individual suppliers.

The commenters concluded that if waivers or exemptions are to be used, they must apply to all suppliers and significant penalties should be attached. In addition, one commenter noted that EPA has to consider how it will respond to supplier-specific waiver requests; and EPA "is urged to adopt a policy on waivers which is consistent with its own RVP regulatory program."

Response. EPA is aware that Connecticut and Rhode Island intend to grant waivers to individual suppliers if necessary to avoid serious supply dislocations during the initial stages of their RVP programs. Although EPA did not focus on this aspect of the program in its notice of proposed rulemaking, commenters were also aware of the states' intentions and the issue was fully aired in the public comments. EPA is approving the Connecticut and Rhode Island RVP programs as a whole, which includes the ability of the states to issue waivers as appropriate. EPA is in essence pre-approving any waivers that Connecticut or Rhode Island might grant as part of the overall RVP program being

approved into the Connecticut and Rhode Island SIPs today. Connecticut and Rhode Island will not be required to submit each waiver to EPA as a SIP revision before it may take effect.

EPA is currently able to pre-approve any waivers that Connecticut or Rhode Island may grant because the RVP program is a discretionary program that the states' have submitted to generate additional emission reductions and move the state closer to attainment of the ozone NAAQS. EPA is not pre-approving waivers from a federally required program or a program to which EPA has already assigned specific emission reduction credits as part of an overall attainment demonstration. EPA could not pre-approve waivers in such situations because they would constitute SIP relaxations. Here, whatever emission reductions Connecticut and Rhode Island obtain from the RVP program, even after any waivers have been granted, will tighten the existing SIP and improve air quality.

EPA notes that its pre-approval of any waivers Connecticut or Rhode Island may grant under the RVP program differs dramatically from approval of a generic permitting program such as a new source review or bubble program. In those cases, EPA authorizes states to approve relaxations of SIP requirements provided that the state follows approved procedures calculated to insure that all such waivers are accounted for in the SIP attainment demonstration and are issued using replicable evaluation techniques. Here, since EPA is not currently relying on the Connecticut and Rhode Island RVP programs for any defined emission reduction credit toward an approved attainment demonstration, EPA need not now analyze the criteria by which Connecticut or Rhode Island will issue any waivers. Connecticut and Rhode Island are free to issue waivers on the basis of their own state criteria, consistent with any requirements of their state administrative procedures acts.

When Connecticut and Rhode Island do submit their completed post-1987 attainment demonstration, EPA will assign specific emission reduction credits to the RVP programs, taking account of any supplier-specific waivers the states may have issued by that time. Once EPA has approved the Connecticut's and Rhode Island post-1987 SIPs, it will take whatever rulemaking action is necessary to ensure that any further waivers under the RVP program, which at that point would be considered SIP relaxations, would be submitted to EPA for approval as individual SIP revisions.

Finally, EPA notes that any suppliers

who receive waivers from Connecticut or Rhode Island must still comply with the federal RVP limit of 10.5 psi.

10. How Soon After the Date of Final Approval of the Connecticut and Rhode Island Revisions Should the RVP Regulations Be Made Effective?

Comments. Many commenters were concerned with the timing of EPA's final action. Those favoring EPA approval of the SIP revision generally favored EPA acting quickly to make the regulations effective by their May 1 starting date or as close to that as possible. These commenters note that the Colonial Pipeline, which supplies 20% of the Northeast's gasoline, has been shipping 9 RVP fuel to the Northeast since March 1, 1989. They also pointed out that those suppliers who have made a good faith effort to comply with the May 1st date would be at a competitive disadvantage relative to those with cheaper, higher volatility gasoline if the date is extended.

Those opposing EPA approval of the SIP revision generally asked that if we did approve it we must provide the petroleum industry with realistic and sufficient lead-time to enable 9 psi gasoline to be distributed throughout the distribution system. These commenters cited EPA's allowing 70 and 100 days for the recently promulgated national regulations to become effective at the terminal and retail level respectively as precedent for such a decision. A third path, suggested by API, would be for EPA to make its final approval conditional on the state's deferral of the compliance date for its regulation.

Response. The timing issue is one of the most difficult ones posed by this action. Since EPA has had control of the timing of the final federal RVP action, the decision on the Massachusetts RVP SIP, and the decision on the Connecticut and Rhode Island RVP revisions, it is important that we ensure that both the federal and state programs start with a maximum likelihood of success and a minimum possibility of supply disruption.

EPA must consider several issues in deciding when to make the rule effective. The first issue is when the industry was put on notice that it would have to supply 9 psi gasoline to Connecticut and Rhode Island. As the states' rules were passed in 1988, the industry was on notice since then of the states' intention to control RVP to 9 psi. However, the Connecticut and Rhode Island rules were preempted on March 22, 1989 by the promulgation of the federal volatility requirements.

Another issue to consider is the lead-time that would be necessary to enable 9 psi gasoline to get through the

distribution system. The record indicates that the industry thought that it would take from 60 to 70 days to achieve compliance at the terminals in Connecticut and Rhode Island. The record also indicates that the Colonial Pipeline, which supplies at least 20% of the gasoline in the Northeast, has been shipping 9 psi gasoline since March 1, 1989.

The final issue involves the air quality consequences of delaying the effective date. EPA should not delay action on a SIP revision in such a manner as would thwart the states' intent in requesting the SIP revision. Connecticut's and Rhode Island's submissions of the RVP SIP revision last winter were clearly aimed at getting their regulatory programs in place for the 1989 ozone season. Thus, it is important to have the effective date as early as possible in order to maximize the air quality benefits of the programs in 1989.

In deciding to make this action effective on June 30, 1989, EPA has attempted to balance these competing interests. EPA believes that this effective date will both minimize possible difficulties the industry might encounter with a shorter lead-time and provide citizens in the Northeast as much relief as is practical during most of the 1989 ozone season. Although some suppliers may have a good faith effort to comply with the May 1 effective date specified in the Connecticut and Rhode Island proposals, they were under no obligation to do so once EPA preempted the states' requirement by promulgating Federal RVP controls on March 22, 1989. The Agency cannot, therefore, select an earlier effective date for all suppliers based on the voluntary action of a few, especially considering that the time between the March 22 federal rulemaking and today's publication is critical to the refiner/supplier planning and implementation process regarding fuel delivery for the coming summer. However, because refiners have already begun to prepare for the sale of 9 RVP fuel as a result of EPA's approval of the Massachusetts RVP SIP (published on May 4, 1989; 54 FR 19173), and in light of the fact that the three states share many links in the gasoline distribution network, the Agency does not believe that an additional 60 to 70 days lead-time is warranted. This starting date in Connecticut and Rhode Island mirrors the starting date of the Massachusetts program.

11. Should EPA Reopen the Comment Period or Withdraw and Repropose This SIP Revision in Light of EPA's Final Action on the National RVP Regulation and Other Alleged Defects in the March Proposals?

Comments. EPA received divergent comments on the appropriate process for and timing of a final action on the Connecticut and Rhode Island SIP revisions. Rhode Island argued that EPA should take final action as soon as possible. On the other hand, the American Petroleum Institute (API) felt that because of numerous allegedly unresolved issues raised in their substantive comments EPA should at a minimum repropose action on the revision to deal with these issues before proceeding to final action.

Response. EPA concludes that given its interpretation of the relevant law and the seasonal nature of the Connecticut and Rhode Island revisions, the Agency should proceed expeditiously to final action based on the record currently before it. EPA is unpersuaded by API's claim that circumstances have so changed since the proposed approvals of the Connecticut and Rhode Island revisions that we should reopen the comment period or withdraw and repropose this action. EPA's proposed Federal Register notices for the Connecticut and Rhode Island RVP programs explicitly discussed the possibility that EPA would take final action on the national RVP program prior to final action on the state programs. EPA clearly presented the path EPA proposed to follow and the conclusions we proposed to reach in the event that the Federal RVP regulations were finally promulgated. Furthermore, in the final Federal Register notice on the national RVP program, EPA explicitly discussed consideration of different state RVP control programs.

In this case EPA concludes that it is not necessary to issue a reproposal prior to taking final action. EPA believes that it has adequately responded to all of the substantive comments raised by commenters in the substantive discussions presented above. Obviously, additional analysis on such technical issues could always be conducted. However, administrative agencies generally have the discretion to determine when issues have been aired sufficiently and to close the record and proceed to final action, consistent of course with the need to act in a reasoned, non-arbitrary fashion. *Vermont Yankee Nuclear Power v. N.R.D.C.*, 435 U.S. 519, 554-555 (1978).

Further, EPA should not delay action on a SIP revision in such a manner that would thwart the state's intent in requesting the SIP revision. In this case, Connecticut and Rhode Island have submitted a seasonal requirement that since currently preempted must be approved in a timely fashion in order to effectuate the states' intent that the regulations provide emission reduction benefits in the upcoming summer ozone

season. Therefore, EPA should make best efforts to act on the information available to it now to the extent that it is adequate or else the agency would thwart the states' intent with regard to the 1989 ozone season. Since EPA has concluded that the existing record is sufficient, EPA can proceed to final action at this time based on that record.

Enforcement

In EPA's proposal on the Rhode Island SIP revision we indicated that there was a problem with the test method section of Regulation Number 11. The regulation allowed alternative test methods "... approved by the Director." EPA stated that such methods must also be approved by EPA or else the alternative methods must be eliminated. EPA's proposal was made with the understanding that this defect would be cured prior to final EPA action.

On April 24, 1989 Rhode Island submitted its revision to Regulation Number 11. The revision adds the words "and EPA" to the end of the relevant sentence. It also changes the specific designation (D323-82) of the ASTM test method for the determination of RVP to a more general designation (D323). This gives the state the flexibility to use the 1982 version of the test or the 1958 version. Both versions will result in accurate measurements of the RVP of gasoline. EPA finds that its prior concerns were addressed in exactly the manner EPA had suggested at proposal and that the test methods section is approvable as revised since it is now fully enforceable.

Final Action

EPA is approving this revision to the Connecticut and Rhode Island Ozone State Implementation Plans to control gasoline volatility, including any waivers Connecticut and Rhode Island may grant under the program. EPA has also made the finding that the Connecticut and Rhode Island SIP revisions meet the requirements of section 211(c)(4)(C) of the Act for an exception to federal preemption.

The Administrator has determined that there is good cause, within the meaning of 5 U.S.C. section 553(d)(3), to make this action effective less than 30 days after publication. The industry has been on notice since the Administrator approved the Massachusetts RVP SIP (54 FR 19173; May 3, 1989) that the Administrator was inclined to approve inconsistent state RVP rules to the extent necessary to provide for attainment. Making this action effective on the same date as the Massachusetts RVP rule provides the industry with a uniform effective date for two contiguous states that both have rules limiting RVP to 9.0 psi.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by (60 days from date of publication). This action may not be challenged later in proceedings to enforce its requirements (see 307(b)(2)).

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plans for the State of Connecticut and the State of Rhode Island was approved by the Director of the Federal Register on July 1, 1982.

Authority: 42 U.S.C. 7401-7642

EPA is today approving the Connecticut and Rhode Island SIP revisions pertaining to their state gasoline volatility programs.

Date: May 10, 1989.

William K. Reilly,
Administrator.

For the reasons set forth in the preamble, Part 52 of Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642

Subpart H—Connecticut

2. Section 52.370 is amended by adding paragraph (c)(50) to read as follows:

§ 52.370 Identification of plan

(c) ...
(50) Revisions to federally approved section 22a-174-20(a) of the Regulations of Connecticut State Agencies, submitted on January 27, 1989 by the Department of Environmental Protection, limiting the volatility of gasoline from May 1 through September 15, beginning 1989 and continuing every year thereafter, including any waivers to such limitations that Connecticut may grant. In 1989, the control period will begin on June 30.

(i) Incorporation by reference.
(A) Amendments to subsection 22a-174-20(a) of the Regulations of Connecticut State Agencies, entitled "Storage of 'volatile organic compounds' and restrictions for the Reid Vapor Pressure of gasoline," effective in the State of Connecticut on December 30, 1988.

Subpart 00—Rhode Island

3. Section 52.2070 is amended by adding paragraph (c)(33) to read as follows:

§ 52.2070 Identification of plan.

(c) ...
(33) Revisions to federally approved Air Pollution Control Regulation Number 11 submitted on November 7, 1988 and April 24, 1989 by the Rhode Island Department of Environmental Management, limiting the volatility of gasoline from May 1 through September 15, beginning 1989 and continuing every year thereafter, including any waivers to such limits Rhode Island may grant. In 1989, the control period will begin on June 30.

(i) Incorporation by reference.
(A) Amendments to Rhode Island Air Pollution Control Regulation No. 11, effective July 5, 1979, entitled, "Petroleum Liquids Marketing and Storage," sections 11.7.1 filed with the Secretary of State of Rhode Island on August 11, 1988, and effective in the State of Rhode Island on August 31, 1988.

(B) Amendments to Rhode Island Air Pollution Control Regulation No. 11, effective July 5, 1979, entitled, "Petroleum Liquids Marketing and Storage," amendments to section 11.7.2 filed with the Secretary of State of Rhode Island on April 27, 1989, and effective in the State of Rhode Island on May 17, 1989.

§ 52.801 [Amended]

4. The table in § 52.2081 is amended by adding a new entry to "No. 11" to read as follows:

TABLE 52.2081.—EPA APPROVED RULES AND REGULATIONS

State Citation	Title/Subject	Date Submitted by State	Date Approved by EPA	FR Citation	52.2070	Comments/Unapproved sections
No. 11	...	11/07/88, 04/24/89	Publication June 2, 1989.	54 FR	(c)(33)	Approves a limitation on volatility of gasoline from June 30 to Sept. 15, 1989, and May 1 to Sept. 15 in subsequent years at Subsections 11.7.1 and 11.7.2.

[FR Doc. 89-12984 Filed 6-1-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 22

[General Docket No. 85-388; FCC 89-141]

Amendment of Sections of Part 22 of the Commission's Rules as They Apply to Applications To Serve Rural Service Areas

AGENCY: Federal Communications Commission.

ACTION: Final rule; petition for reconsideration; clarification.

SUMMARY: In this *Fourth Order on Reconsideration*, (Reconsideration Order), the FCC considered the Petition for Reconsideration filed by the Cellular Telecommunications Industry Association (CTIA) of the *Fourth Report and Order* in Docket 85-388. In the *Fourth Report and Order*, the FCC had amended § 22.917 of its rules by adopting financial requirements for non-wireline cellular applicants for Rural Service Areas (RSAs). CTIA contended that these requirements did not achieve the Commission's goal of limiting applicants to those who sincerely

intended to provide cellular service. The effect of the FCC's action in the *Reconsideration Order* is to deny CTIA's petition and reaffirm its findings and rule amendments in the *Fourth Report and Order*. The FCC also made minor non-substantive amendments to § 22.917(a)(3) and § 22.917(e) to clarify references to other parts of § 22.917.

EFFECTIVE DATE: May 22, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: David H. Siehl, Mobile Services

Division, Common Carrier, Bureau; tele: 202-632-6450.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Fourth Order On Reconsideration*, adopted May 8, 1988, and released May 22, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Fourth Order on Reconsideration

1. On May 18, 1988, the Commission released in this proceeding a *Fourth Report and Order*, FCC 88-154, (*Fourth Report and Order*), which amended Part 22 of the Commission's Rules governing the filing of Rural Service Area (RSA) applications. The Commission issued the *Fourth Report and Order* after considering the comments it had requested in the *Third Notice of Proposed Rulemaking (Third Notice)*, 53 FR 5020 (1988), in this proceeding. In the *Fourth Report and Order*, the Commission adopted financial requirements for non-wireline applicants filing for Rural Service Areas (RSAs) by adding a new § 22.917(c). The Commission also provided that the same financial commitment may be used by an applicant to support applications for any of the 428 RSA markets. After the issuance of the *Fourth Report and Order*, Cellular Telecommunications Industry Association (CTIA) filed a Petition for Reconsideration. In its petition, CTIA contended that the revised RSA financial requirements do not achieve the Commission's goal of limiting the number of applicants to those who intend to provide high quality cellular service. Instead, argued CTIA, the revised rules produce an incentive for speculators to file more applications. CTIA urged the Commission to revise its rules to provide that applicants must submit a separate financial commitment to construct and operate each market for which they apply at the time they file the application. The Commission considered CTIA's arguments in a *Fourth Order on Reconsideration (Reconsideration Order)*.

2. The Commission said that CTIA had not demonstrated that the RSA financial rules encourage the filing of speculative applications. The Commission stated that it adopted the requirement that non-wireline

applicants make a showing of a firm financial commitment at the time of filing their applications in order to assure that only bona fide applicants would be included in the cellular lotteries. The Commission also stated in the *Reconsideration Order* that the provision adopted in the *Fourth Report and Order* to allow these applicants to use the same financial commitment in applying for more than one market was based on a valid contention presented by the commenters to the *Third Notice* that requiring separate firm financial commitments for each market would require an applicant to incur an unreasonable expenditure of funds. The Commission noted that in implementing this provision it had adopted specific requirements intended to assure that applicants have thoroughly considered the financial viability of each RSA proposal and are serious about providing cellular service in each market for which they apply. These requirements adopted to deter speculation were that: financing must be based on a close assessment by the financial institution of the markets for which the applicant applies; the lender must examine the financial viability of each proposal for which the applicant intends to use the commitment; and all financial commitments must be based solely on the creditworthiness of the particular applicant and the financial viability of each of their proposed systems. Additionally, the Commission emphasized that the lender's willingness to make the commitment must be based solely on its relationship with the applicant. Accordingly, the Commission rejected CTIA's arguments and reaffirmed its finding that the financial requirements have a deterrent effect on speculation by making it more difficult for applicants to demonstrate their financial qualifications for RSAs than for Metropolitan Statistical Area markets.

3. Lastly, after redesignating in the *Fourth Report and Order, supra*, former paragraphs (c) and (d) of § 22.917 of its rules as (d) and (e) respectively and adding a new paragraph (c), the Commission made minor amendments in the *Reconsideration Order* to § 22.917 (a)(3) and § 22.917(e) to reference paragraph (d), not (c). The Commission also amended § 22.917(a)(3)(iii)(A) to reference paragraph (e) instead of (d). Because the Commission found these rule amendments which clarified the rules to be non-substantive, it concluded that the notice and comment provisions as well as the effective date requirements of the Administrative Procedure Act are inapplicable.

Accordingly, the Commission ordered that these rule amendments were effective immediately.

List of Subjects in 47 CFR Part 22

Communications common carriers, Radio, Rural areas.

Federal Communications Commission.

Donna R. Searcy,
Secretary.

Rules Section

Part 22 of 47 CFR is amended as follows:

PART 22—PUBLIC MOBILE SERVICE

1. The authority citation for Part 22 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1086, 1082, as amended (47 U.S.C. 154, 303).

§ 22.917 [Amended]

2. Section 22.917(a)(3) introductory text is amended by removing the reference to "paragraph (c)" and adding in its place "paragraph (d)" and (a)(3)(iii)(A) is amended by removing the reference to "paragraph (d)" and adding in its place "paragraph (e)."

3. Section 22.917(e) is amended by removing the reference to "paragraph (c)" and adding in its place "paragraph (d)".

[FR Doc. 89-13043 Filed 6-1-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 81132-9033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the portion of the total allowable catch (TAC) of sablefish allocated to hook and line gear in the Central Regulatory Area of the Gulf of Alaska will be taken before the end of the year. The Secretary of Commerce (Secretary) is prohibiting further directed fishing for sablefish by longline vessels fishing in this area from 12:00 noon, Alaska Daylight Time (ADT), on May 27, 1989 through December 31, 1989.

DATES: This notice is effective from 12:00 noon, a.d.t., on May 27, until

midnight, Alaska Standard Time, December 31, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, Fishery Management Biologist, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR Part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000-830,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

Section 672.24(b)(1) of current regulations restricts the hook-and-line catch of sablefish in the Central Regulatory Area to 80 percent of the TAC. The 1989 TAC specified for sablefish in this area is 11,700 mt (54 FR 6524, February 13, 1989); the portion of the TAC allocated to hook-and-line gear is 9,360 mt. Under § 672.24(b)(3)(i), if the share of the sablefish TAC assigned to any type of gear for any area or district will be taken before the end of the year, further directed fishing for sablefish will be prohibited to provide adequate bycatch amounts to ensure continued fishing activity by that gear group.

During the remainder of the fishing year, hook-and-line fisheries are expected to require 100 mt of sablefish for bycatch. Therefore, the Regional Director plans to close the directed fishery when 9,260 mt have been taken. The directed hook-and-line fishery for sablefish started April 1, 1989. The Regional Director reports that vessels using hook-and-line gear have landed 7,973 mt of sablefish through May 20 in the Central Regulatory Area. The longline fleet in this area has averaged a daily sablefish landing of 194 mt per day. At this rate, the balance of the 9,260, mt will be harvested by 12:00 noon, a.d.t., May 27, 1989.

Therefore, pursuant to § 672.24(b)(3)(i), the Secretary is prohibiting further directed fishing for sablefish caught with hook-and-line gear

in the Central Regulatory Area effective 12:00 noon, ADT, May 27, 1989. Retention of sablefish by hook-and-line fishermen in the Central Regulatory area of amounts less than 4 percent of the total amount of fish and fish products retained on board a vessel, as calculated from round weight equivalents, is permitted.

Allocation of the sablefish resource between hook-and-line and trawl gear in the Central Regulatory Area, and the continued health of all components of the sablefish fishery will be jeopardized unless this notice takes effect promptly. NOAA therefore finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited for a period of 15 days after the effective date of this notice. Public comments on this notice of closure may be submitted to the Regional Director at the address above until June 11, 1989. If written comments are received which oppose or protest this action, the Secretary will reconsider the necessity of this action, and, as soon as practicable after the reconsideration, will publish in the *Federal Register* a notice either of continued effectiveness of the adjustment, responding to comments received, or that modifies or rescinds the adjustment.

Classification

This action is taken under §§ 672.22 and 672.24, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: May 26, 1989.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-13065 Filed 5-28-89; 5:01 pm]

BILLING CODE 3510-22-M

50 CFR Parts 204 and 645

[Docket No. 41156-4156]

Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands

ACTION: Final rule; technical amendment; notice of OMB control numbers.

SUMMARY: This rule announces that the Office of Management and Budget (OMB) has approved the information collection requirements (ICRs) of §§ 645.4 and 645.6 of the final rule to implement the Fishery Management Plan for the Spiny Lobster Fishery of Puerto Rico and the U.S. Virgin Islands (FMP) and publishes the OMB control number for those ICRs.

EFFECTIVE DATE: June 2, 1989.

FOR FURTHER INFORMATION CONTACT: Perry Allen, 813-893-3722.

SUPPLEMENTARY INFORMATION: On December 26, 1984 (49 FR 50049), NOAA published a final rule to implement the FMP. The rule contained ICRs for purposes of the Paperwork Reduction Act at (1) § 645.4—Permits and (2) § 645.6—Vessel and gear identification. A request to collect this information was submitted to OMB for approval. This notice informs the public of the approval and publishes the OMB control number 0648-0205.

Classification

This action is authorized by 50 CFR Parts 204 and 640 and complies with E.O. 12291.

The Assistant Administrator finds that because notice of OMB control numbers is strictly a ministerial action required pursuant to the Paperwork Reduction Act, it is unnecessary to provide notice and opportunity for comment upon such notice, or to delay for 30 days its effective date, under provisions of section 553(b)(3) and (d)(3) of the Administrative Procedure Act.

Dated: May 25, 1989.

Andrew J. Kemmerer,

Acting Executive Director, National Marine Fisheries Service.

For reasons set forth in the preamble, 50 CFR Part 204 is amended as follows:

PART 204—OMB CONTROL NUMBERS FOR NOAA INFORMATION COLLECTION REQUIREMENTS

1. The authority citation for Part 204 continues to read as follows:

Authority: Paperwork Reduction Act of 1980. 44 U.S.C. 3501-3520 (1982).

§ 204.1 [Amended]

2. In § 204.1(b) the table is amended by adding in the left hand column, in numerical order, "section 645.4" and "section 645.6" and adding in the right hand column, in corresponding positions, "-0205".

[FR Doc. 89-13067 Filed 6-1-89; 8:45 am]

BILLING CODE 3610-22-M

Proposed Rules

Federal Register

Vol. 54, No. 105

Friday, June 2, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 591

RIN 3206-AB34

Cost-of-Living Allowances and Post Differentials (Nonforeign Areas)

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend its regulations on the cost-of-living allowance and post differential paid in nonforeign areas. The proposed regulations describe the general method to be used in setting the allowance rates and address the administrative aspects of the program. This proposed amendment to the regulations is necessary to bring the terminology into conformance with current usage, clarify certain provisions, publish modifications to the methodology, and ensure that the requirements of the Administrative Procedure Act are met or exceeded.

DATES: Comments must be received on or before August 31, 1989.

ADDRESS: Persons wishing to submit written comments may send them to: U.S. Office of Personnel Management; White Collar Pay and Allowances Division; Room 7H38; 1900 E Street, NW., Washington, DC 20415

FOR FURTHER INFORMATION CONTACT: Allan G. Hearne, (202) 632-7184.

SUPPLEMENTARY INFORMATION: On October 21, 1985, OPM published (50 FR 42531), for comment, proposed regulations on the allowance and differential program. Changes have been made to the proposed regulations based on the comments received and consideration of other pertinent factors. These changes are sufficient to warrant a new comment period.

The original deadline (December 20, 1985) for comments on the original proposed regulations was extended twice. That comment period ended on

March 31, 1986. We received over 300 comments from employees, three from members of Congress, three from Federal agencies, one from a union, two from Federal executive associations, one from an interagency rent commission, and one from an economist hired by employee organizations.

Many of the comments were critical of the methodology proposed in our October notice. Because of these comments, OPM has designed a new methodology based on the procedures that are typical of private sector practice in establishing cost-of-living allowances. This new methodology is presented here for comment. The comments on the previous proposal that are still relevant are discussed below.

I. Definitions

One commenter requested we include definitions for "date of arrival" and "date of departure" that had been removed. We agree and have replaced these two definitions in § 591.201 (Definitions).

An agency requested we explain when payments begin and end. We agree and this subject is included under § 591.210(g) (Payment of Allowances and Differentials).

An agency requested we specify which Federal pay plans are covered by the program. We agree and this subject is included under § 591.203 (Agencies and Employees Covered).

An employee suggested we define all Hawaii allowance areas by county. We agree and have done so in § 591.204(b) (Establishment of Allowance Areas).

Several employees suggested that 50 miles by road from the three principal cities is too far for defining areas in Alaska. Fifteen miles by road was suggested as an alternative. We believe the 50-mile radius is a reasonable definition of an economic community for the purposes of these regulations and continue to use it in the definition.

In addition to changes adopted to reflect comments received, we have added the Commonwealth of the Northern Mariana Islands to the definitions in § 591.201, to the list of nonforeign areas in § 591.202, and to the list of areas eligible for the post differential in § 591.208, because commonwealth status was conferred upon that area by Presidential proclamation on November 3, 1986.

II. Statute

Several commenters felt that the 25 percent of base pay limit for allowance payments is artificial and inadequate. This limit is mandated by 5 U.S.C. 5941.

Some commenters felt the base area for comparison of living costs should be somewhere other than the alleged high cost Washington, DC, area. The base area is also mandated in the law authorizing the program.

Section 5941 of Title 5, U.S.C., specifies the District of Columbia as the base area. There was much concern about the base area being defined to include portions of Maryland and Virginia near the city of Washington, DC. It is unrealistic to compare living costs of employees in allowance areas to those in the District of Columbia without considering the fact that a significant number of employees working in the District live and shop in Maryland and Virginia. The President, in Executive Order 12510, amended Executive Order 10,000 to clarify the use of the Washington area as the base area.

One commenter felt our regulations should comment on the Federal tax-free status of allowance payments. We cannot do so because tax regulations are the responsibility of the Department of the Treasury.

There were numerous comments that the "manner of living" and "differences in good services" language once contained in Executive Order 10,000 were removed without proper notice and opportunity for comment. We are bound by the Executive Order as it has been amended by the President.

III. Alternative Methods

A few commenters suggested we pay Federal employees the allowances authorized by private firms for their employees. We cannot do so because the law only authorizes payments based on living costs or conditions of environment, not payments based on private sector pay practices that may rest on factors other than those in the law.

Several commenters suggested we base Federal pay on private pay within the allowance area. Again, the law authorizes payments based only on living costs or conditions of environment. Private pay rates may reflect these factors but also reflect size

of the firm, industry mix, degree of labor market competition, and other factors not specified in the law governing the COLA program.

One commenter suggested we use the Urban Family Budgets published by the U.S. Bureau of Labor Statistics instead of conducting our own surveys, however, the Urban Family Budget series was discontinued in 1981.

IV. Housing

A large number of comments were received on the housing portion of the living cost comparison, which represents a significant fraction of total living costs. In the previous proposal this portion was calculated in a way different from the other parts of the proposed index. The earlier proposal would have compared actual housing costs incurred by employees rather than estimated average unit costs. Some employees suggested that the housing cost comparison must be for similar types of houses: same size, type, composition, amenities, location, etc. Under our new proposal housing costs will be calculated for similar housing units in each area.

One employee suggested we use only current market prices for housing and ignore earlier purchases. We disagree because the purchase price and interest rate, two important factors in home ownership costs, are very independent on the time of purchase. We want the new methodology to include the costs of consumers who purchased in past years as well as those making more recent purchases. Because this mix reflects the average of what consumers actually pay, it is a more accurate measure of living costs than current market prices, which affect only those currently purchasing housing. Because the allowance is paid to all employees, not just to those recently transferred to the area, this method is more appropriate than one based only on current purchases.

Some commenters felt the proposed housing cost survey should be replaced with a "rent equivalence" approach. This method estimates the cost for owner occupied housing based on the rental rates for similar housing units that are renter occupied in an area. Commenters said this sort of survey would be easier to administer, more accurate, and permit employees in the allowance areas to achieve economic equality with employees in Washington, DC. We intend to collect data on the cost components that effect homeowners rather than estimate those costs through a survey of rental rates.

Some employees believe that the housing survey starts a vicious cycle.

They believe their income is so low that they can only afford to buy low-cost housing. Subsequent surveys record their low housing costs and their allowance is reduced. They suggested we survey non-Federal employees to eliminate this alleged problem. Under the proposed methodology we will collect housing information without regard to the employment of the occupant.

A rental rate committee suggested that rural areas outside a 50-mile radius of each of the three survey cities in Alaska be exempt from the provisions of § 591.207(a)(2) (Federal Quarters), which covers allowance adjustments for Federal housing. We disagree. The Office of Management and Budget (OMB) Circular A-45, "Policy Governing Charges for Rental Quarters and Related Facilities", provides the rules by which rents for Federal quarters are set. This circular provides suitable adjustments for rental rates in rural areas. To the extent that agencies follow OMB Circular A-45, no deductions from allowances will occur, so no exemption is necessary.

Some commenters suggested that reductions in allowance amounts for employees who are provided Federal housing at rates lower than those set using the OMB Circular A-45 policy should be taken from the allowance index amount instead of from the final allowance. It is possible, for example, to have living costs 50-percent higher than in Washington, while the allowance rate is limited by law to only 25 percent. The intent of the suggestion was that for employees who are provided housing below market rates, the deduction should be made from the 50-percent index rather than from the 25-percent allowance rate. In effect, no deductions would be made from the allowance. The intent of this provision in Executive Order 10,000 is to ensure that employees in Federal housing are not given an advantage over those who live in private housing. The advantage would arise because employees in Federal housing would receive the entire allowance and also pay below market rates for their housing. The Government would be compensating employees twice for high living costs: once through the allowance and again through low cost housing. Deductions from allowances for employees in Federal housing provided at rates below those required by OMB Circular A-45 policy will be made from the allowance actually payable to the employees.

There was also some concern about the meaning of § 591.207(a)(2). The intent of that section is to reduce allowance payments to employees in

Federal housing *only* if the agency is charging rent below that mandated by OMB Circular A-45. The rental rates established under the OMB policy are *net rates* after all appropriate adjustments have been made. If the agency is in compliance with OMB Circular A-45, the employee's allowance will be unaffected. We have revised the wording of that section to correspond more closely with the intent of OMB Circular A-45.

V. Goods and Services

There were numerous comments regarding items covered in the surveys. Most of these comments are discussed below in section.

VI. Special Circumstances

Other items suggested for inclusion in the survey include legal services, appliance repair, auto power train repair, auto painting and body work, medical operations, cable TV, child care, house painting, plumbing, and furnace repairs. There is an almost endless list of goods and services that could be priced. We will publish a list of the goods and services priced to establish allowance rates each time we adjust the rates. In this fashion items can be added or dropped from the survey as needed.

Many commenters stated we must price the exact brand or model of an item in each area. The commenters maintain that this step is necessary to ensure complete equality of purchasing power or living standard between the nonforeign areas and Washington, DC. While we do not agree that the statute guarantees economic parity, we have nevertheless modified our price collection mechanism to incorporate this comment. Under the new proposal the data will be collected using quality specific criteria whenever possible.

Several commenters suggested that sale prices for items should be included in the survey. This issue was raised by the General Accounting Office in a 1982 study of the allowance program. We propose to not adopt this recommendation for the following reasons:

—It is doubtful that reliable data could be obtained; it would require more data collection; and, it would result in increased reporting burdens.

—Because allowance rates reflect relative living costs, sale price patterns would have to differ significantly between an allowance area and the Washington area to affect an item or category index. Because the allowance is paid to the nearest 2.5 percent, a measurable impact is unlikely.

VI. Special Circumstances

The most frequent comments involved special circumstances or needs, or a site-specific life style generated by isolation or climate. Items mentioned included—additional air travel to visit relatives or for vacation or emergencies; long distance phone calls to distant relatives; lack of adequate roads; additional auto maintenance because of salt air, high humidity, or salt on the roads; winter weather needs, such as snow plowing and road grading, higher auto accident rates, engine block heaters, 4-wheel drive vehicles, and snow tires; winter clothing needs, such as boots, mittens, parkas, and rain gear; leisure activity products, such as fishing, hunting, skiing, and camping gear, ice skates, snowmobiles, lift tickets, boats, and trailers; metal garbage cans; extra heating or light bills; quality of educational opportunities; quality of medical care; and similar items. The economist representing employee groups asserted an additional five index points should be added to the cost-of-living allowance index to account for these differences in needs. We do not agree. In some locations it is possible to argue that allowances should be reduced due to warm climate (no heating bills or winter clothing), little traffic congestion or other negative factors associated with urban environments, and the like. In any case, the statute does not require living standard equality. It only permits payment of an allowance based on relative living costs. Further, the statute forbids payments in excess of 25 percent of base pay regardless of living cost differences.

VII. Notice and Comment

Some employees felt it was too difficult to find information on the allowances in the *Federal Register* and suggested we continue to publish rates in FPM letters. Section 553(b) of title 5, U.S.C., specifies the *Federal Register* as the vehicle for notice of rulemaking. Hence, information on allowances must appear in the *Federal Register*. Although 5 U.S.C. 553(a) exempts allowance rate adjustments from the notice and comment provisions, we think it would be useful to publish future rate changes for comment and propose to do so. OPM will publish an FPM bulletin to be posted in Federal agencies transmitting each *Federal Register* notice. The notice will provide a discussion of the survey results specifying any unusual circumstances involved in rate changes and giving more detail on the methods employed. In addition, newspapers in the allowance areas generally report on our rate changes. We believe this will

provide sufficient notice of OPM actions.

Several commenters suggested we hold public hearings on these regulations. We received over 300 written comments on various aspects of the original proposed regulations. We therefore believe the comment period gave ample opportunity for interested parties to make known their views and that public hearings would not add new information. We anticipate that this new comment period on the revised regulations will also generate a significant response from interested parties.

VIII. Miscellaneous

Many employees commented on the hardships that result when allowances are reduced. The consensus seemed to be that any allowance reduction should be made gradually. Executive Order 10,000 permits gradual reduction in allowance rates only when the reduction is due to a change in methodology. The Executive Order further states that OPM must review the rates at least annually to "insure that payment of additional compensation shall continue only during the continuance of conditions justifying such payment and shall not in any instance exceed the amount justified." This language precludes the gradual reduction of allowance rates if the change is not caused by a change in methodology.

Many employees feel that the allowance should compensate for environmental hardship. We do not agree. The Executive Order permits two payments based on separate circumstances: an allowance to be based on living costs; and a differential to be based on environmental hardship. Because employees can receive both an allowance and a differential, it would be inappropriate to include environmental factors in the allowance.

One commenter felt that a post differential hardship allowance should be paid in outlying areas of Alaska. At present, we are paying a 25 percent allowance. The law limits payments of allowances or differentials, or a combination of both to 25 percent. Thus, it is not possible to authorize an additional payment in these outlying areas.

Another comment suggested we consider recruitment and retention conditions in setting allowance rates. Although the reason for the allowance was to enable the Government to recruit and retain a competent workforce, Executive Order 10,000 bases the allowance only on living costs and does not include additional payment for recruitment and retention incentives.

These conditions, therefore, cannot be factors in setting allowance rates. Recruitment and retention problems for specific occupations, grades and locations are handled through the special rates program authorized by 5 U.S.C. 5303.

Many commenters in Puerto Rico believe consideration should be given to the taxation of the allowance by the Commonwealth government. This issue is currently under litigation in the United States District Court for the District of Puerto Rico in *Parker v. Alicea and Horner* (No. 87-0386, March 13, 1987). Hawaii also taxes the allowance. The Federal government taxes the differential but not the allowance. Because current Federal tax regulations exempt allowance payments from Federal income tax, it would be to the general disadvantage of the employees if we considered income taxes when calculating the allowance. Calculations involving income tax must consider Federal taxes as well as state, commonwealth, and local taxes. Because an allowance eligible employee's Federal tax burden is either zero or equal to what would be paid in Washington, including Federal taxes would generally lower the indexes more than including state, commonwealth, and local taxes would raise them.

One commenter stated that commissaries in Alaska are the only ones that must pay for transportation of goods to the site. Any transportation fees included in the prices charged to the consumers in the commissary are included in the prices we collect there. Surcharges added at the cash register are also included in the index calculations.

These regulations provide substantial detail with respect to the substance, subjects, and issues involved in the program and determining and setting allowance rates. The new proposed regulations reflect a balancing of objectivity, precision, and feasibility that takes into account OPM's experience in administering the program, a careful analysis of the comments received on the original proposed regulations, input from private sector experts in the field, and the current state of the applicable law as selected in statute, Executive order, and court decisions.

Commonwealth of the Northern Mariana Islands

An interim rule adding the Commonwealth of the Northern Mariana Islands to the locations covered by the post differential and setting a 25-percent differential rate there was published in

the *Federal Register* on April 15, 1987 (52 FR 12131). We received no comments on that rule and it will be incorporated in these regulations when they are finalized.

Current Allowance and Differential Rates

Allowance rates currently in effect were previously published in FPM Bulletins 591-30 (Anchorage) and 591-32 and 591-33 (all other locations). Post differential rates currently in effect were published in 5 CFR Part 591, Appendix B of Subpart B, except for the rate for the Commonwealth of the Northern Mariana Islands, which appeared in FPM Bulletin 591-34. The rates currently authorized will not change until the new regulations go into effect. These regulations will eliminate some of the allowance categories that existed under the previous regulations. The Local Retail/Federal Housing and Commissary/Exchange/Federal Housing allowance categories will cease to exist when these regulations are finalized. Deductions in allowances paid to employees in Federal housing will be handled under § 591.207(a)(2) (Federal Quarters), instead of as a separate allowance category.

Any necessary deductions for employees in the old Local Retail/Federal Housing Category will be from the new Local Retail Category allowance. Those from the old Commissary/Exchange/Federal Housing Category will be from the new Commissary/Exchange Category.

The following allowance rates (reprinted from the FPM material cited above) and categories are authorized until these new regulations go into effect.

Location/category	Allowance rates (percent)
State of Alaska	
Anchorage and 50 miles by road:	
Local retail/private housing	25.0
Local retail/Federal housing	17.5
Commissary/exchange/private housing	17.5
Commissary/exchange/Federal housing	7.5
Fairbanks and 50 miles by road:	
Local retail/private housing	25.0
Local retail/Federal housing	25.0
Commissary/exchange/private housing	20.0
Commissary/exchange/federal housing	15.0
Juneau and 50 miles by road:	
Local retail/private housing	25.0
Local retail/Federal housing	25.0
Commissary/exchange/private housing	25.0
Commissary/exchange/federal housing	25.0

Location/category	Allowance rates (percent)	Location	Differential rate (percent)
Alaska-all other locations:		American Samoa	25
Local retail/private housing	25.0	Canton Island	25
Local retail/Federal housing	25.0	Christmas Island	25
Commissary/exchange/private housing	25.0	Commonwealth of the Northern Mariana Islands	25
Commissary/exchange/Federal housing	25.0	Johnston and Sand Islands	25
State of Hawaii		Midway Islands	25
City and county of Honolulu (Oahu):		Wake Island	25
Local retail/private housing	22.5	Guam	20
Local retail/Federal housing	5.0		
Commissary/exchange/private housing	12.5		
Commissary/exchange/Federal housing	0		
County of Maui (Islands of Maui, Molokai, Lanai):			
Local retail/private housing	20.0		
Local retail/Federal housing	12.5		
Commissary/exchange/private housing	N/A		
Commissary/exchange/Federal housing	N/A		
County of Kauai:			
Local retail/private housing	17.5		
Local retail/Federal housing	7.5		
Commissary/exchange/private housing	17.5		
Commissary/exchange/Federal housing	7.5		
County of Hawaii:			
Local retail/private housing	15.0		
Local retail/Federal housing	7.5		
Commissary/exchange/private housing	N/A		
Commissary/exchange/Federal housing	N/A		
Territory of Guam			
Guam:			
Local retail/private housing	12.5		
Local retail/Federal housing	12.5		
Commissary/exchange/private housing	0		
Commissary/exchange/Federal housing	0		
Commonwealth of Puerto Rico			
Puerto Rico:			
Local retail/private housing	10.0		
Local retail/Federal housing	7.5		
Commissary/exchange/private housing	0		
Commissary/exchange/Federal housing	0		
Virgin Islands			
St. Croix:			
Local retail/private housing	12.5		
Local retail/Federal housing	0		
Commissary/exchange/private housing	N/A		
Commissary/exchange/Federal housing	N/A		
St. Thomas & St. John:			
Local retail/private housing	12.5		
Local retail/Federal housing	0		
Commissary/exchange/private housing	N/A		
Commissary/exchange/Federal housing	N/A		

N/A means the category does not exist in the location.

The following post differential rates are authorized until these new regulations go into effect.

(Both an allowance and a differential are authorized on Guam. Employees may be eligible to receive an allowance or differential or both but may receive no more than 25 percent of basic pay in combined allowance/differential payments.)

Regulatory Flexibility Act

I certify that these proposed regulations will not have a significant economic impact on a substantial number of small entities because they apply to Federal employees and agencies.

E. O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of Executive Order 12291, Federal Regulation.

List of Subjects in 5 CFR Part 591

Government employees, Travel and Transportation expenses, Wages.

U.S. Office of Personnel Management, Constance Horner, Director.

Accordingly, OPM is revising Subpart B of Part 591 of Title 5, Code of Federal Regulations, to read as follows:

PART 591—ALLOWANCES AND DIFFERENTIALS

• • • • •

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

Sec.

- 591.201 Definitions.
- 591.202 Areas covered.
- 591.203 Agencies and employees covered.
- 591.204 Establishment of allowance areas.
- 591.205 Comparative cost index.
- 591.206 Establishment of allowance rates.
- 591.207 Allowance categories, eligibility, and adjustments.
- 591.208 Post differential.
- 591.209 Eligibility for a differential.
- 591.210 Payment of allowances and differentials.
- 591.211 Periodic review.

• • • • •

Subpart B—Cost-of-Living Allowance and Post Differential—Nonforeign Areas

Authority: 5 U.S.C. 5941; E.O. 10,000; 3 CFR, 1943-1948 Comp., p. 792.

§ 591.201 Definitions.

In this subpart—
 "Allowance area" means a geographic area for which allowance has been authorized. There may be more than one allowance area within a nonforeign area. Allowance areas are listed in § 591.204 of this part.

"Date of arrival" means the beginning of business on the workday of the employee's arrival at the post, or, if the employee's arrival is on a nonworkday, the beginning of business on the first workday following arrival.

"Date of departure" means the close of business on the workday of the employee's departure from the post, or, if the employee's departure is on a nonworkday, the close of business on the last workday preceding departure.

"Day" or "calendar day" means any day of the year. Fractional days are considered whole days.

"Nonforeign allowance" or "allowance" means a cost-of-living allowance established by the Office of Personnel Management and payable under section 5941 of title 5, United States Code, at a location in a nonforeign area where living costs are substantially higher than those in the Washington, DC, area.

"Nonforeign area" means the States of Alaska and Hawaii, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, territories and possessions of the United States, and any additional areas located outside the contiguous United States that the Secretary of State designates as being within the scope of Part II of Executive Order 10,000, as amended. Nonforeign areas are listed in § 591.202 of this part.

"Nonforeign differential" or "differential" means a post differential established by the Office of Personnel Management and payable under section 5941 of title 5, United States Code, at a location in a nonforeign area if conditions of environment differ substantially from conditions of environment in the contiguous United States and warrant its payment as a recruitment incentive.

"Rate of basic pay" means the rate of pay fixed by statute for the position held by an individual before any deductions and exclusive of additional pay of any kind, such as overtime pay, night differential, extra pay for work on holidays, or allowances and differentials.

"Washington, DC, area" or "Washington area" means the District of Columbia and all other areas in Maryland and Virginia included in the Washington DC-MD-VA Metropolitan Statistical Area as defined by the Office of Management and Budget.

§ 591.202 Areas covered.

The following areas are nonforeign areas:

(a) Alaska (including all the Aleutian Islands east of longitude 167 degrees east of Greenwich).

(b) American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoa group east of longitude 171 degrees west of Greenwich, together with Swains Island).

(c) Canton and Enderbury Islands.
 (d) Commonwealth of Puerto Rico.
 (e) Virgin Islands of the United States.
 (f) Guam.

(g) Commonwealth of the Northern Mariana Islands.

(h) Hawaii (including Ocean or Kure Island).

(i) Howland, Baker, and Jarvis Islands.

(j) Johnston Island and Sand Island.

(k) Kingman Reef.

(l) Midway Islands.

(m) Navassa Island.

(n) Palmyra Atoll.

(o) Wake Island.

(p) Any small guano islands, rocks, or keys that, in pursuance of action taken under the Act of Congress, August 18, 1856, are considered as appertaining to the United States.

(q) Any other islands to which the U.S. Government reserves claim, such as Christmas Island.

§ 591.203 Agencies and employees covered.

This subpart applies to civilian employees whose rates of basic pay are fixed by statute and who are employed by an executive department, an independent establishment, or a wholly-owned Government corporation. The following pay plans are covered by this subpart:

(a) General Schedule (including PMRS and SES).

(b) Department of Medicine and Surgery (Department of Veterans Affairs).

(c) Foreign Service (where applicable under this subpart).

(d) Postal Service (where applicable under provisions of 39 U.S.C.).

§ 591.204 Establishment of allowance areas.

(a) The Office of Personnel Management (OPM) designates within nonforeign areas allowance areas where

employees are eligible to receive a cost-of-living allowance by virtue of living costs that are substantially higher than those in the Washington, DC, area. In establishing the limits of allowance areas, OPM considers (1) the existence of a well defined economic community; (2) the availability of consumer goods and services; (3) the concentration of Federal employees covered by this subpart; and (4) unique circumstances related to a specific location.

(b) The following allowance areas have been established where an allowance is authorized to be paid:

(1) *State of Hawaii.* (i) City and County of Honolulu.

(ii) County of Kauai.

(iii) County of Maui (including Kalawao County).

(iv) County of Hawaii.

(2) *State of Alaska.* (i) City of Anchorage and 50 mile radius by road.

(ii) City of Fairbanks and 50 mile radius by road.

(iii) City of Juneau and 50 mile radius by road.

(iv) The rest of the State.

(3) *Commonwealth of Puerto Rico.*

The entire Commonwealth.

(4) *The Virgin Islands.* (i) St. Croix.

(ii) St. Thomas and St. John.

(5) *Territory of Guam.* The entire Territory.

(c) The head of a department or agency will submit requests in writing to OPM for the establishment or revision of allowance areas.

§ 591.205 Comparative cost index.

(a) OPM calculates allowance rates for each area by comparing costs of four categories of expenses in the area to those in the Washington, DC, area. Two allowance rates are calculated for each area; Local Retail and Commissary/Exchange (see § 591.207 of this part). The four categories of expenses are:

(1) Consumption goods and services.

(2) Transportation.

(3) Housing.

(4) Miscellaneous expenses.

(b) Costs are determined for several income levels and home occupancy types (renter or owner), and averaged.

(1) Consumption goods and services budgets (excluding transportation and housing) are estimated from appropriate consumer expenditure data at various income levels for a standard family size. The base budget amounts for goods and services are adjusted by price index multipliers to estimate the budget amounts required in each area.

(i) Goods and services surveyed. The goods and services surveyed for the consumption portion of the system are derived from consumer expenditure

surveys. Whenever possible, exact brands and models are priced in each location. Price data are obtained from appropriate retail outlets in each area. Price data from military facilities are provided by the Department of Defense where needed. Individual items are grouped into categories accounting to common functions or uses.

(ii) The item and category weights are derived from consumer expenditure surveys. The category weights vary by income.

(2) Transportation costs for each income level and area are estimated using data collected by or for OPM on automobile operating expenses and other factors affecting transportation costs.

(3) Housing costs for renters and owners are estimated based on similar housing units. Standard shelter specifications (type, size, age) are selected for each income level.

Appropriate living communities to survey based on the income level and housing type specified are selected for each survey location. Housing data on units within the selected communities meeting the specifications are then collected. Mortgage interest rate and payment data are collected from lending institutions in the area, utility companies and other sources provide information about utility rates, and local governments provide information on real estate tax rates. These data are then combined to estimate dollar expenditures within each survey area for the specified shelter in the selected community.

(4) Miscellaneous expenses. Miscellaneous expenses for gifts, contributions, savings and investments, retirement, and life insurance are estimated from consumer expenditure surveys and other data appropriate for Federal employees for each income level.

(c) The dollar amounts estimated for consumption, transportation, housing, and miscellaneous expenses are combined into a total amount for each of the multiple income levels and renter/owner status. The renter budgets and owner budgets for each income level are combined using weights representing the proportion of renters and owners at each income level derived from appropriate consumer expenditure or census data. The budgets for each location are weighted into one average amount based on the GS grade distribution for the areas. The area budget is divided by the Washington, DC, area budget to generate a comparative cost index. The allowance rate for the area is based upon the index.

(d) OPM will describe in detail the calculation of each allowance rate at the time the rate is published in the *Federal Register* for comment.

§ 591.206 Establishment of allowance rates.

(a) OPM uses the comparative cost indexes for each allowance area to determine the allowance rates for that area. The range of values within which the index value falls determines the appropriate allowance rate, expressed as a percentage of the rate of basic pay for that category of eligible employee.

(b) The following table shows the comparative index range and corresponding allowance rate to be established for an allowance category under § 591.207 of this part:

COMPARATIVE INDEX AND ALLOWANCE RATE TABLE

Index range	Allowance rate (percent)
Less than 105.0	0
105.0 to 106.2	5
106.3 to 108.7	7.5
108.8 to 111.2	10
111.3 to 113.7	12.5
113.8 to 116.2	15
116.3 to 118.7	17.5
118.8 to 121.2	20
121.3 to 123.7	22.5
123.8 and over	25

(c) Allowance area survey summaries, category indexes, and allowance rates are published as notices in the *Federal Register*.

§ 591.207 Allowance categories, eligibility, and adjustments.

(a) Section 205(b) of Executive Order 10,000, as amended, requires adjustments to allowance payments where warranted because of Federal quarters or special purchasing privileges. These adjustments occur only when the quarters or purchasing privileges are made available as a result of Federal civilian employment and result in substantially lower costs when compared to local area costs.

(1) Special purchasing privileges. Adjustments for access to commissaries and exchanges are incorporated into the comparative index calculations and the resulting allowance rates.

(2) Federal quarters. If the rent charged an employee by an agency for quarters is less than the net reasonable value rent, after appropriate adjustments, established as prescribed by the Office of Management and Budget, the difference between the rent charged and the reasonable value rent will be deducted from the allowance paid by the employing agency up to, but

not exceeding, the amount of the allowance.

(b) The allowance categories that are established in each area are—

(1) "Local Retail," which applies to those Federal employees who purchase goods and services from private retail establishments.

(2) "Commissary/Exchange," which applies to those Federal employees who shop at private retail establishments, but who, as a result of their Federal civilian employment, also have unlimited access to commissary and exchange facilities. This category is established only in those allowance areas that have these facilities.

(c) Eligibility for access to commissary and exchange facilities is determined by the appropriate military department. Agencies shall obtain the information needed from employees to determine the applicable allowance category.

§ 591.208 Post differential.

(a) The post differential is based on (1) extraordinarily difficult living conditions; (2) excessive physical hardship; or (3) notably unhealthful conditions.

(b) The places at which differentials are paid are—

(1) American Samoa (including the island of Tutuila, the Manua Islands, and all other islands of the Samoa group east of longitude 171 degrees west of Greenwich, together with Swains Island).

(2) Canton and Enderbury Islands.

(3) Guam.

(4) The Commonwealth of the Northern Mariana Islands.

(5) Johnston Island and Sand Island.

(6) Midway Islands and Wake Island.

(7) Christmas Island

(c) New or revised post differential rates are published as notices in the *Federal Register*.

§ 591.209 Eligibility for a differential.

A department or agency will determine employee eligibility to receive a differential as follows:

(a) To be eligible to receive a differential (1) the employee must be a citizen or national of the United States; (2) the employee's residence in the area where the differential applies must be attributable to employment by the United States; and (3) any prior residence in the area must be because of employment by the United States or by U.S. firms, interests, or organizations.

(b) Subject to paragraph (a) of this section, the classes of persons eligible to receive differentials include, but are not limited to—

(1) Those recruited or transferred from outside the area where the differential applies.

(2) Those employed in the area where the differential applies but who—

(i) Were originally recruited from outside the area and have been in substantially continuous employment by other Federal agencies, contractors of Federal agencies, or international organizations in which the U.S. Government participates, and whose conditions of employment provide for their return transportation to places outside the differential area concerned; or

(ii) Were at the time of employment temporarily present in the differential area concerned for travel or formal study and maintained residence outside the area during that period.

(3) Those who are not normally residents of the area where the differential applies and who are discharged from the military service of the United States in the area to accept employment there with an agency of the Federal Government.

§ 591.210 Payment of allowances and differentials.

(a) Allowances and differentials under this subpart are payable to an employee whose permanent duty station is in a nonforeign area for which an allowance or differential is authorized.

(b)(1) Except as provided in paragraph (b)(2) of this section, allowances and differentials are calculated and paid as a percentage of an employee's hourly rate of basic pay for those hours for which the employee receives basic pay, including all periods of paid leave, detail, or travel status outside the area for which the allowance or differential is authorized.

(2) Payment of a differential during periods of paid leave or travel outside the area for which the differential is authorized continues for the first 42 consecutive calendar days of the absence. Payment of allowances and differentials while absent from the post continues only if the employee returns to duty status in the area, unless the agency determines that—

(i) It is in the public interest not to return the employee to the duty station; or

(ii) The employee's failure to return to the duty station was due to compelling personal reasons or to circumstances over which the employee had no control.

(c) An employee assigned to a duty station for which both an allowance and a differential are authorized under this subpart and eligible for both will receive the full amount of the allowance, plus so much of the differential as will not cause

the combined total of allowance and differential to exceed 25 percent of the hourly rate of basic pay.

(d) If an employee who is receiving an allowance or differential or both under this subpart is temporarily assigned to a duty station in a foreign area and is eligible to receive a foreign post differential authorized by the Department of State under 5 U.S.C. 5925, the employee will receive the foreign area differential, plus so much of the allowance and/or differential (in that order) authorized under this subpart as will not cause the combined total to exceed 25 percent of the hourly rate of basic pay.

(e)(1) An allowance or a differential is not part of an employee's rate of basic pay for the purpose of computing entitlements to overtime pay, retirement, life insurance, or any other additional pay, allowance, or differential under title 5, United States Code.

(2) An allowance or differential is included in an employee's regular rate of pay for computing overtime pay entitlement under the Fair Labor Standards Act of 1938, as amended.

(f) Payment of an allowance or a differential is not an equivalent increase in pay within the meaning of 5 U.S.C. 5335.

(g) Payment of an allowance or differential will begin as of the date of arrival on regular assignment or transfer, or on the date of entrance on duty in the case of local recruitment. Payment of an allowance or differential will cease on separation, or as of the date of departure on transfer to a new post of regular assignment.

§ 591.211 Periodic review.

In accordance with Executive Order 10,000, OPM reviews from time to time, but at least annually, the places designated, the rates fixed, and the regulations in this subpart that are prescribed for payment of allowances and differentials. This review is to make warranted changes to ensure that payments under this subpart will continue only during the continuance of conditions justifying payment of allowances and differentials and will not in any instance exceed the amount justified. However, if program or methodology revisions would substantially reduce an established differential or allowance rate, then the rate of such additional compensation may be reduced gradually.

[FR Doc. 89-13165 Filed 6-1-89; 8:45 am]

BILLING CODE 9325-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-77-AD]

Airworthiness Directives; Airbus Industrie Model A310 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to adopt a new airworthiness directive (AD), applicable to certain Airbus Industrie Model A310 series airplanes, which would require modification of the emergency exists' opening mechanism. This proposal is prompted by reports of the accumulation of moisture in the area of the locking mechanism and subsequent ice buildup. This condition, if not corrected, could prevent the exit of passengers in an emergency situation. **DATES:** Comments must be received no later than July 24, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-77-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Greg Holt, Standardization Branch, ANM-113; telephone (206) 431-1918. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on

the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-77-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Airbus Industrie Model A310 series airplanes. There has been one report where the emergency exit doors could not be opened after landing, due to ice buildup on the opening mechanism. This condition, if not corrected, could prevent exit of passengers in an emergency situation.

Airbus Industrie has issued Service Bulletin A310-52-2017, Revision 2, dated December 22, 1987, applicable to Model A310 series airplanes, which describes procedures for modification of the opening mechanism on the emergency exit doors which will prevent condensation from accumulating. The DGAC has classified this service bulletin as mandatory, and has issued French Airworthiness Directive 86-28-72(B) addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would require modification of the opening mechanism on the emergency exit doors, in accordance with the service bulletin previously described.

It is estimated that 18 airplanes of U.S. registry would be affected by this AD, that it would take approximately 47 manhours per airplane to accomplish the

required actions, and that the average labor cost would be \$40 per manhour. The estimated cost for the modification kits is \$841. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$48,978.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Applies to Model A310 series airplanes, as listed in Airbus Industrie Service Bulletin A310-52-2017, Revision 2, dated December 22, 1987, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent frozen condensation from blocking the emergency exit doors operating mechanism, accomplish the following:

A. Within 100 hours time-in-service after the effective date of this AD, modify the emergency exit doors' opening mechanism, in

accordance with Airbus Industrie Service Bulletin A310-52-2017, Revision 2, December 22, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Airbus Industrie, Airbus Support Division, Avenue Didier Daurat, 31700 Blagnac, France. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 22, 1989.

Leroy A. Keith,
Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 89-13050 Filed 6-1-89; 8:45 am]

BILLING CODE 4010-13-M

14 CFR Part 71

[Airspace Docket No. 89-AEA-6]

Proposed Alteration of VOR Federal Airway V-162; West Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the description of Federal Airway V-162 located in the vicinity of Clarksburg, WV. This action would revoke that section of the airway between Clarksburg and the Derin, WV, intersection which has not been used by Washington Air Route Traffic Control Center (ARTCC) in over 5 years.

DATES: Comments must be received on or before July 14, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AEA-500, Docket No. 89-AEA-6, Federal Aviation Administration, JFK International

Airport, The Fitzgerald Federal Building, Jamaica, NY 11430.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace Branch (ATO-240), Airspace Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made:

"Comments to Airspace Docket No. 89-AEA-6." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of

Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of VOR Federal Airway V-162 located in the vicinity of Clarksburg, WV. The section of the airway between Clarksburg and the Derin, WV, intersection has not been used in over 5 years by the Washington ARTCC. Therefore, we propose to revoke that section of V-162 between Clarksburg and the Derin intersection. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-162 [Amended]

By removing the words "From INT Clarksburg, WV, 135° and Elkins, WV, 098° radials; Clarksburg."

Issued in Washington, DC, on May 18, 1989.

Harold W. Becker,

Manager, Airspace Rules and Aeronautical Information Division.

[FR Doc. 89-13051 Filed 6-1-89; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3597-9]

Plan for Vulcan Materials Company Geismar Chemicals Plant, Geismar, LA

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed approval.

SUMMARY: EPA is proposing approval of the Vulcan Materials Company Geismar Chemicals Plant Alternative Emission Reduction Plan ("Bubble") as a revision to the Louisiana State Implementation Plan (SIP). The Bubble uses credits obtained from extra control of emissions from five volatile organic compound (VOC) storage tanks in lieu of controls on one process vent and one VOC storage tank. The emission reduction credits (ERCs) were determined to be valid consistent with the provisions for bubbles as outlined in EPA's Emissions Trading Policy Statement (ETPS) of December 4, 1986. (51 FR 43840).

DATE: Comments must be received by July 3, 1989.

ADDRESSES: Copies of the State's submittals are available for review during normal business hours at the following locations:

Air Quality Division, Louisiana Department of Environmental Quality, Land and Natural Resources Bldg., 625 N. 4th St., P.O. Box 44066, Baton Rouge, Louisiana 70804.

Environmental Protection Agency, Region 6, Air Programs Branch, 1445 Ross Avenue, Dallas, Texas 75202.

FOR FURTHER INFORMATION CONTACT: Bill Riddle, State Implementation Plan Section; Air Programs Branch; Air, Pesticides & Toxics Division; EPA

Region 6, 1445 Ross Ave., Dallas, Texas 75202, (214) 655-7214.

SUPPLEMENTARY INFORMATION: On October 31, 1983, the Governor of Louisiana submitted a request to revise the Louisiana SIP to include an Alternative Emission Reduction Plan for the Vulcan Materials Company facility located at Geismar, Ascension Parish. The submittal contained certification that adequate notice and a public hearing were provided for the proposed alternative controls. Additional information necessary for complete review of the proposal was submitted on May 4, 1984, by the Air Quality Division (AQD) of the Louisiana Department of Environmental Quality. The AQD revised the bubble in a letter of June 27, 1984, to remove several sources which by then were in compliance and no longer needed to be included in the

bubble. A permit was issued by LDEQ on March 24, 1983, (# 1829T); however, a revised permit addressing improvements in enforceability of the permit was submitted to EPA on April 9, 1987. EPA is proposing to approve the revised bubble and invites comments from all interested persons. Comments received within 30 days of the publication of this notice will be considered by EPA.

Background

Vulcan Materials Company's Geismar Chemical Plant contains several chemical storage tanks regulated under Louisiana Air Quality Regulation (LAQR) 22.3 and waste gas vents under LAQR 22.8. The Company proposes to control five VOC storage tanks to a level beyond Reasonable Available Control Technology (RACT), as an alternative to placing controls on one other tank and one process vent. The storage tank

remaining uncontrolled would have estimated emissions of 4.58 tons per year (TPY) of methanol. The vent remaining uncontrolled under the trade is the HC1 Emergency Scrubber Vent with emissions of 113.8 TPY of chloromethane and ethylene dichloride (EDC). The HC1 Emergency Scrubber Vent contains a waste process stream that is mainly HC1 with a small fraction of organics. The company estimates the cost of control of this vent to be prohibitive and therefore wishes to find an alternative means of compliance.

The credit the company is claiming results from the installation of a vapor recovery system on a tank farm in 1978. This control system was installed in advance of the regulation for control of storage tanks under LAQR 22.3, which was approved by EPA on February 10, 1982 (47 FR 6105). The entire trade is summarized below:

$$\text{Credits from control of tanks } (-163.26 \text{ TPY}) + \text{Noncompliance emissions } (117.78)(1.1) = \text{Progress toward attainment } (-33.7)$$

[10 percent progress toward attainment]

Sources	Emissions (tons/year)					
	Actual			Allowable		
	Before bubble	After bubble	Change	Before bubble	After bubble	Change
CC1, storage tank 4C	13.52	13.52	0	67.18	13.52	-53.66
EDC storage tank 3A	4.61	4.61	0	32.22	4.61	-27.61
EDC storage tank 3B	4.64	4.64	0	33.22	4.64	-28.58
EDC storage tank 3C	4.64	4.64	0	33.22	4.64	-28.58
EDC storage tank 3D	10.63	10.63	0	35.48	10.63	-24.85
HCL vent	113.8	113.8	0	0.0	113.8	113.8
CH ₃ OH storage tank—3-73	4.58	4.58	0	0.6	4.38	3.98
10 percent progress toward attainment			0			11.78
Total	156.42	156.42	0	201.8	188.9	-33.7

In regard to air quality data, no ozone monitor is currently functioning in Ascension Parish. A monitor was functioning for the years 1983 and 1984 and showed no violations.

Ascension Parish, however, is located in the metropolitan statistical area (MSA) of Baton Rouge, Louisiana. The Baton Rouge MSA continues to experience violations of the ozone standard. Based upon 1985 through 1987 data the design value for ozone (fourth highest value over a three year period) was 0.14 ppm.

In the proposed Federal Register for the ozone/carbon monoxide strategy, published November 24, 1987, the Baton Rouge MSA was identified in Appendix A of the Post-87 ozone/carbon monoxide strategy as one of the potential 1988 SIP Call areas. It was

identified as exceeding the NAAQS in 1984-1986 and is expected to continue to exceed the NAAQS.

One May 26, 1988, EPA sent a letter to the Governor of Louisiana identifying areas in Louisiana that would receive a post-87 SIP call.

According to EPA's proposed post-87 policy the SIP planning area has been expanded to the entire MSA. Therefore, Ascension Parish will be included in the SIP call for Baton Rouge, Louisiana. For this special situation where an area was considered to have a demonstration of attainment when submitted as a bubble proposal but by virtue of a SIP call is now not, a special approach was developed. This approach is discussed below.

Review

The Bubble was reviewed for compliance with the requirements of section 110 of the Clean Air Act, 40 CFR Part 51, EPA's Proposed Emissions Trading Policy Statement published in the Federal Register on April 7, 1982, [47 FR 15076] and the Final ETPS. EPA has reviewed the State submittal and developed an Evaluation Report.¹ This report is available for inspection by interested parties during normal business hours at the EPA Region 6 office. Briefly, the review is summarized below.

The Final ETPS sets out current EPA policy for approving bubbles. EPA

¹ EPA Review of the Vulcan Materials Bubble October, 1988.

policy differs depending on whether the bubble is in a nonattainment area with an approved attainment demonstration ("NAWAD") or a nonattainment area lacking an approved attainment demonstration ("NALAD").

A bubble in a NAWAD is approvable if the baseline is consistent with the assumptions used in the approved SIP, and the bubble does not interfere with attainment of the ozone NAAQS. 51 FR 43838 col. 3.

A bubble in a NALAD is approvable only if it meets the following three requirements:

(i) The baseline must be calculated using the lower of actual, SIP-allowable, or RACT-allowable¹ values for each baseline factor, determined as of the date the source submitted the bubble application to the State.

(ii) The bubble must produce a reduction of at least 20% in the emissions remaining after application of the baseline specified above.

(iii) The State must provide assurances that the Proposed trade will be consistent with its efforts to attain the ambient standard. The Final ETPS sets out five representations that the State must make.

51 FR 43839-40.

EPA believes that these NALAD policy elements are necessary to ensure that the bubble will not interfere with attainment as expeditiously as practicable, as required under 42 U.S.C. 110(a)(2) and 7502.

However, the Final ETPS Relaxes these NALAD requirements for pending bubbles. A pending bubble is defined as a bubble submitted by the State to EPA before EPA published the Final ETPS. 51 FR 43840 col. 2. The rules for a pending bubble in a NALAD are as follows:

(i) The baseline must be calculated using the lower of actual, SIP-allowable, or RACT-allowable values for each baseline factor, determined as of the date the source submitted the bubble application to the State.

(ii) The bubble must produce some reduction—but need not produce a 20% reduction—in the emissions remaining after application of the baseline specified above.

State assurances are not required for a pending bubble. 51 FR 43840.

Grandfathering Principles

Because the Final ETPS is a policy statement, it does not set out requirements that apply with equal force in all circumstances. Beyond this, the actions proposed in today's notice are consistent with the principles of grandfathering that the Court of Appeals for the District of Columbia Circuit has applied when an agency changes policy requirements, but seeks to apply the former policy to certain actions pending

¹ RACT refers to Reasonably Available Control Technology.

before the agency at the time of the policy change. Under these principles, the agency may apply the former policy when: (i) The new rule represents an abrupt departure from well-established practice; (ii) affected parties have relied on the old rule; (iii) the new rule imposes a large burden on those affected; and (iv) there is no strong statutory interest in applying the new rule generally. *Sierra Club v. EPA*, 719 F.2d 436 (D.C. Cir. 1982), cert. den. 468 U.S. 1204 (1984).

Proposed Ozone Strategy and SIP Calls

By notice dated November 24, 1987, EPA published a proposed policy ("Proposed Ozone Strategy") to address the fact that many areas in the country were not expected to attain the NAAQS for ozone (and carbon monoxide) by the end of 1987, the latest date for attainment expressly identified in the Clean Air Act, 42 U.S.C. 7502. 52 FR 45044. In general, EPA stated that in the spring of 1988, it would issue SIP calls to areas where, based on recent monitoring data, EPA determined that the SIPs were substantially inadequate to attain the NAAQS. The issuance of SIP calls would trigger a new round of SIP development by the states.

EPA proposed to require that the states that receive SIP calls develop revised inventories within one year of the SIP call, and develop and submit for EPA approval new SIPs within two years of the SIP call. EPA further proposed to require that, in general, the new SIPs must persuasively demonstrate attainment of the NAAQS within five years of the SIP call (in order to avoid construction ban penalties). EPA further proposed to require that, in general, the State demonstrate that the SIP would produce expeditious progress in the interim before attainment. This reasonable rate of progress would be an average annual emissions reduction of at least three percent in the base year inventory for the area. See 52 FR 45045.

On May 26, 1988, EPA issued SIP calls with respect to many areas of the country, including the areas to which this preamble applies. The SIP calls trigger a two-step planning process that ultimately should result in the creation of SIP revisions that will produce near-term attainment of the standards.

Application To Vulcan Materials

The State submitted this bubble to EPA before EPA published the Final ETPS on December 4, 1988. Thus, EPA considers this a "pending bubble" under the Final ETPS. At the time the state submitted this bubble, the area was classified as a NAWAD for purposes of applying the Final ETPS. As noted

above, under the Final ETPS, a bubble in a NAWAD is approvable if the baseline is consistent with the assumptions used in the approved SIP, and the bubble does not interfere with attainment of the ozone NAAQS. At the time the State submitted this bubble, it met these requirements.

To be valid as an ERC, the reduction must be surplus, enforceable, permanent, and quantifiable. First, the reduction is surplus because it exceeds the RACT-level reduction already required in the SIP. At minimum, only emission reductions not required by current regulations in the SIP, not already relied on for SIP planning purpose, and not used by the source to meet any other regulatory requirement can be considered surplus and substituted for required reductions as part of an emissions trade. Louisiana Air Quality Regulation 22.3.1.2 defines RACT for a storage of a VOC substance whose vapor pressure is between 1.5 and 4.0 psia as a welded tank with a floating roof and primary seal. The five storage tanks are attached to a vapor recovery system. The difference between RACT emissions and the lower current emissions qualifies as a surplus reduction. Aacension Parish is currently classified by EPA as a rural ozone nonattainment area. Under EPA policy, such areas need only impose RACT-level controls on stationary sources to satisfy a demonstration of attainment.

The emissions limits are enforceable at the State level under Administrative Permit #1829T(M-1) issued April 9, 1987, by the Louisiana Air Quality Division to Vulcan Chemicals Company.

The emission limits were originally included in permit #1829T issued March 24, 1983. In order to improve the enforceability of the permit the State reissued to Vulcan a revised permit #1829T(M-1), issued April 9, 1987. Based upon review of the reissued permit a majority of concerns of EPA on enforceability were addressed; however, several points of enforceability need to be included in an additional revised permit before EPA can finalize this action. Noted below are the issues that the State is requested to address:

1. There should be a test method to determine vapor condenser efficiency and a test method for the HCl scrubber vent. These methods must be made federally enforceable before final approval.

2. A method to verify compliance with emissions from tanks must be included in the permit. The method to be used is the EPA publication AP-42, Compilation of Air Pollutant Emission Factors, 3rd edition. This is because the 3rd edition

was in effect at the time of bubble submittal from the State. It is necessary that all input variables to the appropriate emission calculations be kept as records (flow rate, temperature, pressure, etc.), both fluctuating parameters and constants, so that it can be checked as to how compliance was determined.

3. The methanol tank (3-73) needs to be included in specific condition 1 for recordkeeping.

4. All attachments included with the April 9, 1987, permit (#1829T(M-1)) need to be referenced in the Specific Conditions of the permit as being enforceable components of the permit. All pages need to be numbered (n of 17).

The five storage tanks are permanently attached to the vapor recovery system. Any lesser means of control would subject Vulcan to possible enforcement action. Under conditions of Permit #1829T(M-1) the new emission limits are permanent. The state submitted detailed calculations quantifying all of the emissions involved in the trade. These calculations were verified by EPA.

The proposed bubble also meets the further criteria given in the Emissions Trading Policy Technical Issues Document published in the April 7, 1982, *Federal Register* [47 FR 15079], and meets the conditions of the final ETPS. The trade is a pound for pound trade of VOCs at the same facility, and is consistent with the RACT baseline called for by EPA policy for rural ozone nonattainment areas [44 FR 20372]. None of the pollutants involved in this trade are listed under Section 112 of the Clean Air Act (NESHAP) as a hazardous material.

However, while EPA was considering this bubble, it received additional information that the SIP for the Baton Rouge MSA does not in fact provide for attainment by the end of 1987. In the November 24, 1987, *Federal Register* notice describing EPA's proposed policy for areas that are not expected to attain by the end of 1987, EPA stated that a SIP call would likely be issued for this area. 52 Fed. Reg. 45100-03. On May 26, 1988, EPA issued the SIP call for this area.

A SIP call, as a finding by EPA under Clean Air Act § 110(a)(2)(H) that the SIP is "substantially inadequate" to achieve the NAAQS, amounts to a provisional finding that the area receiving the call is, for purposes of the general applicability of the Final ETPS, a nonattainment area lacking an approved demonstration ("NALAD").

The pending bubble requirements of

the Final ETPS contemplate a bubble submitted by the State before publication of the Final ETPS, at a time when the area is a NALAD, with no EPA action on the bubble by the date of publication of the Final ETPS. These pending bubble requirements do not explicitly contemplate the circumstances here, in which the bubble was submitted by the State before publication of the Final ETPS, at a time when the area was NAWAD, but the areas subsequently received a SIP call that converted it to NALAD before EPA acted on the bubble.

EPA has determined that different policy elements should apply to this pending bubble. EPA does not believe that the bubble should be required to use a trading baseline of the lower of actual, SIP-allowable, or RACT-allowable emissions; rather, the bubble may continue to use the baseline that is consistent with the assumptions in the applicable attainment demonstration. Nor is the bubble required to show any reduction in emissions beyond the baseline.

However, EPA does believe that for these bubbles, the State should provide certain State assurances. Specifically, the State must make the following representations to EPA:

(i) The State will submit to EPA during the comment period assurances that:

—The State will submit work plans with interim milestones for submitting the revised SIP and correcting deficiencies by the time specified by EPA under the Post-87 SIP call.

—The State will submit, by the time specified by EPA, a complete plan that demonstrates attainment in accordance with the Clean Air Act and EPA policy.

—The State has dedicated appropriate resources to develop the new SIP.

(ii) If the activities committed to in the above assurances are not met, EPA may propose to revisit its approval of emissions trade determinations depending on the degree of failure to meet the commitments.

EPA believes that if the State adequately makes these representations, EPA will be able to approve this bubble on grounds that it does not interfere with attainment and maintenance of the ozone NAAQS, in accordance with Clean Air Act 110(a)(2). EPA believes that applying the policy elements described above would be consistent with the fact that the Final ETPS is a policy statement whose tests may not apply with equal force in all circumstances. Moreover, although grandfathering principles under the case law described above do not literally

apply in the case of this bubble because EPA has not issued any new rule, EPA believes that these principles provide a helpful analogy because of the changed circumstances—conversion from NAWAD to a NALAD—these areas found themselves in while EPA was considering the bubble application.

Specifically, EPA believes it appropriate to exempt this bubble from using a lower-of-actual-or-allowable baseline or providing progress beyond baseline emissions, on equitable ground: the State and the source had submitted the bubble several years ago, and had relied on the area's classification as a NAWAD in submitting the bubble. Subjecting the bubble to the stricter baseline requirements and the progress requirements would be a significant burden because the bubble would likely require significant restructuring to be approvable, which would require the State to undergo its rulemaking process again.

EPA further believes, however, that State assurances of the type described above are necessary. These assurances would protect the requirement of non-interference with attainment because the ongoing state planning process can be expected to result in a SIP that will provide for attainment.

For the reasons stated above, EPA is proposing to approve this plan. Interested persons are invited to submit comments on this proposed approval. EPA will consider all comments received within thirty days of the publication of this notice.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that the attached rule will not have a significant impact on a substantial number of small entities since it proposes no new requirements.

The Office of Management and budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of subjects in 40 CFR Part 52

Air pollution control, Ozone, Sulfur oxides, Nitrogen dioxide, Lead, Particulate matter, Carbon monoxide, Hydrocarbons, Intergovernmental relations.

Authority: 42 U.S.C. 7401-7642.

Dated: May 19, 1989.

Joe D. Winkle,

Acting Deputy Regional Administrator (6D).

[FR Doc. 89-13162 Filed 6-1-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

(MM Docket No. 89-77; DA 89-585)

Broadcast Television Service; Transfers of Control of Certain Licensed Non-Stock Entities**AGENCY:** Federal Communications Commission.**ACTION:** Proposed rule; extension of comment period.

SUMMARY: This action extends the deadline for comments in the *Notice of Inquiry* in MM Docket 89-77 concerning transfers of control of certain licensed non-stock entities (54 FR 15857, April 20, 1989) from June 1, 1989, to July 17, 1989. Also, the period for filing reply comments is extended from June 16,

1989, to July 31, 1989. This action is taken in response to a joint "Motion for Extension of Time to File Comments" filed by National Public Radio, National Federation of Community Broadcasters, National Association of Public Television Stations and the Corporation for Public Broadcasting. The extension is granted in order to allow the petitioning organizations time to survey their members and thus provide the Commission with more complete, essential data that is needed to reach a determination in this proceeding.

DATES: Comments are now due on July 17, 1989, and reply comments are due by July 31, 1989.

ADDRESS: Federal Communication Commission, Washington, DC. 20554.

FOR FURTHER INFORMATION CONTACT: David Horowitz, Mass Media Bureau, Policy and Rules Division, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's *Order Granting Motion for Extension of Time to File Comments*, adopted May 24, 1989, and released May 25, 1989. The full text of this *Order* is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Services, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73.

Radio broadcasting, Television broadcasting.

Federal Communications Commission.

Roderick K. Porter,

Acting Chief, Mass Media Bureau.

[FR Doc. 89-13044 Filed 6-1-89; 8:45 am]

BILLING CODE 6712-01-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE**Form Under Review by Office of Management and Budget**

May 26, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of P.L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, D.C. 20250, (202) 447-2118.

Revision

• Animal and Plant Health Inspection Service

Animal Welfare

VS 18-1, 18-1A, 18-3, 18-5, 18-6, 18-9, 18-11, 18-19, 18-20, 18-23

Recordkeeping; On Occasion; Weekly; Annually; one-time only State or local governments; Businesses or other for-profit; Federal agencies of employees; Non-profit institutions; Small businesses or organizations; 132,839

responses; 168,731 hours; not applicable under 3504(h)

Dr. R.L. Crawford (301) 436-7833

• Food and Nutrition Service

7 CFR Part 225—Reporting/Recordkeeping (Summer Food Service Program)

FNS 19-1, 19-2, 80, 81, 81-1, 189, and 418

Recordkeeping; Monthly

State or local governments; Small businesses or organizations; 31,160 responses; 127,818 hours; not applicable under 3504(h)

Marian Stroud (703) 756-3598

Extension

• Foreign Agriculture Service

Issuing Certificates for the Importation of Specialty Sugars

None

On occasion

Businesses or other for-profit; 50 responses; 100 hours; not applicable under 3504(h)

John L. Nuttall (202) 447-2916

• Agriculture Marketing Service

Lawn and Turf Seed Mixtures, Germination Test Dates, and Certain Labeling Requirements Under the Federal Seed Act.

None

Recordkeeping; On occasion

State or local governments; Farms;

Businesses or other for-profit; Small businesses or organizations; 14,625 hours; 37,169 responses; not applicable under 3504(h)

James P. Triplitt (301) 344-4430

• Agriculture Marketing Service

Cotton Research and Promotion Act

None

Recordkeeping; Monthly; Annually

Farms; Businesses or other for-profit; 21,800 responses; 4,602 hours; not applicable under 3504(h)

Garry L. Lewicki (202) 447-2259

Reinstatement

• Farmers Home Administration

7 CFR 1944-D, Farm Labor Housing Loan and Grant Policies, Procedures, and Authorizations

None

On occasion

State or local governments; Farms; Non-profit institutions; 740 responses; 8,442 hours; not applicable under 3504(h)

Jack Holston (202) 382-9736

Federal Register

Vol. 54, No. 105

Friday, June 2, 1989

New Collection

• Agriculture Stabilization and Conservation Service

Rice Loan Deficiency Payment Application and Certification CCC-700

On occasion

Farms; Small businesses or organizations; 56,000 responses; 14,000 hours; not applicable under 3504(h)

Beverly Pritts (202) 447-8374

Donald E. Hulcher,

Acting Departmental Clearance Officer.

[FR Doc. 89-13060 Filed 6-1-89; 8:45 am]

BILLING CODE 3410-01-M

Forest Service**Project for the Leola-Sullivan Timber Sale in the Colville National Forest, WA**

AGENCY: Forest Service, USDA.

ACTION: Revision of a notice of intent to prepare an Environmental Impact Statement published Monday, April 10, 1989 in Volume 54, Number 67 of the Federal Register.

SUMMARY: Forest Service will prepare an environmental statement (EIS) to analyze and disclose the environmental impacts of a site specific proposal to harvest and regenerate timber, construct and reconstruct roads and habitat improvement projects for wildlife in the Leola-Sullivan Timber Sale Area on the Sullivan Lake Ranger District, Pend Oreille County, Washington. This EIS will tier to the Colville Forest Plan (December 1988) which provides the overall guidance (Goals, Objectives, Standards and Guidelines, and Management Area direction) in achieving the desired future condition for the Leola-Sullivan area. The agency invites written comment and suggestions on the management of this area and the scope of this analysis. In addition, the agency gives notice of the full environmental analysis and decision making process that will occur on this project area so that interested and affected people are aware of how they may participate and contribute to the final decision.

Because this revision does not change the area or time of the original notice of intent, no additional formal comment period is planned prior to the release of the draft EIS and suggestions will be

accepted on the issues, alternative or impacts of alternatives from now until the end of the 45 day comment period on the draft EIS.

DATE: Comments concerning the management of this project area will be accepted until the comment period ends on the draft EIS. The draft EIS is expected to be available to the public in June, 1989.

ADDRESS: Submit written comments and suggestions concerning the management of Leola-Sullivan area to Edward L. Schultz, Forest Supervisor, 695 South Main, Colville, Washington 99114, or Andrew Mason, District Ranger, Route HC2, Meteline Falls, Washington 99153.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed project work and EIS should be directed to Albert Skoglund, Supervisory Forester, Route HC2, Meteline Falls, Washington 99153 (telephone: (509) 446-2681).

SUPPLEMENTARY INFORMATION: The Colville Forest Plan provides the overall guidance for management activities in the potentially affected Leola-Sullivan area through its Goals, Objectives, Standards and Guidelines, Management Area direction, and monitoring requirements.

The majority of the potentially affected area is in Caribou Habitat (Mgt. Area 2) with lesser amounts of area in High Use Recreation (Mgt. Area 3A) and Timber Production (Mgt. Area 7).

The decision to be made is what if any timber harvest timber harvest and other related site specific projects will be undertaken. Related projects could road construction and reconstruction, wildlife and fish habitat improvements, site preparation, tree planting, and thinning. This decision will be made from a range of alternatives presented in an EIS. A no-action alternative will be included. The selected alternative will identify the site specific projects to be included. The period of this action will extend over a period of about 5-7 years. This proposal will follow the Management Area direction and Standards and Guidelines set forth in the Colville National Forest Land and Resource Management Plan.

Because of the controversial nature of timber harvest and road building activities in this area, other Federal, State, and local agencies, potential timber purchasers and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Determination of potential cooperating agencies and assignment of responsibilities.

2. Identification of the issues to be addressed.

3. Identification of issues to be analyzed in depth.

4. Elimination of insignificant issues, issues covered by previous environmental review, and issues not within the scope of this decision.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat occurring as a result of this action.

Scoping for this project began in March 1989. Notification of scoping included public notices and individual communications. The scoping and analysis is expected to take about three months. The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by June 1989. At that time EPA will publish a notice of availability to the draft EIS in the Federal Register.

The comment period on the draft EIS will be 45 days from the date the EPA's notice of availability appears in the Federal Register. It is very important that those interested in the management of the Leola-Sullivan area participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act of 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *Wiscansin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the draft EIS, comments will be analyzed and considered by the Forest Service in preparing the final EIS. In the final, the Forest Service is required to respond to comments received (40 CFR 1503.4). The Final EIS is scheduled to be completed by October 1989. The responsible

official will consider the comments, responses, and consequences discussed in the EIS, applicable laws, regulations, and policies in making a decision regarding the management of the project area. The responsible official will document the decision and reasons for the Record of Decision. That decision will be subject to review under 36 CFR Part 217.

Edward L. Schultz,

Forest Supervisor.

Date: May 23, 1989.

[FR Doc. 89-13111 Filed 6-1-89; 8:45 am]

BILLING CODE 3410-11-M

Vegetative Management Practices for Exotic Plant Species; Flathead National Forest, Hungry Horse, MT; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of vegetation management practices to prevent the spread of exotic plant species on the Hungry Horse, Spotted Bear, and Swan Lake Ranger Districts, Flathead National Forest, Lake, Powell, Missoula, and Flathead Counties, Montana. The area under consideration includes portions of the Great Bear and Bob Marshall Wilderness Areas and Forest Service trail head facilities that provide access to the Bob Marshall Wilderness on the Spotted Bear, Hungry Horse, and Swan Lake Ranger Districts, Flathead National Forest. Plant species under consideration include Leafy Spurge (*Euphorbia esula*), Hound's-tongue (*Cynoglossum officinale*), Butter and Eggs (*Linaria vulgaris*), Spotted Knapweed (*Centaurea maculosa*), Whitetop (*Cardaria draba*), Musk Thistle (*Carduus nutans*), Goatweed (*Hypericum perforatum*), and Canada Thistle (*Cirsium arvense*). The Forest Service proposes multi-year vegetation management practices. Alternatives will be evaluated on a site-specific, species-specific basis and will include a no action alternative. Aerial spraying of herbicides is not being considered. The EIS will tie to the Flathead Forest Plan which provides overall guidance in achieving the desired future condition for the areas under consideration.

The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action.

Comments concerning the scope of the analysis should be received by July 1,

1989 to receive timely consideration in the preparation of the draft EIS.

Submit written comments and suggestions on the potential management opportunities to Bert Stout, District Ranger, Spotted Bear District, Box 310, Hungry Horse, MT 59919.

FOR FURTHER INFORMATION CONTACT: Rich Lasko, Interdisciplinary Team Leader, Spotted Bear District Box 310, Hungry Horse, MT 59919.

SUPPLEMENTARY INFORMATION: The Bob Marshall complex contains one of the largest expanses of Congressionally designed wilderness in the lower 48 states. The Wilderness Act defines wilderness as those areas "where the earth and the community of life are untrammeled by man." Although wilderness may be popularly perceived as those areas that are "left alone", human impacts have required that the Forest Service actively comply with the Wilderness Act mandate that wilderness be "protected and managed so as to preserve its natural condition." The Flathead Forest Plan provides a similar wilderness management goal that commits the agency to "Maintain plants and animals indigenous to the area by protecting the natural dynamic equilibrium associated with natural, complete ecosystems."

Currently the invasion of exotic species into the Bob Marshall and Great Bear Wilderness threatens the "natural condition" of these areas. Exotic species currently infesting these areas range from widely established species such as Timothy grass (*Phleum sp.*) to plants classified as noxious weeds by Montana state law. Noxious weeds such as leafy spurge (*Euphorbia esula*), spotted knapweed (*Centaurea maculosa*), and Canada thistle (*Cirsium arvense*) were introduced to North America from Eurasia and in the absence of natural control agents have spread rapidly in Montana. At the present time these species infest only very small areas in the Bob Marshall and Great Bear Wilderness. However, if left uncontrolled in the wilderness, the species could spread and significantly displace vegetation and reduce the forage available to elk, deer, and other species.

The Forest Service will consider a range of control alternatives based on the individual plant species' characteristics, the extent of infestations, the infestation site characteristics, and other factors. Alternatives will include a no action alternative as well as manual and cultural treatment methods, biological control, and herbicide use. Aerial spraying of herbicides is not being

considered. Alternatives for preventing new infestations will also be investigated. Preventive techniques could include restrictions on the type of livestock feed that may be transported into these areas. Such restrictions could apply to commercial outfitters as well as members of the general public.

All control and prevention measures implemented by the Flathead National Forest will be coordinated as necessary with the Lewis and Clark, Lolo, and Helan National Forests which administer wilderness lands adjacent to the Flathead portion of the Bob Marshall and Great Bear Wilderness.

Public participation is important at several points of the analysis. Although people may visit with Forest Service officials at any time during the analysis and prior to the decision, two time periods are specifically identified for the receipt of comments on the analysis. The two public comment periods include the scoping process (now through May) and the review period for the draft EIS (September-October, 1989). The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the Draft Environmental Impact Statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by relevant previous environmental analysis.
4. Identifying additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects, and connected actions).
6. Determining potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, will be consulted informally throughout the analysis. To meet the requirements of the Endangered Species Act, the Fish and Wildlife Service will review the EIS and biological evaluation and, if necessary, render a formal Biological Opinion of the effects on Threatened and Endangered Species.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in September, 1989. At that time the EPA will publish a notice of availability of the DEIS in the Federal Register. After a 45-day public comment period, the comments received will be analyzed and

considered by the Forest Service in the Final Environmental Impact Statement (FEIS). The FEIS is scheduled to be completed by December, 1989. The Forest Service will respond in the FEIS to the amounts received on the DEIS. The Forest Supervisor who is the responsible official for this EIS will make a decision regarding this proposal considering the comments, responses, and environmental consequences discussed in the FEIS, and the applicable laws, regulations, and policies. The decision and reasons for the decision will be documented in the Record of Decision.

Date: May 2, 1989.

Mary H. Peterson,

Deputy Forest Supervisor.

[FR Doc. 89-13122 Filed 6-1-89; 8:45 am]

BILLING CODE 3410-11-M

Cuddy Mountain Roadless Area; Payette National Forest, ID

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: On April 7, 1988, a notice of intent to prepare an environmental impact statement appeared in the Federal Register for proposed development in portions of the Cuddy Mountain Roadless area which is within the Weiser and Council Ranger Districts, Payette National Forest, Adams County, Idaho. It stated that development was the established direction in the preferred alternative of the Payette Forest Plan. It also stated that the period for public comment on issues and concerns would end May 1, 1988. The original Notice of Intent is revised as follows to further clarify the nature of the proposed action and its schedule.

In the Final Payette Forest Plan, approximately 20,600 acres of the 43,200 acre roadless area were included under a General Forest management prescription, making them available for development. The Forest Plan did not recommend any of the Cuddy Mountain Roadless Area for wilderness consideration. As part of the Forest Plan, a proposed and probable activities schedule was developed to estimate the effects of implementing the Forest Plan. The environmental impact statement (EIS) for Cuddy Mountain evaluates the potential site-specific impacts which would result from implementing management practices as specified in the Forest Plan.

Specifically the EIS will disclose the direct and indirect effects of the first

timber sale scheduled in the area, the Dukes/Grade Creek Timber Sale. Three other sales are scheduled for the area in the next 10-15 years.

A range of alternatives for this area will be considered. One of these will be nondevelopment of the area. Other alternatives will consider development designs for timber production, wildlife and fishery habitat activities, and recreation opportunities.

Philip Jahn, Council District Ranger, and Harold Laird, Welsch District Ranger, are the responsible officials.

The analysis was expected to take about seven months. Analysis has taken additional time and a draft environmental impact statement is now expected to be filed with the Environmental Protection Agency and to be available for public review by June, 1989. At that time EPA will publish a notice of availability of the DEIS in the *Federal Register*. The comment period on the draft environmental impact statement will be 45 days from the date the EPA notice of availability appears in the *Federal Register*. The final environmental impact statement is scheduled to be completed by November, 1989.

DATE: Written comments and suggestions concerning this revised notice of intent should be sent to Veto J. LaSalle, Forest Supervisor, Payette National Forest, P.O. Box 1026, McCall, ID, 83838.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Phil Gilman, Branch Chief, Planning, Programming, and Information, Payette National Forest, phone 208-634-8151.

Date: May 26, 1989.

Phil Gilman,
Branch Chief, Planning, Program, and Information.

[FR Doc. 89-13108 Filed 6-1-89; 8:45 am]
BILLING CODE 3110-11-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Caribbean Fishery Management Council; Public Hearing on Shallow-Water Reef Fish Fisheries Amendment 1

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Caribbean Fishery Management Council will hold a second

round of public hearings, in the U.S. Virgin Islands, on Amendment 1 to the Shallow-Water Reef Fishery Management Plan. Amendment 1 proposes to establish (1) a total closure of the Nassau grouper fishery and (2) an area closure to protect the spawning grounds of the red hind (grouper) southeast of St. Thomas. Comments are requested from the public and oral and/or written presentations will be accepted.

DATES: Written comments will be accepted until July 26, 1989. The public hearings are scheduled as follows:

1. June 26, 1989, 7:30 p.m., St. Croix, U.S. Virgin Islands.
2. June 27, 1989, 7:30 p.m., St. Thomas, U.S. Virgin Islands.

ADDRESSES: Written comments should be sent to the Caribbean Fishery Management Council, Suite 1108, Banco de Ponce Building, Hato Rey, Puerto Rico 00918-2577. The hearings will be held at the following locations:

1. St. Croix—Legislature Building, St. Croix, U.S. Virgin Islands.
2. St. Thomas—Blue Room, Virgin Isle Hotel, St. Thomas, U.S. Virgin Islands.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, 809-766-5926.

Dated: May 26, 1989.

Richard H. Schaefer,
Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-13066 Filed 6-1-89; 8:45 am]
BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council, the Council's Scientific and Statistical Committee (SSC), its Advisory Panel, and other Council Committees will meet on June 19-23, 1989, at the Sheraton Hotel in Anchorage, AK. Except as noted below, the meetings are open to the public.

The Council will meet on June 20 at 9 a.m., in the Kuskokwim Room at the Sheraton. The Council is scheduled to approve its revised Statement of Organization, Practices and Procedures, review public proposals for inshore-offshore preference and consider further action, as well as review opinions for addressing full utilization of groundfish and associated waste issues. The Council will also receive recommendations from its Fishery

Planning Committee on future management alternatives, and approve them for further analysis. A discussion paper on future problems and solutions for fisheries in the Gulf of Alaska and Bering Sea/Aleutian Islands will be presented, and the Council will identify specific management measures for further analysis. The Council will refine system alternatives for licenses and individual fishing quotas for sablefish and halibut, in anticipation of final analysis over the summer. The Council may also revise its schedule for considering fishery management alternatives to allow for review and alteration of the schedule at predetermined dates. Final approval of Amendment #13 to the Bering Sea/Aleutian Islands Groundfish Fishery Management Plan (FMP), and Amendment #18 to the Gulf of Alaska FMP is on the agenda, as well as review and approval of a pollock roe stripping amendment for public review. The Council will receive results from the Shelikof Strait pollock survey and will consider adjusting the pollock total allowable catch for the remainder of 1989. The Council will receive reports on current legislation, the Exxon oil spill, Habitat Committee recommendations, international fisheries, the North Pacific Council's Domestic Observer Program, the status of 1989-1990 bycatch management in the Bering Sea, and industry efforts to minimize herring bycatch. A domestic fisheries report from the Alaska Department of Fish and Game, a National Oceanic and Atmospheric Administration (NOAA) Fisheries Management Report, and a report on enforcement and surveillance by the U.S. Coast Guard will also be presented. The Council will meet in executive session (not open to the public) at least once during the week to receive updates on litigation and foreign affairs.

The Council's SSC and P are scheduled to meet in the Sheraton also during the week. Both meetings are scheduled to begin at 10 a.m., on June 19 at the hotel. The Fisheries Planning Committee is tentatively scheduled to meet on June 19 at 1:30 p.m., and the Habitat Committee is tentatively scheduled to meet at 7 p.m., on June 19. Other workgroup and committee meetings may be announced on short notice during the week.

For more information contact Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103138, Anchorage, AK 99510; telephone: (907) 271-2809.

Date: May 26, 1989.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-13068 Filed 6-1-89; 8:45 am]
BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Groundfish Select Group (GSG) will meet on June 13-14, 1989. The meeting will begin at 1 p.m., on June 13 at the Red Lion Inn-Portland Center, Coos Bay Room, 310 S.W. Lincoln, Portland, OR. The GSG will discuss management of the Pacific whiting joint venture fishery to extend the season and to reduce the bycatch of yellowtail rockfish. It will develop management options for the Pacific Council to consider at its July 12-13, 1989, meeting in San Diego, CA, and will continue deliberating long-term management options for the sablefish fisheries. For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Date: May 26, 1989.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-13069 Filed 6-1-89; 8:45 am]
BILLING CODE 3510-22-M

Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Pacific Fishery Management Council's Anchovy Advisory Subpanel, Anchovy Plan Development Team, and Scientific and Statistical Committee's (SSC) Anchovy Subcommittee will convene public meetings.

The Anchovy Subcommittee of the SSC will meet on June 23, 1989, at 1 p.m., at the National Marine Fisheries Service (NMFS), Southwest Fisheries Center, 8604 La Jolla Shores Drive, La Jolla, CA, to review the NMFS estimate of anchovy spawning biomass for 1989.

The Anchovy Advisory Subpanel and the Anchovy Plan Development Team will meet on June 27 at 10:30 a.m., at the NMFS, Southwest Regional Office, 300 South Ferry Street, Terminal Island, CA, to discuss performance of the 1988-89

anchovy fishery, preliminary 1989 spawning biomass assessment, and preliminary 1989-90 quotas. Recommendations from this meeting will be presented to the Pacific Council at its July 12-13, 1989, meeting in San Diego, CA. For more information contact Lawrence D. Six, Executive Director, Pacific Fishery Management Council, 2000 SW. First Avenue, Portland, OR 97201; telephone: (503) 326-6352.

Date: May 26, 1989.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-13070 Filed 6-1-89; 8:45 am]
BILLING CODE 3510-22-M

South Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council and its Committees will hold public meetings on June 19-23, 1989, at the Sheraton New Bern Hotel, One BiCentennial Parkway, New Bern, NC. Discussions will include large pelagics, king and Spanish mackerel, red drum, spiny lobster, habitat, and other fishery management business. The Council's Finance, Personnel, Advisory Panel Selection, and Executive Committees also will meet. The Executive Committee may hold a closed session (not open to the public). A detailed agenda will be available to the public on or about June 2, 1989.

For more information contact Carria R.F. Knight, Public Information Specialist, South Atlantic Fishery Management Council, One Southpark Circle, Suite 306, Charleston, SC 29407, telephone: (803) 571-4366.

Date: May 26, 1989.

Richard H. Schaefer,
Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-13071 Filed 6-1-89; 8:45 am]
BILLING CODE 3510-22-M

COMMISSION OF FINE ARTS

Meeting

The Commission of Fine Arts' next scheduled meeting is Thursday, 22 June 1989 at 10:00 a.m. at the Commission's offices at 708 Jackson Place, NW., Washington, DC 20006 to discuss various projects affecting the appearance of Washington, DC,

including buildings, memorials, parks, etc.; also matters of design referred by other agencies of the government. Handicapped persons should call the offices (506-1066) for details concerning access to meetings.

Inquiries regarding the agenda and requests to submit written or oral statements should be addressed to Mr. Charles H. Atherton, Secretary, Commission of Fine Arts, at the above address or call the above number.

Dated in Washington, DC 26 May 1989.

Charles H. Atherton,
Secretary.

[FR Doc. 89-13092 Filed 6-1-89; 8:45 am]
BILLING CODE 6330-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

May 26, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending limits.

EFFECTIVE DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1654).

The Governments of the United States and the People's Republic of China have agreed to amend the current limits for Categories 447, 448, 647 and 648. These amendments reflect reclassification of trade as a result of implementation of the Harmonized Commodity Code.

A copy of the current bilateral textile agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50276, published on December 14, 1988.

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements
May 26, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 6, 1988, as amended, concerning imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on June 5, 1989, the directive of December 6, 1988 is amended further to include amended limits for the following categories:

Category	Amended 12 month limit ¹
447.....	73,544 dozen.
448.....	20,673 dozen.
647.....	1,264,919 dozen.
648.....	921,367 dozen.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-13121 Filed 6-1-89; 8:45 am]
BILLING CODE 3510-DR-M

Announcement of Import Restraint Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Czechoslovak Socialist Republic

May 26, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

During negotiations held May 19-21, 1989, the Governments of the United States and the Czechoslovak Socialist Republic agreed to extend the bilateral textile agreement through May 31, 1992. The two governments also agreed to add Categories 410/624, 433 and 434 to the agreement. A formal exchange of diplomatic notes will follow.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the Memorandum of Understanding dated May 21, 1989, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements
May 26, 1989.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Memorandum of Understanding dated May 21, 1989 between the Governments of the United States and the Czechoslovak Socialist Republic; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on June 1, 1989, entry into the United States for consumption and withdrawal from warehouse for consumption of wool and man-made fiber textile products in the following categories, produced or manufactured in Czechoslovakia and exported during the

twelve-month period beginning on June 1, 1989 and extending through May 31, 1990, in excess of the following levels of restraint:

Category	12-month restraint limit
410/624.....	950,000 square meters.
433.....	8,000 dozen.
434.....	11,800 dozen.
435.....	7,300 dozen.
443.....	77,860 numbers.

Imports charged to these category limits, except Categories 410/624, 433 and 434, for the period June 1, 1988 through May 31, 1989 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by the previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement and the Memorandum of Understanding dated May 21, 1989 between the Governments of the United States and the Czechoslovak Socialist Republic.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-13122 Filed 6-1-89; 8:45 am]
BILLING CODE 3510-DR-M

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Indonesia

May 30, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: June 6, 1989.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 535-9480. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted, variously, for swing, carryforward and carryover.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 24476, published on June 29, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements
May 30, 1989.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of June 24, 1988, as amended, issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Indonesia and exported during the period which began on July 1, 1988 and extends through June 30, 1989.

Effective on June 6, 1989, you are directed to adjust the limits for cotton and man-made fiber textile products in the following categories, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and Indonesia:

Category	Adjusted 12-month limit ¹
Sublevels in group I:	
314.....	36,443,526 square meters.
336.....	95,222 dozen.
338/339.....	726,758 dozen.
351.....	140,628 dozen.
640.....	514,356 dozen.
647.....	597,533 dozen.
648.....	1,483,571 dozen.
Sublevels in group II:	
342/642.....	212,137 dozen.
369-D ²	489,525 kilograms.
638.....	278,428 dozen.

¹ The limits have not been adjusted to account for any imports exported after June 30, 1988.

² In Category 366-D, only HTS numbers 6302.60.0010 and 6302.91.0020.

The Committee for the implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-13166 Filed 6-1-89; 8:45 am]
BILLING CODE 3510-DR-M

Denial of Entry of Certain Shipments of Textiles and Textile Products From Romania

May 30, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending an export visa arrangement.

EFFECTIVE DATE: June 6, 1989.

FOR FURTHER INFORMATION CONTACT: Diana Solkoff, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854)

The Governments of the United States and the Socialist Republic of Romania agreed to amend further their current export visa arrangement to require that visas issued by the Government of Romania be stamped only in blue ink.

Shipments of textiles and textile products, produced or manufactured in Romania and exported from Romania on and after June 6, 1989 which are accompanied by visas stamped in black ink will be denied entry.

James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

May 30, 1989.
Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 29, 1983, as amended, by the Chairman, Committee for the Implementation of Textile Agreements, which established export visa requirements for certain cotton, wool and man-made fiber textile products, produced or manufactured in Romania.

Effective on June 6, 1989, you are directed to prohibit entry of textiles and textile

products, produced or manufactured in Romania and exported from Romania on and after June 6, 1989 which are visaed in black ink. Merchandise shall be visaed by the placing of an original circular stamped marking (the visa) in blue ink on the front of the commercial invoice. If the visa is not acceptable, a new visa or visa waiver must be obtained.

The Committee for the implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
James H. Babb,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-13167 Filed 6-1-89; 8:45 am]
BILLING CODE 3510-DR-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989; Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 a commodity to be produced and a service to be provided by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: July 3, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On March 24, and April 17, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notices (54 FR 12262 and 15245) of proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018).

No comments were received concerning the proposed additions to the Procurement List. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodity and service at fair market prices and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity and service listed below are suitable for procurement by the Federal Government

under 41 U.S.C. 46-48c and 41 CFR 51-2.6.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

- The actions will not result in any additional reporting, recordkeeping or other compliance requirements.
- The actions will not have a serious economic impact on any contractors for the commodity and service listed.
- The actions will result in authorizing small entities to produce the commodity and service procured by the Government.

Accordingly, the following commodity and service are hereby added to Procurement List 1989:

Enclosure, Ballistic Protective, 6920-01-089-4401. (Requirements of U.S. Army Missile Command, Redstone Arsenal, Alabama only).

Janitorial/Custodial—Federal Building Complex in the following Oklahoma City, Oklahoma locations:
U.S. Post Office/U.S. Courthouse, 215 Dean A. McGee Avenue
Federal Building/U.S. Courthouse, 200 North West Fourth Street
Alfred P. Murrah Federal Building, 200 North West Fifth Street
Federal Parking Facility, 200 North West Fifth Street

Beverly L. Milkman,
Executive Director.

[FR Doc. 89-13171 Filed 6-1-89; 8:45 am]
BILLING CODE 6350-01-0

Procurement List 1989; Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

DATE: Comments must be received on or before July 3, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3500.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.6. Its purpose is to provide interested persons an

opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government will be required to procure the commodities listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following commodities to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Pole, Folding Cot, Insect Bar 7210-00-267-5641.

Pad, Writing Paper (Repositionable)
7530-01-116-7865
7530-01-116-7866
7530-01-116-7867

Beverly L. Milkman,
Executive Director.

[FR Doc. 89-13172 Filed 6-1-89; 8:45 am]
BILLING CODE 6350-01-0

DELAWARE RIVER BASIN COMMISSION

Special Commission Meeting

Notice is hereby given that the Delaware River Basin Commission will hold a special meeting on Thursday, June 8, 1989 beginning at 10:00 a.m. in the Goddard Conference Room of its offices at 25 State Police Drive, West Trenton, New Jersey.

As part of its May 24, 1989 regular business meeting, the Commission conducted a hearing on a proposed amendment to its Comprehensive Plan to authorize future diversions of Delaware Basin water from the proposed modified Francis E. Walter Reservoir project. Based upon written comments and testimony provided in response to the Commission's May 9 hearing notice, the Commission has extended the comment period for submission of written statements on the proposal. Statements received by the close of business on June 5, 1989 will be included in the hearing record.

The subject of the June 8, 1989 special Commission meeting will be to consider the hearing record and action on the proposed reservation of a portion of Francis E. Walter Reservoir water supply storage for use in northeast Pennsylvania.

Susan M. Weisman,
Secretary.

May 25, 1989.

[FR Doc. 89-13094 Filed 6-1-89; 8:45 am]
BILLING CODE 6350-01-0

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 et seq.).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, or management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed within 30 days of publication of this notice.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI-73), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Avenue,

SW., Washington, DC 20585, (202) 586-2171.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission
2. FERC 521
3. 1902-0087
4. Headwater Benefits
5. Extension
6. On occasion
7. Mandatory
8. Businesses or other for profit, State or local governments; Federal agencies or employees
9. 14 respondents
10. 14 responses
11. 33.60 hours per response
12. 470 hours (total)
13. To carry out the legislative requirements of Section 10(f) of the FPA, which directs the Commission to determine the benefits that have been received by downstream parties from the operation of a storage reservoir or other headwater improvements, and to assess the downstream beneficiaries for a part of the annual charges for interest, maintenance and depreciation of the headwater project.

Statutory Authority:

Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Yvonne M. Bishop,

Director, Statistical Standards Energy Information Administration.

[FR Doc. 89-13170 Filed 6-1-89; 8:45 am]

BILLING CODE 6450-01-0

Financial Assistance Award Intent To Renew Grant With Florida Solar Energy Center

AGENCY: U.S. Department of Energy.

ACTION: Notice of non-competitive assistance award.

SUMMARY: The Department of Energy (DOE) announces that pursuant to 10 CFR 600.7(b)(2)(i)(A), it is restricting eligibility for a renewal award under Grant Number DE-FG01-84CE22122 to Florida Solar Energy Center (FSEC) under DOE's Building and Community System's Windows and Daylighting

Program for daylight availability research.

Scope: The objectives of this work are to advance the state-of-the-art of daylighting and fenestration design and performance evaluation in the following areas:

- (1) Contribute to the development of an international standard practice for daylight availability measurements and planning for the International Commission on Illumination (CIE) International Daylight Measurement Year (IDMY).

- (2) Continue Analysis of availability data collected at FSEC and use this to verify and extend existing theoretical models of daylight availability.

- (3) Continue to perform analyses, write papers, and develop improved design tools based upon the data collected at FSEC and elsewhere.

- (4) Continue supporting Lawrence Berkeley Laboratory (LBL) work in design tool development and evaluation.

- (5) Evaluate the relative merits of daylighting and energy efficient electric lighting in now-residential applications, for the benefit of the U.S. population and electric utility operations.

Eligibility: Eligibility for this renewal award is being limited to FSEC an institute of higher education because of their high qualifications in the fields of optical physics and fenestration system design and evaluation.

2. The FSEC has experience in the design, development, testing, and use of an integrating sphere spectrophotometer for the measurement of the solar optical properties of various materials. The Center, also, has experience in developing and using a solar calorimeter for fenestration solar radiant heat gain measurements and a specialized fast-response, multi-channel photometer for performing a variety of illumination measurements. This experience will be valuable in Task 1 and 4, assisting LBL in analyzing fenestration photometry data, and in improving the method of performing these measurements.

The FSEC has an optical laboratory designed for both indoor and outdoor tests of the solar radiant heat gain and light transmittance and distribution of various fenestration materials and components. This laboratory will be valuable for the performance of tests required to accomplish Task 1, 3, and 4.

The term of this renewal shall be from January 1, 1989 through December 31, 1989.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Rosemarie H. Marshall, MA-453.2, 1000

Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,
Director Contract Operations Division "B"
Office of Procurement Operations.

[FR Doc. 89-13169 Filed 6-1-89; 8:45 am]

BILLING CODE 6450-01-0

Federal Energy Regulatory Commission

[Docket No. CE89-421-600]

Enron Oil & Gas Co.; Petition for Declaratory Order

May 26, 1989.

Take notice that on May 19, 1989, Enron Oil and Gas Company (Enron) filed a petition requesting the Commission to issue a declaratory order stating that it has no jurisdiction over certain natural gas facilities which petitioner intends to construct and operate in federal waters offshore Texas on the Outer Continental Shelf. Petitioner contends that the facilities are gathering and production facilities under section 1(b) of the Natural Gas Act (NGA) and are, therefore, exempt from jurisdiction and the certificate requirements of the NGA.

Enron states that it proposes to construct and operate approximately 6.5 miles of 16-inch diameter pipeline with a maximum operating pressure of 1350 psig from Platform B in the northwest corner of Matagorda Island (MAT) Block 638 to a subsea connection with the existing 24-inch diameter pipeline of Northern Natural Gas Company (Northern) in MAT Block 622, which is adjacent to Amoco Production Company's (Amoco) C Platform. Enron states that other gathering lines have been constructed in this area which attach natural gas reserves to Northern's line at or near Amoco's platform in MAT Block 622. Enron also plans to construct a 12-inch diameter pipeline of approximately 2.2 miles from a proposed A Platform in the center of MAT Block 620 to a subsea tap on the aforesaid 16-inch diameter line approximately 500 feet downstream of the MAT Block 638 Platform B. Enron also contemplates constructing a 10-inch pipeline, 1.9 miles in length connecting its Platform A in MAT Block 620 to a MAT Block 620 B Platform.

Enron states that no compression facilities on the proposed 16-inch line or on the MAT Block 638 and 620 platforms would be installed initially. Enron states that approximately 75,000 MMBtu of natural gas per day is expected to flow from MAT Blocks 638 and 620 initially.

increasing to 200,000 MMBtu per day. Enron also states that if additional reserves are developed in MAT Block's 637, 651 and 652, such reserves could be attached to the proposed 16-inch pipeline.

Petitioner contends that under the primary function test set forth in *Farmland Industries, Inc.*, 23 FERC ¶ 61,063 (1989), the proposed facilities perform a gathering function which qualify the facilities for an exemption under section 1(b) of the NGA.

Any person desiring to be heard or to protest this petition should file a motion to intervene or protest in accordance with Rules 214 or 211 of the Commission's rules of practice and procedure. All motions to intervene or protest should be submitted to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, within 15 days after publication of this notice in the *Federal Register*. All protests will be considered by the Commission, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene in accordance with Rule 214. Copies of this petition are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13126 Filed 6-1-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-49-000]

National Fuel Gas Supply Corp.; Informal Settlement Conference

Take notice that on June 27, 1989 at 10:00 a.m., an informal settlement conference will be convened for the purpose of exploring a possible settlement in the above proceeding.

The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

Participants are defined by 18 CFR § 385.102(b), are invited to attend. For further information, contact Russell Mamone, (202) 357-5744.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13134 Filed 6-1-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP89-1422-000, et al.]

Stingray Pipeline Co. et al.; Natural Gas Certificate Filings

May 26, 1989.

Take notice that the following filings have been made with the Commission:

1. Stingray Pipeline Company

[Docket No. CP89-1422-000]

Take Notice that on May 17, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1422-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Midcon Marketing Corporation (Midcon), a marketer of natural gas, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Stingray states that pursuant to a transportation agreement dated March 23, 1989, under its Rate Schedule ITS, it proposes to transport up to 250,000 dekatherms (dt) per day equivalent of natural gas for Midcon. Stingray states that it would transport the natural gas from various receipt points on its system as shown in Exhibit "A" of the transportation agreement and would deliver the natural gas, less fuel and unaccounted-for line loss, to Holy Beach and OXY-NGL plant, both located in Cameron Parish, Louisiana, and Stingray-HIOS Exchange (EHI-A330) located offshore Texas. Stingray indicates that it would transport 250,000 dt on an average day and 91,250,000 dt annually.

Stingray advises that service under § 284.223(a) of the Commission's Regulations (18 CFR 284.223(a)) commenced on April 1, 1989, as reported in Docket No. ST89-3326.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1444-000]

Take notice that on May 19, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-1444-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the

Natural Gas Act for authorization to transport natural gas for Panhandle Trading Company (PTC), a shipper and marketer of natural gas, pursuant to Panhandle's blanket certificate issued in Docket No. CP86-585-000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Panhandle requests authority to transport up to 300,000 Dt. per day on an interruptible basis on behalf of PTC pursuant to a Transportation Agreement dated March 28, 1989 between Panhandle and PTC (Transportation Agreement). The Transportation Agreement provides for Panhandle to receive gas from various existing points of receipt on its system. Panhandle will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Haven Pool in Reno County, Kansas.

The Shipper states that the estimated daily and estimated annual quantities would be 275,000 Dt. and 100,375,000 Dt., respectively. Service under § 284.223(a) commenced on April 1, 1989, as reported in Docket No. ST89-3178-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Colorado Interstate Gas

[Docket No. CP89-1453-000]

Take notice that on May 19, 1989, Colorado Interstate Gas Company (CIG), Post Office Box 1087, Colorado Springs, Colorado 80944, filed in Docket No. CP89-1453-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas for Questar Energy Company (Questar), a marketer, under CIG's blanket certificate issued in Docket No. CP86-589-000, et al., pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

CIG proposes to transport up to 15,000 Mcf of natural gas per day, on an interruptible basis, for Questar pursuant to a transportation service agreement dated December 1, 1988. It is stated that CIG would receive gas from various existing points of receipt on its system in Kansas, Wyoming, and Colorado, and redeliver the subject gas, less fuel gas and lost and unaccounted-for gas, for the account of Questar in Kearny County, Kansas. CIG further states that the estimated average daily and annual quantities would be 13,500 Mcf and 4.9

Bcf, respectively. CIG states that service commenced on April 6, 1989, under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3140-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-1434-000]

Take notice that on May 18, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern) 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1434-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport gas on behalf of Mesa Operating Limited Partnership (Mesa) a marketer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern proposes to transport on an interruptible basis up to 110,000 MMBtu of natural gas equivalent per day on behalf of Mesa pursuant to a transportation agreement dated April 15, 1989, between Northern and Mesa. Northern would receive the gas at existing delivery points in Oklahoma, Kansas, Texas and New Mexico and redeliver equivalent volumes, less fuel used, at existing delivery points in Kansas, Texas, Oklahoma, Iowa, Illinois, Nebraska, Minnesota, Wisconsin and Mississippi.

Northern further states that the estimated average daily and annual quantities would be 82,500 MMBtu and 40,150,000 MMBtu, respectively. Service under § 284.223(a) commenced on April 15, 1989, as reported in Docket No. ST89-34000-000, it is stated.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Stingray Pipeline Company

[Docket No. CP89-1471-000]

Take notice that on May 22, 1989, Stingray Pipeline Company (Stingray), Post Office Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1471-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for Sun Operating

Limited Partnership (Sun), a shipper and marketer of natural gas, pursuant to Stingray's blanket certificate issued by the Commission's Order No. 509 and section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Stingray Requests authority to transport up to 38,000 Dt. per day on an interruptible basis on behalf of Sun pursuant to a Transportation Agreement dated March 27, 1989 between Stingray and Sun (Transportation Agreement). The Transportation Agreement provides for Stingray to receive gas from various existing points of receipt on its system. Stingray will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Holy Beach and OXY-NGL Plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange (EHI-A330) located offshore Texas.

The Shipper states that the estimated daily and estimated annual quantities would be 27,100 Dt. and 9,891,500 Dt., respectively. Service under Section 284.223(a) commenced on April 1, 1989, as reported in Docket No. ST89-3154.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP89-1455-000]

Take notice that on May 19, 1989, United Gas Pipe Line Company (United) P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1455-000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act for authority to provide interruptible transportation service for Phoenix Gas Pipeline Company (Phoenix), an intrastate pipeline company, under United's blanket transportation certificate which was issued by Commission order on January 15, 1988, in Docket No. CP88-6-000, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United indicates that it will receive the gas from Phoenix at various existing interconnections in the states of Texas, Louisiana, and Mississippi and deliver the gas for the account of Phoenix at various interconnections in the states of Louisiana, Mississippi, Alabama and Florida. United will transport the gas pursuant to its Rate Schedule ITS.

United proposes to transport up to 103,000 MMBtu of gas per peak and average day and approximately 37,595,000 MMBtu of gas annually. United indicates that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on April 19, 1989, pursuant to a transportation agreement dated December 6, 1988, as amended April 10, 1989. United notified the Commission of the commencement of the transportation service in Docket No. ST89-3457-000 on May 10, 1989.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1468-000]

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1468-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for PSI, Inc. (PSI), a shipper and marketer of natural gas, under its blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Panhandle proposes to transport for PSI on an interruptible basis up to 250,000 dt equivalent of natural gas on a peak day, 125,000 dt equivalent on an average day, and 45,625,000 dt equivalent on an annual basis. It is stated that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89-3174. Panhandle indicates that the service would be provided pursuant to Panhandle's Rate Schedule PT. It is stated that the service would have a primary term of one month from the initial date of service and would continue on a monthly basis thereafter. No new facilities are proposed herein.

Comment date: July 10, 1989 in accordance with Standard Paragraph G at the end of the notice.

8. ANR Pipeline Company

[Docket No. CP89-1442-000]

Take notice that on May 18, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1442-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation

service on behalf of Odeco Oil & Gas Company (Odeco), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

ANR requests authorization to transport, on an interruptible basis, up to a maximum of 30,000 dekatherms of natural gas per day for Odeco from receipt points located in Orange County, Indiana and St. Landry Parish, Louisiana, to delivery points located in Paulding, Ohio. ANR anticipates transporting an annual volume of 10,950,000 dekatherms.

ANR states that the transportation of natural gas for Odeco commenced April 1, 1989, as reported in Docket No. ST89-3364-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to ANR in Docket No. CP88-532-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Trunkline Gas Company

[Docket No. CP89-1418-000]

Take notice that on May 17, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251-1642 filed in Docket No. CP89-1418-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulation under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Heartland Gas Marketing, Inc. (Heartland) under the blanket Certificate issued in Docket No. CP88-586-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Trunkline states that it proposes to transport up to 500 dt per day on an interruptible basis on behalf of Heartland pursuant to a Transportation Agreement dated January 31, 1989, between Trunkline and Heartland (Transportation Agreement). The Transportation Agreement provides for Trunkline to receive gas from various existing points of receipt on its system. Trunkline will then transport and redeliver subject gas, less fuel and unaccounted line loss, to CIPSCO-Effingham and CIPSCO-Newton; CIPSCO-Canal/Illinois, and CIPSCO-Cave in Rock in Effingham, Williamson and Johnson Counties, Illinois.

Trunkline also states that the estimated daily and estimated annual

quantities would be 250 dt and 91,250 dt, respectively.

Trunkline further states that it commenced this service April 1, 1989, as reported in Docket No. ST89-3158-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Northern Natural Gas Company Division of Enron Corporation

[Docket No. CP89-1446-000]

Take notice that on May 18, 1989, Northern Natural Gas Company, Division of Enron Corporation (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 7725-1188, filed in Docket No. CP89-1446-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Yates Petroleum Corporation, (Yates), under the blanket certificate issued in Docket No. CP88-435-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it proposes to transport up to 100,000 MMBtu of natural gas per day for Yates, on a peak day, 75,000 MMBtu on an average day, and 36,500,000 MMBtu annually, under Rate Schedule IT-1. This service was reported to the Commission in Docket ST89-3401-000. Northern further states that construction of facilities will not be required to provide the proposed service.

Comment date: July 10, 1989 in accordance with Standard Paragraph G at the end of the notice.

11. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1465-000]

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company, (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1465-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Gas Energy Development (GED), under Panhandle's blanket certificate issued in Docket No. CP88-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle requests authorization to transport, on an interruptible basis, up to a maximum of 60,000 dt of natural gas per day for GED from receipt points located in Colorado, Kansas, Oklahoma and Texas to a delivery point located in

Reno, Kansas. Panhandle anticipates transporting, on an average day 40,000 dt and an annual volume of 14,600,000 dt.

Panhandle states that the transportation of natural gas for GED commenced April 1, 1989, as reported in Docket No. ST89-3163-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Panhandle in Docket No. CP88-585-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Stingray Pipeline Company

[Docket No. CP89-1420-000]

Take notice that on May 17, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1420-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation for Panhandle Trading Company (Panhandle), a shipper and marketer of natural gas, under Stingray's blanket certificate issued by the Commission's Order No. 509 pursuant to section 7 of the Natural Gas Act, with the corresponding rates, terms and conditions in Docket No. RP89-70-000, all as more fully set forth in the request on file with the Commission and open for public inspection.

Stingray states that it would transport up to 125,000 dt equivalent of natural gas per day on an interruptible basis on behalf of Panhandle pursuant to a transportation agreement dated March 23, 1989, between Stingray and Panhandle. It is stated that the transportation agreements provides for Stingray to receive gas from various existing points of receipt on its system, and Stingray would then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to Holly Beach and OXY-NGL Plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange located offshore Texas.

It is further stated the estimated daily and estimated annual quantities would be 75,000 dt and 27,375,000 dt equivalent of natural gas, respectively.

Stingray states that it commenced the transportation of natural gas for Panhandle on April 1, 1989, as reported in Docket No. ST89-3203 for a 120-day period, pursuant to § 284.223(a)(1) of the Commission's Regulations. Stingray further states existing facilities would be used in order to provide this transportation service.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1463-000]

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1463-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Mountain Industrial Gas Company (Mountain Industrial), a marketer, under Panhandle's blanket certificate issued in Docket No. CP88-585-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated February 10, 1989, it proposes to receive up to 2,000 dt equivalent of natural gas per day from Mountain Industrial at specified receipt points located in Colorado, Kansas, Michigan, Ohio, Oklahoma, and Texas and redeliver the gas at a specified point in Morton County, Missouri. Panhandle estimates that the peak day volumes, average day volumes, and annual volumes would be 2,000 dt equivalent of natural gas, 400 dt equivalent of natural gas, and 146,000 dt equivalent of natural gas, respectively. It is stated that on April 1, 1989, Panhandle commenced a 120-day transportation service for Mountain Industrial under § 284.223(a) as reported in Docket No. ST89-3292-000.

Panhandle further states that no facilities need be constructed to implement the service. Panhandle states that the term of the transportation service would continue on a month to month basis until terminated by either Panhandle or Mountain Industrial upon at least thirty days written notice to the other. Panhandle proposes to charge rates and abide by the terms and conditions of its Rate Schedule PT.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1466-000]

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1466-000 a request pursuant to

§ 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Natural Gas Clearinghouse, Inc. (NGC), a marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP88-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request is on file with the Commission and open to public inspection.

Panhandle proposes to transport, on an interruptible basis, up to 250,000 dt equivalent of natural gas on a peak day for NGC, 75,000 dt equivalent on an average day and 27,375,000 dt equivalent on an annual basis. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that Panhandle would receive the gas for NGC's account at designated points on Panhandle's system and would deliver equivalent volumes of gas less fuel used and unaccounted for line loss at a designated point in Reno County, Kansas. It is explained that the service commenced April 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3164.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Stingray Pipeline Company

[Docket No. CP89-1359-000]

Take notice that on May 12, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1359-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation for Shell Gas Trading Company (Shell), a shipper and marketer of natural gas, under Stingray's blanket certificate issued by the Commission's Order No. 509 pursuant to Section 7 of the Natural Gas Act, with corresponding rates, terms and conditions in Docket No. RP89-70-000, all as more fully set forth in the request on file with the Commission and open for public inspection.

Stingray states that it would transport up to 250,000 dt equivalent of natural gas per day on an interruptible basis on behalf of Shell pursuant to a transportation agreement dated March 23, 1989, between Stingray and Shell. It is stated that the transportation agreements provides for Stingray to receive gas from various existing points of receipt on its system and Stingray would then transport and redeliver

subject gas, less fuel used and unaccounted for line loss, to Holly Beach and OXY-NGL Plant located in Cameron Parish, Louisiana and Stingray-HIOS Exchange located offshore Texas.

It is further stated the estimated daily and estimated annual quantities would be 250,000 dt and 91,250,000 dt equivalent of natural gas, respectively.

Stingray states that it commenced the transportation of natural gas for Shell on April 1, 1989, as reported in Docket No. ST89-3144 for a 120-day period, pursuant to § 284.223(a)(1) of the Commission's Regulations. Stingray further states existing facilities would be used in order to provide this transportation service.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13062 Filed 6-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER89-117-000 and ER89-183-000]

Niagara Mohawk Power Corp.; Filing

May 26, 1989.

Take notice that on April 26, 1989 Niagara Mohawk Power Corporation tendered for filing with the Commission additional information in response to a letter from the Commission dated February 10, 1989. This information includes support for the pricing of short-term transmission transactions and the calculation of losses. Niagara Mohawk also submitted amendments to its agreements with UNILIL Power and Central Vermont Public Service Corporation.

Copies of this filing were served upon UNITIL Power and Central Vermont Public Service Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13127 Filed 6-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-599-000]

Rochester Gas & Electric Corp.; Filing

May 26, 1989.

Take notice that on April 13, 1989, Rochester Gas and Electric Corporation (Rochester) tendered for filing an amended Agreement between Rochester and Green Mountain Power Corporation. Rochester states that this amended Agreement is intended to supercede the original agreement and modifies such original agreement by incorporating changes agreed to in response to Staff's November 4, 1988 deficiency letter.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 8, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13128 Filed 6-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-267-008, TM89-3-8-000, RP89-176-000]

South Georgia Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 26, 1989.

Take notice that on May 22, 1989, South Georgia Natural Gas Company (South Georgia) tendered for filing the following proposed tariff sheets to First Revised Volume No. 1 of its FERC Gas Tariff, with a proposed effective date of June 1, 1989:

Fourth Revised Sheet No. 4c
Second Revised Sheet No. 16T

South Georgia submits that the proposed tariff sheets are being submitted for the purposes of: (1) Revising the allocation methodology utilized by South Georgia to flowthrough fixed take-or-pay costs allocated to it as directed by the Commission's letter order of April 28, 1989, in Docket Nos. RP88-267 and TM89-2-8; (2) reflecting the revised level of fixed take-or-pay charges allocated to South Georgia by Southern Natural Gas Company (Southern); and (3) implementing a volumetric take-or-pay surcharge on volumes of gas transported by South Georgia on behalf of current or former nonjurisdictional sales customers.

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such motions to protests should be filed on or before June 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13129 Filed 6-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-148-001]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 26, 1989.

Take notice that On May 19, 1989, Southern Natural Gas Company (Southern) tendered for filing the following sheets to its FERC Gas Tariff, Sixth Revised Volume No. 1, to be effective May 9, 1989:

Substitute Second Revised Sheet No. 30CC

Substitute Original Sheet No. 30UU.1

Southern states that on May 10, 1989, the Commission issued its Order Accepting Tariff Sheets in Docket No. RP89-148-000 (Order) in which the Commission accepted tariff sheets containing various revisions to Southern's Rate Schedules FT and IT and General Terms and Conditions thereto subject to Southern refiling tariff sheets that delete "in its sole discretion" from section 8 of Rate Schedules FT and IT. Accordingly, Southern has submitted the aforementioned revised tariff sheets in compliance with the Commission's Order to be effective May 9, 1989.

Southern states that copies of the filing were mailed to all of Southern's jurisdictional purchasers, shippers, and interested state commissions, as well as the parties listed on the Commission's official service list compiled in this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such protests should be filed on or before June 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13130 Filed 6-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-175-000 and TM89-3-7-000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

May 26, 1989.

Take notice that on May 22, 1989, Southern Natural Gas Company (Southern) tendered for filing the following proposed tariff sheets to Sixth Revised Volume No. 1 of its FERC Gas Tariff, with a proposed effective date of June 1, 1989:

Fourth Revised Sheet No. 4B.1
Fourth Revised Sheet No. 4B.2
Fourth Revised Sheet No. 4B.3

Southern states that the proposed tariff sheets reflect the flowthrough of the buy-out and buy-down costs allocated to Southern by United Gas

Pipe Line Company (United) and Sea Robin Pipeline Company (Sea Robin) to Southern's firm sales customers in compliance with the provisions of the Stipulation and Agreement in Docket Nos. RP83-58, *et al.*

Any person desiring to protest this filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR §§ 385.211 or 385.214). All such motions or protests should be filed on or before June 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13131 Filed 6-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP85-177-061, CP88-136-005, RP88-67-012]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

May 26, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 22, 1989 tendered for filing certain tariff sheets as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, and Original Volume No. 2.

Texas Eastern states that these tariff sheets are filed in compliance with the Commission's September 29, 1988 Order, 44 FERC (CCH) ¶ 61,413 (1988), entitled "Order Approving Contested Offer of Settlement and Issuing Certificates" (September 29 Order) approving the Joint Offer of Settlement filed on May 27, 1988 (May 27 Settlement) and the Commission's April 21, 1989 order, 47 FERC (CCH) ¶ 61,100 (1989), entitled "Order Denying Rehearing, Denying Request For Stay, Granting Clarification and Late Interventions," (April 21 Order), both orders issued in Docket Nos. RP85-177 and CP88-136.

Texas Eastern states that certain tariff sheets in Docket Nos. RP85-177 and CP88-136 set forth the terms and conditions under which Texas Eastern will operate pursuant to the certificates of public convenience and necessity granted by the September 29 Order in

Docket No. CP88-136-000, and accepted by Texas Eastern on October 11, 1988. Other tariff sheets in Docket No. RP88-67, set forth the rates which Texas Eastern proposes to charge commencing on the effective date of the new services.

1. New Services (Docket Nos. RP85-177 and CP88-136)

The first group of tariff sheets reflect the addition to Texas Eastern's tariff of new Rate Schedules CD-1 and CD-2 and related Forms of Service Agreements and changes to Rate Schedules FT-1 and IT-1 to reflect the transportation certificates issued by the Commission to Texas Eastern, including a blanket transportation certificate pursuant to Subpart G of the Commission's Regulations.

A Gas Supply Inventory Reservation Charge is also included in the service agreements underlying new Rate Schedules CD-1 and CD-2 and in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff applicable to Rate Schedules DCQ and GS.

Texas Eastern states that Rate Schedules CD-1, CD-2, and FT-1 Service Agreements are being prepared and will be sent to all current Rate Schedule DCQ and GS customers for execution who have requested such new agreements. Commencing on the effective date of these tariff sheets, Texas Eastern will render service to those customers who return to Texas Eastern an executed CD-1, CD-2, and FT-1 Service Agreements pursuant to the certificate authorizations granted by the Commission in its September 29 Order in Docket Nos. CP88-136-000 *et al.*, which authorizations were accepted by Texas Eastern on October 11, 1988.

2. Rates (Docket No. RP88-67)

In compliance with the September 29 and April 21 Orders, and the May 27 Settlement, Texas Eastern is submitting other tariff sheets to specify the rates Texas Eastern will charge commencing with the effective date of the new services. These rates are based upon the RP88-67 cost of service motioned into effect on September 1, 1988, and accepted subject to refund by the Commission in Docket No. RP88-67 by order dated September 28, 1988. Workpapers supporting the proposed derivation of the rates are attached to the filing. Sheet Nos. 484 and 489 incorporate Rate Schedules CD-1 and CD-2 in the Annual Overrun Penalties specified in Section 32 of Texas Eastern's General Terms and

Conditions. Section 32 is in effect subject to refund pursuant to an order dated August 31, 1988, in Docket No. RP88-221.

3. Proposed Effective Date

All of the tariff sheets are proposed to become effective on July 1, 1989, or the first day of the first month following the acceptance by the Commission of this filing without modification, whichever is later.

Texas Eastern urges that these tariff sheets be accepted at the earliest practical date. These tariff sheets is necessary to permit Texas Eastern to commence service pursuant to the certificates on July 1, 1989. If such acceptance is obtained on or before June 30, 1989, Texas Eastern states it will commence service pursuant to the executed Service Agreements under Rate Schedules CD-1, CD-2, and FT-1 and will offer open-access transportation under Rate Schedules FT-1 and IT-1 to all parties under the blanket transportation certificate as of July 1, 1989.

Copies of this filing are being posted in accordance with § 154.16 of the Commission's Regulations. Lists of All Authorized Purchasers of Natural Gas from Texas Eastern Transmission Corporation and Interested State Commissions to whom copies of this filing have been mailed by overnight mail are attached to the filing. Texas Eastern is also serving by overnight mail all parties to Docket No. RP88-67, all parties on the restricted list in Docket No. RP85-177 and all current Rate Schedule IT-1 Shippers. Accordingly, all affected parties expressing a prior interest in Texas Eastern's rates and/or the new rate schedules should receive de facto notice of this filing by May 23, 1989.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13133 Filed 6-1-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-179-00A]

Western Gas Interstate Co.; Proposed Changes in Rates and Charges

May 26, 1989.

Take notice that on May 22, 1989, Western Gas Interstate Company ("Western"), pursuant to Section 4 of the Natural Gas Act and Part 154 of the Commission's Regulations thereunder, tendered for filing proposed changes to its FERC Gas Tariff, to be effective June 21, 1989.

Western states that the rates and charges filed in this proceeding are based on the overall cost of service for the test period consisting of actual experience for the twelve months ending March 31, 1989, adjusted for known and measurable changes through December 31, 1989.

Western states that its cost allocation is essentially the same as it has historically used in previous rate cases. However, it has adopted the modified fixed variable method for cost classification and rate design.

Western further states that the proposed restructured rates are in compliance with ratemaking principles set forth in Order Nos. 500 et seq. and 436 et seq. Firm transportation services and jurisdictional sales services will include demand or reservation charges and commodity charges.

Copies of the filing are on file with the Commission and are available for public inspection.

Any person desiring to be heard or to protest Western's filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such motions or protests must be filed on or before June 5, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13132 Filed 6-1-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3598-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 15, 1989 through May 19, 1989 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(o) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in *Federal Register* dated April 14, 1989 (54 FR 15008).

Draft EISs

ERP No.: D-MMS-A02228-00. Rating EO2, Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Lease Sales Nos. 123 and 125, Offshore AL, MS, TX, and LA.

Summary: EPA's environmental objections to the proposed action in both sales are the (1) impact of unrestricted leasing on biologically sensitive offshore habitats; (2) impacts on the unique deepwater chemosynthetic communities, or so-called "Bush Hill" communities; and (3) the lack of a well-defined basis for drawing conclusions regarding the effects of offshore air emissions on onshore air quality.

Final EISs

ERP No.: F-COE-G36141-OK, Coal Creek Local Flood Protection, Implementation, City of Henryetta, Okmulgee County, OK.

Summary: EPA has no objections to the proposed action as described.

ERP No.: F-USA-A10057-00, Nationwide Biological Defense Research Program Continuation, Implementation.

Summary: EPA recommended that a number of mitigation measures be implemented in the Record of Decision. These mitigation measures include compliance with applicable environmental laws, biological safety guidance, and Army environmental requirements.

Dated: May 30, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-13175 Filed 6-1-89; 8:45 am]

BILLING CODE 6560-60-M

[ER-FRL-3598-2]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5076 or (202) 382-5074. Availability of Environmental Impact Statements Filed May 22, 1989 Through May 26, 1989 Pursuant to 40 CFR 1506.9.

EIS No. 890135, Draft, AFS, NC, Grassy Gap and Wesser Timber Sales Management Plan, Implementation, Nantahala National Forest, Graham and Swain Counties, NC, Due: July 21, 1989, Contact: Steve Rickerson (704) 479-6431.

EIS No. 890138, Draft, BLM, NV, Nellis Air Force Range Planning Area Resource Management Plan, Implementation, Nye, Lincoln and Clark Counties, NV, Due: September 1, 1989, Contact: Roger Alexander (702) 646-8800.

EIS No. 890137, Draft, AFS, CO, Lake Catamount Resort Construction, Special Use Permit, 404 Permit, Routt National Forest, Routt County, CO, Due: July 17, 1989, Contact: Sherry Reed (303) 879-1870.

EIS No. 890138, Draft, FHW, OR, US 30/ Columbia River Highway Improvements, Bennett Road to Columbia Road, Funding and 404 Permit, Columbia County, OR, Due: July 27, 1989, Contact: Dale Wilken (503) 399-5749.

EIS No. 890139, Final, FHW, PA, Airport Parkway-Southern Expressway Construction, US 22/30 and PA-60 Interchange to PA-60/Beaver Valley Expressway, Funding and Possible COE Permits, Allegheny County, PA, Due: July 3, 1989, Contact: Manuel A. Marks (717) 782-3411.

EIS No. 890140, Final, AFS, OR, Shady Beach Fire Recovery Project, Beach Mountain to Slapjack Butte, Implementation, Rigdon Ranger District, Willamette National Forest, Lane County, OR, Due: July 3, 1989, Contact: Herb Wick (503) 782-2283.

EIS No. 890141, Final, NAS, PRO, Galileo Mission Project, Galileo Spacecraft Preparation and Operation Plan, Implementation, Solar System Exploration Program (Tier 2), Due: July 3, 1989, Contact: Dudley McConnell (202) 453-1587.

EIS No. 890142, Draft, FHW, VA, VA-17 Bypass Extension, VA-17/29 Business to VA-17 northwest of Warrenton, Construction, Funding and COE General Permit, Town of Warrenton, Fauquier County, VA, Due: July 17, 1989, Contact: James Tumlin (804) 771-2371.

EIS No. 890143, Draft, BOP, MD, Cumberland Minimum Security Federal Prison Camp and Correctional Institution Facility, Construction and Operation, Mexico Farms Industrial Park, Cumberland, Allegany County, MD, Due: July 17, 1989, Contact: William Patrick (202) 272-6871.

EIS No. 890144, Final, AFS, AK, 1989-94 Ketchikan Pulp Long-Term Timber Sale Management Plan, Implementation, Tongass National Forest, Prince of Wales Island, AK, Due: SEE BELOW, Contact: Michael Lunn (907) 225-3101.

EPA has granted a reduction of the 30-day period to five days for the following harvest units:

527-102	597-115
580-118	571-132
532-107	620-117
590-125	571-133
540-109	620-122

The period for these units will end on June 6, 1989. The remaining 350 units addressed in the EIS will be subject to the 30-day wait period which will end on July 3, 1989.

Dated: May 30, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-13174 Filed 6-1-89; 8:45 am]

BILLING CODE 6560-60-M

[OPTS-59270A; FRL-3597-8]

Certain Chemicals; Approval of Test Marketing Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces EPA's approval of three applications for test marketing exemptions (TME) under section 5(h)(1) of the Toxic Substances Control Act (TSCA) and 40 CFR 720.38. EPA has designated these applications as TME-89-9, TME-89-10, and TME-89-11. The test marketing conditions are described below.

EFFECTIVE DATE: May 23, 1989.

FOR FURTHER INFORMATION CONTACT:

Mark Howard, Premanufacture Notice Management Branch, Chemical Control Division (TS-794), Office of Toxic Substances, Environmental Protection Agency, Room E-613, 401 M Street, SW., Washington, DC 20460, (202) 245-4143.

SUPPLEMENTARY INFORMATION: Section 5(h)(1) of TSCA authorizes EPA to exempt persons from premanufacture notification (PMN) requirements and permit them to manufacture or import new chemical substances for test marketing purposes if the Agency finds that the manufacture, processing,

distribution in commerce, use, and disposal of the substances for test marketing purposes will not present any unreasonable risk of injury to health or the environment. EPA may impose restrictions on test marketing activities and may modify or revoke a test marketing exemption upon receipt of new information which casts significant doubt on its finding that the test marketing activity will not present any unreasonable risk of injury.

EPA hereby approves TME-89-9, TME-89-10, and TME-89-11. EPA has determined that test marketing of the new chemical substances described below, under the conditions set out in the TME applications, for the stated time period, and under the restrictions specified below, will not present any unreasonable risk of injury to health or the environment. Production volume, use, and the number of customers must not exceed that specified in the applications. All other conditions and restrictions described in the applications and in this notice must be met.

The following additional restrictions apply to TME-89-9, TME-89-10, and TME-89-11:

A. The Applicant must establish a program whereby each person under its control who is reasonably likely to be exposed by inhalation to the TME substances is provided with, and is required to wear, at a minimum, a NIOSH-approved respirator. Such respirator must be used in accordance with 29 CFR 1910.134 and 30 CFR Part 11.

B. The Applicant shall distribute the TME substances only to persons who agree to comply with the same respiratory protection requirements imposed upon the Applicant under paragraph A. above.

C. A bill of lading accompanying each shipment must state that the use of the TME substances is restricted to that approved in the TMEs.

D. The Applicant shall maintain the following records until 5 years after the date they are created, and shall make them available for inspection or copying in accordance with section 11 of TSCA:

1. Records of the quantity of the TME substances produced and the dates of manufacture.

2. Records of dates of the shipments to each customer and the quantities supplied in each shipment.

3. Copies of the bill of lading that accompanies each shipment of the TME substances.

4. Copies of letters from distributees agreeing to comply with respirator protection requirements.

TME-89-9

Date of Receipt: April 6, 1989.

Notice of Receipt: May 4, 1989 (54 FR 19236).

Applicant: Confidential.

Chemical: (C) Substituted

Heterocycle.

Use: (G) Resin additive.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: 18 months,

commencing on the first day of manufacture.

Risk Assessment: EPA identified concerns for liver toxicity, kidney toxicity, and developmental toxicity based on an analogous chemical substance. However, during manufacturing, processing, and use, dermal exposure will be prevented by use of protective gloves, clothing, and goggles, and any inhalation exposure will be prevented by use of NIOSH-approved respirators. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

TME-89-10

Date of Receipt: April 6, 1989.

Notice of Receipt: May 4, 1989 (54 FR 19236).

Applicant: Confidential.

Chemical: (C) Substituted

Heterocyclic.

Use: (G) Intermediate.

Production Volume: Confidential.

Number of Customers: Confidential.

Test Marketing Period: 18 months,

commencing on the first day of manufacture.

Risk Assessment: EPA identified concerns for liver toxicity, kidney toxicity, and developmental toxicity based on an analogous chemical substance. However, during manufacturing, processing, and use, dermal exposure will be prevented by use of protective gloves, clothing, and goggles. No inhalation exposures are expected during manufacturing, processing, and use of this TME substance due to its form. However, should there be any change from this form which is reasonably likely to result in inhalation exposure, NIOSH-approved respirators will be required. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

TME-89-11

Date of Receipt: April 6, 1989.

Notice of Receipt: May 4, 1989 (54 FR 19236).

Applicant: Confidential.

Chemical: (C) Substituted

Heterocyclic.

Use: (G) Intermediate.
 Production Volume: Confidential.
 Number of Customers: Confidential.
 Test Marketing Period: 18 months,
 commencing on the first day of
 manufacture.

Risk Assessment: EPA identified concerns for liver toxicity, kidney toxicity, and developmental toxicity based on an analogous chemical substance. However, during manufacturing, processing, and use, dermal exposure will be prevented by use of protective gloves, clothing, and goggles, and inhalation exposure will be prevented by use of NIOSH-approved respirators. Therefore, the test market substance will not present any unreasonable risk of injury to health or the environment.

The Agency reserves the right to rescind approval or modify the conditions and restrictions of an exemption should any new information that comes to its attention which casts significant doubt on its finding that the test marketing activities will not present any unreasonable risk of injury to health or the environment.

Dated: May 23, 1989.

John W. Melone,
 Director, Chemical Control Division, Office of
 Toxic Substances.

[FR Doc. No. 13163 Filed 6-1-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[GEN Docket No. 88-476; DA 89-533]

New York Public Safety Plan

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The FCC is accepting the New York Metropolitan Area's (Region 8's) plan for public safety. By accepting this plan, the FCC enables the licensing of the 821-824/866-869 MHz spectrum for public safety to begin. The New York Metropolitan Region is the first of the 55 regions in the National Plan to be accepted.

EFFECTIVE DATE: May 22, 1989.

FOR FURTHER INFORMATION CONTACT: Maureen Cesaitis, Private Radio Bureau, Policy and Planning Branch, Washington, DC 20554, (202) 632-6497.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, adopted May 12, 1989, released May 22, 1989, accepting the New York Metropolitan Area's Plan for Public Safety. The full text of this Commission action is available for inspection and

copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of the Order may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Summary of Order

The Chief, Private Radio Bureau, and Chief Engineer have accepted the regional public safety plan for the New York Metropolitan Area, Region 8. The Region 8 plan is the first regional plan submitted to the Commission and is the culmination of the efforts of the many public safety organizations that participated in its development.

The two Bureaus said the Plan is a landmark for the public safety community. They recognized the tremendous effort that went into preparing the Region 8 Plan, which comprises counties from Connecticut, New York and New Jersey.

In 1987, the Commission established policies and rules for a National Plan for public safety services to ensure that the new six megahertz of public safety spectrum (821-824/866-869 MHz) be used effectively and efficiently for important public safety functions. The Commission established 55 regions and instructed each region to develop a plan for use of the newly allocated spectrum to meet current and future mobile communications requirements of the public safety and special emergency entities operating in the area. After each plan is completed and approved by its regional planning committee, it must be submitted to the Chief, Private Radio Bureau, and the Chief Engineer.

The Bureaus found that the Region 8 Plan conforms with the National Public Safety Plan and includes all the necessary elements specified in the 1987 Report and Order. Specifically, the plan provides a summary of its major elements, including usage guidelines, frequency reassignment, common channel implementation, encryption, use of long-range and cellular communications, application evaluation and appeal procedures. In a general description of how the spectrum is to be allotted among the various eligible users within the region, the plan "walks" through the algorithm it has adopted to maximize spectrum efficiency. The plan explains how the requirements of all eligible entities within the region were considered and met to the degree possible, and how future needs will be handled. It explains how the Plan has been coordinated with adjacent regions and offers a detailed description of how

the plan puts the spectrum to the best possible use by requiring system design within minimum coverage areas, by assigning frequencies so that maximum frequency reuse and offset channel use may be made, by using trunking, and by requiring small entities with minimal requirements to join together on a single system where possible.

The Bureaus commended the Tri-State Regional Planning Committee for its excellent work in developing the Plan for a region with a huge population concentration spread over three states and encompassing a multitude of public safety and special emergency entities. They said the Region 8 Plan represents a careful balance of public safety and special emergency mobile communications needs throughout the area and will result in efficient use of the newly allocated 800 MHz Public Safety radio spectrum. In particular, the Bureaus noted the frequency reuse plan, the way in which blocks of frequencies were organized for wide area systems, and the careful detail evident throughout, down to specific channel assignments.

Beginning May 22, 1989, individual public safety entities in Region 8 could apply for licensing in the new 800 MHz spectrum.

Ordering Clauses

3. It is ordered That the New York Metropolitan Area Regional Plan for Public Safety IS ACCEPTED, subject to amendments contained in the Order.

4. It is further ordered That this proceeding is TERMINATED.

List of Subjects in the Public Safety Plan

Public safety, Special emergency, Trunking, Land mobile.

Federal Communications Commission.

Ralph A. Waller,
 Chief, Private Radio Bureau.

Thomas P. Stanley,
 Chief Engineer.

[FR Doc. 89-13045 Filed 6-1-89; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

[Editorial Note: This is a republication of a document which was printed in the issue of April 24, 1989 at page 16405. That issue's table of contents mistakenly listed the entry for the document under the Federal Energy Regulatory Commission.]

1. The Commission has before it the following mutually exclusive applications for a new TV station:

Applicant, city and state	File No.	MM Docket No.
A. Sainte Limited; Las Vegas, NV	BPCT-881011KG	89-80
B. Blackstar Communications, Inc.; Las Vegas, NV	BPCT-881121KK	
C. Televenture Broadcasting, Inc.; Las Vegas, NV	BPCT-881128KF	
D. Lorraine Walker Arms; Las Vegas, NV	BPCT-881202KK	
E. P.Z. Entertainment Partnership L.P.; Las Vegas, NV	BPCT-881205KG	
F. Channel 15—Daniel R. Ewing, Limited Partnership; Las Vegas, NV	BPCT-881205KH	
G. Media Profiles, Inc.; Las Vegas, NV	BPCT-881205KL	
H. Tierra Alta Broadcasting, Inc.; Las Vegas, NV	BPCT-881205KJ	
I. North Las Vegas Broadcasting Co., Inc.; Las Vegas, NV	BPCT-881205KK	
J. Echonet Corporation; Las Vegas, NV	BPCT-881205KM	

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

Issue Heading and Applicant(s)

Air Hazard, E, H, I and J
 Comparative, A, B, C, D, E, F, G, H, I and J
 Ultimate, A, B, C, D, E, F, G, H, I and J

3. If there is any non-standardized issue(s) in this proceeding, the full text of the issue and the applicant(s) to which it applies are set forth in an Appendix to this Notice. A copy of the Complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW.,

Washington, DC 20037 (Telephone No. (202) 857-3800).

Roy J. Stewart, Chief, Video Services Division, Mass Media Bureau.

[FR Doc. 89-13118 Filed 6-1-89; 8:45 am]
 BILLING CODE 1505-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984. Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-000150-096.

Title: Trans-Pacific Freight Conference of Japan.

Parties:

American President Lines, Ltd.
 Barber Blue Sea
 Kawasaki Kisen Kaisha, Ltd.
 Mitsui O.S.K. Lines, Ltd.
 A. P. Moller-Maersk Line
 Neptune Orient Lines Limited
 Nippon Liner System, Ltd.
 Nippon Yusen Kaisha
 Orient Overseas Container Line, Inc.
 Sea-Land Service, Inc.

Synopsis: The proposed modification would permit the Conference Chairman to transmit certain conference information to the administrator(s) of the Trans-Pacific Discussion Agreement ("TDA"), and the Trans-Pacific Stabilization Agreement ("TSA"). It would also permit the Conference Chairman to receive information from TDA and TSA, and would permit the Conference to rely on such information to reach decisions. It would further permit one or more of the Conference's members to provide information to TDA and TSA in the course of TDA and TSA meetings.

Agreement No.: 202-003103-096.

Title: Japan-Atlantic and Gulf Freight Conference.

Parties:

Barber Blue Sea

Kawasaki Kisen Kaisha, Ltd.
 Mitsui O.S.K. Lines, Ltd.
 A. P. Moller-Maersk Line
 Neptune Orient Lines Limited
 Nippon Liner System, Ltd.
 Nippon Yusen Kaisha
 Orient Overseas Container Line, Inc.

Synopsis: The proposed modification would permit the Conference Chairman to transmit certain conference information to the administrator(s) of the Trans-Pacific Discussion Agreement ("TDA"), and the Trans-Pacific Stabilization Agreement ("TSA"). It would also permit the Conference Chairman to receive information from TDA and TSA, and would permit the Conference to rely on such information to reach decisions. It would further permit one or more of the Conference's members to provide information to TDA and TSA in the course of TDA and TSA meetings.

Agreement No.: 206-011239.

Title: United States/Middle East and Indian Subcontinent Discussion Agreement.

Parties:

The "8900" Lines
 A. P. Moller-Maersk Line
 Sea-Land Service, Inc.
 The West Coast/Middle East and West Asia Rate Agreement
 American President Lines, Ltd.
 National Shipping Company of Saudi Arabia
 United Arab Shipping Company (S.A.G.)
 Thames Shipping Ltd.
 Waterman Steamship Corporation

Synopsis: The proposed Agreement would authorize the parties to discuss and agree upon rates, terms and conditions of service, and to exchange information in the trade from U.S. ports (excluding ports in Alaska and Hawaii) and from inland and coastal points in the U.S. and Canada via such ports to all ports and points in Bahrain, Iran, Iraq, Kuwait, Oman, Qatar, Saudi Arabia, the United Arab Emirates, Pakistan, Bangladesh, Burma, Sri Lanka and India.

By Order of the Federal Maritime Commission.

Joseph C. Polking,
 Secretary.

Dated: May 30, 1989.

[FR Doc. 89-13156 Filed 6-1-89; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0072, U.S. Government Lease for Real Property, Standard Form 2. This form is a legal instrument conveying leasehold interest in real property to the Government. The form is completed by the Government to reflect negotiated terms and successful offerors must read and sign the form.

Agency: Acquisition Policy Division, GSA.

Addresses: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW, Washington, DC 20405.

Annual Reporting Burden: Firms responding, 800; responses, 1 per year; average hours per response, 5; burden hours, 400.

For Further Information Contact: Hilary Peoples 202-566-1508.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7074.

Dated: May 17, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 89-13098 Filed 6-1-89; 8:45 am]

BILLING CODE 6820-61-M

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0086, Description of Property for Possible Leasing, Lessor's Annual Cost Statement, and Proposal to Lease Space, GSA Forms 54, 1217, and 1364. GSA's responsibility is to accommodate Federal agencies in leased space. GSA Form 54 is used by persons to describe property for possible leasing. GSA Form 1217 and 1364 are used by GSA to obtain offers in a standardized format for equitable evaluation of all offers by the Government.

Agency: Acquisition Policy Division, GSA.

Addresses: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW, Washington, DC 20405.

Annual Reporting Burden: Firms responding, 3,200; responses, 1 per year; average hours per response, 7; burden hours, 22,400.

For Further Information Contact: Hilary Peoples 202-566-1508.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7074.

Dated: May 17, 1988.

Emily C. Karam,

Director, Information Management Division (CAI).

[FR Doc. 89-13099 Filed 6-1-89; 8:45 am]

BILLING CODE 6820-61-M

Material Safety Data Sheets

AGENCY: Federal Supply Service, GSA.

ACTION: Postponement of Requirement for Including Material Safety Data Sheets (MSDS) in each shipment.

SUMMARY: The April 27, 1989, Federal Register contained a notice concerning the revision of Clause I-FSS-22, Material Safety Data Sheets (MSDS), which is used in Federal Supply Service contracts for items classified as hazardous. The revision would require the contractor to (1) include one copy of the MSDS for each unit of issue in the shipment in or on the shipping container and, (2) provide a contact point for Material Safety Data Sheets. This change, which was scheduled to become effective on June 7, 1989, is postponed indefinitely, pending further agency reviews.

ADDRESS: General Supply Service, Federal Supply Service, Office of Commodity Management (FC), Operations Management Division (FCO), 1941 Jefferson Davis Highway, Crystal Mall Building No. #4, Room 718 Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: D. Michael Smith, Chief, Procurement Policy Branch on (703) 557-7950.

Nicholas M. Economou, CPPO, Director, Operations Management Division, May 28, 1988.

[FR Doc. 89-13093 Filed 6-1-89; 8:45 am]

BILLING CODE 6820-24-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse and Mental Health Administration

Alcohol, Drug Abuse, and Mental Health Services Block Grant State Waiver Guidelines: Maintenance of Effort Requirement

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

ACTION: Notice.

I. Statutory Authority

The Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988 (Pub. L. 100-690, section 2031) amends section 1916(c) of the Public Health Service Act by requiring a State to assure it will meet certain maintenance of effort requirements as a condition for receipt of the ADMS Block Grant. The amendment also authorizes the Secretary to waive this requirement based upon extraordinary economic conditions in the State.

II. Discretionary Authority

The authority provided in section 1916(c)(11)(B) is a discretionary authority. Therefore, requested waivers will not necessarily be granted in every case.

III. Pertinent Statutory Provisions

Subparagraph 1916(c)(11)(A) of the PHS Act, as amended by section 2031 of Pub. L. 100-690 provides:

The State agrees that the State will maintain State expenditures for services provided pursuant to this subpart at a level equal to not less than the average level of such expenditures maintained by the State for the 2-year period preceding the fiscal year for which the State is applying to receive payment under Section 1914.

Subparagraph 1916(c)(11)(B) provides—

The Secretary may, upon the request of a State, waive the requirement established in subparagraph (A) if the Secretary determines that extraordinary economic conditions in the State justify the waiver.

IV. Basis for Waiver

Waivers may only be granted based upon extraordinary economic conditions within the State.

V. Factors Considered in Determining Whether the Economic Conditions in the State are so Extraordinary as to Justify a Waiver

Generally, extraordinary economic conditions will be considered to be

those beyond the control of the State that so decrease the State's revenues or place such heavy unanticipated demands upon those revenues (e.g., responding to natural disasters such as major hurricane damage) as to make compliance with the maintenance of effort requirement unreasonable.

Examples of extraordinary economic conditions include—

(1) A precipitous decline in the financial resources of the State for reasons beyond the control of the State such as:

(a) A significant decrease in the value of the State's taxable resources;

(b) The removal of significant amounts of property from the State's tax roll due to commercial and/or industrial out-migration or as a result of Federal Government action;

(2) An uncontrollable diversion of available revenue to other purposes to accommodate emergency circumstances such as those resulting from a natural disaster; and

(3) Any other extraordinary economic conditions within the State affecting the State's ability to comply with the maintenance of effort requirement.

Shortfalls in State tax revenues due to tax initiatives or referenda, or the failure of the State to raise tax rates, etc., will generally not be considered extraordinary economic conditions.

VI. Form and Content of a Waiver Request

A request for a waiver may be included as a separate part of the application for the ADMS Block Grant or may be submitted separately in the form of a letter to the Administrator. In either case, the request must be specifically signed by the Governor of the State since the conditions necessary to justify the waiver will be statewide economic conditions beyond the jurisdiction of the State Agency administering the block grant and will involve issues of intrastate rebudgeting.

The request should state:

1. The nature of the extraordinary economic circumstances in the State necessitating the waiver. If the extraordinary economic conditions are conditions which existed for the two years immediately prior to the fiscal year for which the State is seeking a waiver, the State should demonstrate why such continuing conditions may be considered extraordinary in view of their continuing nature. The State should also address why these conditions have not already been reflected in State expenditures for those years thus already reducing the required maintenance of effort level for the year for which the waiver is being sought.

2. How these circumstances prevent the State from complying with the requirement.

3. The precise extent of the decrease in State ADMS expenditures that will be necessary and the subsequent level the State is able to commit to for the period of the waiver.

4. The effect of the proposed decrease in State expenditures on the individuals in the State who need alcohol, drug abuse, and mental health services.

5. The extent and manner of the State's commitment to returning to pre-waiver expenditure levels for subsequent fiscal years.

6. Any other factor the State wishes to be considered.

VII. Duration of Waiver

A waiver will only be granted for a specific Federal fiscal year. If necessary, an additional waiver must be sought for an additional fiscal year. Each subsequent year's request for a waiver will be reviewed as a "stand alone" request. No presumption concerning validity will be accorded a request due to the granting, or failure to grant, a previous request.

VIII. Effect of Waiver on the Amount of the ADMS Block Grant Award

The granting of a waiver will have no effect on the amount of the ADMS Block Grant award. The award will be for the full amount for which the State is otherwise entitled.

IX. State Notification of Disposition of Waiver Request

(1) If the States requests a waiver as part of its application and the waiver is granted, the waiver will be specified in the terms and conditions of award. If the waiver is not granted, the State will be notified by a letter from the Administrator addressed to the Governor, with a copy to the State Agency administering the ADMS Block Grant.

(2) If the States requests a waiver in the form of a letter from the Governor to the Administrator, ADAMHA, the State will receive a letter from the Administrator to the Governor, copy to the State Administering Agency, notifying the State of the disposition of the request. If the request is granted, the waiver will also be reflected in the next regularly scheduled quarterly revision to the award (if any).

The notification of a waiver being granted will contain information concerning the conditions of the waiver.

X. Submission of Application

The Secretary has delegated the authority to grant State requests for

waiver to the Administrator, Alcohol, Drug Abuse and Mental Health Administration (ADAMHA). The Administrator will review a State's request for a waiver and will provide a written decision to the State not later than 120 days after the request was received.

Consistent with Section V above, the request for waiver must be signed by the State's Chief Executive Officer (CEO), and submitted as part of the application or separately in the form of a letter. When submitted as a letter, the request should be addressed to: Frederick K. Goodwin, M.D., Administrator, Alcohol, Drug Abuse, and Mental Health Administration, 5600 Fishers Lane, Room 12-105, Rockville, Maryland 20857.

If you have any further questions on the waiver issue or the guidelines, please contact Mr. Thomas Reynolds, Grants Management Officer, ADAMHA Block Grant Programs, 5600 Fishers Lane, Room 13C-20, Rockville, Maryland 20857 (301/443-3334).

Note: The information collection requirements contained in this Notice have been submitted for review to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980. Any comments on the information collection requirements of this Notice should be directed to: U.S. Public Health Service, Attn: PRA, Hubert H. Humphrey Building, Room 721H, 200 Independence Avenue, SW., Washington, DC 20201 and to the Office of Information on Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, D.C. 20503 (Attn: Desk Officer for DHHS).

Dated: May 24, 1989.

Frederick K. Goodwin,
Administrator, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-13125 Filed 6-1-89; 8:45 am]

BILLING CODE 4160-17-M

Alcohol, Drug Abuse, and Mental Health Services Block Grant State Waiver Guidelines: 50 Percent Set-Aside for Intravenous Drug Abuse—FY 1989

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

ACTION: Notice.

I. Statutory Authority

The Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988 (Pub. L. 100-

690, section 2023), amends section 1912A of the Public Health Service Act, by authorizing the Secretary, Department of Health and Human Services, upon the request of a State, to waive all or part of the Alcohol, Drug Abuse, and Mental Health Services (ADMS) Block Grant requirement that the State expend not less than 50 percent of the State's share of the amounts appropriated in the Anti-Drug Abuse Act of 1988 (\$125 million) to carry out programs for the treatment of intravenous drug abuse, described in section 1915(c) of the PHS Act.

II. Discretionary Waiver

The granting of this waiver is a discretionary matter subject to the decision of the Secretary, based on the merits presented by the State in their request. The Secretary will assess the State request for reasonableness and consistency with the following criteria in considering each request for waiver.

III. Statutory Provisions

Section 1912A of the Public Health Service Act indicates the following:

(i)(1) For fiscal year 1989, the Secretary may not make payments to a State from amounts appropriated in the Anti-Drug Abuse Act of 1988 for allotments under this subpart unless the State agrees that—

(A) such payments will be expended only for the purpose of carrying out programs for substance abuse; and

(B) in carrying out such programs, the State will expend not less than 50 percent of such payments to carry out the programs of treatment for intravenous drug abuse described in section 1915(c).

Section 1915(c) indicates, in part, that States may use these monies to develop, implement, and operate programs of treatment for intravenous drug abuse, with priority given to programs to treat individuals infected with the etiologic agent for acquired immune deficiency syndrome; to train drug abuse counselors and other health care providers to provide such treatment; and to carry out outreach activities for the purpose of encouraging individuals in need to undergo such treatment.

(2) The Secretary may, upon request of the State, waive all or part of the requirement established in paragraph (1)(B) for the State if the Secretary determines that the incidence of intravenous drug abuse in the State does not require the level of funding required in such paragraph. The Secretary shall act upon a request for such a waiver not later than 120 days after the date on which the request is made. The Secretary may approve such a request only after providing interested persons

in the State an opportunity to comment upon the request.

IV. Guidelines for State Request for Waiver

The Secretary shall consider the extent to which the waiver request addresses or includes the following information:

A. A narrative description of the nature and extent of the incidence and prevalence of intravenous (VI) drug abuse in the State, especially as it relates to all other substance abuse (discussion should include the relative costs of treatment, if this information is available).

B. Other Federal, State, and local funding available in the State to provide services to IV drug abusers and other substance abusers in the State, in relation to the amount required to be expended by the State in accordance with this section of the Anti-Drug Abuse Act of 1988, and

C. Documented evidence of the procedure(s) used by the State to provide the opportunity for interested persons in the State to comment upon a request for this waiver.

The State must, in the request for waiver, specify the exact dollar amount to be waived by the Secretary.

The State should consider using the following data sources to support and document the request for waiver. Comparatively low numbers of IV drug abusers in the following sources would tend to support the State's request that the requirement for a 50 percent IV set-aside should be waived.

A. Narrative Description

The following information sources may be valuable for State use in documenting the extent of the IV drug problem in the State:

1. The number of clients in treatment with IV drug abuse problems, based on information from State management information systems;

2. Client information reported to the State Alcohol and Drug Abuse Profile (SADAP), as compiled by the National Association of State Alcohol and Drug Abuse Directors (NASADAD);

3. Estimates of IV drug abusers contained in the latest National Drug and Alcohol Treatment Unit Survey, jointly conducted by the National Institute on Alcohol Abuse and Alcoholism and the National Institute on Drug Abuse;

4. The number of persons known to be infected with the AIDS virus, based on an IV drug problem, as may have been reported by the State to the Federal Centers for Disease Control;

5. Information from the U.S. Department of Justice Drug Use Forecasting (DUF) system on arrestees who may have IV drug problems;

6. Arrest rates in the State related to heroin and/or cocaine possession, sale, or other criminal offenses;

7. State household or general population surveys reflecting estimates of annual and current use of drugs which have an IV route of administration; and,

8. Waiting lists in publicly-funded methadone or related types of treatment units.

The above is only a recommended list and should not be considered exhaustive.

States may also consider and discuss the number of treatment slots in the State; the utilization rate of those slots; the quality and effectiveness of treatment services for IV drug abusers in the State; and the extent and effectiveness of existing or planned outreach and/or prevention activities directed to those individuals at high risk for IV drug abuse.

B. Availability of Resources

The State request for waiver should include a brief assessment of the resources available to the State in the current fiscal year for drug abuse treatment and prevention services, with emphasis on services to individuals with an IV route of administration.

Information may be in such form and content as may be determined by the State to accurately describe the source and use of such monies based on State financial, audit, or other reporting mechanisms.

Such a description should be consistent with information the State may include in their annual reports to the Federal Government under the Alcohol, Drug Abuse, and Mental Health Services (ADMS) Block Grant. This section should also be consistent with other reporting, such as to the NASADAD survey.

C. Public Comment on the Request for Waiver

For FY 1989, the State request for a waiver must certify that there is evidence that interested persons in the State had an opportunity to comment on the State's request.

Accordingly, it is suggested that the State establish a mechanism for public input (in a manner and form to be determined by the State) which solicits comments from appropriate State and local officials, health planning organizations, community and ethnic focus groups, local elected and other

public officials, public and private sector treatment service providers, the general public, and any others who may wish to provide testimony.

D. Miscellaneous Information

The State request for waiver may contain any other evidence or documentation which the State wishes to include supporting the requested waiver.

V. Submission of Application

The Secretary has delegated the authority to grant State requests for waiver to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA). The Administrator will review a State's request for a waiver and will provide a written decision to the State not later than 120 days after the request was received.

The request for waiver must be signed by the State's Chief Executive Officer (CEO), or an official designated by the CEO, and should be limited to not more than five single-spaced pages (plus appropriate attachments). The request should be forwarded to: Frederick K. Goodwin, Administrator, Alcohol, Drug Abuse, and Mental Health Administration, 5600 Fishers Lane, Room 12-105, Rockville, Maryland 20857.

If you have any further questions on the waiver issue or the guidelines, please contact Mr. George Kanuck, Division of Intergovernmental Affairs and Data Policy, Office of Communications and External Affairs, ADAMHA, at (301) 443-3820.

Note: The information collection requirements contained in this Notice have been submitted for review to the Office of Management and Budget in accordance with the paperwork Reduction Act of 1980. Any comments on the information collection requirements of this Notice should be directed to: U.S. Public Health Service, Attn: PRA, Hubert H. Humphrey Building, Room 721H, 200 Independence Avenue, SW, Washington, DC 20201 and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, DC 20503, (Attn: Desk Officer for DHHS).

Dated: May 24, 1989.

Frederick K. Goodwin,
Administrator, Alcohol, Drug Abuse, and
Mental Health Administration.

[FR Doc. 89-13124 Filed: 6-1-89; 8:45 am]

BILLING CODE 4160-17-M

Alcohol, Drug Abuse, and Mental Health Services Block Grant State Waiver Guidelines; Construction or Rehabilitation of Substance Abuse Facilities

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration.

ACTION: Notice.

I. Statutory Authority

The Comprehensive Alcohol Abuse, Drug Abuse, and Mental Health Amendments Act of 1988 (Pub. L. 100-690, section 2024), amends section 1915 (b) of the Public Health Service Act, by authorizing the Secretary (Department of Health and Human Services) to grant a waiver for the use of funds from the Alcohol, Drug Abuse, and Mental Health Services (ADMS) Block Grant for the construction or rehabilitation of substance abuse facilities.

II. Discretionary Waiver

The granting of this waiver is a discretionary matter subject to the decision of the Secretary, based on the individual merits of each request. The Secretary will not automatically grant each waiver.

III. Statutory Provisions

Section 1915 (b) of the Public Health Service Act authorizes the Secretary to grant a waiver to use ADMS Block Grant funds for construction of a new facility or rehabilitation of an existing facility under the following circumstances:

1. Funds must be used for the construction of a new facility or rehabilitation of an existing facility, but not for land acquisition.
2. The State must demonstrate that adequate treatment cannot be provided through the use of existing facilities and that alternative facilities in existing suitable buildings are not available.
3. The State must identify a specified amount of ADMS Block Grant funds for which a waiver is sought and describe how these funds will be used to construct or rehabilitate a specified number of beds for residential treatment and/or specified number of slots for outpatient treatment. These calculations must be supported by reasonable estimates of their costs of construction or rehabilitation.
4. The State must carefully design a program that will minimize the costs of additional beds.
5. The State must agree to make available non-Federal contributions in cash for construction and rehabilitation in an amount equal to not less than \$1 for each \$1 of ADMS Block Grant funds requested for this purpose.

IV. Guidelines for State Request for Waiver

In determining whether to grant a waiver, the Secretary shall consider the extent to which the waiver application demonstrates or includes the following in a narrative justification:

A. Assessment of Need

Documentation that the State has assessed the availability and adequacy of treatment services in existing facilities in reasonable geographic proximity to the site considered for construction/rehabilitation and the clients to be served, and demonstration that suitable alternative facilities in existing buildings (schools, military facilities, etc.) are not available for these purposes. States may use any available information to support this justification, including local needs assessments, waiting lists, survey data, or other related sources.

The State must include in its request for waiver the following information:

- A brief description of the project to be funded (including the type(s) of services to be provided and the projected number of residential and/or outpatient clients to be served);
- The specific amount of ADMS Block Grant funds to be used for this project;
- If for residential treatment, the number of beds planned;
- If for outpatient treatment, the number of slots planned.

B. Estimate of Cost

The State's estimate of the total cost of the construction/rehabilitation (and a description of how these estimates were determined), based on an independent estimate of said cost, using standardized, compatible measures as determined by an appropriate State construction certifying authority. An assurance by the State that all applicable National (e.g. National Fire Protection Association, Building Officials and Codes Administrators International), Federal (National Environmental Policy Act), State, and local standards for construction/rehabilitation of health care facilities, will be complied with.

C. Obligation of Funds

Documentation of the State's commitment to obligate these funds by the end of the first year in which the funds are available, and that such funds must be expended by the end of the second year (PHS Act, section 1914(a)(2)).

D. Public Support

Certification that there is public support for a waiver (in a manner and form to be determined by the State) which allows opportunity for input from appropriate State and local health planning organizations, local governmental entities, and public and private-sector service providers that may be impacted by the waiver request. The procedure used and the results of that process should be described in the waiver request. For FY 1990 and beyond, to assure adequate public comment on these matters, the State may include a request for a waiver within the annual State legislative public hearing process, required under the Block Grant legislation (PHS Act, section 1916 (b)).

E. Use for Substance Abuse Facilities

Evidence of a State commitment to use the proposed new or rehabilitated substance abuse facility for the purposes stated in the request for waiver for its useful life—at least 20 years for new construction and at least 10 years for rehabilitated facilities. An assurance that, if the facility ceases to be used for such services, or if the facility is sold or transferred for a purpose inconsistent with the State's waiver request, monies will be returned to the Federal Government in an amount proportionate to the Federal assistance provided, as it relates to the value of the facility at the time services cease or the facility sold or transferred.

F. Minimizing the Costs

A description of the methods used to minimize the costs for additional beds, if the facility being constructed or rehabilitated is to be used for residential care. The description should document the costs of the residential facilities in the local area or other appropriate, equivalent sites in the State. The determination of how costs are to be minimized is within the discretion of the State, however, the details of how this determination was arrived at will be included in this description. If the waiver will enhance outpatient treatment slots, the State should describe what steps were taken to "minimize" these costs.

G. State Match

The Secretary will accept the following statement as evidence that the State has agreed to comply with the matching requirement: "The State of _____ agrees to match the ADMS Block Grant funds used for the described project, on a dollar for dollar cash basis,

from non-Federal contributions, totalling \$_____."

H. Miscellaneous Information

The State request for waiver may contain any other evidence or documentation which the State wishes to include supporting the requested waiver.

V. Submission of Application

The Secretary has delegated the authority to grant State requests for this waiver to the Administrator, Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA). The Administrator will review a State's request for waiver for completeness and consistency with the above guidelines, and will provide a written decision to the State not later than 120 days after the date on which the request was received.

The request for waiver must be signed by the State's Chief Executive Officer (CEO), or an official designated by the CEO, and should be limited to not more than 5 single-spaced pages (plus appropriate attachments). The request should be forwarded to: Frederick K. Goodwin, M.D., Administrator, Alcohol, Drug Abuse, and Mental Health Administration, 5600 Fishers Lane, Room 12-105, Rockville, Maryland 20857.

If you have any further questions on the waiver issue or the guidelines, please contact Mr. George Kanuck, Division of Intergovernmental Affairs and Data Policy, Office of Communications and External Affairs, ADAMHA, at (301) 443-3820.

Note: The information collection requirements contained in this Notice have been submitted for review to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980. Any comments on the information collection requirements of this Notice should be directed to: U.S. Public Health Service, Attn: PRA, Hubert H. Humphrey Building, Room 721H, 200 Independence Avenue, SW Washington, DC 20201 and the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3208, Washington, D.C. 20503 (Attn: Desk Officer for DHHS).

Dated: May 24, 1989.

Frederick K. Goodwin,
Administrator, Alcohol, Drug Abuse, and
Mental Health Administration.

[FR Doc. 89-13123 Filed 6-1-89; 8:45 am]
BILLING CODE 4160-17-M

**Centers for Disease Control
[Announcement No. 934]****Community-based Demonstration
Projects for Human Immunodeficiency
Virus (HIV) Prevention and Risk
Reduction****Introduction**

The Centers for Disease Control (CDC) announces the availability of Fiscal Year 1989 funds for Cooperative Agreements for Community-Based Demonstration Projects for Human Immunodeficiency Virus (HIV) Research Prevention and Risk Reduction activities.

Authority

This program is authorized under the Public Health Services Act: Section 317(k)(3) [42 U.S.C. 247b].

Eligible Applicants

Eligible applicants are the official State and local public health agencies, including the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau. The purpose of this program is to develop health department-based programs which can serve as models for HIV Prevention Programs. Health departments are responsible for protecting the public health within their jurisdiction, and therefore have the authority to coordinate the activities necessary to carry out this program.

Availability of Funds

Approximately \$3,500,000 is available in Fiscal Year 1989 to fund approximately 5 awards. It is expected that the average award will be \$700,000, ranging from \$350,000 to \$1,000,000. It is expected that awards will begin on or about September 1, 1989, and will be for a 12 month budget period within a 1 to 5 year project period. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

The funds available under this program are for research on the prevention of HIV infection at the community level. Funds may be used to develop, implement and evaluate new interventions, including those targeting people who are infected with HIV. Applicants are encouraged to have research groups participate in the program.

Purpose

The purpose of these awards is to promote the design, implementation, and evaluation of health department-based intensive programs in well-defined geographic/sociodemographic subdivisions which can then serve as national models of HIV Prevention Programs. These demonstration areas will design and evaluate prevention methods, determine their effectiveness and their potential applicability, document all activities and findings, and facilitate nationwide implementation of workable approaches.

Program Requirements**A. Recipient Activities**

1. Using available epidemiologic data, design and conduct assessments of strategies to identify and recruit members of at least three of the following hard-to-reach populations which may be at elevated risk for HIV infection or may be infected with HIV:

- Intravenous drug users not in treatment programs;
- Men who have sex with men but do not identify themselves as homosexual or bisexual;
- Individuals who exchange sex for drugs, money, or other services;
- Runaways, dropouts, and other youth who may engage in high risk sexual and drug using behavior; and
- Persons who are or have been sex or needle sharing partners of those listed above, especially female partners.

The applicant must provide appropriate epidemiologic information to justify including a target group not on this list. Applicants with existing cohorts of high risk individuals, whether or not they are listed above, are encouraged to continue assessment activities with them;

2. Develop, implement, and evaluate multifaceted intervention programs to change specific behaviors of individuals at risk of HIV infection in the community. These interventions should use, among other modalities, printed and audiovisual materials, fact-to-face counseling, and other language specific and culturally sensitive approaches. Such programs should focus particularly on those hard-to-reach groups identified by the applicant under activity 1, and should teach the social and technical skills needed to allow behavior change, and reinforce continued and sustained risk avoidance after behavior change has occurred;

3. Promote changes in community norms regarding HIV/AIDS risk reduction behavior by various methods including using mass and targeted media, and encouraging and enabling at

risk individuals to disseminate information to their peers about risk reduction and changes in norms for behavior. Such efforts should focus particularly on those hard-to-reach groups identified by the applicant under activity 1;

4. Undertake studies to improve the understanding of the determinants of high risk behavior among individuals at elevated risk of HIV infection, particularly, but not limited to, the hard-to-reach risk groups identified by the applicant under activity 1;

5. Undertake studies to evaluate changes in the prevalence of risk behaviors in the aforementioned and other relevant high risk groups, and to monitor changes in seroprevalence of HIV in these high risk groups;

6. Evaluate and redirect programmatic efforts in reaction to changes in behaviors and HIV infection in the identified risk groups, and use existing data from surveillance systems to monitor changes in other illnesses which may correlate with behavior change in identified risk groups or other relevant risk groups, (e.g., reportable sexually transmitted infections, hepatitis B, non-A, non-B hepatitis); and

7. Maintain the programmatic and budgetary flexibility to test the feasibility of alternative control strategies, or to conduct short-term studies which seek to replicate or examine the relevance of potentially important findings from other HIV research programs or other Community-Based Demonstration sites.

Projects funded through a cooperative agreement that involve collection of information from 10 or more individuals will be subject to review under the Paperwork Reduction Act.

**B. Centers for Disease Control
Activities**

1. Collaborate in the design of studies of incidence and prevalence of HIV infection and associated risk behaviors in the groups under investigation;

2. Collaborate in the design of all phases of the evaluation, provide consultation on data-collection instruments and procedures, and provide coordination of research and evaluation activities among sites;

3. Participate in the analysis of information gathered from these and other related studies;

4. Provide up-to-date scientific information regarding risk/protective factors for HIV transmission, and coordinate with the national program for preventing the transmission of HIV;

5. Provide technical and theoretical input in planning, operating, and evaluating prevention strategies from

other HIV prevention research projects and from the literature on behavior change and identify control strategies requiring further testing and refinement; and

6. Develop course curricula, training materials, job aids, and other learning opportunities to train personnel from other programs.

Other Requirements

Recipients must comply with the document entitled: Content of Aid-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions (October 1988) (54 FR 10049, March 9, 1989).

All recipients must have procedures in place to ensure the confidentiality of patient records.

Review and Evaluation Criteria

Applications will be reviewed and evaluated on the following criteria.

A. Competing Applications

1. The extent to which proposed objectives are specific, measurable, time-phased, and consistent with the stated purpose of this program (10 points);

2. The extent to which the applicant's proposed plan will identify and reach appropriate hard-to-reach individuals at risk for HIV, and the quality and scope of the applicant's past and current activities to provide education about HIV prevention and AIDS to high risk individuals (20 points);

3. The quality of the applicant's proposed interventions and strategies to motivate and reinforce risk reduction behavior change among hard-to-reach individuals identified by the applicant under recipient activity 1, and other relevant risk groups (15 points);

4. The quality of the applicant's proposed plan to promote changes in community norms regarding HIV prevention and risk reduction behavior, and to generate support, cooperation, and collaboration with community based organizations serving individuals at high risk for HIV (15 points);

5. The extent to which the applicant's proposed plan will determine, monitor, and measure changes in the prevalence of specific knowledge, attitudes, beliefs, and self-reported behaviors (KAB) among hard-to-reach individuals identified by the applicant under recipient activity 1, and other relevant risk groups, and will determine, monitor, and measure changes in community norms (10 points);

6. The quality of the applicant's plan, including proposed methods and

instruments of measurement, to evaluate the effectiveness of the strategies used to access hard-to-reach individuals identified by the applicant, the effectiveness of the strategies used to motivate and reinforce behavior change among those groups targeted by the interventions, and the impact of the programmatic efforts on community norms (20 points);

7. The extent to which the applicant's proposed plan will enable it to respond to and redirect programmatic efforts based on new information, changes in behavior, and changes in HIV seroprevalence (5 points); and,

8. The extent to which the proposed staff, equipment, and facilities for the project are adequate and the extent to which the applicant proposes to involve appropriate research groups (5 points);

In addition, consideration will be given to the extent to which the budget is reasonable and consistent with the intended use of funds.

B. Continuation Applications

Continuation awards within an approved project period will be made on the basis of availability of funds and documented progress toward the achievement of established short- and long-range objectives; the extent to which the objectives for the new budget period are consistent with the purposes for which the cooperative agreement was originally approved and are realistic, specific, measurable, and time-phased; and the extent to which proposed changes in the need for support, long-term objectives, methods of operation, evaluation plans or personnel are likely to enhance the success of the project. In addition, consideration will be given to the extent to which the budget request and proposed use of project funds are appropriate and reasonable.

Funding Priorities

Priority will be given to applicants applying for competing continuation funding. Current recipients have baseline and follow up data on knowledge, attitudes, beliefs and behaviors of cohorts of individuals, and have existing staff familiar with the program who have established relationships with other service providers, research institutions and community-based organizations in connection with the program.

E.O. 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.118, Acquired Immunodeficiency Syndrome (AIDS) activity.

Application Submission and Deadline

The original and two copies of the application must be submitted to Lin Dixon, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, on or before July 28, 1989.

A. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

1. Received on or before the deadline date, or

2. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

B. *Late Applications:* Applications which do not meet the criteria in A. 1. or 2. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

Information on application procedures and application package may be obtained from Anne Fogelsong, Grants Management Specialist, Grants Management Branch, Procurement and Grants Offices, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, GA 30305, (404) 842-6640 or FTS 236-6640.

Please refer to Announcement Number 934 when requesting information and submitting any application on the Request for Assistance.

Technical assistance may be obtained from Kevin O'Reilly, Ph.D., Center for Prevention Services, Centers for Disease Control, Atlanta, GA 30333, (404) 639-2570 or FTS 236-2570.

Dated: May 26, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-13084 Filed 6-1-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 89D-0162]

Uncooked Meat for Animal Food; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration. ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised Compliance Policy Guide (CPG) 7126.23 "Uncooked Meat for Animal Food." The CPG provides advice and guidance on policy and case development to FDA district offices regarding interstate shipment of raw meat from dead, dying, disabled, or diseased animals for animal food use.

ADDRESSES: Submit written requests for single copies of CPG 7126.23 to the Industry Information Staff (HFV-12), Center for Veterinary Medicine, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. CPG 7126.23 is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT:

Marie A. Urban
or
Charles M. Breen,
Center for Veterinary Medicine (HFV-236),
Food and Drug Administration,
5600 Fishers Lane,
Rockville, MD 20857,
301-443-2830.

SUPPLEMENTARY INFORMATION: FDA has prepared CPG 7126.23 "Uncooked Meat for Animal Food" to update a policy guide issued under the same title and number on October 1, 1980. The original policy guide included background information and addressed the regulatory status of such products under the Federal Food, Drug, and Cosmetic Act (the act).

FDA is aware that dead, dying, disabled, or diseased animals may be sold to salvagers for animal food use. Uncooked meat derived from such animals is adulterated under section 402(a)(5) of the act (21 U.S.C. 342(a)(5)), and its shipment in interstate commerce for animal food use is subject to

appropriate regulatory action. Meat from such animals that has not been adequately heat-processed may present a potential health hazard.

The revised guide advises the district offices to conduct preliminary investigations only as a follow-up to complaints and reports of injuries, and to contact the Center for Veterinary Medicine for advice and assistance before they expend substantial resources or recommend regulatory action.

This notice is issued under 21 CFR 10.85.

Dated: May 23, 1989.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-13039 Filed 6-1-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 87P-0274]

Canned Green Beans Deviating From the Standard of Identity; Extension of Temporary Permit for Market Testing.

AGENCY: Food and Drug Administration. ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the expiration date of a temporary permit to market test in interstate commerce canned green beans containing added glucono delta-lactone is being extended. This extension will allow the permit holder to continue experimental market testing of the product while the agency takes action on the petition to amend the standard of identity for canned green beans and canned wax beans that was submitted by the permit holder.

DATES: The new expiration date of the permit will be either the effective date of a final rule for any proposal to amend the standard of identity for canned green beans and canned wax beans that may result from the petition or 30 days after termination of such proposal.

FOR FURTHER INFORMATION CONTACT: Arthur R. Johnson, Center for Food Safety and Applied Nutrition (HFF-414), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202-485-0112.

SUPPLEMENTARY INFORMATION: A temporary permit was issued under the provisions of 21 CFR 130.17 to the Seymour Canning Co., 530 East Wisconsin St., Seymour, WI 54165, to market test experimental packs of canned green beans containing added glucono delta-lactone. The permit was issued in order to facilitate market testing of a food that deviates from the

requirements of the standard of identity promulgated under section 401 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 341). Notice of issuance of the temporary permit to the Seymour Canning Co. was published in the Federal Register of October, 22, 1987 (52 FR 39563).

Seymour Canning Co. has requested that the temporary permit be extended so that the market test period can continue while the agency considers action on a petition submitted on behalf of the Seymour Canning Co., the American National Can Co., and Finnsugar Biochemicals, Inc., to amend the standard of identity for canned green beans and canned wax beans (21 CFR 155.120). FDA has concluded that it is in the interest of consumers to issue the extension.

As provided in 21 CFR 130.17(i), FDA is inviting interested persons to participate in the market test under conditions that apply to the Seymour Canning Co., including the labeling requirements and the amounts of test product to be distributed, except that the designated areas of distribution shall not apply.

Any interested person who wishes to participate in the market test must notify, in writing, the Acting Director, Division of Food Chemistry and Technology (HFF-410), Food and Drug Administration, 200 C Street SW., Washington, DC 20204. The notification must include the amount of test product to be distributed, the areas of distribution, and labeling that will be used for the test product.

FDA is extending the expiration date so that the permit expires either on the effective date of a final rule for any proposal to amend the standard of identity for canned green beans and canned wax beans that may result from the petition or 30 days after termination of such a proposal. All other conditions and terms remain the same.

Dated: May 19, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-13040 Filed 6-1-89; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS. ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of

petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Claims Court is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Claims Court, 717 Madison Place NW., Washington, DC 20005, (202) 633-7257. For information on the Public Health Service's role in the Program, contact the Director, Vaccine Injury Compensation Program, Parklawn Building, 5600 Fishers Lane, Room 4-101, Rockville, MD 20857, (301) 443-6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of Title XXI of the PHS Act, 42 U.S.C. 300aa-10 et seq., provides that those seeking compensation are to file a petition with the U.S. Claims Court and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Claims Court is directed by statute to appoint special masters to take evidence, conduct hearings as appropriate, and to submit to the Court proposed findings of fact and conclusions of law.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the

Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a list of petitions received by PHS from April 27 through May 22, 1989. Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in petition that the petitioner either:

(a) "sustained, or had significantly aggravated, an illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first symptom or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Claims Court at the address listed above (under the heading "FOR FURTHER INFORMATION CONTACT") with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, Suite 8-05, Rockville, MD 20857. The Court's caption (Petitioner's Name v. Secretary of Health and Human Services) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of Title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

- Helen Chronister on Behalf of Dennis Wayne Childress, Madisonville, Kentucky, Claims Court Docket No. 89-41 V
- Edna O'Dell on Behalf of Michael Lee Richmond, Cedar Rapids, Iowa, Claims Court Docket No. 89-42 V

3. Barbara Brading Tison, Lebanon, Ohio, Claims Court Docket No. 89-43 V

4. James Tucker on Behalf of Calvin Tucker, Monticello, Kentucky, Claims Court Docket No. 89-44 V

5. Thomas Rousseau and Carolyn Rousseau on Behalf of Trevor Rousseau, Asuncion, Paraguay, Claims Court Docket No. 89-45 V

6. Clinton Eugene Eads and Toni Lynne Eads on Behalf of Justin Happy Eads, Shawnee, Oklahoma, Claims Court Docket No. 89-46 V

7. Ann Tom on Behalf of Manchester Tom, Honolulu, Hawaii, Claims Court Docket No. 89-47 V and 89-48 V

8. Kelli Delozier and Brown Delozier on Behalf of Mallori Delozier, Dallas, Texas, Claims Court Docket No. 89-49 V

9. Scott R. Young and Crystal Young on Behalf of Scott W. Young, Morristown, Pennsylvania, Claims Court Docket No. 89-50 V

10. Sandra Massing and Jeffery Massing on Behalf of Christopher Massing, Overland, Kansas, Claims Court Docket No. 89-51 V

11. Kyle Stinson on Behalf of Tyler McKinley Stinson, New Holland, Ohio, Claims Court Docket No. 89-52 V

12. Mina Sue McClain on Behalf of Rita Kay McClain, Milan, Tennessee, Claims Court Docket No. 89-53 V

13. Renae Flynn and Michael Flynn on Behalf of Christopher Michael Flynn, Torrance, California, Claims Court Docket No. 89-54 V

14. John Vinyard and Patsy Vinyard on Behalf of Jason Warren Vinyard, Cobb County, Georgia, Claims Court Docket No. 89-55 V.

Dated: May 28, 1989.

John H. Kelso,
Acting Administrator.

[FR Doc. 89-13041 Filed 6-1-89; 8:45 am]

BILLING CODE 4160-15-M

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on May 28, 1989. (Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. Application for Correction of Public Health Service Commissioned Corps Records—0937-0095—An application is submitted by present and former PHS Commissioned Corps officers to request correction of an error or alleged injustice in their personnel records. The information submitted is used by the Board for Correction to determine if an error or injustice has occurred and to rectify such error or injustice.

Respondents: Individuals or households, Federal agencies or employees; **Number of Respondents:** 25; **Number of Responses per Respondent:** 1; **Average Burden per Response:** 4 hours; **Estimated Annual Burden:** 100 hours.

2. HIV Prevention Programs in Minority and Other Community-Based Organizations Project Reports—NEW—CDC will award cooperative agreements to approximately 75 minority and other community-based organizations serving populations with and at risk of HIV infection and AIDS. This clearance request is to have funded HIV prevention programs submit a quarterly narrative report to CDC. These reports will be used as monitoring and evaluation mechanisms. **Respondents:** Non-profit institutions; **Number of Respondents:** 75; **Number of Responses per Respondent:** 4; **Average Burden per Response:** 4 hours; **Estimated Annual Burden:** 1,200 hours.

3. National Ambulatory Medical Care Survey—0920-0134—Data collected from office-based physicians concerning patient visits are aggregated to national statistics. The data are used by the public and private sectors for public health planning, medical education, health manpower assessment, epidemiologic studies, and other medical care utilization research. **Respondents:** Businesses or other for-profit; **Number of Respondents:** 2,600; **Number of Responses per Respondent:** 31; **Average Burden per Response:** .0437 hours; **Estimated Annual Burden:** 3,683 hours.

4. The Framingham Study (Cohort and Offspring)—0925-0216—This research project involves physical examination and testing of surviving members of the Framingham study cohort and their offspring. The study will be used to further describe the risk factors, occurrence rates and consequences of cardiovascular disease in middle-aged and older men and women. **Respondents:** Individuals or households, businesses or other for-profit, small businesses or organizations.

	No. of respondents	No. of hours per response	No. of responses per respondent
Examination and testing.....	1,600	2	1
Provider record requests.....	650	.5	1

Estimated Annual Burden..... 3,525 hours
OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: May 26, 1989.

James M. Friedman,
Acting Deputy Assistant Secretary for Health (Planning and Evaluation).

[FR Doc. 89-13158 Filed 6-1-89; 8:45 am]

BILLING CODE 4160-17-M

Office of the Assistant Secretary for Health; Privacy Act of 1974; Addition of Routine Use to an Existing System of Records

AGENCY: Public Health Service (PHS), HHS.

ACTION: Notification of a new routine use.

SUMMARY: In accordance with the requirements of the Privacy Act, PHS is publishing notice of the addition of a new routine use to system of records 09-37-0002, PHS Commissioned Corps General Personnel Records, Systems of Records, HHS/OASH/OSG.

DATES: PHS invites interested parties to submit comments to the proposed routine use on or before July 3, 1989.

ADDRESS: Please submit comments to: David W. Callagy, Director, Division of Commissioned Personnel, Office of the Surgeon General, OASH, Room 4A-15, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-3067.

Comments received will be available for inspection at the same address from 8:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paul Lichtenstein, Senior Personnel Policy Specialist, Office of the Director, Division of Commissioned Personnel, Office of the Surgeon General, OASH, Room 4A-15, Parklawn Building, 5600

Fishers Lane, Rockville, Maryland 20857, (301) 443-3067.

The numbers listed above are not toll free.

SUPPLEMENTARY INFORMATION: PHS is proposing to add a new routine use (#26) to permit disclosures to Federal Agencies of automated administrative and personnel data on those commissioned officers assigned to their respective agencies. The information to be disclosed includes data elements in the Officer Information Summary (OIS). The purpose of the disclosure is to facilitate use of this data for normal personnel functions such as determining qualifications for promotion, assignments or transfers.

Another change to the system notice is to note that officials in the Office of the Surgeon General (OSG), the parent organization of the Division of Commissioned Personnel (DCP), are authorized users of the system of records.

The final changes in this notice concern storage of the records. The records of inactive reserve officers, who are not in the ready reserve, will now be maintained at the PHS Health Data Center in Carville, LA. If an inactive reserve officer changes status, that officer's record is returned to DCP. Records for persons who no longer have an active relationship with the PHS Commissioned Corps are sent to the National Personnel Record Center (NPRC) in St. Louis, Missouri after one year. Records of retired officials will also be sent to NPRC after four years.

Dated: May 24, 1989.

Wilford J. Forbush,
Deputy Assistant Secretary for Health Operations and Director, Office of Management

09-37-0002

SYSTEM NAME:

PHS Commissioned Corps General Personnel Records, HHS/OASH/OSG.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Division of Commissioned Personnel, Office of the Surgeon General/OASH, Room 4-35, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Records in this system are kept at the address shown above when the person to whom the record pertains has an active relationship with the PHS Commissioned Corps personnel system. Records for inactive reserve officers, who are not ready reserve, who have a potential active relationship with the PHS Commissioned Corps personnel

system, are maintained at the address above.

PHS Health Data Center, GW Long Hansen's Disease Center, Building 12, Carville, Louisiana 70721.

If an inactive officer changes status, his or her records are returned to the Division of Commissioned Personnel for disposition.

Records for individuals who no longer have an active relationship with the PHS Commissioned Corps personnel system are sent to the following locations after one year.

National Personnel Record Center, Civilian Personnel Records, 111 Winnebago Street, St. Louis, Missouri 63118.

Records for retired officers are also sent to St. Louis after four years. When retired officers become deceased, the records are returned to DCP for one year and then returned to St. Louis. Records in this system that are kept at the St. Louis location are considered closed. A record is closed two years from the date on which one of the following occurs: a final decision has been made that an applicant is no longer under consideration for an appointment to the commissioned corps; the person to whom the record pertains has permanently severed all ties with PHS; or the person to whom the record pertains is deceased.

Critical data that can be used to construct key actions concerning an individual's appointment, creditable service, compensation, retirement, or benefits may be micro-fiche and stored at a location apart from the system locations shown above to serve as an emergency data base in the event the original records are destroyed. Because this data is intended to be used only in the event that the original records are destroyed, it includes only duplicates of existing records maintained at the system locations shown above. For this reason, disclosure from and access to this data will generally be unnecessary, since requests for disclosure or access will be granted from the original records.

Names and addresses of contractors given information under routine use 9 can be obtained from the system manager at the Rockville, Maryland location identified above.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who are part of or who have some relationship with the Public Health Service (PHS) Commissioned Corps, including: active duty commissioned officers, former

commissioned officers, inactive reserve officers, retired commissioned officers, deceased commissioned officers, dependents and survivors of the above, former spouses of retired officers, and applicants to the PHS Commissioned Corps.

CATEGORIES OF RECORDS IN THE SYSTEM:

These records contain:

1. Applications for appointment, references and other documents relating to qualifications or suitability for appointment and assignment, including medical intern and residency evaluations;

2. Official Personnel Folders (OPFs), for all officers who are, or were at one time, on active duty, which include: All documents related to the application and appointment process; effectiveness reports; career development and training records; documents relating to assignment, promotion, retention, separation, and all other personnel actions; records of personnel actions relating to pay, travel, and allowances (including overseas educational allowances for dependents); documentation of dependant status used to determine entitlement or eligibility for benefits and identification and privilege cards; applications and records of Service action relating to the Commissioned Officer Residency Deferment Program and Commissioned Officer Student Training and Extern Programs; survivor benefit elections; information supporting officer awards, honors and commendations; documentation supporting non-board terminations and reprimands issued after final administrative action; pay records and medical data after separation or death of the subject individual; and leave records;

3. Worksheets, internal forms, internal memoranda, and other documents which result in, or contribute to an action resulting in a record identified in 2. above;

4. Service Record Cards (summarizing personnel actions); and

5. Correspondence relating to the above.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

The Public Health Service Act (42 United States Code (U.S.C.) 202-217, 218a, 224, 228, 233, and other pertinent sections); The Social Security Act (42 U.S.C. 410(m) et seq.); portions of Title 10, U.S.C., related to the uniformed services; portions of Title 37, U.S.C., related to pay and allowances for members of the uniformed services; portions of Title 38, U.S.C., related to benefits administered by the Veterans

Administration; sections of 50 U.S.C. App., related to the selective service obligation and the Soldiers' and Sailors' Civil Relief Act; Executive Order (E.O.) 9397, "Numbering System for Federal Accounts Relating to Individual Persons;" E.O. 10450, "Security Requirements for Government Employment;" and E.O. 11140, which delegates the authority to administer the PHS Commissioned Corps from the President to the Secretary, DHHS.

PURPOSES:

The information is used by the Office of the Surgeon General (OSG), the Division of Commissioned Personnel (DCP) and Agency Heads and personnel officials of Agencies where Commissioned Officers are assigned, to:

1. Determine qualifications and suitability for appointment, selection, career development, training, promotions, assignments, mobilization, temporary duty, and other types of officer utilization;

2. Determine eligibility for pay, allowances, entitlements, privileges, and benefits;

3. Prepare the Commissioned Officer Roster and Promotion Seniority of the Public Health Service;

4. Determine the eligibility or entitlements of dependents and beneficiaries for benefits based on the service of a PHS commissioned officer;

5. Give legal force and effect to personnel transactions and establish officer rights and obligations under the pertinent laws and regulations governing the commissioned corps personnel system;

6. Provide material for research by the Office of the Secretary, HHS, and the Office of the Assistant Secretary for Health, PHS, concerning the activities of health professionals.

7. Provide information to DHHS components seeking to collect an overdue debt to the Federal government, but only to the extent necessary to collect that overdue debt; and

8. Provide information about professional qualifications, past performance, and career interests of PHS officers to Department and Agency officials involved in the selection or assignment of an officer to a particular program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

These records or information from these records may be used:

1. To locate individuals for personnel research or survey response, and in the production of summary descriptive statistics and analytical studies in

support of the function for which the records are collected and maintained, or for related work force studies. While published statistics and studies do not contain individual identifiers, in some instances the selection of elements of data included in the study may be structured in such a way as to make the data individually identifiable by inference.

2. To disclose information to a congressional office from the record of an individual in response to a verified inquiry from the congressional office made at the written request of that individual.

3. To the Department of Justice, to a court or other tribunal, when:

(a) HHS, or any component thereof; or

(b) Any HHS employee in his or her official capacity; or

(c) Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or

(d) The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components.

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the court, or other tribunal is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purpose for which the records are collected.

4. To disclose information, such as, but not limited to, name, home address, social security number, earned income, withholding status, and amount of taxes withheld, to the Department of Treasury for the following purposes: Preparation and issuance of salary, retired pay, and annuity checks; issuance of U.S. Savings bonds; recording income information; and collecting income taxes.

5. To disclose to State and local government agencies having taxing authority pertinent records relating to employees, retirees, and annuitants, including name, home address, social security number, earned income, and amount of taxes withheld, when these agencies have entered into tax withholding agreements with the Secretary of Treasury, but only to those State and local taxing authorities for which a member, retiree, or annuitant is or was subject to tax, regardless of whether tax is or was withheld.

6. To disclose pertinent information to appropriate Federal, State, or local

agencies; international agencies; or foreign governments responsible for investigating, prosecuting, enforcing, or implementing statutes, rules, regulations, or orders, when PHS becomes aware of evidence of a potential violation of civil or criminal law.

7. To disclose information to an individual who has been asked to provide a reference, to the extent necessary to clearly identify the individual to whom the reference will pertain, inform the source of the purpose(s) of the reference, and to identify the type of information requested from the source, where necessary to obtain information relevant to an agency decision concerning the hiring or retention of any employee, the issuance of a security clearance, the conducting of a security or suitability investigation of an individual, the classifying of jobs, the letting of a contract, or the issuance of a license, grant, or other benefit.

8. To disclose to any agency in the executive, legislative, or judicial branch; the District of Columbia Government; a State or local government agency; a professional credentialing agency; or a nonprofit institution; in response to its request, or at the initiation of the Public Health Service, information in connection with the hiring of an employee; the issuance of a security clearance; the conducting of a security or suitability investigation of an individual; the classifying of jobs; the letting of a contract; the issuance of a license, grant or other benefit by the requesting agency; or the lawful statutory, administrative, or investigative purpose of the agency to the extent that the information is relevant and necessary to the requesting agency's decision on the matter. Information disclosed to professional credentialing or licensing organizations may be made through the computer matching program described in the Federal Register, January 19, 1986 (52 FR 1302).

9. When the Department contemplates contracting with a private firm for the purpose of collating, analyzing, aggregating, or otherwise refining records in this system, relevant records will be disclosed to such a contractor. The contractor shall be required to maintain Privacy Act safeguards with respect to such records. These safeguards are explained in the section entitled "Safeguards."

10. To disclose information to the Department of State and officials of foreign governments for the issuance of passports, visas, and other clearance before an active, retired, or inactive

reserve officer is assigned to that country.

11. To disclose information to the Department of Labor, Veterans Administration, Social Security Administration, or other Federal agencies having special employee benefit programs; to a national, State, county, or municipal agency; or to a publicly recognized charitable organization when necessary to adjudicate a claim under a benefit program, or to conduct analytical studies of benefits being paid under such programs, provided such disclosure is consistent with the purposes for which the information was originally collected.

12. To disclose information to the Office of Management and Budget (OMB) at any stage in the legislative coordination and clearance process in connection with private relief legislation as set forth in OMB Circular No. A-19, or for budgetary or management oversight purposes.

13. When an individual to whom a record pertains is mentally incompetent or under other legal disability, information in the individual's record may be disclosed to any person who is legally responsible for the care of the individual, to the extent necessary to assure payment of benefits to which the individual is entitled.

14. To respond to interrogatories in the prosecution of a divorce action or settlement for purposes stated in 10 U.S.C. 1408 ("The Former Spouses' Protection Act").

15. To disclose information about the entitlements and benefits of a beneficiary of a deceased active duty officer, retiree, or annuitant for purposes of making disposition of the estate.

16. To disclose information to the Department of Defense, United States Coast Guard, or Federal Emergency Management Agency, to the extent necessary to facilitate participation of PHS members in planning, training, and emergency operations in support of civil defense activities, and to provide support in the event of a national emergency.

17. To disclose information to Government training facilities (Federal, State, and local) and to non-Government training facilities (e.g., private vendors of training courses or programs, private schools) for training purposes, such as crediting of work experience in the Commissioned Office Student Training and Extern Program, or verification of status or income.

18. To disclose information to the Defense Enrollment/Eligibility Reporting System (DEERS), uniformed services medical treatment facilities and to the

Department of Defense Office of the Civilian Health and Medical Program of the Uniformed Services, when the information is needed to verify the eligibility of an officer, his/her dependents, or a former spouse for medical benefits.

19. To disclose information to agencies or organizations established in medically underserved areas who apply to the National Health Service Corps for the assignment of commissioned officers to such agencies or organizations.

20. To disclose information on officers assigned to Federal health care facilities to private sector (i.e., other than Federal, State, or local government) agencies, boards, or commissions (e.g. the Joint Commission on Accreditation of Hospitals), to obtain accreditation or other approval rating but only to the extent that the information disclosed is relevant and necessary for that purpose.

21. When Federal agencies having the power to subpoena other Federal agencies' records, such as the Internal Revenue Service or the Civil Rights Commission, issue a subpoena to the Department for records in this system of records, the Department may make such records available.

22. To disclose to a private employer who is considering hiring a former officer information such as the officer's dates of employment, salary, job title and description, duty station, and character and nature of separation.

23. To disclose information to the Equal Employment Opportunity Commission when requested in connection with investigations into alleged or possible discrimination practices in the Federal sector, examination of Federal affirmative employment programs, or other functions vested in the Commission by the President's Reorganization Plan No. 1 of 1978.

24. To disclose to Federal and non-Federal agencies information allowing the consideration and selection of officers for honor awards made as a result of the individuals work as a commissioned officer, and to publicize those awards granted. This may include disclosure to other public and private organizations, including news media, which grant or publicize officer awards and honors.

25. To disclose information to officials of the Selective Service Administration to allow crediting of active service performed by an individual with PHS so that the individual may be properly classified if draft laws once again become operative.

26. To disclose administrative and personnel information, including data

elements reflected in the Officer Information Summary (OIS), to authorized officials in Federal agencies where commissioned officers are assigned, such as the State Department; the Department of Defense; the Department of Justice, Bureau of Prisons and the Immigration and Naturalization Service; the Transportation Department, United States Coast Guard; the Environmental Protection Agency; the Interior Department, United States Park Service; and the Commerce Department, National Oceanic and Atmospheric Administration.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated files are stored on disks, micro-fiche, and magnetic tapes. Nonautomated (hard-copy) files are kept in offices, and may be stored in Lektriers, Conserv-a-files, safes, cabinets, bookcases, or desks.

RETRIEVABILITY:

Alphabetically by name, by PHS serial number, and by Social Security Number in accordance with Section 7(a)(2)(B) of the Privacy Act and Executive Order 9397, "Numbering System for Federal Accounts Relating to Individual Persons".

Safeguards

1. Authorized Users

a. *Automated Records.* Access to and use of automated records is limited to (1) personnel employed in the Office of the Surgeon General, (2) personnel employed in the Division of Commissioned Personnel, Office of the Surgeon General/PHS, (3) authorized officials in HHS components and organizations where commissioned officers are assigned whose official duties require such access and (4) authorized officials in other Federal agencies, such as those in routine use 26 above, where commissioned officers are assigned whose official duties require such access. Automated data is provided to Department personnel officials to update information contained in their personnel records and pay, leave and attendance systems. The Commissioned Officers and Field Systems Division (COFSD), Office of the Assistant Secretary for Personnel, provides computer design, programming and support to DCP, and has access to the data to the extent necessary to facilitate the provision of these services to DCP. However, COFSD personnel are not authorized to grant access to or make disclosures from automated data

in this system to *anyone* (ital.) or any organization (ital.) without the express written approval of the Director of DCP or to an official to whom this authority has been delegated.

b. *Nonautomated records.* Access to and use of nonautomated records is limited to departmental employees whose official duties require such access or to individuals needing access to the information for purposes stated under routine uses. These individuals are permitted access to records only after they have satisfactorily identified themselves as having an official need to review the information and have provided satisfactory proof of their identities. Access is also granted to individuals who have written permission to review the record when that permission has been obtained from the individual to whom the record pertains. All individuals from outside the Department, to whom disclosure is made pursuant to a routine use, must complete Privacy Act nondisclosure oaths and must submit written requests for access to these records showing the name and employing office of the requester, the date on which the record is requested, and the purpose for reviewing the information in the record. This written request is then placed into the record.

2. Physical safeguards

a. *Automated records.* Terminals by which automated records are accessed are kept in offices secured with combination locks. Automated records on magnetic tape, disks, and other computer equipment are kept in rooms designed to protect the physical integrity of the record media and equipment. These rooms are within inner offices to which access is permitted only with special clearance. Outer offices are secured with combination locks. During nonwork hours all cabinets, storage facilities, rooms and offices are locked and the premises are patrolled regularly by building security forces.

b. *Nonautomated records.* Nonautomated records are kept in such a way as to prevent observation by unauthorized individuals while the records are actively in use by an authorized employee. When records are not in use, they are closed and secured in desk drawers with locks, metal filing cabinets with locks, or other security equipment, all of which are kept inside authorized office space which is locked whenever it is not in use. Keys to furniture and equipment are kept only by the individual who is assigned to that furniture or equipment and by the DCP security officer or by the Director of the PHS Data Records Center.

3. Procedural safeguards

a. *Automated records.* Automated records are secured by assigning individual access codes to authorized personnel, and by use of passwords for specific records created by authorized personnel. Access codes and passwords are changed for each authorized user approximately every 90 days, on a random schedule. In addition, programming for automated records allows authorized personnel to access only those records that are essential to their duties. Remote access to automated data from remote terminals is restricted to the CSG and Agency personnel officials where Commissioned Officers are employed. No access is permitted to Agencies that do not have automated personnel recordkeeping systems that comply with Privacy Act requirements.

b. *Nonautomated records.* All files are secured when employees are absent from the premises and are further protected by combination locks on entryways and by the building security force. Official records may not be removed from the physical boundaries of DCP. When records are needed at a remote location, copies of the records will be provided. When copying records for authorized purposes, care is taken to ensure that any imperfect or extra copies are not left in the reproduction room where they can be read, but are destroyed or obliterated.

4. Implementing Guidelines.

Safeguards for automated records are provided in accordance with Part 6 of the Department's Information Resources Management Manual. Safeguards for nonautomated records are provided in accordance with chapters 45-13 and PHS.hf:45-13 of the Department's General Administration Manual.

5. *Contractor Guidelines.* A contractor who is given records under routine use 9 must maintain the records in a secured area, allow only those individuals immediately involved in the processing of the records to have access to them, prevent any unauthorized persons from gaining access to the records, caution employees about the confidentiality of the records, and return the records to the System Manager immediately upon completion of the work specified in the contract. Contractor compliance is assured through inclusion of Privacy Act requirements in contract clauses, and through monitoring by contract and project officers. Contractors who maintain records are instructed to make no disclosure of the records except as authorized by the System Manager.

Retention and disposal: These records are maintained for varying periods of time. Applicant files of individuals selected for appointment as commissioned officers become the Official Personnel Folder. Applicant files of individuals not selected for appointment are maintained for two years after the application process has been completed and are then destroyed, unless an applicant requests that the file be held open for an additional year. The OPF is maintained for one year after an officer separates from active duty, at which time such officer's OPF is transferred to a Federal Records Center for permanent storage. The OPF for inactive reserve officers is maintained at the PHS Health Data Center. When inactive reserve officers change status, the OPF is returned to DCP.

The records of a deceased officer are maintained until one year after an individual's death and are then transferred to a Federal Records Center for permanent storage, unless a dependent of a deceased officer continues to receive benefits from PHS based upon the deceased's PHS service. When a dependent or beneficiary dies or becomes ineligible for further benefits based on a deceased officer's service, all records are maintained for one year, in the event information is needed from the records to help settle an estate, and are then transferred to the Federal Records Center for permanent storage.

Service Record Cards, which list critical data with regard to the dates of all officers' appointments, reassignments, separations, retirements and deaths are maintained permanently by the System Manager.

SYSTEM MANAGER AND ADDRESS:

Director, DCP (See System Location above).

NOTIFICATION PROCEDURE:

Same as Access Procedures. Requesters should also reasonably specify the record contents being sought.

RECORD ACCESS PROCEDURES:

1. *General procedures.* An individual seeking access to his/her records may initially contact any DCP office or employee for information about obtaining access to the records. DCP employees will inform each individual of the appropriate procedures to follow. Each individual seeking access will be required to verify his/her identity to the satisfaction of the DCP employee providing access. Refusal to provide sufficient proof of identity will result in denial of the request for access until such time as proof of identity can be obtained. The system manager, the

Director, DCP, has delegated authority to release automated records to the Assistant Director for Operations, DCP and the authority to release nonautomated records to the DCP Privacy Act Coordinator and Branch Chiefs.

2. *Requests in person.* An individual who is the subject of a record and who appears in person seeking access shall provide his/her name and at least one piece of tangible identification (e.g., PHS Commissioned Corps Identification Card, driver's license, passport, or voter registration card). Identification cards with current photographs are preferred but not required. The record will be reviewed in the presence of an appropriate DCP employee, who will answer questions and ensure that the individual neither removes nor inserts any material into the record without the knowledge of the DCP employee. If the individual requests a copy of any records reviewed, the DCP employee will provide them to the individual. The DCP employee will record the name of the individual granted access, the dates and times of access, and information about the verification of identity on a separate log sheet maintained in the office of the DCP employee who reviewed the record.

3. *Requests by mail.* Written requests must be addressed to the System Manager or the DCP Privacy Act Coordinator, at the address shown as the system location above. All written requests must be signed by the individual seeking access. A comparison will be made of that signature and the signature maintained on file prior to release of the material requested. Copies of the records to which access has been requested will be mailed to the individual. The original version of a record will not be released except in very unusual situations when only the original will satisfy the purpose of the request.

4. *Requests by phone.* Because positive identification of the caller cannot be established with sufficient certainty, telephone requests for access to records generally will not be honored.

5. *Accounting of Disclosures.* An individual who is the subject of records maintained in this record system may also request an accounting of all disclosures that have been made from that individual's records, provided that disclosures have in fact been made.

CONTESTING RECORD PROCEDURES:

Contact the System Manager at the address specified under System Location above and reasonably identify the record. Specify the information being contested. State the corrective action

sought, with supporting justification, along with information to show how the record is inaccurate, incomplete, untimely, or irrelevant.

RECORD SOURCE CATEGORIES:

From individual officers, applicants, persons providing references, dependents, former spouses of retired officers, governmental and private training facilities, health professional licensing and credentialing organizations, government officials and employees and from the records contained in the following systems: 09-37-0003, "PHS Commissioned Corps Medical Records," HHS/OASH/OSG/09-37-0005, "PHS Commissioned Corps Board Proceedings," HHS/OASH/OSG/09-37-0006, "PHS Commissioned Corps Grievance, Investigatory, and Disciplinary Files," HHS/OASH/OSG/09-37-0008, "PHS Commissioned Corps Unofficial Personnel Files and Other Station Files," HHS/OASH/OSG; and 09-90-0017, "Pay, Leave and Attendance Records," HHS/OS/ASPER.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.
(FR Doc. 89-13042 Filed 6-1-89; 8:45 am)
BILLING CODE 4160-17-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-1917; FR-2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: June 2, 1989.

ADDRESS: For further information, contact Morris Bourne, Department of Housing and Urban Development, Room 9140, 451 Seventh Street, SW., Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015.

(These telephone numbers are not toll-free.).

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, D.C.D.C. No. 88-2503-OG, HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal building and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Date: May 25, 1989.
James E. Schoenberger,
General Deputy Assistant Secretary for
Housing—Federal Housing Commissioner
[FR Doc. 89-13038 Filed 6-1-89; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[OR-094-09-6334-12: GP-217]

Temporary Closure of Public Lands

AGENCY: Bureau of Land Management, Interior.

Note: The above number is a correction to an earlier Federal Register notice [54 FR 18160].

ACTION: Temporary closure of public lands in Lane County, OR.

SUMMARY: Notice is hereby given that certain public lands in Lane County, Oregon are temporarily closed to all public use, including recreation, camping, shooting, hiking and sightseeing, from May 15, 1989 through October 31, 1989. The closure is made under the authority of 43 CFR 8364.1.

The public lands affected by this emergency closure are specifically identified as follows:

Willamette Meridian, Oregon

T. 16 S., R. 7 W.,
Sec. 19: SE $\frac{1}{4}$ SE $\frac{1}{4}$, excluding the right-of-way of Oregon State Highway 36.
Containing approximately 36 acres.

The following persons, operating within the scope of their official duties, are exempt from the provisions of this closure order: Bureau employees; state, local and federal law enforcement and fire protection personnel; the holders of BLM road use permits that include roads within the closure area; the contractor authorized to construct the Lake Creek Falls Fish Ladder project and their subcontractors. Access by additional parties may be allowed, but must be

approved in advance in writing by the Authorized Officer.

Any person who fails to comply with the provisions of this closure order may be subject to the penalties provided in 43 CFR 8360.0-7, which include a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months.

The public lands temporarily closed to public use under this order will be posted with signs at points of public access.

The purpose of this temporary closure is to provide for public safety and the protection of property and equipment during the mobilization, construction and de-mobilization phase of the Lake Creek Falls Fish Ladder project.

EFFECTIVE DATES: May 15, 1989 through October 31, 1989.

ADDRESSES: Copies of the closure order and maps showing the location of the closed lands are available from the Eugene District Office, P.O. Box 10226 (1255 Pearl Street), Eugene, Oregon 97440, or the Coast Range Resource Area Office, 1144 Gateway Loop, Springfield, Oregon 97477.

FOR FURTHER INFORMATION CONTACT: Wayne E. Elliott, Coast Range Area Manager, Eugene District Office, at (503) 683-6989.

Date: May 24, 1989.

Wayne E. Elliott,

Area Manager.

[FR Doc. 89-13110 Filed 6-1-89; 8:45 am]

BILLING CODE 4310-33-M

Rules of Conduct and Supplemental Rules; California Desert District, California Coachella Valley Preserve

AGENCY: Bureau of Land Management, Interior.

ACTION: Supplementary Rules to Protect Resources and Federally Threatened Species Habitat Within the Boundaries of the Coachella Valley Preserve.

SUMMARY: The following described areas are closed to the discharge of taking game. These same areas are also closed to camping, campfires, and the collection of vegetative and wildlife resources without authorization. These rules are necessary to protect lands set aside for the preservation of the Federally Threatened Coachella Valley Fringe-toed Lizard. These rules will ensure that public use of the Preserve lands is compatible with the preservation objectives for the species.

Area	Location
1. Coachella Valley Preserve.	San Bernardino P.M. T. 04S., R. 06E., Sec. 1, 2, 10, 11, 13, 14, T. 03S., R. 06E., Sec. 34, 35, 36, T. 04S., R. 07E., Sec. 6, 7, 8, 9, 15, 16, 17.
2. Coachella Valley Preserve Lands jointly administered by the BLM and USFWS.	T. 04S., R. 06E., Sec. 22, 23, 24, 25, 26, 27, 35, 36.
3. Coachella Valley Preserve Indian Avenue Site.	T. 03S., R. 04E., Sec. 25, 26.
4. Coachella Valley Preserve Willow Hole/Edom Hill Site.	T. 03S., R. 05E., Sec. 28, 34.

EFFECTIVE DATE: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Russell L. Kaldenberg, Area Manager, Palm Springs-South Coast Resource Area, 1900 E. Tahquitz-McCallum Way Ste B-1, Palm Springs, CA 92262-7061, (619) 323-4421.

SUPPLEMENTARY INFORMATION: The authority for establishing supplemental rules is contained in 43 CFR 8365.1-6. These rules have been recommended and adopted through the development of the Coachella Valley Preserve Management Plan. These rules will be available in the Palm Springs-South Coast Area Office and Coachella Valley Preserve Visitor Center.

Dated: May 24, 1989.

Russell L. Kaldenberg,

Area Manager.

[FR Doc. 89-13091 Filed 6-1-89; 8:45 am]

BILLING CODE 4310-40-M

[OR-090-09-6310-10: GP-193]

Eugene District Advisory Council; Meeting

Notice is hereby given in accordance with section 309 of the Federal Land Policy and Management Act of 1976 that a meeting of the Eugene District Advisory Council will be held on Friday, June 16, beginning at 9 a.m. in Rooms B and C of Harris Hall, 125 E. 8th Ave., Eugene, Oregon.

The agenda of the meeting will include (1) discussion of the proposed listing of the northern spotted owl as a threatened species; (2) a review of BLM's proposed 1990 timber sales program; (3) and other topics that may be determined later.

The meeting is open to the public. Interested persons may make oral statements to the Council at the end of the meeting or file written statements for the Council's consideration. Anyone desiring to make an oral statement must

notify the District Manager, Bureau of Land Management, 1255 Pearl St., Eugene, Oregon 97401 by the end of the business day on Wednesday, June 14, 1989. A time limit per person may be established by the District Manager.

Ronald L. Kaufman,
District Manager.

Date: May 26, 1989.

[FR Doc. 89-13085 Filed 6-1-89; 8:45 am]

BILLING CODE 4310-33-M

[MT-060-09-4320-02]

Lewistown District Grazing Advisory Board Meeting; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of grazing advisory board meeting.

SUMMARY: The Lewistown District Grazing Advisory Board will meet June 29, 1989. The agenda will be:

09:00 a.m.—Introduction and Welcome
09:15 a.m.—Election of Officers
09:30 a.m.—Range Improvement Update
10:00 a.m.—AMP Implementation
11:00 a.m.—Cattle Guard Maintenance
11:30 a.m.—Delinquent Billings
12:00 Noon—Lunch
1:00 p.m.—Consultation on Range Matters
1:30 p.m.—Weed Control
2:00 p.m.—Land Exchange with Fort Belknap
2:15 p.m.—Judith, Valley and Phillips RMP and Related Issues
—National Guard Training Facility
—Prairie Dog Control
4:00 p.m.—Adjourn.

Public comment will be sought at the end of each agenda item.

Location: Bureau of Land Management, 80 Airport Road, Lewistown, Montana.

FOR FURTHER INFORMATION CONTACT: Wayne Zinne, District Manager, Bureau of Land Management, 80 Airport Road, Lewistown, Montana 59457.

SUPPLEMENTARY INFORMATION: The Lewistown District Grazing Advisory Board is authorized under the Federal Advisory Committee Act, 5 U.S.C., Appendix 1. The board advises the Lewistown District Manager concerning the development of allotment management plans and the utilization of range betterment funds.

Dated: May 24, 1989.

Wayne Zinne,

District Manager.

[FR Doc. 89-13072 Filed 6-1-89; 8:45 am]

BILLING CODE 4310-04-M

[NV-930-09-4212-11; N-50912]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Laughlin, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the Federal Register.

Mount Diablo Meridian, Nevada

T. 32 S., R. 66 E.,

Sec. 15, N $\frac{1}{2}$ NW $\frac{1}{4}$.

Aggregating 80 acres (gross).

Clark County intends to use the land for community college facilities. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe. and will be subject to:

An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County/ the City of Las Vegas.

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the Federal Register, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the Federal Register.

Date: May 25, 1989.

Ben F. Collins,

(District Manager, Las Vegas, NV)

[FR Doc. 89-13105 Filed 6-1-89; 8:45 am]

BILLING CODE 4310-HC-M

[NV-930-09-4212-11; N-50460]

Notice of Realty Action Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Laughlin, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the Federal Register.

Mount Diablo Meridian, Nevada

T. 32 S., R. 66 E.,

Sec. 15, SE $\frac{1}{4}$.

Aggregating 160 acres (gross).

The Clark County Sanitation District intends to use the land for public purposes. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe. and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the transportation plan for Clark County/ the City of Las Vegas.

2. Those rights for power transmission line and access road purposes which have been granted to the U.S. Bureau of Indian Affairs by Permit No. CC-021319 under the Act of March 3, 1901 (31 Stat. 1084).

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the Office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Date: May 25, 1989.

Ben F. Collins,

(District Manager, Las Vegas, NV).

[FR Doc. 89-13106 Filed 6-1-89; 8:45 am]

BILLING CODE 4310-HC-M

[CO-942-09-4520-12]

Colorado; Filing of Plats of Survey

May 23, 1989.

The plat of survey of the following described land, will be officially filed in the Colorado State Office, Bureau of Land Management, Lakewood, Colorado, effective 10:00 a.m., May 23, 1989.

The plat representing the dependent resurvey of portions of the north boundary of the Southern Ute Indian Reservation (south boundary of the Ute ceded lands) and subdivisional lines and the subdivision of certain sections, T. 34 N., R. 3 W. (south of the Ute Line), New Mexico Principal Meridian, Colorado, Group No. 764, was accepted May 5, 1989.

This survey was executed to meet certain administrative needs of the Bureau of Indian Affairs.

All inquiries about this land should be sent to the Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado, 80215.

Jack A. Eaves,

Chief, Cadastral Surveyor for Colorado

[FR Doc. 89-13109 Filed 6-1-89; 8:45 am]

BILLING CODE 4310-JB-M

[ID-942-09-4730-12]

Idaho; Filing of Plats of Survey

The plats of survey of the following described lands were officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 A.M., May 26, 1989.

The plat representing the dependent resurvey of a portion of the First Standard Parallel South (south boundary T. 6 S., R. 16 E.), portions of the west boundary and subdivisional lines, and the subdivision of sections 6 and 7, T. 7 S., R. 17 E., Boise Meridian, Group No. 686, was accepted May 22, 1898.

This survey was executed to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

May 26, 1989.

[FR Doc. 89-13107 Filed 6-1-89; 8:45 am]

BILLING CODE 4310-GG-M

[ID-050-4830-16-2410]

Shoshone District Advisory Council; Meeting

AGENCY: Bureau of Land Management (BLM); Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda for a meeting of the Shoshone District Advisory Council.

DATE: Tuesday, July 18, 1989.

ADDRESS: BLM District Office, 400 West F Street, Shoshone, Idaho 83352.

FOR FURTHER INFORMATION CONTACT: K Lynn Bennett, District Manager, Shoshone District Office, P.O. Box 2 B, Shoshone, Idaho 83352. Telephone (208) 886-2206 or FTS 554-6110.

SUPPLEMENTARY INFORMATION: The proposed agenda for the meeting includes the following items:
Election of Officers
Field tour of Riparian Management Projects

The Shoshone District Advisory Council is established under section 309 of the Federal Land Policy and Management Act of 1976 (Pub. L. 94-579; 43 U.S.C. 1701 et seq.) as amended. Operation and administration of the Council will be in accord with the Federal Advisory Committee Act of 1972

(Pub. L. 92-463; 5 U.S.C. Appendix 1) and Department of Interior regulations, including 43 CFR Part 1784.

The meeting will be open to the public. Anyone may present an oral statement before the Council at 9:10 a.m. or may file a written statement with the Council regarding matters on the agenda. Oral statements will be limited to ten minutes. Anyone wishing to make an oral statement should notify the District Manager by July 17, 1989. Records of the meeting will be available in the Shoshone District Office for public inspection or copying within 30 days after the meeting.

K Lynn Bennett,

District Manager.

[FR Doc. 89-13097 Filed 6-1-89; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-09-4212-11; N-50031]

Realty Action; Lease/Purchase for Recreation and Public Purposes Clark County, NV

The following described public land in Laughlin, Clark County, Nevada has been identified and examined and will be classified as suitable for lease/purchase under the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 et seq.). The lands will not be offered for lease/purchase until at least 60 days after the date of publication of this notice in the **Federal Register**.

Mount Diablo Meridian, Nevada

T. 32 S., R. 66 E.,

Sec. 15, N $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$.

Aggregating 150 acres (gross).

The Clark County Sanitation District intends to use the land for public purposes. The lease and/or patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe, and will be subject to:

1. An easement for streets, roads and public utilities in accordance with the

transportation plan for Clark County/ the City of Las Vegas.

2. Those rights for power transmission line and access road purposes which have been granted to the U.S. Bureau of Indian Affairs by Permit No. CC-021319 under the Act of March 3, 1901 (31 Stat. 1084).

The land is not required for any federal purpose. The lease/purchase is consistent with the Bureau's planning for this area.

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for the recreation and public purposes and leasing under the mineral leasing laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the lands described in this Notice will become effective 60 days from the date of publication in the **Federal Register**.

Date: May 25, 1989.

Ben F. Collins,

(District Manager, Las Vegas, NV).

[FR Doc. 89-13102 Filed 6-1-89; 8:45 am]

BILLING CODE 4310-HC-M

[CA-940-09-4214-10; CACA 18891]

Exchange of Public and Private Lands in Riverside County and Order Providing for Opening of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document and order providing for opening of public lands.

SUMMARY: The purpose of this exchange was to acquire the remaining portion of the non-Federal land within the 13,030-acre preserve for the Coachella Valley fringe-toed lizard. The lizard is Federally listed as threatened and State listed as endangered. The Bureau of Land Management's goal is to acquire approximately 6,700 acres within the preserve. Other Federal and State agencies will acquire the remaining

portion of the preserve. The land being acquired does not constitute a habitat for the lizard, but provides a sand source required for the continuing production of active sand dune areas that are critical habitat for the lizard. The public interest was well served through completion of this exchange. The land acquired in this exchange will be opened to the operation of the public land laws and to the full operation of the United States mining laws and the mineral leasing laws.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 916-978-4820.

The United States issued an exchange conveyance document to The Nature Conservancy on May 17, 1989, under Sec. 206 of the Act of October 21, 1976 (43 U.S.C. 1716), for the following described land:

San Bernardino Meridian, California

T. 6 S., R. 8 E.,

Sec. 2, lots 3 to 5, inclusive, S $\frac{1}{2}$ NE $\frac{1}{4}$, and W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$.

The area described contains 221.95 acres of public land in Riverside County.

In exchange for this land, the United States acquired the following described parcels of land from The Nature Conservancy:

San Bernardino Meridian, California

Parcel A

T. 4 S., R. 7 E.,

Sec. 9, SW $\frac{1}{4}$.

Parcel B

T. 4 S., R. 8 E.,

Sec. 14, NW $\frac{1}{4}$ NW $\frac{1}{4}$.

The areas described aggregate 200 acres of non-Federal land in Riverside County.

The appraised value of the non-Federal land is \$156,000, and the appraised value of the public land is \$62,000. The difference in values between the non-Federal lands and the public land will be equalized in accordance with the procedures set forth in the Memorandum of Agreement dated December 10, 1987.

At 10 a.m. on July 5, 1989, the non-Federal lands described above shall be open to the operation of the public lands laws generally, subject to valid rights and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on July 5, 1989 shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on July 5, 1989, the non-Federal land described under Parcel A above shall be open to applications under the United States mining laws and mineral leasing laws.

The record shows that effective May 20, 1989, under serial No. CACA 22587, the non-Federal land described under Parcel B was opened to location and entry under the United States mining laws and to applications and offers under the mineral leasing laws.

Date: May 23, 1989

Nancy J. Alex,

Chief, Lands Section Branch of Adjudication and Records.

[FR Doc. 89-13096 Filed 6-1-89; 8:45 am]

BILLING CODE 4310-40-M

[CA-940-09-4212-13; CACA 23666]

Exchange of Public and Private Lands in Calaveras and Mariposa Counties, California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of issuance of land exchange conveyance document.

SUMMARY: The purpose of this exchange was to improve the Bureau's management capabilities along the Merced River. The United States acquired riverfront property adjacent to a large block of public land several thousand acres in size. The Bureau disposed of several isolated parcels and fragments of public land that were inaccessible to the public and difficult to manage. The public interest was well served through completion of this exchange.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 916-978-4820.

The United States issued an exchange conveyance document to Meridian Minerals Company on May 11, 1989, under Sec. 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716), for the following described land:

Mount Diablo Meridian, California.

T. 2 N., R. 11 E.,

Sec. 24, lot 1.

T. 2 N., R. 12 E.,

Sec. 19, lots 3, 5, 9, 11, 19, and lots 22 to 25,

inclusive;

Sec. 30, lots 1, 2, 13, 14, 15, 19, 20, lots 22-24,

inclusive, and lots 26 and 27.

The areas described aggregate 133.77 acres of public land in Calaveras County.

In exchange for these lands, the United States acquired the following described land from the Meridian Minerals Company:

A parcel of land known as the "Agatha Placer Mining Claim" designated as Survey No. 5897, embracing a portion of Sec. 10 in

Township 4 South, Range 18 East, Mount Diablo Meridian, and described in patent to Elsie R. Dovidio, dated September 14, 1928, recorded in Volume "I" of Patents, Page 322, Mariposa County Records.

Excepting therefrom those portions of said land conveyed to the State of California by Elsie R. Dovidio, in a Grant Deed recorded October 24, 1950, in Book 33, page 597 of Official Records.

Also excepting therefrom That portion of said land conveyed to the Pacific Gas & Electric Company by Elsie R. Dovidio, in a Grant Deed recorded September 30, 1953, in Book 44, page 481, of Official Records.

The area described above contains 16.32 acres of non-Federal land in Mariposa County.

A cash payment in the amount of \$16,700 has been paid to the United States by the Meridian Minerals Company to equalize values between the non-Federal and the public lands.

The non-Federal lands are located within the Merced Wild and Scenic River Study Area; therefore, no action will be taken to open the non-Federal lands to the operation of the public land laws, including the mining and mineral leasing laws, until it has been determined whether the Merced River will be designated a wild and scenic river.

Date: May 23, 1989.

Nancy J. Alek,
Chief, Lands Section, Branch of Adjudication and Records.

[FR Doc. 89-13095 Filed 6-1-89; 8:45 am]
BILLING CODE 4310-40-M

Realty Action; Exchange of Surface and Mineral Interests in Public and Private Lands, Washington County, Utah, U-49298

AGENCY: Bureau of Land Management, Interior (UT-040-09-4212-13)

ACTION: The surface and mineral estates of the following described public lands have been determined suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, (43 USC 1716): Salt Lake Base & Meridian, Utah, T. 40 S., R. 16 W. sec. 19, SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$; sec. 20, SW $\frac{1}{4}$ NW $\frac{1}{4}$, NW $\frac{1}{4}$ SW $\frac{1}{4}$; sec. 17, Lot 1 containing 142.2 acres. In exchange for these lands, the United States will acquire the surface and mineral estates of the following described lands from Brooks Pace: T. 40 S., R. 16 W., SLM, sec. 2, S $\frac{1}{2}$, containing 320 acres.

All of the above described public lands are segregated from appropriation under the public land laws, including the federal mining laws pending disposition of this action.

SUMMARY: The purpose of this action is to acquire by exchange, private lands valuable as deer winter habitat and to improve Federal land ownership patterns. The public interest will be served by making the exchange. Equalization of values will be achieved by cash payment not to exceed 25 percent of the value of the public lands.

DATE: Interested parties may submit comments for 45 days from the date of publication in the *Federal Register*.

ADDRESS: Detailed information concerning this exchange and copies of the environmental assessment report are available at the Dixie Resource Area Office, 225 North Bluff Street, St. George, Utah 84770. Comments on the proposal should be sent to this address.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the exchange are:

Title transfer will be subject to all valid existing rights, including a right-of-way to Mountain Bell for telephone lines (U-028763), a road right-of-way to Washington County (U-58181), and a right-of-way to UDOT for Utah State Highway 18.

Any objections received during the comment period will be reviewed and the State Director may sustain, vacate, or modify this realty action. In the absence of any objections, this Realty Action Notice will become the final determination of the Department of the Interior.

Date: May 23, 1989.

G. Von Swain,
Acting District Manager.

[FR Doc. 89-13104 Filed 6-1-89; 8:45 am]
BILLING CODE 4310-00-M

[WY-040-09-4200-90; WYW-89429]

Realty Action; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, exchange of public land in Sublette County for private lands in Sublette County.

SUMMARY: The following described public land, surface estate only, has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and

Management Act of 1976 (43 U.S.C. 1716):

Sixth Principal Meridian

T. 34 N., R. 108 W.,
Sec. 26, SE $\frac{1}{4}$ SE $\frac{1}{4}$.

The land described contains 40 acres.

In exchange, the United States proposes to acquire the following private land, surface estate only, from Joseph R. Hicks:

Sixth Principal Meridian

T. 38 N., R. 110 W.,
Sec. 5, E $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$,
E $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$,
NE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, E $\frac{1}{2}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$, and SE $\frac{1}{4}$ SW $\frac{1}{4}$ SE $\frac{1}{4}$.

The land described contains 20 acres.

DATES: On or before July 17, 1989, interested parties may submit comments to the Area Manager, Pinedale Resource Area, Bureau of Land Management, at the address indicated below. Any adverse comments will be evaluated by the District Manager, who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: Arlan Hiner, Area Manager, Pinedale Resource Area, 431 W. Pine Street (P.O. Box 768), Pinedale, Wyoming 82941, 307-367-4358.

SUPPLEMENTARY INFORMATION: The purpose of the exchange is to eliminate an existing access problem within the Upper Cora Stock Driveway. The exchange is also an important first step in securing legal public access throughout the entire Upper Cora Stock Driveway and legal public access to a large contiguous block of Bureau of Land Management administered land adjacent to the Bridger-Teton National Forest. The values of the public and private land involved in the exchange are equal.

Publication of this notice in the *Federal Register* segregates the public land described above (including prior reserved Federal interests in the private land) from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to section 206 of the Federal Land Policy and Management Act of 1976. The segregation will continue for a period of two (2) years, or until issuance of patent or other document of conveyance, or as of the date specified in an opening order published in the *Federal Register*, whichever occurs first.

Conveyance of the above public land will be subject to:

1. Reservation of a right-of-way for ditches or canals constructed under the authority of the Act of August 30, 1890 (43 U.S.C. 945);

2. Reservation of all minerals to the United States;

3. The requirements of 43 CFR 4110.4-2 regarding authorized grazing use.

This exchange is consistent with Bureau of Land Management policies and planning. The public interest will be served by this exchange.

David E. Haper.

Acting Area Manager.

Dated: May 24, 1989.

[FR Doc. 89-13103 Filed 6-1-89; 8:45 am]

BILLING CODE 4310-22-M

[WY-030-09-4212-13; WYW-113713]

Realty Action; Wyoming

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Realty Action; Proposed Exchange of Public and Private Lands in Fremont and Crook Counties, Wyoming.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the *Federal Land Policy and Management Act of 1976* (90 Stat. 2756; 43 U.S.C. 1716):

Sixth Principal Meridian, Wyoming

T. 53 N., R. 65 W.

Sec. 4: Lots 9, 12;

T. 54 N., R. 65 W.

Sec. 8: Lots 6, 7, 10, 11;

Sec. 9: Lots 6, 7, 8;

T. 53 N., R. 66 W.

Sec. 9: SE $\frac{1}{4}$ NE $\frac{1}{4}$, E $\frac{1}{2}$ -SE $\frac{1}{4}$.

Comprising 474.48 acres of public land.

In exchange for these lands, the United States will acquire a parcel or parcels of land, to be specifically identified at a later date, from within the following described block of land owned by the Nature Conservancy:

Sixth Principal Meridian, Wyoming

T. 40 N., R. 105 W.

Sec. 17: All;

Sec. 18: E $\frac{1}{2}$, E $\frac{1}{2}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$ NW $\frac{1}{4}$, SW $\frac{1}{4}$;

Sec. 19: N $\frac{1}{2}$ N $\frac{1}{4}$;

Sec. 20: E $\frac{1}{2}$, N $\frac{1}{2}$ NW $\frac{1}{4}$;

Sec. 21: Lots 1, 2, 3, 4, W $\frac{1}{2}$;

Sec. 28: Lots 1, 2, 3, 4, NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$ SW $\frac{1}{4}$;

Sec. 29: NE $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$.

Comprising 2,862.1 acres of private land.

The intent of both BLM and the Nature Conservancy is ultimately to exchange public lands for the entire 2,862.1 acres of offered private land

described above. This will be accomplished over an, as yet, unspecified period of time, as suitable public lands can be identified for exchange.

The purpose of this exchange is to acquire non-federal lands which have high public values for wildlife habitat, specifically bighorn sheep. The exchange would provide additional winter range for the Whiskey Mountain Bighorn Sheep herd, which is the largest Rocky Mountain bighorn sheep herd in the United States. The public interest will be served by completing the exchange.

When the specific parcel or parcels to be acquired from the Nature Conservancy have been identified from within the block of offered lands, the values of the lands to be exchanged, if not equal, will be fully equalized through adjustment in acreage.

Lands to be transferred from the United States will be subject to the following:

1. Reservation of a right-of-way for ditches and canals pursuant to the Act of August 30, 1890, 43 U.S.C. 945.

2. Reservation of all minerals along with the right of ingress and egress for exploration and development.

3. Oil and Gas leases, BLM serial numbers W-84848, W-90251, W-88239.

4. Any other valid existing rights including rights-of-way that are identified during the evaluation process.

Publication of the notice segregates the selected public land from the operation of all other public land laws, including the general mining laws, for a period of 2 years from the date of first publication.

FOR FURTHER INFORMATION CONTACT: Jack Kelly, Lander Resource Area Manager (307) 332-7822. Information relating to the exchange is available for review at the Lander Resource Area Office, 125 Sunflower, Lander, Wyoming 82520.

SUPPLEMENTARY INFORMATION: For a period of 45 days from the date of the first publication, interested parties may submit comments to the Lander Resource Area Office, P.O. Box 589, Lander, Wyoming 82502. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Jack Kelly,

Area Manager.

Date: May 19, 1989.

[FR Doc. 89-13101 Filed 6-1-89; 8:45 am]

BILLING CODE 4310-22-M

Fish and Wildlife Service

Preparation of an Environmental Impact Statement on a Permit Application to Incidentally Take Stephens' Kangaroo Rats, an Endangered Species, in Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of intent and meeting.

SUMMARY: The U.S. Fish and Wildlife Service (Service) has under consideration a proposal to issue a permit under section 10(a) of the Endangered Species Act (Act) for a period not to exceed two years, that would authorize incidental taking of the endangered Stephens' kangaroo rat (*Dipodomys stephensi*). The applicant for this incidental take permit is the County of Riverside, California (County). The application is accompanied by a proposed Conservation Plan (Plan) for the Stephens' kangaroo rat. In response to the permit application and the accompanying proposal, the Service intends to prepare a joint Federal Environmental Impact Statement (EIS) and State Environmental Impact Report (EIR). This notice describes the proposed action and possible alternatives, outlines the scoping process that will be employed in preparing the joint document, and identifies the Service's official to whom questions and comments concerning the proposed action and the EIS/EIR may be directed.

DATES: A public scoping meeting will be held at the Riverside County Office of Education, 4th floor Board Room, 3939 13th Street, Riverside, California, on Monday, June 12, 1989, at 7:30 p.m. Written comments related to the scope and content of the document will be accepted at the address below until June 19, 1989.

ADDRESSES: Information, comments, or questions related to the document and the National Environmental Policy Act process should be submitted to the Regional Director (FWE/SE), U.S. Fish and Wildlife Service, 1002 NE. Holladay Street, Portland, Oregon 97232-4181.

FOR FURTHER INFORMATION CONTACT: Jackie Campbell at the above address, telephone 503/231-6150 or FTS 8-429-6150. Interested persons are encouraged to attend the meeting to identify and discuss major issues and alternatives that should be discussed in the EIS/EIR. The proposed agenda for the facilitated public scoping meeting includes presentations on the status of and

threats to the species, a summary of the proposed action including mitigation measures, and tentative issues, concerns, opportunities, and alternatives. There will be an opportunity for the public to present formal statements, and a question and answer session. Written comments may also be submitted to the above address.

Interested persons are reminded that the primary purpose of the scoping process is to identify, rather than to debate or argue, the significant issues related to the proposed action. Additional public meetings, if requested, will be held on later dates in order to provide opportunities to comment on the draft document.

SUPPLEMENTARY INFORMATION:

Background

On September 30, 1988, the Service issued a final rule which determined that the Stephens' kangaroo rat to be an endangered species (53 FR 38465). This regulation became effective on October 31, 1988. Because of its listing as an endangered species, the Stephens' kangaroo rat is protected by the Act's prohibition against "taking" (16 USC 1538). The Act defines "take" to mean: To harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect, or to attempt to engage in such conduct. "Harm" is further defined by regulation as any act that kills or injures wildlife including significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering (50 CFR 17.3).

The Service, however, may issue permits to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

The County has submitted an application to the Service for a permit to incidentally take Stephens' kangaroo rats in association with various proposed public and private projects in the western portion of the County. The area covered by the proposed permit would include much of the historical range of the Stephens' kangaroo rat within the County and would allow taking, for a period of two years, resulting from the development of up to 4,500 acres (20 percent) of the 22,000 acres of remaining occupied habitat known for the species.

Under the proposed conservation plan for the incidental take permit, up to 4,500 acres (private lands) of occupied habitat adjacent to lands currently in public ownership would be acquired and managed for the long-term benefit of the species. Comparable acreages of land would be acquired prior to issuance of County permits to destroy similar acreages of habitat. The acquisition of the private lands would be funded, in part, from mitigation fees (\$1,950 per acre) collected by the County.

The County would approve the issuance of land development permits, subsequent to California Environmental Quality Act-mandated review of potential impacts to other environmental resources, for otherwise lawful public and private project proponents in specified portions of the County during the two-year period in which the proposed Federal permit is in effect.

The Service's underlying purpose or goal is to develop a program designed to ensure the continued existence of the species, while resolving potential conflicts that may arise from otherwise lawful private and public improvement projects.

The underlying need as to why the Service must make a decision is that it has received an application from the County for an incidental take permit. Congress has directed that such permits be issued if issuance would be in accordance with the requirements of section 10(a) of the Act.

A tentative list of alternatives that would meet the underlying need includes: issuance of an incidental take permit with components presented in the Plan (County lands only); issuance of an incidental take permit where take would be allowed on both County and participating city lands; or the issuance of an incidental take permit with other modifications of the Plan. A "No Action" alternative (denial of the permit) will also be discussed.

A tentative list of issues, concerns, and opportunities has been developed. There will be a discussion of the potential effect, by alternative, in relation to the following issues:

1. Stephens' kangaroo rat;
2. Stephens' kangaroo rat habitat;
3. other biological resources;
4. land use;
5. agriculture;
6. public facilities;
7. recreational facilities; and
8. housing developments.

Dated: May 25, 1989.

Mervin L. Planert,
Regional Director.

[FR Doc. 89-13063 Filed 6-1-89; 8:45 am]

BILLING CODE 4310-55-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 701-TA-295 (Final)]

Industrial Belts From South Korea; Import Investigation

AGENCY: United States International Trade Commission.

ACTION: Termination of investigation.

SUMMARY: On April 18, 1989, the U.S. Department of Commerce published notice in the Federal Register of a negative final determination of subsidies in connection with the subject investigation. Accordingly, pursuant to § 207.20(b) of the Commission's Rules of Practice and Procedure (19 CFR 207.20(b)), the countervailing duty investigation concerning industrial belts from South Korea (investigation No. 701-TA-295 (Final)) is terminated.

EFFECTIVE DATE: May 23, 1989.

FOR FURTHER INFORMATION CONTACT: Tedford Briggs (202-252-1181), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

Authority: This investigation is being terminated under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 201.10 of the Commission's rules (19 CFR 201.10).

By order of the Commission.

Issued: May 26, 1989.

Kenneth R. Mason,
Secretary.

[FR Doc. 89-13114 Filed 6-1-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub-No. 65X)]

Norfolk and Western Railway Co.; Abandonment Exemption Between Leptic and Lynchburg, VA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its 3.52-mile line of railroad between milepost N-201.18 at Leptic, VA, and milepost 204.7 at Lynchburg, VA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 2, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),² and trail use/rail banking statements under 49 CFR 1152.29 must be filed by June 12, 1989.³ Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by June 22, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Virginia K. Young, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this commission to review and act on the request before the effective date of this exemption.

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1987), and final rules published in the FEDERAL REGISTER on December 22, 1987 (52 FR 48440-48446).

³ The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 7, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or train use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 22, 1989.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 89-12742 Filed 6-1-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of a Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on May 23, 1989, a proposed consent decree in *United States v. Borough of North Arlington, New Jersey, et al.*, Civil Action No. 88-2939, was lodged with the United States District Court for the District of New Jersey. The decree resolves claims of the United States against the Borough of North Arlington, New Jersey, the Township of Lyndhurst, New Jersey, and the North Arlington-Lyndhurst Joint Meeting (the "defendants") for violations of the Clean Water Act, 33 U.S.C. 1251 et seq. The violations arose out of the defendants' operation of a sewage treatment plant in Bergen County, New Jersey.

In the proposed consent decree, the defendants agree to pay the United States a civil penalty in the amount of \$35,000. In addition, the defendants have ceased discharging pollutants and have shut down their sewage treatment plant.

The proposed decree may be examined at the office of the United States Attorney for the District of New Jersey, 970 Broad Street, Newark, New Jersey 07102; at the Regional II Office of

Regional Counsel, Environmental Protection Agency, 28 Federal Plaza, New York, New York 10278, contact: George Shanahan, Esq.; and at the Environmental Enforcement Section, Land and Natural Resources Division of the United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. In requesting copies, please enclose a check in the amount of \$0.90 (10 cents per page reproduction charge) payable to the Treasurer of the United States. The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Borough of North Arlington, New Jersey, et al.*, Civil Action No. 88-2939 (D.N.J.). D.J. Reference No. 90-5-1-1-3099.

Donald A. Carr,
Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-13113 Filed 6-1-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination; Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be

enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 533 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I	
Connecticut, CT89-1 (Jan. 6, 1989).	pp. 62-65.
New Jersey, NJ89-2 (Jan. 6, 1989).	p. 617.
Pennsylvania	
PA89-1 (Jan. 6, 1989)	pp. 838-841.
PA89-3 (Jan. 6, 1989)	pp. 864-865.
PA89-4 (Jan. 6, 1989)	pp. 870-871.
West Virginia, VA89-2 (Jan. 6, 1989).	p. 1213.

Volume II	
Illinois, IL89-9 (Jan. 6, 1989).	p. 152.
Michigan	
MI89-1 (Jan. 6, 1989)	pp. 436, 440-448.
MI89-2 (Jan. 6, 1989)	pp. 452, 456.
MI89-3 (Jan. 6, 1989)	pp. 469, 472.
MI89-4 (Jan. 6, 1989)	pp. 477-482.
MI89-5 (Jan. 6, 1989)	pp. 489, 491.
Missouri, MO89-1 (Jan. 6, 1989).	pp. 628-634.
Ohio, OH89-29 (Jan. 6, 1989).	pp. 870-906b.

Volume III	
Arizona, AZ89-2 (Jan. 6, 1989).	p. 19.
California, CA89-2 (Jan. 6, 1989).	
pp. 44-46, pp. 51-53, p. 55.	
Colorado, CO89-1 (Jan. 6, 1989).	pp. 106-107.
Idaho, ID89-5 (Jan. 6, 1989) ..	p. 170.
North Dakota, ND89-3 (Jan. 6, 1989).	p. 238.

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest,

since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 26th day of May 1989.

Robert V. Setera,
Acting Director, Division of Wage Determinations.

[FR Doc. 89-13063 Filed 6-1-89; 8:45 am]
BILLING CODE 4510-27-M

Mine Safety and Health Administration

[Docket No. M-89-85-C]

A.K.A. Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

A.K.A. Coal Company, Inc., Box 148, R.D. No. 1, Hegins, Pennsylvania 17938 has filed a petition to modify the application of 30 CFR 75.1400 (hoisting equipment; general) to its Diamond Slope (I.D. No. 36-07760) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that cages, platforms or other devices which are used to transport persons in shafts and slopes be equipped with safety catches or other approved devices that act quickly and effectively in an emergency.

2. Effective safety catches or other devices are not available for the conveyances used on the steeply pitching and undulating slopes with numerous curves and knuckles in the main haulage slopes of this anthracite mine.

3. If "makeshift" safety devices are installed they would activate on knuckles and curves when no emergency exists and cause a tumbling effect on the conveyance.

4. As an alternate method, petitioner proposes to operate the man cage or steel gunboat with secondary safety connections securely fastened around the gunboat, and to the hoisting rope above the main connecting device. The hoisting ropes would have a factor of safety in excess of the design factor as determined by the formula specified in

the American National Standard for Wire Rope for Mines.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 3, 1989. Copies of the petition are available for inspection at that address. Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 25, 1989.
[FR Doc. 89-13149 Filed 6-1-89; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-89-68-C]

Birchfield Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Birchfield Mining, Inc., 41 Eagles Road, Beckley, West Virginia 25801 has filed a petition to modify the application of 30 CFR 75.1105 (housing of underground transformer stations, battery-charging stations, substations, compressor stations, shops, and permanent pumps) to its Birchfield No. 1 Mine (I.D. No. 46-07273) located in Boone County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that air currents used to ventilate structures or areas enclosing electrical installations be coursed directly into the return.

2. Two 750 KVA transformers, located on Dog Leg Mains, and one spray pump, two submersible pumps, and four 750 KVA transformers located on Henderson Mains cannot be adequately ventilated to the return.

3. The return airways to which the transformers and pumps are now ventilated would be converted to intake airways when the proposed shaft on Estep Mains is completed. Converting the return airways to intake airways would greatly improve the ventilation system.

4. As an alternate method, petitioner proposes that—

(a) The installations would be totally enclosed in fireproof structures;

(b) An automatic fire suppression device activated by heat sensors would be installed in each installation;

(c) Transformers and spray pump would have openings for ventilation. Such openings for ventilation would be provided which would close automatically if a fire should occur and the fire suppression device is activated;

(d) A warning light, integrated with the fire suppression device, would be installed in a location adjacent to the haulage track or a location readily observed by persons working nearby;

(e) Persons regularly working in this area would be instructed as to the purpose of the light and course of action to follow if activated.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 3, 1989. Copies of the petition are available for inspection at that address. Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 26, 1989.
[FR Doc. 89-13150 Filed 6-1-89; 8:45 a.m.]
BILLING CODE 4510-43-M

[Docket No. M-89-65-C]

Blue Diamond Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Blue Diamond Mining, Inc., P.O. Box 87, Leatherwood, Kentucky 41756 has filed a petition to modify the application of 30 CFR 75.1103-4(a) (automatic fire sensor and warning device systems; installation; minimum requirements) to its Turkey No. 4 Mine (I.D. No. 15-16478) located in Perry County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that automatic fire sensor and warning device systems provide identification of fire within each belt flight.

2. In a separate petition (M-89-64-C), petitioner proposes to use the air in the belt entry to ventilate active working places.

3. As an alternate method, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide (CO) detection system in all belt entries used as intake aircourses with specific conditions.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 3, 1989. Copies of the petition are available for inspection at that address. Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 25, 1989.
[FR Doc. 89-13151 Filed 6-1-89; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-89-64-C]

Blue Diamond Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Blue Diamond Mining, Inc., P.O. Box 87, Leatherwood, Kentucky 41756 has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Turkey No. 4 Mine (I.D. No. 15-16478) located in Perry County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries, and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use air in the belt entry to ventilate active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide (CO) detection system in all belt entries used as intake aircourses and at each belt drive and tailpiece located in intake aircourses.

The monitoring devices would be capable of giving warning of a fire for a minimum of four hours after the source of power to the belt is removed; a visual alert signal would be activated when the CO level is 10 parts per million (ppm) above ambient air and an audible signal would sound at 15 ppm above ambient air. All persons would be withdrawn to a safe area at 10 ppm and evacuated at 15 ppm. The fire alarm signal would be activated at an attended surface location where there is two-way communication. The CO system would be capable of identifying any activated sensor, monitoring electrical continuity and detecting electrical malfunctions.

4. The CO system would be visually examined at least once during each coal producing shift and tested weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly.

5. If the CO system is deenergized for routine maintenance or for failure of a sensor unit, the belt conveyor would continue to operate and qualified persons would patrol and monitor the belt conveyor using hand-held CO detecting devices.

6. The details for the fire detection system, and the permanent stoppings separating the conveyor belt entries from the intake escapeway would be included as part of the ventilation system and methane and dust control plan.

7. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 3, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 25, 1989.

[FR Doc. 89-13152 Filed 6-1-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-63-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.305 (weekly examinations for hazardous conditions) to its Ireland Mine (I.D. No. 46-01438) located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that an examination be made on a weekly basis of seals and of return entries in their entirety.

2. Due to deterioration of roof and rib, certain areas of the mine cannot be safely traveled. Restoration of these areas would expose certified persons to hazardous conditions.

3. As an alternate method, petitioner proposes to establish checkpoints where a certified person would make daily or weekly examinations for hazardous conditions as outlined in the petition.

4. In support of this request, petitioner states that—

(a) The approaches to the checkpoints would, at all times, be maintained in a safe condition. The examination would include tests for methane and the quantity of air;

(b) The person making such examinations and tests would place his/her initials and the date and time at each station. A record of these examinations, tests and actions taken would be recorded in a book kept on the surface and made available for inspection by interested persons;

(c) Methane gas or other harmful, noxious, or poisonous gases would not be permitted to accumulate in the airways. An increase of 0.5 percent methane, or a change of 10 percent in quantity when compared to the last readings at either checkpoint would be cause for an immediate investigation of the affected area;

(d) Persons assigned to make the examinations would be familiar with the normal direction of airflow at each checkpoint. Any changes in airflow would be reported to the mine foreman immediately;

(e) The checkpoints would be included as part of the ventilation and methane and dust control plan.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 3, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 24, 1989.

[FR Doc. 89-13153 Filed 6-1-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-84-C]

Iron Head Mining, Inc.; Petition for Modification of Application of Mandatory Safety Standard

Iron Head Mining, Inc., P.O. Drawer 1160, Grundy, Virginia 24614 has filed a petition to modify the application of 30 CFR 75.209(a) (automated temporary roof support (ATRS) systems) to its Mine No. 1, section 002-0 (I.D. No. 44-03860) located in Buchanan County, Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that an ATRS system be used with roof bolting machines.

2. Due to the size of the roof bolters, petitioner cannot bolt on a cycle that facilitates installation of permanent support (roof bolts) within a reasonable time span. This is due to the way the Fairchild Mark 21 Continuous Miner (Auger Type) is trammed from one working face to another. Also, the tramping of the miner is dislodging the top outby the face, due to the setting and re-setting of the hydraulic jacks required by the present mining practice.

3. As an alternate method, petitioner proposes to use a continuous mining machine and two roof bolters not equipped with ATRS Systems to install permanent supports at the working face with specific procedures as outlined in the petition.

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and

Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 3, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 25, 1989.

[FR Doc. 89-13154 Filed 6-1-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-6-M]

Mississippi Chemical Corp.; Petition for Modification of Application of Mandatory Safety Standard

Mississippi Chemical Corporation, Box 101, Carlsbad, New Mexico 88220 has filed a petition to modify the application of 30 CFR 57.14100(b) (safety defects; examination, correction and records), to its Mississippi Chemical Corporation Mine (I.D. No. 29-00175) located in Eddy County, New Mexico. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that defects on any equipment, machinery, and tools that affect safety be corrected in a timely manner to prevent the creation of a hazard to persons.

2. The lights were removed from shuttle cars to prevent operators from blinding each other when meeting in the time entries, and to avoid head on collisions or hitting other persons or equipment in the area.

3. As an alternate method, petitioner has installed a panel light line through the roadways traveled by shuttle cars and other face equipment.

4. In support of this request, petitioner states that the panel light line system would light the whole face area, and individual lights on the equipment would not be necessary as the roadway and working areas would be well lit.

5. A procedure would be instituted that if the lights go out, or are turned off, ore hauling would stop until the lights are again operational.

6. The petitioner states that the proposed alternate method provides a greater degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These

comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 3, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 25, 1989.

[FR Doc. 89-13155 Filed 6-1-89; 8:45 am]

BILLING CODE 4510-43-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89-43]

Intent To Grant a Partially Exclusive Patent License

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Intent to Grant a Patent License.

SUMMARY: NASA hereby gives notice of intent to grant Diablo Research Corporation of Sunnyvale, California, a limited partially exclusive, royalty-bearing, revocable license to practice the inventions as described in: U.S. Patent No. 4,757,315, entitled "Method and Apparatus for Measuring Distance."

The proposed partially exclusive license will be limited to the fields of the toy, automotive, medical and physical security markets and its will be for a limited number of years and will contain appropriate terms, limitations and conditions to be negotiated in accordance with NASA Patent Licensing Regulations, 14 CFR Part 1245, Subpart 2. NASA will negotiate the final terms and conditions and grant the partially exclusive license, unless within 60 days of the Date of this Notice, the Director of Patent Licensing receives the written objections to the grant, together with supporting documentations. The Director of Patent Licensing will review all written responses to the Notice and then recommend to the Associate General Counsel (Intellectual Property) whether to grant the partially exclusive license.

DATE: Comments to this notice must be received August 1, 1989.

ADDRESS: National Aeronautics and Space Administration, Code GP, Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Harry Lupuloff, (202) 453-2430.

Dated: May 23, 1989.

Edward A. Frankle,
General Counsel.

[FR Doc. 89-13117 Filed 6-1-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Children's Television Series Section) to the National Council on the Arts will be held on June 21, 1989, from 9:00 a.m.-5:00 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Dated: May 25, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations
National Endowment for the Arts.

[FR Doc. 89-13090 Filed 6-1-89; 8:45 am]

BILLING CODE 7537-01-M

Meeting

Thursday, June 22, 1989, at 9:30 a.m. has been designated by the President's Committee on the Arts and the Humanities for Plenary Meeting XIX. This meeting has been scheduled in the Kaufman Conference Room, Institute of International Education, 809 United Nations Plaza, New York, New York. This is a regularly scheduled meeting at which Mr. William Kling, President of Minnesota Public Radio and Vice Chairman of American Public Radio, will lead a discussion on *Creative*

Financing for the Arts and the Humanities.

The Committee, charged with exploring ways to increase private support for the arts and the humanities, has generated private funds to support collaborative projects and programs, and it serves as a forum on issues affecting nonprofit cultural organizations.

Please call 202-682-5409 or 212-512-5957 if you expect to attend because space is limited.

Dated: May 25, 1989.

Yvonne M. Sabine,

Director, Council & Panel Office, National Endowment for the Arts.

[FR Doc. 89-13069 Filed 6-1-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-112]

Environmental Assessment and Finding of No Significant Impact Regarding Proposed Order Authorizing Dismantling of the Reactor and Disposition of Component Parts; University of Oklahoma

The Nuclear Regulatory Commission is considering issuance of an Order authorizing the University of Oklahoma (licensee) to dismantle the AGN 211P Nuclear Reactor in Norman, Oklahoma and to dispose of the reactor components in accordance with the application dated October 25, 1988, as supplemented.

Environmental Assessment

Identification of Proposed Action: By application dated October 25, 1988, as supplemented, the licensee requested authorization to dismantle the 100 watt (thermal) University of Oklahoma Research Reactor (UORR), to dispose of its components parts and radioactive material, and decontaminate the facility in accordance with the proposed dismantling plan, and to terminate Facility License No. R-53. The UORR was shut down in April 1986, and has not been operated since then. The reactor fuel has been removed from the facility and shipped to Department of Energy facilities in accordance with DOE, NRC, and DOT requirements.

Need for Proposed Action: In order to prepare the facility for unrestricted access and use, the dismantling and decontamination activities proposed by UORR must be accomplished.

Environmental Impact of the Proposed Action: All decontamination will be performed by trained personnel in

accordance with previously reviewed procedures and will be overseen by experienced health physics staff. Solid and liquid waste will be removed from the facility and managed in accordance with NRC requirements. The operations are calculated to result in a total radiation exposure of less than 1 person-rem to facility staff and the public.

These conclusions were based on the fact that all proposed operations are carefully planned and controlled, all contaminated components are removed, packaged, and shipped offsite, and that the radiological control procedures ensure that releases of radioactive wastes from the facility are within the limits of 10 CFR Part 20 and are as low as reasonably achievable (ALARA).

Based on the review of the specific proposed activities associated with the dismantling and decontamination of the UORR facility, the staff has determined that there will be no significant increase in the amounts of effluents that may be released offsite, and no significant increase in individual or cumulative occupational or population radiation exposure.

Alternative Use of Resources: The only alternative to the proposed dismantling and decontamination activities is to maintain the facility as a restricted area. This approach would include monitoring and reporting for the duration of the safe storage period. However, the facility management intends the use the area for other purposes.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action based upon the foregoing environmental assessment. We conclude that the proposed action will not have a significant effect on the quality of the human environment.

For detailed information with respect to this proposed action, see the application for dismantling, decontamination and license termination dated October 25, 1988, as supplemented and the Safety Evaluation prepared by the staff. These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland this 28th day of May 1989.

For the Nuclear Regulatory Commission.

Dino C. Scaletti,

Acting Director, Standardization and Non-Power Reactor Project Directorate, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13140 Filed 6-1-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-325 and 50-324]

Carolina Power & Light Co.; Withdrawal of Application for Amendments to Facility Operating Licenses, Brunswick Steam Electric Plant, Units 1 and 2

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Carolina Power & Light Company (the licensee) to withdraw their application dated February 29, 1988, for the Brunswick Steam Electric Plant, Units 1 and 2 (Brunswick) located in Brunswick County, North Carolina.

The proposed amendments were to delete Surveillance Requirement 4.8.1.1.b, which requires the onsite Class 1E distribution system be demonstrated operable at least once per 18 months. The Commission issued a Notice of Consideration of Issuance of Amendments in the *Federal Register* on March 8, 1989 (54 FR 9914). By letter dated May 1, 1989, the licensee withdrew their application for the proposed amendment. The basis for withdrawal of the application was the licensee's determination that a technical specification change is not necessary. The intent of the surveillance requirement is to verify that power can be shifted from the unit auxiliary transformer to the start up auxiliary transformer during shutdown. The licensee interpreted shutdown to mean cold shutdown. The staff does not share this interpretation. The staff uses the words "during shutdown" so that the test will not be conducted at full operating power due to the potential for causing a reactor trip and possibly challenging safety systems. In order to eliminate the confusion, the Bases pages associated with the surveillance requirement were changed.

For further details with respect to this action, see the application for amendments dated February 29, 1988, and the licensee's letter dated May 1, 1989, withdrawing the application for amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the University of North Carolina at

Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina.

Dated at Rockville, Maryland this 25th day of May 1989.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Director, Project Directorate II-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13138 Filed 6-1-89; 8:45 am]

BILLING CODE 7590-01-M

Duke Power Co.; Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

[Docket Nos. 50-369 and 50-370]

The U.S. Nuclear Regulatory Commission (the Commission) has denied a portion of a request by Duke Power Company, (licensee) for amendments to Facility Operating License Nos. NPF-9 and NPF-17, issued to the licensee for operation of the McGuire Nuclear Station, Units 1 and 2, located in Mecklenburg County, North Carolina. Notice of Consideration of Issuance of the amendments was published in the *Federal Register* on March 8, 1989 (54 FR 9916).

The remainder of the amendment request related to functional testing of fuses, was approved by Amendments 96 and 78 to Facility Operating Licenses NPF-9 and NPF-17, respectively.

The purpose of the denied portion of the licensee's amendment request was to relocate the listing of containment penetration conductor overcurrent protective devices from the Technical Specifications to a separate document, and to relocate the specified method of testing circuit breakers from the surveillance requirement to the Bases.

The NRC staff has concluded that that portion of the licensee's request should not be granted as the amendments would reflect the standard Technical Specifications for Westinghouse plants which have not yet been approved. The licensee was notified of the Commission's denial of the proposed change by letter dated May 25, 1989.

By July 3, 1989, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public

Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, and to Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated March 18, 1987, as supplemented April 24, 1987, (2) the Commission's letter to the licensee dated May 25, 1989, and (3) the Commission's Safety Evaluation related to this amendment request, dated May 25, 1989.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC, and at the Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223. A copy of Items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 25th day of May 1989.

For the Nuclear Regulatory Commission.

David B. Matthews,

Director, Project Directorate II-3, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13139 Filed 6-1-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-382A]

Louisiana Power & Light Co.; Waterford Steam Electric Station, Unit 3, Request for Amendment To Authorize Sale and Leaseback Time for Filing Comments on Antitrust Matters

On May 1, 1989, the Louisiana Power and Light Company (LP&L) submitted an application to amend its operating license for the Waterford Steam Electric Station, Unit 3 (Waterford 3) located in St. Charles Parish, Louisiana. LP&L is presently the sole owner of this facility. The amendment request seeks approval of one or more sale and leaseback transactions by LP&L with respect to any portion of its 100% ownership interest in Waterford 3 to one or more equity investors (to be named later) and at the same time to lease back from said equity investors such interests sold in Waterford 3 and receive from said

equity investors the right to use and enjoy the benefits of the undivided ownership interests sold in Waterford 3. The proposed terms of the leases will be for 27 1/2 years subject to rights of renewal. Following the proposed sale and leaseback, LP&L will continue in its present capacity with authority for management, operations,¹ service, maintenance, decommissioning, fuel procurement and disposal, repair and modification of Waterford 3.

Any anticipated sale and leaseback will be subject to the condition that the equity investors and anyone else who may acquire an interest by way of the proposed sale and leaseback are prohibited from exercising directly or indirectly any control over, (1) Waterford 3, (2) power or energy produced by Waterford 3 or (3) the licensee of Waterford 3. Moreover, LP&L will be required to notify the NRC of any action by a lessor or other successor in interest to LP&L that may have an effect on the operation of the facility.

Any person who wishes to express views pursuant to the antitrust issues raised in this amendment request should submit said views within 30 days of the initial publication of this notice in the *Federal Register* to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Chief, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 26th day of May 1989.

For the Nuclear Regulatory Commission.

Cecil O. Thomas,

Chief, Policy Development and Technical Support Branch, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13143 Filed 6-1-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-443]

Public Service Co. of New Hampshire, Seabrook Station, Unit No. 1; Issuance of Facility Operating License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC),¹ has issued

¹ There is an application pending before the NRC that would transfer the operation of Waterford 3 from LP&L to its sister company, System Energy Resources, Inc. (SERI)—both LP&L and SERI are subsidiaries of Middle South Utilities, Inc.

² Public Service Company of New Hampshire is authorized to act as agent for the: Canal Electric Company, Connecticut Light and Power Company, EUA Power Corporation, Hudson Light & Power Company, Massachusetts Municipal Wholesale

Continued

BEST COPY AVAILABLE

Facility Operating License No. NPF-67 to Public Service Company of New Hampshire (PSNH) and the owners listed below (the utilities listed below including PSNH collectively referred to as the licensees) which authorizes operation of the Seabrook Station, Unit No. 1 (the facility) at reactor core power levels not in excess of 170 megawatts thermal (5% of rated power) in accordance with the provisions of the license, the Technical Specifications and the Environmental Protection Plan with a condition currently limiting operation to no more than 0.75 effective full power hours. Authorization to operate beyond five percent of full power will require specific Commission approval.

The Seabrook Station, Unit No. 1 (Seabrook Unit 1) is a pressurized water reactor located on the southeast coast of New Hampshire in Seabrook Township, Rockingham County, New Hampshire. The license is effective as of the date of issuance.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter I which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of an operating license was published in the Federal Register on October 19, 1981 (46 FR 51330).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by the license is encompassed by the overall action evaluated in the Final Environmental Statement.

For further details with respect to this action, see (1) Facility Operating License No. NPF-67, with Technical Specifications (NUREG-1331) and the Environmental Protection Plan; (2) the report of the Advisory Committee on Reactor Safeguards, dated April 19, 1983; (3) the Commission's Safety Evaluation Report, dated March 1983 (NUREG-0896), and Supplements 1 through 8; (4) the Final Safety Analysis Report and Amendments thereto; (5) the Environmental Report and supplements

Electric Company, Montauk Electric Company, New England Power Company, New Hampshire Electric Corporation, Inc., Taunton Municipal Lighting Plant, The United Illuminating Company, and Vermont Electric Generation and Transmission Cooperative, Inc., and has exclusive responsibility and control over the physical construction, operation and maintenance of the facility.

thereto; and (8) the Final Environmental Statement dated December 1982 (NUREG-0895); (7) Assessment of the Effect of License Duration and Matters Discussed in the Final Environmental Statement for the Seabrook Station, Unit No. 1; and (8) the applicant's Decommissioning Funding Assurance Plan, dated March 31, 1989, as supplemented on April 27, 1989.

These items are available for inspection at the Commission's Public Document Room located in the Gelman Building, Lower Level, 2120 L Street NW., Washington, DC, and in the Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833. A copy of Facility Operating License NPF-67 may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Project Directorate No. I-3. Copies of the Safety Evaluation Report and Supplements 1 through 8 (NUREG-0896) may be purchased at current rates from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7982 or by calling (202) 275-2060 or (202) 275-2171.

Dated at Rockville, Maryland this 28th day of May 1989.

For the Nuclear Regulatory Commission,
Richard H. Weissman,
Director, Project Directorate, I-3, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.
[FR Doc. 89-13142 Filed 6-1-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-312]

Sacramento Municipal Utility District; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Sacramento Municipal Utility District (the licensee) to withdraw its June 13, 1986 application for proposed amendment to Facility Operating License No. DPR-54 for the Rancho Seco Nuclear Generating Station, located in Sacramento County, California.

The proposed amendment would have revised the Technical Specifications pertaining to Licensee Event Report clarifications in accordance with Generic Letter 83-43.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on May 6, 1987 (52 FR 18955). However, by letter dated May 10,

1989, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated June 13, 1986, and the licensee's letter dated May 10, 1989, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

Dated at Rockville, Maryland this 25th day of May, 1989.

For the Nuclear Regulatory Commission,
Steven A. Reynolds,
Project Manager, Division of Reactor Projects III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.
[FR Doc. 89-13141 Filed 6-1-89; 8:45 am]
BILLING CODE 7590-01-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-72]

Initiation of Section 302 Investigation; Thailand's Restrictions on Access to Its Cigarette Market

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of initiation of an investigation under section 302(a) of the Trade Act of 1974, as amended; request for written comments.

SUMMARY: Pursuant to 19 U.S.C. 2412(a), the U.S. Trade Representative (USTR) has determined to initiate an investigation of the Royal Thai Government's policies and practices with respect to the importation, distribution and sale of cigarettes. USTR invites written comments on these policies and practices.

EFFECTIVE DATE: May 25, 1989.

ADDRESS: Comments should be addressed to the Chairman, Section 301 Committee, Office of the United States Trade Representative, Room 222, 600 17th St., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Peter Collins, Director for Southeast Asian Affairs, (202) 395-6813, or Catherine Field, Associate General Counsel, (202) 395-3432, Office of the U.S. Trade Representative 600 17th Street, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: On April 10, 1989, the United States Cigarette Export Association (CEA) filed a petition under section 302(a) of the Trade Act of 1974, as amended, 19

U.S.C. 2412(a), alleging that the Royal Thai Government and its instrumentality, the Thailand Tobacco Monopoly (TTM) engaged in acts, policies and practices that are unreasonable or discriminate against imports and burden and restrict U.S. commerce. The Thai government maintains an effective ban on the importation of foreign cigarettes and prohibits foreign investment in cigarette manufacture. The petitioner contends that these bans on importation and investment, combined with high tariffs, discriminatory domestic taxes and TTM distribution practices, deny U.S. firms fair and equitable market opportunities. Finally, the CEA alleges that Thai government restrictions on cigarette advertising are intended to put foreign cigarette brands at a competitive disadvantage.

On May 25, 1989, the U.S. Trade Representative initiated an investigation of the Thai government's policies and practices affecting fair and equitable access to the Thai cigarette market. USTR also requested consultations with the Royal Thai Government, as required by section 303(a) of the Trade Act of 1974, as amended.

In preparing the U.S. presentations for such consultations, USTR will seek information and advice from the petitioner and the appropriate committees established pursuant to section 135 of the Trade Act, as provided in section 303(a)(3).

Any interested person is invited to submit written comments on the issues raised in the petition. Comments should be filed in accordance with the regulations at 15 CFR 2006.8 and are due by noon on June 30, 1989. Comments must be in English and provided in twenty copies to: Chairman, Section 301 Committee, Room 222, USTR, 600 17th Street, NW., Washington DC 20506.

A. Jana Bradley,
Chairwoman, Section 301 Committee.
[FR Doc. 89-13115 Filed 6-1-89; 8:45 am]

BILLING CODE 3190-01-M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

AGENCY: Railroad Retirement Board.

ACTION: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s):

- (1) *Collection title:* Employer Service and Compensation Reports.
- (2) *Form(s) submitted:* UI-41, UI-41a.
- (3) *OMB Number:* 3220-0070.
- (4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.
- (5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.
- (6) *Frequency of response:* On occasion.
- (7) *Respondents:* Businesses or other for-profit.
- (8) *Estimated annual number of respondents:* 400.
- (9) *Total annual responses:* 11,000.
- (10) *Average time per response:* 0818 hours.
- (11) *Total annual reporting hours:* 900.
- (12) *Collection description:* The reports obtain the employee's service and compensation for a period subsequent to those already on file and the employee's base year compensation. The information is used to determine the entitlement to and the amount of benefits payable.

Additional Information or Comments

Copies of the proposed forms and supporting documents can be obtained from Ronald Ritter, the agency clearance officer (312-751-4692). Comments regarding the information collection should be addressed to Ronald Ritter, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 and the OMB reviewer, Justin Kopca (202-395-7316), Office of Management and Budget, Room 3002, New Executive Office Building, Washington, DC 20503.

Ronald Ritter,
Acting Director of Information Resources Management.

[FR Doc. 89-13100 Filed 6-1-89; 8:45 am]

BILLING CODE 7905-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26846; File No. SR-Phlx-88-31]

Self-Regulatory Organizations; Philadelphia Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to Voting Rights Listing Standards

On October 3, 1988, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to Section 19(b)(1) under the Securities Exchange

Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to add to the Exchange's rules a new Rule 806, the Voting Rights Listing Standards—Disenfranchisement Rule.

The proposed rule change was noticed in Securities Exchange Act Release No. 26676, 54 FR 13800 (April 5, 1989). No comments were received on the proposed rule change.

The Exchange states that the purpose of the proposed rule change is to bring the Exchange into compliance with Rule 19c-4, which was recently adopted by the Commission under the Act.³

Rule 19c-4 establishes a minimum voting rights listing standard among the self-regulatory organizations. The Rule prohibits the common stock or other equity securities of a company from being or remaining listed on an exchange if such company issues securities or takes other corporate action that would have the effect of nullifying, restricting or disparately reducing the per share voting rights of existing common stock shareholders of the company.⁴

The text of Phlx's proposed new rule 806 is almost identical to the text of Rule 19c-4 as adopted by the Commission. For example, proposed Rule 806 prohibits the listing by the Phlx of the equity securities of a domestic issuer if that issuer issues securities or takes any corporate action which has the effect of nullifying, restricting or disparately reducing the voting rights of existing shareholders. The text of proposed new rule 806, however, differs from the text of Rule 19c-4 in two respects.

First, proposed Rule 806 incorporates into its text the July 7, 1988 grandfather date provided in the Commission's Adopting Release but not in the actual text of Rule 19c-4. Second, the Exchange proposes to include in paragraph (c)(5) of Rule 806 a provision that would automatically incorporate into the Phlx's rules any exclusion from the voting rights listing standards of Rule 19c-4 adopted by another self-regulatory organization ("SRO"). In its filing, the Exchange stated that the purpose of this provision is to assure that Phlx's rules remain consistent with those of the other markets, and to assure that Phlx will not be prevented from listing or seeking unlisted trading privileges in securities eligible for listing on the other

¹ 15 U.S.C. 78s(b)(1) (1982).

² 17 CFR 240.19b-4 (1986).

³ See Securities Exchange Act Release No. 25891 (July 7, 1988), 53 FR 26376 (July 12, 1988) ("Adopting Release").

⁴ See Adopting Release for text of the Rule, including a non-exclusive list of presumptively permitted and prohibited corporate actions.

markets as a result of amendments to their voting rights listing standards. The Phlx has clarified that Rule 806(c)(5) is intended to extend only to written exclusions, adopted by rule, by the other SROs and approved by the Commission. Proposed Rule 806 would not extend to interpretations or other determinations made by other self-regulatory organizations regarding Rule 19c-4 if such interpretations or determinations were not adopted as a rule change. In addition, the Exchange has indicated that it would file proposed rule changes, as soon as possible, to specifically incorporate into the text of its rule any rule changes adopted by the other SROs to their voting rights listing standards.⁶

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and in particular the requirements of section 6(b)(5) of the Act. The Commission believes that the voting rights listing standards set forth in Exchange Rule 806, as required by Rule 19c-4, will promote just and equitable principles of trade and protect investors and the public interest. Specifically, as discussed in the Adopting Release, the terms of Rule 19c-4, as expressly adopted in Phlx Rule 806, will protect shareholders from being disenfranchised while permitting companies flexibility to use disparate voting rights plans for capital raising purposes. Finally, Rule 19c-4, when adopted by the Commission, automatically becomes a rule of the Securities Self-Regulatory Organizations. Proposed Phlx Rule 806 will codify this by officially placing Rule 19c-4 in the Phlx rule book.

It is Therefore Ordered, pursuant to section 19(b)(2) of the Act,⁶ that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Dated: May 24, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-13064 Filed 6-1-89; 8:45 am]
BILLING CODE 8010-01-M

⁶ See letter to Sharon L. Ikin, Staff Attorney, SEC, from Richard T. Chase, Executive Vice President, Phlx, dated May 5, 1989.

¹⁵ U.S.C. 78e(b)(2) (1982).

¹⁷ 17 CFR 200.30-3(a)(2) (1986).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2352]

South Carolina (and a Contiguous County in the State of North Carolina); Declaration of Disaster Loan Area

Spartanburg County, and the contiguous counties of Cherokee, Laurens, Greenville, and Union, in the State of South Carolina, and Polk County, in the State of North Carolina, constitute a disaster loan as a result of damages from tornadoes which occurred on May 5, 1989. Applications for loans for physical damage may be filed until the close of business on July 24, 1989, and for economic injury until the close of business on February 23, 1990, at the address listed below:

Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308, or other locally announced locations.

The interest rates are:	Percent
Homeowners with credit available elsewhere.....	8.000
Homeowners without credit available elsewhere.....	4.000
Businesses with credit available elsewhere.....	8.000
Businesses and non-profit organizations without credit available elsewhere.....	4.000
Businesses and non-profit organizations (EIDL) without credit available elsewhere.....	4.000
Others (including non-profit organizations) with credit available elsewhere.....	9.125

Any county contiguous to Spartanburg County and not listed above has already been named as a contiguous county in a previous declaration for the same tornadoes.

The number assigned to this disaster for physical damage is 235212 and for economic injury the number is 676500.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 23, 1989.

Susan S. Engeleiter,
Administrator.

[FR Doc. 89-13073 Filed 6-1-89; 8:45 am]
BILLING CODE 8025-01-M

Region IX Advisory Council; Public Meeting

The U.S. Small Business Administration Region IX Advisory Council, located in the geographical area of Santa Ana, will hold a public meeting

at 9:30 a.m. on Tuesday, June 20, 1989, at the Pacific Inland Bank Board Room, 5th floor, 888 S. West St., Anaheim, California, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Steve Waddell, District Director, U.S. Small Business Administration, 901 W. Civic Center Drive, Suite 160, Santa Ana, California 92703, phone (714) 836-2494.

Jean M. Nowak,
Director, Office of Advisory Councils.
May 23, 1989.

[FR Doc. 89-13074 Filed 6-1-89; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area of Concord, will hold a public meeting at 10:00 a.m. Tuesday, June 6, 1989, in the James Cleveland Federal Building, Room B-16, 55 Pleasant Street, Concord New Hampshire, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call William K. Phillips, District Director, U.S. Small Business Administration, P.O. Box 1257, 55 Pleasant Street, Concord, New Hampshire 03302-1257, phone (603) 225-1400.

Jean M. Nowak,
Director, Office of Advisory Councils.
May 23, 1989.

[FR Doc. 89-13075 Filed 6-1-89; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of Newark, will hold a public meeting at 8:30 a.m. on Tuesday, June 13, 1989, at the Headquarters of Bellcore, Bell Communications Research, 290 West Mount Pleasant Avenue, Livingston, New Jersey to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Stanley H. Salt, District Director, U.S. Small Business Administration, 60 Park

Place, Newark, New Jersey 07102, phone (201) 645-3580.

Jean M. Nowak,
Director, Office of Advisory Councils.
May 23, 1989.

[FR Doc. 89-13076 Filed 6-1-89; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of New York City, will hold a public meeting at 9:30 a.m., Tuesday, June 20, 1989, in the 4th floor conference room of the American Institute of Certified Public Accountants, 1211 Avenue of the Americas (between 47th and 48th Streets), New York, New York to discuss such matters as may be presented to members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Bert X. Haggerty, District Director, U.S. Small Business Administration, 26, Federal Plaza, Room 3100, New York, New York 10278, phone (212) 264-1318.

Jean M. Nowak,
Director of Advisory Councils.
May 23, 1989.

[FR Doc. 89-13077 Filed 6-1-89; 8:45 am]

BILLING CODE 8025-01-M

Region VI Advisory Council; Public Meeting

The U.S. Small Business Administration Region VI Advisory Council, located in the geographical area of Lower Rio Grande Valley, will hold a public meeting at 12:00 noon on Wednesday, June 14, 1989, at Wyndham Hotel, 900 North Shoreline, Corpus Christi, Texas to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Miquel A. Cavazos, Jr., District Director, U.S. Small Business Administration, 222 E. Van Buren, Suite 500, Harlingen, Texas 78550, phone (512) 427-8625.

Jean M. Nowak,
Director of Advisory Councils.
May 23, 1989.

[FR Doc. 89-13078 Filed 6-1-89; 8:45 am]

BILLING CODE 8025-01-M

Region III Advisory Council; Public Meeting

The U.S. Small Business Administration Region III Advisory Council, located in the geographical area of Richmond, will hold a public meeting at 1:00 p.m. to 5:00 p.m. Thursday, June 15 and from 8:30 a.m. to 12 noon Friday, June 16, 1989 at the Holiday Inn Conference Center, 1021 Koger Center Blvd., Richmond, Virginia, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration or others present.

For further information, write or call Catherine S. Marschall, District Director, U.S. Small Business Administration, P.O. Box 10126, Federal Building, Richmond, Virginia 23240, phone (804) 771-1741.

Jean M. Nowak,
Director of Advisory Councils.
May 23, 1989.

[FR Doc. 89-13079 Filed 6-1-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Radio Technical Commission for Aeronautics (RTCA); Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the third meeting of RTCA Special Committee 166 on User Requirements for Future Airport and Terminal Area Communication, Navigation, and Surveillance Systems to be held June 19-20, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) approval of the minutes of the second meeting, RTCA Paper No. 168-89/SC166-16; (3) working group activities report on operations working group and technology working group; (4) FAA briefing on Terminal Area R&D Programs; (5) FAA briefing on Terminal Area NAS Plan Programs; (6) consideration of proposed revision to committee terms of reference, Paper No. 125-89/SC166-14; (7) review of committee report outline; (8) other business; and (9) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons

wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on May 24, 1989.

Geoffrey R. McIntyre,
Designated Officer.

[FR Doc. 89-13052 Filed 6-1-89; 8:45 am]

BILLING CODE 4910-13-M

Maritime Administration

Removal From Roster of Approved Trustee

Notice is hereby given that RepublicBank Houston, N.A., InterFirst Bank Houston, N.A. and First RepublicBank Houston, N.A. are removed from the Roster of Approved Trustees, pursuant to Pub. L. 89-346 and 46 CFR 221.21-221.30.

Dated: May 26, 1989.

By Order of the Maritime Administrator.

James E. Saari,
Secretary.

[FR Doc. 89-13053 Filed 6-1-89; 8:45 am]

BILLING CODE 4910-01-M

National Highway Traffic Safety Administration

Petition for Exemption From the Vehicle Theft Prevention Standard; Porsche Cars North American, Inc.

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Grant of petition for exemption.

SUMMARY: This notice grants the petition by Porsche Cars North America, Inc. (Porsche) for an exemption from the parts marking requirements of the vehicle theft prevention standard for the Porsche 928 and 911 carlines for Model Year 1990. The agency takes this action under section 605 of the Motor Vehicle Information and Cost Savings Act. The agency has determined that the antitheft device which the petitioner intends to install on these lines as standard equipment is likely to be as effective in reducing and deterring motor vehicle theft as would compliance with the parts marking requirements.

DATE: The exemption granted by this petition will become effective beginning with the 1990 Model Year.

SUPPLEMENTARY INFORMATION: On January 27, 1989, this agency received from Porsche a petition for exemption

from the theft prevention standard for the Model Year (MY) 1990 Porsche 928 and 911 carlines pursuant to 49 CFR 543. Exemption from Vehicle Theft Prevention Standard. The agency reviewed the January 27, 1989 submission and concluded that it constituted a complete petition. Accordingly, January 27, 1989 is the date on which the statutory 120 day period for processing Porsche's petition began. On February 21, 1989, this agency decided to grant the company's request under 49 CFR Part 512 to treat certain information in the petition regarding location of antitheft devices in the 928 and 911 carlines as confidential business information. On March 25, 1989, Porsche provided supplemental information, requested by NHTSA, addressing concerns about reliability and durability.

In its petition, Porsche included a detailed description and diagrams of the identity, design, and location of the components of the antitheft device for the Porsche 928 and 911 carlines. The antitheft system for the 928 and 911 carlines is the same.

The antitheft device is a comprehensive security alarm system that is activated by removing the key from the ignition and locking either the driver or passenger door with the key. The central locking system then locks the remaining door and arms the alarm. The alarm monitors the doors, front hood, rear trunk (911) or hatch (928), radio, and ignition switch. If a door, front hood or trunk/hatch is opened, the radio removed, or the ignition switch moved from the off position without the alarm first being disarmed with the key, the alarm will go off. When this happens, the horn sounds intermittently and the fog lights and brake lights flash. After 90 seconds, the system resets and turns off the horn and lights. The car will not start so long as the alarm remains armed. If the system again senses another door, hood, or hatch being opened, the radio removed, or the engine trying to be started, the alarm will again activate for 90 seconds. This cycle continues for as long as the vehicle has electrical power.

Porsche also stated that the system is designed to make attempts to defeat the system difficult and time consuming. The battery in the Porsche is located in the rear of the vehicle and can only be accessed from inside the car. The Porsche 911 is a rear engine vehicle and the front hood compartment is the storage area. The battery is located in the front hood compartment of the vehicle and can only be accessed by opening the front hood. The releases for

the hood of both carlines, the hatchback for the 928, and the rear engine lid for the 911 are all located within the passenger compartment. If the front hood, hatchback or rear engine lid is opened, with the alarm first being disarmed with the key, the alarm will sound.

For both the Porsche 928 and 911, the power lines from the battery to the alarm system are inside the vehicle and cannot be accessed from outside the car. For both models, the alarm control units are solid state and located inside the passenger compartment. If a thief should enter the car through a broken window, Porsche asserts it would take a minimum of 15 minutes to gain access to the alarm control unit and would require specific knowledge of the system in order to successfully bypass it. The thief would then need to bypass the ignition lock to start the car.

Porsche also stated that a thief cannot gain access to the lock switches from outside the car, even if the lock cylinders are removed, without physically breaching the outer metal panels surrounding the locks. All system components are of high quality and tested to insure reliability and durability to Porsche's standards. The reliability and durability testing for the antitheft system is the same for the 911 and the 928.

Porsche believes that the alarm system for both the 928 and 911 carlines will be as effective in reducing and deterring theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR Part 541), due to the features and functions described in their petition.

Based on substantial evidence, the agency believes that the antitheft device for Porsche 911 and 928 in Model Year 1990 is likely to be as effective in reducing and deterring motor vehicle theft as compliance with the parts-marking requirements of the theft prevention standard (49 CFR Part 541).

This determination is based on the information that Porsche submitted with its petition, and on other available information. The agency believes that the device will provide the types of performance listed in 49 CFR Part 543.6(a)(3): Promoting activation; attracting attention to unauthorized entries; preventing defeat or circumventing of the device by unauthorized persons; preventing operation of the vehicle by unauthorized entrants; and ensuring the reliability and durability of the device.

As required by section 605(b) of the statute and 49 CFR 543.6(a)(4), the agency also finds that Porsche has

provided adequate reasons for its belief that the antitheft device will reduce and deter theft. This conclusion is based on the information Porsche provided on its device. This information included a description of reliability and functional tests conducted by Porsche for the antitheft system and its components. The function and design of the Porsche antitheft device is similar to those of other devices, such as that on the Nissan 300ZX, General Motors Allante, and Audi 5000S that the agency previously has considered likely to be at least as effective as complying with Part 541 would be.

If Porsche decides not to use the exemption for the 928 and 911 carlines, it should formally notify the agency. If this is the case, these carlines must be marked according to the requirements under 49 CFR Parts 541.6 and 541.5 (marking of major component parts and those replacement parts).

The agency notes that the limited and apparently conflicting data on the effectiveness of the pre-standard parts marking programs make it difficult at this early stage of the theft standard's implementation to compare the effectiveness of an antitheft device with the effectiveness of compliance with the theft prevention standard. The statute clearly invites such a comparison, which the agency has made on the basis of the limited data available.

NHTSA notes that if Porsche wishes in the future to modify the device on which this exemption is based, the company may have to submit a petition to modify the exemption. Section 543.7(d) states that a Part 543 exemption applies only to vehicles that belong to a line exempted under this Part and equipped with the antitheft device on which the line's exemption was based. Further, § 543.9(c)(2) provides for the submission of petitions "(t)o modify an exemption to permit the use of an antitheft device similar to but differing from the one specified in that exemption."

The agency wishes to minimize the administrative burden which § 543.9(c)(2) could place on exempted vehicle manufacturers and itself. The agency did not intend in drafting Part 543 to require the submission of a modification petition for every change in the components or design of an antitheft device. The significance of many such changes could be *de minimus*. Therefore, NHTSA suggests that if Porsche contemplates making any changes the effects of which might be characterized as *de minimus*, then the company should consult the agency

before preparing and submitting a petition to modify.

(15 U.S.C. 2025, delegation of authority at 49 CFR 1.50)

Issued on: May 25, 1989.

Jeffrey R. Miller,
Acting Administrator.

[FR Doc. 89-13087 Filed 6-1-89; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: May 26, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0351

Form Number: 3975, 3975A, 3975B, 3975C, 3975D, 3975E, 3975F and 3975G

Type of Review: Revision

Title: Tax Practitioner Mailing File (TPMF)

Description: Form 3975 Series allows practitioners a systematic way to remain on the mailing file (TPMF) and to order information copies of tax forms materials.

Respondents: Business or other for-profit

Estimated Number of Respondents: 895,000

Estimated Burden Hours Per Response:

Form	Estimated Time
3975	3 minutes
3975A	3 minutes
3975B	3 minutes
3975C	3 minutes
3975D	3 minutes
3975E	6 minutes
3975F	4 minutes
3975G	2 minutes

Frequency of Response: Annually
Estimated Total Reporting Burden: 33,052 hours

OMB Number: 1545-1079

Form Number: 9041

Type of Review: Revision

Title: Application for Electronic/Magnetic Tape Filing of Forms 1041, 1065, 5500-C

Description: Form 9041 will be filed by fiduciaries, partnerships, and sponsors/administrators as an application to file their returns electronically or on magnetic tape; and by software firms, service bureaus, and electronic transmitters, to develop auxiliary services.

Respondents: Businesses or other for-profit

Estimated Number of Respondents: 3,000

Estimated Burden Hours Per Response: 18 minutes

Frequency of Response: Annually
Estimated Total Reporting Burden: 900 hours

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-13056 Filed 6-1-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: May 26, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB number: 1545-0043

Form Number: 972

Type of Review: Revision

Title: Consent of Shareholder to Include Specific Amount in Gross Income

Description: Form 972 is used by shareholders of certain companies to consent to the inclusion in gross income of dividends that are not received. By making their consent, the shareholder may relieve the corporation of paying certain taxes. IRS uses the form to determine if the shareholders have actually included the amounts in gross income.

Respondents: Individuals or households, Businesses or other for-profit institutions,

Estimated Number of Respondents/Recordkeepers: 400

Estimated Burden Hours Per Response/Recordkeeper: 1 hour

Frequency of Response: Annually
Estimated Total Reporting Burden: 408 hours

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-13057 Filed 6-1-89; 8:45 am]

BILLING CODE 4810-25-M

Internal Revenue Service

[Delegation Order No. 156 (Rev. 10); Chief Counsel Directives Manual (30)330]

Delegation of Authority To Permit Disclosure of Tax Information and To Permit Testimony of the Production of Documents

AGENCY: Internal Revenue Service, Treasury.

ACTION: Delegation of authority.

SUMMARY: This revised delegation order authorizes certain Internal Revenue Service officials to disclose returns filed in accordance with Section 60501 of the Internal Revenue Code (IRC) as prescribed in IRC 6103(i)(8). The text of the delegation order appears below.

EFFECTIVE DATE: June 2, 1989.

FOR FURTHER INFORMATION CONTACT: Carman L. Gannotti, EX:D, Room 1603, 1111 Constitution Avenue, NW., Washington, DC 20224. Telephone: (202) 566-4283. (not a toll-free number)

Pursuant to the authority vested in the Commissioner of Internal Revenue by Treasury Order 150-10 and in the Chief Counsel by General Counsel Order No. 4 and by Treasury Order 101-05, authority to act in matters officially before their respective functions is hereby delegated.

The authority to disclose returns and/or return information under certain provisions of the IR Code, such as IRC 6103 (h)(1) and (k)(6) is not delegated herein as the language of these provisions themselves permits officers and employees of the Internal Revenue Service and the Office of the Chief Counsel to disclose such information.

The authority to disclose returns and return information under IRC 6103(k)(4) is also delegated herein as Delegation Order 114 (as revised) governs these disclosures.

(1) Deputy Assistant Commissioners; Division Directors (or equivalent level position); Chief Counsel Division Directors; Regional Commissioners; Regional Inspectors; District Counsels; District and Service Center Directors; Director, Martinsburg Computing Center; and Director, Detroit Computing Center are authorized:

(a) To disclose or, in specific instances, authorize the disclosure of returns or return information to such persons as the taxpayer may designate in a written request, subject to the conditions prescribed in IRC 6103(c) and the Treasury Regulations thereunder. The authority to withhold return information upon a determination that such disclosure would seriously impair Federal tax administration is also delegated. The authority delegated in this paragraph to disclose returns or return information may be redelegated to Internal Revenue Service employees and employees of the Office of Chief Counsel to the extent necessary within the exercise of their official duties. The authority delegated in this paragraph to withhold return information may be redelegated not lower than Chiefs, Special Procedures function; Group Managers (or their equivalent); Chiefs, Appeals Offices; Chiefs, Criminal Investigation Branch; and Disclosure Officers.

(b) To disclose or, in specific instances, authorize the disclosure of returns, upon the written request of an individual taxpayer, partner, corporate officer, shareholder, administrator, executor, trustee, or other person having a material interest subject to the conditions prescribed in IRC 6103(e). The authority to disclose or, in specific instances, authorize the disclosure of return information to such persons, upon a determination that disclosure would not seriously impair Federal tax administration, as prescribed in IRC 6103(e)(7), is also delegated. The authority to withhold return information upon a determination that disclosure would seriously impair Federal tax administration is also delegated. The authority delegated in this paragraph to disclose or authorize the disclosure of returns or return information may be redelegated to Internal Revenue Service employees and employees of the Office of Chief Counsel to the extent necessary within the exercise of their official duties. In the event a disclosure of return information would seriously

impair Federal tax administration, the decision to withhold such return information will be referred to officials not lower than Chiefs, Special Procedures function; Group Managers (or their equivalent); Chiefs, Appeals Offices; Chiefs, Criminal Investigation Branch; and Disclosure Officers.

(c) To disclose or, in specific instances, authorize the disclosure of returns or return information to officers and employees of the Department of Justice including United States attorneys, in a matter involving tax administration, subject to the conditions prescribed in IRC 6103(h)(2), the Treasury Regulations thereunder, and (h)(3)(A). The authority delegated in this paragraph may be redelegated not lower than Chiefs, Special Procedures function; and Group Managers (or their equivalent including Disclosure Officers). The authority delegated in this paragraph to Chief Counsel employees may be redelegated not lower than Chiefs, Appeals Officers; and to attorneys of the Office of Chief Counsel directly involved in such matters. (See paragraph (17) below.)

(d) To disclose or, in specific instances, authorize the disclosure of returns or return information to officers and employees of the Department of Treasury, as specified in IRC 6103(l)(4)(B) or, upon written request, to employees and other persons specified in IRC 6103(l)(4)(A) for use in personnel or claimant representative matters, and to make relevancy and materiality determinations as provided in section 6103(l)(4)(A), subject to the conditions prescribed in IRC 6103(1)(4). The authority delegated in this paragraph may be redelegated only to Assistant Division Directors (or equivalent level position); Assistant Regional Commissioners; Regional Director of Appeals; Assistant Regional Inspectors; Regional Chief, Personnel Branch; Assistant District and Service Center Directors; Division Chiefs; National Officer Branch Chiefs, Internal Security Division; Staff Assistants to Regional Counsels; and to attorneys of the Office of Chief Counsel and Inspectors directly involved in such matters. (See paragraph 13(e).)

(e) To disclose or, in specific instances, authorize the disclosure of returns or return information to the extent necessary in connection with contractual procurement by the Service or Office of the Chief Counsel of equipment or other property of services, subject to the conditions prescribed in IRC 6103(n) and the Treasury Regulations thereunder. The authority delegated in this paragraph may be

redelegated only to Assistant Division Directors (or equivalent level position); Assistant Regional Commissioners; Regional Director of Appeals; Assistant Regional Inspectors; Assistant District and Service Center Directors; Division Chiefs; Chief Counsel Assistant Division Directors; Assistant Regional Counsel; and Disclosure Officers.

(f) To disclose, or in specific instances, authorize the disclosure of return information (other than taxpayer return information) which may constitute evidence of a violation of any Federal criminal law (not involving tax administration) or to disclose return information under circumstances involving a threat or other imminent danger of death or other physical injury, which is directed against the President or other government official, to the U.S. Secret Service, subject to the conditions prescribed in IRC 6103(i)(3). The authority delegated in this paragraph is also delegated to Assistant District and Service Center Directors. This does not limit the authority granted in paragraph 6(d) of this order.

(g) To determine whether a disclosure of standards used or to be used for selection of return for examination, or data used or to be used for determining such standards will seriously impair assessment, collection or enforcement under the internal revenue laws pursuant to IRC 6103(b)(2). The authority delegated in this paragraph may be redelegated to Disclosure Officers.

(2) Deputy Assistant Commissioners; Division Directors (or equivalent level position); Regional Commissioners; Regional Inspectors; District and Service Center Directors; Director, Martinsburg Computing Center; and Director, Detroit Computing Center are authorized to determine whether a disclosure of returns or return information in a Federal or State judicial or administrative proceeding pertaining to tax administration would identify a confidential informant or seriously impair a civil or criminal tax investigation, subject to the conditions prescribed in IRC 6103(h)(4). The authority delegated in this paragraph may not be redelegated.

(3) Deputy Assistant Commissioner (Examination); Regional Commissioners; Assistant Commissioner (International); and District and Service Center Directors are authorized:

(a) To furnish an affirmative or negative response to a written inquiry from an attorney of the Department of Justice (including a United States Attorney) involved in a judicial proceeding pertaining to tax administration, or any person (or his/

her legal representative) who is a party to such proceeding, as to whether a prospective juror has or has not been the subject of any audit or other tax investigation by the Internal Revenue Service, subject to the conditions prescribed in IRC 6103(h)(5). The authority delegated in this paragraph may be redelegated only to Assistant District and Service Center Directors; Division Chiefs, Director, Office of Disclosure and Disclosure Officers.

(b) To disclose or, in specific instances, authorize the disclosure of:

(i) Accepted offers-in-compromise to members of the general public, subject to the conditions prescribed in IRC 6103(k)(1).

(ii) The amount of an outstanding obligation secured by a lien, notice of which has been filed pursuant to section 6323(f), to any person who furnishes satisfactory written evidence establishing a right in or intent to obtain a right in property subject to such lien, subject to the conditions prescribed in IRC 6103(k)(2). The authority to disclose or, in specific instances, authorize the disclosure of the amount of such outstanding obligation is also delegated to the Deputy Assistant Commissioner (Collection).

(iii) Taxpayer identity information with respect to any income tax return preparer and information as to whether any penalty has been assessed against such preparer to officers and employees of any agency charged under State or local law with the regulation of such preparers, upon written request and subject to the conditions prescribed in IRC 6103(k)(5);

(iv) Returns or return information with respect to taxes imposed by IRC chapters 2.21, and 24 to the Social Security Administration, upon written request and subject to the conditions prescribed in IRC 6103(l)(1)(A);

(v) Returns or return information with respect to taxes imposed by IRC chapter 22 to the Railroad Retirement Board, upon written request and subject to the conditions prescribed in IRC 6103(l)(1)(C).

(vi) Returns or return information with respect to taxes imposed by IRC subtitle E (relating to taxes on alcohol, tobacco and firearms) to officers and employees of the Bureau of Alcohol, Tobacco and Firearms, upon written request and pursuant to IRC 6103(o)(1).

The authority delegated in subparagraphs (iv) and (v) is also delegated to the Associate Chief Counsel (Technical). The authority delegated in this paragraph may be redelegated only to Assistant District and Service Center Directors; Director, Office of Disclosure; Division Chiefs;

and Disclosure Officers. In addition, the authority delegated in subparagraph (i) may also be redelegated only to Chiefs, Special Procedures function; Special Procedures function Advisor Reviewers; and Group Managers (or their equivalent). The authority delegated in subparagraph (ii) may also be redelegated only to Chiefs, Special Procedures function; Special Procedures function Advisor Reviewers; Group Managers (or their equivalent); and Revenue Officers. The authority delegated in subparagraph (iv) may be redelegated not lower than Branch Chief.

(4) Regional Commissioners; Assistant Commissioner (International); District and Service Center Directors are authorized to disclose or, in specific instances, authorize the disclosure of returns or return information to designated State tax officials, upon written request by the head of a State tax agency, for the purpose of and to the extent necessary in the administration of State tax laws, pursuant to the provisions of IRC 6103(d) and subject to the conditions prescribed in IRC 6103(h)(4) and (p)(8). The authority to withhold return information pursuant to IRC 6103 (d) and (h)(4) upon determination that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation is also delegated. The authority delegated in this paragraph does not extend to the entry into Federal/State Agreements on the Coordination of Tax Administration. The authority delegated in this paragraph may be redelegated to any supervisory level deemed appropriate, but such redelegation shall not extend to the authority to withhold return information.

(5) The Regional Commissioners; Assistant Commissioner (International); District and Service Center Directors; and Director, Martinsburg Computing Center are authorized to disclose or, in specific instances, authorize the disclosure of returns or return information pursuant to Federal/State Agreements on the Coordination of Tax Administration entered into between the head of any State tax agency and the Commissioner of Internal Revenue, pursuant to the provisions of IRC 6103(d) and subject to the conditions prescribed in IRC 6103(h)(4) and (p)(8). The authority to withhold return information pursuant to IRC 6103 (d) and (h)(4) upon a determination that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation is also delegated. The authority delegated in this paragraph may be redelegated to any supervisory level deemed appropriate, but such

redelegation shall not extend to the authority to withhold return information.

(6) The Deputy Assistant Commissioner (Examination) is authorized:

(a) To disclose or, in specific instances, authorize the disclosure of returns and return information to Congressional committees and other persons, upon written request and subject to the conditions prescribed in IRC 6103(f). The authority delegated in this paragraph is also delegated to the Assistant to the Commissioner (Legislative Liaison) and Assistant Commissioner (International). The authority delegated in this paragraph may not be redelegated.

(b) To disclose or, in specific instances, authorize the disclosure of returns or return information to officers and employees of a Federal agency pursuant to an ex parte order by a Federal District Court judge or magistrate when needed for use in the enforcement of a Federal criminal statute (not involving tax administration), or to locate a fugitive from justice subject to the conditions prescribed in IRC 6103(i)(1) or (i)(5) and the Treasury Regulations thereunder. The authority to withhold any return or return information, pursuant to IRC 6103(i)(6), upon a determination that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation is also delegated. The authority delegated in this paragraph is also delegated to Assistant Commissioner (International); Regional Commissioners; and Assistant District and Service Center Directors. This authority may not be redelegated.

(c) To disclose or, in specific instances, authorize the disclosure of return information (other than taxpayer return information) to officers and employees of a Federal agency upon written request by the head of such agency or the Inspector General thereof, or in the case of the Department of Justice, the Attorney General, the Deputy Attorney General, the Associate Attorney General, any Assistant Attorney General, the Director of the Federal Bureau of Investigation, the Administrator of the Drug Enforcement Administration, any United States attorney, any special prosecutor appointed under section 593 of title 28, United States Code, or any attorney in charge of a criminal division organized crime strike force established pursuant to section 510 of title 28, United States Code, when needed for use in the enforcement of a Federal criminal statute (not involving tax

administration), subject to the conditions prescribed in IRC 6103(i)(2). The authority to withhold return information (other than taxpayer return information), pursuant to IRC 6103(i)(6), upon a determination that such disclosure would identify a confidential informant or seriously impair any civil or criminal tax investigation is also delegated. The authority delegated in this paragraph is also delegated to Regional Commissioners; and Assistant District and Service Center Directors and Assistant Commissioner (International). This authority may not be redelegated.

(d) To disclose or, in specific instances, authorize the disclosure of:

(i) return information (other than taxpayer return information) which may constitute evidence of a violation of Federal criminal law (not involving tax administration) to the extent necessary to apprise the head of the appropriate Federal agency pursuant to IRC 6103(i)(3)(A);

(ii) return information to the extent necessary to apprise appropriate officers or employees of a Federal or State law enforcement agency of circumstances involving an imminent danger of death or physical injury to any individual pursuant to IRC 6103(i)(3)(B)(i);

(iii) return information to the extent necessary to apprise appropriate officers or employees of a Federal law enforcement agency of circumstances involving the imminent flight of an individual from Federal prosecution pursuant to IRC 6103(i)(3)(B)(ii);

With respect to subparagraph (i), the authority to withhold any return information pursuant to IRC 6103(i)(6) upon a determination that such disclosure would identify a confidential informant or seriously impair a civil or criminal tax investigation is also delegated.

With respect to subparagraph (ii), the authority is also delegated to Special Agents and Internal Security Inspectors. The authority delegated in this paragraph is also delegated to Assistant Commissioner (International); Regional Commissioners; and Assistant District and Service Center Directors. This authority is in addition to the authority previously delegated in paragraph (1)(f).

(e) To notify the Attorney General or his delegate or the head of a Federal agency that certain returns or return information obtained pursuant to IRC 6103(i)(1), (2) or (3)(A) shall not be admitted into evidence under IRC 6103(i)(4) (A)(i) or (B), upon a determination, in accordance with IRC 6103(i)(4)(C), that such admission would identify a confidential informant or

seriously impair a civil or criminal tax investigation. The authority delegated in this paragraph is also delegated to Regional Commissioners; Assistant Commissioner (International); and Assistant District and Service Center Directors. This authority may not be redelegated.

(f) To disclose or, in specific instances, authorize the disclosure of returns or return information to officers and employees of the General Accounting Office, upon written request by the Comptroller General of the United States and subject to the conditions prescribed in IRC 6103(i)(7). The authority to withhold any return or return information, pursuant to IRC 6103(i)(6), upon a determination that such disclosure would impair any civil or criminal tax investigation or reveal the identity of a confidential informant is also delegated. The authority delegated in this paragraph may not be redelegated.

(g) To disclose or, in specific instances, authorize the disclosure of:

(i) the mailing address of taxpayer to officers and employees of an agency when needed in connection with a Federal claim against such taxpayer, upon written request and subject to the conditions prescribed in IRC 6103(m)(2). The authority delegated in this paragraph is also delegated to Regional Commissioners; Assistant Commissioner (International); and Assistant District and Service Center Directors. Upon approval of a contractual agreement for such disclosures, the authority delegated in this paragraph is also delegated to the Deputy Assistant Commissioner (Taxpayer Service and Returns Processing); Director, Returns Processing and Accounting Division; Deputy Assistant Commissioner (Computer Services) and Director, Martinsburg Computing Center. The authority delegated in this paragraph may be redelegated only as set forth below. The authority delegated to the Regional Commissioners; Director Martinsburg Computing Center; and Assistant District and Service Center Directors may be redelegated only to the Disclosure Officer, Martinsburg Computing Center and Regional, District and Service Center Disclosure Officers.

The authority delegated in this order does not include authority to enter into a contractual agreement, which is contained in Delegation Order No. 100, as revised.

(ii) whether or not an applicant for a loan under an included Federal loan program has a tax delinquent account to the head of the Federal agency administering such program, upon

written request and subject to the conditions prescribed in IRC 6103(1)(3). The authority delegated in this paragraph is also delegated to Regional Commissioners; Assistant Commissioner (International); and Assistant District and Service Center Directors. Upon approval of a contractual agreement for such disclosures, the authority delegated in this paragraph is also delegated to the Deputy Assistant Commissioner (Taxpayer Service and Returns Processing); Director, Returns Processing and Accounting Division; Deputy Assistant Commissioner (Computer Services) and Director, Martinsburg Computing Center. The authority delegated in this paragraph may be redelegated only as set forth below. The authority delegated to the Regional Commissioners; Director, Martinsburg Computing Center; and Assistant District and Service Center Directors may be redelegated only to the Disclosure Officer, Martinsburg Computing Center, and Regional, District and Service Center Disclosure Officers. The authority delegated in this order does not include authority to enter into a contractual agreement, which is contained in Delegation Order No. 100, as revised.

(h) To disclose or, in specific instances, authorize the disclosure of the mailing address of taxpayers to officers and employees of the National Institute for Occupational Safety and Health, upon written request and subject to the conditions prescribed in IRC 6103(m)(3). Upon approval by the Assistant Commissioner (Examination) or his/her delegate of a contractual agreement for such disclosures, the authority delegated in this paragraph is also delegated to the Deputy Assistant Commissioner (Computer Services); Director, Tax Systems Division; Director, Martinsburg Computing Center; and Service Center Directors may not be redelegated. The authority delegated in this paragraph does not include authority to enter into a contractual agreement, which is contained in Delegation Order No. 100, as revised.

(i) To disclose, or in specific instances, authorize the disclosure of the mailing address of any taxpayer who has defaulted on a loan:

(i) made from the student loan fund established under part B or E of title IV of the Higher Education Act of 1965 or a loan made to a student at an institute of higher education pursuant to section 3(a)(1) of the Migration and Refugee Assistance Act of 1962, to the Secretary of Education upon written request and

subject to the conditions prescribed in IRC 6103(m)(4).

(ii) made under part C of title VII of the Public Health Service Act or under subpart II of part B of title VIII of such Act to the Secretary of Health and Human Services upon written request and subject to the conditions prescribed in IRC 6103(m)(5).

Upon approval by the Assistant Commissioner (Examination) or his/her delegate of a contractual agreement for such disclosures, the authority delegated in subparagraphs (i) and (ii) is also delegated to the following officials: Deputy Assistant Commissioner (Computer Services); Director, Tax Systems Division; Director, Martinsburg Computing Center; and Service Center Directors. This authority may not be redelegated. The authority delegated in this paragraph does not include authority to enter into a contractual agreement, which is contained in Delegation Order No. 100, as revised.

(j) To disclose or, in specific instances, authorize the disclosure, upon written request, or returns filed in accordance with IRC 6050I, to officers and employees of any Federal agency whose official duties require such disclosure to administer Federal criminal statutes not related to tax administration, pursuant to the provisions of IRC 6103(i)(8). The authority delegated in this paragraph also is delegated to the Assistant Commissioner (Criminal Investigation); Director, Office of Disclosure; District Directors and Assistants; Special Assistant for Financial Enforcement, Detroit Computing Center; and Chiefs, Criminal Investigation Division. This authority may not be redelegated, and shall expire November 17, 1990, the expiration of the disclosure authority under IRC 6103(i)(8).

(7) The Assistant Commissioner (Taxpayer Service and Returns Processing) is authorized:

(a) To disclose or, in specific instances, authorize the disclosure of returns or return information for statistical use to officers and employees of the Department of Commerce, Bureau of Census, upon the written request of the Secretary of Commerce or to officers and employees of the Department of the Treasury, subject to the conditions prescribed in IRC 6103(j)(1)(A) and the Treasury regulations thereunder and (j)(3). The authority delegated in this paragraph may be redelegated only to the Director, Statistics of Income Division.

(b) To disclose or, in specific instances, authorize the disclosure of return information for statistical use to officers and employees of the

Department of Commerce, Bureau of Economic Analysis, upon the written request of the Secretary of Commerce, or to officers and employees of the Federal Trade Commission, upon written request of the Chairman, subject to the conditions prescribed in IRC 6103(j)(1)(B) and (j)(2) and the Treasury regulations thereunder. The authority delegated in this paragraph may be redelegated only to the Director, Statistics of Income Division.

(8) The Assistant Director, Public Affairs Division; Regional Commissioners; Assistant Commissioner (International); and District Directors are authorized to disclose or, in specific instances, authorize the disclosure of taxpayers' names and the city, state and zip code of their mailing addresses to the press and other media for purposes of notifying persons entitled to undelivered tax refunds, subject to the conditions prescribed in IRC 6103(m)(1). The authority delegated in this paragraph may be redelegated to Assistant District Directors and Public Affairs Officers.

(9) The Assistant Commissioner (Examination) is authorized:

(a) Upon written request of the President, to disclose, or in specific instances, authorize the disclosure of return information (other than return information that is adverse to the taxpayer) of an individual who is under consideration for appointment to a position in the executive or judicial branch of the Federal Government to the authorized representative of the Executive Office of the President or to the Federal Bureau of Investigation on behalf of the President, subject to the conditions prescribed in IRC 6103(g)(2) and (g)(4). Authority is also delegated to disclose or, in specific instances, authorize the disclosure of return information with respect to the categories of individuals discussed above to the heads of Federal agencies upon written request, or the Federal Bureau of Investigation on behalf of and upon the written request of such agency heads, subject to the conditions described in IRC 6103(g)(2) and (g)(4). Upon receipt of any request for return information under IRC 6103(g)(2), authority to notify the individuals with respect to whom the request has been made is also delegated. The authority delegated in this paragraph may be redelegated but not lower than:

(i) Deputy Assistant Commissioner (Examination), in the case of requests by or on behalf of the President where the return information to be disclosed is not adverse to the taxpayer;

(ii) Director, Office of Disclosure, in the case of requests by or on behalf of

the heads of Federal agencies where the return information to be disclosed is adverse to the taxpayer;

(iii) Director, Office of Disclosure, in the case of requests by or on behalf of the heads of Federal agencies where the return information to be disclosed is not adverse to the taxpayer; and

(iv) Director, Office of Disclosure, concerning the notification of individuals with respect to whom a request has been made.

(b) To make the determination that an agency, body or commission or the General Accounting Office has failed to or does not meet the requirements of IRC 6103(p)(4). Subject to the administrative review applicable to State tax agencies described in IRC 6103(p)(7), authority to withhold returns and return information from any agency, body or commission or the General Accounting Office until a determination is made that the requirements of IRC 6103(p)(4) have been or will be met is also delegated. The authority in this paragraph may not be redelegated.

(10) The Deputy Assistant Commissioner (Employee Plans and Exempt Organizations); Regional Commissioners; District Directors of Key Districts for Employee Plans and Exempt Organizations matters; Service Center Directors; Martinsburg Computing Center; and Director, Detroit Computing Center are authorized to disclose, or in specific instances, authorize the disclosure of:

(a) Statements, notifications, reports, or other return information described in IRC 6057(d) to officers and employees of the Social Security Administration for the administration of section 1131 of the Social Security Act, upon written request and subject to the conditions prescribed in IRC 6103(1)(B). The authority delegated in this paragraph to the Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) may be redelegated, but not lower than Branch Chiefs, Employee Plans Technical and Actuarial Division. The authority delegated in this paragraph to Regional Commissioners may be redelegated not lower than Assistant Regional Commissioner. The authority delegated in this paragraph to the District Directors of Key Districts may be redelegated, but not below Chiefs, Technical Review Staffs, Employee Plans and Exempt Organizations Division. The authority delegated in this paragraph to Service Center Directors may be redelegated, but not lower than Section Chiefs (or their equivalent). The authority delegated in this paragraph to the Director, Martinsburg Computing Center

and Director, Detroit Computing Center may be redelegated, but not lower than Branch Chiefs (or their equivalent).

(b) Returns or return information, including compensation information, to officers and employees of the Department of Labor and Pension Benefit Guaranty Corporation for the administration of Titles I and IV of the Employee Retirement Income Security Act of 1974, upon written request and subject to the conditions prescribed in IRC 6103(1)(2) and the Treasury regulations thereunder. The returns or return information which may be disclosed under this paragraph include:

(i) Upon specific written request, the information specified in 26 CFR 301.6103(1)(2)-1(a), 2(a) 3(b)(1), and 3(b)(2);

(ii) Upon receipt by the Commissioner of Internal Revenue of an annual written request, the information specified in 26 CFR 301.6103(1)(2)-3(a);

(iii) Upon receipt by the Commissioner of Internal Revenue of a general written request, information specified in 26 CFR 301.6103(1)(2)-3(d).

(c) The authority delegated in this paragraph to the Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) may be redelegated, but not lower than Branch Chiefs, Employee Plans Technical and Actuarial Division. The authority delegated in this paragraph to Regional Commissioners may be redelegated not lower than Assistant Regional Commissioner. The authority delegated in this paragraph to District Directors of the Key Districts may be redelegated, but not lower than Employee Plans Specialist. The authority delegated in this paragraph to Service Center Directors may be redelegated, but not lower than Section Chiefs (or their equivalent). The authority delegated in this paragraph to the Director, Martinsburg Computing Center and Director, Detroit Computing Center may be redelegated, but not lower than Branch Chiefs (or their equivalent). The authority delegated in this paragraph is also delegated to the National Director of Appeals, Regional Director of Appeals, Chief, Appeals Office; and Associate Chief, Appeals Office and may not be redelegated.

(11) The Deputy Assistant Commissioner (Employee Plans and Exempt Organizations) is authorized to disclose or, in specific instances, authorize the disclosure of drafts of proposed exemptions or of proposed denials of exemption requests, denial letters, and copies of information submitted by taxpayers requesting exemptions to the proper officers of the

Department of Labor for consultation and coordination as required by IRC 4975(c)(2). The authority delegated in this paragraph may be redelegated not lower than Branch Chiefs, Employee Plans Technical and Actuarial Division.

(12) Disclosure of information to appropriate Federal, State or local law enforcement officials may be made by Internal Revenue Service employees, and employees of the Office of Chief Counsel, concerning nontax crimes which do not involve return information or the income or other financial information of an individual or entity, in accordance with the provisions of Chapter (35)00 of the Disclosure of Official Information Handbook, IRM 1272. In situations, where there is a question as to whether the information to be disclosed is or is not return information, such as those described in IRM 1272, the Deputy Assistant Commissioner (Examination); Regional Commissioners; Assistant Commissioner (International); and Assistant District and Service Center Directors are authorized to approve or deny such requests for disclosure. The Deputy Assistant Commissioner (Examination) should act in all such matters only after coordination with the Disclosure Litigation Division, Office of Chief Counsel, Regional Commissioners; Assistant Commissioner (International); and Assistant District and Service Center Directors should act in all such matters only after coordination with the Associate Chief Counsel (International), Office of Regional or District Counsel, as appropriate. The authority delegated in this paragraph may not be redelegated.

(13) The authority vested in the Commissioner of Internal Revenue by 26 CFR 301.9000-1 is delegated by this Order to the Senior Deputy Commissioner. It is also delegated to the following officials to the extent described below. (No authorization is needed in cases referred to the Department of Justice which are discussed in paragraph 1(c) where the testimony or disclosure is made on behalf of the government.)

(a) Regional Commissioners are authorized to determine whether officers and employees of the Internal Revenue Service assigned to their regions, including employees of the Office of the Regional Counsel, but not including employees of the Regional Inspector, will be permitted to testify or produce Service records because of a request or demand for the disclosure of such records or information. The Regional Commissioners should act in all such matters only after coordination with the Office of Regional Counsel. However,

the personal testimony of a Regional Commissioner shall require authorization in accordance with (b) below. The authority delegated in this paragraph may not be redelegated. (See (d) and (e) below.) The authority delegated in this paragraph shall not extend to the disclosure of Internal Revenue Service records and information in response to a subpoena or request or other order of the Tax Court. (See General Counsel Order No. 4, 44 Federal Register 58017 (1979), which provides the authority for disclosure of Internal Revenue Service records and information in tax court proceedings.)

(b) The Deputy Assistant Commissioner (Examination) is authorized to determine whether Regional Commissioners, officers and employees of the Internal Revenue Service assigned to the National Office, including employees of the Office of Chief Counsel, and employees assigned to Regional Inspectors will be permitted to testify or produce Service records because of a request or demand for the disclosure of such records or information. The Deputy Assistant Commissioner (Examination) should act in all such matters only after coordination with the Disclosure Litigation Division, Office of Chief Counsel. The authority delegated in this paragraph may not be redelegated. (See (d) and (e) below.) The authority delegated in this paragraph shall not extend to the disclosure of Internal Revenue Service records and information in response to a subpoena or request or other order of the Tax Court. (See General Counsel Order No. 4, 44 Federal Register 58017 (1979).)

(c) The Assistant Commissioner (International), District Directors and Service Center Directors are authorized to determine whether officers and employees of the Internal Revenue Service assigned to their office, district or service center (including regional appellate employees located in the district) will be permitted to testify or produce Service records because of a request or demand for disclosure of such records or information. For purposes of this paragraph, employees of the Office of the District Counsel come under the authority of the District Director. Employees of the Regional Inspector are covered under paragraph (b), above. The District and Service Center Directors should act in all such matters only after coordination with the Office of the District Counsel. The Assistant Commissioner (International) should act in all such matters only after coordination with the Associate Chief

Counsel International). However, the personal testimony of a District Director or Service Center Director shall require authorization in accordance with (a) above. The authority in this paragraph may not be redelegated. (See (d) and (e) below.) The authority delegated in this paragraph shall not extend to the disclosure of Internal Revenue Service records and information in response to a subpoena or request or other order of the Tax Court. (See General Counsel Order No. 4, 44 Federal Register 58017 (1979).)

(d) The authority delegated in paragraphs (a), (b) and (c) shall not extend to testimony or the production of Service records because of a request or demand for the disclosure of such records or information:

(i) By a Congressional Committee;

(ii) Involving a disclosure to the President or certain other persons pursuant to IRC 6103(g);

(iii) Involving a disclosure to the Comptroller General pursuant to IRC 6103(i)(7); or

(iv) Involving a disclosure to correct a misstatement of fact pursuant to IRC 6103(k)(3).

(e) The Director, General Legal Services Division, and Assistant Regional Counsel (GLS), with the concurrence of the Director, General Legal Services Division, are authorized to determine whether officers and employees of the Internal Revenue Service, including employees of the Office of Chief Counsel, will be permitted to testify or produce Internal Revenue records or information because of a request or demand for the disclosure of such records or information, if the request or demand is made in connection with personnel or claimant representative matters under the jurisdiction of the General Legal Services Division for which they have been delegated authority to disclose returns or return information as described in paragraph 1(d). The authority delegated above in this paragraph to the Director, General Legal Services Division, may be redelegated only to the Assistant Director, General Legal Services Division, and to Branch Chiefs and attorneys of the Office of Chief Counsel directly involved in such matters. This paragraph does not limit the authority granted in (a), (b), or (c) above.

(f) The authority delegated to Regional Commissioners and District and Service Center Directors in paragraphs (a) and (c) shall not extend to testimony or the production of Service records because of a request or demand for the disclosure of such records or information which may require a disclosure to a competent

authority under a tax convention, whether or not such records or information were previously disclosed pursuant to such convention. The Deputy Assistant Commissioner (Examination) should act in all such matters only after authorization by the appropriate United States competent authority. (See Delegation Order 114, as revised).

(g) In addition to paragraphs (a), (b), (c) and (e) above, authority is further delegated to Assistant Regional Commissioners (Resources Management); Regional Inspectors; Regional and District Counsel; District and Service Center Directors; and Director, Detroit Computing Center, to release or, in specific instances, authorize the release of information from the leave and payroll records of employees under their jurisdiction, and to the Director, Finance Division, to release or, in specific instances, authorize the release of information from the leave and payroll records of all employees of the National Office, when such information is requested or subpoenaed in connection with private litigation, upon determination that release of the information would not be detrimental to the Internal Revenue Service. This delegation does not include authority to release or authorize the release of information contained in official personnel folders, which is covered by IRM 0293. When any uncertainty exists as to the availability of furnishing leave and pay information in a particular case, the matter should be referred to the National Office, Attention: PFR:F, with a complete report of the circumstances. The authority delegated in this paragraph may not be redelegated.

The provisions of this paragraph (13(a)-(g)) are limited to the authorization of testimony or the production of documents pursuant to a request or demand as referred to in paragraphs (d)(1) (i) and (ii) of 26 CFR 301.9000-1 and do not extend to or affect other disclosure authority previously delegated in paragraphs (6) and (9) of this order. Furthermore, in instances where it is anticipated that the testimony or production of Service records by a Chief Counsel attorney will involve matters which may fall within the attorney-client privilege, the determination of whether to waive the privilege, as well as the authority to authorize the testimony or production shall lie with the Deputy Assistant Commissioner (Examination) who will act in these matters only after coordination with the Disclosure Litigation Division. In instances involving Regional or District Counsel

attorneys and the attorney-client privilege, authority shall lie with the Regional Commissioner, who will act in these matters only after coordination with the Regional Counsel.

(14) The Deputy Assistant Commissioner (Computer Services); Regional Commissioners; Assistant Commissioner (International); Director, Tax Systems Division; Director, Martinsburg Computing Center; and Service Center Directors are authorized to disclose or, in specific instances, authorize the disclosure of individual master file information to the head of a Federal, State or local child support enforcement agency or an authorized supervisory official under a contractual agreement entered into pursuant to Delegation Order 100, as revised, Revenue Procedure 78-10, and subject to the conditions prescribed in IRC 6103(1)(6)(A)(i). Such contractual agreement should be entered into only after coordination with the Director, Office of Disclosure. The authority delegated in this paragraph may be redelegated to any supervisory level deemed appropriate.

(15) The Deputy Assistant Commissioner (Examination); Regional Commissioners; Assistant Commissioner (International); and Service Center Directors are authorized to disclose or, in specific instances, authorize the disclosure of return information to the head of a Federal, State or local child support enforcement agency or an authorized supervisory official under a contractual agreement entered into pursuant to Delegation Order 100, as revised, Revenue Procedure 78-10, and subject to the conditions prescribed in IRC 6103(1)(6)(A)(ii). Such contractual agreement should be entered into only after coordination with the Director, Office of Disclosure. The authority delegated in this paragraph may be redelegated to any supervisory level deemed appropriate.

(16) The Deputy Assistant Commissioner (Examination); Regional Commissioners; Service Center Directors; Director, Martinsburg Computing Center; and Director, Detroit Computing Center are authorized to disclose or, in specific instances, authorize the disclosure of information returns filed pursuant to part III of subchapter A of IRC chapter 61 to designate personnel of the Social Security Administration for the purpose of carrying out an effective return processing program in accordance with section 232 of the Social Security Act and pursuant to IRC 6103(1)(5). The

authority delegated in this paragraph may not be redelegated.

(17) The Senior Deputy Commissioner, Associate Chief Counsel (International), and Associate Chief Counsel (Litigation) are authorized to disclose or, in specific instances, authorize the disclosure of returns and return information to the designated officers and employees of the Department of Justice pursuant to a written request from the Attorney General, the Deputy Attorney General, or an Assistant Attorney General in a matter involving tax administration, subject to the conditions prescribed in IRC 6103(h)(3)(B). The authority delegated in this paragraph may not be redelegated.

(18) The Assistant Commissioner (Computer Services); Assistant Commissioner (Taxpayer Service and Returns Processing); Director, Office of Disclosure; Service Center Directors and Director, Martinsburg Computing Center are authorized upon written request to disclose, or in specific instances, authorize the disclosure of return information pursuant to IRC 6103(h)(6) with respect to the address and status of an individual as a nonresident alien, citizen or resident of the United States to the Social Security Administration or the Railroad Retirement Board for purposes of carrying out responsibilities for withholding tax from social security benefits under IRC 1441.

(19) At the request of the Commissioner of Internal Revenue and with the approval of the Joint Committee on Taxation, the following officials may disclose information with respect to a specific taxpayer pursuant to IRC 6103(k)(3): Regional Commissioners; Assistant Commissioner (International); District and Service Center Directors; Assistant Commissioner (Examination); Assistant Commissioner (Collection); Assistant Commissioner (Criminal Investigation); Assistant Commissioner (Employee Plans and Exempt

Organizations); any individual who is specifically designated by the Commissioner of Internal Revenue. The authority delegated in this paragraph may not be redelegated.

(20) Director, Martinsburg Computing Center; and Director, Office of Disclosure, are authorized to disclose or, in specific instances, to authorize the disclosure of return information from the Information Returns Processing Master File under a contractual agreement entered into pursuant to Delegation Order No. 100, as revised, and Revenue Procedure 85-21, as revised, to Federal, State, and local agencies administering certain welfare programs, subject to the conditions of IRC 6103(1)(7). Such contractual agreements may be entered into only after coordination with the Office of Disclosure. The authority in this paragraph may be redelegated to any supervisory level deemed appropriate, but only by the officials named above.

(21) Delegation Order No. 156 (Rev. 9) and Chief Counsel Directives Manual (30)330, effective October 31, 1987 are superseded.

Charles H. Brennan,
Deputy Commissioner (Operations).
Date: May 22, 1989.

[FR Doc. 89-13037 Filed 6-1-89; 8:45 am]
BILLING CODE 4830-01-M

Commissioner's Advisory Group; Open Meeting

There will be a meeting of the Commissioner's Advisory Group on June 14 & 15, 1989. The meeting will be held in Room 3313 of the Internal Revenue Service Building. The building is located at 1111 Constitution Avenue NW., Washington, DC. The meeting will begin at 8:30 a.m. on Wednesday, June 14 and

8:30 a.m. on Thursday, June 15, 1989. The agenda will include the following topics:

Wednesday, June 14, 1989

Regulations Process

The Ruling Process

What Ways Can We Use the Media to Inform Taxpayers of Their Obligations?

The Liaison Function

IRS Recruitment

Thursday, June 15, 1989

Ad hoc topics, Q & A

A Review of Taxpayer Delinquency Investigations (TDI) Procedures.

CAG/IRS Planning Session for September's Meeting.

Note: Last minute changes to the day or order of topic discussion are possible and could prevent effective advance notice.

The meeting, which will be open to the public, will be in a room that accommodates approximately 50 people, including members of the Commissioner's Advisory Group and IRS officials. Due to the limited conference space, notification of intent to attend the meeting must be made with Robert F. Hilgen, Assistant to the Senior Deputy Commissioner no later than June 7, 1989. Mr. Hilgen may be reached on (202) 566-4143 [not toll-free].

If you would like to have the committee consider a written statement, please call or write Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, 1111 Constitution Avenue NW., Room 3014, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Robert F. Hilgen, Assistant to the Senior Deputy Commissioner, [202] 566-4143 [Not toll-free].

Michael J. Murphy,
Acting Commissioner.
[FR Doc. 89-13159 Filed 6-1-89; 8:45 am]
BILLING CODE 4830-01-M

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 2:00 p.m. on Tuesday, June 6, 1989, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous minutes. Resolution amending the delegations of authority with respect to regulation and supervision expenditures.

Memorandum and resolution re: (1) Establishment of the Investigative Files and Records System of Records pursuant to the Privacy Act of 1974, which system of records would relate to those Corporation employees or other persons involved in the Corporation's programs or operations who are or have been under investigation by the Office of the Inspector General in order to detect fraud or abuse; and (2) Proposed amendment to Part 310 of the Corporation's rules and regulations, entitled "Privacy Act Regulations," which amendment would exempt from certain provisions of the Corporation's regulations implementing the Privacy Act of 1974 the Corporation's proposed new Investigative Files and Records System of Records.

Memorandum and resolution re: Proposed amendment to the Corporation's systems of records, entitled "Unofficial Personnel System," maintained pursuant to the Privacy Act of 1974, which amendment would reflect the inclusion of records related to the Corporation's Savings Plan.

Memorandum and resolution re: Notice of compliance with Section 507 of the Competitive Equality Banking Act of 1987, which requires that the Corporation (1) fully consider the adverse economic impact on local communities of its actions taken during the administration and liquidation of loans of a closed bank; and (2) adopt and publish procedures and guidelines to minimize the adverse economic effects caused by its actions.

Reports of actions approved by the standing committees of the Corporation and

by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda

No matters scheduled.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street NW., Washington, DC.

Requests for further information concerning the meeting may be directed by Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: May 30, 1989.
Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
[FR Doc. 89-13233 Filed 5-31-89; 11:10 am]
BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:30 p.m. on Tuesday, June 6, 1989, the Federal Deposit Insurance Corporation's Board of Directors will meet in closed session, by vote of the Board of Directors, pursuant to sections 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of Title 5, United States Code, to consider the following matters:

Summary Agenda: No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Recommendations with respect to the initiation, termination, or conduct of administrative enforcement proceedings (cease-and-desist proceedings, termination-of-insurance proceedings, suspension or removal proceedings, or assessment of civil money penalties) against certain insured banks or officers, directors, employees, agents or other persons participating in the conduct of the affairs thereof:

Names of persons and names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(6), (c)(8), and (c)(9)(A)(ii) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(6), (c)(8), and (c)(9)(A)(ii)).

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Note: Some matters falling within this category may be placed on the discussion agenda without further public notice if it becomes likely that substantive discussion of those matters will occur at the meeting.

Reports of the Director, Office of Corporate Audits and Internal Investigation:

Audit Report re:
New York Regional Office, Cost Center-500, (Memo dated April 28, 1989)

Audit Report re:
Bank Terminations, Minneapolis Consolidated Office, Cost Center-204, (Memo dated May 10, 1989)

Audit Report re:
Audit of Teleprocessing Security (Memo dated May 4, 1989)

Audit Report re:
Audit of the Management and Liquidation of Owned Real Estate-Houston Consolidated Office, (Memo dated May 19, 1989)

Discussion Agenda

Memorandum regarding the Corporation's assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act with an insured bank.

Personnel actions regarding appointments, promotions, administrative pay increases, reassignments, retirements, separations, removals, etc.:

Names of employees authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(2) and (c)(6) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2) and (c)(6)).

Matters relating to the possible closing of certain insured banks:

Names and locations of banks authorized to be exempt from disclosure pursuant to the provisions of subsections (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Requests for further information concerning the meeting may be directed to Mr. Hoyle L. Robinson, Executive Secretary of the Corporation, at (202) 898-3813.

Dated: May 30, 1989.

Federal Deposit Insurance Corporation.
Hoyle L. Robinson,
Executive Secretary.
 [FR Doc. 89-13234 Filed 5-31-89; 8:45 am]
BILLING CODE 6714-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

**"FEDERAL REGISTER" CITATION OF
 PREVIOUS ANNOUNCEMENT:** [54 FR 21525
 May 18, 1989]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, N.W.,
 Washington, D.C.

DATE PREVIOUSLY ANNOUNCED: Monday,
 May 15, 1989.

CHANGES IN THE MEETING: Additional
 meeting.

The following item was considered at
 a closed meeting on Thursday, May 25,
 1989, at 3:00 p.m.

Consideration of *amicus* participation.
 Commissioner Grundfest, as duty officer,
 determined that Commission business
 required the above change.

At times, changes in Commission
 priorities require alterations in the
 scheduling of meeting items. For further
 information and to ascertain what, if
 any, matters have been added, deleted
 or postponed, please contact: Herb
 Janick at (202) 272-2200.

Jonathan G. Katz,
Secretary.

May 30, 1989.

[FR Doc. 89-13262 Filed 5-31-89; 1:36 pm]

BILLING CODE 8010-01-M

Corrections

This section of the FEDERAL REGISTER
 contains editorial corrections of previously
 published Presidential, Rule, Proposed
 Rule, and Notice documents. These
 corrections are prepared by the Office of
 the Federal Register. Agency prepared
 corrections are issued as signed
 documents and appear in the appropriate
 document categories elsewhere in the
 issue.

DEPARTMENT OF AGRICULTURE

Foreign Agricultural Service

Import Limitation; Country of Origin Quota Adjustment

Correction

In notice document 89-11947 beginning
 on page 21453 in the issue of Thursday,
 May 18, 1989, make the following
 correction:

On page 21454, in the first column,
 after the signature, "*Administrator*"
 should read "*Acting Administrator*".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

Correction

In notice document 89-12380 beginning
 on page 22465 in the issue of
 Wednesday, May 24, 1989, make the
 following correction:

1. On page 22465, in the third column,
 under the table heading "Periods to be
 reviewed", the third, fourth, and fifth
 entries should read "04/01/88-11/20/88",
 "04/01/88-11/20/88", and "4/01/89-03/
 31/89" respectively.

2. On page 22466, in the first column,
 under the table heading "Periods to be
 reviewed", all three entries should end
 with the date "12/31/88".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS 42107; FRL-3572-5]

1,6-Hexamethylene Diisocyanate; Proposed Test Rule

Correction

In proposed rule document 89-11824
 beginning on page 21240 in the issue of
 Wednesday, May 17, 1989, make the
 following correction:

On page 21242, in the table, in the first
 table-column, the ninth designated entry
 should read "9. *In vivo* cytogenetics".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-36170; FRL-3574-9]

Standard Evaluation Procedure; Request for Public Comment

Correction

In notice document 89-12321 beginning
 on page 22483 in the issue of
 Wednesday, May 24, 1989, make the
 following correction:

On page 22484, in the 1st column,
 under **ADDRESS**, in the next to last
 paragraph, in the 15th line, after
 "available" insert "for public inspection
 in Rm. 244 at the address given".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPTS-59867; FRL-3571-8]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

Correction

In notice document 89-11695 beginning
 on page 21124 in the issue of Tuesday,
 May 16, 1989, make the following
 correction:

On page 21125, in the first column,
 under **Y 89-108**, in the second line,
 "polyester" should read "polyether".

BILLING CODE 1505-01-D

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FEDERAL MARITIME COMMISSION

Agreements Filed

Correction

In notice document 89-11950
 appearing on page 21473 in the issue of
 Thursday, May 18, 1989, make the
 following correction.

In the second column, after the second
 paragraph of the document, insert the
 following:

Agreement No.: 224-200246

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 85F-0082]

Indirect Food Additives; Adjuvants, Production Aids, and Sanitizers

Correction

In rule document 89-11992 beginning
 on page 21618 in the issue of Friday May
 19, 1989, make the following correction:

§ 178.1010 [Corrected]

On page 21621, in the third column, in
 § 178.1010(b)(36), in the fifth line
 "phosphoric" was misspelled.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-09-4214-12; I-2837]

Termination of Classification for Multiple Use Management; Idaho

Correction

In notice document 89-9518 beginning
 on page 16000 in the issue of Thursday,
 April 20, 1989, make the following
 corrections:

1. On page 16001, in the 1st column,
 the 21st line should read "T. 7 S., R. 16
 E.,".

2. On the same page, in the second
 column, under "T. 8S., R. 21 E.", the fifth
 line should read "Sec. 8, W 1/2 E 1/2, W 1/2".

3. On the same page, in the same
 column, the last line should read
 "NE 1/4 SE 1/4".

4. On the same page, in the third column, under "T. 5 S., R. 18 E.", the second line should read "Sec. 33, S½SW¼, N½SE¼, SW¼SE¼."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-09-4214-12; I-2448]

Termination of Classification for Multiple Use Management; Idaho

Correction

In notice document 89-9517 beginning on page 15999 in the issue of Thursday, April 20, 1989, make the following correction:

On page 16000, in the first column, the second line should read "Sec. 27, S½, S½N½;"

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ID-943-09-4214-12; I-1639]

Partial Termination of Classification for Multiple Use Management; Idaho

Correction

In notice document 89-9187 beginning on page 15561 in the issue of Tuesday, April 18, 1989, make the following correction:

On page 15561, in the third column, in the paragraph designated "1", in the sixth line, "November 9, 1987" should read "November 9, 1967".

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 2

RIN 3150-AC44

Submission and Management of Records and Documents Related to the Licensing of a Geologic Repository for the Disposal of High-Level Radioactive Waste

Correction

In rule document 89-8828 beginning on page 14925 in the issue of Friday, April 14, 1989, make the following correction:

§ 2.714 [Corrected]

On page 14944, in the second column, § 2.714(1) should be designated § 2.714(i).

BILLING CODE 1505-01-D

Friday
June 2, 1989

Part II

Department of
Energy

Federal Energy Regulatory Commission

18 CFR Parts 4 and 16
Hydroelectric Relicensing Regulations
Under the Federal Power Act; Final Rule

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 4 and 16

[Docket No. RM87-33-000; Order No. 513]

RIN 1902-AB02

Hydroelectric Relicensing Regulations Under the Federal Power Act

Issued May 17, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) issued a notice of proposed rulemaking (NOPR) on May 24, 1988, proposing to revise its regulations to incorporate the amendments to the relicensing provisions of the Federal Power Act made by the Electric Consumers Protection Act of 1986 (ECPA).

The final rule implements the relicensing provisions of ECPA by establishing procedures for the processing of applications for licenses to operate existing hydroelectric facilities when their current licenses are approaching expiration.

The final rule provides for the acceleration of license expiration dates under certain circumstances. It provides for potential applicants to have access to existing sites to make studies necessary to prepare their applications.

The final rule establishes a three-stage resource agency consultation process to be followed by potential applicants prior to filing their applications, and provides a mechanism whereby the Director of the Commission's Office of Hydropower Licensing will resolve disputes between potential applicants and resource agencies that arise during the pre-filing consultation process. The final rule requires potential applicants to allow the public to attend the joint meeting at the beginning of the agency consultation process, to solicit the public's comments on relevant resource issues that should be addressed.

The final rule specifies that an existing licensee filing an application for new license in conjunction with a new entity will not be considered an existing licensee for the purposes of the insignificant differences provision of section 15 of the Federal Power Act. Finally, the final rule clarifies that the licensing proceeding following the expiration of a minor license where standard provisions have been waived

is a relicensing proceeding such that municipal preference is not applicable.

EFFECTIVE DATE: This rule is effective July 3, 1989.

FOR FURTHER INFORMATION CONTACT: John Whittaker, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8033.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this final rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

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- 9. Section 15(a)(3) of the Federal Power Act

L. Information Required of Applicants

- 1. Procedures and Format
- 2. Specific Information Requests

M. Joint Applicants

- N. Annual Licenses
- O. Nonpower Licenses

P. Minor and Minor Part Licenses Not Subject To Sections 14 and 15 of the Federal Power Act

- 1. Procedures and Standards
- 2. Transition Provisions
- 3. Continued Operation of Minor Projects

Q. Exemptions

R. Prohibitions Against Filing Applications and Additional Procedures

S. Miscellaneous

V. Regulatory Flexibility Certification

VI. Paperwork Reduction Act Statement

VII. National Environmental Policy Act Statement

VIII. Effective Date

Regulatory Text Appendix A

I. Introduction

The Federal Energy Regulatory Commission (Commission) is revising its regulations governing the relicensing of hydroelectric power projects. The revisions implement, in part, provisions added to the Federal Power Act (FPA) ¹ by the Electric Consumers Protection Act of 1986 (ECPA).²

II. Background

In ECPA, Congress substantially amended the FPA to restructure the statutory framework for the consideration and processing of applications for relicense for hydroelectric power projects subject to sections 14 and 15 of the FPA. ECPA clarified that a municipality is not entitled to a preference at relicensing, enumerated a number of factors the Commission must specifically consider in acting on relicense applications, and specified the standard the Commission must use in choosing among competing applications. In addition, ECPA established new procedural requirements for the filing and processing of applications for new license.

On May 24, 1988, the Commission issued a notice of proposed rulemaking (NOPR) in which it proposed to revise its regulations to incorporate the amendments to the relicensing provisions of the FPA made by ECPA.³ The Commission proposed a process for pre-filing consultation with resource agencies, revised requirements regarding the filing and content of applications for new licenses, and procedures for processing and consideration of applications for new licenses. The NOPR also proposed revisions to the procedures governing applications for nonpower licenses and exemptions from licensing upon expiration of existing licenses, and revisions to the regulations for applications for licenses for minor water power projects and minor part water power projects with expiring licenses not subject to sections 14 and 15 of the

FPA.⁴ Finally, the NOPR proposed new provisions regarding acceleration of license expiration dates, site access for potential competing applicants, and the handling of projects where no timely applications for new licenses are filed.

The Commission received 53 timely comments on the NOPR.⁵ In addition, late comments were filed by five entities.⁶ Finally, comments replying to statements made in the initial comments on the NOPR were filed by 14 entities.⁷ The Commission has reviewed all of these comments in developing the final rule.

All significant comments and revisions in the regulations are discussed in detail in Part IV, *infra*. Following is a summary of the final rule's treatment of major subject areas.

Acceleration. The final rule provides for the acceleration of license expiration dates for any legitimate interest including, but not limited to, installation of new capacity.

Access. The final rule expands both the purposes for which access must be provided and the types of compensation to which existing licensees will be entitled for providing access to potential competitors. In addition, the final rule specifies that certain disputes regarding access are subject to resolution by the Director of the Office of Hydropower Licensing.

Consultation. The final rule adopts the three-stage resource agency consultation process generally as proposed in the NOPR. However, the final rule expands some of the timing provisions of the process and specifies that not all meetings between a potential applicant and a resource agency have to include all other agencies. Also, the scope of the process whereby the Director of the Office of Hydropower Licensing will resolve disputes between potential applicants and resource agencies is expanded to include any matter arising during firststage consultation and to permit agencies to initiate the resolution process.

The final rule also clarifies that the failure of a resource agency to timely participate in a consultation step will

¹ As discussed in Part IV.A., *infra*, a minor water power project is one which would have a total installed capacity of 2,000 horsepower or less. A minor part water power project is one that includes only a portion of a complete unit of development.

² See Appendix A.

³ Columbia Commission, Warm Springs Tribes, Great Lakes Commission, The Department of Commerce, and the Department of the Interior.

⁴ Alabama Power, EEL, Friends of the Earth, Georgia Power, Idaho Power, Long Lake, Mid-Columbia, Nebraska Power, Northern California Agency, Public Pool, Douglas County PUD, Rochester Gas, Wisconsin Department, and Wisconsin Public Service.

⁵ 16 U.S.C. 791a-825r (1982 and Supp. 1988).

⁶ Pub. L. No. 99-495, 100 Stat. 1243 (Oct. 10, 1986).

⁷ Hydroelectric Relicensing Regulations Under the Federal Power Act, 53 FR 21,844 (June 10, 1988), IV FERC Stats. & Regs. ¶ 32,461 (May 24, 1988).

not preclude it from engaging in subsequent consultation steps. The final rule clarifies that the confidentiality provisions of the NOPR regarding pre-filing submissions to the Commission apply only if a request for confidential treatment under one of the tests of the Freedom of Information Act is made in accordance with existing Commission regulations. Also, the rule clarifies that materials are protected from disclosure only until the related application is filed.

Finally, the final rule contains provisions requiring potential applicants to allow the public to attend the joint meeting at the beginning of the agency consultation process to solicit the public's comments on relevant resource issues that should be addressed.

Procedures. The final rule does not adopt the NOPR's proposed prohibition on the filing of applications prior to 30 months before the expiration dates of existing licenses. The final rule also specifies that deadlines for correcting deficiencies and filing final amendments will be established on a case-by-case basis.

Standards and Factors. The final rule eliminates potential confusion regarding the factors the Commission will consider at relicensing by simply referring to the appropriate statutory provision. The final rule also clarifies that the Commission, in examining an existing licensee's track record, will consider both compliance matters and actions the licensee has taken which affect the public.

Joint Applicants. The final rule specifies that an existing licensee filing an application for new license in conjunction with a new entity will not be considered an existing licensee for purposes of the insignificant differences provision of section 15 of the FPA.

Minor Licenses. The final rule adopts the NOPR's provisions regarding the waiver of certain provisions of the FPA by applicants for minor license. The final rule also clarifies that the licensing proceeding following the expiration of a minor license where these standard provisions have been waived is a relicensing proceeding. Consequently, municipal preference is not applicable to the proceeding.

III. Reporting Burden

The public reporting burden for this collection of information is estimated to average 832 hours per response for water power projects having more than five megawatt (MW) capacity and 178 hours per response for water power projects having five MW capacity or less, including the time for reviewing instructions, searching existing data

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sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Office of Management Systems and Analysis, (202) 357-9205]; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for the Federal Energy Regulatory Commission].

IV. Discussion

A. Applicability of Certain Requirements of Part I of the Federal Power Act to Applications for Minor Licenses for Water Power Projects

A "minor water power project" is one that would have a total installed generation capacity of 2,000 horsepower (1.5 megawatts) or less.⁹ Under section 10(i) of the FPA,¹⁰ the Commission has the discretionary authority to waive all but three provisions of Part I of the FPA when it issues licenses for minor water power projects.¹⁰ The Commission has invoked section 10(i) to waive the detailed accounting and administrative provisions of the FPA for these small projects because these provisions are unnecessary and expensive for the Commission to administer.

Traditionally, the Commission has waived the following provisions of Part I of the FPA for minor licenses: (1) The requirement for filing a statement of the actual legitimate costs of construction of a project;¹¹ (2) the requirement that plans affecting navigation be approved by the Chief of Engineers and the Secretary of the Army;¹² (3) the

provisions requiring maintenance of depreciation and amortization reserves by licensees;¹³ (4) the provision incorporating all of the terms and conditions of the FPA into the license (insofar as it relates to the terms and conditions of the FPA that are waived in the license);¹⁴ (5) the provision requiring reimbursement for storage reservoirs or other headwater improvements that directly benefit the licensee;¹⁵ and (6) certain provisions regarding rate and securities regulation,¹⁶ temporary Federal use of project facilities,¹⁷ and contracts to provide power beyond the term of the license.¹⁸

Waiver of the above provisions eliminates the requirement to maintain certain accounts and provide information necessary for net investment determinations associated with Federal takeover of licenses, pursuant to section 14 of the FPA,¹⁹ and issuance of new licenses to other than the existing licensees pursuant to section 15 of the FPA.²⁰ Therefore, the Commission also has traditionally waived these two latter provisions of Part I of the FPA when it issues licenses for minor projects, except for the portion of section 14 that provides the United States and any state or municipality with the right to take over a licensed project at any time by condemnation proceedings upon payment of just compensation.

The Commission's consistent practice has been to routinely waive sections 14 and 15, and the other provisions of Part I of the FPA discussed above, whenever it issues a minor license. However, as discussed in Part IV.B., *infra*, the NOPR included provisions addressing the filing and processing of applications for license for projects with expiring minor or minor part licenses where sections 14 and 15 of the FPA have been waived. Because of the potential significance of these new provisions, the Commission determined that it would be appropriate to replace its routine waiver practice with a mechanism that would enable applicants for minor licenses, both for new projects and existing ones, to

indicate whether they wanted these provisions of Part I of the FPA waived. Accordingly, the Commission proposed in the NOPR to add a new paragraph (c) to § 4.60 of its regulations,²¹ indicating that the Commission would waive the above provisions of Part I of the FPA when it issued a minor license, unless the applicant indicated in its application that it wanted these provisions applied to its project.

Four entities offered comments on the Commission's proposal to amend § 4.60. American Rivers contends that the Commission has not adequately justified the waiver of these provisions. It maintains that the Commission should, at a minimum, impose the requirements that: (1) A licensee file a statement of original cost of construction of the project (arguing that it is easy to prepare and essential to preserve the option of subsequent Federal takeover); (2) the plans of projects that would affect the navigable capacity of navigable waters be approved by the Chief of Engineers and Secretary of the Army; (3) a licensee pay for headwater benefits; and (4) such licenses remain subject to sections 14 and 15 of the FPA. Trout Unlimited suggests that the provisions be waived only on a case-specific basis after notice of intent to waive in the *Federal Register*, newspaper notice, and notification of appropriate Federal and state agencies by mail.

The Department of Commerce opposes the waiver of the referred portions of FPA sections 6, 10(c), 10(d), 10(f), 15, 16, 19, 20, and 22. It argues that the Commission has not adequately evaluated the costs and benefits of waiving these provisions. Commerce also states that the referenced portion of section 4(e) should not be waived, and questions whether the Commission can be assured that these projects will not create navigation problems. Finally, Washington Wildlife questions the waiver of the navigation provision of section 4(e), and without discussion of its reasons, states that it objects to the waiver of the other referenced provisions.

The Commission believes it is appropriate to continue waiving the above-specified provisions of Part I of the FPA for minor licenses in cases where it is in the public interest to do so and where the applicants do not request otherwise. The small scale and scope of these projects do not justify the level of regulation associated with these provisions or the significant burden on licensees that compliance with these provisions would entail. The

Commission is not aware of any problems caused by its existing practice of waiving these provisions. Congress was fully aware of the Commission's waiver practice when it enacted legislation in 1962²² to raise the 100 horsepower limit of section 10(i) to the present 2,000 horsepower limit.²³ As discussed elsewhere herein, the provisions to be enacted as part of this final rule provide adequate means for the filing and processing of applications for license for minor water power projects with expiring licenses not subject to sections 14 and 15 of the FPA.

The commenters' concerns over the waiver of the navigation approval provision of section 4(e) of the FPA are misplaced. In most cases, these minor projects, due to their small size, do not affect navigation. However, should a particular project pose a threat to navigation, the Chief of Engineers and the Secretary of the Army can make their concerns known in their letters of comment filed in response to the public notice issued when the application for the minor project is accepted for Commission processing. The Commission is not aware of any instance where the Chief of Engineers or the Secretary of the Army has objected to waiver of this provision.

Trout Unlimited's suggestions regarding notice of intent to waive these provisions are unnecessary. First, the provisions of § 4.60(c) will put the public on notice of the Commission's waiver policy for minor licenses. Second, agencies consulted pursuant to the provisions of § 4.38,²⁴ in the case of

⁹ Act of September 7, 1962, Pub. L. No. 87-647, 78 Stat. 447 (1962).

¹⁰ See H.R. Rep. No. 2241, 87th Cong., 2nd Sess. (1962), reprinted in 1962 U.S. Code Cong. & Admin. News at 2375-79.

The original Federal Water Power Act in 1920 created the Commission for the purpose of licensing hydroelectric developments on the waters of the United States over which the Congress has jurisdiction. That act recognized, and its major revision in 1935, the Federal Power Act, continued to recognize, that all of the requirements for licensing a large hydroelectric project were not necessary for small projects.

As stated by the Commission, some of the detailed requirements that it now may waive for projects of not more than 100 horsepower and that it would be authorized by the bill to waive for projects of not more than 2,000 horsepower are those relating to the original cost of the project, the annual charges, the establishment of amortization reserves and depreciation reserves, and other accounting matters which are deemed unnecessary for these small plants, expensive for the licensees to comply with, and expensive for the Commission to administer.

²⁴ 18 CFR 4.38 (1988).

applications for original license, or new § 16.8, in the case of subsequent licenses, will receive copies of both the draft and final applications. Consequently, they will be aware of applicants' decisions regarding the waiver of these provisions. The Commission is, however, adding language to § 4.60(c) to make clear that waiver of these provisions is not merely up to the applicant. The Commission will not waive any particular provision if it determines that waiver would not be in the public interest in a particular case.

B. Requirement to Show Project Boundary in Exhibit G of Application for Minor Water Power Project License.

Under existing Commission regulations, applications for minor water power projects must include reasonably accurate descriptions of the project location and all project works and features. Applicants for minor water projects are not required to show definite project boundaries on the Exhibit G maps of their applications, unless their proposed projects would occupy United States lands; in that case, definite project boundaries on such United States lands must be shown in order to make clear what United States lands would be authorized for use under the license and to assess annual charges for use of those lands.²⁵ This regulatory provision is consistent with the Commission's routine waiver practice for minor projects just discussed. Definite project boundaries are necessary only when there is the possibility that the United States will take over a project pursuant to section 14 of the FPA, and thus must know the precise property that would be taken. Since section 14 has traditionally been waived for minor projects, definite project boundaries were not required of minor license applicants.

Consistent with its proposal to allow minor license applicants to elect not to have the Commission waive section 14 and the other provisions of Part I of the FPA,²⁶ the Commission proposed in the NOPR to amend § 4.61(f)(3) of its minor license application regulations to require applicants to show definite project boundaries on their Exhibit G maps if they requested that the Commission apply section 14 and the other provisions of the FPA.²⁷ The proposed revisions to § 4.61(f)(3) retained the provision requiring reasonably accurate descriptions of project features, but not

definite project boundaries, when section 14 and the other provisions of the FPA would be waived,²⁸ and the provision requiring definite project boundaries on United States lands.²⁹

Several commenters³⁰ object to the proposed revisions to § 4.61(f)(3), and request that it be modified to require all minor license applicants to show project boundaries on their Exhibit G maps. They argue that a project boundary description is essential to assessment of project impacts and to competent environmental review, particularly regarding fish and wildlife resources.

The Commission does not accept the commenters' suggestion that a project boundary is essential for proper environmental review of proposed projects. Commission analysis includes the impacts of a project wherever they may occur, and the presence or absence of a project boundary does not broaden or restrict that review. The requirement that all minor license applicants include reasonably accurate descriptions of project locations and features, together with the other information included in the applications, provides the Commission with the information necessary for proper environmental review. Furthermore, as indicated previously, existing § 4.61(f)(3) does not require definite project boundaries in most cases. The Commission is not aware of any review problems caused by the lack of a definite project boundary in any of the numerous applications for minor licenses that have been filed under this regulation.

Definite project boundaries are unnecessary for proper environmental and other review of minor projects. A requirement to show definite project boundaries on Exhibit G maps could be expensive due to the surveying costs associated with developing such boundaries. Therefore, the Commission will not require such boundaries except in those cases where boundaries are needed as a result of potential Federal takeover under section 14 of the FPA. Accordingly, the Commission is adopting the revisions to § 4.61(f)(3) proposed in the NOPR, with one editorial change to ensure that descriptions of project locations are included in the filed Exhibit G maps.

²⁵ Proposed § 4.61(f)(3)(i).

²⁶ Proposed § 4.61(f)(3)(iii).

²⁷ American Rivers, EPA, International Association, Michigan Department and Washington Wildlife.

²⁸ 18 CFR 4.61(f)(3) (1988).

²⁹ Proposed § 4.60(c).

³⁰ Proposed § 4.61(f)(3)(ii).

⁹ 18 CFR 4.30(b)(17) (1988).

¹⁰ 16 U.S.C. 803(i) (1982).

¹¹ Section 10(i) prohibits the Commission from waiving the 50-year limit on license terms contained in section 6 of the FPA, 16 U.S.C. 799 (1982), and the provision regarding the payment of annual charges for use of lands within Indian reservations contained in section 10(e) of the FPA, 16 U.S.C. 803(e) (1982). Section 10(j) of the FPA, 16 U.S.C. 803(j) (1982 and Supp. 1988), specifies that its provisions cannot be waived pursuant to section 10(i).

Section 10(i) also authorizes the Commission to waive provisions of Part I of the FPA when it issues minor part licenses. However, except for transmission lines, the Commission no longer issues minor part licenses. See, e.g., Pacific Gas & Electric Company, 29 F.P.C. 1265, 1266 (1963), and Pacific Gas & Electric Company, 56 F.P.C. 994, 1006-08 (1976).

¹² Section 4(b) of the FPA, 16 U.S.C. 797(b) (1982).

¹³ Section 4(e) of the FPA, 16 U.S.C. 797(e) (1982).

¹⁴ Sections 10(c) and 10(d) of the FPA, 16 U.S.C. 803(c) and 803(d) (1982).

¹⁵ Section 6 of the FPA, 16 U.S.C. 799 (1982).

¹⁶ Section 10(f) of the FPA, 16 U.S.C. 803(f) (1982).

¹⁷ Sections 19 and 20 of the FPA, 16 U.S.C. 812 and 813 (1982). Section 19 vests in the states authority to regulate certain power sales by licensees that are public service corporations. Section 20 vests in the Commission authority to regulate the issuance of securities by licensees in certain instances.

¹⁸ Section 18 of the FPA, 16 U.S.C. 809 (1982).

¹⁹ Section 22 of the FPA, 16 U.S.C. 815 (1982).

²⁰ 16 U.S.C. 807 (1982).

²¹ 16 U.S.C. 806 (1982 and Supp. 1988).

²² 18 CFR 4.60 (1988); proposed § 4.60(c).

C. Applicability of Revised Regulations and Provisions of the Federal Power Act.

Except for the revisions to §§ 4.60 and 4.61 just discussed, the NOPR proposed revisions only to the Commission's existing Part 16 relicensing regulations.³¹ Proposed § 16.1 was a general applicability section indicating that Part 16 was to apply to the filing and processing of applications for both projects with existing licenses subject to sections 14 and 15 of the FPA, and projects not subject to those sections.

Three entities commented on proposed § 16.1. Brazos requests that § 16.1 be amended to indicate that applications filed with the Commission prior to the date of enactment of the revised regulations would not be covered by the revised regulations. PG&E requests that the proposed section be amended to indicate that the Commission has the right "to moderate the requirements of these regulations where the size and/or impact of the project is shown to justify such moderation."³² Finally, Washington Wildlife requests that the section be amended to clarify that the authority of the Departments of Commerce and the Interior to prescribe fishways at projects pursuant to section 18 of the FPA³³ is applicable to relicensing proceedings.

The Commission declines to adopt the revision suggested by Brazos. Section 18 of ECPA specifies that the amendments made to the FPA by ECPA shall take effect with respect to each license or exemption issued under the FPA after the October 16, 1986 date of enactment of ECPA. To the extent that the regulations adopted here implement specific requirements of the FPA as added by ECPA, pending applications cannot be excluded from their applicability. However, appropriate transition provisions are being added to the new regulations that relate to procedural matters not specifically addressed by ECPA, such as proposed § 16.8 relating to agency consultation.³⁴

³¹ See 16 CFR Part 16 (1986), as amended by "Information to be Made Available by Hydroelectric Licensees under Section 4(a) of the Electric Consumers Protection Act of 1986", Interim Rule, 52 FR 11,035 (Apr. 7, 1987), III FERC Stats. & Regs. ¶ 30,736 (Mar. 30, 1987) and Final Rule, Order No. 496, 53 FR 15,804 (May 4, 1988), III FERC Stats. & Regs. ¶ 30,812 (Apr. 28, 1988). The interim and final rules established regulations, required by ECPA, governing the notice and information requirements that apply to an existing licensee of a hydroelectric power project.

³² PG&E at 8.

³³ 16 U.S.C. 811 (1982).

³⁴ See new § 16.8(j).

to ensure that applicants are not required to retrace unnecessarily any steps of the relicensing process.

The Commission also declines to adopt the "moderation" revision proposed by PG&E. Nothing in ECPA indicates that its revisions to the FPA are to be less stringently applied to small and/or environmentally benign projects. Of course, requests for information made by resource agencies during pre-filing consultation or by the Commission may be less expansive in the case of small and/or environmentally benign projects. Also, in individual cases applicants may file requests for waiver of particular provisions of these regulations if they believe that compliance with these provisions is unnecessary for their projects. The Commission may waive such requirements unless the Commission is prevented from waiving them because of statutory restrictions.³⁵

With regard to Washington Wildlife's request regarding section 18 of the FPA, the Commission has never resolved the issue of the applicability to relicensing proceedings of the authority of the Interior Department and the Department of Commerce to prescribe fishways for projects.³⁶

Section 18 reads, in pertinent part:

The Commission shall require the construction, maintenance, and operation by a licensee at its own expense of . . . such fishways as may be prescribed by the Secretary of the Interior or the Secretary of Commerce, as appropriate.

As the Commission explained in its 1987 order in *Lynchburg Hydro Associates (Lynchburg)*,³⁷ which addressed the scope and mandatory nature of the fishway prescription authority in the context of original licensing proceedings, the starting point for interpreting a statute is the language of the statute itself and, absent a clearly expressed legislative intention to the contrary, that language, if unambiguous, must ordinarily be regarded as conclusive. Since section 18 is cast in terms of fishway obligations of "licensees," and does not distinguish between original and subsequent licenses, it appears on its face to be applicable to relicensing proceedings.

As indicated in *Lynchburg*, the legislative history of the section is

³⁵ See 16 CFR 375.314(c) (9) (1988).

³⁶ The comments filed by the Departments of Commerce and the Interior do not specifically address the question of whether they have authority to prescribe fishways in relicensing proceedings. However, from their discussion of how the relicensing process should be integrated with the prescription of fishways pursuant to section 18, both agencies clearly believe they have such authority.

³⁷ 39 FERC ¶ 61,079 (1987).

sparse. Review of that history does not reveal any discussion on the issue of whether the authority of section 18 to prescribe fishways does or does not apply to relicensing proceedings. Consequently, the facial interpretation of section 18 as applying to relicensing proceedings is not contradicted by the legislative history of the section.

From the above, it appears that section 18 should be interpreted as giving the Departments of Commerce and the Interior the authority to prescribe fishways in relicensing proceedings. As the Commission discussed in *Lynchburg*, when it is not feasible to prescribe fishways at the time of issuance of an original license, the Commission will include a condition in the license reserving the authority of Interior or Commerce to prescribe fishways if and when they are needed in the future. Thus, it is possible that fishways may not be prescribed for an original license until near its expiration date. Given this, the Commission believes it would be incongruous to argue that the authority to prescribe fishways does not apply to nearly contemporaneous relicensing proceedings.

The Commission therefore concludes that the authority of Interior and Commerce to prescribe fishways pursuant to section 18 of the FPA is applicable to relicensing proceedings. However, the Commission does not believe it is necessary to codify this statutory interpretation in the relicensing regulation. The Commission is initiating a rulemaking proceeding to develop formal procedures for implementing the provisions of section 10(j) of the FPA.³⁸ The latter proceeding will also address procedures related to the Departments' prescription of mandatory fishways under section 18 during the Commission's licensing and relicensing processes.

The Commission notes, however, as it did in *Lynchburg*, that the authority to prescribe fishways does not include a broad power to impose mandatory conditions of license:

The plain language of section 18 gives the Secretaries the authority to "prescribe" "fishways." It is a specific grant of authority, in contrast to the broader grant of authority in section 4(e) of the FPA, . . . which gives the administering Secretary authority to impose conditions "necessary for the adequate protection and utilization" of a reservation physically occupied by licensed project works. Thus, section 18 in our view empowers the Secretary to prescribe fishways at a licensed project, but not to

³⁸ See Statement of Policy, Order No. 511, 46 FERC ¶ 61,161 (1989).

impose, for the protection, mitigation of damages to, and enhancement of fish resources, more far-reaching conditions with respect to the design and operation of the proposed project.³⁹

D. Definitions

1. "New License"

In the NOPR, the Commission proposed to define "new license" for purposes of Part 16 as "a license, except an annual license, for a water power project that is issued under section 15 of the Federal Power Act after an initial license expires."⁴⁰ Niagara Mohawk indicates that this definition is inconsistent with that found in § 4.30(b)(19) of the Commission's regulations, and suggests that the Part 16 definition be made to conform to the definition found in Part 4. Washington Wildlife suggests that the Commission should change the definition of new license to "relicense," since the licensing of a project upon the expiration of an existing license is commonly known as a relicensing proceeding, and since defining such licenses as new licenses may cause confusion with new licenses issued for entirely new projects.

The Commission does not believe the recommended changes to the proposed definition of new license are necessary. The definition of new license in § 4.30(b)(19) of the Commission's existing regulations embraces applications for licenses for projects with expiring licenses that are subject to sections 14 and 15 of the FPA, and those that are not (*i.e.*, minor licenses where these provisions of the FPA have been waived).⁴¹ Such a definition is appropriate for Part 4, since it eliminates having to refer to these different situations in those sections of Part 4 intended to apply to both.⁴²

However, for purposes of Part 16, it is necessary to distinguish between cases where sections 14 and 15 have been waived and cases where they have not. The definition of new license proposed in § 16.2(a) is intended to cover the latter situation. Unfortunately, a definition to cover the former situation was inadvertently omitted from the

³⁹ 39 FERC at 61,218 (footnotes omitted) (emphasis added).

⁴⁰ Proposed § 16.2(a).

⁴¹ 16 CFR 4.30(b)(19) (1988) defines new license as "any license, except an annual license issued under section 15 of the Federal Power Act, for a water power project that is issued under the Federal Power Act after the initial license for that project." The difference between the definition of new license in § 4.30(b)(19) and in § 16.2(a) is relevant only for existing minor licenses where sections 14 and 15 have been waived; § 4.30(b)(19) applies to renewal applications for such projects, while § 16.2(a) does not.

⁴² See, *e.g.*, 16 CFR 4.41, 4.51, and 4.61 (1988).

NOPR. The Commission is rectifying this by including as new § 16.2(e) a definition for "subsequent license." Also, the Commission is substituting the word "original" for "initial" in the definition of new license, to accurately reflect the language used in section 7(a) of the FPA⁴³ to describe the first license issued for a project.

The use of the word "relicense" as suggested by Washington Wildlife is inappropriate. Although these proceedings are frequently referred to as relicensing proceedings by the Commission and others, section 15 of the FPA refers to applications in these cases as applications for "new license". The definition used in Part 16 should track the definition used in the statute. The confusion suggested by Washington Wildlife should not occur, since the FPA refers to the first license issued for a project as an "original license."

2. "New License Application Filing Deadline"

The NOPR proposed to define the "new license application filing deadline" as "the date 24 months before the expiration of an existing license."⁴⁴ Washington Wildlife suggests that this date be changed to 30 months, to provide more time for the processing of applications prior to the expiration date of existing licenses. The Commission agrees that changing the 24-month date to 30 months would provide more time for processing applications, and that section 15(c)(1) of the FPA⁴⁵ itself would not prohibit an earlier deadline, since it only specifies that applications must be filed with the Commission "at least" 24 months prior to expiration. However, the Commission believes that potential competitors need a full three years from the five-year point when existing licensees file their notices of intent, pursuant to section 15(b)(1) of the FPA,⁴⁶ in which to review the information made available by existing licensees at that time to determine whether they will compete and to carry out the required consultation with resource agencies in preparing their applications. Accordingly, the Commission declines to establish a 30-month filing deadline.

3. "Resource Agency"

The NOPR proposed to define "resource agency" as "a Federal or state agency with responsibilities in the area of flood control, navigation, irrigation, recreation, fish or wildlife, or cultural or

other relevant resources."⁴⁷ Resource agencies are participants in the pre-filing consultation process described in this final rule. Four commenters⁴⁸ suggest that the Commission specifically add water resource agencies to its definition.

The proposed definition is sufficiently broad to include the appropriate water resource agencies and was not intended to exclude agencies with responsibilities not specifically listed. However, the Commission recognizes the importance of the participation of agencies with responsibilities for water resources and is modifying the definition to include them specifically.⁴⁹

E. Public Notice of Expiring Licenses

Existing Commission regulations specify that the Commission will publish each year in its annual report and in the *Federal Register* a table showing the projects with licenses that will expire during the succeeding five years.⁵⁰ In the NOPR, the Commission proposed to continue this practice.⁵¹

American Rivers suggests that the table be published each year in the *Federal Register*, and that the tables include projects with licenses that will expire during the succeeding six years. American Rivers also suggests that the proposed section make clear that projects whose expiration dates have been accelerated pursuant to proposed § 16.4 will be included in the tables. Washington Wildlife suggests that the tables include projects with licenses that will expire during the succeeding seven years, and be provided to all appropriate fish and wildlife agencies. Finally, Montana Natural Resources suggests that the tables include specific references to the procedures required by section 15(b) (2)-(4) of the FPA.

The intent of proposed § 16.3 was to have the table published each year in both the Commission's annual report and in the *Federal Register* as is

⁴⁷ Proposed § 16.2(d).

⁴⁸ Brazos, Montana Natural Resources, Washington Ecology and Western Council, EPA and South Carolina Department request that the definition be amended to encompass water quality agencies. However, this is unnecessary, since proposed § 16.8 clearly covers such agencies.

⁴⁹ EPA suggests that a definition be added for "minor hydroelectric power project," while Niagara Mohawk suggests that a definition be added for a "nonpower project." The Commission declines to include a definition for a "minor hydroelectric power project," since that term is already defined in section 10(l) of the FPA and 16 CFR § 4.30(b)(17) (1988). There is no need to define a "nonpower project," since it is self explanatory, *i.e.*, a project that is maintained for some nonpower purpose, such as recreation or water supply.

⁵⁰ 16 CFR 16.2 (1988).

⁵¹ Proposed § 16.3.

⁴³ 16 U.S.C. 800(a) (1982 and Supp. 1988).

⁴⁴ Proposed § 16.2(b).

⁴⁵ 16 U.S.C. 808(c)(1) (1982 and Supp. 1988).

⁴⁶ 16 U.S.C. 808(b)(1) (1982 and Supp. 1988).

currently done. However, to alleviate American Rivers' concern, the Commission is inserting "annually" in the section to make clear that the publication of the table in the Federal Register will occur each year. Also, while the Commission does not believe it is necessary to expand the tables to include projects with licenses expiring during the succeeding seven years as suggested by Washington Wildlife, the Commission is adopting American Rivers' suggestion to expand the coverage of the tables to include the succeeding six years. This will provide more advance notice of upcoming relicensing proceedings to potential competitors, resource agencies and the public.

Projects with expiration dates accelerated pursuant to proposed § 16.4 would be included in the tables. Therefore, there is no need to modify § 16.3 to specify this, as suggested by American Rivers. Also, the Commission does not believe it is necessary to provide copies of the tables directly to appropriate fish and wildlife agencies. As required by section 15(b)(3) of the FPA,⁵² the Commission will be providing those and other appropriate resource agencies with notices regarding notices of intent filed by individual licensees.⁵³ Finally, the Commission sees no need to repeat in the tables the statutory requirements of section 15(b)(2)-(4), as requested by Montana Natural Resources.⁵⁴

F. Acceleration of License Expiration Dates

In the NOPR, the Commission proposed to permit a licensee wishing to install new capacity at its existing project to file a written request to advance the expiration date of the existing license, called a request for acceleration.⁵⁵ The purpose of this proposal was to allow an applicant to increase project capacity at an earlier time as a result of financing that could become available with a new long-term

license.⁵⁶ The NOPR⁵⁷ specified that the request would have to contain the same statements and information required to be included in a notice of intent filed pursuant to § 16.6, that the Commission would treat the request as a notice of intent, and that the requester would have to make available to the public at that time the information specified in § 16.16.⁵⁸ The Commission proposed to give Federal Register and local newspaper notice of the licensee's request for acceleration, notify appropriate Federal and state resource agencies by mail, provide a 45-day period for comments by interested parties, and, if it determined that the request was in the public interest, issue an order accelerating the expiration date of the license to five years from the date of the Commission order.⁵⁹

Several commenters addressed the issue of the basis for requesting accelerated termination of a license. EEI suggests that licensees be permitted to seek acceleration for improvements other than installation of new capacity, such as dam safety improvements or facilities for the protection and enhancement of fish and wildlife resources. It argues that the rationale for acceleration advanced in the preamble to the NOPR is equally applicable to these situations.

Idaho Power suggests that there are valid bases for acceleration of license expiration dates for other than installation of new capacity, including rehabilitation work for reasons of safety and spillway modifications. Idaho Power also suggests that acceleration could be used to make the expiration dates of licenses for related projects coincide, so that the Commission could consider the projects together in a single relicensing proceeding. Therefore, Idaho Power suggests that a licensee be permitted to request acceleration for any reason.

Montana Power also suggests that there are valid bases for acceleration other than new capacity, citing safety and fish and wildlife concerns. It

recommends permitting acceleration for any legitimate reason that is in the public interest and consistent with statutory purposes.

Trout Unlimited suggests that the Commission discourage acceleration in the short term, because of the extremely heavy volume of upcoming relicensing proceedings. Other commenters focus on the interpretation of the term "new capacity". Washington Wildlife recommends that the Commission adopt a guideline specifying that at least a 20 percent increase in project production is needed to justify acceleration of a license expiration date. Montana Power also suggests that the Commission clarify the term "new capacity", and recommends that it encompass only cases where generation is to be increased through additional water usage or through conversion of a plant from a run-of-the-river facility to a peaking facility.

Two commenters address the issue of when a licensee should be required to make the information available to the public pursuant to § 16.7. EEI suggests that, rather than requiring a licensee to make the information available at the time the acceleration request is made, the Commission should wait until it approves the request for accelerated termination and then require the licensee to make the information available within 120 days. EEI contends that compiling the information and making it available in the required form is a burden, and that if the Commission denies the request some of the information will become stale before the original expiration date. Montana Power also cites the needless compilation of information should the request be denied, and suggests that the licensee be required to make the information available within a reasonable time after a request for accelerated termination is granted.

The South Carolina Department asks that the Commission clarify when the 45-day comment period begins, and suggests that the Commission use certified mail to notify agencies of applications for acceleration. Washington Wildlife suggests that the notices issued pursuant to § 16.4(b) include the information specified in § 16.3(b). Montana Power wants to impose time limits within which the Commission must either grant or deny an acceleration request; this would avoid "potential crippling uncertainty"⁶⁰ caused by the licensee

not knowing when the Commission might act and therefore having difficulty drafting reliable project schedules and organizing and coordinating its relicensing effort. Also, Montana Power questions why the new expiration date must be five years from the date of the Commission order.

Finally, New York Electric and Rochester Gas request that the Commission clarify that, under the proposed provision, licensees wishing to increase capacity are not required to risk their existing licenses by seeking acceleration, and that the alternative of application for a license amendment to expand capacity remains available to them.

The Commission agrees that there may be valid bases for acceleration other than new capacity. Accordingly, the Commission is revising § 16.4(a)(1) to eliminate the reference to the installation of new capacity, and to add the requirement that a licensee include in its acceleration request a detailed explanation of the basis for its request. Thus, any legitimate interest, including, but not limited to, installation of new capacity, dam safety modifications, and fish and wildlife improvements, may serve as the basis for an acceleration request. The Commission notes, however, that licensees are responsible for conducting routine operation and maintenance on their projects and that such routine operation and maintenance activities will not justify an acceleration request.

The Commission does not believe it is necessary to discourage acceleration requests in the short-term, as suggested by Trout Unlimited. Although a significant number of relicensing proceedings will be initiated in the near future, the Commission does not anticipate that many licensees will attempt to avail themselves of the acceleration procedure. Furthermore, the Commission will be able to weigh potential burdens on Commission resources when it is considering whether to grant acceleration requests.

The Commission also does not believe it is necessary to establish restrictions on the type or size of new capacity installations that will justify an acceleration request, as suggested by Washington Wildlife and Montana Power. The Commission will evaluate the merits of each case individually, and will grant an acceleration request only if it will be in the public interest to do so.

The Commission agrees with EEI and Montana Power that the obligation to make information available pursuant to § 16.7 should be tied to Commission approval of an acceleration request. Ninety days following Commission

approval of an acceleration request should be sufficient time for licensees to compile the required information and make it available. Therefore, the Commission is revising § 16.4(a)(2) to specify that, should the Commission grant the request for acceleration, the Commission will deem the request for acceleration to be a notice of intent under § 16.6. Unless the Commission specifies a later period, the licensee will be required to make available the information specified in § 16.7 no later than 90 days from the date the Commission grants the request. Also, the Commission is revising § 16.4(b): (1) To clarify that the notices issued pursuant to that paragraph will be considered as fulfilling the notice provisions of § 16.6(d) should the Commission grant the acceleration request; (2) to specify that the notices issued pursuant to that paragraph must include an explanation of the basis for the acceleration request; (3) to include Indian tribes among those receiving the notices, so as to be consistent with § 16.6(d); and (4) to reduce the number of times the notice is published in a local newspaper from four to one. The reduction in the number of times public notice is issued will reduce costs while still providing the public and resource agencies with ample notice of the request. A comparable change regarding the reduction in the number of times a notice will be issued is being made to § 16.6(d)(2).

As indicated previously, Montana Power questions why the new expiration date of an accelerated license must be five years from the date of the Commission order. The purpose of the five-year period was to preserve the five-year window between the time a licensee is to first make information available and the expiration of the license as established by ECPA. The Commission is revising § 16.4(a)(2) to provide that, unless the Commission specifies a later period, information must be made available no later than 90 days from the date the Commission approves an acceleration request. Therefore, the Commission is also

⁵¹ Since both the notices issued pursuant to this section and § 16.6(d) will include information comparable to that specified in § 16.3(b), there is no need to specifically reference § 16.3(b) in this provision as requested by Washington Wildlife. EPA suggests that § 16.4 be amended to clarify that a licensee should be obligated to provide information to resource agencies at the time the licensee requests acceleration. Although it is unclear what information EPA is referring to, pursuant to the revisions made to § 16.4 herein, the information required by § 16.7 will be available to all entities, including resource agencies, within 90 days from the date the Commission approves an acceleration request.

revising § 16.4(c) to specify that the expiration date of an accelerated license will be not less than five years plus 90 days from the date of the Commission order approving the acceleration request. The qualifying language in § 16.4(a)(2) and the "not less than" language in § 16.4(c) are being used in order to provide the Commission with flexibility in setting expiration dates later than five years in situations where that would be appropriate, such as when requests are made to coincide with the expiration dates of related projects, as suggested by Idaho Power.

With regard to the clarification requested by the South Carolina Department, the § 16.4(b) notices will specify when the 45-day comment period will expire. Due to the expense involved, the Commission declines to adopt the South Carolina Department's suggestion that the notices to resource agencies be sent by certified mail.

The Commission is sympathetic to the uncertainty concerns prompting Montana Power's request for a deadline for Commission action on acceleration requests. The Commission will attempt to act on all acceleration requests in a timely manner and intends that a decision on a request will be made within 45 days after the expiration of the comment period. Also, a degree of certainty regarding the scheduling of relicensing activities is provided to those requesting acceleration due to the fact that license expiration dates will always be set at least five years plus 90 days from the date of the Commission order approving the acceleration request.

The Commission also notes that the comments of New York Electric and Rochester Gas are correct. Licensees always have the ability to file applications to amend their licenses to increase the capacity of their projects, and do not have to request acceleration of their licenses to do so.⁶² If the term of an existing license is less than the statutory maximum of 50 years,⁶³ increases in capacity or other improvements requiring substantial new investment may justify an extension of the license term up to 50 years.⁶⁴

⁶² The Commission may, however, decline to consider new capacity amendments which are requested by an existing licensee near the expiration date of an existing license if it appears that it would be in the public interest to consider those amendments in the context of a relicensing proceeding where competing redevelopment proposals may be considered.

⁶³ See section 6 of the FPA.

⁶⁴ See, e.g., Fieldcrest Mills, 37 FERC ¶ 61,264 (1986).

⁵² See NOPR preamble at 40. All references herein to pages of the NOPR preamble are to the slip opinion because the full text was not published in the Federal Register. Copies of the full text of the NOPR are available from the Commission's Public Reference Room.

⁵³ Proposed § 16.4(a).

⁵⁴ Section 16.16, which was promulgated in Order No. 490, supra, implements the provisions of section 15(b)(2) of the FPA, 16 U.S.C. 808(b)(2) (1982 and Supp. 1988), which requires existing licensees to make available to the public for inspection and copying certain information regarding their projects at the time they file their notices of intent pursuant to section 15(b)(1) of the FPA. The final rule in the instant proceeding redesignates § 16.16 as § 16.7. This section will be referred to hereinafter as § 16.7.

⁵⁵ Proposed §§ 16.4(b) and (c).

⁶⁰ Montana Power at 8.

⁵⁶ 16 U.S.C. 808(b)(3) (1982 and Supp. 1988).

⁵⁷ See § 16.15(d), promulgated in Order No. 490, supra. The final rule in the instant proceeding redesignates § 16.15(d) as § 16.6(d). This section will be referred to hereinafter as § 16.6.

⁵⁸ Trout Unlimited and Washington Ecology suggest that § 16.3 be amended to incorporate the provisions of section 15(b)(3). However, those provisions are addressed in § 16.6(d) and need not be referenced in § 16.3.

⁵⁹ Proposed § 16.4.

G. Site Access for Competing Applicants

In the NOPR, the Commission proposed to establish a procedure whereby a potential applicant for a new license for an existing project that has complied with paragraph (b)(1) of the proposed § 16.8 consultation process could enter the project area to conduct a study or gather information required by a resource agency or the Commission, or to hold a site visit for a resource agency.⁶⁶ The proposed section would require the potential applicant to notify the existing licensee in writing of its need for access, and to enter the project area at a reasonable time, under reasonable conditions, and in a manner that would not adversely affect the environment. Those conditions included, but were not limited to, reasonable liability conditions and conditions for compensation to the existing licensee for energy generation lost as a result of modification of project operations necessary to provide access. The proposed section is consistent with the Commission's order in *Niagara Mohawk Power Corporation*,⁶⁷ and was intended to formalize the procedures ordered in that case.⁶⁸

1. Basis for Access

American Rivers suggests that the permissible purposes for site visits are unduly limited and that they should be expanded to include "any purpose related to the preparation of an application"⁶⁹ after completion of the first stage of consultation, and not merely to conduct a study or hold a site visit requested by a resource agency or the Commission. Conversely, EEL and Alabama Power suggest that the purpose for which a site visit may be conducted should be limited to situations in which the potential applicant cannot conduct a study or gather information by other "reasonably diligent efforts."⁷⁰ According to EEL, because access to an operating hydroelectric power production site may be intrusive and disruptive, site visits should be a last resort.

American Paper suggests that access be restricted to areas within the project for which the competitor can demonstrate a need for access, and that the party seeking access be required to demonstrate to the existing licensee the basis on which access is requested. Similarly, Rochester Gas suggests that a potential applicant seeking access

identify the information that necessitates access for collection, and that the competitor then be permitted to gain access only to those areas of the site that will provide such information.

In its reply comments, the Northern California Agency suggests that the Commission permit potential competitors to have access to sites in order to evaluate the condition of existing equipment, and hence decide how best to develop the site. As to EEL's and Alabama Power's suggestion that potential applicants be permitted access only if they demonstrate that they cannot conduct the study or gather the information by other reasonably diligent efforts, the Northern California Agency contends that it would be unreasonable when such other means would be considerably more time consuming or expensive.

The Commission rejects the recommendation to require potential applicants to show that the information cannot otherwise be obtained or the study conducted through other reasonably diligent efforts before they can obtain access. It would not be an efficient use of the nation's resources, or consistent with the competitive spirit underlying ECPA, to require potential applicants to gather necessary information and conduct necessary studies through means that are more time consuming and expensive than information development through site access. Although the "reasonably diligent" qualifier of the recommended change might insulate potential competitors from having to undertake speculative and exorbitantly expensive studies as a condition precedent to access, the potential for disputes inherent in such language would be great. This in turn could require Commission staff to devote considerable resources to resolving disputes. The intrusion and disruption cited by EEL should be minimized by the requirement that access take place at reasonable times and under reasonable conditions.

The suggestions advanced by American Rivers and the Northern California Agency to expand the permissible purposes for site visits are reasonable. Potential applicants may need site access in order to develop information or conduct studies necessary for their applications that may not be requested by consulted agencies or the Commission. There is no bright line between studies and information needed to develop an application, and those requested by consulted agencies or the Commission. Furthermore, any study or information need could be turned into one requested

by a consulted agency or the Commission by a potential applicant's failing to either propose to conduct or actually conduct the study or information gathering.

Accordingly, the Commission is revising proposed § 16.5 to permit site access for the purpose of conducting a study or gathering information not requested by the Commission or a resource agency but necessary to prepare an application.⁷¹ However, to help ensure that access for such purposes does not turn into general fishing expeditions for information, the Commission is making the need for such access a subject for dispute resolution.⁷²

American Paper's and Rochester Gas' suggestions requiring a potential applicant to state the purpose and extent of the needed access are reasonable. This information will enable the parties to determine the conditions of access. Accordingly, we will require potential applicants to include a statement of the need for and extent of the access in their notices to existing licensees.

However, to the extent the comments of American Paper and Rochester Gas suggest that existing licensees should be able to deny access based on their conclusion that access is not needed, those suggestions are rejected. If access is needed to conduct studies or site visits or to gather information requested by consulted agencies or the Commission, the existing licensee must provide access to the site. However, the timing and conditions of access may be referred to the Director of the Office of Hydropower Licensing (Director).⁷³ Disputes regarding the need of a potential applicant to obtain access to conduct studies or gather information not requested by the Commission or a resource agency but necessary to prepare an application may also be so referred.

2. Compensation

Ten commenters⁷⁴ address the issue of reimbursement to existing licensees for the costs of site visits, suggesting that reimbursement be for "any and all costs" or "all reasonable costs," rather than merely for the costs of lost generation as proposed in the NOPR. They argue that the personnel costs,

⁶⁶ See new § 16.5(a)(2).

⁶⁷ See new § 16.5(b)(1), discussed in Part IV.C.3., *infra*.

⁶⁸ *Id.*

⁶⁹ Alabama Power, EEL, Idaho Power, New York Electric, Public Pool, Puget Sound Power, Southern California Edison, Rochester Gas, Washington Power and Wisconsin Utilities.

operation and maintenance expenses associated with inspections, and all other costs associated with access, should be reimbursable. According to them, full reimbursement is necessary to avoid forcing an existing licensee into the unfair situation of subsidizing its potential competition.

In reply comments, the Northern California Agency opposes the recommendation to allow existing licensees to recover all reasonable expenses incurred as a result of access. According to the Northern California Agency, this type of provision can be used as a barrier to access while an existing licensee forces a potential competitor to waste time negotiating payment terms. It also argues that costs other than lost generation are likely to be *de minimis*, and that existing licensees should be required to bear these costs as part of their obligations under Part I of the FPA.

The Commission believes that existing licensees should not be required to incur expenses associated with the preparation of applications by potential competitors. Therefore, the Commission is revising § 16.5 to require reimbursement for all reasonable expenses incurred by existing licensees as a result of providing access to potential competitors. However, the Commission stresses that the expenses must be reasonable. Thus, for example, the wages and associated expenses incurred by an existing licensee when sending one or two individuals to one of its unmanned hydroelectric sites to permit a potential competitor to have access to the site would be reimbursable, while the expenses associated with sending a platoon to scrutinize a potential competitor's every step would not.

In order to prevent existing licensees from abusing their right to reimbursement, the Commission is amending § 16.5 to allow disputes over payment to be referred to the Director for resolution. However, in response to the concerns of the Northern California Agency regarding delay, the Commission is specifying that access cannot be denied pending resolution of a dispute over payment.⁷⁴

3. Procedural Matters

Idaho Power and Puget Sound Power suggest that § 16.5 be amended to permit disputes over access to be referred to the Director for resolution. The Northern California Agency recommends that, should a dispute resolution procedure be added, the Commission ensure that the

⁷⁴ See new § 16.5(b)(2), discussed in Part IV.C.3., *infra*.

disputes be resolved expeditiously in order to allow potential applicants to meet the filing deadlines established by ECPA.

The Commission agrees that a dispute resolution process will assist in providing reasonable access to potential competitors, and will help deter potential abuses by both existing licensees and potential competitors. Accordingly, the Commission is adding a new paragraph (b) to § 16.5, to permit referral to the Director of disputes regarding: (1) The timing and conditions of access; (2) the need for access to conduct studies and information gathering not requested by the consulted agencies or the Commission but necessary to prepare an application; and (3) reimbursement due existing licensees for providing access. The new procedures will be in accord with those established for resolution of disputes during the agency pre-filing consultation process.⁷⁵

As the Commission stated in *Niagara Mohawk Power Corporation*, *supra*, it fully expects that in most cases existing licensees and potential competitors will be able to resolve access disputes without coming to the Commission.⁷⁶ Thus, the Commission does not expect the dispute resolution process to be used frequently. As urged by the Northern California Agency, when disputes are lodged the Director will attempt to resolve them expeditiously. As discussed *infra*, the Commission intends for the Director to make every effort to resolve referred disputes within 30 days from receipt of all relevant information.

The NOPR proposed in § 16.5 that only potential applicants that had initiated the first stage of agency consultation could obtain access. The Small Business Administration objects to this provision, arguing that access might be required to obtain information needed to compile the § 16.8(b)(1) information package. It therefore suggests, as an alternative, that site access be available if a potential applicant can demonstrate that access is necessary to secure § 16.8(b)(1) information needed by a resource agency to evaluate the project during the first stage of consultation. In addition, Seattle Light, without further explanation, suggests that a potential applicant demonstrate a certain level of commitment to an application before it is granted access to a project site.

The Commission's purpose in providing for an access triggering point was to strike a balance between access

⁷⁵ See § 16.8(b)(5), discussed in Part IV.H.2.e., *infra*.

⁷⁶ See 43 FERC at 61,050.

for serious competitors and unnecessary inconvenience to existing licensees. The Small Business Administration's suggestion that the balance point should be moved forward has certain merit. Nevertheless, the Commission believes that adherence to the completion of the requirements of § 16.8(b)(1) as the threshold for access will best maintain the balance between providing access which is necessary for serious potential applicants while minimizing unnecessary inconvenience to existing licensees. Furthermore, the information that existing licensees are required to make available to the public pursuant to § 16.7, together with the information on existing projects available for inspection by the public at the Commission, should enable potential applicants to gather the information they need to undertake first-stage agency consultation.⁷⁷

The Interior Department recommends that § 16.5 be amended to recognize that Federal agencies have the right to obtain access to existing projects in order to conduct environmental studies. This is unnecessary because standard articles included by the Commission in licenses already provide for such access.⁷⁸

Finally, the Commission is clarifying that the § 16.5 access provisions are applicable to projects under expiring licenses that are not subject to the provisions of sections 14 and 15 of the FPA, and is removing the provision that prohibits access prior to the filing of the existing licensee's notice of intent. The latter change is to facilitate potential competitors that choose to initiate formal consultation under § 16.8 prior to the filing of the existing licensee's notice of intent.

H. Consultation

Section 4.38 of the Commission's regulations⁷⁹ requires applicants,

⁷⁷ For the same reasons, Seattle Light's apparent request to move the balance point back is rejected.

⁷⁸ See, e.g., Article 4 of L-1 ("Terms and Conditions of License for Constructed Major Project Affecting Lands of the United States"), 54 F.P.C. 1799, 1800-1801 (Oct. 1975), which provides that the licensee "shall allow . . . other officers or employees of the United States, showing proper credentials, free and unrestricted access to, through, and across the project lands and project works in the performance of their official duties."

⁷⁹ 18 CFR 4.38 (1988). In the initial stage, a potential applicant must contact all appropriate agencies and provide them with detailed information regarding the proposed project, including detailed maps containing descriptions of the project area and location of proposed project facilities, engineering designs of the proposed project, identification of the environment to be affected, any environmental protection, mitigation and enhancement plans, and stream flow and water regime information. During the second stage, potential applicants must perform all reasonable

including applicants for new license, to conduct a three-stage consultation process with all relevant resource agencies prior to filing their applications with the Commission. Because of the statutory deadline for filing applications added to the FPA by ECPA and the great number of applications for new license anticipated in the near future, the Commission proposed in the NOPR to implement a revised three-stage consultation process for relicensing proceedings. That process was intended to facilitate more expeditious and responsive consultation, and hence the filing of complete applications by the statutory deadline.⁶⁰

Virtually every entity filing comments on the NOPR addressed the proposed consultation provisions. The commenters were generally supportive of the intent of the proposal and the additional structure the proposal would add to the consultation process. However, even those supporting the proposal recommended that numerous changes be made to the section. The major recommendations, suggestions, and comments of all of the commenters are discussed in detail below.

As a threshold matter, the Commission is clarifying the issue of when consultation with resource agencies can be initiated. In the NOPR, the Commission indicated that existing licensees and other potential applicants would have approximately three years following the filing of existing licensees' notices of intent under section 15(b)(1) of the FPA within which to conduct consultation before having to file their applications under the 24-month application filing deadline established by section 15(c)(1) of the FPA.⁶¹ A number of the commenters, in discussing various aspects of the consultation provisions, interpreted this as a statement by the Commission that consultation with agencies could not begin until the filing of an existing licensee's notice of intention.⁶²

studies requested by the consulted agencies. Again during this second stage, potential applicants are required to provide the agencies with copies of the draft application, the results of all studies, and written requests for the agencies' review and comment thereon. During the third stage, an applicant for a project of less than 5 MW must serve copies of its application on the consulted agencies when it files the application with the Commission. An applicant for a project of 5 MW or more must serve copies of its application on the consulted agencies after receiving notification from the Commission that the application has been accepted for Commission processing.

⁶⁰ Proposed § 16.8.

⁶¹ See NOPR preamble at 9.

⁶² See, e.g., Idaho Power at 3 and Public Pool at 6.

This was not the intent of the statement; rather, the statement merely expressed the Commission's belief that most applicants probably would wait until the filing of the section 15(b)(1) notice of intent to initiate agency consultation. Applicants are free to initiate informal consultations, or the formal consultation required by § 16.8, prior to the five-year notice of intent deadline. Indeed, they are encouraged to do so in cases where they expect that necessary studies will require extended periods of time to complete. Conversely, there is no fixed deadline by which consultation must be initiated. However, applicants that postpone the initiation of consultation much after the filing of the section 15(b)(1) notices of intent run the risk of not being able to comply with the requirements of § 16.8.

1. General Requirement to Consult

Proposed § 16.8(a)(1) specified that, before an applicant files an application for new license, nonpower license, exemption, or surrender, it must consult with the relevant Federal and state resource agencies, including the National Marine Fisheries Service, the United States Fish and Wildlife Service, the Federal agency administering any United States lands utilized or occupied by the project, the appropriate state fish and wildlife agencies, and the certifying agency under section 401 of the Federal Water Pollution Control Act (Clean Water Act). Proposed § 16.8(a)(2) specified that the Director or appropriate Regional Director will provide a list of known appropriate Federal and state resource agencies upon request.

Brazos, Washington Ecology, and Western Council suggest that state water resource management agencies be added to the list of agencies specifically enumerated in § 16.8(a)(1). The EPA suggests that it be included in the list of enumerated agencies. The Connecticut Commission suggests that it be included as a consulted agency for any project in the Connecticut River Basin. Brazos and Western Council suggest that § 16.8(a)(2) be modified to specify that, with regard to state resource agencies, the Director shall request and use a list prepared by the governor of each state. Similarly, Montana Natural Resources suggests that the Director solicit lists of state agencies from the states and forward the lists automatically to each applicant.

Consistent with its revision to § 16.2(d), the Commission is adding state water resource management agencies to the list of enumerated § 16.8(a)(1) agencies. Also, due to its significant

resource responsibilities, the EPA is being added to the enumerated agency list even though, like state water resource management agencies, it would be considered a resource agency without being specifically named. Finally, § 16.8(a)(1) is being revised to clarify that interstate agencies with relevant resource responsibilities, such as the Connecticut Commission, are to be consulted by applicants.⁶³

The suggestion that the Director solicit agency lists from the governor of each state is reasonable, since it will help clarify for applicants the existence and specific responsibilities of relevant state resource agencies. Accordingly, the Commission is instructing the Director to solicit such lists and provide any responses received to applicants upon request. The Commission declines, however, to amend § 16.8(a)(2) to require the Director to use the lists supplied by the governors as the Director's lists, since the governors' lists may not contain all agencies with whom the Director believes applicants should consult.

2. First-Stage Consultation

Under the first stage of the proposed consultation regulation (§ 16.8(b)), potential applicants are to provide to each appropriate resource agency and the Commission basic information regarding the existing project and any proposed changes.⁶⁴ After each agency has had 30 days to review this information, the applicant is required to provide an opportunity for a site visit, and hold one or more joint meetings or conference calls with all pertinent agencies to review information and to discuss the data and studies to be provided by the applicant.⁶⁵ The potential applicant is to inform the Commission in advance of the time and place of each meeting or conference call so as to enable Commission staff, if they so choose, to attend the joint meetings or participate in the conference calls.⁶⁶

The NOPR specified that each consulted resource agency was to provide the applicant with written comments identifying its "final" determination of necessary studies to be performed or information to be provided by the applicant. The NOPR required that these written agency comments be provided within 30 days after the joint meeting or conference call "during which there is agreement by all

⁶³ A similar change is being made to the definition of resource agency in § 16.2(d).

⁶⁴ Proposed § 16.8(b)(1).

⁶⁵ Proposed § 16.8(b)(2).

⁶⁶ See NOPR preamble at 12.

participants that the information required by § 16.8(b)(1) has been provided."⁶⁷

The NOPR specified that, if an applicant disagrees with a resource agency as to whether a study is reasonable and necessary or as to the manner in which a study should be performed, it can refer the matter to the Director for resolution, except where the study itself or the manner in which an agency requested it be performed is routinely conducted or used on the type of project proposed.⁶⁸ It also provided that, if an applicant does not refer the matter to the Director, or if it disagrees with the Director's resolution of the matter and does not conduct the requested study or perform it in the manner specified, it must fully explain the basis for its disagreement in its application.⁶⁹ Finally, the NOPR specified that the first stage of consultation ends when all participating agencies provide the required written comments.⁷⁰

a. *Commission Attendance at Joint Meetings.* Puget Sound Power and Great Northern support the possibility of Commission staff attendance at consultation meetings, in the belief that staff's presence might encourage parties to refrain from extreme positions and work toward reasonable accommodation of each other's interests. Southern California Edison expresses certain reservations about Commission involvement in the consultation process, stating that it would prefer that Commission participation after the initial joint meeting be at the invitation and discretion of the potential applicant. Wisconsin Utilities suggests that the Commission not directly participate in the consultation process except to resolve disputed issues pursuant to § 16.8(b)(4). Wisconsin Utilities expresses concern that Commission presence could be counterproductive, since it could trigger posturing by agencies and applicants attempting to influence the Commission's position on disputed issues, or might undermine the Commission's impartiality if the Director is later required to arbitrate a dispute.

Niagara Mohawk objects to the requirement to provide the § 16.8(b)(1) information package to the Commission. According to Niagara Mohawk, the Commission does not need this information unless and until the Director is called upon to resolve a dispute pursuant to § 16.8(b)(4). Also, Alabama

⁶⁷ Proposed § 16.8(b)(3).

⁶⁸ Proposed § 16.8(b)(4)(i).

⁶⁹ Proposed § 16.8(b)(4)(ii).

⁷⁰ Proposed § 16.8(b)(5).

Power and Wisconsin Utilities object to the requirement that the Commission be notified in advance of each meeting, contending that it would be burdensome.

The purpose of giving Commission staff the opportunity to attend the first-stage joint consultation meeting and subsequent meetings during the consultation process is twofold. First, it is to enable the Commission to become familiar with the proposed projects and their associated resource issues, and thus to enable it to more expeditiously resolve any disputes referred under § 16.8(b)(4) and to process applications once they are filed. Second, it is to enable Commission staff, if so-called upon at a meeting, to offer advice and provide guidance regarding normal Commission information needs.⁷¹

The Commission does not believe that attendance at such consultation meetings will encourage posturing. It should encourage accommodation of interests. Commission staff advice on the Commission's information requirements should aid the consultation process. Commission staff attendance at such meetings should be left to staff's discretion, rather than being subject to the discretion of the applicant. Accordingly, the Commission rejects the recommendations of Southern California Edison and Wisconsin Utilities.

The Commission also declines to adopt Niagara Mohawk's suggestion to eliminate the requirement to provide the § 16.8(b)(1) information package to the Commission. This package contains the information needed by Commission staff to determine if it wants to attend a meeting and to familiarize itself with a project prior to the first-stage joint consultation meeting. Receipt of this information at this time will assist in the prompt resolution of any § 16.8(b)(4) disputes that may arise later. Finally, the Commission rejects the suggestion of Alabama Power and Wisconsin Utilities that the requirement for advance Commission notice of meetings be eliminated. While this requirement will impose an additional duty on applicants, it should not prove to be unduly burdensome and is necessary for Commission staff to become aware of the meetings.

b. *Information.* As noted previously, § 16.8(b)(1) requires applicants to provide resource agencies with certain

⁷¹ Commission staff attending such meetings will not attempt to resolve any disputes that may arise between applicants and resource agencies. Any disputes that the parties want resolved by the Commission must be referred to the Director in accordance with the formal dispute resolution procedures.

basic information regarding the existing project and any proposed changes. The information requirements, which are set out in proposed § 16.8(b)(2) (i) to (vi), include: information regarding the specific location of all existing and proposed project features ((i)); general engineering design information ((ii)); a summary of the operational mode of the existing project and any proposed changes ((iii)); identification of the environment affected, the significant resources present, and the applicant's existing and proposed environmental protection, mitigation, and enhancement plans, to the extent known at the time ((iv)); streamflow and water regime information ((v)); and a tentative schedule and location for the initial joint consultation meeting or conference call ((vi)).

A number of commenters remarked on the types and scope of the information required by § 16.8(b)(1). The Michigan Department suggests that the information required by § 16.8(b)(1) (ii) and (v) be more detailed. Similarly, International Association and the New York Department suggest that the information provisions be expanded to require the submittal of significantly more detailed information on environmental resources and physical characteristics of bypassed and downstream river reaches. They also suggest that applicants be required to secure from state and Federal agencies any available information and management objectives on fishery and wildlife resources and, based on that information and those objectives, prepare preliminary recommendations for environmental mitigation. The EPA suggests that applicants be required to provide more detailed information on water quality and affected wetlands.

The Michigan Department suggests that applicants be required to include information pertaining to their record of compliance with the terms and conditions of their licenses. The New York Department suggests that § 16.8(b)(1)(i) be amended to require applicants to delineate project boundaries so that agencies can analyze the environmental impacts of projects. Montana Natural Resources suggests that applicants be required to identify Federal and Indian lands included in the project and provide a statement of annual fees paid pursuant to section 15(b)(4) of the FPA.⁷²

Idaho Power objects to the provisions of proposed § 16.8(b)(1)(v), which requires various streamflow and water regime information. Idaho Power argues

⁷² 16 U.S.C. 803(b)(4) (1982 and Supp. 1984).

that the information required is unnecessarily complex and will involve submission of large amounts of data to agencies with neither the expertise nor staff to analyze it. Niagara Mohawk suggests that § 16.8(b)(1) (i), (ii), and (iii) be revised by adding the phrase "to the extent known" to reflect the fact that an applicant may not know its final development plans until environmental mitigation measures are developed in consultation with the agencies. Finally, PG&E and the Department of Commerce suggest that a provision be added to § 16.8(b)(1) that would require applicants to include in their information packages, descriptions of the studies they intend to conduct and the methodologies they plan to employ in conducting them.

The Commission is adopting the recommendation of PG&E and the Department of Commerce regarding the applicants' identification of proposed studies and methodologies. This will assist resource agencies in determining what additional studies are needed, and will help applicants and resource agencies to more promptly identify and discuss potential issues regarding selection of appropriate methodologies.⁹³ The Commission is also adopting in part the recommendation of the New York Department regarding project boundaries, by amending paragraph (b)(1)(i) to require applicants to show any existing project boundaries. However, the Commission declines to require all applicants to show boundaries around all project facilities, since boundaries for new facilities may not be known at this point in the consultation process, or may not be required at all for certain projects.⁹⁴ Also, as discussed previously, the Commission's analysis of environmental impacts, and hence the resource agencies' review of potential environmental issues, is not constrained by project boundaries.

As generally discussed in the reply comments of EEI, Georgia Power, and PG&E, the detailed information that International Association, the New York Department, the EPA, and the Michigan Department request to be required of applicants is the type that normally will be developed during the latter stages of the consultation process. Requiring this detailed information at the initiation of the consultation process would essentially compress these latter stages

into the first stage. Accordingly, the Commission declines to adopt the detailed environmental information recommendations of these agencies. If these agencies believe that any of this information is necessary for their evaluation of a particular project, they can request that the potential applicant conduct the necessary study or gather the necessary information in preparing its application for the project.

The Commission does not believe that it would be appropriate to require potential applicants to solicit and identify resource information and management objectives of the resource agencies at the initiation of the consultation process, as suggested by International Association and the New York Department. The Commission does not believe it should be the responsibility of potential applicants to inform agencies of the resource information and management objectives of their sister agencies. The resource agencies can and should provide and discuss this information during the initial joint consultation meeting.

The Commission is not requiring applicants to include in their § 16.8(b)(1) information packages, the information on Federal and Indian lands and annual fees as requested by Montana Natural Resources. This information will be included by existing licensees in their applications pursuant to § 16.10(b)(9); it is not necessary for the first stage of consultation. The Commission is not requiring compliance information to be provided to the resource agencies, as suggested by the Michigan Department. This information must be made available to agencies and the public for inspection and copying pursuant to § 16.7(d)(1)(ii).

Idaho Power's objections to the requirements of paragraph (b)(1)(v) regarding streamflow and water regime information are not persuasive. This information should be easily available for projects that have been operating for years. Also, applicants can present this information graphically if that would aid its compilation and understanding. This is a requirement of existing regulations,⁹⁵ and the Commission is not aware of applicants' having difficulty in complying with it.

Finally, the Commission rejects Niagara Mohawk's request that § 16.8(b)(1) (i), (ii), and (iii) be conditioned with the phrase "to the extent known." The Commission recognizes that applicants may not know the final configuration of their projects at the time they are required to

provide the § 16.8(b)(1) information package, and may wish to modify their projects during the course of completing the application process. However, resource agencies must be provided with some idea of the applicant's development plan or plans at the beginning of the consultation process, in order to be able to determine what studies and other information are required. Insertion of Niagara Mohawk's suggested language would allow applicants to avoid entirely the obligation to inform agencies of their development plans, and therefore is inappropriate. Of course, as just mentioned, applicants are not wedded to proposals discussed in the information package and may modify those proposals during the course of the application and consultation process.⁹⁶

c. Joint Meetings. The majority of the commenters supported the concept of joint consultation, pointing to the fact that joint consultation should reduce the instances of inconsistent or conflicting resource agency requests and recommendations. However, a number of commenters contend that it would not be appropriate or desirable to require joint consultation in every instance.

EEI suggests that applicants should be provided with the option of consulting with agencies jointly or individually, as currently permitted by § 4.38. EEI has reservations as to whether joint consultation would be workable in all cases, since state and Federal agencies are sometimes located in different cities and some projects require consultation with agencies of more than one state. EEI indicates that the use of conference calls, as provided for in proposed § 16.8(b)(2) and elsewhere in § 16.8, is not an adequate substitute for agencies unable to attend a joint meeting, due to their inherent communication difficulties.⁹⁷

⁹³ The Interior Department requests that applicants include in their § 16.8(b)(1) information package the statement required by 18 CFR 4.301(a) (1988) indicating whether the potential applicant will be applying for an exemption or a license involving a new dam or diversion. This request is reasonable and § 16.8(b)(1) is being appropriately modified (see new § 16.8(b)(1)(vii)). The Commerce Department requests that the word "significant" be eliminated from potential applicants' requirement to identify resources in § 16.8(b)(1)(iv). The Commission rejects this recommendation, since it may be impossible to identify every potentially affected resource at the time the § 16.8(b)(1) information package is provided.

⁹⁷ Similar comments regarding the joint consultation proposal and the need to provide applicants with the option of joint or individual consultation are expressed by Alabama Power, the Department of Commerce, the Interior Department, Friends of the Earth, Great Northern, Montana Power, PG&E, Puget Sound Power, Southern

Continued

Several commenters⁹⁸ suggest that, if joint consultation is required or elected, applicants be required to consult jointly only with agencies having similar areas of interest, expertise, or responsibility. They point out, for example, that no purpose would be served by requiring a state historic preservation agency to attend meetings on fishery issues. Puget Sound Power and Southern California Edison suggest that, if joint consultation is required, it be limited to the first meeting.

The Commission agrees that joint consultation with all consulted agencies during all stages of the consultation process may be impracticable. However, potential applicants should not have the option of deciding whether they will use joint or individual consultation, as requested by EEI and others. The Commission believes that the initial consultation meeting pursuant to § 16.8(b)(2) should be held with all relevant agencies. This will provide each agency with an understanding of the interrelationship of resources, and the impacts a condition it may request might have on a resource within the purview of another agency. The meetings held under § 16.8(c) ⁹⁹ to resolve disagreements following the submittal of draft applications and agency comments thereon should be attended by all agencies with similar or related areas of interest, expertise, or responsibility.

In accordance with the above, the Commission is modifying § 16.8 as follows. First, § 16.8(b)(2) is being revised to require only a single joint meeting with all pertinent resource agencies during the first stage of agency consultation. Second, the Commission is modifying proposed § 16.8(c)(7) ¹⁰⁰ to specify that meetings to resolve substantive disagreements under the second stage of agency consultation must be joint ones attended by all agencies with similar or related areas of interest, expertise, or responsibility. Finally, the Commission is adding a new § 16.8(h) to clarify that applicants may hold meetings with resource agencies other than the single joint meeting required by § 16.8(b)(2) and any joint meeting held to resolve disagreements

under stage-two consultation. This new paragraph does not require joint consultation; rather, it requires a potential applicant, prior to holding an additional meeting with a resource agency, to inform all agencies with similar or related areas of interest, expertise, or responsibility of the meeting so that they will be able to attend if they choose.¹⁰¹

The Commission clarifies, however, that § 16.8(h) does not apply to every communication between a potential applicant and a resource agency. Telephone calls or meetings between a potential applicant and a resource agency to clarify minor technical or procedural points regarding an agency's request for a study or information, or to otherwise discuss minor issues, do not trigger the requirements of § 16.8(h). Thus, potential applicants will not have to notify other agencies as required by § 16.8(h) with regard to such minor contacts with an agency.

The Commission agrees with the comments regarding the advantages of face-to-face meetings over conference calls. It was not the Commission's intention to imply that conference calls could be substituted for face-to-face joint meetings; rather, the intent was that conference calls could be used to a limited degree to allow an agency to participate in a required joint meeting if it was unable to attend in person. In order to avoid confusion on this point, the Commission is revising § 16.8 to eliminate references to conference calls. However, this action should not be construed as a prohibition on conference calls; in appropriate circumstances conference calls can be used to allow a resource agency to participate in a required joint meeting.

d. Timing and Procedures. As discussed previously, proposed § 16.8(b)(1)(vi) required potential applicants to include in their § 16.8(b)(1) information packages a tentative schedule and location for the first-stage joint consultation meeting. Proposed § 16.8(b)(2) required potential applicants to hold a joint meeting after each agency had 30 days in which to review the § 16.8(b)(1) information package. A number of the commenters objected to,

or sought clarification of, these provisions.

American Rivers states that the proposed provisions are vague on the issue of who would set the time and place of the joint meetings, and suggests that potential applicants should be made responsible for setting up the meetings. Wildlife Federation suggests that the provision be clarified to specify that the meetings be scheduled at a time and place agreeable to the agencies involved. The Michigan Department and Friends of the Earth also suggest that the provision be revised to require applicants to consult with the agencies to arrive at mutually agreeable dates for consultation meetings, while several commenters ¹⁰² object to the apparent unilateral ability of applicants to establish meeting schedules.

The Interior Department objects to the provision's silence on the issue of advance notification to the agencies, and suggests that written notices and agendas be provided two weeks in advance. American Rivers suggests that applicants be required to provide notification to agencies five to ten days in advance of any scheduled meeting. Montana Natural Resources recommends that applicants be required to provide agencies with written notice at least ten days in advance, while Friends of the Earth suggests a 15-day notification period. Finally, the South Carolina Department suggests that the tentative schedule required by proposed § 16.8(b)(1)(vi) be sent to agencies by certified mail at least 30 days in advance of the meeting.

The Commission agrees that potential applicants should consult with resource agencies after submitting the information package in order to arrive at mutually agreeable dates and places for § 16.8(b)(2) joint meetings, and should provide them with advance written notices and agendas. This will assist the agencies in managing their workload and determining which personnel should attend the meetings. Accordingly, the Commission is replacing the provision requiring inclusion of a tentative schedule in the § 16.8(b)(1) information package. The new provisions require potential applicants to consult with the resource agencies in the scheduling of joint meetings, and to provide them with written notice of the time and place of the meetings at least 15 days in advance, together with written agendas of the issues to be discussed.¹⁰³ The

⁹³ See new § 16.8(b)(1)(vi). As discussed in Part IV.H.2.d., *infra*, the former text of § 16.8(b)(1)(vi) is being eliminated.

⁹⁴ See Part IV.B., *supra*, regarding applications for minor licenses.

⁹⁵ See 18 CFR 4.38(b)(1)(v) (1988).

California Edison, Washington Wildlife, Wisconsin Utilities, and Washington Power. International Association, New York Electric, and Washington Wildlife agree with EEI that conference calls are not an adequate substitute for face-to-face meetings.

⁹⁸ EEI, Great Northern, Idaho Power, PG&E, Wisconsin Utilities, and Washington Power.

⁹⁹ See Part IV.H.3., *infra*, for further discussion of the joint meeting and other provisions of the second stage of agency consultation.

¹⁰⁰ This final rule redesignates § 16.8(c)(7) as § 16.8(c)(6).

¹⁰¹ The reference to agencies with "related" areas of interest in new paragraph (h) and in the provision pertaining to second-stage joint meetings is intended to encompass agencies with an interest in or responsibility over a resource that may be impacted as a result of an action taken with regard to another resource. For example, an agency with an interest in whitewater recreation potential in a project's bypass reach could be considered an agency with a related interest in cases where the applicant for the project is to meet with a fishery agency to discuss instream flows in the project's bypass reach.

¹⁰² Washington Fisheries, Columbia Commission, the Department of Commerce, and Seattle Light. Similar comments were made by the Interior Department.

¹⁰³ See § 16.8(b)(2)(ii).

provision requiring advance notification to the Commission is being clarified to require that written notice and a written agenda be provided 15 days in advance. Finally, conforming provisions are being added to the portion of § 16.8(c) pertaining to joint meetings to resolve disputes during second-stage consultation,¹⁰⁴ and to new § 16.8(h).¹⁰⁵

Many of the commenters object to § 16.8(b)(2)'s provision that joint meetings be held after each agency has had 30 days in which to review the § 16.8(b)(1) information package. They contend that additional time is needed for the agencies to review the information prior to the first joint meeting. They suggest that the agencies be provided with 60 days to review the information.¹⁰⁶ American Rivers suggests that the period be extended to 60 days or the section clarified to state that the 30-day period now specified would begin running on the date the agencies actually receive the information. Wildlife Federation suggests that the time period be extended to 60 days or agencies be allowed to obtain 30-day extensions.

Trout Unlimited suggests that extensions of this time period and the other consultation deadlines in § 16.8 be permitted in complex cases. The Department of Commerce recommends either that the period be extended to 60 days or a procedure for extensions be established. The Interior Department suggests that the 30-day period run from the date agencies receive all of the information required by § 16.8(b)(1).

The Commission believes that the 30-day period specified in the NOPR will, in most cases, provide agencies with adequate time to familiarize themselves with proposed projects prior to the first-stage joint consultation meetings. However, the Commission recognizes that, because of heavy workload or the complexity of a case, agencies may sometimes find it difficult to adequately prepare for a joint meeting within 30 days.

¹⁰⁴ See § 16.8(c)(6)(ii).

¹⁰⁵ The Commission believes that the 15-day notice reasonably balances the need for advance notice to the agencies with the need for the consultation process to proceed expeditiously. Accordingly, it rejects the South Carolina Department's suggestion that 30 days advance notice be provided. The Commission is not aware of any problem regarding agencies failing to receive notices from applicants in a timely manner; therefore, it sees no need to adopt the South Carolina Department's suggestion that the notices be sent by certified mail.

¹⁰⁶ Connecticut Commission, Friends of the Earth, International Association, Michigan Department, Montana Natural Resources, New York Department, Washington Fisheries, Washington Wildlife, EEI and Rochester Gas.

In order to accommodate such situations, the Commission is revising proposed § 16.8(b)(2) to specify that a potential applicant must hold the first-stage joint meeting not earlier than 30 days, but not later than 60 days, following the submittal of the § 16.8(b)(1) information package. This extended window will allow applicants to accommodate reasonable agency requests for additional time to prepare for the initial joint meeting. However, the Commission stresses the cooperative nature of the consultation process, and the need for expeditious agency responses to applicants' requests. Consequently, the Commission hopes and expects that the resource agencies will not abuse the extended period for initial joint meetings by insisting on the maximum period for review in all cases. Conversely, the Commission fully expects potential applicants to accommodate reasonable agency requests.

The Commission declines to permit formal extensions of the time in which to conduct the § 16.8(b)(2) joint meeting. A clear non-extendable deadline for the § 16.8(b)(2) joint meeting is required in order to have the expeditious consultation required in relicensing proceedings and meet the filing deadlines mandated by ECPA. The additional time provided, together with diligent and good faith efforts on the part of the resource agencies, should obviate any need for extensions.¹⁰⁷

The Commission is also clarifying that the 30-to-60 day period will be measured from the date of the applicant's letter transmitting the § 16.8(b)(1) information package to the resource agencies. This date is selected in lieu of the date of receipt by the agencies, as advocated by some of the commenters, since it provides an easily recognizable triggering point for the time period.

As indicated previously, proposed § 16.8(b)(3) specifies that, 30 days after the § 16.8(b)(2) joint meeting, the resource agencies will provide a potential applicant with written comments identifying their final determination of necessary studies or information to be provided by the applicant. However, this section also specifies that the 30-day period would

¹⁰⁷ As discussed elsewhere herein, the Commission is revising the dispute resolution provisions to permit resource agencies to refer disputes regarding any first-stage consultation issue to the Director for resolution. Thus, if an applicant has not provided a resource agency with the information required by § 16.8(b)(1) and therefore has hindered the agency's ability to prepare for the joint meeting, the agency can refer the matter to the Director and, depending on his resolution, the deadline for the § 16.8(b)(2) joint meeting may be extended.

not begin running until "there is agreement by all participants that all the information required by § 16.8(b)(1) has been provided." A number of objections were made to the 30-day deadline and the requirement for agreement on the § 16.8(b)(1) information.

Great Northern recommends that the provision be revised to provide that the deadline for agency comments be measured from the date of the joint consultation meeting, and not from the point that all of the agencies agree that the § 16.8(b)(1) information has been provided. According to Great Northern, the current provision will allow a single agency to delay the entire consultation process. Great Northern contends that the agreement language is not necessary, since applicants will provide all of the § 16.8(b)(1) information initially so as to avoid agency requests for unnecessary studies.

EEI also requests deletion of the agreement language, contending that it will lead to confusion and invite delay. EEI contends that this agreement language is unnecessary, since the Commission's current consultation regulations in § 4.38 do not require it and EEI is not aware of any disputes that have arisen over the submittal of initial consultation information. Georgia Power suggests that the agreement language be eliminated and the dispute resolution process be available for disputes regarding the sufficiency of the § 16.8(b)(2) information package.¹⁰⁸

American Rivers suggests that § 16.8(b)(3) be revised to clarify that it is up to the resource agencies to determine when all of the required § 16.8(b)(1) information has been provided, and that the deadline for agency responses be measured from the point when all agencies agree that all of the information has been provided. Washington Wildlife contends that the agreement language is very important. The Interior Department indicates that its experience is that not all applicants provide adequate initial consultation information, and recommends that the provision be clarified to specify what happens when an applicant and an agency do not agree that all requested information has been provided. The Interior Department also states that information not referenced in § 16.8(b)(2) may be necessary for the agencies to recommend studies and that, if an applicant does not agree to provide this supplemental information initially,

¹⁰⁸ Similar concerns with the proposed agreement language are expressed by National Hydropower, Idaho Power, Southern California Edison, PG&E, and Washington Power.

an agency will be forced to request it when it submits its comment letter. Finally, the Department of Commerce contends that first-stage consultation should not be considered complete until all § 16.8(b)(1) information is provided.

The vast majority of the commenters recommend that the 30-day response period for resource agencies be extended, indicating that the period is too short to allow resource agencies to formulate accurate and responsive study requests and that the 30-day limit will prompt boilerplate study requests. A number of commenters¹⁰⁹ recommend that the period be extended to 60 days. Some recommend that it be extended to 90 days.¹¹⁰ Wildlife Federation suggests that either the period be extended to 60 days or extensions of the current 30-day period be provided for in individual cases. Montana Natural Resources suggests that the period be extended to 45 days in single dam projects and to 60 days in multiple dam projects. The Wisconsin Department suggests that the provision be revised to provide for a 60- to 75-day negotiated period. The Interior Department suggests that either the period be extended to 60 days or the agencies be provided with an opportunity to obtain a single 30- to 45-day extension. Finally, American Rivers suggests that the agencies be provided with the unilateral authority to extend the response period for up to 90 days.¹¹¹

In response to the concerns expressed by the commenters, the Commission is extending the resource agency response period from 30 to 60 days. This will provide a more reasonable time period for the resource agencies to respond and will establish a uniform deadline for all proceedings, thus avoiding the uncertainties inherent in some of the commenters' suggestions for optional extension periods.

The Commission is also eliminating the requirement that all of the agencies must agree that all of the § 16.8(b)(1) information has been provided. The new 60-day response period is measured from the date of the § 16.8(b)(2) joint meeting.

The Commission agrees with the commenters that the agreement language would create potential for delay and would allow a single resource agency to hold the consultation process

¹⁰⁹ Connecticut Commission, International Association, New York Department, Trout Unlimited, EEI, PG&E, Friends of the Earth, Alabama Power, and Public Pool.

¹¹⁰ Washington Wildlife, Southern California Edison, and Great Lakes Commission.

¹¹¹ Concerns about the shortness of the response period were also expressed by Maine Office, Montana Fish and Wildlife, Great Northern, Michigan Department and Washington Fisheries.

hostage on a project. However, the Commission recognizes that there may be instances where a potential applicant fails to provide all of the required § 16.8(b)(1) information and that in such situations it would be inequitable and counter-productive to require resource agencies to respond within 60 days. Accordingly, and as discussed in the next part hereof, the Commission is modifying the dispute resolution process to permit resource agencies to refer any matter arising under the first stage of consultation to the Director for resolution. Consequently, agencies that believe they have not been provided with all of the § 16.8(b)(1) information may refer the issue to the Director for resolution, and possibly obtain an extension of time to file their responses under § 16.8(b)(3).¹¹²

The Commission is also revising this provision to require the resource agencies to include in their responses an explanation of the basis for each request. This must include a discussion of: (1) Their understanding of the resource issues and their goals and objectives for these resources; (2) why each study methodology recommended by them is more appropriate than other available methodology alternatives, including those identified by the applicant in its § 16.8(b)(1) information package; (3) why the use of each study methodology recommended by it is a generally accepted practice; and (4) how the data requested will be useful in meeting their resource goals. This revision, suggested by PG&E and Great Northern, will provide potential applicants with a better understanding of agency requests and should help reduce the potential for disputes.¹¹³

e. Dispute Resolution. In the NOPR, the Commission proposed to permit a potential applicant disagreeing with a resource agency, either as to whether a study is reasonable and necessary or as to the manner in which a study should be performed, to refer the matter to the Director for resolution. However, proposed § 16.8(b)(4) limited referrals to studies or methods of conducting studies not routinely used on the type of project proposed.¹¹⁴ That section also provided that an applicant that did not refer a dispute to the Director, or that disagreed with the Director's resolution, did not have to conduct the requested study or perform it in the requested manner, but

¹¹² Section 16.8(b)(3) is redesignated as § 16.8(b)(4) by this final rule.

¹¹³ The word "final" is also being deleted from this provision. This is discussed in Part IV.H.3.c., *infra*.

¹¹⁴ Proposed § 16.8(b)(4)(i) (A) and (B).

had to fully explain in its application the basis for its disagreement.

EEI suggests that any matter arising during the first stage of consultation be subject to referral. EEI states that questions regarding what are considered "routine" studies or methodologies will arise under the proposed version, and that it would aid the consultation process to make procedural issues subject to resolution. Second, EEI recommends that potential applicants be given the option of either formally referring disputes to the Director in writing or scheduling a conference call among the applicant, the disagreeing agency, and the Director or his designee to resolve the dispute. Third, EEI suggests that a 30-day time limit be placed on the Director to resolve disputes. Fourth, EEI requests that potential applicants be allowed to appeal Director dispute decisions to the Commission. Finally, EEI suggests that the disagreeing agency be permitted to file written responses to potential applicants' referrals, so that the Director will have all the information necessary to resolve disputes.

A number of other commenters generally support EEI's request for expansion of the dispute resolution process to cover all matters arising during the first stage of consultation. These commenters¹¹⁵ point out that it is not clear what would be considered routine studies in relicensing proceedings, and that a study that is generally considered routine may be meaningless in the context of an individual case. They also reference the need for the Director to resolve disputes over requested studies whose costs would outweigh the environmental or other benefits that could result from the studies.

Washington Fisheries supports the limitation of the dispute resolution process to non-routine studies and methodologies, stating that this limitation will curtail unnecessary and time-consuming challenges. Montana Natural Resources also supports the proposed limitation, but would refer routine study requests to the Director if they are repetitious, duplicative, or unduly burdensome to the applicant. Montana Power, the Michigan Department, and the Interior Department request specification of

¹¹⁵ Alabama Power, American River, Brazos, Georgia Power, Montana Power, National Hydropower, EPA, Puget Sound Power, Rochester Gas, Southern California Edison, Wisconsin Utilities, and Washington Power.

what would be considered a routine study.¹¹⁶

Wildlife Federation suggests that § 16.8(b)(4) be revised to specify the standard the Director will use in resolving disputes, and recommends that the Director require a potential applicant to conduct any requested study, unless the applicant can show that the study would be inconsistent with the purposes of the FPA. Montana Natural Resources suggests that the provision be broadened to allow resource agencies to refer disputes to the Director. Some commenters¹¹⁷ recommend that resource agencies be afforded an opportunity to participate in the dispute resolution process or otherwise make known their views on a referral. Finally, the EPA and Trout Unlimited suggest that proposed § 16.8(b)(4)(ii) be revised to require potential applicants either to conduct all studies found by the Director to be reasonable, or to resolve all disputes with agencies prior to filing their applications.

The Commission finds persuasive the arguments for expansion of the type of matters that can be referred to the Director for resolution. Accordingly, the Commission is revising proposed § 16.8(b)(4) (redesignated § 16.8(b)(5) by this final rule) to delete the reference to non-routine studies, and to permit any disputes arising during the first stage of consultation to be referred to the Director for resolution.¹¹⁸ However, the Commission reiterates its concern that prompted the use of the "not routinely conducted" language in the NOPR, that potential applicants not use the dispute resolution process to resolve minor or frivolous matters. The Commission urges potential applicants and resource agencies to cooperate during the consultation process to resolve study-related matters among themselves without resort to the dispute resolution

process. If the Commission finds that potential applicants are using the process to attempt to avoid clearly reasonable study requests, the Commission will revise the dispute resolution process.

As suggested by Montana Natural Resources, the Commission is revising § 16.8(b)(5) to allow resource agencies to refer to the Director disputes over any matter arising during first-stage consultation. As pointed out by Wisconsin Public Service in its reply comments, this may lead to disruptive exchanges between the Commission and resource agencies during the period when potential applicants' resources would be better utilized in preparing applications. Nevertheless, the Commission believes it is necessary to afford resource agencies this right in order to consider disputes arising out of a potential applicant's failure to provide the information required by § 16.8(b)(1). The Commission is also requiring potential applicants and resource agencies to provide the other party with a copy of its referral, and to permit the other party to submit a written response within 15 days.¹¹⁹

The Commission is also clarifying (in new § 16.8(b)(5)(iii)) that all written submissions to the Director and written responses thereto pursuant to the dispute resolution provisions of § 16.8(b)(5) must be filed with the Commission's Secretary in accordance with the Commission's Rules of Practice and Procedure. In addition, the Commission is specifying (in new § 16.8(b)(5)(vi)) that the filing and acceptance of an application will not be delayed, and an application will not be considered deficient or patently deficient pursuant to 18 CFR 4.32 (1988), merely because the application does not include a study or information found to be unreasonable or unnecessary by the Director pursuant to the dispute resolution procedures.

The Commission declines to make the other suggested revisions to the dispute resolution process. As to the request for the establishment of an optional informal dispute resolution process, the Commission does not believe it is necessary to make such a process a part of its regulations. Potential applicants and resource agencies are always free to contact appropriate Commission staff to receive guidance and suggestions on how to resolve disputes regarding studies and other information requests. However, the Commission believes that all actual decisions on referred matters should be made by the Director on the

basis of written submissions. Written documentation of the parties' views will reduce the possibility for misinterpretations, and are needed for review of filed applications in cases where applicants decline to follow the decision of the Director.

With regard to the proposal to require the Director to act on referred disputes within 30 days, the Commission acknowledges the need to have such disputes resolved expeditiously. However, as discussed elsewhere herein in relation to similar requests, workload demands may prohibit the Director from acting on such disputes within a specified deadline. Consequently, no deadline will be specified. The Commission is, however, instructing the Director to make every effort to resolve referred disputes within 30 days from receipt of all relevant information.

The arguments advanced by EEI in support of the proposal to allow potential applicants to appeal the Director's decisions to the Commission are not without merit. As pointed out by EEI, the relicensing process may generate significant new study requests by resource agencies, the appropriateness of which the Commission itself has not had an opportunity to address in the past. Also as pointed out by EEI, the consequences of a potential applicant's failure to conduct a study found to be necessary by the Director as a result of a dispute referral could be significant. It could lead to the rejection of the application when it is filed and, if the 24-month filing deadline for relicense applications has passed, prevent the applicant from refiling its application.

Despite the legitimate concerns expressed by EEI, the Commission believes it would be inappropriate to permit appeals to the Commission in these situations. First, while the Commission acknowledges applicants' desire for certainty, appeals of such Director's decisions, except for those related to extensions of time, are clearly interlocutory. Second, the Director's decisions regarding studies and information are advisory and nonbinding. Upon analyzing the reasons set out in an applicant's filed application for not doing a study he found to be necessary during the dispute resolution process, together with the rest of the information contained in the application, the Director may decide that the disputed study is, in fact, not necessary. Third, insertion of the requested appeal provision could lead to a significant and potentially burdensome increase in the number of matters that must be considered by the

¹¹⁹ See new § 16.8(b)(5)(iii).

¹¹⁶ Alabama Power, Southern California Edison, and Wisconsin Utilities support EEI's suggestion regarding optional informal dispute resolution procedures, while Montana Power, the Maine Office, and PC&E support EEI's suggestion that a time limit be placed on Director's decisions. Friends of the Earth supports EEI's suggestion that the Director's decisions be appealable to the Commission, while Montana Power requests that this point be clarified.

¹¹⁷ Washington Ecology, Washington Fisheries, Wisconsin Department, and the Departments of Commerce and the Interior.

¹¹⁸ See new § 16.8(b)(5)(i). As discussed in Part IV.G.3., *supra*, disputes regarding access to existing licensees' projects under § 16.5 can be referred to the Director for resolution. Also, as proposed in the NOPR, under proposed § 16.8(c)(4), disputes regarding studies requested after completion of the first stage of agency consultation can be referred to the Director for resolution. Revisions to § 16.8(b)(5) are being made to clarify this right.

Commission itself. Fourth, as discussed elsewhere herein,¹²⁰ the Commission is clarifying one major study issue which EEI references in support of its request. Finally, the Commission may entertain requests for declaratory orders on such matters where the relevance of the issue raised to relicense applicants in general is so significant that it would be appropriate to consider the matter despite its interlocutory nature.

The Commission does not believe it is necessary to specify in the regulations the standard the Director will use in resolving first-stage consultation disputes. Clearly, his decisions will be made case-by-case on the basis of whether the requested study is reasonable and necessary in relation to the resource goals and management objectives of the resource agencies, and whether it is a generally accepted practice for potential applicants to use the methodology requested by an agency. The standard advocated by Wildlife Federation is undefinable. Any study on a resource issue, or another matter the Commission must consider under its obligation to consider all aspects of the public interest, is related to the FPA and is thus "consistent" with it, regardless of its reasonableness or necessity.

Finally, the suggestions of Trout Unlimited and the EPA that potential applicants either conduct all studies found reasonable by the Director or resolve all disputes prior to filing their applications are rejected. Those proposals either would remove an applicant's ability to make its full case against a requested study in its application or would allow a single unreasonable resource agency to prevent the filing of an application.

In a related matter, the Interior Department contends that studies it requests in order to formulate fish and wildlife terms and conditions pursuant to sections 10(j) and 30(c) of the FPA¹²¹

¹²⁰ See Part IV.H.3.b., *infra*.

¹²¹ 16 U.S.C. 823a(c) (1982 and Supp. 1988). The Interior Department suggests that the Commission clarify the regulations to specify whether existing licensees that apply for exemptions would be subject to mandatory fish and wildlife conditions submitted by Fish and Wildlife Service, the National Marine Fisheries Service and appropriate state fish and wildlife agencies pursuant to section 30(c) of the FPA. There is no need to revise the regulations to specify this, since the applicability of mandatory conditioning authority under section 30(c) of the FPA is clear from the requirement in § 16.12 that existing licensees applying for exemptions comply with the Commission's exemption regulations, which reference mandatory fish and wildlife conditions under section 30(c).

should not be subject to the dispute resolution procedures of § 16.8(b)(5). According to Interior, since such studies are an integral part of providing recommendations and mandatory terms and conditions under these provisions of the FPA, the expertise of Interior's Fish and Wildlife Service dictates that it alone have the ability to determine appropriate studies. The Department of Commerce makes similar contentions regarding studies necessary for the prescription of fishways pursuant to section 16 of the FPA.

The Fish and Wildlife Service, the National Marine Fisheries Service, and appropriate state fish and wildlife agencies have authority pursuant to section 30(c) of the FPA to impose on exemptions, mandatory terms and conditions to prevent loss of, or damage to, fish and wildlife resources. However, the legislative history of ECPA, which added paragraph (j) to section 10 of the FPA, clearly shows that section 10(j) does not give these agencies mandatory conditioning authority.¹²² In any event, even when mandatory conditioning authority such as under section 4(e) of the FPA is involved, the Commission retains the authority to determine which information and study requests are reasonably necessary for the formulation of terms and conditions.¹²³ Although mandatory conditioning authority may be involved, the final authority to act on license applications resides exclusively with the Commission. Thus, the Commission is vested with the exclusive authority to establish the process to be followed by applicants and to determine the type and extent of the information needed to carry out the Commission's licensing responsibilities. Virtually any study request can be claimed to be at least tangentially related to fish and wildlife resources. Since the exception advocated by the Departments of Commerce and Interior could essentially negate the whole dispute resolution process, the Commission declines to make the revisions.

Finally, state and Federal fish and wildlife agencies, such as the Fish and Wildlife Service and the National Marine Fisheries Service, in making recommendations regarding the conservation of fish and wildlife resources pursuant to the Fish and Wildlife Coordination Act (FWCA), are required to base those recommendations "on surveys and investigations

¹²² See H.R. Rep. No. 99-934, 99th Cong., 2nd Sess. at 23-24 (1986).

¹²³ See Scott Paper Company, 37 FERC ¶ 61,216 (1986).

conducted by" them.¹²⁴ Thus, the FWCA imposes some obligation on these agencies to affirmatively study fish and wildlife matters, and indicates that the burden of conducting such studies should not be shouldered entirely by potential applicants for hydroelectric projects. Consequently, if an agency believes a study found to be unreasonable by the Director should be conducted, it may perform that study itself.¹²⁵

f. Termination of First-Stage Consultation. Proposed § 16.8(b)(5) specified that the first stage of consultation ends when all participating agencies provide the written comments required under the provision being redesignated as § 16.8(b)(4) herein. The intent of this provision was to have the first stage end at the deadline for submittal of agency comments specified in § 16.8(b)(4). However, a number of commenters¹²⁶ indicate that proposed § 16.8(b)(5) is vague on this point, and should be clarified to eliminate the suggestion that a resource agency could delay the completion of first-stage consultation by withholding its comments. The Commission agrees that the requested clarification should be made and is revising § 16.8(b)(5) (redesignated § 16.8(b)(8) by this final rule) accordingly.¹²⁷

3. Second-Stage Consultation

In the NOPR, the Commission proposed to require a potential applicant to conduct its own studies independently of any other applicant unless otherwise agreed to by the applicants,¹²⁸ and to specify that a

¹²⁴ See 16 U.S.C. 662 (1982).

¹²⁵ As discussed previously, the Commission is initiating a rulemaking proceeding to develop formal procedures for integrating the section 10(j) process into its licensing and relicensing processes.

¹²⁶ EEI, Great Northern, Montana Power and Niagara Mohawk.

¹²⁷ The Department of the Interior suggests that the first stage of consultation not end until specifically acknowledged by the resource agencies, citing to the possibility that a potential applicant may not have provided the agencies with sufficient information. The Commission sees no need to make this revision since, as discussed previously, the regulations are being revised to allow resource agencies to refer disputes over such things as the adequacy of the § 16.8(b)(1) information package to the Director for resolution.

Georgia Power suggests that resource agency information requests be made subject to dispute resolution. Given the expansion of the dispute resolution process in this final rule to cover all matters arising during the first stage of agency consultation, there is no need to specifically reference information requests. In any event, although the initially proposed dispute resolution process only referenced studies, all requests by agencies for information fall within the scope of the dispute resolution process.

¹²⁸ Proposed § 16.8(c)(1).

potential applicant is not obligated to share the results of a study with a competing applicant.¹²⁹ The NOPR also required a potential applicant to perform all reasonable studies and obtain all information requested during the first stage of consultation either before filing the application or after the license is issued, depending on the type of study involved.¹³⁰

The Commission also specified in the NOPR that a potential applicant must promptly initiate any study requested by a resource agency following the conclusion of the first stage of agency consultation, unless the Director determined that the study request was unreasonable or unnecessary pursuant to the dispute resolution process.¹³¹ However, the NOPR indicated that the results of any such study would be treated as additional information, and that the filing and acceptance of an application would not be delayed because the study was not complete before the application was filed.¹³²

The NOPR also required a potential applicant to provide each resource agency with a copy of its draft application, the results of all studies requested by the relevant agency, and a request for review and comment.¹³³ Under the NOPR, resource agencies were to have 60 days in which to provide applicants with written comments on the draft application.¹³⁴ If the written comments indicated that a resource agency had a substantive disagreement with a potential applicant's proposed mitigation and enhancement measures, the potential applicant was to hold a joint meeting or conference call with all pertinent resource agencies to discuss, and to attempt to reach agreement on, the applicant's plans for environmental mitigation and enhancement measures, with written notice of the meeting provided in advance to the Commission.¹³⁵

The NOPR also required the development of documents detailing potential applicants' and resource agencies' areas of agreement and disagreement,¹³⁶ and that applicants describe areas of disagreement in their applications.¹³⁷ Finally, the NOPR

provided that potential applicants could file their applications either following the submittal of agency comments in cases where no substantive disagreements were raised, or following the holding of joint meetings or conference calls in cases where substantive disagreements were raised.¹³⁸

a. Independent Studies. The provisions of proposed § 16.8(c)(1) and (c)(2) were addressed by a number of the commenters. Great Northern, Public Pool, and Rochester Gas support these provisions, indicating that they will discourage competitors from simply duplicating the studies and application of the applicant that goes through the consultation and application process first. Conversely, the Northern California Agency contends that the provisions establish a bad policy, since there are occasions when the nature of the study or resource itself makes a single study advisable, such as interviewing elderly persons regarding cultural information and tagging and monitoring limited deer populations. Montana Natural Resources states that it may be desirable for the Commission to require cooperative studies by competitors in certain cases, while the Department of Commerce suggests that cooperative studies should be encouraged.

The Commission is deleting proposed paragraphs (1) and (2) from § 16.8(c). Although the Commission continues to believe that applicants should generally conduct studies independently of each other, there are situations such as those referenced above where cooperative studies would be appropriate. However, the Commission does not believe a reasonable and readily enforceable regulatory provision encompassing all potential situations regarding cooperative studies can be developed.

Furthermore, the proposed provisions are inconsistent with existing Commission policy. As discussed in *WV Hydro, Inc. and the City of St. Marys, West Virginia*,¹³⁹ the Commission will not reject an application for containing material duplicated from another application, but will leave to the parties the resolution, in the appropriate legal forum, of the consequences of reproducing copyrighted material. The proposed provisions, by adding to the Commission's regulations an implicit prohibition against the copying of material and studies, would be directly contrary to this policy.

Although the Commission is deleting these provisions, it is not requiring potential applicants to provide copies of their studies to potential competitors. Potential applicants are encouraged to do their own work in developing their applications, instead of merely copying a competitor's materials. An application failing to contain a necessary study or other information may be found to be deficient. In addition, and as discussed in *WV Hydro, supra*, the fact that a competitor copied another applicant's material may be relevant to a Commission decision on the merits of the competing applications. The determination of what weight, if any, to give to copying will be done on a case-by-case basis. Situations may arise where the magnitude of the copying may lead the Commission to conclude that the applicant has little understanding of the proposed project and thus may have difficulty in constructing, operating, and maintaining its project safely and in accordance with the terms and conditions of any license that might be issued.

b. Type of Studies. Many of the commenters¹⁴⁰ object to the classification in proposed § 16.8(c)(3) of which studies must be completed prior to the filing of applications and which ones can be conducted after license issuance. They contend that the classification impermissibly allows the deferral to the post-licensing phase of studies that must be completed prior to licensing. According to some of these commenters, § 16.8(c)(3) violates the decision of the United States Court of Appeals for the Ninth Circuit in *Confederated Tribes of the Yakima Indian Nation v. FERC (Yakima)*,¹⁴¹ according to the commenters, it would allow the Commission to avoid resolving fishery and other issues prior to licensing through the use of open-ended license study articles. These commenters find particularly objectionable the references in proposed § 16.8(c)(3)(ii) to turbine-related fish mortality studies and studies to refine project operation or modify project facilities.

The Commission is fully cognizant of its obligation under the FPA to consider and resolve fish, wildlife, and other resource issues prior to issuing licenses, and will continue to meet this obligation in relicensing proceedings. However, as

the Commission has explained, the FPA, as interpreted by *Yakima*, does not require the resolution of every detail regarding resource issues prior to licensing.¹⁴² Rather, the Commission is required only to responsibly evaluate the effect of a project on fishery and other resources and to consider possible protection, mitigation, and enhancement measures prior to acting on an application. Open-ended license conditions requiring further studies and actions enable the Commission to assess the effectiveness of mitigation measures, to fine-tune project facilities and operations, to secure information that cannot be obtained prior to license issuance, or to address new circumstances that may arise in the future. They are appropriate as long as they are not used as a substitute for reasoned pre-licensing evaluation of fishery and other issues.¹⁴³

The language of proposed § 16.8(c)(3)(ii) (redesignated § 16.8(c)(1)(ii) by this final rule), was taken verbatim from the Commission's current consultation regulations.¹⁴⁴ It was not intended to sanction the use of post-licensing studies in situations where the studies should be prepared prior to licensing. The Commission will continue to meet its obligations under the FPA, as interpreted by *Yakima*.

The Commission is deleting the reference to turbine-related fish mortality studies as an example of a study that can only be conducted after construction or operation of proposed facilities. This is not a good example because these studies can be conducted prior to licensing in cases where the applicant proposes to continue to use the existing turbines without modification.¹⁴⁵

The Commission sees no need, however, to delete the reference to studies to refine project operations or modify project facilities. The provision was merely intended to address studies to fine-tune project operations and facilities approved in a new license as a result of post-licensing operating experience. Studies regarding the possible modification of existing facilities and operations would be required prior to licensing.

Washington Wildlife suggests that § 16.8(c) be modified to specify the routine studies the Commission believes are necessary in all cases. Washington

Fisheries and the Department of Commerce recommend that the introductory sentence be changed to reference studies "requested by agencies unless waived by the Director." They also recommend that the phrase "suitable mitigation measures" in proposed § 16.8(c)(3)(i)(B) be subject to the phrase "recommended by agencies under section 10(j) of the FPA or specified by agencies under section 18 of the FPA." Finally, Montana Power suggests that a provision be added to allow applicants to complete studies after filing their applications, but before licensing, if a study request by a resource agency would take longer to complete than the time between the conclusion of the first stage of consultation and the application filing deadline.

The changes to the introductory sentence of proposed § 16.8(c)(3) recommended by Washington Fisheries and the Department of Commerce are reasonable clarifying changes and are being made. The Commission declines, however, to identify "routine" studies, as requested by Washington Wildlife. Due to the differences between various types of projects, it is impossible to generically identify routine studies applicable to all projects.

The Commission also declines to make the references to sections 10(j) and 18 of the FPA requested by Washington Fisheries and the Department of Commerce. Reasonable studies needed by state and Federal fish and wildlife agencies to recommend terms and conditions for the protection, mitigation, and enhancement of fish and wildlife resources pursuant to the FWCA as referenced in section 10(j) would clearly fall within the scope of § 16.8(b). But § 16.8(c)(3)(i)(B) (redesignated § 16.8(c)(1)(i)(B) by this final rule) is not limited to fish and wildlife resources. Referencing section 10(j), as requested by these two agencies, would impermissibly exclude other resources from the scope of the provision and therefore is inappropriate.¹⁴⁶

The Commission is also adding a new § 16.8(c)(1)(ii)¹⁴⁷ to address the extended study situation mentioned by Montana Power. The new provision specifies that studies that cannot be completed prior to the application filing deadline can be completed after filing only if an applicant initiates formal consultation not later than four years prior to the expiration date of the existing license. This will ensure that potential applicants will not delay the initiation of formal consultation in order to push the requirement for conducting studies to the post-filing stage.

In a related matter, several commenters¹⁴⁸ request that redesignated § 16.8(c)(1) be revised to require potential applicants to gather information and conduct studies regarding the condition of resources in the project area that existed prior to the initial licensing and construction of the project. According to the Department of Commerce, *Yakima, supra*, requires the Commission to collect this "baseline" information to evaluate project impacts as if the project had never been constructed.

EEL in its reply comments, vigorously objects to this suggestion, arguing that in enacting ECPA Congress specifically rejected the idea that the Commission should ignore existing projects and assess environmental values pursuant to a hypothetical pre-project baseline environment.¹⁴⁹ Furthermore, EEL indicates that the collection and analysis of baseline data would require such a high degree of speculation that the exercise would be fruitless in most, if not all, cases. Similar objections were expressed in the reply comments filed by Georgia Power and Wisconsin Public Service.

The Commission agrees with EEL that it would be inappropriate to require potential applicants to gather such baseline data. First, and as indicated by EEL, it is highly doubtful that attempts to ascertain the status of various resources

reference to enhancement is not intended to mean that enhancement is required in every case, only that it is an alternative that may be appropriate.

¹⁴⁷ Proposed § 16.8(c)(3)(ii) is redesignated as § 16.8(c)(1)(iii) by this final rule.

¹⁴⁸ The Departments of Commerce and the Interior, EPA, Wildlife Federation, and Washington Wildlife.

¹⁴⁹ In support of its argument, EEL quotes the following statement from the ECPA Conference Report:

In exercising its responsibilities in relicensing, the conferees expect FERC to take into account existing structures and facilities in providing for these nonpower and nondevelopmental values. No one expects FERC to require an applicant to tear down an existing project.

H.R. Rep. No. 99-934, 99th Cong., 2nd Sess. 22 (1986).

¹²⁹ Proposed § 16.8(c)(2).

¹³⁰ Proposed § 16.8(c)(3).

¹³¹ Proposed § 16.8(c)(4)(i).

¹³² Proposed § 16.8(c)(4)(ii) and (iii).

¹³³ Proposed § 16.8(c)(5).

¹³⁴ Proposed § 16.8(c)(6).

¹³⁵ Proposed § 16.8(c)(7).

¹³⁶ Proposed § 16.8(c)(8).

¹³⁷ Proposed § 16.8(c)(9).

¹³⁸ Proposed § 16.8(c)(10).

¹³⁹ 45 FERC ¶ 61,220 (1988).

¹⁴⁰ See, e.g., the comments of American Rivers, EPA, Department of Interior, Department of Commerce, Michigan Department, Wildlife Federation, Washington Fisheries, and Washington Wildlife.

¹⁴¹ 746 F.2d 466 (9th Cir. 1984), cert. denied, 471 U.S. 1116 (1985).

¹⁴² See, e.g., Delmar Wagner, 44 FERC ¶ 61,213 at 61,801 (1985).

¹⁴³ *Id.*

¹⁴⁴ See 18 C.F.R. 4.38(b)(2)(ii) (1988).

¹⁴⁵ Post-licensing turbine mortality studies would be appropriate in cases where the use of new or additional turbines is proposed.

prior to the time a 50-year-old project was constructed would result in the development of any useful information. Second, while *Yakima* clearly requires the Commission to evaluate resource impacts prior to licensing, the Commission sees nothing in that decision that requires it either to pretend that current projects do not exist, or to require applicants to gather information to recreate a 50-year old environmental base upon which to make present day development decisions.

In deciding whether (or under what conditions) to relicense a project, the Commission must determine whether the resources should still be used (totally or partially) for the generation of electricity. That determination is based on weighing the relevant beneficial uses of the resource, and taking into account appropriate measures to, *inter alia*, protect, mitigate and enhance fish and wildlife resources. In so doing, the Commission can evaluate whether enhancement of fish and wildlife resources would be appropriate. Enhancement may in many cases constitute a reduction of the negative impacts attributable to the project since its construction. However, this evaluation and consideration of the appropriateness of requiring enhancement measures is done in the context of today's environment and in relation to today's needs and problems, not in the context of the world as it existed 50 years ago. Consequently, the Commission declines to make the requested revisions regarding baseline studies, and potential applicants do not have to routinely conduct such studies if requested to do so by resource agencies.

Finally, and as discussed previously, the FWCA imposes some obligation on state and Federal fish and wildlife agencies to affirmatively study fish and wildlife matters. Consequently, at least in the speculative area of baseline information, the agencies themselves should conduct any studies they feel are necessary.

c. Additional Studies. As indicated previously, proposed § 16.8(c)(4) provides that potential applicants must promptly initiate any study requested by a resource agency after the conclusion of the first stage of agency consultation, unless the study is determined by the Director to be unreasonable or unnecessary pursuant to the dispute resolution procedures. However, proposed § 16.8(c)(4) also specifies that the study results will be treated as additional information, and that the filing and acceptance of the application will not be delayed because the study

was not complete before the application was filed.

Many of the commenters object to requiring potential applicants to conduct studies requested by resource agencies following first-stage consultation. They assert that this runs counter to the expeditious consultation purposes of proposed § 16.8, renders meaningless the deadlines for agency actions to be established by § 16.8, and is inconsistent with the requirement in proposed § 16.8(b)(3) that "final" determinations of requested studies must be made within 30 (now 60) days of the initial joint consultation meeting. EEI suggests that the provision be changed to specify that potential applicants "may" conduct the requested studies in such situations, and that such studies should be required only if ordered by the Commission itself. PG&E recommends that the provision be modified to require resource agencies to submit requests for late studies to the Director, who would then determine if the study should be conducted.¹⁵⁰ Niagara Mohawk suggests that the provision be clarified as to whether applicants can challenge such requests pursuant to the dispute resolution process and what procedures will be followed for such disputes.

The Department of Commerce, Friends of the Earth, and Washington Wildlife support the additional study provisions of proposed § 16.8(c)(4), indicating that the results of initial studies prepared at the request of resource agencies sometimes show the need for additional studies. The EPA and Seattle Light agree that additional studies may be necessary after the first stage of consultation, but the EPA and Washington Fisheries note that the use of the word "final" in proposed § 16.8(b)(3) would seem to prohibit such additional studies. Finally, several commenters¹⁵¹ object to the provision's statement that the filing and acceptance of an application will not be delayed because of the failure of an applicant to complete such an additional study prior to filing its application.

The Commission believes that the requirement that potential applicants promptly initiate studies requested by agencies after the conclusion of the first stage of agency consultation is necessary. The Commission's experience is that the results of initially-prepared studies frequently point to the need for additional studies required for

reasoned evaluation of proposed projects. While retaining this provision may require additional work for potential applicants in some cases, the Commission believes that this provision will actually help to speed the review process along. In those cases where such additional studies are necessary, the study work would be initiated earlier than if required to be conducted as part of a Commission staff additional information request. The Commission believes that in most cases the resource agencies will not abuse their right to request additional studies, since it is in their best interest to ensure that potential applicants are informed of needed studies at the earliest possible time.

In accordance with the above, the provisions of proposed § 16.8(c)(4) are being retained (as § 16.8(c)(2)), and the inconsistent reference to "final" determinations of agency-requested studies in proposed § 16.8(b)(3) (now § 16.8(b)(4)) is eliminated. Also, to address the concerns expressed by Niagara Mohawk, the Commission is making clear that applicants' challenges to such additional studies are subject to the dispute resolution procedures of § 16.8(b)(5). Thus, potential applicants can always challenge the need for any additional study. Finally, in response to the apparent concerns of the EPA, Washington Fisheries, and the Wisconsin Department, the provision's statement that the filing and acceptance of an application will not be delayed does not mean that the Commission will proceed to act on an application in such cases. Rather, the Commission will allow an application to be filed and evaluated as to its conformity with the Commission's filing requirements, but will not take final action on the application until the additional study is completed.¹⁵² Of course, if the Commission does not need the results of the additional study to take action on the application (*i.e.*, a study described in § 16.8(c)(1)(iii)), it can act on the application without waiting for the study to be completed.

d. Timing and Procedures. Montana Power suggests that proposed § 16.8(c)(5) be revised to reflect the fact that potential applicants conduct studies in addition to studies requested by resource agencies, and that such studies should also be provided to the resource agencies for review with the draft application. This change to proposed § 16.8(c)(5) (redesignated § 16.8(c)(4) by

¹⁵⁰ Concerns or proposals similar to those advanced by EEI and PG&E are expressed by Great Northern, Montana Power, Niagara Mohawk, Rochester Gas, Wisconsin Utilities, and others.

¹⁵¹ EPA, Washington Fisheries, Great Lakes Commission, and the Wisconsin Department.

this final rule) is appropriate and is being made.

Washington Wildlife, the Michigan Department, and Montana Natural Resources suggest that the 60-day response period for resource agency comments on draft applications specified in proposed § 16.8(c)(6) be extended to 90 days, while the Department of Commerce and the EPA suggest that provision should be made for extensions in appropriate cases. The Department of Commerce, the Michigan Department, and the EPA also request that the running of the response period be measured from the date the resource agencies receive the draft applications and related information. The South Carolina Department requests that applicants be required to use certified mail to transmit the information to the agencies. Finally, PG&E suggests that a provision be added specifying that applicants do not have to address in their applications any comments submitted by the agencies after the expiration of the 60-day period.

Given the complexity of most relicensing proposals, the Commission believes that it would be appropriate to extend the 60-day response period of proposed § 16.8(c)(6) by an additional 30 days. Accordingly, the Commission is extending the response period of proposed § 16.8(c)(6) (redesignated § 16.8(c)(5) by this final rule) from 60 to 90 days. Also, for the reasons discussed above, the Commission believes it is appropriate to measure the start of the 90-day period from the date of the potential applicant's letter transmitting the information to the agencies, and to not require transmittal by certified mail. Finally, due to the waiver provisions discussed in Part IV.H.5., *infra*, and a potential applicant's ability to appeal a late study request to the Director, the Commission does not believe it is necessary to make the revisions suggested by PG&E.

EEI, PG&E, and Montana Natural Resources suggest that a number of revisions be made to the joint meeting provisions of proposed § 16.8(c)(7) pertaining to optional individual consultation and advance written notice of meetings to resource agencies. As explained in Part IV.H.2.c. and d., *supra*, revisions addressing these issues are being made to proposed § 16.8(c)(7) (redesignated § 16.8(c)(6) by this final rule).¹⁵³

¹⁵³ Washington Wildlife suggests that proposed § 16.8(c)(9) be revised to require potential applicants to describe their understanding of the resource agencies' positions on issues where there is disagreement and why the applicants do not agree with those positions. This specific

A few of the commenters suggest that additional procedures be added to the consultation process prior to the conclusion of the second stage of agency consultation. Washington Wildlife suggests that applicants be required to provide agencies with draft study plans for approval, and to hold annual consultation meetings with resource agencies to identify progress in completing requested studies, with study updates provided to the agencies and the Commission every six months. The Michigan Department requests that quarterly study reports be provided. Wildlife Federation suggests that some provision be made for agency review and comment on study design and methodology. Finally, the Department of Commerce recommends that the section be revised to require potential applicants to submit detailed study plans to the resource agencies for approval prior to the applicants' initiation of the studies.

The Commission declines to make the suggested revisions regarding additional procedures; it is not necessary to establish further procedures to resolve disputes regarding study minutia. As many of the commenters point out, the consultation process is intended to be a cooperative, on-going process where potential applicants and resource agencies will work together to develop mutually agreeable studies and study methodologies. Thus, the parties should be able to cooperatively resolve disputes regarding implementation of requested studies without the establishment of additional formal procedures.

The previously described revisions to § 16.8(b) requiring potential applicants to describe their study proposals in their § 16.8(b)(1) information packages, and requiring resource agencies to detail in their written comments following initial joint meetings the reasons behind their requests for the use of study methodologies, will help focus and flush out details regarding studies at an early time. Also, disputes regarding methodologies that arise as a result of agencies' written comments following initial joint meetings are disputes arising under the first stage of agency consultation, and thus are subject to the dispute resolution process. Consequently, early Commission assistance will be available to resolve any major study disputes that may arise.

requirement is unnecessary, since § 16.8(f) requires potential applicants to include in their filed applications all correspondence from resource agencies, which will explain the basis for the agencies' positions.

The Commission also does not believe it is necessary to establish generic reporting requirements regarding study progress. Each project is different and the need to touch base with the resource agencies on study progress may vary from project to project. The need for, and timing of, progress reports are matters potential applicants and resource agencies are expected to cooperatively resolve among themselves.

4. Third-Stage Consultation

Proposed § 16.8(d) of the NOPR requires an applicant to serve on every resource agency consulted, and on every agency which is authorized to assume regulatory supervision over the land, waterways, and facilities to be included within a nonpower project, a copy of its application and any deficiency correction, revision, supplement, or amendment to its application. Revisions are being made to the section to clarify that the obligation to serve documents on agencies authorized to assume regulatory supervision of lands and facilities also applies to applicants for surrender and nonpower license. The section is also being revised to clarify that the obligation to serve documents covers applicants' responses to Commission requests for additional information.¹⁵⁴

5. Agency Waiver

The NOPR contained a provision regarding resource agency waiver of consultation requirements. Specifically, proposed § 16.8(e)(1) provided that a potential applicant would not have to comply with a consultation requirement if "all" of the appropriate resource agencies waive or are deemed to have waived compliance with the requirement. Proposed § 16.8(e)(2) specified that a resource agency would be deemed to have waived compliance with a requirement of this section if it failed either to participate in an initial joint meeting, to identify necessary studies and information following the joint meeting, or to provide written comments on a draft application.

Many of the commenters representing developmental interests support the proposed waiver provisions, indicating that resource agencies that fail to fulfill

¹⁵⁴ Washington Wildlife suggests that resource agencies should be provided with an additional opportunity to review applications before they are filed, to ensure that the Commission understands the resource agencies' positions on issues. This requested revision is unnecessary, since agencies have the opportunity to file comments on filed applications in response to the public notice issued once an application is accepted for Commission processing. See § 16.9(d).

their consultation obligations should be excluded from the consultation process. These commenters also suggest that the provision should be revised to clarify that any agency that fails to timely comply with any consultation requirement should be prohibited from participating in any subsequent stage of the consultation process.

The proposed waiver provisions are vigorously opposed by many of the agency and other commenters.¹⁵⁵ These commenters state that it would be inappropriate to penalize agencies for failing to timely meet their consultation obligations, since workload demands and other factors may legitimately prevent them from attending meetings or providing written comments in a timely manner. They recommend that the waiver provisions either be eliminated or revised to provide for advance written notice and other procedures before an agency can be deemed to have waived consultation.

The majority of these commenters have misconstrued the purpose underlying proposed § 16.8(e). The purpose was not to penalize resource agencies failing to timely comply with an obligation imposed on them by excluding them from further consultation on a project. Rather, the purpose was to enable an applicant to proceed to the next step in the consultation process without waiting for an untimely agency to fulfill its obligations under a previous step of the process. The Commission did not intend to imply by this provision that the failure of a resource agency to meet a requirement in a timely fashion would result in its exclusion from further consultation on a project; an untimely agency would be allowed to participate in subsequent consultation steps. Thus, while an agency could not prevent an applicant from holding the initial joint meeting by unreasonably refusing to attend the meeting, the agency would not be prohibited from submitting written comments pursuant to § 16.8(b)(4).

The Commission is revising § 16.8(e) to clarify its intent. The Commission is also clarifying proposed § 16.8(e)(1) to specify that an applicant does not have to comply with a consultation requirement as to a particular agency if that agency waives compliance with that requirement in writing. Of course, if all relevant resource agencies waive in writing compliance with a consultation requirement, a potential applicant does

not have to meet the requirement at all.¹⁵⁶

The Commission acknowledges the possibility of tardy and unresponsive resource agencies expressed by some of the commenters. However, the Commission does not believe it would be consistent with its obligations under the FPA and other statutes to consult with, and consider the views and recommendations of, various specified agencies if it excluded them from the consultation process for relatively insignificant failures to meet consultation deadlines. Furthermore, as discussed previously, studies requested after the conclusion of first-stage agency consultation are subject to the dispute resolution process and do not have to be completed prior to filing an application. Thus, a resource agency that fails to timely comply with a consultation provision would not be able to interfere with a potential applicant's ability to file an application in a timely manner.

6. Documentation of Agency Consultation.

In the NOPR, the Commission proposed (in § 16.8(f)) to require applicants to include in the Exhibit E (Environmental Report) of their filed applications, certain specified information documenting their compliance with the consultation regulations. Included in this provision was a requirement to explain how and why the proposed project would, would not, or should not, comply with relevant comprehensive plans.¹⁵⁷ In response to suggestions made by EEI and Montana Natural Resources, the Commission is revising this provision to clarify that the comprehensive plans intended to be covered by this provision are those referenced in section 10(a)(2)(A) of the FPA¹⁵⁸ as defined by Commission regulations.¹⁵⁹ The Commission is also requiring applicants to indicate whether any relevant state or Federal resource agency has determined the consistency of the proposed project with any such plan.¹⁶⁰

¹⁵⁵ As discussed in Part IV.H.3.d., *supra*, PG&E suggests that applicants not be required to incorporate into their filed applications late-filed agency comments on their draft applications. Pursuant to § 16.8(e), an applicant could do this without penalty. However, such applicants should forward to the Commission any such late-filed comments once they are received, together with any comments the applicant has in response to them.

¹⁵⁷ Proposed § 16.8(f)(8).

¹⁵⁸ 16 U.S.C. § 803(a)(2)(A) (1982 and Supp. 1988).

¹⁵⁹ See 18 CFR 2.19 (1988).

¹⁶⁰ Although the ultimate determination regarding the consistency of a project with a section 10(a)(2)(A) comprehensive plan will be made by the Commission, information regarding an agency's determination regarding consistency will assist the

The EPA suggests that § 16.8(f) be revised to require the Commission to hold a public hearing in any state located upstream or downstream of a project if the state objects to the project and notifies a Regional EPA Administrator that the project will violate the water quality standards of the upstream or downstream state. Wildlife Federation suggests that the section be revised to require potential applicants to include in their applications information regarding cumulative environmental impacts.

Neither of the suggested revisions is necessary. As to the EPA's recommendation, Section 401(a)(2) of the Clean Water Act already requires the Commission to hold hearings under certain circumstances in downstream states whose water quality standards may be violated by a project located in an upstream state.¹⁶¹ Upstream states may make their views known at any time during the application process. The Commission will fully consider all relevant water quality issues and will hold evidentiary hearings if material issues of fact are in dispute.

With regard to Wildlife Federation's suggestion, as the Commission explained in *Skykomish River Hydro, Inc.*,¹⁶² agencies can request during the agency consultation process the gathering of information related to the project needed to assess cumulative environmental impacts. However, a potential applicant would not be responsible for conducting studies to gather data on other projects that may be necessary to assess cumulative environmental impacts of those projects and the potential applicant's project. Also, the Commission itself will examine cumulative impacts during its National Environmental Policy Act process when appropriate.

7. Confidentiality of Pre-Filing Submissions

The Commission proposed in the NOPR (§ 16.8(g)) to permit potential applicants to request confidential treatment of any information submitted to the Commission during pre-filing consultation, and to treat any such request in accordance with the confidentiality provisions of the

Commission in evaluating this issue. Commission staff has reviewed plans filed with the Commission to determine whether they are section 10(a)(2)(A) comprehensive plans. Lists of plans found to be section 10(a)(2)(A) plans are available from the Director.

¹⁶¹ See *City of Fort Smith, Arkansas*, 44 FERC ¶ 61,160 (1988).

¹⁶² 39 FERC ¶ 61,361 (1987); 42 FERC ¶ 61,283 (1988); and 43 FERC ¶ 61,123 (1988).

Freedom of Information Act (FOIA) embodied in § 388.112 of the Commission's regulations.¹⁶³ The Commission also indicated in the preamble to the NOPR¹⁶⁴ that the proposed confidentiality provision pertained only to information released by the Commission, and that other Federal and state agencies have their own regulations and procedures governing the release of information. However, the Commission encouraged resource agencies to consider the Commission's determination that certain pre-filing consultation information is exempt from disclosure in deciding on their treatment of such materials.¹⁶⁵ A number of commenters suggest elimination or revision of this proposed section.

EEI states that, given the large number of resource agencies that must be consulted, the risk of disclosure of confidential information is great. According to EEI, unless additional provisions are added, applicants will postpone consultation as long as possible to avoid possible disclosure of their plans to potential competitors, which would be contrary to the early and expeditious consultation envisioned by § 16.8. It therefore suggests that an additional provision be added to § 16.8(g) that would allow potential applicants to request resource agencies to maintain the confidentiality of information concerning the applicant's plans, supporting studies, or other materials prepared by or on behalf of the applicant. Under EEI's proposal, if a resource agency declines to maintain the confidentiality of any such information, it would waive the opportunity to consult with the applicant with respect to such information.

EEI also suggests language that would permit resource agencies, in consulting with competing applicants, to offer comments or opinions based on their examination of the confidential information, as long as the plans of the applicant requesting confidential treatment and the source of the information were not revealed. Finally, EEI's proposal would exclude from the confidentiality provisions, information required to be made available to the public pursuant to § 16.7, and applications and related documents once they are filed.

Alabama Power supports the proposed confidentiality provisions and suggests that they continue throughout

the entire application preparation process. American Paper and Long Lake, apparently under the impression that the confidentiality provisions would continue throughout the licensing process, suggest that the confidentiality provisions apply only until the deadline for filing final amendments. Georgia Power suggests that the Commission require all state and Federal agencies to keep confidential information obtained from potential applicants during consultation; it believes that the Commission has the authority under the FPA to implement such a requirement.¹⁶⁶

Douglas County PUD and Grant County PUD object to the proposed confidentiality provisions, noting that municipal applicants would be covered by state open-record laws. They contend that it would be inequitable to provide private applicants with confidential treatment while municipal applicants' plans would be available through the state open-record laws. The Northern California Agency contends that it is contrary to the public disclosure provisions of the FPA, as added by ECPA, to require entities wishing to obtain confidential information to go through the FOIA process to obtain it. Seattle Light suggests that the Commission revise the provision to provide guidance regarding the type of information that will be given confidential treatment. Montana Natural Resources suggests that the Commission clarify that state open-record laws are not pre-empted.

American Rivers objects to proposed § 16.8(g), contending that it will interfere with the public's ability to learn about proposed projects. It also contends that eliminating the provision will foster competition, since, if competitors are aware of each other's proposals, they will be more likely to make vigorous efforts to outdo each other. Finally, American Rivers requests that the provision be clarified to indicate whether information is exempt from disclosure merely on the basis of an applicant's request, or only in accordance with the standards for exemption from disclosure established by FOIA. American Rivers' comments are supported by Friends of the Earth. The Department of Commerce indicates that confidential treatment should be allowed only as permitted by FOIA.

FOIA is a disclosure statute, not a confidentiality statute. Therefore, the Commission proceeds under the presumption that all documents should

be open for public review, unless a statutory exemption in FOIA provides otherwise.

The purpose of proposed § 16.8(g) was to provide potential applicants with a mechanism to keep study results and technical information regarding their proposals free from wrongful appropriation by potential competitors in those limited situations where exemption from disclosure is justified under one of the tests of FOIA. However, from the comments received it is clear that the scope of the provision was not adequately explained in the NOPR. The provisions of § 16.8(g) were not intended to automatically keep confidential all information submitted throughout the licensing process. First, we intended that any confidential treatment afforded to submitted material would expire upon the filing of the application to which it pertained. Second, all requests for confidential treatment were to be handled in accordance with § 388.112 of the Commission's regulations, which, as explained below, does not guarantee confidentiality.

Under § 388.112, when a request for confidential treatment is made Commission staff preliminarily reviews the requester's written justification for nondisclosure to determine whether the procedures set out therein have been followed and to weed out requests for confidential treatment that are clearly deficient on their face. Information that passes the preliminary review is then placed in a nonpublic file. However, the placing of the information in such a file does not mean that the information qualifies for exemption from disclosure.¹⁶⁷ Requests for that information can be made pursuant to FOIA. If a FOIA request is made for such information, the entity requesting the confidential treatment is provided with an opportunity to respond to the request, after which the Commission or its designee will determine if the information is exempt from disclosure under one of the tests set out in the FOIA.¹⁶⁸

Third, § 16.8(g) would not affect in any way an existing licensee's obligation under section 15(b)(2) of the FPA to make certain information available to the public for review and reproduction at the time the existing licensee files its notice of intent pursuant to section 15(b)(1) of the FPA. Consequently, existing licensees would

¹⁶⁷ See 18 CFR 388.112(e) (1988).

¹⁶⁸ See 18 CFR 388.112(d) and (e) (1988). See 5 U.S.C. § 552(h) (1982) for the grounds which justify an exemption from disclosure.

¹⁶³ Draft applications submitted to Commission staff for review pursuant to 18 CFR 4.22(h) (1988) fall within the scope of this provision.

¹⁶⁴ See NOPR preamble at 38.

¹⁶⁵ See NOPR preamble n. 85 at 38.

still have to make available all of the detailed information required by § 16.7.¹⁶⁹

Fourth, and although the NOPR was not clear on this point, § 16.8(g) was not intended to keep potential applicants' general development plans free from disclosure. As suggested by American Rivers, competitors will be more likely to make their best efforts to outdo each other if they are aware of each others' general development proposals. Although disclosure of this information may encourage applicants to delay the initiation of consultation in some cases, the possibility that an applicant may have its application rejected or dismissed for its failure to complete consultation as required by § 16.8 prior to filing its application should reduce such delay to a minimum. As to the withholding of actual development proposals until the final amendment point, the Commission does not believe that it will be feasible for applicants to substantially revise their proposals and conduct necessary studies related thereto during the limited final amendment periods. Thus, withholding of actual proposals until the final amendment point is unlikely.

Finally, any confidential treatment afforded to study results and other detailed information by this proposal will expire upon the filing of the related application. Consequently, the public will have full opportunity to review and comment on all of the information supporting each development proposal. (The public will already have available to it the information required to be disclosed pursuant to Order No. 496, III FERC Stats. & Regs. ¶ 30,812 (Apr. 28, 1988).)

The Commission continues to believe that § 16.8(g), as described herein, is an appropriate and necessary provision. Accordingly, the Commission is retaining § 16.8(g) as proposed, with a revision to clarify that any confidential treatment afforded to information under the provision expires upon the filing of the related application. The Commission is also revising § 16.8(g) to specify that the § 16.8(b)(1) information packages will not be subject to the provisions of subsection (g). This is consistent with the original intent of § 16.8(g) that general development plans were not to be kept confidential, and is necessary in light of the fact that, as discussed in Part IV.H.8, *infra*, potential applicants will be required to make their § 16.8(b)(1) information packages available to the public for inspection and reproduction prior to conducting the § 16.8(b)(2) joint

meeting with resource agencies and the public.

The Commission rejects the suggestions of some of the commenters to extend the confidentiality coverage through the final amendment period or even later, because this would interfere with the public's ability to meaningfully review and comment on filed applications. While the Commission is cognizant of the potential inequities advanced by Douglas County PUD and Grant County PUD, it does not believe that these inequities override the competitive benefits discussed above.

The Commission also declines to articulate the specific types of information that will be protected from disclosure, as suggested by some of the commenters. The Commission believes that decisions regarding the disclosure or non-disclosure of information are best made on a case-by-case basis in accordance with the tests governing privilege set out in the FOIA, as interpreted by the courts. Generally, however, the Commission anticipates that most requests for confidential treatment will be trade secrets and commercial or financial information which is privileged and confidential pursuant to 5 U.S.C. § 552(b)(4) (1982).

The Commission also does not believe it would be appropriate to hold that a resource agency that refuses a request for confidential treatment of information has waived consultation as to that information, as suggested by EEI. This may lead to more instances of agency disclosure of information an applicant wants held confidential. Nevertheless, the Commission does not believe that resource agencies' rights to consult pursuant to various provisions of the FPA and other statutes can be abrogated by their unwillingness or inability to accord confidential treatment. Also, as to state agencies, the Commission does not believe that it would be appropriate to interfere with state open-record laws.¹⁷⁰

8. Public Participation in Pre-filing Consultation
Several of the commenters suggest that § 16.8 should be revised to provide for public involvement in the consultation process, arguing that the public has no opportunity to participate effectively in the pre-filing consultation process and that this exclusion seriously and unfairly disadvantages the public. They contend that pre-filing consultation

¹⁷⁰ Of course, as it did in the NOPR, the Commission encourages both Federal and state resource agencies to consider the Commission's determination regarding disclosure in individual cases of study results and other detailed information in determining how they will handle the same materials.

has become increasingly important in recent years, evolving from a vehicle for identifying and resolving information requirements into a vehicle for resolving substantive issues outside the formal licensing process, and that the proposed regulations place even more weight on the consultation process to resolve substantive issues. They also maintain that pre-filing consultation is even more significant in relicensing proceedings than in original licensing proceedings, since the heart of relicensing is the development of appropriate mitigation and enhancement measures. Finally, they argue that resource agencies involved in the consultation process cannot adequately represent all aspects of the public interest.

American Rivers suggests that § 16.8 be revised to permit any person or group to become a formal intervenor in the proceeding after the existing licensee's notice of intent is filed and publicly noticed under § 16.8(d), and that those intervenors be included in the entire consultation process and be vested with rights identical to those of the resource agencies. Trout Unlimited, which raises concerns paralleling those of American Rivers on the issues of public participation, suggests that the newspaper notice issued after the filing of the notice of intent indicate that any private citizen or organization can become involved in the consultation process. It suggests that public participants either be granted status equal to that of an agency or that they be notified of meetings and be given summaries of meetings and copies of information provided during the consultation process. Washington Ecology urges modification of the section to permit intervention at the earliest possible time and suggests allowing intervention at the notice of intent stage. It also suggests that notice be given in the Federal Register and that entities be provided with 45 days in which to file motions to intervene.

Wildlife Federation also urges the Commission to allow public intervenors opportunities for formal and informal participation in pre-filing consultation. In Wildlife Federation's view, a formal proceeding has begun as soon as a notice of intent is filed under § 16.6, and an interested public party must be allowed either to intervene formally in those proceedings, or to comment informally, and to participate in meetings and have access to project sites. Wildlife Federation also suggests that if there is concern about breaches of confidentiality during the consultation process, the Commission could encourage the signing of an appropriate

confidentiality agreement by a public participant. In the alternative, Wildlife Federation suggests that the Commission could discourage espionage by competitors by providing that applicants that obtain confidential information about another applicant from intervenors would be subject to denial of their license applications.

Seattle Light also recommends that the Commission specify in its regulations how intervenors may participate in the consultation process, arguing that early participation by interested parties during the consultation process would help reduce unnecessary adversarial confrontation and litigation at the time of relicensing. Finally, Friends of the Earth supports the recommendations of American Rivers and suggests that public intervenors in the consultation process be allowed to have access to existing project sites if necessary for responsible and informed involvement in the proceeding.

A number of the other commenters, in their reply comments, object to the proposals to require public participation in the § 16.8 consultation process. Alabama Power states that it is the responsibility of the resource agencies to determine the extent of the public's concerns and to voice those concerns in the consultation process. Furthermore, suggests Alabama Power, including private organizations with narrow, parochial concerns in the consultation process risks meetings too large and unwieldy to control, numerous unjustified study requests, and an insurmountable number of disagreements referred to the Director under the dispute resolution process.

EEI contends that public participation in the consultation process would be unnecessary, unreasonable, and possibly unworkable. EEI points out that projects evolve during the consultation process and that persons with a perceived interest when the section 15(b)(1) notice is given may have no interest in the project by the time the application is put in final form and filed. Also, EEI contends that allowing private parties to secure intervenor status during consultation could chill communications between the Commission and applicants, agencies, and the potential intervenors themselves as a result of the Commission's *ex parte* regulations,¹⁷¹ which would become applicable once a formal proceeding was established.

EEI also contends that allowing the public to intervene in the consultation

¹⁷¹ See 18 CFR 385.2201 *et seq.* (1988).

process would destroy the ability of applicants to keep their plans confidential, and that the confidentiality protection measures suggested by Wildlife Federation would be unenforceable. EEI states that interested groups and individuals already have a mechanism for participating in the process, since they can review the information made available by existing licensees pursuant to § 16.7 and, based on that review, communicate any concern they have to the appropriate resource agency, which in turn can then decide if and how those concerns should be addressed during the consultation process. EEI points out that public participation in the consultation process is not required in either original licensing or amendment proceedings. Finally, EEI points out that the proposals for public participation seem to relate only to existing licensees, as a result of their filing of notices of intent, and that potential competitors, since they are not required to file notices of intent, would not be subject to public participation.

Idaho Power contends that allowing private parties to participate in the consultation process would be destructive, since they have no statutory authority or responsibility, are answerable to no one, and have varying degrees of ability and expertise. Idaho Power suggests that private groups should make their concerns known to the entities created by law to oversee the various relevant resources: the state and Federal resource agencies.¹⁷²

The Commission recognizes that some relevant resource issues may not become apparent until raised in response to the public notice issued when the application is filed and accepted.

Consequently, allowing the public to participate in consultation would be beneficial to the extent that relevant issues are identified earlier in the process.

We also recognize that local residents and other interested persons have a strong and legitimate interest in knowing the status of a hydroelectric project in their vicinity. Such persons might well be affected by proposed expansions or improvements. Riparian property owners might be affected by contemplated alterations in reservoir and flow levels. Local residents may have knowledge about environmental problems associated with the past, present or projected future operations of the project, and may have excellent suggestions for ameliorating such

problems or potential problems. Finally, even if local residents do not have specific questions, complaints or suggestions, at the very least they clearly have an interest in knowing what is going on in their neighborhood. It is important that potential applicants actively seek out the views of local residents and other interested persons, afford them an opportunity to express those views, and provide meaningful information on the relicensing process.

Accordingly, and in order to have potential applicants obtain the views of the public regarding significant resource issues that should be addressed in any application for new license that may be filed, the Commission is adding a new § 16.8(b)(3) to specify that members of the public may attend and participate in the § 16.8(b)(2) joint meeting with resource agencies. The Commission is also adding a new § 16.8(i) which requires potential applicants to publish notice of the joint meeting at least 14 days in advance in a local daily or weekly newspaper.¹⁷³ In order to aid the public in its understanding of the proposed project, this new provision also requires potential applicants to make the § 16.8(b)(1) information package available to the public for inspection and reproduction from the date of the notice to the date of the joint meeting.¹⁷⁴ Finally, new § 16.8(i) specifies¹⁷⁵ that the form and manner in which this information is to be made available for public inspection and reproduction is to be governed by the provisions of redesignated § 16.7(e), as promulgated by Order No. 496, *supra*.

The Commission recognizes that state and federal resource agencies have their own practices and procedures, which may be based on their own underlying statutory authority. The public participation provisions adopted herein are not intended to conflict or be inconsistent with these other statutory and regulatory provisions. The Commission intends for resource agencies to attend the § 16.8(b)(2) joint meetings, and encourages them to participate in those meetings to the full extent that such participation would not be inconsistent with the resource agencies' own practices and procedures, and their statutory and regulatory responsibilities.

We also note that the failure of a resource agency to request the

¹⁷² See new § 16.8(i)(1).

¹⁷³ See new § 16.8(i)(2)(i).

¹⁷⁴ See new § 16.8(i)(2)(ii). New § 16.8(i)(2)(iii) requires potential applicants to make the § 16.8(b)(1) information package available for inspection by the public at the joint meeting.

¹⁷⁵ Georgia Power, Public Pool, Rochester Gas, and Wisconsin Public Service express similar concern.

preparation of a certain study does not mean that the study will not be done. Applicants are required by the Commission's regulations governing the content of applications¹⁷⁶ to consider and address all relevant resource issues in their applications. The failure of an agency to request a study regarding a resource will not excuse an applicant from addressing that resource issue, either in its application or in response to a Commission deficiency or additional information letter. Thus, potential applicants will be consulting with various interest groups informally in order to adequately address resource issues of interest to these groups, and the public is encouraged to bring any issues not fully covered to the attention of the Commission.

To make the Commission aware of the issues once an application has been filed, private entities are encouraged to forward to the Commission any written correspondence between them and potential applicants and resource agencies.¹⁷⁷ After filing of the license application, private entities, to the extent they believe their concerns have not been addressed, should file comments or interventions with the Commission articulating their position and explaining why they believe additional studies should be performed or additional issues addressed.¹⁷⁸

Finally, and contrary to the contentions of American Rivers and other commenters, relicensing proceedings are no different from original licensing proceedings in terms of Commission consideration of agreements between applicants and resource agencies regarding environmental protection, mitigation, and enhancement measures. In each case, the Commission will review any agreed-upon measures and independently determine, pursuant to the requirements of the FPA, whether such measures are appropriate and in the public interest. The Commission may decline to incorporate the measures into a license if it concludes that they are not

appropriate, and may adopt different measures in lieu thereof.

9. Indian Tribes

In the NOPR, the Commission requested comments on the most appropriate mechanism to ensure that the concerns and recommendations of Indian tribes are fully considered by the Commission in relicensing proceedings.¹⁷⁹ The Commission specifically noted that section 10(a)(2)(B) of the FPA¹⁸⁰ requires the Commission to consider the recommendations, including fish and wildlife recommendations, of, *inter alia*, Indian tribes affected by the project. Also, section 10(a)(3) of the FPA¹⁸¹ requires the Commission to solicit recommendations from, *inter alia*, those Indian tribes for proposed terms and conditions to be considered by the Commission for inclusion in the license. The Commission also noted in the NOPR that the legislative history of ECPA raises the question of whether Indian tribes should be permitted to participate in the FPA section 10(j) process to resolve disputes between fish and wildlife agencies, license applicants, and the Commission.¹⁸²

Two commenters suggest that a separate rulemaking proceeding should be initiated¹⁸³ to consider the involvement of Indian tribes, either because it is not germane to relicensing or because the issue should be discussed with the tribes and the Interior Department before the Commission issues a proposal.

The Columbia Commission interprets the legislative history of ECPA as expressing an intent to "grant the tribes a seat at the decisionmaking table"; "given the clear statutory language creating an affirmative obligation for the Commission regarding the involvement of Indian tribes," the Columbia Commission expresses concern about the absence of regulatory provisions respecting tribal interests.¹⁸⁴ It suggests that affected Indian tribes be given a role in the consultation process similar to those of resource agencies; that notices of meetings, copies of information, and correspondence be transmitted to those tribes; and that draft documents such as license conditions and orders on studies be circulated for comment by those tribes.

The Great Lakes Commission also suggests that Indian tribes be included

in the consultation process and that tribes be considered as resource agencies for all consultation purposes. The Great Lakes Commission recommends that the Commission provide funds or otherwise seek funds on behalf of Indian tribes, in order to permit tribes to fully consider and evaluate relicense applications.

The Wisconsin Department states that the Commission, as part of the Federal government, has a trust responsibility for Indian tribes and that licensees should be required to consult with tribes as well as state agencies. It suggests that state agencies and tribes prepare memoranda of understanding to set out procedures for jointly determining which studies should be conducted and how mitigation recommendations will be developed.

Several commenters state that existing law provides the tribes with appropriate mechanisms to bring their concerns and recommendations before the Commission, but that if tribes are permitted to participate in the consultation process they should conform to the requirements placed on resource agencies.¹⁸⁵ The Michigan Department recommends treating tribes as any other intervening party and not as intermediaries between agencies and applicants.

Idaho Power states that it is clear from the statute that Indian tribes were not meant to be included in the FPA section 10(j) process. It notes that, although ECPA specifically addressed the interests of Indian tribes in sections 10(a)(2)(B) and 10(a)(3) and contemplates their participation to the degree they feel their interest requires, it did not make Indian tribes into agencies for purposes of the formal consultation process. American Paper states that the legislative history of ECPA does not support automatic inclusion of Indian tribes in the section 10(j) process, since that would be a modification of the Commission's existing obligations. American Paper suggests that interested tribes be permitted to participate in a specific mediation on a case-by-case basis, and that the standards for such tribal participation include the direct effect the project will have on that tribe's reservation and whether participating fish and wildlife agencies are expected to adequately represent the concerns of the tribe.

Tacoma Utilities also opposes an across-the-board standard for the participation of Indian tribes, because a number of circumstances must be

¹⁸⁵ See, e.g., the comments of Douglas County PUD and Grant County PUD.

considered in order to determine how to treat tribes in each specific case. The EPA suggests that comments be solicited by mail from each potentially affected tribe, and from national and regional intertribal organizations where appropriate. Finally, the Department of Commerce suggests that Indian tribes be a part of the consultation process.

As mentioned previously,¹⁸⁶ the Commission will be preparing a NOPR to develop formal procedures for implementing the provisions of section 10(j) of the FPA. Inasmuch as the role Indian tribes will play in the section 10(j) process will be addressed in that rulemaking proceeding, the Commission will defer consideration of the above referenced arguments to that proceeding, in order to avoid prejudging the issues to be considered therein.

As to the Commission's obligations with regard to Indian tribes under sections 10(a)(2)(B) and 10(a)(3) of the FPA, the Commission believes it is required to ensure that Indian tribes are directly notified of existing licensees' intentions regarding their projects and other procedural milestones in relicensing proceedings. It was for that reason that § 16.15(d)(3) (redesignated § 16.6(d)(3) by this final rule) specifies that the Commission will notify appropriate Indian tribes by mail of notices of intent filed by existing licensees pursuant to section 15(b)(1) of the FPA. Consistent with this, the Commission is: (1) Revising § 16.4 to specify that Indian tribes will be mailed copies of requests for acceleration; (2) revising § 16.9(d)(1)(iii) to specify that Indian tribes will receive direct notice of the acceptance of relicense applications by the Commission; (3) revising § 16.9(d)(2)(ii) to specify that Indian tribes will be mailed copies of the procedural notice required to be issued by section 15(c)(1) of the FPA; and (4) revising § 16.10(a) to require applicants to provide the names and mailing addresses of Indian tribes with land on which any part of the proposed project would be located or which the applicant reasonably believes would otherwise be affected by the proposed project.

The Commission does not believe, however, that potential applicants should be required to consult with Indian tribes as part of the formal consultation procedures established by § 16.8. First, the amendments made by ECPA to the FPA clearly require the Commission to solicit and consider the views and recommendations of Indian tribes during the Commission's processing of filed applications. But

nothing in ECPA or its legislative history indicates that Indian tribes were required to be made a part of the consultation process that occurs between potential applicants and resource agencies before applications are filed.

Second, Indian tribes will have available to them the same opportunities for making their concerns and views known to potential applicants, resource agencies, and the Commission as do other private entities. Also, and as discussed previously in relation to general public participation in formal consultation, applicants are required to allow the public to review the § 16.8(b)(1) information packages and to attend the § 16.8(b)(2) joint consultation meetings with resource agencies. Thus, the potential applicants will be informally consulting with Indian tribes to ensure that resource issues affecting the tribes are considered and addressed.

The Indian tribes also will be able to work with the Bureau of Indian Affairs of the Interior Department, which has a direct trust relationship with the tribes, to ensure that the tribal views and requests for appropriate studies are communicated to potential applicants during the § 16.8 consultation process. Furthermore, in cases where project facilities are or will be located on Indian reservations as defined in the FPA,¹⁸⁷ the Interior Department will be prescribing mandatory terms and conditions it determines are necessary for the adequate protection and utilization of the reservation pursuant to section 4(e) of the FPA.¹⁸⁸ Thus, the Interior Department will be requesting during the § 16.8 consultation process the studies it deems necessary to formulate these provisions.¹⁸⁹

Finally, the Commission does not believe that it should provide or arrange for funding to assist Indian tribes in their review of applications. Section 10(e) of the FPA requires the Commission to collect from all licensees reasonable annual charges for the purpose of reimbursing the United States for the costs of administering Part I of the FPA, and, from licensees using

tribal lands, reasonable annual charges for use of those lands. Congress has specifically addressed in section 10(e) the conditions and circumstances upon which licensees are to provide funding to be used on behalf of Indian tribes. Therefore, the Commission does not believe it would be consistent with legislative intent to read into section 10(e) an obligation on the part of licensees to fund Indian review of their applications for new license as part of their obligation to pay annual fees for the administration of Part I of the FPA.¹⁹⁰

10. Miscellaneous

a. Automatic Intervention. The Department of Commerce and Washington Fisheries request that the regulations be revised to provide for automatic intervention in a relicensing proceeding for every agency participating in consultation under § 16.8 for that project. The Commission rejects this suggestion, since it believes that agencies wanting to participate as formal parties to a relicensing proceeding should be required to demonstrate their level of interest in the proceeding through a motion to intervene. However, as indicated in a recent policy statement, late interventions by fish and wildlife agencies will be permitted in the context of section 10(j) proceedings, at least on a temporary basis pending consideration of these and related issues in the rulemaking proceeding on the procedural implementation of section 10(j).¹⁹¹

b. Transition Provisions. The Commission is adding a transition provision (new § 16.8(j)) specifying which provisions of § 16.8 have to be complied with by applicants that have initiated or completed agency consultation pursuant to § 4.38 of the Commission's regulations. This provision is in response to concern expressed by a number of the commenters¹⁹² regarding the

¹⁸⁷ See section 3(2) of the FPA, 16 U.S.C. 796(2) (1982).

¹⁸⁸ See City of Pasadena Water and Power Department, 46 FERC ¶ 61,004 (1989), where the Commission held that the mandatory conditioning authority of section 4(e) of the FPA applies to relicensing proceedings. The time deadlines and other parameters on the prescription of section 4(e) conditions will be addressed in the rulemaking proceeding regarding section 10(j) of the FPA.

¹⁸⁹ As discussed previously (see Part IV, H.2.e., *supra*), the reasonableness and necessity of studies related to mandatory conditioning authority requested of applicants by resource agencies are proper subjects for dispute resolution.

¹⁹⁰ Columbia Commission suggests that § 16.8(a)(2) be revised to specify that the Director will provide lists of affected Indian tribes upon request. However, since the Director will not know the exact configuration of potential projects at this point in time, he would not be able to determine which Indian tribes would be affected by any particular project. In any event, existing licensees are required to identify affected Indian tribes in their section 15(b)(1) notices. See § 16.7(b)(10). Also, all applicants must identify affected Indian tribes in their applications. See § 16.10(a)(12).

¹⁹¹ See Order No. 511, *supra*.

¹⁹² See, e.g., the comments of EEL, Montana Power, Niagara Mohawk, and Nebraska Power.

¹⁸⁶ See, e.g., Part IV.C., *supra*.

¹⁷⁶ See 16 CFR 4.41, 4.51, and 4.61 (1988). These provisions are applicable to applications for new license. See § 16.9(b)(2).

¹⁷⁷ New § 16.8(f)(2) requires applicants to include in their applications any letters from the public containing comments and recommendations.

¹⁷⁸ The Commission recognizes that in some cases potential applicants and resource agencies may refuse to consider private entities' suggestions regarding studies. However, the Commission believes that the relicensing scheme established by ECPA provides both potential applicants and resource agencies with incentives to adequately address the concerns of private entities during consultation. Therefore, the situations where the concerns of private entities are ignored should be minimal.

¹⁷⁹ See NOPR preamble at 18.

¹⁸⁰ 16 U.S.C. 803(a)(2)(B) (1982 and Supp. 1988).

¹⁸¹ 16 U.S.C. 803(a)(3) (1982 and Supp. 1988).

¹⁸² See NOPR preamble at 18.

¹⁸³ Treaty Council and Tacoma Utilities.

¹⁸⁴ Columbia Commission at 2.

applicability of the consultation provisions of § 16.8 to projects where the applicants either have completed consultation pursuant to § 4.38 of the Commission's regulations and filed their applications, or have already initiated consultation on their projects pursuant to § 4.38.

Specifically, § 16.8(j) exempts from § 16.8 applications filed before the effective date of this rule.¹⁹² In addition, the transition provision specifies that applicants do not have to comply with certain steps of § 16.8 if they have already complied with the comparable provisions under § 4.38.¹⁹⁴ Also, the provision requires all potential applicants that have already complied with stage-one consultation under § 4.38 to hold a public meeting to solicit the views of the public regarding significant resource issues that should be addressed in any application for new license that may be filed.¹⁹⁵ The provisions regarding advance public notice of the meeting and availability of certain information are comparable to those specified in § 16.8(i).

The new provision requires all requests for waiver of, or clarification regarding, the application of the transition provisions to a particular proceeding to be submitted to the Director within 90 days from the effective date of this final rule.¹⁹⁶ This will expeditiously clear up any questions regarding which aspects of § 16.8 must be complied with by a potential applicant that has already initiated consultation with resource agencies under § 4.38.

c. Clarification of Commission's Obligations. A few of the commenters, including Washington Wildlife and the Department of Commerce, suggest that the regulations specify how the Commission itself will consult with resource agencies and Indian tribes. To the extent these requests relate to procedures under section 10(j) of the FPA, the requests will be addressed in the context of the rulemaking that is being developed regarding that section. Generally, however, the Commission will continue its practice of seeking the views of resource agencies through: (1) The documentation of agency consultation contained in filed applications; (2) the notices of application acceptances mailed directly to resource agencies and Indian tribes by the Commission; and (3) the requirement that applicants, in responding to Commission deficiency

and additional information letters, seek and obtain the views and recommendations of relevant resource agencies in appropriate cases.

1. Notices of Intent From Competitors

Section 15(b)(1) of the FPA requires existing licensees, at least five years prior to the expiration of their licenses, to file notices of intent regarding whether they intend to file applications for new license. Section 16.8 of the regulations contains provisions regarding the filing of these notices of intent by existing licensees.

A number of commenters suggest that the Commission also require potential competitors to file notices of intent. According to Idaho Power, the goal of encouraging competition would be advanced if the existing licensee were to learn of the existence of a competing applicant as soon as that applicant initiates consultation with resource agencies. In Idaho Power's words, "[t]his would tend to sharpen the applicant's approach to the project and ensure that the applicant is not 'blind-sided' by an application filed at the last minute by a competitor."¹⁹⁷ EEL suggests that notices of intent from competitors be filed no later than four and one-half years prior to the expiration of the relevant license.

As pointed out by the Northern California Agency in its reply comments, in Order No. 496, which promulgated § 16.8, the Commission considered and rejected the suggestion that potential competitors be required to file notices of intent. As the Commission explained therein, imposition of such a requirement would be inconsistent with the relicensing scheme established by ECPA and could be anticompetitive.¹⁹⁸ Also, and as clearly illustrated by Idaho Power's comments, requiring such notices of intent from competitors might discourage existing licensees from using their best efforts in developing applications for new license in some cases. This is because existing licensees, not seeing notices of intent from potential competitors, will assume there is no competition and will not have an incentive to "sharpen" their applications. Since the commenters have not advanced any arguments the Commission has not already considered, the Commission once again rejects the

suggestion that all competitors be required to submit notices of intent.¹⁹⁹

J. Filing and Processing of Applications

In the NOPR, the Commission proposed that applications for new license could be filed at least 24 months, but not more than 30 months, before the existing license expires.²⁰⁰ The NOPR also specified that applications would have to meet the requirements of § 4.32 of the Commission's regulations,²⁰¹ but that an applicant would have until 18 months before the expiration of the existing license in which to correct deficiencies in its application.²⁰² Also,

¹⁹² Seattle Light contends that notices of intent from all competitors are necessary in order to coordinate the consultation and application process of the competitors. According to Seattle Light, without such coordination competing applicants will be requested by resource agencies to perform identical studies at different times, and resource agencies will be able to use studies prepared by an applicant that initiates consultation first in formulating study demands on an applicant initiating consultation at a later date. In order to avoid these potential inequities, Seattle Light requests that the Commission: require all applicants to file notices of intent; establish identical deadlines for completing each step of the consultation process for each applicant; and require resource agencies to request identical environmental studies of each competitor during all stages of the consultation process.

As noted above, requiring notices of intent from all competitors would not be consistent with ECPA. Also, while requiring competitors to complete each step of the consultation process at the same time could reduce the potential for disparate treatment of competitors by agencies, the Commission does not believe this requirement would be appropriate since applicants who do not presently hold licenses probably will be unable to initiate consultation as soon as existing licensees due to their need to review and analyze the information made available by existing licensees pursuant to section 15(b)(2) of the FPA. Finally, and while the Commission encourages resource agencies to be consistent in their requests to competing applicants for studies, the Commission does not believe that identical studies can be mandated, because of differences between competing proposals and the continuing development of appropriate methodologies over time.

¹⁹⁹ Proposed § 16.9(b)(1).

²⁰⁰ Section 4.32 of the Commission's regulations contains the general procedures regarding the filing and processing of applications. Among other things, § 4.32 specifies that the Director: (1) Will provide applicants with 90 days in which to correct deficiencies in their applications and will reject any application when the deficiencies are not timely corrected (§ 4.32(e)(1)); (2) will reject within 60 days any application that patently fails to substantially comply with the regulations governing content of applications and resource agency consultation (§ 4.32(e)(2)); and (3) will provide applicants with appropriate time to provide additional information needed to evaluate their projects and may dismiss an application, hold it in abeyance, or take other appropriate action if the information is not provided in a timely manner (§ 4.32(g)).

²⁰¹ See III FERC Stats. & Regs. ¶ 30,812 at 31,106-107.

²⁰² Proposed § 16.9(b)(3).

the NOPR specified that an application would have to meet the pertinent requirements of the Commission's regulations governing the content of applications.²⁰³

The Commission also provided in the NOPR that the Commission's regulation governing material amendments²⁰⁴ would not apply to applications for new license, except that the Commission would reissue public notice of the application.²⁰⁵ Also, the NOPR provided that applications dismissed or rejected pursuant to § 4.32 of the Commission's regulations could not be refiled after the new license application filing deadline (24 months prior to the expiration of the license).²⁰⁶

The NOPR specified that the Director would review all applications and would notify all applicants of any deficiencies in their applications within 90 days of their filing.²⁰⁷ In addition, the NOPR specified that all amendments to an application, including correction of any deficiency and the final amendment, must be filed with the Commission no later than 18 months before the expiration of the existing license.²⁰⁸

The NOPR indicated that, upon the acceptance of an application, the Commission would publish notice in a local newspaper in accordance with the provisions of section 4(e) of the FPA, and in the *Federal Register*, and would notify appropriate state and Federal agencies by mail.²⁰⁹ In addition, the NOPR provided that the Commission would issue a notice as required by section 15(c)(1) of the FPA within 60 days from the new license application filing deadline. The notice would indicate any processing deadlines already established under § 4.32, the estimated dates for further processing deadlines under § 4.32, and the final amendment deadline for the project as established in proposed § 16.9(c)(2) (*i.e.*, 18 months prior to the expiration of the existing license). This notice would be published in the *Federal Register*, be provided to appropriate state and Federal resource agencies, and be served on all parties.²¹⁰

As discussed in the NOPR,²¹¹ the purpose of the prohibition on the filing

of applications prior to 30 months before the expiration of an existing license was to avoid the filing of competing applications several years apart, and the non-contemporaneous review of data entailed in the filing of such applications. Also, by limiting the time period in which applications could be filed to a six-month period prior to the new application filing deadline, the Commission would ensure that all applications would include the most up-to-date environmental, economic, and other information. The other processing deadlines in proposed § 16.9, including the establishment in § 16.9(c)(2) of a generic final amendment deadline for all proceedings, were intended to promote the expeditious processing of applications for new license, and to avoid confusion regarding processing deadlines by establishing the same date for filing final amendments and correcting deficiencies.

1. Filing Window

Many of the commenters, while supporting the Commission's goal of contemporaneous review of applications for new license, do not believe the six-month filing window and other procedures proposed in § 16.9 are realistic. With regard to the filing window, Great Northern, Rochester Gas, and others, pointing to the large number of applications for new license that will be filed in the next few years,²¹² indicate that requiring all applications to be filed within this window of time will create tremendous processing burdens for Commission staff. The commenters also argue that the information contained in the applications will be the same regardless of the time they are filed; if the Commission determines that more up-to-date information is needed to evaluate an application filed significantly before the 24-month filing deadline, the Commission can request the applicant to provide the information. Finally, they argue that the Commission should not delay the filing and processing of existing licensees' applications for new license on the off chance that competing applications may be filed near the 24-month filing deadline. They therefore request that the six-month filing window be eliminated.²¹³

²¹² Approximately 170 licenses expire between January 1, 1990, and December 31, 1993.

²¹³ Washington Wildlife suggests that the process could be improved by expanding the filing window by between six and twelve months. The Department of Commerce questions whether the 24-to-30-month period will provide the Commission sufficient time to process applications.

The Commission finds the arguments of the commenters persuasive, and therefore is revising § 16.9(b)(1) to eliminate the prohibition on the filing of applications before the 30-month point. However, the Commission is still concerned with the possibility that it may have to repeat evaluations performed on applications filed years prior to the 24-month filing deadline. Consequently, the Commission will not process an application until the final amendment point except to the extent of determining whether it conforms to the Commission's filing requirements (*i.e.*, the processing stage at which an acceptance letter is sent), unless the applicant indicates in its application that it waives the right to make a final amendment pursuant to section 15(c)(1) of the FPA.²¹⁴ Absent such waiver, further processing will commence only after the expiration of the final amendment deadline.

2. Processing Deadlines

With regard to the other deadlines, the commenters also contend that, given the upcoming relicensing case load, it is unrealistic to assume that the Commission will be able to review all applications and make deficiency determinations within 90 days.²¹⁵ Furthermore, the commenters²¹⁶ contend that 90 days provides insufficient time for applicants to correct any deficiencies that are found and to file final amendments. They also contend that the final amendment deadline should be established on a case-by-case basis in order to accommodate the varying degrees of complexity involved in each case.²¹⁷ They therefore request that three provision be removed from § 16.9: (1) The provision specifying that deficiency determinations be made within 90 days; (2) the provision specifying that deficiency corrections be made no later than 18 months prior to the expiration of the license; and (3) the provision specifying that the final amendment deadline will be 18 months prior to the

²¹⁴ If a competing application is eventually filed for the project, the right of the applicant to file a final amendment will be automatically reinstated without further order of the Commission. Although Great Northern correctly indicates that this problem could be eliminated by requiring all potential competitors to file notices of intent, for the reason discussed in Part IV.L. *supra*, the Commission does not believe it would be consistent with ECPA to impose this requirement.

²¹⁵ See, e.g., the comments of American Rivers, Idaho Power, Montana Power, and Seattle Light.

²¹⁶ See, e.g., the comments of Alabama Power, EEL, Idaho Power, and Montana Power.

²¹⁷ See, e.g., the comments of Alabama Power, EEL, Idaho Power, PG&E, Puget Sound Power, Southern California Edison, and Washington Power.

¹⁹² Section 16.8(j)(1).

¹⁹³ Section 16.8(j)(2) and (3).

¹⁹⁴ Section 16.8(j)(4).

¹⁹⁵ Section 16.8(j)(5).

expiration date of the license. In lieu thereof, they request that the final amendment deadline for each particular case be established in the notice to be issued within 60 days of the 24-month filing deadline pursuant to section 15(c)(1) of the FPA, and that applicants be allowed to correct deficiencies in their applications until the final amendment deadline.²¹⁸

The Commission finds these arguments persuasive. Accordingly, the Commission is: (1) Revising proposed § 16.9(b)(3) (redesignated § 16.9(b)(2) by this final rule²¹⁹) to eliminate the provision requiring deficiencies to be corrected no later than 18 months prior to the expiration of the license; (2) revising proposed § 16.9(c) to eliminate the statement that the Director will make deficiency determinations within 90 days²²⁰ and to specify that all amendments, including final amendments, must be filed no later than the date specified in the § 16.9(d)(2) notice; and (3) revising § 16.9(d)(2) so that the FPA section 15(c)(1) notice will specify the deadline for filing final amendments in each proceeding. Revisions are also being made to § 16.9(c)(2) to provide for the establishment in the § 16.9(d)(2) notice of deadlines for the filing of better adapted statements.²²¹

The Commission declines, however, to modify § 16.9(b) to allow all applicants until the final amendment deadline to correct deficiencies in their applications, as suggested by some of the commenters. Although the deadline for correcting deficiencies probably will be set to correspond to the final amendment deadline in most cases, the Commission does not believe it would be appropriate to provide for this for all cases. As discussed previously, it will now be possible to file applications more than 30 months prior to the expiration of existing licenses. In order to process those applications expeditiously, the Director must be able to set response periods for correcting deficiencies that will expire prior to any

final amendment deadlines that may be established. Accordingly, the regulations leave to the discretion of the Director the determination of the time periods in which to correct deficiencies.²²²

As suggested by some of the commenters,²²³ the Commission is adding a new paragraph (3) to § 16.9(d) to require the Director, in cases where two or more mutually exclusive applications for a site are filed, to establish the same final amendment deadline for all such applications. This provision also requires the Director, in cases where two or more mutually exclusive applications for a site are filed, to establish the same deadlines for filing better adapted statements. For the reasons just discussed, the Commission will not require the establishment of identical deadlines for other processing steps.²²⁴

3. Forfeiture

As indicated previously, redesignated § 16.9(b)(2) provides that applications for license will be processed in accordance with § 4.32 of the Commission's regulations, while proposed § 16.9(b)(5) (redesignated § 16.9(b)(4) by this final rule) provides that, if the Commission rejects or dismisses an application pursuant to § 4.32, the application may not be refiled if the filing deadline for an application for a new license has expired. As a result of these two sections, if the Director rejects or dismisses an application filed before the 24-month filing deadline because it is patently deficient,²²⁵ or because the applicant fails to correct deficiencies²²⁶ or respond to an additional information request²²⁷ in a timely manner, the applicant cannot refile its application if the 24-month filing deadline for the project has passed.

PG&E objects to the operation of these provisions, contending that they could result in the forfeiture of an existing licensee's project "for mere pleading discrepancies." According to PG&E, the

guiding principle behind ECPA was Congress' intention to protect existing licensees and their customers from the risk of project loss for reasons not based on the overall public interest. PG&E contends that the operation of these sections would allow the Commission to dismiss for "pleading problems" a relicensing application "duly" filed "in good faith" by an existing licensee prior to the only application deadline established by ECPA, and thus would be inconsistent with Congress' intent in enacting ECPA.²²⁸ It therefore requests that § 16.9(b) be revised to specify that any application rejected or dismissed pursuant to § 4.32 could be refiled if the deficiencies or other problems that led to the rejection or dismissal are corrected within a reasonable period of time, as established in the order or letter rejecting or dismissing the application.

PG&E's arguments are not totally unpersuasive. The Commission appreciates the concern about potential forfeiture in the event of a mere pleading discrepancy of a technical nature. The Commission also acknowledges that one of the goals of ECPA was to avoid disruptions to the customers of existing licensees as a result of license transfers unless there was a good public interest reason to do so. However, ECPA and its legislative history clearly show that Congress also intended for the Commission to fully and carefully consider all developmental and non-developmental values, particularly fish and wildlife, in considering relicensing applications, and for state and Federal resource agencies to play a major role in the process. Furthermore, the requirement in FPA section 15(c)(1) for a notice establishing expeditious relicensing proceedings indicates Congress' intent that relicensing proceedings not be delayed.

The Commission believes that the primary way the Commission can ensure that these goals of ECPA are met is to apply to applications that are rejected or dismissed, the same § 4.32 processing procedures it uses in all competitive cases when a competition deadline has passed.²²⁹ The possibility

²²² PG&E's comments at 4 and 11.

²²³ Under § 4.32(e), if a license application is refiled after being rejected for being patently deficient or because the applicant failed to timely respond to a request to correct deficiencies, the date the application is refiled will be considered as the filing date of the original application. See 18 CFR 4.32(e)(2)(iii) (1988). However, if this new filing date is later than the deadline for filing competing development applications established in the public notice issued for a first-filed application, the amended application will be rejected. See *id.* and 18 CFR 4.36(b) (1988).

²²⁴ 18 CFR 4.32(e)(1) (1988) provides that applicants for license shall have up to 90 days in which to correct deficiencies in their applications. In order to provide the Director with flexibility in determining deficiency response periods, the Commission is revising redesignated § 16.9(b)(2) to specify that if appropriate, the Director may provide more than 90 days in which to correct deficiencies.

²²⁵ See, e.g., the comments of EEL and PG&E.

²²⁶ The reference in § 16.9(d)(2) to "processing deadlines established under § 4.32" encompasses such things as the date by which the Director will determine if an application is deficient and the dates established for the correction of deficiencies and the submittal of additional information.

²²⁷ See 18 CFR 4.32(e)(2)(i) (1988).

²²⁸ See 18 CFR 4.32(e)(1)(iii) (1988).

²²⁹ See 18 CFR 4.32(g) (1988).

²¹⁸ Seattle Light and New York Electric suggest that the period for filing final amendments be extended to 12 months prior to the expiration date of the license. Friends of the Earth and Rochester Gas suggest that extensions of the final amendment deadline be permitted in appropriate cases.

²¹⁹ Proposed § 16.9(b)(2), which contained transition provisions regarding the prohibition on the filing of applications prior to 30 months, is being deleted.

²²⁰ The NOPR (see preamble at 9) also requested comments on procedures that would apply if the Commission did not review an application within the 90-day period. Since the 90-day limit is being removed, the comments filed in response to this request have been rendered moot.

²²¹ See 18 CFR 4.36(d)(2) (1988).

that an applicant will not be able to refile its application if it is rejected will help ensure: (1) That applicants will include in their applications the environmental and other information the Commission needs to fulfill its obligations under the FPA as amended by ECPA; (2) that applicants adequately consult with state and Federal resource agencies as envisioned by ECPA; and (3) that applicants do not delay the relicensing proceedings by failing to timely correct deficiencies and respond to additional information requests.

No forfeiture of existing licensees' projects will occur as a result of the operation of these provisions if, in PG&E's words, existing licensees file and pursue their applications "in good faith" by filing applications that are not so devoid of the information required by the Commission's regulations as to be patently deficient, and by fully responding to requests to correct deficiencies or supply additional information within the time periods specified in the deficiency or additional information letters. The other revisions being made to § 16.9 will ensure that the time periods for applicants' responses will not be unreasonable. For example, and as indicated previously, § 16.9(b)(2) is being revised to specify that the Director may provide more than 90 days in which to correct deficiencies in applications. Thus, in appropriate cases, the Director may provide more than 90 days to correct deficiencies either in his initial deficiency letters or in response to requests for extensions of time to comply with deficiency correction requests. Finally, the Commission also notes that applicants will have the right to appeal any rejection or dismissal to the Commission, which, if granted, would result in the reinstatement of the application with its original filing date.

4. Material Amendments

As indicated previously, proposed § 16.9(b)(4) (redesignated § 16.9(b)(3) by this final rule) provides that the Commission's material amendment regulation (§ 4.35) will not apply to applications filed under § 16.9, except that the Commission will reissue public notice of the application pursuant to § 16.9(d)(1). The Department of Commerce requests an explanation of the provision, stating that it sees no reason why § 4.35 should not apply to relicensing proceedings in the same manner as it applies to original licensing proceedings.

Under § 4.35, when amendments to applications that are considered as

"material"²³⁰ are filed, the filing date of the initial application is deemed to be the date the material amendment is filed for a variety of purposes, including the determination of whether the initial application was timely filed vis-a-vis competition deadlines.²³¹ On its face, § 4.35 applies to relicensing proceedings.²³² However, application of § 4.35 to relicensing proceedings would mean that an application for new license timely filed by an applicant prior to the 24-month new license filing deadline would be rejected if the applicant were to file a material amendment to the application after the 24-month deadline, even if the amendment were filed prior to the final amendment deadline established for the proceeding.

The Commission believes it is appropriate to waive § 4.35 as to relicensing proceedings to avoid this situation. The provision in section 15(c)(1) for the submittal of final amendments is not specifically limited to minor amendments. In addition, the legislative history of ECPA does not indicate that Congress intended the final amendment process to be limited to minor or non-material amendments. Rather, it indicates that the final amendment provision was intended to allow an applicant to address and resolve any problems or inadequacies in its application,²³³ and to revise its application in any way it felt necessary to make its application superior to a competitor's.²³⁴ Thus, the Commission believes it would be appropriate to retain § 16.9(b)(4) (redesignated as § 16.9(b)(3) by this final rule) as proposed in the NOPR, so as to not limit applicants' ability to revise their applications during the final amendment

period. However, and as proposed in the NOPR, the § 16.9(d)(1) notice will be reissued to obtain the views of the public and others should an amendment considered material under § 4.35(f) be filed.²³⁵

5. Miscellaneous

The Michigan Department suggests that § 16.9 be revised to clarify what consultation procedures will be used by applicants for new and nonpower license. However, this is unnecessary, since § 16.8 specifically applies to applicants for "a new license, a nonpower license, an exemption from licensing, or a surrender of a project."

A number of commenters²³⁶ suggest that § 16.9 be revised to state that the Commission will provide copies of Commission deficiency letters to all consulted resource agencies. Although the Commission's normal practice has been to specify in deficiency letters that applicants are required to provide resource agencies with copies of the deficiency letter when the deficiency letter requires consultation with those agencies, the Commission believes it would be appropriate to codify this requirement in the regulations. Accordingly, the Commission is revising § 16.8(d)(2) (which requires applicants to serve on consulted agencies, *inter alia*, all responses to Commission deficiency letters and additional information requests) to require applicants to serve on the agencies the Commission correspondence requesting such information.²³⁷

Finally, the Department of Commerce requests that the Commission consult with resource agencies at the time an application is filed regarding whether the application is deficient, in cases where the application does not contain the studies or information requested by the agencies during stage-one consultation. Under the Department's proposal, if Commission staff determined that the studies or data were unnecessary, it would provide the resource agencies with a detailed written explanation of its determination, which could then be appealed to the Commission by the agencies.

The Commission declines to adopt the Department of Commerce's suggestions. First, the authority to determine an application's conformity with the Commission's requirements resides with

²³⁰ The reissuance of public notice is consistent with what is required under § 4.35 when a material amendment is filed. See 18 CFR 4.35(c)(3) (1988).

²³¹ See e.g., the comments of the Department of Commerce, the New York Department, Washington Fisheries, and Washington Wildlife.

²³² The right of last amendment was eliminated to ensure that each applicant will have the opportunity to prove its superiority without prejudice or favor. 132 Cong. Rec. H2001 (April 21, 1986).

²³³ See new § 16.8(d)(2)(iii).

the Commission, not the resource agencies. Second, since applicants will be required by § 16.8 to include in their applications descriptions of any disagreements with resource agencies and any correspondence from the agencies, the Commission will have sufficient information to determine whether an applicant has complied with the consultation requirements of § 16.8. Third, and as discussed in Part IV.H.3.C., *supra*, the failure of an applicant to conduct certain necessary studies prior to filing its application will not be considered a deficiency. Finally, and also as discussed previously,²³⁸ the Commission does not believe it would be appropriate to preapprove interlocutory appeals to the Commission regarding studies.

K. Standards and Factors for Relicensing

ECPA amended section 15 of the FPA by adding a new paragraph (a)(2), setting out a number of specific factors the Commission must consider, and, in the case of competing applications, must compare in evaluating applications for new license. In addition, ECPA added a new paragraph (a)(3) to section 15 of the FPA requiring the Commission, in the case of an existing licensee, to also take into consideration the existing licensee's record of compliance with the terms and conditions of the existing license,²³⁹ and the actions taken by the existing licensee which affect the public.²⁴⁰ Finally, Congress specified that a new license shall be issued to the applicant that has the final proposal determined by the Commission to be best adapted to serve the public interest. Insignificant differences between competing applications with regard to the specific factors set out above are not to be determinative or result in the transfer of a project.²⁴¹

In the NOPR, the Commission proposed to add a new § 16.13 to the regulations to codify its obligation to consider the above-referenced specific factors. Paragraph (a) of the section²⁴² was intended to cover the factors set out in section 15(a)(2)(A)-(G) of the FPA. Paragraph (b)²⁴³ was intended to cover the factors set out in section 15(a)(3) of the FPA, and to establish the test the Commission would use in choosing between the applications of an existing

licensee and of a competitor when there were only insignificant differences between the competing applications. Specifically, proposed § 16.13(b) provided as follows:

(b) If there are only insignificant differences between the final applications of an existing licensee and a competing applicant after consideration of the factors enumerated in paragraph (a), the Commission will base its decision on the existing licensee's record of compliance with the terms and conditions of the existing license.

Finally, the Commission discussed in the preamble to the NOPR the type of items it would examine in evaluating the specific factors of section 15(a) (2) and (3), and solicited suggestions on what other factors it might take into account.²⁴⁴

1. Consistency With Statute.

A number of commenters²⁴⁵ contend that the provisions of proposed § 16.13 misstate the provisions of the statute. They request that § 16.13 be revised either to track the statutory language exactly or to state merely that the Commission will consider the factors enumerated in section 15(a) (2) and (3) in evaluating applications for new license. These commenters also contend that proposed § 16.13(b) and the related discussion in the preamble²⁴⁶ misstate the provisions of section 15(a)(3) by incorrectly merging into one "compliance" factor the requirement of section 15(a)(3)(A) to consider an existing licensee's record of compliance with the terms and conditions of its existing license, and the requirement of section 15(a)(3)(B) to consider the existing licensee's actions that affect the public. Finally, some commenters²⁴⁷ contend that proposed § 16.13(b) would incorrectly limit the Commission's review of the items specified in section 15(a)(3) to cases where a non-existing licensee applicant is competing with an existing licensee and there are only insignificant differences between the proposals. They argue that review of the section 15(a)(3) factors must occur in all cases where an existing licensee has filed an application for new license, and not just in cases where there is competition or only insignificant differences between the proposals.

The Commission agrees that the text of § 16.13(a) as proposed in the NOPR

misstates the provisions of the statute. For example, proposed § 16.13(a)(1), while accurately reflecting the requirements of section 15(a)(2)(A)(i) of the FPA, omits the reference of section 15(a)(2)(A)(ii) to the plans and abilities of an applicant to comply with other applicable provisions of Part I of the FPA.²⁴⁸ Accordingly, the Commission is revising § 16.13(a) to state that when the Commission makes its determination regarding whether a proposal is best adapted to serve the public interest, it will consider the factors enumerated in section 15(a)(2) of the FPA and, as discussed next, the factors enumerated in section 15(a)(3) of the FPA.

The Commission also agrees that the text of proposed § 16.13(b) should be revised. The purpose of the paragraph was to codify the test that ECPA and its legislative history²⁴⁹ indicate should be used when there are only insignificant differences between an application submitted by an existing licensee and an application submitted by another entity: the positive and negative aspects of the existing licensee's track record as defined in section 15(a)(3) (A) and (B) of the FPA. The language of proposed § 16.13(b) was not intended either to merge the section 15(a)(3)(B) and section 15(a)(3)(A) factors or to indicate that the Commission would not consider the existing licensee's actions related to the project that affect the public, as specified by section 15(a)(3)(B). The Commission fully intends to comply with its obligation to consider both of the factors enumerated in section 15(a)(3) of the FPA.

Proposed § 16.13(b) also was not intended to imply that the Commission would not consider an existing licensee's track record pursuant to section 15(a)(3) unless there were an applicant competing against an existing licensee and then only when there were

²⁴⁵ EEL also contends that proposed § 16.13(a) incorrectly omitted any reference to section 15(a)(2)(G)'s catch-all provision ("such other factors as the Commission may deem relevant"). However, proposed § 16.13(a)(7) stated that the Commission would consider "the provisions of section 10 of the Federal Power Act." Since section 10(a)(1) of the FPA requires the Commission to evaluate all relevant public interest considerations (See *Udall v. FPC*, 387 U.S. 428 (1967)), the reference to section 10 of the FPA in § 16.13(a)(7) would have allowed the Commission to consider any factor it deemed relevant to a particular relicensing proceeding. American Rivers also objects to the use of the FPA section 10 reference, contending that it would not encompass all matters that may be relevant in a relicensing proceeding. However, as just mentioned, section 10(a)(1) of the FPA encompasses any and all relevant public interest considerations.

²⁴⁶ See 132 Cong. Rec. H8950 (Oct. 2, 1986) (colloquy between Rep. Markey and Rep. Moorhead during House floor consideration of the ECPA Conference Report).

insignificant differences between the proposals. The obligation to consider an existing licensee's track record applies even if there are no competing applications. Also, examination of an existing licensee's track record must occur even when significant differences exist between competing proposals. As suggested by the Northern California Agency's comments, an existing licensee's dismal track record could lead the Commission to award a new license to a competitor despite the fact that the existing licensee's proposal was clearly superior to the competitor's.²⁵⁰ However, since the existing licensee's track record will be the dispositive factor in cases of insignificant differences under all other applicable factors between the proposals of an existing licensee and a competitor, the analysis required by section 15(a)(3) (A) and (B) will be the last one undertaken.

The Commission is revising § 16.13(b) to clarify its intentions regarding the evaluation and timing of existing licensees' track records as expressed above.²⁵¹ However, the Commission declines the suggestion advanced by some of the commenters²⁵² to define what it will consider as being "insignificant differences" between proposals. ECPA and its legislative history provide no guidance for interpreting this phrase. Consequently, the Commission believes that this provision must be developed on a case-by-case basis.²⁵³

²⁵⁰ See H.R. Rep. No. 99-834, 99th Cong. 2nd Sess. 26 (1986).

²⁵¹ With regard to FPA section 15(a)(2)'s statement regarding insignificant differences, the Commission is expected to review the existing licensee's past record of compliance with the existing license terms and conditions and actions related to the project that have affected the public. Both the positive and negative aspects of a licensee's operating history are to be considered. A dismal track record weighs heavily against awarding a new license to an existing licensee just as a good track record should result in the existing licensee being favored.

²⁵² As discussed in Part IV.M., *infra*, the Commission is deleting proposed § 16.13(c).

²⁵³ See, e.g., the comments of American Paper, Montana Natural Resources, and Small Business Administration. The Department of Commerce requests that the Commission explain how it will define insignificant differences.

²⁵⁴ Niagara Mohawk contends that the language of ECPA does not support the conclusion that an existing licensee's track record shall be the sole test for choosing among applicants in cases of insignificant differences. However, as indicated previously, the legislative history of ECPA clearly provides for this.

The Department of Commerce contends that energy alternatives and other environmental issues should not be considered insignificant differences. However, this position is directly contrary to the language of section 15(a)(2), which states that insignificant differences between any of the factors enumerated in section 15(a)(2) (A)-(G) shall not be determinative. Energy alternatives are considered under section 15(a)(2)(D), while environmental

2. Codification of Factors

As indicated previously, the NOPR preamble discussed the type of items the Commission would examine in evaluating the specific factors of section 15(a) (2) and (3). Some of the commenters²⁵⁴ suggest that the list of examples in the preamble is too restrictive. Other commenters²⁵⁵ suggest that some or all of the examples discussed in the preamble be incorporated into the text of § 16.13 to provide potential applicants with more guidance regarding the items the Commission will be considering so that applicants will be better able to determine what information should be provided to the Commission. Still others²⁵⁶ suggest that the Commission's development of the items it will consider under the section 15(a) (2) and (3) factors be on a case-by-case basis. They suggest that compilation at this time of any "exclusive" list, either in § 16.13 itself or in the preamble, could limit the consideration of potentially relevant factors whose relevance may not become apparent until the Commission examines particular cases in the future. Finally, some commenters²⁵⁷ urge the Commission to clarify that not all of the examples or factors may be relevant in every case.

The discussion in the NOPR of the type of items the Commission will be examining in carrying out its relicensing obligations was not intended to create an exclusive list of all relevant relicensing considerations under section 15(a) (2) and (3) of the FPA. There may be items not referenced in the preamble that may be relevant in a particular case. Conversely, some of the referenced items or even some of the specific factors of the statute may not be of any particular significance in an individual case. The Commission will evaluate any factor or item that may be significant to a particular proceeding, and will consider any arguments advanced by applicants, competitors, resource agencies, intervenors or others regarding the appropriateness of evaluating a factor. Accordingly, the Commission declines to develop a list of items and will address such matters on a case-by-case basis.

Issues are considered under section 15(a)(2)(G). Of course, as discussed in Part IV.K., *infra*, the plans of an applicant concerning fish and wildlife are not subject to comparative evaluation.

²⁵⁴ See, e.g., the comments of American Rivers.

²⁵⁵ American Paper, American Rivers, Southern California Edison and Wisconsin Department.

²⁵⁶ EEL, Idaho Power and Northern California Agency.

²⁵⁷ American Paper and Long Lake.

3. Section 15(a)(2)(A) of the Federal Power Act

Section 15(a)(2)(A)²⁵⁸ of the FPA requires the Commission to consider the "plans and abilities of the applicant to comply with (i) the articles, terms, and conditions of any license issued to it and (ii) with other applicable provisions of [Part I of the FPA]." In the NOPR, the Commission indicated that the Commission would consider such matters as the plans of an applicant to finance a project, an applicant's personnel, facilities and accomplishments, and whether an applicant has personnel adequate in number and training to construct any additional project works and to operate and maintain the project in a competent manner.²⁵⁹

American Paper suggests that the Commission either further explain what is meant by the word "accomplishments," or delete the reference. It argues that the term is so broad as to be meaningless and can be confused with the track record examination required by section 15(a)(3) of the FPA. American Paper also states that the Commission should be aware of the fact that applicants and licensees frequently hire outside contractors to perform activities related to a hydroelectric project.

New York Electric requests that the Commission clarify that it will be considering an applicant's staff or staffing plan, rather than its personnel. It argues that the use of the word "personnel" implies that the Commission will be examining the qualifications of particular persons, which may change over time. Public Pool and others suggest that the Commission determine whether an applicant's personnel are adequate in number, training and experience to operate and maintain the project.

Long Lake indicates that some non-utility applicants are unable to enter into power sales contracts until their licenses are issued. Therefore, it suggests that the Commission only inquire into whether applicants are capable of arranging financing. Also, it suggests that the Commission not compare which of the competing applicants is more capable of arranging financing. Finally, the Northern California Agency suggests that the Commission inquire into an existing licensee's past difficulties in complying with the terms of a previous license in

²⁵⁸ 16 U.S.C. 806(a)(2)(A) (1982 and Supp. 1988).

²⁵⁹ See NOPR preamble at 21-22.

²³⁸ See Part IV.H.2.a., *supra*.

²³⁹ Section 15(a)(3)(A) of the FPA, 16 U.S.C. 806(a)(3)(A) (1982 and Supp. 1988).

²⁴⁰ Section 15(a)(3)(B) of the FPA, 16 U.S.C. 806(a)(3)(B) (1982 and Supp. 1988).

²⁴¹ Section 15(a)(2) of the FPA, 16 U.S.C. 806(a)(2) (1982 and Supp. 1988).

²⁴² Proposed § 16.13(a).

²⁴³ Proposed § 16.13(b).

²⁴⁴ See NOPR preamble at 19-32.

²⁴⁵ See, e.g., the comments of Alabama Power, EEL, Northern California Agency, Niagara Mohawk, PG&E, Southern California Edison, and Washington Power.

²⁴⁶ See NOPR preamble at 20.

²⁴⁷ See, e.g., the comments of American Rivers, the Northern California Agency, and Niagara Mohawk.

determining the existing licensee's ability to comply with a future license.

The use of the word "accomplishments" in the NOPR was not intended to superimpose on to the section 15(a)(2)(A) analysis, the track record examination required under section 15(a)(3). Rather, it was intended to encompass such matters as whether an applicant has past experience in hydroelectric matters and, in the case of applicants that have never built or operated a hydroelectric project, whether they have managed endeavors of a similar nature.

With regard to the comments of the Northern California Agency, the Commission will not examine an existing licensee's compliance record under section 15(a)(2)(A). This will be examined under section 15(a)(3). Examining that record in the context of section 15(a)(2)(A) would result in double consideration of compliance factors. However, the Commission may under section 15(a)(2)(A) inquire into the reasons behind an existing licensee's past compliance problems to help evaluate whether the existing licensee has corrected the situation and thus is able to comply with the terms and conditions of a new license and other provisions of Part I of the FPA.

As to the inquiry into personnel, the Commission does not intend to examine the qualifications of individuals. Rather, it intends to consider whether applicants' and/or their contractors' overall staffing plans, including numbers of personnel and training programs, are adequate.

Finally, the Commission recognizes that the ability of some applicants to secure financing depends on the issuance of a license. Consequently, the Commission will consider an applicant's ability to secure financing on the assumption that a license will be issued. Also, while the Commission will not compare competing applicants' financing plans under section 15(a)(2)(A), any differences in those plans may be relevant to the inquiry into cost-effectiveness under section 15(a)(2)(F) of the FPA.

4. Section 15(a)(2)(B) of the Federal Power Act

Section 15(a)(2)(B) of the FPA²⁶⁰ requires the Commission to inquire into the "plans of the applicant to manage, operate, and maintain the project safely." In the NOPR, the Commission stated that it would consider under this section an existing licensee's past safety record with regard to the project.²⁶¹

²⁶⁰ 16 U.S.C. 808(a)(2)(B) (1982 and Supp. 1988).

²⁶¹ See NOPR preamble at 23.

American Paper suggests that an existing licensee's past safety record be evaluated only under section 15(a)(3), not under section 15(a)(2)(B). For the reasons discussed previously in relation to section 15(a)(2)(A), the Commission will examine an existing licensee's safety record to the extent it involves compliance matters only under section 15(a)(3). However, as explained in the discussion under section 15(a)(2)(A), the reasons behind past compliance problems can be considered under section 15(a)(2)(B) to evaluate whether an existing licensee has corrected the situation and thus is able to fulfill its future plans to safely manage, operate and maintain the project. Also, certain aspects of an existing licensee's past safety record, such as the number of injuries to personnel, are not specifically addressed by Commission order or regulations, and thus are not properly included under the compliance evaluation of section 15(a)(3). Consequently, these items will be considered under section 15(a)(2)(B).²⁶²

5. Section 15(a)(2)(C) of the Federal Power Act

Section 15(a)(2)(C) of the FPA²⁶³ requires the Commission to consider the "plans and abilities of the applicant to operate and maintain the project in a manner most likely to provide efficient and reliable electric service." The Commission stated in the NOPR that under this provision it might consider an applicant's plans to coordinate the operation of its project with other projects on the same watercourse in order to maximize generation and to improve overall efficiency.²⁶⁴

²⁶² The Department of Commerce states that applicants' safety plans should include emergency plans to deal with such matters as pipeline ruptures and slope failures. Commerce also states that, when a risk of dam failure or breach exists, an applicant should provide a plan for permanently rehabilitating the structure instead of being allowed to utilize an intensive maintenance plan.

If an applicant's proposal could potentially cause damage to environmental resources through pipeline ruptures or slope failures, the applicant should address, and the Commission will consider, this potential and any measures proposed by the applicant to deal with such problems. Also, an applicant must evaluate whether a risk of dam failure or breach exists and, if so, evaluate the extent of the risk and describe in detail the measures it proposes to deal with the problem and any associated impacts on life, property and environmental resources. The Commission will evaluate the problem and any proposed solutions and determine the appropriate measures that should be undertaken at the project site.

²⁶³ 16 U.S.C. 808(a)(2)(C) (1982 and Supp. 1988).

²⁶⁴ See NOPR preamble at 23.

American Paper contends that examination of the coordination element should be subject to a separate examination under section 15(a)(2)(G) of the FPA. Long Lake suggests that the Commission consider the applicants' past willingness to coordinate the operation of its project with other existing projects in order to maximize generation and improve overall efficiency.

The Commission believes that examination of future coordination plans can properly occur under section 15(a)(2)(C). As to past actions in this regard, they are to be evaluated pursuant to section 15(a)(3) of the FPA.²⁶⁵

6. Section 15(a)(2)(D) of the Federal Power Act

Section 15(a)(2)(D) of the FPA²⁶⁶ requires the Commission to consider the "need of the applicant over the short and long term for the electricity generated by the project or projects to serve its customers," taking into consideration a variety of factors specified in section 15(a)(2)(D). The Commission's consideration of the need factor and the various components of that analysis were discussed in detail in the NOPR.²⁶⁷

Mid-Columbia, Douglas County PUD, Grant County PUD and Public Pool contend that the NOPR did not adequately address the situation where an entity currently receiving power from an existing project pursuant to a contract with the existing licensee that extends beyond the term of the existing licensee's license²⁶⁸ files an application for new license for the existing project in competition with the existing licensee. They argue that the Commission must recognize the contractual obligation of the existing licensee to provide power to this other entity and, therefore, must consider as part of its analysis of the existing licensee's need for the power, the need of the existing licensee for project power to fulfill its contractual obligation to serve this wholesale customer.

²⁶⁵ See Part IV.K.9., *infra*.

²⁶⁶ 16 U.S.C. 808(a)(2)(D) (1982 and Supp. 1988). This provision also contains a number of detailed elements the Commission must evaluate as part of its analysis of project need.

²⁶⁷ See NOPR preamble at 24-28.

²⁶⁸ Pursuant to section 22 of the FPA, 16 U.S.C. 815 (1982), contracts to furnish power beyond the termination date of a license must be approved by the Commission and the state public service commission, and, if a new license is not issued to the original licensee upon expiration of the existing license, the new licensee shall assume and fulfill such contracts.

The Commission recognizes that the legislative history of ECPA clearly requires the Commission to consider an applicant's need for power to serve its wholesale customers in cases where an applicant may not be able to directly use all of the power from a project.²⁶⁹ Consequently, the Commission will consider wholesale power needs when appropriate.

The Commission rejects the commenters' suggestion that it consider as part of the existing licensee's demand need for the power produced by the existing project, the power being supplied to a wholesale customer who is competing with the existing licensee for a new license for the project. First, adopting the commenters' argument would create a truly illusory "need" and upset the need analysis required by section 15(a)(2)(D) of the FPA. Second, the legislative history of ECPA directly addresses this issue and clearly indicates that in this situation the existing licensee is not to include the wholesale customer in its projections of demand.²⁷⁰ Of course, the cost implications and other impacts on the existing licensee's customers and served communities that would occur in transferring the project to the former wholesale customer would have to be evaluated as part of the broad analysis under section 15(a)(2)(D). Also, the fact that the wholesale customer has a contractual right to receive a portion of the project power for some period of time following expiration of the existing license must be evaluated as part of the analysis of the wholesale customer's overall need for the project.

²⁶⁹ See H.R. Rep. No. 99-934, 99th Cong., 2nd Sess. 27 (1986):

In many cases, applicants may not be able to directly use all of the power from the project. This will not disqualify an applicant. The conference agreement is not intended to alter current law which permits need to be based, in part, upon sales of power in excess of the applicant's direct consumption. This would, of course, have to take into account the benefits to those purchasing the power, such as a reduction in rates, and would have to be tempered by common sense and our intent that licensees ought to be given to applicants who, among other things, actually need the projects.

²⁷⁰ See H.R. Rep. No. 99-934, 99th Cong., 2nd Sess. 27 (1986), in the paragraph that immediately precedes the one set out in the previous note:

Customers are to be defined broadly, and are to include both existing and future customers. In a case where an existing licensee is in competition for the project with one of its customers, the existing licensee is not to be permitted to include that customer in its demand projections to the extent that the customer will no longer be served by the existing licensee. Similarly, where an existing licensee is in competition with an independent power producer, the Commission must recognize the possibility that the small power producer may sell the electricity from the project back to the existing licensee.

New York Electric states that the Commission should recognize that, in the case of investor-owned utilities seeking relicensing of their own projects, the alternative source of power that the applicant is most likely to use to replace power under the license is power produced by the same project operated by others at a significantly increased cost to the utilities' ratepayers. The Northern California Agency argues that the needs analysis is not to be a headcounting test with the larger applicant prevailing, and that the needs analysis should be developed in the context of specific proceedings. Finally, the Department of Commerce argues that if there is no short-term need for project power, then project development should be cancelled, not postponed, and the alternatives analysis should be expanded to include a process for eliminating environmentally damaging alternatives.

The Department of Commerce's statement regarding cancellation (and presumably removal) of existing projects in the absence of short-term need is contrary to the requirement of section 15(a)(2)(D) to consider both short- and long-term need. It is also inconsistent with the legislative history of ECPA that indicates that short-term power surpluses should not be the sole basis upon which to base the needs analysis.²⁷¹ And it ignores the significant environmental consequences associated with removal and then reconstruction of existing hydroelectric facilities. In considering the feasibility of alternatives, the Commission will be looking at their potential impacts on the environment. Finally, the Commission recognizes the possibility raised by New York Electric, and acknowledges that the legislative history of ECPA clearly indicates that the analysis of need is not to be a headcounting test with the larger applicant prevailing.²⁷²

7. Section 15(a)(2)(F) of the Federal Power Act²⁷³

Section 15(a)(2)(F) of the FPA²⁷⁴ requires the Commission to consider whether the "plans of the applicant will be achieved, to the greatest extent possible, in a cost effective manner." In the NOPR, the Commission stated that the legislative history of ECPA indicates that this provision was intended to

²⁷¹ See, e.g., 132 Cong. Rec. S15383-84 (Oct. 6, 1986) (statement by Senator McClure).

²⁷² See, e.g., 132 Cong. Rec. H8951 (Oct. 2, 1986) (colloquy between Reps. Markey, Moorhead and Swift).

²⁷³ No significant comments were made regarding the requirements of section 15(a)(2)(F) of the FPA.

²⁷⁴ 16 U.S.C. § 808(a)(2)(F) (1982 and Supp. 1988).

²⁷⁵ 16 U.S.C. 808(a)(2)(F) (1982 and Supp. 1988).

discourage the "gold-plating" of applications by applicants attempting to propose the "best" plans, regardless of cost.²⁷⁵

American Paper suggests that the Commission reserve the right to dismiss applications that are obviously gold-plated. New York Electric suggests that the Commission make clear that cost effectiveness will not be the primary basis of comparing projects, since differences in benefit/cost ratios might reflect such things as different levels of reliability, with a more reliable plant having a lower benefit/cost ratio due to redundancy and greater quality.

The Commission does not believe it has the authority to dismiss "gold-plated" applications without fully completing the required relicensing analysis. However, a clearly gold-plated application will lose to a comparable cost-effective proposal submitted by a competitor. Also, the Commission is aware of the reliability and quality factors referenced by New York Electric and will consider such matters in examining cost-effectiveness.

8. Section 15(a)(2)(G) of the Federal Power Act

a. Comparative Analysis of Fish and Wildlife Matters. Section 15(a)(2)(G) of the FPA²⁷⁶ gives the Commission the authority during the relicensing process to consider "such other factors as it may deem relevant." In discussing this provision in the NOPR, the Commission indicated that the plans of applicants concerning fish and wildlife will not be subject to comparative evaluation. Citing to section 10(j) of the FPA, the Commission stated that it will establish fish and wildlife conditions specific to each project proposal pursuant to section 10 of the FPA. The Commission also stated that in cases where applicants propose different general schemes of development for the same project, it will determine whether the protection, mitigation and enhancement measures of each proposal are adequate under the circumstances of that proposal, and will specify final conditions concerning fish and wildlife in the issued license.²⁷⁷

A number of the commenters, including International Association, Wildlife Federation, and Trout Unlimited, object to the Commission's statement that applicants' plans covering fish and wildlife shall not be subject to comparative evaluation.

²⁷⁵ See NOPR preamble at 29.

²⁷⁶ 16 U.S.C. 808(a)(2)(G) (1982 and Supp. 1988).

²⁷⁷ See NOPR preamble at 31-32.

However, as pointed out in the NOPR and by EEL and others in their reply comments, section 15(a)(2)(C) specifically prohibits the comparative evaluation of applicants' fish and wildlife plans.²⁷⁸ Consequently, the Commission cannot undertake the comparative analysis requested by these commenters.²⁷⁹

Washington Wildlife suggests that the Commission revise the regulations to include the criteria it will use to establish fish and wildlife conditions. The Department of Commerce also recommends specific standards. It suggests that the Commission specify that it will look first at each proposal's plans and capabilities for protection and mitigation and then look at the proposal's potential for enhancement and compensation. According to Commerce, the overriding principle should be that adverse impacts from past and future actions must be fully addressed through protection and mitigation and that enhancement must be provided where such opportunities exist. Finally, although not entirely clear on this point, Commerce appears to argue that it would be inappropriate to evaluate the benefits and costs of protection and mitigation measures incrementally, and that such measures must be evaluated in the context of total costs and revenues, presumably over the entire life of the project.

The Commission is unable to specify precise criteria that it will use in establishing fish and wildlife conditions. The development of such measures will be on a case-by-case basis, pursuant to section 10 of the FPA and the provisions of section 10(j) regarding adequate and equitable protection, mitigation and enhancement measures and consistency with the purposes and requirements of Part I of the FPA. The Commission may evaluate whether enhancement of fish and wildlife resources, which may constitute a reduction of the negative impacts attributable to a project since its construction, would be appropriate.

²⁷⁸ Section 15(a)(2)(C) of the FPA provides as follows:

(C) Such other factors as the Commission may deem relevant, except that the terms and conditions in the license for the protection, mitigation, or enhancement of fish and wildlife resources affected by the development, operation, and management of the project shall be determined in accordance with section 10, and the plans of an applicant concerning fish and wildlife shall not be subject to a comparative evaluation under this subsection.

²⁷⁹ Northern California Agency states that § 16.13 as proposed in the NOPR would compel comparative evaluation of applicants' fish and wildlife plans. However, the Commission believes that its revision of § 16.13 to reference the statute will clearly show that comparative evaluation is prohibited.

But, as explained previously,²⁸⁰ the evaluation and consideration of the appropriateness of requiring fish and wildlife measures is to be in the context of today's environment, and in relation to today's needs and problems. Thus, contrary to Commerce's position, there is no set requirement that all past damage to fish and wildlife caused by a project must be "mitigated" in a relicensing proceeding.

In addition, while the Commission agrees that adequate fish and wildlife measures are a cost of doing business, it finds without merit Commerce's apparent argument that the cost of fish and wildlife measures proposed at relicensing can only be considered in the context of total costs and revenues over the life of a project. Such an approach would sanction the adoption of any fish and wildlife measure, no matter how expensive, as long as the costs of the fish and wildlife measure were less expensive than the total of the net revenues of the project over the term of the previous license and the expected net revenues of the project over the term of the new license. Once again, this type of approach ignores the fact that fish and wildlife measures at relicensing must be considered in the context of today's costs, needs and problems.²⁸¹

b. Antitrust. In the NOPR, the Commission stated that it will consider the antitrust provision of section 10(h) of the FPA²⁸² during relicensing but that applications would not be subject to a comparative evaluation on that issue. The NOPR cited the ECPA Conference Report in support of this position.²⁸³

The Northern California Agency objects to the Commission's statement, contending that it was impermissible to rely on the Conference Report language to override the clear language of the statute which requires the Commission to consider all of the requirements of section 10 of the FPA, including section 10(h).

The Commission believes that the statute clearly does not contain a

requirement for comparative evaluation of applications on section 10(h) grounds. Moreover, the conferees' statement makes clear the intent of Congress that the Commission not subject applications to comparative evaluation on antitrust matters. Furthermore, section 10(h) itself does not require comparative evaluation of antitrust matters at relicensing. Paragraph (2) of section 10(h), which was added by ECPA, only requires the Commission: (1) To include in issued licenses, conditions to prevent or adequately minimize any unjustified contravention of the policies expressed in the antitrust laws; and (2) to refuse to issue a new license to an existing licensee if it is impossible to prevent or adequately minimize the contravention. Thus, although antitrust matters will not be subject to comparative evaluation, the proposal of an existing licensee found superior to a competitor's as a result of the comparative analysis required by section 15(a) (2) and (3) will have to be reviewed pursuant to section 10(h) as is the current practice of the Commission.

c. Requirements of Section 10. As indicated previously, section 15(a)(2) of the FPA requires the Commission to consider the requirements of section 10 of the FPA in evaluating applications for new license under section 15(a). As discussed in the NOPR,²⁸⁴ this requires consideration of all section 10 procedures and requirements.

Specifically, these requirements include the mandate of section 10(a)(1) that a project adopted shall be "best adapted to a comprehensive plan for improving or developing" the waterway after consideration of all beneficial public uses. Section 10(a)(1), in turn, requires the Commission to consider all purposes referred to in section 4(e) of the FPA. Section 4(e) requires the Commission to give equal consideration to the purposes of energy conservation, the protection, mitigation of damage to, and enhancement of, fish and wildlife (including relating spawning ground and habitat), the protection of recreational opportunities, and the preservation of other aspects of environmental quality, in addition to the power and development purposes for which a license is issued.²⁸⁵

Section 10(a)(2)(A), as amended by ECPA, also requires that the Commission consider the extent to which the project is consistent with a comprehensive plan (where one exists)

²⁸⁰ See Part IV.K.3.b., *supra*.

²⁸¹ The Departments of Commerce and the Interior, Wildlife Federation and other commenters suggest that the Commission explain in the regulations how the FPA sections 10(j) and 16 processes will be integrated into the relicensing process. However, as explained elsewhere herein, these issues will be addressed in a separate rulemaking proceeding.

²⁸² 16 U.S.C. 803(h) (1982 and Supp. 1988).

²⁸³ See H.R. Rep. No. 99-934, 99th Cong., 2nd Sess. 26 (1986).

However, the conferees agreed that the protection, mitigation and enhancement of fish and wildlife resources proposed by an applicant, and the requirements of section 10(h) are not to serve as part of the basis for the comparative evaluation of competing applications under section 15.

²⁸⁴ See NOPR preamble at 16-19.

²⁸⁵ As indicated in Part IV.K.8.a., *supra*, fish and wildlife matters are not subject to comparative evaluation.

for improving, developing, or conserving a waterway or waterways affected by the project that is prepared by: (1) An agency established pursuant to Federal law that has the authority to prepare such a plan; or (2) the State in which the facility is or will be located.

Section 10(a)(2)(B) requires the Commission to consider the recommendations of Federal and state agencies exercising administration over flood control, navigation, irrigation, recreation, cultural, and other relevant resources of the state in which the project is located, and the recommendations (including fish and wildlife recommendations) of Indian tribes affected by the project. Section 10(a)(3) requires the Commission to solicit recommendations from those agencies and Indian tribes for proposed terms and conditions to be considered by the Commission for inclusion in the license.

Section 10(a)(2)(C) requires the Commission to consider the electricity consumption efficiency improvement program of the applicant, including its plans, performance, and capabilities for encouraging or assisting its customers to conserve electricity cost-effectively, taking into account the published policies, restrictions, and requirements of relevant state regulatory authorities applicable to such applicant. Finally, and as discussed previously,²⁸⁶ the Commission is required to consider antitrust matters pursuant to section 10(h).

The Commission must consider the above requirements of section 10 of the FPA in relicensing proceedings; it has no discretion in this regard. Furthermore, to the extent any of these requirements have significance as factors for the comparative evaluation of applications, the Commission must enumerate its consideration of them under section 15(a)(2)(G).²⁸⁷

²⁸⁶ See Part IV.K.8.b., *supra*.

²⁸⁷ See H.R. Rep. No. 99-934, 99th Cong., 2nd Sess. 26 (1986).

Criteria in both bills that were duplicative of section 10 were dropped because the conference agreement modifies section 15 to make clear that requirements of section 10 apply and are considered in relicensing proceedings under section 15. For example, in relicensing proceedings, the Commission may evaluate the section 10 criterion concerning the applicant's plans for the improvement and utilization of the power development potential of the waterway. To the extent that elements of section 10 serve as factors for the comparative evaluation of applications, the Commission shall enumerate its consideration of those factors under section 15(a)(2)(G).

9. Section 15(a)(3) of the Federal Power Act

As discussed previously,²⁸⁸ the Commission is revising § 16.13 to track precisely the language of section 15(a)(3) (A) and (B). This will clarify that both an existing licensee's record of compliance with the terms and conditions of the existing license under section 15(a)(3)(A), and the actions taken by an existing licensee which affect the public under section 15(a)(3)(B), will be considered by the Commission.

In discussing the provisions of section 15(a)(3) in the NOPR, the Commission cited a number of examples of the types of matters that will be examined under section 15(a)(3). These examples include an existing licensee's: (1) Compliance with the Commission's general policies on recreational use of project facilities; (2) cooperation with appropriate resource agencies to reduce the project's detrimental impact on fish, wildlife and other resources; (3) setting aside of land adjacent to the project for future environmental purposes; and (4) willingness to adopt measures ensuring the safety of the public. The Commission requested comments on these and other criteria that it should consider under section 15(a)(3).²⁸⁹

A number of commenters question the examples listed in the NOPR, stating that they either are incorrectly classified as compliance matters under section 15(a)(3)(A) when they should instead be considered under section 15(a)(3)(B), or may not be relevant in all cases. For example, EEL and others²⁹⁰ point out that prior to 1963,²⁹¹ the Commission did not require applicants to include recreational development plans in their applications and that the Commission did not develop its formal recreational policies until 1965.²⁹² These commenters also state that the Commission specifically indicated that these recreational requirements and policies were not to apply to existing licenses. They therefore contend that an existing licensee not subject to these recreational provisions should not be penalized under the compliance factor of section 15(a)(3)(A) for failing to comply with these provisions. Furthermore, they contend that, if an existing licensee voluntarily implements some of these recreational provisions, this positive action should be considered in favor of an existing

licensee pursuant to section 15(a)(3)(B) of the FPA.

Similar concerns are raised by EEL, Idaho Power and American Paper regarding the setting aside of land. They point out that, unless specifically required by a license provision, the failure of an existing licensee to set aside land is not a compliance factor under section 15(a)(3)(A), and that any voluntary setting aside of land by an existing licensee should be considered as a positive factor under section 15(a)(3)(B). American Paper also cautions that, in reviewing the extent of an existing licensee's cooperation with resource agencies to voluntarily lessen environmental impacts, the Commission must consider the reasonableness of any agency requests.

These comments accurately reflect the type of analysis the Commission will undertake pursuant to section 15(a)(3). Unless specifically required by the terms and conditions of an existing license, an existing licensee's actions regarding recreational development and the setting aside of land will be considered in the context of section 15(a)(3)(B), not section 15(a)(3)(A), of the FPA. Furthermore, all analysis under section 15(a)(3)(B) will have to take into account all relevant factors, including the ability of an existing licensee to engage in such matters.

Thus, in cases where such recreational development at the site would have been impracticable or impossible, the failure of an existing licensee to voluntarily provide for recreational development when not required by its license will not be weighed against the licensee under section 15(b)(3)(B). Conversely, where an existing licensee voluntarily provides for such development, that action will be weighed in favor of the licensee under section 15(b)(3)(B).

American Rivers suggests that the Commission clarify that section 15(a)(3)(A) of the FPA requires consideration of an existing licensee's compliance with all terms and conditions of the existing license. Seattle Light suggests that the Commission articulate in the regulations the specific compliance and public interest matters the Commission will consider. EPA suggests that a licensee's cooperation with resource agencies in lessening a project's detrimental impacts on water quality and wetlands be considered under section 15(a)(3). American Paper states that the existing licensee's willingness to quickly correct safety problems and its maintenance of project works should be considered.

²⁸⁸ See Part IV.K.1., *supra*.

²⁸⁹ See NOPR preamble at 20.

²⁹⁰ See, e.g., the comments of Alabama Power.

²⁹¹ See 29 F.P.C. 777 (1983) and 33 F.P.C. 32 (1965).

²⁹² See 34 F.P.C. 1546 (1965).

The Wisconsin Department suggests that the extent of public participation afforded by the licensee, the quality of the licensee's data and submittals, and the lack of controversy on study and mitigation recommendations should be considered. New York Electric suggests that an existing licensee's unit availability record and productivity be evaluated. Finally, Wildlife Federation suggests that the Commission consider, in the context of section 15(a)(2)(G) of the FPA, an existing licensee's record of compliance with the licenses it holds.

The Commission will evaluate an existing licensee's compliance with all provisions of its license. This includes all provisions of Part I of the FPA incorporated into the license and regulatory provisions generally applicable to all licensees, such as the Commission's regulations regarding dam safety.²⁹³ However, as discussed previously,²⁹⁴ the Commission does not believe it is appropriate or possible to incorporate into regulatory language all factors that will be considered under section 15(a)(3) (A) and (B) or section 15(a)(2).

Congress has provided an express directive in section 15(a)(3)(A) to consider an existing licensee's record of compliance "with the terms and conditions of the existing license" (emphasis added). Thus, the Commission does not believe it would be consistent with the intent of ECPA to examine, in the context of either section 15(a)(2)(C) or section 15(a)(3)(A), the existing licensee's record of compliance with all other licenses it holds.

With regard to the suggestions of EPA, American Paper, and New York Electric, those matters will be considered if relevant under section 15(a)(3) (A) or (B), depending on the specific requirements and provisions of the existing license. As to the Wisconsin Department's suggestion regarding analysis of public participation, this might be a factor that could be considered under section 15(a)(3)(B). However, the other two items referenced by the Wisconsin Department appear to be inappropriate for examination under section 15(a)(3), since they pertain to matters related to the filing of an application for new license, not to matters related to an existing licensee's conduct.

In a related matter, the Northern California Agency argues that the Commission should treat as a negative factor in its section 15(a)(3)(B) evaluation, an existing licensee's past

assertion of rights under section 6 of the FPA to block a superior use of a nearby project's water supplies. The Commission declines to adopt this suggestion. An existing licensee should not be penalized for legitimately relying on the section 6 prohibition against unilateral alteration of licenses, to protect its ability to operate its project in the manner allowed and required by the existing license. Thus, an existing licensee's reliance on FPA section 6 will not be considered as a negative factor under the section 15(a)(3)(B) evaluation. In summary, while an existing licensee's compliance with specific obligations or responsibilities under its license will be examined under section 15(a)(3), its exercise of legitimate rights provided by the license or the FPA will not.

L. Information Required of Applicants

In the NOPR, the Commission proposed to require applicants for new license to submit certain information not currently required by the regulations.²⁹⁵ The Commission needs that information to conduct its evaluations under sections 15(a) (2) and (3) of the FPA, meet the information requirement of section 15(b)(4) of the FPA,²⁹⁶ and carry out its obligations under section 10(a) (1) and (2) of the FPA. These requirements, proposed to be codified in § 16.10, were divided into three parts: (1) information to be supplied by all applicants (proposed § 16.10(a)); (2) information to be supplied by an applicant who is an existing licensee (proposed § 16.10(b)); and (3) information to be supplied by an applicant who is not an existing licensee (proposed § 16.10(c)).

1. Procedures and Format

EEL, Great Northern and others state that § 16.10 is unclear on when and how the information required under the section is to be provided to the Commission. Great Northern suggests that the Commission specify that the § 16.10 information be included at a single place in the license application. EEL suggests that the Commission specify that the information required by § 16.10 be included in a separate document filed with the Commission on the date the corresponding license application is filed. EEL also recommends that applicants be provided with the option of circulating the information required by the section to resource agencies for review and comment prior to filing the information with the Commission.

The Commission believes that the information required by § 16.10 should

be incorporated at a single place in the license application, and that resource agencies should be provided with an opportunity to review and comment on this information in reviewing draft applications submitted to them pursuant to § 16.8(c)(4). Incorporation of this information into license applications will facilitate Commission processing and consideration of applications, and will provide resource agencies with additional time to fully evaluate and comment on the information required by § 16.10. Also, the information on costs and impacts to the applicant's customers required by § 16.10 may assist resource agencies in formulating recommended terms and conditions that strike a reasonable balance between the protection, mitigation and enhancement of environmental resources and the needs of an applicant and its customers. Accordingly, the Commission is adding a new paragraph § 16.10(e) that specifies that the § 16.10 information is to be included in the license application as a separate exhibit labeled "Exhibit H."

EEL, National Hydropower, PG&E and Washington Power suggest that § 16.10 be revised to specify that the information to be provided only has to be "commensurate with the scope of the project." They contend that this revision is necessary to address the fact that not all of the specific items of information may be relevant for all projects, particularly small ones. Wisconsin Power raises similar concerns regarding the relevance of all of the specific information items to minor projects.

The Commission declines to adopt the suggestion made by these commenters. The "commensurate with the scope of the project" language could be interpreted by some potential applicants as excusing them from having to address all of the items of information required by § 16.10. All of the items must be discussed by applicants. However, the Commission recognizes that not all of the items may be particularly relevant to an individual project. Consequently, if a potential applicant does not believe a particular item is relevant to its project, it can explain why in addressing the item. Also, the level of detail that must be provided will vary according to the size of the project and the circumstances of each case.²⁹⁷

EEL states that some of its members are part of integrated electric systems that conduct resource studies on a

system-wide or regional basis. Therefore, EEL suggests that § 16.10 be revised to permit applicants that are part of an integrated system to submit the load, cost and other resource data required by § 16.10 on a system-wide basis. American Paper and Friends of the Earth suggest that it would be helpful to applicants to segregate the § 16.10 information items into separate sections corresponding to the section 15(a) (2) and (3) provisions to which the information items pertain.

The Commission does not believe it is necessary to make the revision suggested by EEL. Nothing in § 16.10 prohibits applicants from submitting the information in the format suggested by EEL, as long as the information is sufficiently detailed to enable the Commission to evaluate the information item in the context of the individual project proposal. The Commission declines to segregate the § 16.10 information, as requested by American Paper and Friends of the Earth, since some of the information items may be relevant to more than one provision of section 15(a) (2) or (3) or other provisions of the FPA.²⁹⁸

2. Specific Information Requests

As discussed previously,²⁹⁹ in evaluating an applicant's need for a project the Commission is required to consider the need of an applicant for project power to serve wholesale customers. Accordingly, and as requested by some of the commenters,³⁰⁰ the Commission is revising appropriate provisions of § 16.10 to specifically reference wholesale customers.³⁰¹

The Commission is also revising proposed § 16.10(b)(7) to substitute the phrase "a discussion of any actions taken by the existing licensee related to the project which affect the public" for the phrase "a summary of any acquisition of land or land rights associated with the project." This change, which was requested by some of the commenters,³⁰² is consistent with

the previous discussion regarding the scope of section 15(a)(3)(B) of the FPA.³⁰³

As indicated previously,³⁰⁴ the Commission will be examining applicants' general staffing plans as part of the analysis it will undertake pursuant to section 15(a)(2)(A) of the FPA. The Commission is amending proposed § 16.10(a)(9) to require the submittal of more specific information in this regard.³⁰⁵

A number of commenters³⁰⁶ suggest that § 16.10 be revised to require applicants to discuss the environmental effects of their proposals and/or the matters addressed during the consultation process with resource agencies. These suggested changes are unnecessary. The Commission's regulations governing the content of the Environmental Reports that are to be included in applications,³⁰⁷ which govern applications for new license, and the provisions of § 16.8 requiring the documentation of resource agency consultation, will ensure that this information will be provided.

The Department of Commerce and the EPA suggest that § 16.10 be revised to require applicants, when discussing alternative sources of power and the impacts on them and their customers of relying on alternative sources of power should an applicant not receive a license for the project, to also discuss the environmental impacts of such alternatives. The Commission agrees that the environmental impacts of alternatives will have to be considered in evaluating applications for new license. However, the Commission believes that it would be more appropriate to have the collection of such information addressed in the post-filing phase of application processing, through additional information requests. This will permit the Commission to ascertain the specific information gaps that need addressing, and to limit the information demands to those alternatives that it believes are most reasonable.

The Department of Commerce suggests that proposed § 16.10(a)(11), which requires applicants to provide a statement regarding the consistency of their proposals with state and Federal comprehensive plans described in section 10(a)(2)(A) of the FPA, be

revised to more accurately track the language of section 10(a)(2)(A). Commerce also suggests that proposed § 16.10(a)(8) be revised to more accurately track the comprehensive development language of section 10(a)(1) of the FPA.

The Commission is deleting proposed § 16.10(a)(11), since it is unnecessary in light of the provisions of § 16.8(f)(6). The Commission is, however, revising proposed § 16.10(a) (7) and (8) to more accurately reflect the provisions of section 10(a)(1) of the FPA.

In a related matter, Washington Ecology requests that applicants discussing the conformity of their projects with a comprehensive plan for improving or developing the waterway, be required to conduct studies and collect data regarding all competing uses of the water to be used by their projects. The Commission declines to adopt this suggestion, since it would place an impossible burden on applicants. The Commission's regulations governing the content of Environmental Reports for applications already require applicants to generally discuss project impacts on reasonable competing uses of the waterway. The Commission believes that the obligation to supply specific data and conduct studies regarding competing uses of the waterway rests with the resource agencies that are responsible for overseeing these other uses. Thus, if a resource agency believes that a proposed project would conflict with another use of the waterway, it can present its position to the Commission and submit any studies or data regarding the other use of the waterway it believes support its position.

Finally, Wildlife Federation, Friends of the Earth and the Department of Commerce suggest that the provisions of § 16.10 pertaining to the submittal of information on conservation be modified to ensure that all applicants will adequately address and consider conservation as an alternative. The Commission does not believe any changes in this regard are necessary, since § 16.10(a)(3)(ii)(A) and (C), and redesignated (a)(11), clearly require that the conservation alternative be addressed. The Commission fully intends to consider conservation and other load management measures in evaluating applications for relicense.³⁰⁸

³⁰⁸ Rochester Gas suggests that § 16.10(a)(10) be revised to require applicants proposing to expand project lands to show that the expansion is necessary and economically justifiable. This change is unnecessary, since these issues will have to be addressed in filed license applications pursuant to

²⁹³ See 18 CFR Part 12 (1988).

²⁹⁴ See Part IV.K.2., *supra*.

²⁹⁵ See 18 CFR 4.41, 4.51 and 4.61 (1988).

²⁹⁶ 16 U.S.C. 808(b)(4) (1982 and Supp. 1988).

²⁹⁷ Washington Power and Wisconsin Power also request that holders of minor licenses not subject to sections 14 and 15 of the FPA not be required to provide the § 16.10 information. This request is discussed in Part IV.P., *infra*.

²⁹⁸ American Rivers states that the regulations are ambiguous as to whether applicants for nonpower licenses must provide the information specified in § 16.10 and suggest that the regulations need to be clarified on this point. The Commission does not believe any revision is necessary, since § 16.10 is limited to applicants for "new license," which, under the definitions of § 16.2, would not include applications for nonpower license. Applications for nonpower license must include the information specified in § 16.11, not § 16.10.

²⁹⁹ See Part IV.K.a., *supra*.

³⁰⁰ See, e.g., the comments of Public Pool and Mid-Columbia.

³⁰¹ See § 16.10(a)(2)(i) and (iii)(A).

³⁰² See, e.g., the comments of EEL and PG&E.

³⁰³ See Part IV.K.9., *supra*.

³⁰⁴ See Part IV.K.3., *supra*.

³⁰⁵ This revision was suggested by several commenters, including Public Pool.

³⁰⁶ See, e.g., Trout Unlimited, Michigan Department, Montana Fish and Wildlife, and Washington Wildlife.

³⁰⁷ See, e.g., 18 CFR 4.51(f) (1988).

M. Joint Applicants

In the NOPR, the Commission stated that it generally should not consider an existing licensee to be an existing licensee for purposes of section 15 of the FPA and the Commission's relicensing regulations if the licensee files an application for a new license in conjunction with another entity or entities that are not current licensees of the project.³⁰⁹ Accordingly, the Commission indicated in § 16.13(c) that such joint applicants would not be considered existing licensees. However, the Commission also solicited comments on whether there were circumstances under which an existing licensee should retain that status in applying for a new license if it has joined with other venturers in its application.³¹⁰

A number of commenters³¹¹ agree with the Commission's proposed approach, contending that it is consistent with the Commission's policy regarding the non-availability of municipal preference to hybrid applicants.³¹² Some contend that in no case should joint applicants be considered an existing licensee, while others contend that existing licensee status should be afforded to joint applicants only if the new entity to be added will have no operating responsibilities.

The majority of the commenters, however, oppose the Commission's

proposed policy.³¹³ They contend that the joinder of new entities with existing licensees may be financially beneficial to the customers of the existing licensees; such joinder may permit the use of lower cost financing techniques that would not be available to the existing licensees alone. They therefore argue that it would be contrary to the public interest to deprive existing licensees of the ability to reduce the costs of redevelopment to their customers through the use of these financing techniques. Consequently, they request that the Commission either reverse its position or at least defer a decision on this issue and make such determinations on a case-by-case basis, applying relevant policy considerations to the particular facts presented.³¹⁴

Clearly, one of the purposes of the insignificant differences provision of section 15(a)(2) is to avoid the disruptions and economic dislocations that an existing licensee's customers would suffer in the event of a license transfer, unless there is a strong public interest reason for a transfer. Consequently, and as pointed out by the commenters in opposition to § 16.13(c), as long as the customers of an existing licensee would not be adversely affected financially or in terms of power availability, relicensing applications filed jointly by existing licensees and new entities would not cause disruptions and economic dislocations. However, and as discussed below, the Commission does not believe the possibility that existing customers may not be adversely affected in some cases justifies the elimination of § 16.13(c).

First, adoption of the proposition that joint applicants should be considered existing licensees would have to be premised upon the situation described above: no adverse financial or power availability impacts to the customers of the existing licensee. Consequently, the Commission would be required to examine these two factual issues on a case-by-case basis following the filing of a joint development application. This in turn would require the Commission to

ascertain such things as the appropriate past and future customer base, and financing terms and rates, for alternative development scenarios (one with the new entity and the existing licensee, one with only the existing licensee). In addition to being time- and resource-consuming, this case-by-case analysis would not provide the bright-line test existing licensees and potential competitors need in order to responsibly weigh their development options.

Second, while Congress was concerned about economic dislocations and disruptions that might be suffered by the customers of an existing licensee, there is no indication in the legislative history of ECPA that Congress contemplated, let alone sanctioned, the wholesale selling of portions of existing licensees' projects and future revenue streams to third parties heretofore unrelated to the existing licensee. Indeed, Congress' reference in section 15(a)(3) to the track record of the existing licensee, and its intent that the track record be used to determine which applicant should receive a new license in the case of insignificant differences, indicates that Congress intended for the indirect benefits of the insignificant differences provision of section 15(a)(2) to flow only to the exact entity that was the current existing licensee of the project.

Finally, not considering a joint application as one filed by an existing licensee will not significantly impair the existing licensee's ability to enter into financing arrangements with third parties that may ultimately benefit the customers of the existing licensee. As the Commission has held previously, financial arrangements between licensees and non-licensees

are permissible, provided licensees maintain in such arrangements sufficient ownership and control of a project to enable the Commission, through its licensee, to carry out its regulatory responsibilities with respect to that project. Any non-licensee who for financing or other purposes owns or controls rights necessary for the operation of the projects must also be made a co-licensee.

See *City of New Martinsville, West Virginia*, 32 FERC ¶61,261 at 61,638 (1985).³¹⁵ The above-mentioned standard regarding when financiers and other entities must be added as co-applicants will be fully applicable to relicensing proceedings. Thus, as long as

³⁰⁹ See, e.g., the comments of Alabama Power, EEL, Georgia Power, National Hydropower, Niagara Mohawk, Fourth Branch, PC&E, Wisconsin Department and Washington Power. The Small Business Administration states that it supports the Commission's proposed policy, but that the Commission should not prevent joint applicants when the added party's only role will be to provide necessary financing for improvements.

³¹⁰ The Warm Springs Tribe suggests that § 16.13(c) be revised so that an existing licensee that files a relicensing application for a complete project in conjunction with an entity that is an existing licensee for only part of the same project be considered an existing licensee for purposes of section 15 of the FPA.

³¹¹ See *El Dorado Irrigation District and El Dorado Water Agency*, 29 FERC ¶61,375 (1984); *Linweave, Inc.*, 23 FERC ¶61,391 (1983); and *New York State Electric & Gas Corp.*, 23 FERC ¶61,034 (1983), for examples of financing and ownership arrangements that do not require joinder of the financier as a co-applicant or co-licensee.

the existing licensee will retain sufficient ownership and control, a third party financier will not have to be added to an existing licensee's application for new license and the existing licensee will not be jeopardizing its status as an existing licensee under section 15(a)(2).

In light of the above, the Commission is retaining paragraph (c) in § 16.13, with slight revisions to accommodate the unique situation raised by the Warm Springs Tribe,³¹⁶ and to clarify the effect of the section. An existing licensee filing an application for new license in conjunction with a new entity will not have the status of an existing licensee for the purpose of the insignificant differences provision of section 15(a)(2). In all other respects, an existing licensee filing in conjunction with a new entity must follow the same procedures and will have its application processed in the same manner as an existing licensee filing individually.³¹⁷

Finally, the Northern California Agency expresses concern that an existing licensee might add a co-applicant in order to avoid consideration of an existing licensee's poor track record in complying with the terms and conditions of its existing license. However, since examination of an existing licensee's track record is a relevant consideration under section 10 of the FPA, and since section 10 is applicable to relicensing proceedings, the Commission will fully consider an existing licensee's track record in every case where an existing licensee chooses to file a relicensing application in conjunction with a new entity, even though the joint entity will not be considered an existing licensee for purposes of the insignificant differences provision of section 15(a)(2).³¹⁸

³¹⁶ See discussion, *supra*.

³¹⁷ Long lake is concerned that not treating joint applicants as existing licensees may interfere with the Commission's ability to issue annual licenses to the existing licensee pursuant to section 15(a)(1) of the FPA, 16 U.S.C. 808(a)(1) (1982 and Supp. 1988). The Commission's authority to issue annual licenses would not be affected by not treating joint applicants as existing licensees, since the Commission would in such situations issue an annual license to the holder of the existing license.

³¹⁸ Wildlife Federation suggests that the Commission promulgate a regulation requiring heightened scrutiny of license transfer applications and forbidding license transfers during the last five years of an existing license. Wildlife Federation contends that this is necessary to prevent third parties from buying out existing licensees merely to obtain an advantage in relicensing. The Commission declines to adopt a prohibition against transfers during the last five years of a license, since there are legitimate public interest purposes served by such transfers. However, the Commission will scrutinize all such transfer requests to determine if the transfer's primary purpose is to gain an advantage at relicensing, such as when a transfer is

N. Annual Licenses

Section 15(a)(1) of the FPA provides that

[I]n the event the United States does not exercise the right to take over or does not issue a license to a new licensee, or issue a new license to the existing licensee, upon reasonable terms, then the Commission shall issue from year to year an annual license to the then licensee under the terms and conditions of the existing license until the property is taken over or a new license is issued as aforesaid. [Emphasis added.]

In the NOPR, the Commission proposed in § 16.18 to codify in regulatory language the annual licensing provisions of section 15(a)(1), and to specify the circumstances where an annual license would be issued.³¹⁹ In addition, the Commission proposed to codify its long standing practice of considering annual licenses automatically renewed without further order of the Commission if processing of relicensing and other applications, and takeover proceedings, are not completed prior to expiration of the current annual license.³²⁰

A number of commenters object to the automatic renewal provision of § 16.18(c). American Rivers contends that the provision should be revised to prevent the issuance of an unlimited number of annual licenses until action is taken on any pending applications. It contends that the legislative history of ECPA indicates that Congress did not intend to allow the Commission to use annual licenses to delay the changes that will be implemented as part of a new license. Friends of the Earth suggests that § 16.18(c) be deleted and replaced with a provision stating that each annual license will include a schedule for completing studies during the term of the annual license, and a projected date by which the Commission intends to complete action on pending applications.

Wildlife Federation also objects to the automatic renewal provisions of § 16.18(c), contending that this will permit existing licensees to delay relicensing proceedings for years. It suggests that the initial annual license include a schedule for completion of the relicensing proceeding, and that the Commission be required to issue each subsequent annual license. Also,

intended to escape consideration of a poor compliance record. The Commission may deny a transfer request in such a situation or take other appropriate action, such as imputing the transferor's poor compliance record to the transferee in considering the transferee's application for relicensing.

³¹⁹ Proposed § 16.18(b).

³²⁰ Proposed § 16.18(c).

Wildlife Federation suggests that the Commission revise § 16.18 to specify that, if the existing license contains reopener provisions, the Commission will use its authority under such reopener provisions to impose new terms and conditions on the annual license.

The Department of Commerce makes similar suggestions, although it suggests that the Commission specify that it has the authority to impose new terms and conditions for the protection of fish and wildlife resources in every case if necessary. The Northern California Agency suggests that in cases involving competition, and if the relicensing process has not been completed within three years from the expiration date of the existing license, the existing licensee should be required to pay a competing applicant a total of one-half the net value of holding the license during the post-expiration period. Finally, Washington Wildlife suggests that the section be revised to specify that the Commission will require fish and wildlife mitigation measures to be undertaken during the annual license.

The Commission declines to make any of these suggested revisions. As the Commission explained in the *Central Nebraska Public Power and Irrigation District (Central Nebraska)* case,³²¹ the provision of section 15(a)(1) of the FPA regarding the issuance of annual licenses "under the terms and conditions of the existing license" until the relicensing or takeover proceeding is completed, is mandatory. The issuance of an annual license is a ministerial and non-discretionary act. Thus, although the Commission is cognizant of ECPA's mandate of expedition, the Commission is required to issue annual licenses under the exact terms and conditions of the existing license³²² and has no authority to impose additional terms and conditions regarding schedules, deadlines or payment requirements.

Furthermore, unless the terms and conditions of the existing license reserve to the Commission the authority to impose on the existing licensee, and therefore in the annual license, additional appropriate conditions for the protection of fish, wildlife or other resources, the Commission has no authority to impose on annual licenses

³²¹ 39 FERC ¶ 61,378 (1987), *reh'g denied*, 43 FERC ¶ 61,225 (1988), *appeal pending sub nom. Platte River Whooping Crane Critical Habitat Maintenance Trust v. FERC*, No. 88-1425 (D.C. Cir. filed June 15, 1988).

³²² As suggested by Washington Wildlife, the Commission is revising § 16.18(b) to clarify that the annual license will be under the terms and conditions of the existing license.

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additional conditions for the protection of these resources. However, even when the Commission has reserved authority to do so, it cannot impose additional conditions for the protection of these resources unless those additional conditions are based on substantial evidence.³²³ In most cases annual licenses will be used to provide the Commission with sufficient time to analyze and resolve factual issues regarding what conditions should be imposed in a new license. Therefore, it is doubtful that the Commission in many cases will have available to it prior to the completion of the relicensing proceeding the substantial evidence needed to support the imposition of additional terms and conditions in an annual license.³²⁴

The fact that the Commission has no discretionary authority with regard to annual licenses does not mean, however, that the Commission will not be able to prevent existing licensees from delaying relicensing proceedings. As discussed previously,³²⁵ the Commission will be establishing deadlines pursuant to §§ 16.9(b) and 4.32 of the Commission's regulations for the submittal of additional information and correction of application deficiencies. Existing licensees and other applicants that attempt to delay the proceedings by delaying their responses to deficiency correction and additional information requests could have their applications dismissed. Thus, all applicants will have a strong incentive *not* to delay the proceedings through untimely and incomplete responses to Commission information requests. Furthermore, the final amendment deadlines the Commission will be issuing as required by section 15(c)(1) of the FPA will help ensure that the relicensing process is not unduly delayed.

The Commission also notes that delay in the issuance of new licenses may not be the fault of the applicants. Resource agencies may not formulate recommended terms and conditions for licenses early in the application consideration process or may have to provide the Commission with additional data to substantiate their positions.

³²³ See section 313(b) of the FPA, 16 U.S.C. 8251 (1982).

³²⁴ The Wisconsin Department suggests that the section be revised to specify that annual licenses can be issued to allow applicants time to complete additional necessary prelicensing studies. This revision is unnecessary, since a purpose of the annual licensing provision is to allow the Commission to complete the relicensing process, which would include the gathering of necessary study materials and data.

³²⁵ See Parts IV.J.2. and 3., *supra*.

Also, resource agencies may request applicants to provide additional information and may need additional time to resolve issues that were not identified by them and resolved during § 16.8 consultation.

O. Nonpower Licenses

Section 15(f) of the FPA³²⁶ provides the Commission with the authority to issue licenses for nonpower use upon the expiration of an existing power license. Pursuant to section 15(f), nonpower licenses are only temporary licenses which the Commission will terminate whenever it determines that a state, municipality, interstate agency, or another Federal agency is authorized and willing to assume regulatory supervision over the lands and facilities covered by the nonpower license. Finally, pursuant to section 14(a) of the FPA, nonpower licensees must pay the existing licensee its net investment in its project and reasonable severance damages.³²⁷

In the NOPR, the Commission proposed provisions regarding the filing and processing of applications for nonpower license, the termination of a nonpower application proceeding, and the duration of nonpower licenses. Specifically, proposed § 16.11(a) would require nonpower applicants to include in their applications, *inter alia*: (1) The information required by § 4.51 or § 4.61 of the Commission's regulations;³²⁸ (2) a description of the proposed nonpower use; (3) a showing of how the nonpower use conforms with a comprehensive plan for the waterway as defined in section 10(a)(1) of the FPA; and, (4) a statement identifying the state, municipal, interstate, or Federal agency authorized and willing to assume regulatory supervision over the lands, waterways, and facilities to be included within the nonpower project.

Proposed § 16.11(b) would allow the Commission to terminate a nonpower application proceeding in cases where the existing project is located on United States lands, and the Federal agency with jurisdiction over the land is able and willing to accept immediate responsibility for the nonpower use. Finally, proposed § 16.11(c) would allow the nonpower license to remain in effect until either the pertinent agency assumes regulatory control over the

³²⁶ 15 U.S.C. 808(f) (1982 and Supp. 1988).

³²⁷ 16 U.S.C. 807(a) (1982).

³²⁸ The Michigan Department and Trout Unlimited suggest that § 16.11 be revised to require nonpower applicants to provide certain environmental information about their proposals. This revision is unnecessary because §§ 4.51 and 4.61 of the Commission's regulations require that this information be provided.

lands and facilities, or the project structures are removed and the land is restored pursuant to a plan approved by the Commission.

American Rivers objects to the provision of § 16.11(a) requiring identification of the agency authorized and willing to assume regulatory supervision over the project. It contends that identification of the regulatory agency at the application stage is inconsistent with FPA section 15(f), since that section only requires identification of the agency at the point when termination of the nonpower license will occur. American Rivers also objects to § 16.11(b), arguing that it would allow the Federal land management agency to take over a project subject to a nonpower licensing proceeding regardless of the amount of time and effort the nonpower applicant has invested in the proceeding. It recommends that the provision be revised to require the land management agency to provide notice of its intent to exercise its rights under the provision at least 24 months prior to license expiration. Finally, American Rivers requests clarification regarding § 16.11(c), arguing that its provision allowing removal of project structures and restoration of lands by the nonpower licensee conflicts with the requirement in § 16.11(a) that a regulatory agency be identified in all cases.³²⁹

The purpose of section 15(f) of the FPA is to permit the operation of projects for nonpower purposes under Commission supervision for short periods until an agency with regulatory authority over the site is willing to assume responsibility over the lands and facilities included in the nonpower license. This is why section 15(f) specifically provides that a nonpower license is to be "a temporary license." Thus, the Commission will issue a nonpower license when it is reasonably assured that such an agency will be able to assume regulatory control of the project lands and facilities in the near future. The Commission, therefore, must know at the time it is considering an application for nonpower license whether an authorized agency will be willing to assume these responsibilities. Consequently, and contrary to American Rivers' contentions, the requirement in § 16.11(a) that applicants for nonpower

³²⁹ American Rivers also requests clarification of the reference in § 16.11(a)(vii) to § 16.8(d)(2). The purpose of this provision is to ensure that nonpower applicants have provided all agencies which are authorized to assume regulatory supervision over the site with copies of their applications for nonpower license, as specified in § 16.8(d)(2).

licenses identify the agency that is authorized and willing to assume regulatory responsibility over the site is entirely consistent with the provisions of section 15(f) of the FPA.

As pointed out by American Rivers, the provisions of § 16.11(c)(2) allowing nonpower licensees to terminate their licenses by removing project structures and restoring the land are inconsistent with the requirement of § 16.11(a) for identification of a responsible agency. There would be no need to identify such an agency if a nonpower licensee could terminate its license by removal without such an agency assuming regulatory control. The Commission believes that section 15(f) provides for termination of nonpower licenses only when an authorized agency is to assume regulatory responsibility over the site. Therefore, the Commission is revising § 16.11(c) to eliminate the provision allowing nonpower licensees to remove project structures and restore project lands.

The Commission does not believe it is necessary to revise § 16.11(b), as suggested by American Rivers. The purpose of § 16.11(b) was to avoid the necessity of issuing a nonpower license in cases where the project is located on Federal lands, and the relevant Federal land management agency is willing to immediately assume regulatory responsibility for the nonpower use. While this procedure may result in an applicant's devoting resources to prepare an application for a nonpower license but not receiving a nonpower license, the same result could occur in cases where the Commission denies an application for a nonpower license. Furthermore, in order to fulfill the requirement of § 16.11(a) to identify the agency that will eventually be assuming regulatory responsibility over the site, potential nonpower applicants will have to consult with the Federal land management agency early in the application preparation process. Thus, such applicants will be aware of the agency's willingness to assume responsibility and the time at which the agency would be willing to do so. Consequently, such applicants will have advance notice of the Federal agency's intentions.

In a related matter, Brazos contends that the Commission should revise § 16.11(b) to exclude municipal applicants for nonpower license from its coverage. Brazos contends that municipalities should not be subject to having their property transferred to a Federal agency. No revision to this section is necessary to protect municipalities' ownership rights. Section

16.11(b) only pertains to the transfer from the Commission to the Federal land management agency of regulatory responsibility over the site. It does not affect entities' property rights in project facilities.³³⁰

P. Minor and Minor Part Licenses not Subject to Sections 14 and 15 of the Federal Power Act

As discussed previously,³³¹ the Commission's longstanding practice has been to waive sections 14 and 15 and other applicable provisions of the FPA when it issues minor and minor part licenses.³³² Consequently, numerous licenses are not statutorily covered by the substantive and procedural provisions of section 15 of the FPA as amended by ECPA.

In order to clarify the procedures it would use in processing and considering applications for subsequent license for projects covered by expiring minor and minor part licenses where sections 14 and 15 had been waived, the Commission proposed in the NOPR to add a new Subpart E to its relicensing regulations. In summary, the provisions of Subpart E would: (1) Require existing licensees of such projects to file notices of intent and make information available in accordance with sections 15(b) (1) and (2), respectively, of the FPA;³³³ (2) require applicants for subsequent license to follow the consultation requirements of § 16.8;³³⁴ (3) require applicants for subsequent license to file their applications at least 24 months prior to the expiration of the existing licenses, in accordance with section 15(c)(1) of the FPA;³³⁵ and (4)

require applicants for subsequent license to include in their applications the information specified in § 16.10.³³⁶

The NOPR also proposed that applications for subsequent license be subject to the same general processing provisions as applications for new license for projects subject to sections 14 and 15 of the FPA.³³⁷ However, since section 15 of the FPA is not applicable to these projects, the Commission indicated that the licensing proceeding for a project with an expiring minor or minor part license where sections 14 and 15 have been waived would be an original licensing proceeding under section 4(e) of the FPA.³³⁸ Thus, the provision of section 15(a)(2) of the FPA that insignificant differences between competing proposals will not result in a transfer of a project would not be applicable to applications for subsequent license. Instead, the Commission would use the standard of section 10(a)(1) of the FPA and the rules of preference applicable to original licensing proceedings,³³⁹ including the preference afforded to municipalities under section 7(a) of the FPA, to choose between competing applicants for subsequent license.³⁴⁰

1. Procedures and Standards

The majority of the commenters³⁴¹ object to the Commission's proposals in the NOPR to subject holders of minor and minor part licenses where sections 14 and 15 of the FPA have been waived, and applicants for subsequent license for these projects, to the procedural and information requirements applicable to projects subject to section 15. They state that it would be inequitable to require owners of, and applicants for, these small, sometime minuscule, projects to comply with the detailed and burdensome requirements applicable to larger projects. They find particularly objectionable the requirement that they file notices of intent pursuant to section 15(c)(1) of the FPA. They contend that this requirement, in combination with the Commission's proposals to have section 7(a) municipal preference apply to these proceedings, and to not apply the insignificant differences test of

³³⁰ Proposed § 16.20(c).

³³¹ *Id.*

³³² See NOPR preamble at 33 and proposed § 16.19(b).

³³³ See 18 CFR 4.37 (1988).

³³⁴ Proposed § 16.20(c).

³³⁵ See, e.g., the comments of American Paper, Georgia Power, National Hydropower, Rochester Gas, Wisconsin Power, Wisconsin Utilities and Washington Power. The Michigan Department supports the proposal to require applicants for such projects to comply with the consultation provisions of § 16.8.

³³⁶ The Department of Commerce suggests that applicants for new licenses be required to provide the information required of applicants for nonpower licenses under § 16.11(a) if a resource agency requests that the project be converted to nonpower use under a nonpower license. The Commission declines to make this revision. If a state agency wants a site to be converted to nonpower use, it should file an application for nonpower license and prepare the information required by § 16.11(a). If a Federal agency wants a site converted to nonpower use, it should file a recommendation that the United States take over the project as prescribed in section 14 of the FPA.

The procedures for takeover under section 14 of the FPA were specified in proposed §§ 16.14 to 16.17 of the NOPR. No significant comments were received on these provisions. The final rule adopts the provisions as proposed in the NOPR with minor revisions.

³³⁷ See Part IV.A., *supra*.

³³⁸ As indicated before in this preamble, except for transmission line licenses, the Commission no longer issues minor part licenses.

³³⁹ Proposed § 16.18.

³⁴⁰ Proposed § 16.20(c).

³⁴¹ Proposed § 16.20(b).

section 15(a)(2) to the proceedings, will put existing licensees of these projects in an extremely disadvantageous position vis-a-vis competing municipal applicants.

The commenters also contend that most, if not all, of the items of information contained in § 16.10 are irrelevant to Commission evaluation of their small projects. They further state that requiring them to develop and submit this information could lead many of them to decide not to seek subsequent licenses for the projects.

PG&E objects to the applicability of municipal preference to these proceedings. PG&E contends that application of this preference would be inconsistent with Congress' intent in enacting ECPA to eliminate use of the applicants' status as a decisional factor in choosing among competing applicants at the expiration of existing licenses. In support of its position, PG&E cites section 10 of ECPA,³⁴² which established special procedures to address nine cases where municipal applicants had filed applications for license in competition with the existing non-municipal applicants. According to PG&E, Congress did not intend municipal preference to be applicable to subsequent licenses for minor projects where the existing licenses waive the application of sections 14 and 15 of the FPA.³⁴³ PG&E argues that this is clearly shown by Congress' inclusion of two minor licenses, where sections 14 and 15 of the FPA had been waived,³⁴⁴ within the coverage of ECPA section 10, together with that section's provision³⁴⁵ that the issue of whether municipal preference would be applicable to the proceedings would be based on the ultimate resolution of then ongoing court proceedings.³⁴⁶

In section 2 of ECPA, Congress clearly restricted the municipal preference under section 7 of the FPA to preliminary permits and to original licensing and made it inapplicable to relicensing proceedings. Neither the language nor the legislative history of ECPA suggests that Congress intended to eliminate the municipal preference in the relicensing of major projects while retaining it for minor ones. No such

distinction appears in the language of ECPA. Both the House and Senate reports accompanying the legislation that was eventually enacted as ECPA explain that ECPA makes the municipal preference "inapplicable in proceedings following expiration of an existing license."³⁴⁷ Congress was thus attempting to differentiate between an "original" license (*i.e.*, the first license issued for a project), to which the preference would continue to apply, and any license issued following the expiration of an existing license, to which the preference would not apply.

The purpose of Congress was to place all applicants in a relicensing on an equal footing, to deny any applicant or class of applicants a preference, and to require the Commission to award the license to the applicant whose proposal would best serve the public interest. These considerations apply equally to minor licenses as to major ones.

Specifically, section 2 of ECPA revised the municipal preference provisions of section 7(a) to state that the Commission was to afford municipalities a preference "[i]n issuing preliminary permits hereunder or original licenses where no preliminary permit has been issued." Prior to ECPA, that section had required the Commission to afford municipalities a preference "[i]n issuing preliminary permits hereunder or licenses where no preliminary permit has been issued and in issuing licenses to new licensees under section 15 hereof."

This revision to section 7(a) of the FPA, together with Congress' changing of all references in section 15(a)(1) of the FPA from "original" licensees or licenses to "existing" licensees or licenses,³⁴⁸ indicates that Congress was attempting to differentiate between "original" licenses and those to be issued following the expiration of an existing license. In light of this, and considering Congress' general intent to eliminate the status of an applicant as a decisional factor in determining which applicant should receive a second or third license for a project, the Commission believes that Congress intended that municipal preference would apply only to preliminary permits and the first license issued for a project, regardless of the technical status of the second or subsequent license for a project.

Moreover, there are affirmative indications that Congress expected ECPA to clarify that the municipal preference would be inapplicable to all relicensing proceedings, whether for major or minor projects. In section 10 of ECPA, Congress provided that ECPA's revision to the municipal preference provision of section 7(a) of the FPA would not be applicable to nine listed relicensing cases, including two involving minor projects, if the existing licensees elected not to use the ECPA section 10 procedures. Furthermore, Congress in section 10 of ECPA provided that the amendments to the FPA made by ECPA (including the revisions to section 7(a)) would govern these nine proceedings, if the competing municipalities elected not to use the ECPA section 10 procedures. These actions clearly show that Congress believed that the issue of the applicability of municipal preference at relicensing was identical for both major and minor licenses, and that its clarification that municipal preference was not to apply at relicensing was to encompass both major and minor projects.

The fact that the Commission has made it a practice to waive the provisions of section 15 of the FPA in the case of minor licenses has no bearing on the question of municipal preference. The subsequent licensing of an expired minor license is a relicensing for purposes of ECPA. It is not transformed into an original licensing merely because the Commission, in a previous licensing order, has waived the provisions of section 15 of the FPA as too burdensome for a minor license. Further, while the Commission in this rule is freeing minor licensees from some requirements related to section 15 provisions, applicants for a subsequent minor license will be subject to different requirements than applicants for an original license. They will be required, for example, to file notices of intent and to make certain information available in accordance with section 15(b) of the FPA; to follow the consultation process of § 16.8; and to file applications at least 24 months prior to the expiration of existing licenses. Competing applications for minor licenses will also be evaluated by the same standards as those applicable to major projects under regulations implementing section 15 of the FPA. These provisions recognize the reality that the licensing of a minor project subsequent to the expiration of an earlier license is a relicensing.

In this regard, the prior waiver of sections 14 and 15 and the related provisions of the FPA previously

discussed was intended to relieve minor licensees from various burdensome requirements that are inappropriate and unnecessary in the context of minor projects. The waivers were never intended to exclude minor licensees from the relicensing process. Relicensing is not a burden inappropriate to a minor project; on the contrary, it is a process that is as applicable and necessary to minor projects as it is to major projects. Moreover, subsequent to the waiver of sections 14 and 15 in those minor licenses, Congress, through ECPA, has amended section 15 with respect to the relicensing process. The waivers were clearly not intended to apply to portions of a statute that were not in existence at the time the waivers were granted. Therefore, in light of all of the above, the Commission is adding a new provision³⁴⁹ specifically indicating that section 7(a) of the FPA will not be applicable to minor license proceedings.³⁵⁰

With the one exception discussed below, the Commission declines to exempt owners of, and applicants for, subsequent license from complying with the procedural provisions established for major projects covered by section 15 of the FPA. The Commission believes that having these provisions apply to these proceedings will eliminate potential confusion regarding filing deadlines and processing procedures, and will result in better and more informed consultation with agencies. Furthermore, since the Commission is clarifying that municipal preference will not be applicable to these proceedings, the inequities cited by the commenters will not occur.

The Commission is, however, deleting the requirement that applicants for

subsequent license provide the information specified in § 16.10. As suggested by the commenters, much of this information may not be relevant to their small projects, and generically requiring the development and submittal of all of this information in all cases would be unduly burdensome. The Commission will seek, through additional information requests, the items of § 16.10 information it deems necessary to evaluate individual applications.

Finally, the Commission is eliminating the reference in § 16.20(c) to the processing of subsequent applications in accordance with the rules of preference of § 4.37 of the Commission's regulations. Those rules of preference, in addition to relying on municipal preference, accord decisional significance to the first-filed application and to other factors clearly inappropriate to these proceedings. The Commission will rely on the standards of sections 10(a) and 15(a) of the FPA in evaluating applications. In minor licensing cases where competing applications are filed, the Commission will apply the same tests as for major licenses, after requesting from the competing applicants the information it deems necessary to evaluate the factors set out in section 15(a) (2) and (3).

2. Transition Provisions

In the NOPR, the Commission proposed certain transition provisions regarding the application of the section 15 procedures to minor licenses where sections 14 and 15 had been waived.³⁵¹ In response to concerns raised by the commenters, the Commission is updating the transition provisions,³⁵² and specifying that holders of existing minor licenses do not have to make available information required by § 16.7 if they have already filed their applications.³⁵³

³⁵¹ See proposed § 16.19(c) (3) and (4) and § 16.20(b) (2) and (3).

³⁵² See § 16.19(b) (3) and (4) and § 16.20(c) (2) and (3). Specifically, § 16.19(b)(3) provides that licensees with licenses expiring before October 17, 1994, must file notices of intent with the Commission no later than 60 days after the effective date of this rule, while § 16.19(b)(4) provides that new notices of intent are not required of applicants that filed such notices or their applications prior to the effective date of this rule. Section 16.20(c) (2) and (3) provide that applications for subsequent license for minor projects with licenses that will expire within four years of the effective date of this rule must be filed at least 12 months before the expiration date of the existing license.

³⁵³ See § 16.19(c)(2). Holyoke expresses concern that it would be required to repeat consultation with resource agencies pursuant to § 16.8 even though it had already filed its applications. However, § 16.9(i)(1) specifically indicates that such reconsultation would not be required.

3. Continued Operation of Minor Projects

As discussed previously,³⁵⁴ the Commission's authority and obligation to issue annual licenses to existing licensees in cases where the relicensing proceedings are not completed prior to the expiration of the existing licenses is derived from section 15(a) of the FPA. Since minor licenses in most cases waive the applicability of sections 14 and 15 of the FPA, the Commission has no authority to issue annual licenses for these minor licenses. However, pursuant to the provisions of section 9(b) of the Administrative Procedure Act (APA),³⁵⁵ when a licensee has made a timely and sufficient application for a renewal of license, the existing license is deemed not to expire until the application has been finally acted upon by the agency. Consequently, if, prior to the end of the term of the existing license, the Commission has not acted on an application for subsequent license filed by the holder of a minor license where sections 14 and 15 of the FPA have been waived, then the existing licensee can continue to operate the project until the Commission acts. Paragraph (a) of § 16.21 codifies this principle.

The ability of an existing minor licensee to continue to operate its project after the term of its license under section 9(b) of the APA is contingent upon the filing of a renewal application by the existing licensee. If such an application is not filed, the existing minor licensee has no express authority to continue to operate its project. However, this could result in a hiatus in the operation of, and direct user responsibility over, projects in cases where a third party, but not the existing licensee, files an application for subsequent license, and the Commission is unable to complete processing of the third party's application prior to the expiration of the existing license. In order to avoid this, the Commission proposed, in § 16.21(b), to issue orders to allow existing licensees to continue to operate their projects after expiration.

Washington Wildlife suggests that the Commission revise § 16.21 to make clear that continued operation of these projects would be under the terms and conditions of the existing license. It also suggests that the Commission specify that it will be requiring existing licensees to implement resource mitigation measures during the period following expiration of the existing licenses. The Department of Commerce

³⁵⁴ See Part IV.N., *supra*.

³⁵⁵ 5 U.S.C. 558(c) (1982).

³⁴² See 100 Stat. 1252.

³⁴³ In its reply comments, Northern California Agency expresses support for the proposition that municipal preference is applicable to these proceedings.

³⁴⁴ Project Nos. 596 and 1061.

³⁴⁵ See section 10(b) of ECPA, 100 STAT. 1253.

³⁴⁶ See Pacific Power & Light Co., 25 FERC ¶ 61,052, *reh'g denied*, 25 FERC ¶ 61,290 (1983), *rev'd en banc on other grounds sub nom. Clark-Cowlitz Joint Operating Agency v. FERC*, 828 F.2d 1074 (D.C. Cir. 1987).

³⁴⁷ H.R. Rep. No. 507, 99th Cong., 2d Sess. 10 (1986). The Senate Committee language is similar, indicating the preference "does not apply to the issuance . . . of a new license for a previously licensed hydroelectric project. S. Rep. No. 161, 99th Cong., 1st Sess. 4 (1985).

³⁴⁸ See section 4(b) of ECPA, 100 Stat. 1248.

objects to § 16.21(b), contending that the Commission does not have the authority to allow operation of projects after expiration of their licenses in cases where the existing licensees do not file renewal applications.

The suggestion of Washington Wildlife, to clarify that operation of these projects will be under the terms and conditions of existing licenses, is appropriate, and the Commission is making the necessary changes to § 16.21. However, the Commission declines to make the other revision suggested by Washington Wildlife. With regard to projects covered by § 16.21(a), it appears that section 9(b) of the APA contemplates that the operation of projects following expiration of existing licenses will be under the terms and conditions of the existing license. Thus, as in the case of annual licenses under section 15(a)(1) of the FPA, the Commission cannot impose additional mitigation requirements unless it had reserved to itself the authority to do so in the existing license. As to projects covered by § 16.21(b), while the Commission would not be constrained by the operation of section 9(b) of the APA, it is doubtful that the Commission would have the substantial evidence to support any such requirements.³⁶⁶

Contrary to the contentions of the Department of Commerce, the Commission believes it has the authority to require existing licensees to continue to operate their projects following expiration, as specified in § 16.21(b). As discussed previously, the purpose of this provision was to require existing licensees to continue to operate their projects until the Commission could act on any application for the site filed by a third party.³⁶⁷ This will permit the Commission to ensure that the safety and environmental provisions of the existing license will continue until the Commission acts on a competing application, or takes other appropriate action regarding termination of the existing licensee's presence at the site. The Commission believes that its authority in this regard clearly falls within the scope of section 309 of the FPA,³⁶⁸ which provides the Commission with the authority "to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions" of the FPA.

³⁶⁶ See Part IV.N., *supra*, for further discussion of this issue.

³⁶⁷ As proposed in the NOPR, § 16.21(b) used the word "allowing"; however, the intent of the provision was to give the Commission the authority to "require" continued operation. Section 16.21(b) is being revised accordingly.

³⁶⁸ 16 U.S.C. § 825h (1982).

Q. Exemptions

Current Commission regulations state that the Commission will accept an exemption application for a project currently under license, but only if the exemption applicant is the licensee.³⁶⁹ Accordingly, in the NOPR the Commission specified the requirements regarding the filing of exemption applications by existing licensees of projects with licenses subject to sections 14 and 15 of the FPA (§ 16.12), and by existing licensees of projects with minor licenses not subject to sections 14 and 15 of the FPA (§ 16.22). These regulations would subject existing licensees intending to file exemption applications to the same provisions applicable to applicants for new license regarding notices of intent, access, consultation, application filing deadlines, providing of information, and Commission processing of the applications.³⁶⁰

The Small Business Administration objects to making exemption applicants follow the same procedures applicable to applicants for new license, stating that existing consultation and filing provisions are adequate. The Commission believes, however, that, in order to eliminate confusion and to be consistent with the scheme of regulation established by ECPA, the same procedural requirements should be followed by all applicants. However, the Commission is revising § 16.22 to eliminate the requirement that existing licensees having minor licenses not subject to sections 14 and 15 of the FPA, provide the information specified in § 16.10 when filing exemption applications.

R. Prohibitions Against Filing Applications and Additional Procedures

In the NOPR, the Commission proposed that an existing licensee who informed the Commission in its FPA section 15(b)(1) notice of intent that it did not intend to file an application would be prohibited from filing an application for new license.³⁶¹ In

³⁶⁰ See 18 CFR 4.33(d)(ii) (1988). Commission regulations provide for two types of exemptions from licensing: for a small hydroelectric power project of five megawatts or less (governed by 18 CFR Part 4 Subpart K (1988)), and for a small conduit hydroelectric facility (governed by 18 CFR Part 4 Subpart L (1988)). An existing licensee filing an exemption application must comply with the provisions of Subpart K or L, as appropriate. In the case of five megawatt exemptions, the existing licensee must propose to increase the generating capacity of its project. See 18 CFR 4.30(b)(12) (1988).

³⁶¹ See § 16.12 (b) and (c) and § 16.22(b).

³⁶² Proposed § 16.23(a).

addition, the Commission proposed to prohibit an existing licensee from filing an application if it failed to do so by the 24-month filing deadline established by section 15(c)(1) of the FPA.³⁶³

The Commission also proposed in the NOPR that, if an existing licensee informed the Commission in its FPA section 15(b)(1) notice of intent that it would file an application, but failed to do so, and no other applications were filed, or if all timely filed applications were subsequently rejected or dismissed pursuant to § 4.32,³⁶⁴ the Commission would issue a public notice soliciting applications from potential applicants other than the existing licensee.³⁶⁵ If one or more notices of intent to file an application were filed with the Commission within 90 days of the notice, the applicants filing the notices of intent could, within 18 months from the dates their notices of intent were filed with the Commission, file applications for license for their projects pursuant to section 4(e) of the FPA.³⁶⁶

Existing licensees would be required to file, for the Director's approval, a schedule for the filing of a surrender application.³⁶⁷ The schedule must be filed either: (1) After the due date for filing notices of intent established in the § 16.24(a) notice, in cases where no notices of intent were filed;³⁶⁸ or (2) after the due date for applications, in cases where notices of intent were filed but no follow-up license applications were filed.³⁶⁹ Finally, after the 24-month filing deadline, existing licensees would be required to file, for the Director's approval, a schedule for the filing of a surrender application, if they indicated in their FPA section 15(b)(1) notices of intent that they did not intend to file, and no applications were in fact filed.³⁶⁰

The Commission indicated, however, that in cases where an existing licensee stated in its section 15(b)(1) notice of intent that it intended not to file an application, and no notices of intent or applications were filed pursuant to § 16.24(b), the Commission was contemplating offering an existing licensee one last opportunity to choose

³⁶³ Proposed § 16.23(b).

³⁶⁴ Pursuant to § 16.9(b)(4), an application rejected or dismissed pursuant to § 4.32 cannot be refilled after the 24-month new license application filing deadline.

³⁶⁵ Proposed § 16.24(a).

³⁶⁶ Proposed § 16.24(b)(1).

³⁶⁷ The requirements regarding the content of applications for surrender are embodied in 18 CFR Part 6 (1988).

³⁶⁸ Proposed § 16.24(c)(2).

³⁶⁹ Proposed § 16.24(c)(3).

³⁷⁰ Proposed § 16.24(c)(1).

between applying to surrender its project and applying for a license to continue to operate the project.³⁷⁰ Therefore, it solicited comments on the most appropriate approach to this situation.³⁷¹ The Commission also solicited comments on the appropriate treatment of an application filed in response to a notice issued under § 16.24(a) by a combined entity consisting of an existing licensee that failed to file a timely application and another venturer.³⁷²

The Small Business Administration supports the provisions of § 16.23 (a) and (b). However, it suggests that the section be revised to state that existing licensees failing to timely file notices of intent pursuant to section 15(b)(1) of the FPA be prohibited from filing license applications.³⁷³ It also argues that, in cases where existing licensees indicate in their section 15(b)(1) notices of intent that they are not going to file, and no applications are timely filed, then existing licensees should have a final opportunity to maintain possession of their projects.³⁷⁴

New York Electric states that, if the Commission adopts the NOPR proposal not to treat those existing licensees that file applications jointly with a third party as existing licensees, it should revise the negative notice of intent provisions of § 16.23(a) to allow an existing licensee filing a negative notice of intent, to file a timely application in conjunction with another entity.

American Rivers supports the provisions of § 16.24. It also states that it has no objection to existing licensees filing applications in conjunction with third parties in response to a § 16.24(a) notice, as long as the existing licensee is not permitted to enjoy the advantages of incumbency. In addition, it states that it can see no reason why an existing

³⁷⁰ See NOPR preamble at 7.

³⁷¹ See NOPR preamble at 8.

³⁷² See NOPR preamble at 7.

³⁷³ A similar suggestion was made by Rochester Gas.

³⁷⁴ The Small Business Administration contends that the Commission can address this problem by requesting existing licensees to file applications for annual license pursuant to section 15(a)(1) of the FPA. Although it is not entirely clear on this point, it appears to argue that, if the existing licensee files an application for annual license and the Commission grants such an annual license, the existing licensee would continue to operate its project indefinitely under annual license.

As discussed previously (see Part IV.N., *supra*), annual licenses are granted automatically; no application is required on the part of the existing licensee. Also, an annual license will continue only until either the Commission grants a new license, Federal takeover occurs, or the existing licensee vacates the site pursuant to Commission order. Perpetual annual licenses are not authorized. See *La Courte Oreilles Band v. FPC*, 510 F.2d 198, 209-10 (D.C. Cir. 1975).

licensee should not be allowed to apply for an original license when no other applications are timely filed pursuant to the § 16.24(b) procedures. However, American Rivers states that existing licensees should be afforded this right only if they file notices of intent pursuant to § 16.24(b), and that those failing to do so should be required to file applications for surrender. Finally, it suggests that the regulations be revised to clarify that existing licensees will be required to file applications for surrender when the Commission determines that no new license should be issued for a project.

Wildlife Federation contends that existing licensees should be provided with an opportunity to file either original applications for license or surrender applications in cases where no other entity expresses an interest in a site by filing notices of intent and license applications pursuant to the § 16.24(b) procedures. However, Wildlife Federation argues that the Commission should state a presumption in favor of requiring existing licensees to file for surrender in such cases.³⁷⁵

Long Lake contends that the Commission generally should not permit an existing licensee that indicated in its section 15(b)(1) notice of intent that it would file an application, but does not in fact do so, to file a joint application with another venturer. However, it suggests that it might be appropriate to allow a joint application to be filed when no other applications are filed after notice soliciting such other applications is issued, and when it would be in the public interest to allow a project to continue to be operated under license. Long Lake also contends that an existing licensee should be required to file an application for surrender and dismantle its project when it states in its sections 15(b)(1)

³⁷⁵ Wildlife Federation also suggests that the Commission revise the proposed regulations to require existing licensees to file applications either for surrender or conversion to a nonpower license in cases where the Commission determines that it should not issue a power license for a project. Also, it contends that the regulations governing applications for nonpower license (§ 16.11) should be revised to indicate that nongovernmental entities can apply for and obtain nonpower licenses.

The annual license provisions of section 15(a)(1) of the FPA, which are discussed in Part IV.N., *supra*, do not provide the Commission with the authority to require existing licensees to apply for, and continue to operate their projects involuntarily under, nonpower licenses. Consequently, the Commission declines to make the revision. Also, there is no need to revise § 16.11 as suggested by it, since § 16.11 does not limit those who can file applications for nonpower license to governmental entities; any entity, including an existing licensee or a private third party, can file an application for nonpower license under section 15(a)(1) of the FPA as implemented by § 16.11.

notice that it does not intend to file an application, and no other entity files an application.

Rochester Gas and the Wisconsin Department state that an existing licensee should be provided with an opportunity to file a license application, instead of an application for surrender, in cases where no other applications are filed. The Department of Commerce and the Michigan Department contend that existing licensees should not be provided with this opportunity. Finally, Washington Wildlife contends that, if no new license is issued for a project because either no application is filed or the Commission determines that no new license should be granted, the existing licensee, at the request of the resource agencies, should be required to remove project structures.

As recommended by the Small Business Administration and Rochester Gas, and consistent with ECPA's legislative history,³⁷⁶ the Commission is adding a new section³⁷⁷ specifying that the failure of an existing licensee to file a timely section 15(b)(1) notice of intent will be deemed a negative notice of intent. As discussed below, this will prohibit the existing licensee from filing an application for the site.

The Commission is retaining the provisions of proposed § 16.23 (redesignated § 16.24 by this final rule³⁷⁸), prohibiting existing licensees that file negative section 15(b)(1) notices of intent from filing applications, and prohibiting the filing of applications after the new application filing deadline. Existing licensees should ascertain in a timely manner whether they intend to file. A negative notice of intent could mislead potential competitors. Therefore, the prohibition on filing applications in these circumstances is appropriate.

As to the prohibition on untimely applications by existing licensees, the Commission believes that the legislative history of ECPA³⁷⁹ requires retention of

³⁷⁶ See H.R. Rep. No. 99-507, 99th Cong. 2nd Sess. 38 (1986).

³⁷⁷ Failure to meet the [section 15(b)(1) and (c)(1)] deadlines must prejudice the affected entity. FFC has no authority in the bill to waive the deadlines or to find reasons for granting exceptions, grace periods, or otherwise recognizing excuses.

³⁷⁸ See new § 16.23. The provisions of proposed § 16.23 are now embodied in § 16.24.

³⁷⁹ In order to reflect the differing transition filing deadlines for applications for projects with licenses subject to sections 14 and 15 of the FPA and for those that are not, the text of § 16.24 is divided into two subsections covering the two situations.

³⁸⁰ See discussion, *supra*.

this provision. Also, as discussed previously,³⁰⁰ the Commission is retaining the proposed provision specifying that existing licensees filing joint applications with third parties would not be considered existing licensees for purposes of the insignificant differences provision of section 15(a)(2). Despite this, the Commission does not believe there is any need to create special processing or re-application provisions for such joint applicants, and declines to adopt those suggestions. The Commission is clarifying that the various prohibitions on the filing of applications by existing licensees apply whether the existing licensee is acting individually or in conjunction with an entity or entities that are not currently licensees of the project.³⁰¹

The Commission is also retaining the provisions of proposed § 16.24 (redesignated § 16.25 by this final rule) regarding the solicitation of applications for license from potential applicants other than the existing licensee, in cases where an existing licensee indicates in its section 15(b)(1) notice that it intends to file, and no other applications are filed by the new application filing deadline. The Commission believes that this provision is necessary to provide an opportunity to compete for the project site for entities that decide not to file applications because of an existing licensee's positive notice of intent. The Commission declines to revise the provision to permit an existing licensee to reenter the competition, since it believes that existing licensees should not be able to compete after having misled other potential applicants.

The Commission is adding a new § 16.26 to address the situation where no applications are timely filed for the project after an existing licensee states in its section 15(b)(1) notice of intent that it does not intend to file an application. This section specifies that the Director, following the expiration of the new application filing deadline, will provide the existing licensee with written notice of the fact that no timely applications for the project have been filed. The existing licensee will then be required to file, within 90 days of the notice, for the Director's approval, a schedule for the filing of a surrender application for the project. The existing licensee, as in the case where no notices of intent or applications are filed in situations covered by § 16.25, will then be required to file its surrender application under the approved schedule

and vacate the site in accordance with Commission directions.

The situation addressed by § 16.26 does not involve any misleading actions on the part of the existing licensee. However, and contrary to some of the commenters' suggestions, the Commission believes that in this situation, where no entity expresses an interest in continuing to operate a project, the relicensing process should terminate with no entity, including the existing licensee, having been afforded an additional opportunity to obtain a new license for the site. Allowing additional opportunities to file applications would be contrary to ECPA's mandate of expedition, and could prolong the process for years. Once the license expires or the surrender process is complete, the site would be open for development under applications for license filed pursuant to section 4(e) of the FPA.

The Commission declines to adopt the various suggestions made by the commenters regarding surrender applications. The revision suggested by American Rivers, to clarify that applications for surrender will be required in cases where the Commission determines no license should issue, is unnecessary. The Commission clearly has the authority to require applications for surrender in such cases, and will exercise this authorization whenever it determines that no application for a new or subsequent power license should be issued.

Washington Wildlife's suggestion, that resource agencies be provided with the authority to require an existing licensee to remove its project in cases where no new or subsequent license is to be issued, is inappropriate. As discussed previously, existing licensees will be required to file applications for surrender in these situations. Since the existing licensees are required to consult with resource agencies pursuant to § 16.8 in preparing these applications,³⁰² the resource agencies will be able to make their views known regarding the most appropriate means for an existing licensee to vacate a site. However, the authority to determine the conditions governing an existing licensee's leaving a site at the expiration of its license, including any conditions regarding the extent and timing of an existing licensee's obligation to remove project facilities and restore the site, resides exclusively with the Commission.

In many cases, existing licenses specify by way of license articles an

existing licensee's obligation to file an application for surrender and to comply with Commission orders regarding vacating the site. However, even when an existing license is silent as to these issues, the Commission retains the authority to determine the process an existing licensee will follow in providing the Commission with the information it needs to determine how a project site will be vacated, and the actual conditions governing an existing licensee's vacation of a site. The Commission's authority in this regard is derived from its general authority under section 309 of the FPA to issue orders necessary and appropriate to carry out the provisions of the FPA, and its authority under section 10(c) of the FPA³⁰³ to prescribe rules and regulations necessary to protect life, health, and property.

The Commission's authority under these provisions of the FPA is broad,³⁰⁴ and permits the Commission to take any reasonable action under the FPA necessary to regulate in the public interest all aspects of hydroelectric use of the nation's waters. Thus, the Commission can require an existing licensee to file an application for surrender, and comply with Commission orders regarding removal of project structures, even in cases where an existing minor licensee not filing an application for subsequent license proposes to cease, at the expiration of its license, the jurisdictional activity that initially required it to obtain a license.³⁰⁵

S. Miscellaneous

As discussed previously, applicants for new or subsequent license are required to comply with, *inter alia*, the Commission's regulations governing the content of applications (18 CFR §§ 4.41, 4.51, or 4.61 (1988), as appropriate).³⁰⁶ A

³⁰⁰ 18 U.S.C. 803(c) (1982).

³⁰¹ See, e.g., *Niagara Mohawk Power Corporation v. FPC*, 379 F.2d 153 (D.C. Cir. 1967).

³⁰² One of the purposes of § 16.21(b) is to clarify, for holders of existing minor licenses that do not file applications for subsequent license, that the Commission has the authority to require them to continue operating their projects after expiration, if necessary for the Commission to determine the conditions governing the minor licensee's vacation of the site.

³⁰³ See § 16.9(b)(2) and § 16.20(d) (referring to § 16.9(b)(2)). Sections 4.41, 4.51, and 4.61 deal with, respectively, license applications for major unconstructed and major modified projects; major projects involving an existing dam with a total installed capacity of more than five megawatts; and minor water power projects and major water power projects with a total installed capacity of five megawatts or less. The use of the word "appropriate" in § 16.9(b)(2) means that applicants must conform their applications to the section that

Continued

few commenters³⁰⁷ suggest that the Commission create "stand-alone" relicensing regulations that would contain all provisions applicable to relicensing applications and proceedings and would not reference back to the Part 4 regulations. They contend this is necessary to eliminate confusion.

The incorporation into the Part 16 regulations and possible revision of §§ 4.41, 4.51, and 4.61 would be a significant and unnecessary undertaking. The Commission believes its clarification of such issues as the location in applications of the § 16.10 information, and potential applicants' responsibilities regarding the collection of "baseline" data, will eliminate much of the confusion referenced by the commenters. Potential applicants with questions regarding the applicability of specific provisions of the Part 4 regulations can, and are encouraged to, contact Commission staff to obtain any needed clarification.

V. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)³⁰⁸ generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.³⁰⁹ Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the proposed relicensing regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities, and that, even if the rule were to have a significant economic impact on a substantial number of small entities, it would be to their benefit. The Commission believes that most of the entities affected by the rule do not fall within RFA's definition of "small entity." Even if the rule would have a significant effect on a substantial number of small entities, however, application requirements proposed in this rule are necessary for the Commission to grant a new or subsequent license to an applicant at the expiration of an existing license term. Any applicant may benefit substantially by obtaining a license. The notice and

governs their projects (*i.e.*, either § 4.41, § 4.51, or § 4.61), not pick and choose among the various provisions of these three sections as they deem appropriate.

³⁰⁷ See, e.g., the comments of National Hydropower and PC&E.

³⁰⁸ 5 U.S.C. 601-612 (1982).

³⁰⁹ Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to Section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a) (1982).

information requirements for licensees are mandated by statute.³¹⁰

VI. Paperwork Reduction Act Statement

The Paperwork Reduction Act (PRA)³¹¹ and the Office of Management and Budget (OMB) regulations³¹² require the OMB to approve certain information collection requirements imposed by agency rule. The information collection requirements in this final rule are contained in FERC-500, Application for License for Water Power Projects With More Than 5 MW Capacity, and FERC-505, Application for License for Water Power Projects 5 MW or Less.

Part I of the FPA gives the Commission jurisdiction over the licensing of hydropower projects. The amendments to section 15 of the FPA made by ECPA mandate that the Commission consider additional factors in granting a new license (relicensing) and establish new procedures for filing an application for a new license. A number of hydropower projects are expected to apply for license renewal in the near future.

Owners and operators of hydropower projects subject to these rules are the likely respondents. Applications for licenses for water power projects having more than a 5 MW capacity (FERC-500) are estimated to have a total annual reporting time of 40,768 hours. The estimated number of respondents is 49; the frequency of response per year is one; and the estimated average number of hours per response is 832. Applications for licenses for a water power project having a capacity of 5 MW or less (FERC-505) are estimated to have a total annual reporting time of 12,460 hours. The number of respondents per year is estimated to be 70; the frequency of response per year is estimated to be one, and the estimated average number of hours per response is 178.

VII. National Environmental Policy Act Statement

Commission regulations require that an environmental assessment or an environmental impact statement (EIS) be prepared for any Commission action that may have a significant adverse effect on the human environment.³¹³

³¹⁰ Comments were received from the Small Business Administration. The Commission's response to these comments is found in Part IV of this preamble.

³¹¹ 44 U.S.C. 3501-3520 (1982).

³¹² 5 CFR 1320.21(a)(2) (1988).

³¹³ Regulations Implementing National Environmental Policy Act, 52 Fed. Reg. 47897 (Dec. 17, 1987), codified at 18 CFR Part 380.

The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.³¹⁴ No environmental consideration is necessary for the promulgation of a rule that is clarifying, corrective, or procedural, or that does not substantially change the effect of legislation or regulations being amended.³¹⁵

This final rule is procedural in nature. It proposes certain information that must be included with an application. Thus, no environmental assessment or environmental impact statement is necessary for the requirements proposed in this rule.

The Department of Commerce asserts that these proposed regulations "provide new requirements which will impair collection of adequate information regarding environmental effects, restrict the abilities of agencies to consult with applicants compared with current practice, and fail to establish standards for Commission action consistent with the Electric Consumers Protection Act (ECPA) and other law." The Department of Commerce then concludes, without further argument or amplification, that an EIS must be prepared because the regulations are not procedural in nature but constitute a substantive change. The Commission disagrees.

The final rule revises the procedures that govern relicensing of hydroelectric power projects subject to sections 14 and 15 of the FPA. Contrary to the suggestions of Commerce, the rule does not substantially change existing Commission regulations providing for pre-filing consultation with all appropriate agencies. The affected projects have been in existence for decades. The regulations do not authorize the construction or operation of any project, but merely determine the procedures by which such construction or operation will be considered on a case-by-case basis in future proceedings. Accordingly, the Commission concludes that these procedural rules will not have any significant adverse effects on the quality of the human environment such as to require the preparation of an EIS.

VII. Effective Date

This rule is effective July 3, 1989. If OMB has not approved the information collection provisions at that time, the Commission will issue a notice delaying the effective date until OMB approval of the final rule.

³¹⁴ See 18 CFR 380.4 (1988).

³¹⁵ See 18 CFR 380.4(a)(2)(ii) (1982).

³⁰⁰ See Part IV.M., *supra*.

³⁰¹ See §§ 16.24 (a) (1) and (2), (b) (1) and (2), and 16.25(a).

³⁰² See §§ 16.25(d) and 16.26(c).

List of Subjects

18 CFR Part 4

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 16

Electric power.

In consideration of the foregoing, the Commission amends Parts 4 and 16 of Chapter I, Title 18, Code of Federal Regulations as set forth below.

By the Commission. Commissioner Stalon dissented in part with a separate statement to be issued later. Commissioner Trabandt concurred in part and dissented in part with a separate statement attached. Commissioner Moler concurred with a separate statement attached.

Linwood A. Watson, Jr.,
Acting Secretary.

PART 4—LICENSES, PERMITS, EXEMPTIONS, AND DETERMINATION OF PROJECT COSTS

1. The authority citation for Part 4 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a-825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. No. 99-495; Public Utility Regulatory Policies Act of 1978, 16 U.S.C. 2601-2645 (1982); Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

2. In § 4.60, a new paragraph (c) is added to read as follows:

§ 4.60 Applicability and notice to agencies.

(c) Unless an applicant for a license for a minor water power project requests in its application that the Commission apply the following provisions of Part I of the Federal Power Act when it issues a minor license for a project, the Commission, unless it determines it would not be in the public interest to do so, will waive:

(1) Section 4(b), insofar as it requires a licensee to file a statement showing the actual legitimate costs of construction of a project;

(2) Section 4(e), insofar as it relates to approval by the Chief of Engineers and the Secretary of the Army of plans affecting navigation;

(3) Section 6, insofar as it relates to the acceptance and expression in the license of terms and conditions of the Federal Power Act that are waived in the licensing order;

(4) Section 10(c), insofar as it relates to a licensee's maintenance of depreciation reserves;

(5) Sections 10(d) and 10(f);

(6) Section 14, with the exception of the right of the United States or any

state or municipality to take over, maintain, and operate a project through condemnation proceedings; and

(7) Sections 15, 16, 19, 20 and 22.

3. In § 4.61, paragraph (f)(3) is revised to read as follows:

§ 4.61 Contents of application

(f) . . .

(3)(i) If an application for a license for a minor water power project that will not occupy any public lands or reservations of the United States does not contain a statement that the applicant requests the Commission to apply the provisions of Part I of the Federal Power Act enumerated in § 4.60(c), the applicant:

(A) Must provide a reasonably accurate description of the project location and all project works and features; and

(B) Must identify, in Exhibit G of its application, the owners of all lands necessary for the construction and operation of the project; but

(C) Need not show a project boundary.

(ii) If an application for a license for a minor water power project contains a statement that the applicant requests the Commission to apply the provisions of Part I of the Federal Power Act enumerated in § 4.60(c), the applicant must show the project boundary on the map it submits as Exhibit G to its application, as specified in § 4.41(h)(2).

(iii) If an application for a license for a minor water power project proposes that the project would occupy any public lands or reservations of the United States, the applicant must show the project boundaries on public lands and reservations on the map it submits as Exhibit G to its application, as specified in § 4.41(h)(2).

PART 16—PROCEDURES RELATING TO TAKEOVER AND RELICENSING OF LICENSED PROJECTS

4. The authority citation for Part 16 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a-825r, as amended by the Electric Consumers Protection Act of 1986, Pub. L. No. 99-495; Department of Energy Organization Act, 42 U.S.C. 7101-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142.

5. Sections 16.1 through 16.5 are revised and designated Subpart A, to read as follows:

Subpart A—General Provisions

§ 16.1 Applicability.

This part applies to the filing and processing of an application for:

(a) A new license, a nonpower license, or an exemption from licensing for a hydroelectric project with an existing license subject to the provisions of sections 14 and 15 of the Federal Power Act.

(b) A subsequent license or an exemption from licensing for a hydroelectric project with an existing minor license or minor part license not subject to the provisions of sections 14 and 15 of the Federal Power Act because those sections were waived pursuant to section 10(i) of the Federal Power Act.

§ 16.2 Definitions.

For purposes of this part:

(a) "New license" means a license, except an annual license, for a water power project that is issued under section 15(a) of the Federal Power Act after an original license expires.

(b) "New license application filing deadline", as provided in section 15(c)(1) of the Federal Power Act, is the date 24 months before the expiration of an existing license.

(c) "Nonpower license" means a license for a nonpower project issued under section 15(b) of the Federal Power Act.

(d) "Resource agency" means a Federal, state, or interstate agency with responsibilities in the areas of flood control, navigation, irrigation, recreation, fish or wildlife, water resource management, or cultural or other relevant resources of the state or states in which a project is or will be located.

(e) "Subsequent license" means a license for a water power project issued under Part I of the Federal Power Act after a minor or minor part license that is not subject to sections 14 and 15 of the Federal Power Act expires.

§ 16.3 Public notice of projects under expiring licenses.

In addition to the notice of a licensee's intent to file or not to file an application for a new license provided in § 16.6(d), the Commission will publish, in its annual report and annually in the Federal Register, a table showing the projects whose licenses will expire during the succeeding six years. The table will:

(a) List the licenses according to their expiration dates; and

(b) Contain the following information: license expiration date; licensee's name; project number; type of principal project works licensed, e.g., dam and reservoir, powerhouse, transmission lines; location by state, county, and stream; location by city or nearby city when appropriate;

whether the existing license is subject to sections 14 and 15 of the Federal Power Act; and plant installed capacity.

§ 16.4 Acceleration of a license expiration date.

(a) *Request for acceleration.* (1) A licensee may file with the Commission, in accordance with the formal filing requirements in Subpart T of Part 385 of this chapter, a written request for acceleration of the expiration date of its existing license, containing the statements and information specified in § 16.6(b) and a detailed explanation of the basis for the acceleration request.

(2) If the Commission grants the request for acceleration pursuant to paragraph (c), the Commission will deem the request for acceleration to be a notice of intent under § 16.6 and, unless the Commission directs otherwise, the licensee shall make available the information specified in § 16.7 no later than 90 days from the date that the Commission grants the request for acceleration.

(b) *Notice of request for acceleration.* (1) Upon receipt of a request for acceleration, the Commission will give notice of the licensee's request and provide a 45-day period for comments by interested persons by:

(i) Publishing notice in the Federal Register;

(ii) Publishing notice once in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated; and

(iii) Notifying appropriate Federal, state, and interstate resource agencies and Indian tribes by mail.

(2) The notice issued pursuant to paragraphs (1) (i) and (ii) and the written notice given pursuant to paragraph (1)(iii) will be considered as fulfilling the notice provisions of § 16.6(d) should the Commission grant the acceleration request and will include an explanation of the basis for the licensee's acceleration request.

(c) *Commission order.* If the Commission determines it is in the public interest, the Commission will issue an order accelerating the expiration date of the license to not less than five years and 90 days from the date of the Commission order.

§ 16.5 Site access for a competing applicant.

(a) *Access.* If a potential applicant for a new license, subsequent license, or nonpower license for a project has complied with the first stage consultation provisions of § 16.8(b)(1) and has notified the existing licensee in writing of the need for and extent of the

access required, the existing licensee must allow the potential applicant to enter upon or into designated land, buildings, or other property in the project area at a reasonable time and under reasonable conditions, including, but not limited to, reasonable liability conditions, conditions for compensation to the existing licensee for all reasonable costs incurred in providing access, including energy generation lost as a result of modification of project operations that may be necessary to provide access, and in a manner that will not adversely affect the environment, for the purposes of:

(1) Conducting a study or gathering information required by a resource agency under § 16.8 or by the Commission pursuant to § 4.32 of this chapter;

(2) Conducting a study or gathering information not covered by paragraph (a)(1) but necessary to prepare an application for new license, subsequent license, or nonpower license; or

(3) Holding a site visit for a resource agency under § 16.8.

(b)(1) *Disputes.* Except as specified by paragraph (b)(2), disputes regarding the timing and conditions of access for the purposes specified in paragraphs (a) (1), (2), or (3) of this section and the need for the studies or information specified in paragraph (a)(2) may be referred to the Director of the Office of Hydropower Licensing for resolution in the manner specified in § 16.8(b)(5) prior to the providing of access.

(2) Disputes regarding the amount of compensation to be paid the existing licensee for access may be referred to the Director of the Office of Hydropower Licensing for resolution in the manner specified in § 16.8(b)(5) after the access has been provided.

§ 16.15 [Redesignated as § 16.6]

6. Section 16.15 is redesignated as § 16.6 and paragraph (d)(2) is revised to read as follows:

§ 16.6 Notification procedures under section 15 of the Federal Power Act.

(d) . . .

(2) Publishing notice once in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated; and

§ 16.7 [Removed]

7. Section 16.7 is removed.

§ 16.16 [Redesignated as § 16.7]

8. Section 16.16 is redesignated as § 16.7.

9. Sections 16.8 through 16.13 are revised and, together with newly redesignated §§ 16.6 and 16.7, are designated as Subpart B.

Subpart B—Applications for Projects Subject to Sections 14 and 15 of the Federal Power Act

§ 16.8 Consultation requirements.

(a) *Requirement to consult.* (1) Before it files an application for a new license, a nonpower license, an exemption from licensing, or, pursuant to § 16.25 or § 16.26, a surrender of a project, a potential applicant must consult with the relevant Federal, state, and interstate resource agencies, including the National Marine Fisheries Service, the United States Fish and Wildlife Service, the United States Environmental Protection Agency, the Federal agency administering any United States lands utilized or occupied by the project, the appropriate state fish and wildlife agencies, the appropriate state water resource management agencies, and the certifying agency under section 401 of the Federal Water Pollution Control Act (Clean Water Act), 33 U.S.C. 1341.

(2) The Director of the Office of Hydropower Licensing or the Regional Director responsible for the area in which the project is located will provide a list of known appropriate Federal, state, and interstate resource agencies upon request.

(b) *First stage of consultation.* (1) A potential applicant must provide each of the appropriate resource agencies and the Commission with the following information:

(i) Detailed maps showing existing project boundaries, if any, proper land descriptions of the entire project area by township, range, and section, as well as by state, county, river, river mile, and closest town, and also showing the specific location of all existing and proposed project facilities, including roads, transmission lines, and any other appurtenant facilities;

(ii) A general engineering design of the existing project and any proposed changes, with a description of any existing or proposed diversion of a stream through a canal or a penstock;

(iii) A summary of the existing operational mode of the project and any proposed changes;

(iv) Identification of the environment affected or to be affected, the significant resources present and the applicant's existing and proposed environmental protection, mitigation, and enhancement plans, to the extent known at that time;

(v) Streamflow and water regime information, both existing and proposed, including drainage area, natural flow periodicity, monthly flow rates and durations, mean flow figures illustrating the mean daily streamflow curve for each month of the year at the point of diversion or impoundment, with location of the stream gauging station, the method used to generate the streamflow data provided, and copies of all records used to derive the flow data used in the applicant's engineering calculations;

(vi) Detailed descriptions of any proposed studies and the proposed methodologies to be employed; and

(vii) Any statement required by § 4.301(a) of this chapter.

(2) Not earlier than 30 days, but not later than 60 days, from the date of the potential applicant's letter transmitting the information to the agencies under paragraph (b)(1) of this section, the potential applicant will:

(i) Hold a joint meeting, including an opportunity for a site visit, with all pertinent agencies to review the information and to discuss the data and studies to be provided by the potential applicant as part of the consultation process; and

(ii) Consult with the resource agencies on the scheduling of the joint meeting and provide each resource agency and the Commission with written notice of the time and place of the joint meeting and a written agenda of the issues to be discussed at the meeting at least 15 days in advance.

(3) Members of the public are invited to attend the joint meeting held pursuant to paragraph (b)(2)(i) of this section. Members of the public attending the meeting are entitled to participate fully in the meeting and to express their views regarding resource issues that should be addressed in any application for new license that may be filed by the potential applicant. Attendance of the public at any site visit held pursuant to paragraph (b)(2)(i) of this section shall be at the discretion of the potential applicant. The potential applicant must make either audio recordings or written transcripts of the joint meeting, and must upon request promptly provide copies of these recordings or transcripts to the Commission and any resource agency.

(4) Unless otherwise extended by the Director of the Office of Hydropower Licensing pursuant to paragraph (b)(5) of this section, not later than 60 days after the joint meeting held under paragraph (b)(2) of this section each interested resource agency must provide a potential applicant with written comments:

(i) Identifying its determination of necessary studies to be performed or information to be provided by the potential applicant;

(ii) Identifying the basis for its determination;

(iii) Discussing its understanding of the resource issues and its goals and objectives for these resources;

(iv) Explaining why each study methodology recommended by it is more appropriate than other available methodology alternatives, including those identified by the potential applicant pursuant to paragraph (b)(1)(vi) of this section;

(v) Documenting that the use of each study methodology recommended by it is a generally accepted practice, and

(vi) Explaining how the studies and information requested will be useful to the agency in furthering its resource goals and objectives.

(5)(i) If a potential applicant and a resource agency disagree as to any matter arising during the first stage of consultation or as to the need to conduct a study or gather information referenced in paragraph (c)(2) of this section, the potential applicant or resource agency may refer the dispute in writing to the Director of the Office of Hydropower Licensing for resolution.

(ii) The entity referring the dispute must serve a copy of its written request for resolution on the disagreeing party at the time the request is submitted to the Director. The disagreeing party may submit to the Director of the Office of Hydropower Licensing a written response to the referral within 15 days of the referral's submittal to the Director.

(iii) Written referrals to the Director of the Office of Hydropower Licensing and written responses thereto pursuant to paragraphs (b)(5)(i) or (b)(5)(ii) of this section must be filed with the Secretary of the Commission in accordance with the Commission's Rules of Practice and Procedure, and must indicate that they are for the attention of the Director of the Office of Hydropower Licensing pursuant to § 16.8(b)(5).

(iv) The Director of the Office of Hydropower Licensing will resolve disputes by letter provided to the potential applicant and the disagreeing resource agency.

(v) If a potential applicant does not refer a dispute regarding a request for information (other than a dispute regarding the information specified in paragraph (b)(1) of this section) or a study to the Director under paragraph (b)(5)(i) of this section or if a potential applicant disagrees with the Director's resolution of a dispute regarding a request for information (other than a

dispute regarding the information specified in paragraph (b)(1) of this section) or a study, and if the potential applicant does not provide the requested information or conduct the requested study, the potential applicant must fully explain the basis for its disagreement in its application.

(vi) Filing and acceptance of an application will not be delayed, and an application will not be considered deficient or patently deficient pursuant to § 4.32 (e)(1) or (e)(2) of this chapter, merely because the application does not include a particular study or particular information if the Director of the Office of Hydropower Licensing had previously found, under paragraph (b)(5)(iv) of this section, that such study or information was unreasonable or unnecessary.

(6) Unless otherwise extended by the Director of the Office of Hydropower Licensing pursuant to paragraph (b)(5) of this section, the first stage of consultation ends when all participating agencies provide the written comments required under paragraph (b)(4) of this section or 60 days after the joint meeting held under paragraph (b)(2) of this section, whichever occurs first.

(c) *Second stage of consultation.* (1) Unless determined otherwise by the Director of the Office of Hydropower Licensing pursuant to paragraph (b)(5), a potential applicant must complete all reasonable and necessary studies and obtain all reasonable and necessary information requested by resource agencies under paragraph (b) of this section:

(i) Prior to filing the application, if the results:

(A) Would influence the financial (e.g., instream flow study) or technical feasibility of the project (e.g., study of potential mass soil movement); or

(B) Are needed to determine the design or location of project features, reasonable alternatives to the project, the impact of the project on important natural or cultural resources (e.g., resource surveys), suitable mitigation or enhancement measures, or to minimize impact on significant resources (e.g., wild and scenic river, anadromous fish, endangered species, caribou migration routes);

(ii) After filing the application but before license issuance, if the applicant complied with the provisions of paragraph (b)(1) of this section no later than four years prior to the expiration date of the existing license and the results:

(A) Would be those described in paragraphs (c)(1)(i) (A) or (B) of this section; and

(B) Would take longer to conduct and evaluate than the time between the conclusion of the first stage of consultation and the new license application filing deadline.

(iii) After a new license is issued, if the studies can be conducted or the information obtained only after construction or operation of proposed facilities, would determine the success of protection, mitigation, or enhancement measures (e.g., post-construction monitoring studies), or would be used to refine project operation or modify project facilities.

(2) If, after the end of the first stage of consultation as defined in paragraph (b)(6) of this section, a resource agency requests that the potential applicant conduct a study or gather information not previously identified and specifies the basis for its request, the potential applicant will promptly initiate the study or gather the information, unless the Director of the Office of Hydropower Licensing determines under paragraph (b)(5) of this section either that the study or information is unreasonable or unnecessary or that use of the methodology requested by a resource agency for conducting the study is not a generally accepted practice.

(3) (i) The results of studies and information gathering referenced in paragraphs (c)(1)(ii) and (c)(2) of this section will be treated as additional information; and

(ii) Filing and acceptance of an application will not be delayed and an application will not be considered deficient or patently deficient pursuant to § 4.32 (e)(1) or (e)(2) of this chapter merely because the study or information gathering is not complete before the application is filed.

(4) A potential applicant must provide each resource agency with:

(i) A copy of its draft application that: (A) Indicates the type of application the potential applicant expects to file with the Commission; and

(B) Responds to any comments and recommendations made by any resource agency either during the first stage of consultation or under paragraph (c)(2) of this section;

(ii) The results of all studies and information gathering either requested by that resource agency in the first stage of consultation (or under paragraph (c)(2) of this section if available) or which pertain to resources of interest to that resource agency and which were identified by the potential applicant pursuant to paragraph (b)(1)(vi) of this section, including a discussion of the results and any proposed protection, mitigation, or enhancement measure; and

(iii) A written request for review and comment.

(5) A resource agency will have 90 days from the date of the potential applicant's letter transmitting the paragraph (c)(4) information to it to provide written comments on the information submitted by a potential applicant under paragraph (c)(4).

(6) If the written comments provided under paragraph (c)(5) of this section indicate that a resource agency has a substantive disagreement with a potential applicant's conclusions regarding resource impacts or its proposed protection, mitigation, or enhancement measures, the potential applicant will:

(i) Hold at least one joint meeting with the disagreeing resource agency and other agencies with similar or related areas of interest, expertise, or responsibility not later than 60 days from the date of the disagreeing agency's written comments to discuss and to attempt to reach agreement on its plan for environmental protection, mitigation, or enhancement measures; and

(ii) Consult with the disagreeing agency and other agencies with similar or related areas of interest, expertise, or responsibility on the scheduling of the joint meeting and provide the disagreeing resource agency, other agencies with similar or related areas of interest, expertise, or responsibility, and the Commission with written notice of the time and place of each meeting and a written agenda of the issues to be discussed at the meeting at least 15 days in advance.

(7) The potential applicant and any disagreeing resource agency may conclude a joint meeting with a document embodying any agreement among them regarding environmental protection, mitigation, or enhancement measures and any issues that are unresolved.

(8) The potential applicant must describe all disagreements with a resource agency on technical or environmental protection, mitigation, or enhancement measures in its application, including an explanation of the basis for the applicant's disagreement with the resource agency, and must include in its application any document developed pursuant to paragraph (c)(7) of this section.

(9) A potential applicant may file an application with the Commission if:

(i) It has complied with paragraph (c)(4) of this section and no resource agency has responded with substantive disagreements by the deadline specified in paragraph (c)(5) of this section; or

(ii) It has complied with paragraph (c)(6) of this section if any resource agency has responded with substantive disagreements.

(10) The second stage of consultation ends:

(i) Ninety days after the submittal of information pursuant to paragraph (c)(4) of this section in cases where no resource agency has responded with substantive disagreements; or

(ii) At the conclusion of the last joint meeting held pursuant to paragraph (c)(6) of this section in cases where a resource agency has responded with substantive disagreements.

(d) *Third stage of consultation.* (1) The third stage of consultation is initiated by the filing of an application for a new license, nonpower license, exemption from licensing, or surrender of license.

(2) When an applicant files such application documents with the Commission, or promptly after receipt in the case of documents described in paragraph (d)(2)(iii) of this section, it must serve on every resource agency consulted, and, in the case of applications for surrender or nonpower license, any state, municipal, interstate, or Federal agency which is authorized to assume regulatory supervision over the land, waterways, and facilities covered by the application for surrender or nonpower license, a copy of:

(i) Its application for a new license, a nonpower license, an exemption from licensing, or a surrender of the project;

(ii) Any deficiency correction, revision, supplement, response to additional information request, and amendment to the application; and

(iii) Any written correspondence from the Commission requesting the correction of deficiencies or the submittal of additional information.

(e) *Resource agency waiver of compliance with consultation requirements.* (1) If a resource agency waives in writing compliance with any requirement of this section, a potential applicant does not have to comply with that requirement as to that agency.

(2) If a resource agency fails to timely comply with a provision regarding a requirement of this section, a potential applicant may proceed to the next sequential requirement of this section without waiting for the resource agency to comply.

(3) The failure of a resource agency to timely comply with a provision regarding a requirement of this section does not preclude its participation in subsequent stages of the consultation process.

(f) *Application requirements documenting consultation and any*

disagreements with resource agencies. An applicant must show in Exhibit E of its application that it has met the requirements of paragraphs (b) through (d) of this section, and § 16.8(i), and must include:

(1) Any resource agency letters containing comments, recommendations, and proposed terms and conditions;

(2) Any letters from the public containing comments and recommendations;

(3) Notice of any remaining disagreement with a resource agency on:

(i) The need for a study or the manner in which a study should be conducted and the applicant's reasons for disagreement, and

(ii) Information on any environmental protection, mitigation, or enhancement measure, including the basis for the applicant's disagreement with the resource agency.

(4) Evidence of any waivers under paragraph (e) of this section;

(5) Evidence of all attempts to consult with a resource agency, copies of related documents showing the attempts, and documents showing the conclusion of the second stage of consultation;

(6) An explanation of how and why the project would, would not, or should not, comply with any relevant comprehensive plan as defined in § 2.19 of this chapter and a description of any relevant resource agency determination regarding the consistency of the project with any such comprehensive plan;

(7)(i) With regard to certification requirements for a license applicant under section 401(a)(1) of the Clean Water Act:

(A) A copy of the water quality certification;

(B) A copy of the request for certification, including proof of the date on which the certifying agency received the request in accordance with applicable law governing filings with that agency; or

(C) Evidence of waiver of water quality certification as described in paragraph (f)(7)(ii) of this section.

(ii) A certifying agency is deemed to have waived the certification requirements of section 401(a)(1) of the Clean Water Act under the same circumstances as set out in § 4.38(e)(2) of this chapter.

(iii) Any material amendment, as defined under § 4.35(f) of this chapter, to plans of development for the existing project proposed in an application for a license requires a new request for certification; and

(8) A description of how the applicant's proposal addresses the significant resource issues raised by

members of the public during the joint meeting held pursuant to paragraph (b)(2) of this section.

(g) *Confidentiality of pre-filing submissions.* If a potential applicant requests confidential treatment of any information submitted to the Commission during pre-filing consultation (except for the information specified in paragraph (b)(1)), the Commission will treat that request in accordance with the confidentiality provisions in § 388.112 of this chapter until the date the application is filed with the Commission.

(h) *Other meetings.* Prior to holding a meeting with a resource agency other than a joint meeting pursuant to paragraph (b)(2)(i) or (c)(6)(i) of this section, a potential applicant must provide the Commission and each resource agency with an area of interest, expertise, or responsibility similar or related to that of the resource agency with which the potential applicant is to meet with written notice of the time and place of each meeting and a written agenda of the issues to be discussed at the meeting at least 15 days in advance.

(i) *Public participation.* (1) At least 14 days in advance of the joint meeting held pursuant to paragraph (b)(2), the potential applicant must publish notice, at least once, of the purpose, location, and timing of the joint meeting, in a daily or weekly newspaper published in the county or counties in which the existing project or any part thereof or the lands affected thereby are situated.

(ii)(A) A potential applicant must make available to the public for inspection and reproduction the information specified in paragraph (b)(1) of this section from the date on which the notice required by paragraph (i)(1) of this section is first published until the date of the joint meeting required by paragraph (b)(2) of this section.

(ii) The provisions of § 16.7(e) shall govern the form and manner in which the information is to be made available for public inspection and reproduction.

(iii) A potential applicant must make available to the public for inspection at the joint meeting required by paragraph (b)(2) of this section the information specified in paragraph (b)(1) of this section.

(j) *Transition provisions.* (1) The provisions of this section are not applicable to applications filed before July 3, 1989.

(2) The provisions of paragraphs (a) and (b) of this section are not applicable

to potential applicants that complied with the provisions of § 4.38 (a) and (b)(1) of this chapter prior to July 3, 1989.

(3) The provisions of paragraph (c) are not applicable to potential applicants that complied with the provisions of § 4.38(b)(2) of this chapter prior to July 3, 1989.

(4)(i) Any applicant that files its application on or after July 3, 1989 and that complied with the provisions of § 4.38 (a) and (b)(1) of this chapter prior to July 3, 1989 must hold a public meeting, within 90 days from July 3, 1989, at or near the site of the existing project to generally explain the potential applicant's proposal for the site and to obtain the views of the public regarding resource issues that should be addressed in any application for new license that may be filed by the potential applicant. The public meeting must include both day and evening sessions, and the potential applicant must make either audio recordings or written transcripts of both sessions.

(ii) At least 14 days in advance of the meeting, the potential applicant must publish notice, at least once, of the purpose, location, and timing of the meeting, in a daily or weekly newspaper published in the county or counties in which the existing project or any part thereof or the lands affected thereby are situated.

(iii)(A) A potential applicant must make available to the public for inspection and reproduction information comparable to that specified in paragraph (b)(1) from the date on which the notice required by paragraph (j)(4)(ii) is first published until the date of the public meeting required by paragraph (j)(4)(i).

(B) The provisions of § 16.7(e) shall govern the form and manner in which the information is to be made available for public inspection and reproduction.

(C) A potential applicant must make available to the public for inspection at both sessions of the public meeting required by paragraph (j)(4)(i) of this section the information specified in paragraph (j)(4)(iii)(A).

(D) A potential applicant must upon request promptly provide to the Commission and any resource agency copies of the audio recordings or written transcripts of the sessions of the public meeting.

(iv) Any applicant holding a public meeting pursuant to paragraph (j)(4)(i) must include in its filed application a description of how the applicant's proposal addresses the significant resource issues raised during the public meeting.

(5) All requests for waiver of, or clarification regarding, the application of the provisions of this subsection to a proceeding must be submitted to the Director of the Office of Hydropower Licensing not later than 90 days after July 3, 1989 and will be subject to, and processed in accordance with, the provisions of paragraph (b)(5).

§ 16.9 Applications for new licenses and nonpower licenses for projects subject to sections 14 and 15 of the Federal Power Act.

(a) *Applicability.* This section applies to an applicant for a new license or nonpower license for a project subject to sections 14 and 15 of the Federal Power Act.

(b) *Filing requirement.* (1) An applicant for a license under this section must file its application at least 24 months before the existing license expires.

(2) An application for a license under this section must meet the requirements of § 4.32 (except that the Director of the Office of Hydropower Licensing may provide more than 90 days in which to correct deficiencies in applications) and, as appropriate, §§ 4.41, 4.51, or 4.61 of this chapter.

(3) The requirements of § 4.35 of this chapter do not apply to an application under this section, except that the Commission will reissue a public notice of the application in accordance with the provisions of § 16.9(d)(1) if an amendment described in § 4.35(f) of this chapter is filed.

(4) If the Commission rejects or dismisses an application pursuant to the provisions of § 4.32 of this chapter, the application may not be refiled after the new license application filing deadline specified in § 16.9(b)(1).

(c) *Final amendments.* All amendments to an application, including the final amendment, must be filed with the Commission and served on all competing applicants no later than the date specified in the notice issued under paragraph (d)(2).

(d) *Commission notice.* (1) Upon acceptance of an application for a new license or a nonpower license, the Commission will give notice of the application and of the dates for comment, intervention, and protests by:

(i) Publishing notice in the Federal Register;

(ii) Publishing notice once every week for four weeks in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated; and

(iii) Notifying appropriate Federal, state, and interstate resource agencies and Indian tribes by mail.

(2) Within 60 days after the new license application filing deadline, the Commission will issue a notice on the processing deadlines established under § 4.32 of this chapter, estimated dates for further processing deadlines under § 4.32 of this chapter, deadlines for complying with the provisions of § 4.36(d)(2) (ii) and (iii) of this chapter in cases where competing applications are filed, and the date for final amendments and will:

(i) Publish the notice in the Federal Register;

(ii) Provide the notice to appropriate Federal, state, and interstate resource agencies and Indian tribes; and

(iii) Serve the notice on all parties to the proceedings pursuant to § 395.2010 of this chapter.

(3) Where two or more mutually exclusive competing applications have been filed for the same project, the final amendment date and deadlines for complying with the provisions of § 4.36(d)(2) (ii) and (iii) of this chapter established pursuant to the notice issued under paragraph (d)(2) of this section will be the same for all such applications.

(4) The provisions of § 4.36(d)(2)(i) of this chapter will not be applicable to applications filed pursuant to this section.

§ 16.10 Information to be provided by an applicant for new license.

(a) *Information to be supplied by all applicants.* All applicants for a new license under this part must file the following information with the Commission:

(1) A discussion of the plans and ability of the applicant to operate and maintain the project in a manner most likely to provide efficient and reliable electric service, including efforts and plans to:

(i) Increase capacity or generation at the project;

(ii) Coordinate the operation of the project with any upstream or downstream water resource projects; and

(iii) Coordinate the operation of the project with the applicant's or other electrical systems to minimize the cost of production.

(2) A discussion of the need of the applicant over the short and long term for the electricity generated by the project, including:

(i) The reasonable costs and reasonable availability of alternative sources of power that would be needed by the applicant or its customers,

including wholesale customers, if the applicant is not granted a license for the project;

(ii) A discussion of the increase in fuel, capital, and any other costs that would be incurred by the applicant or its customers to purchase or generate power necessary to replace the output of the licensed project, if the applicant is not granted a license for the project;

(iii) The effect of each alternative source of power on:

(A) The applicant's customers, including wholesale customers;

(B) The applicant's operating and load characteristics; and

(C) The communities served or to be served, including any reallocation of costs associated with the transfer of a license from the existing licensee.

(3) The following data showing need and the reasonable cost and availability of alternative sources of power:

(i) The average annual cost of the power produced by the project, including the basis for that calculation;

(ii) The projected resources required by the applicant to meet the applicant's capacity and energy requirements over the short and long term including:

(A) Energy and capacity resources, including the contributions from the applicant's generation, purchases, and load modification measures (such as conservation, if considered as a resource), as separate components of the total resources required;

(B) A resource analysis, including a statement of system reserve margins to be maintained for energy and capacity; and

(C) If load management measures are not viewed as resources, the effects of such measures on the projected capacity and energy requirements indicated separately;

(iii) For alternative sources of power, including generation of additional power at existing facilities, restarting deactivated units, the purchase of power off-system, the construction or purchase and operation of a new power plant, and load management measures such as conservation:

(A) The total annual cost of each alternative source of power to replace project power;

(B) The basis for the determination of projected annual cost; and

(C) A discussion of the relative merits of each alternative, including the issues of the period of availability and dependability of purchased power, average life of alternatives, relative equivalent availability of generating alternatives, and relative impacts on the applicant's power system reliability and

other system operating characteristics; and

(iv) The effect on the direct providers (and their immediate customers) of alternate sources of power.

(4) If an applicant uses power for its own industrial facility and related operations, the effect of obtaining or losing electricity from the project on the operation and efficiency of such facility or related operations, its workers, and the related community.

(5) If an applicant is an Indian tribe applying for a license for a project located on the tribal reservation, a statement of the need of such tribe for electricity generated by the project to foster the purposes of the reservation.

(6) A comparison of the impact on the operations and planning of the applicant's transmission system of receiving or not receiving the project license, including:

(i) An analysis of the effects of any resulting redistribution of power flows on line loading (with respect to applicable thermal, voltage, or stability limits), line losses, and necessary new construction of transmission facilities or upgrading of existing facilities, together with the cost impact of these effects;

(ii) An analysis of the advantages that the applicant's transmission system would provide in the distribution of the project's power; and

(iii) Detailed single-line diagrams, including existing system facilities identified by name and circuit number, that show system transmission elements in relation to the project and other principal interconnected system elements. Power flow and loss data that represent system operating conditions may be appended if applicants believe such data would be useful to show that the operating impacts described would be beneficial.

(7) If the applicant has plans to modify existing project facilities or operations, a statement of the need for, or usefulness of, the modifications, including at least a reconnaissance-level study of the effect and projected costs of the proposed plans and any alternate plans, which in conjunction with other developments in the area would conform with a comprehensive plan for improving or developing the waterway and for other beneficial public uses as defined in section 10(a)(1) of the Federal Power Act.

(8) If the applicant has no plans to modify existing project facilities or operations, at least a reconnaissance-level study to show that the project facilities or operations in conjunction with other developments in the area would conform with a comprehensive plan for improving or developing the

waterway and for other beneficial public uses as defined in section 10(a)(1) of the Federal Power Act.

(9) A statement describing the applicant's financial and personnel resources to meet its obligations under a new license, including specific information to demonstrate that the applicant's personnel are adequate in number and training to operate and maintain the project in accordance with the provisions of the license.

(10) If an applicant proposes to expand the project to encompass additional lands, a statement that the applicant has notified, by certified mail, property owners on the additional lands to be encompassed by the project and governmental agencies and subdivisions likely to be interested in or affected by the proposed expansion.

(11) The applicant's electricity consumption efficiency improvement program, as defined under section 10(a)(2)(C) of the Federal Power Act, including:

(i) A statement of the applicant's record of encouraging or assisting its customers to conserve electricity and a description of its plans and capabilities for promoting electricity conservation by its customers; and

(ii) A statement describing the compliance of the applicant's energy conservation programs with any applicable regulatory requirements.

(12) The names and mailing addresses of every Indian tribe with land on which any part of the proposed project would be located or which the applicant reasonably believes would otherwise be affected by the proposed project.

(b) *Information to be provided by an applicant who is an existing licensee.* An existing licensee that applies for a new license must provide:

(1) The information specified in paragraph (a).

(2) A statement of measures taken or planned by the licensee to ensure safe management, operation, and maintenance of the project, including:

(i) A description of existing and planned operation of the project during flood conditions;

(ii) A discussion of any warning devices used to ensure downstream public safety;

(iii) A discussion of any proposed changes to the operation of the project or downstream development that might affect the existing Emergency Action Plan, as described in Subpart C of Part 12 of this chapter, on file with the Commission;

(iv) A description of existing and planned monitoring devices to detect structural movement or stress, seepage, uplift, equipment failure, or water

conduit failure, including a description of the maintenance and monitoring programs used or planned in conjunction with the devices; and

(v) A discussion of the project's employee safety and public safety record, including the number of lost-time accidents involving employees and the record of injury or death to the public within the project boundary.

(3) A description of the current operation of the project, including any constraints that might affect the manner in which the project is operated.

(4) A discussion of the history of the project and record of programs to upgrade the operation and maintenance of the project.

(5) A summary of any generation lost at the project over the last five years because of unscheduled outages, including the cause, duration, and corrective action taken.

(6) A discussion of the licensee's record of compliance with the terms and conditions of the existing license, including a list of all incidents of noncompliance, their disposition, and any documentation relating to each incident.

(7) A discussion of any actions taken by the existing licensee related to the project which affect the public.

(8) A summary of the ownership and operating expenses that would be reduced if the project license were transferred from the existing licensee.

(9) A statement of annual fees paid under Part I of the Federal Power Act for the use of any Federal or Indian lands included within the project boundary.

(c) *Information to be provided by an applicant who is not an existing licensee.* An applicant that is not an existing licensee must provide:

(1) The information specified in paragraph (a).

(2) A statement of the applicant's plans to manage, operate, and maintain the project safely, including:

(i) A description of the differences between the operation and maintenance procedures planned by the applicant and the operation and maintenance procedures of the existing licensee;

(ii) A discussion of any measures proposed by the applicant to implement the existing licensee's Emergency Action Plan, as described in Subpart C of Part 12 of this chapter, and any proposed changes;

(iii) A description of the applicant's plans to continue safety monitoring of existing project instrumentation and any proposed changes; and

(iv) A statement indicating whether or not the applicant is requesting the licensee to provide transmission

services under section 15(d) of the Federal Power Act.

(d) *Extended deadline for certain applicants.* If an applicant must file an application under § 16.9 within 90 days after July 3, 1989, that applicant may provide the information required in this section within 90 days after the date on which it files the application.

(e) *Inclusion in application.* Except as permitted in paragraph (d), the information required to be provided by this section must be included in the application as a separate exhibit labeled "Exhibit H."

§ 16.11 Nonpower licenses.

(a) *Information to be provided by all applicants for nonpower licenses.* (1) An applicant for a nonpower license must provide the following information in its application:

(i) The information required by §§ 4.51 or 4.61 of this chapter, as appropriate;

(ii) A description of the nonpower purpose for which the project is to be used;

(iii) A showing of how the nonpower use conforms with a comprehensive plan for improving or developing the waterway and for other beneficial public uses as defined in section 10(a)(1) of the Federal Power Act;

(iv) A statement of any impact that converting the project to nonpower use may have on the power supply of the system served by the project, including the additional cost of power if an alternative generating source is used to offset the loss of the project's generation;

(v) A statement identifying the state, municipal, interstate, or Federal agency, which is authorized and willing to assume regulatory supervision over the land, waterways, and facilities to be included within the nonpower project;

(vi) Copies of written communication and documentation of oral communication that the applicant may have had with any jurisdictional agency or governmental unit authorized and willing to assume regulatory control over the project and the point of time at which the agency or unit would assume regulatory control;

(vii) A statement that demonstrates that the applicant has complied with the requirements of § 16.8(d)(2);

(viii) A proposal that shows the manner in which the applicant plans to remove or otherwise dispose of the project's power facilities;

(ix) Any proposal to repair or rehabilitate any nonpower facilities;

(x) A statement of the costs associated with removing the project's power facilities and with any necessary restoration and rehabilitation work; and

(xi) A statement that demonstrates that the applicant has resources to ensure the integrity and safety of the remaining project facilities and to maintain the nonpower functions of the project until the governmental unit or agency assumes regulatory control over the project.

(2) If an applicant must file an application for a nonpower license under § 16.9 within 90 days after July 3, 1989, that applicant may provide the information required in paragraph (a) (except the information specified in paragraph (a)(1)(i)), within 90 days after the date it files the application.

(b) *Termination of a proceeding for a nonpower license.* The Commission may deny an application for a nonpower license and turn the project over to any agency that has jurisdiction over the land or reservations if:

(1) An existing project is located on public lands or reservations of the United States;

(2) Neither the existing licensee nor any other entity has filed an application for a new license for the project;

(3) No one has filed a recommendation to take over the project pursuant to § 16.14; and

(4) The agency that has jurisdiction over the land or reservations demonstrates that it is able and willing to:

(i) Accept immediate responsibility for the nonpower use of the project; and

(ii) Pay the existing licensee for its net investment in the project and any severance damages specified in section 14(a) of the Federal Power Act.

(c) *Termination of nonpower license.* A nonpower license will be terminated by Commission order when the Commission determines that a state, municipal, interstate, or Federal agency has jurisdiction over, and is willing to assume regulatory responsibility for, the land, waterways, and facilities included within the nonpower license.

§ 16.12 Application for exemption from licensing by a licensee whose license is subject to sections 14 and 15 of the Federal Power Act.

(a) An existing licensee whose license is subject to sections 14 and 15 of the Federal Power Act may apply for an exemption for the project.

(b) An applicant for an exemption under paragraph (a) must meet the requirements of Subpart K or Subpart J of Part 4 of this chapter, and §§ 16.5, 16.6, 16.7, 16.8, 16.9(b)(1), (2) (except the requirement to comply with §§ 4.41, 4.51, or 4.61 of this chapter), 16.9(c), 16.10(a), 16.10(b), 16.10(d), and 16.10(e).

(c) The Commission will process an application by an existing licensee for

an exemption for the project in accordance with §§ 16.9(b)(3), 16.9(b)(4), and 16.9(d).

(d) If a license application is filed in competition with an application for exemption filed by the existing licensee, the Commission will decide among the competing applications in accordance with the standards of § 16.13 and not in accordance with the provisions of § 4.37(d)(2) of this chapter.

§ 16.13 Standards and factors for issuing a new license.

(a) In determining whether a final proposal for a new license under section 15 of the Federal Power Act is best adapted to serve the public interest, the Commission will consider the factors enumerated in sections 15(a)(2) and (a)(3) of the Federal Power Act.

(b) If there are only insignificant differences between the final applications of an existing licensee and a competing applicant after consideration of the factors enumerated in section 15(a)(2) of the Federal Power Act, the Commission will determine which applicant will receive the license after considering:

(1) The existing licensee's record of compliance with the terms and conditions of the existing license; and

(2) The actions taken by the existing licensee related to the project which affect the public.

(c) An existing licensee that files an application for a new license in conjunction with an entity or entities that are not currently licensees of all or part of the project will not be considered an existing licensee for the purpose of the insignificant differences provision of section 15(a)(2) of the Federal Power Act.

10. Section 16.14 is revised and §§ 16.15 through 16.17 are added and designated as Subpart C, to read as follows:

Subpart C—Takeover Provisions for Projects Subject to Sections 14 and 15 of the Federal Power Act

§ 16.14 Departmental recommendation for takeover.

(a) A Federal department or agency may file a recommendation that the United States exercise its right to take over a hydroelectric power project with a license that is subject to sections 14 and 15 of the Federal Power Act. The recommendation must:

(1) Be filed no earlier than five years before the license expires and no later than the end of the comment period specified by the Commission in:

(i) A notice of application for a new license, a nonpower license, or an exemption for the project; or

(ii) A notice of an amendment to an application for a new license, a nonpower license, or an exemption;

(2) Be filed in accordance with the formal requirements for filings in Subpart T of Part 385 of the Commission's regulations and be served on each relevant Federal and state resource agency, all applicants for new license, nonpower license or exemption, and any other party to the proceeding;

(3) Specify the project works that would be taken over by the United States;

(4) Describe the proposed Federal operation of the project, including any plans for its redevelopment, and discuss the manner in which takeover would serve the public interest as fully as non-Federal development and operation;

(5) State whether the agency intends to undertake the operation of the project; and

(6) Include the information required by §§ 4.41, 4.51, or 4.61 of this chapter, as appropriate.

(b) A department or agency that files a takeover recommendation becomes a party to the proceeding.

(c) An applicant or potential applicant for a new license, a nonpower license, or an exemption that involves a takeover recommendation may file a reply to the recommendation, within 120 days from the date the takeover recommendation is filed with the Commission. The reply must be filed with the Commission in accordance with Part 385 of the Commission's regulations and a copy of such a reply must be served on the agency recommending the takeover and on any other party to the proceeding.

§ 16.15 Commission recommendation to Congress.

Upon receipt of a recommendation from any Federal department or agency, a proposal of any party, or on the Commission's own motion, and after notice and opportunity for hearing, the Commission may determine that a project may be taken over by the United States, issue an order on its findings and recommendations, and forward a copy to Congress.

§ 16.16 Motion for stay by Federal department or agency.

(a) Within 30 days of the date on which an order granting a new license or exemption is issued, a Federal department or agency that has filed a takeover recommendation under § 16.14 may file a motion under § 385.2010 of this chapter to request a stay of the

effective date of the license or exemption order.

(b)(1) If a Federal department or agency files a motion under paragraph (a), the Commission will stay the effective date of the order issuing the license or exemption for two years.

(2) The stay issued under paragraph (b)(1) of this section may be terminated either:

(i) Upon motion of the department or agency that requested the stay; or

(ii) By action of Congress.

(c) The Commission will notify Congress if:

(1) An order granting a stay under paragraph (b)(1) of this section is issued;

(2) Any license or exemption order becomes effective by reason of the termination of a stay; or

(3) Any license or exemption order becomes effective by reason of the expiration of a stay.

(d) The Commission's order granting the license or exemption will automatically become effective:

(1) Thirty days after issuance, if no request for stay is filed, provided that no appeal or rehearing is filed;

(2) When the period of the stay expires; or

(3) When the stay is terminated under paragraph (b)(2) of this section.

§ 16.17 Procedures upon Congressional authorization of takeover.

If Congress authorizes the takeover of a hydroelectric power project as provided under section 14 of the Federal Power Act:

(a) The Commission or the Director of the Office of Hydropower Licensing will notify the existing licensee in writing of the authorization at least two years before the takeover occurs; and

(b) The licensee must present any claim for compensation to the Commission:

(1) Within six months of issuance of the notice of takeover; and

(2) As provided in section 14 of the Federal Power Act.

11. Section 16.18 is added as Subpart D, to read as follows:

Subpart D—Annual Licenses for Projects Subject to Sections 14 and 15 of the Federal Power Act

§ 16.18 Annual licenses for projects subject to sections 14 and 15 of the Federal Power Act.

(a) This section applies to projects with licenses subject to sections 14 and 15 of the Federal Power Act.

(b) The Commission will issue an annual license to an existing licensee under the terms and conditions of the existing license upon expiration of its existing license to allow:

(1) The licensee to continue to operate the project while the Commission reviews any applications for a new license, a nonpower license, an exemption, or a surrender;

(2) The orderly removal of a project, if the United States does not take over a project and no new power or nonpower license or exemption will be issued; or

(3) The orderly transfer of a project to:

(i) The United States, if takeover is elected; or

(ii) A new licensee, if a new power or nonpower license is issued to that licensee.

(c) An annual license issued under this section will be considered renewed automatically without further order of the Commission, unless the Commission orders otherwise.

12. Sections 16.19 through 16.22 are added as Subpart E, to read as follows:

Subpart E—Projects With Minor and Minor Part Licenses Not Subject to Sections 14 and 15 of the Federal Power Act

Sec.

16.19 Procedures for an existing licensee of a minor hydroelectric power project or of a minor part of a hydroelectric power project with a license not subject to sections 14 and 15 of the Federal Power Act.

16.20 Applications for subsequent license for a project with an expiring license not subject to sections 14 and 15 of the Federal Power Act.

16.21 Operation of projects with a minor or minor part license not subject to sections 14 and 15 of the Federal Power Act after expiration of a license.

16.22 Application for an exemption by a licensee with a minor or minor part license for a project not subject to sections 14 and 15 of the Federal Power Act.

Subpart E—Projects With Minor and Minor Part License Not Subject to Sections 14 and 15 of the Federal Power Act

§ 16.19 Procedures for an existing licensee of a minor hydroelectric power project or of a minor part of a hydroelectric power project with a license not subject to sections 14 and 15 of the Federal Power Act.

(a) *Applicability.* This section applies to an existing licensee of a minor hydroelectric power project or of a minor part of a hydroelectric power project that is not subject to sections 14 and 15 of the Federal Power Act.

(b) *Notification procedures.* (1) An existing licensee with a minor license or a license for a minor part of a hydroelectric project must file a notice of intent pursuant to § 16.6(b).

(2) If the license of an existing licensee expires on or after October 17,

1994, the licensee must notify the Commission as required under § 16.6(b) at least five years before the expiration of the existing license.

(3) Except as provided in paragraph (b)(4) of this section, if the license of an existing licensee expires before October 17, 1994, the licensee must notify the Commission as required under § 16.6(b) no later than September 1, 1989.

(4) The requirement in paragraph (b)(3) of this section does not apply if an applicant filed a notice of intent as required by § 16.6(b) or an application for a subsequent license on or before July 3, 1989.

(5) The Commission will give notice of a licensee's intent to file or not to file an application for a subsequent license in accordance with § 16.6(d).

(c) *Requirement to make information available.* (1) Except as provided in paragraph (c)(2) of this section, a licensee must make the information described in § 16.7 available to the public for inspection and reproduction when it gives notice to the Commission under paragraph (b).

(2) The requirement of paragraph (c)(1) of this section does not apply if an applicant filed an application for a subsequent license on or before [insert the effective date of the rule].

§ 16.20 Applications for subsequent license for a project with an expiring license not subject to sections 14 and 15 of the Federal Power Act.

(a) *Applicability.* This section applies to an application for subsequent license for a project with an expiring license that is not subject to sections 14 and 15 of the Federal Power Act.

(b) *Licensing proceeding.* (1) An applicant for a license for a project with an expiring license not subject to sections 14 and 15 of the Federal Power Act must file its application under Part I of the Federal Power Act.

(2) The provisions of section 7(a) of the Federal Power Act do not apply to licensing proceedings involving an application described in paragraph (b)(1).

(c) *Requirement to file.* (1) Except as provided in paragraphs (c)(2) and (c)(3) of this section, an applicant must file an application for subsequent license at least 24 months before the expiration of the existing license.

(2) The requirement in paragraph (c)(1) does not apply if the license is due to expire within three years of July 3, 1989.

(3) An applicant intending to file an application for subsequent license for a project whose license is due to expire within four years of July 3, 1989, must file an application at least 12 months

before the date on which the existing license expires.

(d) *Requirements for and processing of applications.* An application for subsequent license must meet the requirements of, and will be processed in accordance with, §§ 16.5, 16.8, 16.9(b)(2), 16.9(b)(3), 16.9(b)(4), 16.9(c), and 16.9(d).

(e) *Applicant notice.* An applicant for subsequent license or exemption that proposes to expand an existing project to encompass additional lands must include in its application a statement that the applicant has notified, by certified mail, property owners on the additional lands to be encompassed by the project and governmental agencies and subdivisions likely to be interested in or affected by the proposed expansion.

§ 16.21 Operation of projects with a minor or minor part license not subject to sections 14 and 15 of the Federal Power Act after expiration of a license.

(a) A licensee of a minor or minor part project not subject to sections 14 and 15 of the Federal Power Act that has filed an application for a subsequent license or exemption may continue to operate the project in accordance with the terms and conditions of the license after the minor or minor part license expires until the Commission acts on its application.

(b) If the licensee of a minor or minor part project not subject to sections 14 and 15 of the Federal Power Act has not filed an application for a subsequent license or exemption, the Commission may issue an order requiring the licensee to continue to operate its project in accordance with the terms and conditions of the license until the Commission either acts on any applications for subsequent license timely filed by another entity or takes action pursuant to §§ 16.25 or 16.26.

§ 16.22 Application for an exemption by a licensee with a minor or minor part license for a project not subject to sections 14 and 15 of the Federal Power Act.

(a) *Applicability.* This section applies to an existing licensee with a license for a project not subject to sections 14 and 15 of the Federal Power Act.

(b) *Information requirements.* An applicant for an exemption must meet the requirements of, and will be processed in accordance with, Subpart K or Subpart J of Part 4 of this chapter, and §§ 16.5, 16.8, 16.9(b)(2) (except the requirement to comply with §§ 4.41, 4.51, or 4.61 of this chapter), §§ 16.9(b)(3), 16.9(b)(4), 16.9(c), 16.9(d), and 16.20(c).

(c) *Standard of comparison.* If an application for subsequent license is filed in competition with an application for exemption by an existing licensee,

the Commission will decide among competing applications in accordance with the standards of § 16.13 and not in accordance with the provisions of § 4.37(d)(2) of this chapter.

13. Sections 16.23, 16.24, 16.25 and 16.26 are added as Subpart F, to read as follows:

Subpart F—Procedural Matters

Sec.

16.23 Failure to file timely notices of intent.

16.24 Prohibitions against filing applications for new license, nonpower license, exemption, or subsequent license.

16.25 Disposition of a project for which no timely application is filed following a notice of intent to file.

16.26 Disposition of a project for which no timely application is filed following a notice of intent not to file.

Subpart F—Procedural Matters

§ 16.23 Failure to file timely notices of intent.

(a) An existing licensee of a water power project with a license subject to sections 14 and 15 of the Federal Power Act that fails to file a notice of intent pursuant to § 16.6(b) by the deadlines specified in § 16.6(c) shall be deemed to have filed a notice of intent indicating that it does not intend to file an application for new license, nonpower license, or exemption.

(b) An existing licensee of a water power project with a license not subject to sections 14 and 15 of the Federal Power Act that fails to file a notice of intent pursuant to § 16.6(b) by the deadlines specified in § 16.20(c) shall be deemed to have filed a notice of intent indicating that it does not intend to file an application for subsequent license or exemption.

§ 16.24 Prohibitions against filing applications for new license, nonpower license, exemption, or subsequent license.

(a) *Licenses subject to sections 14 and 15 of the Federal Power Act.* (1) An existing licensee with a license subject to sections 14 and 15 of the Federal Power Act that informs the Commission that it does not intend to file an application for new license, nonpower license, or exemption for a project, as required by § 16.6, may not file an application for new license, nonpower license, or exemption for the project, either individually or in conjunction with an entity or entities that are not currently licensees of the project.

(2) An existing licensee with a license subject to sections 14 and 15 of the Federal Power Act that fails to file an application for new license, nonpower license, or exemption for a project at least 24 months before the expiration of

the existing license for the project may not file an application for new license, nonpower license, or exemption for the project, either individually or in conjunction with an entity or entities that are not currently licensees of the project.

(b) *Licenses not subject to sections 14 and 15 of the Federal Power Act.* (1) An existing licensee with a license not subject to sections 14 and 15 of the Federal Power Act that informs the Commission that it does not intend to file an application for subsequent license or exemption for a project, as required by § 16.6, may not file an application for subsequent license or exemption for the project, either individually or in conjunction with an entity or entities that are not currently licensees of the project.

(2) An existing licensee with a license not subject to sections 14 and 15 of the Federal Power Act that fails to file an application for subsequent license or exemption for a project by the deadlines specified in § 16.20(c) may not file an application for subsequent license or exemption for the project, either individually or in conjunction with an entity or entities that are not currently licensees of the project.

§ 16.25 Disposition of a project for which no timely application is filed following a notice of intent to file.

(a) If an existing licensee that indicates in the notice filed pursuant to § 16.6 that it will file an application for new license, nonpower license, subsequent license, or an exemption does not file its application individually or in conjunction with an entity or entities that are not currently licensees of the project at least 24 months before its existing license expires in the case of licenses subject to sections 14 and 15 of the Federal Power Act, or by the deadlines specified in § 16.20(c) in the case of licenses not subject to sections 14 and 15 of the Federal Power Act, and no other applicant files an application within the appropriate time or all pending applications filed before the applicable filing deadline are subsequently rejected or dismissed pursuant to § 4.32 of this chapter, the Commission will publish in the *Federal Register* and once in a daily or weekly newspaper published in the county or counties in which the project or any part thereof or the lands affected thereby are situated, notice soliciting applications from potential applicants other than the existing licensee.

(b) A potential applicant that files a notice of intent within 90 days from the date of the public notice issued pursuant to paragraph (a):

(1) May apply for a license under Part I of the Federal Power Act and Part 4 of this chapter (except § 4.38) within 18 months of the date on which it files its notice; and

(2) Must comply with the requirements of § 16.8 and, if the project would have a total installed capacity of over 2,000 horsepower, § 16.10.

(c) The existing licensee must file a schedule for the filing of a surrender application for the project, for the approval of the Director of the Office of Hydropower Licensing, 90 days:

(1) After the due date established for any notice of intent issued under paragraph (a), if no notices of intent were received; or

(2) After the due date for any application filed under paragraph (b)(1), if no application has been filed.

(d) Any application for surrender must be filed according to the approved schedule, must comply with the requirements of § 16.8 and Part 6 of this chapter, and must provide for disposition of any project facility.

§ 16.26 Disposition of a project for which no timely application is filed following a notice of intent not to file.

(a) If an existing licensee indicates in the notice filed pursuant to § 16.6 that it will not file an application for new license, nonpower license, subsequent license, or exemption and no other applicant files an application at least 24 months before the existing license expires in the case of licenses subject to sections 14 and 15 of the Federal Power Act, or by the deadlines specified in § 16.20(c) in the case of licenses not subject to sections 14 and 15 of the Federal Power Act, the Director of the Office of Hydropower Licensing will provide the existing licensee with written notice that no timely applications for the project have been filed.

(b) The existing licensee, within 90 days from the date of the written notice provided in paragraph (a), must file a schedule for the filing of a surrender application for the project for the approval of the Director of the Office of Hydropower Licensing.

(c) Any application for surrender must be filed according to the approved schedule, must comply with the requirements of § 16.8 and Part 6 of this chapter, and must provide for disposition of any project facility.

Note: This appendix will not be published in the *Code of Federal Regulations*.

Appendix A—List of Commenters

1. Alabama Power Company (Alabama Power)

2. American Paper Institute (American Paper)
3. American Public Power Association (American Power)
4. American Rivers
5. Brazos River Authority (Brazos)
6. Columbia River Inter-Tribal Fish Commission (Columbia Commission)
7. Confederated Tribes of the Warm Springs Reservation (Warm Springs Tribes)
8. Connecticut River Atlantic Salmon Commission (Connecticut Commission)
9. Denver Water Department (Denver Department)
10. Edison Electric Institute (EEI)
11. Eugene Water and Electric Board (Eugene Board)
12. Friends of the Earth
13. Georgia Power Company (Georgia Power)
14. Great Lakes Indian Fish & Wildlife Commission (Great Lakes Commission)
15. Great Northern Nekoosa (Great Northern)
16. Holyoke, Massachusetts (Holyoke)
17. Idaho Power Company (Idaho Power)
18. International Association of Fish & Wildlife Agencies (International Association)
19. Linweave, Inc.
20. Long Lake Energy Corporation (Long Lake)
21. Maine State Planning Office (Maine Office)
22. Michigan Department of Natural Resources (Michigan Department)
23. Mid-Columbia Public Utility District (Mid-Columbia)
24. Montana Department of Fish, Wildlife & Parks (Montana Fish and Wildlife)
25. Montana Department of Natural Resources and Conservation (Montana Natural Resources)
26. Montana Power Company (Montana Power)
27. National Hydropower Association (National Hydropower)
28. National Wildlife Federation (Wildlife Federation)
29. Nebraska Public Power District (Nebraska Power)
30. New York Department of Environmental Conservation (New York Department)
31. New York State Electric & Gas Corporation (New York Electric)
32. Niagara Mohawk Power Corporation (Niagara Mohawk)
33. Niagara Mohawk/Fourth Branch Associates (Fourth Branch)
34. Northern California Power Agency (Northern California Agency)

35. Pacific Gas & Electric Company (PG&E)
36. Point No Point Treaty Council (Treaty Council)
37. Public Generating Pool (Public Pool)
38. Public Utility District #1 of Douglas County, Washington (Douglas County PUD)
39. Public Utility District #2 of Grant County, Washington (Grant County PUD)
40. Puget Sound Power & Light Company (Puget Sound Power)
41. Rochester Gas & Electric Corporation (Rochester Gas)
42. Seattle City Light (Seattle Light)
43. South Carolina Department of Health & Environmental Control (South Carolina Department)
44. Southern California Edison
45. Tacoma Public Utilities (Tacoma Utilities)
46. Trout Unlimited
47. U.S. Department of Commerce
48. U.S. Department of the Interior
49. U.S. Environmental Protection Agency (EPA)
50. U.S. Forest Service
51. U.S. Small Business Administration (Small Business Administration)
52. Washington Department of Ecology (Washington Ecology)
53. Washington Department of Fisheries (Washington Fisheries)
54. Washington Department of Wildlife (Washington Wildlife)
55. Washington Water Power (Washington Power)
56. Western States Water Council (Western Council)
57. Wisconsin Department of Natural Resources (Wisconsin Department)
58. Wisconsin Power & Light (Wisconsin Power)
59. Wisconsin Public Service Corporation *et al.* (Wisconsin Public Service)
60. Wisconsin Utilities Association (Wisconsin Utilities)

TRABANDT, Commissioner Concurring in Part and Dissenting in Part

There are six issues contained in this Final Rule that deserve further comment. These issues are: (1) The Commission decision to promulgate a section 10(j) rule that would include procedures for implementing sections 4(e), 18, and 10(j) (that would include Indian Tribe participation in the 10(j) process); (2) the impact of joint applications on existing licensee status; (3) interlocutory appeals in the dispute resolution process; (4) applicability of section 4(e) to relicensing proceedings; (5) applicability of section 18 to relicensing proceedings; and (6) public participation during the pre-filing consultation process.

I reluctantly concur with the resolution of the first issue. The second

issue is included in this opinion so that I can highlight an important discussion contained in the Final Rule concerning acceptable options for financing projects. The remaining issues listed above were either not adequately resolved or incorrectly resolved causing me to dissent. I concur with all other issues contained in the Final Rule.

1. The Upcoming Section 10(j) Rulemaking

In Order No. 511 issued February 17, 1989, the Commission made public its instruction to staff to prepare a NOPR on the conflict resolution procedures prescribed by section 10(j). I submitted a concurring opinion wherein I made clear my view that current Commission practice: (1) Is completely consistent with the legislative history of the Conference Report enacted by Congress; and (2) implements dispute resolution in an effective and efficient manner for the mutual benefit of license applicants and fish and wildlife resources.

I would also note my dissenting opinion in *Henwood Associates, Inc.*, Project No. 8142, issued May 2, 1989. In *Henwood*, the majority concluded that the Commission's existing section 10(j) procedures have been flawed, despite a spirited Commission defense of those procedures in a January 13, 1989, letter to Chairman Dingell. The majority held that the Director of OHL in his letter to a state agency did not use precise enough language to inform that agency that the conflict to be resolved rested on the unacceptable impact on project viability which would trigger the statutory dispute resolution process of section 10(j), rather than merely on the inconsistencies between the recommendations of the state agency and those of the staff. Consequently, the majority found the entire section 10(j) negotiation to be fatally flawed. In essence, the majority adopted a formal expansion of section 10(j) before the Commission had the benefit of comments in response to the upcoming NOPR.

What makes this upcoming NOPR even more troublesome is that it now will contain procedures for the implementation of other sections contained in the Federal Power Act, notably sections 4(e) and 18. Inasmuch as these procedures will apply to relicensing proceedings, I question why they are not included in the instant Final Rule. There may be some arguable justification for foregoing such action at this juncture (e.g. further delay as a result of notice problems possibly requiring the issuance of another NOPR) because of the pressing need to get some relicensing rules out in order to

accommodate many current relicensing applicants whose licenses are about to expire. But, from a programmatic perspective, it appears at least to me well worth the effort to implement all relicensing procedures at the same time to avoid any confusion as to what course of action is appropriate under each provision of the FPA applicable to relicensing.

Put another way, of what particular value is the pre-filing consultation process adopted here with all the new requirements for applicants, resource agencies and the Commission staff, if we haven't decided yet how to implement in relicensing the statutory requirements under sections 4(e), 10(j) and 18. Those statutory obligations, as a practical matter, are the substantive "guts" of the relicensing process with regard to critical resource issues and the Commission's fundamental responsibility to give "equal consideration" to all resource values. The absence of those sectional implementing procedures in this rule, in my judgment, leaves a large hole in the Final Rule. Because of that conclusion, two things become essential for the subsequent 10(j) rulemaking. First, the Commission must act promptly to issue the Notice of Proposed Rulemaking to fill that hole. And, second, the Final Rule in that separate proceeding must be as consistent and complementary in substance and procedure as possible to avoid unnecessarily complicating or setting back the entire relicensing process.

Finally, in light of the unfortunate results associated with the original decision to do a section 10(j) rulemaking and the subsequent decision in the *Henwood* case, I have serious concerns about the likely direction of the forthcoming Notice of Proposed Rulemaking and the distinct possibility that the end result will be *de facto* mandatory conditioning for resource agencies across the spectrum of sections 4(e), 10(j) and 18, and even conceivably in other aspects of this Final Rule. I believe the Commission invites exactly that possibility with this bifurcated rulemaking approach, the all-or-nothing dynamics of the 10(j) rulemaking, and the probably inevitable "regulatory gamesmanship" that will be forced to occur, as occurred in *Henwood*. Consequently, all interested parties on rehearing should clearly be on notice of these potentialities.

2. Impact of Joint Applications on Existing Licensee Status

As the Final Rule points out, the majority of commenters on this issue

oppose the Commission's policy of not considering an incumbent to be an existing licensee for purposes of section 15 of the FPA and the Commission's relicensing regulations if the licensee files an application for a new license in conjunction with another entity or entities that are not current licensees of the project. These commenters provided much food for thought. My colleagues and I struggled mightily in an effort to determine how best to resolve this issue.

In that effort, we reviewed four separate options and a series of sub-options, before reaching our conclusion. Those options included:

1. Consider joint applicants to be existing licensees if there are no adverse impacts to existing customers in terms of power availability and costs. This is the option used in the March 17 draft, with minor revisions.

2. Consider joint applicants to be existing licensees if the existing licensee retains a specified percentage ownership in project facilities, such as the QF 50% rule.

3. Consider joint applicants to be existing licensees if the existing licensee will receive the majority of the benefits of the project, using the stream of benefits test developed for QF proceedings.

4. State that joint applicants will not be considered existing licensees under any circumstances.

On balance, it appears the best course of action is the one proposed in the Final Rule which essentially affirms what the NOPR proposed. However, I wish to highlight the discussion contained on pages 204 and 205 of the slip opinion. Financial arrangements between existing licensees and third parties that may ultimately benefit the customers of the existing licensee can be entered into without the need to add the third party as a co-applicant. As long as the existing licensee will retain sufficient ownership and control, a third party financier will not have to be added to an existing licensee's application for new license and the existing licensee will not be jeopardizing its status as an existing licensee under section 15(a)(2). In the interest of future certainty and predictability, interested parties may wish to seek further clarification as to the types of financial transactions, as well as any particular formulations of financial interest, that would be acceptable to the Commission.

3. Interlocutory Appeals in the Dispute Resolution Process

Although I appreciate and fully understand the arguments made by my colleagues with respect to the advisory nature of the Director's decisions in the

dispute resolution process, I firmly believe that the Director's decisions will be *de facto* binding on the applicants. The Final Rule denies the request of several parties that we provide some form of appeal process as a result, even though the majority acknowledges that this could be a serious matter in some cases (slip op. at p. 83).

A decision by the Director affirming the need for a particular study requested by an appropriate agency could have the effect of forcing an existing licensee to stop pursuing its application for new license because of the significant cost of conducting and completing such a study. The fact that the final regulations permit an applicant to ignore the Director's decision and file an application without the study does not assuage my concern. If the applicant chooses to submit an application without the study, the applicant risks having its application dismissed as patently deficient by the Director. Only then does the applicant have the opportunity to seek an appeal before the Commission. Meanwhile, the applicant would have committed tens of thousands of dollars to the further processing of its application, money that might not have been spent had the applicant been apprised by the Commission as to its views on the matter.

In the alternative, if the applicant knew in pre-consultation that the Commission would be unyielding in requiring the study, the applicant could proceed in an expeditious manner to initiate the study or consider other options. Accordingly, in those instances where the need for a study is in question such that an applicant submits the matter to the Director for resolution pursuant to the dispute resolution process articulated in the Final Rule, I believe the applicant should have the right to appeal on an interlocutory basis, but with streamlined procedures, directly to the Full Commission. Such an appeal should be handled in an expeditious manner.

I note that I am not persuaded that my position on an interlocutory appeal process for the applicant leads *ipso facto* to the inevitable conclusion that there must be public participation in the pre-filing consultation process. I view those two issues as wholly separate and unrelated, because the general public and the applicant stand in two completely different postures at that point in the overall relicensing process, including the later formal proceedings triggered once an application is filed with the Commission. The general public will have full participation and effective remedies on any resource issue after the application is filed and, thus, is not

bound in any way by the Director's decisions in the pre-filing consultation process. Compare that result with the applicant's potential dilemma inherent in the Final Rule, as discussed above, where the Director's decision *de facto* could bind the applicant as a practical matter. I, therefore, believe that there is a persuasive disassociation of the applicant interlocutory appeal issue and the public participation issue in this rule.

Finally, I would highlight the standard for studies requested by resource agencies adopted in the Final Rule. (Slip op. at p. 84 and associated regulatory text). Where a dispute is referred to the Director for resolution over the need for and substance of a particular study, the resource agency will be required to demonstrate that the proposed study is consistent with "generally accepted practice" for such analyses in terms of both the objectives of the study and the scope and methodology of the study. This new standard will provide a critical balancing factor in the consultative process to ensure that potential applicants are not required to conduct unnecessary, unreasonable or extraordinary studies, which may be requested otherwise for any number of reasons or purposes unrelated to or inconsistent with the conduct of the relicensing process envisioned by Congress in ECPA. In the event of any disputes over studies between potential applicants and resource agencies, the Director should complete a careful scrutiny of any requested study in dispute and require the resource agency to demonstrate persuasively that the study, as a matter of fact, is necessary, reasonable and fully consistent with generally accepted practice.

4. Applicability of Section 4(e) to Relicensing Proceedings

The majority cites to its decision in the *City of Pasadena Water and Power Department* case (see footnote No. 138 in Final Rule slip opinion at 136) where it determined that section 4(e) mandatory conditioning authority applied to relicensing proceedings. I note that I strongly disagreed with the majority's decision in that case and issued a vigorous dissent. Therefore, it is unnecessary for me here to reiterate my arguments as to why I believe the majority erred in applying section 4(e) authority to relicensing proceedings. I would note, however, that the majority's decision to incorporate implementation of section 4(e) for relicensing in the 10(j) process exacerbates significantly the problems discussed in my dissent.

5. Applicability of Section 18 to Relicensing Proceedings

The majority has included in the Final Rule a determination that the authority of the Interior and Commerce Departments to prescribe fishways for projects under section 18 of the FPA applies to relicensing proceedings. I disagree with this determination.

The majority's decision unnecessarily jeopardizes two important Congressional interests in Commission relicensing proceedings: to protect the interests of the investors and the project's customers. (See the dissenting opinion in *City of Pasadena Water and Power Department*, 46 FERC ¶ 61,004 (1989)). The Commission's *Lynchburg* decision cited in the Final Rule, held *inter alia*, that the authority to prescribe fishways could be reserved by the responsible agencies prior to the Commission's issuance of an original license. However, this reserved authority had to be expressly requested by the responsible agencies and expressly included in the license. 39 FERC ¶ 61,079 at p. 61,219.

If such authority was reserved in an original license and never acted on, I seriously question whether carrying that reserved authority into a relicense proceeding would be appropriate after 30, 40 or 50 years of operations. The design and installation of fishways at hydroelectric projects is, generally speaking, very costly in terms of construction, operation and maintenance costs, and potential negative impact on project operations and power generation. A potential licensee should be given the opportunity to include in any economic feasibility assessment a reasonable estimate of expected future expenses. It is unreasonable to issue a license to an applicant and not at least put the licensee on notice that significant expenses are yet to come, or to let decades pass without any action under the reserved authority.

With respect to relicense applications that propose to do nothing more than continue the existing operation without any modifications, it appears to me to be grossly inappropriate to permit Interior or Commerce to require the design, construction, operation, and maintenance of costly fish passage facilities without requiring Interior or Commerce to meet at least some threshold standard of extraordinary circumstances. If the responsible agencies did not request or have the Commission expressly reserve the authority to prescribe fishways during the processing of an original license, or if it was reserved but never used during

the original term of the license, those agencies should carry a heavy burden of proof when attempting to impose this requirement during the processing of a relicense application.

Moreover, I believe that it is the responsibility of the Commission to evaluate and determine whether the request of Interior or Commerce to prescribe fishways is necessary or appropriate in a relicense proceeding under the general rubric of "equal consideration" of all power and resource values. The language contained in section 18 does not clearly indicate that Interior and Commerce have an unquestionable right to impose fishways on a "relicense" applicant. Indeed, as the Final Rule itself points out (slip op. at p. 22), the legislative history of section 18 is sparse, and nothing in it indicates section 18 does or should automatically apply to relicensing proceedings.

I also place considerable significance from a statutory construction perspective on the decision of Congress to enact the section 15 process in the Electric Consumer Protection Act of 1986 (ECPA). I find it inexplicable that Congress would have enacted section 15 with regard to the subject of fish and wildlife recommendations more generally, if there was any conceivable argument that section 18 should apply to relicensing. In the alternative, if section 18 was deemed to apply to relicensing, Congress surely would have noted that and rationalized its application as part of section 15.

For these reasons, I believe the majority's decision to automatically apply section 18 to relicense proceedings is incorrect and I dissent on that issue.

6. Public Participation During Pre-filing Consultation

The majority adopts in § 18.8 "Consultation Requirements," a new requirement for formal public participation in the joint meeting of the applicant and the resource agencies under paragraph (b)(3) in the first stage of mandatory pre-filing consultation. The purpose of the meeting is for the applicant and the resource agencies to review the applicant's information package and to discuss the data and studies to be provided by the applicant in the relicensing process. The applicant, under § 18.8(j), must give prior public notice and also now make available to the public the same information package provided to the pertinent agencies. Members of the public in attendance at the joint meeting now are entitled to participate fully and express their views regarding resource issues that should be

addressed in any new license application. Also, at the discretion of the existing license applicant, the public can participate in the site visit held for officials of the pertinent agencies coincident with the joint meeting. This new requirement for public participation in the joint meeting is justified on several grounds by the majority in the preamble (slip op. 125-129).

With all due respect for my colleagues in the majority, I believe they fundamentally have misapprehended the public participation comments of certain parties in response to the NOPR. There clearly was no need for the majority to concoct a regulatory requirement for public participation in the pre-filing consultation stage of the Final Rule's relicensing process. I believe that, in fact, the procedure adopted by the majority has unnecessarily complicated the pre-filing process and, indeed, may work to inhibit, rather than facilitate, meaningful public participation at this stage of the relicensing process. I, therefore, feel compelled to dissent as to this requirement.

Nothing in the Federal Power Act (FPA) or ECPA requires that the Commission provide for formal public participation in the consultation process that precedes a formal license application proceeding for either original licensing or relicensing. Indeed, FPA section 15, as amended by ECPA, contains specific provisions requiring advance notice to the public of an existing licensee's intent to file an application for a new license. It also requires that extensive data pertaining to the project be made available to the public at the time of the advance notice. Yet, Congress did not accompany these provisions with an expansion of the public's existing right to participate as interveners in formal license application proceedings. So, it is clear that the majority has chosen, in its discretion, to establish such a right, even though it is not required by statute.

Moreover, I believe that the Commission's current licensing process, which begins with the filing of an acceptable license or new license application, provides ample opportunity for meaningful public participation. Following the acceptance of an original or new license application, the Commission publicly notices the application. The notice contains pertinent details describing the location, design, and mode of operation, as well as other facts related to the proposed project that can be used to determine the potential impact the proposed project may have on the environment.

The notice also provides enough information for the public to assess whether riparian or other property rights will be affected by the proposed project.

The public is given an opportunity to meaningfully participate in the license proceeding as parties by filing a motion to intervene within the time prescribed in the public notice. Becoming a party in a license proceeding entitles one to receive all filed documents in the proceeding, and participate fully at each stage of the formal proceeding, and also ensures the right to seek an appeal or rehearing of any Commission action that may be perceived by a party to be adverse to its interest. In any and every imaginable situation, the Commission, if persuaded on the merits by any party's arguments, has more than ample authority in relicensing to address any resource issue and adequately remedy any identified environmental problem. The timing of this public participation does not diminish one iota the Commission's available authority to efficiently and effectively respond to any and all environmental concerns, even where additional analysis or study may be necessary. If rehearing is sought and then subsequently denied by the Commission, a party has a right to seek judicial review of the Commission's decision.

In the relicensing context, an existing licensee is required to notify the Commission five years prior to the expiration of its license whether or not it will apply for a new license for the project (the "notice of intent" or "NOI"). Concurrent with this notification, and as noted above, the existing licensee must make extensive information about the project available for public inspection at its business offices. Upon receipt of the existing licensee's notice of intent, and years before a formal license application is filed at the Commission, the Commission issues a public notice in the local newspaper that identifies the project and states when and where the project information is available. There is, quite simply, no need for and no real benefit from *formal* public participation in the pre-filing consultation process at this time, because no application has yet been filed with the Commission that would trigger a formal licensing proceeding. However, I believe that active, but informal public involvement can, and indeed should, begin at this point in the relicensing process without the need for additional regulatory requirements adopted by the majority.

Any interested person or entity, for example, has the opportunity at this time to contact the applicant in order to find out more about the project. Once an

interested person or entity has reviewed the information made publically available pursuant to the NOI, a preliminary assessment of the impacts caused by the project can be made in order to develop an informal dialogue with the applicant as to how to resolve potential problems. There is ample opportunity during the remainder of the consultation process to work informally with the applicant to discuss perceived problems. Clearly, active public discussion at this stage of the process provides a precious "early warning" advantage to the applicant. This "early warning" can be used by the applicant to effectively respond to what could otherwise become after the filing of an application, a protracted bureaucratic process that would include appeals and rehearings and, possibly, evidentiary trial-type hearings before administrative law judges. This potential consequence is obviously not in the applicant's best interest and should provide the incentive necessary for the applicant to pursue meaningful discussion with *all* interested parties.

In addition to contacting and working closely with the applicant, interested persons or entities also have the opportunity to approach the state or Federal resource agencies at this early stage in the process to either assist or seek assistance in reviewing potential problems. For these reasons, I conclude that rules requiring formal public participation prior to the time an acceptable license application is filed are neither legally required nor necessarily an appropriate policy. As discussed above, there is ample opportunity for the public to get involved informally during the time frame of the pre-filing consultation process, should anyone wish to do so.

However, I do not mean to diminish the genuine concern my colleagues obviously feel about ensuring public involvement at the earliest stage in the relicensing process. Requiring the potential applicant to hold a public meeting at or near the site of the existing project to obtain the views of the public regarding resource issues that should be addressed in any application for new license would have been an acceptable, and in my view more prudent, alternative method of guaranteeing public involvement prior to the actual filing of an application. To accommodate the meeting participants' varying work schedules, the public meeting could have included both day and evening sessions, and the potential applicant could have been required to publish advance notice of the meeting in a local daily or weekly newspaper. In

addition, the potential applicant could have been required to make audio recordings or transcripts of the meeting, and further required to make a copy of the record available to the Commission and any resource agency that requests one.

The formalized regulatory method adopted by the majority, in my view, unjustifiably encroaches on state public participation prerogatives by strongly encouraging state agencies, if not all but requiring them, to participate with the applicant and the interested public at a public meeting prior to the filing of an application with the Commission. Such a requirement will likely have a chilling effect on open and candid exchanges between resource agencies and the applicant. In addition, such a procedure will encourage posturing by various interest groups and resource agencies for their respective constituencies at a stage when candor and cooperation are most important. Including private organizations with narrow parochial concerns at this stage of the process also clearly risks meetings that will be too large and unwieldy to control with numerous requests for otherwise unjustified studies and analysis. Since the public meeting is at such a preliminary point in the process, interests of the various parties could, and in all likelihood will, change by the time the application is filed. And, of course, the eventual formal application may be changed materially from the proposal at the time of the NOI and the beginning of the pre-filing consultation process with the resource agencies. And, indeed, that is one of the several objectives of the process prior to filing of the formal application, *i.e.* developing the most acceptable form of application to be filed.

Moreover, under this rule the applicant is now required to set up this public meeting as part of its compliance responsibilities with our relicensing regulations. Presumably failure to do so could cause the application to be patently deficient or at least deficient, even if all other requirements imposed by our regulations were adequately met. Ironically, original license applicants are not required to do this under the Commission's current regulations, because the Commission heretofore has not considered it necessary or appropriate, even though original licenses govern construction of completely *new* projects, while relicensing will govern consideration of *existing* projects already constructed and operating. Such a requirement for relicense applicants in my view is without any public interest justification,

certainly without any basis in law, and in all likelihood will counterproductively disserve the clear public interest and Congressional intent in an expeditious and effective relicensing process.

Two other aspects of the majority's new public participation requirement cause serious concerns. First, the confidentiality provisions of the NOPR and the earlier drafts of the final rule have been adjusted now to reflect the formal and mandatory participation of the public in the first joint meeting of the applicant and the resource agencies. In some respects, those adjustments will serve to tilt the confidentiality approach against the existing license applicant and extend certain competitive advantages to new competing applicants, solely because of the new public participation. I view that result as generally contrary to the clear intent of Congress for at least a "level playing field," if not more, for existing licenses in ECPA. Second, I am fearful that public participation now in *only* the first joint meeting will be argued by proponents as providing only a symbolic participation gesture. They will probably demand full public participation throughout the entire pre-filing consultation process as the only way to deal responsibly with the public. Thus, this first step in that direction could, in the absence of future restraint by the majority, become a slippery slope

to the demise altogether of the important consultative process with resource agencies.

Conclusion

Many challenging and difficult issues have been resolved to my satisfaction in the formulation of this Final Rule. For that reason, I concur generally with regard to this order. At the same time, the issues discussed above will play a critical role in the overall adequacy of the relicensing process over the next several years. I would have preferred strongly to have the Final Rule adopt more acceptable positions on those key issues. Nonetheless, it is time to act on the long pending NOPR and provide some measure of general regulatory certainty and predictability in this important area of our responsibilities. For that reason, I support going forward today. But, at the same time, I believe the Commission on rehearing must address and remedy the serious problems I have outlined in this separate opinion in order to finish the job begun by Congress with the enactment of ECPA in 1986 and advanced by the NOPR last year.

For these reasons, I concur in part and dissent in part.

Charles A. Trabandt,
Commissioner.

Moler, Commissioner, concurring:

I am delighted that the final rule adopted by the Commission includes a substantial, meaningful role for the public during the first stage of the pre-filing consultation process.

The Commission faces a formidable task in the years ahead as hundreds of existing hydroelectric power project licenses come up for relicensing. An efficient, workable pre-filing consultation process is an essential prerequisite if we are to meet the challenge that lies ahead.

The NOPR would have excluded the public from participating during the first stage of the pre-filing consultation process. I could not have supported that result. By contrast, the final rule adopts my suggestions to provide the public information about an applicant's plans at the earliest stage of the relicensing process, and to provide for public participation at the initial joint meeting between the applicant and the resource agencies.

I sincerely hope that all parties involved in the pre-filing consultation process will make a genuine effort to identify relevant resource issues early in the process, and to resolve resource conflicts wherever possible. I believe that active participation by the applicants, resource agencies, and the public at large in the pre-filing consultation process, as well as during the Commission's consideration of any license application, will enhance our mutual understanding of any issues or problems that must be addressed during the relicensing process.

Elizabeth Anne Moler,
Commissioner.

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Friday
June 2, 1989

Part III

Department of Labor

Occupational Safety and Health
Administration

29 CFR Part 1926
Underground Construction; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1926

[Docket No. S-370]

RIN 1218-AA38

Underground Construction

AGENCY: Occupational Safety and Health Administration, Labor.**ACTION:** Final rule.

SUMMARY: The Occupational Safety and Health Administration (OSHA) hereby revises its safety and health regulations for Underground Construction (formerly titled "Tunnels and Shafts") located in 29 CFR 1926.800. The revised standard clarifies the existing 17-year old standard, covers hazards not effectively addressed previously, and reflects the current technology and methods used in underground construction.

EFFECTIVE DATE: This revision of 29 CFR 1926.800 becomes effective August 1, 1989.

ADDRESS: In compliance with 28 U.S.C. 2112(a), the Agency designates for receipt of petitions for review of the standard, the Associate Solicitor for Occupational Safety and Health, Office of the Solicitor, Room S-4004, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, Room N-3637, U.S. Department of Labor, Washington, DC 20210, Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION:**I. Background**

Congress amended the Contract Work Hours Standards Act (CWHSA) [40 U.S.C. 327 et seq.] in 1969 by adding a new section 107 (40 U.S.C. 333) to provide employees in the construction industry with a safer work environment and to reduce the frequency and severity of construction accidents and injuries. The amendment, commonly known as the Construction Safety Act

[Pub. L. 91-54; August 9, 1969], significantly strengthened employee protection by providing for occupational safety and health standards for employees of the building trades and construction industry in Federal and Federally-financed or Federally-assisted construction projects.

The Occupational Safety and Health Act of 1970 (the OSH Act), [29 U.S.C. 651 et seq.] authorized the Secretary of Labor to adopt established Federal standards issued under other statutes, including the Construction Safety Act, as occupational safety and health standards under the OSH Act. Accordingly, the Secretary adopted the construction standards which were issued under the Construction Safety Act in 29 CFR Part 1518 as OSHA standards on May 29, 1971 (36 FR 10466) and redesignated these rules as 29 CFR Part 1926, on December 30, 1971 (36 FR 25232). The standard entitled "Tunnels and Shafts," § 1926.800, was adopted as an OSHA standard in Subpart S of Part 1926 as part of this process. Section 1926.800 protects underground construction workers from hazards such as cave-ins, contaminated atmospheres, fires and explosions, haulage and hoisting operations, and floods.

In 1971, two major tunnel disasters, in Sylmar, California, and in Port Huron, Michigan, prompted the Assistant Secretary of Labor for Occupational Safety and Health to ask the Agency's construction safety standards staff and the Advisory Committee on Construction Safety and Health (ACCSH) (established under section 107 of the Construction Safety Act and section 7(b) of the OSH Act) to study the existing rules and to recommend any necessary changes. The ACCSH formed a subcommittee on tunnels, which met on January 31, 1972, February 8 and 22, 1972, and on November 1, 20, and 21, 1972. The full ACCSH met on August 30, 1972, December 14, 1972, June 19, 1973, and July 25, 1973. The ACCSH submitted its recommendations to the Secretary of Labor on July 25, 1973 (Ex. 1:15).

On the basis of the ACCSH's findings, OSHA proposed revisions to the tunneling regulations on March 18, 1974 (39 FR 10218). A public hearing on the

1974 proposal was held in Washington, DC, on June 26, 1974. The testimony and comments received in connection with this hearing have been entered into the record of the present rulemaking (Ex. 1:19-28). Based on these comments and changes in the industry, OSHA decided to withdraw the 1974 proposal and to publish a revised proposed rule.

OSHA issued a new proposal to revise 29 CFR 1926.800 on August 5, 1983 (48 FR 35774). Prior to that date, the ACCSH reviewed and made recommendations on several drafts of the revised proposal at several meetings (Ex. 2-5). At those meetings, the Committee consistently urged OSHA to initiate rulemaking on a new proposal (Ex. 2, pp. 136-138; Ex. 3, p. 134; Ex. 4, pp. 8-124). The transcript of the ACCSH's deliberations on the various drafts has been entered into the record (Ex. 1, 4, 7, and 8 [Ex. 1 includes the ACCSH's transcripts prior to March 18, 1974]). The Committee's comments, and those of other interested parties, have been carefully analyzed in connection with the proposed and final rulemakings. Many of the changes in the standard proposed in 1983 reflect the Committee's recommendations and suggestions. Relevant ACCSH comments and recommendations were discussed in the Summary and Explanation section of the Notice of Proposed Rulemaking.

Comments on the 1983 proposal were received from 52 sources including individuals, businesses, labor unions, state governments, federal agencies, and trade associations. An informal public rulemaking hearing was held on March 13-15, 1984, to examine pertinent issues including those specified in a notice published on December 19, 1983 (48 FR 56087). Following the hearing, Administrative Law Judge Charles P. Rippey allowed 60 days for the submission of post-hearing comments and 30 days for the submission of argument and briefs. Judge Rippey certified the 800-page hearing transcript and all related submissions to OSHA and officially closed the record on October 24, 1984.

After the close of the record, OSHA received new relevant data developed by a contractor, JRB Associates/

Science Applications International Corporation (JRB/SAIC). The new information affected costs attributable to underground construction activities which would be classified as "gassy" or "potentially gassy." The contractor also provided estimates related to the cost of providing permissible ventilation systems, with and without reversible controls at the surface. OSHA decided to place the data into the record (Exhibit #54), to invite the public to review it, and to permit the submission of written comments on the contractor's report. Accordingly, OSHA reopened the record for this limited purpose for 60 days (50 FR 33357, August 19, 1985). Copies of the report were sent to those who had participated at the hearing. OSHA received no comments challenging the contents and conclusions reported in the JRB/SAIC study.

OSHA appreciates the contribution of the parties who assisted in assembling the record during this rulemaking. OSHA has developed this Final Rule based on a full consideration of the entire record of this proceeding, including the materials discussed or relied on in the proposal, the record of the hearing, and all written comments and exhibits received.

Accidents resulting in injuries and fatalities continue to occur during underground construction operations despite the promulgation of the OSHA Construction Standards in 1971. An in-depth discussion of the hazards appeared in the Notice of Proposed Rulemaking published on August 5, 1983 (48 FR 35774). OSHA has determined that these hazards pose a significant risk to the underground construction industry and that the requirements contained in this revision of 29 CFR 1926.800 are reasonably necessary to protect against that risk. For a further discussion of significance of risk, see Section III, Summary of the Regulatory Impact and Regulatory Flexibility Assessment.

In accordance with section 6(b)(8), 29 U.S.C. 655(b)(8), of the OSH Act, OSHA has reviewed various national consensus standards, such as ANSI A10.16-1981, Safety Requirements for Construction of Tunnels, Shafts, and Caissons; ANSI/NFPA 58-1986, Storage and Handling of Liquefied Petroleum Gases; and ANSI/NFPA 495-1985, Manufacture, Transportation, Storage, and Use of Explosive Materials, that cover working conditions addressed in this Final Rule. Where appropriate, OSHA has incorporated provisions from those national consensus standards as part of the Final Rule. OSHA believes that the final standard will better

effectuate the purposes of the Occupational Safety and Health Act of 1970 than the national consensus standards which have not been made a part of this Final Rule, because this Final Rule is more comprehensive and provides greater flexibility in its requirements for safety.

II. Summary and Explanation of the Final Rule

In light of the testimony at the public hearing and the written comments, OSHA has modified aspects of the 1983 proposal. The following table lists those portions of the proposal that remain unchanged or those that have been revised only editorially, not substantively. The reasons supporting the Final Rule, including any significant modifications of the 1983 proposal, are discussed below and in the narrative accompanying the proposal (48 FR 35777-35809).

TABLE OF PARAGRAPHS NOT SUBSTANTIALLY CHANGED FROM PROPOSED RULE

Proposed paragraph Nos.	Final rule paragraph Nos.
(b)(1).....	(b)(1)
(c).....	(c)
(f).....	(f)
(g)(1) (iv) and (v).....	(f) (3) and (4)
(j)(1)(i).....	(j)(1)(i)
(j)(1)(iv)(A).....	(j)(1)(iv)(A), (j)(1)(iv)(B)
(j)(1)(iv) (C) and (D).....	(j)(1)(iv) (C) and (D)
(j)(1)(v).....	(j)(1)(v)
(j)(1)(vi).....	(j)(1)(vi)
(j)(1)(ix).....	(j)(1)(ix)
(j)(1)(x).....	(j)(1)(x)
(j)(2) (i), (ii) and (iv).....	(j)(2) (i), (ii) and (iii)
(j)(3).....	(j)(3)
(k)(1).....	(k)(2)
(k)(3).....	(k)(6)
(k)(4).....	(k)(7)
(k)(5).....	(k)(8)
(k)(6).....	(k)(9)
(k)(7)(i).....	(k)(10)(i)
(m)(2).....	(m)(1)
(m)(3).....	(m)(2)
(m)(4)(i).....	(m)(3)
(m)(5) (i) and (ii).....	(m)(5) (i) and (ii)
(m)(6).....	(m)(6)
(m)(8).....	(m)(8)
(m)(9).....	(m)(9)
(m)(10).....	(m)(10)
(m)(11).....	(m)(11)
(m)(12).....	(m)(12)
(n)(2).....	(n)(3)
(o)(1).....	(o)(1)
(o)(2)(i)(A).....	(o)(3)(i)(A)
(o)(2)(i)(B).....	(o)(3)(i)(B)
(o)(2)(ii).....	(o)(3)(ii)
(o)(2)(iii).....	(o)(3)(iii)
(o)(2)(iv).....	(o)(3)(iv)(B)
(o)(2)(vii).....	(o)(3)(vii)
(o)(2)(viii).....	(o)(3)(viii)
(o)(2)(ix).....	(o)(3)(ix)
(o)(3)(i).....	(o)(4)(i)
(o)(3)(ii)(A).....	(o)(4)(ii)(A)
(o)(3)(iii).....	(o)(4)(iii)
(p)(2).....	(p)(1)
(q)(1).....	(q)(1)
(q)(2).....	(q)(2)

TABLE OF PARAGRAPHS NOT SUBSTANTIALLY CHANGED FROM PROPOSED RULE—Continued

Proposed paragraph Nos.	Final rule paragraph Nos.
(q)(3).....	(q)(3)
(q)(4).....	(q)(4)
(q)(5).....	(q)(5)
(q)(6).....	(q)(6)
(q)(7).....	(q)(7)
(q)(8)(i).....	(q)(8)(i)
(q)(8)(ii).....	(q)(8)(ii)
(q)(8)(iv)(B).....	(q)(8)(iv)(B)
(q)(8)(v).....	(q)(8)(v)
(q)(9).....	(q)(9)
(q)(10)(ii).....	(q)(10)(ii)
(q)(11).....	(q)(11)
(r)(1).....	(r)(1)
(r)(2)(i).....	(r)(12)(i)
(r)(3).....	(r)(3)
(r)(4)(ii).....	(r)(4)
(r)(5).....	(r)(5)
(r)(6)(i).....	(r)(6)(i)
(r)(7).....	(r)(7)
(r)(8).....	(r)(8)
(r)(9).....	(r)(9)
(r)(10).....	(r)(10)
(r)(11).....	(r)(11)
(r)(13).....	(r)(14)
(r)(14).....	(r)(15)
(r)(15).....	(r)(16)
(r)(16).....	(r)(17)
(r)(17)(ii).....	(r)(18)(ii)
(s)(3).....	(s)(2)
(s)(4).....	(s)(3)
(t)(1)(i)(A).....	(t)(1)(iv)(A)
(t)(1)(i)(A)(2).....	(t)(1)(iv)(B)
(t)(1)(i)(D)(7).....	(t)(1)(ii)
(t)(1)(i)(D)(2).....	(t)(1)(iii)
(t)(1)(i)(G).....	(t)(1)(i)
(t)(1)(ii)(E)(2).....	(t)(1)(vii)
(t)(1)(ii)(G)(7).....	(t)(1)(v)
(t)(1)(ii)(G)(2).....	(t)(1)(vi)
(t)(1)(ii)(G)(3).....	(t)(1)(viii)
(t)(3)(i).....	(t)(2)
(t)(4)(i)(B).....	(t)(3)(xi)
(t)(4)(i)(C).....	(t)(3)(xii)
(t)(4)(i)(D).....	(t)(3)(viii)
(t)(4)(i)(E) (7) and (2).....	(t)(3)(ix)
(t)(4)(i)(F).....	(t)(3)(x)
(t)(4)(i)(H).....	(t)(3)(xx)
(t)(4)(i)(I).....	(t)(3)(xxi)
(t)(4)(i)(J).....	(t)(3)(xxv)
(t)(4)(ii)(A).....	(t)(4)(vii)
(t)(4)(ii)(B).....	(t)(4)(viii)
(t)(4)(ii)(C).....	(t)(4)(ix)
(u)(2).....	(u)(1)
(u)(4).....	(u)(3)
(u)(5).....	(u)(4)
(u)(6).....	(u)(5)

Paragraph (a) Scope and Application

Proposed paragraph (a)(1) stated that the revised standard would apply to underground tunnels, shafts, chambers, passageways, and cut-and-cover excavations which have been covered sufficiently to present the underground construction hazards addressed in the standard. It should be noted that the current standard has been applied to certain cut-and-cover excavations since 1976. Since 1979, it has applied to any phase of cut-and-cover operations being conducted during and as part of the

construction of tunnels which also have been covered so as to create conditions in which hazards characteristic of tunnel operations are present (See OSHA Instruction STD 3.11, Dec. 10, 1979) (Ex. 15-5). In the Final Rule, paragraph (a)(1) remains as proposed except that, as a result of several comments, the reference to cut-and-cover excavations has been modified.

A number of commenters questioned the application of the revised standard to cut-and-cover operations (Exs. 17-12, 17-13, 17-24, 17-31, 17-37, 17-38, 17-45, and 21-13). For example, Kenny Construction Company asserted that there is no consensus on the degree of cover of an excavation that will correlate to the hazards addressed in § 1926.800, and that individual judgments will vary as to when hazards characteristic of tunnel operations are present (Ex. 17-31). Mr. Frederick F. Foote, a construction safety consultant, commented that the phrase "sufficiently covered to present underground construction hazards" leaves too much to the subjective judgment of OSHA compliance officers (Ex. 17-12).

OSHA was also urged to develop a separate standard for cut-and-cover operations (Ex. 17-13). However, the cut-and-cover proposal was strongly endorsed by the United Brotherhood of Carpenters and Joiners of America. Joseph L. Durst, Jr., Director of the Union's Health and Safety Department, characterized the inclusion of cut-and-covered excavations as "one of the most improved elements of this proposal" and stated that it filled a void between the current underground construction standard and the excavation standards at 29 CFR 1926.652 and 1926.655 (March 1984 Hearing Transcript at pp. 766-768).

In the Final Rule, OSHA has revised the application of the standard to cut-and-cover excavations by stating that if the excavation is covered so as to create conditions characteristic of underground construction and the excavation is also physically connected to other ongoing underground construction operations which are within the scope of this section, then the cut-and-cover excavation is also within the scope. For example, a cut-and-cover subway station that has active tunneling operations at either end of it would be within the scope of this standard because the excavation occurring during these other tunneling operations creates the hazards and the cover over the excavation contains them, thereby creating conditions within the cut-and-covered portion similar to an actual tunnel. OSHA believes that this more clearly expresses the regulatory intent

without substantively altering the scope of the current standard. Although OSHA recognizes that hazards may differ in degree from one worksite to another, the Agency cannot explicitly anticipate every unique circumstance in fashioning safety and health standards for general application to underground construction. In the last ten years, OSHA has found that the application of § 1926.800 to certain cut-and-cover operations is generally well understood by the industry as well as by OSHA compliance officers. The record in this proceeding does not demonstrate a need for a separate cut-and-cover standard. Accordingly, OSHA will continue to apply the underground construction standard to cut-and-cover operations.

OSHA emphasizes that the scope of this Final Rule remains consistent with the overall philosophy expressed in the Preamble to the proposal (48 FR 35777-78), that this standard should apply to the construction of any underground facility or to any underground operation that is physically connected to tunneling operations so as to present hazards typical of tunnel construction. Although OSHA stated (48 FR 35778) that certain pipejacking and manhole construction operations would be covered by this standard, it appears that this point needs further clarification. For example, one commenter asserted that pipeline and manhole work does not involve all of the same conditions as tunnel work, and recommended that OSHA use the criteria of a passageway excavated by employees and equipment working below the earth's surface in determining the scope of this standard (Ex. 17-24).

OSHA intends that § 1926.800 protect employees working in both pre-existing manholes and manholes under construction if the manhole is both physically connected to an active underground construction operation and also covered to such an extent that the manhole presents the underground construction hazards addressed in this section.

OSHA also intends to apply these rules to certain pipejacking operations, based on the location of the employees performing the work. For example, if an employee is working underground, then this section applies, regardless of whether the ground support is advanced by pushing pipe or is fabricated within the heading. However, if an employee is working outside of the portal in an open pit (for example, operating horizontal boring and pipejacking equipment) and is not exposed to underground construction hazards, then this section does not apply. (That type of an operation is more appropriately covered

by other OSHA construction standards, including Excavations (§ 1926.650-652) and Confined Spaces (§ 1926.21(b)(6)).

Paragraph (a)(2) explains that § 1926.800 does not apply to foundation operations for above-ground structures that are not physically connected to an underground construction operation, or to surface excavation, as both are addressed in Subpart P (Excavations) of this Part; or to underground electrical transmission and distribution lines, as addressed in Subpart V (Power Transmission and Distribution) of this Part.

OSHA specifically solicited comments on whether other types of construction should be exempted from the scope of this section (48 FR 35778). AT&T (Ex. 17-5) recommended that telecommunications manholes specifically be exempted, contending that the construction of manholes is more appropriately covered under Subpart P. OSHA agrees that the construction of such manholes would be covered by Subpart P, and not by § 1926.800, if such manholes are not physically connected to an underground construction operation. However, it should be noted that once a manhole is physically connected to an underground construction job, OSHA believes that an employee within the manhole who is exposed to hazards typical of underground construction should be afforded the same protections that § 1926.800 provides.

OSHA received comments that foundation operations such as underpinning and drilled-pier shafts should be included within the scope of this standard, rather than excluded (see, for example, Exs. 17-2 and 17-36). OSHA has considered the hazards cited by these comments (for example, workers who descend into a large machine-drilled shaft for cleanup or geotechnical inspection and are exposed to confined spaces, moving ground, and bad air) and has decided that these hazards will be covered by Subpart P, § 1926.55 (Gases, vapors, fumes, dusts, and mists), § 1926.57 (Ventilation), and the confined spaces requirements of § 1926.21(b)(6). It should also be noted that Subpart P is currently being revised (see 52 FR 12288) and that revision will address bell-bottom pier holes and other similar footing excavations. In addition, the revision will address cave-in protection, air-monitoring, and other hazards for these types of excavations.

Several commenters recommended the development of a confined spaces standard to cover certain operations—such as work performed by small crews and unspecified sizes of sewer jobs

(Exs. 17-4, 17-6, 17-9, 17-13, 17-22, 17-29, 17-51). For example, Mr. Edward Bovee, with Underground Construction Company, Inc., (Ex. 17-37) stated that a three-man crew working on a sewer manhole connected to a sewer main is adequately covered in the California confined space standard. In response, it must first be noted that under this Final Rule, manhole work on an existing sewer is beyond the scope of this standard. However, for operations within the scope of this standard, OSHA does not agree that employees should be excluded from the additional protections afforded by § 1926.800 simply because a crew is composed of only three employees.

A number of comments (Exs. 17-6, 17-13, 17-24, 17-31, 21-13) questioned the necessity of such proposed requirements as two 5-person rescue crews, a formal check-in/check-out system, and a nine-point safety program, including flood control, in connection with activities such as constructing manholes connected to sewer systems, setting a concrete box culvert or steel pipe in an open-cut operation, or jacking an open-ended pipe beneath a highway. OSHA has addressed these comments generally by clarifying (see below) when manhole construction and pipe-jacking operations are to be considered within the scope of this standard, and also by revising the provisions concerning rescue crews, safety programs, and check-in/check-out systems to reflect the size or extent of the job.

Paragraph (b) Access and Egress

OSHA proposed, at paragraph (b)(1), a general requirement written in performance language for safe means of access to and egress from all work stations. OSHA explained that this proposed revision was editorial in nature, in that it clarified the existing standard, at § 1926.800(a)(2), by adding the word "egress," but without further change (see 48 FR 35778). Although OSHA was unaware of any confusion attributable to the performance language in the current standard, OSHA solicited comments on the appropriateness of including more detailed access/egress provisions such as those found in the ANSI and Michigan tunneling standards (see 48 FR 35779). The record does not, however, indicate a need for more detailed provisions, so the current standard, with editorial revision, is retained in this Final Rule.

OSHA has revised proposed paragraph (b)(2) to specify the hazard to which the standard is intended to apply (see 48 FR 35779). The proposal simply required the employer to provide "protection" for employees walking in

areas where mobile equipment is present. The Final Rule clarifies that the hazard contemplated by the standard is being "struck by" such equipment.

OSHA has revised proposed paragraph (b)(3) to reflect comments made by Granite Construction (Ex. 17-24), among others (Exs. 17-4, 17-21, 17-32), who suggested more flexible performance language that allows the employer to select appropriate effective methods of controlling unauthorized entry.

Paragraph (c) Check-in/Check-out

Paragraph (a)(6) of the current standard requires a check-in and check-out system that will provide positive identification of every employee underground. In addition, the standard requires that an accurate record and location of the employees be kept on the surface.

OSHA proposed to revise the existing standard in two ways: First, by requiring a check-in/check-out system at each above-ground entrance that would provide the employer with an accurate record of each person underground (see proposed paragraph (d)(1)); and second, by requiring each person underground to wear or carry a means of positive personal identification (see proposed paragraph (d)(2)). OSHA stated that this check-in/check-out system would enable the employer to identify how many and which workers are underground (see 48 FR 35779).

OSHA solicited comment on various methods for check-in and check-out, especially concerning the effectiveness, maintenance costs, and any other associated problems (see 48 FR 35780). In response, OSHA received numerous comments, but few in favor of the proposed changes. These comments focused on the four issues discussed below.

The first issue pertains to the need for positive identification of every employee underground. Some commenters acknowledged the need to account for the number of employees underground in the event of an accident to assist rescue/recovery operations (Exs. 17-19 and 17-21A). Nevertheless, they argued that the intent of the standard is satisfied by knowing the number, but not necessarily the identities, of employees underground. OSHA recognizes that a check-in/check-out system may not contribute directly to safety during normal operations. However, at the time of an underground emergency, such as a cave-in or an explosion, the ability to determine accurately the number of employees underground is of significant value—both to those employees who may be

trapped underground, and also to those members of the rescue crew who would be at risk during rescue operations. OSHA acknowledges that the benefits to be derived from this rule pertain most directly to having an accurate count of the employees still underground, rather than to knowing the identity of each such employee. Therefore, OSHA has deleted the positive identification requirement contained in the current standard at § 1926.800(a)(6).

The second issue, closely related to the issue of positive identification just discussed, pertains to the proposed requirement that each person underground wear or carry a means of positive identification. OSHA's rationale for this proposed requirement was to determine which employees were still underground. OSHA further stated that the rescue team cannot be sure that all employees have been rescued unless a means of positive identification is provided (see 48 FR 35780).

One commenter praised the rule as excellent and necessary, especially in high risk situations, although no rationale was provided (Ex. 17-14). Three commenters criticized the proposal (Exs. 17-17, 17-19, 17-21A) on the check-in/check-out system (Ex. 21A).

OSHA has analyzed the record and does not find sufficient justification to require positive identification to be worn by each employee underground, in addition to maintaining an accurate above-ground count of the number of employees underground. Although OSHA expects that most employers who currently use a system of identifying workers who are underground will continue to do so, the record fails to establish that an employer's failure to implement such a system subjects employees to a greater risk underground. Therefore, OSHA has dropped the proposed requirement that each person underground wear or carry a personal identification tag.

The third issue pertains to the elements required for a check-in/check-out system. While OSHA did not propose specific components for the system, it was anticipated that a board and tags would be used (see 48 FR 35779). Indeed, OSHA's experience under the current standard has been that employers typically use a brass tag system. Moreover, the use of the term "record" in both the current standard and the proposal certainly implies a tangible component, such as a written list or a board with tags.

Some commenters argued that the proposed language was too stringent, particularly on smaller jobs where a less

formal system may be just as effective and less burdensome (Exs. 17-21A, 17-32, and 17-33). For example, C and E Construction Company (Ex. 17-33) contended that the brass tag system was unnecessary for crews of up to 10 men. On the other hand, Air Products and Chemicals, Inc. (Ex. 17-30) and Perini Corporation (Ex. 17-23) endorsed a brass tag system. OSHA agrees that the brass tag system is a good method of accounting for employees underground and does not want to discourage its use. Nevertheless, OSHA sees merit in the assertion that other methods of accounting for personnel underground may also be reliable, particularly on smaller jobs (see Ex. 17-21-A, 17-32, and 17-33). The true test of whether any system is reliable is whether the employer knows at all times the number of employees underground. The record in this rulemaking does not demonstrate the clear superiority of one method over others generally. Nor does the record support a particular number of employees as the threshold at which a more formal system involving hardware of some kind, such as the brass-tag system, should be required.

Therefore, Final Rule paragraph (c) simply requires that the employer maintain a procedure that will ensure an accurate count of the number of persons underground in the event of an emergency. While the method of compliance is not prescribed in this Final Rule, and may be effective without the use of a record, the employer remains responsible for assuring that an accurate count of the number of persons underground is available to above-ground personnel in the event of an emergency (see paragraph (g)(3) below). Only through planning and routinely following procedures will the employer know accurately the number of persons who were underground prior to the emergency, how many persons were able to evacuate, and how many persons remain to be rescued.

The fourth issue, which pertains to multiple above-ground entrances, is closely related to the issue just discussed. OSHA received comments which noted that requiring check-in/check-out systems at multiple entrances would duplicate recordkeeping and be extremely impractical for many tunneling projects (Exs. 17-8, 17-21A, and the March 1984 Hearing Transcript, p. 203). However, OSHA also received comment advocating a requirement that employers with jobsites having multiple points of access ensure reliable communication between the different check-out points to facilitate accounting for personnel (Ex. 17-16). In light of

these comments, and the deletion of the requirements for positive identification and for a tangible record above ground of each person underground, OSHA has also deleted the requirement for a check-in/check-out system to be maintained at each above-ground entrance. Nevertheless, even though an employer's worksite has more than one entrance or exit, paragraph (c) of the Final Rule requires the employer by whatever means to ensure that an accurate count of persons underground is available to above-ground personnel in preparing rescue efforts. See also paragraph (g)(3) of this Final Rule. Thus, the standard affords the employer flexibility in selecting the appropriate method, in light of jobsite conditions.

OSHA also proposed an exemption from the check-in/check-out system requirement for certain underground facilities where major construction had essentially been completed and environmental and structural hazards had been eliminated. OSHA received generally positive response to this part of the proposal (see, for example, Exs. 17-13 and 17-21A) and has therefore retained the exemption in this Final Rule.

Paragraph (d) Safety Instruction

OSHA received many comments on its proposed nine-point safety program in which commenters suggested that OSHA should require employees to be instructed only in subjects that were relevant to the particular worksite (Exs. 17-4, 17-13, 17-21A, 17-22, 17-24, 17-32). For example, the Associated General Contractors of America, Inc., argued that if employees are working in conditions which pose no threat of flooding, they should not have to be versed in flood control measures (Ex. 17-13). OSHA agrees that employees should receive instruction in the recognition and avoidance of hazards specific to their worksite rather than receive general, boiler-plate type of instruction, and has revised the rule to require only that employees be instructed in topics that are appropriate for the jobsite.

In addition, the National Institute of Occupational Safety and Health (NIOSH) suggested that fire prevention and protection be included in the safety instruction (Ex. 17-27). OSHA agrees that this would be consistent with OSHA's emphasis on prevention of fires in underground construction areas and, accordingly, has added that topic to the list.

OSHA has also clarified that check-in/check-out should be part of the emergency procedures covered in the employer's safety instruction. OSHA

believes that the effectiveness of the check-in/check-out procedure will be proportional to the effort an employer invests in planning, and also to how well each employee has been instructed to perform his or her assigned function.

OSHA proposed in paragraphs (e)(1) and (e)(3) that a written outline of the safety program be available at the jobsite and be distributed to and discussed with each employee. As OSHA noted at 48 FR 35780, the current standard does not require a written safety program or a written outline of the safety program, although § 1926.20(b) requires employers to initiate and maintain such accident prevention programs as may be necessary to comply with Part 1926, and many contractors produce written safety and health programs during OSHA inspections to demonstrate compliance with this rule (see Ex. 21-13, Attachment 1).

The purpose of distributing a written outline and discussing it with each employee was to inform the employees of the program. While OSHA concurs with those comments that extolled the value of training (see Exs. 17-13, 17-22 and March 1984 Hearing Transcript, p. 642), OSHA has decided that employees can be instructed in the hazards, safeguards, and work rules without the necessity of using a written outline. Therefore, the Final Rule does not require a program to be available in outline form at the worksite, or issued to the employee or discussed with the employee. OSHA will look for evidence of the effectiveness of the accident prevention effort at the worksite by observing physical conditions and interviewing employees to determine their knowledge of the safety instructions.

Paragraph (e) Notification

The question of whether the notification to the on-coming shift of any safety-related incidents should be in writing (48 FR 35781) elicited divergent comments. Mr. Frederick Foote, Safety Consultant (Ex. 17-12), and Air Products and Chemicals, Inc. (Ex. 17-30), both strongly supported a log of significant information to be signed by and passed between shift bosses. The United Brotherhood of Carpenters and Joiners criticized the proposed language, pointing out that there was no specification in the rule of how the notification would be accomplished, or who would be notified (Ex. 17-11). The Associated General Contractors of America approved OSHA's proposed performance language (Ex. 17-13), and Salgado Eastern Corporation

acknowledged the "good sense" of cautioning other employees concerning existing or potential hazards, but opposed having to "fill any more file cabinets with useless records" (Ex. 17-32).

OSHA believes that the record supports an explicit obligation on the part of employers to establish a procedure so that the on-coming shift is cautioned about potentially hazardous conditions. Nevertheless, the record does not support adding to the employer's recordkeeping burden a requirement that such notification be in writing. Therefore, OSHA has retained the performance language in paragraph (e)(1), as proposed.

Paragraph (e)(2) is substantively similar to what was proposed in paragraph (g)(2), which required employers engaged in underground construction to maintain direct communications for coordination of activities with other employers whose operations may affect the safety of their employees. Most commenters agreed with the necessity to maintain direct communications with other employers whose operations may affect the safety of their employees (see Exs. 17-13, 17-22, 17-23, and 17-30). However, Kenny Construction (Ex. 17-21A) contended that the project owner or manager, not the contractor, is the only party with the authority to require compliance with a coordination procedure. OSHA acknowledges the value of active involvement by project managers and owners in this coordination among contractors. Nevertheless, under the OSH Act, Congress made each employer ultimately responsible for the safety and health of his or her own employees. Therefore, under this standard, the employer must initiate contact with other employers who may affect the safety of his employees.

Comments were divided concerning whether employers should maintain a written record of such inter-employer coordination. Mr. J. T. Barr, with Air Products and Chemicals, Inc., (Ex. 17-30) urged that OSHA require regular meetings of both operations officials and safety coordinators, with written records of salient points. However, AGC of America, and the Carolinas Branch (Exs. 17-13, 17-22), did not believe that a written record need be kept, but did endorse inter-employer coordination. OSHA believes that it is the actual coordination activity among employers that yields the benefits to employees, and this may be either oral or written. OSHA considered all these comments and found insufficient evidence in the record to justify requiring a written

record of coordination among employers.

Paragraph (f) Communications

Paragraph (f)(1) is substantively the same as proposed paragraph (g)(1)(i), except that the requirement for hoist station communication has been moved to paragraph (i)(5)(i)(j). The current standard, at § 1926.800(b)(4), requires that telephone or other signal communications be provided between the work face and the tunnel portal, but does not prescribe a particular distance for the spacing of the components. The proposal explicitly permitted natural voice communication to be used in situations where the unassisted voice could be readily understood above workplace noise. OSHA solicited comment on the desirability of using the proposed performance language, as opposed to designating specific intervals for the spacing of the components, such as those listed in the California and Michigan tunneling standards (see 48 FR 35781). OSHA received little comment on this issue. Of the comments received, two generally endorsed the proposed change (Exs. 17-13 and 17-51), while another commenter stated that tunnels less than 500 feet long do not need communication systems unless the tunnel has a compressed air atmosphere (Ex. 17-32). OSHA has determined that the evidence in the record is too inconclusive to warrant specific distance intervals. Thus, OSHA has concluded that employee safety is best served by requiring a powered system when natural unassisted voice communication is ineffective, without regard to specific distance intervals.

During the public hearings, Mr. H.B. Butcher of Fenix and Scisson, Inc., questioned the feasibility of proposed paragraph (g)(1)(i):

Radio transmission could cause premature firing of electric blasting caps * * * and the Institute of Manufacturers of Explosives cautions against this possibility * * *. The alternative to radio transmission is hard wire telephone lines. In order to meet the requirement of providing communications to each working face, considerable quantities of wire must be installed permanently with a substantial additional amount of wiring being moved continuously (March 1984 Hearing transcript, pp. 569-571).

OSHA believes, nevertheless, that radio is both a feasible and a cost-effective means of voice communication. The hazard of triggering electric blasting caps can be avoided by switching to non-electric detonators. Alternatively, voice-activated communications systems, similar to those used in mines, could be used in the vicinity of electric detonators. In addition, for large tunnel

sites, the use of wired telephones appears to be common; virtually all large sites visited by JRB (OSHA's contractor) had wired telephones (see Ex. 11, Appendix C, pp. 42-124). For small tunnel sites, OSHA expects that power-assisted bullhorns could be used. OSHA therefore concludes that this provision is technologically feasible and appropriate.

Paragraph (f)(2) is also substantially the same as proposed paragraph (g)(1)(ii). Fenix and Scisson (Ex. 17-20) questioned whether a telephone and a bell signal system would qualify as "two effective means of communication" as stated in the proposed standard. OSHA's intent is to permit the employer to choose the two means of communication as long as one is a voice communication system, and both are "effective." C and E Construction (Exs. 17-33) recommended a gas-operated horn, with a simple set of signals posted at the portal and on top, as a second communication system. Although the standard does not prescribe a horn or a bell, OSHA expects that either signal system, supplementing a voice communication system, could be "effective" for this purpose.

Paragraphs (f)(3) and (f)(4) [proposed paragraphs (g)(1) (iv) and (v), respectively] received only supportive comment (e.g., Exs. 17-13) and therefore remain unchanged in the Final Rule.

Paragraph (f)(5) revises proposed paragraph (g)(1)(vi) and incorporates public comments. Kenny Construction (Exs. 17-21A) stated that "Sporadic maintenance activities or activities in completely supported sections of a tunnel or shaft do not require a special communication system. The risk of an accident is insignificant and would not justify the cost of such a system. The rule should apply only to employees working alone in hazardous areas." A.G.C. (Exs. 17-13 and 17-22) also recommended the inclusion of the "in hazardous locations" qualifier. CAL/OSHA Rule 8410(h) and MSHA 57.18-25 both specify protection for an employee working alone in a hazardous location, such as one with a hydrogen sulfide atmosphere, or one where remotely controlled equipment is operating. Based on these comments, OSHA has determined that the limiting phrase "working in hazardous locations" should be added. OSHA has also clarified the proposed language "except when in view of other persons" by prescribing that the employee be "under observation by other persons" and not simply viewable.

Mr. Ben Hill, International Union of Operating Engineers, asked for a

specification of distance to define "working alone" (March 1984 Hearing Transcript, pp. 731-732). OSHA believes that, in the context of working in a hazardous location, the conditions of not being watched and being unable to be heard are more valid criteria for defining "working alone" than simply distance, and the Final Rule reflects that belief.

Paragraph (g) Emergency Provisions

OSHA's current standard at § 1926.800(b)(2) requires emergency hoisting facilities to be "readily available at shafts more than 50 feet in depth, unless hoisting facilities are provided that are independent of electrical power failures."

OSHA proposed in paragraph (i)(1) to require advance arrangements for emergency hoisting capability to be on site or close at hand at jobsites where hoisting would expedite emergency procedures, such as underground construction operations dependent upon shafts for access. OSHA stated that this requirement would apply even at shafts where the primary hoist is powered independently of that shaft's electrical system. OSHA also stated that this rule would apply to all shafts used for access, regardless of depth, since injured employees at the bottom of shafts less than 50 feet deep may need hoisting assistance (see 48 FR 35783). Both Section 8.2 of the ANSI standard, and Rule 408.41463 of the Michigan standard require emergency hoisting facilities to be readily available unless hoisting facilities are provided that are independent of electrical power failures.

Commenters contended that emergency hoisting is not necessary if a crane is the primary hoisting means. Salgado Construction stated that the chance of a crane being down at the same time someone is injured is very remote (Ex. 17-32). C and E Construction asserted that a secondary hoist system is cost-prohibitive and unnecessary, except in the remote possibility that the primary hoist is electric (Ex. 17-33). Al Johnson Construction Company stated, without elaboration, that backup systems would be burdensome in many cases (Ex. 17-19).

OSHA reemphasizes that this backup hoisting capability does not necessarily have to be provided at every jobsite, but only at underground construction operations where a shaft is used as a means of egress. In the proposal, OSHA provided examples of conditions where such a back-up capability would not be required (see 48 FR 35783). In addition, OSHA also stated that the emergency hoisting capability need not be on the jobsite; it could be on call from a source that could respond on a timely basis.

Therefore, after considering these comments and the ANSI and Michigan Standards, OSHA has substantively retained the rule as proposed, but is only requiring an emergency hoisting means to be readily available when the primary hoist function could become inoperative due to an electrical power failure.

OSHA proposed in paragraph (i)(2) to require self-rescuers for all employees at work stations in underground areas where employees might be trapped by smoke or gas. This revision was developed to help clarify paragraph (b)(3) of the current standard, which had been interpreted by some always to require self-rescuers only at the advancing face, regardless of whether employees at that face might be trapped by smoke or gas.

Paragraph (g)(2) of the Final Rule retains that concept as proposed. The standard also reemphasizes OSHA's intention that the obligation to provide self-rescuers is not limited solely to employees at the advancing face. OSHA expects the employer to make a careful analysis of worksite conditions (such as the use of combustible fuels or hydraulic fluids; the presence of sources of ignition; the likelihood of liberation of flammable gases based on geological studies and air monitoring records; and the direction of air flow in relation to work stations) when deciding whether a particular work station presents conditions in which an employee might be trapped by smoke or gas, and consequently would need respiratory protection for escape. OSHA fully expects that such an analysis could result in a decision to not provide self-rescuers based on a lack of hazards such as combustible fuels and materials, sources of ignition, flammable gases in combination with good ventilation and air quality.

In response to OSHA's request for comments related to self-rescuer use (48 FR 35783), OSHA received favorable comment concerning both the carbon monoxide (CO) type of self-rescuer and the self-contained type. The Associated General Contractors of America—the Colorado Chapter, the Carolinas Branch, and the National Office (Exs. 17-51, 17-13, 17-22)—stated that the CO self-rescuer is adequate, and that self-contained self-rescuers should not be required. On the other hand, Mr. Dan McAuliffe, with the International Union of Operating Engineers, urged the use of self-contained self-rescuers in the parts of the country that have gas problems, provided that the apparatus was not so heavy as to be impractical (March 1984 Hearing Transcript, p. 735). The record (Ex. 11, pp. 4-13 and 4-14) indicates that

lightweight, compressed-oxygen emergency self-rescuers, rated for one hour under escape conditions (longer periods if the user is passively awaiting rescue), have been approved by MSHA and NIOSH.

OSHA proposed, in paragraph (i)(2), a cross-reference to § 1926.103(b) which requires that the selection of respiratory protection be based on the worksite conditions. That paragraph applies industry-wide to construction, and gives employers the flexibility to tailor their respiratory protection program to the variables at each worksite.

Mr. Bruce Summers, with Granite Construction Company (Ex. 17-48), stated that OSHA should not reference § 1926.103 for the selection and maintenance requirements for respirators until the self-contained self-rescuer can be made economically feasible. Mr. Summers stated that the present cost of such equipment would be prohibitive for all tunnel operations. Contrary to this apprehension, however, the cross-reference to § 1926.103 does not effectively prescribe the use of self-rescuers in all underground construction operations and, most importantly, does not require the self-contained type of self-rescuers for all tunnel operations. Paragraph (g)(2) of the Final Rule only requires self-rescuers for those employees who might be trapped by smoke or gas.

OSHA finds that the record does not support a requirement for one type of self-rescuer over the another in all circumstances. However, the record does support a requirement that the selection of the self-rescuer be in accordance with § 1926.103(b). It remains the employer's duty to select the type and capacity of approved self-rescuer based on the worksite conditions. Moreover, retaining the cross-reference to § 1926.103 addresses the concerns raised by Mr. J.T. Barr, with Air Products and Chemicals (Ex. 17-30), that the standard include a requirement that the self-rescuer must have adequate capacity for the situation at hand.

The last sentence in paragraph (i)(2) of the proposal explicitly required employees to be trained in the use of self-rescuers. OSHA has deleted this sentence because it is redundant with § 1926.103(c)(1), which already imposes a duty upon employers to train properly those employees who might be required to use self-rescuers.

Objections were raised because the proposal merely required that self-rescuers be kept at work stations, rather than worn on the belts of workers (see for example, March 1984 Hearing

Transcript, pp. 726-735; and Exs. 17-46). Nevertheless, the current standard at § 1926.800(b)(3) does not require that self-rescuers be worn on the person of the employee, and the record in this proceeding does not support such a change. Therefore, the Final Rule does not specify how or where the self-rescuer must be kept, although the standard clearly requires that it must be in the immediate area of any employee who might be trapped by smoke or gas in the event of an emergency such as a fire. Either having an employee wear the self-rescuer on his or her belt or having a cache of self-rescuers within the immediate work area of employees who might need them would fulfill the requirements of the performance language.

OSHA has slightly modified proposed paragraph (i)(3), designated person, to make paragraph (g)(3) of the Final Rule compatible with changes made to other parts of the standard, such as check-in/check-out (paragraph (c)) and evacuation procedures (paragraph (d)). The final rule provides that in addition to securing aid in an emergency, the designated person is also assigned to keep an accurate count of the number of employees underground (see paragraph (c) above).

OSHA has revised proposed paragraph (i)(4) to clarify that a flashlight need not be MSHA-approved. Although the proposed standard required an MSHA-approved hand-lamp or cap-lamp, OSHA stated in the accompanying text that an "approved" flashlight would meet the proposed requirement (48 FR 35784). Paragraph (g)(4) of the Final Rule requires the lamp to be "acceptable," which is defined in new paragraph (n), Definitions, to mean "Any device, equipment, or appliance that is either approved by MSHA and maintained in permissible condition, or is listed or labeled for the class and location under Subpart K of this Part."

The requirements for rescue teams proposed in paragraph (i)(5) provoked many comments. The majority of the commenters—including six underground construction contractors (Exs. 17-4, 17-21A, 17-23, 17-24, 17-32 and 17-33)—agreed with OSHA's proposal to allow locally available teams to provide rescue services to an underground construction site. The record indicates that using locally available rescue teams saves both training and equipment costs, and that police and fire department paramedics are better trained and experienced to handle emergencies (Exs. 17-4 and 17-32). However, many commenters did not support the proposed requirement that

two 5-person rescue teams be available at all underground construction sites, and recommended that OSHA revise the rule to correlate the rescue capability to the number of employees working underground (see, for example, Exs. 17-1, 17-8, 17-13, 17-19, 17-21A, 17-22 and 17-24). On the basis of these comments, OSHA has determined not to change the size criteria in the existing standard (at § 1926.800(e)(1)(xii)) which requires the training of at least two rescue teams (10 employees divided between shifts) when 25 or more employees work underground at one time, and of not less than five employees at smaller operations. However, OSHA has retained the proposed requirements that the primary team be available either on the jobsite or within one-half hour travel time, and that the second team be available within two hours travel time.

As proposed (48 FR 35784), an employer could use a locally available team in lieu of training and equipping his own employees. The current standard, at § 1926.800(e)(1)(xxi), implies that rescue team members be employees of the underground construction employer, although OSHA has allowed local rescue services to fulfill this requirement. OSHA has removed any ambiguity regarding the use of local rescue teams. The standard requires the employer to ensure that rescue team members have the proper training and equipment to effect a rescue at the underground construction jobsite; can respond within the specified travel time; and are familiar with the environment and configuration of the underground worksite (see testimony of Mr. Dave Bell, United Brotherhood of Carpenters and Joiners of America, March 1984 Hearing Transcript, p. 786).

In paragraph (i)(5)(ii), OSHA proposed to continue the current requirement for annual training of rescue team members, and added a requirement for practicing the use of the self-contained breathing apparatus (SCBA) for at least 30 minutes every month. Objections were raised regarding the proposed practice frequency and duration. For example, Mr. G.B. Knight, with S.A. Healy Company, stated that annual training should only require a refresher course, rather than the entire course, after the first year. Mr. Knight also questioned the need for monthly practice on SCBA after the initial training, asserting that the trained person is not likely to lose the ability to use the equipment (Ex. 17-29). Similarly, Mr. I.J. Meyerson, with Boeing Aerospace Company, stated that 30 minutes of SCBA practice is excessive to the point that it would exhaust the air supply. Mr. Meyerson

contended that, aside from causing great expense, the proposal would produce no apparent increase in proficiency, as compared to frequent donning and operation without taking 30 minutes per session and without wasting standby air supplies. He recommended that the paragraph be revised to require that rescue team members be trained and practice often enough to maintain the necessary proficiency (Ex. 17-39). On the basis of the above comments, OSHA has determined that the proposed 30-minutes-practice requirement is not necessary, and that the annual training requirement provides the requisite degree of safety.

Therefore, the Final Rule provides, at paragraph (g)(5)(iv), that at all underground construction sites where flammable or noxious gases are encountered or anticipated in hazardous quantities, rescue team members shall practice donning and using self-contained breathing apparatus monthly. At other sites, rescue team members must have at least an annual review of their qualifications (see paragraph (g)(5)(iii)).

Paragraph (h) Hazardous Classifications

[Note: In the August 5, 1983 Proposed Rule, OSHA solicited comments related to the first aid, medical service, and sanitation needs for underground construction operations, and reserved paragraph (h) for the possible inclusion of such requirements in the Final Rule (48 FR 35782-83). However, the record does not demonstrate the need to supplement the existing standards in §§ 1926.50 and 1926.51 of this Part which cover these topics. Rather than leave paragraph (h) reserved, OSHA has used this available space to place criteria for the classifications of "Potentially Gassy" and "Gassy Operations."]

The proposal added new provisions and revised the existing provisions governing the hazards associated with flammable gas in a new paragraph entitled "Gassy Operations." OSHA also proposed—in paragraph (j)(1)(xii)—air monitoring criteria (five percent of the Lower Explosive Limit (LEL) for methane, 10 percent LEL for other flammable gases, and 20 percent LEL for petroleum vapors in any open workings) which would cause an operation to be classified as "gassy." The LEL of a material is the minimum concentration of vapor in air below which propagation of a flame will not occur in the presence of an ignition source. OSHA's proposal would have required an underground construction operation to be classified as gassy whenever a one-time reading at the prescribed percent LEL was detected. Furthermore, once classified as gassy, the operation would be

operated thereafter as gassy, with no provision for reverting to a less hazardous classification.

OSHA received many comments related to the new gassy requirements. The majority of these comments focused on three areas of concern. The first area was the use of three different percentages of the LELs for specific gases and vapors. The second area was whether an underground construction operation should be classified as gassy based on a one-time reading of the flammable gas, or if the flammable gas should continue for some interval of time. The third area that OSHA received comment on was whether a gassy operation must remain classified as gassy or if it can be reclassified to a less stringent classification.

Many comments suggested that the proposed three-tier air monitoring requirements far exceeded the capabilities of most underground construction contractors, or, more specifically, the capabilities of those competent persons assigned to perform air monitoring. These comments also questioned the ability of flammable gas monitors currently used underground to discriminate between various flammable gases. For example, Mr. Bruce C. Summers, with Granite Construction Company (Ex. 17-24), stated that three different tiers could lead to confusion and would require at least three differently calibrated instruments for flammable gases or vapors alone, noting that most instruments for detection of flammable gases are calibrated on methane, which covers the majority of flammable gases encountered. Mr. Summers suggested that, for clarity and simplicity, a concentration of five percent or more of the LEL of methane or other flammable gas should be used to define "gassy."

Mr. Joseph Hadden, with MSHA, testified that rather than a three-tiered system, all flammable gases should be measured against a one-level system (March 1984 Hearing Transcript, p. 172), the then-current MSHA method for classifying an operation as gassy in metal and non-metal mines (30 CFR 57.21001, 1983 edition).

Dr. Verne Brown (Ex. 30) stated that the three-tiered distinction for LELs would require an analysis of atmospheric combustible gas vapors beyond the competence of most firms engaged in underground construction, and perhaps beyond the sophistication of the instruments available to such firms. He stated that portable, hand-held gas detectors are the existing practical instrument for the construction industry. Mr. Brown further stated that instrumentation is primarily calibrated

for methane and cannot identify mixtures of gases; this can only be done using gas chromatography (March 1984 Hearing Transcript, pp. 353-395). Thus, in his view, the three-tiered gassy criteria would force the use of laboratory analytical equipment for gas chromatography.

Dr. Brown also testified that if OSHA maintained the five percent LEL methane criterion, it would very likely result in more than 50 percent of the tunnel construction projects being classified as gassy. OSHA has not been able to verify this estimate, but agrees that a larger percentage of the tunnels would indeed be classified as "gassy" under the five percent LEL criterion.

In light of the instrumentation feasibility limitations, the Final Rule refers to "methane or other flammable gases" rather than specifying particular gases. Moreover, the comments have persuaded OSHA to drop the proposed three-tiered "gassy" classification system based on different percentages of LEL. Although OSHA proposed three different LELs as gassy classification criteria, the Agency believes that one level is adequate for employee safety. In addition, the Final Rule establishes 10 percent of the LEL as the level, above which an underground operation is classified as potentially gassy or gassy. This percentage is consistent with the criterion used to determine safe entry of personnel in OSHA's Shipyard Employment Standards (see 29 CFR 1915.12(a)(2)). The December 1979 NIOSH Criteria for a Recommended Standard related to Working in Confined Spaces also uses 10 percent Lower Flammable Limit as the recommended maximum concentration of flammable gas.

It should be noted that the 10-percent level in paragraphs (h) (1) and (2) establish criteria for classifying operations as potentially gassy or gassy, and for triggering the additional requirements for such conditions. Other provisions of the standard require precautionary action to be taken wherever five percent or more of the LEL for methane or other flammable gases is detected (see paragraph (j)).

The second area that provoked comment was OSHA's proposal to classify an underground construction operation as gassy whenever a one-time reading of the specified (five, ten, or twenty) percent LEL was detected (48 FR 35813 and 35818). OSHA received comment charging that this approach was excessively and unjustifiably stringent (see, for example, Exs. 17-19, 17-21A, 31 and 37). Mr. John Kenny, with Kenny Construction, argued that the contractor should be given the

opportunity to dilute the gas and restore the atmosphere to normal levels before declaring the job "gassy" or shutting it down (March 1984 Hearing Transcript, p. 496). Mr. Michael F. Duffy, representing the American Mining Congress, pointed out that in June 1983 MSHA had abandoned the "all or nothing" approach to classifying gassy mines adopted in OSHA's proposal and had proposed a "radically different approach," categorizing mines according to the circumstances under which flammable gas occurs and the degree of hazard involved (Ex. 37). Mr. Duffy urged that OSHA delay the revision of the gassy portion of the Underground Construction standard until the Agency could review the completed MSHA classification scheme.

Mr. A. A. Mathews, an internationally recognized expert in tunnel construction, served as a consultant to OSHA contractor JRB/SAIC during this rulemaking (Ex. 23). Mr. Mathews stated that a suitable criterion for distinguishing a continuous gassy condition from an isolated pocket of gas would be the persistence of the excess concentration for some period of time. Mr. Mathews acknowledged that establishing a reasonable time period is a judgment call; he suggested three days. He also endorsed a three-day criterion as a suitable length of time to determine whether an occurrence of hydrogen sulfide gas might be an isolated pocket or a more persistent condition.

It is well known (and was substantiated by many of the commenters) that the costs of an underground construction project increase greatly when it is classified as "gassy." For example, Mr. Charles Kelso, Dillingham Construction Company, stated that after the bid documents were revised to drop the gassy classification on a tunnel job in California, the dollar amount of the bids dropped about 50 percent (March 1984 Hearing Transcript, p. 681). Mr. Ronald Searle, with the U.S. Department of Interior, Bureau of Reclamation, referred to some preliminary engineering studies showing that an underground construction operation costs considerably more to operate under gassy conditions than under non-gassy or potentially gassy conditions. Mr. Searle said that when the Bureau of Reclamation anticipates that an underground construction project is going to be potentially gassy, the Bureau also prescribes certain criteria for the contractor to comply with in the hope that, if gas is encountered, it can be handled before conditions attain the

threshold for a gassy classification (March 1984 Hearing Transcript, pp. 122-123).

OSHA finds merit in these comments, and recognizes that the substantial costs associated with graduating immediately from a non-gassy to a gassy classification are not necessary to protect employees where intermediate, less costly measures suffice to abate the hazard. Therefore, the proposal has been revised to retain protection for employees while relieving the economic burden on employers. OSHA has adjusted the Final Rule so that an underground construction operation where gassy conditions are anticipated would initially be classified as "potentially gassy." Only after the presence of 10 percent of the LEL of flammable gas had continued for three consecutive days would the more stringent classification of "gassy" be required. This phased-in approach allows an assessment to be made of the duration and extent of the flammable gas concentration while providing the opportunity to control or dilute the gas before "gassy" conditions are achieved.

The third area which provoked comment was OSHA's proposed requirement (paragraph (u)(1)) that once an underground construction operation was classified as gassy, it would be operated thereafter as gassy, with no provision for reverting to a less stringent classification based on a reassessment of the air quality. Dr. Verne Brown (Ex. 30) stated that the proposal presumed that an area stays "gassy" and cannot be reduced back to safe levels. Mr. A. A. Mathews recommended that as a job progresses, if the geology encountered is found to be significantly better than anticipated, and if excessive concentrations of gas are not found, the gassy portion of a job can be reclassified (Ex. 23).

OSHA is persuaded by Dr. Brown's and Mr. Mathew's comments and the reasonableness of the three day phase-in period. OSHA agrees that an operation can be declassified without jeopardizing employees. Although the appropriate period of time for completing the declassification was not widely discussed in the comments, OSHA has determined that the three-day span is reasonable and consistent with the statutory purpose. OSHA has therefore added the criterion for declassifying a "gassy" underground construction operation to "potentially gassy" after three consecutive days of less than 10 percent LEL readings on the flammable gas monitor. However, if any of the conditions set forth in paragraph (h)(2) are encountered again, the

operation would be reclassified as gassy.

OSHA has also revised the language of proposed paragraph (j)(1)(xii) by replacing the term "in any open workings" with "in any underground work area" for purpose of clarity. "Open workings" is a mining term which may be unfamiliar to many underground construction contractors.

Finally, the criteria for identifying an operation as "gassy" which appeared in paragraph (u)(1) of the proposal, have been moved to paragraph (h)(2) of the Final Rule for reformatting purposes. Most of the remainder of paragraph (u) of the proposal has been moved to paragraph (i).

Paragraph (i) Gassy Operations—Additional Requirements

The requirements for gassy operations that were proposed in paragraphs (u) (2) through (6) have been transferred to paragraph (i). OSHA did not receive substantive comments on these provisions; rather it was the proposed classification system which would have triggered the application of these rules that evoked comment.

The revisions to the classification system discussed above necessitated the addition of paragraph (i)(6) to make the system practical from both a compliance and a cost standpoint. Paragraph (h) requires the employer to classify an operation as "gassy" after air monitoring discloses flammable gas concentrations of 10 percent LEL or more for three consecutive days. During those three days, the employer may take steps to attempt to control the gas by means such as increasing the ventilation or by grouting the entry point for the gas. If the gas is only an isolated pocket, it may bleed off to a negligible amount, removing the need to classify the operation as "gassy." After three days, if the gas remains at or greater than 10 percent LEL, the operation will be classified as "gassy." Thus, when an operation has changed from potentially gassy to a gassy classification, the contractor who has not already come into compliance with the gassy operation equipment requirements at the end of the three-day period would be in violation. OSHA has added paragraph (i)(6) to allow the time necessary to come into compliance with the "gassy" provisions. To ensure the safety of employees, and to prevent this phase-in allowance from being abused, OSHA requires that all operations except the three prescribed in the rule be suspended in the affected area.

Since the suspension of operations is expensive, this will ensure a good faith effort by the employer either to control

the gas or to come into compliance with the gassy operation requirements. Normal operations may be resumed as soon as the employer has either implemented the necessary modifications to comply with the gassy operations requirements, or has controlled the gas to the point that the area can be declassified.

Paragraph (j) Air Quality and Monitoring

OSHA noted in the proposal that contaminated air is a hazard that often results in serious injury or death (48 FR 35774-35777). Paragraph (j) contains the requirements related to air quality and monitoring which are intended to reduce that hazard potential. The format is the same as that in the proposed rule. Paragraph (j)(1) contains the general requirements that apply to all underground construction operations.

OSHA had proposed in paragraphs (j)(1)(i) (A)-(D) a list of circumstances during which employees could work temporarily in atmospheres having concentrations of airborne contaminants exceeding the limits prescribed in § 1926.55, provided that respirators were used in accordance with § 1926.103. The Final Rule retains the reference to § 1926.55 for air quality limits and control requirements, but OSHA has deleted the proposed specification of extraordinary work situations because those are already sufficiently covered in §§ 1926.55 and 1926.103, and because the Agency does not intend to exclude, by omitting them from the list, other work situations which may warrant the use of respiratory protection.

OSHA has carried forward proposed paragraphs (j)(1)(iii) (A) and (B) into Final Rule paragraphs (j)(1)(i) (A) and (B) with editorial clarification. These standards assign the competent person to make a reasonable determination as to which substances to monitor and the frequency of such monitoring. Specific topics that the competent person must consider when making such reasonable determinations are contained in paragraph (j)(1)(i)(B). These standards allow the competent person to tailor the monitoring program to suit the jobsite conditions, which may vary greatly. This flexibility enables the competent person to avoid unnecessary monitoring and to focus on the actual air contaminants at that site. The competent person must meet the requirements specified on § 1926.32(f).

OSHA proposed in paragraph (j)(1)(iii) that the upper limit of oxygen in all underground work areas not exceed the atmospheric level typical of the locality (approximately 21 percent). OSHA

explained that this new requirement would reduce the likelihood of ignitions and explosions due to oxygen-enriched atmospheres (see 48 FR 35735). OSHA initially made the reference to localities due to a mistaken impression that oxygen concentration varies due to differences in elevation. Although no comments on this point were received, OSHA realizes that it is the density of the air which varies with elevation and not the concentration (percent by volume) of oxygen. Therefore, any reference to local variations in oxygen concentration is inappropriate since the hazard is related to the percent by volume of oxygen in the atmosphere.

In the proposal, OSHA referred to the "National Fire Protection Handbook" as recognizing the increased flammability hazard associated with oxygen-enriched atmospheres (see 48 FR 35786). That Handbook (14th edition) defines an oxygen-enriched atmosphere, at p. 5-40, as "any atmosphere in which the concentration of oxygen exceeds 21 percent by volume, or the partial pressure of oxygen exceeds 160 torr (millimeters of mercury), or both." OSHA proposed the acceptable upper limit of oxygen in accordance with this definition.

OSHA solicited information about accidents related to oxygen-enriched atmospheres, and also on the appropriateness of the proposed 21 percent upper limit (see 48 FR 35786). In response, OSHA received no information pertaining to related accidents, and little comment on the rule itself (see Exs. 17-11 and 17-30). Mr. J.T. Barr responded that the unspecified upper limit of oxygen was not only unclear, but it conflicted with the 23-percent oxygen level discussed in the preamble to the proposal as the appropriate upper limit to minimize the potential for fire or explosion (see 48 FR 35794). Mr. Barr recommended a lower limit of 19.5 and an upper limit of 23 percent oxygen. He stated that the rate of combustion is not accelerated significantly at 23 percent as compared to 21 percent oxygen content, and this allows sufficient leeway to avoid argument over analytical differences. Dr. Verne Brown supported 19.5 percent as the minimum level for oxygen, but recommended that OSHA revise the upper limit of oxygen from 21 percent to a limit as high as 25 percent as recommended in the 1979 NIOSH Criteria for a Recommended Standard-Working in Confined Spaces (Ex. 30). That document states that if testing indicates the oxygen level to be greater than 25 percent, then there shall be no entry into confined spaces, and hot

work is prohibited until ventilating techniques have reduced the oxygen level to approximately 21 percent.

OSHA notes that, subsequent to these comments, the National Fire Protection Association has addressed these same concerns in the 1988 standard NFPA 306 Control for Gas Hazards on Vessels. That standard provides that the appropriate upper limit for both employee exposure and hot work is 22 percent by volume. The NFPA selected this limit for reasons of the accuracy of the meter and the precision with which it can be read. This limit is within the range of limits considered by OSHA and discussed by the commenters. OSHA recognizes the expertise of the NFPA in such matters, and is persuaded that the standard should specify an upper limit of oxygen to control flammability hazards in oxygen-enriched atmospheres. Accordingly, OSHA has adopted the NFPA 306 (1988) upper limit. Paragraph (j)(1)(ii)(A) of this Final Rule establishes an upper limit of 22 percent oxygen at normal atmospheric pressure.

OSHA has revised Final Rule paragraph (j)(1)(iii)(B), formerly proposed paragraph (j)(1)(iv)(B), to conform with the reformatting of other paragraphs, the addition of the potentially gassy classification, and the revision of the proposed three-tiered listing of "methane, petroleum vapors, and other flammable gases" to the more generic phrase "methane and other flammable gases."

OSHA has revised Final Rule paragraph (j)(1)(iv), formerly proposed paragraph (j)(1)(v), to use the term "rapid excavation machines" rather than "tunnel boring machines." However, no revision was made to the requirement for such machines to be equipped with a flammable gas monitor. OSHA explained that "tunnel boring machines," as used in the proposal, are mechanical excavating machines designed to cut through soil or rock (see 48 FR 35786). Therefore, the term rapid excavation machines includes tunnel boring machines, shields, roadheaders, and other similar machines.

OSHA has also revised the proposal concerning monitoring for hydrogen sulfide (H₂S) by clarifying where monitoring must be performed, and by changing the concentration at which an alarm must sound. Paragraph (j)(1)(v)(A) retains the proposed requirement for twice-a-shift monitoring of H₂S once its presence is detected. However, OSHA has added the criterion which allows cessation of the twice-a-shift monitoring after three consecutive days without the detection of additional H₂S.

Proposed paragraph (j)(1)(vi) prescribed that whenever the presence of H₂S was detected, testing for H₂S had to be conducted "in all underground work areas" at the beginning and mid-point of each shift. Several commenters argued that the detection of gas in one work area does not necessarily indicate the presence of hazardous conditions in all other work areas (Exs. 17-24, 17-26, 23, 31). It was pointed out that many projects have work areas that are a long distance apart, often a mile or more (Ex. 31, p. 51). OSHA concurs that if the presence of H₂S has not been detected in other underground work areas, then twice-per-shift monitoring should not be required in those locations. However, the prudent competent person should consider the variables present at that job site to determine the testing frequency in other nearby underground work areas where H₂S has not yet been detected. For example, differing geology or different courses of air could account for H₂S appearing in one work area and not in another work area. Once the presence of H₂S has been detected, the Final Rule requires that monitoring be performed twice a shift in each work area where it was detected.

One commenter stated that OSHA was attempting to resurrect the "action level" concept by requiring monitoring to begin at a level less than the exposure limit; he suggested that OSHA was lowering the exposure limit for H₂S to five ppm (March 1984 Hearing Transcript, p. 356). Plainly, though, OSHA has not revised the exposure limit for H₂S in this proceeding. Moreover, a requirement for monitoring to begin at a level less than the exposure limit is used in other OSHA standards that regulate worker exposure to toxic substances (see, for example, 29 CFR 1910.1017, 1910.1018, 1910.1025, and 1910.1045). It is consistent with OSHA policy and sound industrial hygiene principles to require reasonable precautions to protect workers from recognized hazards.

Mr. Patrick Moore, a specialist in H₂S analyzers, supported the proposed rule to require continuous monitoring once H₂S has been detected in amounts approaching five ppm. Mr. Moore stated that the toxicity of hydrogen sulfide is too great to assume the risk that a one-time detection is merely an isolated pocket (March 1984 Hearing transcript, p. 243).

A written submission provided jointly by the National Utility Contractors Association, the Underground Contractors Association and Kenny Construction Company questioned the availability of equipment to monitor H₂S

at levels of five ppm (Ex. 31, p. 51). By contrast, Mr. Moore stated at the hearing that the technology presently exists to detect, accurately and specifically, hydrogen sulfide concentrations of less than five ppm, as well as concentrations in excess of that amount (March 1984 Hearing Transcript, p. 247). In addition, OSHA notes that numerous H₂S monitors are available that can detect hydrogen sulfide at a concentration of five ppm.

OSHA proposed in paragraph (j)(1)(vi)(D) that the continuous monitor provide a visual and aural alarm when 10 ppm H₂S is reached. Dr. Verne Brown recommended that OSHA use 10 ppm H₂S as the trigger point for requiring continuous monitoring, rather than the proposed five ppm level (March 1984 Hearing Transcript, p. 356). The May 1977 "NIOSH Criteria for a recommended standard * * * Occupational Exposure to Hydrogen Sulfide" recommends that fixed (non-portable) monitoring devices have an alarm to notify employees whenever there is an H₂S concentration greater than 10 ppm.

OSHA's current exposure limit for employees engaged in construction work is 10 ppm H₂S as an eight hour time-weighted average (TWA) (see § 1926.55). The 10 ppm H₂S limit is derived from the 1970 American Conference of Governmental Industrial Hygienists (ACGIH) Threshold Limit Values (TLV) Tables. According to the more recent 1980 ACGIH TLV Tables, nearly all workers may be repeatedly exposed to a TWA concentration of 10 ppm H₂S for a normal 8-hour workday or a 40-hour workweek day after day without adverse effect. In reexamining the proposed language that required an alarm to sound (for an unspecified length of time) when the 10 ppm concentration is reached, OSHA recognizes that, as proposed, workers could have remained working underground with the alarm sounding for the complete shift. The 1977 NIOSH Criteria Document concerning occupational exposure to hydrogen sulfide noted above states that the 10 ppm alarm should be for alert only and should not trigger evacuation. Both the Michigan standard (R325.50213(2)) and the former OSHA General Industry Standard (29 CFR 1910.1000, Table Z-2) established a ceiling limit for exposure to hydrogen sulfide at 20 ppm but do not set an 8-hour TWA. In the recently published Final Rule on Air Contaminants (54 FR 2332), which revised § 1910.1000, new limits for hydrogen sulfide were set at 10 ppm 8-hour TWA with a 15 ppm short term

exposure limit (STEL) (15 minutes). (As noted earlier, the current construction standard for H₂S in § 1926.55 sets a 10 ppm TWA, but has no STEL.) As noted in the preamble to the Air Contaminants Final Rule (54 FR 2783), OSHA is in the process of formally consulting with the Advisory Committee on Construction Safety and Health about whether the revised limits should be extended to construction. Such consultation is required prior to proposing new standards that have a major impact on construction (see 29 CFR 1911.10(a)).

Based on the present rulemaking record, OSHA has concluded that, at 10 ppm H₂S, workers must be informed that they are in an atmosphere which has reached the Permissible Exposure Level, but an alarm is not required for this purpose (see Final Rule (j)(1)(v)(c)). The Final Rule, at paragraph (j)(1)(v)(D), requires that the continuous monitor provide a visual and aural alarm when the concentration of hydrogen sulfide reaches 20 ppm, in order to signal that additional measures, such as respirator use, increased ventilation, or evacuation, might be necessary to maintain exposures below the permissible exposure limit.

An employer may use a monitor with two distinctive alarms, one for 10 ppm notification and the other for 20 ppm evacuation, as long as employees can distinguish between the two alarms. Any other effective method of informing employees that they are at the 10 ppm level would also be permitted under the standard.

As proposed, paragraph (j)(1)(viii) required that precautionary measures be taken whenever a 10 percent LEL flammable gas or petroleum vapor concentration is detected. As explained above regarding paragraph (h), this Final Rule establishes 10 percent LEL methane or other flammable gas as the threshold for classifying an operation as "potentially gassy." Once an operation is classified "potentially gassy," an employer must comply with an additional set of requirements. The current industry practice is to reduce or dilute the flammable gas concentration before it attains the level that would require compliance with the more costly "gassy" or even the "potentially gassy" provisions (March 1984 Hearing Transcript, pp. 123, 155-156, 494-496, 501-502). Obviously, precautionary measures to control flammable gas must be undertaken before the "potentially gassy" threshold is reached. Therefore, paragraph (j)(1)(vii) of this Final Rule requires the employer to begin efforts to reduce or otherwise control the gas concentration at five percent LEL of

methane or other flammable gas. The record also suggested the need for a mechanism for discontinuing extra precautionary measures once the air contamination hazard is controlled (Exs. 23, 30, and March 1984 Hearing Transcript, p. 496). Therefore, paragraph (j)(1)(vii) specifies that such steps need be continued only until the gas concentration is reduced to less than five percent LEL unless the employer is operating in accordance with the "potentially gassy" or the "gassy" operation requirements.

OSHA has revised paragraph (j)(2) to include additional air monitoring requirements for both "potentially gassy" and "gassy" operations. This paragraph refers to the criteria that now appear in paragraph (h) pertaining to the classification of potentially gassy and gassy operations. Paragraphs (j)(2) (i), (ii), (iii) and (iv) are substantively the same requirements as those proposed for gassy operations alone.

Paragraph (j)(2)(iii), like proposed (j)(2)(ii), requires a manual flammable gas monitor to be used as needed. OSHA received testimony that, at a minimum, all air quality testing should be performed at the beginning and mid-point of each shift (March 1984 Hearing Transcript, p. 172). Although OSHA does not believe that this is necessary at all underground construction operations (for example, at those which have never tested positive for flammable gas), OSHA believes that this twice-per-shift minimum is warranted in "potentially gassy" and "gassy" operations. Clearly, the increased risk of fire and explosion in these operations warrants the increased frequency of air monitoring over that required in non-gassy operations. Consequently, the Final Rule requires gas tests at the beginning and mid-point of each shift for "potentially gassy" and "gassy" operations at paragraph (j)(2)(iii).

OSHA proposed, in paragraph (j)(1)(xi), to require monitoring for flammable gas prior to re-entry after blasting for all drill and blast operations. Granite Construction (Ex. 17-24) commented that depending on such factors as the nature of the ground, geology, and history, it would not always be necessary to test for flammable gas or petroleum vapor after each blast. Granite Construction also pointed out that in California, this requirement only applies to gassy tunnels. OSHA concurs and has revised paragraph (j)(2)(v) to require additional monitoring for flammable gas during drill and blast operations only in "potentially gassy" and "gassy" environments.

OSHA proposed in paragraph (j)(3) to continue the current requirement, at § 1926.800(c)(1)(i), for maintaining records of air quality tests, but left open the appropriate retention period for such records (48 FR 35789). OSHA stated that § 1910.20 currently requires at least a 30-year retention period, unless a specific standard provides a different period of retention period for records required by proposed paragraph (j)(3). OSHA received several comments on this requirement. For example, Mr. Robert Lange, representing Fenix and Scisson, Inc. (Ex. 17-20), stated that recordkeeping for air quality testing should be maintained for only three years completion of the job, not 30 years as required for toxic chemicals. Kenny Construction (Ex. 17-21A) contended that testing records are useful in investigating the cause of problems which occur during construction, but are not useful after the project has been completed. Mr. Bruce Summers, Granite Construction Co., stated that there is no need to specify any period of time for retention of air quality test records at the worksite. Mr. Summers added that records of employee exposure to toxic substances are addressed in OSHA's "Access to Employee Exposure and Medical Records" standard. That standard, at § 1910.20(d)(1)(ii), provides that each "employee exposure record" shall be preserved and maintained for at least 30 years. Mr. John Dyer, with the Southern California Rapid Transit District (Ex. 17-28), endorsed a 30-year retention requirement for records regarding chemicals whose toxicity can persist; in contrast, he contended that records of flammable atmosphere tests need not be kept for 30 years because conditions after construction do not pose a health hazard.

OSHA also received comment that petroleum vapors are toxic as well as flammable. It was pointed out that since the permissible exposure levels for these hydrocarbon compounds are ten to twenty times lower than their lower explosive limit, it is hardly worthwhile to segregate records of toxic vs. flammable atmospheres (March 1984 Hearing Transcript, p. 355, and Ex. 17-16).

Based on the above comments, the provision has been revised to require that only records of exposures to toxic substances be retained for 30 years, and that all other air quality records be retained only until the project has been completed.

Paragraph (k)—Ventilation

This paragraph contains the requirements pertaining to ventilation of the underground atmosphere. The

importance of an effective ventilation system was cited repeatedly by commenters as probably the key factor in controlling air contaminants that are encountered during underground construction. Thus, for example, the Bureau of Reclamation insists that the ventilation system be adequately designed and then approved even before the Bureau permits the contractor to go underground (March 1984 Hearing Transcript, pp. 123-124).

Paragraph (k)(1)(i), derived from proposed paragraph (k)(2)(ii), prescribes in general performance language that fresh air must be supplied in sufficient quantities to prevent dangerous or harmful accumulation of dusts, fumes, vapors or gases in all underground work areas. The proposal specified that mechanical ventilation was required when natural ventilation failed to provide the required air quality and flow. Three commenters recommended that OSHA require mechanical ventilation and not permit reliance upon natural ventilation (Exs. 17-1, 17-14, and 17-17). However, these commenters did not provide sufficient rationale to support why natural ventilation should be prohibited in all cases. Therefore, OSHA has required, in Final Rule paragraph (k)(1)(ii), that mechanical ventilation be used except where natural ventilation provides the necessary air quality.

Paragraph (k)(3) is a revision of proposed paragraph (k)(2)(i), which required at least 30 feet per minute (fpm) airflow in the tunnel bore, shafts, and all other unsealed underground work areas. The current standard, at § 1926.800(c)(2)(v), requires not less than 30 fpm where blasting or rock drilling is conducted or where conditions are present that are likely to produce dust, fumes, vapors, or gases in harmful or explosive quantities. Mr. C.R. Mattson, with the Perini Corporation (Ex. 17-23), stated that the present standard is sufficient. Kenny Construction Company (Ex. 17-21A) stated that the proposal was too broad because only active work areas need ventilation. Mr. Robert Lange, with Fenix and Scisson, Inc., stated that using the term "unsealed areas" does not suit some mining methods, and suggested "in all areas where workers are regularly required to work" as an alternative. Mr. W.R. Bristol, with CAL/OSHA (Ex. 17-1), stated that 30 fpm is inadequate, especially when diesel equipment is operating in the tunnel. Mr. Bruce Summers, with Granite Construction Company (Ex. 17-24), stated that the air flow should be whatever is necessary to maintain the proper quantity of clean air

at the workplace. Based on the record, OSHA has concluded that the language in the current standard best expresses the employer's duty to provide a sufficient velocity of clean air in underground work areas. OSHA also notes that where mobile diesel equipment is used underground, additional ventilation may be necessary to maintain adequate air quality (see the discussion below concerning paragraph (k)(10)(ii)).

OSHA's current standard, at § 1926.800(c)(2)(i), requires mechanical ventilation in all work areas and also that the direction of airflow be reversible. OSHA proposed to add a requirement that the air flow be reversible from above-ground controls (see proposed paragraph (k)(2)(iii)). In the proposal, OSHA cited three other standards that require reversibility of mechanical air flow (48 FR 35790). OSHA has re-examined these standards and has found that only CAL/OSHA requires that the main ventilation system be arranged so that air flow can be reversed from the surface, and only if a fire or some emergency makes this advisable (emphasis added) (California 8437(b)). The other two standards (ANSI's and Michigan's) do not address the location of ventilation controls. Therefore, paragraph (k)(4) retains the current requirement that mechanical ventilation be reversible, but does not prescribe that all mechanical ventilation systems used in underground construction operations be provided with controls located above ground. OSHA has concluded that above-ground controls are warranted only in the case of "gassy" operations (see the discussion below concerning paragraph (k)(12)).

Paragraph (k)(5) of the final rule explicitly requires that after blasting, the employer must exhaust smoke and fumes to the outside atmosphere before work underground is resumed. This new provision is being added to provide protection to employees who must enter the underground worksite after blasting (see explanation of proposed paragraph (k)(2)(iii) at 48 FR 35790.)

OSHA proposed, in paragraph (k)(7)(ii), to continue the current requirement for mobile diesel-powered equipment to be approved by MSHA in accordance with 30 CFR Part 32, formerly commonly referred to as "Schedule 24." In addition, OSHA proposed to allow the use of mobile diesel-powered equipment that is equivalent in all respects to MSHA-approved equipment. This proposed allowance was made to permit the use of equipment that, although it had not

been officially approved by MSHA, had been determined by the employer, the manufacturer or a qualified third party to have met the criteria contained within 30 CFR Part 32 (see 40 FR 35791).

Several commenters objected to the incorporation by reference of 30 CFR Part 32, arguing that MSHA certification and approval is a complicated and time-consuming process. Instead, they urged that OSHA promulgate performance standards prescribing air quality requirements (see, for example, Ex. 17-21A and Ex. 17-24). OSHA has carefully reviewed 30 CFR Part 32, which covers such topics as cooling the exhaust gases, fuel supply system safety, electrical system safety, and ventilation requirements, in addition to the composition of exhaust gas. Mr. Joseph Hadden, with MSHA, stated that 30 CFR Part 32 was developed through significant research and effort and he did not believe that OSHA needed to duplicate that research and effort to develop independently new standards governing the design and use of diesel-powered equipment underground (March 1984 Hearing Transcript, p. 169). 30 CFR Part 32 is also the nationally recognized standard for underground diesel equipment: OSHA's current standard, at § 1926.800(c)(2)(vii), has for years incorporated Schedule 24, and both the ANSI A10.16 and Michigan standards also contain this reference. Moreover, the MSHA standards are widely recognized by the underground equipment industry and are widely available to any interested person through either OSHA or MSHA. Finally, 30 CFR Part 32 is comprehensive in its requirements: OSHA believes that air quality performance standards alone would not provide a level of safety comparable with that provided by 30 CFR Part 32 at this time. Therefore, reference to 30 CFR Part 32 has been retained in paragraph (k)(10)(ii), governing use of mobile diesel powered equipment underground in other-than-"gassy" conditions. (The use of mobile diesel-powered equipment underground in "gassy" conditions is governed by paragraph (i)(2), which incorporates by reference the MSHA requirements in 30 CFR Part 36.)

OSHA solicited comments on the use of water scrubbers and catalytic converters (see 48 FR 35791) and received numerous comments that supported both types of exhaust conditioners (see, for example, Exs. 17-4, 17-13, 17-20, 17-21, 17-23, 17-24). In addition, documentation was submitted to the record to show that catalytic converters have been successfully used on diesel-powered equipment approved

under 30 CFR, Part 32 (Exs. 36 and 41). In his opening statement at the hearings, Mr. Barry White, Director of OSHA's Safety Standards Programs, explained that OSHA will allow the use of any equipment that can be shown to meet the approval criteria contained in 30 CFR Part 32, regardless of the type of exhaust conditioner used to meet those criteria. The debate over water scrubbers versus catalytic converters is unimportant at this time, since equipment with both types of exhaust conditioning have been approved by MSHA under 30 CFR Part 32, and are therefore acceptable to OSHA.

OSHA received two comments pertaining to the note that accompanied proposed paragraph (k)(8). The note indicated that diesel engines need at least 100 cubic feet of air per minute for each brake horsepower, in addition to the volume of air supplied to personnel. The National Utility Contractors Association stated that where several pieces of equipment are on the job at the same time, an adjustment to the amount of air per brake horsepower should be made, i.e., 100 percent of 100 cubic feet per minute (cfm) per brake horsepower for the first machine; 75 percent for the second machine; and 50 percent for each successive machine (Ex. 31, pp. 43-45). The J. F. Shea Company also suggested this declining percentage (Ex. 4). Neither of these comments contained specific evidence that such a formula provided adequate ventilation.

In this regard it should be noted that in the MSHA rules in 30 CFR Part 32, § 32.9 provides that if more than one unit is used at a given location, or in any continuous course of air, then the rate of ventilation should be the sum of the requirements for the individual units. Therefore, OSHA has decided to retain the note which accompanied proposed paragraph (k)(8), and will rely on the amount of ventilation determined in accordance with the tests prescribed in 30 CFR Part 32.

Final rule paragraph (k)(11), a revision of proposed paragraph (u)(7), requires specific design criteria for ventilation systems used in "potentially gassy," as well as "gassy" operations. The inclusion of "potentially gassy" classification in this paragraph was necessitated by the addition of the new "potentially gassy" classification in the standard. OSHA has also incorporated in paragraph (k)(11) the requirement proposed in paragraph (u)(2) that only acceptable equipment be used in a "gassy" operations; the rule now specifies that the electrical systems, including the fan motors, must be acceptable.

OSHA proposed, in paragraph (k)(2)(iii), to require above-ground controls for reversing mechanical airflow at all underground construction operations. The Final Rule, in paragraph (k)(13), has been revised so that above-ground controls for reversing the direction of mechanical airflow are required only in gassy operations.

Kenny Construction argued that connecting the in-line booster fans to a central above-ground control will require the installation of a burdensome wiring and switch system which is unjustified, absent some compelling need for surface control (Ex. 31, p. 54). Mr. Vinton Garbesi contended that above-ground reversing mechanisms for tunnel ventilation systems are neither practical nor safety beneficial (March 1984 Hearing Transcript, p. 190).

Mr. Ronald Searle testified that the Bureau of Reclamation requires above-ground controls for all underground operations. Mr. Searle stated that in case an evacuation of the underground becomes necessary, the ventilation system can be controlled from the surface (March 1984 Hearing Transcript, p. 124). Mr. Searle also stated that ventilation control by above-ground rescue crews is critical, adding that controlling underground atmospheres is essential to expediting rescue operations (Ex. 24, p. 4).

The sole evidence cited in the Proposal, at 48 FR 35790, in support of the proposed requirement at (k)(2)(iii) that the direction of mechanical ventilation be reversible by above-ground controls was ANSI, Michigan, and CAL/OSHA. But ANSI and Michigan do not require above-ground controls. Only CAL-OSHA calls for above-ground controls, and only if a fire or emergency makes this advisable (see 8437(b)). However, in light of Mr. Searle's testimony about the value of above-ground controls for control from the surface after evacuation and during rescue work (March 1984 Hearing, pp. 124-125), and the requirements of the CAL/OSHA rule, OSHA believes that the record does support a decision to require above-ground controls in operations where such events are most likely to occur, that is, in "gassy" operations. Therefore, OSHA promulgates Final Rule paragraph (k)(12) as revised.

OSHA proposed, in paragraph (u)(7), that ventilation systems used in gassy operations be provided with explosion-relief mechanisms. No substantive comments were submitted on this provision. However, the August 1985 "Summary Report of Compliance Cost Estimates Pertaining to Permissible

Ventilation and Gassy Tunnels" (Ex. 54) by the contractor JRB/SAIC questioned the feasibility of explosion-relief mechanisms in the typical single-bore tunnel ventilation system. That report also correctly cited 30 CFR 57.21-20(e), an MSHA ventilation requirement pertaining to gassy mines, as the source for OSHA's proposed rule. None of the comments received in response to the limited reopening of the record (50 FR 33357) provided OSHA with any information on this issue. OSHA believes that the JRB/SAIC report raises serious questions about the feasibility of this provision, and has therefore modified the proposed requirement to delete coverage of the typical single-bore tunnel ventilation system. The final rule uses language similar to that of the mining rule to provide coverage of those few underground construction operations that use mine-type ventilation systems with offset surface fans so as to maintain ventilation during an explosion.

Paragraph (l) Illumination

OSHA proposed, in paragraph (l)(1) and Table D-3 of § 1926.56, to revise the minimum level of illumination (see 48 FR 35791-35792). Currently, paragraph (d) of § 1926.800 requires five footcandles in general work areas, and ten footcandles at the heading during drilling, mucking, and scaling operations. Several commenters recommended that OSHA retain the currently required levels of illumination (Exs. 17-12, 17-17, 17-24). In general, the rationale presented by these comments was that the underground environment is wet, dirty, and slippery and that poor lighting conditions exaggerate such hazards. OSHA believes that the record does not support the proposed minimum levels of illumination. Therefore, OSHA has decided to retain the current levels of illumination and has not revised Table D-3 of § 1926.56 of this Part.

Paragraph (l)(2) proposed that acceptable portable lighting be used within 50 feet of any underground heading during explosives handling. Some comments urged that such lighting only be required where electric detonators are used (Exs. 17-1, 17-4, 21-A, 17-24). None of these comments, though, cited any authority to substantiate that their use would provide an adequate level of safety. OSHA consulted publications of the Institute of Makers of Explosives (IME). OSHA recognizes IME as an authoritative source on the subject of safety with explosives and accords great weight to its recommendations. IME is the safety association of the commercial explosives industry in the United States

and Canada. Its member companies produce over 75 percent of the commercial explosives consumed in the United States each year. OSHA has relied on IME guidelines in other OSHA standards (see for example 29 CFR Part 1926, Subpart U). The IME Publication Number 17, "Safety in the Transportation, Storage, Handling and Use of Explosive Materials," page 3, states that "where portable lights are needed around explosive materials, only approved electric flashlights or electric lanterns should be permitted." The IME Publication Number 12, "Glossary of Commercial Explosives Industry Terms," page 14, defines Explosive Materials to include, but not be limited to, dynamite and other high explosives; slurries, emulsions and water gels; black powder and pellet powder; initiating explosives; detonators (blasting caps); safety fuse; squibs; detonating cord; igniting cord; and igniters. Therefore, the IME clearly intends the requirement for approved lighting to apply to all explosive materials, not just electric detonators.

OSHA also notes that the Army Corps of Engineers requires that the loading area be illuminated by floodlights located 50 feet from the face. If additional illumination is needed, the loading crew shall be provided with approved head lamps (see Ex. 14-2 at Rule 24.C.03). Therefore, in the Final Rule, OSHA has concluded that any lighting equipment used within 50 feet of the underground heading during explosives handling must be of a portable type that meets the definition of "acceptable."

Paragraph (m) Fire Prevention and Control

OSHA proposed, in paragraph (m)(4)(ii), to prohibit piping diesel fuel from the surface to underground locations. OSHA explained that the purpose was to control a fuel source hazard arising from leaks from the pipe (see 48 FR 35792-93). This proposal drew several comments, all critical of the proposal.

Mr. Bruce Harvey, representing J. S. Redpath Corporation (Ex. 17-8), contended that diesel fuel can be transferred to an underground storage facility using a dry-line supply system without the hazards involved in transporting fuel containers. Mr. Harvey added that the pipe-line would be dry at all times except when actually transmitting diesel fuel.

Mr. Vinton Garbesi, with S and M Constructors, Inc., testified that it is far safer to pipe diesel to a fueling station at the bottom of a shaft than to transport fuel tanks in and out of the shaft. He

recommended a dry-type pipe with a transfer pump on the surface and two valves, one at the surface and one at the fueling station (March 1984 Hearing Transcript, p. 191).

Mr. Charles Kelso, Dillingham Construction Company, argued that piping diesel fuel is an efficient, economical and safe way of handling fuel. Mr. Kelso testified that hoisting 55-gallon drums up and down a shaft would expose them to greater risk of damage and subsequent leaks, consequently creating greater hazards than would a dry-line supply system (March 1984 Hearing Transcript, p. 679).

Mr. E. O. Mixon described a dry-pipe system typically used by Kenny Construction Company (March 1984 Hearing Transcript, p. 519-520). When a piece of equipment underground needs fuel, a top man fills a small (50 to 100 gallon) tank located at the shaft collar from a 15,000-20,000 gallon storage tank also on the surface. The bottom man uses a service-station type nozzle to fill the equipment fuel tank, and the top man controls a valve at the shaft collar tank. If something goes awry, at worst the fuel leak to the underground is 50 to 100 gallons, not 15,000 to 20,000 gallons. The 50 to 100 gallons is also less than the typical one-day's supply of underground storage that is currently permitted under § 1926.800(e)(1)(iv).

OSHA sees merit in these comments and has determined that the record supports the use of a dry-line supply system which incorporates many of the components cited in the comments (see, for example, Exs. 17-8, 17-20, 17-21A, and 17-35). OSHA believes that compliance with all the requirements contained in paragraph (m)(4) of this Final Rule will effectively control the hazards and points of possible failure associated with a pipe-line system.

OSHA proposed, in paragraph (m)(5)(ii), to allow the use of acetylene, liquefied petroleum gas (LP-Gas) and Methylacetylene Propadiene Stabilized (MPS) gas underground only for welding, cutting and hot work. The existing tunnel standard, at § 1926.800(e)(1)(v), prohibits LP-Gas underground. However, Subpart J—Welding and Cutting, of the OSHA Construction Standards contained in 29 CFR Part 1926, permits the underground use of fuel gases, including LP-Gas, under prescribed conditions, including handling, storage and ventilation requirements (see 48 FR 35793). In an effort to clarify this contradiction in its standards, OSHA published OSHA Instruction STD 3-17.1 in November 1976, which allowed fuel gases,

including LP-Gas, to be used underground.

Kenny Construction opposed the use of LP-Gas underground because of its volatility, alluding to an "unfortunate experience" that they had experienced (Ex. 21). Mr. Dan McAuliffe, testifying for the International Union of Operating Engineers, stated that MPS gas is stored in thinner walled containers than acetylene and should not be used (March 1984 Transcript, p. 727). OSHA's requirements that apply to all fuel gas welding and cutting in construction (29 CFR 1926.350) require that all cylinders meet the Department of Transportation (DOT) requirements published in 49 CFR Part 178, Subpart C, "Specification for Cylinders." These rules, which specify the cylinder wall thicknesses determined to be safe for the storage of each compressed gas, have long been the recognized industry standard.

OSHA has weighed these comments carefully and finds the evidence insufficient to warrant changing the proposal. OSHA believes that the risks that may be associated with the use of fuel gases will continue to be effectively controlled by compliance with the paragraphs referred to in the rule; namely, 29 CFR Part 1926, Subpart J and paragraphs (j), (k), (m) and (n) of this section.

OSHA has revised proposed paragraph (m)(7). OSHA proposed that where it is not feasible to maintain a 100 foot separation between flammable or combustible materials stored above ground and the opening to any underground operation, a one hour fire-rated barrier must be placed between the flammable/combustible material and the opening. The intent was to prevent fire and explosion hazards at the surface opening from endangering employees underground (see 48 FR 35793).

Mr. Mark Hoffman, with Stimm-Fitzpatrick Constructors, asserted that there is insufficient space at some sites to maintain a 100-foot separation (Ex. 17-26). He also argued that such a barrier would not contain smoke and might create a visibility problem. Mr. Hoffman added that if no flammable materials is used in the shaft, such a barrier would be ineffective. He suggested that if combustible or flammable materials or supplies are stored in close proximity to the opening, adequate and clearly marked fire protection equipment should be provided.

OSHA believes that a barrier will both keep the fire and heat away from any access opening to the underground, and enable employees to evacuate the work area. Therefore, OSHA has

concluded that the barrier will enhance employee safety, even though a barrier would not contain the smoke from a surface fire. Obviously, the best course would be to prevent the fire from occurring in the first place. In addition, OSHA has deleted from the Final Rule a redundant reference to 29 CFR 1926.152(c); Paragraph (m) already contains a reference to the fire protection requirements covered in Subpart F.

Paragraph (n) Welding, Cutting and Hot Work

Proposed paragraph (n)(1) was deleted from this Final Rule because it was redundant to the final provision in paragraph (j)(1)(iii)(B) that requires the competent person to consider the use of fuel gases and welding, cutting and hot work operations when making the determination for air monitoring. Two commenters interpreted the proposal as requiring additional air monitoring, even if no gas was present (Exs. 17-19, 17-21A), but this was not OSHA's intent. For example, if compliance with the monitoring requirements of paragraph (j) indicated there was no reason to believe that the air should be monitored immediately prior to starting the hot work, and if the competent person had no reason to suspect that the cylinders could be leaking, then the competent person might have sufficient information to support the determination without additional air monitoring.

OSHA proposed in paragraph (n)(2) to limit the number of compressed gas cylinders underground to a one-shift supply. The commenters acknowledged that it is sound safety practice to limit the amount of cylinders underground, but argued that a one-shift limit was unnecessarily stringent. For example, Mr. Mark Hoffman, with Stimm-Fitzpatrick Constructors, stated that the more trips required to carry the cylinders, the more risk was involved (Ex. 17-26). Mr. Vinton Garbesi, with S and M Construction, Inc., stated that, in his experience, accidents involving compressed gas cylinders have generally occurred while they were being transported, and that the proposal would increase the frequency of transportation (March 1984 Hearing Transcript, pp. 191, 192, and 213). As a result of these comments, OSHA is persuaded of the need to reduce the handling of cylinders, as well as to limit the number of cylinders. Therefore, OSHA has increased the amount of fuel gas and oxygen that is permitted underground from the proposed one-shift limit; the Final Rule permits a 24-hour supply. OSHA believes that the 24-hour criterion represents an appropriate

balance of reducing handling risks, and minimizing the amount of compressed gas stored underground. It must also be remembered that in all other respects, the regulations in 29 CFR 1926.350 pertaining to transporting and storing of compressed gas cylinders also apply to underground construction.

Paragraph (o) Ground Support

Proposed paragraph (o)(2)(iv) drew several comments pertaining to the variety of bolts in use (Exs. 17-8, 17-21A). For example, Mr. Garbesi noted that the proposed rule overlooked the fact that some rock bolts and dowels do not depend on torsionally applied force, such as split-set stabilizers bolts, and post-tension grouted bolts (March 1984 Hearing Transcript, p. 192). Therefore, the Final Rule, renumbered as final paragraph (o)(3)(iv)(A), provides that a torque wrench is to be used only if the bolt depends on torsionally-applied force.

Proposed paragraph (o)(2)(v) would have required the employer to maintain the torque bolt tension assignments at the jobsite. OSHA received no substantive comments on this proposed requirement. However, because paragraph (o)(3)(iv)(B) requires a competent person to determine that the bolts are properly torqued, OSHA does not believe that a record of tension assignments would improve the protection provided by the standard.

Several comments were received regarding paragraph (o)(2)(vi)—renumbered as final paragraph (o)(3)(v)—concerning "temporary roof supports." The proposed rule, derived from California section 8441.(e), provided for temporary roof supports to protect employees who are either working beyond or installing permanent roof supports. One commenter, Mr. Bruce Summers, with Granite Construction, stated that temporary roof supports are frequently retained as permanent roof supports (Ex. 17-24). Both Mr. Summers and Mr. Brown, representing J.F. Shea Co., Inc. (Ex. 17-4), recommended that OSHA adopt the CAL-OSHA rule, from which OSHA's proposed language was derived. OSHA agrees that the performance-oriented CAL-OSHA provision, allowing any effective method of protection, expresses the intended purpose more clearly than the proposal without diminishing employee safety, and has revised the standard accordingly.

Proposed paragraph (o)(3)(ii)(B)—paragraph (o)(4)(ii)(B) in the Final Rule—has been revised in response to comments asserting that the proposed 42-inch casing height is too restrictive

(Exs. 17-4, 17-19, 17-24, 17-28). For example, Mr. John Dyer, with the Southern California Rapid Transit District, conceded the need for a barrier to prevent tripping and falling into the shaft, but questioned the need for the casing to be extended to 42 inches (Ex. 17-28). Mr. L.W. Brown, with J.F. Shea Company, Inc., stated that the objectives of the proposed 42-inch casing height are appropriate (see 48 FR 35795), but that the regulation should be performance-oriented to allow the employer other compliance options (Ex. 17-4). OSHA notes that ANSI A10.16-1981, paragraph 4.7, requires shafts to be guarded by means of a standard guardrail or a tight covering (see Ex. 13). Therefore, OSHA has determined to retain the 12-inch casing height in the existing standard, at § 1926.800(h)(3)(ii), provided that a standard (42-inch) railing is used; that the ground is sloped so as to prevent liquids from running over the 12-inch high casing; and that barriers are used to prevent mobile equipment from jumping over the 12-inch high casing. This system will provide equivalent protection to the proposed requirement.

Paragraph (p) Blasting

The Final Rule indicates a new requirement, in paragraph (p)(2), to make explicit what was implicit in the proposal: That employees shall not enter a work area until air quality meets minimum requirements. In New York, in 1980, three men entered an underground area after a blast without checking air quality; all three were killed by poisonous fumes (Ex. 31, App. 3, p. 13). The addition here reiterates the intent expressed elsewhere in the standard, such as at paragraphs (j)(2)(v) and (k)(5).

Paragraph (q) Drilling

The current standard, at § 1926.800(i)(8), requires the employer to provide mechanical means for lifting drills, roof bolts, mine straps, and other unwieldy heavy material to the top deck of jumbos over ten feet in height. Proposed paragraph (q)(8)(i) retained this requirement, but increased the scope of the standard to the top decks of all jumbos, not just those over ten feet in height. This revision was proposed because the current standard does not provide for mechanical assistance to employees who need it to lift heavy material to the top deck of a jumbo that is less than ten feet in height.

Mr. Vinton Garbesi, with S and M Construction, stated that the regulation should require mechanical hoists or lifts on jumbos, but should leave the circumstances of their use to be determined by the employer (March 1984 Hearing Transcript, p. 193). Mr.

Brown, with J.F. Shea Company, commented that a fairly typical roof bolt weighs 22 pounds and is not that unwieldy (Ex. 17-4). OSHA has determined that the list of examples of heavy or unwieldy objects unnecessarily includes the types of roof bolts referred to by Mr. Brown. On the other hand, the list might not accurately illustrate the universe of materials intended to be included. OSHA agrees that the unwieldiness or heaviness of an object depends not only on its configuration, but also on its location and the conditions at the worksite. The list of examples of heavy or unwieldy materials was not intended to be all inclusive. Further, if a list item such as a roof bolt was shown to be not "heavy or unwieldy," it would not require mechanical assistance. Accordingly, OSHA is deleting the list of examples from this provision. Therefore, OSHA has concluded that mechanical lifting means shall be provided on the top deck so that personnel who need to lift any unwieldy or heavy materials will have mechanical assistance, if needed, regardless of the height of the jumbo.

Paragraph (q)(8)(ii) retains the requirement under the existing standard, at § 1926.800(i)(9), that jumbos over 10 feet in height have stairs wide enough for two persons. Several commenters, including Kenny Construction and S and M Constructors, Inc. (Exs. 17-21A, 26), contended that the rule is unnecessary and that the cost of providing two-person-wide stairs would be significant. Nevertheless, the existing standard reflects OSHA's belief that, even though this width may not be necessary for routine access, it would facilitate a rapid evacuation from the deck, or the transport of an injured employee on a stretcher from the deck to the tunnel floor. Both the U.S. Army Corps of Engineers and the Michigan OSHA standards contain this requirement. In addition, because the requirement has been in effect for some years already, this aspect of the revised standards will not cause employers to incur new costs to come into compliance. Accordingly, the record does not provide a compelling basis for altering the current standard.

Proposed § 1926.800(q)(8)(iv)(A) retained the requirement of current paragraph (i)(12), that only employees assisting the operator shall be allowed to ride on jumbos. Mr. Gail Knight, with S. A. Healy Company, stated that a blanket restriction is unjustified; that it is often necessary to transport workers on jumbos, and if additional protection is desired, contractors should equip jumbos with seats or handles (Ex. 21-13, p. 10). OSHA has reexamined the record

and sees no reason why employees other than those assisting the operator should not be allowed to ride a jumbo, provided that suitable protection is provided for such riders. Therefore, paragraph (q)(8)(iv)(A) has been revised to allow employees to ride jumbos provided that the jumbo is equipped to allow those employees to ride safely as prescribed in paragraph (r)(6)(ii).

OSHA has revised proposed paragraph (q)(10)(i) to remove a redundant requirement, and also to clarify the intent of the rule. The first sentence of the proposal required an examination for and removal of any misfired charges prior to drilling. This same requirement appears in Subpart U at § 1926.910 and § 1926.911 and need not be repeated here.

The second sentence of proposed paragraph (q)(10)(i) prohibited drilling blasting holes through muck or water. Mr. Garbei stated that most holes in the invert of tunnels are drilled through muck or water. Garbesi acknowledged the need to inspect for and remove misfires. However, OSHA maintains that drilling through muck or water is an unsafe practice, even if an inspection is performed, because of the inherent difficulty of assuring that all misfires have been located and removed. Therefore, OSHA promulgates this paragraph as proposed, continuing the existing requirement.

Paragraph (r) Haulage

Paragraph (r)(2) has been revised to increase safety by ensuring that haulage equipment can be stopped even if the brakes alone are not effective. Mr. Dan McAuliffe, with the International Union of Operating Engineers, stated that under certain conditions, including slope, moisture and temperature, brakes may not be adequate to stop equipment, and he recommended that "sandlers" be required (March 1984 Hearing Transcript, pp. 727-728). There is no data in the record to support specific slope or temperature limits. Therefore, OSHA has expressed the requirement using performance-oriented language. If conditions are such that suitable brakes alone are not effective, then sanders or some other means may be used to provide an effective means of stopping. This clarification is consistent with the intent of the proposed rule (see 48 FR 35796).

Proposed paragraph (r)(4)(i) would have required Falling Object Protective Structures (FOPS) on all powered mobile haulage equipment. This provision has not been carried forward into the Final Rule, primarily for feasibility and safety considerations.

For example, S and M Constructors, Inc., contended that the regulation should be modified to recognize that in small diameter tunnels the incorporation of FOPS into conventionally designed locomotives is "dimensionally" not possible while maintaining the operator's field of view to allow safe operation of the locomotive (Ex. 21-1).

Mr. E. O. Mixon, with Kenny Construction Company, contended that FOPS would compound the restricted clearances of most tunnels (Ex. 17-21). In addition, Mr. Mixon argues that locomotive operators have no need for more protection from falling objects than anyone else working underground, and that the next logical extension of this rule would require FOPS for everybody underground. Mr. Bruce F. Harvey, with J. S. Redpath Corporation, recommended that OSHA require overhead protection on manhaul cars only (Ex. 17-8).

In addition to the feasibility concerns associated with FOPS, it was stated that FOPS may be unnecessary in some ground conditions. Michael F. Duffy, of the American Mining Congress, states that the ground support requirements may negate the need to provide FOPS (Ex. 21-11). Mr. Duffy added that in many underground metal-nonmetal mines where stable roof conditions prevail, FOPS are not necessary and are not required by MSHA.

OSHA stated in the proposal at 48 FR 35796 that the same hazard exist for machines used underground as for those used above ground. Since machines used above-ground do not have the benefit of operating within an environment controlled by the ground control requirements of paragraph (o), the Agency no longer sees the need for FOPS underground. Thus, OSHA has not carried the proposed FOPS requirement forward into this Final Rule.

OSHA has revised proposed paragraph (r)(6)(ii) to clarify the exception for train crewmen. OSHA explained, in 48 FR 35797, that the rule was not intended to apply to train crewmen standing on properly designed platforms with suitable handholds, but did not state the exception explicitly in the proposed rule. OSHA has added a requirement for a safe place for train crewmen who ride the locomotive.

Paragraph (r)(6)(iii) also carries forward a requirement for seating for each passenger that protects passengers from being struck, crushed, or caught between other equipment or surfaces. Two commenters objected (see Exs. 17-19 and 17-21(a)) to such seating being required in elevators and shaft conveyances; however, this provision is intended to apply only to haulage

equipment and not hoisting equipment. Therefore, OSHA has carried forward this requirement from existing rules 29 CFR 1926.601(b)(8) and 29 CFR 1926.800(k)(7).

The proposed new coupling requirements of paragraphs (r)(12)(i) through (iii) were intended to reduce the need for employees to reach between cars and locomotives, and to reduce the hazards of inadvertent uncoupling, resulting in runaway cars. OSHA solicited comments on the hazards associated with coupling/uncoupling operations and with runaway cars (see 48 FR 35798).

Kenny Construction Company stated that the proposed requirement for automatic couplers would be ineffective in protecting employees from being caught between cars since both manual and automatic couplers can require employee exposure (Ex. 17-21A). OSHA concedes that the use of an automatic coupler which continues to expose employees to the hazards encountered during cleaning, aligning, and hooking/unhooking operations would not accomplish the desired risk reduction.

Mr. Mixon, with Kenny Construction, also pointed out that unit trains used with tunnel boring machines (TBMs) are seldom uncoupled (March 1984 Hearing Transcript, p. 438). Mr. Knight, with S. A. Healy Company, testified that his employer uses unit trains with cars pinned solidly together and never uncouple them. Mr. Knight added that putting couplings on those cars would increase the risk to workers due to the cars' tendency to become uncoupled under certain conditions (March 1984 Transcript, p. 262).

Several commenters suggested a performance rule that would keep employees from between the cars and allow the employer to choose the method of coupling, such as releasing levers, chains or rods (see, for example, March 1984 Hearing Transcript, pp. 32-33, pp. 514-515). Mr. Ronald J. Searle, with the Bureau of Reclamation, testified that he would like to keep the brakemen from between the cars, and recommended that engines and cars be equipped with automatic couplers or handles for pulling coupler pins (March 1984 Transcript, p. 137-139).

OSHA has reexamined the state and Federal standards cited at 48 FR 35798 and found that all require automatic couplers. However, in addition, some have work practice rules to further reduce the risk to employees. For example, CAL/OSHA prohibits employees from shifting or lining up couplings on moving cars or locomotives (see CAL/OSHA rule 8474(b)). *Bulletin 644-Tunneling: Recommended Safety*

Rules, published in 1968 by the U.S. Bureau of Mines, states that persons should not go between cars unless the train is stopped, the motorman is notified and the notice is acknowledged (Ex. 12-34, p. 17). MSHA 57.9-51 contains that same requirement (Ex. 14-3). *Bulletin 644* also contains a rule that trains be brought to a complete stop before cars are coupled or uncoupled, unless the cars are equipped with automatic couplers (Ex. 12-34, p. 18). MSHA 57.9-97 requires that trains be brought to a complete stop, then moved very slowly when coupling or uncoupling cars manually (Ex. 14-3).

After considering these comments and the record evidence, OSHA is convinced that the proposed requirement for automatic couplers would not effectively control the hazards to which employees are exposed during coupling and uncoupling operations. Therefore, rather than merely requiring automatic couplers on all cars, paragraph (r)(12)(i) offers the alternative of using manual couplers and bringing the car to a complete stop during coupling and uncoupling operations. In addition, paragraphs (r)(12)(ii) and (iii) of the final rule contain work practice rules modeled after those discussed above, which incorporate safe work practices such as prohibiting employees from reaching between moving cars.

OSHA proposed in paragraphs (r)(12)(ii) and (iii) requirements for safety chains to be used in addition to couplers for certain types of cars. One commenter, Mr. Audrain Weatherl, with the Laborers International Union of North America, stated that he had seen many runaway trains and urged that a loaded train be attached by chains in addition to the normal coupling (March 1984 Hearing Transcript pp. 635-636). Another commenter, Mr. Ronald Searle, noted that the Bureau of Reclamation had successfully used safety chains to prevent serious accidents during derailment or accidental uncoupling. Mr. Searle added that safety chains were used with side or rotating dumping equipment (Ex. 24). (However, OSHA notes that the Bureau of Reclamation regulations do not require such chains.)

OSHA believes that accidental uncoupling of man cars and of powder cars poses risk to employees (see 48 FR 35798) and, therefore, the Agency has retained the proposed safety chain requirements. It has been renumbered as paragraph (r)(13)(i).

Mr. Vinton Garbesi, with S and M Constructors, Inc., testified that the weight of a safety chain is strong as a coupler would make it too unwieldy and difficult to use. OSHA concurs that a

safety chain as strong as the coupler might be excessive to prevent runaway cars. Accordingly, OSHA has deleted the phrase "of equivalent strength to the coupler." However, OSHA has replaced that term with the performance language of "capable of maintaining connection between cars" in Final Rule paragraph (r)(13)(iii).

Several commenters objected to proposed paragraph (r)(12)(iii)'s requirement of safety chains on haulage cars when the grade exceeds one percent. They argued that such use of safety chains would be very expensive and might be unsafe.

For example, Mr. Mixon, of Kenny Construction, stated that compliance with this provision could be very expensive because it would require two men per shift to service a rotary dumping mechanism. Each time a muck car was to be inverted 180 degrees to be dumped, the chains would have to be disconnected between cars. Mr. Mixon added that when the train went back to the head again, the cars would have to be disconnected and reconnected at that point (March 1984 Transcript, p. 406).

Mr. Vinton Garbesi, of S and M Constructors, Inc., stated that in his experience, safety chains on rail equipment are not safe to utilize in high-speed tunnel haulage systems. He added that the coupling and uncoupling of the chain requires employees constantly to place themselves between haulage units, and also that the chains are hazardous when allowed to swing unattached on the end car of a haulage train. Mr. Garbesi recommended that the haulage regulation instruct the employer what has to be done in order to control a train on a grade. He added that this is usually done on steeper grades by having the locomotive downhill of the train at all times (March 1984 Hearing Transcript, p. 196). This suggestion was also endorsed by Mr. Mixon of Kenny Construction (March 1984 Hearing Transcript, pp. 440-441).

No evidence was submitted into the record to refute Messrs. Garbesi and Mixon's recommendation of positioning the locomotive downhill of the train. OSHA believes that this is a feasible alternative that will be effective in reducing the risk of runaway cars, and has modified paragraphs (r)(13) (i) and (ii) to allow positioning the locomotive downhill of the train as an acceptable alternative to the use of safety chains.

OSHA's intent is to apply the one percent criterion in final rule paragraph (r)(13)(ii) to the overall slope of the tunnel, but not to isolated areas such as California switches. For example, if the overall job is flat, then there is no real potential for runaway cars and no safety

chains would be required for haulage cars, even though the slope on the California switch might exceed one percent. OSHA has clarified the rule by adding the phrase pertaining to the existence of potential for runaway cars.

OSHA proposed in paragraph (r)(17)(i) that occupied man cars be pulled and not pushed. OSHA received comments that this new provision was not feasible in all tunnels. For example, Mr. G.B. Knight, with S.A. Healy Company, argued that this proposed rule was not feasible given the tight space restrictions in tunnel construction which typically preclude switching of cars (Ex. 21-13). OSHA notes that both ANSI A10.16-1981, paragraph 9.5.2, and CAL/OSHA 8473(a) require that man-cars shall be pulled, not pushed, by the locomotive, where switching facilities are available. In addition, ANSI has a supplemental precaution to follow when a personnel car must be pushed: Where switching is not available and personnel cars must be pushed, a qualified person must be stationed in the lead car to give signals to the operator if the locomotive operator's vision of the track ahead is hampered. OSHA has, therefore, revised this provision so that paragraph (r)(18)(i) requires that occupied man cars be pulled and not pushed, where switching facilities are available.

Paragraph (s) Electrical Safety

OSHA proposed in paragraph (s)(2) that electrical power lines be both insulated and located away from other systems. In the preamble to the proposal, OSHA stated that the paragraph restated the existing requirements in § 1926.800 (1)(2) (see 48 FR 35799). It was subsequently pointed out that the existing requirement prescribes that powerlines shall be well separated or insulated from water lines, telephone lines, and air lines (Ex. 17-8). OSHA did not intend substantively to amend the existing requirement, and believes that either method can be effective. Both are not required together. However, if insulation alone is used, it must be kept free from damage which would create a hazard to employees, as prescribed by Subpart K of this Part.

Paragraph (t) Hoisting

Proposed paragraph (t) was much more comprehensive in addressing underground hoisting operations than the existing standard, at paragraph (m). The rationale for the proposal was explained in 48 FR 35799-35807. OSHA has significantly revised this entire paragraph (t) to eliminate requirements that were redundant with those current requirements in 29 CFR Part 1926, Subpart N—Cranes, Derricks, Hoists,

Elevators, and Conveyors; to rely on the recently published 29 CFR 1926.550(g)—Crane or Derrick Suspended Personnel Platforms [53 FR 29116]; and also to respond to numerous comments on the proposed rule.

The following list contains those proposed requirements for cranes and hoists which are not brought forward into this Final Rule because those requirements are already covered by the existing standards in Subpart N.

Proposal Paragraph Number:

(t)(1)(i)(A)
(t)(1)(i)(D)(2)
(t)(1)(i)(F)(4) (i) and (ii)
(t)(1)(ii)(c)
(t)(1)(ii)(H)
(t)(1)(iii)(B)
(t)(1)(iii)(D)
(t)(1)(iii)(E)(1)
(t)(1)(iii)(F)
(t)(2)(iii)
(t)(4)(i)(A)
(t)(4)(ii)(D) (1) and (2)

The following list contains those proposed requirements which were to apply to cranes and hoists, but which have been modified in this Final Rule to apply only to hoists. A discussion of the rationale for each change will appear in the appropriate section of the preamble, as indicated by the numbering sequence for this final rule.

Proposed paragraph No.	Final rule No.
(t)(1)(i)(B).....	(t)(3)(ii)
(t)(1)(i)(C).....	(t)(3)(i)
(t)(1)(i)(D)(1).....	(t)(3)(vii)
(t)(1)(i)(E)(1).....	(t)(3)(iii)
(t)(1)(i)(E)(2).....	(t)(3)(iv)
(t)(1)(i)(F)(1).....	(t)(4)(iii)
(t)(1)(i)(F)(2).....	(t)(4)(iv)
(t)(1)(i)(F)(3) (i) and (ii).....	(t)(4)(v)
(t)(1)(ii)(B).....	(t)(4)(ii)
(t)(1)(ii)(E).....	(t)(3)(v)
(t)(1)(ii)(F).....	(t)(3)(vi)
(t)(1)(ii)(I).....	(t)(3)(ix)
(t)(1)(ii)(J).....	(t)(3)(ix)(i)
(t)(1)(ii)(K).....	(t)(3)(ix)(ii)
(t)(1)(iii) (A) and (C).....	(t)(3)(xviii)
(t)(1)(iv)(A).....	(t)(3)(xv)
(t)(1)(iv)(B).....	(t)(3)(xvi)
(t)(1)(iv)(C).....	(t)(3)(xvii)
(t)(1)(iv)(D).....	(t)(4)(vi)
(t)(2)(i).....	(t)(3)(i)
(t)(2)(ii).....	(t)(4)(i)
(t)(2)(iv).....	(t)(4)(vii)

The format of paragraph (t) of this Final Rule is as follows:

(t)(1) General requirements for cranes and hoists
(t)(2) Additional requirements for cranes
(t)(3) Additional requirements for hoists
(t)(4) Additional requirements for personnel hoists

Those final provisions that have been substantively changed from the

proposed provisions are discussed below.

OSHA's introductory note to paragraph (t) has been simplified and clarified. Some of the proposed hoisting requirements were in addition to those contained in Subpart N of this Part, while others modified the Subpart N rules. OSHA also proposed to allow an employer to choose to comply with certain provisions of Subpart N, or disregard that Subpart and comply with requirements in 29 CFR 1926.800(t). The introduction to this Final Rule states that paragraph (t) applies in addition to the crane and hoist provisions in Subpart N of this Part. OSHA has decided to rely on those existing standards and to include in paragraph (t) only those requirements necessary to modify the general rules to address the unique concerns of underground construction.

Paragraph (t)(1) of this Final Rule contains general provisions applicable to all underground construction hoisting operations performed by cranes and hoists.

Final rule paragraph (t)(1)(iii) is a clarification of proposed paragraph (t)(1)(ii)(D)(2). Proposed paragraph (t)(1)(ii)(D)(1) provided that a hoistway that is not fully enclosed must use a flashing light to warn employees at the shaft bottom and subsurface shaft entrances that a load is being hoisted. Proposed paragraph (t)(1)(ii)(D)(2) also set forth a hoisting procedure to be followed when personnel are working in the shaft bottom. The prescribed hoisting procedure was intended to apply to a hoistway that is not fully enclosed; clearly, employees are not exposed to the hazard if the load is being lowered in a fully enclosed hoistway. Although the exclusion for full enclosed hoistways was explicit in proposed paragraph (t)(1)(ii)(D)(1) and was, OSHA believes, clearly implicit in proposed paragraph (t)(1)(ii)(D)(2), the Final Rule has been revised to make this exclusion explicit in paragraph (t)(1)(iii) as well.

The two provisions of (t)(1) (ii) and (iii) adequately control the hazard, addressed by proposed paragraph (t)(1)(ii)(H), of passing equipment, tools and material over personnel. Such hazards created by crane operations are governed by existing standards 29 CFR 1926.550(b)(2) and ANSI B30.5.

OSHA proposed, in paragraphs (t)(1)(iii)(H) (1) and (2), to require a secondary bridle connection, capable of holding 150 percent of the load, for cages and skips. This provision was to apply to all hoisting operations performed by cranes and hoists. Several comments were unfavorable to this proposed

requirement. For example, one commenter (Ex. 17-8) stated that this provision should not apply to shaft sinking operations where floating crossheads are used to guide the conveyances or buckets, because the crosshead must be disengaged during dumping and when going through the stage area at the bottom of the shaft. Another commenter (Ex. 17-19) stated that wire rope clips for attaching safety bridles to hoist lines should not be permitted because they induce stress concentrations on the rope strands, and they create a condition for accelerated corrosion of the rope. In addition to these negative responses, OSHA notes that back-up bridles are not required by the current OSHA requirements for cranes and hoists. Consequently, OSHA believes the record does not support these proposed provisions pertaining to secondary bridles, and they have not been carried forward into this Final Rule.

OSHA proposed two new requirements for cranes. The first requirement proposed, in paragraph (t)(3)(i), was for a line-out indicator on cranes used in underground construction. Mr. G.B. Knight, with S.A. Healy Company (Ex. 29), and Mr. John Kenny, Jr., with Kenny Construction Company (March 1984 Hearing Transcript, pp. 467-470), stated that the hazards mentioned in the proposal are effectively controlled by marking the wire rope for distance and by communication between the operator and the signalman. The argument was also raised that a line-out indicator might divert the crane operator's attention away from the signalman. Accordingly, OSHA has decided to delete the proposed requirement for a line-out indicator because no supporting data was submitted in response to OSHA's request at 48 FR 35805, and because the record does not refute the testimony submitted by Messrs. Knight and Kenny.

OSHA also proposed, in paragraph (t)(3)(ii), that a crane be equipped with a limit switch to prevent over-travel at the boom tip (commonly called an anti-two-block device). Testimony presented jointly by the National Utility Contractors Association, the Underground Contractors Association, and Kenny Construction Company stated that they had no objection to the proposed requirement for a limit switch (Ex. 31, p. 31). Mr. M. Dumas, with Al Johnson Construction, contended that such a device can be difficult to maintain (Ex. 17-19). Mr. Bruce Summers, with Granite Construction, stated that the unreliability of such devices can create a more hazardous

condition than would be prevented by their use (Ex. 17-24). Mr. Thomas McGeorge, with C and E Construction Company, stated that this is a good device when it is working, and should be installed on all new cranes, although it is expensive to retrofit on some of the older cranes (Ex. 17-33). Mr. G. Knight, with S.A. Healy Company, stated that the minimal benefits of such devices are not justified by the cost of retrofitting old cranes (Ex. 29, p. 22).

OSHA believes that maintenance is critical to the proper functioning of any mechanical/electrical device. If these devices are maintained regularly according to manufacturer's instructions, OSHA does not anticipate any greater likelihood of faulty operation than with other similar equipment. OSHA has addressed one of the expressed concerns about limit switches by explicitly forbidding the operator to use the safety device as an operational control. OSHA examined the costs and determined, based on the JRB report, that all cranes used in underground construction—new and old—could be equipped with such devices without causing economic hardship (Ex. 11). Therefore, OSHA has decided that all cranes used in underground construction shall be equipped with a limit switch to prevent two-blocking accidents. This new requirement is found in paragraph (t)(2) of the Final Rule.

Paragraph (t)(3) of this Final Rule contains requirements for hoists that supplement those contained in 29 CFR 1926.552. Additional rules that apply only to personnel hoists are contained in paragraph (t)(4).

Paragraph (t)(3)(i) requires the load hoist drum to be powered in both directions and the automatic application of brakes upon power release or failure. This rule continues the current "power down" requirement for hoists in § 1926.800(m)(1). This final rule is also derived from two proposed paragraphs: § 1926.800(t)(1)(i)(c) and § 1926.800(t)(2)(i).

OSHA has revised proposed paragraph (t)(1)(i)(c), which would have required power-down drums on all cranes and hoists and prohibited "free-wheeling" except for excavation using a clam-shell bucket. Commenters stated that many older friction-clutch types cranes lack this feature (Exs. 17-32 and 17-33). In the recent OSHA rulemaking on Crane or Derrick Suspended Personnel Platforms, § 1926.550(g) (OSHA Docket No. S-409), the Agency determined that power-down is necessary for employee safety when cranes are used to hoist personnel. As

noted earlier, § 1926.550(g) is being applied to crane hoisting of personnel in underground construction. Because the power-down requirement in § 1926.550(g)(3)(i)(D) will provide protection for crane-hoisted personnel, the final underground construction standard itself does not contain such a provision.

In the proposal (48 FR 35800, column 2) OSHA indicated that a power-down requirement would also provide protection for employees in the hoistway (shaft) when cranes are used to hoist materials alone. However, OSHA has determined that the final standard provides other adequate means for protecting employees in the hoistway (see, e.g., paragraphs (t)(1)(i), (ii), and (iii)), and that power-down when using cranes to hoist materials is not necessary for employee safety.

OSHA had also proposed, in paragraph (t)(2)(i), that all cranes and hoists used for personnel have power-down and an automatic-setting brake. This rule has been revised by deleting the reference to cranes, because, as noted above, cranes used to hoist personnel are covered by 29 CFR 1926.550(g), which has this requirement. All hoists covered by § 1926.800 have been required to have power-down (no "free-wheeling") and automatic brakes since 1971 and OSHA continues that requirement in final rule § 1926.800(t)(3)(i).

Final rule § 1926.800(t)(3)(ii) is derived from OSHA's current paragraph (m)(2), which requires controls for powered hoists to be of the "deadman" type with a non-locking switch or control. OSHA proposed, in paragraph (t)(1)(i)(B), that all cranes and hoists have "deadman controls," and stated that the intent of this rule is to assure that the hoist line drum stops when the operator releases the control (see 48 FR 35800). OSHA cited BOR, ANSI, Michigan, and California standards as authority for a requirement for "deadman controls" on all cranes and hoists to support the proposed rule (48 FR 35800). Upon reexamination, OSHA has determined that these standards, like current paragraph (m)(2), apply to hoists, but not to cranes. Therefore, the paragraph has been rewritten to address only hoists, and OSHA will rely on the current standards in § 1926.550(g)(3)(i)(D) and (g)(3)(ii)(C) (53 FR 29123) to address cranes. In addition, OSHA has clarified its intent in the use of the term "deadman controls" by requiring that control levers return automatically to their center (neutral) position upon release.

The first sentence of proposed paragraph (t)(1)(i)(E)(1) required cranes

and hoists used for both personnel and material hoisting to be assigned a load rating for each purpose. The National Utility Contractors Association asked who would assign the dual ratings for cranes used to hoist materials and personnel (Ex. 31, pp. 32-33). In response, OSHA notes that the manufacturer of the crane assigns load ratings for material handling and publishes them on the load rating chart. As required by § 1926.550(a)(1), employers must follow the manufacturer's assigned ratings. However, when a crane is used to hoist personnel, which is not the fundamental purpose of a crane, the employer must comply with the additional load rating limitations and requirements in § 1926.550(g)(3)(i)(B) and (g)(3)(i)(F). Final Rule paragraph (t)(3)(iii) requires that, when a hoist is used both for hoisting personnel and for hoisting material, load and speed ratings must be assigned based on the specific use.

The second sentence of proposed paragraph (t)(1)(i)(E)(1) is addressed in the Final Rule by (t)(3)(v) because it is related to the topic of that paragraph—inspection and maintenance activities. Paragraph (t)(3)(v) is substantively the same as proposed paragraph (t)(1)(ii)(E), but has been clarified to avoid possible misunderstanding, and its application is limited to hoists and not to cranes. OSHA stated in the proposal that the type of inspection or service contemplated by the rule pertained to the rail and guide system, and to lubricating sheaves on the block (see 48 FR 35801-02). For this type of work, the employee may remain on the top of the conveyance, provided the employee is secured by a body belt or harness system. OSHA believes that this is the only type of inspection or maintenance that necessitates working from the top of the conveyance.

Final Rule paragraph (t)(3)(xiv) is a minor revision to proposed rule paragraph (t)(4)(i)(J). OSHA proposed to require a two-way closed circuit communication system for hoist operators to communicate with landing stations. Mr. Harvey, with J. S. Redpath Corporation, stated that these type systems prevent communication from other stations when in use (Ex. 17-8, p. 6). OSHA has therefore revised this paragraph to delete the "two-way" specification. This will enable the operator to communicate with all other stations connected to the closed circuit system.

Paragraph (t)(1)(iv) of the proposal, requiring guides and safeties, did not distinguish either between hoisting materials and hoisting of personnel, or between hoists and cranes. This

resulted in two major difficulties in the implementation of the proposed provision. First, many comments questioned the feasibility of providing safeties that will stop and hold 150 percent of the weight of a fully loaded muck bucket. For example, Ronald J. Searle, of the Bureau of Reclamation, said "It is very hard to provide protection against a fully loaded muck bucket. If that [broken rope safeties] can be provided, that is fine. But I would suspect that would not be feasible" (March 1984 Hearing Transcript, p. 153). Mr. John Coyle, of Kiewit Construction, said that in case the rope broke with a 25-ton muck bucket traveling at 100 feet per minute, it would bring the whole shaft down (March 1984 Hearing Transcript, p. 226).

Second, comments also questioned the economic feasibility of providing both guides and safeties for cranes. For example, Mr. Vinton Garbesi, of S and M Constructors, Inc., stated that using shaft guides at depths greater than 75 feet will cause the employer to have to replace the cranes presently in use with hoists and guides, and also that having to operate with the guides during tunnel excavation would cause additional expenses. Mr. Garbesi added that the cost of installing the guides as part of the production phase in shaft sinking will also have a significant impact on the cost. Mr. Garbesi conservatively estimated a 25 to 40 percent increase in excavation costs for shafts (Ex. 26).

Although some commenters, such as Ronald Searle (March 1984 Hearing Transcript, pp. 140-149) and Don Brennan (March 1984 Hearing Transcript, pp. 273-291), stated that it is possible to use guides and safeties with cranes (i.e., the cranes do not have to be replaced by hoists), the record shows that this can only be accomplished by effectively immobilizing the crane. NUCA conducted a detailed analysis of this alternative. Based upon an engineering study conducted by the Elgood-Mayo Corporation, NUCA estimates that:

One shaft would have incurred at least \$191,230 additional direct costs due to guides and safeties. Furthermore, we estimate at least six extra weeks in project duration to erect and disassemble the necessary head frame, shaft cover, etc. for each work site * * *. It should be stressed that these figures are * * * for personnel mancages only. If we were to attempt to add extra costs for a guide and safety system for muckbuckets, assuming that such a system were possible, these costs would escalate dramatically * * * (Ex. 46).

Based on these comments, OSHA has removed cranes from the scope of final rule paragraphs (t)(3)(xv)-(xvii) and is

only requiring guides for material hoists. Guides and safeties are required for personnel hoists (see paragraph (t)(4)(vi)). OSHA believes that the costs associated with this revised provision will be negligible, based on the record evidence that guides and safeties on hoists used for personnel hoisting are current industry practice. The American National Standards Institute (ANSI) A10.4-1963 requires the use of guides (#4-11) and safeties (#4-17) for workmen's hoists. In addition, the two sites visited by JRB that used hoists to carry personnel—sites seven and eight—both used guides and safeties. Site seven had four hoists all fitted with "Canadian broken-rope safeties" and site eight had two hoists equipped with "safety dogs" (Ex. 11).

OSHA proposed, in paragraph (t)(1)(iii)(A), a minimum safety factor of five for load lines on material hoists. OSHA did not receive substantive comment to revise the factor of five, but was encouraged to no longer use the term "safety factor." MSHA stated the term "safety factor" has generally been superseded by "design factor." OSHA acknowledges that the hoisting and wire rope industries have generally replaced the term "safety factor" with "design factor." However, to be consistent with other recent rulemakings (see, for example, § 1926.550(g)), OSHA has used the phrase "shall be capable of supporting, without failure at least five times the maximum intended load" in final rule paragraph (t)(3)(xviii), instead of the term "design factor."

Proposed paragraph (t)(1)(iii)(B) required a wire rope safety factor of ten or more for personnel hoisting with cranes or hoists. OSHA has decided to rely on the recently published standard on "Crane or Derrick Suspended Personnel Platforms," § 1926.550(g)(3)(i)(B). That paragraph requires a design factor of seven (times the maximum intended load), except that where rotation-resistant rope is used, the design factor shall be at least ten. MSHA recommended in 1984 that OSHA adopt the design factors contained in their Wire Rope Standards, 30 CFR Part 57, 19a-21 (Ex. 35, p. 2). Those MSHA rules require factors of safety that range from four to seven, depending on the type of use and the length of wire rope. OSHA notes that these factors of safety are considerably less than the range of factors (7.60 to 10.70) those currently required for personnel hoists in 29 CFR 1926.552(c)(14)(iii). In addition, the MSHA rules contain more stringent maintenance, inspection and rope-replacement criteria than OSHA. Absent

these additional safeguards, OSHA does not believe that adopting the MSHA design factors of four to 7 percent would be sufficiently protective. However, a single design factor of 10 may not be appropriate for all hoists used in underground construction, and, as the current standards recognize, the design factor may vary depending on the speed of the hoist. In this regard, it should be noted that the ANSI A10.16 standard continues to refer to the ANSI A10.4 standard for personnel hoists, which in turn contains the same requirements for wire rope design factors as the current OSHA standard. Therefore, OSHA believes that employee safety is best protected by referring to the design factors found in 29 CFR 1926.552(c)(14)(iii) for wire rope on personnel hoists.

OSHA has revised the formula for computation of the design factor that was proposed at paragraph (t)(1)(iii)(c). Final Rule (t)(3)(xviii) contains the method for determining the design factor for wire rope used in underground construction hoists. Other than minor editorial changes, OSHA has deleted the requirement for acceleration and deceleration allowances due to the difficulty that MSHA stated field personnel would have when attempting to determine such factors (Ex. 35, p. 3).

OSHA solicited comments on load testing for hoists used in underground construction (see 48 FR 35806). OSHA proposed, in paragraph (t)(4)(i)(G)(1), to increase the frequency of load-testing from annually to quarterly. Mr. Bruce Harvey, with J. S. Redpath, pointed out that such an increase in frequency could result in excessive damage to permanent hoist installations (Ex. 17-8). Al Johnson Construction Company contended that the proposed recordkeeping and stringent checking of hoists seemed excessive (Ex. 17-19). None of the commenters supported the increased frequency, so OSHA has decided to retain an annual frequency for load testing. OSHA has also decided to revise the proposed requirement that a copy of the test records be maintained for the duration of the project (proposed paragraph (t)(4)(i)(G)(2)). Final Rule paragraph (t)(3)(xxi) requires that the person performing such inspections and tests certify when the required tests and inspections were performed, identify the hoist, and sign the certification. Only the most recent certification is required to be kept until completion of the project. This certification requirement is consistent with recent OSHA rulemaking practices (see 51 FR 34552 and 52 FR 12120).

OSHA proposed, in paragraph (t)(1)(ii)(I), a requirement for a trial run of all cranes and hoists after repairs or after being out of service for one shift. OSHA has limited the scope of that proposed standard to apply only to hoists in this Final Rule. The requirements for cranes are those existing standards in § 1926.550.

OSHA proposed, in paragraph (t)(2), additional requirements for personnel hoisting by both cranes and hoists. Such hoisting operations would primarily be for the purpose of routine access to the underground via a shaft.

Kenny Construction Company commented that OSHA should apply proposed § 1926.550(g), "Crane or Derrick Suspended Personnel Platforms" (49 FR 6280), in place of the proposed rules in paragraph (t) of this rulemaking, which are related to crane hoisting of personnel (Ex. 31). OSHA has carefully considered this and the many other comments received on the proposed rules of Underground Construction related to the use of cranes to hoist personnel.

OSHA believes the provisions of § 1926.550(g) appropriately address the hazards of personnel hoisting by cranes in underground construction as well as in other construction work. It provides a comprehensive approach to the hazards of hoisting personnel. Section § 1926.550(g) limits the use of cranes to hoist personnel to situations where it is the safest or only method available; however, OSHA believes these limitations are neither appropriate nor necessary for routine access to underground construction operations (where a crane-suspended platform is being used for transportation between levels and not as a work platform) for several reasons. First, the cranes used to hoist personnel for routine access do not need to travel during hoisting. Second, the hoisting takes place in a shaft where wind effects are minimal. And third, the boom angle and length do not need to be adjusted during hoisting. (For more background on paragraph (g) of § 1926.550, the entire record related to that rulemaking is contained in OSHA Docket number S-409.)

Since OSHA has removed personnel hoisting by cranes from the scope of this Final Rule, paragraph (t)(4) now only pertains to hoisting personnel by hoists.

Paragraph (t)(4)(i) requires two means of stopping and holding the load. Mr. Bruce Harvey, with J.S. Redpath, stated that OSHA had created confusion in its proposal by referring to one brake in proposed paragraph (t)(2)(ii), and then referring to two brakes in the accompanying explanation (48 FR

35804). OSHA is not requiring two brakes. Only one of the two required means of stopping the load must be a brake and is required by paragraph (i)(3)(i) of this Final Rule. The other means of stopping could be, for example, a second brake, a torque converter control, or the controls of hydraulic hoist drum system. Based on MSHA testimony (Ex. 35, p. 6), the statement in the proposal that broken-rope safeties are not acceptable as a means of stopping and holding the load has been expanded to include safety catches and arrestment devices.

Final Rule paragraph (i)(4)(vi) requires broken-rope safety devices, safety catches or arrestment devices for personnel platforms operating on guide rails or guide ropes. This rule is derived from proposed rule (i)(1)(iv)(D). Cranes have been removed from the scope of this paragraph because § 1926.550(g) applies to crane operations. The terms "safety catches" and "arrestment devices" were added as a result of MSHA's recommendation (Ex. 35, p. 6). For a further explanation of this paragraph, see the discussion pertaining to paragraphs (i)(3) (xv)-(xvii) earlier in this preamble.

Proposed rule paragraph (i)(4)(ii)(D)(1) required overspeed governors to activate at 100 feet per minute over the rated speed. MSHA recommended revising the limit to 15 percent above the rated speed (Ex. 35, p. 7). This recommendation is consistent with language in ANSI A10.4, Safety Requirements for Personnel Hoists, which is already referenced by § 1926.552(c)(16). Therefore, OSHA decided not to address this issue separately in the Final Rule and to continue to rely on that general personnel hoist standard for overspeed protection.

Proposed rule paragraph (i)(4)(ii)(D)(2) required devices to limit acceleration and deceleration to six feet per second per second. Mr. Capra, with Systems Control, argued that hoists with an AC-wound motor hoist cannot meet this specification (Ex. 47). Mr. Lange, with Fenix and Scisson, Inc., questioned if OSHA meant something other than the normal overspeed and over and underwinds on a Lilly controller (Ex. 17-20). OSHA's current standard on personnel hoists does not specifically address acceleration/deceleration rates, but controls them indirectly by the § 1926.552 reference to ANSI A10.4, which sets forth provisions pertaining to controls, brakes, and normal and final stopping devices; those current rules apply to all personnel hoists. In response to the comments received,

OSHA has not carried forward the proposed specification for acceleration and deceleration rates, but will the continue to rely on the current requirements in these areas.

Paragraph (u) Definitions

OSHA has moved the definition of "acceptable" from a note in the proposal and placed it in this paragraph. OSHA has also added a definition of "rapid excavation machines" in order to include machines such as roadheaders and shields which some persons might not consider to be a tunnel boring machine (see discussion of paragraphs (j)(1)(iv) and (j)(2)(ii) above).

III. Summary of Regulatory Impact and Regulatory Flexibility Analysis of the Underground Construction Standard

Introduction

Executive Order 12291 (46 FR 13197, February 19, 1981) requires that a regulatory analysis be conducted for any rule having major economic consequences on the national economy, individual industries, geographical regions, or levels of government. In addition, the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 et seq., requires OSHA to determine whether a regulation will have a significant impact on a substantial number of small entities.

Consistent with these requirements, OSHA has prepared a Regulatory Impact and Regulatory Flexibility Analysis (RIA) for the Underground Construction standard. This analysis includes a profile of the industries that are covered by the standard, an estimate of the number of exposed workers, a review of the nonregulatory alternatives, and assessments of the technological feasibility, costs, benefits, and overall economic impacts of the final standard. The RIA is available at the OSHA Docket Office.

The Need for Regulation

OSHA has assessed the need for this regulation and has determined that the risks incurred by employees in underground construction warrant a revised standard. Based upon data obtained on site visits to both large and small tunneling projects in 1979 and 1982, JRB Associates, Inc., under contract to OSHA (Ex. 11), found that approximately 10,000 employees (of which about 3,100 are employees of small firms) work underground. Due to the cyclical nature of this work, employment had declined to 8,136 employees working below ground by 1987. Using data from JRB site visits and OSHA Fatality/Catastrophe (FAT/CAT)

Reports, OSHA estimates that 6 to 7 fatalities occur among employees doing underground construction work each year. In addition, 2 fatalities each year are caused by worker exposures to gassy atmospheres while working underground. By comparison, 1985 data from the Bureau of Labor Statistics (BLS) indicate that for the same number of full-time workers, there were about 3.1 occupational fatalities in mining and construction, and 0.5 fatalities in manufacturing industries. OSHA estimates that underground construction workers experienced about 1,109 lost-time injuries in 1986, or an average of 13.6 lost-time accidents for every 100 full-time workers. In contrast, BLS reports that the 1985 lost-time accident rate was 6.8 for construction 4.8 for mining, and 4.6 for manufacturing.

These data confirm that significant workplace hazards continue to exist in underground construction work. OSHA's review of these accidents indicates that underground construction fatalities and injuries can be reduced by eliminating such major underground hazards as unsafe means of access and egress, accumulation of toxic or explosive gases, conditions susceptible to ground collapse, and unsafe hoisting operations.

In addition to the specific workplace hazards, OSHA believes that the high accident rate in this industry results from uninformed workers who unknowingly implement unsafe or improper work procedures. Currently, many employees have only a limited understanding of the hazards of underground construction, because this industry has a high labor turnover and therefore a high percentage of new employees. New employees are at serious risk until they obtain accurate information on job-related hazards and safe work procedures. In addition, many workers in this industry do not perform the same task every day, nor do they remain in one place for long periods of time. Consequently, these workers are not as familiar with the associated risks of their assignments as are workers in other industries who perform fairly repetitive tasks. Finally, employees of different trades (e.g., laborers, welders, and electricians) who frequently work together on a project may be unaware of how their own safety is affected by the work of others. In addition, these employees have no reasonable means of determining whether their co-workers are taking the proper precautions to avoid workplace disasters. Thus, OSHA believes that underground construction work remains hazardous at least partly due to changing work surroundings and to new employees who lack sufficient

knowledge of the hazards of tunnel and shaft construction.

Potential Benefits From Regulation

OSHA estimated the potential benefits of the final standard on the basis of JRB's economic impact analysis and on accident data (i.e., lost-time injuries and fatalities) obtained from the following sources: The 1977 report developed by Safety Sciences, Inc. for OSHA entitled, "Technical Assistance in the Development and Evaluation of an OSHA Regulation Strategy for Underground Construction"; the Maryland First Reports of Injury (FRI); the regional files included in OSHA's Management Information System (MIS) data base, the OSHA State Plan data base, and OSHA Fatality/Catastrophe reports.

The annual number of underground construction fatalities that would be prevented due to compliance with the revised standard was estimated on the basis of four of the available data bases (which contain information on fatalities for a number of years). Based on these sources, it was determined that 53 percent of the fatalities each year could be prevented by compliance with the revised standard. OSHA estimates that about 5 fatalities (i.e., 53 percent of the 8 to 9 fatalities that occur each year) would be prevented annually due to compliance with the final standard.

This benefits estimate includes two fatalities each year from worker exposures to gassy atmospheres. With regard to circumstances in which gas is present, there have been at least four major tunnel disasters involving the explosion of petroleum vapors since 1971. In Sulmar, California 17 men were killed in 1971; in Port Huron, Michigan 21 men were killed in 1971; in Green Bay, Wisconsin 4 men were killed in 1974; and in November of 1988 a methane gas explosion in a sewer tunnel under construction in Milwaukee, Wisconsin killed 3 men who had re-entered the tunnel (after it had been evacuated due to the detection of high levels of methane) to check on its safety. OSHA has studied these disasters and determined that they were primarily caused by inadequate ventilation and lack of monitoring. Although such disasters do not occur on a regular basis, OSHA believes these hazards continue to exist. Because this rule addresses these hazards, OSHA has estimated the potential benefits from the

requirements which cover these situations.

The annual number of underground construction lost-time injuries that would be prevented due to compliance with the revised standard was estimated on the basis of the Safety Sciences and Maryland FRI data. These two sources contain injury information collected over several years. Based on these two sources, OSHA estimates that 145 out of 780 injuries in the Safety Sciences data base would have been prevented due to compliance with the revised standard. Thus, OSHA estimates that a total of about 229 injuries out of the 1,378 injuries in both data bases (i.e., 16.6 percent) could have been prevented due to compliance with the revised standard. OSHA, therefore, estimates that compliance with the revised standard will prevent about 185 injuries per year (i.e., 16.6 percent of the estimated 1,109 injuries that occur each year).

In sum, as a result of compliance with the final standard, OSHA estimates that the annual lost-time injuries can be reduced by at least 16.6 percent, from 1,109 injuries to 924 injuries, and that annual fatalities can be reduced by at least 53 percent from 8 to 9 to about 3 deaths per year.

Technological Feasibility Determination

In evaluating the technological feasibility of the standard, OSHA carefully examined the economic data and proposed requirements. In their analysis, JRB considered the factors associated with equipment-related and nonequipment-related provisions. In terms of equipment-related provisions, JRB considered the equipment required, the availability of equipment, and the current industry practice. They also examined the differences in compliance methods or the use of equipment for small businesses, the technological advances that have recently or may soon affect methods of compliance, and the use of required equipment by other industries where relevant. JRB also evaluated nonequipment-related provisions resulting in possible procedural or work practice changes.

As a result of that analysis, JRB found that many of the provisions of the 1983 proposal are similar to those of the American National Standards Institute (ANSI), and to the Michigan and California standards. For example, the ANSI standard (§ 4.1) requires accident prevention programs, but does not

specifically mention evaluation procedures for these programs. Similarly, both the Michigan and the California standards specifically address emergency and evacuation plans (Rule 408.41463 and section 8426, respectively).

Since the publication of the 1983 proposal, however, OSHA has received much additional information and has concluded that some of the provisions, as drafted in the 1983 proposal, may not have been cost-effective or feasible. Examples of those provisions include requirements for the use of guides and safeties on cranes and falling object protective structures (FOPS) in all tunnels. Based on the record, OSHA made various modifications to those parts of the standard that would have been most difficult to implement. OSHA believes that all of the provisions, as currently drafted, are feasible.

Estimated Costs of Compliance

For the 1983 proposal, OSHA's estimate of the compliance costs associated with the revisions to 29 CFR 1926.800 was based primarily upon data contained in the JRB report. JRB developed and analyzed provisions proposed in the September 1982 OSHA draft of the standard and calculated the total estimated cost for industry end-use sectors, such as mass transit and sewer tunnels, as well as for the entire underground construction industry.

Since the publication of the 1983 proposal, the Agency has received useful comments concerning these compliance cost estimates. In cases where the Agency determined that the provisions as drafted in the 1983 proposal were inappropriate (e.g., guides and safeties), the comments served as the basis for revisions or deletions. Additionally, in cases where the Agency determined that the provisions were necessary, the comments served as the basis for revisions in OSHA's compliance cost estimates.

From a baseline of current industry practice, OSHA estimates, as summarized in table III-1, that full compliance with the provisions of the final standard will cost the underground construction industry a total of about \$2.9 million annually—including approximately \$883 thousand for large sites and \$2.02 million for small sites. Most of these costs are related to new provisions in the standard.

TABLE III-1.—SUMMARY OF COMPLIANCE COST ESTIMATES FOR ALL UNDERGROUND CONSTRUCTION SITES
[1987 Dollars]

Type of cost	Estimated Cost of the Final Standard *		
	Large sites	Small sites	Total
Non-gassy	648,713	1,468,025	2,116,738
Potentially gassy	230,327	554,104	784,431
Gassy	4,759	1,016	5,775
Totals	883,799	2,023,145	2,906,945

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis, 1988.

* OSHA's estimate is based on a non-supervisory wage rate of \$17.39 per hour and a ten year useful equipment life.

Cost Estimates for Requirements Unrelated to Flammable Gas

Given the current level of compliance in underground construction, OSHA estimates that the total annual compliance costs for those provisions unrelated to the presence of flammable gas will be about \$648,713 for large sites and about \$1,468,025 for small sites. Similarly, based on an assumption of full compliance with existing standards, the incremental cost of those requirements unrelated to the presence of flammable gas would be \$627,471 and \$1,428,717 for large and small sites respectively.

The major costs of these requirements are related to lost work time. For example, with regard to large sites the two most expensive provisions—which pertain to equipment used for hauling—account for about 47 percent of the estimated costs. The associated labor costs are for workers to connect and disconnect cars in order to ensure that occupied mancars are pulled (where switching facilities are available) and to ensure that the locomotive is always downhill of the car on steep grades (if safety chains are not used). Similarly, for small sites, the provision requiring that a designated person remain above ground whenever anyone is working underground accounts for almost half of the total estimated compliance costs.

Provisions Pertaining to Flammable Gas

OSHA received considerable comment on the cost estimates associated with provisions of the proposal that pertained to gassy operations in tunnels. The proposal set forth a number of circumstances under which tunnels must be classified and operated as "gassy," including a one-time reading of the lower explosive limit (LEL) for methane, or a 10-percent or more reading of the LEL for other flammable gasses. The proposal specified a number of requirements (i.e., Schedule 31 equipment, signs, permissible ventilation, monitoring, etc.) for tunnels classified as gassy.

In estimating the compliance costs associated with the proposal, OSHA took into account the cost of the additional requirements of the proposal as compared to the current standard, but did not estimate the higher percentage of tunnels being classified as "gassy." This resulted in an underestimation of the total compliance costs associated with these provisions of the proposal.

In reviewing the comments concerning changes in the requirements related to flammable gas, OSHA found that the most common recommendation was for OSHA to give the tunneling contractor some method of avoiding classifying the operation as gassy if alternative methods existed to control the gas problem. Based on these and other comments, OSHA developed a classification scheme for the final underground construction standard that specifies a gradual phase-in of requirements according to the concentration of gas encountered in tunnels, and permits tunnels to be declassified from "gassy" under appropriate conditions.

Cost Estimates for Operations Classified as Potentially Gassy

In addition to a permissible ventilation system, the standard requires the following three types of flammable gas monitoring for operations that would be classified as potentially gassy:

- (1) Continuous automatic monitoring when rapid excavation machines are being used
- (2) Manual monitoring twice per shift
- (3) Monitoring before hot work.

JRB analyzed a geographic distribution of planned tunnel construction in order to determine which prospective sites might be classified as potentially gassy. As a result of their analysis, JRB estimated that 17 percent of the projected tunnel operations for the years 1985 through 2000 will be classified as potentially gassy.

Based upon the assumption that sites visited by JRB (i.e., sites 5, 9 and B) are representative of the entire underground

construction industry, OSHA first estimated the costs of bringing those three sites into compliance and then extrapolated the compliance costs to the entire industry. OSHA estimates that the annual cost to comply with the potentially gassy requirements will be about \$230,327 for the large sites, and \$554,104 for the small sites.

Cost Estimates for Operations Classified as Gassy

The standard requires that any operation exceeding the 10-percent LEL for 3 consecutive days shall be classified as gassy and shall meet the following requirements when employees are working in the tunnel:

- (i)(1) Use only acceptable equipment.
- (i)(2) Use either Schedule 31 mobile diesel-powered equipment or fully equivalent equipment
- (i)(3) Post signs,
- (i)(4) Prohibit smoking,
- (i)(5) Post fire watch, and
- (k)(12) Provide above ground controls for reversing the air flow.

JRB estimated that 1 percent of all underground construction operations during the years 1985–2000 will exceed the 10-percent LEL trigger for 3 consecutive days. In addition, it was estimated that for half of these operations (0.5 percent of all tunnels), the gassy classification will only be temporary because the standard permits constructors to take steps to reduce gas concentrations without first having to meet the gassy operation requirements. Thus, it is estimated that only 0.5 percent of tunnels will be classified as "gassy." Based on this assumption, OSHA estimates that the large sites would incur about \$4,759 in added costs, and the small sites about \$1,016 in additional compliance costs.

Summary of Costs of Provisions Pertaining to Flammable Gas

Thus, OSHA estimates that the underground construction industry will incur less than \$1 million in additional costs to comply with the provisions related to flammable gas. Large sites

will incur about \$235,086 in additional annual compliance costs, and small sites will incur about \$555,120 in additional annual compliance costs. For both large and small sites, the additional labor associated with atmospheric testing (i.e., provisions (j)(2) (i), (iii), (iv)) is the major cost component. These provisions account for about 98 percent of the estimated \$230,327 in annual costs for large sites to comply with the provisions related to potentially gassy operations, and 96.8 percent of all of the costs associated with the provisions related to flammable gas. For small sites, these provisions account for about 86.0 percent of the annual compliance costs associated with provisions related to potentially gassy operations, and 85.8 percent of the annual compliance costs associated with all of the provisions related to flammable gas.

Economic Impact and Regulatory Flexibility Analysis

In accordance with Executive Order 12291 and the Regulatory Flexibility Act of 1980, OSHA assessed the potential economic impact of the final standard on the underground construction industry as a whole and on small entities in particular. Based largely on the JRB Economic Impact Analysis, OSHA estimates that even under its upper bound scenario (which assumes a five year equipment depreciation factor), large and small firms in the underground construction industry will remain viable.

The Agency estimates that the costs of complying with the final rule will be a minimal percentage of total annual revenue, amounting to less than .067 percent for large firms and .76 percent for small firms. OSHA believes that these costs will produce minor effects of less than 1 percent upon most of the important measures of the industry's economic status, such as profit, output, and employment. Thus, OSHA concludes that no large firms will fail as a result of increased compliance costs and that only 1 small firm out of the total 262 small firms might fail due to increased compliance costs.

Even under OSHA's upper bound the costs of compliance will still not exceed .069 percent of revenue for large firms and .87 percent of revenue for small firms. Thus, the final standard will not significantly affect the underground construction industry. Even if small firms incur annual compliance costs of \$2.29 million (i.e., OSHA's upper bound cost estimate) and cannot pass any of the added compliance costs on to their customers, OSHA anticipates no change in the stability or competitiveness of the small firms in this industry. Moreover, OSHA believes that the actual impacts

will be less than those estimated by this analysis because small or marginal firms can choose to avoid some of these costs by not working on the more difficult potentially gassy or gassy projects.

Thus, OSHA concludes that the compliance costs of the final underground construction standard will not affect the viability of small firms and the potential economic impact on these entities will be minimal.

Cost Effectiveness of Rule

Before promulgating a safety standard, Executive Order 12291 of February 17, 1981, requires the Agency to evaluate the economic effects of the regulatory action. As a means of attaining some perspective on the cost-effectiveness of the standard, OSHA calculated the net benefits of the final rule. In particular, a 1981 study by Levitt and coworkers (Levitt, Raymond, et al., "Improving Construction Safety Performance: The User's Role", Stanford University, Department of Civil Engineering Technical Report #280, August 1981) was used to determine the cost effectiveness of the final rule. Based on the results of this study—that a firm saves about \$5,122 (in 1987 dollars) from improved productivity and reduced recordkeeping per lost-workday injury or fatality-prevented-total industry savings amount to about \$973,180 per year as a result of compliance with the provisions of the final standard, (i.e., \$5,122 × 185 lost-workday injuries prevented + \$5,122 × 5.0 fatalities prevented). With total compliance cost estimated at \$2,906,945, this results in a total effective compliance costs of \$1,933,765 per year or a cost of \$386,573 per life saved. Similarly, from a baseline of current compliance with the existing standard, the incremental cost per life saved amounts to \$758,148. However, these costs are overstated since no allowance has been made for the expected reduction in non-fatal injuries, and the consequent increase in aggregate worker utility that attends such a reduction. Studies which utilize a willingness-to-pay approach to identify the cost of injuries, have estimated costs (and conversely the cost saving of an injury avoided) to be over \$32,000 dollars per non-fatal injury avoided.

Environmental Effects

This rule and its major alternatives have been reviewed in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4321, et seq.), the regulations of the Council on Environmental Quality (40 CFR Part 1500), and OSHA's DOL NEPA

Procedures (29 CFR Part 11). As a result of this review the rule is not anticipated to have a significant effect on air or water quality, solid waste disposal, or land use.

IV. OMB Approval Under the Paperwork Reduction Act

This subpart contains a collection of information in § 1926.800(j)(3). This provision requires employers to maintain a record of their air-quality tests at the job site. OMB has reviewed this collection and has approved it through 1991. The OMB control number is 1218-0067.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Regulatory Analysis, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Washington, DC 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1218-0067), Washington, DC 20503.

V. State Plan Requirements

The 25 states and territories with their own OSHA-approved occupational safety and health plans must revise their existing standard within six months or show OSHA why there is no need for action, e.g., because an existing state standard covering this area is already "at least as effective" as the revised Federal standard. These states and territories are: Alaska, Arizona, California, Connecticut*, Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, New York*, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, Wyoming.

VI. Federalism

The final standard has been reviewed in accordance with Executive Order 12612 (52 FR 41685; October 30, 1987) regarding Federalism. This Order requires that agencies, to the extent possible, refrain from limiting state policy options, consult with states prior to taking any actions that would restrict state policy options, and take such

* Plan covers only state and local government employees.

actions only when there is clear constitutional authority and the presence of a problem of national scope. The Order provides for preemption of state law only if there is a clear Congressional intent for the Agency to do so. Any such preemption is to be limited to the extent possible.

Section 18 of the Occupational Safety and Health Act (OSH Act), expresses Congress' clear intent to preempt state laws relating to issues with respect to which Federal OSHA has promulgated occupational safety or health standards. Under the OSH Act, a state can avoid preemption only if it submits, and obtains Federal approval of, a plan for the development of such standards and their enforcement. Occupational safety and health standards developed by such Plan States must, among other things, be as least as effective in providing safe and healthful employment and places of employment as the Federal standards.

This Federal standard for underground construction is drafted so that all construction workers will be protected by general, performance-oriented standards. To the extent that there are state or regional peculiarities that could alter construction methods, states with occupational safety and health plans approved under section 18 of the OSH Act would be able to develop their own state standards to deal with any special problems. Moreover, the performance nature of this proposed standard, of and by itself, allows for flexibility by states and contractors to provide as much safety as possible using varying methods consonant with conditions in each state.

In short, there is a clear national problem related to the occupational safety and health of construction workers. While the individual states, if all acted, might be able collectively to deal with the safety problems involved, most have not elected to do so in the 17 years since the enactment of the OSH Act. Those states which have elected to participate under section 18 of the OSH Act would not be preempted by this proposed regulation, and would be able to address special, local conditions within the framework provided by this performance-oriented standard while ensuring that their standards are at least as effective as the Federal standard. State comments were invited on the proposal and were fully considered prior to promulgation of this Final Rule.

VII. List of Subjects in 29 CFR Part 1926

Construction industry, Construction safety, Electric power, Excavations, Explosives, Fire prevention, Flammable materials, Health, Protective equipment,

Respiratory protection, Safety, Signs and symbols, Tools, Tunnels, Welding.

VIII. Authority:

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6(b), and 8(g) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657), section 107 of the Construction Act (40 U.S.C. 333), Secretary of Labor's Order No. 9-83 (48 FR 35736), and 29 CFR Part 1911, 29 CFR Part 1926 is amended as set forth below.

Signed at Washington, D.C. this 25th day of May 1989.

Alan C. McMillan,

Acting Assistant Secretary of Labor.

CFR Part 1926 is amended as follows:

PART 1926—(AMENDED)

1. The authority citation for Subpart S of Part 1926 is revised to read as follows:

Authority: Sec. 107, Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); Secs. 4, 6, and 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-78 (41 FR 25059), or 9-83 (48 FR 35736), as applicable. Section 1926.800 also issued under 29 CFR Part 1911.

2. By revising the title of Subpart S to read as follows:

Subpart S—Underground Construction, Caisson, Cofferdams and Compressed Air

3. By revising § 1926.800 to read as follows:

§ 1926.800 Underground construction.

(a) *Scope and application.* (1) This section applies to the construction of underground tunnels, shafts, chambers, and passageways. This section also applies to cut-and-cover excavations which are both physically connected to ongoing underground construction operations within the scope of this section, and covered in such a manner as to create conditions characteristic of underground construction.

(2) This section does not apply to the following:

(i) Excavation and trenching operations covered by Subpart P of this part, such as foundation operations for above-ground structures that are not physically connected to underground construction operations, and surface excavation; nor

(ii) Underground electrical transmission and distribution lines, as addressed in Subpart V of this part.

(b) *Access and egress.* (1) The employer shall provide and maintain safe means of access and egress to all work stations.

(2) The employer shall provide access and egress in such a manner that employees are protected from being struck by excavators, haulage machines, trains and other mobile equipment.

(3) The employer shall control access to all openings to prevent unauthorized entry underground. Unused chutes, manways, or other openings shall be tightly covered, bulkheaded, or fenced off, and shall be posted with warning signs indicating "Keep Out" or similar language. Completed or unused sections of the underground facility shall be barricaded.

(c) *Check-in/check-out.* The employer shall maintain a check-in/check-out procedure that will ensure that above-ground personnel can determine an accurate count of the number of persons underground in the event of an emergency. However, this procedure is not required when the construction of underground facilities designed for human occupancy has been sufficiently completed so that the permanent environmental controls are effective, and when the remaining construction activity will not cause any environmental hazard or structural failure within the facilities.

(d) *Safety instruction.* All employees shall be instructed in the recognition and avoidance of hazards associated with underground construction activities including, where appropriate, the following subjects:

- (1) Air monitoring;
- (2) Ventilation;
- (3) Illumination;
- (4) Communications;
- (5) Flood control;
- (6) Mechanical equipment;
- (7) Personal protective equipment;
- (8) Explosives;
- (9) Fire prevention and protection; and
- (10) Emergency procedures, including evacuation plans and check-in/check-out systems.

(e) *Notification.* (1) Oncoming shifts shall be informed of any hazardous occurrences or conditions that have affected or might affect employee safety, including liberation of gas, equipment failures, earth or rock slides, cave-ins, floodings, fires or explosions.

(2) The employer shall establish and maintain direct communications for coordination of activities with other employers whose operations at the

jobsite affect or may affect the safety of employees underground.

(f) *Communications.* (1) When natural unassisted voice communication is ineffective, a power-assisted means of voice communication shall be used to provide communication between the work face, the bottom of the shaft, and the surface.

(2) Two effective means of communication, at least one of which shall be voice communication, shall be provided in all shafts which are being developed or used either for personnel access or for hoisting. Additional requirements for hoist operator communication are contained in paragraph (t)(3)(xiv) of this section.

(3) Powered communication systems shall operate on an independent power supply, and shall be installed so that the use of or disruption of any one phone or signal location will not disrupt the operation of the system from any other location.

(4) Communication systems shall be tested upon initial entry of each shift to the underground, and as often as necessary at later times, to ensure that they are in working order.

(5) Any employee working alone underground in a hazardous location, who is both out of the range of natural unassisted voice communication and not under observation by other persons, shall be provided with an effective means of obtaining assistance in an emergency.

(g) *Emergency provisions—(1) Hoisting capability.* When a shaft is used as a means of egress, the employer shall make advance arrangements for power-assisted hoisting capability to be readily available in an emergency, unless the regular hoisting means can continue to function in the event of an electrical power failure at the jobsite. Such hoisting means shall be designed so that the load hoist drum is powered in both directions of rotation and so that the brake is automatically applied upon power release or failure.

(2) *Self-rescuers.* The employer shall provide self-rescuers having current approval from the National Institute for Occupational Safety and Health and the Mine Safety and Health Administration to be immediately available to all employees at work stations in underground areas where employees might be trapped by smoke or gas. The selection, issuance, use, and care of respirators shall be in accordance with paragraphs (b) and (c) of § 1926.103 of this part.

(3) *Designated person.* At least one designated person shall be on duty above ground whenever any employee is working underground. This designated

person shall be responsible for securing immediate aid and keeping an accurate count of employees underground in case of emergency. The designated person must not be so busy with other responsibilities that the counting function is encumbered.

(4) *Emergency lighting.* Each employee underground shall have an acceptable portable hand lamp or cap lamp in his or her work area for emergency use, unless natural light or an emergency lighting system provides adequate illumination for escape.

(5) *Rescue teams.* (i) On jobsites where 25 or more employees work underground at one time, the employer shall provide (or make arrangements in advance with locally available rescue services to provide) at least two 5-person rescue teams, one on the jobsite or within one-half hour travel time from the entry point, and the other within 2 hours travel time.

(ii) On jobsites where less than 25 employees work underground at one time, the employer shall provide (or make arrangements in advance with locally available rescue services to provide) at least one 5-person rescue team to be either on the jobsite or within one-half hour travel time from the entry point.

(iii) Rescue team members shall be qualified in rescue procedures, the use and limitations of breathing apparatus, and the use of firefighting equipment. Qualifications shall be reviewed not less than annually.

(iv) On jobsites where flammable or noxious gases are encountered or anticipated in hazardous quantities, rescue team members shall practice donning and using self-contained breathing apparatus monthly.

(v) The employer shall ensure that rescue teams are familiar with conditions at the jobsite.

(h) *Hazardous classifications.—(1) Potentially gassy operations.* Underground construction operations shall be classified as potentially gassy if either:

(i) Air monitoring discloses 10 percent or more of the lower explosive limit for methane or other flammable gases measured at 12 inches (304.8 mm) $\pm$ 0.25 inch (6.35 mm) from the roof, face, floor or walls in any underground work area for more than a 24-hour period; or

(ii) The history of the geographical area or geological formation indicates that 10 percent or more of the lower explosive limit for methane or other flammable gases is likely to be encountered in such underground operations.

(2) *Gassy operations.* Underground construction operations shall be classified as gassy if:

(i) Air monitoring discloses 10 percent or more of the lower explosive limit for methane or other flammable gases measured at 12 inches (304.8 mm) $\pm$ 0.25 inch (6.35 mm) from the roof, face, floor or walls in any underground work area for three consecutive days; or

(ii) There has been an ignition of methane or of other flammable gases emanating from the strata that indicates the presence of such gases; or

(iii) The underground construction operation is both connected to an underground work area which is currently classified as gassy and is also subject to a continuous course of air containing the flammable gas concentration.

(3) *Declassification to potentially gassy operations.* Underground construction gassy operations may be declassified to Potentially Gassy when air monitoring results remain under 10 percent of the lower explosive limit for methane or other flammable gases for three consecutive days.

(i) *Gassy operations—additional requirements.* (1) Only acceptable equipment, maintained in suitable condition, shall be used in gassy operations.

(2) Mobile diesel-powered equipment used in gassy operations shall be either approved in accordance with the requirements of 30 CFR Part 36 (formerly Schedule 31) by MSHA, or shall be demonstrated by the employer to be fully equivalent to such MSHA-approved equipment, and shall be operated in accordance with that part.

(3) Each entrance to a gassy operation shall be prominently posted with signs notifying all entrants of the gassy classification.

(4) Smoking shall be prohibited in all gassy operations and the employer shall be responsible for collecting all personal sources of ignition, such as matches and lighters, from all persons entering a gassy operation.

(5) A fire watch as described in § 1926.352(e) shall be maintained when hot work is performed.

(6) Once an operation has met the criteria in paragraph (h)(2) warranting classification as gassy, all operations in the affected area, except the following, shall be discontinued until the operation either is in compliance with all of the gassy operation requirements or has been declassified in accordance with paragraph (h)(3) of this section:

(i) Operations related to the control of the gas concentration;

(ii) Installation of new equipment, or conversion of existing equipment, to comply with this paragraph (i); and
(iii) Installation of above-ground controls for reversing the air flow.

(j) *Air quality and monitoring*—(1) *General.* Air quality limits and control requirements for construction are found in § 1926.55, except as modified by this section.

(i)(A) The employer shall assign a competent person who shall perform all air monitoring required by this section.

(B) Where this paragraph requires monitoring of airborne contaminants "as often as necessary," the competent person shall make a reasonable determination as to which substances to monitor and how frequently to monitor, considering at least the following factors:

(1) Location of jobsite: Proximity to fuel tanks, sewers, gas lines, old landfills, coal deposits, and swamps;

(2) Geology: Geological studies of the jobsite, particularly involving the soil type and its permeability;

(3) History: Presence of air contaminants in nearby jobsites, changes in levels of substances monitored on the prior shift; and

(4) Work practices and jobsite conditions: The use of diesel engines, use of explosives, use of fuel gas, volume and flow of ventilation, visible atmospheric conditions, decompression of the atmosphere, welding, cutting and hot work, and employees' physical reactions to working underground.

(ii)(A) The atmosphere in all underground work areas shall be tested as often as necessary to assure that the atmosphere at normal atmospheric pressure contains at least 19.5 percent oxygen and no more than 22 percent oxygen.

(B) Tests for oxygen content shall be made before tests for air contaminants.

(iii)(A) The atmosphere in all underground work areas shall be tested quantitatively for carbon monoxide, nitrogen dioxide, hydrogen sulfide, and other toxic gases, dusts, vapors, mists, and fumes as often as necessary to ensure that the permissible exposure limits prescribed in § 1926.55 are not exceeded.

(B) The atmosphere in all underground work areas shall be tested quantitatively for methane and other flammable gases as often as necessary to determine:

(1) Whether action is to be taken under paragraphs (j)(1)(vii), (viii), and (ix), of this section; and

(2) Whether an operation is to be classified potentially gassy or gassy under paragraph (h) of this section.

(C) If diesel-engine or gasoline-engine driven ventilating fans or compressors are used, an initial test shall be made of the inlet air of the fan or compressor, with the engines operating, to ensure that the air supply is not contaminated by engine exhaust.

(D) Testing shall be performed as often as necessary to ensure that the ventilation requirements of paragraph (k) of this section are met.

(iv) When rapid excavation machines are used, a continuous flammable gas monitor shall be operated at the face with the sensor(s) placed as high and close to the front of the machine's cutter head as practicable.

(v)(A) Whenever air monitoring indicates the presence of 5 ppm or more of hydrogen sulfide, a test shall be conducted in the affected underground work area(s), at least at the beginning and midpoint of each shift, until the concentration of hydrogen sulfide has been less than 5 ppm for 3 consecutive days.

(B) Whenever hydrogen sulfide is detected in an amount exceeding 10 ppm, a continuous sampling and indicating hydrogen sulfide monitor shall be used to monitor the affected work area.

(C) Employees shall be informed when a concentration of 10 ppm hydrogen sulfide is exceeded.

(D) The continuous sampling and indicating hydrogen sulfide monitor shall be designed, installed, and maintained to provide a visual and aural alarm when the hydrogen sulfide concentration reaches 20 ppm to signal that additional measures, such as respirator use, increased ventilation, or evacuation, might be necessary to maintain hydrogen sulfide exposure below the permissible exposure limit.

(vi) When the competent person determines, on the basis of air monitoring results or other information, that air contaminants may be present in sufficient quantity to be dangerous to life, the employer shall:

(A) Prominently post a notice at all entrances to the underground jobsite to inform all entrants of the hazardous condition; and

(B) Ensure that the necessary precautions are taken.

(vii) Whenever five percent or more of the lower explosive limit for methane or other flammable gases is detected in any underground work area(s) or in the air return, steps shall be taken to increase ventilation air volume or otherwise control the gas concentration, unless the employer is operating in accordance with the potentially gassy or gassy operation requirements. Such additional ventilation controls may be

discontinued when gas concentrations are reduced below five percent of the lower explosive limit, but shall be reinstituted whenever the five percent level is exceeded.

(viii) Whenever 10 percent or more of the lower explosive limit for methane or other flammable gases is detected in the vicinity of welding, cutting, or other hot work, such work shall be suspended until the concentration of such flammable gas is reduced to less than 10 percent of the lower explosive limit.

(ix) Whenever 20 percent or more of the lower explosive limit for methane or other flammable gases is detected in any underground work area(s) or in the air return:

(A) All employees, except those necessary to eliminate the hazard, shall be immediately withdrawn to a safe location above ground; and

(B) Electrical power, except for acceptable pumping and ventilation equipment, shall be cut off to the area endangered by the flammable gas until the concentration of such gas is reduced to less than 20 percent of the lower explosive limit.

(2) *Additional monitoring for potentially gassy and gassy operations.* Operations which meet the criteria for potentially gassy and gassy operations set forth in paragraph (h) of this section shall be subject to the additional monitoring requirements of this paragraph.

(i) A test for oxygen content shall be conducted in the affected underground work areas and work areas immediately adjacent to such areas at least at the beginning and midpoint of each shift.

(ii) When using rapid excavation machines, continuous automatic flammable gas monitoring equipment shall be used to monitor the air at the heading, on the rib, and in the return air duct. The continuous monitor shall signal the heading, and shut down electric power in the affected underground work area, except for acceptable pumping and ventilation equipment, when 20 percent or more of the lower explosive limit for methane or other flammable gases is encountered.

(iii) A manual flammable gas monitor shall be used as needed, but at least at the beginning and midpoint of each shift, to ensure that the limits prescribed in paragraphs (h) and (j) are not exceeded. In addition, a manual electrical shut down control shall be provided near the heading.

(iv) Local gas tests shall be made prior to and continuously during any welding, cutting, or other hot work.

(v) In underground operations driven by drill-and-blast methods, the air in the

affected area shall be tested for flammable gas prior to re-entry after blasting, and continuously when employees are working underground.

(3) *Recordkeeping.* A record of all air quality tests shall be maintained above ground at the worksite and be made available to the Secretary of Labor upon request. The record shall include the location, date, time, substance and amount monitored. Records of exposures to toxic substances shall be retained in accordance with § 1910.20 of this chapter. All other air quality test records shall be retained until completion of the project.

(k) *Ventilation.* (1)(i) Fresh air shall be supplied to all underground work areas in sufficient quantities to prevent dangerous or harmful accumulation of dusts, fumes, mists, vapors or gases.

(ii) Mechanical ventilation shall be provided in all underground work areas except when the employer can demonstrate that natural ventilation provides the necessary air quality through sufficient air volume and air flow.

(2) A minimum of 200 cubic feet (5.7 m³) of fresh air per minute shall be supplied for each employee underground.

(3) The linear velocity of air flow in the tunnel bore, in shafts, and in all other underground work areas shall be at least 30 feet (9.15 m) per minute where blasting or rock drilling is conducted, or where other conditions likely to produce dust, fumes, mists, vapors, or gases in harmful or explosive quantities are present.

(4) The direction of mechanical air flow shall be reversible.

(5) Following blasting, ventilation systems shall exhaust smoke and fumes to the outside atmosphere before work is resumed in affected areas.

(6) Ventilation doors shall be designed and installed so that they remain closed when in use, regardless of the direction of the air flow.

(7) When ventilation has been reduced to the extent that hazardous levels of methane or flammable gas may have accumulated, a competent person shall test all affected areas after ventilation has been restored and shall determine whether the atmosphere is within flammable limits before any power, other than for acceptable equipment, is restored or work is resumed.

(8) Whenever the ventilation system has been shut down with all employees out of the underground area, only competent persons authorized to test for air contaminants shall be allowed underground until the ventilation has been restored and all affected areas

have been tested for air contaminants and declared safe.

(9) When drilling rock or concrete, appropriate dust control measures shall be taken to maintain dust levels within limits set in § 1926.55. Such measures may include, but are not limited to, wet drilling, the use of vacuum collectors, and water mix spray systems.

(10) (i) Internal combustion engines, except diesel-powered engines on mobile equipment, are prohibited underground.

(ii) Mobile diesel-powered equipment used underground in atmospheres other than gassy operations shall be either approved by MSHA in accordance with the provisions of 30 CFR Part 32 (formerly Schedule 24), or shall be demonstrated by the employer to be fully equivalent to such MSHA-approved equipment, and shall be operated in accordance with that Part. (Each brake horsepower of a diesel engine requires at least 100 cubic feet (28.32 m³) of air per minute for suitable operation in addition to the air requirements for personnel. Some engines may require a greater amount of air to ensure that the allowable levels of carbon monoxide, nitric oxide, and nitrogen dioxide are not exceeded.)

(11) Potentially gassy or gassy operations shall have ventilation systems installed which shall:

(i) Be constructed of fire-resistant materials; and

(ii) Have acceptable electrical systems, including fan motors.

(12) Gassy operations shall be provided with controls located above ground for reversing the air flow of ventilation systems.

(13) In potentially gassy or gassy operations, wherever mine-type ventilation systems using an offset main fan installed on the surface are used, they shall be equipped with explosion-doors or a weak-wall having an area at least equivalent to the cross-sectional area of the airway.

(1) *Illumination.* (1) Illumination requirements applicable to underground construction operations are found in Table D-3 of § 1926.56 of this part.

(2) Only acceptable portable lighting equipment shall be used within 50 feet (15.24 m) of any underground heading during explosives handling.

(m) *Fire prevention and control.* Fire prevention and protection requirements applicable to underground construction operations are found in Subpart F of this part, except as modified by the following additional standards.

(1) Open flames and fires are prohibited in all underground construction operations except as permitted for welding, cutting and other

hot work operations in paragraph (n) of this section.

(2) (i) Smoking may be allowed only in areas free of fire and explosion hazards.

(ii) Readily visible signs prohibiting smoking and open flames shall be posted in areas having fire or explosion hazards.

(3) The employer may store underground no more than a 24-hour supply of diesel fuel for the underground equipment used at the worksite.

(4) The piping of diesel fuel from the surface to an underground location is permitted only if:

(i) Diesel fuel is contained at the surface in a tank whose maximum capacity is no more than the amount of fuel required to supply for a 24-hour period the equipment serviced by the underground fueling station; and

(ii) The surface tank is connected to the underground fueling station by an acceptable pipe or hose system that is controlled at the surface by a valve, and at the shaft bottom by a hose nozzle; and

(iii) The pipe is empty at all times except when transferring diesel fuel from the surface tank to a piece of equipment in use underground; and

(iv) Hoisting operations in the shaft are suspended during refueling operations if the supply piping in the shaft is not protected from damage.

(5) (i) Gasoline shall not be carried, stored, or used underground.

(ii) Acetylene, liquefied petroleum gas, and Methylacetylene Propadiene Stabilized gas may be used underground only for welding, cutting and other hot work, and only in accordance with Subpart J of this part, and paragraphs (j), (k), (m), and (n) of this section.

(6) Oil, grease, and diesel fuel stored underground shall be kept in tightly sealed containers in fire-resistant areas at least 300 feet (91.44 m) from underground explosive magazines, and at least 100 feet (30.48 m) from shaft stations and steeply inclined passageways. Storage areas shall be positioned or diked so that the contents of ruptured or overturned containers will not flow from the storage area.

(7) Flammable or combustible materials shall not be stored above ground within 100 feet (30.48 m) of any access opening to any underground operation. Where this is not feasible because of space limitations at the jobsite, such materials may be located within the 100-foot limit, provided that:

(i) They are located as far as practicable from the opening; and

(ii) Either a fire-resistant barrier of not less than one-hour rating is placed between the stored material and the

opening, or additional precautions are taken which will protect the materials from ignition sources.

(8) Fire-resistant hydraulic fluids shall be used in hydraulically-actuated underground machinery and equipment unless such equipment is protected by a fire suppression system or by multi-purpose fire extinguisher(s) rated at of sufficient capacity for the type and size of hydraulic equipment involved, but rated at least 4A:40B:C.

(9) (i) Electrical installations in underground areas where oil, grease, or diesel fuel are stored shall be used only for lighting fixtures.

(ii) Lighting fixtures in storage areas, or within 25 feet (7.62 m) of underground areas where oil, grease, or diesel fuel are stored, shall be approved for Class I, Division 2 locations, in accordance with Subpart K of this part.

(10) Leaks and spills of flammable or combustible fluids shall be cleaned up immediately.

(11) A fire extinguisher of at least 4A:40B:C rating or other equivalent extinguishing means shall be provided at the head pulley and at the tail pulley of underground belt conveyors.

(12) Any structure located underground or within 100 feet (30.48 m) of an opening to the underground shall be constructed of material having a fire-resistance rating of at least one hour.

(n) *Welding, cutting, and other hot work.* In addition to the requirements of Subpart J of this part, the following requirements shall apply to underground welding, cutting, and other hot work.

(1) No more than the amount of fuel gas and oxygen cylinders necessary to perform welding, cutting, or other hot work during the next 24-hour period shall be permitted underground.

(2) Noncombustible barriers shall be installed below welding, cutting, or other hot work being done in or over a shaft or raise.

(o) *Ground support.*—(1) *Portal areas.* Portal openings and access areas shall be guarded by shoring, fencing, head walls, shotcreting or other equivalent protection to ensure safe access of employees and equipment. Adjacent areas shall be scaled or otherwise secured to prevent loose soil, rock, or fractured materials from endangering the portal and access area.

(2) *Subsidence areas.* The employer shall ensure ground stability in hazardous subsidence areas by shoring, by filling in, or by erecting barricades and posting warning signs to prevent entry.

(3) *Underground areas.* (i)(A) A competent person shall inspect the roof, face, and walls of the work area at the

start of each shift and as often as necessary to determine ground stability.

(B) Competent persons conducting such inspections shall be protected from loose ground by location, ground support or equivalent means.

(ii) Ground conditions along haulageways and travelways shall be inspected as frequently as necessary to ensure safe passage.

(iii) Loose ground that might be hazardous to employees shall be taken down, scaled or supported.

(iv) (A) Torque wrenches shall be used wherever bolts that depend on torsionally applied force are used for ground support.

(B) A competent person shall determine whether rock bolts meet the necessary torque, and shall determine the testing frequency in light of the bolt system, ground conditions and the distance from vibration sources.

(v) Suitable protection shall be provided for employees exposed to the hazard of loose ground while installing ground support systems.

(vi) Support sets shall be installed so that the bottoms have sufficient anchorage to prevent ground pressures from dislodging the support base of the sets. Lateral bracing (collar bracing, tie rods, or spreaders) shall be provided between immediately adjacent sets to ensure added stability.

(vii) Damaged or dislodged ground supports that create a hazardous condition shall be promptly repaired or replaced. When replacing supports, the new supports shall be installed before the damaged supports are removed.

(viii) A shield or other type of support shall be used to maintain a safe travelway for employees working in dead-end areas ahead of any support replacement operation.

(4) *Shafts.* (i) Shafts and wells over 5 feet (1.53 m) in depth that employees must enter shall be supported by a steel casing, concrete pipe, timber, solid rock or other suitable material.

(ii) (A) The full depth of the shaft shall be supported by casing or bracing except where the shaft penetrates into solid rock having characteristics that will not change as a result of exposure. Where the shaft passes through earth into solid rock, or through solid rock into earth, and where there is potential for shear, the casing or bracing shall extend at least 5 feet (1.53 m) into the solid rock. When the shaft terminates in solid rock, the casing or bracing shall extend to the end of the shaft or 5 feet (1.53 m) into the solid rock, whichever is less.

(B) The casing or bracing shall extend 42 inches (1.07 m) plus or minus 3 inches (8 cm) above ground level, except that the minimum casing height may be

reduced to 12 inches (0.3 m), provided that a standard railing is installed; that the ground adjacent to the top of the shaft is sloped away from the shaft collar to prevent entry of liquids; and that effective barriers are used to prevent mobile equipment operating near the shaft from jumping over the 12 inch (0.3 m) barrier.

(iii) After blasting operations in shafts, a competent person shall determine if the walls, ladders, timbers, blocking, or wedges have loosened. If so, necessary repairs shall be made before employees other than those assigned to make the repairs are allowed in or below the affected areas.

(p) *Blasting.* This paragraph applies in addition to the requirements for blasting and explosives operations, including handling of misfires, which are found in Subpart U of this part.

(1) Blasting wires shall be kept clear of electrical lines, pipes, rails, and other conductive material, excluding earth, to prevent explosives initiation or employee exposure to electric current.

(2) Following blasting, an employee shall not enter a work area until the air quality meets the requirements of paragraph (j) of this section.

(q) *Drilling.* (1) A competent person shall inspect all drilling and associated equipment prior to each use. Equipment defects affecting safety shall be corrected before the equipment is used.

(2) The drilling area shall be inspected for hazards before the drilling operation is started.

(3) Employees shall not be allowed on a drill mast while the drill bit is in operation or the drill machine is being moved.

(4) When a drill machine is being moved from one drilling area to another, drill steel, tools, and other equipment shall be secured and the mast shall be placed in a safe position.

(5) Receptacles or racks shall be provided for storing drill steel located on jumbos.

(6) Employees working below jumbo decks shall be warned whenever drilling is about to begin.

(7) Drills on columns shall be anchored firmly before starting drilling, and shall be retightened as necessary thereafter.

(8) (i) The employer shall provide mechanical means on the top deck of a jumbo for lifting unwieldy or heavy material.

(ii) When jumbo decks are over 10 feet (3.05 m) in height, the employer shall install stairs wide enough for two persons.

(iii) Jumbo decks more than 10 feet (3.05 m) in height shall be equipped with

guardrails on all open sides, excluding access openings of platforms, unless an adjacent surface provides equivalent fall protection.

(i) (A) Only employees assisting the operator shall be allowed to ride on jumbos, unless the jumbo meets the requirements of paragraph (r)(6)(ii) of this section.

(B) Jumbos shall be chocked to prevent movement while employees are working on them.

(v) (A) Walking and working surfaces of jumbos shall be maintained to prevent the hazards of slipping, tripping and falling.

(B) Jumbo decks and stair treads shall be designed to be slip-resistant and secured to prevent accidental displacement.

(9) Scaling bars shall be available at scaling operations and shall be maintained in good condition at all times. Blunted or severely worn bars shall not be used.

(10) (i) Blasting holes shall not be drilled through blasted rock (muck) or water.

(ii) Employees in a shaft shall be protected either by location or by suitable barrier(s) if powered mechanical loading equipment is used to remove muck containing unfired explosives.

(11) A caution sign reading "Buried Line," or similar wording shall be posted where air lines are buried or otherwise hidden by water or debris.

(r) *Haulage.* (1)(i) A competent person shall inspect haulage equipment before each shift.

(ii) Equipment defects affecting safety and health shall be corrected before the equipment is used.

(2) Powered mobile haulage equipment shall have suitable means of stopping.

(3) (i) Power mobile haulage equipment, including trains, shall have audible warning devices to warn employees to stay clear. The operator shall sound the warning device before moving the equipment and whenever necessary during travel.

(ii) The operator shall assure that lights which are visible to employees at both ends of any mobile equipment, including a train, are turned on whenever the equipment is operating.

(4) In those cabs where glazing is used, the glass shall be safety glass, or its equivalent, and shall be maintained and cleaned so that vision is not obstructed.

(5) Anti-roll back devices or brakes shall be installed on inclined conveyor drive units to prevent conveyors from inadvertently running in reverse.

(6)(i) (A) Employees shall not be permitted to ride a power-driven chain, belt, or bucket conveyor unless the conveyor is specifically designed for the transportation of persons.

(B) Endless belt-type manlifts are prohibited in underground construction.

(C) General requirements also applicable to underground construction for use of conveyors in construction are found in § 1926.555 of this part.

(ii) No employee shall ride haulage equipment unless it is equipped with seating for each passenger and protects passengers from being struck, crushed, or caught between other equipment or surfaces. Members of train crews may ride on a locomotive if it is equipped with handholds and nonslip steps or footboards. Requirements applicable to Underground Construction for motor vehicle transportation of employees are found in § 1926.601 of this part.

(7) Powered mobile haulage equipment, including trains, shall not be left unattended unless the master switch or motor is turned off; operating controls are in neutral or park position; and the brakes are set, or equivalent precautions are taken to prevent rolling.

(8) Whenever rails serve as a return for a trolley circuit, both rails shall be bonded at every joint and crossbonded every 200 feet (60.96 m).

(9) When dumping cars by hand, the car dumps shall have tiedown chains, bumper blocks, or other locking or holding devices to prevent the cars from overturning.

(10) Rocker-bottom or bottom-dump cars shall be equipped with positive locking devices to prevent unintended dumping.

(11) Equipment to be hauled shall be loaded and secured to prevent sliding or dislodgement.

(12) (i) Mobile equipment, including rail-mounted equipment, shall be stopped for manual connecting or service work.

(ii) Employees shall not reach between moving cars during coupling operations.

(iii) Couplings shall not be aligned, shifted or cleaned on moving cars or locomotives.

(13) (i) Safety chains or other connections shall be used in addition to couplers to connect man cars or powder cars whenever the locomotive is uphill of the cars.

(ii) When the grade exceeds one percent and there is a potential for runaway cars, safety chains or other connections shall be used in addition to couplers to connect haulage cars or, as an alternative, the locomotive must be downhill of the train.

(iii) Such safety chains or other connections shall be capable of maintaining connection between cars in the event of either coupler disconnect, failure or breakage.

(14) Parked rail equipment shall be chocked, blocked, or have brakes set to prevent inadvertent movement.

(15) Berms, bumper blocks, safety books, or equivalent means shall be provided to prevent overtravel and overturning of haulage equipment at dumping locations.

(16) Bumper blocks or equivalent stopping devices shall be provided at all track dead ends.

(17) (i) Only small handtools, lunch pails or similar small items may be transported with employees in man-cars, or on top of a locomotive.

(ii) When small hand tools or other small items are carried on top of a locomotive, the top shall be designed or modified to retain them while traveling.

(18) (i) Where switching facilities are available, occupied personnel-cars shall be pulled, not pushed. If personnel-cars must be pushed and visibility of the track ahead is hampered, then a qualified person shall be stationed in the lead car to give signals to the locomotive operator.

(ii) Crew trips shall consist of personnel-loads only.

(s) *Electrical safety.* This paragraph applies in addition to the general requirements for electrical safety which are found in Subpart K of this part.

(1) Electric power lines shall be insulated or located away from water lines, telephone lines, air lines, or other conductive materials so that a damaged circuit will not energize the other systems.

(2) Lighting circuits shall be located so that movement of personnel or equipment will not damage the circuits or disrupt service.

(3) Oil-filled transformers shall not be used underground unless they are located in a fire-resistant enclosure suitably vented to the outside and surrounded by a dike to retain the contents of the transformers in the event of rupture.

(t) *Hoisting unique to underground construction.* Except as modified by this paragraph (t), the following provisions of Subpart N of this part apply:

Requirements for cranes are found in § 1926.550 of this part. Paragraph (g) of § 1926.550 applies to crane-hoisting of personnel, except that the limitation in paragraph (g)(2) does not apply to the routine access of employees to the underground via a shaft. Requirements for material hoists are found in § 1926.552 (a) and (b) of this part.

Requirements for personnel hoists are found in the personnel hoist requirements of § 1926.552 (a) and (c) of this part and in the elevator requirement of § 1926.552 (a) and (d) of this part.

(1) *General requirements for cranes and hoists.* (i) Materials, tools, and supplies being raised or lowered, whether within a cage or otherwise, shall be secured or stacked in a manner to prevent the load from shifting, snagging or falling into the shaft.

(ii) A warning light suitably located to warn employees at the shaft bottom and subsurface shaft entrances shall flash whenever a load is above the shaft bottom or subsurface entrances, or the load is being moved in the shaft. This paragraph does not apply to fully enclosed hoistways.

(iii) Whenever a hoistway is not fully enclosed and employees are at the shaft bottom, conveyances or equipment shall be stopped at least 15 feet (4.57 m) above the bottom of the shaft and held there until the signalman at the bottom of the shaft directs the operator to continue lowering the load, except that the load may be lowered without stopping if the load or conveyance is within full view of a bottom signalman who is in constant voice communication with the operator.

(iv) (A) Before maintenance, repairs, or other work is commenced in the shaft served by a cage, skip, or bucket, the operator and other employees in the area shall be informed and given suitable instructions.

(B) A sign warning that work is being done in the shaft shall be installed at the shaft collar, at the operator's station, and at each underground landing.

(v) Any connection between the hoisting rope and the cage or skip shall be compatible with the type of wire rope used for hoisting.

(vi) Spin-type connections, where used, shall be maintained in a clean condition and protected from foreign matter that could affect their operation.

(vii) Cage, skip, and load connections to the hoist rope shall be made so that the force of the hoist pull, vibration, misalignment, release of lift force, or impact will not disengage the connection. Moused or latched open-throat hooks do not meet this requirement.

(viii) When using wire rope wedge sockets, means shall be provided to prevent wedge escapement and to ensure that the wedge is properly seated.

(2) *Additional requirements for cranes.* Cranes shall be equipped with a limit switch to prevent overtravel at the boom tip. Limit switches are to be used only to limit travel of loads when

operational controls malfunction and shall not be used as a substitute for other operational controls.

(3) *Additional requirements for hoists.*

(i) Hoists shall be designed so that the load hoist drum is powered in both directions of rotation, and so that brakes are automatically applied upon power release or failure.

(ii) Control levers shall be of the "deadman type" which return automatically to their center (neutral) position upon release.

(iii) When a hoist is used for both personnel hoisting and material hoisting, load and speed ratings for personnel and for materials shall be assigned to the equipment.

(iv) Material hoisting may be performed at speeds higher than the rated speed for personnel hoisting if the hoist and components have been designed for such higher speeds and if shaft conditions permit.

(v) Employees shall not ride on top of any cage, skip or bucket except when necessary to perform inspection or maintenance of the hoisting system, in which case they shall be protected by a body belt/harness system to prevent falling.

(vi) Personnel and materials (other than small tools and supplies secured in a manner that will not create a hazards to employees) shall not be hoisted together in the same conveyance. However, if the operator is protected from the shifting of materials, then the operator may ride with materials in cages or skips which are designed to be controlled by an operator within the cage or skip.

(vii) Line speed shall not exceed the design limitations of the systems.

(viii) Hoists shall be equipped with landing level indicators at the operator's station. Marking of the hoist rope does not satisfy this requirement.

(ix) Whenever glazing is used in the hoist house, it shall be safety glass, or its equivalent, and be free of distortions and obstructions.

(x) A fire extinguisher that is rated at least 2A:10B:C (multi-purpose, dry chemical) shall be mounted in each hoist house.

(xi) Hoist controls shall be arranged so that the operator can perform all operating cycle functions and reach the emergency power cutoff without having to reach beyond the operator's normal operating position.

(xii) Hoists shall be equipped with limit switches to prevent overtravel at the top and bottom of the hoistway.

(xiii) Limit switches are to be used only to limit travel of loads when operational controls malfunction and

shall not be used as a substitute for other operational controls.

(xiv) Hoist operators shall be provided with a closed-circuit voice communication system to each landing station, with speaker-microphones so located that the operator can communicate with individual landing stations during hoist use.

(xv) When sinking shafts 75 feet (22.86 m) or less in depth, cages, skips, and buckets that may swing, bump, or snag against shaft sides or other structural protrusions shall be guided by fenders, rails, ropes, or a combination of those means.

(xvi) When sinking shafts more than 75 feet (22.86 m) in depth, all cages, skips, and buckets shall be rope or rail-guided to within a rail length from the sinking operation.

(xvii) Cages, skips, and buckets in all completed shafts, or in all shafts being used as completed shafts, shall be rope or rail-guided for the full length of their travel.

(xviii) Wire rope used in load lines of material hoists shall be capable of supporting, without failure, at least five times the maximum intended load or the factor recommended by the rope manufacturer, whichever is greater. Refer to § 1926.552(c)(14)(iii) of this part for design factors for wire rope used in personnel hoists. The design factor shall be calculated by dividing the breaking strength of wire rope, as reported in the manufacturer's rating tables, by the total static load, including the weight of the wire rope in the shaft when fully extended.

(xix) A competent person shall visually check all hoisting machinery, equipment, anchorages, and hoisting rope at the beginning of each shift and during hoist use, as necessary.

(xx) Each safety device shall be checked by a competent person at least weekly during hoist use to ensure suitable operation and safe condition.

(xxi) In order to ensure suitable operation and safe condition of all functions and safety devices, each hoist assembly shall be inspected and load-tested to 100 percent of its rated capacity: at the time of installation; after any repairs or alterations affecting its structural integrity; after the operation of any safety device; and annually when in use. The employer shall prepare a certification record which includes the date each inspection and load-test was performed; the signature of the person who performed the inspection and test; and a serial number or other identifier for the hoist that was inspected and tested. The most recent certification

record shall be maintained on file until completion of the project.

(xxii) Before hoisting personnel or material, the operator shall perform a test run of any cage or skip whenever it has been out of service for one complete shift, and whenever the assembly or components have been repaired or adjusted.

(xxiii) Unsafe conditions shall be corrected before using the equipment.

(4) *Additional requirements for personnel hoists.* (i) Hoist drum systems shall be equipped with at least two means of stopping the load, each of which shall be capable of stopping and holding 150 percent of the hoist's rated line pull. A broken-rope safety, safety catch, or arrestment device is not a permissible means of stopping under this paragraph.

(ii) The operator shall remain within sight and sound of the signals at the operator's station.

(iii) All sides of personnel cages shall be enclosed by one-half inch (12.70 mm) wire mesh (not less than No. 14 gauge or equivalent) to a height of not less than 6 feet (1.83 m). However, when the cage or skip is being used as a work platform,

its sides may be reduced in height to 42 inches (1.07 m) when the conveyance is not in motion.

(iv) All personnel cages shall be provided with positive locking door that does not open outward.

(v) All personnel cages shall be provided with a protective canopy. The canopy shall be made of steel plate, at least 3/16-inch (4.763 mm) in thickness, or material of equivalent strength and impact resistance. The canopy shall be sloped to the outside, and so designed that a section may be readily pushed upward to afford emergency egress. The canopy shall cover the top in such a manner as to protect those inside from objects falling in the shaft.

(vi) Personnel platforms operating on guide rails or guide ropes shall be equipped with broken-rope safety devices, safety catches or arrestment devices that will stop and hold 150 percent of the weight of the personnel platform and its maximum rated load.

(vii) During sinking operations in shafts where guides and safeties are not yet used, the travel speed of the personnel platform shall not exceed 200 feet (60.96 m) per minute. Governor

controls set for 200 feet (60.96 m) per minute shall be installed in the control system and shall be used during personnel hoisting.

(viii) The personnel platform may travel over the controlled length of the hoistway at rated speeds up to 600 feet (182.88 m) per minute during sinking operations in shafts where guides and safeties are used.

(ix) The personnel platform may travel at rated speeds greater than 600 feet (182.88 m) per minute in completed shafts.

(u) *Definitions.* "Accept"—Any device, equipment, or appliance that is either approved by MSHA and maintained in permissible condition, or is listed or labeled for the class and location under Subpart K of this part. "Rapid Excavation Machine"—Tunnel boring machines, shields, roadheaders, or any other similar excavation machine.

(Information collection requirements contained in paragraphs (j)(1), (j)(2), and (j)(3) were approved by the Office of Management and Budget under control number 1218-0067)

[FR Doc. 89-12954 Filed 6-1-89; 8:45 am]

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federal register

Friday
June 2, 1989

Part IV

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

**48 CFR Part 52
Federal Acquisition Regulation (FAR);
Household Goods Claims; Proposed Rule**

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Part 52

Federal Acquisition Regulation (FAR);
Household Goods Claims

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a change to the Federal Acquisition Regulation (FAR) in the clause at 52.247-23 to extend the period for which a contractor would be liable for loss of or damage to household goods.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 1, 1989 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 89-36 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:**A. Background**

The clause at FAR 52.247-23, used in contracts for the transportation of household goods, currently provides that the contractor is liable for loss of or damage to household goods if the owner reports the loss or damage within a specified period, not to exceed 45 days, after delivery of the household goods. In April 1984, the Department of Defense negotiated a Memorandum of Understanding with the household goods moving industry which gave the property owner 75 days to report the damage. The proposed change would extend the additional time for reporting to the civilian agencies.

B. Regulatory Flexibility Act

The proposed change may have a significant economic impact on a substantial number of small business concerns. However, it is impracticable to assess what impact, if any, might result and for that reason an Initial Regulatory Flexibility Analysis has not been prepared. Responses to this request for comment will be used to assess the effect of the proposed change on small business concerns, and a Final Regulatory Flexibility Analysis will be prepared if required.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed change

to the FAR does not impose recordkeeping information collection requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: May 22, 1989.

Harry S. Rosinski

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, 48 CFR Part 52 is amended as set forth below:

**PART 52—SOLICITATION
PROVISIONS AND CONTRACT
CLAUSES**

1. The authority citation for 48 CFR Part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

52.247-23 [Amended]

2. Section 52.247-23 is amended in the introductory text by inserting a colon following the word "clause" and removing the remainder of the sentence; by removing in the title of the clause the date "(APR 1984)" and inserting in its place "(MAY 1989)"; by removing in two places in paragraph (b) the words "45 days" and inserting in both places "75 days"; and by removing the derivation line following "(End of clause)".

[FR Doc. 89-13058 Filed 6-1-89; 8:45 am]

BILLING CODE 6820-JC-M

Special Federal Register

Friday
June 2, 1989

Part V

Department of
Transportation

Federal Aviation Administration

14 CFR Part 121 et al.
Special Federal Aviation Regulation No.
38; Certification and Operating
Requirements; Final Rule and Request
for Comments

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 127, 129, and 135

[Docket No. 18510; SFAR No. 38-5]

Special Federal Aviation Regulation No. 38; Certification and Operating Requirements

AGENCY: Federal Aviation Administration [FAA], DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment establishes a new termination date for Special Federal Aviation Regulation [SFAR] No. 38-2 [50 FR 23941; June 7, 1985]. SFAR 38-2 was reinstated by SFAR 38-4 [52 FR 28938; August 4, 1987] and was amended to extend its termination date to allow time for the FAA, in a separate rulemaking action, to prepare a Notice of Proposed Rulemaking (NPRM) [Notice No. 88-18; 53 FR 39852; October 12, 1988] to consolidate the certification rules now in SFAR 38-2, Part 121, and Part 135 into a new Part 119 of the Federal Aviation Regulations (FAR). The FAA stated in SFAR 38-3 and in SFAR 38-4 that having generally reviewed the FAA regulations to determine the most appropriate response to the Airline Deregulation Act of 1978 [ADA or Act] and the termination of Civil Aeronautics Board (CAB) functions following the CAB sunset, it was necessary to establish a new termination date for SFAR 38-2 to allow time for the FAA to complete the rulemaking process that will consolidate the certification rules and incorporate SFAR 38-2 into the FAR. The current termination date for SFAR 38-2 is June 1, 1989. Because the FAA has not completed this rulemaking process, it is necessary to extend the current termination date 1 year. If new Part 119 is issued before June 1, 1989, or before the new termination date, the FAA intends to publish a notice rescinding SFAR 38-2 concurrently with the new Part 119 final rule in the Federal Register.

DATES: Effective date June 2, 1989. Comments must be received on or before August 1, 1989.

ADDRESSES: Send comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Docket No. 18510, 800 Independence Avenue, SW., Washington, DC 20591, or deliver comments in duplicate to: Federal Aviation Administration, Rules Docket, Room 918, 800 Independence Avenue, SW., Washington, DC.

Comments may be examined in the Rules Dockets weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Michael Coffey, Project Development Branch, AFS-240, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; Telephone (202) 287-3750.

SUPPLEMENTARY INFORMATION:

Background

On December 12, 1978, the FAA issued SFAR 38 [43 FR 58366; December 14, 1978] in consequence of the ADA [Pub. L. 95-504, 92 Stat. 1705]. That Act expresses the Congressional intent that the Federal Government diminish its involvement in regulating the economic aspects of the airline industry. To accomplish this, Congress directed that the CAB be abolished on December 31, 1984, and that various of its functions cease before that date. Anticipating its sunset, the CAB itself curtailed or suspended much of its regulatory activity during the period 1979-1984. On October 4, 1984, additional legislation was enacted further defining the process of CAB sunset. On January 1, 1985, the remaining CAB functions were transferred to the Department of Transportation (DOT).

Because some aspects of FAA safety regulations relied upon CAB definitions and authority, the FAA found it necessary in 1978 to adopt an interim measure to provide for an orderly transition from CAB and FAA interlocking authority to a regulatory regime with no CAB in existence. This action was consistent with the Congressional directive contained in Section 107(a) of the Act that the deregulation of airline economics result in no diminution of the high standard of safety in air transportation that existed when the ADA was enacted. SFAR 38 set forth FAA certification and operating requirements applicable to all "air commerce" and "air transportation" operations for "compensation or hire." (SFAR 38 did not address Part 133 External Load Operations, Part 137 Agriculture Aircraft Operations, or Part 91 training and other special purpose operations.)

On December 27, 1984, the FAA issued SFAR 38-1 [50 FR 450; January 4, 1985], which merely extended the termination date of the regulation and allowed the FAA time to propose and receive comments on revising SFAR 38.

On May 28, 1985, the FAA issued SFAR 38-2 [50 FR 23491; June 7, 1985],

which updated SFAR 38 in light of changes since 1978 and clarified provisions stating which FAA regulations apply to each air carrier and each type of operation. This action was necessary because of the changes in the air transportation industry brought about by economic deregulation. Before deregulation, economic certificates were rigidly compartmentalized and each air carrier typically was authorized to conduct only one type of operation (domestic, flag, or charter (supplemental)). The safety certificate issued to the air carrier by the FAA paralleled the authorization granted in the air carrier's economic certificate. Economic deregulation broke down the barriers between the various types of operations. The economic authority granted an air carrier by the DOT is no longer indicative of the safety regulations applicable to the type of operation authorized by the FAA. Thus, it was necessary for the FAA to establish guidelines to determine what safety standards were applicable to an air carrier's particular operation.

On April 30, 1986, the FAA issued SFAR 38-3, which extended the termination date of SFAR 38-2 to allow the FAA time to incorporate its contents into Notice No. 88-18. That notice proposes to consolidate the certification rules in Parts 121 and 135, and to incorporate various provisions of SFAR 38-2 into new Part 119 of the FAR.

On July 15, 1987, the FAA issued SFAR 38-4, which reinstated SFAR 38-2, because it was inadvertently allowed to expire, and extended its termination date to June 1, 1989. That extension allowed the FAA time to incorporate the contents of SFAR 38-2 into Notice No. 88-18.

Good Cause Justification for Immediate Adoption

The reasons which justify the adoption, and the subsequent revision, of SFAR 38 still exist. Therefore, it is in the public interest to establish a new termination date for SFAR 38-2 of June 1, 1990. If the FAA publishes a final rule incorporating SFAR 38-2 into the FAR before the termination date, a notice rescinding SFAR 38-2 will be published concurrently. This action is necessary to permit continued operations under SFAR 38, as amended, and to avoid confusion in the administration of FAA regulations regarding operating certificates and operating requirements.

For this reason, and because this amendment continues in effect the provisions of a currently effective SFAR and imposes no additional burden on any person, I find that notice and public

procedures are unnecessary, impracticable, and contrary to the public interest, and that the amendment should be made effective in less than 30 days after publication. However, interested persons are invited to submit such comments as they desire regarding this amendment. Communications should identify the docket number and be submitted in duplicate to the address above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of the comments received. All comments will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested parties.

International Trade Impact Analysis

The FAA finds this amendment will have no impact on international trade.

Federalism Implications

The amendment herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this amendment would not have sufficient federalism applications to warrant the preparation of a Federalism Assessment.

Conclusion

The FAA has determined that this document involves an amendment that

imposes no additional burden on any person. Accordingly, it has been determined that: The action does not involve a major rule under Executive Order 12291; it is not significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and its anticipated impact is so minimal that a full regulatory evaluation is not required.

List of Subjects

14 CFR Part 121

Air carrier, Aircraft, Airmen, Air transportation, Aviation safety.

14 CFR Part 125

Aircraft, Airmen, Airports, Airspace, Air traffic control, Air transportation, Chemicals, Children, Drugs, Flammable materials, Handicapped, Hazardous materials, Infants, Smoking.

14 CFR Part 127

Air carriers, Aircraft, Airmen, Airworthiness

14 CFR Part 129

Air carriers, Aircraft, Airmen, Air transportation, Aviation safety, Safety.

14 CFR Part 135

Air carriers, Aircraft, Airmen, Air taxis, Air transportation, Airworthiness, Aviation safety, Safety.

Adoption of the Amendment

In consideration of the foregoing SFAR 38-2 (14 CFR Parts 121, 125, 127, 129, and 135) of the Federal Aviation Regulations is amended as follows:

1. The authority citation for Part 121 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1423, 1424, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

2. The authority citation for Part 125 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

3. The authority citation for Part 127 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, 1422, 1423, 1424, 1425, 1430; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

4. The authority citation for Part 129 is revised to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1356, 1357, 1421, 1502, and 1522; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

5. The authority citation for Part 135 is revised to read as follows:

Authority: 49 U.S.C. 1354(a), 1355(a), 1421 through 1431, and 1502; 49 U.S.C. 106(g) (revised Pub. L. 97-449, January 12, 1983).

Special Federal Aviation Regulation No. 38-2 is amended by removing the words "June 1, 1989" in the last paragraph, and by adding in their place the words "June 1, 1990."

Issued in Washington, DC, on May 26, 1989.

Robert L. Goodrich,

Director, Flight Standards Service.

[FR Doc. 89-13136 Filed 5-30-89; 12:10 pm]

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test report
federal register

Friday
June 2, 1989

Part VI

Environmental Protection Agency

40 CFR Parts 122, 123 and 130
National Pollutant Discharge Elimination
System; Surface Water Toxics Control
Program; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

(FRL-3557-8)

40 CFR Parts 122, 123 and 130**National Pollutant Discharge Elimination System; Surface Water Toxics Control Program****AGENCY:** Environmental Protection Agency.**ACTION:** Final Rule.

SUMMARY: Today's action amends Parts 122, 123, and 130 of EPA's regulations. The regulations clarify EPA's surface water toxics control program, and incorporate section 308(a) of the Water Quality Act of 1987 into EPA's toxics control program. Section 308(a) of the Water Quality Act added section 304(l) to the Clean Water Act (hereafter referred to as section 304(l)). Section 304(l) requires the states to identify those waters that are adversely affected by toxic, conventional, and nonconventional pollutants, and requires the states to prepare individual control strategies that will control point source discharges of toxic pollutants. The states must submit lists of waters and individual control strategies to EPA for review, and if EPA disapproves a state's decision with respect to a list or an individual control strategy, then EPA must implement the requirements of section 304(l) in cooperation with the state. EPA and the states must accomplish the tasks in section 304(l) according to an ambitious series of deadlines. Today's regulations will strengthen State and Federal controls over discharges to toxic pollutants, and will assist EPA and the states in satisfying the requirements of section 304(l) of the CWA.

EFFECTIVE DATE: These regulations shall be effective on May 26, 1989 at 1:00 p.m. Eastern Daylight Savings Time. In accordance with 40 CFR 23.2, EPA hereby specifies that these regulations shall be considered final agency action for purposes of judicial review at 1:00 p.m. Eastern Daylight Savings Time on May 26, 1989.

FOR FURTHER INFORMATION CONTACT: Paul Connor, Program Development Branch, Office of Water Enforcement and Permits, (EN-336), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 475-9537, or Judith Leckrone, Assessment and Watershed Protection Division, Office of Water Regulations

and Standards, (WH-553), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (202) 382-7056. The Public record for this regulation is available at the EPA library, M2904, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:**Preamble Outline****I. Authority****II. Background**

- A. Biennial Submission of Lists Under section 303(d) and section 305(b) of the CWA
- B. EPA's Surface Water Toxics Control Program
- C. Section 304(l) and Its Relationship to EPA's Surface Water Toxics Control Program
- D. Purpose and Summary of Today's Regulations

III. Section-by-Section Analysis**A. Changes to the National Surface Water Toxics Control Program**

1. Amendments to 40 CFR 122.44
 - a. A Definition for Whole Effluent Toxicity
 - b. Narrative Water Quality Standards
 - c. Developing Water Quality-Based Effluent Limits
 - d. Technology-Based Controls for Toxic Pollutants

2. State NPDES Program Requirements**B. Identification of Waters**

1. Description of the Four Lists
2. Explanation of Terms Used in section 304(l)(1)(B)
 - a. Applicable Standard
 - b. Due Entirely or Substantially to Discharges from Point Sources
3. Preparation and Review of the Lists
 - a. Use of Existing and Readily Available Data
 - b. Documentation of Data and Methodologies
 - c. Review of Lists By EPA

C. Individual Control Strategies

1. Description of an Individual Control Strategy
 - a. Types of Controls
 - b. EPA's Point Source-Based Approach
 - c. Approval of Permits that are Not Yet Effective
 - d. CERCLA Sites
 - e. Non-Approved States
2. Technical Review Criteria

D. EPA Review of Lists and Individual Control Strategies

1. Partial Approval and Disapproval of State Submittals
2. Public Participation
 - a. Contents of EPA's Notice of Approval or Disapproval
 - b. Public Hearings
 - c. Petitions for Additional Listings
 - d. Response to Comments and Petitions

3. Subsequent steps in the 304(l) Process
 - a. EPA Implementation of § 304(l)
 - b. Judicial Review of Decisions Under § 304(l)

IV. Effective Date**V. Regulatory Analysis**

- A. Executive Order 12291
- B. Paperwork Reduction Act
- C. Regulatory Flexibility Act

I. Authority

These regulations are issued under the authority of the Clean Water Act, 33 U.S.C. 1251 et seq.

II. Background

EPA's surface water toxics control program uses several key terms. For the convenience of the reader and for the purposes of this preamble, these terms are described as follows:

"Narrative standard" refers to a narrative water quality criterion adopted by a state under section 303(c) of the Clean Water Act. All states have adopted a narrative criterion that prohibits the discharge of toxic pollutants in toxic amounts.

"Priority pollutant" refers to the 126 pollutants listed in Appendix A to (40 CFR Part 423.) The 126 priority pollutants are derived from the 65 classes of compounds listed at 40 CFR § 401.15.

"Toxic pollutant" means any pollutant listed as toxic under section 307(a)(1) of the CWA. EPA has listed 65 classes of compounds under section 307(a)(1) of the CWA, and these 65 classes are listed at 40 CFR § 401.15.

"Toxics" refers to any pollutant or combination of pollutants which causes toxicity to aquatic life or terrestrial life, or causes adverse human health impacts.

"Whole effluent toxicity" means the aggregate toxic effect of an effluent measured directly with a toxicity test. A toxicity test measures the degree of response to an exposed test organism to a specific chemical or effluent. Like biochemical oxygen demand (BOD), which is also a biological measurement, toxicity can be limited in an NPDES permit.

A. Biennial Submission of Lists Under Section 303(d) and Section 305(b) of the CWA

Many commenters objected to the additional reporting requirements

suggested by EPA's proposal to require a biennial submission of lists under sections 303(d) and 305(b) of the CWA. Most expressed confusion about the extent to which the proposed requirements overlapped with and related to the section 304(l) listing process. Due to this confusion, EPA has decided not to amend the Part 130 regulations in today's rule to include these biennial submissions. Rather, EPA will extend the comment period on this part of the proposal in order to take the necessary time to consider all implications that the proposed amendments might have for the entire section 303(d) reporting and TMDL development program. In the near future EPA will extend the comment period in a separate action in the *Federal Register*.

B. EPA's Surface Water Toxics Control Program

EPA has described its surface water toxics control program in several documents. These descriptions are not repeated here, but the reader is referred to these documents for more information on EPA's approach for controlling discharges of toxic pollutants. On March 9, 1984, EPA published a document called "Development of Water Quality-Based Permit Limitations for Toxic Pollutants: National Policy" 49 FR 9016 (1984). The policy emphasizes EPA's integrated approach in the NPDES permit program for assessing and controlling the discharge of toxic pollutants to the nation's surface waters.

Two preambles to EPA's rulemakings also describe EPA's surface water toxics control strategy. The preamble to EPA's NPDES regulations (45 FR 33520 (1980)) emphasizes that NPDES permits must contain limitations reflecting the most stringent of technology-based or water quality-based controls for toxic pollutants. The second preamble discussion (49 FR 37998 (1984)) emphasizes the need to establish effluent limitations in NPDES permits to control toxic pollutants. The preamble to the 1984 regulations also describes several regulations in Part 122 that require dischargers to identify and report the presence of toxic pollutants in discharges.

EPA's existing regulations also reflect the Agency's surface water toxics control strategy. Part 131 of EPA's regulations describes the process for developing, reviewing, revising, and approving state water quality standards. Part 122 describes the NPDES permit regulations. These regulations currently require NPDES permits to establish limitations, standards, and conditions necessary to achieve water quality

standards, or to attain and maintain specified water quality through effluent limits. Part 125 provides criteria and standards for imposing technology-based treatment requirements, including the control of toxic pollutants. Part 129 contains effluent standards for certain toxic pollutants, and Part 130 describes EPA's program for identifying waters affected by toxic pollutants.

EPA has also developed standard procedures, policies, and guidance documents necessary to support the toxics control program. The "Water Quality Standards Handbook," (October 1983), describes how to develop water quality standards and describes the procedures that a state should follow in adopting water quality standards. (The Handbook is available from the Criteria and Standards Division (WH-585), U.S. EPA, 401 M Street SW., Washington, DC 20460.) Two important guidance documents that support EPA's toxics control program are the "Technical Support Document for Water Quality-Based Toxics Control," (TSD), EPA 440/4-85-032, September, 1985, and the "Permit Writer's Guide to Water Quality-Based Permitting," EPA 440/4-87-005, July, 1987. (Both documents are available from the Permitting Division (EN-336), U.S. EPA, 401 M Street, SW., Washington, DC, 20460.) The Technical Support Document (TSD) provides a detailed technical explanation of biological and chemical techniques to assess and control toxic pollutants and toxicity. The TSD explains how to assess aquatic toxicity and how to calculate the risk to human health of an effluent, explains wasteload allocation modeling, and explains the equations for deriving water quality-based effluent limits. The Permit Writer's Guide gives state and EPA NPDES permit writers a step-by-step methodology for deriving water quality-based effluent limits for toxic pollutants and toxicity.

C. Section 304(l) and Its Relationship to EPA's Surface Water Toxics Control Program

Section 304(l) of the CWA reinforces EPA's on-going program to identify and control discharges of toxics. Under section 304(l) the state's deadline for submitting the four lists to EPA for review and approval was February 4, 1989. The statutory language of section 304(l) requires the listing of waters for which water quality standards will not be achieved due to discharges from point sources of any toxic pollutants listed pursuant to section 307(a); " * * *." The toxic pollutants identified under section 307(a) of the CWA are 65 categories and classes of pollutants that can include thousands of

compounds. EPA's water quality criteria and effluent guidelines focus on a list of 126 "priority pollutants" which are common, widely present chemicals for which toxicological data are available. Therefore, EPA will address the 126 priority pollutants when describing the regulatory requirements governing the control of toxic pollutants under section 304(l) of the CWA.

The four lists required by section 304(l) are described as follows, and are identified by their corresponding paragraphs in section 304(l)(1):

1. (A)(i)—A list of those waters in the state which, after application of technology-based effluent limits, cannot reasonably be anticipated to attain or maintain water quality standards for priority pollutants adopted under section 303(c)(2)(B) of the CWA;

2. (A)(ii)—A list of all waters which, after application of technology-based effluent limits, cannot reasonably be anticipated to attain or maintain that water quality which shall assure protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of a balanced population of shellfish, fish and wildlife, and allow recreational activities in and on the water;

3. (B)—A list of those waters which, after application of technology-based effluent limits, the state does not expect will achieve applicable water quality standards, due entirely or substantially to point source discharges of priority pollutants;

4. (C)—A list of the point sources of the priority pollutants which are believed to be preventing or impairing water quality for waters on the (B) list, and the amount of each priority pollutant discharged by each point source.

In addition to the listing requirements under section 304(l)(1), the states must prepare an individual control strategy (ICS) for each point source on the (C) list. (The definition of an ICS is discussed in more detail in section III.C of this preamble.) An ICS must require reductions in the discharge of priority pollutants from point sources on the (C) list, which reductions are sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve applicable water quality standards as soon as possible but not later than three years after establishment of the ICS. Where EPA approves a state submittal, the deadline for compliance is as soon as possible but not later than June 4, 1992. Where EPA disapproves a state submittal and promulgates an ICS in lieu of the state,

the deadline for compliance is as soon as possible but not later than June 4, 1993.

All ICSs were due to EPA, from states approved by EPA to administer the NPDES program, by February 4, 1989. EPA must approve or disapprove the lists and ICSs by June 4, 1989. When EPA disapproves an ICS, EPA must implement section 304(l)(1) "in cooperation with such state and after notice and opportunity for public comment," by June 4, 1990.

An approved state's obligation to prepare and submit an ICS to EPA is similar to an approved NPDES state's obligation to prepare NPDES permits and submit the permits to EPA for review. However, section 304(l) establishes new deadlines and procedures for issuing and reviewing some NPDES permits. (Many NPDES permits are not subject to section 304(l). Permits that are not subject to section 304(l) should receive the same priority for reissuance or oversight that the permits would receive regardless of section 304(l).)

Today's proposed rulemaking is one of several EPA actions to implement section 304(l). In March 1988, EPA issued guidance entitled "Implementation of Requirements Under section 304(l) of the Clean Water Act, as Amended" (March, 1988). (EPA published a notice of availability for the guidance on March 18, 1988, and the document is available by writing to the Permits Division, Office of Water (EN-336), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.)

EPA has promulgated a final interpretive rule that incorporated into EPA's regulations and provisions of the WQA relating to the NPDES program and section 304(l), 54 FR 248 (1989). The rule codified the statutory requirements of paragraphs (A), (B), and (C) of section 304(l) into 40 CFR § 130.10(d). The rule also codified section 304(l)(1)(D) and §§ 304 (1)(2) and (3) into 40 CFR § 123.46. These new paragraphs describe the requirement that states submit lists of waters and individual control strategies to EPA for review. Today's rulemaking re-promulgates § 123.46(a) of the January 4, 1989 interpretive rule. EPA is re-promulgating this paragraph with changes that reflect more clearly EPA's interpretation of section 304(l)(1)(D). See section III. C for further discussion of this paragraph. Today's final regulations supplement the January 4, 1989 interpretive rule by defining key terms in section 304(l) and describing Federal and state responsibilities under section 304(l).

D. Purpose and Summary of Today's Regulations

The purpose of today's rules is to reinforce EPA's surface water toxics control program, and to specify in more detail the requirements of section 304(l). Section 304(l) does not change the direction of EPA's surface water toxics control program, but rather, establishes ambitious deadlines by which EPA and the states must identify and control priority pollutants. While EPA's toxics control policies require control of all toxic pollutants, including but not limited to toxicity and the priority pollutants, the WQA reflects Congress' intent that priority pollutants be addressed on a rapid schedule. After the deadlines of section 304(l) pass, EPA and the states must continue the toxics control program by determining the presence of toxic pollutants in effluents and receiving waters, developing the necessary policies and regulations to control toxic pollutants and toxicity, and establishing effluent limits in permits.

EPA received a number of comments suggesting that the thirty day comment period allowed for this rule was too short. Although EPA has considered all comments received, it remains convinced that thirty days was a sufficient comment period for the following reasons. The principal components of the rule were publicly available before the proposal, in particular the majority of the section 304(l) requirements were a part of the guidance that was made available for public comment. In addition, EPA provided speakers to interested groups regarding the rule several months before proposal, and solicited comments on the development of the proposal.

Furthermore, both the proposal and the administrative record were short and not overly technical. The administrative record supporting the proposal was made up of documents that have been not only publicly available, but also in practical use for some time. In short, the proposal did not present a great number of novel, complex or technical issues requiring a lengthy comment period. Given that EPA believes that a thirty day comment period was adequate, EPA decided not to extend the comment period because of the short amount of time in which EPA wished to finalize the rule.

EPA received a number of comments that are not addressed in this preamble. A separate summary of these comments and the Agency's response to them is included in the administrative record for this rulemaking.

Today's regulations amend three parts of the CFR. Changes to EPA's surface

water toxics control program are located in Parts 122 and 123 of the CFR. Part 130 incorporates the proposed regulations for listing waters under section 304(l)(1)(A)-(C), and the proposed regulations for individual control strategies prepared under section 304(l) and located in Part 123.

1. Changes to 40 CFR Part 122:

Today's regulations add a definition for whole effluent toxicity to § 122.2. EPA is also adding seven paragraphs to § 122.44(d)(1). The new language describes the procedures the permitting authority shall use to determine whether an NPDES permit must include a water quality-based effluent limit. The proposed regulations also address the procedures for deriving effluent limits from state narrative or numeric water quality criteria. EPA is also changing the title to paragraph (e) of § 122.44 to clarify that paragraph (e) applies to technology-based controls.

2. Changes to 40 CFR Part 130:

Today's regulations amend Part 130 to incorporate the listing requirements of section 304(l)(1). The regulations also establish procedures for EPA's review and approval or disapproval of the lists prepared under section 304(l). These regulations are described in sections III.B and III.D of this preamble.

The proposed regulations included a requirement for a biennial submission of lists under sections 303(d) and 305(b) of the CWA. EPA deleted these requirements from today's final regulations. Many commenters objected to the additional reporting requirements suggested by the proposed regulations. Other commenters were confused about the extent to which the proposed requirements overlapped with and related to the section 304(l) listing process. Due to these comments EPA has decided to address these biennial reporting requirements in a separate action.

3. Changes to 40 CFR Part 123:

The additions to Part 123 establish procedures for EPA's approval and disapproval of the ICSs prepared under section 304(l). Today's rules provide for public participation in reviewing the ICSs, and also establish the criteria EPA will use to evaluate the adequacy of ICSs. These regulations are discussed more fully in sections III.C and III.D of this preamble. Finally, EPA is placing an additional criterion for NPDES state program withdrawal in 40 CFR Part 123. These regulations are described in section III.A of this preamble.

EPA believes that today's rules and preamble will assist the states and the public at large in developing a better understanding of the national surface

water toxics control program. Today's rulemaking will also ensure that the activities carried out under section 304(l) will be consistent with EPA's statutory obligations and national policy for controlling toxic pollutants and whole effluent toxicity.

III. Section-By-Section Analysis

This section discusses today's regulations in four parts. Part A describes regulations that amend and clarify EPA's existing surface water toxics control program. Part B describes the requirements for identifying and listing waterbodies under paragraph 1 of § 304(l). Part C discusses the requirements for preparing and reviewing ICSs, and Part D discusses the procedures for reviewing and approving or disapproving the lists and ICSs.

A. Changes to the National Surface Water Toxics Control Program

1. Amendments to 40 CFR 122.44

Two of the most important components of EPA's surface water toxics control program are the development and implementation of water quality-based permit limits. The permitting authority (either EPA or a state approved by EPA to administer the NPDES program) uses water quality-based limits when effluent limits more stringent than technology-based limits are necessary to attain or maintain water quality standards. Although sections 402(a)(1) and 301(b)(1)(C) of the CWA provide the authority to require NPDES permits to achieve the effluent limits necessary to attain and maintain water quality standards, the existing NPDES regulations do not describe the procedures for developing water quality-based effluent limits. This section explains today's regulations which describe procedures for developing water quality-based effluent limits.

EPA uses an integrated approach to water quality-based permitting. The integrated approach includes both biological and chemical procedures for characterizing effluents and developing effluent limits. EPA's integrated approach to water quality-based permitting is explained more fully in the Technical Support Document and in EPA's National Policy of March 9, 1984 which are described in section II.A of this preamble.

EPA has issued detailed guidance on the integrated approach to water quality-based permitting. Although EPA's existing NPDES regulations provide adequate authority to require water quality-based effluent limits in permits when an excursion above a water quality criterion is either

identified or projected, the existing regulations do not describe the procedures for developing such limits. Today's regulations establish minimum consistent procedures for the states, EPA, and the regulated community, to use in developing water quality-based effluent limitations.

a. *A Definition for Whole Effluent Toxicity.* Today's regulations add a definition for "whole effluent toxicity" to the definitions in 40 CFR 122.2. Whole effluent toxicity is defined as the aggregate toxic effect of an effluent measured directly with a toxicity test. A toxicity test measures the degree of response of an exposed test organism to a chemical or effluent. The proposed definition is the same definition used in the TSD and in the Permit Writer's Guide.

EPA is promulgating a definition for whole effluent toxicity because controls for whole effluent toxicity are an essential component of EPA's integrated approach to toxics control. Where controls on individual pollutants do not adequately protect water quality, assessing and controlling whole effluent toxicity is necessary to reduce or eliminate the toxic impact of the effluent. A definition for the term will assist the public in better understanding how controls on whole effluent toxicity are used in EPA's surface water toxics control program.

A limit on whole effluent toxicity refers to a numeric effluent limitation expressed in terms such as toxic units, no observed effect level (NOEL), LC50, or percent mortality. Effluent limitations may be expressed as chronic toxicity or acute toxicity (or both). Regardless of how the numeric effluent limitations for whole effluent toxicity are expressed, any single violation of the effluent limit is a violation of the NPDES permit and is subject to the full range of state and Federal enforcement actions.

Many commenters suggested that the definition for whole effluent toxicity is too vague, that the definition should describe a "toxicity test," or that EPA should publish maximum allowable water quality criterion for toxicity. EPA is maintaining a broad definition of whole effluent toxicity for several reasons. First, there are a variety of testing procedures that may be used to determine whole effluent toxicity. Although EPA has developed protocols and guidance documents for performing toxicity tests, it would be inappropriate to incorporate these documents into the definition because these protocols are recommended procedures, not mandatory procedures. Second, today's definition does not include a water quality criterion for toxicity because

publishing a criterion for whole effluent toxicity is a process carried out under section 304(a) of the CWA, and is therefore inappropriate for this rulemaking. The reader should refer to the recommended values for whole effluent toxicity that are described in the TSD. If EPA chooses to develop formal water quality criteria for toxicity, EPA will publish the criteria pursuant to section 304(a) of the CWA.

Several commenters asked for clarification of the meaning of "whole" in the term "whole effluent toxicity." Commenters were concerned about whether dilution of the effluent was precluded as a part of whole effluent toxicity testing. The word "whole" in definition refers to the aggregate toxicity of an effluent—not to 100% effluent. Percentages of effluents in permit limits represent that concentration of the effluent which achieves state water quality standards.

Commenters also asked whether in-stream dilution would be considered in determining whole effluent toxicity. These commenters asked if whole effluent toxicity referred to the toxicity of an effluent at the "end of the pipe," or referred to in-stream toxicity of an effluent after mixing. These commenters are confusing the definition of whole effluent toxicity with the development and expression of a permit limit for whole effluent toxicity. Today's definition does refer to "end of the pipe" toxicity because compliance with permit limits is measured at that point. These end-of-pipe limitations are developed using the state's water quality standards, including mixing zones (where allowed) and wasteload allocations, to determine how much effluent toxicity must be limited to attain and maintain applicable water quality standards.

b. *Narrative Water Quality Criteria.*

Today's regulations amend § 122.44(d)(1). Existing paragraph (d) requires NPDES permits to contain effluent limits more stringent than technology-based limits, where more stringent limits are necessary to "achieve water quality standards established under section 303 of the CWA." Today's regulations amend paragraph (d)(1) to clarify that effluent limits established under paragraph (d) must achieve any state narrative water quality criteria as well as numeric water quality criteria.

EPA received no comments opposing this regulation, and therefore the agency is promulgating this regulation without change from the proposed regulation. However, many commenters questioned EPA's use of narrative water quality

criteria in the other amendments to § 122.44(d)(1). For convenience EPA is responding to these comments in the discussion of paragraph (1)(iv) of § 122.44(d).

c. Developing Water Quality-Based Effluent Limits. Today's rulemaking adds seven new subparagraphs to § 122.44(d)(1). The subparagraphs describe the procedures for determining whether a discharge is causing or contributing to an excursion above a water quality criterion, identify those permits that must have water quality-based effluent limits, and describe several principles for developing water quality-based effluent limits. The Agency has determined that additional clarification of § 122.44(d) will assist in the implementation of the national water quality-based toxics control program and the recommendations of EPA's national policy, 49 FR 9016 (1984).

The amendments to § 122.44(d)(1) are intended to describe procedures for implementing existing state water quality standards and are not intended to suggest that states change existing standards. Section 303(c)(2)(B) of the CWA, as amended, addresses state review and adoption of water quality standards for toxic pollutants listed pursuant to section 307(a)(1) of the CWA. EPA has prepared guidance on section 303(c)(2)(B) which is available from: Criteria and Standards Division (WH-585), Office of Water, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The first of the seven subparagraphs is paragraph (d)(1)(i). EPA originally proposed this paragraph in § 122.44(e)(2), but in placing this language in § 122.44(d)(1) in today's final regulations because the description of water quality-based controls is more appropriate for paragraph (d)(1). The subsequent six paragraphs are re-numbered (ii) through (vii).

The new paragraph clarifies that an NPDES permit must limit any pollutant or pollutant parameter (whether conventional, nonconventional, or toxic), including whole effluent toxicity, that is or may be discharged at a level that causes, has the reasonable potential to cause, or contributes to an excursion above any water quality criterion, including state narrative water quality criteria. The new language clarifies that paragraph (d) applies to any pollutant, whether conventional, nonconventional, toxic, or whole effluent toxicity, and applies to excursions above narrative water quality criteria, not just numeric criteria in state water quality standards.

Some commenters asked for clarification of the phrase "excursions above applicable water quality

standards" and the role of effluent limitations in preventing such excursions. Water quality criteria express water quality objectives for protecting aquatic life and human health and for meeting a defined level of water quality protection. Where a discharge has a reasonable potential to cause or contribute to an excursion above a water quality criterion, effluent limitations are necessary to ensure that water quality standards will always be met. This connection is inherent in section 301(b)(1)(C) of the Clean Water Act which requires that water quality standards be achieved through effluent limitations.

As used in today's regulation, "excursion above" refers to any projected or actual concentration of a pollutant that is greater than the applicable water quality criterion. For most water quality standards, an excursion occurs if the projected or actual in-stream concentrations are numerically higher than the applicable criterion. In some cases, however, excursions occur if the ambient values are numerically lower than the criterion (e.g., dissolved oxygen or pH). The phrase "excursions above" in today's regulation applies to both cases.

An "excursion" must also be consistent with the duration and frequency of the applicable water quality standard. Duration refers to the period of time over which the in-stream concentration is averaged for comparison with criteria concentrations, and frequency describes how often criteria can be exceeded without impairing the designated use of the receiving water. An excursion above a water quality standard should account for these elements of the standard.

When referring to excursions, today's regulations use the term "criteria" instead of "standard" because it is more accurate to refer to excursions above water quality criteria. Water quality criteria are the threshold values against which ambient concentrations are compared to determine whether a waterbody exceeds the water quality standard.

The new language will clarify that NPDES permits must establish limits on any pollutant, where necessary to attain and maintain applicable water quality standards. The paragraph also emphasizes the importance of narrative water quality standards. Today's regulations emphasize that narrative standards have the same force and effect as other state water quality standards.

Subparagraph (ii) of § 122.44(d)(1) concerns the procedures for determining whether a discharge must have a water

quality-based effluent limit. EPA is promulgating this language without change except for the new paragraph number. To determine whether a discharge causes, has a reasonable potential to cause, or contributes to an excursion above a water quality criterion, and thus requires a water quality-based effluent limit, the permitting authority must use reliable and consistent procedures. Although the procedures can vary considerably from one state to another, most such procedures account for any dilution of the effluent in the receiving water, after considering mixing zones if applicable, any contributions of the pollutant from upstream point and nonpoint sources, the variability of the pollutant in the effluent, and, when evaluating whole effluent toxicity, the sensitivity of the test species in a toxicity test. Some commenters objected to the reference to mixing zones and requested that EPA prohibit mixing zones. EPA believes, however, that it is inappropriate to prohibit mixing zones in this regulation. The use of mixing zones raises issues that are more appropriately addressed in the state water quality standards adoption process. Therefore, EPA is not deleting the reference to mixing zones in paragraph (d)(1)(ii).

Paragraph (d)(1)(ii) requires the permitting authority to consider variability because limited data on the concentration of a pollutant in an effluent result in a large uncertainty when determining whether a discharge causes or has the reasonable potential to cause an excursion above a water quality criterion. Unless effluent variability is adequately considered, the permitting authority may make erroneous decisions concerning whether to develop permit limitations for a pollutant. One commenter suggested that the regulation should establish a national applicable maximum variability factor. EPA has procedures for accounting for variability in the Technical Support Document which may be applied to specific sites. However, EPA is not setting a national standard for variability because there is an element of judgment in making such determinations that is best made by state or regional regulatory authorities. Factors such as the appropriate level of confidence and the adequacy of available data enter into these decisions, and many states have their own procedures for accounting for variability. EPA therefore believes it is more appropriate for each regulatory authority to evaluate variability when determining whether an excursion

above a water quality criterion can occur.

Paragraph (d)(1)(ii) requires the permitting authority to account for species sensitivity when using toxicity tests. Toxicity testing must account for species sensitivity because different test species exhibit different sensitivities to the same effluent.

Subparagraph (ii) addresses discharges that have "the reasonable potential to cause" excursions above water quality criteria. Because the concentration of a pollutant in an effluent and in the receiving water can vary considerably, it is necessary to address discharges that have the reasonable potential to violate water quality criteria. EPA requires water quality-based effluent limits for these discharges in order to ensure compliance with section 301(b)(1)(C) which requires NPDES permits to achieve applicable water quality standards.

Some commenters said that the phrase "reasonable potential to cause" was too vague and could apply to permittees that are not actually exceeding a water quality criterion. EPA does not believe that it is appropriate to be more specific because a permitting authority has a significant amount of flexibility in determining whether a particular discharge has a reasonable potential to cause an excursion above a water quality criterion, taking the factors in subparagraph (ii) into account. The composition and concentration of toxicants in an effluent can vary widely. The flow rates of a discharge can also show significant variability. Some effluents may prevent a water quality standard from being maintained even though individual measurements do not show an actual excursion above the water quality criterion. Without effluent limitations on those discharges, there is a reasonable potential that the water quality criteria would be exceeded at some time. Effluent limitations must attain and maintain water quality standards in order to be consistent with the requirements of the Clean Water Act. Some commenters suggested that all discharges would be required to have limits under this language. EPA does not expect that this will be the case.

However, EPA expects that with few exceptions, all major POTWs and major industrial discharges will need to be evaluated to determine whether they have a reasonable potential to cause excursions. Before requiring a water quality-based effluent limit, the permitting authority must have a basis for finding that discharges have the reasonable potential to cause excursions

above water quality criteria. When EPA is the permitting authority, the Technical Support Document will normally provide the basis for such a finding.

Some commenters said the language "causes or has the reasonable potential to cause" used in the proposed regulations implies that a single point source discharge must be responsible for the entire pollutant loading that exceeds the water quality criterion. EPA did not intend this, and is persuaded that this point needs clarification. EPA intended for the proposed regulations to apply to any point source that is discharging a pollutant at a level that is exceeding or may exceed a waste load allocation for that discharge. This approach is consistent with EPA's existing regulation and policies for establishing water quality-based effluent limits. The process for identifying water quality-limited segments requiring total maximum daily loads (TMDLs) and wasteload allocations (WLAs) is set forth in EPA's regulations at 40 CFR 130.7. This regulation establishes procedures for identifying and controlling multiple discharges to the same receiving water in order to attain and maintain applicable water quality standards. Under this approach, discharges which contribute to the TMDL for a segment are apportioned a WLA which serves as the basis for effluent limitations for the pollutant or pollutant of concern. To clarify this approach in today's regulations, EPA is adding the phrase "or contributes to" to paragraphs (d)(1) (i) through (vi). This clarification makes no substantive change to today's regulations, but merely clarifies that today's amendments to paragraph (d)(1) are consistent with EPA's existing approach for establishing water quality-based effluent limits.

Some commenters questioned how paragraph (ii) relates to the other paragraphs added to § 122.44(d)(1). The requirements of paragraphs (iii), (iv), (v) or (vi) apply after the permitting authority has determined that water quality-based effluent limits are necessary under paragraph (ii). Paragraph (ii) provides several principles that the permitting authority must follow when determining whether a pollutant or a pollutant parameter is exceeding a water quality criterion. If the permitting authority, after applying the principles in paragraph (ii), determines that a pollutant or a pollutant parameter is exceeding or is expected to exceed a water quality criterion, then the permitting authority uses one or more of paragraphs (iii), (iv), (v) or (vi) to determine the appropriate

controls for the pollutant or pollutant parameter. Subparagraph (ii) should assist the permitting authority in determining whether it is necessary, under Federal regulations, to establish limits for a pollutant.

The next two paragraphs that EPA is adding to § 122.44(d) are paragraphs (d)(1)(iii) and (d)(1)(iv). EPA originally proposed these two paragraphs as a single paragraph in (d)(1)(ii). The single paragraph addressed both chemical-specific limits and whole effluent toxicity limits and many commenters were confused about the meaning of the proposed paragraph. Therefore, for the purposes of clarification, EPA divided the one paragraph into two paragraphs. Paragraph (d)(1)(iii) addresses only chemical-specific limits and paragraph (d)(1)(iv) addresses only whole effluent toxicity limits.

Paragraph (d)(1)(iii) requires an NPDES permit to include an effluent limit on an individual pollutant when the permitting authority determines that the discharge of that pollutant is causing, is expected to cause, or contributes to, an excursion above a numeric water quality criterion for that pollutant. This paragraph applies where the state has adopted a numeric water quality standard for the pollutant of concern. Some commenters objected to the language in this paragraph because they claimed the paragraph could potentially require effluent limits for a large number of pollutants in an effluent. EPA believes however that paragraph (d)(iii) will not result in any unnecessary effluent limits in NPDES permits because the permitting authority must satisfy the procedures in paragraph (ii) before establishing limits under paragraph (d)(1) (iii), (iv), (v), or (vi). Paragraph (ii) requires the permitting authority to follow several fundamental principles when determining the need for an effluent limit. Furthermore, the permitting authority must have a basis for determining that a discharge will cause or has the reasonable potential to cause an excursion above the numeric water quality criterion for that pollutant. (Where EPA is the permitting authority, use of the procedures outlined in the Technical Support Document will normally provide such a basis.) Paragraph (iii) does not require limits for every pollutant but only for those pollutants which the permitting authority determines must be limited after applying the procedures described in paragraph (ii).

Paragraph (d)(1)(iv) requires an NPDES permit to include a limit on whole effluent toxicity when the permitting authority determines that the

effluent is causing or is expected to cause an excursion above a state numeric criterion for whole effluent toxicity, where the state has promulgated a numeric water quality criterion for whole effluent toxicity. (Note, where a state has not adopted a numeric water quality criterion for whole effluent toxicity, paragraph (d)(1)(v) may require whole effluent toxicity limits.) The comments on this language focused on EPA's legal authority to regulate whole effluent toxicity, and on the scientific basis for toxicity testing. EPA addresses these comments in the discussion of paragraph (d)(1)(v) later in this section. EPA is not persuaded by the comments challenging the language in paragraphs (d)(1)(iii) and (d)(1)(iv), and is therefore making no substantive changes to the proposed regulations.

The next amendment to § 122.44(d)(1) is subparagraph (v) (originally proposed as subparagraph (iii)). This regulation requires the permitting authority to establish permit limits on whole effluent toxicity when the discharger causes or has the reasonable potential to cause an excursion above a state's narrative water quality criterion.

Subparagraph (v) allows the permitting authority to choose not to develop whole effluent toxicity limits where the permitting authority can demonstrate that chemical-specific limits will attain and maintain applicable water quality criteria, including narrative water quality criteria. One method for making this demonstration would be to use toxicity testing to show that the effluent has no acute or chronic toxic effects on aquatic life in the receiving water. Some commenters said the exemption from whole effluent toxicity limits provided in this paragraph is impractical because the costs of making the demonstration are prohibitive. EPA is not convinced that the costs of showing that chemical-specific limits attain and maintain appropriate water quality standards would be excessive. Over the life of the permit, the costs of the initial demonstrations could be substantially less than the costs of compliance monitoring associated with both types of limits. The most straightforward method of making this demonstration will usually consist of toxicity testing in conjunction with chemical specific testing for the chemicals which are limited in the permit. Costs of toxicity tests typically range from a few hundred dollars for simple screening tests to as much as one or two thousand dollars per month for monthly chronic toxicity analyses. While EPA recognizes that

this approach will not always be the easiest and least expensive way to ensure that the narrative criteria are met, EPA believes the option should remain available for those cases where the exemption from whole effluent toxicity limits is a viable and cost-effective option.

The exception described in paragraph (d)(1)(v) is not available under paragraph (d)(1)(iv) because paragraph (d)(1)(iv) relies on numeric criteria for limits on whole effluent toxicity, whereas paragraph (d)(1)(v) relies on narrative criteria. Paragraph (d)(1)(iv) describes a situation where the state has adopted a numeric criterion for whole effluent toxicity which reflects the maximum degree of toxicity determined to be acceptable in the state's surface waters. Narrative criteria for whole effluent toxicity do not necessarily reflect an affirmative determination by the state to establish a numeric criterion for whole effluent toxicity. The exception in paragraph (d)(1)(v), if used under paragraph (d)(1)(iv), could frustrate the state's efforts to establish effluent limits on whole effluent toxicity and implement its surface water toxics control program.

Many commenters objected to whole effluent toxicity limits on the ground that the scientific basis for toxicity testing is not sufficiently developed. These commenters also suggested that EPA should not use toxicity tests until EPA has published toxicity testing procedures pursuant to section 304(h) of the CWA. EPA disagrees. EPA has shown, through testing protocols, site-specific studies, and guidance manuals, that toxicity testing is reliable and has a sound scientific basis. In 1984 EPA concluded that " * * * toxicity testing is sufficiently refined to be used in setting effluent limitations * * *," 49 FR 38009 (1984). EPA's studies since 1984 reinforce this conclusion.

EPA has published a number of toxicity testing protocols that describe reliable and reproducible toxicity tests. See for example: *Short Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Freshwater Organisms*, EPA/600/4-89/001, Second Edition, February 1989; *Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms*, Third Edition, EPA/600/4-85/013, March 1985; and *Short-Term Methods for Estimating the Chronic Toxicity of Effluents and Receiving Waters to Marine and Estuarine Organisms*, EPA 600/4-87/028, May 1988.

EPA's Technical Support Document for Water Quality-Based Toxics Control

(TSD) gives detailed technical guidance for each phase of water quality-based toxics control. The TSD describes the technical basis for establishing limits on whole effluent toxicity, and describes the methods for using toxicity testing in the permitting process. The TSD also cites several studies which show that toxicity testing methods, where properly followed, exhibit an acceptable range of variability.

It is not necessary for EPA to publish toxicity testing guidelines pursuant to section 304(h) of the CWA before using biomonitoring and whole effluent toxicity limits in NPDES permits. EPA has published toxicity testing protocols that can be used in NPDES permits. The absence of guidelines under section 304(h) does not affect EPA's authority to use toxicity testing, nor does it affect the reliability of EPA's toxicity testing protocols. EPA's position on this issue is stated in the preamble to EPA's final NPDES regulations, 49 FR 38010 (1984) and is reiterated here: permitting authorities must use their judgment in determining which toxicity testing methods are appropriate for the NPDES permit. (Note that there are other toxicity testing methodologies available. EPA has determined that EPA's methods are protective of aquatic life. If a state wishes to use other methods, those methods must be scientifically defensible and protective of aquatic life. EPA expects that such methods would always be comparable to the procedures in EPA's methodologies and would use test species of equivalent sensitivity.) Until EPA publishes guidelines under section 304(h), the permitting authority must specify in the permit which analytical methodology must be used.

Some commenters also questioned whether toxicity testing can be used to predict biological impact to receiving waters. To address this issue EPA has conducted the "Complex Effluent Toxicity Testing Program." The program has produced eight site-specific studies which show that where exposure is adequately assessed, effluent toxicity correlates directly to in-stream impact. The studies are: *Validity of Effluent and Ambient Toxicity Tests for Predicting Biological Impact*: Scippo Creek, Circleville, Ohio, EPA/600/3-85/044; Ottawa River, Lima, Ohio, EPA/600/3-84/080; Five Mile Creek, Birmingham, Alabama, EPA/600/8-85/015; Skeleton Creek, Enid, Oklahoma, EPA/600/8-86/002; Naugatuck River, Waterbury, Connecticut, EPA/600/8-86/005; Back River, Baltimore Harbor, Maryland, EPA/600/8-86/001; Ohio River, Near Wheeling, West Virginia, EPA/600/3-85/071; Kanawha River, Charleston,

West Virginia, EPA/600/3-86/006. These studies are available from the Center for Environmental Research Information, 26 West St. Clair Street, Cincinnati, Ohio 45208.

Commenters also suggested that EPA does not have the legal authority to require effluent limits on whole effluent toxicity. The commenters argue that the state narrative water quality criterion "no toxics in toxic amounts" cannot be used as a basis for requiring whole effluent toxicity limits. EPA disagrees. State narrative water quality criteria must be attained and maintained in the same way as all water quality criteria. Narrative water quality criteria have the same force of law as other water quality criteria, and NPDES permits must contain effluent limits necessary to attain and maintain all applicable water quality criteria, including narrative criteria.

The Court of Appeals for the District of Columbia Circuit recently upheld EPA's toxicity limits regulation, 40 CFR 125.3(c)(4), in *Natural Resources Defense Council v. Environmental Protection Agency*, 859 F.2d 156 (D.C. Cir. 1988). Section 125.3(c)(4) provides that permit writers may express technology-based or water quality-based limits in terms of toxicity as long as the limits reflect the appropriate requirements of the CWA. The court concluded that although toxicity appears to be an attribute of pollutants rather than a pollutant itself, the CWA authorizes the use of toxicity as a measure to regulate effluents. The court's affirmation of the use of whole effluent toxicity limits further supports EPA's authority to require whole effluent toxicity limits and to promulgate today's regulations.

Finally, section 301(b)(1)(C) requires NPDES permits to contain any effluent limitations necessary to meet all applicable water quality standards. A permit would be inconsistent with section 301(b)(1)(C) if the permit did not contain effluent limits necessary to attain and maintain both narrative and numeric water quality criteria. For these reasons, EPA believes its authority to regulate discharges using whole effluent toxicity limits is well established.

Some commenters said EPA should use whole effluent toxicity testing only as a trigger for further investigation into the cause of the toxicity, and should not use whole effluent toxicity as an enforceable effluent limit. EPA cannot incorporate these suggestions. EPA requires whole effluent toxicity limits where necessary to meet water quality standards. EPA does not believe that a whole effluent toxicity trigger alone is fully effective because it does not, by

itself, restrict the quantity, rate, or concentration of pollutants in an effluent. Whole effluent toxicity limitations are enforceable in the same way as any other effluent limitation in an NPDES permit. Section 309 of the CWA provides that any single violation of an effluent limitation can be subject to an enforcement action, and section 309 applies to whole effluent toxicity limits in the same way as any other effluent limitation.

Several commenters asked if state narrative water quality criteria, that are used as the basis for establishing effluent limits under paragraphs (d)(1)(v) and (vi), apply to all waters regardless of their designated use. Narrative water quality criteria apply to all designated uses at all flows unless specified otherwise in a state's water quality standards. It is EPA's policy that no acutely toxic conditions may exist in any state waters, regardless of designated use. State narrative water quality criteria and interpretations of their narrative water quality criteria may be more protective than levels necessary to prevent acutely toxic conditions. For more information, please refer to the Water Quality Standards Handbook, December 1983.

State narrative water quality criteria provide the legal basis for establishing effluent limits under paragraphs (d)(1)(v) and (d)(1)(vi) of today's regulations. There is flexibility in the state's interpretation of its narrative water quality criteria. When a state adopts a narrative water quality criteria, EPA's regulations at 40 CFR 131.11(a)(2) require the state to "provide information identifying the method by which the state intends to regulate point source discharges of toxic pollutants on water quality limited segments based on such narrative criteria." When interpreting a state's narrative water quality criteria, the permitting authority may use a proposed numeric criterion for the pollutant of concern, an explicit state policy, or a proposed or final state regulation interpreting its narrative criteria provided the interpretation will fully protect the designated use. In the absence of an explicit state policy or regulation that fully protects the designated use, the permitting authority will use the procedures summarized in paragraphs (d)(1)(ii) and (d)(1)(vii) of today's regulations for applying a state's narrative water quality criteria. (Note that states may evaluate the designated use of a waterbody by performing a use attainability analysis pursuant to 40 CFR Part 131, and depending on the results of the use attainability analysis may, after providing for public notice and an opportunity to comment, upgrade

or downgrade the designated use of the waterbody.)

Subparagraph (vi), (originally proposed as subparagraph (iv)), addresses the situation in which a state has not adopted a numeric water quality criterion for a toxic, conventional, or nonconventional pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above an applicable narrative water quality criterion. In this situation the permitting authority does not have a numeric criterion to use for deriving a water quality-based effluent limit. EPA emphasizes that paragraph (d)(1)(vi) is not used to establish effluent limits on a pollutant if the state has adopted a numeric water quality criterion for that pollutant.

Several commenters said the phrase " * * * for a specific chemical pollutant that is known to adversely affect or threaten human health or aquatic life * * *" in proposed paragraph (vi) could have been read to require an effluent limit for every priority pollutant, even if the pollutant is not present in the effluent. Other commenters said this language should apply to discharges that are "known or suspected" to adversely affect aquatic life or human health. EPA agrees that these points needed clarification. As a result of these comments, EPA amended the introductory language of paragraph (vi) to clarify that water quality-based effluent limits are required only for pollutants that are " * * * present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable state narrative water quality standard." This language clarifies that water quality-based effluent limits are required only for pollutants present in an effluent at concentrations of concern to the permitting authority. EPA also added the words "or has reasonable potential" to the introductory language in paragraph (vi). This language is consistent with the language in paragraphs (i) through (v). This language is necessary to assure that effluent limits attain and maintain water quality standards, and the language is discussed more fully under the discussion of paragraph (ii). The new language also clarifies that an applicable state narrative water quality criterion provides the legal basis for establishing effluent limits under this paragraph. This revised language clarifies the scope and applicability of paragraph (d)(1)(vi).

Paragraph (d)(1)(vi) describes three options available to the permitting

authority for using narrative criteria as the basis for establishing effluent limits. Option A allows the permitting authority to establish water quality-based effluent limitations using a "calculated numeric water quality criterion" which the permitting authority demonstrates will attain and maintain applicable water quality standards. When using this approach, states may derive values different from the values in the EPA's water quality criteria documents to reflect site-specific factors, including predicted local human consumption of aquatic foods, as well as the state's determination of an appropriate risk level, and any more recent scientific data that may not be included in EPA's criteria documents. Under this option the permitting authority should use all available scientific information on the effect of a pollutant on human health and aquatic life. Available information includes but is not limited to, risk assessments, exposure data, and site-specific water quality parameters. (The proposed regulations included only two options under this paragraph. Today's final regulation includes a third option—"option C," which is described later in this section of the preamble. Today's final regulations also reverse the order of proposed options A and B. Proposed option A appears in today's final regulation as option B, and proposed option B appears as option A in the final regulation. The remainder of this discussion refers to the options as they appear in today's final regulation.)

Option A received a mixed reaction from commenters. Some commenters objected to option A because it requires a water quality-based effluent limit for a pollutant before a state adopts a numeric water quality criterion for that pollutant. Other commenters supported option A because the option gives the permitting authority flexibility in developing water quality-based effluent limits. Many of the commenters who oppose option A suggested that option A circumvented the state's role in developing water quality standards. EPA responds to this concern in the discussion of option B. It is worth noting, however, that this should be a minor concern for option A because option A does not necessarily rely on EPA's water quality criteria. Option A allows the permitting authority to use any criteria that protect aquatic life and human health. Thus option A gives the states maximum flexibility in developing water quality-based effluent limits for pollutants for which the state has not adopted a water quality criterion.

One commenter objected to option A because it appeared to be similar to

state "translator mechanisms" for developing water quality standards under section 303(c)(2)(B). Some states use a procedure or "translator mechanism" to derive site-specific numeric water quality criteria and to develop water quality-based effluent limits. EPA's guidance implementing section 303(c)(2)(B) of the CWA provides that the use of a translator mechanism can be consistent with section 303(c)(2)(B) of the CWA. (See EPA's Guidance for State Implementation of Water Quality Standards for section 303(c)(2)(B).) Translator mechanisms that are used to satisfy section 303(c)(2)(B) of the CWA must be approved by EPA before the translator mechanism becomes part of the state's water quality standards. Such approved translator mechanisms can be used to develop effluent limitations under paragraph (d)(1)(iii) of today's regulations, but may not be used to develop effluent limitations under paragraph (d)(1)(vi). Paragraph (d)(1)(vi) is used only in the absence of a state numeric water quality criterion (including a criterion derived from an approved translator mechanism). The options in paragraph (d)(1)(vi) provide a regulatory basis for developing water quality-based effluent limitations as an interim measure until a numeric criterion for the pollutant of concern is available. State policies or procedures, even procedures which calculate derived criteria but are not approved by EPA, may be used to develop effluent limits under option A of paragraph (d)(1)(vi). However, if the state has adopted a policy or procedure in its standards that is approved by EPA and results in a derived or calculated numeric criteria, the permitting authority must develop effluent limits according to paragraph (d)(1)(iii) and may not use paragraph (d)(1)(vi).

The commenter also claimed that translator mechanisms do not provide adequate opportunity for public participation. When using a translator mechanism the state must provide an opportunity for public participation in the development of derived numeric criteria. The permit development process also gives the public an opportunity to comment on the effluent limitations developed from the criteria derived using a translator mechanism.

Several commenters stated that option A should describe scientifically sound procedures that must be followed when deriving numeric criteria. EPA believes it is inappropriate for this regulation to provide detailed technical procedures for developing numeric criteria because option A is intended to provide

flexibility to the states when developing water quality-based effluent limitations. EPA emphasizes however, that scientifically valid procedures must be used to develop criteria that protect aquatic life and human health. The regulation suggests the use of EPA's Water Quality Standards Handbook, but other procedures may be used provided the resulting numeric water quality criteria attain and maintain all applicable water quality standards. Because there is more than one procedure that can be used to develop water quality-based effluent limitations under option A, EPA is making no changes to this language in option A.

EPA believes that option A offers a reasonable approach to developing water quality-based effluent limits in the absence of state numeric water quality standards, and EPA is not persuaded by the objections to option A. Therefore, EPA is promulgating option A with only the minor changes discussed above.

The second option in paragraph (d)(1)(vi), (option B), allows the permitting authority to establish effluent limits using EPA's Water Quality Criteria guidance documents, if EPA has published a criteria document for the pollutant pursuant to section 304(a) of the CWA. (EPA criteria documents provide a comprehensive summary of available data on the effects of a pollutant, and include maximum ambient concentrations that protect aquatic life and human health.) In the absence of a state numeric criterion for a pollutant, the permitting authority would use the appropriate EPA Water Quality Criteria document to calculate effluent limits for the pollutant in order to comply with applicable state narrative water quality criteria (e.g. "no toxics in toxic amounts").

Many commenters objected to option B because they claimed that EPA does not have the legal authority to require the use of EPA's water quality criteria in developing effluent limitations. EPA reiterates that section 301(b)(1)(C) requires that NPDES permits contain effluent limits that achieve narrative water quality criteria. This obligation applies regardless of whether or not a state has adopted a numeric water quality criterion for a pollutant of concern. EPA's water quality criteria should not be used as a substitute for state water quality standards, but rather, option B may be used as one of three options to interpret state narrative water quality criteria until the state adopts a numeric water quality criterion for the pollutant. Further, EPA is not requiring states to use EPA's water quality criteria. EPA is offering the

water quality criteria as one of three options available to the state for interpreting and applying narrative water quality criteria. EPA's water quality criteria provide one reasonable approach for interpreting state narrative water quality criteria because EPA's criteria account for the effects of a pollutant on aquatic life and human health.

Many commenters also suggested that option B circumvents the state's traditional role in establishing water quality standards. The commenters argue that section 303(c) of the CWA reserves for the states the sole authority to establish water quality standards, and that option B would somehow prevent a state from exercising its authority under section 303(c). EPA disagrees that the use of option B in implementing the narrative criterion would prevent a state from adopting numeric water quality criteria. To the contrary, section 303(c)(2)(B) requires states to adopt water quality standards for certain toxic pollutants as soon as possible. States must adopt standards according to the provisions of section 303(c) and when the water quality standards are adopted, the NPDES permits must contain effluent limits necessary to meet each standard. Option B applies only in the absence of state numeric water quality criteria. If a state has a numeric water quality criterion for the pollutant of concern, then paragraph (vi) does not apply. Option B is not intended to substitute EPA's water quality criteria for state water quality standards. Option B simply provides a mechanism for implementing narrative water quality criteria. Although states are required to adopt all necessary water quality standards under section 303, some states have not yet done so. Thus EPA is promulgating paragraph (vi) as an interim measure to control a pollutant of concern until the state promulgates a water quality criterion for the pollutant. However, EPA's legal obligation to ensure that NPDES permits meet all applicable water quality standards, including narrative criteria, cannot be set aside while a state develops water quality standards. This legal obligation applies to more than state adopted water quality standards. Section 301(b)(1)(C) requires that NPDES permits achieve "any more stringent limitation, including those necessary to meet water quality standards, treatment standards, or schedule of compliance, established pursuant to any state law or regulations (under authority preserved by section 510) or any other Federal law" including international treaties or

agreements that have force as domestic law.

Some commenters suggested that EPA must incorporate the criteria documents by reference in order to use them in option B. The Administrative Procedures Act, 5 U.S.C. 552(a)(1) and 552(a)(1), requires agencies to publish in the **Federal Register** or incorporate by reference, with the approval of the Director of the Federal Register, all "substantive rules * * *". Although NPDES permits must be developed in accordance with today's regulations, water quality criteria documents do not "impose mandatory obligations upon members of the public and permit issuance authorities * * *". See *Appalachian Power Co. v. Train* 566 F.2d 451, 455 (4th Cir. 1977). The regulations provide other options that a state may use to determine the appropriate interpretation of its narrative water quality criteria.

The preamble to the proposed regulations solicited comment on a third option for subparagraph (vi). The third option proposed to allow the establishment of effluent limits on pollutants other than toxicants of concern such as an indicator parameter. An indicator parameter could be a conventional pollutant like total suspended solids (TSS), the control of which may be tied to a concomitant decrease in metals concentration. Another example of an indicator parameter is total toxic organics (TTO). Effluent limitations on TTO can be used to control the organic pollutants in an effluent, and are useful where an effluent contains many organic compounds. In such a case, the permitting authority must demonstrate that compliance with a limitation on the indicator parameter or some other effluent limit would ensure the control of the toxicant of concern to a level that will attain and maintain applicable state narrative water quality criteria, and will protect aquatic life and human health. EPA received mixed comments on this option. Some commenters liked the flexibility provided by the option, whereas other commenters pointed out the technical problems of demonstrating that controls on one pollutant also control other pollutants.

EPA's existing regulations allow the permitting authority to use indicator parameters for technology-based controls (see 40 CFR 125.3(c)(4), 125.3(h), and 122.44(e), and certain effluent limitation guidelines.) In the case of effluent limitations guidelines, EPA has data and other information showing that controls on one pollutant sometimes control one or more other pollutants.

Similar data are often not available when developing water quality-based effluent limitations and therefore, the regulation describing this option requires a justification for using the indicator parameter in the permit. There may be cases where effluent limits on an indicator parameter are sufficient to attain and maintain applicable water quality standards for pollutants of concern and EPA does not wish to foreclose this option for water quality-based controls. Therefore EPA is including a third option in paragraph (vi) that allows the permitting authority to use indicator parameters under limited circumstances.

Like options A and B, option C is used only where a state has not adopted a water quality criterion for a pollutant for which the permitting authority has data showing that the pollutant is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above an applicable state narrative water quality criterion. In order to use option C the permitting authority must satisfy four conditions. First, the permit must identify which pollutant is intended to be controlled by the indicator parameter. This condition is similar to the requirement in 40 CFR 125.3(h) describing the use of indicator parameters for technology-based controls. Second, the fact sheet of the NPDES permit must include a finding that the effluent limit for the indicator parameter will attain and maintain applicable water quality standards. This condition is also similar to the requirements in 40 CFR 125.3(h), but is modified to address water quality-based effluent limits. Third, the permit must require all monitoring necessary to show that the limits on the indicator parameter continue to attain and maintain applicable water quality standards. This condition of option C is necessary to ensure that the controls on the indicator parameter are sufficient to attain and maintain applicable water quality standards. Fourth, the permit must contain a reopener clause allowing the permitting authority to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards. This requirement clarifies that a permit may be reopened if the controls on the indicator parameter are insufficient. The type and frequency of monitoring necessary under condition three above would be determined by the permitting authority and would be based on case-specific factors. In general, EPA expects that this monitoring would include

analysis of the effluent for the indicator parameter and the pollutant of concern at a frequency sufficient to verify the correlation for the various operating conditions of the discharger. EPA recognizes that it may be difficult to show a correlation between controls on the indicator parameter and controls on the pollutants of concern. EPA recognizes that in most cases the data probably will not be available to show such a correlation. However, where such data are available EPA believes this option should be available to the permitting authority.

Today's regulations do not allow the permitting authority to use indicator parameters under paragraphs (d)(1) (iii) and (iv). Indicator parameters may not be used to develop effluent limitations under these paragraphs because, under these paragraphs, the state has promulgated a numeric criterion for the pollutant of concern. Such a numeric criterion represents a state's affirmative decision with respect to the maximum allowable ambient concentration for the pollutant. If paragraphs (d)(1) (iii) and (iv) provided for the use of indicator parameters, such provisions could frustrate the state's efforts to promulgate and implement water quality standards. EPA is limiting the use of indicator parameters to paragraph (d)(1)(vi) because this paragraph is intended as an interim measure employed in the absence of a state numeric criterion for the pollutant of concern, and because EPA seeks to allow the states flexibility to interpret their narrative water quality criteria.

There are several additional noteworthy points about developing effluent limitations under option C. In some cases, protecting sensitive test species from observed chronic exposure can protect against human health impacts because EPA's experience with toxicants has shown that values necessary to protect aquatic life are often more stringent than values necessary to protect human health. Thus, in many cases the controls necessary to avoid chronic aquatic effects may also protect against human exposure. However, the regulatory authorities should be cautious if a limit on whole effluent toxicity is used as an indicator parameter. Whole effluent toxicity limits may not necessarily account for carcinogenic compounds or highly bioaccumulative compounds, differences in the bioavailability of a pollutant once discharged to the receiving water, and the toxic effects which can occur from persistent chemicals that accumulate in sediments.

The final point about paragraph (vi) is that in the majority of cases where paragraph (vi) applies waste load allocations and total maximum daily loads will not be available for the pollutant of concern. Nonetheless, any effluent limit derived under paragraph (vi) must satisfy the requirements of paragraph (vii). Paragraph (vii) requires that all water quality-based effluent limitations comply with "appropriate water quality standards," and be consistent with "available" waste load allocations. Thus for the purposes of complying with paragraph (vii), where a wasteload allocation is unavailable, effluent limits derived under paragraph (vi) must comply with narrative water quality criteria and other applicable water quality standards.

Several commenters asked if it was necessary to show in-stream impact, or to show adverse effects on human health before invoking paragraph (vi) as a basis for establishing water quality-based limits on a pollutant of concern. It is not necessary to show adverse effects on aquatic life or human health to invoke this paragraph. The CWA does not require such a demonstration and it is EPA's position that it is not necessary to demonstrate such effects before establishing limits on a pollutant of concern.

Several commenters suggested that option A will create a large resource burden for the states by requiring them to develop numeric criteria. EPA understands that a significant effort is involved in deriving a numeric criterion as the basis for water quality-based effluent limits under option A. However, where a state chooses this option, EPA sees no alternative but to derive a numeric criterion that protects aquatic life and human health. Option A gives the state flexibility in developing numeric criteria, and if the state believes that option A involves too many resources the state is free to use the other, less resource intensive options described in this paragraph.

Several commenters were concerned that the anti-backsliding provisions of section 402(o) of the CWA would apply to the effluent limitations developed under section 304(1). Section 402(o) does not necessarily prevent EPA or the states from reissuing NPDES permits with less stringent effluent limitations than the limits in the prior permit. The amendments establish a process and conditions for determining when less stringent limits are appropriate. These provisions apply to both technology-based and water quality-based effluent limitations. For water quality-based effluent limitations, the applicability of

section 402(o) depends on whether the receiving waters are attaining and maintaining applicable water quality standards at the time of permit renewal. While there may be cases where section 402(o) prohibits less stringent effluent limitations, such a result can only be determined on a case-by-case basis.

It is EPA's intent that the three options in subparagraph (vi) will allow the permitting authority to set effluent limits to control discharges (in the absence of state numerical water quality criteria for all pollutants of concern) that interfere with attaining and maintaining designated uses, while at the same time, giving the permitting authority sufficient flexibility to account for site-specific impacts on aquatic life or human health.

A number of commenters indicated some confusion over the applicability of subparagraphs (iii), (iv), (v), and (vi), and some confusion over the relationship between these provisions. Paragraph (iii) is intended to apply when the permitting authority has data on a conventional, nonconventional, or toxic pollutant, indicating that a point source is causing, is expected to cause, or contributes to an excursion above a state numeric water quality criterion for that pollutant. In contrast to paragraph (iii), paragraph (iv) requires only whole effluent toxicity limits, and applies when the permitting authority has either toxicity data, pollutant-specific data, or other data, and this data shows that an effluent causes, is expected to cause, or contributes to an excursion above a numeric water quality criterion for toxicity. Paragraphs (iii) and (iv) do not operate to require both whole effluent toxicity limits and chemical-specific limits in every permit, as some commenters suggested. Although paragraph (iii) requires pollutant-specific effluent limits when the permitting authority has sufficient data for that pollutant, paragraphs (iii) and (iv) are consistent with EPA's toxics control strategy which recommends the appropriate combination of whole effluent toxicity and pollutant-specific controls necessary to attain and maintain all applicable water quality standards. EPA also emphasizes that the controls described in paragraphs (iii), (iv), (v), and (vi) are necessary only after the permitting authority has determined, using the principles in paragraph (ii), that water quality-based effluent limits are necessary for a discharge.

Paragraph (v) requires only whole effluent toxicity limits, and is used when the permitting authority relies on a narrative water quality criterion. Unlike paragraph (iv), paragraph (v) applies when the state has not adopted a

numeric water quality criterion for whole effluent toxicity.

Paragraph (vi) applies when the permitting authority has data on a conventional, nonconventional, or toxic pollutant, indicating that a point source is discharging the pollutant at a concentration that is causing, is expected to cause, or contributes to an excursion above an applicable narrative criterion for water quality, and the state has not adopted a numeric water quality criterion for the pollutant. Paragraph (vi) requires only effluent limits for individual pollutants (except in those cases where limits on whole effluent toxicity can be used as an indicator parameter). If the permitting authority uses paragraph (vi) to require a pollutant-specific effluent limit, and the permitting authority also has toxicity data indicating a toxicity problem, the permitting authority would use paragraph (iv) or paragraph (v), whichever applies, to require whole effluent toxicity limits. EPA hopes this discussion of these paragraphs clarifies the applicability of these regulations.

Several commenters objected to the references in option A to EPA's Water Quality Standards Handbook and to EPA's water quality criteria documents. The commenters suggested that EPA must incorporate by reference these documents into today's regulation, and solicit public comment on the documents in order to refer to them in the rulemaking. It is not necessary however, to incorporate these documents by reference as part of this rulemaking because option A refers to these documents only as suggested resource materials that may be used as one option in the regulations. The documents do not contain enforceable requirements, and the use of these documents is not mandatory under the regulations. Therefore the documents do not need to be incorporated by reference into these regulations.

The final change to § 122.44(d)(1) is subparagraph (vii). This subparagraph describes two requirements that the permitting authority must use to derive water quality-based effluent limits. The first requirement provides that water quality-based effluent limits shall be derived from water quality standards. Under section 303(c) of the CWA, and Part 131 of EPA's regulations, a state must adopt water quality standards, (including an antidegradation policy) and submit the standards to EPA for review. Although Part 131 describes the process for adopting and reviewing water quality standards, EPA's permitting regulations in Part 122 do not specify that water quality-based effluent

limits must be derived from water quality standards, (although this requirement is implied in § 122.44). The language in paragraph (vii) clarifies this requirement of the NPDES permitting regulations.

The second requirement in subparagraph (vii) for deriving water quality-based effluent limits, is that the water quality-based effluent limits must be consistent with wasteload allocations (WLAs) developed and approved in accordance with 40 CFR 130.7, if a WLA is available for the discharge. A wasteload allocation is defined at 40 CFR 130.2 and reflects the portion of a receiving water's loading capacity that is allocated to a point source. The requirement to use approved wasteload allocations for water quality-based permit limits is implied in current § 122.44(d) because paragraph (d) requires effluent limits to meet water quality standards. Today's language clarifies EPA's existing regulations by stating that when WLAs are available, they must be used to translate water quality standards into NPDES permit limits. Although subparagraph (vii) requires the permitting authority to use a wasteload allocation if one has been approved under Part 130, today's regulations do not allow the permitting authority to delay developing and issuing a permit if a wasteload allocation has not already been developed and approved.

Deriving water quality-based effluent limits from water quality standards is the only reliable method for developing water quality-based effluent limits that protect aquatic life and human health. Pursuant to section 303(c) of the CWA, the states adopt water quality standards, and then, under section 303(d), develop total maximum daily loads (TMDLs), for water quality-limited segments, to attain and maintain the water quality standards. The TMDLs are used to derive a wasteload allocation for individual pollutants discharged from a point source. This process results in effluent limits that protect aquatic life and human health because the limits are derived from water quality standards.

Subparagraph (vii) does not prescribe detailed procedures for developing water quality-based effluent limits. Rather, the regulation prescribes minimum requirements for developing water quality-based effluent limits, and at the same time, gives the permitting authority the flexibility to determine the appropriate procedures for developing water quality-based effluent limits.

Comments on subparagraph (vii) were generally favorable. The comments supported the concept of deriving water

quality-based effluent limits from water quality criteria, and favor the language requiring water quality-based effluent limits to be consistent with a wasteload allocation, if a wasteload allocation is available for the discharge. Therefore, because subparagraph (vii) describes two fundamental principles for deriving water quality-based effluent limits, and because the comments on this regulation were generally favorable, EPA is promulgating this regulation without change from the proposed regulation.

d. *Technology-Based Controls on Toxic Pollutants.* The final change to § 122.44 is a modification to the title of paragraph (e). The new title reads "Technology-Based Controls on Toxic Pollutants." This title more accurately describes the scope of paragraph (e). Paragraph (e) has been used primarily as a basis for requiring technology-based controls. Although the proposed regulations suggested the title "Toxic Pollutants and Sources of Toxicity," a number of commenters suggested that the proposed changes to paragraph (e) overlapped with the amendments to paragraph (d). EPA is persuaded by these comments, and is therefore clarifying in today's preamble that paragraph (e) applies primarily to technology-based controls, whereas paragraph (d) applies whenever the permitting authority is developing water quality-based controls.

The proposed regulations included a new paragraph (e)(2), but EPA decided it is more appropriate to place this language in paragraph (d)(1). The new language applies to water quality-based controls, not technology-based controls, and the language provides an accurate statement of the controls necessary in an NPDES permit to attain and maintain water quality standards.

The commenters also found the proposed change in paragraph (e)(3)(iii) to overlap with the amendments to paragraph (d). Therefore, EPA decided not to include the proposal in today's final regulations. EPA proposed to add a reference to whole effluent toxicity in paragraph (e), but the proposed language clouded the distinction between paragraph (d) and paragraph (e). To maintain a clear distinction between the applicability of these paragraphs, EPA decided to not carry the language proposed for paragraph (e)(3)(iii) forward into today's final regulations.

Thus, the only change that today's rulemaking makes to paragraph (e) is to change the title of the paragraph to reflect more accurately the scope of the paragraph.

2. State NPDES Program

Requirements. The proposed regulations included a new paragraph for § 123.63(a) to clarify EPA's authority to withdraw a state's NPDES program if state fails to develop an adequate program for developing water quality-based effluent limits in NPDES permits. Today's regulations include this language without change from the proposed regulation.

The new language focuses on how well a state's NPDES permits protect water quality. If other elements of a state's surface water toxics control program adversely affect the quality of NPDES permit limits, then EPA may include other program elements in its evaluation of a state's NPDES program. For example, if a state fails to use consistent and defensible procedures for developing water quality-based effluent limits, EPA would consider this deficiency when evaluating a state's NPDES program.

Several commenters asked for a detailed decision of the exact meaning of the phrase "adequate regulatory program" as it is used in today's regulations. EPA believes, however, that it is inappropriate to be too prescriptive about the requirements for state surface water toxics control programs. The states have flexibility in developing programs to address toxics, and today's regulations do not affect this flexibility. In its oversight of state programs, EPA has emphasized and will continue to emphasize the importance of toxics control programs, and today's regulations reflect the priority that EPA believes is appropriate for these programs.

EPA is adding this criteria to § 123.63(a) because it is essential for all authorized states to operate effective toxics control programs. An adequate state regulatory program for developing water quality-based effluent limits in NPDES permits should be an integral part of each approved state's NPDES program.

B. Identification of Waters

Section III.A of this preamble discussed the rules for strengthening EPA's ongoing surface water toxics control program. The remainder of this preamble discusses the requirements of section 304(l) of the CWA and how EPA is incorporating these requirements into EPA's toxics control program. This section (III.B) discusses how EPA and the states will administer the listing requirements of section 304(l).

1. Description of the Four Lists

The four lists required by section 304(l)(1), paragraphs (A)(i), (A)(ii), (B), and (C) are described below.

Note. Both paragraphs (A)(i) and (B)(i) use the term "toxic pollutants," however, EPA is implementing the section 304(l)(1)(B) listing and control requirements by relying on the priority pollutants rather than the thousands of pollutants potentially encompassed by the term "toxic pollutants." (See Section II.B of this preamble for further discussion.) Also, ammonia and chlorine are not included within the terms "toxic pollutants," "§ 307(a) toxic pollutants" or "priority pollutants" for the purposes of section 304(l).

Paragraph (A)(i) of section 304(l)(1) requires a list of those waters within each state which, after application of technology-based effluent limits, "cannot reasonably be anticipated to attain or maintain water quality standards for such waters reviewed, revised, or adopted in accordance with section 303(c)(2)(B) of the CWA," due to section 307(a) toxic pollutants. Section 303(c)(2)(B) refers to the adoption by the states of numeric criteria into their water quality standards for section 307(a) toxic pollutants. Therefore, EPA interprets the (A)(i) list to include only those waters where water quality standards with numeric criteria adopted under section 303(c)(2)(B) for priority pollutants are not achieved, or are not expected to be achieved, due to either point or nonpoint sources of pollution, on or before February 4, 1989, after application BAT, pretreatment and new sources performance standards. These are final water quality criteria which have been reviewed, revised and adopted by the state and approved by EPA.

Paragraph (A)(ii) of section 304(l)(1) requires a list of those waters within each state which, after the application of technology-based effluent limitations, "cannot reasonably be anticipated to attain or maintain that water quality which shall assure the protection of public health, public water supplies, agricultural and industrial uses, and the protection and propagation of shellfish, fish and wildlife, and allow recreational activities in and on the water." EPA interprets this to mean that the state must create a comprehensive list of waters that are impaired or are expected to be impaired as of February 4, 1989 by point or nonpoint source discharges of toxic, conventional, or nonconventional pollutants. This list should include all waters not meeting the goals of the CWA after the application of technology-based effluent limitations, regardless of whether or not a state has adopted numeric criteria

within their water quality standards. This includes all waters which are classified for uses that do not meet the "fishable and swimmable" goals of the Act.

Paragraph (B) of section 304(l)(1) requires a list of those waters within each state for "which the state does not expect the applicable standard under § 303 of the CWA will be achieved after the requirements of sections 301(b), 306, and 307(b) are met, due entirely or substantially to discharges from point sources of any toxic pollutants listed pursuant to section 307(a)" of the CWA. EPA interprets this list to include all waters which can not achieve or are not expected to achieve, either the numeric or narrative water quality criteria applicable to a priority pollutant due entirely or substantially to discharges from point sources on or before February 4, 1989 after application of BAT, pretreatment and new source performance standards. Waters where impairment is due to discharges of whole effluent toxicity are included on the paragraph (B) list only when the toxicity is due in whole or in large part to one or more of the priority pollutants. (Waters where whole effluent toxicity is observed, but is not attributable to a priority pollutant, are to be included on the paragraph (A)(ii) list.)

For all the waters listed on the paragraph (B) list, the state must identify the point sources discharging the priority pollutant(s) as described below the develop individual control strategies for each point source. (See section III.C. of this preamble for more information on individual control strategies.)

Interpretations of the terms "applicable standard," and "due entirely or substantially to discharges from point sources," which appear in the statutory language of section 304(l)(1)(B), are discussed in the next section (section III.B.2) of this preamble.

Paragraph (C) of section 304(l) describes the fourth list required to be submitted by the states to EPA. It requires, for each of the segments included on the paragraph (B) list, "a determination of the specific point sources discharging any such toxic pollutant which is believed to be preventing or impairing such water quality and the amount of each such toxic pollutant discharged by each such source." EPA interprets this paragraph to mean that for each water on the paragraph (B) list, the state must list each point source within its jurisdiction that is discharging the priority pollutant(s) to the water which is listed, and the amount of each priority

pollutant discharged by each such source. Individual control strategies (ICSs) are to be prepared for each point source discharger on the paragraph (C) list.

Some commenters maintained that individual control strategies are required for all three lists of waters to be developed under section 304(l), and that EPA's interpretation that ICSs are only required for the paragraph (B) list of waters is contrary to Congressional intent. The statutory language indicates that individual control strategies must be developed which will produce a reduction of point source discharges of section 307(a) toxic pollutants in order to achieve applicable water quality standards within three years of establishment of the strategy. In order for such point source controls, in combination with "existing nonpoint source controls," to effectively achieve water quality standards, there is an implicit assumption that such waters are capable of achieving or making significant progress toward achieving water quality standards primarily by controlling point sources of section 307(a) toxic pollutants. Such a scenario corresponds to the paragraph (B) list of waters, and therefore support EPA's interpretation that the ICS requirement applies only to the paragraph (B) list. However, like ICSs, permits for any point source discharges to waters on the paragraphs (A)(i) and (B) lists must still include effluent limits to attain and maintain water quality standards for all parameters of concern including toxic pollutants, through the permits are not subject to the compliance dates of section 304(l).

Note that every state, as defined by EPA at 40 CFR 122.2, is required to submit lists of waters, sources and amounts whether or not the state is authorized by EPA to administer the NPDES program.

Some commenters asked EPA how to assess whether to list waters on the paragraph (B) list which have point sources which do not yet meet either existing permit limits derived from technology-based standards under section 301(b), 306 and 307(b) of the CWA, or do not yet have such permit limits. EPA requires the state to list any water that was not meeting its applicable water quality standards by February 4, 1989 on one or more of the lists of waters described above, as appropriate.

The only exception to this requirement is provided when a state demonstrates that enforceable permit limits derived from technology-based standards will bring the water into compliance with applicable water

quality standards. However, EPA expects that where compliance with technology-based limits cannot be expected within three years of the preparation of the list, there will be too much uncertainty in the determination of whether the limits are adequate to achieve water quality standards in order to demonstrate to EPA that the water should not be listed.

If the existing permit limits are based on water quality standards and those limits are not yet achieved as of February 4, 1989 due entirely or substantially to discharges from point sources, the water should be included on the paragraph (B) list. These waters qualify for the paragraph (B) list even if the permit has a compliance schedule to achieve water quality standards on or before June 4, 1992. In these cases it may not be necessary to modify these existing limits or schedules in the permit to meet the compliance deadlines of section 304(l), and the existing permit may qualify as an ICS. However, the waters and point sources must be listed and the permit authority must still review the existing permit, exercise its judgment to decide if the existing water quality-based limits will meet the section 304(l) compliance dates, and revise the limits if necessary.

2. Explanation of Terms Used in section 304(l)(1)(B)

Paragraph (B) of section 304(l)(1) introduces two terms that EPA believes need further interpretation and explanation to ensure consistency in implementing this paragraph. These terms are "applicable standard," and "due entirely or substantially to discharges from point sources." Paragraphs 130.10(d) (4) and (5) of today's amendments contain these interpretations.

a. Applicable standard. For the purposes of listing waters under paragraph (B) of section 304(l)(1), in paragraph 130.10(d)(4) EPA interprets the "applicable standard" to mean numeric criteria promulgated within state water quality standards for priority pollutants. Where a state numeric criterion for a priority pollutant is not promulgated in state water quality standards, for the purposes of listing waters under section 304(l), "applicable standard" means the state narrative water quality criteria to control toxic pollutants (e.g. "no toxics in toxic amounts"). These state narrative water quality criteria can be interpreted, on a chemical-by-chemical basis, by applying a proposed state numeric criterion, or an explicit state policy or regulation for interpreting the narrative criterion, or an EPA water quality criterion published in

EPA's water quality criteria guidance documents, supplemented by other relevant information. Other relevant information may include, for example EPA's Integrated Risk Information System (IRIS) database (see EPA document EPA/600/8-86/032), local exposure assessments, and other site-specific information. Among these alternative interpretations of narrative criteria, EPA will give substantial deference to a proposed state numeric criterion, or an explicit state policy or regulation where the interpretation will fully protect the designated uses. In the absence of any such acceptable state interpretations which protect the designated uses, an EPA national water quality criterion must be used for interpreting the state's narrative water quality criteria, supplemented with other relevant information as described above.

Many commenters objected to the proposal to use national water quality criteria to interpret the state's narrative water quality criteria for the purposes of listing waters under section 304(l)(1)(B). To make it clear that EPA's intent is not to undermine or usurp state authority to develop water quality standards, but to establish a minimum baseline for screening waters to be listed, EPA has added language to today's preamble and regulation that encourages a state, whenever possible, to rely on its formally proposed or adopted interpretations, policies, criteria and risk levels as the applicable standard for listing purposes under section 304(l). Only in the absence of these is EPA requiring the use of EPA water quality criteria and specifying the risk level to be used. Furthermore, EPA allows the state to rely on additional or more recent representative scientific data when available to update the information in the EPA water quality criteria documents, such as EPA's Integrated Risk Information System (IRIS) documents.

In the absence of formally proposed or adopted numeric criteria for all of the priority pollutants or explicit state policies which interpret the narrative water quality criteria, EPA needs some criteria or definition of impairment to identify waters for listing. If waters that are exceeding narrative criteria are excluded from the paragraph (B) list, those states that have not yet set numeric water quality criteria for the priority pollutants would effectively be exempted from the requirements of section 304(l)(1)(B), despite the possible presence of significant water quality problems. The section 304(l) statutory language mandates that states and EPA

move forward expeditiously to achieve water quality goals and it does not provide relief from deadlines due to lack of numeric criteria within state water quality standards. One commenter suggested that EPA require each state to establish its own numeric criteria in water quality standards for the section 307(a) toxic pollutants as part of the section 304(l) list development process. The CWA does not provide time for delay in implementing section 304(l) requirements pending state action to establish their own numeric criteria in water quality standards.

After identifying a water for listing on the section 304(l)(1)(B) list by using the EPA criteria, a state may then use other and more site-specific data and criteria to establish appropriate permit limits in the individual control strategies for the point sources on the water. This process is described in § 122.4(d)(1) of today's rule.

EPA received comments arguing that EPA must incorporate its water quality criteria documents by reference in order to require states to list waters in accordance with these documents. The Administrative Procedures Act, 5 U.S.C. 552(a)(1) and 522(a)(1), requires agencies to publish in the Federal Register or incorporate by reference with approval of the Director of the Federal Register, all "substantive rules." EPA has amended § 130.10(d)(4) to allow states to list waters on the basis of their own interpretations of the state narrative criteria, and the use of EPA water quality criteria documents is clearly not mandatory. Therefore, EPA is not incorporating the criteria documents by reference in today's rule. (See the discussion of this issue in section III.A. above.)

Several commenters asked if state narrative water quality criteria apply to all waters regardless of their designated use. Narrative water quality criteria apply to all designated uses at all flows unless specified otherwise in a state's water quality standards. It is EPA's policy that no acutely toxic conditions may exist in any state waters, regardless of designated use. A state's narrative water quality criteria and interpretations of its narrative water quality criteria may be more protective than the levels necessary to prevent acutely toxic conditions. For more information, please refer to EPA's Water Quality Standards Handbook, December, 1983.

One commenter requested that the definition of applicable standard include the water quality standards and limitations established under the Great Lakes Water Quality Agreement of 1978. EPA has not incorporated this comment

into today's final rule. Section 304(l)(1)(B) refers to the "applicable standard under section 303 of this Act." Section 303 establishes the process for state adoption of water quality standards and, in those situations where EPA disapproves a state standard, it establishes the process for EPA promulgation of a water quality standard for such state. Provisions of the Great Lakes Water Quality Agreement are not standards "under section 303" of the Clean Water Act.

b. Due Entirely or Substantially to Discharges From Point Sources. Paragraph 130.10(d)(5) describes two conditions that require a water to be listed under paragraph (B) of section 304(l)(1) because the applicable water quality standard is not expected to be met "due entirely or substantially to discharges from point sources." These two conditions are listed below.

In making the determination of whether a water meets either of these conditions, a state should perform a water quality analysis using a design flow specified in state regulation or policy, or the critical design flow as established by EPA guidance or regulation (for example, EPA's Technical Guidance Manual for Performing Wasteload Allocations—Book VI, Design Conditions—Chapter I Stream Design Flow for Steady State Modeling, September 1986 (EPA 440/4-87-004).)

If a water meets either of the conditions below, after the application of the technology-based requirements of sections 301(b), 306, and 307(b), then it must appear on a state's section 304(l)(1)(B) list. (See discussion in section III.B.1 of this preamble on application of technology-based requirements for making listing decisions.)

(a) Existing or additional water quality-based limits on one or more point sources would result in the achievement of an applicable water quality standard for a priority pollutant or:

(b) The discharge of a priority pollutant from one or more point sources, regardless of any nonpoint source contribution of the same pollutant, is sufficient to cause, or is expected to cause, an excursion above the applicable water quality standard for the priority pollutant.

The proposed rulemaking contained three conditions. Many commenters objected to one or more of them: some supported one or more of them. The Agency decided to revise conditions (a) and (b) slightly and delete condition (c) in response to comments.

Many commenters objected to the three conditions in the proposal because the conditions do not consider the proportion of point source contributions to nonpoint source contributions and thereby could require controls on point sources which may be contributing relatively small amounts of the pollutant of concern. Some commenters suggested EPA designate a specific percentage that the point source would have to contribute in order to be listed. EPA decided not to revise the conditions in response to these comments because it is important whenever possible to bring waters into compliance with water quality standards, and if additional controls on point sources will do so, then they should not be delayed or omitted due to contributions from nonpoint sources. Furthermore, proportions are difficult to calculate because they vary widely. For example, rainfall events can change dramatically the proportion of point and nonpoint source contributions by contributing very large but occasional and almost unpredictable loads from nonpoint sources. However, to the extent that relative point and nonpoint source contributions can be determined, a state may make appropriate and cost-effective adjustments to respective control requirements for nonpoint and point sources through the total maximum daily load and wasteload allocation processes established under 40 CFR 130.7.

Many commenters objected to the proposed conditions on the basis that controls on point sources may not necessarily bring the water into compliance with the water quality standard since the nonpoint source contribution alone can cause excursions. In these cases, the commenters argued an NPDES permit would not be able to be issued that meets EPA's definition of an individual control strategy. The conditions were not revised or deleted in response to these comments. In essence, these comments suggest that EPA should list waters on the basis of whether or not the water quality standard can be achieved within the statutory framework of section 304(1), rather than on the basis of the pollutant load to the stream from point sources. EPA believes that the Congressional purpose of controlling point sources which are substantial contributors to a failure to meet water quality standards, would be best accomplished by focusing on the point source discharges to particular waters. If EPA were to define "due * * * substantially to discharges from point sources" to exclude waters where the water quality standards

cannot be met by point source controls alone, then the discharges to some of the most polluted waters may not be controlled. Congress enacted a comprehensive scheme to address waters impaired by both point and nonpoint sources of toxic pollutants. At the same time that it enacted section 304(l), Congress passed section 319 to address nonpoint sources. When section 304(l)(1)(B) is read together with section 319, EPA believes that all waters not achieving water quality standards for priority pollutants should be listed pursuant to at least one or sometimes both sections of the Act. To exclude a water from the section 304(l)(1)(B) list because of nonpoint sources would leave open the possibility of a state excluding the same water from its section 319 list because of point source contributions. The result of such an approach could be that waters needing both point and nonpoint source controls to meet water quality standards might be excluded from both programs.

EPA believes that states should make continuous progress toward the attainment of water quality standards as required by the Act, and that controls on the point source contribution of a priority pollutant should not be delayed or omitted while awaiting effective controls on nonpoint sources of the pollutant. In cases where there are significant loadings of a toxic pollutant from nonpoint sources, and effluent limits on the point sources by themselves may not bring the water into compliance with the applicable water quality standard, an ICS will satisfy the language of section 304(l)(1)(D) if the effluent limits in the ICS are consistent with a wasteload allocation for the discharger. (See section III.D.1 for discussion on why EPA believes that this approach is reasonable and appropriate.)

To address commenters concerns that an ICS does not address nonpoint sources, EPA requires that the supporting documentation for an ICS show evidence that the impact of nonpoint sources on the identified segment has been considered during the preparation of total maximum daily loads (TMDLs) and wasteload allocations (WLAs). EPA also encourages permitting authorities to utilize all available authorities to control nonpoint sources, including section 319 of the CWA.

Many commenters felt that the language in condition (c) in the proposed rule was too subjective, vague and was not authorized by the statute. EPA agrees and has deleted condition (c) in response to these comments.

In addition, EPA has deleted Exhibit A from the final rule. Exhibit A, which appeared in the proposed rule, was an illustration for determining if the concentration of a priority pollutant is entirely or substantially due to discharges from point sources. This chart has been deleted since it caused considerable confusion and because it illustrated only seven of myriad possible discharge scenarios, all of which could not be illustrated.

Finally, the proposed word "initial" has been replaced by the word "existing" in final condition (a). EPA believes the word "initial" is vague, and the word "existing" more clearly describes the situation where existing limits on one or more point sources, if made effective, would bring the water into compliance with an applicable water quality standard, and therefore it should be listed on the paragraph (B) list. This change does not signify an expansion of the listing requirements, but is a correction in the language which makes it consistent with other parts of today's rule. For example, this change is consistent with section III.B.1 of today's preamble which clarifies that if the water was not meeting or was not expected to meet that water quality standard on or before February 4, 1989 due entirely or substantially to discharges from point sources, it must be listed on the paragraph (B) list even if the point sources on a water already have existing water quality-based effluent limitations designed to meet a water quality standard. No commenters requested this change in the language, but EPA believed it was necessary to make the correction for the reasons stated above.

For the purposes of interpreting the term "due entirely or substantially to discharges from point sources," any discharge which meets the definition of a point source under 40 CFR § 122.2 must be considered as such for the purposes of listing waters and point sources under section 304(l)(1)(B), including discharges from combined sewer overflows (CSOs) and discharges from stormwater outfalls. In addition, water quality impairments due to in-place sediments which have been substantially or entirely contaminated or deposited by priority pollutant loadings currently being discharged from an active and operating point source subject to section 402(a) of the CWA, must be listed under paragraph (B) of section 304(l) and the discharger must be listed under paragraph (C). If the sediments have been contaminated or deposited entirely or almost entirely by nonpoint sources or by a facility or site which is no longer

in operation or is abandoned, and therefore cannot be issued an NPDES permit, EPA would not consider the contamination to be due to a point source when evaluating whether a water should be listed on the paragraph (B) list. EPA emphasizes that the sediments themselves are not considered point sources, but the contamination or deposition of them by active and operating industrial or municipal facilities is considered as contamination that is due to a point source.

Some commenters asked for clarification on whether to list waters based on exceedances of criteria in the water column or based on biological impairment caused by contaminated sediments. Waters may be listed on either basis. The evaluation for listing on the section 304(l)(1)(B) list is based on whether there is an excursion or expected excursion above an applicable narrative or numeric criterion for a priority pollutant which is designed to protect the designated uses. If the contaminated sediment is causing biological damage it may be impairing the designated uses of a water, and therefore a state's narrative criteria for toxics may be exceeded. Or if the sediment is releasing a priority pollutant back into the water column in amounts that exceed the allowable concentrations, the state's numeric criteria is being exceeded. In either of these situations, the waters, as well as the appropriate dischargers, should be listed, if the contamination is due entirely or substantially to point sources.

Some commenters thought that EPA intended states to list waters where the sediment is contaminated due entirely or almost entirely to nonpoint sources or inactive point source dischargers. EPA does not intend this. Also, EPA did not intend to suggest in the proposed rule, as some commenters believed, that if there is a water quality problem due to in-place sediments which have been contaminated entirely or almost entirely by an abandoned or inactive point source or by nonpoint sources, that the water must be listed if there is any active point source of the same priority pollutant. The water would only be listed if the active point source is entirely or substantially contributing to or causing the sediment contamination, which is in turn impairing the uses of the water. Thus, for listing purposes, EPA is treating dischargers which are contaminating sediments in the same manner as other dischargers.

When a state evaluates whether a water is impaired "due entirely or substantially to discharges from point

sources," the evaluation must be based only on the contribution of one priority pollutant at a time from the point sources, and only for priority pollutants. Therefore, a water quality problem due to a pollutant which is not a priority pollutant may not be taken into account when determining whether a water should or should not be listed on the paragraph (B) list for priority pollutants. For example, if a water does not meet the water quality criterion for chromium (a priority pollutant) from point source contributions, nor does it meet the water quality criterion for pH (a conventional pollutant) from either point or nonpoint sources, the state must still list this water on the (B) list, because of the chromium point source contribution. Even though a water may still not meet its designated uses due to another pollutant, EPA does not want the states to delay controlling a priority pollutant of concern from a point source. (As a matter of policy, EPA urges states to attach the same priority to the identification and control of all non-priority pollutants of concern.)

One commenter expressed concern about being able to develop ICSs for combined sewer overflows and stormwater outfalls. EPA acknowledges that writing permits for these sources may be difficult. However, ease in writing the individual control strategy or ability to meet appropriate permit limits is not the basis for listing waters and point sources under section 304(l). Another commenter contended that under section 402 of the CWA urban stormwater discharges do not have to meet permit limits until 1994 at the earliest. EPA disagrees. Section 402(p)(2)(E) of the CWA states that "[a] discharge for which the Administrator or the State determines that the stormwater discharge contributes to a violation of a water quality standard or is a significant contributor of pollutants to waters of the United States" is exempted from the general rule that EPA or the state cannot require a permit for stormwater discharges prior to October 1, 1992. Stormwater discharges listed pursuant to section 304(l) qualify for this exemption. Furthermore, Congress did not specifically exempt any categories of point sources from the requirements of section 304(l).

3. Preparation and Review of the Lists

The CWA requires the states to have submitted the four section 304(l)(1) lists to EPA for review and approval on or before February 4, 1989. Paragraphs 130.10(d)(1)-(3), promulgated as part of EPA's interpretive rule for the Water Quality Act on January 4, 1989 (Federal Register Vol. 54 No. 2 at 216) already

require this submission, along with the requirement that these lists be reviewed and approved or disapproved by EPA.

In addition to paragraphs (4) and (5) discussed above, today's rules also add paragraphs (6) through (11) to subsection 130.10(d). Paragraphs (6) and (7) describe the data that each state must use in developing the lists, and the documentation that each must provide to EPA when submitting lists to EPA. Paragraph (8) describes the basis upon which EPA will approve or disapprove a state's lists. Paragraphs (9) through (11) are discussed in this section of the preamble. New paragraphs (9), (10) and (11) discuss public notice and comment procedures and are discussed in section III.D.2 of this preamble.

a. *Use of Existing and Readily Available Data.* Because EPA believes that states should build on the work that has already been done in the continuous process of assessing water quality, today's amendments allow states to use existing and readily available data when they develop their lists. Also, the ambitious deadlines of the CWA require EPA to forgo a requirement for lengthy monitoring designs and extensive collection of new data and to rely on existing and readily available data. The regulation which allows states to rely on existing and readily available data appears in proposed paragraph 130.10(d)(6).

To assist states in deciding what existing and readily available data they should rely on, EPA is designating sixteen categories of waters about which, as a minimum, each state must assemble and evaluate all existing and readily available data. These categories of waters are described in paragraph 130.10(d)(6). EPA considers the existing and readily available information and data about the categories of waters described in paragraph 130.10(d)(6) to be the minimum data and information that a state must assemble and evaluate when preparing lists in order for EPA to have an adequate basis to approve or disapprove the lists. States should obtain any other additional data and information needed to identify and determine as accurately as possible which waters and point sources to list.

These categories reflect what EPA considers to be the minimum existing and readily available water quality data and information that a state and EPA can reasonably obtain. This existing data includes data that states should have developed in the course of reviewing and revising water quality standards, evaluating needs for technology-based or water quality-based controls, developing total

maximum daily loads (TMDLs), wasteload allocations and load allocations (WLAs/LAs), issuing permits, and monitoring to determine the effectiveness of pollution controls. Furthermore, EPA is requiring that the states assemble and evaluate this minimum existing and readily available data because it encourages cooperation and communication among the many Federal, state and local government agencies and private organizations that collect, analyze or report water quality data and information.

EPA is requiring that these waters be evaluated for the purposes of developing the three lists of waters required by section 304(l) because they are either waters which have been reported by the state or other government or private sector agencies as failing to meet water quality standards or as having a high potential for not meeting water quality standards, or they are waters which receive point source discharges. EPA believes that if a state evaluates all waters in these categories it will identify virtually all waters that may need to be listed.

Information and data about the categories of waters described in paragraph 130.10(d) are of two general types. The first is existing and readily available data and reports from Federal, state, local and private sectors. The second is dilution calculation results generated by EPA and the states for use as a screening tool. These two types of information are discussed below.

There are many existing lists, reports and assessments that provide valuable information to states when identifying and preparing lists of waters. New paragraph 130.10(d)(6) designates the minimum information and reports which each state must assemble and evaluate in order to identify waters that meet the section 304(l) statutory requirements for listing. These include state section 305(b) reports, Clean Lakes Assessments, the section 319 Nonpoint Source Assessments, the National Priority List prepared under CERCLA, reports of adverse water quality conditions by the International Joint Commission and the Great Lakes Water Quality Board, and the Toxic Chemical Release Inventory developed pursuant to Title III of the Superfund Amendments and Reauthorization Act of 1986, among others. Beyond waters identified by these specific reports, the final rule requires the state to obtain any existing and readily available data about other specific waters which should be considered for listing on one or more of the lists required by section 304(l); for example, waters where fishing

bans and recreational restrictions are in effect, waters which have had repeated fishkills, and waters where there are waterfowl or wildlife consumption advisories or bans. Appendix B of the Final Guidance for Implementation of Requirements under section 304(l) of the Clean Water Act as Amended (March 1988) lists other available data sources that should be consulted.

A few commenters requested that other reports or sources of data be cited in the regulations, to ensure that the states review them. EPA has not named these specific reports in the regulatory language because there are many reports or data sources that a state could use and they can not all be named specifically in the regulations. However, subparagraph 130.10(d)(6)(xiii) is broad enough that it includes any such reports or information sources that report on water quality. Also, EPA has mentioned many of these reports suggested by the commenters as examples of possible data and information sources.

The second general type of information that EPA is requiring that the states consider, as a minimum, is screening information developed using dilution calculations. Dilution calculations should be conducted to indicate possible excursions above numeric water quality criteria within state water quality standards (or EPA water quality criteria where state numeric criteria are not available). Dilution calculations should be performed for, but not limited to, all point source discharges of priority pollutants, ammonia and chlorine to help identify waters and dischargers for listing on any of the lists. At a minimum, waters with primary industrial major and minor point source dischargers, major publicly-owned treatment works (POTWs), and waters with other major point source dischargers must be screened for expected excursions above the water quality criteria by performing dilution calculations using site-specific data, or, if necessary, data based on national estimates. EPA emphasizes that to list a water on the Paragraph (B) list, the state does not necessarily need to have enough data to indicate exactly which point source or sources may be causing any observed or projected criteria excursions or use impairments. It is sufficient that the data indicate that the applicable water quality standards are not being achieved or are not expected to be achieved due entirely or substantially to discharges from point sources. After identifying the water for listing on the paragraph (B) list, the state should then obtain as much discharger-specific data as necessary to identify the

dischargers which may be causing or expected to cause the criteria excursions, and then place these dischargers on the paragraph (C) list.

Where ambient data on criteria excursions are being used to identify waters, the state may use the criteria for designated use support outlined in Figure 1 of EPA's Guidelines for the Preparation of the 1988 State Water Quality Assessment section 305(b) Report. Figure 1 provides guidelines to states in determining the degree to which waters are supporting their designated uses based on the frequency of criteria excursions and comparison of mean values to criteria.

Some commenters said that reliance on existing and readily available data could lead to inaccurate or unreliable results and that EPA should clarify that states should make their listing decisions on existing and readily available accurate data. Also, EPA should allow states to use professional judgment in resolution of conflicting data. EPA expects the state to determine as much as possible the accuracy and validity of their existing and readily available data and information about the sixteen categories of waters, or about any other waters, when developing the lists. EPA does not expect the states to rely on old or inaccurate data or information. If the state finds that much of its existing and readily available data is unreliable, EPA strongly encourages the states to obtain more current additional data whenever possible. Also, EPA expects states to exercise best professional judgment when faced with conflicting data.

Some commenters felt that requiring the states to use all existing and readily available data about the sixteen categories of waters was too prescriptive or burdensome. EPA is requiring the states to examine the categories in order to ensure that all possible sources of existing and readily available data are considered. It may be that a state has found that a particular category of data is unsuitable for use. To accommodate this situation, the regulations provide that the state submit its reasons for a decision not to evaluate any particular category of waters. If a state demonstrates to EPA that it has reviewed all existing and readily available data about the sixteen categories as appropriate, it can reduce the "second-guessing" by EPA, which some commenters were concerned about, when EPA reviews the lists.

EPA's intent in requiring that states review and evaluate at a minimum all existing and readily available data on the sixteen categories of water in

paragraph 130.10(d), is to be sure that EPA and the states cast a broad net in the list development and review process. The states are expected to review and evaluate these data for accuracy and reliability, determine which waters are candidates for listing, and then review and evaluate and gather, if necessary, more site-specific data on these candidates in order to make their final listing decisions. In short, these categories of waters are the minimum beginning universe of waters which states should evaluate for waters qualified for the section 304(l) lists. These latter would be the waters that the data and information show, after assurance of its reliability and the use of professional judgment, cannot reasonably be anticipated by the state to attain or maintain applicable water quality standards as described in section 304(l)(1) of the CWA.

b. *Documentation of Data and Methodologies.* Paragraph 130.10(d)(7) requires that each state submit to EPA, together with its lists of waters and sources, documentation of all data and methodologies used by the state to develop the lists.

Subparagraph (i) of (d)(7) requires each state to submit a description of the methodology used by the state to develop each of the lists of waters and point sources required by section 304(l). This description of methodology should include assumptions and criteria used by the state when reviewing and analyzing data and information.

Subparagraph (ii) requires the state to provide a description of the data and information used by the state, and to specifically address which of the categories of waters described in paragraph (d)(6) were used. If a state does not assemble and evaluate data about one of these categories, subparagraph (iii) requires the state to provide the rational for deciding not to do so as part of its documentation.

Subparagraph (iv) requires the state to provide any other information that the Regional Administrator requests in order to review the state's submission of lists. Specifically, subparagraph (iv) requires a state, if EPA requests, to demonstrate good cause for not including a water or discharger on one or more of the required section 304(l)(1) lists.

"Good cause" may include, but is not limited to, the following:

- More recent or more accurate data,
- More accurate water quality modeling.

- Flaws in the original analysis that led to the water being identified in one of the categories, or
- Changes in conditions, e.g., new control equipment, or elimination of discharges.

These above documentation requirements are necessary because a Regional Administrator's office may not maintain all the available water quality and discharger data for all of its states. Therefore, part of the review by EPA of a state's submission must necessarily include a review of the data, assumptions and criteria used by the state for listing waters and point sources to ensure that they are consistent with the statutory and regulatory requirements for listing. For example, a state's documentation should reflect that the state considered stormwater outfalls as a point source when determining whether a water is impaired due entirely or substantially to discharges from point sources.

Some commenters said that EPA's request for documentation in § 130.10(d)(7) is burdensome and without statutory authority. Section 304(l) requires EPA to review and approve or disapprove each state's lists. (See section III.D. of this preamble which discusses in detail EPA's authority to approve and disapprove lists.) EPA remains convinced that in order to review a state's lists adequately, the Agency must know on what basis the state made its decisions to list or not list waters and point sources, and must be able to review all existing and readily available data and information used for those decisions. Because this information is crucial to EPA's review of a state's lists, the Agency does not view these requirements to supply documentation on methodologies, criteria and assumptions as overly burdensome and did not revise the regulatory language as commenters requested. In addition, because the state or EPA must provide adequate public participation for these lists, the state should be documenting its decisions and methodologies for this purpose. Therefore these requirements to develop and submit documentation should not represent a significant additional burden to the states.

Two commenters requested that the language in § 130.10(d)(7)(iv) which allows the Regional Administrator to request any other additional information be revised to restrict the Regional Administrator to requesting information that is reasonable, necessary or pertinent to determine the adequacy of the state's lists. EPA agrees with this comment and has incorporated it into the regulatory language at subparagraph

130.10(d)(7)(iv). Some commenters felt that the "good cause" language in this section is essentially "second-guessing" the state and is burdensome to the state. EPA relies on its rationale for requesting documentation, discussed above, for its decision not to revise this language pursuant to these comments. In addition, EPA views the procedure for a state to submit additional information as a way to ensure that EPA does not disapprove a state's decisions that are founded on an adequate basis. EPA emphasizes that a state does not have to automatically submit "good cause" when submitting its lists to EPA for review, but only when the Regional Administrator requests such information on specific waterbodies or dischargers.

c. *Review of Lists by EPA.* Section 304(l) requires that all states submit all four lists described above to EPA no later than February 4, 1989. Upon receiving the lists from each state, the Regional Administrator is required to review and then approve or disapprove each state's lists. If a state fails to submit a list or if a state submits an inadequate list, then EPA must either entirely or partially disapprove the list. Section 304(l)(2) gives EPA 120 days to approve or disapprove a state's list and where EPA entirely or partially disapproves a state's list, EPA will, in cooperation with the state, develop the final list.

In order for EPA to complete its review of a state's lists, the state must have met the data and documentation requirements in proposed paragraphs (6) and (7). The Regional Administrator will approve each list if the state has met the regulatory requirements for listing under 40 CFR 130.10, and disapprove each list that does not.

If, after reviewing the state lists, available data and any required documentation, the Regional Administrator is satisfied that the state has identified and appropriately listed all waters, then EPA will approve the lists. (See Section III.D. of this preamble for a detailed discussion of review and approval and disapproval of lists and individual control strategies.)

Some commenters asked whether EPA is intending to apply these requirements to lists submitted before the final rule becomes effective, and argued that to do so would be to apply the regulation retroactively, which is prohibited. The regulations promulgated today will apply to all Regional decisions issued after the effective date of today's rule. EPA does not view this as applying the regulations retroactively. Rather, EPA is applying the criteria for review of lists to decisions it makes in the future.

Some commenters asked EPA to include in today's rule a procedure for removing waters or point sources from the section 304(l) lists. Listing of waters and point sources under section 304(l) is a one-time activity. Therefore, it is unnecessary to develop regulations for removing waters and point sources from a list. The public comment and review period provided by EPA or the state provides opportunity for waters or point sources to be deleted from, or added to, a list.

C. Individual Control Strategies

In addition to the four lists required by section 304(l)(1), the states must prepare and submit to EPA an individual control strategy (ICS) for each point source on the (C) list. This section describes what EPA will approve as an ICS.

On January 4, 1989, EPA codified sections 304(l)(1)(D), 304(l)(2), and 304(l)(3) of the CWA into a new section in Part 123—§ 123.46. Section 123.46(a) requires the states to submit ICSs to EPA on or before February 4, 1989, and § 123.46(b) requires EPA to approve or disapprove the ICSs by June 4, 1989.

Today's rules add new paragraphs (c)–(f) to § 123.46. Paragraph (c) defines an ICS. Paragraph (d) describes the petitions submitted under section 304(l)(3). Paragraph (e) describes the procedures EPA will use to approve or disapprove ICSs, and paragraph (f) establishes the criteria that EPA will use to evaluate an ICS.

Today's regulations also re-promulgate § 123.46(a). EPA originally promulgated this regulation on January 4, 1989, but it is necessary to amend this language so the regulation more accurately reflects EPA's approach for implementing section 304(l). The new language clarifies that an ICS is required for each point source under section 304(l)(1)(C) rather than each water segment identified under section 304(l)(1)(B).

1. Description of an Individual Control Strategy

Section 304(l)(1)(D) provides that an individual control strategy must " * * * produce a reduction in the discharge of toxic pollutants from point sources * * * identified under section 304(l)(1)(C), which is * * * sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of the establishment of such strategy." These elements of an individual control strategy are codified at 40 CFR 123.46(a).

Today's regulations define an ICS as a final NPDES permit, a draft NPDES permit with a schedule for issuing a final permit, or, for an on-site response action under CERCLA, the decision document for the response action. EPA received many comments on the definition of an ICS. The following preamble discussion responds to these comments and clarifies some aspects of the definition.

EPA has determined that, for point source discharges to meet the requirements of section 304(l), an ICS must consist of a draft or final NPDES permit for each point source on the (C) list, plus supporting documentation that the permit has adequately considered the impact from other discharges on the identified segment. ICSs are required for both currently permitted discharges and for point sources identified on the (C) list that do not have NPDES permits. A sufficient ICS, therefore, consists of the controls for each such point source (NPDES permit limitations and a schedule for achieving such limitations if they cannot be achieved upon permit issuance) and documentation which shows that the controls selected are appropriate and adequate (i.e., fact sheets with information on total maximum daily loads and wasteload allocations). Enforcement orders and consent decrees, by themselves, are not adequate substitutes for ICSs. However, an enforcement order or judicial decree based on a final and sufficient NPDES permit may be a part of the supporting documentation for the ICS, provided the ICS satisfies all applicable provisions of section 304(l) of the CWA.

EPA believes this is the correct interpretation of the term "individual control strategy" because paragraph (D) of section 304(l)(1) states that an ICS must reduce discharges of toxic pollutants through "effluent limitations under section 402" of the CWA. Section 402 of the CWA establishes the NPDES program, and the effluent limitations in NPDES permits are the primary control mechanism that EPA and the states use to reduce point source discharges of pollutants. By inserting a reference to the NPDES program in paragraph (D) EPA believes that Congress intended for an NPDES permit to be the essential element of an ICS.

The comments on EPA's definition of an ICS focused on two issues: First, an ICS should include more than just NPDES permits for point sources; and second an ICS should be developed for a water segment, not for each individual point source. EPA considered these comments but decided to promulgate the definition unchanged, for the reasons discussed below.

a. *Types of controls.* In arguing that an ICS should be broader than an NPDES permit, some commenters requested that EPA approve state water quality management plans as ICSs. EPA remains convinced that such plans would not satisfy the requirements of section 304(l) because these plans are not directly enforceable (although they are binding on the states) and therefore they cannot ensure, by themselves, that limitations will be achieved within the deadlines of section 304(l). This problem of enforceability could be solved by defining ICSs to include not only the plans but also the permits necessary to implement them. EPA is rejecting such an approach because the two years allowed by section 304(l) for developing ICSs does not allow for a sequential listing of waters, development of state plans and development of permits based on the plans. To meet the section 304(l) deadlines states would, for the most part, be compelled to develop permits before completing the planning process. EPA believes that this suggestion would not make good use of the planning process, and would consume resources without improving ICSs.

Several commenters argued that EPA's definition of an ICS makes point sources responsible for nonpoint source discharges and urged EPA to require nonpoint source controls as a part of ICSs. EPA agrees with the commenters that nonpoint sources can be an important toxics problem on some of the waters identified for control under section 304(l). EPA is not incorporating nonpoint source controls into ICSs because EPA does not believe that Congress gave EPA the authority to impose nonpoint source controls as a part of an ICS. The statute clearly contemplates the implementation of ICSs through NPDES permits (through the reference to "effluent limitations under section 402"), which only provide point source controls. The legislative history supports this interpretation. See Rep. No. 99-1004, 99th Cong., 2d Sess. pages 126-130. Furthermore, Congress added section 319, which addresses nonpoint source programs, at the same time as section 304(l). Section 319 requires identification of waters that need nonpoint source controls to meet water quality standards, and requires submission of management programs which identify, among other things, methods for controlling nonpoint sources of pollution. Because Congress wrote a separate section for nonpoint source programs, EPA does not believe that Congress intended for EPA to establish a nonpoint source control program under section 304(l). As stated

in the proposal, EPA urges states to implement nonpoint source controls wherever necessary to meet water quality standards. To further encourage nonpoint source controls EPA interprets the statute's mandate to consider "existing controls on point and nonpoint sources of pollution," section 304(l)(1)(D), as including nonpoint source controls that will be in place by June of 1992. (EPA explains the meaning of this interpretation more thoroughly in the March, 1988 guidance.)

Some commenters argued that EPA's definition of an ICS does not account for multiple discharges to a receiving water. EPA disagrees. An ICS must be consistent with any total maximum daily loads (TMDLs) for the water segment and wasteload allocations developed for the discharge (where the wasteload allocation is approved by EPA pursuant to 40 CFR 130.7). An ICS must also include documentation indicating that a water will meet all applicable water quality standards. EPA believes this definition implements the congressional desire for coordination in the evaluation and control of point sources discharging the same pollutants to the same water segments.

b. *EPA's point source-based approach.* EPA's definition of an ICS and the amendments to § 123.46(a) require an ICS for each point source on the (C) list. Some commenters noted that section 304(l)(1)(D) requires ICSs for "each such segment" identified in paragraph (B). EPA acknowledges that section 304(l)(1)(D) refers to waterbody segments. EPA considered defining an ICS as the aggregation of all permits and supporting documentation for a water segment. EPA is not adopting this expanded definition of an ICS because congressional intent in enacting section 304(l) is better accomplished by retaining the proposed definition. If permits were aggregated to form an ICS for a water segment then the ICS could not be approved, and in many cases would not be implemented, until all permits for the water segment were developed and incorporated into the ICS. Furthermore, the aggregation of permits would result in the same level of control as single-permit ICSs. Given the deadlines that Congress imposed in section 304(l) it is clear that Congress established a premium on expeditious attainment of water quality standards. EPA sees no reason to delay an ICS until all permits for a water segment are developed. In addition to finalizing the proposed definition, EPA is amending § 123.46(a) to make clear that ICSs should be submitted for each point source on the (C) list.

EPA rejected the idea of creating a new mechanism for controlling point sources under section 304(l) because a new mechanism is not necessary to implement section 304(l), and the deadlines in section 304(l) do not allow enough time to design, promulgate and implement a new mechanism for controlling discharges of pollutants to surface waters.

In urging EPA to take a segment-based approach some commenters argued that such an approach is necessary to account for multiple discharges to a water segment. However, an ICS must be consistent with wasteload allocations and must include documentation indicating that the effluent limitations are sufficient to meet the wasteload allocation. EPA believes that these requirements implement the congressional desire for coordination when evaluating and controlling point sources discharges of the same pollutant to the same water segment.

c. *Approval of permits that are not yet effective.* Where a state demonstrates that a final permit cannot be issued by February 4, 1989, a draft permit and supporting documentation may qualify as an ICS. However, such a draft permit must be accompanied by a schedule indicating that the final permit will be issued on or before February 4, 1990. One commenter asked EPA to require a more burdensome showing from states before allowing until February 4, 1990 to issue the final permit. EPA believes that the section 304(l) requirement for achieving controls as soon as possible along with a deadline for issuing a final permit is sufficient to guide the states and regions in meeting the requirements of section 304(l).

EPA's definition of an ICS includes draft permits because the description of an ICS in section 304(l)(1)(D) allows for such an interpretation, and because it is unrealistic to expect final NPDES permits to be prepared for every point source on the (C) lists within the ambitious deadlines of section 304(l). Water quality-based effluent limits can be technically difficult to prepare and are often subject to extensive public comment during the permit development process. Today's proposal to include draft permits in the definition of an ICS requires the permitting authority to prepare the effluent limitations required by § 304(l)(1)(D), but at the same time, gives the states the necessary flexibility to meet the ambitious deadlines of section 304(l).

A draft permit prepared as an ICS under section 304(l) must be issued as a final permit within one year of establishment of the ICS. Therefore, if a state submits a draft permit to EPA on

or before February 4, 1989, the ICS must be issued as a final NPDES permit on or before February 4, 1990. In the case of state-issued ICSs, the one year time period allows EPA to exercise its authority under section 304(l)(2) if a state fails to issue a final NPDES permit within the one year time period. In the case of EPA-issued ICSs, the ICS may be a draft permit, and like the states, EPA would also have up to one year in which to issue a final NPDES permit.

Some commenters argued that EPA's choice of a one year deadline for a state to finalize draft permits was arbitrary and the connection to EPA's implementation of section 304(l) was too tenuous to support it. EPA believes that to ensure success of the section 304(l) program no ICS should be unconditionally approved until it represents the state's final decision to implement controls. If an approval contingent upon a final decision by a state must be subsequently disapproved, EPA must have sufficient time to prepare an ICS by its deadline of June 4, 1990. EPA believes that allowing states more than one year to issue final permits would jeopardize EPA's ability to meet the section 304(l) deadlines. In addition, EPA believes that one year is sufficient time for the states to develop final permits from approved drafts.

Where EPA approves a draft permit as an ICS, EPA's approval is automatically conditioned on the state's meeting the schedule for issuing the final permit. If a state fails to meet the schedule for issuing the final permit, then EPA may exercise its authority to disapprove the ICS and implement section 304(l).

An NPDES permit usually becomes effective 30 days after a final decision to issue or modify the permit unless an evidentiary hearing is requested under 40 CFR 124.74. Evidentiary hearings can delay the effective date of the conditions challenged in the permit. Because these potential delays could jeopardize the ability of EPA and the states to meet the deadlines in section 304(l), and because a final permit reflects the final decision of the permitting authority with respect to the permit, EPA will accept a final (but not necessarily fully effective) NPDES permit as an ICS.

d. *CERCLA sites.* As EPA noted in the proposal, it is possible that some CERCLA sites will be subject to section 304(l) because these sites can be point source discharges of a priority pollutant. If a CERCLA site qualifies for the (C) list under section 304(l), then the site must also satisfy section 304(l)(1)(D) relating to ICSs, including the deadlines in section 304(l). For "off-site" response actions, the CERCLA site discharger

must obtain an NPDES permit, and will therefore satisfy section 304(l) in the same way as other point sources subject to section 304(l)(1)(C). For "on-site" actions however, the discharger must meet all "applicable or relevant and appropriate requirements" of the CWA, but is exempt under section 121 of CERCLA from the procedural requirements of the NPDES permitting process. Therefore, on-site actions that are subject to section 304(l) will satisfy paragraph (D) of section 304(l) through compliance with applicable or relevant and appropriate requirements under the CWA, as described in the decision document for that on-site response action. Although EPA expects that there will be relatively few CERCLA sites subject to section 304(l), EPA emphasizes that the ICS for any such CERCLA site is subject to the deadlines in section 304(l). The proposed definition of an ICS at § 123.46(c) includes CERCLA decision documents for on-site response actions.

e. *Non-approved states.* A state that is not approved by EPA to administer the NPDES program will fulfill its obligations under section 304(l)(1)(D) by preparing and submitting wasteload allocations to the Regional Offices for EPA review and approval. Under the NPDES program, non-approved states assist EPA in issuing permits by providing EPA with background information, wasteload allocations, and certifications under section 401 of the CWA. EPA uses the wasteload allocations to prepare the NPDES permits for the state. The role of non-approved states with respect to ICSs will be the same as their role with respect to NPDES permits. Non-approved states are responsible for preparing wasteload allocations for each point source on the (C) list. The Regional Offices will prepare and issue, in cooperation with non-approved states, final NPDES permits in the state. EPA received comments both supporting and criticizing this interpretation of the role of non-approved states. One commenter argued that the minimal role of non-approved states undermines EPA's definition of an ICS as an NPDES permit. EPA disagrees with the commenter because section 304(l)(1)(D) provides that individual control strategies are to achieve reductions in discharges from point sources "through the establishment of effluent limitations under section 402." Non-approved states do not have the authority to establish effluent limitations in NPDES permits. Therefore, the role of non-approved states is necessarily different from that of approved states in implementing

section 304(l). Furthermore, a non-approved state's role will not be minimal. Preparing WLA's and providing section 401 certifications requires the state to be fully involved in the preparation of an ICS. Although state certifications under section 401 of the CWA are required for ICSs, EPA's regulations at 40 CFR 124.53 provide that a state will be deemed to waive its right to certify under section 401 of the CWA if the state fails to exercise this right within 60 days from the date that EPA mails the draft permit to the state.

Section 304(l) establishes a three-year deadline for achieving water quality standards, whereas section 301(b)(1)(C) requires water quality standards to be met by July 1, 1977. The different deadlines in the two sections raise the question of how the two sections interact. EPA believes that Congress did not intend for section 304(l) to repeal the July 1977 deadline in section 301(b)(1)(C). Rather, Congress recognized that permittees will need a reasonable amount of time, not to exceed three years, to comply with new effluent limits that are necessary to achieve new water quality standards, or re-interpretations of existing water quality standards. On the other hand, there is no indication that Congress intended for section 304(l) to be an extension for permittees who have already failed to comply with effluent limitations. An ICS may not extend a compliance schedule for achieving effluent limits if the permittee has already failed to abide by the compliance schedule. Also, where new effluent limits will require construction or other activities (e.g. wastewater treatment system optimization, pretreatment program implementation, etc.) an ICS may include a compliance schedule for such activities. The reason for this distinction is that section 304(l) requires that water quality standards be met "as soon as possible." If a permit already includes a compliance schedule, then the permitting authority has already given the permittee a reasonable time to comply with effluent limits and therefore achieve water quality standards. Therefore, where a compliance schedule has not been met, the ICS cannot extend the schedule. Rather, an enforcement order may be required as part of the supporting documentation for the ICS.

EPA received comments requesting EPA to extend the deadline for compliance with the effluent limits imposed pursuant to section 304(l). EPA does not have the authority to extend these statutory deadlines. EPA does, however, have the authority to exercise

its enforcement discretion. The following discussion explains the range of actions EPA may take in appropriate cases.

It is possible that some permittees may not meet the effluent limits on or before the deadline in section 304(l) for achieving applicable water quality standards. For example, the treatment technology may not be immediately available to reduce the discharge of a priority pollutant to the levels necessary to protect aquatic life and human health. In such cases, the NPDES permit may contain a schedule of compliance that leads to compliance with section 304(l) and other requirements of the CWA. (Note, however, that a schedule of compliance must require compliance no later than applicable statutory deadlines.)

If the permittee does not achieve effluent limits within the time specified in the permit (which must be no later than the applicable deadline in section 304(l)), the CWA provides for a range of enforcement actions. These actions are provided for in section 309 of the CWA and include administrative orders, administrative penalty orders, and civil or criminal judicial actions. The appropriate enforcement response is determined on a case-by-case basis. In limited cases in the past, EPA has issued administrative orders concurrently with an NPDES permit where the effluent limits are effective immediately upon permit issuance. Factors which are considered when determining the appropriate enforcement response include but are not limited to: the potential impact of the discharge on human health or the environment; the compliance history of the permittee; and any good faith efforts by the permittee to achieve compliance.

EPA recognizes that there may be situations where compliance with applicable water quality standards will require ICSs for a number of point sources on a stream segment, or may require nonpoint source controls. More than one point source may contribute the same priority pollutant to a waterbody identified on the "B" list, and therefore, controls on only one point source may not achieve water quality standards. In other cases where there are significant loadings of a toxic pollutant from nonpoint sources, effluent limits for the point sources, by themselves, may not attain and maintain applicable water quality standards. (See the discussion of the phrase "entirely or substantially" in section III.B.2 of this preamble.) In these cases, it is EPA's position that an ICS may satisfy the language in paragraph (D) of section

304(l), and in § 123.46(c), (which require the ICS to achieve water quality standards), if the effluent limits for the point sources are consistent with a wasteload allocation for the point source. This approach allows the permitting authority to develop an ICS for each point source that, together with other point or nonpoint source controls, is designed to attain and maintain applicable water quality standards. This approach is also consistent with EPA's existing surface water toxics control program, in which each point source is obligated to reduce its contribution of a pollutant according to its wasteload allocation. The result of this approach should be substantial reductions in point source contributions of priority pollutants, which is consistent with Congress' intent in enacting section 304(l).

Where a waterbody on the (B) list has a significant nonpoint source of a priority pollutant that could impede progress toward achieving water quality standards, EPA and the states should address the nonpoint source using all available authorities including state and local authorities and section 319 of the CWA. (Note that where point and nonpoint sources on the same waterbody contribute different priority pollutants, the degree of nonpoint source contributions will not affect the decision whether to list the water under paragraph B of section 304(l)(1). For more information see the discussion of the (B) list in section III.B of this preamble.)

Nonpoint source loadings are included in the process of developing water quality-based effluent limits for point sources because nonpoint sources are considered when developing TMDLs and WLAs under section 303(d) of the CWA. EPA's regulations at 40 CFR 130.2 require that TMDLs account for nonpoint source loadings. The regulations also specify that TMDLs provide for "tradeoffs" between point sources and nonpoint sources, and that TMDLs submitted under 40 CFR 130.7 must be approved by EPA. EPA emphasizes that nonpoint source controls can make significant improvements in water quality. For many waters, the most significant sources of pollutants are nonpoint sources. Nonpoint source controls are, in some cases, more cost-effective than point source controls, and the regulations at 40 CFR 130.2 provide that the relative cost of point source and nonpoint source controls may be considered (among other factors such as reliability and technical achievability) when preparing TMDLs for the pollutant

of concern. Where possible, EPA encourages the states to use nonpoint source controls to meet the objectives of section 304(l) of the CWA to the extent that nonpoint source controls are adopted and implemented through appropriate state and Federal authorities.

Section III.B.2 of this preamble explains that a waterbody may qualify for the (B) list if the source of the priority pollutant is sediment deposited or contaminated due to the discharge of an active point source subject to section 402 of the CWA. For example, the effluent from an active point source discharge may contain priority pollutants that are deposited as sediments in the receiving water, or the effluent may contaminate existing sediment in the receiving water. In such cases the sediment can interfere with the designated use of the water, and the releases can cause excursions above other applicable water quality standards. Where contaminated sediment is caused by an active point source, it is EPA's position that the contamination should be characterized as "due to the discharge from a point source". Several commenters said that an NPDES permit could not require dredging of sediments, and that EPA should not attempt to write ICSs for these sources based on contamination of sediments. Today's regulations do not require this. Rather, EPA is requiring ICSs to contain the necessary effluent limits to prevent further contamination of the sediment and water column. It is EPA's goal that the ICSs for these active point sources achieve applicable water quality standards within the time frames of section 304(l). However, because controls for in-place sediments raise unique problems for the NPDES program, an ICS for such a point source should, at a minimum, prevent additional accumulation or contamination of the sediments that are the source of the toxic pollutant.

Under EPA's interpretation of section 304(l), all permits for point sources subject to section 304(l)(1)(C), including final or effective permits, must be included in the review required by section 304(l). It is EPA's position that section 304(l) gives EPA the authority to reopen a permit before the term of the permit expires regardless of whether the permit has a reopener clause.

EPA's authority under section 304(l) to reopen final and effective permits is supported by the requirement that EPA implement ICSs where EPA disapproves, or the state fails to submit an adequate ICS. Given that ICSs must be implemented through limitations

under section 402 the alternatives to reopening permits would not necessarily meet the requirements of section 304(l)(1)(D). The alternatives are: (1) Allow ICSs to be unenforceable plans that might incorporate limitations under section 402 at some later time; (2) omit certain point sources from the section 304(l) process because the permits for these point sources are not due for review under 40 CFR 123.44; or (3) wait until a permit expires (possibly after the deadlines in section 304(l)) to change the terms of the permit. None of these alternatives would satisfy the requirement that ICSs attain water quality standards by the deadlines in section 304(l). Therefore, EPA will review, and possibly disapprove under section 304(l), final or effective permits regardless of whether the permit has a reopener clause.

Some commenters thought it inequitable to reopen a permit before it expires. EPA has attempted to ease the planning problems created by an unanticipated change in permit terms by requiring that the permit be in draft form three years before the permittee is required to comply with the limits, and in final form two or more years before such compliance is required. Furthermore, the definition of an ICS as a draft or final NPDES permit, and the use of compliance schedules, give the permittees added flexibility in meeting the requirements of section 304(l).

One commenter requested that EPA apply the requirements of 40 CFR 123.44 (which describe the procedures for EPA disapproval of state-issued NPDES permits) to disapproval of ICSs in order to implement the congressional requirement that EPA issue the ICSs "in cooperation with the state and after opportunity for public comment." The commenter seemed to indicate that EPA should apply these processes before the June 4, 1989 disapproval of a state's ICS. Although EPA has solicited extensive informal cooperation with the states in the approval/disapproval process, EPA believes that the formal requirement for cooperation with the states applies during EPA's development of an ICS after disapproval. As the following discussion indicates, EPA does not believe that applying the requirements of § 123.44 would be the best way to incorporate the requirement for cooperation with the state in the development of the ICS.

As EPA stated in the proposal, to implement section 304(l), EPA will use existing procedures where possible. However, EPA will use the section 304(l) process where pre-existing regulatory procedures are inconsistent with the

section 304(l) review process. EPA is not requiring compliance with § 123.44 (the procedures for EPA's objections to state permits) because it would be inconsistent with the section 304(l) review process. Section 402 of the CWA establishes conditions that are prerequisites to EPA's authority to issue permits in approved states. For example, section 402 requires an approved state to submit a permit to EPA for review and requires EPA to object in writing within ninety days, as prerequisites to EPA's authority to issue the permit. Although the procedures under section 304(l) provide an equivalent opportunity for state-EPA cooperation in the development of permits, section 304(l) also gives EPA the authority to issue permits where the state fails to issue permits that satisfy section 304(l). Under the existing regulations the state submits a proposed permit to EPA, and EPA then has 90 days to object to the terms of the permit. After EPA's objection, the state has 90 days to request a public hearing or to re-submit the permit to EPA. If EPA grants a public hearing, the state may re-submit the permit within 30 days after the Administrator issues the post-hearing decision. If the state does not re-submit the permit within the time limits in § 123.44, the exclusive authority to issue the permit passes to EPA.

These procedures are not appropriate for the section 304(l) review process. First, EPA must review final or effective permits in the ICS review process, not just draft or proposed permits. Second, section 304(l) gives EPA a deadline by which to review an ICS, not the 90 days provided for in § 123.44. Third, section 304(l) makes no provision for the state to re-submit a disapproved ICS. Rather, section 304(l) directs EPA to work in cooperation with the state in preparing and implementing EPA's ICSs. Finally, section 304(l) requires EPA to provide for public notice and an opportunity to comment on the ICSs, not just an opportunity to request a hearing as provided under § 123.44. Taken as a whole the ICS review process is inconsistent with the permit review process under § 123.44. Even though EPA is not requiring the use of the procedures in § 123.44, EPA is sensitive to the commenter's concern that states be as involved as possible in the issuance of any disapproved ICS. EPA regions are required to consult with the state in the development of any ICSs by the language that was codified at § 123.46(a). Although EPA has a limited time in which to develop the ICS, EPA will seek a partnership with the states in the process. If EPA issues the permit the

state would review and certify the permit under section 401 of the CWA. In addition, if EPA issues the permit, EPA will provide for public comment on the ICS through the permit development process, which will provide another opportunity for the state to comment on EPA's proposed ICS.

For disapproved ICSs, EPA will use the existing permit issuance procedures in Part 124 to issue these ICSs. After EPA disapproves an ICS that is a draft or final NPDES permit, the Agency will use the procedures described in 40 CFR Part 124 to issue a final ICS. If EPA disapproves a decision document for an on-site response action under CERCLA, the Agency will use the procedures under CERCLA for issuing these ICSs.

Some commenters asked EPA to explain the status of permits issued by EPA in approved states. EPA intends to treat permits issued by EPA in authorized states in the same manner as EPA-issued permits following EPA objection to a state-issued permit. The Regional Administrator will issue the permit in accordance with 40 CFR Parts 121, 122, and 124 and any other guidelines and requirements of the CWA.

EPA expects that many of the ICSs that are subject to section 304(l) will be final state-issued permits that EPA has previously reviewed under 40 CFR Part 123. When a state submits an ICS to EPA for review under section 304(l), any previous EPA decision to not object to the permit under Part 123 does not waive EPA's authority to review and approve or disapprove the ICS under section 304(l). If EPA reviewed a permit under Part 123, EPA reserves the right to review the same permit under the provisions of section 304(l).

2. Technical Review Criteria. Section 304(l) requires an ICS to achieve applicable water quality standards as soon as possible but not later than three years after the ICS is established. Although this language establishes a general standard for evaluating an ICS, the language says little about the permit conditions necessary to ensure that applicable water quality standards will be achieved. EPA will use the review criteria in 40 CFR 123.46(f) to evaluate whether an ICS meets the requirements of section 304(l). The criteria that EPA will use to review ICSs are the same as the criteria EPA uses to review the water quality-based effluent limits for any permit. Section III.A of this preamble discusses amendments to § 122.44(d). These amendments describe how to establish water quality-based effluent limits in NPDES permits. Effluent limits derived from water quality standards must satisfy

§ 122.44(d). The regulations at § 123.46(f), provide that ICSs shall be reviewed according to the criteria in § 122.44(d). EPA is also amending § 123.44(c) to incorporate the review criteria for ICSs into EPA's criteria for reviewing other permits not subject to section 304(l). Section 123.44(c) enumerates the criteria that EPA may use to review state-issued permits. By using the same criteria for reviewing ICSs and for reviewing permits that are not subject to section 304(l), EPA is ensuring consistency in reviewing the technical adequacy of these two categories of permits.

Some commenters asked whether EPA was intending to apply these requirements to lists and ICSs submitted before this final rule becomes effective, and argued that to do so would be to apply the regulation retroactively, which is prohibited. The regulations promulgated today will apply to EPA's decisions issued after the effective date of today's regulations. EPA does not view this as applying the regulations retroactively. Rather, EPA is applying the criteria for review of lists and ICSs to decisions it makes after the effective date of these regulations. Therefore, although these regulations will not apply retroactively, EPA anticipates that the concepts embodied in the rule would apply in most cases of EPA's review of lists and ICSs unless the discharger or the state can show why they should not apply.

Where EPA disapproves an ICS, section 304(l)(3) requires EPA to implement section 304(l) in a manner which will achieve applicable water quality standards on or before June 4, 1993. A final permit issued after EPA disapproves the permit under section 304(l) must include language in the fact sheet or statement of basis that identifies the permit as an ICS that satisfies the requirements of section 304(l) of the CWA. This requirement is similar to the language in draft permits subject to section 304(l) which identifies the permit as an ICS. The language in the final permit will identify for the public and the regulated community those ICSs which satisfy the requirements of section 304(l).

D. EPA Review of Lists and Individual Control Strategies

Section 304(l) requires EPA to review and approve or disapprove the lists and ICSs submitted by a state. If a state fails to submit the lists or ICSs, or if a state submits inadequate lists or ICSs, then EPA must disapprove the lists or ICSs. Section 304(l)(2) gives EPA 120 days to approve or disapprove a state's ICSs, and where EPA disapproves an ICS,

section 304(l)(3) requires EPA to implement section 304(l)(1) on or before June 4, 1990. Today's rules establish the same review procedures for the lists as for ICSs. Although the deadline established for ICSs does not explicitly apply to EPA's review of lists, EPA determined that it would not be appropriate for EPA to establish different deadlines for the approval of lists. Some commenters argued that EPA does not have the authority to approve or disapprove lists because section 304(l)(2) speaks only of the disapproval of ICSs. EPA believes however that the Agency is authorized to review both the lists and ICSs. First, the introduction in section 304(l)(1) requires all the lists and ICSs to be submitted "to the Administrator for review, approval, and implementation . . ." EPA's final rulemaking of January 4, 1989 codifies this language at 40 CFR 123.46(a) and 130.10(d). Review and approval would be meaningless if the statute did not allow disapproval where the review reveals inadequacies in the lists submitted. Second, section 304(l) requires the Administrator to prepare ICSs where the state fails to submit them. EPA believes that this provision would not make sense if EPA did not also have the authority to disapprove a state's decision to not submit an ICS to EPA for review. Such a disapproval depends on a review and possible disapproval of at least the paragraph (B) lists submitted under section 304(l)(1).

The first step in the review process occurred when the states submitted their lists and ICSs to the Regional Offices for review. (The state's deadline for submitting the lists and ICSs was February 4, 1989.) The Regional Offices must approve or disapprove the lists and ICSs by June 4, 1989.

Several commenters asked how the process subsequent to the initial decision would work. The next steps in the process depend on the Regional Administrator's decision of approval or disapproval. If the Regional Administrator approves a state's decisions with respect to the lists of waters and ICSs, and decides that additional public participation is unnecessary (see paragraph 2 below) the decision will be final and the permits will be implemented according to the normal permitting procedures (including permit appeal, judicial review, enforcement, etc.). If the Regional Administrator takes public comment on the lists and ICSs then the region will consider the comments and issue another decision regarding the lists and ICSs in approximately January of

1990, but may take until June 4, 1990 to issue ICSs (where necessary).

1. Partial Approval and Disapproval of State Submittals

Section 304(l) gives EPA the discretion to approve or disapprove an entire list of waters or point sources, or to approve or disapprove individual waters on the list, or individual point sources on the (C) list. EPA has the same discretion to approve or disapprove one or more ICSs. The basis for this conclusion is the requirement in section 304(l) that EPA implement the listing and ICS requirements of the statute where the state fails to submit an ICS in accordance with paragraph section 304(l)(1). Submission of an ICS in accordance with this paragraph includes listing the water where appropriate, and preparing an adequate ICS. For simplicity EPA has decided to refer to approvals or disapprovals of a listed waterbody rather than an entire list of waterbodies.

As described in section III.B.1 of this preamble, section 304(l) requires each state to submit three lists of waters to EPA. EPA will review each waterbody on each of the three lists. If the waterbody meets the criteria described in the regulations at § 130.10(d) of today's rulemaking, then EPA will approve the state's decision to list that waterbody. If EPA identifies a waterbody that qualifies for one or more of the three lists of waters, and the state had not included the waterbody on the appropriate list(s), then EPA will disapprove the state's decision to not list the waterbody under the applicable paragraph(s) in its notice of approval and disapproval. For example, if a state included a waterbody on the (A)(i) list, but not on the (B) list, and if EPA determined that the waterbody qualified for both lists, then EPA would approve the decision to list the waterbody on the (A)(i) list, but would disapprove the state's decision to not place the waterbody on the (B) list. Another example is where a state does not include a waterbody on any of the three lists, but EPA determines that the waterbody qualifies for one or more of the lists. EPA would disapprove the state's decision to not list the waterbody under each paragraph for which the waterbody qualifies.

EPA also has the authority to disapprove the listing of a waterbody by a state if the waterbody does not qualify for the list. For example, if the state includes a waterbody on the (B) list, and EPA determines that the waterbody does not qualify for the (B) list, EPA would disapprove the state's listing of the waterbody on the (B) list, and

indicate this decision in EPA's notice of approval or disapproval.

EPA will also review each point source on the (C) list. EPA will approve the listing of each point source that meets the criteria in section 304(l)(1)(C). EPA will disapprove the listing of any point source that does not satisfy section 304(l)(1)(C), and will disapprove a state's decision to not list any point source that meets the criteria in section 304(l)(1)(C).

Like EPA's review of individual waters, EPA will review each ICS, and will approve each ICS submitted by a state that meets the requirements of an ICS. EPA will also disapprove a state's decision to not submit an ICS if EPA determines that the state should have included the ICS in its submittal to EPA. The notice of approval and disapproval, explained in the following section, will include EPA's decisions with respect to each water, point source, and ICS.

2. Public Participation

The only explicit requirement for public participation in section 304(l) is under section 304(l)(3) of the CWA. Under this section, if a state fails to submit one or more ICSs, or if EPA disapproves one or more ICSs, then EPA must implement the requirements of section 304(l)(1) within one year after notice and opportunity for public comment. This section describes the additional public participation procedures that EPA will conduct during the section 304(l) process. In summary, whether EPA will be required to conduct public participation will depend on two factors: the existence of either factor will be enough to trigger the notice and comment requirements. The first factor is whether the state conducted adequate public participation in its development of the lists and ICSs: if it did not then EPA will do so. The second factor is whether EPA is disapproving any of a state's decisions: any disapprovals will be subject to public comment. In addition, the regulations allow the Regional Administrator to request public comment when he believes that it would be useful. Today's regulations on public participation amend § 130.10(d) (relating to lists of waters), and § 123.46(c) (relating to ICSs).

EPA received a number of comments objecting to what the commenters perceived as a new requirement for public participation in the development of the lists and ICSs under section 304(l). They argued that the states could not comply with such a requirement when it was only proposed a short time before the lists and ICSs were due. Commenters also argued that section 304(l) does not require public

participation, and some claimed that EPA does not have the authority under the CWA to take public comment on the lists and ICSs. EPA emphasizes that these regulations do not require any state public participation procedures under section 304(l). Instead the proposed regulations, and the regulations promulgated today, require the Regional Administrators to give the public an opportunity to comment on the lists and ICSs if the state has not provided such an opportunity. Where the state has provided such an opportunity then EPA believes it will be appropriate in many cases to rely on the state's public participation procedures rather than duplicating them. The principal situation in which the Regions will take public comment on the state's section 304(l) submissions is where EPA is disapproving part of a state's submission (in which case EPA will always provide an opportunity for comment on the disapprovals). There may be some cases where the state has provided adequate opportunity for comment, and where the Region approves a state's entire submission but the Regional Administrator believes that additional public comment will be useful. This could occur if, for example, a Region receives a request from the public with reasons why an additional comment period is warranted. In such a case the regulations leave the decision of whether to provide for comment to the discretion of the Regional Administrator.

EPA received comments questioning its authority to conduct public participation where the statute does not specifically require it. EPA believes that section 501 provides authority and section 101(e) encourages EPA to provide an opportunity for public participation.

One commenter argued that EPA should provide for public comment on EPA's decisions for all states. The commenter argued that groups interested in the section 304(l) process did not know that they would be required to rely on only the state participation procedures. EPA is not persuaded by this argument. First, the guidance published in March 1988 alerted interested persons that EPA might rely on state public participation procedures in its review process (see EPA Guidance pp. 35-39). Second, EPA believes that interested persons should present all arguments to the states, where an opportunity is provided. In general EPA has a strong commitment to providing adequate public participation in all programs. At the same time EPA wants to avoid redundant procedures

that may simply waste resources of the states, the public and EPA and delay the implementation of section 304(l).

EPA intends to rely, to the extent possible, on state public participation procedures. EPA has encouraged the states to provide for full public participation when developing their lists and ICSs under section 304(l). Adequate state public participation procedures must, at a minimum, provide for public notice and an opportunity to comment on the state's lists and ICSs. Parts 25 and 124 of EPA's regulations describe procedures for public notice and comment that states may use under section 304(l). Where a state does provide adequate public participation on the lists and ICSs, and where the Regional Administrator approves all of a state's decisions with respect to the lists and ICSs, today's regulations give the Regional Administrator the discretion to forego an additional round of notice and comment on the lists and ICSs.

Where the Regional Administrator determines that a state did not provide for adequate notice and opportunity to comment on the lists and ICSs, EPA's notice of approval or disapproval must include all approvals and disapprovals. Such notice would include all of EPA's approvals and disapprovals for all waters and ICSs subject to section 304(l).

If a state provides for adequate public participation, but the Regional Administrator disapproves any of a state's decisions with respect to the waters, point sources, or ICSs, then EPA's notice must include each of the Agency's disapprovals. In this case it is not necessary for the notice to include EPA's approvals of a state's decisions under section 304(l). However, the Regional Administrator has the discretion to include EPA's approvals in the notice provided under section 304(l). (See 40 CFR §§ 123.46(e) and 130.10(d)(7).)

The final rules require the Regional Offices to mail a copy of the notice to the appropriate state Director. The final rule requires the Regional Administrator to publish a notice of availability, either: (a) in a daily or weekly newspaper with state-wide circulation, or (b) in the *Federal Register*. (See 40 CFR 123.46(e) and 130.10(d)(10).) The notice of availability tells the public where to obtain copies of EPA's notice of approval or disapproval, but in most cases will not list all the approvals and disapprovals. Under today's rules, public participation for the lists and ICSs occurs at the same time, and the Regional Offices will probably use the same notice for the lists and ICSs.

EPA is adding the option to substitute *Federal Register* notice for notice in a state newspaper because in some situations the *Federal Register* may be a more effective way to reach an interested audience than a state newspaper. Furthermore, some states do not have a newspaper that has statewide circulation. The notice in the *Federal Register* will not substitute for the notice that is required to be mailed directly to interested persons.

EPA considered providing notice and an opportunity for comment on a state's submittal before issuing a notice of approval or disapproval. EPA rejected this approach because such notice is not required under section 304(l) and because the ambitious deadlines in section 304(l) preclude public notice and comment before EPA approves or disapproves a state's lists and ICSs. Some commenters urged EPA to adopt this approach, but EPA remains convinced that providing an opportunity to comment on decisions during the period for petitions (120 days after June 4, 1989) will be sufficient.

a. *Contents of EPA's Notice of Approval or Disapproval.* Today's amendments to § 123.46 and to § 130.10(d) describe the contents of the public notice provided under section 304(l). If the Regional Office combines the notice for the lists and ICSs, then each notice would include the following:

1. The name and address of the EPA office that reviews the state's submittals.
2. A brief description of the section 304(l) process. For example, the notice should describe the requirement to identify point sources of toxic pollutants, and should discuss EPA's review of the state's submittal.
3. A list of the waters disapproved under paragraph (A)(i), (A)(ii), and (B), and a short finding that the waters do not meet the applicable review criteria.
4. A list of point sources disapproved under paragraph (C) of section 304(l)(1), and a short finding that the point sources do not satisfy the criteria of paragraph (C).
5. A list of ICSs disapproved under paragraph (D) of section 304(l)(1) and a short finding that the ICSs do not meet the applicable review criteria.
6. If the Regional Administrator determines that a state did not provide adequate public notice and an opportunity to comment on the waters, point sources, or ICSs prepared under section 304(l), or if the Regional Administrator chooses to exercise his or her discretion, a list of approvals and a short finding that the approved waters,

point sources, or ICSs meet the applicable review criteria.

7. The name, address, and telephone number of the person at the Regional Office from whom interested parties may obtain more information.

8. The location where interested persons may examine EPA's records of approval or disapproval.

9. Notice that written petitions or comments are due within 120 days.

The contents of these notices are similar to the notices given under 40 CFR 124.10. EPA believes that by using existing procedures wherever possible the agency will minimize the administrative burden of implementing section 304(l).

EPA's notice of approval or disapproval allows 120 days for public comment. The 120-day comment period coincides with the 120 days described in section 304(l)(3), which allows interested persons to petition EPA to list additional waters. Under section 304(l)(3), EPA will consider for listing any navigable water for which any person submits a petition to EPA. Under the statute, interested persons must submit petitions on or before October 4, 1989. Today's rule uses the same 120-day period for receiving petitions and for taking comments on EPA's notice of approval and disapproval. EPA chose to provide a 120-day comment period because it would be impractical to close the public comment period on the notice of approval or disapproval before the statutory deadline for petitions. If EPA closed the comment period before October 4, 1989, it is possible that the Agency would receive petitions for additional listings after the close of public comments.

b. *Public Hearings.* EPA is not proposing new regulations for public hearings under § 304(l). The 120-day comment period allows sufficient public involvement in reviewing EPA's decisions with respect to the lists and ICSs. Furthermore, new regulations for public hearings are not necessary because the Regional Administrator may hold a public hearing if he or she finds a significant degree of public interest in the state's submittal.

c. *Petitions for Additional Listings.* Under section 304(l)(3), EPA must consider petitions from the public for additional listings of navigable waters. Petitions are due within 120 days after disapproval under section 304(l)(3), and should be submitted to the appropriate Regional Administrator. A petition must identify a waterbody with sufficient detail so that EPA is able to determine the location and boundaries of the waterbody. For example, the petition

could identify the waterbody using the name and number assigned to the waterbody by EPA's REACH file. The REACH file is a data base that includes a geographic description of the nation's surface waters, and the information is available from EPA's Regional Offices. Another method for identifying a waterbody is to use the common name for the waterbody, and give the geographic boundaries for the water. The petition must identify the list or lists for which the waterbody qualifies. The petition must include sufficient supporting information or data to show that the waterbody satisfies the criteria in section 304(l) of the CWA and 40 CFR § 130.10(d)(6). EPA needs this information to evaluate the petition. If EPA determines that the petition demonstrates that the water should be listed, and the state has not listed the water, then EPA will disapprove the state's failure to list the water.

EPA received comments that it should require the petitioner to provide extensive information before EPA would consider the petition. EPA is rejecting this suggestion because it does not want the petition requirements to be so burdensome as to discourage interested persons from petitioning EPA with regard to waters that should be listed. At the same time, to grant the petition, EPA needs sufficient information indicating that the water meets the criteria for listing in CWA section 304(l) and 40 CFR 130.10(d)(6). This approach will discourage frivolous petitions while at the same time avoiding a cumbersome process for preparing and submitting petitions.

Petitions submitted to EPA pursuant to section 304(l)(3) are limited to adding waters to one or more of the three lists of waters prepared under section 304(l)(1). Under section 304(l)(3), an interested party may not petition EPA to delete a water, point source, or ICS from the lists prepared under section 304(l). The relevant language describing petitions under section 304(l)(3) limits the petitions to navigable waters "... for listing under [section 304(l)]," and does not discuss deleting waters, point sources, or ICSs from the lists prepared under section 304(l). As a result of the statutory language, the public may submit petitions only for adding waters to one or more lists of waters prepared under section 304(l).

d. Response to Comments and Petitions. After the close of the public comment period on October 4, 1989 the Regional Offices will provide, as soon as practicable but not later than June 4, 1990, a response to the comments and petitions received. In most cases the

response to comments will represent the Agency's final decisions with respect to the content of the lists prepared under section 304(l)(1). The response to comments will be given in the same manner as the first notice. The contents of the response to comments are the same as the first notice of approval or disapproval except for the following changes:

1. The lists of disapproved waters, point sources, and ICSs must reflect any changes made pursuant to comments or petitions received.

2. A brief summary of major comments and petitions received, and EPA's response to the comment or petition.

3. A brief description of the subsequent steps in the section 304(l) process.

Interested persons will have an additional opportunity to comment on disapproved ICSs. Where EPA disapproves an ICS because it does not meet the requirements of section 304(l), or because the state failed to submit the ICS to EPA for review, section 304(l) requires EPA to prepare an ICS in cooperation with the state after notice and an opportunity to comment. The public notice requirements of section 304(l)(3) will be fulfilled by the public notice procedures followed by EPA or the state when issuing the permit that will constitute the ICS. If EPA disapproves one or more ICSs, then EPA or the state may modify, revoke and reissue, or terminate that ICS using the procedures in 40 CFR Part 124. The procedures in Part 124 require the permitting authority to provide for public notice and an opportunity to comment before issuing a final permit. Therefore, if the permitting authority modifies, revokes and reissues, or terminates a disapproved ICS, the permitting authority must provide for public notice and an opportunity to comment. At any time after the Regional Administrator disapproves an ICS (or conditionally approves a draft permit as an ICS), the Regional Office may submit a written notification to the state that the Regional Office intends to issue the ICS. Upon mailing the notification to the state, exclusive authority to issue the permit passes to EPA. This issue is addressed in today's regulations at 40 CFR § 123.46(f). EPA is promulgating this regulation to clarify the time at which exclusive authority to issue ICSs passes to EPA under section 304(l).

3. Subsequent Steps in the section 304(l) Process

a. EPA Implementation of section 304(l). Where EPA disapproves a state's decision with respect to a waterbody or

an ICS it is under an obligation to implement section 304(l) in cooperation with the state. Some commenters questioned whether EPA's process allowed for full cooperation with the states. EPA proposed, and is finalizing a procedure that will allow EPA to assume the authority to issue a permit that is disapproved as an ICS (or one that the state did not submit). The rule allows EPA's Regional Office to notify the state that it will issue the permit where the ICS is disapproved. EPA rejected requiring the exclusive permitting authority to revert automatically to EPA in order to allow ample opportunity for the region to negotiate with the state regarding each permit. At the same time EPA is mindful of the necessity of expediting the permit-issuance process where agreement cannot be reached with the state, especially considering that Congress has imposed deadlines for the issuance of the ICSs and the implementation of the effluent limits. Therefore EPA is retaining the approach in the proposal which allowed EPA to assume permitting jurisdiction upon notice to the state. In issuing the permit EPA will follow its normal permit-issuance procedures including requesting certification under section 401 of the CWA.

For listing, EPA will solicit public comment on the waters and point sources that were disapproved by EPA. (In most cases, these will be waters and point sources that EPA believes that the state should have included on one or more of its lists, but did not.) If the state has not provided adequate public notice on the lists, EPA will solicit public notice on all waters and point sources, both approved and disapproved. Until EPA takes final Agency action with regard to the lists, EPA will continue to cooperate with the state to decide which waters and point sources should appear on the lists. EPA may add or delete waters in response to public comments or additional data and information received during the time before its final decision on the lists. EPA will make these decisions public as final Agency action as expeditiously as possible after the public comment period closes, but no later than June 4, 1990, in the same manner as it provides public notice in June, 1989. This final Agency action constitutes promulgation by EPA of the lists. EPA believes it is critical that the Agency establishes these lists as final as soon as possible in order to begin development of individual control strategies in time to be finished by June 4, 1990, as required by the CWA.

b. Judicial Review of Decision Under section 304(l). As EPA stated in the proposal, judicial review of a disapproved ICS under section 509(b) of the CWA is not available until EPA makes a final decision with respect to the ICS, i.e., a final decision on the EPA-issued NPDES permit under Part 124 of EPA's regulations. One commenter argued that EPA's position on this issue further undermined its definition of an ICS by making 509(b)(1)(G) redundant. Within the limits of the Act, the Agency has the discretion to define ICSs as discussed above in Section C.1. The Agency continues to believe that its definition is the best reading of the statute, and Congress gave EPA discretion in determining what exact definition to use. Congress' addition of section 509(b)(1)(G) to the Act shows Congress' intent that EPA's promulgation of an ICS, however defined, be reviewed in the courts of appeals more than any intent to preclude or restrict EPA's interpretation that an NPDES permit be an ICS. Therefore, EPA believes that the permits that EPA issues as ICSs are reviewable in the court of appeals. Review of any other actions by EPA under section 304(l) must be obtained in a district court.

IV. Effective Date

This rule became effective on May 26, 1989. Title 5 U.S.C. 553(d) provides that regulations should take effect 30 days after their publication in the *Federal Register*, unless EPA finds and publishes good cause for a shorter time. In determining that good cause exists in this case, EPA weighed the necessity for an immediate effective date against problems it would cause for those subject to the rules. The need for an immediate effective date arises from the statute's deadline for EPA decisions on state submissions. It is critical that today's rule be effective when EPA's Regional Offices make their decisions under section 304(l). Today's regulations are important to ensure consistency and certainty in regional decisions.

V. Regulatory Analysis

A. Executive Order 12291

Under section 3(b) of Executive Order 12291 the agency must judge whether a regulation is major and thus subject to the requirements of a Regulatory Impact Analysis. The regulation published today is not major because the rule will not result in an effect on the economy of \$100 million or more, will not result in increased costs or prices, will not have significant adverse effects on competition, employment, investment,

productivity, and innovation, and will not significantly disrupt domestic or export markets.

EPA received comments arguing that the regulations were in fact major. EPA disagrees. The regulations specify what factors states must use to determine whether permits will achieve water quality standards, while the determination of what the standards are and what permit limits are necessary to comply with the standards remains principally with the states. Compliance with the water quality standards has been required by the Clean Water Act since July 1, 1977. Many of the limits that are imposed as a result of the procedures in today's rule are to implement standards that were in place long ago. The reporting requirements discussed in today's rule require no additional monitoring, and preparing the reports will not result in an effect on the economy of \$100 million or more.

Therefore, the Agency has not prepared a Regulatory Impact Analysis under the Executive Order. EPA submitted this regulation to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Paperwork Reduction Act

There is no information collection requirement after the effective date of this rulemaking, and, therefore, no information collection request and clearance are needed. An information collection request for the proposed rulemaking, submitted by EPA to the Office of Management and Budget (OMB) was disapproved by OMB because the information had already been submitted to EPA pursuant to the statutory deadline of February 4, 1989, and EPA did not formally submit the ICR in a timely manner after the proposed rule was published (see PRA regulations 5 CFR 1320.13 (b) and (d)).

The comments from OMB regarding the ICR for the proposed rule are available from the Chief, Information Policy Branch, PM-223, U.S. EPA, 401 M Street SW., Washington, DC 20460; and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act of 1980 (5 U.S.C. 601 et seq.), Federal agencies must, when developing regulations, analyze their impact on small entities (small businesses, small government jurisdictions, and small organizations). This analysis is unnecessary, however, where the agency's administrator certifies that the rule will not have a significant economic

effect on a substantial number of small entities. The agency has concluded that this rule will not have a significant economic effect on a substantial number of small entities because today's rulemaking imposes no new requirements for the regulated community. Today's regulations merely establish the procedures for implementing section 304(l) of the CWA, and clarify certain elements of EPA's surface water toxics control program.

List of Subjects

40 CFR Part 122

EPA Administered Permit Programs: The National Pollutant Discharge Elimination System.

40 CFR Part 123

State program requirements.

40 CFR Part 130

Water quality planning and management.

Date: May 26, 1989.

F. Henry Habicht II,
Acting Administrator.

PART 122—EPA ADMINISTERED PERMIT PROGRAMS: THE NATIONAL POLLUTANT DISCHARGE ELIMINATION SYSTEM

1. The authority citation for Part 122 continues to read as follows:

Authority: The Clean Water Act, 33 U.S.C. 1251 et seq.

2. Section 122.2 is amended by adding in alphabetical order a new definition as follows:

§ 122.2 Definitions.

Whole effluent toxicity means the aggregate toxic effect of an effluent measured directly by a toxicity test.

3. Paragraph (d)(1) of § 122.44 is revised to read as follows:

§ 122.44 Establishing limitations, standards, and other permit conditions (applicable to State NPDES programs, see § 123.25).

(d) * * *

(1) Achieve water quality standards established under section 303 of the CWA, including State narrative criteria for water quality.

(i) Limitations must control all pollutants or pollutant parameters (either conventional, nonconventional, or toxic pollutants) which the Director determines are or may be discharged at a level which will cause, have the

reasonable potential to cause, or contribute to an excursion above any State water quality standard, including State narrative criteria for water quality.

(ii) When determining whether a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative or numeric criteria within a State water quality standard, the permitting authority shall use procedures which account for existing controls on point and nonpoint sources of pollution, the variability of the pollutant or pollutant parameter in the effluent, the sensitivity of the species to toxicity testing (when evaluating whole effluent toxicity), and where appropriate, the dilution of the effluent in the receiving water.

(iii) When the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the allowable ambient concentration of a State numeric criteria within a State water quality standard for an individual pollutant, the permit must contain effluent limits for that pollutant.

(iv) When the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above the numeric criterion for whole effluent toxicity, the permit must contain effluent limits for whole effluent toxicity.

(v) Except as provided in this subparagraph, when the permitting authority determines, using the procedures in paragraph (d)(1)(ii) of this section, toxicity testing data, or other information, that a discharge causes, has the reasonable potential to cause, or contributes to an in-stream excursion above a narrative criterion within an applicable State water quality standard, the permit must contain effluent limits for whole effluent toxicity. Limits on whole effluent toxicity are not necessary where the permitting authority demonstrates in the fact sheet or statement of basis of the NPDES permit, using the procedures in paragraph (d)(1)(ii) of this section, that chemical-specific limits for the effluent are sufficient to attain and maintain applicable numeric and narrative State water quality standards.

(vi) Where a State has not established a water quality criterion for a specific chemical pollutant that is present in an effluent at a concentration that causes, has the reasonable potential to cause, or contributes to an excursion above a narrative criterion within an applicable State water quality standard, the

permitting authority must establish effluent limits using one or more of the following options:

(A) Establish effluent limits using a calculated numeric water quality criterion for the pollutant which the permitting authority demonstrates will attain and maintain applicable narrative water quality criteria and will fully protect the designated use. Such a criterion may be derived using a proposed State criterion, or an explicit State policy or regulation interpreting its narrative water quality criterion, supplemented with other relevant information which may include: EPA's Water Quality Standards Handbook, October 1983, risk assessment data, exposure data, information about the pollutant from the Food and Drug Administration, and current EPA criteria documents; or

(B) Establish effluent limits on a case-by-case basis, using EPA's water quality criteria, published under section 307(a) of the CWA, supplemented where necessary by other relevant information; or

(C) Establish effluent limitations on an indicator parameter for the pollutant of concern, provided:

(1) The permit identifies which pollutants are intended to be controlled by the use of the effluent limitation;

(2) The fact sheet required by § 124.56 sets forth the basis for the limit, including a finding that compliance with the effluent limit on the indicator parameter will result in controls on the pollutant of concern which are sufficient to attain and maintain applicable water quality standards;

(3) The permit requires all effluent and ambient monitoring necessary to show that during the term of the permit the limit on the indicator parameter continues to attain and maintain applicable water quality standards; and

(4) The permit contains a reopener clause allowing the permitting authority to modify or revoke and reissue the permit if the limits on the indicator parameter no longer attain and maintain applicable water quality standards.

(vii) When developing water quality-based effluent limits under this paragraph the permitting authority shall ensure that:

(A) The level of water quality to be achieved by limits on point sources established under this paragraph is derived from, and complies with all applicable water quality standards; and

(B) Effluent limits developed to protect a narrative water quality criterion, a numeric water quality criterion, or both, are consistent with the assumptions and requirements of any available wasteload allocation for the

discharge prepared by the State and approved by EPA pursuant to 40 CFR 130.7.

4. The title of paragraph (e) of § 122.44 is revised to read as follows:

(e) *Technology-based controls for toxic pollutants.*

PART 123—STATE PROGRAM REQUIREMENTS

1. The authority citation for Part 123 continues to read as follows:

Authority: Clean Water Act, 33 U.S.C. 1251 et seq.

2. Section 123.44 is amended by adding paragraph (c)(8) to read as follows:

§ 123.44 EPA review of and objections to State permits.

(c)
(8) The effluent limits of a permit fail to satisfy the requirements of 40 CFR 122.44(d).

3. In § 123.46 paragraph (a) is revised and paragraphs (c), (d), (e) and (f) are added, as follows:

§ 123.46 Individual control strategies.

(a) Not later than February 4, 1989, each State shall submit to the Regional Administrator for review, approval, and implementation an individual control strategy for each point source identified by the State pursuant to section 304(l)(1)(C) of the Act which will produce a reduction in the discharge of toxic pollutants from the point sources identified under section 304(l)(1)(C) through the establishment of effluent limitations under section 402 of the CWA and water quality standards under section 303(c)(2)(B) of the CWA, which reduction is sufficient, in combination with existing controls on point and nonpoint sources of pollution, to achieve the applicable water quality standard as soon as possible, but not later than three years after the date of the establishment of such strategy.

(c) For the purposes of this section the term individual control strategy, as set forth in section 304(l) of the CWA, means a final NPDES permit with supporting documentation showing that effluent limits are consistent with an approved wasteload allocation, or other documentation which shows that applicable water quality standards will be met not later than three years after the individual control strategy is established. Where a State is unable to

issue a final permit on or before February 4, 1989, an individual control strategy may be a draft permit with an attached schedule (provided the State meets the schedule for issuing the final permit) indicating that the permit will be issued on or before February 4, 1990. If a point source is subject to section 304(l)(1)(C) of the CWA and is also subject to an on-site response action under sections 104 or 106 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), (42 U.S.C. 9601 et seq.), an individual control strategy may be the decision document (which incorporates the applicable or relevant and appropriate requirements under the CWA) prepared under sections 104 or 106 of CERCLA to address the release or threatened release of hazardous substances to the environment.

(d) A petition submitted pursuant to section 304(l)(3) of the CWA must be submitted to the appropriate Regional Administrator. Petitions must identify a waterbody in sufficient detail so that EPA is able to determine the location and boundaries of the waterbody. The petition must also identify the list or lists for which the waterbody qualifies, and the petition must explain why the waterbody satisfies the criteria for listing under CWA section 304(l) and 40 CFR 130.10(d)(6).

(e) If the Regional Administrator disapproves one or more individual control strategies, or if a State fails to provide adequate public notice and an opportunity to comment on the ICSs, then, not later than June 4, 1989, the Regional Administrator shall give a notice of approval or disapproval of the individual control strategies submitted by each State pursuant to this section as follows:

(1) The notice of approval or disapproval given under this paragraph shall include the following:

(i) The name and address of the EPA office that reviews the State's submittals.

(ii) A brief description of the section 304(l) process.

(iii) A list of ICSs disapproved under this section and a finding that the ICSs will not meet all applicable review criteria under this section and section 304(l) of the CWA.

(iv) If the Regional Administrator determines that a State did not provide adequate public notice and an opportunity to comment on the waters, point sources, or ICSs prepared pursuant to section 304(l), or if the Regional Administrator chooses to exercise his or her discretion, a list of the ICSs approved under this section, and a

finding that the ICSs satisfy all applicable review criteria.

(v) The location where interested persons may examine EPA's records of approval and disapproval.

(vi) The name, address, and telephone number of the person at the Regional Office from whom interested persons may obtain more information.

(vii) Notice that written petitions or comments are due within 120 days.

(2) The Regional Administrator shall provide the notice of approval or disapproval given under this paragraph to the appropriate State Director. The Regional Administrator shall publish a notice of availability, in a daily or weekly newspaper with State-wide circulation or in the Federal Register, for the notice of approval or disapproval. The Regional Administrator shall also provide written notice to each discharger identified under section 304(l)(1)(C), that EPA has listed the discharger under section 304(l)(1)(C).

(3) As soon as practicable but not later than June 4, 1990, the Regional Offices shall issue a response to petitions or comments received under section 304(l). The response to comments shall be given in the same manner as the notice described in paragraph (e) of this section except for the following changes:

(i) The lists of ICSs reflecting any changes made pursuant to comments or petitions received.

(ii) A brief description of the subsequent steps in the section 304(l) process.

(f) EPA shall review, and approve or disapprove, the individual control strategies prepared under section 304(l) of the CWA, using the applicable criteria set forth in section 304(l) of the CWA, and in 40 CFR Part 122, including § 122.44(d). At any time after the Regional Administrator disapproves an ICS (or conditionally approves a draft permit as an ICS), the Regional Office may submit a written notification to the State that the Regional Office intends to issue the ICS. Upon mailing the notification, and notwithstanding any other regulation, exclusive authority to issue the permit passes to EPA.

4. Section 123.63 is amended by adding paragraph (a)(5) to read as follows:

§ 123.63 Criteria for withdrawal of state programs.

(a)

(5) Where the State fails to develop an adequate regulatory program for developing water quality-based effluent limits in NPDES permits.

PART 130—WATER QUALITY PLANNING AND MANAGEMENT

1. The authority citation for Part 130 continues to read as follows:

Authority: 33 U.S.C. 1251 et seq.

2. Section 130.10 is amended by adding paragraphs (d)(4), (d)(5), (d)(6), (d)(7), (d)(8), (d)(9), (d)(10), and (d)(11) to read as follows:

§ 130.10 State submittals to EPA.

(d)

(4) For the purposes of listing waters under § 130.10(d)(2), "applicable standard" means a numeric criterion for a priority pollutant promulgated as part of a state water quality standard. Where a state numeric criterion for a priority pollutant is not promulgated as part of a state water quality standard, for the purposes of listing waters "applicable standard" means the state narrative water quality criterion to control a priority pollutant (e.g., no toxics in toxic amounts) interpreted on a chemical-by-chemical basis by applying a proposed state criterion, an explicit state policy or regulation, or an EPA national water quality criterion, supplemented with other relevant information.

(5) If a water meets either of the two conditions listed below the water must be listed under § 130.10(d)(2) on the grounds that the applicable standard is not achieved or expected to be achieved due entirely or substantially to discharges from point sources.

(i) Existing or additional water quality-based limits on one or more point sources would result in the achievement of an applicable water quality standard for a toxic pollutant; or

(ii) The discharge of a toxic pollutant from one or more point sources, regardless of any nonpoint source contribution of the same pollutant, is sufficient to cause or is expected to cause an excursion above the applicable water quality standard for the toxic pollutant.

(6) Each state shall assemble and evaluate all existing and readily available water quality-related data and information and each state shall develop the lists required by paragraphs (d)(1), (2), and (3) of this section based upon this data and information. At a minimum, all existing and readily available water quality-related data and information includes, but is not limited to, all of the existing and readily available data about the following categories of waters in the state:

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(i) Waters where fishing or shellfish bans and/or advisories are currently in effect or are anticipated.

(ii) Waters where there have been repeated fishkills or where abnormalities (cancers, lesions, tumors, etc.) have been observed in fish or other aquatic life during the last ten years.

(iii) Waters where there are restrictions on water sports or recreational contact.

(iv) Waters identified by the state in its most recent state section 305(b) report as either "partially achieving" or "not achieving" designated uses.

(v) Waters identified by the states under section 303(d) of the CWA as waters needing water quality-based controls.

(vi) Waters identified by the state as priority waterbodies. (State Water Quality Management plans often include priority waterbody lists which are those waters that most need water pollution control decisions to achieve water quality standards or goals.)

(vii) Waters where ambient data indicate potential or actual exceedances of water quality criteria due to toxic pollutants from an industry classified as a primary industry in Appendix A of 40 CFR Part 122.

(viii) Waters for which effluent toxicity test results indicate possible or actual exceedances of state water quality standards, including narrative "free from" water quality criteria or EPA water quality criteria where state criteria are not available.

(ix) Waters with primary industrial major dischargers where dilution analyses indicate exceedances of state narrative or numeric water quality criteria (or EPA water quality criteria where state standards are not available) for toxic pollutants, ammonia, or chlorine. These dilution analyses must be based on estimates of discharge levels derived from effluent guidelines development documents, NPDES permits or permit application data (e.g., Form 2C), Discharge Monitoring Reports (DMRs), or other available information.

(x) Waters with POTW dischargers requiring local pretreatment programs where dilution analyses indicate exceedances of state water quality criteria (or EPA water quality criteria where state water quality criteria are not available) for toxic pollutants, ammonia, or chlorine. These dilution analyses must be based upon data from NPDES permits or permit applications (e.g., Form 2C), Discharge Monitoring Reports (DMRs), or other available information.

(xi) Waters with facilities not included in the previous two categories such as major POTWs, and industrial

minor dischargers where dilution analyses indicate exceedances of numeric or narrative state water quality criteria (or EPA water quality criteria where state water quality criteria are not available) for toxic pollutants, ammonia, or chlorine. These dilution analyses must be based upon estimates of discharge levels derived from effluent guideline development documents, NPDES permits or permit application data, Discharge Monitoring Reports (DMRs), or other available information.

(xii) Waters classified for uses that will not support the "fishable/swimmable" goals of the Clean Water Act.

(xiii) Waters where ambient toxicity or adverse water quality conditions have been reported by local, state, EPA or other Federal Agencies, the private sector, public interest groups, or universities. These organizations and groups should be actively solicited for research they may be conducting or reporting. For example, university researchers, the United States Department of Agriculture, the National Oceanic and Atmospheric Administration, the United States Geological Survey, and the United States Fish and Wildlife Service are good sources of field data and research.

(xiv) Waters identified by the state as impaired in its most recent Clean Lake Assessments conducted under section 314 of the Clean Water Act.

(xv) Waters identified as impaired by nonpoint sources in the *America's Clean Water: The States' Nonpoint Source Assessments* 1985 (Association of State and Interstate Water Pollution Control Administrators (ASIWPACA)) or waters identified as impaired or threatened in a nonpoint source assessment submitted by the state to EPA under section 319 of the Clean Water Act.

(xvi) Surface waters impaired by pollutants from hazardous waste sites on the National Priority List prepared under section 105(8)(A) of CERCLA.

(7) Each state shall provide documentation to the Regional Administrator to support the state's determination to list or not to list waters as required by paragraphs (d)(1), (d)(2) and (d)(3) of this section. This documentation shall be submitted to the Regional Administrator together with the lists required by paragraphs (d)(1), (d)(2), and (d)(3) of this section and shall include as a minimum:

(i) A description of the methodology used to develop each list;

(ii) A description of the data and information used to identify waters and sources including a description of the data and information used by the state

as required by paragraph (d)(6) of this section;

(iii) A rationale for any decision not to use any one of the categories of existing and readily available data required by paragraph (d)(6) of this section; and

(iv) Any other information requested by the Regional Administrator that is reasonable or necessary to determine the adequacy of a state's lists. Upon request by the Regional Administrator, each state must demonstrate good cause for not including a water or waters on one or more lists. Good cause includes, but is not limited to, more recent or accurate data; more accurate water quality modeling; flaws in the original analysis that led to the water being identified in a category in § 130.10(d)(6); or changes in conditions, e.g., new control equipment, or elimination of discharges.

(8) The Regional Administrator shall approve or disapprove each list required by paragraphs (d)(1), (d)(2), and (d)(3) of this section no later than June 4, 1989. The Regional Administrator shall approve each list required under paragraphs (d)(1), (d)(2), and (d)(3) of this section only if it meets the regulatory requirements for listing under paragraphs (d)(1), (d)(2), and (d)(3) of this section and if the state has met all the requirements of paragraphs (d)(6) and (d)(7) of this section.

(9) If a state fails to submit lists in accordance with paragraph (d) of this section or the Regional Administrator does not approve the lists submitted by such state in accordance with this paragraph, then not later than June 4, 1990, the Regional Administrator, in cooperation with such state, shall implement the requirements of CWA section 304(l)(1) and (2) in such state.

(10) If the Regional Administrator disapproves a state's decision with respect to one or more of the waters required under paragraph (d)(1), (2), or (3) of this section, or one or more of the individual control strategies required pursuant to section 304(l)(1)(D), then not later than June 4, 1989, the Regional Administrator shall distribute the notice of approval or disapproval given under this paragraph to the appropriate state Director. The Regional Administrator shall also publish a notice of availability, in a daily or weekly newspaper with state-wide circulation or in the *Federal Register*, for the notice of approval or disapproval. The Regional Administrator shall also provide written notice to each discharger identified under section 304(l)(1)(C), that EPA has listed the discharger under section 304(l)(1)(C).

The notice of approval and disapproval shall include the following:

(i) The name and address of the EPA office that reviews the state's submittals.

(ii) A brief description of the section 304(l) process.

(iii) A list of waters, point sources and pollutants disapproved under this paragraph.

(iv) If the Regional Administrator determines that a state did not provide adequate public notice and an opportunity to comment on the lists prepared under this section, or if the

Regional Administrator chooses to exercise his or her discretion, a list of waters, point sources, or pollutants approved under this paragraph.

(v) The name, address, and telephone number of the person at the Regional Office from whom interested persons may obtain more information.

(vi) Notice that written petitions or comments are due within 120 days.

(11) As soon as practicable, but not later than June 4, 1990, the Regional Office shall issue a response to petitions or comments received under paragraph (d)(10) of this section. Notice shall be

given in the same manner as notice described in paragraph (d)(10) of this section, except for the following changes to the notice of approvals and disapprovals:

(i) The lists of waters, point sources and pollutants must reflect any changes made pursuant to comments or petitions received.

(ii) A brief description of the subsequent steps in the section 304(l) process shall be included.

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Friday
June 2, 1989

Part VII

Department of Education

Jacob K. Javits Gifted and Talented
Students Education Program; Invitation
for Applications for New Awards for
Fiscal Year 1989; Notice

DEPARTMENT OF EDUCATION

[CDEA No. 84.206A]

Jacob K. Javits Gifted and Talented Students Education Program Notice Inviting Applications for New Awards for Fiscal Year (FY) 1989

Note to applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under this program.

Purpose of program: Provides financial assistance to State and local educational agencies, institutions of higher education, and other public and private agencies and organizations, to encourage research, demonstration projects, personnel training, and similar activities designed to help build a nationwide capability in elementary and secondary schools to identify and meet the special educational needs of gifted and talented students.

Deadline for transmittal of application: July 31, 1989.

Deadline for intergovernmental review: September 29, 1989.

Available funds: \$6.2 million.

Estimated range of awards: \$200,000–\$310,000.

Estimated average size of awards: \$248,000.

Estimated number of awards: 25.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Budget Period: 12 months.

Applicable regulations: The following regulations apply to the Gifted and Talented Program:

The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act: Enforcement), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Description of the Program:

The Gifted and Talented Program is authorized by the Jacob K. Javits Gifted and Talented Students Education Act of 1988, Title IV, Part B of the Elementary and Secondary Education Act of 1965, as amended.

Definitions

The following definitions apply to the terms used in this notice:

(a) "Gifted and talented students" means children and youths who—

(1) Give evidence of high performance capability in such areas as intellectual, creative, artistic, or leadership capacity or in specific academic fields; and

(2) Require services or activities not ordinarily provided by the school in order to develop such capabilities fully.

(b) "Hawaiian native" means any individual any of whose ancestors were natives prior to 1778 of the area that now comprises the State of Hawaii.

(c) "Hawaiian native organization" means any organization recognized by the Governor of the State of Hawaii primarily serving and representing Hawaiian natives.

(d) "Institution of higher education" has the same meaning given such term in section 435(b) of the Higher Education Act of 1965, as amended.

Eligible Parties

The following are eligible to apply under this program:

(a) State educational agencies.
(b) Local educational agencies.
(c) Institutions of higher education.
(d) Other public agencies and private agencies and organizations (including Indian tribes and organizations as defined by the Indian Self-Determination and Education Assistance Act and Hawaiian native organizations).

Uses of Funds

(a) Projects assisted under this program may include—

(1) Preservice and inservice training (including fellowships) for personnel (including leadership personnel) involved in the education of gifted and talented students;

(2) Establishment and operation of model projects and exemplary programs for the identification and education of gifted and talented students, including summer programs and cooperative programs involving business, industry, and education;

(3) Strengthening the capability of State educational agencies and institutions of higher education to provide leadership and assistance to local educational agencies and nonprofit private schools in the planning,

operation and improvement of programs for the identification and education of gifted and talented students; and

(4) Programs of technical assistance and information dissemination.

(b) Grantees must use funds received under this program to supplement and make more effective the expenditure of State and local funds, and of Federal funds made available under Chapter 2 of Title I and Title II of the Elementary and Secondary Education Act of 1965 for the education of gifted and talented students.

Participation of Private School Students

Applicants must make provision for the equitable participation of students and teachers in private nonprofit elementary and secondary schools, including the participation of teachers and other personnel in preservice and inservice training programs supported under the Act.

Priorities**Absolute Priorities**

In accordance with 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet one or both of the following priorities:

(a) Applications that propose to identify gifted and talented students who may not be identified through traditional assessment methods (including economically disadvantaged individuals, individuals of limited English proficiency, and individuals with handicaps) and provide education programs designed to include gifted and talented students from such groups; or

(b) Applications that propose programs and projects designed to develop or improve the capability of schools in an entire State or region of the Nation through cooperative efforts and participation of State and local educational agencies, institutions of higher education, and other public and private agencies and organizations (including business, industry, and labor), to plan, conduct, and improve programs for the identification and education of gifted and talented students.

Under 34 CFR 75.105(c)(3), the Secretary funds under this competition only applications that meet one or both of these absolute priorities.

Service Priority

In approving applications under this program, the Secretary ensures that at least one half of the applications approved contain a component designed to serve gifted and talented students who are economically disadvantaged individuals.

Invitational Priorities

In accordance with EDGAR, 34 CFR 75.105(c)(1), the Secretary is particularly interested in applications that meet one or more of the following invitational priorities:

(a) Inservice and preservice training that enables classroom teachers to provide individualized instruction to gifted and talented children;

(b) Inservice and preservice training, including fellowships, that enhance teacher ability and school capacity to instruct gifted and talented children in particular disciplines;

(c) Projects that serve gifted and talented children through schools of choice, including magnet school programs;

(d) Projects that seek to discover and cultivate the potential of highly able students within the regular classroom;

(e) Model projects that are based on relevant research and literature for identifying and instructing the gifted and talented student populations that will be served;

(f) Model projects that use multiple criteria for selecting highly able students for admission into a gifted and talented program, rather than a single measure such as a standardized test;

(g) Projects that encourage highly able students who are not being identified through traditional assessment methods to develop and display their skills and talents over an extended period in order to increase their prospects for admission into a gifted program;

(h) Training for parents of gifted and talented students in nurturing their children's gifts and talents.

An application that addresses one or more of these invitational priorities does not receive from the Secretary competitive or absolute preference over other applications.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under the Gifted and Talented Program.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of the Jacob K. Javits Gifted and Talented Students Education Act of 1988, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of the authorizing statute.

Note to Applicants: A statement of the purposes of the authorizing statute is found in the Purpose of Program section of this notice.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in the statute that authorizes the program, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (15 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (10 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (6 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (15 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

(Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.)

(7) *Adequacy of resources.* (4 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Intergovernmental Review of Federal Programs

This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the Federal Register on November 18, 1987, pages 44338–44340.

In States that have not established a process or chosen a program for review, State, area-wide, regional, and local

entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372—CFDA #84.206A, U.S. Department of Education, Room 4161, 400 Maryland Avenue, SW., Washington, DC 20202-0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that this address is not the same address as the one to which the applicant submits its completed application. *Do not send application to the above address.*

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.206A), Washington, DC 20202-4725

or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.206A), Room #3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant *must* indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts plus a statement regarding estimated public reporting burden and various assurances and certifications. These parts and additional materials are organized in the same manner that the submitted application should be organized. The parts and additional materials are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

Part III: Application Narrative.

Additional Materials.

Estimated Public Reporting Burden.

Assurances—Non-Construction Programs (Standard Form 424B).

**Certification regarding Debarment,
Suspension, and Other Responsibility**

Matters: Primary Covered Transactions (ED Form GCS-008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS-009) and instructions. (NOTE: ED Form GCS-009 is intended for the use of grantees and should not be transmitted to the Department.)

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80-0004).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and the certifications must each have an *original signature*. No grant may be awarded unless a completed application form has been received.

Interactive Audio Conference

The U.S. Department of Education in cooperation with participating State departments of education will hold an interactive audio conference to provide prospective applicants and interested parties with information related to the development and submission of applications for the FY 1989 Gifted and Talented discretionary grant competition. The 1 and ½ hour audio conference will be held in two time slots on June 19, 1989—2:00 pm and 3:30 pm Eastern Daylight Time. If your State would like to participate or you would like additional information, contact Gloria Herbert by June 12, 1989 at (202) 357-6187.

FOR FURTHER INFORMATION CONTACT:
L. Ann Benjamin, U.S. Department of
Education, Office of Educational
Research and Improvement, 555 New
Jersey Avenue, NW, Washington, DC
20208-5843; Phone: (202) 357-6187.

Program Authority: 20 U.S.C. 3061-3068.

Dated: May 26, 1989.

Bruno V. Manno,
*Acting Assistant Secretary, Office of
Educational Research and Improvement.*

BILLING CODE 4000-01-M

APPLICATION FOR FEDERAL ASSISTANCE

APPLICATION FOR FEDERAL ASSISTANCE		OWB Approval No. 0348-0043																						
1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction ☒ Non-Construction ☐ Non-Construction		2. DATE SUBMITTED _____																						
3. DATE RECEIVED BY STATE _____		Applicant Identifier _____																						
4. DATE RECEIVED BY FEDERAL AGENCY _____		Federal Identifier _____																						
5. APPLICANT INFORMATION																								
Legal Name: _____		Organizational Unit: _____																						
Address (give city, county, state, and zip code): _____		Name and telephone number of the person to be contacted on matters involving this application (give area code): _____																						
6. EMPLOYER IDENTIFICATION NUMBER (EIN): 		7. TYPE OF APPLICANT: (enter appropriate letter in box)																						
8. TYPE OF APPLICATION: ☒ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): ☐ ☐ A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify): _____		A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) _____																						
9. NAME OF FEDERAL AGENCY: _____		U.S. Department of Education																						
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 2 0 6		11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT: _____																						
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.): _____		13. PROPOSED PROJECT: Start Date _____ Ending Date _____																						
14. CONGRESSIONAL DISTRICTS OF: a. Applicant _____ b. Project _____		15. ESTIMATED FUNDING:																						
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 40%;">a. Federal</td> <td style="width: 10%;">\$</td> <td style="width: 10%; text-align: right;">.00</td> </tr> <tr> <td>b. Applicant</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>c. State</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>d. Local</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>e. Other</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>f. Program Income</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> <tr> <td>g. TOTAL</td> <td>\$</td> <td style="text-align: right;">.00</td> </tr> </table>		a. Federal	\$	.00	b. Applicant	\$	.00	c. State	\$	.00	d. Local	\$	.00	e. Other	\$	.00	f. Program Income	\$	.00	g. TOTAL	\$	.00	16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? a. YES, THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE _____ b. NO. ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
a. Federal	\$	.00																						
b. Applicant	\$	.00																						
c. State	\$	.00																						
d. Local	\$	.00																						
e. Other	\$	.00																						
f. Program Income	\$	.00																						
g. TOTAL	\$	.00																						
17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No		18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED																						
a. Typed Name of Authorized Representative _____		b. Title _____																						
c. Telephone number _____		d. Signature of Authorized Representative _____																						
e. Date Signed _____		f. Date Signed _____																						

Previous Editions Not Usable

Standard Form 424 REV 4-88
Prescribed by OMB Circular 2-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry: | Item: | Entry: |
|-------|--|-------|--|
| 1. | Self-explanatory. | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). | 13. | Self-explanatory. |
| 3. | State use only (if applicable). | 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. | 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 7. | Enter the appropriate letter in the space provided. | 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:
— "New" means a new assistance award.
— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. | | |
| 9. | Name of Federal agency from which assistance is being requested with this application. | | |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. | | |

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A — BUDGET SUMMARY

Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B — BUDGET CATEGORIES

6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8.	\$	\$	\$	\$	
9.					
10.					
11.					
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$	
SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$	\$	\$	\$	\$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Years)				
	(b) First	(c) Second	(d) Third	(e) Fourth	
16.	\$	\$	\$	\$	
17.					
18.					
19.					
20. TOTALS (sum of lines 16-19)	\$	\$	\$	\$	
SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)					
21. Direct Charges:		22. Indirect Charges:			
23. Remarks					

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a *single* Federal grant program (Federal Domestic Assistance Catalog number) and *not requiring* a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a *single* program *requiring* budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to *multiple* programs where one or more programs *require* a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For *new applications*, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For *continuing grant program applications*, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For *supplemental grants and changes* to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j — Show the amount of indirect cost.

Line 6k — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A (continued)

Line 7 - Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 - Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) - Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) - Enter the contribution to be made by the applicant.

Column (c) - Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) - Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) - Enter totals of Columns (b), (c), and (d).

Line 12 - Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 - Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 - Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 - Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 - Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 - Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 - Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 - Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 - Provide any other explanations or comments deemed necessary.

Instructions for Part III—Application Narrative

Before preparing the application narrative, an applicant should read carefully the description of the program, the information regarding priorities, and the selection criteria the Secretary uses to evaluate applications.

The Narrative should encompass each function or activity for which funds are being requested and should:

1. Begin with an abstract, that is, a summary of the proposed project;

2. Describe the proposed project in light of each of the selection criteria in the order in which these criteria are listed in this notice;

3. Describe how the proposed project will meet one or both of the absolute priorities and any of the invitational priorities listed in this notice;

4. Clearly identify any component of the project that will serve gifted and talented students who are economically disadvantaged.

5. According to EDGAR, 34 CFR 75.591, grantees are required to cooperate in any Federal evaluation of their projects. Recipients of funds under the Jacob K. Javits Gifted and Talented Students Education Program shall collect the following data for evaluation, and applicants shall describe in their

grant application their plan for collecting this data:

Demographic information on participants, including number of participants, grade level, racial/ethnic composition, socio-economic composition, and evidence of special needs;

A description of services provided to participants; and

Measures which demonstrate the progress made in achieving the project's stated goals and objectives, such as increased enrollment of students in gifted and talented programs, academic achievement and improvements in teacher's skills and attitudes.

This data will be used in evaluating project effectiveness and in evaluating continuation applications.

6. Include any other pertinent information that might assist the Secretary in reviewing the application, including the scope and degree of service and when it will be delivered. The application should enable reviewers to make clear linkage between the proposed project and specific project tasks, operation, and service delivery.

Please limit the application narrative to no more than 30 double-spaced, typed pages (on one side only). Supplemental documentation (not to exceed 25 pages)

may be attached to the program narrative and is not counted as part of the 30 pages of narrative.

Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 30 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Office of Management and Budget, Paperwork Reduction Project 1850-0635, Washington, DC 20503.

(Information collection approved under OMB control number 1850-0635. Expiration date: May 31, 1992.)

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age;
- (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to non-discrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL		TITLE
APPLICANT ORGANIZATION		DATE SUBMITTED

SF 424B (4-88) Back

Assurances -- Jacob K. Javits Gifted and Talented Students
Education Program

The applicant hereby assures and certifies that it will:

1. If it provides for service delivery, provide for the equitable participation of students and teachers in private nonprofit elementary and secondary schools, including the participation of teachers and other personnel in preservice and inservice training programs supported under the Act;
2. Use the funds received under the Javits program to supplement and make more effective the expenditure of State and local funds, and of Federal funds made available under Chapter 2 of Title I and Title II of the Elementary and Secondary Education Act of 1965 for the education of gifted and talented students.

Signature

Name

Title

Date

GIFTED AND TALENTED PROGRAM

Data Sheet

Please check the priority or priorities your proposed program or project will address.

ABSOLUTE PRIORITIES: (The application must address one or both of these priorities.)

_____ The identification of gifted and talented students who may not be identified through traditional assessment methods (including economically disadvantaged individuals, individuals of limited English proficiency, and individuals with handicaps) and the provision of education programs designed to include gifted and talented students from such groups; and

_____ Programs and projects designed to develop or improve the capability of schools in an entire State or region of the Nation through cooperative efforts and participation of State and local educational agencies, institutions of higher education, and other public and private agencies and organizations (including business, industry, and labor), to plan, conduct, and improve programs for the identification and education of gifted and talented students.

SERVICE PRIORITY:

_____ The application contains a component designed to serve gifted and talented students who are economically disadvantaged individuals.

**Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing a drug-free awareness program to inform employees about—
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- (e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;
- (f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—
 - (1) Taking appropriate personnel action against such an employee, up to and including termination; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

ED 80-0004

[FR Doc. 89-13137 Filed 6-1-89; 8:45 am]

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Friday
June 2, 1989

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 71

Proposed Establishment of the Phoenix
Terminal Control Area and Revocation of
the Phoenix Radar Service Area, Arizona;
Notice of Proposed Rulemaking

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-AWA-8]

Proposed Establishment of the Phoenix Terminal Control Area and Revocation of the Phoenix Airport Radar Service Area, Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a Terminal Control Area (TCA) at the Phoenix Sky Harbor International Airport, AZ. The TCA would consist of airspace from the surface or higher within a 25-mile radius of Phoenix Sky Harbor International Airport to and including 10,000 feet above mean sea level (MSL). Establishment of this TCA would impose certain operating rules and pilot/equipment requirements, including requirements for an operable two-way radio, a 4096 transponder with automatic altitude-reporting equipment, and an operable very high frequency omni-directional radio range (VOR) or tactical air navigational aid (TACAN) receiver; and restrictions on student pilot operations. This action is intended to increase the capability of the air traffic control (ATC) system to separate all aircraft in the terminal airspace around the Phoenix Sky Harbor International Airport. It is based on data indicating that a high percentage of near midair collisions reported to the FAA in terminal areas involves visual flight rules (VFR) aircraft that are not required to be under the control of ATC. The objective of this proposal is to substantially increase safety while accommodating the legitimate concerns of airspace users. Phoenix Sky Harbor International Airport is currently served by an Airport Radar Service Area (ARSA), which would be rescinded concurrent with the establishment of this TCA.

DATES: Comments must be received on or before August 1, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket [AGC-10], Airspace Docket No. 88-AWA-8, 800 Independence Avenue, SW., Washington, DC 20591.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief

Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Betty W. Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 88-AWA-8." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the notice number of this NPRM. Persons

interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

Related Rulemaking Actions

On May 21, 1970, the FAA published FAR Amendment 91-78 (35 FR 7782) which enabled the establishment of TCA's. On October 14, 1988, the FAA published a final rule which revised the classification and pilot/equipment requirements for conducting operations in a TCA (53 FR 40318). Specifically, the rule: (a) Establishes a single-class TCA; (b) requires the pilot-in-command of a civil aircraft operating within a TCA to hold at least a private pilot certificate, except for a student pilot who has received certain documented training; and (c) eliminates the helicopter exception from the minimum navigational equipment requirement.

The FAA published a final rule on June 21, 1988 which requires Mode C equipment when operating within 30 miles of any designated TCA primary airport from the surface to 10,000 feet MSL, except for operations by certain aircraft types specifically excluded (53 FR 23356).

On February 3, 1987, the FAA published a final rule which established requirements pertaining to the use, installation, inspection, and testing of Air Traffic Control Radar Beacon System (ATCRBS) and Mode S transponders in U.S.-registered civil aircraft (53 FR 3380). The rule adopted continues to require a transponder for operation in each TCA.

Background

The TCA program was developed to reduce the midair collision potential in the congested airspace surrounding an airport with high density air traffic by providing an area in which all aircraft will be subject to certain operation rules and equipment requirements.

The density of traffic and the type of operation being conducted in the airspace surrounding major terminals increases the probability of midair collisions. An extensive study in 1970 found that the majority of midair collisions occurred between a general aviation (GA) aircraft and either an air carrier, military or another GA aircraft. The basic causal factor common to these conflicts was the mix of uncontrolled aircraft operating under VFR and controlled aircraft operating under instrument flight rules (IFR). TCA's provide a method to accommodate the increasing number of IFR and VFR operations. The regulatory requirements

of TCA airspace afford the greatest protection for the greatest number of people by providing ATC with an increased capability to provide aircraft separation service, thereby minimizing the mix of controlled and uncontrolled aircraft.

On August 22, 1987, the Secretary of Transportation announced nine locations for which the FAA would issue notices of proposed rulemaking (NPRM's) proposing establishment of TCA's. The nine candidates cited qualify for TCA status by meeting the criteria published in FAA Handbook 7400.2, "Procedures for Handling Airspace Matters." The criteria for establishing a TCA are based on factors which include the number of aircraft and people using that airspace, the traffic density, and the type or nature of operations being conducted. Accordingly, guidelines have been established to identify TCA locations based on two basic elements—the number of enplaned passengers and the number of aircraft operations.

To date, the FAA has established a total of 23 TCA's. The FAA is proposing to take action to modify or implement the application of these proven control techniques to more airports to provide greater protection of air traffic in the airspace regions most commonly used by passenger-carrying aircraft.

PRE-NPRM Public Input*Airspace Meetings*

Two Pre-NPRM airspace meetings were held (June 30 and July 28, 1988) to allow local aviation interests and airspace users an opportunity to present input on the design of the proposed Phoenix TCA. During the course of these meetings, there were presentations from the Air Line Pilots Association (ALPA), two local user groups (Arizona Airspace Utilization Committee (AAUC) and Arizona Pilots Association (APA)), private pilots, and concerned citizens.

ALPA supported a "generic" FAA design for the Phoenix TCA, stating that the lateral limits should extend to 30 miles and vertical limits should be at least 10,000 feet MSL. ALPA's concerns centered on ensuring turbojet containment within the TCA, taking into consideration aircraft performance during hot weather. ALPA stated that the Sky Harbor Airport (PHX) must have a very high frequency omni-directional radio range and distance measuring equipment (VOR/DME) or VORTAC on the field. Further, the Association endorsed the establishment of a north-south VFR transition route.

The AAUC presented its design of the proposed Phoenix TCA in the two public

meetings and in a subsequent meeting between an AAUC subcommittee and FAA representatives on February 22, 1989. The boundaries of this proposal were based almost exclusively on visual landmarks (roads, rivers and mountains). This design was based upon the fact that the largest sector of users in the state operate under VFR. The lateral limits of the AAUC proposal extended to 20 miles, with vertical limits of 10,000 feet MSL. The AAUC recommended that the FAA make a commitment to install a VOR/DME or VORTAC on the airport. This group initially supported a north-south VFR corridor.

The APA, a member of the AAUC, made a separate proposal. The APA's proposal is based upon the "core" of AAUC's design. This group felt that the 20-mile arcs to the north and south (as per AAUC's design) were not necessary for this TCA. APA stated that the size of a TCA is determined by IFR and air carrier operations, but boundaries must be established along identifiable visual landmarks readily seen by VFR pilots wishing to avoid the TCA. The APA supported a design with vertical limits at 8,000 feet MSL on condition that provisions can be made for sailplanes and nonelectrical aircraft to operate without Mode C equipment up to 10,000 feet MSL, outside the TCA and within 30 miles of Sky Harbor Airport. If these operations cannot be accommodated by the FAA, the top of the TCA should be set at 10,000 feet MSL with provisions for a north-south VFR corridor. The APA also recommended that a VOR/DME be installed on the airport before TCA implementation.

The majority of the private pilots' comments supported the concepts of the AAUC or APA proposals.

A resident from the area (nonpilot) supported a "generic" FAA TCA design.

Written Comments

The FAA accepted written comments of this Pre-NPRM proposal until August 15, 1988. A total of 22 comments were received during this period. These letters included: 15 supporting AAUC's proposal, 5 endorsing APA's design, and 2 other proposals submitted by private pilots.

The comments received are summarized as follows:

1. A VOR/DME or VORTAC should be installed on the airport prior to TCA implementation.

2. Provisions should be made for non-Mode C-equipped helicopters to operate at specified altitudes.

3. The implementation of the TCA should be delayed until July 1, 1989, to coincide with Final Rule 88-2 regarding Mode C.

4. Measures should be taken to ensure that the Phoenix TRACON is adequately staffed and has sufficient equipment.

5. An exemption should be granted to student pilots using the Sky Harbor Airport after TCA implementation, given proper Certified Flight Instructor or Certified Flight Instructor Instrument endorsements.

6. Design of the TCA should be based on use of visual landmarks.

The FAA evaluated all the comments and designs received on this proposal. A common recommendation in the comments was the use of visual landmarks to distinguish TCA boundaries. Since the weather in Phoenix is predominantly VFR, the proposed design utilizes as many visual landmarks as practical to define the various segments of the TCA.

Another issue mentioned frequently was the installation of a VOR/DME or VORTAC on the airport. The FAA is in the process of identifying a suitable site on or near the Sky Harbor Airport for this equipment. The proposed installation is scheduled for a mid-1990 completion date. Even though a TCA can be established with the VORTAC in the present location with no derogation of safety, the FAA is considering relocating the VORTAC on airport property. Until then, pilots will be able to use existing electronic navigational facilities as well as prominent visual landmarks. This system is currently in effect at other TCA's.

An uncontrolled VFR corridor was requested by several user groups. This request was considered in developing the proposed design. Due to traffic flows and airspace sectorization, an uncontrolled corridor was not feasible. Establishment of this type of airspace would result in air traffic transiting portions of the TCA utilized by turbojet arrivals without being identified and without being required to contact Phoenix approach control or Phoenix tower. As an alternative to the VFR corridor, the FAA has developed a transition route that it believes will be safer than the corridor and will meet the needs of the users for a convenient north/south route.

The VFR transition route, which does not require rulemaking, would be established through the proposed Phoenix TCA for VFR aircraft. Pilots requesting a designated VFR transition route would comply with all TCA requirements including an ATC authorization. The VFR transition route

would be published on the Phoenix Terminal Area Chart.

The proposed VFR transition route, Biltmore, extends from the southeast along Interstate 10, then north over the Phoenix Sky Harbor International Airport. The altitudes available on the Biltmore transition route would be 3,500 feet MSL to 5,500 feet MSL as assigned by ATC.

The AAUC recommended that the TCA extend to 10,000 feet. This suggestion is encompassed in the proposed design. The proposed design extends to 25 miles from the primary airport which differs from AAUC's recommendation of a 20-mile extension. The added distance was necessary to ensure turbojet departure containment during hot or inclement weather.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish a TCA at Phoenix Sky Harbor International Airport, AZ. The 1987 passenger enplanements for the Phoenix Sky Harbor International Airport were 8,911,860 which is more than double the established criteria of 3.5 million. Additionally, within the proposed boundaries, 435,836 flight operations were conducted of which 244,309 were air carrier. Consequently, the FAA has determined that establishment of a TCA at Phoenix Sky Harbor International Airport is in the interest of flight safety and will result in a greater degree of protection for the greatest number of people during flight in that terminal area. Phoenix Sky Harbor International Airport is currently served by an ARSA, which would be rescinded concurrent with the establishment of this TCA. Additionally, within the lateral boundaries of the TCA proposed herein, there are two nonregulatory airspace areas, Alert Area A-231 and the Williams 1 Military Operations Area (MOA), AZ. Adoption of the proposed TCA would result in adjustments to the airspace and operations conducted within both of these areas.

Section 91.90 of Part 91 of the Federal Aviation Regulations (14 CFR Part 91) defines TCA's and prescribes operating rules for aircraft in airspace designated as a TCA. The TCA rule provides, in part, that prior to entering the TCA, any aircraft arriving at any airport within the TCA or flying through a TCA must: (1) Obtain appropriate authorization from ATC; (2) unless otherwise authorized by ATC, all large turbine engine-powered aircraft operating to or from a primary airport shall operate above the designated floors of the TCA; (3) comply with any procedures

established by ATC for such operations as pilot training at an airport within a TCA; (4) hold at least a private pilot certificate; (5) meet the requirements of § 61.95 if the aircraft is operated by a student pilot; (6) have an operable VOR or TACAN receiver; (7) have an operable two-way radio capable of communications with ATC on appropriate frequencies for that TCA; and (8) be equipped with the applicable operating transponder and automatic altitude reporting equipment specified in paragraph (a) of § 91.24, except as provided in paragraph (d) of that section. Any aircraft departing from an airport located inside the TCA is required to receive a clearance from ATC prior to takeoff.

All aircraft operating within a TCA are required to comply with all ATC clearances and instructions and any FAA arrival or departure traffic pattern for the airport of intended operation. However, the rule permits ATC to authorize deviations from any of the operating requirements of the rule when safety considerations justify the deviation or more efficient utilization of the airspace can be attained. Ultralight vehicle operations and parachute jumps in a TCA may only be conducted under the terms of an ATC authorization.

Definitions, operating requirements, and specific airspace designations applicable to TCA's may be found in §§ 71.12, 71.401, and 71.403 of Part 71 (14 CFR Part 71) and §§ 91.1 and 91.90 of Part 91 (14 CFR Part 91).

The standard configuration of a TCA consists of 3 concentric circles centered on the primary airport extending to 10, 20, and 30 miles respectively. The vertical limits of the TCA are 12,500 feet above MSL, with the floor established at the surface in the inner area and at levels appropriate to containment of operations in the outer areas. Variations of these criteria may be authorized contingent upon terrain, adjacent regulatory airspace, and factors unique to the terminal area. The airspace configuration contained herein is the result of an extensive staff study conducted by the local FAA authority after obtaining public input from informal airspace meetings and coordinating with the FAA regional office. The FAA has determined the following proposed TCA airspace configuration is consistent with TCA objectives and allows consideration of terminal area flight operations and terrain as follows:

1. That airspace extending upward from the surface to and including 10,000 feet MSL bounded on the north by Camelback Road on the east by Pima/Price Road, on the south by Guadalupe

Road and Interstate 10, and on the west by 51st Avenue. This airspace is necessary to contain large turbine-powered aircraft within the confines of the TCA while operating to and from the primary airport.

2. That airspace on the east and west of the Phoenix Sky Harbor International Airport, excluding that airspace in paragraph 1, extending from 3,000 feet MSL to and including 10,000 feet MSL bounded on the north by Glendale Avenue and Indian Bend Road, on the east by Gilbert Road, on the south by Chandler Boulevard and an extension of Chandler Boulevard, on the west by Litchfield Road and the Agua Fria River. This airspace is needed to provide sufficient room for vectoring aircraft arriving and departing the Phoenix Sky Harbor International Airport.

3. That airspace north, east and south of Phoenix Sky Harbor International Airport extending from 4,000 feet MSL to and including 10,000 feet MSL, excluding that airspace described in paragraphs 1 and 2, bounded on the north by Thunderbird Road, on the east by a 20-mile arc from the ILS localizer antenna and the Williams 1 MOA, on the south by Riggs Road and an extension of Riggs Road, on the west by the Gila River until intercepting an extension of Chandler Boulevard, then an extension of Chandler Boulevard until intercepting Litchfield Road, then Litchfield Road until the Agua Fria River. This configuration takes into consideration the terrain and is necessary to provide additional airspace for aircraft on downwind, and for approaches and departures to the north.

4. That airspace north and south of Phoenix Sky Harbor International Airport within a 20-mile radius extending from 6,000 feet MSL to and including 10,000 feet MSL, excluding that airspace described in paragraphs 1-3. This area is utilized extensively for departures to the north and south. Within this area a mix of traffic exists due to operations to/from airports in the Phoenix terminal area.

5. That airspace within a 25-mile radius of Phoenix Sky Harbor International Airport extending from 8,000 feet MSL to and including 10,000 feet MSL, excluding that airspace described in paragraphs 1-4; and that airspace west of Phoenix Sky Harbor International Airport extending from 8,000 feet MSL to and including 10,000 feet MSL bounded by an extension of Chandler Boulevard clockwise until intersecting Camelback Road. This airspace is impacted by high terrain and allows adequate airspace for nonparticipating aircraft conducting

VFR operations. This configuration would provide an area to contain aircraft during climb and descent profiles while transitioning between the terminal and en route structure.

The preceding general summary of the proposed TCA airspace configuration identifies that airspace which is necessary to contain large turbojet aircraft operations at Phoenix Sky Harbor International Airport. ATC will provide control and separation of all flights within the proposed airspace boundaries. Furthermore, ACT authorization is requisite to aircraft operations within that airspace. Establishment of this TCA will greatly enhance the safety of flight within the congested airspace overlying the Phoenix metropolitan area by facilitating the separation of controlled and uncontrolled flight operations. Section 71.403 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6D dated January 4, 1988.

Regulatory Evaluation Summary

The FAA is required to assess the benefits and costs of each proposed rulemaking action to assure that the public is not burdened with rules whose costs outweigh their benefits. The section contains an analysis which quantifies, to the maximum possible extent, the costs and benefits of establishing a TCA at Phoenix, AZ.

This proposal is intended to lower the likelihood of midair collisions by increasing the capability of the ATC system to separate all aircraft in terminal airspace around the Phoenix Sky Harbor International Airport. This action was prompted by data indicating that a high percentage of near midair collisions reported to the FAA in terminal areas involve VFR aircraft that are not required to be under the control of ATC. Thus, the overall objective of this proposal is to substantially increase safety while accommodating the legitimate concerns of airspace users.

Costs-Benefits Analysis

a. Costs

The FAA estimates the total cost expected to accrue from implementation of the proposed rule to be \$1.2 million (\$1 million, discounted) in 1987 dollars. Approximately \$471,000 (discounted) or 46 percent of the total estimated costs would be incurred by the FAA primarily for training and additional equipment. The remaining costs would be incurred by small GA aircraft operators who would be required under this proposal to equip their aircraft with Mode C transponders sooner than they would

have for the ARSA under the previous FAA rule: "Transponder With Automatic Altitude Reporting Capability Requirement (Mode C)" (53 FR 23356, June 21, 1988). This rule became effective June 21, 1989, and will be implemented in two phases. Phase I, to begin in July 1989, will require a transponder with Mode C at and above 10,000 feet MSL and in the vicinity (30 nautical miles) of TCA primary airports. There are currently 23 TCA's. Phase II will implement a transponder with Mode C requirement in the airspace in the vicinity (10 nautical miles) of ARSA primary airports. Phase II becomes effective on December 30, 1990, and will affect over 135 ARSA's. Also in Phase II, a transponder with Mode C will be required at other designated airports for which either a TCA or ARSA has not been adopted. Consequently, it would be very difficult for any aircraft to fly without entering within 30 nautical miles of a primary TCA airport, within 10 nautical miles of a primary ARSA airport, or within controlled airspace of other designated airports that would also require Mode C transponders. Thus, this evaluation, as well as the Mode C rule, assumes that all aircraft without Mode C would acquire such equipment rather than circumnavigate the subject airport. The only aircraft without this equipment would be non-electrical and antique types. Costs to these types of aircraft operators have already been accounted for by the Mode C rule. As a result, aircraft operators impacted by this proposal would only incur the opportunity costs of capital by requiring them to acquire, install, and maintain Mode C transponders one and a half years earlier than they would be required to do so in accordance with Phase II of the Mode C rule.

b. Benefits

This proposed rule is expected to generate potential benefits primarily in the form of enhanced safety to the aviation community and the flying public. Such safety, for instance, would take the form of reduced casualty losses (namely, aviation fatalities and property damage) resulting from a lowered likelihood of midair collisions because of increased positive control in airspace to be established by the TCA. In addition, potential benefits are expected to accrue in the form of improved operational efficiency on the part of FAA air traffic controllers.

Ordinarily, the potential benefits of this proposal would be the reduction in the probability of midair collisions resulting from converting the existing ARSA to a TCA. However, because of the recent Mode C rule (and to some

extent, the Traffic Alert and Collision Avoidance (TCAS) rule, 54 FR 940, January 10, 1989), the number of potential midair collisions avoided by this proposal is expected to be significantly lower. Nevertheless, this proposal is still expected to accrue benefits in terms of enhanced safety, though on a much smaller scale. This point can be illustrated with the use of statistical models based on actual and projected critical NMAC incidents in lieu of actual midair collisions. (A critical NMAC is an event involving two aircraft coming within 100 feet of each other; the fact that they do not collide is not due to an action on the part of either pilot; but, rather, purely to chance.) Since midair collisions involving Part 135 aircraft and especially Part 121 aircraft are rare, the use of critical NMAC's will serve to illustrate, to some degree, the potential improvements in aviation safety of implementing this proposal. Simple regression analyses were prepared for this evaluation which focused on critical NMAC's and aircraft operations in the 23 existing TCA's and in a random sample of 23 of the existing 79 ARSA's (as of 1986 and 1987). The results of these analyses indicated that TCA's have approximately 32 percent fewer critical NMAC's annually, on average, than ARSA's. While there is no demonstrated relationship between NMAC's and actual midair collisions, the lower NMAC rate does indicate a more efficient separation of aircraft in congested airspace.

As the result of these findings, if the existing Phoenix ARSA were to remain unchanged (and the recent Mode C and TCAS rules were not in effect), the Phoenix Terminal Area would be expected to experience approximately 2.6 critical NMAC's annually (or 41 critical NMAC's over the next 15 years). If, however, the ARSA were to become a TCA, this figure would reduce to approximately 0.8 critical NMAC's annually (or 13 critical NMAC's over the next 15 years). Thus, over the next 15 years, this proposal could result in the reduction of approximately 28 critical NMAC's. However, it is important to note that many, if not most, of these potential critical NMAC's would never materialize as predicted primarily because of the "Mode C" rule as it is applied to the Phoenix ARSA and, to some extent, the "TCAS" rule.

According to Phase II of the Mode C rule, all aircraft operating within 10 nautical miles (except for flights under the outer 5-mile "shelf") of an ARSA primary airport must be equipped with the Mode C Transponder. Phase I of the Mode C rule requires, as of July 1989,

aircraft operating within 30 nautical miles of a TCA to be equipped with a Mode C transponder. These requirements are expected to significantly reduce the risk of midair collisions in ARSA's and TCA's. For this reason, the primary safety benefit of this proposal to create a TCA in 1989 at Phoenix is that the safety enhancements of the Mode C and TCAS requirements will occur one and a half years earlier than they otherwise would be expected without this proposal. A second safety benefit would be in terms of the lowered likelihood of midair collisions as the result of expanding the lateral boundaries of positive ATC by 20 nautical miles through replacing the Phoenix ARSA with a TCA.

Thus, the safety benefits of the establishment of a new TCA, while positive, would be less than would otherwise accrue in the absence of the Mode C and TCAS rules. Since this proposal essentially extends the effects of the Mode C rule, virtually all of its potential safety benefits are assumed to be part of that rule. Such benefits cannot be estimated separately and, therefore, are considered to be inextricably linked primarily to the Mode C rule. Over a 15-year period, the Mode C rule is expected to generate total potential safety benefits of \$344 million (discounted, in 1987 dollars). (The Mode C rule benefits estimated of \$310 million for 10 years has been adjusted to a 15-year period for the purpose of comparability with the TCAS rule and other FAA rulemaking actions.) It is important to note that part of these safety benefits would be attributed to the TCAS rule. Thus, the potential safety benefits of this proposal, and the Mode C and TCAS rules are considered to be inextricably linked.

Another potential benefit of the proposed rule would be improved operational efficiency on the part of FAA air traffic controllers. Under the proposed rule, Mode C transponder requirements would ease controller workload per aircraft being controlled because of the reduction in radio communications. It would also make potential traffic conflicts more readily apparent to the controller. As the result of improved operational efficiency, the impact of the controller workload increased by separation requirements in the proposed TCA would be somewhat offset because of the controller's ability to adjust the volume of VFR traffic in any given portion of the TCA. Improved operational efficiency should generate other types of benefits in the form of significant reductions in the number of VFR aircraft requests denied and VFR

aircraft delayed during busy periods. As the result of converting the existing Phoenix ARSA to a TCA, the improved operational efficiency would accrue because of the additional equipment (such as flight data input-output, dedicated communication link, and video mapper). If the Phoenix ARSA were to remain intact, such equipment would not be required. The potential benefits of improved operational efficiency, which is not considered to be quantifiable in this evaluation, would be attributed to this proposal.

c. Comparison of Benefits and Costs

The total cost that would accrue from implementation of the proposed rule is estimated to be \$1 million (discounted, in 1987 dollars). Approximately, half of this total cost estimate would fall on those GA aircraft operators without Mode C transponders in the form of opportunity costs by requiring them to acquire such avionics equipment one and a half year sooner than they otherwise would under the status quo. The typical individual GA aircraft operator impacted would incur an estimated one-time cost ranging from \$120 to \$280 (discounted) under the proposed rule. The potential benefits of the proposed rule would be the lowered likelihood of midair collisions from the conversion of the existing ARSA to a TCA. The number of midair collisions avoided and their respective monetary values cannot be estimated for this proposal independent of the Mode C and TCAS rules, but the FAA believes the risk would be substantially reduced. An FAA analysis prepared for this evaluation, however, has shown that critical near midair collisions occur approximately one-third less frequently in a TCA than within an ARSA. The FAA believes that even after the aviation community complies with the Mode C and TCAS rules, locations converting from ARSA's to TCA's would continue to experience reduced critical NMIC's. In addition, the proposed rule would generate improved operational efficiency benefits on the part of FAA air traffic controllers, though they are not considered to be quantifiable in monetary terms.

The Regulatory Evaluation that has been placed in the docket contains additional detailed information related to the costs and benefits that are expected to accrue from the implementation of this NPRM.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted to ensure that small entities are not unnecessarily and

disproportionately burdened by Government regulations. The RFA requires agencies to review rules which may have "a significant economic impact on a substantial number of small entities."

The small entities which could be potentially affected by the implementation of this proposed rule are unscheduled operators of aircraft for hire who own nine or fewer aircraft.

Virtually all of the aircraft operators impacted by this proposed rule would be those who acquire Mode C transponder capability. The FAA believes that all unscheduled aircraft operators (namely, air taxi operators) potentially impacted by this proposed rule already have Mode C transponder due to the fact that such operators fly regularly in or near airports where radar approach control service has been established. Even if some of these operators were to acquire, install, and maintain Mode C transponders, the cost would not have a significant economic impact on a substantial number of them. The annual FAA threshold for significant economic impact is \$3,700 (1987 dollars) for a small entity. According to FAA Order 2100.14A (Regulatory Flexibility Criteria and Guidance), the definition of a small entity, in terms of an air taxi operator, is one with nine aircraft owned, but not necessarily operated.

If we were to assume that a particular aircraft operator had nine aircraft without transponders, then the one-time cost per aircraft would be approximately \$243. This figure represents the annualized cost for each impacted aircraft. The total cost per small entity would amount to an estimated \$2,187. Thus, the annual worst case cost for a small entity would fall far below the FAA's annual threshold of \$3,700. Therefore, the FAA believes this proposed rule will not have a significant economic impact on a substantial number of small entities.

International Trade Impact Assessment

The proposed rule would neither have an effect on the sale of foreign aviation products or services in the United States, nor would it have an effect on the sale of U.S. products or services in foreign countries. This is because the proposed rule would only potentially impact small GA aircraft operators without Mode C, and not aircraft manufacturers. The average cost of acquiring Mode C capability is estimated to range from \$900 (to upgrade from a Mode A transponder) to \$2,000 (to acquire a Mode C transponder without having a Mode A transponder). The cost of acquiring Mode C capability

is not considered to be high enough to discourage potential buyers of small GA airplanes.

Federalism Implications

This regulation would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, preparation of a Federalism assessment is not warranted.

Conclusion

For the reasons discussed under "Regulatory Evaluation," The FAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291, and it is certified that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. This rule is considered a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 23, 1979).

List of Subjects in 14 CFR Part 71

Aviation safety, Terminal control areas, Airport radar service areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.403 [Amended]

2. Section 71.403 is amended as follows:

Phoenix, AZ [New]

Primary Airport

Phoenix Sky Harbor International Airport (lat. 33°26'10" N., long. 112°00'32" W.)
Phoenix Sky Harbor International Airport Runway 8R Instrument Landing System (ILS) Localizer Antenna (lat. 33° 25'52" N., long. 111°59'11" W.)

Boundaries

Area A. That airspace extending upward from the surface to and including 10,000 feet MSL within the area bounded on the north by a point at lat. 33°30'34" N., long. 112°10'05"

W. (intersection of 51st Avenue and Camelback Road), extending east along Camelback Road until a point at lat. 33°30'07" N., long. 111°53'26" W., (intersection of Camelback Road and Pima/Price Road), on the east by Pima/Price Road until a point at lat. 33°21'49" N., long. 111°53'34" W. (Pima/Price Road and Guadalupe Road), on the south by Guadalupe Road to a point at lat. 33°21'50" N., long. 111°58'05" W. (Intersection of Guadalupe Road and Interstate 10), direct to a point at lat. 33°21'48" N., long. 112°06'17" W., direct to a point at lat. 33°21'48" N., long. 112°10'06" W., on the west by 51st Avenue to the point of beginning.

Area B. That airspace extending upward from 3,000 feet MSL to and including 10,000 feet MSL within an area bounded on the north by a point at lat. 33°30'29" N., long. 112°21'26" W., (intersection of Litchfield Road and Camelback Road), extending east on Camelback Road to a point at lat. 33°30'27" N., long. 112°18'14" W., (Camelback Road and Agua Fria River), north along Agua Fria River to a point at lat. 33°32'11" N., long. 112°18'23" W., (Agua Fria River and Glendale Avenue), extending east on Glendale Avenue to a point at lat. 33°32'19" N., long. 112°06'42" W. (intersection of Glendale Avenue and Interstate 17), on the east by Interstate 17 to a point at lat. 33°30'34" N., long. 112°06'42" W. (intersection of Interstate 17 and Camelback Road), west on Camelback Road to a point at lat. 33°30'34" N., long. 112°10'05" W. (intersection of Camelback Road and 51st Avenue), south of 51st Avenue to a point at lat. 33°21'48" N., long. 112°10'06" W., east to a point at lat. 33°21'48" N., long. 112°06'27" W., south to a point at lat. 33°18'18" N., long. 112°06'27" W., on the south by an extension of Chandler Boulevard extending west to a point at lat. 33°18'18" N., long. 112°21'26" W., on the west by Litchfield Road and an extension of Litchfield Road to the point of beginning.

Area C. That airspace extending upward from 3,000 feet MSL with the airspace bounded on the north by a point at lat. 33°32'18" N., long. 111°53'26" W. (intersection of Indian Bend Road and Pima/Price Road), east on Indian Bend Road and an extension of Indian Bend Road until a point at lat. 33°32'20" N., long. 112°47'20" W. (extension of Indian Bend Road intercepts Gilbert Road), on the east by Gilbert Road and an extension of Gilbert Road to a point at lat. 33°18'18" N., long. 111°47'20" W. (extension of Gilbert Road intercepts Chandler Boulevard), on the south by Chandler Boulevard to a point at lat. 33°18'19" W., long. 111°58'18" W. (intersection of Chandler Boulevard and Interstate 10), on the west by Interstate 10 to a point at lat. 33°21'50" N., long. 111°58'05" W., then east on Guadalupe Road to a point at lat. 33°21'49" N., long. 111°53'34" W. (intersection of Guadalupe Road and Pima/Price Road), then north on Pima/Price Road until the point of beginning.

Area D. That airspace extending upward from 4,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point at lat. 33°36'32" N., long. 112°18'12" W. (Agua Fria River and Thunderbird Road), extending east on Thunderbird Road and Cactus Road until intersecting the 20-mile arc from the ILS localizer antenna clockwise to the Williams 1

MOA, AZ, boundary, then south along the Williams 1 MOA boundary until intersecting Riggs Road and an extension of Riggs Road, extending west on Riggs Road and an extension of Riggs Road to a point at lat. 33°12'00" N., long. 112°09'00" W. (intersection of Valley Road and Riggs Road), north on Valley Road to a point at lat. 33°15'15" N., long. 112°09'00" W. (intersection of Valley Road and Gila River), north along Gila River until intercepting an extension of Chandler Boulevard at lat. 33°18'18" N., long. 112°12'00" W., extending east on an extension of Chandler Boulevard to a point at lat. 33°18'18" N., long. 112°06'27" W., north to a point at lat. 33°21'48" N., long. 112°21'27" W., east to a point at lat. 33°21'50" N., long. 111°58'05" W. (intersection of Guadalupe Road and Interstate 10), south on Interstate 10 to a point at lat. 33°18'19" N., long. 111°58'18" W. (intersection of Chandler Boulevard and Interstate 10), east on Chandler Boulevard to a point at lat. 33°18'19" N., long. 111°47'20" W. (intersection of Gilbert Road and Chandler Boulevard), north on Gilbert Road and an extension of Gilbert Road to a point at lat. 33°32'20" N., long. 111°47'20" W. (intersection of Gilbert Road and Indian Bend Road), west on Indian Bend Road to a point at lat. 33°32'18" N., long. 111°53'26" W. (intersection of Indian Bend Road and Pima/Price Road), south on Pima/Price Road to a point at lat. 33°30'07" N., long. 111°53'26" W. (intersection of Camelback Road and Pima/Price Road), west on Camelback Road to a point at lat. 33°30'34" N., long. 112°06'42" W. (intersection of Camelback Road and Interstate 17), north on Interstate 17 to a point at lat. 33°32'19" N., long. 112°06'42" W. (Interstate 17 and Glendale Avenue), west on Glendale Avenue to a point at lat. 33°32'11" N., long. 112°18'23" W. (intersection of Glendale Avenue and Agua Fria River), north on Agua Fria River until the point of beginning.

Area E. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point at the Agua Fria River and the 20-mile arc of the ILS, clockwise until intercepting Thunderbird Road and an extension of Cactus Road, west on an extension of Cactus Road and Thunderbird Road until a point at lat. 33°36'32" N., long. 112°18'15" W. (intersection of Agua Fria River and Thunderbird Road), north along Agua Fria River until the point of beginning.

Area F. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point at lat. 33°12'00" N., long. 112°09'00" W., (intersection of Valley Road and Riggs Road) and an extension of Riggs Road until intercepting the 20-mile arc of the ILS localizer antenna clockwise until intercepting a point at lat. 33°07'30" N., long. 112°09'05" W., on Valley Road, north on Valley Road until the point of beginning.

Area G. That airspace extending upward from 6,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point on the 25-mile arc of the ILS localizer antenna and Camelback Road, east on Camelback Road to a point at lat. 33°30'29" N., long. 112°21'26" W., (intersection of Camelback

Road and Litchfield Road) south on Litchfield Road to a point at lat. 33°18'18" N., long. 112°21'28" W., (intersection of Litchfield Road and an extension of Chandler Boulevard) west on an extension of Chandler Boulevard to a point on the 25-mile arc of the ILS localizer antenna, clockwise until the point of beginning.

Area H. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point on the 25-mile arc of the ILS localizer antenna and the Agua Fria River clockwise to the Williams 1 MOA, west along the Williams 1 MOA until intercepting the 20-mile arc of the ILS localizer antenna and the Agua Fria

River, north along the Agua Fria River until the point of beginning, excluding that airspace between Interstate 17 and the 008° bearing from the ILS localizer antenna.

Area I. That airspace extending upward from 8,000 feet MSL to and including 10,000 feet MSL within an area bounded by a point at lat. 33°05'40" N., long. 111°59'50" W., on the 20-mile arc of the ILS localizer antenna counterclockwise to the Williams 1 MOA south along Williams 1 MOA to the 25-mile arc of the ILS localizer antenna counterclockwise to a point at lat. 33°00'35" N., long. 111°59'50" W., (power transmission line) north along the power transmission line to the point of beginning.

§ 71.501 [Amended]

3. Section 71.501 is amended as follows:

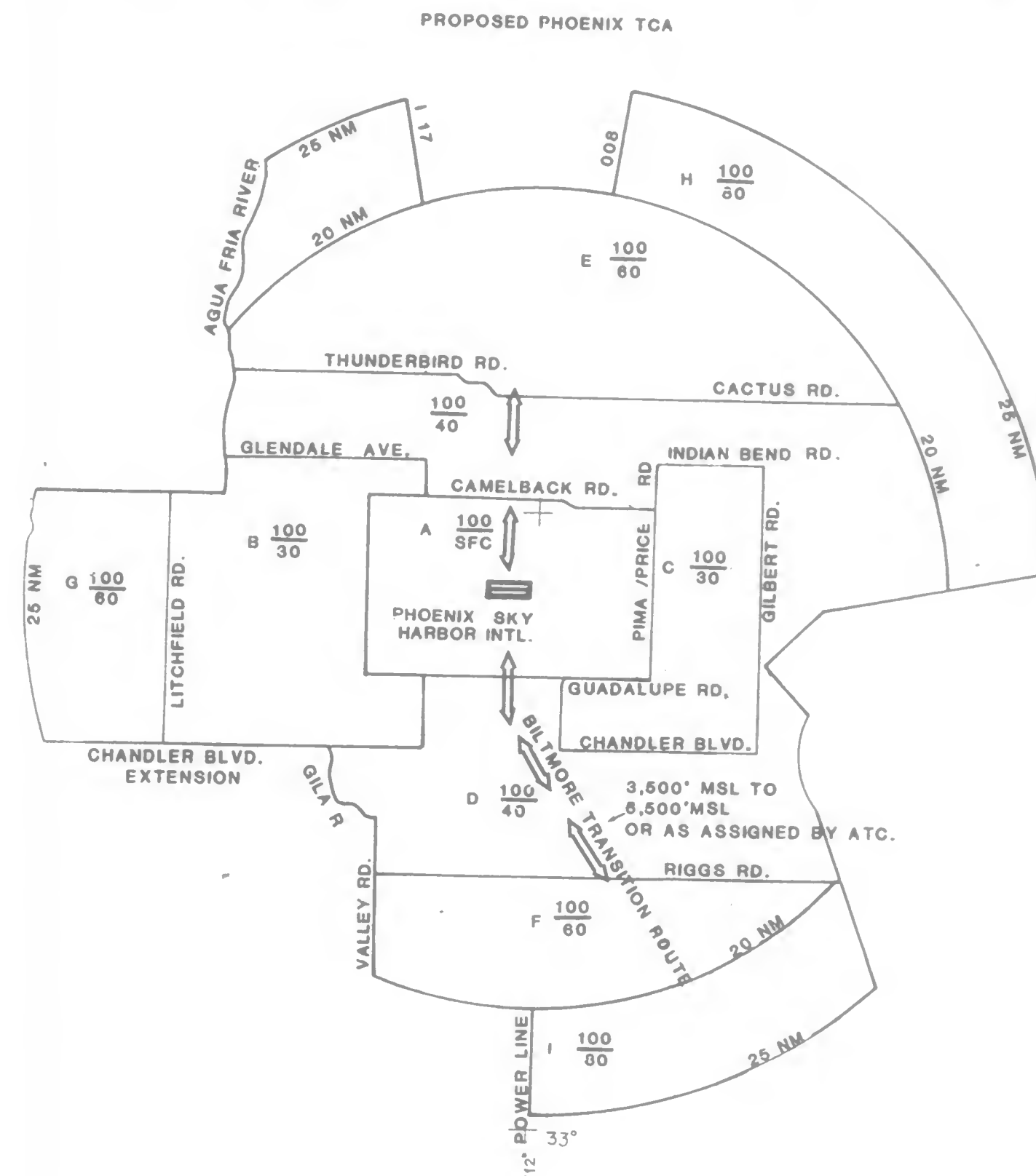
Phoenix Sky Harbor International Airport, AZ [Removed]

Issued in Washington, DC., on May 28, 1989.

Harold W. Becker,

Manager, Airspace Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M



federal register

Friday
June 2, 1989

Part IX

Department of Housing and Urban Development

Office of the Assistant Secretary for
Community Planning and Development

24 CFR Part 590
Urban Homesteading Program;
Implementation of 1987 Statutory
Amendments and Revision of Selected
Program Procedures; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 590

(Docket No. R-89-1413; FR-2461)

RIN 2506-AA79

Urban Homesteading Program; Implementation of 1987 Statutory Amendments and Revision of Selected Program Procedures

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Final rule.

SUMMARY: This rule implements amendments to the Urban Homesteading Program regulations made by sections 517 (c) and (d) of the Housing and Community Development Act of 1987 ("1987 Act"). In accordance with section 517(c) of the 1987 Act, the rule eliminates the former three pronged "special priority" test for the selection of homesteaders and substitutes a single priority selection criterion—that the prospective homesteader should be a "lower-income" person or family. The rule also implements section 517(d) of the 1987 Act, which authorizes States and units of general local government participating in the program to enter into agreements with designated "qualified non-profit organizations" to perform functions under the local urban homesteading program, including selecting homesteaders and properties, and accepting title to and conveying the properties to homesteaders. Finally, the rule also makes a number of specific changes in program procedures, such as specifying certain additional documents that must be submitted with a locality's urban homesteading application, setting a guideline that a local urban homesteading agency should generally anticipate homesteading a minimum of five properties per year in order to participate effectively in the program, and raising the existing limit on the values of properties selected for homesteading from \$20,000 to \$25,000 for one-unit properties, and from \$5,000 to \$8,000 per additional unit in two- to four-unit properties. In addition, the program's fund reservation system is being changed from an annual reservation based on estimated annual needs to a system of first-come, first-served reservations for specific properties.

EFFECTIVE DATE: July 17, 1989.

FOR FURTHER INFORMATION CONTACT: Marion F. Connell, Director, Urban Homesteading Program, Rehabilitation Loans and Homesteading Division, Office of Urban Rehabilitation, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 7178, Washington, DC 20410. Telephone: (202) 755-5324. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. The OMB control number, when assigned, will be announced by separate notice in the Federal Register. Until the information collection requirements have been approved and assigned an OMB control number, no person may be subjected to a penalty for failure to comply with these information collection requirements. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Findings and Certifications*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 7th Street, SW., Room 10276, Washington, DC 20410, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

Section 517 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) amended section 810 of the Housing and Community Development Act of 1974, 12 U.S.C. 1706e ("1974 Act"), which authorizes the Urban Homesteading Program, as follows.

Section 517(c) eliminates the former three-pronged "special priority" test for the selection of homesteaders and substitutes a single priority selection criterion—that the homesteader selected should be a "lower-income" person or family.

Section 517(d) authorizes States and units of general local government to designate a "qualified non-profit organization," or a public agency, to act as the local urban homesteading agency

(LUHA)—including accepting title to and conveying properties to homesteaders if they so choose.

In addition to the amendments made by sections 517 (c) and (d) of the 1987 Act, section 517(a) amends the 1974 Act to extend the authority for the local property and the multifamily property urban homesteading demonstrations. These demonstrations would be implemented by Notice, rather than by permanent regulations, if they were reinstated. However, the Department is not currently planning to implement either of these demonstrations in FY 1989.

Also, section 517(b) amends section 106(d)(3)(A) of the 1974 Act to allow State participants in the Urban Homesteading Program to use Community Development Block Grant (CDBG) funds for urban homesteading administrative expenses, consistent with the authority available to CDBG grantees other than States. This provision will be implemented by an appropriate revision to the State CDBG Regulations, rather than in this rule. However, this provision is self-executing, and, therefore, it does not require regulatory action to be effective. States participating in the Urban Homesteading Program may charge eligible administrative expenses incurred after February 5, 1988 (the effective date of the 1987 Act) in operating their urban homesteading programs to their otherwise available State CDBG administrative funds, provided such administrative expenditures would satisfy other Title I requirements.

Other changes to Part 590 in this rule are being promulgated at HUD's initiative. Generally, these changes stem from the need to update certain provisions in keeping with comments received from Congressional committee reports, comments from local officials, and HUD's own experience in administering the program since the last major revision of the regulations (see 50 FR 25941, June 24, 1985).

The principal amendments to Part 590 are discussed below in the order that they appear in the final rule. Other technical amendments are in the following sections of Part 590: Sections 590.1 (a) and (b); 590.5 (definitions of "Act" and "LUHA" are amended; new definitions of "lower-income families" and "qualified community organization are added; and definition of "locally owned property" is deleted); §§ 590.7; 590.11 (c) and (d); 590.13; 590.15; 590.17; 590.19; 590.23; 590.29; and 590.31. These technical amendments have not been separately discussed below, since they

are either editorial in nature, or they are conforming changes to make the amended provision consistent with one of the principal amendments in the proposed rule.

Amendments to Part 590

In § 590.7, "Program requirements," the final rule adds guidance that, in general, local agencies shall select neighborhoods so as to be able to anticipate homesteading a minimum of five properties per year, in order for their programs to be cost-effective and have discernible impact. Under § 590.13, "Standards for HUD review and approval of a local urban homesteading program", compliance with this and other requirements of Part 590 will be considered by HUD in determining whether to approve an applicant's initial application or annual request for program participation. These provisions are established in view of the high demand for scarce program funds in order to establish a reasonable threshold level necessary for continued program participation. Regional economic conditions dictate not only the availability of federally-owned properties but also their price range. These factors, in turn, influence the feasibility of homesteading in the region. Over time, economic conditions shift within regions of the country, so that homesteading may become infeasible in a previously active area due to a lack of foreclosed single-family properties in the HUD, VA, and FmHA inventories, or the increased cost of such properties. Conversely, as more properties become available or their values decrease, homesteading may become very active in an area previously inactive. Without a threshold program level, communities could continue indefinitely in the program, operating ineffective, expensive, low level programs, while other areas with greater need for program resources find it difficult or impossible to obtain funding.

Under "Program requirements" at § 590.7(b)(2), the homesteader selection section is being modified to conform the regulations to section 517(c) of the 1987 Act. The three existing priority selection criteria are deleted and one priority criterion set forth, which gives priority to eligible "lower-income families or individuals," as defined by 24 CFR Part 813. Since HUD has already advised local urban homesteading agencies that this provision is considered self-executing, local agencies should already be selecting homesteaders in accordance with the new single criterion for priority. However, homesteaders notified of their selection in accordance with the previous special priority before

February 5, 1988 (the effective date of the 1987 Act) remain entitled to properties, if they have not received them yet. The final rule makes no change in the basic effect to the statutory priority from existing rules, apart from the simplification of the criterion for priority selection itself. Specifically, a local urban homesteading agency (LUHA) still may not select a homesteader who is not entitled to priority if there is an available priority homesteading candidate who has applied and is qualified for the particular property involved. However, as discussed under "Public Comments—Selection Criteria" below, HUD now explicitly recognizes in the final rule that determining who is qualified for a particular property requires reasonably matching the size of the household selected as homesteaders to the bedroom size of the property available.

Finally, a new provision, designated (iii), was added to § 590.7(b)(2) of the proposed rule and has not been changed in the final rule. This new requirement provides that membership in, or ties to, particular private organizations shall not be made a factor affecting homesteader selection. With the advent of non-profit community organizations being designated as LUHAs, HUD believes it is important to specify that membership in any private organization, doing business with such an organization, or any other ties to a particular private organization, are not made criteria for homesteader selection.

Also under "Program requirements" in § 590.7, amendments to subparagraphs (b)(4) and (b)(6) have been made in order to clarify the LUHA's responsibility to assist in securing compliance with Section 312 Program loan terms and to find a replacement homesteader where it appears that the initial applicant has defaulted on a section 312 loan during the homesteader's conditional title period: During this period, foreclosure of the section 312 loan is generally not a viable option, since it either results in undue loss to HUD, if HUD forecloses only on the homesteader's interest in the property, or it results in the property being lost to the homesteading program, if the LUHA gives up its reverter interest in the property and allows HUD to foreclose and then to sell the property on the open market. The best option both to minimize HUD's loss and to preserve the property for homesteading is for the local agency to identify a successor homesteader who will assume the section 312 loan, or as much of the loan as the property's value at the time of assumption will support. The

amendments are designed to give local agencies clearer regulatory notice of this policy, which is more fully described in CPD Notice 88-21 on this subject issued under HUD's Unified Issuances System. Also, the amendments to § 590.7(b)(6) allow HUD to shorten the homesteading period required of the successor homesteader under that section, if that is necessary to attract a successor homesteader.

Under "Program requirements" in § 590.7, a new paragraph (c) is added entitled "Designation of LUHA." As at present, the applicant State or unit of general local government may act as its own local urban homesteading agency (LUHA), conducting the program and accepting and conveying title to federally owned properties in its own name, or it may designate a legally separate and independent public agency to do so. Similar to present practice, the designation is approved by HUD as part of the program application approval process, and it remains in effect until a new LUHA is designated by the applicant by a program amendment approved by HUD, or the local urban homesteading program is closed out. Finally, also as already permitted (although not specified in the regulation in effect prior to this rule), the final rule specifies that the LUHA itself may carry out its program functions through one or more third party contractors, consultants, or agents, except for the acceptance and conveyance of title to properties. The final rule makes clear that the third party agreements must be in writing, and it may not relieve the LUHA or the applicant of responsibility for the conduct of the program.

In addition, based on section 517(d) of the 1987 Act, HUD also is allowing qualified community organizations to act as LUHAs, under § 590.7(c)(2)(iii) of the final rule. As provided by the 1987 Act, the final rule defines "qualified community organizations" as non-profit corporations whose directors serve without pay and which qualify as IRS section 501(c)(3) tax exempt organizations (See § 590.7(c)(4)). Consistent with present practice, any designated LUHA (whether public or private) must have legal authority to accept and convey title to properties for homesteading purposes. The final rule specifically provides in § 590.7(c)(1) that this key function may not be passed on to another entity by the LUHA unless HUD approves a program amendment designating a new LUHA, because up to three Federal agencies must know on a day-to-day basis what local entity they are authorized to deal with in conveying properties, and to assure that the LUHA

remains properly accountable for the properties it obtains, both to HUD and to the homesteaders who deal with the LUHA.

Finally, the final rule requires a written agreement between the LUHA and the applicant, and it specifies at § 590.7(c)(3) certain provisions which the agreement must contain at a minimum. HUD believes that a written agreement detailing the responsibility of the LUHA is essential for non-profits to act as LUHAs. HUD also believes that program responsibilities will be clarified and accountability strengthened if designated public agencies are also required to enter into such agreements with the responsible States and units of general local government, and the final rule so provides at § 590.7(c)(2)(ii).

Under "applications" at § 590.11, the final rule requires local urban homesteading agencies applying for the first time to submit additional information in their application package. HUD is now requesting a description of the applicant's proposed homesteader selection procedures which complies with the 1987 Act and § 590.7(b)(2) of the regulations, copies of the applicant's proposed legal documents complying with §§ 590.7(b)(3), (5) and (7), an estimate of the number of properties to be acquired during the program year, and a copy of the applicant's written agreement designating any local urban homesteading agency in compliance with § 590.7(c). Receipt of these specific documents is necessary to avoid serious flaws in program design which HUD has found more difficult to correct after the fact. The Department still wishes to offer maximum latitude to local agencies administering the program, but several recent applicants have commented that they prefer more specificity on these matters at program startup. Similarly, in § 590.11(b), HUD is requiring previously approved applicants to submit the information newly required by §§ 590.11(a)(4), (5), (7), (8), and (9) for the first program year following the effective date of the final rule.

Under "Standards for HUD review and approval of a local urban homesteading program" at § 590.13, HUD is adding language changing the point at which environmental review occurs. That will now occur when an urban homesteading neighborhood is approved under this section.

Under "Transfer of HUD-owned property" at § 590.17(b)(4) and under "Reimbursement to FmHA and VA" at § 590.18(c)(1), the administratively imposed maximum amount that may be charged to section 810 appropriations for acquisition of federally-owned, single-dwelling unit properties is being

raised from \$20,000 to \$25,000, in keeping with suggestions from the House-Senate Conference Committee on H.J. Res. 395 (FY 1988 Appropriations Act) in House of Representatives Report No. 100-498 at page 843. This will help keep pace with inflation in real estate market values being experienced in some areas of the country. This cost cap has not been adjusted since 1985. HUD is, however, amending §§ 590.17 and 590.18 to delete HUD Field Office authority to grant local program-wide exceptions to this acquisition cost cap, because of the need to further target the limited program funds to sections of the nation experiencing softer real estate markets. Under the final rule, the price paid for a property shall be the as-is fair market value, not to exceed \$25,000, or a negotiated lesser amount, unless an exception for an individual property is granted by a HUD Field Office. An additional amount up to \$8,000 per unit may also be charged to section 810 funds for properties with two to four dwelling units. This is an increase from \$5,000 per additional dwelling unit, a figure which had not been adjusted since the inception of the program. In addition, the 30 day time frame for which HUD/FHA has been obligated to suspend its routine property disposition activity in urban homesteading neighborhoods is shortened to 21 days to reflect actual program experience and realize economies for the Department.

In § 590.17(b)(2), § 590.18(b), § 590.17(c) and § 590.18(d) changes of a similar nature are made for the purpose of clarifying when the reservation of funds to reimburse HUD, VA, or FmHA for the transfer of a specific property, and how long the reservation may remain outstanding. These changes are necessitated by the change from an annual to a property specific reservation system, which is discussed below under "Public Comments—Reservation of Funds".

At § 590.23, "Program close-out," the final rule gives HUD specific authority to terminate a local urban homesteading program if the LUHA has not acquired any properties for the last two fiscal years and local market conditions demonstrate that an insufficient number of properties will be available for the next fiscal year. Section 590.23(c) is also revised to make clear the LUHA's obligation to continue to monitor, enforce, and implement existing agreements with homesteaders after close-out.

Finally, at § 590.31(e), the final rule clarifies the remedial standard under which HUD may direct the LUHA to repay HUD for homestead properties that the LUHA has mishandled. The

former standard on its face dealt only with properties that the LUHA had "converted to its own use." This standard clearly covered properties that the LUHA had sold, rented, or used for its own purposes without HUD approval; it did not as clearly cover situations in which the LUHA's negligent failure to preserve and protect the property permitted deterioration that made it infeasible to homestead the property, or where the LUHA simply did nothing with the property for more than a year, unless excused by HUD under § 590.7(b)(3) of the final rule. The revised language of the final rule corrects these oversights.

A proposed rule was published for comment on October 19, 1988, at 53 FR 41028. The public comments received and the disposition of those comments are discussed below.

Public Comments

HUD received seven public comments: four from cities, one from a county, one from a technical consulting firm, and one from a HUD Field Office. The principal issues raised are summarized below, with HUD's response following each issue.

Five Property Threshold—§ 590.7(o)

One commenter misinterpreted the five property guideline for annual program participation levels by thinking that this threshold would be applicable to each approved homesteading neighborhood. In fact, the five property threshold is meant to apply on a program-wide basis, for each LUHA, and not on a neighborhood basis, in order for their efforts to be more cost effective and have discernible impact in the community.

Selection Criteria—§ 590.7(b)(2)

One commenter objected to the provision in paragraph (v) of § 590.7(b)(2) of the proposed rule that appeared to require that a single head of household could not occupy a property having more than two (2) bedrooms because the number of family members could increase during the five (5) year occupancy requirement.

As of § 590.7(b)(2)(v) in the proposed rule (concerning "other reasonable selection criteria"), the final rule divides this provision into two parts and renumbers the paragraphs of § 590.7(b)(2). New paragraph (iv) now contains the provisions formerly in paragraph (v) with respect to locally-adopted criteria designed to reasonably match homesteader household size to the bedroom size of the property for which the homesteader is being

selected. Former paragraph (iv) (concerning selection priority for lower income families) has been redesignated as paragraph (v), and the rest of former paragraph (v) (other reasonable selection criteria) has been redesignated as paragraph (vi).

With respect to the public comment cited above, the revised language of paragraph (iv) now states that a one-person household may not "receive" (as opposed to "occupy") a homestead property with more than two bedrooms, unless there are no longer households on the waiting list. Since the provision in question is a selection requirement, the word "occupy" was inappropriate in context. Generally, once a homesteader receives a property, there is no further Federal requirement that the homesteader continue to meet regulatory criteria that relate only to selection, such as the household/property size matching provision, or the provision that a homesteader may not own any other residential property (see paragraph (i) of § 590.7(b)(2)). Of course, after a homesteader does receive (take title to) a property, he or she must continue to comply with the ongoing requirements of the homesteader agreement under § 590.7(b)(5), such as continuing to occupy the property as his/her personal residence for at least five years.

New paragraph (iv) of § 590.7(b)(2) contains another apparent change from the proposed rule, which concerns the relationship of household/property size matching criteria to the lower income selection priority in paragraph (v), as redesignated in the final rule. HUD views the household/property size matching criteria as necessary, eligibility-based selection requirements, which override the "priority" in paragraph (v), and the language following "notwithstanding" at the end of paragraph (vi) in the final rule is intended to make that clear. On the other hand, the "other reasonable selection criteria" concerning locally-adopted residency preferences, which are referred to in paragraph (vi) of § 590.8(b)(2) of the final rule, are not intended to override the lower income priority. That is, a lower-income prospective homesteader on the waiting list should receive a property before anyone on the waiting list who is not entitled to the lower-income priority, even if the lower-income household is not entitled to local residency preference and the non-lower-income household does not have local residency preference. Such locally-adopted residency preferences may operate only among classes of prospective

homesteaders having the same priority status.

Timely Conveyance to Homesteaders—§ 590.7(b)(3)

One commenter urged that the rule discuss the timely conveyance of properties to homesteaders because it is in a LUHA's best interests to convey properties to homesteaders shortly after acquisition. Therefore, at § 590.7(b)(3), language has been added to state that the time frame between transfer of a homesteading property from HUD to the LUHA and the LUHA's conditional conveyance to a homesteader shall be within one year, or less, of title transfer to the LUHA unless otherwise approved by HUD in writing prior to the expiration of the one-year period.

Acquisition Cost Cap—§ 590.17(b)(4)(i)

Two cities commented on the increase of the acquisition cost cap per property to \$25,000 and requested that it be higher. Both of their LUHAs have been using program-wide high cost exceptions in the recent past which enabled them to purchase properties closer to \$35,000, and they wish to continue this practice. In making this change, the Department realize that not every community may be able to continue participation in the Urban Homesteading Program indefinitely. However, the limited program resources available compared to the national demand for section 810 funding mitigates against a further increase in the acquisition cost cap at this time or a continuation of the use of program-wide high cost approvals. As a basis of comparison, the average acquisition cost per property in FY 1988 was only \$18,043, so the majority of LUHAs are able to obtain suitable properties under \$25,000. For LUHAs who wish to continue in the program, and who can not find properties in this range, they are always free to add CDBG, or other local funds, to the \$25,000 in Section 810 funds to cover higher cost acquisitions (although these additional funds cannot be repaid by the homesteader).

Transfer of HUD-Owned Property (Exceptions)—§ 590.17(c)

One city expressed concern about the possibility of losing potential homesteading properties to "emergency housing needs." This issue became more important to LUHAs after the issuance of a temporary restraining order in the case of *Deborah Lee v. Kemp*, Civil Action No. 88-2395-OG (D.D.C.), which for a short time prohibited FHA from selling properties until the court heard oral arguments to determine whether a preliminary injunction should issue.

While that restraining order has been lifted, the case is still in litigation and, of course, HUD would have to comply with any court ordered action. While the Department understands the commenter's concern, it would be neither prudent nor effective for the Department to attempt to restrict the disposition of FHA-owned properties in such a manner that emergency housing needs are not considered. However, it appears likely that there will be an ample supply of properties appropriate for homesteading in most regions of the country even if some of the FHA inventory is used to help alleviate the homeless situation.

Also, in response to two commenters' concerns as to how much time a LUHA has after acceptance to close on the property, clarifying language has been added to § 590.17(c)(1), where it had not been clear that a LUHA has 30 days from its acceptance of HUD's offer of a property to accept title and close on the transaction.

Reservation of Funds—§ 590.21

The proposed rule formalized major changes in how program budget authority is made available for the use of participating LUHAs. The former system provided that each LUHA would be given an "annual reservation." Over the course of the fiscal year, the LUHAs could then identify properties and acquire them with reimbursement in the appropriate amount per property to the applicable Federal housing loan fund, up to the amount of its "annual reservation." The proposed rule would have changed the funding mechanism to a "first-come, first-served" reservation system for individual properties, "subject to available fund limitations." In response to public comments and discussions with local officials, the final rule retains, but modifies and clarifies, the "first-come, first-served" system contemplated by the proposed rule.

With respect to the basic decision to change to the first-come, first-served system, HUD continues to believe it is generally more efficient and equitable than the former system. In particular, the former system tended to "lock-in" relative funding levels among LUHAs early in the fiscal year, and these levels were based on even earlier data on past fund use and property availability. In reality, however, the supply of properties available to each LUHA during the fiscal year from the HUD, FmHA, and VA inventories may fluctuate significantly, leading to imbalances between the funding authority available to particular LUHAs and the relative numbers of properties

available to them. Previously, complicated adjustments were required to revise relative funding levels at the end of each fiscal year. Furthermore, the older system tended to favor LUHAs that had been in the program longer, since they had more opportunity to build up a high program level in the past, even though some may now have relatively smaller numbers of properties available for homesteading. The modified first-come, first-served system in the final rule continues to make funding generally more competitive among LUHAs, while making changes to improve the fairness of the system, compared to the proposed rule.

One commenter opposed the first-come, first-served system, urging a more stringent priority for large inventory cities, and stating that a strict first-come, first-served policy favored LUHAs closer to the applicable field office. Another commenter agreed with the new system in general, but suggested that the strict first-come, first-served policy favored larger LUHAs, and that smaller LUHAs needed at least a brief initial set-aside in order to effectively identify and request fund reservations for specific properties.

HUD has considered these comments, and the final rule permits HUD field offices to establish, for not more than 60 days, minimum initial allocations of section 810 funding authority for each participating LUHA in their jurisdiction, against which each LUHA will be exclusively authorized to request reservations for specific properties under either § 590.17 (HUD-owned

property) or § 590.19 (VA and FmHA owned-property) for that period. After these temporary allocations are used up or have expired, the LUHA will compete on an equal basis with other LUHAs in the field office jurisdiction for reservations from the field office subassignment. This procedure provides an initial opportunity for smaller LUHAs, or those farther from the field office, to obtain properties on a less competitive basis. Thereafter, however, LUHAs which are more efficient in seeking properties, and which have more properties available from which to choose, will find it easier to obtain funding.

Furthermore, HUD's fund assignments to HUD Regional and Field Offices, from which LUHAs request reservations, are in part based upon past funding levels and in part upon projected demand. Therefore, LUHA's which have larger inventories, and which are also efficient in requesting and homesteading properties, will gradually help increase assignments made to their field offices and will, thereby, be able to obtain a greater share of program resources.

Miscellaneous

A HUD Field Office commenter asked for clarification of eligible expenses for FmHA and VA properties. This will be handled in the handbook for this program.

The same commenter recommended that the definition of "eligible applicant" be expanded to include legally formed regional planning agencies and development districts. With proper

coordination, a regional planning or development agency, if it has the authority to accept and convey properties to homesteaders in its own name and otherwise to carry out a local homesteading program under Part 590, could prepare and submit concurrent applications on behalf of several units of general local government, as their joint "designated agency-LUHA". However, the units of general local government would have to sign the applications themselves as a formal matter. Also, such an agency could be designated to act as a LUHA for the State in which it is located. Given these options, as well as the general Federal policy embodied in the Intergovernmental Cooperation Act of 1968, which favors applications for Federal assistance from states and cities or counties, rather than special purpose bodies, HUD is not disposed to change Part 590 to allow regional agencies directly to apply on their own behalf for homesteading program participation.

Findings and Certifications

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(b) of the Paperwork Reduction Act of 1980. Sections 590.11 (a), (b), (c) and (d); 590.17(b); 590.18; 590.21; 590.25; and 590.29(c) of this final rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

ANNUAL REPORT BURDEN
FINAL RULE—URBAN HOMESTEADING PROGRAM

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondent	Total annual responses	Hours per response	Total hours
Application (2506-0042)	590.11(a) and (d)	20	1.00	20	30.00	600
Amendment (2506-0042)	590.11(c)	13	1.00	13	4.00	52
Annual request for program participation (2506-0042)	590.11(b)	112	1.00	112	2.33	260
Verification of fund availability, HUD-40050 (2506-0042)	590.17(b), 590.18, 590.21	132	4.00	528	0.25	132
Homesteading property addition, HUD-40063 (UHPMIS) (2506-0042)	590.29(c)	132	4.00	528	0.50	264
Quarterly property* report (UHPMIS) (2506-0042)	590.29(c)	132	1.34	176	0.25	44
Quarterly progress report (UHPMIS) (2506-0042)	590.29(c)	192	4.00	768	1.00	768
Recordkeeping for local urban homesteading programs	590.25	192	1.00	192	3.00	576
Total Annual Burden						2,696

*This report replicates data submitted on the HUD-40063. LUHAs do not submit it if it is correct. Less than one-third make additional corrections.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which

implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection

during regular business hours (7:30 a.m. to 5:30 p.m. weekdays) in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276,

Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. Analysis indicates that it does not: (1) Have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule implements several statutory provisions that improve the Urban Homesteading Program. These changes have neither a significant economic impact on, nor an effect on, a substantial number of small entities.

Executive Order 12612, Federalism. The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that this rule does not have "federalism implications" because it does not have substantial direct effects on the States (including their political subdivisions), or on the distribution of power and responsibilities among the various levels of government. This rule primarily relaxes and simplifies the criteria for selecting homesteaders. The provision under this rule that authorizes States and units of general local government to designate qualified non-profit organizations or public agencies to act as urban homesteading agencies is merely a function of delegation and does not affect the powers and responsibilities of the States or units of general local government.

Executive Order 12606, the Family. The General Counsel, as the Designated Official under Executive Order 12606, *the Family*, has determined that this rule does not have potential significant impact on family formation, maintenance, and general well-being because it does not affect the mechanics and benefits of the Urban Homesteading Program so far as the beneficiaries of the program are concerned. The rule primarily simplifies some of the requirements and makes procedural changes which do not affect the intended beneficiaries.

The Catalog of Federal Domestic Assistance Program number is 14.230.

This rule was listed as item number 995 in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 590

Urban homesteading. Administrative practice and procedure. Grant programs: Housing and community development, Low and moderate income housing.

Accordingly, the Department revises 24 CFR Part 590 to read as follows:

PART 590—URBAN HOMESTEADING

- Sec. 590.1 Scope and purpose of regulation.
- 590.3 Waiver authority.
- 590.5 Definitions.
- 590.7 Program requirements.
- 590.9 Listing of HUD-owned, VA-owned, and FmHA-owned properties.
- 590.11 Applications.
- 590.13 Standards for HUD review and approval of a local urban homesteading program.
- 590.15 Urban homesteading program participation agreement.
- 590.17 Transfer of HUD-owned property.
- 590.18 Reimbursement to FmHA and VA.
- 590.19 Use of section 810 funds.
- 590.21 Reservation of funds.
- 590.23 Program close-out.
- 590.25 Retention of records.
- 590.27 Audit.
- 590.29 HUD review of LUHA performance.
- 590.31 Corrective and remedial actions.

Authority: Sec. 810, Housing and Community Development Act of 1974 (12 U.S.C. 1706e); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 590.1 Scope and purpose of regulation.

(a) *Scope.* This part applies to the Urban Homesteading Program authorized under section 810(b) of the Housing and Community Development Act of 1974. The program is generally administered through the Department's field offices, which can provide information to the public about the States and localities participating, as well as technical assistance to participants about applying for and operating the program.

(b) *Purpose.* The purpose of the Urban Homesteading Program is to use existing housing stock to provide homeownership opportunities, primarily for lower income families, thereby encouraging public and private investment in selected neighborhoods and assisting in their preservation and revitalization. The program provides for the transfer without payment to a local urban homesteading agency (LUHA) of

federally owned properties for use in a HUD-approved local urban homesteading program.

§ 590.3 Waiver authority.

HUD may waive any requirement of this part not required by law whenever it determines that undue hardship would result from applying the requirement, or where applying the requirement would adversely affect achievement of the purposes of the program.

§ 590.5 Definitions.

"Act" means section 810 of the Housing and Community Development Act of 1974, as amended from time to time.

"Applicant" means any State or unit of general local government that applies for HUD approval of a local urban homesteading program under these regulations.

"Federally-owned property" means any real property to which the Secretary of HUD, the Secretary of Agriculture or the Secretary of Veterans Affairs holds title and which is:

- (1) Improved with a one- to four-family residence;
- (2) Unrepaired and not the subject of an outstanding repair or sales contract; and
- (3) Not occupied by an individual or family under a lease. (Property of this nature is also referred to as "HUD-owned property," "FmHA-owned property," or "VA-owned property" when the context requires identification of the particular agency.)

"FmHA" means the Farmers Home Administration, an agency within the U.S. Department of Agriculture.

"Homesteader" means an individual or family that participates in a local urban homesteading program by agreeing to rehabilitate and occupy a property in accordance with § 590.7(b)(5).

"HUD" means the U.S. Department of Housing and Urban Development.

"Local urban homesteading agency" (LUHA) means a State, a unit of general local government, or a public agency or qualified community organization designated in accordance with § 590.7(c) by a State or a unit of general local government.

"Local urban homesteading program" means the operating procedures and requirements developed by a LUHA and approved by HUD in accordance with this part for selecting and conveying federally-owned properties to qualified homesteaders.

"Lower income families" means those families and individuals whose adjusted incomes do not exceed 80 per centum of

the median income for the area, as determined by the Secretary under section 3(b)(2) of the United States Housing Act of 1937. Under the provision of 24 CFR Part 813, the Secretary's income limits for this purpose are updated annually and are available from the Housing Management Division in HUD field offices.

"Qualified community organization" has the meaning specified in § 590.7(c)(4).

"Section 810 funds" means funds available to reimburse HUD, FmHA, or VA (as applicable) for federally-owned property transferred to LUHAs in accordance with this part.

"State" means any State of the United States, any instrumentality of a State approved by the Governor, and the Commonwealth of Puerto Rico.

"Unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State, Guam, the Virgin Islands, or American Samoa, or any general purpose political subdivision thereof; the District of Columbia; the Trust Territory of the Pacific Islands; and Indian tribes, bands, groups, and nations of the United States, including Alaska Indians, Aleuts, and Eskimos.

"Urban homesteading neighborhood" means any geographic area approved by HUD for the conduct of a local urban homesteading program that meets the requirements of this part.

"VA" means the U.S. Department of Veterans Affairs.

§ 590.7 Program requirements.

(a) *Designation of urban homesteading neighborhood; coordinated approach toward neighborhood improvement.* The applicant shall designate the neighborhood or neighborhoods in which it will carry out its local urban homesteading program, and it shall develop a plan that provides for the improvement of these neighborhoods through the homesteading program and the upgrading of community services and facilities, and through other measures needed to assure a suitable living environment, in combination with any other public or private revitalization efforts affecting the neighborhood. In general, the applicant should select neighborhoods so that it can reasonably anticipate homesteading a minimum of five (5) properties per year for the LUHA's overall program during its first full year of operation and each program year thereafter.

(b) *Development of local urban homesteading program.* The applicant

shall develop, in compliance with this part, a local urban homesteading program containing the following major elements:

(1) *Selection and management of properties.* The program shall include procedures for selecting federally-owned properties suitable for homesteading and for managing the properties before conditional conveyance to homesteaders. The program shall also provide that, by accepting title to a property under this part, the LUHA assumes liability for injury or damage to persons or property by reason of a defect in the dwelling, its equipment or appurtenances, or for any other reason related to ownership of the property.

(2) *Homesteader selection.* The program shall include equitable procedures for homesteader selection which:

(i) Exclude prospective homesteaders who own other residential property;

(ii) Take into account a prospective homesteader's capacity to make or cause to be made the repairs and improvements required under the homesteader agreement, including the capacity to contribute a substantial amount of labor to the rehabilitation process, or to obtain assistance from private sources, community organizations, or other sources;

(iii) Provide that membership in, or other ties to, any private organization (including a qualified community organization) may not be made a factor affecting selection as a homesteader;

(iv) Include locally adopted criteria reasonably matching family size to the number of bedrooms in each property for which a homesteader is being selected, provided that a prospective homesteader who is a one person household shall not be permitted to receive a property having more than two bedrooms, unless there are no larger households on the waiting list, notwithstanding the relative standing of the respective households under the lower income priority (see § 590.7(b)(2)(v)).

(v) Provide that, before a property is offered to other prospective homesteaders who are eligible, the property will be offered to eligible lower income families; and

(vi) Include other reasonable selection criteria which are consistent with this § 590.7(b)(2) and which shall be specified in the applicant's application pursuant to § 590.11(a) and approved by HUD under § 590.13. Such selection criteria may include preferences for the selection of neighborhood residents or other local residents, but only to the extent that they are not inconsistent

with this section and with affirmative marketing objectives under § 590.11(d)(5)(ii). Such preferences based on residential location may not be based upon the length of time the prospective homesteader has resided in the jurisdiction or the neighborhood. Also, persons who are employed, or who have been notified that they have been hired, in the jurisdiction shall be extended any preference available to current residents.

(3) *Conditional conveyance.* The program shall provide for the conditional conveyance of federally-owned properties to homesteaders without any substantial consideration within one year, or less, of title transfer to the LUHA, unless otherwise approved by HUD in writing prior to the transfer.

(4) *Financing.* The program shall provide procedures for the LUHA to undertake, or to assist the homesteader in arranging, financing for the rehabilitation required under the homesteader agreement. Where direct Federal loans under section 312 of the Housing Act of 1964 (42 USC 1452b) are used as a rehabilitation financing resource by the LUHA, the LUHA shall make reasonable efforts to assist HUD in monitoring and securing compliance with the terms of the loan during the homesteader's conditional title period.

(5) *Homesteader Agreement.* The program shall provide for the execution, concurrent with or as a part of the conditional conveyance, of a homesteader agreement between the LUHA and the homesteader which shall require the homesteader:

(i) To repair, within one year from the date of conditional conveyance of the property to the homesteader, any defects that pose a substantial danger to health and safety;

(ii) To make or cause to be made additional repairs and improvements necessary to meet the applicable local standards for decent, safe, and sanitary housing within three years from the date of conditional conveyance of the property to the homesteader, and to comply with any energy conservation measures designated by the LUHA as part of the repairs;

(iii) To occupy the property as his or her principal residence for not less than five consecutive years from the date of initial occupancy except as otherwise approved in writing by HUD on a case-by-case basis when emergency conditions make compliance with this requirement infeasible;

(iv) To permit reasonable inspections at reasonable times by employees or designated agents of the LUHA to

determine compliance with the agreement; and

(v) To surrender possession of, and any interest in, the property upon material breach of the homesteader agreement (including default on any rehabilitation financing secured by the property), as determined by the LUHA in accordance with this part.

(6) *Monitoring and selecting successor homesteaders.* The program shall provide that the LUHA will monitor the homesteader's compliance with the homesteader agreement, will revoke the conditional conveyance and homesteader agreement upon any material breach by the homesteader, and, to the extent necessary and practicable, will select one or more successor homesteaders for the property. The LUHA shall make reasonable efforts to assure that any proposed successor homesteader assumes any section 312 loan on the property, subject to HUD approval of the terms of the assumption. If the LUHA selects a successor homesteader, it shall require the successor homesteader to assume the original homesteader's remaining obligations under his/her homesteader agreement and conditional conveyance in compliance with this part. However, the LUHA shall require the successor homesteader to occupy the property for at least five consecutive years after he/she assumes these obligations unless the LUHA requests and HUD approves a lesser occupancy period where necessary to facilitate assumption of a Federal rehabilitation loan under section 312 of the Housing Act of 1964 (42 USC 1452b) or any other public or private financing. Such period will not be less than the greater of (i) two additional years, or (ii) the remaining amount of the original occupancy period.

(7) *Fee simple title.* The program shall provide for the conveyance of fee simple title to the property from the LUHA to the homesteader, or successor homesteader, without substantial consideration upon compliance with the terms of the homesteader agreement and conditional conveyance.

(8) *Homesteading infeasible; alternative use.* If completion of homesteading proves, in the judgment of HUD, to be infeasible for any reason after a LUHA has accepted title to a federally-owned property, the LUHA shall not demolish, dispose of, rent or otherwise convert the property to its own use until HUD approves an alternative use consistent with the coordinated approach to neighborhood improvement.

(c) *Designation of LUHA—(1) Responsibilities.* Under the requirements of this § 590.7(c), the applicant shall designate a LUHA, which shall have primary responsibility for administering the local urban homesteading program for the applicant. The LUHA shall be the legal entity that accepts title in its own name to federally-owned properties conveyed by the applicable Federal agency with reimbursement from section 810 funds and which conveys title to such properties to homesteaders under paragraph (b) of this § 590.7. Although the applicant may at any time amend its local urban homesteading program to designate a new LUHA, subject to HUD approval as described in §§ 590.13–15 of this part, neither the applicant nor the designated LUHA may delegate or contract out to another legal entity the function of accepting and conveying in its own name title to properties for homesteading purposes under this part. To the extent permitted by the applicant, the LUHA may use third parties as contractors, consultants, or agents to assist in carrying out other functions and responsibilities with respect to the local urban homesteading program, by entering into a written agreement between the LUHA and the third party. No such agreement shall be deemed to relieve the LUHA or the applicant of responsibility for the third party's actions in connection with the local urban homesteading program.

(2) *Identity of LUHA.* The LUHA must have legal authority to carry out a local urban homesteading program as described in this part, including the authority to accept and convey title to properties under paragraph (b) of this § 590.7. To the extent consistent therewith, the applicant State or unit of general local government may:

(i) Act as LUHA in its own name, while identifying within its administrative organization a lead department or agency to act as the primary contact point for HUD, VA and FmHA as described in § 590.11(a)(7);

(ii) Designate, and enter into a written agreement with, a legally separate public body or agency to act as LUHA in accordance with this part; or

(iii) Designate and enter into a written agreement with, a qualified community organization (as defined in § 590.7(c)(4)) to act as LUHA in accordance with this part.

(3) *Content of Agreement with Designated Public Agency or Qualified Community Organization.* The applicant's written agreement with its designated public agency or qualified community organization shall contain at

least the following provisions, and nothing inconsistent therewith:

(i) The agreement of the LUHA to carry out the local urban homesteading program, including the acceptance and conveyance of title to properties for homesteading purposes, in accordance with the Act, this part, and the applicant's HUD-approved urban homesteading application;

(ii) The agreement of the LUHA to hold title (and the right of reverter or other interest retained after conveyance of conditional title to a homesteader) to former federally-owned properties conveyed to it under this part in trust, solely for the purpose of conveying such title to homesteaders (or for such alternative use as may be approved by HUD) pursuant to this part, and not to convey, encumber or otherwise deal with such property for its own benefit or account;

(iii) The agreement of the LUHA promptly to assign or convey title and/or other interests in properties held under this part to the applicant, or to such new LUHA as may be designated by the applicant and approved by HUD, if the applicant terminates the LUHA's designation; and

(iv) The agreement of the applicant and the LUHA that the LUHA's designation shall not relieve the applicant of full responsibility to HUD for the conduct of the local urban homesteading program, and that HUD may take any corrective or remedial action under this part against the applicant, the LUHA, or both, solely at HUD's option.

(4) *Definition of Qualified Community Organization.* As used in this part, the term "qualified community organization" means a private non-profit corporation which is:

(i) Incorporated under applicable State or local enabling legislation and which has the authority necessary to carry out the program;

(ii) Controlled by a board of directors whose members receive no compensation of any kind for the performance of their duties; and

(iii) Is organized exclusively for charitable, educational, or scientific purposes, or the promotion of social welfare, and qualifies as an exempt organization under paragraph (3) or (4) of section 501(c) of the Internal Revenue Code of 1986.

§ 590.9 Listing of HUD-owned VA-owned, and FmHA-owned properties.

In order to facilitate planning for local urban homesteading programs, HUD, FmHA, and VA, upon request by a LUHA, each shall provide the LUHA

with a listing of all residential one- to four-unit properties in the LUHA's jurisdiction to which they hold title and which are not subject to executed repair or sale contracts or leases. The LUHA shall give the public access to the list during ordinary business hours at the offices of the LUHA.

§ 590.11 Applications.

(a) *Initial application requirements.* Applicants may submit an initial application under this part to the responsible HUD Field Office at any time during the year. Applications shall consist of:

- (1) Standard Form-424;
- (2) A map of each proposed urban homesteading neighborhood with geographic boundaries indicated and census tracts shown;
- (3) A brief statement of the local goals for the homesteading program for each neighborhood selected;
- (4) A description of the applicant's proposed homesteader selection procedures which complies with § 590.7(b)(2);

(5) The applicant's proposed legal documents which when read together comply with § 590.7(b) (3), (5), and (7);

(6) An estimate of the amount of section 810 funds to be used during the current Federal fiscal year and a statement concerning the basis for the estimate, including the number of properties expected to be acquired during the year, prepared after consultation with HUD/FHA, FmHA or VA as appropriate;

(7) The applicant's written agreement designating its LUHA which complies with § 590.7(c), or, if the applicant proposes to act as its own LUHA, identification of the lead agency primarily responsible for administration of the program;

(8) The certifications required by paragraph (d) of this section; and

(9) Any additional documentation HUD specifically requests after review of the initial application under § 590.13.

(b) *Annual Requests for Program Participation.* (1) An applicant that has previously submitted and received approval of an initial application under paragraph (a) of this section shall notify the HUD Field Office in writing on or before August 1 of each succeeding fiscal year if it wishes to continue in the program. At the same time, the applicant shall notify HUD of its estimate of the section 810 funds to be used during the upcoming Federal fiscal year, along with an explanation of the basis for the estimate, including the number of properties expected to be acquired during the year, prepared after

consultation with HUD/FHA, FmHA or VA as appropriate.

(2) Participants with previously approved applications will be required to submit the items described in paragraphs (a) (4), (5), (7), (8), and (9) of section 590.11 with their annual request for program participation for the first Federal fiscal year following the effective date of this regulation. Except for those items, HUD will deem the initial application still in effect as it was finally approved, unless the applicant concurrently submits other amendments under paragraph (c) of this section.

(c) *Amendments.* If the applicant wishes to change any element of its local urban homesteading program that is specifically described in the HUD-approved application (such as the identification of urban homesteading neighborhoods or the designation of the LUHA to carry out the program), the applicant shall submit its proposal to the HUD Field Office for approval before making any such change. The proposal shall identify specifically the elements to be changed, and shall set forth the proposed amendment. Proposed amendments may be submitted with an annual request for program participation or at any other time during the program year.

(d) *Certifications.* As part of its application, the applicant shall certify that:

(1) Except for States, the applicant's governing body has duly adopted or passed an official act, resolution, motion, or similar action authorizing the filing of the application, including all understandings and assurances contained in these certifications.

(2) The LUHA possesses the legal authority to and will carry out the local urban homesteading program described in its approved application in accordance with this part, including the specific program requirements described in § 590.7(b).

(3) The LUHA has:

(i) An adequate administrative organization capable of carrying out the program in a timely and cost effective manner;

(ii) Procedures for selecting and accepting property suitable for homesteading and rehabilitation as required by § 590.7(b)(1);

(iii) Procedures to assist in arranging, or for itself to undertake, rehabilitation financing for property conveyed to homesteaders, as required by § 590.7(b)(4).

(iv) Procedures for monitoring the homesteader agreement and for revoking a conditional conveyance upon material breach of the agreement, and

for selecting a successor homesteader as required by § 590.7(b)(6); and

(v) Procedures for conveying fee simple title to the residential property received from HUD, FmHA or VA without substantial consideration to the homesteader upon his or her full compliance with the agreement required in § 590.7(b)(7).

(4) The applicant or the LUHA has, before submission of the application:

(i) Developed a plan for a coordinated approach toward neighborhood improvement as required by § 590.7(a); and

(ii) Provided citizens an adequate opportunity to express preferences about the proposed location of the urban homesteading neighborhood or neighborhoods, and to comment on the plan for a coordinated approach toward neighborhood improvement.

(5) The applicant and LUHA will:

(i) Assure non-discrimination in the selection of homesteaders and that no eligible person is denied equal opportunity for housing, or excluded from equal participation in the homestead program, on the basis of race, creed, color, national origin, age, sex or handicapping condition and that it will comply with all requirements of Title VI of the Civil Rights Act of 1964; Executive Order 11063; Title VIII of the Civil Rights Act of 1968, as amended; section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975, section 562 of the Housing and Community Development Act of 1987, and all applicable regulations issued under these authorities, in any activity in its local urban homestead program; and

(ii) Employ affirmative marketing procedures in the advertising of homesteading properties.

(6) The LUHA will comply with the lead-based paint procedures set forth in 24 CFR Part 35 for properties constructed or substantially rehabilitated prior to 1978.

(7) (i) The LUHA will submit any information which HUD requests for the purpose of assisting HUD in meeting its environmental responsibilities under 24 CFR Part 50 and the Coastal Barrier Resources Act of 1982.

(ii) The use of any funds provided under this part shall be subject to sections 102(a) and 202(a) of the Flood Disaster Protection Act of 1973 which respectively requires owners of assisted flood-prone property to purchase flood insurance and requires participation by the community in the National Flood Insurance Program.

(8) The applicant and its designated LUHA will give HUD and the

Comptroller General, through their authorized representatives, access to and the right to examine all records, books, papers, or documents related to the local urban homesteading program.

(9) The LUHA will maintain in writing and on file a description of its approved local urban homesteading program for public information and review.

§ 590.13 Standards for HUD review and approval of a local urban homesteading program.

(a) *Applications.* The appropriate HUD Field Office will review an applicant's initial application and the Field Office Manager will approve the proposed local urban homesteading program, unless the Field Office Manager determines that the program does not comply with the Act, this part or other applicable laws and regulations, or that it is plainly inappropriate or plainly inconsistent with available facts and data. If the program is disapproved, HUD shall notify the applicant in writing of the specific reasons.

(b) *Annual requests for program participation and program amendments.* The HUD Field Office will review any proposed application amendments and an applicant's annual request for program participation and will approve the applicant's submission unless the Field Office Manager determines that the proposal does not comply with the Act, this part, or other applicable laws and regulations, is plainly inappropriate or plainly inconsistent with available facts and data, or that the applicant's past performance does not meet the standards of § 590.29(a). HUD will notify the applicant in writing of the specific reasons for any disapproval. Program amendments will be considered approved as of the date of HUD's written notification of approval to the applicant. Annual requests for program participation will be considered approved as of the date of HUD's written notification to the applicant of approval, or notice of satisfaction of any approval conditions, whichever is later.

§ 590.15 Urban homesteading program participation agreement.

Upon approval of an application, HUD, the State or unit of general local government and the designated LUHA, if any, will execute an urban homesteading program participation agreement in the form prescribed by HUD. The agreement authorizes the LUHA to request HUD, VA, and FmHA to transfer properties to the LUHA under the provisions of this part, to the extent that funds available are sufficient to reimburse the Federal agency for the

properties. The agreement also obligates the LUHA to use the properties in accordance with the Act, this part, other applicable laws and regulations, and its approved application. However, the agreement does not obligate HUD, FmHA or VA to transfer a specific number of properties or particular properties identified in a program application, or a program amendment.

§ 590.17 Transfer of HUD-owned property.

(a) *Property disposition assistance.* HUD's property disposition activity shall support local urban homesteading programs as follows:

(1) After execution of its initial urban homesteading agreement, but before the initial selection of any HUD-owned property, a LUHA may request HUD to suspend its routine property disposition activity for up to 45 days for HUD-owned properties listed under § 590.9 and identified by the LUHA as located in a HUD-approved urban homesteading neighborhood. Based upon this request, HUD shall state in writing the starting and closing dates of the suspension of property disposition activity for all such identified HUD-owned properties. During this period, the LUHA may notify the HUD Field Office of specific HUD-owned properties that it intends to use in its local urban homesteading program under this part.

(2) With respect to properties coming into HUD's inventory later, the HUD Field Offices shall develop and implement property disposition plans for HUD-owned properties located in HUD-approved urban homesteading neighborhoods. These plans shall include the following procedures:

(i) As soon as feasible, but in no event later than ten days after HUD receives a notice of property transfer and application for insurance benefits for a HUD-owned property located in a HUD-approved urban homesteading neighborhood, the HUD Field Office shall notify the LUHA in writing of the potential availability of the property for homesteading.

(ii) The HUD Field Office shall not approve a property disposition program for a HUD-owned property until the LUHA has informed the Field Office, in writing, whether or not it intends to use the property in the local urban homesteading program, or until 21 days from the date of HUD's notice, whichever comes first. The Field Office Manager may extend the 21-day deadline if the Field Office Manager makes a written determination that notification by the LUHA within 21 days is impracticable.

(b) *Conditions for transferring HUD-owned properties.* Except as provided in

paragraph (c) of this section, HUD shall offer to transfer the title of a HUD-owned property to a LUHA, without payment, if:

(1) The property is located in a HUD-approved urban homesteading neighborhood;

(2) The LUHA has notified the HUD Field Office, within the applicable period specified in paragraph (a)(1) or (a)(2)(ii) of this section, that it intends to use the property in the local homesteading program;

(3) HUD has reserved section 810 funds in an amount sufficient to reimburse the applicable housing loan or mortgage insurance accounts for the estimated as-is fair market value of the property, or a negotiated lesser amount, plus closing costs as approved by HUD; and

(4) The HUD Field Office determines that the requested property is suitable for the approved local urban homesteading program, as follows:

(i) The agreed-upon transfer value of the property does not exceed \$25,000 (excluding closing costs) for a one-unit single family residence and an additional \$8,000 for each additional unit of two- to four-family residences; or

(ii) The Field Office Manager authorizes, on a property-by-property basis, the transfer of a HUD-owned property where the agreed-upon transfer value exceeds the preceding limitations if the benefit to the community expected from the expedited occupancy of the property, and the expected reduction of difficulties and delays (such as vandalism to the property) that HUD typically encounters in the disposition and sale of property, warrant the additional cost to the Federal government.

(c) *Exceptions.* (1) If a LUHA fails to accept title within 30 days of its acceptance of HUD's offer of a property for a specific price in accordance with paragraphs (b) (1)-(4) of this section, HUD may approve an alternative disposition plan for the property. The HUD Field Office Manager may extend, for a reasonable period of time, this 30-day deadline if the HUD Field Office Manager makes a written determination that acceptance of title by the LUHA within 30 days of property selection is impracticable. A reservation made under paragraph (b)(2) of this section may be cancelled by HUD if the closing for the applicable property does not occur within the time permitted under this paragraph (c)(1).

(2) A property otherwise eligible for transfer to a LUHA may be used to meet higher priority needs if the Field Office Manager makes a determination in

writing that the property is essential to meet an existing legal obligation such as:

- (i) Settlement of a sales warranty claim;
- (ii) Settlement of a claim under section 518 of the National Housing Act for critical structural defects in certain one- to four-family dwellings;
- (iii) Emergency housing needs (disaster housing and urgent public housing needs, such as providing shelter for the homeless);
- (iv) Reconveyance for noncompliance with 24 CFR 203.363;
- (v) Reconveyance pursuant to a Civil Frauds Act settlement;
- (vi) Reconveyance where the mortgage was never insured; and
- (vii) Other legal obligations as determined by HUD.

§ 590.18 Reimbursement to FmHA and VA.

The Secretary shall reimburse FmHA or VA from a LUHA's section 810 funds in an amount agreed to between the LUHA and FmHA or VA for FmHA- or VA-owned property plus approved closing costs, under the following conditions:

(a) The property is located in a HUD-approved urban homesteading neighborhood;

(b) HUD has reserved section 810 funds in an amount sufficient to support the agreed reimbursement, including closing costs;

(c) The reimbursement (excluding closing costs) does not exceed the lesser of the amounts specified in paragraphs (c) (1) or (2) of this section;

(1)(i) \$25,000 for a one-unit single family residence, plus \$8,000 for each additional unit of a two- to four-family residence; or

(ii) An amount greater than the amount in paragraph (c)(1)(i) of this section, if authorized by the HUD Field Office Manager on a property-by-property basis, where the benefit to the community expected from the expedited occupancy of the property, and the expected reduction of difficulties and delays (such as vandalism to the property) that HUD typically encounters in the disposition and sale of similar property, warrant the additional cost to the Federal government; or

(2) The amount certified by FmHA or VA to be a fair value for the property based on the lesser of the market value or the amount of FmHA's or VA's claim plus the expenses connected with Federal ownership; and

(d) The property has been conveyed to a LUHA for use in a HUD-approved local urban homesteading program. The closing shall occur not longer than 30 days after the reservation is made under

paragraph (b) of this section, and the reservation may be cancelled by HUD if it does not.

§ 590.19 Use of section 810 funds.

Section 810 funds may be used to reimburse HUD, VA or FmHA for federally-owned properties. Section 810 funds may not be used to reimburse LUHAs for administrative costs, nor may they be used to acquire property other than through reimbursement for federally-owned property. Participants receiving Community Development Block Grant (CDBG) funds may charge eligible administrative expenses incurred in operating their urban homesteading programs to their otherwise available CDBG administrative funds, provided such administrative expenditures would satisfy other Title I requirements.

§ 590.21 Reservation of funds.

After execution of the applicant's urban homesteading program participation agreement during the first program year, and thereafter following approval of the applicant's annual request for program participation, HUD will reserve funds to reimburse the FHA Fund, HUD's Rehabilitation Loan Fund, FmHA, and VA when specific properties are identified for transfer to the LUHA, as stated in § 590.17 or § 590.18. Funds will be reserved by HUD on a first-come, first-served basis subject to availability from the applicable field office subassignment, except that field offices may designate a temporary, minimum initial allocation of section 810 funds to be exclusively available for each participating LUHA for a period not to exceed 60 days from the date the LUHA is notified of such temporary allocation. During the term of the temporary allocation, all reservations made under § 590.17 or § 590.18 on behalf of the particular LUHA for specific properties shall be charged to the allocation. After the temporary allocation has been used, or has expired, the LUHA shall compete for reservations from the balance of the Field Office subassignment with other LUHAs in the Field Office jurisdiction. At any time during a fiscal year, HUD may decline making funds available when in HUD's judgment the LUHA's performance does not meet the standards set out in § 590.29(a) or when, due to market conditions in the area, there are an insufficient number (generally less than five) of affordable, federally-owned properties available to warrant continuation in accordance with § 590.7(a) and § 590.13.

§ 590.23 Program close-out.

(a) *Initiation of close-out.* This section prescribes procedures for program close-out when continuing a program is no longer feasible or where the beneficial results are not commensurate with the further expenditure of section 810 funds in a locality's designated urban homesteading neighborhoods. The LUHA will institute close-out procedures, in accordance with HUD instructions, when one or more of the following occurs:

(1) The LUHA determines that it does not have the capacity to continue administering the program in a timely and cost-effective manner;

(2) HUD terminates the LUHA's program because the LUHA's performance does not meet the standards specified in § 590.29(a); or

(3) HUD terminates the LUHA's program because the LUHA did not acquire any federally-owned properties in the previous two Federal fiscal years and because local market conditions demonstrate that an insufficient number of affordable, federally-owned properties is likely to be available for the next Federal fiscal year.

(b) Close-out may be subject to later audit in accordance with § 590.27(b).

(c) *Close-Out Conditions.* Upon completion of HUD close-out review, HUD will send the LUHA a letter of completion, which HUD may condition. Conditions may reflect unmet obligations, deadlines to meet them, and a statement of any required interim reporting procedures. In addition to any other conditions that may be specifically set forth in the letter of completion, the LUHA remains responsible after close-out to take whatever actions may be necessary to enforce the homesteader agreement and complete final fee simple conveyance to the homesteader or a successor homesteader, or to obtain alternative use approval from HUD under § 590.7(b)(8), for properties conveyed to the LUHA for homesteading prior to close-out. LUHAs are required to report to HUD on a quarterly basis until each property has been conveyed in fee simple title to the homesteader.

(d) *Monitoring of closed-out programs.* HUD shall monitor closed-out programs to determine compliance with any conditions imposed under paragraph (c) of this section, the certifications under § 590.11(d), the Act, this part and other applicable Federal laws and regulations until the LUHA transfers fee simple title to all federally-owned properties to the homesteader, or until HUD approves an alternative use and the LUHA implements it under § 590.7(c).

§ 590.25 Retention of records.

The LUHA shall maintain adequate financial records, property disposition documents, supporting documents, statistical records, and all other records pertinent to the local urban homesteading program until fee simple title has been conveyed to all homesteaders, generally a five-year period. The LUHA will also maintain current and accurate data on the race and ethnicity of program beneficiaries.

§ 590.27 Audit.

(a) *Access to records.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to all books, accounts, records, reports, files, and other papers or property of LUHAs pertaining to funds or property transferred under this part, for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) *Audit.* The LUHA's financial management system shall provide for audits in accordance with 24 CFR Part 44.

§ 590.29 HUD review of LUHA performance.

(a) HUD shall review the performance of each LUHA that has an urban homesteading program participation agreement at least once each Federal fiscal year to determine whether:

(1) The program complies with the urban homesteading program participation agreement and certifications, the Act, this part, and other applicable Federal laws and regulations;

(2) The LUHA is carrying out its program substantially as approved by HUD;

(3) The federally-owned properties the LUHA selects are suitable for homesteading and rehabilitation;

(4) The LUHA is making reasonable progress in moving properties through the stages of the homesteading process, including acquisition, homesteader selection, conditional conveyance, rehabilitation, and final conveyance, and is not making an unreasonable number of requests for extension of the time periods specified in § 590.17 (a)(2)(ii) and (c)(1);

(5) The improvements in neighborhood public facilities and services provided for in the coordinated approach toward neighborhood improvement are occurring on a timely basis; and

(6) The LUHA has a continuing administrative and legal capacity to carry out the approved program in a cost-effective and timely manner.

(b) In reviewing a LUHA's performance, HUD will consider all available evidence, which may include, but need not be limited to, the following:

(1) Records maintained by the LUHA;

(2) Results of HUD's monitoring of the LUHA's performance;

(3) Audit reports, whether conducted by the LUHA or by HUD auditors;

(4) Records of comments and complaints by citizens and organizations; and

(5) Litigation history.

(c) LUHAs shall supply data and make available records necessary for HUD's annual evaluation of the LUHA's local urban homesteading program.

§ 590.31 Corrective and remedial action.

When HUD determines on the basis of its review that the LUHA's performance does not meet the standards specified in § 590.29(a), HUD shall take one or more of the following corrective or remedial actions, as appropriate in the circumstances:

(a) Issue a letter of warning that advises the LUHA of the deficiency and puts it on notice that HUD will take more serious corrective and remedial action if the LUHA does not correct the deficiency, or if it is repeated;

(b) Advise the LUHA to suspend, discontinue or not incur costs for identified defective aspects of the local program;

(c) Condition the approval of the annual request for program participation if there is substantial evidence of a lack of progress, noncompliance, or a lack of continuing capacity. In such cases, HUD shall specify the reasons for the conditional approval and the actions necessary to remove the conditions;

(d) In cases of continued substantial noncompliance, terminate the urban homesteading program participation agreement, close out the program and advise the LUHA of the reasons for such action; or

(e) Where HUD determines that a LUHA has, contrary to its obligations under § 590.7(b), converted a property received under this part to its own use, failed to adequately preserve and protect the property, failed to timely secure a homesteader for the property, or received excessive consideration for conveyance of the property, HUD may direct the LUHA to repay to HUD either the amount of compensation HUD finds that the LUHA has received for the property or the amount of section 810 funds expended for the property, as HUD determines appropriate.

Dated: May 23, 1989.

Audrey E. Scott,

General Deputy, Assistant Secretary for Community Planning and Development.
[FR Doc. 89-13176 Filed 6-1-89; 8:45 am]

BILLING CODE 4210-29-M

federal register

Friday
June 2, 1989

Part X

**Department of
Education**

**National Assessment Governing Board;
Meeting; Notice**

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Partially Closed Meeting

AGENCY: National Assessment Governing Board.

ACTION: Notice of Partially Closed Meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATE: June 19, 1989.

TIME: 10:00 A.m. Until adjournment. 10:00-10:30 a.m. (Open session); 10:30 until adjournment (Closed session).

Location: U.S. Department of Education, National Assessment Governing Board, Suite 4060, Mary E. Switzer Building, 330 C Street, SW., Washington, DC 20202-7583.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Staff Director, National Assessment Governing Board, Suite 600, 555 New Jersey Avenue, NW., Washington, DC 20208, Telephone: (202) 357-6050.

SUPPLEMENTARY INFORMATION: The National Assessment Governing board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of

the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act). Title III-C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297); 20 USC 1221e-1).

The Board is established to advise the Commissioner of the National Center of Education Statistics on policies and actions needed to improve the form and use of the National Assessment of Educational Progress, and develop specifications for the design, methodology, analysis and reporting of test results. The Board also is responsible for selecting subject areas to be assessed, identifying the objectives for each age and grade tested, and establishing standards and procedures for interstate and national comparisons.

The Executive Committee of the National Assessment Governing Board will meet via teleconference on Monday, June 19, 1989, from 10:00 a.m. until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Board's deliberations during the open session which will take place from approximately 10:00 a.m. to 10:30 a.m. The proposed agenda includes discussion of the Board's by-laws.

A portion of the meeting will be closed to the public. From 10:30 a.m. until the completion of business the meeting will be closed and the Executive Committee will discuss qualifications of candidates for nominations to the Board and

qualifications of specific individuals for key positions on the Board's staff. Discussion will touch upon matters that would disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy if conducted in open session. This portion of the meeting of the Executive Committee will be closed under the authority of Section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. Appendix 2) and under exemption (6) of section 552b(c) of the Government in the Sunshine Act (Pub. L. 94-409; 5 U.S.C. 552b(c)(6)).

A summary of the activities at the closed session and related matters which are informative to the public consistent with Title 5 U.S.C. 552b will be available to the public within fourteen days of this meeting.

Records are kept of all Board proceedings, and until a permanent office site for the Board has been established, are available for public inspection at the U.S. Department of Education, Office of Educational Research and Improvement, 555 New Jersey Avenue NW., Room 600, Washington, DC, from 8:30 a.m. to 5:00 p.m., Monday through Friday.

Dated: May 31, 1989.

Bruno V. Manno,

Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-13336 Filed 6-1-89 10:57 am]

BILLING CODE 4000-01-M

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6-5-89
Vol. 54 No. 106

Monday
June 5, 1989

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6-5-69
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Monday
June 5, 1989

Briefing on How To Use the Federal Register—
For information on briefing in Washington, DC, see
announcement on the inside cover of this issue.

Federal Register

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FEDERAL REGISTER Published daily, Monday through Friday, (not published on Saturdays, Sundays, or on official holidays), by the Office of the Federal Register, National Archives and Records Administration, Washington, DC 20408, under the Federal Register Act (49 Stat. 500, as amended; 44 U.S.C. Ch. 15) and the regulations of the Administrative Committee of the Federal Register (1 CFR Ch. I). Distribution is made only by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

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THE FEDERAL REGISTER WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:
 1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
 2. The relationship between the Federal Register and Code of Federal Regulations.
 3. The important elements of typical Federal Register documents.
 4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: June 15; at 9:00 a.m.
WHERE: Office of the Federal Register,
 First Floor Conference Room,
 1100 L Street, NW., Washington, DC
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Federal Register

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Monday, June 5, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE**Office of the Secretary****7 CFR Part 2****Revision of Delegations of Authority**

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document revises the delegations of authority from the Secretary of Agriculture to the Under Secretary for Small Community and Rural Development and the Administrator of the Farmers Home Administration (FmHA) to include all of the authority and discretion vested in the Secretary by section 510(d) of the Housing Act of 1949 (42 U.S.C. 1480(d)), as amended by section 1045 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. No. 100-628. This assignment of responsibility includes: Determining and referring matters to the Department of Justice for litigation; determining and referring matters to the General Counsel of the United States Department of Agriculture to perform such litigation; and contracting with attorneys in the private sector to perform such litigation. Such actions may be taken only with the concurrence of the General Counsel.

EFFECTIVE DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT:

Kenneth E. Cohen, Assistant General Counsel, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250, (202) 447-5565.

SUPPLEMENTARY INFORMATION: Section 1045 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. No. 100-628, amended section 510(d) of the Housing Act of 1949

(42 U.S.C. 1480(d)) to provide the Secretary with certain authority and discretion regarding the conduct of litigation under section 502 of the Housing Act of 1949, 42 U.S.C. 1472. Previously, authority to conduct litigation arising out of FmHA lending activities was vested exclusively in the Attorney General of the United States. The amendment gave the Secretary the discretion of having section 502 litigation activities conducted by the General Counsel of the United States Department of Agriculture, by attorneys with whom the Secretary contracts, or by the Attorney General of the United States.

The Secretary has determined that the authority of the Secretary under section 510(d) will be delegated to the Under Secretary for Small Community and Rural Development and further redelegated to the Administrator of the Farmers Home Administration. Pursuant to this delegation of authority, the Administrator of the Farmers Home Administration will have the discretion, with the concurrence of the General Counsel, to determine whether to assign cases to the Attorney General of the United States, to the General Counsel of the United States Department of Agriculture, or to private attorneys with whom he contracts. This delegation of authority would enable the Administrator of the Farmers Home Administration to perform out-of-court litigation support functions relating to such actions.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rule making and opportunity for comments are not required, and this rule may be made effective less than 30 days after publication in the Federal Register. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order No. 12291. Finally, this action is not a rule as defined by the Regulatory Flexibility Act and, thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, 7 CFR Part 2 is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

1. The authority citation for Part 2 continues to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

2. Section 2.23 is amended by adding a new paragraph (a)(19) to read as follows:

§ 2.23 Delegations of authority to the Under Secretary for Small Community and Rural Development.

(a) * * *

(19) Exercise all authority and discretion vested in the Secretary by section 510(d) of the Housing Act of 1949 (42 U.S.C. 1480(d)), as amended by section 1045 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. No. 100-628, including the following:

(i) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel.

(ii) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel for the conduct of litigation.

(iii) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Farmers Home Administration and representation by the attorneys will either accelerate the process by which a family or person eligible for assistance

under section 502 of the Housing Act of 1949 will be able to purchase and occupy the housing involved, or preserve the quality of the housing involved.

Subpart I—Delegations of Authority by the Under Secretary for Small Community and Rural Development

3. Section 2.70 is amended by adding a new paragraph (a)(34) to read as follows:

§ 2.70 Administrator, Farmers Home Administration.

(a) * * *

(34) Exercise all authority and discretion vested in the Secretary by section 510(d) of the Housing Act of 1949, as amended by section 1045 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988, Pub. L. No. 100-628 (42 U.S.C. 1480(d)), including the following:

(i) Determine, with the concurrence of the General Counsel, which actions are to be referred to the Department of Justice for the conduct of litigation, and refer such actions to the Department of Justice through the General Counsel.

(ii) Determine, with the concurrence of the General Counsel, which actions are to be referred to the General Counsel for the conduct of litigation and refer such actions.

(iii) Enter into contracts with private sector attorneys for the conduct of litigation, with the concurrence of the General Counsel, after determining that the attorneys will provide competent and cost effective representation for the Farmers Home Administration and representation by the attorney will either accelerate the process by which a family or person eligible for assistance under section 502 of the Housing Act of 1949 will be able to purchase and occupy the housing involved, or preserve the quality of the housing involved.

For Subpart C:
Date: May 26, 1989.

Clayton Yeutter,
Secretary of Agriculture.

For Subpart I:
Date: May 23, 1989.

Roland R. Vautour,
Under Secretary for Small Community and Rural Development.

[FR Doc. 89-13239 Filed 6-2-89; 8:45 am]
BILLING CODE 3410-14-M

Food and Nutrition Service

7 CFR Parts 272 and 275

[Amdt. No. 296]

Food Stamp Program; Quality Control Arbitration Process Technical Amendment

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends Food Stamp Program regulations pertaining to the quality control arbitration process. It limits the scope of arbitration to the issue or issues in dispute between the State agency and the Food and Nutrition Service (FNS) regional office concerning the quality control case findings. The intent of the rule is to enhance efficiency of the quality control arbitration process. Proposed regulations were published in the *Federal Register* on September 30, 1987 at 52 FR 36581. Comments were solicited through November 30, 1987. This final rulemaking takes the comments received into account. Readers are referred to the proposed regulations for a more complete understanding of this rule.

EFFECTIVE DATE: This final rule is effective July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be directed to Mr. Duane Maddox, Chief, Quality Control Branch, Program Accountability Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, VA 22302, (703) 756-3457.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

The Department has reviewed this final rule under Executive Order 12291 and Secretary's Memorandum No. 1512-1 and has classified it as "not major." The rule will not have an annual effect on the economy of \$100 million or more. This rule will have no effect on costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises in domestic or export markets.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the

reasons set forth in the final rule and related notice(s) to 7 CFR Part 3015, Subpart V (48 FR 29116, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980, 5 U.S.C. 601-612. G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This action does not contain recordkeeping or reporting requirements subject to approval by the Office of Management and Budget under the Paperwork Reduction Act of 1980 44 U.S.C. 3507.

Background

On September 30, 1987 the Department issued a proposed rule to limit arbitration of cases where the Federal findings and State agency findings either agreed or disagreed to a review of the points within the Federal findings that the State agency disputes. Thirteen comments were received, nine from State agencies, two from local agencies, one from a legal service, and one from an association. Seven commenters supported the proposed change; five opposed it. The reasons for supporting the change were increased efficiency and fairness to the State agency. Those opposing the change cited decreased accuracy and also fairness to the State agency. One commenter opposed to an issue-only review was particularly concerned that circumstances may have been overlooked or misinterpreted earlier in the quality control process that the arbitrator could find which would minimize the effect of the issue being arbitrated.

The Department has considered all the comments received and recognizes that there is a major difference of opinion among those concerned. A number of commenters want to continue the current process of a review of the entire case. Others want the review to be limited to the specific point or points raised by the State agency, regardless of any other potential basis for adjusting the finding in the case. After consideration of the comments, the Department has decided to adopt the rule as it was proposed, with one

exception. If the arbitrator finds any mathematical errors in the computation sheet, he or she shall correct the mathematical error and adjust the allotment amount.

The Department understands the concerns of both sides in this issue. Further, the Department issued the proposed rule principally to address the situation of a large number of cases being submitted simultaneously concerning one point, for example a sampling procedure or an implementation date. The Department's efficiency in arbitration has been hampered in several instances by the conduct of full case reviews in such situations. The final rule will permit the Department to improve its efficiency in arbitration while at the same time providing the flexibility to correct mathematical errors which may not have been raised by State agencies.

Implementation

This rulemaking is effective (30 days after publication date). State agencies may opt for either an entire case review or an issue only review for all cases for which an arbitration request was submitted before the effective date, provided that the arbitration decision has not already been made.

List of Subjects

7 CFR Part 272

Alaska, Civil Rights, Food stamps, Grant programs—social programs, Reports and recordkeeping requirements.

7 CFR Part 275

Administrative practice and procedures, Food Stamps, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Parts 272 and 275 are amended as follows:

1. The authority citation for Parts 272 and 275 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1, a new paragraph (g)(111) is added to read as follows:

§ 272.1 General terms and conditions.

(g) *Implementation.* * * *
(111) *Amendment No. 296.* The provisions of Amendment 296 are effective July 5, 1989.

PART 275—PERFORMANCE REPORTING SYSTEM

3. Section 275.3 is amended by adding two sentences between the first and second sentences in paragraph (c)(4).

§ 275.3 Federal monitoring.

(c) *Validation of State Agency Error Rates.* * * *

(4) *Arbitration.* * * * The arbitration review shall be limited to the point(s) within the Federal findings that the State agency disputes. However, if the arbitrator in the course of the review discovers a mathematical error in the computation sheet, the arbitrator shall correct the error while calculating the allotment. * * *

Date: May 30, 1989.

G. Scott Dunn,
Acting Administrator.

[FR Doc. 89-13291 Filed 6-2-89; 8:45 am]
BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 668]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 668 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 400,000 cartons during the period June 4 through June 10, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 668 (§ 910.968) is effective for the period June 4 through June 10, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96458, Washington, DC 20090-6458; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order

that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910], regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1988-89. The Committee met publicly on May 31, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is strong.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information

and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.968 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.968 Lemon Regulation 668.

The quantity of lemons grown in California and Arizona which may be handled during the period June 4, 1989, through June 10, 1989, is established at 400,000 cartons.

Dated: June 1, 1989.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-13410 Filed 6-2-89; 8:45 am]

BILLING CODE 3410-02-M

Animal and Plant Health Inspection Service

9 CFR Part 92

[Docket No. 89-060]

Importation of Horses from Argentina

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations by removing the requirement that horses imported into the United States from Argentina be quarantined for not less than seven days. We are removing this quarantine requirement because we have determined that Venezuelan equine encephalomyelitis (VEE) does not exist in Argentina. This rule will allow horses imported into the United States from Argentina that meet all the requirements for importation, to qualify in most cases for a shortened quarantine period (usually three days) upon importation into the United States.

EFFECTIVE DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Harvey A. Kryder, Senior Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, Room 753, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-7885.

SUPPLEMENTARY INFORMATION:

Background

Regulations of the Animal and Plant Health Inspection Service (APHIS) on animal importations in 9 CFR Part 92 (referred to below as the regulations) prohibit or restrict the importation of horses that could introduce various diseases, including Venezuelan equine encephalomyelitis (VEE), into the United States.

On March 13, 1989, we published in the *Federal Register* (54 FR 10356-10357, Docket No. 88-162) a document proposing to amend § 92.11(d)(1)(i) of the regulations by eliminating the requirement that horses imported into the United States from Argentina undergo a quarantine of not less than seven days to prevent the introduction of VEE into the United States.

Comments on the proposal were required to be postmarked or received on or before April 12, 1989. We received two comments from members of the public in support of the proposal. Based on the rationale set forth in the proposal and in this document, we are adopting the provisions of the proposal without change as a final rule.

Effective Date

This final rule is made effective on the date of publication. The final rule relieves certain restrictions which have been found to be unnecessary. Accordingly, prompt action should be taken to delete these restrictions.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This regulation will generally reduce the time that horses imported from Argentina must spend in quarantine at the port of arrival, and will, therefore, reduce the cost to importers of expenses related to this quarantine. The number of horses imported from Argentina annually is small compared with the total number of horses imported annually. In 1988, of 30,000 imported horses, approximately 890 were imported from Argentina. These importations involved several hundred individuals importing one or a few horses, with no importations of large groups of horses. Because horses imported from Argentina under this rule will usually be quarantined for no more than three days while test results are obtained, the main economic effect of this rule will be to save importers the costs of quarantining their horses four additional days, a savings of approximately \$238 per horse.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 92

Animal diseases, Canada, Imports, Livestock and livestock products, Mexico, Poultry and poultry products, Quarantine, Transportation, Wildlife.

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

Accordingly, we are amending 9 CFR Part 92 as follows:

1. The authority citation continues to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102-105, 111, 134a, 134b, 134c, 134d, 134f, and 135; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.11 [Amended]

2. In § 92.11(d)(1)(i) the words "and except with respect to horses from Argentina," are added immediately following the word "Mexico,".

Done in Washington, DC, this 30th day of May 1989.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-13240 Filed 6-2-89; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Parts 145 and 147

[Docket No. 89-049]

National Poultry Improvement Plan and Auxiliary Provisions

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The National Poultry Improvement Plan (referred to below as the Plan) is a federal-state-industry voluntary program for the improvement of poultry breeding stock and hatchery products. This goal is achieved primarily through the prevention and control of certain poultry diseases. We are expanding the Plan to include a new "U.S. Sanitation Monitored, Turkeys" program for reducing Salmonella levels in turkey flocks and products. We are also amending certain provisions of Parts 145 and 147 in order to increase the effectiveness of the Plan's monitoring and testing procedures, and to keep the Plan current with the latest improvements in poultry disease technology.

EFFECTIVE DATE: July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. I. L. Peterson; Sheep, Goat, Equine, and Poultry Diseases Staff; VS; APHIS; USDA; Room 771; Federal Building; 6505 Belcrest Road; Hyattsville; MD 20782; 301-436-5777.

SUPPLEMENTARY INFORMATION:

Background

The National Poultry Improvement Plan (referred to below as the Plan) is a cooperative federal-state-industry mechanism for controlling poultry diseases by identifying states, flocks, hatcheries, and dealers that meet certain disease control standards. Customers then have the opportunity to purchase stock that are tested "clean" of certain diseases, or that are produced under disease-prevention requirements.

The Plan currently consists of a variety of programs to prevent and control egg-transmitted, hatchery-disseminated poultry diseases.

Participation in all Plan programs is voluntary. However, flocks, hatcheries, and dealers must qualify as "U.S. Pullorum-Typhoid Clean" before participating in any other Plan program.

The regulations for this voluntary program are contained in 9 CFR Parts 145 and 147 (referred to below as "the regulations"). These provisions are amended from time to time to incorporate new scientific information and technologies within the Plan.

We published in the *Federal Register* on January 6, 1989 (54 FR 418-427, Docket No. 88-110), a proposal to amend the regulations by making the following changes:

1. Establish a new "U.S. Sanitation Monitored, Turkeys" program and emblem for turkey flocks and products.

2. Require annual examination, by State Inspectors, of all records pertaining to flocks maintained primarily for production of hatching eggs.

3. Lower the minimum age at which turkeys can be blood tested.

4. Change certain procedures for blood testing flocks and individual birds for pullorum-typhoid.

5. Expand and improve the sanitation and flock management requirements of the "U.S. Sanitation Monitored" program for egg-type chicken breeding flocks.

6. Authorize egg yolk testing as an alternative method of monitoring certain multiplier breeding flocks classified as "U.S. M. Gallisepticum Clean."

7. Expand procedures used to determine if a flock is infected with the Mycoplasma organism for which it was tested.

8. Disclaim liability for failure, on the part of users, to adhere to Occupational Safety and Health Administration (OSHA) standards for formaldehyde fumigation.

Our proposed amendments were consistent with recommendations approved by the voting delegates to the June 1988 and 1988 meetings of the Biennial National Plan Conferences. Participants at these meetings represented flockowners, breeders, hatcherymen, and Official State Agencies from all cooperating states.

Comments

Our proposal invited the submission of written comments, which were required to be received or postmarked by February 6, 1989. We subsequently published another document in the *Federal Register* on March 8, 1989 (54 FR 9842, Docket No. 89-023) re-opening and extending the comment period until April 7, 1989. We received eleven comments before the deadline. No

commenter opposed the proposed rule, although three commenters suggested relatively minor changes to the rule, discussed below.

Section 145.23(d)—U.S. Sanitation Monitored Program Qualifications

One commenter suggested that proposed § 145.23(d)(1)(vi) be changed from requiring pullorum-typhoid antigen testing of 300 birds from each flock, to requiring testing of 300 birds from primary breeding flocks and 150 birds from multiplier flocks. The commenter suggested this sample size because it would be consistent with the present requirements for testing flocks for the "U.S. M. Gallisepticum Clean" program (§ 145.23(c)) and the "U.S. M. Synoviae Clean" program (§ 145.23(e)).

We are not making any change in response to this comment. The sample size of 300 birds was designed to ensure a 95 percent probability of detecting flocks infected with Salmonellosis at an incidence of 1 percent. Because the best presently available research indicates that Salmonellosis can occur in flocks at an incidence as low as 1 percent, while the incidence of *Mycoplasma gallisepticum* and *M. synoviae* in flocks infected with these organisms is usually much higher, we believe it is important to test for Salmonellosis at a rate of 300 birds per flock. If later experience in flock testing shows that the incidence of Salmonellosis is normally greater than 1 percent, we will consider reducing the 300 bird sample size.

One commenter noted, regarding the discussion in the Background section of the proposed rule concerning isolation of *S. enteritidis* from environmental samples, that environmental contamination can also result from contaminated feed containing incompletely pasteurized animal protein products either prior to mixing or in complete feed. We agree with this comment. Since the comment does not relate to the rulemaking language of the proposal, no change to the rule is being made.

One commenter requested that *S. enteritidis* antigen be approved for use in the tests required by § 145.23(d)(1)(vi). We proposed to require use of pullorum-typhoid antigen, which is as effective as *S. enteritidis* antigen in detecting infected birds, and which is available in a form allowing rapid whole blood plate tests. Since the tests are used only as a screening device to identify birds to necropsy, a simple and rapid test is desirable. Because no available *S. enteritidis* antigen test currently meets these criteria, no change is being made in response to this comment.

Pelletized Feed Manufacturing Standards

One commenter addressed the standards for pelletized feed fed to flocks, contained in §§ 145.23(d)(1)(ii)(A) and 145.43(f)(3)(i). These proposed sections contain cooking time, temperature, and pressure standards designed to destroy any *Salmonella* present during the feed pellet manufacturing process. The commenter suggested that a requirement be added to require that during manufacture, the feed mix must contain a minimum moisture content of 14.5 percent. The commenter stated that this moisture content is necessary to ensure that all *Salmonella* present are destroyed by the temperature, pressure, and cooking time standards contained in these sections.

We agree that maintaining a 14.5 percent moisture content during the pelletized feed manufacturing process is advisable to ensure destruction of *Salmonella*, and are changing these sections accordingly.

Miscellaneous

Several commenters made suggestions that were outside the scope of the proposed rule, some of which addressed other areas of the National Poultry Improvement Plan. These suggestions are appropriate for discussion at the next Biennial National Plan Conference meeting in 1990.

We have replaced the term "birth" with the more accurate term "hatching" at several places in the rule. We have also made minor editorial changes and corrections to the proposed rule.

Based on the rationale set forth in the proposal and in this document, we are adopting the proposal, with the changes discussed in this document, as a final rule.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Plan is a cooperative Federal-state program. Participation is voluntary. Changes to provisions of this program are based on recommendations of the Biennial National Plan Conference, which included representatives of member states, hatcheries, dealers, flock owners, and breeders. Plan participants requested that we make amendments to the regulations to incorporate new technology and information within the Plan.

The amendments made in this document should not cause significant changes in the cost of producing or buying poultry and poultry products, or in the amount of poultry and poultry products marketed because:

1. The annual examination of all records pertaining to flocks maintained primarily for production of hatching eggs should enable Official State Agencies to identify more of the flocks that have incurred a possible disease exposure. This should increase the effectiveness of the annual on-site inspection program, but will neither increase nor decrease the number of inspections conducted.

2. Changing the minimum age for blood testing turkeys will permit testing one month earlier than under current rules, but will neither increase nor decrease the number of birds tested annually.

3. Amendments to certain of the Plan's testing and monitoring procedures incorporate new technology and research findings. These changes should increase effectiveness and permit use of alternative tests and monitoring procedures for diseases prevented and controlled by Plan programs.

4. Amendments to the provisions of the "U.S. Sanitation Monitored, Turkeys" program will result in a slight increase in producer costs for additional testing. However, these same amendments should result in a slight reduction in the egg and chick mortality for participating flocks. It is difficult to project the degree to which these new producer costs and savings will be offset, because the regulations allow flock owners to choose among testing and feed alternatives. Nevertheless, we are certain that net costs or savings resulting from the changes will be significant, in terms of overall production costs, and will not affect the wholesale or retail cost of poultry or poultry products.

5. Cost-benefits to producers who decide to participate in the new "U.S. Sanitation Monitored, Turkeys" program will also roughly balance out. Producers will incur a small additional cost for required sanitation measures (although many producers are already engaging in

some or all of these sanitation practices). The primary purpose of these measures is to reduce the incidence of *Salmonella* in the flock, but reduced *Salmonella* levels should, in turn, result in a slight increase in the number of surviving eggs and poults. The experience of the turkey industry in Minnesota—where a "U.S. Sanitation Monitored, Turkeys" program has been underway for seven years—is that profits from the sale of the additional eggs and poults roughly equals the cost of the additional sanitation measures.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

These programs/activities under 9 CFR Parts 145 and 147 are listed in the Catalog of Federal Domestic Assistance under No. 10.025 and are subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Parts 145 and 147

Animal diseases, National Poultry Improvement Plan, Poultry and poultry products.

Accordingly, 9 CFR Parts 145 and 147 are amended as follows:

PART 145—NATIONAL POULTRY IMPROVEMENT PLAN

1. The authority citation for Part 145 continues to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d).

§ 145.1 [Amended]

2. The definitions in § 145.1 are placed in alphabetical order and the paragraph designations are removed.

3. Section 145.1 is amended by adding new definitions in alphabetical order to read as follows:

§ 145.1 Definitions.

Exposed (Exposure). Contact with birds, equipment, personnel, supplies, or any article infected with, or

contaminated by, communicable poultry disease organisms.

Fluff sample. Feathers, shell membrane, and other debris resulting from the hatching of poultry.

Infected flock. A flock in which an authorized laboratory has discovered one or more birds infected with a communicable poultry disease for which a program has been established under the Plan.

Midlay. Approximately 2–3 months after a flock begins to lay or after a molted flock is put back into production.

Program. Management, sanitation, testing, and monitoring procedures which, if complied with, will qualify, and maintain qualification for, designation of a flock, products produced from the flock, or a state by an official Plan classification and illustrative design, as described in § 145.10 of this part.

Reactor. A bird that has a positive reaction to a test, required or recommended in Parts 145 or 147 of this chapter, for any poultry disease for which a program has been established under the Plan.

Succeeding flock. A flock brought onto a premises during the 12 months following removal of an infected flock.

4. In § 145.10, a new paragraph (k) is added to read as follows:

§ 145.10 Terminology and classification; flocks, products, and States.

(k) *U.S. Sanitation Monitored, Turkeys.* (See § 145.43(f).)



5. Paragraph (b) of § 145.12 is revised to read as follows:

§ 145.12 Inspections.

(b) The records of all flocks maintained primarily for production of

hatching eggs shall be examined annually by a State Inspector. On-site inspections of flocks and premises will be conducted if the State Inspector determines that a breach of sanitation, blood testing, or other provisions has occurred for Plan programs for which the flocks have or are being qualified.

6. Section 145.14 is amended as follows:

a. The introductory paragraph is revised.

b. Paragraph (a)(1) is revised and a new footnote number "1" is added.

c. Paragraph (a)(3) is amended by removing "Salmonella" and inserting "pullorum-typhoid".

d. Paragraph (a)(4) is removed and reserved.

e. Paragraph (a)(5) is amended by removing the last three sentences.

f. Paragraphs (a) (6) through (10) are redesignated as paragraphs (a) (7) through (11) respectively and a new paragraph (a)(6) and footnote 2 are added.

g. Newly redesignated paragraph (a)(8) is amended by removing "with *Salmonella* antigens of" and inserting "for pullorum-typhoid in".

h. Newly redesignated paragraph (a)(9) is revised.

i. Newly redesignated paragraph (a)(10) is amended by removing "upon which a *Salmonella* classification is based" and inserting "for pullorum-typhoid".

j. Footnote number "1" and the reference in paragraph (b)(1) are renumbered "3".

The amended provisions of § 145.14 read as follows:

§ 145.14 Blood testing.

Poultry must be more than 4 months of age when blood tested for an official classification; *Provided*, That turkey candidates may be blood tested at more than 12 weeks of age under Subpart D, while game birds may be blood tested under Subpart E when more than 4 months of age or upon reaching sexual maturity, whichever comes first. Blood samples for official tests shall be drawn by an Authorized Agent or State Inspector and tested by an authorized laboratory, except that the stained antigen, rapid whole-blood test for pullorum-typhoid may be conducted by an Authorized Agent or State Inspector. For Plan programs in which a representative sample may be tested in lieu of an entire flock, the minimum number tested shall be 30 birds per house, with at least 1 bird taken from each pen and unit in the house. All birds must be tested in houses containing fewer than 30 birds.

(a) *For Pullorum-Typhoid.* (1) The official blood tests for pullorum-typhoid shall be the standard tube agglutination test, the microagglutination test, the enzyme-labeled immunosorbent assay test (ELISA), or the rapid serum test for all poultry; and the stained antigen, rapid whole-blood test for all poultry except turkeys. The procedures for conducting official blood tests are set forth in §§ 147.1, 147.2, 147.3, and 147.5 of this chapter and referenced in footnote 3 of this section. Only antigens approved by the Department and of the polyvalent type shall be used for the rapid whole-blood test. All microtest antigens and enzyme-labeled immunosorbent assay reagents shall also be approved by the Department.¹

(4) [Reserved]

(6) When reactors are found in serum or blood from any flock, or *S. pullorum* or *S. gallinarum* organisms are isolated by an authorized laboratory from baby poultry, or from fluff samples produced by hatching eggs, the infected flock shall qualify for participation in the Plan with two consecutive negative results to an official blood test named in paragraph (a)(1) of this section. A succeeding flock must be qualified for participation in the Plan's pullorum-typhoid program with a negative result to an official blood test named in paragraph (a)(1) of this section. Testing to qualify flocks for Plan participation must include the testing of all birds in infected and succeeding flocks for a twelve month period, and shall be performed or physically supervised by a State Inspector. If the State Inspector determines that a primary breeding flock has been exposed to *S. pullorum* or *S. gallinarum*,² the Official State Agency shall require:

(i) The taking of blood samples—performed by or in the presence of a State Inspector—from all birds on premises exposed to birds, equipment, supplies, or personnel from the primary breeding flock during the period when the State Inspector determined that exposure to *S. pullorum* or *S. gallinarum* occurred.²

¹ The criteria and procedures for Department approval of antigens and reagents may be obtained from Veterinary Biologics, BBEP, APHIS, USDA, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

² In making determinations of exposure, the State Inspector shall evaluate both evidence proving that exposure occurred and circumstances indicating a high probability of contacts with: infected wild birds; contaminated feed or waste; or birds, equipment, supplies, or persons from or exposed to flocks infected with *S. pullorum* or *S. gallinarum*.

(ii) The banding of all birds of these premises—performed or physically supervised by a State Inspector—in order to identify any bird that tests positive; and

(iii) The testing of blood samples at an authorized laboratory using an official blood test named in paragraph (a)(1) of this section.

(9) Poultry from flocks undergoing qualification testing for participation in the Plan, that have a positive reaction to an official blood test named in paragraph (a)(1) of this section, shall be evaluated for pullorum-typhoid infection. The Official State Agency shall select one or more of the following procedures to be used in each circumstance, based on a cost-benefit analysis involving evaluation of such factors as: the value of the reactors and flocks at risk; the necessity for preserving birds from scarce genetic lines; the need for a quick determination of disease existence; and the cost for each retesting option versus the total availability of funds (when the state provides retesting subsidies):

(i) Reactors shall be submitted to an authorized laboratory for bacteriological examination. If there are more than 4 reactors in a flock, a minimum of 4 reactors shall be submitted to the authorized laboratory; if the flock has 4 or fewer reactors, all of the reactors must be submitted. The approved procedure for bacteriological examination is set forth in § 147.11 of this chapter. When reactors are submitted to the authorized laboratory within 10 days from the date of reading an official blood test named in paragraph (a)(1) of this section, and the bacteriological examination fails to demonstrate pullorum-typhoid infection, the Official State Agency shall presume that the flock has no pullorum-typhoid reactors.

(ii) The serum specimen that produced the positive reaction shall be retested at an authorized laboratory in accordance with procedures set forth in § 147.1 of this chapter for the standard tube agglutination test, or in § 147.5 of this chapter for the microagglutination test for pullorum-typhoid. If the reaction to this retest is positive in dilutions of 1:50 or greater for the standard tube agglutination test, or 1:40 or greater for the microagglutination test, additional examination of the bird and flock will be performed in accordance with paragraph (a)(9)(i) or (a)(9)(iii) of this section.

(iii) The reactors shall be retested within 30 days using an official blood test named in paragraph (a)(1) of this

section. If this retest is positive, additional examination of the reactors and flock will be performed in accordance with paragraph (a)(9)(i) of this section. During the 30-day period, the flock must be maintained under a security system, specified or approved by the Official State Agency, that will prevent physical contact with other birds and assure that personnel, equipment, and supplies that could be a source of pullorum-typhoid spread are sanitized.

§§ 145.23, 145.33, 145.43, 145.53 [Amended]

7. Paragraph (b)(2)(iii) of §§ 145.23, 145.33, 145.43, and 145.53 is revised as follows:

- (b) * * *
- (2) * * *

(iii) The flock is located on a premises where either no poultry or a flock not classified as U.S. Pullorum-Typhoid Clean were located the previous year; *Provided*, That an Authorized Agent must blood test up to 300 birds per flock, as described in § 145.14, if the Official State Agency determines that the flock has been exposed to pullorum-typhoid. In making determinations of exposure and setting the number of birds to be blood tested, the Official State Agency shall evaluate the results of any blood tests, described in § 145.14(a)(1) of this part, that were performed on an unclassified flock located on the premises during the previous year; the origins of the unclassified flock; and the probability of contacts between the flock for which qualification is being sought and (a) infected wild birds, (b) contaminated feed or waste, or (c) birds, equipment, supplies, or personnel from flocks infected with pullorum-typhoid.

8. Section 145.23 is further amended as follows:

- a. Paragraph (d)(1)(i) is revised.
- b. Paragraph (d)(1)(iii) is removed.
- c. Paragraph (d)(1)(iv) is redesignated as paragraph (d)(1)(iii).
- d. Paragraph (d)(1)(ii) is redesignated as paragraph (d)(1)(iv) and a new paragraph (d)(1)(ii) and footnote 4 are added.
- e. Paragraph (d)(1)(v) is redesignated as paragraph (d)(1)(vii) and revised, and a new paragraph (d)(1)(v) is added.
- f. Paragraph (d)(1)(vi) is revised and redesignated as paragraph (d)(1)(viii), and a new paragraph (d)(1)(vi) is added.
- g. A new paragraph (d)(1)(ix) is added.

h. Paragraph (d)(2) is removed, and paragraphs (d)(3) and (4) are redesignated as paragraphs (d)(4) and (5), respectively.

i. New paragraphs (d)(2) and (3) are added.

The amended provisions of § 145.23 read as follows:

§ 145.23 Terminology and classification; flocks and products.

- (d) *U.S. Sanitation Monitored.* * * *
- (1) * * *

(i) The flock originated from a U.S. Sanitation Monitored flock, or meconium from the chick boxes and a sample of chicks that died within 7 days after hatching are examined bacteriologically for salmonella at an authorized laboratory. Cultures from positive samples shall be serotyped.

(ii) All feed fed to the flock shall meet the following requirements:

(A) Pelletized feed shall contain either no animal protein or only animal protein products produced under the Animal Protein Products Industry (APPI)/Education Salmonella Reduction Program⁴, a minimum moisture content of 14.5 percent, and must have been subjected to temperatures of 190 degrees F. or above, 165 degrees F. for at least 20 minutes, or 184 degrees F. and 70 lbs. of pressure during the manufacturing process;

(B) Mash feed shall contain either no animal protein or only animal protein products supplement manufactured in pellet form and crumbled.

(v) Environmental samples shall be collected from the flock by an Authorized Agent, as described in § 147.12 of this chapter, when the flock is more than 4 months of age. The samples shall be examined bacteriologically for group D salmonella at an authorized laboratory. Cultures from positive samples shall be serotyped.

(vi) Blood samples from 300 birds shall be officially tested with pullorum-typhoid antigen when the flock is a minimum of more than 4 months of age. All birds with positive or inconclusive reactions, up to a maximum of 25 birds, shall be submitted to an authorized laboratory and examined for the presence of group D salmonella, as described in § 147.11 of this chapter.

⁴ Documents concerning the APPI/Education Salmonella Reduction Program may be obtained from Dr. I. L. Peterson: Sheep, Goat, Equine, and Poultry Diseases Staff; VS: APHIS; USDA, Room 771; Federal Building; 6505 Belcrest Road; Hyattsville; MD 20782.

Cultures from positive samples shall be serotyped.

(vii) Hatching eggs are collected as quickly as possible and are handled as described in § 147.22 of this chapter and are sanitized or fumigated as described in § 147.25(a) of this chapter.

(viii) Hatching eggs produced by the flock are incubated in a hatchery that is in compliance with the recommendations in §§ 147.23 and 147.24(b) of this chapter, and sanitized either by a procedure approved by the Official State Agency or as prescribed in § 147.25 of this chapter.

(ix) A minimum of 30 dead-germ eggs, taken monthly from randomly selected ha'ches from the flock, shall be examined bacteriologically for group D salmonella at an authorized laboratory. Cultures from positive samples shall be serotyped.

(2) A flock shall not be eligible for this classification if *Salmonella enteritidis* (*S. enteritidis* ser Enteritidis) is isolated from a sample collected from the flock in accordance with paragraph (d)(1)(vi) or (d)(1)(ix) of this section.

(3) A flock shall be eligible for this classification if *Salmonella enteritidis* (*S. enteritidis* ser Enteritidis) is isolated from an environmental sample collected from the flock in accordance with paragraph (d)(v) of this section: *Provided*, That testing is conducted in accordance with paragraphs (d)(1)(vi) and (d)(1)(ix) of this section each 30 days and no positive samples are found.

§§ 145.24, 145.34, 145.44, and 145.54 [Amended]

9. Paragraph (a)(1)(ii) of §§ 145.24, 145.34, 145.44, and 145.54 is amended by removing "found in waterfowl" and inserting "found within the preceding 24 months in waterfowl", and by removing the phrase "for a period of two years".

10. Section 145.43 is amended as follows:

a. Paragraph 145.43(c)(1) is amended by removing "§ 145.14(b)." and inserting "§ 145.14(b): *Provided*, That to retain this classification, a minimum of 30 samples from male flocks and 60 samples from female flocks shall be retested at 28–30 weeks of age."

b. Paragraphs (c)(1), (d)(1)(i), and (e)(1) and (3) of § 145.43 are amended by removing the phrase "4 months of age" and inserting the phrase "12 weeks of age".

c. The footnote and the reference in paragraph (d)(2) of § 145.43 are renumbered "5" and the newly designated footnote 5 is revised.

d. A new paragraph (f) and footnote 6 are added.

The amended provisions of § 145.43 read as follows:

§ 145.43 Terminology and classification; flocks and products.

- (d) * * *
- (2) * * *

⁵ See footnote 3 to § 145.14(b)(1) of this part.

(f) *U.S. Sanitation Monitored, Turkeys.* A flock or hatchery whose owner is controlling or reducing the level of salmonella through compliance with sanitation and management practices as described in Subpart C of Part 147 of this chapter, and where the following monitoring, testing, and management practices are conducted:

(1) Hatchery debris (dead germ hatching eggs, fluff, and meconium collected by sexors), a sample of the poult that died within 10 days after hatching, or both, from each candidate breeding flock produced by a primary breeder, are examined bacteriologically at an authorized laboratory for Salmonella.

(2) The poult for the candidate breeding flock are placed in a building that has been cleaned, disinfected, and examined bacteriologically for the presence of Salmonella by an Authorized Agent, as described in § 147.12 of this chapter.

(3) Feed for turkeys in the candidate breeding flock shall meet the following requirements:

(i) All feed manufactured in pellet form must contain a minimum moisture content of 14.5 percent and must have been subjected to temperatures of 190 degrees F. or above, 165 degrees F. for at least 20 minutes, or 184 degrees F. and 70 lbs. of pressure during the manufacturing process.

(ii) Initial feed (for newborn poult to 2 weeks of age) shall be manufactured in pellet form, either with no animal protein or with animal protein products produced under the Animal Protein Products Industry/Education Salmonella Reduction Program.⁴

(iii) Succeeding feed (for turkeys 2 weeks or older) shall be as described in (f)(3)(ii) of this section, mash that contains no animal protein products, or mash that contains an animal protein products supplement that has been manufactured in pellet form and crumbled.

(4) Environmental samples shall be taken by an Authorized Agent, as described in § 147.12 of this chapter, from each flock at 12–20 weeks of age and examined bacteriologically at an authorized laboratory for Salmonella.

(5) Owners of flocks found infected with a paratyphoid Salmonella may vaccinate these flocks with an autogenous bacterin with a potentiating agent.⁶

(6) Environmental samples shall be taken by an Authorized Agent, as described in § 147.12 of this chapter, from each flock at 35–50 weeks of age and from each molted flock at midlay, and examined bacteriologically at an authorized laboratory for Salmonella.

(7) Environmental samples shall be taken, by an Authorized Agent using the procedures described in § 147.12 of this chapter, from the laying house after the flock is removed, and examined bacteriologically at an authorized laboratory for Salmonella.

(8) Hatchery debris (dead germ hatching eggs, fluff, and meconium collected by sexors), a sample of the poult that died within 10 days after hatching, or both shall be cultured from poult produced from hatching eggs from each flock, as a means of evaluating the effectiveness of the control procedures.

§ 145.33 [Amended]

11. Paragraph (c)(1)(ii)(A) of § 145.53 is amended by revising the phrase "a random sample of at least" to read "a random sample of serum or egg yolk from at least".

PART 147—AUXILIARY PROVISIONS ON NATIONAL POULTRY IMPROVEMENT PLAN

12. The authority citation for Part 147 continues to read as follows:

Authority: 7 U.S.C. 429; 7 CFR 2.17, 2.51, and 371.2(d).

13. The introductory text of paragraph (b) of § 147.6 is amended by removing the phrase "additional agglutination" and inserting "additional culturing procedures, and agglutination".

14. Paragraph (b)(5) of § 147.6 is revised as follows:

§ 147.6 Procedure for determining the status of flocks reacting to tests for *Mycoplasma gallisepticum*, *Mycoplasma synoviae*, and *Mycoplasma meleagridis*.

- (b) * * *

(5) If HI titers of 1:80, positive enzyme-labeled immunosorbent assay (ELISA) titers, or SPD titers of 1:10 or higher are found, in conjunction with any of the criteria described in paragraph (a)(1) of this section, the Official State Agency shall presume the flock to be infected. If the indicated titers are found, but none

⁶ Preparation and use of this type of vaccine may be regulated by state statutes.

of the criteria described in paragraph (a)(1) of this section are evident, tracheal swabs from 30 randomly selected birds shall be taken promptly and cultured individually for Mycoplasma, and additional tests conducted in accordance with paragraph (b)(6) of this section before final determination of the flock status is made.

15. Section 147.25 is amended by adding a sentence to the end of the introductory paragraph to read as follows:

§ 147.25 Fumigation.

APHIS disclaims any liability in the use of formaldehyde for failure on the part of the user to adhere to the Occupational Safety and Health Administration (OSHA) standards for formaldehyde fumigation, published in the Dec. 4, 1987, *Federal Register* (52 FR 48168, Docket Nos. H-225, 225A, and 225B).

Done in Washington, DC, this 30th day of May 1989.

James W. Glasser,
Administrator, Animal and Plant Health
Inspection Service.

(FR Doc. 89-13241 Filed 6-2-89; 8:45 am)
BILLING CODE 3410-34-M

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 600

Financial Assistance Rules; Technical Amendments

AGENCY: Department of Energy.

ACTION: Final rule, technical amendments.

SUMMARY: The Department of Energy (DOE) today amends the Financial Assistance Rules, 10 CFR Part 600, to make technical, non-substantive corrections. DOE amended these rules three times in 1988 and after a detailed review of them, has identified a number of technical errors (typographical errors, repetitions, incorrect citations, and the like) which warrant correction. Correction of these minor errors does not involve any substantive change.

EFFECTIVE DATE: July 5, 1989.

FOR FURTHER INFORMATION CONTACT:

Edward F. Sharp, Business and Financial Policy Division (MA-422), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-8192. Christopher Smith, Office of the Assistant General Counsel

Procurement and Finance (GC-34), U.S. Department of Energy, Washington, DC 20585, (202) 586-1528.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department of Energy (DOE) is today amending the Financial Assistance Rules (10 CFR Part 600) to make non-substantive changes to correct errors appearing in it. There were three significant amendments to the Rules in 1988: changes to the way in which cooperative agreements are handled (53 FR 5260, February 22, 1988), adoption of the A-102 Common Rule (53 FR 8044, March 11, 1988), and the establishment of procedures for dealing with determinations of noncompetitive financial assistance and justifications of restricted eligibility (53 FR 12137, April 13, 1988). These changes not only involved policy issues, but, in the case of the common rule, a substantial reorganization of the Financial Assistance Rules, with renumbering of various sections. Inevitably, errors appeared in the text, including typographical mistakes, repetitions, and incorrect references.

II. Changes to 10 CFR Part 600

Section 600.2 is amended by deleting the reference to OMB Circular A-102 in paragraph (f)(i) and to OMB Circular A-124 in paragraph (f)(iii). Circular A-102 was replaced by the Common Rule (adopted by DOE as Subpart E of the Financial Assistance Rules) and Circular A-124 was cancelled in March 1987. The remaining numbering within the subsection is changed to reflect the deletions.

Section 600.10 is corrected to reinsert a subsection initially included in the February 22 revision and inadvertently deleted in the March 11 revision. Section 600.10(b) is corrected to remove the reference to OMB Circular A-102, Attachment M, as a result of the adoption of the Common Rule.

Section 600.14 is amended to correct a typographical error in paragraph (a) and a repetition in paragraph (e).

Section 600.20 is amended to correct a reference in paragraph (c) to § 600.108. This section was redesignated as § 600.32 in the March 11, 1988, Common Rule.

Section 600.28 is amended to delete paragraph (b)(4). It makes reference to § 600.27(g) which does not exist.

Section 600.30 is amended to clarify a citation in paragraph (a)(2).

Section 600.102 is amended to eliminate a reference to OMB Circular A-102 in paragraph (b)(1).

Sections 600.104, 600.106, and 600.108 of Subpart B of the Financial Assistance

Rules are designated "Reserved" sections. They were redesignated as §§ 600.30, 600.31, and 600.32, respectively, in DOE's March 11, 1988, addendum to the A-102 Common Rule. There are sections in Subpart B following them.

Section 600.114 is amended to change a reference in (b)(ii) to reflect the redesignation of § 600.108 to § 600.32 in the March 11, 1988, *Federal Register* notice. This section is also amended to delete the duplicate inclusion of (b)(iv).

Section 600.119 is amended to clarify that the applicable section for procurement under financial assistance to governmental entities is contained in § 600.436, Subpart E, and to delete a reference to § 600.19(b)(1), which has been removed from the rule.

Section 600.207 is amended to correct the references in paragraphs (b) (7), (8) and (9) from § 600.118 to § 600.33.

Section 600.305 is amended to replace the reference in paragraph (c) to A-102 with the correct citation to Subpart E.

Section 600.315 is amended to replace the reference to A-102 with the correct citation to Subpart E.

Section 600.402 is amended to include the addition to the definition of "prior approval" contained in the March 11, 1988, final rule. It is also amended to replace, in the definition of "supplies," the word "part" with the word "subpart."

Section 600.403 is amended to replace "part" with "subpart" in the last line of paragraph (a)(3)(i).

III. Review Under Executive Order 12291

This rule was reviewed under Executive Order 12291 (February 17, 1981). It involves only technical changes to the Financial Assistance Rules. DOE has concluded that it is thus not a "major rule" because its promulgation will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States based enterprises to compete in domestic or export markets. In accordance with requirements of the Executive order, this rulemaking has been reviewed by the Office of Management and Budget (OMB).

IV. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Pub.

L. 96-354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. DOE has concluded that the rule will have no effect on small entities. DOE thus certifies that this will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

V. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, or OMB's implementing regulations at 5 CFR Part 1320.

VI. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of these wholly technical changes clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR Parts 1500-1508), and the DOE guidelines (10 CFR Part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

VII. Review Under Executive Order 12612

Executive Order 12612 requires that regulations or rules be reviewed for substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power among various levels of government. If there are sufficient substantial direct effects, E.O. 12612 requires preparation of a federalism assessment to be used in all decisions involved in promulgating or implementing a regulation or rule.

Today's regulatory amendments will have direct effects on State recipients of financial assistance, but those direct effects will be insubstantial because they involve minor technical corrections to existing regulations. Accordingly, DOE has concluded that preparation of a federalism assessment is not warranted.

VIII. Discussion of Comments on Proposed Rule

A proposed rule announcing these changes was published on February 9, 1989 (52 FR 6296) with comments to be submitted by March 13, 1989. No public comments were received. One additional correction was added as a result of a comment by DOE staff.

List of Subjects in 10 CFR Part 600

Administrative practice and procedure, Cooperative agreements/energy, Copyrights, Debarment and Suspension, Educational institutions, Energy, Grants/energy, Hospitals, Indian Tribal governments, Individuals, Inventions and patents, Non-profit organizations, Reporting and recordkeeping requirements, Small businesses.

Berton J. Roth,
Deputy Assistant Secretary for Procurement
and Assistance Management.

For the reasons set out in the preamble, Part 600 of Chapter II, Title 10 of the Code of Federal Regulations is amended as follows:

PART 600—[AMENDED]

a. The authority citation for Part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95-91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97-258, 96 Stat. 1003-1005 (31 U.S.C. 6301-6308).

§ 600.2 [Amended]

b. Section 600.2 is amended by removing paragraphs (f)(1) (i) and (iii) and redesignating (f)(1)(ii) as (f)(1)(i) and (f)(1)(iv) through (f)(1)(vii) as (f)(1)(ii) through (f)(1)(v).

c. Section 600.10 is amended by removing paragraph (b), redesignating paragraph (a) as paragraph (b) and revising it, and by adding paragraph (a) to read as follows:

§ 600.10 Form and content of applications and preapplications.

(a) *General.* Applications shall be required for all financial assistance projects or programs. Preapplications shall be required for all construction, land acquisition, and land development projects or programs for which the need for Federal funding exceeds \$100,000 unless the cognizant program office makes a written program determination to waive the preapplication requirement.

(b) *Forms.* Applications or preapplications shall be on the form or in the format and in the number of copies specified by DOE either in this part, in a program rule, or in the applicable solicitation, and must include all required information. For State

governments, local governments, or Indian tribal governments, applications shall be made on the applicable forms in the Standard Form 424 (SF 424) series. Such applicants shall not be required to submit more than the original and two copies of the application or preapplication.

§ 600.14 [Amended]

d. Section 600.14(a) is amended to change "from" in the first sentence to "for".

§ 600.20 [Amended]

e.-f. Section 600.20(c) is amended by revising the reference to "§ 600.108" to read "§ 600.32".

§ 600.28 [Amended]

g. Section 600.28(b) is amended by removing paragraph (b)(4).

§ 600.30 [Amended]

h. Section 600.30(a)(2) is amended by revising the reference to "§ 1040.4" to read "10 CFR 1040.4".

§ 600.102 [Amended]

i. Section 600.102(b)(1) is amended to remove the words "contained in OMB Circular A-102, as" in the second sentence.

§ 600.114 [Amended]

j. Section 600.114(b)(1)(ii) is amended by revising the reference to "§ 600.108(d)" to read "§ 600.32(d)".

k. Section 600.114(b)(1)(iv) is amended by removing the second version of this duplicated paragraph.

l. Section 600.119 is amended by revising paragraphs (a)(1) and (c)(2)(i) to read as follows:

§ 600.119 Procurement under grants and subgrants.

(a) * * *
(1) This section does not apply to procurements covered by § 600.436, Subpart E.

(c) * * *
(2) * * *

(i) If DOE or the grantee determines, on the basis of a review in accordance with § 600.104 or § 600.105, that the grantee's or subgrantee's procurement procedures or operations do not comply with one or more of the applicable procurement system standards; or

§ 600.207 [Amended]

m. Section 600.207(b) (7), (8) and (9)(iii) are amended to revise the reference to "§ 600.118" to read "§ 600.33".

§ 600.305 [Amended]

n. In § 600.305, paragraph (b)(2)(ii) is amended by designating (c) as (C), and newly designated paragraph (b)(2)(ii)(C) is amended to revise the reference to "Attachment F of Circular A-102, 'Uniform requirements for grants to State and local governments'" to read "§ 600.424 of Subpart E".

§ 600.315 Definitions.

o. Section 600.315 is amended to revise the reference to "Attachment O of Circular A-102, 'Uniform requirements for grants to State and local governments,' as implemented by § 600.119 of this part" to read "§ 600.436 of Subpart E".

p. Section 600.402 is amended to revise the definition of "prior approval" and "supplies" as follows:

§ 600.402 Definitions.

"Prior approval" means documentation evidencing consent prior to incurring specific cost. For the Department of Energy, this must be signed by a Contracting Officer.

"Supplies" means all tangible personal property other than "equipment" as defined in this subpart.

§ 600.403 [Amended]

q. Section 600.403(a)(3)(i) is amended by revising the reference to "part" to read "subpart".

[FR Doc. 89-13168 Filed 6-5-89; 8:45 am]

BILLING CODE 6450-01-M

SMALL BUSINESS ADMINISTRATION**13 CFR Part 122**

[Rev. 4, Amdt. 4]

Business Loans; Export Loans

AGENCY: Small Business Administration.

ACTION: Final rule.

SUMMARY: Title VIII of the Omnibus Trade and Competitiveness Act of 1988, Pub. L. 100-418 (102 Stat. 1107), enacted August 23, 1988 (1988 legislation), amends the Small Business Act (15 U.S.C. 636) with respect to export loans. This final rule implements the amendments relating to the provisions affecting such export loans.

EFFECTIVE DATE: This rule is effective June 5, 1989.

FOR FURTHER INFORMATION CONTACT: Charles R. Hertzberg, Deputy Associate Administrator for Finance and Investment, Small Business Administration, 1441 L Street, NW.,

Washington, DC 20418, telephone (202) 653-6574.

SUPPLEMENTARY INFORMATION: On December 27, 1988, the Small Business Administration (SBA) published proposed regulations in the *Federal Register* (53 FR 52187) to implement the 1988 legislation. Two commenters responded. Their comments will be discussed in place. SBA presently is authorized to guaranty an export revolving line of credit loan (ERLC) not to exceed eighteen months in order to enable the borrower to utilize pre-export financing or to develop foreign markets. Under the 1988 legislation, an applicant small concern may be, but is not required to be, a small business export trading company or a small business export management company. This final amendment of § 122.54-2 of SBA regulations reflects this provision and in subsection (b) thereof it defines these entities. Both types of companies specialize in providing marketing and management services for firms which wish to engage in exporting but which have limited or no experience in selling abroad.

Section 122.54-3 is the same as present § 122.54-3 with respect to the use of proceeds, namely that proceeds can be used only to penetrate or develop a foreign market and/or to finance labor and materials for pre-export production. One commenter stated that the use of proceeds was too limited in its reference to pre-export production, and that there should be some mention of accounts receivable. SBA considers the comment well-founded; so it is adding a statement that the ERLC balance can remain outstanding until the insured accounts receivable or letters of credit are collected. New language was added to section 7(a)(14) of the Small Business Act concerning the use of proceeds, namely that SBA, in considering these ERLC loans, is to give weight to export-related benefits. The Agency decided not to include such language in the final regulation because of an explanatory statement in H.R. Rep. No. 38, 100th Cong., 1st Sess., at p. 32 (1987), that such statutory provision "is not intended to be read as a limitation on the existing mandate regarding export financing, but is intended to consider favorably those applications with export benefits which also meet other criteria which the Administration is required to consider."

Section 122.54-4, relating to fees, restates present § 122.54-4. Thus, a lender could continue to charge the borrower of an ERLC loan a commitment fee equal to one-fourth of one percent of the loan or \$200, whichever is greater. Section 122.54-5,

relating to collateral, restates present § 122.54-5. The only collateral acceptable continues to be that located in the United States, its territories and possessions. A commenter stated that the regulation should specifically allow export receivables as eligible collateral. The SBA interpretation of the law is that the program is not intended to take on a foreign risk. Only a domestic risk is acceptable. However, insured accounts receivable and letters of credit are eligible forms of collateral since the foreign risk is thereby replaced by dependence upon a domestic insurance company or lender. In any event, while the ERLC balance can remain outstanding until the insured accounts receivable or letters of credit are collected, the ERLC loan must terminate at the end of the statutory 18 months.

Section 122.54-6, relating to loan conditions, is the same as the existing regulation. One of the comments was that cash flow projections and monthly reports should be left to local SBA offices and that other documentation should be allowed, such as annual renewals. SBA is not changing the regulation based on these comments because cash flow projections have always been a part of SBA's short-term loan projections in order to estimate the inflow and outflow of funds. This is necessary in order to establish the amount of financing needed. Monthly reports are required in order to promote prudent servicing by the lender. With respect to allowing annual renewals instead of filing a new application, SBA believes any timesaving to the borrower would be minimal. Updated financial information required by a new application is essential to determine whether the risk to the lender is reasonable.

The 1988 legislation added a new subsection 16 to section 7(a) of the Small Business Act. This final rule adds new §§ 122.57 through 122.57-5 to SBA regulations to reflect a new category of international trade loans. Section 122.57-1 provides that the Agency could assist an eligible small business concern in an industry engaged in or adversely affected by international trade. The purpose of such guaranteed financing would be for the acquisition, construction, renovation, modernization, improvement or expansion of productive facilities or equipment to be used in the United States in the production of goods or services involved in international trade. SBA, in each case, is required to determine whether the upgrading of the plant or equipment would allow the applicant to improve its competitive position. If the loan would be made by a

Preferred Lender pursuant to Part 120, Subpart D of these regulations (13 CFR Part 120), the Preferred Lender would be required to make such a determination.

Section 122.57-2 provides that, in addition to meeting the eligibility criteria applicable to all loans made under section 7(a) of the Small Business Act, the applicant has to show that either (1) it is in a position to significantly expand existing export markets or to develop new export markets, or (2) it is adversely affected by import competition because it (i) is confronting increased direct competition with foreign firms in the relevant market and (ii) can demonstrate injury attributable to such competition. To show import competition the applicant must establish that increased imports of articles like, or directly competitive with, those produced by it have

contributed importantly to a decline in its competitive position. To show that SBA assistance would help export promotion, the applicant would have to submit a business plan which identifies the amount of expected sales abroad and which provides information—such as an export marketing analysis and plan—to reasonably support projected export sales.

Section 122.57-3 states that the SBA guaranteed portion of a loan guaranteed under subsection 7(a)(16) of the Small Business Act could not exceed \$1,000,000 for facilities or equipment. In addition, a borrower would be eligible for SBA financing not to exceed \$250,000 to be used solely for working capital, supplies or an ERLC loan. Further, this section makes clear that the aggregate amount of \$1,250,000 available from the business loan and investment fund

(BLIF) would be reduced by any other financing from SBA pursuant to section 7(a) of the Small Business Act (Act). Thus, if the outstanding balance of the SBA guaranteed portion of a section 7(a) loan for facilities and equipment (F&E) is \$200,000, applicant would be eligible under § 122.57 for \$800,000 for F&E, plus \$250,000 for working capital (WC). If the outstanding balance of the SBA guaranteed portion of a section 7(a) loan for F&E is \$500,000 and \$250,000 for WC, it would be eligible under § 122.57 for only \$500,000 in F&E and no additional financing for WC. In both cases presented, the aggregate SBA guaranteed portion financing under section 7(a) of the Act could not exceed \$1,250,000. Examples of this rule are reflected in the following chart:

Outstanding SBA portion of prior financing under Section 7(a) of the Act		Section 7(a)(16) eligibility		Aggregate from BLIF	
F + E	WC	F + E	WC		
—0—	200,000	1,000,000	50,000	1,250,000	
—0—	300,000	950,000	—0—	1,250,000	
—0—	750,000	500,000	—0—	1,250,000	
200,000	—0—	800,000	250,000	1,250,000	
200,000	200,000	800,000	50,000	1,250,000	
500,000	250,000	500,000	—0—	1,250,000	
750,000	—0—	250,000	250,000	1,250,000	

Section 122.57-4 provides that the only acceptable security would be collateral located in the United States, its territories and possessions. The 1988 legislation requires that the lender of international trade loans under subsection 7(a)(16) of the Small Business Act must obtain a first lien position or first mortgage on the property or equipment financed. This section of the regulations reflects this statutory requirement.

Section 122.57-5 reflects the statutory provision that a lender making a loan under this section would have to sell the guaranteed portion in the secondary market within 180 days of the date when full disbursement is completed. If the sale is not made within such time frame, the SBA guaranty would terminate without further action or notice by SBA. A commenter objected to the required sale, but since this is a statutory requirement, SBA has to implement that provision.

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

SBA certifies that this rule does not constitute a major rule for the purposes of Executive Order 12291, since the

change is not likely to result in an annual effect on the economy of \$100 million or more.

This final rule would impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35. Section 122.57-2(c) requires the applicant to submit a business plan which identifies the amount of expected sales abroad and which provides information to reasonably support projected export sales.

This rule would not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 122

Loan Programs/Business.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)), SBA hereby amends part 122, Chapter I, Title 13, Code of Federal Regulations, as follows:

1. The Table of Contents at the beginning of part 122, in Subpart B, is amended by adding new §§ 122.57 through 122.57-5 as follows:

Sec.
122.57 International trade loans under section 7(a)(16) of the Act.
122.57-1 Policy.

Sec.
122.57-2 Eligibility.
122.57-3 Amount and percentage of loan guaranty.
122.57-4 Collateral and lien position.
122.57-5 Sale in secondary market.

2. The authority citation of Part 122 continues to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a).

3. Sections 122.54, 122.54-1, 122.54-2, 122.54-3, 122.54-4, 122-54-5, and 122.54-6 are revised to read as follows:

§ 122.54 Export revolving line of credit loans under Section 7(a)(14) of the Act.

§ 122.54-1 Policy.

The Act authorizes a revolving line of credit for pre-export financing and for export purposes in order to develop foreign markets. No such loan shall be made for a period which exceeds eighteen months.

§ 122.54-2 Eligibility.

(a) *General.* An applicant for an Export Revolving Line of Credit (ERLC) loan under this subsection, in addition to meeting the eligibility criteria applicable to all loans made under the authority of section 7(a) of the Act, 15 U.S.C. 636(a), shall have been in operation for at least 12 full months prior to filing an application. An

applicant small business concern may be, but is not required to be, a small business export trading company or a small business export management company. This 12-month requirement may be waived by the appropriate SBA regional office if the management of the applicant has sufficient export trade experience or other management ability to warrant an exception to the general rule. Waivers can be made only by regional office officials who have delegated authority to approve ERLC loans.

(b) *Definitions.* An export trading company and an export management company are independent firms which specialize in providing marketing and management services for firms which wish to engage in exporting but have limited or no experience in selling abroad.

§ 122.54-3 Use of proceeds.

Proceeds of an ERLC loan can be used only to penetrate or develop a foreign market and/or to finance labor and materials for pre-export production. Professional export marketing advice or services, foreign business travel or participation in trade shows are examples of eligible expenses related to developing or penetrating a foreign market. The cost of acquiring or renting office or commercial space in a foreign country, equipping such an office, or wages for a staff in such an office are examples of ineligible uses of proceeds. The ERLC balance may remain outstanding until the insured accounts receivable or letters of credit are collected.

§ 122.54-4 Fees.

In addition to other allowable fees (see § 120.104-2 of this Chapter), the participant in an ERLC loan may charge the borrower a commitment fee equal to one-fourth (¼) of one (1) percent of the loan or \$200, whichever is greater. This fee shall not be charged until the SBA has approved the lender's request for guaranty.

§ 122.54-5 Collateral.

Only collateral that is located in the United States, its territories and possessions shall be acceptable security for these loans.

§ 122.54-6 Additional loan conditions.

(a) *Cash flow projection.* All ERLC loan applications shall include a projected cash flow chart for the term of the loan that supports the need for the funds and that evidences repayment

ability. The projection must cover the applicant's total operation and clearly identify the intended use(s) of the loan proceeds and source(s) or repayment.

(b) *Monthly progress reports.* The ERLC borrowers must submit monthly progress reports to the Lender and explain discrepancies between the projected cash flow and the progress report.

3. Sections 122.57, 122.57-1, 122.57-2, 122.57-3, 122.57-4, and 122.57-5 are added to read as follows:

§ 122.57 International Trade Loans Under Section 7(a)(16) of the Act.

§ 122.57-1 Policy.

The Act authorizes assistance to an eligible small business concern in an industry engaged in or adversely affected by international trade for the financing of the acquisition, construction, renovation, modernization, improvement or expansion of productive facilities or equipment to be used in the United States in the production of goods and services involved in international trade. For each loan request approved by the Agency, the SBA must make a determination that the upgrading of the plant or equipment will allow the applicant to improve its competitive position. If the loan is made under the Preferred Lender Program (PLP) (Part 120, Subpart D of these regulations), the PLP Lender must make such a determination.

§ 122.57-2 Eligibility.

(a) *General.* An applicant, in addition to meeting the eligibility criteria applicable to all section 7(a) loans, is eligible if it can establish that it is

(1) In a position to significantly expand existing export markets or to develop new export markets or

(2) Adversely affected by import competition because it is confronting increased direct competition with foreign firms in the relevant market and it can demonstrate injury attributable to such competition.

(b) *Import Competition.* An applicant, by narrative explanation submitted in writing with its loan application, must establish that increased imports of articles like, or directly competitive with, those produced by it have contributed importantly to a decline in its competitive position. In addition, an applicant must establish that an upgrading of plant and/or equipment is likely to help to improve its competitive position with respect to foreign competition.

(c) *Export Promotion.* In order for the

applicant to show that SBA financial assistance is likely to significantly expand the applicant's export markets or to develop new export markets for the applicant, it must prepare and submit a business plan which identifies the amount of expected sales abroad and which provides information to reasonably support projected export sales.

§ 122.57-3 Amount and percentage of loan guaranty.

A guaranty commitment made by SBA pursuant to section 7(a)(16) of the Act shall not exceed 85 percent of the amount of the loan. Such guaranty commitment by SBA shall not exceed \$1,000,000 of guaranty authority for financing of facilities or equipment. This is in addition to any other SBA financing made available to the same applicant solely for working capital, supplies, or ERLC purposes in an amount not to exceed \$250,000. The aggregate amount of \$1,250,000 available from the business loan and investment fund under this subsection shall be reduced by any other financing from SBA pursuant to section 7(a) of the Act.

§ 122.57-4 Collateral and lien position.

Only collateral that is located in the United States, its territories and possessions shall be acceptable security for a loan made under subsection 7(a)(16) of the Act. The Lender must take a first lien position or first mortgage on the property or equipment financed under this section. This is in addition to any other collateral security position which SBA may require.

122.57-5 Sale in secondary market.

Any Financial Institution making a loan under this section must agree to sell the guaranteed portion in the secondary market within 180 days of the date when full disbursement is completed (see Subparts G and H, Part 120 of these regulations). If the Financial Institution does not sell within this statutory time frame, the SBA guaranty shall terminate without further action or notice by SBA.

(Catalog of Federal Domestic Assistance Programs No. 59.012, Small Business Loans)

Dated: April 12, 1989.

James Abdnor,
Administrator.

[FR Doc. 89-13221 Filed 6-2-89; 8:45 am]

BILLING CODE 8025-01-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34-26870; File No. S7-25-87]

Multiple Trading of Standardized Options

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission announces the adoption of Rule 19c-5 under the Securities Exchange Act of 1934, which rule amends the rules of national securities exchanges ("exchanges") governing the listing and trading of standardized options. The Rule provides that, as of January 22, 1990, no rule, stated policy, practice, or interpretation of an options exchange shall restrict the listing of any new stock options class to a single exchange. In addition, effective January 21, 1991, but not before, Rule 19c-5 amends exchange rules to prohibit any exchange from limiting by any means its ability to list any stock options class because that options class is listed on another exchange. The Rule also contains a phased-in implementation schedule. Specifically, commencing January 22, 1990, an options exchange may list up to ten classes of standardized put and call options overlying exchange-listed stocks that were also listed on another options exchange on or before January 22, 1990. **EFFECTIVE DATE:** January 22, 1990.

FOR FURTHER INFORMATION CONTACT: Thomas R. Gira, Attorney, Branch of National Market System Regulation, Division of Market Regulation, Securities and Exchange Commission (Mail Stop 5-1), 450 Fifth Street, NW., Washington, DC 20549, at 202/272-2827.

SUPPLEMENTARY INFORMATION:

I. Introduction and Background

The Securities and Exchange Commission ("Commission" or "SEC") announces the adoption of Rule 19c-5 under the Securities Exchange Act of 1934 ("Act").¹ As of January 22, 1990, the effective date of this Rule, all national securities exchanges that provide a market for trading standardized put or call options ("options exchanges") are prohibited from restricting the listing of any new stock options class to a single exchange. In addition, the Rule provides that on January 21, 1991, no options exchange may have a rule that limits its ability to list any stock options class

because that options class is listed on another options exchange.

Rule 19c-5 also provides a substantial phase-in period to reduce market structure and operational concerns. Specifically, the Rule does not take effect for almost eight months, until January 22, 1990. Commencing January 22, 1990, no options exchange can limit its ability to list at any one time up to ten standardized stock option classes overlying exchange-listed stocks that were also listed on another options exchange on or before January 22, 1990.² Further, as of January 22, 1990, no options exchange may limit its ability to list any standardized options class first listed on another options exchange on or after January 22, 1990, because that options class is listed on another options exchange. The Rule, however, would not restrict an options exchange's authority to choose, as a business matter, not to trade options already listed on another exchange.

The Commission proposed the adoption of a multiple trading³ rule in a release issued on June 18, 1987, announcing the commencement of a proceeding pursuant to Section 19(c)⁴ of the Act to consider whether to (1) adopt a policy permitting multiple market trading of standardized options on exchange-listed securities, and/or (2) adopt a rule amending the rules of national securities exchanges that provide a market in standardized options to remove restrictions on the multiple trading of options on exchange-listed securities.⁵ In connection with this proceeding the Commission solicited comment on proposed Rule 19c-5 and held public hearings on February 11, 1988, to receive testimony from interested persons.⁶

¹ These ten classes would be in addition to any option on an exchange-listed stock that was allowed to be traded on more than one options exchange as of the effective date of this Rule (e.g., options on Disney Productions, Xerox, and National Semiconductor). Thus, the ten additional classes would consist of options on individual, exchange-listed equity securities that have been assigned to trading on a single exchange since 1980 pursuant to the Allocation Plan. See discussion *infra* at note 86 and accompanying text.

² Multiple trading is the trading of standardized options with the same underlying security on more than one options exchange.

³ 15 U.S.C. 78s(c)(1982).

⁴ See Securities Exchange Act Release No. 24613 (June 18, 1987), 52 FR 23849 ("Proposal Release"). The Commission today is adopting a rule that subsumes the proposed policy, as well as the proposed rule.

⁵ A copy of the hearing transcript, together with all comment letters received in connection with this proceeding, is available in the Public Reference Room at the Commission's home office in Washington, DC. See File No. S7-25-87.

The Commission's proposed rule was announced after more than a ten-year period during which the multiple trading of standardized options overlying exchange-listed securities was limited to relatively few options classes. Between the commencement of multiple trading on standardized options in 1976 and mid-1977, when the options exchanges agreed voluntarily to suspend further expansion of the options markets, only 22 options classes were multiply-traded.⁷ Upon the termination of this options moratorium in 1980, the Commission precluded an immediate expansion in the number of multiply traded options based upon its finding that, while multiple trading could, "under appropriate circumstances,"⁸ benefit options investors, it raised a number of concerns. Among these concerns were: (1) Market fragmentation (*i.e.*, the failure of the prices in any one market to reflect all the buying and selling interest in a security); (2) member firm order routing practices that were automatically directing order flow to the market exhibiting the greatest volume, regardless of whether or not that exchange was offering the best execution for each order so routed; and (3) the potential negative impact on the financial position of regional exchanges, which were dependent on revenues from their options trading programs. In light of these concerns, the Commission deferred making a decision regarding the expansion of multiple trading until the exchanges could undertake a study of the feasibility of developing market integration facilities similar to those developed for stock trading.⁹

In conjunction with its determination to defer expansion of multiple trading, the Commission requested the options exchanges to develop a fair means for allocating options then not listed on any exchange. The exchanges' plan, termed the "Allocation Plan," and approved by the Commission in 1980,¹⁰ permitted the

⁷ In 1977, the self-regulatory organizations ("SROs") agreed to halt expansion of standardized options trading in conjunction with the commencement of a Commission staff investigation into trading practices of the options markets. At the time of the moratorium's commencement the number of multiply-traded classes had declined to fifteen. See Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess., 800-04 (Comm. Print 96-IFC3, December 22, 1978) ("Options Study Report").

⁸ Securities Exchange Act Release No. 16701 (March 26, 1980), 45 FR 21426, 21431 ("Moratorium Termination Release").

⁹ The Commission envisioned that a market integration system would provide a prompt and efficient means of sending and receiving orders to purchase or sell multiply-traded options among options markets. *Id.* at 21431.

¹⁰ See Securities Exchange Act Release No. 16863 (May 30, 1980), 45 FR 37928.

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options exchanges thereafter to list new options for which they would be the sole market, and to remain the sole market for existing options which were not multiple traded at that time.

Following adoption of the Allocation Plan, the SROs submitted a report to the Commission that concluded that the development of options market integration facilities, particularly a limit order exposure system¹¹ suggested by the Commission, was not feasible at that time.¹² Thereafter, the SROs made no substantial efforts to develop any market integration facilities. As a result, options on exchange-listed equity securities continued to be listed for trading pursuant to the Allocation Plan.

Despite the absence of options market integration facilities, the Commission permitted multiple-trading of new options products approved for trading subsequent to the termination of the options moratorium. In approving these new products, the Commission took the position that competitive market forces should be allowed to shape the structure of the options markets to the maximum extent possible,¹³ and that multiple trading could benefit the market for these products through enhanced price competition, improvements in exchange services, and innovation in contract design.¹⁴ Based largely upon these rationales,¹⁵ the Commission approved

¹¹ The Commission envisioned that a limit order exposure system would provide for simultaneous representation of public limit orders from all options exchanges and provide floor participants on those exchanges with access to those public limit orders. *Id.*

¹² Interim Report of the American, Pacific, and Philadelphia Stock Exchanges and the Chicago Board Options Exchange in Response to Release No. 34-16701 (January 8, 1981), *see also* Supplementary Report of the American, Pacific, and Philadelphia Stock Exchanges and the Chicago Board Options Exchange in Response to Release No. 34-16701 (September 1, 1981) ("Supplementary Task Force Report").

¹³ See Securities Exchange Act Release No. 18297 (December 2, 1981), 46 FR 60376, 60377-78.

¹⁴ See, e.g., Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310, 20330-31 (approving in principle proposals by the National Association of Securities Dealers, Inc. ("NASD"), options exchanges, and New York Stock Exchange ("NYSE") to trade options on over-the-counter ("OTC") stocks) ("OTC Approval Release").

¹⁵ The Commission also took into account the fact that, because the options at issue were not yet listed on any exchange, no exchange had invested capital in developing a market for these products on the basis of enjoying an exclusive franchise, and accordingly that there was no threat that multiple trading would negatively affect the existing market structure. *Id.* at 20328 n. 178. The Commission cautioned, however, that it did not interpret the Act as charging it with a responsibility to ensure the continued viability of a particular marketplace or participant. See, e.g., *id.* at 20331.

multiple trading for options on stock indexes,¹⁶ Treasury securities,¹⁷ foreign currencies,¹⁸ and OTC stocks.¹⁹

In November 1986, the Commission published two staff studies that attempted to measure the cost savings to investors arising from the multiple trading of options on OTC stocks.²⁰ Both Staff Studies found that the spreads between the bid and the offer for options subject to multiple trading were significantly narrower than the spreads for options listed exclusively on one exchange.²¹ The DEPA Study estimated that investors who traded OTC options saved in the aggregate \$25 million from June 1985 to May 1988 as a result of narrower spreads.²² The OCE Study estimated that investors would receive an annual cost savings of \$150 million if multiple trading were expanded to include all individual equity options.²³ The OCE Study also

¹⁶ See Securities Exchange Act Release No. 19264 (November 22, 1982), 47 FR 5396 (approving exchange proposals to trade options on broad-based stock indexes) and Securities Exchange Act Release No. 20075 (August 12, 1983), 48 FR 37556 (approving a proposal by the American Stock Exchange ("Amex") to trade options on narrow-based indexes).

¹⁷ See Securities Exchange Act Release No. 19125 (October 14, 1982), 47 FR 46934.

¹⁸ See Securities Exchange Act Release No. 19133 (October 14, 1982), 47 FR 46946 (approving the Philadelphia Stock Exchange ("Phlx") foreign currency options program) and Securities Exchange Act Release No. 22471 (September 26, 1985), 50 FR 40636 (approving the Chicago Board Options Exchange ("CBOE") foreign currency option program). The CBOE elected to delist its foreign currency options in August 1987 due to insufficient volume, thereby making the Phlx the exclusive market for options on foreign currencies. See Securities Exchange Act Release No. 26059 (September 2, 1986), 51 FR 35144.

¹⁹ See OTC Approval Release, *supra* note 14.

²⁰ See Directorate of Economic and Policy Analysis, "The Effects of Multiple Trading on the Market for OTC Options," (November 1986) ("DEPA Study"), and Office of the Chief Economist, "Potential Competition and Actual Competition in the Options Market," (November 1986) ("OCE Study") (referred to collectively as "Staff Studies" or "Studies").

²¹ The DEPA Study compared the spreads in Amex-listed options on OTC stocks to those in singly-listed Amex options on exchange-listed stocks for three sample periods between June 1985 (shortly after trading on OTC options began) and March 1986 (after trading volume had concentrated on one exchange, the Amex). The Study found that the spreads in multiply-traded options were on average 19.8% narrower than the spreads in the singly-traded options. DEPA Study, *supra* note 20, at 9. The OCE Study drew similar conclusions from a different sample pool, finding that multiple trading reduced spreads by as much as 20% in low volume options. The OCE found, however, that the measurable impact of multiple trading on spreads diminishes as options volume increases, and estimated that the impact disappears at a volume level of approximately 1,500 contracts per day. OCE Study, *supra* note 20, at 17-18, 24.

²² DEPA Study, *supra* note 20, at 7.

²³ OCE Study, *supra* note 20, at 21.

found that its data supported the "contestable markets" theory, which maintains that effective competition is not dependent upon the number of actual competitors, but rather only upon the ease of entry and exit in the market. Thus, the OCE Study found that "options eligible for multiple listing have significantly lower spreads despite having virtually all their volume on a single exchange."²⁴ The findings of both studies were challenged by the CBOE, Phlx, and Pacific Stock Exchange ("PSE"), each of whom submitted a critique of the Studies prepared by an economist retained for that purpose.²⁵ These critiques questioned the methodology of the Studies and argued that, even if the conclusions of the Studies were accepted, they overestimated the cost savings that could be realized from multiple trading.²⁶

In the release proposing the adoption of Rule 19c-5, the Commission stated that it preliminarily had determined that exchange rules prohibiting multiple trading may now be inconsistent with the Act, particularly because they may impose a burden on competition no longer necessary in furtherance of the Act's purposes.²⁷ The Commission also stated that a continued deferral of multiple trading may be inconsistent with sections of the Act requiring "fair competition among brokers and dealers [and] among exchange markets,"²⁸ and the "economically efficient execution of securities transactions."²⁹ The Commission based its decision to reconsider the expansion of multiple trading on developments, including improvements in trading technologies, taking place in the options markets since adoption of the Allocation Plan and the largely positive experience with multiple trading of options on non-equity securities and OTC stocks. The Commission found that no specific harm

²⁴ *Id.* at 2.

²⁵ See Comment on SEC Staff Studies of Multiple Trading of Options, by Hans R. Stoll (Owen Graduate School of Management, Vanderbilt University), February 5, 1987; Memorandum Concerning SEC Staff Studies of Multiple Trading in Options, by Seymour Smidt (Johnson Graduate School of Management, Cornell University) February 9, 1987; and Competitiveness of Options Trading Under the Options Allocation Plan, by Gregory Connor (University of California at Berkeley), March 4, 1987. Copies of these papers are in the public file for this proceeding.

²⁶ See Proposal Release, *supra* note 5, at 52 FR 23852.

²⁷ See sections 8(b)(8) and 23(a)(2) of the Act [15 U.S.C. 78f(b)(8) and 78w(a)(2)] (1982)].

²⁸ See section 11A(a)(1)(C)(ii) of the Act [15 U.S.C. 78k-1(a)(1)(C)(ii)] (1982)].

²⁹ See section 11A(a)(1)(C)(i) of the Act [15 U.S.C. 78k-1(a)(1)(C)(i)] (1982)].

to the markets had resulted from multiple trading of OTC options, including the absence of either significant price disparities between different markets in the same option class or significant problems with the execution of customer orders. While the Commission reaffirmed its belief that market integration facilities may be beneficial in a multiple trading environment, it stated that, in view of the burden on competition imposed by the Allocation Plan, it could not defer indefinitely its consideration of these issues in anticipation of exchange undertakings to develop such facilities.

II. Recent Trading Experience and Studies

In the Proposal Release, the Commission described the multiple trading experience in options on OTC stocks from the commencement of trading in June 1985 to the time of the Release's issuance in June 1987. The Commission found that, within the first few weeks of multiple trading, the Amex captured the majority of order flow in each of the eight multiple-traded OTC options that it listed, and within a few months had increased its market share to almost 90% in each option class.³⁰ By June 1987, only two of the original nine multiple-traded OTC options continued to be multiple-traded, and in both instances the primary market accounted for more than 99% of the volume.³¹

By June 1987, however, there had been some additional multiple listings in OTC options for which a dominant market had not emerged. In Mentor and Microsoft options, which began trading on the PSE and Amex in March 1987, neither exchange clearly established itself as the primary market within the first few months of dual trading. Volume in Microsoft was fairly evenly divided between the exchanges until October 1987 (seven months after the start-up of dual trading), when the PSE increased its market share to 75%, a position which it has continued to hold and increase through the present with no significant exceptions.³² During the first six months

³⁰ See Proposal Release, *supra* note 5, 52 FR at 23851. Amex market share in the first month of trading was approximately as follows: Apollo, 72%; Apple, 77%; ChiChi's, 94%; DSC, 64%; Intel, 81%; Intergraph, 80%; Lotus, 68%; and Tandem, 70%.

³¹ Those options are Apple and Genentech. *Id.*

³² The PSE's market share in Microsoft slipped below 75% only twice between October 1987 and August 1988. In March and April, 1988, its market share fell slightly, to 74.61% and 71.22%, respectively. Between December 1988 and April 1989, the PSE's market share averaged 90%.

of trading in Mentor options, market share on average was divided approximately 55/45, with the PSE garnering the larger volume; between September 1987 and August 1988 the PSE increased its market share to approximately 67%.³³ The trading experience in Battle Mountain Gold ("BMG") options, listed on the CBOE and Amex since September 1987, exhibited a similar pattern. Although the CBOE captured more than 50% of the trading volume in five of the first six months of trading, it did not show a market share greater than 65% until March 1988, seven months after the start-up of dual trading. Moreover, in February 1989, seventeen months after BMG options were listed, the CBOE's market share was only 60%.³⁴ While it is too early to discern a pattern, in four other recently listed multiply-traded OTC options no exchange acquired a dominant market share within the first few weeks of trading. Indeed, in Blockbuster options, listed on the Amex and the CBOE since July 1988, the CBOE's market share averaged 59% between October and December 1988 while the Amex averaged 41%.³⁵

In connection with this proceeding, both the PSE and CBOE submitted to the Commission data regarding the occurrence of trade-throughs³⁶ in multiply-traded options on OTC stocks.³⁷ The CBOE's examination of

³³ This figure represents the average monthly market share over a twelve month period. Between December 1988 and April 1989, the PSE's market share in Mentor options averaged 73.2%.

³⁴ Between March and June, 1988 the CBOE averaged a monthly market share of 65.27%. In July 1988, its market share increased to 81%; however, between December 1988 and April 1989, the CBOE's market share averaged 71.2%.

³⁵ From December 1988 to April 1989, however, CBOE market share averaged 74.7%. The other three recently listed OTC options are Micron (June 1988), Henley Group (August 1988), and Intel Corporation (October 1988). Market share in Micron through August 1988 was split between the PSE, Amex and CBOE approximately 52%, 32% and 15%, respectively (3 month averages). Between December 1988 and April 1989, however, the PSE's market share averaged 65.1% while the CBOE and Amex averaged 18.9% and 16%, respectively. Market share in Intel options, listed on the CBOE and the PSE since October 1988, was evenly divided (48/52%) between October and December 1988. Since February 1989, the CBOE has captured 99% of the order flow. The Commission has been informed that Henley group options are to be delisted in the near future.

³⁶ A "trade-through" occurs when a transaction takes place in one market even though another market is contemporaneously quoting a superior price.

³⁷ See Memoranda from Eileen Smith, CBOE, to Joseph Levin, CBOE, re Battle Mountain Gold Trade-Throughs, dated January 13, 1988 and January 26, 1988 ("BMG Memos") (copies in Public File No. S7-25-87) and Multiple Market Trade/Quote Analysis ("Microsoft Study"), Appendix B to Statement of the Pacific Stock Exchange, Inc. in Response to SEC Release No. 34-24613, dated January 27, 1988 ("PSE response").

trading in BMG options during two five-day periods revealed a trade-through rate of approximately 19% in both periods measured as a percentage of the total number of trades on both exchanges. The CBOE further found that the majority of trade-throughs in both study periods were 1/6th of a point away from the quotation disseminated by the other market (81.5% in the first period and 71.4% in the second), and 23.8% of those occurring in the second period were 1/4th of a point away from the best quote. The PSE's study of trade-throughs in Microsoft options occurring during the week of September 8-11, 1987 estimated that approximately 5% of the total number of trades occurring on both exchanges were trade-throughs.³⁸ Applying this trade-through rate to the total number of trades in Microsoft between March 9, 1987 (the start-up of dual trading) and December 31, 1987, and making assumptions regarding average trade size (13 contracts) and average price disparity (1/4th point or \$12.50 per contract), the PSE estimated a potential trade-through cost to investors of approximately \$586,000 (\$700,000 on an annualized basis) in this option class. The PSE also found that its trade-through data indicated that large investors, *i.e.*, those who bought or sold a greater number of contracts per trade, were less likely to experience the negative effect of trade-throughs than small investors, owing to lower price discrepancies on larger trades.³⁹

The Commission's Office of Economic Analysis ("OEA")⁴⁰ reviewed the trading data submitted by the PSE and CBOE and found that both studies were over-inclusive in the number of trades they identified as possible trade-throughs.⁴¹ Specifically, the OEA Study found that one-half of the BMG trade-throughs identified by the CBOE were based on quotes over one hour old, thereby making it questionable whether, given the thinly-traded nature of the option, the quotes which were trade-through continued to reflect the market for the option at the time of the alleged trade-through. Although OEA found that the PSE excluded more trade-throughs

³⁸ The PSE found 29 possible cases [2.5% of the total number of trades on both exchanges] where the Amex traded through PSE quotes. The 5% figure cited in the text above reflects the PSE's assumption that there were an equal number of cases where the PSE traded through Amex quotes.

³⁹ See PSE response, *supra* note 37, at 13.

⁴⁰ In 1988, DEPA and OCE were combined to form OEA.

⁴¹ See Information Memorandum to the Commission from OEA regarding trade-throughs in multiply-traded options, dated September 23, 1988. A copy of the memorandum has been placed in the public file of this proceeding.

involving stale quotes than did the CBOE, the PSE's analysis still contained a number of questionable trade-throughs.⁴³ Moreover, OEA estimated that, if one assumed all PSE trade-throughs were correctly identified, the cost to investors during the periods studied was \$1.19 per contract traded through. This cost would fall to .29¢ per contract if OEA's estimate of the trade-through rate were used.⁴⁴ In either case, OEA found that its estimate regarding the cost savings realized by investors as a result of narrower spreads in Microsoft due to multiple trading (\$11.25 per contract) was significantly greater than the cost of the trade-throughs.

III. Summary of Comments

The Commission received more than eighteen comment letters and heard testimony from 15 individuals in connection with proposed Rule 19c-5.⁴⁵ The Commission also has received several letters from members of Congress concerning the proposal.⁴⁶

⁴³ Of the total number of trade-throughs identified by the PSE, 10% were based on quotes more than 35 minutes old, and two were for transactions involving 100 and 200 contracts, a size at which a trade reasonably could occur outside the inside quote. Upon excluding those trades for which OEA did not find confirming evidence of a trade-through (e.g., excluding those trades which were not confirmed by a trade at the quoted price in the traded-through market or a subsequently occurring trade at a superior price), it concluded that the PSE's data could support a finding that only 3.4% of Microsoft trades in the sample period were trade-throughs. Applying the same standard of review to the CBOE's data did not yield useful information in OEA's opinion largely because of the thinly-traded nature of BMG options. See *id.* at 4.

⁴⁴ *Id.* at 5.

⁴⁵ Since publication of the notice of the Commission meeting to consider adoption of proposed Rule 19c-5, the Commission has received several additional comments regarding the proposed Rule. These comments, in large part, reaffirmed prior positions of the commentators and urged deferral of action on the proposed Rule. In the interest of prompt publication of this release, these comments are not summarized in this release, although the comments were considered by the Commission and will be placed in the public file.

⁴⁶ Congressional comments on proposed Rule 19c-5 generally requested that the Commission study certain issues relevant to the expansion of multiple trading and resolve these issues in a manner consistent with the Act before acting on the Rule proposal. See, e.g., letter from John D. Dingell *et al.*, Chairman, U.S. House of Representatives Committee on Energy and Commerce, to David S. Ruder, Chairman, SEC, dated October 18, 1987; letter from Senator John Heinz *et al.*, Senate Committee on Banking, Housing, and Urban Affairs, to David S. Ruder, Chairman, SEC, dated August 9, 1987. Congressman Dingell requested that the Commission consider (1) the impact of multiple trading on the regional exchanges; (2) the costs of establishing duplicative trading facilities in various markets; and (3) the competitive cost of diverting resources of the U.S. securities exchanges away from foreign competition to inter-exchange competition. Senator Heinz requested that the Commission consider (1) the feasibility of developing a national market system for options; (2)

A. Commentators Opposed to Rule 19c-5

The majority of commentators, including three of the SROs that provide a market for standardized options trading, urged the Commission not to adopt Rule 19c-5 at the current time.⁴⁷ The chief arguments cited in opposition to the Rule are: (1) multiple trading will fragment trading interest between markets, resulting in disparate pricing, trade-throughs, and best execution problems;⁴⁸ (2) multiple trading in any option is likely to be short-lived and the gains to be derived are doubtful;⁴⁹ (3) multiple trading will impose additional significant costs on the SROs and providers of market information, which costs will be passed on to broker-dealers and their customers;⁵⁰ and (4)

the safeguards necessary for public limit orders in a multiple trading environment; and (5) the costs and benefits of multiple trading in the absence of market linkage facilities. See *also* letter from Senators Timothy E. Wirth and John Heinz, Senate Committee on Finance, to David S. Ruder, Chairman, SEC, dated February 5, 1988, suggesting that the Commission postpone public hearings scheduled for February 11, 1988, until such time as the Commission collected additional data concerning the incidence of trade-throughs in multiply-traded OTC options. Similar requests were made by Congressmen Dingell and Thomas J. Bliley, Jr. (see letter from John D. Dingell to David S. Ruder, dated January 20, 1988; letter from Thomas J. Bliley, Jr. to David S. Ruder, dated February 10, 1988).

⁴⁷ The three SROs that oppose the Rule are the CBOE, Phlx, and PSE. The NYSE, which became a participant in the Allocation Plan in 1985, urged the Commission to defer consideration of a multiple trading rule until such time as the exchanges, the securities industry, and the SEC had thoroughly studied the events leading up to the October 1987 market break, and analyzed what impact multiple trading of key index stocks would have had on the markets at that time. The NYSE endorsed the concept of initially "grandfathering" options classes already allocated to a single exchange in the event the Commission determined to adopt Rule 19c-5. See letter to Jonathan G. Katz, Secretary, SEC, from James E. Buck, Vice President and Secretary, NYSE, dated February 10, 1988 ("NYSE letter").

⁴⁸ See, e.g., letter from William L. Larsen, Assistant Vice President and Director of State and Regulatory Affairs, Securities Industry Association ("SIA"), to Jonathan G. Katz, Secretary, SEC, dated February 29, 1988 ("SIA comment"); letter from David B. Weinberger, Managing Partner, O'Connor & Associates ("OCA"), to Jonathan G. Katz, Secretary, SEC, dated February 10, 1988 ("OCA comment"); letter from Patrick W. Powell *et al.*, Chairman, Options Round Table ("ORT"), to David S. Ruder, Chairman, SEC, dated June 14, 1988 ("ORT comment"); Response of Philadelphia Stock Exchange to Securities Exchange Act Release No. 34-24613, submitted to the SEC on September 17, 1987 ("Phlx response"); and letter from Brenda J. Swenson (options trading desk employee of a brokerage firm) to David S. Ruder, dated October 4, 1988.

⁴⁹ See, e.g., Statement of Chicago Board Options Exchange, Inc. in Response to Release No. 34-24613, dated February 1, 1988 ("CBOE response"). See *also*, letter from Alger B. Chapman, Chairman and Chief Executive Officer, CBOE, to Richard G. Ketchum, Director, Division of Market Regulation, SEC, dated January 5, 1989 ("CBOE response No. 2").

⁵⁰ See, e.g., SIA comment, OCA comment, and ORT comment, *supra* note 47; letter from Robert J.

real and potential competition presently exists in the market for standardized options, making it unnecessary to adopt Rule 19c-5.⁵¹

A majority of commentators that oppose the adoption of Rule 19c-5 stressed the harm to public investors that they allege will result from the absence of a centralized market or linked markets for each equity option. They believe that, in a multiple trading environment in which order flow is divided between market centers, there will be numerous instances where customers will not receive best execution⁵² of their orders, thereby imposing significant costs on public investors.⁵³ They argued that each market ultimately will become less deep and less liquid, thereby negatively affecting the prices at which customers can trade and the market making ability of floor traders. They stated that best execution problems will be further exacerbated by the absence of firm quotes in the options markets⁵⁴ and the

Casale, Group President, Automatic Data Processing (Brokerage Services Division) to Jonathan G. Katz, Secretary, SEC, dated February 29, 1988 ("ADP letter") at 2; and letter from Kenneth B. Allen, Senior Vice President, Government Relations, Information Industry Association, to Jonathan G. Katz, Secretary, SEC, dated February 12, 1988 ("IIA letter") at 3.

⁵⁰ See, e.g., letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to David S. Ruder, Chairman, SEC, *et al.*, dated February 22, 1988 ("CBOE letter"); OCA comment, *supra* note 47, at 2; and Phlx response, *supra* note 47, at 20-22.

⁵¹ In this context, "best execution" refers to the obligation of a broker to execute a customer's order in the best market. See Section 11A(a)(1)(C)(iv) of the Act (15 U.S.C. § 78k-1(a)(1)(C)(iv)(1982)). See *infra* note 127 accompanying text for a discussion of the Commission's expectation that broker-dealers who route retail options orders to a single exchange will review periodically the quality of other competing markets to assure that their customers are receiving best execution of their orders.

⁵² As noted previously, the PSE and CBOE each submitted data on the number of trade-throughs they observed in discrete time periods in Microsoft and BMG options, respectively. See *supra* notes 36-39 and accompanying text.

⁵³ In the past, options exchange market makers (including specialists) generally were not required by exchange rules to honor their displayed quotes; thus, options quotes were not, technically speaking, "firm" in the same sense that equity market makers are required, by rule, to honor their quotes. See Securities Exchange Act Rule 11Ac1-1 ("Quote Rule") [17 CFR 240.11Ac1-1 (1988)]. Recently, the options exchanges have undertaken initiatives to make quotes firm for smaller orders (see *infra* notes 100-05 and note 137 and accompanying text.) Moreover, even if market maker quotes are not required by Commission regulation to be firm, they cannot be fictitious and must be consistent with the maintenance of fair and orderly markets. See *also* Options Market Structure, Securities Exchange Act Release No. 28871 (May 28, 1989) at notes 50-52 and accompanying text ("Market Structure Paper") (published elsewhere in this edition of the Federal Register).

present inability of exchange member firms to redirect order flow from the floor of one exchange to another in the event another market quotes a superior price prior to order execution.⁵⁴

Several commentators also expressed the opinion that multiple trading could foster an environment in which exchange rules regarding the priority of order execution are easily ignored, thereby degrading the overall pricing efficiency of the market for a particular option. For example, if a cross transaction⁵⁵ could not be executed favorably on one exchange because of the presence of public limit orders placed with the specialist or Order Book Official, the transaction could be effected in another market without regard to the existence of customer orders at the first exchange.⁵⁶

Several commentators addressed the issue of whether it is currently desirable or even feasible to design market integration facilities that would alleviate best execution and pricing problems. The PSE stated that facilities similar to the Intermarket Trading System ("ITS")⁵⁷ for equity securities should be in place before multiple trading commences, but agreed that the extension of an ITS-type system to options raises numerous problems because of the structure of the options markets and the derivative nature of the securities.⁵⁸ These problems include the

⁵⁴ One commentator predicted that broker-dealer firms could be open to legal liability in the event orders are inadvertently sent to the wrong market, traded-through on another market, and ultimately not filled, prior to a trading halt or significant news announcement. See letter from Lyn Lane, Vice President, Rauscher Pierce Refines Inc. ("RPR"), to Alice N. Rome, Special Counsel, Division of Market Regulation, SEC, dated September 1, 1987 ("RPR letter").

⁵⁵ A cross transaction occurs when the same broker acts as agent on both sides of the trade. As a general matter, this practice only occurs if the broker first attempts to obtain a better price in the market by publicly bidding above the highest bid or offering below the lowest offer. See, e.g., CBOE Rule 6.74.

⁵⁶ See, e.g., OCA comment, *supra* note 47, at 5-6. In addition, in CBOE response No. 2, *supra* note 48, the CBOE provided data it believes demonstrates that "secondary" options markets are used to facilitate crosses or to enable market makers to trade away from the primary market. For a discussion of the Commission's views toward block-trading in a multiple trading environment, see *infra* notes 114-18 and accompanying text.

⁵⁷ ITS, developed jointly by several equity exchanges, permits orders for the purchase and sale of multiple-traded securities to be routed among market centers. In 1980, when the Commission asked the options exchanges to study various alternative market integration facilities, it noted that an ITS-type system for options might be difficult to develop in the absence of a firm quote rule for options. See Moratorium Termination Release, *supra* note 8, 45 FR at 21431-32.

⁵⁸ A similar opinion was expressed by a PSE member who commented on the proposal. See letter from Don C. Whitaker, President, Don C. Whitaker,

large number of options series that would have to be included in the system, the derivative nature and volatility of options, and the use of multiple component options strategies (e.g., spread and combination orders.)⁵⁹ Further, the PSE and CBOE commented that, if multiple trading were initiated prior to the development of market integration facilities, the exchange(s) that had become primary markets would have no incentive to participate in the development of a system that ultimately could bring about a loss in their market share.⁶⁰

Several commentators opposed to the Rule stated that, in the event multiple trading is expanded to include options not currently multiple traded, there will be only a short period of competition between markets, followed by the emergence of a single, dominant market for each option.⁶¹ The commentators believe that this phenomenon will be dictated by broker-dealer order routing practices and capabilities, whereby broker-dealer firms pre-select the one market to which they will direct their order flow prior to the actual start-up of multiple trading.⁶² They argue that, once

Inc., to Richard Ketchum, Director, Division of Market Regulation, SEC, dated June 22, 1987.

⁵⁹ See PSE response, *supra* note 37, at 5-6. The Phlx argued that the SEC can bring about actual or "real" competition in the options markets only by (1) requiring that quotes from all competing markets be displayed; (2) that all orders be routed to the best market; and (3) that limit orders in all markets receive equal protection. See Phlx response, *supra* note 47, at 40. The CBOE commented: "We do not believe that systems can be created within a reasonable period of time or at reasonable expense—if they can be created at all—that would alleviate the adverse effects of multiple trading . . ." CBOE response, *supra* note 48, at 28.

⁶⁰ See PSE response, *supra* note 37, at 1 and CBOE response, *supra* note 48, at 27.

⁶¹ See, e.g., testimony of Nicholas Giordano, President, Phlx, Transcript of February 11, 1988, Public Hearing on the Multiple Trading of Options (corrected copy) ("Hearing Transcript") at 40-41. Some exchange commentators differentiated between what they view as the probable effect of an expansion of multiple trading in new listings and the effect of an expansion on options classes currently traded in a single market. The CBOE commented that it is unlikely that order flow in the latter category of options will shift away from the currently designated markets. See testimony of Alger Chapman, Chairman, CBOE, Hearing Transcript at 16-17; see *also* testimony of Ivers Riley, Senior Executive Vice President, Amex, Hearing Transcript at 83 (fears of so-called "cherry-picking" the most desirable options listings from other exchanges are "greatly exaggerated").

⁶² Several commentators alleged that member firm order routing decisions are tainted by the consideration of factors unrelated to market quality. See, e.g., CBOE letter, *supra* note 50, at 4-5 (alleging that in the past order flow has been redirected from one exchange to another as a result of enforcement actions taken in one market against a member firm, and because of the willingness of a specialist on a competing exchange to absorb losses that a competing market-maker could not) and PSE

a single market becomes dominant, the benefits to be derived from actual competition (such as a reduction in quoted spreads) disappear and potential competitors, lacking any order flow, have little ability thereafter to challenge the primary market.⁶³

One commentator, the CBOE, argued that the NYSE would have an unfair competitive advantage in a multiple trading environment which encompassed NYSE-listed stocks.⁶⁴ The CBOE believes that the NYSE's failure to dominate the market in OTC options is irrelevant to the issue of its possible domination in options on stocks for which it is the primary market. Moreover, the CBOE asserted that the NYSE's competitive advantage would be greatly increased in the event it were permitted at some future time to engage in side-by-side trading.⁶⁵

Several commentators, including the three exchanges that oppose adoption of the Rule, challenged what they perceive to be a key assumption in the Commission's formulation of Rule 19c-5—namely, that Commission adoption of a multiple trading rule is needed as an incentive to spur exchange competition. The exchanges argued that competition already exists in numerous forms in the markets for singly-traded options, as evidenced by the presence of competing marketmakers on each options floor; competition between exchanges in the areas of product development, execution and routing systems, and services to members; and competition with foreign markets and U.S. commodities markets. Two commentators also argued that in proposing Rule 19c-5 the Commission appeared to be elevating the goal of

response, *supra* note 37, at 11 ("[w]ithout a best price execution rule, there will be a tendency to place orders with the exchange where it is most convenient, and not necessarily the one with the best price.")

⁶³ See, e.g., CBOE response, *supra* note 48, at 12-13. The CBOE argues that, upon the emergence of a dominant market, "actual and potential competition cease to exist. To think that there will be potential competition from those who fought and lost—or from those who were unable or unwilling to fight—is to ignore the realities of the world in which such decisions are actually made."

⁶⁴ See *id.* at 17-19.

⁶⁵ "Side-by-side" trading is generally defined as the trading of derivative and underlying securities at the same physical location. "Dual" market making, a related term, refers to simultaneous market making in an option and its underlying security by the same person or firm. Presently, NYSE specialists are permitted to acquire and hold positions in listed options on any of their specialty stocks in their specialist trading accounts "where appropriate . . . to offset the risk of making a market in the underlying stock." See Securities Exchange Act Release No. 21710 (February 4, 1985), 50 FR 5708, 5709. We assume that, in the context of this proceeding, the CBOE's objection is to both dual market making and side-by-side trading.

competition above other regulatory purposes, (e.g., the protection of investors and the maintenance of fair and orderly markets), rather than weighing the benefits of increased competition against its impact on these other regulatory purposes.⁶⁶

Several commentators argued that Commission adoption of Rule 19c-5 at the current time would impose burdensome costs on the options exchanges and the securities industry at a time when they are ill-equipped to bear such expenses. These commentators stressed that the direct costs of the Rule, such as investments in the design and development of market integration facilities as well as possible loss of options revenue, could place U.S. options exchanges at a competitive disadvantage vis-a-vis foreign options markets and domestic commodity markets, and could result in decreased funding for product development.⁶⁷ The commentators further stated that these costs must be considered in light of the significant volume and revenue declines experienced by the options exchanges following the October 1987 market break.⁶⁸ SRO commentators also questioned whether there is presently sufficient market making capital available to support an increase in the number of multiple-traded option classes.

The CBOE recommended that, if multiple trading were permitted, it should be done on a prospective basis only.⁶⁹ The CBOE asserts that there is a sufficient number of option-eligible stocks that do not currently have options overlying them to provide an adequate basis for examining the effects of expanded multiple trading without jeopardizing exchange resources in a full-scale expansion to multiple trading.

Exchange commentators also suggested that purveyors of options information (i.e., the Options Price Reporting Authority ("OPRA")⁷⁰ and the private vendors that publicly disseminate options last sale information and quotations) do not have the capacity to handle the increased message traffic that might be associated

with multiple trading.⁷¹ For example, if several exchanges multiply-traded most or all existing listed options, the number of displayed quotations would increase dramatically, especially with the large number of series traded in many options classes. The CBOE estimated that the cost to vendors involved in upgrading their systems to meet increased demand "could be in the range of \$100 to \$200 million * * *."⁷² In light of the vendor problems with series proliferation during the October market break, these commentators argued that increased options information from multiple trading could overload vendor systems.⁷³

Those options information vendors who commented on the proposed rule expressed similar concerns. For example, the Information Industry Association ("IIA") stated that the expansion over the past several years in options quotation and trading information has strained "the electronic computer systems and communications networks of financial information service vendors."⁷⁴ IIA expressed the concern that, should this expansion continue as a result of multiple trading, there could be serious operational problems and significant increases in processing costs, which costs would be passed on to brokerage firms and the public. It indicated that measures designed to promote a more efficient information dissemination system should be considered prior to expanding the number of multiply-traded options.⁷⁵ Another vendor commentator, Automatic Data Processing, urged the Commission to determine whether all market data vendors have the capacity to disseminate options data on an accurate and timely basis.⁷⁶

⁷¹ See, e.g., CBOE response, *supra* note 48, at 19-23.

⁷² *Id.* at 22-23 (footnote omitted).

⁷³ For a discussion of vendor capacity issues, see Division of Market Regulation, *The October 1987 Market Break* (February 1988), at 8-8 and 8-22.

⁷⁴ See IIA letter, *supra* note 49, at 2.

⁷⁵ Specifically, IIA made the following three suggestions: (1) that quotation reporting be allowed to commence prior to the market opening in order to reduce the number of price reports at the market opening; (2) that quotation reporting on inactive contracts be deferred until after the market opening; and (3) that use of "auto-quote" systems (i.e., systems that automatically generate quotations in all series of an option contract based on a trade report in one series) be discouraged. See *id.* at 4. The Commission also received a letter from Knight-Ridder Financial Information Group ("KR") that expressed support for the IIA's position. See letter from Thomas J. Jordan, Chairman, KR, to Jonathan G. Katz, Secretary, SEC, dated March 7, 1988.

⁷⁶ See ADP letter, *supra* note 49, at 1-2.

B. Comments in Support of Rule 19c-5

Two SROs⁷⁷ and two broker-dealer firms⁷⁸ commented favorably on the Commission's proposal to expand multiple trading. The Amex suggests that the Allocation Plan has "outlived its usefulness" and in fact has become detrimental to the options exchanges, their members, and public customers. The Amex commented that, under the Plan, exchanges have no incentive to delist options that are only thinly traded and feel compelled to list new options for which they will have an exclusive franchise, regardless of the potential of a particular class to attract significant trading interest. As a result, exchange and member firm resources are committed to marketing and supporting products that would be delisted in a more competitive environment for lack of order flow. The Amex also objected to a continuation of the Allocation Plan on the grounds that it prevents investors from realizing the savings benefits associated with multiple trading in the form of reduced spreads—benefits which the Amex believes would outweigh the possible negative impacts of multiple trading, at least in options classes not presently allocated to a single exchange.⁷⁹

The Amex states that the Allocation Plan should be abandoned. If, however, a wholesale expansion of multiple trading would cause problems for firms and information vendors, the Amex suggests several means to permit a gradual or "phased-in" expansion of multiple trading, including an alternative whereby multiple trading of options currently limited to trading on one exchange would be phased-in over a period of time.⁸⁰ While the Amex states that it prefers a wholesale end to the Allocation plan, it suggests that a "phased-in" approach might lessen potential problems for retail firms in terms of order routing and staffing decisions, for vendors in terms of accommodating increased traffic in quotation and execution reporting, and

⁷⁷ See Statement of the American Stock Exchange regarding Multiple Trading of Options, dated February 1, 1988 ("Amex statement"); and Introductory Statement [of John T. Wall, and Testimony of Peter B. Madoff, National Association of Securities Dealers, Inc. on Multiple Trading of Options, dated February 11, 1988 ("NASD statement").

⁷⁸ See letter from Daniel P. Tully, President and Chief Operating Officer, Merrill Lynch & Co., Inc., to Jonathan G. Katz, Secretary, SEC, dated September 10, 1987 ("Merrill Lynch letter") and letter from Anson M. Beard, Jr., Managing Director, Morgan Stanley, to Jonathan G. Katz, Secretary, SEC, dated February 10, 1988 ("Morgan Stanley letter").

⁷⁹ See Amex statement, *supra* note 77, at 11-12.

⁸⁰ See *id.*

for the exchanges in terms of losing dominant markets previously established.

The NASD⁸¹ expressed views similar to the Amex, commenting that in its opinion multiple trading enhances market depth and liquidity without increasing transaction costs or compromising investor protection. It cited the recent OTC options trading experience in Mentor and Microsoft options⁸² as evidence that the development of a primary market soon after the institution of multiple trading is not a foregone conclusion. Further, the NASD asserts that, where primary markets have emerged, they have been won on the basis of market quality. The NASD postulates that markets that do enjoy a dominant share of order flow "continue to be disciplined by the threat of future competition."⁸³ Unlike the Amex, the NASD expressed a preference for an across-the-board expansion of multiple trading, rather than implementation of multiple trading on a prospective basis for optionable stocks not previously allocated to a single exchange.

Morgan Stanley and Merrill Lynch express support for proposed Rule 19c-5. Morgan Stanley states that in its experience multiple trading provides customers with improved execution possibilities, and in addition has the potential to increase liquidity in the options market by attracting additional sources of capital and market making talent. The firm states that the competitive benefits of multiple trading will outweigh the costs incurred by member firms to develop price and quotation integration facilities, which the firm views as a requirement for best execution of customer orders.⁸⁴

⁸¹ In 1985, the NASD received Commission approval, in principle, to display quotations in standardized put and call options on NASDAQ stocks and stock indexes. Prior to commencing an options program, however, the Commission determined that the NASD would need to implement a fully automated options audit trail. In addition, before NASD market makers can engage in integrated market making, the Commission determined that exchanges which traded both stock and options would have to be eligible to obtain unlisted trading privileges ("UTP") in OTC stocks and the NASD would have to implement regulatory standards and surveillance procedures to detect frontrunning abuses. See OTC Approval Release, *supra* note 14, 50 FR at 20315-27. As of the date of this Release, these requirements have not been fulfilled. Indeed, the NASD commenced a program to trade standardized options on certain OTC stock indexes in September 1985, but the program was terminated in July 1986 due to a lack of volume. See Securities Exchange Act Release No. 22404 (September 13, 1985), 50 FR 38235.

⁸² See discussion *supra* notes 32-33 and accompanying text.

⁸³ NASD Statement, *supra* note 77, at 5.

⁸⁴ The firm comments that the costs of building such facilities should be viewed as "an important

Merrill Lynch states that it supports Rule 19c-5 because its OTC options customers have not been disadvantaged by multiple trading and the firm's selection of primary markets. The firm notes that this position represents a departure from its position of a decade ago, when it opposed an expansion of multiple trading due largely to the fact that no order routing systems existed which automatically could route customer orders to the market with the best price.⁸⁵ Although such a system still does not exist, Merrill Lynch supports an expansion of multiple trading because of its "favorable" experience with OTC options "and the Commission's acceptance" of brokerage firm market designation practices.⁸⁶ Merrill Lynch recommends, however, that, in the event multiple trading is extended to a large number of options classes, the Commission should consider (1) adopting standards regarding what constitutes "public" versus "professional" volume (so that firms consistently have reported data upon which to base their order routing decisions), and (2) requiring that all exchanges commence multiple trading in an option class on the same day (so that firms have sufficient time and information to make routing decisions).⁸⁷ Merrill Lynch states that adoption of these measures would promote fair competition between exchanges in the absence of market integration facilities.

IV. Discussion

After a careful review of the record, including all comment letters and the testimony of all witnesses, the Commission believes adoption of a rule to permit multiple trading of all options classes is desirable and wholly consistent with the Act and its purposes. In order to reduce operational concerns raised by commentators and to provide an opportunity for the markets to implement any market integration facilities that they believe are appropriate, the Commission has designed the Rule to provide the exchanges with a substantial phase-in period. The discussion below provides the rationale, justification, and authority for the Commission's decision to adopt Rule 19c-5, and discusses certain

investment in more efficient options markets," and that in the long term these facilities would help maintain the competitive posture of U.S. securities markets in a global trading environment. Morgan Stanley letter, *supra* note 78, at 3.

⁸⁵ See attachment to Merrill Lynch letter, *supra* note 78.

⁸⁶ Merrill Lynch letter, *supra* note 78, at 2.

⁸⁷ *Id.*

modifications made to the Rule as initially proposed.

A. Description of Rule 19c-5 and New Commission Policy on Multiple Trading

Rule 19c-5, as adopted, adds to the rules of national securities exchanges that provide a trading market in standardized put or call options a prohibition, commencing on the effective date of this Rule, January 22, 1990, against the allocation of any new stock options class to a single exchange, and thus ends the Allocation Plan. Therefore, any stock options class first listed on an options exchange on or after January 22, 1990 can be multiply traded. For the reasons discussed below, the Commission also has determined to permit multiple trading of previously listed options on exchange listed stocks. Accordingly, beginning January 22, 1990, each options exchange will be permitted to multiply trade at any one time up to ten additional stock options classes overlying exchange-listed stocks that were trading on another options exchange on or before January 22, 1990.⁸⁸ In order to ease market structure and operational concerns raised by an immediate expansion of multiple trading, however, the Commission has designed Rule 19c-5 to provide a phased-in expansion of multiple trading on exchange-listed stocks. Specifically, the Rule provides that as of January 22, 1990, no exchange rule can limit the exchange's ability to list any stock options class first listed on an options exchange on or after January 22, 1990, because that option is listed on another options exchange. Finally, the Rule also provides that as of January 21, 1991, no options exchange can limit by any means its ability to list any stock options class because that class is listed on another exchange. Under Rule 19c-5, an exchange unilaterally could decide, as a business matter, not to multiple trade any particular option. An exchange could not, however, reach an agreement with one or more other exchanges to refrain from multiple trading.

As noted elsewhere, several commentators expressed concern that implementation of the Rule immediately following its adoption would not provide

⁸⁸ Under the Rule, any of the pre-existing options eligible for multiple trading, whether overlying OTC stocks or exchange-listed stocks, could be multiply traded and would not count as one of the ten additional options classes. In addition, no stock option class first listed on an options exchange on or after January 22, 1990, would count as one of the ten additional options classes. Moreover, the ten options classes chosen need not remain static; an exchange can replace any of the ten at any time.

sufficient time for the exchanges, member firms and options information processors to make any systems modifications and listing decisions they deemed appropriate or necessary. Several commentators also stated that a wholesale expansion of multiple trading to include previous as well as future options listings would be particularly burdensome. The Commission, however, continues to believe that, just as with the introduction of new options products,⁹⁹ multiple trading of options on exchange-listed stocks listed after the effective date of the Rule will not have a radical effect on existing markets because no options exchange's financial viability is dependent on revenues from these products. In response to these concerns, Rule 19c-5, as adopted, will permit a gradual expansion of multiple trading by limiting to ten the number of existing listed options on exchange-listed securities that any exchange may subject to multiple trading between January 22, 1990, and January 21, 1991.⁹⁰ As discussed below, the Commission believes the phased-in implementation schedule of Rule 19c-5 affords the options exchanges, broker-dealers, information vendors, and other market participants ample time to consider and implement necessary changes to accommodate the introduction of multiple trading of options on exchange-listed securities.

The Commission also has designed Rule 19c-5 to address the treatment of replacement options during the phase-in period. Specifically, Rule 19c-5 provides that an options exchange can replace any of its ten selected options with another option listed prior to January 22, 1990, if the option is involuntarily delisted as a result of a merger or failure to satisfy options listing standards.⁹¹

Finally, in response to commentators' requests and congressional concern that the Commission provide direction to the SROs and the securities industry

⁹⁹ For a discussion of the Commission's rationale for permitting multiple trading of new options products, see *supra* notes 13-15 and accompanying text.

⁹⁰ In other words, between January 22, 1990, and January 21, 1991, a maximum of fifty (50) options classes previously limited to trading on a single exchange could be listed for multiple trading (assuming the five SROs currently approved as options markets each selected their maximum allotment and each SRO did not duplicate the selection of another SRO). Under the phased-in policy, an options exchange would not be prohibited from selecting the same options class for listing as selected by another exchange, but such a selection would count against the ten total selections permitted that exchange.

⁹¹ Of course, any option newly listed to replace an involuntarily delisted option will be eligible to be multiply traded without counting against the ten total selections permitted each exchange.

regarding the design of facilities to integrate the market for standardized options trading, the Commission today is releasing a staff paper describing alternative initiatives for the development of market integration systems.⁹² As explained in detail in that document, the Commission believes that the technological means to achieve the goal of integration presently exist; the Commission also believes, however, for reasons stated below, that the development of market integration facilities prior to the expansion of multiple trading as contemplated by Rule 19c-5 is not required by the Act.

B. Statutory Requirements

As stated in the Introductory section of this Release, the Commission proposed Rule 19c-5 pursuant to sections 6(b)(8) and 11A(a)(1)(C) (i) and (ii) of the Act⁹³, sections which, respectively, (1) prohibit a national securities exchange registered with the Commission from imposing "any burden on competition not necessary or appropriate" in furtherance of the purposes of the Act, and (2) direct the Commission to promote the "economically efficient execution of securities transactions; [and] fair competition among brokers and dealers, [and] among exchange markets * * *." These sections codify a Congressional intent that the U.S. securities markets, including options markets, be free from competitive restraints to the furthest extent possible consistent with the other goals of the Act.⁹⁴ Accordingly, in addressing the multiple trading issue, the Commission has examined carefully the evidence regarding the positive impact of exchange competition arising from multiple trading on investors, as well as arguments regarding the potential negative effect of multiple trading on the exchanges, their member firms, and retail customers.

Having examined this evidence, we believe the benefits to be derived from an expansion of multiple trading have been demonstrated and amply documented by the Commission, its staff, and several of the commentators. The Commission begins with the premise that, under the Act, market participants should have the ability to select the marketplace of their choice. Thus, the Act disfavors the imposition of a particular market on investors via a

⁹² See Market Structure Paper, *supra* note 53.

⁹³ Rule 19c-5 is also consistent with sections 19(c) and 23(a)(2) of the Act (15 U.S.C. 78e and 78w (1982)).

⁹⁴ Senate Comm. on Banking, Housing & Urban Affairs, *Report to Accompany S. 249*, S. Rep. No. 94-75, 94th Cong., 1st Sess. 7, 13, reprinted in 1975 U.S. Code Cong. & Ad. News 179 ("Senate Report").

government-sanctioned lottery, at least in situations in which there is no evidence of significant negative impacts occurring as a result of multiple trading. This requirement consistently has been a factor in positions taken by the commission since the introduction of standardized options trading. Indeed, in 1980, the Commission approved the Allocation Plan only as an interim step until structural problems with multiple trading could be resolved. This interim step has become entrenched as the options exchanges have ceased efforts to develop market integration facilities which would resolve these structural problems.

In considering the adoption of rules such as Rule 19c-5, the Act requires the Commission "to balance the perceived anticompetitive effects of the regulatory policy or decision at issue against the purposes of the Exchange Act that would be advanced thereby and the costs of doing so."⁹⁵ Implicit in this calculus is the Act's initial preference for providing investors with marketplace choice; this choice should be restricted only when it might lead to serious regulatory abuses or a market failure.⁹⁶

In examining multiple options trading, the Commission finds that the Act's initial preference for marketplace choice is supported strongly by the benefits that multiple trading has and will provide to the marketplace. First, multiple trading could lead to an improvement in market making quality. The Commission staff studies found that investors could directly benefit from multiple trading by paying reduced transaction costs.⁹⁷ The extent to which these costs can be reduced has been debated by commentators throughout this proceeding.⁹⁸ The Commission nevertheless believes that the staff studies amply demonstrate that multiple trading provides at least significant short term improvements in the quality of multiple-traded options markets. Given the longer period of time it has taken for multiple trading battles to settle on a dominant marketplace since these studies were conducted,⁹⁹ it is likely that these benefits will prove even more significant. Further, the Commission notes that, if an exchange emerges as the dominant marketplace

⁹⁵ *Id.* at 13-14.

⁹⁶ Therefore, competition is not "paramount to the great purposes of the * * * Act, but the need for and effectiveness of regulatory actions in achieving those purposes * * * have to be weighed against any detrimental impact on competition." *Id.* at 14.

⁹⁷ See DEPA Study, *supra* note 20, at 7; OCE Study, *supra* note 20, at 24.

⁹⁸ See *supra* notes 25-28 and accompanying text.

⁹⁹ See *supra* notes 32-35 and accompanying text.

for a particular option, it still could be challenged in the future for that option if it does not continue to provide an adequate market for that option.

Second, multiple trading has spurred the options exchanges to increase the quality of the services they provide. In response to battles for a particular option or to the initiation of OTC options trading generally, the exchanges have improved operational services, enhanced market making requirements, and provided incentives to attract order flow. For example, the PSE and the PHLX have imposed trading crowd market making requirements to improve trading crowd performance ("ten-up requirements")¹⁰⁰ and the Commission has approved CBOE, PSE, and PHLX programs that require exchange members to evaluate the quality of their exchange's markets. In addition, the CBOE has implemented a quasi-specialist system, involving a Designated Primary Market Maker ("DPMM"), to enhance market making for new options.¹⁰¹ The system is used for all new OTC options, and is a response to the CBOE's failure to achieve primary market status in the first round of OTC options in 1985.¹⁰²

Similarly, both the Amex and CBOE have expanded the use of their small order routing and execution systems as a means to compete for OTC options. When the CBOE was limited to using its Retail Automatic Execution System ("RAES")¹⁰³ for only six equity options

¹⁰⁰ PSE rules require that, when market makers are responsible for the best bid and/or offer in certain specified option classes, customer orders are to be filled to a minimum depth of ten contracts by the market makers in the trading crowd. See Securities Exchange Act Release No. 23775 (November 4, 1986), 51 FR 41886. The PHLX's ten-up requirement applies to all options series traded on the PHLX and to instances where floor traders are not quoting the best bid or offer. See Securities Exchange Act Release No. 26669 (March 27, 1989), 54 FR 13282. In addition, the CBOE and the Amex have filed proposed rule changes with the Commission to impose a ten-up requirement on their floor traders on a pilot program basis. See Securities Exchange Act Release No. 26570 (February 24, 1989), 54 FR 8857 and Release No. 26834 (May 18, 1989).

¹⁰¹ Under the DPMM program, a CBOE committee appoints a DPMM to a particular option class. In addition to the normal obligations of a floor broker and a market maker, the DPMM responsibilities include: (1) disseminating accurate market quotations; (2) honoring market quotations; (3) maintaining a regular presence at the trading post; (4) participating in automatic execution systems, as applicable; and (5) resolving trading disputes, among others. See Securities Exchange Act Release No. 24934 (September 22, 1987), 52 FR 36122.

¹⁰² See *supra* notes 30-31 and accompanying text.

¹⁰³ RAES automatically executes public customer market and marketable limit orders of ten or fewer contracts against participating market makers in the CBOE trading crowd at the best bid or offer reflected in the CBOE quotation system. Subsequently, RAES has been approved for all CBOE-equity options. See Securities Exchange Act Release No. 25995 (August 15, 1986), 53 FR 31781.

during a pilot phase, it replaced a relatively inactive allocated option with an option on the OTC stock Battle Mountain Gold when the option was introduced on the CBOE and the Amex. The Amex immediately placed the Battle Mountain Gold option on its small order execution system.¹⁰⁴ Moreover, as the CBOE expanded the use of RAES to an additional 75 options, and placed new OTC options on the system, the Amex expanded its system to all multiply traded options. In addition, the PHLX has filed a proposed rule change with the Commission to adapt its automated order routing and confirmation system, known as "AUTOM", to include an automated execution feature for certain eligible market and marketable limit orders.¹⁰⁵

Thus, the Commission believes that, at a minimum, multiple trading in OTC stocks has spurred the options exchanges to increase trade handling and execution quality.¹⁰⁶ The Commission believes that further expansion of multiple trading will continue to encourage service innovations by the options exchanges. The Commission has weighed the reasonably anticipated benefits against the possible adverse consequences of an expansion of multiple trading—namely, market fragmentation, domination by one market, and harm to the financial integrity of particular exchanges.¹⁰⁷ While, as described below, enhancements to the multiple trading environment may be appropriate, we have determined that on balance the benefits to be derived from an expansion under the currently existing market structure outweigh any reasonably anticipated costs. The experience in OTC options has provided the Commission with an opportunity to review the operation of multiple trading, albeit on a reduced scale. The OTC options experience has been largely a positive one; few of the feared problems have surfaced while several

¹⁰⁴ The Amex's automatic execution system, known as Auto-Ex, executes public customer market and marketable limit orders of 20 or fewer contracts at the best bid or offer displayed at the time the order is entered into the system. See Securities Exchange Act Release No. 25996 (August 15, 1986), 53 FR 31779.

¹⁰⁵ See rule filing SR-PHLX-89-03.

¹⁰⁶ If an options exchange does not provide an adequate level of execution services, that failure could conceivably affect its market share. For instance, in 1978, Merrill Lynch changed its primary market designation for several options classes from the CBOE to the Amex due to "operational difficulties" of the CBOE. Options Study Report, *supra* note 7, at 836-38.

¹⁰⁷ The Commission notes that the Act does not require a minimum number of options exchanges or mandate that any exchange be allowed to survive by shielding it from fair competition.

marketplaces have been provided a meaningful opportunity to compete for business. Given the Act's preference for marketplace choice and the benefits which multiple trading has engendered to date, Rule 19c-5 should be adopted unless serious and far-reaching harms would result. As described below, the Commission believes that the problems, if any, that would result from full scale multiple trading would be small and manageable.

1. *Market Fragmentation.* Those commentators who oppose an expansion of multiple trading cited market fragmentation and its potential consequences (e.g., failure of the market to reflect all buying and selling interest, trade-throughs, and best execution problems) as the chief problem with multiple trading in the absence of market integration facilities. Opinions of the commentators regarding the degree to which market fragmentation will occur were mixed. Some commentators believe that multiple trading in the absence of market linkages is likely to result in numerous exchanges each listing the same option classes; others believe that a single, dominant market will emerge for all options trading. As noted previously, some commentators differentiated between the market fragmentation which may arise in classes currently trading on a single exchange, and that which may occur in classes not yet listed.

Having considered the evidence before us, we believe that it is unlikely the adoption of Rule 19c-5 will result in either a significantly large number of fragmented options classes or significant fragmentation within a single class. Historically, the exchange which has first established a market in an option generally has been successful in maintaining a major proportion of order flow against any challenger. Accordingly, the Commission does not anticipate that options markets will challenge currently existing primary markets for a significant number of their options listings,¹⁰⁸ nor do we believe that any competition that does arise in multiply-traded options will, in the typical case, involve multiple competitors. Indeed, the Commission believes that it is unlikely that a new market will challenge an existing market unless the existing exchange is providing a poor market or the

¹⁰⁸ We note that this position is in accord with the opinion of at least two options exchanges, one of which opposes Rule 19c-5. See testimony of Alger Chapman, Chairman, CBOE, Hearing Transcript, *supra* note 61, at 16-17 and testimony of Ivers Riley, Senior Executive Vice President, Amex, *id.* at 83.

competitor is prepared to provide an excellent market and superior services.

The Commission does not believe that, in those classes in which there is substantial market fragmentation (either in the short or long run), there will be significant negative impacts on investors. To the contrary, improvements in market making quality should be the most significant in those classes for which there are competitive markets. Even in those classes in which a dominant or single market exists, the threat of potential competition could have a disciplining effect on market prices.¹⁰⁹

Moreover, in the OTC option context, problems with "trade throughs" have not, in the Commission's judgment, exceeded the benefits obtained from multiple trading.¹¹⁰ While the evidence is mixed as to the number of trade-throughs that may occur in a multiple trading environment, we find that the potential incidence and cost of trade-throughs does not appear to approach the potential for cost savings from exchange competition.¹¹¹

Further, we do not believe that the presence of competing markets will result in significant pricing problems at the opening, inferior execution of public limit orders, or serious pricing problems resulting from the executions of block-size trades away from the primary market. The experience with multiple trading of OTC options demonstrates that the exchanges have the ability to mitigate pricing problems at the opening. Indeed, Commission staff studies of multiple trading of OTC options found no evidence of pricing problems at the opening. One of the exchanges that opposes Rule 19c-5 testified at the public hearing that, although initially disparate prices occurred at the opening on an average of two or three times a week in one multiple-traded class, within a relatively short period of time

the competitor exchange delayed its opening until the primary market had established a price.¹¹² The Commission also notes that one large retail firm, Merrill Lynch, commented that it has received very few customer complaints concerning executions received in multiple-traded OTC options.¹¹³ In addition, we believe that the best execution obligations of all brokerage firms will aid in ensuring that public customers generally receive the best available price.

Regarding the potential for block-sized transactions to be routed away from the primary market in order to avoid public limit orders, the Commission recognizes that this practice could have a negative effect on the pricing efficiency of the market and on the protection of public customer limit orders placed with specialists and Order Book Officials. The Commission is unable to conclude, however, that trading large options orders away from the primary market is likely to become widespread in a multiple trading environment. Although the CBOE has provided some evidence regarding the frequency with which this practice may occur,¹¹⁴ its data does not suggest that more than a minimal percentage of an option's order flow consists of blocks executed away from the primary exchange. Accordingly, while the Commission does not believe its impact will be significant, the Commission will monitor this practice closely as multiple trading expands.¹¹⁵ If this practice does prove material, the Commission believes that the proper response would not be for the Commission to restrict multiple trading but instead for the options SROs to develop market integration systems which would permit system-wide protection of limit orders.¹¹⁶

¹⁰⁹ See testimony of Charles Henry, president, CBOE, Hearing Transcript, *supra* note 61, at 20-23.

¹¹⁰ See Merrill Lynch letter, *supra* note 78, at 2.

¹¹¹ See CBOE response No. 2, *supra* note 48, at 3.

¹¹² Indeed, even assuming that a significant portion of options order flow was in block-size transactions and that such orders were executed away from the primary market, the effect on public limit orders of such executions (as the CBOE has argued in other contexts, including the development of RAES) would depend on whether the block transactions were effected at prices which would otherwise trigger the execution of eligible public limit orders on the primary market and whether those orders were nevertheless executed. For example, in 1981, the CBOE reported that booked limit orders represented only 15% of its total contract volume, and booked and executed orders represented only 7% of total contract volume. See Supplementary Task Force Report, *supra* note 12, at 8-11.

¹¹³ We also note that, because by definition trade-throughs reflect prices in a fragmented market, the estimated cost of the trade-throughs identified by the PSE and CBOE may reflect the positive pricing attributes of competing markets. As noted previously, the majority of trade-throughs identified by the PSE and CBOE occurred between 1/4th and 1/2th point away from the best quote. Because the relative narrowness of the spreads in these markets may be at least partly attributed to inter-exchange competition, the trade-through price may be indicative of what the broader quotations would have been if the option were not subject to multiple trading.

¹¹⁴ See Market Structure Paper, *supra* note 53, at notes 76-83 and accompanying text.

In sum, the market fragmentation problems from OTC options have been minimal, and little evidence exists that full-scale multiple trading would increase significantly these problems. Rather than restrict options from multiple trading, and thereby remove the substantial benefits that such competition provides, the Commission believes that the exchanges should work on reducing any perceived market fragmentation problems. Rule 19c-5 will not take effect for almost eight months, and there will be a one-year phase-in period thereafter. During this time, the options exchanges should review the desirability of implementing cost-effective market integration systems.¹¹⁷ Moreover, the phase-in period would provide ample time for the exchanges to increase communication procedures among themselves for openings of multiply-traded option classes and to resolve any problems regarding the introduction of new option classes. In this connection, the Commission has today authorized the publication of a staff white paper which analyzes the costs and benefits of these potential initiatives. The Commission will use the phase-in period to monitor trade-throughs, block avoidance, and any other possible problems that may result from multiple trading, and will consult with the options exchanges should unanticipated problems develop. It bears repeating, however, that by adopting Rule 19c-5, the Commission has concluded that these issues do not warrant delaying multiple trading any longer. There are sound reasons for pursuing the development of market integration facilities, but the Commission does not believe that meaningful progress on these issues will occur so long as some of the existing options markets who oppose multiple trading believe that the failure to develop such facilities will further delay multiple trading.

2. *Fair competition.* Several commentators objected to Rule 19c-5 on the grounds that "fair" competition¹¹⁸ between exchanges as mandated by the Act is impossible to achieve in the absence of a neutral order routing switch,¹¹⁹ a firm quote rule,¹²⁰ and a

¹¹⁷ *Id.* at Part V.

¹¹⁸ See Section 11(A)(a)(i)(C)(ii) [15 U.S.C. 78k1(a)(i)(c)(ii)(1982)].

¹¹⁹ The Commission envisions that a neutral order routing switch would permit any broker or dealer to route options orders from its offices to any competing options exchange. See Securities Exchange Act Release No. 14418 (January 26, 1978), 43 FR 4354, 4358 and *Morelitorium Termination Release*, *supra* note 8, 45 FR at 21431.

¹²⁰ See *supra* note 53 and accompanying text.

vendor display requirement similar to that for equities.¹²¹ We do not agree.¹²² If ever valid, these rationales appear outdated in view of the competition between exchanges for OTC options over the last year.

In regard to the fairness of competition in the absence of market linkage facilities, the Commission recognizes that brokerage firms generally do select, prior to the commencement of multiple trading in a particular class, the market to which they will direct their retail customer order flow. Although this situation has been the norm since the advent of options trading, the factors which firms consider in selecting a primary market appear to have increasingly emphasized market quality considerations. For example, in 1978, after reviewing trading practices in the then-existing options markets, Commission staff found that volume was the principal determinant in market selection decisions, so much so that the staff concluded that "exchanges other than the exchange designated as primary are effectively precluded from competing for automatically routed customer orders."¹²³ In 1985, however, with the start-up of multiple trading in OTC options, it appeared that, while volume was among the selection criteria, it was but one factor considered, and the selection factors in the aggregate emphasized market quality rather than market dominance.¹²⁴ The Commission believes that the more recent multiple trading experiences (e.g., in Mentor, Microsoft, BMG, and Blockbuster options) evidence a continuing effort by brokerage firms to engage in a good

¹²¹ See Rule 11Ac1-2 under the Act ("Vendor Display Rule"). [17 CFR 240.11Ac1-2 (1988)].

¹²² The Quote Rule, cited *supra* note 53, requires equity markets to make available to quotation vendors the highest bid and lowest offer for certain equity securities that they trade. These bids and offers must be honored up to the size displayed. Although the Quote Rule is not applicable to options trading, pursuant to the OPRA plan each exchange collects and transmits to the OPRA system "bids and offers at stated prices or limits" sufficient in number and timeliness to reflect the current state of the market in such security." In addition, the Vendor Display Rule, *supra* note 121, provides that, in displaying quotations from the equities markets, securities information vendors must include either: (1) The best bid and best offer from among all markets (with identifiers indicating the market(s) reporting the best bid and offer), or (2) a montage showing quotations from all reporting markets. The Vendor Display Rule by its terms does not apply to quotations for options. Many vendors, however, provide a montage showing the quotes of competing exchanges in each series of a multiply-traded class. It appears that most, if not all vendors, display in some form quotation information from all markets multiply trading a particular option class.

¹²³ Options Study Report, *supra* note 7, at 854.

¹²⁴ See, e.g., Merrill Lynch letter, *supra* note 78, at 1-2.

faith evaluation of the liquidity and general operational capabilities of each competing marketplace, rather than simply to route all orders in all option classes to one exchange. Indeed, the fact that volume in the most recently contested options has been, at least initially, evenly split between at least two markets indicates that firms are not automatically directing order flow in all of their OTC options to a single market. Moreover, once firms have made an initial order routing decision, they have not locked themselves into that choice. Data from OTC options demonstrates that firms have switched order routing decisions months after the start-up of trading in an option, not just during the initial weeks of trading.¹²⁵

Several commentators stated that firm order routing decisions are "unfair" because they are based on the consideration of factors unrelated to market quality, e.g., enforcement efforts undertaken by a particular exchange against a broker-dealer member, affiliations between a firm and particular specialists, and "old-boy" networks. Similarly, the argument has been made that the exchanges located outside New York (i.e., the "regional" exchanges) are at a distinct competitive disadvantage in their efforts to attract order flow, possibly because of a preference on the part of major broker-dealers for exchanges located in close proximity to themselves. Moreover, while the potential for consideration of irrelevant factors will exist in an options multiple trading environment (just as it exists for equity securities), the self-interest of brokerage firms in ensuring that their customers receive best execution and that the firms themselves are well serviced by the exchanges should discipline any tendency to consider factors unrelated to market quality.¹²⁶ Moreover, the Commission expects that "those broker-dealers that automatically route retail customer orders in a particular security to a pre-designated market [will], at a minimum, make periodic assessments as to the

¹²⁵ For example, in Mentor options, which began trading in March 1987 on both the PSE and the Amex, the PSE market share decreased from 76.8% in April 1988 to 56.5% in July 1988, while the Amex's market share increased from 23.2% to 43.5% over the same period. This shift occurred 17 months after Mentor options trading began. A similar market shift occurred in Microsoft options. From September 1987 to November 1987, nine months after Microsoft options trading began, the PSE's market share increased from 66.7% to 84.8%, while the Amex's decreased from 33.3% to 15.2%.

¹²⁶ Where it is alleged that a brokerage firm order routing decision is influenced by exchange disciplinary proceedings against the firm, the Commission will not hesitate to investigate and take appropriate enforcement action.

quality of such markets."¹²⁷ In addition, as discussed above, the recent battles over OTC options indicate that the exchanges outside of New York can obtain a primary market status in contests with the Amex. Finally, the Commission notes, too, that the order routing decisions of Merrill Lynch, one of the largest options retail firms, do not appear to reflect a prejudice either for or against exchanges located outside New York.¹²⁸

A related argument, raised by the regional exchanges, is that an expansion of multiple trading will severely reduce their profitability, particularly in light of the decrease in options trading volume since the October 1987 market break, and ultimately may result in the closure of some or all of the regional exchanges.¹²⁹ The Commission does not believe that this argument is correct. The evidence before us clearly demonstrates the capacity of the regional exchanges to compete for, and in some instances dominate, trading in any new option class.¹³⁰ Moreover, for

¹²⁷ Securities Exchange Act Release No. 16590 (February 19, 1980), 45 FR 12391, 12400 n.118 (Rule 11Ac1-2 Adopting Release). The Commission also notes that:

Broker-dealers who choose to automatically route their customer orders to a designated market should be alert for unusual market conditions in the designated market which would require brokers to take additional measures (such as disclosure of market conditions or special handling of customer orders). Examples of such unusual market conditions would include substantial price disparity between the designated market and other markets, extreme volatility of the market in the security and unusual trading patterns. *Id.*

See also Securities Exchange Act Release No. 15671 (March 22, 1979), 44 FR 20360, 20366 (1978 Status Report on the Development of a National Market System).

¹²⁸ See Merrill Lynch letter, *supra* note 78, at 1-2.

¹²⁹ The regional exchanges also argued that any loss of revenue and/or increased costs associated with the expansion of multiple trading would place them at a competitive disadvantage vis-a-vis foreign options exchanges. The Commission, however, believes it is highly unlikely that foreign exchanges will be able to attract a significant amount of order flow from U.S. options exchanges in the near future. Few options on U.S. stocks are traded on foreign exchanges, and none has generated any significant order flow. Moreover, in the one instance where fungible options on the same underlying security have been traded contemporaneously in the U.S. and abroad (options on the Major Market Index, traded on the Amex and European Options Exchange), the U.S. market has captured the vast majority of order flow. Finally, the Commission believes the enhanced competition among U.S. options markets resulting from the adoption of Rule 19c-5 will act as a catalyst for more efficient markets which will attract foreign options order flow to U.S. exchanges.

¹³⁰ For a trading statistics discussion, see *supra* notes 32-35 and accompanying text.

the reasons discussed above, the Commission believes that it is unlikely that competing markets generally will be successful in capturing a substantial market share in options already trading on an exchange. For example, the CBOE listed an option on the Standard & Poor's 100 Index ("OEX"), which has captured the large majority of index options volume, and no other options exchange has been successful in shifting away from the CBOE a significant percentage of the OEX's volume to its own index options. In addition, the regional exchanges have demonstrated their ability to be innovative in the design of new options products. In particular, trading on the Phlx in foreign currency options in 1988 constituted 46.7% of its total contract volume and provides the exchange with a substantial additional source of income.¹³¹ Finally, as the Commission repeatedly has cautioned, the Act does not charge it with a responsibility to ensure by regulatory fiat the continued viability of a particular market participant.¹³²

At least one commentator has argued that the NYSE, as the dominant market for equity securities trading, would have unfair competitive advantages over the other options exchanges in an expanded multiple trading environment, particularly if the exchange were permitted to engage in side-by-side trading.¹³³ The Commission does not agree. Rule 19c-5 as adopted does not allow the NYSE to engage in side-by-side trading in options on NYSE-listed stocks, and by no means reflects a Commission determination regarding the merits of that issue.¹³⁴ In addition, the NYSE has shown no ability to dominate other options exchanges in the competition for OTC-multiple-traded options. In fact, the NYSE has not become the primary market for any multiply traded option.

The Commission recognizes the CBOE's concern that the NYSE would

have competitive advantages if options overlying stocks listed on the NYSE were multiply traded. Given the existing physical separation of the options and stock trading floors on the NYSE, however, the Commission cannot conclude that the NYSE, in comparison to the other options exchanges, would be able to provide market participants with substantially superior execution efficiency or market information. Further, the Commission cannot conclude that allowing the NYSE to participate in multiple trading would be unfair because NYSE specialists would engage in tying and other predatory practices. As we stated in the Proposal Release,¹³⁵ we question whether NYSE specialists would risk misusing their market power (for example, by providing inferior stock executions to firms which route their options order flow to other markets) in an effort to attract volume. In the absence of any evidence that the NYSE has engaged in predatory acts since the commencement of its option program, we cannot presume that the exchange would seek to do so in an expanded multiple trading environment.¹³⁶

We also do not believe that the absence of firm quote and vendor display rules will preclude or inhibit fair competition between the exchanges.¹³⁷ The Commission understands that many vendors, including Quotron and ADP, provide a montage for OTC options showing the quotes for each series on competing exchanges. Other vendors permit retrieval on separate displays of quotation and transaction information for all markets trading a particular

class.¹³⁸ Thus, accurate and complete information is available.¹³⁹ Moreover, because Rule 19c-5 is drafted so as to permit only a gradual expansion of multiple trading, the exchanges and vendors will have sufficient time to undertake measures designed to provide the most useful information in quotation displays of multiply traded options.¹⁴⁰

3. Dissemination of Information.

There appears to be general agreement among the commentators that measures to increase the capacity of both OPRA and private vendors should be undertaken in order to accommodate an expansion of multiple trading. What steps should be taken, however, and how much they will cost, remains unclear. No firm cost estimates have been submitted to the Commission (although one commentator speculated that "[o]n an overall industry basis, the cost will be in the range of \$100 to \$200 million" ¹⁴¹), nor has any commentator submitted evidence indicating that systems enhancements are, from a technological standpoint, impossible to develop. In addition, the Commission believes that some commentators have overestimated the information increase that would be engendered by multiple trading. As noted previously, we believe it is unlikely that adoption of the Rule will result in geometric increases in either the total number of multiple-traded options, or in the number of markets each trading the same option class. For example, of the 449 OTC stocks eligible for options trading, only 103 (23%) have options overlying them,

¹³⁸ Quotron and ADP also provide their customers with quotation and transaction information in this format.

¹³⁹ The Commission also notes that it will not permit vendors to discontinue displaying market information from any exchange about a multiply-traded option.

¹⁴⁰ The Commission notes the inconsistency of commentators arguing on the one hand that fair competition will be precluded or inhibited because of broker-dealer order routing practices that are unresponsive to which competing market is disseminating the best quote, and on the other that fair competition is unattainable because of the absence of firm quote and vendor display rules for options.

¹⁴¹ See CBOE response, *supra* note 46, at 19-23. The CBOE, however, stated that "[i]t is difficult to estimate the cost." The CBOE did not detail what assumptions it was making about the degree to which options would be multiply traded and did not explain the basis for its "overall industry" cost estimate. Nevertheless, the Commission preliminarily believes that the costs to the industry will not be this dramatic because, as discussed above, the Commission does not believe there will be a high incidence of multiple trading of currently outstanding options. Indeed, CBOE's estimate of potential file records expansion, which is based on whether "all outstanding option classes that are now solely listed were multiple-traded by every market," describes a situation which will not occur.

of which only 10 (9.7%) are multiply traded. Moreover, Rule 19c-5 as adopted is well suited to accommodating the need of the exchanges and the information industry to test and determine the capacity limits of current systems, design system improvements, and calculate estimated costs, well in advance of any significant increase in the number of multiply-traded classes. The exchanges and disseminators of options information will have approximately six months to prepare for an increase in the number of multiple listings, and this increase will be limited, and to a large extent predictable, for the first 12 months following the Rule's adoption. Finally, even though the Commission is sensitive to the impact of Rule 19c-5 on the operational capacities of OPRA and private vendors and has designed the Rule to provide these entities with ample time to make systems enhancements well before there is any significant increase in the number of multiply-traded options, the Commission nevertheless believes potential vendor capacity concerns should not dictate the resolution of such an important market structure issue as multiple options trading.

4. Other Issues Raised by the Commentators—

a. Grandfathering: Several exchange commentators expressed a preference for grandfathering those options already trading on one exchange pursuant to the Allocation Plan, in the event the Commission determined to adopt Rule 19c-5.¹⁴² As already mentioned, however, the vast majority of desirable optionable stocks have been allocated to one exchange. If the Rule were not to apply to these option classes, the benefits investors could derive from multiple trading would be severely circumscribed. The Commission is sympathetic, however, with concerns expressed by commentators that, if the Rule were imposed quickly and across-the-board (*i.e.*, to previous as well as future listings), neither the industry nor the options exchanges would have sufficient time to plan for the Rule's implementation. In response to these concerns, the Rule as initially proposed has been modified so as to take effect on January 22, 1990, approximately six months after its adoption. In addition, affected parties will have an additional year between January 22, 1990, and January 21, 1991, in which to prepare for full implementation of the Rule.

¹⁴² See, e.g., NYSE letter, *supra* note 46, and CBOE response No. 2, *supra* note 46.

b. Same Day Start-Up: One commentator, Merrill Lynch, suggested that the Commission require all exchanges that desire to trade the same option to begin multiple trading on the same day. The Commission believes that such a requirement is inconsistent with the central concept of multiple trading: That the options exchanges be free to trade any eligible option at any time. A government-imposed uniform commencement of trading in an option would lessen the incentive for options exchanges to list what they judge to be a desirable option and would be an inappropriate restraint on the business judgment of an individual exchange. The Commission, however, does believe that options markets should provide their members a notice period, prior to the commencement of trading in a new options class, sufficient to permit their members to prepare operationally and to evaluate the relative merits of any competing markets. The Commission urges the options SROs to reach agreement on such uniform notice period.

c. Other Means to Enhance Multiple Trading: ¹⁴³ Merrill Lynch also suggested that the Commission set standards for defining "public" versus "professional" trading volume and disseminating this information. If this were accomplished, broker-dealers would have a more accurate picture of how order flow is being routed to several exchanges trading an option, which would not only help them in examining their own routing decisions but also provide a more realistic indication of the volume and activity in a particular option. The Commission agrees that this information would be useful and would enhance fair competition among exchanges. Accordingly, the Commission encourages the options exchanges to develop such a capability. More specifically, the Commission requests each of the options exchanges to submit by September 18, 1989, a report detailing the criteria applied to distinguish "public" from "professional" orders, and an analysis of the feasibility of separately reporting public and professional trading volume.

¹⁴³ In regard to the IIA's three suggestions as to the improvement of information system dissemination prior to an expansion of multiple trading, (see *supra* note 75 and accompanying text), the Commission believes that the options exchanges should consider the capacity enhancements recommended by IIA. For the reasons discussed above, however, the Commission does not agree with the IIA that multiple trading would result in such an increase in informational processing costs that multiple trading should be deferred until the problems are solved.

The comment by Merrill Lynch underscores the responsibility that the options exchanges have to ensure that their members engage in fair competition in multiple trading contests. An important, but certainly not the only, factor in firm order-routing decisions for multiply traded options is which exchange is attracting the majority of public order flow from other firms. This may be particularly important in the first few months of multiple trading competition until a primary market has developed. Market makers at an exchange, in order to present an appearance of activity, might be tempted to engage in trading among themselves to an excessive (and often riskless) degree. This conduct is generally known as churning. Such conduct could take the form of riskless or near riskless box or spread trading among market makers, a pattern of establishing and then reversing trades among a group of market makers, or merely a level of trading between market makers that is highly disproportionate to the usual level of market maker trading in non-dually traded options.¹⁴⁴ The Commission believes that this type of activity would be a failure of the market makers to uphold their obligations under SRO rules to maintain a fair and orderly market,¹⁴⁵ would be inconsistent with just and equitable principles of trade,¹⁴⁶ and would be violative of Sections 9 and 10 of the Act.¹⁴⁷ Accordingly, in light of Rule 19c-5, the Commission emphasizes the importance of the options exchanges maintaining adequate surveillance procedures to detect churning.¹⁴⁸

¹⁴⁴ See Securities Exchange Act Release No. 13433 (April 5, 1977), 11 SEC Doc. 2194 (April 19, 1977) ("Churning Release"). The Commission recently imposed sanctions on the CBOE for failure to prosecute properly a churning case. See Securities Exchange Act Release No. 26809 (May 11, 1989).

¹⁴⁵ See Amex Rules 170 and 958; CBOE Rule 8.7; and NYSE Rules 104 and 758. Phlx Rules 1014 and 1020, and PSE Rule VI, Section 79.

¹⁴⁶ See Amex Rule 16, CBOE Rule 4.1, NYSE Rule 401, Phlx Rule 707, and PSE Article XI, Section 1.

¹⁴⁷ Sections 9 and 10 of the Act [15 U.S.C. 78i and 78j (1982)]. See Churning Release, *supra* note 144. Accordingly, in light of the adoption of Rule 19c-5, the options exchanges will have to reevaluate the adequacy of their surveillance procedures to detect churning. The Commission, however, does not believe this will be a difficult task because the exchanges already have implemented procedures which are used to detect churning in OTC stock options.

¹⁴⁸ The Commission urges the SROs to ensure that their listing and marketing activities also are consistent with the concept of fair competition. For example, the phase-in-period for multiple trading should provide the SROs with sufficient time to agree on procedures governing the timing and selection process for listing new options. This is particularly significant in light of the Merrill Lynch suggestion of a uniform start-up date.

V. Conclusion

In consideration of the above, the Commission has determined to adopt Rule 19c-5. After a careful review of the record before us, the Commission believes Rule 19c-5 is necessary and appropriate in furtherance of the Act, particularly Sections 6, 11A, 19(c) and 23.

VI. Availability of Final Regulatory Flexibility Analysis

A Final Regulatory Flexibility Analysis ("FRFA") in accordance with the Regulatory Flexibility Act regarding Rule 19c-5 has been prepared. A summary of the corresponding Initial Regulatory Flexibility Analysis was included in the proposal release. Members of the public who wish to obtain a copy of the FRFA should contact Thomas R. Gira, Attorney, Branch of National Market System Regulation, Division of Market Regulation, Securities and Exchange Commission (Mall Stop 5-1), 450 Fifth Street, NW., Washington, DC 20549.

VII. Statutory Basis and Text of Rule

In accordance with the foregoing, 17 CFR Part 240 is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for Part 240 is amended by adding the following citations:

Authority: Sec. 23, 48 Stat. 901, as amended, 15 U.S.C. 78w * * * 240.19c-5 also issued under Sections 6, 11A, and 19 of the Securities Exchange Act of 1934, 48 Stat. 885, as amended, 89 Stat. 111, as amended, and 48 Stat. 898, as amended, 15 U.S.C. 78f, 78k-1, and 78s.

2. By adding 240.19c-5 as follows:

240.19c-5 Governing the multiple listing of options on national securities exchanges.

(a) The rules of each national securities exchange that provides a trading market in standardized put or call options shall provide as follows:

(1) On and after January 22, 1990, but not before, no rule, stated policy, practice, or interpretation of this exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of this exchange to list any stock options class first listed on an exchange on or after January 22, 1990, because that options class is listed on another options exchange.

(2) During the period from January 22, 1990, to January 21, 1991, but not before, no rule, stated policy, practice, or

interpretation of this exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of this exchange to list up to ten classes of standardized stock options overlying exchange-listed stocks that were listed on another options exchange before January 22, 1990. These ten classes shall be in addition to any option on an exchange-listed stock trading on this exchange that was traded on more than one options exchange before January 22, 1990.

(3) On and after January 21, 1991, but not before, no rule, stated policy, practice, or interpretation of this exchange shall prohibit or condition, or be construed to prohibit or condition or otherwise limit, directly or indirectly, the ability of this exchange to list any stock options class because that options class is listed on another options exchange.

(b) For purposes of paragraph (a)(2) of this Rule, if any options class is delisted from an options exchange as a result of a merger of the equity security underlying the option or a failure of the underlying security to satisfy that exchange's options listing standards, then the exchange is permitted to select a replacement option from among those standardized options overlying exchange-listed stocks that were listed on another options exchange before January 22, 1990.

(c) For purposes of this Rule, the term "exchange" shall mean a national securities exchange, registered as such with the Commission pursuant to Section 6 of the Securities Exchange Act of 1934, as amended.

(d) For purposes of this Rule, the term "standardized option" shall have the same meaning as that term is defined in Rule 9b-1 under the Securities Exchange Act of 1934, as amended, 17 CFR 240.9b-1.

(e) For purposes of this Rule, the term "options class" shall have the same meaning as that term is defined in Rule 9b-1 under the Securities Exchange Act of 1934, as amended, 17 CFR 240.9b-1.

By the Commission.

Jonathan G. Katz,
Secretary.

Dated: May 26, 1989.

[FR Doc. 89-13144 Filed 6-2-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 658

RIN 2125-AC35

Truck Size and Weight; National Network—Oregon

May 10, 1989.

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical amendments.

SUMMARY: This document corrects, clarifies and removes routes not on the Primary System from the National Network for trucks in the State of Oregon.

EFFECTIVE DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Richard A. Torbik, Office of Planning (202) 366-0233, Mr. Philip W. Blow, Office of Motor Carrier Information Management and Analysis, (202) 366-4036, or Mr. David C. Oliver, Office of the Chief Counsel, (202) 366-1356, Federal Highway Administration, 400 Seventh Street, SW., Washington DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

The National Network of Interstate highways and federally-designated routes, on which commercial vehicles with the dimensions authorized by the Surface Transportation Assistance Act (STAA) of 1982, Pub. L. 97-424, 96 Stat. 2097 may operate, was first established by the final rule (23 CFR Part 658) published in the Federal Register at 49 FR 23302, June 5, 1984, and is located in each State, the District of Columbia, and Puerto Rico. Routes on the National Network are listed or described by category in Appendix A of the rule. Additional routes not on the network but available for STAA vehicles were also identified at State request.

The FHWA will make such technical amendments from time to time, in the interest of maintaining accuracy for Appendix users, and publish them as a final rule in the Federal Register. The only changes to Network routings included in this amendment provide for the removal of ineligible routes (routes not on the Primary System).

Corrections and Clarifications

The format has been adjusted for clarity by listing all route numbers in numerical order beginning with the US

numbers routes and following with the State numbered routes. Contiguous segments with the same route number have been combined.

Route descriptions of some of the listings have been clarified by providing additional information for termini of segments such as cross route numbers and locality names. Spelling and punctuation corrections have been made where necessary.

Ineligible Routes

The National Network consists of the Interstate System and other qualifying Federal-aid primary highways.

The two following routes in the State of Oregon were removed from the Federal-aid primary system when I-5 was completed in their vicinity:

OR 99 from OR 42 (Winston) to I-5 (Myrtle Creek)
OR 99 from OR 38 (Drain) to I-5 (Yoncalla)

The following route OR 201 was incorrectly listed in the June 5, 1984, Federal Register as:

US 201 from Spur US-95 to Idaho State Line

The correct listing should be:

OR 201 from US 20 Cairo to US 95 Spur near Weiser, ID

Therefore, route OR 201 is being correctly listed.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or significant regulation under the regulatory policies and procedures of the Department of Transportation. Since the technical amendments contained in this document are being issued for the purpose of removing ineligible routes, public comment is impracticable and unnecessary. Therefore, the FHWA finds good cause to make the revisions final without notice and opportunity for comment and without a 30-day delay in effective date under the Administrative Procedures Act. Notice and opportunity for comment are not required under the regulatory policies and procedures of the Department of Transportation because it is not anticipated that such action could result in the receipt of useful information since the revisions incorporated in the regulation require no interpretation. A regulatory impact analysis was prepared for the June 5, 1984, rulemaking which initially designated the National Network and is available for inspection in the Headquarters Office of the FHWA, 400 7th Street SW., Washington, DC. Based on this analysis and under the criteria of

the Regulatory Flexibility Act, the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities. This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this document does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment. The final rule is in response to an application by the State and will expedite further review on substantive issues raised by the application.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 658

Grant programs—transportation, Highways and roads, Motor Carrier—size and weight.

Issued on: May 26, 1989.

R.D. Morgan,
Executive Director.

In consideration of the foregoing, the FHWA amends Chapter 1 of Title 23, Code of Federal Regulations, by amending Appendix A to Part 658 for the State of Oregon to read as set forth below.

PART 658—[AMENDED]

1. The authority citation for 23 CFR Part 658 continues to read as follows:

Authority: Secs. 133, 411, 412, 413, and 416 of Pub. L. 97-424, 96 Stat. 2097 (23 U.S.C. 127; 49 U.S.C. 2311, 2313, and app. 2316), as amended by Pub. L. 98-17, 97 Stat. 59, and Pub. L. 98-554, 98 Stat. 2823; 23 U.S.C. 315; and 49 CFR 1.48.

Appendix A to Part 658 [Amended]

2. Appendix A to Part 658 is amended by revising the State of Oregon section to read as follows:

Posted route No.	From	To
Oregon		
US 20.....	US 101 Newport	ECL Sweet Home.
US 20.....	OR 126 Sisters	ID State Line Nysa. Mitchell.
US 26.....	US 101 Cannon Beach Junction	I-405 Portland.
US 30.....	US 101 Astoria	
US 30.....	In Cascade Locks.	
US 30.....	I-84 W. of Pendleton.	I-84 E. of Pendleton.
US 30 BR.....	OR 201 Ontario	ID State Line.
US 95.....	NV State Line	ID State Line.
US 95 Spur.....	OR 201	ID State Line Weiser, ID.
US 97.....	CA State Line	WA State Line.
US 101.....	CA State Line	Gold Beach.
US 101.....	SCL Port Orford	OR 126 Florence.
US 101.....	US 20 Newport	OR 18 Ols.
US 101.....	MP 75.54 N. of Beaver.	WA State Line.
US 197.....	OR 216 Maupin	WA State Line.
US 199.....	CA State Line	OR 99 Grants Pass.
US 395.....	CA State Line	US 26 John Day.
US 395.....	Long Creek	Pendleton.
US 395.....	I-84 Stanfield	US 730 near Umatilla.
US 730.....	I-84 Boardman	WA State Line.
OR 6.....	US 101 Tillamook.	US 26 near Banks.
OR 8.....	OR 47 Forest Grove.	OR 217 Beaverton.
OR 11.....	US 30 Pendleton	WA State Line.
OR 18.....	US 101 Otis	OR 99W Dayton.
OR 19.....	OR 206 Condon	I-84 Arlington.
OR 22.....	OR 18 near Williamina.	US 20 Santiam Jct.
OR 31.....	US 97 La Pine	US 395 Valley Falls.
OR 34.....	OR 99W Corvallis.	US 20 Lebanon.
OR 35.....	Baseline Road MP 82.11.	I-84 Hood River.
OR 38.....	US 101 Reedsport.	I-5 Anlauf.
OR 39.....	CA State Line	OR 140 E. of Klamath Falls.
OR 42.....	US 101 Coos Bay.	OR 42S Coquille.
OR 47.....	OR 99W near McMinnville.	US 26 N. of Banks.
OR 51.....	OR 99W Monmouth.	OR 22 near Eola.
OR 58.....	I-5 Eugene	US 97 near Chemult.
OR 62.....	Medford	Trail.
OR 78.....	Burns	US 95 Burns Junction.
OR 82.....	I-84 La Grande	Joseph.
OR 99.....	Ashland	Central Point.
OR 99.....	I-5 E. of Rogue River.	I-5 Grants Pass.
OR 99.....	I-5 Eugene	OR 99W/E Junction City.
OR 99E.....	I-5 Salem	US 26 Portland.
OR 99E.....	I-5 Albany	OR 99/99W Junction City.
OR 99W.....	OR 99/99E Junction City.	I-5 Portland.
OR 126.....	US 101 Florence	US 26 Prineville.
OR 138.....	OR 38 Elkton	I-5 near Sutherlin.
OR 140.....	US 97 Klamath Falls.	OR 39 E. of Klamath Falls.
OR 201.....	US 28 Cairo	US 95 Spur near Weiser, ID.
OR 206.....	US 97 Wasco	OR 19 Condon.

Posted route No.	From	To
OR 207.....	US 730 Cold Springs Jct.	MP 23.56 Kinzua Rd.
OR 212.....	E. Jct. OR 224 near Rock Ck. Corner.	US 26 near Boring.
OR 214.....	I-5 Woodburn.....	OR 213 Silverton.
OR 217.....	US 26 Beaverton..	I-5 Tigard.
OR 223.....	Kings Valley Hwy. in Dallas.	OR 99W Rickreall.
OR 224.....	OR 99E Milwaukie.	E. Jct. OR 212 near Rock Ck Corner

[FR Doc. 89-13279 Filed 6-2-89; 8:45 am]

BILLING CODE 4910-22-M

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 52**

[FRL-3596-6]

Prevention of Significant Deterioration Delegation of Authority State of Hawaii**AGENCY:** Environmental Protection Agency (EPA).**ACTION:** Notice of final rulemaking.

SUMMARY: The Regional Administrator for EPA, Region 9, San Francisco, has amended the agreement delegating full authority to the State of Hawaii to implement and enforce the Federal Prevention of Significant Deterioration (PSD) Program.

DATES: The effective date of delegation is January 5, 1989.

ADDRESSES:

Hawaii Department of Health, Environmental Protection and Health Services Division, 1250 Punchbowl Street, Honolulu, HI 96813
Mailing Address: Hawaii Department of Health, Environmental Protection and Health Services Division, Post Office Box 3378, Honolulu, HI 96801.

FOR FURTHER INFORMATION CONTACT: Robert Baker, New Source Section (A-3-1), Air Operations Branch, Air and Toxics Division, U.S. Environmental Protection Agency, 215 Fremont Street, San Francisco, CA 94105, Telephone: (415) 974-8209.

SUPPLEMENTARY INFORMATION: The Environmental Protection Agency has delegated, under the provisions which are found in 40 CFR 52.21(u), to the State of Hawaii: (A) Authority over all sources in that State subject to review for the Prevention of Significant Deterioration of Air Quality, pursuant to Part C, section 169 of the Clean Air Act, as amended August 7, 1977, and the

requirements promulgated at 40 CFR 52.21; and (b) authority of review, administer, and enforce throughout the State the PSD requirements imposed by the Clean Air Act sections 101, 110 and 160-169, and 40 CFR 52.21 as amended August 7, 1980 and subsequent amendments.

Information on this delegation together with a copy of the delegation is provided below.

On July 28, 1983, the Director of the Hawaii Department of Health requested delegation of authority for PSD. Full delegation was granted on August 15, 1983. The delegation was amended on December 12, 1988 and the amended delegation became effective on January 5, 1989. The following letter and attached agreement represent the terms and conditions of the amended delegation.

December 12, 1989.

Mr. David P. Howekamp,
Director, Air Management Division, U.S.
Environmental Protection Agency,
Region 9, 215 Fremont Street, San
Francisco, CA 94105

Dear Mr. Howekamp:

Subject: Amended U.S. EPA/DOH Delegation Agreement of the Regulations for Prevention of Significant Deterioration (PSD) of Air Quality

The Hawaii Department of Health has reviewed and agrees with the subject amended U.S. EPA/DOH PSD delegation agreement. The signed document is being returned for U.S. EPA concurring signature.

If you have any questions, please feel free to call Mr. Wilfred Nagamine of the Environmental Permits Branch at (808) 548-6410.

Sincerely,

Bruce S. Anderson, PH.D.

Deputy Director for Environmental Health.

Amended Agreement for Delegation of Authority of the Regulations for Prevention of Significant Deterioration of Air Quality (40 CFR 52.21) Between USEPA and Hawaii DOH

The undersigned, on behalf of the Hawaii Department of Health (Hawaii DOH) and the United States Environmental Protection Agency (USEPA), hereby agree to the delegation of authority for the administrative, technical and enforcement elements of the source review provisions of 40 CFR 52.21, Prevention of Significant Deterioration (PSD), as they may be amended and in accordance with the permit review requirements in 40 CFR 124 Subparts A and C, from the USEPA to the Hawaii DOH, subject to the terms and conditions below. This delegation is enacted pursuant to 40 CFR 52.21 (u), Delegation of Authority, and supersedes the agreement dated August 15, 1983 signed by Hawaii DOH and EPA.

I. General Delegation Conditions

A. Authority is delegated for all sources under the jurisdiction of Hawaii DOH that are subject to review for PSD. This includes all source categories listed in 40 CFR 52.21 for each pollutant regulated by the Clean Air Act.

B. This delegation may be amended at any time by the formal written agreement of both the Hawaii DOH and the USEPA, including amendments to add, change, or remove conditions or terms of this Agreement.

C. If the Regional Administrator determines that the State is not implementing or enforcing the PSD program in accordance with the terms and conditions of this delegation, the requirements of 40 CFR 52.21, 40 CFR 124, or the Clean Air Act, this delegation, after consultation with the Hawaii DOH, may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the State. Nothing in this paragraph shall preclude USEPA from exercising its enforcement authority, as provided in paragraph V.B. below.

D. The permit appeal provisions of 40 CFR 124.19 shall apply to all appeals to the Administrator on permits issued by the Hawaii DOH under this delegation. For purposes of implementing the federal permit appeal provisions under this delegation, if there is a public comment requesting a change in a draft preliminary determination or draft permit conditions, the final permit issued by Hawaii DOH is required to contain statements which indicate that for Federal PSD purposes and in accordance with 40 CFR 124.15 and 124.19, (1) the effective date of the permit is 30 days after the final decision to issue, modify, revoke and reissue the permit; and (2) if an appeal is made to the Administrator, the effective date of the permit is suspended until such time as the appeal is resolved. The Hawaii DOH shall inform USEPA (Region IX) in accordance with conditions of this delegation when there is public comment requesting a change in the preliminary determination or in a draft permit condition. Failure by Hawaii DOH to comply with the terms of this paragraph shall render the subject permit invalid for Federal PSD purposes.

E. By this agreement, the Hawaii DOH assumes authority for enforcement and permit modification/amendment for EPA issued NSR/PSD permits.

F. This delegation of authority becomes effective upon the date that both parties have signed this Agreement.

II. Communications Between USEPA and Hawaii DOH

The Hawaii DOH and USEPA will use the following communication procedures:

A. The Hawaii DOH will report to the USEPA on a quarterly basis the compliance status of the sources that have received a PSD permit from either the Hawaii DOH or USEPA. The Compliance Data System (CDS) will be used for this purpose. Compliance determinations will be made with respect to the conditions established in the PSD permits.

B. The Hawaii DOH will forward to USEPA, at the beginning of the public comment period, a summary of (1) the findings related to each PSD application for new sources, major modifications and amendments, (2) the justification for the Hawaii DOH's preliminary determination, and (3) a copy of the draft PSD permit. Should there be any comments or concerns about the pending PSD permit, USEPA will communicate these comments and concern to the Hawaii DOH as soon as possible prior to the close of the public comment period.

C. The Hawaii DOH will forward to USEPA copies of the final action on the PSD permit applications at the time of issuance, as well as copies of substantive public comments. Any public comments not incorporated will be addressed, and a summary of the responses will be provided.

D. The Hawaii DOH will send to EPA a copy of all applicability determinations and justifications made that would involve PSD exemption for new or modified major sources due to netting.

III. Revision To Title 40 CFR 52.21

A. This delegation covers any revisions that are promulgated for 40 CFR 52.21 and 40 CFR 124. The terms "40 CFR 52.21" and "40 CFR 124" as used in the delegation request and throughout this Agreement, include such regulations as are in effect on the date this Agreement is executed and any revisions that are promulgated after that date.

B. The revisions that have been promulgated for 40 CFR 52.21 since the effective date (August 15, 1983) of the previous delegation agreement include the following:

1. Stack Height Regulations as promulgated on July 8, 1985 (50 FR 27892);

2. Revised Modeling Guidelines as promulgated on September 9, 1986 (51 FR 32176); and,

3. PM-10 Regulations as promulgated on July 1, 1987 (52 FR 24634).

The Hawaii DOH is required to incorporate the above revisions into its PSD review, and to ensure that any permits issued by the Hawaii DOH comply with these final regulations.

C. In addition, the following USEPA policies apply to PSD review in Hawaii:

1. According to USEPA guidance published on September 22, 1987 and supplemental guidance published on July 28, 1988, all delegated agencies must now consider pollutants not subject to the Clean Air Act in their Best Available Control Technology (BACT) determinations. The BACT determinations must include a review of the toxic effects of unregulated pollutants and the impact of the proposed BACT on the emissions of these pollutants.

2. The Hawaii DOH must consult with the appropriate Federal, State, and local land use agencies prior to issuance of preliminary determinations on PSD permits.

In particular, USEPA requires that the Hawaii DOH must:

(a) Notify the Fish and Wildlife Service (FWS) and USEPA when a PSD permit application has been received, in order to assist USEPA in carrying out its non-delegable responsibilities under Section 7 of the Endangered Species Act (PL 97-304). Hawaii DOH must:

(b) Notify potential applicants of the potential need for consultation between USEPA and the FWS if an endangered species may be affected by the project. USEPA's data sheet may be used for this process (copy enclosed).

(c) Refrain from issuing a final PSD permit unless the FWS has determined that the proposed project will not adversely affect any endangered species.

3. According to USEPA guidance published on June 26, 1987, delegated agencies are required to look at certain control options when making BACT determinations for municipal waste combustors. Specifically, these agencies should consider a dry scrubber for sulfur dioxide control, a baghouse or electrostatic precipitator for particulate control, and efficient combustion techniques for carbon monoxide control in their BACT determinations for this type of source.

4. Additional BACT guidance issued on December 1, 1987, by USEPA, states that the Regional Office is to encourage the application of "top-down" BACT determinations in the Region. This means that USEPA will consider as deficient any BACT determinations that do not begin with the most stringent

control options available for that source category.

5. Upon notification from EPA, Hawaii DOH will implement such new regulations or directives pending revision of this agreement.

IV. Permits

A. For all PSD permit applications filed with Hawaii DOH, USEPA will assist the Hawaii DOH in the BACT determination. Subsequent to August 1, 1988, concurrence by USEPA will be required for each BACT determination. USEPA will ensure Hawaii DOH access to the BACT Clearinghouse.

B. All modeling analyses for determination of increment consumption and compliance with NAAQS will require concurrence by USEPA. The signatures of USEPA and Hawaii DOH on the final PSD permit shall constitute concurrence on the BACT determinations and the modeling analyses.

C. In any matter involving interpretation of Sections 160-169 of the Clean Air Act, or 40 CFR 52.21 and 40 CFR 124 where guidance on the implementation, review, administration, or enforcement of these Sections has not been sent to the Hawaii DOH, USEPA will be contacted and requested to provide the appropriate guidance.

D. The Hawaii DOH will at no time grant any waiver to the PSD permit requirements.

E. Permits issued under this delegation shall contain language stating that the Federal PSD requirements have been satisfied.

F. Authorities to Construct must include appropriate provisions, as specified in Attachment A, to ensure permit enforceability. Permit conditions shall, at a minimum, contain reporting requirements on initiation of construction, start-up, and source testing (where applicable) and continuous emissions monitoring (where applicable). In all cases where tests are required, the test methods shall be specified. All cases where CEMS are required, appropriate testing and reporting requirements shall be included. Upset/breakdown and malfunction conditions shall be included in all permits.

G. U.S. EPA and Hawaii DOH will jointly concur on any future modifications and amendments affecting emissions and emission limitations at Kahe Units 1-6.

V. Permit Enforcement

A. The primary responsibility for enforcement of the PSD regulations in the State of Hawaii will rest with the

Hawaii DOH. The Hawaii DOH will enforce the provisions that pertain to the PSD program, except in those cases where the rules or policy of the Hawaii DOH are more stringent. In that case, the Hawaii DOH may elect to implement the more stringent requirements.

B. Taking into consideration the terms of the USEPA-Hawaii DOH Enforcement Agreement, nothing in this delegation agreement shall prohibit EPA from enforcing the PSD provisions of the Clean Air Act, the PSD regulations or any PSD permit issued by the Hawaii DOH pursuant to this agreement.

C. In the event that the Hawaii DOH is unwilling or unable to enforce a provision of this delegation with respect to a source subject to the PSD regulations, the Hawaii DOH will immediately notify the Regional Administrator. Failure to notify the Regional Administrator does not preclude USEPA from exercising its enforcement authority.

Date: December 12, 1988.

John C. Lewin, M.D.,
Hawaii Department of Health.

Date: January 5, 1989.

David P. Howekamp,
U.S. Environmental Protection Agency.

Attachment A

1. Identification of all points of emission (both stack and fugitive).
2. Specification of a numerical emission limitation for each point of emission in terms of mass rate or concentration limitations. If emission testing based on a numerical emission limitation is feasible, the permit may instead prescribe a design, operational, or equipment standard. Any permits issued without numerical emission limitations must contain conditions which assure that the design characteristics or equipment will be properly maintained or that the operational conditions will be properly performed so as to continuously achieve the assumed degree of control.
3. Limitations of factors which were the basis for air quality impact analysis must be specified (e.g. hours of operation, stack height, materials processed which affect emissions).
4. Methods and frequency of determining continued compliance for each point of emission must be referenced (if part of the SIP or subject to NSPS or NESHAPS) or explicitly identified if a reference method is not used.
5. Record keeping requirements which enable the agency to ascertain continued compliance especially where factors such as hours of operation, throughput of materials, sulfur content

of fuels, fuel usage, type or quantity of materials processed are conditions or the permit.

8. A condition that the permit will expire if the construction is not commenced within a certain specified time frame.

7. The condition that the source is responsible for providing sampling and testing facilities at its own expense.

8. Reporting requirements which enable the agency to monitor the progress of source construction and compliance including the date by which construction is completed, and if different from the completion of construction date, the date by which full compliance is to be achieved.

9. Permits issued under this delegation should contain language stating that the Federal PSD-requirements have been satisfied.

10. As a courtesy to sources exempted from PSD review due to federally enforceable operational or process restrictions, or the use of controls more stringent than required by applicable SIP limits, the source should be advised that any relaxation of those limits may subject the entire source to full PSD review as if construction had not yet begun. Suggested language is as follows:

"This source is exempt from PSD review because of (e.g. "a requirement that operation is limited to eight hours per day"). Any relaxation in this limit that increases your potential to emit above the applicable PSD threshold will require a full PSD review of the entire source."

The Regional Administrator finds good cause for foregoing prior public notice and for making this rulemaking effective immediately in that it is an administrative change and not one of substantive content. No additional substantive burdens are imposed on the parties affected. This delegation became effective on August 15, 1983; therefore, it serves no purpose to delay this technical revision, adding the State's address to the Code of Federal Regulations.

A copy of the request for delegation of authority is available for public inspection at the U.S. Environmental Protection Agency, Region 9 Office, Air & Toxics Division, Air Operations Branch, 215 Fremont Street, San Francisco, California 94105.

This rulemaking is under the authority of sections 101, 110, 160-169 and 301(a) of the Clean Air Act, as amended [42 U.S.C. 7401, 7410, 7470-79 and 7501(a)].

Dated: May 25, 1989.

Daniel McGovern,
Regional Administrator.

[FR Doc. 89-13290 Filed 6-2-89; 8:45 am]

BILLING CODE 6660-60-M

40 CFR Part 52

(FRL-3597-4)

Approval and Promulgation of Implementation Plans

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Final rulemaking.

SUMMARY: USEPA is disapproving a site-specific revision to the ozone portion of the Ohio State Implementation Plan (SIP) for Ameri-Cal Corporation in Medina County. The revision would allow a permanent relaxation of the volatile organic compound (VOC) emission limits previously approved by USEPA for the paper coating line at the Ameri-Cal Corporation facility in Medina County, Ohio.

USEPA's action is based upon a May 9, 1988, revision request that was submitted by the State. The source is located in Medina County which is part of the Cleveland ozone demonstration area. USEPA is disapproving this revision because the State has not demonstrated that the requested revision would limit VOC emissions to levels reflecting the application of reasonable available control technology (RACT), and that the revision would not interfere with timely attainment of the ozone standard or with progress toward attainment in the interim. The source remains subject to the control requirements of the Ohio Administrative Code (OAC), Rule 3745-21-09(F).

EFFECTIVE DATE: This disapproval will become effective on July 5, 1989.

ADDRESSES: Copies of this revision to the Ohio SIP are available for inspection at: (It is recommended that you telephone the contact person provided below before visiting the Region V office.)

U.S. Environmental Protection Agency,
Region V, Air and Radiation Branch
(5AR-26), 230 South Dearborn Street,
Chicago, Illinois 60604.

Ohio Environmental Protection Agency,
Office of Air Pollution Control, 1800
WaterMark Drive, P.O. Box 1049,
Columbus, Ohio 43266-0149.

FOR FURTHER INFORMATION CONTACT:
Anne E. Tenner, (312) 353-3849.

SUPPLEMENTARY INFORMATION: On May 9, 1988, the Ohio Environmental Protection Agency (OEPA) submitted, as a revision to its ozone SIP, a request for a SIP revision that consists of a permanent relaxation of the VOC emission limits for the paper coating line.

The Ameri-Cal Corporation operates a custom-design knife-over-roll adhesive

coating line (Source K001) which coats and cures the adhesive laminate to the paper substrate materials. This is defined as a paper coating line and is subject to OAC Rule 3745-21-09(F) which limits the emission of VOC to 2.9 pounds per gallon of coating less water.

Alternatively, the source may comply with this rule via the installation of add-on control equipment. Ameri-Cal Corporation is subject to the April 1, 1982, compliance date contained in OAC Rule 3745-21-04(C)(5).

OEPA had submitted to USEPA a request for a SIP revision that consists of a permanent relaxation of the VOC emission limits for the paper coating line. This request was submitted in the form of a variance issued by OEPA to Ameri-Cal. The variance contains the following terms and conditions:

1. Source K001 is required to utilize coatings with VOC contents, not to exceed 4.8 lbs/gallon of coating less water
2. Source K001 shall not emit VOC in excess of 22.7 tons per year
3. The company is required to maintain detailed records on coatings used and submit a semi-annual report indicating that the variance requirements are met.

In order to support the SIP revision request, OEPA submitted information that purported to demonstrate that it is not economically reasonable for Ameri-Cal to install add-on control equipment, and the coatings which comply with OAC Rule 3745-21-09(F) are not currently available and are not expected to be available in the near future.

On May 3, 1988, (53 FR 15703), USEPA proposed to disapprove this SIP revision because the source is located in Medina County, which is part of the Cleveland demonstration area, and the State did not demonstrate that the revision would limit VOC emissions to levels reflecting the application of RACT; or lacking such a RACT demonstration, that the revision would not interfere with timely attainment of the ozone standard or with progress towards attainment in the interim.

The notice of proposed rulemaking further identified the following two possible means of making the second demonstration:

1. The State of Ohio may remove Medina County, which is an attainment area, from the Cleveland demonstration area and show that the relaxation would not interfere with attainment or maintenance in either Medina County or the Cleveland demonstration area.

2. The State of Ohio may wish to provide further technical support that this relaxation is already considered in

the Cleveland demonstration of attainment (i.e., the emissions increase from this relaxation is explicitly considered in Cleveland's demonstration of attainment). If already included, USEPA could only approve the revision if and when the Cleveland SIP is approved.

In response to this proposed rulemaking, USEPA received one comment from OEPA on June 1, 1988, addressing each of these points and the question of RACT.

1. *OEPA Comment:* It is OEPA's understanding that when USEPA finalizes its "post-87" policy for ozone, Medina County must be included in the post-87 attainment area for Cleveland since it is part of the Cleveland Standard Metropolitan Statistical Area.

USEPA Responses: Under the proposed post-87 ozone policy, OEPA would be required to include Medina County as part of the Cleveland demonstration area. The notice of proposed rulemaking only concerned the requirements for 1982 SIPs.

If the Post-1987 policy is finalized as proposed, OEPA would not have the option of supporting this revision by removing Medina County from the demonstration area.

2. *OEPA Comment:* The State believes that the SIP revision submittal demonstrates that this relaxation would not interfere with the attainment or maintenance of the ozone standard in Medina County or the Cleveland demonstration area. The current SIP allowable VOC emission rate for the paper coating line is 10.3 tons/year at the 1985 level of production. By limiting the level of production, and by relaxing the VOC content limitation of the adhesives used in the paper coating line, the proposed maximum emission rate would be 22.7 tons/year (or 107.1 kilograms per average summer day) which is 12.4 tons/year (or 58.5 kg/day) greater than that currently allowed for a given level of production. Actually, under the SIP approved rules, Ameri-Cal Corporation can substantially increase production if it uses complying coatings. The allowable emissions could approach or exceed the emission rate proposed under the SIP revision.

Moreover, the proposed relaxation will not produce a measurable or demonstrable effect on the ambient air quality in light of the total VOC emissions for the Cleveland demonstration area. In the attainment demonstration submitted May 16, 1986, the State projected total point and area source emissions to be 274,513 kilograms per average summer day in 1987. The relaxation associated with Ameri-Cal

Corporation will be less than .02 percent of the total. Ameri-Cal Corporation's emissions are also insignificant when compared to the total emission estimate for Medina County, which is now designated "attainment" for ozone.

USEPA Response: OEPA still has not provided any evidence that the level of emissions allowed by this revision were explicitly considered in Cleveland's demonstration of attainment. Therefore, OEPA has not adequately demonstrated that the revision will not interfere with timely attainment of the ozone standard.

3. *OEPA Comment:* As described in the SIP revision request, Ameri-Cal Corporation had been unable to comply with the SIP requirements due to the lack of RACT for this particular paper coating line at the current level of production. Complying adhesives do not exist for the company's knife-over-roll coater. If Ameri-Cal Corporation should find a greatly expanded market for its products, the Ohio EPA will re-evaluate RACT to determine whether the installation of add-on control equipment will be RACT under the circumstances.

USEPA Response: OEPA's comment does not provide any additional information, beyond the original submittal, concerning whether this revision represents RACT for Ameri-Cal. The issues reiterated by OEPA were considered by USEPA in the proposed action.

Conclusion: USEPA is disapproving the SIP revision request for Ameri-Cal Corporation in Medina, Ohio, because OEPA still has not demonstrated that the requested revision will limit VOC emissions to a level reflecting the application of RACT, and that the revision will not interfere with timely attainment of the ozone standard, or with progress towards attainment in the interim.

Under Executive Order 12291, today's action is not "Major." Review of this action by the OMB was waived on January 6, 1989.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 4, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Environmental protection, Hydrocarbons, Intergovernmental relations, Ozone.

Dated: May 22, 1989.

Valdas V. Adamkus,

Regional Administrator.

40 CFR Part 52 Subpart KK is amended as follows:

PART 52—[AMENDED]

Ohio—Subpart KK

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1885 is amended by adding new paragraph (k) to read as follows:

§ 52.1885 Control Strategy: Ozone.

(k) Disapproval. On May 9, 1986, the Ohio Environmental Protection Agency submitted a revision to the ozone portion of the Ohio State Implementation Plan (SIP) for Volatile Organic Compounds (VOC). This revision request consists of a permanent relaxation of the VOC emission limits previously approved by USEPA for the paper coating line at the Ameri-Cal Corporation facility in Medina County, Ohio. As a result of USEPA's disapproval, the source remains subject to the control requirements of the Ohio Administrative Code (OAC) Rule 3745-21-09(F).

[FR Doc. 89-13222 Filed 6-2-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6833]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.

ACTION: Final rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation

that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the *Federal Register*.

EFFECTIVE DATE: As shown in fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street, SW., Room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1988, FEMA published a final rule in the *Federal Register* that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1988. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities will not be suspended and will continue

their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the *Federal Register*. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the require floodplain management measures are met prior to the effective suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in an of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State	Community name	County	Community No.	Effective date
Colorado.....	Greeley, city of.....	Weld.....	080184	June 5, 1989
Kansas.....	Lake Quivira, city of.....	Johnson and Wyandotte.....	200186	Do.
Do.....	Unincorporated areas.....	Leavenworth.....	200186	Do.

State	Community name	County	Community No.	Effective date
Do.....	Leocompton, city of.....	Douglas.....	200091	Do.
Do.....	Leona, city of.....	Doniphan.....	200082	Do.
Do.....	Moline, city of.....	Elk County.....	200093	Do.
Do.....	Natoma, city of.....	Osborne.....	200254	Do.
Do.....	Neodesha, city of.....	Wilson.....	200359	Do.
Do.....	Oberlin, city of.....	Decatur.....	200073	Do.
Do.....	Unincorporated areas.....	Pawnee.....	200566	Do.
Nebraska.....	Gibbon, city of.....	Buffalo.....	310015	Do.
Do.....	Henderson, city of.....	York.....	310378	Do.
Do.....	Hubbell, village of.....	Thayer.....	310220	Do.
Do.....	LaVista, city of.....	Sarpy.....	310192	Do.
Do.....	Linwood, village of.....	Butler.....	310028	Do.
Do.....	Litchfield, village of.....	Sherman.....	310295	Do.
Do.....	Lodgepole, village of.....	Cheyenne.....	310038	Do.
Do.....	Loup City, city of.....	Sherman.....	310215	Do.
Do.....	Maxwell, village of.....	Lincoln.....	310300	Do.
Do.....	Newman Grove, city of.....	Madison.....	310393	Do.
Do.....	Omaha, city of.....	Douglas.....	315274	Do.
Do.....	Papillion, city of.....	Sarpy.....	315275	Do.
North Dakota.....	Burlington, city of.....	Ward.....	380650	Do.
Do.....	Casselton, city of.....	Cass.....	380020	Do.
Do.....	Harwood, city of.....	Cass.....	380338	Do.
Do.....	Harwood, township of.....	Cass.....	380259	Do.
Ohio.....	Ashtabula, city of.....	Ashtabula.....	390011	Do.
Do.....	Fairview Park, city of.....	Cuyahoga.....	390108	Do.
Do.....	Florida, village of.....	Henry.....	390263	Do.
Do.....	Gambier, village of.....	Knox.....	390310	Do.
Do.....	Germantown, village of.....	Montgomery.....	390411	Do.
Do.....	Gettysburg, village of.....	Darke.....	390686	Do.
Do.....	Gloria Glens, village of.....	Medina.....	390381	Do.
Do.....	Grand Rapids, village of.....	Wood.....	390585	Do.
Do.....	Hartford, village of.....	Licking.....	390331	Do.
South Dakota.....	Belle Fourche, city of.....	Butte.....	460012	Do.
Wyoming.....	Douglas, town of.....	Converse.....	560013	Do.
Do.....	Evansville, town of.....	Natrona.....	560071	Do.

Harold T. Duryee,
Administrator, Federal Insurance
Administration.

Issued: May 19, 1989.

[FR Doc. 89-13256 Filed 6-2-89 8:45 am]

BILLING CODE 6710-21-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

45 CFR Part 402

RIN 0970-AA72

State Legalization Impact Assistance Grants (SLIAG)

AGENCY: Office of Refugee Resettlement, PSA, HHS.

ACTION: Final rule with comments.

SUMMARY: This rule amends the final rule implementing the State Legalization Impact Assistance Grants (SLIAG), published on March 10, 1988. This action changes the deadline by which Fiscal Year 1990 State SLIAG applications are due from July 15, 1989 to October 1, 1989, and the deadline by which a State's FY 1990 application must be approvable by the Secretary from October 1, 1989 to December 15, 1989. This will give States sufficient time to develop actual cost

data which can be used in preparing their FY 1990 applications.

DATES: Final rule effective June 5, 1989; comments must be received on or before July 5, 1989.

ADDRESSES: Comments may be mailed to Division of State Legalization Assistance, Office of Refugee Resettlement, Family Support Administration, 370 L'Enfant Promenade SW., 6th floor, Washington, DC 20447.

FOR FURTHER INFORMATION CONTACT: Norman L. Thompson (Director), 202-252-4571/(FIS 252-4571).

SUPPLEMENTARY INFORMATION: The State Legalization Impact Assistance Grant (SLIAG) regulation at 45 CFR 402.43 currently requires that States submit their FY 1990 applications by July 15, 1989, and that those applications be approvable by the Secretary of Health and Human Services by October 1, 1989. The regulation, and other guidance issued to States, contemplates that the cost estimates in their FY 1990 applications, which include updated cost estimates for FY 1989, be based on actual cost data from FY 1988 and from FY 1989. At the time the regulation was published, we expected that States would have complete cost data for FY 1988 by December 31, 1988, when annual reports on FY 1988 costs were due, and would have at least partial FY 1989 cost

data before submitting the FY 1990 application.

States' annual reports submitted pursuant to 45 CFR 402.51(e) indicate that most States need more time to establish FY 1988 costs for a substantial number of programs. It appears that States may not have actual cost data for at least some programs in time to use it in an application that would be due July 15, 1989. The inability of many States to base their FY 1990 application estimates on actual cost data will create a less equitable treatment of States. The great variation in quality of estimates may well risk punishing States that can use actual costs, on the one hand, or require us to apply an extremely rigid standard to all estimates not based on actual costs.

To help States document costs, we are working on several initiatives. The major effort is a system that would enable States to determine their actual costs by matching the Social Security numbers of program participants against the Social Security numbers of eligible legalized aliens. (The system is being designed so that such a matching system can be employed while maintaining the strict confidentiality requirements set forth by the Immigration Reform and Control Act of 1986 (Pub. L. 99-603) for information concerning lawful

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temporary residents.) We expect this system to be in place and available to States by June 1, 1989. That the system will be available this soon is an example of exemplary interagency cooperation among the Immigration and Naturalization Service, the General Services Administration, and the Family Support Administration and the Social Security Administration within the Department of Health and Human Services. However, we recognize that it may be impossible for most States to access the system and receive cost data in time to incorporate this information into their FY 1990 applications by July 15, 1989.

By extending the deadline for the FY 1990 application, we can obviate the need for States to prepare cost estimates for FY 1989 and projections for FY 1990 in the absence of empirical data on the participation of eligible legalized aliens in State and local programs, and then to resubmit cost estimates as experiential data becomes available. This will ease the administrative burden on all levels of government involved in SLIAG and will ensure an equitable allocation of funds.

We are therefore extending the deadline for submitting the FY 1990 application to October 1, 1989, and the deadline for that application to be approvable by the Secretary to December 15, 1989. This will give States sufficient time to develop actual cost data which can be used in preparing their FY 1990 applications. This change will delay our allocating FY 1990 SLIAG funds from November 1989 to January 1990. However, this will not disadvantage States. FY 1990 funds are not available for allocation before October 1 in any case, and cost estimates in States' FY 1989 applications indicate that States will have more than ample FY 1988 and FY 1989 grant funds to carry over into the first part of calendar year 1990. If a State wishes to submit a completed application before October 1, 1989, we will review it promptly and approve it at the earliest possible time.

Because the amendments set out in this rule pertain to agency procedure or practice under section 553(b) of the Administrative Procedure Act, we have dispensed with a Notice of Proposed Rulemaking. We will consider any comments received and, if necessary, publish another rule.

Regulatory Procedures

In accordance with 5 U.S.C. 605(b), the Secretary certifies that this rule does not have a significant adverse economic

impact on small business entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291.

Paperwork Reduction Act

This rule imposes no new reporting or recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalogue of Federal Domestic Assistance Program No. 13.786, State Legalization Impact Assistance Grants)

List of Subjects in 45 CFR Part 402

Administrative cost, Allocation formula, Aliens, Allotment, Education, Grant programs, Immigration, Immigration Reform and Control Act, Public assistance, Public health assistance, Reporting and recordkeeping requirements, State Legalization Impact Assistance Grants.

Dated: March 17, 1989.

Wayne A. Stanton,

Principal Deputy Assistant Secretary, Family Support Administration.

Approved: May 5, 1989.

Louis W. Sullivan,

Secretary of Health and Human Services.

For the reasons set out in the preamble, 45 CFR Part 402 is amended as follows:

PART 402—STATE LEGALIZATION IMPACT ASSISTANCE GRANTS

1. The authority citation for Part 402 continues to read as follows:

Authority: Sec. 204, Pub. L. 99-603.

2. Section 402.43 is amended by revising the second sentence in paragraph (a) and the second sentence in paragraph (b) and adding the OMB control number at the end of the section to read as follows:

§ 402.43 Application deadline.

(a) * * * Applications for Federal fiscal years 1989, 1990, and 1991 must be received no later than July 15, 1988, October 1, 1989, and July 15, 1990, respectively. * * *

(b) * * * In order to receive funds under this Part for FY 1989, FY 1990, and FY 1991, a State's application must be approvable by the Secretary by October 1, 1988, December 15, 1989, and October 1, 1990, respectively. * * *

(Approved by the Office of Management and Budget under control number 0970-0079)

[FR Doc. 89-13184 Filed 6-2-89; 8:45 am]

BILLING CODE 4150-04-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-74; RM-5649]

Radio Broadcasting Services; Oxnard and Glendale, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 275A in lieu of Channel 271A at Oxnard, California. This channel substitution avoids any potential interference to an Oxnard station which may result from the modified facilities of Station KMPC-FM, Glendale, California. The applicants for the Oxnard will be permitted to amend their pending applications without loss of cut-off protection. The reference coordinates for Channel 275A at Oxnard are 34-13-08 and 119-12-59. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-74, adopted May 4, 1989, and released May 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended under California by removing Channel 271A and adding Channel 275A at Oxnard.

Federal Communications Commission.

Bradley P. Holmes,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-13249 Filed 6-2-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 86-443; RM-5366, RM-5736 and RM-5737]

Radio Broadcasting Services; Picayune, MS, Pascagoula, MS, and Ponchatoula, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 291C2 in lieu of Channel 292A at Picayune, Mississippi, and modifies the license of Station WRMH, Picayune, Mississippi, to specify operation on Channel 291C2. In taking this action, we dismissed counterproposals to allot Channel 291A to Ponchatoula, Louisiana, and Channel 290C2 to Pascagoula, Mississippi, at the request of the respective proponents. The reference coordinates for Channel 291C2 at Picayune are 30-34-29 and 89-59-36. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 86-443, adopted May 4, 1989, and released May 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments, is amended under Mississippi by removing Channel 292A and adding Channel 291C2 at Picayune.

Federal Communications Commission.

Bradley P. Holmes,
Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-13250 Filed 6-2-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-574; RM-6478]

Radio Broadcasting Services; Kirksville, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 233C for Channel 233C1 at Kirksville, Missouri, in response to a petition filed by KIRK, Inc. We shall also modify the license of Station KRXL(FM) to specify operation on Channel 233C in lieu of Channel 233C1. The coordinates for Channel 233C are 40-14-34 and 92-25-42. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-574, adopted May 5, 1989, and released May 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments under Missouri is amended by removing Channel 233C1 and adding Channel 233C at Kirksville.

Federal Communications Commission.

Karl Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-13251 Filed 6-2-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-493; RM-6431, RM-6445]

Radio Broadcasting Services; West Point and Blair, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Kelly Communications, Inc., substitutes Channel 300C1 for Channel 300A at West Point, Nebraska, and modifies its license for Station KWPN-FM to specify operation on the higher powered channel. Channel 300C1 can be allotted to West Point in compliance with the Commission's minimum distance separation requirements and can be used at Station KWPN-FM's licensed site. The coordinates for this allotment are North Latitude 41-47-06 and West Longitude 96-40-39. This action also dismisses the mutually exclusive request of LDH Communications, Inc. to substitute Channel 299A for Channel 292A at Blair, Nebraska, and the modification of its license for Station KBWH-FM accordingly, based on its withdrawal of interest. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-493, adopted May 4, 1989, and released May 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended by adding Channel 300C1 and removing Channel 300A at West Point, Nebraska.

Federal Communications Commission.
Karl A. Kensinger,
*Chief, Allocations Branch, Policy and Rules
 Division, Mass Media Bureau.*
 [FR Doc. 89-13252 Filed 6-2-89; 8:45 am]
 BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-544; RM-6487]

Radio Broadcasting Services; Shadyside, OH

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Adventure Three, Inc., substitutes Channel 239B1 for Channel 239A at Shadyside, Ohio, and modifies its construction permit for Station WBJY to specify operation on the higher powered channel. Channel 239B1 can be allotted to Shadyside in compliance with the Commission's minimum distance separation requirements with a site restriction of 7.0 kilometers (4.4 miles) north to accommodate petitioner's desired transmitter site. Canadian concurrence has been received since Shadyside is located within 320 kilometers (200 miles) of the U.S.-Canadian border. With this action, this proceeding is terminated.

DATE: Effective July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-544, adopted May 5, 1989, and released May 24, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202), 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended by removing

Channel 239A and adding Channel 239B1 at Shadyside, Ohio.

Federal Communications Commission.
Karl A. Kensinger,
*Chief, Allocations Branch, Policy and Rules
 Division, Mass Media Bureau.*
 [FR Doc. 89-13253 Filed 6-2-89; 8:45 am]
 BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 74-14; Notice 60]

RIN 2127-AC01

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.
ACTION: Final rule; grant of petitions for reconsideration.

SUMMARY: On November 23, 1987, NHTSA published a final rule which, among other things, responded to the dummy positioning issues raised in petitions for reconsideration of the 1986 final rule adopting the Hybrid III test dummy. Three of the petitions for reconsideration of that 1987 rule asked that the positioning procedures for the test dummy's head and feet be amended to make the procedures more specific. NHTSA agrees with these petitioners about the need for such changes, and so is amending the head and feet positioning procedures along the lines requested by the petitioners.

EFFECTIVE DATE: The changes to the Hybrid III test dummy positioning procedures are effective December 4, 1989.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Strombotne, Chief, Crashworthiness Division, NRM-12, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION: On July 25, 1986 (51 FR 26688), NHTSA published a final rule adopting the Hybrid III test dummy as an alternative for use in determining compliance with the injury criteria in dynamic crash testing under Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208). This rule established the technical specifications and calibration requirements to be met by the new test dummy, an additional injury criteria to be met when the new test dummy was used, and the procedures to be used to

position the new test dummy during Standard No. 208 compliance testing.

More than a dozen petitions for reconsideration of that rule were timely filed with NHTSA. The petitions addressed all facets of the final rule, but most focused on the additional injury criteria. The agency responded to all of the issues raised in these petitions, except the dummy positioning issues, in a notice published on March 17, 1988; 53 FR 8755.

While these petitions for reconsideration were pending, NHTSA was formulating a final rule requiring light trucks and light multipurpose passenger vehicles equipped with manual lap/shoulder belts at the front outboard seats to comply with the injury criteria of Standard No. 208. While formulating this rule, the agency decided that it ought to expedite its consideration of the dummy positioning issues raised in the petitions for reconsideration of the Hybrid III final rule. This decision to expedite was necessary because those dummy positioning procedures would also be used to position the Hybrid III test dummies in light trucks and multipurpose passenger vehicles. Absent an agency response to those petitions, only the older test dummy could be used in compliance testing for light trucks and multipurpose passenger vehicles. Accordingly, the final rule that established dynamic testing requirements for light trucks and light multipurpose passenger vehicles also responded to the petitions for reconsideration of the Hybrid III test dummy positioning procedures (52 FR 44898; November 23, 1987).

NHTSA received five petitions for reconsideration of the November 23, 1987 final rule. Three of those petitions sought some modifications of the dynamic testing requirements. NHTSA responded to those petitions on December 14, 1988 (53 FR 50221). In that notice, the agency indicated that it had not finished evaluating the petitions relating to the Hybrid III test dummy positioning procedures, and that a response to those petitions would be published at a later time. This notice responds to those petitions relating to the test dummy positioning procedures.

The petitioners in this case were Ford, Honda, and Toyota. The petitions focused on the positioning procedures for the head and feet of the Hybrid III test dummy. These petitions are granted, for the reasons explained below.

The head positioning procedures established for the Hybrid III test dummy in passenger cars specified that the head accelerometer mounting

platform is horizontal within ½ degree. However, the final rule extending dynamic testing to light trucks and MPVs noted that NHTSA had encountered difficulties in properly leveling the Hybrid III test dummy's head in "vehicles that had very upright seats with non-adjustable seatbacks;" 52 FR 44898, at 44903; November 23, 1987. To address this problem, the final rule established a sequence of head positioning procedures to be followed when positioning the Hybrid III test dummy in "vehicles with upright seats with non-adjustable backs."

In its petition for reconsideration of the 1987 rule, Ford asserted that the problem of leveling the dummy's head does not arise from the fact that the seats are non-adjustable. Ford correctly noted that section S8.1.3 of Standard No. 208 requires that adjustable seat backs be placed at the manufacturer's nominal design riding position, and not be adjusted out of that position. Instead, Ford alleged that the problem of leveling the dummy's head arises when seats are "very upright," either because the seats are non-adjustable or because that is the manufacturer's nominal design riding position. Accordingly, Ford suggested that the reference to "non-adjustable seats" be deleted from the head positioning procedures. Toyota raised a similar point in its petition, asserting that Standard No. 208 specifies clearly the head positioning procedures to be followed for non-adjustable seatbacks but does not specify any head positioning procedures for adjustable seatbacks.

NHTSA has not encountered any difficulties in positioning Hybrid III test dummies in vehicles where the seats have adjustable backs. The manufacturer's nominal design riding position for vehicles with adjustable seats has to date always resulted in a seat position inclined to the rear of the vehicle. However, NHTSA agrees with the point that vehicles with adjustable seats could be produced with a very upright nominal design riding position, and that such vehicles would pose the same head positioning difficulties that have been encountered in vehicles with non-adjustable seats. To avoid any potential difficulties, this notice amends the head positioning procedures for the Hybrid III dummy to provide that those procedures should be followed in all vehicles, regardless of whether the seats are adjustable or non-adjustable. This notice also adds language to the head positioning procedures to clarify that before the neck bracket of the Hybrid III is adjusted, the neck bracket should be set at "0" (the non-adjusted position)

and after the neck bracket of the Hybrid III is adjusted, the test dummy should remain within the limits for the H point and the pelvic angle.

The other dummy positioning issue raised in the petitions for reconsideration of the 1987 rule was the issue of foot positioning. As the foot positioning procedures for the Hybrid III dummy were being developed, both Ford and Toyota asserted that the agency should use the same foot positioning procedures for the Hybrid III dummy as it used for the older Part 572 Subpart B test dummy. In response to these assertions, the final rule stated:

NHTSA agrees with Ford and Toyota that the foot positioning procedures for the two test dummies should be the same. NHTSA has made the necessary changes to the Hybrid III foot positioning procedures to conform them with the procedures used with the Part 572 Subpart B test dummy. 52 FR 44904; November 23, 1987.

Ford, Toyota, and Honda stated in their petitions for reconsideration that NHTSA had not made the foot positioning procedures for the two test dummies the same, notwithstanding its stated intent to do so. Honda noted that the Hybrid III foot positioning procedures do not specify how to place the test dummy's feet for vehicles with a footrest or for vehicles with wheelhouse projections in the passenger compartment after September 1, 1991. Prior to that date, the rule permits the feet of the Hybrid III test dummy to be positioned according to the same procedures specified for the Part 572 Subpart B test dummy.

The agency has already expressly stated that the foot positioning procedures for the two test dummies should be the same. NHTSA agrees with the petitioners' assessment that the amendments made to the Hybrid III foot positioning procedures in the November 23, 1987 final rule did not achieve the goal of making the foot positioning procedures the same for the two test dummies. Therefore, this notice adopts as the foot positioning procedures for the Hybrid III test dummy the foot positioning procedures that have already been adopted for the Part 572 Subpart B test dummy.

This notice also removes section S12 from Standard No. 208, and the reference to that section in S10 of Standard No. 208. Section S12 set forth optional positioning procedures for the Part 572 Subpart B dummy that could be used until September 1, 1987. Since that date has now passed, there is no continuing need to refer to those optional positioning procedures in Standard No. 208.

Impact Assessments

NHTSA has considered the impacts of these changes to the Hybrid III test dummy positioning procedures in response to the petitions for reconsideration. The agency has determined that these impacts are neither "major" within the meaning of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The changes to the test dummy positioning procedures do not affect the estimates of costs and other impacts set forth in the final regulatory evaluation that was prepared in connection with the final rule establishing the dynamic testing requirements for light trucks and MPVs. Interested persons are referred to that document, which is available in NHTSA Docket No. 74-14, Notice 53. Copies of that regulatory evaluation may be obtained by writing to: NHTSA Docket Section, Room 5109, 400 Seventh Street, SW., Washington, DC 20590, or by calling the Docket Section at (202) 366-4949.

As noted above, the only differences between the rule considered in that regulatory evaluation and this response to the petitions for reconsideration are the two modifications of the Hybrid III test dummy positioning procedures. These modifications do not impose any burdens on any party. Instead, the modifications to the positioning procedures will result in more consistent crash test results, by more clearly specifying precisely how the Hybrid III test dummy is to be positioned in a vehicle prior to a crash test. Changes to the positioning procedures do not affect the cost of purchasing a Hybrid III test dummy or the cost of conducting a crash test. Because of these minimal impacts, a full regulatory evaluation has not been prepared for this response to the petitions for reconsideration.

NHTSA has also considered the effects of this action under the Regulatory Flexibility Act. I hereby certify that the modifications to the Hybrid III test dummy positioning procedures made in response to the petitions for reconsideration will not have a significant economic impact on a substantial number of small entities. These changes will only affect manufacturers that conduct their own crash testing, few of which are small entities. As described above, no adverse impacts will be associated with these modifications of the Hybrid III positioning procedures. Further, since no price increases will result from these modifications to the test dummy

positioning procedures, small organizations and small governmental entities will not be affected by this action when they purchase new vehicles.

NHTSA has also analyzed this regulatory action for the purposes of the National Environmental Policy Act, and determined that this action will not have a significant impact on the quality of the human environment.

This rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR 571.208 is amended as follows:

PART 571—(AMENDED)

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. S10 is amended by revising the introductory text to read as follows:

S10. *Test dummy positioning procedures.* Position a test dummy, conforming to Subpart B of Part 572 of this chapter, in each front outboard seating position of a vehicle as set forth below in S10 through S10.9. Each test dummy is restrained during the crash tests of S5 as follows:

• • • • •

3. S11 is amended by revising S11.1 and S11.6 to read as follows:

S11. *Positioning Procedure for the Part 572 Subpart E Test Dummy.*

• • • • •

S11.1 *Head.* The transverse instrumentation platform of the head shall be horizontal within ½ degree. To level the head of the test dummy, the following sequences must be followed. First, adjust the position of the H point within the limits set forth in S11.4.3.1 to level the transverse instrumentation platform of the head of the test dummy. If the transverse instrumentation platform of the head is still not level, then adjust the pelvic angle of the test dummy within the limits specified in

S11.4.3.2 of this standard. If the transverse instrumentation platform of the head is still not level, then adjust the neck bracket of the dummy the minimum amount necessary from the non-adjusted "0" setting to ensure that the transverse instrumentation platform of the head is horizontal within ½ degree. The test dummy shall remain within the limits specified in S11.4.3.1 and S11.4.3.2 after any adjustment of the neck bracket.

• • • • •

S11.6 *Feet.* The feet of the driver test dummy shall be positioned in accordance with S10.1.1 (b) and (c) of this standard. The feet of the passenger test dummy shall be positioned in accordance with S10.1.2.1 (b) and (c) or S10.1.2.2 (b) and (c) of this standard, as appropriate.

• • • • •

4. S12 is removed.

Issued on May 30, 1989.

Jeffrey R. Miller,
Acting Administrator.
[FR Doc. 89-13211 Filed 6-2-89; 8:45 am]
BILLING CODE 4910-59-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 88-073]

Ports of Entry for Certain Plants and Plant Products

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning foreign quarantine notices by adding a plant inspection station at the port of Houston, Texas. Adding a station through which certain plants and plant products may be imported would facilitate the importation of these plants and plant products into the United States.

DATES: Consideration will be given only to comments received on or before July 5, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Helene R. Wright, Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 88-073. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Don R. Thompson, Operations Officer, Port Operations, PPQ, APHIS, USDA, Room 638, Federal building, 6505 Belcrest Road Hyattsville, MD 20782, 301-436-8393.

SUPPLEMENTARY INFORMATION: Background

We are proposing to amend the regulations concerning foreign quarantine notices contained in 7 CFR Part 319, Subpart—Nursery Stock, Plants, Roots, Bulbs, Seeds, and Other Plant Products, and referred to below as the regulations. These regulations prohibit the importation into the United States of certain articles from foreign countries and localities, including certain plants and plant products, as a means of preventing the introduction into the United States of certain tree, plant, and fruit diseases, or injurious insects, that are new to or now widely prevalent or distributed within and throughout the United States. These regulations also restrict the importation into the United States of certain articles from foreign countries and localities, including certain plants and plant products, as a means of preventing the entry into the United States of certain injurious plant diseases, injurious insect pests, and other plant pests.

Restricted articles, with the exception of certain restricted articles from Canada, can be imported or offered for importation into the United States only at ports of entry listed in § 319.37-14(b) of the regulations. Restricted articles that are not required to be imported under a written permit pursuant to § 319.37-3(a) (1) through (6) of the regulations can only be imported or offered for importation at parts of entry designated by an astrisk in § 319.37-14(b). These latter ports of entry have plant inspection stations; i.e., special inspection and treatment facilities. Restricted articles that are required to be imported under a written permit pursuant to § 319.37-3(a) (1) through (6) of the regulations must be imported only at ports of entry that have a plant inspection station because these restricted articles appear to present a substantial risk of carrying injurious plant diseases, insect pests, or other plant pests at the time of importation. Plant inspection stations have the special treatment and inspection facilities adequate for taking necessary action with respect to such articles in order to prevent the introduction of

accompanying injurious plant diseases, injurious insect pests, or other plant pests.

Only some of the ports of entry listed in paragraph (b) of § 319.37-14 have plant inspection stations. Texas currently has 15 ports of entry, but only three of these ports—Brownsville, El Paso, and Laredo—have plant inspection stations. A fourth plant inspection station would provide a more conveniently located facility for importers in the Houston area, and would relieve the workload on other plant inspection stations in the area.

We are therefore proposing to add a plant inspection station at the port of Houston, Texas. This new station would have the special inspection and treatment facilities needed to import certain restricted articles, including certain plants and plant products, that are required to be imported under a written permit pursuant to § 319.37-3(a) (1) through (6) of the regulations. These restricted articles cannot be imported through Houston's existing inspection location, because it does not have a plant inspection station which is equipped with the necessary holding, treatment, and inspection facilities.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule would have an effect on the economy of less than \$100 million; would not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The addition of a plant inspection station in Houston, Texas, would facilitate the importation of restricted articles, including certain plants, into the United States. We believe the addition of this facility would have a positive but small economic impact on importers, since Texas already has three inspection stations through which plants

requiring written permits pursuant to § 319.37-3(a) (1) through (6) of the regulations may be imported. We have no way of projecting how heavily the new plant inspection station would be used, but we estimate that between 5 and 20 commercial importers—most of them small entities—would use these new facility on a regular basis. Most of them would realize small savings in transportation costs since they would now have access to a fourth plant inspection station. The primary impact on these importers, therefore, would be increased convenience.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR 3015, Subpart V.)

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subject in 7 CFR Part 319

Agricultural commodities, Fruit, Imports, Nursery stock, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation.

Accordingly, we are proposing to amend 7 CFR Part 319 as follows:

PART 319—FOREIGN QUARANTINE NOTICES

1. The authority citation for Subpart Nursery stock, Plants, Roots, Bulbs, Seeds, and other Plants Products would be revised to read as follows:

Authority: 7 U.S.C. 150dd-150ff, 154, 155, 157, 159, 160, 182, and 164a; 7 CFR 2.17, 2.51, and 371.2(c).

§ 319.37-14 [Amended]

2. In § 319.37-14(b), the entry for Texas would be amended by adding an asterisk immediately before the word "Houston", and by adding, immediately under the word "Houston", the information as shown below:

§ 319.37-14 Ports of entry.

(b) . . .

Lists of Ports of Entry

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Texas

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(Airport) Houston Plant Inspection Station, 3016 McKaughan, Houston, TX 77032

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Done in Washington, DC, This 30th day of May 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-13242 Filed 6-2-89; 8:45 am]

BILLING CODE 3410-34-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 655

[FHWA Docket No. 89-1, Notice No. 2]

National Standards for Traffic Control Devices; Manual on Uniform Traffic Control Devices; Work Zone Traffic Control Standards Revision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for comments.

SUMMARY: The MUTCD is incorporated by reference in 23 CFR 655, Subpart F and recognized as the national standard for traffic control devices on all public roads. The FHWA has been considering options for restructuring and reformatting Part VI of the MUTCD with the objective of improving the application of effective traffic control devices in a work zone. On December 23, 1988, FHWA Docket 89-1, Notice No. 1 (53 FR 51826), made the initial recommendations from this effort available to the public for review and comment. The information received from Notice No. 1 has been evaluated and many of the suggestions and comments have been incorporated in this notice. This notice makes the second Public Information Package covering current recommended changes to Part VI available to the public for review and comment.

DATE: Comments on action and materials cited in this notice must be received on or before February 15, 1990. Comments received after that date will be considered to the extent practicable.

ADDRESS: Submit written, signed comments, to FHWA Docket 89-1, Notice No. 2, Federal Highway Administration, HCC-10, 400 Seventh Street SW., Washington, DC 20590. All

comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., ET, Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION OR A COPY OF THE PUBLIC INFORMATION PACKET

CONTACT: Mr. Philip O. Russell, Office of Traffic Operations, (202) 366-2184, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m. ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The Manual on Uniform Traffic Control Devices (MUTCD) is approved by the Federal Highway Administration as the National Standard for highways open to public travel. Part VI "Traffic Controls for Street and Highway Construction, Maintenance, Utility and Emergency Operations" of the MUTCD sets forth basic principles and prescribes standards for traffic control during construction, maintenance, and other work operations on streets and highways. It has been determined that Part VI needs to be revised to better serve the highway community. A contractor has been retained by the FHWA to review Part VI and to recommend changes. The text of Part VI is to be expanded to include additional "utility" and "emergency" subject areas as well as to include recent research results and other areas not adequately covered in the current MUTCD, Part VI. Also improved graphics will be added along with the clarification of ambiguous language. On December 23, 1988, FHWA Docket 89-1, Notice No. 1 (53 FR 51826), made the contractor's initial recommended changes to Part VI available to the public for review and comment. The information received from Notice No. 1 has been evaluated and many of the suggestions and comments have been incorporated. This notice announces the availability of a second Public Information Package that provides the contractor's current recommended changes to Part VI. The contractor will be working very closely with the FHWA's Office of Traffic Operations to ensure that all of the comments are appropriately considered. This notice is being published to inform the public of the status of the contract to rewrite Part VI of the MUTCD and to request comments on the work done since Notice No. 1.

The MUTCD is available for inspection and copying as prescribed in 49 CFR Part 7, Appendix D. It may be purchased for \$22.00 (domestic price)

from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, Stock No. 050-001-00308-2. The FHWA both receives and initiates requests for amendments to the MUTCD. The MUTCD is a promulgation of uniform national traffic control devices standards and applications for use on all streets and highways open to public travel regardless of type or class or the governmental agency having jurisdiction.

Issued on: May 30, 1989.

R. D. Morgan,

Executive Director.

[FR Doc. 89-13280 Filed 6-2-89; 8:45 am]

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

[Docket No. H-160]

RIN 1218-AA28

Health Standards; Methods of Compliance

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.

ACTION: Proposed rule.

SUMMARY: By this notice the Occupational Safety and Health Administration (OSHA) proposes to modify the existing provisions for controlling employee exposures to toxic substances found in 29 CFR 1910.1000(e) and 29 CFR 1910.134(a)(1). The Agency proposes to incorporate additional flexibility in its methods of compliance requirements by more explicitly setting forth the circumstances under which respiratory protection may be used in lieu of engineering controls. While some additional approaches are not reflected in actual proposed regulatory language, comment is requested on the appropriateness of addressing all of the various areas discussed by this notice in a final methods of compliance rule. This action is being taken based on data the Agency has received in response to an Advance Notice of Proposed Rulemaking (ANPR) published in February, 1983 (48 FR 7473) that solicited comment on its policy relating to the use of engineering controls and respirators and on data found in OSHA's 6(b) rulemaking records addressing the methods of compliance issue (Ex.4).

Notice is also given, herein, that certain modifications to the compliance

requirements with respect to short-term exposures in the recently promulgated standards for benzene (52 FR 34460), formaldehyde (52 FR 46168), and ethylene oxide (53 FR 11414) may result from this rulemaking.

DATE: Comments and requests for a hearing should be submitted by October 3, 1989.

ADDRESSES: Comments should be submitted in quadruplicate to the Docket Officer, Docket No. H-160, Room N-3670, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Requests for a hearing should be submitted in quadruplicate to Mr. Tom Hall, OSHA, Division of Consumer Affairs, Docket No. H-160, Room N-3637, U.S. Department of Labor, 200 Constitution Ave., NW., Washington, DC, 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Occupational Safety and Health Administration, Office of Public Affairs, Room N-3649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 523-8151.

SUPPLEMENTARY INFORMATION:

I. Background

OSHA's methods of compliance policy, first adopted by OSHA from national consensus standards in 1971, and subsequently included in OSHA substance specific health standards, requires that employers rely primarily on feasible engineering controls to prevent employee exposures from exceeding permissible levels. This requirement, in particular, is stated in the OSHA Respiratory Protection Standard, 29 CFR 1910.134(a)(1), which applies to all exposures to airborne toxic substances, and in the Air Contaminant Standard, 29 CFR § 1910.1000(e), which applies to exposures to 600 substances listed in Tables Z-1, Z-2, and Z-3. Thus, 29 CFR 1910.1000(e) requires employers to first implement engineering and administrative controls to comply with the permissible exposure limits for substances listed in the above Tables. Similar language appears in OSHA's generic respirator standard which set forth the conditions of respirator use required to protect the health of employees. (29 CFR 1910.134(a)(1)). These standards were adopted without full rulemaking proceedings to allow OSHA to quickly put into place a body of workable regulations, pursuant to section 6(a) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655 *et seq.*).

This methods of compliance policy has also been incorporated in every health standard adopted pursuant to section 6(b) of the Act after OSHA's evaluation of the related rulemaking records. All substance specific health standards (except for the 13 carcinogen standards, 29 CFR 1910.1003-1016, which mandate specific engineering controls) and the carcinogen policy (29 CFR Part 1990) recite a generalized preference for engineering and work practice controls. However, in each such standard OSHA has identified circumstances or operations where the record shows the infeasibility or impracticality of installing engineering controls and has allowed reliance on respiratory protection as well. However, the generic standards, 29 CFR 1910.1000(e) and 134(a)(1), do not set out most of these modifying circumstances in their regulatory texts.

In certain recognized situations and conditions under OSHA's substance specific standards, engineering controls are not required and respirator use is permitted. For example, the following standards permit the use of respiratory protective devices during installation of feasible engineering controls, where engineering controls are not feasible, and where it is necessary to supplement engineering controls in order to achieve full compliance: asbestos, arsenic, lead, coke ovens, cotton dust, DBCP, acrylonitrile, and ethylene oxide. Other specific allowances for respirator use can be found in standards for arsenic (maintenance and repair), lead (for employees exposed less than 30 days per year), coke ovens (maintenance and repair), acrylonitrile (maintenance, repair, and vessel cleaning), and ethylene oxide (collection of quality assurance samples, removal of biological indicators, loading and unloading of tank cars, changing ethylene oxide tanks, vessel cleaning, and maintenance and repair activities). These examples provide a clear indication of the Agency's realistic expectations with respect to the implementation of engineering controls and of the flexibility implied with respect to the meaning of "feasible engineering controls." In addition, in an enforcement context, it may be demonstrated that for specified operations engineering controls are infeasible. OSHA seeks comment on whether these specific types of allowances should be explicitly built into the general methods-of-compliance provisions.

OSHA's policy has been criticized by some as too inflexible, not cost-effective, often unnecessary for health

protection and outdated based on the argument that sufficient progress has been made in respirator technology and application to permit their use on a wider scale.

In order to address these criticisms OSHA published an ANPR on February 22, 1983, to solicit public comment on issues such as preference for engineering controls, comparative protectiveness of respirators and engineering controls, total costs of respirators and engineering controls, and the use of engineering controls even if such controls fail to reduce levels to below the PEL. OSHA was also seeking information that would help the Agency to focus on three primary policy considerations:

The first consideration was health protection. It had been postulated that there may be many instances where respirators would provide protection to employees equivalent to engineering controls, and that their routine use should be permitted.

The second consideration was that respirator technology and use practices have progressed significantly since initial adoption of OSHA's compliance requirements in 1971. As a result of many of these advances, the consensus among many occupational health professionals concerning what constitutes a reasonable effective respirator program has changed. This point is demonstrated by the issuance of the American National Standards Institute (ANSI) Z-88.2-1980 standard, entitled "Practices for Respiratory Protection," a revision of the 1969 ANSI standard. In addition, improved respiratory protection programs are currently being addressed in a proposed revision of OSHA's respiratory protection standard (29 CFR 1910.134). It was suggested, therefore, that, in the presence of such programs, respirators would be capable of taking a more significant role in air contaminant protection than they have had before.

The third consideration was cost-effectiveness. There may be instances where the costs of engineering controls would exceed the expected costs of respiratory protection, and where the routine use of respirators may provide adequate employee protection. Should such instances exist, reasonable allowances for the use of respiratory protection should be made.

For the foregoing reasons, it was felt to be timely and appropriate to reexamine OSHA's policy on methods of compliance.

Over 135 ANPR comments were received, with a wide range of responses from industry, labor, health organizations, and others. In addition,

rulemaking records from other standards which OSHA has promulgated have been re-examined and relevant exhibits have been placed in this record. Labor unions opposed any change in the role of respirators in current programs. In addition, NIOSH, and Los Alamos and Lawrence Livermore research laboratories, highly respected for their expertise and experience in exposure control technology, also opposed changing the existing policy.

The preponderance of data in this and other rulemaking records (ethylene oxide, cotton dust, DBCP, acrylonitrile, arsenic, lead, asbestos, cancer policy) support the industrial hygiene principle that engineering controls, where feasible, are more effective in controlling exposure than other means.

Commenters representing unions, (2-53, 2-102, 2-122, 2-98), universities (2-120), research organizations (2-128, 2-138, 2-131, 2-81), and health associations (2-89), contended that the requirement to implement feasible engineering controls should be maintained. Industry representatives that acknowledged the superiority of feasible engineering controls include AT&T (2-59), DOW (2-71), Monsanto (2-88), and ALCOA (2-103).

These commenters agreed that engineering controls provide reliable and consistent levels of protection to a large number of workers and are not dependent on individual human performance. Data submitted to the record support this assertion. Performance of engineering controls can be monitored continually, inexpensively, and can be predicted at the design stage. As stated by DOW, "The primacy of engineering controls for controlling exposure is an accepted principle of occupational health" (2-71). AT&T commented that "Engineering controls should always be given primary consideration" (2-59). Los Alamos' Industrial Hygiene Group has stated,

That * * * there are no analytical results to indicate that respirators offer equal or better protection than engineering controls and with very few exceptions * * * respirators simply cannot offer the same degree and reliability of protection to employees, as properly designed and operated engineering controls (2-131).

The University of North Carolina commented that:

All industrial hygiene practice indicates feasible engineering controls should take precedence * * * (Ex. 2-120).

ALCOA, addressing the reliability of engineering controls and respirators, provided the following:

Engineering controls generally provide better and more reliable methods of protecting employee health * * * Improperly wearing respirators can be a continual problem. While we believe this occurs less than 5% of the time in many of our plants, we expect it occurs more frequently in some plants—possibly in the order of 30% or more of the time. (Ex. 2-103).

Many industry commenters, however, called for increased flexibility in OSHA's compliance policy; still others for abandonment of the preference for engineering controls. For example, the Chemical Manufacturers Association stated [Ex. 2-72], in response to the question of whether OSHA should require the use of feasible engineering controls "in preference" to the use of respirators, as follows:

As long as the employer meets a permissible exposure limit (PEL), controls the skin contact, or meets the appropriate biological levels that are consistent with employee health and safety, OSHA should not require any specific control strategy [sic]. Means for achieving such standards will often involve engineering controls and the use of respirators as well as administrative and work practice controls. Methods of reducing exposure to the desired level will be different in each workplace and the combination of engineering, administrative, and work practice controls and use of respirators should be left to the employer.

Representing a broad cross section of industry, the National Association of Manufacturers [Ex. 2-91] similarly stated, arguing that OSHA's current methods policy was actually counterproductive to worker safety and health, as follows:

The threshold question is whether current OSHA standards requiring employers to implement feasible engineering controls to maintain air contaminants in the workplace to within prescribed permissible exposure limits and permitting engineering controls are not feasible, not yet installed, or are inadequate is conducive to the "most effective" protection of workplace health. It is the NAM's belief that almost exclusive reliance on engineering controls while not accounting for situational variations is neither the most effective approach nor in the best interest of overall worker protection.

Few professionals in industry would argue that engineering controls are not the "ideal" means for the elimination or mitigation of workplace hazards. However, ideal solutions rarely work as well as expected in practice and practical concerns must also be considered. These practical concerns include all hazards rather than a single hazard and must be viewed in relation to and interacting with a total workplace safety and health program. Under this total program, the ideal solution for the control of one hazard may likely limit an employer's ability to address the remaining segments of the program. Thus, preference for one form of control over another, unmindful of the variables involved,

we believe, is counterproductive to the effectiveness of a balanced and truly effective overall safety and health program. For this reason, the feasibility of an engineering control should not be the sole determinant of its use and OSHA policy should not reflect this short-sighted goal.

Specific companies reflected similar concerns. Thus, the DOW Chemical Company [Ex. 2-71] noted:

The prime concern in any reconsideration of the methods-of-compliance provisions must be maintenance of safety and health protection for employees to prevent work-related injuries, illness and death. Such protection cannot be achieved by mandating a hierarchy of control techniques. Dow recommends that OSHA delete or modify any mandatory preference to allow employers greater flexibility to use their professional judgment to determine the balance of engineering controls, work practices, operator training and personal protective equipment that is most effective for them in achieving the appropriate level of protection.

Another major chemical company, Du Pont, emphasized the effectiveness of respirators together with the need for greater flexibility:

Much has changed since the current methods of compliance policy was adopted. Data obtained from research on the performance of respirators in the workplace, much of it performed by DuPont, lend strong support to the conclusion that respirators provide reliable employee protection when used in a good respirator program.

Recent research on workplace protection factors demonstrates that respirators provide effective control for exposure to airborne chemicals when they are used correctly in a good respirator program. In many cases they provide the most cost effective means of control. Accordingly, DuPont believes that respirators, like engineering and administrative controls, have a proper role to play in the protection of employee's. Therefore, DuPont recommends that each employee's personal work environment be maintained at a safe exposure level through implementation of cost-effective engineering controls augmented as necessary by personal protective equipment and/or work practice controls. The choice of methods should depend on the factors in each specific situation.

The choice of the proper method(s) of compliance involves, therefore, far more than the simple dichotomy of engineering controls versus respirators. For this reason, the question "Which are better, engineering controls or respirators?" cannot be satisfactorily answered in the abstract. As the information and comments offered by Du Pont in the enclosure will indicate, the choice of the proper method(s) of compliance is best made on an individualized basis by industrial hygiene professionals. So long as the two criteria identified above have been met, an employer should not be needlessly constrained from choosing the control strategy that makes sense for his particular operation.

Atlantic Richfield Company [Ex. 2-80], in endorsing comments submitted by the American Petroleum Institute [Ex. 2-73], noted:

Employers should have the option to select a protective control strategy rather than being mandated to adhere to the current rigid hierarchy of exposure controls. The ultimate goal of any control strategy must be the adequate protection of workers exposed to contaminants. Varying control strategies will achieve that goal at least equally well, and often more cost-effectively, as the fixed controls provided by current policy.

In support of this recommendation we want to emphasize that the statutory language of the OSH Act does not mandate the primacy of engineering controls. Support for this conclusion is fully developed in API's comments.

OSHA should recognize the significant advances in both technology and applicability of respirators in the last decade. New methods and procedures for fit-testing and respirator fit reliability have been developed.

Other commenters expressed similar concerns. (See Cast Metals Federation [Ex. 2-49], Horston Lighting & Power [Ex. 2-21], the American Gas Association [Ex. 2-77], SCM Corporation [Ex. 2-21], and National Agricultural Chemicals Association [Ex. 2-77]. National Paint and Coatings Association, Inc. [Ex. 2-78]. Motor Vehicles Manufacturers Association [Ex. 2-95], and The Health Industries Manufacturers Association [Ex. 2-110].

This rulemaking does not address the assessment and reduction of any absolute existing risks but rather addresses the possible change in risk abatement associated with the use of respirators instead of engineering controls. The nature of the risks involved concerns differences in degree of protection between respirators and engineering controls as applied in various types of work situations involving different air contaminants.

The Proposal

OSHA proposes to modify its existing requirements in 29 CFR 1910.1000(e) and 134(a)(1) that specify primary reliance on feasible engineering and work practice controls, by further clarifying the circumstances, based on experience with OSHA's 6(b) standards and data and information submitted for the record, under which more extensive use of respirators may be appropriate.

The record does identify specific situations where engineering controls generally may not be feasible, and where respirators may have to be used (Exs. 2-51, 2-72, 2-131). OSHA, therefore, is proposing to specify five sets of circumstances where there will be no need for employers to show that engineering and work practice controls

are not feasible before an employer can rely on respirators to reduce employee exposure to required levels.

In large part, these circumstances reflect the current application of the two standards involved and circumstances recognized in substance-specific standards. By setting out explicit situations OSHA hopes to make future application of the methods of compliance policy more uniform and understandable.

It is noted that provisions adopted under this standard will not change the compliance provisions found in OSHA's existing substance specific standards with the possible exceptions of the STEL provisions in the ethylene oxide (29 CFR 1910.1047), benzene (29 CFR 1910.1028) and formaldehyde (29 CFR 1910.1048) standards. The preamble to those standards indicated that if evidence were to be submitted during this rulemaking, appropriate to ethylene oxide, benzene or formaldehyde on the STEL compliance issue OSHA would consider making appropriate changes to each rule. If information developed in the course of this rulemaking demonstrates that changes should be made in any of the existing substance specific standards, OSHA will amend these standards to permit employers to elect to use either respirators or engineering controls to achieve compliance with those existing short term limits.

The circumstances listed define concrete situations where OSHA has or would have treated the primary reliance on engineering controls as infeasible in most cases. Within these circumstances employers will be able to use any combination of engineering or work practice controls and respiratory protection to effectively reduce employee exposures to required levels.

OSHA also notes that as under the current standards, OSHA's enforcement of the hierarchy of controls provision is on a case by-case basis. Other situations where engineering controls may be infeasible can be more easily identified because of the explicit examples provided in the proposed provisions.

OSHA has recognized other circumstances where respirators are essential to guarantee employee health in some substance-specific standards. Thus, OSHA has provided that in work operations such shutdown and repair activities respirators may be used as a primary control strategy. (See 29 CFR 1910.1048(a)(1)(ii), Formaldehyde; 1910.1047(g)(1)(ii), Ethylene oxide (EtO); 1910.1043(f)(1)(ii), Cotton dust; 1910.1029(g)(1)(b), Coke Oven emissions;

1910.1018(h)(1)(ii), Inorganic arsenic; 1910.1001(g)(ii), Asbestos, tremolite, anthophyllite, and actinolite).

OSHA has not proposed an explicit exclusion for maintenance activities for the generic standards. As OSHA observed in the preamble to the carcinogen policy, based on its review of that voluminous record, although these activities are "intermittent, often unpredictable and often undertaken when engineering controls break down . . . some maintenance activities are feasibly controlled by engineering and work practice controls" 45 FR 5226. Moreover, the Agency believes that routine activities that are performed on a repeated or scheduled basis can be controlled through implementation of feasible engineering and work practice controls. Compliance plans can be developed and engineering controls implemented for predictable activities, including routine maintenance. However, OSHA raises for comment the question of whether it is necessary to require that all feasible engineering controls such as ventilation systems be installed solely for maintenance activities. Specifically, OSHA would like to receive examples of instances which would demonstrate that an engineering control requirement exclusively for maintenance exposures would or would not be appropriate. (For activities such as shutdown and repair, which are necessary due to unexpected or unpredicted occurrences, respirators would be permitted as they would be the only available source of protection against exposure.)

The Agency does agree, however, that there may be some activities that are considered to be maintenance that may have to be performed with respirators due to the absence of other controls. Nevertheless, as discussed above, the Agency believes many maintenance activities lend themselves to control by engineering means. OSHA does not have sufficient information to list specific maintenance jobs commonly performed in general industry that may require widespread use of respirators. Therefore, the Agency is interested in receiving comment on the practicality of listing specific maintenance jobs for which engineering controls are generally infeasible or maintenance activities where respirator use is otherwise appropriate based on consideration of duration, frequency and whether routine or not.

Thus, data are solicited regarding circumstances, conditions, frequency, and duration of the types of industry-wide maintenance activities that typically require the use of respirators

due to the general infeasibility of engineering control implementation or for which respirators would, in any case, provide sufficient protection.

The five sets of circumstances that have been identified by OSHA from data in the record where engineering controls may generally be infeasible include:

1. During the time necessary to install feasible engineering controls;
2. Where feasible engineering controls result in only a negligible reduction in exposure;
3. During emergencies, life saving, recovery operations, repair, shutdowns, and field situations where there is a lack of utilities for implementing engineering controls;
4. Operations requiring added protection where there is a failure of normal controls; and
5. Entries into unknown atmospheres.

A provision-by-provision discussion of the proposed revisions follows:

1. OSHA is proposing to allow primary reliance on respiratory protection during the time necessary to install or implement feasible engineering controls. This circumstance was specifically identified in submissions to the ANPR (Exs. 2-91, 2-50), and in all substance specific standards (see e.g. 29 CFR 1910.104(g)(1)(i), EtO; 1910.1045(h)(1)(i), cotton dust).

2. OSHA is proposing to allow primary reliance on respiratory protection where engineering control implementation would result in only a negligible reduction in exposures. OSHA requests comment on whether setting forth this additional explicit regulatory language is necessary in light of existing provisions requiring that only feasible engineering means be implemented to reduce exposures. Current OSHA enforcement policy and practice recognize that the degree of expected exposure reduction is part of the determination of feasibility. Therefore, OSHA feels that it may be unnecessary to supplement the current compliance requirements with specific language as suggested above. Further, to define in regulatory terms on a broad basis what a "negligible" reduction in exposure level is in general industry as a result of engineering control implementation, as opposed to defining it on a case-by-case enforcement basis, may prove to be confusing to employers and impractical to OSHA. Nevertheless, since the potential success of exposure reduction is considered in determining feasibility, proposing specific language to that effect would not change current OSHA policy and therefore, may be

appropriate for clarification purposes. Comment is requested on this issue.

OSHA points out that this exception does not cover the required supplemental use of respirators when feasible engineering controls do not "achieve full compliance" pursuant to 29 CFR 1910.1000(e). Rather, it refers to situations where engineering controls would achieve exposure reductions only to a negligible degree.

Comments in response to the ANPR identified some operations which may be covered by this proposed provision. However, further case-by-case analysis still will be required (Exs. 2-131, 2-118, 2-132). Thus, for example, the American Foundrymen's Society (AFS) asserts that "technical limitations prevent the control of dust exposures to within permissible exposure limits by engineering means at most chipping and grinding operations." (Ex. 2-44). Spray painting booths were also cited as virtually impossible to engineer to achieve substantial exposure reduction (Ex. 2-36). OSHA notes however, that engineering controls may be feasible to implement, and the issue may be the degree to which they are effective. The proposed provision would allow reliance on respirators when feasible engineering controls only achieve negligible exposure reduction. If in the case of foundries, the installation of local exhaust hoods and increased housekeeping make little difference in the employee's exposure because of unalterable difficulties in hood placement, then the provision may apply. If however, engineering controls can reduce exposures, although not down to the PEL's, the unrevised supplemental respirator use provision of § 1910.1000(e) would, as now, come into play and require a combined control strategy, and not total reliance on respirator protection.

OSHA also notes that confining discussion about the effectiveness of feasible engineering controls to "conventional" controls may dictate unwarranted conclusion of infeasibility, loss of productivity or ineffectiveness. NIOSH has pointed out that, for example, in the plastics and resins industry, implementing controls for cotton dust, and in silica flour milling, engineering control modifications and innovation increased production and control effectiveness over "conventional" technology. (Ex. 2-81). Innovative controls which are available will have to be assessed before this exception may be relied on.

3. The third provision proposed by OSHA to permit reliance on respiratory equipment encompasses several

circumstances where total reliance on engineering controls would be ineffective or inappropriate. These are emergencies, recovery operations, unscheduled repairs shutdown, and in field situations where there is a lack of utilities for implementing engineering controls.

OSHA believes that in these circumstances, respiratory protection has proven itself generally as the most and often the only practical means to minimize employee exposure. Respirators may be the only means of protection in situations where engineering controls cannot be implemented due to the remoteness of the locale, other configuration of the site, or the characteristic of the work operation. Further, some of the defects of respirators, i.e., lack of employee acceptance and degradation of fit over time are greatly reduced by the short time they may be worn during emergencies, recovery operations, unscheduled repairs and shutdown. Most submissions supported respirator use in circumstances similar to exception three. For example, Monsanto noted that during emergencies (liquid spills, fire fighting, etc.) respirators are used in operations where routine protection is achieved by engineering controls (Ex. 2-88). API noted that respirators are the only means to provide emergency protection in the event of an equipment failure (Ex. 2-93).

Most substance specific standards permit primary respirator use in these situations (See e.g. §§ 1910.1018(h)(1)(ii), arsenic; § 1910.1029(g)(1)(d), coke oven emissions); and § 1910.1044(h)(1)(iv), DBCP).

4. OSHA is also proposing to allow reliance on the use of respirators in operations involving materials which are primarily controlled by engineering devices to protect employees in the case of control breakdown. OSHA's intent is to allow respiratory protection to be used as a redundant control system where redundancy is considered necessary either because of the toxicity of the substance or the possibility of engineering breakdown. For example, Conoco, Inc. stated that "standby or back-up respiratory protection is normally maintained in all locations where hydrogen sulfide (H₂S) gas is produced in case of accidents" (Ex. 2-60).

5. The fifth circumstance proposed to allow reliance on respiratory protection is for entries into unknown atmospheres. Preliminarily, OSHA intends to cover confined spaces or vessel entry and tank cleaning and vessel cleaning. Most commenters who addressed this issue agreed that respiratory protection was

essential for these activities, and that engineering controls were, in the main, infeasible (Ex. 2-112).

OSHA believes that employees will be effectively protected in the situations envisioned in provisions 4 and 5, by the proper selection and use of respiratory protection.

The Agency requests comments on all aspects of these proposed provisions. In particular, the clarity of the "exception provisions" is of concern to the Agency, because one reason for these provisions is to provide certainty and uniformity of application to employers and OSHA enforcement personnel.

In addition to requesting comment on the appropriateness of allowing the use of respirators during the activities discussed above, OSHA requests data, views, and comment on other situations, as discussed below, where it may be acceptable to use respirators in lieu of engineering controls, and which should be allowed for, as part of this rulemaking, in a final methods of compliance rule.

Specifically, comment is sought on the appropriateness of permitting the use of respirators for work situations in which the hazardous exposure is of very brief duration. OSHA permits the use of respirators in specific activities in a number of its existing section 6(b) standards based, in part, on the short duration of the activity. For example, respirator use is permitted under the ethylene oxide standard (29 CFR 1910.1047) during the collection of quality assurance samples, removal of biological indicators, and changing of ethylene oxide tanks or cylinders. These activities are typically brief in nature. The concept of according acceptability of respirators for intermittent use is also found in the benzene (52 FR 34460) and lead (29 CFR 1910.1025) standards which, in general, permit their use where the regulated substance is used in the workplace less than a total of 30 days per year. These exceptions to implementation of engineering controls were adopted in each specific standard based on data that demonstrated the acceptability of the use of respirators for those particular circumstances in those particular substance using industries. Thus, it is not presently clear to OSHA whether such exclusions can be appropriately applied generally. Another regulatory agency, the Mine Safety and Health Administration (MSHA), is also exploring the issue of ways to permit more flexibility in required exposure control methods for unusual situations. For example, MSHA is considering permitting the use of respirators in "tasks such as maintenance or investigative activities [which] require

occasional entry into hazardous atmospheres." Comments submitted to the Methods of Compliance record also argued for incorporation of flexibility in respirator use under certain conditions. One commenter stated that respirator use should be permitted in lieu of feasible engineering controls for a certain percentage of time per individual, per work station (Ex. 2-43). This suggests, perhaps, that employers should be allowed to establish a "respirator budget" to allocate a certain number of days per year or hours per day for employees to wear respirators in lieu of feasible engineering controls. Comment and data is sought that demonstrate that "budgeted" respirator use will result in reliable and predictable control equivalent to that afforded by engineering controls. Others supported allowing employers to rely on respirators to control exposures for short term tasks (Ex. 2-61), and for high exposure variability, infrequent and small exposed population job tasks (Exs. 2-88, 2-93). None of these comments, however, provided substantial data to the record demonstrating that employee protection would not be compromised by permitting the use of respirators in these instances in lieu of feasible engineering controls. Receipt of such data is requested by OSHA.

As indicated above, however, OSHA is not convinced based on available data that it is appropriate for the Agency to adopt broadly applicable generic exposure control provisions incorporating intermittency or short duration of operation as a basis for permitting the use of respirators in lieu of engineering controls, as found in the specific standards discussed above. Therefore, comment and data are solicited that demonstrate or refute the appropriateness of adopting this approach into a final rule on OSHA's methods of compliance requirements, based on the frequency and duration of the activity, that could be applied to general industry. Comment is also specifically requested on whether actual final regulatory language which would reflect this approach should incorporate specific time limitations as to the duration and frequency of use per work shift and what these specific time limitations should be, or should, rather, such language be phrased in general, flexible terms such as "brief duration," "short duration," or "brief intermittent use" without specific time limitations. If a time limitation is suggested, the Agency requests data and information as to the appropriate time period and why adequate protection would be

provided by respirators during that period.

Related to the issue of the appropriateness of permitting short duration use of respirators, as discussed above, is the issue of specifically permitting respirators to be used to achieve compliance with short-term exposure limits (STELs). The preambles to the recently promulgated benzene (52 FR 34460) and formaldehyde (52 FR 46168) standards, for which STELs were adopted, and the preamble to the ethylene oxide standard (53 FR 11414), for which an excursion limit was adopted, indicated that OSHA would consider in its Methods of Compliance rulemaking whether different principles should apply as to means of compliance for the STEL or excursion limit, such as using respirators to meet the short-term limit, but not the TWA. Neither the ethylene oxide, benzene nor the formaldehyde standard adopted a provision allowing respirators to be used to achieve compliance with the short-term limit in lieu of feasible engineering controls because data in their specific respective records did not justify such an allowance. It is noted in each standard's preamble that if evidence is submitted in the Methods of Compliance rulemaking, appropriate to ethylene oxide, benzene or formaldehyde on the short-term limit compliance issue OSHA will consider making appropriate changes to each rule. OSHA therefore requests, additional data beyond those received during the specific 6(b) rulemakings, addressing the question of whether the compliance requirements in these standards should be modified with respect to control of short-term exposures. Data and views are solicited on circumstances under which it would or would not be appropriate to permit employers to elect to use either engineering controls or respirators as the primary means of limiting exposure to within the benzene STEL, the formaldehyde STEL, or the ethylene oxide excursion limit.

Based on information received during this rulemaking, that is pertinent to these substances with respect to compliance requirements for control of short-term exposures, OSHA will either amend these standards to permit employers broader discretionary use of respirators regarding STEL compliance in this rulemaking, or will reaffirm the conclusions reached during the previous rulemakings for each of the three substances.

OSHA presently does not have sufficient data to justify proposing to include regulatory language allowing

STEL compliance for all substances to be achieved solely through the use of respirators. Since OSHA has received no documentation that convinces the Agency that respirators can be used as a consistently effective means of routinely meeting STEL's on a widespread basis, the Agency is raising this issue for comment.

The Agency is raising this issue for comment in conformance with statements to that effect in the ethylene oxide, benzene and formaldehyde standards. OSHA therefore requests substantive technical data concerning conditions and situations under which respirators can be employed successfully in lieu of other controls to achieve STEL or excursion limit compliance, and concerning how and why the use of respirators for protection against short-term exposures can be differentiated from protection against TWA exposures with respect to effectiveness.

Comment on another area where broader use of respirators may be acceptable is also being requested by OSHA. As discussed earlier, the question arises whether there are circumstances in the workplace where the protection afforded by respirators would be equal to the protection provided through implementation of engineering controls. In particular, the question arises whether there are circumstances where the costs of the respirator program would be less than those of engineering controls and yet equal protection would be afforded by either. Are there circumstances in which cost effectiveness factors are a legitimate consideration in determining the acceptability of one exposure control method over another. Also, what workplace factors would have to be considered to evaluate the effectiveness of a control method before costs could be taken into account? A number of factors that may be appropriate to consider in determining whether engineering controls or respirators will provide adequate protection in a particular situation were raised for comment in the ANPR. OSHA seeks further comment on how factors such as described below should be taken into account by OSHA or the employer in determining the acceptability of using either engineering controls or respirators. Workplace factors which may affect the performance and degree of protection provided by exposure control means may include: number of exposed employees and number of employees with respirator fitting problems; severity of acute and chronic health effects; length and frequency of

exposure; ability to measure and ensure the adequacy of exposure control; work rate; temperature and humidity of the workplace; ability to assess the probability of protection failure; detectability of control failure before harm; and the extent to which employees may be expected to wear respirators for any required period. Comment received on these factors as set forth in the ANPR revealed that an important role is played by each in determining the suitability of compliance methodology. Engineering controls were suggested as being particularly preferred where health effects are more severe, where there are more lengthy and frequent periods of exposure; where respirator failure warning properties do not exist; where the work rate exertion level is greater, where significant respirator fit problems exist, and where extreme temperature and humidity conditions exist. OSHA again raises for comment the question as to how or if these workplace factors should be viewed in deciding whether engineering controls or respirators are most appropriate and, further, how these factors could be reflected in a final rule to define those circumstances where respirator use would provide appropriate protection and would, thus, be permitted under the rule. How would it be determined that employees would be provided with the desired degree of protection? It is noted here that OSHA is in the process of revising its standard on respiratory protection (29 CFR 1910.134) and that consideration should be given as to whether an increased degree of protection may result where respirators are used in conformance with the new respirator program provisions.

It is not clear to OSHA at this time, however, how it can be determined that respirator use is equally protective as engineering controls, costs notwithstanding. Nevertheless, OSHA seeks comment that would show the appropriateness of allowing cost effectiveness to be incorporated as a control method selection factor.

In the preceeding discussion, OSHA has maintained its support for a continuance of its existing compliance method hierarchy, but has also suggested that, under certain specific sets of circumstances, it may be appropriate to allow respirator use in lieu of feasible engineering controls, thus providing flexibility in determining the appropriate method of compliance. For example, OSHA seeks comment on a requirement to permit respirator use in lieu of feasible engineering controls in certain instances where the employer has submitted a comprehensive written

respirator compliance program to the Agency. This compliance plan would be subject to OSHA approval and would be required to demonstrate to the Agency that the use of respirators under the circumstances described would provide protection to the employee equivalent to that afforded if feasible engineering controls were implemented. OSHA believes, however, that this flexibility may not be appropriate where the substance involved is a carcinogen, has no identified dose-response threshold, continues to pose a significant risk at the PEL, has no respirator breakthrough warning properties, or if there are no means of determining the specific in-use effectiveness of the respirator. On the other hand, if the effectiveness of respirators can be monitored readily in some manner, such as by biological monitoring, it may be appropriate to permit their limited use. The Agency solicits comment on the issue of OSHA approved respirator use. Views are sought on criteria which should be considered and met for respirator compliance program approval and on circumstances, as suggested above, under which respirator use should not be permitted in lieu of feasible engineering controls.

An alternative which would provide even more flexibility with regard to respirator use is to allow employers under any circumstances to comply with exposure limits by any method the employer deems advisable. Some commenters have suggested that establishment and enforcement of a good respirator program will result in effective exposure control where respirators are used in place of engineering controls, and that employers should be allowed to implement such respirator programs under the standard in circumstances deemed appropriate by the employer (Exs. 2-61, 2-88, 2-93, 2-94, 2-109). For example, the Ethyl Corporations states that "The government should not regulate the need for engineering controls but should regulate the use of personal protective equipment, requiring the employer to show that protection is being provided" (Ex. 2-109). The American Petroleum Institute asserts that "The burden should rest on the employer to demonstrate that its employees are protected by whatever [control] strategy is chosen" (Ex. 2-93). Finally, 3M states that "A well written performance standard should satisfy the requirement that OSHA ensure that exposures are within permissible exposure limits while allowing the employer to be concerned with the 'how' of meeting a specific standard" (Ex. 2-88). OSHA is not

convinced that, as suggested by these commentors, implementation of even a strong respirator programs will result in equivalency of protection afforded by respirators as compared to engineering controls. The inherent limitations of respirators preclude their providing equivalent protection to engineering controls for use as the primary means of exposure control in most all circumstances where implementation of engineering controls are feasible. A control method which limits contaminant entrance into the workplace (e.g. engineering controls) has been clearly shown to be a more effective application of industrial hygiene principles than one that does not. Nevertheless, OSHA seeks comment on whether continuance of the control hierarchy is still necessary in any form, and whether adoption of a purely performance oriented compliance provision into a final methods of compliance rule is a viable option. Comments in support of discontinuance of the control hierarchy should describe the specific circumstances under which such a change would be appropriate, and how it would result in continued equivalent employee protection. Data and information are also sought that can demonstrate that adoption of a performance oriented compliance requirement will maintain the protection afforded employees under current methods of compliance provisions. If the employer is permitted to choose any mix of control methods to achieve compliance, should choice of the method be at the discretion of the employer or should the method chosen be required to be approved by a professional in the field of safety and health or other technically qualified person? Commenters supporting continuance of OSHA's current policy should provide pertinent data that demonstrate the necessity of maintaining primary reliance on feasible engineering and work practice means of exposure control.

Based on the preceeding discussion, OSHA proposes to add a new paragraph 1910.1000(f) that explicitly sets forth circumstances in the workplace where employers may choose to use respirators in lieu of engineering means as a permissible method of controlling employee exposures to toxic substances listed in the Z-tables of section 1910.1000. OSHA also proposes to modify section 1910.134(a)(1) by incorporating a statement of reference that indicates that respirators may be used in lieu of control in the circumstances listed under proposed paragraph 1910.1000(f).

Regulatory Impact

OSHA has not performed a preliminary Regulatory Impact Analysis, Regulatory Flexibility Analysis, or paperwork clearance package for this action since adoption of the proposed requirements would add no new regulatory burdens on employers with respect to either costs or information collection.

II. Pertinent Legal Authority

Authority for this action is found primarily in sections 6(b), 8(c), and 8(g)(2) of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 655(b), 657(c), and 657(g)(2).

III. Public Participation

Interested persons are invited to submit written data, views, and arguments on this proposed amendment. These comments must be postmarked on or before October 3, 1989, and submitted in quadruplicate to the Docket Officer, Docket No. H-160, U.S. Department of Labor, Occupational Safety and Health Administration, 200 Constitution Avenue, NW., Room N-3670, Washington, DC 20210, (202)523-7894. Written submissions must clearly identify the provisions of the proposal which are addressed, and the position taken on each issue.

The data, views, and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions will be part of the record of the proceeding.

Requests for Hearing

Under section 6(b)(3) of the OSH Act and 29 CFR 1911.11, interested persons who desire that OSHA hold an oral hearing on the proposal may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in quadruplicate and must comply with the following conditions:

1. The objection must include the name and address of the objector;
2. The objections must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefor;
3. Each objection must be separately stated and numbered; and
4. The objections must be accompanied by a detailed summary of the evidence proposed to be introduced at the requested hearing.

Interested persons who have objections to various provisions or have changes to recommend may, of course, make those objections or

recommendations in their comments and OSHA will fully consider them. There is only need to file formal "objections" if the interested persons desire to request an oral hearing.

Requests for a hearing should be submitted in quadruplicate, postmarked on or before October 3, 1989, addressed to Mr. Tom Hall, OSHA Division of Consumer Affairs, Docket No. H-160, Room N-3637, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 523-8615.

IV. References

A complete set of the references in Docket H-160 upon which this proposed action is based is available for examination and copying at the OSHA Docket Office, Room N-2625, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, between 8:30 am. and 4:30 pm., Monday through Friday, legal holidays excepted.

V. Authority

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Pursuant to sections 4, 6(b), 8(c) and 8(g)(2) of the Occupational Safety and Health Act (29 U.S.C. 653, 655, 657), 29 CFR Part 1911 and Secretary of Labor's Order No. 9-83 (48 FR 35736), 29 CFR Part 1910 is proposed to be amended as set forth below.

List of Subjects in 29 CFR Part 1910

Chemicals, Diving, Electric power, Electronic products, Fire prevention, Cases, Hazardous materials, Health records, Noise control, Occupational safety and health, Radiation protection, Reporting and recordkeeping requirements, Signs and symbols.

Signed at Washington, DC, this 25th day of May.

Alan C. McMillan,
Acting Assistant Secretary of Labor.

PART 1910—[AMENDED]

Part 1910 of Title 29 of the Code of Federal Regulations is proposed to be amended as follows:

Subpart I—[Amended]

1. The authority citation for Subpart I of Part 1910 is revised as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970 (29 U.S.C. 653, 655, 657); Secretary of Labor's Order No. 12-71 (36 FR 8754), 8-76 (41 FR 25059) or 9-83 (48 FR 35736), as applicable. Section 1910.134 also issued under 29 CFR Part 1911.

2. The last sentence of paragraph (a)(1) of § 1910.134 is proposed to be revised to read as follows:

§ 1910.134 Respiratory protection.

(a) Permissible practice

(1) * * *

When effective engineering controls are not feasible, while they are being instituted, or in circumstances meeting the requirements of 29 CFR 1910.1000(f), appropriate respirators may be used pursuant to the following requirements.

Subpart Z—[Amended]

3. The authority citation for Subpart Z of Part 1910 continues to read as follows:

Authority: Secs. 6, 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders 12-71 (36 FR 8754), 8-76 (41 FR 25059), or 9-83 (48 FR 35736) as applicable; and 29 CFR Part 1911.

All of Subpart Z issued under Sec 8(b) of the Occupational Safety and Health Act, 29 U.S.C. 655(b) except those substances listed in the Final Rule Limits columns of Table Z-1-A, which have identical limits listed in the Transitional Limits columns of Table Z-1-A, Table Z-2 or Table Z-3. The latter were issued under Sec. 6(a) (5 U.S.C. 655 (a)).

Section 1910.1000, the Transitional Limits columns of Table Z-1-A, Table Z-2 and Table Z-3 also issued under 5 U.S.C. 533. Section 1910.1000, Tables Z-1-A, Z-2 and Z-3 not issued under 29 CFR 1911 except for the arsenic, benzene, cotton dust, and formaldehyde listings.

Section 1910.1001 also issued under Sec. 107 of Contract Work Hours and Safety Standards Act, 40 U.S.C. 333.

Section 1910.1002 not issued under 29 U.S.C. 655 or 29 CFR Part 1911; also issued under 5 U.S.C. 553.

Sections 1910.1003 through 1910.1018 also issued under 29 U.S.C. 653.

Section 1910.1025 also issued under 29 U.S.C. 653 and 5 U.S.C. 553.

Section 1910.101028 also issued under 29 U.S.C. 653.

Section 1910.1043 also issued under 5 U.S.C. 551 et seq.

Sections 1910.1045 and 1910.1047 also issued under 29 U.S.C. 653.

Section 1910.1048 also issued under 29 U.S.C. 653.

Sections 1910.1200, 1910.1499 and 1910.1500 also issued under 5 U.S.C. 553.

4. Section 1910.1000 is proposed to be amended by revising paragraph (e) and adding a new paragraph (f) to read as follows:

§ 1910.1000 Air contaminants.

(e) * * *

(e) Except as provided by paragraph (f) of this section, to achieve compliance with paragraphs (a) through (d) of this section, administrative or engineering controls must first be determined and implemented whenever feasible. When such controls are not feasible to achieve

full compliance, protective equipment or any other protective measures shall be used to keep the exposure of employees to air contaminants within the limits prescribed in this section. Any equipment and/or technical measures used for this purpose must be approved for each particular use by a competent industrial hygienist or other technically qualified person. Whenever respirators are used, their use shall comply with § 1910.134.

(f) Respiratory protection may be used in lieu of administrative or engineering controls to achieve compliance with paragraphs (a) through (d) of this section under the following circumstances:

(1) During the time necessary to install feasible engineering controls;

(2) Where feasible engineering controls result in only a negligible reduction in exposure.

(3) During emergencies, life saving, recovery operations, repair, shutdowns, and field situations where there is a lack of utilities for implementing engineering controls.

(4) Operations requiring added protection where there is a failure of normal controls; and

(5) Entries into unknown atmospheres.

[FR Doc. 89-13157 Filed 6-2-89; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3596-1]

Approval and Promulgation of Implementation Plans; Harris County, TX; Disapproval of Alternative Reasonably Available Control Technology Determination

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This notice proposes disapproval of a State Implementation Plan (SIP) revision submitted by the State of Texas on January 12, 1987. This revision is to the Ozone Control Strategy For Harris County (Houston) to allow alternative reasonably available control technology (RACT) for metal surface coating processes at Richmond Tank Car Company's railroad tank car repair and coating facility (In Sheldon, Harris County, Texas.) This action proposes disapproval of the SIP revision for Richmond Tank Car Company under Section 110 of the Clean Air Act (CAA).

This revision would allow higher volatile organic compound (VOC) emission limits and long term (30 day) averaging of emissions from interior and exterior railroad tank car coating lines. EPA proposes to disapprove this revision for the following reasons: (1) The revision request does not contain adequate support that low solvent coating alternatives are not available. (2) The revision request does not contain adequate support that all potential add-on control options have been considered. (3) The revision request fails to provide fully enforceable emission limits and necessary recordkeeping requirements to demonstrate compliance with the revision. (4) The revision request fails to adequately demonstrate that Reasonable Further Progress (RFP) will be maintained. (5) The revision request does not contain adequate support that 30-day averaging of coating solvent content emissions is justifiable in light of the inadequate RFP demonstration.

DATES: Comments must be received on or before July 5, 1989.

ADDRESSES: Written comments should be sent to Thomas H. Diggs, Chief, SIP/New Source Section (6T-AN), U.S. Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas 75202. Copies of the SIP and EPA's evaluation report (Evaluation Report for Disapproval of Alternative Reasonably Available Control Technology Determination for Richmond Tank Car Company, August 1987) are available for public review during normal business hours at the following locations: Texas Air Control Board, 6330 Hwy 290 East, Austin, Texas 78723; and EPA, Region 6, Library, 12th Floor, 1445 Ross Avenue, Dallas, Texas 75202. Those wishing to view the documents at the EPA offices are requested to call the contact named below at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Jim Callan, Air Programs Branch, U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone (214) 655-7214 or FTS 255-7214.

SUPPLEMENTARY INFORMATION:

Background

Harris County, Texas was designated as an ozone nonattainment area in 1978. Under the requirements of the 1977 Clean Air Act Amendments for such nonattainment areas, the State of Texas submitted a SIP revision in April of 1979 demonstrating that Harris County would not meet the December 31, 1982, deadline for attainment of the National Ambient Air Quality Standards (NAAQS) for ozone despite

implementing all reasonably available control measures. These measures for stationary sources are outlined in EPA's Control Technique Guideline (CTG) series as to how they apply to particular source categories. Surface coating processes at Richmond Tank Car Company are a Set II CTG VOC source. TACB adopted RACT regulations for Set II CTG source categories as revisions to Regulation V, Control of Air Pollution from VOC's. The rule applicable to Richmond Tank Car is Regulation V, Rule 115.191(9), Miscellaneous Metal Parts and Products, and this Rule has a final compliance date of December 31, 1982. These regulations were approved by the EPA on July 10, 1981 (45 FR 35642), and September 29, 1981 (46 FR 47544).

Since the 1979 Ozone SIP acknowledged that Harris County could not attain the ozone standard by the end of 1982, Texas was required to adopt further controls for Harris County in preparation of an Extension SIP (extension of the attainment date for areas with severe ozone problems), demonstrating attainment by December 31, 1987. The State developed this 1982 Ozone SIP for Harris County. Following the state's submittal of final revisions, the Harris County 1982 ozone plan was approved by the EPA on June 26, 1985 (50 FR 26359).

Harris County has continued to show monitored violations of the ozone standard during 1984-1986 as well as during 1985-1987 (see Appendix A of the November 24, 1987, proposed Post-1987 Ozone and CO Policy (52 FR 45100)). Therefore, the State was notified on May 26, 1988, that the ozone SIP for Harris County was substantially inadequate to achieve the NAAQS (this notification is termed a SIP-Call).

During a March 15, 1983, inspection of Richmond Tank Car's Sheldon facility, TACB witnessed violations of TACB Regulation V, Rules 115.191 (Surface Coating Processes, Emission Limits). A Notice of Violation (NOV) (including permit reporting and recordkeeping requirements) was issued by TACB on February 13, 1985, to Richmond Tank Car for violating TACB rule 115.191(9). Pursuant to section 113(a)(1) of the Clean Air Act, EPA Region VI issued a similar NOV Letter to Richmond Tank Car on September 9, 1985, citing daily violations of the coating solvent content rule.

TACB's surface coating rule includes an exemption provision which allows alternative emission limitation requirements for any facility demonstrating to TACB that those alternative requirements will result in the lowest emission rate that is

technologically and economically reasonable. All exemptions pursuant to this exemption provision, Rule 115.193(c)(6), are submitted to EPA as SIP revisions to be reviewed and evaluated by EPA. Richmond Tank Car requested an exemption under TACB rules 115.193(c)(6) in an August 27, 1985, letter to TACB. EPA explained to Richmond Tank Car in an October 2, 1985, meeting that no exemption from current emission limits is allowed until the State and EPA approve a SIP revision.

TACB submitted to EPA a draft Board Order adopting an exemption for Richmond Tank Car on February 7, 1986. In EPA's comments of March 11, 1986, deficiencies in the draft exemption were cited. These included the failure of the revision to adequately demonstrate that it provided the lowest emission rate that was economically and technologically feasible, and to demonstrate maintenance of RFP in Harris County. TACB submitted to EPA in a letter dated June 11, 1986, a Notice of Public Hearing slated for July 17, 1986, and copies of TACB Board Order No. 86.05 which addresses the issue in question. EPA Region 6 identified deficiencies regarding the draft public hearing proposal in a letter to the TACB on June 20, 1986. These comments were reiterated in a July 23, 1986, letter to TACB Hearing Examiner for inclusion in the Public Hearing record. The TACB revised the SIP revision request and approved it on October 24, 1986. Notice of the TACB's approval was sent to Richmond Tank Car in a December 18, 1986, letter. The SIP revision proposal was formally submitted by the State to EPA's Administrator on January 12, 1987. Details of this proposed revision are discussed in the following Section.

During the pendency of the exemption before EPA, Richmond initiated a Chapter 11 bankruptcy proceeding. This action could render the exemption request moot; however, EPA is aware of interest in continuing to operate the Richmond facility. Consequently, EPA continues to act upon the exemption request.

Operations

Richmond Tank Car (Richmond) operates a rail car manufacture, repair, and coating facility in Sheldon, Texas which is in the ozone nonattainment county of Harris. During the early 1980's, the facility manufactured and repaired railroad tank and hopper cars. The manufacture of railcars at Richmond decreased from a production rate of approximately 4800 new cars in 1980 to 150 in 1984, and all manufacturing

operations were suspended in 1988. Notwithstanding the Chapter 11 bankruptcy proceeding, the repair and maintenance operations are expected to continue to function under new management. The facility has the capability of manufacturing and coating/painting new tank cars and hopper cars, and repairing and recoating used tank cars and hopper cars.

Coating of new and used rail cars is conducted within the confines of one building at the Richmond facility. Two railroad tracks run parallel through the length of the building to facilitate the transfer of the cars through each of the five process steps. Step one involves cleaning and preparation of the metal surfaces by slag blasting, VOC solvent rinsing, or water rinsing, as is required. Step two involves the actual spray coating conducted in either a Devilblis Water-wash spray booth in the case of exterior coating, or in an open flash-off area immediately following the spray booth in the case of interior coating. In step three, cars are left to dry, either partially or fully, in a flash-off area. Dependent upon the curing requirements of the coating, step four involves the car being either baked in one of two ovens (maximum temperature of 200–250°F), air dried, or forced-air dried with portable heaters. Step five involves stenciling of the completed car.

While all coating processes are housed in one structure, no control of VOC emissions from the cleaning, flash-off, and stenciling areas is provided. Air output from both spray booths are vented to the atmosphere. Emissions captured in both ovens are routed to a thermal oxidizer (incinerator) with primary heat exchange. This incinerator is designed for 1656 SCFM exhaust from each oven for a total of 3312 SCFM.

Tank car coating operations at Richmond are controlled under TACB Regulation V, Rule 115.191(9), Miscellaneous Metal Parts and Products Coating. Pursuant to Rule 115.191(9), coatings used by Richmond in the coating of railcars are classified as extreme performance coatings and are therefore subject to a VOC emission limit of 3.5 pounds per gallon of coating (less water) based on a daily (24 hour) weighted average. Rule 115.191(9) further states that all VOC emissions from solvent washings shall be considered in the 3.5 pound per gallon limit, unless directed into containers to prevent evaporation. This 3.5 lbs. of VOC/gallon of coating (minus water) is the emission limitation specified in EPA's control techniques guideline (CTG) documents for such facilities. Rule 115.193(c)(6) allows the Executive

Director of the TACB to approve, for a specific facility, requirements different from those in Rule 115.191(9) based upon his determination that such alternate requirements will result in the lowest emissions rate that is technologically and economically reasonable.

Summary of Proposed SIP Revision

Pursuant to Rule 115.193(c)(6), the TACB has granted an exemption to Rule 115.191(9) for Richmond Tank Car.

In TACB's proposal, solvent content limits are specified for coatings to be used in three distinct coating categories: exterior coating of new railcars, exterior maintenance and recoating of used railcars, and interior lining of railcars (new and used). Proposed content limits are 3.5, 4.63, and 5.11 (pounds VOC/gallon of coating), respectively. These content limits apply to each individual coating used in a given category. Therefore, no coating for a given category of use will be allowed if that coating exceeds the limit specified for that category. The exemption provisions further specify that the weighted average of all coatings, including the aforementioned three extreme performance coating categories, is limited to 3.5 pounds VOC per gallon in any 30-day (monthly) period. Additionally, total daily emissions from all coatings applied shall not exceed 0.6 tons per day.

Records are required indicating the quantity and average VOC content of all coatings applied at the facility and shall be maintained for two years at the Richmond facility in Sheldon, Texas. These are to be made available to the TACB and local air pollution control agencies upon request.

Every three years beginning in January, 1990, a report is to be submitted to the TACB demonstrating that the conditions of the exemption still exist as represented. This report shall demonstrate "the nonavailability of compliant coatings, or shall describe significant changes in the company's production rate or operating conditions, coating technologies, or other relevant factors affecting VOC emissions." In response to this information TACB shall consider revision or revocation of the exemption.

Review of Deficiencies

The State's proposed SIP revision would allow relaxed emission limits for Richmond's Sheldon facility. As is previously stated, EPA is proposing to disapprove this revision because of several deficiencies in the State's SIP revision submittal allowing this exemption for Richmond. Each of these deficiencies is discussed below:

1. Nonavailability of Low Solvent Coatings: TACB bases its adoption of an exemption for Richmond upon the nonavailability of low solvent content coatings for the railcar coating industry that meet the 3.5 lbs VOC/gallon of coating (less water) limitation when averaged over total daily usage. Richmond and TACB cite the need for extreme performance coatings capable of protecting equipment from harsh exposure to constant weathering, detergents, abrasives, solvents, corrosive atmospheres, and in some cases temperatures greater than 95°C, and capable of ensuring product purity. The State's submittal maintains that low solvent formulations are not available for certain types of exposure.

Communication with coatings manufacturers by EPA in July 1987 indicates that low solvent alternatives are available for extreme performance duties outlined in the State's submittal. Specifically, the State's submittal cites one type of extreme performance coating as having no low VOC content substitute. This coating, a phenolic formaldehyde resin produced by one particular manufacturer, is used on interiors of tank cars in sulfuric acid service. EPA, however, has found that since the time of Richmond Tank Car's exemption request, a low VOC content substitute for this coating has been introduced by the same manufacturer. Further details are outlined in the Evaluation Report. EPA's position is that suitable low solvent coating alternatives are more readily available than are presented in Richmond's request.

2. Economic Infeasibility of Add-On Controls: TACB also bases its exemption for Richmond upon the prohibitive cost of installing and operating add-on pollution control equipment. The Richmond facility currently is able to control (destroy) VOC emissions only from its two curing ovens by ducting these exhausts to a thermal incinerator. These ovens are only in use in the curing of certain "low temperature-bake" coatings. If those ovens are to also be used in the curing of other "high temperature-bake" coatings, the increased baking temperature will require the installation of a new incinerator and the resultant annual costs will be prohibitive when compared to the incremental VOC reductions it will achieve. This exemption demonstration is unduly limited to the destruction of oven exhaust. EPA's disapproval is based upon the failure to consider other control options such as electrostatic spray equipment, capture of spray booth and tank car interior exhaust gases for

destruction in the existing or newer incinerator, increased use of "low-bake" coatings, and improved process procedures.

3. Compliance Requirements: Emissions from all coatings applied are limited to 0.6 tons VOC/day as a condition of the exemption. While such a daily emission ceiling or "daily cap" is a useful tool in ensuring control of pollutant emissions, EPA feels that this daily cap is unenforceable for two reasons. First, as stated, emission reductions from add-on control devices may be considered in meeting the daily cap. However, Richmond Tank Car has provided no testing results showing the destruction efficiency of its control devices. Without such testing, the appropriate credit for add-on controls cannot be determined. Prior communication with the company indicates that it is assuming an incineration efficiency of 90%. When coupled with an unspecified capture efficiency, the company has claimed overall emission reductions of up to 80%. Therefore, to be acceptable, the daily cap should either be specified based on uncontrolled emissions (ignoring the reduction achieved by add-on controls), or the company should be required to conduct capture efficiency and incineration efficiency testing to determine exactly what add-on control credit can be claimed. Second, the recordkeeping provisions of the exemption require recording monthly quantity and average VOC content of all coatings. No requirement is made for daily recordkeeping to demonstrate compliance with a daily cap. This effectively makes the demonstration of compliance with the aforementioned daily cap an impossibility. Therefore, daily records of coating usage quantities, VOC contents of each coating used, and total VOC usage quantities should be required.

4. Demonstration of Reasonable Further Progress (RFP): The aforementioned daily cap is tied directly to the VOC emissions from Richmond as reported in the 1980 Emission Inventory that was used in devising the control strategy for the 1982 Ozone SIP Harris County. Emissions of 0.6 tons VOC per day (uncontrolled) over 250 work days per year nets 150 tons VOC per year. This value approximates the value calculated in the 1980 Emission Inventory of 157 tons VOC per year. Achievement of reasonable further progress (RFP) would dictate reductions in emissions (from the 1982 Ozone SIP baseline, 157 tons VOC) for sources controlled under a Group II CTG document such as Richmond. The

objective of the Harris County Ozone SIP is to bring about reductions from the baseline emission inventory (see 50 FR 26359 as published on June 26, 1985). While Richmond appears to have operated at well below 157 tons VOC per year in emissions (estimated at less than 60 tons VOC per year in 1984), allowing, as a "cap", an increase to its previous allowable level or beyond could jeopardize the RFP plan for Harris County. Again, Harris County was demonstrated to reach attainment in 1987, but continues to show monitored violations. Based upon this concern and the previously noted lack of daily recordkeeping requirements to comply with a daily cap, EPA believes that the State's exemption granted to Richmond fails to demonstrate that it will not conflict with RFP for Harris County.

5. Long Term Averaging of Coating Solvent Content: TACB further justifies the relaxed emission limits by limiting the weighted average of the VOC content of all extreme performance coatings applied in any 30 day period to 3.5 lbs VOC/gallon of coating. VOC's are a precursor for ozone, a pollutant whose National Ambient Air Quality Standard (NAAQS) is based on hourly attainment. Thus, Section 110 of the Clean Air Act requires that VOC emission control be reasonably consistent with protecting this short term standard. Further, since VOC control plans contemplate the actual application of RACT, regulatory actions that incorporate longer term averages to circumvent the installation of overall RACT level controls cannot be allowed. Therefore, reporting and monitoring requirements of a SIP should be supportive of this short term standard. A January 20, 1984, memorandum of John R. O'Connor (then Acting Director of the Office of Air Quality Planning and Standards) explains that the use of 30 day averaging of emissions to support or justify an alternative RACT demonstration should be evaluated under certain requirements.

Briefly, these requirements for justification of long-term averaging and the evaluation of the State's submittal with respect to each are as follows:

Criteria 1: The source's operations must be such that VOC emissions cannot be determined on daily basis, or the application of RACT for each emission point is not technically feasible on a daily basis.

Response: The State's SIP revision request for Richmond Tank Car company is based on TACB's position that the application of RACT for each emission point is not technically feasible

on a daily basis, but the State has not adequately demonstrated this.

Criteria 2: The area in which the facility is located must not lack an approved SIP, and there must be no measured violations of the ozone standard unless the State revises the SIP to demonstrate attainment of the NAAQS and maintenance of RFP (reflecting the maximum daily emissions resulting from long-term averaging).

Response: While Harris County did have a federally approved SIP for attainment by December 31, 1987, it has had measured violations of the ozone standard since 1987 and received a SIP Call in May of 1988. This issue is further discussed in item 4 under the section of this notice titled "Review of Deficiencies".

Criteria 3: The State must demonstrate that the use of long-term averaging (greater than 24-hour averaging) will not jeopardize either attainment of the NAAQS or RFP. The State may make this demonstration by showing that the maximum daily increase in emissions associated with monthly averaging is consistent with the approved ozone SIP.

Response: The State has not made this assurance that the daily emission cap for the facility will not jeopardize the RFP plan. This issue is discussed in item 4 under the section of this notice titled "Review of Deficiencies".

Criteria 4: Averaging times must be as short as practicable and in no case longer than 30 days.

Response: The State has not demonstrated that 30 days is the shortest averaging period practicable.

Proposed Action

EPA is today proposing to disapprove the exemption submitted as a SIP revision for Richmond Tank Car Company in Sheldon, Harris County, Texas for the following reasons:

1. The State has not demonstrated, based on the nonavailability of low solvent coatings, that the requested exemption constitutes the lowest emission rate that is technologically and economically reasonable as is required by Rule 115.193(c)(6) of the Federally approved SIP for Texas. In fact, EPA has found that alternative coatings containing less solvent are available.

2. The State has not demonstrated, based on the economic infeasibility of installing add-on controls, that the requested exemption constitutes the lowest emission rate that is technologically and economically reasonable as is required by Rule 115.193(c)(6) of the Federally approved SIP for Texas.

3. The conditions of the exemption inappropriately allow the consideration of incineration credit in complying with the daily cap, and fail to require sufficient recordkeeping provisions to demonstrate compliance with a daily cap.

4. The State has not demonstrated that the requested exemption will not jeopardize the RFP plan for Harris County.

5. The conditions of the exemption inappropriately allow long term (30-day) averaging of coating solvent content without a demonstration that RFP will be maintained.

Pursuant to the provisions of 5 U.S.C. 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities because it affects only one source. In addition, this action imposes no additional requirements on the source beyond what is already required under the current State Implementation Plan.

Under Executive Order 12291, today's action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon Monoxide, Hydrocarbons, Intergovernmental relations, Lead Nitrogen dioxide, Ozone, Particulate Matter, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: 42 U.S.C. 7401-7642

Date: February 24, 1989.

Robert E. Layton Jr.,
Regional Administrator.
[FR Doc. 89-13277 Filed 6-2-89;8:45am]
BILLING CODE 8560-50-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 57

RIN 0905-AC 34

Grants for Nursing Post-baccalaureate Faculty Fellowships

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes regulations to govern grants to schools of nursing for post-baccalaureate fellowships for faculty, as authorized by section 830(b) of the Public Health Service Act (the Act).

DATES: Comments on the proposed regulations are invited. To be

considered, comments must be received no later than August 4, 1989.

ADDRESS: Written comments should be addressed to J. Jarrett Clinton, M.D., Director, Bureau of Health Professions (BHP), Health Resources and Services Administration, Room 8-05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857. All comments received will be available for public inspection and copying at the Office of Program Development, BHP, Room 8A-53, Parklawn Building, at the above address weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Mary S. Hill, PhD., Chief Nursing Education/Practice Resources Branch, Division of Nursing, BHP, Health Resources and Services Administration, Room 5C-26, Parklawn Building, at the above address; telephone: 301 443-6193.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, Department of Health and Human Services, with the approval of the Secretary, proposes to add a new Subpart BB to Part 57 of Title 42 of the Code of Federal Regulations to implement section 830(b) of the Act.

Section 830(b) was added to the Act by the Nurse Education Amendments of 1985 (Pub. L. 99-92). It authorizes the Secretary to make grants to public or nonprofit private schools of nursing to cover the costs of post-baccalaureate fellowships for faculty in these schools to enable the faculty to:

(1) Investigate cost-effective alternatives to traditional health care modalities, with special attention to the needs of at-risk populations, such as the elderly, premature infants, physically and mentally disabled individuals, and ethnic and minority groups;

(2) Examine nursing interventions that result in positive outcomes in health status, with attention to interventions which address family violence, drug and alcohol abuse, the health of women, adolescent care, or disease prevention; or

(3) Address other areas of nursing practice considered by the Secretary to require additional study.

The following is a summary of the major items in the proposed regulations:

Section 57.2704 How will applications be reviewed?

In determining the funding of approved applications, the Secretary will consider applications which demonstrate any special factors relating to national needs as the Secretary may from time to time announce in the Federal Register.

Section 57.2708 Who is eligible for financial assistance as a fellow?

This section would establish the following eligibility criteria for an individual to receive financial assistance as a fellow. An individual must:

(1) Be a member of the faculty of the grantee school and remain a faculty member during the period of the fellowship award. The continuous faculty status of the fellow in the grantee school of nursing would enable the grantee to effectively administer and monitor the fellowship in the event that the fellow would be enrolled in a different school during the period of the fellowship;

(2) Be enrolled in a master's program in nursing or in a doctoral program which requires a substantial study, master's thesis or a doctoral dissertation in pertinent areas. The curricula of such programs would provide fellows with the skills and knowledge to conduct studies of the nature required by the legislation;

(3) Expect to meet requirements for a master's degree in nursing or a doctoral degree before or by the end of the budget period to be funded. This requirement assures completion of the fellowship study (master's thesis or doctoral dissertation) within the same period; and

(4) Be currently licensed to practice as a registered professional nurse in a State. This requirement assures that these funds will go to faculty members who are nurses.

The Department specifically requests comments on criterion (3) above. Of special interest is whether an individual in a doctoral program should be required to complete all degree requirements, including the dissertation.

Regulatory Flexibility Act and Executive Order 12291

These regulations govern a financial assistance program in which participation is voluntary. The rule will not exceed the threshold level of \$100 million established in section (b) of Executive Order 12291. For these reasons, the Secretary has determined that this proposed rule is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required. Further, because the rule does not have a significant economic impact on a substantial number of small entities, a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980 is not required.

Paperwork Reduction Act of 1980

This proposed rule contains information collections which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collections are shown below with an

estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Grants for Nursing Post-baccalaureate Faculty Fellowships.

Description: Grant recipients need to collect and maintain information of the qualifications of individual faculty members receiving fellowships. Individuals withdrawing from a program must be notified by the grantee of the disposition of refunded tuition.

Description of Respondents: Individuals and households and nonprofit institutions.

ESTIMATED ANNUAL REPORTING AND RECORDKEEPING BURDEN

Section No.	Annual No. of respondents	Annual frequency	Average burden per response (hours)	Annual burden hours
57.2709(a).....	100	1	.5	50
57.2709(b)(i).....	200	1	.25	50
57.2709(b)(ii).....	200	1	.25	50
57.2709(b)(iv).....	200	1	.25	50
57.2709(b)(v).....	200	1	.25	50
57.2709(b)(vi).....	10	1	.25	2.5
57.2711(b).....	4	1	.25	1.0
Total.....				253.5

We have submitted a copy of this proposed rule to OMB for its review of these information collections. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

List of Subjects in 42 CFR Part 57

Educational research, Grant programs—education, Scholarships and fellowships, Student aid.

Accordingly, it is proposed to add a new Subpart BB to Part 57 of Title 42 of the Code of Federal Regulations as set forth below.

Date: February 1, 1989.

Robert E. Windom,
Assistant Secretary for Health.

Approved: March 27, 1989.

Louis W. Sullivan,
Secretary.

[Catalog of Federal Domestic Assistance No. 13.147, Grants for Post-baccalaureate Faculty Fellowships]

PART 57—GRANTS FOR CONSTRUCTION OF TEACHING FACILITIES, EDUCATIONAL IMPROVEMENTS, SCHOLARSHIPS AND STUDENT LOANS

1. 42 CFR Part 57 is amended by adding a new Subpart BB, consisting of §§ 57.2701 through 57.2713, entitled, "Grants for Nursing Post-baccalaureate Faculty Fellowships" to read as follows:

Subpart BB—Grants for Nursing Post-baccalaureate Faculty Fellowships

- Sec.
- 57.2701 To what programs do these regulations apply?
- 57.2702 Definitions.
- 57.2703 Who is eligible to apply for a grant?
- 57.2704 How will applications be reviewed?
- 57.2705 How long does grant support last?
- 57.2706 For what purposes may grant funds be spent?
- 57.2707 What financial support is available to fellows?
- 57.2708 Who is eligible for financial assistance as a fellow?
- 57.2709 What are the requirements for fellowships and the appointment of fellows?
- 57.2710 Duration of fellowships.
- 57.2711 Termination of fellowships.
- 57.2712 What additional Department regulations apply to grantees?
- 57.2713 Additional conditions.

Subpart BB—Grants for Nursing Post-baccalaureate Faculty Fellowships

Authority: Sec. 215 of the Public Health Service Act, 58 Stat. 690, 67 Stat. 631 (42 U.S.C. 216); sec. 830(b) of the Public Health Service Act, 99 Stat. 396 (42 U.S.C. 297).

§ 57.2701 To what programs do these regulations apply?

These regulations apply to grants awarded to public or private nonprofit schools of nursing for the purpose of providing post-baccalaureate faculty fellowships.

§ 57.2702 Definitions.

"Act" means the Public Health Service Act, as amended.

"Fellow" means a nurse faculty member who is receiving a fellowship from a grant under this subpart.

"Fiscal year" means the Federal fiscal year, beginning October 1 and ending the following September 30.

"National of the United States" means a citizen of the United States or a person who, though not a citizen of the United States, owes permanent allegiance to the United States (as defined in 6 U.S.C. 1101(a)(22), the Immigration and Nationality Act).

"Nonprofit" as applied to any school, agency, organization or institution, means an entity owned and operated by one or more corporations or associations, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"Registered nurse" means a person who has graduated from a school of nursing and is licensed to practice as a registered/professional nurse in a State.

"School of Nursing" means a collegiate, associate degree or diploma school of nursing as defined in section 853 of the Act.

"Secretary" means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

"State" includes in addition to the several States, the Commonwealth of Puerto Rico, the District of Columbia, the Commonwealth of the Northern Mariana Islands, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federal States of Micronesia.

BEST COPY AVAILABLE

§ 57.2703 Who is eligible to apply for a grant?

Any public or private nonprofit school of nursing which is located in a State and is currently employing faculty who would qualify for a post-baccalaureate faculty fellowship is eligible to apply for a grant. Each eligible applicant desiring a grant under this subpart shall submit an application in the form and at such time as the Secretary may prescribe.¹

§ 57.2704 How will applications be reviewed?

In determining the funding of approved applications, the Secretary will consider:

- (a) The degree to which the faculty member's study, thesis or dissertation addresses the criteria set forth in § 57.2708(d); and
- (b) Any special factors relating to national needs as the Secretary may from time to time announce in the Federal Register.

§ 57.2705 How long does grant support last?

(a) The notice of grant award specifies the length of time the Secretary intends to support the grant. This period, called the project period, will not exceed 1 year.

(b) Generally, the grant will be funded for 1 year, and subsequent awards will also be for 1 year at a time.

(c) Neither the approval of any application nor the award of any grant shall commit or obligate the United States in any way to make any additional awards with respect to any approved application or portion of an approved application.

§ 57.2706 For what purposes may grant funds be spent?

(a) A grantee shall only spend funds it receives under this subpart for faculty fellowships according to the approved application and budget, the authorizing legislation, terms and conditions of the grant award, and these regulations.

(b) Grantees may not spend grant funds for sectarian instruction or for any religious purpose.

(c) Any balance of federally obligated grant funds remaining unobligated by the grantee at the end of a budget period may be carried forward to the next budget period, for use as prescribed by the Secretary, provided a continuation award is made. If at any time during a budget period it becomes apparent to the Secretary that the amount of Federal

funds awarded and available to the grantee for that period, including any unobligated balance carried forward from prior periods, exceeds the grantee's needs for the period, the Secretary may adjust the amounts awarded by withdrawing the excess. A budget period is an interval of time (usually 12 months) into which the project period is divided for funding and reporting purposes.

§ 57.2707 What financial support is available to fellows?

Expenditures from grant funds are limited to:

(a) Tuition and fees, in accordance with established rates of the institution in which the fellow is enrolled, except as limited by the Secretary. Schools which provide their employees with discounts for tuition or fees are expected to maintain this policy in their charges to the grant; and

(b) Stipends paid in accordance with established Public Health Service stipend levels for periods of full time study. A fellow may be paid a stipend only if attending the educational institution as a full-time student during an entire academic period of study, including a summer session. Stipends may only be paid to fellows in monthly installments.

§ 57.2708 Who is eligible for financial assistance as a fellow?

To be eligible for a fellowship, an individual must:

(a) Be a resident of the United States and either a citizen or national of the United States, an alien lawfully admitted for permanent residence in the United States, a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Trust Territory of the Pacific Islands (TTPI) (consisting of the Republic of Palau), or a citizen of the Republic of the Marshall Islands or the Federated States of Micronesia (both formerly part of the TTPI);

(b) Be a member of the faculty of the applicant school and remain a faculty member during the period of the fellowship award;

(c) Be enrolled in a master's program in nursing or in a doctoral program which requires a substantial study, master's thesis or a doctoral dissertation;

(d) Undertake a study, thesis or dissertation during the fellowship period, which focuses on:

(1) Cost-effective alternatives to traditional health care modalities, with special attention to the needs of at-risk populations, such as the elderly, premature infants, physically and

mentally disabled individuals, and ethnic and minority groups;

(2) Nursing interventions that result in positive outcomes in health status, with attention to interventions which address family violence, drug and alcohol abuse, the health of women, adolescent care, or disease prevention; or

(3) Areas of nursing practice considered by the Secretary to require additional study, which will be announced in the Federal Register prior to a grant cycle;

(e) Expect to meet requirements for a master's degree in nursing or a doctoral degree before or by the end of the budget period for which the grant will be awarded;

(f) Be currently licensed to practice as a registered professional nurse in a State; and

(g) Not be receiving concurrent support for the same training from another Federal educational award which provides a stipend or otherwise duplicates financial provisions, except educational benefits under the Veteran's Readjustment Benefits Act and loans from Federal sources.

§ 57.2709 What are the requirements for fellowships and the appointment of fellows?

(a) The grantee must complete a statement of appointment by the beginning of the academic period or as soon thereafter as possible if the fellow receives notice of his or her fellowship appointment after the education period has begun. The statement of appointment must include information which documents the eligibility of the fellow and a statement to certify that there will be compliance with all applicable Public Health Service terms and conditions governing the appointment. The program director must sign the statement of appointment on behalf of the grantee, and the fellow must sign it certifying that the statements are true and complete. The original copy of the statement of appointment must be retained by the grantee to be available for program review and financial audit, and a copy shall be provided to the fellow.

(b) An appointed fellow must:

(1) Provide the grantee with the information required for the statement of appointment form and information related to his or her academic standing in the institution in which he or she is enrolled;

(2) Document the cost of tuition and fees for courses to be charged to the fellowship;

(3) Remain a member of the faculty of the grantee school during the period of the fellowship award;

(4) Provide the grantee school with a copy of the study, thesis or dissertation produced during the period of the fellowship;

(5) Provide the grantee school with a written summary of the training undertaken during the period of the fellowship; and

(6) Return to the grantee school any funds which may be reimbursed to the fellow by the educational institution for courses charged to the fellowship account.

§ 57.2710 Duration of fellowships.

A fellow may be appointed at the beginning of any academic period, including a summer session, which falls, within the current budget period specified by the Notice of Grant Award. No appointment may exceed 12 months.

§ 57.2711 Termination of fellowships.

(a) The grantee must terminate a fellowship:

(1) Upon request of the fellow; and

(2) If the fellow withdraws from the educational program in which he or she is enrolled;

(3) If the fellow is no longer a faculty member at the grantee school; or

(4) If the fellow is not eligible or able to continue in his or her master's or doctoral program in accordance with the standards and practices of the school in which the fellow is enrolled.

(b) The Federal portion of any tuition refund given or owed to a fellow must be deposited into the grant account by the grantee and the grantee must provide written notice to the fellow regarding this deposit.

§ 57.2712 What additional Department regulations apply to grantees?

Several other regulations apply to grants. They include, but are not limited to:

42 CFR Part 50, Subpart D—Public Health Service grants appeals procedure

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedures for hearings under Part 80 of this Title

45 CFR Part 83—Regulation for the administration and enforcement of sections 799A and 845 of the Public Health Service Act²

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance

§ 57.2713 Additional conditions.

The Secretary may impose additional conditions on any grant award before or at the time of any award if he or she determines that these conditions are necessary to assure or protect the advancement of the approved activity, the interest of the public health, or the conservation of grant funds.

[FR Doc. 89-13248 Filed 6-2-89; 8:45 am]

BILLING CODE 4160-15-M

42 CFR Part 110**Vaccine Information Materials**

AGENCY: Centers for Disease Control (CDC), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Availability of the administrative docket for public inspection in Rockville, Maryland.

SUMMARY: On March 3, 1989, CDC published in the Federal Register (54 FR 9180) a notice of proposed rulemaking (NPRM) pertaining to the development and distribution of vaccine information materials required under Title XXI, section 2126 of the PHS Act. The preamble of the NPRM invited written comments and indicated that comments received (i.e., the administrative docket) would be available for public inspection between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) in Room 314, 1600 Tullie Circle, Atlanta, Georgia. This notice announces that a second copy of the administrative docket containing comments received will also be available for public inspection at the Park Building in Rockville, Maryland.

DATES: Effective May 30, 1989 the administrative docket is also available

² Section 799A of the Public Health Service Act was redesignated as section 704 by Pub. L. 94-484; section 845 of the Public Health Service Act was redesignated as section 855 by Pub. L. 94-63.

for public inspection in Rockville, Maryland.

ADDRESS: Yuth Nimit, Ph.D., National Vaccine Program, The Park Building, 12420 Parklawn Drive, Rockville, Maryland 20857, telephone (301) 443-0715.

FOR FURTHER INFORMATION CONTACT: Walter A. Orenstein, M.D., Director, Division of Immunization, Center for Prevention Services, Centers for Disease Control, Mailstop E-05, Atlanta, Georgia 30333, telephone (404) 639-1880.

SUPPLEMENTARY INFORMATION: In addition to the administrative docket available for public inspection in Atlanta, Georgia, a second copy of the docket will be available for public inspection between 8 a.m. and 4:30 p.m., Monday through Friday (except holidays) in Room 124, The Park Building, 12420 Parklawn Drive, Rockville, Maryland.

Dated: May 30, 1989.

Glenda S. Cowart,
Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-13227 Filed 6-2-89; 8:45 am]

BILLING CODE 4160-10-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 73**

[MM Docket No. 89-119, RM-6417]

Radio Broadcasting Services; Stamping Ground, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by James P. Gray which proposes to allot Channel 256A to Stamping Ground, Kentucky, as its first local FM service, at coordinates 38-18-04 and 84-40-52.

DATES: Comments must be filed on or before July 17, 1989, and reply comments on or before August 1, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: James P. Gray, 10 Trinity Place, Fort Thomas, KY 41075, (Petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of

¹ Applications and instructions [Form PHIS 6025-1, OMB #0915-0000] may be obtained from the Grants Management Officer, Bureau of Health Professions, Parklawn Building 5600 Fishers Lane, Rockville, Maryland 20857.

Proposed Rule Making, MM Docket No. 89-119, adopted May 5, 1989, and released May 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.
Federal Communications Commission.
Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.
[FR Doc. 89-13254 Filed 6-2-89; 8:45 pm]
BILLING CODE 6712-01-M

47 CFR Part 94

[PR Docket No. 89-113, FCC 89-153]

Private Operational-Fixed Microwave Service

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission is proposing new technical rules for the 2450-2483.5 MHz band available to the Private Operational-Fixed Microwave Service as defined in Part 94 of the Commission's Rules. Specifically, the Commission is proposing to adopt a new channeling plan for this band that is based on 625 kilohertz wide channels. Licensees would, however, be allowed to combine adjacent channels in order to achieve more spectrum. This action is necessary because other recent decisions of the Commission have rendered the existing channeling plan an inefficient use of the radio spectrum.

DATES: Comments must be submitted on or before July 17, 1989, and replies to comments on or before August 1, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Michael Lewis, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making in PR Docket No. 89-113, adopted May 10, 1989, and released May 25, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's Copy Contractor, International Transcription Service, 2100 M Street, NW., Suite 140 Washington, DC, 20037, telephone (202) 857-3800.

Summary of Notice of Proposed Rule Making

1. Prior to 1985, the Private Operational-Fixed Microwave Service (OFS) had access to the frequency band extending from 2450 MHz to 2500 MHz. This 50 megahertz band contained thirty channel pairs with each channel 800 kilohertz wide. The associated transmit and receive channels of a given channel pair were separated by 24.4 megahertz. In 1985, however, the upper 16.5 megahertz of this band (*i.e.*, 2483.5-2500 MHz) were reallocated to the Radio-determination Satellite Service (RDSS). This reallocation reduced the efficiency of the channeling plan for OFS users of this band. On December 10, 1987, the Harris Corporation—Farinon Division filed a *Petition for Rule Making* proposing a new channeling plan for this band.

2. In its petition, Harris states that channels in this band should be wide enough to accommodate digital transmissions and urges that we create 1250 kilohertz channels while allowing bandwidths up to 2500 kilohertz on a case-by-case basis. Harris also proposes a reduction in the separation between paired channels from the present 24.4 megahertz to 22 megahertz. Finally, Harris requests that we adopt a 10 megahertz channel in the band for emergency restoration, maintenance bypass, and other temporary fixed purposes. In reply, the Associated Petroleum Institute urged the Commission to create smaller channels so that the needs of more users may be satisfied.

3. Upon review of the record, the Commission is proposing to adopt a channeling plan that offers licensees flexibility to acquire the amount of spectrum that best suits their needs. The plan is based on 625 kilohertz channels and would allow licensees to "stack" adjacent channels upon a proper showing of need. The Commission also is proposing to adopt a standard separation of 17.25 megahertz but asks for comments on how this proposal would affect equipment costs. The Commission is also soliciting additional information on the need for a 10 MHz restoration/emergency by-pass channel in this band.

Paperwork Reduction

4. The proposals contained herein have been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection and/or recordkeeping, labeling, disclosure or record retention requirements, and will not increase burden hours imposed on the public. Rather, if adopted as proposed the licensing burden on the public could be reduced.

Ordering Clauses

5. Authority for issuance of this *Notice of Proposed Rule Making* is contained in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r). Interested persons may file comments on or before July 17, 1989, and reply comments on or before August 1, 1989. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding. In reaching its decision, the Commission may take into consideration information and ideas not contained in the comments, provided that the fact of the Commission's reliance on such information is noted in the report and order.

List of Subjects in 47 CFR Part 94

Radio, private operational-fixed microwave service, communications equipment.

Amendatory Text

47 CFR Part 94 is proposed to be amended as follows:

PART 94—[AMENDED]

1. The authority citation for Part 94 continues to read as follows:

Authority: Sections 4, 303, 48 Stat., as amended, 1066, 1082; 47 U.S.C. 154, 303, unless otherwise noted.

2. 47 CFR 94.85 is proposed to be amended by revising paragraph (e) to read as follows:

§ 94.85 Frequencies.

(e) **2450-2500 MHz:** This band is shared with base, mobile, and radiolocation stations, and is subject to no protection from interference from Industrial, Scientific and Medical devices operating on 2450 MHz. 625 kHz bandwidth.

PAIRED FREQUENCIES

Transmit (or receive)	Receive (or transmit)
2450.3125.....	2467.5625
2450.9375.....	2468.1875

PAIRED FREQUENCIES—Continued

Transmit (or receive)	Receive (or transmit)
2451.5625.....	2468.8125
2452.1875.....	2469.4375
2452.8125.....	2470.0625
2453.4375.....	2470.6875
2454.0625.....	2471.3125
2454.6875.....	2471.9375
2455.3125.....	2472.5625
2455.9375.....	2473.1875
2456.5625.....	2473.8125
2457.1875.....	2474.4375
2457.8125.....	2475.0625
2458.4375.....	2475.6875
2459.0625.....	2476.3125
2459.6875.....	2476.9375
2460.3125.....	2477.5625
2460.9375.....	2478.1875
2461.5625.....	2478.8125
2462.1875.....	2479.4375
2462.8125.....	2480.0625

PAIRED FREQUENCIES—Continued

Transmit (or receive)	Receive (or transmit)
2463.4375.....	2480.6875
2464.0625.....	2481.3125
2464.6875.....	2481.9375
2465.3125.....	2482.5625
2465.9375.....	2483.1875

Applicants may request up to four adjacent channel pairs in order to receive a maximum of 2500 kHz.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-13255 Filed 6-2-89; 8:45 am]

BILLING CODE 6712-01-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Plenary Session; Public Meeting

Notice is hereby given, pursuant to the Federal Advisory Committee Act, Pub. L. No. 92-463, that the membership of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies in carrying out their programs, will meet in Plenary Session on Thursday, June 15 and Friday, June 16, 1989 in the Amphitheatre of the Federal Home Loan Bank Board, Second Floor, 1700 G Street NW., Washington, DC. The meeting on June 15 will begin at 12:45 p.m. and end at approximately 5:45 p.m.; the meeting on June 16 will begin at 9:00 a.m. and end at approximately 1:00 p.m.

The Conference will consider, not necessarily in the order stated, proposed recommendations of the following subjects.

1. Peer Review and Sanctions in the Medicare Program.
2. Mass Decisionmaking Programs: The Alien Legalization Experience.
3. Asylum Adjudication Procedures.
4. Contracting Officers' Management of Disputes.
5. Judicial Acceptance of Agency Statutory Interpretations.
6. Conflict-of-Interest Requirements for Federal Advisory Committee.
7. Public Financial Disclosure by Executive Branch Officials.

Plenary sessions are to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L

Street NW., Suite 500, Washington, DC 20037, telephone (202) 254-7020.

June 1, 1989.

Jeffrey S. Lubbers,
Research Director.

[FR Doc. 89-13398 Filed 6-2-89; 8:45 am]

BILLING CODE 6110-01-M

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service [Docket No. 89-018N]

National Advisory Committee on Microbiological Criteria for Foods; Meeting

Notice is hereby given that a meeting of the National Advisory Committee on Microbiological Criteria for Foods will be held on Tuesday, Wednesday, Thursday, and Friday, June 20-23, 1989, at the Hyatt Regency Chicago, 151 East Wacker Drive, Chicago, IL 60601.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria for microorganisms that indicate whether foods have been produced using good manufacturing practices.

The agenda for the meeting follows:

- (1) Tuesday, June 20, 2:00 p.m. to 6:00 p.m.—Session of the Hazard Analysis Critical Control Point Subcommittee.
- (2) Wednesday and Thursday, June 21-22, 8:30 a.m. to 5:30 p.m.—Concurrent sessions of the Meat and Poultry Subcommittee, and the Seafood Subcommittee.
- (3) Friday, June 23, 8:30 a.m. to 5:30 p.m.—Full Committee Session.
 - (a) Approval of Meeting Agenda
 - (b) Update of Long-range Planning Initiative
 - (c) Report of the Seafood Working Group
 - (d) Report of the Meat and Poultry Working Group
 - (e) Committee Discussion
 - (f) Future Assignments
 - (g) Public Comments

The Committee meeting is open to the public on a space available basis. Comments of interested persons may be filed before or after the meeting and should be addressed to Ms. Catherine

Federal Register

Vol. 54, No. 106

Monday, June 5, 1989

M. DeRoeper, Director, Executive Secretariat, U.S. Department of Agriculture, Food Safety and Inspection Service, Room 3175, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. Background materials are available for inspection by contacting Ms. DeRoeper on (202) 447-9150.

Done at Washington, DC on June 1, 1989.

Lester M. Crawford,
Acting Chairman.

[FR Doc. 89-13440 Filed 6-2-89; 9:20 am]

BILLING CODE 3410-DM-M

Forest Service

Six Mile Timber Sale and Whites Timber Sale

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement to implement two commercial timber sales on the Salmon River Ranger District, Klamath National Forest, Siskiyou County, California.

DATE: Comments concerning the scope of the analysis must be received by July 15, 1989.

ADDRESSES: Written comments and suggestions concerning the analysis should be sent to Michael P. Lee, District Ranger, Salmon River Ranger District, P.O. Box 280, Etna, California 96027. Attn: Six Mile/Whites E.I.S.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Albert Buchter, Timber Sale Planner or Roger Siemers, Timber Sale Planning Forester, Salmon River Ranger District, P.O. Box 280, Etna, California 96027, phone (916) 467-5757.

SUPPLEMENTARY INFORMATION: The two proposed sale areas are within the Russian Roadless Area as inventoried during the initial RARE II process. In the 1979 RARE II process, the Russian Roadless Area was split into two portions. One of the portions was selected as a wilderness area by the California Wilderness Act of 1984 and the remaining portion which contains the proposed timber sales was released

for multiple use management. During September and October of 1987, the Salmon River Ranger District suffered from a number of catastrophic fires that burned over 90,000 acres. The proposed sale areas are approximately six miles from the nearest fires. The environmental analysis for these two projects will determine if these areas will require further planning as roadless areas and if there would be cumulative or significant impacts to the environment by the implementation of these projects.

A range of alternatives for these project areas will be considered. One of these will include no road construction or timber harvest. Other alternatives will consider development of transportation systems, application of harvest methods and silvicultural treatments, opportunities for resources other than timber, and post timber sale silvicultural treatments.

Robert L. Rice, Forest Supervisor, Klamath National Forest is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determination of potential cooperating agencies and task assignments.

The Forest Supervisor will hold a public scoping meeting at the Salmon River Ranger District, Klamath National Forest, Etna, California, at 7:00 p.m., Thursday, June 29, 1989.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by October 1989. At that time EPA will publish a notice of availability of the DEIS in the Federal Register.

The comment period on the draft environmental impact statement (DEIS) will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the Federal Register. It is very important that those interested in the management of the area encompassed by the proposed Six Mile and Whites Timber Sales participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of DEIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered by the Forest Service in preparing the final environmental impact statement (FEIS). The FEIS is scheduled to be completed by February 1990. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosures of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. That decision will be subject to appeal under 36 CFR Part 217.

Date: May 25, 1989.

Barbara Holder,

Deputy Forest Supervisor.

[FR Doc. 89-13209 Filed 6-2-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committees on the American Indian and Alaska Native Populations for the 1990 Census, Asian and Pacific Islander Populations for the 1990 Census, Black Population for the 1990 Census, and Hispanic Population for the 1990 Census; Reestablishment

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. (1976), and Office of Management and Budget Circular A-63 of March 1974, and after consultation with CSA, the Secretary of Commerce has determined that the reestablishment of the Census Advisory Committees on the American Indian and Alaska Native Populations for the 1990 Census, Asian and Pacific Islander Populations for the 1990 Census, Black Population for the 1990 Census, and Hispanic Population for the 1990 Census is in the public interest in connection with the performance of duties imposed on the Department by law.

These committees were originally established in 1985. The Department of Commerce last renewed each committee on May 7, 1987.

The committees will continue to provide advice to the Director, Bureau of the Census, during the planning of the 1990 Census of Population and Housing on such elements as improving the accuracy of the population count, suggesting areas of research, recommending subject content and tabulations of particular use to the populations they represent, expanding the dissemination of census results among present and potential users of census data in their communities, and generally improving the usefulness of the census product.

The committees will each have a balanced representation of 12 members. The committees will continue to report and be responsible to the Director, Bureau of the Census, and will function solely as an advisory body in compliance with the Federal Advisory Committee Act.

The Department of Commerce will file copies of the committees' revised charters with appropriate committees in Congress.

You may address inquiries or comments to Mrs. Phyllis Van Tassel, Committee Liaison Officer, Bureau of the Census, Room 2423-3, Washington DC 20233, telephone (301) 763-5410, or Ms. Jan Jivatode, Committee Management Analyst, U.S. Department

of Commerce, Washington, DC 20230, telephone (202) 377-3271.

Date: May 30, 1989.

C.L. Kincannon,

Deputy Director.

[FR Doc. 89-13231 Filed 6-2-89; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

Joint Factory Computing and Communications Subcommittee; Partially Closed Meeting

A meeting of the Joint Factory Computing and Communications Subcommittee of the Automated Manufacturing Equipment Technical Advisory Committee; the Computer Peripherals, Components & Related Test Equipment Technical Advisory Committee; the Computer Systems Technical Advisory Committee and the Electronic Instrumentation Technical Advisory Committee will be held June 23, 1989, 8:30 a.m., Room 1617F, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The joint subcommittee advises the Office of Technology & Policy Analysis on overlapping issues such as: Computerized Numerical Control (CNC), Computer-Aided-Design (CAD), Computer-Aided-Manufacturing (CAM), Computer Aided-Engineering (CAE), etc.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Reports from Technical Advisory Committee Representatives.
4. Presentation and Status of Priority Projects: Lasers, Networking, CAD, Signal Processing.
5. Other Business.

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal

Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Subcommittee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on 202/377-2583.

Date: May 29, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89-13202 Filed 6-2-89; 8:45 am]

BILLING CODE 3510-DT-M

Software Subcommittee of the Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Software Subcommittee of the Computer Systems Technical Advisory Committee will be held June 21, 1989 at 9:00 a.m., Room 1617F, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Software Subcommittee was formed to study computer software with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Discussion on transferring Data Encryption Standard from Office of Munitions Control to Commerce.
4. Discussion on the controls on open systems security.

Executive Session

5. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The general session of the meeting will be open to the public and a limited number of seats will be available. To the

extent time permits, members of the public may present oral statements to the Committee. Written statements may be presented at any time before or after the meeting. The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to Section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public. A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on 202/377-2583.

Date: May 29, 1989.

Betty Anne Ferrell,

Director, Technical Support Unit, Office of Technology & Policy Analysis.

[FR Doc. 89-13197 Filed 6-2-89; 8:45 am]

BILLING CODE 3510-DT-M

Supercomputer Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Supercomputer Subcommittee of the Computer Systems Technical Advisory Committee will be held June 21, 1989, 1:30 p.m., Room 1617F, Herbert C. Hoover Building, 14th Street & Constitution Avenue, NW., Washington, DC. The Supercomputer Subcommittee was formed with the goal of making recommendations to the Department licensing issues with respect to supercomputers.

Agenda

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Presentation by the Thinking Machines Corporation on advances on supercomputer technologies.
4. Demonstration of a supercomputer by Intel.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the

Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, call Lee Ann Carpenter at 202/377-2583.

Dated: May 29, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89-13198 Filed 6-2-89; 8:45 am]

BILLING CODE 3510-DT-M

Computer Systems Technical Advisory Committee; Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held June 22, 1989, 3:00 p.m., in the Herbert C. Hoover Building, Room 1617F, 14th & Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer systems or technology.

The Committee will meet only in Executive Session to discuss matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified material listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions thereof is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC 20230. For further information, contact Lee Ann Carpenter on 202/377-2583.

Dated: May 29, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89-13199 Filed 6-2-89; 8:45 am]

BILLING CODE 3510-DT-M

Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Licensing Procedures and Regulations Subcommittee of the Computer Systems Technical Advisory Committee, will be held June 22, 1989, 9:00 a.m., Room 1617, Herbert C. Hoover Building, 14th Street & Constitution Avenue, NW., Washington, DC. The subcommittee was formed to review the procedural aspects of export licensing and recommend areas where improvements can be made.

Agenda:

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Election of a new chairperson.
4. Update on the implementation of the People's Republic of China Distribution License procedure.
5. Status report on the new BXA 6031P Form.
6. Update on the use of a single SED for both validated license and general license items.
7. Better procedures for filing the SED.

The entire meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, call Lee Ann Carpenter at 202/377-2583.

Date: May 29, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89-13200 Filed 6-2-89; 8:45 am]

BILLING CODE 3510-DT-M

Hardware Subcommittee of the Computer Systems Technical Advisory Committee; Open Meeting

A meeting of the Hardware Subcommittee of the Computer Systems Technical Advisory Committee will be held June 22, 1989, 11:00 a.m., Room 1617F, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC. The Hardware Subcommittee was formed to study computer hardware with the goal of making recommendations to the Department of Commerce relating to the appropriate parameters for controlling exports for reasons of national security.

Agenda

1. Opening Remarks by the Chairman.
2. Presentation of Papers or Comments by the Public.
3. Discussion of the controls on array transform processors.
4. Discussion on the controls on graphics workstations.
5. Update on the Office of Foreign Availability's PC/AT finding.

The meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

For further information or copies of the minutes, call Lee Ann Carpenter at (202) 377-2583.

Date: May 29, 1989.

Betty Anne Ferrell,

Director, Technical Advisory Committee Unit, Office of Technology & Policy Analysis.

[FR Doc. 89-13201 Filed 6-2-89; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Application Forms Booklet, Naval Reserve Officers Training Corps Scholarship Program; NAVCRUIT 1131/8; and OMB Control 0703-0026.

Type of Request: Reinstatement. Average Burden Hours/Minutes Per Response: 4 hours.

Frequency of Response: Situation.

Number of Respondents: 12,000.

Annual Burden Hours: 48,000.

Annual Responses: 12,000.

Needs and Uses: An assessment of an applicant's qualifications for a NROTC scholarship is necessary to ensure that the Selection Board has the information needed to select the best qualified candidates. Collection is necessary to have information from teachers and other adults on the applicant's academic and/or leadership ability and eligibility for a NROTC scholarship.

Affected Public: Individuals or households; High school administrators or teachers.

Frequency: Annually.

Respondents Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

May 30, 1989.

[FR Doc. 89-13189 Filed 6-2-89; 8:45 am]

BILLING CODE 3810-01-M

The Joint Staff; National Defense University Transition Planning Committee (Long Committee); Meeting

AGENCY: Joint Staff, Department of Defense.

ACTION: Notice of Meeting.

SUMMARY: The Chairman, Joint Chiefs of Staff, has scheduled a meeting of the Long Committee.

DATE: The meeting will be held on June 28-29, 1989.

ADDRESS: The meeting will be held at the Center for Naval Analysis, 4401 Ford Avenue, Alexandria, Virginia.

FOR FURTHER INFORMATION CONTACT: Colonel Tom Berta or LtCol Joe Shackelford, Executive Assistants, Long Committee, Park Center Complex, Suite 571, 4401 Ford Avenue, Alexandria, VA 22302. To reserve space, interested persons should phone (703) 758-0616.

SUPPLEMENTARY INFORMATION: The committee will be examining the desirability and feasibility of establishing a National Center for Strategic Studies. The meeting is open to the public, but the limited space

available for observers will be allocated on a first-come, first-served basis.

Linda M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

May 30, 1989.

[FR Doc. 89-13190 Filed 6-2-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Availability of Changes to Army Pamphlet 25-30 (DA Pam 25-30), Consolidated Index of Army Publications and Blank Forms

ACTION: Notice.

SUMMARY: This notice is to inform the public and U.S. Government Agencies other than the Department of Defense of the availability of DA PAM 25-30, Consolidated Index of Army Publications and Blank Forms. The DA Pam and its updated versions may be purchased through the following organization:

National Technical Information Service (NTIS), 5295 Port Royal Road, Springfield, Virginia 22161, Telephone—703 487-4600.

The Army Index is available in microfiche form only.

FOR FURTHER INFORMATION CONTACT: Major Peggy Patterson, Chief, Inventory Management Division, United States Army Publishing and Printing Command, Alexandria, VA 22331. Telephone 202-325-8297.

John O. Roach, II,

Department of the Army Liaison Officer for the Federal Register.

[FR Doc. 89-13196 Filed 6-2-89; 8:45 am]

BILLING CODE 3710-06-M

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 27-28 June 1989.

Time: 1300-1700 hours, 27 June. 0800-1500 hours, 28 June.

Place: St. Louis, Missouri.

Agenda: The Army Science Board Ad Hoc Subgroup on Total Quality Management will meet for a tour and a series of discussions with the US Army Aviation Systems Command (AVSCOM) and the McDonnell-Douglas Corporation. The Subgroup will discuss the AVSCOM and the McDonnell-Douglas corporate approach to quality. These

meetings will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The classified and unclassified matters and proprietary information to be discussed are so inextricably intertwined so as to preclude opening any portion of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-13228 Filed 6-2-89; 8:45 am]

BILLING CODE 3710-0-M

Army Science Board; Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the committee: Army Science Board (ASB).

Dates of meeting: 29-30 June 1989.

Time: 0800-1700 hours each day.

Place: Fort Rucker, Alabama.

Agenda: The Army Science Board Ad Hoc Subgroup on Human Dimensions in Army Safety will conduct its next meeting at Fort Rucker, Alabama. The meeting will be a working meeting to prepare the initial draft findings for the study, and additional briefings by selected U.S. Army Safety Center personnel may be given. This meeting is open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039/7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-13229 Filed 6-2-89; 8:45 am]

BILLING CODE 3710-0-M

Corps of Engineers, Department of the Army

Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Bayou Lafourche-Lafourche Jump Waterway, Louisiana, Study

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent to prepare a DEIS.

SUMMARY: This study will investigate Federal involvement in maintaining the bar and entrance channels of Bayou Lafourche, Louisiana, at depths greater than those currently authorized.

FOR FURTHER INFORMATION CONTACT: Questions concerning the proposed project can be answered by Mr. Dale

Geerdes, (504) 862-1855, and questions concerning the DEIS can be answered by Mr. Richard Boe, (504) 862-1505, U. S. Army Corps of Engineers, Planning Division (CELMN-PD), P.O. Box 60267, New Orleans, Louisiana 70160-0267.

SUPPLEMENTARY INFORMATION: 1.

Proposed action: The existing Federal responsibility at Bayou Lafourche from the Gulf of Mexico to mile 13.2 is a 12 by 125-foot channel. The channel was authorized by the River and Harbors Act of 14 July 1960. By resolutions passed by the Committee on Public Works of the U.S. Senate on 21 February 1972, and the Committee on Public Works of the U.S. House of Representatives on 14 June 1972, the Corps of Engineers is authorized to conduct a study to determine the feasibility of modifying the Bayou Lafourche-Lafourche Jump Waterway, Louisiana, with particular reference to providing adequate channel dimensions to meet needs of existing and future navigation.

In 1968 the Greater Lafourche Port Commission enlarged the portion of the channel from the Gulf of Mexico to Port Fourchon to 20 by 300 feet. The bar channel and jetty reach was further enlarged by the Port Commission to 30 by 300 feet in 1980. The Port Commission has requested the Corps assume maintenance of the channel at the enlarged dimensions and investigate the feasibility of further channel enlargements.

The channel provides access to the Gulf of Mexico for vessels engaged in the offshore oil and gas industry, the Louisiana Offshore Oil Port, and a large commercial fishing industry.

Alternatives: Project alternatives will address Federal involvement in the Bayou Lafourche channel up to Port Fourchon. The feasibility of taking over responsibility of the channel at dimensions greater than those currently authorized will be investigated. The drafts and other dimensional requirements of vessels using the waterway will be used to develop alternative plans. Under the no-action plan, the Corps would continue to be responsible for maintenance of the channel at the authorized dimensions of 12 by 125 feet.

Scoping: The scoping process will include distribution of a scoping input request to local, state, and Federal agencies, elected officials, local organizations, local news media, affected businesses, and segments of the public who may have an interest in the project. The scoping input request will invite comments on project alternatives and other significant project related

issues to be used in the planning process. Comments received as a result of the scoping input request will be summarized and a summary will be sent to all respondents. Discussion of significant issues in the DEIS will encompass the suggestions contained in the replies to the scoping input request. A scoping meeting will not be held unless written responses indicate a need for such action.

Significant Issues: The DEIS will analyze significant issues concerning the proposed project such as effects to the offshore oil and gas industry, the Louisiana Offshore Oil Port, commercial fishing industry, endangered and threatened species, wildlife and fishery resources, marsh lands, oyster beds, and cultural and recreational resources.

Environmental Consultation and Review: The U.S. Fish and Wildlife Service will provide a Coordination Act Report. The Corps will work with state and Federal agencies in attempts to minimize environmental impacts while using dredge material to rebuild marsh and nourish beaches.

Completion Date: The DEIS is scheduled to be available to the public in April 1990.

Dated: May 18, 1989.

Richard V. Gorski,

Colonel, U.S. Army, District Engineer.

[FR Doc. 89-13232 Filed 6-2-89; 8:45 am]

BILLING CODE 3710-04-M

DEPARTMENT OF ENERGY

Office of Energy Research

Energy Research Advisory Board; Cold Fusion Panel

Notice is hereby given of the following meeting:

Name: Cold Fusion Panel of the Energy Research Advisory Board (ERAB).

Date & Time: June 22, 1989, 8:30 a.m.-5:00 p.m.

Place: Department of Energy, 1000 Independence Avenue, SW., Room 4A-110, Washington, DC 20585.

Contact: William L. Woodard, Department of Energy, Office of Energy Research, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-5767.

Purpose of the Parent Board: To advise the Department of Energy (DOE) on the overall research and development conducted in DOE and to provide long-range guidance in these areas to the Department.

Purpose of the Panel: The purpose of the Panel is to review the experiments and theory of the recent work on cold fusion; identify research that should be undertaken to determine, if possible, what physical, chemical, or other processes may be involved; and identify what R&D direction DOE should pursue to fully understand these

phenomena and develop the information that could lead to their practical application.

Tentative Agenda: The specific agenda items are subject to last minute changes. Visitors planning to attend for a specific topic should confirm the time prior to and during the date of the meeting.

Agenda

- Administrative Items
- Report on Los Alamos National Laboratory Cold Fusion Workshop
- Status of Cold Fusion Research
- Future Panel Schedule
- Discussion of Interim Draft Report
- Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Panel either before or after the meeting. Members of the Public who wish to make oral statements pertaining to agenda items should contact William Woodard at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda. The Chairmen of the Panel are empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Minutes of the Meeting: Available for review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal Holidays.

Issued at Washington, DC, on May 30, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89-13285 Filed 6-2-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. CP89-1461-000 et al.]

Southern Natural Gas Co. et al.; Natural Gas Certificate Filings

May 26, 1989.

Take notice that the following filings have been made with the Commission:

1. Southern Natural Gas Company

[Docket No. CP89-1461-000]

Take notice that on May 22, 1989, Southern Natural Gas Company (Southern) filed in Docket No. CP89-1461-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport gas on an interruptible basis for BP Gas Inc. (BP) under Southern's blanket certificate issued in Docket No. CP88-316-000 under Section 7 of the Natural Gas Act, all as more fully set forth in the request

on file with the Commission and open to public inspection.

Southern would perform the proposed transportation service for BP, a marketer, pursuant to a service agreement dated March 17, 1989, under Southern's Rate Schedule IT. The service agreement is for a primary term of one month with successive terms of one month thereafter unless cancelled by either party. The service agreement provides for a maximum quantity of 50,000 MMBtu of gas on a peak day but BP anticipates requesting 41,095 MMBtu of gas on an average day, and accordingly, 15,000,000 MMBtu of gas on an annual basis. Southern proposes to receive the gas at various receipt points in Offshore Texas, Offshore Louisiana, Texas, Louisiana, Mississippi and Alabama for delivery to a delivery point in Georgia. Southern asserts that no new facilities are required to implement the proposed service.

Southern commenced transportation of natural gas for BP on April 1, 1989, as reported in Docket No. ST89-3039 pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Southern proposes to continue this transportation service in accordance with the provisions of §§ 284.221 and 284.223(b) of the Commission's Regulations.

Comment date: July 10, 1989 in accordance with Standard Paragraph G at the end of the notice.

2. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-1433-000]

Take notice that on May 18, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern) filed in Docket No. CP89-1433-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas under its blanket certificate issued in Docket No. CP86-435-000 on behalf of Arco Oil & Gas Company (Arco), a producer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern indicates that service commenced April 11, 1989, and the volumes transported to be 75,000 MMBtu per day on a peak day, 56,250 MMBtu on an average day and 27,375,000 MMBtu on an annual basis for Arco.

Northern states that no construction of facilities will be required.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1450-000]

Take notice that on May 19, 1989, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1450-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of the City of Bushnell (Bushnell), a shipper and local distribution company of natural gas, under its blanket authorization issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle would perform the proposed interruptible transportation service for Bushnell, pursuant to a transportation service agreement dated April 1, 1989. The transportation agreement is effective for a primary term of ten years from the initial date of service and thereafter until terminated by either party upon at least six months prior notice. Panhandle proposes to transport 2,012 Dekatherms (Dth) of natural gas on a peak and average day; and on an annual basis 734,380 Dth of natural gas for Bushnell. Panhandle proposes to receive the subject gas from Arkla and Transok in Custer County, Oklahoma and Oklahoma Natural Gas Company in Dewey County, Oklahoma. Panhandle will then transport and redeliver the gas, less fuel used and unaccounted for line loss, to the City of Bushnell in Fulton County, Illinois. No new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Panhandle commenced such self-implementing service on April 1, 1989, as reported in Docket No. ST89-3175-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. United Gas Pipe Line Company

[Docket No. CP89-1458-000]

Take notice that on May 19, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1458-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service on behalf of

Loutex Energy, Inc. (Loutex), a producer and marketer of natural gas, under its blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United states that it proposes to transport natural gas on behalf of Loutex from a point of receipt located in offshore Louisiana to a point of delivery located in offshore Louisiana.

United further states that the maximum daily, average daily and annual quantities that it would transport on behalf of Loutex would be 12,360 MMBtu equivalent, 12,360 MMBtu equivalent and 4,511,400 MMBtu equivalent of natural gas, respectively.

United indicates that in Docket No. ST89-3415, filed with the Commission on May 8, 1989, it reported that transportation service for Loutex had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1460-000]

Take notice that on May 19, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1460-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport gas on an interruptible basis for Catamount Natural Gas Inc. (Catamount) under its blanket certificate issued in Docket No. CP-328-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco states that it would receive the gas for Catamount at various existing points of receipt in Mississippi, Pennsylvania, offshore Louisiana, Louisiana, offshore Texas and Texas, and would redeliver the gas at various existing delivery points located in New York.

Transco further states that the maximum daily, average daily and annual quantities that it would transport for Catamount would be 150,000 dt equivalent of natural gas, 100,000 dt equivalent of natural gas and 36,500,000 dt equivalent of natural gas, respectively.

Transco indicates that in a filing made with the Commission in Docket No. ST89-3393, it reported that

transportation service for Catamount commenced on April 13, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1469-000]

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1469-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Mountain Industrial Gas Company (Mountain), a marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle requests authorization to transport, on an interruptible basis, up to a maximum of 2,000 dekatherms of natural gas per day for Mountain from receipt points located in Colorado, Illinois, Kansas, Michigan, Ohio, Oklahoma and Texas, to Robert W. Davis in Morton County, Kansas. Panhandle anticipates transporting, on an average day 400 dekatherms and an annual volume of 146,000 dekatherms.

Panhandle states that the transportation of natural gas for Mountain commenced April, 1989, as reported in Docket No. ST89-3294-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Panhandle in Docket No. CP86-585-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Southern Natural Gas Company

[Docket No. CP89-1472-000]

Take notice that on May 22, 1989, Southern Natural Gas Company (Southern), First National, Southern Natural Building, Birmingham, Alabama 35203, filed in Docket No. CP89-1472-000 a request pursuant to §§ 157.205 and 284.223 of the Commissions Regulations under the Natural Gas Act, for authorization to transport natural gas under its blanket certificate issued in Docket No. CP88-316-000, pursuant to section 7 of the Natural Gas Act for Citizens Gas Supply Corporation (Citizens) all as more fully set forth in

the request on file with the Commission and open to public inspection.

Southern proposes to transport up to a maximum daily quantity of 35,000 MMBtu on a peak day, 34,520 MMBtu on an average day and an annual volume of 12,600,000 MMBtu for Citizens.

Southern explains that service commenced April 1, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3047-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1479-000]

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), Post Office Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1479-000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of the City of Clarence (Clarence), a shipper and local distribution company of natural gas, under its blanket authorization issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle would perform the proposed interruptible transportation service for Clarence, pursuant to a transportation service agreement dated April 1, 1989. The transportation agreement is effective for a primary term of ten years from the initial date of service and thereafter until terminated by either party upon at least six months prior notice. Panhandle proposes to transport 262 Dekatherms (Dth) of natural gas on a peak day; 88 Dth on an average day; and on an annual basis 32,120 Dth of natural gas for Clarence. Panhandle proposes to receive the subject gas from Arkla and Transok in Custer County, Oklahoma and Oklahoma Natural Gas Company in Dewey County, Oklahoma. Panhandle will then transport and redeliver the gas, less fuel used and unaccounted for line loss, to the City of Clarence in Audrain County, Missouri. No new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's

Regulations. Panhandle commenced such self-implementing service on April 1, 1989, as reported in Docket No. ST89-3111-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1481-000]

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1481-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to transport natural gas on behalf of Amgas, Inc. (Amgas or Shipper), a shipper and marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Panhandle requests authority to transport up to 150 dt equivalent of natural gas per day on an interruptible basis on behalf of Amgas pursuant to a transportation agreement dated March 20, 1989, between Panhandle and Amgas. It is stated that the transportation agreement provides for Panhandle to receive gas from various existing points of receipt on its system in Colorado, Illinois, Kansas, Michigan, Ohio, Oklahoma, Texas, and Wyoming. It is stated that Panhandle will then transport and redeliver the subject gas, less fuel used and unaccounted for line loss, to CILCO—Peoria #1 & #2 in Tazewell County, Illinois. Panhandle states that the shipper's estimated average daily and annual quantities would be 75 dt equivalent of natural gas per day and 27,375 dt equivalent of natural gas, respectively. It is stated that the transportation charge for this service is based upon Panhandle's currently effective Rate Schedule PT. Panhandle further states that service under the 120-day automatic provisions of § 284.223(a) of the Commission's Regulations commenced on April 1, 1989, as reported in Docket No. ST89-3293.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1483-000]

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company

(Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1483-000 a request pursuant to § 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 284.223) for authority to provide interruptible transportation service for Conoco, Inc. (Conoco) a producer and shipper of natural gas, under Panhandle's blanket transportation certificate authority issued November 20, 1987, in Docket No. CP86-585-000, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Panhandle states it will receive the gas at various existing points on its system in the states of Texas, Oklahoma, Kansas, Colorado and Illinois and deliver the gas for the account of Conoco to Columbia Gas-Maumee in Lucas County, Ohio.

Panhandle proposes to transport up to 1,500 dt of gas per peak day and approximately 500 dt and 182,500 dt of gas per average day and annually, respectively. Panhandle states that the transportation service commenced under the 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on April 1, 1989, pursuant to a transportation agreement dated January 24, 1989. Panhandle notified the Commission of the commencement of the transportation service in Docket No. ST89-3291-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1485-000]

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company, (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1485-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Seagull Marketing Services, Inc. (Seagull), under its blanket authorization issued in Docket No. CP86-585-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Panhandle would perform the proposed interruptible transportation service for Seagull, a shipper and marketer of natural gas, pursuant to a transportation agreement Rate Schedule PT dated February 13, 1989 (Contract No. P-PLT-2631). The term of the transportation agreement is for a

primary term of one month from the initial date for service, and shall continue in effect month-to-month thereafter until terminated by either party upon at least 30 days' prior notice to the other party. Panhandle proposes to transport on a peak day up to 100,000 dekatherm equivalent; on an average day up to 50,000 dekatherm equivalent; and on an annual basis 18,250,000 dekatherm equivalent of natural gas for Seagull. Panhandle proposes to receive the subject gas from various existing points of receipt on its system. The volumes would be transported and redelivered less fuel used and unaccounted for line loss to Union Gas Limited in Wayne County, Michigan. Panhandle proposes to charge the then effective, applicable rates and charges under its PT rate schedule. Panhandle avers that no new facilities nor expansion of existing facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self-implementing provision of § 284.223(a)(1) of the Commission's Regulations. Panhandle commenced such self-implementing service on April 1, 1989, as reported in Docket No. ST89-3289-000.

Comment date: July 10, 1989 in accordance with Standard Paragraph G at the end of the notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1492-000]

Take notice that on May 23, 1989 Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1492-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas for the Village of Stonington (Stonington), a shipper and marketer of natural gas, pursuant to Panhandle's blanket certificate issued in Docket No. CP86-585-000 and section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Panhandle requests authority to transport up to 1,026 Dt. per day on an interruptible basis on behalf of Stonington pursuant to a Transportation Agreement dated April 1, 1989 between Panhandle and Stonington (Transportation Agreement). The Transportation Agreement provides for Panhandle to receive gas from Arkla and Transok in Custer County, Oklahoma and Oklahoma Natural Gas

Company in Dewey County, Oklahoma. Panhandle will then transport and redeliver subject gas, less fuel used and unaccounted for line loss, to the Village of Stonington in Christian County, Illinois.

Shipper states that the estimated daily and estimated annual quantities would be 1,086 Dt. and 396,390 Dt., respectively. Service under § 284.223(a) commenced on April 1, 1989, as reported in Docket No. ST89-3173-000.

Comment date: July 10, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13257 Filed 6-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10405-006 Oregon]

Craig W. Scott; Surrender of Preliminary Permit

May 30, 1989

Take notice that Craig W. Scott, Permittee for the South Fork Water Power Project No. 10405, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 10405 was issued September 18, 1988, and would have expired August 31, 1991. The project would have been located on Hemaloose Creek and the South Fork of the Clackamas River within the Mt. Hood National Forest in Clackamas County, Oregon.

The Permittee filed the request on May 8, 1989, and the preliminary permit for Project No. 10405 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which

case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13258 Filed 6-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP88-44-000, et al]

El Paso Natural Gas Co.; Informal Settlement Conference

May 30, 1989.

In the matter of RP85-58-017, RP88-202-000, RP88-185-000, RP88-184-000, CP88-434-000, CP88-333-000, CP88-332-000, CP88-203-000, CP87-553-000, CI87-290-000, TM89-1-33-000, TQ89-1-33-000, TA88-1-33-000, TA88-3-33-000, TA85-1-33-004, and TA85-1-33-009¹

Take notice that an informal settlement conference will be convened in the above-referenced proceedings on June 13, 1989 at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

The parties and the Commission Staff are invited to attend the informal settlement conference. Persons wishing to become parties must move to intervene pursuant to the Commission's Regulations (18 CFR 385.214 (1985)) and have their motion granted.

For additional information contact Cynthia A. Govan (202) 357-5330 or Rebecca S. Haney (202) 357-8461.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13259 Filed 6-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1500-000]

Transcontinental Gas Pipe Line Corp; Request Under Blanket Authorization

May 30, 1989.

Take notice that on May 24, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1500-000 a request pursuant to § 157.205 of the Commission's Regulations under the natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Catamount Natural Gas, Inc. (Catamount), under the blanket certificate issued in Docket No. CP88-

¹ All of the above-referenced proceedings have not been consolidated for purposes of hearing or decision. Settlement discussions may, however, address issues raised in each of these proceedings.

328-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Transco states that pursuant to service agreement dated March 1, 1989, under its Rate Schedule IT, it proposes to transport up to 3,067,600 dekatherms (dt) per day equivalent of natural gas for Catamount. Transco states that it would transport the gas from various existing receipt points in Mississippi, Pennsylvania, onshore and offshore Louisiana, and onshore and offshore Texas, and would deliver the gas at various existing delivery points in Virginia, Pennsylvania, Maryland, Georgia, New Jersey, Alabama, North Carolina, New York, onshore Texas and onshore Louisiana.

Transco advises that service under § 284.223(a) commenced April 1, 1989, as reported in docket No. ST89-3116-000. Transco further advises that it would transport 50,000 dt on an average day and 18,250,000 dt annually.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13260 Filed 6-2-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1473-000]

Transwestern Pipeline Co.; Request Under Blanket Authorization

May 30, 1989.

Take notice that on May 22, 1989, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1473-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Yates Petroleum

Corporation (Yates) under the blanket certificate issued in Docket No. CP88-133-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission.

Transwestern states that it proposes to transport up to 100,000 MMBtu of natural gas for Yates on a peak day, 75,000 MMBtu on an average day, and 36,500,000 MMBtu annually, under Rate Schedule ITS-I. This service was reported to the Commission in Docket No. ST89-3408-000. Transwestern further states that construction of facilities will be required to provide the proposed service.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13261 Filed 6-2-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of March 31 Through April 7, 1989

During the Week of March 31 through April 7, 1989, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt of an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office

of Hearings and Appeals, Department of Energy, Washington, DC 20585.

May 23, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of Mar. 31 through Apr. 7, 1989]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 3, 1989	Farmington Gas Company, Inc., Farmington, NH	KEE-0175	Exception to the reporting requirements. If granted: Farmington Gas Co., Inc. would no longer be required to file Form E1A-782B "Reseller/Retailer's Monthly Petroleum Products Sales Report".
Do	Salomon, Inc., Washington, DC	KRD-0720	Motion for Discovery. If granted: Discovery would be granted to Salomon, Inc. in connection with the Statement of Objections submitted by the firm in response to a Proposed Remedial Order (Case No. KRO-0720).
Apr. 8, 1989	Schenectady Gazette, Washington, DC	KRA-0274	Appeal of an Information Request Denial. If granted: The March 1, 1989 Freedom of Information Request Denial issued by the Office of Naval Reactors would be rescinded and the Schenectady Gazette would receive access to 12 documents related to activities at the Knolls Atomic Power Laboratory.
Apr. 7, 1989	William G. Lloyd, Cincinnati, Ohio	KFA-0275	Appeal of an information request denial. If granted: The March 29, 1989 Freedom of Information Request Denial issued by the Oak Ridge Operations Office would be rescinded and William G. Lloyd would receive access to documents relating to a recent security clearance investigation.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund application	Case No.
03/31/89 thru 04/7/89.	Crude Oil Refund Applications Received.	RF272-75424 thru RF272-75435
03/31/89 thru 04/7/89.	Murphy Oil Refund Applications Received.	RF309-1158 thru RF309-1288
3/31/89 thru 04/7/89.	Atlantic Richfield Applications Received.	RF304-8281 thru RF304-8349
03/31/89 thru 04/7/89.	Exxon Refund Applications Received.	RF307-9726 thru RF307-9793
03/31/89 thru 04/7/89.	Shell Refund Applications Received.	RF315-5018 thru RF315-5137

Name of firm	Case No.	Received
Highway Transport, Incorporated.	RF306-4	10/19/88
Diversified Properties, Incorporated.	RF300-10771	04/03/89
Johnson's Pine Hill's Gulf.	RF300-10772	04/03/89
Florida Center Gulf	RF300-10773	04/03/89
Myers Crown	RF313-116	04/03/89
David Darrah Expy Crown S/S.	RF313-117	04/04/89
James W. Tate	RC272-42	04/04/89
Roe's Crown Service Station.	RF307-9734	04/05/89
Gibson's Crown, Inc.	RF313-119	04/05/89
Beacon Hill Gulf	RF300-10775	04/05/89
Blair's Gulf & Repair Service.	RF300-10774	04/05/89

Name of firm	Case No.	Received
Gerald Zimmerman	RC272-43	04/06/89
Emmett Elliott	RC272-44	04/06/89
Omaha Transit Authority.	RC272-45	04/06/89

[FR Doc. 89-13286 Filed 6-2-89; 8:45 am]
BILLING CODE 6450-01-M

Issuance of Decisions and Orders During the Week of January 30 Through February 3, 1989

During the week of January 30 through February 3, 1989, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Petition for Special Redress

Kenneth Walker, 2/2/89, KEG-0037

Kenneth Walker filed a Petition for Special Redress with the DOE in which he asked that the Office of Hearings and Appeals (OHA) be disqualified from further consideration of a Proposed Remedial Order that had been issued jointly to him and the Southwestern States Marketing Corporation. The Petition alleged bias on the part of OHA because, in an interlocutory order OHA had issued in the enforcement proceeding, it had included a reference to an irrelevant criminal conviction. The

DOE noted that Petitions for Special Redress are intended to be used to obtain extraordinary relief. The regulations require that a Petition be dismissed if there is a more appropriate proceeding by which the requested relief may be obtained. The DOE found that Walker could obtain review of his bias allegations in the enforcement proceeding itself and in subsequent review by the Federal Energy Regulatory Commission. The DOE also found that there was no actual evidence of bias. Accordingly, the Petition was dismissed.

Implementation of Special Refund Procedures

Amorient Petroleum Company, California, Salomon, Inc., Coral Petroleum, Inc., International Crude Corporation, Conoco, Inc., 2/3/89, KEF-0101, KEF-0109, KEF-0114, KEF-0115, KFX-0027

The DOE issued a final Decision and Order establishing procedures to distribute \$29,300,785, plus accrued interest, obtained from Amorient Petroleum Company, California, Salomon, Inc., Coral Petroleum, Inc., International Crude Corporation, and Conoco, Inc. The DOE has determined to distribute these funds in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). In making this determination, the DOE rejected the comments filed by Philip P. Kalodner concerning the sufficiency of the 20 percent set-aside for injured claimants. As the Decision

and Order indicates, Applications for Refund may now be filed by injured purchases of refined petroleum products. The specific information required in an Application for Refund is set forth in the Decision and Order.

Lone Star Oil and Chemical Company, Holly Corporation, 1/31/89, KEF-0106, KEF-0113

The DOE issued a Decision and Order implementing a plan for the distribution of \$1,950,756.18 (plus accrued interest) received pursuant to the DOE's settlement agreements with Lone Star Oil and Chemical Corporation and the Holly Corporation. The DOE determined that the consent order funds should be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges, 51 FR 27899 (August 4, 1986). The specific information to be included in Applications for Refund is set forth in the Decision.

Refund Applications

A.N. Pierson, Inc., 2/2/89, RF272-26244

The DOE approved an Application for Refund filed in the crude oil overcharge refund proceeding by A.N. Pierson, Inc., an end-user of refined petroleum products. The refund granted to Pierson is \$2,895.

Aminoil U.S.A., Inc./Avon LP Gas Co., et al., 2/3/89, RF139-13, et al.

The DOE issued a Decision and Order concerning Motions for Reconsideration filed by 29 claimants in the Aminoil U.S.A., Inc. special refund proceeding. The firms submitted information which indicated that they did not receive their full shares of accrued interest in their initial refund decisions. After examining the firms' applications and supporting documentation, the DOE concluded that the firms should receive refunds totaling \$231,716 in interest.

Aminoil U.S.A., Inc./Burling Sales Association Inc., et al., 2/3/89, RF139-42, et al.

The DOE issued a Decision and Order concerning three Motions for Reconsideration filed in the Aminoil U.S.A., Inc. special refund proceeding. The DOE found that (i) the original applications, which had been previously denied, were filed over three years after the deadline established in the Aminoil proceeding, (ii) the Motions for Reconsideration failed to show good cause for reconsidering the original denials, and (iii) accepting these late claims would prejudice the status of other timely-filed, pending applications. Under these circumstances, and because the proceeding is approaching completion, the Motions were denied.

Aminoil U.S.A., Inc./King Gas Company, Inc., et al., 2/3/89, RF139-48, et al.

The DOE issued a Decision and Order concerning sixteen Motions for Reconsideration filed in the Aminoil U.S.A., Inc. special refund proceeding. The DOE found that (i) the original applications, which had previously been denied, were filed over three years after the deadline established in the Aminoil proceeding, (ii) the Motions for Reconsideration were filed by a representative with experience before the DOE who failed to show good cause for reconsideration of the original denials, and (iii) accepting these late claims would prejudice the status of other timely-filed, pending applications. Under these circumstances, and because the proceeding is approaching completion, the Motions were denied.

Aminoil U.S.A., Inc./Minnegasco, Inc., 1/31/89, RF139-205

The DOE issued a Decision and Order concerning an Application for Refund filed in the Aminoil U.S.A., Inc. special refund proceeding. The DOE found that (i) the application was filed over three and one-half years after the deadline established in the Aminoil proceeding, (ii) the application was filed by a representative with experience before the DOE who failed to show good cause for the late filing, and (iii) the application was incomplete upon filing. Under these circumstances, and because the proceeding is approaching completion, the application was denied.

Aminoil U.S.A., Inc./Plymouth LP Gas, 1/31/89, RF139-126

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Plymouth LP Gas (Plymouth) in the Aminoil U.S.A., Inc. (Aminoil) special refund proceeding. Plymouth was unable to provide material showing injury and its submission was treated in a small purchaser claim limited to \$5,000 in principal. After examining the application and supporting documentation, the DOE determined that Plymouth should receive a refund of \$5,000 plus accrued interest.

Aminoil U.S.A., Inc./Walter J. Mornes, 1/31/89, RF139-172

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of Walter J. Mornes (Mornes) in the Aminoil U.S.A., Inc. (Aminoil) special refund proceeding. Mornes showing of injury established that it had been forced to absorb \$2,933 of Aminoil's alleged overcharges. After examining the application and supporting documentation, the DOE

determined that Mornes should receive a refund of \$2,933 plus accrued interest.

Atlantic Richfield Company/Millers Service Center, Nuss ARCO Service, Economy Oil Company, 1/30/89, RF304-138, RF304-1730, RF304-1984

The DOE issued a Decision and Order concerning 3 Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. As reseller/retailers claiming refunds of less than \$5,000 in principal, each applicant is presumed to have been injured by ARCO's alleged overcharges. After examining the applications and supporting documentation, the DOE determined that the firms should receive refunds totaling \$12,487, representing \$9,799 in principal and \$2,688 in interest.

City of Atlanta, 2/3/89, RF272-15958

The DOE issued a Decision and Order concerning an Application for Refund that the City of Atlanta (Atlanta) submitted in the Subpart V crude oil refund proceedings. On October 20, 1988, the DOE issued a Proposed Decision denying Atlanta's application because it was believed to have submitted a waiver and release in the Refiners' Escrow. This waiver would have barred Atlanta from collecting other crude oil refund monies. Although Atlanta was eligible to participate in the Refiners' Escrow, it had chosen not to do so and was therefore not barred from participating in the Subpart V crude oil proceedings. This Decision granted Atlanta a refund of \$4,240 based on its purchases of 21,198,434 gallons of petroleum products.

Crown Central Petroleum Corporation/Cooper Oil Company, 1/31/89, RF313-11

The DOE issued a Decision and Order granting an Application for Refund filed by Cooper Oil Company (Cooper), a purchaser of Crown refined products, in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in Crown Central Petroleum Corp., 18 DOE ¶ 85,326 (1988), Cooper was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of the refund approved in this Decision was \$860, representing \$749 in principal plus \$111 in accrued interest.

Crown Central Petroleum Corporation/Heflin's Garage, et al., 1/31/89, RF313-9, et al.

The DOE issued a Decision and Order granting applications filed by two purchasers of Crown refined petroleum

products in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of refunds approved in this Decision was \$11,480, representing \$10,000 in principal plus \$1,480 in accrued interest.

Crown Central Petroleum Corporation/Richards Fuel Oils, Inc., et al., 1/31/89, RF313-5, et al.

The DOE issued a Decision and Order granting applications filed by four purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of refunds approved in this Decision was \$14,802, representing \$12,893 in principal plus \$1,909 in accrued interest.

Exxon Corporation/Weems Exxon, et al., 2/3/89, RF307-2041, et al.

The DOE issued a Decision and Order concerning 13 Applications for Refund filed in the Exxon Corporation special refund proceeding. All of the applicants purchased directly from Exxon and were resellers whose allocable share is less than \$5,000. Each of the applicants relied upon gallonage figures taken from its records or a printout sent to it by Exxon to document its purchases during the consent order period. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is \$10,830 (\$9,354 principal plus \$1,476 interest).

Fuels, Inc., et al., 2/2/89, RF272-63026, et al.

The DOE issued a Decision and Order denying 46 Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant was a reseller or retailer during the period August 19, 1973, through January 27, 1981. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, each applicant was ineligible for a crude oil refund.

Garnavillo Mill, Inc., et al., 2/1/89, RF272-6679, et al.

The DOE issued a Decision and Order granting refunds from crude oil

overcharge funds to five applicants based upon their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used various actual records and/or conservative estimates to support their gallonage claims. Each applicant was an end-user of the products it had purchased and therefore was presumed injured. The sum of the refunds granted in this Decision, including accrued interest is \$3,893. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Gulf Oil Corporation/Concord Oil Company, Inc., Concord Oil of Newport, Inc., 1/31/89, RF300-1223, RF300-1224

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Concord Oil Company and Concord Oil of Newport. Because the firms were under common ownership during the consent order period, and because their allocable share exceeds \$5,000, it is appropriate to consider them together when applying the presumptions of injury. The two firms collectively purchased 72,086,646 gallons of covered Gulf products, and their Applications were approved under the 40 percent presumption of injury. The sum of the refunds granted in this Decision, including both principal and interest, is \$23,645.

Gulf Oil Corporation/Cunningham Butane Gas Co., Inc., 1/31/89, RF300-2288, RF300-2289

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Cunningham Butane Gas Co., Inc. (Cunningham). Cunningham's total allocable share exceeded \$5,000. Cunningham elected not to prove injury. Therefore, it received a refund under the 40 percent presumption of injury method. The sum of the refunds granted in this Decision, which includes both principal and interest, is \$8,406.

Gulf Oil Corporation/George Rice Fuel Oil Corp., Capable Utilities, Inc., 1/31/89, RF300-2640, RF300-2648

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by George Rice Fuel Oil Corp. and Capable Utilities, Inc. Because the firms were under common ownership during the consent order period, they could not be considered separately under the small

claims presumption of injury. The two companies collectively purchased 17,661,168 gallons of Gulf products, and their applications were approved under the 40 percent presumption of injury. The amount of the refund granted in this Decision is \$6,406.

Gulf Oil Corporation/Main Street Gulf & Carryout, et al., 1/31/89, RF300-6404, et al.

The DOE issued a Decision and Order concerning 18 Applications for Refund submitted in the Gulf Oil Corporation refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is \$42,173.

Gulf Oil Corporation/Manpower Inc. of Beaumont-Pt. Arthur, 1/31/89, RF300-1298

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Manpower, Inc. of Beaumont-Pt. Arthur (Manpower). Manpower managed 12 gas stations for Gulf but never owned any of the stations, leased any of them from Gulf, or took title to the Gulf petroleum products at any of them. Therefore, since Manpower could not have been injured by Gulf's alleged overcharges, Manpower's application for refund was denied.

Gulf Oil Corporation/Navy Resale and Services Support Office, 2/1/89, RF300-4393

The DOE issued a Decision and Order to the Navy Resale and Services Support Office (NRSSO) in the Gulf Oil Corporation special refund proceeding. The NRSSO's primary purpose is to provide discount goods and services to military personnel. Any profits generated by its sales operations are used for the benefit of the military personnel who purchase from it. Because the covered products claimed by the NRSSO were sold to and consumed by military personnel, and because any refund received by the NRSSO will be used for the benefit of military personnel, the DOE granted the NRSSO a full volumetric refund totaling \$320,487 on 390,837,957 gallons of covered Gulf products.

Gulf Oil Corporation/Ram Fuel Corporation, 2/3/89, RF300-10649, RF300-10650

The DOE issued a Decision and Order denying two Applications for Refund submitted by Ram Fuel Corporation in the Gulf Oil Corporation special refund proceeding. The Applicant submitted information indicating that it purchased

9,578,041 gallons of Gulf products during the consent order period, and wished to receive a small claims refund of \$6,406 (\$5,000 principal + \$1,406 interest) based on those purchases. However, the DOE had previously granted Ram Energy Corporation, an affiliated corporate entity, a refund of exactly this amount based on its purchases of 9,791,993 gallons. Although the two firms are owned separately, they are highly operationally related. Thus, it was appropriate to consider their claims together when applying the presumptions of injury. In this proceeding, the two firms are entitled to a refund on the combined purchase total of 19,370,034 gallons, or \$6,406. Since Ram Energy had previously been granted a refund of \$6,406 in this proceeding, Ram Fuel's Applications for Refund were denied.

Gulf Oil Corporation/Saveway Gas and Appliance, Inc., College Drive Gulf, 2/1/89, RF300-4118, RF300-4554

The DOE issued a Decision and Order concerning 2 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is \$12,812.

Gulf Oil Corporation/William J. Smith, et al., 2/2/89, RF300-6000, et al.

The DOE issued a Decision and Order concerning a number of Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury standard. The sum of the refunds granted in this Decision is \$260,323.

Liquid Carbonic Industries Corp., Inc., et al., 1/31/89, RF272-13159, et al., RD272-13159, et al.

Four manufacturing companies submitted Applications for Refund from crude oil overcharge funds. A group of thirty states and Territories (the States) filed identical consolidated States, Objections and Motions for Discovery in each of the four proceedings. The States opposed receipt of any refunds and sought discovery of information in support of their opposition. The DOE determined that: (1) The four companies were presumptively entitled to refunds as industrial end-users of petroleum products outside of the petroleum industry and each applicant had certified the volume of petroleum products it had purchased during the price control period; (2) the States had failed to rebut the presumption of eligibility; and (3) the States had failed

to show that discovery with regard to these applications was appropriate or that any additional information should be required of these companies. Accordingly, the Applications for Refund of the four companies were granted, and the States' Objections and Motions for Discovery were dismissed.

Louisiana Sulphur Carriers, 2/1/89, RF272-514

The DOE issued a Decision concerning an Application for Refund that Louisiana Sulphur Carriers (Louisiana) submitted in the Subpart V crude oil refund proceedings. Louisiana purchased 13,752,488 gallons of petroleum products during the period August 19, 1983, through January 27, 1981. Louisiana was a shipper of sulphur products within the United States during the relevant time period. Louisiana relied on the end-user presumption of injury. The total refund approved in this Decision is \$2,750.

Murphy Oil Corporation/Bi-Rite Food Stores, et al., 2/2/89, RF309-600, et al.

The DOE issued a Decision and Order granting applications filed by 49 purchasers of Murphy refined petroleum products in the Murphy Oil Corporation special refund proceeding. According to the procedures set forth in *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Murphy. The total amount of refunds approved in this Decision was \$58,479, representing \$49,720 in principal plus \$6,759 in accrued interest.

Murphy Oil Corporation/Goenner Oil Company, et al., 2/1/89, RF309-127, et al.

The DOE issued a Decision and Order granting Applications for Refund filed by 6 applicants, all purchasers of refined petroleum products, in the Murphy Oil Corporation special refund proceeding. Each applicant was found to be injured under the appropriate presumption of injury defined in *Murphy Oil Corporation*, 17 DOE ¶ 85,782 (1988). According to the procedures set forth in that decision, each applicant was found to be eligible for a refund based on the volume of product it purchased from Murphy. The total refund approved in this decision was \$18,099, represented \$15,933 in principal plus \$2,166 in accrued interest.

Murphy Oil Corporation/Lakehead Pipe Line Co., Inc., et al., 1/31/89, RF309-305, et al.

The DOE issued a Decision and Order granting applications filed by seven

purchasers of Murphy refined petroleum products in the Murphy Oil Corporation special refund proceeding. According to the procedures set forth in *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1988), each applicant was found to be eligible for a refund. Three applicants were found to be eligible to receive a refund at the \$5,000 small claims presumption level while the other four were found to be eligible for a refund equal to their principal allocable shares. The total amount of refunds approved in this Decision was \$19,740, representing \$17,377 in principal plus \$2,363 in accrued interest.

Plaquemines Oil Sales Corp./Buras Fuel Docks, 2/3/89, RF305-11

The DOE issued a Decision and Order denying an Application for Refund submitted by Buras Fuel Docks (Buras) in the Plaquemines Oil Sales Corp. special refund proceeding. Buras, a retailer of Plaquemines No. 2 diesel fuel, submitted an injury showing in order to receive the refund amount identified in the Decision and Order implementing the Plaquemines refund proceeding. That showing was deficient since the firm's approximated cost banks were not based upon a proper May 15, 1973 base period cost of product. Buras requested that either of two sources of information, the average market price as recorded in *Platt's Oil Price Handbook & Oil Manual* or the base period cost of a local competitor, be used as an imputed base period margin. The DOE found these suggestions unnecessary because information in the Plaquemines remedial order proceedings indicated a specific base period cost for Buras. Using this information, the DOE imputed a base period margin and determined that Buras had a negative cumulative cost bank beginning in January 1974 and throughout the remainder of the Plaquemines settlement period. Accordingly, the DOE determined that Buras was not injured and its Application for Refund was denied.

Rubbermaid Incorporated, 1/30/89, RF272-18800

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Rubbermaid Incorporated, (Rubbermaid) based on the firm's purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Rubbermaid documented purchases of 9,069,516 gallons of petroleum products, including 1,281,300 gallons of hydraulic oil. The DOE determined that hydraulic oil is a product refined from crude oil, and thus, is an eligible product for the purposes of

the Subpart V crude oil refund proceedings. The amount of the refund granted in this Decision is \$1,814. Rubbermaid will be eligible for additional refunds as additional crude oil overcharge funds become available.

Superiorgas Limited, 2/1/89, RF272-33104

The DOE issued a Decision and Order denying an Application for Refund filed by Superiorgas Limited (Superior) in the Subpart V crude oil proceedings. Superior was a retailer during the period August 19, 1973, through January 27, 1981. Because Superior did not demonstrate that it was injured due to the crude oil overcharges, it was found to be ineligible for a crude oil refund.

Trent Bridge Exxon, et al., 2/2/89, RF272-63581, et al.

The DOE issued a Decision and Order denying 17 Applications for Refund filed in the Subpart V crude oil refund proceedings. Each applicant was a reseller or retailer during the period August 19, 1973, through January 27, 1981. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, each applicant was ineligible for a crude oil refund.

Total Petroleum, Inc./Schulte Oil Co. Inc., et al., 2/3/89, RF310-107, et al.

The DOE issued a Decision and Order concerning 18 Applications for Refund filed by purchasers of motor gasoline and/or No. 2 oils from Total Petroleum, Inc. (Total). The applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total. Each of the applicants was a reseller whose allocable share is less than \$5,000.

Under the standards established in *Total Petroleum, Inc.*, 17 DOE ¶ 85,542 (1988), the DOE granted refunds in this proceeding which total \$41,640 (\$35,813 principal plus \$5,827 interest).

Total Petroleum, Inc./Stan Hayes Enterprises, Inc., et al., 2/2/89, RF310-19, et al.

The DOE issued a Decision and Order concerning 24 Applications for Refund filed by purchasers of motor gasoline and/or No. 2 oils from Total Petroleum, Inc. (Total). The applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total. Each of the applicants was either an end-user or a reseller whose allocable share is less than \$5,000. Under the standards established in *Total Petroleum, Inc.*, 17 DOE ¶ 85,542 (1988), the DOE granted refunds in this proceeding which total \$37,430 (\$32,210 principal plus \$5,220 interest).

Vickers Energy Corporation/Coline Gasoline Corp./Perry Gas Processors, Inc./Wisconsin, 2/1/89, RQ1-470, RQ2-500, RQ183-501

The DOE issued a Decision and Order approving a second-stage refund application submitted by the State of Wisconsin in the Coline Gasoline Corp. and Perry Gas Processors, Inc. special refund proceedings and dismissing for administrative reasons, a second-stage refund application in the Vickers Energy Corp. special refund proceeding. *Coline Gasoline Corp.*, 13 DOE ¶¶ 85,048, 85,091 (1985); *Vickers Energy Corp.*, 12 DOE ¶¶ 85,164, 85,178 (1985). The DOE adjusted the State's available second-stage monies in this Decision to account for a previous overpayment in Vickers

funds of \$63. The DOE also determined that Wisconsin could use \$13,775 in Coline and Perry Gas funds to supplement funding for an expansion of its Waste-to-Energy Conversion program.

W.H. Johns, Inc., Colonial Motor Freight Lines, Inc., G.G. Parsons Trucking Co., 2/1/89, RF272-9835, RF272-9835, RF272-9892, RF272-9892, RF272-11290, RF272-11290

The DOE issued a Decision and Order concerning applications for refund filed by three interstate common carriers (carriers) in the Subpart V crude oil refund proceeding. A group of States objected to the carriers' applications on two grounds: (1) That the economy generally allows the members of the trucking industry to pass through some portion of increased costs to customers via higher prices and (2) that the ICC fuel surcharges implemented during the price control period allowed the carriers to pass through increased fuel costs. The States argued that this evidence is sufficient to rebut the end-user presumption for the applicants, and, therefore, OHA should deny the applications or, in the alternative, grant the accompanying motions for discovery and requests for special report orders filed in each of the proceedings. OHA granted the refunds for all three applicants and denied the States' motions for discovery and requests for special report orders determining that the States had failed to procure evidence which would indicate that these applicants passed-through increased fuel costs equal to the amount of crude oil overcharges.

CRUDE OIL END-USERS

Name	Case number	Date	No. of applicants	Total refund
The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:				
City of Coon Rapids, et al.	RF272-26061	1/31/89	24	\$14,144
Donald C. Oesterle, et al.	RF272-22144	1/31/89	144	57,018
Massachusetts Institute of Technology, et al.	RF272-14360	1/31/89	26	10,109
Peterson Contractors, Inc., et al.	RF272-30526	1/31/89	21	25,111
Pitzel Feed Yards, Inc., et al.	RF272-12134	2/2/89	39	19,701
Trigon Associates, et al.	RF272-20157	1/31/89	28	43,939
W O. Bankston Enterprise, et al.	RF272-19501	2/2/89	35	9,225
Weidon Coca Cola Bottling Works, et al.	RF272-331	1/31/89	110	23,049

Dismissals

The following submissions were dismissed:

Name	Case No.
Atlantic Richfield Oil Co.	RF304-3975
Anthony Mechanical Contractors, Inc.	KFA-0249
Arcudi's Service Station	RF265-2769
Bennett Heat Treating & Brazing Co., Inc.	RF272-64570
Davenport Oil Co.	RF272-62469
Duke and Long Distributing Co., Inc.	RF300-7691
Frank J. Overlaur	RF272-73934
GM Assembly Division, GMC General Motors Corp.	RF304-1542
Hassell Oil Co.	RF304-31
Hubert H. Ingram	RF272-74492
Interstate Gulf/Quintard Gulf	RF300-10664
J.O. Barber Lumber Co., Inc.	RF272-61435
Jim's Holiday Gulf	RF300-10267
Saunders Esso/R.B. Saunders Exxon.	RF307-1822
Silco Oil Co.	RF265-2768
State of Hawaii, Dept. of Defense	RF272-56217
Tesoro Petroleum Corp.	HRO-0196 KRO-0670 KRO-0680
Tom's Standard Service	RF21-12627

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

May 24, 1989.

George B. Breznay,
Director, Office of Hearings and Appeals.
[FR Doc. 89-13287 Filed 6-2-89; 8:45 am]
BILLING CODE 645-01-M

Issuance of Decisions and Orders During the Week of February 6 Through February 10, 1989

During the week of February 6 through February 10, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

State of Alaska, 02/07/88, KFA-0254

The State of Alaska (Alaska) filed an Appeal from a denial by the Economic Regulatory Administration (ERA) of a request for several forms under Exemption 4 of the Freedom of Information Act. Specifically, Alaska sought the following documents that had been filed with the DOE by six companies for the period January 1, 1979, through January 27, 1981: EIA-14

(Refiner's Monthly Cost Allocation Report); EIA-782A (Refiners/Gas Plant Operators Monthly Petroleum Product Sales Report); EIA-782B (Resellers/Retailers Monthly Petroleum Product Sales Report); EIA-182 (Domestic Crude Oil First Purchase Report); and ERA-49 (Entitlements Report). In considering the Appeal, the OHA noted that the ERA's determination to withhold the requested forms was clearly inadequate because ERA failed to specifically explain how the withheld forms meet the Exemption 4 standards. The OHA noted, however, that one of the requested forms, i.e., the Refiner's Monthly Cost Allocation Report, must be made available to Alaska, insofar as that form had been previously released. As to the remaining forms, the OHA remanded the determination to the ERA for further consideration consistent with the Decision.

Refund Applications

Abington School District, et al., 2/10/89, RF272-27337, et al.

The DOE issued a Decision and Order granting Applications for Refund from crude oil overcharge funds filed by 50 Pennsylvania school districts based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. The applicants were found to be end-users that purchased a total of 95,239,008 gallons of covered products. The total refund granted in this Decision was \$19,045.

Aminoil U.S.A., Inc./Minnegasco, Inc., 2/10/89, RR139-64

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed by Minnegasco, Inc. in the Aminoil U.S.A., Inc. special refund proceeding. The firm's initial Application for Refund was denied on the basis that (i) the application was filed more than three and one-half years after the deadline established in the Aminoil proceeding, (ii) the application was filed by a representative with experience before the DOE who failed to show good cause for the late filing, and (iii) the application was incomplete upon filing. The Motion for Reconsideration presented no information to lead the DOE to amend the prior decision and, accordingly, the motion was denied.

Atlantic Richfield Company/Miller's Arco, et al., 2/06/89, RF304-1528, et al.

The DOE issued a Decision and Order concerning seven Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were reseller/retailers

requesting refunds of \$5,000 or less. Therefore, each applicant was presumed injured. The refunds granted in this Decision totalled \$13,945, including \$3,029 in accrued interest.

Crown Central Petroleum Corporation/Consolidated Edison Corporation of New York, Inc., 2/10/89, RF313-20

The DOE issued a Decision and Order granting an Application for Refund filed by the Consolidated Edison Corporation of New York, Inc. (Con Edison), in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), Con Edison was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of the refund approved in this Decision was \$13,135, including \$1,693 in accrued interest.

Crown Central Petroleum Corporation/Jones Oil Distributor, Inc., 2/10/89, RF313-19

The DOE issued a Decision and Order granting an Application for Refund filed by Jones Oil Distributor, Inc. (Jones), in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), Jones was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of the refund approved in this Decision was \$1,131, representing \$985 in principal plus \$146 in accrued interest.

Crown Central Petroleum Corporation/Oden Enterprise Inc., et al., 2/07/89, RF313-17, et al.

The DOE issued a Decision and Order granting applications filed by two purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of refunds approved in this Decision was \$14,822, representing \$12,911 in principal plus \$1,911 in accrued interest.

Exxon Corporation/Frederick E. Meyer, 2/08/89, RF307-8073

The DOE issued a Supplemental Order to Frederick E. Meyer (Meyer), an applicant that had been granted a refund in *Exxon Corp./National Exxon*, 18 DOE ¶ 85,207 (1988). After issuance of that refund determination, the DOE found that the claimant had also received a refund based on the same purchase volumes in connection with

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another Decision and Order. Accordingly, the DOE rescinded the duplicate refund of \$261 (\$230 principal plus \$31 interest) and informed Meyer that he must remit that amount to this Office so that it may be deposited in the Exxon escrow account established at the Department of the Treasury.

Exxon Corporation/Minit Mart & Exxon, et al., 2/09/89, RF307-802, et al.

The DOE issued a Decision and Order concerning 25 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either an end-user or a reseller with an allocable share of less than \$5,000. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is \$18,466 (\$15,952 principal plus \$2,514 interest).

Exxon Corporation/Thomas J. Clark, et al., 2/09/89, RF307-4812, et al.

The DOE issued a Decision and Order concerning 14 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share is less than \$5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision is \$10,490, including \$1,493 in accrued interest).

Getty Oil Company/ Arvil E. Sims, 2/10/89, RF265-2047

Arville E. Sims filed an Application for Refund in which it sought a portion of the fund obtained by the DOE through a consent order entered into with the Getty Oil Company. Sims documented the volume of motors gasoline which it purchased from Getty through the Tri-County Oil Company, a Getty jobber. The Arvil Sims refund, which was calculated based upon the procedures outlined in *Pioneer Corp./E.I. du Pont de Nemours & Co.*, 14 DOE ¶ 85,190 (1988), totaled \$9,282, representing \$4,505 in principal and \$4,777 in interest.

Getty Oil Company/Phillips Petroleum Company, 2/07/89, RF265-1970, RF265-1971, RF265-1972, RF265-2583

The DOE issued a Decision and Order concerning four Applications for Refund filed by the Phillips Petroleum Company (Phillips), a reseller of petroleum products covered by a Consent Order that the DOE entered into with the Getty Oil Company. Phillips submitted information documenting the volumes of

its Getty NGL purchases, elected to limit its claims on the basis of the percentage of injury presumption and was eligible for the maximum refund under that presumption of \$50,000.00. The sum of the refunds approved in this Decision is \$103,014, representing \$50,000 in principal and \$53,014 in accrued interest.

Gulf Oil Corporation/American Plant Food Corp., et al., 2/09/89, RF 300-559, et al.

The DOE issued a Decision and Order concerning 87 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is \$135,599.

Gulf Oil Corporation/Billy A. Phillips, 2/07/89, RF300-10675

The DOE issued a Supplemental Order concerning an Application for Refund filed by Billy A. Phillips in the Gulf Oil Corporation special refund proceeding. On January 17, 1989, the DOE issued a Decision granting Billy A. Phillips a refund of \$813. *Gulf Oil Corporation/James P. Lowe, et al., 18 DOE ¶* (Case Nos. RF300-509, et al.). The DOE sent Mr. Phillips a copy of the Decision but it was returned by the United States Postal Service with the comment "moved left no address". All attempts to contact Mr. Phillips have failed. Therefore, the DOE rescinded the refund granted to Billy A. Phillips in the Gulf proceeding.

Gulf Oil Corporation/Bobken's Fuel Service, et al., 2/09/89, RF300-0459, et al.

The DOE issued a Decision and Order concerning 35 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is \$64,236.

Gulf Oil Corporation/City of Fort Lauderdale, et al., 2/09/89, RF300-5800, et al.

The DOE issued a Decision and Order concerning 48 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is \$109,031.

Gulf Oil Corporation/Dries & Reichard, Inc., et al., 2/09/89, RF300-6200, et al.

The DOE issued a Decision and Order concerning 71 Applications for Refund submitted in the Gulf Oil Corporation

special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is \$117,816.

Gulf Oil Corporation/Kay Bee Auto Service of Deer Park, Inc., Kay Bee Gas O Rama, Inc., et al., 2/09/89, RF300-4597, RF 300-4601, et al.

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Kay Bee Auto Service of Deer Park, Inc. and Kay Bee Gas O Rama, Inc. The firms were under common ownership during the consent order period. Therefore, in applying the presumptions of injury, the two firms were considered together. Collectively, the firms purchased 10,118,404 gallons of covered Gulf products, and their Applications were approved under the 40 percent presumption of injury. The refund granted in this Decision, including accrued interest, is \$6,484.

Gulf Oil Corporation/Peter Johnston's Gulf, et al., 2/09/89, RF300-301, et al.

The DOE issued a Decision and Order concerning 54 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is \$106,008.

Gulf Oil Corporation/Renegade Oil Company, Inc., et al., 2/07/89, RF300-1717, RF 300-10562

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding by Renegade Oil Company, Inc. (Renegade). Renegade purchased 8,813,516 gallons of Gulf refined product as a reseller (RF300-10562) and distributed 23,422,339 gallons of Gulf refined product as a consignee (RF300-1717). Renegade received a refund of \$6,484 (\$5,000 principal plus \$1,484 interest).

Joseph H. Hill Company, et al., 2/08/89, RF272-8563, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to seven applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used petroleum products for various activities including farming, electricity generation and trucking, and each determined its volume either by consulting actual

purchase records or by reasonably estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed by the DOE to have been injured. The sum of the refunds granted in this Decision is \$15,527. All of the claimants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Mt. Vernon Community School Corp., et al., 2/10/89, RF272-12541, et al.

The DOE issued a Decision and Order approving Applications for Refund submitted by 39 claimants for crude oil overcharge funds collected by the DOE. The DOE found that the claimants, all end-users, met the eligibility requirements by supplying their actual or estimated purchase volume information for their commercial or agricultural activities. The DOE granted the claimants' refunds totalling \$12,992 based on their purchases of 64,966,214 gallons of refined petroleum products.

Murphy Oil Corporation/Grosskopf Oil Inc., et al., 2/08/89, RF309-13, et al.

The DOE issued a Decision and Order granting 7 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the Applicants purchased directly from Murphy and was a reseller whose allocable share was more than \$5,000. Each applicant elected to rely on the relevant reseller injury presumption established in the Murphy proceeding, either limiting its claim to \$5,000 or receiving 40% of its allocable share, whichever was greater. The sum of the refunds granted in the Decision was \$43,299 (\$37,849 principal plus \$5,450 interest).

Murphy Oil Corporation/Vines Gulf Station, et al., 2/07/89, RF309-34, et al.

The DOE issued a Decision and Order granting 10 Applications for Refund filed in the Murphy Oil Corporation special refund proceeding. Each of the applicants purchased directly from Murphy and was either a reseller whose allocable share was less than \$5,000 or an end-user of Murphy products. Accordingly, each applicant was granted a refund equal to its full allocable share, plus a proportionate share of the interest that has accrued in the Murphy escrow account. The sum of the refunds granted in the Decision was \$5,834 (\$5,099 principal plus \$735 interest).

Quintana Petroleum Corp./Texas Utilities Fuel Co., 2/08/89, RF133-1

Texas Utilities Fuel Company (TUFCO) submitted an Application for Refund from a consent order fund made available by Quintana Petroleum Corporation. The application was filed in a Subpart V refund proceeding conducted by the Office of Hearings and Appeals and was based on TUFCO's purchases of crude oil from Quintana. In considering the application, the DOE found that an affiliate of TUFCO had received a refund from the escrow fund established for utilities by the Stripper Well Settlement Agreement. Accordingly, the DOE determined that TUFCO's right to a refund in the Subpart V refund proceedings had been waived and therefore denied the TUFCO refund application.

Ted Veldman, et al., 2/08/89, RF272-22322, et al.

The DOE issued a Decision and Order denying refunds to 18 applicants in the crude oil Subpart V proceeding. All 18 applicants were retailers of petroleum

products during the period August 19, 1973, through January 27, 1981. Because none of the applicants demonstrated that they were injured due to the crude oil overcharges, they were found ineligible for crude oil refunds. Accordingly, their Applications for Refund were denied. *The Lee Co., Inc., et al., 2/10/89, RF272-30931, et al.*

The DOE issued a Decision and Order approving Applications for Refund submitted by 24 claimants for crude oil overcharge funds collected by the DOE. The DOE found that the claimants, all end-users, met the eligibility requirements by supplying their actual or estimated purchase volume information for their commercial or agricultural activities. The DOE granted the claimants' refunds totalling \$26,774 based on their purchases of 133,865,178 gallons of refined petroleum products.

Total Petroleum, Inc./Enlow Sales Co., et al., 2/10/89, RF310-133, et al.

The DOE issued a Decision and Order concerning 20 Applications for Refund filed by purchasers of motor gasoline and/or No. 2 oils from Total Petroleum, Inc. The applicants sought a portion of the settlement fund obtained by the DOE through a consent order entered into with Total. Each of the applicants was either a reseller or end-user whose allocable share is less than \$5,000. Under the standards established in *Total Petroleum, Inc.*, 17 DOE ¶ 85,542 (1988), the DOE granted refunds in this proceeding which total \$35,861 (\$30,843 principal plus \$5,018 interest).

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Antioch Building Materials, et al.	RF272-35900	2/7/89	31	\$17,426
Charley W. Meyers, et al.	RF272-27005	2/9/89	48	10,949
Herbert C. Knafla, et al.	RF272-48400	2/8/89	137	4,160
John Rupp, Jr., et al.	RF272-48200	2/8/89	157	4,270
Miami Trace Local School District, et al.	RF272-26010	2/10/89	67	23,133
Oliver B. Urdahl, et al.	RF272-48000	2/7/89	137	3,422
Tuba City Unified Dist. No. 15, et al.	RF272-30838	2/7/89	25	8,173

Dismissals

The following submissions were dismissed:

Name	Case No.	Name	Case No.
Buller Manufacturing Co.	RF272-53545	Frances Muz	RF272-50437
C&T Auto Repair, Inc.	RF304-276	Gem Industries	RF272-53860
Ceco Buildings Division	RF272-65105	General Electric Lighting Systems	RF272-01806
Chauency Kingery	RF272-42261	Giles County Board of Education	RF272-65427
City of Pensacola	RF272-75048	Moniclit Servicer, Inc.	RF307-964
Downtown Gulf	RF300-419	MPB Corporation	RF272-66070
Elwood Sneath	RF272-44958	Newman-Crosby Steel	RF272-58461

Name	Case No.
Oceanside UFSD	RF272-58576
P. Wajer & Sons Express Co	RF272-67302
Paul's Arco	RF304-5374
Petrolane, Inc.	RF300-2500
Plautz, Inc.	RF272-68750
R. Notley Exxon	RF307-1975
Salazar Exxon Station	RF307-1817
Sam's Spring Lake Exxon	RF307-6528
Shackelford's Exxon Station	RF307-1946
Skyway Exxon Station	RF307-1814
Tipton County Schools	RF272-65088
W. H. Braum, Inc.	RF272-37488
Weldon Asphalt Co	RF272-73238
William E. Wright Co	RF272-41584

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

May 23, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-13288 Filed 6-2-89; 8:45 am]

BILLING CODE 645-01-M

Southeastern Power Administration

Order Confirming and Approving Power Rates on an Interim Basis; Georgia-Alabama System of Projects

AGENCY: Southeastern Power Administration (Southeastern), Department of Energy.

ACTION: Notice of approval on an interim basis of the Georgia-Alabama projects' rates.

SUMMARY: On May 26, 1989, the Deputy Secretary confirmed and approved, on an interim basis, eight replacement Rate Schedules, GA-1-B, GA-2-B, GA-3-A, GU-1-B, ALA-1-F, ALA-3-B, MISS-1-F, MISS-2-B; and established three new rate schedules, SC-3-A, CAR-3-A and SCE-2-A, for Georgia-Alabama Projects' power. Present rate schedules GAMF-2-E, SC-1-E, SC-2-E, CAR-1-F, and SCE-1-A are still in effect. The rates were approved on an interim basis through September 30, 1990, and are subject to confirmation and approval by the Federal Energy Regulatory Commission on a final basis.

DATES: Approval of rates on an interim basis is effective on June 1, 1989.

FOR FURTHER INFORMATION CONTACT:

Leon Jourolmon, Jr., Director, Power Marketing, Southeastern Power

Administration, Department of Energy, Samuel Elbert Building, Elberton, Georgia 30635.

Rodney L. Adelman, WDC, Director, Washington Liaison Office, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585.

SUPPLEMENTARY INFORMATION: The Federal Energy Regulatory Commission by Order issued July 22, 1988, in Docket No. EF86-3011-000 confirmed and approved Wholesale Power Rate Schedules GA-1-A, GA-2-A, GU-1-A, GAMF-2-E, ALA-1-E, ALA-3-A, MISS-1-E, MISS-2-A, SC-1-E, SC-2-E, CAR-1-F, and SCE-1-A through September 30, 1990. Rate Schedules GA-1-B, and GA-3-A replace GA-1-A. Rate Schedules GA-2-B, GU-1-B, ALA-1-F, ALA-3-B, MISS-1-F, and MISS-2-B replace GA-2-A, GU-1-A, ALA-1-E, ALA-3-A, MISS-1-E, and MISS-2-A. Rate Schedules SC-3-A, CAR-3-A and SCE-2-A are new rate schedules for preference customers in the South Carolina Public Service Authority area, the South Carolina Electric & Gas Company area, and Duke Power Company area who agreed to the rate increase. Rate Schedules GAMF-2-E, SC-1-E, SC-2-E, CAR-1-F, and SCE-1-A remain in effect.

Issued in Washington, DC, May 26, 1989.

W. Henson Moore,

Deputy Secretary.

[Rate Order No. SEPA-25]

Pursuant to Sections 302(a) and 301(b) of the Department of Energy Organization Act, Public Law 95-91, the functions of the Secretary of the Interior and the Federal Power Commission under Section 5 of the Flood Control Act of 144, 16 U.S.C. 825s relating to the Southeastern Power Administration (Southeastern) were transferred to and vested in the Secretary of Energy. By Delegation Order No. 0204-108, effective May 30, 1986, 51 FR 19744 (May 30, 1986), the Secretary of Energy delegated to the Administrator the authority to develop power and transmission rates, and delegated to the Under Secretary the authority to confirm, approve, and place in effect such rates on an interim basis and delegated to the Federal Energy Regulatory Commission (FERC) the authority to confirm and approve on a final basis or to disapprove rates developed by the Administrator under the delegation. Department of Energy regulation DOE No. 1110.29 dated October 27, 1988, redelegated the authority from the Under Secretary to the Deputy Secretary. This rate order is issued pursuant to the delegation to the Deputy Secretary.

Background

Power from the Georgia-Alabama System of Projects is presently sold under Wholesale Power Rate Schedules GA-1-A, GA-2-A, GU-1-A, GAMF-2-E, ALA-1-E, ALA-3-A, MISS-1-E, MISS-2-A, SC-1-E, SC-2-E, CAR-1-F and SCE-1-A. All of these rate schedules were approved by the FERC on July 22, 1988, for a period ending September 30, 1990.

Public Notice and Comment

Opportunities for public review and comment on the Rate Schedules proposed for use during the period June 1, 1989, through September 30, 1990, were announced by notice published in the *Federal Register* on November 28, 1988, and all customers were notified by mail. Public Information and Comment Forums were held in Atlanta, Georgia, on January 5, 1989, and in Columbia, South Carolina on January 10, 1989, and written comments were invited by the notice through March 3, 1989. Oral comments were presented at the forum and written comments were received prior to March 3, 1989. There were sixteen substantive comments received. All comments were evaluated by Southeastern.

Discussion

System Repayment

An examination of Southeastern's system power repayment study, prepared in March 1989, for the Georgia-Alabama System of Projects, reveals that over the 2-year rate review period with an annual revenue increase of \$12,757,000 over the current revenues shown in a March 1989 Southeastern repayment study, all system power costs are paid within their repayment life. Present contracts allow rate adjustments only on October 1, 1990, and every five successive years thereafter. Southeastern proposed a contract amendment to allow a rate increase to be effective on June 1, 1989. Some customers did not agree to the increased rates which were not allowed by the contract. Therefore, Southeastern is proposing to raise rates for those customers who will agree to the rate increase and leave existing rate schedules for those who will not agree to the rate increase. Southeastern will recoup the revenue shortfall in the October 1, 1990, rate increase. Additionally, Rate Schedules GA-1-B, GA-2-B, GA-3-A, GU-1-B, ALA-1-F, ALA-3-B, MISS-1-F, MISS-2-B, SC-3-A, CAR-3-A and SCE-2-A, which are premised on all customers agreeing to the rate increase, will not produce

revenue adequate to recover all system power costs on a timely basis because some customers will not agree to the rate increase. The Administrator of Southeastern has certified that the rates are consistent with applicable law and that they are the lowest possible rates to customers consistent with sound business principles.

Environmental Impact

Southeastern has reviewed the possible environmental impacts of the rate adjustment under consideration and has concluded with Departmental concurrence that, because the increased rates would not significantly affect the quality of the human environment within the meaning of the National Environmental Policy Act of 1969, the proposed action is not a major Federal action for which preparation of an Environmental Impact Statement is required.

Availability of Information

Information regarding these rates, including studies, and other supporting materials is available for public review in the offices of Southeastern Power Administration, Samuel Elbert Building, Elberton, Georgia 30635, and in the Washington Liaison Office, James Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Submission to the Federal Energy Regulatory Commission

The rates hereinafter confirmed and approved on an interim basis, together with supporting documents, will be submitted promptly to the Federal Energy Regulatory Commission for confirmation and approval on a final basis for a period beginning June 1, 1989, and ending no later than September 30, 1990.

Order

In view of the foregoing and pursuant to the authority delegated to me by the Secretary of Energy, I hereby confirm and approve on an interim basis, effective June 1, 1989, attached Wholesale Power Rate Schedules GA-1-B, GA-2-B, GA-3-A, GU-1-B, ALA-1-F, ALA-3-B, MISS-1-F, MISS-2-B, SC-3-A, CAR-3-A and SCE-2-A. The rate schedules shall remain in effect on an interim basis through September 30, 1990, unless such period is extended or until the FERC confirms and approves them or substitute rate schedules on a final basis. Rate schedules GAMF-2-E, SC-1-E, SC-2-E, CAR-1-F, and SCE-1-A remain in effect through September 30, 1990.

Issued in Washington, DC., this 26th day of May 1989.

W. Henson Moore,

Deputy Secretary.

United States Department of Energy Southeastern Power Administration

Wholesale Power Rate Schedule GA-1-B

Availability

This rate schedule shall be available to public bodies except Acworth and Hampton (either one of which is hereinafter called the Customer) in Georgia, owning distribution systems, to whom power may be wheeled pursuant to contracts between the Government and the Georgia Power Company (hereinafter called the Company), or Municipal Electric Authority of Georgia (hereinafter called MEAG) or Water, Light and Sinking Fund Commission of the City of Dalton (hereinafter called Dalton).

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer and to any deficiency energy purchased by the Government from the Companies.

Charter of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on the Company's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity, energy, transmission and other transmission sold under this rate schedule for the periods specified shall be:

Capacity charge:

Per kilowatt of total contract demand for the period: June 1989 through September 1990..... \$1.74

Energy charge:

Mills per kilowatt-hours..... 8.50

Other Transmission Charge:

Per kilowatt of total contract demand..... \$20

Transmission charge:

Per kilowatt of total contract demand..... \$.11

Transmission

The Government has entered into a contract with MEAG to provide transmission services to its members. The charge for this service to its members will initially be \$1.29 per kilowatt of total contract demand per month. The preference customers will pay MEAG directly for these services. These charges may be adjusted from time to time in accordance with Appendix B of the Government-MEAG contract. The Government retains the right to obtain alternative transmission. In that event, the Government will charge the preference customers at the same rate the Government pays for the services.

The Government has entered into a contract with Dalton to provide transmission services to Dalton. The Government retains the right to obtain alternative transmission. In that event, the Government will charge Dalton at the same rate the Government pays for the services.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less five and one-half (5.5) percent losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of

all such control and protective equipment shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's

system or on the Georgia Integrated Transmission System, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\frac{\text{Number of kilowatts unavailable for at least 12 hours in any calendar day}}{\text{Monthly capacity charge}} \times \frac{\text{Number of days in billing month}}{\text{Number of days in billing month}}$$

June 1, 1989.

United States Department of Energy, Southeastern Power Administration

Wholesale Power Rate Schedule GA-3-A

Availability

This rate schedule shall be available to Acworth and Hampton (either one of which is hereinafter called the Customer) in Georgia, owning distribution systems, to whom power may be wheeled pursuant to contracts between the Government and the Georgia Power Company (hereinafter called the Company), or Municipal Electric Authority of Georgia (hereinafter called MEAG).

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer and to any deficiency energy purchased by the Government from the Companies.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on the Company's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity, energy, transmission and other transmission

sold under this rate schedule for the periods specified shall be:

Capacity charge:

Per kilowatt of total contract demand for the period: June 1989 through September 1990.....

\$1.74

Energy charge:

Mills per kilowatt-hours.....

8.50

Other Transmission charge:

Per kilowatt of total contract demand.....

\$2.20

Transmission charge:

Per kilowatt of total contract demand.....

\$2.81

Transmission

This rate is subject to annual adjustment on January 1, and will be computed subject to the Appendix C attached to the Government-Company contract, less \$.11 per kilowatt for use of facilities revenues from the Southern Companies. The Government has entered into a contract with MEAG to provide transmission services to its members and may enter into a contract with MEAG to provide transmission services for Acworth and Hampton. In that event Acworth and Hampton will pay MEAG directly for these services, and these charges may be adjusted from time to time in accordance with Appendix B of the Government-MEAG contract. The Government retains the right to obtain alternative transmission. In that event, the Government will charge the preference customers at the same rate the Government pays for the services.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less five and one-half (5.5) percent losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted; and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\frac{\text{Number of kilowatts unavailable for at least 12 hours in any calendar day}}{\text{Monthly capacity charge}} \times \frac{\text{Number of days in billing month}}{\text{Number of days in billing month}}$$

June 1, 1989.

United States Department of Energy Southeastern Power Administration

Wholesale Power Rate Schedule GA-2-B

Availability

This rate schedule shall be available to cooperatives (any one of which is hereinafter called the Customer) in Georgia, owning distribution systems, to whom power may be wheeled pursuant to contracts between the Government and the Georgia Power Company (hereinafter called the Company), or Oglethorpe Power Corporation (hereinafter called OPC).

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government from the Companies.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on the Company's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity, energy, transmission and other transmission sold under this rate schedule for the periods specified shall be:

Capacity charge:

Per kilowatt of total contract demand for the period: June 1989 through September 1990.....

\$1.74

Energy charge:

Mills per kilowatt-hours.....

8.50

Other transmission charge:

Per kilowatt of total contract demand.....

\$2.20

Transmission charge:

Per kilowatt of total contract demand.....

\$-1.11

Transmission

The Government has contracted with OPC to provide transmission services to its members. The initial rate for that service is \$1.69 per kilowatt of total contract demand per month. The

preference customer will pay OPC directly for the transmission service. The rate is subject to adjustment from time to time. The Government reserves the right to obtain alternative arrangements. In that event, the Government will charge the preference customer at the same rate the Government pays for the service.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy to Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less five and one-half (5.5) percent losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system or on the Georgia Integrated Transmission System, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\frac{\text{Number of kilowatts unavailable for at least 12 hours in any calendar day}}{\text{Monthly capacity charge}} \times \frac{\text{Number of days in billing month}}{\text{Number of days in billing month}}$$

June 1, 1989.

[FR Doc. 89-13289 Filed 6-2-89; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[FRL-3578-5]

Approvals and Disapprovals of Individual Control Strategies (ICSs) Submitted Under Section 304(l) of the Clean Water Act (CWA)**AGENCY:** Environmental Protection Agency.**ACTION:** Notice.

SUMMARY: Notice is hereby given of the U.S. Environmental Protection Agency's (EPA) approvals and disapprovals of decisions made by the Region V States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin with regard to the lists of waters, point sources and pollutants and the individual control strategies (ICSs) submitted by the above listed States under section 304(l) of the Clean Water Act (CWA) as amended by the Water quality Act (WQA) of 1987. The approval and disapproval actions described in this notice are being taken in response to section 304(l) of the CWA. The effect of the approval actions is to formally agree with the States regarding the identification of specific waters which do not meet water quality standards and the development of ICSs to control the discharge of toxic pollutants. The effect of disapproval actions is to cause the EPA to promulgate the appropriate lists or additions to the lists, and ICSs, in cooperation with the affected States, following notice and opportunity for public comment.

DATES: The approval and disapproval actions described in this notice are effective June 5, 1989. The close of the public comment period regarding the Region's decisions is October 4, 1989. A response to public comments received concerning this notice will be published in the same manner as today's notice on or about January 4, 1990.

ADDRESSES: Copies of the section 304(l) lists, ICSs and supporting documentation are available for public inspection and copying upon request at the following location: U.S. Environmental Protection Agency, Region V, Library (18th Floor), 230 South Dearborn Street, Chicago, IL 60604.

FOR FURTHER INFORMATION CONTACT: Mr. Noel W. Kohl of the U.S. EPA Region V Monitoring and Quality Assurance Branch, 55MQA, 230 South Dearborn Street, Chicago, IL 60604; telephone (312) 886-6224.

SUPPLEMENTARY INFORMATION:**Description of Section 304(l) of the Clean Water Act**

Section 304(l), which was added to the CWA by the WQA of 1987, requires every State to develop lists of impaired waters which cannot reasonably be expected to attain or maintain water quality standards, identify certain point sources and amounts of pollutants causing toxic impacts, and to develop ICSs for these point resources. Under section 304(l), the States' submittals are generally grouped into three lists.

The first, "long list," includes all waters which do not meet water quality standards for any conventional, nonconventional, or toxic pollutant due to any point or nonpoint source of pollution; this list must also include waters which are classified for uses which do not meet the fishable or swimmable goals of the CWA. Paragraph (A)(i) of section 304(l) requires the "long list."

The second, "medium list," includes waters which do not meet certain State numeric water quality standards (those developed under section 303(c)(2)(B) of the CWA) for the toxic pollutants listed under section 307(a) of the CWA due to any point or nonpoint source of pollution. Paragraph (A)(i) of the section 304(l) requires the "medium list."

The third, "short list," includes waters which, due entirely or substantially to discharges from point sources, do not meet numeric or narrative water quality standards for the toxic pollutants listed under section 307(a) of the CWA. Paragraph (B) of section 304(l) requires this list.

The "short list" also includes a list of facilities and their point source discharges of section 307(a) pollutants which cause or substantially contribute to the impairment which results in the waters being listed on the "short list." The list of facilities is required by paragraph (C) of section 304(l) and is also referred to as the "C list." The States must also develop and submit to EPA and ICS for each point source on the "short list." The ICS in most cases will be a draft or issued National Pollutant Discharge Elimination System (NPDES) permit with supporting documentation. These ICSs must require the permittee to meet specific effluent limits that will assure attainment or maintenance of State water quality standards. The ICS must assure that applicable water quality standards. The ICS must assure that applicable water quality standards are achieved generally within three years after the

establishment of the ICS, but no later than June 4, 1992.

The deadline for submitting lists of waters, point sources, pollutants of concern and the ICSs by each State to the EPA was February 4, 1989.

The EPA must review and approve or disapprove the lists and ICSs that the States submitted. If a State failed to submit complete lists or a specific ICS, or the EPA does not approve a list or ICS submitted by a State, then the EPA, in cooperation with the State and after opportunity for public comment, must develop the list and ICSs. The EPA can also disapprove a State's decision not to include a particular waterbody or segment on the appropriate list, or develop an ICS, based upon scientific and technical information currently available to EPA. In this instance, EPA's decision, when finalized, will constitute an addition to the lists and ICSs submitted by the State. In a number of instances identified in this notice, EPA is proposing the addition of waters and ICSs to the State lists. Once EPA makes a final determination as to the contents of these lists, following review of comments and any public hearing resulting from this notice, EPA has the authority to establish an ICS for any point source added by EPA to the list or for which the EPA disapproves a State's ICS. Until EPA acts to finally establish such an ICS, the State may act to establish an acceptable ICS in lieu of EPA's action. ICSs are generally established and enforced by incorporation into NPDES permits as specific conditions and limitations. Any action taken by EPA in establishing an ICS must be taken in cooperation with the States where possible; any similar State action is subject to EPA's normal NPDES review pursuant to sections 304(l) and 402(d) of the CWA.

Today's notice announces the availability, by State, of the lists of waters and ICSs approved by EPA. It further identifies waters and ICSs, whether submitted to EPA by the State or omitted from the State's submission, for which the EPA disapproves the State's decision. Today's notice also provides opportunity for comment and requests for public hearings on EPA's determinations.

EPA's Approvals of the States' Decisions with Respect to Lists of Waters, Point Sources, Pollutants and ICSs

The EPA has reviewed the information submitted by the States and approves the "long and medium lists" submitted by the States of Illinois,

Indiana, Michigan, Minnesota, Ohio and Wisconsin. EPA finds that the waters so listed have met the criteria for being included on the lists required by section 304(l)(1)(A) (i) and (ii). A summary of the long and medium list approval actions in terms of numbers of waters is presented as follows:

EPA APPROVALS OF "LONG AND MEDIUM LIST" WATERS

State	"Long List" Waters	"Medium List" Waters
IL.....	1069	105
IN.....	527	55
MI.....	256	64

EPA APPROVALS OF "LONG AND MEDIUM LIST" WATERS—Continued

State	"Long List" Waters	"Medium List" Waters
MN.....	1140	527
OH.....	805	291
WI.....	1124	324

Copies of the long and medium lists as submitted and approved may be viewed or obtained by contacting Mr. Noel W. Kohl as identified above.

The EPA approves the decisions of the States of Illinois, Indiana, Michigan, Minnesota, Ohio and Wisconsin to list

the following waters on each State's respective "short list" required by paragraph (B) of section 304(l). The EPA finds that the waters so listed have met the criteria for being included on the list required by section 304(l)(1)(B) of the CWA. EPA also approves the following point sources on the "C list" because the sources on the "C list" have met the criteria for being included on the list required by section 304(l)(1)(C). The waterbodies and point sources approved by the EPA in reviewing the States' "short list" are presented as follows:

EPA Approvals of "Short List" Waters and Point Sources

State	Waterbody name	Waterbody	Point source name
Short list			
Illinois	Lake Michigan	Segment No. 4040002002	C list N Chicago Refiners & Smetters.
Illinois	Waukegan Harbor	4060200-NA	Outboard Marine Corp.
Illinois	Tributary to Sugar Creek	5120111011	Marathon Oil.
Illinois	Brush Creek	7130005013	Koppers Company Inc.
Illinois	Lake Braken	7130005013	Koppers Company Inc.
Illinois	Mississippi River	7140101006	Sauget Abtfl.
Illinois	Wood River	7110009002	Olin Corp.
Indiana	Trail Creek	4040001000	Michigan City Wwtp.
Indiana	Grand Calumet River East Branch	4040001010	USX Corp.
Indiana	Grand Calumet River West Branch	4040001010	Hammond Stp.
Indiana	Grand Calumet River West Branch	4040001010	East Chicago Stp.
Indiana	Grand Calumet River East Branch	4040001010	Gary Stp.
Indiana	Indiana Harbor & Ship Canal	4040001010	Inland Steel.
Indiana	Indiana Harbor & Ship Canal	4040001010	LTV Steel.
Indiana	Mather Ditch	4050001020	Syndicate Store Fixtures.
Indiana	Teutsch Ditch	4100003002	Universal Tool.
Indiana	Cedar Creek	4100003009	Stanadyne.
Indiana	Harvester Ditch	4100004001	Phelps Dodge.
Indiana	Little River	5120101018	Roanoke Stp.
Indiana	Little Mississinewa River	5120103007	Sheller Globe Corp.
Indiana	Eel River Tributary	5120104002	Laketon Refining.
Indiana	Eel River	5120104004	United Technologies.
Indiana	Wabash River	5120105009	Logansport Wwtp.
Indiana	Walnut Creek	5120106019	Warsaw Stp.
Indiana	Prairie Creek	5120107004	Frankfort Stp.
Indiana	Wildcat Creek	5120107009	Kokomo, Wwtp.
Indiana	Wabash River	5120108-NA	Landis Gyr.
Indiana	Elliot Ditch	5120108017	ALCOA Lafayette Works
Indiana	Wabash River	5120108018	Lafayette Stp.
Indiana	Whitlock Springs	5120110001	Mid States Steel & Wire
Indiana	Vernon Fork	5120207024	North Vernon Stp.
Indiana	Richland Creek	5120113012	Pnncton Stp.
Indiana	Wilson Ditch	5120201007	Firestone.
Indiana	Eagle Creek	5120201032	General Motors.
Indiana	Eagle Creek	5120201032	Speedway Stp.
Indiana	Eagle Creek	5120201032	Brdgeport Brass.
Indiana	Big Blue River	5120204006	Allegheny Ludlum.
Indiana	Boggs Creek	5120208015	USDN Crane Ammn. Depot.
Indiana	Bailey Branch	5120208018	GMC Central Foundry.
Indiana	Patokia River	5120209010	Jasper Stp.
Indiana	Falling Run Creek	5140101001	New Albany Stp.
Indiana	Ohio River	5140202016	Evansville East-Stp.
Indiana	Travis Ditch	7120001022	Laporte Stp.
Indiana	Travis Ditch	7120001022	Roli Coater.
Michigan	Carp Creek	4020105029	Ishpeming Wwtp.
Michigan	Menominee River	4030108014	Champion-Quinnsec Mill.
Michigan	Menominee River	4030108015	Menominee Wwtp.
Michigan	Escanaba River	4030110001	Mead Paper.
Michigan	Lake Macatawa	4050002012	BASF Pigments Div.
Michigan	Grand River	4050004005	Jackson Wwtp.
Michigan	Hayworth Creek	4050005009	Federal Mogul.
Michigan	Hayworth Creek	4050005009	St. Johns Wwtp.
Michigan	Ruddiman Creek	4060101010	Sealed Power Corp.
Michigan	Boardman River	4060105007	Traverse City Wwtp.
Michigan	St. Marys River	4070001019	Sault St. Marie Wwtp.
Michigan	Tittabawasee River	4080201001	Dow Chemical Midland.
Michigan	Wolf Creek Tributary	4050006025	Hitachi Magnetics Corp.
Michigan	Flint River	4080204005	Flint Wwtp.

State	Waterbody name	Waterbody	Point source name
	Short list	Segment No.	C list
Michigan	Clinton River	4090003006	Mt. Clemens Wwtp.
Michigan	Detroit River	4090004013	Trenton Wwtp.
Michigan	Detroit River	4090004013	Detroit Wwtp.
Michigan	Willow Run Creek	4090005003	Ypsilanti Com. Utilities.
Minnesota	St. Louis Bay	4010102001	Western Lake Superior SD.
Minnesota	Mississippi River	7010206001	Koch Refinery.
Minnesota	Rainy River	9030004013	Boise Cascade.
Ohio	Hemming Ditch	411000-NA	Bechtel McLaughlin-Sand.
Ohio	Mahoning River	503010-NA	Warren Consolidate Industries.
Ohio	Sixmile Creek	4100007-NA	Ohio Decorative Products.
Ohio	Sixmile Creek	4100007-NA	Harvard Industries Inc.
Ohio	Oil Ditch	4100008-NA	Cooper Tire & Rubber.
Ohio	N. Turkey Foot Creek	4100009-NA	Wauseon Wwtp.
Ohio	Raccoon Creek	4100011-NA	Whirlpool Corp.-Clyde.
Ohio	Maumee River	410009001	Toledo Bay Wiew Wwtp.
Ohio	Black River	4110001004	Elyria Wwtp.
Ohio	Black River	4110001004	Stanadyne Inc.
Ohio	Ashtabula	4110003008	Vygen Corp.
Ohio	Leslie Run Tributary	5030101-NA	Roshel Industries.
Ohio	Hocking River	5030204027	Lancaster Wwtp.
Ohio	Hurford Run	5040001-NA	Ashland Petroleum Co.
Ohio	Doner Ditch	5040001-NA	Timken Co.
Ohio	Nimishillen Creek	5040001028	J&L Specialty Products.
Ohio	Nimishillen Creek	5040001028	LTV Massillon.
Ohio	Rocky Fk. Mohican	5040002004	White Consolidated Industnes.
Ohio	Rocky Fk. Mohican	5040002004	Mansfield Wwtp.
Ohio	Mill Creek	5060001032	Ray Lewis & Son Inc.
Ohio	Rockswale Ditch	5060001033	Whirlpool Corp.—Marion.
Ohio	Big Darby Creek	5060001043	Ranco—Plain City.
Ohio	Scippo Creek	5060002082	PPG Ind.—Circleville.
Ohio	Paint Creek	5060003001	Mead Paper Corp.
Ohio	Turtle Creek	5090202007	Cincinnati Milacron.
Wisconsin	Lake Michigan	4040020004	Milwaukee Msd—Shore.
Wisconsin	Lake Michigan	4040030001	Milwaukee Msd—Jones Is.
Wisconsin	Wisconsin River	7070002023	Daishowa Chemicals.
Wisconsin	Wisconsin River	7070002034	Wausau Wwtp.
Wisconsin	Wisconsin River	7070003033	Nekoosa Papers Inc.
Wisconsin	Wisconsin River	7070003033	Vulcan Materials.
Wisconsin	Wisconsin River	7070003036	Consolidated Papers Inc.
Wisconsin	Davy Creek	7090001028	Oconomowoc Electroplating.
Wisconsin	Badfish Creek	7090001057	Madison Msd.
Wisconsin	Fox River (Ill.)	7120006011	Waukesha Stp.

The EPA approves the following ICSs because EPA finds that these ICSs meet

all applicable statutory and regulatory requirements for ICSs.

EPA APPROVALS OF ICSS

State	Permit No. (ICS No.)	Point source name	Pollutants of concern
Illinois	IL0002755	N. Chicago Refiners & Smelters	Cu, Pb, Zn, Ni.
Illinois	IL0002267	Outboard Marine Corp.	PCB.
Illinois	IL0004073	Marathon	Phenol, Cr + 3, Cr + 6.
Illinois	IL0035688	Koppers Co. Inc.	Phenol.
Illinois	IL0000230	Olin Corp.	Cu, Cr, CN, Pb, Ni, Zn.
Indiana	IN0023060	Hammond Stp.	Phenol.
Indiana	IN0022829	East Chicago Stp.	Cu, CN.
Indiana	IN0022977	Gary Stp.	CN.
Indiana	IN0000205	LTV Steel	CN, Phenol.
Indiana	IN0052400	Syndicate Store Fixtures	CN, Cd.
Indiana	IN0000639	Universal Tool	Cu, Cr, Ni.
Indiana	IN0000442	Phelps Dodge	Cr, Cu, Zn.
Indiana	IN0003107	Sheller Globe Corp.	Cu, Phenol.
Indiana	IN0001244	Laketon Refining	Cu, Ni.
Indiana	IN0025453	United Technologies	CN.
Indiana	IN0023604	Logansport Wwtp.	Cu.
Indiana	IN0024805	Warsaw Wwtp.	Cd, Cu, Pb, Ni, Zn.
Indiana	IN0032875	Kokomo Wwtp.	Cd, Cu, Pb, Ni, Zn.
Indiana	IN0001074	Landis & Gyr	Pb, Ni, CN, Cu, Cd, Zn.
Indiana	IN0002445	Mid States Steel & Wire	Cu.
Indiana	IN0001341	Firestone	Cu, Pb.
Indiana	IN0032972	Speedway Stp.	PCB.
Indiana	IN0001767	Bridgeport Brass	Cu.
Indiana	IN0045284	Allegheny Ludlum	Cu.
Indiana	IN0021539	USDN Crane Ammn. Depot	Ni.
			Ni, CN.

EPA APPROVALS OF ICSS—Continued

State	Permit No. (ICS No.)	Point source name	Pollutants of concern
Indiana	IN0020834	Jasper Stp.	Cd, Cu, CN, Pb.
Indiana	IN0025577	Laporte Stp.	Cu, CN.
Indiana	IN0028172	Roll Coater	Cu, Pb, Zn.
Michigan	MI0021369	Ishpeming Wwtp.	CN, Pb.
Michigan	MI0025631	Menominee Wwtp.	Cu, Hg.
Michigan	MI0023256	Jackson Wwtp.	Cd, Zn.
Michigan	MI0002747	Federal Mogul	Cd.
Michigan	MI0026468	St. Johns Wwtp.	Hg.
Michigan	MI0004057	Sealed Power Corp.	TCE.
Michigan	MI0024058	Sault St. Marie Wwtp.	Cu.
Michigan	MI0000868	Dow Chemical Midland	2,3,7,8-TCDD.
Michigan	MI0027812	Hitachi Magnetics Corp.	Hg.
Michigan	MI0022926	Flint Wwtp.	Cd, CN, Pb, Hg, PCB.
Michigan	MI0021164	Trenton Wwtp.	Hg.
Michigan	MI0042676	Ypsilanti Community Util.	Cd.
Minnesota	MN0049876	Western Lake Superior SD.	Hg.
Minnesota	MN0000418	Koch Refinery	Organics, Cr.
Minnesota	MN0001643	Boise Cascade	2,3,7,8-TCDD.
Ohio	OH0002852	Ohio Decorative Products	Cu, CN.
Ohio	OH0003301	Harvard Industries Inc.	Cr.
Ohio	OH0002577	Cooper Tire & Rubber	Cu, Pb, Zn, Hg, Ag.
Ohio	OH0023400	Wauseon Wwtp.	Cr, Cu, Pb, Ni, Zn.
Ohio	OH0025003	Elyria Wwtp.	Cd, Cu, Cr, Ni, CN, Zn.
Ohio	OH0000426	Stanadyne Inc.	Cu.
Ohio	OH0002283	Vygen Corp.	Cd, Cu, Hg, Zn, Bis(2-ethyl-hexyl)phthalate, 1,2-Dichloroethane.
Ohio	OH0051489	Roshel Industries	Cr, T1, CHC13, phthalates.
Ohio	OH0026026	Lancaster Wwtp.	Cu, Zn.
Ohio	OH0005657	Ashland Petroleum Co.	Sb, Cd, Cr, Cu, Pb, Ni, Ag, Zn.
Ohio	OH0004219	Timken Co.	Cu, Ni, Zn, Pb, Cr.
Ohio	OH0007188	J&L Specialty Products	Cu, Ni, Zn, Cr.
Ohio	OH0006939	LTV Steel Co. Bar Plant	Cd, Cu.
Ohio	OH0004600	White Consolidated Industries	Ag, CN, Pb.
Ohio	OH0026328	Mansfield Wwtp.	Cd, Cu, Zn, Hg, CN.
Ohio	OH0005479	Ray Lewis & Son Inc.	Cd, Cu, Ni, Ag.
Ohio	OH0004251	PPG Industries	Cr, Ni, Zn.
Ohio	OH0009911	Cincinnati Milacron	Cd, Cu, Ni.
Wisconsin	WI0024775	Milwaukee Msd—S. Shore	Cr + 6, CN, Bis(2-ethyl-hexyl)phthalate.
Wisconsin	WI0024767	Milwaukee Msd—Jones Is.	Cu, CN, Cr + 6, Bis(2-ethyl-hexyl)phthalate.
Wisconsin	WI0003450	Daishowa Chemicals	Cu, Zn.
Wisconsin	WI0025739	Wausau Wwtp.	CN, Cu, Cd, Se.
Wisconsin	WI0003565	Vulcan Materials	Cu.
Wisconsin	WI0002241	Oconomowoc Electroplating	Cd, Cu, CN, Zn.
Wisconsin	WI0024597	Madison Msd.	Hg, CN, T1.
Wisconsin	WI0029971	Waukesha Wwtp.	Cd, Cu, Pb, CN, Bis(2-ethyl-hexyl)Phthalate, p-Chloro-m-cresol.

EPA's Disapprovals of the State's Decisions with Respect to Lists of Waters, Point Sources, Pollutants and ICSs

The EPA disapproves those portions of the "short list" required by paragraph

(B) of section 304(l) of the CWA for the waterbodies and States indicated for the reasons given below. EPA bases this action specifically on the State's failure to include these waters on the "short list" despite available information

which EPA believes would support thier additions to the list.

EPA DISAPPROVALS OF "SHORT LIST" WATERS

State	Waterbody name	Waterbody segment No.	Reason for "Short List" disapproval
Indiana	Trail Creek Tributary	4040001-NA	Failed to list waterbody for Cr from Anderson Co. Inc.
Indiana	Brown Ditch	5080003014	Failed to list waterbody for Cd, Cu, CN, Pb, Zn from Dana Corp.
Indiana	Phillips Ditch	5120105-NA	Failed to list waterbody for Cr, Cu, Zn from Wm Parker Co.
Indiana	Wabash River	5120111011	Failed to list waterbody for Ag from Hamilton Glass.
Minnesota	Mississippi River	7010206001	Failed to list waterbody for PCB from Metro Wwtp

EPA DISAPPROVALS OF "SHORT LIST" WATERS—Continued

State	Waterbody name	Waterbody segment No.	Reason for "Short List" disapproval
Ohio	Lake Erie	41202-NA	Failed to list waterbody for Cu from North Coast Brass and Copper and CN from Elkem Metals.
Ohio	Cuyahoga	4110002001	Failed to list waterbody for Cu, Cd, Zn, Phenolics from Akron Wwtp.
Ohio	Mahoning	5030103007	Failed to list waterbody for CN, Cu, Cr+6 from Thomas Steel Strip.
Ohio	Red Run Tributary	5060001035	Failed to list waterbody for Zn, Ag, Cu, CN from Sharon Steel.
Ohio	Paint Creek	5060003001	Failed to identify 2,3,7,8-TCDD impact from Mead Paper Corp.
Wisconsin	Peshtigo River	4030105002	Failed to list waterbody for 2,3,7,8-TCDD from Peshtigo Stp and Badger Paper.
Wisconsin	Lower Fox River	4030204001	Failed to list waterbody for 2,3,7,8-TCDD from Green Bay Msd and James River Corp.
Wisconsin	Lower Fox River	4030204002	Failed to list waterbody for PCB from Fort Howard Paper.
Wisconsin	Lake Michigan	4040002002	Failed to list waterbody for Cu from Anderson Brass Co.
Wisconsin	Wisconsin River	7070002023	Failed to identify 2,3,7,8-TCDD impact from Weyerhaeuser Corp.

The EPA disapproves the following ICSs because either the State failed to

submit the ICS to EPA for review or because the ICS is inconsistent with

applicable regulatory and statutory requirements for developing ICSs.

EPA DISAPPROVALS OF ICSS

State	Permit No. (ICS No.)	Point source name	Reason for ICS disapproval
Illinois	IL0065195	Sauget Abrt.	Inadequate limits for Chlorobenzene, Aniline.
Illinois	IN0032565	Anderson Co. Inc.	Failed to submit ICS for Cr.
Indiana	IN0023752	Michigan City Wwtp.	Inadequate limits for Cu,Cd,Pb,Ni,Zn.
Indiana	IN0000281	USX Corp.	Failed to submit ICS for Phenols, Cr.
Indiana	IN0000940	Inland Steel	Failed to submit ICS for Pb,Zn.
Indiana	IN0000582	Stanadyne	Failed to submit ICS for Cu.
Indiana	IN0001333	Dana Corp.	Failed to submit ICS for Cd, Cu, CN, Pb, Zn.
Indiana	IN0021440	Roanoke Stp.	Failed to submit ICS for Cd, Cu.
Indiana	IN0049743	Wm Pfaff Co.	Failed to submit ICS for CR, Cu, Zn.
Indiana	IN0022934	Frankford Stp.	Failed to submit ICS for Cu.
Indiana	IN0001210	Alcoa Lafayette	Failed to include Cu limit.
Indiana	IN0032468	Lafayette Stp.	Failed to submit ICS for Pb.
Indiana	IN0025861	Hamilton Glass	Failed to submit ICS for Ag.
Indiana	IN0024392	Princeton Stp.	Inadequate limits for Cu, Hg.
Indiana	IN0020451	North Vernon	Failed to submit ICS for Cu.
Indiana	IN0003573	GMC Central Foundry	Failed to submit ICS for Cu, PCB.
Indiana	IN0023884	New Albany Stp.	Failed to submit ICS for Cu, Pb.
Indiana	IN0033073	Evansville East Stp.	Inadequate Limits for CN, Pb.
Michigan	MI0042170	Champion Paper Quinnesec Mill	Failed to submit ICS for 2,3,7,8-TCDD.
Michigan	MI0000027	Mead Paper	Inadequate limits for 2,3,7,8-TCDD.
Michigan	MI0000761	BASF Pigments Div.	ICS fails to limit 3,3'-DCB.
Michigan	MI0023847	Mt. Clemens Wwtp.	Failed to submit ICS for Cd, Cr, Hg.
Michigan	MI0022802	Detroit Wwtp.	Failed to submit ICS for Cd, Cu, Pb, Hg, PCB.
Minnesota	MN0029815	Metro Wwtp.	Failed to submit ICS for PCBs.
Ohio	OH0000701	Bechtel McLaughlin	Inadequate limits for Be, Hg, Se, Ag, CHC13 Ni, Se, Ag.
Ohio	OH0032727	North Coast Brass & Copper	Failed to submit ICS for Cu.
Ohio	OH0000027	Elkem Metals	Failed to submit ICS for CN.
Ohio	OH0101079	Warren Consolidated Industries	Inadequate limits for Cd, Hg, Cu, Pb, Zn, Ag.
Ohio	OH0000965	Whirlpool Corp.	Inadequate limits for Sb.
Ohio	OH0027740	Toledo Bay View Wwtp.	Inadequate limits for Cr, Ag, Toluene.
Ohio	OH0023833	City of Akron Wwtp.	Failed to submit ICS for Cu, Cd, Zn, Phenolics.
Ohio	OH0011363	Thomas Strip Steel	Failed to submit ICS for CN, Cu, Cr+6.
Ohio	OH0007358	Whirlpool Corp.	Inadequate limits for Sb, Cd, Pb, T1, Zn.
Ohio	OH0083852	Sharon Steel	Failed to submit ICS for Zn, Ag, Cu, CN.
Ohio	OH0004502	Ranco—Plain City	Inadequate limits for Ag.
Ohio	OH0004481	Mead Paper Corp.	Inadequate limits for 2,3,7,8-TCDD, Thallium.
Wisconsin	WI0000663	Badger Paper Mill	Failed to submit ICS for 2,3,7,8-TCDD.

EPA DISAPPROVALS OF ICSS—Continued

State	Permit No. (ICS No.)	Point source name	Reason for ICS disapproval
Wisconsin	WI0030651	Peshtigo Stp.	Failed to submit ICS for 2,3,7,8-TCDD.
Wisconsin	WI0001261	James River Corp.	Failed to submit ICS for 2,3,7,8-TCDD.
Wisconsin	WI0020991	Green Bay Msd.	Failed to submit ICS for 2,3,7,8-TCDD.
Wisconsin	WI0001848	Fort Howard Paper	Failed to submit ICS for PCB.
Wisconsin	WI0000299	American Brass Co.	Failed to submit ICS for Cu.
Wisconsin	WI0026042	Weyerhaeuser Corp.	Failed to submit ICS for 2,3,7,8-TCDD.
Wisconsin	WI0003620	Nekoosa Papers Inc.	Inadequate limits for 2,3,7,8-TCDD.
Wisconsin	WI0037991	Consolidated Papers	Inadequate limits for 2,3,7,8-TCDD.

Public Comment and Requests for Public Hearing

The EPA solicits comments on its proposals set forth in this notice with regard to the lists of waters, point sources, pollutants and ICSs. Comments should address the appropriateness of listing either waters or facilities or both and the adequacy of the ICSs. To the extent possible, comments should be supported by technical or scientific information that relates specifically to the waters or facilities in question. Comments should address all issues and cover all available arguments and supporting material, and be submitted by no later than October 4, 1989 to Mr. Noel W. Kohl, Chief, Ambient Monitoring Section, 5SMQA, U.S. EPA, Region V, 230 S. Dearborn Street, Chicago, IL 60604. In addition, any person may make a request for a public hearing to consider these lists and ICSs. Such requests should be made in writing to Mr. Noel W. Kohl prior to the above date, and should state the nature of the issues proposed to be raised in the hearing. The EPA may choose to hold one or more public hearings after review of the comments and requests. Notification of any such public hearing will be made at least 30 days prior to the scheduled hearing date.

Petitions to Add Waters and Dischargers

Section 304(1) allows any person to submit to the EPA a petition to add waters to one or more of the three lists of waters submitted by a State and/or add point sources to the "short list." Petitions are due October 4, 1989, and should be addressed to Mr. Valdas V. Adamkus, Regional Administrator, Attention: Noel W. Kohl, 5SMQA, U.S. EPA, Region V, 230 S. Dearborn Street, Chicago, IL 60604. The petition should identify and describe the waters and dischargers in sufficient detail so that the EPA is able to determine the location of the dischargers and the

boundaries of the waters subject to the petition. The petitioner must also identify the lists or lists for which the petitioner believes the water and dischargers qualify, and the petition must explain why the water satisfies the criteria for the list or lists.

EPA's Response to Comments

Following the close of the comment and petition period and after a public hearing, if such hearing is held, the Regional Administrator will issue a response to the comments and petitions that have been received. The Regional Administrator will consider all petitions and comments received and anticipates providing a response to the comments and petitions on or about January 4, 1990. This response and its availability will be announced to the public in the same manner as today's notice.

Additional Information About the EPA's Decisions of Approval and Disapproval Under Section 304(1)

The administrative record containing the EPA's documentation on its decisions on approval and disapproval is on file and may be inspected at the EPA, Region V Library, 16th Floor, 230 S. Dearborn St., Chicago, IL 60604, between the hours of 9:00 a.m. and 4:00 p.m., Monday through Friday except holidays. To make arrangements to examine or make copies of the administrative record, contact the person named above. Copies of the administrative record including the section 304(1) lists, ICSs and supporting documents, or portions thereof, will be made available at fifteen (15) cents per page. No fee will be charged if the total cost is under twenty-five (25) dollars.

For additional information about section 304(1), see EPA's publication of "Final Guidance for Implementation of Requirements Under section 304(1) of

the CWA as Amended" (March 1988), and proposed regulations under section 304(1) published in the *Federal Register* January 12, 1989, beginning on page 1300.

Valdas V. Adamkus,
Regional Administrator.
[FR Doc. 89-13352 Filed 6-2-89; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL EMERGENCY
MANAGEMENT AGENCY

[FEMA-828-DR]

Amendment to Notice of a Major
Disaster Declaration; Texas

AGENCY: Federal Emergency
Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-828-DR), dated May 19, 1989, and related determinations.

DATED: May 25, 1989.

FOR FURTHER INFORMATION CONTACT:
Neva K. Elliott, Disaster Assistance
Programs, Federal Emergency
Management Agency, Washington, DC
20472, (202) 646-3614.

Notice: The notice of a major disaster for the State of Texas, dated May 19, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 19, 1989:

The counties of Cooke, Fannin, Harris, Kaufman, Johnson, McLennan, Montague, Nacogdoches, Parker, Smith, Rusk, and Williamson for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,
Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-13247 Filed 6-2-89; 8:45 am]
BILLING CODE 6718-02-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

SMALL BUSINESS ADMINISTRATION

Individual and Family Grant Program

AGENCY: Federal Emergency Management Agency and Small Business Administration.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) is charged with coordinating Federal assistance under the provisions of the Robert T. Stafford Disaster Relief and Emergency Assistance Act when the President has declared a major disaster. The Small Business Administration (SBA) disaster loan program and the State-administered Individual and Family Grant (IFG) program are major sources of Federal disaster assistance.

These two programs are the principal sources of funds to repair or replace real or personal property damaged in disasters. However, persons can qualify for IFG funds only if no other assistance is available. This is interpreted as meaning that those whose needs can be met by way of the SBA loan are not eligible for IFG assistance. Prior to this time, FEMA policy required that approval of IFG assistance be based, in part, upon receipt of written documentation from the SBA that the applicant had been summarily declined for a loan from that agency.

Realizing that many persons who failed to qualify for loan assistance did so because their income was not sufficient to permit them to assume any additional debt, the SBA provided IFG program administrators with tables outlining minimum income levels necessary to establish a "reasonable assurance of ability to repay" the loan. These tables had been used as a prescreening device; persons whose income fell below these levels were directed to the SBA where they would be interviewed further to assure there was no loan repayment ability. Where this was the case, the individual would then be given a document to take to the IFG program administrators to prove they were ineligible for SBA assistance.

After several years' experience with this procedure, it became apparent that the interview process at SBA was not productive as few of these low income individuals qualified for loan assistance subsequent to the SBA interview. Therefore, in the interest of expediting the delivery of disaster assistance and relieving the burden of unnecessary questioning of the applicant, FEMA has revised its policy regarding the establishment of IFG eligibility. As of the date of this notice, State IFG program administrators need require only their own or FEMA's documentation that the applicant's income did not meet the minimums noted on an SBA-provided income table in order to determine that SBA loan assistance is not available to that applicant.

Although this requires only changes in implementation procedures and not a regulation revision, FEMA and SBA want to provide notice of the change to the public.

FOR FURTHER INFORMATION CONTACT: Glenn Carcelon, Individual Assistance Division, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3616 or Bernard Kulik, Deputy Associate Administrator for Disaster Assistance, Small Business Administration, Washington, DC 20416, (202) 653-6879.

Date: May 23, 1989.

Grant C. Peterson,
Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

Bernard Kulik,
Deputy Associate Administrator, Disaster Assistance, Small Business Administration.
[FR Doc. 89-13245 Filed 6-2-89; 8:45 am]
BILLING CODE 6718-02-M

FEDERAL HOME LOAN BANK BOARD

(No. 89-1479)

Thrift Financial Report

Date: May 18, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The public is advised that the Federal Home Loan Bank Board ("Board") has submitted a request for a revision of an information collection entitled "Thrift Financial Report," to the Office of Management and Budget for approval in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The information collected will enable the Bank Board to monitor the on-going financial condition of insured

institutions and to make initial determinations with respect to their compliance with regulatory requirements. We estimate it will take approximately 257 hours per year per respondent to complete the information collection.

DATES: Comments on the information collection request are welcome and should be received on or before June 20, 1989.

ADDRESS: Comments regarding the paperwork-burden aspects of the request should be directed to: Office of Management and Budget, Office of Information and Regulatory Affairs, Washington, DC 20503. Attention: Desk Officer for the Federal Home Loan Bank Board.

The Board would appreciate commenters sending copies of their comments to the Board.

Request for copies of the proposed information collection requests and supporting documentation are obtainable at the Board address given below: Director, Information Services Division, Office of Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Phone: 202-416-2751.

FOR FURTHER INFORMATION CONTACT: Blake Elliott, Office of Regulatory Activities, (202) 785-5466, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-13203 Filed 6-2-89; 8:45 am]
BILLING CODE 6720-01-M

Lincoln Savings and Loan Association, Los Angeles, CA; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), as amended, the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Lincoln Savings and Loan Association, Los Angeles, California, on April 14, 1989.

Dated: May 30, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89-13205 Filed 6-2-89; 8:45 am]
BILLING CODE 6720-01-M

(No. 89-1516)

April Calculation of the Median Return on Assets of All Insured Institutions by the Federal Savings and Loan Insurance Corp.

Date: May 22, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is hereby publishing its April calculation of the 1988 median return on assets of all institutions the accounts of which are insured by the FSLIC ("insured institutions"). This April calculation and notice are required by the regulatory capital regulation ("capital regulation") adopted on August 15, 1988, Board Res. No. 88-857, 12 CFR 563.13(b)(2)(iv), as amended by Board Res. No. 88-222, adopted on March 30, 1988, 53 FR 11243 (April 6, 1988) ("amended April calculation provision").

EFFECTIVE DATE: May 22, 1989.

FOR FURTHER INFORMATION CONTACT: Donald J. Bisenius, Director, Financial Analysis Division, Office of Policy and Economic Research, (202) 906-6759, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION: The amended April calculation provision of the capital regulation requires the Board to compute and publish in April of each year the median return on assets of all insured institutions for the prior calendar year, as well as the revised liability factors for institutions with initial liability factors of 3 percent ("standard group") or less than 3 percent ("lower group"). In general, an insured institution's liability factor is the percentage rate applied at the end of each quarter to its January 1, 1987 total liabilities to determine the capital required for such liabilities.

The median return on assets earned by all insured institutions during calendar year 1988 was 0.41 percent. Accordingly, insured institutions in the standard group must increase their liability factors by 75 percent of this rate (0.31 percentage point). The regulation requires one-half of this increase (0.16 percentage point after rounding) on July 1, 1989, and the other half (0.15 percentage point), on January 1, 1990. The standard group's liability factor will be 3.60 percent on July 1, 1989 and 3.75 on January 1, 1990.

Institutions in the lower group must increase their liability factors by the

greater of: (1) 90 percent of 0.41 of one percent (0.37 percentage point) or (2) 90 percent of the institution's own return on assets. Accordingly, lower group institutions that had a return on assets in 1988 of less than or equal to 0.41 percent would increase their liability factors by 0.19 percentage points on July 1, 1989 and 0.18 percentage points on January 1, 1990, provided that this does not bring a firm's requirement above that for the standard group.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.

[FR Doc. 89-13204 Filed 6-2-89; 8:45 am]
BILLING CODE 6720-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

May 30, 1989.

Background

Notice is hereby given of final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulation on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822)
OMB Desk Officer—Gary Waxman—Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503 (202-395-7340)

Final approval under OMB delegated authority of the extension, without revision, of the following report:

Report title: Report of Brokers Carrying Margin Accounts.

Agency form number: FR 2240.

OMB Docket number: 7100-0001.

Frequency: Annually.

Reporters: Brokers and dealers.

Annual reporting hours: 351.

Estimated average hours per response: 2.7

Number of respondents: 130.

Small businesses are affected.

General Description of Report

This information collection is mandatory [15 U.S.C. 78q(g)] and is given confidential treatment [5 U.S.C. 552(b)(4)].

This report is used to insure compliance of brokers and dealers with the Federal Reserve Margin Regulations and Security Credit as authorized by section 17 of the Securities and Exchange Act of 1934. This report collects certain balance sheet information from securities brokers and dealers carrying margin accounts and is used by the Federal Reserve to regulate securities credit extended by brokers.

Final approval under OMB delegated authority of the extension, with revision, of the following reports:

1. *Report title:* Monthly Survey of Selected Deposits and the Annual Supplement to the Survey of Selected Deposits.

Agency form number: FR 2042 and FR 2042a.

OMB Docket number: 7100-0066.

Frequency: Monthly and annually.

Reporters: Commercial banks and FDIC-insured savings banks.

Annual reporting hours: 22943.

Estimated average hours per response: .9 to 3.25.

Number of respondents: 575.

Small businesses are affected.

This survey collects information on the price and certain non-price terms of loans made to businesses and farmers by commercial banks. The information is used for analysis of developments in bank loan markets.

Board of Governors of the Federal Reserve System, May 30, 1989
William W. Wiles,
Secretary of the Board.
[FR Doc. 89-13225 Filed 6-2-89; 8:45 am]
BILLING CODE 6210-01-M

First Union Corp. Charlotte, NC; Proposal To Underwrite and Deal in Certain Securities to a Limited Extent, Conduct Private Placements as Agent of All Types of Securities and Engage in Other Securities Related Activities

First Union Corporation, Charlotte, North Carolina ("First Union"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo* through its wholly owned subsidiary, First Union Securities, Inc., Charlotte, North Carolina ("Company"), in the activities of underwriting and dealing in, to a limited extent, commercial paper, municipal revenue bonds, mortgage-related securities, and consumer-receivable-related securities ("ineligible securities"). These securities are eligible for purchase by banks for their own account but are not eligible for banks to underwrite and deal in.

First Union has also applied to: (1) Underwrite and deal in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act ("bank-eligible securities") pursuant to § 225.25(b)(18) of Regulation Y (12 CFR 225.25(b)(18)); (2) conduct foreign exchange advisory activities pursuant to 12 C.F.R. 225.25(b)(17); (3) act as a futures commission merchant pursuant to 12 CFR 225.25(b)(18); (4) purchase and sell silver and gold for the account of customers within the limitations contained in *United Virginia Bankshares, Inc.*, 73 Federal Reserve Bulletin 309 (1987); and (5) provide financial advisory services as approved in *Signet Banking Corporation*, 73 Federal Reserve Bulletin 59 (1987) and *Canadian Imperial Bank of Commerce*, 74 Federal Reserve Bulletin 571 (1988). Company would conduct the proposed activities on a nationwide basis.

In addition, First Union proposes to provide investment advisory and brokerage activities separately and on a combined basis subject to all of the conditions of 12 CFR 225.25 (b)(4), (b)(15), and *Bank of New England*

Corporation, 74 Federal Reserve Bulletin 700 (1988), except that Company would broker and recommend to institutional customers securities in which Company has a principal's position as permitted in *Bankers Trust New York Corporation*, 74 Federal Reserve Bulletin 695 (1988). First Union has also proposed that Company be permitted to broker and recommend to institutional customers shares of investment companies for which First Union or its affiliates serve as investment advisor. First Union contends that any possible adverse effects stemming from conflicts of interest would be mitigated by the institutional nature of Company's customers. Moreover, in First Union's view, the disclosure and other requirements set forth in the *Bankers Trust Order* as well as federal securities law and common law fiduciary requirements would further mitigate the potential for any adverse effects.

First Union has applied to underwrite and deal in ineligible securities in accordance with the limitations set forth in the Board's Orders approving those activities for a number of bank holding companies. See, e.g., *Citicorp, J.P. Morgan & Co. Incorporated and Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 473 (1987); and *Chemical New York Corporation, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp, Manufacturers Hanover Corporation, and Security Pacific Corporation*, 73 Federal Reserve Bulletin 731 (1987).

First Union also seeks independent approval to privately place all types of securities as a separate activity from Company's underwriting and dealing in ineligible securities. The Board has previously authorized a bank holding company subsidiary to privately place third-party commercial paper as agent subject to certain limitations. *Bank of Montreal*, 74 Federal Reserve Bulletin 500 (1988). First Union has proposed to engage in the placement activity subject to the limitations contained in *Bank of Montreal*.

The Board has not previously determined that the proposed placement activities are permissible under section 4(c)(8) of the Bank Holding Company Act. Section 4(c)(8) provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking as to be a proper incident thereto." First Union maintains that the proposed activities are closely related to banking because banks are currently active participants in the private placement market.

In determining whether an activity is a proper incident to banking, the Board must consider whether the proposal may "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices." First Union contends that permitting bank holding companies to engage in the proposed activities would result in increased competition, gains in efficiency, and maintenance of the competitiveness of U.S. banking organizations.

First Union contends that approval of the application would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as First Union National Bank of North Carolina, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" of securities. With regard to the proposed ineligible securities underwriting and dealing activity, First Union states that, consistent with section 20, it would not be "engaged principally" in such activities on the basis of the restriction on the amount of the proposed activity relative to the total business conducted by the underwriting subsidiary previously approved by the Board. First Union contends that the proposed placement activities do not raise an issue under section 20, relying on *Securities Industry Ass'n v. Board of Governors*, 807 F.2d 1052 (D.C. Cir. 1986), *cert. denied*, 107 S.Ct. 3228 (1987).

Any request for a hearing on this application must comply with § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)).

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Richmond.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than June 30, 1989.

Board of Governors of the Federal Reserve System, May 30, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13224 Filed 6-2-89; 8:45 am]

BILLING CODE 6210-01-M

GENERAL ACCOUNTING OFFICE

Proposed Framework for Establishing Federal Government Accounting Standards

AGENCY: General Accounting Office.

ACTION: Public notice.

SUMMARY: The Comptroller General proposes to establish a new process by which he will prescribe accounting principles, standards and requirements for federal executive agencies. The Comptroller General invites interested parties to review and comment on his proposed process.

DATE: Interested parties should provide their comments by July 15, 1989.

ADDRESS: Interested parties may obtain copies of the proposed process by writing the Director, Accounting Principles and Standards, Accounting and Financial Management Division, General Accounting Office, Room 6023, 441 G Street, NW., Washington, DC 20548. The Director, also, will receive written comments from interested parties.

FOR FURTHER INFORMATION CONTACT: Ronald Young, Director, Accounting Principles and Standards, Accounting and Financial Management Division, (202) 275-9578.

SUPPLEMENTARY INFORMATION: The Budget and Accounting Procedures Act of 1950, as amended, authorizes the Comptroller General to prescribe accounting principles, standards and requirements for federal executive agencies. The Comptroller General proposes to establish a new procedure for prescribing such principles, standards and requirements. The new process will provide interested and affected parties an opportunity to participate in the process.

The Comptroller General invites all interested parties to review and comment on the proposed procedure. An exposure draft, entitled "Proposed Framework for Establishing Federal Government Accounting Standards," GAO/AFMD-89-56, May 1989, may be obtained by writing or phoning the Director, Accounting Principles and Standards, Accounting and Financial Management Division. The Comptroller General will consider and evaluate all written comments received by the Director postmarked or hand delivered on or before July 15, 1989.

Brian P. Crowley,

Acting Assistant Comptroller General, Accounting and Financial Management.

[FR Doc. 89-13210 Filed 6-2-89; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in June

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Correction of meeting notices.

SUMMARY: Public notice was given in the Federal Register on May 15, 1989, Volume 54, No. 92, on page 20922 that the Biological and Neurosciences Subcommittee of the Mental Health Small Grant Review Committee would meet on June 1-2. This meeting has been cancelled.

Also, in this same Federal Register issue, page 20923, it was announced that the Epidemiology Research Subcommittee of the Epidemiologic and Services Research Review Committee, NIMH, would meet at the Key Bridge Marriott, Arlington, VA. This meeting place has been changed to the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.

Peggy W. Cockrill,

Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

Date: May 30, 1989.

[FR Doc. 89-13177 Filed 6-2-89; 8:45 am]

BILLING CODE 4160-20-M

Health Care Financing Administration

[OIS-005-N]

Quarterly Listing of Program Issuances

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: General notice.

SUMMARY: This notice lists HCFA manual instructions, interpretative rules, and statements of policy that were published during January, February and March 1989 that relate to the Medicare program. Section 1871(c) of the Social Security Act requires that we publish a list of our issuances in the Federal Register every three months.

FOR FURTHER INFORMATION CONTACT: Allen Savadkin (301) 966-5265. (For Issuance Information Only) Matt Plonski (301) 966-4662 (For All Other Information)

SUPPLEMENTARY INFORMATION: The Health Care Financing Administration (HCFA) is responsible for administering the Medicare program, a program which pays for health care and related services for 33 million Medicare beneficiaries.

Administration of the program involves effective communications with regional offices, State governments, various providers of health care, fiscal intermediaries and carriers who process claims and pay bills, and others. To implement the various statutes on which the program is based, we issue regulations under authority granted the Secretary under sections 1102 and 1871 and related provisions of the Social Security Act (the Act) and also issue various manuals, memoranda, and statements necessary to administer the program efficiently.

Section 1871(c)(1) of the Act requires that we publish in the Federal Register no less frequently than every three months a list of all Medicare manual instructions, interpretative rules, statements of policy, and guidelines of general applicability. This is the fifth listing of issuances. As in prior notices, although both substantive and interpretive regulations published in accordance with section 1871(a) of the Act are not subject to the publication requirement of section 1871(c), for the sake of completeness of the listing of operational and policy statements we are including regulations (proposed and final) published.

A. How to Use the Listing

This notice is organized so that a reader may review the subjects of all manual issuances, memoranda, or regulations published during this timeframe to determine whether any are of particular interest. We expect it to be used in concert with previously published notices. Most notably, those unfamiliar with a description of our manuals may wish to review Table I of our first three notices (53 FR 21731, 53 FR 36892, and 53 FR 50579), and those seeking information on the location of regional depository libraries may wish to review Table IV of our first notice (53 FR 21736). We have divided this current listing into three tables.

Table I describes where interested individuals can get an extensive description of all previously published HCFA manuals and memoranda. Also, Table I gives a brief description of HCFA Rulings as an issuance.

Table II of this notice lists, for each of our manuals or Program Memoranda, a transmittal number unique to that instruction and a brief statement of its subject matter. The subject matter in a transmittal may consist of a single instruction or many. Often it is necessary to use information in a transmittal in conjunction with information currently in the manuals.

Table III lists all Medicare and Medicaid regulations and general notices published in the *Federal Register* during this period. For each item, we list the date published, the title of the regulation, and the Parts of the Code of Federal Regulations (CFR) which have changes.

B. How to Obtain Listed Material

• Manuals

An individual or organization interested in routinely receiving any manual and revisions to it may purchase a subscription to that manual. Those wishing to subscribe should contact either the Government Printing Office (GPO) or the National Technical Information Service (NTIS) at the following addresses: Superintendent of Documents, Government Printing Office, Washington, DC 20402. Telephone (202) 783-3238; National Technical Information Service, Department of Commerce, 5825 Port Royal Road, Springfield, VA 22161. Telephone (703) 487-4630.

In addition, individual manual transmittals listed in this notice can be purchased from NTIS. Interested parties should identify the transmittal(s) they want. GPO or NTIS will give complete details on how to obtain the publications they sell. Program Memoranda will soon be available for sale through NTIS. (See subsection C.)

• Regulations and Notices

Regulations and notices are published in the daily *Federal Register*. Interested individuals may purchase individual copies or may subscribe to the *Federal Register* by contacting the Government Printing Office at the following address: Superintendent of Documents, Government Printing Office, Washington, DC 20402. Telephone (202) 783-3238. When ordering individual copies, it is necessary to cite either the date of publication or the volume number and page number.

• Rulings

Rulings are published on an infrequent basis by HCFA. Interested individuals can obtain copies from the nearest HCFA regional office or review them at the nearest regional depository library.

C. How to Review Listed Material

Transmittals or Program Memoranda can be reviewed at a local Federal Depository Library (FDL). Under the Federal Depository Library Program, government publications are sent to approximately 1400 designated libraries throughout the United States. Interested

parties may examine the documents at any one of the FDLs. Some may have arrangements to transfer material to a local library not designated as an FDL. To locate the nearest FDL, individuals should contact any library.

In addition, individuals may contact regional depository libraries, which receive and retain at least one copy of nearly every Federal Government publication, either in printed or microfilm form, for use by the general public. These libraries provide reference services and interlibrary loans; however, they are not sales outlets. Individuals may obtain information about the location of the closest regional depository library from any library.

Superintendent of Documents numbers for each HCFA publication are shown in Table II, along with the HCFA publication and transmittal numbers. To help FDLs locate the instruction, use the Superintendent of Documents number, plus the HCFA transmittal number. For example, to find the Intermediary Manual Part 3—Claims Process (HCFA-Pub. 13-3) transmittal containing "Covered Inpatient Hospital Services" and "Outpatient Observation Services" use the Superintendent of Documents number HE 22.8/8 and the HCFA transmittal number 1416.

D. General Information

It is possible that an interested party may have a specific information need and not be able to determine from the listed information whether the issuance or regulation would fulfill that need. Consequently, we are providing information contact persons to answer general questions concerning these items. Copies are not available through the contact person. Individuals are expected to procure copies or arrange to review them as noted above.

Questions concerning items in Table II may be addressed to Allen Savadkin, Office of Issuances, Health Care Financing Administration, Room 688 East High Rise, 6325 Security Blvd., Baltimore, MD 21207; Telephone (301) 966-5265.

Questions concerning all other information in Tables I or III may be addressed to Matt Plonski, Regulations Staff, Health Care Financing Administration, Room 132, East High Rise, 6325 Security Blvd., Baltimore, MD 21207, Telephone (301) 966-4662.

Table I—Description of Manuals, Memoranda and HCFA Rulings

An extensive descriptive listing of manuals and memoranda was previously published at 53 FR 21731 and supplemented at 53 FR 36892 and 53 FR 50579. An HCFA Ruling was issued

January 26, 1989 and a description of this issuance follows.

HCFA Rulings are decisions of the Administrator that serve as precedent final opinions and orders and statements of policy and interpretation. They provide clarification and interpretation of complex or ambiguous statutory or regulatory provisions relating to Medicare, Medicaid, Utilization and Quality Control Peer Review, and related matters.

HCFA Rulings are binding on all HCFA components, the Provider Reimbursement Review Board and Administrative Law Judges, who hear Medicare appeals. They are distributed to HCFA components, intermediaries, carriers, staff of the DHHS Office of the General Counsel, and to the Social Security Administration's Administrative Law Judges. Copies also are sent to the 50 regional Federal Depository Libraries. Due to the small number of HCFA Rulings, they are not available by subscription.

Table II—Medicare Manual Instructions, January–March 1989

Trans. No.	Manual/Subject/Publication No.
	Intermediary Manual Part 2—Audits, Reimbursement Program Administration (HCFA-Pub. 13-2) (Superintendent of Documents No. HE 22.8/6.2)
367	• Provider-Based HHA and Provider-Based Hospice Transfer Requirements
	Regional Intermediary Delin- eation of Responsibility Audit Intermediary Delinea- tion of Responsibility Data Exchange Requirements Time Period for the Exchange of Operational Data Responsible Party/Function and Time Requirements Media of Exchange
	Intermediary Manual Part 3—Claims Process (HCFA-Pub. 13-3) (Superintendent of Documents No. HE 22.8/6)
1416	• Covered Inpatient Hospital Services, Outpatient Observa- tion Services
1417	• Billing for Durable Medical Equipment (DME) and Orthotic/ Prosthetic Devices
1418	• Provider's Right to Appeal Initial Determination, Beneficiary Representation by Provider
1419	• Claims Processing Timeliness
IM-89-1	• Planning for Implementation of HCPCS for Hospital Outpatient Radiology Services
IM-89-2	• New Part A Provisions Under Catastrophic Insurance
	Medicare Carriers Manual Part 3—Claims Process (HCFA-Pub. 14-3) (Superintendent of Documents No. HE 22.8/7)
1285	• Incentive Payments to Physi- cians for Services Rendered in a Health Manpower Shortage Area
1286	• Capped Rental Items 15-Month Ceiling

Trans. No.	Manual/Subject/Publication No.	Trans. No.	Manual/Subject/Publication No.	Trans. No.	Manual/Subject/Publication Number
1287	• Payment for Services Furnished by Qualified Anesthetists Conditions for Payment of Charges—Anesthesiology Services Payment for Physician Anes- thesia Services Determining Reasonable Charges for Medically Di- rected Anesthesia Services	B-89-1	• Carrier Quality Assurance System (CQAS) Implementation Schedule		Change of Ownership of Cur- rently Participating Provider Model Letter Notifying Skilled Nursing Facility of Noncom- pliance
	• Explanatory and Denial Mes- sages Monitoring Potential Violation of Laboratory Assignment	B-89-2	• Collection and Submission of Data for the Physician Identifi- cation Effort		Excepting to State Agency Certification
1288	• Processing of Claims for the Services of Certified Registered Nurse Anesthetists	B-89-3	• Implementation of Carrier Manual Transmittal No. 1237 (Payment for Home Dialysis Supplies and Equipment)		Prioritizing Survey Workload Ascertaining Compliance with Civil Rights Requirement
1289	• Questionable Business Ar- rangements	B-89-4	• Notice of New Interest Rate Ap- plicable on Clean Claims		Readmission to the Medicare or Medicaid Program After Termination
1290	• Prepayment Review Personnel and Procedures	B-89-5	• Counting Physicians, Limited Li- cense Practitioners, and Suppli- ers Who Have Elected to Partic- ipate in the Medicare Pro- gram Effective January 1, 1989		Interviewing Key Personnel Summary of Certification Ac- tions Performed After Survey
1291	• Glossary of Terms Reporting of Inquiries and other Actions on the Carrier Appeal Report Elements of a Review Combining Claims to Meet the \$100 Limitation On the Record Decision Reopening and Revision of Claims Determinations and Decisions Budgeting Allocation and Workload Reporting Development of Appeals Definitions		Program Memorandum Intermediaries/Carriers (HCFA-Pub. 60 A/B) (Superintendent of Documents No. HE 22.8/6-5)		Statement of Deficiencies and Plan of Correction
1292	• Fraud and Abuse	AB-88-14	• HMOs Terminating Their Medi- care Contracts		Evaluation of Compliance Adverse Actions-General
1293	• Disposition Codes	AB-89-1	• HMO Directory		Initial Denials of Medicare Provider/Supplier Requests for Program Participation
1294	• Special Travel Allowance for Clinical Diagnostic Laboratory Services		State Operations Manual Provider Certification (HCFA-Pub. 7) (Superintendent of Documents No. HE 22.8/12)		Termination Procedures—Im- mediate and Serious Threat to Patient Health and Safety (Medicare)
1295	• Coordination of Part A Denials from Intermediaries (A/B) Link Payment for Physicians' Serv- ices Furnished to Dialysis Inpatients	217	• SNFs Which Perform Their Own Diagnostic Services Interpretive Guidelines—Hos- pitals Interpretive Guidelines— Home Health Agencies Interpretive Guidelines—Inde- pendent Laboratories		Change in Size or Location of Distinct Part Skilled Nurs- ing Facility
1296	• Presentation of the Data on the EOMB Form, Illustration D Statements for Unassigned Claims Conditions for Data Area I of the EOMB Conditions for Data Area IV of the EOMB Prohibition Against Billing for Unassigned Physician Serv- ices Which Are Determined to be Not Reasonable and Necessary	218	• ESRD Facility Survey Report Crucial Data Extract (Form HCFA-3427C) End Stage Renal Disease Fa- cility Survey Report (Form HCFA-3427A) Survey Procedures for End Stage Renal Disease Facili- ties		Hospital Manual (HCFA-Pub. 10) (Superintendent of Documents No. HE 22.8/2)
1297	• Use of Relative Value Scale and Conversion Factors for Reason- able Charge Gap-filling Determining Fee Schedule Re- imbursement for Radiology Services Rendered or Su- pervised by Radiologists	219	• Criteria for Psychiatric and Re- habilitation Units	538	• Billing for Durable Medical Equipment (DME) and Orthotic/ Prosthetic Devices
	Program Memorandum Intermediaries (HCFA-Pub. 60A) (Superintendent of Documents No. HE 22.8/6-5)	220	• Identifying Eligible Providers and Suppliers Establishing Separate Cost Entities in Multiple Compon- ent Hospitals Distinct Part Skilled Nursing Facilities Conducting Initial Surveys and Scheduled Resurveys Conducting Unscheduled Sur- veys Exit Conference Limitations on Technical As- sistance Afforded by Sur- veyors Basis for Terminating Provid- er Participation—Citations and Discussion Denial of Payments in Lieu of Termination of Long-Term Care Facility (Medicare and Medicaid)	559	• Covered Inpatient Hospital Services Outpatient Observation Serv- ices Health Care Associated with Pregnancy Outpatient Defined
A-89-1	• Direct Medicare Billing by Certi- fied Registered Nurse Anesthe- tists (CRNAs)		Termination Procedures—Non- compliance With One or More Conditions of Partici- pation or Coverage and Cited Deficiencies Limit Ca- pacity of Provider/Supplier to Furnish Adequate Level or Quality of Care—Exclud- ing SNFs	560	• Claims Processing Timeliness
A-89-2	• Extension of Due Date for Filing Provider Cost Reports on Form HCFA-2552-85		Program Memorandum Carriers (HCFA-Pub. 60B) (Superintendent of Documents No. HE 22.8/6-5)	IM-89-1	• Planning for Implementation of HCPCS for Hospital Outpatient Radiology Services
				IM-89-2	• Planning for Implementation of HCPCS for Hospital Outpatient Radiology Services (This in- struction corrects IM-89-1)
					Christian Science Sanatorium Hospital Manual Supplement (HCFA-Pub. 32) (Superintendent of Documents No. HE 22.8/2.2)
				23	• Claims Processing Timeliness
					Home Health Agency Manual (HCFA-Pub. 11) (Superintendent of Documents No. HE 22.8/5)
				219	• Billing for Durable Medical Equipment (DME) and Orthotic/ Prosthetic Devices
				220	• IDHA's Right to Appeal Initial Determination Under the Limita- tion of Liability Provision Beneficiary Representation by Home Health Agency
				221	• Claims Processing Timeliness
					Skilled Nursing Facility Manual (HCFA-Pub. 12) (Superintendent of Documents No. HE 22.8/3)
				276	• Billing for Durable Medical Equipment (DME) and Orthotic/ Prosthetic Devices
				277	• Claims Processing Timeliness
					Rural Health Clinic Manual (HCFA-Pub. 27) (Superintendent of Documents No. HE 22.8/19.985)

Trans. No.	Manual/Subject/Publication Number	Trans. No.	Manual/Subject/Publication Number	Trans. No.	Manual/Subject/Publication No.
33	• Claims Processing Timeliness Renal Dialysis Facility Manual (Non-Hospital Operated) (HCFA-Pub. 29) (Superintendent of Documents No. HE 22.8/13)		Computation of Hospital- Based Skilled Nursing Facility Adjusted Cost		Forms and Instructions (General) (HCFA-Pub. 151IV) (Superintendent of Documents No. HE 22.8/4)
338	• Claims Processing Timeliness Hospice Manual (HCFA-Pub. 21) (Superintendent of Documents No. HE 22.8/18)		Calculation of Medicare Set- tlement	1	• Principles HCFA Rulings (HCFA-Pub. 10009)
21	• Claims Processing Timeliness Outpatient Physical Therapy and Comprehensive Outpatient Rehabilitation Facility Manual (HCFA-Pub. 9) (Superintendent of Documents No. HE 22.8/9)		Inpatient Hospital Services Under PPS	HCFA 89-1	This ruling establishes, effective January 26, 1989, that two recent Court decisions, one by the U.S. Supreme Court and the other by the United States Court of Appeals for the District of Columbia Circuit, control and, therefore, render moot for lack of an actual case or contro- versy various claims and ap- peals challenging certain Medi- care reimbursement regulations that are now pending before fiscal intermediaries, the Provider Reimbursement Review Board, HCFA, and the Federal courts. It also explains how HCFA and its fiscal interme- diaries will make payment in pending administrative and judi- cial appeals that are controlled by these two Court decisions. The regulations in question con- cern the wage index component of the 1981 cost limits and the retroactive 1984 Medicare wage index rule, in addition to the 1979 and 1986 rules on malprac- tice costs for cost reporting peri- ods beginning before May 1, 1986. The regulations dealing with the hospital-specific rate under the Prospective Payment System is also affected in that all four transition period pay- ments will be adjusted to reflect additional base period costs.
84	• Billing for durable Medical Equipment (DME) and Orthotic/ Prosthetic Devices		Outpatient Ambulatory Sur- gery		
85	• Claims Processing Timeliness Provider Reimbursement Manual Part II Provider Cost Reporting Forms and Instructions (General) (HCFA-Pub. 15HS) (Superintendent of Documents No. HE 22.8/4)		Outpatient Radiology Services		
10	• Reclassification and Adjustment of Trial Balance of Expenses Computation of Ratio of Cost or Charges Cost Apportionment Apportionment of Inpatient Routine Service Pass Through Costs Apportionment of Inpatient Ancillary Service Pass Through Costs Apportionment of Medical and Other Health Services Costs Apportionment of Medicare Share of Risk Portion of Premium and Directly As- signed Malpractice Costs		Other Outpatient Diagnostic Procedures		
			Apportionment of Cost for the Services of Teaching Physi- cians		
			Calculation of Reimbursement Settlement—Swing Beds		
			Calculation of Reimbursement Settlement		
			Medicare Part A Services— Cost Reimbursement		
			All Other Health Services		
			Computation of Recovery of Unreimbursed Cost		
			Balance Sheet for Computa- tion of Return of Equity Capital of Proprietary Pro- viders		
			Computation of Difference Be- tween Total Interim Pay- ments and Net Cost of Cov- ered Services		
			Apportionment of Allowable Return of Equity Capital of Proprietary Providers		
			Apportionment of Allowable Return on Equity Capital		
			Provider Reimbursement Manual Part II Provider Cost Reporting		

Table III.—Regulations and Notices Published, January—March, 1989

Publication date/cite	42 CFR Part	Title
Final Rules		
01/27/89 (54 FR 4023)	409, 410, 418, 421, 424, 441, 489	Miscellaneous Medicare and Medicaid Amendments.
02/02/89 (51 FR 5316)	405, 442, 447, 483, 488, 489, 498	Medicare and Medicaid Program; Requirements for Long Term Care Facilities (Correction was published on 02/27/89 (54 FR 8261)).
02/03/89 (54 FR 5452)	433	Medicaid Program; Refunding of Federal Share of Overpayments Made to Medicare Providers (Correction was published on 02/28/89 (54 FR 8439)).
02/06/89 (54 FR 5619)	405	Medicare Program Payment for Kidneys Sent to Foreign Countries or Transplanted in Patients Other Than Medicare Beneficiaries.
03/02/89 (54 FR 8738)	433, 435	Medicare Program; Targeting Information for Income and Eligibility Verification Systems
03/02/89 (54 FR 8994)	405	Medicare Program; Fee Schedules for Radiologist Services (Correction was published on 03/31/89 (54 FR 13294)).
Proposed Rules		
01/18/89 (54 FR 1956)	405, 424, 462, 466, 473, 477, 489	Medicare and Medicaid Programs; Denial of Payment for Substandard Quality Care and Review of Beneficiary Complaints.
01/26/89 (54 FR 3794)	405	Medicare Program; Uniform Relative Value Guide for Anesthesia Services Furnished by Physicians.
01/26/89 (54 FR 3803)	405, 410, 412, 413, 482	Medicare Program; Fee Schedules for the Services of Certified Registered Nurse Anesthetists.
01/26/89 (54 FR 3818)	413	Medicare Program; Payment for Outpatient Surgery at Eye and Ear Specialty Hospitals.
01/30/89 (54 FR 4302)	400, 405	Medicare Program Criteria and Procedures for Making Medical Services Coverage Decisions that Relate to Health Care Technology.
02/07/89 (54 FR 5948)	405, 415	Medicare Program; Payment for Physician Services Furnished in Teaching Settings; Payment to Providers for Compensation Paid to Physicians Who Furnish Services to Providers; and Payment for Consultative Pathology Services Furnished to Patients in Providers.

Publication date/cite	42 CFR Part	Title
02/23/89 (54 FR 7798)	431, 433, 435, 436, 440, 447	Medicaid Program; Eligibility Groups, Coverage, and Conditions of Eligibility; Legislative Changes Under OBRA '87, COBRA, and TEFRA.
Notices		
01/03/89 (54 FR 67)		Medicare Program; Meeting of the Advisory Committee on Home Health Claims.
01/12/89 (54 FR 1244)		Medicare Program; Inherent Reasonableness for Home Dialysis Supplies and Equipment.
01/25/89 (54 FR 3685)		Medicare Program; Schedule of Limits on Home Health Agency Costs Per Visit for Cost Reporting Periods Beginning On or After July 1, 1988 (Corrects notice published 10/18/88).
02/01/89 (54 FR 5142)		Medicare and Medicaid Programs; Health Care Financing Research and Demonstration; Availability of Funds for Cooperative Agreements and Grants.
02/07/89 (54 FR 6032)		Meeting of the Advisory Panel on the Development of Uniform Needs Assessment Instrument(s).
03/01/89 (54 FR 8599)		Medicare Program; Peer Review Organizations Revised Scopes of work for Maryland, New Jersey, The Virgin Islands; and Guam, American Samoa, the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.
03/17/89 (54 FR 11293)		Medicare and Medicaid Program; ICD-9-CM Coordination and Maintenance Committee Meeting.
03/17/89 (54 FR 11361)		Medicare Program; Meeting of the Supplemental Health Insurance Panel.
03/23/89 (54 FR 12017)	Quarterly Listing of Program Is- sues.	
03/30/89 (54 FR 13116)		Medicare Program; Data Users Conference Notification.

(Catalog of Federal Domestic Assistance Program No. 13.773, Hospital Insurance; and Program No. 13.774, Medicare-Supplement Medical Insurance Program)

Dated: May 11, 1989.

Louis B. Hays,
Acting Administrator, Health Care Financing
Administration.

[FR Doc. 89-13183 Filed 6-2-89; 8:45 am]

BILLING CODE 4120-01-M

Privacy Act of 1974; Report of New System

AGENCY: Health Care Financing Administration (HCFA), Department of Health and Human Services (HHS).

ACTION: Notice of new system of records.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974, we are proposing to establish a new system of records, "Evaluation of the Arizona Health Care Cost Containment and Long Term Care Systems Demonstration," HHS/HCFA/ORD No. 09-70-0045. We have provided background information about the proposed system in the "Supplementary Information" section below. Although the Privacy Act requires only that the portion of the system which describes the routine uses of the system be published for comment, HCFA invites comment on all portions of this notice.

DATES: HCFA filed a New System Report with the Chairman of the Committee on Government Operations of the House of Representatives, the Chairman of the Committee on Governmental Affairs of the Senate, and the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on June

1, 1989. The new system of records will become effective on or before August 4, 1989, unless HCFA receives comments which would necessitate alterations to the system.

ADDRESS: The public should address comments to Richard A. DeMeo, Privacy Act Officer, Office of Budget and Administration, Health Care Financing Administration, Room G-M-1, East Low Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207. Comments received will be available for inspection at this location.

FOR FURTHER INFORMATION CONTACT: William L. England, Ph.D., Division of Health Systems and Special Studies, Office of Research and Demonstrations, Room 2306 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207, telephone (301) 966-6630.

SUPPLEMENTARY INFORMATION: HCFA proposes to initiate a new system of records for data collected under the Arizona Health Care Cost Containment System (AHCCCS) demonstration project, which includes both acute care and the Arizona Long Term Care System (ALTCSS). (Both programs will be referred to as the AHCCCS program.) The AHCCCS program is conducted under the authority of Section 1115 of the Social Security Act. Section 1115 gives the Secretary authority to waive certain requirements of Title XIX (Medicaid) for demonstration projects. The purpose of the proposed system of records is to acquire and maintain data necessary to evaluate the AHCCCS project. The AHCCCS project began in 1982 and in November, 1988 was granted a 5 year annually renewable extension through 1993.

The AHCCCS concept involves payment of a capitated rate for acute and long term care for indigent persons in Arizona, in lieu of a traditional Medicaid fee-for-service system. Because the AHCCCS program is capitated, Arizona does not receive claims data directly from Medicaid billings generated by the program, as is the case with traditional fee-for-service programs. The proposed system of records will include encounter data collected by AHCCCS provider organizations, and beneficiary surveys conducted by the evaluator contracted by HCFA to evaluate the AHCCCS program.

One objective of the AHCCCS demonstration project is preparation of a study comparing the AHCCCS system with a traditional fee-for-service Medicaid system. In order to fulfill this objective and complete the tasks of this project, HCFA and the evaluation contractor must have individually-identified records. We are proposing to establish this system of records in accordance with the requirements and principles of the Privacy Act. We do not anticipate that establishment of the proposed system of records will have an unfavorable effect on the privacy or other personal rights of individuals.

The Privacy Act permits us to disclose individually identifiable information without the consent of the individual under an exception for "routine uses". Under the "routine uses" exception, disclosure is permitted for purposes that are compatible with the purpose for which HCFA collected the information. The proposed routine uses of the proposed system meet the compatibility criteria because the information in the system is collected for evaluating the

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AHCCCS program, a demonstration program of the Federal Government. We anticipate that disclosures under the routine uses will not result in any unwarranted adverse effects on personal privacy.

In addition to the above, we are also changing the Retention and Disposal Section in the "Evaluation of Medicare Competition Demonstrations," from an expiration date of December 31, 1988, to an expiration date of December 31, 1993. This system, No. 09-70-0029, was last published at 48 FR 56645; December 22, 1983. This extension is needed to allow the data gathered in the evaluation of the demonstrations to be used in conjunction with another system of records, the "Evaluation of the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) Health Maintenance Organization (HMO) and Competitive Medical Plan (CMP) Program" HHS/HCFR/ORD, No. 09-70-0038, last published at 53 FR 182; January 5, 1988.

Dated: May 26, 1989.

Louis B. Hays,
Acting Administrator, Health Care Financing Administration.

09-70-0045

SYSTEM NAME:

Evaluation of the Arizona Health Care Cost Containment and Long Term Care Systems Demonstration.

SECURITY CLASSIFICATION:

None.

SYSTEM LOCATION:

Contact system manager for location of contractor. See "System Manager(s) and Address" for system manager location.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons residing in Arizona who qualify for medical assistance under the Aid to Families with Dependent Children (AFDC), or the Supplemental Security Income (SSI) programs, and a sample of persons in these programs in another state(s) chosen for comparison with Arizona.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records in the system will contain information taken from the preadmission screening instrument, including beneficiary name, address, age, social security and Medicare numbers, demographic data, social worker assessment, available social supports and services, medical conditions, history and treatments, and a cost-effectiveness analysis of proposed treatment. The system will also include information on past

encounters with AHCCCS facilities, visit types (inpatient or outpatient), the type of facility visited, and the nature of the health resources utilized. During this project, approval for a beneficiary survey may be requested, in accordance with the Paperwork Reduction Act and 5 CFR Part 1320. Data from such a survey would be included in the proposed system of records. In addition, data from a previous beneficiary survey approved by the Office of Management and Budget (OMB), "Evaluation of Arizona Health Care Cost Containment System", HCFA-386, OMB Number 0938-0281, may be included in the proposed system of records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Section 1115 Waiver authority of Title XIX (Medicaid) requirements under which the AHCCCS program is operated.

PURPOSE OF THE SYSTEM:

The primary objective of the AHCCCS demonstration is to assess the merits of providing medical care to indigent persons on a capitated basis, compared to a traditional fee-for-service system. This system of records will be used to study and evaluate the performance of the AHCCCS demonstration.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USERS:

Disclosure may be made:

1. To contractor(s) for the purpose of collating, analyzing, aggregating, or otherwise refining or processing records in the system or for developing, modifying, and/or manipulating ADP software. Data would also be disclosed to contractors incidental to consultation, programming, operation, user assistance, or maintenance of an ADP or telecommunications system containing or supporting records in the system.
2. To a congressional office, from the record of an individual in response to an inquiry from the congressional office made at the request of that individual.
3. To the Department of Justice, to a court or other tribunal, or to another party before such tribunal, when:
 - a. HHS, or any component thereof; or
 - b. Any HHS employee in his or her official capacity; or
 - c. Any HHS employee in his or her individual capacity where the Department of Justice (or HHS, where it is authorized to do so) has agreed to represent the employee; or
 - d. The United States or any agency thereof where HHS determines that the litigation is likely to affect HHS or any of its components.

is a party to litigation or has an interest in such litigation, and HHS determines that the use of such records by the Department of Justice, the tribunal, or the other party is relevant and necessary to the litigation and would help in the effective representation of the governmental party, provided, however, that in each case, HHS determines that such disclosure is compatible with the purposes for which the records were collected.

4. To an individual or organization for research, demonstration, evaluation, or epidemiological study related to the prevention of disease or disability, the restoration or maintenance of health, or the efficacy or efficiency of HCFA programs if HCFA:

- a. Determines that the proposed use does not violate legal limitations under which the record was provided, collected, or obtained, including such limitations as may be imposed or provided under the Privacy Act;
- b. Determines that the purpose for which the proposed use is to be made:
 - (1) Cannot be reasonably accomplished unless the record is provided in a format that identifies individuals;
 - (2) Is of sufficient importance to warrant the effect on or risk to the privacy or the individual by such limited additional exposure that unauthorized disclosure of the record might bring; and
 - (3) There is a reasonable probability that the objective of the use will be accomplished;
- c. Requires the recipient of the information to:
 - (1) Establish appropriate administrative, technical, and physical safeguards to prevent unauthorized use or disclosure of the record;
 - (2) Remove or destroy the information that allows the individual to be identified at the earliest time at which removal or destruction can be accomplished consistent with the purpose of the project, unless the recipient receives written authorization from HCFA that is justified based on research objectives for retaining such information; and
 - (3) Makes no further use of the record except:
 - (a) For use in emergency circumstances affecting the health or safety of any individual following written authorization of HCFA;
 - (b) For disclosure to a person, identified in advance by HCFA, for the purpose of conducting an audit of the research project, providing information which would identify research subjects is destroyed by the person authorized to conduct the audit at the earliest

opportunity consistent with the purpose of the audit; or

(c) when further approved by HCFA.

d. Secures a written, legally binding statement from the recipient of the information attesting that the recipient understands the provisions of paragraph 4(c) and all terms and conditions of the Privacy Act.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper and magnetic tape.

RETRIEVABILITY:

Information will be retrieved by beneficiary's name, health insurance claim, or social security number.

SAFEGUARDS:

Employees who maintain records in this system will be instructed to grant access only to authorized users. Data stored in computers will be accessed through the use of passwords, keywords, numbers, or some combination thereof known only to the authorized personnel. These passwords, keywords or numbers will be changed as needed.

Contractors who maintain records in this system will be instructed to make no further disclosures of the records except as authorized by the system manager in accordance with the Privacy Act. (See title and business address of responsible agency official under "System Manager(s) and Address".) Privacy Act requirements will be specifically included in contracts related to this system. The project officer and contract officer will oversee compliance with these requirements. The particular safeguards implemented will be developed in accordance with the HHS Information Resource Manual (IRM), Part 6, "Systems Security Policies" (e.g., use of passwords), and the National Bureau of Standards Federal Information Processing Standards.

RETENTION AND DISPOSAL:

Hardcopy data collection forms and magnetic tapes with identifiers will be retained in secure storage areas. The disposal technique of degaussing will be used to strip magnetic tape of all identifying names and numbers by December 2003, ten years after project completion. Hardcopy records will also be destroyed by that time.

SYSTEM MANAGER(S) AND ADDRESS:

The responsible agency official (System Manager) is the Director, Office of Research and Demonstrations. The address is the Health Care Financing Administration, Room 2230 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

NOTIFICATION PROCEDURE:

To determine if a record exists, write to the System Manager at the address indicated above, specifying name, address, and health insurance claim or social security number.

RECORD ACCESS PROCEDURES:

Same as notification procedures. Requesters should reasonably specify the record contents being sought. (These procedures are in accordance with HHS Regulations (45 CFR 5b.5(a)(2)).)

CONTESTING RECORD PROCEDURES:

Contact the System Manager named above and reasonably identify the record and specify the information to be contested. State the reason for contesting the record (e.g., why it is inaccurate, irrelevant, incomplete, or not current). (These procedures are in accordance with HHS Regulations (45 CFR 5b.7).)

RECORD SOURCE CATEGORIES:

Information contained in these records will be obtained from encounter records provided by the AHCCCS administrator, from AHCCCS beneficiary surveys conducted by HCFA's evaluation contractor, and from existing HCFA Medicare record systems.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 13226 Filed 6-2-89; 8:45 am]

BILLING CODE 4120-03

National Institutes of Health

Meeting; National Cancer Institute

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biometry and Epidemiology Contract Review Committee, National Cancer Institute, National Institutes of Health, June 19-20, 1989, at the Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, Maryland 20814.

This meeting will be open to the public on June 19 from 9 a.m. to 10 a.m. to discuss administrative matters. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 19 from 10 a.m. to recess; and on June 20 from 9 a.m. to adjournment for the review, discussion and evaluation of individual contract proposals. The proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material

and personal information concerning individuals associated with the proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and a roster of committee members upon request.

Dr. Harvey P. Stein, Executive Secretary, Biometry and Epidemiology Contract Review Committee, National Cancer Institute, Westwood Building, Room 804, National Institutes of Health, Bethesda, Maryland 20892 (301/496-7030) will furnish substantive program information.

Dated: May 26, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-13178 Filed 6-2-89; 8:45 am]

BILLING CODE 4140-01-M

National Center for Nursing Research; National Advisory Council for Nursing Research; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Steering Committee for the National Nursing Research Agenda (NNRA), National Advisory Council for Nursing Research, National Center for Nursing Research, June 26, 1989, from 6:30 p.m. to 9:00 p.m. at the Hyatt Regency Hotel, Bethesda, MD. The specific meeting room will be noted on the reader board in the hotel lobby.

This meeting will be open to the public. The agenda will include discussion of issues concerning the National Nursing Research Agenda.

Attendance by the public will be limited to space available.

Dr. Doris Bloch, Executive Secretary, Steering Committee, NNRA, National Advisory Council for Nursing Research, National Institutes of Health, Building 31, Room 5B23, Bethesda, Maryland 20892, (301) 496-0207, will provide a summary of the meeting, roster of steering committee members, and substantive program information upon request.

Dated: May 25, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-13179 Filed 6-2-89; 8:45 am]

BILLING CODE 4140-01-M

National Center for Nursing Research; National Advisory Council for Nursing Research; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Advisory Council for Nursing Research, National Center for Nursing Research, June 27-28, 1989, Building 31C, Conference Room 10, National Institutes of Health, Bethesda, Maryland 20892.

This meeting will be open to the public on June 27 from 9 a.m. to 2:30 p.m. and on June 28 from approximately 10:00 a.m. to adjournment. Agenda items to be discussed will include the NCNR Director's Report, report of the meeting of the Advisory Committee to the Director, NIH, update on the National Nursing Research Agenda, report on the Nursing Task Force on Nursing Research, and a review of the Acute and Chronic Illness Branch.

Attendance by the public will be limited to space available.

In accordance with the provisions set forth in Sections 552b(c)(4) and 552b(c)(6), Title 5, U.S. Code and Section 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 27 from 2:30 p.m. to recess and on June 28 from 8:30 a.m. to completion of the review, discussion, and evaluation of individual grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Ruth K. Aladj, Executive Secretary, National Advisory Council for Nursing Research, National Institutes of Health, Building 31, Room 5B23, Bethesda, Maryland 20892, (301) 496-0207, will provide a summary of the meeting, roster of committee members, and substantive program information upon request.

Dated: May 26, 1989.

Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 89-13180 Filed 6-2-89; 8:45 am]
BILLING CODE 4140-01-M

National Institute on Deafness and Other Communication Disorders; National Deafness Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Deafness Advisory Board, on June 28, 1989. The meeting will take place from 8:30 a.m. to 4:30 p.m. in the

Stone House, National Institutes of Health, Bethesda, Maryland 20892. The meeting will be open to the public. Attendance will be limited to available space.

The meeting will be devoted to discussions of programs and issues concerning the National Institute on Deafness and Other Communication Disorders.

The Acting Executive Officer, Geoffrey E. Grant, National Institute on Deafness and Other Communication Disorders, Building 31, Room 1B62, Bethesda, Maryland 20892, (301) 496-7243, will furnish the meeting agenda, rosters of committee members and substantive program information upon request.

Date: May 30, 1989.

Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 89-13283 Filed 6-2-89; 8:45 am]
BILLING CODE 4140-01-M

Meeting of Heart, Lung, and Blood Research Review Committee B

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, on June 29, 1989, in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92-463, the meeting will be closed to the public from approximately 10 a.m. until adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Louis M. Ouellette, Executive Secretary, NHLBI, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, (301) 496-7915, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837, Heart and Vascular Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health.)

Dated: May 28, 1989.

Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 89-13181 Filed 6-2-89; 8:45 am]
BILLING CODE 4140-01-M

Meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine on June 21, 1989, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 9 a.m. to 5 p.m. The Subcommittee will discuss electronic imaging technologies and the role of the National Library of Medicine in relation to these technologies. Attendance by the public will be limited to space available.

Ms. Susan Buyer Slater, Deputy Assistant Director for Planning and Evaluation of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, telephone 301-496-2311, will provide a summary of the meeting, roster of subcommittee members, and substantive program information upon request.

Date: May 26, 1989.

Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 89-13284 Filed 6-2-89; 8:45 am]
BILLING CODE 4140-01-M

Alcohol Drug Abuse and Mental Health Administration, NIH/ADAMHA-Industry Collaboration Forum

With the passage of the Federal Technology Transfer Act of 1986 (FTTA), incentives have been provided that encourage collaboration between government scientists and industry. It is anticipated that a number of such endeavors will lead, through mutually advantageous patent and license agreements to the beneficial commercial application of laboratory research findings.

As part of a government-wide effort to implement the FTTA, the National Institutes of Health (NIH) and the Alcohol, Drug Abuse and Mental Health Administration (ADAMHA) will sponsor an NIH/ADAMHA-Industry Collaboration Forum, to be held on Tuesday, October 3, 1989 at the Lipsett Auditorium of the Warren G. Magnuson Clinical Center at NIH. A directory containing information gathered from participants on capabilities and resources available in interested government and industrial laboratories will be distributed at the forum. Although eligibility for registration is unrestricted, the forum will be most useful to those for-profit organizations with capabilities and resources to conduct research with biomedical or behavioral applications.

The forum will begin at 8:30 a.m. with a brief plenary session, followed by a poster session displaying the goals and research capabilities of various NIH and ADAMHA laboratories. Early registration is strongly encouraged. Deadline for registration is September 1, 1989. There will be a registration fee of \$100.00. Applications for registration after this date may not be honored. To obtain registration information, call (301) 986-4886 or write to: Judy Gale, Social and Scientific Systems, Inc., 7101 Wisconsin Avenue, Suite 610, Bethesda, MD 20814-4805, (301) 986-4886.

Dated: May 23, 1989.

James B. Wyngaarden,
Director, NIH.
[FR Doc. 89-13182 Filed 6-2-89; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-010-09-4333-13]

Road Closure Order, Whiskey Flat Area, Mariposa County, CA; Folsom Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Order to close road in the Whiskey Flat area within Mariposa County in the Folsom Resource Area, Bakersfield District, California.

SUMMARY: This action closes to vehicular use a road on BLM-administered public land in the Whiskey Flat area in Mariposa County, California. The reasons for the closure of this unauthorized road relate to: (1) Its improper design having led to a degradation of surface resources on

public land and (2) the unsatisfactory condition of the road making it unsafe for public use. This order will close the road to all vehicle use, except for administrative and rehabilitative purposes. Persons allowed to use the road for these purposes will be designated by the authorized officer. This closure will take effect immediately and will be permanent. The specific public lands affected by this closure are located in T. 4 S., R. 18 E., MDM, section 20, NE¼SW¼, NW¼SE¼, and Lot 1. The specific road to be closed enters public land near corner 3 of MS5982 and exits public land near the northwest corner of NE¼SW¼, section 20. Authority for this closure order is contained in CFR Title 43, Subtitle B, Chapter II, Subchapter H, Part 8000, Subpart 8364.1.

FOR FURTHER INFORMATION CONTACT: Deane Swickard, Folsom Resource Area Manager, Folsom Resource Area, Bureau of Land Management, Natoma Street, Folsom, California 95630; (916) 985-4474.

Dated: May 19, 1989.

David N. Harris,
Acting Area Manager.

[FR Doc. 89-13195 Filed 6-2-89; 8:45 am]
BILLING CODE 4310-40-M

[UT-040-4320-02]

Availability of Environmental Assessment on Predator Control Work on Public Lands in the Cedar City District, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Environmental Assessment (EA) and finding of no significant impact on a districtwide predator control program.

SUMMARY: This environmental assessment evaluates Animal Damage Control (ADC) work by Animal and Plant Health Inspections Service (APHIS) employees on public lands in the Cedar City District. The area includes 35 Wilderness Study Areas (WSAs) and two Wilderness Areas (WAs). Control methods allowed in WSAs/WAs will be confined to traps, snares, shooting, dogs, and aerial hunting when livestock losses are confirmed and upon written approval by the authorized officer. The use of M44s in WSAs/WAs will not be allowed.

ADDRESS: To obtain a copy of the EA contact District Manager, Bureau of Land Management, 176 East DL Sargent Drive, Cedar City, Utah 84720.

Dated: May 26, 1989.

G. Von Swain,
Acting District Manager.

[FR Doc. 89-13193 Filed 6-2-89; 8:45 am]
BILLING CODE 4310-DQ-M

[WY-920-09-4111-15; WYW94581]

Proposed Reinstatement of Terminated Oil and Gas Lease

May 26, 1989.

Pursuant to the provisions of Pub. L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW94581 for lands in Fremont County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$5 per acre, or fraction thereof, per year and 16½ percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this Federal Register notice.

The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW94581 effective February 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Andrew L. Tarshis,
Chief, Leasing Section.

[FR Doc. 89-13194 Filed 6-2-89; 8:45 am]
BILLING CODE 4310-02-M

[OR-010-09-4212-21; GP-9-227]

Realty Action; Noncompetitive Lease of Public Land in Lake County, OR

The following described parcel of public land is being considered for lease under section 302 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1732), at not less than fair market value:

T. 28 S., R. 14 E., W.M., Oregon
Sec. 7: NE¼NW¼SE¼.
(approx. 3.9 acres within)

The purpose of the lease would be to authorize the existing irrigation and harvest of meadow-grass hay from the above described public land. The current use was initiated in trespass

when the adjacent landowner mistakenly assumed the lands to be their own. Since the proposed lessee is the only practical user of the subject property, the land will not be offered for lease through competitive bidding.

The subject property is being considered for authorization by lease to Schumacher Ranch of P.O. Box 8, Silver Lake, Oregon 97638. The lease would be issued for a thirty (30) year term and would be renewable upon request by the lessee at the discretion of the Bureau of Land Management. The Bureau will review the lease proposal in accordance with the National Environmental Policy Act to assess impacts and determine compatibility with land use plans for the area.

Information regarding this proposal can be reviewed at the Bureau of Land Management, Lakeview District Office, 1000 South 9th St., P.O. Box 151, Lakeview, Oregon 97630, telephone (503) 947-2177.

For a period of forty-five (45) days from the date of publication interested parties may submit comments to the District Manager, Bureau of Land Management at the above address. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this notice of realty action accordingly.

Date: May 25, 1989.

Judy Ellen Nelson,

District Manager.

[FR Doc. 89-13192 Filed 6-2-89; 8:45 am]

BILLING CODE 4310-33-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31433]

Consolidated Rail Corp.—Trackage Rights Exemption—CSX Transportation Inc.

CSX Transportation, Inc. (CSXT) has agreed to grant local trackage rights to Consolidated Rail Corporation (Conrail) between milepost 124.5 at Cuyahoga Falls and milepost 143.8 near Warwick in Summit County, OH.¹ The trackage rights were to become effective on May 23, 1989, or such later date as the parties may agree.

This notice is filed under 49 CFR 1180.2(d)(7). Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John J. Paylor, Consolidated Rail Corporation, 1138 Six Penn Center, Philadelphia, PA 19103.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Dated: May 30, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 89-13263 Filed 6-2-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-55 (Sub. 308X)]

CSX Transportation, Inc.—Abandonment and Discontinuance of Trackage Rights Exemption—in Wise County, VA

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonment and Discontinuance of Service and Trackage Rights* to: (1) Abandon its 12.0-mile line of railroad between milepost CV-277.3, at Big Stone Gap, VA, and milepost CV-289.3, at Norton, VA; and (2) discontinue its trackage rights over a 22.5-mile line of the Norfolk Southern Railway between milepost 465.38 at Norton and milepost 442.90 at St. Paul, VA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic

on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 5, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),² and trail use/rail banking statements under 49 CFR 1152.29 must be filed by June 15, 1989.³ Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by June 26, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to

¹ A stay will be routinely issued by the Commission in those proceedings where an informal decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

² See *Exempt. of Rail Abandonment—Offers of Finon, Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440-48446).

³ The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

applicant's representative: Charles M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ad initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 9, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: May 24, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 89-13264 Filed 6-2-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No. 86X)]

Missouri Pacific Railroad Co.—Abandonment Exemption—in Buchanan County, MO

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 0.91-mile line of railroad between milepost 353.3 and the end of the line at milepost 354.21, near St. Joseph, in Buchanan County, MO.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—*

Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 5, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),² and trail use/rail banking statements under 49 CFR 1152.29 must be filed by June 15, 1989.³ Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by June 26, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Jeanna L. Regier, Room 830, 1416 Dodge Street, Omaha, NE 68179.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 9, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

² See *Exempt. of Rail Abandonment—Offers of Finon, Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440-48446).

³ The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

imposed, where appropriate, in a subsequent decision.

Decided: May 22, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-13265 Filed 6-2-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Information Collections Under Review

May 30, 1989.

The Office of Management and Budget (OMB) has been sent the following proposals for the collection of information for review under the provisions of the Paperwork Reduction Act (44 USC Chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories. Each entry contains the following information: (1) The title of the form or collection; (2) the agency form number, if any, and the applicable component of the Department sponsoring the collection; (3) how often the form must be filled out or the information is collected; (4) who will be asked or required to respond, as well as a brief abstract; (5) an estimate of the total number of respondents and the amount of time estimated for an average respondent to respond; (6) an estimate of the total public burden (in hours) associated with the collection; and, (7) an indication as to whether section 3504(h) of Pub. L. 96-511 applies. Comments and/or suggestions regarding the item(s) contained in this notice, especially those regarding the estimated response time, should be directed to the OMB reviewer, Mr. Edward H. Clarke, on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Larry E. Miesse, on (202) 633-4312. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should so notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Larry E. Miesse, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collections

- (1) Long-Term Offender Update Study.
- (2) No form number. Prisons division, National Institute of Corrections.
- (3) One time.
- (4) State or local governments, Federal agencies or employees. This nationwide study of the fifty State departments of corrections, the District of Columbia Department of Corrections, and the Federal Bureau of Prisons will obtain selected information with which to update the 1984 study of long-term offenders.
- (5) 52 respondents at 16 hours per response.
- (6) 832 estimated annual burden hours.
- (7) Not applicable under 3504(h).

Revision of a Currently Approved Collection

- (1) Victims of Crime Act, Crime Victims Assistance Grant Program, Program Performance Report (Revised).
- (2) OJP 7390/4. Office for Victims of Crime, Office of Justice Programs.
- (3) 90 days after completion of grant.
- (4) State or local governments. The information requested is necessary to generate and submit a statutorily required report to the President and the Congress on the effectiveness of the Victims of Crime Act, as amended, and to ensure grantees' compliance with statutory criteria.
- (5) 560 estimated annual respondents at 22 hours per response plus one recordkeeping burden hour per response.
- (6) 1,288 estimated annual public burden hours.
- (7) Not applicable under 3504(h).
- (1) Crime Victim Assistance Grant Program, Subgrant Award Report (Revised).
- (2) OJP 7390/2a. Office for Victims of Crime, Office of Justice Programs.
- (3) 30 days after an award is made.
- (4) State or local governments. This information is necessary to generate and submit a statutorily required report to the President and the Congress on the effectiveness of the Victims of Crime Act.
- (5) 56 respondents averaging 27 responses each, per year, at one hour per response plus 27 annual recordkeeping burden hours per respondent.
- (6) 3,024 estimated annual public burden hours.
- (7) Not applicable under 3504(h).

Reinstatement of a Previously Approved Collection for Which Approval Has Expired

- (1) Victims of Crime Act, Crime Victim Compensation Grant Program, Program Performance Report (Revised).
- (2) OJP 7390/2. Office for Victims of Crime, Office of Justice Programs.
- (3) 90 days after completion of the grant.
- (4) State or local governments. Information necessary to generate and submit a statutorily required report to the President and the Congress.
- (5) 56 annual respondents at one per response plus 3 hours each recordkeeping burden.
- (6) 448 estimated annual burden hours.
- (7) Not applicable under 3504(h).

Extension of the Expiration Date of a Currently Approved Collection Without any Change in the Substance or in the Method of Collection

- (1) National Prisoner Statistics—Prison Population Report (1A—Midyear Population Counts; 1B—Advance Yearend Population Counts).
- (2) NPS 1A, NPS 1B.
- (3) Annually.
- (4) State or local governments, Federal agencies or employees. Data provides midyear and advance yearend measures on the number of persons incarcerated and the degree of overcrowding in correctional institutions.
- (5) 55 respondents for each form for 110 annual responses at 2.5 hours per response.
- (6) 275 estimated annual burden hours.
- (7) Not applicable under 3504(h).
- (1) Application for permit to import controlled substances for domestic and/or scientific purposes pursuant to 21 USC 952.
- (2) DEA 357. Drug Enforcement Administration.
- (3) On occasion.
- (4) Businesses or other for-profit. Title 21, CFR 1312.12 requires any registrant who desires to import certain controlled substances into the United States to apply to do so on the DEA 357. Information is needed to determine suitability for issuance of an import permit, ensure that import quotas are not exceeded, and provide the United Nations with data on the legitimate traffic on narcotics.
- (5) 57 respondents at approximately 4.68 responses each per annum, at .25 hours per response.
- (6) 67 estimated annual respondents.
- (7) Not applicable under 3504(h).
- (1) Application for registration, application for registration renewal.

- (2) DEA 225 (Registration), DEA 225a (Renewal). Drug Enforcement Administration.
- (3) DEA 225 on occasion (new applicant), DEA 225a annually.
- (4) State or local governments, businesses or other for-profit, non-profit institution. The Controlled Substances Act requires all firms or individuals who manufacture, distribute, import, export, conduct research or dispense controlled substances to register with the Drug Enforcement Administration. Registration provides a closed system of distribution to control the flow of controlled substances through the distribution chain.
- (5) 10,000 respondents at .5 hours each.
- (6) 5,000 estimated annual burden hours.
- (7) Not applicable under 3504(h).

Larry E. Miesse,
Department Clearance Officer, Department of Justice.
[FR Doc. 89-13191 Filed 6-2-89; 8:45 am]
BILLING CODE 4410-10-M

Drug Enforcement Administration**Manufacturer of Controlled Substances; Application**

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is a notice that on April 6, 1989, Abbott Laboratories, 14th Street and Sheridan Road, Attn: Customer Service D-345, North Chicago, Illinois 60064, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug—	Schedule
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100).	II
Bulk dextropropoxyphene (non-dosage forms) (9273).	II
Fentanyl (9801).....	II
Hydromorphone (9150).....	II

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice.

1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed on or before July 5, 1989.

Gene R. Haislip,
Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: May 28, 1989.

[FR Doc. 89-13286 Filed 6-2-89; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 88-106]**Devendranathan Chanmugram, M.D., Inez, KY; Hearing**

Notice is hereby given that on October 14, 1988, the Drug Enforcement Administration, Department of Justice, issued to Devendranathan Chanmugram, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, BC0880371, and deny any pending applications for renewal.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, June 27, 1989, commencing at 12:30 p.m., at the Fiscal Courtroom, Room 402, 101 Jefferson County Courthouse, 527 West Jefferson Street, Louisville, Kentucky.

Dated: May 30, 1989.

John C. Lawn,
Administrator, Drug Enforcement Administration.
[FR Doc. 89-13267 Filed 6-2-89; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 88-121]**Bradley Harbin, M.D. Stamps, AK; Hearing**

Notice is hereby given that on December 16, 1988, the Drug Enforcement Administration, Department of Justice, issued to Bradley Harbin, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, June 6, 1989, commencing at 9:30 a.m., at the Federal District Court, U.S. Post Office and Courthouse Building, 500

State Line Avenue, 3rd Floor, Texarkana, Arkansas.

Dated: May 30, 1989.

John C. Lawn,
Administrator, Drug Enforcement Administration.
[FR Doc. 89-13268 Filed 6-2-89; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 89-1]**Chester James Hurd, M.D., San Jose, CA; Hearing**

Notice is hereby given that on December 9, 1988, the Drug Enforcement Administration, Department of Justice, issued to Chester James Hurd, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, June 27, 1989, commencing at 9:30 a.m., at the United States Tax Court, Courtroom 2041, Federal Building and Courthouse, 450 Golden Gate Avenue, San Francisco, California.

Dated: May 30, 1989.

John C. Lawn,
Administrator, Drug Enforcement Administration.
[FR Doc. 89-13269 Filed 6-2-89; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 88-101]**Roy Nachman, M.D., Los Angeles, CA; Hearing**

Notice is hereby given that on September 2, 1988, the Drug Enforcement Administration, Department of Justice, issued to Roy Nachman, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your Certificate of Registration, AN8380367, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, August 15, 1989, commencing at 9:00 a.m., at the United States Tax Court, Courtroom 2041, Federal Building and Courthouse, 450 Golden Gate Avenue, San Francisco, California.

Dated: May 30, 1989.

John C. Lawn,
Administrator, Drug Enforcement Administration.
[FR Doc. 89-13270 Filed 6-2-89; 8:45 am]
BILLING CODE 4410-09-M

[Docket No. 88-107]**Ekambaram Parameswaran, M.D., Inez, KY; Hearing**

Notice is hereby given that on October 14, 1988, the Drug Enforcement Administration, Department of Justice, issued to Ekambaram Parameswaran, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AP7136369 and AP2551667, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, June 27, 1989, commencing at 12:30 p.m., at the Fiscal Courtroom Room 402, 101 Jefferson County Courthouse, 527 West Jefferson Street, Louisville, Kentucky.

Dated: May 30, 1989.

John C. Lawn,
Administrator, Drug Enforcement Administration.
[FR Doc. 89-13271 Filed 6-2-89; 8:45 am]
BILLING CODE 4410-09-M

Manufacturer of Controlled Substances; Application; Radian Corp.

Pursuant to § 1301.43(a) of Title 21 of the Code of Federal Regulations (CFR), this is notice that on March 20, 1989, Radian Corporation, P.O. Box 201088, 8501 Mopac Blvd., Austin, Texas 78759, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug—	Schedule
Lysergic acid diethylamide (7315).....	I
Tetrahydrocannabinols (7370).....	I
Amphetamine, its salts, optical isomers, and salts of its optical isomers (1100)	II
Methamphetamine, its salts, isomers, and salts of its isomers (1105)	II
Phencyclidine (7471).....	II
Fentanyl (9801).....	II

Any other such applicant and any person who is presently registered with

DEA to manufacture such substances may file comments or objections to the issuance of the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed on or before July 5, 1989.

Dated: May 26, 1989.

Gene R. Halslip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 89-13272 Filed 6-2-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-104]

Dean A. Steinberg, M.D., Doylestown, PA, Hearing

Notice is hereby given that on October 24, 1988, the Drug Enforcement Administration, Department of Justice, issued to Dean A. Steinberg, M.D., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AS2190471, and deny any pending applications for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Tuesday, June 21, 1989, commencing at 10:00 a.m., at the United States Court of Appeals for the Federal Circuit, 717 Madison Place NW., Courtroom 1, second floor, Washington, DC.

Dated: May 30, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-13273 Filed 6-2-89; 8:45 am]

BILLING CODE 4410-09-M

Ranzy S. Weston, M.D.; Denial of Application

On March 3, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Ranzy Weston, M.D. of Augusta, Georgia. The Order

proposed to deny his application for registration executed on October 22, 1988, and filed with the DEA pursuant to 21 U.S.C. 823(f). By letter dated March 27, 1989, Dr. Weston waived a hearing in this matter relying instead on statements in support of his application contained in the letter.

Title 21 CFR 1301.54(c), (e) authorizes the Administrator to issue a final order based on the investigative file together with any statements submitted by the applicant. The Administrator therefore issues this final order considering such statements in the light of the lack of opportunity for cross examination in determining the weight to be given to matters of fact asserted therein.

In April 1987, State of Georgia agents went to Dr. Weston's office to discuss prescriptions for Dilaudid written by him. Dr. Weston was warned that many of his patients were known drug abusers. He was also warned that many of these same patients were receiving hydrocodone cough syrup prescriptions. Between October and December 1987, the agents conducted three undercover visits to Dr. Weston's office. On each occasion the agent never informed Dr. Weston that there was anything physically wrong with her. On the contrary, she insisted she was fine but wanted something to relax. Dr. Weston prescribed the controlled substances Tussionex and Terpin Hydrate with Codeine. The Administrator finds that these prescriptions were not issued for a legitimate medical purpose.

During the course of this investigation, it was learned that Dr. Weston did not have a valid DEA Certificate of Registration. Dr. Weston's previous registration had expired on May 31, 1978, and had not been renewed. Dr. Weston has had no authority since that time to possess, prescribe or dispense controlled substances. On September 30, 1988, a letter informing Dr. Weston of the status of his DEA registration was sent by certified mail. The return receipt was received by the DEA on October 14, 1988, signed by Dr. Weston. This was followed by a telephone call informing Dr. Weston of his lack of registration. In spite of these notices, Dr. Weston continued to issue prescriptions for controlled substances using the expired DEA registration. On November 5, 1988, he issued a prescription for Tussend Expectorant, a Schedule II controlled substance. On November 21 and 28, 1988, he issued prescriptions for Darvocet, a Schedule IV controlled substance. On December 1, 5, and 26, he issued prescriptions for Darvocet. In January 1989, he issued two prescriptions for Tega-Tussin Cough

Expectorant and two prescriptions for Darvocet.

In his March 27, 1989, letter in response to the Order to Show Cause, Dr. Weston indicates that he has been practicing medicine part-time, and plans to retire soon. He also indicates that after receiving the Order to Show Cause, he studied his records and concluded that he was over-prescribing, but he was only doing so to help his patients. In addition, Dr. Weston states that he had a busy practice and that some patients took advantage of him. In response to the statement that he prescribed controlled substances without a valid DEA registration, Dr. Weston stated that he thought he couldn't write prescriptions for "narcotics" as opposed to "controlled substances". Dr. Weston concluded his letter and waiver of hearing by stating that he did have "legitimate intentions," and that he cannot practice good medicine without a DEA number.

The Administrator finds that Dr. Weston has violated the Federal laws relating to controlled substances in that he wrote prescriptions for controlled substances for other than a legitimate medical purpose and that he knowingly used an expired DEA number to write prescriptions for controlled substances. He did so after receiving specific warnings concerning his prescribing practices and concerning his use of an expired registration. He ignored these warnings. This doctor cannot be trusted to handle controlled substances in a responsible manner. The statements in Dr. Weston's letter do not offer any valid reasons for, or mitigation of, the doctor's past conduct in handling controlled substances. The Administrator finds that the registration of Dr. Weston would be inconsistent with the public interest.

Accordingly, having concluded that there is a lawful basis for the denial of Dr. Weston's application, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that Dr. Weston's application for registration with DEA, dated October 22, 1988, be, and it hereby is, denied.

This order is effective on or before July 5, 1989.

John C. Lawn,

Administrator.

Dated: May 26, 1989.

[FR Doc. 89-13274 Filed 6-2-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 89-13]

Neveille H. Williams III, D.D.S. Wichita Falls, TX; Hearing

Notice is hereby given that on December 19, 1988, the Drug Enforcement Administration, Department of Justice, issued to Neveille Williams III, D.D.S., an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on Thursday, August 17, 1989, commencing at 10:00 a.m., at the United States Tax Court, Room 505, Pacific Building, 1900 Pacific Avenue, Dallas, Texas.

Dated: May 30, 1989.

John C. Lawn,

Administrator, Drug Enforcement Administration.

[FR Doc. 89-13275 Filed 6-2-89; 8:45 am]

BILLING CODE 4410-09-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 89-42]

Government-owned Inventions; Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are owned by the U.S. Government and are available for domestic, and possibly foreign licensing.

Copies of patent applications cited are available from the National Technical Information Service, Springfield, VA 22161. Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent applications sold to avoid premature disclosure.

DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT:

National Aeronautics and Space Administration, Harry Lupuloff, Director of Patent Licensing, Code GP, Washington, DC 20546, Telephone (202) 453-2430, Fax (202) 755-2371.

Patent Application 07/292,121: Docking System for Spacecraft; filed December 30, 1988.

Patent Application 07/292,123: Docking Mechanism for Spacecraft; filed December 30, 1988.

Patent Application 07/292,124: Dynamic Resource Allocation Scheme for Distributed Heterogeneous Computer System; filed December 30, 1988.

Patent Application 07/292,130: Method and Apparatus for Sensor Fusion; filed December 30, 1988.

Patent Application 07/292,131: Smart Tunnel-Docking Mechanism; filed December 30, 1988.

Patent Application 07/292,141: Oxidation of Semiconductors and Superconductors; filed December 30, 1988.

Patent Application 07/292,146: High Temperature Flexible Steel; filed December 30, 1988.

Patent Application 07/279,630: Computer Access Security Code System; filed December 5, 1988.

Patent Application 07/279,676: Integrated Circuit Reliability Testing; filed December 5, 1988.

Patent Application 07/283,443: Long Wavelength Infrared Detector; filed December 12, 1988.

Patent Application 07/292,047: Distributed Proximity Sensor System; filed December 30, 1988.

Patent Application 07/301,925: Semi-Interpenetrating Polymer Network for Tougher and More Microcracking Resistant High Temperature Polymers; filed January 26, 1989.

Patent Application 07/304,149: Two-Stage Sorption Type Cryogenic Refrigerator Including Heat Regeneration System; filed January 31, 1989.

Patent Application 07/304,154: Vibration Analyzer; filed January 31, 1989.

Date: May 25, 1989.

Edward A. Frankle,

General Counsel.

[FR Doc. 89-13116 Filed 6-2-89; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records

schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before July 20, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions

requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture, Forest Service, Fiscal and Public Safety Staff (N1-95-89-1). General correspondence related to arrangements for external and internal meetings, including staff, information, and task force meetings.
2. Department of Commerce, Bureau of the Census (N1-29-89-1). Miscellaneous maps of the Geography Division not used in connection with the 1950 census or other data collections.
3. Department of Health and Human Services, Health Care Finance Administration (N1-440-89-2). Records documenting the cost and delivery of acute health care in Arizona Health Care Cost Containment System facilities.
4. Department of Health and Human Services, Health Care Finance Administration (N1-440-89-3). Records of the Health Care Finance Administration's Regulatory Reform Task Force.
5. Department of Labor, Bureau of Labor Statistics (N1-257-88-7). Miscellaneous printouts, data collection forms, and related records of the Employment, Hours, and Earnings Program.
6. National Archives and Records Administration, Office of Records Administration (N1-CRS-89-1). General Records Schedule item covering committee management files.
7. National Archives and Records Administration, Office of Records Administration (N1-CRS-89-2). General Records Schedule item covering files relating to the erroneous release of privileged information.
8. U.S. Postal Service (N1-28-89-1). Procurement related records found among permanent records scheduled for transfer to the National Archives.
9. U.S. Postal Service (N1-28-89-2). Drawings of elevator installations in various Federal buildings, and other drawings too badly deteriorated for preservation found among permanent architectural records to be transferred to the National Archives.
10. Department of State, Bureau of Politico-Military Affairs, Office of Munitions Control (N1-59-88-32). Routine, facilitative, and duplicate records relating to munitions control

matters. Policy materials are scheduled for permanent retention.

11. Department of State, Deputy Under Secretary for Economic Affairs, Mutual Security Coordinator (N1-59-89-2). Facilitative subject files and extra copies of transcripts of hearings.

12. Department of State, Under Secretary of State, Special Assistant for Mutual Security Coordination (N1-59-89-4). Extra copies of program books.

13. Department of State, Office of International Conferences (N1-59-89-10). Documents of the UN conference on Food and Agriculture, UN Interim Commission for Food and Agriculture, and the Food and Agricultural Organization of the UN. Policy documentation is scheduled for permanent retention.

14. Tennessee Valley Authority, Office of Governmental and Public Affairs (N1-142-88-15). Audio tapes of Board meetings held after 1979 in Knoxville. Video tapes of these meetings are designated for permanent retention by the National Archives.

Dated: May 28, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-13208 Filed 6-2-89; 8:45 am]

BILLING CODE 7515-01-M

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of selected subject categories and staff member files from the Nixon White House Central Files (WHCF). Notice is hereby given that, in accordance with section 104 of Title I of the Presidential Recordings and Materials Preservation Act (88 Stat. 1695; 44 U.S.C. 2111 note) and § 1275.42(b) of the Public Access Regulations implementing the Act (36 CFR Part 1275), the agency has identified, inventoried, and prepared for public access integral file segments of materials among the Nixon Presidential materials.

DATES: The National Archives intends to make the integral file segments described in this notice available to the public beginning July 17, 1989. Any person who believes it necessary to file a claim or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before July 7, 1989.

ADDRESSES: The materials will be made available to the public at the National Archives' facility located at 845 South Pickett Street, Alexandria, Virginia.

Petitions concerning access must be sent to the Archivist of the United States, National Archives and Records Administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: Clarence F. Lyons, Jr., Acting Director, Nixon Presidential Materials Staff, 703-756-6498.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened consist of 68.5 cubic feet. This is the fourth of a series of openings of Central Files; the previous openings were on December 1, 1986; March 22, 1988; and December 9, 1988.

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. Some of the materials designated for opening on July 17 were selected for the Subject Files of the Central Files. The Subject Files are based on an alphanumeric file scheme of 61 primary subject categories. Listed below are the primary subject categories of the Subject Files that will be made available to the public on July 17.

Subject Category	Volume (cubic feet)
Federal Government (FG):	
Department of Defense (FG-13).....	3.0
Post Office (FG-18).....	2.0
Department of Labor (FG-22).....	2.3
Department of Housing and Urban Development (FG-24).....	2.3
Department of Transportation (FG-25).....	3.0
Commission on Civil Rights (FG-90).....	0.3
Equal Employment Commission (FG-109)....	0.3
Cabinet Committee on Opportunity for Spanish Speaking People (FG-145).....	0.3
National Council on Indian Opportunity (FG-173).....	0.3
Selective Service System (FG-216).....	1.0
USIA (FG-230).....	0.6
Cabinet Committee on Voluntary Action (FG-252).....	0.3
National Center for Voluntary Action (FG-259).....	0.3
Commission on Campus Unrest (FG-288)....	0.3
Action (FG-325).....	0.6
National Security—Defense (ND 1 thru ND 8-1-2).....	23.0

In addition to the subject categories, three file groups from the Staff Member and Office Files will be made available to the public. These consist of materials that were transferred to Central Files but were not incorporated into the Subject Files. Listed below are the Staff

Member and Office Files that will be made available to the public on July 17.

File Group	Volume (cubic feet)
Glenn R. Schleede.....	20.0
Bradley Patterson (Late accretion).....	2.0
Gwen King.....	6.8

Public access to some of the items in the file segments will be restricted as outlined in 38 CFR 1275.50 or 1275.52 (Public Access Regulations).

Dated: May 30, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-13353 Filed 6-2-89; 8:45 am]

BILLING CODE 7515-01-M

Privacy Act of 1974; Systems of Records

AGENCY: National Archives and Records Administration (NARA).

ACTION: Notice of revised systems of records; correction.

SUMMARY: On May 9, 1989, NARA published its notice of revised systems of records which are subject to the Privacy Act of 1974 (54 FR 19970). In this correction notice NARA is clarifying the reason for deleting the Personnel Information Resources System (PIRS) from NARA-14, Payroll and Time and Attendance Reporting System. No changes are being made to the systems of records described in the May 9, 1989, notice.

The discussion of NARA-14 in the Supplementary Information section of the May 9, 1989, notice should have stated that PIRS was being deleted from NARA-14 because PIRS does not contain payroll and attendance information which is covered by the NARA-14 system. PIRS contains personnel information which is covered by the Governmentwide system OPM/COVT-1.

FOR FURTHER INFORMATION CONTACT: John A. Constance or Nancy Allard, Policy and Program Analysis Division (NAA), National Archives and Records Administration, Washington, DC 20408. Telephone (202) 523-3214 or (FTS) 523-3214.

Dated: May 26, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-13207 Filed 6-2-89; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-269, 50-270 and 50-287]

Duke Power Co.; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-38, DPR-47, and DPR-55 issued to Duke Power Company, (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2 and 3, located in Oconee County, South Carolina.

Environmental Assessment

Identification of Proposed Action: The amendments would add limiting conditions for operation and surveillance requirements to the Oconee Technical Specifications (TSs) in accordance with NRC Generic Letter (GL) 83-37 providing guidance on the scope of TSs for NUREG-0737, "Clarification of TMI Action Plan Requirements." Specifically, TSs are added for the following TMI action items: (1) Containment High-Range Radiation Monitor (TMI Action Item II.F.1.3), (2) Containment Pressure Monitor (II.F.1.4), (3) Containment Water Level Monitor (II.F.1.5), (4) Containment Hydrogen Monitor (II.F.1.6), (5) Instrumentation for Detection of Inadequate Core Cooling (II.F.2), and (6) Control Room Habitability Requirements (III.D.3.4).

The proposed action is in accordance with the licensee's applications for amendments dated October 8, 1984 and January 6 and March 15, 1988, as supplemented or revised August 27, 1985; January 30, June 27, August 13 and September 19, 1988; January 18, May 13, September 16 and December 29, 1988; and May 17, 1989.

The Need for the Proposed Action: The need for TSs for certain post-TMI instrumentation and systems has been established by the Commission in NUREG-0737, "Clarification of TMI Action Plan Requirements." The Commission noted, in part, that TSs are required to provide assurance that facility operation is maintained within the limits determined acceptable following implementation at each facility. Accordingly, on November 1, 1983 and by GL 83-37, the Commission provided guidance for format and content of TSs for those NUREG-0737 items which were scheduled for implementation after December 31, 1981, and requested licensees to submit applications for amendments using this guidance.

Environmental Impacts of the Proposed Action: The scope and type of specification requested by GL 83-37 and requested by the licensee include appropriate actions if limiting conditions for operation can not be met. The instrumentation addressed by GL 83-37 is used for post-accident monitoring, including detection of inadequate core cooling and maintaining control room habitability conditions. The actions typically limit the allowed period for operation above hot shutdown and/or require reporting to the NRC if part of the redundant system or actuation logic (e.g., one of two channels) is inoperable and can not be restored within a specified period, and require the plant to be placed in hot shutdown if the required minimum number of channels (e.g., two of two channels) should be inoperable for a specific period. The specification changes also add relevant surveillance and testing requirements for installed equipment to ensure that it is maintained in a reliable condition.

The Oconee control rooms are provided with pressurization and ventilation filtering systems to provide additional protection of the control room (CR) operators from the effects of accidental release of radioactive effluents and toxic gases in the turbine buildings and the auxiliary buildings enclosing the CRs. Oconee 1 and 2 have a shared CR while Unit 3 has a separate CR. The CR pressurization and filtering system would be manually activated in the event of such a release. Each system is comprised of two separate outside air booster fans with prefilter/HEPA/carbon adsorber filter trains, two redundant control room air handling unit fans, associated ductwork, and a radiation monitor. One activated, the system maintains a slightly positive pressure in the CR to prevent in-leakage. The proposed changes to the TS would specify limiting conditions for operation and periodic surveillance and testing requirements for the pressurization and filtering system to provide increased assurance of system availability, and hence, a habitable CR after an accident. The Oconee TS does not presently contain such requirements. Thus, the TS change provides for reduction in occupational radiological exposure or exposure to potential in-plant toxic releases. No adverse environmental impacts result from system operation.

The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational

radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed change to the TS involves systems located within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendments.

Alternative to the Proposed Action: Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation, but would adversely affect safety by permitting extended operation without the needed assurance that post-TMI instrumentation and systems are being maintained so as to be available if needed after an accident.

Alternative Use of Resources: This action does not involve the use of any resources not previously considered in the Final Environmental Statement Related to the Operation of Oconee Nuclear Station, Units 1, 2 and 3, dated March 1972.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

The Notices of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action were published in the *Federal Register* on April 20, 1988 (53 FR 13037) and June 3, 1988 (53 FR 20394). No request for hearing or petition for leave to intervene was filed following these notices.

For further details with respect to this action, see the requests for the amendments dated October 8, 1984, and January 8 and March 15, 1988, as

supplemented or revised August 27, 1985, January 30, June 27, August 13, and September 19, 1988, January 18, May 13, September 18, and December 29, 1988, and May 17, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29991.

Dated at Rockville, Maryland, this 30th day of May 1989.

For the Nuclear Regulatory Commission.

Lawrence P. Crocker,
*Acting Director, Project Directorate II-3,
Division of Reactor Projects I/II, Office of
Nuclear Reactor Regulation.*

[FR Doc. 89-13235 Filed 6-2-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-325 and 50-324]

Carolina Power & Light Co., et al.; Denial of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Carolina Power & Light Company, (the licensee) for an amendment to Facility Operating License Nos. DPR-71 and DPR-62, issued to the licensee for operation of the Brunswick Steam Electric Plant, Units 1 and 2, located in Brunswick County, North Carolina. Notice of Consideration of Issuance of this amendment was published in the *Federal Register* on September 9, 1987 (52 FR 33999).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) to increase surveillance testing and calibration intervals for Rosemount analog trip unit systems.

The NRC staff has concluded that the licensee's request cannot be granted at this time. The licensee was notified of the Commission's denial of the proposed change by letter dated May 25, 1989. A Safety Evaluation accompanied the letter.

By July 5, 1989, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555; Attention: Docketing and Services Branch, or may be delivered to the Commission's Public

Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to R.E. Jones, General Counsel, Carolina Power & Light Company, P.O. Box 1551, Raleigh, North Carolina 27602, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated May 1, 1987, as supplemented June 22, 1987, July 7, 1987 and March 16, 1989, and (2) the Commission's letter to the licensee dated May 25, 1989.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the William Madison Randall Library, University of North Carolina at Wilmington, 601 S. College Road, Wilmington, North Carolina 28403-3297. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555. Attention: Document Control Desk.

Dated at Rockville, Maryland, this 25th day of May, 1989.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,
*Director, Project Directorate II-1, Division of
Reactor Projects—I/II, Office of Nuclear
Reactor Regulation.*

[FR Doc. 89-13238 Filed 6-2-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System; Denial of Amendment to Facility Operating License NPF-21 and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the Washington Public Power Supply System, (licensee) for an amendment to Facility Operating License No. NPF-21 issued to the licensee for operation of the Nuclear Project No. 2, located in Richland, Washington. Notice of Consideration of Issuance of this amendment was published in the *Federal Register* on April 8, 1987 (52 FR 11377).

The licensee's amendment request was to revise technical specification Tables 3.3.7.5-1, "Accident Monitoring Instrumentation," and 4.3.7.5-1, "Accident Monitoring Surveillance Requirements" to include wide range

neutron flux monitoring instrumentation. This request was submitted in anticipation of satisfying License Condition 18, Attachment 2, Item 3b to the WNP-2 Operating License. This license condition requires that the licensee " * * * shall implement (installation or upgrade) requirements of Regulatory Guide 1.97, Revision 2, for flux monitoring * * * by a specified time. At the time of the amendment application the licensee was in the process of procuring equipment to meet the specified schedule and satisfy the license condition.

By letter dated March 10, 1987 the licensee advised that they were unsuccessful in qualifying the neutron monitoring system environmentally. By letter dated March 31, 1987 they asked NRC to hold the November 18, 1986 amendment request in abeyance.

The NRC staff has advised the licensee that the proposed amendment is denied since the licensee has still not been successful in demonstrating that the instrumentation is environmentally qualified.

The licensee was notified of the Commission's denial of the proposed change by a letter dated May 17, 1989.

By July 5, 1989 the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC., 20555, and to Nicholas S. Reynolds, Esq., Bishop, Cook, Purcell and Reynolds, 1400 L Street, NW, Washington, DC 20005-3502 and Mr. G.E. Doupe, Esq., Washington Public Power Supply System, P.O. Box 968, 3000 George Washington Way, Richland, Washington 99352, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 18, 1986 and supplemental letters dated March 10, 1987 and March 31, 1987, and (2) the Commission's letter to the licensee dated

These documents are available for public inspection at the Commission's

Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352. A copy of item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland this 17th day of May, 1989.

For The Nuclear Regulatory Commission.

George W. Knighton,
*Director, Project Directorate V, Division of
Reactor Projects—III, IV, V and Special
Projects, Office of Nuclear Reactor
Regulation.*

[FR Doc. 89-13237 Filed 6-2-89; 8:45]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corp.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of Appendix A to 10 CFR Part 50 to the Florida Power Corporation (the licensee), for the Crystal River Unit 3 Nuclear Generating Plant, located in Crystal River, Florida.

Environmental Assessment

Identification of Proposed Action

The proposed exemption would allow temporary relief from the requirements of General Design Criterion-4 (GDC-4) for the Crystal River Unit 3 Nuclear Generating Plant with regard to high energy line breaks.

The Need for the Proposed Action

The proposed exemption is needed in order to permit plant operation until the end of next scheduled refueling outage (Refuel 7).

Environmental Impacts of the Proposed Action

The proposed exemption does not involve any measurable environmental impacts during normal operation since plant configuration and operation are not changed. The likelihood of a high energy line break which would affect equipment required to operate to avoid radiological impact is low. Thus, the proposed exemption will not significantly affect the probability or consequences of potential reactor accidents and would not otherwise affect radiological plant effluents. Consequently, the Commission concludes that there are no significant

radiological impacts associated with the proposed exemption.

With regard to potential non-radiological impacts, the proposed exemption involves features located entirely within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption. Alternatives to the Proposed Action

Since the Commission concluded that there are no measurable environmental impacts associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the exemption would be to require literal compliance with GDC-4. Such action would not enhance the protection of the environment, and would result in very high costs to the licensee as the plant could not restart from its current outage or continue to operate. Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Crystal River Unit 3 Nuclear Generating Plant. Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult with any other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. The Commission has, therefore, determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application for exemption dated December 16, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Crystal River Public Library, 668 NW., First Avenue, Crystal River, Florida 32629.

Dated at Rockville, Maryland, this 31st day of May 1989.

For the Nuclear Regulatory Commission

Herbert N. Berkow,
*Director, Project Directorate II-2, Division of
Reactor Projects I, II, Office of Nuclear
Reactor Regulation.*

[FR Doc. 89-13387 Filed 6-2-89; 8:45 am]

BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

(Release No. 26871; File No. S7-15-89)

Options Market Structure

AGENCY: Securities and Exchange Commission.**ACTION:** Request for comment.

SUMMARY: The Securities and Exchange Commission is releasing a concept release, prepared by the staff of the Commission's Division of Market Regulation, which discusses the market structure issues associated with options multiple trading and outlines several possible market structure enhancements. The Commission seeks comment on the measures identified by the Staff.

DATE: Comments must be received by September 18, 1989.

ADDRESS: Persons wishing to submit comments should file three copies with Jonathan G. Katz, Secretary, Securities and Exchange Commission, (Mail Stop 6-9), 450 Fifth Street NW., Washington, DC 20549. All comments should refer to File No. S7-15-89 and will be available for public inspection and copying at the Commission's Public Reference Room.

FOR FURTHER INFORMATION CONTACT: Thomas R. Gira, Branch of National Market System Regulation, 202/272-2827, Division of Market Regulation, Securities and Exchange Commission, (Mail Stop 5-1), 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In a separate release issued today, the Securities and Exchange Commission ("Commission" or "SEC") adopted Rule 19c-5 under the Securities Exchange Act of 1934.¹ Rule 19c-5 permits a gradual, phased-in expansion of multiple trading of options on exchange-listed stocks. The expansion of options multiple trading will provide opportunities for the options self-regulatory organizations to develop a national market system for options.

The staff of the Commission's Division of Market Regulation has prepared a release that discusses the market structure issues involved with options multiple trading and discusses a number of possible enhancements for the options markets to consider. The views expressed in the release are those of the staff of the Division of Market Regulation and not of the Commission.

The Commission, nonetheless, believes that the staff proposals merit serious consideration by the options self-regulatory organizations. Accordingly, the Commission asks that the options markets and other interested parties comment on the release by September 18, 1989. The text of the staff's release is organized as follows.

Options Market Structure

- I. Introduction
 - A. Background
 - B. Multiple Trading and Options Market Structure
- II. Quotation Information in the Options Markets
- III. Market Integration Facilities
 - A. Intermarket Order Routing Linkages
 - B. Small Order Switching Facilities
 - C. Central Limit Order File
- IV. Market Openings
- V. Conclusion

I. Introduction

In adopting Rule 19c-5, the Commission found that multiple market trading ("multiple trading")² of standardized options on exchange-listed securities is consistent with the purposes of the Securities Exchange Act of 1934 ("Act").³ In particular, the Commission found that permitting the options exchanges to compete in a multiple trading environment will bring substantial benefits to investors, both in the form of improved prices and better services. The staff of the Division of Market Regulation ("Staff") believes that it may be possible for the options markets to extend further the overall beneficial effects of multiple trading by developing certain market structure enhancements.

This statement will discuss the market structure issues traditionally associated with options multiple trading and some of the possible ways of enhancing the benefits of a multiple trading environment. The Staff believes that the options self-regulatory organizations ("SROs") should give careful consideration to at least three possible measures to further integrate the nation's options markets: an intermarket order routing linkage, a mechanism for order-by-order routing to the market with the best price, and a central limit order file.

A. Background

The trading of standardized options on securities exchanges began in 1973, with the organization as a national securities exchange of the Chicago Board Options Exchange ("CBOE"), and

the Commission's approval of the CBOE's options pilot program.⁴ This pilot initially was limited to call options on only 18 underlying stocks. Listed options trading expanded rapidly from 1973 until July 1977, when the options exchanges, at the Commission's behest, agreed to a moratorium on any further listings. In addition to the CBOE's program, the Commission approved options pilot programs at four other exchanges: the American ("Amex"),⁵ Philadelphia ("Phlx"),⁶ Pacific ("PSE"),⁷ and Midwest ("MSE")⁸ Stock Exchanges. Applications by the New York Stock Exchange ("NYSE") and the National Association of Securities Dealers, Inc. ("NASD") to trade options also were pending. By mid-1977, the number of call options classes traded on exchanges had grown from 16 to 219, and put options trading also had been approved.

The development of options trading programs by the exchanges that followed the CBOE raised the question of whether, and under what conditions, multiple trading⁹ should occur. In February 1976, the CBOE initiated trading of an option class that already was being traded on the Phlx, and in March of that year, the Commission approved the PSE options program, which included listings of options classes already traded on other exchanges. Other exchanges quickly followed and also began to engage in multiple trading. Between February 1976 and July 1977, 22 classes of call options were traded on more than one exchange. In July 1977, in response to concerns over the rapid growth in listed options trading and possible trading and sales

practice abuses, the Commission requested that the options exchanges refrain from listing any options classes beyond those already listed as of July 15, 1977. In October 1977, the Commission announced that it would undertake a comprehensive investigation and study of the standardized options markets ("Options Study").¹⁰ In announcing this Study, the Commission expressed concern over, among other things: (1) The adequacy of the SROs' surveillance systems; (2) the adequacy of Commission and SRO rules to prevent fraudulent, deceptive and manipulative practices in connection with options trading; (3) the development of the standardized options markets in a manner consistent with the public interest and the perfection of the mechanisms of a national market system; and (4) the development of appropriate standards for evaluating particular programs which would have the effect of expanding or altering existing pilot options trading programs.

The Options Study was completed and a report was released on December 22, 1978.¹¹ The Options Study Report examined some of the major issues of market structure in the standardized options markets, including multiple trading,¹² and steps the Commission should consider to assure evolution of the standardized options markets in a manner consistent with establishment of a national market system.¹³ By examining certain indicia of market quality, such as continuity¹⁴ and

liquidity,¹⁵ the Options Study found that multiple trading may improve the quality of markets for multiply traded options classes, at least in the short run.¹⁶ In addition to market quality factors, the Report described how multiple trading could promote competition among market centers, leading to greater operational efficiencies, improved services and new technological developments. The Report also noted that the statutory goal of competition "among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets"¹⁷ hardly could be pursued if multiple trading were not permitted.

As discussed in greater detail below, the Options Study recognized that multiple trading could result in some degree of market fragmentation, in that pricing in the various markets might not always accurately reflect the aggregate buying and selling interest for a particular security. The Study also recognized that, even in a multiple trading environment, concerns over fair competition among markets might remain.

In March 1980, after implementing a number of the Options Study recommendations, the Commission ended the voluntary moratorium on expansion of the standardized options markets.¹⁸ Although the Commission, in ending the moratorium, resolved to permit the expansion by the options exchanges of put and call option trading, it deferred a decision to expand multiple trading. After noting the potential benefits, on the one hand, and the fragmentation and fair competition concerns, on the other hand, the Commission concluded that "under appropriate circumstances, the benefits of expansion of multiple trading appear to outweigh any adverse consequences."¹⁹ The Commission decided, however, to defer the general expansion of multiple trading "in order to afford the [SROs] an opportunity to consider whether, and to what extent, the development of market integration

facilities would minimize concerns regarding market fragmentation and maximize competitive opportunities in the options markets."²⁰

The options markets were asked to consider jointly whether market integration facilities should be built, and if so, how these facilities should be designed. To provide some guidance, the Commission outlined three possible (complementary or alternative) approaches: (1) A market linkage system similar to the Intermarket Trading System ("ITS");²¹ (2) a requirement that brokerage firms handling retail orders individually route each order to the market center showing the best quotation accompanied by a quotation size (*i.e.*, number of contracts) equalling or exceeding that of the order; and (3) an order exposure system for options public limit orders. The Commission suggested that the third approach, a limit order exposure system, might be the most fruitful course for the options exchanges to pursue, and that the prospects for the other two integration measures might be limited insofar as a firm quote rule could not be applied, at that time, to options trading.²² A market linkage system or individualized routing of retail orders would depend, to a large extent, on the quality and reliability (*i.e.*, firmness) of quotation information.

The options exchanges formed an inter-exchange task force to respond to the Commission's request in the Moratorium Termination Release that they study the feasibility of market integration measures. The task force issued two reports, in January and September of 1981,²³ in which it

²⁰ *Id.*

²¹ The ITS is an inter-market order and message routing facility among the nation's securities markets. See discussion *infra* at notes 59-63 and accompanying text.

²² The options exchanges had argued that a firm quote rule would not work in the options environment. Due to the derivative nature of options and the need to update multiple series whenever there is a change in the price of the underlying stock, it was thought that quotes could not be updated quickly enough to accommodate a firm quote rule. Further, the CBOE maintained that such a rule would be difficult to administer in the competing market maker trading systems used by the CBOE, MSE and PSE. Letter from Joseph W. Sullivan, President, CBOE, to George A. Fitzsimmons, Secretary, SEC, dated August 1, 1977.

²³ Interim Report of the American, Pacific, and Philadelphia Stock Exchanges and the Chicago Board Options Exchange in response to Release No. 34-16701, dated January 8, 1981; and Supplementary Report of the American, Pacific and Philadelphia Stock Exchanges and the Chicago Board Options Exchange in response to Release No. 34-16701, dated September 1, 1981. The CBOE also submitted separate presentations on some of the market structure issues raised in the Moratorium Termination Release. See Letters from Walter E.

Continued

⁴ Securities Exchange Act Release No. 9985 (February 1, 1973), 1 S.E.C. Doc. 11.

⁵ Securities Exchange Act Release No. 11144 (December 19, 1974), 40 FR 3258.

⁶ Securities Exchange Act Release No. 11423 (May 15, 1975), 8 S.E.C. Doc. 894.

⁷ Securities Exchange Act Release No. 12283 (March 30, 1976), 41 FR 14454.

⁸ Securities Exchange Act Release No. 13045 (December 8, 1978), 41 FR 54783. The MSE's options program was merged into the CBOE's in 1979.

⁹ The NYSE did not begin to trade options on listed stocks until 1985. See Securities Exchange Act Release No. 21759 (February 14, 1985), 50 FR 7250. The Commission has approved in principle a proposal by the NASD to trade standardized options. Indeed, the NASD commenced on September 13, 1985, and subsequently terminated on July 18, 1986, a program to trade standardized options on certain over-the-counter ("OTC") stock indexes. See Securities Exchange Act Rel. No. 22404 (September 13, 1985) 50 FR at 38235. Nevertheless, the part of the NASD's proposal that would have integrated the trading of options with their underlying stock was deferred pending further developments in the OTC market. See Securities Exchange Act Release No. 22028 (May 8, 1985), 50 FR 20310.

² Multiple trading—the trading of the same options in more than one marketplace—is sometimes also referred to as "dual trading."

³ 15 U.S.C. 78a *et seq.*, as amended.

¹ 17 CFR 240.19c-5, Securities Exchange Act Rel. No. 26870 (May 28, 1989) ("Rule 19c-5 Adoption Release") (published elsewhere in this edition of the Federal Register).

concluded that a limit order exposure system was not likely to reduce substantially the adverse effects of multiple trading. The task force did not explore any other possibilities for addressing market structure concerns in a multiple trading environment.

In the meantime, in view of the Commission's deferral of an expansion of multiple trading, and the limited number of attractive new options available for listing, the Commission asked the options exchanges to develop a fair method for allocating among themselves new options. In response, the exchanges proposed and the Commission approved the lottery system for allocating new options ("the Allocation Plan").²⁴ This system has remained in place with little modification since its adoption in 1980.

The Commission has, however, declined to restrict multiple trading in other products. For example, in approving the CBOE's proposal to trade options on Government National Mortgage Association securities, in February 1981, the Commission stated that it did not believe that its decision to defer multiple trading in equity options should apply to non-equity options.²⁵ This was followed, on December 2, 1981, by a policy statement in which the Commission announced its view that "competitive forces should be permitted to define the structure of the non-equity options markets to the maximum extent possible," and that it would not designate any single exchange as the exclusive market place for non-equity options.²⁶ In adopting this policy, the Commission rejected the arguments of many industry commentators, who maintained that the same concerns raised in the equity options context—market fragmentation and unfair competition between markets—would apply in the non-equity options context. The Commission found that these concerns were outweighed by the benefits of multiple trading and by the difficulties that would be involved in allocating non-equity instruments.

In 1985, the Commission approved proposals by the options exchanges to trade options on certain OTC equity securities.²⁷ In doing so, the

Commission again considered the multiple trading question and concluded that the benefits of allowing multiple trading would outweigh any adverse effects. Among other things, the Commission found that, even if actual competition among exchanges for a given option is short-lived and a primary market for the option emerges, it is better that this should occur as the result of market forces than through the lottery allocation system. The Commission again urged options market participants to consider the development of market integration facilities, and voiced the belief that the approval of multiple trading for options on OTC stocks might provide the necessary impetus for the options exchanges to develop such facilities.

In November 1986, the Commission released two staff studies on the effects of options multiple trading.²⁸ These studies found that multiple trading led to improved quality of markets, as measured by bid-ask spreads, and that these benefits outweighed the detrimental effects of any pricing disparities between markets. These studies concluded that multiple trading would produce substantial savings to investors.²⁹

B. Multiple Trading and Options Market Structure

Sections 6(b)(8), 11A, and 23(a)(2) of the Act express Congress' intent that the securities markets be free from competitive restraints to the furthest extent possible consistent with the other goals of the Act. It has long been the Commission's policy to foster competition among the nation's securities markets and encourage multiple trading of securities. In particular, the Commission has supported the trading of NYSE-listed securities on regional exchanges, and has acted to remove barriers to regional exchanges competing with the Am.v and NYSE. Against this background, the Commission's deferral, since 1980, of an expansion of multiple trading in equity options, and the continued dearth of potential competition in equity options trading, are an anomaly. In view of the development of the options markets since 1980 and the recognition that multiple trading is likely to bring

benefits to investors, the Commission determined that restrictions on options multiple trading impose a burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Accordingly, in 1989, the Commission adopted Rule 19c-5 which amends the rules of national securities exchanges governing the listing and trading of standardized options to prohibit (after a specified phase-in period) any exchange from limiting by any means its ability to list any stock option class because that option class is listed on another exchange.³⁰ The Commission also designed the Rule to provide a substantial phase-in period to reduce market structure and operational concerns. Specifically, commencing January 22, 1990, no options exchange may limit its ability to list up to ten standardized stock option classes overlying exchange-listed stocks that were also listed on another options exchange on or before January 22, 1990. Further, as of January 22, 1990, no options exchange can limit its ability to list any standardized options class first listed on another options exchange on or after January 22, 1990, because that options class is listed on another options exchange. Finally, as of January 21, 1991, no options exchange may limit by any means its ability to list any stock options class because that class is listed on another exchange.

Any consideration of market structure issues associated with options multiple trading must be guided by Congress' findings regarding the essential "goals and objectives of a national market system for qualified securities" expressed in Section 11A of the Act.³¹ Section 11A encourages "fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets" and "the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities." In section 11A, Congress also made the finding that "[t]he linking of all markets . . . through communication and data processing facilities will foster efficiency, enhance competition, increase the information available to brokers, dealers and investors, facilitate the offsetting of investors' orders, and contribute to best execution of such orders."

As the Commission observed in an early statement on the development of a national market system: "[t]he major

problems to which the idea of a national market system is addressed are those arising from 'market fragmentation,' or the existence of multiple, geographically separated forums in which trading in the same security occurs . . ."³² This dispersion of trading activity in fragmented markets could, under certain circumstances, result in pricing disparities between markets, that is, prices which do not reflect a complete assessment of the aggregate buying and selling interest for a particular security.

In addition to the inefficiencies inherent in such disparate pricing, multiple trading also may raise so-called "best execution" concerns. Regardless of whether there are significant pricing disparities or merely marginal price differences between markets, orders may not be routed to the marketplace where they would be executed at the best available price. This so-called "best execution" concern is of particular significance for retail orders. A brokerage firm typically does not make retail order routing decisions on an order-by-order basis; instead it designates one market as "primary"³³ and automatically routes all retail orders to that market unless and until it designates another market as primary. Institutional and other large or complex orders, on the other hand, are normally provided individualized attention by the firm's options trading desk, or "special handling."

Multiple trading need not, however, lead to significant pricing and best execution problems. The Options Study Report concluded that:

dispersion of order flow among market centers need not result in pricing inefficiencies [because] public dissemination of quotation and transaction information may to a large extent assure that professional and nonprofessional market participants are apprised, on a current and continuous basis, of those markets offering the most favorable execution opportunities (at least for orders of modest size) so that they have the opportunity to direct . . . orders appropriately In addition, competition among market makers on the floors of exchanges multiply trading an option class and, in many circumstances, the trading

³² Securities Exchange Act Release No. 14416 (January 28, 1978), 43 FR 4354, 4356.

³³ The Options Study Report observed that "[a]lthough the bases that . . . large retail firms use for designating an exchange as 'primary' vary from firm to firm, a principal factor that the firms consider is the volume of public orders that are [sic] executed on each exchange." Options Study Report, *supra* note 11, at 831. As explained below in the discussion of "fair competition" among marketplaces, there are now indications that brokerage firms rely increasingly on market quality considerations in determining where to route retail orders. See *infra* notes 40-41 and accompanying text.

³⁰ See Rule 19c-5 Adoption Release, *supra* note 1.

³¹ See Senate Report, *supra* note 73, at 7.

activities of professional traders and arbitrageurs may discipline option pricing among market centers to a substantial degree.³⁴

Moreover, in adopting Rule 19c-5, after reviewing the recent experience with multiple trading, the Commission found that the market fragmentation problems from OTC options have been minimal, and little evidence exists that full-scale multiple trading would significantly increase these problems.³⁵

Market openings present a special situation regarding inter-market pricing disparities and best execution concerns. While public dissemination of quotation and transaction information (and, perhaps, an inter-market linkage) may serve to limit adverse fragmentation effects from arising during the trading day, it is more difficult to disseminate and absorb quotation information from another market when both exchanges are trying to open the same option class simultaneously. This is particularly the case because the opening price of each option series will be dependent on the price at which the underlying stock opens. Pricing disparities are most likely to occur where two or more markets open trading in the same security more or less simultaneously without the benefit of price and order imbalance information from all markets trading the security. For example, the Options Study Report described one particularly dramatic instance in 1978, where the same Bally option opened at \$5 on one exchange and at \$10 on another exchange twenty minutes later, without there having been an appreciable change in the price of the underlying stock in that interval.³⁶ More recent experience with multiple trading, however, has not produced significant pricing problems. In adopting Rule 19c-5, the Commission noted that the exchanges have been able to mitigate pricing problems at the opening, even if this has meant allowing the primary market to open and establish a price first.³⁷

In addition to market fragmentation, concern also has been expressed that multiple trading may not fully facilitate "fair competition" among marketplaces. Specifically, commentators have argued that even with multiple trading "fair competition" may be impeded by brokerage order routing practices.³⁸ As

indicated above, brokerage firms tend not to route retail orders on an order-by-order basis to the market displaying the best quotation. Instead, for each option the firms will designate one market as "primary" and direct all retail order flow to that market. In the past, the Commission has been concerned that primary market designation decisions have been guided almost exclusively by the volume of trading in a security already occurring on a particular exchange.³⁹ Accordingly, the designation decisions of a few large brokerage firms could cause the bulk of all retail order flow in an option to be routed to a single exchange. In the Moratorium Termination Release, the Commission expressed its concern that, because of this so-called primary market phenomenon, meaningful competition for order flow in any given option may be no more than a transitory phenomenon.

It appears, however, that brokerage firms now consider a broader range of factors than merely volume in making market designation decisions. For example, one major firm, Merrill Lynch, described in its comments in the Rule 19c-5 proceedings the process by which it designates a primary market for multiple traded options.⁴⁰ Designation decisions are made by a standing committee composed of individuals from various areas of the firm experienced in options-related functions. Among the factors considered by this committee, according to the firm's comments, are "the quality of the markets made by the assigned specialist or market makers, the depth and liquidity of the market, and the operational facilities and responsiveness of the exchanges to complaints and suggestions for improving their facilities." Recent experience with multiple trading of OTC options suggests that firms also may be more willing to review periodically their order routing decisions.⁴¹ Furthermore,

34-24613, dated February 1, 1988 ("CBOE response") at 11.

³⁹ Firms have responded to criticism of these mechanical routing practices by arguing that, in routing orders to the market with the most business, they are more likely to receive an execution at a price between the bid and offer and less likely to "miss the market."

⁴⁰ Letter from Daniel P. Tully, President and Chief Operating Officer, Merrill Lynch & Co., Inc. to Jonathan G. Katz, Secretary, SEC, dated September 10, 1987.

⁴¹ See Rule 19c-5 Adoption Release, *supra* note 1, at note 124 and accompanying text. Indeed, the Commission has taken the position that "a broker routing retail orders in a particular security to a single market (whether by automated or other means) must at least make periodic assessments of the quality of competing markets to assure that it is

Auch, Chairman and Chief Executive Officer, CBOE, to George A. Fitzsimmons, Secretary, SEC, dated September 22, 1980, and January 8, 1981.

²⁴ Securities Exchange Act Release No. 18863 (May 30, 1980), 45 FR 37928.

²⁵ Securities Exchange Act Release No. 17577 (February 26, 1981), 46 FR 15242.

²⁶ Securities Exchange Act Release No. 18297 (December 2, 1981), 46 FR 60376.

²⁷ Securities Exchange Act Release No. 22026 (May 8, 1985), 50 FR 20310.

²⁸ Directorate of Economic and Policy Analysis, "The Effects of Multiple Trading on the Market for OTC Options" (November 1986), and Office of the Chief Economist, "Potential Competition and Actual Competition in the Options Market" (November 1986).

²⁹ The CBOE, Phlx and PSE challenged the findings of the studies. See Rule 19c-5 Adoption Release, *supra* note 1, at notes 25-26 and accompanying text.

as the release adopting Rule 19c-5 explains, recent experience with multiple traded options on OTC stocks suggests that the competition between and among exchanges for order flow may not be as short-lived as once thought. Nor has one exchange emerged as the only winner in competition for order flow in multiple traded OTC options.⁴²

The Staff believes that it is important to recognize that when the market structure concerns outlined above were raised in 1978 by the Options Study there had only been a brief and limited experience with multiple trading. These concerns have been reiterated on numerous occasions since 1978, and have, to a certain extent, taken on a life of their own. The experience with multiple trading of options on OTC stocks since 1985 has shown, however, that, even in the absence of market integration facilities, some of these concerns may have been exaggerated. Particularly with respect to market fragmentation concerns, the experience with multiple trading of OTC issues has failed to produce anything like the dramatic pricing disparities discussed in the Options Study Report.⁴³

Nevertheless, the Staff believes that an exploration of market integration facilities which might further reduce pricing inefficiencies, enhance best execution opportunities and increase competitive alternatives is valuable. The Staff emphasizes, however, that the purpose of this discussion is not to dictate, at this time, changes in the trading environment for options but to facilitate analysis by the options markets and the securities industry.

II. Quotation Information in the Options Markets

The availability and reliability of comprehensive quotation information for options is an important element in considering the concerns traditionally associated with multiple trading. Current and reliable quotation information enhances the ability of market participants to direct orders to markets offering the most favorable execution. The dissemination of such quotation information also furthers the ability of markets to compete for order flow and to facilitate the activities of

market professionals who ensure that pricing among markets remains in line.

To understand the existing quote and trade reporting regime for options, and to consider whether modifications would enhance a multiple trading environment, it may be helpful to outline the rules governing the collection and dissemination of quotations for stocks.

Pursuant to section 11A(a)(1)⁴⁴ and other provisions of the Act, the Commission has adopted rules governing the collection, display, and reliability of stock quotes. Pursuant to the Quote Rule (Rule 11Ac1-1 under the Act)⁴⁵ all exchanges are required, at all times that they are open for trading, to make available to securities information vendors the highest bid and lowest offer for certain equity securities that they trade. Subject to certain exceptions, the rule also requires exchange members to honor their quotes, i.e., the rule requires "firm" quotes. In addition, to ensure that all markets have an equal opportunity to advertise their prices, the Vendor Display Rule (Rule 11Ac1-2 under the Act)⁴⁶ provides that, in displaying quotations, securities information vendors must include either: (1) The best bid and best offer from among all markets (with identifiers indicating the reporting market center(s) making available these best bids and offers), or (2) a montage showing quotations from all reporting markets. Many securities information vendors do, in fact, elect the second display mode and show a montage of quotations from all reporting markets.

By their terms, neither the Quote Rule nor the Vendor Display Rule apply to quotations for options. Nonetheless, a system for the collection and dissemination of quotation and transaction information for options has developed that is in many ways similar to that for stocks. All of the options exchanges are participants in a national market system plan for the collection and dissemination of quotation and last sale information. The plan is administered by the Options Price Reporting Authority ("OPRA"). Each exchange collects⁴⁷ and transmits to

the OPRA system "bids and offers at stated prices or limits with respect to [options] in which it provides a market, sufficient in number and timeliness to reflect the current state of the market in such [options]." ⁴⁸ OPRA in turn makes this quotation information available to securities information vendors, which disseminate it to their subscribers.

A significant issue in considering whether the existing quote and trade reporting regime for options needs to be adapted for multiple trading is the extent to which equity options quotes are firm, or otherwise reliable. In the past, many commentators have argued that firm quotes are not possible in the options environment, and that this lack of firm quotes precludes building market linkage systems. Because of the derivative nature of options, and the need to adjust quotes in numerous series in response to a single price change in the underlying security, it was thought to be impractical or even impossible to require options market professionals always to honor their quotes. A firm quote requirement also was thought to pose special problems for the exchanges using multiple market maker systems; for example, it was argued that there would be difficulties in identifying the member of a trading crowd responsible for a quote, and in providing a mechanism for quotes to be modified or withdrawn.

There have been two developments in recent years which suggest that the arguments that firm options quotes are not possible should be reexamined. First, the development and use by the options exchanges of sophisticated automated systems, known as "Autoquote" systems, has made it possible for market professionals to update their quotes in numerous options series simultaneously.⁴⁹

Second, and more importantly, most options markets have developed systems or trading policies to provide what are, in effect, firm quotes for public customer orders of up to ten contracts in certain options. The CBOE and Amex have developed automated execution systems (known as Retail Automatic Execution System or "RAES" and the automatic execution system or "AUTO-EX", respectively) which provide

executions of such orders at the best bid or offer available on each exchange at the time of order entry.⁵⁰ Market makers on the CBOE, and specialists and Registered Options Traders on the Amex who participate in these systems are required to accept executions, on a rotation basis, by the systems at the applicable inside quote. Although these systems do not currently include all equity options listed on the two exchanges, the Commission recently approved proposals by the exchanges that would allow all such options eventually to be included.⁵¹

The availability of what are, in effect, firm quotes for certain orders is not limited to the CBOE and Amex. The Phlx and PSE, which currently do not use automated execution systems, have adopted trading policies to ensure that for certain series of options (generally, the most active ones) public customer orders are filled at the best bid or offer prevailing on the exchange. In particular, the trading policies, termed ten-up requirements, require that when specialists/market-makers are responsible for the best bid and/or offer in certain specified option classes, customer orders are to be filled to a minimum depth of ten contracts by the specialist/market-makers in the trading crowd.⁵²

These developments show that firm quotes in options are, at least to a limited extent, possible. In particular, the development by the options exchanges of systems and trading policies which provide firm quotes for public customers demonstrates the fallacy of the argument that firm quotes are inherently incompatible with options trading. While firm quotes may be possible in retail options trading, however, the involvement of professional traders presents special problems. If required to honor their

quotes for professional traders, options market makers and specialists are vulnerable to being "picked off" by professional traders whenever they have not adjusted their quotes quickly enough.⁵³ This could impose substantial costs and risks on market makers, which could cause market makers to reduce the number of securities in which they make a market. If this were to occur it might effect options market liquidity.⁵⁴

The Staff does not believe that it is now necessary or appropriate to extend the firmness requirement of the Quote Rule to options. It is important to recognize that the options markets generally provide accurate quotes, even where the quotes are not expressly firm. Moreover, firm quotes for small customer orders are now generally available. It appears that options quotes are sufficiently reliable to support an intermarket linkage or an order routing switch.

Furthermore, the Staff believes that the OPRA infrastructure and the standards and procedures for collecting and disseminating market information are fundamentally adequate to support multiple trading. Clearly, the adoption of multiple trading may require a review of existing procedures and enhancements of data storage and processing capacity.⁵⁵ The Staff is confident, however, that the options exchanges and OPRA will be able to address these tasks.

In adopting the Vendor Display Rule for stocks (described above), the Commission recognized that the manner in which securities information vendors display market information can have implications for competition among markets. In requiring that vendors display either the best bid and offer from among all markets or a montage showing quotations from all markets, the Commission sought to ensure that all markets would be able to engage in price competition on an equal basis. The Staff has considered whether it may be necessary to adopt vendor display requirements for options in a multiple trading environment, and, to this end, has conducted a review of the current

practices of a group of vendors ⁵⁶ regarding multiply traded options on OTC stocks. The Staff found that many of these vendors provide a montage showing the quotes of competing exchanges for each series of these OTC options, although in some cases the montage is not part of the vendor's basic service. All carry, in one form or another, quotation information from all markets trading a particular options class. In other words, for multiply-traded options on OTC stocks, vendors currently carry the data that is necessary to make order routing choices among markets. We note, however, that none of the vendors contacted provides this data in the form of the best bid and offer from among all markets. We anticipate that as multiple trading evolves, pursuant to the terms of Rule 19c-5, vendors might wish to offer quotation information for the more active multiply traded series in the abbreviated form of a best bid and offer.

The Staff preliminarily has concluded that it is not necessary to impose vendor display requirements for options. The staff does believe, however, that vendor practices should be consistent with the notion of fair competition. Accordingly, we will continue to monitor vendor practices closely as multiple trading is phased in pursuant to the terms of Rule 19c-5.⁵⁷ In particular, the Commission would be concerned by, and would not permit, vendor practices that do not provide competing exchanges an adequate opportunity to disseminate their quotes, as would be the case, for example, were a vendor discriminatorily to eliminate information from competing markets.⁵⁸

⁵⁶ The Staff surveyed Automated Data Processing, Bridge Information Systems, Quotron, Track Data, and Wang Financial Information Service Corp.

⁵⁷ The Commission has explicit authority under the Act to prescribe rules and regulations to "assure the prompt, accurate, reliable, and fair collection, processing, distribution, and publication of information with respect to quotations for and transactions in . . . securities and the fairness and usefulness of the form and content of such information." Section 11A(c)(1)(B) of the Act (15 U.S.C. 78k-1(c)(1)(B)(1982)).

⁵⁸ The Staff recognizes that vendors may be constrained by data capacity management considerations. A number of commentators in the Rule 19c-5 proceeding, including the Information Industry Association ("IIA") and Automated Data Processing, expressed concern that multiple trading could lead to a proliferation of options market data and place increasing strains on the operational capabilities of vendors. The IIA suggested several specific measures to address vendor capacity concerns in a multiple trading environment. It recommended that: (1) Procedures be considered to permit quotation reporting to begin before the market opening, to reduce the information reporting "peak" that typically occurs at the opening; (2)

Continued

taking all reasonable steps under the circumstances to seek out best execution of customers' orders." Securities Exchange Act Rel. No. 15671 (March 22, 1979), 44 FR 20360, 20366. See also Rule 19c-5 Adoption Release, *supra* note 1, at note 127 and accompanying text.

⁴³ See Rule 19c-5 Adoption Release, *supra* note 1, at notes 32-35 and note 125 and accompanying text.

⁴⁴ *Id.* at note 112 and accompanying text.

⁴⁵ 15 U.S.C. 78k-1(a)(1) (1982).

⁴⁶ 17 CFR 240.11Ac1-1 (1988).

⁴⁷ 17 CFR 240.11Ac1-2 (1988).

⁴⁸ The mechanics of this process differ according to whether the exchange uses a unitary specialist system or a competing market maker system. At the Amex, NYSE and Phlx, the specialist is responsible for quotations. At the CBOE and PSE, which use competing market maker systems, an exchange employee is responsible for monitoring and publishing quotations as they are made from among competing market makers, floor brokers, and the Order Book Official (an exchange official who holds the book of agency limit orders).

⁴⁹ See Plan for Reporting of Consolidated Options Reports and Quotation Information, section V(b) (available on file at the Commission's home office in Washington, DC).

⁵⁰ We recognize that while use of Autoquote systems may assist in market-making activity, it also may contribute to strains on the capacity of market data systems by generating more quotations. In more condensed periods of time, than would be possible if quotes were entered only manually.

⁵⁰ The Phlx also has filed a proposed rule change, SR-Phlx89-03, with the Commission to adapt its automated order routing and confirmation system, known as "AUTOM," to include an automated execution function for certain eligible market and marketable limit orders.

⁵¹ Securities Exchange Act Rel. No. 25995 (August 15, 1988), 53 FR 31781 (relating to CBOE's RAES); Securities Exchange Act Rel. No. 25996 (August 15, 1988), 53 FR 31779 (relating to Amex's AUTO-EX system).

⁵² See PSE Rule VI, Sections 48 and 79, and PSE Options Floor Procedure Advice B-12; Phlx Rule 1033(A). The Phlx recently expanded its ten-up requirement to all options series traded on the Phlx and to instances where floor traders are not quoting the best bid or offer. Securities Exchange Act Release No. 26669 (March 27, 1989), 54 FR 13282. In addition, the CBOE has filed a proposed rule change with the Commission to create a pilot program to require firm quotes for up to ten contracts for public customer orders. Securities Exchange Act Rel. No. 26570 (February 24, 1989), 54 FR 8857.

⁵³ In other words, although market makers may be willing to honor disseminated quotes for public customers' orders, which reflect the relatively random flux of buy and sell orders, they may be less willing to make those quotes available to other professional traders where there is a greater likelihood that such traders may be acting on information generally not known to public customers.

⁵⁴ See also Securities Exchange Act Release No. 26361 (December 15, 1988), 53 FR 51605 (order approving NASD proposed rule change limiting access to the Small Order Execution System for professional traders).

⁵⁵ See *infra* note 58.

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III. Market Integration Facilities

The discussion of means to alleviate the market fragmentation concerns traditionally associated with options multiple trading has focused on three measures: (1) An intermarket linkage to allow orders to be sent among markets; (2) a mechanism to route small customer orders to the "best" market and to guarantee an execution at the best bid or offer of the competing markets; and (3) a central limit order file. The Staff believes that each of these measures has merit and should be given serious consideration by the options exchanges.

A. Intermarket Order Routing Linkage

There is currently one major intermarket linkage system in operation. This system, known as the "Intermarket Trading System" ("ITS"), was developed jointly by several of the stock exchanges, and authorized by the Commission as a national market system facility, pursuant to section 11A(a)(3)(B) of the Act.⁵⁹ The ITS is a computer-communications linkage among the major stock exchanges and certain NASD market makers that provides facilities and procedures for: (1) The display of composite quotation information at each of the participant markets so that brokers are able to determine readily the best bid and offer available from any participant for a multiply-traded security; (2) efficient routing of orders and administrative messages between market participants; and (3) participation, under certain circumstances, by members of all participating markets in opening transactions in those markets.

Trading through ITS occurs in the following manner. When a floor broker receives an order to buy or sell stock,⁶⁰ he will compare the quotations in his market with the ITS display of quotations from other markets. If the ITS display shows that another market has a superior quote, the broker may send the order through the ITS to that market.⁶¹

quotation reporting for inactive option series be deferred from the opening until less active periods of the day; (3) use of Autoquote be discouraged. Letter from Kenneth B. Allen, Senior Vice President, IIA to Jonathan Katz, Secretary, SEC, dated February 12, 1988. The Staff believes that the options exchanges should consider the capacity enhancements recommended by IIA. It is to address concerns over market data capacity, in part, that the Commission has determined to "phase-in" multiple trading according to the terms of Rule 19c-5. The Staff plans to work with the IIA, OPRA and options SROs during the phase-in period to address these issues.

⁵⁹ 15 U.S.C. 78k-1(a)(3)(B) (1982).

⁶⁰ Essentially all listed reported stocks which are multiply traded are eligible for trading in the ITS.

⁶¹ The ITS Plan does not require that the order be routed to the market with the better quote. The order may be executed in the market in which it is

To do so, he will send a "commitment to trade," good for a specified amount of time (either one or two minutes), through the ITS to that exchange. If the bid or offer is still good at the receiving market when the commitment arrives, the receiving member will send a response through the ITS accepting the commitment. The ITS also is available for routing proprietary orders between markets. Indeed, the System is often used by specialists on regional exchanges to "lay off" inventory positions in the New York market.

The ITS has helped to prevent pricing disparities among the participating exchanges and has helped to ensure that orders are not executed at an inferior price on one exchange while a superior price is available at another exchange. To this end, the ITS participants have adopted "trade-through" rules, which generally prohibit executing orders on one exchange if a superior price is available at a linked exchange,⁶² and a block trade policy.⁶³

An intermarket linkage system similar to the ITS was one of the market integration approaches suggested by the Commission in the Moratorium Termination Release. At that time, the Commission questioned whether such a system would work in the options environment because of the lack of firm quotes. According to the Commission: "[t]he successful implementation of a market linkage system . . . is virtually entirely dependent upon the quality and reliability of quotation information disseminated by each market center. However, the Commission has received significant commentary that a firm quote rule . . . could not be applied to options."⁶⁴ At the same time, the

received, with that market often matching the better quote.

⁶² The rule is enforced by requiring an exchange member who has initiated a trade-through to: (1) Satisfy the superior bid or offer in a separate transaction with the exchange member whose quote has been traded through; (2) to adjust the price of the transaction that constituted the trade-through; or (3) to cancel the transaction. See Plan for the Purpose of Creating and Operating an Intermarket Communications Linkage, Exhibit B. The ITS trade-through rule was approved in Securities Exchange Act Release No. 17703 (April 9, 1981), 22 S.E.C. Doc. 707.

⁶³ A block trade, for purposes of the policy, is a trade involving 10,000 or more shares, or a market value of \$200,000 or more, that is effected at a price outside the bid or offer displayed from another ITS market. The ITS trade-through policy requires (subject to a number of exceptions) that a member representing a block-size order send, at the time of execution of a block trade, to each ITS market displaying a bid (offer) superior to the execution price a commitment to trade at the execution price for the number of shares displayed with the superior quote. *Id.*

⁶⁴ Moratorium Termination Release, *supra* note 18, 45 FR at 21431. (footnote omitted)

Commission recognized that, even in the absence of firm quotes, an intermarket linkage might help to reduce pricing disparities between markets by facilitating arbitrage activity from the floors of the exchanges, and that it could provide a prompt and efficient means for options market makers to "lay-off" their order imbalances.⁶⁵

It appears that the lack of firm quotations is no longer the impediment it once was to the development of an options intermarket linkage. The nature of quotation information has changed since the Commission considered the prospects for an inter-market linkage in the Moratorium Termination Release. As explained in the preceding section, the development by three options markets of automated small order execution systems, and the adoption by two options exchanges of trading policies requiring firm quotes, has shown that the options markets now believe that options quotations provide a sufficient basis for pricing orders of up to ten contracts.

The Staff has examined sample equity options trading data to determine what proportion of all orders are for ten or fewer contracts. Data for a sample one week period, January 18–22, 1988, showed that approximately 82% of all trades executed on the five options exchanges were for ten or fewer contracts. This data shows that a large proportion of equity options orders falls within the size range in which reliable quotations have been shown to be possible.⁶⁶

Although the absence of reliable quotes has been the principal conceptual impediment to an intermarket linkage system for options, other objections also have been raised. Critics have argued that such a linkage would be too slow for the fast pace of options trading, and that it would prove too costly to route individual orders from one market to another in pursuit of the best price.⁶⁷ Also, it has been argued that an intermarket linkage would not lend itself to the kind of multiple component transactions, such as spreads and straddles, that are common in options trading.⁶⁸

The Staff believes that these objections are, to a large extent, based on erroneous assumptions regarding the

⁶⁵ *Id.* at 21432 n.58.

⁶⁶ We recognize that the automated execution systems and the trading policies described above provide firm pricing only for public customer orders.

⁶⁷ See, e.g., Statement of the Pacific Stock Exchange Incorporated in Response to Securities and Exchange Commission Release No. 34-24813 (January 27, 1988), at 1 and Appendix A.

⁶⁸ See, e.g., CBOE response, *supra* note 38, at 28.

necessary scope and trading capacity of such an intermarket linkage. For example, one of the exchanges responding to proposed Rule 19c-5 observed that, while approximately 1,400 stocks are traded in the ITS today, a linkage for options might have to accommodate as much as all of the 21,000 individual options series traded on exchanges today. Clearly, it is an exaggeration to expect that all—or even most—listed equity options will be multiply traded.⁶⁹ Indeed, of the 449 OTC stocks eligible for options trading, only 103 (23%) have options overlying them, of which only 10 (9.7%) are multiply traded. Moreover, even with respect to those that are multiply traded, not all series would need to be eligible to be traded through the linkage; participation in the linkage could be limited to the more active near-term at-the-money series which are multiply-traded.⁷⁰ Nor need the linkage necessarily support heavy trading to fulfill its purpose of preventing the adverse effects of market fragmentation.⁷¹ We recognize that such an intermarket linkage for options would not be able to accommodate multiple component transactions unless it could be designed to allow for customized multiple component quotations. We believe, however, that the mere creation of an intermarket order routing channel will be likely to prevent significant intermarket pricing disparities.

The cornerstone of such a system would be an undertaking among the exchanges to formalize and extend their current practices and guarantee executions of agency orders routed through the system at each exchanges' current quotes. For example, the exchanges might agree to guarantee executions of up to ten contracts for more actively traded options series and up to a lesser size, perhaps five contracts, for thinly traded series.

The exchanges may wish to consider whether the linkage also should be available for routing larger agency

orders, professional orders and even limit spread orders, albeit without firm quotes. Such a system, like the ITS, would need to provide for the display of composite quotation information at each of the participating markets. It also should be designed for fast and efficient input of orders, particularly in those markets with multiple market makers. In light of the fast pace of options trading, and the need to respond quickly to price changes in the underlying stocks, an options linkage should, perhaps, require that orders sent through the system be accepted or rejected more quickly than is the case in the ITS. The options SROs also may wish to adopt default procedures to provide that an execution automatically occur when an order has not been accepted or rejected within the applicable time period.⁷² An intermarket linkage for options need not, in the Staff's view, be as elaborate as the ITS to achieve its desired effect. For example, the application of a trade-through rule may not be necessary at the inception of an options linkage.⁷³ Also, for reasons that are discussed in the following section, it may not be practical to use such a linkage to coordinate market openings. Finally, an options linkage should be designed to be flexible so that options can quickly be added and deleted, in view of the fact that certain options may be multiply traded for only a short time before a dominant market emerges and other markets delist.

In sum, the Staff believes that it would be possible to develop a workable intermarket options order routing system that would, by enhancing best execution opportunities and providing a second level of competition among the exchanges, help to augment the beneficial effects of multiple trading. The Staff recommends that the options markets review the feasibility of implementing an intermarket order routing linkage for multiply-traded options.

B. Small Order Switching Facility

The second market integration measure that has been considered is a mechanism to route orders, on an order-

by-order basis, to the "best" market. This could be accomplished either by requiring brokerage firms to make order-by-order routing decisions, or by developing a switching facility to which all orders would be sent for routing to the best market. In either event, this approach would, like an inter-market linkage, also depend on the quality and reliability of quotation information.

Implementation of an order-by-order routing approach would require a fundamental change in behavior on the part of brokerage firms, particularly large, retail-oriented firms, which generally select one primary market for the receipt of most order flow. Absent a switch, requiring firms to route all orders one-by-one would be costly. Moreover, in accepting customer orders, brokerage firms assume certain fiduciary obligations to their customers, including the duty of "best execution."⁷⁴ Critics of the order-by-order routing approach have argued that an order routing switch or rule would be too inflexible, and that it would fail to take into account the fact that the quoted price alone is not necessarily the only factor in determining where to obtain the best execution. For example, the market with the best quote at any particular moment is not necessarily the one with the most depth and liquidity or the most reliable execution and clearing services.

Nevertheless, it may be possible to proceed with a market integration approach that is based on limited order-by-order routing for small customer orders, that does not require development of a central switching facility or individual order routing decisions by firms, and that is based on modification and expansion of existing exchange facilities. As explained above in connection with the nature of quotation information, the CBOE and Amex have developed automated execution systems which provide executions of retail orders at the best bid or offer available on each exchange at the time of order entry. If the markets that do not currently have automated execution capabilities build such systems, these systems could be linked and modified to include a message switch on each. Incoming orders in options that are traded on both exchanges would be automatically retained for execution or routed to the other exchange's system, depending on which exchange was then offering the

⁷² Cf. Division of Market Regulation, *The October 1987 Market Break* (Feb. 1988) at 7-48 (suggesting that ITS participants consider adopting default procedures).

⁷³ A block trade policy, such as the ITS policy (described *supra* note 63), may not be appropriate in the options context. The requirement that market participants who execute block trades "take out" superior quotes in other markets is premised on those quotes being firm. As noted above, however, the "firmness" of options quotes is changing, and if an options linkage facility were to be developed, the options markets may wish to consider developing special policies for handling large-sized orders.

⁷⁴ See Section 11A(a)(1)(C)(iv) of the Act (15 U.S.C. 78k-1(a)(1)(C)(iv)) (1982).

best price.⁷⁵ The Staff believes that this type of linkage would reduce further the possibility of pricing disparities between markets. While such a system would remove the firm's opportunity to use its best judgement as to how to achieve best execution of its customers' orders, the system may provide greater benefits than are available through the exercise of such judgment. For example, firms employing options automatic execution systems already have determined that the advantages of an assured quote-based execution of its customers' orders exceed the potential benefits of achieving a superior execution between the quotation spread. A switching facility would provide execution of customer orders at the best disseminated quote in a multiply traded environment. Moreover, because orders automatically would be directed to the market with the best price (where they would be guaranteed an execution), this type of linkage would greatly enhance opportunities for competition among markets.

Accordingly, the Staff recommends that the options markets review the feasibility of developing a procedure to route customer market and marketable limit orders of up to ten contracts to the market disseminating the best bid or offer (as the case may be) and provide a guarantee of execution for agency orders at that price. The system need not be mandatory, but could be offered as a voluntary alternative to firms who wished both to ensure their customer's order an execution at the best disseminated quotation and, at the same time, encourage quote competition among options markets.

C. Central Limit Order File

The third market integration measure that has been considered in connection with multiple trading is a central limit order exposure system—an electronic facility for collecting, displaying, and providing automatic execution of, limit orders in multiply traded options. If successfully implemented, a central limit order system would have the potential to enhance fair competition among brokers and dealers and among markets, to provide inter-market order interaction and thereby reduce market fragmentation, and to ensure that public customer limit orders are protected and are not bypassed by professional or

institutional orders executed on other markets.

As already mentioned, the Commission asked the options exchanges to consider such a facility when the Moratorium was lifted in 1980. The Commission envisioned an electronic facility which would (1) allow brokers to enter and retrieve public limit orders directly;⁷⁶ (2) queue orders for execution on the basis of price/time priority; (3) provide on each options exchange a display summary of orders in the system; (4) provide floor members on each options exchange an equal opportunity to execute automatically against orders in the system; and (5) provide the floor member executing against the limit order and the broker entering the order an immediate execution report.⁷⁷

The task force formed by the exchanges reasoned that the effectiveness of a limit order exposure system in addressing the concerns associated with multiple trading would depend on the extent to which the system was used, *i.e.*, on the proportion of order flow affected by the system. In an attempt to predict this, the task force examined the extent to which limit orders were then used in options trading and the extent to which these limit orders were in fact "booked" with the specialist or order book official. The task force found that while limit orders were widely used in options trading, they often were not "booked." The task force explained that limit orders were used in different ways and for different reasons in options trading than they traditionally had been in the equity markets. An equity investor typically would use a limit order when he wished to buy at a price below, or sell at a price above, the prevailing market price, and the order generally would be "booked." An options investor, on the other hand, would often use a limit order even when willing to trade at the current market price, to protect against an unfavorable execution. Such orders typically would not be "booked" for the same reason that they were placed to begin with—because of the danger of receiving an unfavorable execution before being able to retrieve an order from the book. In sum, the task force concluded that, because of the manner and extent to which limit orders were used in options trading, a central limit order exposure system would not be likely to address

fair competition and market fragmentation concerns.⁷⁸

The Staff believes that the options SROs should reexamine the prospects for a central limit order exposure system. The circumstances under which options are traded have changed considerably since the options exchanges examined this issue in 1980/81.⁷⁹ Technological developments such as the implementation of electronic limit order books at the NYSE, and the development by the NASD of a limit order processing and execution capability for SOES,⁸⁰ have shown that a central limit order system is now operationally feasible. While the Staff is unable to estimate the actual percentage of limit orders which would be entered into such a system, the ability to participate in trades in other markets would appear to provide a powerful incentive for routing orders to the system. In addition, such a system would permit participants in each competing market to have access to all booked limit orders. Accordingly, a limit order system potentially could increase opportunities for market-maker competition and provide nationwide price protection for all limit orders.

Consideration of a central limit order system would raise a number of policy and technical considerations. A threshold question is which limit orders should be included in the system; that is, whether only public orders should be eligible, and whether there ought to be a limitation on the size of orders (public or other) that could be entered. The Staff is inclined to believe that the system, at least initially, should be limited to public customer orders because of the heightened concerns regarding the execution of public customer orders in a multiple trading environment. In addition, the Staff believes that limiting the availability of the system to public customers will reduce concerns over the impact of any such file on the structure of the existing trading markets and therefore will enable the exchanges to more easily design and implement such a system.

A closely related issue is what rules of protection or priority should apply to

⁷⁵ Having reached this conclusion, the task force did not proceed to what was to have been the second phase of its effort—consideration of technological and cost factors associated with a limit order exposure system.

⁷⁶ We note that the advent of guaranteed executions of retail orders up to a certain size at an exchange's best price (either through automated execution systems or exchange trading policies) may have changed the way in which limit orders are used in options trading.

⁷⁷ See Securities Exchange Act Release No. 26476 (January 19, 1989), 54 FR 3881.

orders entered into the system in relation to other orders. For example, limit orders entered into the system could be given priority over any options order elsewhere at the same price; in other words, all proposed options transactions would be required to clear the limit order system before or upon being executed.⁸¹ In the alternative, limit orders entered into the system could be provided price protection so that orders outside the system could not be executed at inferior prices unless limit orders at superior prices in the system were satisfied.⁸² The Staff believes that any system that may be developed should provide, at a minimum, price protection for public limit orders.⁸³

Priority rules with respect to orders in the system also would have to be established. The most likely alternative would be for orders to be queued on the basis of price first, and then time of entry into the system. The content of these intra-system priority rules also would depend, however, on what type of limit orders are eligible to be entered into the system. For example, if proprietary orders of brokers and dealers could be entered into the system, it may be desirable to afford priority to public customer limit orders.

Among the more technical considerations would be how to design the system to provide maximum flexibility and speed in functions such as entering, retrieving or updating orders, and generation of execution reports to all parties to a transaction.

The Staff believes that a central limit order system has the potential to alleviate the concerns associated with multiple trading, and recommends that the options markets review the feasibility of implementing such a system.

IV. Market Openings

Concern over pricing disparities in a multiple trading environment has often been focused on market openings.⁸⁴ It is

⁸¹ The rules of the CBOE (which allows only public customer limit orders to be entered into the exchange's limit order books) provide for such preferential treatment of public limit orders. CBOE Rules 6.45 and 7.4.

⁸² The rules of the Amex (which allows both public and professional orders to be entered into the exchange's limit order books) provide for such protection of "booked" limit orders. Amex Rule 155.

⁸³ We understand, however, that it may be desirable to provide exceptions from price protection or priority rules for spread transactions, to the same extent that exchange rules currently exempt such transactions. See CBOE Rule 6.45(d) and Amex Rule 950(d), Commentary .01.

⁸⁴ Options market openings differ from openings in stocks. The various series in a given options class are opened in a set sequence, in a practice known

at that point in the trading day, in theory, that differing mixes of buy and sell orders among markets are most likely to produce significant pricing disparities. Indeed, the early experience with multiple trading, before the imposition of the Moratorium, produced several dramatic instances of disparate pricing at the opening.⁸⁵ Despite the potential for pricing disparities at the opening, however, the Commission staff studies of multiple trading of options on OTC stocks failed to reveal any significant pricing problems at the opening.

To ascertain how much of daily trading potentially could be affected by whatever pricing problems that do occur, the Staff has sought to determine what proportion of daily trading takes place at the opening. Data for two sample weeks, the weeks of September 28 to October 2, 1987, and January 18 to 22, 1988, showed that trades executed before 10 a.m.⁸⁶ accounted for 8.2% and 9.2% respectively of the daily number of trades, and for 7.6% and 6.4% respectively of daily contract volume.

The Staff has considered, but does not currently recommend, a number of possible measures to coordinate market openings in options. For example, an inter-market order and message routing linkage, as discussed in the preceding section, could include a pre-opening application to share order imbalance information and to allow markets to participate in each other's openings. ITS, for example, provides such an application for stocks. In light of the derivative nature of options, however, the number of different series involved, and the differences between unitary specialist and multiple market maker trading systems, the Staff recognizes that such an arrangement might prove too cumbersome and time-consuming in the options context.

Another possibility considered by the Staff would be to designate one market to open trading, with the designation perhaps rotating among competing markets. The drawback with this solution is that it would provide the market chosen to do the opening an unwarranted competitive advantage. If the designation were to be changed frequently, it could result in public investor confusion and costly operational changes for member firms. Moreover, if the designation were rotated, nonprimary markets might not

as the "opening rotation." Options openings do not begin until the underlying stock has been opened.

⁸⁵ See *supra* note 36 and accompanying text.

⁸⁶ The period of up to 10 a.m. is, perhaps, over-inclusive as a measure of trading that occurs at the opening.

have sufficient order flow or capital to properly price each option series.

Multiple trading of options on OTC stock has not produced significant pricing disparities at the opening. The Staff believes that coordination at the opening among markets trading the same option may only be necessary when there are unusual market conditions. For these instances, the options exchanges should establish means of assured communications, such as dedicated telephone lines or electronic mail facilities between trading posts in the competing markets.

V. Conclusion

The Commission has found that multiple trading of options is likely to bring benefits to investors that will substantially outweigh any adverse consequences of market fragmentation, even in the absence of integration facilities among markets. The Staff believes that it would be possible to devise integration measures that would address the concerns associated with market fragmentation.

The Staff believes that the options markets should avail themselves of the advance notice provided and the Commission's policy of phased-in implementation of Rule 19c-5 to consider developing market integration facilities. The Staff is committed to working closely with the options markets in their evaluation of the feasibility of such facilities.

By the Commission.

Jonathan G. Katz,
Secretary.

Dated: May 26, 1989.

[FR Doc. 89-13145 Filed 6-2-89; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area # 2354]

Louisiana; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on May 20, 1989, I find that Ouachita Parish, in the State of Louisiana, constitutes a disaster loan area due to damages from severe storms and flooding beginning on May 5, 1989. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on July 18, 1989, and for economic injury until the close of business on February 20, 1990, at the address listed below: Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie,

Texas 75051, or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous parishes of Caldwell, Jackson, Lincoln, Morehouse, Richland, and Union, in the State of Louisiana, may be filed until the specified date at the above location.

The interest rates are:

	Percent
Homeowners with Credit Available Elsewhere.....	8.000
Homeowners without Credit Available Elsewhere.....	4.000
Businesses with Credit Available Elsewhere.....	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere.....	4.000
Businesses and Non-Profit Organizations (EIDL) without Credit Available Elsewhere.....	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere.....	9.125

The number assigned to this disaster for physical damage is 235408 and for economic injury the number is 676700.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: May 23, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-13216 Filed 6-2-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2349]

Minnesota, Amendment #1, Declaration of Disaster Loan Area

The above-numbered Declaration (54 FR 22390) is hereby amended in accordance with the Notices of Amendment to the President's declaration, dated May 12 and May 16, 1989, to include Kittson County, in the State of Minnesota, as a result of damages from severe storms and flooding, end to establish the incident period as between March 29 and May 8, 1989.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on July 10, 1989, and for economic injury until the close of business on February 9, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 18, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-13217 Filed 6-2-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2351]

North Carolina; (and Contiguous Counties in the States of South Carolina and Virginia) Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on May 17, 1989, I find that the counties of Catawba, Cleveland, Davidson, Davie, Durham, Forsythe, Granville, Guilford, Iredell, Lincoln, and Union, in the State of North Carolina, constitute a disaster loan area due to damages from tornadoes which occurred on May 5 and 6, 1989. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on July 17, 1989, and for economic injury until the close of business on February 20, 1990, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308.

or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Alamance, Alexander, Anson, Burke, Cabarrus, Caldwell, Caswell, Chatham, Franklin, Gaston, Mecklenburg, Montgomery, Orange, Person, Randolph, Rockingham, Rowan, Rutherford, Stanley, Stokes, Surry, Vance, Wake, Wilkes, and Yadkin, in the State of North Carolina; Cherokee, Chesterfield, Lancaster, and York Counties, in the State of South Carolina; and Halifax and Mecklenburg Counties, in the State of Virginia, may be filed until the specified date at the above location.

	Percent
Homeowners with Credit Available Elsewhere.....	8.000
Homeowners without Credit Available Elsewhere.....	4.000
Businesses with Credit Available Elsewhere.....	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere.....	4.000
Businesses and Non-Profit Organizations (EIDL) without Credit Available Elsewhere.....	4.000
Others (including Non-Profit Organizations) with Credit Available Elsewhere.....	9.125

The number assigned to this disaster for physical damage is 235112, and for economic injury the numbers are 676200 for the State of North Carolina, 676300 for the State of Carolina, and 676400 for the State of Virginia.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Dated: May 22, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-13218 Filed 6-2-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2353]

Texas (and Contiguous Counties in the State of Oklahoma) Amendment #1, Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated May 25, 1989, to include Cooke, Fannin, Harris, Johnson, Kaufman, McLennan, Montague, Nacogdoches, Parker, Rusk, Smith, and Williamson Counties, in the State of Texas, as a result of damages from severe storms, tornadoes, and flooding beginning on May 4, 1989.

In addition, applications for economic injury from small businesses located in the contiguous counties of Angelina, Bastrop, Bell, Bosque, Brazoria, Burnet, Chambers, Cherokee, Clay, Coryell, Delta, Falls, Fort Bend, Galveston, Grayson, Gregg, Harrison, Henderson, Hill, Hunt, Lamar, Lee, Liberty, Limestone, Milam, Montgomery, Panola, San Augustine, Shelby, Travis, Upshur, Van Zandt, Waller, and Wood, in the State of Texas, and Bryan, Choctaw, Jefferson, and Love Counties, in the State of Oklahoma, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on July 17, 1989, and for economic injury until the close of business on February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 26, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-13219 Filed 6-2-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2353]

Declaration of Disaster Loan Area; Texas

As a result of the President's major disaster declaration on May 19, 1989, I find that Dallas, Hood, Palo Pinto, and Tarrant Counties, in the State of Texas, constitute a disaster loan area due to damages from severe storms, tornadoes, and flooding beginning on May 4, 1989. Eligible persons, firms, and organizations may file applications for physical damage until the close of business on July 17, 1989, and for economic injury until the close of business on February 20, 1990, at the address listed below:

Disaster Area 3 Office, Small Business Administration, 2306 Oak Lane, Suite 110, Grand Prairie, Texas 75051

or other locally announced locations. In addition, applications for economic injury from small businesses located in the contiguous counties of Collin, Denton, Eastland, Ellis, Erath, Jack, Johnson, Kaufman, Parker, Rockwall, Somervell, Stephens, Wise, and Young, in the State of Texas, may be filed until the specified date at the above location.

	Percent
Homeowners with Credit Available Elsewhere.....	8.000
Homeowners without Credit Available Elsewhere.....	4.000
Businesses with Credit Available Elsewhere.....	8.000
Businesses and Non-Profit Organizations without Credit Available Elsewhere.....	4.000
Businesses and Non-Profit Organizations (EIDL) without Credit Available Elsewhere.....	4.000
Others (Including Non-Profit Organizations) with Credit Available Elsewhere.....	9.125

The number assigned to this disaster for physical damage is 235312 and for economic injury the number is 676600.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: May 23, 1989

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-13220 Filed 6-2-89; 8:45 am]

BILLING CODE 8025-01-M

Region I Advisory Council; Public Meeting

The U.S. Small Business Administration Region I Advisory Council, located in the geographical area

of Hartford, will hold a public meeting at 8:00 a.m. on Monday, June 19, 1989, at the Yale Inn, 900 East Main Street, Meriden, Connecticut to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Henry A. Povinelli, District Director, U.S. Small Business Administration, 330 Main Street, Hartford, Connecticut 06106, phone (203) 240-4670.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 23, 1989.

[FR Doc. 89-13123 Filed 6-2-89; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of Newark, will hold a public meeting at 8:30 a.m. on Tuesday, June 13, 1989, at the Headquarters of Bellcore, Bell Communications Research, 290 West Mount Pleasant Avenue, Livingston, New Jersey to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Stanley H. Salt, District Director, U.S. Small Business Administration, 60 Park Place, Newark, New Jersey 07102, phone (201) 645-3580.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 26, 1989.

[FR Doc. 89-13215 Filed 6-2-89; 8:45 am]

BILLING CODE 8025-01-M

Region II Advisory Council; Public Meeting

The U.S. Small Business Administration Region II Advisory Council, located in the geographical area of New York City, will hold a public meeting at 9:30 a.m. on Tuesday, June 20, 1989, in the 4th floor conference room of the American Institute of Certified Public Accountants, 1211 Avenue of the Americas (between 47th and 48th Streets), New York, New York to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Bert X. Haggerty, District Director, U.S. Small Business Administration, 26

Federal Plaza, Room 3100 New York, New York 10278, phone (212) 264-1318.

Jean M. Nowak,

Director, Office of Advisory Councils.

May 26, 1989.

[FR Doc. 89-13214 Filed 6-2-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Filed Under Subpart Q During the Week Ended May 26, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No.: 46308.

Date Filed: May 22, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 19, 1989.

Description: Application of Aeroejecutivos, C.A. pursuant to section 402 of the Act and Subpart Q of the Rules of Practice applies for a foreign air carrier permit to engage in scheduled foreign air transportation of property and mail as follows:

From a point or points in Venezuela, on the one hand, to Miami, Florida, on the other. Applicant also requests on and off-route charter authority as appropriate under Part 212 of the Economic Regulations.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 89-13185 Filed 6-2-89; 8:45 am]

BILLING CODE 4010-62-M

Implementation of the Small Business Competitiveness Demonstration Program

AGENCY: Office of the Secretary (DOT).
ACTION: Notice and request for information.

SUMMARY: As required by the December 22, 1988 joint Office of Federal Procurement Policy (OFPP) and Small Business Administration (SBA) interim

policy directive and test plan implementing Title VII of the "Business Opportunity Development Reform Act of 1988", Pub. L. 100-656 (53 FR 52889), the DOT is announcing its ten targeted industry categories selected for enhanced small business participation and requesting information from firms who wish to participate in the Small Business Competitiveness Demonstration Program.

ADDRESS: For information requested therein, interested parties should submit a written request to Will Terry Moore, Chief, Direct Contracting and Financial Assistance Division, S-42, Office of Small and Disadvantaged Business Utilization, 400 7th Street, SW., Room 9410, Washington, DC 20590.

I. Supplementary Information

A. Background

The Small Business Competitiveness Demonstration Program was established by Title VII of the "Business Opportunity Development Reform Act of 1988", Pub. L. 100-656. The purpose of the demonstration program is to:

(1) Test the ability of small businesses to compete successfully in four designated industry groups without competition being restricted by the use of small business set-asides.

(2) Measure the extent to which awards are made to a new category of small businesses known as emerging small businesses (ESB's), and to provide for certain acquisitions to be reserved for ESB participation only.

(3) Expand small business participation in 10 targeted industry categories through continued use of set-aside procedures, increased management attention, and specifically tailored acquisition procedures, as implemented through agency procedures.

II. Small Business Competitiveness Demonstration Program

A. Four Designated Industry Groups (DIG's)

The following industry groups have been designated to demonstrate whether the competitive capabilities of small business firms in certain industry groups will enable them to successfully compete on an unrestricted basis for Federal contracts:

(1) *Construction* under standard industrial classification (SIC) code that comprise Major Groups 15, 16, and 17 (excluding dredging—Federal Procurement Data System (FPDS) service codes Y216 and Z216).

(2) *Refuse systems and related services* under SIC code 4212 or 4953, limited to FPDS service code S205.

(3) *Architectural and engineering services* (including surveying and mapping) under SIC code 7389, 8711, 8712, or 8713 (limited to FPDS service codes C111 through C219, T002, T004, T008, T009, T014, and R404).

(4) *Nonnuclear ship repair* under SIC code 3731 (limited to FPDS service codes J998 and J999).

Acquisitions in the four DIG's with an estimated value of \$25,000 or less shall be set aside for emerging small business (ESB) concerns provided that the contracting officer determines that there is a reasonable expectation of obtaining offers from two or more responsible emerging small businesses that will be competitive in terms of market price, quality and delivery. If no such reasonable expectation exists, the contracting officer shall proceed in accordance with FAR Subpart 19.5, "Set-Asides for Small Business" or FAR Subpart 19.8, "Contracting with the Small Business Administration (The 8(a) Program)".

ESB means a small business concern whose size is no greater than 50 percent of the numerical-size standard applicable to the standard industrial classification code assigned to a contracting opportunity.

Acquisitions in the four DIG's with an estimated value of \$25,000 or more are to be suspended from small business set-asides under FAR Subpart 19.5 unless otherwise directed. However, acquisitions in the four DIG's shall continue to be considered for placement under the 8(a) set-aside program (see FAR Subpart 19.8). After periodic review of DOT Operating Administration's performance, and a determination that the small business share in a particular test industry falls below 40 percent, DOT may direct reinstatement of the use of small business.

B. Ten Targeted Industry Categories (TIC's)

The DOT is fully committed to implementing all of the requirements of the demonstration program and for purposes of the expansive portion, DOT has identified ten targeted industry categories (TIC's) as follows:

Industry name	FPDS codes
(1) Lease/Rental General Purposes Automatic Data Processing (ADP)	W070
(2) System Engineering Services Only	R414
(3) Maintenance Engine/Turbine and Maintenance, Repair, Rebuilding of Weapons	J026 J010
(4) Radar Equipment and Navigation & Navigational Aids R&D	5840 AT30
(5) Radio/TV Communication Equipment (Except Airborne)	5820

Industry name	FPDS codes
(6) Automatic Data Processing, Central Processing Unit (ADP, CPU), Analog	7020
(7) Rescue Vessels	3732 7035
(8) Automatic Data Processing (ADP) Accessorial Equipment	
(9) Automatic Data Processing (ADP) Teleprocessing and System Development & Programming Service	D305 D302
(10) Lease/Rental Facilities	X119

The ten TIC's were selected using: (1) Historical data from the Federal Procurement Data System (FPDS) on past small business participation in each of the ten TIC's, (2) anticipated future levels of DOT purchases, and (3) availability of small businesses. DOT's level of small business participation in the ten TIC's ranged from zero to a maximum of 9.3 percent, although the services are purchased in substantial quantities. A survey of source lists, the SBA Procurement Automated Source System (PASS) and other data identifying small businesses revealed that there is a significant amount of small business capacity to perform such services and supplies.

The DOT's goal is to increase small business participation at a minimum rate of one or two percent in each TIC per year. In order to reach this goal, each DOT procurement office has been directed to carefully evaluate every proposed procurement over \$25,000, in each of the ten TIC FPDS codes for possible designation as an 8(a) or small business set-aside before considering it for full and open competition.

III. Notice of the DOT's Intention of Identifying: (1) Emerging Small Businesses (ESB's) in the Four Designated Industry Groups (DIG's) (2) Small Businesses in the Ten Targeted Industry Categories (TIC's) and (3) Small Businesses Interested in Joint Ventures Related to the TIC's

The DOT is committed to assisting all interested small businesses, including ESB's to participate fully in the "Small Business Competitiveness Demonstration Program". To help accomplish this, the DOT is compiling lists of: (1) ESB's with capability in the four DIG's, (2) Small businesses that have capability in the ten TIC's, and (3) Small businesses interested in a joint venture in order to participate in the ten TIC expansion program.

If any small business desires to be included on any of these lists, please submit a written request to the address shown in the second paragraph of this notice.

Dated: May 26, 1989.

Alicia L. Casanova,

Director, Office of Small and Disadvantaged Business Utilization.

[FR Doc. 89-13186 Filed 6-2-89; 8:45 am]

BILLING CODE 4010-02-M

Coast Guard

[CGD 89-044]

Commercial Fishing Industry Vessel Advisory Committee; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to section 10(a) of the Federal Advisory Committee Act (Pub. L. 92-403; U.S.C. App. I) notice is hereby given of a meeting of the Commercial Fishing Industry Vessel Advisory Committee. The meeting will begin at 9:00 a.m. on July 6 and 7, 1989, at the Department of Transportation, 400 7th Street, SW., Washington, DC, in Room 2330. The agenda is as follows:

—Call to order and opening remarks.

—Review of 19 April 1989 meeting and minutes.

—Discussion of 1989 CFIVAC and Subcommittees

—Discussion of Torremolinos Convention.

—Inspection and licensing studies.

—Meeting of Subcommittees:

A. General Regulation Review and Assessment

B. Safety Equipment Regulation Review and Assessment

C. Crew Qualifications, Education and Training

—Subcommittee reports and recommendations

—Future meeting dates and agendas.

—Adjournment.

The meeting is open to the public. Members of the public may present written or oral statements at the meeting.

FOR FURTHER INFORMATION CONTACT:

Mr. Norman W. Lemley, Executive Director, Commercial Fishing Industry Advisory Committee; Marine Technical and Hazardous Materials Division (G-MTH), Room 1218, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001; or telephone (202) 267-0001.

Dated: May 25, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-13187 Filed 6-2-89; 8:45 am]

BILLING CODE 4010-14-M

National Highway Traffic Safety Administration

Discretionary Grant To Support the Coordination of Community Traffic Safety Program Activities

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Announcement of a discretionary grant to support the coordination of information concerning Community Traffic Safety Program activities.

SUMMARY: The National Highway Traffic Safety Administration (NHTSA) announces the availability of a FY 1989 discretionary grant to support the coordination and dissemination of technical information to and for community traffic safety programs through State Highway Safety Offices. This notice solicits applications from national non-profit organizations that are interested in developing and implementing this project.

DATE: Applications must be received at the office designated below on or before July 6, 1989.

ADDRESS: Applications must be submitted to the National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD-30), ATTN: Rose Watson, 400 7th Street, SW., Room 5301, Washington, DC 20590. All applications submitted must include a reference to NHTSA Grant Project No. DTNH22-89-Z-5203. Interested applicants are advised that no separate application package exists beyond the contents of this announcement.

FOR FURTHER INFORMATION CONTACT: General administrative questions may be directed to Ms. Rose Watson, Office of Contracts and Procurement, at (202) 366-9557. Programmatic questions relating to this grant project should be directed to Ms. Marilena Amoni, Policy Advisor for Traffic Safety Programs (NTS-01), NHTSA, 400 7th Street, SW., Room 5125, Washington, DC 20590 at (202) 366-1755.

SUPPLEMENTARY INFORMATION:

Background

Over the past several years, Community Traffic Safety Programs began to evolve as an outgrowth of a single issue as a drunk driving, safety belt or engineering improvement effort. Many of these projects combined resources and focused on a more comprehensive approach to traffic safety. City, county and State leaders, elected officials, and governmental agencies saw potential for applying combined, coordinated programs to other areas of traffic safety as well.

Community Traffic Safety Programs began to include a variety of traffic safety issues including pedestrians, bicycles, motorcycles, speed enforcement, and emergency medical services. Each year, more programs are merging as a natural evolution from existing single issue projects.

In 1988, NHTSA and the U.S. Conference of Mayors hosted a meeting for Community Traffic Safety Program Coordinators from large cities. In addition, NHTSA extended participation to programs in counties and small cities, as well as the National Association of Governors' Highway Safety Representatives. As an outcome of that meeting, participants identified several needs. Program coordinators felt fragmented from the rest of the highway safety system and identified a need for a formal communication network to provide for the coordinated exchange of technical information among like programs.

NHTSA provides national leadership and support to State governments that manage funds allocated to them by Congress, and works with other private and public groups. NHTSA administers funds for State and Community Programs and research and development projects in order to assist key groups with highway safety programs and evaluation. The Agency has ten Regional Offices that approve State Highway Safety Plans, and a central staff that administers the research and demonstration projects. As a result of joint efforts with the States and other groups, Community Traffic Safety Programs are the state-of-the-art in highway safety programs.

Objectives

In FY 1989, NHTSA intends to award one grant to a national non-profit organization to promote information exchange among communities with traffic safety programs, coordinate the exchange of information among States supporting Community Traffic Safety Programs, provide information assistance to those communities wanting to establish a Community Traffic Safety Program, disseminate evaluations of the impact of these programs, share information with other national organizations to publicize the Community Traffic Safety Program approach, and promote the gathering of information to identify emerging safety issues of concern to communities.

In order to achieve these objectives, the grantee shall:

1. Establish a community traffic safety program information clearinghouse. As facets of this activity, the types of information needed by the community traffic safety program coordinators will be identified; the traffic safety issues of greatest concern will be determined; and information addressing the identified needs and issues will be gathered and disseminated to communities, States and interested national organizations. Such activities shall be coordinated with the respective State Highway Safety Offices.

2. Plan and conduct a national workshop of participants involved or interested in the development, administration, implementation and evaluation of Community Traffic Safety Programs. The purpose of the national workshop is to share technical information among State Highway Safety Offices, Community Traffic Safety Program Coordinators and NHTSA representatives. It is anticipated that this two-day national workshop will be conducted in early November, 1989, in Boston, Massachusetts.

3. Promote Special Awareness events through the dissemination of information. Such events shall include national traffic safety awareness weeks, such as, Drunk and Drugged Driving Awareness Week, Buckle Up American Week. The promotion includes distribution of Idea Samplers printed by NHTSA and other appropriate materials to the community traffic safety coordinators as well as preparing appropriate articles for publication preceding the event.

4. Encourage public, governmental, and organizational understanding and appreciation of the Community Traffic Safety Programs (CTSP) approach. As a facet of this activity, informational assistance will be provided to communities to facilitate the enhancement of the intergovernmental aspect of community traffic safety programs to strengthen the communities' capacity to develop and sustain CTSPs. In addition, informational resources and assistance will be provided to State and local government agencies interested in establishing CTSPs as well as other national organizations interested in publicizing the CTSP approach.

5. Assessment of collected information. Considering information collected as a result of the other activities identified above as well as internal organizational insight, emerging traffic safety issues will be identified and potential solutions will be provided to community leaders who are attempting to address identified problems. Based upon available information resources, the long range

effect of local traffic safety programs which have evolved into CSTPs will be analyzed and the findings disseminated to the traffic safety "community" and other interested national organizations.

Period of Support

The grant project described in this notice will be supported through the award of one grant agreement with an anticipated project period of eight months. The application for funding assistance should address what is proposed and can be accomplished during this period. The anticipated funding level shall not exceed \$85,000. Federal funds should be viewed as seed money to assist the organization in the development of information transfer regarding Community Traffic Safety Programs. Monies allocated for this grant are not intended to cover all the costs that will be incurred in this project. Applicants should demonstrate a commitment of in-kind resources in support of the proposed project activities.

Eligibility Requirements

In order to be eligible to participate in this grant project, an organization must be on a non-profit group with a national membership composed of State/local chapters and/or affiliates and a demonstrated organizational interest and capability to support traffic safety programs.

Application Procedure

Applications must be submitted from the national office level of the organization, not from State or local affiliate levels, or individual members. All applications submitted must include a reference to NHTSA Grant Project No. DTNH22-89-Z-5203. Only complete applications received on or before July 6, 1989, shall be considered.

Each applicant must submit one original and two copies of their application to: National Highway Traffic Safety Administration, Office of Contracts and Procurement (NAD-30), ATTN: Rose Watson, 400 7th Street, SW., Room 5301, Washington, DC 20590.

Application Contents

1. The application package must be submitted with OMB Standard Form 424 (Rev. 4-88, including 424A and 424B). Application for Federal Assistance, with the required information filled in and the certified assurances included.

2. Applications shall include a project narrative statement which addresses the following:

(a) Identifies the proposed organizational approach for achieving the objectives of the grant project.

(b) Identifies the proposed plan of action for conducting the activities of the grant project, including a schedule of milestones and their target dates, and assessing the project accomplishments.

(c) Identifies the anticipated results and benefits to be derived.

(d) Identifies key organizational personnel who will participate in the grant project, including a description of their qualifications and respective organizational responsibilities, as well as the proposed role of other participating organizations or individuals.

Evaluation Criteria and Review Process

Initially, all applications will be reviewed to confirm that the applicant is an eligible recipient and to assure that the application contains all of the information required by the Application Contents of this notice.

Each complete application from an eligible recipient will then be evaluated by an Evaluation Committee. The applications will be evaluated using the following criteria which are listed in descending order of importance:

1. The applicant's demonstrated organizational understanding and awareness of the current issues involving traffic safety and the unique aspects of Community Traffic Safety Programs as evidenced in the description of their proposed approach and plan of action. Consideration will be given to the demonstrated experience and commitment of the applicant organization to work with other national organizations that have related missions and that could provide additional support to Community Traffic Safety Programs.

2. The technical merit of the proposed grant project effort, including the feasibility of the approach, plan of action and project assessment, and anticipated results.

3. The adequacy of the organizational resources for accomplishing the proposed grant project effort, including the qualifications and experience of proposed personnel and their proposed level of effort, as well as the proposed participation of other organizations or individuals.

4. The "cost/benefit" potential of the proposed grant project effort, including consideration of contributed organizational resources, and other proposed sources of financial support.

Terms and Conditions of the Award

1. Prior to award, the recipient must comply with the certification requirements of 49 CFR Part 29—Department of Transportation

Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants).

2. **Performance Reporting Requirements:** (a) Quarterly Progress Reports in a format and schedule to be determined after the award.

(b) A final summary report which describes the conduct of the grant project, details the outcomes, and provides recommendations.

3. During the effective period of the grant awarded as a result of this notice, the grant shall be subject to the general administrative requirements of OMB Circular A-110 (or the "common rule," if effected prior to award), the cost principles of OMB Circular A-122, and the requirements of 49 CFR Part 29.

Issued on: May 31, 1989.

George L. Reagle,
Associate Administrator for Traffic Safety Programs.

[FR Doc. 89-13281 Filed 6-2-89; 8:45 am]

BILLING CODE 4910-58-M

UNITED STATES INFORMATION AGENCY

A Grants Program for Private Not-For-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the private sector. The program is designed to increase mutual understanding between the people of the U.S. and other countries and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175 entitled "A Grants Program for Private, Non-Profit Organization in Support of International Educational and Cultural Activities," announced in the *Federal Register* February 9, 1989.

Private Sector organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate:

The Role of the University in Development

The Office of Private Sector Programs will assist in supporting a three-week multi-site program for eight to ten African higher education officials. The program will strive to expose the delegation to the variety of alternatives present in the American higher education system, and demonstrate how

universities work in coordination with government and private enterprise to fulfill specific national and community development needs. The project will include an introductory seminar familiarizing the participants with the structure of American higher education, meetings with U.S. government officials to discuss the governmental role in promoting university-led development, sessions with private sector organizations or businesses which lend support and guidance to American universities, meetings with American university officials to discuss issues to mutual concern such as: the relationship of the university to business and other constituencies, admissions and tuition practices with positive development results, tailoring or curricula to meet development needs, employment and placement services for university graduates.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming; and with organizations that have potential for obtaining private sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to successfully develop and conduct the above project and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than twenty-one days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Please refer to this specific program by name in your letter of interest: Office of Private Sector Program, Bureau of Educational and Cultural Affairs, (Attn: Michael Ringler) United States Information Agency, 301 4th Street SW., Washington, DC 20547.

Dated: May 28, 1989.

Robert Francis Smith,
Director, Office of Private Sector Programs.

[FR Doc. 89-13282 Filed 6-2-89; 8:45 am]

BILLING CODE 3230-01-M

UNITED STATES SENTENCING COMMISSION

Sentencing Guidelines for United States Courts

AGENCY: United States Sentencing Commission.

ACTION: Notice of proposed temporary, emergency amendments to the

Sentencing Guidelines and official commentary. Request for public comment.

SUMMARY: Pursuant to its emergency authority under section 21(a) of the Sentencing Act of 1987, the Sentencing Commission proposes for public comment the amendments to the sentencing guidelines and commentary set forth below. The Commission invites comment on these proposals.

DATES: Comments should be received by the Commission no later than July 5, 1989.

ADDRESS: Comments should be sent to: United States Sentencing Commission, 1331 Pennsylvania Avenue, NW., Suite 1400, Washington, DC 20004, Attention: Emergency Amendments Comment.

FOR FURTHER INFORMATION CONTACT: Paul K. Martin, Communications Director for the Commission, telephone: (202) 662-8800.

SUPPLEMENTARY INFORMATION: Section 21(a) of the Sentencing Act of 1987 (Pub. L. 100-182, Dec. 7, 1987), authorizes the U.S. Sentencing Commission, an independent agency in the judicial branch of government, to promulgate temporary, emergency guidelines or temporarily amend existing guidelines in certain circumstances, including "(2) the creation of a new offense or amendment of an existing offense." Unlike regular amendments issued pursuant to 28 U.S.C. 994(p), amendments promulgated by the Commission under this authority are not required to be submitted to Congress for 180 days' review prior to their taking effect. However, Section 21 emergency amendments are temporary; i.e., unless submitted to Congress as regular amendments in the next regular amendments report, they expire upon the disposition of that report.

The proposed temporary amendments set forth below pertain to two types of criminal offenses—(1) illegal possession and/or trafficking in cocaine base ("crack"); and (2) distribution of obscene materials. In general, the proposed amendments are designed to implement provisions of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, Nov. 18, 1988), that either amended the statutes providing for these offenses or, in the case of obscenity distribution, created new offenses in that category. In both cases, however, the Commission proposes to go somewhat beyond the promulgation of temporary guideline corresponding solely to the offenses created or amended by the Anti-Drug Abuse Act. The Commission's preliminary view, as expressed by these proposed amendments, is that the

statutory changes call for some modification of existing sentencing guidelines for closely related offenses in order to carry out the overall intent of Congress and to most effectively further the purposes of sentencing. Those expressing comment may, if they wish, address the Commission's authority vis-a-vis section 21 of the Sentencing Act of 1987 to issue these proposed amendments.

Comment is also requested on the following broader policy questions associated with these proposals:

1. Do the proposed amendments appropriately reflect Congressional intent regarding sentencing for the specific offenses created or amended by the Anti-Drug Abuse Act of 1988 and for closely related offenses?

(a) With respect to cocaine base, does the amendment to 21 U.S.C. 844 contained in section 6371 of the Anti-Drug Abuse Act of 1988 provide a policy basis for changing the cocaine base equivalencies in the Drug Quantity Table for Guideline § 2D1.1, covering cocaine trafficking offenses, in order to treat such offenses more severely?

(b) With respect to child pornography and obscenity offenses, does Subtitle N of the Anti-Drug Abuse Act of 1988 (cited as the Child Protection and Obscenity Enforcement Act of 1988) provide a policy basis for amending Guideline § 2G3.1 (Importing, Mailing, or Transporting Obscene Matter) or Guideline § 2G2.2 (Transporting, Receiving, or Trafficking in Material Involving the Sexual Exploitation of a Minor) or both in the manner proposed?

2. Do the proposed amendments reflect sound public policy with respect to sentencing for these offenses?

Authority: 28 U.S.C. 994(a), section 21(a) of the Sentencing Act of 1987 (Pub. L. 100-182, Dec. 7, 1987).

William W. Wilkins, Jr.,
Chairman.

The proposed temporary, emergency amendments to guidelines and commentary are as follows:

1. Amendment: Section 2D2.1 is amended by inserting the following additional subsection:

"(b) Cross Reference

(1) If the defendant is convicted under 21 U.S.C. 844(a) of possession of (A) more than 5 grams of a mixture or substance containing cocaine base; (B) more than 3 grams of a mixture or substance containing cocaine base after a previous conviction under 21 U.S.C. 844(a) for possession of such a mixture or substance has become final; or (C) more than 1 gram of a mixture or substance containing cocaine base after two or more previous convictions under

21 U.S.C. 844(a) for possession of such a mixture or substance have become final, apply § 2D1.1 (Unlawful Manufacturing, Importing, Exporting, or Trafficking) as if the defendant had been convicted of possession of a mixture or substance containing cocaine base with intent to distribute."

The Commentary to § 2D2.1 captioned "Background" is deleted in its entirety and the following inserted in lieu thereof:

"Background: Mandatory minimum penalties for several categories of cases are set forth in 21 U.S.C. 844(a). When a mandatory minimum penalty exceeds the guideline range, the mandatory minimum becomes the guideline sentence. § 5G1.1(b).

Subsection (b) applies to defendants subject to the enhanced penalties created by Section 6371 of the Anti-Drug Abuse Act of 1988 (i.e., defendants subject to the penalties for possession of cocaine base set forth in the third sentence of 21 U.S.C. 844(a), as amended)."

Reason for Amendment: This amendment provides that convictions for possession of cocaine base ("crack") subject to the enhanced penalties created by Section 6371 of the Anti-Drug Abuse Act of 1988 are to be treated as if the conduct constituted possession of the controlled substance with intent to distribute.

2. Amendment: Section 2D2.1(a)(1) is amended by deleting "or an analogue of these" and inserting in lieu thereof "an analogue of the above, or cocaine base".

Reason for Amendment: This amendment specifies the appropriate offense level for possession of cocaine base ("crack") in cases not covered by the enhanced penalties created by section 6371 of the Anti-Drug Abuse Act of 1988.

3. Amendment: The Drug Quantity Table in § 2D1.1, in effect on May 1, 1989, is amended by:

(1) Deleting "500 G Cocaine Base" and inserting in lieu thereof "250 G Cocaine Base";

(2) Deleting "150-499 G Cocaine Base" and inserting in lieu thereof "75-249.9 G Cocaine Base";

(3) Deleting "50-149 G Cocaine Base" and inserting in lieu thereof "25-74.9 G Cocaine Base";

(4) Deleting "35-49 G Cocaine Base" and inserting in lieu thereof "17.5-24.9 G Cocaine Base";

(5) Deleting "20-34.9 G Cocaine Base" and inserting in lieu thereof "10-17.4 G Cocaine Base";

(6) Deleting "5-19 G Cocaine Base" and inserting in lieu thereof "2.5-9.9 G Cocaine Base";

(7) Deleting "4-4.9 G Cocaine Base" and inserting in lieu thereof "2-2.4 G Cocaine Base";

(8) Deleting "3-3.9 G Cocaine Base" and inserting in lieu thereof "1.5-1.9 G Cocaine Base";

(9) Deleting "2-2.9 G Cocaine Base" and inserting in lieu thereof "1-1.4 G Cocaine Base";

(10) Deleting "1-1.9 G Cocaine Base" and inserting in lieu thereof "500-999 MG Cocaine Base";

(11) Deleting "500-999 MG Cocaine Base" and inserting in lieu thereof "250-499 MG Cocaine Base";

(12) Deleting "250-499 MG Cocaine Base" and inserting in lieu thereof "125-249 MG Cocaine Base"; and

(13) Deleting "250 MG Cocaine Base" and inserting in lieu thereof "125 MG Cocaine Base".

The Drug Quantity Table in § 2D1.1, set forth in the Commission's guideline amendments submitted to Congress May 1, 1989 (proposed effective date November 1, 1989) at amendment 59, is further amended by:

(1) Deleting "15 KG or more of Cocaine Base" and inserting in lieu thereof "7.5 KG or more of Cocaine Base";

(2) Deleting "At least 5 KG but less than 15 KG of Cocaine Base" and inserting in lieu thereof "At least 2.5 KG but less than 7.5 KG of Cocaine Base";

(3) Deleting "At least 1.5 KG but less than 5 KG of Cocaine Base" and inserting in lieu thereof "At least 750 G but less than 1.5 KG of Cocaine Base";

(4) Deleting "At least 500 G but less than 1.5 KG of Cocaine Base" and inserting in lieu thereof "At least 250 G but less than 750 G of Cocaine Base";

(5) Deleting "At least 150 G but less than 500 G of Cocaine Base" and inserting in lieu thereof "At least 75 G but less than 250 G of Cocaine Base";

(6) Deleting "At least 50 G but less than 150 G of Cocaine Base" and inserting in lieu thereof "At least 25 G but less than 75 G of Cocaine Base";

(7) Deleting "At least 35 G but less than 50 G of Cocaine Base" and inserting in lieu thereof "At least 17.5 G but less than 25 G of Cocaine Base";

(8) Deleting "At least 20 G but less than 35 G of Cocaine Base" and inserting in lieu thereof "At least 10 G but less than 17.5 G of Cocaine Base";

(9) Deleting "At least 5 G but less than 20 G of Cocaine Base" and inserting in lieu thereof "At least 2.5 G but less than 10 G of Cocaine Base";

(10) Deleting "At least 4 G but less than 5 G of Cocaine Base" and inserting in lieu thereof "At least 2 G but less than 2.5 G of Cocaine Base";

(11) Deleting "At least 3 G but less than 4 G of Cocaine Base" and inserting in lieu thereof "At least 1.5 G but less than 2 G of Cocaine Base";

(12) Deleting "At least 2 G but less than 3 G of Cocaine Base" and inserting in lieu thereof "At least 1 G but less than 1.5 G of Cocaine Base"; and

(13) Deleting "At least 1 G but less than 2 G of Cocaine Base" and inserting in lieu thereof "At least 500 MG but less than 1 G of Cocaine Base";

(14) Deleting "At least 500 MG but less than 1 G of Cocaine Base" and inserting in lieu thereof "At least 250 MG but less than 500 MG of Cocaine Base";

(15) Deleting "At least 250 MG but less than 500 MG of Cocaine Base" and inserting in lieu thereof "At least 125 MG but less than 250 MG of Cocaine Base"; and

(16) Deleting "Less than 250 MG of Cocaine Base" and inserting in lieu thereof "Less than 125 MG of Cocaine Base".

The Commentary to § 2D1.1 captioned "Application Notes" is amended in Note 10 in the "Drug Equivalency Tables" in the subdivision captioned "Cocaine and other Schedule I and II stimulants" by deleting "1 gm of Cocaine Base ("Crack") = 100 gm of cocaine/20 gm of heroin" and inserting in lieu thereof "1 gm of Cocaine Base ("Crack") = 200 gm of cocaine/40 gm of heroin."

Reason for Amendment: This amendment revises the ratio of cocaine base ("crack") to other controlled substances to more appropriately reflect the seriousness of offenses involving this substance as indicated by the enhanced penalties for possession of cocaine base contained in Section 6371 of the Anti-Drug Abuse Act of 1988.

Additional Explanatory Statement: The portion of this amendment affecting

the Drug Quantity Table in § 2D1.1 is set forth in relation to the guidelines currently in effect as well as in relation to the amended guidelines submitted to the Congress on May 1, 1989, that have a proposed effective date of November 1, 1989.

4. Amendment: Section 2G3.1 and accompanying commentary is deleted in its entirety and the following inserted in lieu thereof:

"§ 2G3.1 Offenses Involving Obscene Matter

(a) Base Offense Level:

(1) [12][13][14][15][16], if the offense involved distribution for pecuniary gain;

(2) [6][8], otherwise.

(b) Specific Offense Characteristics

[(Apply the greater):]

(1) If the base offense level is determined under subsection (a)(1), increase by the number of levels from the table at § 2F1.1(b)(1) corresponding to the retail value of the obscene matter.

(2) If the base offense level is determined under subsection (a)(1), and the offense involved the defendant engaging in a pattern of distributing the obscene matter to persons under eighteen years of age, increase by 4 levels.

(c) Cross Reference

(1) If the offense involved the visual depiction of a person under eighteen years engaging in or assisting another person to engage in sexually explicit conduct, apply § 2G2.2 (Transporting, Receiving, or Trafficking in Material Involving the Sexual Exploitation of a Minor) as if the offense had involved transporting, receiving, or trafficking in material involving the sexual exploitation of a minor.

Commentary

Statutory Provisions: 18 U.S.C. 1460-1463, 1465-1466.

Application Note:

1. 'Distribution', as used in this guideline, includes production, transportation, and possession with intent to distribute, and shall be broadly construed.

2. Subsection (c)(1) includes circumstances in which a person under eighteen years, or a person pretending to be under eighteen years of age, is visually depicted engaging in or assisting another to engage in sexually explicit conduct."

[Section 2G2.2 is amended by inserting at the end the following additional specific offense characteristic:

"3. If the offense involved the defendant engaging in a pattern of distributing the material to persons under 18 years of age, increase by 4 levels.".]

Reason for Amendment: This amendment establishes a guideline to cover two offenses created by Sections 7521 and 7526 of the Omnibus Anti-Drug Abuse Act of 1988. The existing guideline at § 2G3.1 covering related offenses is deleted and the offenses covered by the existing guideline are included in the revised guideline.

Additional Explanatory Statement: Public comment is sought as to the appropriate base offense levels for this offense and whether proposed specific offense characteristics (b) (1) and (2) should be additive or in the alternative. If specific offense characteristics (b) (1) and (2) are additive, a conforming revision to § 2G2.2 is required for consistency.

[FR Doc. 89-13223 Filed 6-2-89; 8:45 am]

BILLING CODE 2210-40-M

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 2, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89-13373 Filed 6-1-89; 12:37 pm]
BILLING CODE 6361-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 9, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89-13374 Filed 6-1-89; 12:37 pm]
BILLING CODE 6361-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 16, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89-13375 Filed 6-1-89; 12:37 pm]
BILLING CODE 6361-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 23, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89-13376 Filed 6-1-89; 12:37 pm]
BILLING CODE 6361-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Friday, June 30, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Surveillance Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,
Secretary of the Commission.
[FR Doc. 89-13377 Filed 6-1-89; 12:37 pm]
BILLING CODE 6361-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:00 p.m. on Tuesday, May 30, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) Matters relating to the possible closing of certain insured banks; (2) a recommendation regarding administrative enforcement proceedings against an insured bank; and (3) matters relating to the Corporation's assistance agreements, pursuant to section 13(c) of the Federal Deposit Insurance Act, with certain insured banks.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Mr. Dean S. Marriott, acting in the place and stead of Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation;

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and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B) and (c)(10)).

Dated: May 31, 1989.
Federal Deposit Insurance Corporation.
Robert E. Feldman,
Deputy Executive Secretary.
[FR Doc. 89-13337 Filed 6-1-89; 11:33 am]
BILLING CODE 6714-01-M

LEGAL SERVICES CORPORATION

Committee on the Provision for the Delivery of Legal Services Meeting

TIME AND DATE: The meeting will take place on Monday, June 12, 1989, from 9:00 a.m. until 5:00 p.m. and continue on Tuesday, June 13, 1989, from 10:30 a.m. until 12:00 p.m.

PLACE: Hyatt Regency Woodfield Hotel, Regency Ballroom, 1800 E. Golf Road, Schaumburg, Illinois 60173.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Agenda
2. Approval of Minutes
—March 24, 1988
3. Consideration of the Competitive Award System of LSC Grants

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: June 1, 1989.
Maureen R. Bozell,
Corporation Secretary.
[FR Doc. 89-13423 Filed 6-1-89; 3:28 p.m.]
BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Board of Directors meeting will be held on June 13, 1989. An Executive Session will be held from 12:00 p.m. until 1:30 p.m. The open portion of the meeting will commence at 1:30 p.m. or immediately following the previous meeting and continue until 3:30 p.m. or until all official business is completed.

PLACE: The Hyatt Regency Woodfield, Regency Ballroom, 1800 E. Golf Road, Schaumburg, Illinois 60173.

STATUS OF MEETING: Open [A portion of the meeting is to be closed to discuss personnel, personal, litigation, and investigatory matters under the Government in the Sunshine Act [5 U.S.C. 552b (c) (2), (7), (9), (B), and (10)] and 45 CFR 1822.5 (a), (e), (f), (g), and (h)].

MATTERS TO BE CONSIDERED:

- Executive Session (closed)
1. Personnel and Personal Matters
 2. Litigation and Investigation Matters
- Board of Directors (open)
1. Approval of Agenda
 2. Approval of Minutes
—April 14, 1989
 3. Report from the Committee on the Provision for the Delivery of Legal Services

Discussion and Public Comment follow each item.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: June 1, 1989.
Maureen R. Bozell,
Corporation Secretary.
[FR Doc. 89-13424 Filed 6-1-89; 3:28 p.m.]
BILLING CODE 7050-01-M

LEGAL SERVICES CORPORATION

Task Force on Client Board Member Training Meeting

TIME AND DATE: The Task Force on Client Board Member Training will meet on Tuesday, June 13, 1989, from 9:00 a.m. until 10:30 a.m.

PLACE: The Hyatt Regency Woodfield Hotel, Regency Ballroom, 1800 E. Golf Road, Schaumburg, Illinois 60173.

STATUS OF MEETING: Open.

MATTERS TO BE CONSIDERED:

1. Public Comment on Client Issues.

CONTACT PERSON FOR MORE INFORMATION: Maureen R. Bozell, Executive Office, (202) 863-1839.

Date issued: June 1, 1989.
Maureen R. Bozell,
Corporation Secretary.
[FR Doc. 89-13425 Filed 6-1-89; 3:28 p.m.]
BILLING CODE 7050-01-M

THE UNITED STATES INSTITUTE OF PEACE

DATE: Thursday, June 8, 1989.

TIME: Thursday 9:15 a.m. 5:30 p.m.

PLACE: The United States Institute of Peace, 1550 M Street, NW., ground floor (conference room).

STATUS: Open session—Thursday 9:15 a.m. to 5:30 p.m. (portions may be closed pursuant to subsection (c) of section 552(b) of title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Pub. L. (98-525).

AGENDA TENTATIVE: Meeting of the Board of Directors convened. Chairman's Report. President's Report. Committee Reports. Consideration of the Minutes of the Thirty-second meeting of the Board. Consideration of grant application matters.

CONTACT: Ms. Olympia Diniak, Telephone (202) 457-1700.

Date: May 31, 1989.
Bernice J. Carney,
Administrative Officer, The United States Institute of Peace.
[FR Doc. 89-13347 Filed 6-1-89; 11:36 am]
BILLING CODE 3155-01-M

Corrections

Federal Register

Vol. 54, No. 106

Monday, June 5, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

INTERSTATE COMMERCE
COMMISSION

[Finance Docket No. 31465]

**Kansas City Southern Railway Co.;
Acquisition and Operation of Trackage
Rights Exemption—Arkansas Central
Railway Co.**

Correction

In notice document 89-12646 beginning on page 22817 in the issue of Friday, May 26, 1989, in the heading, the finance docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 151

[CGD 89-014]

RIN 2115-AD23

Implementation of the Shore
Protection Act of 1988

Correction

In rule document 89-12396 beginning on page 22546 in the issue of Wednesday, May 24, 1989, make the following corrections:

1. On page 22546, in the 3rd column, under *II. Regulatory Approach*, in the first paragraph, in the 15th line, "hearings" should read "headings".

2. On page 22547, in the 1st column, in the 1st paragraph, in the 20th line, "in" should read "is".

§ 151.1009 [Corrected]

3. On page 22549, in the first column, in § 151.1009(b), in the second line, "§ 151.104" should read "§ 151.1024".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Fiscal Service

[Dept. Circ. 570, 1988—Rev., Supp. No. 14]

Surety Companies Acceptable on
Federal Bonds: Termination of
Authority AEGON Reinsurance
Company of America

Correction

In notice document 89-11646 appearing on page 21158 in the issue of Tuesday, May 16, 1989, make the following correction:

In the second column, in the second paragraph of the document, in the third line "25033" should read "25053".

BILLING CODE 1505-01-D

Monday
June 5, 1989

Part II

Department of Labor

Occupational Safety and Health
Administration

29 CFR Part 1910

Permit Required Confined Spaces; Notice
of Proposed Rulemaking

federal register

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

(Docket No. S-019)

RIN 1218-AA51

Permit Required Confined Spaces

AGENCY: Occupational Safety and Health Administration (OSHA), U.S. Department of Labor.**ACTION:** Notice of proposed rulemaking.

SUMMARY: OSHA proposes to establish safety requirements, including a permit system, for entry into those confined spaces which OSHA has identified as posing special dangers for entrants due to their configuration or other features. The proposed standard provides a comprehensive regulatory framework within which the employer can more effectively apply the existing 29 CFR Part 1910 standards to protect employees who work in such confined spaces. The proposed standard introduces the term "permit required confined space" to cover the particular confined spaces which are to be regulated.

Few OSHA standards address confined space hazards in general industry, and these provide only limited protection. OSHA has determined, based on its review of the Agency's fatality and injury data, enforcement experience and other information, that the existing standards do not adequately protect workers in confined spaces from atmospheric, mechanical and other hazards. The Agency has further determined that the ongoing need for monitoring, testing and communication at workplaces which contain entry permit confined spaces can be satisfied only through the implementation of a comprehensive confined space entry program. OSHA anticipates that compliance with the provisions of this proposed standard would effectively protect from injury and death employees who work in permit required confined spaces.

DATES: Written comments, objections and requests for a hearing on the proposal must be postmarked by August 4, 1989.

ADDRESS: All written submissions should be sent, in quadruplicate, to the Docket Office, Docket No. S-019, U.S. Department of Labor, Occupational Safety and Health Administration, Room N2634, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, U.S. Department of

Labor, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, Room N3647, Washington, DC 20210, (202) 523-8151.

SUPPLEMENTARY INFORMATION:**I. Background**

There are confined spaces in many U.S. industrial workplaces. OSHA is concerned that many of these confined spaces, which for the purposes of this rulemaking OSHA considers to be permit required confined spaces (permit spaces), pose unique problems due to their contents and/or configuration. Some permit spaces, for example, pose entrapment hazards for entrants, while others restrict air circulation so that hazardous atmospheres may accumulate quickly. Confinement itself can increase the risk of injury or death by making employees work closer to hazards than they would otherwise. Accident investigators and OSHA compliance personnel have long recognized and directed employer and employee attention to the special dangers of permit space work.

The hazards encountered in permit spaces, such as exposure to electrical shock and contact with chemicals and machinery, are also encountered elsewhere in the workplace and are, in general, addressed by existing OSHA standards. OSHA's review of investigation reports covering confined space fatalities (Exs. 10 through 13 and 16), however, indicates that many employers do not seem to appreciate either that these hazards are exacerbated by conditions of confined space work, or that the current OSHA standards apply to hazards wherever they are found, including confined spaces. This proposed standard will help correct these problems by clearly stating employer responsibilities when employees are to work inside confined spaces.

OSHA has reviewed state safety and health regulations and has found that most of the states do not have standards which cover permit spaces. The Agency has further determined that those states which have addressed permit spaces in general, have, like OSHA, neither adequately identified the potential hazards nor required the precautions or procedures necessary to protect entrants. The state regulations reviewed also differ regarding the percentage of a substance's lower flammable limit (LFL) at which entry into a potentially flammable atmosphere would be barred. For example, New Jersey, California and Kentucky set their limits at 14 percent, 20 percent and 24 percent, respectively. Florida, in turn, simply requires that "the atmosphere shall be tested

first to determine that it is not explosive or flammable." As noted in proposed paragraph (b), OSHA has determined, based on NFPA guidelines, that employees should be forbidden to enter a permit space when the atmosphere contains 10 percent or more of the LFL for a flammable gas, vapor or mist. Therefore, OSHA has determined that federal regulatory action is necessary to protect employees from permit space hazards.

On July 24, 1975, OSHA issued an Advance Notice of Proposed Rulemaking (ANPR), "Standard for Work in Confined Spaces," to obtain data and information to develop a confined spaces standard (40 FR 30980). This ANPR sought comments on 14 issues, including problems with existing regulations, confined space injuries or deaths, and control of hazards.

The respondents agreed that confined spaces posed significant hazards for workers, and that the existing OSHA standards addressed the problems inadequately. The commenters generally recommended that OSHA issue a standard which specifically addressed confined space hazards. Some commenters suggested that OSHA issue a comprehensive standard which would regulate work in all confined spaces. Other commenters stated that confined space operations which were found not to pose hazards should be excluded from the scope of a confined space standard.

Many commenters stated that OSHA should very specifically define the term "confined space," so that the range of conditions confronted would be defined. Commenters suggested a wide range of definitions.

Several commenters suggested that OSHA base any proposed rule on the draft American National Standards Institute (ANSI) standard "Safety Requirements for Working in Tanks and Other Confined Spaces," which was then under consideration by the ANSI Z117.1 Committee and was subsequently adopted as an ANSI Standard in 1977.

OSHA notes that ANSI Z117.1-1977 was withdrawn in May 1988, because the Z117 Committee had not completed action to renew or revise the standard within the period allotted for such action. OSHA believes that the ANSI standard provides useful guidance for the protection of employees from permit space hazards. Therefore, the Agency has based parts of its proposed rule on ANSI Z117.1-1977.

Citing both "the complexity of the issues and the period of time since the previous Advance Notice," OSHA issued another ANPR, "Entry and Work

in Confined Spaces" (44 FR 60334), on October 19, 1979. The 24 questions raised in the 1979 ANPR were similar to, but more detailed than the 14 issues raised in the 1975 ANPR. The 1979 ANPR again requested suggestions for a definition of "confined space," as well as information regarding the appropriate procedures for addressing confined space hazards, and the cost of those procedures. OSHA received 68 comments in response to the 1979 ANPR. These comments were similar to those received in response to the 1975 ANPR. However, they provided a broader base of information on which to support a standard for confined spaces.

The comments focused on the choice between a performance-oriented and a specification-oriented standard. Most commenters suggested that OSHA develop a performance-oriented standard similar to OSHA's "fire protection standard" (29 CFR Part 1910, Subparts E, H, and L), which was then being revised and which was subsequently published as a final rule on September 12, 1980 (45 FR 60704). Also, many commenters suggested that defining the hazards confronted in confined spaces was more important than defining the term "confined space."

On March 25, 1980, OSHA issued an Advance Notice of Proposed Rulemaking (Construction ANPR) "Entry and Work in Confined Spaces" (45 FR 19266), to obtain information which could be used "to revise its existing standards in order to effectively cover hazards connected with these (confined space) activities in construction." The Agency stated its belief that "the hazards of work in confined spaces are also significant in the construction industry." The Construction ANPR posed 31 questions, similar to those presented in the 1979 General Industry ANPR, regarding the appropriate precautions and procedures for controlling confined space hazards which construction workers may confront. The Agency received 75 comments, most of which related to general industry concerns. OSHA has not proceeded with rulemaking for the construction industry and has not included construction within the scope of the proposed rule. The Agency has, however, asked, in Issue 6 of this proposal, for comments and information related to the adequacy of the existing Part 1926 regulatory language.

On April 4, 1980, OSHA scheduled public meetings (45 FR 22978) where interested parties could make oral presentations regarding confined space hazards. Those meetings were held during May 1980 in Houston, Texas;

Denver, Colorado; and Washington, DC. There were approximately 30 participants at these meetings.

In the course of drafting this proposal, OSHA has studied the confined space regulations generated by states and other countries (see References 2, 3, 7, 8, 17 and 18); the 1979 NIOSH criteria document (see Reference 9); the ANSI Z117.1-1977 standard (see Reference 5); and the guidelines of other organizations (see References 1, 4, 6, and 14). While the Agency has gained some valuable insights from the documents reviewed, OSHA believes that a number of them are focused too narrowly on atmospheric hazards. As a result, mechanical and physical hazards have received insufficient attention.

OSHA notes that NIOSH has focused a substantial effort on investigating permit space incidents and on developing guidelines for safe work in permit spaces. In particular, NIOSH produced a Criteria Document for confined space work in 1979, an "Alert" in 1986, a "Guide to Safety in Confined Spaces" in 1987 and a number of incident reports up through 1987. The proposed rule is based, in part, on the materials generated by NIOSH.

NIOSH, in its 1979 Criteria Document, raised a number of access and ventilation considerations, noted the seriousness of mechanical hazards, and accounted for different levels of risk and the need to modify work procedures by distinguishing three "classes" of confined spaces.

In January 1986, NIOSH, in further recognition that confined spaces continued to pose serious hazards, issued a "Request for Assistance in Preventing Occupational Fatalities in Confined Spaces" (see Reference 16), which described 16 confined space fatalities. The "Alert" also recommended that employers increase their efforts to recognize and evaluate hazards, and to take necessary precautions for work in or rescue from confined spaces. Fourteen of the 16 victims included in the NIOSH report died of asphyxiation due to atmospheric hazards.

The materials upon which OSHA has relied in drafting this Notice of Proposed Rulemaking, including accident reports, existing regulatory language, responses to the 1975 and 1979 ANPRs, transcripts of the 1980 public meetings and the sources listed in the "References" section below, are available for review and copying in the OSHA Docket Office.

II. Agency Action

OSHA has determined, based on consideration of the factors discussed above, that a comprehensive, federal

standard for protection of employees who work in permit spaces is necessary. In this section of the proposal, OSHA describes the hazards which confront permit space workers, incidents involving those hazards and the chronology of OSHA's efforts to develop a proposed rule. In this way, the Agency seeks to underscore the need for comprehensive regulation of permit spaces, and to document the significance of the risks to which employees working in permit spaces are exposed.

A. Hazards

OSHA has determined, based on its review of accident data, that asphyxiation is the leading cause of death in confined spaces, and that atmospheric hazards cause most confined space asphyxiation fatalities. However, atmospheric hazards are not the only causes of asphyxiation fatalities in confined spaces. For example, employees working in water towers and bulk material hoppers have slipped or fallen into narrow, tapering, discharge pipes where death resulted from asphyxiation by constriction of the torso.

In addition, OSHA has determined that there have been confined space injuries and fatalities which did not involve asphyxiation. The Agency has, for example, documented confined space incidents in which victims were burned, ground-up by auger type conveyers, or crushed by rotating or moving parts inside mixers. OSHA observes that, in those cases, the victims were unable either to avoid the hazards, or to escape from the work area because the configuration of the space restricted them to the danger zone. Failure to lock out power to equipment inside the space was also a factor in those accidents. OSHA has addressed some failures to lock out power to equipment in its proposed rule The Control of Hazardous Energy Sources (Lockout/Tagout) published April 29, 1988 (53 FR 15496).

OSHA proposes to use the term "permit required confined space" when referring to those spaces where serious hazards such as atmospheric or mechanical hazards are or may be present. The selection of this term reflects OSHA's determination that employers must implement comprehensive permit programs in order to authorize employee entry where confined spaces contain or could contain serious hazards. Under the permit program, employers would first identify their entry permit spaces; restrict access so that only authorized personnel may enter; control the

hazards in those spaces through engineering or work practices; and test, monitor or inspect the entry permit spaces to ensure that the hazards remain under control. OSHA believes that compliance with the proposed requirements will protect employees from the risk of death and injury due to confined space hazards.

1. Incident Data and Confined Space Hazards Analysis

The 1979 NIOSH Criteria document, "Working in Confined Spaces" (Reference 9), cites a study by the Safety Sciences Division of WSA, Inc., San Diego, California, which was titled "Search of Fatality and Injury Records for Cases Related to Confined Spaces" (Reference 17). The Safety Sciences study reviewed approximately 20,000 reports covering industrial accidents nationally in 1974-1977. Even with this limited sample, 276 confined space accidents which resulted in 234 deaths and 193 injuries were identified for the period 1974-1977. Safety Sciences conducted its study to determine if regulatory action was needed to control confined space hazards, not to identify the exact causes of death and injury. OSHA, in turn, has been unable to connect the 234 fatalities and 193 injuries to specific industry segments or work activities.

More recently, OSHA examined its records of accident investigations for fatal confined space incidents. In particular, OSHA sought to identify the specific hazards and work activities involved. OSHA determined during this review that, where multiple deaths occurred, the majority of the victims in each event died while trying to rescue the original entrant from a confined space. This determination is consistent with the finding by NIOSH in its 1986 "Alert" (Reference 18) that "rescuers" accounted for more than 60 percent of confined space fatalities. This evidence indicates that untrained or poorly trained rescuers constitute an especially important "group at risk." This group would be protected from permit space hazards under the terms of the proposed rule.

OSHA has also gathered incident data from a number of other sources, such as the Fatal Accidents Circumstances and Epidemiology (FACE) reports produced by NIOSH, and reports produced by the states. That information has been very useful to OSHA, even though in some cases there was not enough detail for OSHA to evaluate the circumstances of the incidents. OSHA requests that commenters submit information on permit space incidents in order to

further document the hazards to which employees have been exposed.

The OSHA-investigated cases which OSHA analyzed to determine the cause of death in confined spaces have been compiled in four reports prepared by OSHA's Office of Statistical Studies and Analyses. These are: "Selected Occupational Fatalities Related to Fire and/or Explosion in Confined Work Spaces as Found in Reports of OSHA Fatality/Catastrophe Investigations" (April 1982) (Reference 10); "Selected Occupational Fatalities Related to Lockout/Tagout Problems as Found in Reports of OSHA Fatality/Catastrophe Investigations" (August 1982) (Reference 11); "Selected Occupational Fatalities Related to Grain Handling as Found in Reports of OSHA Fatality/Catastrophe Investigations" (January 1983) (Reference 12); and "Selected Occupational Fatalities Related to Toxic and Asphyxiating Atmospheres in Confined Work Spaces As Found in Reports of OSHA Fatality/Catastrophe Investigations" (July 1985) (Reference 15).

These four reports focused on fatalities because OSHA found that the reporting of injuries from permit space incidents was frequently incomplete. OSHA observes that injuries are most likely to be reported when they occur as part of an incident where fatalities occur. The Agency anticipates that this rulemaking will lead to improved data collection regarding injuries because employers and employees are being clearly alerted to OSHA's concern about permit space hazards.

OSHA has analyzed the studies to determine the underlying causes of the conditions which existed when confined space related accidents occurred. From this information, OSHA developed proposed measures which would have prevented most of the accidents in the studies, and used those measures as the basis of its proposed standard. OSHA notes that many of the reports did not fully document the circumstances of the accidents covered. The Agency has determined, however, that the available accident data, despite its limitations, provides the necessary basis for characterizing permit space hazards and for proposing protective measures. OSHA will continue to collect accident data in the course of this rulemaking. The Agency requests that commenters, especially the states and other governmental entities, submit accident data.

OSHA has determined that a variety of confined space hazards have caused death and injury. The Agency notes that some of the incidents used as examples

in this proposal date from several years ago. In general, OSHA has documented those hazards with summaries which the Agency feels characterize the problems confronted by employees who enter permit spaces. OSHA has determined, based on its review of information in the record and on its enforcement experience, that confined space workers confront significant risks of death, injury, or impairment of health or functional capacity.

Atmospheric Hazards. OSHA's review of accident data indicates that most confined space deaths and injuries are caused by atmospheric hazards. OSHA has classified those hazards into three categories: toxic; asphyxiating; and flammable or explosive atmospheres, in order to account for their differing effects.

Some chemical substances present multiple atmospheric hazards, depending on their concentration. Methane, for example, is an odorless substance that is non-toxic and is harmless at some concentrations. Methane, however, can displace all or part of the atmosphere in a confined space. With only 10 percent displacement, methane produces an atmosphere which, while adequate for respiration, can explode violently. With 90 percent displacement, methane will not burn or explode, but it will asphyxiate an unprotected worker in about five minutes.

OSHA is concerned that employees may be exposed to atmospheric hazards because the employer has not properly evaluated the work operations. Problems could arise, for example, where an employer has not selected the necessary atmospheric test instruments or has not ensured their proper use. Problems have arisen because most of the instruments used to test the flammability of a permit space atmosphere do not identify specific gases or vapors, nor do they identify oxygen deficient atmospheres.

For example, some test instruments would indicate the absence of an explosion hazard simply because the atmosphere did not contain sufficient oxygen for combustion, but would not indicate that the oxygen deficiency also posed an asphyxiation risk. On the other hand, a test performed only to determine the oxygen level might indicate that conditions are acceptable for entry without respiratory protection, despite the presence of 10 percent methane, an explosive level, in the atmosphere. Therefore, OSHA proposes to require that employers test and monitor their entry spaces with instruments which will detect hazardous atmospheres.

OSHA presents the following examples regarding atmospheric hazards to illustrate how a relatively uncomplicated series of events can lead to workplace deaths and injuries. In each case, OSHA believes that death and injury would have been prevented if the procedures and safeguards required in this proposed rule had been used. OSHA notes that the hazards confronted could only have been controlled effectively through the use of mechanical ventilation. OSHA recognizes that many confined space workplaces present situations which are more complex than those described below.

a. Fatalities in asphyxiating atmospheres. In its analysis of these confined space incidents, OSHA uses the term "asphyxiating atmosphere" when referring to an atmosphere which contains less than 19.5 percent oxygen because that is not enough oxygen to supply an entrant's respiratory needs when performing physical work. These atmospheres need to contain no toxic materials—such toxic atmospheres are discussed later. For example, the oxygen in a space may have been absorbed by materials, such as activated charcoal, or consumed by a chemical reaction, such as the rusting of a vessel or container. In another situation, the original atmosphere may intentionally have been wholly or partly inerted using such gases as helium, nitrogen, methane, argon, or carbon dioxide. Victims often are unaware of their predicament until they are incapable of saving themselves or even calling for help.

Example #1. A worker in Oklahoma prepared to enter a molasses tank. The atmosphere had not been tested and no respirators, retrieval lines or harnesses were provided. Following a longstanding practice at the company involved, employees removed the tank lid and allowed the tank to "ventilate naturally" for several hours before entering. No testing of the tank's atmosphere was undertaken. The first entrant reported feeling ill as soon as he entered, and collapsed almost immediately. Two "standby" workers, required by the plant's "procedure," entered to rescue him. Each of them collapsed after saying they felt dizzy. All three employees died.

Example #2. During the same year three workers died in a molasses tank at a Kansas feed mill in circumstances almost identical to example #1. OSHA has determined that these fatalities occurred because the oxygen level in each tank was too low to support life.

Example #3. In Oklahoma, a three-man work crew ruptured a water line while boring through a street to prepare the way for extended water service. The

workers were instructed to close off three valves in order to cut off water flow to the damaged pipe. The workmen had no personal protective equipment or training for confined space entry. They were aware of a company policy which required atmospheric testing before entry, but they decided that shutting off the water was more important. They had no trouble with the first valve pit. However, the employee who entered the second pit, which had not been opened in three years, soon called for help. The crew leader entered the pit to assist the initial entrant but was overcome. The third crewman realized that entering the pit was unsafe and went for help. Firemen equipped with self-contained breathing apparatus were on the scene within a few minutes. They entered the second valve pit, discharged oxygen from cylinders to increase the oxygen level and retrieved the victims. Both victims died shortly afterward, asphyxiated due to oxygen deprivation. The accident report noted that the oxygen level at a valve pit two miles downstream from the scene of the accident was only three percent.

The entry permit program (§ 1910.146(c)) required by the proposed standard is a systems approach which would have prevented all eight of the deaths in these three examples. The proposal requires, prior to actual entry, that the person authorizing or in charge of entry determine that the atmosphere in the space is safe. This would include determining that the atmosphere is not oxygen deficient (§ 1910.146(g)(1)).

Such determinations prior to entry would have shown that the "natural ventilation" had not made the tank safe for entry, and the person in charge would not have allowed entry (§ 1910.146(c)(2) and (g)(1)(ii)) until the atmosphere was made safe.

Had there been the need for a rescue at a later time, the rescuers would have been notified in advance of the hazards and been available to perform rescue (§ 1910.146(h)). The attendants themselves would have been trained not to enter the tank to perform rescue (§ 1910.146(f)(3)). The entrants would have been ordered to evacuate as soon as they complained about feeling "dizzy" (§ 1910.146(f)(2)(ii)) and exit would likely have been completed before anyone even lost consciousness.

b. Fatalities in toxic atmospheres. The term "toxic atmospheres" refers to atmospheres containing gases, vapors or fumes known to have poisonous physiological effects. The toxic effect is independent of the oxygen concentration, which may in fact be greater than 20 percent. The most

commonly encountered toxic gases are carbon monoxide and hydrogen sulfide.

Some toxic atmospheres may have severe harmful effects which may not manifest until years after exposure, while others may kill quickly. Some can produce both immediate and delayed effects. For example, while carbon disulfide at low concentrations may exhibit no immediate sign of exposure, it can cause permanent and cumulative brain damage as a result of repeated "harmless" exposures. At higher concentrations, it can kill quickly.

Example #1. A foreman and a worker entered an unventilated sewer in Arizona to refuel a gasoline-powered pump. The sewer atmosphere was not tested, and the employer provided no procedures or equipment for rescue. The worker was overcome by carbon monoxide and died. The foreman managed to escape from the sewer and call the fire department for help. A "passerby" tried to rescue the worker, and was also fatally overcome. Thirty firefighters and eight co-workers were treated for carbon monoxide poisoning resulting from this single incident.

Example #2. An employee (also in Arizona) entered a solvent storage tank to remove toluene residues. The tank was 20 feet tall and 10 feet in diameter. The employer had rented a self-contained breathing apparatus (SCBA) for this entry and showed the employee how to use it, but again the tank atmosphere had not been tested, nor had any provisions for rescue been made. The employee was provided with a length of rope for his descent into the tank. The employee could not fit through the tank's opening while wearing the SCBA, so the employer decided that the SCBA would be lowered to him, using the same rope, after the employee reached the bottom of the tank. After entry, the employer lowered the SCBA, but the worker collapsed before he could put it on. A call for help was sent to the city fire department.

Because of the small opening, the firemen who responded to the rescue call could also not enter the tank while wearing SCBA. They decided that only by cutting open the tank could they possibly rescue the victim. Despite the precautions taken by the firemen during the cutting of the tank, the toluene vapor in the tank ignited. The explosion killed one fireman and injured 16 others. It was later determined that the entrant was already dead due to the toxic effects of toluene and lack of oxygen before the explosion occurred.

Both of these incidents occurred because the hazard was not fully appreciated by entrants and would-be

rescuers, and proper procedures were not followed. The permit program (§ 1910.146(c)) and the permit system (§ 1910.146(d)) would have prevented the deaths and injuries cited in these two examples.

In the first example, if the worker's employer had made appropriate rescue provisions (§ 1910.146(c)(8)), the worker could have been rescued by the foreman. The worker's injuries would most likely have been limited to abrasions from being dragged through the sewer line. Again, hazard control and verification of safe conditions as required by this standard (§ 1910.146(c)(2) and (g)(1)(ii)) would have prevented the unsafe entry in the first place.

In the second example, the standard would require the employer to identify all of the serious hazards prior to entry (§ 1910.146(c)(1)) and train his employees in proper entry procedures (§ 1910.146(e)). By so doing, the unsafe entry would not have been authorized (§ 1910.146(g)(1)). Also, if appropriate rescue provisions had been made (§ 1910.146(c)(8)), the worker could have been rescued without help by the fire department.

c. Fatalities due to flammable or explosive atmospheres. OSHA defines the term "flammable or explosive atmosphere" as an atmosphere which poses a hazard because flammable gases, vapors or dusts are present at a concentration greater than 10 percent of their lower flammable limit. This last subcategory of hazardous atmospheres includes atmospheres containing gases such as methane or acetylene; vapors of solvents or fuels such as carbon disulfide, gasoline, kerosene or toluene; or dusts of combustible materials.

Example #1. Workers at a refinery in Puerto Rico were cleaning a large storage tank. Since it had last been cleaned, the tank had been used at various times to store gasoline, gas oil, and light and heavy crude oils. The employer expected that the tank would contain residues from these liquids.

The procedures, tools, and all other equipment to be used for entry were prescribed by an entry permit prepared by the parent company, not by the refinery. Under the terms of the entry permit, workers were required to use air-supplying respirators, lifelines, explosion-proof lighting, and were also required to test the atmosphere for flammable conditions before and during entry. However, no one at the refinery had been made accountable for compliance with the permit.

Employee accounts indicate that the refinery management had originally followed permit procedures, but that

permit requirements were generally ignored the day of the incident. For example, even though it was known that the work could generate a flammable atmosphere and that only explosion-proof lighting was allowed where a flammable atmosphere could exist, only two of the twelve lamps illuminating the inside of the tank were explosion-proof; no lifelines were available; and no atmospheric monitoring was done.

Five employees were in the tank when it exploded and burned briefly. The workers outside the tank were unable to help them. The fire burned out in just seconds, but by then four of the workers were dead. The fifth entrant died of massive respiratory injuries several days later.

Compliance with the proposed standard would have prevented this incident. The hazard was not controlled (§ 1910.146(c)(2)). Prescribed equipment was not used, inappropriate equipment was used and proper entry procedures were not followed (§ 1910.146(g)(1)(ii)). Atmospheric testing and monitoring were not performed (§ 1910.146(g)(1)(ii) and (g)(1)(iii)). There was no clear chain of command or responsibility (§ 1910.146(c), (d) and (g)(1)). The refinery personnel were not adequately trained (§ 1910.146(c)(6)) and supervised in the appropriate entry procedures (§ 1910.146(g)).

Fatalities from engulfment. "Engulfment" refers to situations where a confined space entrant is trapped or enveloped, usually by dry bulk materials. The engulfed entrant is in danger of asphyxiation, either through filling of the victim's respiratory system as the engulfing material is inhaled, or through compression of the torso by the engulfing material. In some cases, the engulfing materials may be so hot or corrosive that the victims sustain fatal chemical or thermal burns, but are never buried below a point at which they can breathe.

Example #1. A group of employees of a Nebraska sawmill entered a 40 foot high storage tank, thought to be nearly full of sawdust. Entry was made through a small opening near the top. One of these workers suddenly disappeared. He had fallen into an air pocket in the sawdust. Rescue operations began immediately, but the worker died of asphyxiation by the time his body was recovered.

Two years earlier, this same employee had narrowly escaped death in a similar incident only because his foreman had seen him sinking into the sawdust and managed to grab his hand and pull him out.

OSHA's report on the fatal incident quotes the sawmill's report of its own

investigation of the earlier, non-fatal incident, which concluded that the company "decided for bin workers to use a safety rope . . ." The only "rope" on hand at the time of the fatal incident was a cord formed by knotted-together pieces of rotted sash cord. The employees did not use this rope because they recognized that it was useless and also, in the words of the employees, "because it was too much trouble."

Example #2. A truck driver was draining sawdust from a 22-foot high bin in Pennsylvania when he noticed that the flow had prematurely slowed to a trickle, indicating that the sawdust had probably stuck to the walls of the bin. Following the usual practice, he took a pipe, climbed to the top of the bin and climbed inside to knock the sawdust loose. The owner of the bin and the entrant had previously discussed the hazards involved in entering the bin. While no formal procedures had been set, the owner had provided a safety line for use when entering the bin. The entrant did not use the safety line on this occasion. As he was banging the walls, the sawdust beneath him gave way and he was engulfed in sawdust. About two hours later, the owner noticed that the man was missing and checked the bin. The victim's body was discovered and removed. It was determined that the entrant had died of asphyxiation.

In the first example the employer did not appreciate how severe the hazard was. As a result his employees did not know there was a serious hazard, what the hazard was, nor how to protect themselves from it. Compliance with the proposed standard would have prevented this incident because the employer would have ensured that the proper procedures and equipment were used (§ 1910.146(c)) before allowing entry (§ 1910.146(g)(1)).

In the second example, if the employer had followed the entry permit program and the permit system required by the proposed standard (§ 1910.146(c) and (d)), the need to dislodge the bridged sawdust from outside the tank, and the need to make appropriate provision for rescue would have been recognized.

Fatalities due to mechanical hazards. OSHA has determined that accidents have resulted in confined spaces when employers failed to isolate equipment from sources of mechanical or electrical energy. In each case reviewed, death resulted from mechanical force injury, such as the crushing of the victim. OSHA has determined from its review of accidents involving mechanical hazards that the correct preventive

action is to secure the machinery or equipment so that it will not be inadvertently activated while employees are in the confined space. This procedure is commonly called "lockout."

Example. A workman entered the bag house in the dust collection system of an Ohio basic-oxygen steelmaking furnace to check the condition of the bags. He stepped onto the dust conveyor, which was not supposed to be operating at the time, and was caught in the machinery. The employee died before rescuers could remove him from the auger pipe conveyor.

As required by the standard, the hazards would have been identified (§ 1910.146(c)(1)) and entry could not have been authorized (§§ 1910.146(d) and (g)(1)) until both the conveyor had been locked out, and the environmental conditions were acceptable for entry.

Fatalities among untrained rescuers. As noted above, OSHA has determined that a high percentage of confined space accident victims have been untrained rescuers. Indeed, in some cases the unsuccessful rescuers die, while the initial entrant recovers. The likelihood that good intentions and poor preparation will lead to tragedy has led the Agency to establish criteria for rescue which would protect co-workers or volunteers from accidental injury or death. The following summaries illustrate how would-be rescuers have created problems for themselves and for the initial victims they sought to rescue.

Example #1. A Connecticut fuel company owner sent an employee into a large underground vault. The vault's only means of access and ventilation was straight down through six feet of 30-inch steel culvert pipe. The employer reportedly told police that "he heard a clunk" soon after his employee descended into the vault. Concerned because he had lost contact with this employee, he sent in a second employee. This rescuer collapsed at the foot of the ladder. The employer then directed a third employee to go in and help the others. The second rescuer collapsed before he got to the bottom of the ladder, with one leg caught between two ladder rungs. This hung the employee upside-down, interfering with rescue efforts by the firemen who were summoned to the scene.

Both "rescuers" were pronounced dead at the scene. The initial entrant died two days later from massive brain damage caused by prolonged oxygen deprivation.

OSHA subsequently learned from police department records that about six years earlier, two employees were overcome by lack of oxygen in a similar vault operated by the same employer. In

that case, the entrants were rescued without loss of life. Unfortunately, the employer had not taken advantage of the close call warning by implementing procedures which would have prevented subsequent incidents.

Because the proposed standard embodies a systems safety approach, trained rescuers would have been available and would have been equipped with proper respiratory protection (§§ 1910.146(c)(8), (d)(2)(vi) and (h)(1)). In addition, the proposed standard requires verification that the vault atmosphere is safe prior to entry (§ 1910.146(g)(1)(ii)).

Example #2. An employee of a septic tank cleaning company in Georgia entered a waste tank at a chicken hatchery to remove sludge. Three other employees were on hand during the job. None of the four had training or equipment for dealing with confined space hazards. There was no atmospheric testing of the space. The septic tank clean-out procedure had been used for five years without mishap, so it is unlikely that the employees expected to face an uncontrolled hazard. Unfortunately, unknown to the contractor, the chicken hatchery had just changed its chlorine compounds used for cleaning the hatchery, creating a hazard from exposure to chlorine gas. The first entrant was overcome by toxic gases almost as soon as he entered the tank. Two of his co-workers tried to rescue him, but were themselves overcome. The fourth worker ran for help, then returned to the tank and attempted rescue. He, too, was overcome. Firemen wearing protective gear and self-contained breathing apparatus retrieved the victims. The initial entrant and the first two would-be rescuers died from chlorine exposure. The fourth employee sustained permanent severe brain damage.

The firm that hired the septic tank cleaning company had a written confined space entry program which specified atmospheric testing, ventilation, special equipment and training for any of its own employees who would enter these spaces. Included in the firm's program was a total ban on confined space entry by its own employees.

The septic tank cleaning firm had no program. The proposed standard could have prevented this incident by requiring the employer to inform the contractor of the confined space hazards (§ 1910.146(c)(10)). In addition, the proposed standard makes it clear that the contractor, like any other employer whose employees may be exposed to confined space hazards, must implement

a confined space entry program (§ 1910.146(c)).

B. Need for Proposed Standard

Based on its investigations and studies of confined space incidents, its review of the published literature, and its accumulated knowledge of confined space hazards, OSHA has determined that employees who are required to work in confined spaces face a significant risk of injury or death.

The Agency believes that many employers have not adequately protected their employees from confined space hazards, despite warnings and accidents they may have experienced, and that employee protection will not improve sufficiently in the absence of comprehensive OSHA regulation. As discussed in Section VI of the Preamble, below, there is a sizable worker population exposed to permit space hazards, and a significant annual injury and death toll. Therefore, OSHA has decided to initiate rulemaking by issuing this proposed standard, which includes provisions for procedures, training and safeguards to minimize the potential for confined space injuries and deaths. The Agency invites comments and information regarding confined space hazards, injuries and accidents.

OSHA believes that only through the implementation of comprehensive entry permit programs will employees receive the necessary protection from permit space hazards. The Agency anticipates that compliance with the proposed standard will compel employers to think through and implement entry precautions and procedures which ensure that any entry to a permit space can be performed safely. Furthermore, OSHA believes that the implementation of an entry permit program which includes written procedures will enable employers and employees to review their entry procedures critically so that unsafe practices can be recognized and corrected before an incident occurs. Also, if an incident does occur, the permit and written procedures will provide management with appropriate tools for rescuing entrants and for determining both what caused the incident, and how to prevent a recurrence.

On August 1, 1983, OSHA began distributing a first draft of this proposed standard to all the parties who had submitted comments in response to either of the ANPR's or who had testified at the public meetings, as well as to the OSHA Regional Offices, the State Plan States, and parties who requested a copy of the 1983 draft. The 1983 draft was extensively revised

based on comments from the more than 120 reviewers and, on February 1, 1984, OSHA began distributing a second draft to interested parties, requesting comments and suggestions. These responses were also considered in the preparation of this proposed standard.

In summary, OSHA has obtained a wide range of inputs from interested parties for developing this proposal and its appendices. OSHA believes that employees who work in entry permit confined spaces face significant risks from safety and health hazards, and that this proposal is required to better control or eliminate these hazards. OSHA believes strongly that compliance with these proposed requirements would greatly reduce the number of deaths or injuries in permit required confined spaces.

III. Issues

In drafting this standard, OSHA has identified several areas of concern which are not presently addressed in this proposed standard, but which merit additional consideration. In addition, there are several subjects covered by the standard for which OSHA requests more information to develop a more complete rulemaking record. Therefore, OSHA has developed the following issues for which it requests comments.

Please support your comments with information identifying industries, spaces, and the nature of the work requiring entry into these spaces and any available accident data.

1. In this proposed rule, OSHA has established training requirements for entrants, attendants, and also for those persons to whom the employer would delegate authority to be in charge of an entry or to authorize entry(ies). OSHA has not specified or suggested the experience or training necessary for the individual who would initially evaluate spaces, identify their hazards, and formulate the requirements (including means of isolation to be used, acceptable environmental conditions, types of environmental testing and frequency of testing) and the procedures that must be used for safe entry into those spaces identified as permit spaces. Likewise, OSHA has not specified what experience or training would be necessary to qualify a person to perform pre-entry testing and verification of permit conditions that would allow entry to commence.

Should OSHA set experience, proficiency, or other criteria to qualify individuals who are expected to initially evaluate spaces and develop appropriate entry procedures? If so, what should these criteria be? Should persons with the training and

experience equivalent of a certified safety professional, a registered professional safety engineer, an industrial hygienist, or a marine chemist qualify? What should small employers do that do not have such professionals? Should OSHA specify experience and training requirements for persons who perform the pre-entry tests and monitor conditions during entry? If so, what would persons performing these tests need to know and understand? Is it essential that they know field calibration procedures, and should they be trained to interpret the results of the testing?

2. OSHA based the proposed standard on its analysis of hundreds of confined space fatality incidents. Most of these are in the public record. The proposed rule takes a performance oriented "systems" approach, and for this reason contains redundancies to protect confined space workers.

Based on the redundancies of the "systems" approach, OSHA estimates the proposal to be 80 percent to 90 percent effective in reducing fatalities, assuming compliance with these requirements. Is the assumption of 80 percent to 90 percent effectiveness valid? Should it be higher or lower? If so, why should the estimated level of effectiveness be changed? Does the proposal contain enough safeguards for permit space entrants, or are there redundancies which should be eliminated? If so, which requirements are considered redundant and why? Please support your comments with injury information or other relevant documentation.

3. OSHA has proposed a definition for "permit required confined space" (permit space) (§ 1910.146(b)(10)) in order to state clearly the criteria by which employers must evaluate their workplaces to determine if they contain permit spaces. Is the definition clear? Are there circumstances where the application of the proposed definition would either include work areas that should be excluded, or exclude work areas that should be included within the scope of this proposal? OSHA requests input on the adequacy of the proposed definition, including suggestions, accompanied by supporting information, for additional or alternative definitional language. (Please also see issue 17.)

4. OSHA is aware from sources such as its Fatality and Catastrophe Reports that a significant number of deaths and injuries occur in spaces which the Agency proposes to regulate as permit required confined spaces. "Minor injuries," often called "near misses" in the confined space context, are usually not reported or otherwise available to

OSHA. (These "events" generally involve entrants recognizing their unsafe situation while they are still capable of unassisted escape, or can escape with help from others. Often they recover without hospitalization or seeking medical attention.)

In order to assist the Agency in estimating the benefits of implementing this proposal, OSHA requests that information and available documentation on all confined space incidents be submitted, including those incidents with non-fatal and noncatastrophic consequences. Please identify the space involved and the industry or type of workplace in which it is located.

5. OSHA proposes (§ 1910.146(d)(3)), to require that, unless the person who authorizes the entry assumes direct charge of the entry for its duration, employers prepare a permit which specifies the place, time, purpose, personnel assigned for the entry and ensure that the signature, together with the legibly marked name, of the authorizing person is placed on the permit.

Is it appropriate for employers to supervise entry operations in lieu of putting this additional information on a permit? Would the combination of a permit which satisfies proposed paragraph (d)(2) and the employers direct supervision provide adequate employee protection? How useful would it be to allow such an approach? To what extent would allowing an employer to supervise entry instead of issuing a more complete permit be cost-effective? OSHA requests that commenters submit information on any projected cost savings, any workplace experience which would indicate the extent to which the proposed provision would be appropriate, and examples of procedures and permits which have been used.

6. OSHA proposes (§ 1910.146(f)) certain duties for an individual who would serve as an attendant outside a permit required confined space. Should OSHA add a requirement that such individuals perform no other work when they are working as attendants? Should activities directly related to the entry, such as passing tools or other materials to entrants be allowed to be performed by attendants? How much attention, if any, should an attendant be permitted to spare for other activities? In its cost analysis, OSHA has assumed employers would use less experienced (and thus lower paid) workers as attendants. Is this realistic? Please support your comments with information on

experiences of attendants who have or have not been assigned other duties.

7. The proposed standard emphasizes that both equipment and procedures are necessary to protect employees from atmospheric hazards. What additional provisions or revisions would be appropriate to protect employees from hazards such as nipping or crushing? Please submit information on equipment and procedures used to control physical and mechanical hazards.

8. OSHA has proposed to exclude the agriculture, construction and maritime industries from the scope of this rulemaking, based on the determination that "permit space" entrants in those industries are protected by existing regulatory language. Do these regulations provide adequate protection? Please submit information on injury and fatality data and workplace experience with the "permit space" standards for those industries.

9. The proposed standard uses performance-oriented language, except in a few cases where OSHA would set the permissible levels for certain substances in the workplace atmosphere. OSHA has chosen this approach in order to provide employers with maximum flexibility in determining how to protect their employees. Is this approach appropriate? Are there proposed provisions using performance-oriented language which should be revised to use specification language? Are there provisions using specification language where the specified levels should be changed or where performance-oriented language should be substituted? OSHA requests supporting information for suggestions and that information be submitted on the impact that any such revisions would have on the anticipated costs and benefits of the proposed rule.

10. OSHA anticipates that the cost of employee training will contribute most of the initial cost burden for the proposed standard. The Agency expects that a one hour training session will be adequate for all employees who have duties under the entry permit program. Would this amount of time be adequate to train the employees properly? What features should be added to or removed from the proposed training requirements? Please submit information on existing programs.

11. OSHA has determined that there are permit spaces which, while subject to the proposed standard, either pose such a low level of risk or have had their hazards so controlled that they could be

safely entered without an attendant on hand under a permit which could last as long as a year (proposed paragraph (i)). To what extent should OSHA differentiate permit requirements based on level of risk? Should OSHA limit an employer's ability to qualify for use of a special permit once he or she has had a special permit revoked? What criteria should an employer use to determine if the use of a special permit is appropriate?

12. OSHA anticipates that many employers will use retrieval lines for rescue of entrants, but also understands that employers might use other rescue methods, particularly when retrieval lines would pose an entanglement hazard. OSHA is interested in receiving information on the various nonentry rescue methods, particularly regarding their costs and any experience using them.

13. OSHA is considering adding a non-mandatory appendix as a source of general guidance for employers in understanding and complying with the proposed standard. Are there subjects, such as classification of permit spaces, rescue procedures, and the selection, maintenance and use of personal protective equipment, which should be added to such an appendix? Specific recommendations for material to include in an appendix are requested.

14. In addition, the Agency would be interested to learn if there are any industries or employees within industries covered by this proposed standard which, due to their size, would lack the resources to develop their own entry permit programs. OSHA is considering adding additional material to a nonmandatory appendix which would provide examples of specific procedures to aid employers in complying with the proposed standard. Please submit any sample procedures which it is felt would be appropriate for consideration as guidelines in a non-mandatory appendix.

15. In this proposal (and in conjunction with current OSHA Standards) OSHA would require employees to wear atmosphere supplying respirators when working in atmospheres containing less than 19.5 percent oxygen when employees must enter spaces with reduced oxygen content. Please submit information on: (1) The estimated number of employees who work in such atmospheres; (2) the actual oxygen content of the atmospheres in which they work; and (3) any effects this reduced oxygen content

has been shown to have on unprotected employees (who may have entered the spaces without realizing that the space contained a reduced oxygen content).

16. OSHA requests information, based on actual recorded atmospheric measurements, on any physical or physiological effects caused by rapid transition from breathing normal air (21 percent oxygen content) to breathing atmospheres containing less than normal oxygen content (such as the transition of any employee inhaling air outside a permit space and then inhaling air from inside the space) particularly when vertical entry is made into a space containing such an atmosphere.

17. OSHA recognizes that the hazards associated with particular permit spaces will differ in nature and degree according to the type of space being entered. In this rulemaking, the Agency has proposed to allow employers the flexibility to tailor their entry permit programs so that the particular conditions encountered are taken into account. In addition, OSHA has proposed somewhat different requirements for the two categories of spaces (permit required confined spaces and permit required low-hazard permit spaces) identified by the Agency. Are there permit space areas or operations, which have unique worker protection needs not addressed by the proposed standard? Are there, on the other hand, work areas which, while considered permit spaces under the definition proposed (See Issue 3) would not need to have all of the protective measures which are required by the proposed standard in order to ensure safe entry? For example, OSHA has no accident or fatality data, related to confined space work, for several industries (see Average Annual Fatality table). Is this lack of injury data due to data collection problems or does it indicate that permit spaces in those industries are inherently safer than spaces for which OSHA has accident or fatality data? Or does the data indicate that proper confined space entry procedures, such as those proposed by OSHA, are being followed in those industries?

The Average Annual Fatality table shows the relative cost-effectiveness of the rule in the various SIC classifications. This table shows tremendous variation in the "cost per fatality prevented" from SIC to SIC. If this analysis is correct, this rule, as proposed, would be much more cost-effective in some industries than in other industries.

AVERAGE ANNUAL FATALITY TABLE

(Average Annual Fatalities in Permit Spaces and Annualized Compliance Costs of the Proposed Standard, and Cost per Fatality Prevented, by Industry¹)

Industry	(a) Average annual fatalities	(b) Annualized compliance costs	(c) Cost per fatality prevented ((a)/(b)) ²	(d) Annual cost limit per fatality prevented ³
Elec. Gas, Sanitary Services	8.8	53,084,362	8,978,058	6,978,058
Wholesale Trade/Nondurable	1.3	16,819,521	11,957,629	11,957,629
Electric/Electronic Equipment	0.3	16,241,658	55,424,659	16,241,658
Food and Kindred Products	4.7	14,096,949	2,996,898	2,996,898
Transportation Equipment	2.0	11,064,207	4,865,542	4,865,542
Agricultural Services	0.0	7,488,232		
Fabricated Metal Products	0.7	6,578,192	9,051,845	6,578,192
Primary Metals Industry	2.3	5,804,593	2,256,056	2,256,056
Stone, Clay, Glass & Concrete	0.3	5,148,490	17,568,221	5,148,490
Rubber Products	0.7	4,646,280	8,393,318	4,646,280
Paper Products	1.9	4,358,625	2,094,902	2,094,902
Health Services	0.0	4,023,918		
Motor Freight Transportation	1.1	3,598,841	2,966,436	2,966,436
Machinery, Except Electrical	0.5	2,058,862	3,860,365	2,058,862
Petroleum Ref. & Related Industry	0.7	1,615,992	2,088,853	1,615,992
Furniture and Fixtures	0.0	1,509,409		
Chemicals & Allied Products	5.3	1,382,040	234,171	234,171
Wood Products (Less Furniture)	0.2	1,140,080	5,894,734	1,140,080
Misc. Manufacturing Ind.	0.0	1,071,193		
Textile Mill Products	0.0	828,023		
Hotels and Other Lodging	0.3	736,021	1,902,781	736,021
Oil & Gas Extraction	2.9	585,000	179,848	179,848
Misc. Retail	0.0	300,685		
Personal Services	0.0	88,644		
Tobacco Manufacturers	0.0	48,248		
Leather and Leather Products	0.8	18,909	20,550	18,909
Printing and Publishing	0.0	932		
Instruments & Related Prods	0.2	637	3,293	637
Museums, Botanical, Zoo	0.0	334		
Motion Pictures	0.0	0		
Industry undetermined ³	6.1	0	0	0

¹ For further discussion of fatality and cost estimates, see Section VI.² Because about 15% (8.1 annual fatalities show in the final line of this table) of the fatalities could not be attributed to a specific industry, individual industry sector values may be substantially overstated.³ This column reflects the fact that the actual industry sector cost will not exceed this annual limit.

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

The extreme variations in cost-effectiveness suggest that (since the cost for each confined space was held constant for all SICs) the risk of dying in a confined space is much lower in some industries than in others, despite the equal treatment of the industries in the rule. In other words, it suggests that OSHA has not adequately distinguished between low-risk confined spaces and high-risk confined spaces.

Such variations in cost-effectiveness could also mean that more intensive regulation in some SICs (where the rule is more cost-effective) and less intensive regulation in other SICs (where the rule is less cost-effective) would increase the number of fatalities prevented and reduce the overall cost of the rule. How can the definition of "confined space" be improved or the rule's provisions modified to increase the overall cost-effectiveness of the final rule?

Should OSHA expand proposed paragraph (i) or add a new paragraph to deal with specific circumstances where compliance with the basic program, as set out by proposed paragraphs (c) and (d), either would provide inadequate

protection or would impose an excessive burden? Please specify any permit space areas, operations or special conditions which OSHA should consider when it reviews this issue and determines what regulatory action, if any, would be appropriate. Insofar as commenters are suggesting additional requirements, please submit information on the anticipated costs and benefits of those provisions.

16. In proposed paragraph (c)(10), OSHA requires employers who control a workplace which contains permit spaces to inform contractors who would have employees enter those spaces of any existing or potential hazards and of any measures taken to protect entrants. The Agency would like to know if the term "contractor" is sufficiently inclusive to ensure that all employers who have permit space operations in workplaces they do not control benefit from the proposed paragraph. Are there employers who, while neither contractors nor in control of the workplace, would have employees enter permit spaces? Please describe any circumstances, arrangements and

procedures under which such employers have operated in permit spaces.

IV. Summary and Explanation of the Proposal

OSHA proposes to add a new § 1910.146 to Subpart J of 29 CFR Part 1910 which addresses the hazards confronting employees who enter "permit required confined spaces" (permit spaces). The proposed standard provides a comprehensive regulatory framework within which employers can apply the existing 29 CFR Part 1910 standards to protect employees who work in confined spaces. The Agency has proposed a definition for the term "permit required confined space" to state clearly which work spaces OSHA would consider subject to the proposed standard.

Paragraph (a) sets forth the scope and application of the proposed standard. OSHA has specifically excluded the agriculture, construction and maritime industries from the scope of this standard. As noted above in Issue 5, while OSHA believes that those industries are appropriately covered

under the existing industry-specific regulations, the Agency is interested in public input on the need for additional employee protection in those areas.

OSHA notes that the existing regulations for welding (§ 1910.251); pulp, paper and paperboard mills (§ 1910.261); and grain handling facilities (§ 1910.272) contain provisions which require employers to protect employees from hazards which the Agency proposes, in this rulemaking, to regulate as permit space hazards. OSHA's approach to such situations is to have the industry-specific provisions take precedence over the proposed generic permit space provisions, insofar as the two cover the same subject matters (with the same level of detail). In a case where the generic standard provides the only coverage for a particular subject matter, OSHA would apply the generic standard. OSHA believes that this approach strikes the appropriate balance between crediting efforts to develop a standard which meets the needs of a particular industry and ensuring that all employers protect their employees from workplace hazards, wherever those dangers arise.

In paragraph (b), OSHA is proposing a number of definitions which clearly state the meaning, for the purposes of this standard, of certain terms. OSHA has included this paragraph in the proposal because the Agency recognizes that some of the terms used in the proposed rule may be unfamiliar, or may have meanings which differ from their meaning in this proposal.

While most of the proposed definitions are self-explanatory, OSHA believes that an expanded discussion would be appropriate for several of them. For example, OSHA has proposed a definition for the term "entry" in order to indicate exactly when OSHA considers a person to have entered a permit space. Under the proposed definition, entry has begun as soon as an entrant's face breaks the plane of the permit space's opening and the entrant is breathing the atmosphere of that permit space.

The Agency has proposed this definition in recognition of the atmospheric hazards to which an entrant could be exposed even before the employee had completely entered and begun work in the permit space. Indeed, OSHA anticipates that, in the absence of the proposed standard, an employee could stick his or her head inside the permit space, be overcome by an atmospheric hazard and suffer death or injury due either to the direct effects of the atmospheric hazard or to falling into or near the permit space.

In proposed paragraph (b)(10) OSHA introduces and defines the term "permit required confined space" (permit space). Under the proposed definition, a permit space is: (1) Difficult to enter and leave; (2) not intended for employee occupancy except to perform repair or maintenance type tasks; and (3) presents or potentially presents serious hazards, including atmospheric hazards, and serious recognized hazards to any occupants. OSHA notes that, for the purposes of proposed paragraph (b)(10)(ii), doorways and other portals through which a person can walk are not considered to be limited means for entry or exit. The Agency emphasizes that this proposed standard is directed towards work areas, such as those with hatches and narrow passageways, whose configurations exacerbate employee risk by slowing evacuations and rescues.

In addition, OSHA proposes paragraph (b)(10)(iii) to make it clear that the work areas covered by this standard are unsuitable, by nature for continuous employee occupancy, because those spaces were created to contain such things as degreasers, sawdust and sewage, not to accommodate people. Indeed, under the proposed standard, an employer is required to ensure that a permit space is safe for entry only at the time that the entry could occur. OSHA anticipates that few, if any, employers whose workplaces contain permit spaces could both maintain those spaces safe for entry and use the permit spaces for their intended purposes.

OSHA considers the hazardous atmosphere element of the permit space definition to be so important that the five conditions that make a "hazardous atmosphere" are specifically enumerated in paragraph (b)(13). Two of the conditions listed in the definition of "hazardous atmosphere" are discussed here.

Under the proposed definition, a "hazardous atmosphere" may occur due to a concentration of airborne combustible dust that obscures vision at a distance of five feet (1.52 m) or less. This proposed language is based on eyewitness observations gathered during OSHA investigations of dust explosions. A statement found in almost every report describes the situation preceding the initial blast is " * * * the dust was so thick you could not see your hand in front of your face." OSHA specified the distance as five feet or less in order to provide employers with clear guidance as to the point at which a combustibility hazard might be present, given that there are no recognized

explosibility ratings for combustible dusts and there is no reliable equipment available to measure all combustible dust concentrations. The proposed language is readily understood and can be applied with minimal training and with no equipment required.

Proposed paragraph (b)(13)(iv), describes another hazardous atmosphere condition as an atmospheric concentration of any toxic, corrosive, or asphyxiant substance which exceeds, or could reasonably exceed, the permissible exposure limit for that substance specified in Subpart Z of 29 CFR Part 1910. In addition, if the substance does not have a permissible exposure limit specified in Subpart Z, then OSHA recommends the use of the exposure limits set for that substance in the "NIOSH Recommendations for Occupational Health Standards" dated 1986, the limits set for that substance as specified by the American Conference of Governmental Industrial Hygienists in their publication "Threshold Limit Values and Biological Exposure Indices for 1986-87" dated 1986, or other references such as material safety data sheets.

The term "low hazard permit space" means a permit space where there is an extremely low likelihood that an IDLH or engulfment hazard could be present, and where all other serious hazards have been controlled. OSHA proposes this definition in order to provide clear guidance for employers who may decide that compliance with proposed paragraph (i) is an appropriate alternative to providing an attendant throughout an entry. The Agency has proposed paragraph (i) in recognition that there may be spaces, which qualify only marginally as permit spaces and which have virtually no potential to pose IDLH or engulfment hazards, where the employer could ensure safe entry without an attendant on duty. OSHA distinguishes between IDLH and engulfment hazards on the one hand, and other serious hazards, requiring that the former be extremely unlikely, while requiring that the other hazards be controlled before an employer could choose to comply with paragraph (i) instead of paragraph (f). OSHA believes that permit spaces should be most closely scrutinized to determine if IDLH and engulfment hazards are or may be present, because those hazards can kill quickly and without notice.

Once IDLH and engulfment hazards have been identified as occurring in a space, proposed paragraph (i) would be inapplicable. OSHA recognizes that it is impossible to completely rule out the possibility that an IDLH condition will

arise, but requires that employers seeking to follow paragraph (i) make every reasonable effort to determine if IDLH hazards may arise in the permit space. Other hazards, once detected, can usually be reliably controlled. Therefore, the employer who can virtually rule out the possibility of IDLH or engulfment hazards and control any other serious hazards would be able to follow proposed paragraph (i). OSHA solicits comments on how best to define or explain this term.

The term "retrieval line," which appears in paragraph (b)(25), is defined as a line attached to a lifting device or an anchorage, with the other end attached to a worker, which can be used to pull the worker from a permit space. Retrieval lines often differ from lifelines in several respects. The retrieval line is used for retrieving an entrant to whom it is attached from a permit space, whereas a lifeline is used for fall arrest. Because the retrieval line needs only to be strong enough for that purpose, it may be handier to use, thinner, and a less expensive line than that used for lifelines. Unless the permit space contains the potential for a serious fall, the retrieval line would not need to withstand the impact loading associated with fall arrest, nor would the elasticity of a lifeline, which is desirable in arresting falls, be necessary. However, a lifeline may be used as a retrieval line if desired. The primary purpose of the retrieval line, as defined, is that the line is attached to the entrant and can be used for immediate rescue without exposing anyone else to conditions that disabled the entrant. Using the retrieval line with a powered winch is recommended and makes a much quicker rescue possible.

Proposed paragraph (c) requires employers to ensure that any permit spaces in their workplaces are identified, and that appropriate measures are taken to protect workers from permit space hazards. If an employer finds, upon completion of his or her initial investigation, that the workplace contains no permit spaces, the proposed standard imposes no further responsibility, except to ensure that any change in the workplace which creates potential for permit space hazards is detected in time for the appropriate measures to be taken.

On the other hand, if the employer determines that permit spaces are present in the workplace, then he or she has additional responsibilities depending upon the potential actions of his or her employees with regard to the permit spaces. If the employer determines that no one will ever enter

the permit spaces, the employer could satisfy the proposed standard by permanently shutting off the space in question and ensuring that no one could enter. If an employer finds that the workplace contains permit spaces, but determines that those spaces will not be entered by his or her employees, the employer could satisfy the proposed standard by taking whatever measures are necessary to ensure that his or her employees do not enter the spaces, such as by posting signs or by closing off the spaces; and by providing other employers, such as contractors who plan to have employees perform work in that permit space, with the information specified in proposed paragraph (c)(10), below.

Finally, where the employer determines that the workplace contains permit spaces, and that his or her employees will enter those spaces, the employer would ensure that any work in a permit space be performed in compliance with an appropriately protective entry permit program. The elements of such a program are discussed below. In recognition of the diversity of permit spaces, OSHA has drafted the proposed provisions in performance-oriented language so that employers can implement effective programs which are compatible with their operations. The Agency has arranged the provisions so they fit the logical sequence employers would follow in implementing the program.

Proposed paragraph (c)(1) requires employers to identify the potential permit space hazards that their employees could confront. OSHA is concerned that employees who do not know what hazards may appear in their permit spaces will be unable to protect their employees adequately. Indeed, OSHA notes that failure to identify potential hazards was a factor in several of the incidents reported in the Hazards section, above. Therefore, the Agency believes that compliance with the proposed paragraph will ensure that employers obtain the information needed to implement an effective entry permit program.

Proposed paragraph (c)(2) requires employers to establish and implement means, procedures and practices for control of the identified permit space hazards. OSHA notes, based on the incident reports, that employees do not benefit from the identification of permit spaces and the hazards associated with them unless employers follow through systematically to implement hazard controls. OSHA believes that authorized entrants are particularly dependent upon hazard controls for their protection

because the nature of permit space work, especially the way permit space configurations exacerbate hazards, tends to rule out reliance on personal protective equipment. OSHA requests information on the engineering and work practice controls which have been used to protect employees who enter permit spaces.

In implementing proposed paragraph (c)(2), the employer must ensure that employees are not exposed to substances whose concentrations exceed the permissible exposure limits (PELs) listed in § 1910.1000. OSHA recognizes that the "Z Tables" allow exposure to concentrations exceeding the numerical value of the time weighted average (TWA) listed, provided their ceiling values and their short term exposure limits (STELs) (for substances with a "C" notation in Table Z-1-A, or listed in Table Z-2) are not exceeded, and provided the duration of such exposure is short enough that the exposure during an eight hour period does not exceed the TWA for that substance.

For example, if a substance regulated in Subpart Z has an 8-hour TWA of one part per million (ppm), it would be permissible for an employee to be exposed to two ppm for up to four hours, or four ppm for two hours, etc., provided the employee has no other exposures and the ceiling and STEL values are not exceeded.

However, OSHA is concerned about the procedures that employers will use to comply with the PELs during confined space entry. Specifically, the Agency feels that, in many cases, employers should not characterize concentrations of a substance in a confined space on the basis of a single sample, and then calculate the duration that workers would be permitted to remain in the space without any protection other than by controlling the duration of exposure only, so that (at least theoretically) the PEL would not be exceeded. The Agency believes, in many cases, that there are too many uncertain variables in entering confined spaces which would make such a procedure unwise. For example, the restricted air circulation and non-homogenous atmosphere that characterize so many confined spaces might not be properly characterized by one, or perhaps even several, samplings of the atmosphere in the area where the entry work will be performed. Also, either the entry task or even the entry itself may "stir up" contaminants so that the ambient air concentration may rise and the PELs be exceeded. In addition, exit from a confined space in many cases is very difficult which may result in

unanticipated delays in workers leaving the space causing them to be exposed above the PEL. Lastly, the cause (e.g., a leaking valve gland) of the initial low to moderate reading may suddenly and unexpectedly deteriorate further (e.g., leak becomes a blowout), causing a sudden, very high exposure.

For these reasons OSHA generally recommends, as a procedure, that where conditions would tend to higher or unexpected exposures, employers need to take precautions, such as mechanical ventilation, personal protective equipment, or other measures, when employees enter confined spaces where the readings exceed the values listed for the 8-hour TWAs in § 1910.1000.

OSHA requests comments on this recommended procedure.

Proposed paragraph (c)(3) requires employers to establish a written permit system under which entry permits would be properly prepared, issued and implemented. The Agency believes that compliance with the proposed requirement would ensure that permit space entry took place only after all actions and conditions necessary for the protection of authorized entrants have been performed. In particular, OSHA believes that requiring a written system would provide the best assurance that an employer systematically addressed permit space concerns while implementing the entry permit program and while reviewing the program in light of entry experience. The provisions of the permit system appear in proposed paragraph (d). OSHA requests that commenters submit examples of permit systems for permit space entry.

Proposed paragraph (c)(4) requires employers to post signs near the permit spaces to notify employees what hazards may be present and that only authorized entrants may enter the permit spaces. The Agency believes that employees need this information to understand the seriousness of potential hazards in the workplace. The Agency anticipates that compliance with this requirement would ensure that employees who are not involved in permit space operations would be sufficiently informed so that they would not attempt to enter permit spaces. OSHA notes that only personnel who work with permit spaces would need to know more about the potential hazards.

Proposed paragraph (c)(5) requires employers to prevent unauthorized permit space entry. In addition, the proposed paragraph mentions training and the posting of signs and barriers as examples of means by which employers could comply with this provision. OSHA is concerned that personnel who are not authorized to enter a permit space are

unlikely to know of or to take the necessary precautions for safe entry. Therefore, the Agency believes that it is essential for employers to prevent unauthorized entry. OSHA requests that commenters submit information on methods used to prevent unauthorized entry and the effectiveness of those methods.

Proposed paragraph (c)(6) requires employers to train employees so they can safely perform their entry permit program duties. OSHA notes that inadequate training was an important factor in virtually all of the incidents reported in the Hazards section, above. The Agency has proposed this general requirement, in addition to the specific training requirements in proposed paragraphs (e) through (i), in order to emphasize that proper training is essential for safe permit space operations. OSHA requests that commenters submit information on training provided to employees working in permit space operations, including information on provisions for retraining.

Proposed paragraph (c)(7) requires employers to provide, maintain and ensure the proper use of the equipment necessary for safe entry, such as testing, monitoring, communication and personal protective equipment. This provision covers equipment which detects hazards before or during entry; which enables attendants to contact authorized entrants or rescue services; and which protects authorized entrants from any permit space hazards which may arise. OSHA believes, even though the proposal places primary reliance on hazard controls, that it is appropriate to require additional equipment and procedures to ensure employee protection in case hazard controls are inadequate. The Agency requests that commenters submit information on the equipment and procedures they have used.

Proposed paragraph (c)(8) requires employers to implement the equipment and procedures necessary to rescue entrants from permit spaces. OSHA notes that in most of the permit space incidents reported the entrants would not have been harmed if the proper rescue equipment and procedures had been available and used. Indeed, the incident reports indicate that many employers have made no provision for the rescue of entrants, and that this has resulted in fatalities among the would-be rescuers. Therefore, OSHA believes that this proposed paragraph is needed to ensure that employers make the necessary rescue equipment, such as retrieval lines, available and establish appropriate rescue procedures. OSHA requests information from commenters

on the equipment and procedures which have been used for rescue.

Proposed paragraph (c)(9) requires employers to ensure that all barriers necessary to protect authorized entrants from external hazards, such as vehicles or unauthorized entrants, are provided. OSHA is concerned that authorized entrants are extremely vulnerable to hazards, due to the nature of the spaces where they work, and that those hazards originate both inside and outside the permit space. The Agency notes that often protection has focused too strongly on hazards which arise inside the space. OSHA, therefore, believes that a specific requirement to prevent external hazards from endangering entrants would be appropriate to reflect the importance which OSHA attaches to effective control of all potential permit space hazards. OSHA requests information on barriers or other means which have been used to protect authorized entrants from external hazards.

Proposed (c)(10) requires individuals who control permit spaces (host employer) to provide contractors (or similar employers) who plan to have employees enter these permit spaces with all available information on permit space hazards; on efforts to comply with the standard; and on any other hazards, safety rules or emergency procedures. OSHA believes that contractors would need that information in order to comply with the proposed standard. As indicated by the preface to proposed paragraph (c), OSHA anticipates that compliance with the proposed provision would be particularly important where an employer identifies permit spaces, and then decides to have a contractor instead of his or her own employees perform permit space work.

OSHA notes that a contractor whose employees enter permit spaces would be under the same obligation as any other employer to comply with this standard. However, OSHA believes that a contractor who is unfamiliar with a particular workplace may be seriously hampered in his or her efforts to identify and control potential hazards. Indeed, that difficulty could be exacerbated where the party retaining a contractor assumes that the contractor knows how to operate safely in a particular space because the contractor has a particular professional expertise. In addition, as described above in the incident reports, contractor employees have been endangered where the host employer makes changes in workplace operations which create hazards, but does not inform the contractor. Further, once a contractor's employees have confronted

a hazard, employees of the host employer and members of an emergency rescue team could be killed or injured trying to save the initial entrants. Therefore, OSHA has determined that proposed paragraph (c)(10) is needed to ensure that contractors offset any disadvantage they might otherwise face in complying with this standard.

Proposed paragraph (d) requires employers who plan to have employees enter permit spaces to establish a system under which entry will be authorized, supervised and terminated, as necessary, to ensure protection of employees. In particular, the proposed paragraph requires employees to document certain critical elements of their compliance with the proposed standard. OSHA recognizes that the employers covered by this proposed standard are diverse in their activities, resources and safety concerns. Accordingly, the Agency has determined that this proposed paragraph should allow employers some flexibility in deciding how to comply with the proposed documentation requirements. The three compliance approaches which OSHA would consider appropriate are, as follows:

- Preparation of a written permit at the time entry is authorized which contains all of the information needed to document compliance with the proposed standard;
- Preparation of a written permit at the time entry is authorized which identifies the place, date and time of the entry and the personnel who are involved in the entry, along with a checklist portion of the permit (which may be pre-printed) which specifies the hazards potentially present and the precautions which have been taken to protect entrants;
- Direct supervision of the entry by the person authorizing entry using a checklist-type permit, in lieu of a more complete written permit, which specifies the hazards potentially present and the precautions which have been taken to protect entrants.

In addition, OSHA would not require employers to prepare a permit when the personnel entering a space are members of a rescue team summoned in compliance with this standard.

Proposed paragraph (d)(1) requires employers to provide a permit(s) through which the employers identify all conditions which must be evaluated to ensure safe entry. OSHA is concerned, based on the incidents reported, that employers have not been sufficiently careful about authorizing permit space entry, and believes that only a systematic approach will ensure that entrants receive the necessary

protection. The Agency has not specified a format for employers to use in complying with the proposed paragraph, because OSHA anticipates that individual companies or industries would have approaches which are attuned to their particular circumstances. The Agency has included sample permit system format(s) as a non-mandatory appendix to this rule. OSHA requests that commenters submit other samples of permit system formats which have already been in use.

Proposed paragraph (d)(2) specifies the required information on permit space hazards and entry precautions which the employer must include as part of a permit. OSHA recognizes that much of the information generated by employers planning permit space entries is unchanged from one entry to the next. In particular, this is the case with the identification of the potential hazard(s) and with the description of the measures that are necessary to protect entrants. Therefore, the Agency would accept the use of a pre-printed permit containing the required information in order to spare employers an unnecessarily repetitive burden. OSHA notes that allowing the use of a pre-printed permit would not reduce the employer's responsibility to ensure that the recorded information is accurate.

Proposed paragraph (d)(3) specifies the additional minimum information OSHA would require in an entry permit for entries not directly supervised by the individual authorizing the permit. OSHA believes that preparing a contemporaneous record of the entry place, purpose, time, date and personnel would ensure that the person authorizing an entry gave appropriate consideration to the precautions needed for that entry. OSHA notes that the requirement to identify the attendant does not apply when entry is performed without an attendant, pursuant to proposed paragraph (i), below.

Proposed paragraph (d)(4) requires that an employer who plans to have hot work, such as welding, done in a permit space detail that ventilation or other measures have been taken to ensure that authorized entrants would be protected from potential hot work hazards, such as fire or asphyxiation. This information could appear either in a permit or in a separate hot work permit which is attached to the permit. OSHA is not concerned about how the information is presented, as long as it is readily available. The Agency recognizes that requiring employers to copy hot work permit information onto a separate entry permit would impose an unnecessary burden on employers.

Proposed paragraph (d)(5) requires that, after all actions and conditions necessary for safe entry into a permit space have been performed, the person authorizing entry shall sign or initial the permit as applicable, and then allow entry to begin. OSHA has proposed this common sense requirement here, as well as in paragraph (g), in order to impress on employers that compliance with the proposed entry permit program requirements, and verification of that compliance in the permit, are prerequisites for entry. The Agency wants employers to take their responsibilities under the proposed standard very seriously, so that they sign off on an entry permit only if they are certain that the standard has been followed.

Proposed paragraph (d)(6) requires that, upon completion of the work for which the entry was required and after all authorized entrants have exited the permit space, the person who authorized the entry shall cancel the permit. Again, OSHA has proposed a common sense requirement, which also appears in paragraph (g). In this case, the Agency simply intends to provide clear guidance on what to do with a permit after the authorized work has been completed. OSHA notes that permits can remain valid for up to one year so long as the conditions under which the permit was issued are maintained. In addition, this proposed provision underscores the Agency's view that the authorization of entry is one part of a larger ongoing process by which employers ensure that their employees are protected from permit space hazards. OSHA anticipates that compliance with this paragraph would help to ensure that employers give due attention to all phases of the entry permit program.

OSHA anticipates that the information generated in complying with proposed paragraph (d) would be useful in ensuring the safety of particular entries, and also when employers review their entry procedures in light of their entry experiences, especially where employers are investigating incidents.

Proposed paragraph (e) requires employers to train and supervise the employees they assign to work as authorized entrants so that the entrants perform their work safely. OSHA notes that the provisions covering authorized entrants and attendants are very similar. This reflects the Agency's perception that authorized entrants and attendants have complementary responsibilities. OSHA believes that employers who cultivate a spirit of mutual trust and cooperation between entrants and

attendants will maximize safety and work efficiency.

In addition, OSHA observes that a given employee could be assigned to perform any of the duties set out in the proposed rule, as long as that employee has the requisite training. Many employers may elect to alternate workers between entrant and attendant duties. As a result, employees can develop a clear understanding of how the attendant's vigilance and the entrant's responsiveness combine to ensure workplace safety.

Proposed paragraph (e)(1) requires employers to ensure that authorized entrants know and can recognize the effects of the hazards they may confront, and that they understand the consequences of hazard exposure. As indicated by the injury and fatality data, permit space hazards often give very little warning before entrants are endangered. Therefore, OSHA believes that familiarizing authorized entrants with potential hazards will significantly increase the likelihood that an entrant would detect a hazard in time for successful escape or rescue.

Proposed paragraph (e)(2) requires that employers ensure that authorized entrants use the means furnished for communicating with attendants. In many cases, attendants will depend on information from entrants in determining whether it is safe to continue the entry. Indeed, OSHA anticipates that an entrant's failure to maintain contact, or that behavioral changes detected in communications from entrants, will indicate to the attendant that an entry should be terminated immediately.

The proposed paragraph also requires entrants to notify the attendant if they initiate evacuation. In this way, the attendant would be alerted to perform any assigned rescue-related duties, such as using a winch to haul entrants out or summoning a rescue team. OSHA believes that signaling the attendant would greatly improve the entrant's chances of exiting the space safely.

Proposed paragraph (e)(3) requires that employers provide and ensure the proper use of the personal protective equipment (PPE) necessary for safe entry. OSHA notes that the failure to provide and ensure the proper use of the appropriate personal protective equipment was a major factor in many of the incidents reported in the Hazards section, above. The Agency believes, therefore, that compliance with this proposed paragraph would prevent the recurrence of these reported incidents.

Proposed paragraph (e)(4) requires employers to ensure that their employees who work as authorized

entrants exit a permit space without assistance (self-rescue), insofar as it is physically possible, in the appropriate circumstances. OSHA believes that self-rescue will often provide the entrant's best chance of escaping a space when a hazard is present. The time lost waiting for the attendant to summon rescuers, waiting for the rescue team to arrive, or waiting for the attendant to perform any other rescue duties can be the difference between life and death. Also, the Agency notes that the narrowly configured openings of many confined spaces can make it very difficult for rescuers to pull or to carry out victims of permit space hazards. Therefore, while OSHA recognizes that self-rescue will sometimes be impossible, the Agency stresses the importance of self-rescue as a means of saving lives and minimizing injuries.

(f) *Training and duties of the attendant.* Proposed paragraph (f) requires employers to train and supervise attendants so they perform their work properly. As noted above, the provisions covering attendants and authorized entrants are designed to complement each other. The attendant's role in this relationship is particularly important where one attendant is assigned to monitor more than one entrant working in one or more permit spaces. The Agency observes that, in a setting where employees may be called upon to make split-second decisions, the employer who conscientiously trains and supervises attendants significantly reduces the likelihood that hazards, employee errors, or confusion will endanger authorized entrants.

Proposed paragraph (f) focuses the attendant's attention on detecting and responding to hazards. OSHA has not, however, proposed to prohibit the attendant from performing other assigned duties. The Agency believes that attendants could perform other duties as long as those other duties do not interfere with the requirements of proposed paragraph (f). OSHA envisions circumstances, for example, where attendants pass or receive equipment and materials to and from authorized entrants. OSHA has specifically requested public input on this matter in Issue 3 of this proposal.

Proposed paragraph (f)(1) requires employers to ensure that the attendant knows, at all times during the entry, how many persons are in the permit space so that no one is accidentally left in the space when it is returned to service. In event of an emergency in the space, the attendant also needs to know the number of entrants so that there are neither any entrants needing help left in the space, nor are there any useless

search and rescue entries conducted for persons who have already left the space.

Proposed paragraph (f)(2) requires employers to ensure that attendants know and can recognize the effects of the hazards entrants may confront in a space. The attendants would be required to monitor the permit space to ensure that any hazard was detected. In this way, authorized entrants, whose efficiency might suffer if they were preoccupied by efforts to detect hazards, could work carefully with the confidence that the attendant would detect any hazard which eluded their attention. OSHA also proposes to have attendants watch out for any entry space hazards which might originate outside the permit space.

Proposed paragraph (f)(3) requires employers to ensure that attendants maintain contact with authorized entrants. In addition, the attendant would, when necessary, order evacuation, deal with unauthorized persons in or near the space, and summon rescue and other emergency services. OSHA notes that establishing a routine for maintaining contact between attendants and entrants would help attendants detect problems within a space, because an entrant when first affected by a permit space hazard might signal the attendant erratically. The Agency has not prescribed any particular means or procedure for communication, because OSHA anticipates that the approaches chosen will have to vary according to the circumstances of the particular workplaces. The Agency's sole concern is that the means of communication chosen enable the attendants and the entrants to maintain effective and continuous contact.

Proposed paragraph (f)(4) requires employers to ensure that attendants properly perform any assigned rescue duties. OSHA is particularly concerned that employers prohibit attendants from entering a permit space to attempt rescue. There are numerous reports of attendants who died as would-be rescuers because they were unprepared for the hazards within the spaces. The Agency believes that the attendant does the most good for entrants by working from the outside, such as by attempting rescue through the use of retrieval lines or by contacting trained rescuers, and by being on hand to inform the rescuers of what has happened in the space. Furthermore, OSHA believes that the training of attendants should include simulated rescues, so that attendants can develop a systematic approach for summoning and dealing with rescuers.

and for performing any assigned rescue duties.

Proposed paragraph (g) prescribes the training and duties of individuals who authorize entry or who are in charge of an entry. Individuals who may authorize an entry may also assume the duty of either attendant or entrant if they have the proper training. OSHA believes that the successful performance of these roles is crucial to the success of the employer's efforts to ensure safe entry.

Proposed paragraph (g)(1) requires employers to ensure that individuals who authorize or take charge of entry operations make the necessary determination that acceptable entry conditions are present, that the entry permit or checklist is prepared correctly, and that entry authorization is terminated if acceptable entry conditions are not present.

OSHA believes that the proposed requirements are needed to ensure that entries take place only after certain findings have been made and after certain actions have been taken. The Agency notes that failure to follow through with entry procedures contributed to some of the incidents reported in the Hazards section, above. The proposed provisions clearly assign responsibility for verifying compliance to the individual who authorizes or is in charge of entry. OSHA observes that a single individual might both authorize and take charge of an entry. Indeed, that individual might also serve as the attendant.

Proposed paragraph (g)(2) requires employers to ensure that individuals authorizing or in charge of entry take the necessary measures to remove unauthorized individuals who are in or near entry permit spaces. OSHA is concerned that unauthorized individuals who get in or near a permit space may endanger themselves, as well as authorized entrants and personnel who may be needed to rescue the unauthorized individuals from entry space hazards. The Agency believes that the person authorizing or in charge of entry is in the best position to take the necessary action to deal with unauthorized individuals.

Proposed paragraph (h) sets out the requirements for in-house and outside rescue teams. The employer would choose whichever type of rescue team best suits his or her circumstances. The Agency is aware that, while prompt action by an in-plant rescue team may make the difference between a successful and a failed rescue, many employers may not have the resources to maintain a rescue team.

Proposed paragraph (h)(1) lists the minimum requirements for an in-house

rescue team. The standard would require that employers provide the rescue team with the equipment for rescue, and train the team in proper rescue techniques, as well as in entry procedures. At least one member of the team would be required to maintain certification in basic first aid and cardiopulmonary resuscitation (CPR).

Proposed paragraph (h)(2) requires employers who choose to use outside rescue services to ensure that the outside rescuers are informed of the hazards they may confront so they can equip and conduct themselves appropriately. Given that the employer has no control over outside rescuers, OSHA believes it is very important that employers keep designated rescuers informed of potential rescue needs.

Proposed paragraph (i) contains provisions under which employers could issue "special permits" which would authorize employees to enter low-hazard permit spaces without an attendant. Low-hazard permit spaces, as defined in proposed paragraph (b), pose an extremely low risk of posing IDLH or engulfment hazards and have had all other serious hazards controlled. OSHA believes that this divergence from the proposed paragraph (f) requirement for an attendant is justified where entrants routinely enter permit spaces to perform checking and inspecting, minor maintenance work and diked area work, because authorized entrants would be adequately protected from any possible atmospheric hazards through the proposed testing, monitoring and ventilation requirements and through the other proposed provisions. The Agency notes that employers who assign employees to enter permit spaces, which qualify only marginally as permit spaces, could find proposed paragraph (i) a reasonable alternative to complying with proposed paragraph (f).

OSHA proposes to limit the effective life of a special permit to one year. OSHA has not limited the effective life of entry permits when entry is to be performed with an attendant on hand. The Agency believes that an employer who complies with the requirements of the proposed standard, including the requirements for attendants, has provided sufficient assurance that entrants would be protected to justify permitting the employer to set the duration of the permit at the length appropriate to complete the pertinent work. On the other hand, OSHA believes that the authorization of entry without an attendant may provide less assurance that the necessary conditions for safe entry would be maintained. Therefore, the Agency would require employers who follow proposed

paragraph (i) to reevaluate and reissue their entry permits at least once a year to ensure that employers authorize non-attendant entry only when the necessary conditions and actions have been performed.

Proposed paragraph (i) covers situations in which employers who authorize entry with special permits, and who then revoke those permits because unacceptable entry conditions have arisen. These employers cannot allow entry into those spaces by special permit until the conditions of that space which allowed for special permit entry have been restored and the employer reevaluates the space and makes a new determination that the space may again be treated as a special permit (low hazard) space. This requirement reflects OSHA's concern that employees would be endangered if the employer was again allowed to authorize entry without an attendant and unacceptable entry conditions again arose. The Agency has serious doubts as to the likelihood that an employer could establish that a permit space for which a special permit has been revoked should continue to be treated as a low-hazard permit space. This provision also reflects OSHA's view that proposed paragraph (i) should only be available where employers can provide clear assurance that employee protection will not be compromised by absence of an attendant.

Proposed paragraph (i)(1) presents the additional requirements which employers must satisfy if they decide to have employees perform checking or inspecting duties inside a low-hazard permit space without having an attendant stationed outside. OSHA believes that there are situations where an employer could appropriately decide that an entry performed simply to check or inspect equipment did not require the stationing of an attendant, based on:

- The circumstances of the permit space, such as the nature of the identified hazards and the likelihood that authorized entrants would generate or confront hazards;
- The employer's and authorized entrant's experience with entry to that permit space;
- The routine, repetitive and nondisruptive nature of the entry; and
- The ability to comply with the special provisions of proposed paragraph (i)(1).

OSHA remains sufficiently concerned that an IDLH atmosphere could arise in a "low-hazard permit space" that the Agency would require employers to ensure that the permit space atmosphere is tested immediately prior to entry and that authorized entrants who would

move beyond the area which could be tested from outside the space be appropriately equipped, trained and supervised to ensure that they test the atmosphere, as necessary, to ensure that conditions are acceptable for continued entry.

Proposed paragraph (i)(2) presents the additional requirements which employers must satisfy if they decide to have employees perform minor maintenance duties inside a low-hazard permit space without having an attendant stationed outside. OSHA believes that there are situations where an employer could appropriately decide, based on the factors discussed above under proposed paragraph (i)(1), that minor maintenance work on equipment within the permit space could be performed safely without having an attendant on hand.

The key difference between proposed paragraphs (i)(1) and (i)(2) is that entrants performing minor maintenance would bring materials into the permit space and perform work in the permit space which could change the conditions in the space. Under the proposal, the employer must ensure that any such change in the permit space would not generate a serious hazard. OSHA stresses that, where the employer cannot ensure that maintenance work would proceed without generating a serious hazard in a permit space, the employer would be required to comply with the requirements for attendants in proposed paragraph (f).

OSHA also notes that, as discussed above under proposed paragraph (i)(1), proposed paragraph (i)(2) requires employers to ensure that any potential IDLH hazard is controlled or detected prior to entry. Again this provision indicates the Agency's concern that however low the probability, authorized entrants in a low-hazard permit space may be exposed to atmospheric hazards due, for example, to changes in the space. Therefore, the Agency proposes that employers ensure the safety of authorized entrants by testing, monitoring or ventilating, as appropriate under the given circumstances.

Proposed paragraph (i)(3) presents the additional requirements which employers must satisfy if they decide to have employees perform work in diked areas which are six feet or more in height and are regulated as permit spaces without having an attendant stationed outside. OSHA believes that there are situations where the employer could appropriately decide, based again on the factors discussed above under proposed paragraph (i)(1), that work in a diked area could be performed safely without an attendant on hand.

The work contemplated under proposed paragraph (i)(3) could be similar to that which would be authorized under proposed paragraph (i)(1) and (i)(2), and could also include regular maintenance or repair work. In any case, OSHA would require that entry could proceed without an attendant only if the employer ensured that the necessary procedures to prevent generation of a hazard were in effect before and throughout the entry. OSHA specifically noted linebreaking as an activity performed in diked areas for which appropriate procedures, including the preparation of a permit to authorize linebreaking, would be required to protect authorized entrants. OSHA solicits comments on the appropriateness of allowing employers to authorize entry without providing an attendant. In addition, as noted in Issue 8, OSHA requests that commenters submit suggested criteria through which employers could assess the applicability of proposed paragraph (i) to their operations and could determine how best to comply with proposed paragraph (i).

Costs vs. Risk Reduction

The U.S. Supreme Court, in *American Textile Manufacturers Institute v. Donovan*, 452 U.S. 490 (1981), determined that for standards dealing with toxic substances or harmful physical agents ("section 6(b)(5) standards"), once OSHA determines that there is a "significant risk" to employees, the standards may not be based on a balancing of costs and benefits; rather, the standards must reduce the risk "to the extent feasible." The decision in *American Textile* did not reach the issue of whether cost-benefit analysis is either required or permitted in the issuance of other types of standards under the OSH Act.

In a recent decision on OSHA's grain handling standard, *National Grain and Feed Association v. OSHA*, 866 F.2d 717 (5th Cir., 1989), the U.S. Court of Appeals for the Fifth Circuit held that the grain standard did not deal with a toxic substance or harmful physical agent within the contemplation of section 6(b)(5), and that it was not subject to the "feasibility mandate" under the *American Textiles* decision. In *National Grain*, the Fifth Circuit found that standards other than section 6(b)(5) standards must be "reasonably necessary or appropriate" to protect employee safety, and that, in contrast to 6(b)(5) standards, "[t]his determination encompasses a specie of cost-benefit justification." 866 F.2d at 733. Citing its previous decision in *Texas Independent Ginners v. Marshall*, 630 F.2d 398 (1980),

the Court determined that "[t]he reasonably necessary requirement . . . only demands that the expected costs of OSHA regulations be reasonably related to the expected benefits, leaving considerable discretion for the agency as long as it is exercised on substantial evidence and with an adequate statement of reasons. 630 F.2d [398] at 411 n. 44[.]" 866 F.2d at 733. OSHA believes that its proposed rule on confined spaces readily meets the test set forth by the Fifth Circuit in *National Grain*, insofar as that test is applicable and requests public comment on the requirements in its proposed rule.

Appendices

OSHA would propose to include three non-mandatory appendices (Appendix A, Appendix B and Appendix C) with the standard. The purpose of these appendices is to provide information useful to the employer in complying with the standard. Subjects of these appendices would be:

Appendix A—Decision logic flowchart.

Appendix B—References.

Appendix C—Permit and associated checklist examples.

OSHA would welcome examples of confined space entry procedures and permits as well as other useful information which could be included in these appendices to serve as guidelines for employers.

V. References

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9. U.S. Department of Health, Education, and Welfare, National Institute for Occupational Safety and Health (USDHEW/NIOSH). "Criteria for a Recommended Standard . . . Working in Confined Spaces." Cincinnati, Ohio 45226. U.S. DHEW/NIOSH 1979.

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14. American Petroleum Institute (API). Draft #3, "Guidelines for Working in Inert

Confined Spaces in the Petroleum Industry." AOSC, 1985. Washington, DC 20005.

15. U.S. Department of Labor, Occupational Safety and Health Administration (U.S. DOL/OSHA). "Selected Occupational Fatalities Related To Toxic And Asphyxiating Atmospheres In Confined Spaces As Found In Reports of OSHA Fatality/Catastrophe Investigations." Washington, DC 20210. U.S. DOL/OSHA, 1985.

16. U.S. Department of Health and Human Services, National Institute for Occupational Safety and Health (DHHS/NIOSH). "Request for Assistance in Preventing Occupational Fatalities in Confined Spaces." Cincinnati, Ohio 45226. HHS/PHS/CDC/NIOSH, 1986.

17. State of New Jersey, Department of Labor and Industry, Bureau of Engineering and Safety. New Jersey Administrative Code Title 12, Chapter 170, "Work in Confined Spaces." April 1971. Trenton, New Jersey 08625.

18. State of Florida, Department of Commerce, Bureau of Workmen's Compensation. "Regulation Relating to Hazardous Atmospheres in Confined Spaces." 1969. Tallahassee, Florida 32301.

VI. Summary of the Preliminary Regulatory Impact and Regulatory Flexibility Analysis and the Environmental Impact Assessment

A. Preliminary Regulatory Impact Analysis

This analysis has been performed in accordance with the requirements of Executive Order 12291 and the Regulatory Flexibility Act of 1980 (5

U.S.C. 601 et seq.). The following paragraphs summarize the economic and other impacts of the proposed rule on the sectors most likely to be affected. The complete PRIA is available in the public docket.

1. Background

Based largely on an industry report prepared by the CONSAD Research Corporation (CONSAD), OSHA estimates that the proposed confined space standard will have a cost impact on at least 30 two-digit Standard Industrial Classification (SIC) industry groups covered by the proposal.

In manufacturing industries, examples of permit spaces include storage vessels, furnaces, railroad tank cars and aircraft sections being manufactured. In non-manufacturing industries, permit spaces include manholes serviced in the Utilities Industry (SIC 49) and autoclaves cleaned and maintained in hospitals (SIC 806). OSHA estimates that about 224,000 establishments have permit spaces, that about 7.2 million production workers are employed at these establishments, and about 2.1 million workers enter permit spaces annually. Table I presents the number of establishments with permit spaces and the number of production workers and permit space entrants by major industry group.

TABLE 1.—NUMBER OF ESTABLISHMENTS WITH PERMIT SPACES AND NUMBER OF WORKERS AND SCHEDULED ENTRANTS AT THOSE PLANTS

SIC Industry/Category	Number of establishments with permit spaces	Total production workers	Number of entrants (annual) ¹
07 Agricultural Services.....	10,656	¹ 60,966	25,361
13 Oil & Gas Extraction.....	681	13,620	681
20 Food and Kindred Products.....	8,148	399,487	81,887
21 Tobacco Manufacturers.....	89	34,803	2,468
22 Textile Mill Products.....	1,585	162,230	29,133
24 Wood Products (Less Furniture).....	6,298	118,228	26,640
25 Furniture and Fixtures.....	5,256	186,102	36,212
26 Paper Products.....	4,404	318,030	45,930
27 Printing and Publishing.....	41	530	82
28 Chemicals & Allied Products.....	8,015	342,829	72,935
29 Perishable & Related Industry.....	1,741	92,900	18,368
30 Rubber Products.....	5,991	232,318	132,287
31 Leather and Leather Products.....	110	5,850	767
32 Stone, Clay, Glass & Concrete.....	13,610	333,587	147,802
33 Primary Metals Industry.....	3,210	305,527	59,481
34 Fabricated Metal Products.....	7,058	193,018	36,983
35 Machinery, Except Electrical.....	4,317	233,430	120,105
36 Electric/Electronic Equipment.....	8,812	673,856	137,195
37 Transportation Equipment.....	3,514	800,118	44,908
38 Instruments & Related Prods.....	35	2,824	285
39 Misc. Manufacturing Ind.....	709	14,134	4,875
42 Motor Freight Transportation.....	14,583	¹ 145,830	29,168
49 Elec., Gas, Sanitary Services.....	19,961	¹ 1,049,481	636,742
51 Wholesale Trade/Nondurable.....	25,375	¹ 246,966	178,135
59 Misc. Retail.....	9,003	¹ 71,214	12,874
70 Hotels and Other Lodging.....	4,961	¹ 163,523	68,813
72 Personal Services.....	3,577	¹ 37,427	7,154
78 Motion Pictures.....	11	¹ 204	66
80 Health Services.....	7,465	¹ 1,197,219	26,801
84 Museums, Botanical, Zoo.....	123	¹ 2,182	738

TABLE 1.—NUMBER OF ESTABLISHMENTS WITH PERMIT SPACES AND NUMBER OF WORKERS AND SCHEDULED ENTRANTS AT THOSE PLANTS—Continued

SIC Industry/Category	Number of establishments with permit spaces	Total production workers	Number of entrants (annual) ¹
Boilers in Commercial Bldgs.....	45,190	NA	186,636
Total.....	224,329	7,247,634	2,171,309

¹ Represents total employees.

² Includes contractors.

Source: CONSAD; U.S. Department of Labor, BLS, Office of Employment and Unemployment Statistics; DOL, OSHA, Office of Regulatory Analysis.

Employees who enter permit spaces may encounter a variety of hazards. OSHA has determined that most employee injuries and deaths occur in toxic or asphyxiating atmospheres. The Agency has found that confined space entrants are also injured and killed due to engulfment by fine particulate matter, fire, explosion and mechanical hazards. In addition, when personnel outside a confined space become aware that an entrant is experiencing difficulties, those personnel often attempt to rescue the entrant. Often these would-be rescuers are unaware of or not equipped for the hazard encountered and are overcome along with the initial entrant.

Most permit spaces are entered infrequently. Periodic entries may be made into those spaces to inspect, clean or repair equipment. Some products are considered permit spaces while they are being built, and entries by workers are required as part of the manufacturing process. Entry into these permit spaces is often frequent.

2. Nonregulatory Alternatives

The objective of OSHA's proposed standard for confined spaces is to reduce the number of employee injuries resulting from unsafe entry into confined spaces. OSHA believes that the present risk to employees is excessive and that compliance with the proposed standard will prevent nearly all of the work-related accidents. OSHA examined the nonregulatory approaches for promoting adequate levels of workplace safety for promoting adequate levels of workplace safety in confined spaces, including (1) economic forces generated by the private market system, (2) incentives created by Workers' Compensation programs or the threat of private suits, and (3) related activities of other private or government agencies. As a result of this review, OSHA has determined that

the need for government regulation arises from the significant risk of job-related injury or death caused by the inadequate rate of optional private hazard-abatement expenditure in establishments with confined spaces.

Private markets fail to provide enough safety and health resources due to the imperfect distribution of risk information, the immobility of labor, and the externalization of some of the social costs of worker injuries and deaths. Workers' Compensation systems do not offer an adequate remedy because the premiums do not reflect workplace risk, and liability claims are restricted by state statutes preventing employees from suing their employers. While there are some voluntary industry-generated standards and some state regulation, OSHA believes that these measures, because they tend to be incomplete, inconsistent and lacking in guidance for employers, do not provide adequate protection for all workers. In addition, OSHA has repeatedly cited employers under the general duty clause, section 5(a)(1) of the OSH Act, for confined space workplace conditions which the Agency determined violated the basic requirement that employers provide their employees with workplaces free from recognized hazards. This indicates to OSHA that employees working in confined spaces confront significant safety and health hazards frequently enough to justify the issuance of a standard specifically designed to address those hazards. Therefore, OSHA has determined that a comprehensive federal standard is necessary to protect confined space workers.

3. Technological Feasibility

OSHA has determined that it is technologically feasible to implement the proposed standard. The technology

that would be required by the provisions in the proposed standard is now used by some employers in all industries covered by the proposal. Based on the current use of atmospheric testing instruments, ventilation equipment, respirators, and retrieval devices, OSHA believes that all employers would be able to implement existing technology to comply with the proposal. No new technological developments would be needed for firms to reach compliance with the proposed standard.

4. Benefits

While there are limitations to available data, OSHA estimates that 80 to 90 percent of the accidents in confined spaces would be avoided by compliance with the proposed standard. OSHA estimates that 31 to 35 fatalities, 2,220 to 2,497 lost workday injuries, and 2,532 to 2,849 non-lost workday injuries would be prevented. However, given the uncertainty over the precise number of injuries occurring annually in confined spaces, a sensitivity analysis of benefits, based on varying assumptions, is provided in Tables II-A and II-B. The accident reports indicate that most fatalities and injuries occur because employees are unaware of the hazards in the permit spaces and are inadequately equipped to manage the hazardous situations. The objective of the proposed standard is to correct both of these situations. By lowering the accident rate of employees who make work-related entries, the standard will also reduce the number of emergency situations where injured workers are incapacitated inside permit spaces. Rescuers would make fewer entries, thereby reducing their exposure to confined spaces and preventing additional injuries and deaths.

TABLE II-A.—SENSITIVITY ANALYSIS OF ESTIMATED PREVENTED FATALITIES

Sector	Current	Prevented	
		80%	90%
Oil & Gas Extraction.....	2.9	2.3	2.6
Manufacturing.....	20.8	16.5	18.5
Transportation & Public Utilities.....	7.9	6.3	7.1
Wholesale And Retail Trade.....	1.3	1.0	1.2
Services.....	0.3	0.2	0.3
Host Employer Unidentified.....	6.1	4.9	5.5
Total.....	39.1	31.3	35.2

¹ Includes .4 average annual fatalities in Lockout/tagout situations.
Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

TABLE II-B.—LOST WORKDAY INJURIES

Lost Workday Injuries

Sector	Number of injuries at 5, 10, and 20 percent of BLS ratio of injuries to fatalities ¹ and estimated injuries prevented at 80 and 90 percent effectiveness level								
	Current			Prevented (80%)			Prevented (90%)		
	5%	10%	20%	5%	10%	20%	5%	10%	20%
Oil & Gas Extraction.....	103	206	412	82	165	329	93	185	371
Manufacturing.....	731	1,462	2,924	585	1,170	2,339	658	1,316	2,632
Transportation & Public Utilities.....	280	561	1,122	224	449	897	252	505	1,010
Wholesale and Retail Trade.....	46	92	185	37	74	148	42	83	166
Services.....	10	20	40	8	16	32	9	18	36
Host Employer Unidentified.....	217	433	866	173	346	693	195	390	780
Total.....	1,367	2,774	5,549	1,110	2,220	4,439	1,248	2,497	4,994

TABLE II-C.—NON-LOST WORKDAY INJURIES

Sector	Number of injuries at 5, 10, and 20 percent of BLS ratio of injuries to fatalities ¹ and estimated injuries prevented at 80 and 90 percent effectiveness level								
	Current			Prevented (80%)			Prevented (90%)		
	5%	10%	20%	5%	10%	20%	5%	10%	20%
Oil & Gas Extraction.....	117	235	470	94	188	376	106	211	423
Manufacturing.....	834	1,668	3,336	667	1,334	2,669	751	1,501	3,003
Transportation & Public Utilities.....	320	640	1,280	256	512	1,024	288	576	1,152
Wholesale and Retail Trade.....	53	105	211	42	84	168	47	95	190
Services.....	11	23	46	9	18	37	10	21	41
Host Employer Unidentified.....	247	494	988	198	395	791	222	445	889
Total.....	1,583	3,165	6,330	1,266	2,532	5,064	1,424	2,849	5,697

¹ To estimate injuries, OSHA employed the ratio of BLS estimated injuries to fatalities in manufacturing and utilities. However, because confined space accidents are typically more catastrophic in nature, a lower ratio would be expected. For this reason, OSHA has estimated the number of injuries at 5, 10 and 20 percent of the BLS ratio. OSHA has employed 10 percent for its calculation of benefits. This modified ratio was then multiplied by the number of fatalities recorded in confined spaces in OSHA data (as represented in Table II-A).

Source: U.S. Department of Labor, Occupational Safety and Health Administration, Office of Regulatory Analysis.

In addition, OSHA expects the rules to save productive time that would be lost due to these accidents and administrative time spent filing accident reports and replacing injured workers. Based upon an estimated value of \$4,000 per lost-workday injury avoided, and \$350 per non-lost workday injury avoided, employer benefits (cost savings) are estimated to have a monetized value of \$9.9 to \$11.1 million. Further, based upon willingness to pay estimates of \$33,000 per lost-workday injury and \$320 per non-lost-workday injury, the total value of reduced non-

fatal accidents to society is estimated to be approximately \$85 to \$94 million.

5. Estimated Costs of the Proposed Standard

OSHA estimates that compliance with the proposed permit required confined space standard will impose start-up costs of \$36.9 million and recurring annualized costs of \$160.0 million. Annualizing the start-up costs produces a total annualized cost of \$166.0 million. Factoring in the non-fatality benefits to society noted above, OSHA estimates the net cost per fatality avoided is

between \$2.0 and \$2.5 million.

OSHA also calculated the costs of compliance by provision for each affected industry. As shown in Table III, the highest initial cost of any provision, \$25.8 million, is for training. This cost is due to the large number of production workers to be trained. The highest annual cost, to provide an attendant during entries, is \$54.7 million a year. There are also significant annual costs to provide respiratory protection and to perform atmospheric testing.

As shown in Table IV, the industry group with the highest estimated initial

cost, \$8.0 million, is the utilities industry (SIC 49). The utilities industry also has the highest estimated annual cost, \$52 million, mainly due to the large number of confined space entries made each year.

TABLE III.—SUMMARY OF INITIAL AND TOTAL COMPLIANCE COSTS BY PROVISION (\$)

Provision	Total initial costs	Total annual costs
Establish Permit Entry Program/System.....	9,162,226	39,000
Issue Permits.....	0	11,744,418
Training.....	25,826,964	3,099,436
Inform Non-Entrants.....	6,357	2,701,120
Atmospheric Testing.....	0	36,506,187
Mechanical Ventilation.....	0	13,128,908
Respiratory Protection.....	0	29,177,494
Retrieval Devices.....	1,882,242	2,224,340
Isolation Procedures ¹	0	3,144,304
Protective Clothing.....	0	3,338,158
Vehicle & Pedestrian Guards.....	0	126,244
Attendant.....	0	54,747,406
Total.....	36,879,788	159,977,015

¹ Includes \$1 million for control of hazardous energy sources that will be required under a separate rule, once final.
Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

TABLE IV.—SUMMARY OF INITIAL AND TOTAL COMPLIANCE COSTS OF THE CONFINED SPACES STANDARD BY INDUSTRY (4)

SIC Industry	Total initial costs	Total annual costs
07 Agricultural Services.....	2,743,417	7,127,545
13 Oil & Gas Extraction.....	0	585,000
20 Food and Kindred Products.....	2,368,152	13,787,599
21 Tobacco Manufacturers.....	33,294	43,870
22 Textile Mill Products.....	387,187	777,118
24 Wood Products (less Furniture).....	1,511,643	941,339
25 Furniture and Fixtures.....	901,605	1,390,871
26 Paper Products.....	1,525,518	4,158,059
27 Printing and Publishing.....	760	832
28 Chemicals & Allied Products.....	1,476,496	1,187,919
29 Petrim Ref & Related Industry.....	132,641	1,598,553
30 Rubber Products.....	596,747	4,567,823
31 Leather and Leather Products.....	19,412	16,357
32 Stone, Clay, Glass & Concrete.....	1,992,046	4,886,588
33 Primary Metals Industry.....	1,011,200	5,671,647
34 Fabricated Metal Products.....	2,247,886	6,282,654
35 Machinery, Except Electrical.....	543,968	1,987,344
36 Electric/Electronic Equipment.....	2,808,893	15,872,363
37 Transportation Equipment.....	1,157,633	10,912,009
38 Instruments & Related Products.....	2,274	338
39 Miscellaneous Manufacturing Industry.....	100,473	1,057,983
42 Motor Freight Transportation.....	2,330,464	3,219,569
49 Elec, Gas, Sanitary Services.....	8,025,120	52,029,269
51 Wholesale Trade/Nondurable.....	3,602,372	16,345,904
59 Miscellaneous Retail.....	322,123	258,334
70 Hotels and Other Lodging.....	72,880	726,439
72 Personal Services.....	423,383	32,980
78 Motion Pictures.....	0	0
80 Health Services.....	263,251	3,989,307
84 Museums, Botanical, Zoo.....	877	219
Boilers in Commercial Buildings.....	291,693	532,845
Total.....	36,879,788	159,977,015

¹ Numbers may not total precisely due to rounding.
Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

Various other proposed OSHA standards would overlap with certain provisions and industries covered by this standard. In this analysis, as noted in Tables IIA and III, OSHA has assumed costs and benefits attributable to control of hazardous power sources in confined spaces. Similarly, costs and benefits related to mitigating hazards in confined spaces in electrical power generating facilities have also been

included. When these rules become final, these costs and benefits will no longer apply to this rule.

6. Economic and Other Impacts

OSHA believes that none of the 30 industry groups having costs imposed by the proposal would experience significant economic impacts because the compliance costs can be passed through to consumers or absorbed from

profits. OSHA estimates that the average price increase needed to maintain profits in the affected industries would be less than one hundredth of a percent (ratio of compliance costs to the value of shipments). The maximum price increase in any one of the 30 industries was estimated to be less than 0.2 percent. OSHA also estimated the economic consequences of the

assumption that all of the costs would be absorbed from industry profits and not passed on to consumers. By comparing the estimated compliance costs to estimated profits for each

industry, OSHA estimated that the overall profit reduction for the 30 affected industries was less than 0.1 percent. Therefore, OSHA expects that the proposed standard will not have a

significant economic impact. Table V shows the estimated maximum price increase or profit reduction for each major industry group.

TABLE V.—MAXIMUM PRICE INCREASE OR PROFIT REDUCTION FOR MAJOR INDUSTRY GROUPS (\$)

SIC Industry	Maximum price increase (percent)	Maximum profit reduction (percent)
07 Agricultural Services.....	N/A	N/A
13 Oil & Gas Extraction.....	0.00028	0.01228
20 Food and Kindred Products.....	.00421	.05874
21 Tobacco Manufacturers.....	.00026	.00083
22 Textile Mill Products.....	.00146	.02410
24 Wood Products (less Furniture).....	.00411	.03912
25 Furniture and Fixtures.....	.00401	.07247
26 Paper Products.....	.00367	.03987
27 Printing and Publishing.....	.00000	.00001
28 Chemicals & Allied Products.....	.00064	.00561
29 Petrol Ref & Related Industry.....	.00124	.02145
30 Rubber Products.....	.00589	.07852
31 Leather and Leather Products.....	.00002	.00319
32 Stone, Clay, Glass & Concrete.....	.00844	.10621
33 Primary Metals Industry.....	.00521	.12780
34 Fabricated Metal Products.....	.00490	.08909
35 Machinery, Except Electrical.....	.00097	.01373
36 Electric/Electronic Equipment.....	.00725	.10902
37 Transportation Equipment.....	.00342	.05243
38 Instruments & Related Prods.....	.00000	.00001
39 Misc. Manufacturing Ind.....	.00518	.04057
42 Motor Freight Transportation.....	.00489	N/A
49 Elec, Gas, Sanitary Services.....	.12678	.17110
51 Wholesale Trade/Nondurable.....	.00424	.66005
59 Misc. Retail.....	.01355	N/A
70 Hotels and Other Lodging.....	.00110	N/A
72 Personal Services.....	.00165	.00339
78 Motion Pictures.....	.00000	.00000
80 Health Services.....	.00485	.03491
84 Museums, Botanical, Zoo.....	.00004	N/A
Total.....	.00504	.07183

Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980 (5 U.S.C. *et seq.*), OSHA has assessed the expected impact of the proposed standard on small entities in each of the affected industries. OSHA has concluded that the proposed standard will not significantly burden small businesses. This assessment was based on a comparison of estimated compliance costs and value of shipments for those small plants where data were available. In no industry would the small business segment have to increase prices by more than two-tenths of one percent to offset the costs. The majority of the industry increases are below one hundredth of a percent (see Table VI). The highest estimated price increase would be 0.12 percent in Stone, Clay, and Glass Products (SIC 32). In addition, the use of performance language in the proposed standard would facilitate compliance by small firms. The flexibility in meeting requirements allows smaller plants to

have lower compliance costs for some provisions.

TABLE VI.—MAXIMUM PRICE INCREASE FOR SMALL ENTITIES

SIC Industry	Maximum price increase (percent)
07 Agricultural Services.....	NA
13 Oil & Gas Extraction.....	NA
20 Food and Kindred Products.....	0.0022
21 Tobacco Manufacturers.....	.0276
22 Textile Mill Products.....	.0007
24 Lumber and Wood Products.....	.0182
25 Furniture and Fixtures.....	.0044
26 Paper and Allied Products.....	.0057
27 Printing and Publishing.....	(¹)
28 Chemicals and Allied Products.....	.0003
29 Petroleum and Coal Products.....	.0049
30 Rubber and Misc. Plastic Products.....	.0001
31 Leather and Leather Products.....	NA
32 Stone, Clay, and Glass Products.....	.1231
33 Primary Metal Industries.....	.0008
34 Fabricated Metal Products.....	.0176
35 Machinery, Except Electrical.....	.0021
36 Electric/Electronic Equipment.....	.0441
37 Transportation Equipment.....	.0076
38 Instruments & Related Products.....	NA

TABLE VI.—MAXIMUM PRICE INCREASE FOR SMALL ENTITIES—Continued

SIC Industry	Maximum price increase (percent)
39 Misc. Manufacturing Ind.....	(¹)
42 Motor Freight Transportation.....	NA
49 Electric, Gas, and Sanitary Services.....	NA
51 Wholesale Trade.....	.0014
59 Misc. Retail.....	.0081
70 Hotels and Other Lodging.....	NA
72 Personal Services.....	.0000
78 Motion Pictures.....	.0000
80 Health Services.....	NA
84 Museums, Botanical, Zoo.....	NA

¹ Negligible.
Source: U.S. Department of Labor, OSHA, Office of Regulatory Analysis.

C. Environmental Impact Assessment

The proposed rule and its major alternatives have been reviewed in accordance with the requirements of the National Environmental Policy Act

(NEPA) of 1969 (42 U.S.C. 4321, *et seq.*), the Guidelines of the Council on Environmental Quality (CEQ) (40 CFR Parts 1500–1577), and the Department of Labor's (DOL) NEPA procedures (29 CFR Part 11). As a result of this review, the Assistant Secretary for OSHA has determined that the proposed rule will have no significant environmental impact.

The proposed standard is designed to reduce employee accidents and injuries by such means as work practices, engineering controls, training, atmospheric testing, personal protective equipment, and the implementation of rescue procedures. Such procedures and applications do not impact on air, water or soil quality, plant or animal life, the use of land or other aspects of the environment. Therefore, this proposed standard is categorized as an excluded action according to Subpart B, § 11.10 of the DOL NEPA regulations.

VII. Recordkeeping

The proposed standard contains "collection of information" (recordkeeping) requirements pertaining to establishing permits, the employer-specified entry conditions, and conditions that actually existed at the time of entry. OSHA estimates that these documents, the entry permit and entry permit system would be required to be maintained by the employer. The Agency believes that the entry permit would not be retained by employers for more than 30 days after completion of the entry if no deaths, injuries or serious, adverse health effects resulted from that entry.

We estimate that for the "worst case scenario", an employer with no existing program, it will take an average of 9 hours per establishment per year, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (1218-AA51), Washington, DC 20503, and to the Docket Office, Docket No. S-019, Occupational Safety and Health Administration, Room N2634, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, for inclusion in the record for this rulemaking.

VIII. Federalism

This proposed regulation has been reviewed in accordance with Executive

Order 12612, regarding Federalism. The regulation is drafted so that employees entering confined spaces in every state would be protected by general, performance oriented standards. To the extent that there are state or regional peculiarities caused by the types of spaces to be entered, the terrain, the climate or other factors, states would be able, under the OSH Act, to develop their own state standards to address any special problems. And, under the Act, if a state develops its own, approved state program, it could impose additional requirements in its standards. Moreover, the performance nature of this proposed standard, of and by itself, allows for flexibility by states and employers to provide as much safety as possible using varying methods consonant with conditions in each state.

In short, there is a clear national problem related to occupational safety and health in entering confined spaces. While the individual states, if all acted, collectively might be able to address the safety problems involved, most have not elected to do so in the 17 years since the enactment of the OSH Act. Those states which have elected to participate under the statute would not be preempted by this proposed regulation, and would be able to address special, local conditions within the framework provided by this performance oriented standard.

IX. Public Participation

Interested persons are invited to submit written data, views, and arguments with respect to this proposal. These comments must be postmarked by August 4, 1989, and submitted in quadruplicate to the Docket Office, Docket S-019, Room N2634, U.S. Department of Labor, Washington, DC 20210. Written submissions must clearly identify the issues or specific provisions of the proposal which are addressed and the position taken with respect to each issue or provision.

The data, views and arguments that are submitted will be available for public inspection and copying at the above address. All timely submissions received will be made a part of the record of this proceeding. The preliminary regulatory assessment and the exhibits cited in this document will be available for public inspection and copying at the above address. OSHA invites comments concerning the conclusions reached in the regulatory impact assessment.

Additionally, under section 6(b)(3) of the OSHA Act and 29 CFR 1911.11, interested persons may file objections to the proposal and request an informal hearing. The objections and hearing requests should be submitted in

quadruplicate to the Docket Office at the above address and must comply with the following condition:

1. The objections and hearing requests must include the name and address of the objector;

2. The objections and hearing requests must be postmarked on or before August 4, 1989.

3. The objections and hearing requests must specify with particularity the provisions of the proposed rule to which objection is taken and must state the grounds therefore;

4. Each objection and hearing request must be separately stated and numbered; and

5. The objections and hearing requests must be accompanied by a detailed summary of the evidence proposed to be adduced at the requested hearing.

OSHA recognizes that there may be interested persons who, through their knowledge of safety or their experience in the operations involved, would wish to endorse or support certain provisions in the standard. OSHA welcomes such supportive comments, including any pertinent accident data or cost information which may be available, in order that the record of this rulemaking will present a balanced picture of the public response on the issue involved.

X. State Plan Standards

The 25 states and territories with their own OSHA-approved occupational safety and health plans must adopt a comparable standard within six months of the publication date of a final standard. These 25 states are: Alaska, Arizona, California, Connecticut, New York (for state and local government employees only), Hawaii, Indiana, Iowa, Kentucky, Maryland, Michigan, Minnesota, Nevada, New Mexico, North Carolina, Oregon, Puerto Rico, South Carolina, Tennessee, Utah, Vermont, Virginia, Virgin Islands, Washington, and Wyoming. Until such time as a state standard is promulgated, Federal OSHA will provide interim enforcement assistance, as appropriate, in these states.

XI. List of Subjects in 29 CFR Part 1910

Attendant, Confined spaces, Hazardous atmospheres, Hazardous materials, Monitoring, Occupational safety and health, Entry permit system, Incorporation by reference, Permits, Personal protective equipment, Rescue equipment, Respiratory protection, Retrieval lines, Safety, Signs, Tags, Tools, Welding.

Authority

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Accordingly, pursuant to sections 4, 6(b) and 8(c) of the Occupational Safety and Health Act of 1970 (84 Stat. 1593, 1597, 1599; 29 U.S.C. 653, 655, 657, Secretary of Labor's Order No. 9-83 (48 FR 35736)), and 29 CFR Part 1911, OSHA proposes to add a new § 1910.146 to 29 CFR as set forth below.

Signed at Washington, DC this 25th day of May 1989.

Alan C. McMillan,
Acting Assistant Secretary.

PART 1910—OCCUPATIONAL SAFETY AND HEALTH STANDARDS

1. The authority citation for Subpart J of Part 1910 would be revised to read as follows:

Authority: Secs. 4, 6, 8, Occupational Safety and Health Act of 1970, 29 USC 653, 655, 657; Secretary of Labor's Order No. 12-71 (36 FR 8754, 8-76 (41 FR 25059) or 9-83 (48 FR 35736), as applicable.

Section 1910.146 is also issued under 29 CFR Part 1911.

2. Part 1910 of Title 29 of the Code of Federal Regulations would be amended by adding a new § 1910.146 and Appendices A, B, and C to Subpart J to read as follows:

§ 1910.146 Permit required confined spaces.

(a) *Scope and application.* This section contains requirements for practices and procedures to protect employees from those hazards of entry into and work within permit required confined spaces in General Industry which can be identified by an employer exercising reasonable care. This section does not apply to agriculture or construction, or to purely maritime (i.e., afloat) industry activities, nor does this section apply to confined spaces in electric generation and transmission industries, grain handling facilities, or onshore operations of the maritime industries wherever these confined spaces are regulated by a more specific confined space entry standard.

(b) *Definitions.* (1) "Acceptable environmental conditions" means confined space workplace conditions in which uncontrolled hazardous atmospheres are not present, and which include any additional environmental criteria the employer may require for employee entry into a permit required confined space.

(2) "Attendant" means an individual stationed outside the permit required confined space who is trained as required by this standard and who monitors the authorized entrants inside the permit required confined space. An attendant may monitor not more entrants nor more permit spaces than the entry permit specifically authorizes.

(3) "Authorized entrant" means an employee who is authorized by the employer to enter a permit required confined space. Authorized entrants may rotate duties, serving as attendants if the permit program and the entry permit so state. Any properly trained person with the authority to authorize entry by other persons may enter the permit space during the term of the permit provided the attendant is informed of that entry.

(4) "Blanking" or "blinding" means the absolute closure of a pipe, line or duct, by fastening across its bore a solid plate or "cap" which completely covers the bore; which extends at least to the outer edge of the flange at which it is attached; and which is capable of withstanding the maximum upstream pressure.

(5) "Double block and bleed" means the closure of a line, duct or pipe by locking and tagging a drain or vent which is open to the atmosphere in the line between two locked-closed valves.

(6) "Emergency" means any occurrence (including any failure of hazard control or monitoring equipment) or event(s) internal or external to the confined space which could endanger entrants.

(7) "Engulfment" means the surrounding and effective capture of a person by a liquid or finely divided solid substance.

(8) "Entry" means the act by which a person intentionally passes through an opening into a permit required confined space, and includes ensuing work activities in that space. The entrant is considered to have entered as soon as any part of the entrant's face breaks the plane of an opening into the space.

(9) "Entry permit" means the written or printed document established by the employer, the content of which is based on the employer's hazard identification and evaluation for that confined space (or class or family of confined spaces if a number of spaces may contain similar hazards) and is the instrument by which the employer authorizes his or her employees to enter that permit required confined space. The entry permit:

Defines the conditions under which the permit space may be entered; states the reason(s) for entering the space; the anticipated hazards of the entry; for entries where the individual authorizing

the entry does not assume direct charge of the entry, lists the eligible attendants, entrants, and the individuals who may be in charge of the entry; and establishes the length of time (not to exceed one year) for which the permit may remain valid.

(10) "Entry permit system" means the employer's written procedures for preparing and issuing permits for entry and returning the permit space to service following termination of entry, and designates by name or title the individuals who may authorize entry.

(11) "Hazardous atmosphere" means an atmosphere which exposes employees to a risk of death, incapacitation, injury or acute illness from one or more of the following causes:

(i) A flammable gas, vapor, or mist in excess of 10 percent of its lower flammable limit (LFL);

(ii) An airborne combustible dust at a concentration that obscures vision at a distance of five feet (1.52 m) or less;

(iii) An atmospheric oxygen concentration below 19.5 percent or above 22 percent;

(iv) An atmospheric concentration of any substance for which a permissible exposure limit is published in Subpart Z of 29 CFR Part 1910 and could result in employee exposure in excess of its permissible limit(s). [When an air contaminant for which OSHA has not determined a permissible exposure limit may be present in the permit space atmosphere, OSHA recommends employers consult other sources of information, such as Material Safety Data Sheets which comply with the Hazard Communication Standard, § 1910.1200, for guidance in establishing the acceptable environmental conditions for entry by their employees.]

(v) Any atmospheric condition recognized as immediately dangerous to life or health.

(12) "Hot work permit" means the employer's written authorization to perform operations which could provide a source of ignition, such as riveting, welding, cutting, burning or heating.

(13) "Immediately dangerous to life or health (IDLH)" means any condition which poses an immediate threat of loss of life; may result in irreversible or immediate-severe health effects; may result in eye damage; irritation or other conditions which could impair escape from the permit space.

(14) "Immediate-severe health effects" means any acute clinical sign(s) of a serious, exposure-related reaction manifested within 72 hours after exposure.

(15) "Inerting" means rendering the atmosphere of a permit space non-flammable, non-explosive or otherwise chemically non-reactive by such means as displacing or diluting the original atmosphere with steam or a gas that is non-reactive with respect to that space.

(16) "In-plant rescue team" means a group of two or more employees designated and trained to perform rescues in permit spaces in their plant.

(17) "Isolation" means the separation of a permit space from unwanted forms of energy which could be a serious hazard to permit space entrants. Isolation is usually accomplished by such means as blanking or blinding; removal or misalignment of pipe sections or spool pieces; double block and bleed; or lockout and/or tagout.

(18) "Line breaking" means the intentional opening of a pipe, line or duct that is or has been carrying flammable, corrosive or toxic material, an inert gas, or any fluid at a pressure or temperature capable of causing injury.

(19) "Low-hazard permit space" means a permit space where there is an extremely low likelihood that an IDLH or engulfment hazard could be present, and where all other serious hazards have been controlled.

(20) "Not-permitted condition" means any condition or set of conditions whose hazard potential exceeds the limits stated in the entry permit.

(21) "Oxygen deficient atmosphere" means an atmosphere containing less than 19.5 percent oxygen by volume.

(22) "Oxygen enriched atmosphere" means an atmosphere containing more than 22 percent oxygen by volume.

(23) "Permit required confined space" (permit space), means an enclosed space which:

(i) Is large enough and so configured that an employee can bodily enter and perform assigned work;

(ii) Has limited or restricted means for entry or exit (some examples are tanks, vessels, silos, storage bins, hoppers, vaults, pits and diked areas);

(iii) Is not designed for continuous employee occupancy; and,

(iv) Has one or more of the following characteristics:

(A) Contains or has a known potential to contain a hazardous atmosphere;

(B) Contains a material with the potential for engulfment of an entrant;

(C) Has an internal configuration such that an entrant could be trapped or asphyxiated by inwardly converging walls, or a floor which slopes downward and tapers to a smaller cross-section; or,

(D) Contains any other recognized serious safety or health hazard.

(24) "Permit required confined space program" means the employer's program

for preventing unauthorized employee entry and for ensuring safe entry into and work within permit spaces by authorized employees.

(25) "Retrieval line" means a line or rope secured at one end to the worker by a chest-waist or full-body harness, or wristlets, and with its other end secured to either a lifting (or other retrieval) device, or to an anchor point located outside the entry portal.

(c) *Permit required confined space program (entry permit program).* The employer shall determine if the workplace contains permit confined spaces. If there are changes in a confined space which previously was not a permit space, the employer shall reevaluate that space to determine if it has become a permit space. If the employer has permit spaces and decides that his or her employees will not enter those spaces, the employer shall take appropriate measures to ensure that the spaces are not entered by his or her employees, and shall comply with paragraph (c)(10), as applicable. Any employer who decides to have employees enter a permit space, whether or not that space is under that employer's direct control (contractors may be examples of such employers), shall establish an entry permit program to ensure that entrants are protected from permit space hazards. Under the entry permit program, the employer shall:

(1) *Hazard identification.* Identify and evaluate each hazard of the permit spaces, including determination of severity;

(2) *Hazard control.* Establish and implement the means, procedures and practices by which the permit spaces can be entered safely;

(3) *Permit system.* Establish a written permit system for the proper preparation, issuance and implementation of entry permits.

(4) *Employee information.* Signs shall be posted near permit spaces to notify employees what hazards may be present and that only authorized entrants may enter the permit spaces;

(5) *Prevention of unauthorized entry.* Prevent unauthorized employee entry through such measures as training or by posting signs and barriers, as necessary;

(6) *Employee training.* Train employees, as provided by this standard, so that attendants, authorized entrants and personnel authorizing or in charge of entry can work safely in and around the permit space;

(7) *Equipment.* Provide, maintain and ensure the proper use of the equipment necessary for safe entry, including testing, monitoring, communication and personal protective equipment;

(8) *Rescue.* Ensure that the procedures and equipment necessary to rescue entrants from permit spaces are implemented and provided;

(9) *Protection from external hazards.* Ensure that all pedestrian, vehicle or other barriers necessary to protect entrants from external hazards are provided;

(10) *Duty to other employers.* Ensure that, when an employer, such as a contractor, plans to send employees into a permit space which is under the control of another employer (host employer), the host employer provides the contractor with all available information on permit space hazards; on efforts to comply with this standard; and on any other workplace hazards, safety rules and emergency procedures of which the contractor needs to be aware in order to comply with this standard.

(d) *Permit system.* (1) Where required under this standard, the employer shall prepare a permit(s) in a standardized format (or preprinted), through which the employer identifies all conditions which must be evaluated to ensure safe entry. (For examples of permits, see Appendix C. The Appendix is non-mandatory.)

(2) Employers who intend to authorize entry into a permit space shall include the following information in the checklist portion of a permit:

(i) The hazards of the permit space;

(ii) The measures for isolation of the permit space;

(iii) The measures, such as lockout/tagout, equipment and procedures for purging, inerting, ventilating and flushing, used to remove or control potential hazards;

(iv) Acceptable environmental conditions, quantified with regard to the hazards identified in the permit space, which must be maintained during entry;

(v) Testing and monitoring equipment and procedures by which the employer will verify that acceptable environmental conditions are being maintained during entry;

(vi) The rescue and other services which would be summoned in case of emergency and the means of communication with those services;

(vii) Rescue equipment to be provided on-site, if necessary;

(viii) The communication procedures and equipment used by authorized entrants and attendants to maintain contact;

(ix) The personal protective equipment, such as respirators, clothing and retrieval lines, provided in order to ensure employee safety; and

(x) Any other information whose inclusion is necessary, given the

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circumstances of the particular permit space, in order to ensure employee safety.

(3) Unless the individual who authorizes an entry assumes direct charge of the entry for its duration, employers who intend to authorize entry in a permit space shall, in addition to the checklist items required in paragraph (d)(2), above, include in the permit, at a minimum, the following information:

- (i) The identity of the permit space;
- (ii) The purpose of the entry;
- (iii) The date of the entry and the authorized duration; (A permit may be valid for up to one year, so long as all conditions under which the permit was issued are maintained.)
- (iv) A list of the authorized entrants;
- (v) A list of eligible attendants;
- (vi) A list of individuals eligible to be in charge of the entry and;
- (vii) The signature, together with the name printed or otherwise legible, of the individual authorizing the entry, verifying that all actions and conditions necessary for safe entry have been performed.

(4) Employers who intend to authorize hot work in a permit space, such as welding, shall note that intention prominently on either the entry permit or on a separate hot work permit which is attached to the permit.

(5) The individual authorizing the entry shall sign or initial the permit before the entry begins, but not until all actions and conditions necessary for safe entry into the permit space have been performed.

(6) Upon completion of the entry covered by the permit, and after all entrants have exited the permit space, the individual authorizing the entry shall cancel the permit.

(e) *Training and duties of authorized entrants.* The employer shall ensure that employees who work as authorized entrants receive the appropriate training, and perform their assigned duties under the entry permit program, as follows:

- (1) *Hazard recognition.* The employer shall ensure that authorized entrants:
 - (i) Know the hazards which may be faced during entry;
 - (ii) Recognize the signs and symptoms of exposure to a hazard; and
 - (iii) Understand the consequences of exposure to a hazard.
- (2) *Communication.* The employer shall ensure that authorized entrants:
 - (i) Maintain contact with the attendant; and
 - (ii) Notify the attendant when the entrants self-initiate evacuation of a permit space.

(3) *Protective equipment.* The employer shall ensure that authorized entrants:

- (i) Are aware of the personal protective equipment, such as retrieval lines, respirators or clothing, needed for safe entry and exit;
 - (ii) Are provided with the necessary personal protective equipment;
 - (iii) Use the personal protective equipment properly; and
 - (iv) Are aware of the external barriers needed to protect entrants from external hazards and of the proper use of those barriers.
- (4) *Self-rescue.* The employer shall ensure that authorized entrants exit the permit space, unless it is physically impossible to do so, when:
- (i) The attendant orders evacuation;
 - (ii) An automatic alarm is activated; or
 - (iii) The authorized entrants perceive that they are in danger.

(f) *Training and duties of the attendant.* Except where paragraph (i) applies, the employer shall ensure that an attendant is stationed and remains outside the permit space(s) at all times during entry operations, and that employees who work as attendants receive the appropriate training and perform their assigned duties under the entry permit program, as follows:

(1) *Number of entrants.* The employer shall ensure that attendants continuously maintain an accurate count of all persons in the space.

(2) *Hazard recognition.* The employer shall ensure that attendants know of and can recognize potential permit space hazards, monitor activities inside and outside the permit space to determine if it is safe for entrants to remain in the space.

(3) *Communication.* The employer shall ensure that attendants:

- (i) Maintain effective and continuous contact with authorized entrants during entry;
- (ii) Order authorized entrants to evacuate the permit space immediately when:
 - (A) The attendant observes a condition which is not allowed in the entry permit;
 - (B) The attendant detects behavioral effects of hazard exposure;
 - (C) The attendant detects a situation outside the space which could endanger the entrants;
 - (D) The attendant detects an uncontrolled hazard within the permit space;
- (E) The attendant is monitoring entry in more than one permit space and must focus attention on the rescue of entrants from one of those spaces; and

(F) The attendant must leave the work station.

(iii) *Summon rescue and other emergency services* as soon as the attendant determines that authorized entrants need to escape from permit space hazards; and

(iv) Take the following actions, as necessary, when unauthorized persons approach or enter a permit space while entry is underway:

(A) Warn the unauthorized persons away from the space;

(B) Request the unauthorized persons to exit immediately if they have entered the permit space; and

(C) Inform the authorized entrants and any other persons designated by the employer if unauthorized persons have entered the permit space.

(4) *Rescue.* The employer shall ensure that attendants:

(i) Do not enter the permit space to attempt rescue of entrants; and

(ii) Properly use any rescue equipment provided for their use and perform any other assigned rescue and emergency duties, without entering the permit space.

(g) *Training and duties of the individual authorizing or in charge of entry.* The employer shall ensure that individuals authorizing or in charge of entry receive the appropriate training and perform assigned duties, as follows:

(1) *Entry authorization and supervision.* Individuals authorizing or in charge of entry shall:

(i) Determine that the entry permit contains the requisite information before authorizing or allowing entry;

(ii) Determine that the necessary procedures, practices and equipment for safe entry are in effect before allowing entry;

(iii) Determine, at appropriate intervals, that entry operations remain consistent with the terms of the entry permit, and that acceptable entry conditions are present;

(iv) Cancel the entry authorization and terminate entry whenever acceptable entry conditions are not present; and

(v) Take the necessary measures for concluding an entry operation, such as closing off a permit space and cancelling the permit, once the work authorized by the permit has been completed.

(vi) Individuals empowered to authorize entries may also serve as authorized entrants or attendants for an entry if they have the proper training.

(2) *Dealing with unauthorized personnel.* Individuals authorizing or in charge of entry shall take the appropriate measures to remove

unauthorized personnel who are in or near entry permit spaces.

(h) *Rescue team.* The employer shall have either an in-plant rescue team or an arrangement under which an outside rescue team will respond to a request for rescue services.

(1) *In-plant rescue team.* If the employer decides to use an in-plant team, the employer shall ensure that:

(i) Personnel assigned to an in-plant rescue team are provided with and trained to use properly the personal protective equipment, including respirators, and rescue equipment necessary for making rescues from the employer's permit spaces;

(ii) The in-plant rescue team is trained to perform the assigned rescue functions and has received the training required for authorized entrants;

(iii) Rescue teams practice making permit space rescues at least once every twelve months, by means of simulated rescue operations in which they remove dummies, mannequins or personnel through representative openings and portals whose size, configuration and accessibility closely approximate those of the permit spaces from which rescues may be required; and

(iv) At least one member of each rescue team maintains current certification in basic first-aid and cardiopulmonary resuscitation (CPR) skills.

(2) *Outside rescue team.* If the employer chooses to use outside rescue services, the employer shall ensure that the designated rescuers are aware of the hazards they may confront when called on to perform rescues at the employer's facility, so that the outside rescue team can equip, train and conduct itself appropriately.

(i) *Special permits for entry into low-hazard permit spaces.*

When employers determine, based on documentation which appears on the entry permit, that the permit spaces they plan to have employees enter are low-hazard permit spaces, the employers may authorize entry into a permit space without providing an attendant, for a period of up to one year, by complying with paragraphs (c) and (d) and the following provisions, as applicable:

(1) *Inspection and Checking.* Employers who plan to have employees periodically enter low-hazard permit

spaces on a routine basis, solely to inspect or check meters or other equipment, shall ensure that authorized entrants receive the necessary training and that:

(i) Appropriate entry practices and procedures are in effect before authorizing or allowing entry, and are followed throughout the entry;

(ii) In permit spaces with potential for atmospheric hazard, the permit space atmosphere shall be tested prior to each entry and as the entry proceeds, using an appropriate direct reading instrument and a remote sampling probe and testing in the following sequence: Oxygen concentration, combustible gas or vapor, and potential toxic contaminants;

(iii) No permit space hazard is present immediately before each entry;

(iv) The authorized entrant neither takes anything into the permit space nor takes any action which could cause a hazard to arise;

(v) If the space has a potential for a hazardous atmosphere and the entry requires the entrant to move through areas which were not tested prior to entry, the authorized entrant has an appropriate direct reading instrument and remote sampling probe throughout the entry so that the entrant can determine using the testing sequence in paragraph (i)(1)(ii) of this section, at the appropriate intervals, if the permit space conditions remain acceptable for entry;

(vi) The entry permit is revoked when the direct reading instrument being used or some other circumstance indicates that conditions in the space are no longer acceptable for entry; and

(vii) When an entry permit has been revoked because unacceptable conditions have arisen in a permit space, subsequent entry may not be made by special permit until the space is restored to special permit conditions.

(2) *Minor maintenance work.* Employers who plan to have employees enter low-hazard permit spaces to perform minor maintenance work, such as tightening a packing nut, which would not generate a serious hazard shall ensure that authorized entrants receive the necessary training and that:

(i) Appropriate entry practices and procedures are in effect before authorizing or allowing entry and are followed throughout the entry;

(ii) If the space has a potential for a hazardous atmosphere, the permit space atmosphere shall be shown to be, and to remain, acceptable for entry using one of the following means, as appropriate to make that determination:

(A) Ventilation of the permit space prior to entry, using a mechanically powered ventilator for at least the time specified in the nomograph prepared for that ventilator, and continuously throughout the entry; or

(B) A combination of mechanically powered ventilation and atmospheric testing; or

(C) Continuous atmospheric monitoring; or

(D) Frequent atmospheric testing.

(iii) The entry permit is revoked when the conditions become unacceptable for entry; and

(iv) When an entry permit has been revoked because unacceptable conditions have arisen in a permit space, any subsequent entry is made with an attendant stationed outside the permit space.

(3) *Entry into certain diked areas.* Employers who plan to have employees enter diked areas which have dikes six feet or more in height and are regulated as permit spaces shall ensure that authorized entrants receive the necessary training and that:

(i) Appropriate entry practices and procedures are in effect before authorizing or allowing entry, and are followed throughout the entry;

(ii) There has been no escape of flammable, toxic or corrosive materials or other change in the permit space which causes a permit space hazard to be present;

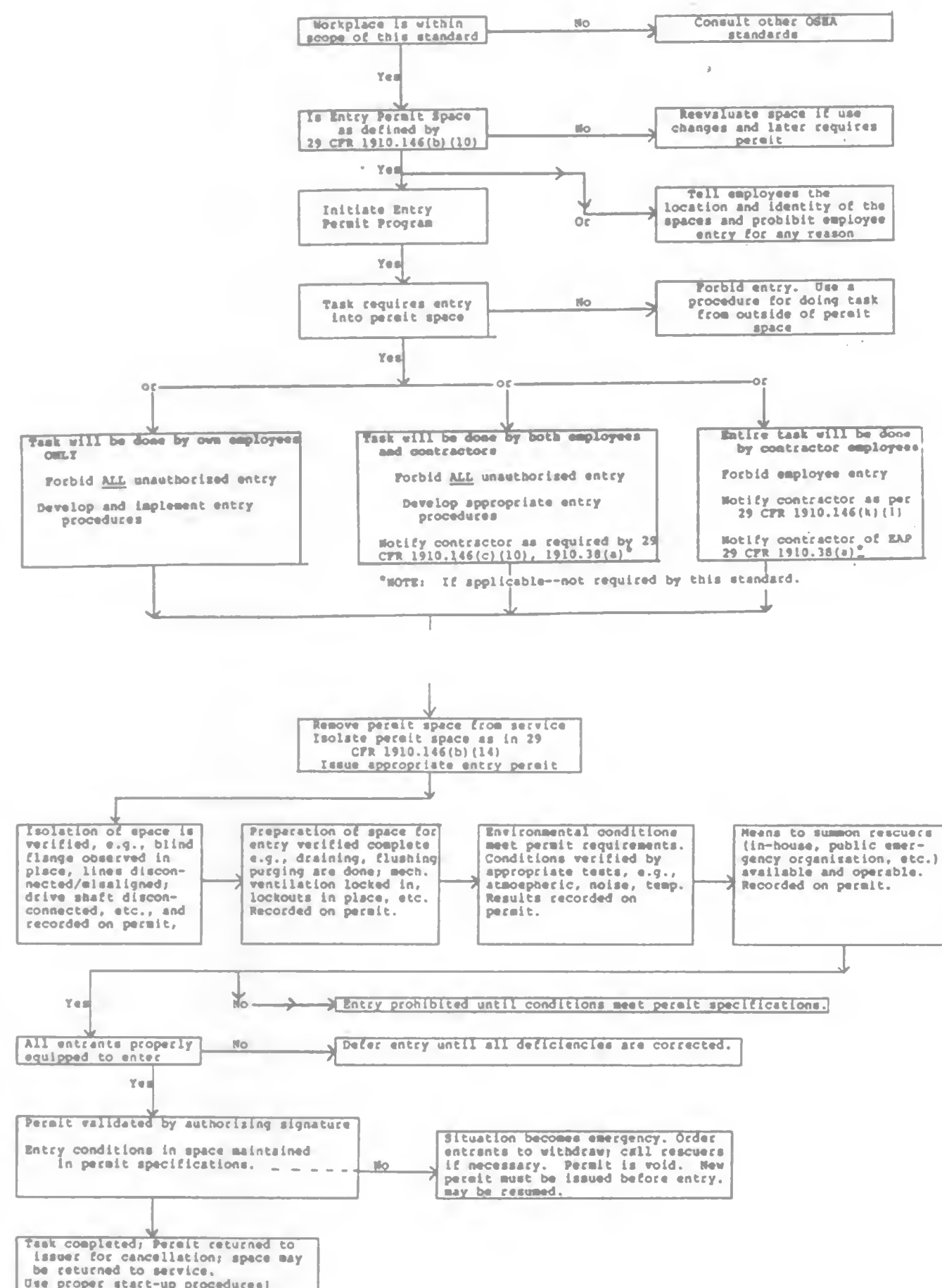
(iii) Any linebreaking is performed using the appropriate equipment and in accordance with the appropriate procedures, including procedures for the authorization of line breaking through a permit which could be attached to the entry permit;

(iv) The entry permit is revoked when the conditions become unacceptable for entry; and

(v) When an entry permit has been revoked because unacceptable conditions have arisen in a permit space, any subsequent entry is made with an attendant stationed outside the permit space.

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APPENDIX A to § 1910.146
PERMIT REQUIRED CONFINED SPACE DECISION FLOWCHART



BILLING CODE 4510-26-C

Appendix B to § 1910.146—References for Further Information

The following references provide information which can be helpful in understanding the requirements contained in various provisions of the standard as well as provide other helpful information.

1. U.S. Department of Labor, Occupational Safety and Health Administration (U.S. DOL/OSHA). "Selected Occupational Fatalities Related To Toxic And Asphyxiating Atmospheres In Confined Spaces As Found In Reports of OSHA Fatality/Catastrophe Investigations." Washington, DC 20210. U.S. DOL/OSHA, 1985.
2. U.S. Department of Labor, Occupational Safety and Health Administration (U.S. DOL/OSHA). "Selected Occupational Fatalities Related To Fire and/or Explosion in Confined Work Spaces as Found in OSHA Fatality/Catastrophe Investigations." Washington, DC 20210. U.S. DOL/OSHA, 1982.
3. U.S. Department of Labor, Occupational Safety and Health Administration (U.S. DOL/OSHA). "Selected Occupational Fatalities Related to Lockout/Tagout Problems As Found in Reports of OSHA Fatality/Catastrophe Investigations." Washington, DC 20210. U.S. DOL/OSHA, 1982.
4. U.S. Department of Labor, Occupational Safety and Health Administration (U.S. DOL/OSHA). "Selected Occupational Fatalities Related to Grain Handling As Found in Reports of OSHA Fatality/Catastrophe Investigations." Washington, DC 20210. U.S. DOL/OSHA, 1983.
5. U.S. Department of Health and Human Services, National Institute for Occupational Safety and Health (DHHS/NIOSH), "Request for Assistance in Preventing Occupational Fatalities in Confined Spaces." Cincinnati, Ohio 45226. HHS/PHS/CDC/NIOSH, 1986.

6. U.S. Department of Health, Education, and Welfare, National Institute for Occupational Safety and Health (USDHEW/NIOSH). "Criteria for a Recommended Standard * * * Working in Confined Spaces." Cincinnati, Ohio 45226. U.S. DHEW/NIOSH, 1979.

7. State of California, Department of Industrial Relations. General Industry Safety Orders #5182, "Confined Spaces." Sacramento, California 95814.

8. State of Florida, Department of Commerce, Bureau of Workmen's Compensation "Regulation Relating to Hazardous Atmospheres in Confined Spaces." 1989. Tallahassee, Florida 32301.

9. Kentucky Department of Labor, Occupational Safety and Health Program. "Kentucky Occupational Safety and Health General Industry Standards, 803 Kar 2:015 Section 3, Confined Spaces." Frankfort, Kentucky 40601.

10. Michigan Department of Public Health, Division of Occupational Health. "Control Measures for Hazardous Atmospheres (including tank and vessel entry)." Lansing, Michigan 48909.

11. Commonwealth of Pennsylvania, Department of Environmental Resources. "Entry to Confined Spaces." Harrisburg, Pennsylvania 17120.

12. State of New Jersey, Department of Labor and Industry, Bureau of Engineering and Safety, New Jersey Administrative Code Title 12, Chapter 170, "Work in Confined Spaces," April 1971. Trenton, New Jersey 08625.

13. American National Standards Institute (ANSI). "Safety Requirements for Working in Tanks and other Confined Spaces." ANSI Z117.1-1977. New York, New York 10018.

14. American Petroleum Institute (API). Draft #3, "Guidelines for Working in Inert

Confined Spaces in the Petroleum Industry." AOSC, 1985. Washington, DC 20005.

15. Organization Resource Counselors, Inc. "Sixth Draft of Proposed Performance Standard for Confined Spaces." Washington, DC 20006.

16. National Fire Protection Association (NFPA). "Standards for the Control of Gas Hazards on Vessels." NFPA 306-1984. Batterymarch Park, Quincy, Massachusetts 02269.

17. West Virginia University. "Confined Space Entry. An Evaluation of Current Practices and Procedures used by General Industry with Recommendations for Improvements to the Confined Space Entry Standard." 1984. Morgantown, West Virginia 26505.

18. E. I. DuPont de Nemours and Company. Safety Engineering Standard, "Vessel and Confined Space Entry." Wilmington, Delaware 19898.

Appendix C to § 1910.146

This appendix provides examples of permits in current use by industries where entries are made into permit required confined spaces. One sample permit is applicable to spaces directly supervised by the person who authorizes the entry (checklist type permit), paragraph (d)(2), and the other example is applicable to spaces authorized for entry by a person who does not directly supervise the entry [paragraph(d)(3)]. These samples are intended to provide guidance for employers in devising their own permits. They may be reproduced and used in whole or in part as applicable and desirable.

These examples are advisory only; their use is NOT mandatory.

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- ☐ CONFINED SPACE ENTRY PERMIT
☐ HAZARDOUS AREA ENTRY PERMIT

ALL COPIES OF PERMIT
WILL REMAIN AT JOB SITE
UNTIL JOB IS COMPLETED

LOCATION and DESCRIPTION
of Confined Space _____ Date _____

PURPOSE of Entry _____ Time _____ M

DEPARTMENT _____ Expiration _____ M

PERSON in Charge of Work _____

SUPERVISOR (S) In Charge of Crews		Type of Crew	Phone

SPECIAL REQUIREMENTS	Yes	No		Yes	No
Lock Out - De-energize			Escape Harness		
Lines Broken - Capped or Blanked			Tripod emergency escape unit		
Purge - Flush and vent			Lifelines		
Ventilation			Fire Extinguishers		
Secure Area			Lighting		
Breathing Apparatus			Protective Clothing		
Resuscitator - Inhalator			Respirator		

TEST(S) TO BE TAKEN (Valid for one 8-hour turn only)	P.E.L. °	Y S	N O	DATE	DATE	DATE	DATE	DATE	DATE	DATE	DATE
				M	M	M	M	M	M	M	M
% of Oxygen	-19.5% +21%										
% of L.E.L. °	Any % over 10										
Carbon Monoxide	50 ppm										
Aromatic Hydrocarbon	10 ppm										
Hydrocyanic Acid	10 ppm										
Hydrogen Sulfide	10 ppm										
Sulfur Dioxide	5 ppm										
Ammonia	25 ppm										

Name _____

GAS TESTER _____

Note: Continuous/periodic tests shall be established before beginning job. Any questions pertaining to test requirements contact certified division gas tester, Plant Gas Coordinator or the Industrial Hygienist

INSTRUMENTS USED	Name	Type	Ident. No.

SAFETY STANDBY PERSON(S)	Name	Ck. No.

YES ☐
NO ☐

Supv. authorizing all
above conditions satisfied

- * P.E.L. Permissible Entry Level
 * L.E.L. Lower Explosion Level

Orig. to Dept.
Copy to Safety

CONFINED SPACE & HAZARDOUS AREA ENTRY PERMIT

The form will be initiated by the supervisor in charge of the complete job.

Part 1, 3, and 4 (yes or no) can be completed at the procedure meeting, namely:

Location - Purpose - Person in Charge - Date - Time of job start - Estimated time of completion - Special requirements - Tests to be taken/how often

(Note) If job will continue an estimate of 6 turns, 6 copies of the entry permit will be initiated at the procedure meeting with the same information as stated above.

The supervisor in charge at the job site will negotiate the following:

Part 2 - Outside supervisor(s) - Group Leader - Type of Crew (Electrical, carpenter, boilermaker, etc.)

Part 4 - Results of tests taken prior to job entry - (Lab or certified gas tester will note all information on form, and sign.)
 List all other tests taken during turn.

Part 5 - List all instruments used for tests (Lab will note information on form.)

The supervisor at the job site will list name(s) of safety standby person(s) if needed.

The supervisor authorizing all the above conditions to his satisfaction will sign, date and time prior to work start. (Each turn)

Confined Space and Hazardous Area Entry Permit and Procedure will remain at the job site.

When job is completed -

Original to Department
 Duplicate to Safety Department

VESSEL AND CONFINED
SPACE ENTRY

TANK ENTRY - SAFETY CHECK SHEET - TANK NO. _____
(This form must be completely filled in each time tank is entered)

Item	Done			Removed		
	Date	Time	By	Date	Time	By
1. Initial Inspection - Operations						
a. Inspect tank - must be clean, cool and fume free						
2. Safety Locks - Operations						
a. Agitator. Test Start switch						
Note: Any one entering tank must have key to lock on agitator in his pocket.						
b. Can Downtherm valve and lock						
c. 14 Transfer pump						
3. Lines Broken and/or Blanked						
a. Sulfuric Acid						
b. Molten PX						
c. Solvent - bottom of tank - remove F/B valve						
d. Caustic						
e. Nitrogen						
f. Vent - line to tower						
g. Charging chute - remove section - Cover inlet on third floor - place STOP sign at site						
Note: All blanks must have yellow tab						
4. Safety Locks - Mechanical						
a. Agitator - See 2a above						
5. Safety Equipment - Mechanical						
a. Air Blower - 1 - tested						
b. Air Mask - 2 - Connected - tested						
c. Ladder - 1 - correct color code						
d. Safety Harness - 2 - wrist type - inspected						
e. Rescue Chainfall in place - tested						
f. Safety Light - tested						
g. Alarm Horn - tested						
6. Final Check - Operations and Mechanical						
a. Oxygen test result						
b. Explosimeter test result						
c. Tank cleared for entry - Operations						
d. Tank cleared for entry - Mechanical						
7. Work Completed by Mechanical						
a. Tank returned to Operations						
8. Final Check by Operations						
a. Recheck all lines for blanks						
b. Tank returned to service						

Monday
June 5, 1989

Part III

Environmental
Protection Agency

40 CFR Part 22
Collection of Civil Penalties Under Title II
of the Toxic Substances Control Act, the
Asbestos Hazard Emergency Response
Act of 1986; Final Rule

**ENVIRONMENTAL PROTECTION
AGENCY****40 CFR Part 22**

[FRL-3428-1]

**Collection of Civil Penalties Under Title
II of the Toxic Substances Control Act,
the Asbestos Hazard Emergency
Response Act of 1986****AGENCY:** Environmental Protection
Agency (EPA).**ACTION:** Final rule.

SUMMARY: This rule amends the Consolidated Rules of Practice, 40 CFR Part 22, under which administrative proceedings to assess civil penalties by EPA are conducted. Presently, all administrative civil penalties assessed under the Consolidated Rules must be paid to the Treasurer of the United States of America. Section 207 of Title II of the Toxic Substances Control Act (TSCA), 15 U.S.C. 2647 (enacted in section 2 of the Asbestos Hazard Emergency Response Act of 1986 (AHERA)), however, requires that all civil penalties collected from local educational agencies under Title II be used by the local educational agencies for purposes of complying with Title II. Any portion of a collected civil penalty remaining unspent after compliance by a local educational agency is completed must be deposited into the Asbestos Trust Fund established under section 5 of AHERA. This rule amends the Consolidated Rules of Practice to modify penalty collection procedures as they pertain to collection of penalties under TSCA Title II.

EFFECTIVE DATE: July 5, 1989.

FOR FURTHER INFORMATION CONTACT:
Jon D. Silberman, Attorney, Toxics
Litigation Division (LE-134P), Office of
Enforcement and Compliance
Monitoring, Environmental Protection
Agency, Room NE-113, Northeast Mall,

401 M Street, SW., Washington, DC
20460; Telephone: 202-475-8690.

SUPPLEMENTARY INFORMATION: This final rule codifies certain language appearing in section 207(a) Title II of TSCA, enacted as section 2 of AHERA. AHERA, the term commonly used for these provisions, will be used in this preamble.

This rule establishes supplemental rules of practice governing the administrative assessment of civil penalties under AHERA. Rather than being paid into the United States Treasury, as are other administratively assessed civil penalties (*see* 40 CFR 22.31(b)), administrative civil penalties collected from local educational agencies under section 207(a) for violations of AHERA will be made available to the local educational agencies for purposes of complying with AHERA. Once compliance is achieved, any remaining balance of such penalties will be deposited into the Asbestos Trust Fund established under AHERA section 5.

As this rule simply codifies statutory language and is procedural in effect, public comment is unnecessary, and no opportunity for public comment is being afforded.

This rule is not a major rule for the purposes of Executive Order (E.O.) 12291 of February 17, 1981. This rule was submitted to OMB for review under E.O. 12291. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

List of Subjects in 40 CFR Part 22Administrative practice and
procedure, Asbestos, Schools.

Dated: May 8, 1989.

William K. Reilly,
Administrator.Therefore, 40 CFR Part 22 is amended
as follows:**PART 22—[AMENDED]**

1. The authority citation for Part 22 is revised to read as follows:

Authority: Secs. 16 and 207 of the Toxic Substances Control Act; secs. 211 and 301 of the Clean Air Act; secs. 14 and 25 of the Federal Insecticide, Fungicide, and Rodenticide Act; secs. 105 and 108 of the Marine Protection, Research, and Sanctuaries Act; secs. 2002 and 3008 of the Solid Waste Disposal Act.

2. Section 22.41 is added to read as follows:

§ 22.41. Supplemental rules of practice governing the administrative assessment of civil penalties under Title II of the Toxic Substances Control Act, enacted as section 2 of the Asbestos Hazard Emergency Response Act (AHERA).

(a) Scope of the Supplemental rules. These Supplemental rules of practice shall govern, in conjunction with the preceding Consolidated Rules of Practice (40 CFR Part 22), all proceedings to assess a civil penalty conducted under section 207 of the Toxic Substances Control Act (the "Act") (15 U.S.C. 2647). Where inconsistencies exist between these Supplemental rules and the Consolidated rules (§§ 22.01 through 22.32), these Supplemental rules shall apply.

(b) Collection of civil penalty. Any civil penalty collected under section 207 of the Act shall be used by the local educational agency for purposes of complying with Title II of the Act. Any portion of a civil penalty remaining unspent after a local educational agency achieves compliance shall be deposited into the Asbestos Trust Fund established under section 5 of AHERA.

[FR Doc. 89-13276 Filed 6-2-89; 8:45 am]

BILLING CODE 6560-50-M

Monday
June 5, 1989**Part IV****Department of
Education**

34 CFR Parts 668 and 682

**Student Assistance General Provisions,
Guaranteed Student Loan (GSL), and
PLUS Programs; Implementation of the
Default Reduction Initiative and
Clarification; Final Rule and Proposed
Rule**

federal register

DEPARTMENT OF EDUCATION

34 CFR Parts 668 and 682

Student Assistance General Provisions and Guaranteed Student Loan and PLUS Programs

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the Student Assistant General Provisions regulations (34 CFR Part 668) and the regulations for the Guaranteed Student Loan (GSL) and PLUS programs (34 CFR Part 682). The final regulations are needed to implement the Secretary's default reduction initiative, and clarify that certain regulations in Part 682 apply to the Supplemental Loans for Students (SLS) Program.

Note: Pub. L. 100-297, enacted April 28, 1988, has renamed the Guaranteed Student Loan (GSL) Program, the Stafford Loan Program. This change will be reflected in a later document.

DATES:

Effective date: These regulations take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments, with the exception of §§ 668.15, 668.23, 668.44, 668.90, 682.604, 682.606, and 682.610. Those sections will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education and approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980. A document announcing the effective date will be published in the *Federal Register*. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

Section 682.603(c) applies only to the certification of a loan application on or after October 1, 1989. Section 682.606(b)(2) applies only to the refund calculation for a student whose last recorded day of attendance occurs on or after June 5, 1990. Section 682.411(h) applies only to a loan for which a request for preclaim assistance is made on or after December 4, 1989. Also, if a lender holds more than one loan made to a specific borrower, and those loans were acquired by the lender prior to that date, the requirements of § 682.411(h) are satisfied as to all of those loans if the lender complies with those requirements as to at least one of those loans.

Sections 668.44(c)(1)(ii) through (iv) and (d) apply only to loans certified for periods of enrollment beginning on or after December 1, 1989. However, the

requirements of section 487(a)(8) of the Act regarding disclosures continue to apply.

FOR FURTHER INFORMATION CONTACT: Pat Newcombe or Pamela A. Moran, telephone number (202) 732-4242.

SUPPLEMENTARY INFORMATION: On September 18, 1988, the Secretary published a notice of proposed rulemaking (NPRM) in the *Federal Register* (53 FR 36216). The NPRM included a detailed discussion of the various regulatory proposals included in the default reduction initiative, and that discussion will not be repeated here. The comment period on the NPRM was extended through February 28, 1989 (53 FR 39317).

The Secretary's extensive review of the default issue and the public comments received since the publication of the NPRM have resulted in a number of significant changes to the NPRM. A discussion of those changes follows. A full discussion of other changes to the NPRM is contained in the Summary of Comments and Responses, published as an appendix to the regulations.

The Secretary believes that several additional regulatory initiatives are needed to address the default problem. Those new regulatory initiatives will appear in a new NPRM to be published separately.

Revisions to the Notice of Proposed Rulemaking

Part 668—Student Assistance General Provisions

Section 668.15 Additional factors for evaluating administrative capability

The Secretary has revised the provision in this section that would have authorized the initiation of a proceeding to limit, suspend, or terminate (LST) the eligibility of a school with a default rate above 20 percent. The revised provision authorizes the initiation of such a proceeding beginning in 1991 if the school's default rate exceeds 60% (to be lowered to 40% in annual increments of 5%) or if it exceeds 40% and was not reduced by an increment of at least 5% from the preceding year's rate (e.g., a 50% rate must be reduced to 45% or below). As noted in revised § 668.90, a school against whom an LST action is brought under this provision will be able to avoid an LST sanction by demonstrating that it has acted diligently to implement the default reduction measures described in Appendix D of Part 668. This defense to LST sanctions based on a high default rate is referred to in this document as "the Appendix D defense."

It may not be necessary or appropriate to initiate LST actions against all schools that exceed the default rate triggers described above. Before deciding whether to institute an LST action against a school, the Secretary will generally request from the school the information described in § 668.15(b)(2) pertaining to the causes of default by the school's students. In deciding whether to initiate a proceeding, the Secretary intends to consider this information, the progress being made by the school in reducing defaults, other mitigating factors, and the likelihood of the school's satisfying the elements of the Appendix D defense.

Under the revised § 668.15(e), a school with a default rate over 20% could be required to implement specified reasonable and appropriate default reduction measures—in effect, a default management plan. The contents of each school's plan will be established by the Secretary based on a review of the school's analysis of its causes of default, any recommendations by the cognizant guarantee agencies, consultation with the school, and the information presented by the school at any informal hearing provided at the school's request. The goal of this process will be to select measures to address the major causes of default by the school's students.

While the authority to require high default schools to implement reasonable and appropriate default reduction measures has been in the General Provisions regulations since 1975, the use of a cumulative default rate in those regulations, and the inadequacy of available data on defaults that occurred in the early years of the GSL program, has made taking such actions difficult. The use of fiscal year default rates in the final regulations removes this impediment to the effective use of this authority.

In addition to the LST and default management plan initiatives, under revised §§ 682.604 and 682.606, a school with a default rate over 30% is required to adopt two "core" default reduction measures—a *pro rata* refund policy and delayed certification of loan applications—designed to reduce defaults by dropouts. The Secretary believes that this multi-tiered approach will preserve access to postsecondary education for all students regardless of income level, while protecting the Federal taxpayer from unreasonable risks of loss. The final regulations recognize that Federal policy should not discourage schools from serving the most disadvantaged members of society, but that it is nevertheless fair to require schools that present a high default risk

to take reasonable measures to reduce that risk.

Section 668.22 Distribution formula for institutional refunds and for repayment of disbursements made to the student for non-institutional costs

The final regulations do not revise current § 668.22, since the proposed revisions to that section in the NPRM were based on the application of a *pro rata* refund requirement to all schools. As noted below, the final regulations impose that requirement only on schools with default rates above 30%.

Section 668.44 Institutional information

The final regulations revise this section to require that a school disclose a job placement rate based on the information it has regarding the job placement of its students, including dropouts. The Secretary was concerned that the NPRM's proposed exclusion from the job placement rate calculation of graduates who do not respond to a school's job placement questionnaire could result in disclosure of inflated job placement rates. This potential bias is eliminated by the approach taken in the final rule. The school is required to disclose to prospective students the number of graduates for whom the school lacks job placement information, and the number of graduates that decide not to seek employment in the relevant occupation. In this way, the disclosures required by this section will provide data that is accurate and complete, in a simplified form that facilitates informed consumer choice. By requiring disclosure of job placement rates for all students, not just graduates, the final rule also provides prospective students with more useful information than would disclosures of job placement rates just for graduates.

In order to ensure that the job placement information disclosed to prospective students by a school under this section is accurate, each program review of the school conducted by the Department will include an examination of the procedures employed by the school in compiling that information, and, in selected cases, verification of the accuracy of that information through inquiries to employers and former students.

Section 668.90 Initial and final decisions—Appeals

This section has been revised to reflect the new 60% and 40% default rate thresholds for LST proceedings described in § 668.15 and discussed above. In addition, the elements of the Appendix D defense that a school may assert to avoid LST sanctions have been

added to this section. This defense is satisfied, and the administrative law judge is therefore precluded from imposing an LST sanction against the school based on a high default rate, if the school shows that it has acted diligently to implement the default reduction measures described in Appendix D to Part 668.

It should be emphasized that the Appendix D defense prevents the termination of a school based on its default rate if the school shows that it has implemented the measures listed in Appendix D. Thus, while a school's default rate of more than 60%, or of more than 40% absent a 5% annual reduction, is grounds for initiating an LST proceeding, it cannot serve as the basis for imposing an LST sanction on a school that demonstrates its administrative capability under this defense. The Secretary notes, however, that absent this defense, the ALJ must impose the sanction sought by the designated Department official; the ALJ retains no discretion in such a case. In effect, the LST provisions of § 668.15 and the Appendix D defense operate to (1) require that each school with a default rate above the rates described above implement the measures listed in Appendix D, and (2) make LST sanctions apply automatically to a school that fails to make a diligent effort to do so. The Secretary believes that, although some of the measures in Appendix D will be more effective for some schools than for others, the serious risk of financial loss to the GSL and SLS programs posed by schools with very high default rates requires that those schools take each of these steps, in order to provide the substantial incremental benefit in default reduction that each step will afford at every school.

The Secretary further notes that the Appendix D defense does not prevent the imposition of an LST sanction against a school based on a violation of program requirements. The Secretary will view a school's substantial noncompliance with a requirement of the regulations contained in this document as a serious infraction, requiring imposition of the termination sanction in most cases.

Part 682—Guaranteed Student Loan and Plus Programs**Section 682.410 Fiscal, administrative, and enforcement requirements**

The final regulations revise the NPRM by increasing from 15% to 20% the school default rate that will trigger a guarantee agency's duty to conduct a program review of a school. A review is

not required of a school with a rate above 20% if the school is subject to a default management plan imposed by the Secretary under § 668.15, or if the school's rate is not based on at least one cohort of loans entering repayment in a single fiscal year that totals \$100,000 or more. These revisions greatly reduce the burden on guarantee agencies with respect to the number of reviews required to be conducted, while preserving the effectiveness of the program review requirement as an element of the default reduction initiative.

Section 682.603 Certification by a participating school in connection with a loan application

Under the NPRM, one default reduction measure that a school with a default rate above 20% would have had to justify not implementing was delaying the certification of a borrower's loan application so that the borrower's loan proceeds were not received by the borrower until at least 30 days into the loan period. See NPRM proposed § 668.90(a)(3)(iii)(B) and proposed Appendix D to Part 668, item 14. Section 682.603 of the final regulations makes delayed certification with respect to the school's first-time borrowers a requirement applicable to any school with a default rate over 30%, until the Secretary notifies the school that its rate no longer exceeds that level. To ensure that this provision operates to prevent the delivery of loan proceeds to early dropouts as intended, this section also specifies that the student's endorsement of the check for the first disbursement of a loan subject to delayed certification may not occur until 30 days into the loan period.

The Secretary believes that delayed delivery of loan proceeds to first-time borrowers should apply to all schools, and has proposed legislation to accomplish this goal. These regulations only effect this policy for high default schools, because the Secretary believes that the impact on the programs of applying this policy to all schools is serious enough that the Congress should be given the opportunity to decide whether such a step is warranted.

Section 682.606 Refund policy

This provision has been revised to require the implementation of a *pro rata* refund policy only by schools with default rates above 30%, and to limit the required application of such a policy by the school to the shorter of the first six months in the student's program of study, or the first half of that program. All other schools and academic periods

continue to be subject to the fair and equitable refund requirements of § 682.806(b), and Appendix A to Part 682. As with the delayed certification requirement, this rule would require high default schools to take a step that addresses the troubling problem of defaults by early dropouts. The Secretary is limiting the application of this rule to high default schools because he believes that the regulatory imposition of a mandated refund policy should only be undertaken for schools whose default experience provides strong justification for doing so on program integrity grounds. The Secretary believes that the importance of a *pro rata* refund policy in reducing early dropouts provides that justification when a school's default rate exceeds 30%.

Section 682.810 Records, reports, and inspection requirements for participating schools

The final regulations revise this section to require each school that is required to use a "track record" disclosure form set forth in Appendix A to Part 688 to provide a completed form to the Secretary, along with information on the total cost of the program involved, on an annual basis. The NPRM required that the completed form be provided to each prospective student, but did not mandate that the school provide a copy of the form to the Secretary.

The Secretary will use the track record information provided under this provision in making various policy decisions relevant to vocational training programs, and in formulating his proposals for reauthorization of the Higher Education Act in 1991. The Secretary also intends to use this track record information to compile and disseminate lists of undergraduate nonbaccalaureate vocational training programs, arranged by geographic area and vocation in which each program is offered, to further enhance consumers' ability to make well-informed choices about enrollment in vocational training programs. The recipients of the lists will include high schools, welfare offices, and other entities likely to receive requests for information on these programs from prospective students.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 2,452 parties submitted comments on the proposed regulations. In addition, the Secretary received over 1,200 comments in response to the separate request for comments on the default issue published in the Federal Register on November 3,

1988 (53 FR 44514). An analysis of the comments and of the changes in the regulations since publication of the NPRM is published as an appendix to these final regulations. Substantive issues raised by commenters are discussed under the section of the regulations to which they pertain. Technical and other minor comments and changes are not addressed.

Executive Order 12291

The regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 688

Administrative practice and procedure, Colleges and universities, Consumer protection, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Student aid.

34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan Program and PLUS Program)

Dated: June 1, 1989.

Lauro F. Cavazos,
Secretary of Education.

The Secretary amends Part 688 and Part 682 of Title 34 of the Code of Federal Regulations as follows:

PART 688—STUDENT ASSISTANCE GENERAL PROVISIONS

1. The authority citation for Part 688 continues to read as follows:

Authority: 20 U.S.C. 1085, 1088, 1091, 1092, 1094, and 1141, unless otherwise noted.

2. Section 688.15 is revised to read as follows:

§ 688.15 Additional factors for evaluating administrative capability.

(a) The Secretary considers it an indication of an institution's impaired capability of properly administering Title IV, HEA programs if—

(1) The fiscal year default rate, as defined in paragraph (f) of this section, on loans made under the GSL and SLS programs to students for attendance at that institution exceeds 20 percent;

(2) The default rate on loans made under the Perkins Loan program to students for attendance at that institution exceeds 20 percent of the principal of all those loans that have reached the repayment period; or

(3)(i) For an institution that a common academic year for a majority of its students, more than 33 percent of the regular students who are enrolled on the first day of classes of an academic year withdraw from enrollment at that institution during that academic year; or

(ii) For an institution which does not have a common academic year for a majority of its students, more than 33 percent of the regular students enrolled on the first day of classes of any eight-month period withdraw during that period.

(b) If the GSL and SLS fiscal year default rate for an institution exceeds 20 percent for any fiscal year after fiscal year 1988, the Secretary may, after such consultation with cognizant guarantee agencies as the Secretary deems appropriate, take one or more of the following actions:

(1) On or after January 1, 1991, initiate a proceeding under Subpart G of this part to limit, suspend, or terminate the eligibility of the institution to participate in the Title IV, HEA programs, if—

(i) The institution's GSL and SLS fiscal year default rate exceeds 40 percent for any fiscal year after 1989 and has not been reduced by an increment of at least 5 percent from its rate for the previous fiscal year (e.g., a 50 percent rate was not reduced to 45 percent or below); or

(ii) The institution's GSL and SLS fiscal year default rate exceeds—

(A) 60 percent for fiscal year 1989;
(B) 55 percent for fiscal year 1990;
(C) 50 percent for fiscal year 1991;
(D) 45 percent for fiscal year 1992; or
(E) 40 percent for any fiscal year after fiscal year 1992.

(2) Require the institution to submit to the Secretary and one or more guarantee agencies the following information,

within a time frame specified by the Secretary, to help the Secretary make a preliminary determination as to the appropriate action to be taken by the Secretary regarding the institution:

(i) A comprehensive written analysis of the causes of default by its students, for defaults in the first two years of repayment, that occurred during the three most recent calendar years ending not less than six months prior to the Secretary's request, and the factual basis for each conclusion reached in the analysis.

(ii) In the case of an institution offering an undergraduate non-baccalaureate degree program designed to prepare students for a particular vocational, trade, or career field, a statistical analysis showing the following for each program:

(A) The pass rates of graduates of the program in the three preceding calendar years ending not less than six months prior to the Secretary's request on any licensure or certification examination required by the State in which the institution is located for employment in the particular vocational, trade, or career field.

(B) The job placement rates for students who were originally scheduled, at the time of enrollment, to complete the program in the three most recent calendar years ending not less than eighteen months prior to the Secretary's request, as calculated in accordance with § 688.44(c)(3) of this part.

(C) The completion rates for students in the program for the three most recent calendar years ending not less than 18 months prior to the Secretary's request, as calculated in accordance with § 688.44(c)(4) of this part, for all of the institution's regular students in the aggregate, and as segregated according to the following categories:

(1) Title IV student aid recipients.

(2) High school graduates or holders of GED certificates at the time of enrollment.

(3) Students admitted on the basis of "ability to benefit" as defined in § 688.7(b) of this part.

(iii) A written description of all additional steps taken by the institution beyond those otherwise required by statute, regulation, or agreement with the Secretary, designed to reduce defaults by its students in the future.

(iv) Any other information relating to that determination, as reasonably required by the Secretary.

(c)(1) If the default rate for an institution under the Perkins Loan program exceeds the rate set forth in paragraph (a)(2) of this section, or if the withdrawal rate at an institution exceeds the rate set forth in paragraph

(a)(3) of this section for an academic year, the Secretary may require the institution to submit for its latest complete fiscal year—

(i) A profit and loss statement and a balance sheet that are based on the same accounting procedures used by the institution for financial reporting;

(ii) A financial audit report of the institution. The audit must have been conducted by a licensed certified public accountant in accordance with generally accepted auditing standards; or

(iii) Other information required by the Secretary to determine the cause of the high withdrawal or default rate and the best measures for alleviating that condition.

(2) The date of preparation of the documents referred to in paragraph (c)(1)(i) through (iii) of this section must be within 12 months of the date of the Secretary's request.

(d) The Secretary may require that the profit and loss statement and balance sheet referred to in paragraph (c)(1)(i) of this section be audited and certified by a licensed certified public accountant in accordance with generally accepted auditing standards.

(e) If the institution's GSL and SLS fiscal year default rate, Perkins Loan program default rate, or withdrawal rate exceeds the rates set forth in paragraph (a)(1), (a)(2), or (a)(3) of this section respectively, in addition to, or in lieu of, taking the actions described in paragraph (b) of this section, or requiring the institution to submit the documents described in paragraph (c) of this section, the Secretary may require the institution, after notice and opportunity for a hearing, to take specified reasonable and appropriate measures to alleviate that condition as a requirement for its continued participation in the Title IV, HEA programs.

(f) The following definitions apply to this section and § 688.90 of this part:

(1) "Fiscal year default rate" means, for any fiscal year in which 30 or more current and former students at the institution enter repayment on GSL or SLS program loans received for attendance at the institution, the percentage of those current and former students who enter repayment on GSL or SLS program loans received for attendance at that institution in that fiscal year who default before the end of the following fiscal year. For any fiscal year in which less than 30 of the institution's current and former students enter repayment, the term "fiscal year default rate" means the average of the rate calculated under the preceding sentence for the three most recent fiscal years. In the case of a student who has

attended and borrowed at more than one school, the student (and his or her subsequent repayment or default) is attributed to each school for attendance at which the student received a loan that entered repayment in the fiscal year. A loan on which a payment is made by the school, its owner, agent, contractor, employee, or any other affiliated entity or individual, in order to avoid default by the borrower, is considered as in default for purposes of this definition.

(2) "Fiscal year" means the period from and including October 1 of a calendar year through and including September 30 of the following calendar year.

(Authority: 20 U.S.C. 1082, 1094)

3. In section 688.23, paragraph (f)(1)(vi) is amended by removing the word "and"; paragraph (f)(1)(vii) is amended by removing the period and adding in its place "; and"; and a new paragraph (f)(1)(viii) is added, to read as follows:

§ 688.23 Audits, records, and examination.

(f) . . .
(1) . . .
(viii) Information substantiating all disclosures made to a prospective student under § 688.44 (c) through (f) of this part.

4. Section 688.44 is amended by revising paragraph (c), and by adding new paragraphs (d), (e), and (f) to read as follows:

§ 688.44 Institutional information.

(c)(1) Prior to a prospective student's enrollment or execution of an enrollment contract, whichever occurs earlier, in an undergraduate non-baccalaureate degree program designed to prepare students for a particular vocational, trade, or career field, the institution shall disclose to the prospective student—

(i) All licensure or certification requirements established by the State in which the institution is located for the particular vocational, trade, or career field;

(ii) The pass rate of graduates of the program for the most recent calendar year that ended not less than six months prior to the date of disclosure, on any licensure or certification examination required by the State for employment in the particular vocational, trade, or career field;

(iii) The job placement rate for students who were originally scheduled,

at the time of enrollment, to complete the program in the most recent calendar year that ended not less than 18 months prior to the date of disclosure. In calculating this rate, the institution shall consider as not having obtained employment for any graduate for whom the institution does not possess evidence, documented in the graduate's file, showing that the graduate has obtained employment in the occupation for which the program is offered.

(iv) The completion rate for students in the program for the most recent calendar year that ended not less than 18 months prior to the date of disclosure. This rate is calculated by determining the percentage of students enrolled in the program who were originally scheduled, at the time of enrollment, to complete the program in that calendar year that successfully completed the program, or obtained full-time employment in the occupation for which the training was offered, within 150% of the amount of time normally required to complete the program; and

(v) Any other information necessary to substantiate the truth of any claim made by the institution as to job placement.

(2) For purposes of this paragraph (c), a student is "originally scheduled, at the time of enrollment, to complete the program" on the date when the student will have been enrolled in the program for the amount of time normally required to complete the program. The "amount of time normally required to complete the program" is the period of time specified in the institution's enrollment contract, catalog, or other materials, for completion of the program by a full-time student, or the period of time between the date of enrollment and the anticipated graduation date appearing on the student's loan application (if any), whichever is less. However, the "amount of time normally required to complete the program" must be calculated on a *pro rata* basis for students enrolled on a less than full-time basis.

(d) With respect to a program other than an undergraduate non-baccalaureate program designed to prepare students for a particular vocational, trade, or career field, prior to a prospective student's enrollment or execution of an enrollment contract, whichever is earlier, in a program for which the institution publicly makes a claim as to the job placement experience of its students as a means of attracting students to enroll in the program, the institution shall disclose to the prospective student—

(1)(i) The information described in paragraphs (c)(1) (i) through (iii) of this

section, in the case of a baccalaureate or graduate program designed to prepare students for a particular vocational, trade, or career field; or

(ii) Other valid employment statistics for students who have enrolled in the program, for any other program;

(2) The information described in paragraph (c)(1)(iv) of this section; and

(3) Any other information necessary to substantiate the truth of the claim as to job placement.

(e) If an institution makes a claim to a prospective student regarding the starting salaries of its graduates, or the starting salaries or local availability of jobs in a field, it must disclose to the prospective student detailed statistics and other information necessary to substantiate the truthfulness of that claim.

(f)(1) The institution shall make the disclosure required under paragraphs (c)(1) (ii) through (iv) of this section using the applicable disclosure form set forth in Appendix A to this part, except that an institution may use an appropriate foreign language version of that form for a student whose primary language is not English.

(2) The institution shall indicate in the space provided for that purpose on the form the number of graduates of the program included in the calculation of the job placement rate disclosed on the form who state in writing that they have chosen not to attempt to obtain employment in the occupation for which the program is offered, and the number of such graduates, if any, who fail to indicate within 60 days, in response to a questionnaire seeking that information sent by the institution to the last known address of the graduate, whether they have obtained employment in that occupation.

(3) The completed disclosure form must be signed by the student and a copy thereof maintained by the institution in the student's file.

(Authority: 20 U.S.C. 1082, 1092)

5. In section 668.72, paragraph (j) is amended to remove the word "or", paragraph (k) is amended to remove the period and add, in its place, "; or", and a new paragraph (l) is added to read as follows:

§ 668.72 Nature of educational program.

(l) Any matters required to be disclosed to prospective students under § 668.44 of this part.

(Authority: 20 U.S.C. 1094)

6. Section 668.90 is amended by adding a new paragraph (a)(3)(iii), and

revising the citation of legal authority to read as follows:

§ 668.90 Initial and final decisions—Appeals.

(a)

(3)

(iii) In a limitation, suspension or termination proceeding commenced on the grounds described in § 668.15(b)(1) of this part, if the administrative law judge finds that the institution's GSL and SLS fiscal year default rate, as defined in § 668.15(f) of this part, meets the conditions specified in § 668.15(b)(1) of this part for initiation of limitation, suspension, or termination proceedings, the administrative law judge shall find that the sanction sought by the designated Department official is warranted, except that the administrative law judge shall find that no sanction is warranted if the institution demonstrates that it has acted diligently to implement the default reduction measures described in Appendix D to this part.

(Authority: 20 U.S.C. 1082, 1094)

7. Part 668 is amended by adding an Appendix A to read as follows:

Appendix A—Track Record Disclosure Forms

This appendix provides forms for institutions to use to disclose to prospective students the information required by 34 CFR 668.44(c) (2) through (4). The use of these forms is required by 34 CFR 668.44(f).

An institution shall use Form I in connection with a program offered for a vocational, trade, or career occupation for which there exists a State licensure or certification examination required by the State for employment in the occupation. For all other programs for which disclosures under 34 CFR 668.44(c) (2) through (4) are required, the institution shall use Form II.

Form I:

HOW OUR STUDENTS ARE DOING

To help you make a good decision about whether to sign up for (name of program), (name of institution) wants you to know that, according to the latest information—

—%, or — of the — students in this program scheduled to graduate in (year) went on to graduate;

—%, or — of the — students scheduled to graduate in that year have found jobs in (name of occupation or field for which training is offered); and

—%, or — of the — graduates of this program taking the (name of test) administered by the State of (name of State in which the program is being offered to the student) in (year) passed that examination.

I have read and understood the graduation rate, licensing or certification examination

pass rate, and job placement rate information provided above.

Date

(Prospective student's signature)

"We have been told by — of the students that were scheduled to graduate in that year that, even though they graduated, they decided not to look for a job in that occupation. Also, — of that year's graduates have not responded to our job placement questionnaire, so we do not know whether they have found jobs or not."

Form II

HOW OUR STUDENTS ARE DOING

To help you make a good decision about whether to sign up for (name of program), (name of institution) wants you to know that, according to the latest information—

—%, or — of the — students in this program scheduled to graduate in (year) went on to graduate; and

—%, or — of the — students scheduled to graduate in that year have found jobs in (name of occupation or field for which training is offered).

I have read and understood the graduation rate and job placement rate information provided above.

Date

(Prospective student's signature)

"We have been told by — of the students scheduled to graduate in that year that, even though they graduated, they decided not to look for a job in that occupation. Also, — of that year's graduates have not responded to our job placement questionnaire, so we do not know whether they have found jobs or not."

8. Part 668 is amended by adding a new Appendix D to read as follows:

Appendix D—Default Reduction Measures

This appendix describes measures that an institution with a high default rate under the GSL and SLS programs should find helpful in reducing defaults. An institution with a fiscal year default rate that exceeds the threshold rate for a limitation, suspension, or termination action under § 668.15 may avoid those sanctions by demonstrating that it has made a diligent effort to implement the measures included in this Appendix. Other institutions should strongly consider taking these steps as well.

To reduce defaults, the Secretary recommends that the institution take the following measures:

I. Measures to Reduce Defaults by Dropouts

1. Revise admission policies and screening practices, consistent with applicable State law, to ensure that students enrolled in the institution, especially those admitted under "ability to benefit" criterion or those in need of substantial remedial work, have a

reasonable expectation of succeeding in their programs of study.

2. Improve the availability and effectiveness of academic counseling and other support services to decrease withdrawal rates, particularly with respect to academically high-risk students.

3. In consultation with the cognizant accrediting body, attempt to reduce its withdrawal rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program.

4. Increase the frequency of reviews of in-school status of borrowers to ensure the institution's prompt recognition of instances in which borrowers withdraw without notice to the institution.

5. Implement a compensation structure for commissioned enrollment representatives and salesmen under which a representative or salesman earns no more than a nominal commission for enrolling students that never attend school, and progressively greater commissions for students who remain in school for substantial periods.

6. Implement a *pro rata* refund policy, as defined in 34 CFR 682.606(b)(2).

7. Delay certification of a first-time borrower's loan application, as described in 34 CFR 682.603(c).

8. Except in the case of a program of study by correspondence, require each first-time student borrower to endorse the loan check at the institution, and pick up at the institution any loan proceeds remaining after deduction of institutional charges.

II. Measures to Reduce Defaults Related to Borrowers' Difficulty Finding Employment

1. Expand its job placement program for its students by, for example, increasing contacts with local employers, counseling students in job search skills, and exploring with local employers the feasibility of establishing internship and cooperative education programs.

2. In consultation with the cognizant accrediting body, attempt to improve its job placement rate and licensing examination pass rate by improving its curricula, facilities, materials, equipment, qualifications and size of faculty, and other aspects of its educational program.

3. Establish a liaison for job information and placement assistance with the local office of the United States Employment Service and the Private Industry Council supported by the U.S. Department of Labor.

III. Measures To Improve Borrowers' Understanding and Respect for the Loan Repayment Obligation

1. In cooperation with the lender and in compliance with law, including the Fair Debt Collection Practices Act, if applicable, contact each borrower with respect to whom the lender has requested preclaims assistance from the guarantee agency to urge the borrower to repay the loan and to emphasize the consequences of default listed in item III.5(a)(3)(ii), below, by means of telephone contacts and letters sent "Forwarding and Address Correction Requested."

2. In cooperation with the lender and in compliance with law, including the Fair Debt Collection Practices Act, if applicable, contact a borrower during the grace period in order to—

(i) Remind the borrower of the importance of the repayment obligation and of the consequences of default listed in item III.5(a)(3)(ii), below, by means of telephone contacts and letters sent "Forwarding and Address Correction Requested"; and

(ii) Update the institution's records regarding the borrower's address, telephone number, employer, and employer's address.

3. At the time of a borrower's admission to the institution, obtain information from the borrower regarding references and family members beyond those provided on the loan application, to enable the institution to provide the lender with a variety of ways to locate a borrower who later relocates without notifying the lender.

4. Require an enrollment representative or salesman to explain carefully to a prospective student that, except in the case of a loan made or originated by the institution, the student's dissatisfaction with, or nonreceipt of, the educational services being offered by the institution does not excuse the borrower from repayment of any GSL or SLS loan made to the borrower for enrollment at the institution.

5. Conduct the following counseling activities in addition to those described in 34 CFR Part 682, Subpart F:

(a) As part of the initial loan counseling provided to a GSL or SLS borrower—

(1) Provide information to the borrower regarding, and through the use of a written test and intensive additional counseling for those who fail the test, ensure the borrower's comprehension of, the terms and conditions of GSL and SLS program loans, including—

(i) The stated interest rate on the borrower's loans;

(ii) The applicable grace period provided to the borrower and the approximate date the first installment payment will be due;

(iii) A description of the charges imposed for failure of the borrower to pay all or part of an installment payment when due; and

(iv) A description of any charges that may be imposed as a consequence of default, such as liability for expenses reasonably incurred in attempts by the lender or guarantee agency to collect the loan, including attorney's fees;

(2) Explain the borrower's rights and responsibilities in the GSL and SLS loan programs including—

(i) The borrower's responsibility to inform his or her lender immediately of any change of name, address, telephone number, or Social Security number;

(ii) The borrower's right to deferment, cancellation or postponement of repayment, and the procedures for obtaining those benefits;

(iii) The borrower's responsibility to contact his or her lender in a timely manner, before the due date of any payment he or she cannot make; and

(iv) The availability of forbearance under the circumstances and procedures described in 34 CFR Part 682;

(3) Provide to the borrower—

(i) (A) General information on the average indebtedness of student borrowers who have obtained GSL or SLS program loans for attendance at that institution and the average amount of a required monthly payment based on that indebtedness; or

(B) The estimated balance owed by the borrower on GSL and SLS loans, and the average amount of a required monthly payment based on that balance; and

(ii) Detailed information regarding the consequences of the failure to repay the loan, including a damaged credit rating for at least 7 years, loss of generous repayment schedule and deferment options, possible seizure of Federal and State income tax refunds due, exposure to civil suit, liability for collection costs, possible referral of the account to a collection agency, garnishment of wages if the borrower is a Federal employee, and loss of eligibility for further Federal Title IV student assistance.

(4) Review the repayment options (e.g., loan consolidation, refinancing) available to the borrower;

(5) Explain the sale of loans by lenders and the use by lenders of outside contractors to service loans; and

(6) Provide general information on budgeting of living expenses and other aspects of personal financial management.

(b) As part of the exit counseling provided to a GSL or SLS borrower—

(1) Provide the counseling and testing described in paragraph (a) for the initial loan counseling;

(2) Provide a sample loan repayment schedule based on the borrower's total loan indebtedness for attendance at that institution;

(3) Provide the name and address of the borrower's lender(s) according to the institution's records;

(4) Provide guidance on the preparation of correspondence to the borrower's lender(s) and completion of deferment forms; and

(c) Obtain information from the borrower regarding the borrower's address, the address of the borrower's next-of-kin, and the name and address of the borrower's expected employer.

6. Use available audio-visual materials, such as videos and films, to enhance the effectiveness of its initial and exit counseling.

IV. General

1. Conduct an annual comprehensive self-evaluation of its administration of the Title IV programs to identify institutional practices that should be modified to reduce defaults, and then implement those modifications.

PART 682—GUARANTEED STUDENT LOAN AND PLUS PROGRAMS

9. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

10. A new § 682.104 is added to read as follows:

§ 682.104 Applicability of regulations to the Supplemental Loans for Students Program.

The Supplemental Loans for Students (SLS) program is a continuation of the portion of the predecessor PLUS Program that provided for loans to student borrowers. Accordingly, the provisions of the regulations in this part, Part 600, and Part 688, applicable to loans made to students under the PLUS Program apply to loans made under the SLS Program, except where inconsistent with the Act.

(Authority: 20 U.S.C. 1078-1, 1082)

11. Section 682.410 is amended by removing the word "and" at the end of paragraph (c)(1)(i)(B), by removing the period at the end of paragraph (c)(1)(ii)(B) and adding in its place "and", by adding a new paragraph (c)(1)(iii), and by revising the citation of legal authority to read as follows:

§ 682.410 Fiscal, administrative, and enforcement requirements.

(c) * * *

(iii) Each participating school located in a State for which the guarantee agency is the principal guarantee agency that has a fiscal year default rate, as defined in 34 CFR 688.15, for either of the two immediately preceding fiscal years, as defined in § 688.15, that exceeds 20 percent, unless the school is under a mandate from the Secretary under 34 CFR 688.15 to take specific default reduction measures, or if the total dollar amount of loans entering repayment in each fiscal year on which the default rate over 20 percent is based does not exceed \$100,000.

(Authority: 20 U.S.C. 1078, 1078-1, 1082, 1094, 1097)

12. Section 682.411 is amended by revising paragraph (h) to read as follows:

§ 682.411 Due diligence by lenders in the collection of guarantee agency loans.

* * *

(h) If the agency that guaranteed the loan offers preclaims assistance, the lender shall request that assistance within 10 days of the date that assistance is first available from the agency, and shall, not later than 30 days after sending that request unless the loan has been brought current prior to that thirtieth day, notify the school for attendance at which the loan was made of the request by providing the school with a copy of that request, or by other means.

* * *

13. Section 682.603 is amended by adding a new paragraph (c) and revising the citation of legal authority to read as follows:

§ 682.603 Certification by a participating school in connection with a loan application.

(c) Beginning not later than 60 days after a school receives notice from the Secretary that its fiscal year default rate, as defined in 34 CFR Part 688, exceeded 30 percent for any fiscal year after fiscal year 1986, and continuing until the school is notified by the Secretary that its rate was equal to or less than 30 percent for a subsequent fiscal year, a school shall delay certification of the loan application of any student applying for his or her first GSL or SLS loan for attendance at the school, so that, in compliance with § 682.604, the school ensures that the student's endorsement of the check for (or written approval for the release of funds disbursed by electronic funds transfer representing) the first disbursement of the loan, the delivery of any loan proceeds to such a borrower, and the crediting of any proceeds to the borrower's account, do not occur until the borrower has attended the institution for at least 30 days during the period of enrollment for which the loan was made.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1078-2, 1082, 1085, 1094)

14. Section 682.604 is amended by revising the section heading, by adding new paragraphs (f), (g), and (h), and revising the authority citation to read as follows:

§ 682.604 Processing the borrower's loan proceeds and counseling borrowers.

* * *

(f) *Initial counseling.* (1) Except in the case of a correspondence school, a school shall conduct counseling with each GSL and SLS borrower, either in person or by videotape presentation. In each case, the school shall conduct this counseling prior to its release of the first disbursement of the proceeds of the first GSL or SLS loan made to the borrower for attendance at the school, and shall ensure that an individual with expertise in the Title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. A correspondence school shall provide the borrower with written counseling materials by mail prior to releasing those proceeds.

(2) In conducting the initial counseling, the school must—

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming;

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports and litigation; and

(iii) In the case of a student borrower of a GSL or SLS program loan (other than a loan made or originated by the school), emphasize that the borrower is obligated to repay the full amount of the loan even if the borrower does not complete the program, is unable to obtain employment upon completion, or is otherwise dissatisfied with or does not receive the educational or other services that the borrower purchased from the school.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in Appendix D to 34 CFR Part 688.

(g) *Exit counseling.* (1) A school shall conduct in-person exit counseling with each GSL and SLS borrower shortly before the borrower ceases at least half-time study at the school, except that—

(i) In the case of a correspondence school, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge, or fails to attend an exit counseling session as scheduled, the school shall mail written counseling material to the borrower at the borrower's last known address within 30 days after learning that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling the school must—

(i) Provide the borrower with general information with respect to the average indebtedness of the students who have obtained GSL or SLS program loans for attendance at that school;

(ii) Inform the student as to the average anticipated monthly repayment for those students based on that average indebtedness;

(iii) Review for the borrower available repayment options (e.g., loan consolidation, refinancing);

(iv) Suggest to the borrower debt management strategies that the school determines would best facilitate repayment by the borrower; and

(v) Include the matters described in paragraph (f)(2) of this section.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or

materials are set forth in Appendix D to Part 688.

(4) The school shall maintain in the student borrower's file documents substantiating the school's compliance with paragraphs (f)-(g) of this section as to that borrower.

(Authority: 20 U.S.C. 1077, 1078, 1078-1, 1082, 1085, 1092, 1094)

15. Section 682.605 is amended by revising paragraph (a) to read as follows:

§ 682.605 Determining the date of a student's withdrawal.

(a) Purpose. This section establishes rules for how a school shall determine the withdrawal date for a student to whom or on whose behalf a loan has been made under this part, for the purpose of reporting to the lender the date that the student has withdrawn from the school and for determining when a refund must be paid under § 682.607 of this part.

16. Section 682.606 is revised to read as follows:

§ 682.606 Refund policy.

(a) *General.* (1) A school shall have a fair and equitable refund policy under which the school shall make a refund of unearned tuition, fees, room and board and other charges, to a student who received a GSL or SLS Program loan, or whose parent received a PLUS Program loan on behalf of the student, if the student—

(i) Does not register for the period of attendance for which the loan was intended; or

(ii) Withdraws or otherwise fails to complete the period of enrollment for which the loan was made.

(2) The school shall provide a written statement containing its refund policy, together with examples of the application of this policy, to a prospective student prior to the student's enrollment, and shall make its policy known to currently enrolled students. The school shall include in its statement the procedures that a student must follow to obtain a refund, but the school shall pay to the lender the portion of a refund allocable to the student's GSL, SLS, or PLUS program loans under 34 CFR Part 688 whether or not the student follows those procedures. If the school changes its refund policy, it shall ensure that all students are made aware of the new policy.

(b) *Fair and equitable refund policy.* A school's refund policy is fair and equitable if—

(1) That policy provides for a refund of at least the larger of the amount provided under—

(i) The requirements of applicable State law; or

(ii) (A) The specific refund standards established by the school's nationally recognized accrediting agency and approved by the Secretary; or

(B) If no such standards exist, the specific refund policy standards contained in Appendix A to this part, or the refund policy standards set by another association of institutions of postsecondary education and approved by the Secretary; and

(2) Within 60 days after the school's receipt of notice from the Secretary that its fiscal year default rate, as defined in 34 CFR Part 688, exceeded 30 percent for any fiscal year after 1986, and continuing until the Secretary notifies the school that its rate was equal to or less than 30 percent for a subsequent fiscal year, the school's policy conforms with the *pro rata* refund calculation described in paragraph (c) of this section or the requirements of paragraph (b)(1) of this section, whichever results in the larger refund amount. However, the provisions of paragraph (b)(2) of this section do not apply to the school's refund policy for any student whose withdrawal date is after the earlier of—

(i) The halfway point (in time) for the student's program of study; or

(ii) Six months after the commencement of the student's program.

(c)(1) "*Pro rata* refund," as used in this section, means a refund by the school of not less than that portion of the tuition, fees, room and board, and other charges assessed the student by the school equal to the portion of the period of enrollment for which the student has been charged, plus—

(i) A reasonable administrative fee not to exceed the lesser of 5 percent of the tuition, fees, room and board, and other charges assessed the student, or \$100; and

(ii) Charges authorized by paragraph (c)(5) of this section.

(2) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in credit hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of weeks comprising the period of enrollment for which the

student has been charged into the number of weeks remaining in that period as of the last recorded day of attendance by the student.

(3) For purposes of paragraph (c)(1) of this section, in the case of a program that is measured in clock hours, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total clock hours comprising the period of enrollment for which the student has been charged into the number of clock hours remaining to be completed by the student in that period as of the last recorded day of attendance by the student.

(4) For purposes of paragraph (c)(1) of this section, in the case of a correspondence program, "the portion of the period of enrollment for which the student has been charged that remains" is determined by dividing the total number of lessons comprising the period of enrollment for which the student has been charged into the total number of such lessons not submitted by the student.

(5) A school may require that equipment issued to the student by the school that the school would reissue to another student be returned by a student once the school determines that the borrower has withdrawn, if the school makes a written request for that return that is received by the student within 10 days of the date of that determination. If the school notified the student in writing prior to enrollment that return of the specific equipment involved would be required if the student withdrew, the school may deduct from the refund owed under this section the documented cost to the school of that equipment if the student fails to return it within 10 days of the date of the student's receipt of the request from the school. However, the school may not delay its payment of a refund to a lender under § 682.607 by reason of this process.

(Authority: 20 U.S.C. 1078, 1078-1, 1078-2, 1082, 1084)

17. Section 682.607 is amended by revising paragraph (c) to read as follows:

§ 682.607 Payment of a refund to a lender.

(c) *Timely payment.* A school shall pay a refund that is due—

(1) Within 60 days after the earliest of the—

(i) Student's withdrawal as determined under § 682.605 (b)(1)(i) or (b)(3);

(ii) Expiration of the academic term (e.g., semester, quarter, or trimester) in

which the student withdrew, as determined under § 682.605(b)(1)(ii);

(iii) Expiration of the period of enrollment for which the loan was made; or

(iv) The date on which the school makes a determination that the student has withdrawn under § 682.605(b)(1)(ii); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under § 682.605(c), within 30 days after the last day of that leave of absence.

18. Section 682.610 is amended by adding new paragraphs (f) and (g) to read as follows:

§ 682.610 Records, reports, and inspection requirements for participating schools.

(f) *Information sharing.* Upon request, a school shall promptly provide a lender or guarantee agency with any information it has respecting the last known address, surname, employer, and employer address of a borrower who attends or has attended the school.

(g) *Reports to the Secretary.* With respect to each program for which a disclosure to a prospective student is required by 34 CFR 688.44 to be made using a form set forth in Appendix A, Part 688, a school shall, between October 1 and December 31 of each year, transmit to the Secretary—

(1) A completed copy of that form containing the most recent data required by Part 688 to be included on the form; and

(2) Information showing the total amount of charges for tuition, fees, equipment, books, and supplies for the program.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Analysis of Comments and Changes

Section 682.15 Additional factors for evaluating administrative capability

Comments: The majority of commenters objected to the provisions in this section that would authorize the initiation of an LST action against a school with a GSL and SLS default rate greater than 20 percent. Many commenters objected to use of this criterion to eliminate a school from participation in all Federal student financial aid programs. They believed that this factor alone was not an adequate indicator of a school's administrative capability. Many commenters also believed that a school should have the option of implementing a default reduction plan to reduce its default rate prior to action by the Secretary to terminate the school.

Discussion: Several changes have been made. The Secretary has revised this section to implement a multi-tiered approach that authorizes the initiation of an LST action beginning in 1991 if the school's default rate exceeds 60% (this standard to be lowered to 40% in increments of 5% by 1995), or if that rate exceeds 40% and has not been reduced by an increment of at least 5% from the preceding year's rate. Under §§ 682.604 and 682.606, schools with default rates over 30% would be subject to two mandatory default reduction measures—a *pro rata* refund policy and delayed certification of loan applications for first-time borrowers. Finally, under this section, schools with default rates over 20% would be required to implement default management plans established by the Secretary on a case-by-case basis, with components of the plan being drawn from Appendix D, recommendations of the school and guarantee agencies, and other sources. The school would be provided an opportunity for an informal hearing prior to imposition of a plan.

Comments: Several commenters disagreed with the use of a fiscal year default rate. They thought that a cumulative rate or a rate that reflected a longer time frame would be more equitable. Other commenters urged the use of a dollar-based rate, rather than a borrower-based rate, and a number of commenters urged that the rate take account of post-default collections. Some commenters also expressed concern about the quality of available data on defaults.

Discussion: No change has been made. The Secretary believes that using a fiscal year default rate is more equitable than using a cumulative rate because it does not penalize a school for a high default rate incurred before it took steps to reduce defaults. Indeed, the positive results of actions taken by a school to reduce its default rate would be readily evident from its fiscal year rates, but not from its cumulative rate. Further, a default that takes place more than two years after the borrower leaves school is unlikely to be attributable to the actions of the school and should therefore not be charged to the school.

A borrower-based rate has been retained in preference to a dollar-based rate to avoid numerous technical issues inherent in the latter approach, such as the calculation of outstanding balances, attribution of payments, capitalization of interest, and the like. A dollar-based rate would also tend to unfairly and artificially reduce the rates for longer programs, since graduates of those programs have loan balances that are much larger, relative to the loan balances of default-prone dropouts, than the graduates of shorter programs. Recognizing past problems with the quality of default-related data submitted to the Department by guarantee agencies, the Secretary has recently revised the reporting requirements for guarantee agencies to ensure that the data collected from all guarantee agencies on which actions would be taken under these regulations is both accurate and complete.

Comments: One commenter asked how deferments are treated in the default rate calculation.

Discussion: No change has been made. It is the entry of a loan into repayment that is relevant to the default rate calculation. Subsequent deferments are considered as falling within the repayment period. The end of a deferment period does not result in the borrower "entering repayment," even though the duty to make payments resumes at that time, since the borrower is considered to have been in repayment throughout the deferment period. Thus, a deferment granted a borrower after entering repayment on a loan in a given fiscal year is ignored in calculating the school's rate for that fiscal year. This is necessary both because not all deferments appear on the "tape dump" (the current source of the Secretary's default information) and because a default by a borrower after leaving deferment status may be too removed in time from the borrower's attendance at the school to be fairly charged to the school.

Comments: Many commenters claimed that it is unfair to place the burden of proof on the school to justify a high default rate. One commenter representing numerous lenders supported placing the burden of proof on the school, but recommended that a 50% default rate be used to trigger this rather than the 20% rate proposed in the NPRM. Many commenters objected to excluding the composition of the student body as an acceptable explanation for a high default rate. Other commenters wanted schools to have the option to deny certification of a loan, as well as require cosigners or credit checks for borrowers, to enable them to refuse loans to likely defaulters.

Discussion: A change has been made. Section 688.90 has been revised to clarify the defense that may be used to avoid LST sanctions. The Secretary believes that the burden of proof is appropriately placed on the school to demonstrate its administrative capability when a high default rate gives rise to a strong inference that this capability is lacking. At the high default rates specified in the final rule, this inference clearly arises. The recommendation that schools be allowed to require cosigners or credit checks, and to refuse to certify applications for otherwise eligible Stafford and SLS borrowers, would require legislative changes to implement, and thus are beyond the scope of these regulations.

Comments: Several commenters were disturbed by the possibility that schools with very few borrowers would be subject to sanctions based on their default rates.

Discussion: A change has been made. The Secretary recognizes that schools with very few borrowers could be placed at a disadvantage if they are judged under the default rate formula outlined in the NPRM, so he has revised that provision to evaluate a school with 30 borrowers or less entering repayment in a fiscal year based on a "rolling" three-year average default rate. In addition, it should be noted that an LST action allowed by this regulation against high default rate schools is not mandatory, and could be declined if a school's default volume is so low that the Department's resources would be more effectively employed in other ways.

Comments: A number of commenters recommended that the default rate

calculation not treat as defaults, loans on which the borrowers begin or resume repayment after default.

Discussion: No change has been made. The fiscal year default rate is designed to yield information as to a school's performance in default-related matters. The use of post-default collection information would reduce the usefulness of the rate for this purpose by introducing factors unrelated to a school's default-related performance, such as the guarantor's effectiveness in collecting defaulted loans.

Comments: Several commenters asked whether a school would be given "credit" for defaulted loans that are purchased by that institution.

Discussion: A change has been made. The Secretary believes that a payment made by a school or related party to avoid a default is not an appropriate basis for excluding a loan from a school's default rate, and has revised this section to reflect that position.

Section 688.22 Distribution formula for institutional refunds and for repayment of disbursements made to the student for non-institutional costs

Comments: A number of commenters suggested that it would be inappropriate and unfair to establish, under proposed § 688.22(a)(3) (i) and (ii), two distinct refund attribution formulas—one for GSL, SLS, and PLUS loan recipients, and one for other students.

Discussion: A change has been made. Since the proposed revisions to § 688.22 were based on the application of a *pro rata* requirement to all schools, these regulations do not revise current § 688.22. Pursuant to § 682.606(b)(2) of these final regulations, a school is required to adopt a *pro rata* refund policy as one of two "core" default reduction measures only if its default rate exceeds 30%, and then only for certain borrowers and academic periods.

Section 688.44 Institutional information

Comments: A number of commenters suggested that the disclosures required by § 688.44 (c) through (f) of the NPRM should be reserved for institutions having "unacceptable" default rates. Many commenters agreed that the disclosures are needed, but suggested that they apply to all programs and all schools. Several commenters supported the Secretary's proposal to target these disclosures to vocational training programs, particularly given the aggressive marketing techniques employed by many trade and technical schools.

Discussion: No change has been made. While the provisions of current § 688.44 (a) and (b) are applicable to all schools, the Secretary believes that the dropout rate, placement rate, and State licensing examination pass rate disclosures, specified in § 688.44 (c) through (f), should be mandated only for a school that offers either an undergraduate non-baccalaureate trade program or another program (whether or not undergraduate non-baccalaureate) for which it makes a claim regarding job placement in order to attract prospective students. As stated in the preamble to the NPRM, the

Secretary believes that adequate and accurate information on these matters is of critical importance to prospective students evaluating the quality of such programs. It should be noted that the provisions of § 688.44 (c) through (f) would not apply to a program that is primarily intended as preparatory for, and acceptable towards, a baccalaureate or equivalent level degree (e.g., Associate of Arts degree programs offered by community colleges), as distinguished from a course of study designed to provide a complete vocational training program.

Comments: Many commenters expressed concerns about the administrative burden imposed by the information collection and disclosure activities required by § 688.44 (c) through (e), and by the requirement that a school utilize and maintain the forms required by § 688.44(f) and Appendix A to Part 688. As a result a number of commenters recommended that the disclosures specified in the NPRM only be required of schools having unacceptable default rates.

Discussion: No change has been made. By statute, a school must disclose dropout rate, placement rate, and State licensing examination rate information for any programs as to which the school makes a marketing claim regarding job placement. See section 487(a)(8) of the HEA. This requirement applies to high default and low default schools alike. Given the fact that undergraduate nonbaccalaureate vocational training programs are marketed and purchased almost exclusively for their value in imparting employable vocational skills, the intent of section 487(b)(8) can be achieved only if the information listed in § 688.44 (c) through (f) is disclosed for each program of that type. Moreover, it is apparent that the market forces that should operate to reward effective programs and weed out the ineffective ones are not currently working. The Secretary believes that more informed consumer choice will do much to correct that problem, and thereby substantially reduce defaults, but this can only be accomplished if consumers have access to the information required under these provisions for all programs of this nature, good and bad. The Secretary, in § 688.44(f), has also specified that the required information described in § 688.44(c) (2) through (4) be disclosed to prospective students using the "track record" disclosure forms contained in Appendix A. The Secretary believes that the use of a standardized form, in an easy-to-read format and in language that can be readily understood by all students, will greatly enhance a prospective student's ability to fully consider the information provided, and to compare the various programs in which he or she may be interested.

Comments: One commenter indicated that a variety of factors could affect the decision of a graduate not to seek employment in the occupation for which the training was offered by the school. The commenter argued that the job placement rate calculation specified in § 688.44(c)(3) should exclude these graduates.

Discussion: A change has been made. The Secretary agrees that there may be valid reasons why a graduate of a program does not seek employment in the occupation for

which the training was offered. Section 688.44(c)(3) of these final regulations has been revised to allow a school to note in its disclosure the number of graduates who state in writing that they have chosen not to seek employment in the occupation for which they were trained. However, this provision does not allow the school to include a graduate who discontinues seeking such employment after an unsuccessful search.

Comments: One commenter recommended that the "completion rate" calculation in § 688.44(c)(4) include as completions borrowers who leave school to accept employment in the occupation for which the training was offered.

Discussion: A change has been made. Section 688.44(c)(4) has been revised to include as completions in the completion rate calculation those students who have not successfully completed the program (i.e., graduated), but who have obtained full-time employment in the occupation for which the training was offered within 150% of the normal time for completion of the program.

Comments: One commenter suggested that, in using the documents specified in Appendix A to Part 688, as required by § 688.44(f), accommodation should be made for institutions that serve largely Spanish-speaking populations.

Discussion: A change has been made. Section 688.44(f) has been revised to permit the use of a foreign language version of the forms for students whose primary language is not English.

Comments: One commenter recommended that the Secretary, as part of these default reduction measures, require lenders to disclose to borrowers information about the role that secondary markets play in the GSL, SLS, and PLUS programs. The commenter also suggested that lenders be required to give notice to the guarantor, the school, and the student whenever a loan is sold or transferred to another eligible lender.

Discussion: No change has been made. While the Secretary agrees with the concerns expressed by the commenter, the suggestions are not within the scope of the final regulations. A separate NPRM, in which these issues will be addressed, is currently under development.

Section 688.90 Initial and final decisions—appeals

Comments: The comments received for this section mirrored the comments made under § 688.15. The major issues addressed by commenters were the use of a 20% default rate as a trigger to limit, suspend, or terminate an institution from participation in all Title IV programs, the use of a fiscal year default rate, and the relevance of the composition of a school's student body.

Discussion: A change has been made. These issues have been addressed in the preamble and elsewhere in this Appendix. This section has been revised to include the elements of the Appendix D defense that a school may prove to avoid LST sanctions. This defense prevents termination of a school if the school shows that it has acted diligently to implement the default reduction measures described in Appendix D of Part 688.

Appendix D—Default Reduction Measures

Comments: The Secretary received broad support for the idea that a school with a high default rate should adopt default reduction measures such as those contained in Appendix D. A number of school commenters noted that many of these measures were already part of the standard procedures. Many commenters were concerned about the administrative burden that would be imposed on a school performing some of these measures.

Discussion: A change has been made. To assist schools in identifying those measures appropriate for their circumstances, the Secretary has grouped the measures according to the cause of default that each is meant to address. Any school with a default rate over 20% could be required to implement a default management plan containing some of the measures in Appendix D, as well as other appropriate default reduction steps. These steps would also be selected to address the school's circumstances. In this manner, the Secretary and the school will be able to select those measures that require only the administrative effort necessary to adequately and efficiently address the school's particular causes of default.

Comments: One commenter was concerned that a school might be prohibited by State law from withholding an academic transcript of a former student. Another commenter argued that withholding a transcript would be counterproductive because, in the case of a student seeking employment, denying a request from a prospective employer for an academic transcript would prevent the borrower from acquiring a job, perhaps preventing the borrower from repaying the loan.

Discussion: A change has been made. The Secretary concurs with the objections raised and has deleted this measure from the final regulation.

Comments: Several commenters expressed concern over the suggestion in Appendix D that schools revise admission policies, as these policies, in the case of community colleges, are sometimes mandated by the State.

Discussion: A change has been made. The final regulation specifies that the school should revise its admissions policies in a manner that is consistent with applicable State law.

Comments: Many commenters requested clarifications about the applicability of the Fair Debt Collection Practices Act (FDCPA) to a school that followed the recommendation that it contact a borrower during his or her grace period or after the school received a copy of the lender's preclaim assistance request to urge the borrower to repay the loan.

Discussion: No change has been made. This provision specifies that the school's actions must be consistent with the FDCPA. The authority to interpret the FDCPA rests with the Federal Trade Commission (FTC), not with the Department of Education. In a letter from FTC's Division of Credit Practices to Louise C. Trubek, Executive Director, Center for Public Representation, dated September 12, 1988, the FTC indicated that pre-default collection efforts are not covered by the FDCPA.

Comments: Some commenters argued that, without notification to the school from the lender or guarantee agency that a borrower has made payments to resolve a delinquency, the school might continue efforts to urge the borrower to make payments after the delinquency is resolved, thereby damaging the collectibility of the loan. Other commenters expressed a more general concern that poorly informed or timed collection efforts by schools would do more harm than good.

Discussion: No change has been made. As noted in the NPRM, this default reduction step should be taken in cooperation with the lender to avoid confusing the borrower or damaging the collectibility of the loan. A school should always note in its communications with the borrower that, if the borrower has made payments to cure a delinquency, the school's notice should be ignored.

Comments: Several commenters supported the proposal that, under § 688.90, a school with a default rate over 20%, to avoid an LST sanction, would have to justify not adopting the practice of delaying the certification of a borrower loan application so that the borrower's proceeds were not delivered to the borrower or credited to the borrower's account until the borrower had attended the institution for 30-45 days during the period for which the loan was made. One commenter suggested applying this as a requirement for high default schools with dropout or cancellation problems. Numerous other commenters objected to this measure, expressing concern that it would negatively affect borrowers who need the proceeds from the loan for living expenses, and would create cash-flow problems at some schools.

Discussion: A change has been made. Section 682.603(c) has been amended to require each school with a default rate over 30% to delay certification of the loan application of each student for his or her first GSL or SLS loan for attendance at the school. The Secretary believes that the potential benefit of this measure justifies requiring all schools with default rates over 30% to take this step.

Section 682.410 Fiscal, administrative, and enforcement requirements

Comments: Several commenters supported the Secretary's proposal to establish a default rate that would trigger a guarantee agency's review of a school. However, many commenters suggested that the 15% default rate trigger was too low and should be increased to reduce the burden imposed on schools and agencies by this requirement.

Discussion: A change has been made. The Secretary has revised the NPRM by increasing from 15% to 20% the default rate that triggers a guarantee agency program review of a school. The final rule also excludes from mandatory review any school that is subject to a default management plan imposed by the Secretary under 34 CFR 688.15, and any school whose default rate of over 20 percent is not based on at least one cohort of loans entering repayment in a single fiscal year that totals \$100,000 or more. These revisions significantly reduce the number of

program reviews that an agency would have been required to perform under the NPRM while preserving the effectiveness of this requirement as a default reduction tool.

The Secretary notes that, as guarantee agencies have previously been informed, the Department is receptive to proposals from individual guarantee agencies to employ specific selection criteria for program reviews that differ from the "top ten/2%" program review criteria in current § 682.410(c)(1)(ii) (A) and (B). If the Secretary is satisfied that an agency's proposed criteria represent an effective approach to the selection of schools for reviews, he will grant that agency a waiver from those provisions.

Comments: Several commenters questioned the guarantee agencies' expertise to conduct program reviews of schools. Some commenters suggested that the reviews should be performed by professionally-trained auditors through program reviews by the Secretary or independent auditors hired by schools to review other Federal programs.

Discussion: No change has been made. Although the Secretary intends to increase Federal lender and school reviews, it is the Secretary's intent that guarantee agencies can and should assume a major responsibility for monitoring their program participants. The Secretary has provided guarantee agencies with extensive training in program review requirements and has developed a comprehensive site review guide for agency use.

Comments: One commenter recommended that the Secretary include a provision that would exempt from guarantee agency review any school that had lowered its default rate to below 15% even if its default rate exceeded 15% in the immediately preceding year.

Discussion: No change has been made. The Secretary believes that the increase from 15% to 20% in the default rate that triggers a guarantee agency review adequately addresses this concern.

Comments: Two commenters supported the requirement of guarantee agency program reviews of schools with excessive default rates, but thought that the review should be limited to the GSL, SLS, and PLUS programs, and should not include other Title IV programs.

Discussion: No change has been made. The provision requiring guarantee agency reviews of schools with fiscal year default rates in excess of 20% applies only to the GSL, PLUS, and SLS programs.

Comments: Several commenters questioned which agency would conduct the compliance program review for schools that deal with several guarantee agencies.

Discussion: No change has been made. An agency may either conduct a joint review of a school with another agency or establish a reciprocal agreement with the other agency. Under a joint review or a reciprocal agreement, each participating agency is responsible for the quality of the review. The Secretary recommends that all reciprocal agreements state that the performing agency will conduct the review in accordance with the OSFA site review guides, and that, as required, any unique requirements of each agency whose review response is to be satisfied by a review under the agreement will be included in each such review.

Section 682.411 Due diligence by lenders in the collection of guarantee agency loans

Comments: Some commenters recommended that, rather than requiring the lender to provide a copy of each preclaim assistance request to the school for attendance at which the loan was made, the lender should be allowed to provide this information to the last school attended by the borrower. The commenters noted that the last school attended by the borrower could provide more recent information to assist the lender in its collection efforts.

Discussion: No change has been made. The requirement that a lender provide a school with a copy of the preclaim assistance request is designed to alert the school of a potential default by one of its students, and to allow the school an opportunity to act in a timely manner to avert a default. Fairness requires that the school against whom a default will be charged have the opportunity to make a diligent effort to contact the borrower to encourage repayment.

Comments: Some commenters suggested that lenders be allowed to provide a periodic list to the school of delinquent borrowers for which the lender has requested preclaim assistance from the guarantor. Other commenters suggested that the guarantors, rather than lenders, provide this information to schools.

Discussion: A change has been made. The final regulations require the lender to notify the school within 30 days after it requests preclaim assistance. In this way, the regulations allow time for guarantors wishing to do so to provide schools with this notice on lenders' behalf, through the use of periodic lists. However, the Secretary believes that prompt notice to the school is necessary for any actions taken by the school to be meaningful in averting defaults, and is therefore requiring that notice reach the school within 30 days of the date of the lender's preclaim assistance request.

Section 682.604 Processing the borrower loan proceeds and counseling borrowers

Comments: Many commenters proposed that the lender, not the school, be responsible for counseling the student prior to the disbursement of the loan proceeds to the institution.

Discussion: No change has been made. The Secretary has declined to impose the responsibility of in-person counseling on the lender because the distance between many lenders and the borrowers they serve is often great. The Secretary believes that since a school will typically be in a better position than the lender to engage in face-to-face counseling, it is the most appropriate entity to provide entrance counseling. Moreover, lenders are already required to provide detailed disclosures to borrowers at the time of loan disbursement regarding the borrower's rights and obligations on GSL and SLS loans.

Comments: Several commenters indicated that they believe entrance counseling is redundant and ultimately ineffective because, in their view, early counseling does not make an impression on the student and does not significantly reduce defaults. Many other commenters supported the requirement of

entrance counseling as an effective default reduction measure.

Discussion: No change has been made. The Secretary believes, and the experience of many schools confirms, that improving a borrower's understanding of the terms and conditions of the loan and impressing upon the borrower the importance of meeting his or her repayment obligations, at the time of receipt of loan proceeds, helps greatly in reducing defaults.

Comments: Several commenters suggested that the school be given the flexibility to schedule entrance counseling throughout the semester, or at least prior to the student's second loan disbursement, to avoid scheduling all counseling sessions with loan recipients during the registration period, when a substantial burden is already being imposed on the school's administrative resources.

Discussion: No change has been made. The Secretary believes it is imperative for students to receive loan counseling at, or prior to, the receipt of a GSL or SLS loan. The linkage of this counseling with the receipt of loan funds will impress upon the borrower the importance of the obligation to repay the money he or she is about to receive, thereby lessening the risk of default.

Comments: Several commenters recommended that schools be allowed to use videotape presentations to counsel their students. Some commenters suggested that a videotape presentation followed up by a question and answer period with a financial aid officer would be an effective and efficient way to counsel borrowers.

Discussion: A change has been made. The Secretary agrees with this recommendation and has revised the NPRM to allow for videotape presentations, and to require that the school provide each borrower an opportunity, after the entrance counseling session, to obtain answers to questions he or she may have regarding the loan.

Comments: Many commenters believed that requiring entrance counseling is too burdensome and costly for a school with a small financial aid staff and a large number of loan recipients. Other commenters expressed concern about the difficulty centralized financial aid offices would have in meeting with loan recipients at remote branches of the school, and suggested that the school be paid an administrative allowance to cover the extra burden.

Discussion: No change has been made. The Secretary believes that an institutional financial aid office can inexpensively reach its loan recipients through the use of group counseling sessions or videotapes.

Comments: One commenter recommended that the requirement in the NPRM that students in undergraduate non-baccalaureate vocational training programs be advised that they are obligated to repay their loans regardless of the outcome of their enrollment in the program, should be expanded to apply to all programs of study.

Discussion: A change has been made. The Secretary agrees with this recommendation and has revised the regulations to make this requirement applicable to all programs of study.

Section 682.605 Determining the date of a student's withdrawal

Comments: Several commenters indicated that the proposed change to § 682.605(a) requires clarification.

Discussion: No change has been made. The amendment to § 682.605(a) simply clarifies that the date of a student's withdrawal, calculated under § 682.605(b), only relates to the institution's reports to lenders and to the date on which the institution's duty to pay a refund arises, not to the withdrawal date used for refund calculations. For this latter purpose, § 682.604 uses the student's last recorded day of attendance as 34 CFR 688.22 has done since January, 1988.

Section 682.606 School refund policy

Comments: Many commenters objected to the proposed amendment to § 682.606 requiring a school to employ a *pro rata* refund policy for a student receiving or benefiting from a CSL, SLS, or PLUS program loan who withdraws prior to the completion of the academic period for which the loan is made. These commenters believe that this requirement represented an unwarranted Federal intrusion into a school's administrative practices and would impose a significant increase in the administrative burden involved in refund calculations. Numerous commenters also argued that a *pro rata* refund was unfair in light of the substantial "up front" costs incurred by schools in enrolling a student and in offering a program that does not appreciably change when a student withdraws from school. A number of commenters argued that their current institutional refund policies, developed using standards approved by their accrediting agencies, are fair and equitable and do not unfairly penalize dropouts or contribute to loan defaults. Many commenters noted that the loss of revenue to the school that would result from the increased volume and dollar amount of refunds calculated using a *pro rata* policy would inevitably be passed along to students in the form of increased tuition costs. Several commenters suggested that the availability of a *pro rata* refund would encourage a student to withdraw when he or she encounters academic or financial difficulties. Several commenters recommended restricting the use of a *pro rata* policy to high default schools since the Secretary, in announcing the proposed rules, noted the linkage between a high level of dropouts and defaults. Some commenters recommended that the Department should not regulate the refund policy applicable to students who complete at least one half of their programs to reduce the administrative burden on schools and the intrusiveness of the rule, and in recognition both of the "up front" costs argument and the inapplicability of the "drop out reduction" rationale to a student that completes a substantial portion of the program before dropping out.

Discussion: A change has been made. Although the widely used practice of over-enrollment and the ability of many schools to quickly replace a dropout with a new enrollee militate strongly against the "up front costs" argument, the Secretary is requiring the use of a *pro rata* refund policy

only when the default experience of the school requires that step to maintain GSL, SLS, and PLUS program integrity. Accordingly, this provision has been revised to require the implementation of a *pro rata* refund policy only by schools with default rates above 30 percent. Any school with a default rate at or below 30% must continue to use fair and equitable refund policies as defined in existing regulations. Further, the Secretary believes that the prospects for default are greater among those students who withdraw early in their programs, and that the aim of this rule should therefore be to remove the incentive for a school to enroll a student lacking a reasonable prospect for completing his or her program of study. The Secretary has accordingly revised the proposed rule to require the use of a *pro rata* policy only for a student whose withdrawal date occurs prior to the halfway point of the student's program, or the end of the first six months of the student's program, whichever is earlier. The Secretary believes that this targeted application of the *pro rata* refund rule will achieve the goals of the rule with a minimum of adverse effects. Also, the Secretary has revised the rule to permit the school to round upward to the nearest 10 percent the portion of the program deemed to have been completed by a student, to reduce administrative burden.

Comments: Several commenters from public institutions indicated that State law prevents them from applying a *pro rata* refund policy.

Discussion: No change has been made. The Secretary considers the use of a *pro rata* refund policy by those schools with default rates above 30 percent to be a necessary and appropriate administrative requirement for participation in the GSL, SLS, and PLUS programs. Therefore, schools that are subject to this requirement are required to implement a *pro rata* refund policy if they wish to continue to participate in those programs, regardless of the requirements of State law.

Comments: Many commenters objected to the imposition of a *pro rata* refund policy on the grounds that it would create inequities between loan recipients and students who do not receive loans or who do not receive any Title IV aid. Some commenters felt that the proposed regulations would force schools to establish multiple refund policies. Others considered that they would, as a matter of equity, be forced to apply a *pro rata* refund policy to all students. A number of commenters asserted that any refund policy mandated by the Secretary should encompass all students at an institution.

Discussion: No change has been made. The Secretary's legal authority to mandate refund policies at school is limited to students benefiting from GSL, SLS, or PLUS loans.

Comments: Some commenters argued that the implementation of a *pro rata* refund policy would have little impact on the default rate at a school, particularly if the school continues to be permitted to apply refund amounts to other sources of aid before returning loan funds to lenders. Other commenters indicated that, since students often use loan funds for non-institutional costs, a *pro rata* refund policy affecting only direct institutional costs, may result minimal increases in refunds for many students.

Discussion: No change has been made. These final regulations require high default schools to take steps, such as the implementation of a *pro rata* refund policy, to address the problem of defaults by dropouts. The primary purpose of the *pro rata* refund requirement is not to increase the dollar amount of loan funds returned to the lender, but to remove the incentive for high default schools to enroll students who are inadequately prepared and are therefore likely to quickly drop out and default. This rule also will provide an incentive for schools to take steps on their own to improve their completion rates.

Comments: A number of commenters suggested various measures to either complement or replace the implementation of the *pro rata* refund policy. Some commenters suggested that loans should be awarded incrementally as the student progresses through the academic term or that the aid be awarded after the student has successfully completed the term. Others felt that lenders should be required to disburse Part B loans according to dates recommended by the school. Still other commenters suggested requiring credit-worthy endorsers as a way to reduce defaults.

Discussion: No changes have been made. Implementation of these suggestions would require statutory amendments and therefore does not fall within the scope of these final regulations.

Comments: Many commenters maintained that the administrative fee that the school would be allowed to retain, pursuant to § 682.606(c)(1), would not cover all administrative expenses. Some suggested raising the amount to as much as \$500.

Discussion: A change has been made. The revised rule allows a school to retain at least 10 percent of tuition and fees paid by a student that attends school at all during the loan period, in addition to the \$100/5% administrative fee.

Section 682.607 Payment of a refund to a lender

Comments: A number of commenters stated that students often do not officially withdraw. Consequently, the school may not become aware of the student's withdrawal until the start of a subsequent academic period, or the school may not be able to identify the last date of attendance. Many of these commenters believe that the period for paying a refund to the lender should run from the start of the next academic period after that in which the borrower withdraw, as determined under § 682.605(b)(1)(ii). Other commenters urged the Secretary to retain the prior rule, which they read as requiring that a refund to be sent to the lender within 30 days of the date of the school's determination that the student has withdrawn.

Discussion: No change has been made. Current regulations treat the last recorded date of attendance as the dropout date for students who unofficially withdraw. 34 CFR 688.22. Under the prior regulations, with respect to an unofficial withdrawal, a refund was required to be sent within 30 days of the withdrawal date, *i.e.*, the last recorded date of attendance. This date could occur several

months before the end of the academic period in which the student ceased attendance. The Secretary does not believe this result is consistent with the administrative practices of many schools in monitoring enrollment status. However, the Secretary continues to be concerned with the length of time a refund remains unpaid, because the Secretary is continuing to pay interest benefits and special allowance on the full outstanding balance of the loan even though the funds are no longer needed by the borrower to pay educational expenses, and because a persistently inflated loan balance increases the risk of default. The Secretary believes that a school cannot be permitted to wait until the beginning of the next academic period to determine which students have unofficially withdrawn and pay their refunds. The Secretary also believes that, once the school has determined that the student has withdrawn, the school should expeditiously process any refund owed, and has therefore revised the regulations to require payment of a refund within 60 days of the date of the school's determination that the student has withdrawn. See § 682.607(c)(2)(iv).

Comments: Several commenters suggested that the period in which a refund must be paid be extended from 30 up to 60 days. They believe that 30 days from the earlier of the dates specified in § 682.607(c)(1) does not provide sufficient time to allow for unexpected delays in processing refunds (e.g., computer delays, the involvement of more than one office in the refund process, etc.), and that such a timeframe, immediately following the end of an academic period, could create undue administrative burdens.

Discussion: A change has been made. Section 682.607(c) now requires that the school must pay the lender a refund within 60 days of the earlier of the dates specified in § 682.607(c)(1) or, pursuant to § 682.607(c)(2), within 60 days after the last day of an approved leave of absence when the student does not return to school.

Comments: Several commenters questioned how the use of the term "semester" in § 682.607(c)(1)(ii) would apply to schools that do not use semesters.

Discussion: A change has been made. The final regulation uses the term "academic term" to clarify its applicability to quarters and trimesters.

Section 682.610 Records, reports, and inspection requirements for participating schools

Comment: Several commenters pointed out any change in the borrower's surname that the school was aware of would be very useful to the holder of the loan.

Discussion: A change has been made. This section in the final regulation has been revised to require a school to furnish upon request any information it has regarding the borrower's surname.

Comments: One commenter suggested that this provision would be an administrative burden for the school, requiring them to track former students.

Discussion: No change has been made. Nothing in this section requires a school to furnish any more information than it has on hand respecting the last known address, surname, employer and employer address of a borrower who attends or has attended the school.

[FR Doc. 89-13380 Filed 6-1-89; 3:51 pm]
BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

34 CFR Part 682

Guaranteed Student Loan and PLUS Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations for the Guaranteed Student Loan (GSL) and PLUS programs (34 CFR Part 682). The proposed regulations are needed to implement elements of the Secretary's default reduction initiative.

Note: Pub. L. 100-297, enacted April 28, 1988, has renamed the Guaranteed Student Loan (GSL) Program, the Stafford Loan Program. This change will be reflected in a later document.

DATES: Comments must be received on or before August 4, 1989.

ADDRESSES: Comments should be addressed to Pamela A. Moran, Chief, Policy Section, Guaranteed Student Loan Branch, Division of Policy and Program Development, U.S. Department of Education, 400 Maryland Avenue SW. (Room 4310, ROB-3), Washington, DC 20202.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: Pat Newcombe or Pamela A. Moran, Telephone Number (202) 732-4242.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 1987, the Secretary announced a new policy initiative designed to reduce defaults in the GSL and Supplemental Loans for Students (SLS) Programs. On Friday, September 16, 1988, the Secretary published in the *Federal Register* a Notice of Proposed Rulemaking (NPRM) (53 FR 36216) advancing a number of regulatory default reduction proposals. The Secretary is publishing in this issue of the *Federal Register* final regulations implementing those proposals, with significant revisions resulting from the numerous public comments received in response to a November 3, 1988 request for public comment (53 FR 44514), and to the September 16, 1988 NPRM. Those comments and the Secretary's continued review of the default issue revealed the need for several additional regulatory measures addressing certain aspects of the default problem. These proposed rules would implement those measures.

Regulatory Changes

These proposed regulations would make two important changes in the GSL and SLS programs.

(1) An assignee of a loan would be required to notify the borrower of the assignment if the borrower is thereby required to send payments to a different party.

(2) A private school that offers an undergraduate nonbaccalaureate vocational training program would be required to enter into a "teachout" agreement with another school, to ensure that students at the private school will not be prevented from completing their studies if the school closes.

A more detailed explanation of these changes follows.

Section 682.208 Due diligence in servicing a loan

The Secretary proposes to amend § 682.208 to require the assignee of any loan to notify the borrower, in writing, of the assignment, if the transaction results in a change in the party to whom the borrower must make payments. A similar requirement has been in effect in the Federal Insured Student Loan Program since 1970. 34 CFR 682.508(b)(2)(ii).

The Secretary has been advised repeatedly by schools, borrowers, and guarantee agencies that a significant cause of defaults is borrowers' confusion over who holds their loans. To ensure that an assignment causes a minimum of disruption to the borrower's repayment of the loan, the proposed rule would require that notice of the assignment be provided prior to or simultaneously with the completion of the assignment transaction.

Section 682.610 Records, reports, and inspection requirements for participating schools

The Secretary proposes to add a new paragraph (h) to this section. This provision would require each private school that offers an undergraduate nonbaccalaureate vocational training program to enter into an agreement with another school, under which the latter school would agree to offer each borrower enrolled in the private school an opportunity to complete his or her program of study, if the private school closes. These "teachout" agreements would do much to alleviate the hardships to students, and resulting defaults, caused by sudden school closings. These arrangements are sometimes, but by no means invariably, undertaken now.

The proposed regulation would apply this requirement only to private schools offering undergraduate nonbaccalaureate vocational training programs. In recent years, virtually every school that has closed in the middle of an academic term without provision for a teachout falls in this category. The Secretary therefore believes that applying this requirement just to schools in this category provides effective protection for students and ED against abrupt school closings without imposing unnecessary administrative burdens.

The Secretary believes that requiring a "teachout" agreement would be the most feasible and inexpensive way to ensure that the taxpayers and students are protected against abrupt school closings. A good school has a strong interest in the integrity and reliability of the sector of postsecondary education to which it belongs, so that it should be willing to assist the Secretary in providing this protection through its participation in a "teachout" agreement with another school in its area. Accrediting commissions have a similar interest in the performance of their respective sectors, and should consider establishing "teachout" agreements as an accreditation requirement.

Moreover, it would not be unduly expensive for a school to obtain a surety bond, if necessary, indemnifying the school agreeing to a "teachout" arrangement for the cost the latter may incur in carrying out its obligations thereunder. Such a bond would almost certainly be less expensive to obtain than a bond indemnifying the Secretary for all Federal student financial aid program funds disbursed to students at the school during a period in which it closes. This latter alternative, which has often been suggested as a means of protecting the taxpayer from the costs of closed schools, also lacks the consumer protection features of the proposal included here. Nevertheless, the Secretary is particularly interested in comments as to the fairest and most efficient means of addressing the issue of school closings. One alternative to the proposal for "teachout" agreements might be to require schools to participate in pooled-risk arrangements that provide full refunds to students at closed schools, such as are in effect now in several States for proprietary schools. The Secretary welcomes comments on this approach, and any other proposals to address this issue.

Executive Order 12291

The proposed regulations have been reviewed in accordance with Executive

Order 12291. They are classified as nonmajor because they do not meet the criteria for major regulations established in the order.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations will not have a significant economic impact on a substantial number of small entities.

Certain reporting, recordkeeping, and compliance requirements are imposed on guarantee agencies, lenders, and schools by the regulations. However, these requirements would not have a significant impact because they would not impose excessive regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1980

Section 682.208(e) contains information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these proposed regulations to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h)).

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention James D. Houser.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in ROB-3, Room 4310, 7th and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4:00 p.m., Monday through Friday of each week except Federal holidays.

To assist the Department in complying with the specific requirements of Executive Order 12291 and the Paperwork Reduction Act of 1980 and

their overall requirement of reducing regulatory burden, the Secretary invites comment on whether there may be further opportunities to reduce any regulatory burdens found in these proposed regulations.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs—education, Reporting and recordkeeping requirements, Student aid, Vocational education.

Dated: June 1, 1989.

(Catalog of Federal Domestic Assistance Number 84.032, Guaranteed Student Loan Program and PLUS Program)

Lauro F. Cavazos,
Secretary of Education.

The Secretary proposes to amend Part 682 of Title 34 of the Code of Federal Regulations as follows:

PART 682—GUARANTEED STUDENT LOAN AND PLUS PROGRAMS

1. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087-2, unless otherwise noted.

2. Section 682.208 is amended by adding a new paragraph (e) to read as follows:

§ 682.208 Due diligence in servicing a loan.

(e) If the assignment of a GSL, PLUS, or SLS loan is to result in a change in the identity of the party to whom the borrower must send subsequent payments, the assignee of the loan shall, prior to or simultaneously with its receipt of a legal interest in the assigned loan, provide notice to the borrower of the assignment, the identity of the assignee, and the name and address of the party to whom subsequent payments must be sent. For purposes of this paragraph, the term "assigned" is defined in § 682.401(b)(9)(ii).

3. Section 682.610 is amended by adding a new paragraph (h) to read as follows:

§ 682.610 Records, reports, and inspection requirements for participating schools.

(h) "Teachout" agreements. (1) A private school that offers an undergraduate nonbaccalaureate program designed to prepare students for a particular vocational, trade, or career field shall at all times have in effect a "teachout" agreement with another school (the teachout school) as a condition for participation in the GSL, SLS, and PLUS programs.

(2) The "teachout" agreement shall contain the following provisions:

(i) The teachout school shall agree that, if the private school terminates its teaching activities in a course of study in which it enrolls a student to whom or on whose behalf a GSL, PLUS, or SLS loan is made for attendance at the private school, the teachout school will offer each such student enrolled in that course of study at the private school when the teaching activities are terminated a reasonable opportunity to promptly resume and complete his or her course of study, or a substantially similar course of study, in the geographic area in which the private school provided the original course of study.

(ii) The teachout school shall agree to provide this opportunity without charge to the student, except that the teachout school may assess the student charges for periods of enrollment that the student was required to undertake to complete the original course of study at the private school, as the student incurs those charges, up to the amount not yet paid by the student, that the private school would have been entitled to collect for those periods of enrollment from the student, had the private school not terminated its teaching activities.

[FR Doc. 89-13390 Filed 6-1-89; 3:51 pm]

BILLING CODE 4000-01-M

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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¹ Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

² No amendments to this volume were promulgated during the period Jan. 1, 1988 to Dec. 31, 1988. The CFR volume issued January 1, 1988, should be retained.

³ No amendments to this volume were promulgated during the period Jan. 1, 1987 to Dec. 31, 1988. The CFR volume issued January 1, 1987, should be retained.

⁴ No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.

⁵ The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

⁶ No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

⁷ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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June 6, 1989

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June 6, 1989

Briefing on How To Use the Federal Register—
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WHEN: June 15; at 9:00 a.m.

WHERE: Office of the Federal Register,
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1100 L Street, NW., Washington, DC

RESERVATIONS: 202-523-5240

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GENERAL ACCOUNTING OFFICE

4 CFR Parts 27 and 28

Administrative Practice and Procedure

AGENCY: Personnel Appeals Board, GAO.

ACTION: Final rule.

SUMMARY: The language at Parts 27 and 28 is amended to reflect changes in the procedural rule for case processing before the GAO Personnel Appeals Board.

EFFECTIVE DATE: June 6, 1989.

ADDRESSES: GAO Personnel Appeals Board, Academy Building, Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: John Davis, Solicitor for the Board, (202) 275-6137.

SUPPLEMENTARY INFORMATION: Notice of proposed changes to 4 CFR Parts 27 and 28, the General Accounting Office Personnel Appeals Board Procedures, was originally disseminated to interested parties within GAO in February 1988. The original comment period was to end March 31, 1988, but it was informally extended to June 30, 1988, at the request of some of the parties. A total of four comments were received from the General Accounting Office, the GAO Career Level Council, the GAO chapter of Blacks in Government, and the PAB General Counsel. Comprehensive comments were received from GAO. The other organizations had comments that related only to a few of the sections of the proposed rule.

For the most part, the new rule makes no significant changes in the overall functions of the Board, but rather deals with procedural matters. Over the years, the Board has developed methods for dealing with a wide variety of procedural issues. These methods were developed based upon the needs of our

system and with reference to the Federal Rules of Civil Procedure and the rules of our counterparts in the executive branch, in particular the MSPB and, to some extent, the EEOC. The object of these rule changes is to codify these various procedures in order to provide clear and concise guidance to the parties on procedural issues that we have found by experience are apt to arise in cases before the Board. Thus, for example, some of the major additions proposed here deal with subjects such as discovery, evidence at hearing, motions practice, subpoenas, and interlocutory appeals.

The rule defines the jurisdiction of the Board at § 28.2. This definition distinguishes between actions brought by employees and applicants for employment, on the one hand, and actions brought by the General Counsel, on the other hand. The rule does not change the scope of jurisdiction, but merely states in one section what has been in effect throughout various sections in the past. At § 28.2(b)(1), the words "officer or employee" is inserted to comport with the statutory language of 31 U.S.C. 753(a)(1).

A number of definitions are added at § 28.3. With one exception, the definitions are self-explanatory. In the past, the Board has used the terms "Presiding Member" and "Hearing Officer" to refer to individuals who conduct hearings for the Board. In recent years, the EEOC and the MSPB have adopted the term "administrative judge." In order to use one term that is familiar to practitioners, the Board is adopting the term "administrative judge."

The former rule at § 28.9 required GAO to regularly advise employees of their appeal rights to the Board, particularly when the employee was the object of an adverse action. The proposed rule at § 28.10(a) added a requirement for proof of service "such as a properly signed registered mail receipt or a certificate of service with the employee's signature acknowledging receipt." One comment states that the effect of the language in this subsection is to make the agency's power to take an adverse action dependent upon the agency's ability to show proof of service. However, the Board's intent with this language is merely to insure proof of service of appeal rights when any adverse or performance-based

action is taken. Therefore, the proposed language requiring proof of service is retained. However, in response to expressed concern, the proposed language, quoted above, which suggests forms for the proof of service, is deleted from the final rule at § 28.10(a).

The proposed rule at § 28.10(b)(3) required GAO to give employees, who were the objects of an adverse or performance-based action, notice "of any applicable rights such as the right to representation and right to a hearing." One comment noted that this language is vague and ambiguous. The comment is well taken, and the corrections made reflect our agreement with the comment.

In the past, §§ 28.11(b)(4) and 28.47(b)(2) of the Board's rule allowed an employee to file a charge involving an EEO matter with the General Counsel when there was no agency decision and "80" days had passed since the filing of the formal EEO complaint in the agency process. These same rules apply in the executive branch, except that the waiting period for filing prior to an agency decision is 180 days. In drafting the proposed rule, the Board concluded that the 80 day period was unduly short. A comment urged that at GAO most cases should be capable of processing within four months and, likewise, that six months was excessive processing time for most cases. The Board accepts this suggestion and §§ 28.11(b)(4) and 28.98(b)(2) now provide a period of 120 days.

On the other hand, the rule provides that when the agency issues an EEO decision, the complainant has 20 days in which to file with the Board's General Counsel. One comment suggested that that period should be extended to 30 days. We declined that suggestion. This 20 day appeal period is consistent with this Board's other appeal periods for issues such as adverse actions and prohibited personnel practices. It is also consistent with the appeal periods in the executive branch from agency actions to the MSPB and from final agency decisions to the EEOC.

In the past we have followed a particular set of steps for promulgating a rule and changes to a rule. This procedure, however, has never been defined specifically. Therefore, § 28.16 was created to define the process for amending or revoking this rule.

Some years ago the Board established an internal policy for grievances and

complaints which are brought by employees of the Board against the Board or the General Counsel. Section 28.17(a) places that policy in the Board's rule. This procedure provides a mechanism whereby Board employees receive the same right to outside review in their adverse action, performance-based action or EEO complaint as GAO employees receive by appealing to this Board. One comment argued that the Board is not empowered to delegate its authority to arbitrators or other non-Board members. The comment urged that the Board must preserve its "decisionmaking responsibility." However, the Board does not regard this provision as relating to its "decision-making responsibility" at GAO. This provision, dealing as it does with the Board's staff rather than with GAO staff, involves the statutory responsibility of the Chairman of the Board to act as "chief executive and administrative officer of the Board." 31 U.S.C. 752(a). After careful consideration, the Board has concluded that this provision for providing to Board staff the same rights that are enjoyed by GAO employees is consistent with the spirit and intent of the GAO Personnel Act of 1980.

Section 28.18(d) describes the requirements for filing a petition for review with the Board. One comment urged that this section be modified to bring it into accord with the Federal Rules of Civil Procedure and to require a petition for review to be stated in a legal context. The Board rejected these suggestions. The rule already allows the Board to follow the specific guidance of the Federal Rules of Civil Procedure whenever it seems appropriate. As to making the petition for review a more legalistic document, it is the Board's intention to keep the process open to unrepresented employees as much as possible. Furthermore, the discovery process provides ample opportunity for both parties to understand the context of the opposing party's case. Therefore, more legalistic requirements for filing a petition for review seems unnecessary and possibly counterproductive.

The prior rule of the Board provided at § 28.19(f) that either party to a proceeding had a right to a hearing before the Board. The proposed rule, at §§ 28.18(f) and 28.21(c), changed the provision so that the employee/applicant would continue to have a right to a hearing. However, a request by GAO for a hearing could be granted at the discretion of the administrative judge. One comment argued that there was no basis for denying GAO a right to a hearing. The Board rejected this

argument. Agencies have no right to a hearing in EEO complaints or in MSPB proceedings in the executive branch. Only employees or, in EEO cases, applicants for employment, have a right to a hearing. The Board's intention is to make the right to a hearing consistent with the executive branch processes. Since the right to a hearing rule is different in unfair labor practice proceedings before the FLRA, the Board added language to this subsection to mirror the FLRA rule. However, in response to the concern expressed by this comment, the Board is requiring in this rule that any time a request for hearing by GAO is denied, there must be a statement of the basis for the denial.

The Board has jurisdiction over class actions that raise EEO issues and class actions that raise non-EEO issues. One comment noted that the language of the proposed rule regarding the standards for certifying EEO class actions was different from the language for certifying non-EEO class actions. It is the Board's intention that the requirements of the Federal Rules of Civil Procedure be used as a guide in both types of class actions. Therefore, the provision for non-EEO class actions at § 28.18(g) and the provision for EEO class actions at § 28.97(e) both make reference to the standards in the Federal Rules of Civil Procedure.

Numerous changes relate to filing time limits. The proposed rule at § 28.20(c) required that responses to all pleadings be filed within 10 days from receipt. In response to arguments presented in two comments, the Board changed this time limit to 20 days. The proposed rule at § 28.53(b) required that motions to correct a transcript be filed within 15 days of receipt of the transcript. Also in response to comments, the Board changed this 15 day period to 30 days. In this final rule, this time limit now appears at § 28.58(b). Finally, the proposed rule at § 28.82(a) required that a party file interlocutory appeals within 5 days after receipt of the administrative judge's determination. In response to comments, this time limit is set at 10 days.

Other time limits set in the proposed rule are unchanged in the final rule. For example, motions to compel discovery must be filed within 10 days after an objection to discovery is filed (§ 28.42(d)(4)); responses to petitions for review must be filed within 20 days after receipt (§ 28.19(a)); and requests for reconsideration must be filed within 30 days from issuance of the initial decision (§ 28.87(b)).

As suggested by one comment, language was added at the end of

§ 28.21(a) to provide standards for the exercise of the Board's or administrative judge's discretion in allowing amendments to a petition for review.

The proposed rule provided at § 28.21(b) that once a motion and a response to the motion had been filed, no further responses may be filed by either party without permission of the administrative judge. Though one comment urged that a reply to the response should be allowed, the final rule leaves this provision unchanged. Whether replies will be allowed is at the discretion of the administrative judge.

The former rule at § 28.19(g) provided that when the PAB General Counsel was party to a settlement agreement during the General Counsel's investigative phase, the settlement agreement was dispositive of the case. The intent of this provision was to make it clear that the General Counsel was not required to seek Board approval of a settlement that was reached during this investigative stage of the procedures. This provision was carried into the proposed rule at § 28.21(d). One comment suggested changes that would have extended to settlements not involving the PAB General Counsel. These suggestions were rejected because they would have substantially departed from the original, more narrow purpose of the provision.

Section 28.22(b)(6) allows the administrative judge to exclude from the hearing any witness whose later testimony might be colored by testimony of other witnesses or any persons whose presence might have a chilling effect on a testifying witness. One comment sought to modify this provision so as to allow the GAO attorney to designate a management agent who would stand in place of the Comptroller General as respondent and who could attend all sessions of the hearing as a matter of right. The Board rejected this suggestion since it does not appear to be a widely accepted practice in other federal personnel administrative forums. However, in response to the comment, the rule now reflects at § 28.57(b) that four individuals have a right to be present in a hearing: the GAO technical representative, who is not expected to testify, the GAO representative, the petitioner and the petitioner's representative. This, we believe, does conform with practice in administrative proceedings in the executive branch. Otherwise, the decision of who shall be excluded from the hearing is properly left to the discretion of the administrative judge. The language as written does not affect the substantive rights of either party to request that any

particular person or witness be excluded or included at the hearing.

The former rule at § 28.17(f) provided that when the PAB General Counsel was not participating in a case, the General Counsel could request permission to intervene in the case with regard to any issue in which the General Counsel finds a significant public interest with regard to the preservation of the merit system. This provision for permissive intervention by the General Counsel carried over to the proposed rule at § 28.12(f). However, the proposed rule also added language at § 28.27 that would have allowed the PAB General Counsel to intervene in Board proceedings as a matter of right. This provision is based upon the MSPB rule that grants the Special Counsel the right to intervene in proceedings before the MSPB. One comment pointed out that the provision for permissive intervention at § 28.12(f) and the provision for intervention as a matter of right at § 28.27 were in conflict. The comment also argued that, except for the General Counsel's limited intervention under § 28.12(f), the concept of intervention serves no useful purpose in proceedings before the Board. The comment argued that no one other than the General Counsel should be allowed to seek intervention.

The noted conflict between §§ 28.12(f) and 28.27 is well taken. The General Counsel's right to intervene is, therefore, deleted from § 28.27. With the General Counsel's broad scope of authority in our system, permissive intervention is appropriate in those rare circumstances in which the General Counsel may find it appropriate to participate in a case in which the General Counsel is not already participating. As to whether the rule should provide for intervention by other parties, we agree that circumstances warranting such intervention may be rare. However, the MSPB rule provides for such intervention by other persons (see 5 CFR 1201.34) and defining appropriate grounds for granting such intervention is better left to development by case law.

When the Board's rule was amended some years ago, provisions were added to clarify the General Counsel's investigative, disciplinary, and corrective action authority. These provisions now appear at §§ 28.130 through 28.133. Although these provisions made paragraphs (c) and (d) in § 28.33 of the former rule redundant, the two paragraphs were not removed when the rule was last revised. These two paragraphs are now eliminated from the rule.

Section 28.42 of the proposed rule provided guidance on the procedures

governing discovery. Comments on this section argued that the time limits for initiating discovery and responding to discovery requests were too short and were not consistent with MSPB practice and that the requirements imposed on a party seeking a subpoena to show the "relevance, scope and materiality of the particular information sought" was not consistent with the requirements in federal civil practice. These comments were all well taken and appropriate changes are made in the final rule.

The subject of discovery from a nonparty is described at § 28.42(b). Nonparty includes anyone who is not an officer or employee of GAO. The rule provides that when voluntary discovery fails, then an order compelling discovery and a subpoena may be issued by the administrative judge. One comment suggested that the rule should be crafted to empower the Board to use sanctions such as not admitting evidence covered by the order as an alternative to proceeding to enforce the subpoena. In response to this comment, the discussion in § 28.42(b) of orders compelling discovery and subpoenas was deleted. Particularly by removing the reference to subpoenas, there should be less opportunity for the discovery process and the subpoena process to be confused. At the same time, by placing the subpoena provisions (see §§ 28.46 through 28.50) immediately after the discovery provisions (see § 28.40 through 28.45), it should be clear that both processes are available as the Board deems appropriate.

The proposed rule provided that once a hearing date was set by the Board or its administrative judge, motions for postponement would have to be in writing and accompanied by an affidavit setting forth the reasons for the request. The motion would be granted only upon a showing of good cause. A comment urged that such written motions be required only when the parties do not agree on the need for a postponement. When the parties agree on the need for postponement, the comment suggested that the motion be made orally and that the motion be granted unless extraordinary circumstances were present. The Board modified the provision at § 28.55 to allow motions to be made orally when the parties are in agreement on the requested postponement. However, the motion can be granted only upon a showing of good cause.

The former rule at § 28.21(g) made Board hearings closed to the public unless the petitioner, usually the employee party in the hearing, requested that the hearing be open. The proposed rule at § 28.57 reversed this position.

Hearings would be open unless there was an interest to be served by closing the hearing to the public. One comment urged that the prior rule remain unchanged since such personnel matters should remain confidential. However, since Board decisions are open to the public, Board hearings should normally be open to the public also. Public hearings are also consistent with MSPB practice. See 5 CFR 1201.52.

The proposed rule provided at § 28.53 that a verbatim transcript of the hearing would be made available to the parties upon the payment of costs, except that the PAB General Counsel and the GAO were exempted from paying the costs. In response to comments, this provision, now at § 28.58, provides that each party will receive a copy of the transcript. However, a party requesting additional copies of the transcript will have to pay the costs of the additional copy.

Section 28.56 of the proposed rule, which is § 28.61 in the final rule, discusses burdens of proof. One comment urged that this provision be amended to state that the agency's action in a denial of a within-grade increase must be supported by substantial evidence. The burden of proof in such cases has been established by case law here and in the executive branch. The Board believes that that issue should continue to be governed by case law rather than by its rulemaking authority.

The rules of the Board have always provided a means for non-Board members to conduct hearings. One comment urged that this entire process be abandoned. The argument was that the process effectively delegated the Board's authority to non-Board members. Such delegation of authority, the argument continued, is not permitted by the statute that created the Board.

Though seldom used, this provision has always been deemed necessary primarily because the Board members do serve in a part-time capacity. Therefore, an unusual surge in the case load or other unique circumstances could make case processing by the five part-time Board members so slow and inefficient as to create an injustice to all the parties. The one time this provision has been used to date represents a good example. An extremely complex EEO case required substantially more time to litigate than originally anticipated. The term of the presiding member expired before a decision could be issued. That individual no longer had the authority to issue a decision. Without this provision, the alternative would have involved assigning a new member to rehear the case or to render a decision based solely

on the written record. Using this provision, however, the Board appointed the former member as a hearing officer so that the case could proceed to a decision expeditiously.

The provision in the former rule, § 28.25(a), required that a member or panel of members review the hearing officer's report and the member or panel of members would then issue a decision. The proposed rule, at § 28.86 (a) and (b), retained the basic means by which a non-Board member could hear a case. The proposed rule, however, attempted to further refine the process by which a final Board decision would be produced when a non-Board member originally hears the case.

In response to the comment, the Board does not reach the question of whether it may delegate its statutory decision-making authority, because the purpose and effect of this provision have never been to delegate such authority to a non-Board member. To avoid any suggestion that decision-making authority is being delegated by this provision, the paragraphs that address hearings conducted by non-members are substantially re-written at § 28.86. The section makes it clear that the non-member prepares a "recommended decision" and that, even if the parties take no exception to the recommended decision, the Board will review it with the power to adopt, reverse, remand, modify or vacate the recommended decision, in whole or in part. The section also emphasizes in various ways that the Board's review of the recommended decision is virtually unfettered. In short, the provision in no way represents a delegation of the Board's decision-making authority and the Board need not reach the issue of whether it could delegate any of its decision-making authority.

Section 28.25(c) of the former rule sets forth five grounds upon which the Board could reconsider and reverse an initial decision. The scope of the Board's review was the same as that used by federal courts of appeal in their review of Board decisions, but the scope of review was not as broad as the scope of review used by the MSPB when it reviews an initial decision by one of its administrative judges. The proposed rule at § 28.86(e) made no change in the Board's scope of review. A comment suggested that the Board should not so limit its scope of review. The comment argued that the Board should retain sufficient authority to correct all decisions that are in error, whether the error is factual or legal. The Board concurs and has rewritten § 28.87 accordingly. The final language allows

the Board, like the MSPB, to conduct a de novo review of the law and facts for each initial decision that the Board is called upon to reconsider.

The former rule provided at § 28.25(h) that "any person" could seek enforcement of a final decision. The proposed rule offered no change in that provision. One comment argued that the reference to "any person" was vague and should be changed to read "petitioner, counsel or an intervenor, subject to the limitation of his/her intervention, should be allowed to petition for enforcement of a final decision." After considering this comment, the Board decided not to accept the suggested change. The rule at § 28.3 defines "person" as "an employee or applicant for employment, a labor organization or the GAO." In response to the particular comment, any person who has no interest in a final decision would have no standing to petition for enforcement of the decision. However, after further consideration of this enforcement provision, the Board concludes that it is appropriate for the General Counsel to have independent authority to seek enforcement of final Board decisions. Therefore, the final rule at § 28.88(c) provides that "any person and/or the General Counsel" may petition for enforcement.

The former rule provided at § 28.27(c) that the Board could designate the General Counsel or another qualified individual to represent it in any judicial appeals from its decisions taken in accordance with 31 U.S.C. 755. This language suggested that the Board might only have occasion for appearances in proceedings before the court of appeals. However, there are occasions when the Board may find it necessary to appear in a Federal district court. This could occur, for example, when the Board seeks judicial enforcement of its decision or when a case in district court raises issues regarding interpretation of a Board rule or of the GAO Personnel Act. Therefore, the new section, which appears at § 28.90(c), is written to include representation in any judicial proceeding that involves a Board decision or the interpretation of a Board rule or of the GAO Personnel Act.

The description of rights to sue on EEO claims in federal court are substantially rewritten in the final rule at § 28.100. For the most part, the changes were made to more clearly state the rights under various civil rights statutes. However, special comment is necessary regarding the provision in the Age Discrimination in Employment Act (hereinafter, the ADEA). The rights of federal employees and applicants for

federal employment to initiate a civil action in federal district court are not clearly stated in the ADEA. As a result, there are numerous interpretations available and there is not as yet clear agreement among the courts of appeal on resolution of the various issues involved. The controversy arises because the enforcement scheme of the ADEA for employees and applicants in the federal sector is not clearly defined.

While the ADEA prohibition against age discrimination in federal employment is patterned after the federal sector provisions of Title VII of the Civil Rights Act of 1964, the enforcement scheme bears no resemblance to the Title VII enforcement scheme. On the other hand, while the ADEA enforcement scheme for the federal sector resembles the ADEA private sector enforcement scheme, it is missing certain important enforcement elements including guidance on the exhaustion of remedies, and the statute of limitations for filing a civil action. In short, the hybrid nature of the federal sector ADEA statute has caused the courts to fill in the statute's missing enforcement details with elements of Title VII or of the private sector ADEA statute. The result is often conflicting and confusing case law on such important issues as whether one must exhaust administrative remedies, what exhaustion of administrative remedies means, and whether one has 30 days, two years or six years in which to file a civil action.

The one concept that is generally accepted by all the courts and the Equal Employment Opportunity Commission is that federal employees and applicants for employment have two avenues by which they may raise an ADEA claim: (1) Forego administrative complaint processing and file directly in federal district court or (2) file an EEO administrative complaint and postpone suit in court. See, for example, *Purtill v. Harris*, 658 F.2d 134, 138 (3rd Cir. 1981), cert. den., 462 U.S. 1131 (1983); *Poterson v. Weinberger*, 644 F.2d 521, 523 (5th Cir. 1981); and 29 CFR 1613.211 in which EEOC recognizes "age" complaints as being covered by the administrative process. However, as suggested above, it is the ramifications of selecting one of these avenues that is not well settled in the case law. For example, the decisions vary as to whether the federal employee or applicant who files an ADEA claim in the administrative process must exhaust administrative remedies before filing in court; whether exhaustion of remedies means waiting 180 days or waiting for an agency decision; whether the court action must be filed within two years

regardless of whether the administrative process is still on-going; and so on. See, for example, *Langford v. Army Corps of Engineers*, 839 F.2d 1192 (8th Cir. 1988); *Caraway v. The Postmaster General of the United States*, 678 F. Supp. 125 (D.Md. 1988); *Marks v. Turnage*, 680 F. Supp. 1241 (N.D.Ill. 1988); *Purtill v. Harris*, supra; *Castro v. U.S.*, 775 F.2d 399 (1st Cir. 1985); *Tkac v. Nimmo*, 603 F. Supp. 1182 (W.D. Mich. 1985); and *Poterson v. Weinberger*, 644 F.2d 521 (5th Cir. 1981).

In view of the split by the courts on these issues, this Board has decided to adopt a rule that incorporates both the ADEA private sector model and the Title VII model, depending on whether the claim is first filed in court or in the administrative process. As an administrative body charged with interpretation and enforcement of the federal sector anti-discrimination laws, it is our intention to provide employees and applicants with clear guidance in this difficult and important area and to provide to the courts our suggestion for a comprehensive interpretation of the enforcement scheme for the federal sector provisions of the ADEA. Following is a description of the effect of this rule.

As noted above, it is generally acknowledged that there are two avenues by which a federal employee or applicant may pursue an ADEA claim: (1) By filing an administrative complaint or (2) by filing a notice of intent to sue in court. Where an employee or applicant elects to use the administrative complaints process, we believe that the Title VII enforcement scheme and statute of limitations should apply. Thus, the employee or applicant must initiate a timely EEO complaint with the agency and the employee may pursue that complaint through the agency process and subsequently file with the General Counsel and then with the Board. Pursuant to our rule, the employee or applicant, who files in the administrative process, may file in a federal district court at any time after 180 days have elapsed since the formal complaint was filed with the agency or after 180 days have elapsed since the filing with the General Counsel or within 30 days after the agency or the Board issues a final decision. On the other hand, where the employee or applicant elects to file in federal district court directly, we believe the private sector ADEA enforcement scheme and statute of limitations should apply. Thus, within 180 days after the alleged unlawful practice occurred, the employee or applicant must file with GAO a notice of intent to sue. The

employee or applicant must give no less than 30 days notice to GAO of the intent to sue. Suit must actually be filed in court within two years from the date of the alleged discriminatory occurrence or, if the discrimination is willful, within three years of the alleged discriminatory occurrence.

A variety of policy reasons support the above described approach. The use of different enforcement schemes for Title VII and ADEA cases in the federal sector would lead to splitting complaints that allege violations of both statutes or to premature departure from the administrative process in order to timely file a lawsuit on the ADEA issue. For example, if the requirement to exhaust administrative remedies were different for Title VII (i.e., may file in court 180 days after formal administrative complaint) and for ADEA cases (i.e., may not file in court until agency decision issues), then employees or applicants raising both issues in an administrative complaint would be forced to forego their right after 180 days to file the Title VII issue in court or they would be forced to split their case in order to exercise their right to file the Title VII issue in court. Likewise, the statute of limitations is different under the two statutes. In most cases, private sector employees or applicants must file ADEA allegations in court within two years after the alleged discriminatory occurrence. Federal sector employees or applicants under Title VII may wait until 30 days after the final administrative decision. The final administrative decision is often more than 2 years after the alleged discriminatory occurrence. Therefore, federal sector employees or applicants raising a Title VII issue and an ADEA issue together in the administrative complaint process may, after two years in the administrative process, be faced with splitting the case to take the age issue into court in a timely fashion or with abandoning their right to an administrative determination on the Title VII issue in order to file both issues in court. None of these options is reasonable or palatable. Thus, in cases alleging age discrimination, we adopt the entire Title VII scheme—both the exhaustion of remedies concept and the limitations period—when the employee or applicant elects to pursue the administrative complaints process and we adopt the entire private sector ADEA scheme when the employee or applicant elects to bypass the administrative process and go directly to court.

Further support for this approach is found in the Civil Service Reform Act

and its legislative history. The Reform Act provides a 30 day limitations period for federal employees to file suit when a claim of age discrimination is based on an action that is appealable to the MSPB (i.e., a "mixed case" involving a claim of age discrimination). See 5 U.S.C. 7703(b)(2). This appears to indicate that Congress intended or understood that the 30 day limitations period from Title VII applied as well to ADEA lawsuits. See S. Rep. No. 969, 95th Cong., 2d. Sess. at 63; reprinted in 1978 U.S. Code Cong. and Admin. News 2723, 2785 ("Under the anti-discrimination laws an employee has 30 days from the final agency action to initiate a de novo court proceeding"). Failure to use the 30 day limitations period for all civil actions under the ADEA would result in some age cases having a 30 day limitations period (i.e., mixed case complaints that raise age discrimination) and others having a 2 or 3 year limitations period (i.e., non-mixed case age complaints).

For all of these reasons, we have chosen to adopt the Title VII enforcement scheme for ADEA cases filed in the administrative complaints process and the private sector ADEA enforcement scheme for cases that initiate in federal court.

One comment suggested that all or part of the statute of limitations for willful violations, which is incorporated from the Fair Labor Standards Act (FLSA) into private sector ADEA provisions, has been held by the courts to be inapplicable to the Federal Government. We find this argument to be based upon a misreading of certain court decisions. Specifically the comment apparently relies on the Supreme Court decision in *Lehman v. Nakshian*, 453 U.S. 156, 26 FEP 65 (1981). According to the comment, the *Nakshian* decision holds that none of the private sector ADEA/FLSA enforcement scheme, including the statute of limitations, is incorporated into the federal sector ADEA provisions. The *Nakshian* holding is not that broad.

The issue in *Nakshian* was whether the ADEA provided a right to jury trial in federal sector age discrimination law suits; in other words, whether Congress had waived sovereign immunity on this issue. Like the waiver of immunity itself, it is well settled that "limitations and conditions upon which the Government consents to be sued must be strictly observed and exceptions thereto are not to be implied." *Lehman v. Nakshian*, at pages 160-161. Such waivers of immunity must be "unequivocally expressed." *United States v. Mitchell*, 445 U.S. 535, 536 (1980). The *Nakshian* court held that in the federal sector

ADEA provisions, Congress did not "affirmatively and unambiguously" waive sovereign immunity and grant a right to a jury trial. Thus, the waiver of sovereign immunity was limited to a right to sue the government in a nonjury trial. Along the way, the *Nakshian* court stated in various ways that Congress did not adopt the FLSA enforcement scheme into the federal sector ADEA provisions. It is such statements that have led some courts, as well as one comment on our proposed rule, to conclude that the FLSA enforcement scheme, including the statute of limitations, does not apply to the federal sector ADEA provisions. This, however, misses the point of the *Nakshian* ruling. Since the issue was waiver of sovereign immunity, the *Nakshian* court's holding was that in the federal sector ADEA provisions Congress did not "affirmatively and unambiguously" express an intent to waive sovereign immunity regarding jury trials by adopting the FLSA enforcement scheme. The "affirmative and unambiguous waiver" standard in the *Nakshian* ruling has no bearing on the question of how certain procedural gaps in the federal sector ADEA enforcement scheme should be filled in.

Frequently in federal civil law, Congress will fail to include procedural details in the enforcement scheme (e.g., identity of the proper party defendant, exhaustion of administrative remedies, statute of limitations). In such circumstances, the Supreme Court teaches that the "task is to 'borrow' the most suitable statute or other rule of timeliness from some other source." *Del Costello v. Internat'l Brotherhood of Teamsters*, 482 U.S. 151, 158 (1988) and *Wilson v. Garcia*, 471 U.S. 261 (1984). Thus, the ruling in *Nakshian* was that Congress had not "unequivocally expressed" its consent to waive sovereign immunity to jury trials in federal sector ADEA law suits and such consent cannot be "implied." On the other hand, when faced with providing a statute of limitations where Congress did not provide one, it is proper, even necessary, to "borrow" from a similar statute or "imply" that a similar statute provides the most reasonable guidance.

Consistent with this approach, many courts, noting that the ADEA does not identify the proper party defendant in federal sector law suits, have "borrowed" the relevant provision from Title VII. See *Ellis v. U.S. Postal Service*, 784 F.2d 835, 838 (7th Cir. 1986); *Romain v. Shear*, 799 F.2d 1416, 1418 (9th Cir. 1986); and *Healy v. U.S. Postal Service*, 677 F. Supp. 1284 (E.D.N.Y. 1987). Likewise, the ADEA does not contain a statute of limitations for Federal sector

employee or applicant cases that are initiated in the administrative process. Thus, numerous courts have "borrowed" the relevant provision from Title VII. See *Caraway v. Postmaster General of U.S.*, supra, and *Healy v. U.S. Postal Service*, supra.

In deciding that a statute of limitations period of one federal law should be applied to another federal law, which is silent on the time for bringing an action, the courts refer to a law that is most analogous in terms of "Federal policy and practicalities." See *Del Costello v. Internat'l Brotherhood of Teamsters*, supra, at 171-172. With this in mind, we chose to adopt the Title VII enforcement scheme and statute of limitations for ADEA cases filed in the administrative process and we chose to adopt the private sector ADEA enforcement scheme and statute of limitations for ADEA cases filed first in federal district court. The former choice conforms with the decisions in *Caraway* and *Healy*. With regard to the latter choice, we have found no decisions addressing the question of what statute of limitations to use when a federal sector ADEA complainant goes first to federal district court. However, using the standards enunciated by the *Del Costello* court, the answer seems obvious. The private sector ADEA statute and the federal sector statute are both intended to prohibit age discrimination and both allow the filing of a civil action after notice is given to the EEOC. Although, as the Supreme Court noted in *Nakshian*, the substantive protection of the federal sector ADEA statute is "patterned after" the substantive protection of Title VII, the latter statute requires that considerable administrative processing be completed before suit can be filed in federal district court. There is no provision in Title VII for bypassing the administrative process. Therefore, when the employee or applicant with a federal sector ADEA claim elects to bypass the administrative process, the statute of limitations that is most analogous in terms of federal policy and practicalities is the private sector ADEA statute, which incorporates by reference the statute of limitations from the Fair Labor Standards Act.

In the alternative, we could have reached the exact same result by borrowing from the Civil Service Reform Act statute of limitations (5 U.S.C. 7703(b)(2)), which is discussed above. It can be argued that it is the most analogous limitations period since it applies not only to civil rights actions by federal employees, but more specifically to those alleging age discrimination. It

also can be argued that it is at least as analogous as the Title VII limitations period to which it is identical. Thus, the Reform Act supports the use of a 30 day limitations period for ADEA lawsuits either because, as discussed above, its legislative history indicates that Congress intended the Title VII limitations period be applied to ADEA actions or because the Reform Act limitations period is the most analogous statute of limitations or because the limitations periods common to both Title VII and the Reform Act should be borrowed as the most analogous statutes of limitation.

Since the GAO Personnel Act, as amended, makes EEO decisions of the Board appealable to the Court of Appeals for the Federal Circuit and since, in another federal personnel context, the courts have held that the court of appeals will not hear a case that is also before a federal district court on substantially the same issues (i.e., judicial review of mixed cases), we note in the final rule at § 28.100(e) that a Board decision on an EEO case could be appealed to the Court of Appeals for the Federal Circuit in lieu of filing in a federal district court.

In the past, both in the executive branch and at GAO, an employee or applicant for employment could file an EEO complaint and 180 days later file in federal district court. Then both the administrative and judicial proceedings would move forward simultaneously. However, in 1987, the EEOC changed the rule for the executive branch. Under the new rule, filing the lawsuit terminates the processing of the administrative complaint. At § 28.101, we adopt this same rule for EEO cases filed with the Board.

The former rule provided a process by which the Board may grant a request from the General Counsel to stay a GAO personnel action. However, the former rule provided no guidance as to whether a stay that the Board granted could be vacated during the subsequent litigation. When that issue arose in a case, the Board established the rule that a member, subject to interlocutory review by the Board, may vacate the stay of a personnel action when the evidence taken at hearing warrants such action. However, with § 28.133 of the proposed rule, the Board changed that rule. There being no comments in opposition to the provision, the final rule provides that only the Board, rather than a member, may vacate a Board imposed stay of a GAO personnel action.

A comment was received on the stay process in general. In brief, the General Counsel is authorized to ask the Board

to stay a personnel action when there are reasonable grounds to believe that the personnel action will result in a prohibited personnel practice. The comment received on the stay process suggested that the General Counsel also be required to show harm to the affected employee and to show a likelihood of prevailing in the subsequent litigation. Furthermore, when the case involved EEO allegations, it was suggested that the General Counsel defer any possible stay action until GAO completes its investigation. After careful consideration, the Board rejected all of these suggestions. The criteria and processes for stay proceedings before this Board are based upon and derived from the stay authority created by Congress for the Special Counsel and the MSPB. However, the changes suggested in the comment would restrict the General Counsel's authority as compared to that of the Special Counsel and would prevent the General Counsel from requesting a stay in circumstances in which the Special Counsel in the executive branch could successfully seek a stay. This Board is unwilling to modify the stay process in ways that would significantly reduce the authority of the General Counsel as a public prosecutor or that would indirectly diminish the rights of GAO employees.

Finally, § 28.155 is a savings provision. It provides that any case in which the charge was filed before this rule became final will be processed under the former rule.

List of Subjects in 4 CFR Parts 27 and 28

Administrative practice and procedure.

For the reasons set out in the preamble, Title 4 of the Code of Federal Regulations, Parts 27 and 28, are amended as follows.

1. Part 27 is revised to read as follows:

PART 27—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD—ORGANIZATION

- Sec.
27.1 The Board.
27.2 The Chairperson.
27.3 The General Counsel.

Authority: 31 U.S.C. 753.

§ 27.1 The Board.

The General Accounting Office Personnel Appeals Board, hereinafter the Board, is composed of five members appointed by the Comptroller General, in accordance with the provisions of 31 U.S.C. 751. The Board may designate a panel of its members or an individual Board member to take any action within the scope of the Board's authority,

subject to later reconsideration by the Board.

§ 27.2 The Chairperson, Vice Chairperson.

The members of the Board shall select from among its membership a Chairperson, hereinafter the Chair, who shall serve as the chief executive and administrative officer of the Board. The members of the Board may select from among its membership a Vice Chairperson, hereinafter the Vice Chair, who shall serve in the absence of the Chair and in other matters delegated by the Chair.

§ 27.3 The General Counsel.

The Chairman shall select an individual and the Comptroller General shall appoint the individual selected by the Chair to serve as the General Counsel of the Board. The General Counsel, at the request of the Board, shall investigate matters under the jurisdiction of the Board, and otherwise assist the Board in carrying out its functions, unless to do so would create a conflict of interest for the General Counsel.

2. The table of contents for Part 28 is revised and the authority citation continues to read as follows:

PART 28—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES

Subpart A—Purpose, General Definitions, and Jurisdiction

- Sec.
28.1 Purpose and scope.
28.2 Jurisdiction.
28.3 General definitions.
28.4 Time limits.

Subpart B—Procedures

- 28.8 Informal procedural advice.
28.9 Procedures—general.
28.10 Notice of appeal rights.
28.11 Filing a charge with the General Counsel.
28.12 General Counsel procedures.

Hearing Procedures for Cases Before the Board—General

- 28.15 Scope and policy.
28.16 Revocation, amendment or waiver of rules.
28.17 Internal appeals of Board employees.
28.18 Filing a petition for review and request for hearing with the Board.
28.19 Content of agency response.
28.20 Number of pleadings, service, and response.
28.21 Prehearing procedures and motions practice.
28.22 Administrative Judges.
28.23 Disqualification of Administrative Judges.
28.24 Sanctions.

Parties, Practitioners, and Witnesses

- 28.25 Representation.

- 28.26 Witness fees.
28.27 Intervenor.
28.28 Substitution.
28.29 Consolidation or joinder.

Discovery

- 28.40 Statement of purpose.
28.41 Explanation, scope, and methods.
28.42 Voluntary discovery and protective orders.
28.43 Compelling discovery.
28.44 Taking of depositions.
28.45 Admissions of fact and genuineness of documents.

Subpoenas

- 28.46 Motion for subpoena.
28.47 Motion to quash.
28.48 Service.
28.49 Return of service.
28.50 Enforcement.

Hearings

- 28.55 Scheduling the hearing.
28.56 Hearing procedures, conduct and copies of exhibits.
28.57 Public hearings.
28.58 Transcript.
28.59 Official record.
28.60 Briefs.
28.61 Burden and degree of proof.
28.62 Closing the record.

Evidence

- 28.65 Service of documents.
28.66 Admissibility.
28.67 Production of statements.
28.68 Stipulations.
28.69 Judicial notice.

Interlocutory Appeals

- 28.80 Explanation.
28.81 Criteria for certification.
28.82 Procedure.

Board Decisions, Attorney's Fees, and Judicial Review

- 28.86 Board procedures—recommended decisions.
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Authority: 51 U.S.C. 753

§§ 28.31 and 28.33 [Redesignated as §§ 28.91 and 28.92 respectively]

3. Subpart C, consisting of §§ 28.31 and 28.33 are redesignated as Subpart C, §§ 28.91 and 28.92 respectively.

§ 28.92 [Amended]

4. Newly redesignated § 28.92 is amended as follows:

- a. In paragraph (a)(1) remove “§ 28.41” and add “§ 28.95”.
b. In paragraph (b), remove “§ 28.33(a)” and add “§ 28.92(a)”.

5. Section 28.92 is amended by removing paragraphs (c) and (d).

§§ 28.41, 28.43, 28.45, 28.47, 28.49, and 28.51 [Redesignated as §§ 28.95 through 28.100 respectively]

6. Subpart D, consisting of §§ 28.41, 28.43, 28.45, 28.47, 28.49, and 28.51 is redesignated as §§ 28.95 through 28.100 respectively.

7. Newly redesignated § 28.97 is amended by adding paragraph (e) to read as follows:

§ 28.97 Class actions in EEO cases.

• • • • •

(e) *Standards.* For the purpose of determining whether it is appropriate to treat an appeal as a class action, the administrative judge will be guided, but

not controlled, by the applicable provisions of the Federal Rules of Civil Procedure.

§ 28.96 [Amended]

8. Newly redesignated § 28.96 is amended as follows:

- a. Paragraph (b)(2) is amended by removing “80” and adding “120”.
b. Paragraph (d) is removed.
c. Paragraph (e) is redesignated as (d); and is amended by removing “§ 28.17” and adding “§ 28.12”.

§ 28.99 [Amended]

9. Newly redesignated § 28.99(a) is amended by removing “§ 28.25” and adding “§ 28.90”.

10. Newly redesignated § 28.100 is revised to read as follows:

§ 28.100 Civil action; discrimination complaints.

(a) Race, color, religion, sex, or national origin. An employee or applicant alleging violations of 42 U.S.C. 2000e-16 (Title VII of the Civil Rights Act of 1964, as amended) may file suit in Federal District Court—

(1) After 180 days from filing a complaint with GAO if there is no final decision on that complaint or within 30 days of receipt of notice of final action taken by GAO, or

(2) After 180 days from filing a charge with the General Counsel if there is no final decision by the Board on that discrimination appeal or within 30 days of receipt of notice of final action by the Board.

(b) Handicapping condition. An employee or applicant alleging discrimination based upon a handicapping condition (29 U.S.C. 791, 794a, Rehabilitation Act) may file suit in Federal District Court—

(1) After 180 days from filing a complaint with GAO if there is no final decision on that complaint or within 30 days of receipt of notice of final action taken by GAO, or

(2) After 180 days from filing a charge with the General Counsel if there is no final decision by the Board on that discrimination appeal or within 30 days of receipt of notice of final action by the Board.

(c) Age. An employee or applicant alleging discrimination based upon age (29 U.S.C. 631, 633a, Age Discrimination in Employment Act) may forego administrative action altogether and file a civil action in U.S. District Court after giving GAO 30 days Notice of Intent to File such action. The Notice shall be filed within 180 days after the alleged unlawful practice occurred. When such notice is provided and no administrative complaint is filed, a civil action may be

filed in the appropriate U.S. District Court within two years or, if the violation is willful, three years of the date of the alleged ADEA violation. An employee or applicant for employment, who has filed an administrative complaint alleging age discrimination, may file suit in Federal District Court—

(1) After 180 days from filing a complaint with GAO if there is no final decision on that complaint or within 30 days of receipt of notice of final action taken by GAO, or

(2) After 180 days from filing a charge with the General Counsel if there is no final decision by the Board on that discrimination appeal or within 30 days of receipt of notice of final action by the Board.

(d) Sex-based salary inequity. An employee or applicant alleging discrimination based upon salary inequity due to sex (29 U.S.C. 206d, Equal Pay Act provisions of the Fair Labor Standards Act) may forego administrative action altogether and file suit in U.S. District Court.

(e) In lieu of filing a civil action in U.S. District Court, a final decision of the Board involving prohibited discrimination (31 U.S.C. 732(f)(1)) may be appealed in accordance with 31 U.S.C. 755, to the United States Court of Appeals for the Federal Circuit within 30 days after the date the petitioner receives notice from the Board of the final decision.

11. Subpart D is amended by adding a new § 28.101 to read as follows:

§ 28.101 Effect on administrative processing.

Any proceeding before the Board shall be terminated when an employee or applicant who is alleging violations of 42 U.S.C. 2000e-16 (Title VII of Civil Rights Act of 1964, as amended) (Rehabilitation Act, 29 U.S.C. 791, 794c) or who is alleging violations based upon a handicapping condition or who is alleging age discrimination (29 U.S.C. 631, 633a), files suit in Federal District Court pursuant to § 28.100 (a), (b) or (c).

§§ 28.61, 28.63, 28.65, 28.67, 28.69, 28.71, and 28.73 [Redesignated as §§ 28.110 through 28.116 respectively]

12. In Subpart E, §§ 28.61, 28.63, 28.65, 28.67, 28.69, 28.71, and 28.73 are redesignated as §§ 28.110 through 28.116 respectively.

§§ 28.81, 28.83, 28.85, 28.87, and 28.89 [Redesignated as §§ 28.120 through 28.124 respectively]

13. In Subpart F, §§ 28.81, 28.83, 28.85, 28.87, and 28.89 are redesignated as §§ 28.120 through 28.124 respectively.

§§ 28.101, 28.103, 28.105, and 28.107 [Redesignated as §§ 28.130 through 28.133 respectively]

14. In Subpart G, §§ 28.101, 28.103, 28.105, and 28.107 are redesignated as §§ 28.130 through 28.133 respectively.

15. Newly redesignated § 28.133 is revised to read as follows:

§ 28.133 Stay proceedings.

(a) If the General Counsel determines after an investigation under these rules that there are reasonable grounds to believe that a personnel action was taken, or is to be taken, as a result of a prohibited personnel practice, the General Counsel may request any member of the Board to order a temporary stay of the personnel action for a period of not more than 60 days.

(b) Content of request. Each request must be signed by the General Counsel or his/her representative and must set forth:

- (1) The names of the parties.
(2) The agency and officials involved.
(3) The nature of the action to be stayed.

(4) A concise statement of facts justifying the charge that the personnel action was or is to be the result of a prohibited personnel practice.
(5) The laws or regulations that were or will be violated if the stay is not issued.

(c) A Board member shall order a temporary stay under paragraph (a) of this section, unless the member determines that such a stay would not be appropriate. Unless denied, any temporary stay requested shall be granted within 3 working days after the date of request.

(d) The Board may grant a further temporary stay or a permanent stay if the Board concurs in the determination of the General Counsel and after an opportunity for oral or written comment by the General Counsel and GAO. A permanent stay by the Board is final and appealable in accordance with § 28.90.

(e) Additional information and vacating a stay. At any time, the Board, or a member of the Board, where appropriate, may require the General Counsel and/or the agency to appear and present further information or explanation on a request for a stay, to file supplemental briefs or memoranda, or to supply factual information needed by the Board in making a determination regarding a stay. A stay may be vacated only by a decision of the full Board.

§§ 28.111 and 28.113 [Redesignated as §§ 28.140 and 28.141 respectively]

16. In Subpart H, §§ 28.111 and 28.113 are redesignated as §§ 28.140 and 28.141 respectively.

§§ 28.117, 28.119, 28.121, 28.123, and 28.125 [Redesignated as §§ 28.145 through 28.149 respectively]

17. In Subpart I, §§ 28.117, 28.119, 28.121, 28.123, and 28.125 are redesignated as §§ 28.145 through 28.149 respectively.

18. Subparts A and B of Part 28 are revised as follows:

Subpart A—Purpose, General Definitions, and Jurisdiction

§ 28.1 Purpose and scope.

(a) The purpose of these rules is to establish the procedures to be followed:

(1) By the GAO, in its dealings with the Board;

(2) By employees of the GAO or applicants for employment by the GAO, or by groups or organizations claiming to be affected adversely by the operations of the GAO personnel system;

(3) By employees or organizations petitioning for protection of rights or extension of benefits granted to them under Subchapters III and IV of Chapter 7 of Title 31, U.S.C.; and

(4) By the Board, in carrying out its responsibilities under Subchapters III and IV of Chapter 7 of Title 31, U.S.C.

(b) The scope of the Board's operations encompasses the investigation and, where necessary, adjudication of cases arising under 31 U.S.C. 753. In addition, the Board has authority for oversight of the equal employment opportunity program at GAO. This includes the review of policies and evaluation of operations as they relate to EEO objectives and, where necessary, the ordering of corrective action for violation of or inconsistencies with equal employment opportunity laws.

(c) The intent of Subchapters III and IV of Chapter 7 of Title 31, U.S.C. is to provide GAO independence in administering its labor and employee relations function, while ensuring that “GAO employees are entitled to the same rights and protection as employees in the executive branch” H.R. Rep. No. 96-494, p. 15 (1980).

(d) In considering any procedural matter not specifically addressed in these rules, the Board will be guided, but not bound, by the Federal Rules of Civil Procedure.

§ 28.2 Jurisdiction.

(a) The Board has jurisdiction to hear and decide the following actions brought by the General Counsel:

(1) Proceedings in which the General Counsel seeks to stay a personnel action based upon an alleged prohibited

personnel practice that has occurred or is about to occur;

(2) Proceedings in which the General Counsel seeks corrective action for an alleged prohibited personnel practice; and

(3) Proceedings in which the General Counsel seeks discipline for a GAO employee who has allegedly committed a prohibited personnel practice or who has allegedly engaged in prohibited political activity.

(b) The Board has jurisdiction to hear any action brought by any person or group of persons in the following subject areas:

(1) An officer or employee appeal involving a removal, suspension for more than 14 days, reduction in grade or pay, or furlough of not more than 30 days;

(2) A prohibited personnel practice under 31 U.S.C. 732(b)(2);

(3) A decision of an appropriate unit of employees for collective bargaining;

(4) An election or certification of a collective bargaining representative;

(5) A matter appealable to the Board under the labor-management relations program under 31 U.S.C. 732(e), including an unfair labor practice under 31 U.S.C. 732(e)(1);

(6) An action involving discrimination prohibited under 31 U.S.C. 732(f)(1); and

(7) An issue about GAO personnel which the Comptroller General by regulation decides the Board shall resolve.

(c) Limitations on appellate jurisdiction, collective bargaining agreements and election of procedures.

(1) Where an employee is covered by a collective bargaining agreement which provides for an exclusive negotiated grievance procedure for actions involving discrimination under 5 U.S.C. 7702, reduction-in-grade or adverse actions under either 5 U.S.C. 4303 or 7512, the employee may raise the matter under either the negotiated grievance procedure or under the Board's appellate procedures but not both. However, selection of the negotiated grievance procedure in no manner prejudices the right of an employee to request the Board to review the final decision from the negotiated grievance procedure in which prohibited discrimination was at issue. Other matters which are covered by a negotiated grievance procedure under 5 U.S.C. 7121 may not be appealed to the Board.

(2) Election of procedure. Where a covered employee has initially elected to use an exclusive negotiated grievance procedure, he/she may not appeal the matter to the Board. This election,

however, does not prohibit an employee from requesting Board review of a decision involving discrimination, as described in paragraph (c)(1) of this section.

§ 28.3 General definitions.

In this part—

"Administrative Judge" means any individual designated by the Board to preside over a hearing conducted on matters within its jurisdiction. An administrative judge may be a member of the Board, an employee of the Board, or any individual qualified by experience or training to conduct a hearing and is appointed to do so by the Board. When a panel of Members or the full Board is hearing a case, the Chair shall designate one of the members to exercise the responsibilities of the administrative judge in the proceedings.

"Board" means the General Accounting Office Personnel Appeals Board as established by 31 U.S.C. 751.

"Charge" means any request filed with the PAB General Counsel on any matters within the jurisdiction of the Board, under the provisions of Subchapter IV of Chapter 7 of Title 31, United States Code.

"Charging Party" means any person filing a charge with the General Counsel for investigation.

"Comptroller General" means the Comptroller General of the United States.

"Days" means calendar days.

"Exceptions to the Recommended Decision" means a request filed by a party with the Board that objects to the findings and/or conclusions of a recommended decision.

"Executive Assistant" means the Executive Assistant of the Board.

"GAO" means the General Accounting Office.

"General Counsel" means the General Counsel of the Board, as provided for under 31 U.S.C. 752.

"Initial Decision" means the adjudicatory statement of a case that is issued by an administrative judge who is a member of the Board.

"Person" means an employee or applicant for employment, a labor organization or the GAO.

"Petition for Review" means any request filed with the Board for action to be taken on matters within the jurisdiction of the Board, under the provisions of Subchapter IV of Chapter 7 of Title 31, United States Code.

"Petitioner" means any person filing a petition for review for Board consideration.

"Pleading" means a document that initiates a cause of action before the Board, responds to a cause of action,

amends a cause of action, responds to an amended cause of action, requests reconsideration of a decision, responds to a request for reconsideration, requests reconsideration of a recommended decision or responds to such a request.

"Recommended Decision" means the adjudicatory statement of a case that is issued by an administrative judge, who is not a member of the Board.

"Request for Reconsideration" means a request filed with the Board for review of an initial decision.

"Solicitor" means the attorney appointed by the Board to provide advice and assistance to the Board in carrying out its adjudicatory functions and to otherwise provide assistance as directed by the Board.

§ 28.4 Time limits.

(a) To compute the number of days for filing under these rules, the first day shall be the day after the event from which the time period begins to run and the last day for filing shall be included in the computation. When the last day falls on a Saturday, Sunday or federal government holiday, then the filing deadline will be the next regular federal government workday.

(b) The Board may waive the time limits in these rules for good cause shown.

Subpart B—Procedures

§ 28.8 Informal procedural advice.

(a) Persons may seek informal advice on all aspects of the Board's procedures by contacting the Board's Solicitor or General Counsel.

(b) Informal procedural advice will be supplied within the limits of available time and staff.

§ 28.9 Procedures—general.

(a) The procedures described in this subpart are generally applicable to the processing of all matters presented for consideration by the Board. Where special procedures are to be followed, they will be prescribed in those subsequent subparts to which they are particularly applicable.

(b) All pleadings, motions, and attachments thereto shall not exceed 60 pages. The Board may waive this limitation for good cause shown. Pleadings, motions, and attachments thereto filed with the Board shall be on standard letter-size paper (8½ x 11).

§ 28.10 Notice of appeal rights.

(a) The GAO shall be responsible for ensuring that employees are routinely advised of their appeal rights to the Board and that employees, who are the object of an adverse or performance-

based action, are, at the time of the action, adequately advised of their appeal rights to the Board. The notice in adverse and performance-based actions must be accompanied by proof of service.

(b) Notice in adverse and performance-based actions shall include:

- (1) Time limits for appealing to the Board and the address of the Board;
- (2) A copy of the Board's regulations; and
- (3) Notice of the right to representation and right to a hearing.

§ 28.11 Filing a charge with the General Counsel.

(a) Who may file.

(1) Any GAO employee or applicant for employment claiming to be affected adversely by GAO action or inaction which is within the Board's jurisdiction under Subchapter IV of Chapter 7 of Title 31, United States Code.

(2) Non-EEO class actions. One or more employees or applicants for employment may file a charge as representative of a class of employees or applicants for employment in any matter within the Board's jurisdiction. See § 28.97 for EEO class actions.

(b) When to file.

(1) Charges relating to adverse and performance-based actions must be filed within 20 days after the effective date of the action.

(2) Charges relating to other personnel actions must be filed within 20 days after the effective date of the action or 20 days after the charging party knew or should have known of the action.

(3) Charges relating to adverse and performance-based actions (paragraph (b)(1) of this section) and other personnel actions (paragraph (b)(2) of this section) that also raise an allegation of prohibited discrimination must be filed in accordance with paragraph (b)(4) of this section.

(4) Charges relating to discrimination complaints shall be filed any time after 120 days have passed since the filing of a formal complaint of discrimination with GAO, except that, when GAO has issued a final agency decision, the charge shall be filed within 20 days from receipt by the charging party of the final agency decision.

(5) Charges relating to continuing violations shall be filed at any time.

(c) How to file. Charges shall be filed at the Office of the General Counsel (Academy Building, 717 Fifth Street, NW., Washington, DC) or by mail addressed to the General Counsel, Personnel Appeals Board, Academy Building, General Accounting Office,

Washington, DC 20548. When filed by mail, the postmark shall be the date of filing for all submissions to the General Counsel.

(d) What to file. The charging party shall include in any charge the following information:

(1) Name of the charging party or a clear description of the group or class of persons on whose behalf the charge is being filed;

(2) The names and titles of persons, if any, responsible for actions the charging party wishes to have the General Counsel review;

(3) The actions complained about, including dates, reasons given, and internal appeals taken;

(4) The charging party's reasons for believing the actions to be improper;

(5) Remedies sought by the charging party;

(6) Name and address of the representative, if any, who will act for the charging party in any further stages of the matter; and

(7) Signature of the charging party or the charging party's representative.

(e) The General Counsel shall not represent a petitioner when the only issue is attorney fees. When attorney fees are the only issue raised in a charge to the General Counsel, the General Counsel shall transmit the charge to the Board for processing under §§ 28.18 through 28.88 as a petition for review.

§ 28.12 General Counsel procedures.

(a) The General Counsel shall serve on the agency a copy of the charge, investigate the matters raised in a charge, refine the issues where appropriate, and attempt to settle all matters at issue.

(b) The General Counsel's investigation may include gathering information from GAO and interviewing and taking statements from witnesses. Employees of GAO who are requested by the General Counsel to participate in any investigation under these Rules shall be on official time.

(c) Following the investigation, the General Counsel shall provide the charging party with a Right to Appeal Letter. Accompanying this letter will be a statement of the General Counsel advising the charging party of the results of the investigation. This statement of the General Counsel is not subject to discovery and may not be introduced into evidence before the Board.

(d) If, following the investigation, the General Counsel determines that there are not reasonable grounds to believe that the charging party's rights under Subchapter IV of Chapter 7 of Title 31, United States Code, have been violated, then the General Counsel shall not

represent the charging party. If the General Counsel determines that there are reasonable grounds to believe that the charging party's rights under Subchapter IV of Chapter 7 of Title 31, United States Code, have been violated, then the General Counsel shall represent the charging party, unless the charging party elects not to be represented by the General Counsel. Any charging party may represent himself/herself or obtain other representation.

(e) When the charging party elects to be represented by the General Counsel, the General Counsel is to direct the representation in the charging party's case. The charging party may also retain a private representative in such cases. However, the role of a private representative is limited to assisting the General Counsel as the General Counsel determines to be appropriate.

(f) When the General Counsel is not participating in a case, the General Counsel may request permission to intervene with regard to any issue in which the General Counsel finds a significant public interest with respect to the preservation of the merit system.

Hearing Procedures for Cases Before the Board—General

§ 28.15 Scope and policy.

The rules in this subpart apply to actions brought by any person, except as otherwise provided in § 28.17. These rules also apply to actions brought by the General Counsel, except as otherwise provided in Subpart G. It is the policy of the Board that these rules shall be applied in a manner which expedites the processing of each case, but with due regard to the rights of all parties.

§ 28.16 Revocation, amendment or waiver of rules.

(a) The Board may revoke or amend these regulations by publishing proposed changes within GAO and providing for a comment period of not less than 30 days. Following the comment period, any changes to the rules are final once they are published in the *Federal Register*. Notice of publication in the *Federal Register* must be published throughout GAO.

(b) An administrative judge or the Board may waive a Board regulation in any case for good cause shown if application of the regulation is not required by statute.

§ 28.17 Internal appeals of Board employees.

(a) The provisions of the GAO Personnel Act, its implementing regulations, and the Board's procedural rules apply in the same manner to

employees of the Board as they do to other GAO employees, with the following exceptions.

(1) The General Counsel has no cause of action in his/her own employment matters except for the statutory bases such as prohibited discrimination and prohibited personnel practices, as described at 31 U.S.C. 732 (b)(2) and (f)(1).

(2) When an employee of the Board has an EEO complaint, the employee shall consult either with the Solicitor or with the General Counsel and seek advice on filing an EEO complaint. If the matter cannot be resolved within 10 days, the Solicitor or General Counsel shall notify the employee of his/her right to file an EEO complaint. The employee shall have 20 days from receipt of this notice to file an EEO complaint with the General Counsel. Upon receipt of an EEO complaint, the General Counsel shall arrange for processing in accordance with paragraph (b) of this section.

(3) When an employee of the Board has any other issue that would be subject to the Board's jurisdiction, the employee shall file a charge with the General Counsel and the General Counsel shall arrange for processing in accordance with paragraph (b) of this section.

(b) The responsibilities and functions of the Board's General Counsel will be assumed by an attorney who is not a current or former employee of the Board or the GAO. The services of that attorney, who shall be knowledgeable in federal personnel matters, will be paid for by the Board. The attorney will be selected by an impartial body as described below.

(1) If agreed to by the Special Counsel of the Merit Systems Protection Board (MSPB) (or the EEOC, as appropriate), that body will appoint and detail a person from among its attorneys to perform the functions of the General Counsel.

(2) If the MSPB Special Counsel (or the EEOC) does not agree to such a procedure, an appointment of an attorney will be sought from the Federal Mediation and Conciliation Service (FMCS).

(3) In any event, whatever person is so appointed, he/she will possess all of the powers and authority possessed by the General Counsel in employee appeal cases.

(c) The adjudication responsibilities and functions of the Board will be assumed by a person who is not a current or former employee of the Board or the GAO. The services of that person, who shall be knowledgeable in federal

personnel matters, will be paid for by the Board. The person will be selected by an impartial body as described below.

(1) If agreed to by the MSPB (or the EEOC, as appropriate), that body will appoint and detail one of its administrative law judges or administrative judges to perform the Board's adjudicative functions.

(2) If the MSPB (or the EEOC) does not agree to such a procedure, an appointment of an arbitrator will be sought from the FMCS.

(3) In any event, whatever person is so appointed, he/she will possess all of the powers and authority possessed by the Board in employee appeals cases. The decision of the administrative law judge, administrative judge, or arbitrator shall be a final decision of the Board, in the same manner as if rendered by the Board under 4 CFR 28.86(e). Judicial review of the decision may be pursuant to 4 CFR 28.88.

(d) Any employee of the Board who believes that he/she is aggrieved by any personnel matter that is not reviewable by the Board under 31 U.S.C. 753(a) may file a grievance as follows:

(1) Informal Step. The employee must discuss the complained of incident with his/her supervisor as soon as possible after the complained of incident.

(2) Step 1. If the supervisor is unable to resolve the matter informally to the satisfaction of the employee, then the employee may file a formal grievance with the supervisor. The formal grievance must be filed by the employee with the supervisor within 20 days after the complained of incident. The supervisor must respond to the employee in writing within 10 days.

(3) Step 2.

(i) If the employee is not satisfied with the supervisor's response, the employee has 10 days in which to appeal to the Chair. In this appeal, the employee must forward to the Chair the formal grievance, the supervisor's response and a brief statement from the employee explaining why the supervisor's response is not satisfactory.

(ii) The Chair or another member designated by the Chair, shall meet with the employee and discuss the matter of concern within 10 days after receipt of the step 2 appeal. The Chair or designee shall issue a written resolution of the grievance.

(4) Step 3. Within 10 days after receipt of the Chair's resolution or within 60 days after initiating step 2, whichever occurs first, the employee may request that the full Board review the grievance. The decision of the full Board is the final decision in the matter.

§ 28.18 Filing a petition for review and request for hearing with the Board.

(a) Who may file. Any GAO employee or applicant for employment, who has received a Right to Appeal Letter from the General Counsel and who is claiming to be affected adversely by a GAO action or inaction which is within the Board's jurisdiction under Subchapter IV of Chapter 7 of Title 31, United States Code, may file a petition for review.

(b) When to file. Petitions for review must be filed within 20 days after receipt by the charging party of the Right to Appeal Letter from the General Counsel.

(c) How to file. Petitions shall be filed as follows: by hand delivery at the Office of the Board (Academy Building, 717 Fifth Street, NW., Washington, DC) or by mail to the Personnel Appeals Board, Academy Building, General Accounting Office, Washington, DC 20548. When filed by mail, the postmark shall be the exclusive date of filing for all submissions to the Board.

(d) What to file. The petition for review shall include the following information:

(1) Name of the petitioner, or a clear description of the group or class of persons on whose behalf the petition is being filed;

(2) The names and titles of persons, if any, responsible for actions the petitioner wishes to have the Board review;

(3) The actions being complained about, including dates, reasons given, and internal appeals taken;

(4) Petitioner's reasons for believing the actions to be improper;

(5) Remedies sought by the petitioner;

(6) Name and address of the representative, if any, who will act for the petitioner in any further stages of the matter;

(7) Whether a hearing is requested; and

(8) Signature of the petitioner or petitioner's representative.

(e) Failure to raise a claim or defense in the petition for review shall not bar its submission later unless to do so would prejudice the rights of the other parties and unduly delay the proceedings.

(f) Right to hearing. In an unfair labor practice proceeding there will be a hearing conducted by the administrative judge. In all other proceedings, the employee/petitioner has a right to a hearing or may request a determination based on the record. A request by GAO for a hearing may be granted at the discretion of the administrative judge. A denial of such a request shall state the basis for the denial.

(g) Non-EEO class actions. One or more employees may file a petition for review as representatives of a class of employees in any matter within the Board's jurisdiction. For the purpose of determining whether it is appropriate to treat an appeal as a class action, the administrative judge will be guided, but not controlled, by the applicable provisions of the Federal Rules of Civil Procedure. See § 28.97 for EEO class actions.

§ 28.19 Content of GAO response.

(a) Within 20 days after receiving a copy of a petition for review, the GAO shall file a response containing at least the following:

(1) A statement of GAO's position on each of the issues raised by the petitioner, including admissions, denials or explanations of each allegation made in the petition and any other defenses to the petition.

(2) Designation of, and signature by, the GAO representative authorized to act for the GAO in the matter.

(b) Failure to raise a claim or defense in the response shall not bar its submission later unless to do so would prejudice the rights of the other parties and unduly delay the proceedings.

§ 28.20 Number of pleadings, service, and response.

(a) *Number.* One original and seven copies of all pleadings, including the petition for review, and amendments to the petition, the response to the petition for review and amendments to the response, the request for reconsideration or the response to a request for reconsideration, must be filed with the Board.

(b) *Service—(1) Service by the Board.* The Board will serve copies of a petition for review upon the parties to the proceeding by mail. The Board will attach a service list indicating the names and addresses of the parties to the proceeding or their designated representatives. The Board will not serve copies of any pleadings, motions, or other submissions by the parties after the initial petition for review.

(2) *Service by the parties.* The parties shall serve on each other one copy of all pleadings other than the initial petition for review. Service shall be made by mailing or by delivering personally a copy of the pleading to each party on the service list previously provided by the Board. Each pleading must be accompanied by a certificate of service specifying how and when service was made. It shall be the duty of all parties to notify the Board and one another in

writing of any changes in the names or addresses on the service list.

(c) *Time limitations for response to pleadings.* Unless otherwise specified by the administrative judge or this Subpart, a party shall have 20 days from receipt to respond to a pleading served by another party.

(d) *Size limitations.* Size limitations are set forth at § 28.9(b).

§ 28.21 Prehearing procedures and motions practice.

(a) *Amendments to petitions.* The Board, at its discretion, may allow amendments to a petition for review as long as all persons who are parties to the proceeding have adequate notice to prepare for the new allegations and if to do so would not prejudice the rights of the other parties and unduly delay the proceedings.

(b) *Motions practice.* When an action is before an administrative judge, motions of the parties shall be filed with the administrative judge and shall be in writing except for oral motions made during the hearing. An original and 3 copies of written motions shall be filed with the administrative judge. When an action is before the Board, an original and 7 copies of any motion shall be filed with the Board. Copies shall be served simultaneously upon the other parties to the proceeding. An original and 3 copies of responses in opposition to written motions must be filed with the administrative judge, or if the action is before the Board an original and 7 copies must be filed with the Board, and served simultaneously upon the other parties to the proceeding within 20 days of receipt of the motion, unless the administrative judge requires a shorter response time. All written motions and responses thereto shall include a proposed order, where applicable. A certificate of service will be filed with all motions and responses thereto showing service by mail or personal delivery of the motion to the other parties. Additional responses to the motion or to the response to the motion by either party may be filed only with the approval of the administrative judge. Motions for extension of time will be granted only for good cause shown.

(c) *Order for a hearing.* The administrative judge shall order a hearing or deny a request for a hearing in accordance with § 28.18(f). The administrative judge may, at his/her own initiative, order a hearing. When there is no hearing, the administrative judge may issue a decision and order based upon the written submissions of the parties. The administrative judge may allow oral argument at his/her discretion.

(d) *General Counsel Settlement.* Where the General Counsel under § 28.12(a) transmits a settlement, which has been agreed to by the parties, the settlement agreement shall be the final disposition of the case.

§ 28.22 Administrative Judges.

(a) *Exercise of authority.* Administrative judges may exercise authority as provided in paragraph (b) of this section upon their own initiative or upon the motion of a party, as appropriate.

(b) *Authority.* Administrative judges shall conduct fair and impartial hearings and take all necessary action to avoid delay in the disposition of all proceedings. They shall have all powers necessary to that end unless otherwise limited by law, including, but not limited to, the authority to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas in accordance with § 28.46;

(3) Rule upon offers of proof and receive relevant evidence;

(4) Rule upon discovery issues as appropriate under §§ 28.42 through 28.45;

(5) Convene a hearing as appropriate, regulate the course of the hearing, maintain decorum and exclude from the hearing any disruptive persons;

(6) Exclude from the hearing any witness whose later testimony might be colored by testimony of other witnesses or any persons whose presence might have a chilling effect on a testifying witness;

(7) Rule on all motions, witness and exhibit lists and proposed findings;

(8) Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;

(9) Order the production of evidence and the appearance of witnesses whose testimony would be relevant, material and nonrepetitious;

(10) Impose sanctions as provided under § 28.24 of this part;

(11) Hold prehearing conferences for the settlement and simplification of issues; and

(12) File recommended or initial decisions, as appropriate.

§ 28.23 Disqualification of Administrative Judges.

(a) In the event that an administrative judge considers himself/herself disqualified, he/she shall withdraw from the case, stating on the record the reasons therefor, and shall immediately notify the Board of the withdrawal.

(b) Any party may file a motion requesting the administrative judge to withdraw on the basis of personal bias

or other disqualification and specifically setting forth the reasons for the request. This motion shall be filed as soon as the party has reason to believe there is a basis for disqualification.

(c) The administrative judge shall rule on the motion. If the motion is denied, the party requesting withdrawal may request certification of the issue to the Board as an interlocutory appeal under §§ 28.80 through 28.82. Failure of the party to request certification shall be considered a waiver of the request for withdrawal.

§ 28.24 Sanctions.

The administrative judge may impose sanctions upon the parties as necessary to serve the ends of justice, including but not limited to the instances set forth in this section.

(a) *Failure to comply with an order.* When a party fails to comply with an order, including an order for taking a deposition, the production of evidence within the party's control, a request for admission, and/or production of witnesses, the administrative judge may:

(1) Draw an inference in favor of the requesting party on the issue related to the information sought.

(2) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought.

(3) Permit the requesting party to introduce secondary evidence concerning the information sought.

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(b) *Failure to prosecute or defend.* If a party fails to prosecute or defend an appeal, the administrative judge may dismiss the action with prejudice or rule for the petitioner.

(c) *Failure to make timely filing.* The administrative judge may refuse to consider any motion or other action which is not filed in a timely fashion in compliance with this subpart.

Parties, Practitioners, and Witnesses

§ 28.25 Representation.

(a) All parties to an appeal may be represented in any matter relating to the appeal. The parties shall designate their representatives, if any, in the petition for review or responsive pleading. Any subsequent changes in representation shall also be in writing and submitted to the administrative judge.

(b) A party may choose any representative so long as the person is willing and available to serve. However, the other party or parties may challenge the representative on the grounds of

conflict of interest or conflict of position. This challenge must be made by motion to the administrative judge within 10 days after receipt of the notice of designation, and shall be ruled upon by the administrative judge prior to any further proceedings in the case. These procedures apply equally to original and subsequent designations of representatives. In the event the selected representative is disqualified, the party affected shall be given a reasonable time to obtain another representative.

(c) The administrative judge, on his/her own motion, may disqualify a party's representative on the grounds described in paragraph (b) of this section.

§ 28.26 Witness fees.

The costs involved in the appearance of witnesses in any Board proceeding shall be allocated as follows:

(a) Persons employed by the GAO shall, upon request by the administrative judge to GAO, be made available to participate in the hearing and shall be in official duty status for this purpose and shall not receive witness fees. Payment of travel and per diem expenses shall be governed by applicable laws and regulations.

(b) Employees of other federal agencies called to testify at a Board proceeding shall, at the request of the administrative judge and with the approval of the employing agency, be in official duty status during any period of absence from normal duties caused by their testimony, and shall not receive witness fees. Payment of travel and per diem expenses shall be governed by applicable laws and regulations. In the event that the employing agency refuses the request to release the employee-witness in an official duty status, the employee-witness may be paid a witness fee in accordance with paragraph (d) of this section.

(c) When the General Counsel is the petitioner or is representing the petitioner, the General Counsel shall pay witness fees and arrange for travel and per diem expenses consistent with applicable law and regulation.

(d) Witnesses who are not covered by paragraphs (a), (b) or (c) of this section are entitled to the same witness fees as those paid to subpoenaed witnesses under 28 U.S.C. 1821. The fees, in the first instance, shall be paid by the party requesting their appearance, subject to a subsequent decision otherwise in accordance with § 28.89. Such fees shall be tendered to the witness at the time the subpoena is served; or, when the witness appears voluntarily, at the time of appearance. A federal agency or

corporation is not required to tender witness fees in advance. Payment of travel and per diem expenses shall be governed by applicable law and regulation.

§ 28.27 Intervenors.

(a) Intervenors are persons who are allowed to participate in a proceeding because the proceeding, or its outcome, may affect their rights or duties. A request to intervene may be made by motion to the administrative judge under paragraph (c) of this section.

(b) Any person may, by motion, request the administrative judge for permission to intervene. The motion shall state the reasons why the person should be permitted to intervene.

(c) A motion for permission to intervene will be granted where a determination is made by the administrative judge or Board that the requestor will be affected directly by the outcome of the proceeding, including any person alleged to have committed a prohibited personnel practice under 5 U.S.C. 2302(b). Denial of a motion for intervention may be appealed to the Board.

(d) Intervenors who are granted permission to intervene will be considered full parties to the hearing and will have the same rights and duties as a party with two exceptions:

(1) Intervenors will not have an independent right to a hearing.

(2) Intervenors may participate in Board proceedings only on the issues affecting them, as determined by the administrative judge or Board.

§ 28.28 Substitution.

(a) If a petitioner dies or is otherwise unable to pursue the appeal, the action shall be completed upon substitution of proper parties or by the representative of the original party. Substitution will not be permitted where the interests of the original party have terminated because of death or other disability.

(b) A motion for substitution shall be filed by the representative or proper party within 90 days after the death of the petitioner or other disabling event.

§ 28.29 Consolidation or joinder.

(a) *Explanation.* (1) Consolidation may occur where two or more parties have cases which should be united because they contain identical or similar issues or in such other circumstances as justice requires.

(2) Joinder may occur where one person has two or more appeals pending and they should be united for consideration. For example, a single appellant who has one appeal pending challenging a 30-day suspension and

another appeal pending challenging a subsequent dismissal might have the cases joined.

(b) *Action by administrative judge.* An administrative judge may consolidate or join cases on his/her own initiative or on the motion of a party if to do so would expedite processing of the cases and not adversely affect the interests of the parties.

Discovery

§ 28.40 Statement of purpose.

Proceedings before the Board shall be conducted as expeditiously as possible with due regard to the rights of the parties. Discovery is designed to enable a party to obtain relevant information needed for presentation of the party's case. These regulations are intended to provide a simple method of discovery. They will be interpreted and applied so as to avoid delay and to facilitate adjudication of the case. The parties are expected to initiate and complete needed discovery with a minimum amount of Board intervention.

§ 28.41 Explanation, scope, and methods.

(a) *Explanation.* Discovery is the process apart from the hearing whereby a party may obtain relevant information from another person, including a party, which has not otherwise been provided. Relevant information includes information which appears reasonably calculated to lead to the discovery of admissible evidence. This information is obtained for the purpose of assisting the parties in developing, preparing, and presenting their cases. The Federal Rules of Civil Procedure may be used as a general guide for discovery practices in proceedings before the Board, except as to matters specifically covered by these regulations. The Federal Rules of Civil Procedure shall be interpreted as instructive rather than controlling in any event.

(b) *Scope.* Any person may be examined pursuant to paragraph (c) of this section regarding any nonprivileged matter which is relevant to the issue under appeal including the existence, description, nature, custody, condition, and location of documents or other tangible things and the identity and location of persons having knowledge of relevant facts. The information sought must appear reasonably calculated to lead to the discovery of admissible evidence.

(c) *Methods.* Discovery may be obtained by one or more of the methods provided under the Federal Rules of Civil Procedure, including: written interrogatories, depositions, production of documents or things for inspection or

copying, and requests for admission addressed to parties.

§ 28.42 Voluntary discovery and protective orders.

(a) Discovery from a party. A party seeking discovery from another party shall initiate the process by serving a request for discovery on the other party. The request for discovery shall conform to the following requirement:

(1) It shall state the time limit for responding, as prescribed in paragraph (d) of this section.

(2) In the case of a request for deposition of a party, reasonable notice in writing shall be given to every party to the action. The notice shall:

(i) Specify the time and place of the taking of the deposition, and

(ii) Be served on the person to be deposed.

(3) When a request for discovery is directed to an officer or employee of GAO, the agency shall make the officer or employee available on official time for the purpose of responding to the request and shall assist the officer or employee as necessary in providing relevant information that is available to the agency. For purposes of discovery under these regulations, a party includes an intervenor.

(b) Discovery from a nonparty. Parties are encouraged to attempt to obtain voluntary discovery from nonparties whenever possible. A party seeking discovery from a nonparty may initiate the process by serving a request for discovery on the nonparty and on all other parties to the proceeding.

(c) Responses to discovery requests.

(1) A party shall answer a discovery request within the time provided by paragraph (d)(2) of this section either by furnishing to the requesting party the information or testimony requested or agreeing to make deponents available to testify within a reasonable time or by stating an objection to the particular request and the reasons for objection or by requesting a protective order.

(2) Upon the failure or refusal of a party to respond in full to a discovery request, the requesting party may file with the administrative judge a motion to compel in accordance with § 28.42(d)(4). A copy of the motion shall be served on the other party and on any nonparty from whom the discovery was sought. The motion shall be accompanied by:

(i) A copy of the original request served on the other party and a statement showing the relevancy and materiality of the information sought.

(ii) A copy of the objections to discovery or, where appropriate, a

verified statement that no response has been received.

(3) The other party and any other nonparty from whom discovery was sought shall respond to the motion to compel within the time limits set forth in (d)(4) of this section.

(d) *Time limits.* (1) Requests for discovery shall be served within 30 days after the service list is issued by the Board to all parties.

(2) A party or nonparty shall respond to a discovery request within 20 days after service on the party or nonparty of the request. Any discovery requests following the initial request shall be served within 10 days of the date of service of the prior response, unless otherwise directed. Deposition witnesses shall give their testimony at the time and place stated in the notice of deposition-taking or in the subpoena, unless otherwise agreed to by the parties.

(3) In responding to a discovery request, a party or nonparty shall respond as fully as possible, except to the extent that the party or nonparty objects to the discovery or requests a protective order. Any objection or request for protective order shall be filed within the time limits set forth in paragraph (d)(2) of this section. Any objection shall be addressed to the party requesting discovery and shall state the particular grounds for the objection. Any request for protective order shall state the grounds for the protective order and shall be served on the administrative judge and any other party and nonparty to the action. The administrative judge shall rule on the request for protective order.

(4) Motions for an order compelling discovery shall be filed with the administrative judge within 10 days of filing of objections or within 10 days of the expiration of the time limits for response when no response or an alleged inadequate response is received. Opposition to a motion to compel must be filed with the administrative judge within 10 days of the date of service of the motion.

(5) Discovery shall be completed by the time designated by the administrative judge, but no later than 65 days after the filing of the appeal. A later date may be set by the administrative judge after due consideration of the particular situation including the dates set for hearing and closing of the case record.

(6) The time limits prescribed in this section may be altered by the administrative judge for good cause shown.

§ 28.43 Compelling discovery.

(a) *Motion for an order compelling discovery.* Motions for orders compelling discovery shall be submitted to the administrative judge as set forth at § 28.42(c)(2) and (d)(4) above.

(b) *Content of order.* Any order issued may include, where appropriate:

(1) Provision for notice to the person to be deposed as to the time and place of such deposition.

(2) Such conditions or limitations concerning the conduct or scope of the proceedings or the subject matter as may be necessary to prevent undue delay or to protect any party or deponent from undue expense, embarrassment or oppression.

(3) Limitations upon the time for conducting depositions, answering written interrogatories, or producing documentary evidence.

(4) Other restrictions upon the discovery process as determined by the administrative judge.

(c) Failure to comply with an order compelling discovery may subject the noncomplying party to sanctions under § 28.24. Failure to comply with an order compelling discovery may subject a noncomplying nonparty to enforcement proceedings under § 28.50.

§ 28.44 Taking of depositions.

Depositions may be taken before any person not interested in the outcome of the proceedings who is authorized by law to administer oaths.

§ 28.45 Admissions of fact and genuineness of documents.

(a) Any party may be served with requests for the admission of the genuineness of any relevant documents identified within the request or the truth of any relevant matters of fact or application of law to the facts as set forth in the request.

(b) Within the time period prescribed by § 28.42(d)(2), the party on whom the request is served must submit to the requesting party:

(1) A sworn statement specifically denying, admitting, or expressing a lack of knowledge after making reasonable inquiry regarding the specific matters on which an admission is requested; and/or

(2) An objection to a request for the admission of the genuineness of any relevant document may be filed, in whole or in a part, on the grounds that the matters contained therein are privileged, irrelevant, or otherwise improper.

(c) Upon a failure or refusal of a party to respond or object to a request for admissions within the prescribed time

period, the request shall be deemed admitted.

Subpoenas

§ 28.46 Motion for subpoena.

(a) *Authority to issue subpoenas.* Any member of the Board may issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia; and order the taking of depositions and order responses to written interrogatories.

(b) *Motion.* A motion for the issuance of a subpoena requiring the attendance and testimony of witnesses or the production of documents or other evidence under § 28.46(a) shall be submitted to the administrative judge.

(c) *Forms and showing.* Motions for subpoenas shall be submitted in writing to the administrative judge and shall specify with particularity the books, papers, or testimony desired and shall be supported by a showing of general relevance and reasonable scope and a statement of the facts expected to be proven thereby.

(d) *Rulings.* Where the administrative judge is not a Board member, the motion shall be referred with a recommendation for decision to a Board member. The Board member shall promptly rule on the request. Where the administrative judge is a Board member, he/she shall rule directly on the request.

§ 28.47 Motion to quash.

Any person against whom a subpoena is directed may file a motion to quash or limit the subpoena setting forth the reasons why the subpoena should not be complied with or why it should be limited in scope. This motion shall be filed with the administrative judge within 20 days after service of the subpoena.

§ 28.48 Service.

Service of a subpoena may be made by a United States Marshal or Deputy Marshal or by any person who is over 18 years of age.

§ 28.49 Return of service.

When service of a subpoena is effected by a person other than a United States Marshal or Deputy Marshal, that person shall certify on the return of service that the prescribed fees have been tendered or provided for and that service was made either:

- (1) In person,
- (2) By registered or certified mail, or

(3) By delivery to a responsible person (named) at the residence or place of business (as appropriate) of the person to be served.

§ 28.50 Enforcement.

If a person has been served with a Board subpoena but fails or refuses to comply with its terms, the party seeking compliance may file a written motion for enforcement with the administrative judge or make an oral motion for enforcement while on record at a hearing. The party shall present the return of service and, except where the witness was required to appear before the administrative judge, shall submit affidavit evidence of the failure or refusal to obey the subpoena. The Board may then request the appropriate United States district court to enforce the subpoena.

Hearings

§ 28.55 Scheduling the hearing.

The notice of initial hearing shall fix the date, time and place of hearing. GAO, upon request of the administrative judge, shall provide appropriate hearing space. Motions for postponement by either party shall be made in writing and accompanied by an affidavit setting forth the reasons for the request and shall be granted only upon a showing of good cause. When the parties agree on postponement, motions may be made orally and shall be granted only upon a showing of good cause.

§ 28.56 Hearing procedures, conduct, and copies of exhibits.

(a) The Board may designate one or more administrative judges to conduct hearings on appropriate matters.

(b) The hearing will be conducted as an administrative proceeding and, ordinarily, the rules of evidence will not be strictly followed.

(c) Parties will be expected to present their cases in a concise manner limiting the testimony of witnesses and submission of documents to relevant matters.

(d) Any party to a hearing offering exhibits into the record shall submit two copies of all such exhibits to the administrative judge, plus one copy for each opposing party that is separately represented.

(e) Each party to a proceeding shall be responsible for bringing the proper number of copies of an exhibit to the hearing.

(f) Multipage exhibits shall be paginated in the lower right hand corner and the first page shall indicate the total number of pages in the exhibit.

§ 28.57 Public hearings.

(a) Hearings shall be open to the public. However, the administrative judge, at his or her discretion, may order a hearing or any part thereof closed, where to do so would be in the best interests of the petitioner, a witness, the public, or other affected persons. Any order closing the hearing shall set forth the reasons for the administrative judge's decision. Any objections thereto shall be made a part of the record.

(b) Regardless of whether a hearing is open or closed, the GAO technical representative, who is not expected to testify, the GAO representative, the petitioner and the petitioner's representative each has a right to be present at the hearing.

§ 28.58 Transcript.

(a) Preparation. A verbatim record made under supervision of the administrative judge shall be kept of every hearing and shall be the sole official record of the proceeding. Upon request, a copy of a transcript of the hearing shall be made available to each party. Additional copies of the transcript shall be made available to a party upon payment of costs. Exceptions to the payment requirement may be granted for good cause shown. Motions for an exception shall be made in writing and accompanied by an affidavit setting forth the reasons for the request and shall be granted upon a showing of good cause. Requests for copies of transcripts shall be directed to the executive assistant. The executive assistant may, by agreement with the person making the request, make arrangements with the official hearing reporter for required services to be charged to the requester.

(b) Corrections. Corrections to the official transcript will be permitted. Motions for correction must be submitted within 30 days of the receipt of the transcript. Corrections of the official transcript will be permitted only when errors of substance are involved and only upon approval of the administrative judge. The administrative judge may make changes at any time with notice to the parties.

§ 28.59 Official record.

The transcript of testimony and exhibits, together with all papers and motions filed in the proceedings, shall constitute the exclusive and official record.

§ 28.60 Briefs.

(a) Length. Principal briefs shall not exceed 60 pages and reply briefs 30 pages, exclusive of tables and pages limited only to quotations of statutes,

rules, and the like. Motions to file extended briefs shall be granted only for good cause shown.

(b) Format. Every brief must be easily readable. Pages must be 8 1/2 x 11 inches with margins at least one inch on all sides. Typewritten briefs must have double spacing between each line of text, except for quoted texts which may be single spaced.

(c) Number of copies. An original and 3 copies of briefs shall be filed with the administrative judge and one copy served on each party separately. When an action is before the Board, an original and seven copies of each brief must be filed with the Board and one copy served on each party separately represented.

§ 28.61 Burden and degree of proof.

(a) In appealable actions, as defined by 5 U.S.C. 7701(a), agency action must be sustained by the Board if:

(1) It is a performance-based action and is supported by substantial evidence; or

(2) It is brought under any other provision of law, rule, or regulation as defined by 5 U.S.C. 7701(a) and is supported by a preponderance of evidence.

(b) Notwithstanding paragraph (a) of this section, the agency's decision may not be sustained if the petitioner:

(1) Shows harmful error in the application of the agency's procedures in arriving at such decision;

(2) Shows that the decision was based on any prohibited personnel practice described in 4 CFR 2.5; or

(3) Shows that the decision was not in accordance with law.

(c) In any other action within the Board's jurisdiction, the petitioner shall have the responsibility of presenting the evidence in support of the action and shall have the burden of proving the allegations of the appeal by a preponderance of the evidence.

(d) Definitions. The following definitions shall apply: "Harmful error" means error by the agency in the application of its procedures which, in the absence or cure of the error, might have caused the agency to reach a conclusion different than the one reached. The burden is upon the petitioner to show that, based upon the record as a whole, the error was harmful, i.e., caused substantial harm or prejudice to his/her rights.

"Preponderance of the evidence" means that degree of relevant evidence which a reasonable person, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

"Substantial evidence" means that degree of relevant evidence which a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. This is a lower standard of proof than preponderance of the evidence.

§ 28.62 Closing the record.

(a) When there is a hearing, the record shall be closed at the conclusion of the hearing. However, when the administrative judge allows the parties to submit argument, briefs, or documents previously identified for introduction into evidence, the record shall be left open for such time as the administrative judge grants for that purpose.

(b) If the parties waive a hearing, the record shall be closed on the date set by the administrative judge as the final date for the receipt of submissions of the parties to the matter.

(c) Once the record is closed, no additional evidence or argument shall be accepted into the record except upon a showing that new and material evidence has become available which was not available despite due diligence prior to the closing of the record. However, the administrative judge shall make part of the record any motions for attorney fees, any supporting documentation, and determinations thereon, and any approved correction to the transcript.

Evidence

§ 28.65 Service of documents.

Any document submitted with regard to any pleading, motion, or brief shall be served upon all parties to the proceeding.

§ 28.66 Admissibility.

Evidence or testimony may be excluded from consideration by the administrative judge if it is irrelevant, immaterial, or unduly repetitious.

§ 28.67 Production of statements.

After an individual has given evidence in a proceeding, any party may request a copy of any prior signed statement made by that individual which is relevant to the evidence given. If the party refuses to furnish the statement, the administrative judge may draw an adverse inference from the failure to produce or may exclude the relevant portion of the evidence given by the individual from consideration.

§ 28.68 Stipulations.

The parties may stipulate as to any matter of fact. Such a stipulation will

satisfy a party's burden of proving the fact alleged.

§ 28.69 Judicial notice.

The administrative judge on his/her own motion or on motion of a party, may take judicial notice of matters of common knowledge or matters that can be verified. Judicial notice taken of any fact satisfies a party's burden of proving the fact noticed.

Interlocutory Appeals

§ 28.80 Explanation.

An interlocutory appeal is an appeal to the Board of a ruling made by an administrative judge during the course of a proceeding. This appeal may be permitted by the administrative judge if he/she determines that the issue presented is of such importance to the proceeding that it requires the Board's immediate attention. The Board makes a decision on the issue and the administrative judge acts in accordance with that decision.

§ 28.81 Criteria for certification.

Rulings of the administrative judge may not be appealed during the course of the hearing unless the administrative judge certifies the ruling for review by the Board. The administrative judge shall certify a ruling for review only if it can be shown that:

(a) The ruling involves an important question of law or policy about which there is substantial ground for difference of opinion; and

(b) An immediate ruling will materially advance the completion of the proceeding, or denial of an immediate ruling will cause undue harm to a party or the public.

§ 28.82 Procedure.

(a) Motion for certification. A party seeking review by interlocutory appeal must file a motion for certification with the administrative judge within ten days of receipt of the administrative judge's determination. The motion shall include arguments in support of both the certification and the determination to be made by the Board. Responses, if any, shall be filed within ten days of receipt of the motion for certification.

(b) Certification and review. The administrative judge shall grant or deny a motion for certification following receipt of the motion and response, if any. If certification is granted, the record shall be referred to the Board. If certification is denied, the issue may be raised in exceptions to the recommended decision or in a request for reconsideration filed in accordance with § 28.86 after issuance of the

recommended decision or initial decision, respectively.

(c) Stay of hearing. The stay of the hearing during the time an interlocutory appeal is pending is at the discretion of the administrative judge. However, when the administrative judge refuses to stay the hearing during the time an interlocutory appeal is pending, the Board is not precluded from staying a hearing pending a decision on the interlocutory appeal.

Board Decisions, Attorney's Fees, and Judicial Review

§ 28.86 Board procedures; recommended decisions.

(a) Non-member recommended decisions. Where an administrative judge, who is not a Board member, conducts a hearing, the administrative judge shall transmit to the parties and to the Board a recommended decision.

(b) Exceptions to the recommended decision shall be filed within 30 days from issuance as follows: By hand delivery by any party at the office of the Board (Academy Building, 717 Fifth Street, NW., Washington, DC) or by mail to the Personnel Appeals Board, Academy Building, General Accounting Office, Washington, DC 20548. When filed by mail, the postmark shall be the exclusive date of filing. The party filing the exceptions shall serve the Board with an original and 7 copies and shall serve one copy of the exceptions on other parties. The exceptions shall include all supporting material and shall set forth objections to the recommended decision, with references to applicable laws or regulations, and with specific reference to the record. The responding party shall have 30 days from receipt of the exceptions to file any reply. Additional responsive pleadings may be filed only with the approval of the Board.

(c) Regardless of whether exceptions to a recommended decision are filed with the Board, the Board shall review the recommended decision. In reviewing the recommended decision, the Board shall review the record as though it were making the initial decision. The Board may adopt, reverse, remand, modify or vacate the recommended decision, in whole or in part. Where no party files exceptions to a recommended decision and the Board is considering any action other than adopting the recommended decision in whole as the final decision, the Board shall provide the parties an opportunity to address the issues it is considering. Where appropriate, the Board shall issue a final decision and order a date for compliance. In

reviewing any recommended decision, the Board may:

- (1) Issue a single decision which decides the case;
- (2) Hear oral arguments;
- (3) Require the filing of briefs;
- (4) Remand the proceedings to the administrative judge to take further testimony or evidence or make further findings or conclusions; or
- (5) Take any other action necessary for final disposition of the case.

(d) The Board shall reject a recommended decision, in whole or in part, on the basis of its own motion or on the basis of exceptions filed by the parties, when the Board finds that:

- (1) New and material evidence is available that, despite due diligence, was not available when the record was closed;
- (2) The recommended decision is based on an erroneous interpretation of statute or regulation;
- (3) The recommended decision is arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;
- (4) The recommended decision is not made consistent with required procedures and results in harmful error; or
- (5) The recommended decision is unsupported by evidence required by the requisite burden of proof as set forth at § 28.61.

(e) The decision of the Board shall be final and subject to judicial review pursuant to § 28.90.

§ 28.87 Board procedures; initial decisions.

(a) Initial decisions by a member or panel of members. Where a Board member or panel of members hears a case, an initial decision shall be issued to the Board and to the parties. The initial decision—

- (1) Shall contain the date upon which the initial decision will become final, which will be at least 30 days from issuance and
- (2) Shall become final on that date unless, within 30 days from issuance of the initial decision, a party files a request for reconsideration or the Board decides to reconsider the initial decision on its own motion.

(b) A request for reconsideration of an initial decision shall be filed within 30 days from issuance as follows: by hand delivery by any party at the office of the Board (Academy Building, 717 Fifth Street, NW., Washington, DC) or by mail to the Personnel Appeals Board, Academy Building, General Accounting Office, Washington, DC 20548. When filed by mail, the postmark shall be the exclusive date of filing. The party filing

the request for reconsideration shall serve the Board with an original and 7 copies and shall serve one copy of the request on other parties. The request for reconsideration shall include all supporting material and shall set forth objections to the initial decision, with references to applicable laws or regulations, and with specific reference to the record. The responding party shall have 30 days from receipt of the request for reconsideration to file any reply. Additional responsive pleadings may be filed only with the approval of the Board.

(c) When a request for reconsideration is filed, the Board shall review the initial decision. In reviewing the initial decision, the Board may review the record as though it were making the initial decision. The Board may affirm, reverse, remand, modify or vacate the initial decision, in whole or in part. Where appropriate, the Board shall issue a final decision and order a date for compliance. In reviewing any initial decision, the Board may:

- (1) Issue a single decision which decides the case;
 - (2) Hear oral arguments;
 - (3) Require the filing of briefs;
 - (4) Remand the proceedings to the administrative judge to take further testimony or evidence or make further findings or conclusions; or
 - (5) Take any other action necessary for final disposition of the case.
- (d) The Board shall reject an initial decision, in whole or in part, on the basis of its own motion or on the basis of a request for reconsideration, when the Board finds that:

- (1) New and material evidence is available that, despite due diligence, was not available when the record was closed;
 - (2) The initial decision is based on an erroneous interpretation of statute or regulation;
 - (3) The initial decision is arbitrary, capricious, an abuse of discretion, or otherwise not consistent with law;
 - (4) The initial decision is not made consistent with required procedures and results in harmful error; or
 - (5) The initial decision is unsupported by evidence required by the requisite burden of proof as set forth at § 28.61.
- (e) The decision of the Board shall be final and subject to judicial review pursuant to § 28.90.

§ 28.88 Board procedures; enforcement.

(a) A person required to take any action under the terms of a Board decision or order shall carry out its terms promptly, and shall, within 30 days after the decision or order becomes

final, provide the Board and all parties to the proceeding with a compliance report specifying:

(1) The manner in which compliance with the provisions of the decision or order has been accomplished.

(2) The reasons why compliance with any provisions of the Board's order has not been fully accomplished.

(3) The steps being taken to ensure full compliance.

(b) When the Board does not receive a compliance report in accordance with paragraph (a) of this section, the Executive Assistant shall make inquiries to determine the status of the compliance report. When the executive assistant establishes that a complete compliance report is not forthcoming, the executive assistant shall report the failure to file a complete compliance report to the Board.

(c) Any person and/or the General Counsel may petition the Board for enforcement of a final decision of the Board. The petition shall specifically set forth the reasons why the petitioner believes there is non-compliance.

(d) Upon receipt of a non-compliance report from its Executive Assistant or of a petition for enforcement of a final decision, the Board may issue a notice to any person to show cause why there was non-compliance. Following a show cause proceeding, the Board may seek judicial enforcement of its decision or order.

§ 28.89 Attorney fees and costs.

Within 20 days after receipt of a notice of final decision by the Board or other final resolution of the case, the petitioner, if he/she is the prevailing party, may submit a request for the award of reasonable attorney fees and costs. GAO may file a response to the request within 20 days after its receipt. Motions for attorney fees shall be filed in accordance with § 28.21 of these regulations. Rulings of the Board on attorney fees and costs shall be consistent with the standards set forth at 5 U.S.C. 7701(g). The Board's decision on attorney fees and costs shall be a final decision, in accordance with § 28.87.

§ 28.90 Board procedures; judicial review.

(a) A final decision by the Board under 31 U.S.C. 753(a) (1), (2), (3), (6), or (7) may be appealed to the United States Court of Appeals for the Federal Circuit within 30 days after the date the petitioner receives notice from the Board of the final decision.

(b) Special provisions regarding civil actions in discrimination complaints are set forth at § 28.100.

(c) The Board may designate the Solicitor, the General Counsel or any other qualified individual to represent it in any judicial proceeding involving a Board decision or the interpretation of a Board rule or of the GAO Personnel Act.

19. Part 28 is amended by adding a new Subpart J, consisting of § 28.155, to read as follows:

Subpart J—Savings Provisions

§ 28.155 Savings provisions.

Cases in which a charge has been filed with the General Counsel prior to June 6, 1989, will continue to be processed in accordance with the rules previously in effect. In circumstances in those previously filed cases where the prior rules contain no specific guidance, the provisions of these rules shall apply.

Date: May 26, 1989.

Jessie James, Jr.,
Chairman.

[FR Doc. 89-13212 Filed 6-5-89; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 271, 272, and 273

[Amdt. No. 315]

Food Stamp Program; Disaster Assistance Act, Nondiscretionary Provisions of the Hunger Prevention Act, and Technical Corrections

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This action contains final regulations pertaining to the Disaster Assistance Act of 1988, several nondiscretionary provisions of the Hunger Prevention Act of 1988, and some technical corrections. These provisions: (1) Eliminate the proration of the initial month's benefits when a migrant or seasonal farmworker household has participated in the Food Stamp Program within 30 days prior to application, (2) exclude any emergency general assistance (GA) or public assistance (PA) vendor payments while a migrant or seasonal farmworker household is in the job stream, (3) increase food stamp allotments in three stages to 103 percent of the Thrifty Food Plan (TFP), (4) increase the dependent care deduction from a maximum of \$160 per household per month to a maximum of \$160 per dependent per month, excluding costs paid by an employment and training program, (5) make monthly reporting and retrospective budgeting

(MRRB) optional, (6) require prospective budgeting for all households except those subject to MRRB, (7) exclude advance earned income tax credit payments when calculating income for food stamp purposes, and (8) make technical corrections concerning the urban Alaska TFP, Alaska proration, energy assistance payments, and the dependent care deduction. The effect of these changes is to increase food stamp benefits and facilitate food stamp participation for some households.

EFFECTIVE DATES: This action is effective October 1, 1988, except for: (1) The provisions of 7 CFR 273.9(c)(1)(ii)(E) and 273.10(a)(1)(ii) affecting migrant and seasonal farmworkers, which are effective September 1, 1988; (2) the provision of 7 CFR 273.9(c)(11) relating to a technical correction concerning energy assistance payments, which is effective September 19, 1988; (3) the provision of 7 CFR 273.9(c)(14) concerning advance earned income tax credit payments, which is effective January 1, 1989; and (4) the provisions of 7 CFR 272.7(c), 272.7(f)(3)(iii), 273.11(c)(2)(iii) and 273.12(e)(1)(i)(C) making technical corrections concerning the urban Alaska TFP, Alaska proration, and the dependent care deduction, which are effective August 1, 1989.

FOR FURTHER INFORMATION CONTACT: Questions regarding this rulemaking should be addressed to Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service (FNS), 3101 Park Center Drive, Alexandria, VA 22302, or by telephone at (703) 756-3496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This final action has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Department has classified this action as nonmajor. The annual effect of this action on the economy will be less than \$100 million. The final action will have no effect on costs or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.551.

For the reasons set forth in the Final rule and related Notice to 7 CFR Part 3015, Subpart V (48 FR 29115, June 24, 1983), this program is excluded from the scope of Executive Order 12372 which requires inter-governmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, September 19, 1980). G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. However, State welfare agencies are affected by this rule to the extent that they must implement the provisions described in this action. Potentially eligible and currently participating households may receive increased benefits due to the changed method of adjusting the Thrifty Food Plan, the revised procedure for calculating the dependent care deduction, and the exclusion of advance earned income tax credit payments. Certain households which contain migrants and seasonal farmworkers will receive additional benefits if they have a break in participation of 30 days or less or certain emergency assistance payments are made on their behalf. Certain households may no longer be required to participate in monthly reporting and retrospective budgeting, and households not subject to monthly reporting must have their benefits determined using prospective budgeting.

Public Participation and Justification for Less Than a Thirty-day Effective Date

This action is being finalized without prior notice or public comment under authority of 5 U.S.C. 553(b) (A) and (B). The matters addressed by this rulemaking are nondiscretionary. Moreover, most provisions in this rule have already been implemented by the State agencies.

The provisions relating to the Disaster Assistance Act were effective September 1, 1988. The provisions relating to the Thrifty Food Plan adjustment, the dependent care deduction, and monthly reporting and retrospective budgeting were effective October 1, 1988. The provision concerning advance earned income tax credit payments was effective January 1, 1989. Therefore, the Department has determined in accordance with 5 U.S.C. 553(b) that Notice of Proposed Rulemaking and Opportunity for public comments is unnecessary and contrary to the public interest and, in accordance

with 5 U.S.C. 553(d), finds that good cause exists for making this action effective prior to the date of publication.

Paperwork Reduction Act

This action does not contain any reporting and recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act.

Background

Disaster Assistance Act—7 CFR 273.9(c)(1)(ii)(E) and 273.10(a)(1)(ii)

On August 11, 1988, the President signed Pub. L. 100-387, the Disaster Assistance Act of 1988. That law mandated two changes affecting the provision of food stamp benefits to migrant and seasonal farmworker households.

Under 7 CFR 273.9(b)(2)(i), PA and GA payments are generally counted as income to the household when determining its eligibility or calculating its benefits. Under certain circumstances, however, PA or GA payments provided in the form of a vendor payment (i.e., provided to a third party on behalf of the household) may be exempt from consideration as countable income, as provided in 7 CFR 272.9(c)(1)(ii). Section 501 of the Disaster Assistance Act amended section 5(k)(2) of the Food Stamp Act to broaden the circumstances under which PA or GA vendor payments may be excluded from income. Section 501 provides for an income exclusion for any emergency assistance payment which is provided to a third party on behalf of a migrant or seasonal farmworker household while the household is in the job stream. This assistance may include, but is not limited to, emergency vendor payments for housing or transportation—as long as the household is in the job stream. (Legislative history provides that this provision does not include vendor payments for gas or auto repair to get the migrant back home or to another area of employment, nor does it include transportation to get the seasonal worker to the farm. These are not a part of normal emergency grants. See *Congressional Record* of July 28, 1988, H 6036).

The effect of this provision is to lower the net incomes of certain migrant and seasonal farmworker households. By not counting these payments as income, net household incomes will be lower and, therefore, food stamp benefits may be greater. In addition, as a result of not counting these payments as income to the household, more migrant and seasonal farmworker households will

have incomes low enough to qualify for expedited service, which will enable them to receive their food stamps sooner than they otherwise would.

Accordingly, this final action amends 7 CFR 273.9(c)(1)(ii) to provide that emergency PA or GA payments made on behalf of a migrant or seasonal farmworker during the period the household is in the job stream shall be considered excludable vendor payments and not counted as income to the household.

Under 7 CFR 273.10(a)(1)(ii), a household's food stamp benefits are prorated from the date of application to the end of the month in the initial month of certification. (The first month on the Program, or the "initial month," is defined as the first month of certification for participation in the Food Stamp Program following any period during which the household was not certified for participation.) Thus, if the household applied for the Program on a date other than the first of the month, it would only be entitled to a partial, or prorated, food stamp allotment for that month. The next month of participation, the household would be entitled to receive its entire monthly benefit.

Section 502 of the Disaster Assistance Act amended section 8(c) of the Food Stamp Act to eliminate the proration provision for certain migrant and seasonal farmworkers. They will receive the full allotment for a month of application when the household has participated in the Food Stamp Program within 30 days prior to the date of application.

Migrant and seasonal farmworker households may participate sporadically in the Food Stamp Program as they go in and out of the job stream, and they may have shorter-than-usual certification periods due to the unpredictability of their household circumstances. Exempting migrant and seasonal farmworkers from 7 CFR 273.10(a)(1)(ii) under certain circumstances will minimize the penalties associated with their taking advantage of short-term temporary job opportunities which may result in incomes temporarily too high to qualify for food stamps. Thus, unless the household's break in participation in the Food Stamp Program exceeds 30 days, the migrant or seasonal farmworker household will be eligible for a full month's allotment, rather than a prorated allotment, in the month of application. Accordingly, this final action amends 7 CFR 273.10(a)(1)(ii) to specify that the "initial month" for migrant and seasonal farmworkers will be the first month for which the household was certified for participation

following any period of more than 30 days during which the household was not certified for participation.

Hunger Prevention Act of 1988

On September 19, 1988, the President signed Pub. L. 100-435, the Hunger Prevention Act of 1988. Several nondiscretionary provisions of the Hunger Prevention Act are included in this action. These concern the adjustment of the TFP, monthly reporting and retrospective budgeting, advance payment of earned income tax credits, and the dependent care deduction.

Thrifty Food Plan—7 CFR 271.2, 271.7, 273.10(e)(2), 273.10(e)(4), and 273.12(e)

The TFP is a market basket of foods for obtaining a nutritious diet at low cost. Food stamp allotments are based on the cost of the TFP for a family of four persons consisting of a man and woman ages 20-50 and children ages 6-8 and 9-11. June costs of the TFP are used to establish allotments for the following October through September period. In order to obtain the maximum food stamp allotment for each household size, TFP costs are adjusted upward and downward by USDA to take into account economies of scale and household size and the final results are rounded down.

Section 120 of the Hunger Prevention Act requires a change in the procedures USDA follows in developing food stamp allotment levels. This change increases food stamp allotments by requiring the Department to adjust the TFP upward (prior to making economy of scale and household size adjustments) and base allotments on the adjusted level. Under this provision, food stamp allotments will be increased in three stages to a point where they equal 103 percent of the TFP for the preceding June. The October 1, 1988 adjustment was based on 100.65 percent of the June 1988 TFP. The October 1, 1989 adjustment will be based on 102.05 percent of the June 1989 TFP, and the October 1, 1990 adjustment will be based on 103 percent of the June 1990 TFP.

Therefore, June 1988 TFP costs of \$298.10, were increased by .65 percent to \$300.04 and rounded down to a food stamp allotment for the four-person household of \$300 for the October 1, 1988 through September 30, 1989 period. A Federal Register Notice announcing this amount, as well as revised food stamp allotments for other household sizes, was published at 53 FR 44505, dated November 3, 1988 and 53 FR 46187, dated November 16, 1988. State agencies were notified of these amounts on August 18, 1988.

Accordingly, this final action amends 7 CFR 273.10(e)(4) to specify that maximum food stamp allotments will increase in stages to 103 percent of the cost of the TFP for the preceding June. It also makes conforming changes to 7 CFR 271.2, 271.7, 273.10(e)(2), and 273.12(e) to specify that the Secretary will make additional adjustments in the TFP to obtain maximum food stamp allotments.

Monthly Reporting and Retrospective Budgeting—7 CFR 273.21(a) and 273.21(b)

Under current rules at 7 CFR 273.21(b)(1) a State agency's monthly reporting and retrospective budgeting (MRRB) system must include all households with earnings and a recent work history. Currently budgeting and reporting requirements are mandated by section 5(f) and 6(c) of the Food Stamp Act of 1977, as amended (7 U.S.C. 2014(f) and 2015(c)). Section 202 of the Hunger Prevention Act amended sections 5(f) and 6(c) to make monthly reporting a State agency option. The Hunger Prevention Act also expanded the statutory exemptions to monthly reporting to include seasonal farmworker households and households in which all members are homeless individuals. Prior to this only migrant farmworker households and households with no earned income in which all adult members are elderly or disabled were excluded from MRRB. A State agency may not require any households in the exempt categories to submit periodic (monthly) reports. To reflect the expanded exemptions the Department is amending 7 CFR 273.21(b) in this final action.

Under current rules at 7 CFR 273.21(a) and (b), households subject to monthly reporting must be retrospectively budgeted. With the exception of those households exempt from MRRB, a State agency may determine the allotments of other households either prospectively or retrospectively. Section 202 of the Hunger Prevention Act amended section 5(f)(2) of the Food Stamp Act (7 U.S.C. 2014(f)) to require State agencies to prospectively budget all households not subject to monthly reporting. Accordingly, this final action amends 7 CFR 273.21(b)(2) to reflect this provision.

Prior to enactment of the Hunger Prevention Act, sections 6(c)(1) and 6(c)(5) of the Food Stamp Act contained authorities for several types of reporting waivers. Section 5(f) of the Food Stamp Act contained related authorities to permit waivers of budgeting requirements. The authorities are contained in current 7 CFR 273.21(a)(4), under which FNS may approve several

types of budgeting and reporting waivers to provide State agencies with flexibility and to ensure that a State agency's MRRB system is operated in a cost effective manner. The waiver authorities also included waivers of budgeting and/or reporting requirements to allow State agencies to conform their food stamp budgeting and/or reporting systems to the criteria for budgeting or reporting in the Aid to Families with Dependent Children (AFDC) Program. Under the current waiver authority FNS could approve proposals to allow less-frequent-than-monthly periodic reporting if monthly reporting would not be cost effective for selected categories of households and to allow alternative methods of reporting at less frequent intervals for those households. The final waiver authority allows FNS to waive retrospective budgeting for households waived from monthly reporting.

The Hunger Prevention Act retains the waiver authorities for food stamp/AFDC budgeting and reporting consistency contained in sections 5(f)(4) and 6(c)(5) of the Food Stamp Act while eliminating the other waiver authorities. However the provision requiring prospective budgeting for households not subject to monthly reporting may not be waived. Thus, the authority permitting waivers of reporting requirements based on AFDC consistency is essentially moot although it has been retained in section 6(c)(5) of the Food Stamp Act. With the exception of households exempt from monthly reporting under section 6(c)(1), monthly reporting is optional and State agencies wishing to change reporting requirements will no longer need to request waivers to implement such changes. To reflect the above-described changes mandated by section 202 of the Hunger Prevention Act, the Department is amending 7 CFR 273.21(a) to delete obsolete waiver authorities.

Under the current provisions of 7 CFR 273.21(d) and (g), households (subject to MRRB) suffering serious hardship must have their benefits determined using prospective budgeting during the beginning months. Section 202 of the Hunger Prevention Act amended section 5(f)(3)(B) of the Food Stamp Act to require State agencies to determine the allotments of all households, otherwise subject to MRRB, prospectively for the first, or at the option of the State agency, for the first and second months of participation following certification without regard to serious hardship. To reflect this change the Department is amending 7 CFR 273.21 by deleting all references to special procedures for households suffering serious hardship. The Department is also amending 7 CFR

273.21(d) to remove the current option which allows a State agency to utilize an additional beginning month to coincide with the AFDC budgeting system for households applying jointly for both programs. This is consistent with the Hunger Prevention Act which specifies that State agencies must use one or two beginning months. State agencies wishing to use a third beginning month will not have to request a waiver from FNS.

Exclusion for Advance Payment of Earned Income Tax Credit—7 CFR 273.9(c)(14)

Section 402 of the Hunger Prevention Act amended section 5(d) of the Food Stamp Act to provide for an additional exclusion in calculating a household's income for food stamp purposes. Income exclusions are not counted toward the level of a household's net income. Since food stamp benefits are based upon an individual household's net income, an additional income exclusion would lower the net incomes of some households, thereby increasing their benefits.

Under 7 CFR 273.9(b) and 273.9(c)(9), there is an implicit distinction for food stamp purposes between earned income tax credit (EITC) payments made as advance payments and EITC payments made as tax refunds. (Under the Internal Revenue Code, certain low-income households can receive EITCs as advance payments. They can receive these as part of their income tax refunds, as part of their paychecks (though a reduction in taxes withheld), or as a reduction in taxes that otherwise would have been paid at the end of the year. More than 99 percent of EITC payments are provided as tax refunds (S. Report 100-397, dated June 23, 1988).

EITC payments which are made as "advance payments" are implicitly counted as part of food stamp income under 7 CFR 273.9(b) and (c) to the extent that the credit is paid "in advance" in each paycheck. Tax refunds are considered to be nonrecurring lump-sum payments. As such, they are excluded from being counted as food stamp income under 7 CFR 273.9(c)(9); they are counted as food stamp resources in accordance with 7 CFR 273.8(c) of the food stamp regulations.

Section 402 of the Hunger Prevention Act provides that advance EITC payments must not be considered as income for food stamp purposes. Legislative history indicates that these payments should be counted as resources (S. Report 100-397, dated June 23, 1988). Thus, this final action amends 7 CFR 273.9(c) to add a new paragraph (14) to provide that advance EITC

payments reflected in the paycheck will be treated in the same manner as EITC refund payments. These payments will be excluded from income; they will be counted as a resource against the food stamp recipient's resource limit to the extent that they become a resource available to the household.

Dependent Care Deduction—7 CFR 273.9(d)(4), 273.10(d)(1)(i), and 273.10(e)(1)(i)(E)

Deductions are expenses that are subtracted from a household's income in determining the amount of its net income for food stamp purposes. Under 7 CFR 273.9(d)(4), households are allowed a deduction for their actual dependent care expenses up to a maximum of \$160 per household per month. These expenses must be necessary for a household member to: (1) Accept or continue employment, (2) seek employment in compliance with the Food Stamp Program's job search criteria or an equivalent effort by those not subject to job search, or (3) attend training or receive education which is preparatory to employment.

Section 403 of the Hunger Prevention Act amended section 5(e) of the Food Stamp Act to increase the dependent care deduction for certain households and to provide that other households would not be entitled to the dependent care deduction. Section 403: (1) Provides that households eligible for the dependent care deduction can deduct up to \$160 a month per dependent rather than \$160 a month per household, and (2) specifies that the dependent care deduction cannot be taken for dependent care expenses which are reimbursed under an employment and training program as specified in section 6(d)(4)(I) of the Act (7 CFR 273.7).

The restriction that households cannot receive a dependent care deduction for dependent care expenses which are reimbursed under an employment and training program simply reiterates the principle already set forth in 7 CFR 273.10(d)(1) that households should not be allowed a deduction from income for reimbursed expenses that are excluded from income. Allowing a dependent care deduction in addition to providing a reimbursement would generally constitute a subsidy to the household beyond that necessary to make up for the costs actually incurred for dependent care. Accordingly, this final action amends 7 CFR 273.9(d)(4), 273.10(d)(1)(i), and 273.10(e)(1)(i)(E) to increase the maximum dependent care deduction from \$160 per household per month to \$160 per dependent per month and to specify that households will not be entitled to a dependent care

deduction under certain circumstances (including when their dependent care expenses are reimbursed under an employment and training program). It also makes a technical change to: (1) Delete references to seeking employment in compliance with the job search criteria or an equivalent effort, and (2) to add language to specify that dependent care costs incurred to pursue activities necessary to comply with employment and training requirements would meet the criteria for obtaining the dependent care deduction. This change will conform this section to language elsewhere in the regulations.

Technical Corrections—7 CFR 272.7(c), 272.7(f), 273.9(c)(11), 273.12(c)(2)(iii) and 273.12(e)(1)(C)

Under 7 CFR 272.7(c), the "Urban Alaska TFP" is incorrectly defined as being (in part) 1.0079 percent higher than the Anchorage TFP. The Urban Alaska TFP is obtained by multiplying the Anchorage TFP by 1.0079, which is different mathematically than being 1.0079 percent higher. Thus, the Urban Alaska TFP is actually 100.79 percent of the Anchorage TFP, or .79 percent higher. Accordingly, 7 CFR 272.7(c) is being amended to correct this and specify that the Urban Alaska TFP will be .79 percent higher than the Anchorage TFP.

Under 7 CFR 272.7(f)(3)(iii), households in Alaska are incorrectly excluded from the proration requirements of 7 CFR 273.10(a) for the initial month of participation. However, the Alaska State Agency correctly applies the provisions of 7 CFR 273.10(a). The oversight in the regulations is being corrected by this rule.

Section 343 of Pub. L. 100-435 made a technical change to the Food Stamp Act to specify that energy assistance payments or allowances that are excluded from income do not have to be part of a Federal, State, or local law enacted specifically for the purpose of providing energy assistance. Instead, the law may be for some other purpose, but it may include an energy assistance component. Under 7 CFR 273.9(c)(11) the Federal laws must be for the purpose of providing energy assistance, and payments or allowances under State or local laws must be designated and made for the purpose of providing energy assistance. According to legislative history, this change is not intended to change current policy (S. Rept. 100-397, dated June 23, 1988, p. 29). Accordingly, 7 CFR 273.9(c)(11) is amended to clarify that the payments or allowances under

Federal laws must be made for the purpose of providing energy assistance.

Under 7 CFR 273.12(e)(1)(C), adjustments in the shelter/dependent care deduction are effective in accordance with § 273.9(d)(8). However, Pub. L. 99-198 and Pub. L. 99-500 (See 51 FR 11009 and 51 FR 42992) established the dependent care deduction as a separate deduction from the shelter deduction. The dependent care deduction is not adjusted periodically to take into account changes in the cost of living, so the provisions of 7 CFR 273.9(d)(8) no longer apply. Likewise, 7 CFR 273.11(c)(2)(iii) continues to consider together the shelter and dependent care deductions in counting the expenses of ineligible household members. Therefore, 7 CFR 273.11(c)(2)(iii) and 273.12(e)(1)(i)(C) are being amended to reflect that the dependent care deduction is no longer tied to the shelter deduction.

Implementation

State agencies were required to implement the provisions of this rule in accordance with effective dates specified in Pub. L. 100-387 and Pub. L. 100-435.

The provisions of this rule which relate to migrant and seasonal farmworkers (7 CFR 273.9(c)(1)(ii)(E) and 273.10(a)(1)(ii)) were effective September 1, 1988 for all households applying or certified subsequent to August 31, 1988. Changes affecting currently participating households were to be implemented on recertification or when it was necessary to implement other changes affecting the household. The Food and Nutrition Service notified its regional offices on August 10, 1988 of these provisions of the Disaster Assistance Act. They, in turn, notified State agencies.

State agencies were required by section 701(b)(1) of Pub. L. 100-435 to implement the provisions of this rule regarding a technical correction to 7 CFR 273.9(c)(11) concerning energy assistance payments on September 19, 1988. This technical correction to 7 CFR 273.9(c)(11) does not represent any change in policy and does not require any special implementation efforts by State agencies.

State agencies were required to implement the provisions of this rule relating to the Thrifty Food Plan (7 CFR 271.2, 271.7, 273.10(e)(2), 273.10(e)(4)(ii), and 273.12(e)) on October 1, 1988. These provisions were implemented as a mass change in accordance with 7 CFR 273.12(e). If for any reason, a State agency failed to implement these provisions on that date, households should be provided the lost benefits

which they would have received if the State agency had implemented these provisions as required. State agencies were individually notified about the provisions relating to the Thrifty Food Plan on August 18, 1988.

State agencies were required to implement the provisions relating to the dependent care deduction (7 CFR 273.9(d)(4), 273.10(d)(1)(i) and 273.10(e)(1)(i)(E)) and monthly reporting and retrospective budgeting (7 CFR 273.21(a) and (b)) on October 1, 1988. These provisions were immediately effective for all households certified subsequent to September 30, 1988. Changes affecting currently participating households were to be implemented upon recertification, at the household's request, or when it was necessary to implement other changes affecting the household. (For example, a change reported by a nonmonthly reporting retrospectively budgeted household was to be implemented in accordance with 7 CFR 273.12.) The Department is not requiring State agencies to conduct a casefile review to implement monthly reporting and retrospective budgeting changes for currently participating households. Monthly reports submitted by households which have become exempt from MRRB as a result of the Hunger Prevention Act, such as non-migrant seasonal farmworkers or the homeless, are to be treated as change reports and processed prospectively in accordance with 7 CFR 273.12(c).

Changes relating to the dependent care deduction had to be implemented as of October 1, 1988 for all households. State agencies were individually notified about the dependent care deduction on August 18, 1988. Regional offices were notified about the monthly reporting and retrospective budgeting provisions on September 27, 1988.

State agencies were required to implement the provision of this rule concerning the exclusion of advance payment or earned income tax credits, 7 CFR 273.9(c)(14), on January 1, 1989. Households applying subsequent to December 31, 1988 were to have this provision implemented as of their date of application. Earned income tax credit changes affecting households participating as of December 31, 1988 were to be implemented upon recertification, at the household's request, or when it was necessary to implement other changes affecting the household. State agencies were notified on December 22, 1988 to implement the advance payment of earned income tax credits provision.

All other provisions of this rule involve only technical corrections concerning the urban Alaska TFP (7 CFR

272.7(c)), Alaska proration (7 CFR 272.7(f)(3)(iii)), and the dependent care deduction (7 CFR 273.11(c)(2)(iii) and 273.12(e)(1)(i)(C)). These technical corrections do not represent any change in policy and/or do not require any special implementation efforts by State agencies. These provisions will be effective August 1, 1989.

Lastly, this action clarifies that quality control errors resulting from changes to 7 CFR 273.9, 273.10, and 273.21 (relating to the increase in the dependent care deduction, monthly reporting and retrospective budgeting, assistance for migrants and seasonal farmworkers, and advance earned income tax credit payments) during the required implementation time frame established by this rulemaking shall be handled in accordance with interim regulations published at 53 FR 44171, dated November 2, 1988. Changes to 7 CFR 273.10(e)(4), relating to adjustments to food stamp allotments, are not covered in the quality control hold harmless provision in accordance with H. Rept. 100-828, dated August 5, 1988 (p. 35) which provides that the grace period would not apply for mass benefit changes, such as annual adjustments in deductions and benefit levels.

If for any reason a State agency failed to implement any of these provisions by the required dates, affected households shall be provided lost benefits which they would have received if the State agency had implemented these provisions as required.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs-social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims, Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Parts 271, 272 and 273 are amended as follows:

1. The authority citation for Parts 271, 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

PART 271—GENERAL INFORMATION AND DEFINITIONS

2. In § 271.2:
- The definition of "Beginning month(s)" is amended by removing the second sentence; and
 - The definition of "Thrifty Food Plan" is amended by removing the second sentence and replacing it with two new sentences.
- The addition reads as follows:

§ 271.2 Definitions

"Thrifty Food Plan" . . . The cost of such diet shall be the basis for uniform allotments for all households regardless of their actual composition. In order to develop maximum food stamp allotments, the Secretary shall make household size and other adjustments in the Thrifty Food Plan taking into account economies of scale and other adjustments as required by law.

§ 271.7 [Amended]

3. In § 271.7, paragraphs (b), (c), (d), and (e), are amended by replacing the words "Thrifty Food Plan" with the words "maximum food stamp allotments" each place they appear (eleven occurrences).

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

4. In § 272.1, a new paragraph (g)(109) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

- (g) . . .
- (109) *Amendment No. 315.* Program changes required by Amendment No. 315 to the food stamp regulations shall be implemented as follows:
- The provisions relating to migrant and seasonal farmworkers (7 CFR 273.9(c)(1)(ii)(E) and 273.10(a)(1)(ii)) are effective September 1, 1988 for all households applying or certified subsequent to August 31, 1988. Changes affecting currently participating households are to be implemented at recertification or when it is necessary to implement other changes affecting the household.
 - State agencies were required to implement the provision of this rule regarding a technical correction concerning energy assistance payments (7 CFR 273.9(c)(11)) on September 19, 1988.
 - State agencies were required to implement revised food stamp allotments on October 1, 1988 (7 CFR

271.2, 271.7, 273.10(e)(2), 273.10(e)(4)(ii), and 273.12(e)). Revised allotments were implemented as mass changes in accordance with 7 CFR 273.12(e).

(iv) State agencies were required to implement the provision relating to the dependent care deduction, 7 CFR 273.9(d)(4), 273.10(d)(1)(i), and 273.10(e)(1)(i)(E), and monthly reporting and retrospective budgeting, 7 CFR 273.21(a) and (b), on October 1, 1988. These provisions were immediately effective for all households certified subsequent to September 30, 1988. Changes affecting currently participating households were to be implemented upon recertification, at the household's request, or when it was necessary to implement other changes affecting the household. (For example, a change reported by a nonmonthly reporting retrospectively budgeted household was to be implemented in accordance with 7 CFR 273.12.) The Department was not requiring State agencies to conduct a casefile review to implement monthly reporting and retrospective budgeting changes for currently participating households. Monthly reports submitted by households which became exempt from MRRB as a result of the Hunger Prevention Act, such as non-migrant seasonal farmworkers or the homeless, were to be treated as change reports and processed prospectively in accordance with 7 CFR 273.12(c).

(v) State agencies were required to implement the provisions of this rule concerning the exclusion of advance payment of earned income tax credits, 7 CFR 273.8(c)(1) and 273.9(c)(14), on January 1, 1989. Households applying subsequent to December 31, 1988 should have had this provision applied to them as of their date of application. Changes affecting households participating as of December 31, 1988 were to be implemented upon recertification, at the household's request, or when it was necessary to implement other changes affecting the household.

(vi) All other provisions of this rule, relating to technical corrections concerning the urban Alaska TFP (7 CFR 272.7(c)), Alaska proration (7 CFR 272.7(f)(3)(iii)), and the dependent care deduction (7 CFR 273.11(c)(2)(iii) and 273.12(e)(1)(i)(C)), are to be implemented August 1, 1989.

(vii) Quality control errors made as a result of this rule's changes to §§ 273.9, 273.10, and 273.21 during the required implementation time frame established by this rulemaking shall be handled in accordance with interim regulations published at 53 FR 44171, dated November 2, 1988. Food stamp allotment changes are not covered by the interim

regulation because this is a mass change.

(viii) State agencies which failed to implement any of these provisions by the required dates shall provide affected households with the lost benefits they would have received if the State agency had implemented these provisions as required.

5. In § 272.7:

- The definition of "Urban Alaska TFP" in paragraph (c) is amended by revising the first sentence; and
- The last sentence of paragraph (f)(3)(iii) is revised.

The revisions read as follows:

§ 272.7 Procedures for program administration in Alaska.**(c) . . .**

"Urban Alaska TFP" refers to a TFP that is the higher of the TFP that was in effect in each area on October 1, 1985, or .79 percent higher than the Anchorage TFP, as calculated by FNS, with rounding and other reductions that are appropriate. . . .

(f) . . .**(3) . . .**

(iii) . . . The household, if determined eligible, shall be entitled to benefits in accordance with § 273.10(a).

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS**6. In § 273.9:**

- Paragraph (c)(1)(ii)(C) is amended by removing the last word "or";
- Paragraph (c)(1)(ii)(D) is amended by changing the period "." to a semicolon ";" and adding the word "or";
- New paragraph (c)(1)(ii)(E) is added;
- The first sentence of paragraph (c)(11) is revised;
- New paragraph (c)(14) is added; and
- Paragraph (d)(4) is revised.

The revisions and additions read as follows:

§ 273.9 Income and deductions.**(c) . . .****(1) . . .****(ii) . . .**

(E) Emergency assistance for a migrant or seasonal farmworker household during the period the household is in the job stream. This assistance may include, but is not limited to, emergency vendor payments for housing or transportation.

(11) Payments or allowances made for the purpose of providing energy assistance under any Federal law. . . .

(14) **Earned income tax credit** payments received either as a lump sum or payments under section 3507 of the Internal Revenue Code of 1986 (relating to advance payment of earned income tax credits received as part of the paycheck or as a reduction in taxes that otherwise would have been paid at the end of the year).

(d) . . .

(4) **Dependent care.** Payments for the actual costs for the care of children or other dependents when necessary for a household member to accept or continue employment, comply with the employment and training requirements as specified under § 273.7(f), or attend training or pursue education which is preparatory to employment, except as provided in § 273.20(d)(1)(i). The maximum monthly dependent care deduction amount households shall be granted under this provision is \$160 per month, per dependent.

7. In § 273.10:

- The introductory text of paragraph (a)(1)(ii) is amended by removing the third sentence and replacing it with two new sentences;
 - The first sentence of paragraph (d)(1)(i) is revised;
 - The first sentence of paragraph (e)(1)(i)(E) is revised;
 - Paragraphs (e)(2)(ii)(A), (e)(2)(vi)(A), and (e)(2)(vi)(C) are amended by replacing the words "Thrifty Food Plan" with the words "maximum food stamp allotment" each place they appear (seven occurrences);
 - The title of paragraph (e)(4) is revised;
 - Paragraph (e)(4)(i) is revised;
 - Paragraph (e)(4)(ii)(C) is amended by replacing the words "and each October 1 thereafter," with the words "October 1, 1988, and October 1, 1989,"; and
 - New paragraphs (e)(4)(ii)(D), (e)(4)(ii)(E), and (e)(4)(ii)(F) are added.
- The revisions and additions read as follows:

§ 273.10 Determining household eligibility and benefit levels.**(a) . . .****(1) . . .****(ii) . . .**

As used in this section, the term initial month means the first month for which the household is certified for participation in the Food Stamp Program following any period during which the household was not certified for participation, except for migrant and seasonal farmworker households. In the

case of migrant and seasonal farmworker households, the term initial month means the first month for which the household is certified for participation in the Food Stamp Program following any period of more than 30 days during which the household was not certified for participation. . . .

(d) . . .**(1) . . .**

(i) Any expense covered by an excluded reimbursement (including reimbursements under employment and training programs) or excluded vendor payment (except an energy assistance vendor payment made under the Low Income Home Energy Assistance Act (LIHEAA)) shall not be deductible. . . .

(e) . . .**(1) . . .****(i) . . .**

(E) Subtract allowable monthly dependent care expenses, if any, up to a maximum amount of \$160 per dependent. . . .

(4) Thrifty Food Plan (TFP) and Maximum Food Stamp Allotments.

(i) Maximum food stamp allotment level. Maximum food stamp allotments shall be based on the TFP as defined in § 271.2, and they shall be uniform by household size throughout the 48 contiguous States and the District of Columbia. The TFP for Hawaii shall be the TFP for the 48 States and DC adjusted for the price of food in Honolulu. The TFPs for urban, rural I, and rural II parts of Alaska shall be the TFP for the 48 States and DC adjusted by the price of food in Anchorage and further adjusted for urban, rural I, and rural II Alaska as defined in § 272.7(c). The TFPs for Guam and the Virgin Islands shall be adjusted for changes in the cost of food in the 48 States and DC, provided that the cost of these TFPs may not exceed the cost of the highest TFP for the 50 States. The TFP amounts and maximum allotments in each area are adjusted annually and will be prescribed in a General Notice published in the Federal Register.

(ii) . . .

(D) Effective October 1, 1988, maximum food stamp allotments shall be based on 100.65 percent of the cost of the TFP for the preceding June, rounded to the nearest lower dollar increment.

(E) Effective October 1, 1989, maximum food stamp allotments shall be based on 102.05 percent of the cost of the TFP for the preceding June, rounded to the nearest lower dollar increment.

(F) Effective October 1, 1990 and each October 1, thereafter, maximum food stamp allotments shall be based on 103 percent of the cost of the TFP for the preceding June, rounded to the nearest lower dollar increment.

8. In § 273.11, the last sentence of paragraph (c)(2)(iii) is revised to read as follows:

§ 273.11 Action on households with special circumstances.**(c) . . .****(2) . . .**

(iii) . . . All but the ineligible members' share is counted as a deductible shelter or dependent care expense for the remaining household members.

9. In § 273.12:

a. Paragraph (e) introductory text and paragraph (e)(1)(i)(A) are amended by replacing the words "Thrifty Food Plan" with the words "maximum food stamp allotment" each place they appear (2 occurrences).

b. Paragraph (e)(1)(i)(C) is revised to read as follows:

§ 273.12 Reporting changes.**(e) . . .****(1) . . .****(i) . . .**

(C) Adjustments in the shelter deduction shall be effective in accordance with § 273.9(d)(8).

10. In § 273.21:

a. Paragraph (a)(4) is revised.

b. Paragraph (b) is revised.

c. In the second sentence of paragraph (d), the phrase "except that for a household which has applied for food stamps and AFDC at the same time the State agency may allow an additional beginning month if necessary to coincide with the AFDC budgeting system" is removed.

d. In the second sentence of paragraph (d)(2) the phrase "except when an additional beginning month is provided in accordance with introductory paragraph (d) of this section" is removed, and the comma (,) preceding the phrase is replaced with a period (.).

e. The phrase "serious hardship provisions" is removed from the title of paragraph (e) and the phrase "beginning months' procedures" is added in its place.

f. The phrase "not suffering serious hardship" is removed from the title of paragraph (f) and the phrase "following

the beginning months" is added in its place.

g. The phrase "such as for serious hardship cases or" is removed from paragraph (f)(1)(ii) and the phrase "during the beginning months or for" is added in its place.

h. The phrase "for households suffering serious hardship" is removed from the title of paragraph (g).

i. The introductory text of paragraph (g) is revised.

j. Paragraph (g)(1) is removed and paragraphs (g) (2) through (4) are redesignated (g) (1) through (3), respectively.

k. In the titles of newly redesignated paragraphs (g)(1) and (g)(2) the phrase "for serious hardship cases" is removed and the phrase "during the beginning months" is added in its place.

l. In the title of newly redesignated paragraph (g)(3), the phrase "for serious hardship cases" is removed and the phrase "following the beginning months" is added in its place, and m. The fourth sentence of newly redesignated paragraph (g)(3) is removed.

The revisions read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

(a) * * *

(4) *Budgeting Waivers.* FNS may approve waivers of the budgeting requirements of this section to conform to budgeting procedures in the AFDC Program, except for households excluded from retrospective budgeting under paragraphs (b)(1) and (b)(2) of this section.

(b) *Included and excluded households.* The establishment of an MRRB system is a State agency option. Households not required to submit monthly reports shall have their eligibility and benefits determined on a prospective basis. A State agency may include any household in its MRRB system, except as follows:

(1) Migrant or seasonal farmworker households.

(2) Households in which all members are homeless individuals.

(3) Households with no earned income in which all adult members are elderly or disabled.

* * * * *

(g) *Determining eligibility and allotments in the beginning months.* The State agency shall use the prospective budgeting procedures of this paragraph for determining the allotments and eligibility of households in the MRRB

system during this first month, or first and second month of participation.

* * * * *

G. Scott Dunn,
Acting Administrator, Food and Nutrition Service.

May 30, 1989.

[FR Doc. 89-13294 Filed 6-5-89; 8:45 am]

BILLING CODE 3410-30-M

Federal Grain Inspection Service

7 CFR Part 810

Official United States Standards for Grain

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Federal Grain Inspection Service (FGIS) is amending the Official United States Standards for Grain to show the proper method for recording the percentage of splits in soybeans.

EFFECTIVE DATE: June 6, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090-6454, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

D. R. Galliant, Acting Administrator, FGIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities because those persons who apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Further, the standards are applied equally to all entities.

Final Action

In the Federal Register of June 30, 1987 (52 FR 24414), FGIS published a final rule that included the complete text of the Official United States Standards for Grain with various amendments. It was FGIS' intention that the recording of

splits in soybeans (7 CFR 810.104(b)) continue to be recorded in whole percents with fractions of a percent being disregarded. However, in the June 30, 1987, final rule the reference to recording the percentage of splits in soybeans was inadvertently placed with classes and subclasses in wheat, flint corn, flint and dent corn, waxy corn, classes in barley, and the percentage of each kind of grain in mixed grain, which are recorded to the nearest whole percent.

On March 21, 1989 (54 FR 11543), FGIS proposed to amend the United States Standards for Soybeans to show the proper method for recording the percentage of splits in soybeans.

Interested parties were invited to participate in the rulemaking process by submitting written comments on the proposed rule. During the comment period two comments were received from representatives of major trade associations. One commentator supported the proposed rule as written as well as making the change effective upon publication of the final rule. Although supporting the proposal, one commentator did question the consistency with rounding practices for reporting most other types of inspection results. As FGIS further reviews the soybean standards, the review will include the manner in which soybean splits are recorded. At this time, sufficient information is not available regarding the possible impact of reporting soybean splits to the nearest whole percent. Therefore, FGIS is amending § 810.104(b) for clarity, only to be consistent with current practices.

Pursuant to section 4(b) of the United States Grain Standards Act, no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. Because these changes are being made for clarity so as to show the proper method for recording the percentage of splits in soybeans, FGIS has determined that it is in the public interest that the change be made effective immediately. For these same reasons, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register (5 U.S.C. 553).

List of Subjects in 7 CFR Part 810

Export, Grain.

For reasons set forth in the preamble, 7 CFR Part 810 is amended as follows:

PART 810—[AMENDED]

1. The authority citation for Part 810 continues to read as follows:

Authority: Secs. 3A and 4, United States Grain Standards Act (7 U.S.C. 75a, 76).

Subpart A—General Provisions

§ 810.104 [Amended]

2. Section 810.104(b) is amended by revising the first sentence to read "The percentage of splits in soybeans, and the percentage of dockage in barley, flaxseed, rye, and sorghum are reported in whole percents with fractions of a percent being disregarded."

3. Section 810.104(b) is further amended by removing the phrase "splits in soybeans;" after the phrase "classes in barley;" in the ninth sentence.

Dated: May 18, 1989.

D.R. Galliant,

Acting Administrator.

[FR Doc. 89-13396 Filed 6-5-89; 8:45 am]

BILLING CODE 3410-EN-M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 140

RIN 3150-AD08

Financial Protection Requirements and Indemnity Agreements; Miscellaneous Amendments Necessitated By Changes in the Price-Anderson Act

AGENCY: Nuclear Regulatory Commission.

ACTION: Final Rule.

SUMMARY: The Nuclear Regulatory Commission is amending its regulations to conform to changes made to the Price-Anderson Act by "The Price-Anderson Amendments Act of 1988," which was enacted on August 20, 1988. The Commission is also amending its regulations to increase the level of the primary layer of financial protection required of certain indemnified licensees. The provisions of Section 170 of the Atomic Energy Act of 1954, as amended, require production and utilization facility licensees to have and maintain financial protection to cover public liability claims. Therefore, the Commission is amending its regulations to coincide, as statutorily required, with the increase in the level of the primary layer of insurance provided by private nuclear liability insurance pools. This change would provide additional insurance to pay public liability claims arising out of a nuclear incident.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Ira Dinitz, Policy Development and Financial Evaluation Section, Policy Development and Technical Support Branch, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-1289.

SUPPLEMENTARY INFORMATION: On August 20, 1988, "The Price-Anderson Amendments Act of 1988" was enacted as Pub. L. 100-408. This legislation modifies and extends for 15 years (to August 1, 2002) the Price-Anderson Act. On December 20, 1988, the Commission published a proposed rule in the Federal Register (53 FR 51120) requesting comments on amending certain provisions of 10 CFR Part 140 to conform to changes made by Pub. L. 100-408. Two nonsubstantive comments were received on the proposed rule. The first commenter, without indicating a need, requested an extension of the comment period, which the NRC did not believe was warranted. The other commenter requested specific incorporation of certain other regulatory changes, which has been done. First, the requirement for the imposition of a surcharge above the \$63 million deferred premium assessment, as specified in subsection 170a.(1)(E) of the Act, has been incorporated into the regulations. Second, the regulations have been clarified to specify that the \$10 million annual deferred premium would be assessed on a "per incident" basis as implied in the Act and as clearly indicated in the legislative history.

Section 170 of the Atomic Energy Act of 1954, as amended, (the Act) requires production and utilization facility licensees to have and maintain financial protection to cover public liability claims resulting from a nuclear incident or precautionary evacuation. Section 170 also requires the Nuclear Regulatory Commission to indemnify the licensee and other persons indemnified, up to the statutory limitation on liability, against public liability claims in excess of the amount of financial protection required. Subsection 170b. of the Act requires that for facilities designed for producing substantial amounts of electricity and having a rated capacity of 100,000 electrical kilowatts or more, the amount of financial protection required shall be the maximum amount available from private sources. Primary financial protection may be in the form of private insurance, private contractual indemnities, self-insurance or other proof of financial responsibility, or combination of such measures.

The insurers who provide the nuclear liability insurance, American Nuclear

Insurers (ANI) and Mutual Atomic Energy Liability Underwriters (MAELU), have advised the Commission that the maximum amount of primary nuclear energy liability insurance available has been increased from \$160 million to \$200 million. Pursuant to the provisions of subsection 170b. of the Act, the amount of primary financial protection required for facilities having a rated capacity of 100,000 electrical kilowatts or more will be increased to \$200 million.

Environmental Impact: Categorical Exclusion

The Commission has determined that this rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(1). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this rule.

Paperwork Reduction Act Statement

This rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) Existing requirements were approved by the Office of Management and Budget approval number 3150-0039.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)) the Commission hereby certifies that this rule will not have a significant economic effect on a substantial number of small entities. This rule applies only to nuclear power plant licensees which are electric utility companies dominant in their service areas. These licensees are not "small entities" as set forth in the Regulatory Flexibility Act and do not meet the standards set forth for small businesses in Small Business Administration regulations in 13 CFR Part 121.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to this rule, and therefore, that a backfit analysis is not required for this rule. These amendments are required to conform NRC regulations to statutory directives and do not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 140

Extraordinary nuclear occurrence, Insurance, Intergovernmental relations, Nuclear materials, Nuclear power plants and reactors, Penalty, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the

Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended and 5 U.S.C. 552 and 553, the NRC is adopting the following amendments to 10 CFR Part 140.

PART 140—FINANCIAL PROTECTION REQUIREMENTS AND INDEMNITY AGREEMENTS

1. The authority citation for Part 140 continues to read as follows:

Authority: Secs. 161, 170, 68 Stat. 948, 71 Stat. 576, as amended (42 U.S.C. 2201, 2210); secs. 201, as amended, 202, 68 Stat. 1242, as amended, 1244 (42 U.S.C. 5841, 5842).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273); §§ 140.11(a), 140.12(a), 140.13, and 140.13a are issued under sec. 161b., 68 Stat. 948, as amended (42 U.S.C. 2201(b)); and § 140.6 is issued under sec. 161c., 68 Stat. 950, as amended (42 U.S.C. 2201(c)).

2. In § 140.11, paragraph (a)(4) is revised and the introductory text (a) is provided for the convenience of the user to read as follows:

§ 140.11 Amounts of financial protection for certain reactors.

(a) Each licensee is required to have and maintain financial protection:

(4) In an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges equal to the pro rata share of the aggregate public liability claims and costs, excluding costs payment of which is not authorized by section 170c.(1)(D), in excess of that covered by primary financial protection) for each nuclear reactor which is licensed to operate and which is designed for the production of electrical energy and has a rated capacity of 100,000 electrical kilowatts or more: Provided, however, That under such a plan for deferred premium charges for each nuclear reactor which is licensed to operate, no more than \$63,000,000 with respect to any nuclear incident (plus any surcharge assessed under subsection 170c.(1)(E) of the Act) and no more than \$10,000,000 per incident within one calendar year shall be charged.

3. In § 140.13a, paragraph (a) is revised to read as follows:

§ 140.13a Amount of financial protection required for plutonium processing and fuel fabrication plants.

(a) Each holder of a license issued pursuant to Part 70 of this chapter to possess and use plutonium at a

plutonium processing and fuel fabrication plant is required to have and maintain financial protection in the form specified in § 140.14 in the amount of \$200,000,000. Proof of financial protection shall be filed with the Commission in the manner in § 140.15 prior to issuance of the license under Part 70 of this chapter.

4. Section 140.92, Appendix B, is amended as follows:

a. Article I, paragraphs 1 and 7 are revised.

b. Article II, paragraph 4(c), introductory text of paragraph 8, and paragraphs 8(a), 8(b), and 8(c) are revised.

c. Article III, paragraph 4(b) is revised.

d. Article VIII, paragraph 1 is revised.

§ 140.92 Appendix B—Form of Indemnity Agreement With Licensees Furnishing Insurance Policies as Proof of Financial Protection

Article I

1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

7. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

Article II

4. . . .

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

8. With respect to any common occurrence,

(a) If the sum of limit of liability of any Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association exceeds \$155,000,000 the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and \$155,000,000 as the limit of liability of the Nuclear Energy Liability Insurance Association policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability Insurance Association;

(b) If the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds \$45,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and \$45,000,000 as the limit of liability of the Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters;

(c) If any of the other applicable agreements is with a person who has furnished financial protection in a form other than a nuclear energy liability insurance policy (facility form) issued by Nuclear Energy Liability Insurance Association or Mutual Atomic Energy Liability Underwriters, and if also the sum of the amount of financial protection established under this agreement and the amounts of financial protection established under all other applicable agreements exceeds an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection, the obligations of the licensee shall not exceed a greater proportion of an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection, than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements.

Article III

4. . . .

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under this agreement and all other applicable agreements; or (2) an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection.

Article VIII

1. Each licensee is required to have and maintain financial protection in an amount specified in Item 2 a and b of the Attachment annexed hereto, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges); Provided, however, That under such a plan for deferred premium charges, such charges for each nuclear reactor which is licensed to operate shall not exceed \$63,000,000 with respect to any single nuclear incident (plus any surcharge assessed under subsection 170c.(1)(E) of the Act) nor exceed \$10,000,000 per incident within one calendar year. If the licensee fails to pay assessed deferred premiums, the Commission reserves the right to pay those premiums on behalf of the licensee and to recover the amount of such premiums from the licensee.

5. Section 140.93, Appendix C, is amended as follows:

a. Article I, paragraphs 1 and 7 are revised.

b. Article II, paragraphs 4(c) and 6 are revised.

c. Article III, paragraph 4(b) is revised.

d. Article VIII, paragraph 1 is revised.

§ 140.93 Appendix C—Form of Indemnity Agreement With Licensees Furnishing Proof of Financial Protection in the Form of Licensee's Resources

Article I

1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

7. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a

nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

Article II

4. . . .

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

8. With respect to a common occurrence, if the sum of the amount of financial protection established under this agreement and the amount of financial protection established under all other applicable agreements exceeds an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection, the obligations of the licensee described in paragraph 3 of this Article shall not exceed a greater proportion of an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements. As used in this paragraph, and in Article III, "other applicable agreements" means each other agreement entered into by the Commission pursuant to subsection 170 c. or k. of the Act in which agreement the nuclear incident is defined as a "common occurrence".

Article III

4. . . .

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property

described in the proviso to Paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amount of financial protection established under this agreement and to all other applicable agreements; or (2) an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection.

Article VIII

1. Each licensee is required to have and maintain financial protection in an amount specified in Item 2 annexed hereto, and the amount available as secondary financial protection (in the form of private liability insurance available under an industry retrospective rating plan providing for deferred premium charges); Provided, however, That under such a plan for deferred premium charges, such charges for each nuclear reactor which is licensed to operate shall not exceed \$63,000,000 with respect to any single nuclear incident (plus any surcharge assessed under subsection 170c.(1)(E) of the Act) nor exceed \$10,000,000 per incident within one calendar year. If the licensee fails to pay assessed deferred premiums, the Commission reserves the right to pay those premiums on behalf of the licensee and to recover the amount of such premiums from the licensee.

6. Section 140.94, Appendix D, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, paragraphs 4(c) and 6 are revised.

§ 140.94 Appendix D—Form of Indemnity Agreement With Federal Agencies

Article I

1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3)

claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

Article II

4. * * *

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

6. With respect to a common occurrence, the obligations of the Commission under this Article shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amount of financial protection established under all applicable agreements; or (2) an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection. As used in this Article "applicable agreements" means each agreement entered into by the Commission pursuant to subsection 170c. or k. of the Act in which agreement the nuclear incident is defined as "common occurrence."

7. Section 140.95, Appendix E, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, paragraphs 2(c) is revised.

c. Article III, paragraphs 4(b) is revised.

d. Article IV, paragraph 1 is revised.

§ 140.95 Appendix E—Form of Indemnity Agreement With Nonprofit Education Institutions

Article I

1. "Nuclear reactor," "byproduct material," "person," "source material," "special nuclear material," and "precautionary evacuation" shall have the meanings given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

6. "Public liability" means are legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Act of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, or the transporting vehicle, and (b) in connection with the licensee's possession, use, or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

Article II

2. * * *

(c) Any issue or defense based on any statute of limitations if suit is instituted within 3 years from the date on which the claimant first knew, or reasonably could have known, of his injury or damage and the cause thereof.

The waiver of any such issue or defense shall be effective regardless of whether such issue or defense may otherwise be deemed jurisdictional or relating to an element in the cause of action. The waivers shall be judicially enforceable in accordance with their terms by the claimant against the person indemnified.

Article III

4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed whichever of the following is lower: (1) The sum of the amounts of financial protection established under all applicable agreements; or (2) an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection. As used in this Article "applicable agreements" means each agreement entered into by the Commission pursuant to subsection 170 c. or k. of the Act in which agreement the nuclear incident is defined as a "common occurrence."

Article IV

1. When the Commission determines that the United States will probably be required to make indemnity payments under the

provisions of this agreement, the Commission shall have the right to collaborate with the licensee and other persons indemnified in the settlement and defense of any claim including such legal costs of the licensee as are approved by the Commission and shall have the right (a) to require the prior approval of the Commission for the settlement or payment of any claim or action asserted against the licensee or other person indemnified for public liability or damage to property of persons legally liable for the nuclear incident which claim or action the licensee or the Commission may be required to indemnify under this agreement; and (b) to appear through the Attorney General of the United States on behalf of the licensee or other person indemnified, take charge of such action or defend any such action. If the settlement or defense of any such action or claim is undertaken by the Commission, the licensee shall furnish all reasonable assistance in effecting a settlement or asserting a defense.

8. Section 140.107, Appendix G, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, introductory text of paragraph 6 and paragraphs 6(a), (6)(b), and 6(c) are revised.

c. Article III, paragraph 4(b) is revised.

§ 140.107 Appendix G—Form of Indemnity Agreement With Licensees Processing Plutonium for Use in Plutonium Processing and Fuel Fabrication Plants and Furnishing Insurance Policies as Proof of Financial Protection

Article I

1. "By product material," "person," "source material," "special nuclear material," "precautionary evacuation," and "extraordinary nuclear occurrence" shall have the meaning given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of or damage to, or loss of use of (a) property which is located at the location and used in connection with the

licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

Article II

6. With respect to any common occurrence, (a) If the sum of the limit of liability of any Nuclear Energy Liability-Property Insurance Association policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability-Property Insurance Association exceeds \$155,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and \$155,000,000 as the limit of liability of the Nuclear Energy Liability-Property Insurance Association policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Nuclear Energy Liability-Property Insurance Association;

(b) If the sum of the limit of liability of any Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment and the limits of liability of all other nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters exceeds \$45,000,000, the amount of financial protection specified in Item 2 a and b of the Attachment shall be deemed to be reduced by that proportion of the difference between said sum and \$45,000,000 as the limit of liability of the Mutual Atomic Energy Liability Underwriters policy designated in Item 5 of the Attachment bears to the sum of the limits of liability of all nuclear energy liability insurance policies (facility form) applicable to such common occurrence and issued by Mutual Atomic Energy Liability Underwriters;

(c) If any of the other applicable agreements is with a person who has furnished financial protection in a form other than a nuclear energy liability insurance policy (facility form) issued by Nuclear Energy Liability-Property Insurance Association or Mutual Atomic Energy Liability Underwriters, and if also the sum of the amount of financial protection established under this agreement and the amounts of financial protection established under all other applicable agreements exceeds an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection, the obligations of the licensee shall not exceed a greater proportion of an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial

protection established under all other applicable agreements.

Article III

4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed \$200,000,000.

9. Section 140.108, Appendix H, is amended as follows:

a. Article I, paragraphs 1 and 6 are revised.

b. Article II, paragraph 6 is revised.

c. Article III, paragraph 4(b) is revised.

§ 140.108 Appendix H—Form of Indemnity Agreement With Licensees Possessing Plutonium for Use in Plutonium Processing and Fuel Fabrication Plants and Furnishing Proof of Financial Protection in the Form of the Licensee's Resources

Article I

1. "Byproduct material," "person," "source material," "special nuclear material," "precautionary evacuation," and "extraordinary nuclear occurrence" shall have the meaning given them in the Atomic Energy Act of 1954, as amended, and the regulations issued by the Commission.

6. "Public liability" means any legal liability arising out of or resulting from a nuclear incident or precautionary evacuation (including all reasonable additional costs incurred by a State, or a political subdivision of a State, in the course of responding to a nuclear incident or precautionary evacuation), except (1) claims under State or Federal Workmen's Compensation Acts of employees of persons indemnified who are employed (a) at the location or, if the nuclear incident occurs in the course of transportation of the radioactive material, on the transporting vehicle, and (b) in connection with the licensee's possession, use or transfer of the radioactive material; (2) claims arising out of an act of war; and (3) claims for loss of, or damage to, or loss of use of (a) property which is located at the location and used in connection with the licensee's possession, use, or transfer of the radioactive material, and (b) if the nuclear incident occurs in the course of transportation of the radioactive material, the transporting vehicle, containers used in such transportation, and the radioactive material.

Article II

6. With respect to any common occurrence, if the sum of the amount of financial protection established under this agreement and the amount of financial protection established under all other applicable agreements exceeds an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection, the obligations of the licensee described in paragraph 3 of this Article shall not exceed a greater proportion of an amount equal to the sum of \$200,000,000 and the amount available as secondary financial protection than the amount of financial protection established under this agreement bears to the sum of such amount and the amounts of financial protection established under all other applicable agreements. As used in this paragraph, and in Article III, "other applicable agreements" means each other agreement entered into by the Commission pursuant to subsection 170c. or k. of the Act in which agreement the nuclear incident is defined as a "common occurrence."

Article III

4. * * *

(b) With respect to a common occurrence, the obligations of the Commission under this agreement shall apply only with respect to such public liability and such damage to property of persons legally liable for the nuclear incident (other than such property described in the proviso to paragraph 2 of this Article) as in the aggregate exceed \$200,000,000.

Dated at Rockville, MD, this 30th of May 1989.

For the Nuclear Regulatory Commission.

Victor Stello, Jr.,

Executive Director for Operations.

[FR Doc. 89-13381 Filed 6-5-89; 8:45 am]

BILLING CODE 7590-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-146-AD; Amdt. 39-6232]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Boeing Model 747 series airplanes, which requires periodic inspections and cleaning of the cavity aft of the wing center section. This amendment is prompted by reports of inadequate drainage, which apparently

is caused by an inordinate quantity of debris and foreign material collecting in the cavity area. This situation has led to accumulated water leaking from the wing center section onto portions of the aileron control system and subsequently freezing. Ice in the aileron control system can result in reduced lateral control capability.

EFFECTIVE DATE: July 10, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bul, Airframe Branch, ANM-120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive which requires periodic inspections and cleaning of the cavity aft of the wing center section, was published in the *Federal Register* on January 13, 1989 (54 FR 89796). The comment period for the proposal closed on March 9, 1989.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The Air Transport Association (ATA) of America, on behalf of its members, expressed no technical objection with the proposed rule. The ATA did, however, request that the initial compliance interval be extended from 12 to 15 months, and that the repetitive inspection interval be extended from 15 to 18 months, to accommodate operators' normal "C" check maintenance hold. The extension is needed because, the proposed inspection will require substantially more time than the 9-manhour estimate stated in the cost estimate of the Notice unless it is accomplished when the airplane is open for inspection such as a "C" check. One ATA member has estimated that approximately 80 manhours are needed to accomplish the proposed task because of removal/replacement activities required for access. This task can, therefore, only be scheduled during long maintenance holds such as a "C" check. The FAA has considered the ATA's comment and has

concluded that the request has merit. The FAA has determined that an extension of the initial compliance time to 15 months and the repetitive inspection interval to 18 months will not have a derogative effect on safety. The final rule has been revised accordingly.

Another commenter requested that this AD be revised to include a provision for a longer interval for the airplanes which have improved drain capability, such as the incorporation of Boeing Service Bulletins 747-51-2028, 747-51-2032, and 747-51-2036. The FAA agrees that there are other acceptable methods of complying with the rule, and paragraph B. of the AD contains provisions for alternate means of compliance. Since alternate means must be considered on a case-by-case basis, it is not practicable to incorporate all possible means of compliance in the final rule.

The manufacturer requested that this AD be revised to require visual inspection external of the cavity and, if drainage is blocked, then inspection internally. The FAA disagrees because accumulated water leaking from the wing center section onto portions of the aileron control system and subsequently freezing, was found on airplanes that were reported to have had the drainage previously checked.

The manufacturer also requested that the wording of the final rule identifying the inspection area be changed from "cavity over the wing center section" to "cavity aft of the wing center section." The FAA concurs; the suggested wording clarifies the intent of the rule. The final rule has been revised accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the changes previously noted. The FAA has determined that these changes will neither increase the economic burden on any operator, nor increase the scope of the AD.

There are approximately 700 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 260 airplanes of U.S. registry will be affected by this AD, that it will take approximately 9 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$93,600.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this regulation and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to all Model 747 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced lateral control caused by icing of the aileron control cables, accomplish the following:

A. Within the next 15 months after the effective date of this AD, unless already accomplished within the last 3 months, and thereafter at intervals not to exceed 18 months, perform the following:

1. Gain access to the cavity aft of the wing center section.

2. Remove all debris and foreign material, clean the cavity, and verify all drains are open and clean.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who may add any comments and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 10, 1989.

Issued in Seattle, Washington, on May 24, 1989.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 89-13317 Filed 6-5-89; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-13-AD; Amdt. 39-6233]

Airworthiness Directives; Israel Aircraft Industrie (IAI) Model 1121, 1121A, 1121B, 1123, 1124, and 1124A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Israel Aircraft Industrie (IAI) Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, which currently requires repetitive dye penetrant inspections to detect cracks in the horizontal stabilizer aft spar splice fitting, and replacement, as necessary. This amendment requires repetitive visual inspections for cracks in the hinge lugs of the horizontal stabilizer aft spar splice fitting, and replacement of any fittings found cracked. This amendment is prompted by reports of cracks found in the outer hinge lugs during a visual inspection, which were apparently missed during the previously required dye penetrant inspection. Such cracking, if not detected and corrected, could lead to failure of the outer and inner hinge lugs, which would compromise the

structural integrity of the horizontal stabilizer assembly.

EFFECTIVE DATE: July 10, 1989.

ADDRESSES: The applicable service information may be obtained from Israel Aircraft Industrie (IAI), Delaware Office, P.O. Box 10086, Wilmington, Delaware 19850. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations by superseding AD 86-14-02, Amendment 39-5341 (51 FR 23217; June 26, 1986), applicable to Israel Aircraft Industrie (IAI) Model 1121, 1121A, 1121B, 1123, 1124 and 1124A series airplanes, to require repetitive visual inspections for cracks in the hinge lugs of the horizontal stabilizer aft spar splice fitting, and replacement of any fittings found cracked, was published in the *Federal Register* on March 17, 1989 (54 FR 11226).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given the single comment received in response to the proposal.

The commenter supported the proposed rule.

Paragraph C. of the final rule has been revised to reflect the correct issue date for Revision 2 of Service Bulletins 1121-55-004 and 1123-55-007 as October 21, 1988.

After careful review of the available data, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously noted. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

It is estimated that 410 airplanes of U.S. registry will be affected by this AD, that it will take approximately one-half manhour per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is

estimated to be \$8,200 for the initial inspection cycle.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" or under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the Regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority Citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 86-14-02, Amendment 39-5341 (51 FR 23217; June 26, 1986), with the following new airworthiness directive:

Israel Aircraft Industries (IAI): Applies to Model 1121, 1121A, 1121B, 1123, 1124, and 1124A series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To detect cracks in the hinge lugs of the horizontal stabilizer aft spar splice fitting (hinge assembly), accomplish the following:

A. Within the next 75 flight hours time-in-service after the effective date of this AD, unless previously accomplished within the last 225 flight hours time-in-service, conduct a visual inspection of the horizontal stabilizer aft spar splice fitting (hinge assembly) Part

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Number 453005-501, in accordance with the following IAI service bulletins entitled "Horizontal Stabilizer Aft Spar Splice Fitting P/N 453005-501 (Hinge Assembly) Inspection", as appropriate:

Model	Service bulletin
1121, 1121A, 1121B.....	1121-55-003, Revision 1, dated August 8, 1988.
1123.....	1123-55-008, Revision 1, dated August 8, 1988.
1124, 1124A.....	1124-55-020, Revision 2, dated August 8, 1988.

B. If no cracks are found, repeat the inspection required by paragraph A., above, at intervals not to exceed 300 hours time-in-service.

C. If cracks are found, replace the splice fitting prior to further flight, in accordance with the following IAI service bulletins entitled "Horizontal Stabilizer Assembly—Inspection, Repair, and Improvement (AFC 2037)," as appropriate:

Model	Service bulletin
1121, 1121A, 1121B.....	1121-55-004, Revision 2, dated October 21, 1988.
1123.....	1123-55-007, Revision 2, dated October 21, 1988.
1124, 1124A.....	1124-55-021, Revision 3, dated October 21, 1988.

D. Following replacement of the splice fitting, described in the above service bulletins, repeat the inspection required by paragraph A. of this AD at intervals not to exceed 300 hours time-in-service.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Standardization Branch, ANM-113.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Israel Aircraft Industries, Delaware Office, P.O. Box 10088, Wilmington, Delaware 19850. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft

Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This Amendment supersedes AD 86-14-02, Amendment 39-5341.

This Amendment becomes effective July 10, 1989.

Issued in Seattle, Washington, on May 24, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-13318 Filed 6-5-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-84-AD; Amdt. 39-6231]

Airworthiness Directives; Aerospatiale Model ATR42 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Aerospatiale Model ATR42 series airplanes, which requires modification of the cargo compartment smoke detector test system. This amendment is prompted by reports that the smoke detector test system may not indicate failure of a smoke detector when it occurs. This condition, if not corrected, could result in a fire in the cargo compartment remaining undetected.

EFFECTIVE DATE: June 20, 1989.

ADDRESSES: The applicable service information may be obtained from Aerospatiale, 216 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Robert McCracken, Standardization Branch, ANM-113; telephone (206) 431-1979. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority of France, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on Aerospatiale Model ATR42 series airplanes. There have been reports that the smoke detector test

system may not indicate failure of a smoke detector when it occurs. This problem is due to a test signal feedback by the operative smoke detector. This condition, if not corrected, could result in a fire in cargo compartment remaining undetected.

Aerospatiale has issued Service Bulletin ATR42-28-0010, Revision 1, dated March 28, 1989, which describes procedures for modification of the smoke detector system in the cargo compartments which segregates the forward and aft smoke detector circuits. The DGAC has classified this service bulletin as mandatory and has issued French Airworthiness Directive 88-186-016B addressing this subject.

This airplane model is manufactured in France and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD requires modification of the smoke detector test system in the cargo compartments, in accordance with the service bulletin previously described.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and

placed in the regulatory docket (otherwise, an evaluation is not required). A copy of it, when filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation Safety, Safety

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Applies to all Model ATR42 series airplanes, certificated in any category. Compliance is required within 30 days after the effective date of this AD, unless previously accomplished.

To prevent a fire in a cargo compartment remaining undetected, accomplish the following:

A. Modify the forward and aft smoke detector test systems, in accordance with Aerospatiale Service Bulletin ATR42-28-0010, Revision 1, dated March 28, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to Aerospatiale, 216 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective June 20, 1989.

Issued in Seattle, Washington, on May 24, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-13318 Filed 6-5-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ANM-13]

Establishment of VOR Federal Airway V-593; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment designates a new Federal Airway, V-593, between Denver, CO, and Pueblo, CO. The arrival fix over Kiowa, CO, produces congestion in that area for traffic landing at Denver. This action adds a new airway that bypasses Kiowa for a direct route to the Denver terminal area, reduces delays and shortens the distance to the Denver terminal area by 9 miles.

EFFECTIVE DATE: 0901 u.t.c., July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On August 11, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to designate new VOR Federal Airway, V-593, located in the vicinity of Denver, CO (53 FR 30298). We have identified the need for an airway to support procedures for the arrival traffic flow from the south. Presently, low and high altitude arrivals mix at Kiowa, CO, VORTAC, producing delays. This new airway bypasses Kiowa and shortens the route to the Denver terminal area by 9 miles. This action reduces controller workload. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates a new Federal Airway, V-593, between Denver, CO, and Pueblo, CO. The arrival fix over Kiowa, CO, produces congestion in that area for traffic landing at Denver. This action adds a new airway that bypasses Kiowa for a direct route to the Denver terminal area, reduces delays, and shortens the distance to the Denver terminal area by 9 miles.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-593 [New] From Pueblo, CO. INT Pueblo 004* and Denver, CO, 147* radials; to Denver.

Issued in Washington, DC, on May 24, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-13319 Filed 6-5-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Part 799

[Docket No. 90128-9133]

RIN 0694-AA05

Amendment of Validated License Controls on Magnetically Enhanced Sputtering Equipment

AGENCY: Bureau of Export Administration, Commerce.**ACTION:** Interim rule with request for public comment.

SUMMARY: This rule amends the validated export license controls on certain magnetically enhanced sputtering equipment described in paragraph (b)(1)(vi) of Export Control Commodity Number (ECCN) 1355A in the Commodity Control List (Supplement No. 1 to § 799.1 of the Export Administration Regulations). This action is in accordance with a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended.

As a result of this regulatory action, exports of magnetically enhanced sputtering equipment to any destination located in Country Group T or V—except the People's Republic of China and Afghanistan—no longer require a validated license, unless the equipment is described in the *Validated License Required* paragraph of ECCN 1355A. A validated license continues to be required for national security reasons for exports of all magnetically enhanced sputtering equipment to destinations in Country Groups Q, S, W, Y, and Z, the People's Republic of China, and Afghanistan.

DATES: This rule is effective June 1, 1989. Comments must be received by July 6, 1989.

ADDRESS: Written comments (six copies) should be sent to Vincent Greenwald, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: John R. Pastore, Office of Foreign Availability, Room SB701, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230. Telephone: (202) 377-8074.

SUPPLEMENTARY INFORMATION:**Background**

On September 2, 1988, the Commerce Department published a positive finding of foreign availability of magnetically

enhanced sputtering equipment in the *Federal Register* (53 FR 34135). However, because this equipment is still necessary for the production of critical integrated circuits, the notice reported a Presidential override of the foreign availability finding and requested public comments on the economic impact of continued control.

A Presidential override requires the Department of Commerce to retain the requirement for a validated export license while the President negotiates with the government(s) of the identified source(s) for the elimination of the foreign availability. The President overrode the foreign availability finding on June 24, 1987 and the United States initiated negotiations to eliminate the foreign availability.

The Department had 18 months to conclude negotiations to eliminate foreign availability. As a result of the negotiations, foreign availability was eliminated completely for a five-month period; hence, the foreign availability controls have been maintained up to the time of this regulatory action.

As of June 1, 1989, the United States Government has temporarily eliminated the foreign availability of magnetically enhanced sputtering equipment specially designed for the manufacture of semiconductors. The Commerce Department will continue to require a validated license for such equipment during the period for which foreign availability has been eliminated.

However, other magnetically enhanced sputtering equipment that are for general purpose applications and are not specially designed for manufacturing semiconductors (e.g., bell jar types without vacuum load locks—designed to normally process one wafer at a time—in which the main chamber is opened each time a wafer is manually loaded into and removed from the system, and batch types without vacuum load locks with hinged openings that provide access to the main chamber when wafers or other substrates are manually loaded into and removed from the system) will, effective June 1, 1989, no longer require a license to Country Groups T and V, except the People's Republic of China and Afghanistan. The U.S. Government will refer this finding to COCOM for a four-month consideration of possible removal of national security controls for exports to all destinations. A validated license will continue to be required for foreign policy reasons for exports to Country Groups S and Z.

Rulemaking Requirements and Invitation to Comment

1. This rule complies with Executive Order 12291 and Executive Order 12861.

2. This rule mentions collections of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The Office of Management and Budget has approved these collections under control numbers 0694-0004 and 0694-0005. The net effect of this rule will be to reduce the number of export license applications submitted for this equipment. This rule should reduce the paperwork burden on the public.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of the Federalism Assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979 (EAA), as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553, including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Publishing this rule in proposed form would impair BXA's ability to issue effective and timely controls. Consistent with section 13(b) of the EAA, an opportunity for public comment is provided for this rule.

The period for submission of comments will close July 6, 1989. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their

consideration cannot be assured. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The Department will not accept public comments accompanied by a request that part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations.

All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, Room 4886, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in Part 4 to Title 15 of the *Code of Federal Regulations*. Information about the inspection and copying of records may be obtained from Margaret Cornejo, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 377-2593.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 799 of the Export Administration Regulations (15 CFR Parts 730-799) is amended as follows:

PART 799—[AMENDED]

1. The authority citation for 15 CFR Part 799 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*) as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 100-418 of August 23, 1988, and by Pub. L. 99-64 of July 12, 1985; E.O. 12523 of July 12, 1985

(50 FR 28757, July 18, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985), as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

§ 799.1 [AMENDED]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 3 (General Industrial Equipment), ECCN 1355A is amended by revising the *Validated License Required* paragraph, to read as follows:

1355A Equipment for the manufacture or testing of electronic components and materials; and specially designed components, accessories and "specially designed software" therefor.

Validated License Required: Country Groups QSTVWYZ, except as provided for magnetically enhanced sputtering equipment and wire bonders below.

Magnetically enhanced sputtering equipment. A validated license is required to Country Groups QSTVWYZ for single "wafer" in-line magnetically enhanced sputtering equipment and multiple wafer magnetically enhanced sputtering equipment that uses vacuum load locks to isolate the main chamber from the loading chamber. A validated license is required only to Country Groups QSWYZ, the People's Republic of China, and Afghanistan for other magnetically enhanced sputtering equipment controlled by paragraph (b) (1) (vi).

Technical Note: A "wafer" is a thin disk-like section of material (e.g., silicon, gallium arsenide, or aluminum oxide—crystalline or noncrystalline) that is the underlying support, base, or structure upon which materials are subsequently deposited and processed in the production of semiconductor devices.

Wire bonders. Wire bonders controlled by paragraph (b)(5)(ii) and not described below require a validated license only to Country Groups QSWYZ, the People's Republic of China, and Afghanistan. A validated license is required to Country Groups QSTVWYZ for "stored program controlled" wire bonders that are specially designed and enabled to be integrated into a "totally automated (semiconductor) manufacturing facility" or that have all of the following characteristics:

- (a) Bonding wire that is less than 0.0007 inches (17.5 micrometers) diameter;
- (b) Bond to bonding pads (on semiconductor circuits and devices) that are 0.0015 inches × 0.0015 inches (37.5 micrometers × 37.5 micrometers) or less

and spaced closer than 0.0025 inches (62.5 micrometers) from center to center; and

- (c) Have a bond cycle time of 100 ms or less per wire (bond cycle time measured with 1.5 mm distance between bonds).

Technical Note: A "totally automated (semiconductor) manufacturing facility" is one in which all equipment controls and all materials handling operations from the blank polished wafer through encapsulation and electronic test are performed without human intervention in the production of semiconductor circuits and devices. This is distinguished from an "automated (semiconductor) manufacturing facility" in which individual pieces of equipment used in the production of semiconductor circuits and devices are: (a) Controlled from a host computer; and (b) associated with facilities to supply material and remove processed material without human intervention.

Dated: June 1, 1989.

James M. LeMunyon,
Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-13450 Filed 6-2-89; 11:35 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 271

[Docket No. RM86-7-000; Order No. 473]

Compression Allowances and Protest Procedures Under NGPA Section 110

May 30, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Publication of pipeline filings made pursuant to Order No. 473.

SUMMARY: In Order No. 473, 52 FR 21,660 (June 9, 1987), the Federal Energy Regulatory Commission amended its regulations to provide parties an opportunity to protest allowances for delivery of natural gas which were heretofore presumed authorized by "area rate" clauses in gas sales contracts. Order No. 473 amended 18 CFR 271.1104(h) to require all interstate pipelines to provide a listing of those producers that have claimed an entitlement to delivery allowances pursuant to an "area rate" clause. The interstate pipelines were required to indicate whether they concurred in the producers claim for delivery allowances.

Attached are three lists provided by interstate pipelines as required by 18 CFR 271.1104(h) (1987). First, MISC, Inc.

(MIGC) made a filing on December 9, 1988. List I sets forth the only first seller selling gas to MIGC that asserts contractual authority to collect delivery allowances under an area rate clause. Second, Valley Gas Transmission, Inc. (Valley) filed List II and III on January 7, 1989. List II sets forth those first sellers and gas purchase contracts for which Valley concurs with the assertion of contractual authority to collect delivery allowances pursuant to an area rate clause. List III sets forth the first sellers and gas purchase contracts for which Valley protests the assertion of contractual authority to collect delivery allowances pursuant to an area rate clause.

DATE: As provided in 18 CFR 271.1104(h)(4)(i) (1987), any protest must be filed by September 5, 1989.

ADDRESS: An original and 14 copies of each protest must be filed with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Edward G. Gingold, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-9114.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the *Federal Register*, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. A copy of MIGC and Valley's filings may be obtained from CIPS up to 10 days following the date of issuance by the Commission. The complete text of this notice on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,
Secretary.

MIGC, INC. First Seller with Contractual Authority to Collect Production Related Costs

The only first seller selling gas to MIGC, Inc. (MIGC) that asserts contractual authority to collect delivery allowances under an area rate clause is Western Gas Processors, Ltd. (Western Gas). MIGC believes that Western Gas does have contractual authority to collect production-related costs permitted under Section 271.1104 of the Commission's Regulations. The number of Western Gas' seventh amendment to the gas sales contract is IP-5000 (S-2153) dated November 1, 1985.

Valley Gas Transmission, Inc.—Lost of First Sellers and Gas Purchase Contracts for Which Valley Concurs With The Assertion of Contractual Authority To Collect Delivery Allowances Pursuant To An Area Rate Clause

First seller	Contract date	Rate schedule No.
Phillips Petroleum Co.	04/06/66	427
Suburban Propane Gas Corp.	05/23/66	
TXO Production Corp.	05/23/66	

Valley Gas Transmission, Inc.—List of First Sellers and Gas Purchase Contracts For Which Valley Protests The Assertion of Contractual Authority To Collect Delivery Allowances Pursuant To An Area Rate Clause

First seller	Contract date	Rate schedule No.
None		

[FR Doc. 89-13334 Filed 6-5-89; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 134

Country of Origin Marking Requirement on Fruit Juice Containers

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Notice of Postponement of Effective Date of interpretive rule.

SUMMARY: This document advises interested parties that the scheduled June 7, 1989, implementation date for requiring that labels on frozen

concentrated and reconstituted fruit juices which contain imported concentrate be marked to show the foreign country of origin of the concentrate, is postponed.

EFFECTIVE DATE: The effective date of June 7, 1989, for merchandise entered, or withdrawn from warehouse for consumption is postponed.

FOR FURTHER INFORMATION CONTACT: John Doyle, Office of Regulations and Rulings (202) 566-5765.

SUPPLEMENTARY INFORMATION: Customs published a notice in the *Federal Register* on June 7, 1988 (53 FR 20836), announcing June 7, 1989, as the effective date for requiring that labels on frozen concentrated and reconstituted fruit juice products which contain imported concentrate be labeled to show the foreign country of origin of the concentrates. Such a rule is already in place in regard to imported orange juice concentrate and was to be extended to all other imported fruit juice concentrates. A method of compliance available to orange juice processors known as major supplier marking was also made available to processors of other juices.

Customs published another notice that same day (53 FR 20869), announcing that consideration was being given to discontinuing major supplier marking as an acceptable compliance method and requiring that all sources marking be the acceptable method for complying with the marking law as applied to imported fruit juice concentrate.

In the intervening months since those notices were published, Customs has considered the many comments received, and sought a resolution to this marking problem that balances the needs of all the parties concerned.

Determination

The June 7, 1989, implementation date for requiring that labels on frozen concentrated and reconstituted fruit juices which contain imported concentrate be marked to show the foreign country of origin of the concentrate, is postponed. Customs will publish a final rule concerning the country of origin marking of imported fruit juice concentrate, applicable to the entire juice industry, on or before August 7, 1989.

Date: June 1, 1989.

William von Raab,

Commissioner of Customs.

[FR Doc. 89-13564 Filed 6-5-89; 8:45 am]
BILLING CODE 4820-02-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 906

Colorado Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSMRE is announcing approval of an amendment to the Colorado permanent regulatory program (hereinafter referred to as the Colorado program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment pertains to the preservation of cultural and historic resources. It revises the State program to be consistent with the corresponding Federal regulations.

EFFECTIVE DATE: June 6, 1989.

FOR FURTHER INFORMATION CONTACT: Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 825 Silver Avenue, SW., Suite 310, Albuquerque, NM 87102; Telephone (505) 766-1486.

SUPPLEMENTARY INFORMATION:

- I. Background
- II. Submission of the Amendment
- III. Director's Findings
- IV. Summary and Disposition of Comments

I. Background on the Colorado Program

On December 15, 1980, the Secretary of the Interior conditionally approved the Colorado program. Information regarding the general background on the Colorado program, including the Secretary's findings, the disposition of comments, and a detailed explanation of the conditions of approval can be found in December 15, 1980, *Federal Register* (45 FR 82173). Actions taken subsequent to the approval of the Colorado program are found at 30 CFR 906.11, 906.15, and 906.30.

II. Submission of the Amendment

In accordance with the provisions of 30 CFR 732.17(d), the Director on June 9, 1987, notified Colorado of the changes necessary to ensure that the approved regulatory program was no less stringent than SMCRA and no less effective than the implementing Federal regulations with respect to the protection of cultural and historic resources. On October 14,

1988, Colorado submitted a proposed amendment partially addressing these concerns (Administrative Record No. CO-406). The proposed amendment pertains to the identification and protection of sites listed on or eligible for listing on the National Register of Historic Places (NRHP).

OSMRE announced receipt of the proposed amendment in the December 14, 1988, *Federal Register* (53 FR 50244) and, in the same notice, opened the public comment period and provided an opportunity for a public hearing on its substantive adequacy (Administrative Record No. CO-424). The public comment period closed on January 13, 1989. The public hearing, scheduled for January 9, 1989, was not held because no one requested an opportunity to testify.

III. Director's Findings

As discussed below, the Director finds, in accordance with SMCRA and 30 CFR 732.15 and 732.17, that the amendment submitted by Colorado on October 14, 1988, meets the requirements of, and is no less stringent and effective than, SMCRA and 30 CFR Chapter VII.

1. Rule 2.05.6(4)(b), Mitigation of Impacts of Mining Operations

Colorado proposes to add Rule 2.05.6(4)(b) which states that the Mined Land Reclamation Division (MLRD) may require an applicant for a mining permit to use appropriate mitigation and treatment measures to protect historic or archeological sites listed or eligible for listing on the NRHP as determined by the State Historic Preservation Officer (SHPO). It also states that such measures may be taken after permit issuance provided they are completed before the sites are affected by mining.

The proposed rule is substantively identical to the counterpart Federal regulations at 30 CFR 780.31(b) and 784.17(b), except that Colorado proposes to add language clarifying that the SHPO will make the determination on eligibility. The cited Federal regulations do not specify who makes the determination on eligibility.

However, the Federal regulations at 36 CFR 800.4(c), which implement Section 106 of the National Historic Preservation Act, specify that the Agency Official, in consultation with the SHPO, and following the Secretary's Standards and Guidelines for Evaluation, shall apply the National Register Criteria to evaluate properties for NRHP eligibility.

As stated in part I of this "SUPPLEMENTARY INFORMATION"

section of the notice, Colorado is a State with an approved regulatory program. In States with regulatory programs approved by OSMRE, the regulatory authority issues permits for surface coal mining operations. Accordingly, State-issued permits are State rather than Federal undertakings, and Federal laws and rules such as the provisions of the National Historic Preservation Act and 36 CFR Part 800 do not directly apply (52 FR 4250, February 10, 1987).

The provisions of 30 CFR 730.5 require State programs to be consistent with SMCRA and rules adopted by OSMRE under SMCRA. However, they do not require direct State program implementation of other Federal laws such as the National Historic Preservation Act. Thus, State programs must be no less effective than the Secretary's regulations in meeting the requirements of SMCRA. There is no requirement in SMCRA that the approved State program be "no less effective than" the requirements of the National Historic Preservation Act (52 FR 4250).

Additionally, as discussed in more detail below, the Director notes that the Advisory Council on Historic Preservation commented that it is appropriate for the SHPO to have the lead role in determining eligibility of sites for the NRHP.

With respect to the subject State program amendment, since Colorado has elected to defer to the SHPO in making determinations as to NRHP eligibility, the Director finds that proposed Rule 2.05.6(4)(b) provides for a process which is (1) as a practical matter, at least effective as that provided for in 36 CFR 800.4(c), and (2) no less effective than the corresponding Federal regulations at 30 CFR 780.31(b) and 784.17(b).

2. Rule 2.07.6(2)(e) (i) and (ii), Criteria for Permit Approval or Denial

This rule requires that, prior to permit approval, the MLRD find that the operation either will not adversely affect any publicly owned park or places listed on the NRHP or that the operation has been jointly approved by all affected agencies with jurisdiction over the park or place. This requirement does not apply to operations with valid existing rights. Colorado proposes to expand the scope of this finding to include not only places listed on the NRHP but also those eligible for listing. Colorado also proposes to add language clarifying that the SHPO will make the

determination as to whether a site is eligible for listing.

In response to OSMRE's June 9, 1987, Part 732 notification to Colorado on February 16, 1988, provided OSMRE with clarification that it interprets the phrase "publicly-owned park or place listed on the NRHP" in its proposed Rules 2.07.6(2)(e) (i) and (ii) to include both publicly and privately-owned sites (Administrative Record No. CO-364). Therefore, the proposed rule as written provides protection to both publicly and privately-owned sites listed on or eligible for listing on the NRHP.

As revised, the Colorado rule affords greater protection to historic resources than does the corresponding Federal rule at 30 CFR 773.15(c)(3)(ii), which does not include places eligible for listing on the NRHP.

Based upon Colorado's interpretation of its rule that it affords protection to publicly and privately-owned sites, and the revised rule that protects sites listed on and eligible for listing on the NRHP, the Director finds that the revised rule is no less effective than its Federal counterpart. As explained in finding No. 1, Colorado's proposal to rely on the SHPO for determinations of eligibility is also no less effective than the Federal requirements.

Furthermore, by extending the protection of this finding to sites eligible for listing on the NRHP, Colorado has rendered moot that portion of the June 9, 1987, Part 732 notification requiring an amendment of the program to include a finding no less effective than that contained in 30 CFR 773.15(c)(11). The cited Federal rule requires a finding that the regulatory authority has taken into account the effect of the proposed permitting action on properties listed and eligible for listing on the NRHP. Since the revised State rule requires a finding of either no adverse impact or joint agency approval for operations affecting such properties, the Director finds Colorado Rule 2.07.6(2)(e) as revised to be no less effective than 30 CFR 773.15(c)(11).

3. Rule 2.10.3(1)(g), Specific Information Requirements for Maps and Plans

Colorado Rule 2.10.3(1)(g) requires each permit applicant to submit a map showing the location of cultural and historic resource sites within the proposed permit and adjacent areas if they are listed on the NRHP. Colorado proposes to revise this rule to require that this map also show those sites eligible for listing on the NRHP. Colorado also proposes to add language clarifying that the SHPO will make the determination as to whether a site is eligible for listing.

As revised, the mapping requirements of this rule are substantively identical to those of the corresponding Federal regulations at 30 CFR 779.24(i) and 783.24(i). As explained in finding No. 1, Colorado's proposal to rely on the SHPO for determinations of eligibility is no less effective than the applicable Federal requirements. Therefore, the Director finds Colorado Rule 2.10.3(1)(g) to be no less effective than the counterpart Federal regulations at 30 CFR 779.24(i) and 783.24(i).

IV. Summary and Disposition of Comments

OSMRE did not receive any public comments in response to its December 14, 1988, Federal Register notice, and it did not hold a public hearing because no one requested an opportunity to provide testimony.

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11), OSMRE solicited comments from various Federal agencies having an actual or potential interest in the Colorado program. It did not receive any substantive comments in response to this solicitation of comments. Pursuant to 30 CFR 732.17(h)(4) OSMRE also solicited comments from the SHPO and the Advisory Council on Historic Preservation (the Council) on this cultural and historic resources proposed amendment. The Council commented on three aspects of the proposed amendment (Administrative Record No. CO-421). These comments are summarized and discussed below.

First, the Council commented that it assumed that the language of Colorado's rules would be accompanied by appropriate procedures providing for the identification of properties eligible for listing on the NRHP. In response, the Director notes that OSMRE's June 9, 1987, Part 732 notification still requires Colorado to amend Rule 2.04.4 to authorize Colorado MLRD to require permit applicants to identify and evaluate, through collection of additional information, conduct of field investigations, or other appropriate analyses, important historic and archaeological resources that may be eligible for listing on the NRHP. The Director also notes that the Colorado MLRD and the SHPO are apparently preparing a cooperative agreement that will detail the procedures for cultural and historic resource permitting reviews. Since the revision of Rule 2.04.4 and the execution of the cooperative agreement between the Colorado MLRD and the SHPO will address (1) the identification and evaluation of cultural and historic resources which may be

eligible for listing on the NRHP, and (2) the procedures to be followed during permit review to ensure that the MLRD and the SHPO properly consider all factors relating to cultural and historic resources, the Director has determined that no further action is required with regard to this comment.

Second, the Council commented that language paralleling that of Section 106 of the National Historic Preservation Act would be clearer than the language included in Colorado's proposed regulations. Specifically, the Council suggested that Colorado use the language "included in or eligible for inclusion in the National Register" in place of "listed on or those places eligible for listing * * * on the National Register of Historic Places." OSMRE did not require Colorado to revise its proposed rules in the manner suggested by the Council because the Colorado language is virtually identical to that contained in the counterpart Federal regulations and because its meaning is identical to that suggested by the Council.

Third, the Council also commented that while it is appropriate, as Colorado proposed, for the SHPO to have the lead role in determining eligibility of sites for the National Register, leaving these decisions to the unilateral discretion of the SHPO could create situations in which (1) OSMRE would be unable to exercise its section 106 responsibilities with respect to properties that are in fact eligible but have been determined ineligible by the SHPO, or (2) OSMRE would be carrying out section 106 responsibilities with respect to properties that are not, in fact, eligible. However, the Council concluded that such questions could probably be handled through consultation among the SHPO, OSMRE, the Keeper of the NRHP, and the Council without requiring further changes in Colorado's program.

In response, and for the following reasons, the Director agrees with the Council's conclusion that no further changes to Colorado's program are required. The Director notes, as previously stated, that in States such as Colorado with regulatory programs approved by OSMRE, the State, not OSMRE, issues permits for surface coal mining operations. Accordingly, it is not appropriate for OSMRE to routinely become involved in questions of eligibility arising from State actions, nor is such involvement and the involvement of the Keeper of the NRHP required under the Council's regulations at 36 CFR 800.4(c). Rather, such questions are to be determined by the

Agency Official, in consultation with the SHPO. The Director recognizes that, under 36 CFR 800.4(c)(4), the Council and the Secretary have the right, on their own initiative, to intervene on a case-by-case basis and elevate the question of eligibility to the Secretarial level. While this provision is rarely invoked, the Director does not interpret the Colorado rule as foreclosing this possibility, nor does the State have the authority to do so. Rather, the State's rules are intended to clarify routine determination procedures; where, as specified above, the Council or the Secretary decide to remove such decision-making authority from the SHPO, OSMRE expects that Colorado will abide by such a decision, as required by the National Historic Preservation Act. Additionally, the Director does not interpret the Colorado rule as foreclosing the SHPO, if the SHPO so desires, from seeking the advice of the Keeper of the NRHP in determining eligibility of sites for the NRHP.

V. Director's Decision

Based on the above findings, the Director is approving the proposed amendment submitted by Colorado on October 14, 1988. The Federal regulations at 30 CFR Part 906 that codify decisions concerning the Colorado program are being amended to implement this decision. The Director is approving the rules with the provision that they be fully promulgated in a form identical to that submitted to and reviewed by OSMRE and the public. However, the Director may require further changes in the future as a result of Federal regulatory revisions, court decisions, and OSMRE oversight of the Colorado program. This final rule is being made effective immediately to expedite the State program amendment process and to encourage States to bring their programs into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Compliance with the National Environmental Policy Act

The Secretary has determined that, pursuant to section 702(d) of SMCRA, 30 U.S.C. 1292(d), no environmental impact statement need be prepared on this rulemaking.

2. Executive Order No. 12291 and the Regulatory Flexibility Act

On July 12, 1984, the Office of Management and Budget (OMB) granted OSMRE an exemption from sections 3, 4,

7, and 8 of Executive Order 12291 for action directly related to approval or conditional approval of State regulatory programs. Therefore, this action is exempt from preparation of a Regulatory Impact Analysis and regulatory review by OMB.

The Secretary has determined that this rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This rule will not impose any new requirements; rather, it will ensure that existing requirements established by SMCRA and the Federal rules will be met by the State.

3. Paperwork Reduction Act

This rule does not contain information collection requirements which require approval by the OMB pursuant to 44 U.S.C. 3507.

List of Subjects in 30 CFR Part 906

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Allen D. Klein,
Acting Assistant Director, Western Field Operations.

Date: May 26, 1989.

For the reasons set out in the preamble, Title 30, Chapter VII, Subchapter T of the Code of Federal Regulations is amended as set forth below.

PART 906—COLORADO

1. The authority citation for Part 906 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 906.15 is amended by adding a new paragraph (l) to read as follows:

§ 906.15 Approval of regulatory program amendments.

(l) Revisions to § 2.05.6(4)(b), 2.07.6(2)(e) (i) and (ii), and 2.10.3(1)(g) of 2 CCR 407-2, the rules and regulations of the Colorado Mined Land Reclamation Board, as submitted on October 14, 1988, are approved effective June 6, 1989. The revisions pertain to the identification and protection of cultural and historical resources.

[FR Doc. 89-13365 Filed 6-5-89; 8:45 am]
BILLING CODE 4310-05-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[COTP Hampton Roads, Regulation 89-37]

Safety Zone; Chesapeake Bay, Off Fort Story, Virginia Beach, VA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is amending the safety zone established around a U.S. Navy exercise off Fort Story in Virginia Beach, Virginia. The exercise began May 28, 1989 and is scheduled to end June 8, 1989. The safety zone is intended to minimize the risk of collision between military exercise vessels and other vessels. The Captain of the Port will close all access to the safety zone to non-exercise vessels in the interest of safety. Vessels or individuals will not be permitted to enter the safety zone, except in an emergency and then only in accordance with Captain of the Port orders or directions. In the event of an emergency, the Captain of the Port may be reached at phone: (804) 441-3314 and on VHF-FM channels 13 or 16.

EFFECTIVE DATE: These amended regulations are effective from 4:00 p.m., May 30, 1989 to 11:59 p.m., June 8, 1989, unless terminated sooner by the Captain of the Port Hampton Roads, Virginia.

FOR FURTHER INFORMATION CONTACT: Lieutenant Commander R.R. Fiebrandt at telephone number (804) 441-3295.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 553 a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impractical since the safety zone is already in existence. This regulation amends the safety zone by making it smaller and is considered to be in the public interest.

Drafting Information

The drafters of this amended regulation are Lieutenant Commander R.R. Fiebrandt, Project Officer, and Lieutenant Commander R. K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Coast Guard has established a safety zone around a U. S. Navy exercise in the waters off Fort Story in Virginia Beach, Virginia from May 28, 1989 to June 8, 1989. This regulation was published in the Federal Register on

May 26, 1989. The safety zone has been found to encompass more area than was actually needed and is being made smaller to reduce the impact on the public. The safety zone is needed to minimize the risk of collision between military exercise vessels and other vessels. The Captain of the Port will close all access to the safety zone to non-exercise vessels in the interest of safety. Vessels or individuals will not be permitted to enter the safety zone, except in an emergency and then only in accordance with Captain of the Port orders or directions. The boundaries of the safety zone will be marked by special purpose buoys with flashing yellow lights and Coast Guard patrol boats will be stationed along the boundaries of the safety zone. Coast Guard patrol vessels will be on scene at all times while the safety zone is in effect to notify boaters of the zone restrictions and to enforce the safety zone. Coast Guard patrol vessels will be monitoring channels 13 and 16 VHF-FM. Members of other Federal, state, local and private agencies may assist the Captain of the Port in enforcing these regulations.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Final Regulation

In consideration of the foregoing, Subpart D of Part 165 of Title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05-1(g), 6.04-1, 6.04-6 and 160.5.

2. Section 165.T0537 is revised to read as follows:

§ 165.T0537 Safety Zone: Chesapeake Bay, off Fort Story, Virginia Beach, Virginia.

(a) Location. The following area is a safety zone: The waters of the Chesapeake Bay bounded by the shoreline and a line connecting the following points:

Latitude	Longitude
36°55'30.0" N.	76°02'44.0" W.
36°56'03.7" N.	76°03'24.0" W.
36°57'06.0" N.	76°02'40.0" W.
36°56'58.0" N.	76°01'30.0" W.
36°55'54.0" N.	76°01'30.0" W.

(b) For the purposes of this section "representative of the Captain of the Port" means a Coast Guard commissioned, warrant or petty officer

who has been designated by the Captain of the Port to act on his behalf with respect to this safety zone.

(c) *Regulations.* (1) No person or vessel, other than those participating in the U. S. Navy exercise, may transit or otherwise enter, remain in or anchor in the safety zone.

(2) The Captain of the Port or a representative of the Captain of the Port may permit access to or open the safety zone to non-exercise vessels if he deems it necessary in the interest of safety or in the event of an emergency. The Captain of the Port may be reached at phone: (804) 441-3299 and on VHF-FM channels 13 or 16.

(3) Any person or vessel given permission to enter the safety zone under the provisions of paragraph (c)(2) of this section shall obey immediately any and all directions or orders of the Captain of the Port or a representative of the Captain of the Port.

(d) *Effective dates.* These regulations are effective from 5:00 a.m., May 28, 1989 to 11:59 p.m., June 8, 1989, unless terminated sooner by the Captain of the Port Hampton Roads, Virginia.

Dated: May 30, 1989.

E.K. Johnson,

Captain, U. S. Coast Guard, Captain of the Port Hampton Roads.

[FR Doc. 89-13310 Filed 6-5-89; 8:45 am]

BILLING CODE 4910-14-M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 301

[Docket No. CRT 89-4-RM]

Modification of Rules of Agency Organization

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Tribunal is amending one of its rules concerning agency organization. The amendment clarifies the procedure for the rotation of chairmanship. This action is in response to the agency's own internal review of its rules.

EFFECTIVE DATE: July 6, 1989.

FOR FURTHER INFORMATION CONTACT: Robert Cassler, General Counsel, Copyright Royalty Tribunal, 1111 20th Street, NW., Suite 450, Washington, DC 20036 (202-653-5175).

SUPPLEMENTARY INFORMATION:

List of Subjects in 37 CFR Part 301

Administrative practice and procedure, Freedom of information, Sunshine Act.

For the reasons set forth in the preamble, the Tribunal is amending 37 CFR Part 301 as follows:

PART 301—COPYRIGHT ROYALTY TRIBUNAL RULES OF PROCEDURE

1. The authority citation for Part 301 continues to read as follows:

Authority: 17 U.S.C. 803(a).

2. In § 301.4, paragraph (a) is revised as follows:

§ 301.4 The Chairman

(a) On December 1st of each year, the Chairman will be designated for a term of 1 year from the most senior Commissioner who has not yet previously served as Chairman, or, if all the Commissioners have served, the most senior Commissioner who has served the least number of terms will be designated Chairman, provided, that unless he is the most senior of all sitting Commissioners, no Commissioner may serve as Chairman until he has served at least one year as a Commissioner.

Edward W. Ray,
Chairman.

Dated: June 1, 1989.

[FR Doc. 89-13372 Filed 6-5-89; 8:45 am]

BILLING CODE 1410-06-M

DEPARTMENT OF VETERANS AFFAIRS

48 CFR Parts 828 and 829

VA Acquisition Regulation; Bonds, Insurance and Taxes

RIN 2900-AE00

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs (VA) is amending the VA Acquisition Regulation (VAAR) to assure that all Department-issued procurement-related regulations are essential to implement Governmentwide policies and procedures within the Department. In addition, authorization is given to the head of the contracting activity to approve group insurance plans under cost reimbursement contracts. Other administrative and technical changes are made as well as deleting duplicative coverage already provided for in the Federal Acquisition Regulation (FAR).

EFFECTIVE DATE: May 28, 1989.

FOR FURTHER INFORMATION CONTACT: Mildred C. Shields, Acquisition Policy

Staff (93), Office of Acquisition and Materiel Management, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC, (202) 233-4339.

SUPPLEMENTARY INFORMATION:

I. Background

The Office of Federal Procurement Policy (OFPP) of the Office of Management and Budget has directed each executive agency to review their respective acquisition regulations to ensure that they are the minimum necessary to appropriately implement and supplement the FAR. This mandate is specifically aimed at reducing repetitive coverage in the agency acquisition regulation text.

This document contains a technical amendment to change the title of Title 48, Code of Federal Regulations, Chapter 8, Veterans Administration, to Title 48, Code of Federal Regulations, Chapter 8, Department of Veterans Affairs, to conform to the redesignation of the Veterans Administration to the Department of Veterans Affairs (Pub. L. 100-527).

VA is amending its regulations to update organizational titles and to delete duplicative coverage from 48 CFR Chapter 8. In addition, authorization is being given the head of the contracting activity to approve group insurance plans under cost reimbursement contracts.

These changes are internal VA management policies and therefore public participation is unnecessary (5 U.S.C. 553(d)(3)).

II. Executive Order 12291

Pursuant to the memorandum from the Director, Office of Management and Budget, to the Administrator, Office of Information and Regulatory Affairs, dated December 13, 1984, this proposed rule is exempt from sections 3 and 4 or Executive Order 12291.

III. Regulatory Flexibility Act (RFA)

Since a notice of proposed rulemaking is unnecessary and will not be published, these amendments do not come within the term "rule" as defined in the Regulatory Flexibility Act, 5 U.S.C. 601(2), and are therefore not subject to the requirements of the Act. Nevertheless, these amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612.

IV. Paperwork Reduction Act

These amendments do not impose any additional reporting or recordkeeping requirements on the public which require the approval of the Office of

Management and Budget under 44 U.S.C. 3501 et seq.

List of Subjects in 48 CFR 828 and 829

Government procurement.

Approved: May 26, 1989.

Edward J. Derwinski,
Secretary.

In 48 CFR Chapter 8, the title, and Parts 828 and 829 are amended as follows:

1. Title 48, Chapter 8, Code of Federal Regulations, is amended by revising the title to read as follows: Chapter 8—Department of Veterans Affairs

2. The authority citation for Parts 828 and 829 continues to read as follows:

Authority: 38 U.S.C. 210 and 40. U.S.C. 486(c).

PART 828—[AMENDED]

Subpart 828.2—[Removed]

3. Subpart 828.2, sections 828.203, 828.203-1, and 828.203-2 are removed.

4. Section 828.307-1 is added to read as follows:

828.307-1 Group Insurance plans.

Under cost reimbursements contracts, before buying insurance under a group insurance plan, the contractor shall submit the plan to the contracting officer for review. During review, the contracting officer should utilize all sources of information available such as audit, industry practices, etc., to determine that acceptance of the group insurance plan, as submitted, is in the Government's best interest, prior to submitting the determination and the plan to the head of the contracting activity for approval.

828.7101 [Amended]

5. In 828.7101(a), remove the word "Administrator" and insert in its place, the word "Secretary", and in 828.7101(b), remove the words "Procurement and Supply" and insert in their place, the words "Acquisition and Materiel Management".

PART 829—[AMENDED]

829.202-70 [Amended]

6. In 829.202-70(a)(2), remove the words "Chief, Marketing Center," and insert in their place, the words "Director, Marketing Center", and remove the words "Chief, Supply Service" and insert in their place, the words "Chief, Acquisition and Materiel Management Service".

829.270 [Amended]

7. In 829.270(a) remove the words "the VA" wherever they appear and insert in their place, the word "VA".

829.270-1 [Amended]

8. In 829.270-1, in paragraphs (a), (b), and (e), remove the words "the VA" wherever they appear and insert in their place, the word "VA".

829.270-2 [Amended]

9. In 829.270-2, the section heading is amended to read as follows:

829.270-2 Processing of order by Department of Veterans Affairs.

Subpart 829.3—[Removed]

10. Subpart 829.3 and section 829.302 are removed.

[FR Doc. 89-13296 Filed 6-5-89; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-97; Amdt. 192-60A]

RIN 2137-AB20

Confirmation or Revision of Maximum Allowable Operating Pressure; Alternative Method

AGENCY: Research and Special Programs Administration (RSPA), DOT.
ACTION: Final rule.

SUMMARY: Under this final rule, the maximum allowable operating pressure (MAOP) of a pipeline may be confirmed or revised as a specified percentage of its past test pressure, provided the test was conducted for at least 8 hours. Previously, a pipeline must have been tested to at least 90 percent of the specified minimum yield strength (SMYS) of the pipe to qualify for this method of confirming or revising MAOP. This rule change may reduce the need to retest pipelines for which past test pressures provide an adequate safety basis for current operating pressures.

EFFECTIVE DATE: This final rule takes effect July 6, 1989.

FOR FURTHER INFORMATION CONTACT: Bernard L. Liebler, (202) 366-2392, regarding the subject matter of this final rule or the Docket Unit, (202) 366-4148, regarding copies of this final rule or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

Section 192.611 requires that, when the class location (population density) of a pipeline segment increases, the

maximum allowable operating pressure (MAOP) must be confirmed or revised to be compatible with the existing class location. The rule permits three alternatives for confirming or revising the MAOP of the pipeline segment.

Under the first alternative (§ 192.611(a)), if the pipeline segment has been tested to at least 90 percent of its SMYS, its MAOP must be confirmed or reduced so that the resulting hoop stress will not exceed 72 percent of SMYS in Class 2 locations; 60 percent of SMYS in Class 3 locations; and 50 percent of SMYS in Class 4 locations. Under the second alternative (§ 192.611(b)), if the segment has not been tested to 90 percent of its SMYS, the MAOP must be reduced so that the corresponding hoop stress is not greater than that permitted for new segments of pipeline in the existing class location. Finally, the third alternative (§ 192.611(c)) requires pressure testing of the pipeline segment in accordance with the requirements of Subpart J. Pipeline segments tested under this alternative must be operated within the hoop stress constraints of the first alternative, and the MAOP is limited to 0.8 times the test pressure in Class 2, 0.667 in Class 3, and 0.555 in Class 4.

Notice 1 of this proceeding (53 FR 1043, January 15, 1988) proposed revising the first alternative to permit operators to confirm or revise the MAOP of a pipeline segment within the hoop stress constraints and MAOP limits of the third alternative based on any prior test pressure held for at least 8 hours. Under this proposal, the pipeline segment need not have been tested to at least 90 percent of its SMYS.

Comments

In response to Notice 1, RSPA received 28 comments from operators, State regulatory agencies, and trade groups. The commenters unanimously supported the objective of the proposed rule change.

A few commenters, however, suggested minor modifications so that the proposed alternative method would not result in a lower MAOP than could be obtained under § 192.611(b). One of these commenters cited the example of a pipeline tested originally to a pressure creating a hoop stress of 66 percent of SMYS, operating currently at 60 percent of SMYS, and experiencing a class location change from Class 2 to Class 3. This commenter noted that, under the proposed alternative method, the pipeline could be operated at 44 percent of SMYS ($66\% \times .667 = 44\%$), but it could be operated under the second alternative (§ 192.611(b)) at a pressure

producing a hoop stress of 50 percent of SMYS.

RSPA has not modified the proposed alternative method as recommended because it was not intended necessarily to allow a higher MAOP than other permitted methods. The intent of the proposed rule was to provide an alternative to retesting pipelines for all pipelines previously tested for at least 8 hours.

One commenter assumed that § 192.611 (a), (b), and (c) must be applied sequentially. Rather, Section 192.611 provides alternative methods for confirming or revising MAOP each of which results in a safe operating pressure. (See, e.g., Docket No. PS-90, Amdt. 192-53; 51 FR 34987.) The alternative method incorporated in this final rule will not change that policy. It will simply provide the operator with an additional method to apply in the proper circumstances.

To ensure the clarity of the rule, RSPA has revised the language of § 192.611 (a), (b), and (c) to specify the alternative nature of the requirements. In addition, RSPA has deleted the existing § 192.611(e)(1), which applies to class location changes that occurred before July 1, 1973, because this section is obsolete; and in the new paragraph (c), a reference to paragraph (a)(1) has been included because as a result of this amendment, pressure reduction may occur under either paragraph (a)(1) or (a)(2).

Advisory Committee Review

Section 4(b) of the Natural Gas Pipeline Safety Act of 1968, as amended (49 U.S.C. 1673(b)), requires that each proposed amendment to a safety standard established under this statute be submitted to a 15-member advisory committee for its consideration. The Technical Pipeline Safety Standards Committee, composed of persons knowledgeable about transportation of gas by pipeline, discussed the proposed rule at a meeting held September 22, 1987. The Committee voted unanimously that the proposal was technically feasible, reasonable, and practicable. The Committee's official report for the meeting is in the docket.

Impact Assessment

This final rule is considered to be nonmajor under Executive Order 12291 and is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). Since the rule provides an alternative to an existing requirement, it will have a minimal impact on the economy, and a further evaluation of costs and benefits is unnecessary. Also, based on the facts

available about the impact of this rulemaking action, I certify pursuant to section 605 of the Regulatory Flexibility Act that the action will not have a significant economic impact on a substantial number of small entities.

RSPA has analyzed this action in accordance with the principles and criteria contained in E. O. 12612 (52 FR 41685) and has determined that it does not have sufficient federalism implications to warrant preparing a Federalism Assessment.

List of Subjects in 49 CFR Part 192

Pipeline Safety, Test, Tie-in, Joint.

In view of the foregoing RSPA amends 49 CFR Part 192 as follows:

PART 192—[AMENDED]

1. The authority citation for Part 192 continues to read as follows:

Authority: 49 App. U.S.C. 1672 and 1804; 49 CFR 1.53.

2. Section 192.611 is revised to read as follows:

§ 192.611 Change in class location: Confirmation or revision of maximum allowable operating pressure.

(a) If the hoop stress corresponding to the established maximum allowable operating pressure of a segment of pipeline is not commensurate with the present class location, and the segment is in satisfactory physical condition, the maximum allowable operating pressure of that segment of pipeline must be confirmed or revised according to one of the following requirements:

(1) If the segment involved has been previously tested in place for a period of not less than 8 hours, the maximum allowable operating pressure is 0.8 times the test pressure in Class 2 locations, 0.667 times the test pressure in Class 3 locations, or 0.555 times the test pressure in Class 4 locations. The corresponding hoop stress may not exceed 72 percent of the SMYS of the pipe in Class 2 locations, 60 percent of SMYS in Class 3 locations, or 50 percent of SMYS in Class 4 locations.

(2) The maximum allowable operating pressure of the segment involved must be reduced so that the corresponding hoop stress is not more than that allowed by this part for new segments of pipelines in the existing class location.

(3) The segment involved must be tested in accordance with the applicable requirements of Subpart J of this part, and its maximum allowable operating pressure must then be established according to the following criteria:

(i) The maximum allowable operating pressure after the requalification test is 0.8 times the test pressure for Class 2 locations, 0.667 times the test pressure for Class 3 locations, and 0.555 times the test pressure for Class 4 locations.

(ii) The maximum allowable operating pressure confirmed or revised in accordance with this section, may not exceed the maximum allowable operating pressure established before the confirmation or revision.

(iii) The corresponding hoop stress may not exceed 72 percent of the SMYS of the pipe in Class 2 locations, 60 percent of SMYS in Class 3 locations, or 50 percent of SMYS in Class 4 locations.

(b) Confirmation or revision of the maximum allowable operating pressure of a segment of pipeline in accordance with this section does not preclude the application of §§ 192.553 and 192.555.

(c) Confirmation or revision of the maximum allowable operating pressure that is required as a result of a study under § 192.609 must be completed within 18 months of the change in class location. Pressure reduction under paragraph (a) (1) or (2) of this section within the 18-month period does not preclude establishing a maximum allowable operating pressure under paragraph (a)(3) of this section at a later date.

Issued in Washington, DC, on June 1, 1989.

Travis P. Dungan,
Administrator, Research & Special Programs
Administration.

[FR Doc. 89-13388 Filed 6-5-89; 8:45 am]

BILLING CODE 4810-80-M

DEPARTMENT OF COMMERCE

National Oceanic and Administration

50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California; Corrections

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of 1989 fishery management measures, modification of the Klamath River fall chinook spawning escapement rate; corrections.

SUMMARY: This notice corrects an error and clarifies a table in the notice of 1989 fishery management measures and modified spawning escapement rate for the commercial and recreational ocean salmon fisheries off Washington, Oregon, and California, which was published May 8, 1989 (54 FR 19798).

EFFECTIVE DATE: May 1, 1989.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS), 206-526-6140; Rodney R. McInnis (Southwest Region, NMFS), 213-514-6199; or Lawrence D. Six (Pacific Fishery Management Council), 503-221-6352.

In FR document 89-10793 in the issue of May 8, 1989, beginning on page 19798, the following corrections are made:

1. On page 19800, column 1, under the heading "Pink Salmon Stocks", in line 21 of the 2nd paragraph, the coordinate is corrected to read "48° N. lat.".

2. Table 3 on pages 19807-8 is clarified to indicate that the restrictions specified under the "Special restrictions by area" column apply to both open seasons defined under each treaty-Indian tribe. For example, under the Makah tribe, the special restriction by area (stating "Barbless hooks, except that hooks used with bait and plugs may be barbed. No more than 8 fixed lines per boat, or no more than 4 hand-held lines per person") applies to both the open seasons indicated.

Note: For an additional correction to the document referenced in this document, see the corrections section of this issue.

Dated: May 31, 1989.

James E. Douglas, Jr.,
Deputy Assistant Administrator For
Fisheries, National Marine Fisheries Service.

[FR Doc. 89-13293 Filed 6-5-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

United States Standards for Wheat

AGENCY: Federal Grain Inspection Service, USDA.

ACTION: Proposed Rule.

SUMMARY: The Federal Grain Inspection Service (FGIS or Service) is proposing to amend the United States Standards for wheat by replacing the single class White Wheat with two classes, Hard White wheat (HWW) and Soft White wheat (SWW). The class SWW would have three subclasses, Common White wheat, White Club Wheat and Western White Wheat. The class HWW would have no subclasses. These changes would provide greater consistency in applying the standards; make the standards easier to interpret; and would facilitate trade in both hard and soft white wheat.

DATE: Comments must be submitted on or before August 7, 1989.

ADDRESS: Written comments must be submitted to Lewis Lebakken, Jr., Resources Management Division, USDA, FGIS, Room 0628 South Building, P.O. Box 96454, Washington, DC, 20090-6454. Telemail users may respond to [IRSTAFF/FGIS/USDA] telemail; telex users may respond to Lewis Lebakken, Jr., TLX: 7606351, ANS: FGIS UC; and telecopy users may send responses to the automatic telecopier machine at (202) 447-4628.

All comments received will be made available during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Jr., address as above, telephone (202) 475-3428.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation

1512-1. This action has been classified as nonmajor because it does not meet the criteria for a major regulation established in the Order.

Regulatory Flexibility Act Certification

W. Kirk Miller, Administrator, FGIS, has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities because those persons that apply the standards and most users of the inspection service do not meet the requirements for small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 610 et seq.). Further, the standards are applied equally to all entities.

Background

The United States Standards for Wheat include the following seven classes: Hard Red Spring wheat, Durum wheat, Hard Red Winter wheat, Soft Red Winter wheat, White wheat, Unclassed wheat and Mixed wheat. White wheat has four subclasses which are Hard White wheat, Soft White wheat, White Club wheat and Western White wheat.

Grain inspectors class wheat by visually examining kernel characteristics such as length, width, contour, and texture. Subclasses in wheat, excluding White Club and Western White, are based on a visual examination for vitreousness or hardness. Visual examination of wheat kernels to determine class and subclass has been used since 1917 and is currently the only approved method.

The recent development of white wheat varieties with hard endosperms and the establishment of a market for them creates a need to revise the United States Standards for Wheat. Milling and baking studies demonstrate a significant difference in milling properties and in end-use functions between hard and soft endosperm wheats. Hard and soft endosperm wheats are marketed as separate products to meet specific end-use needs. To reflect the specific end uses, the standards should address to the extent practicable, hard and soft endosperm wheats as separate wheat classes and consider the mixing of the two wheat types as mixed wheat.

A second issue regarding the current White wheat class standards focuses on the method used to distinguish the subclasses. The current standards define HWW as white wheat with 75 percent or more hard kernels and 10

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percent or less club wheat, SWW is defined as white wheat with less than 75 percent hard kernels and 10 percent or less club wheat. Inspectors determine whether a kernel is hard based on the visual appearance of the kernel. Vitreous kernels are considered hard and nonvitreous kernels are considered soft. However, the visual analysis of wheat for vitreousness does not indicate whether the endosperm is hard or soft.

Until recently, the White wheat standards sufficiently met the needs of the industry. The subclass HWW accommodated occasional samples of wheat which had a high percentage of vitreous kernels and needed to be separated from the subclasses Soft White, White Club and Western White. However, six States now have active breeding programs to produce white wheat with hard endosperms and two States are producing them commercially. California leads this effort with the commercial production of hard endosperm white wheat. This production has increased to the extent that export shipments are predicted in 1989. Kansas wheat producers are growing two varieties of hard endosperm white wheat which are identity preserved in the marketing system. Montana State University is working on several varieties. Both Colorado and Idaho are producing small quantities of hard endosperm white wheat from the California variety.

Proposed Action

A HWW classification subcommittee of U.S. Wheat Associates, representing the HWW producers and the Pacific Northwest SWW producers recommended changes in the class White wheat to: create new classes called Hard White wheat and Soft White wheat; eliminate the class White wheat; eliminate the 75 percent hard kernel definition; and eliminate the subclass HWW.

FGIS proposes to revise the Official U.S. Standards for Wheat by replacing the current White wheat class with the classes HWW and SWW. The class SWW would have three subclasses, Common White, White Club and Western White. Further, under the current standards, Hard White wheat is white wheat that contains 75 percent or more of hard kernels and Soft White wheat is white wheat with less than 75 percent of hard kernels. Both may not

contain more than 10 percent White Club wheat. This proposal would revise the standards to eliminate the 75 percent vitreous kernel requirements. This would improve the ability under the standards to identify and grade hard and soft varieties as are marketed by the trade and thereby more approximately reflect end uses.

HWW and SWW would be defined as all hard endosperm white wheat varieties and all soft endosperm white wheat varieties, respectively. The class would be determined by visually examining the varietal kernel characteristics. The presence of HWW in SWW or SWW in HWW would be treated as "wheat of other classes."

The classes HWW and SWW would be treated as "contrasting classes" with respect to Durum, HRS, and HRW. Soft Red Winter wheat would be treated as "contrasting classes" in HWW and SWW because of the color contrast rather than "wheat of other classes" as is currently the case in the class White wheat. Because of the new class name SWW, the subclass name SWW would be changed to Common White wheat.

If this proposal is adopted, HWW and SWW will be classified by varietal kernel characteristics rather than vitreousness of the kernel. This method of classification is feasible at this time since only a few hard endosperm white wheat varieties are being produced. If more hard endosperm varieties are released into the marketplace in the future, the proposed classification system may become less practical. Therefore, FGIS is currently considering the development of alternative testing methods as the basis of a future classification system.

The proposed changes to the standards would provide greater consistency in applying the standards; make them easier to interpret; and facilitate trade in both hard and soft white wheat.

Pursuant to section 4(b) of the United States Grain Standards Act (7 U.S.C. 76(b)), no standards established or amendments or revocations of standards are to become effective less than one calendar year after promulgation, unless in the judgment of the Administrator, the public health, interest, or safety requires that they become effective sooner. If this proposal is adopted, it should become effective to coincide with the crop year, which begins on May 1, 1990.

List of Subjects in 7 CFR Part 810

Export, Grain.

For reasons set forth in the preamble, 7 CFR Part 810 is proposed to be amended as follows:

PART 810—OFFICIAL UNITED STATES STANDARDS FOR GRAIN

1. The authority citation for Part 810 continues to read as follows:

Authority: Sections 3A and 4, United States Grain Standards Act (7 U.S.C. 75a, 76).

Subpart L—United States Standards for Wheat

Section 810.2202 (a) and (b) are revised to read as follows:

§ 810.2202 Definition of other terms.

(a) *Classes.* There are eight classes for wheat: Durum wheat, Hard Red Spring wheat, Hard Red Winter wheat, Hard White wheat, Soft Red Winter wheat, Soft White wheat, Unclassed wheat, and Mixed wheat.

(1) *Durum wheat.* All varieties of white (amber) durum wheat. This class is divided into the following three subclasses:

(i) *Hard Amber Durum wheat.* Durum wheat with 75 percent or more of hard and vitreous kernels of amber color.

(ii) *Amber Durum Wheat.* Durum wheat with 60 percent or more but less than 75 percent of hard and vitreous kernels of amber color.

(iii) *Durum wheat.* Durum wheat with less than 60 percent of hard and vitreous kernels of amber color.

(2) *Hard Red Spring wheat.* All varieties of Hard Red Spring wheat. This class shall be divided into the following three subclasses:

(i) *Dark Northern Spring wheat.* Hard Red Spring wheat with 75 percent or more of dark, hard, and vitreous kernels.

(ii) *Northern Spring wheat.* Hard Red Spring wheat with 25 percent or more but less than 75 percent of dark, hard, and vitreous kernels.

(iii) *Red Spring wheat.* Hard Red Spring wheat with less than 25 percent of dark, hard, and vitreous kernels.

(3) *Hard Red Winter wheat.* All varieties of Hard Red Winter wheat. There are no subclasses in this class.

(4) *Hard White wheat.* All hard endosperm white wheat varieties. There are no subclasses in this class.

(5) *Soft Red Winter wheat.* All varieties of Soft Red Winter wheat. There are no subclasses in this class.

(6) *Soft White wheat.* All soft endosperm white wheat varieties. This class is divided into the following three subclasses:

(i) *Common White wheat.* Soft endosperm white wheat varieties which contain not more than 10 percent of white club wheat.

(ii) *White Club wheat.* Club headed soft endosperm, white wheat varieties containing not more than 10 percent of white club wheat.

(iii) *Western White wheat.* Soft White wheat containing more than 10 percent of other soft white wheats.

(7) *Unclassed wheat.* Any variety of wheat that is not classifiable under other criteria provided in the wheat standards. There are no subclasses in this class. This class includes:

(i) Red durum wheat.

(ii) Any wheat which is other than red or white in color.

(8) *Mixed wheat.* Any mixture of wheat that consists of less than 90 percent of one class and more than 10 percent of one other class, or a combination of classes that meet the definition of wheat.

(b) *Contrasting classes.* Contrasting classes are:

(1) Durum wheat, Hard White wheat, Soft White wheat, and Unclassed wheat in the classes Hard Red Spring wheat and Hard Red Winter wheat.

(2) Hard Red Spring wheat, Hard Red Winter wheat, Hard White wheat, Soft Red Winter wheat, Soft White wheat, and Unclassed wheat in the class Durum wheat.

(3) Durum wheat and Unclassed wheat in the class Soft Red Winter wheat.

(4) Hard Red Spring wheat, Durum wheat, Hard Red Winter wheat, Soft Red Winter wheat, and Unclassed wheat, in the classes Hard White wheat and Soft White wheat.

Dated: May 23, 1989.

W. Kirk Miller,

Administrator.

[FR Doc. 89-13397 Filed 6-5-89; 8:45 am]

BILLING CODE 3410-EN-M

Farmers Home Administration

7 CFR Part 1980

Form FmHA 1980-27 "Contract of Guarantee" (Line of Credit)

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend Form FmHA 1980-27, "Contract of Guarantee (Line of Credit)," for clarification. A change is proposed in section (1)(b) of the form to add the word delinquent preceding the word taxes so that the form would agree with the present regulations. The change of

significance is made under "When Guarantee Terminates". The intended effect of this action is to clarify that the loan balance may float between \$0 and the ceiling amount during the advance period (first 3 years) rather than the present method which requires the lender to maintain a balance from year at all times in order to keep the guarantee in effect. The other changes are made to eliminate confusion between a Line of Credit Agreement and a Promissory note. Either of these two methods is acceptable for a line of credit provided they meet all requirements of the regulations.

DATES: Comments are due on or before July 6, 1989.

FOR FURTHER INFORMATION CONTACT: Paul D. Hardin, Loan Officer, USDA FmHA, Farmer Program Loan Making Division, Guaranteed Branch, Room 5439-S, 14th Street and Independence Avenue SW., Washington, DC 20250, Telephone: (202) 382-1657.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established in Department Regulation 1512-1 which implements Executive Order 12291, and has been determined to be non-major. The annual effect on the economy is less than \$100

million and there will be no significant adverse increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

Program Affected

The program which this form affects is listed in the Catalog of Federal Domestic Assistance under No. 10.406 Farm Operating Loans. For the reasons set forth in the Final Rule related Notice to 7 CFR Part 3015, Subpart V, 48 FR 29115, June 24, 1983, this program/activity is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with state and local officials.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR Part 1940, Subpart C, "Environmental Program". It is the determination of FmHA that the action does not constitute a major Federal action significantly affecting the

quality of the human environment and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

List of Subjects in 7 CFR Part 1980

Loan programs—Agriculture, Loan programs—Business and industry—Rural development assistance, Loan programs—Housing and community development.

Therefore, as proposed, Chapter XVIII, Title 7, of the Code of Federal Regulations is amended as follows:

PART 1980—GENERAL

1. The authority citation for Part 1980 continues to read as follows:

Authority: 7 U.S.C. 1989; 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—General

2. Appendix D of Subpart A of Part 1980 is revised to read as follows:

Date: April 8, 1989.
Neal Sox Johnson,
Acting Administrator, Farmers Home Administration.

BILLING CODE 3410-67-M

Appendix D

USDA-FmHA
Form FmHA 1980-27
(Rev. 4-89)

CONTRACT OF GUARANTEE (Line of Credit)

Lender	Lender's IRS Tax No.	Type of Loan
Lender's Address		Case No.
		State
		County
Borrower's Name and Address		Date of Line of Credit Agreement/Note
		Line of Credit Ceiling \$

The guaranteed portion of this line of credit is _____% of the principal balance owed at any one time on advances made within an approved line of credit by the above-named Lender to the above-named Borrower.

In consideration of making advance(s) by the Lender within the line of credit ceiling pursuant to the Line of Credit Agreement, the United States of America acting through the Farmers Home Administration of the United States Department of Agriculture (herein called "FmHA"), pursuant to the Consolidated Farm and Rural Development Act (7 U.S.C. 1921 et. seq.), the Emergency Livestock Credit Act of 1974 (P.L. 93-357), as amended, or the Emergency Agricultural Credit Adjustment Act of 1978 (P.L. 95-334) agrees that in accordance with and subject to the conditions and requirements in this agreement, it will pay to the Lender who holds the line of agreement(s) (and note(s), if any exist) for said advance(s) (or assumption agreement) covered by this contract the lesser of 1. or 2. below:

1. Any loss sustained by such Lender on the guaranteed portion including:
 - a. Principal and interest indebtedness as evidenced by said line of credit agreement(s) (and note(s), if any exist) or by assumption agreement(s), and
 - b. Principal and interest indebtedness on secured protective advances for protection and preservation of collateral made with FmHA's authorization, including but not limited to, advances for delinquent taxes, annual assessments, any ground rents, and hazard or flood insurance premiums affecting the collateral; or
2. The guaranteed principal advances to or assumed by the Borrower under said line of credit agreement(s) (and note(s), if any exist) or assumption agreement(s) and any interest due thereon.

If an Operating Loan Line of Credit is involved, advances under that line of credit must be made within three years from the date of this Contract. Advances made after that date will not be covered by this Contract. If FmHA conducts the liquidation of the line of credit, loss occasioned to a Lender by accruing interest after the date FmHA accepts responsibility for liquidation will not be covered by this Contract of Guarantee. If Lender conducts the liquidation of the line of credit, accruing interest shall be covered by this Contract of Guarantee to date of final settlement when the Lender conducts the liquidation expeditiously in accordance with the liquidation plan approved by FmHA.

CONDITIONS OF GUARANTEE

1. Line of Credit Servicing
Lender will be responsible for servicing the entire line of credit, and Lender will remain mortgagee and/or secured party of record. The Lender agrees that, if liquidation of the account becomes imminent, the Lender will consider the Borrower of an Operating Loan Line of Credit for an Interest Rate Buydown under Exhibit C of Subpart B of 7 CFR, Part 1980, and request a determination of the Borrower's eligibility by FmHA. The Lender may not initiate foreclosure action on the line of credit until 60 days after a determination has been made with respect to the eligibility of the Borrower to participate in the Interest Rate Buydown Program.
2. Priorities
The entire line of credit will be secured by the same security with equal lien priority for the guaranteed and unguaranteed portions of the line of credit. The unguaranteed portion of the line of credit will not be paid first nor given any preference or priority over the guaranteed portion.
3. Full Faith and Credit
The Contract of Guarantee constitutes an obligation supported by the full faith and credit of the United States and is incontestable except for fraud or misrepresentation of which Lender has actual knowledge at the time it became such Lender or which Lender participates in or condones. If the line of credit agreement or note to which this Contract of Guarantee is attached provides for the payment of interest on interest, this Contract of Guarantee is void. In addition, the Contract of Guarantee will be unenforceable by the Lender to the extent any loss is occasioned by the violation of usury laws, negligent servicing, or failure to obtain the required security regardless of the time at which FmHA acquires knowledge of the foregoing. Any losses occasioned will be unenforceable to the extent that loan funds are used for purposes other than those specifically approved by FmHA in its Conditional Commitment for Guarantee. Negligent servicing is defined as the failure to perform those services which a reasonably prudent lender would perform in servicing its own portfolio of loans that are not guaranteed. The term includes not only the concept of a failure to act but also not acting in a timely manner or acting in a manner contrary to the manner in which a reasonably prudent lender would act up to the time of loan maturity or until a final loss is paid.

4. Protective Advances

Protective advances made by Lender pursuant to the regulations will be guaranteed against a percentage of loss to the same extent as provided in this Contract of Guarantee.

5. Custody of Unguaranteed Portion

The Lender may retain or sell the unguaranteed portion of the line of credit only through participation. Participation, as used in this instrument, means the sale of an interest in the line of credit in which the Lender retains the line of credit agreement (and note, if one exists) collateral securing the line of credit, and all responsibility for servicing and liquidation of the line of credit.

6. When Guarantee terminates

This Contract of Guarantee will terminate automatically (a) upon full payment of the guaranteed line of credit occurring after the advance period has expired; or (b) upon full payment of any loss obligation under this Contract; or (c) upon written notice from the Lender to FmHA that the guarantee will terminate 30 days after the date of notice, provided the Contract is returned to FmHA to be cancelled.

7. Settlement

The amount due under this instrument will be determined and paid as provided in the applicable Subpart of Part 1980 of Title 7 CFR in effect on the date of this instrument.

8. Notices

All notices and actions will be initiated through the FmHA County Supervisor for _____ (County)

_____ (State) with mailing address at the date of this instrument:

UNITED STATES OF AMERICA

FARMERS HOME ADMINISTRATION

By: _____

Title: _____

(Date)

Assumption Agreement by _____ dated _____, 19____

Assumption Agreement by _____ dated _____, 19____

[FR Doc. 89-13309 Filed 6-5-89; 8:45 am]

BILLING CODE 3410-07-C

Food Safety and Inspection Service

9 CFR Parts 327 and 381

[Docket No. 88-001P]

RIN 0583-AA91

Definition of Terms: "Import (Imported)" and "Offer(ed) for Entry" and "Entry (Entered)"

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend the Federal meat inspection regulations and the poultry products inspection regulations by defining the terms "import (imported)" and "offer(ed) for entry" and "entry (entered)" to clarify what these terms are intended to mean and to clarify at what point meat and poultry products offered for entry into the United States are no longer considered to be imported products and are deemed and treated as domestic articles under the law. Once product offered for entry has been reinspected by FSIS inspectors and the official mark of inspection has been applied, FSIS considers that such product has been "entered" into the United States and, therefore, is the regulatory equivalent of domestic product. At that point, such product is subject to the laws and regulations of the United States as applied to domestic product, particularly with respect to the disposal of product found to be adulterated.

The definitions of "offer(ed) for entry" and "entry (entered)" would be different for products imported from Canada under the interim rule recently published in the Federal Register (54 FR 273). The interim rule exempted such products from the requirement that they be marked with the official mark of inspection and provided for a "streamlined" inspection procedure.

This action is a result of litigation which indicated the need for clarification of terms with respect to USDA's interpretation of provisions of the Federal Meat Inspection Act and the regulations promulgated thereunder concerning at what point FSIS considers imported products to be domestic products.

DATE: Comments must be received on or before July 6, 1989.

ADDRESS: Written comments to Policy Office, ATTN: Linda Carey, FSIS Hearing Clerk, Room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Patricia Stolfa, Deputy Administrator,

International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250 (202) 447-3473.

SUPPLEMENTARY INFORMATION:**Comments**

Interested persons are invited to submit comments concerning this action. Written comments should be sent to the Policy Office and should refer to the document number located in the heading of this document. Requests to present oral comments, as provided by the Poultry Products Inspection Act, should be directed to Ms. Patricia Stolfa so that arrangements can be made for such views to be presented. A record will be made of all views orally presented. All comments submitted in response to this rule will be available for public inspection in the Policy Office between 9:00 a.m. and 4:00 p.m., Monday through Friday.

Executive Order 12291

The Agency has determined that this proposed rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Effect on Small Entities

FSIS has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The proposed rule would clarify, through the addition of definitions, when meat and poultry products are considered to be "imported" and when such products offered for entry are considered to be entered and, therefore, are treated as domestic products. Such domestic products are subject to the laws and regulations of the United States applicable to such products, particularly with respect to the disposal of products found to be adulterated. Clarification of these terms will not result in any change in current procedures. Domestic producers or domestic importers will not be affected by this proposed rule.

Background

Section 20 of the Federal Meat Inspection Act (FMIA) (21 U.S.C. 620) and section 17 of the Poultry Products

Inspection Act (PPIA) (21 U.S.C. 466) prohibit the importation of meat or poultry products into the United States if such products are adulterated or misbranded and unless they comply with all the inspection, building construction standards, and all other provisions of the Acts and regulations as are applied to domestic products. Section 20 of the FMIA and section 17 of the PPIA also provide that once imported products are entered into the United States, such products are considered to be and should be treated as domestic products subject to the provisions of the FMIA and PPIA and other food related statutes. FSIS is defining the terms "import (imported)" and "offer(ed) for entry" and "entry (entered)" to clarify at what point product offered for entry into the United States is considered to be domestic product. The term "import (imported)" is considered to be that point when the product is brought within the territorial limits of the United States whether that arrival is accomplished by land, air, or water. For product other than from Canada, the term "offered for entry" is considered to be that point at which the importer offers the product for reinspection to FSIS, that is, the point at which imported product from eligible countries has been presented to FSIS for reinspection. The term "entry (entered)" is considered to be the point at which product from eligible countries, other than Canada, imported into the United States and subsequently offered for entry receives reinspection and is marked with the official mark of inspection.

FSIS is providing separate definitions for "offer(ed) for entry" and "entry (entered)" for Canadian product as a result of the interim rule which was published on January 5, 1989, (54 FR 273) that exempted imported Canadian meat and poultry products from the requirement that such product be marked with the official mark of inspection. As part of the interim rule, FSIS also instituted new "streamlined" inspection procedures for Canadian product exported to the United States. Under these procedures, inspectors at participating Canadian establishments are authorized to request reinspection assignments and, if deemed necessary, to draw samples for reinspection by Program import inspectors. Therefore, FSIS is providing a separate definition for "offer(ed) for entry" as it applies to participating Canadian establishments. The term is defined as that point at which an official of the Canadian meat inspection system contacts the Import Field Office for an inspection

assignment. Products from nonparticipating establishments will receive an inspection assignment upon arrival at an import inspection establishment. For Canadian product produced in nonparticipating establishments, "offer(ed) for entry" is defined as that point at which the importer presents the product to the Program for reinspection.

FSIS has also instituted a new sampling program for all Canadian product, based on statistically based random sampling plans developed by FSIS, whereby some product is subject to reinspection by FSIS and some product is not. Therefore, because of the new "streamlined" inspection procedures, the new sampling plans, and the exemption of Canadian product from application of the official mark, FSIS is providing separate definitions for "entry (entered)" of Canadian product. For Canadian product not subject to reinspection, FSIS is defining "enter (entered)" as when the containers or the products themselves if not in containers are marked with the Canadian export stamp and upon the filing of Customs Form 7533 at the port of entry or at the nearest customhouse in accordance with 19 CFR Part 123.

For Canadian product subject to reinspection, FSIS is defining "enter (entered)" as when the containers or the products themselves if not in containers are marked with the Canadian export stamp and the foreign inspection certificate accompanying the product is stamped as "Inspected and Passed" by the import inspector.

The FMIA and PPIA and the regulations promulgated thereunder require that product found to be adulterated on the day it is reinspected be refused entry, and such product may be reexported (9 CFR 327.13(a)(2) and 381.202(a)(2)). In cases where meat product is only misbranded (e.g., labeling or certificates are missing, incorrect, or incomplete), such product may be brought into compliance by the importer, under FSIS's supervision (9 CFR 327.13(a)(4)).

Before a foreign country can export product to the United States it must be granted eligibility to do so. FSIS has established procedures by which foreign countries desiring to export meat and/or poultry products to the United States may become eligible to do so. These regulations are contained in Part 327 of the Federal meat inspection regulations and Part 381, Subpart T, of the poultry products inspection regulations (9 CFR Part 327 and Part 381, Subpart T). These regulations provide that a meat and/or poultry product inspection system maintained by a foreign country, with

respect to establishments preparing products in that country for export to the United States, must ensure compliance of such establishments and their meat and/or poultry products with requirements at least equal to all the provisions of the FMIA and the PPIA and the regulations that are applied to official establishments in the United States and their meat and poultry products. In addition, for approval to export meat and/or poultry products to the United States, the requirement that reliance can be placed on certificates required under the regulations from authorities in the country must also be met.

Before eligibility is granted, a complete evaluation of the country's inspection system is made by FSIS personnel. This evaluation consists of two processes—a document review and on-site reviews of system operations. The document review process involves a review of the laws, regulations, directives and other written materials used by the country to operate its inspection program. FSIS assists the country in organizing this material by providing questionnaires in five risk areas: Contamination, disease, processing, residues, and compliance/economic fraud. FSIS then evaluates the information to assure that the critical points in each of the risk areas are being addressed satisfactorily with respect to standards, activities, resources and enforcement. This process usually involves several exchanges of information. In many cases, the country seeking recognition must revise its regulations or publish special directives to achieve equivalency with United States requirements.

If the document review proves to be satisfactory, on-site reviews are scheduled using a multi-disciplinary team to evaluate all aspects of the country's program including laboratories and individual establishments within the country. On-site reviews are designed to further explore areas determined to require more detailed evaluation and are also undertaken to allow the FSIS review team to observe the system in its daily operation.

After a review of all the documents submitted by the foreign country and an evaluation of the findings of the on-site reviews, the Administrator makes a determination concerning the ability of the foreign country to assure, with respect to certified establishments within the foreign country preparing product for export to the United States, compliance with requirements at least equal to those applicable to official establishments within the United States which prepare meat and/or poultry

products, and that reliance can be placed upon certificates required under the FMIA and the PPIA from authorities of the foreign country.

This judgement by the Administrator—that the foreign country's inspection system is considered to be "at least equal to" the inspection system of the United States—is the primary means used by FSIS to assure that product intended for export to the United States will be "at least equal to" all the requirements applied to domestic product. Once eligibility is granted, FSIS conducts ongoing reviews of the system in operation to assure that procedures and standards continue to meet United States requirements.

FSIS relies on its initial determination of a foreign country's eligibility coupled with ongoing reviews to provide assurance that products offered for entry from such eligible country are, and continue to be, wholesome and properly labeled and packaged. As a further check on the effectiveness of the foreign inspection system, all product offered for entry into the United States, except that from Canada as discussed above, is subject to basic reinspection by FSIS import inspectors. This reinspection consists of a review of the product containers to check for damage or other problems received in transit to the United States, and a review of product labeling, health certificates and FSIS inspection forms to assure that the documentation is correct and complete.

Such imported products offered for entry also receive a form of secondary level reinspection depending on the type of product. Secondary reinspection consists of examinations for production defects such as the presence of hair, grease, hide, dirt and similar substances in frozen or fresh bulk product; net weight checks, condition of container examinations, and incubation tests for canned products; laboratory analyses for food chemistry (fat, water, and nitrite levels) for processed products; and, analyses for chemical residues in fresh, frozen and canned product. Some of these test results are available immediately; others, such as incubation results or chemical residue analyses, are not available for several days. In cases where the product has passed basic reinspection, even though secondary inspection results are not available, the product is stamped with the official mark of inspection and is entered into the United States and is considered to be domestic product. At this point, FSIS assumes that the secondary test results will confirm that the product meets United States requirements.

When secondary test results are received by FSIS and the results indicate violations of United States requirements, especially in chemical residue analyses which would render the product adulterated under United States laws, FSIS institutes actions to locate the product and, if appropriate, to destroy it in accordance with requirements for product produced in the United States. Domestic product which is found to be adulterated, as defined in the Acts and under § 301.2(aa) of the meat inspection regulations (9 CFR 301.2(aa)) and § 381.1(b)(4) of the poultry products inspection regulations (9 CFR 381.1(b)(4)), must be destroyed for human food purposes in accordance with the provisions of Part 314 of the Federal meat inspection regulations (9 CFR Part 314) and Part 381, Subpart L, of the poultry products inspection regulations (9 CFR Part 381, Subpart L).

Proposed Rule

This proposal is a result of recent litigation concerning the seizure and condemnation of product offered for entry that had been reinspected, marked and allowed entry into the United States. The importers asserted that the product should be permitted to be exported because the statutes and regulations are not clear as to when imported products offered for entry are to be deemed and treated as domestic product. To preclude any future questions on that point, FSIS has concluded that it is prudent to make clarifying changes in the meat and poultry products inspection regulations. Clarification of terms will assure that all interested parties understand what is meant by use of the terms "import (imported)" and "offer(ed) for entry" and "entry (entered)" with respect to FSIS's jurisdiction over imported meat and poultry products.

Therefore, FSIS is proposing to amend § 327.1 of the Federal meat inspection regulations (9 CFR 327.1) and § 381.195 of the poultry products inspection (9 CFR 381.195) to add definitions for the terms "import (imported)" and "offer(ed) for entry" and "entry (entered)." FSIS defines "import (imported)" as "to bring within the territorial limits of the United States whether that arrival is accomplished by land, water, or air." For imported products other than from Canada, FSIS defines "offer(ed) for entry" as "that point at which the importer presents the imported product to the Program for reinspection;" and defines "entry (entered)" as "that point at which imported product offered for entry

receives reinspection and is marked with the official mark of inspection."

For Canadian product produced in Canadian establishments participating in the "streamlined" inspection procedures, FSIS is defining "offer(ed) for entry" as "that point at which an official of the Canadian meat inspection system contacts the Import Field Office for an inspection assignment."

For Canadian product produced in nonparticipating establishments, FSIS is defining "offer(ed) for entry" as "the point at which the importer presents the imported product to the Program for reinspection."

For Canadian product not subject to reinspection, FSIS is defining "enter (entered)" as "when the containers or the products themselves if not in containers are marked with the Canadian export stamp and upon the filing of Customs Form 7533 at the port of entry or at the nearest customhouse in accordance with 19 CFR Part 123."

For Canadian product subject to reinspection, FSIS is defining "enter (entered)" as "when the containers or the products themselves if not in containers are marked with the Canadian export stamp and the foreign inspection certificate accompanying the product is stamped as "Inspected and Passed" by the import inspector."

FSIS is also amending several sections of Parts 327 and 381 with respect to the terms "import (imported)," "offer(ed) for entry," and "entry (entered)" as defined in this proposed rule. These amendments would make consistent the use of the above terms as they are used in the affected sections. These amendments are editorial only and make no changes to the content of those sections.

For the reasons stated in the preamble, FSIS is proposing to amend Part 327 of the Federal meat inspection regulations and Part 381, Subpart T, of the poultry products inspection regulations as set forth below:

List of Subjects

9 CFR Part 327

Imported products; Meat inspection.

9 CFR Part 381

Imported products; poultry products inspection.

PART 327—IMPORTED PRODUCTS

1. The authority citation for Part 327 would continue to read as follows:

Authority: 34 Stat. 1260, 79 Stat. 903, as amended, 81 Stat. 584, 84 Stat. 91, 438; 21 U.S.C. 71 *et seq.*

2. Section 327.1 would be amended by revising the section heading, by designating the existing text as paragraph (b), and by adding a new paragraph (a) to read as follows:

§ 327.1 Definitions; application of provisions.

(a) When used in this part, the following terms shall be construed to mean:

(1) *Import (imported)*. To bring within the territorial limits of the United States whether that arrival is accomplished by land, air, or water.

(2) For product from eligible countries other than Canada:

(i) *Offer(ed) for entry*. The point at which the importer presents the imported product to the Program for reinspection.

(ii) *Entry (entered)*. The point at which imported product offered for entry receives reinspection and is marked with the official mark of inspection in accordance with § 327.26 of this subchapter.

(3) For product from Canada:

(i) Offer(ed) for entry from establishments participating in the "streamlined" inspection procedures. The point at which an official of the Canadian meat inspection system contacts the Import Field Office for an inspection assignment.

(ii) Offer(ed) for entry from nonparticipating establishments. The point at which the importer presents the imported product to the Program for reinspection.

(iii) Entry (entered) for product not subject to reinspection. When the containers or the products themselves if not in containers are marked with the Canadian export stamp and upon the filing of Customs Form 7533 at the port of entry or at the nearest customhouse in accordance with 19 CFR Part 123.

(iv) Entry (entered) for product subject to reinspection. When the containers or the products themselves if not in containers are marked with the Canadian export stamp and the foreign inspection certificate accompanying the product is stamped as "Inspected and Passed" by the import inspector.

3. Paragraph (b) of § 327.2 would be revised to read as follows:

§ 327.2 Eligibility of foreign countries for importation of products into the United States.

(b) It has been determined that product of cattle, sheep, swine, and goats from the following countries covered by foreign meat inspection

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certificates of the country of origin as required by § 327.4, except fresh, chilled, or frozen or other product ineligible for importation into the United States from countries in which the contagious and communicable disease of rinderpest or of foot-and-mouth disease or of African swine fever exists as provided in Part 94 of this title, is eligible under the regulations in this subchapter for entry into the United States after inspection and marking as required by the applicable provisions of this part.

4. Paragraphs (b) introductory text and (d) of § 327.3 would be revised to read as follows:

§ 327.3 No product to be imported without compliance with applicable regulations.

(b) No fresh or cured meat or meat trimmings in pieces too small to permit adequate inspection shall be imported into the United States. Individual pieces or trimmings must not be smaller than 2-inch cubes or pieces comparable in size. Except as provided in paragraph (c) of this section, processed meat food products prepared with meat pieces smaller than 2-inch cubes or pieces comparable in size shall not be imported except under the following conditions:

(d) Further, no carcasses or parts of carcasses of livestock offered for entry from which naturally associated tissues such as the peritoneum, pleura, body lymph glands, or the portal glands of the liver have been removed, shall be imported into the United States.

5. Section 327.5 heading and the first sentence of paragraph (a) would be revised to read as follows:

§ 327.5 Importer to make application for inspection of products for entry; information required; "streamlined" inspection procedures for Canadian product.

(a) Except for importers of Canadian products, each importer shall apply for inspection of any product offered for entry by contracting the Import Field Office covering the location where import inspection will take place.* * *

6. Paragraph (a)(1) of § 327.6 would be revised to read as follows:

§ 327.6 Products for importation; program inspection, time and place; application for approval of facilities as official import inspection establishment; refusal or withdrawal of approval; official numbers.

(a)(1) Except as provided in §§ 327.5(d)(1), 327.16 and 327.17, all products offered for entry from any

foreign country shall be inspected by a Program inspector before they shall be entered into the United States.

§ 327.10 [Amended]

7. Paragraph (b) of § 327.10 would be revised to read as follows:

(b) Except for product offered for entry from Canada, the outside containers of all products offered for entry from any foreign country and accompanied with a foreign inspection certificate as required by this part, which, upon reinspection by import inspectors are found not to be adulterated or misbranded and otherwise eligible for entry into the United States under this part, or the products themselves if not in containers, shall be marked with the official inspection legend prescribed in § 327.26 of this subchapter. Except for Canadian product, all other products so marked, in compliance with this part, shall be entered into the United States, insofar as such entry is regulated under the Act.

§ 327.15 [Amended]

8. Paragraph (c) of § 327.15 would be revised to read as follows:

(c) Except for product offered for entry from Canada, all outside containers of products which have been inspected and passed in accordance with this part shall be marked by a Program import inspector or under a Program import inspector's supervision with the official import meat inspection mark prescribed in § 327.26.

9. Section 327.16 Would be revised to read as follows:

§ 327.16 Small importations for importer's own consumption; requirements.

Any product in a quantity of 50 pounds or less which was purchased by the importer outside the United States for his/her own consumption, is eligible to be imported into the United States from any country without compliance with the provisions in other sections of this part but subject to applicable requirements under other laws, including the regulations in Part 94 of this title. However, Program employees may inspect any product imported under this section to determine whether it is within the class eligible to be imported under this paragraph.

10. Section 327.18 heading and paragraphs (a) and (b) would be revised to read as follows:

§ 327.18 Products offered for entry and entered to be handled and transported as domestic; exception.

(a) All products, after entry into the United States, shall be deemed and treated as domestic products and shall be subject to the applicable provisions of the Act and the regulations in this subchapter and the applicable requirements under the Federal Food, Drug and Cosmetic Act, except that products imported under § 327.18 are required to comply only with the requirements of that Act and § 327.18 of this subchapter.

(b) Products entered in accordance with this part may, subject to the provisions of Part 318 of this subchapter, be taken into official establishments and be mixed with or added to any product in such establishments which has been inspected and passed therein.

11. Section 327.20 would be revised to read as follows:

§ 327.20 Importation of foreign inedible fats.

No inedible grease, inedible tallow, or other inedible rendered fat shall be imported into the United States unless it has been first denatured as prescribed in § 327.25 of this part and the containers marked as prescribed by § 318.15 of this subchapter or unless it is identified and handled as prescribed by § 325.11 (b) or (c) of this subchapter.

12. Section 327.22 would be revised to read as follows:

§ 327.22 Official seals for transportation of products.

The official mark for use in sealing cars, trucks, other means of conveyance, or containers in which any product offered for entry is conveyed shall be the inscription and a serial number hereinafter shown below¹, and the import meat seal approved by the Administrator for applying such mark shall be an official device for purposes of the Act. Such device shall be attached to the means of conveyance only by a Program employee, or a Customs officer or his/her designee, and he/she shall also affix thereto a "Warning Tag" (Form MP-408-3).

13. The title and paragraph (b) introductory text of § 327.23 would be revised to read as follows:

§ 327.23 Compliance procedure for cured pork products offered for entry.

¹ The term "F-351587" is given as an example only. The serial number of the specific seal will be shown in lieu thereof.

(b) Normal monitoring procedures.

Except for product imported from Canada, the Department shall collect sample(s) of cured pork product on a random basis from lots offered for entry at the Port of Entry and, after analyzing the sample for fat and indigenous protein content, calculate the PFF percentage. The product shall not be held pending laboratory results during the monitoring phase. The PFF percentage for each sample shall be considered along with the cumulative results of prior samples to assess the effectiveness of a country's overall compliance program and to determine the course of action for subsequent lots of product.

§ 327.2 [Amended]

14. Paragraph (b) of § 327.26 would be revised to read as follows:

(b) Except for product offered for entry from Canada, when import inspections are performed in official establishments the official inspection legend to be applied to meat and meat food products offered for entry shall be the appropriate form as specified in §§ 312.2 and 312.3 of this subchapter.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

15. The authority citation for Part 381 would continue to read as follows:

Authority: 71 Stat. 441, 82 Stat. 791, as amended, 21 U.S.C. 451 *et seq.*; 76 Stat. 663 (7 U.S.C. 450 *et seq.*)

16. Section 381.195 would be amended by revising the heading, by designating the current text of paragraphs (a) and (b) as paragraphs (b) and (c) respectively, and by adding a new paragraph (a) to read as follows:

§ 381.195 Definitions; Requirements for importation into the United States.

(a) When used in this part, the following terms shall be construed to mean:

(1) *Import (imported)*. To bring within the territorial limits of the United States whether that arrival is accomplished by land, air, or water.

(2) For product from eligible countries other than Canada:

(i) *Offer(ed) for entry*. The point at which the importer presents the imported product to the Program for reinspection.

(ii) *Entry (entered)*. The point at which imported product offered for entry receives reinspection and is marked with the official mark of inspection in accordance with § 327.26 of this subchapter.

(3) For product from Canada:

(i) Offer(ed) for entry from establishments participating in the "streamlined" inspection procedures. The point at which an official of the Canadian inspection system contacts the Import Field Office for an inspection assignment.

(ii) Offered for entry from nonparticipating establishments. The point at which the importer presents the imported product to the Program for reinspection.

(iii) Entry (entered) for product not subject to reinspection. When the containers or the products themselves if not in containers are marked with the Canadian export stamp and upon the filing of Customs Form 7533 at the port of entry or at the nearest customhouse in accordance with 19 CFR Part 123.

(iv) Entry (entered) for product subject to reinspection. When the containers or the products themselves if not in containers are marked with the Canadian export stamp and the foreign inspection certificate accompanying the product is stamped as "Inspected and Passed" by the import inspector.

§ 381.196 [Amended]

17. Paragraph (b) introductory text of § 381.196 would be revised to read as follows:

(b) It has been determined that poultry products from the following countries, covered by foreign poultry inspection certificates of the country of origin as required by § 381.197, are eligible under the regulations in this subpart for entry into the United States, after inspection and marking as required by the applicable provisions of this subpart:¹

18. The heading and first sentence of paragraph (a) of § 381.198 would be revised to read as follows:

§ 381.198 Importer to make application for inspection of poultry products offered for entry.

(a) Each person who wishes to offer for entry any slaughtered poultry or other poultry product shall make application for inspection to the import supervisor of the import field office at the port where the poultry product is to be offered for entry, or to the Administrator, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, as long as possible in advance of the

¹ Listing of any country in this section does not relieve the poultry products of such country from applicable requirements under other Federal laws.

anticipated arrival of each consignment of such product, except in the case of poultry product exempted from inspection by §§ 381.207 or 381.209.

19. Paragraphs (a)(1) and (b) and the heading of § 381.199 would be revised to read as follows:

§ 381.199 Inspection of poultry products offered for entry.

(a)(1) Except as provided in §§ 381.198(b)(1) and 381.209 of this part, and paragraph (c) of this section, all slaughtered poultry and poultry products offered for entry from any foreign country shall be reinspected by a Program import inspector before they shall be allowed entry into the United States.

(b) Inspectors may take, without cost to the United States, from each consignment of poultry products offered for entry, such samples of the products as are deemed necessary to determine the eligibility of the products for entry into the commerce of the United States.

20. The first sentence of paragraph (c) and the heading of § 381.200 would be revised to read as follows:

§ 381.200 Poultry products offered for entry, retention in customs custody; delivery under bond; movement prior to inspection; sealing; handling; facilities and assistance; official seal.

(c) Means of conveyance or outside containers in which any poultry product intended to be offered for entry is moved, prior to inspection from the port or wharf where first unloaded in the United States, shall be sealed with the official seals of the Department of Agriculture as prescribed in paragraph (h) of this section or otherwise identified as provided in this paragraph unless sealed with customs or consular seals in accordance with the customs regulations.* * *

21. The heading of § 381.201 would be revised to read as follows:

§ 381.201 Means of conveyance and equipment used in handling poultry products offered for entry to be maintained in sanitary condition.

22. The heading of and § 381.203 would be revised to read as follows:

§ 381.203 Products offered for entry; charges for storage, cartage, and labor with respect to products which are refused entry.

All charges for storage, cartage, and labor with respect to any product

offered for entry which is refused entry pursuant to the regulations shall be paid by the owner or consignee and, in default of such payment, shall constitute a lien against any other products offered for entry thereafter by or for such owner or consignee.

§ 381.204 [Amended]

23. Paragraph (a) of § 381.204 would be revised to read as follows:

(a) Except for product offered for entry from Canada, poultry products which upon reinspection are found to be acceptable for entry into the United States shall be marked with the official inspection legend shown in paragraph (b) of this section. Such inspection legend shall be placed upon such products only after completion of official import inspection and product acceptance.

24. The heading and paragraph (a) and the first sentence of paragraph (c) of § 381.205 would be revised to read as follows:

§ 381.205 Labeling of immediate containers of poultry products offered for entry.

(a) Immediate containers of poultry products imported into the United States shall bear a label printed in English showing in accordance with Subpart N of this part all information required by that section (except that the inspection mark and establishment number assigned by the foreign poultry inspection system and certified to the Inspection Service shall be shown instead of the official dressed poultry identification mark or other official inspection legend, and official establishment number); and in addition the label shall show the name of the country of origin preceded by the words "Product of," which statement shall appear immediately under the name of the product.

(c) Labels for immediate containers of imported poultry products shall be submitted for approval in sketch form to the Standards and Labeling Division, Technical Services, Food Safety and Inspection Service, USDA, Washington, DC 20250.

25. The heading and the first sentence of § 381.206 would be revised to read as follows:

§ 381.206 Labeling of shipping containers of poultry products offered for entry.

Shipping containers or imported poultry products are required to bear in a prominent and legible manner the name of the product, the name of the country of origin, the foreign inspection

system establishment number of the establishment in which the product was processed, and the inspection mark of the country of origin.

26. Section 381.207 up to the proviso would be revised to read as follows:

§ 381.207 Small importations for consignee's personal use, display, or laboratory analysis.

Any poultry product (other than one which is forbidden entry by other Federal law or regulation) from any country in quantities of less than 50 pounds net weight, exclusively for the personal use of the consignee, or for display or laboratory analysis by the consignee, and not for sale or distribution; which is sound, healthful, wholesome, and fit for human food, and which is not adulterated and contains no substance not permitted by the Act or regulations, may be imported into the United States without a foreign inspection certificate, and such product is not required to be inspected upon arrival in the United States and may be shipped to the consignee without further restriction under this part, except as provided in § 381.199(c):

27. The heading and paragraphs (a) and (b) of § 381.208 would be revised to read as follows:

§ 381.208 Poultry products offered for entry and entered to be handled and transported as domestic; entry into official establishments; transportation.

(a) All poultry products, after entry into the United States in compliance with this subpart, shall be deemed and treated and, except as provided in § 381.207, shall be handled and transported as domestic products, and shall be subject to the applicable provisions of this part and to the provisions of the Poultry Products Inspection Act and the Federal Food, Drug, and Cosmetic Act.

(b) Poultry products entered in accordance with this subpart may, subject to the provisions of the regulations, be taken into official establishments and be mixed with or added to poultry products that are inspected and passed or exempted from inspection in such establishments.

Done in Washington, DC, on: April 25, 1989.
Lester M. Crawford,

Administrator, Food Safety and Inspection Service.

[FR Doc. 89-13236 Filed 6-5-89; 8:45 p.m.]

BILLING CODE 3410-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Ch. I

[Summary Notice No. PR-89-5]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before August 7, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 31, 1989.

Denise Donohue Hall,

Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 24784.

Petitioner: Icarus Executive Services, Inc.

Regulations Affected: 14 CFR 135.73.

Description of Petition: The amendment would permit a person acceptable to the Administrator to conduct certain inspections or audits of Part 135 certificate holders that presently are performed by the Administrator of the Federal Aviation Administration. Denied. May 19, 1989.

[FR Doc. 89-13322 Filed 6-5-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-63-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, which would require visual inspection of certain H-11 steel bolts for cracks or fracture, and replacement, if necessary; and would require the eventual replacement of H-11 steel bolts with bolts made of Inconel 718 material. This proposal is prompted by reports of cracking or fracture of H-11 steel bolts at several critical locations. This condition, if not corrected, could result in severe structural damage.

DATES: Comments must be received no later than July 24, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-63-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Dan R. Bui, Airframe Branch, ANM-

120S; telephone (206) 431-1919. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Availability of NPRM

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the FAA, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-63-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

Discussion

Several operators of Model 747 series airplanes have reported fractures and cracking found on 43 H-11 steel bolts installed in several critical locations on the airplane. Such locations have included the body landing gear inboard and outboard trunnion vertical support, and the wing landing gear beam upper chord to longeron attachment. Cracking of these bolts has initiated due to stress corrosion, which can result from finish deterioration, preload, moisture presence, and/or shank corrosion. This condition, if not corrected, could lead to overloading the adjacent bolts and severe structural damage.

The FAA has reviewed and approved Boeing Service Bulletin 747-51-2043, dated June 30, 1988, which describes procedures for visual inspections of the H-11 steel bolts for cracks or fracture. A terminating action for these inspections is also described, which consists of replacing all affected H-11 bolts with Inconel 718 bolts.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require repetitive visual inspections for cracks or fracture of H-11 bolts installed in certain locations of the airplane, and replacement, if necessary, in accordance with the service bulletin previously described. The AD would also require the eventual replacement of all H-11 steel bolts with bolts made of Inconel 718 material.

There are approximately 648 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 165 airplanes of U.S. registry would be affected by this AD, that it would take approximately 67 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Parts are estimated at \$200 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$475,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For these reasons, the FAA has determined that this document (1) involves a proposed regulation which is not major under Executive Order 12291 and (2) is not a significant rule under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and it is further certified under the criteria of the Regulatory Flexibility Act that this proposed rule, if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities because few, if any, Model 747 airplanes are operated by small entities. A copy of a draft regulatory evaluation prepared for this action is contained in the regulatory docket.

List of Subjects in 14 CFR Part 39

Aviation safety, Aircraft.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend § 39.13 of Part 39 of

the Federal Aviation Regulations (14 CFR 39.13) as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. By adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, listed in Boeing Service Bulletin 747-51-2043, dated June 30, 1988, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent structural damage caused by cracked or fractured H-11 steel bolts, accomplish the following:

A. Prior to the accumulation of 4 years total time-in-service, or within the next 15 months after the effective date of this AD, whichever occurs later, visually inspect H-11 steel bolts for cracks or fractures, in accordance with Boeing Service Bulletin 747-51-2043, dated June 30, 1988, at the following locations:

1. Body landing gear inboard and outboard trunnion vertical support.
2. Wing landing gear beam upper chord to longeron attachment.
3. Wing landing gear beam lower chord to crease beam attachment.
4. Body station (BS) 2598 horizontal stabilizer hinge attachment.
5. BS 2598 longeron splice fitting attachment at stringers 11 and 23.
6. Pin to body attachment.
7. The horizontal stabilizer front spar jack screw attachment.

B. If a cracked or fractured bolt is found, replace it with an Inconel 718 bolt prior to further flight, in accordance with Boeing Service Bulletin 747-51-2043, dated June 30, 1988.

C. If a cracked or fractured bolt is found and if Inconel 718 bolts are unavailable, replace the cracked or fractured bolt with an H-11 steel bolt, prior to further flight, in accordance with Boeing Service Bulletin 747-51-2043, dated June 30, 1988. Repeat the visual inspection required by paragraph A., above, at intervals not to exceed 18 months.

D. If no cracking or fracture is found, repeat the visual inspections required by paragraph A., above, at intervals not to exceed 18 months.

E. Within the next 36 months after the effective date of this AD, replace all affected H-11 steel bolts with Inconel 718 bolts, in accordance with Boeing Service Bulletin 747-51-2043, dated June 30, 1988.

F. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or

comment and then send it to the Manager, Seattle Aircraft Certification Office.

G. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 22, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-13320 Filed 6-5-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-25-AD]

Airworthiness Directives; Lockheed Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Lockheed Model L-1011 series airplanes, which currently requires extending and rerouting overheat sensors for the air conditioning bleed air ducts located below the Mid-Electrical Service Center (MESC) floor, removing excess flow sensors, modifying structure, and installing isolation barriers. This action would require a further modification to the previously accomplished rework, and the installation of additional overheat sensors and improved isolation barriers. This action is prompted by an incident where the No. 2 air conditioning pack duct failed under the MESC floor and activated the overheat sensor for the No. 3 pack instead of its own overheat sensor. This condition, if not corrected, could result in loss of all AC/DC electrical power, including the emergency bus.

DATES: Comments must be received no later than July 25, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-25 AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Department 65-33, Unit 20, Plant A-1. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT:

Mr. Kevin Kuniyoshi, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5337.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-25-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On March 25, 1985, the FAA issued AD 85-07-05, Amendment 39-5028 (50 FR 13014; April 2, 1985), to require (1) extension and rerouting of overheat sensors for the air conditioning bleed air ducts located below the MESC floor, removal of excess flow sensors, modification of structure, and installation of an isolation barrier, in accordance with Lockheed Service Bulletin 093-21-214, dated December 9, 1983; and (2) extension of the barrier in the MESC area in accordance with Lockheed Service Bulletin 093-21-222, dated January 9, 1984. That action was prompted by reports of clamp and duct failures in the vicinity of the MESC area during flight. This condition, if not corrected, could result in an uncontrolled overheating of the MESC floor, leading to the loss of AC/DC electrical power.

Since issuance of AD 85-07-05, an additional incident has occurred where the No. 2 air conditioning pack duct failed under the MESC floor and activated the overheat sensor for the No. 3 pack instead of its own overheat sensor. Since the flight crew was unable to isolate the source of failure from the warning indication immediately, the continued leakage under the floor caused multiple areas to be overheated before the No. 2 pack was finally shut down by the flight crew. This condition, if not corrected, could result in loss of all AC/DC electrical power, including the emergency bus.

This latest incident occurred on an airplane on which the provisions of the two previously mentioned service bulletins had been accomplished. Investigation revealed, however, that the pack duct isolation barriers, installed in accordance with the two service bulletins, must be extended to seal up against the MESC floor; and that the capability of the overheat sensor to detect the No. 2 pack duct overheat was limited, due to insufficient length of the sensor and partial blockage by the barrier support between the No. 2 and No. 3 pack ducts.

The FAA has reviewed and approved Lockheed Service Bulletin 093-21-227, dated August 15, 1988, which describes procedures for (1) the extension of the duct isolation barrier to completely seal up against the MESC floor, (2) the addition of overheat sensors for the No. 2 pack duct, and (3) a revision of the insulation blanket retention. These modifications provide a prompt and accurate air conditioning bleed air duct failure overheat warning indication to the flight crew.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would revise AD 85-07-05 to require the modification of the duct isolation barrier, overheat sensors, and insulation blanket retention, in accordance with the service bulletin previously described.

Additionally, the proposed revision removes all references to the use of "later FAA-approved revisions of the applicable service bulletin," in order to be consistent with FAA policy in that regard. The FAA has determined that this change will not increase the economic burden in any operator, nor will it increase the scope of the AD, since later revisions of the service bulletin may be approved as an alternate means of compliance of this AD, as provided by paragraph D.

There are approximately 249 Model L-1011 series airplanes of the affected design in the worldwide fleet. It is estimated that 91 airplanes of U.S. registry would be affected by this AD, that it would take approximately 7 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. The cost of modification parts is estimated to be \$13,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$13,280 per airplane, or \$1,208,480 for the U.S. fleet.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising AD 85-07-05, Amendment 39-5028 (50 FR 13014; April 2, 1985), as follows:

Lockheed Aeronautical Systems Company:

Applies to Lockheed Model L-1011 series airplanes, serial numbers -1002 through -1221, that have not been modified in accordance with Lockheed Service Bulletin 093-21-184, dated November 21, 1983, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To minimize the potential for unrecoverable loss of all AC/DC electrical power, including the emergency bus, accomplish the following:

A. Within 3,600 flight hours after May 9, 1985 (the effective date of Amendment 39-5028), extend and reroute Fenwall thermal overheat sensors below the Mid-Electrical Service Center (MESC) floor, remove excess flow sensors, and modify the structure below the MESC floor, in accordance with Lockheed Service Bulletin 093-21-214, Revision 1, dated December 9, 1983; Revision 2, dated September 10, 1984; Revision 3, dated April 21, 1986; or Part I of the Accomplishment Instructions of Revision 4, dated August 15, 1988.

B. Within 3,600 flight hours after May 9, 1985 (the effective date of Amendment 39-5028), extend the duct isolation barrier in accordance with Lockheed Service Bulletin 093-21-222, dated January 9, 1984; Revision 1, dated April 30, 1984; or Revision 2, dated August 15, 1988.

C. Within 1,800 flight hours after the effective date of this amendment, further extend the duct isolation barrier, add overheat sensors, and revise the insulation blanket retention, in accordance with Lockheed Service Bulletin 093-21-227, dated August 15, 1988.

D. An alternate means of compliance or adjustment of compliance time, which provides an acceptable level of safety may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199, to

operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Lockheed Aeronautical Systems Company, P.O. Box 551, Burbank, California 91520, Attention: Commercial Order Administration, Department 65-33, Unit 20, Plant A-1. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

Issued in Seattle, Washington, on May 24, 1989.

Darrell M. Pederson,
Acting Manager, Transport Airplane
Directorate, Aircraft Certification Service.
[FR Doc. 89-13321 Filed 6-5-89; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Parts 71 and 75

[Airspace Docket No. 89-ASO-12]

Proposed Alteration of VOR Federal Airways and Jet Routes; Florida

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to alter the descriptions of several Federal Airways and Jet Routes located in the vicinity of Fort Myers, FL. The lease on the Fort Myers very high frequency omni-directional radio range and tactical air navigational aid (VORTAC) will not be renewed; therefore, the VORTAC is being renamed and relocated to the Southwest Florida Regional Airport. This action supports the relocation of the VORTAC.

DATES: Comments must be received on or before July 17, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ASO-500, Docket No. 89-ASO-12, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 918, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours

at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 287-9250.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposals. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-12." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-230, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 287-3484. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposals

The FAA is considering amendments to Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) to change the descriptions of all VOR Federal Airways and Jet Routes affected by the relocation of the Fort Myers VORTAC. The lease for the Fort Myers VORTAC will not be renewed at its current location. The new VORTAC will be located at the Southwest Florida Regional Airport, and renamed the Lee County VORTAC. The coordinates for the VORTAC site are latitude 26°31'46"N., long. 81°46'34"W. This action supports relocation of the Fort Myers VORTAC. Sections 71.123 and 75.100 of Parts 71 and 75 of the Federal Aviation Regulations were republished in Handbook 7400.8E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 28, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Parts 71 and 75

Aviation safety, VOR Federal airways, Jet routes.

The Proposed Amendments

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Parts 71 and 75 of the Federal Aviation Regulations (14 CFR Parts 71 and 75) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-7 [Amended]

By removing the words "via Fort Myers, FL; Lakeland, FL;" and substituting the words "Lee County, FL; INT Lee County 349°T(351°M) and Lakeland, FL, 175°T(174°M) radials; Lakeland;"

V-35 [Amended]

By removing the words "and Fort Myers, FL, 137° radials; Fort Myers;" and substituting the words "and Lee County, FL, 139°T(141°M) radials; Lee County;"

V-225 [Amended]

By removing the words "Fort Myers, FL;" and substituting the words "Lee County, FL;"

V-521 [Amended]

By removing the words "Fort Myers, FL, 101° radials; Fort Myers; INT Fort Myers 022°" and substituting the words "Lee County, FL, 099°T(101°M) radials; Lee County; INT Lee County 014°T(016°M)"

V-539 [Revised]

From Key West, FL; INT Key West 012°T(014°M) and Lee County, FL, 167°T(169°M) radials; to Lee County.

V-579 [Amended]

By removing the words "From Ft. Myers, FL, via INT Ft. Myers 311°" and substituting the words "From Lee County, FL; INT Lee County 312°T(314°M)"

§ 71.203 [Amended]

3. Section 71.203 is amended as follows:

Fort Myers, FL [Removed]

PART 75—ESTABLISHMENT OF JET ROUTES AND AREA HIGH ROUTES

4. The authority citation for Part 75 continues to read as follows:

Authority. 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

5. Section 75.100 is amended as follows:

J-41 [Amended]

By removing the words "From Key West, FL, via INT of Key West 358° and St. Petersburg, FL, 151° radials;" and substituting the words "From Key West, FL; Lee County, FL;"

J-58 [Amended]

By removing the words "and Sarasota, FL, 286° radials; Sarasota; INT of Sarasota 138° and Biscayne Bay, FL, 301° radials; to Biscayne Bay;" and substituting the words "and Sarasota, FL, 286°T(288°M) radials; Sarasota; Lee County, FL; Biscayne Bay, FL;"

J-75 [Amended]

By removing the words "From Biscayne Bay, FL; Fort Myers, FL; INT Fort Myers 345°

and Taylor, FL, 175° radials;" and substituting the words "From INT Fort Lauderdale, FL, 272°T(272°M) and Lee County, FL, 120°T(122°M) radials; Lee County; INT Lee County 340°T(342°M) and Taylor, FL, 176°T(179°M) radials;"

Issued in Washington, DC, on May 24, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-13323 Filed 6-5-89; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION

16 CFR Part 414

Trade Regulation Rule; Deception as to Transistor Count of Radio Receiving Sets, Including Transceivers

AGENCY: Federal Trade Commission.

ACTION: Notice of Proposed Rulemaking (NPR).

SUMMARY: The Federal Trade Commission announces the commencement of a rulemaking proceeding for the trade regulation rule concerning deception as to transistor count of radio receiving sets, including transceivers ("Transistor Rule" or "Rule") (16 CFR Part 414). The proceeding will address whether or not the Transistor Rule should be repealed. The Commission invites public comment on how the Transistor Rule has affected consumers, businesses and others.

DATE: Written comments and requests for a public hearing will be accepted until July 6, 1989.

ADDRESS: Comments and requests for a public hearing should be submitted to Henry B. Cabell, Presiding Officer, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580. All comments and requests should be captioned: "NPR Comment—Transistor Rule."

FOR FURTHER INFORMATION CONTACT: Robert E. Easton, Esq., Special Assistant—Enforcement, (202) 326-3029, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: In an Advance Notice of Proposed Rulemaking, the Commission invited public comment upon whether the Rule should remain in effect as it is or be repealed. The Commission received only one public comment (from an industry association). This comment, which is on the public record of this proceeding, confirmed the information garnered in staff's preliminary inquiry that transistors are no longer considered selling features for audio electronic

products. Further, the comment recommended that the Rule be repealed in the interest of efficient government. The paucity of public comment indicates that the issue of repeal is not controversial. Because it is anticipated that there will be no need for public hearing unless such hearing is requested (See Part E—Requests for Public Hearings), no dates are set for submissions of notifications of interest in questioning witnesses and requests to testify at hearings.

Part A—Background Information

This notice is being published pursuant to Section 18 of the Federal Trade Commission Act, 15 U.S.C. 57a et seq., the provisions of Part 1, Subpart B of the Commission's Rules of Practice, 16 CFR 1.7 and 5 U.S.C. 551 et seq. This authority permits the Commission to promulgate, modify and repeal trade regulation rules that define with specificity acts or practices that are unfair or deceptive in or affecting commerce within the meaning of section 5(a)(1) of the FTC Act, 15 U.S.C. 45.

The Transistor Rule declares that it is an unfair method of competition and an unfair or deceptive act or practice in connection with the sale of radio receiving sets including transceivers to represent directly or by implication that a radio set contains a specified number of transistors when the transistors counted do not function to detect, amplify or receive radio signals.

The Transistor Rule was adopted on May 14, 1968, and became effective on December 10, 1968.

Part B—Objectives and Analysis

The objective of this rulemaking proceeding is to determine whether the Commission's Transistor Rule should be repealed. To assist the Commission in reaching its determination, the Commission seeks evidence on the following factual issues: (1) Whether there are any benefits from the Transistor Rule and, if so, whether they are greater than its costs; and (2) whether radio technology and marketing have changed so that the Rule is no longer needed.

Those factual issues were previously raised in the ANPR (54 FR 5090, Feb. 1, 1989). The only comment received was from the Electronics Industries Association (EIA), an association of manufacturers of consumer electronics products. The EIA submission is on the public record in this proceeding and stated:

[T]ransistor counts are rarely, if ever, used in the consumer electronics industry as a means of marketing audio products. Some

products may still use transistors but most rely on solid state componentry. Transistors are no longer considered a selling feature for audio electronics products.

Although we believe the rule imposes minimal costs, if any, on manufacturers, it does not appear to have any benefits. Accordingly, it should be eliminated in the interest of efficient government.

The Commission is undertaking this rulemaking proceeding as part of the Commission's ongoing program of evaluating trade regulation rules to determine their current effectiveness and impact. Based on information currently in its possession, the Commission believes that the Rule no longer serves the public interest and should be repealed.

Part C—Alternative Actions

The Commission does not plan to consider alternatives to repealing the Transistor Rule or leaving it in effect as it is.

Part D—Request for Comments

Members of the public are invited to comment on any issues or concerns they believe are relevant or appropriate to the Commission's review of the Transistor Rule. A comment that includes the reasoning or basis for a proposition will likely be more persuasive than a comment without supporting information. The Commission requests that factual data upon which the comments are based be submitted with the comments. In this section, the Commission identifies a number of issues on which it solicits public comment. The identification of issues is designed to assist the public to comment on relevant matters and should not be construed as a limitation on the issues or the public comment.

Questions

(1) Do manufacturers and retailers of radios and transceivers (walkie-talkies) currently use transistor counts as a means of marketing their products (this question does not apply to integrated circuits which are not covered by the Rule)?

(2) Are transistors currently used in radios and transceivers to detect, amplify or receive radio signals?

(3) Is the use of transistors in radios and transceivers considered "state of the art" technology?

(4) Is promotion of the number of transistors in radios or transceivers a useful marketing strategy?

(5) Is the number of transistors contained in a radio or transceiver customarily disclosed on the set itself or in promotional material such as advertisements?

(6) Are retail store sales personnel informed of the transistor count of radios and transceivers and/or instructed to mention such count to customers?

(7) What are the costs to manufacturers and sellers of radios and transceivers imposed by the Rule?

(8) What are the benefits to consumers from the Rule?

(9) Should the Rule be kept in effect or should it be repealed?

Part E—Requests for Public Hearings

Because there does not appear to be any dispute as to the material facts or issues raised by this proceeding and because written comments appear adequate to present the views of all interested parties, a public hearing has not been scheduled. If any person would like the Commission to schedule public hearings, he or she should address a request for public hearings to Henry B. Cabell, Presiding Officer, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580 (202-326-3642) as soon as possible but not later than 30 days from publication of this notice.

Part F—Preliminary Regulatory Analysis

The following discussion constitutes the Commission's Preliminary Regulatory Analysis of the proposed Rule pursuant to the Requirements of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.* The Act requires an analysis of the anticipated impact of the proposed Rule repeal on small business. The analysis must contain, as applicable, a description of the reasons why action is being considered; the objectives of and legal basis for the proposed Rule; the class and number of small entities affected; the projected reporting, recordkeeping and other compliance requirements of the proposed Rule; any existing federal rules which may duplicate, overlap or conflict with the proposed Rule; and any significant alternatives to the proposed Rule which accomplish its objectives and, at the same time, minimize its impact on small entities.

A description of the reasons why action is being considered and the objectives of and legal basis for the proposed repeal of the Rule have been explained elsewhere in this Notice.

Repeal of the Rule would appear to have little or no effect on any small business. Because of changes in technology, it appears that small businesses no longer use transistor count as a method for marketing radio receiving sets.

Repeal of the Rule will remove any reporting, recordkeeping or other compliance requirements of the Rule.

The Commission is not aware of any existing federal rules which would conflict with, duplicate, or overlap the Rule.

The only significant alternative to repeal of the Rule is to keep it as is. Because of advances in technology, the Rule no longer appears to serve a meaningful purpose. Under these circumstances, keeping the Rule as is would run counter to the efficiencies of repealing rules which no longer serve a useful purpose.

Part G—Paperwork Reduction Act

The Transistor Rule contains no information collection requirements as defined by the Paperwork Reduction Act, 44 U.S.C. 3501-3518.

Part H—Proposed Repeal of Trade Regulation Rule

Notice is hereby given that the Federal Trade Commission, pursuant to the Federal Trade Commission Act, *as amended*, 15 U.S.C. 41, *et seq.*, the provisions of Part I, Subpart B of the Commission's Procedures and Rules of Practice, 16 CFR 1.7, *et seq.*, and the Administrative Procedures Act, 5 U.S.C. 553, *et seq.*, has initiated a proceeding for the repeal of the trade regulation rule concerning deception as to transistor count of radio receiving sets, including transceivers.

List of Subjects in 16 CFR Part 414

Transistor, Trade practices.

By direction of the Commission.

Donald S. Clark,
Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga Concerning "Transistor Rule" Notice of Proposed Rulemaking

I dissent from the Commission's decision to initiate a rulemaking proceeding to repeal the "Transistor Rule," 16 CFR Part 414, because I believe that the costs of repealing the rule outweigh the benefits.

There are obvious benefits to repealing rules that contain unnecessary reporting or recordkeeping requirements, affirmative disclosure provisions, or other burdensome features. Less tangible benefits also may come from removing outdated and unnecessary regulations from the Code of Federal Regulations where, as in this case, those regulations do not impose burdens.

Unfortunately, the Commission can delete the regulatory flotsam and jetsam that clutters the CFR only through the cumbersome and expensive procedures of Magnuson-Moss rulemaking, which requires an advance notice of proposed rulemaking, an initial public comment period, a final notice of proposed rulemaking, a preliminary

regulatory analysis, a second public comment period, a staff report, a recommended decision by the presiding officer, a post-record comment period, a statement of basis and purpose, and a final regulatory analysis. See 15 U.S.C. 57a; 16 CFR 1.10-1.15. By repealing the Transistor Rule, the Commission would reduce the size of the CFR by two pages. Given our current budgetary constraints, I believe that we should focus our efforts on matters that offer the prospect of a more substantial return on our resource investment.

Dissenting Statement of Commissioner Andrew J. Strenio, Jr. Regarding Transistor Count Rule (R011005)

This obsolete rule does not now harm consumers or competition. Repealing the rule would consume staff time that already is stretched thin. Therefore, I oppose initiating this rulemaking both because the tangible costs outweigh any theoretical benefits, and because the agency's scarce resources can be put to much more practical use.

[FR Doc. 89-13402 Filed 6-5-89; 8:45 am]

BILLING CODE 6750-01-M

RAILROAD RETIREMENT BOARD

20 CFR Parts 200 and 262

RIN 3220-AA56

General Administration; Miscellaneous

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board proposes to amend Parts 200 and 262 of its regulations in order to consolidate certain administrative procedures in one part (Part 200) of its regulations, to revise and clarify certain procedures for the disclosure of information obtained in the administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act, and to eliminate certain little-used and obsolete provisions. This action is necessary to avoid the confusion which can result from having to consult two entirely separate parts containing general administrative rules. The proposed rule will remove Part 262.

DATE: Comments must be submitted on or before August 7, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dadabo, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4945 (FTS 386-4945).

SUPPLEMENTARY INFORMATION: The Railroad Retirement Board (Board) is charged with the administration of both the Railroad Retirement Act (45 U.S.C.

231 *et seq.*) and the Railroad Unemployment Insurance Act (45 U.S.C. 351 *et seq.*). The Board has issued separate regulations to facilitate the administration of these two Acts. However, certain administrative procedures may be applied in situations arising under either Act. The Board believes that such procedures would be better incorporated into one regulatory part (Part 200), rather than being set forth in separate parts. Moreover, the subjects covered by certain regulations now in Part 262 have already been incorporated into other sections of the Board's regulations as part of an ongoing project to revise and update the agency's regulations. In addition, the procedures in the present § 262.16 concerning the disclosure of information in the possession of the agency are proposed to be revised, reorganized, and moved to Part 200, which already contains the Board's regulations issued under the Freedom of Information Act (§ 200.4) and the Privacy Act (§ 200.5), so that all of the agency's disclosure regulations may be located in one part. Finally, certain of the provisions in the current Part 262 are little used and are proposed to be removed because they are obsolete.

A brief summary of the disposition of the various sections of the present Part 262 under the proposed regulation is set forth below.

1. Sections 262.1, "Penalties," is simply a repetition of 45 U.S.C. 2311 and, because of this redundancy, is proposed to be removed.

2. Sections 262.2, "Posting notices to employees," and 262.10, "Free Transportation," are seldom used and are proposed to be removed for obsolescence.

3. The subjects formerly covered by §§ 262.5, 262.6, and 262.7 now appear in Part 243 of the Board's regulations. These three sections were removed when Part 243 was added to the Board's regulations.

4. Section 262.12 is proposed to be redesignated as § 200.10.

5. The subject covered by § 262.15, "Offices of the Board," is covered in detail in § 200.1. Section 262.15 is therefore proposed to be removed.

6. Section 262.16 is proposed to be redesignated as § 200.8. In addition, certain revisions are proposed to be made to this section in order to facilitate the administration of certain provisions of section 12(d) of the Railroad Unemployment Insurance Act (RUIA) (45 U.S.C. 362(d)), which is incorporated into the Railroad Retirement Act (RRA) by section 7(b)(3) of that Act (45 U.S.C. 231f(b)(3)). The present § 262.16 provides that no document or any

information in the possession of the Board will be produced, disclosed, delivered, or opened to inspection unless the Board finds that such production, disclosure, delivery, or opening to inspection "will not be detrimental to the interest of the person to whom the document pertains, or to the estate of such person." The "not detrimental" standard was set forth at 4 FR 1503, April 7, 1939, as part of a complete reissue of the Board's previous regulations under the Railroad Retirement Act of 1937. Section 12(d) of the RUIA permits disclosure if the Board finds that disclosure "is clearly in furtherance of the interest of the employee or his estate." Although the standard in section 12(d) was enacted as part of the original RUIA in June 1938, section 12(d) was not incorporated into the Railroad Retirement Act of 1937 until 1966 by Pub. L. 89-700, 80 Stat. 1079, and was also subsequently incorporated into the Railroad Retirement Act of 1974, Pub. L. 93-445, October 15, 1974, 88 Stat. 1305, the successor to the 1937 Act, by section 7(b)(3) of that Act. The difference in the two standards has caused some confusion. The proposed revised regulation incorporates the statutory standard.

7. The proposed § 200.8 would also reorganize most of the disclosure procedures contained in the present § 262.16 and update statutory references therein. In addition, introductory provisions would clarify the applicability of § 200.8 in order to avoid confusion with the Board's regulations issued under the Freedom of Information Act (found in § 200.4) and those issued under the Privacy Act (found in § 200.5).

8. Section 262.17 simply repeats statutory provisions concerning the Actuarial Advisory Committee provided for in section 15(f) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(f)) and formerly provided for in the Railroad Retirement Act of 1937 (45 U.S.C. 228(o)) and is proposed to be removed.

9. Section 262.18 is proposed to be redesignated as § 200.9. The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. In addition, this rule does not impose any information collections within the meaning of the Paperwork Reduction Act.

List of Subjects in 20 CFR Parts 200 and 262

Railroad employees, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, Title 20, Chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—GENERAL ADMINISTRATION

1. The authority citation for Part 200 continues to read as follows:

Authority: 45 U.S.C. 231(f)(5) and 45 U.S.C. 362.; § 200.4 also issued under 5 U.S.C. 552; § 200.5 also issued under 5 U.S.C. 552a; § 200.6 also issued under 5 U.S.C. 552b; and § 200.7 also issued under 31 U.S.C. 3717, unless otherwise noted.

2. Section 200.4 is amended by revising paragraph (b) to read as follows:

§ 200.4 Availability of information to public.

(b) The identifying details to be deleted shall include, but not be limited to, names and identifying numbers of employees and other individuals as needed to comply with sections 12 (d) and (n) of the Railroad Unemployment Insurance Act, section 7(b)(3) of the Railroad Retirement Act, and § 200.8 of this part, or to prevent a clearly unwarranted invasion of personal privacy.

3. Section 200.8 is proposed to be added to read as follows:

§ 200.8 Disclosure of information obtained in the administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

(a) *Purpose and scope.* The purpose of this section is to establish specific procedures necessary for compliance with section 12(d) of the Railroad Unemployment Insurance Act, which is incorporated into the Railroad Retirement Act by section 7(b)(3) of that Act. Except as otherwise indicated in this section, these regulations apply to all information obtained by the Railroad Retirement Board in connection with the administration of the Railroad Retirement Act and the Railroad Unemployment Insurance Act.

(b) Definitions.

Agency. The term "agency" refers to the Railroad Retirement Board, an independent agency in the executive branch of the United States Government.

Applicant. The term "applicant" means a person who signs an application for an annuity or lump-sum payment or unemployment benefits or sickness benefits for himself or herself or for some other person.

Beneficiary. The term "beneficiary" refers to an individual to whom a

benefit is payable under either the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

Board. The term "Board" refers to the three-member governing body of the Railroad Retirement Board.

Document. The term "document" includes correspondence, applications, claims, reports, records, memoranda and any other materials or data used, prepared, received or transmitted to, from, by or for the agency in connection with the administration of the Railroad Retirement Act or the Railroad Unemployment Insurance Act.

Information. The term "information" means any non-medical document or data which is obtained by the agency in the administration of the Railroad Retirement Act and/or the Railroad Unemployment Insurance Act. "Information" does not include the fact of entitlement to or the amount of a benefit under either of these Acts. Medical records are subject to the disclosure provisions set out in § 200.5(e) of this part.

(c) *General rule.* Except as otherwise authorized by this section, information shall not be produced, disclosed, delivered or open to inspection in any manner revealing the identity of an employee, applicant or beneficiary unless the Board or its authorized designee finds that such production, disclosure, delivery, or inspection is clearly in furtherance of the interest of the employee, applicant or beneficiary or of the estate of such employee, applicant or beneficiary. Where no such finding is made, no information shall be released except in accordance with the provisions of § 200.5 of this part, unless release of such information is required by a law determined to supersede this general rule. In addition, regardless of whether or not such finding can be made, information which is compiled in anticipation of a civil or criminal action or proceeding against an applicant or beneficiary may not be released under this general rule.

(d) *Subpoenas—general rule.* (1) No officer, agent, or employee of the agency is authorized to accept or receive service of subpoenas, summons, or other judicial process addressed to the Board or to the agency except as the Board may from time to time delegate such authority by power of attorney. The Board has issued such power of attorney to the Deputy General Counsel of the agency and to no one else.

(2) In the event the production, disclosure, or delivery of any information is called for on behalf of the United States or the agency, such information shall be produced, disclosed, or delivered only upon and

pursuant to the advice of the Deputy General Counsel.

(3) When any member, officer, agent, or employee of the agency is served with a subpoena to produce, disclose, deliver, or furnish any information, he or she shall immediately notify the Deputy General Counsel of the fact of the service of such subpoena. Unless otherwise ordered by the Deputy General Counsel or his or her designee, he or she shall appear in response to the subpoena and respectfully decline to produce, disclose, deliver, or furnish the information, basing such refusal upon the authority of this section.

(e) *Subpoena duces tecum.* (1) When any document is sought from the agency by a subpoena duces tecum or other judicial order issued to the agency by a court of competent jurisdiction in a proceeding wherein such document is relevant, a copy of such document, certified by the Secretary to the Board to be a true copy, may be produced, disclosed, or delivered by the agency if, in the judgment of the Board or its designee, such production is clearly in furtherance of the interest of the employee, applicant, or beneficiary to whom the document pertains, or is clearly in furtherance of the interest of the estate of such employee, applicant, or beneficiary, and such document does not consist of or include a report of medical information.

(2) When the production, disclosure, or delivery of any document described in paragraph (e)(1) of this section would not be permitted under the standards therein set forth, no member, officer, agent, or employee of the agency shall make any disclosure of or testify with respect to such document.

(f) *Authorized release of information.* Subject to the limitation expressed in paragraph (h) of this section, disclosure of documents and information is hereby authorized, in such manner as the Board may by instructions prescribe, in the following cases:

(1) To any employer, employee, applicant, or prospective applicant for an annuity or death benefit under the Railroad Retirement Act of 1974, or his or her duly authorized representative, as to matters directly concerning such employer, employee, applicant, or prospective applicant in connection with the administration of such Act.

(2) To any employer, employee, applicant or prospective applicant for benefits under the Railroad Unemployment Insurance Act, or his or her duly authorized representative, as to matters directly concerning such employer, employee, applicant, or

prospective applicant in connection with the administration of such Act.

(3) To any officer or employee of the United States lawfully charged with the administration of the Railroad Retirement Tax Act, the Social Security Act, or acts or executive orders administered by the Veterans Administration, and for the purpose of the administration of those Acts only.

(4) To any applicant or prospective applicant for death benefits or accrued annuities under the Railroad Retirement Act, or to his or her duly authorized representative, as to the amount payable as such death benefits or accrued annuities, and the name of the person or persons determined by the agency to be the beneficiary, or beneficiaries, thereof, if such applicant or prospective applicant purports to have a valid reason for believing himself or herself to be, in whole or in part, the beneficiary thereof.

(5) To any officer or employee of the United States lawfully charged with the administration of any Federal law concerning taxes imposed with respect to amounts payable under the Railroad Retirement Act of 1974 and the Railroad Unemployment Insurance Act and the name of the person or persons to whom such amount was payable.

(6) To any officer or employee of any state of the United States lawfully charged with the administration of any law of such state concerning unemployment compensation, as to the amounts payable to payees or beneficiaries under the Railroad Retirement Act of 1974 and the Railroad Unemployment Insurance Act.

(7) To any court of competent jurisdiction in which proceedings are pending which relate to the care of the person or estate of an incompetent individual, as to amounts payable under the Railroad Retirement Act to such incompetent individual, but only for the purpose of such proceedings.

(8) To parties involved in litigation, including an action with respect to child support, alimony, or marital property, the amount of any actual or estimated benefit payable under the Railroad Retirement Act or the Railroad Unemployment Insurance Act, where such amount or estimated amount is relevant to that litigation.

(9) To any employer, as to the monthly amount of any retirement annuity under the Railroad Retirement Act of 1974 or benefit under the Railroad Unemployment Insurance Act to which a present or former employee of that employer is entitled.

(10) To any governmental welfare agency, information about the receipt of benefits and eligibility for benefits.

(11) To any law enforcement agency, information necessary to investigate or prosecute criminal activity in connection with claims for benefits under the Railroad Retirement Act, Railroad Unemployment Insurance Act, or any other Act the Board may be authorized to administer.

(g) No document and no information acquired solely by reason of any agreement, arrangement, contract, or request by or on behalf of the agency, relating to the gathering, preparation, receipt or transmittal of documents or information to, from or for the agency, which is by virtue of such agreement, arrangement, contract, or request in the possession of any person other than an employee of the agency, shall be produced, reproduced, or duplicated, disclosed or delivered by any person to any other person or tribunal (other than the agency or an employee thereof, or the person to whom the document or information pertains), whether in response to a subpoena or otherwise, except with the consent of the Board or its designee. Any person, upon receipt of any request, subpoena, or order calling for the production, disclosure, or delivery of such document or information shall notify the Board or its designee of the request, subpoena, or order and shall take no further action except upon advice of the Board or its designee. Unless consent of the Board or its designee is given, the person shall respectfully decline to comply with the request, subpoena or order.

(h) Notwithstanding any other provision of this section, no disclosure of information may be made by the Board or any member, officer, agent, or employee of the agency, if the disclosure of such information is prohibited by law.

4. Section 200.9 is proposed to be added to read as follows:

§ 200.9 Selection of members of Actuarial Advisory Committee.

(a) *Introduction.* Under section 15(f) of the Railroad Retirement Act of 1974 (45 U.S.C. 231n(f)), the Board is directed to select two actuaries to serve on an Actuarial Advisory Committee. This section describes how the two actuaries are selected.

(b) *Carrier actuary.* One member of the Actuarial Advisory Committee shall be selected by recommendations made by "carrier representatives." "Carrier representatives," as used in this section, shall mean any organization formed jointly by the express companies, sleeping-car companies and carriers by railroad subject to the Interstate Commerce Act which own or control more than 50 percent of the total

railroad mileage within the United States.

(c) *Railway labor actuary.* The other member of the Actuarial Advisory Committee to be selected by the Board shall be recommended by "representatives of employees." "Representatives of employees," as used in this section, shall mean any organization or body formed jointly by a majority of railway labor organizations organized in accordance with the Provisions of the Railway Labor Act, as amended, or any individual or committee authorized by a majority of such railway labor organizations to make such recommendation.

5. Section 200.10 is proposed to be added to read as follows:

§ 200.10 Representatives of applicants or beneficiaries.

(a) *Power of attorney.* An applicant or a beneficiary shall not be required to hire, retain or utilize the services of an attorney, agent, or other representative in any claim filed with the Board. In the event an applicant or beneficiary desires to be represented by another person, he or she shall file with the Board prior to the time of such representation a power of attorney signed by such applicant or beneficiary and naming such other person as the person authorized to represent the applicant or beneficiary with respect to matters in connection with his or her claim. However, the Board may recognize one of the following persons as the duly authorized representative of the applicant or beneficiary without requiring such power of attorney when it appears that such recognition is in the interest of the applicant or beneficiary:

(1) A Member of Congress;

(2) A person designated by the railway labor organization of which the applicant or beneficiary is a member to act on behalf of members of that organization on such matters; or

(3) An attorney who, in the absence of information to the contrary, declares that he or she is representing the applicant or beneficiary.

(b) *Payment of claim.* The Board will not certify payment of any awarded claim to or through any person other than the applicant or beneficiary for the reason that a power of attorney for such person to represent such applicant or beneficiary has been filed.

PART 262—MISCELLANEOUS [REMOVED AND RESERVED]

6. Part 262, consisting of §§ 262.1 through 262.18, is proposed to be removed and reserved.

Dated: May 30, 1989.
By Authority of the Board.
Beatrice Ezerski,
Secretary to the Board.
[FR Doc. 89-13361 Filed 6-5-89; 8:45 am]
BILLING CODE 7905-01-M

20 CFR Part 222

RIN 3220-AA57

Family Relationships

AGENCY: Railroad Retirement Board.
ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board proposes to amend its regulations by adding a new Part 222 which will define the relationships to a railroad employee created by marriage, divorce, birth, adoption, or dependency which a claimant may have to establish in order to qualify for benefits under the Railroad Retirement Act.

DATE: Comments must be submitted on or before August 7, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: The Railroad Retirement Act (45 U.S.C. 231 *et seq.*) provides a system of retirement and disability benefits for railroad employees, their spouses, children, and survivors who meet certain eligibility requirements under that Act. The Railroad Retirement Board's regulations regarding family relationships are currently located in Parts 216 and 219. These regulations were issued in February 1982 and do not take into account the categories of beneficiaries which were added by the Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35); namely divorced spouses, surviving divorced spouses and remarried widow(er)s.

The proposed regulation incorporates the provisions regarding family relationships currently contained in Parts 216 and 219 into one new Part 222, and adds provisions pertaining to the classes of beneficiaries created by the 1981 Amendments to the Railroad Retirement Act. The phrase "family relationship" generally pertains to a relationship to a railroad employee which has been created by marriage, divorce, birth, adoption, or dependency. Both Parts 216 and 219 are also currently under extensive revision and when published as final rules will reflect that

all definitions regarding family relationships are now contained in Part 222.

The Bureau of Law within the Railroad Retirement Board is currently involved in a project to revise all regulations for which the agency has responsibility. It is the aim of the project to incorporate the latest legislative, legal and policy changes while using plain language in order to make the regulations easier to use and understand. As a result, this part has been written to be an integral part of the planned revised and reorganized regulations and may, in certain instances, refer to parts of regulations which are not currently in effect. The Railroad Retirement Board believes that any minor inconveniences that might arise as a result of publishing the regulations on a part-by-part basis are outweighed by the benefits derived from publishing current, more easily usable and understandable regulations on a consistent basis.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory impact analysis is required. In addition, this rule does not impose any information collections within the meaning of the Paperwork Reduction Act (44 U.S.C. Ch. 35).

List of Subjects in 20 CFR Part 222

Railroad employees, Railroad retirement, Family relationships.

For the reasons set out in the preamble, Title 20, Chapter II of the Code of Federal Regulations is proposed to be amended by adding Part 222, Family Relationships, to read as follows:

PART 222—FAMILY RELATIONSHIPS

Subpart A—General

- Sec.
222.1 Introduction.
222.2 Definitions.
222.3 Other regulations related to this part.
222.4 Homicide of employee.

Subpart B—Relationship as Wife, Husband or Widow(er)

- 222.10 When determinations of relationship as wife, husband, widow or widower of employer are made.
222.11 Determination of marriage relationship.
222.12 Ceremonial marriage relationship.
222.13 Common-law marriage relationship.
222.14 Deemed marriage relationship.
222.15 When spouse is living with employee.
222.16 When spouse is living in the same household with employee.
222.17 "Child in care" when child of the employee is living with the claimant.

- 222.18 "Child in care" when child of the employee is not living with the claimant.

Subpart C—Relationship as Divorced Spouse, Surviving Divorced Spouse, or Remarried Widow(er)

- 222.20 When determination of relationship as divorced spouse, surviving divorced spouse, or remarried widow(er) is made.
222.21 When marriage is terminated by final divorce.
222.22 Relationship as divorced spouse.
222.23 Relationship as surviving divorced spouse.
222.24 Relationship as remarried widow(er).

Subpart D—Relationship as Child

- 222.30 When determinations of relationships as child are made.
222.31 Relationship as child for annuity and lump-sum payment purposes.
222.32 Relationship as a natural child.
222.33 Relationship resulting from legal adoption.
222.34 Relationship resulting from equitable adoption.
222.35 Relationship as stepchild.
222.36 Relationship as grandchild or stepgrandchild.

Subpart E—Relationship as Parent, Grandchild, Brother or Sister

- 222.40 When determinations of relationship are made for parent, grandchild, brother or sister.
222.41 Determination of relationship and support for parent.
222.42 When employee is contributing to support.
222.43 How the one-half support determination is made.
222.44 Other relationship determinations for lump-sum payments.

Subpart F—Child Support and Dependency

- 222.50 When child dependency determinations are made.
222.51 When a natural child is dependent.
222.52 When a legally adopted child is dependent—general.
222.53 When a legally adopted child is dependent—child adopted after entitlement.
222.54 When a legally adopted child is dependent—grandchild or stepgrandchild adopted after entitlement.
222.55 When a stepchild is dependent.
222.56 When a grandchild or stepgrandchild is dependent.
222.57 When an equitably adopted child is dependent.
222.58 When a child is living with an employee.

Authority: 45 U.S.C. 231f.

Subpart A—General

§ 222.1 Introduction.

This part sets forth and describes the family relationships that may make a claimant eligible for an annuity or lump-sum payment under the Railroad Retirement Act and furnishes the basic rules for determining when those relationships exist. Such relationships

may result from a current or terminated marriage or through birth, death or adoption. Other relevant relationships are having a child in care, dependency or lack of it, contributing to support, living in the same household, and being under court order to contribute to support.

§ 222.2 Definitions.

As used in this part—

"Annuity" means a payment under the Railroad Retirement Act due to an entitled claimant for a calendar month and made to him or her on the first day of the following month.

"Apply" means to sign a form or statement that the Railroad Retirement Board accepts as an application for an annuity or lump-sum payment under the rules set out in Part 217 of this chapter.

"Child" has differing definitions for annuity and lump-sum payment purposes. See § 222.31.

"Claimant" means a person who files an application for an annuity or lump-sum payment or for whom an application is filed.

"Eligible" means that a person would meet all the requirements for payment of an annuity or lump-sum payment as of a given date but has not yet applied therefor.

"Employee" means an employee as defined in Part 203 of this chapter.

"Final divorce" means a divorce that completely dissolves a marriage and restores the parties to the status of single persons; it is also referred to as an absolute divorce.

"Finally divorced person" means a person whose marriage has been terminated or dissolved by a final divorce.

"Legal impediment" means that there was a defect in the procedures followed in a marriage ceremony or that a previous marriage of the employee or spouse had not ended at the time of the ceremony.

"Lump-sum payment" means any of the following payments under the Railroad Retirement Act: lump-sum death payment, residual lump-sum, annuities due but unpaid at death, or lump-sum refund payment (see Part 234 of this chapter).

"Marriage" means the social and legal relationship of husband and wife for family relationship purposes, as well as the act by which the married state is effected.

"Permanent home" means the employee's true and fixed home (legal domicile); it is the place to which the employee intends to return whenever he or she is absent therefrom.

"Relationship" means a family connection by blood, marriage, or

adoption between the employee and another person who is a claimant.

"Spouse" means the husband or wife of the employee.

"State law" means the law of the State in which the employee has his or her permanent home or, in the case of a deceased employee, the law of the State in which the employee had his or her permanent home at the time of his or her death. If the employee's permanent home is not in one of the 50 States, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, or American Samoa, the laws of the District of Columbia are applied.

§ 222.3 Other regulations related to this part.

This part is related to a number of other parts of this chapter:

Part 216 describes when a person is eligible for an annuity under the Railroad Retirement Act.

Part 217 describes how to apply for an annuity or for lump-sum payments.

Part 218 sets forth the beginning and ending dates of annuities.

Part 219 sets out what evidence is necessary to prove eligibility and the relationships described in this part.

Part 220 describes when a person is eligible for a disability annuity under the Railroad Retirement Act or a period of disability under the Social Security Act.

Part 225 explains how primary insurance amounts (PIA's) are computed.

Part 228 outlines the computation of employee and spouse annuities.

Part 228 describes how survivor annuities are computed.

Part 229 describes when and how an employee and spouse annuity may be increased under the social security overall minimum provision.

Part 234 describes lump-sum payments under the Railroad Retirement Act.

§ 222.4 Homicide of employee.

No person convicted of the felonious and intentional homicide of an employee can be entitled to an annuity or lump-sum payment based on the employee's earnings record (service and compensation). Further, the convicted person is considered not to exist in deciding the rights of other persons to annuity or lump-sum payments. A minor may be denied a survivor annuity or lump-sum payment on the earnings record of a parent if the minor was convicted of intentionally causing the parent's death by an act which would be considered a felony if committed by an adult.

Subpart B—Relationship as Wife, Husband, or Widow(er)

§ 222.10 When determinations of relationship as wife, husband, widow or widower of employee are made.

(a) The claimant's relationship as the wife or husband of an employee is determined when the claimant applies for an annuity, or when there is a claim which would include a husband or wife in the computation of the social security overall minimum provision, or when a claim is filed for a lump-sum payment. If a deemed marriage (see § 222.14) is to be determined, the husband, wife, or widow(er) must also be found to be or to have been living in the same household as the employee (see § 222.16).

(b) The claimant's relationship as the widow(er) of an employee is determined as of the date on which the employee died. If the claimant applied for a lump-sum payment as the widow(er) of the employee, one of the following determinations is made:

(1) Whether the widow(er) was living in the same household as the employee, as defined in § 222.16 of this part, at the time of the employee's death, if the claimant is applying for the 1974 Act lump-sum death payment.

(2) Whether the widow(er) was living with the employee, as defined in § 222.15 of this part, at the time of the employee's death, if the claimant is applying for the 1937 Act lump-sum death payment, annuities due but unpaid at death, the residual lump-sum payment, or a lump-sum refund payment.

(c) In order for a claimant who has applied for a monthly survivor annuity to establish a deemed marriage, the claimant must have been living in the same household as the employee at the time of the employee's death (see § 222.16).

(d) If the husband, wife, widow(er), remarried widow(er), or surviving divorced spouse of the employee is a claimant for a monthly annuity on a basis other than age or disability, a child in care determination is required (see §§ 222.17 and 222.18).

§ 222.11 Determination of marriage relationship.

A claimant will be considered to be the husband, wife, or widow(er) of an employee if the law of the State in which the employee has or had a permanent home would recognize that the claimant and employee were validly married, or if a deemed marriage is established.

(a) Generally, State courts will find that a claimant and employee were validly married if—

(1) The employee and claimant were married in a civil or religious ceremony (see § 222.12) or

(2) The employee and claimant live together in a common-law marriage relationship which is recognized under applicable State law (see § 222.13), and no impediment to the marriage existed at the time it took place.

(b) A deemed marriage relationship may be established as described in § 222.14.

§ 222.12 Ceremonial marriage relationship.

A valid ceremonial marriage is one which would be recognized as valid by the courts of the State in which the marriage ceremony took place. Generally, State law provides various procedures which must be followed, such as designation of who may perform the marriage ceremony, what licenses or witnesses are required, and similar rules. A ceremonial marriage may be a civil or religious ceremony, or a ceremony which follows tribal customs, Chinese customs, or similar traditional procedures.

§ 222.13 Common-law marriage relationship.

Under the laws of some States, a common-law marriage is one which is not solemnized in a formal ceremony, but is generally evidenced by a consummated agreement to marry between two persons legally capable of making a marriage contract, followed by cohabitation. The laws of the various States which recognize common-law marriage delineate specific factors which must be present in order to establish a valid common-law marriage in those States.

§ 222.14 Deemed marriage relationship.

If a ceremonial or common-law marriage relationship cannot be established under State law, a claimant may still be found to have the relationship as spouse of an employee based upon a deemed marriage. A claimant is deemed to be the wife, husband, or widow(er) of the employee if the person's marriage to the employee would have been valid under State law except for a legal impediment, and all of the following requirements are met:

(a) The claimant married the employee in a civil or religious ceremony.

(b) The claimant went through the marriage ceremony in good faith. Good faith means that at the time of the ceremony the claimant did not know that a legal impediment existed, or if the claimant did know, he or she thought that it would not prevent a valid marriage.

(c) The claimant was living in the same household as the employee (see § 222.16) when he or she applied for the spouse annuity or when the employee died.

(d) At the time the claimant applies for his or her annuity, no other person has a relationship under State law, as described in §§ 222.12 and 222.13, as the employee's wife, husband, or widow(er), and is entitled to an annuity under the Railroad Retirement Act or a monthly social security benefit based on that relationship.

§ 222.15 When spouse is living with employee.

A spouse, or widow(er) is living with the employee if—

(a) He or she and the employee are living in the same household; or

(b) The employee is contributing to the support of the spouse or widow(er); or

(c) The employee is under court order to contribute to the support of the spouse or widow(er).

§ 222.16 When spouse is living in the same household with employee.

(a) Living in the same household means that the employee and spouse customarily live together as a married couple in the same residence.

(b) The employee and spouse are also considered members of the same household when they live apart but expect to resume or continue living together after a temporary separation.

(c) If the employee and spouse were separated solely for medical reasons, the Board will consider them "living in the same household" even if the separation was likely to be permanent.

§ 222.17 "Child in care" when child of the employee is living with the claimant.

"Child in care" means a child who has been living with the claimant for at least 30 consecutive days unless—

(a) The child is inactive military service;

(b) The child is 18 years old (16 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities) or older and is not disabled;

(c) The child is 18 years old (16 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities) or older with a mental disability and the claimant does not exercise parental control and responsibility; or

(d) The child is 18 years old (16 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities) or older with a physical disability, but it is not

necessary for the claimant to perform personal services for the child.

(e) Parental control and responsibility for the care and welfare of the child means that the parent supervises the child's activities and makes important decisions about the child's needs either alone or with another person. Personal services are services such as dressing, feeding and managing money which the child cannot do alone because of a disability.

§ 222.18 "Child in care" when child of the employee is not living with the claimant.

(a) When child is in care. A child living apart from a claimant is in that claimant's care if—

(1) the child lives apart or is expected to live apart from the claimant for not more than six months; or

(2) The child is under 18 years old (16 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities), the claimant supervises the child's activities and makes important decisions about his or her needs, and one of the following circumstances applies:

(i) The child is living apart because of attendance at school but generally spends a vacation of at least 30 consecutive days with the claimant each year, and, if the claimant and the child's other parent are separated, the school must look to the claimant for decisions about the child's welfare.

(ii) The child is living apart because of the claimant's employment but the claimant makes regular and substantial contributions to the child's support. "Contributing to support" is defined in § 222.42.

(iii) The child is living apart because of the child's or the claimant's physical disability; or

(3) The child is 18 years old (16 with respect to male spouse, divorced spouse, surviving divorced spouse, or remarried widow(er) annuities) or older and is mentally disabled and the claimant supervises the child's activities, makes important decisions about the child's needs, and helps in the child's upbringing and development.

(b) When child is not in care. A child living apart from a claimant is not in the claimant's care if—

(1) The child is in active military service; or

(2) The child is living with his or her other parent; or

(3) A court order removed the child from the claimant's custody and control; or

(4) The claimant gave the right to custody and control of the child to someone else; or

(5) The claimant is mentally disabled.

Subpart C—Relationship as Divorced Spouse, Surviving Divorced Spouse, or Remarried Widow(er)

§ 222.20 When determination of relationship as divorced spouse, surviving divorced spouse, or remarried widow(er) is made.

(a) *Divorced spouse.* The claimant's relationship as the divorced spouse of an employee is determined when the purported divorced spouse applies for an annuity, or when there is a claim which would include a divorced spouse in the computation of the social security overall minimum provision. Such a determination is also made when a spouse annuitant age 62 or over secures a final divorce from the employee after 10 years of marriage.

(b) *Surviving divorced spouse.* The claimant's relationship as the surviving divorced spouse of an employee is determined when the purported surviving divorced spouse applies for an annuity on the basis of age, disability, or having a child in care. Such a determination is also made when there is a divorced spouse annuitant and the employee dies.

(c) *Remarried widow(er).* The claimant's relationship as a remarried widow(er) of an employee is determined when the purported remarried widow(er) applies for an annuity. Such a determination is also made when a widow(er) who is receiving an annuity remarries after age 60, or when a widow(er) who is receiving a disability annuity remarries after age 50.

§ 222.21 When marriage is terminated by final divorce.

A final divorce, often referred to as an absolute divorce, completely dissolves the marriage relationship and restores the parties to the status of single persons. A legal separation, qualified or preliminary divorce, divorce from bed and board, interlocutory decree of divorce, or similar court order is not considered a final divorce for family relationship and benefit entitlement purposes.

§ 222.22 Relationship as divorced spouse.

A claimant will be considered to be the divorced spouse of an employee if—

(a) His or her marriage to the employee has been terminated by a final divorce; and

(b) He or she is not married (if the claimant remarried after the divorce from the employee, the later marriage has been terminated by death, final divorce, or annulment); and

(c) He or she had been validly married to the employee, as set forth in § 222.11,

for a period of 10 years immediately before the date the divorce became final. The claimant meets this requirement even if the claimant and employee were divorced within the ten-year period, provided that the claimant and employee were remarried no later than the calendar year immediately following the year in which the divorce took place.

§ 222.23 Relationship as surviving divorced spouse.

A claimant will be considered to be the surviving divorced spouse of a deceased employee if the conditions in either paragraph (a) or (b) of this section are met:

(a) *Age or disability.* The claimant applied for an annuity on the basis of age or disability, and the conditions set forth in § 222.22 are met.

(b) *Child in care.* The claimant applied for an annuity on the basis of having a child in care, and—

(1) His or her marriage to the employee has been terminated by a final divorce, and

(2) He or she is not married (if the claimant remarried after the divorce from the employee, the later marriage has been terminated by death, final divorce, or annulment); and

(3) He or she either—
(i) Was the natural parent of the employee's child; or

(ii) Had been married to the employee when either the employee or the claimant legally adopted the other's child or when they both legally adopted a child who was then under 18 years of age.

§ 222.24 Relationship as remarried widow(er).

(a) *New eligibility.* A claimant will have the relationship of a remarried widow(er) if he or she is the widow(er), as discussed in § 222.11, of an employee and the claimant—

(1) Remarried after attaining age 60, or remarried after attaining age 50 and after the date on which he or she became disabled; or

(2) Remarried before attaining age 60, but is now unmarried, or remarried before attaining age 50 or before the date on which he or she became disabled, but is now unmarried.

(b) *Reentitlement.* A claimant will have the relationship of a remarried widow(er) if he or she remarries after his or her entitlement to an annuity as a widow(er) has been established, and the claimant—

(1) Remarries after attaining age 60, or remarries after attaining age 50 and after the date on which he or she became disabled; or

(2) Is entitled to an annuity based upon having a child of the employee in care and remarries, but this marriage is to a person who is entitled to a retirement, disability, widow(er)'s, mother's, father's, parent's, or disabled child's benefit under the Railroad Retirement Act or Social Security Act.

Subpart D—Relationship as Child

§ 222.30 When determinations of relationship as child are made.

(a) Determinations will be made regarding a person's relationship as the child of the employee and that person's dependency on the employee (see Subpart F of this part) when—

(1) The wife or husband of an employee applies for a spouse's annuity based on having the employee's child in care; or

(2) The employee's annuity can be increased under the social security overall minimum provision based on the child; or

(3) The employee dies and the claimant applies for a child's annuity.

(b) A determination will be made regarding a claimant's relationship as the child of the employee when the claimant applies for a share of a lump-sum payment as a child.

§ 222.31 Relationship as child for annuity and lump-sum payment purposes.

(a) *Annuity claimant.* When there are claimants under paragraphs (a)(1), (a)(2), or (a)(3) of § 222.30 above, a person will be considered the child of the employee when that person is—

(1) The natural or legally adopted child of the employee (see § 222.33); or

(2) The stepchild of the employee; or

(3) The grandchild or stepgrandchild of the employee or spouse; or

(4) The equitably adopted child of the employee.

(b) *Lump-sum payment claimant.* A claimant for a lump-sum payment must be one of the following in order to be considered the child of the employee:

(1) The natural child of the employee;

(2) A child legally adopted by the employee (this does not include any child adopted by the employee's widow or widower after the employee's death);

(3) The equitably adopted child of the employee.

§ 222.32 Relationship as a natural child.

A claimant will be considered the natural child of the employee for both annuity and lump-sum payment purposes if one of the following sets of conditions is met:

(a) Under relevant State law, the claimant could inherit a share of the employee's personal estate as the

employee's natural child if the employee were to die without leaving a will;

(b) The claimant is the employee's son or daughter, and the employee and the claimant's mother or father went through a marriage ceremony which would have been valid except for a legal impediment;

(c) The claimant's mother or father has not married the employee, but—

(1) The employee has acknowledged in writing that the claimant is his or her son or daughter; or

(2) A court has decreed that the employee is the mother or father of the claimant; or

(3) A court has ordered the employee to contribute to the claimant's support because the claimant is the employee's son or daughter; and

(4) Such acknowledgement, court decree, or court order was made not less than one year before the employee became entitled to an annuity or, in the case of a disability annuitant, prior to his or her most recent period of disability or, in case the employee is deceased, prior to his or her death.

(d) The claimant's mother or father has not married the employee, but—

(1) The claimant has submitted evidence acceptable in the judgment of the Board, other than that discussed in paragraph (c) of this section, that the employee is his or her mother or father; and

(2) The employee was living with the claimant or contributing to the claimant's support, as discussed in §§ 222.58 and 222.42 of this part, when—

(i) The spouse applied for an annuity based on having the employee's child in care; or

(ii) The employee's annuity could have been increased under the social security overall minimum provision; or

(iii) The employee died, if the claimant is applying for a child's annuity or lump-sum payment.

§ 222.33 Relationship resulting from legal adoption.

(a) *Adopted by employee.* A claimant will be considered to be the child of the employee for both annuity and lump-sum payment purposes if the employee legally adopted the claimant in accordance with applicable State law. Legal adoption differs from equitable adoption in that in the case of legal adoption formal adoption proceedings have been completed in accordance with applicable State law and such proceedings are not defective.

(b) *Adopted by widow or widower.* A claimant who is legally adopted by the widow or widower of the employee after the employee's death will be considered to be the child of the employee for

annuity but not for lump-sum payment purposes if—

(1) Either the claimant is adopted by the widow or widower within two years after the date on which the employee died, or the employee commenced proceedings to legally adopt the claimant before the employee's death; and

(2) The claimant was living in the employee's household at the time of the employee's death; and

(3) The claimant was not receiving regular support contributions from any other person other than the employee or spouse at the time of the employee's death.

§ 222.34 Relationship resulting from equitable adoption.

In many States, where a legal adoption proceeding was defective under State law or where a contemplated legal adoption was not completed, a claimant may be considered to be an equitably adopted child. A claimant will have the relationship of an equitably adopted child for annuity and lump-sum payment purposes if, in addition to meeting the other requirements of this part—

(a) The employee had agreed to adopt the claimant; and

(b) The natural parents or the person legally responsible for the care of the claimant agreed to the adoption; and

(c) The employee and the claimant lived together as parent and child; and

(d) The agreement to adopt is recognized under applicable State law such that, if the employee were to die without leaving a will, the claimant could inherit a share of the employee's personal estate as the child of the employee.

§ 222.35 Relationship as a stepchild.

A claimant will be considered to have the relationship of stepchild of an employee, and will be considered a child for annuity but not for lump-sum benefit purposes if—

(a) The claimant's natural or adoptive parent married the employee after the claimant's birth; and

(b) The marriage between the employee and the claimant's parent is a valid marriage under applicable State law (see §§ 222.12 and 222.13), or would be valid except for a legal impediment; and

(c) The employee and the claimant's parent were married at least one year before the date—

(1) On which the spouse applies for an annuity based on having the employee's child in care; or

(2) On which the employee's annuity can be increased under the social security overall minimum provision; or

(d) The employee and the claimant's parent were married at least nine months before the date on which the employee died if the claimant is applying for a child's annuity; or if the employee and the claimant's parent were married less than nine months, the employee was reasonably expected to live for nine months, and—

(1) The employee's death was accidental; or

(2) The employee died in the line of duty as a member of the armed forces of the United States; or

(3) The widow(er) was previously married to the employee for at least nine months.

§ 222.36 Relationship as grandchild or stepgrandchild.

A claimant will have the relationship of grandchild or stepgrandchild of an employee, or the grandchild or stepgrandchild of an employee's spouse, and be considered a child for annuity purposes if the requirements in both paragraph (a) and either paragraph (b) or (c) of this section are met.

(a) The claimant is the natural child, adopted child, or stepchild of a child of an employee, or of a child of the employee's spouse as defined in this subpart;

(b) The claimant's natural or adoptive parents are deceased or are disabled, as defined in section 223(d) of the Social Security Act, in the month in which—

(1) The employee, who is entitled to an age and service or disability annuity, under the Railroad Retirement Act, would also be entitled to an age benefit under section 202(a) of the Social Security Act or a disability benefit under section 223 of the Social Security Act, if his or her railroad compensation were considered wages under that Act; or

(2) The employee dies; or

(3) The employee's period of disability begins, if the employee has a period of disability which continues until he or she could be entitled to a social security benefit as described in paragraph (b)(1) of this section or until he or she dies;

(c) The claimant was legally adopted in the United States by the employee's widow(er) after the employee's death, and the claimant's natural or adoptive parent or stepparent was not living in the employee's household and making regular contributions to the claimant's support at the time the employee died.

Note: A grandchild or stepgrandchild does not have the relationship of "child" for lump-sum payment purposes (see § 222.44).

Subpart E—Relationship as Parent, Grandchild, Brother or Sister

§ 222.40 When determinations of relationship are made for parent, grandchild, brother or sister.

(a) *Parent.* The claimant's relationship as a parent of the employee is determined when the claimant applies for an annuity or for lump-sum payments.

(b) *Grandchild.* The claimant's relationship as a grandchild, rather than as a child, of the employee is determined when the claimant applies for lump-sum payments.

(c) *Brother or sister.* The claimant's relationship as a brother or sister of the employee is determined when the claimant applies for lump-sum payments.

§ 222.41 Determination of relationship and support for parent.

(a) *Annuity claimant.* For purposes of applying for an annuity, a claimant is considered the employee's parent when the claimant—

(1) Is the natural mother or father of the employee, and is considered the employee's parent under the law of the State in which the employee had a permanent home when the employee died; or

(2) Is a person who legally adopted the employee before the employee became 16 years old; or

(3) Is a stepparent who married the employee's natural or adoptive parent before the employee became 16 years old (the marriage must be valid under the law of the State in which the employee had a permanent home when the employee died); and

(4) Was receiving at least one-half support from the employee (see §§ 222.42 and 222.43 of this part) either when the employee died or at the beginning of the period of disability, if the employee had a period of disability.

(b) *Lump-sum payment claimant.* For purposes of applying for lump-sum payments, a claimant is considered the employee's parent when he or she—

(1) Is the natural mother or father of the employee, and is considered the employee's parent under applicable State law; or

(2) Legally adopted the employee, if thereby recognized as a parent under applicable State law; but

(3) The claimant need not have received one-half support from the employee.

§ 222.42 When employee is contributing to support.

(a) An employee is contributing to the support of a person if the employee gives cash, goods, or services to help

support such person. Support includes food, clothing, housing, routine medical care, and other ordinary and necessary living expenses. The value of any goods which the employee contributes shall be based upon the replacement cost of those goods at the time they are contributed. If the employee provides services that would otherwise require monetary payment, the cash value of the employee's services may be considered a contribution to support.

(b) The employee is contributing to the support of a person if that person receives an allotment, allowance, or benefit based upon the employee's military pay, veteran's pension or compensation, social security earnings, or railroad compensation.

(c) Contributions must be made regularly and must be large enough to meet an important part of the person's ordinary and necessary living expenses. If the employee provides only occasional gifts or donations for special purposes, they will not be considered contributions for support. Although the employee's contributions must be made on a regular basis, temporary interruptions caused by circumstances beyond the employee's control, such as illness or unemployment, will be disregarded unless during these interruptions someone else assumes responsibility for support of the person on a regular basis.

§ 222.43 How the one-half support determination is made.

(a) *Amount of contributions.* The employee provides one-half support to a person if the employee makes regular contributions to that person's support, and the amount of the contributions is equal to or in excess of one-half of the person's ordinary and necessary living expenses. Ordinary and necessary living expenses are the costs for food, clothing, housing, routine medical care, and similar necessities. A contribution may be in cash, goods, or services (see § 222.42 of this part). For example, an employee pays rent and utilities amounting to \$6,000 per year on an apartment in which his mother resides. In addition, the employee's mother receives \$3,600 per year in social security benefits which she uses to pay for her food, clothing and medical care. The mother's total necessary living expenses are \$9,600 (\$6,000 + \$3,600). Since the employee contributes \$6,000 toward these expenses he is contributing in excess of one-half of his mother's support.

(b) *Reasonable period of time.* The employee is not providing at least one-half of a person's support unless the employee has made contributions for a

reasonable period of time. Ordinarily, the Board will consider a reasonable period of time to be the 12-month period immediately preceding the time when the one-half support requirement must be satisfied. However, if the employee provided one-half or more of the person's support for at least 3 months of the 12-month period, and was forced to stop or reduce contributions because of circumstances beyond his or her control, such as illness or unemployment, and no one else took over responsibility for providing at least one-half of the person's support on a permanent basis, three months shall be considered a reasonable period of time.

§ 222.44 Other relationship determinations for lump-sum payments.

Other claimants will be considered to have the relationships to the employee shown below for lump-sum payment purposes:

(a) *Grandchildren.* A grandchild is a separate class of beneficiary to be considered for lump-sum payments and is not a child of the employee; he or she is a child of the employee's son or daughter as determined under State law. A stepgrandchild is not included in this class of beneficiary.

(b) *Brother or Sister.* "Brother" or "Sister" means a full brother or sister or a half brother or half sister, but not a stepbrother or stepsister.

Subpart F—Child Support and Dependency

§ 222.50 When child dependency determinations are made.

(a) *Dependency determination.* One of the requirements for a child's annuity or for increasing an employee or spouse annuity under the social security overall minimum provision on the basis of the presence of a child in the family group is that the child be dependent upon the employee. The dependency requirements and the time when they must be met are explained in §§ 222.51 through 222.57.

(b) *Related determinations.* To prove a child's dependency, an applicant may be asked to show that at a specific time the child lived with the employee, that the child received contributions for his or her support from the employee, or that the employee provided at least one-half of the child's support. The terms "living with", "contributing to support", and "one-half support" are defined in §§ 222.58, 222.42, and 222.43. These determinations are required when—

(1) A natural child or legally adopted child of the employee is adopted by someone else; or

(2) The child claimant is the stepchild, grandchild, or equitably adopted child of the employee.

§ 222.51 When a natural child is dependent.

The employee's natural child, as defined in § 222.32, is considered to be dependent upon the employee. However, if the child is legally adopted by someone else during the employee's lifetime and, after the adoption, a child's annuity or other annuity or annuity increase is applied for on the basis of the employee's earnings record and the relationship of the child to the employee, the child will be considered dependent upon the employee (the natural parent) only if he or she was either living with the employee or the employee was contributing to the child's support when either

- (a) A spouse's annuity begins; or
- (b) The employee's annuity can be increased under the social security overall minimum provision; or
- (c) The employee dies; or
- (d) If the employee had a period of disability which lasted until he or she could have become entitled to an age or disability benefit under the Social Security Act (treating the employee's railroad compensation as wages under that Act), at the beginning of the period of disability or at the time the employee could have become entitled to the benefit.

§ 222.52 When a legally adopted child is dependent—general.

(a) *During employee's lifetime.* If the employee adopts a child before he or she could become entitled to a social security benefit (treating his or her railroad compensation as wages under that Act), the child is considered dependent upon the employee. If the employee adopts a child, unless the child is his natural child or stepchild, after he or she could become entitled to an old age or disability benefit under the Social Security Act (treating his or her railroad compensation as wages under that Act), the child is considered dependent on the employee only if the requirements of § 222.53 are met.

(b) *After employee's death.* If the surviving spouse of an employee adopted a child after the employee's death, the child is considered dependent on the employee if either—

- (1) The employee began proceedings to adopt the child prior to his or her death, or the surviving spouse adopted the child within two years after the employee's death; and
- (2) The child was living in the employee's household at the time of the employee's death; and

(3) The child was not receiving regular contributions from any person, including any public or private welfare organization, other than the employee or spouse at the time of the employee's death.

§ 222.53 When a legally adopted child is dependent—child adopted after entitlement.

A child who is not the employee's natural child, stepchild, grandchild, or stepgrandchild, and who is adopted by the employee after the employee could become entitled to an old age or disability benefit under the Social Security Act (treating his or her railroad compensation as wages under that Act), is considered dependent on the employee during the employee's lifetime only if the requirements in paragraphs (a) and (b), and either (c) or (d) of this section are met:

- (a) The child is adopted in the United States;
- (b) The child began living with the employee before the child attained age 18;
- (c) The child is living with the employee in the United States and received at least one-half of his or her support from the employee for the year before the month in which—

(1) The employee could become entitled to a social security benefit as described above; or

(2) The employee becomes entitled to a period of disability which continues until he or she could become entitled to a social security benefit as described above;

(d) In the case of a child born within the one-year period stated in paragraph (c) of this section, at the close of such period the child must have been living with and have been receiving at least one-half of his or her support from the employee for substantially all of the period that began on the date the child was born.

(e) "Substantially all" means—

- (1) The child was living with and receiving one-half support from the employee when the employee could have become entitled to a social security benefit as described above; and
- (2) Any period during which the child was not living with or receiving one-half support from the employee is not more than one-half the period from the child's birth to the employee's date of entitlement or three months, whichever is less.

§ 222.54 When a legally adopted child is dependent—grandchild or stepgrandchild adopted after entitlement.

If an employee legally adopts his or her grandchild or the spouse's

grandchild after he could become entitled to an old age or disability benefit under the Social Security Act (treating his or her railroad compensation as wages under that Act), the grandchild is considered dependent on the employee during the employee's lifetime only if the requirements in paragraphs (a) and (b), and either (c) or (d) of this section are met:

(a) The grandchild is adopted in the United States.

(b) The grandchild began living with the employee before the grandchild attained age 18.

(c) The grandchild is living with the employee in the United States and receives at least one-half of his or her support from the employee for the year before the month in which—

(1) The employee's annuity was increased under the social security overall minimum provision by including the grandchild; or

(2) The employee could become entitled to a social security benefit as described above; or

(3) The employee becomes entitled to a period of disability which continues until he or she could become entitled to a social security benefit as described above.

(d) In the case of a grandchild born within the one-year period referred to in paragraph (c) of this section, at the close of such period the child must have been living with and have been receiving at least one-half of his or her support from the employee for substantially all of the period that began on the date the grandchild was born. "Substantially all" is defined in § 222.53.

§ 222.55 When a stepchild is dependent.

An employee's stepchild, as described in § 222.35, is considered dependent on the employee if the stepchild is living with or receiving at least one-half of his or her support from the employee at one of the times shown in § 222.51.

§ 222.56 When a grandchild or stepgrandchild is dependent.

An employee's grandchild or stepgrandchild, as described in § 222.36, is considered dependent on the employee if the requirements in both paragraphs (a) and (b), or paragraph (c) of this section are met:

(a) The grandchild or stepgrandchild was living with the employee before the grandchild or stepgrandchild attained age 18.

(b) The grandchild or stepgrandchild is living with the employee in the United States and receives at least one-half of his or her support from the employee for the year before the month in which—

(1) The employee could become entitled to an age and service or disability annuity under the Social Security Act (treating his or her railroad compensation as wages under that Act); or

(2) The employee dies; or

(3) The employee becomes entitled to a period of disability that lasts until he or she could become entitled to a social security benefit as described above or until he or she dies.

(c) In the case of a grandchild or stepgrandchild born within the one-year period referred to in paragraph (b) of this section, at the close of such period the child must have been living with and receiving at least one-half of his or her support from the employee for substantially all of the period that began on the date the grandchild or stepgrandchild was born. "Substantially all" is defined in § 222.53.

§ 222.57 When an equitably adopted child is dependent.

An employee's equitably adopted child, as defined in § 222.34, is considered dependent upon the employee if the employee was either living with or contributing to the support of the child at the time of his or her death. If the equitable adoption is found to have occurred after the employee could have become entitled to an old age or disability benefit under the Social Security Act (treating his or her railroad compensation as wages under that Act), the child is not considered dependent on the employee during the employee's lifetime. If the equitable adoption took place before such time, the child is dependent on the employee if the employee was living with or contributing to the support of the child at one of the times shown in § 222.51.

§ 222.58 When a child is living with an employee.

A child is living with the employee if the child normally lives in the same household with the employee and the employee has parental control and authority over the child's activities. The child is considered to be "living with" the employee while they are living apart if they expect to live together again after a temporary separation. A temporary separation may include the employee's absence because of working away from home or hospitalization. However, the employee must have parental control and authority over the child during the period of temporary separation. A child who is in active military service or in prison is not "living with" the employee, since the employee does not have parental control over the child.

Dated: May 30, 1989.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 89-13362 Filed 6-5-89; 8:45 am]

BILLING CODE 7905-01-M

DEPARTMENT OF THE TREASURY

31 CFR Part 17

Enforcement of Non-discrimination on the Basis of Handicap in Treasury Programs

AGENCY: Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed regulation provides for the enforcement of section 504 of the Rehabilitation Act of 1973, as amended, which prohibits discrimination on the basis of handicap, as it applies to programs or activities conducted by the Department of the Treasury. It sets forth standards for what constitutes discrimination on the basis of mental or physical handicap, provides a definition for individual with handicaps and qualified individual with handicaps, and establishes a complaint mechanism for resolving allegations of discrimination.

DATES: To be assured of consideration, comments must be in writing and must be received on or before August 7, 1989. Comments should refer to the specific sections in the regulation.

ADDRESSES: Comments should be sent to: Charlene J. Robinson, Director, Human Resources Directorate, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. (202) 566-5256.

Comments received will be available for public inspection from 9:00 a.m. to 5:30 p.m., Monday through Friday in the Office of Equal Opportunity Program, Department of the Treasury, 1201 Constitution Avenue, NW., Room 7225, Washington, DC 20220. Copies of this notice will be made available on tape for persons with impaired vision who request them. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Charlene J. Robinson, Director, Human Resources Directorate, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. (202) 566-5256. This is not a toll free number.

SUPPLEMENTARY INFORMATION:

Background

The purpose of this proposed rule is to provide for the enforcement of section 504 of the Rehabilitation Act of 1973, as

amended (29 U.S.C. 794), as it applies to programs and activities conducted by the Department of the Treasury. As amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Sec. 119, Pub. L. 95-602, 92 Stat. 2982), and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810), section 504 of the Rehabilitation Act of 1973 states that:

No otherwise qualified individual with handicaps in the United States, . . . shall, solely by reason of his handicap[s], be excluded from the participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance or under any program or activity conducted by an Executive agency or by the United States Postal Service. The head of each such agency shall promulgate such regulations as may be necessary to carry out the amendments to this section made by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Act of 1978. Copies of any proposed regulation shall be submitted to appropriate authorizing committees of the Congress, and such regulation may take effect no earlier than the thirtieth day after the date on which such regulation is so submitted to such committees.

(29 U.S.C. 794) (1978 amendment italicized).

The substantive nondiscrimination of the agency, as set forth in this proposed rule, are identical, for the most part, to those established by Federal regulations for programs or activities receiving Federal financial assistance. See 28 CFR Part 41 (section 504 coordination regulation for federally assisted programs). This general parallelism is in accord with the intent expressed by supporters of the 1978 amendment in floor debate, including its sponsor, Rep. James M. Jeffords, that the Federal Government should have the same section 504 obligations as recipients of Federal financial assistance. 124 Cong. Rec. 13,901 (1978) (remarks of Rep. Jeffords); 124 Cong. Rec. E2668, E2670 (daily ed. May 17, 1978) *id.*; 124 Cong. Rec. 13,897 (remarks of Rep. Brademas); *id.* at 38,552 (remarks of Rep. Sarasin).

There are, however, some language differences between this proposed rule and the Federal Government's section 504 regulations for federally assisted programs. These changes are based on the Supreme Court's decision in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), and the subsequent circuit court decisions interpreting *Davis* and section 504. See *Dopico v. Goldschmidt*, 687 F.2d 644 (2d Cir. 1982); *American Public Transit Association v. Lewis*, 655 F.2d 1272 (D.C.

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Cir. 1981) (APTA); see also *Rhode Island Handicapped Action Committee v. Rhode Island Public Transit Authority*, 718 F.2d 490 (1st Cir. 1983).

These language differences are also supported by the decision of the Supreme Court in *Alexander v. Choate*, 469 U.S. 287 (1985), where the Court held that the regulations for federally assisted programs did not require a recipient to modify its durational limitation on Medicaid coverage of inpatient hospital care for handicapped persons. Clarifying its *Davis* decision, the Court explained that section 504 requires only "reasonable" modifications, *id.* at 300 and explicitly noted that "[t]he regulations implementing section 504 (for federally assisted programs) are consistent with the view that reasonable adjustments in the nature of the benefit offered must at times be made to assure meaningful access." *Id.* at 301 n.21 (emphasis added).

Incorporation of these changes, therefore, makes this regulation implementing section 504 for federally conducted programs consistent with the Federal Government's regulations implementing section 504 for federally assisted programs as they have been interpreted by the Supreme Court. Many of these federally assisted regulations were issued prior to the interpretations of section 504 by the Supreme Court in *Davis*, by lower courts interpreting *Davis*, and by the Supreme Court in *Alexander*. Therefore, their language does not reflect the interpretation of section 504 provided by the Supreme Court and by the various circuit courts. Of course, these federally assisted regulations must be interpreted to reflect the holdings of the Federal judiciary. Hence, the agency believes that there are no significant differences between this proposed rule for federally conducted programs and the Federal Government's interpretation of section 504 regulations for federally assisted programs.

This regulation has been reviewed by the Department of Justice.

It is an adaptation of a prototype prepared by the Department of Justice under Executive Order 12250 (45 FR 72995, 3 CFR, 1980 Comp., p. 298) and distributed to Executive agencies.

This regulation has also been reviewed by the Equal Employment Opportunity Commission under Executive Order 12067 (43 FR 28967, 3 CFR, 1978 Comp., p. 206).

It has been determined that this proposed regulation is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR, 1981 Comp.,

p. 127) and, therefore, a regulatory impact analysis has not been prepared.

It is further certified that the regulation does not have a significant economic impact on small entities. It is not, therefore, subject to the Regulatory Flexibility Act (5 U.S.C. 601-612).

Section-by-Section Analysis

Section 17.101 Purpose

Section 17.101 states the purpose of the proposed rule, which is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States Postal Service.

Section 17.102 Application

The proposed regulation applies to all programs or activities conducted by the agency but does not include programs or activities outside the United States that do not involve individuals with handicaps in the United States. Under this section, a federally conducted program or activity is, in simple terms, anything a Federal agency does. Aside from employment, there are two major categories of federally conducted programs or activities covered by this regulation: those involving general public contact as part of ongoing agency operations and those directly administered by the agency for program beneficiaries and participants. Activities in the first category include communication with the public (telephone contacts, office walk-ins, or interviews) and the public's use of the agency's facilities. Activities in the second category include programs that provide Federal services or benefits.

Section 17.703 Definitions

"Agency." For purposes of this part, "agency" means the Department of the Treasury.

"Assistant Attorney General." "Assistant Attorney General" refers to the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

"Auxiliary aids." "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in and enjoy the benefits of the agency's programs or activities. The definition provides examples of commonly used auxiliary aids. Although auxiliary aids are required explicitly only by § 17.160(a)(1),

they may also be necessary to meet other requirements of the regulations.

"Complete complaint." "Complete complaint" is defined to include all the information necessary to enable the agency to investigate the complaint. The definition is necessary, because the 100-day period for the agency's investigation (see § 17.170(g)) begins when the agency receives a complete complaint.

"Facility." The definition of "facility" is similar to that in the section 504 coordination regulation for federally assisted programs (28 CFR 41.3(f)), except that the term "rolling stock or other conveyances" has been added and the phrase "or interest in such property" has been deleted because the term "facility," as used in this regulation, refers to structures and not to intangible property rights. It should, however, be noted that the regulations applies to all programs and activities conducted by the agency regardless of whether the facility in which they are conducted is owned, leased, or used on some other basis by the agency. The term "facility" is used in §§ 17.149, 17.150 and 17.170(f).

"Individual with handicaps." The definition of "individual with handicaps" is substantially similar to the definition of "handicapped person" appearing in the section 504 coordination regulation for federally assisted programs (28 CFR 41.31). Although section 103(d) of the Rehabilitation Act Amendments of 1986 changed the statutory term "handicapped individual" to "individual with handicaps," the legislative history of this amendment indicates that no substantive change was intended. Thus, although the term has been changed in this regulation to be consistent with the statute as amended, the definition is unchanged. In particular, although the term as revised refers to "handicaps" in the plural, it does not exclude persons who have only one handicap.

"Qualified individual with handicaps." The definition of "qualified individual with handicaps" is a revised version of the definition of "qualified handicapped person" appearing in the section 504 Coordination Regulation for federally assisted programs (28 CFR 41.32).

Paragraph (1) deviates from existing regulations for federally assisted programs because of intervening court decisions. It defines "qualified individual with handicaps" with regard to any program under which a person is required to perform services or to achieve a level of accomplishment. In such programs a qualified individual with handicaps is one who can achieve the purpose of the program without

modifications in the program that the agency can demonstrate would result in a fundamental alteration in the nature of the program. This definition reflects the decision of the Supreme Court in *Southeastern Community College v. Davis*, 442 U.S. 397 (1976). In that case, the Court ruled that a hearing-impaired applicant to a nursing school was not a "qualified handicapped person" because her hearing impairment would prevent her from participating in the clinical training portion of the program. The Court found that, if the program were modified so as to enable the respondent to participate (by exempting her from the clinical training requirements), "she would not receive even a rough equivalent of the training a nursing program normally gives." *Id.* at 410. It also found that "the purpose of (the) program was to train persons who could serve the nursing profession in all customary ways," *id.* at 413, and that the respondent would be unable, because of her hearing impairment, to perform some functions expected of a registered nurse. It therefore concluded that the school was not required by Section 504 to make such modifications that would result in "a fundamental alteration in the nature of the program." *Id.* at 410.

Treasury has incorporated the Court's language in the definition of "qualified individual with handicaps" in order to make clear that such a person must be able to participate in the program offered by the agency. The agency is required to make modifications in order to enable an applicant with handicaps to participate, but is not required to offer a program of a fundamentally different nature. The test is whether, with appropriate accommodation, the applicant can achieve the purpose of the program offered; not whether the applicant could benefit or obtain results from some other program that the agency does not offer. Although the revised definition allows exclusion of some individuals with handicaps from some programs, it requires that an individual with handicaps who is capable of achieving the purpose of the program must be accommodated, provided that the accommodations do not fundamentally alter the nature of the program.

The agency has the burden of demonstrating that a proposed modification would constitute a fundamental alteration in the nature of its program or activity. Furthermore, in demonstrating that a modification would result in such an alteration, the agency must follow the procedures established in §§ 17.150(a) and 17.160(d), which are discussed below, for demonstrating that

an action would result in undue financial and administrative burdens. That is, the decision must be made by the agency head or his or her designee in writing after consideration of all resources available for the program or activity and must be accompanied by and explanation of the reasons for the decision. If the agency head determines that an action would result in a fundamental alteration, the agency must consider options that would enable the individual with handicaps to achieve the purpose of the program but would not result in such an alteration.

For programs or activities that do not fall under the first paragraph, paragraph (2) adopts the existing definition of "qualified handicapped person" with respect to services (28 CFR 41.32(b)) in the coordination regulation for programs receiving Federal financial assistance. Under this definition, a qualified individual with handicaps is an individual with handicaps who meets the essential eligibility requirements for participation in the program or activity.

Paragraph (3) explains that "qualified individual with handicaps" means "qualified handicapped person" as that term is defined for purposes of employment in the Equal Employment Opportunity Commission's regulation at 29 CFR 1613.702(f), which is made applicable to this part by § 17.140.

Nothing in this part changes existing regulations applicable to employment. "Section 504." This definition makes clear that, as used in this regulation, "Section 504" applies only to programs or activities conducted by the agency and not to programs or activities to which it provides Federal financial assistance.

Section 17.110 Self-evaluation

The Department shall conduct a self-evaluation of its compliance with section 504 within one year of the effective date of this regulation. The self-evaluation requirement is present in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.5(b)(2)). Experience has demonstrated the self-evaluation process to be a valuable means of establishing a working relationship with individuals with handicaps that promotes both effective and efficient implementation of section 504.

Section 17.111 Notice

Section 17.111 requires the agency to make available sufficient information to interested persons including employees, applicants, participants, and beneficiaries of Treasury programs and activities to apprise them of rights and

protections afforded by section 504 and this regulation. Methods of providing this information may include, for example, the publication of information in handbooks, manuals, and pamphlets that are distributed to the public to describe the agency's programs and activities; the display of informative posters in service centers and other public places; or the broadcast of information by television or radio.

Section 17.130 General Prohibitions Against Discrimination

Section 17.130 is an adaptation of the corresponding section of the section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.51).

Paragraph (a) restates the nondiscrimination mandate of section 504. The remaining paragraphs in § 17.130 establish the general principles for analyzing whether any particular action of the agency violates this mandate. These principles serve as the analytical foundation for the remaining sections of the regulation. If the agency violates a provision in any of the subsequent sections, it will also violate one of the general prohibitions found in § 17.130. When there is no applicable subsequent provision, the general prohibitions stated in this section apply.

Paragraph (b) prohibits overt denials of equal treatment of individuals with handicaps. The agency may not refuse to provide an individual with handicaps with an equal opportunity to participate in or benefit from its program simply because the person is handicapped. Such blatantly exclusionary practices often result from the use of irrebuttable presumptions that absolutely exclude certain classes of disabled persons (e.g., epileptics, hearing-impaired persons, persons with heart ailments) from participation in programs or activities without regard to an individual's actual ability to participate. Use of an irrebuttable presumption is permissible only when in all cases a physical condition by its very nature would prevent an individual from meeting the essential eligibility requirements for participation in the activity in question. It would be permissible, therefore, to exclude without an individual evaluation, all persons who are blind in both eyes from eligibility for a license to operate a commercial vehicle in interstate commerce. It may not be permissible to automatically disqualify all those who are blind in just one eye.

Section 504, however, prohibits more than just the most obvious denials of equal treatment. It is not enough to admit persons in wheelchairs to a

program if the facility in which the program is conducted is inaccessible. Paragraph (b)(1)(iii), therefore, requires that the opportunity to participate or benefit afforded to an individual with handicaps be as effective as that opportunity afforded to others. The later sections on program accessibility (§§ 17.149-17.151) and communications (§ 17.160) are specific applications of this principle.

Despite the mandate of paragraph (d) that the agency administer its programs or activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, paragraph (b)(1)(iv), in conjunction with paragraph (d), permits the agency to develop separate or different aids, benefits, or services when necessary to provide individuals with handicaps with an equal opportunity to participate in or benefit from the agency's programs or activities. Paragraph (b)(1)(iv) provides that different or separate aids, benefits, or services to qualified handicapped persons is not justified unless such action is necessary to provide individuals with handicaps with aids, benefits, or services as effective as those provided others. Even when separate or different aids, benefits, or services would be more effective, paragraph (b)(3) provides that a qualified individual with handicaps may still choose to participate in the program that is not designed to accommodate individuals with handicaps. It is not appropriate to assume that all individuals with handicaps should participate in a special "handicapped" program even if the program is designed to meet the particular needs of some individuals with handicaps. This is intended to ensure that individuals with handicaps are not unnecessarily segregated from nonhandicapped people or subjected to arbitrary or stereotypical limitations on their participation in federally conducted programs.

Paragraph (b)(1)(v) prohibits the agency from denying a qualified individual with handicaps the opportunity to participate as a member of a planning or advisory board.

Paragraph (b)(1)(vi) prohibits the agency from otherwise limiting a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving any aid, benefit, or service.

Paragraph (b)(2) is taken from the Department of Health, Education, and Welfare's (now Health and Human Services) original regulation implementing section 504 for programs and activities to which it provides Federal financial assistance (45 CFR

84.4(b)(2)). It clarifies that the agency is required to provide equal opportunities to individuals with handicaps, but is not required to guarantee equality of results.

Paragraph (b)(4) prohibits the agency from utilizing criteria or methods of administration that deny individuals with handicaps access to the agency's programs or activities. The phrase "criteria or methods of administration" refers to official written agency policies and to the actual practices of the agency. This paragraph prohibits both blatantly exclusionary policies or practices and nonessential policies and practices that are neutral on their face, but deny individuals with handicaps an effective opportunity to participate.

Paragraph (b)(5) specifically applies the prohibition enunciated in § 17.130(b)(4) to the process of selecting sites for construction of new facilities or selecting existing facilities to be used by the agency. Paragraph (b)(5) does not apply to construction of additional buildings at an existing site.

Paragraph (b)(6) prohibits the agency, in the selection of procurement contractors, from using criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

Paragraph (b)(7) prohibits the agency from discriminating against qualified individuals with handicaps on the basis of handicap in the granting of licenses or certifications. A person is a qualified individual with handicaps with respect to licensing or certification, if he or she can meet the essential eligibility requirements for receiving the license or certification (see § 17.103).

In addition, the agency may not establish requirements for the programs or activities of licensees or certified entities that subject qualified individuals with handicaps to discrimination on the basis of handicap. For example, the agency must comply with this requirement when establishing safety standards for the operations of licensees. In that case the agency must ensure that standards that it promulgates do not discriminate against the employment of qualified individuals with handicaps in an impermissible manner.

Paragraph (b)(7) does not extend section 504 directly to the programs or activities of licensees or certified entities themselves. The programs or activities of Federal licensees or certified entities are not themselves federally conducted programs or activities nor are they programs or activities receiving Federal financial assistance merely by virtue of the Federal license or certificate. However, as noted above, section 504 may affect

the content of the rules established by the agency for operation of the program or activity of the licensee or certified entity, and thereby indirectly affect limited aspects of their operations.

Paragraph (c) provides that programs conducted pursuant to Federal statute or Executive Order that are designed to benefit only individuals with handicaps or a given class of individuals with handicaps may be limited to those individuals with handicaps.

Paragraph (d) provides that the agency must administer programs and activities in the most integrated setting appropriate to the needs of qualified individuals with handicaps, i.e., in a setting that enables individuals with handicaps to interact with nonhandicapped persons to the fullest extent possible.

Section 17.140 Employment.

Section 17.140 prohibits discrimination on the basis of handicap in employment by the agency. Courts have held that section 504, as amended in 1978, covers the employment practices of Executive agencies. *Gardner v. Morris*, 752 F.2d 1271, 1277 (8th Cir. 1985); *Smith v. U.S. Postal Service*, 742 F.2d 257, 259-260 (6th Cir. 1984); *Prewitt v. United States Postal Service*, 662 F.2d 292, 301-04 (5th Cir. 1981); *Contra McGuiness v. U.S. Postal Service*, 744 F.2d 1318, 1320-21 (7th Cir. 1984); *Boyd v. U.S. Postal Service*, 752 F.2d 410, 413-14 (9th Cir. 1985).

Courts uniformly have held that in order to give effect to section 501 of the Rehabilitation Act, which covers Federal employment, the administrative procedures of section 501 must be followed in processing complaints of employment discrimination under section 504. *Smith*, 742 F.2d at 262; *Prewitt*, 662 F.2d at 304. Accordingly, § 17.140 (Employment) of this rule adopts the definitions, requirement and procedures of section 501 as established in regulations of the Equal Employment Opportunity Commission (EEOC) at 29 CFR Part 1613. In addition to this section, 17.170(b) specifies that the agency will use the existing EEOC procedures to resolve allegations of employment discrimination. Responsibility for coordinating enforcement of Federal law prohibiting discrimination in employment is assigned to the EEOC by Executive Order 12067 (3 CFR, 1978 Comp. p. 206). Under this authority, the EEOC establishes government-wide standards on non-discrimination in employment on the basis of handicap. While this rule could define terms with respect to employment and enumerate what

practices are covered and what requirements apply, the agency has adopted EEOC's recommendation that to avoid duplicative, competing, or conflicting standards with respect to Federal employment, reference in these regulations to the government-wide EEOC rules is sufficient. The class of Federal employees and applicants for employment covered by section 504 is identical to or subsumed within that covered by section 501. To apply different or lesser standards to persons alleging violations of section 504 could lead unnecessarily to confusion in the enforcement of the Rehabilitation Act with respect to Federal employment.

Section 17.149 Program Accessibility: Discrimination Prohibited

Section 17.149 states the general non-discriminate principle underlying the program accessibility requirements of §§ 17.150 and 17.151.

Section 17.150 Program Accessibility: Existing Facilities

This regulation adopts the program accessibility concept found in the existing section 504 coordination regulation for programs or activities receiving Federal financial assistance (28 CFR 41.57), with certain modifications. Thus, § 17.150 requires that each agency program or activity, when viewed in its entirety, be readily accessible to and usable by individuals with handicaps. The regulation also makes clear that the agency is not required to make each of its existing facilities accessible (§ 17.150(a)(1)). However, § 17.150, unlike 28 CFR 41.57, places explicit limits on the agency's obligation to ensure program accessibility (§ 17.150(a)(2)).

Paragraph (a)(2) generally codifies recent case law that defines the scope of the agency's obligation to ensure program accessibility. This paragraph provides that in meeting the program accessibility requirement the agency is not required to take any action that would result in a fundamental alteration in the nature of its program or activity or in undue financial and administrative burdens. A similar limitation is provided in § 17.160(d). This provision is based on the Supreme Court's holding in *Southeastern Community College v. Davis*, 442 U.S. 397 (1979), that section 504 does not require program modifications that result in a fundamental alteration in the nature of a program, and on the Court's statement that Section 504 does not require modifications that would result in "undue financial and administrative burdens." 442 U.S. at 412. Since *Davis*, circuit courts have applied this

limitation on a showing that only one of the two "undue burdens" would be created as a result of the modification sought to be imposed under section 504. See, e.g., *Dopico v. Goldschmidt*, 687 F.2d 644, (2d Cir. 1982); *American Public Transit Association v. Lewis (APTA)*, 655 F.2d 1272 (D.C. Cir. 1981).

Paragraphs (a)(2) and 17.160(d) are also supported by the Supreme Court's decision in *Alexander v. Choate*, 469 U.S. 287 (1985). *Alexander* involved a challenge to the State of Tennessee's reduction of inpatient hospital care coverage under Medicaid from 20 to 14 days per year. Plaintiffs argued that this reduction violated section 504 because it had an adverse impact on handicapped persons. The Court assumed without deciding that section 504 reaches at least some conduct that has an unjustifiable disparate impact on handicapped people, but held that the reduction was not "the sort of disparate impact" discrimination that might be prohibited by section 504 or its implementing regulation. *Id.* at 299.

Relying on *Davis*, the Court said that section 504 guarantees qualified handicapped persons "meaningful access to the benefits that the grantee offers." *Id.* at 301, and what "reasonable adjustments in the nature of the benefit being offered must at times be made to assure meaningful access." *Id.* at n.21 (emphasis added). However, section 504 does not require "changes," "adjustments" or "modifications" to existing programs that would be "substantial" * * * or that would constitute "fundamental alteration(s) in the nature of a program." *Id.* at n.20 (citations omitted). *Alexander* supports the position, based on *Davis* and earlier, lower court decisions that there are situations when accommodations for a handicapped person may so alter an agency's program or activity, or entail such extensive costs and administrative burdens that the refusal to undertake the accommodations is not discriminatory. Failure to include such a provision could lead to judicial invalidation of the regulation or reversal of a particular enforcement action taken pursuant to the regulation. This paragraph, however, does not establish an absolute defense; it does not relieve the agency of all obligations to individuals with handicaps. Although the agency is not required to take actions that would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens, it nevertheless must take any other steps necessary to ensure that individuals with handicaps receive the benefits and

services of the federally conducted program or activity.

It is our view that compliance with § 17.150(a) would in most cases not result in undue financial and administrative burdens on the agency. In determining whether financial and administrative burdens are undue, all agency resources available for use in the funding and operation of the conducted program or activity should be considered.

The burden of proving that compliance with § 17.150(a) would fundamentally alter the nature of a program or activity or would result in undue financial and administrative burdens rests with the agency. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee and must be accomplished by a written statement of the reasons for reaching that conclusion. Any person who believes that he or she has been injured by the agency head's decision or failure to make a decision may file a complaint under the compliance procedures established in section 17.170.

Paragraph (b) sets forth a number of means by which program accessibility may be achieved, including redesign of equipment, reassignment of services to accessible buildings, and provisions of aides. In choosing among methods, the agency shall give priority consideration to those that will be consistent with provisions of services in the most integrated setting possible. Structural changes in existing facilities are required only when there is no other feasible way to make the agency's program accessible. (It should be noted that "structural changes" include all physical changes to a facility; the term does not refer only to changes to structural features such as removal of or alterations to a loading-bearing structural member.) The agency may comply with the program accessibility requirement by delivering services at alternate accessible sites or making home visits as appropriate.

Paragraphs (c) and (d) establish time periods for complying with the program accessibility requirement. As currently required for federally assisted programs by 28 CFR 41.57(b), the agency must make any necessary structural changes in facilities as soon as practicable, but in no event later than three years after the effective date of this regulation. Where structural modifications are required, a transition plan shall be developed within six months of the effective date of this regulation. Aside from structural changes, all other

necessary steps to achieve compliance shall be taken within sixty days.

Section 17.151 Program Accessibility: New Construction and Alterations

Overlapping coverage exists with respect to new construction under section 504 and the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). Section 17.151 provides that those buildings that are constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered to be readily accessible to and usable by individuals with handicaps in accordance with 41 CFR 101-19.600 through 101-19.607. This standard was promulgated pursuant to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157). We believe that it is appropriate to adopt the existing Architectural Barriers Act standard for section 504 compliance because new and altered buildings subject to this regulation are also subject to the Architectural Barriers Act. Further, adopting of the standard will avoid duplicative and possibly inconsistent standards.

Existing buildings leased by the agency after the effective date of this regulation are not required by the regulation to meet accessibility standards simply by virtue of being leased. They are subject, however, to the program accessibility standard for existing facilities in § 17.150. To the extent the buildings are newly constructed or altered, they must also meet the new construction and alteration requirements of § 17.151.

Federal practice under section 504 has always treated newly leased buildings as subject to the existing facility program accessibility standard. Unlike the construction of new buildings where architectural barriers can be avoided at little or no cost, the application of new construction standards to an existing building being leased raises the same prospect of retrofitting buildings as the use of an existing Federal facility, and the agency believes the same program accessibility standard should apply to both owned and leased existing buildings.

Section 17.160 Communications

Section 17.160 requires that the agency take appropriate steps to effectively communicate with personnel of other Federal entities, applicants, participants, and members of the public. These steps shall include procedures for determining when auxiliary aids are necessary under § 17.160(a)(1) to afford an individual with handicaps an equal opportunity to participate in, and enjoy

the benefits of, the agency's program or activity. They shall also include an opportunity for individuals with handicaps to request the auxiliary aids of their choice. This expressed choice shall be given primary consideration by the agency § 17.160(a)(1)(i). The agency shall honor the choice unless it can demonstrate that another effective means of communication exists or that use of the means chosen would not be required under § 17.160(d). That paragraph limits the obligation of the agency to ensure effective communication in accordance with *Davis* and the circuit court opinions interpreting it (see *supra* preamble discussion of § 17.150(a)(3)). Unless not required by § 17.160(d), the agency shall provide auxiliary aids at no cost to the individual with handicaps.

The discussion of § 17.150(a), Program accessibility: Existing facilities, regarding the determination of undue financial and administrative burdens also applies to this section and should be referred to for a complete understanding of the agency's obligation to comply with § 17.160.

In some circumstances, a notepad and written materials may be sufficient to permit effective communication with a hearing-impaired person. In many circumstances, however, they may not be, particularly when the information being communicated is complex or exchanged for a lengthy period of time (e.g., a meeting) or where the hearing-impaired applicant or participant is not skilled in spoken or written language. In these cases, a sign language interpreter may be appropriate. For vision-impaired persons, effective communication might be achieved by several means, including readers and audio recordings. In general, the agency intends to inform the public of (1) the communications services it offers to afford individuals with handicaps an equal opportunity to participate in or benefit from its programs or activities, (2) the opportunity to request a particular mode of communication, and (3) the agency's preferences regarding auxiliary aids if it can demonstrate that several different modes are effective.

The agency shall effectively communicate with vision-impaired and hearing-impaired persons involved in hearings conducted by the agency. Auxiliary aids shall be used where necessary for effective communication. If sign language interpreters are necessary, the agency may require that it be given reasonable notice prior to the proceeding of the need for an interpreter.

The agency will not provide individually prescribed devices, readers

for personal use or study, or other devices of a personal nature (§ 17.160(a)(1)(ii)). For example, the agency is not required to provide eyeglasses or hearing aids to applicants or participants in its programs. Similarly, the regulation does not require the agency to provide wheelchairs to persons with mobility impairments.

Paragraph (b) requires the agency to provide information, as appropriate, to individuals with handicaps concerning accessible services, activities, and facilities.

Paragraph (c) requires the agency to post signs at inaccessible facilities that direct users to locations with information about accessible facilities.

Section 17.170 Compliance Procedures

Paragraph (a) specifies that paragraphs (c) through (l) of this section establish the procedures for processing complaints other than employment complaints. Paragraph (b) provides that the agency will process employment complaints according to procedures established in existing regulations of the EEOC (29 CFR Part 1613) pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

Paragraph (c) vests responsibility for the implementation and operation of this section in the Office of the Deputy Assistant Secretary for Departmental Finance and Management.

Paragraph (d)(1) is adapted from the compliance procedures of the Department of Justice's regulation implementing section 504 for its federally conducted programs and activities (28 CFR 39.170(d)(1)(i)). It provides that complaints may be filed by a person who alleges that he or she has been subjected to discrimination prohibited by this part or that he or she is a member of a class of persons subjected to discrimination, or by an authorized representative of such a person. This paragraph prevents third parties from filing generalized complaints where there has been no harm to a particular individual or individuals.

The agency is required to accept and investigate all complete complaints (§ 17.170(d)). If it determines that it does not have jurisdiction over a complaint, it shall promptly notify the complainant and make reasonable efforts to refer the complaint to an appropriate entity of the Federal Government (§ 17.170(e)).

Paragraph (f) requires the agency to notify the Architectural and Transportation Barriers Compliance Board upon receipt of a complaint alleging that a building or facility

subject to the Architectural Barriers Act was designed, constructed, or altered in a manner that does not provide ready access to and use by individuals with handicaps.

Paragraph (g) requires the agency to provide to the complainant, in writing, findings of fact and conclusions of law, the relief granted if noncompliance is found, and notice of the right to appeal (§ 17.170(g)). One appeal within the agency shall be provided (§ 17.170(i)). The appeal will not be heard by the same person who made the initial determination of compliance or noncompliance.

Paragraph (l) permits the agency to delegate its authority for investigating complaints to other Federal agencies. Under this paragraph the agency may have any required investigation performed by a nongovernment investigator under contract with the agency. However, the statutory obligation of the agency to make a final determination of compliance or noncompliance may not be delegated.

List of Subjects in 31 CFR Part 17

Blind, Buildings, Civil Rights, Employment, Equal employment opportunity, Federal buildings and facilities, Government employees, Handicapped.

For the reasons set forth in the Preamble, Subtitle A of Title 31, Part 17 of the Code of Federal Regulations is proposed to be amended as follows:

David M. Nummy,
Acting Assistant Secretary of the Treasury
(Management).

Part 17 is added to read as follows:

PART 17—ENFORCEMENT OF NON-DISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE DEPARTMENT OF THE TREASURY

Sec.	
17.101	Purpose.
17.102	Application.
17.103	Definitions.
17.104-17.109	[Reserved]
17.110	Self-evaluation.
17.111	Notice.
17.112-17.129	[Reserved]
17.130	General prohibitions against discrimination.
17.131-17.139	[Reserved]
17.140	Employment.
17.141-17.148	[Reserved]
17.149	Program accessibility: Discrimination prohibited.
17.150	Program accessibility: Existing facilities.
17.151	Program accessibility: New construction and alterations.
17.152-17.159	[Reserved]
17.160	Communications.

Sec.
17.161-17.169 [Reserved]
17.170 Compliance procedures.
17.171-17.999 [Reserved]
Authority: 29 U.S.C. 794.

§ 17.101 Purpose.

The purpose of this part is to effectuate section 119 of the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978, which amended section 504 of the Rehabilitation Act of 1973 ("section 504") to prohibit discrimination on the basis of handicap in programs or activities conducted by Executive agencies or the United States' Postal Service.

§ 17.102 Application.

This part applies to all programs or activities conducted by the agency, except for programs or activities conducted outside the United States that do not involve individuals with handicaps in the United States.

§ 17.103 Definitions.

For purposes of this part, the term—

(a) "Agency" means the Department of the Treasury.

(b) "Assistant Attorney General" means the Assistant Attorney General, Civil Rights Division, United States Department of Justice.

(c) "Auxiliary aids" means services or devices that enable persons with impaired sensory, manual, or speaking skills to have an equal opportunity to participate in, and enjoy the benefits of, programs or activities conducted by the agency. For example, auxiliary aids useful for persons with impaired vision include readers, Brailled materials, audio recordings and other similar services and devices. Auxiliary aids useful for persons with impaired hearing include telephone handset amplifiers, telephones compatible with hearing aids, telecommunication devices for deaf persons (TDD's), interpreters, notetakers, written materials and other similar services and devices.

(d) "Complete complaint" means a written statement that contains the complainant's name and address, and describes the agency's alleged discriminatory action in sufficient detail to inform the agency of the nature and date of the alleged violation of section 504. It shall be signed by the complainant or by someone authorized to do so on his or her behalf. Complaints filed on behalf of classes of individuals with handicaps shall also identify (where possible) the alleged victims of discrimination.

(e) "Facility" means all or any portion of a building, structure, equipment, road, walk, parking lot, rolling stock, or other

conveyance, or other real or personal property.

(f) "Individual with handicaps" means any person who has a physical or mental impairment that substantially limits one or more of the individual's major life activities, has a record of such an impairment, or is regarded as having such an impairment. As used in this definition, the phrase:

(1) "Physical or mental impairment" includes (i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: Neurological; musculoskeletal; special sense organs; respiratory, including speech organs; cardiovascular; reproductive; digestive; genitourinary; hemic and lymphatic; skin; and endocrine; or (ii) any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, drug addition and alcoholism.

(2) "Major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(3) "Has a record of such an impairment" means has a history of, or has been misclassified as having, a mental or physical impairment that substantially limits one or more of the individual's major life activities.

(4) "Is regarded as having an impairment" means—

(i) Has a physical or mental impairment that does not substantially limit major life activities but is treated by the agency as constituting such a limitation;

(ii) Has a physical or mental impairment that substantially limits major life activities only as a result of the attitudes of others toward such impairment; or

(iii) Has none of the impairments defined in paragraph (f)(1) of this definition but is treated by the agency as having such an impairment.

(g) "Qualified individual with handicaps" means—

(1) With respect to an agency program or activity under which a person is required to perform services or to achieve a level of accomplishment, an individual with handicaps who meets the essential eligibility requirements and

who can achieve the purpose of the program or activity without modifications in the program or activity that the agency can demonstrate would result in a fundamental alteration in the nature of the program; and

(2) With respect to any other program or activity, an individual with handicaps who meets the essential eligibility requirements for participation in, or receipt of benefits from, that program or activity; and

(3) For purposes of employment, "qualified handicapped person" is defined in 29 CFR 1613.702(f), which is made applicable to this part by § 17.140.

(h) "Section 504" means section 504 of the Rehabilitation Act of 1973 (Pub. L. 93-112, 87 Stat. 394 (29 U.S.C. 794)), as amended by the Rehabilitation Act Amendments of 1974 (Pub. L. 93-516, 88 Stat. 1817); the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602, 92 Stat. 2955); and the Rehabilitation Act Amendments of 1986 (Pub. L. 99-506, 100 Stat. 1810). As used in this part, section 504 applies only to programs or activities conducted by Executive agencies and not to federally assisted programs.

§§ 17.104-17.109 [Reserved]

§ 17.110 Self-evaluation.

(a) The agency shall, by one year after the effective date of this part, evaluate its current policies and practices, and the effects thereof, to determine if they meet the requirements of this part. To the extent modification of any such policy and practice is required, the agency shall proceed to make the necessary modifications.

(b) The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the self-evaluation process by submitting comments (both telephonic and written).

(c) The agency shall, until three years following the completion of the self-evaluation, maintain on file and make available for public inspection:

- (1) A description of areas examined and any problems identified; and
- (2) A description of any modifications made.

§ 17.111 Notice.

The agency shall make available to all Treasury employees, and to all interested persons, as appropriate, information regarding the provisions of this part and its applicability to the programs or activities conducted by the agency, and make such information

available to them in such a manner as is necessary to apprise them of the protections against discrimination assured them by section 504 of this part.

§§ 17.112-17.129 [Reserved]

§ 17.130 General prohibitions against discrimination.

(a) No qualified individual with handicaps in the United States, shall, solely by reason of his or her handicap, be excluded from the participation in, be denied the benefits of, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

(b)(1) The agency, in providing any aid, benefit, or service, may not directly or through contractual, licensing, or other arrangements, on the basis of handicap—

(i) Deny a qualified individual with handicaps the opportunity to participate in or benefit from the aid, benefit, or service;

(ii) Afford a qualified individual with handicaps an opportunity to participate in or benefit from the aid, benefit, or service that is not equal to that afforded others;

(iii) Provide a qualified individual with handicaps with an aid, benefit, or service that is not as effective in affording equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement as that provided to others;

(iv) Provide different or separate aid, benefits or services to individuals with handicaps or to any class of individuals with handicaps than is provided to others unless such action is necessary to provide qualified individuals with handicaps with aid, benefits or services that are as effective as those provided to others;

(v) Deny a qualified individual with handicaps the opportunity to participate as a member of planning or advisory boards; or

(vi) Otherwise limit a qualified individual with handicaps in the enjoyment of any right, privilege, advantage, or opportunity enjoyed by others receiving the aid, benefit, or service.

(2) For purposes of this part, aids, benefits, and services, to be equally effective, are not required to produce the identical result or level of achievement for individuals with handicaps and for nonhandicapped persons, but must afford individuals with handicaps equal opportunity to obtain the same result, to gain the same benefit, or to reach the same level of achievement in the most integrated setting appropriate to the individual's needs.

(3) Even if the agency is permitted, under paragraph (b)(1)(iv) of this section, to operate a separate or different program for individual with handicaps or for any class of individuals with handicaps, the agency must permit any qualified individuals with handicaps who wishes to participate in the program that is not separate or different to do so.

(4) The agency may not, directly or through contractual or other arrangements, utilize criteria or methods of administration the purpose or effect of which would—

(i) Subject qualified individuals with handicaps to discrimination on the basis of handicap; or

(ii) Defeat or substantially impair accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(5) The agency may not, in determining the site or location of a facility, make selections the purpose or effect of which would

(i) Exclude individuals with handicaps from, deny them the benefits of, or otherwise subject them to discrimination under any program or activity conducted by the agency; or

(ii) Defeat or substantially impair the accomplishment of the objectives of a program or activity with respect to individuals with handicaps.

(6) The agency, in the selection of procurement contractors, may not use criteria that subject qualified individuals with handicaps to discrimination on the basis of handicap.

(7) The agency may not administer a licensing or certification program in a manner that subjects qualified individuals with handicaps to discrimination on the basis of handicap. However, the programs or activities of entities that are licensed or certified by the agency are not, themselves, covered by this part.

(c) The exclusion of nonhandicapped persons from the benefits of a program limited by Federal statute or Executive order to individuals with handicaps or the exclusion of a specific class of individuals with handicaps from a program limited by Federal statute or Executive order to a different class of individuals with handicaps is not prohibited by this part.

(d) The agency shall administer programs and activities in the most integrated setting appropriate to the

needs of qualified individuals with handicaps.

§§ 17.131-17.139 [Reserved]

§ 17.140 Employment.

No qualified individual with handicaps shall, on the basis of handicap, be subjected to discrimination in employment under any program or activity conducted by the Department. The definitions, requirements and procedures of section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791), as established by the Equal Employment Opportunity Commission in 29 CFR Part 1613, shall apply to employment in federally conducted programs or activities.

§§ 17.141-17.148 [Reserved]

§ 17.149 Program accessibility: Discrimination prohibited.

Except as otherwise provided in § 17.150, no qualified individual with handicaps shall, because the agency's facilities are inaccessible to or unusable by individuals with handicaps, be denied the benefits of, be excluded from participation in, or otherwise be subjected to discrimination under any program or activity conducted by the agency.

§ 17.150 Program accessibility: Existing facilities.

(a) *General.* The agency shall operate each program or activity so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with handicaps. This paragraph does not require the agency—

(1) To make structural alterations in each of its existing facilities in order to make them accessible to and usable by individuals with handicaps where other methods are effective in achieving compliance with this section; or

(2) To take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with the § 17.150(a) would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all agency resources available for use in the funding and operation of the conducted program or

activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration or such burdens but would nevertheless ensure that individuals with handicaps receive the benefits and services of the program or activity.

(b) *Methods.* The agency may comply with the requirements of this section through such means as redesign of equipment, reassignment of services to accessible buildings, assignment of aides to beneficiaries, home visits, delivery of services at alternate accessible sites, alteration of existing facilities and construction of new facilities, use of accessible rolling stock, or any other methods that result in making its programs or activities readily accessible to and usable by individuals with handicaps. The agency, in making alterations to existing buildings, shall meet accessibility requirements to the extent compelled by the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), and any regulations implementing it. In choosing among available methods for meeting the requirements of this section, the agency shall give priority to those methods that offer programs and activities to qualified individuals with handicaps in the most integrated setting appropriate.

(c) *Time period for compliance.* The agency shall comply with the obligations established under this section within sixty (60) days of the effective date of this part except that where structural changes in facilities are undertaken, such changes shall be made within three years of the effective date of this part, but in any event as expeditiously as possible.

(d) *Transition plan.* In the event that structural changes to facilities will be undertaken to achieve program accessibility, the agency shall develop within six months of the effective date of this part, a transition plan setting forth the steps necessary to complete such changes. The agency shall provide an opportunity to interested persons, including individuals with handicaps or organizations representing individuals with handicaps, to participate in the development of the transition plan by submitting comments (both telephonic and written). A copy of the transition plan shall be made available for public inspection. The plan shall at a minimum—

(1) Identify physical obstacles in the agency's facilities that limit the physical accessibility of its programs or activities to individuals with handicaps;

(2) Describe in detail the methods that will be used to make the facilities accessible;

(3) Specify the schedule for taking the steps necessary to achieve compliance with this section and, if the time period of the transition plan is no longer than one year, identify steps that will be taken during each year of the transition period; and

(4) Indicate the official responsible for implementation of the plan.

§ 17.151 Program Accessibility: New construction and alterations.

Each building or part of a building that is constructed or altered by, on behalf of, or for the use of the agency shall be designed, constructed, or altered so as to be readily accessible to and usable by individuals with handicaps. The definitions, requirements, and standards of the Architectural Barriers Act (42 U.S.C. 4151-4157), as established in 41 CFR 101-19.600 through 101-19.607 apply to buildings covered by this section.

§§ 17.152-17.159 [Reserved]

§ 17.160 Communications.

(a) The agency shall take appropriate steps to effectively communicate with applicants, participants, personnel of other Federal entities, and members of the public.

(1) The agency shall furnish appropriate auxiliary aids where necessary to afford an individual with handicaps an equal opportunity to participate in, and enjoy the benefits of, a program or activity conducted by the agency.

(i) In determining what type of auxiliary aid is necessary, the agency shall give primary consideration to the requests of the individual with handicaps.

(ii) The agency need not provide individually prescribed devices, readers for personal use or study, or other devices of a personal nature to applicants or participants in programs.

(2) Where the agency communicates with applicants and beneficiaries by telephone, the agency shall use telecommunication devices for deaf persons (TDD's) or equally effective telecommunication systems to communicate with persons with impaired hearing.

(b) The agency shall make available to interested persons, including persons with impaired vision or hearing, information as to the existence and location of accessible services, activities, and facilities.

(c) The agency shall post notices at a primary entrance to each of its

inaccessible facilities, directing users to an accessible facility, or to a location at which they can obtain information about accessible facilities. The international symbol for accessibility shall be used at each primary entrance of an accessible facility.

(d) This section does not require the agency to take any action that it can demonstrate would result in a fundamental alteration in the nature of a program or activity or in undue financial and administrative burdens.

In those circumstances where agency personnel believe that the proposed action would fundamentally alter the program or activity or would result in undue financial and administrative burdens, the agency has the burden of proving that compliance with § 17.160 would result in such alteration or burdens. The decision that compliance would result in such alteration or burdens must be made by the agency head or his or her designee after considering all resources available for use in the funding and operation of the conducted program or activity and must be accompanied by a written statement of the reasons for reaching that conclusion. If an action required to comply with this section would result in such an alteration or such burdens, the agency shall take any other action that would not result in such an alteration of such burdens but would nevertheless ensure that, to the maximum extent possible, individuals with handicaps receive the benefits and services of the program or activity.

§§ 17.161-17.169 [Reserved]

§ 17.170 Compliance procedures.

(a) Except as provided in paragraph (b) of this section, this section applies to all allegations of discrimination on the basis of handicap in programs and activities conducted by the agency.

(b) The agency shall process complaints alleging violations of section 504 with respect to employment according to the procedures established by the Equal Employment Opportunity Commission in 29 CFR Part 1613 pursuant to section 501 of the Rehabilitation Act of 1973 (29 U.S.C. 791).

(c) All other complaints alleging violations of section 504 shall be filed and processed according to regulations which will be published by this Department. Until such regulations are published, all complaints alleging violations of section 504 that do not concern employment will be filed with the Director, Human Resources Directorate, who will forward them to the appropriate offices for processing.

Responsibility for implementation and operation of this section shall be vested in the Office of the Deputy Assistant Secretary for Departmental Finance and Management.

(d) (1) Any person who believes that he or she has been subjected to discrimination prohibited by this part may by him or herself or by his or her authorized representative file a complaint. Any person who believes that any specific class of persons has been subjected to discrimination prohibited by this part and who is a member of that class or the authorized representative of a member of that class may file a complaint.

(2) The agency shall accept and investigate all complete complaints over which it has jurisdiction.

(3) All complete complaints must be filed within 180 days of the alleged act of discrimination. The agency may extend this time period for good cause.

(e) If the agency receives a complaint over which it does not have jurisdiction, it shall promptly notify the complainant and shall make reasonable efforts to refer the complaint to the appropriate Government entity.

(f) The agency shall notify the Architectural and Transportation Barriers Compliance Board upon receipt of any complaint alleging that a building, or facility that is subject to the Architectural Barriers Act of 1968, as amended (42 U.S.C. 4151-4157), is not readily accessible to and usable by individuals with handicaps.

(g) Within 100 days of the receipt of a complete complaint over which it has jurisdiction, the agency shall notify complainant of the results of the investigation in a letter containing—

(1) Findings of fact and conclusions of law;

(2) A description of a remedy for each violation found; and

(3) A notice of the right to appeal.

(h) Appeals of the findings of fact and conclusions of law or remedies must be filed by the complainant within 90 days of receipt from the agency of the letter required by § 17.170(g). The agency may extend this time for good cause.

(i) Timely appeals shall be accepted and processed by the Director, Equal Employment Opportunity, or his or her designee, who will issue the final agency decision which may include appropriate corrective action to be taken by the agency.

(j) The agency shall notify the complainant of the results of the appeal within 30 days of the receipt of the appeal. If the agency determines that it needs additional information from the complainant, it shall have 30 days from the date it received the additional

information to make its determination on the appeal.

(k) The time limits cited in paragraphs (g) and (j) of this section may be extended for an individual case when the Deputy Secretary determines that there is good cause, based on the particular circumstances of that case, for the extension.

(l) The agency may delegate its authority for conducting complaint investigations to other Federal agencies or may contract with a nongovernment investigators to perform the investigation but the authority for making the final determinations may not be delegated to another agency.

§§ 17.171-17.999 [Reserved]

[FR Doc. 89-13363 Filed 6-5-89; 8:45 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900-AE01

Duty Periods

AGENCY: Department of Veterans Affairs.

ACTION: Proposed rule.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulation for classification of training performed by members of the Senior Reserve Officers' Training Corps. This change is required because of a change of law regarding the definition of training for this group. The intended result of this change is to clarify the duty status of this group during specific types of training.

DATES: Comments must be received on or before July 6, 1989. Comments will be available for public inspection until July 17, 1989. This amendment is proposed to be effective October 1, 1989, in accordance with the provisions of Pub. L. 100-456 (1988).

ADDRESSES: Interested persons are invited to submit written comments, suggestions, or objections regarding this change to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, Room 132, at the above address and only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until July 17, 1989.

FOR FURTHER INFORMATION CONTACT:

Bill Leonard, Legal Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, (202) 233-3005.

SUPPLEMENTARY INFORMATION: Section 633(c) of Pub. L. 100-456, National Defense Authorization Act, amends 38 U.S.C. 101, requiring training duty performed by members of the Senior Reserve Officers' Training Corps for periods of less than four weeks, or for any period which is not a prerequisite to commissioning, to be defined as "inactive duty training" rather than "active duty for training." Training by applicants for membership in the Senior Reserve Officers' Training Corps as defined in 5 U.S.C. 8140(g) is also included under the definition of "inactive duty training." We propose to implement this change by amending 38 CFR 3.8 (c) and (d).

The Secretary hereby certifies that this proposed regulatory amendment will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. The reason for this certification is that this amendment would not directly affect any small entities. Only VA beneficiaries could be directly affected. Therefore, pursuant to 5 U.S.C. 605(b), this proposed amendment is exempt from the initial and final regulatory flexibility analysis requirements of sections 603 and 604.

In accordance with Executive Order 12291, Federal Regulation, the Secretary has determined that this proposed regulatory amendment is non-major for the following reasons.

(1) It will not have an annual effect on the economy of \$100 million or more.

(2) It will not cause a major increase in costs or prices.

(3) It will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Catalog of Federal Domestic Assistance program numbers are 64.100, 64.101, 64.104, 64.105, 64.106, 64.109, and 64.110.

List of Subjects in 39 CFR Part 3

Administrative practice and procedure, Claims, Handicapped, Health care, Pensions, Veterans.

Approved: May 12, 1989.

Edward J. Derwinski,
Secretary of Veterans Affairs.

38 CFR Part 3, Adjudication, is proposed to be amended as follows:

PART 3—[AMENDED]

In § 3.8, paragraph (c)(4) is revised, and authority citation is added following paragraph (c)(5), paragraph (d)(3) is redesignated as paragraph (d)(4), paragraph (d)(2) is revised, new paragraph (d)(3) and a new authority citation for the section are added so the revised and added text reads as follows:

§ 3.8 Duty periods.

* * * * *

(c) * * *

(4) Duty performed by a member of a Senior Reserve Officers' Training Corps program when ordered to such duty for the purpose of training or a practice cruise under Chapter 103 of Title 10, United States Code.

(i) The requirements of this paragraph are effective—

(A) On or after October 1, 1982, with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated after September 30, 1982, and

(B) October 1, 1983, with respect to deaths and disabilities resulting from diseases or injuries incurred or aggravated before October 1, 1982.

(ii) Effective on or after October 1, 1988, such duty must be prerequisite to the member being commissioned and must be for a period of at least four continuous weeks.

(Authority: 38 U.S.C. 101(22)(D) as amended by Pub. L. 100-456)

(5) * * *

(Authority: 38 U.S.C. 101(22))

(d) * * *

(2) Special additional duties authorized for Reserves (including commissioned officers of the Reserve Corps of the Public Health Service) by the Secretary concerned and performed by them on a voluntary basis in connection with the prescribed training or maintenance activities of the units to which they are assigned; and

(3) Training (other than active duty for training) by a member of, or applicant for membership (as defined in 5 U.S.C. 8140(g)) in, the Senior Reserve Officers' Training Corps prescribed under Chapter 103 of Title 10, United States Code.

* * * * *

(Authority: 38 U.S.C. 101(23))

[FR Doc. 89-13297 Filed 6-5-89; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 51

[AD-FRL-3598-4]

Requirements for Preparations, Adoption, and Submittal of Implementation Plans; Methods for Measurement of PM₁₀ Emissions From Stationary Sources

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: The EPA has promulgated a revised National Ambient Air Quality Standard (NAAQS) (52 FR 24634), which, depending on the control strategy adopted by the State, may require State implementation plans (SIPs) to contain emission limits for particulate matter (PM) with an aerodynamic diameter of 10 µm or less (PM₁₀). Because of the need for a source test method for PM₁₀, the Agency proposes to add two PM₁₀ methods, Methods 201 and 201A, for the measurement of PM₁₀ emissions from stationary sources, to Appendix M, 40 CFR Part 51. Appendix M is a newly designated repository for example test methods for SIPs. The Agency also proposes to revise Subpart K, 40 CFR Part 51, to direct States to Appendix M and to reiterate the fact that each SIP must include enforceable test methods with each emission limit in the SIP, including PM₁₀. The PM₁₀ source test method shall be Method 201, 201A, or an acceptable alternative. A public hearing will be held, if necessary, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed rule.

DATES: Comments. Comments must be received on or before August 21, 1989.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by June 27, 1989, a public hearing will be held July 21, 1989, beginning at 10:00 a.m. Persons interested in attending the hearing should call the contact mentioned under **ADDRESSES** to verify that a hearing will be held.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact EPA by June 27, 1989.

ADDRESSES: Comments. Comments should be submitted (in duplicate if possible) to: Air Docket (LE-131), Attention: Docket Number A-88-08, U.S. Environmental Protection Agency, Room M1500—1st floor, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory Building, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Roy Huntley, Emission Measurement Branch (MD-19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-1060.

FOR FURTHER INFORMATION CONTACT: Roy Huntley or Roger Shigehara, Emission Measurement Branch (MD-19), Technical Support Division, telephone number (919) 541-1060, or Joseph J. Sableski, Air Quality Management Division (MD-15), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5897.

SUPPLEMENTARY INFORMATION:

I. The Rulemaking

Section 110 of the Clean Air Act, as amended (42 U.S.C. 7410), specifies that States are to submit plans for EPA approval that provide for the attainment and maintenance of emission standards through control programs directed at sources of the pollutants involved. Those plans shall include enforceable test methods for each emission limit, including PM_{10} . The source test method for PM_{10} shall be Method 201, 201A, or an acceptable alternative.

Although EPA recognized this need on the part of the States for test methods when it proposed and promulgated the PM_{10} standard and the associated implementation requirements, EPA did not have sufficient time and resources to develop a PM_{10} source test method. Accordingly, EPA elected to provide States and local control agencies and the public with guidance on how a widely accepted source testing train, EPA's Method 5 train, could be modified to measure PM_{10} . Appendix C of the PM_{10} SIP Development Guideline gives instructions which would allow a person knowledgeable in source testing theory and methods to adapt a Method 5 train for measuring emissions of PM_{10} .

Improved PM_{10} source test methodology has since been developed and, in order to make this methodology available to States, the EPA, in this notice, is proposing to publish two PM_{10} source test methods in the *Federal Register*. The methods will be published as example test methods in Appendix M, which this notice will designate as a repository for example test methods that States can use in their SIP's. Appendix M, entitled Example Test Methods for

State Implementation Plans, will contain methods numbered 201-299.

This notice also revises Subpart K to emphasize the requirement that States must include enforceable test methods in their SIP's for each emission limit. Also, Subpart K is revised to direct States to Appendix M, and two methods for measuring PM_{10} from stationary sources are added to Appendix M. The first method, Method 201 (also known as the Exhaust Gas Recycle (EGR) Procedure), uses a recycle loop to maintain a constant flow rate through a cyclone while maintaining isokinetic flow conditions at the nozzle. The second method, Method 201A (previously known as SIM-5 and called the Constant Sampling Rate (CSR) Procedure in this action), maintains a constant sampling rate through the particle sizing device while keeping the anisokinetic errors within well defined limits. The EPA considers the methods equivalent in PM_{10} measurement and is therefore proposing both methods.

Interested parties were advised by an Advance Notice of Proposed Rulemaking (ANPR) (53 FR 11688) of the Agency's intention to propose methods to measure PM_{10} source emissions.

Technical Problems in PM_{10} Emission Measurement

The collection of PM_{10} is based on the aerodynamic behavior of particles. Therefore, two types of inertial separators—cascade impactors and cyclones—are most appropriate for the in-stack collection of PM_{10} . Although similar principles are involved, each has advantages and disadvantages.

Cascade impactors are best suited for determining multiple cut fractions of PM. Their technology is developed to the point that their performance can be accurately predicted from geometrical and flow considerations. However, each stage can collect only a few milligrams of PM before particle bounce adversely affects collection performance. Omission of stages in impactors to reduce the number of size fractions and increase catch sizes hastens the increase of errors due to particle bounce. Because of problems due to particle bounce, the sampling times with cascade impactors are relatively short.

Cyclones perform well as single stage collectors, do not suffer from problems due to particle bounce, and have the potential of collecting PM mass in the order of grams. However, current theories on cyclone operations are rudimentary and cannot accurately predict cyclone performance from geometrical and flow considerations. This limits the use of cyclones to those that have been demonstrated to produce

the necessary particle cut size through empirical calibration procedures. The cut size of an inertial sizing device is defined here as the aerodynamic diameter of a particle that has a 50 percent probability of capture by the device. Cyclones capable of collecting PM_{10} with acceptable sharpness of cut have been developed and are currently available for both the EGR and CSR sampling trains.

Sampling from stacks presents challenges when using inertial sizing devices. For example, the aerodynamic cut size is a function of the flow rate and viscosity of the gas flowing through the sizing device. Therefore, the flow rate through the sizing device must be kept at a constant discrete value to maintain the cut size at 10 μm . Since stack velocities usually vary from point to point, maintaining both isokinetic sampling rates and constant sizing device flow rates in the sizing device is a problem not easily overcome. The two PM_{10} methods offer different solutions to this problem.

The EGR Procedure. The EGR train samples isokinetically at the nozzle tip and recycles a filtered, dried portion of the exhaust sample gas back through a single stage cyclone to maintain the constant flow rate through the cyclone required for a cut size of 10 μm . Isokinetic sampling is maintained by changing the recycle and sample flow rates. For example, if the stack gas velocity increases, the tester can increase the nozzle velocity to match the stack velocity by increasing the sample flow rate while simultaneously decreasing the recycle flow rate so that the total flow rate through the cyclone remains the same. Thus, the recycle capability of the EGR procedure permits the tester to sample isokinetically in the presence of variable stack gas velocity while maintaining a constant cut size of 10 μm in the cyclone.

The EGR sampling train includes a meter and flow control console to monitor the sample, recycle, and total flow rates throughout the sampling train. The nozzle is constructed to allow for the addition of recycle exhaust gas. The sampling protocol is similar to Method 5 except that the required maximum number of points in a stack is 12. Also, a total PM catch can be calculated by summing the PM_{10} catch and the cyclone catch.

The ERG sampling train is available commercially, however, only one company manufactures the train. The cost is approximately \$19,000. An earlier *Federal Register* notice (53 FR 11688) erroneously reported this cost to be \$10,000.

The CSR Procedure. The CSR sizing device can be either a cyclone or a cascade impactor. In this procedure, a constant sampling rate required for a 10 μm cut size is maintained throughout the sample traverse. The anisokinetic error is kept within acceptable limits by specifying a permissible range of velocity values for each sampling probe nozzle. The nozzle selected is the one whose maximum and minimum velocity values bracket all of the actual sampling point velocities. Often only one nozzle is required to complete a sampling run, but if the sampling point velocities vary beyond the specified range of any single nozzle, the use of more than one nozzle and sampling train per traverse will be necessary. A larger number (11) of nozzles are recommended to increase the likelihood that the tester can complete the sample traverse with only one nozzle and sampling train.

To add practicality to the procedure, the criteria for accepting the results in terms of isokinetic variation are more liberal than for the EGR procedure. Rather than the ± 10 percent allowed for the EGR procedure, an isokinetic variation of ± 20 percent with all of the sampling points within the nozzle velocity limits or ± 10 percent with no more than one sampling point outside the nozzle velocity is used. Because the particles of interest are less affected by inertial effects than larger particles, the total PM catch will not be as accurate as the EGR procedure. To account for the effects of sampling anisokinetically, the sampling time at each point is adjusted proportionally to the velocity at that point to provide a velocity weighted sample.

The CSR procedure uses a standard Method 5 sampling train, two glass fiber filters, and an inertial sizing device, either a cyclone or a cascade impactor. The impactors will have to be extensively calibrated for this procedure. The approximate cost of a calibrated impactor, pre-collector, and 11 nozzles is \$8,000. The approximate cost of a PM_{10} cyclone and 11 nozzles is \$3,000.

Both the EGR and the CSR procedures have two glass fiber filters. One filter is located out-of-stack directly behind the probe and maintained at a constant temperature of $120 \pm 14^\circ C$ ($248 \pm 25^\circ F$). The temperature requirement of the out-of-stack filter is consistent with the temperature requirement of the Method 5 filter.

Another filter is an in-stack filter, located directly behind the sizing device. The PM_{10} concentration at many sources can be very low, and the recovery of small amounts of PM_{10} over a large surface area, such as the interior

surfaces of a long probe, is difficult. Therefore, this filter collects PM_{10} immediately behind the sizing device at stack temperatures, and usually catches the majority of the PM_{10} . In both methods, PM_{10} is the sum of the PM recovered on both filters and on all of the surfaces from the sizing device to the front half of the out-of-stack filter.

Comments and Responses to ANPR

The comment period extended from April 8, 1988, to May 9, 1988. Seventeen comment letters were submitted. The American Mining Congress, BP America, and the Utilities Air Regulatory Group also requested an additional 30 days in which to comment. These extensions were granted.

Commenters included three oil companies, four trade associations, three local control agencies, three cement companies, one aluminum company, one car manufacturer, and two public utilities. The major comments and responses are summarized below.

PM_{10} Measurement

Three commenters preferred the EGR method, two commenters preferred the CSR method, and three commenters said that either method would be more accurate than using an assumed PM_{10} ratio and a total PM measurement. As a result of the comments, EPA is proposing both methods.

Two commenters criticized EPA for proposing the PM_{10} emission test methods after the deadline for the PM_{10} based SIP, and questioned the legality of EPA disapproving a previously approved SIP because the SIP specifies another method to measure PM_{10} . Also, these two commenters are concerned that EPA would use one of these new methods to determine compliance for a PM_{10} SIP emission limit that was based on a "nonreference" method.

When EPA promulgated the PM_{10} NAAQS in July 1987, a method for measuring PM_{10} emissions was included in the PM_{10} SIP Development Guideline. This method was considered an interim method to be used until the ERG and the CSR methods could be developed and promulgated. It is very similar to the CSR method being proposed today except that the train described in the Guideline had only one filter.

To date, no PM_{10} SIP has received final approval by EPA. It is thus possible for a State to include a PM_{10} test method in its PM_{10} SIP as that SIP is being developed. The EPA expects all States to either make provision in their SIP's for an in-stack test method based on the methods proposed herein, or for an alternate method acceptable to the Administrator, or to commit to including

a PM_{10} test method in their SIP based on the methods EPA finally promulgates.

One commenter did not like the out-of-stack filter for two reasons. First, both methods have been developed and field tested with only the in-stack filter. The commenter felt that the addition of the out-of-stack filter changes the method and new field tests should be done before these methods are proposed. Second, the addition of the out-of-stack filter means that the sample probe must be glass-lined. The commenter felt that the torque of the heavy sampling apparatus (cyclone, nozzle, filter holder, and pilot) would break a conventional Method 5 glass liner.

The out-of-stack filter was added to make the measurements similar to Method 5. Since the addition of the out-of-stack filter makes either of the PM_{10} methods not significantly different from other PM methods, a new round of field tests is not justified.

The EPA agrees that the sampling apparatus of the EGR sampling train is heavier than the sampling apparatus of the Method 5 sampling train and that the extra weight would probably break a glass liner if the probe was constructed like the Method 5 probe. If these methods are promulgated with the out-of-stack filter, the sampling probe of both methods will have to be redesigned to reduce the torque of the sampling apparatus on the glass liner. If stack temperature permits, a Teflon liner may be used.

Three commenters cited a report by Kilkelly Environmental Associates (KEA) that states that ambient and source PM size separators have different sample collection characteristics and that these differences can result in the over prediction of source PM_{10} emissions by an average of 38 percent. The KEA report concludes that the PM_{10} source test methods may overestimate a source's contributions to ambient PM_{10} concentrations significantly.

The conclusions and estimates by KEA were based on a misinterpretation of data. The data used in the KEA report were obtained from Southern Research Institute (SoRI) and are the same data EPA used to develop AP-42 emission factors. The KEA report confused physical or Stokes diameter with aerodynamic diameter when calculating source PM_{10} emission data. In effect, KEA calculated values for PM_{10} rather than for PM_{10} . The EMB contacted SoRI and obtained the correct values. These values indicate that the collection effectiveness for the source PM_{10} sampler and the collection effectiveness for the ambient sampler are essentially

the same and that KEA's conclusions are not correct.

One commenter stated that EPA should conduct interlaboratory collaborative testing before promulgation. The EPA feels that collaborative tests are desirable, but not essential. The EPA has promulgated numerous methods without doing this type of testing and has no plans for collaborative testing for either PM₁₀ method before promulgation.

Condensible Measurement

Regarding the measurement of condensible PM, four commenters preferred the impinger catch method, four preferred special procedures, three preferred the dilution and filter method, and two felt that none of the methods described in the ANPR were acceptable.

Several commenters felt that condensible PM should not be measured when determining compliance with an emission limit that is based on a test method that does not measure condensible PM. The EPA agrees with these commenters. The test method for determining compliance with an emission standard should consider the means used to establish the emission standard. The EPA discussed the problem of whether or not to include condensibles in the PM₁₀ SIP Development Guideline. As discussed in that document, EPA recognizes that many sources with good particulate controls may emit significant amounts of condensible particulate matter. All methods discussed herein do, in fact, collect varying amounts of condensible particulate matter depending primarily on the temperature of the filter or other collecting media. Thus, the greatest amount of condensibles would be collected in the impingers in the train as they are immersed in an ice bath that cools the gas stream to 20 °C. The next greatest amount would be collected on the out-of-stack filter as it is maintained at 120 °C. The least amount would be collected on the in-stack filters, assuming the gas temperature in the stack to be above 120 °C. By allowing the States to adopt alternate methods to those proposed herein, EPA is allowing them to make provision for test methods applicable to sources that have large amounts of condensibles in their effluents. Such sources might best be tested with a train in which there are no filters, all materials being collected in the impingers.

Another commenter stated that condensible PM are uncontrollable because they exist as vapor in the stack. The EPA agrees that a material in the vapor state cannot be controlled by dry particulate control devices. However,

condensible emissions can be reduced by other means, such as wet scrubbers, incinerators, or process modifications.

Other commenters believed that the EPA should first define condensible PM, then develop a method to measure them. In addition, the test method should simulate the gradual cooling in the atmosphere.

The EPA has defined condensible particulate in section 5.5 of the PM₁₀ SIP Development Guideline. Condensible particulate matter can be broadly defined as material that is not particulate matter at stack conditions but which condenses upon cooling and dilution in the ambient air to form particulate matter immediately after discharge from the stack. Condensible particulate matter is of potential importance because it usually is quite fine and thus falls primarily within the PM₁₀ fraction.

It is unlikely that a method can be developed that will measure exactly that portion of condensible emissions that contribute to ambient PM concentrations. The only prudent course is to select a method that has good precision and either reasonably measures condensible emissions or measures an acceptable surrogate. Therefore, the EPA is currently examining two approaches to measuring condensable emissions. The impinger catch procedure is a gravimetric determination of a modified Method 5 "back-half". The dilution and filter procedure is a gravimetric determination of a filter catch after the stack gas has been diluted and cooled by conditioned ambient air. In both of these procedures, the test method will define condensible PM. Since data available to the EPA indicate that condensible stack gases condense outside the stack as PM₁₀, the Agency is planning to eventually propose methods for condensible emissions. Regardless of the condensible issue, States are required to include Method 201, 201A, or an acceptable alternative in their SIP.

II. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed test method in accordance with section 307(d)(5) of the Clean Air Act. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each. Any member of the public may file a written statement with EPA before, during, or within 30 days after the hearing. Written statements should be addressed to the

Central Docket Section address given in the ADDRESSES section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at EPA's Central Docket Section in Washington, DC (see ADDRESSES section of this preamble).

B. Docket

The docket for this regulatory action is A-88-08. The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review materials) (Section 307(d)(7)(A)).

C. Office of Management and Budget Review

Executive Order 12291 Review. Under Executive Order 12291, EPA must judge whether a regulation is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This rulemaking is not major because it will not have an annual effect on the economy of \$100 million or more; it will not result in a major increase in costs or prices; and there will be no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

D. Regulatory Flexibility Act Compliance

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this attached rule, if promulgated, will not have an economic impact on small entities because no additional costs will be incurred.

This rule does not contain an information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

Date: May 25, 1989.

Don R. Clay,
Acting Assistant Administrator for Air and Radiation.

The EPA proposes to amend Title 40, Chapter I, Part 51 of the Code of Federal Regulations as follows:

PART 51—[AMENDED]

1. The authority citation for Part 51 continues to read as follows:

Authority: Section 110 of the Clean Air Act as Amended, 42 U.S.C. 7410.

2. Subpart K, Section 51.212 is amended by adding paragraph (c) to read as follows:

§ 51.212 Testing inspection, enforcement, and complaints.

.. . . .

(c) Enforceable test methods for each pollutant regulated under the plan. As an enforceable method, States may use:

(1) Any of the appropriate methods in Appendix M, Example Test Methods for State Implementation Plans, or

(2) An alternative method following review and approval of that method by the Administrator, or

(3) Any appropriate method in Appendix A to 40 CFR 60.

3. Appendix M, which was reserved, is now titled "Example Test Methods for State Implementation Plans", and two methods are added as follows: Method 201—Determination of PM₁₀ Emissions (Exhaust Gas Recycle Procedure) and Method 201A—Determination of PM₁₀ Emissions (Constant Sampling Rate Procedure).

Appendix M—Example Test Methods for State Implementation Plans

The example regulations presented herein reflect generally recognized ways of measuring air pollutants emanating from an emission source. They are provided as example methods a State may use in its plan to meet the requirements of Subpart K—Source Surveillance.

The State may also choose to adopt other methods to meet the requirements of Subpart K, subject to the normal plan review process.

The State may also meet the requirements of Subpart K by adopting, again subject to the normal plan review process, any of the relevant methods in Appendix A to 40 CFR Part 60.

Method 201—Determination of PM₁₀ Emissions (Exhaust Gas Recycle Procedure)

1. Applicability and Principle

1.1 Applicability. This method applies to the measurement of particulate matter (PM) emissions equal to or less than an aerodynamic diameter of nominally 10 µm (PM₁₀) from stationary sources. This method does not measure condensible emissions; it measures only PM₁₀ as it occurs in the stack and at 120 °C (248 °F).

1.2 Principle. A gas sample is isokinetically extracted from the source. An in-stack cyclone is used to separate PM greater than PM₁₀, and glass fiber filters are used to collect the PM₁₀. To maintain isokinetic flow rate conditions at the tip of the probe nozzle and a constant flow rate through the cyclone, a clean, dried portion of the sample gas at stack temperature is recycled into the nozzle. The particulate mass is determined gravimetrically after removal of uncombined water.

2. Apparatus

Note: Method 5 as cited in this method refers to the method in 40 CFR Part 60, Appendix A.

2.1 Sampling Train. A schematic of the exhaust gas recycle (EGR) train is shown in Figure 1.

2.1.1 Nozzle with Recycle Attachment. Stainless steel (316 or equivalent) with a sharp tapered leading edge, and recycle attachment welded directly on the side of the nozzle (see schematic in Figure 2). The nozzle shall meet the design specifications in the EGR Operators Manual, entitled *Applications Guide for Source PM₁₀ Exhaust Gas Recycle Sampling System*, EPA 600/3-88-058.

2.1.1.1 The recycle attachment shall have a thermocouple as shown in Figure 3 to measure the temperature of the recycle gas. The recycle attachment shall be made of stainless steel and shall be connected to the probe and nozzle with stainless steel fittings. Two nozzle sizes, e.g., 0.125 and 0.156 in., should be available to allow isokinetic sampling to be conducted over a range of flow rates. Each nozzle shall be calibrated as described in Method 5, section 5.1.

2.1.2 PM₁₀ Sizer. Cyclone, meeting the specifications in section 5.7.

2.1.3 Filter Holder. Same as in Method 5, section 2.1.5 (or equivalent) for the out-of-stack filter and 63-mm, stainless steel for the in-stack filter. An Anderson filter, part number SE274, has been found to be acceptable for the in-stack filter.

Note. Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.

2.1.4 Pitot Tube. Same as in Method 5, section 2.1.3. Attach the pitot to the pitot lines with stainless steel fittings and to the cyclone in a configuration similar to that shown in Figure 3. The pitot lines shall be made of heat resistant material and attached to the probe with stainless steel fittings.

2.1.5 EGR Probe. Stainless steel, 15.9-mm (5/8-in.) ID tubing with a probe liner, stainless steel 9.53-mm (3/8-in.) ID stainless steel recycle tubing, two 6.35-mm (1/4-in.) ID stainless steel tubing for the pitot tube extensions, three thermocouple leads, and one power lead, all contained by stainless steel tubing with a diameter of approximately 51 mm (2.0 in.). Design considerations should include minimum weight construction materials sufficient for probe structural strength. The sample and recycle tubes shall be wrapped with a heating tape to heat the sample and recycle gases to stack temperature. The probe liner shall be like that in Method 5, section 2.1.2.

2.1.6 Condenser. Same as in Method 5, section 2.1.7.

2.1.7 Umbilical Connector. Flexible tubing with thermocouple and power leads of sufficient length to connect probe to meter and flow control console.

2.1.8 Vacuum Pump. Leak-tight, oil-less, noncontaminating, with an absolute filter, "HEPA" type, at the pump exit. A Gast Model 0522-V103 G18DX pump has been found to be satisfactory.

2.1.9 Meter and Flow Control Console. System consisting of a dry gas meter and calibrated orifice for measuring sample flow rate and capable of measuring volume to ±2

percent, calibrated laminar flow elements (LFE's) or equivalent for measuring total and sample flow rates, probe heater control, and manometers and magnehelic gauges (as shown in Figures 4 and 5), or equivalent. Temperatures needed for calculations include stack, recycle, probe, dry gas meter, filter, and total flow. Flow measurements include velocity head (Δp), orifice differential pressure (ΔH), total flow, recycle flow, and total back-pressure through the system.

2.1.10 Barometer. Same as in Method 5, section 2.1.9.

2.1.11 Rubber Tubing. 6.35-mm (1/4-in.) ID flexible rubber tubing.

2.2 Sample Recovery.

2.2.1 Nozzle, Cyclone, and Filter Holder Brushes. Nylon bristle brushes properly sized and shaped for cleaning the nozzle, cyclone, filter holder, and probe or probe liner, with stainless steel wire shafts and handles.

2.2.2 Wash Bottles, Glass Sample Storage Containers, Petri Dishes, Graduated Cylinder and Balance, Plastic Storage Containers, and Funnel. Same as Method 5, sections 2.2.2 through 2.2.6, and 2.2.8, respectively.

2.3 Analysis. Same as in Method 5, section 2.3.

3. Reagents

The reagents used in sampling, sample recovery, and analysis are the same as that specified in Method 5, sections 3.1, 3.2, and 3.3, respectively.

4. Procedure

4.1 Sampling. The complexity of this method is such that, in order to obtain reliable results, testers should be trained and experienced with the test procedures.

4.1.1 Pretest Preparation. Same as in Method 5, section 4.1.1.

4.1.2 Preliminary Determinations. Same as in Method 5, section 4.1.2, except use the directions on nozzle size selection in this section. Use of the EGR method may require a minimum sampling port diameter of 6 inches. Also, the required maximum number of sample traverse points at any location shall be 12.

4.1.2.1 The cyclone and filter holder must be in-stack or at stack temperature during sampling. The blockage effect of the EGR sampling assembly will be minimal if the cross-sectional area of the sampling assembly is 3 percent or less of the cross-sectional area of the duct and a pitot coefficient of 0.84 may be assigned to the pitot. If the cross-sectional area of the assembly is greater than 3 percent of the cross-sectional area of the duct, then use the procedures in Method 1A to determine the sampling site, flow measurements, and the number of traverse points.

4.1.2.2 Construct a setup sheet of pressure drops for various Δp's and temperatures. A computer is useful for these calculations. An example of the output of the EGR setup program is shown in Figure 6, and directions on its use are in section 4.1.5. Computer programs, written in IBM BASIC computer language, to do these types of setup and reduction calculations for the EGR procedure are available through the National Technical Information Services (NTIS), 5285 Port Royal Road, Springfield, Virginia 22161.

4.1.2.3 The EGR set up program allows the tester to select the nozzle size based on anticipated average stack conditions and prints a setup sheet for field use. The amount of recycle through the nozzle should be between 10 and 80 percent. Inputs for the EGR setup program are stack temperature (minimum, maximum, and average), stack velocity (minimum, maximum, and average), atmospheric pressure, stack differential pressure, meter box temperature, stack moisture, percent O₂ and percent CO₂ in the stack gas, pitot coefficient (C_p), orifice ΔH°, flow rate measurement calibration values [slope (m) and y-intercept (b) of the calibration curve], and the number of nozzles available and their diameters.

4.1.2.4 A less rigorous calculation for the setup sheet can be done manually using the equations on the example worksheets in Figures 7, 8, and 9, or by a Hewlett-Packard HP41 calculator using the program provided in Appendix D of the EGR operators manual, entitled *Applications Guide for Source PM₁₀ Exhaust Gas Recycle Sampling System*. This calculation uses an approximation of the total flow rate and agrees within 1 percent of the exact solution for pressure drops at stack temperatures from 38 to 260 °C (100 to 500 °F) and stack moisture up to 50 percent. Also, the example worksheets use a constant stack temperature in the calculations, ignoring the complicated temperature dependence from all three pressure drop equations. Errors for this at stack temperatures ±28 °C (±50 °F) of the temperature used in the setup calculations are within 5 percent for flow rate and within 5 percent for cyclone cut size.

4.1.2.4.1 The pressure upstream of the LFE's is assumed to be constant at 0.6 in. Hg in the EGR setup calculations.

4.1.2.4.2 The setup sheet constructed using this procedure shall be similar to Figure 6. Inputs needed for the calculation are the same as for the EGR setup computer program except that stack velocities are not needed.

4.1.3 Preparation of Collection Train. Same as in Method 5, section 4.1.3, except use the following directions to set up the train.

4.1.3.1 Assemble the EGR sampling device, and attach it to probe as shown in Figure 3. If stack temperatures exceed 260 °C (500 °F), then assemble the EGR cyclone without the O-ring and reduce the vacuum requirement to 130 mm (5.0 in.) in the leak-check procedure in section 4.1.4.3.2.

4.1.3.2 Connect the probe directly to the filter holder and condenser as in Method 5. Connect the condenser and probe to the meter and flow control console with the umbilical connector. Plug in the pump and attach pump lines to the meter and flow control console.

4.1.4 Leak-Check Procedure. The leak-check for the EGR Method consists of two parts: the sample-side and the recycle-side. The sample-side leak-check is required at the end of the run. The recycle-side leak-check tests the leak tight integrity of the recycle components and is required prior to the first test run and after each shipment.

4.1.4.1 Pretest Leak-Check. A pretest leak-check of the sample-side is recommended but not required. Use the procedure in section 4.1.4.3 to conduct a pretest leak-check.

4.1.4.2 Leak-Checks During Sample Run. Same as in Method 5, section 4.1.4.1.

4.1.4.3 Post-Test Leak-Check. A leak-check is required at the conclusion of each sampling run. Use the following procedure to conduct a post-test leak-check.

4.1.4.3.1 The sample-side leak-check is performed as follows: Seal the nozzle with a leak-tight stopper. Maintain the out-of-stack filter at stack temperature. Before starting pump, close the coarse total valve and both recycle valves, and open completely the sample back pressure valve and the fine total valve. After turning the pump on, partially open the coarse total valve slowly to prevent a surge in the manometer. Adjust the vacuum to at least 381 mm Hg (15.0 in. Hg) with the fine total valve. If the desired vacuum is exceeded, either leak-check at this higher vacuum or end the leak-check as shown below and start over. CAUTION: Do not decrease the vacuum with any of the valves. This may cause a rupture of the filter. Note: A lower vacuum may be used, provided that it is not exceeded during the test.

4.1.4.3.2 Leak rates in excess of 0.00057 m³/min (0.020 ft³/min) are unacceptable. If the leak rate is too high, void the sampling run.

4.1.4.3.3 To complete the leak-check, slowly remove the stopper from the nozzle until vacuum is near zero, then immediately turn off the pump. The procedure sequence prevents a pressure surge in the manometer fluid and rupture of the filter.

4.1.4.3.4 The recycle-side leak-check is performed as follows: Close the coarse and fine total valves and sample back pressure valve. Open the coarse and fine recycle valves. Disconnect the recycle plug from the umbilical connector. Connect a second vacuum pump with a vacuum gauge and dry gas meter into the recycle inlet on the meter and flow control console. Start the additional pump, adjust the vacuum to at least 380 mm Hg (15 in. Hg), and read the leak rate on the extra dry gas meter. If the desired vacuum is exceeded, either leak-check at this higher vacuum, or end the leak-check and start over. Minimum acceptable leak rates are the same as for the sample-side. If the leak rate is too high, void the sampling run.

4.1.5 EGR Train Operation. Same as in Method 5, section 4.1.5, except omit references to nomographs and recommendations about changing the entire filter assembly rather than just the filter.

4.1.5.1 Record the data required on a data sheet such as the one shown in Figure 10. Make periodic checks of the manometer level and zero to ensure correct ΔH and Δp values. An acceptable procedure for checking the zero is to equalize the pressure at both ends of the manometer by pulling off the tubing, allowing the fluid to equilibrate and, if necessary, to re-zero. Maintain the probe temperature to within 11 °C (20 °F) of stack temperature.

4.1.5.2 The procedure for using the example EGR setup sheet is as follows: Obtain a stack velocity reading from the pitot manometer (Δp), and find this value on the ordinate axis of the setup sheet. Find the stack temperature on the abscissa. Where these two values intersect are the differential pressures necessary to achieve isokineticity and 10 μm cut size (interpolation may be necessary).

4.1.5.3 The top three numbers are differential pressures (in. H₂O), and the

bottom number is the percent recycle at these flow settings. Adjust the total flow rate valves, coarse and fine, to the sample value (ΔH) on the setup sheet, and the recycle flow rate valves, coarse and fine, to the recycle flow value on the setup sheet.

4.1.5.4 For startup of the EGR sample train, the following procedure is recommended. Preheat the cyclone in the stack for 30 minutes. Close both the sample and recycle coarse valves. Open the fine total, fine recycle, and sample back pressure valves halfway. Ensure that the nozzle is properly aligned with the sample stream. After noting the Δp and stack temperature, select the appropriate ΔH and recycle values from the EGR setup sheet. Start the pump and timing device simultaneously. Immediately open both the coarse total and the coarse recycle valves slowly to obtain the approximate desired values. Adjust both the fine total and the fine recycle valves to achieve more precisely the desired values. In the EGR flow system, adjustment of either valve will result in a change in both total and recycle flow rates, and a slight iteration between the total and recycle valves may be necessary. Because the sample back pressure valve controls the total flow rate through the system, it may be necessary to adjust this valve in order to obtain the correct flow rate.

Note: Isokinetic sampling and proper operation of the cyclone are not achieved unless the correct ΔH and recycle flow rates are maintained.

4.1.5.5 During the test run, monitor the probe and filter temperatures periodically, and make adjustments as necessary to maintain the desired temperatures. If the sampling loading is high, the filter may begin to blind or the cyclone may clog. The filter or the cyclone may be replaced during the sample run. Before changing the filter or cyclone, conduct a leak-check (section 4.1.4.2). The total particulate mass shall be the sum of all cyclone and filter catches during the run. Monitor stack temperature and Δp periodically, and make the necessary adjustments in sampling and recycle flow rates to maintain isokinetic sampling and the proper flow rate through the cyclone. At the end of the run, turn off the pump, close the coarse total valve, and record the final dry gas meter reading. Remove the probe from the stack, and conduct a post test leak-check as outlined in section 4.1.4.3.

4.1.6 Calculation of Percent Isokinetic Rate and Aerodynamic Cut Size. Calculate percent isokinetic rate and the aerodynamic cut size (D₅₀) (see Calculations, section 6) to determine whether the test was valid or another test run should be made. If there was difficulty in maintaining isokinetic rates or a D₅₀ of 10 μm because of source conditions, the Administrator may be consulted for possible variance.

4.2 Sample Recovery. Allow the probe to cool. When the probe can be safely handled, wipe off all external PM adhering to the outside of the nozzle, cyclone, and nozzle attachment, and place a cap over the nozzle to prevent losing or gaining PM. Do not cap the nozzle tip tightly while the sampling train is cooling, as this action would create a vacuum in the filter holder.

4.2.1 Disconnect the probe from the umbilical connector, and take the probe to the cleanup site. Sample recovery should be conducted in a dry indoor area or, if outside, in an area protected from wind and free of dust. Cap the ends of the impingers, and carry them to the cleanup site. Inspect the components of the train prior to and during disassembly to note any abnormal conditions. Disconnect the pitot from the cyclone. Remove the cyclone from the probe. Recover the sample as follows:

4.2.1.1 Container No. 1 (In-Stack Filter). The recovery shall be the same as that for Container No. 1 in Method 5, section 4.2.

4.2.1.2 Container No. 2 (Out-of-Stack Filter). The recovery shall be the same as that for Container No. 1 in Method 5, section 4.2.

4.2.1.3 Container No. 3 (Cyclone or Large PM Catch). The cyclone must be disassembled and the nozzle removed in order to recover the large PM catch. Quantitatively recover the PM from the interior surfaces of the nozzle and the cyclone, excluding the "turn around" cup and the interior surfaces of the exit tube. The recovery shall be the same as that for Container No. 2 in Method 5, section 4.2.

4.2.1.4 Container No. 4 (PM₁₀). Quantitatively recover the PM from all of the surfaces from cyclone exit to the front half of the in-stack filter holder, including the "turn around" cup and the interior of the exit tube. The recovery shall be the same as that for Container No. 2 in Method 5, section 4.2.

4.2.1.5 Container No. 5 (PM₁₀). Quantitatively recover the PM from all interior surfaces between the in-stack filter and the out-of-stack filter. The recovery shall be the same as that for Container No. 2 in Method 5, section 4.2.

4.2.1.6 Container No. 6 (Silica Gel). Same as that for Container No. 3 in Method 5, section 4.2.

4.2.1.7 Impinger Water. Same as in Method 5, section 4.2, under "Impinger Water."

4.3 Analysis. Same as in Method 5, section 4.3, except handle EGR Containers No. 1 and No. 2 like Container No. 1, EGR Containers No. 3, No. 4, and No. 5 like Container No. 2, and EGR Container No. 6 like Container No. 3. Use Figure 11 to record the weights of PM collected.

4.4 Quality Control Procedures. Same as in Method 5, section 4.4.

5. Calibration. Maintain an accurate laboratory log of all calibrations.

5.1 Probe Nozzle. Same as in Method 5, section 5.1.

5.2 Pitot Tube. Same as in Method 5, section 5.2.

5.3 Meter and Flow Control Console. Same as in Method 5, section 5.3, for the dry gas meter.

5.3.1 Calibrate the recycle, total, and inlet total LFE gauges with a manometer. Read and record flow rates at 10, 50, and 90 percent of full scale on the total and recycle pressure gauges. Read and record flow rates at 10, 20, and 30 percent of full scale on the inlet total LFE pressure gauge. Record the total and recycle readings to the nearest 0.3 mm (0.01 in.). Record the inlet total LFE readings to the nearest 3 mm (0.1 in.). Record the manometer

readings to the nearest 0.3 mm (0.01 in.). Make three separate measurements at each setting and calculate the average. The maximum difference between the average pressure reading and the average manometer reading shall not exceed 1 mm (0.05 in.). If the differences exceed the limit specified, adjust or replace the pressure gauge. After each field use, check the calibration of the pressure gauges.

5.3.2 Total LFE. Same as in Method 5, section 5.3.

5.3.3 Recycle LFE. Same as in Method 5, section 5.3, except completely close both the coarse and fine recycle valves.

5.4 Probe Heater Calibration. Connect the probe through the umbilical connector to the meter and flow control console. Insert a thermocouple into the probe sample line approximately half the length of the probe sample line. Calibrate the probe heater at 68 °C (150 °F), 121 °C (250 °F), and 177 °C (350 °F). Turn on the probe power, and set the probe heater to the specified temperature. Allow the heater to equilibrate, and record the thermocouple temperature and the meter and flow control console temperature to the nearest 0.5 °C (1 °F). The two temperatures should agree within 5.5 °C (10 °F). If this agreement is not met, adjust or replace the probe heater controller.

5.5 Temperature Gauges. Connect all thermocouples, and let the meter and flow control console equilibrate to ambient temperature. All thermocouples shall agree to within 1.1 °C (2.0 °F) with a standard mercury-in-glass thermometer. Replace defective thermocouples.

5.6 Barometer. Calibrate against a standard mercury-in-glass barometer.

5.7 Probe Cyclone and Nozzle Combinations. The probe cyclone and nozzle combinations need not be calibrated if both the cyclone and the nozzle meet the design specifications in Figures 12 and 13. If the nozzles do not meet the design specifications, then test the cyclone and nozzle combination for conformity with the performance specifications (PS's) in Table 1. The purpose of the PS tests are to determine if the cyclone's sharpness of cut meets minimum performance criteria. If the cyclone does not meet design specifications, then, in addition to the cyclone and nozzle combination conforming to the PS's, calibrate the cyclone and determine the relationship between flow rate, gas viscosity, and gas density. Use the procedures in section 5.7.4 to connect PS tests and the procedures in section 5.7.6 to calibrate the cyclone.

5.7.1 Conduct the PS tests in a wind tunnel described in section 5.7.2 and using a particle generation system described in section 5.7.3. Use five particle sizes and three wind velocities as listed in Table 2. Perform a minimum of three replicate measurements of collection efficiency for each of the 15 conditions listed, for a minimum of 45 measurements.

5.7.2 Wind Tunnel. Perform calibration and PS tests in a wind tunnel (or equivalent test apparatus) capable of establishing and maintaining the required gas stream velocities within 10 percent.

5.7.3 Particle Generation System. The particle generation system shall be capable of

producing solid monodispersed dye particles with the mass median aerodynamic diameters specified in Table 2. The particle size distribution verification should be performed on an integrated sample obtained during the sampling period of each test. An acceptable alternative is to verify the size distribution of samples obtained before and after each test, with both samples required to meet the diameter and monodispersity requirements for an acceptable test run.

5.7.4 Establish the size of the solid dye particles delivered to the test section of the wind tunnel using the operating parameters of the particle generation system, and verify the size during the tests by microscopic examination of samples of the particles collected on a membrane filter. The particle size, as established by the operating parameters of the generation system, shall be within the tolerance specified in Table 2. The precision of the particle size verification technique shall be at least ±0.5 μm, and the particle size determined by the verification technique shall not differ by more than 10 percent from that established by the operating parameters of the particle generation system.

5.7.5 Certify the monodispersity of the particles for each test either by microscopic inspection of collected particles on filters or by other suitable monitoring techniques such as an optical particle counter followed by a multichannel pulse height analyzer. If the proportion of multiplets and satellites in an aerosol exceeds 10 percent by mass, the particle generation system is unacceptable for purposes of this test. Multiplets are particles that are agglomerated, and satellites are particles that are smaller than the specified size range.

5.7.6 Schematic drawings of the wind tunnel and blower system and other information showing complete procedural details of the test atmosphere generation, verification, and delivery techniques shall be furnished with calibration data to the reviewing agency.

5.7.7 Flow Rate Measurements. Determine the cyclone air flow rates with a dry gas meter and a stopwatch, or a calibrated orifice system capable of measuring flow rates to within 2 percent.

5.7.8 Performance Specification Procedure. Establish the test particle generator operation and verify the particle size microscopically. If monodispersity is to be verified by measurements at the beginning and the end of the run rather than by an integrated sample, these measurements may be made at this time.

5.7.9 The cyclone cut size (D₅₀) is defined as the aerodynamic diameter of a particle having a 50 percent probability of penetration. Determine the required cyclone flow rate for a D₅₀ of 10 μm. A suggested procedure is to vary the cyclone flow rate while keeping a constant particle size of 10 μm. Measure the PM collected in the cyclone (m_c), exit tube (m_e), and filter (m_f). Compute the cyclone efficiency (E_c) as follows:

$$E_c = \frac{m_c}{(m_c + m_1 + m_2)} \times 100$$

5.7.10 Perform three replicates and calculate the average cyclone efficiency as follows:

$$E_{avr} = \frac{(E_1 + E_2 + E_3)}{3}$$

where E_1 , E_2 , and E_3 are replicate measurements of E_c .

5.7.11 Calculate the standard deviation (σ) for the replicate measurements of E_c as follows:

$$\sigma = \left[\frac{(E_1^2 + E_2^2 + E_3^2) - \frac{(E_1 + E_2 + E_3)^2}{3}}{2} \right]^{0.5}$$

If σ exceeds 0.10, the replicate runs shall be repeated.

5.7.12 Using the cyclone flow rate that produces D_{50} for 10 μm , measure the overall efficiency of the cyclone and nozzle, E_o , at the particle sizes and nominal gas velocities in Table 2 using the following procedure.

5.7.13 Set the air velocity in the wind tunnel to one of the nominal gas velocities from Table 2. Establish isokinetic sampling conditions and the correct flow rate through the sampler (cyclone and nozzle) using recycle capacity so that the D_{50} is 10 μm . Sample long enough to obtain ± 5 percent precision on the total collected mass as determined by the precision and the sensitivity of the measuring technique. Determine separately the nozzle catch (m_n), cyclone catch (m_c), cyclone exit tube catch (m_1), and collection filter catch (m_2).

5.7.14 Calculate the overall efficiency (E_o) as follows:

$$E_o = \frac{(m_n + m_c)}{(m_n + m_c + m_1 + m_2)} \times 100$$

5.7.15 Do three replicates for each combination of gas velocities and particle sizes in Table 2. Calculate E_o for each particle size following the procedures described in this section for determining efficiency. Calculate the standard deviation (σ) for the replicate measurements. If σ exceeds 0.10, the replicate runs shall be repeated.

5.7.16 Criteria for Acceptance. For each of the three gas stream velocities, plot the average E_o as a function of particle size on Figure 14. Draw a smooth curve for each velocity through all particle sizes. E_o shall be within the banded region for all sizes, and the average E_o for a D_{50} of 10 μm shall be 50 ± 0.5 percent.

5.7.17 Cyclone Calibration Procedure. The purpose of this section is to develop the relationship between flow rate, gas viscosity,

gas density, and D_{50} . This procedure only needs to be done on those cyclones that do not meet the design specifications in Figure 12.

5.7.18 Determine the flow rates and D_{50} 's for three different particle sizes between 5 μm and 15 μm , one of which shall be 10 μm . All sizes must be determined within 0.5 μm . For each size, use a different temperature within 60°C (108°F) of the temperature at which the cyclone is to be used and conduct triplicate runs. A suggested procedure is to keep the particle size constant and vary the flow rate. Some of the values obtained in the PS tests in Section 5.7.4 may be used.

5.7.19 On log-log graph paper, plot the Reynolds number (Re) on the abscissa, and the square root of the Stokes 50 number $[(Stk_{50})^{0.5}]$ on the ordinate for each temperature. Use the following equations:

$$Re = \frac{4 \rho Q_{cyc}}{d_{cyc} \pi \mu_{cyc}}$$

$$(Stk_{50})^{0.5} = \left[\frac{4 Q_{cyc} (D_{50})^2}{9 \pi \mu_{cyc} (d_{cyc})^3} \right]^{0.5}$$

where:

Q_{cyc} = Cyclone flow rate, cm^3/sec .

ρ = Gas density, g/cm^3 .

d_{cyc} = Diameter of cyclone inlet, cm.

μ_{cyc} = Viscosity of gas through the cyclone, poise.

D_{50} = Cyclone cut size, cm.

Use a linear regression analysis to

determine the slope (m), and the y-intercept (b). Use the following formula to determine Q , the cyclone flow rate required for a size cut of 10 μm .

$$Q = \frac{\pi \mu_{cyc}}{4} \left[(3000) (K_1)^b \left(\frac{T_o}{M_c P_o} \right)^{m/(m-0.5)} \right]^{m/(m-0.5)} (m-1.5)/(m-0.5)$$

where:

Q = Cyclone flow rate for a size cut of 10 μm , cm^3/sec .

T_o = Stack gas temperature, $^\circ\text{K}$.

d = Diameter of nozzle, cm.

$K_1 = 4.077 \times 10^{-3}$

5.7.20 Refer to Section 5 of the EGR operators manual for directions in using this expression for Q in the setup calculations.

6. Calculations

6.1 The EGR data reduction calculations are performed by the EGR reduction computer program, written in IBM BASIC basic computer language, and is available

through NTIS. Examples of program inputs and outputs are shown in Figure 14.

6.1.1 Calculations can also be done manually, as specified in Method 5, Sections 6.3 through 6.7, and 6.9 through 6.12, with the addition of the following:

6.1.2 Nomenclature.

B_c = Moisture fraction of mixed cyclone gas, by volume, dimensionless.

C_1 = Viscosity constant, 51.12 micropoise for $^\circ\text{K}$ (51.05 micropoise for $^\circ\text{R}$).

C_2 = Viscosity constant, 0.372 micropoise/ $^\circ\text{K}$ (0.207 micropoise/ $^\circ\text{R}$).

C_3 = Viscosity constant, 1.05×10^{-4} micropoise/ $^\circ\text{K}^2$ (3.24×10^{-5} micropoise/ $^\circ\text{R}^2$).

C_4 = Viscosity constant, 53.147 micropoise/fraction O_2 .

C_5 = Viscosity constant, 74.143 micropoise/fraction H_2O .

D_{50} = Diameter of particles having a 50 percent probability of penetration, μm .

f_{O_2} = Stack gas fraction O_2 , by volume, dry basis.

$K_1 = 0.3858 \text{ } ^\circ\text{K}/\text{mm Hg}$ ($17.64 \text{ } ^\circ\text{R}/\text{in. Hg}$).

M_c = Wet molecular weight of mixed gas through the PM_{10} cyclone, $\text{g}/\text{g-mole}$ ($\text{lb}/\text{lb-mole}$).

M_d = Dry molecular weight of stack gas, $\text{g}/\text{g-mole}$ ($\text{lb}/\text{lb-mole}$).

P_{bar} = Barometric pressure at sampling site, mm Hg (in. Hg).

P_{inl} = Gauge pressure at inlet to total LFE, mm H_2O (in. H_2O).

P_o = Absolute stack pressure, mm Hg (in. Hg).

Q_s = Total cyclone flow rate at wet cyclone conditions, m^3/min (ft^3/min).

$Q_{s(Std)}$ = Total cyclone flow rate at standard conditions, dscm/min (dscf/min).

T_m = Average temperature of dry gas meter, $^\circ\text{K}$ ($^\circ\text{R}$).

T_o = Average stack gas temperature, $^\circ\text{K}$ ($^\circ\text{R}$).

$V_{w(Std)}$ = Volume of water vapor in gas sample (standard conditions), scm (scf).

X_T = Total LFE linear calibration constant, $\text{m}^3/[(\text{min})(\text{mm H}_2\text{O})]$ ($\text{ft}^3/[(\text{min})(\text{in. H}_2\text{O})]$).

Y_T = Total LFE linear calibration constant, dscm/min (dscf/min).

ΔP_T = Pressure differential across total LFE, mm H_2O (in. H_2O).

θ = Total sampling time, min.

μ_{cyc} = Viscosity of mixed cyclone gas, micropoise.

μ_{LFE} = Viscosity of gas at laminar flow elements, micropoise.

μ_{std} = Viscosity of standard air, 180.1 micropoise.

6.2 PM_{10} Particulate Weight. Determine the weight of PM_{10} by summing the weights obtained from Containers No. 1, 2, 4, and 5, less the acetone blank.

6.3 Total Particulate Weight. Determine the particulate catch for greater than PM_{10} from the weight obtained from Container No. 3 less the acetone blank, and add it to the PM_{10} particulate weight.

6.4 Total Cyclone Flow Rate. The average total flow rate at standard conditions is determined from the average pressure drop across the total LFE and is calculated as follows:

$$Q_{s(Std)} = K_1 \left[X_T \Delta P \frac{\mu_{std}}{\mu_{LFE}} + Y_T \right] \frac{P_{bar} + P_{inl}/13.6}{T_m}$$

The PM_{10} flow rate, at actual cyclone conditions, is calculated as follows:

$$Q_s = \frac{T_o}{K_1 P_o} \left[Q_{s(Std)} + \frac{V_{w(Std)}}{\theta} \right]$$

6.5 Aerodynamic Cut Size. Use the following procedure to determine the aerodynamic cut size (D_{50}):

6.5.1 Determine the water fraction of the mixed gas through the cyclone by using the equation below.

$$B_c = \frac{V_{w(Std)}}{Q_{s(Std)} \theta + V_{w(Std)}}$$

$\mu_{cyc} = C_1 + C_2 T_o + C_3 T_o^2 + C_4 f_{O_2} - C_5 B_c$

6.5.3 Calculate the molecular weight on a wet basis of the cyclone gas as follows:

$M_c = M_d(1 - B_c) + 18.0(B_c)$

6.5.4 If the cyclone meets the design specification in Figure 12, calculate the actual D_{50} of the cyclone for the run as follows:

$$D_{50} = \beta_1 \left[\frac{T_o}{M_c P_o} \right]^{0.2091} \left[\frac{\mu_{cyc}}{Q_s} \right]^{0.7091} \quad \text{where } \beta_1 = 0.1562$$

6.4.5 If the cyclone does not meet the design specifications in Figure 12, then use the following equation to calculate D_{50} .

$$D_{50} = (3)(10)^{0.7376 \times 10^{-9}} \left[\frac{M_c P_o}{T_o} \right]^{0.2091} \left[\frac{4 Q_s}{\pi \mu_{cyc}} \right]^{0.7091} (1.5 - m)$$

where:

m = Slope of the calibration curve obtained in section 5.7.6.

b = y-intercept of the calibration curve obtained in section 5.7.6.

6.6 Acceptable Results. Acceptability of anisokinetic variation is the same as Method 5, section 6.12.

6.6.1 If $9.0 \mu\text{m} < D_{50} < 11 \mu\text{m}$, the results are acceptable. If D_{50} is greater than 11 μm ,

the Administrator may accept the results. If D_{50} is less than 9.0 μm , reject the results and repeat the test, unless the total particulate catch is less than the PM_{10} standard. In this

case, the Administrator may accept the results.

7. Bibliography

1. Same as Bibliography in Method 5.

2. McCain, J.D., J.W. Ragland, and A.D. Williamson. Recommended Methodology for the Determination of Particle Size Distributions in Ducted Sources, Final Report. Prepared for the California Air Resources Board by Southern Research Institute. May 1986.

3. Farthing, W.E., S.S. Dawes, A.D. Williamson, J.D. McCain, R.S. Martin, and J.W. Ragland. Development of Sampling Methods for Stationary Source PM-10 Particulate Emissions. Southern Research Institute for the Environmental Protection Agency. 1986 (Unpublished).

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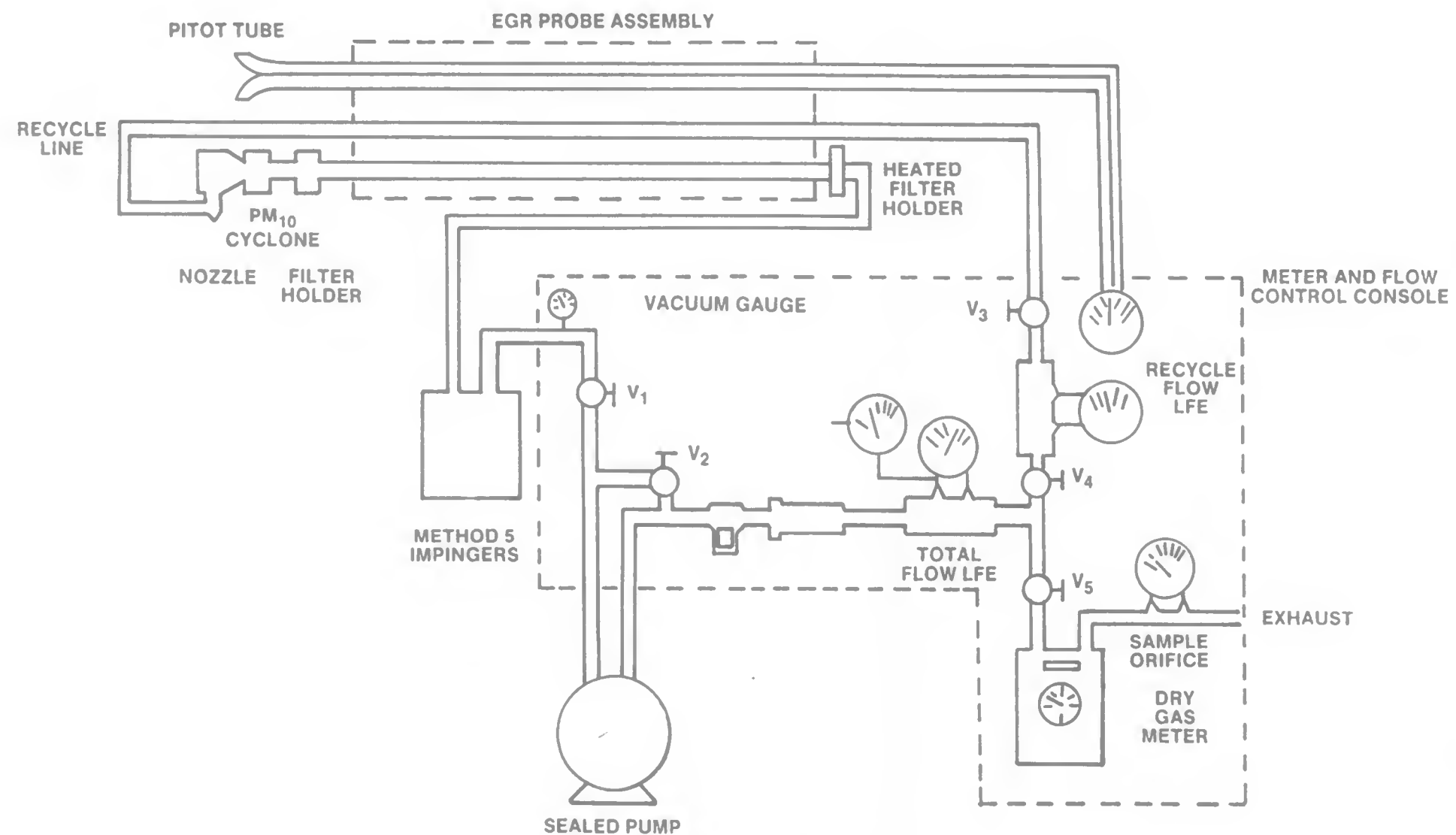


Figure 1. Schematic of the exhaust gas recycle train.

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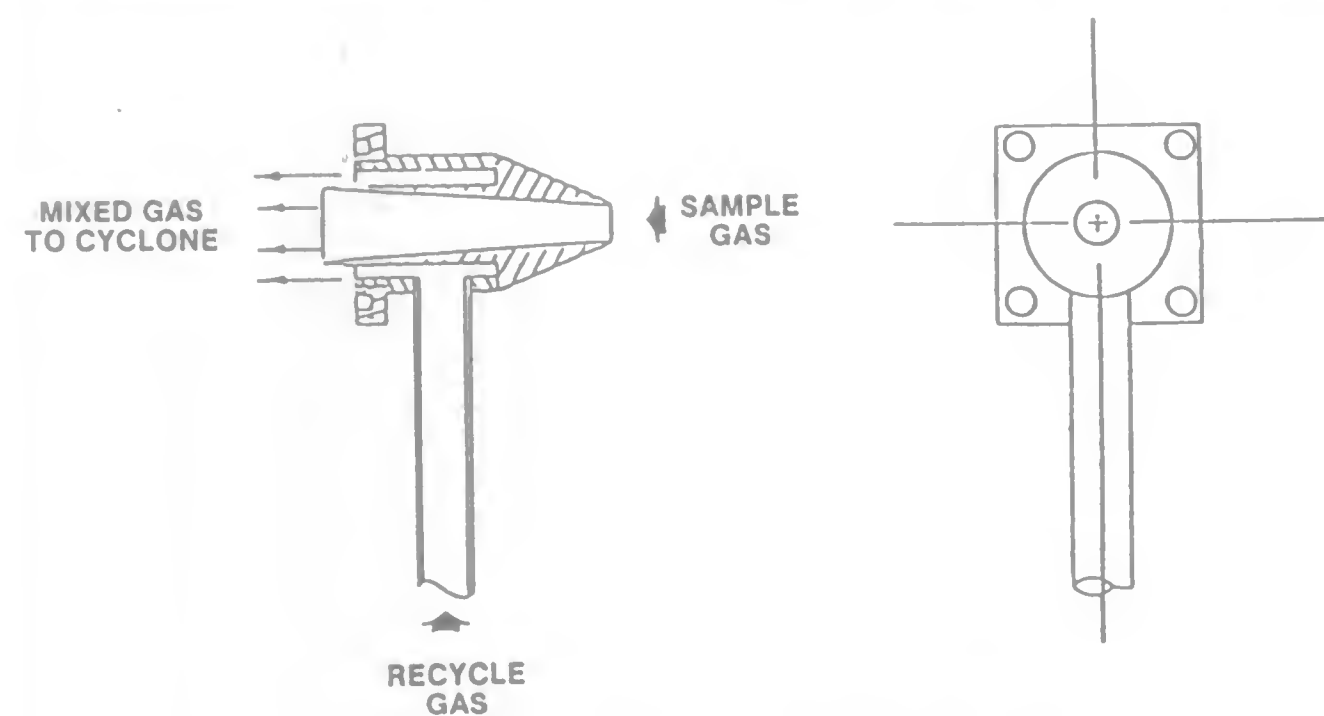
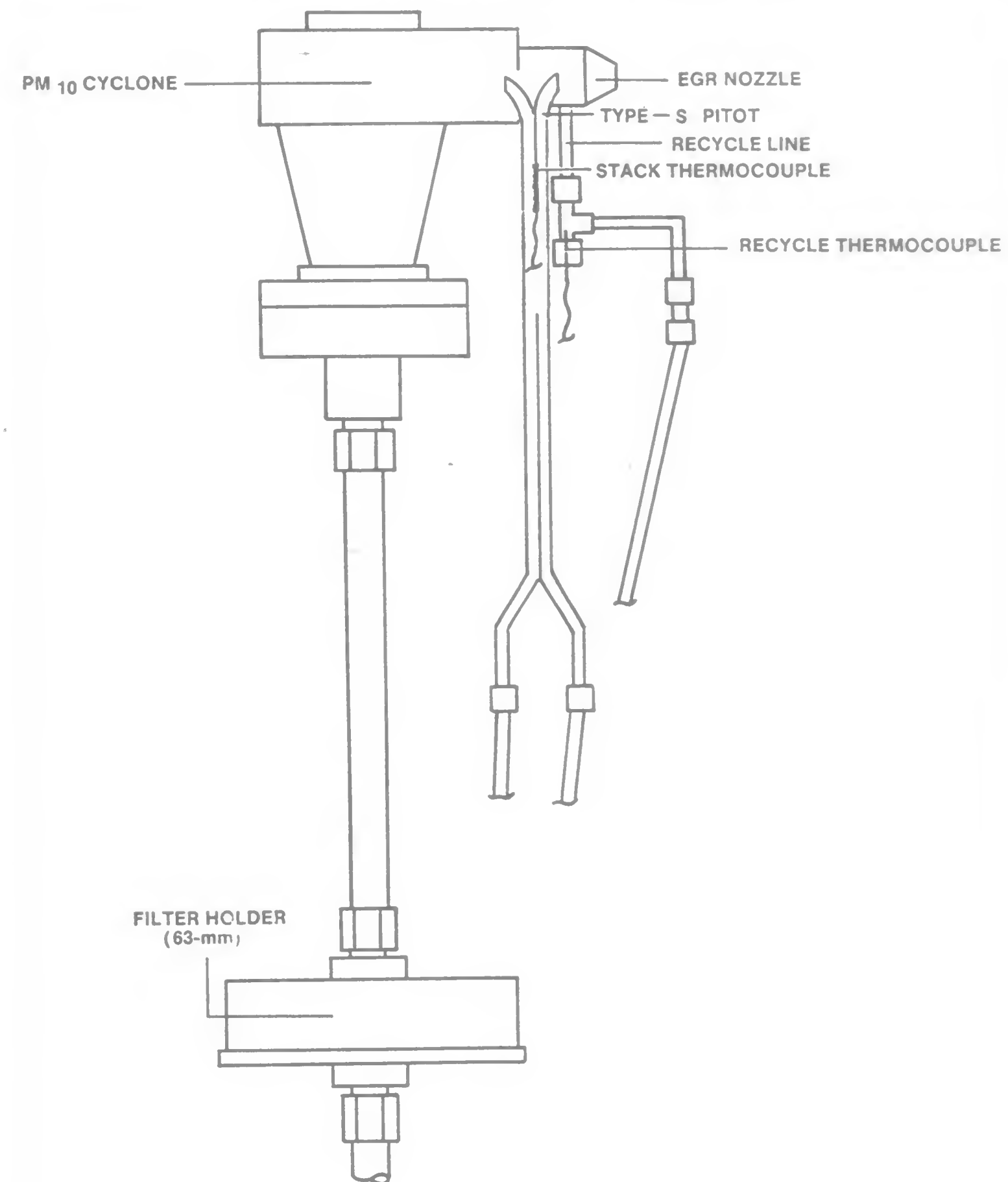


Figure 2. Schematic of EGR nozzle assembly.

Figure 3. EGR PM₁₀ cyclone sampling device.

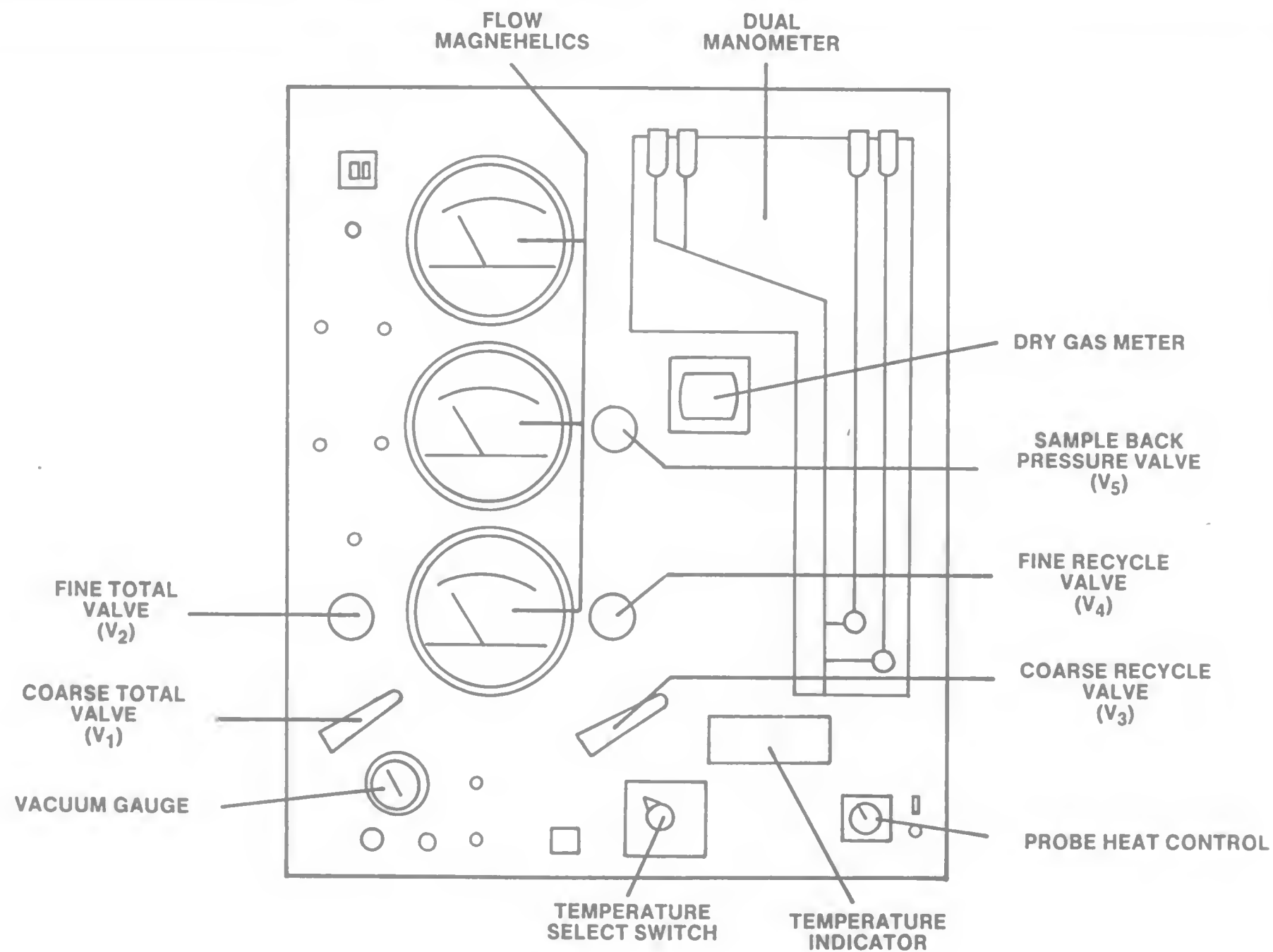


Figure 4. Example EGR control module (front view) showing principle components.

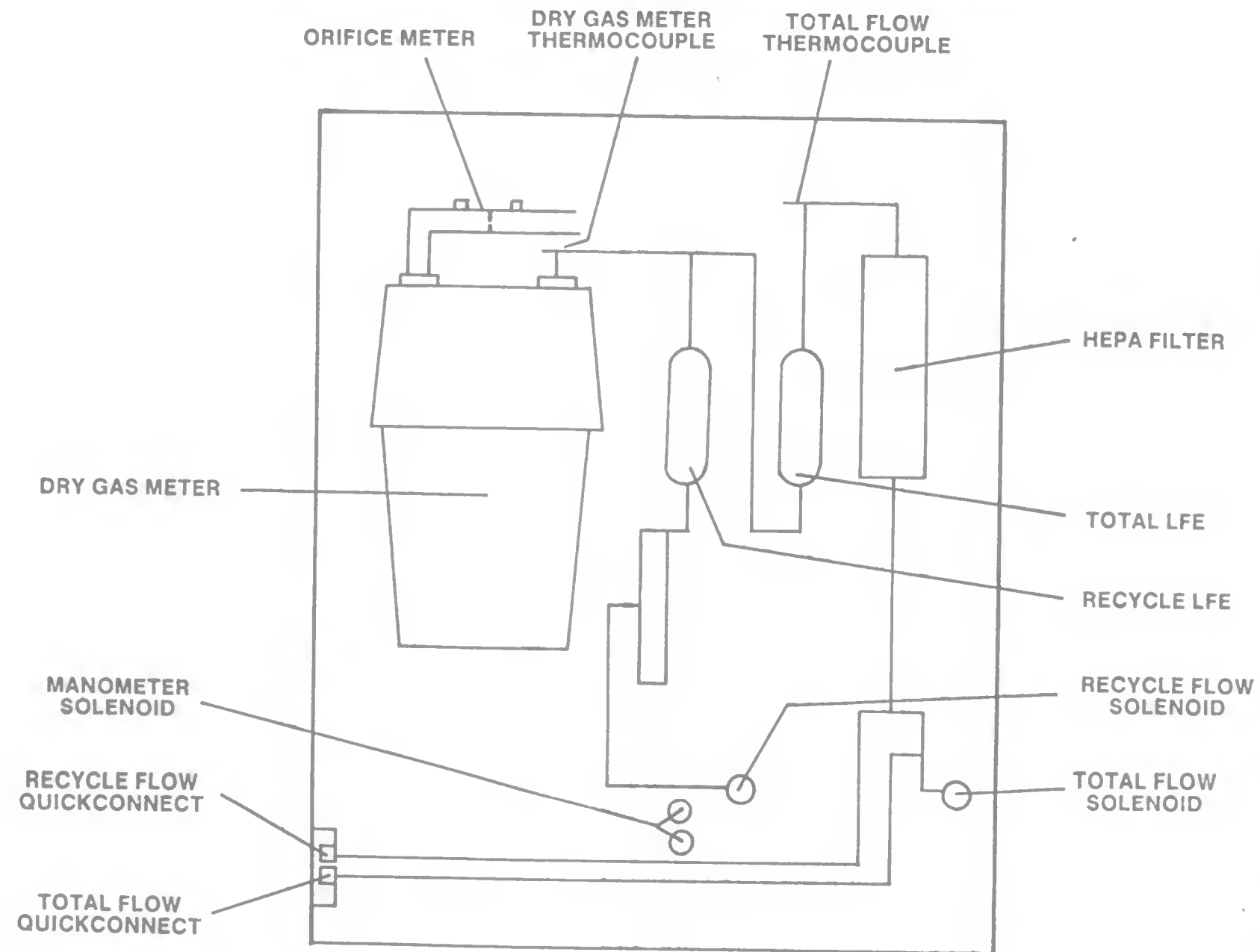


Figure 5. Example EGR control module (rear view) showing principle components.

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Figure 6. Example EGR Setup Sheet

EXAMPLE EMISSION GAS RECYCLE SETUP SHEET, VERSION 3.1, MAY 1986

Test I.D.: Sample Setup
Run Date: 11/24/86
Location: Source SIM
Operator(s): RH JB
Nozzle Diameter (IN): .25
Stack Conditions:

Average Temperature (F): 200.0
Average Velocity (FT/SEC): 15.0
Ambient Pressure (IN HG): 29.92
Stack Pressure (IN H₂O): .10
Gas Composition
H₂O=10.0% MD=28.84
O₂=20.9% MW=27.75
CO₂= .0% (LB/LB MOLE)

Target Pressure Drops Temperature (F)

DP (PTO)	150	161	172	183	194	206	217	228
0.028	Sample	0.49	0.49	0.49	0.47	0.46	0.45	0.45
	Total	1.90	1.90	1.91	1.92	1.92	1.92	1.93
	Recycle	2.89	2.82	2.94	2.97	3.00	3.02	3.05
	% RCL	61%	61%	62%	62%	62%	63%	63%
0.031	.58	.58	.53	.53	.53	.54	.53	.52
	1.88	1.89	1.89	1.90	1.91	1.91	1.91	1.92
	2.71	2.74	2.77	2.80	2.82	2.85	2.88	2.90
	57%	57%	58%	58%	58%	59%	60%	60%
0.035	.67	.66	.64	.63	.62	.61	.60	.59
	1.88	1.88	1.89	1.89	1.90	1.90	1.91	1.91
	2.57	2.60	2.63	2.66	2.69	2.72	2.74	2.74
	54%	55%	55%	56%	56%	57%	57%	57%
0.039	.75	.74	.72	.71	.70	.69	.67	.66
	1.87	1.88	1.88	1.89	1.89	1.90	1.90	1.91
	2.44	2.47	2.50	2.53	2.56	2.59	2.62	2.65
	51%	52%	52%	53%	53%	54%	54%	55%

Figure 7. Example Worksheet 1, Meter Orifice Pressure Head Calculation

Barometric pressure, P_{bar}, in.H_g = _____Stack gauge pressure, P_g, in.H_gO = _____Average stack temperature, T_s,

°F = _____

Meter temperature, T_m, °F = _____

Gas analysis:

% CO₂ = _____% O₂ = _____% N₂ + % CO = _____

Fraction moisture content,

B_{ws} = _____

Calibration data:

Nozzle diameter, D_n, in. = _____Pitot coefficient, C_p = _____ΔH_g, in. H₂O = _____

Molecular weight of stack gas, dry basis:

M_d = 0.44 (%CO₂) + 0.32 (%O₂) + 0.28 (%N₂) + %CO = _____ lb/lb mole

Molecular weight of stack gas, wet basis:

M_w = M_d (1 - B_{ws}) + 18B_{ws} = _____ lb/lb mole

Absolute stack pressure:

P_s = P_{bar} + (P_g/13.6) = _____ in. HgK = 848.72 D_n⁵ ΔH_g C_p³ (1 - B_{ws})³M_d (t_m + 460) P_g/M_w (t_s + 460) P_{bar} = _____

Desired meter orifice pressure (ΔH) for

velocity head of stack gas (Δp):

ΔH = K Δp = _____ in. H₂O

Figure 8. Example Worksheet 2, Total LFE Pressure Head

Barometric pressure, P_{bar}, in.H_g = _____Absolute stack pressure, P_s, in.H_g = _____Average stack temperature, T_s,

°R = _____

Meter temperature, T_m, °R = _____

Molecular weight of stack gas,

wet basis, M_w, lb/lb mole = _____

Pressure upstream of LFE, in. Hg 0.6

H_g = _____

Gas analysis:

% O₂ = _____

Fraction moisture content,

B_{ws} = _____

Calibration data:

Nozzle diameter, D_n, in. = _____Pitot coefficient, C_p = _____

Total LFE calibration constant,

X_i = _____

Total LFE calibration constant,

Y_i = _____

Absolute pressure upstream of LFE:

P_{LFE} = P_{bar} + 0.6 = _____ in. Hg

Viscosity of gas in total LFE:

μ_{LFE} = 152.418 + 0.2552 T_m + 3.2355 × 10⁻⁵T_m² + 0.53147 (%O₂) = _____

Viscosity of dry stack gas:

μ_d = 152.418 + 0.2552 T_s + 3.2355 × 10⁻⁵T_s² + 0.53147 (%O₂) = _____

Constants:

$$K_1 = 1.5752 \times 10^{-5} \frac{\mu_{LFE} T_m P_s^{0.7051} \mu_d}{P_{LFE} M_d^{0.2949} T_s^{0.7051}} = \underline{\hspace{2cm}}$$

$$K_2 = 0.1539 \frac{\mu_{LFE} T_m D_n^2 C_p}{P_{LFE}} \left[\frac{P_s}{T_s} \right]^{0.5} = \underline{\hspace{2cm}}$$

$$K_3 = \frac{B_{ws} \mu_d [1 - 0.2949 (1 - 18/M_d)] + 74.143 B_{ws}}{\mu_d - 74.143 B_{ws}} = \underline{\hspace{2cm}}$$

$$A_1 = \frac{K_1}{X_i} - \frac{\mu_{LFE} Y_i}{180.1 X_i} = \underline{\hspace{2cm}}$$

$$B_1 = \frac{K_3 K_2}{(M_w)^{0.5} X_i} = \underline{\hspace{2cm}}$$

Total LFE pressure head:
ΔP_i = A₁ - B₁ (Δp)^{0.5} = _____ in. H₂O

Figure 9. Example Worksheet 3 Recycle LFE Pressure Head

Barometric pressure, P_{bar}, in.H_g = _____Absolute stack pressure, P_s, in.H_g = _____Average stack temperature, T_s,

°R = _____

Meter temperature, T_m, °R = _____

Molecular weight of stack gas,

dry basis, M_d, lb/lb mole = _____Viscosity of LFE gas, μ_{LFE},

poise = _____

Viscosity of dry stack gas, μ_d,

poise = _____

Absolute pressure upstream of

LFE, P_{LFE}, in. Hg = _____

Calibration data:

Nozzle diameter, D_n, in. = _____Pitot coefficient, C_p = _____

Recycle LFE calibration con-

stant, X_r = _____

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$$K_1 = 1.5752 \times 10^{-5} \frac{\mu_{LFE} T_m P_s^{0.7051} \mu_d}{P_{LFE} M_d^{0.2949} T_s^{0.7051}} = \underline{\hspace{2cm}}$$

$$K_2 = 0.1539 \frac{M_{LFE} T_m D_n^2 C_p}{P_{LFE}} \left[\frac{P_s}{T_s} \right]^{0.5} = \underline{\hspace{2cm}}$$

$$K_4 = \frac{\mu_d}{M_w^{0.2051} M_d^{0.2949} (\mu_d - 74.143 B_{ws})} = \underline{\hspace{2cm}}$$

$$A_2 = \frac{K_1}{X_r} - \frac{\mu_{LFE} Y_r}{180.1 X_r} = \underline{\hspace{2cm}}$$

$$B_2 = \frac{K_4 K_2}{X_r} = \underline{\hspace{2cm}}$$

Pressure head for recycle LFE:

$$\Delta P_r = A_2 - B_2 (\Delta p)^{0.5} = \underline{\hspace{2cm}} \text{ in. H}_2\text{O}$$

Run Code	Date	Stack Temperature (°F)	Gas Composition %CO ₂ %O ₂ %CO										
Sampler ID	Start Time	Stack Gauge Pressure (in.H ₂ O)	Moisture Content										
Filter ID	End Time	Ambient Temperature (°F)											
Sampler Orientation	Sampling Duration (min)	Ambient Pressure (in.Hg)	Pitot Leak Check (Pos) (Neg)										
Sampling Location	DGM (Initial)	Gas Velocity											
Nozzle Diameter-ID (in)	DGM (final)	System Leak Check (≥ 15 in. Hg)	Notes										
Operator(s)	Sample Volume (ft ³)												
Dual Manometer Leveled and Zeroed?													
Magnehelics Zeroed?													
Run Time	Port No Trav. Pt.	ΔP Pitot	ΔH Sample	DGM Volume	ΔP Total	P Inlet	ΔP Recycle	T ₁ Stack	T ₂ Recycle	T ₃ Probe	T ₄ LPE	T ₅ DGM	T ₆ Fil

Figure 10. Example EGR Procedure data sheet.

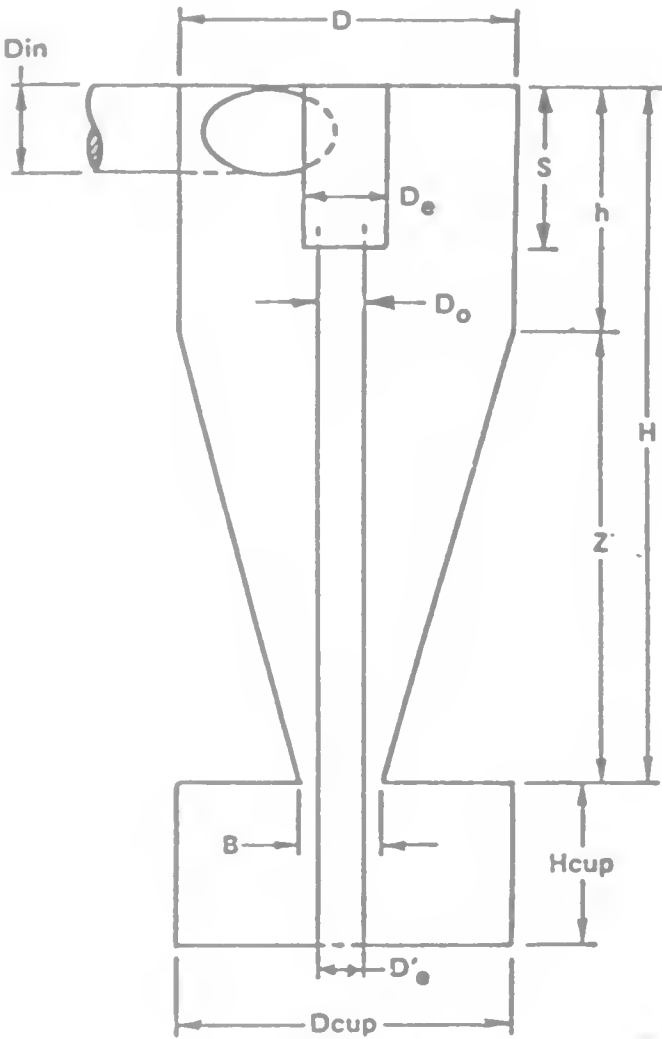
Figure 11. EGR Method Analysis Sheet

Plant _____
Date _____
Run no. _____
Filter no. (in-stack) _____
Filter no. (out-of stack) _____
Amount liquid lost during transport _____
Acetone blank volume, ml _____
Acetone wash volume, ml (3) _____ (4) _____
_____ (5) _____
Acetone blank conc., mg/mg (Equation 5-4,
Method 5) _____
Acetone wash blank, mg (Equation 5-5,
Method 5) _____

Container number	Weight of particulate matter, mg		
	Final weight	Tare weight	Weight gain
1.....			
2.....			
4.....			
5.....			
Total.....			
Less acetone blank.....			
Weight of PM ₁₀			
3.....			
Total particulate weight.....			

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Cyclone Interior Dimensions



	Dimensions, ± 0.013 cm (± 0.005 in.)											
	D_{in}	D	D_e	B	H	h	Z	S	H_{cup}	D_{cup}	D'_e	D_0
cm	1.27	4.47	1.50	1.88	6.95	2.24	4.71	1.57	2.25	4.45	1.02	1.24
inches	0.50	1.76	0.59	0.74	2.74	0.88	1.85	0.62	0.89	1.75	0.40	0.49

Figure 12. Cyclone design specifications.

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TABLE 1. PERFORMANCE SPECIFICATIONS FOR PM_{10} CYCLONES AND NOZZLE COMBINATIONS

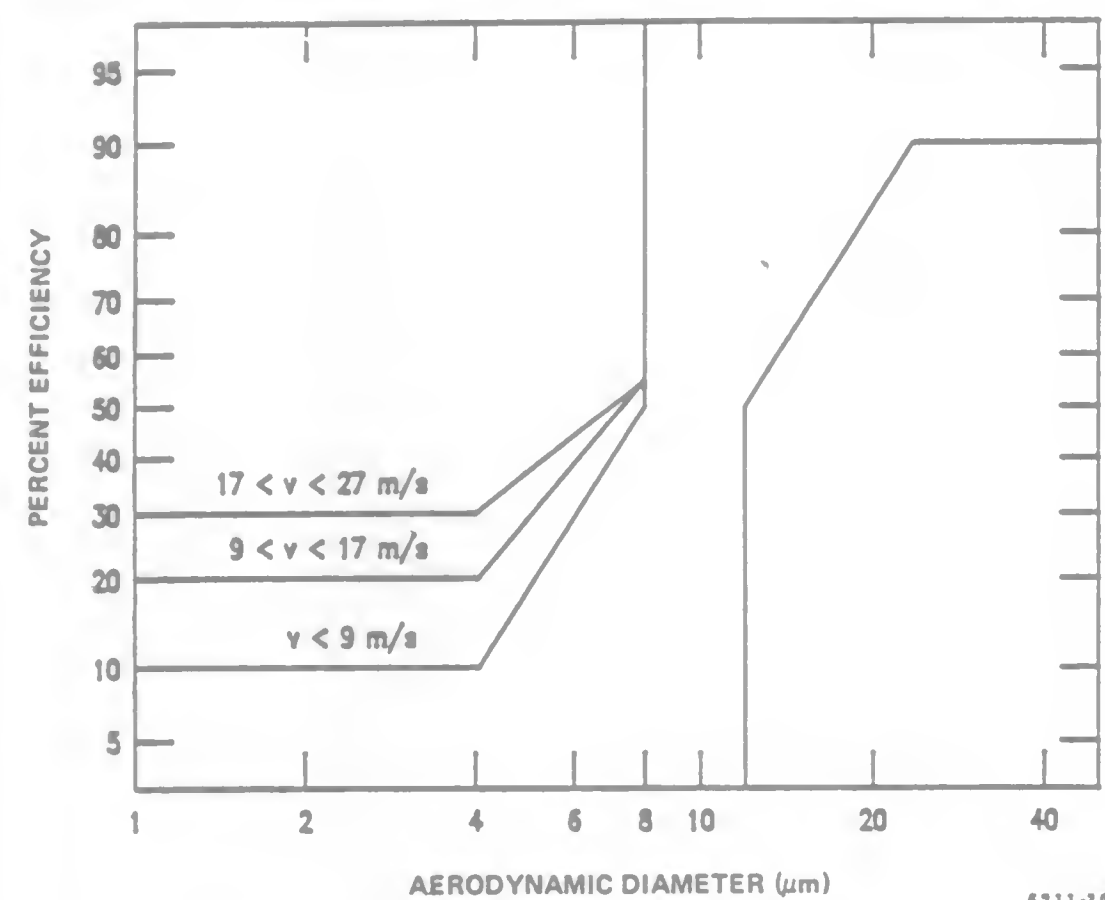
Parameter	Units	Specification
1. Collection efficiency.	Percent	Such that collection efficiency falls within envelope specified by Section 5.7.5 and Figure 9.
2. Cyclone cut size.	μm	$10 \pm 1 \mu m$ aerodynamic diameter.

TABLE 2.—TEST PARTICLE SIZES AND TARGET GAS VELOCITIES

Particle size (μm) ^a	Target gas velocities (m/sec)		
	7 ± 1.0	15 ± 1.5	25 ± 2.5
5 ± 0.5			
7 ± 0.5			
10 ± 0.5			
14 ± 1.0			
20 ± 1.0			

(a) Mass median aerodynamic diameter.

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Figure 13. Efficiency envelope for the PM₁₀ cyclone.

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Figure 14. Example Inputs and Outputs of the EGR Reduction Program

EMISSION GAS RECYCLE DATA
REDUCTION, VERSION 3.4, MAY 1988

Test ID. Code: Chapel Hill 2
 Test Location: Baghouse Outlet
 Test Site: Chapel Hill
 Test Date: 10/20/88
 Operator(s): JB RH MH

Entered Run Data

Temperatures
 T(STK): 251.0 F
 T(RCL): 259.0 F
 T(LFE): 81.0 F
 T(DGM): 76.0 F

System Pressures

DH(ORI): 1.18 INWG
 DP(TOT): 1.91 INWG
 P(INL): 12.15 INWG

DP(RCL): 2.21 INWG
 DP(PTO): 0.06 INWG
 Miscellaneous
 P(BAR): 29.99 INWG
 DP(STK): 0.10 INWG
 V(DGM): 13.744 FT³
 TIME: 60.00 MIN
 % CO₂: 8.00
 % O₂: 20.00
 NOZ (IN): 0.2500

Water Content

Estimate: 0.0 %
 or
 Condenser: 7.0 ML
 Column: 0.0 GM

Raw Masses

Cyclone 1: 21.7 MG
 Filter: 11.7 MG
 Impinger Residue: 0.0 MG
 Blank Values
 CYC Rinse: 0.0 MG

Filter Holder Rinse: 0.0 MG
 Filter Blank: 0.0 MG
 Impinger Rinse: 0.0 MG
 Calibration Values
 CP(PITOT): 0.840
 DH(ORI): 10.980
 M(TOT LFE): 0.2298
 B(TOT LFE): -.0058
 M(RCL LFE): 0.0948
 B(RCL LFE): -.0007
 DGMA Gamma: 0.9940

REDUCED DATA

Stack Velocity (FT/SEC) 15.95
 Stack Gas Moisture (%) 2.4
 Sample Flow Rate (ACFM) 0.3104
 Total Flow Rate (ACFM) 0.5819
 Recycle Flow Rate (ACFM) 0.2760
 Percent Recycle 46.7
 Isokinetic Ratio (%) 95.1

	(UM)	(% <) (Particulate)	(MG/ DNOM)	(GR/ ACF)	GR/DCF	(LB/DSCF) (X 1E6)
Cyclone 1	10.15	35.8	56.6	0.01794	0.02470	3.53701
Backup Filter			30.5	0.00968	0.01332	1.907
Particulate Total			87.2	0.02762	0.03802	5.444

Method 201A—Determination of PM₁₀
Emissions

(Constant Sampling Rate Procedure)

1. Applicability and Principle

1.1 Applicability. This method applies to the measurement of particulate matter (PM) emissions with an aerodynamic diameter equal to or less than nominally 10 μ m (PM₁₀) from stationary sources. This method does not measure condensable emissions; it measures only PM₁₀ as it occurs in the stack and at 120°C (248° F).

1.2 Principle. A gas sample is extracted at a constant flow rate through an in-stack sizing device, which separates PM greater than PM₁₀, and two glass fiber filters are used to collect the PM₁₀. Variations from isokinetic sampling conditions are maintained within well-defined limits. The particulate mass is determined gravimetrically after removal of uncombined water.

2. Apparatus

2.1 Sampling Train. A schematic of the Method 201A sampling train is shown in Figure 1. With the exception of the PM₁₀ sizing device and in-stack filter, this train is the same as a standard Method 5 train.

Note: Method 5 as cited in this method is part of 40 CFR Part 60, Appendix A.

2.1.1 Nozzle. Stainless steel (316 or equivalent) with a sharp tapered leading edge. Eleven nozzles that meet the design specifications in Figure 2 are recommended. A large number of nozzles with small nozzle increments increase the likelihood that a single nozzle can be used for the entire traverse. If the nozzles do not meet the design specifications in Figure 2, then the nozzles must meet the criteria in section 5.2.

2.1.2 Sizing Device. Stainless steel (316 or equivalent), capable of determining the PM₁₀ fraction. The sizing device shall be either a cyclone that meets the specifications in section 5.2 or a cascade impactor that meets the specifications in section 5.3

2.1.3 Probe Liner. Same as in Method 5, section 2.1.2.

2.1.4 Pitot Tube. Same as in Method 5, section 2.1.3. The pitot lines shall be made of heat resistant tubing and attached to the probe with stainless steel fittings.

2.1.5 Differential Pressure Gauge, Filter Holders, Filter Heating System, Condenser, Metering System, Barometer, and Gas Density Determination Equipment. Same as in Method 5, sections 2.1.4. through 2.1.10 respectively.

2.2. Sample Recovery.

2.2.1 Nozzle, Sizing Device, Probe, and Filter Holder Brushes. Nylon bristle brushes with stainless steel wire shafts and handles, properly sized and shaped for cleaning the nozzle, sizing device, probe or probe liner, and filter holders.

2.2.2 Wash Bottles, Glass Sample Storage Containers, Petri Dishes, Graduated Cylinder and Balance, Plastic Storage Containers, Funnel and Rubber Policeman, and Funnel.

Same as in Method 5, section 2.2.2 through 2.2.8, respectively.

2.3 Analysis. Same as in Method 5, section 2.3.

3. Reagents

The reagents for sampling, sample recovery, and analysis are the same as that specified in Method 5, sections 3.1, 3.2, and 3.3, respectively.

4. Procedure

4.1 Sampling. The complexity of this method is such that, in order to obtain reliable results, testers should be trained and experienced with the test procedures.

4.1.1 Pretest Preparation. Same as in Method 5, section 4.1.1.

4.1.2 Preliminary Determinations. Same as in Method 5, section 4.1.2, except use the directions on nozzle size selection and sampling time in this section. Use of any nozzles greater than 0.16 in. in diameter requires a minimum sampling port diameter of 6 inches. Also, the required maximum number of traverse points at any location shall be 12.

4.1.2.1 The sizing device must be in-stack or maintained at stack temperature during sampling. The blockage effect of the EGR sampling assembly will be minimal if the cross-sectional area of the sampling assembly is 3 percent or less of the cross-sectional area of the duct. If the cross-sectional area of the assembly is greater than 3 percent of the cross-sectional area of the duct, then use the procedures in Method 1A to determine the sampling site, flow measurements, and the number of traverse points.

4.1.2.2 The setup calculations can be performed by using the following procedures.

4.1.2.2.1 In order to maintain a cut size of 10 μm in the sizing device, the flow rate through the sizing device must be maintained at a constant, discrete value during the run. If the sizing device is a cyclone that meets the design specifications in Figure 3, use the equations in Figure 4 to calculate three orifice pressure heads (ΔH): one at the average stack temperature, and the other two at temperatures $\pm 28^\circ\text{C}$ ($\pm 50^\circ\text{F}$) of the average stack temperature. Use the ΔH calculated at the average stack temperature as the pressure head for the sample flow rate as long as the stack temperature during the run is within 28°C (50°F) of the average stack temperature. If the stack temperature varies by more than 28°C (50°F), then use the appropriate ΔH .

4.1.2.2.2 If the sizing device is a cyclone that does not meet the design specifications in Figure 3, use the equations in Figure 4, except use the equation for cyclone flow rate derived in section 5.2.8.

4.1.2.2.3 To select a nozzle, use the equations in Figure 5 to calculate ΔP_{min} and ΔP_{max} for each nozzle at all three temperatures. If the sizing device is a cyclone that does not meet the design specifications in Figure 3, the example worksheets can be used except use the procedures in section 5.2.6 to determine Q_c , the correct cyclone flow rate for a 10 μm cut size.

4.1.2.2.4 Correct the Method 2 pitot readings to Method 201A pitot readings by multiplying the Method 2 pitot readings by the square of a ratio of the Method 201A pitot

coefficient to the Method 2 pitot coefficient. Select the nozzle for which ΔP_{min} and ΔP_{max} bracket all of the corrected Method 2 pitot readings. If more than one nozzle meets this requirement, select the nozzle giving the greatest asymmetry. Note that if the expected pitot reading for one or more points is near a limit for a chosen nozzle, it may be outside the limits at the time of the run.

4.1.2.2.5 Vary the dwell time, or sampling time, at each traverse point proportionately with the point velocity. Use the equations in Figure 6 to calculate the dwell time at the first point and at each subsequent point. It is recommended that the number of minutes sampled at each point be rounded to the nearest 15 seconds.

4.1.3 Preparation of Collection Train. Same as in Method 5, section 4.1.3, except omit directions about a glass cyclone.

4.1.4 Leak-Check Procedure.

4.1.4.1 Pretest Leak-Check. Same as in Method 5, section 4.1.4.1.

4.1.4.2 Leak-Checks During Sample Run. Same as in Method 5 section 4.1.4.1.

4.1.4.3 Post-Test Leak-Check. Same as in Method 5, section 4.1.4.3.

4.1.5 Method 201A Train Operation. Same as in Method 5, section 4.1.5, except use the procedures in this section for isokinetic sampling and flow rate adjustment. Maintain the flow rate calculated in section 4.1.2 throughout the run provided the stack temperature is within 28°C (50°F) of the temperature used to calculate ΔH . If stack temperatures vary by more than 28°C (50°F), use the appropriate ΔH value calculated in section 4.1.2. Calculate the dwell time at each traverse point as in Figure 6.

4.1.6 Calculation of Percent Isokinetic Rate and Aerodynamic Cut Size (D_{50}). Calculate percent isokinetic drag and D_{50} (see Calculations, section 6) to determine whether the test was valid or another test run should be made. If there was difficulty in maintaining isokinetic sampling rates within the prescribed range, or if the D_{50} is not in its proper range because of source conditions, the Administrator may be consulted for possible variance.

4.2 Sample Recovery. If a cascade impactor is used, use the manufacturer's recommended procedures for sample recovery. If a cyclone is used, use the same sample recovery as that in Method 5, section 4.2, except an increased number of sample recovery containers is required.

4.2.1 Container No. 1 (In-Stack Filter). The recovery shall be the same as that for Container No. 1 in Method 5, section 4.2.

4.2.2 Container No. 2 (Out-of-Stack Filter). The recovery shall be the same as that for Container No. 1 in Method 5, section 4.2.

4.2.3 Container No. 3 (Cyclone or Large PM Catch). This step is optional. The isokinetic error for the cyclone PM is theoretically larger than the error for the PM₁₀ catch. Therefore, adding all the fractions to get a total PM catch is not as accurate as Method 5 or Method F2. Disassemble the cyclone and remove the nozzle to recover the large PM catch. Quantitatively recover the PM from the interior surfaces of the nozzle and cyclone, excluding the "turn around" cup and the interior surfaces of the exit tube. The

recovery shall be the same as that for Container No. 2 in Method 5, section 4.2.

4.2.4 Container No. 4 (PM₁₀). Quantitatively recover the PM from all of the surfaces from the cyclone exit to the front half of the in-stack filter holder, including the "turn around" cup inside the cyclone and the interior surfaces of the exit tube. The recovery shall be the same as that for Container No. 2 in Method 5, section 4.2.

4.2.5 Container No. 5 (PM₁₀). Quantitatively recover PM between the back half of the in-stack filter holder and the front half of the out-of-stack filter. The recovery shall be the same as that for Container No. 2 in Method 5, section 4.2.

4.2.6 Container No. 6 (Silica Gel). The recovery shall be the same as that for Container No. 3 in Method 5, section 4.2.

4.2.7 Impinger Water. Same as Method 5, section 4.2, under "Impinger Water."

4.3 Analysis. Same as in Method 5, section 4.3, except handle Method 201A Containers No. 1 and No. 2 like Container No. 1, Method 201A Containers No. 3, No. 4, and No. 5 like Container No. 2, and Method 201A Container No. 6 like Container No. 3. Use Figure 7 to record the weights of PM collected. Use Figure 5-3 in Method 5, section 4.3, to record the volume of water collected.

4.4 Quality Control Procedures. Same as in Method 5, section 4.4.

5. Calibration

Maintain an accurate laboratory log of all calibrations.

5.1 Probe Nozzle, Pitot Tube, Metering System, Probe Heater Calibration, Temperature Gauges, Leak-check of Metering System, and Barometer. Same as in Method 5, sections 5.1 through 5.7, respectively.

5.2 Probe Cyclone and Nozzle Combinations. The probe cyclone and nozzle combinations need not be calibrated if both meet design specifications in Figures 2 and 3. If the nozzles do not meet design specifications, then the cyclone and nozzle combinations shall be tested for conformity with performance specifications (PS's) in Table 1. If the cyclone does not meet design specifications, then the cyclone and nozzle combination shall conform to PS's and the cyclone shall be calibrated to determine the relationship between flow rate, gas viscosity, and gas density. Use the procedures in section 5.2.4 to conduct PS tests and the procedures in section 5.2.6 to calibrate the cyclone.

5.2.1 Conduct the PS tests in a wind tunnel described in section 5.2.2 and particle generation system described in section 5.2.3. Use five particle sizes and three wind velocities as listed in Table 2. A minimum of three replicate measurements of collection efficiency shall be performed for each of the 15 conditions listed, for a minimum of 45 measurements.

5.2.2 Wind Tunnel. The calibration and PS tests shall be performed in a wind tunnel (or equivalent test apparatus) capable of establishing and maintaining the required gas stream velocities within 10 percent.

5.2.3 Particle Generation System. The particle generation system shall be capable of producing solid monodispersed dye particle

with the mass median aerodynamic diameters specified in Table 2. The particles size distribution verification should be performed on an integrated sample obtained during the sampling period of each test. An acceptable alternative is to verify the size distribution of sample obtained before and after each test, with both sample required to meet the diameter and monodispersity requirements for an acceptable test run.

5.2.4 Establish the size of the solid dye particles delivered to the test section of the wind tunnel by using the operating parameters of the particle generation system, and verify them during the tests by microscopic examination of samples of the particles collected on a membrane filter. The particle size, as established by the operating parameters of the generation system, shall be within the tolerance specified in Table 2. The precision of the particle size verification technique shall be least $\pm 0.5 \mu\text{m}$, and particle size determined by the verification technique shall not differ by more than 10 percent from that established by the operating parameters of the particle generation system.

5.2.5 The monodispersity of the particles shall be certified for each test either by

microscopic inspection of collected particles on filters or by other suitable monitoring techniques such as an optical particle counter followed by a multichannel pulse height analyzer. If the proportion of multiplets and satellites in an aerosol exceeds 10 percent by mass, the particle generation system is unacceptable for purposes of this test. Multiplets are particles that are agglomerated, and satellites are particles that are smaller than the specified size range.

5.2.6 Schematic drawings of the wind tunnel and blower system and other information showing complete procedural details of the test atmosphere generation, verification, and delivery techniques shall be furnished with calibration data to the reviewing agency.

5.2.7 Flow Measurements. Measure the cyclone air flow rates with a dry gas meter and a stopwatch, or a calibrated orifice system capable of measuring flow rates to within 2 percent.

5.2.8 Performance Specification Procedure. Establish test particle generator operation and verify particle size microscopically. If monodispersity is to be verified by measurement at the beginning and the end of the run rather than by an

integrated sample, these measurements may be made at this time.

5.2.9 The cut size, or D_{50} , of a cyclone is defined here as the particle size having a 50 percent probability of penetration. Determine the cyclone flow rate at which the D_{50} is 10 μm . A suggested procedure is to vary the cyclone flow rate while keeping a constant particle size of 10 μm . Measure the PM collected in the cyclone (m_c), the exit tube (m_e), and the filter (m_f). Calculate cyclone efficiency (E_c) for each flow rate as follows:

$$E_c = \frac{m_c}{(m_c + m_e + m_f)} \times 100$$

5.2.10 Do three replicates and calculate the average cyclone efficiency ($E_{c(\text{avg})}$) as follows:

$$E_{c(\text{avg})} = (E_1 + E_2 + E_3)/3$$

where E_1 , E_2 , and E_3 are replicate measurements of E_c .

5.2.11 Calculate the standard deviation (σ) for the replicate measurements of E_c as follows:

$$\sigma = \left[\frac{(E_1^2 + E_2^2 + E_3^2) - \frac{(E_1 + E_2 + E_3)^2}{3}}{2} \right]^{0.5}$$

If σ exceeds 0.10, or if $E_{c(\text{avg})}$ is not 50 ± 0.5 percent, repeat the replicate runs.

5.2.12 Measure the overall efficiency of the cyclone and nozzle, E_o , at the particle sizes and nominal gas velocities in Table 2 using the following procedure.

5.2.13 Set the air velocity and particle size from one of the conditions in Table 2. Establish isokinetic sampling conditions and the correct flow rate in the cyclone (obtained by procedures in this section) such that the D_{50} is 10 μm . Sample long enough to obtain ± 5 percent precision on total collected mass as determined by the precision and the sensitivity of measuring technique. Determine separately the nozzle catch (m_n), cyclone catch (m_c), cyclone exit tube (m_e), and collection filter catch (m_f) for each particle size and nominal gas velocity in Table 2. Calculate overall efficiency (E_o) as follows:

$$E_o = \frac{(m_n + m_c)}{(m_n + m_e + m_f + m_d)} \times 100$$

5.2.14 Do three replicates for each combination of gas velocity and particle size in Table 2. Use the equation below to calculate the average overall efficiency ($E_{o(\text{avg})}$) for each combination following the

procedures described in this section for determining efficiency.

$$E_{o(\text{avg})} = (E_o + E_o + E_o)/3$$

where E_1 , E_2 , and E_3 are replicate measurements of E_o .

5.2.15 Use the appropriate formula in this section to calculate σ for the replicate measurements. If σ exceeds 0.10 or if the particle sizes and nominal gas velocities are not within the limits specified in Table 2, repeat the replicate runs.

5.2.16 Criteria for Acceptance. For each of the three gas stream velocities, plot the $E_{o(\text{avg})}$ as function of particle size on Figure 8. Draw smooth curves through all particle sizes. $E_{o(\text{avg})}$ shall be within the banded region for all sizes, and the $E_{c(\text{avg})}$ shall be 50 ± 0.5 percent at 10 μm .

5.3 Cyclone Calibration Procedure. The purpose of this section is to develop the relationship between flow rate, gas viscosity, gas density, and D_{50} .

5.3.1 Determine flow rates and D_{50} 's for three different particle sizes between 5 μm and 15 μm , one of which shall be 10 μm . All sizes must be determined within 0.5 μm . For each size, use a different temperature within 60°C (108°F) of the temperature at which the cyclone is to be used and conduct triplicate runs. A suggested procedure is to keep the

particle size constant and vary the flow rate.

5.3.2 On log-log graph paper, plot the Reynolds number (Re) on the abscissa, and the square root of the Stokes 50 number ($(Stk_{50})^{0.5}$) on the ordinate for each temperature. Use the following equations to compute both values:

$$Re = \frac{4 \rho Q_{cr}}{d_{cr} \pi \mu_{cr}}$$

$$(Stk_{50})^{0.5} = \left[\frac{4 Q_{cr} (D_{50})^2}{9 \pi \mu_{cr} (d_{cr})^3} \right]^{0.5}$$

where:

Q_{cr} = Cyclone flow rate, cm^3/sec .

ρ = Gas density, g/cm^3 .

d_{cr} = Diameter of cyclone inlet, cm.

μ_{cr} = Viscosity of gas through the cyclone, micropoise.

D_{50} = Aerodynamic diameter of a particle having a 50 percent probability of penetration, cm.

5.3.3 Use a linear regression analysis to determine the slope (m) and the y-intercept (b). Use the following formula to determine Q, the cyclone flow rate required for a size cut of 10 μm .

$$Q = \frac{\pi \mu_{cr}}{4} \left[\frac{(3000)(K_1)^{0.5-0.5m}}{M_c P_c} \right] \left[\frac{T_c}{M_c P_c} \right]^{m/(1-0.5m-1.50)/(m-0.5)}$$

where:

m = Slope of the calibration line.

b = y-intercept of the calibration line.

Q = Cyclone flow rate for a size cut of 10 μm , cm^3/sec .

d = Diameter of nozzle, cm .

T_s = Stack gas temperature, $^{\circ}\text{R}$.

P_s = Absolute stack pressure, in. Hg.

M_s = Molecular weight of the stack gas, lb/lb-mole.

$K = 4.077 \times 10^{-3}$.

5.3.4 Refer to the Method 201A operators manual, entitled *Measurement of Size Selective Particulate Emissions from Stationary Sources by Constant Sampling Rate*, for directions in the use of this equation for Q in the setup calculations.

5.4 Cascade Impactor Calibration Procedure. The purpose of calibrating a cascade impactor is to determine the empirical constant (Stk_{50}), which is specific to the impactor and which permits the accurate determination of the cut sizes of the impactor stages at field conditions. It is not necessary to calibrate each individual impactor. Once an impactor has been calibrated, the calibration data can be applied to other impactors of identical design.

5.4.1 Wind Tunnel. Same as in section 5.2.2.

5.4.2 Particle Generation System. Same as in section 5.2.3.

5.4.4 Hardware Configuration for Calibrations. An impaction stage constrains an aerosol to form circular or rectangular jets, which are directed toward a suitable substrate where the larger aerosol particles are collected. For calibration purposes, three stages of the cascade impactor shall be discussed and designated calibration stages 1, 2, and 3. The first calibration stage consists of the collection substrate of an impaction stage and all upstream surfaces up to and including the nozzle. This may include other preceding impactor stages. The second and third calibration stages consist of each respective collection substrate and all upstream surfaces up to but excluding the collection substrate of the preceding calibration stage. This may include intervening impactor stages which are not designated as calibration stages. The cut size, or D_{50} , of the adjacent calibration stages shall differ by a factor of not less than 1.5 and not more than 2.0. For example, if the first calibration stage has a D_{50} of 12 μm , then the D_{50} of the downstream stage shall be between 6 and 8 μm .

5.4.5 It is expected, but not necessary, that the complete hardware assembly will be used in each of the sampling runs of the calibration and performance determinations. Only the first calibration stage must be tested under isokinetic sampling conditions. The second and third calibration stages must be calibrated with the collection substrate of the preceding calibration stage in place, so that gas flow patterns existing in field operation will be simulated.

5.4.6 Each of the PM_{10} stages should be calibrated with the type of collection substrate, viscous material (such as grease) or glass fiber, used in PM_{10} measurements. Note

that most materials used as substrates at elevated temperatures are not viscous at normal laboratory conditions. The substrate material used for calibrations should minimize particle bounce yet be viscous enough to withstand erosion or deformation by the impactor jets and not interfere with the procedure for measuring the collected PM.

5.4.7 Calibration Procedure. Establish test particle generator operation and verify particle size microscopically. If monodispersity is to be verified by measurements at the beginning and the end of the run rather than by an integrated sample, these measurements shall be made at this time. Measure in triplicate the PM collected by the calibration stage (m) and the PM on all surfaces downstream of the respective calibration stage (m') for all of the flow rates and particle size combinations shown in Table 2. Techniques of mass measurement may include the use of a dye and spectrophotometer. Particles on the upstream side of a jet plate shall be included with the substrate downstream, except agglomerates of particles, which shall be included with the preceding or upstream substrate. Use the following formula to calculate the collection efficiency (E) for each stage.

$$E = \frac{m}{m + m'} \times 100$$

5.4.8 Use the appropriate formula in section 5.2.4 to calculate the standard deviation (σ) for the replicate measurements. If σ exceeds 0.10, repeat the replicate runs.

5.4.9 Use the following formula to calculate the average collection efficiency (E_{avg}) for each set of replicate measurements.

$$E_{avg} = (E_1 + E_2 + E_3)/3$$

where E_1 , E_2 , and E_3 are replicate measurements of E .

5.4.10 Use the following formula to calculate Stk for each E_{avg} .

$$\text{Stk} = \frac{D^2 Q}{9 \mu A d_1}$$

where:

D = Aerodynamic diameter of the test particle, cm (g/cm^3) $^{0.5}$.

Q = Gas flow rate through the calibration stage at inlet conditions, cm^3/sec .

μ = Gas viscosity, micropoise.

A = Total cross-sectional area of the jets of the calibration stage, cm^2 .

d_1 = Diameter of one jet of the calibration stage, cm .

5.4.11 Determine Stk_{50} for each calibration stage by plotting E_{avg} versus Stk on log-log paper. Stk_{50} is the Stk number at 50 percent efficiency. Note that particle bounce can cause efficiency to decrease at high values of Stk . Thus, 50 percent efficiency can occur at multiple values of Stk . The calibration data

should clearly indicate the value of Stk_{50} for minimum particle bounce. Impactor efficiency versus Stk with minimal particle bounce is characterized by a monotonically increasing function with constant or increasing slope with increasing Stk .

5.4.12 The Stk_{50} of the first calibration stage can potentially decrease with decreasing nozzle size. Therefore, calibrations should be performed with enough nozzle sizes to provide a measured value within 25 percent of any nozzle size used in PM_{10} measurements.

5.4.13 Criteria For Acceptance. Plot E_{avg} for the first calibration stage versus the square root of the ratio of Stk to Stk_{50} on Figure 9. Draw a smooth curve through all of the points. The curve shall be within the banded region.

6. Calculations

6.1 Nomenclature.

B_{wt} = Moisture fraction of stack, by volume, dimensionless.

C_1 = Viscosity constant, 51.12 micropoise for $^{\circ}\text{K}$ (51.05 micropoise for $^{\circ}\text{R}$).

C_2 = Viscosity constant, 0.372 micropoise/ $^{\circ}\text{K}$ (0.207 micropoise/ $^{\circ}\text{R}$).

C_3 = Viscosity constant, 1.05×10^{-4} micropoise/ $^{\circ}\text{K}^2$ (3.24×10^{-5} micropoise/ $^{\circ}\text{R}^2$).

C_4 = Viscosity constant, 53.147 micropoise/fraction O_2 .

C_5 = Viscosity constant, 74.143 micropoise/fraction H_2O .

D_{50} = Diameter of particles having a 50 percent probability of penetration, μm .

O_2 = Stack gas fraction O_2 , by volume, dry basis.

K_1 = 0.3858 $^{\circ}\text{K}/\text{mm Hg}$ (17.64 $^{\circ}\text{R}/\text{in. Hg}$).

M_c = Wet molecular weight of mixed gas through the PM_{10} cyclone, $\text{g}/\text{g-mole}$ (lb/lb-mole).

M_d = Dry molecular weight of stack gas, $\text{g}/\text{g-mole}$ (lb/lb-mole).

P_{bar} = Barometric pressure at sampling site, mm Hg (in. Hg).

P_s = Absolute stack pressure, mm Hg (in. Hg).

Q_s = Total cyclone flow rate at wet cyclone conditions, m^3/min (ft^3/min).

$Q_{s(Std)}$ = Total cyclone flow rate at standard conditions, dscm/min (dscf/min).

T_m = Average absolute temperature of dry meter, $^{\circ}\text{K}$ ($^{\circ}\text{R}$).

T_s = Average absolute stack gas temperature, $^{\circ}\text{K}$ ($^{\circ}\text{R}$).

$V_{w(Std)}$ = Volume of water vapor in gas sample (standard conditions), scm (scf).

Θ = Total sampling time, min.

μ_{cyc} = Viscosity of mixed cyclone gas, micropoise.

μ_{std} = Viscosity of standard air, 180.1 micropoise.

6.2 Analysis of Cascade Impactor Data. Use the manufacturer's recommended procedures to analyze data from cascade impactors.

6.3 Analysis of Cyclone Data. Use the following procedures to analyze data from a single stage cyclone.

6.3.1 PM_{10} Weight. Determine the PM catch in the PM_{10} range from the sum of the weights obtained from Containers Nos. 1, 2, 4, and 5 less the acetone blank.

6.3.2 Total PM Weight (optional). Determine the PM catch for greater than PM_{10}

from the weight obtained from Container No. 3 less the acetone blank, and add it to the PM_{10} weight.

6.3.3 Aerodynamic Cut Size. Calculate the stack gas viscosity as follows:

$$\mu_{cyc} = C_1 + C_2 T_s + C_3 T_s^2 + \Psi_1 \text{O}_2 - C_4 B_{wt}$$

6.3.3.1 The PM_{10} flow rate, at actual cyclone conditions, is calculated as follows:

$$Q_s = \frac{T_s V_{w(Std)}}{K_1 P_s (1 - B_{wt}) \Theta}$$

6.3.3.2 Calculate the molecular weight on a wet basis of the stack gas as follows:

$$M_c = M_d(1 - B_{wt}) + 18.0(B_{wt})$$

6.3.3.3 Calculate the actual D_{50} of the cyclone for the given conditions as follows:

$$D_{50} = \beta_1 \left[\frac{T_s}{M_c P_s} \right] 0.2091 \left[\frac{\mu_{cyc}}{Q_s} \right] 0.7091$$

where $\beta_1 = 0.27754$ for metric units (0.15625 for English units).

6.3.4 Acceptable Results. The results are acceptable if two conditions are met. The first is that $9.0 \mu\text{m} \leq D_{50} \leq 11.0 \mu\text{m}$. The second is that no sampling points are outside ΔP_{min} and ΔP_{max} , or that 80 percent $\leq I \leq 120$ percent and no more than one sampling point is outside ΔP_{min} and ΔP_{max} . If D_{50} is less than $9.0 \mu\text{m}$, reject the results and repeat the test, unless the total particulate catch is less than the PM_{10} standard. In this case, or if D_{50} is greater than $11 \mu\text{m}$, the Administrator may accept the results.

7. Bibliography

1. Same as Bibliography in Method 5.
2. McCain, J.D., J.W. Ragland, and A.D. Williamson. Recommended Methodology for the Determination of Particle Size Distributions in Ducted Sources. Final Report. Prepared for the California Air Resources Board by Southern Research Institute. May 1988.
3. Farthing, W.E., S.S. Dawes, A.D. Williamson, J.D. McCain, R.S. Martin, and J.W. Ragland. Development of Sampling Methods for Stationary Source PM_{10} Particulate Emissions. Southern Research Institute for the Environmental Protection Agency. 1988 (Unpublished).

BILLING CODE 6560-50-M

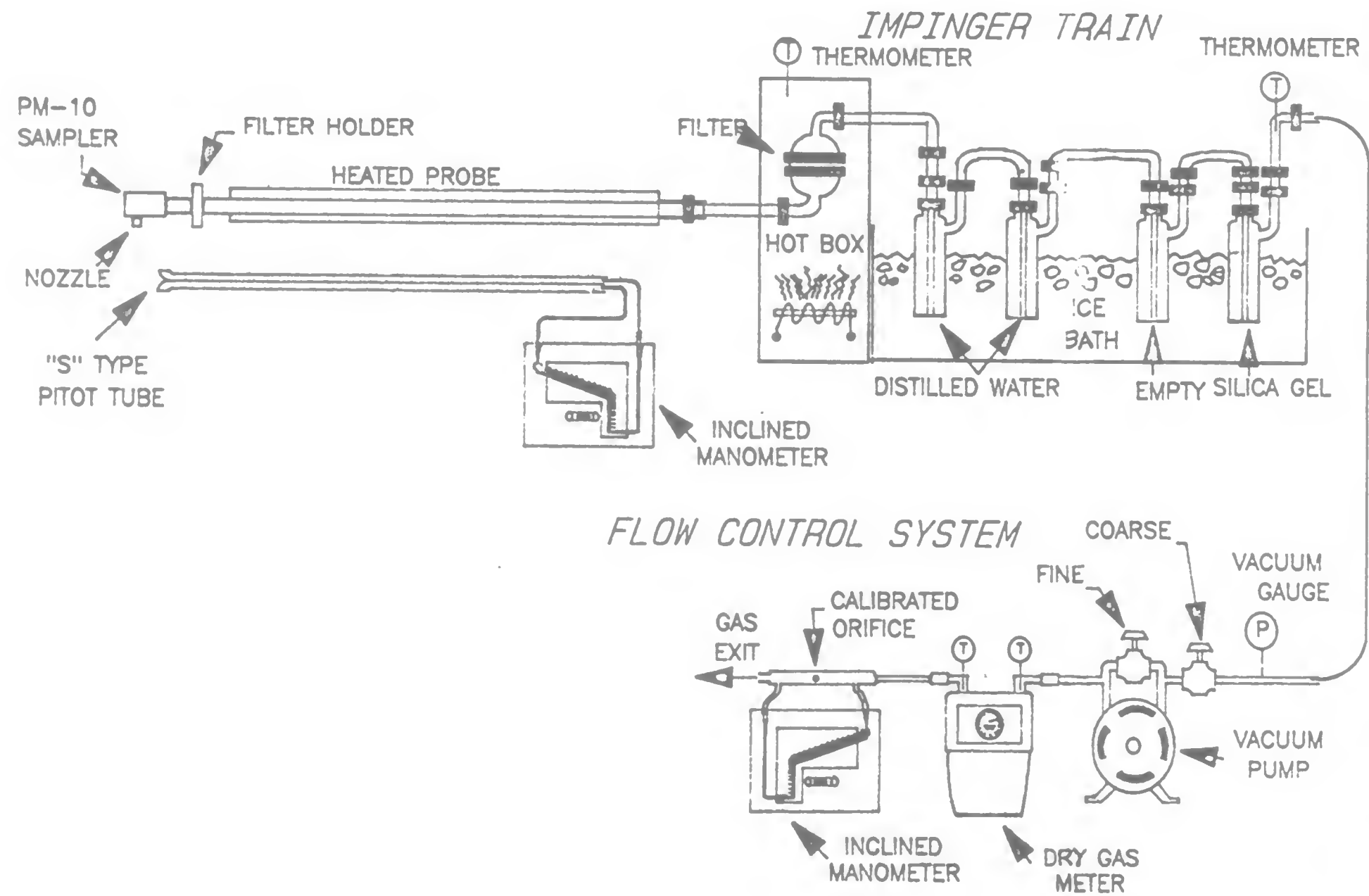
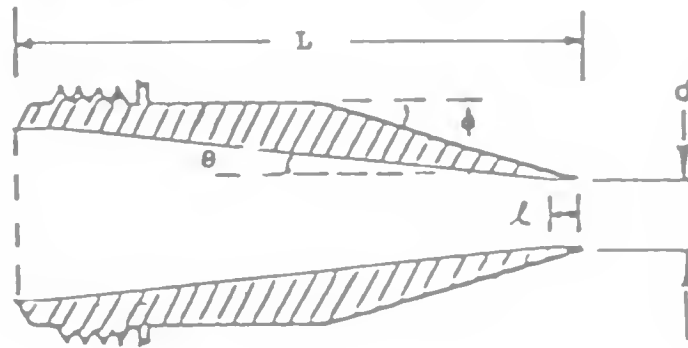


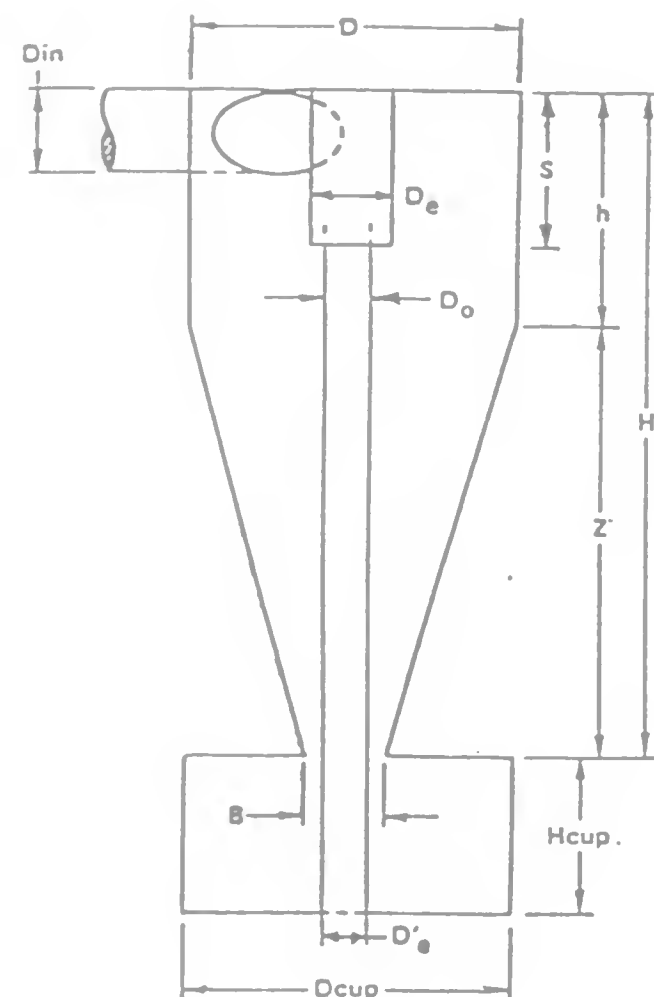
Figure 1. CSR Sampling Train



Nozzle Diameter (inches)	Cone Angle, θ (degrees)	Outside taper, ϕ (degrees)	Straight inlet length, l (inches)	Total Length L (inches)
0.136	4	15	<0.05	2.653 ± 0.05
0.150	4	15	<0.05	2.553 ± 0.05
0.164	5	15	<0.05	1.970 ± 0.05
0.180	6	15	<0.05	1.572 ± 0.05
0.197	6	15	<0.05	1.491 ± 0.05
0.215	6	15	<0.05	1.45 ± 0.05
0.233	6	15	<0.05	1.45 ± 0.05
0.264	5	15	<0.05	1.45 ± 0.05
0.300	4	15	<0.05	1.48 ± 0.05
0.342	4	15	<0.05	1.45 ± 0.05
0.390	3	15	<0.05	1.45 ± 0.05

Figure 2. Nozzle design specifications.

Cyclone Interior Dimensions



Dimensions, ± 0.013 cm (± 0.005 in.)												
	Din	D	De	B	H	h	Z	S	Hcup	Dcup	D'	D0
cm	1.27	4.47	1.50	1.88	6.95	2.24	4.71	1.57	2.25	4.45	1.02	1.24
inches	0.50	1.76	0.59	0.74	2.74	0.88	1.85	0.62	0.89	1.75	0.40	0.49

Figure 3. Cyclone design specifications.

BILLING CODE 6590-50-C

Figure 4. Example Worksheet 1, Cyclone Flow Rate and ΔH Barometric pressure, P_{bar} , in.Stack gauge pressure, P_s , in.Average stack temperature, t_s , °FMeter temperature, t_m , °FOrifice ΔH in. H_2O

Gas analysis:

% CO_2 =% O_2 =% $N_2 + \%CO$ =

Fraction moisture content,

 B_{ws} =

Molecular weight of stack gas, dry basis:

 $M_d = 0.44 (\%CO_2) + 0.32 (\%O_2) + 0.28$ $(\%N_2 + \%CO) =$ lb/lb mole

Molecular weight of stack gas, wet basis:

 $M_w = M_d (1 - B_{ws}) + 18 (B_{ws}) =$ lb/lb mole

Absolute stack pressure:

$$P_s = P_{bar} + \frac{P_s}{13.6} = \text{in. Hg}$$

Viscosity of stack gas:

 $\mu_s = 152.418 + 0.2552 t_s + 3.2355 \times 10^{-4}$ $t_s^2 + 0.53147 (\%O_2) - 74.143 B_{ws} =$

micropoise

Cyclone flow rate:

$$Q_s = 0.002837 \mu_s \left[\frac{(t_s + 460)}{M_w P_s} \right]^{0.2949} = \text{ft}^3/\text{min}$$

Orifice pressure head (ΔH) needed for cyclone flow rate:

$$\Delta H = \left[\frac{Q_s (1 - B_{ws}) P_s}{t_s + 460} \right]^2 \frac{t_m M_d 1.083 \Delta H_0}{P_{bar}} = \text{in. } H_2O$$

Calculate ΔH for three temperatures: t_s , °F ΔH , in. H_2O

Figure 5. Example Worksheet 2, Nozzle Selection

Stack viscosity, μ_s , micropoise =Absolute stack pressure, P_s , in.Average stack temperature, t_s , °FMeter temperature, t_m , °FMethod 201A pitot coefficient, C_p =Cyclone flow rate, ft^3/min , Q_s =Method 2 pitot coefficient, C_p =

Molecular weight of stack gas,

wet basis, M_w =Nozzle diameter, D_n , in. =

Nozzle velocity:

$$v_n = \frac{3.056 Q_s}{D_n^2} = \text{ft/sec}$$

Maximum and minimum velocities:

$$v_{min} = v_n \left[0.24578 + \left[0.3072 + \frac{0.2603 Q_s^{0.5} \mu_s}{v_n^{1.5}} \right]^{0.5} \right] = \text{ft/sec.}$$

$$v_{max} = v_n \left[0.4457 + \left[0.5690 + \frac{0.2603 Q_s^{0.5} \mu_s}{v_n^{1.5}} \right]^{0.5} \right] = \text{ft/sec.}$$

Maximum and minimum velocity head values:

$$\Delta P_{min} = 1.3686 \times 10^{-4} \frac{P_s M_w (v_{min})^2}{(t_s + 460) C_p^2} = \text{in. } H_2O$$

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$$\Delta P_{max} = 1.3686 \times 10^{-4} \frac{P_s M_a}{(v_{max})^2} = \text{in. H}_2\text{O}$$

$$(t_s + 460) C_p^2$$

Nozzle number				
D _n , in.				
v _n , ft/sec				
v _{min} , ft/sec				
V _{max} , ft/sec				
ΔP _{min} , in. H ₂ O				
ΔP _{max} , in. H ₂ O				

Velocity traverse data:

$$\Delta p(\text{Method 201A}) = \Delta(\text{Method 2}) \left[\frac{C_p}{C_p'} \right]^2 = \text{in. H}_2\text{O}$$

Figure 6. Example Worksheet 3, Dwell Time

Total run time, minutes = _____
No. traverse points = _____

$$t_1 = \left[\frac{\Delta p'1}{\Delta p'avg} \right] 0.5 \frac{(\text{Total run time})}{(\text{No. points})}$$

where:

t₁ = dwell time at first traverse point, minutes.Δp'1 = the velocity head at the first traverse point (from a previous traverse), in. H₂O.Δp'avg = the square of the average square root of the Δp's (from a previous velocity traverse), in. H₂O.

At subsequent traverse points, measure the velocity Δp and calculate the dwell time by using the following equation:

$$t_n = \frac{t_1}{(\Delta p_1)^{0.5}} (\Delta p_n)^{0.5}, n = 2, 3, \dots \text{total number of sampling points}$$

where:

t_n = dwell time at traverse point n, minutes.Δp_n = measured velocity head at point n, in. H₂O.Δp₁ = dwell time at first traverse point, minutes.

Point No.

1
2
3
4
5
6

Port	Port	Port	Port
Δp	t	Δp	t
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Figure 7. Method 201A Analysis Sheet

Plant _____
Date _____
Run no. _____
Filter no. (in-stack) _____
Filter No. (out-of-stack) _____
Amount of liquid lost during transport _____
Acetone blank volume, ml _____
Acetone wash volume, ml (4) _____ (5) _____Acetone blank conc., mg/mg (Equation 5-4, Method 5) _____
Acetone wash blank, mg (Equation 5-5, Method 5) _____

Container number	Weight of PM ₁₀ , mg		
	Final weight	Tare weight	Weight gain
1.....			
2.....			
4.....			
5.....			
Total.....			
Less acetone blank.....			
Weight of PM ₁₀			

TABLE 1.—PERFORMANCE SPECIFICATIONS FOR SOURCE PM₁₀ Cyclones and Nozzle Combinations

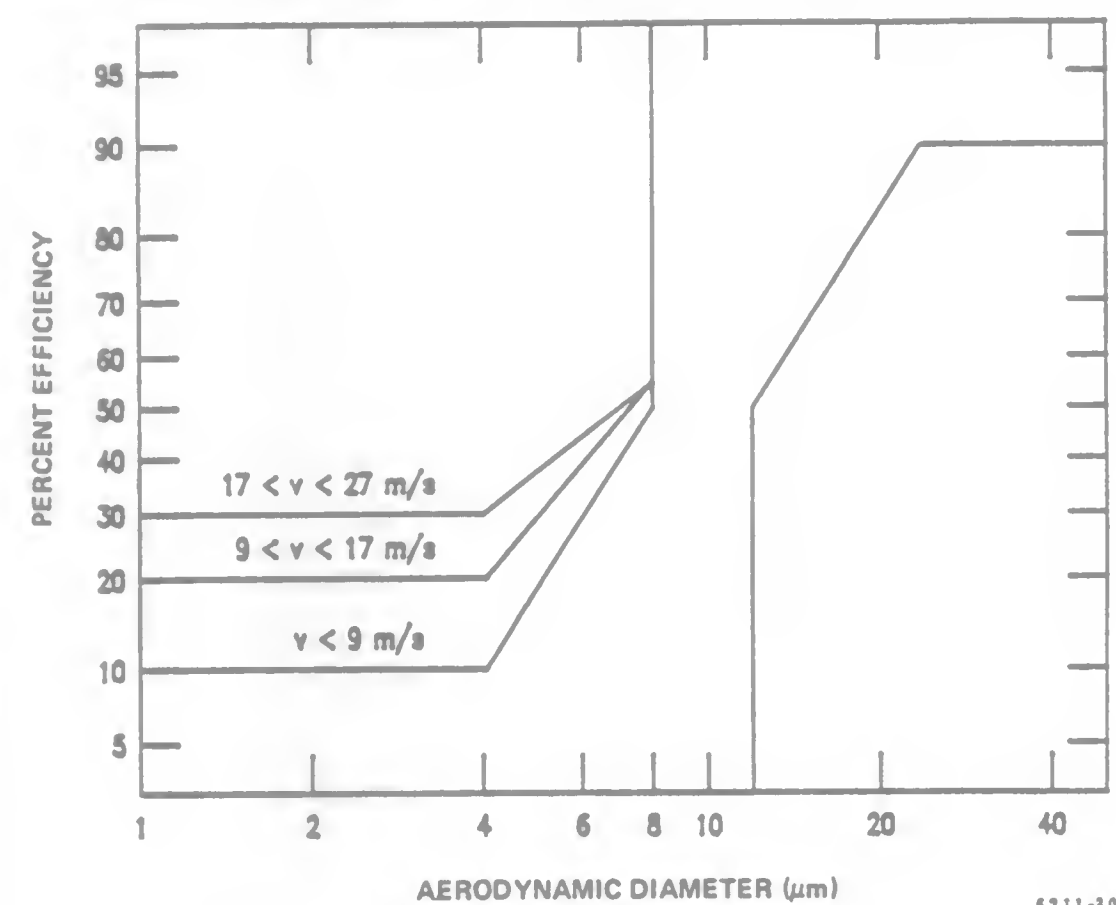
Parameter	Units	Specification
1. Collection efficiency.	Percent.....	Such that collection efficiency falls within envelope specified by Section 5.2.5 and Figure 8.
2. Cyclone cut size (D ₅₀).	μm.....	10±1 μm aerodynamic diameter.

TABLE 2.—PARTICLE SIZES AND NOMINAL GAS VELOCITIES FOR EFFICIENCY

Particle size (μm)*	Target gas velocities (m/sec)		
	7±1.0	15±1.5	25±2.5
5±0.5.....			
7±0.5.....			
10±0.5.....			
14±1.0.....			
20±1.0.....			

(a) Mass median aerodynamic diameter.

BILLING CODE 6560-50-M

Figure 8. Efficiency envelope for the PM₁₀ cyclone.

6211-30

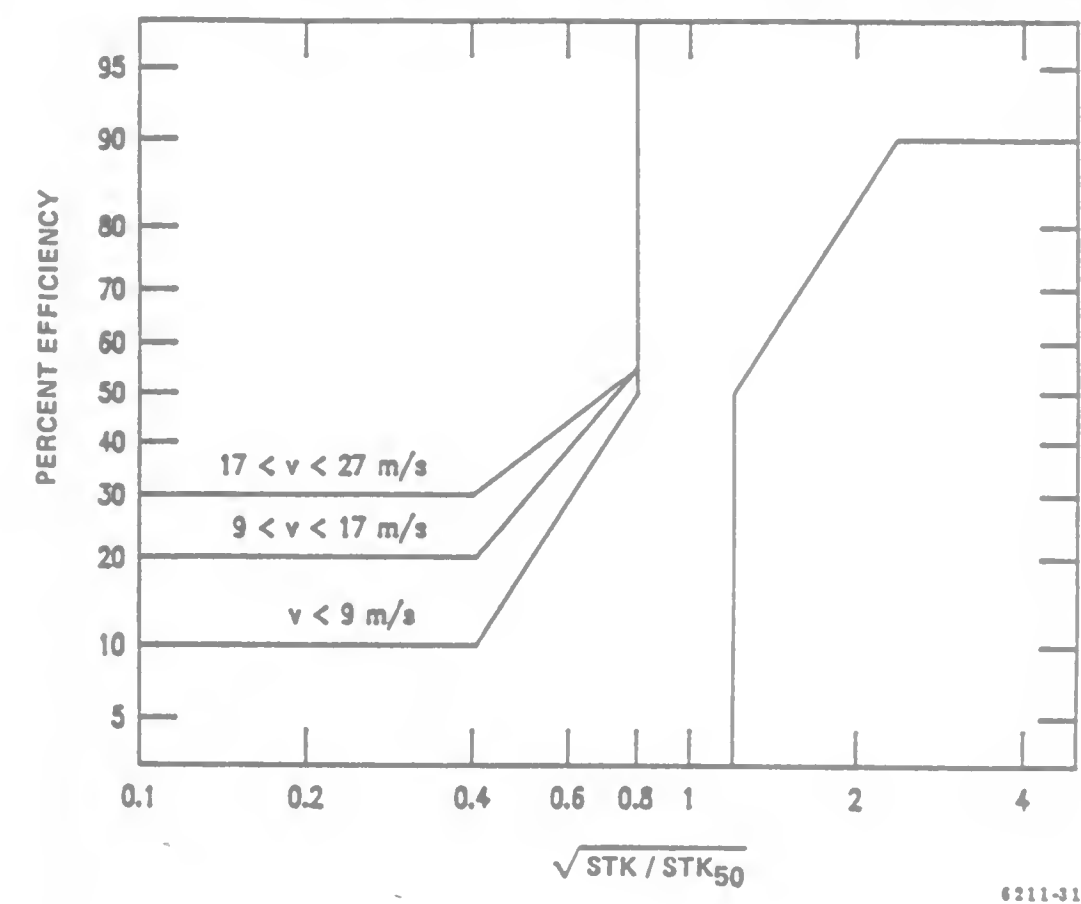


Figure 9. Efficiency envelope for first calibration stage.

6211-31

[FR Doc. 89-13161 Filed 6-5-89; 8:45 am]
BILLING CODE 8560-50-C

DEPARTMENT OF DEFENSE

48 CFR Parts 217, 219, 232, 242, and 252

Department of Defense Federal Acquisition Regulation Supplement; DFARS Implementation of Section 1207 of Pub. L. 99-661 and Section 806 of Pub. L. 100-180; Contracting With Small Disadvantaged Business Concerns, Historically Black Colleges and Universities, and Minority Institutions

AGENCY: Department of Defense (DoD).

ACTION: Proposed rule and request for comment; correction.

SUMMARY: This document corrects a proposed rule on the further implementation of section 1207 of Pub. L. 99-661 and section 806 of Pub. L. 100-180, which was published May 23, 1989 (54 FR 22337). This action is necessary to delete references in the Supplementary Information to guidance erroneously listed as part of the proposed rule.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

Charles W. Lloyd,
Executive Secretary, Defense Acquisition Regulatory Council.

Accordingly, the preamble of the proposed rule is corrected as follows:

On page 22337, in paragraph A of the Supplementary Information, delete the paragraphs which read:

- Emphasizes the use of remedies currently available for noncompliance with the subcontracting plan.

- Broadens the HBCU/MI set-aside program to include acquisitions that are normally acquired from Higher Educational Institutions.

[FR Doc. 89-13369 Filed 6-5-89; 8:45 am]

BILLING CODE 3010-04-M

Notices

Federal Register

Vol. 54, No. 107

Tuesday, June 6, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

(Docket No. 89-083)

Receipt of Permit Applications for Release into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR Part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Document Control Officer, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 847, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340, "Introduction of Organisms and Products Altered or Produced Through

Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organism	Field test location
89-109-03.....	Iowa State University	04-19-89	Popular plants genetically engineered to express wound inducible chloramphenicol acetyltransferase..	Iowa.
89-116-20.....	BioTechnica Agriculture, Inc. ..	04-26-89	Tobacco plants genetically engineered to express dihydrodipicolinic acid synthase..	Wisconsin.

Done in Washington, DC, this 31st day of May 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-13405 Filed 6-5-89; 8:45 am]

BILLING CODE 3410-34-M

Avg Hours per Response: 25 minutes
Needs and Uses: Data Collected will be used by the Bureau of Economic Analysis in computing the Gross National Product, by the Federal Reserve Board in measuring consumer credit, and by businesses in determining market share
Affected Public: Businesses or other for-profit institutions, Small businesses or organizations
Frequency: Annually
Respondent's Obligation: Mandatory
OMB Desk Officer: Don Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H6622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: May 31, 1989.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-13333 Filed 6-5-89; 8:45 am]

BILLING CODE 3510-07-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census
Title: Annual Retail Trade Survey
Form Numbers: B-151, B-151A, B-151D, B-152, B-153, B-153D

Agency Approval Number: 0607-0013

Type of Request: Extension of a currently approved form

Burden: 9,078 hours

Number of Respondents: 21,635

National Institute of Standards and Technology

Visiting Committee on Advanced Technology; Closed Meeting

AGENCY: National Institute for Standards and Technology, Commerce.
ACTION: Notice of Closed Meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that there will be a closed meeting of the Visiting Committee on Advanced Technology of the National Institute of Standards and Technology on Wednesday, June 21, 1989, at 9:30 a.m. to 10:30 a.m. with officials at the Department of Commerce. The Visiting Committee on Advanced Technology is composed of

nine members from the private sector, prominent in their fields in industry or academia and appointed by the Director of the National Institute of Standards and Technology. The purpose of this meeting is to fully examine and discuss FY 1991 budget planning information for the National Institute of Standards and Technology.

DATE: The meeting will convene June 21, 1989, at 9:30 a.m. and adjourn at 10:30 a.m. on June 21, 1989. The entire meeting will be closed.

ADDRESS: The meeting will be held in Conference Room 5850, Department of Commerce, 14th and Constitution, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Dale E. Hall, Executive Director, Visiting Committee on Advanced Technology, National Institute for Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 31, 1989 that the meeting of the Visiting Committee on Advanced Technology with officials at the Department of Commerce will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., as amended by section 5(c) of the Government in the Sunshine Act, P.L. 94-409. The meeting, which involves review of budget planning information to be fully examined and discussed, may be closed to the public in accordance with section 552(c)(4) of Title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Date: May 31, 1989.
Raymond G. Kammer,
Acting Director.

[FR Doc. 89-13532 Filed 6-5-89; 8:45 am]
BILLING CODE 3510-13-M

Malcolm Baldrige National Quality Award's Panel of Judges; Closed Meeting

AGENCY: National Institute of Standards and Technology, DoC.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. App., notice is hereby given that there will be a closed meeting of the Panel of Judges of the Malcolm Baldrige National Quality Award from Tuesday, June 14, through Wednesday, June 15, 1989. The Panel of Judges is composed of nine members prominent in the field of quality

management and appointed by the Secretary of Commerce. The purpose of this meeting is to review the 1989 Award applications and to select applications to be considered in the second stage of the evaluation. The applications under review contain trade secrets and proprietary commercial information submitted to the Government in confidence.

DATES: The meeting will convene June 14, 1989 at 8:30 a.m. and adjourn at approximately 2:00 p.m. on June 15, 1989. The entire meeting will be closed.

ADDRESS: The meeting will be held in Suite 500 of the American Society for Quality Control, 310 West Wisconsin Avenue, Milwaukee, Wisconsin 53203.
FOR FURTHER INFORMATION CONTACT: Dr. Curt W. Reimann, Associate Director of Quality Programs, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2036.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on May 19, 1989 that the meeting of the Panel of Judges will be closed pursuant to section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. App., as amended by section 5(c) of the Government in the Sunshine Act, Pub. L. 94-409. The meeting, which involves examination of records and discussion of Award applicant data, may be closed to the public in accordance with section 552b(c)(4) of Title 5, United States Code, since the meeting is likely to disclose trade secrets and commercial or financial information obtained from a person and privileged or confidential.
Raymond G. Kammer,
Acting Director.

Date: May 30, 1989.

[FR Doc. 89-13348 Filed 6-5-89; 8:45 am]
BILLING CODE 3510-13-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Mr. Guerrero-Calderon From an Objection by the Puerto Rico Planning Board

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of Appeal.

On March 17, 1989, the Secretary of Commerce received a notice of appeal from Mr. Guerrero-Calderon (Appellant) pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act, 16

U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H. The appeal is taken from an objection by the Puerto Rico Planning Board (PRPB) to the Appellant's consistency certification for a United States Army Corps of Engineers (Corps) permit to build a private use timber pier, with mooring pilings and buoys, in Tamarindo Bay, Culebra, Puerto Rico. The PRPB's objection precludes the Corps from issuing the permit pending the outcome of the Appellant's appeal.

If the Appellant perfects the appeal by filing the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the Federal Register and a local newspaper.

FOR FURTHER INFORMATION CONTACT: Hugh C. Schratwieser, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: May 26, 1989.

B. Kent Burton,
Assistant Secretary for Oceans and Atmosphere.

[FR Doc. 89-13301 Filed 6-5-89; 8:45 am]
BILLING CODE 3510-08-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Availability of DoD 5025.1-I, "DoD Directives System Annual Index"

AGENCY: Office of the Secretary, DoD.
ACTION: Notice.

SUMMARY: This notice is to inform the public and U.S. Government Agencies other than the Department of Defense of the availability of DoD 5025.1-I. The Index may be purchased from the following organizations:

National Technical Information (NTIS),
5285 Port Royal Road, Springfield,
Virginia 22161, Telephone number
(703) 487-4600,

or

U.S. Naval Publications and Forms Center (NPPFC), 5801 Tabor Avenue, Attention Code 1052, Philadelphia, Pennsylvania 19120-5099, Telephone number (215) 697-3321.

The NTIS accession number for the "DoD Directives System Annual Index," January 1989 edition, is PB89 175186; NPPFC identifies it as DoD 5025.1-I.

FOR FURTHER INFORMATION CONTACT: Ms Linda Bynum, Correspondence and Directives Directorate, Directives Division, Room 2A286, the Pentagon, Washington, DC 20301-1155, telephone number (202) 687-4111.

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
May 31, 1989.

[FR Doc. 89-13303 Filed 6-5-89; 8:45 am]

BILLING CODE 3510-01-M

Defense Intelligence Agency Advisory Board; Cancellation of Closed Meeting

AGENCY: Defense Intelligence Agency Advisory Board, DoD.

ACTION: Notice of cancellation of closed meeting.

SUMMARY: Notice is hereby given that the closed meeting of the DIA Advisory Board's Tactical Intelligence Information Handling Systems Panel, scheduled for 31 May 1989, that was announced in the Federal Register on Thursday, 6 April 1989, Vol. 54, No. 65, 13944 has been cancelled.

FOR FURTHER INFORMATION CONTACT: Lieutenant Colonel John E. Hatlelid, USAF, Executive Secretary, DIA Advisory Board, Washington, DC 20340-1328 (202/373-4930).

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
May 31, 1989.

[FR Doc. 89-13304 Filed 6-5-89; 8:45 am]
BILLING CODE 3510-01-M

Department of Defense Advisory Committee on Uncompensated Overtime; Meeting

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of advisory committee meeting.

SUMMARY: Pursuant to the provisions of Public Law 92-463 (Federal Advisory Committee Act), notice is hereby given that a meeting of the Department of Defense Advisory Committee on Uncompensated Overtime is scheduled to be held on June 16, 1989, from 1:00 pm to 4:00 pm, at The Pentagon, Washington, DC, in OSD Conference Room 1E801 #7. The meeting is open to the public. This is the third meeting of the advisory committee.

The Department of Defense Advisory Committee on Uncompensated Overtime was established pursuant to section 804 of Pub. L. 100-456 (FY89 National Defense Authorization Act). The advisory committee is responsible for: (1) Developing criteria to ensure that proposals for contracts for professional and technical services are evaluated on a basis which does not encourage contractors to propose mandatory uncompensated overtime for professional and technical employees, and (2) making recommendations to the Secretary of Defense on the criteria to be adopted by the Secretary. In developing the recommendations, the advisory committee shall address the following issues: (A) How the Department of Defense can best be assured that it receives the best quality services for the amounts expended and that the contractors supplying such services follow sound personnel management practices and observe established labor-management policies and regulations; (B) Whether contract competitions should be structured in a manner that requires offerors to compete on the basis of factors other than the number of hours per week its professional and technical employees of similar annual salaries work; and (C) Whether the Department of Defense can allow contractors to maintain different accounting systems (for example, 40-hour work week, full time accounting) and still allow the Department to evaluate proposals on the basis of a work rate of 40 hours per week and 2,080 hours per year.

FOR FURTHER INFORMATION CONTACT: Persons desiring additional information or planning to attend the meeting should contact Mr. Ted Godlewski, Action Officer, Office of the Deputy Assistant Secretary of Defense for Procurement, Directorate of Cost, Pricing and Finance, The Pentagon—Room 3C800, Washington, DC 20301-1800, telephone (202) 695-7249, no later than June 14, 1989.

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
May 31, 1989.

[FR Doc. 89-13305 Filed 6-5-89; 8:45 am]
BILLING CODE 3510-01-M

Corps of Engineers, Department of the Army

Environmental Advisory Board; Meeting

Federal Register Citation of Previous Announcement: Federal Register/Vol. 54, No. 93/Tuesday, May 16, 1989/

Notices, page 21094, Meeting: Environmental Advisory Board, Agency: U.S. Army Corps of Engineers, DOD, Action: Notice of open meeting.

Previously Announced Time and Date of the Meeting: The meeting will be held from 1:00 p.m. to 5:00 p.m., Thursday, June 22, 1989.

Changes in the Meeting: The meeting will commence at 1:00 p.m. on Thursday, June 22, 1989 and will end at 12:00 p.m. on Friday, June 23, 1989.

Contact Person for More Information: Dr. William L. Klesch, Chief, Office of Environmental Policy, Office of the Chief of Engineers, Washington, DC 20314-1000, (202) 272-0166.

John O. Roach, II,
Army Liaison Officer with the Federal Register.

[FR Doc. 89-13359 Filed 6-5-89; 8:45 am]
BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 6, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue, SW., Room 5624, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or

waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: May 30, 1989.

Carlos U. Rice,
Director, Office of Information Resources Management.

Office of Educational Research and Improvement

Type of Review: Extension
Title: Library Services and Construction Act (Pub. L. 98-490)—Financial Performance and Completion Reports for State Administered Programs—Titles I, II, and III

Frequency: Annually
Affected Public: State or local government

Reporting Burden:

Responses: 54

Burden Hours: 2,160

Recordkeeping Burden:

Recordkeepers: 54

Burden Hours: 541

Abstract: These forms will be used by State Library Administrative Agencies that receive funds under the Library Services and Construction Act, as amended. The Department uses the information collected to assess the accomplishments of project goals and objectives and to aid in effective program management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New
Title: Biennial Report Form for Emergency Immigrant Education Program

Frequency: Biennially
Affected Public: State and local governments

Reporting Burden:

Responses: 32

Burden Hours: 2,208

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: This form requires SEAs to submit a biennial report to the Secretary on expenditures of Emergency Immigrant Education Program funds. The SEAs are also required to report the national origin of the immigrant children in the program. The Department uses the information collected to assess the accomplishments of projects and to aid in effective program management.

Office of Postsecondary Education

Type of Review: Extension

Title: Application Information Request to Participate in the Paul Douglas Teacher Scholarship Program

Frequency: On Occasion

Affected Public: State or local governments

Reporting Burden:

Responses: 11

Burden Hours: 45

Recordkeeping Burden:

Recordkeepers: 0

Burden Hours: 0

Abstract: The Paul Douglas Teacher Scholarship Program uses Federal funds to provide college scholarships to outstanding high school students to enable them to pursue teaching careers at the elementary or secondary school levels. The Department uses this information for program management.

[FR Doc. 89-13357 Filed 6-5-89; 8:45 am]

BILLING CODE 4000-01-M

Office of Elementary and Secondary Education

Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965; Chapter 1 Program in Local Educational Agencies; Meetings

AGENCY: Office of Elementary and Secondary Education, Department of Education.

ACTION: Notice of regional meetings.

SUMMARY: The Acting Assistant Secretary for Elementary and Secondary Education of the U.S. Department of Education will convene eight regional meetings to discuss the content of the final regulations for grants to local educational agencies under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended by the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of

1988, Public Law 100-297, and to solicit input for the Department on the content of the policy manual required under those Amendments. These meetings are open to the public and will include representatives of Federal, State, and local administrators, parents, teachers, members of local school boards, and private school representatives involved with the implementation of local education programs under Chapter 1. The Acting Assistant Secretary has notified the Chief State School Officer (CSSO) in each State and the following educational organizations and interest groups:

American Association of School Administrators

American Federation of Teachers

Center for Law and Education, Inc.

Children's Defense Fund

Council for American Private Education

Council of Chief State School Officers

Council of the Great City Schools

International Reading Association

Lawyers' Committee for Civil Rights

Under Law

NAACP Legal Defense Fund

National Association of Elementary

School Principals

National Association of Federal

Education Program Administrators

National Association of Secondary

School Principals

National Association of State Boards of

Education

National Center for Neighborhood

Enterprise

National Coalition of Title I/Chapter 1

Parents

National Council of Teachers of

Mathematics

National Governors' Association

National Education Association

National Parent Teachers Association

National School Boards Association

Rural Education Association

The CSSOs and the organizations and interest groups will assist the Department in selecting persons to be invited to attend the meetings, but other interested individuals are welcome to attend as well.

Meeting Information: The regional meetings are scheduled to be held as follows:

June 5-8: Atlanta, GA, at the Radisson Inn and Conference Center; Arlington, VA, at the Rosslyn Westpark Hotel

June 8-9: Albany, NY, at the Sheraton Airport Inn; Denver, CO, at the Radisson Hotel

June 12-13: Austin, TX, at the Marriott at the Capitol; San Francisco, CA, at the Westin Hotel

June 15-16: Kansas City, MO, at the Hyatt Regency Crown Center Hotel;

Tacoma, WA, at the La Quinta Motor Inn

Each meeting will begin at approximately 9:00 a.m. the first day and conclude at noon on the second day.

FOR FURTHER INFORMATION CONTACT: Other persons interested in attending one of the meetings should contact Mary Jean LeTendre, Compensatory Education Programs, Office of Elementary and Secondary Education, 400 Maryland Avenue, SW., Washington, DC 20202-6132. Telephone: (202) 732-4682.

(Catalog of Federal Domestic Assistance No. 84.010, Educationally Deprived Children—Local Educational Agencies)

Dated: May 30, 1989.

Daniel F. Bonner,
Acting Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 89-13356 Filed 6-5-89; 8:45 am]

BILLING CODE 4000-01-M

Office of Special Education and Rehabilitative Services

[CFDA No. 84.133D]

Invitation of Applications for New Awards for Fiscal Year 1989 by the National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice Inviting Applications for New Awards Under the Knowledge Dissemination and Utilization Program of the National Institute on Disability and Rehabilitation Research for Fiscal Year 1989.

Purpose of Program: The purpose of this program is to ensure that rehabilitation knowledge generated from projects and Centers funded by NIDRR and others is utilized fully to improve the lives of individuals with disabilities.

Deadline for Transmittal of Applications: July 7, 1989.

Applications Available: June 7, 1989.

Available Funds: \$400,000.

Estimated Number of Awards: 2.

Estimated Average Award: \$200,000.

Project Period: Up to 18 months.

Note: The Department of Education is not bound by any estimates in this notice, except as otherwise provided by statute. This notice is for applications for Regional Information Exchanges as described in the notice of final funding priorities published in the Federal Register on April 25, 1989 at 59 FR 17896. Potential applicants should consult the final funding priority for a description of the purpose and scope of the projects. Applicants may use the application forms published in

that issue of the Federal Register to submit their applications.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), in 34 CFR Parts 74, 75, 77, 80, 81, and 85, and (b) the regulations governing this program at 34 CFR Parts 350 and 355.

For Applications Contact: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-2601, Attention: Peer Review Unit. Telephone: (202) 732-1141; deaf and hearing-impaired individuals may call (202) 732-1198 for TDD services.

FOR FURTHER INFORMATION CONTACT: Sean Sweeney, National Institute on Disability and Rehabilitation Research, (202) 732-1202.

Program Authority: 29 U.S.C. 761(a), 762(a), and 762(b)(5).

Dated: June 1, 1989.

Michael Veder,
Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

[FR Doc. 89-13355 Filed 6-5-89; 8:45 am]

BILLING CODE 4001-01-M

[CFDA No. 84.224A]

Invitation to Applications for New Awards for Fiscal Year 1989 by the National Institute on Disability and Rehabilitation Research

AGENCY: Office of Special Education and Rehabilitative Services, Department of Education.

ACTION: Notice Inviting Applications for New Awards Under the State Grants Program for Technology-Related Assistance for Individuals with Disabilities for Fiscal Year 1989.

SUMMARY: On May 25, 1989, a notice was published in the Federal Register at 54 FR 22616. The application notice is corrected as follows: On page 22616, in the second column under Applicable Regulations, Part 79 was omitted.

For Applications Contact: National Institute on Disability and Rehabilitation Research, U.S. Department of Education, 400 Maryland Avenue, SW., Washington, DC 20202-2601, Attention: Peer Review Unit. Telephone: (202) 732-1141; deaf and hearing-impaired individuals may call (202) 732-1198 for TDD services.

FOR FURTHER INFORMATION CONTACT: Betty Jo Berland, National Institute on Disability and Rehabilitation Research, (202) 732-1139.

Program Authority: 29 U.S.C. 2201-2271

Dated: May 30, 1989.

Michael Veder,
Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.
[FR Doc. 89-13356 Filed 6-5-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER89-440-000, et al.]

Duke Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

May 30, 1989.

Take notice that the following filings have been made with the Commission:

1. Duke Power Company

[Docket No. ER89-440-000]

Take notice that on May 15, 1989, Duke Power Company (Duke Power) tendered for filing estimated billing information for calendar year 1989 pursuant to which North Carolina Municipal Power Agency Number 1 will be billed by Duke Power under Rate Schedule FERC No. 280. Duke Power states that this information is being submitted pursuant to the Commission's order dated October 6, 1978.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Niagara Mohawk Power Corporation

[Docket No. ER89-422-000]

Take notice that on May 9, 1989, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing an agreement between Niagara Mohawk and Central Vermont Public Service Corporation dated May 1, 1989.

The May 1, 1989 agreement is to provide for the sale by Niagara Mohawk Power Corporation of peaking capacity and related energy to Central Vermont Public Service Corporation. The terms of this agreement and the period during which the purchase of Peaking Capacity can occur shall commence on May 1, 1989 and shall continue until October 31, 1989.

Copies of this filing were served upon Central Vermont Public Service Corporation and the New York State Public Service Commission.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Duke Power Company

[Docket No. ER89-444-000]

Take notice that on May 15, 1989, Duke Power Company (Duke Power) tendered for filing the 1987 Catawba Interconnect Annual Actual Statements which were used to true-up the 1987 billing estimates for Rate Schedule FERC No. 280 between Duke Power and North Carolina Municipal Power Agency Number 1.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Power Company

[Docket No. ER89-445-000]

Take notice that on May 15, 1989, Duke Power Company (Duke Power) tendered for filing the 1987 Catawba Interconnect Annual Actual Statements which were used to true-up the 1988 billing estimates for Rate Schedule FERC No. 274 between Duke Power and Saluda River Electric Cooperative, Inc.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Wisconsin Electric Power Company

[Docket No. ER89-446-000]

Take notice that Wisconsin Electric Power Company (Wisconsin Electric) on May 17, 1989, tendered for filing a transmission service agreement with Madison Gas and Electric Company (MG&E). The agreement provides for either firm or non-firm transmission service to be rendered by Wisconsin Electric to MG&E, in accordance with Wisconsin Electric's FERC Electric Tariff, Original Volume No. 1, Rate Schedule T-1.

Wisconsin Electric respectfully requests waiver of the Commission's sixty-day notice requirements in order to allow an effective date of May 10, 1989. Wisconsin Electric is authorized to state that MG&E joins in the requested effective date.

Copies of the filing have been served on MG&E and the Public Service Commission of Wisconsin.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Nevada Power Company

[Docket No. ER89-450-000]

Take notice that on May 19, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Interconnection Agreement Between Nevada Power Company and Overton Power District No. 5 (Overton) hereinafter "the Agreement." The primary purpose of the Agreement is to establish the terms and conditions for

the interchange of economy, emergency, and banked energy and for other power transactions that may be possible through the Parties' interconnected systems or through the systems of third Parties.

Nevada states that copies of the filing were served upon Overton.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Nevada Power Company

[Docket No. ER89-451-000]

Take notice that on May 19, 1989, Nevada Power Company (Nevada) tendered for filing an agreement entitled Interconnection Agreement Between Nevada Power Company and Deseret (Deseret) Generation & Transmission Co-Operative hereinafter the Agreement. The primary purpose of the Agreement is to establish the terms and conditions for the interchange of economy, emergency, and banked energy and for other power transactions that may be possible through the Parties' interconnected systems or through the systems of third Parties.

Nevada states that copies of the filing were served upon Deseret.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania Power & Light Company

[Docket No. ER89-452-000]

Take notice that Pennsylvania Power & Light Company (PP&L) tendered for filing on May 19, 1989, as a Supplement to its Rate Schedule FERC No. 84, an executed Agreement dated as of May 3, 1989, between PP&L and Jersey Central Power & Light Company (Jersey Central). The agreement clarifies the methodologies for determining the depreciation expense and decommissioning expense components in the formula rate, and makes several conforming amendments to the rate schedule. A Certificate of Concurrence executed by Jersey Central accompanied PP&L's filing.

Copies of PP&L's filing have been served upon Jersey Central, the Pennsylvania Public Utility Commission and the New Jersey Board of Public Utilities.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Wisconsin Power & Light Company

[Docket No. ER89-349-001]

Take notice that on May 15, 1989, Wisconsin Power & Light Company (WPL) tendered for filing a Wholesale Power Contract dated June 28, 1986 and

Amendment No. 1 dated March 22, 1989, both between the City of Elkhorn and WPL. Elkhorn is currently taking service from Wisconsin Electric Power Company (WEP).

The purpose of the Contract and Amendment is to define the terms and conditions of service. Service under this Contract will be in accordance with WPL's standard W-3 rate schedule. WPL requests an effective date of June 16, 1989, concurrent with the termination date of Elkhorn's wholesale power agreement with WEP. WPL states that copies of the agreement and filing have been provided to Elkhorn, WEP and the Wisconsin Public Service Commission.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. Florida Power & Light Company

[Docket No. ER89-400-000]

Take notice that Florida Power & Light Company (FPL), on May 2, 1989, tendered eight (8) revised Exhibits A which provide for the contract demands for Florida Keys Electric Cooperative Association, Inc; Fort Pierce Utilities Authority; City of Homestead; Utilities Commission, City of New Smyrna Beach; City of Starke; City of Vero Beach; City of Jacksonville Beach; and City of Green Cove Springs under Rate Schedule PR-3 of FPL's FERC Electric Tariff Second revised Volume No. 1. The proposed effective date for the contract demands for Florida Keys Electric Cooperative Association, Inc; Fort Pierce Utilities Authority; City of Homestead; Utilities Commission, City of New Smyrna Beach; City of Starke; and City of Vero Beach is May 29, 1989. The proposed effective date for the contract demands for the City of Jacksonville Beach, and the City of Green Cove Springs is June 1, 1989.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. Minnesota Power & Light Company

[Docket No. ER89-434-000]

Take notice that Minnesota Power & Light Company (MP&L) on May 15, 1989, tendered for filing proposed changes in its rate schedule for third-party purchase and resale transactions pursuant to Commission Order No. 84, designated as:

Minnesota Power & Light Company
FERC Order No. 84 Rate Schedule
Original Sheet No. 1

The third rate schedule is applicable to third-party purchase and resale of electric power. The rate schedule provides that for such voluntary third-

party transactions, Minnesota Power will charge the receiving party:

(a) The amount Minnesota Power pays the supplying third party for such power and/or energy; plus

(b) Up to \$5.42 per MWh (in no event shall the one day total of such hourly charges for any single transactions exceed \$88.77 times the highest average number of megawatts resold in any hour during the day) for transmission investment; plus

(c) Up to \$1.00 per MWh for difficult-to-quantify costs; plus

(d) An adjustment for transmission losses.

Minnesota Power states that its reason for proposing the rate schedule is to include the quantifiable costs in its third-party transactions and to increase Minnesota Power's flexibility to effectively market power and energy by permitting it to charge less than the full rate.

Copies of the filing have been mailed to each of the parties identified in the Service List.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. Duke Power Company

[Docket No. ER89-435-000]

Take notice that on May 15, 1989, Duke Power Company (Duke Power) tendered for filing the 1988 Catawba Interconnect Annual Actual Statements which were used to true-up the 1988 billing estimates for Rate Schedule FERC No. 273 between Duke Power and North Carolina Electric Membership Corporation.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

13. Duke Power Company

[Docket No. ER89-439-000]

Take notice that on May 15, 1989, Duke Power Company (Duke Power) tendered for filing the Catawba Interconnect Annual Actual Statements which were used to true-up the 1987 billing estimates for Rate Schedule FERC No. 273 between Duke Power and North Carolina Electric Membership Corporation.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

14. Duke Power Company

[Docket No. ER89-441-000]

Take notice that on May 15, 1989, Duke Power Company (Duke Power) tendered for filing the 1988 Catawba Interconnect Annual Actual Statements which were used to true-up the 1988

billing estimates for Rate Schedule FERC No. 276 between Duke Power and Piedmont Municipal Power Agency.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

15. Duke Power Company

[Docket No. ER89-442-000]

Take notice that on May 15, 1989, Duke Power Company tendered for filing the 1988 Catawba Interconnect Annual Actual Statements which were used to true-up the 1988 billing estimates for Rate Schedule FERC No. 280 between Duke Power and North Carolina Municipal Power Agency Number 1.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

16. Duke Power Company

[Docket No. ER89-443-000]

Take notice that on May 15, 1989, Duke Power Company (Duke Power) tendered for filing the 1987 Catawba Interconnect Annual Actual Statements which were used to true-up the 1987 billing estimates for Rate Schedule FERC No. 274 between Duke Power and Saluda River Electric Cooperative, Inc.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

17. Duke Power Company

[Docket No. ER89-446-000]

Take notice that on May 15, 1989, tendered for filing estimated billing information for calendar year 1989 pursuant to which Saluda River Electric Cooperative, Inc. will be billed by Duke Power under Rate Schedule FERC No. 274. Duke Power states that this data is being submitted pursuant to the Commission's Letter Order dated October 6, 1978.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

18. Arizona Public Service Company

[Docket No. ER89-449-000]

Take notice that on May 18, 1989, Arizona Public Service Company (APS or Company) tendered for filing Supplemental Capacity Sale Agreements (Agreements) between the Company and the Arizona Power Authority (APA), Electrical District No. 8 (Ed-8), Citizens Utilities Company (Citizens) and the Town of Wickenburg (Wickenburg) (collectively referred to as the Customers or Parties).

The Agreements provide for the sale of short-term firm supplemental capacity and associated energy by APS to the

Parties. The term of these Agreements covers the general period May 1, 1989 through September 30, 1989.

The rates or costs to the Company's other customers will be unaffected by these transactions. No new facilities or modifications to existing facilities are required. The Parties recognize their obligation to provide for the supplemental load thereafter.

For the purposes of administrative efficiency, APS has also filed Notice of Cancellation, with the concurrence of the Parties.

APS and the parties request that the normal notice requirements be waived so that these Agreements may become effective May 1, 1989, for ED-8 and Citizens; and June 1, 1989 for APA and Wickenburg.

A copy of this filing has been served upon the Parties, and the Arizona Corporation Commission.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

19. New England Power Pool

[Docket No. ER89-453-000]

Take notice that on May 22, 1989, the New England Power Pool tendered for filing signature pages to the NEPOOL Agreement dated September 1, 1971, as amended, signed by the New Hampshire Electric Cooperative, Inc. The New Hampshire Electric Cooperative, Inc. has its principal office in Plymouth, New Hampshire. NEPOOL indicates that the New England Power Pool Agreement has previously been filed with the Commission as a rate schedule (designated NEPOOL FPC No. 1).

NEPOOL states that New Hampshire Electric Cooperative, Inc. has joined over 90 other electric utilities as participants in the pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make the New Hampshire Electric Cooperative, Inc. a participant in the pool.

NEPOOL requests an effective date of October 1, 1988, for commencement of participation in the power pool by the New Hampshire Electric Cooperative, Inc. and requests waiver of the Commission's customary notice requirements to permit the membership of the New Hampshire Electric Cooperative, Inc. to become effective on that date.

Comment date: June 12, 1989, in accordance with Standard Paragraph E at the end of this notice.

20. O'Brien (Hartford) Cogeneration Limited Partnership

[Docket No. QF88-0-002]

On May 12, 1989, O'Brien (Hartford) Cogeneration Limited Partnership (Applicant), of St. James Street at Eighth Street, Philadelphia, Pennsylvania 19106, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located at the Hartford Steam Company, 80 Columbus Boulevard, Hartford, Connecticut 01644. The facility will consist of two combustion turbine generating units, two heat recovery steam generators and an extraction/condensing steam turbine generating unit. The thermal output will consist of steam sold to the Hartford Steam Company for resale to customers in its steam loop. The primary energy source of the facility will be natural gas. No. 2 fuel oil will be used in emergency situations. The net electric power production capacity of the facility will be 53,914 kilowatts. Installation of the facility will begin the second quarter of 1989.

The original application was filed by O'Brien Energy System, Inc., on October 7, 1985 and was granted on December 27, 1985 (33 FERC ¶ 62,449). On December 6, 1988, Applicant filed a notification of qualifying status with the Commission describing a change in ownership and installation of the facility. The instant recertification is requested due to further change in ownership of the facility.

Comment date: Thirty days from publication in the *Federal Register*, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Casbell,
Secretary.

[FR Doc. 89-13335 Filed 6-5-89; 8:45 am]
BILLING CODE 8717-01-M

[Docket No. CP89-856-001]

Algonquin Gas Transmission Co.; Amendment

May 31, 1989.

Take notice that on May 26, 1989, Algonquin Gas Transmission Company (Applicant), P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP89-856-001 an amendment to its pending application filed on January 17, 1989, pursuant to Section 7(c) of the Natural Gas Act to construct and operate natural gas facilities and to provide a firm transportation service on behalf of Providence Gas Company (Providence), all as more fully set forth in the amendment on file with the Commission and open to public inspection.

In Docket No. CP89-856-000, Applicant requested authorization to initiate a firm transportation service for Providence of 21,063 MMBtu per day under Applicant's proposed Rate Schedule AFT-3. In order to implement the proposed service, Applicant proposed to construct (1) 2.0 miles of 36-inch pipeline loop in Mansfield and Chaplin, Connecticut, (2) 1.6 miles of 24-inch pipeline loop on its existing G-12 System in East Providence, Rhode Island, (3) 2.1 miles of 18-inch pipeline loop on its existing G-3 System which would start from Faunce Corner Road in Dartmouth, Massachusetts and terminate near New Bedford, Massachusetts, (4) 3.8 miles of new 12-inch pipeline lateral from its G-1 System to the new North Portsmouth, Rhode Island meter station on Aquidneck Island and (5) a new meter station on Aquidneck Island which would be designated as the North Portsmouth Meter Station. Applicant estimated that the cost to construct the proposed facilities would have been \$17,677,000. It was further proposed that the transportation service would be implemented in two phases. The first phase of 10,000 MMBtu would have commenced on November 1, 1989, with deliveries at the existing Dey Street Meter Station and the second phase of 11,063 MMBtu would have commenced one year later after the proposed North Portsmouth Meter Station and the 3.8-mile lateral had been constructed.

In the amending application, Applicant now proposes to transport only 11,063 MMBtu per day on a firm

basis on behalf of Providence and to construct (1) 2.0 miles of 36-inch pipeline loop in Mansfield and Chaplin, Connecticut, (2) 1.6 miles of 24-inch pipeline loop on its existing G-12 System in East Providence, Rhode Island, and (3) 2.1 miles of 18-inch pipeline loop in its existing G-3 System which would start from Faunce Corner Road in Dartmouth, Massachusetts and terminate near New Bedford, Massachusetts. Applicant estimates that the cost to construct these facilities would be approximately \$11,230,000. Applicant explains that Providence no longer desires Applicant to construct the 3.8 miles of new 12-inch pipeline lateral or the North Portsmouth Meter Station on Aquidneck Island.

Applicant states that the proposed service would be rendered pursuant to the proposed Rate Schedule AFT-3, a copy of which was filed in the original application. Applicant proposes to recover the cost of the proposed facilities through a monthly demand charge of approximately \$16.845 per MMBtu.

Applicant states that it would still receive the quantities of natural gas on behalf of Providence at a proposed point of interconnection with Columbia Gas Transmission Company (Columbia) in Morris County, New Jersey. Applicant explained that Columbia has requested to construct the proposed interconnection in the pending Docket No. CP88-183-000, *et al.*, currently on file with the Commission. From this point of receipt, Applicant would transport and deliver the quantities of natural gas to Providence at the existing Dey Street, East Providence Meter Station; it is stated.

Any person desiring to be heard or to make any protest with reference to said amendment should on or before June 7, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules. All persons

who have heretofore filed need not file again.

Lois Casbell,
Secretary.

[FR Doc. 89-13300 Filed 6-5-89; 8:45 am]
BILLING CODE 8717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3598-7]

Alabama and Florida; Fiscal Year 89 Grant Performance Reports

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability of grantee performance evaluation reports.

SUMMARY: EPA's grant regulations (40 CFR 35.150) require the Agency to evaluate the performance of agencies which receive grants. EPA's regulations for regional consistency (40 CFR 58.7) require that the Agency notify the public of the availability of the reports of such evaluations. EPA recently performed midyear evaluations of two state air pollution control programs (Alabama Department of Environmental Management and Florida Department of Environmental Regulation). These midyear audits were conducted to assess the agencies' performance under the grants made to them by EPA pursuant to section 105 of the Clean Air Act. The audits were also conducted as part of the National Air Audit System (NAAS) established by EPA in an effort to assure nationwide consistency in the evaluation of state and local air pollution programs. EPA Region IV has prepared reports for the two agencies identified above and these NAAS/§ 105 reports are now available for public inspection.

ADDRESS: The reports may be examined at the EPA's Region IV office, 345 Courtland Street NE., Atlanta, GA 30365, in the Air, Pesticides & Toxics Management Division.

FOR FURTHER INFORMATION CONTACT: Walter Bishop at 404/347-2864. (FTS: 257-2864.)

Dated: May 26, 1989.

Joe R. Franzmathes,
Acting Regional Administrator.
[FR Doc. 89-13354 Filed 6-5-89; 8:45 am]
BILLING CODE 6860-60-M

[OPTS-59271; FRL-3598-8]

Toxic and Hazardous Substances; Test Market Exemption Applications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA may upon application exempt any person from the premanufacturing notification requirements of section 5 (a) or (b) of the Toxic Substance Control Act (TSCA) to permit the person to manufacture or process a chemical for test marketing purposes under section 5(h)(1) of TSCA. Requirements for test marketing exemption (TME) applications, which must either be approved or denied within 45 days of receipt are discussed in EPA's final rule published in the *Federal Register* of May 13, 1983 (48 FR 21722). This notice, issued under section 5(h)(6) of TSCA, announces receipt of 5 application(s) for exemption, provides a summary, and requests comments on the appropriateness of granting this exemption.

DATES: Written comments by: T 89-12, 89-13, 89-14, 89-15, 89-16 June 21, 1989.

ADDRESS: Written comments, identified by the document control number "[OPTS-59271]" and the specific TME number should be sent to: Document Processing Center (TS-790), Office of Toxic Substances, Environmental Protection Agency, 401 M Street, SW., Room L-100, Washington, DC 20460, (202) 382-3532.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer of the TME received by EPA. The complete nonconfidential document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

T 89-12

Close of Review Period. July 5, 1989.
Importer. Confidential.
Chemical. (G) Polyphenylene ether/polyamine alloy.
Use/Import. (G) Resin for molding.
Import range: Confidential.

T 89-13

Close of Review Period. July 5, 1989.

Importer. Confidential.
Chemical. (G) Polyphenylene/polyamide alloy.
Use/Import. (G) Resin for molding.
Import range: Confidential.

T 89-14

Close of Review Period. July 5, 1989.
Importer. Confidential.
Chemical. (G) Polyphenylene/polyamide alloy.
Use/Import. (G) Resin for molding.
Import range: Confidential.

T 89-15

Close of Review. July 5, 1989.
Importer. Confidential.
Chemical. (G) Polyphenylene/polyamide alloy.
Use/Import. (G) Resin for molding.
Import range: Confidential.

T 89-16

Close of Review Period. July 5, 1989.
Importer. Confidential.
Chemical. (G) Polyphenylene/polyamide alloy.
Use/Import. (G) Resin for molding.
Import range: Confidential.

Date: May 26, 1989.

Steven Newburg-Rinn,
Acting Director, Information Management Division, Office of Toxic Substances.
[FR Doc. 89-13404 Filed 6-5-89; 8:45 am]
BILLING CODE 6560-50-M

EXPORT-IMPORT BANK OF THE UNITED STATES**Open Meeting of the Advisory Committee**

Summary: The Advisory Committee was established by Pub. L. 98-181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

Time and Place: Tuesday, June 20, 1989, from 9:30 a.m. to 12:00 noon. The meeting will be held at Eximbank in Room 1143, 811 Vermont Avenue NW., Washington, DC 20571.

Agenda: The meeting agenda will include a discussion of the following topics: Financial Report, Congressional Matters, Competitiveness Report, Reinvolving Financial Institutions, Tied Aid Credit Report, and other topics.

Public Participation: The meeting will be open to public participation; and the last 15 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to

arrange suitable accommodations, members of the public who plan to attend the meeting should notify Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566-8871, not later than June 19, 1989. If any person wishes auxiliary aids (such as a language interpreter) or other special accommodations, please contact, prior to June 15, 1989, the Office of the Secretary, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, Voice: (202) 566-8871 or TDD: (202) 535-3913.

Further Information: For further information contact Joan P. Harris, Room 935, 811 Vermont Avenue NW., Washington, DC 20571, (202) 566-8871.

Joan P. Harris,
Corporate Secretary.
[FR Doc. 89-13537 Filed 6-5-89; 8:45 am]
BILLING CODE 9999-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

(FEMA-829-DR)

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-829-DR), dated May 20, 1989, and related determinations.

DATED: May 30, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Louisiana, dated May 20, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 20, 1989:

The parishes of Allen, Beauregard, Caddo, Caldwell, Calcasieu, Natchitoches, Red River, Sabine, Union, Vernon for Individual Assistance.

The notice of a major disaster for the State of Louisiana, dated May 20, 1989, is further amended to change the incidence period from May 5, 1989, and continuing, to May 4, 1989, through May 27, 1989.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-13378 Filed 6-5-89; 8:45 am]

BILLING CODE 6710-02-M

(FEMA-829-DR)

Louisiana; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-829-DR), dated May 20, 1989, and related determinations.

DATED: May 26, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Louisiana, dated May 20, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 20, 1989.

The parishes of Lincoln, Morehouse, Richland, and West Carroll for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

George H. Orrell,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-13379 Filed 6-5-89; 8:45 am]

BILLING CODE 6710-02-M

(FEMA-827-DR)

North Carolina; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.
ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of North Carolina (FEMA-827-DR), dated May 17, 1989, and related determinations.

DATED: May 30, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of North Carolina, dated May 17, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 17, 1989.

The County of Lincoln, For Public Assistance (Lincoln County is already designated for Individual Assistance)

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Grant C. Peterson,

Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-13380 Filed 6-5-89; 8:45 am]

BILLING CODE 6710-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission for approval pursuant to section 15 of the Shipping Act, 1916, as amended (39 Stat. 733, 75 Stat. 763, 46 U.S.C. 814).

Interested parties may inspect and may request a copy of each agreement and the supporting statement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 20 days after the date of the Federal Register in which this notice appears. The requirements for comments and protests are found in § 560.7 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224-200251

Title: Port of Seattle Terminal Agreement

Parties: Port of Seattle, Puget Sound Tug & Barge Co.

Filing Party: Keith Christian, Manager, Marine Real Estate, Port of Seattle, P.O. Box 1209, Seattle, WA 98111

Synopsis: The Agreement provides for the lease and operation of a rail barge

terminal at Pier 2. The terminal is to be used for staging and loading full containers on rail cars and chassis onto barges for shipment to Alaska. The Agreement also provides for chassis and container storage and related operations. The Agreement's term is for 10 years.

By order of the Federal Marine Commission.

Joseph C. Polking,

Secretary.

Dated: May 31, 1989.

[FR Doc. 89-13307 Filed 6-5-89; 8:45 am]

BILLING CODE 6730-01-M

Notice of Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-002401-011.

Title: Long Beach Terminal

Agreement.

Parties:

City of Long Beach
Sea-Land Service, Inc.

Synopsis: The Agreement incorporates into the preferentially assigned areas of the basic agreement a 2.5 acre area commonly referred to as "Pelican Pond" and adjusts the rent payable for Parcel 1 for the term June 1, 1989 through March 31, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: May 31, 1989.

[FR Doc. 89-13308 Filed 6-5-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Howard R. Curd, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 20, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. **Howard R. Curd**, Longwood, Florida; to acquire up to 25.0 percent of the voting shares of Community National Bankcorp, Inc., Staten Island, New York, and thereby indirectly acquire Community National Bank & Trust Company of New York, Staten Island, New York.

B. Federal Reserve Bank of Cleveland (John J. Wixsted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. **Ameritrust Corporation Employees' Savings and Investment Plan**, Cleveland, Ohio; to acquire up to an additional 7.49 percent of the voting shares of Ameritrust Corporation, Cleveland, Ohio, for a total of between 14.7 percent and 16.0 percent, and thereby indirectly acquire Ameritrust Company, N.A., Cleveland, Ohio; and Ameritrust Indiana Corporation, and thereby indirectly acquire American National Bank of Noblesville, Noblesville, Indiana; Boone County State Bank, Lebanon, Indiana; First National Bank, Elkhart, Indiana; First National Bank & Trust Company, Sturgis, Minnesota; Indiana Bank & Trust Company, Martinsville, Indiana; State Bank of Lima, Howe, Indiana; State Bank of Syracuse, Syracuse, Indiana; Union Bank & Trust Company, Kokomo, Indiana; and Franklin Bank & Trust Company, Franklin, Indiana.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice

President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. **Gail K. Mathisen**, Chanhassen, Minnesota; to retain ownership of 100 percent of the voting shares of St. James Bankcorp, Inc., Chanhassen, Minnesota, and thereby indirectly acquire Citizens State Bank of St. James, St. James, Minnesota; and Jackson State Bank, Jackson, Minnesota.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. **Dennis Schardt**, Deshler, Nebraska; to acquire 39.47 percent; Ronald Schardt, Deshler, Nebraska, to acquire 0.67 percent; Superior Deshler Company, Deshler, Nebraska, to acquire 4.94 percent; VIE Company, Deshler, Nebraska, to acquire 4.94 percent; S&S Industries, Inc., Deshler, Nebraska, to acquire 0.65 percent of the voting shares of Gibbon Exchange Company, Gibbon, Nebraska, and thereby indirectly acquire Exchange Bank, Gibbon, Nebraska.

E. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. **Lowell M. Irby**, Artesia, New Mexico, to acquire 6.10 percent; William M. Siegenthaler, Artesia, New Mexico, to acquire 2.68 percent; Loy C. Fletcher, Artesia, New Mexico, to acquire 1.52 percent; John T. Jackson, Jr., Artesia, New Mexico, to acquire 1.52 percent; Greg Anesi, Farmington, New Mexico, to acquire 3.05 percent; James E. Guy, Artesia, New Mexico, to acquire 1.52 percent; and Western Bank, Artesia, New Mexico, to acquire 3.06 percent of Western Bancshares of New Mexico, Inc., Artesia, New Mexico, and thereby indirectly acquire Western Bank, Artesia, New Mexico.

2. **Vernon Carroll Minor**, Marlin, Texas; to acquire 67 percent of the voting shares of Lorena State Bank, Lorena, Texas.

Board of Governors of the Federal Reserve System, May 31, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-13327 Filed 6-5-89; 8:45 am]

BILLING CODE 6210-01-M

Puget Sound Bancorp; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C.

1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 23, 1989.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Puget Sound Bancorp.*, Tacoma, Washington; to engage *de novo* in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Tacoma, Washington.

Board of Governors of the Federal Reserve System, May 31, 1989.

William W. Wiles,
Secretary of the Board.

[FR Doc. 89-13328 Filed 6-5-89; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the

Bank Holding Company Act (12 USC 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 29, 1989.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Security Pacific Corporation*, Los Angeles, California; to acquire through a wholly-owned subsidiary, Security Pacific Housing Services, Inc., certain assets of the Home and Recreation Financial Services department of General Electric Capital Corporation and continue to engage in conditional sales contract financing and servicing pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, May 31, 1989.

William W. Wiles,
Secretary of the Board.

[FR Doc. 89-13329 Filed 6-5-89; 8:45 am]

BILLING CODE 6210-01-M

Valley Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 23, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Valley Bancorp, Inc.*, White River Junction, Vermont; to become a bank holding company by acquiring 100 percent of the voting shares of Valley Bank, White River Junction, Vermont.

B. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1445 East Sixth Street, Cleveland, Ohio 44101:

1. *First Financial Bancorp.*, Monroe, Ohio; to merge with ILB Financial Corp., North Manchester, Indiana, and thereby indirectly acquire Indiana Lawrence Bank, North Manchester, Indiana.

C. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street NW., Atlanta, Georgia 30303:

1. *FBC Holding Company, Inc.*, Crestview, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of First Bank of Crestview, Crestview, Florida.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Mercantile Bancshares, Inc.*, Jonesboro, Arkansas; to acquire 100 percent of the voting shares of North

Arkansas Bancshares, Inc., Jonesboro, Arkansas, and thereby indirectly acquire First State Bank of Newport, Newport, Arkansas; The Bank of Rector, Rector, Arkansas; and Searcy County Bank, Marshall, Arkansas; and Mammoth Investment and Credit Corporation, Mammoth Spring, Arkansas, and thereby indirectly acquire Security National Bank, Sidney Arkansas, and Peoples National Bank, Mammoth Spring, Arkansas. First State Bank of Newport, The Bank of Rector, Searcy County Bank, and Security National Bank engage only in the sale, as agent, of credit-related insurance. Peoples National Bank engages in the sale of general insurance through its wholly-owned subsidiary, Spring River Property, Inc., Mammoth Spring, Arkansas, which has a population of less than 5,000.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Hutchinson Financial Corporation*, Wichita, Kansas; to acquire 100 percent of the voting shares of Iuka Bancshares, Inc., Iuka, Kansas, and thereby indirectly acquire The Iuka State Bank, Iuka, Kansas. Comments on this application must be received by June 20, 1989.

F. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *BankAmerica Corporation*, San Francisco, California; to acquire 100 percent of the voting shares of Nevada First Development Corporation, Reno, Nevada, and thereby indirectly acquire Nevada First Bank, Reno, Nevada, and Silver State Thrift & Loan Association, Reno, Nevada.

Board of Governors of the Federal Reserve System, May 31, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-13330 Filed 6-5-89; 8:45 am]

BILLING CODE 6210-01-M

The Long-Term Credit Bank of Japan, Limited, Tokyo, Japan; Application To Provide Certain Financial Advisory Services

The Long-Term Credit Bank of Japan, Limited, Tokyo, Japan ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Act (12 U.S.C. 1841, *et seq.*) (the "BHC Act") and § 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), to acquire, through its wholly owned subsidiary, LTCB Capital Markets, Wilmington, Delaware ("LCM"), 60 percent of the outstanding

voting shares of LTCB-MAS Investment Management, Inc., Bala-Cynwyd, Pennsylvania ("LTCB-MAS"), and thereby establish a joint venture with Miller, Anderson & Sherrerd, Bala-Cynwyd, Pennsylvania ("MAS"). MAS is a partnership which provides discretionary money management services to institutional investors in the United States.

Applicant states that the primary function of LTCB-MAS would be to provide discretionary investment management services and investment advice to Japanese institutional investors and their United States subsidiaries with respect to securities principally traded in the United States. LTCB-MAS would engage in investment advisory activities throughout the United States to the extent permissible under 12 CFR 225.25(b)(4): (i) Serving as the advisory company for a mortgage or a real estate investment trust; (ii) serving as investment adviser (as defined in section 2(a)(20) of the Investment Company Act of 1940, 15 U.S.C. 80a-2(a)(20)) to an investment company registered under that act, including sponsoring, organizing, and managing a closed-end investment company; (iii) providing portfolio investment advice to any other person; (iv) furnishing general economic information and advice, general economic statistical forecasting services and industry studies; and (v) providing financial advice to state and local governments, such as with respect to the issuance of their securities.

Interested persons are requested to express their views in writing on whether consummation of the proposal can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices.

Any views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than June 30, 1989.

Any request for a hearing must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

Board of Governors of the Federal Reserve System, May 31, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-13331 Filed 6-5-89; 8:45 am]

BILLING CODE 6210-01-M

W.T.B. Financial Corporation, Spokane, WA; Expand Geographic Scope of Permissible Nonbanking Activities; Correction

This notice corrects a previous Federal Register notice (FR Doc. 89-11310) published at page 20431 of the issue for Thursday, May 11, 1989.

Under the Federal Reserve Bank of San Francisco, the entry for W.T.B. Financial Corporation is amended to read as follows:

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *W.T.B. Financial Corporation*, Spokane, Washington; to engage *de novo* through its subsidiary, W.T. Investment Advisors, Inc., Spokane, Washington, in acting as an investment advisor to the extent of providing portfolio investment advice to any person, serving as an investment advisor to a registered investment company and providing financial advice to state and local government, such as with respect to the issuance of their securities pursuant to § 225.25(b)(4) of the Board's Regulation Y. These activities will be conducted in the States of Nevada and California.

Comments regarding this application must be received at the Federal Reserve Bank of San Francisco or the offices of the Board of Governors not later than June 20, 1989.

Board of Governors of the Federal Reserve System, May 31, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-13332 Filed 6-5-89; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires

persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to

terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants

were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 051589 AND 052689

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
The Ranco Group Inc., AMAX Inc., AMAX Magnesium Corporation.....	89-1473	05/15/89
Amoco Corporation Chevron Corporation, Chevron U.S.A. Inc.....	89-1564	05/15/89
York Holdings Corporation, RECO International, Inc., RECO International, Inc.....	89-1567	05/15/89
Mr. George S. Mann, Dunkin' Donuts Incorporated, Dunkin' Donuts Incorporated.....	89-1596	05/15/89
Prudential-Bache Energy Income L.P., VIP-25, Martin D. Gruss, J.G. Carmel, Inc., Lyntin Oil.....	89-1603	05/15/89
Courtauld plc, Products Research & Chemical Corporation, Products Research & Chemical Corporation.....	89-1607	05/15/89
PepsiCo, Inc., Ruby Rice Speck, Rice Bottling Enterprises, Inc.....	89-1609	05/15/89
Kirk Kerkorian, Christopher C. Skase, Qintex Australia Limited.....	89-1626	05/15/89
Qintex Entertainment Inc., Kirk Kerkorian, MGM/UA Communications Co.....	89-1627	05/15/89
William W. Winepear, c/o Associated Materials Inc., Amercord Inc., Amercord Inc.....	89-1635	05/15/89
First Chicago Corporation, JWC Associates L.P., The Georgia Marble Company.....	89-1641	05/15/89
Ivosc, Inc., Amercord Inc. Amercord Inc.....	89-1650	05/15/89
Sonnet Inc., John Franks, John and Alta Franks, Franks Petroleum Inc.....	89-1851	05/15/89
Johnson Controls, Inc., Pan Am Corporation Pan Am World Services, Inc./Pan Am World Airways, Inc.....	89-1656	05/15/89
Tenneco Inc., Hugo Schwartz, Interfriction U.S.A. Corporation.....	89-1658	05/15/89
Daniel J. Sullivan, Trust Under The Will of George T. Carr, Detroit Tool Metal Products Company.....	89-1661	05/15/89
Mr. Abraham D. Gosman, c/o A.M.A. Equities Corp., American Healthcorp, Inc., American Treatment Centers, Inc.....	89-1876	05/15/89
Acadia Partners, L.P. Manville Corporation, Manville Sales Corporation.....	89-1678	05/15/89
Roxboro Investments (1978) Ltd., Imperial Chemical Industries PLC, C-I-L Corporation of America.....	89-1683	05/15/89
Sam Fox, Manville Corporation, Manville Sales Corporation.....	89-1704	05/15/89
Stollor Group Inc., The Statesman Group, Inc., Statesman Financial Services, Inc.....	89-1721	05/15/89
Aetna Life and Casualty Company, HealthWays Systems, Inc., HealthWays Systems, Inc.....	89-1552	05/16/89
Victor Posner, DWG Corporation, DWG Corporation.....	89-1681	05/16/89
Gerald C. Phillips, George Shinn, Rutledge Education System.....	89-1686	05/16/89
Household International, Inc., Atlantic Financial Federal, Atlantic Financial Federal.....	89-1688	05/16/89
Compagnie Financiere de Suez, Federal-Mogul Corporation, Target Products Division.....	89-1469	05/17/89
Petroleos de Venezuela, S.A., Unocal Corporation, Union Oil Company of California.....	89-1558	05/17/89
Robert M. Bass, The Vons Companies, Inc., The Vons Companies, Inc.....	89-1580	05/17/89
Petroleos de Venezuela, S.A., Unocal Corporation, Union Oil Company of California.....	89-1598	05/17/89
Unocal Corporation, Unocal Corporation, Unocal Corporation.....	89-1599	05/17/89
ServiceMaster Limited Partnership, American Home Shield Corporation, American Home Shield Corporation.....	89-1605	05/17/89
Kobe Steel, Ltd., USX Corporation, Lorain Works of USX.....	89-1620	05/17/89
Health Insurance Plan of Greater New York, Rutgers Community Health Plan, Inc., Rutgers Community Health Plan, Inc.....	89-1629	05/17/89
HCS Technology, N.V., Colorco Corporation, Colorco Corporation.....	89-1637	05/17/89
E.I. du Pont de Nemours and Company, Transco Energy Company, TXP Operating Company and Transco Exploration Company.....	89-1874	05/17/89
Peerless Carpet Mills, Inc., Peerless Carpet Mills, Inc.....	89-1693	05/17/89
Peerless Carpet Corporation, Galaxy Carpet Mills, Inc., Galaxy Carpet Mills, Inc.....	89-1697	05/17/89
Tyler Capital Fund, L.P., American Healthcare Management, Inc., American Healthcare Management, Inc.....	89-1706	05/17/89
Tyler Capital Fund, L.P., AHM Acquisition (Joint Venture) AHM Acquisition (Joint Venture).....	89-1714	05/17/89
Donald J. Trump, Elanore Corporation, Elanore Shore Associates.....	89-1597	05/18/89
The Brand Companies, Inc., R.L. Anderson, Jr., Scaffold Services, Inc.....	89-1814	05/18/89
Unilever N.V., Thomas J. Lutsay, Gold Bond Ice Cream, Inc.....	89-1640	05/18/89
Cambrex Corporation, Whittaker Corporation, Whittaker Corporation.....	89-1583	05/19/89
Kolobuki Fudosen Ltd., Golder, Thoma & Creasey Fund II, Ltd. Partnership, Willow Springs Premium Water, Inc.....	89-1610	05/19/89
Acme Steel Company, Sudbury, Inc., Alpha and Beta Tube Divisions, Sudbury Industrial, Inc.....	89-1685	05/19/89
Crown Pacific, Ltd., Scott Paper Company, Three River Timber Company et al.....	89-1701	05/19/89
Diesel Kiki Co., Ltd., Gleason Corporation, DK-Gleason, Inc.....	89-1707	05/19/89
Henry T. Swiger, ESCO Corporation, NEWESCO.....	89-1712	05/19/89
Carolco Investments B.V., De Laurentis Entertainment Group Inc., De Laurentis Entertainment Group Inc.....	89-1719	05/19/89
Kobe Steel, Ltd., Kobe/Lorain, Inc., Kobe/Lorain, Inc.....	89-1724	05/19/89
Parker & Parsley Development Partners, L.P., Southmark Corporation, Parker & Parsley Petroleum Company.....	89-1726	05/19/89
Roger West, Sudbury, Inc., United Industries, Inc.....	89-1730	05/19/89
Kennametal Inc., Allied-Signal Inc., Garrett Industrial Supply Company.....	89-1733	05/19/89
Ladbroke Group PLC, The Equitable Life Assurance Society of the U.S., Washington International Associates.....	89-1735	05/19/89
Ladbroke Group PLC, Ali A. Juffali (89-1736), Ahmed A. Juffali (89-1737), Washington International Associates.....	89-1736	05/19/89
Ladbroke Group PLC, Ahmed A. Juffali, Washington International Associates.....	89-1737	05/19/89
Qualex Corporation, Nichols-Homestead, Inc., Nichols-Homestead, Inc.....	89-1739	05/19/89
Gay M. Love, Bahta Corporation, Daniels Packaging Company, Inc.....	89-1743	05/19/89
Gerald C. Phillips, Maxwell Communication Corporation plc, Katherine Gibbs School (Incorporated).....	89-1750	05/19/89
American West Airlines, Inc., Texas Air Corporation, Eastern Air Lines, Inc.....	89-1752	05/19/89
Stanhome Inc., The Hamilton Group Limited, Inc., The Hamilton Group Limited, Inc.....	89-1567	05/22/89
Sommer Allibert, S.A., NEWCO, NEWCO.....	89-1648	05/22/89
Rubbermaid Incorporated, NEWCO, NEWCO.....	89-1647	05/22/89
John A. Catamatis, c/o Red Apply Companies, Michael Foster, 162093 Canada Limited.....	89-1708	05/22/89
Michael Foster, Core-Mark International Inc., Core-Mark International Inc.....	89-1709	05/22/89
Norton Company, Panhandle Eastern Corporation, Eastman Christensen Company.....	89-1718	05/22/89
General Atlantic Corporation, Stroller Tod White, Blessing/White Incorporated.....	89-1727	05/22/89

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 051589 AND 052689—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
Sid R. Bass, American Medical International, Inc., American Medical International, Inc.....	89-1578	05/23/89
Rockwell International Corporation, BBA Group plc, Butler Polymet, Inc.....	89-1604	05/23/89
Daniel J. Sullivan, Detroit Tool & Engineering Company, Detroit Tool & Engineering Company.....	89-1660	05/23/89
Hampton Tree Farms, Inc., The Times Mirror Company, Times Mirror Land and Timber Company.....	89-1662	05/23/89
Takata Corporation, Halle & Steglitz, Inc., Halle & Steglitz, Inc.....	89-1666	05/23/89
Baker Hughes Incorporated, Bird Incorporated, Bird Machine Company, Inc.....	89-1671	05/23/89
Fireman's Fund Corporation, Sabine Royalty Trust, Sabine Royalty Trust.....	89-1677	05/23/89
Transamerica Corporation, Charles Miller, Criterion Group, Inc.....	89-1732	05/23/89
Household International, Inc., Advanta Corp., Colonial National Bank USA.....	89-1741	05/23/89
Franklin Savings Corporation, Broad Inc., SunLife Insurance Company of America.....	89-1675	05/24/89
Christopher C. Skase, Hemmeter Laguna Niguel Partners, Laguna Niguel Resort Associates.....	89-1717	05/24/89
Reed International PLC, The News Corporation Limited, Travel Information Group.....	89-1694	05/25/89
James H. Guerin, Ferranti International Signal PLC, ISC Technologies, Inc.....	89-1723	05/25/89
Graymont Limited, The Bricom Group Limited, Continental Lime Inc.....	89-1731	05/25/89
The RTZ Corporation PLC, The British Petroleum Company plc, Amseco Minerals Inc.....	89-1713	05/26/89
Exxon Corporation, Maxus Energy Corporation, Maxus Exploration Company.....	89-1748	05/26/89
Fluor Corporation, Osterreichische Industrieholding AG, Virginia Crews Coal Company.....	89-1762	05/26/89
Teachers Insurance & Annuity Association of America, Aetna Life and Casualty Company, Aetna Life Insurance Company.....	89-1774	05/26/89
Masco Corporation, Sherie Wagner & Rose Wagner, Sherie Wagner Intl., Inc. and Sherie Wagner Corp.....	89-1777	05/26/89
Katokichi Co., Ltd., Richard R. Kelley, Outrigger Hotels Hawaii.....	89-1792	05/26/89
Wendy's International, Inc., Wendco Northwest Limited Partnership, Wendco Northwest Limited Partnership.....	89-1797	05/26/89
Unity Mutual Life Insurance Company, Progressive Life Insurance Company, Progressive Life Insurance Company.....	89-1809	05/26/89

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay, Contact
Representative, Premerger Notification
Office, Bureau of Competition, Room
303, Federal Trade Commission,
Washington, DC 20580, (202) 326-3100.

By direction of the Commission.

Donald S. Clark,
Secretary.

[FR Doc. 89-13403 Filed 6-5-89; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND
HUMAN SERVICES

Centers for Disease Control

[Program Announcement No. 915]

Implementation of a National
Laboratory Training Network for State
Laboratories

Introduction

The Centers for Disease Control (CDC) announces the availability of funds in Fiscal Year 1989 for cooperative agreements for the implementation of a National Laboratory Training Network for laboratorians.

Authority

This project is authorized by Section 317(k)(3) of the Public Health Service Act, as amended.

Eligible Applicants

Eligible applicants are the Public Health Laboratories of States, the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, The Federated States of Micronesia, Guam, the Northern

Meriana Islands, the Republic of the Marshall Islands, and the Republic of Palau.

Availability of Funds

Approximately \$100,000 will be available to State Public Health Laboratories during FY 1989 to support seven (7) Area Laboratory Training Alliance (ALTA) cooperative agreements for a 12-month budget period within a 5-year project period. It is estimated that \$50,000 will be available for each State Public Health Laboratory in each subsequent year. Continuation awards within the 5-year project period will be made on the basis of satisfactory progress in meeting project objectives and is subject to availability of funds. The funding estimate outlined above may vary and is subject to change.

Under section 317 of the Public Health Service Act as amended, direct assistance may be requested in lieu of cash.

Purpose

This purpose of the cooperative agreement is twofold: (1) To assist State Public Health Laboratories in providing effective coordination of training for the States within their ALTA and, (2) to assist the participation of State Public Health Laboratories in the implementation of a National Laboratory Training Network to increase training opportunities, including HIV/retrovirus testing procedures, for laboratorians.

Program Requirements

A. Recipient Activities

1. Conduct training needs assessments, analyze data, and make recommendations for training to meet needs;
2. Develop and maintain a resource roster of content specialists and training materials;
3. Promote area development of training materials and maintenance of a resource library;
4. Coordinate the area alliance training calendar;
5. Establish a communications network among the States in the area and with the National Laboratory Training Network;
6. Participate in the delivery of laboratory training workshops and seminars;
7. Participate in analyzing the overall effectiveness of the Area Laboratory Training Alliances in meeting the training needs of the Nation's laboratorians.

B. CDC Activities

1. Collaborate with the Area Laboratory Training Alliances in assessing and analyzing laboratory training needs in the States;
2. Provide input for the roster of educational and technical experts who develop and deliver laboratory training;
3. Serve as a collaborator in the design, development, promotion and evaluation of laboratory training materials;
4. Collaborate in development of the Area Laboratory Training Alliance calendars;

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5. Participate in the communications network established for the Area Laboratory Training Alliances;
6. Collaborate in the development and delivery of laboratory training workshops and seminars;
7. Collaborate in analyzing the overall effectiveness of the Area Laboratory Training Alliances.

Evaluation Criteria

The application will be reviewed and evaluated on the following:

- a. That the estimated cost to the Government of the project is reasonable considering the anticipated results;
- b. That project personnel are well qualified by training and/or experience for the support sought, and that the applicant has adequate facilities and manpower;
- c. That insofar as practical, the proposed activities, if well executed, are capable of attaining project objectives; and
- d. That the project objectives are identical with, or are capable of achieving, the specific program objectives defined in the program announcement.

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.283—Centers for Disease Control—Investigations and Technical Assistance.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161-1 (Rev. 3/89) must be submitted to Henry Cassell, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Atlanta, Georgia 30305 on or before July 3, 1989.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

- a. Received on or before the deadline date, or

- b. Sent on or before the deadline date and received in time for submission to the independent review group.

(Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. Late Applications: Applications which do not meet the criteria in 1.a. or b. above are considered late

applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures and an application package may be obtained from Harvey Rowe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Atlanta, Georgia 30305, (404) 842-8797 or FTS 236-8797.

Please refer to Announcement Number 915 "Implementation of a National Laboratory Training Network for State Laboratories" in all requests for information pertaining to this project.

Technical assistance may be obtained from Carl H. Blank, Training Laboratory Program Office, Centers for Disease Control, Atlanta, Georgia 30333 (404) 639-3874 or FTS 236-3874.

Dated: May 31, 1989.

Robert L. Foster,

Acting Director, Office of Program Support, Centers for Disease Control.

[FR Doc. 89-13312 Filed 6-5-89; 8:45 am]

BILLING CODE 4160-10-M

Food and Drug Administration

[Docket No. 89F-0171]

E.I. du Pont de Nemours & Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that E.I. du Pont de Nemours and Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of poly(p-phenyleneterephthalamide) resins, to which have been added optional adjuvant substances required in their preparation. The resins are intended to produce articles for repeated use in processing and handling food.

FOR FURTHER INFORMATION CONTACT: Rudolph Harris, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4101) has been filed by E.I. du Pont de Nemours and Co., 1007 Market St., Wilmington, DE 19898, proposing that the food additive

regulations be amended to provide for the safe use of poly(p-phenyleneterephthalamide) resins. The resins are intended to produce articles for repeated use in processing and handling food and in their preparation and finishing may include optional adjuvant substances:

Diundecylphthalate
Mono- and di-potassium salts of lauryl phosphate
o-Phenylphenol
Poly(oxyethylene/oxypropylene)monobutylether
Polyethyleneglycol mono(nonylphenyl)ether
Polyvinylmethylether
Polyoxyethylene sorbitol monolaurate tetraoleate
Polyoxyethylene sorbitol hexaoleate
4,4'-Butylidenebis(6-tert-butyl-m-cresol)

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated: May 26, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-13341 Filed 6-5-89; 8:45 am]

BILLING CODE 4160-01-M

[Docket No. 89N-0190]

Drug Export; Pseudoephedrine Hydrochloride Controlled Release Capsules, 240 mg

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that KV Pharmaceutical Co. has filed an application requesting approval for the export of the human drug Pseudoephedrine Hydrochloride Controlled Release Capsules, 240 mg, to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act

of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Mary F. Cooper, Division of Drug Labeling Compliance (HFD-313), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8073.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the *Federal Register* within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that KV Pharmaceutical Co., 2503 South Hanley Rd., St. Louis, MO 63144, has filed an application requesting approval for the export of the drug Pseudoephedrine Hydrochloride Controlled Release Capsules, 240 mg, to Canada. This product is used for the temporary relief of nasal congestion due to the common cold, hay fever, or other upper respiratory allergies, and nasal congestion associated with sinusitis. This product also promotes nasal and/or sinus drainage. The application was received and filed in the center for Drug Evaluation and Research on May 19, 1989, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by June 16, 1989, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate

consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: May 26, 1989.

Daniel L. Michels,

Director, Office of Compliance, Center for Drug Evaluation and Research.

[FR Doc. 89-13342 Filed 6-5-89; 8:45 am]

BILLING CODE 4160-01-M

Consumer Participation; Open Meetings

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the following district consumer meetings:

Boston District Office: Chaired by Edward J. McDonnell, District Director. The topic to be discussed is "Combating Medical Quackery: Health Professionals' Responsibility."

DATE: Monday, June 12, 1989, 8:30 a.m. to 3:30 p.m.

ADDRESS: Ray Conference Center, Butler Hospital, 345 Blackstone Blvd., Providence, RI 02906.

FOR FURTHER INFORMATION CONTACT: Paula B. Fairfield, Consumer Affairs Officer, Food and Drug Administration, One Montvale Ave., Fourth Floor, Stoneham, MA 02180, 617-279-1479.

Boston District Office: Chaired by Edward J. McDonnell, District Director. The topics to be discussed are current food labeling issues and the Boston District Health Fraud Survey.

DATE: Friday June 23, 1989, 10 a.m. to 12 m.

ADDRESS: Lecture Rm. B, Science Bldg., Cape Cod Community College, West Barnstable, MA 02668.

FOR FURTHER INFORMATION CONTACT: Paula B. Fairfield, Consumer Affairs Officer, Food and Drug Administration, One Montvale Ave., Fourth Floor, Stoneham, MA 02180.

SUPPLEMENTARY INFORMATION:

The purpose of these meetings is to educate and inform the public on matters pertaining to consumer fraud and quackery, to enhance relationships between local consumers and FDA's District Offices, and to contribute to the agency's consumer education programs.

Dated: May 31, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-13350 Filed 6-5-89; 8:45 am]

BILLING CODE 4160-01-M

Health Care Financing Administration

Statement of Organization, Functions, and Delegations of Authority

Part F. of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services, Health Care Financing Administration (HCFA), (*Federal Register*, Vol. 53, No. 146, pg. 28702, dated Friday, July 29, 1988, *Federal Register*, Vol. 52, No. 155, pg. 29889 and 29890, dated Wednesday, August 12, 1987), is amended to indicate organizational changes within the Office of the Actuary, Office of the Associate Administrator for Management. Changes are made to the Office of Medicare Cost Estimates' functional statement to include the responsibility for preparing cost estimates for the Catastrophic Drug Insurance program. A new division, the Division of Catastrophic Drug Insurance, is added to concentrate on the catastrophic program. The Office of Medicaid Cost Estimates and the Division of Medicaid Cost Estimates are replaced by a single Office of Medicaid Cost Estimates. Functional statements for the two divisions in the Office of national Cost Estimates are revised to remove references regarding health insurance survey activities. A new division with responsibility for conducting industry and population surveys to measure health insurance coverage and use of health care services is established. The title of the new division is the Division of Survey Studies.

The specific amendments to Part F. are described below:

- Section FH.20.B.1., Office of Medicare Cost Estimate (FHG1), is deleted and replaced by a revised functional statement, and a new section FH.20.B.1.c., Division of Catastrophic Drug Insurance (FHG13), is added.

1. Office of Medicare Cost Estimates (FHG1)

Evaluates the operations of the Medicare trust funds particularly relating to outlays and program solvency. Prepares cost estimates for the Hospital Insurance program, the Supplementary Medical Insurance program, and the Catastrophic Drug Insurance program for use in the

President's budget. Develops such variables as the Part B and prescription drug premium rates, the inpatient and outpatient prescription drug deductibles, the Part A premium rate for voluntary enrollees, and the physicians' economic index applicable to prevailing fees. Develops the payment rates for the annual update of the adjusted average per capita cost ratebook, which is used to pay health maintenance organizations that enter into a risk contract with HCFA to provide benefits to Medicare enrollees. Provides estimates and computations of the impact program benefits and financing modifications have on contractor workload. Serves as technical consultants throughout the Government on Medicare cost estimate issues.

c. Division of Catastrophic Drug Insurance (FHG13)

Evaluates the operations of the Medicare Catastrophic Drug Insurance trust fund concerning outlays and program solvency. Prepares cost estimates for the Catastrophic Drug Insurance (CDI) program for use in the President's budget. Develops such variables as the prescription drug monthly premium and the outpatient prescription drug deductible. Provides estimates and computations of the impact program benefits and financing modifications have on contractor workload. Serves as technical consultants throughout the Government on Medicare CDI cost estimate issues.

• Section FH.20.B.2., Office of Medicaid Cost Estimates (FHG2), and section FH.20.B.2.a., the Division of Medicaid Cost Estimates (FHG21), are deleted in their entirety and replaced by a new section FH.20.B.2., Office of Medicaid Cost Estimates (FHG2) which reads:

2. Office of Medicaid Cost Estimates (FHG2)

Provides cost estimates for the Medicaid program, including the development of cost estimates for proposed changes in Medicaid or in programs affecting Medicaid, and overall Medicaid program costs for years after the current budget year. Develops forecasts of Medicaid expenditures for incorporation into the HCFA budget development process. Studies approaches and research techniques to assist in the development of program forecasts. Provides actuarial consultation to other components of HCFA concerning various proposals and programs affecting the future of the Medicaid program. Provides Government-wide actuarial consultation on issues such as Acquired

Immunodeficiency Syndrome (AIDS). Serves as technical consultants throughout the Government on Medicaid cost estimate issues.

• Section FH.20.B.3.a., Division of Economic and Actuarial Analysis (FHG34), is revised to read:

a. Division of Economic and Actuarial Analysis (FHG34)

Conducts economic and actuarial analysis, constructs economic and actuarial models, and reports and interprets national trends in health expenditures. Analyzes and estimates national and regional health care use and expenditures, preparation of health indicators, and development of benchmark issues. Provides analysis of historical experience, creates forecasts of future trends, and explains the underlying causes and forces shaping the size and distribution of United States health expenditures. Explains how past policies have shaped the size and distribution of health spending and how various policy instruments and health sector changes can be expected to influence the size and shape of future health expenditures. Creates a variety of econometric and actuarial models to measure differences in expenditure trends for types of services, e.g., hospitals, physicians, etc., and sources of payment, e.g., public programs, private health insurance, and out-of-pocket.

• Section FH.20.B.3.b., Division of Statistical Analysis (FHG35), is revised to read:

b. Division of Statistical Analysis (FHG35)

Develops and applies statistical methods, models, and techniques used in the analysis of health expenditures, health projections, hospital prospective payments, and other Office initiatives, such as projections of health care expenditures, estimates of health spending differences by age, analysis in support of the Prospective Payment System, and other regulatory processes, and estimation and forecasting of provider market basket input price indices. Designs statistical data bases and statistical software systems to access, retrieve, and process needed data to support cross-sectional analyses, time series analyses, forecasting, and projections. Creates and applies statistical models and methods needed for economic and actuarial studies of hospital case-mix, hospital reimbursement distributional impacts, health expenditure projections, national health accounts, hospital market baskets, private health insurance, and other Office initiatives, as needed.

• Section FH.20.B.3., Office of National Cost Estimates (FHG3), is amended by adding a new section FH.20.B.3.c., Division of Survey Studies (FHG36), which reads:

c. Division of Survey Studies (FHG36)

Conducts industry and population surveys to measure health insurance coverage and use of health care services. Conducts demographic surveys of populations, both insured and uninsured, for health-related issues, acquisition and analysis of other health surveys, comparison of relevant survey data to National Health Expenditure (NHE) levels, evaluation of NHE benchmark issues, and development of alternative estimates of NHE. Analyzes, interprets, and reports results to policymakers and the public that explain the effects of current policies on health consumer and private insurer behavior and the expected outcomes from changes in current policies. Acquires and analyzes external surveys of health services use and insurance coverage as bases for comparison, and to feed into ongoing Office analyses of health expenditures, e.g., by age, by State, etc. Develops instruments to measure the current enrollment, coverage, and financial experience of the private health insurance industry and links current experience with historical survey results, creating a time series showing the evolution of private insurance coverage and its influence on national health expenditure trends. Conducts surveys and acquires external survey results as needed to support Office initiatives.

Louis B. Hays,

Acting Administrator.

Date: May 19, 1989.

[FR Doc. 89-13302 Filed 6-5-89; 8:45 am]

BILLING CODE 4120-01-M

Health Resources and Services Administration

Application Announcement for Nursing Post-baccalaureate Faculty Fellowship Grants (Second Cycle)

The Health Resources and Services Administration announces the acceptance of applications for a second Fiscal Year 1989 grant cycle and invites comments on the expansion of study areas to be included under eligibility criteria for Post-baccalaureate Faculty Fellowship Grants, authorized by section 830(b) of the Public Health Service Act, as amended.

Approximately \$1,076,000 is available for the Fiscal Year 1989 grant cycle.

Applications submitted for the first grant cycle will be considered before those submitted for the second grant cycle. Thirty-three (33) applications were submitted for the first grant cycle requesting approximately \$400,000. It is expected that a total of 134 awards averaging \$8,000 each will be made for Fiscal Year 1989.

Purpose

Section 830(b) of the Public Health Service Act, as amended, authorizes grants to public or private nonprofit schools of nursing to cover the costs of post-baccalaureate faculty fellowships to enable faculty to carry out studies in areas specified by the legislation or by the Secretary, Department of Health and Human Services.

Applicants

Public or private nonprofit schools of nursing are eligible to apply for grants to cover the cost of tuition and fees for faculty members who would qualify for a post-baccalaureate faculty fellowship. Stipends also may be requested for periods of full-time study. A school may request fellowship support for more than one faculty member.

Faculty Eligibility

To qualify for a fellowship, a faculty member must:

- (1) Hold a baccalaureate degree.
- (2) Be employed by the applicant institution as a faculty member during the period of the awarded fellowship.
- (3) Be enrolled in a master's program in nursing or in a doctoral program which requires a substantial study, master's thesis or doctoral dissertation, and anticipate meeting master's or doctoral degree requirements by August 31, 1990 or sooner.
- (4) Undertake a reported study, thesis or dissertation focusing on:
 - a. An investigation of cost-effective alternatives to traditional health care modalities, with special attention to the needs of at-risk populations, such as the elderly, premature infants, physically and mentally disabled individuals, and ethnic and minority groups; or
 - b. The examination of nursing interventions that result in positive outcomes in health status, with attention to interventions which addresses family violence, drug and alcohol abuse, the health of women, adolescent care, and disease prevention; or
 - c. Factors within the practice setting associated with retention of nursing personnel; or
 - d. Acute and long-term nursing care of patients with infectious diseases, particularly illness caused by the human immunodeficiency virus (HIV); or

e. Issues in nursing education including recruitment, retention and graduation of students; quality of clinical education; and innovative teaching/learning strategies with special attention to the needs of disadvantaged students; or

f. Issues in nursing administration which focus on quality assurance and cost effective nursing services.

(5) Be licensed to practice as a registered nurse in a State.

The foci of studies have been expanded by the Secretary to include items 4(e) and (f) dealing with nursing education and nursing administration because these two areas are basic to nursing practice and improved health care delivery. Interested parties are invited to comment on items 4(e) and (f). Normally the comment period would be 60 days but due to the need to implement any changes for the Fiscal Year 1989 award cycle, this comment period has been reduced to 30 days. All comments received on or before July 6, 1989, will be considered before faculty eligibility will be expanded to include the two new study areas. No funds will be allocated or final selections made until a final notice is published stating whether the expanded study areas will apply.

Written comments should be addressed to: Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C-26, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying in the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Review

In determining the funding of approved applications, the Secretary will consider:

- (a) The degree to which the faculty member's study, thesis, or dissertation addresses the criteria set forth in paragraph (4) under "faculty eligibility", and
- (b) The below-described funding preference.

Funding Preference

A funding preference was published for public comment and implemented in Fiscal Years 1987 and 1988. This preference states that schools which have been successful in recruiting or retaining minority faculty will be given a funding preference. The Department is extending this preference for Fiscal Year

1989. All eligible applications, however, will be reviewed and given consideration for funding. The Department believes that continued efforts must be made to increase the number of minority faculty and students in schools of nursing.

Application Deadline

To receive consideration applications must meet the deadline of June 30, 1989. Applications shall be considered as meeting the deadline if they are either:

- (1) Received on or before the deadline, or
- (2) Postmarked on or before the deadline date, and received in time for submission for review. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

The standard application form and general instructions, Form PHS 6025-1 HRSA Competing Training Grant Application and supplement for this program have been approved by the Office of Management and Budget.

The OMB Clearance number is 0915-0060.

Requests for application materials should be directed to: Grants Management Officer (A-23), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8C-22, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-6915.

Completed applications should be mailed to the Grants Management Officer at the above address.

For technical assistance and other information regarding this program, contact: The Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 5C-26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443-5763.

This program is listed at 13.147 in the "Catalog of Federal Domestic Assistance" and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: April 19, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-13299 Filed 6-5-89; 8:45 am]

BILLING CODE 4160-15-M

Public Health Service**Health Resources and Services Administration; Nurse Training Delegation of Authority**

Notice is hereby given that in furtherance of the delegation of authority of March 24, 1989, from the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration, the Administrator has redelegated all of the authorities vested in the Administrator under Title VIII of the Public Health Service Act (42 U.S.C. 296 *et seq.*), as amended, pertaining to nurse training, to the Bureau Directors of the Health Resources and Services Administration, as follows:

1. To the Director, Bureau of Health Professions, subject to section 856, all of the authorities delegated under Title VIII of the Public Health Service Act, as amended, excluding the authorities delegated to the Director, Bureau of Maternal and Child Health and Resources Development, and the Director, Bureau of Health Care Delivery and Assistance.

2. To the Director, Bureau of Maternal and Child Health and Resources Development, all of the authorities delegated under section 858 of Title VIII of the Public Health Service Act, as amended, pertaining to recovery for construction.

3. To the Director, Bureau of Health Care Delivery and Assistance, all of the authorities under section 836(h) of the Public Health Service Act, as amended, pertaining to the nursing loan repayment program.

The delegation excluded the authority under section 851 to establish and to select members to the National Advisory Council on Nurse Training, promulgate regulations, establish advisory committees and councils, and select members to advisory councils.

Exercise of these authorities is subject to Health and Human Services policy and requirements for administering section 855 of the Public Health Service Act relating to the prohibition against discrimination by schools on the basis of sex.

Redelegation

These authorities may be redelegated.

Prior Delegations

Provision was made for all previous delegations and redelegations to continue in effect, provided they were consistent with this delegation.

Effective Date

This delegation was effective on May 24, 1989.

John H. Kelso,
Acting Administrator.

Date: May 24, 1989.

[FR Doc. 89-13338 Filed 6-5-89; 8:45 am]

BILLING CODE 4160-15-M

Health Resources and Services Administration; Delegation of Authority to the Director, Bureau of Health Professions

Notice is hereby given that in furtherance of the delegation of authority of April 28, 1989, from the Assistant Secretary for Health to the Administrator, Health Resources and Services Administration, the Administrator has redelegated to the Director, Bureau of Health Professions, the authorities delegated to him under section 254 of Pub. L. 100-607, as amended hereafter, pertaining to continuing education for providers of health care to Acquired Immune Deficiency Syndrome (AIDS) patients. The delegation excluded the authorities to issue regulations, submit reports to Congress or a congressional committee, or appoint members to an advisory committee.

Redelegation

This authority may be redelegated.

Effective Date

This delegation became effective on May 24, 1989.

John H. Kelso,
Acting Administrator.

Date: May 24, 1989.

[FR Doc. 89-13339 Filed 6-5-89; 8:45 am]

BILLING CODE 4160-15-M

Social Security Administration**Disability Advisory Committee; Meeting**

AGENCY: Social Security Administration, HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act (Pub. L. 92-463), this notice announces the schedule and proposed agenda of a forthcoming meeting of the Disability Advisory Committee (the Committee).

DATES: June 21, 1989, 8:30 a.m. to 6:00 p.m.; June 22, 1989, 8:00 a.m. to 6:00 p.m.

ADDRESS: Hubert H. Humphrey Building, Humphrey Auditorium, 200 Independence Avenue SW., Washington, DC 20201.

Agenda: Review materials and formulate recommendations.

The Committee may hold additional sessions during the evenings of June 21 and/or June 22, 1989. If the Committee decides to hold these evening sessions, the Committee will make an announcement during the regularly scheduled sessions.

FOR FURTHER INFORMATION CONTACT:

Jean H. Hinckley, Executive Director, Disability Advisory Committee, P.O. Box 17064, Baltimore, Maryland 21235, (301) 965-4646.

SUPPLEMENTARY INFORMATION: The Committee is established under and governed by the provisions of section 1114 of the Social Security Act, as amended, and the provisions of the Federal Advisory Committee Act, as amended, (Pub. L. 92-463). The Committee is chaired by Dr. John E. Affeldt.

The purposes of the Committee are to study the Social Security administrative review process (known as the "appeals process") to ensure that the process protects the rights of the claimants, produces accurate and swift decisions, and is viewed as fair and equitable; receive and consider public views on reform of the process; and make a report and recommendations to the Commissioner of Social Security (the Commissioner).

The Committee is scheduling this meeting to further review and discuss the oral and written comments received pursuant to two public meetings held in March 1989 (announced February 21, 1989 at 54 FR 7477). During the review and discussion, the Committee will identify the issues and proposals and formulate recommendations for inclusion in its report to the Commissioner.

This meeting is open to the public to the extent space is available.

A transcript of the Committee meeting is available to the public on an at-cost-of duplication basis. The transcript will become part of the record of these proceedings.

Dated: May 30, 1989.

Jean H. Hinckley,
Executive Director, Disability Advisory Committee.

[FR Doc. 89-13349 Filed 6-5-89; 8:45 am]

BILLING CODE 4160-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. N-89-1998]

Submission of Proposed Information Collection to the Office of Management and Budget

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESS: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Jon Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and

Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755-6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an

information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: May 24, 1989.

John T. Murphy,

Director, Information Policy and Management Division.

Proposal: Survey of Mortgage Lending Activity

Office: Administration

Description of the Need for the Information and Its Proposed Use: This form is used to obtain information on developments in the mortgage market. It is used to monitor such developments and provide statistical data to Federal, State, and non-governmental entities.

Form Number: HUD-136

Respondents: State or Local Governments, Businesses or Other For-Profit, and Federal Agencies or Employees

Frequency of Submission: Monthly
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Survey	3,771		12		.67		30,319

Total Estimated Burden Hours: 30,319
Status: Extension

Contact: John N. Dickie, (202) 755-7270, John Allison, OMB, (202) 395-6880.

Date: May 24, 1989.

[FR Doc. 89-13314 Filed 6-5-89; 8:45 am]

BILLING CODE 4210-01-M

[Docket No. N-89-1917; FR-2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: June 6, 1989.

ADDRESS: For further information, contact Morris Bourne, Department of

Housing and Urban Development, Room 9140, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 21, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, D.C.D.C. No. 88-2503-OC, HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Date: May 31, 1989.

James E. Schoenberger,

General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89-13313 Filed 6-5-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR**Office of the Secretary****Privacy Act of 1974; Revision of Systems of Records**

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is revising two notices describing systems of records maintained by the Office of Surface Mining Reclamation and Enforcement (OSMRE). Except as noted below, all changes being published are editorial in nature, and reflect organizational changes and other minor administrative revisions which have occurred since the previous publication of the material in the *Federal Register*. The two revised notices, which are published in their entirety below, are:

1. Personnel Security Files—Interior, OSMRE-7 (formerly OSM-7), which was previously published in the *Federal Register* on March 31, 1978 (43 FR 13644).

2. Employment and Financial Interests Statements—States and other Federal agencies—Interior, OSMRE-8 (formerly OSM-8), which was previously published in the *Federal Register* on March 14, 1978 (43 FR 10640).

In both notices, the existing routine disclosure statement for litigation purposes is revised to incorporate the clarification on such disclosures prescribed by the Office of Management and Budget in its supplementary guidelines dated May 24, 1985, for implementing the Privacy Act. Also, in both notices the retention and disposal statements are amended to conform to guidelines issued by the Assistant Archivist for Records Administration, National Archives and Records Administration, in his memorandum to Agency Records Officers dated June 11, 1985.

Since these changes do not involve any new or intended use of the information in the systems of records, the notices shall be effective on June 6, 1989. Additional information regarding these revisions may be obtained from the Privacy Act Officer, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue NW., Washington, DC 20240, Telephone: 202-343-4293.

David R. DeAngelis,
Acting Director, Office of Management Improvement.

Date: May 30, 1989.

INTERIOR/OSMRE-7

SYSTEM NAME:

Personnel Security Files—Interior, OSMRE-7.

SYSTEM LOCATION:

U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSMRE), 1100 L Street, NW., Room 5415L, Washington, DC 20005. Mailing address: 1951 Constitution Ave., NW., Room 5415L, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

OSMRE personnel who have been investigated under E.O. 10450 for suitability and/or security considerations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains records concerning employees, including personal data submitted by the individual, information developed by investigatory authorities, and records of the requirement, basis, degree and data of clearances. Contains

a security briefing statement signed by the employee.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Executive Order 10450, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary use of the records is to identify OSM personnel who have security clearances and their degree of clearance. Disclosures outside the Department of the Interior may be made (1) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (2) to Federal, State or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or issuance of a security clearance, contract, license, grant or other benefit; (3) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (4) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies, responsible for investigating or prosecuting the violation or for enforcing or implementing the statute, rule, regulation, order or license.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in manual form in file folders.

RETRIEVABILITY:

Indexed by name.

SAFEGUARDS:

Maintained in a safe having a three-position dial-type, manipulation proof, combination lock, in the same manner as defense classified material.

RETENTION AND DISPOSAL:

Maintained in accordance with General Records Schedule 18, Item 23.

Destroyed by fire, shredder, disintegrator or pulverizer.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Personnel, Office of Surface Mining Reclamation and Enforcement, 1100 L Street NW., Room 5415L, Washington, DC 20005. Mailing address: 1951 Constitution Ave., Room 5415L, Washington, DC 20240.

NOTIFICATION PROCEDURE:

A written and signed request to the System Manager stating that the requester seeks information concerning record pertaining to him. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access shall be addressed to the System Manager. The request must be in writing and signed by the requester. See 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager. See 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained and investigations conducted by Federal, State or local agencies or other pertinent authorities.

INTERIOR/OSMRE-8

SYSTEM NAME:

Employment and Financial Interests Statements—States and other Federal agencies—Interior, OSMRE-8

SYSTEM LOCATION:

U.S. Department of the Interior, Office of Surface Mining Reclamation and Enforcement (OSMRE), 1100 L Street, NW., Room 5415L, Washington, DC 20005. Mailing address: 1951 Constitution Ave., NW., Room 5415L, Washington, DC 20240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

1. The head of each State regulatory authority who is required to file a financial statement with the Director of the Office of Surface Mining Reclamation and Enforcement by 30 CFR 705.15; 2. Federal employees, other than Interior Department employees, who are required to file a financial interest statement by 30 CFR 706.11(b) and who file with the Director of the Office of Surface Mining Reclamation and Enforcement in accordance with 30 CFR 706.15(c); and 3. State employees, and Federal employees other than Interior Department employees, whose financial interest statements are referred to the Department of the

Interior in accordance with 30 CFR 705.19(a)(3) or 30 CFR 706.19(c).

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains Statements of Employment and Financial Interests forms for State employees (form OSMRE-23), and for Federal employees (form DI-212A) and similar forms used by Federal agencies other than the Department of the Interior. Also contains records of decisions, analysis of financial holdings, employee statements, pertinent comments from supervisors, heads of bureaus or offices, and the Solicitor's Office, and related records needed for processing.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 201(c) and (f) and 517(g) of Pub. L. 95-87.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) to review employee financial interests and determine employee compliance or non-compliance with the applicable statute and regulations; (b) to record the fact that the employee has been made aware of specifically directed legislation or regulations covering his organization and duties and that he or she is in compliance with such specific legislation or regulations; and (c) to provide an adequate system of records for auditors performing compliance audits. Disclosures outside the Department of the Interior may be made: (1) To the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (2) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, or local agencies responsible for investigating or prosecuting the violation or, (3) to a Congressional office from the record of an individual in response to an inquiry made at the request of that individual, (4) to Federal, State or local agencies where necessary to obtain information

relevant to resolving prohibited financial interest situations or to litigation which may affect the hiring or retention of an employee.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders;

RETRIEVABILITY:

Filed alphabetically by employee name;

SAFEGUARDS:

Maintained in locked file cabinet in a locked office;

RETENTION AND DISPOSAL:

Records filed with the Department by regulation will be destroyed six years after receipt unless needed in an ongoing investigation (General Records Schedule 1, Item 25). Records referred to the Department will be returned to the referring agency for disposal in accordance with that agency's disposal policy.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Division of Personnel, Office of Surface Mining Reclamation and Enforcement, 1100 L Street, NW., Room 5415L, Washington, DC 20005. Mailing address: 1951 Constitution Ave., NW., Room 5415L, Washington, DC 20240.

NOTIFICATION PROCEDURE:

Inquiries may be addressed to the System Manager as indicated above. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager for information regarding the entire system or for specific information about a State or Federal office system. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment shall be addressed to the System Manager and must meet the requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Present or past Federal or State employees required to file Employment and Financial Interests Statements.

[FR Doc. 89-13311 Filed 6-5-89; 8:45 am]

BILLING CODE 4310-05

Minerals Management Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau Clearance Officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau Clearance Officer, Minerals Management Service, Mail Stop 632, 381 Elden Street, Herndon, Virginia 22070-4817 and to the Office of Management and Budget Interior Department Desk Officer, Paperwork Reduction Project (1010-XXXX), Washington, DC 20503, telephone (202) 395-7340, with copies to Gerald D. Rhodes; Chief, Branch of Rules, Orders, and Standards; Offshore Rules and Operations Division; Mail Stop 646; Minerals Management Service; 381 Elden Street; Herndon, Virginia 22070-4817.Q02

Title: MONTCAR Coast Data Acquisition

OMB Approval Number: 1010-XXXX

Abstract: This information will be used to assess the validity and consistency of cost data currently used as well as to develop new data to be used to determine fair market value in the Outer Continental Shelf (OCS).

Bureau Form Number: Forms MMS-370, 371, 372, 373, 374, 375, 376, 377, and 378.

Frequency: On occasion
Description of Respondents: Federal OCS oil and gas lessees
Estimated Completion Time: 8.5 hours
Annual Responses: 176

Annual Burden Hours: 1,500
Bureau Clearance Officer: Dorothy Christopher, (703) 787-1239.

Date: April 5, 1989.

Wm. D. Bettenberg,
Associate Director for Offshore Minerals Management.

[FR Doc. 89-13364 Filed 6-5-89; 8:45 am]

BILLING CODE 4310-MR-M

National Park Service**Cape Krusenstern National Monument Subsistence Resource Commission; Meeting**

AGENCY: National Park Service, Interior.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Superintendent of the Northwest Alaska Areas and the Chairman of Cape Krusenstern National Monument Subsistence Resource Commission announce a forthcoming meeting of the Cape Krusenstern National Monument Subsistence Resource Commission.

The following agenda topics will be discussed:

- (1) Introduction of new members and election of chairman
- (2) Introduction of guests
- (3) Report on statewide chairman's meeting in Fairbanks (November 1988)
- (4) Review of minutes from last meeting
- (5) Update of research and activities in Cape Krusenstern National Monument
- (6) Recent court rulings on Subsistence Activities and possible effects on NW. Alaska
- (7) Subsistence Hunting Plan
- (a) Review of Past recommendations
- (b) Work on Hunting Plan and new recommendations
- (c) Commission recommendations for future research and information needs
- (8) Old and New Business

DATES: The meeting will begin at 9:00 a.m., June 22, 1989, and will conclude the afternoon of June 23, 1989.

ADDRESS: The meeting will be held at: Northwest Arctic Borough Conference Room, Kotzebue, Alaska 99752.

FOR FURTHER INFORMATION CONTACT: Dave Mills, Management Assistant, National Park Service, P.O. Box 1029, Kotzebue, AK 99752, (907) 442-3890.

SUPPLEMENTARY INFORMATION: The Cape Krusenstern National Monument Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487, and operates in accordance with the provisions of the Federal Advisory Committee Act.

Richard J. Stenmark,
Acting Regional Director.

[FR Doc. 89-13394 Filed 6-5-89; 8:45 am]

BILLING CODE 4310-70-M

Kobuk Valley National Park Subsistence Resource Commission; Meeting

AGENCY: National Park Service.

ACTION: Subsistence Resource Commission Meeting.

SUMMARY: The Superintendent of the Northwest Alaska Areas and the Chairman of Kobuk Valley National Park Subsistence Resource Commission announce a forthcoming meeting of the Kobuk Valley National Park Subsistence Resource Commission.

The following agenda items will be discussed:

- (1) Election of chairman and introduction of new members.
- (2) Introduction of guests.
- (3) Review of minutes from last meeting.
- (4) Report on chairman's meeting in Fairbanks (November 1988).
- (5) Update on research and activities in Kobuk Valley National Park.
- (6) Recent court rulings on subsistence and possible effects on NW Alaska.
- (7) Subsistence Hunting Plan.
- (a) Review of past recommendations.
- (b) Work on Hunting Plan and new recommendations.
- (c) Commission recommendations for future research and information needs.
- (8) Old and New Business.

DATE: The meeting will begin at 9:00 a.m., June 20, 1989 and will conclude the afternoon of June 21, 1989.

ADDRESS: The meeting will be held at: NW Arctic Borough Conference Room, Kotzebue, Alaska.

FOR FURTHER INFORMATION CONTACT: Dave Mills, Management Assistant, National Park Service, P.O. Box 1029, Kotzebue, AK 99752, (907) 442-3890.

SUPPLEMENTARY INFORMATION: The Kobuk Valley National Park Subsistence Resource Commission is authorized under Title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96-487, and operates in accordance with the provision of the Federal Advisory Committee Act.

Richard J. Stenmark,
Acting Regional Director.

[FR Doc. 89-13395 Filed 6-5-89; 8:45 am]

BILLING CODE 4310-70-M

National Capital Memorial Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National

Capital Memorial Commission will be held on Tuesday, June 20, at 1:30 p.m., in the Executive Conference Room at the National Capital Planning Commission, 1325 G Street, NW., Washington, DC.

The Commission was established by Pub. L. 99-652, for the purpose of advising the Secretary of the Interior or the Administrator of the General Services Administration, depending on which agency has jurisdiction over the lands involved in the matter, on policy and procedures for establishment of (and proposals to establish) commemorative works in the District of Columbia or its environs, as well as such other matters concerning commemorative works in the Nation's Capital as it may deem appropriate. The Commission evaluates each memorial proposal and makes recommendations to the Secretary or the Administrator with respect to appropriateness, site location and design, and serves as an information focal point for those seeking to erect memorials on Federal land in Washington, DC, or its environs.

The members of the Commission are as follows:

- James Ridenour, Chairman, Director, National Park Service, Washington, DC.
 - George M. White, Architect of the Capitol, Washington, DC.
 - Honorable Andrew J. Goodpaster, Chairman, American Battle Monuments Commission, Washington, DC.
 - J. Carter Brown, Chairman, Commission of Fine Arts, Washington, DC.
 - Glen Urquhart, Chairman, National Capital Planning Commission, Washington, DC.
 - Honorable Marion S. Barry, Jr., Mayor of the District of Columbia, Washington, DC.
 - John Alderson, Administrator, General Services Administration, Washington, DC.
 - Honorable Frank Carlucci, Secretary of Defense, Washington, DC.
- The purpose of the meeting will be to review and take action on the following:
- I. Review Korean War Memorial design competition selection.
 - II. Review Law Enforcement Heroes design.
 - III. Review Design Competition Criteria for the Peace Garden.
 - IV. Old Business.
 - V. New Business.

Dated: May 25, 1989.

Ronald N. Wrye,
Acting Regional Director, National Capital Region.

[FR Doc. 89-13393 Filed 6-5-89; 8:45 am]

BILLING CODE 4310-70-M

Santa Fe National Historic Trail Advisory Council; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Pub. L. 92-463, that a meeting of the Santa Fe National Historic Trail Advisory Council will be held at 8:30 a.m., m.d.s.t. on June 21 and 22, 1989, in the Sandia Room at the Howard Johnson Plaza Hotel, 4048 Cerrillos Road, Santa Fe, New Mexico.

The Santa Fe, National Historic Trail Advisory Council was established pursuant to Pub. L. 90-543 establishing the Santa Fe National Historic Trail to advise the National Park Service on such issues as preservation of trail routes and features, public use, standards for posting and maintaining trail markers, as well as administrative matters.

The members of the Santa Fe National Historic Trail Advisory Council are:

- Dr. David A. Sandoval, Pueblo, Colorado
- William deBuys, Santa Fe, New Mexico
- Pauline Fowler, Independence, Missouri
- Dr. Virginia L.S. Fisher, Arrow Rock, Missouri
- Joseph W. Snell, Topeka, Kansas
- Dr. Constance Ramirez, Arlington, Virginia
- Karen McClure, Springer, New Mexico
- David Jolly, Albuquerque, New Mexico
- Mrs. Greer Garson Fogelson, Dallas, Texas
- Mark L. Gardner, Trinidad, Colorado
- Don Berg, Trinidad, Colorado
- Ellis Freeny, Oklahoma City, Oklahoma
- Daniel T. Kipp, Colorado Springs, Colorado
- Dr. Timothy Zwink, Alva, Oklahoma
- Mrs. Jane Mallinson, Independence, Missouri
- Edward B. Boyd, Larned, Kansas
- Ramon Powers, Topeka, Kansas
- Dr. Michael A. Olsen, Las Vegas, New Mexico
- J. Richard Salazar, Fairview, New Mexico
- William Aull, Lexington, Missouri
- Marvin B. Spears, Raton, New Mexico
- Helen Judd, Council Grove, Kansas
- Stanley Hordes, Santa Fe, New Mexico
- Dr. George C. Stone, Lyons, Kansas
- Dr. Stanley B. Kimball, Florissant, Missouri
- Jack Earl Sewell, Clayton, New Mexico
- Dan Sharp, Boise City, Oklahoma
- Malcolm Disimone, Dallas, Texas
- Edmundo R. Delgado, Santa Fe, New Mexico
- Joy L. Poole, Farmington, New Mexico
- Robert Carr Vincent, Boise City, Oklahoma
- John E. Cook, Santa Fe, New Mexico

The matters to be discussed include:
—Draft Comprehensive Management and Use Plan and Environmental Assessment.

—Results of the public and agency comments on the Plan.

—Implementation of the Plan.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with David Gaines, Project Coordinator.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact David Gaines, Project Coordinator, Santa Fe, National Historic Trail, P.O. Box 728, Santa Fe, New Mexico 87504-0728, telephone 505/988-6779. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of the Project Coordinator, located in Room 346, Pinon Building, 1220 South St. Francis Drive, Santa Fe, New Mexico.

Dated: May 25, 1989.

Richard Marks,

Acting Regional Director, Southwest Region.

[FR Doc. 89-13392 Filed 6-5-89; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before May 27, 1989. Pursuant to § 60.13 of 38 CFR Part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by June 21, 1989.

Carol D. Shull,

Chief of Registration, National Register.

MARYLAND**Charles County**

Widow's Pleasure, Piney Church Rd., Waldorf vicinity, 89000664

MASSACHUSETTS**Middlesex County**

- Ayer, Albert, House (Winchester MRA)*, 8 Brooks St., Winchester, 89000635
- Ayer, Thomas, House (Winchester MRA)*, 8 Grove St., Winchester, 89000630
- Bacon, Robert, House (Winchester MRA)*, 8 Mystic Valley Pkwy., Winchester, 89000611

- Baker, Kenelum, House (Winchester MRA)*, 4 Norwood St., Winchester, 89000632
- Beacon Street Tomb (Wakefield MRA)*, Beacon St., Wakefield, 89000714
- Beebe Homestead (Wakefield MRA)*, 142 Main St., Wakefield, 89000667
- Boardman, E., House (Wakefield MRA)*, 34 Salem St., Wakefield, 89000686
- Boit, Elizabeth, House (Wakefield MRA)*, 127 Chestnut St., Wakefield, 89000720
- Brackett, Edward A., House (Winchester MRA)*, 290 Highland Ave., Winchester, 89000626
- Braddock, Edward, House (Winchester MRA)*, 112 Highland Ave., Winchester, 89000651
- Brine, George, House (Winchester MRA)*, 219 Washington St., Winchester, 89000638
- Building at 35-37 Richardson Avenue (Wakefield MRA)*, 35-37 Richardson Ave., Wakefield, 89000710
- Building at 38-48 Richardson Avenue (Wakefield MRA)*, 34-48 Richardson Ave., Wakefield, 89000709
- Carr-Jeeves House (Winchester MRA)*, 57 Lake St., Winchester, 89000639
- Center Depot (Wakefield MRA)*, 57 Water St., Wakefield, 89000693
- Central Street Historic District (Winchester MRA)*, Roughly Central St. from Norwood St. to Church St., Winchester, 89000660
- Childs, Webster, House (Winchester MRA)*, 16A Ginn St., Winchester, 89000644
- Church-Lafayette Street Historic District (Wakefield MRA)*, Roughly Church St. from Lafayette St. to North Ave., Wakefield, 89000757
- Cole House (Winchester MRA)*, 12 Mason St., Winchester, 89000646
- Common District (Wakefield MRA)*, Roughly bounded by Lake Quannapewitt, Main St., Common St., Church St., and Lake Ave., Wakefield, 89000754
- Cowdry, Jonas, House (Wakefield MRA)*, 61 Prospect St., Wakefield, 89000739
- Cowdry, Nathaniel, House (Wakefield MRA)*, 71 Prospect St., Wakefield, 89000738
- DeRochmont House (Winchester MRA)*, 2-4 Rangeley Rd., Winchester, 89000642
- Dike-Orne House (Winchester MRA)*, 257 Forest St., Winchester, 89000621
- Dwight, Edmund, House (Winchester MRA)*, 5 Cambridge St., Winchester, 89000633
- Elder, Samuel, House (Winchester MRA)*, 38 Rangeley Rd., Winchester, 89000643
- Emerson-Franklin Poole House (Wakefield MRA)*, 23 Salem St., Wakefield, 89000685
- Everett Avenue-Sheffield Road Historic District (Winchester MRA)*, Roughly bounded by Bacon St., Mystic Valley Pkwy., Mystic Lake, Niles Ln., Everett Ave, Sheffield Rd., and Church St., Winchester, 89000661
- Firth-Glengarry Historic District (Winchester MRA)*, Roughly bounded by Pine St., Grassmere Ave., Dix St., and Wildwood St., Winchester, 89000662
- Flanley's Block (Wakefield MRA)*, 349-353 Main St., Wakefield, 89000729
- Gardner, Edward, House (Winchester MRA)*, 89 Cambridge St., Winchester, 89000605
- Gardner, Potience and Sarah, House (Winchester MRA)*, 103-105 Cambridge St., Winchester, 89000608

Ginn Carriage House (Winchester MRA), 24 Ginn Rd., Winchester, 89000655
 Ginn Gardener's House (Winchester MRA), 22 Ginn Rd., Winchester, 89000654
 Goodwin, Captain—James Custis House (Wakefield MRA), 1 Elm St., Wakefield, 89000744
 Gould, Samuel, House (Wakefield MRA), 48 Meriam St., Wakefield, 89000704
 Greenwood Union Church (Wakefield MRA), Main and Oak, Wakefield, 89000697
 Green, Capt. William, House (Wakefield MRA), 391 Vernon St., Wakefield, 89000672
 Green, Deacon Daniel, House (Wakefield MRA), 747 Main St., Wakefield, 89000708
 Grover, Henry, House (Winchester MRA), 223-225 Cambridge St., Winchester, 89000641
 Hatch, Horace, House (Winchester MRA), 28 Grove St., Winchester, 89000612
 House at 1 Morrison Avenue (Wakefield MRA), 1 Morrison Ave., Wakefield, 89000722
 House at 1 Woodcrest Drive (Wakefield MRA), 1 Woodcrest Dr., Wakefield, 89000673
 House at 11 Wave Avenue (Wakefield MRA), 11 Wave Ave., Wakefield, 89000678
 House at 113 Salem Street (Wakefield MRA), 113 Salem St., Wakefield, 89000686
 House at 118 Greenwood Street (Wakefield MRA), 118 Greenwood St., Wakefield, 89000702
 House at 12 West Water Street (Wakefield MRA), 12 W. Water St., Wakefield, 89000708
 House at 13 Sheffield Road (Wakefield MRA), 13 Sheffield Rd., Wakefield, 89000734
 House at 15 Chestnut Street (Wakefield MRA), 15 Chestnut St., Wakefield, 89000726
 House at 15 Lawrence Avenue (Wakefield MRA), 15 Lawrence Ave., Wakefield, 89000682
 House at 15 Wave Avenue (Wakefield MRA), 15 Wave Ave., Wakefield, 89000679
 House at 18 Park Street (Wakefield MRA), 18 Park St., Wakefield, 89000690
 House at 18A and 20 Aborn Street (Wakefield MRA), 18A and 20 Aborn St., Wakefield, 89000676
 House at 19-21 Salem Street (Wakefield MRA), 19-21 Salem St., Wakefield, 89000684
 House at 190 Main Street (Wakefield MRA), 190 Main St., Wakefield, 89000686
 House at 193 Vernon Street (Wakefield MRA), 193 Vernon St., Wakefield, 89000674
 House at 196 Main Street (Wakefield MRA), 196 Main St., Wakefield, 89000688
 House at 2 Nichols Street (Wakefield MRA), 2 Nichols St., Wakefield, 89000740
 House at 20 Hancock Road (Wakefield MRA), 20 Hancock Rd., Wakefield, 89000671
 House at 20 Lawrence Street (Wakefield MRA), 20 Lawrence St., Wakefield, 89000680
 House at 20 Morrison Road (Wakefield MRA), 20 Morrison Rd., Wakefield, 89000724
 House at 21 Chestnut Street (Wakefield MRA), 21 Chestnut St., Wakefield, 89000727
 House at 22 Parker Road (Wakefield MRA), 22 Parker Rd., Wakefield, 89000735
 House at 23 Avon Street (Wakefield MRA), 23 Avon St., Wakefield, 89000730

House at 23 Lawrence Street (Wakefield MRA), 23 Lawrence St., Wakefield, 89000681
 House at 25 Avon Street (Wakefield MRA), 25 Avon St., Wakefield, 89000731
 House at 26 Francis Avenue (Wakefield MRA), 26 Francis Ave., Wakefield, 89000701
 House at 28 Cordis Street (Wakefield MRA), 28 Cordis St., Wakefield, 89000675
 House at 28 Wiley Street (Wakefield MRA), 28 Wiley St., Wakefield, 89000695
 House at 30 Sheffield Road (Wakefield MRA), 30 Sheffield Rd., Wakefield, 89000733
 House at 32 Morrison Road (Wakefield MRA), 32 Morrison Rd., Wakefield, 89000723
 House at 38 Salem Street (Wakefield MRA), 38 Salem St., Wakefield, 89000687
 House at 380 Albion Street (Wakefield MRA), 380 Albion St., Wakefield, 89000711
 House at 39 Converse Street (Wakefield MRA), 39 Converse St., Wakefield, 89000716
 House at 40 Crescent Street (Wakefield MRA), 40 Crescent St., Wakefield, 89000691
 House at 42 Hopkins Street (Wakefield MRA), 42 Hopkins St., Wakefield, 89000732
 House at 5 Bennett Street (Wakefield MRA), 5 Bennett St., Wakefield, 89000698
 House at 509 North Avenue (Wakefield MRA), 509 North Ave., Wakefield, 89000748
 House at 52 Oak Street (Wakefield MRA), 52 Oak St., Wakefield, 89000700
 House at 54 Spring Street (Wakefield MRA), 54 Spring St., Wakefield, 89000703
 House at 556 Lowell Street (Wakefield MRA), 556 Lowell St., Wakefield, 89000670
 House at 6 Adams Street (Wakefield MRA), 6 Adams St., Wakefield, 89000721
 House at 7 Salem Street (Wakefield MRA), 7 Salem St., Wakefield, 89000683
 House at 8 Park Street (Wakefield MRA), 8 Park St., Wakefield, 89000689
 House at 88 Prospect Street (Wakefield MRA), 88 Prospect St., Wakefield, 89000737
 House at 9 White Avenue (Wakefield MRA), 9 White Ave., Wakefield, 89000677
 House at 90 Prospect Street (Wakefield MRA), 90 Prospect St., Wakefield, 89000738
 House at 95 Chestnut Street (Wakefield MRA), 95 Chestnut St., Wakefield, 89000725
 Hovey—Winn House (Winchester MRA), 384 Main St., Winchester, 89000616
 Hutchinson—Blood House (Winchester MRA), 394-396 Main St., Winchester, 89000615
 Item Building (Wakefield MRA), 26 Albion St., Wakefield, 89000712
 Johnson—Thompson House (Wakefield MRA), 201 Ridge St., Winchester, 89000604
 Jones, Marshall W., House (Winchester MRA), 326 Highland Ave., Winchester, 89000648
 Jordan, Dr. Charles, House (Wakefield MRA), 9 Jordan Ave., Wakefield, 89000718
 Kendall, Deacon Thomas, House (Wakefield MRA), One Prospect St., Wakefield, 89000742
 Lakeside Cemetery Chapel (Wakefield MRA), North Ave., Wakefield, 89000745
 Locke, Asa, House (Winchester MRA), 68 High St., Winchester, 89000631
 Lynnwood (Wakefield MRA), 5 Linden Ave., Wakefield, 89000705

Mann, James H., House (Winchester MRA), 23 Hancock St., Winchester, 89000624
 Mason, John, House (Winchester MRA), 8-10 Hillside Ave., Winchester, 89000634
 Massachusetts State Armory (Wakefield MRA), Main St., Wakefield, 89000707
 Maxwell, Louis N., House (Winchester MRA), 16 Herrick St., Winchester, 89000650
 McCall, Samuel W., House (Winchester MRA), 4 McCall Rd., Winchester, 89000657
 Mitchell, Amy B., House (Winchester MRA), 237 Highland Ave., Winchester, 89000653
 Moore House (Winchester MRA), 85 Walnut St., Winchester, 89000620
 Oak Knoll (Winchester MRA), 39 Oak Knoll, Winchester, 89000648
 Parker House (Winchester MRA), 180 Mystic Valley Pkwy., Winchester, 89000628
 Parker, Edmund, Jr., House (Winchester MRA), 287 Cambridge St., Winchester, 89000610
 Parker, Harrison, Sr., House (Winchester MRA), 60 Lloyd St., Winchester, 89000627
 Pressey—Eustis House (Winchester MRA), 14 Stevens St., Winchester, 89000623
 Remick, Joseph, House (Winchester MRA), 84 Cambridge St./4 Swan Rd., Winchester, 89000658
 Richardson, Dr. S. O., House (Wakefield MRA), 694 Main St., Wakefield, 89000696
 Richardson, Zachariah, House (Winchester MRA), 587 Washington St., Winchester, 89000618
 Russell, Arthur H., House (Winchester MRA), 10 Mt. Pleasant St., Winchester, 89000652
 Russell, Charles, House (Winchester MRA), 993 Main St., Winchester, 89000617
 Sharon House (Winchester MRA), 403 Main St., Winchester, 89000640
 Simonds, William, House (Winchester MRA), 420 Main St., Winchester, 89000640
 Simpson, Dr. Thomas, House (Wakefield MRA), 114 Main St., Wakefield, 89000665
 Skillings Estate House (Winchester MRA), 37 Rangeley Rd., Winchester, 89000645
 South Reading Academy (Wakefield MRA), 7 Foster St., Wakefield, 89000713
 St. Joseph's School (Wakefield MRA), Gould St., Wakefield, 89000749
 St. Mary's Catholic Church (Winchester MRA), 159 Washington St., Winchester, 89000625
 Stanton, Jacob, House (Winchester MRA), 21 Washington St., Winchester, 89000614
 Stimpson, William, House (Wakefield MRA), 22 Prospect St., Wakefield, 89000741
 Sullivan, Edward, House (Winchester MRA), 9 Kendall St., Winchester, 89000636
 Sweetser, Daniel, House (Wakefield MRA), 458 Lowell St., Wakefield, 89000669
 Sweetser, Michael, House (Wakefield MRA), 15 Nahant St., Wakefield, 89000699
 Symmes, Deacon John, House (Winchester MRA), 212-214 Main St., Winchester, 89000606
 Symmes, Marshall, House (Winchester MRA), 230 Main St., Winchester, 89000607
 Symmes, Marshall, Tenant House (Winchester MRA), 233 Main St., Winchester, 89000637
 Temple Israel Cemetery (Wakefield MRA), North Ave., Wakefield, 89000753
 Thompson, Abijah, House (Winchester MRA), 81 Walnut St., Winchester, 89000619

Tilton, D. Horace, House (Wakefield MRA), 379 Albion St., Wakefield, 89000715
 Trowbridge—Badger House (Winchester MRA), 12 Prospect St., Winchester, 89000647
 Winton, Alfred, house (Winchester MRA), 417 Main St., Winchester, 89000629
 Wakefield Park (Wakefield MRA), Roughly Park Ave. between Summit Ave. and Chestnut St., Wakefield, 89000755
 Wakefield Ratton Co. (Wakefield MRA), 134 Water St., Wakefield, 89000692
 Wakefield Trust Company (Wakefield MRA), 371 Main St., Wakefield, 89000728
 Wakefield Upper Depot (Wakefield MRA), 27-29 Tuttle St., Wakefield, 89000719
 Warren, H. M., School (Wakefield MRA), 30 Converse St., Wakefield, 89000750
 Wedgemere (Winchester MRA), Roughly bounded by Foxcroft, Fletcher, Church, and Cambridge, Winchester, 89000659
 West Ward School (Wakefield MRA), 39 Prospect St., Wakefield, 89000748
 White, S. B., House (Winchester MRA), 8 Stevens St., Winchester, 89000622
 Wildwood Cemetery (Winchester MRA), Palmer and Wildwood Sts., Winchester, 89000658
 Winn Street Railroad Bridge (Wakefield MRA), Winn St. over Boston & Maine Railroad tracks, Wakefield, 89000752
 Winn, Suell, House (Wakefield MRA), 72-74 Elm St., Wakefield, 89000743
 Winship, Charles, House (Wakefield MRA), 13 Mansion Rd., Wakefield, 89000717
 Woodville School (Wakefield MRA), Farm Rd., Wakefield, 89000694
 Woodward Homestead (Wakefield MRA), 17 Main St., Wakefield, 89000747
 Wyman, George, House (Winchester MRA), 195 Cambridge St., Winchester, 89000609
 Yale Avenue Historic District (Wakefield MRA), 16-25 Yale Ave., Wakefield, 89000756

MISSISSIPPI
Hinds County
 Wolfe House, 401 Claiborne, Terry, 89000762

MISSOURI
Washington County
 Susan Cave (23WA190), Address Restricted, Shirley vicinity, 89000758

NEW JERSEY
Mercer County
 Princeton Battlefield Historic District (Boundary Increase), Roughly Quaker Rd. from Stockton Rd. to Stony Brook, Princeton, 89000761

NORTH CAROLINA
Moore County
 Aberdeen Historic District, Roughly bounded by Maple Ave., Bethesda Ave., Campbell St., Main St., Pine St., South St., and Poplar St., Aberdeen, 89000663

Rowan County
 Salisbury Historic District (Boundary Increase II), Roughly bounded by Ellis St., Monroe St., Church St., Bank St., S. Main St., and McCubbins St., Salisbury, 89000760

SOUTH CAROLINA

Charleston County

Charleston Old and Historic District (Boundary Increase), Roughly bounded by US 17, E. Bay, Charlotte, Cooper River, Laurens, Alexander, Calhoun, Coming, Morris, Bee, & Courtney, Charleston, 89000603

VERMONT

Windsor County

Doman, Rev. George, House, Wyman Ln., Woodstock, 89000759

[FR Doc. 89-13391 Filed 6-5-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-6 (Sub-No. 307)]

The Burlington Northern Railroad Co. Abandonment in Washington and Chisago Counties, Minnesota; Findings

The Commission has found that the public convenience and necessity permit the Burlington Northern Railroad Company to abandon its 17.22-mile line of railroad between North Branch (milepost 40.72) and Forest Lake (milepost 23.50), located in Washington and Chisago Counties, MN, subject to the imposition of public-use conditions to allow Washington and Chisago Counties and the City of Wyoming 180 days to negotiate for acquisition for alternative public use.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant not later than 10 days from publication of this notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope: "Rail Section, AB-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: May 25, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Andre commented with a separate expression. Vice Chairman Simmons and

Commissioner Lamboley dissented with separate expressions.

Noreta R. McGee, Secretary.

[FR Doc. 89-13399 Filed 6-5-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-7 (Sub-No. 114X); Docket No. AB-57 (Sub-No. 29X)]

CMC Real Estate Corp.; Abandonment Exemption; Chicago, IL; Soo Line Railroad Co.; Discontinuance of Operations Exemption; Chicago, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission is reopening and modifying an exemption served and published in the Federal Register on February 8, 1989 (54 FR 6183) that permitted Soo Line Railroad Company to discontinue service on the Deering Line in Chicago, IL. The modification reduces the scope of the exemption to discontinuance of service between engineering station 23 + 11 and engineering station 36 + 50. the exemption will continue to be subject to appropriate labor protection, as previously imposed.

DATES: The modified exemption will become effective on June 21, 1989. Petitions to stay the exemption must be filed by June 13, 1989. Petitions for reconsideration must be filed by June 16, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB-57 (Sub-No. 29X) to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.
 (2) Railroads' representatives: Glenn Olander-Quamme, Suite 1000, Soo Line Building, 105 South Fifth Street, Minneapolis, MN 55402.

John Broadley, Jenner & Block, 21 DuPont Circle NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Building, Washington, DC 20433. Telephone (202) 289-4357/4359. (Assistance for hearing impaired is available through TDD services (202) 275-1721.)

Decided: May 25, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.
 Norela R. McGee,
 Secretary.
 [FR Doc. 89-13400 Filed 6-5-89; 8:45 am]
 BILLING CODE 7036-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act Advisory Committee; Change in Meeting Location

Notice is hereby given of a change of location of the Job Training Partnership Advisory Committee's June 27, 1989 meeting, announced on April 25, 1989, 54 FR 17844.

The meeting will be held at the Mayflower Hotel, 1127 Connecticut Avenue, NW., Washington, DC 20036. The meeting will begin at 9:30 a.m. and adjourn at 4:00 p.m. The meeting is open to the public.

For further information, contact Hugh Davies, Office of Job Training Programs, U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, NW., Room N-4709, Washington, DC 20210. Telephone: 202-535-0580.

Signed at Washington, DC, this 30th day of May 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

[FR Doc. 89-13401 Filed 6-5-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-78-C]

McElroy Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

McElroy Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-1(f)(2) (type and quality of firefighting equipment) to its McElroy Mine (I.D. No. 46-01437) located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a fire hose installed for use in underground coal mines have a bursting pressure at least 4 times the

water pressure at the valve to the hose inlet with the valve closed.

2. As an alternate method, petitioner proposes the following procedures:

(a) All firefighting nozzles would be modified to prevent shut off; farthest closure would be a fog pattern. This modification would eliminate shock loads which could be imposed on the hose by nozzle closure;

(b) Delivery pressure would be maintained less than 600 pounds per square inch (psi);

(c) The fire hose utilized would be at least one and one-half inch in diameter;

(d) All fire hose to be deployed as firefighting equipment would be mildew resistant and contain a single polyester jacket with a manufacturers minimum specified burst strength of 750 psi; and

(e) The fire hose would only be used for emergency firefighting purposes;

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 6, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: May 28, 1989.

[FR Doc. 89-13371 Filed 6-5-89; 8:45 am]

BILLING CODE 4510-43-M

THE MARTIN LUTHER KING, JR. FEDERAL HOLIDAY COMMISSION

Meeting

AGENCY: The Martin Luther King, Jr. Federal Holiday Commission.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463 as amended, the Martin Luther King, Jr. Federal Holiday Commission announces a forthcoming meeting of the Commission.

DATE: June 19, 1989, 12 Noon to 3:00 p.m.

ADDRESS: Rayburn House Office Building, Room B-308, Independence Ave., SW., Washington, DC 20515.

FOR FURTHER INFORMATION CONTACT: Mr. Lloyd Davis, The Martin Luther

King, Jr. Federal Holiday Commission, Washington, DC 20410 (202/755-1005).

Type of Meeting: Open

Agenda:

Monday, June 19

12:15 p.m.—Adoption of Minutes of Previous Meeting.

12:30 p.m.—Discussion of Critical Issues to be addressed by the Commission including: (1) responsibilities of Commission under Federal Advisory Committee Act and H.R. 1385 as amended, (2) Financial Report/Audit; and (3) Adoption of 1989 Budget, Reorganization of D.C. and Atlanta Offices, 1989 Work Program, and Resolutions for Consultant Services.

3:00 p.m.—Adjourn.

Charles R. Sadler,

Acting Director.

[FR Doc. 89-13561 Filed 6-5-89; 8:45 am]

BILLING CODE 4210-01-M

NATIONAL COMMISSION FOR EMPLOYMENT POLICY

Public Hearing

ACTION: Notice of hearing.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) notice is hereby given of a public hearing at 26 Federal Plaza, Main Conference Room 305-C, New York City, New York, 10278.

DATE: Wednesday, June 21, 1989, 9:00 a.m.-4:30 p.m.

Status: The hearing is to be open to the public.

Matters to be discussed: The purpose of this public hearing is to enable the Commission members to learn from various segments of the Job Training Partnership Act (JTPA) system their reactions to a draft Commission paper which examines possible explanations for the under-representation of Hispanics in JTPA. Persons invited to testify represent State and local government agencies that administer JTPA programs and organizations that provide training under JTPA.

Interested parties may submit written testimony either prior to or after the official hearing date, but no later than August 15, 1989 to the Commission headquarters. Additional hearings will be conducted across the U.S. over the next few months. It is anticipated that the results of the hearings will be used to develop formal Commission recommendations.

FOR FURTHER INFORMATION CONTACT:

Barbara C. McQuown, Director, National Commission for Employment

Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, (202) 724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to Title IV-F of the Job Training Partnership Act (P.L. 79-300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Minutes of the hearing and written testimony submitted by witnesses will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., Suite 300, Washington, DC. 20005.

Signed at Washington, DC, this 31st day of May, 1989.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89-13367 Filed 6-5-89; 8:45 am]

BILLING CODE 4510-30-M

Public Hearing

ACTION: Notice of hearing.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) notice is hereby given of a public hearing at Metro Dade Center, Terrace Level A, 111 NW. 1st Street, Miami, Florida, 33128-1965.

DATE: Friday June 23, 1989 9:00 a.m.-4:30 p.m.

STATUS: The hearing is to be open to the public.

Matters to be discussed: The purpose of this public hearing is to enable the Commission members to learn from various segments of the Job Training Partnership Act (JTPA) system their reactions to a draft Commission paper which examines possible explanations for the under-representation of Hispanics in JTPA. Persons invited to testify represent State and local government agencies that administer JTPA programs and organizations that provide training under JTPA.

Interested parties may submit written comments either prior to or after the official hearing date, but no later than August 15, 1989 to the Commission headquarters. Additional hearings will be conducted across the U.S. over the next few months. It is anticipated that the results of the hearings will be used to develop formal Commission recommendations.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005, (202) 724-1545.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to Title IV-F of the Job Training Partnership Act (Pub. L. 97-300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should contact the Commission so that appropriate accommodations can be made. Transcripts of the hearing and written testimony submitted by witnesses will be available for public inspection at the Commission's headquarters, 1522 K Street, NW., Suite 300, Washington, DC 20005.

Signed at Washington, DC, this 31st day of May, 1989.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89-13368 Filed 6-5-89; 8:45 am]

BILLING CODE 4510-30-M

Meeting

AGENCY: Notice of meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463; 86 Stat. 770) notice is hereby given of a public meeting of the National Commission for Employment Policy at the Doubletree Hotel, Coconut Grove, Florida, 33133.

DATE: Thursday, June 22, 1989, 1:30 p.m. till 4:30 p.m.

Status: This meeting is to be open to the public.

Matters to be discussed: The purpose of this public meeting is to enable the Commission members to discuss progress on the proposed research agenda, and to discuss findings received from the prior hearings.

FOR FURTHER INFORMATION CONTACT: Barbara C. McQuown, Director, National Commission for Employment Policy, 1522 K Street, NW., Suite 300, Washington, DC 20005.

SUPPLEMENTARY INFORMATION: The National Commission for Employment Policy was established pursuant to Title IV-F of the Job Training Partnership Act (Pub. L. 97-300). The Act charges the Commission with the broad responsibility of advising the President, and the Congress on national employment issues. Handicapped individuals wishing to attend should

contact the Commission so that appropriate accommodations can be made. Minutes of the meeting and working papers will be available for public inspection at the Commission's headquarters, 1522 K Street NW., Suite 300, Washington, DC 20005.

Signed at Washington, DC, this 31st day of May, 1989.

Barbara C. McQuown,

Director, National Commission for Employment Policy.

[FR Doc. 89-13370 Filed 6-5-89; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Overview and Special Projects Section) to the National Council on the Arts will be held on June 27-29, 1989, from 9:00 a.m.-5:00 p.m. in Room M14 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 27, 1989, from 9:00 a.m.-5:00 p.m.; June 28, 1989, from 9:00 a.m.-noon; and June 29, 1989, from 3:00 p.m.-5:00 p.m. The topics for discussion will be special projects guidelines and policy issues.

The remaining portion of this meeting on June 28, 1989, from 1:00 p.m.-5:00 p.m. and on June 29, 1989, from 9:00 a.m.-3:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on application for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), and (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms.

Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

Yvonne M. Sabine,
Director, Council and Panel Operations,
National Endowment for the Arts.

[FR Doc. 89-13324 Filed 6-5-89; 8:45 am]
BILLING CODE 7537-01-M

Theater Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Theater Advisory Panel (Overview and Distinguished Artists Fellowships in Theater Section) to the National Council on the Arts will be held on June 22-23, 1989, from 9:30 a.m.-5:30 p.m. in Room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 22, 1989 from 9:30 a.m.-10:00 a.m. and from 1:30 p.m.-5:30 p.m. and on June 23, 1989, from 9:30 a.m.-5:30 p.m. The topics for discussion will be guidelines and policy issues.

The remaining portion of this meeting on June 22, 1989, from 10:00 a.m.-1:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National

Endowment for the Arts, Washington, D.C. 20506, or call 202/682-5433.

Yvonne M. Sabine,
Director, Council and Panel Operations,
National Endowment for the Arts.

[FR Doc. 89-13325 Filed 6-5-89; 8:45 am]
BILLING CODE 7537-01-M

Visual Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Visual Arts Advisory Panel (Special Projects and Challenge III Sections) to the National Council on the Arts will be held on June 29, 1989, from 11:00 a.m.-5:30 p.m. and June 30, 1989, from 9:30 a.m.-3:30 p.m. in Room 730 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the Agency by grant applicants. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,
Director, Council and Panel Operations,
National Endowment for the Arts.
[FR Doc. 89-13326 Filed 6-5-89; 8:45 am]

BILLING CODE 7537-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of

information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.
2. The title of the information, collection: Occupational External Radiation Exposure History.
3. The form number if applicable: NRC Form 4.
4. How often the collection is required: On occasion.
5. Who will be required or asked to report: NRC licensees.
6. An estimate of the number of responses: 40,000 per year.
7. An estimate of the total number of hours needed to complete the requirement or request: 10,000 hours annually (40,000 forms $\times$ 0.25 hr/form) or about 1.3 hours per licensee.
8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.
9. Abstract: NRC Form 4 is used to record the occupational exposures of individuals to ensure that the accumulated exposure does not exceed regulatory limits.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150-0005), Office of Management and Budget, Washington, DC 20503. Comments can also be communicated by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 28th day of May 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,
Designated Senior Official for Information
Resources Management.

[FR Doc. 89-13382 Filed 6-5-89; 8:45 am]

BILLING CODE 7590-01-M

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget (OMB) review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the

following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.
2. The title of the information, collection: Current Occupational External Radiation Exposure.
3. The form number if applicable: NRC Form 5.
4. How often the collection is required: Monthly.
5. Who will be required or asked to report: NRC licensees.
6. An estimate of the number of responses: 4,800,000.
7. An estimate of the total number of hours needed to complete the requirement or request: 166,320 hours annually (4,800,000 $\times$ 0.033 hrs) or about 22 hours per licensee.
8. An indication of whether section 3504(h), Pub. L. 96-511 applies: Not applicable.
9. Abstract: NRC Form 5 is used to record the current occupational exposures of individuals to ensure that the regulatory limits are not exceeded.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150-0006), Office of Management and Budget, Washington, DC 20503. Comments can also be communicated by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo. Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 28th day of May 1989.

For the Nuclear Regulatory Commission.

Joyce A. Amenta,
Designated Senior Official for Information
Resources Management.

[FR Doc. 89-13383 Filed 6-5-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-321 and 50-366]

Georgia Power Co., Oglethorpe Power Corp., Municipal Electric Authority of Georgia, City of Dalton, GA; Environmental Assessment and Finding of No Significant Impact

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to the Technical Specifications (TS) to modify the reactor protection system (RPS) surveillance requirements to the Georgia Power Company, et al., (the licensee) for the Edwin I. Hatch Nuclear

Plant, Units 1 and 2, located on the licensee's site in Appling County, Georgia.

Environmental Assessment

Identification of Proposed Action

By letter dated March 27, 1986 as supplemented April 22 and December 27, 1988, the licensee, submitted a request for changes to the TS RPS surveillance requirements. The changes requested involve modifying the Hatch Unit 1 TS RPS surveillance requirements to be consistent with the Hatch Unit 2 requirements and modifying the TS RPS surveillance requirements for both units and the allowed equipment outage times for Hatch Unit 2 in accordance with the results of General Electric Company Topical Report NEDC-30851P, "Technical Specification Improvement Analyses for BWR Reactor Protection System," dated May 1985, General Electric Company Report MDE-75-0485, "Technical Specification Improvement Analysis for the Reactor Protection System for Edwin I. Hatch Nuclear Plant, Unit 1," and General Electric Company Report MDE-76-0485, "Technical Specification Improvement Analysis for the Reactor Protection System for Edwin I. Hatch Nuclear Plant, Unit 2."

The proposed amendments are required to make Hatch Unit 1 TS consistent with Hatch Unit 2 TS, increase the RPS surveillance intervals for both units, and increase the allowed equipment outage times for Hatch Unit 2.

Environmental Impacts of the Proposed Action

With respect to the amendments, the licensee states that, overall, RPS surveillance requirements for Hatch Unit 1 will be made more stringent when revised to be consistent with Hatch Unit 2. With regard to increasing RPS surveillance and equipment outage times, the licensee states that the General Electric Reports provide a probabilistic basis for extending RPS surveillance and Hatch Unit 2 allowed equipment outage times. The licensee also states that the reports' . . . methodology shows that the requested interval extensions can be enacted without negatively affecting the functional capability or reliability of the RPS."

Accordingly, the amendments will not increase or probability or consequences of any reactor accident sequence and will not otherwise affect any other radiological impact associated with the facility. Consequently, the Commission concludes that there are no significant

radiological impacts associated with the proposed amendments.

With regard to potential nonradiological impacts, the proposed amendments involve features located entirely within the restricted area as defined in 10 CFR Part 20. They do not affect nonradiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

Alternative to the Proposed Action

Because the staff has concluded that there is no significant environmental impact associated with the proposed amendments, any alternative to the amendments will have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts as a result of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement for the Edwin I. Hatch Nuclear Plant, Unit 1 and Unit 2," dated October 1972, and the "Final Environmental Statement related to the operation of the Edwin I. Hatch Nuclear Plant, Unit No. 2," dated March 1978.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendments. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based upon this environmental assessment, we conclude that the proposed action will not have a significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the request for the amendments dated March 27, 1986 as supplemented April 22 and December 27, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

Dated at Rockville, Maryland, this 31st day of May 1989.

For the Nuclear Regulatory Commission.
Lawrence P. Crocker,
*Acting Director, Project Directorate II-3,
Division of Reactor Projects I/II, Office of
Nuclear Reactor Regulation.*
[FR Doc. 89-13305 Filed 6-5-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-312]

**Sacramento Municipal Utility District;
Denial of Amendment to Facility
Operating License and Opportunity for
Hearing**

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Sacramento Municipal Utility District (licensee) for an amendment to Facility Operating License No. DPR-54, issued to the licensee for operation of the Rancho Seco Nuclear Generating Station, Unit No. 1, located in Sacramento County, California. Notice of Consideration of Issuance of this amendment was published in the *Federal Register* on December 18, 1986 (51 FR 45407).

The purpose of the licensee's amendment request was to revise the Technical Specifications (TS) relating to main steam safety valves.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated

By July 6, 1989, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. David S. Kaplan, Secretary and General Counsel, Sacramento Municipal Utility District, 6201 S Street, P.O. Box 15830, Sacramento, California 95813, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated November 14, 1985, and (2) the Commission's letter to the licensee dated

These documents are available for public inspection at the Commission's

Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docket Control Desk.

Dated at Rockville, Maryland, this 31st day of May 1989.
For the Nuclear Regulatory Commission.
George W. Knighton,
*Director, Project Directorate V, Division of
Reactor Projects—III, IV, V and Special
Projects, Office of Nuclear Reactor
Regulation.*

[FR Doc. 89-13386 Filed 6-5-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-255]

**Consumers Power Co.; Withdrawal of
Application for Amendment to
Provisional Operating License**

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Consumers Power Company (the licensee) to withdraw its November 5, 1982, application for proposed amendment to Provisional Operating License No. DPR-20 for the Palisades Plant, located in Van Buren County, Michigan.

The proposed amendment would have modified the Appendix A Technical Specifications (TSs) by adding instrumentation operability and surveillance requirements for certain NUREG-0737, specifically Items II.F.1.1 (Noble Gas Effluent Monitor), II.F.1.2 (Sampling and Analysis of Plant Effluents), II.F.1.3 (Containment Radiation Hi-Range Monitor), and II.F.1.6 (Containment Hydrogen Monitor).

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the *Federal Register* on November 22, 1983 (48 FR 52811). However, by letter dated January 24, 1989, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated November 5, 1982, and the licensee's letter dated January 24, 1989, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the Van Zoeren Library, Hope College, Holland, Michigan 49401.

Dated at Rockville, Maryland, this 31st day of May 1989.

For the Nuclear Regulatory Commission.
Albert W. De Agazio,
*Project Manager, Project Directorate III-1,
Division of Reactor Projects—III, IV, V &
Special Projects, Office of Nuclear Reactor
Regulation.*
[FR Doc. 89-13384 Filed 6-5-89; 8:45 am]
BILLING CODE 7590-01-M

**SECURITIES AND EXCHANGE
COMMISSION**

[Rel. No. IC-16976; 811-4496, 811-3241,
811-4340, 811-4339, 811-5186, 811-4122,
811-5599 and 811-4396]

**Altius Beta Fund, Inc., et al;
Deregistration**

May 28, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of proposed deregistration under the Investment Company Act of 1940 ("1940 Act").

Relevant 1940 Act Section: Section 8(f).

SUMMARY: The SEC proposes to declare on its own motion that Registrants have ceased to be investment companies.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on the deregistration of any of the Registrants, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on June 19, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicable Registrant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. The most recent address for each of the Registrants contained in the files of the SEC is as follows: Altius Beta Fund, Inc., ("Altius"), 745 Fifth Avenue, 19th Floor, New York, NY 10151; Cashman Farrell Fund, Inc. ("Cashman"), 207 Valley Circle, West Chester, PA 19380; Citius Alpha Fund, Inc., ("Citius A"), 745 Fifth Avenue, 19th Floor, New York, NY 10151; Citius Beta Fund, Inc., ("Citius B"), 745 Fifth Avenue, 19th Floor, New York, NY 10151; Henderson International Equity Fund, Inc., ("Henderson"), 630 Fifth Avenue, New

York, NY 10111; Sisco fund, Inc., ("Sisco"), 142-30 38th Avenue, Flushing, NY 11354; TrustFunds Cash Reserve Trust, ("TrustFunds"), 28 State Street, Boston, MA 02109; and Zeta Mutual Trust, ("Zeta"), 20380 Town Center Lane, Suite 180, Cupertino, CA 95051.

FOR FURTHER INFORMATION CONTACT: Patricia L. Copeland, Legal Technician, at (202) 272-3009, or Jeremy N. Rubenstein, Staff Attorney, at (202) 272-2847 (Office of Investment Company Regulation, Division of Investment Management).

1. Altius filed a Form N-8A (811-4496) to register under the 1940 Act on November 21, 1985, and on February 20, 1986, Altius filed a registration statement under the Securities Act of 1933 ("1933 Act") on Form N-1A (33-3495). The Altius registration statement was never declared effective and was ordered withdrawn on June 14, 1988.

2. Cashman filed a Form N-8A (811-3241) to register under the 1940 Act on August 12, 1981, and on that same date filed a registration statement under the 1933 Act on Form N-1 (2-73647). The Cashman registration statement was never declared effective and was ordered abandoned on June 29, 1982.

3. Citius A filed a Form N-8A (811-4340) to register under the 1940 Act on June 28, 1985, and on September 30, 1985, Citius A filed a registration statement under the 1933 Act on Form N-1A (33-525). The Citius A registration statement was never declared effective and was ordered withdrawn on June 14, 1988.

4. Citius B filed a Form N-8A (811-4339) to register under the 1940 Act on June 28, 1985, and on September 30, 1985 Citius B filed a registration statement under the 1933 Act on Form N-1A (33-528). The Citius B registration statement was never declared effective and was ordered withdrawn on June 14, 1988.

5. Henderson filed a Form N-8A (811-5186) to register under the 1940 Act on May 22, 1987, and on May 29, 1987 Henderson filed a registration statement under the 1933 Act on Form N-1A (33-14570). The Henderson registration statement was never declared effective and was ordered withdrawn on April 21, 1988.

6. Sisco filed a Form N-8A (811-4122) to register under the 1940 Act on October 9, 1984. Sisco never filed any registration statement under the 1933 Act and has made no further filings with the SEC since filing its N-8A.

7. TrustFunds filed a Form N-8A (811-5599) to register under the 1940 Act on June 22, 1988, and on that same date filed a registration statement under the 1933 Act on Form N-1A (33-22689). The

TrustFunds registration statement was never declared effective and was ordered withdrawn on April 20, 1989.

8. Zeta filed a Form N-8A (811-4396) to register under the 1940 Act on August 26, 1985, and on that same date filed a registration statement under the 1933 Act on Form N-1A (2-99866). The Zeta registration statement was never declared effective and was ordered withdrawn on September 23, 1986.

9. Section 8(f) provides, in pertinent part, that whenever the Commission, on its own motion or upon application, finds that a registered investment company has ceased to be an investment company, it shall so declare by order, and upon the taking effect of such order the registration of such company under the 1940 Act shall cease to be in effect.

10. Because each of the companies listed in this notice either abandoned or withdrew its registration statement under the 1933 Act subsequent to its registration under the 1940 Act, it appears that such companies have ceased to be investment companies. Accordingly, the Commission proposes to declare, on its own motion, that each of the listed companies has ceased to be an investment company and thereby terminate its registration under the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-13306 Filed 6-5-89; 8:45 am]
BILLING CODE 8010-01-M

[File No. 500-1]

**European American Corp.; Order of
Suspension of Trading**

June 1, 1989.

It appears to the Securities and Exchange Commission that questions have been raised about European American Corporation ("Euramco") concerning, among other things, the adequacy and accuracy of publicly disseminated information concerning Euramco's business activities, operations and acquisition and valuation of assets, and whether Euramco has reporting obligations under section 12 of the Securities Exchange Act of 1934. The Commission is of the opinion that the public interest and protection of investors require a suspension of trading in the securities of Euramco.

Therefore, it is ordered, pursuant to section 12(k) of the Securities Exchange Act of 1934, that trading in the securities

of Euramco in the over-the-counter or otherwise, is suspended for the period from 9:00 a.m. (e.d.t.), June 1, 1989, through 11:59 p.m. (e.d.t.) on June 9, 1989.

By the Commission.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-13366 Filed 6-5-89; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF THE TREASURY

**Public Information Collection
Requirements Submitted to OMB for
Review**

Date: May 31, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of the Public Debt

OMB Number: 1535-0065

Form Number: PD 1946-1

Type of Review: Reinstatement.

Title: Application for Disposition—United States Savings Bonds/Notes and/or Related Checks Owned by Decedent Whole Estate is Being Settled Without Administration.

Description: This form is used by the heirs to apply for disposition of United States Savings Bonds/Notes and/or related checks owned by decedent whose estate is being settled without administration.

Respondents: Individuals or households.
Estimated Number of Respondents:

1,500

Estimated Burden Hours Per Response:
35 minutes

Frequency of Response: On occasion
Estimated Total Reporting Burden: 875 hours

Clearance Officer: Rita DeNagy, (202) 447-1640, Bureau of the Public Debt, Room 137, BEP Annex, 300 13th Street, SW., Washington, DC 20239-0001.

OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management

and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.
Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 89-13345 Filed 6-5-89; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: May 31, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0135

Form Number: 1138

Type of Review: Extension

Title: Extension of Time for Payment of Taxes by a Corporation Expecting a Net Operating Loss Carryback.

Description: Form 1138 is used by corporations to request an extension of time to pay their income taxes, including estimated taxes. Corporations may only file for an extension when they expect a net operating loss in the current tax year and want to delay the payment of tax for a prior year.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 2,033

Estimated Burden Hours Per Response: Recordkeeping, 3 hours 21 minutes

Learning about the law of the form, 35 minutes

Preparing and sending the form to IRS, 41 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 9,392 hours

Clearance Officer: Garrick Shear, (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395-6860, Office of Management

and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.
Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 89-13346 Filed 6-5-89; 8:45 am]
BILLING CODE 4810-25-M

Office of the Secretary

[Supplement to Dept. Circ.—Public Debt Series—No. 15-89]

Treasury Notes, Series Z-1991

Washington, May 25, 1989.

The Secretary announced on May 24, 1989, that the interest rate on the notes designated Series Z-1991, described in Department Circular—Public Debt Series—No. 15-89 dated May 18, 1989, will be 8-¾ percent. Interest on the notes will be payable at the rate of 8-¾ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.
[FR Doc. 89-13343 Filed 6-5-89; 8:45 am]
BILLING CODE 4810-40-M

[Supplement to Depart. Circ.—Public Debt Series—No. 16-89]

Treasury Notes, Series K-1994

Washington, May 26, 1989.

The Secretary announced on May 25, 1989, that the interest rate on the notes designated K-1994, described in Department Circular—Public Debt Series—No. 16-89 dated May 18, 1989, will be 8½ percent. Interest on the notes will be payable at the rate of 8½ percent per annum.

Gerald Murphy,
Fiscal Assistant Secretary.
[FR Doc. 89-13344 Filed 6-5-89; 8:45 am]
BILLING CODE 4810-40-M

Office of Foreign Assets Control

Service Transactions Related to Cuban Travel or Family Remittances Forwarded to Cuban Nationals

AGENCY: Department of the Treasury.
ACTION: Notice.

SUMMARY: Consistent with the licensing requirements governing persons engaged in travel service to, from, and within Cuba and persons forwarding family remittances to Cuba, the Office of Foreign Assets Control invites public comment concerning the fitness and qualification of license applicants. In addition, this notice updates and corrects information concerning certain license applicants listed in an earlier notice. It also informs the public of the

identity of additional travel service providers and family remittance forwarders authorized to engage in these services.

DATE: Comments must be submitted on or before August 7, 1989.

FOR FURTHER INFORMATION CONTACT: Richard J. Hollas, Chief of Enforcement, Tel.: (202) 376-0400, or Steven I. Pinter, Chief of Licensing, Tel.: (202) 376-0236, Office of Foreign Assets Control, Department of the Treasury, 1331 G Street, NW., Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Sections 515.560 and 515.563 of the Cuban Assets Control Regulations, 31 CFR Part 515 (the "Regulations"), were amended, effective December 23, 1988, to require that persons engaged in service transactions related to travel to Cuba or the forwarding of remittances to close relatives in Cuba obtain a specific license from the Office of Foreign Assets Control. The Regulations provide that licenses will be issued only upon the applicant's affirmation and demonstration "that it does not participate in discriminatory practices of the Cuban government against certain residents and citizens of the United States." 31 CFR 515.560(i)(1)(ii).

On April 21, 1989, the Office of Foreign Assets Control published a list of license applicants, who had been granted provisional authority to provide services pending review of their completed license application (54 FR 16188). Provisional authority based on submission of a completed license application is necessary to lawfully provide travel services or family remittance forwarding services. Subsequent to the publication of the April 21, 1989 notice, 8 additional license applicants, listed below, have submitted completed applications and have been granted provisional authority to engage in these services.

In order to evaluate the assertions made by license applicants that they do not engage in discriminatory practices, and to determine the fitness and qualification of the license applicants listed below, anyone having personal knowledge regarding the applicants (including employees, officers, and directors) is invited to comment concerning the following:

1. Any evidence of discrimination based on race, color, religion, sex, citizenship, place of birth, national origin, or ability to pay (charging different amounts based on the financial means of the travelers) with regard to the provision of or payment required for accommodations and meals, or other

services provided in connection with travel to, from, or within Cuba;
2. Any evidence of demanding, soliciting, receiving, or forwarding to Cuba payments or remittances in excess of the amounts permitted by § 515.563 of the Cuban Assets Control Regulations, namely family remittances to close relatives in amounts not to exceed \$500 in any consecutive 3-month period to any one payee or household, and remittances for the purpose of enabling emigration from Cuba on a one-time basis in an amount not to exceed \$500 to any one payee; and
3. Any evidence of charging any fees prohibited by U.S. law or any arbitrary and exorbitant fees which exceed the total of official Cuban government consular fees and reasonable service charges.

Comments should be submitted in writing to the Office of Foreign Assets Control, Department of the Treasury, 1331 G Street, NW., Room 400, Washington, DC 20220. To the extent permitted by law, the identity of anyone submitting information, as well as any identifying information provided, will be held in confidence and will not be released without the express permission of the person submitting the information. Any information provided will be evaluated by the Director of the Office of Foreign Assets Control to determine its reliability and relevance to the investigation of applicants.

List of Applicants for Licenses to Perform Travel, Carrier, and Family Remittance Forwarding Services:

Name of Applicant (Company Name or Individual)	Principal Officer (If Applicant is Incorporated:	Branch Office(s)	Address (As Supplied by Applicant)	Travel service provider ("TSP"); Carrier service provider ("CSP"); Family remittance forwarder ("FRF")
Adventure Travel Maria De Jesus Menendez 2619 Davie Blvd. Fort Lauderdale, FL 33312				TSP, FRF
Air Center of Miami, Inc. Richard L. Rawlins 13101 SW 80th Ave. Miami, Florida 33156				TSP, CSP
Airlift International, Inc. A. M. Oliver 3400 NW. 62nd Ave. (Bldg. 1006) Miami, FL 33152				CSP
Airways International, Inc. Iraz N. Djahanshahi 5700 NW. 38th St. Miami, FL 33166				CSP
Customer Service Company Omar Calleja 3314 Northside Dr., #17A Key West, FL 33040				TSP
Hop-A-Jet, Inc. Harvey N. Hop 5500 NW. 21st Terrace Fort Lauderdale, FL 33309				CSP
Isla Cuba Lucia Anreus 6006 Bellaire Blvd., #206 Houston, TX 77081				TSP, RFR
Twin Town Leasing, Inc. Clay Gamber 270 SW. 34th St. Fort Lauderdale, FL 33315				CSP

Corrections to Notice of April 21, 1989
The following company names and addresses which were listed in the April 21, 1989 notice are repeated below in order to update and/or correct information published at that time:

Airline Brokers Company Vivian Mannerud 3971 SW. 8th Street, #307 Coral Gables, FL 33134	TSP, FRF
Cuba Paquettes, Inc. Milton Serret 1087-A West 29th St. Hialeah FL 33012	TSP, FRF
El Español Corporation Augusto C. Rodriguez 8838 SW. 40th St. Miami, FL 33165	FRF
Le Club Travel, Inc. Hector Martinez Puldon 1708 W. 68th St. Hialeah, FL 33014	TSP, FRF
Miami-Cuba Envios, Inc. Mario Saldivar 2853 NW. 7th St. Miami, FL 33125	TSP, FRF
New Miami International Import-Export, Corp. Alberto Rodriguez 4800 NW. 7th St. Miami, FL 33126	TSP, FRF
Paradise International, Inc. Jesus G. Rodriguez 1111 SW. 8th St., #208 Miami, FL 33130	TSP, FRF
Sam Immigration Agency & Tours Hilda Martinez 6818 Pacific Blvd., Suite E Huntington Park, CA 90255	TSP, FRF
Solymar Tours Corp Marisol Gutierrez 530 57th St. West New York, NJ 7903	TSP, FRF

Dated: May 22, 1989.

R. Richard Newcomb,
Director, Office of Foreign Assets Control.

Approved: May 31, 1989.

Salvatore R. Martoche,
Assistant Secretary (Enforcement).

[FR Doc. 89-13444 Filed 6-2-89; 10:33 am]

BILLING CODE 4810-25-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under Office of Management and Budget Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable, (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to

respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Pub. L. 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: May 25, 1989.

By direction of the Secretary.

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Veterans Benefits Administration
2. Application for Total Disability Income Provision
3. VA Form 29-1606

4. This application is used to establish eligibility for the provision. The completed application is required by the Department of Veterans Affairs to determine the insured's eligibility.

5. On occasion
6. Individual or households
7. 15 responses
8. 1 1/2 hours
9. Not applicable.

1. Veterans Benefits Administration
2. Statement of Holder or Servicer of Veteran's Loan
3. VA Form Letter 28-559

4. This form letter is completed by holders or servicers of guaranteed or insured home loans from which obligors may be released from liability pursuant to 38 U.S.C. 1813(a) and/or approval or substitution of entitlement in accordance with 38 U.S.C. 1802(b)(2). Information collected is used to determine that the loan is current.

5. On occasion
6. Business or other for-profit
7. 18,000 responses
8. 1/6 hour
9. Not applicable.

[FR Doc. 89-13298 Filed 6-5-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: May 30, 1989, 54 FR 23015.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: May 31, 1989, 10:00 a.m. **CHANGE IN THE MEETING:** The following Docket Numbers and Companies have been added to Items CAG-1, CAG-11 and CAG-48 for the agenda of May 31, 1989:

Item No., Docket No., and Company

CAG-1—RP88-68-000 and RP87-7-012, Transcontinental Gas Pipe Line Corporation

CAG-11—RP89-132-000, El Paso Natural Gas Company

CAG-48—ST88-2905-000, ST88-3337-000, ST88-4985-000 and ST89-229-000, Louisiana Intrastate Gas Corporation

Lois D. Cashell,

Secretary.

[FR Doc. 89-13468 Filed 6-2-89; 11:34 am]

BILLING CODE 6717-02-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 1, 1989.

TIME AND DATE: 10:00 a.m., Thursday, June 8, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Local Union 1261, District 22, United Mine Workers of America v. Consolidation Coal Co.*, Docket No. WEST 88-199-C. Issues include: (1) Whether miners who have been withdrawn by the operator and therefore are not working at the time on order of withdrawal is issued are entitled to compensation under the first two sentences of section 111 of the Mine Act, and (2) whether the miners are also entitled to pre-judgement interest.

Any person intending to attend this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 20 CFR 2706.150(a)(3) and 2706.160(d).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629/ (202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-13548 Filed 6-2-89; 3:58 pm]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on May 26, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, June 5, 1989.

CHANGES IN THE MEETING: Addition of the Following close item(s) to the meeting:

Proposed statement to be presented to the Consumer and Regulatory Affairs Subcommittee of the Senate Committee on Banking, Housing and Urban Affairs concerning Community Reinvestment Act disclosures, Government check cashing, and "lifeline" checking accounts.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Date June 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13548 Filed 6-2-89; 3:53 pm]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, June 12, 1989.

PLACE: Marriner S. Eccles Federal Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed Federal Reserve Bank salary structure adjustments.
2. Proposed acquisition of computer equipment within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning

Federal Register

Vol. 54, No. 107

Tuesday, June 8, 1989

at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13547 Filed 6-2-89; 8:45 am]

BILLING CODE 6210-01-M

FOREIGN CLAIMS SETTLEMENT COMMISSION

[F.C.S.C. Meeting Notice No. 1-89]

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date and Time

Tues., June 27, 1989 at 10:00 a.m.

Subject Matter

Routine Business

Consideration of claims under section 6 of the War Claims act of 1948.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 1111—20th Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 1111—20th Street, NW., Room 400, Washington, DC 20579. Telephone: (202) 653-6155.

Dated at Washington, D.C. on June 2, 1989.

Judith H. Lock,

Administrative Officer.

[FR Doc. 89-13541 Filed 6-2-89; 3:04 pm]

BILLING CODE 4410-01-M

PAROLE COMMISSION

Record of Vote of Meeting Closure

I, Benjamin F. Baer, Chairman of the

United States Parole Commission, presided at a meeting of said Commission which started at 9 o'clock a.m. on Wednesday, May 31, 1989 at the Commission's Central Office, 5550 Friendship Boulevard, Chevy Chase, Maryland 20815. The meeting ended at or about 2:30 p.m. The purpose of the meeting was to decide approximately 20 appeals from National Commissioners' decisions pursuant to 28 CFR 2.27. Eight Commissioners were present, constituting a quorum when the vote to close the meeting was submitted.

Public announcements further describing the subject matter of the meeting and certifications of General Counsel that this meeting may be closed by vote of the Commissioners present were submitted to the Commissioners prior to the conduct of any other business. Upon motion duly made, seconded, and carried, the following Commissioners voted that the meeting be closed: Benjamin F. Baer, Cameron M. Batjer, Jasper Clay, Jr., Vincent Fechtel, Jr., Carol Pavilack Getty, Victor M.F. Reyes, Daniel R. Lopez, and G. MacKenzie Rast.

In witness whereof, I make this official record of the vote taken to close this meeting and authorize this record to be made available to the public.

(Pub. L. 94-409; 5 U.S.C. 552b)

Date: May 31, 1989.

Benjamin F. Baer,
Chairman, U.S. Parole Commission.
[FR Doc. 89-13513 Filed 6-2-89; 1:22 pm]
BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 5, 12, 19, and 26, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 5

Thursday, June 8

11:30 a.m.

Affirmation/Discussion and Vote (Public meeting)

a. NEPA Review Procedures for Geological Repositories for High-Level Waste

Week of June 12—Tentative

Tuesday, June 13

2:00 p.m.

Briefing on Proposed Rule on Basic Quality Assurance in Radiation Therapy (Public meeting)

Thursday, June 15

3:30 p.m.

Affirmation/Discussion and Vote (Public meeting) (if needed)

Week of June 19—Tentative

Tuesday, June 20

10:00 a.m.

Briefing on the Application of the Severe Accident Policy to the Lead Application for Advanced Light Water Reactors (Public meeting)

Thursday, June 22

10:00 a.m.

Briefing on Status of Proposed Rule for License Renewal (Public meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public meeting) (if needed)

Week of June 26—Tentative

Wednesday, June 28

11:30 a.m.

Affirmation/Discussion and Vote (Public meeting) (if needed)

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 492-1661.

William M. Hill, Jr.,

Office of the Secretary.

June 1, 1989

[FR Doc. 89-13534 Filed 6-2-89; 2:33 pm]

BILLING CODE 7990-01-M

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of June 5, 1989.

Closed meetings will be held on Wednesday, June 7, 1989, at 2:30 p.m. and on Thursday, June 8, 1989, following the 2:30 p.m. open meeting. Open meetings will be held on Thursday, June 8, 1989, at 9:30 a.m. and 2:30 p.m. and on Friday, June 9, 1989, at 10:00 a.m., in Room 1C30.

The Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has

certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meetings scheduled for Wednesday, June 7, 1989, at 2:30 p.m., will be:

Institution of administrative proceedings of an enforcement nature.

Settlement of administrative proceeding of an enforcement nature.

Institution of injunctive action.

Regulatory matters regarding financial institutions.

The subject matter of the open meeting scheduled for Thursday, June 8, 1989, at 9:30 a.m., will be:

Consideration of whether: (1) To authorize a 2-year pilot program, as part of the General Counsel's study of the Commission's statutory role in Chapter 11 bankruptcy reorganization proceedings, consisting of active participation in a limited number of large Chapter 11 cases; and (2) to broaden the delegation of authority to the General Counsel to take positions on issues in the pilot cases. Participation in these pilot cases would enable the staff to generate evidence concerning the extent of benefits to public investors of active Commission participation in reorganization cases. The study would analyze the effect of Commission participation and the adequacy of public investor protections in reorganization cases. The study's results would form the basis for recommendations as to the future direction and scope of the Commission's bankruptcy program. For further information, please contact Michael A. Berman at (202) 272-2493.

The subject matter of the open meeting scheduled for Thursday, June 8, 1989, at 2:30 p.m., will be:

Oral argument on the Commission's review of an administrative law judge's initial decision with respect to George C. Kern, Jr., a partner in the law firm of Sullivan & Cromwell. For further information, please contact Daniel J. Savitsky at (202) 272-7400.

The subject matter of the closed meeting scheduled for Thursday, June 8, 1989, following the 2:30 p.m., open meeting, will be:

Post oral argument discussion.

The subject matter of the open meeting scheduled for Friday, June 9, 1989, at 10:00 a.m., will be:

1. Consideration of whether to recommend legislation to Congress to amend the Investment Advisers Act of 1940. The legislative proposal would authorize the Commission to register one or more national investment adviser associations to provide a

self-regulatory mechanism for investment advisers, subject to Commission oversight. Membership in an association would be mandatory for all registered investment advisers. For further information, please contact John McGuire at (202) 272-2072.

2. Consideration of whether to approve a National Association of Securities Dealers, Inc. ("NASD") proposed rule change (SR-NASD-88-26) that would establish a new category of registration, Assistant Representative—Order Processing, for associated persons at NASD member firms. The new category would permit associated persons who take and pass the new exam, which is less comprehensive than the general

securities representative (Series 7) exam, to take unsolicited orders from existing customers of member firms. For further information, please contact Eugene A. Lopez at (202) 272-2828.

3. Consideration of whether to authorize publication of a release proposing rule and form changes to the registration and reporting requirements relating to employee benefit plans, including (1) amendment of Form S-8 to streamline registration procedures under the Securities Act of 1933; (2) amendment of Form 11-K under the Securities Exchange Act of 1934 to eliminate the requirement for the annual description of the plan's operations; and (3) related new rules and rule

amendments. For further information, please contact Larisa Dobriansky at (202) 272-2589.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Karen Burgess at (202) 272-2200.

Jonathan G. Katz,

Secretary.

June 1, 1989.

[FR Doc. 89-13515 Filed 6-2-89; 8:45 am]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 107
Tuesday, June 6, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

Applications for Duty-Free Entry of Scientific Instruments; University of Wisconsin-Madison et al.

Correction

In notice document 89-12114 beginning on page 22000 in the issue of Monday, May 22, 1989, make the following correction:

In the third column, in the first line, "the " should read "to".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California

Correction

In rule document 89-10793 beginning on page 19798 in the issue of Monday, May 8, 1989, make the following corrections:

1. On page 19805, under "C. SPECIAL REQUIREMENTS, RESTRICTIONS, AND EXCEPTIONS", in C-4, in the second line, "124'23'18'" should read "124'23'00'".

2. On the same page, in C-6, in the second line "4" should read "24".

3. On page 19806, in the second column, under *Geographical Landmarks*, in the second paragraph, the ninth line should read "Leadbetter Point—46°38'10'".

Note: For a Department of Commerce correction to the document referenced in this correction, see the Rules section of this issue.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP89-14-006]

Inter-City Minnesota Pipelines Ltd., Inc.; Tariff Filing

Correction

In notice document 89-12884 appearing on page 23256 in the issue of Wednesday, May 31, 1989, in the heading, the docket number should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP89-174-000]

Southern Natural Gas Co; Proposed Change in FERC Gas Tariff

Correction

In notice document 89-12882 appearing on page 23257 in the issue of Wednesday, May 31, 1989, in the heading, the docket number should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Meetings

Correction

In notice document 89-11839 beginning on page 21289 in the issue of Wednesday, May 17, 1989, make the following correction:

On page 21289, in the third column, under the *Oncologic Drugs Advisory Committee*, in the second paragraph, in the fourth line, "4:16p.m." should read "4:15p.m.".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M-0137]

Telectronics, Inc.; Premarket Approval of Meta MV™ Model 1202 Pulse Generator, etc.

Correction

In notice document 89-11781 beginning on page 21288 in the issue of Wednesday, May 17, 1989, make the following corrections:

In the third column under **SUPPLEMENTARY INFORMATION**, in the fifth line, the closing quotation marks should be replaced by a trademark symbol.

1. In the third column, under **SUPPLEMENTARY INFORMATION**, in the sixth line, "5803" should read "5803".

2. On page 21289, in the first column, under **OPPORTUNITY FOR ADMINISTRATIVE REVIEW**, in the first line, "Section 515(d)" should read "Section 515(d)(3)".

BILLING CODE 1505-01-D

Tuesday
June 6, 1989

Part II

Department of the Interior

Fish and Wildlife Service

50 CFR Part 20

Migratory Game Bird Hunting; Proposed Rule

federal register

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 20

RIN 1018-AA24

Migratory Game Bird Hunting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; supplemental.

SUMMARY: The Fish and Wildlife Service (hereinafter the Service) proposed in an earlier document to establish annual hunting regulations for certain migratory game birds. This supplementary document describes proposed changes and provides additional information that will facilitate establishment of the 1989-90 hunting regulations for certain migratory game birds. Comments received on the preliminary proposals do not appear in this supplemental but will be addressed in the final rule.

DATES: The comment period for proposed migratory bird hunting season frameworks for Alaska, Hawaii, Puerto Rico, the Virgin Islands, and other early seasons will end on July 21, 1989; and that for late-season proposals will end on August 28, 1989. Public hearings on proposed early- and late-seasons frameworks will be held on June 22 and August 3, 1989, respectively (54 FR 12534).

ADDRESSES: Send comments to: Director (FWS/MBMO), U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC 20240. The June 22 public hearing for early-season proposals will be held in the Auditorium of the Department of the Interior Building on C Street, between 18th and 19th Streets, NW., Washington, DC, and the August 3 public hearing for late-season proposals will be held in the Auditorium of the General Service Administration Building on F Street, between 18th and 19th Streets, NW., Washington, DC. Notice of intention to participate in either hearing should be sent in writing to the Director at the address above.

Comments received on this supplemental proposed rulemaking will be available for public inspection during normal business hours in Room 634, Arlington Square Building, 4401 North Fairfax Drive, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Byron K. Williams, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Room 634-Arlington Square, Washington, DC 20240 (703-358-1714).

SUPPLEMENTARY INFORMATION: The annual process for developing migratory game bird hunting regulations deals with regulations for early and late seasons. Early seasons include those which may open before October 1, while late seasons may open about October 1 or later. Regulations are developed independently for early and late seasons. The early-seasons regulations cover mourning, white-winged and white-tipped doves, band-tailed pigeons, ralls, moorhens, and gallinules, woodcock, and common snipe; sea ducks in the Atlantic Flyway; September teal; experimental September duck seasons in identified States; experimental September Canada goose seasons in portions of identified States; sandhill cranes in the Central and Pacific Flyways; doves in Hawaii; migratory game birds in Alaska, Puerto Rico, and the Virgin Islands; and some extended falconry seasons. Late seasons include the general waterfowl seasons; coots, moorhens and gallinules, and common snipe in the Pacific Flyway; and extended falconry seasons.

Certain general procedures are followed in developing regulations for the early and late seasons. The data used in regulatory decisions were outlined in the March 27, 1989, *Federal Register* (54 FR 12534). At this time the Service does not have complete data from the spring breeding ground surveys but a preliminary assessment of duck breeding habitat was developed in mid-May. The habitat conditions in the prairie-parklands continue to be dry and duck production prospects are poor. Restrictive duck regulations were enacted in 1988 in response to poor habitat conditions, reduced duck breeding populations, and expected poor fall flights. The Service notes that if populations need additional protection, further framework restrictions, to include, but not limited to, outside dates, season lengths and bag limits, will be considered in the development of regulations for the 1989-90 hunting season. In addition, all aspects of past regulations which may have a bearing on possible harvest, are being reviewed. Some actions on early-season regulations will have to be based on information from the May surveys.

Initial regulatory proposals are announced in the *Federal Register* document published in March and opened to public comment. These proposals are supplemented, as necessary, with additional *Federal Register* documents. Comments in response to the March document that support or oppose proposed preliminary regulations are not listed in this supplemental document. They will be

considered in the regulations development process. This document does contain recommendations that require either new proposals or substantial modifications of existing proposals in order to facilitate effective public participation. Following review of comments received and after public hearings, the Service further develops and publishes proposed frameworks for times of seasons, season lengths, shooting hours, daily bag and possession limits, and other regulatory elements. After consideration of additional public comments, the Service publishes final frameworks in the *Federal Register*. The Service responses to comments and proposals do not appear in this supplemental or subsequent proposed rules but will appear in the two final frameworks documents. Using these frameworks, State conservation agencies then select hunting season dates and options. Upon receipt of State selections, the Service publishes a final rule in the *Federal Register*, amending Subpart K of 50 CFR Part 20, to establish specific seasons, bag limits, and other regulations. The regulations become effective upon publication. States may prescribe more restrictive seasons than those provided in the final frameworks.

The regulations schedule for this year is as follows: On March 27, 1989, the Service published in the *Federal Register* (54 FR 12534) a proposal to amend 50 CFR Part 20, with public comment periods ending as noted above. The proposal dealt with establishment of seasons, limits, and other regulations for migratory game birds under §§ 20.101 through 20.107, 20.109, and 20.110 of Subpart K. This document is the second in a series of proposed, supplemental, and final rules for migratory game bird hunting regulations. Comment periods on this second document are specified above under **DATES**. Final regulatory frameworks for migratory game bird hunting seasons for Alaska, Puerto Rico, the Virgin Islands, and early seasons in other areas of the United States are targeted for *Federal Register* publication on or about August 9, 1989; and those for late seasons on or about September 18, 1989.

On June 22, 1989, a public hearing will be held in Washington, DC, as announced in the *Federal Register* of March 27, 1989, to review the status of mourning, white-winged, and white-tipped doves; band-tailed pigeons; ralls; moorhens and gallinules; woodcock; common snipe; and sandhill cranes. Recommended hunting regulations will be discussed for these species and for

migratory game birds in Alaska, Puerto Rico and the Virgin Islands; September teal seasons; experimental September waterfowl seasons in designated States; special sea duck seasons in the Atlantic Flyway; and extended falconry seasons.

On August 3, 1989, a public hearing will be held in Washington, DC, as announced in the *Federal Register* of March 27, 1989, to review the status and recommended hunting regulations for waterfowl not previously discussed at the June 22 public hearing.

This supplemental rulemaking describes a number of changes which have been recommended based on the preliminary proposals published on March 27, 1989, in the *Federal Register*. Statements and comments are invited.

Review of Public Comments

Written Comments Received

As of May 8, 1989, the Service had received comments on proposals published in the March 27, 1989, *Federal Register* (54 FR 12534) from 16 correspondents, including 4 States, 2 organizations, all four waterfowl flyway councils, and 8 individuals. In some instances, the communications did not specifically mention the open comment period or the regulatory proposals; however, because they were received during the comment period and generally relate to migratory game bird hunting regulations, they are treated as comments. The Service seeks additional information and comments on the recommendations contained in this supplemental proposed rule. These recommendations and all associated comments will be considered during development of the final frameworks. Early-season frameworks will be proposed in late June and late-season frameworks in early August. Responses to written comments and those received at the public hearings will be included in the appropriate final frameworks *Federal Register* documents, at which time, additional data about the status of affected species will be available.

General Comments

The Service is currently reviewing many special harvest strategies and tools for migratory game bird management. The Service requested information from the Flyway Councils and States on these harvest strategies which include zones, splits, management units, special seasons, bonus birds, and the point system. The Service reiterates that any action on these items is likely to be deferred until the review is complete, which likely will not occur prior to the 1989-90 hunting season. New proposals and modifications to

previously described proposals are discussed below. Wherever possible, they are discussed under headings corresponding to the numbered items in the March 27, 1989, *Federal Register* (at 54 FR 12536).

1. *Shooting hours.* The Service believes clarification is needed in regard to shooting hours and falconry. The first consideration is that hunting hours for falconry will be the same as those for other means of taking migratory birds. The second is that States need not consider falconry seasons in determining the "earliest duck season opening date" * * * latest duck season closing date" (at 54 FR 12539, item 1b) in their State.

2. *Frameworks for ducks in the conterminous United States—outside dates, season length and bag limits.* Framework dates. At its March meeting, the Central Flyway Council recommended that framework dates be standardized to open on the Saturday nearest October 1 and closing on the Sunday nearest January 20, as was in effect in 1984-85.

4. *Wood ducks.* The recommendation for September Duck Season bag limits will impact wood ducks (see Item 8).

8. *September Duck Seasons.* At its March meeting, the Atlantic Flyway Council endorsed a recommendation that the bag limit be 4 wood ducks only during the Experimental September Duck Season in Florida. The Council notes that low harvest levels, low band recovery rates, and a low portion of northern wood ducks in the harvest are compatible with providing increased opportunity for harvesting southern wood ducks without jeopardizing the sustained welfare of wood duck populations.

14. *Frameworks for geese and brant in the conterminous United States—outside dates, season length and bag limits.*

a. The Atlantic Flyway Council endorsed the following recommendations at its March meeting:

i. That a 3-year experimental season be established for resident Canada geese in North Carolina west of Interstate 95 from September 1 through September 10. The daily bag limit would be 2 geese. The Council notes that North Carolina's voluntary closure of the Canada goose season in that portion of the State west of Interstate 95 eliminated a means to harvest resident geese within the regular season framework. Recreational opportunity to harvest resident geese has been lost and hunter support for efforts to protect geese affiliated with the Southern James Bay population may decline as a result. The arrival of migrant geese in North

Carolina appears to occur after the proposed season dates of September 1-10.

ii. That a 3-year experimental season be established for resident Canada geese in Georgia and last for 8 days between November 15 and February 5. The bag limit would be 1 goose per season. The Council notes that resident Canada geese in Georgia have increased to nuisance proportions and the population is large enough to support a limited sport harvest. High levels of recreational use, other than hunting, within the proposed hunt areas, prevent implementation of an early September resident goose season.

iii. That the bag limit of Atlantic brant be increased from 2 to 4 birds per day. The season length would remain at 50 days. The Council notes that the population increased and a large proportion of young birds warrant further liberalization of the existing regulation. The 1987-88 season frameworks allowed a 30-day season and 2 brant daily and was extended to 50 days in 1988-89.

iv. That the bag limit for greater snow geese be increased from 4 to 5 birds per day. The season length would remain at 90 days. The Council notes that populations are at high levels and crop depredation and habitat degradation are resulting. Snow geese are adapting to hunting pressure, resulting in lower harvest levels increasing the daily bag limit may stimulate interest, increase hunter participation, and increase harvest levels.

v. That the experimental (special) snow goose season at Bombay Hook NWR in Delaware be expanded to include State areas adjacent to the existing area. The Council notes that the 13-day seasons have been successful in moving geese and minimizing late October damage to Spartina marshes at Bombay Hook. The experimental hunts also provide additional hunting opportunity.

b. The Upper Region Regulations Committee of the Mississippi Flyway Council endorsed the following recommendations at its March meeting:

i. That a 3-year experimental season be established to evaluate the effectiveness of a September 1 to September 10 season for reducing the growth of the local Canada goose population in the Southwest Border zone of Minnesota. The Council notes that giant Canada goose populations in this zone have exceeded population objectives. Restrictive Canada goose seasons have made it difficult to harvest adequate numbers of local Canada

geese in this area in order to minimize nuisance and damage problems.

ii. That a 3-year experimental season be established to evaluate the effectiveness of a September 1 to September 10 season for reducing growth of the Canada goose population in the Fergus-Alex zone of Minnesota. The Council notes that giant Canada goose populations in this zone have exceeded population objectives. Restrictive Canada goose seasons have made it difficult to harvest adequate number of local Canada geese in this area in order to minimize nuisance and damage problems.

iii. That Iowa be permitted to change the boundary of its Southwest Goose zone to include DeSoto National Wildlife Refuge and associated feeding areas. Goose seasons in this zone have generally been held 2 weeks later than those in the rest of the State. The Council notes that snow geese in western Iowa have migrated later in recent years. The requested change will allow the snow goose season in the vicinity of DeSoto National Wildlife Refuge to better coincide with the period when snow geese are present. A slight harvest increase may occur in some years, but snow goose populations are increasing.

iv. That Indiana be permitted to split its goose season in existing zones into 3 segments. The Service notes that 3 segments in zoned areas previously have not been permitted.

c. At its March meeting, the Pacific Flyway Council recommended lifting restrictions on hunting western Canada geese in 2 California areas (Sacramento Valley and San Joaquin Valley). There is currently no open season for Canada geese in the Sacramento Valley area, while the hunting season for Canada geese in the San Joaquin Valley area currently closes no later than November 23. The Council notes that western Canada goose hunting is consistent with harvest management objectives for Pacific population Canada geese, but acknowledges potential concerns for Aleutian and cackling Canada geese wintering in these areas.

15. *Tundra swans*. There were two errors regarding the tundra swan seasons in the preliminary proposal. The following statements correct these errors and clarify the swan framework in the Pacific Flyway.

a. It is again proposed that permits in the Pacific Flyway portion of Montana would be valid in Teton, Cascade, Toole, Liberty, Hill, and Pondera Counties.

b. It is again proposed that tundra swan hunts in the Central Flyway

portion of Montana run concurrent with the season dates for taking geese.

c. In the Pacific Flyway eligible States may select a 93-day season between September 30 and January 21.

24. *White-winged and White-tipped Doves*.

a. In the March 27, 1989, *Federal Register* (at 54 FR 12542), the Service reviewed a request from Texas for an experimental dove bag limit. At its March meeting, the Central Flyway Council recommended establishment of a 3-year experimental dove bag limit study during the 4-day special season for white-winged doves in Texas. The aggregate daily bag limit of 12 white-winged, mourning, and white-tipped doves would permit no more than 2 white-tipped doves but would allow up to 12 mourning doves. The Council notes that these 4 days (during the first 2 weekends in September) are part of, and not in addition to, the 70-day mourning dove season in Texas. The daily aggregate bag is currently 10 white-winged, mourning, and white-tipped doves to include no more than 2 mourning doves and 2 white-tipped doves. The Council further notes that the restricted bag limits have limited recreational opportunity and contributed to economic problems.

b. In a letter dated May 2, 1989, Texas recommended their initial proposal be modified to limit the aggregate bag limit to 10 doves per day, not more than 5 of which can be mourning doves or 2 of which can be white-tipped doves, except that in the special white-winged dove area upriver from Del Rio, the aggregate daily bag be allowed to contain up to 10 mourning doves. The State reports there is very little late-nesting of mourning doves in the upriver area.

If the experiment is approved, the Texas Parks and Wildlife Department proposes to monitor the effects of the experimental bag limit with (1) additional mourning dove call-count surveys, (2) a nesting chronology study, (3) an egg and nestling survival study, and (4) harvest surveys. Results of these surveys will be used in formulating bag limit recommendations at the end of the 3-year experimental period.

25. *Migratory bird hunting seasons in Alaska*. At its March meeting, the Pacific Flyway Council endorsed Alaska's existing frameworks with no change for the 1989 migratory bird hunting frameworks. In 1988, shooting hours for migratory game birds in Alaska began one-half hour before sunrise. In the March 27, 1989, *Federal Register* (at 54 FR 12542) the Service proposed that shooting hours for Alaska begin at sunrise and end at sunset. The Council notes that, during the hunting

season, Alaska receives greater illumination at one-half hour before sunrise than the contiguous United States.

27. *Migratory game bird season for falcons*. See item 1 (Shooting hours). Because of the framework extension granted for falconry in 1988 the Service believes that the number of season segments allowed needs to be established. The Service recommends not more than 3 segments be allowed for falconry seasons.

Public Comment Invited

Based on the results of migratory game bird studies now in progress and with due consideration for any data or views submitted by interested parties, the possible amendments resulting from this supplemental rulemaking will specify open seasons, shooting hours, and bag and possession limits for designated migratory game birds in the United States, including Alaska, Hawaii, Puerto Rico, and the Virgin Islands.

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals. The addresses where comments should be sent and where received comments are available for public inspection were given earlier in this document under the caption **ADDRESSES**.

Special circumstances are involved in the establishment of these regulations which limit the amount of time that the Service can allow for public comment. Specifically, two considerations compress the time in which the rulemaking process must operate: the need, on the one hand, to establish final rules at a point early enough in the summer to allow affected State agencies to appropriately adjust their licensing and regulatory mechanisms, and, on the other hand, the unavailability before mid-June of specific, reliable data on this year's status of some migratory shore and upland game bird populations. Therefore, the Service believes that to allow comment periods past the dates specified is contrary to the public interest.

Flyway Council Meetings

Department of the Interior representatives will be present at the following meetings of Flyway Councils:

Atlantic Flyway—Quebec City, Quebec, Canada (Desgouverneurs) July 28–29

Mississippi Flyway—Saginaw, Michigan (Saginaw Sheraton) July 29–30

Central Flyway—North Platte, Nebraska (Holiday Inn) July 27–28

Pacific Flyway—Reno, Nevada (Peppermill Hotel) July 28

Although agendas are not yet available, these meetings usually commence at 8:30 to 9 a.m. on the days indicated.

NEPA Consideration

The "Final Environmental Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds (FES 75–54)" was filed with the Council on Environmental Quality on June 6, 1975, and notice of availability was published in the *Federal Register* on June 13, 1975 (40 FR 25241). The "Final Supplemental Environmental Impact Statement for the Issuance of Annual Regulations Permitting the Sport Hunting of Migratory Birds" was completed and filed with the Environmental Protection Agency on June 9, 1988, and a Notice of Availability was published in the June 16, 1988, *Federal Register* (53 FR 22582). Copies of these documents are available from the Service at the address indicated under the caption **ADDRESS**.

Endangered Species Act Consideration

Consultations are presently underway to ensure that actions resulting from

these regulatory proposals will not likely jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of their critical habitat. It is possible that the findings from the consultations, which will be included in a biological opinion, may cause modification of some of the regulatory measures proposed in this document. Any modifications will be reflected in the final frameworks.

Hunting regulations are designed, among other things, to remove or alleviate chances of conflict between seasons for migratory game birds and the protection and conservation of endangered and threatened species and their habitats.

The Service's biological opinions resulting from its consultation under section 7 are considered public documents and are available for public inspection in the Division of Endangered Species and Habitat Conservation, and the Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240.

Regulatory Flexibility Act, Executive Order 12291, and the Paperwork Reduction Act

In the *Federal Register* dated March 27, 1989 (54 FR 12534), the Service reported measures it had undertaken to comply with requirements of the Regulatory Flexibility Act and the Executive Order. These included

preparing a Determination of Effects and an updated Final Regulatory Impact Analysis, and publication of a summary of the latter. This information is included in the present document by reference. As noted in the above *Federal Register* publication, the Service plans to issue its Memorandum of Law for the migratory bird hunting regulations at the same time the first of the annual hunting rules is finalized. This rule does not contain any information collection requiring approval by OMB under 44 U.S.C. 3504.

Authorship

The primary author of this supplemental proposed rulemaking is Morton M. Smith, Office of Migratory Bird Management, working under the direction of Byron K. Williams, Acting Chief.

List of Subjects in 50 CFR Part 20

Exports, Hunting, Imports, Transportation, Wildlife.

Authority: Migratory Bird Treaty Act, sec. 3, Pub. L. 65–186, 40 Stat. 755 (16 U.S.C. 701–708h); sec. 3(h), Pub. L. 95–616, 92 Stat. 3112 (16 U.S.C. 712).

Dated: May 31, 1989.

Becky Norton Dunlop,
Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89–13351 Filed 6–5–89; 8:45 am]

BILLING CODE 4310–65–M

federal register

Tuesday
June 6, 1989

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 606 and 610
Current Good Manufacturing Practice for
Blood and Blood Components;
Proficiency Testing Requirements;
Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 606 and 610

(Docket No. 88N-0413)

RIN 0905-AC92

Current Good Manufacturing Practice for Blood and Blood Components; Proficiency Testing Requirements

AGENCY: Food and Drug Administration.
ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend the regulations concerning blood products to require that each establishment or laboratory, responsible for performing FDA-required tests for hepatitis B surface antigen (HBsAg) and evidence of Human Immunodeficiency Virus (HIV), participate in an approved program to demonstrate proficiency in performing these tests. This proposed rule is part of an FDA program to provide increased assurance of the quality of laboratory performance.

DATES: Comments by July 6, 1989. FDA proposes that the effective date of any final rule be 80 days after the date of its publication in the Federal Register.

ADDRESS: Written comments to the Dockets Management Branch (HFA-306), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT:

JoAnn Minor, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION: FDA is proposing to amend the regulations concerning blood and blood components intended for transfusion or for further manufacture (hereafter referred to as blood and blood components) to require that laboratories performing required tests for evidence of HIV or hepatitis B surface antigen participate in approved proficiency testing programs. The proposed regulations would require these laboratories to perform successfully in such programs to be considered qualified to conduct required HIV or HBsAg testing.

I. Background

Because blood, blood components, and blood products have the potential to transmit HIV (the causative agent of acquired immunodeficiency syndrome (AIDS)) and the virus that causes hepatitis B, FDA has required each

donation of blood or blood components to be tested appropriately to detect evidence of HIV or HBsAg (21 CFR 610.40 and 610.45). Units testing reactive or repeatedly reactive to these tests are not to be shipped or used in manufacturing biological products except under specified narrowly limited circumstances (21 CFR 610.40 (b) and (d) and 610.45(c)).

As part of this procedure designed to help protect the public against these serious and life-threatening diseases, it is important that the testing for evidence of HIV and for HBsAg be adequately and accurately performed. FDA regulations currently require such testing to be performed by the collection facility, by personnel of an establishment licensed to manufacture blood or blood derivatives under section 351 of the Public Health Service Act (42 U.S.C. 262), or by a clinical laboratory that meets the standards of the Clinical Laboratory Improvement Act of 1967 (CLIA) (42 U.S.C. 263a), provided that the establishment or laboratory is qualified to perform the test (21 CFR 610.40(b) and 610.45(b)). FDA requires that tests approved for this purpose be used, and the specific method for carrying out each licensed test is described in the labeling accompanying the test's reagents.

Recently, questions have been raised concerning the controls over performance of these required tests by testing facilities. The Presidential Commission on the HIV Epidemic (the Commission) has recommended the use of proficiency testing programs to help ensure high quality performance by testing laboratories. (Report of the Presidential Commission on the Human Immunodeficiency Virus Epidemic (June 1988), pp. 80-81). On August 5, 1988, in response to the Commission's recommendations, the President directed the Department of Health and Human Services (DHHS) to take steps to improve the quality of HIV antibody laboratory testing. (Memorandum for the Secretary of Health and Human Services from President Ronald Reagan dated 8/5/88, p. 1.)

FDA is issuing this proposed rule as an additional step in a continuing program to improve laboratory quality. FDA has accelerated its inspection program so that every blood establishment in the United States was inspected in 1988. A number of problems were found related to the interpretation of test results and the disposition of products that had not met all testing requirements. FDA assured that appropriate corrective actions were taken, including recalls of a number of blood products and changes in

laboratory procedures. The problems encountered demonstrate that a complete program of quality assurance should be in place to prevent deficiencies in laboratory testing.

Proficiency testing is commonly used for many testing procedures to assure that test accuracy is being maintained. Many State and private organizations offer proficiency testing programs. In general, the organization conducting the proficiency testing program periodically pretests samples and distributes them to participating laboratories. The laboratories' supervisory staff knows that the test samples come from the proficiency testing program, but the laboratory is expected to test the proficiency samples as it would any patient or donor sample. The results are reported back to the organization conducting the program, which scores the results and reports them to each laboratory. Repeated unsuccessful participation in the proficiency testing program would indicate that the laboratory should reevaluate its operations and take corrective action, as necessary, to improve the quality of the laboratory's testing program. Thus, proficiency testing serves as a quality assurance tool for use by the laboratories.

As part of a DHHS-wide program to accomplish the goal of improving the quality of laboratory testing, FDA is proposing to amend the regulations concerning blood and blood components to require proficiency testing. Another part of this departmental initiative is the regulation proposed by the Health Care Financing Administration (HCFA) on August 5, 1988 (53 FR 29590). Under this proposed regulation, HCFA would require laboratories seeking approval for Medicare or Medicaid reimbursement or licensing under the Clinical Laboratories Improvement Act of 1967 (CLIA) to enroll in an approved proficiency testing program. (See proposed 42 CFR 493.21 (53 FR 29590 at 29611)).

Although many laboratories testing blood and blood components would be subject to HCFA's proposed regulations, some laboratories performing HIV antibody or HBsAg testing would not be. These include establishments that do not receive Medicare or Medicaid reimbursement, as well as those that do not engage in testing in interstate commerce. (See proposed 42 CFR 493.1 (53 FR 29590 at 29610)). FDA's proposed regulation would assure that laboratories not covered by HCFA's proposed regulations will participate in proficiency testing programs. (Recent amendments to the Clinical Laboratory

Improvement Act will expand HCFA's authority, beginning January 1, 1990, to include the regulation of laboratories that engage solely in testing in intrastate commerce.)

FDA's proposed regulations are intended to supplement, not supersede, the regulations proposed by HCFA, so that all blood and blood product testing laboratories in the United States would be subject to proficiency testing. In the future, however, FDA may consider issuing its own regulations to establish specific requirements for these proficiency testing programs. Such FDA regulations would be considered if development of the HCFA final rule is substantially delayed or if the HCFA final rule does not provide specific assurance that a laboratory testing blood or blood products is qualified to conduct the required HIV or HBsAg testing.

II. Highlights of the Proposed Rule

FDA is proposing to require that any laboratory or other facility that performs either the FDA-required test for HBsAg or for evidence of HIV (currently, the test for antibody to HIV) participate successfully in an approved program to demonstrate proficiency in performing the tests. The proposed rule would apply to any laboratory performing such testing on behalf of, or as part of, any registered blood establishment, whether licensed or unlicensed, and including any plasmapheresis center. (Registered, unlicensed blood establishments may collect and process blood and blood components solely for intrastate distribution.)

Laboratories would be required to participate in a proficiency testing program approved by FDA; however, programs already approved by HCFA would be viewed as meeting FDA requirements. A laboratory that fails to perform successfully, as defined by the organization directing the program at the time of enrollment, would be required to notify FDA immediately by phone or other means, with a followup notification in writing required within 30 days after the laboratory is so notified. The written notification to FDA would include a description of the problem believed to have resulted in the failure and a description of any plans of corrective action. After notification, FDA would initiate appropriate action to assure the adequate performance of the laboratory and the continued protection of the public health.

III. Provisions of the Proposed Rule

A. Requirement To Participate in a Proficiency Testing Program

FDA's proposed amendments to the blood and blood product regulations are intended to help assure that every establishment or laboratory performing FDA-required tests for evidence of HIV or HBsAg is qualified to perform such tests, as evidenced in part by successful participation in an approved proficiency testing program. Proposed 21 CFR 606.145(a) would require laboratories performing either of the tests required under 21 CFR 610.40 (HBsAg) or 21 CFR 610.45 (HIV) to participate in a proficiency testing program.

Throughout this proposed rule, FDA is using the term "test for evidence of HIV" rather than "test for antibody to HIV," so that, if a test other than the test for antibody for HIV is approved by FDA as appropriate for testing in accordance with 21 CFR 610.45, participation in proficiency testing for the new test would be required without necessitating additional rulemaking.

FDA is not proposing to require that laboratories performing the Western Blot test for detecting HIV participate in a proficiency testing program. The Western Blot test is not used for assuring product safety under FDA's requirements but is routinely used by blood establishments to gather additional evidence of infection with HIV before the donor is notified of positive test results. The Western Blot test is also used as part of a testing algorithm to determine whether a donor who has previously tested reactive to the required test for HIV tested "false positive" and therefore may reenter as a donor of blood and blood components. The Western blot test is used in clinical settings as part of determining whether a patient is infected with HIV. FDA is not aware of any proficiency testing programs that currently have the ability to conduct proficiency testing for the Western Blot test.

FDA invites comment on whether proficiency testing for the Western Blot test should be required and, if so, the scope of such a requirement. Proficiency testing for the Western Blot test could be required only for blood establishments regulated by FDA or the scope could be expanded to include all laboratories regulated by HCFA who conduct Western Blot testing in a clinical setting. The comments received will be considered by both FDA and HCFA in preparing their respective final rules.

The term "laboratories" as used in proposed 21 CFR 606.145 is intended to include any entity which performs either

the HBsAg test or the test for evidence of HIV pursuant to FDA's regulations.

B. Standards for Acceptable Proficiency Testing Program

Proposed 21 CFR 606.145(b) and (c) address the criteria for acceptable proficiency testing programs. The general standards, as set forth in proposed 21 CFR 606.145(b), would provide that the program must be adequate to demonstrate and evaluate the laboratory's performance of the HBsAg and evidence of HIV tests. A proficiency testing program is most useful when it measures the laboratory's performance under the laboratory's usual practice. Therefore, the proposal would require that proficiency samples be tested (1) Under routine conditions, (2) as part of the laboratory's regular workloads, (3) by the personnel who routinely perform the tests, and (4) using the laboratory's usual methods.

Proposed 21 CFR 606.145(c) would require that a laboratory enroll in a proficiency testing program that has been approved by the Director, Center for Biologics Evaluation and Research (CBER) in FDA. FDA recognizes that many laboratories are regulated both by FDA and HCFA and would want to enroll in one proficiency testing program to meet the requirements of both agencies. FDA is cooperating closely with HCFA to assure that proficiency testing programs conforming with HCFA's final rule will be appropriate for complying with FDA's requirements. Proposed 21 CFR 606.145(c) would provide that proficiency testing programs approved by HCFA will be approved by FDA upon the submission of the written approval by HCFA of the proficiency testing program for the test category that includes the tests for HBsAg and evidence of HIV. FDA is proposing to require its approval of programs already approved by HCFA so that FDA can identify the criteria for unsuccessful performance consistent with each program and instruct the program organization concerning the obligations for laboratories to notify FDA of unsuccessful performance in the proficiency testing program. The proficiency testing program would be expected to notify each laboratory upon enrollment of its obligation to notify FDA in the event that the laboratory fails to participate successfully. By not identifying the exact circumstances for FDA notification in the regulations, FDA will have the flexibility to select appropriate notification procedures for each type of proficiency testing program. (See proposed 21 CFR 606.145(d) and the discussion below.)

A proficiency testing program seeking FDA approval under proposed 21 CFR 606.145(c) that has not already been approved by HCFA would be required to submit a complete description of the program to FDA for review and approval. Proficiency testing programs seeking FDA approval, but not participating under HCFA's regulations, would not necessarily be required to meet HCFA's regulations. For example, criteria applicable to specialties and subspecialties may not be necessary to meet FDA's requirements. However, FDA intends to assure that any proficiency testing programs under its regulations are at least equivalent to those programs meeting HCFA's standards in demonstrating the proficiency of laboratories in performing the required tests. Before publication of any final rule resulting from this proposal, FDA intends to provide additional guidance concerning the information that should be submitted when requesting approval of a proficiency testing program not already approved by HCFA.

FDA is proposing that each proficiency testing program request FDA approval, rather than proposing that each laboratory request approval of the program in which it elects to participate, as the least burdensome means for all concerned of assuring that each laboratory will participate in a program acceptable to FDA and that each laboratory is aware of its specific notification obligations under proposed 21 CFR 606.145(d).

FDA is not proposing at this time to include specific standards, other than those in 21 CFR 606.145 (b) and (c), concerning the criteria for approval and structure of proficiency testing programs and the criteria for successful performance for laboratories participating in proficiency testing. Those proficiency testing programs and laboratories regulated both by HCFA and by FDA would be required to meet the criteria set forth in HCFA's regulations, when they become final. HCFA's standards apply to groups of related tests, rather than individual tests as do FDA's regulations. Because the applicable HCFA regulations also reference many other tests unrelated to this proposed rule, FDA is not repeating the applicable HCFA regulations in proposed 21 CFR 606.145. If standards specific for the tests for HBsAg and anti-HIV are included in HCFA's final regulations, FDA would consider cross-referencing them in 21 CFR 606.145 for the convenience of those laboratories that must meet both FDA's and HCFA's regulations.

Under the proposed HCFA proficiency testing program (42 CFR 493.111), at least two samples per test procedure must be tested each quarter. To participate successfully, a laboratory may not (1) For each test event (e.g., each quarter) have a test for which all results have been unacceptable; and (2) for two consecutive test events have an unsatisfactory result on one of the two challenges. In addition, for all tests in the "General Immunology" subspecialty, which includes the tests for anti-HIV and HBsAg, a score of 80 percent of acceptable results must be obtained for each testing event. (See HCFA's proposed 42 CFR 493.47.)

Laboratories failing to meet these criteria must enroll in an "enhanced proficiency testing program" (42 CFR 493.22(b)). In an enhanced proficiency testing program, a laboratory must participate successfully in three consecutive testing events, occurring quarterly or more frequently. Six samples are tested on each event. A laboratory must obtain an overall score for each event of at least 80 percent and must achieve correct results on 5 of 6 samples for the first testing event; 10 of 12 samples for the first and second testing events; and 15 of 18 samples for all three testing events (21 CFR 493.25(a)). (For example, if a laboratory achieves correct results on all six samples in the first testing event, the laboratory must then achieve correct results on at least four of the six samples in the second testing event.) These proposed HCFA requirements are subject to change as a result of public comment on the proposed rule and because of recent legislation affecting that agency's proficiency testing rules. FDA is cooperating closely with HCFA to assure that proficiency testing programs conforming to HCFA's final rule will be appropriate for complying with FDA's requirements. However, FDA is not proposing to require that laboratories otherwise not regulated by HCFA must follow HCFA's proficiency testing requirements. FDA is proposing that laboratories participating successfully in a proficiency testing program in accordance with HCFA's requirements would also meet FDA's proposed requirements.

FDA considered whether to propose more stringent standards than those proposed by HCFA for demonstrating proficiency in tests that are performed for assuring the safety of the blood supply, particularly for the test for anti-HIV. HCFA's proposed requirement that clinical laboratories obtain a score of 80 percent acceptable results for all tests in the "General Immunology" subspecialty

is intended to identify possible problems in performing a related group of tests that often use similar equipment and methodology. The other criteria for successful performance are intended to identify possible problems in any specific test procedure listed under the subspecialty. FDA considered whether to set a more stringent standard than 80 percent acceptable results, such as 90 percent acceptable results, for the FDA required tests for HBsAg and anti-HIV, thereby providing a criterion more directly applicable to these specific tests. In the proficiency testing programs currently in existence, from two to five samples per test procedure are tested each quarter. Many small laboratories affiliated with blood establishments perform only the tests for HBsAg and anti-HIV and would test only 4 to 10 proficiency testing samples per quarter. The setting of a more stringent and more specific criterion would mean that a single incorrect test result could result in unsuccessful performance. FDA believes that a laboratory should be concerned about any incorrect test result and should determine the cause of the error and, if appropriate, take corrective action. However, FDA wishes to inquire whether isolated errors should result in regulatory action, such as required enrollment in an enhanced proficiency testing program or required notification of FDA. The proposed proficiency testing program would be only part of the system for assuring the continued quality of the testing of blood and blood components. In accordance with the instructions provided with each test kit, positive and negative control samples are included with each test run. In accordance with 21 CFR 606.140(b), each laboratory must have control procedures for routinely monitoring the reliability, accuracy, precision and performance of laboratory test procedures and instruments. FDA believes that these quality assurance measures, considered together, are adequate to assure the continued quality of the testing of blood and blood components. Therefore, at this time, FDA does not believe that standards more stringent than those proposed by HCFA for demonstrating proficiency are needed.

In some cases, a proficiency testing program currently ships samples to each laboratory for testing; in other cases, the samples are hand delivered by a representative of the program, usually as part of an overall inspection of the laboratory under HCFA's standards. (The samples are customarily not "blinded"; that is, proficiency testing samples are usually identified as such to the laboratories that are being tested.)

FDA considered whether to initiate its own mandatory proficiency testing program as part of its proficiency testing initiative. As part of its routine inspection of blood establishments, FDA could provide quality control test samples and monitor the testing of the samples during the inspection. In this manner, FDA could more closely monitor the testing of proficiency testing samples as performed. However, FDA does not currently have the resources for the routine collection, testing, handling, and distribution of appropriate samples and the routine processing of test results. Such a program would require specialized training for FDA investigators who would administer the program and additional facilities, expertise, and equipment would be necessary for preparing and handling test samples. For most laboratories, an FDA administered on-site proficiency testing program would be duplicative of current on-site programs conducted under HCFA's requirements. Thus, FDA believes at this time that the proposed proficiency testing requirements, along with other quality control measures described elsewhere in this document, will adequately assure continued accurate testing by laboratories. Accordingly, FDA does not believe at this time that the limited benefits that would be derived from conducting its own proficiency testing program justify the increased resource demands that would be placed on the agency to initiate and administer such a program.

FDA particularly invites comments on the following issues: (1) Whether HCFA's regulations should be cross-referenced in FDA's regulations concerning proficiency testing; (2) whether FDA should provide in FDA's regulations specific stringent standards for performing successfully in proficiency testing, particularly for the test for anti-HIV, and what those standards should be; (3) whether specific standards should be included in FDA's regulations for the structure of proficiency testing programs intended to meet FDA's requirements; (4) whether isolated errors should result in regulatory actions, such as required enrollment in an enhanced proficiency testing program or required notification of FDA; (5) whether FDA should consider blind testing and how such testing could be made operational; and (6) whether FDA should provide quality control samples for testing during inspection as part of its mandatory proficiency testing programs.

C. Notification to FDA of Unsuccessful Participation in Proficiency Testing Program

Because FDA will not itself be conducting the proficiency testing programs, it is important that laboratories be required to notify FDA when they have failed to meet the performance standards of the program in which they are enrolled. Only if FDA is informed of such failures can the agency assess the significance of the unsatisfactory performance and assure that appropriate steps are taken to improve the performance of the laboratory or otherwise protect the public health.

Therefore, proposed 21 CFR 606.145 would require a laboratory that fails to meet the standards of the applicable proficiency testing program to notify FDA immediately by phone or other rapid means of communication, such as by facsimile or electronic transmission (FAX). A followup written report would be required within 30 days after the laboratory received notice of such failure. A laboratory would be required to include in the written notification the laboratory's evaluation of the problem that resulted in unsuccessful performance and a description of its plan, including any action already taken, for correcting the problem. To ensure that no problems of unsuccessful performance are missed, the agency also proposes that an approved proficiency testing program notify FDA within 30 days of a failure by any of its participants.

FDA is requiring the laboratory to report a proficiency testing failure to FDA, because only the laboratory can quickly provide the information needed to assess the nature of the testing failure and to determine what appropriate followup action should be taken. FDA is requiring the proficiency testing program to report the failure as an added insurance that FDA is made aware of all testing failures.

The criteria for unsuccessful performance that would trigger the FDA notification requirement would be established at the time of approval of the program. Each laboratory would be instructed by the entity conducting the proficiency testing program of the criteria for "unsuccessful performance" and for notifying FDA at the time of enrollment in the program.

FDA also proposes in 21 CFR 606.145(d) to provide specifically that laboratories make the results of their proficiency tests available to FDA upon request, including, for example, during FDA inspection of the laboratory.

FDA is not proposing that laboratories or proficiency testing programs routinely submit proficiency testing results to FDA. HCFA proposed to require that each proficiency testing program issue reports on each laboratory's performance to the State survey agency responsible for inspecting the laboratory and issue cumulative reports on Medicare-approved and CLIA-licensed laboratories to DHHS. See HCFA's proposed 42 CFR 493.93. FDA does intend to monitor proficiency testing, including by examining test results, as part of its routine inspection of blood establishments. Other than in conjunction with an FDA inspection, a laboratory would be required to report test results only when the laboratory fails to perform successfully in its proficiency testing program. FDA invites comment on whether the proposed system of reporting results only upon unsuccessful performance will be adequate to assure the continued quality of laboratory testing.

D. Potential Ramifications of Unsuccessful Participation in Proficiency Testing Program

The purpose of the notification requirement, as discussed above, is to allow FDA to evaluate the situation and, if necessary, take appropriate action. Any laboratory that fails its proficiency testing program will be closely monitored by FDA regarding the safety of the laboratory's blood products. In order for such a laboratory to continue to perform FDA-required tests on blood and blood components, it must demonstrate to FDA's satisfaction that its staff and procedures are adequate to assure the safety of its products.

Proposed 21 CFR 606.145(e) is intended to make clear some likely consequences of failure to perform successfully in proficiency testing programs. Paragraph (e) of 21 CFR 606.145 would authorize FDA to take any appropriate action, including (1) requiring changes in laboratory procedures or staffing, (2) requiring the laboratory to enroll its staff in suitable training programs, and (3) FDA inspection of the laboratory. The appropriate actions taken by the laboratory and FDA will depend on the nature of the proficiency testing failure, i.e. equipment failure, clerical failure, deficiencies in technical expertise of laboratory personnel, and problems related to the sample (and not to the laboratory's testing system).

If, based on the available information, FDA determines that the laboratory's testing program is not adequate to assure the continued safety of the blood

or blood components being tested, the agency may decide that the laboratory is not qualified to perform FDA-required tests on blood and blood components. Then, until adequate performance has been demonstrated to FDA's satisfaction, the laboratory would be deemed unqualified to perform FDA-required tests.

Similar procedures have been relied on in the past when FDA inspections have revealed serious shortcomings in laboratory practices. These procedures have proved successful in assuring the continued availability of safe and effective blood and blood products.

In order to emphasize that the proposed proficiency testing requirements are directly related to the requirements that the HIV antibody and HBsAg tests be performed by qualified laboratories, the agency is also proposing to revise 21 CFR 610.40 and 610.45. These proposed revisions state that a laboratory performing an FDA required test for HBsAg or evidence of HIV, respectively, must participate successfully in a proficiency testing program consistent with proposed 21 CFR 606.145.

IV. Environmental and Economic Impacts

The agency has determined under 21 CFR 25.24(c)(10) that this proposed action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

The agency has examined the economic impact of this final rule and has determined that it does not require either a regulatory impact analysis, as specified in Executive Order 12291, or a regulatory flexibility analysis, as specified in the Regulatory Flexibility Act (Pub. L. 96-354).

Most laboratories would already be required to perform proficiency testing in accordance with any final rule resulting from the HCFA proposed rule of August 5, 1988. Thus, this FDA proposal affects only the estimated 80 to 100 laboratories that are not covered by the HCFA proposal but are regulated by FDA. Although some of these laboratories may incur costs to achieve the required compliance with proficiency testing standards, these costs are expected to be relatively small.

According to the economic analysis that was published in the HCFA proposal, HCFA's proposed rule would not have a significant economic impact. HCFA's proposal, if finalized, would

affect approximately 12,000 Federally-regulated laboratories located in hospitals and independent settings. Since FDA's proposal would affect a much smaller number of laboratories (80 to 100), FDA has determined that the final rule will not be a major rule as defined by Executive Order 12291. Further, if promulgated, FDA certifies that the proposed rule will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

V. Paperwork Reduction Act

Section 606.145 of this proposed rule contains information collection requirements that are subject to the Office of Management and Budget (OMB) approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3504, *et seq.*). Organizations and individuals desiring to submit comments on the information collection requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Rm. 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

VI. Comments

Because of the importance to the public health of having this new requirement in place expeditiously, the Commissioner of Food and Drugs finds, in accordance with 21 CFR 10.40(b)(2), that good cause exists for shortening the comment period on this proposed rule to 30 days. Therefore, interested persons may, on or before July 6, 1989, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

21 CFR Part 610

Biologics, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Administrative Procedure Act, it is proposed that Parts 606 and 610 be amended as follows:

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

1. The authority citation for 21 CFR Part 606 continues to read as follows:

Authority: Secs. 201, 501, 502, 505, 510, 701, 52 Stat. 1040-1042 as amended, 1049-1051 as amended by 76 Stat. 780, 1052-1053 as amended, 1055-1056 as amended, 76 Stat. 794 as amended, and sec. 301 of Pub. L. 87-761 (21 U.S.C. 321, 351, 352, 355, 360 and note, 371), the Public Health Service Act (secs. 351 and 361, 58 Stat. 702 and 703 as amended (42 U.S.C. 262 and 264)), and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243, as amended (5 U.S.C. 553, 702, 703, 704)); 21 CFR 5.10 and 5.11.

2. Section 606.145 is added to Subpart H to read as follows:

§ 606.145 Proficiency testing.

(a) Laboratories performing a test for hepatitis B surface antigen (HBsAg) required by § 610.40 of this chapter or a test for evidence of Human Immunodeficiency Virus (HIV) required by § 610.45 of this chapter shall participate in a proficiency testing program as described in this section.

(b) The proficiency testing program for the Food and Drug Administration (FDA) required tests for HBsAg and evidence of HIV shall be adequate to demonstrate and evaluate the performance of the laboratory in required testing for HBsAg or evidence of HIV under routine conditions of testing, with the proficiency samples tested as part of the laboratory's regular workload by personnel who routinely perform testing, using the laboratory's usual methods.

(c) For the tests described in paragraph (a) of this section, a laboratory shall enroll in a proficiency testing program that is approved in writing by the Director, Center for Biologics Evaluation and Research, as appropriate for fulfilling the requirements of this section. Proficiency testing programs approved by the Health Care Financing Administration (HCFA) will be approved by FDA upon submission to the Director, Center for Biologics Evaluation and Research, of the written approval by HCFA of the proficiency testing program for the applicable tests.

(d) A laboratory failing to meet the standards for adequate performance for the tests described in paragraph (a) of this section shall notify the Director, Center for Biologics Evaluation and Research, as soon as possible by phone (301-295-8191) or other means of rapid communication such as by facsimile transmission (FAX) (FAX 301-295-8197). Written notification shall be submitted

by the laboratory to the Director, Center for Biologics Evaluation and Research, 8800 Rockville Pike, Bethesda, Maryland 20892 within 30 days after the laboratory is notified of such a failure. The written notification shall include an evaluation of the problem and a description of the laboratory's plan for corrective action. The laboratory shall make the results of its proficiency tests available to FDA upon request, including during FDA inspection of the laboratory. The criteria for unsuccessful performance and for reporting to FDA under this paragraph will be established at the time of enrollment in the proficiency testing program. In addition to notification by the laboratory, an approved proficiency testing program shall notify FDA within 30 days of a failure by any of its participants.

(e) When notified of a failure under paragraph (d) of this section, FDA may take such action as it deems appropriate. For example, the agency may inspect the laboratory, require the laboratory to enroll its staff in suitable training programs, or require changes in laboratory procedures or staffing. If, based on the available information, FDA determines that the laboratory has not

demonstrated that its testing program is adequate to assure the continued safety of the blood and blood components being tested, FDA may determine that the laboratory is no longer qualified to perform FDA-required tests on blood and blood components until adequate performance is demonstrated to FDA.

PART 610—GENERAL BIOLOGICAL PRODUCTS STANDARDS

3. The authority citation for 21 CFR Part 610 continues to read as follows:

Authority: Secs. 201, 501, 502, 505, 510, 701, 52 Stat. 1040-1042 as amended, 1049-1051 as amended by 76 Stat. 780, 1052-1053 as amended, 1055-1056 as amended, 76 Stat. 794 as amended, and sec. 301 of Pub. L. 87-761 (21 U.S.C. 321, 351, 352, 355, 360 and note, 371), the Public Health Service Act (secs. 351 and 361, 58 Stat. 702 and 703 as amended (42 U.S.C. 262 and 264)), and the Administrative Procedure Act (secs. 4, 10, 60 Stat. 238 and 243, as amended (5 U.S.C. 553, 702, 703, 704)); 21 CFR 5.10 and 5.11.

4. Section 610.40 is amended by redesignating paragraph (f) as (g) and adding a new paragraph (f) to read as follows:

§ 610.40 Test for hepatitis B surface antigen.

(f) *Proficiency testing.* Laboratories performing tests for hepatitis B surface antigen required by this section shall participate successfully in a proficiency testing program consistent with § 606.145 of this chapter.

5. Section 610.45 is amended by adding a new paragraph (d) to read as follows:

§ 610.45 Human Immunodeficiency Virus (HIV) requirements.

(d) *Proficiency testing.* Laboratories performing tests for evidence of HIV, including tests for antibody to HIV, as required by this section shall participate successfully in a proficiency testing program consistent with § 606.145 of this chapter.

Frank E. Young,
Commissioner of Food and Drugs.
Otis R. Bowen,
Secretary of Health and Human Services.

Dated: January 19, 1989.
[FR Doc. 89-13340 Filed 6-5-89; 8:45 am]
BILLING CODE 4160-01-M

federal register

Tuesday
June 6, 1989

Part IV

Department of Transportation

Federal Aviation Administration

14 CFR Part 43
U.S./Canada Bilateral Airworthiness
Agreement; Notice of Proposed
Rulemaking

BEST COPY AVAILABLE

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 43

[Docket No. 25920; Notice No. 89-16]

RIN 2120-AB89

U.S./Canada Bilateral Airworthiness Agreement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to amend the regulations to provide for the acceptance of maintenance, preventive maintenance, and alterations accomplished on U.S. civil aeronautical products and components in Canada. This proposal is prompted by the airworthiness maintenance provisions contained in the U.S./Canadian Bilateral Airworthiness Agreement and the Schedule of Implementation Procedures between the United States and Canada. The proposed amendment would provide for acceptance by the FAA of maintenance, preventive maintenance, and alterations performed on aircraft engines, propellers, appliances, materials, parts, and other components which are transported from the United States to Canada and which are for installation on U.S.-registered aircraft.

DATE: Comments on the proposal must be received on or before August 7, 1989.

ADDRESS: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attention: Rules Docket (AGC-204), Docket No. 25920, 800 Independence Avenue, SW., Washington, DC 20591; or delivered in duplicate to the Federal Aviation Administration, Rules Docket, Room 915-G, 800 Independence Avenue, SW., Washington, DC. Comments may be examined in Room 915-G on weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m.

FOR FURTHER INFORMATION CONTACT: Leo Weston, Aircraft Maintenance Division, Office of Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-8203.

SUPPLEMENTARY INFORMATION:**Comments Invited**

Interested persons are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental,

energy, or economic impact that might result from adoption of the proposals contained in this notice are invited. Substantive comments should be accompanied by cost estimates. Comments should identify the regulatory docket or notice number and be submitted in duplicate to the Rules Docket address listed above. All comments received on or before the closing date for comments will be considered by the Administrator before taking action on the proposed rule. All comments submitted will be available both before and after the closing date for comments for examination by interested persons in the Rules Docket. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 25920." The postcard will be date/time stamped and mailed to the commenter.

Availability of NPRM

Any person may obtain a copy of this NPRM by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-430, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-3484. Communications must identify the docket number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedures.

Background

Section 43.17 of the Federal Aviation Regulations (FAR) (14 CFR 43.17) currently defines the scope of mechanical work authorized to be performed by Canadian persons on U.S.-registered aircraft. Generally, an appropriately rated Canadian Aircraft Maintenance Engineer or an authorized employee (Approved Inspector) of an approved Canadian maintenance company may, with respect to a U.S.-registered aircraft located in Canada: (1) Perform maintenance, preventive maintenance, and alterations, if the work is performed and recorded in accordance with the requirements of Part 43 of the FAR; (2) perform inspections (other than annual inspections), if the inspection is performed and recorded in accordance

with the requirements of Part 43 of the FAR; and (3) approve the work accomplished in order to return the aircraft to service (except that only a Canadian Airworthiness Inspector or an Approved Inspector may approve a major repair or major alteration). As presently delineated in § 43.17(a), Canadian persons are allowed to perform mechanical work with respect to a U.S.-registered aircraft only when the aircraft is located in Canada.

The need to maintain products used in U.S. and Canadian aircraft operations created a necessity for the United States and Canada to restructure their bilateral airworthiness agreement. In addition to including the present provisions of § 43.17 to maintain and alter U.S.-registered aircraft in Canada, this agreement provides for the maintenance, preventive maintenance, and alterations of aeronautical products shipped between the United States and Canada.

On September 7, 1984, the United States and Canada signed the Agreement Concerning the Airworthiness and Environmental Certification, Approval, or Acceptance of Imported Civil Aeronautical Products (the U.S./Canadian Bilateral Airworthiness Agreement or U.S./CBAA). This agreement terminated and replaced the Arrangement of July 28, 1938 (as amended by the Exchange of Notes at Ottawa, August 12, 1970, and February 18, 1971), which provided for the reciprocal acceptance of certificates of airworthiness for export of aeronautical products between the United States and Canada. The purpose of the maintenance provisions of the U.S./CBAA is to provide for the reciprocal acceptance of the performance in one contracting State of maintenance on, and alterations of, civil aeronautical products certified, approved, or accepted in the other contracting State. (The U.S./CBAA defines "maintenance" as including the types of functions performed as "preventive maintenance," and defines "modification" as synonymous with "alteration.").

Canada has entered into similar airworthiness agreements with several European countries that include provisions to maintain Canadian-registered aircraft in those European countries. The provisions of the agreements between Canada and those European countries are not included as part of the U.S./CBAA. Products for use on U.S.-registered aircraft cannot be maintained or altered under any bilateral agreement made between

Canada and any other country except the United States.

On January 31, 1985, the United States and Canada signed the Schedule of Implementation Procedures (Schedule) for the U.S./Canadian Bilateral Airworthiness Agreement. The purpose of the Schedule is to carry out the objectives of the U.S./CBAA. The Schedule includes the objective of ensuring that "the procedures for the performance of maintenance and alteration or modification by authorized persons in one State on aircraft which are under airworthiness regulation by the civil airworthiness authority * * * of the other State, including aeronautical products to be installed on such aircraft, establish that the work is performed and the aircraft is returned to service in accordance with the laws, regulations, standards, and requirements of the State regulating the airworthiness of the affected aircraft." Concurrent with this objective is the necessity to provide for the development of reciprocity procedures and cooperation toward sustaining the environmental and equivalent safety objectives of the U.S./CBAA.

Discussion of Proposal*Section 43.17*

This proposal would provide the regulatory framework for the acceptance of maintenance, preventive maintenance, and alterations accomplished under the U.S./CBAA. The proposal would not change the existing provisions that allow maintenance of U.S.-registered aircraft located in Canada. The amendment, as proposed, would allow a Canadian repair company or air carrier to perform maintenance (excluding annual inspections) and preventive maintenance on, and alterations of, U.S. aeronautical products shipped to Canada, and approve those products for return to service, provided such work is of the type and complexity for which the company or air carrier is approved to perform by the Canadian Department of Transport with respect to Canadian aeronautical products. If the work performed is a major repair or major alteration, the product would be approved for return to service only if the work was accomplished in accordance with technical data approved by the FAA. A Canadian Aircraft Maintenance Engineer, with appropriate ratings issued by the Canadian Department of Transport, would be allowed to perform maintenance (excluding annual inspections) and preventive maintenance on, and alterations of, U.S.-registered aircraft located in Canada

and approve those aircraft for return to service. However, an Aircraft Maintenance Engineer would not be allowed to approve a major repair or major alteration.

It should be noted that, for purposes of this proposed amendment, "aeronautical product" means any civil aircraft or airframe, aircraft engine, propeller, appliance, component, or part to be installed thereon. "Modification" is defined as synonymous with "alteration." It also should be noted that the proposal would require that all persons performing work under this section must comply with the applicable performance requirements of §§ 43.13, 43.15, and 43.16; recording requirements of §§ 43.2(e), 43.9, and 43.11; approval requirements of § 43.5; and environmental requirements of Part 36 of the FAR.

Under the reciprocal regulations promulgated by the Canadian Department of Transport pursuant to the U.S./CBAA, the Canadian Department of Transport would accept maintenance, preventive maintenance, and alterations performed with respect to Canadian-registered aircraft located in and shipped to the United States if the work is accomplished and approved by U.S. entities appropriately certificated by the FAA.

This proposed rulemaking action would not adversely affect safety. Persons performing work under this proposal would be required to comply with the performance and approval requirements of the FAR. Canada has maintenance organizations that are approved and surveilled by Canadian procedures similar to those outlined in the FAR.

In addition, this proposal would not result in any cost to the FAA under the U.S./CBAA, since duplicative approval and surveillance time of Canadian-approved maintenance organizations would not be necessary.

Paperwork Reduction Act

Information collection requirements in Part 43 have previously been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB Control Number 2120-0020.

Regulatory Evaluation

The rapid growth following deregulation of the airline industry has resulted in an increased demand for qualified maintenance services and facilities. Since the proposed amendment would permit operators of U.S.-registered aircraft to use aeronautical products that have been

shipped to Canada for maintenance, preventive maintenance, and alterations, this would provide additional maintenance services and facilities to U.S. air carriers and other operators of U.S.-registered aircraft.

The proposed amendment reflects changes made to the U.S./CBAA, which is intended to increase trade and competition in the marketplace and yield benefits by giving U.S. certificate holders the option of choosing alternative sources of maintenance that are not permissible under the existing rules. This increase in the availability of maintenance sources would be accomplished without diminishing aviation safety. The FAA anticipates that consumers could also benefit, because the availability of alternative sources of maintenance may result in lower air carrier operating costs that could be passed on to consumers in the form of lower air transportation fares.

Although expanding the access to Canadian markets for aircraft maintenance may ultimately result in additional work being done at Canadian locations, the FAA does not foresee an extensive shift of jobs from the United States to Canada. In fact, since the U.S./CBAA has been in effect, the FAA has already granted several exemptions to permit maintenance and services that would be allowed under the proposed rule. The FAA believes that the expected overall growth in the aviation industry would offset losses, if any, to either the United States or Canada in maintenance and services.

Sending aeronautical products for repair to Canada would not be mandatory under the proposed amendment. The FAA has no available data upon which to predict the extent to which air carriers might take advantage of this proposal. The decision to utilize a Canadian repair facility would depend on the type and make of aeronautical product involved, whether the facility under consideration is appropriately rated, the availability of other appropriately rated repair facilities, time constraints, and many other factors. Thus, the FAA is unable to measure the extent of the benefits that might accrue to these carriers.

Since the proposed amendment would permit, but not require, the use of Canadian repair facilities, no significant costs would be imposed on the public. The availability of additional sources of repair facilities would tend to reduce costs and increase operating efficiency, thus indirectly improving service to the traveling public.

International Trade Impact Analysis

The proposal and the reciprocal regulations to be promulgated by Canada would improve international trade for both U.S. firms doing business in Canada and Canadian firms doing business in the United States by accepting the airworthiness certification process for each country's products. The airworthiness standards that both U.S. and Canadian-manufactured aeronautical products currently have to meet would not change. In addition, both U.S. operators and Canadian operators would have additional facilities for the maintenance of aeronautical products in each other's country. Thus, the proposal would have a beneficial impact on international trade.

Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure, among other things, that small entities are not disproportionately affected by Government regulations. The RFA requires agencies to review rules that may have "a significant economic impact on a substantial number of small entities." Under FAA Order 2100.14A, adopted September 16, 1988, operators of aircraft for hire who are considered to be small entities are defined as follows: They are those that own, but not necessarily operate, less than nine aircraft. A substantial number of small entities means a number which is not less than 11 and which is more than one-third of the small entities subject to a proposed rule.

The proposal to amend § 43.17 would continue to permit the Canadian Department of Transport approved persons that meet minimum FAA standards to perform maintenance, preventive maintenance, and alterations with respect to U.S. aeronautical products and to inspect and approve those products for return to service. The U.S./CBAA sets forth in detail the standards and methods that will be applied in the approval of the products and repairs.

The proposed regulation would not be mandatory; small entities would be allowed to choose whether or not to utilize Canadian repair facilities. In any case, the FAA does not expect more than one-third of the small entities affected by this proposal to utilize these facilities. As a result, a substantial number of small entities is not expected to be impacted by the proposal. The FAA, therefore, finds that an initial regulatory flexibility analysis is not required by the Regulatory Flexibility Act.

Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Conclusion

Since the proposals contained in this document would not require the FAA's certification and surveillance of Canadian-approved maintenance organizations and would lessen costs and improve service to the operators of U.S.-registered aircraft, the estimated benefits exceed the estimated costs of implementing this proposal. For the reasons discussed above, the FAA certifies that, under the criteria of the Regulatory Flexibility Act, this proposal, if adopted, will not have a significant economic impact, positive or negative, on a substantial number of small entities, and a regulatory flexibility analysis is not required. This proposal is not considered significant under DOT Regulatory Policies and Procedures (44 FR 11034; February 28, 1979). In addition, for the same reasons, the proposal does not involve a major rule under Executive Order 12291. A copy of the draft regulatory evaluation for this regulatory action is contained in the regulatory docket. A copy of it may be obtained by contacting the person identified under the caption "FOR FURTHER INFORMATION CONTACT."

List of Subjects in 14 CFR Part 43

Maintenance, Preventive maintenance, Rebuilding, Alterations.

The Proposed Amendment

In consideration of the foregoing, the FAA proposes to revise § 43.17 of the FAR (14 CFR 43.17) as follows:

PART 43—MAINTENANCE, PREVENTIVE MAINTENANCE, REBUILDING, AND ALTERATION

1. The authority citation for Part 43 continues to read as follows:

Authority: 49 U.S.C. 1354, 1421 through 1430; 49 U.S.C. 106 (g) (Revised Pub. L. 97-449, January 12, 1983).

2. Section 43.17 is revised to read as follows:

§ 43.17 Maintenance, preventive maintenance, and alterations performed on U.S. aeronautical products by certain Canadian persons.

(a) *Authorized persons.* (1) A person holding a valid Canadian Department of Transport certificate (Aircraft Maintenance Engineer license) and appropriate ratings may, with respect to a U.S.-registered aircraft located in Canada, perform maintenance, preventive maintenance, and alterations in accordance with the requirements of paragraph (c) of this section and approve the affected aircraft for return to service in accordance with the requirements of paragraph (d) of this section.

(2) A company (Approved Maintenance Organization) (AMO) or air carrier whose system of quality control for the maintenance, alteration, and inspection of aeronautical products has been approved by the Canadian Department of Transport, or a person who is an authorized employee (Approved Inspector) performing work for such a company or air carrier, may, with respect to a U.S.-registered aircraft located in Canada or other U.S. aeronautical products transported to Canada from the United States, perform maintenance, preventive maintenance, and alterations in accordance with the requirements of paragraph (c) of this section and approve the affected products for return to service in accordance with the requirements of paragraph (d) of this section.

(b) *Definitions.* For purposes of this section, "aeronautical product" means any civil aircraft or airframe, aircraft engine, propeller, appliance, component, or part to be installed thereon; "U.S. aeronautical product" means any civil aircraft or airframe, aircraft engine, propeller, or appliance under airworthiness regulation by the FAA, or component or part to be installed thereon; "Canadian aeronautical product" means any civil aircraft or airframe, aircraft engine, propeller, or appliance under airworthiness regulation by the Canadian Department of Transport, or component or part to be installed thereon.

(c) *Performance requirements.* A person authorized in paragraph (a) of this section may perform maintenance (including any inspection required by § 91.109 of this chapter, except an annual inspection), preventive maintenance, and alterations, provided:

(1) The person performing the work is authorized by the Canadian Department of Transport to perform the same type of work with respect to Canadian aeronautical products;

(2) The work is performed in accordance with §§ 43.13, 43.15, and 43.16 of this chapter, as applicable;

(3) The work is performed such that the affected product complies with the applicable requirements of Part 38 of this chapter; and

(4) The work is recorded in accordance with §§ 43.2(a), 43.9, and 43.11 of this chapter, as applicable.

(d) *Approval requirements.* (1) To return an affected product to service, a person authorized in paragraph (a) of this section must approve (certify) maintenance, preventive maintenance, and alterations performed under this

section, except that an Aircraft Maintenance Engineer may not approve a major repair or major alteration, unless the work is accomplished in accordance with technical data approved by the Administrator.

(2) An AMO or an air carrier whose system of quality control for the maintenance, alteration, and inspection of aeronautical products has been approved by the Canadian Department of Transport, or an authorized employee (Approved Inspector) performing work for such an AMO or air carrier, may approve (certify) a major repair or major alteration performed under this section

if the work was performed in accordance with technical data approved by the Administrator.

(e) No person may operate in air commerce an aircraft, airframe, aircraft engine, propeller, or appliance on which maintenance, preventive maintenance, or alteration has been performed under this section unless it has been approved for return to service by a person authorized in this section.

Issued in Washington, DC, on May 30, 1989.

Daniel C. Beaudette,
Acting Director, Flight Standards Service.

[FR Doc. 89-13315 Filed 6-5-89; 8:45 am]

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Tuesday
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Part V

Environmental Protection Agency

40 CFR Part 259

Standards for the Tracking and
Management of Medical Waste; Notice
Identifying Participating States, Delaying
Effective Date for Certain States, and
Extending Comment Period

ENVIRONMENTAL PROTECTION AGENCY**40 CFR Part 259**

[SW-FRL-3598-5]

Standards for the Tracking and Management of Medical Waste**AGENCY:** Environmental Protection Agency.**ACTION:** Notice identifying participating states; delaying effective date for certain states; and extending the comment period.

SUMMARY: The purpose of this Notice is to specify the States in which the medical waste tracking demonstration program, published in the *Federal Register* on March 24, 1989 (54 FR 12326), will be effective. The Medical Waste Tracking Act of 1988 set up a demonstration program to track medical waste and allowed States 30 days in which to decide whether to participate in the program. Medical wastes generated in such "Covered States" are subject to the tracking requirements promulgated in the March 24 interim final rule. EPA has now determined that seven States will participate in the demonstration program and is revising the regulations to identify as Covered States: Connecticut, Louisiana, New Jersey, New York, Puerto Rico, Rhode Island, and the District of Columbia.

DATES: *Effective Date:* These amendments are effective June 6, 1989. The tracking regulations under Part 259 will be effective June 22, 1989, in New York, New Jersey, and Connecticut, and on July 24, 1989, in Louisiana, Rhode Island, Puerto Rico, and the District of Columbia.

Comments: Comments will be accepted on the March 24, 1989 notice through June 22, 1989.

ADDRESSES: The public docket for this rulemaking (Docket No. F-89-MTPF-FFFFF) is located at Room LC-100, RCRA Docket (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. EPA's RCRA docket is open from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. To review docket materials, the public must make an appointment by calling (202) 475-9327. A maximum of 100 pages may be copied from any regulatory docket at no cost. Additional copies cost \$0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline toll free at (800) 424-9346 (in Washington, DC, call (202) 382-3000). For information on

specific aspects of today's notice, contact Mike Petruska, Office of Solid Waste (OS-332), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

SUPPLEMENTARY INFORMATION:**I. Authority**

This Notice is issued under the authority of sections 2002, 11001, 11002, 11003, 11004, 11010, 11011 of the Solid Waste Disposal Act of 1970 as amended by the Medical Waste Tracking Act of 1988, 42 U.S.C. 6992 *et seq.*

II. Background

Recent incidents of medical waste mismanagement resulted in enactment of a two-year demonstration program for tracking medical waste from the point of its generation to its point of disposal. The Medical Waste Tracking Act of 1988, 42 U.S.C. 6992 *et seq.*, requires this demonstration program to be established in a limited number of States. Congress chose this option in order to regulate medical waste on a small scale.

In establishing the demonstration program, Congress intended for Connecticut, New York, and New Jersey to participate or to have a State program that is at least as stringent as the Federal program. Congress also intended for the Great Lakes States (Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, and Wisconsin) to participate unless the Governors of those states decided not to participate. Finally, any other States could participate if their Governors wished. Congress provided the States with a 30-day period to decide whether or not to participate (i.e. the opt out/petition in period).

The opt out/petition in period began with the date of the promulgation of the interim final tracking regulations 54 FR at 12326-12395 (March 24, 1989), and ended April 24, 1989. The regulation identified the 7 Great Lake States, New York, New Jersey, and Connecticut as "Covered States." 54 FR 12373.

EPA received several opt out and petition in notifications. As provided in Section 259.23, in this Notice EPA is removing as "Covered States" the Great Lakes States that chose not to participate in the program and is adding as "Covered States" those States which have elected to join this program. 54 FR 12373 (March 24, 1989). As explained in the March 24 preamble (54 FR 12336), now that the 30-day period has passed, EPA will not consider any further additions or deletions to the list of States (id).

III. Participating States

The following States, identified as Covered States in the Act, have elected to remain in the program. They include the States of Connecticut, New York, and New Jersey. The Governors of New York and New Jersey sent letters, available in the public docket, affirming their States' participation in the program; Connecticut did not send a letter.

The Governors of the following States identified as Covered States in the statute and regulations have elected to opt out of the demonstration tracking program for medical waste. They include: Illinois, Indiana, Michigan, Minnesota, Ohio, Pennsylvania, and Wisconsin. The letters from the Governors of each of these States, indicating their decisions to opt out of the demonstration tracking program, are available in the public docket for this Notice.

The Governors of the States of Louisiana and Rhode Island and the Mayor of the District of Columbia, and Governor of the Commonwealth of Puerto Rico, have petitioned the Administrator to be included in the program. The letters from the Governors of each of the several States petitioning for inclusion into the demonstration tracking program are available in the public docket for this rulemaking. The Administrator has reviewed the petitions for inclusion and has determined that inclusion of these States would provide a broader range of experience and information and therefore, a more meaningful demonstration program than if only New York, New Jersey, and Connecticut were included. Thus, this Notice amends the list of Covered States in §§ 259.10 and 259.20 to identify the following States as Covered States: Connecticut, Louisiana, New Jersey, New York, Puerto Rico, Rhode Island, and the District of Columbia. The regulated medical waste generated in these States will therefore be subject to the regulations at 40 CFR Part 259.

Finally, EPA has modified the effective date of the March 24 regulation so that the regulated communities in the four States that petitioned-in have until July 24 to come into compliance. EPA determined the extra time would be necessary because the regulated parties in those States are only now being officially notified that their States are definitely in the new program, while parties in New York, New Jersey, and Connecticut have known for some time they would be regulated under the new EPA rules or equivalent State rules.

Also, EPA has extended the comment period until June 22 to give all parties, including those in the new States further opportunity for comment.

EPA notes that certain sections of the regulations (e.g., § 259.61, § 259.78, and the incinerator and transporter report forms in Appendices II and III of Part 259) refer to the June 22 date. Regulated parties in Louisiana, Rhode Island, Puerto Rico, and the District of Columbia, however, are not required to keep the required records and report on the period of June 22 to July 23. Their first incinerator and transporter reports then will cover the period July 24-December 22, 1989. After this first reporting period all parties will be in the same schedule and the demonstration program will end in all States on June 22, 1991.

IV. Regulatory Impact

Under Executive Order 12291, EPA must determine whether a regulation is "major" and therefore subject to the requirements of a Regulatory Impact Analysis. The Administrator determined in the Interim Final Rule that the Medical Waste Demonstration Tracking Program had a total estimated cost of less than \$100 million per year. The estimated cost was based on expected

cost for management practices and assumed that the 10 States identified in the Medical Waste Tracking Act would participate in the program. Since the seven States bordering the Great Lakes have opted out of the program and only four States, Louisiana, Rhode Island, Puerto Rico, and the District of Columbia, have petitioned in, the Agency believes that the program costs will continue to be less than \$100 million per year. Therefore, no Regulatory Impact Analysis is required.

Dated: May 26, 1989.

Robert L. Duprey,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

PART 259—STANDARDS FOR THE TRACKING AND MANAGEMENT OF MEDICAL WASTE

1. The authority citation for Part 259 continues to read as follows:

Authority: 42 U.S.C. 6912, 6992, *et seq.*

2. Section 259.10 is amended by revising the definition for "Covered States" in paragraph (b) to read as follows:

§ 259.10 Definitions.

* * * * *

(b) * * *

"Covered States" means those States that are participating in the Demonstration Medical Waste Tracking Program and includes: Connecticut; Louisiana; New Jersey; New York; Rhode Island; Puerto Rico; and the District of Columbia. Any other State is a Non-Covered State.

Subpart C—Covered States

3. Section 259.20 is revised to read as follows:

§ 259.20 States included in the demonstration program.

(a) The regulations of this part apply to Regulated Medical Waste that is generated in any Covered State.

(b) For purposes of this part, Covered States are the States of Connecticut, Louisiana, New Jersey, New York, Rhode Island, Puerto Rico, and the District of Columbia.

§ 259.21 [Removed]

4. Section 259.21 is removed.

§ 259.22 [Removed]

5. Section 259.22 is removed.

§ 259.23 [Removed]

6. Section 259.23 is removed.

[FR Doc. 89-13278 Filed 6-5-89; 8:45 am]

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: June 15; at 9:00 a.m.
WHERE: Office of the Federal Register,
 First Floor Conference Room,
 1100 L Street, NW., Washington, DC
RESERVATIONS: 202-523-5240

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Federal Register

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Wednesday, June 7, 1989

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 89-047]

Witchweed Regulated Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the list of suppressive areas under the witchweed quarantine and regulations by adding and deleting areas in North Carolina and South Carolina. These changes affect 13 counties in North Carolina and three counties in South Carolina. These actions are necessary in order to impose certain restrictions on the interstate movement of regulated articles to prevent the artificial spread of witchweed and to delete unnecessary restrictions on the interstate movement of regulated articles.

DATES: Interim rule effective June 7, 1989. Consideration will be given only to comments received on or before August 7, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Helene R. Wright, Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-047. Comments may be inspected at Room 1141 of the South Building, 14th and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 643, Federal

Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

Witchweed is a parasitic plant that causes degeneration of corn, sorghum, and other grassy crops. It has been found in the United States only in parts of North Carolina and South Carolina.

The witchweed quarantine and regulations (contained in 7 CFR 301.80 *et seq.*, and referred to below as the regulations) quarantine the States of North Carolina and South Carolina and restrict the interstate movement of certain witchweed hosts from regulated areas in the quarantined states for the purpose of preventing the artificial spread of witchweed.

Regulated areas for witchweed are designated as either suppressive areas or generally infested areas. Restrictions are imposed on the interstate movement of regulated articles from both in order to prevent the artificial movement of witchweed into noninfested areas. However, the eradication of witchweed is undertaken as an objective only in places designated as suppressive areas.

Designation of Areas as Suppressive Areas

We are amending the list of suppressive areas by adding areas in Cumberland, Greene, Harnett, Pender, Richmond, and Sampson Counties in North Carolina, and an area in Marlboro County in South Carolina to the list of suppressive areas in § 301.80-2a of the regulations.

Surveys conducted by the United States Department of Agriculture and State agencies of North Carolina and South Carolina establish that witchweed has spread, or is likely to spread, to certain areas beyond the outer perimeter of areas previously designated as suppressive areas. Therefore, those additional areas in these counties in North Carolina and South Carolina, which were previously nonregulated areas, are designated as witchweed suppressive areas. We are taking this action in order to prevent the spread of witchweed and to facilitate its eradication.

The regulations list the suppressive areas for each county. Non-farm areas, if any, are listed first; farms are then listed alphabetically.

Removal of Areas from List of Regulated Areas

We are also amending the list of suppressive areas by removing areas in Beaufort, Columbus, Craven, Cumberland, Duplin, Greene, Harnett, Hoke, Lenoir, Pender, Sampson, and Wayne Counties in North Carolina, and areas in Florence, Horry, and Marlboro Counties in South Carolina from § 301.80-2a of the regulations. As a result of this action, there are no longer any regulated areas in Beaufort County, North Carolina.

We are taking this action because we have determined that witchweed no longer occurs in these areas and there is no longer a basis to continue listing these areas as suppressive areas for the purpose of preventing the artificial spread of witchweed. Therefore, we are removing these areas from the list of suppressive areas in order to remove unnecessary restrictions on the movement of articles designated as witchweed regulated articles.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that a situation exists that warrants publication of this interim rule without prior opportunity for public comment. Because of the possibility that witchweed could be spread artificially to noninfested areas of the United States, it is necessary to act immediately to control its spread. Also, where witchweed no longer occurs, immediate action is needed to delete unnecessary restrictions on the interstate movement of regulated articles.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon publication in the *Federal Register*. We will consider comments received within 60 days of publication of this interim rule in the *Federal Register*. After the comment period closes, we will publish another document in the *Federal Register*, including a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an estimated annual effect on the economy of less than \$4,000; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This action affects the interstate movement of regulated articles from specified areas in North Carolina and South Carolina. Based on information compiled by the Department, we have determined that approximately 281,000 small entities move these articles interstate from North Carolina and South Carolina. However, this action affects only 477 of these entities by removing 472 entities from regulation and placing 5 new entities under regulation. We have determined that the 472 deregulated entities will realize combined annual savings of approximately \$10,936, or \$23.17 each, in regulatory and control costs. We estimate that the 5 newly regulated entities will need to invest a similar amount, approximately \$675 each, per year, in order to comply with our regulations.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

The program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with

state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant pests, Plants (Agriculture), Quarantine, Transportation, Witchweed.

Accordingly, we are amending 7 CFR Part 301 as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for Part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 181, 182 and 184-187; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 301.80-2a is revised to read as follows:

§ 301.80-2a Regulated areas; suppressive and generally infested areas.

The civil divisions and parts of civil divisions described below are designated as witchweed regulated areas within the meaning of the provisions of this subpart; and these regulated areas are hereby divided into generally infested areas or suppressive areas as indicated below:

North Carolina

- (1) *Generally infested areas.* None.
- (2) *Suppressive areas.*

Bladen County. The entire county.

Columbus County. The part of the county lying north and west of a line that begins at a point where State Highway 410 intersects the Bladen-Columbus County line, then south along this road to its junction with U.S. Highway 76, then west along U.S. Highway 76 to its junction with State Secondary Road 1356, then south along this road to its junction with the North Carolina-South Carolina border, where the line ends.

The Brown, Annie, farm located on the west side of State Highway 11 and 0.6 mile south of the junction of this road with State Highway 87.

The Harmon, Thelma, (formerly the Lloyd Spaulding farm) located in the southeast corner of the junction of State Secondary Roads 1726 and 1713.

The Jacobs, Thomas, farm located 0.2 mile north of State Secondary Road 1847 and 1 mile northeast of the junction of this road with State Secondary Road 1740.

The Jacobs, Mrs. Willie C., farm located on both sides of a farm road 0.5 mile southeast of its intersection with State Secondary Road 1713 at a point 2.7 miles northeast of the junction of this road with State Secondary Road 1001.

The Walters, Eugene, farm located on the southeast side of a farm road 0.2 mile southeast of its intersection with State Highway 131 at a point opposite the junction of this highway with State Secondary Road 1539.

Craven County. The Tripp, Dudley, farm located on the north side of State Secondary

Road 1444 and 1.1 miles southwest of its junction with State Secondary Road 1440.

Cumberland County. That area bounded by a line beginning at a point where U.S. Highway 401 intersects the Cumberland-Hoke County line, then east along this highway to its intersection with the Fayetteville city limits, then south, east, and northeast along these city limits to its junction with U.S. Highway 301 north, then northeast along this highway to its junction with U.S. Interstate 95, then northeast along this interstate to its junction with U.S. Highway 13, then east and northeast along this highway to its intersection with the Cumberland-Sampson County line, then southerly along this county line to its junction with the Bladen-Cumberland County line, then westerly along this county line to its junction with the Cumberland-Robeson County line, then northwesterly along this county line to its junction with the Cumberland-Hoke County line, then northwesterly along this county line to the point of beginning.

The Contrell, C. T., farm located on the west side of State Secondary Road 1400 at its junction with State Secondary Road 1401.

The Elliott, Lattie, farm located on the north side of State Secondary Road 1722 and 0.4 mile east of its junction with State Secondary Road 1714.

The Elliott, W. H., farm located on the south side of State Secondary Road 1609 and 0.5 mile east of its junction with State Secondary Road 1710.

The Gerald, Rufus, farm located on the east side of State Secondary Road 1818 and 0.5 mile north of its intersection with U.S. Highway 13.

The Holiday, Waddell, farm located on the south side of State Secondary Road 3122 and its junction with State Secondary Road 1402.

The Jackson, J. T., farm located on the west side of State Secondary Road 1403 and 0.7 mile north of its junction with U.S. Highway 401.

The Lockamy, Earl, farm located on the west side of U.S. Highway 301 and 0.3 mile south of its junction with State Secondary Road 1802.

The Lovick, Eugene, farm located on the north side of State Secondary Road 1732 and 0.9 mile west of its junction with U.S. Highway 301.

The Matthews, Ada H., farm located on the east side of State Secondary Road 1818 and 0.7 mile north of its intersection with U.S. Highway 13.

The Matthews, Isaiah, farm located on a private road off the east side of U.S. Highway 301 and 0.1 mile north of its junction with State Secondary Road 1722.

The McKeithan, Sarah E., farm located on the west side of U.S. Highway 301 and 0.3 mile north of its junction with State Secondary Road 1815.

The McLaurin, Burnice, farm located on the north side of State Secondary Road 1720 and 0.7 mile east of its intersection with State Secondary Road 1719.

The McLaurin, Elwood, farm located on the west side of U.S. Highway 301 and 0.2 mile north of its junction with State Secondary Road 1828.

The McLaurin, George, farm located on the north side of State Secondary Road 1722 and 0.4 mile west of its junction with U.S. Highway 301.

The McLaurin, Greg, farm located on the south side of State Secondary Road 1722 and 0.3 mile west of its junction with U.S. Highway 301.

The McLaurin, McLaurin, farm located on the north side of State Secondary Road 1722 and 0.5 mile west of its junction with U.S. Highway 301.

The McLaurin, Octavious, farm located on the north side of State Secondary Road 1722 and 0.51 mile west of its junction with U.S. Highway 301.

The McMillan, Vander, farm located on the west side of U.S. Highway 301 and 0.5 mile north of its junction with State Secondary Road 1722.

The Melvin, Edith, farm located on the east side of State Secondary Road 1800 and 1.7 miles north of its intersection with State Secondary Road 1815.

The Powell, William Clinton, farm located on the south side of State Secondary Road 1722 and 0.3 mile east of its junction with State Secondary Road 1714.

The Pruitt, K. D., farm located on the west side of U.S. Highway 13 and 0.6 mile north of its intersection with State Secondary Road 1818.

The Roberts, Christine Dawson, farm located on the south side of State Secondary Road 1714 and 0.5 mile west of its junction with State Secondary Road 1718.

The Shirman, Harry, farm located on the west side of State Secondary Road 1400 and 0.1 mile south of its junction with State Secondary Road 1401.

The Smith, Agnes, farm located on the south side of State Secondary Road 1720 and 0.7 mile east of its intersection with State Secondary Road 1719.

The Smith, Larry Don, farm located on a private road off the west side of U.S. Highway 301 and 0.2 mile south of its junction with State Secondary Road 1722.

The Underwood, Olive T., farm located on the east side of State Secondary Road 1723 and 0.8 mile south of its junction with State Secondary Road 1722.

The Valentine, Ike, farm located on the west side of State Secondary Road 1402 and 0.9 mile south of its junction with State Secondary Road 1400.

The Vann, W. E., farm located on the northwest side of State Secondary Road 1819 at its junction with State Secondary Road 1813.

The Williams, Maggie, farm located on the north side of State Secondary Road 1719 and 1.2 miles north of its intersection with State Secondary Road 1720.

Duplin County. The Dobson, Elizabeth S., farm located on the north side of State Highway 24 and 0.2 mile east of its intersection with State Secondary Road 1737.

The Dodson, Twillie, farm located on the south side of State Secondary Road 1912 and 0.7 mile west of the junction of this road and State Highway 11.

The Grand, Pietro, farm located 0.2 mile southwest of the end of State Secondary Road 1861.

The Hamilton, John, farm located on both sides of State Secondary Road 1921 and 1.4

miles southeast of the junction of this road and State Secondary Road 1822.

The Holland, William, farm located on the west side of U.S. Highway 117 at the junction of State Secondary Road 1909.

The Jones, H.A., No. 2, farm located on both sides of State Secondary Road 1700 and 0.6 mile west of its intersection with Northwest Cape Fear River.

The Lee, Daphne, farm located on the south side of State Highway 24 and 0.3 mile east of its intersection with State Secondary Road 1737.

The Miller, O'Berry, farm located on the north side of State Secondary Road 1700, and 0.1 mile east of its junction with State Highway 11.

The Phillips, Hubert, farm located on the east side of State Secondary Road 1375 and 0.7 mile northwest of its junction with State Highway 24.

The Thomas, Douglas M., farm located on the southwest side of State Secondary Road 1700 and 0.4 mile northwest of the intersection of this road with State Secondary Road 1728.

The Thomas, J.R., farm located on the south side of State Secondary Road 1700 and 1.8 miles east of the intersection of this road and State Secondary Road 1701.

The Tyner, J.R., farm located on the south side of State Highway 24 and the east side of State Secondary Road 1737 at the intersection of this road.

Greene County. The Carmon, James E., farm located on the east side of State Secondary Road 1004 and 0.4 mile south of its junction with State Highway 903.

The Dun, Jo Estate farm located 1.0 mile south of Maury on the northeast side of State Secondary Road 1441 and 0.5 mile west of its junction with State Secondary Road 1413.

The Edwards, Joe E., farm located on the west side of State Secondary Road 1413 and 0.4 mile north of its junction with State Secondary Road 1400.

The Lane, Sylvester, farm located on both sides of State Secondary Road 1400 and 2.8 miles southeast of its junction with U.S. Highway 13.

The Nethercutt, Lawrence, farm located on the north side of State Secondary Road 1400 and 3.0 miles southeast of its junction with U.S. Highway 13.

The Warren, Francis, farm located on the west side of State Secondary Road 1418 and 0.3 mile north of its junction with State Secondary Road 1419.

Harnett County. The Byrd, Lee, farm located on both sides of State Secondary Road 1108 and north of its junction with State Secondary Road 1110.

The Cook, A.L., farm located on the east side of State Secondary Road 1201 and 0.8 mile south of the junction of this road with State Secondary Road 1203.

The Dove, Ira, farm located on the southeast side of State Secondary Road 1105 and 0.7 mile southwest of its junction with State Highway 24/27.

The Estate, Walter, farm located on the west side of State Secondary Road 2031 and 0.2 mile north of its junction with State Secondary Road 2039.

The Farrel, David, farm located on the west side of State Secondary Road 1201 and 0.2

mile northwest of its junction with State Highway 27.

The Forthberry, Bennett, farm located on the south side of State Secondary Road 1141 and 0.4 mile east of the junction of this road with State Secondary Road 1139.

The Graham, Ralph, farm located on both sides of State Secondary Road 1200 and west of its junction with State Highway 24/27.

The Grey, Charlie, farm located on the west side of State Secondary Road 1111 and 0.6 mile south of its junction with State Highway 24.

The Hicks, Vashti, farm located on the south side of State Secondary Road 2039 and 0.4 mile west of its junction with State Secondary Road 2031.

The Hobbs, Marvin, farm located on the southwest side of State Secondary Road 2072 and 1.0 mile northwest of its junction with State Secondary Road 2033.

The Hobbs, R.C., farm located on the southwest side of State Secondary Road 2072 and 1.1 miles northwest of its junction with State Secondary Road 2033.

The Holder, Charlie, farm located on the south side of State Secondary Road 1120 and 0.3 mile west of its junction with State Secondary Road 1121.

The McCoy, Mack, farm located on the northwest side of State Secondary Road 1105 and 0.7 mile southwest of its junction with State Highway 24/27.

The McNeil, Raymond F., farm located on the east side of State Secondary Road 1201 and north of its junction with State Secondary Road 1202.

The Pennington, Albert J., farm located on the southwest side of State Secondary Road 1110 and 0.3 mile east of its junction with State Secondary Road 1108.

The Spaulding, James, farm located on the north side of State Secondary Road 1141 and 1.3 miles east of its junction with State Secondary Road 1139.

The Thomas, Floyd E., farm located on the northeast side of State Secondary Road 1146 and 0.2 mile north of its junction with State Secondary Road 1117.

The Walker, N.A., farm located on the east side of State Secondary Road 2042 and 0.9 mile southwest of its junction with State Secondary Road 2026.

Hoke County. The Bryant, James, farm located on the south side of State Secondary Road 1003 and 0.8 mile west of its junction with State Secondary Road 1440.

The Butler, James, farm located on the southwest side of State Secondary Road 1003 and 0.2 mile east of its junction with State Secondary Road 1429.

The Fowler, Arne, farm located on the north side of State Secondary Road 1203 and 0.2 mile northeast of its junction with State Secondary Road 1207.

The Hough, E.J., farm located on both sides of State Secondary Road 1413 and 0.4 mile east of its junction with State Secondary Road 1428.

The Hough, E.J., farm located on both sides of State Secondary Road 1413 and 0.4 mile east of its junction with State Secondary Road 1428.

The Johnson, George, farm located on the south side of State Secondary Road 1219 and

0.3 mile east of its junction with State Secondary Road 1218.

The Kelton, Worthy, farm located on the west side of State Secondary Road 1461 and 0.4 mile north of its junction with State Secondary Road 1422.

The Locklear, Alton, farm located on the northeast side of State Secondary Road 1448 at its junction with State Secondary Road 1436.

The McMillan, James, farm located 0.3 mile south of the junction of State Secondary Road 1113 with State Secondary Road 1130.

The McNeill, Ken, farm located on the west side of State Secondary Road 1429 at the dead end of this road.

The McPhatter, Neil, farm located 0.1 mile west of State Secondary Road 1102 and 0.3 mile northwest of its junction with State Secondary Road 1100.

The McQueen, Rosetta, farm located on the south side of State Secondary Road 1134 and 0.4 mile southeast of its junction with State Secondary Road 1135.

The McRae, Mary Della, farm located on the south side of State Secondary Road 1134, 0.7 mile east of the junction of this road with State Secondary Road 1116.

The Melvin, Sylvester, farm located on the north side of State Secondary Road 1003 and 0.4 mile east of its junction with State Secondary Road 1427.

The Oldham, James, farm located on the west side of State Secondary Road 1200 and 0.1 mile north of its junction with State Secondary Road 1201.

The Sandy, L.A., farm located 0.5 mile north of State Secondary Road 1003 and 0.2 mile east of its junction with State Secondary Road 1431.

The Sandy, Lewis, farm located on the east side of State Secondary Road 1429 at the dead end of this road.

Lenoir County. The Dawson, Wayne, farm located on State Secondary Road 1318 and 0.3 mile north of its junction with State Secondary Road 1316.

The Faulkner, Isabelle, farm located on both sides of State Secondary Road 1809 and 0.5 mile east of its junction with State Secondary Road 1720.

The Hill, Nannie T., farm located in the east junction of State Highway 55 and State Secondary Road 1161.

The Pelletier, Roger, farm located on the northeast side of State Secondary Road 1316 and 0.3 mile northwest of its junction with State Secondary Road 1316.

The Rouse, James, farm located on the southeast side of State Secondary Road 1307 and 0.4 mile southwest of its junction with State Secondary Road 1307 and State Secondary Road 1324.

The Taylor, Heber, No. 2, farm located on the south side of State Secondary Road 1161, 0.9 mile east of its junction with State Highway 55.

Pender County. The Anderson, Julian W., farm located on both sides of State Secondary Road 1106 and 0.9 mile northwest of its junction with State Secondary Road 1107.

The Barnhill, Frank, farm located on the south side of State Highway 210 and 0.1 mile of the junction of this highway and State Secondary Road 1130.

The Batson, Arthur, farm located on the east side of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

The Burns, T.C., farm located 0.8 mile northeast of State Secondary Road 1104 and 1.0 mile northwest of the junction of this road and State Secondary Road 1107.

The Corbett, Robert L., farm located on both sides of State Highway 210 and 0.5 mile northwest of its junction with State Secondary Road 1130.

The Dees, Betty, farm located 0.6 mile east of State Secondary Road 1411 and 1.5 miles east of its intersection with U.S. Highway 117.

The Fensel, F.P., farm located on the north side of State Secondary Road 1103 and 0.8 mile west of its junction with State Secondary Road 1133.

The Hardie, George, farm located on the north side of a field road 0.4 mile east of State Secondary Road 1104 and 0.2 mile northeast of its intersection with Lyon Canal.

The Henry, Mary E., farm located 0.1 mile south of State Secondary Road 1130 and 0.2 mile east of its intersection with the Pender-Bladen County line.

The Hicks, Carol, farm located on the south side of State Highway 210 and 0.6 mile east of its intersection with U.S. Highway 117.

The Hutcheson, Katie, farm located on a field road 1.7 miles east of U.S. Highway 117 and 0.3 mile south of its intersection with State Secondary Road 1411.

The Kea, Nora, farm located 0.1 mile west of the west end of State Secondary Road 1108.

The Keith, Alton, estate located on the south side of State Highway 210 and 0.3 mile east of the junction of this road and State Secondary Road 1130.

The Keith, F.R., farm located on both sides of State Secondary Road 1130 and 0.7 mile west of the junction of this road and State Highway 210.

The Keith, Sprunt, farm located on the southwest side of State Secondary Road 1130 and at the Pender-Bladen County line.

The Lanier, Admah, farm located on the southeast side of State Secondary Road 1411 and 1.4 miles east of its intersection with U.S. Highway 117.

The Larkins, C.E., farm located on the southwest side of State Secondary Road 1102 and 0.2 mile southeast with the Pender-Bladen County line.

The Larkins, Maggie, estate located on the northeast side of State Secondary Road 1102 and 0.2 mile southeast along this road to its intersection with the Pender-Bladen County line.

The Malloy, Pete, No. 1, farm located on both sides of State Highway 210 and the east side of State Secondary Road 1599.

The Malloy, Pete, No. 2, farm located on both sides of State Highway 210 and 1.3 miles east of the intersection of this highway and U.S. Highway 117.

The Manuel, George, farm located 0.1 mile south of State Highway 210 and 0.2 mile west of its junction with State Secondary Road 1103.

The Marshall, Crawford, farm located on the north side of State Secondary Road 1103 and 0.6 mile west of its junction with State Secondary Road 1133.

The Marshall, Milvin, farm located on the north side of State Secondary Road 1103 and 0.6 mile east of the southern junction of this road and State Secondary Road 1104.

The Nixon, Rosa, farm located on both sides of State Highway 210 and on the west side of State Secondary Road 1599.

The Peterson, Grady, farm located on the north side of a field road 0.2 mile east of State Secondary Road 1104 and northeast of its intersection with Lyon Canal.

The Pridgen, Pete, farm located on the southwest side of State Secondary Road 1103 and 0.3 mile southeast of its junction with State Highway 210.

The Taylor, Bill, farm located on the west side of State Secondary Road 1104 and 2.0 miles south of the northernmost intersection of this road with State Secondary Road 1103.

The Terrell, Nancy, farm located on a field road 2.8 miles east of U.S. Highway 117 and 0.3 mile south of its intersection with State Secondary Road 1411.

The Thompson, Dick, farm located on the southwest side of State Secondary Road 1108 and 0.5 mile northwest of its junction with State Secondary Road 1107.

The Williams, Leroy, farm located on the south side of State Secondary Road 1600 and at the south end of State Secondary Road 1599.

Richmond County. The Covington, Tally, farm located on a private road 0.1 mile north of State Secondary Road 1433 and 0.6 mile east of U.S. Highway 220.

The Watkins, Mosby, farm located on both sides of State Secondary Road 1476 and 0.2 mile northeast of its junction with State Secondary Road 1442.

Robeson County. The entire county.

Sampson County. That area bounded by a line beginning at a point where State Secondary Road 1927 intersects the Sampson-Duplin County line, then southerly and easterly along this county line to its junction with the Sampson-Pender County line, then southwesterly along this county line to its junction with the Sampson-Bladen County line, then northwesterly along this county line to its junction with the Sampson-Cumberland County line, then northwesterly, north, and northeast along this county line to its junction with the Sampson-Harnett County line, then easterly along this county line to its junction with the Sampson-Johnston County line, then southeast along this county line to its intersection with State Highway 242, then south along this highway to its junction with U.S. Highway 421, then southeast along this highway to its intersection with U.S. Highway 13, then east along this highway to its junction with State Secondary Road 1845, then east along this road to its intersection with U.S. Highway 701, then south along this highway to its junction with State Highway 403, then east along this highway to its junction with State Secondary Road 1919, then east along this road to its intersection with State Secondary Road 1909, then southerly along this road to its junction with State Secondary Road 1004, then southerly along this road to its junction with State Secondary Road 1911, then southerly along this road to its junction with State Secondary

Road 1927, then southerly along this road to the point of beginning.

The Darden, Jessie, farm located on the southwest side of State Secondary Road 1758 and 1.0 mile west of its junction with State Secondary Road 1742.

The Hawley, William, farm located on the southwest side of State Secondary Road 1731 and 2.5 miles west of its intersection with State Secondary Road 1725.

The Jackson, Tony, farm located on the northwest side of the intersection of State Secondary Roads 1740 and 1742.

The Precise, Stewart, farm located on both sides of State Secondary Road 1757 and 0.5 mile north of its junction with State Secondary Road 1731.

The Shipp, Estelle, B., farm located on the southwest side of State Secondary Road 1758 and 0.5 mile west of its junction with State Secondary Road 1742.

The Swain, Robert W., farm located on the northeast side of State Secondary Road 1740 and 1.0 mile northwest of its intersection with State Secondary Road 1742.

The Weeks, Glenn, farm located on the south side of State Secondary Road 1737 and 1.1 mile east of U.S. Highway 701.

Wayne County. The Bowden, B. J., farm located on the west side of State Secondary Road 1931 and 0.2 mile south of the intersection of this road and State Secondary Road 1120.

The Broadhurst, Johnny Lee, farm located on the north side of State Secondary Road 1744, 1.2 miles northeast of the intersection of this road and State Secondary Road 1915.

The Daniels, Riley, farm located on the east side of State Secondary Road 1915, 0.1 mile south of the junction of this road and State Secondary Road 1120.

The Exum, Molly, farm located on the east side of State Secondary Road 1739 and 0.1 mile south of the junction of this road and State Highway 55.

The Gautier, Rosa Mae, farm located on the east side of State Secondary Road 1915 and 0.8 mile south of the junction of this road and State Secondary Road 1914.

The Georgia-Pacific Corp., farm located on the north side of State Secondary Road 2010 at the junction of this road and State Secondary Road 1938.

The Grady, Annie, farm located on the west side of State Secondary Road 1915, 0.1 mile south of the junction of this road and State Secondary Road 1120.

The Greenfield, Charlie, farm located on both sides of State Secondary Road 1915 and 0.2 mile north of the junction of this road and State Secondary Road 1914.

The Greenfield, Mattie, farm located on the north side of State Secondary Road 1914, 0.9 mile east of the junction of this road and State Secondary Road 1915.

The Greenfield, William, No. 1, farm located 4 miles west of the Seven Springs on State Secondary Road 1744, 0.2 mile west of the junction of this road and State Secondary Road 1913.

The Haggin, Joe, No. 2, farm located on the east side of State Secondary Road 1931 and 1.1 miles northeast of its intersection with State Secondary Road 1120.

The Ham, Thedy, Estate, farm located on the west side of State Secondary Road 1913,

0.5 mile south of the junction of this road and State Highway 111.

The Humphrey, Josephine, farm located on the east side of State Secondary Road 1932 and 0.2 mile north of its intersection with State Secondary Road 1120.

The Lofton, Mary F., farm located on the south side of State Secondary Road 1745 and 0.1 mile west of its junction with State Secondary Road 1952.

The O'Quinn, Earl, farm located on the north side of State Secondary Road 1914, 0.4 mile east of the junction of this road and State Secondary Road 1915.

The Raynor, Early, No. 1, farm located on the south side of U.S. Highway 13 and 0.3 mile east of its junction with State Secondary Road 1207.

The Sasser, Johnny, farm located on the west side of State Secondary Road 1931 and 0.3 mile south of its junction with State Secondary Road 1930.

The Simmons, James, farm located on the southwest side of State Secondary Road 1932 and 0.2 mile northwest of the junction of this road and State Secondary Road 1934.

The Smith, Allen J., farm located on both sides of State Secondary Road 1953 and 0.5 mile north of State Highway 55.

The Wayne County Landfill property located on the southeast side of State Secondary Road 1728 and 0.5 mile northeast of its junction with State Highway 111.

South Carolina

(1) *Generally infested areas.* None.

(2) *Suppressive areas.*

Dillon County. The entire county.

Florence County. The McAllister, Armstrong, farm located at the end of a dirt road and 0.4 mile northwest of its junction with another dirt road, then south along this dirt road to its junction with another dirt road, then westerly along this dirt road to its junction with State Secondary Highway 34, this junction being 1.1 miles southeast of the junction of State Secondary Highway 149 with State Secondary Highway 34.

The Parker, Boston, farm located on the northwest side of State Secondary Road 791 and 0.3 mile northeast of its junction of State Secondary Road 791 with State Secondary Road 732, this junction being 1.7 miles northeast of the junction of State Secondary Road 732 with State Highway 51.

Horry County. That area bounded by a line beginning at a point where State Secondary Highway 33 intersects the South Carolina-North Carolina State line and extending south along this highway to its intersection with State Secondary Highway 306, then west along this highway to its intersection with State Secondary Highway 142, then south along this highway to its junction with State Primary Highway 9, then northwest along this highway to its intersection with State Secondary Highway 59, then southwest and south along this highway to its junction with State Primary Highway 917, then southwest along this highway to its intersection with State Secondary Highway 19, then south and southeast along Highway 19 to its intersection with U.S. Highway 701 at Allsbrook, then northeast along this highway to its intersection with State Primary Highway 9, then southeast and south along

this highway to its intersection with the Waccamaw River, then northeast along this river to its intersection with the South Carolina-North Carolina State line, then southeast along this state line to its intersection with U.S. Highway 17, then southwest along this highway to its junction with State Primary Highway 90, then west along this highway to its intersection with a dirt road known as Telephone Road, this intersection being 1.3 miles west of Wampee, then southwest and south along Telephone Road to its end, then northwest along a projected line for 1.9 miles to its junction with Jones Big Swamp, then northwest along this swamp to its junction with the Waccamaw River, then west along this river to its intersection with Stanley Creek, then north along this creek 1.6 miles, then northwest along this creek 2.8 miles, then north along a line projected from a point beginning at the end of the main run of this creek, and extending north to the junction of this line with State Primary Highway 905, then southwest along this highway to its junction with State Secondary Highway 19, then north along this highway 2.4 miles to its junction with a dirt road.

Then southwest along this road to its intersection with Maple Swamp, then north along this swamp to its intersection with State Secondary Highway 65, then southwest along this highway to its junction with U.S. Highway 701, then south along this highway to its intersection with U.S. Highway 501, then northwest along this highway to its intersection with State Secondary Highway 548, then west along this highway to its junction with a dirt road, then west along a dirt road to its junction with State Secondary Highway 78, then north along this highway to its junction with State Secondary Highway 391, then northeast along this highway to its junction with U.S. Highway 501, then southeast along this highway to its junction with State Secondary Highway 591, then north along this highway to its intersection with State Secondary Highway 97, then east 0.2 mile to its intersection with a dirt road, then north along this dirt road to its junction with State Primary Highway 319, then northwest along this highway to its junction with State Secondary Highway 131, then east and north along this highway to its intersection with Loosing Swamp, then west and northwest along this swamp to its intersection with State Secondary Highway 45, then southwest along this highway to its junction with State Secondary Highway 129, then northwest along this highway to its junction with U.S. Highway 501, then northwest along the latter highway to its intersection, with Little Pee Dee River, then northwest along this river to its junction with the Lumber River, then northeast along this river to its intersection with the South Carolina-North Carolina State line, then southeast along this state line to the point of beginning, excluding the area within the corporate limits of the towns of Conway and Loris.

The Alford, Alex, farm located on the south side of a dirt road and being 2 miles southwest and west of the junction of this dirt road and State Secondary Highway 99,

this junction being 1.75 miles north of the junction of this highway and State Secondary Highway 97.

The Cooper, Thomas B., farm located northeast of a dirt road and 0.75 mile northwest of the intersection of this dirt road with rural paved road No. 109, this intersection being 2.25 miles northeast of the junction of rural paved road No. 109 with rural paved road No. 79.

The Edge, Nina L., farm located on the west side of a dirt road and 0.8 mile southeast of its junction with a second dirt road, this junction being 0.5 mile south of the junction of the second dirt road and State Primary Highway 90, this second junction being 0.8 mile southwest of the junction of this highway and State Secondary Highway 31.

The Martin, Daniele E., farm located on the east side of State Primary Highway 90 and 0.9 mile northeast of the junction of this highway and State Secondary Highway 377.

The Richardson, Talmage, farm located on the north side of a dirt road and 1 mile southwest of the junction of this dirt road with State Secondary Highway 90, this junction being 1.75 miles north of the junction of State Secondary Highway 90 and State Secondary Highway 97.

Marion County. The entire county.

Marlboro County. The Harrison, Nancy, Estate farm located on the north side of State Secondary Road 299 and 0.2 mile east of its intersection with State Highway 38.

Done in Washington, DC, this 1st day of June 1989.

Larry B. Slagle,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-13473 Filed 6-6-89; 8:45 am]

BILLING CODE 3410-34-M

Federal Crop Insurance Corporation

7 CFR Part 400

[Doc. No. 6908S]

General Administrative Regulations; Implementation of Disaster Assistance Act of 1988

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC), at the direction of the Secretary of Agriculture, hereby issues a new Subpart N in Chapter IV of Title 7 of the Code of Federal Regulations for the purpose of implementing the Disaster Assistance Act of 1988 (the "ACT"). The intended effect of this rule is to set forth the procedures for implementing the requirements of the Disaster Assistance Act with respect to a reduction in commissions paid to private insurance agents, brokers or companies, on contracts for crop insurance coverage

entered into under the provisions of the ACT.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action constitutes a review as to the need, currency, clarity, and effectiveness of these regulations under those procedures. The sunset review date established for these regulations is May 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This rule is made necessary by the enactment of section 207 of the Disaster Assistance Act of 1988 which mandates the purchase of crop insurance coverage with respect to certain benefits under the ACT.

In accordance with section 207(c)(3) of the ACT, the Secretary of Agriculture is required to provide by regulation for a reduction in the commissions paid to private insurance agents, brokers, or companies on crop insurance contracts entered into under this section sufficient to reflect that such insurance contracts principally involve only a servicing function to be performed by the agent, broker, or company. This rule is for the purpose of carrying out that directive.

Under the provisions of section 234 of the ACT, publication for notice and comment is omitted so that these regulations may be made effective as quickly as possible. All entities affected by this rule were advised of the provisions prior to the October 1, 1988, effective date.

List of Subjects in 7 CFR Part 400

Crop Insurance; General Administrative Regulations; Implementation of Disaster Assistance Act of 1988.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation herewith issues a new Subpart N in Part 400 of Title 7 of the Code of Federal Regulations, effective October 1, 1988.

Subpart N is added to read as follows:

PART 400—GENERAL ADMINISTRATIVE REGULATIONS

Subpart N—Disaster Assistance Act of 1988; Procedures for Implementation

Sec.

- 400.250 General statement.
- 400.251 Purpose and applicability.
- 400.252 Implementation and expense reimbursement.

Subpart N—Disaster Assistance Act of 1988; Procedures for Implementation

§ 400.250 General statement.

The Disaster Assistance Act of 1988 (the ACT) requires that, subject to certain limitations in the ACT, producers on a farm, in order to be eligible to receive a disaster payment under the provisions of the ACT, or an emergency loan under the provisions of the Rural Development Act (7 U.S.C. (1961) *et seq.*) for crop losses due to drought, hail, excessive moisture, or related condition in 1988, or forgiveness of the repayment and advance deficiency payments under subsection 201(b) of the ACT, must agree to obtain multi-peril crop insurance under the Federal Crop Insurance Act (7 U.S.C. 1501 *et seq.*) for the 1989 crop of the

commodity for which such payments, loans, or forgiveness are sought. The ACT also requires that regulations be promulgated to provide for a reduction in the commissions paid to private insurance agents, brokers, or companies on contracts for crop insurance entered into under the ACT sufficient to reflect that such insurance contracts principally involve only a servicing function to be performed by the agent, broker, or company.

§ 400.251 Purpose and applicability.

(a) It is the purpose of these regulations to provide the procedures for implementing the provisions of the ACT by requiring a reduction in the compensation rate to the agent, broker, or company under contract or agreement with FCIC.

(b) The provisions contained in this subpart shall be applicable to all holders of an Agency Sales and Service Contract (herein referred to as "agency") or a Reinsurance Agreement (herein referred to as "company") with FCIC, and shall be applicable on all crop insurance contracts for 1989 crops entered into to comply with the provisions of section 207 of the Disaster Assistance Act of 1988, as set forth in subsections (c) (2) and (3) of said ACT.

§ 400.252 Implementation and expense reimbursement.

Crop insurance coverage, required by the ACT to be made available to any producer identified by the Agricultural Stabilization and Conservation Service (ASCS) as having suffered a crop loss of 65 percent or more, unless the requirement for such crop insurance coverage is waived under the provisions of the ACT, may be made available through any agent or company under the terms and conditions of the contract or agreement such agent or company may have with FCIC. Agents under an Agency Sales and Service Contract and companies under a Reinsurance Agreement with FCIC are required to sign an amendment to the contract or agreement agreeing to a reduction in expense reimbursement for evidence of a policy of crop insurance issued under the requirements of the ACT. Such expense reimbursement:

(a) Will not be reduced if the producer:

(1) Had crop insurance under the Federal Crop Insurance Act during the 1988 crop year for which the payment or other benefit is being sought under the ACT and said insurance has been continued into the 1989 crop year;

(2) Furnishes evidence of insurance coverage (copy of the completed, filed application or policy confirmation) for

the 1989 crop year for the crop for which the payment or other benefit under the ACT is being requested, to the ASCS county office at the time of application for the disaster payment or other benefit under the ACT; or

(3) Has, under the provisions of the ACT, received a waiver of the requirement to obtain crop insurance coverage.

(b) Will be reduced in the amount of 3 percent (3%) of base premium when the producer, applying for disaster payment at the ASCS Office without evidence of the required crop insurance coverage, is required by the ASCS or the Farmer's Home Administration (FmHA) county committee to obtain such crop insurance coverage for crop year 1989 in order to receive the payment or other benefit sought under the ACT.

Done in Washington, DC, on June 1, 1989.
David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-13530 Filed 6-6-89; 8:45 am]

BILLING CODE 3410-08-M

7 CFR Part 403

[Doc. No. 6910S]

Peach (Fresh) Crop Insurance Regulations

AGENCY: Federal Crop Insurance Corporation, USDA.

ACTION: Final rule.

SUMMARY: The Federal Crop Insurance Corporation (FCIC) amends the Peach (Fresh) Crop Insurance Regulations (7 CFR Part 403), effective for the 1990 and succeeding crop years, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1990 crop year expiration. The intended effect of this rule is to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

EFFECTIVE DATE: July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Peter F. Cole, Secretary, Federal Crop Insurance Corporation, Room 4090, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone (202) 447-3325.

SUPPLEMENTARY INFORMATION: This action has been reviewed under USDA procedures established by Departmental Regulation 1512-1. This action does not constitute a review as to the need, currency, clarity, and effectiveness of

these regulations under those procedures. The sunset review date established for these regulations is February 1, 1994.

John Marshall, Manager, FCIC, (1) has determined that this action is not a major rule as defined by Executive Order 12291 because it will not result in: (a) An annual effect on the economy of \$100 million or more; (b) major increases in costs or prices for consumers, individual industries, federal, State, or local governments, or a geographical region; or (c) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets; and (2) certifies that this action will not increase the federal paperwork burden for individuals, small businesses, and other persons and will not have a significant economic impact on a substantial number of small entities.

This action is exempt from the provisions of the Regulatory Flexibility Act; therefore, no Regulatory Flexibility Analysis was prepared.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.450.

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115, June 24, 1983.

This action is not expected to have any significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Under the provisions of the Peach (Fresh) Crop Insurance Regulations (7 CFR Part 403), an insured may be eligible for a premium reduction in excess of 5 percent based on that individual's insuring experience through the 1984 crop year under the terms and conditions contained in their peach crop insurance policy for 1985. The insured will continue to receive the benefit of such reduction subject to several conditions, one of which being that no premium reduction will be retained after the 1990 crop year.

The FCIC Board of Directors has suggested that the present premium reduction be continued and directed that a study be made of the entire premium reduction for good experience issued as it might apply to all policyholders.

Accordingly, FCIC herein amends the Peach (Fresh) Crop Insurance

Regulations (7 CFR Part 403) to allow a continuation of the good experience discount provision so that no premium reduction will be retained after the 1991 crop year.

On Monday, April 10, 1989, FCIC published a notice of proposed rulemaking in the Federal Register at 54 FR 14240, to provide that the premium reduction gained by insureds through good insuring experience will extend beyond the present 1990 crop year expiration to allow a continuation of good experience discount for all present policyholders who are eligible for a premium reduction while FCIC reviews the entire good experience discount issue for all policyholders.

The public was given 30 days in which to submit written comments, data, and opinions on the proposed rule, but none were received. Therefore, FCIC herewith adopts the proposed rule published at 54 FR 14240 as a final rule without change.

List of Subjects in 7 CFR Part 403

Crop Insurance, Peaches.

Final Rule

Accordingly, pursuant to the authority contained in the Federal Crop Insurance Act, as amended (7 U.S.C. 1501 *et seq.*), the Federal Crop Insurance Corporation amends the Peach (Fresh) Crop Insurance Regulations (7 CFR Part 403), effective for the 1990 and succeeding crop years, in the following instances.

PART 403—[AMENDED]

1. The authority citation for 7 CFR Part 403 is revised to read as follows:

Authority: 7 U.S.C. 1508, 1516.

2. Paragraph 7(d) of the Peach (Fresh) Crop Insurance Regulations (7 CFR 403.7) is amended by revising subparagraph 5.c.(1) to read as follows:

§ 403.7 The application and policy.

(d) * * *

5. Annual premium.

c. * * *

(1) No premium reduction will be retained after the 1991 crop year.

Done in Washington, DC, on May 31, 1989.

David W. Gabriel,

Acting Manager, Federal Crop Insurance Corporation.

[FR Doc. 89-13531 Filed 6-6-89; 8:45 am]

BILLING CODE 3110-06-M

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV-89-127FR]

Navel Oranges Grown in Arizona and Designated Part of California; Valencia Oranges Grown in Arizona and Designated Part of California; Administrative Rules and Regulations (Additional Reporting Requirements for Handlers)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends procedures which are contained in the administrative rules and regulations of the California-Arizona navel and Valencia orange marketing orders. This rule was recommended by the Navel and Valencia Orange Administrative Committees (committees), the agencies responsible for local administration of the orders.

This change requires handlers of navel and Valencia oranges to submit information to the committees reflecting the quantity of oranges harvested on a weekly basis. Receiving this information on a weekly basis will enable the committees to more efficiently carry out their auditing functions to monitor handler compliance with the marketing orders.

EFFECTIVE DATE: July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION:

This final rule is issued under Marketing Order Nos. 907 and 908 (7 CFR Parts 907 and 908), both as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California. These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under their respective orders, and approximately 4,065 producers of navel oranges and 3,500 producers of Valencia oranges in California and Arizona. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.1) as those having average gross annual revenues for the last three fiscal years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of California-Arizona navel and Valencia orange producers and handlers may be classified as small entities.

This final rule makes changes to the administrative rules and regulations of the navel and Valencia orange marketing orders. These changes require handlers to report information on oranges harvested to the committees on a weekly, rather than periodic, basis.

Sections 907.72 and 908.72 of the navel and Valencia orange marketing orders, respectively, require that upon request of the committees, with the approval of the Secretary of Agriculture, every person subject to regulation under the navel and Valencia orange marketing orders shall furnish to the committees, in such manner and at such times as they may prescribe, such information, in addition to that already required by the order, as will enable the committees to perform their duties. Thus, the committees have the authority to request additional information from handlers to help the committees perform their duties under their respective orders.

Sections 907.142 and 908.142 of the administrative rules and regulations of the orders currently require handlers, at the request of the committees, to submit information on oranges harvested and other information on Handler Report of Picks and Estimates forms (Base Estimate Forms No. 1). The information required on these forms must be provided for each grower who delivers oranges to the handler, broken down by individual groves. The new weekly

reporting requirement requests only gross figures of the number of cartons harvested by all of a handler's growers for the preceding week and cumulatively for the season.

In the past, because of the detailed nature of the report, the committees have requested submission of the Handler Report of Picks and Estimates only three or four times during the marketing year. This periodic information on oranges harvested is used to determine the status of the industry and individual handlers at a given point in the marketing year regarding the quantity of oranges harvested and the quantity remaining for harvest. The new weekly reporting requirement will be met by using less detailed forms. When information on the quantity of oranges harvested is submitted on a weekly basis, however, it will improve the data base available to the committees and enable them to more closely monitor the flow of oranges from grower to handler to final disposition. For auditing purposes, this comparison could help identify marketing order violations if discrepancies in the figures occur.

It is estimated that the additional information required by this rule will take less than five minutes to complete and should present no significant burden to the approximately 125 handlers of navel oranges and 115 handlers of Valencia oranges subject to regulation under their respective orders.

Therefore, the committees recommended amending §§ 907.142 and 908.142 of the rules and regulations under the navel and Valencia orange marketing orders, respectively, to require handlers to submit information regarding the quantity of oranges harvested on a weekly basis on new Navel Orange Administrative Committee/Valencia Orange Administrative Committee (N.O.A.C./V.O.A.C) Forms No. 37. These forms will be printed on the lower, currently unused, portion of N.O.A.C./V.O.A.C. Forms No. 4, which are weekly reports of orange shipments from handlers.

Thus, sections 907.142 and 908.142 of the navel and Valencia marketing orders are amended by redesignating paragraphs (a) as (a)(2) and adding paragraphs (a)(1). In addition, revisions of paragraphs (b) provide gender neutral language.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

Notice of this action was published in the Federal Register on November 7,

1988, (53 FR 44925). Written comments were invited from interested persons for 30 days, until December 7, 1988. Two comments were received: From Richard J. Pescosolido of Foothill Farms, an orange grower and alternate committee member, and from James A. Moody, writing in behalf of Sequoia Orange Company, for which he is counsel.

Mr. Pescosolido objected to the manner in which the proposal was made and especially that it was offered by the committees' manager. Mr. Moody also objected to the fact that the rule was formulated and proposed to the committees by the manager.

It is normal procedure for the professional, paid staff of marketing order committees, including their managers, to develop proposals for information gathering since they regularly use such information in meeting the various requirements of the orders and in preparing various reports and statistical information for the committees. It is a function of the committees to accept, modify or reject such proposals presented to them. In this case, the committees endorsed the suggested requirement and adopted it as a proposal that would improve the committees' ability to administer their respective orders. The committees then recommended that the Department adopt the proposals as amendments to the regulations implementing the Order.

Mr. Pescosolido further commented that no hearing was held to establish a record on the subject. However, hearings are not required for informal rulemaking actions.

Mr. Pescosolido objected that no advance notice was given to growers, handlers or committee members, and that the meeting, because it was held in Los Angeles, took place away from all growers and handlers. Mr. Moody also asserted that the proposal was not given wide notice and that its presentation at the Los Angeles meeting prevented interested parties from examining its merits or faults. However, Los Angeles is the normal location for a majority of these committee meetings. The proposal was presented at a joint meeting of the N.O.A.C./V.O.A.C. These committees are made up of growers, handlers, and representatives of the public. Committee members are nominated by all California/Arizona navel and Valencia producers and handlers to be their representatives. The committees responded to the manager's suggestion of this rule by voting to adopt it. They recommended that it be made effective under the marketing orders. A proposed rule was published in the Federal Register and public comments were invited for a period of 30 days, during

which other interested individuals had the opportunity to comment on the proposed requirement.

Mr. Pescosolido and Mr. Moody expressed concern about protecting the confidentiality of information gathered. Sections 907.73(d) and 908.73(d) of the marketing orders deal with the issue of confidentiality and outline protections and limitations on disclosure of information. In addition, section 608(d)(2) of the Agricultural Marketing Agreement Act of 1937, as amended, provides: " * * * all information furnished to or acquired by the Secretary of Agriculture pursuant to this section, as well as information for marketing order programs that is categorized as trade secrets and commercial or financial information * * * shall be kept confidential by all officers and employees of the Department of Agriculture * * * " (7 U.S.C. 608(d)(2)). These safeguards are designed and implemented to protect against divulgence of confidential information.

Mr. Pescosolido noted that the Florida and Texas orange marketing orders do not include a provision such as that contained in this rule, and claimed that approval of the rule would discriminate against California/Arizona citrus growers. The Florida and Texas marketing orders were promulgated on the basis of separate rulemaking proceedings and are different in that they do not utilize prorate regulation, and must therefore be differently administered.

Messrs. Pescosolido and Moody also contended that the information contained in the weekly reporting requirement, if publicly distributed, would give buyers knowledge of inventories held by handlers and allow them to manipulate prices downward by withholding orders. Mr. Moody further stated that any such release would only serve to strengthen the bargaining position of buyers without offsetting benefits to growers and handlers. The supplementary information section of the proposed rule stated that the information on oranges harvested could be included in weekly Handler Bulletins. While we believe that Messrs. Moody's and Pescosolido's comments in this regard are unfounded, upon further analysis and review, we believe that it is not necessary to publish such information in weekly Handler Bulletins. Therefore, information collected on oranges harvested will not be distributed to the industry on a weekly basis.

Mr. Moody questioned whether the proposal would improve the data base

available to the committees and enable the committees to more closely monitor the flow of oranges from grower to handler to final disposition. In addition, he asserted that the collection of additional data will not aid in the detection of marketing order violations. We disagree with these comments. The collection of additional information will improve the committees' ability to administer their respective orders. Further, additional information will provide a more frequent check on the flow of product through the marketing system and the Department believes that illegal diversions should be more quickly and precisely identified.

For the reasons stated above, Mr. Peasosolido's and Mr. Moody's objections are denied.

In accordance with the Paperwork Reduction Act of 1980 [44 U.S.C. 3504], the information collection provisions contained in this final rule have been approved by the Office of Management and Budget (OMB) and assigned OMB control nos. 0581-0116 (navel oranges) and 0581-0121 (Valencia oranges).

After consideration of all relevant matter presented, including the committees' recommendation, the comments received, and other available information, it is found that the changes hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Parts 907 and 908

Arizona, California, Marketing agreements and orders, Navels, Oranges, Valencias.

For the reasons set forth in the preamble, 7 CFR Parts 907 and 908 are amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

1. The authority citation for 7 CFR Parts 907 and 908 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 907.142 is revised to read as follows:

Subpart—Rules and Regulations

§ 907.142 Other reports.

(a)(1) Each handler shall, in conjunction with the weekly report specified in § 907.140 of this part, submit to the committee each Friday on N.O.A.C. Form No. 37 a report of oranges harvested showing, from the oranges controlled by the handler, the quantity of oranges harvested during the immediately preceding week together

with the cumulative quantity of such oranges harvested from the beginning of the fiscal year through the end of such weekly period.

(2) Each handler shall make available to the committee's field department representative, upon request, information as to the quantity of oranges which have been harvested from all groves or portions thereof under such handler's control. When requested, the information shall be supplied in writing on Handler Report of Picks and Estimates (Base Estimate Form No. 1), requiring information on designated individual blocks as to acreage, original tree crop estimate by the handler, actual clean picks, partial picks to date, and oranges remaining to be picked.

(b) Upon request, each handler shall submit to the committee a completed N.O.A.C. Form No. 29—Inventory Report of Navel Oranges Controlled—showing therein: The specified inventory date; variety; field boxes of oranges picked to date; estimated number of field boxes remaining to be picked; field boxes of oranges in the packinghouse; cartons of oranges loaded on trucks and rail cars for Friday shipment; number of cartons of oranges in storage; number of cartons of oranges on the packinghouse floor; loose oranges on hand (converted to cartons); oranges on hand for products (converted to cartons); and the date when the handler plans to complete such handler's orange picking operations. The report shall be signed by the handler or the handler's authorized representative.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

3. Section 908.142 is revised to read as follows:

Subpart—Rules and Regulations

§ 908.142 Other reports.

(a)(1) Each handler shall, in conjunction with the weekly report specified in § 908.140 of this part, submit to the committee each Friday on V.O.A.C. Form No. 37 a report of oranges harvested showing, from the oranges controlled by the handler, the quantity of oranges harvested during the immediately preceding week together with the cumulative quantity of such oranges harvested from the beginning of the fiscal year through the end of such weekly period.

(2) Each handler shall make available to the committee's field department representative, upon request, information as to the quantity of oranges which have been harvested from all groves or portions thereof under such

handler's control. When requested, the information shall be supplied in writing on Handler Report of Picks and Estimates (Base Estimate Form No. 1), requiring information on designated individual blocks as to acreage, original tree crop estimate by the handler, actual clean picks, partial picks to date, and oranges remaining to be picked.

(b) Upon request, each handler shall submit to the committee a completed V.O.A.C. Form No. 29—Inventory Report of Valencia Oranges Controlled—showing therein: The specified inventory date; variety; field boxes of oranges picked to date; estimated number of field boxes remaining to be picked; field boxes of oranges in the packinghouse; cartons of oranges loaded on trucks and rail cars for Friday shipment; number of cartons of oranges in storage; number of cartons of oranges on the packinghouse floor; loose oranges on hand (converted to cartons); oranges on hand for products (converted to cartons); and the date when the handler plans to complete such handler's orange picking operations. The report shall be signed by the handler or the handler's authorized representative.

Dated: June 2, 1989.

Robert C. Kenney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-13465 Filed 6-6-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 915

[Docket No. FV-89-045]

Avocados Grown in South Florida; Maturity Requirement Changes

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule.

SUMMARY: This rule changes minimum maturity requirements currently in effect on a continuous basis for Florida and imported avocados. The rule changes the maturity shipping schedules for the Hardee, Nadir, and Pinkerton varieties of avocados, based on maturity test data developed for these varieties last season. This rule also changes the maturity schedule in Table I of the regulation to synchronize it with the 1989-90 calendar years. This action is designed to promote orderly marketing conditions for Florida and imported avocados in the interest of producers and consumers, and provide fresh markets with mature fruit to create and maintain consumer satisfaction and sales.

DATES: Section 915.332 becomes effective June 7, 1989. This section is applicable to avocados imported into the United States under § 944.31 as of June 12, 1989. Comments which are received by July 7, 1989 will be considered prior to issuance of the final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96450, Room 2525-S, Washington, DC 20090-6450. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. The written comments should reference the docket number, date, and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96450, Room 2525-S, Washington, DC 20090-6450, telephone (202) 475-3918.

SUPPLEMENTARY INFORMATION: This rule is issued under the Marketing Agreement and Marketing Order No. 915, both as amended [7 CFR Part 915], regulating the handling of avocados grown in South Florida. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601-674], hereinafter referred to as the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1, and has been determined to be a "non-major" rule under the criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act and rules issued thereunder are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are an estimated 34 handlers of Florida avocados subject to regulation under the marketing order for avocados grown in South Florida, and an estimated 20 importers who import

avocados into the United States. In addition, there are approximately 300 avocado producers in Florida. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than \$500,000, and agricultural services firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of the avocado handlers, importers, and producers may be classified as small entities.

Fresh Florida avocado shipments are projected at 1,220,000 bushels (55 pounds net weight) for the 1989-90 season, compared with 1,057,618 bushels shipped in 1988-89, 1,129,587 bushels shipped in 1987-88, 956,217 bushels shipped in 1986-87, and 1,110,130 bushels shipped in 1985-86. Florida avocados are usually shipped every month of the year. The new season normally begins with light shipments of early varieties in late May or early June, with heavy shipments occurring from July through December. Florida avocados compete primarily with avocados produced in California, with estimated shipments of about 5,284,465 bushels during the 1988-89 California shipping season. Avocado imports into the United States are estimated at 30,539 bushels for the 1988-89 season.

Section 915.332 specifies continuous maturity requirements for fresh shipments of avocados grown in South Florida. The maturity requirements are designed to make sure that all of the Florida avocados shipped are mature enough to complete the ripening process, to improve buyer confidence in the marketplace, and to foster increased consumption. The maturity requirements are in terms of color for certain varieties which turn red or purple when mature, and in terms of minimum weights or diameters for specified time periods during the shipping season for some 60 varieties and two seedling types of Florida grown avocados. The time periods are for seven-day increments, beginning on Monday of each week and ending on Sunday. A minimum grade requirement of U.S. No. 2 is also currently in effect on a continuous basis for Florida avocados under § 915.306 [7 CFR Part 915]. Similar maturity requirements have been in effect for several seasons, and Florida avocado producers and handlers have found such requirements beneficial in the successful marketing of the avocado crop.

Some Florida avocado shipments are exempt from the maturity requirements. Handlers may ship up to 55 pounds of avocados during any one day under a minimum quantity exemption, and may

make gift shipments of up to 20 pounds of avocados in individually addressed containers. Also, avocados utilized in commercial processing are not covered by the maturity requirements.

On April 12, 1989, the Avocado Administrative Committee (committee) recommended the changes in the maturity requirements. The committee works with the Department in administering the marketing agreement and order program. The committee meets prior to and during each season to consider recommendations for modification, suspension, or termination of the regulatory requirements for Florida avocados. Committee meetings are open to the public and interested persons may express their views at these meetings. The Department reviews committee recommendations and information submitted by the committee and other available information, and determines whether modification, suspension, or termination of the regulatory requirements would tend to effectuate the declared policy of the Act.

Reflecting the committee's recommendation, this action revises Table I in § 915.332(a)(2) to change the maturity requirements for the Hardee, Nadir, and Pinkerton varieties of avocados, based on last season's test data on the maturity characteristics of these varieties. The test data indicate that the Hardee and Nadir varieties mature later in the season, the Hardee variety matures at a lower weight, and the Pinkerton variety matures sooner in the season than the dates currently reflected in the shipping schedule. In recognition of these factors, the seasonal shipping schedule for the Hardee variety is shifted two weeks later into the season with the starting date moved from the second Monday in June to the fourth Monday in June. Also for the Hardee variety, the minimum weight requirement is reduced by two ounces, with starting minimum weight reduced from 18 to 16 ounces. For the Nadir variety, the shipping schedule is shifted one week later into the season, with the starting date moved from the third Monday in June to the fourth Monday in June. For the Pinkerton variety, shipments will be permitted one week earlier beginning the first Monday in October. Also, this action makes calendar date adjustments in the varietal shipping schedules in the Florida avocado maturity regulation to synchronize them with the 1989-90 calendar years. These changes further the marketing goals of the industry by preventing the shipment of immature avocados to the fresh market.

Section 8e of the Act [7 U.S.C. 608e-1] requires that whenever specified commodities, including avocados, are regulated under a Federal marketing order, imports of that commodity into the United States must meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodity. The Act further provides that the requirements on imports shall not become effective until giving not less than three days notice.

Avocado import maturity requirements are in effect on a continuous basis under § 944.31 [7 CFR Part 944], issued under section 83 of the Act. That section provides that minimum weight and diameter maturity requirements for avocados imported into the United States from northern hemisphere countries be the same as such maturity requirements specified in § 915.332 for Florida avocados and that the requirements contained in § 915.332(a)(2) do not apply to imported avocados grown in the southern hemisphere. Since this action changes the minimum weight and diameter maturity requirements for Florida produced avocados, these same changes apply to imported avocados grown in northern hemisphere countries. No change is needed in the text of the import regulation by this action.

Further, avocado import grade requirements are currently in effect on a continuous basis under § 944.28 [7 CFR Part 944]. Such requirements specify that all avocados imported into the United States must grade a least U.S. No. 2, as appear in § 915.306. This action does not change the requirements concerning avocados grown in the production area. Accordingly, § 944.28 of the regulations is not affected.

The avocado maturity and grade import regulations both contain an exemption provision which permits persons to import up to 55 pounds of avocados exempt from such import requirements.

The maturity requirements, specified herein, reflect the committee's and the Department's appraisal of the need to change the maturity requirements applicable to domestic and import shipments of avocados. Therefore, the Department's view is that these changes will not adversely impact producers, handlers, and importers. The application of the maturity requirements to both Florida and imported avocados over the past several years have helped to assure that only mature avocados were shipped to fresh markets. The committee considers the Florida avocado maturity requirements to be necessary to improve grower returns. Although compliance with these maturity requirements will affect costs to handlers and importers, these costs appear to be significantly offset when compared to the potential benefits of assuring the trade and consumers of mature avocados.

Based on the above, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other available information, it is found that the rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting

this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) Avocado handlers are aware of this action which was recommended by the committee at a public meeting; (2) the changes synchronize the shipping periods for the two varieties beginning in May in the maturity table with the 1989-90 calendar years, and changes the starting dates for two varieties which begin shipping in mid-June; (3) the avocado import requirements changes are mandatory under section 8e of the Act; and (4) the rule provides a 30-day comment period, and any comments received will be considered prior to issuance of a final rule.

List of Subjects in 7 CFR Part 915

Marketing agreements and orders, avocados, Florida.

For the reasons set forth in the preamble, 7 CFR Part 915 is amended as follows:

Note: This section will appear in the Code of Federal Regulations.

PART 915—AVOCADOS GROWN IN SOUTH FLORIDA

1. The authority citation for 7 CFR Part 915 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 915.332 is amended by revising Table I in paragraph (a)(2) to read as follows:

§ 915.332 Florida avocado maturity regulation.

(a) * * *

(2) * * *

TABLE I

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
Kosel	3rd Mon. May	4th Sun. May	16	
	5th Mon. May	2nd Sun. June	13	
Arue	3rd Mon. May	4th Sun. May	16	
	5th Mon. May	1st Sun. July	14	3 1/8
Donnie	4th Mon. May	1st Sun. June	16	3 1/8
	1st Mon. June	1st Sun. July	14	3 1/8
Dr. Dupuis #2	5th Mon. May	2nd Sun. June	16	3 1/8
	2nd Mon. June	1st Sun. July	14	3 1/8
	1st Mon. July	3rd Sun. July	12	3 1/8
Fuchs	1st Mon. June	3rd Sun. June	14	3 1/8
	3rd Mon. June	1st Sun. July	12	3
K-5	2nd Mon. June	4th Sun. June	18	3 1/8
	4th Mon. June	2nd Sun. July	14	3 1/8
Pollock	3rd Mon. June	1st Sun. July	16	3 1/8
	1st Mon. July	3rd Sun. July	16	3 1/8
	3rd Mon. July	5th Sun. July	14	3 1/8
Simmonds	3rd Mon. June	1st Sun. July	16	3 1/8
	1st Mon. July	3rd Sun. July	14	3 1/8

TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
West Indian Seedling ¹	3rd Mon. July	5th Sun. July	12	3 1/8
	3rd Mon. June	3rd Sun. July	18	
	3rd Mon. July	3rd Sun. Aug.	16	
Hardee	4th Mon. Aug.	3rd Sun. Sept.	14	
	4th Mon. June	1st Sun. July	16	3 1/8
	1st Mon. July	2nd Sun. July	14	3 1/8
Nadir	2nd Mon. July	4th Sun. July	12	2 1/4
	4th Mon. June	1st Sun. July	14	3 1/8
	1st Mon. July	2nd Sun. July	12	3 1/8
Gorham	2nd Mon. July	3rd Sun. July	10	2 1/4
	1st Mon. July	3rd Sun. July	29	4 1/8
Reuhle	3rd Mon. July	2nd Sun. Aug.	27	4 1/8
	1st Mon. July	2nd Sun. July	18	3 1/8
	2nd Mon. July	3rd Sun. July	16	3 1/8
	3rd Mon. July	5th Sun. July	14	3 1/8
	5th Mon. July	1st Sun. Aug.	12	3 1/8
Biondo	1st Mon. Aug.	2nd Sun. Aug.	10	3 1/8
Peterson	2nd Mon. July	2nd Sun. Aug.	13	
	2nd Mon. July	3rd Sun. July	14	3 1/8
	3rd Mon. July	4th Sun. July	12	3 1/8
	4th Mon. July	1st Sun. Aug.	10	3 1/8
Bernecker	3rd Mon. July	5th Sun. July	18	3 1/8
	5th Mon. July	2nd Sun. Aug.	16	3 1/8
Miguel (P)	2nd Mon. Aug.	4th Sun. Aug.	14	3 1/8
	3rd Mon. July	5th Sun. July	22	3 1/8
	5th Mon. July	2nd Sun. Aug.	20	3 1/8
232	2nd Mon. Aug.	4th Sun. Aug.	18	3 1/8
	3rd Mon. July	5th Sun. July	14	
	5th Mon. July	2nd Sun. Aug.	12	
Pinelli	3rd Mon. July	5th Sun. July	18	3 1/8
	5th Mon. July	2nd Sun. Aug.	16	3 1/8
Trapp	3rd Mon. July	5th Sun. July	14	3 1/8
	5th Mon. July	2nd Sun. Aug.	12	3 1/8
Nesbitt	3rd Mon. July	5th Sun. July	22	3 1/8
	5th Mon. July	1st Sun. Aug.	16	3 1/8
	2nd Mon. Aug.	3rd Sun. Aug.	14	3 1/8
Beta	5th Mon. July	1st Sun. Aug.	18	3 1/8
	1st Mon. Aug.	4th Sun. Aug.	16	3 1/8
Tonnage	5th Mon. July	2nd Sun. Aug.	16	3 1/8
	2nd Mon. Aug.	3rd Sun. Aug.	14	3 1/8
	3rd Mon. Aug.	4th Sun. Aug.	12	3
Waldin	5th Mon. July	2nd Sun. Aug.	16	3 1/8
	2nd Mon. Aug.	4th Sun. Aug.	14	3 1/8
	4th Mon. Aug.	2nd Sun. Sept.	12	3 1/8
Tower 2	5th Mon. July	2nd Sun. Aug.	14	3 1/8
	2nd Mon. Aug.	1st Sun. Sept.	12	3 1/8
K-9	5th Mon. July	3rd Sun. Aug.	16	
Christina	5th Mon. July	3rd Sun. Aug.	11	2 1/4
Lisa (P)	1st Mon. Aug.	2nd Sun. Aug.	12	3 1/8
	2nd Mon. Aug.	3rd Sun. Aug.	11	3
Catalina	2nd Mon. Aug.	4th Sun. Aug.	24	
	4th Mon. Aug.	3rd Sun. Sept.	22	
Fairchild	2nd Mon. Aug.	4th Sun. Aug.	16	3 1/8
	4th Mon. Aug.	2nd Sun. Sept.	14	3 1/8
	2nd Mon. Sept.	3rd Sun. Sept.	12	3 1/8
Black Prince	2nd Mon. Aug.	4th Sun. Aug.	28	4 1/8
	4th Mon. Aug.	2nd Sun. Sept.	23	3 1/8
	4th Mon. Sept.	1st Sun. Oct.	16	3 1/8
Loretta	4th Mon. Aug.	2nd Sun. Sept.	30	4 1/8
	2nd Mon. Sept.	1st Sun. Oct.	26	3 1/8
Booth 8	4th Mon. Aug.	3rd Sun. Sept.	16	3 1/8
	3rd Mon. Sept.	1st Sun. Oct.	14	3 1/8
	1st Mon. Oct.	3rd Sun. Oct.	10	3 1/8
Booth 7	4th Mon. Aug.	2nd Sun. Sept.	18	3 1/8
	2nd Mon. Sept.	4th Sun. Sept.	16	3 1/8
	4th Mon. Sept.	2nd Sun. Oct.	14	3 1/8
Blair	4th Mon. Aug.	2nd Sun. Sept.	16	3 1/8
	2nd Mon. Sept.	1st Sun. Oct.	14	3 1/8
Booth 5	3rd Mon. Sept.	3rd Sun. Sept.	14	3 1/8
	3rd Mon. Sept.	1st Sun. Oct.	12	3 1/8
Guatemalan Seedling ²	1st Mon. Sept.	1st Sun. Oct.	15	
	1st Mon. Oct.	1st Sun. Dec.	13	
Marcus	1st Mon. Sept.	3rd Sun. Sept.	32	4 1/8
	3rd Mon. Sept.	5th Sun. Oct.	24	4 1/8
Brooks 1978	1st Mon. Sept.	2nd Sun. Sept.	12	3 1/8
	2nd Mon. Sept.	3rd Sun. Sept.	10	3 1/8
	3rd Mon. Sept.	2nd Sun. Oct.	8	2 1/4

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TABLE I—Continued

Avocado variety	Effective period		Minimum size	
	From	Through	Weight (ounces)	Diameter (inches)
Rue	2nd Mon. Sept.	3rd Sun. Sept.	30	4 1/2
	3rd Mon. Sept.	1st Sun. Oct.	24	3 1/2
	1st Mon. Oct.	3rd Sun. Oct.	18	3 1/2
Collinson	2nd Mon. Sept.	2nd Sun. Oct.	16	3 1/2
Hickson	2nd Mon. Sept.	4th Sun. Sept.	12	3 1/2
	4th Mon. Sept.	2nd Sun. Oct.	10	3
Simpson	3rd Mon. Sept.	2nd Sun. Oct.	16	3 1/2
Choquette	4th Mon. Sept.	3rd Sun. Oct.	28	4 1/2
	3rd Mon. Oct.	5th Sun. Oct.	24	4 1/2
	5th Mon. Oct.	2nd Sun. Nov.	20	3 1/2
Hall	4th Mon. Sept.	2nd Sun. Oct.	26	3 1/2
	2nd Mon. Oct.	4th Sun. Oct.	20	3 1/2
	4th Mon. Oct.	1st Sun. Nov.	18	3 1/2
Winstowson	4th Mon. Sept.	3rd Sun. Oct.	18	3 1/2
Leone	4th Mon. Sept.	2nd Sun. Oct.	18	3 1/2
Lula	1st Mon. Oct.	3rd Sun. Oct.	16	3 1/2
	3rd Mon. Oct.	5th Sun. Oct.	14	3 1/2
	5th Mon. Oct.	2nd Sun. Nov.	12	3 1/2
Herman	1st Mon. Oct.	3rd Sun. Oct.	16	3 1/2
	3rd Mon. Oct.	5th Sun. Oct.	14	3 1/2
Pinkerton (CP)	1st Mon. Oct.	3rd Sun. Oct.	13	3 1/2
	3rd Mon. Oct.	5th Sun. Oct.	11	3
	5th Mon. Oct.	2nd Sun. Nov.	9	
Taylor	2nd Mon. Oct.	4th Sun. Oct.	14	3 1/2
	4th Mon. Oct.	1st Sun. Nov.	12	3 1/2
Ajex (B-7)	2nd Mon. Oct.	5th Sun. Oct.	18	3 1/2
Booth 3	2nd Mon. Oct.	3rd Sun. Oct.	16	3 1/2
	3rd Mon. Oct.	5th Sun. Oct.	14	3 1/2
Linda	5th Mon. Oct.	3rd Sun. Nov.	18	3 1/2
Buocaneer	5th Mon. Oct.	4th Sun. Nov.	13	3 1/2
Monroe	1st Mon. Nov.	3rd Sun. Nov.	26	4 1/2
	3rd Mon. Nov.	1st Sun. Dec.	24	4 1/2
	1st Mon. Dec.	3rd Sun. Dec.	20	3 1/2
	3rd Mon. Dec.	5th Sun. Dec.	16	3 1/2
Booth 1	2nd Mon. Nov.	4th Sun. Nov.	16	3 1/2
	4th Mon. Nov.	2nd Sun. Dec.	12	3 1/2
Zio (P)	2nd Mon. Nov.	4th Sun. Nov.	12	3 1/2
	4th Mon. Nov.	2nd Sun. Dec.	10	2 1/2
Wagner	3rd Mon. Nov.	1st Sun. Dec.	12	3 1/2
	1st Mon. Dec.	3rd Sun. Dec.	10	3 1/2
Brookside	2nd Mon. Dec.	3rd Sun. Dec.	18	3 1/2
	3rd Mon. Dec.	4th Sun. Dec.	16	3 1/2
	4th Mon. Dec.	1st Sun. Jan.	14	3 1/2
	2nd Mon. Jan.	3rd Sun. Jan.	12	3 1/2
	4th Mon. Jan.	1st Sun. Feb.	10	
Meyo (P)	2nd Mon. Dec.	4th Sun. Dec.	13	3 1/2
	4th Mon. Dec.	1st Sun. Jan.	11	3
Reed (CP)	2nd Mon. Dec.	4th Sun. Dec.	12	3 1/2
	4th Mon. Dec.	1st Sun. Jan.	10	3 1/2
	2nd Mon. Jan.	3rd Sun. Jan.	9	3

¹ Avocados of the West Indian type varieties and the West Indian type seedlings not listed elsewhere in Table I.

² Avocados of the Guatemalan type varieties, hybrid varieties, and unidentified seedlings not listed elsewhere in Table I.

Dated: June 2, 1989.

Charles R. Brader,
Director, Fruit and Vegetable Division.
[FR Doc. 89-13486 Filed 6-6-89; 8:45 am]
BILLING CODE 3410-22-M

7 CFR Part 982

[Docket No. FV-89-019FR]

Filberts/Hazelnuts Grown in Oregon and Washington; Revisions of Administrative Rules and Regulations Concerning the Disposition of Substandard Filberts/Hazelnuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule changes administrative rules and regulations established under the Federal marketing order for filberts/hazelnuts grown in Oregon and Washington to remove a

provision allowing for the disposition of small-sized filberts in export outlets and to add safeguards concerning the disposition of inshell or shelled substandard filberts/hazelnuts for animal feed or oil. The Filbert/Hazelnut Marketing Board (Board) unanimously recommended these changes to the rules and regulations. These changes are necessary in order to eliminate an outdated section in the rules and regulations and to ensure that inshell or shelled substandard filberts/hazelnuts are disposed of in proper outlets.

EFFECTIVE DATE: July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Allen Belden, Marketing Specialist,

Marketing Order Administration Branch, F&V AMS, USDA, Room 2525-S, P.O. Box 98456, Washington, DC 20090-6456; (202) 447-5120.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 982 (7 CFR Part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This action has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 26 handlers of filberts/hazelnuts subject to regulation under the filbert/hazelnut marketing order, and approximately 1,300 filbert/hazelnut producers in the Oregon and Washington production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of filbert/hazelnut handlers and producers may be classified as small entities.

This final rule will delete an unused section in the rules and regulations and add a new section concerning the disposition of inshell and shelled substandard filberts/hazelnuts.

The first change in the administrative rules and regulations of the marketing order will delete § 982.453 which previously authorized the disposition of inshell small-sized filberts/hazelnuts in export markets. The Board recommended that § 982.453 be deleted from the rules and regulations since the provision is no longer used by handlers.

At the present time, the industry practice is to shell small-sized filberts/hazelnuts, with the intent of making minimum grade standards for shelled filberts/hazelnuts, instead of shipping them inshell into export markets. Inshell filberts/hazelnuts are substandard under § 982.45 of the marketing order if they do not meet the requirements of Oregon No. 1 grade and are not medium size as defined in the Oregon Grade Standards For Filberts In Shell.

The second change in the rules and regulations will add a monitoring procedure for the disposition of inshell and shelled substandard filberts/hazelnuts. The establishment of such a procedure is authorized pursuant to § 982.53 of the order. The Board has indicated that filbert/hazelnut production is increasing and, as a result, a larger quantity of inshell and shelled substandard filberts/hazelnuts and filbert/hazelnut waste is available for utilization. Currently, handlers dispose of shelled substandard filberts/hazelnuts for use as livestock feed, in feed products, or for crushing into oil. However, such disposition is not monitored by the Board. The Board has received a number of inquiries from handlers and users of substandard filberts/hazelnuts concerning the sale of substandard filberts/hazelnuts and filbert/hazelnut waste to be used in these outlets. The procedure authorized by this final rule will enable the Board to monitor the disposition of inshell and shelled substandard filberts/hazelnuts to ensure that these filberts/hazelnuts do not enter normal market outlets for merchantable filberts/hazelnuts. Merchantable filberts/hazelnuts are those that meet applicable inshell or shelled minimum grade requirements. This change will enable the industry to ensure the quality of inshell and shelled filberts/hazelnuts entering normal market outlets.

This rule establishes new reporting requirements. Under this action, users (crushers, livestock feed manufacturers, and livestock feeders) who are interested in purchasing substandard filberts/hazelnuts or filbert/hazelnut waste will be required to file F/H Form D with the Board in order to be approved and maintained on an approved list at the Board's office. The Board will have the authority to deny any user approval if the Board finds that such user is not complying with the proper procedures for disposition of the substandard filberts/hazelnuts and filbert/hazelnut waste.

A new F/H Form D will include the location and a description of the user's disposal facilities and a certification to the Board and the Secretary of

Agriculture that the applicant will: (1) Crush, manufacture feed, or feed to livestock such substandard filberts/hazelnuts at the location specified by the user; (2) use such filberts/hazelnuts only for the purpose of crushing into oil, manufacturing into livestock feed or livestock feeding; (3) permit the inspection of substandard filberts/hazelnuts received by the user and also the inspection of the user's premises; and (4) keep records of receipts, holdings, and usage of substandard filberts/hazelnuts for two years after the end of each marketing year and make such records available for inspection by representatives of the Board or the U.S. Department of Agriculture. Users would also agree to submit any additional reports that may be required and to certify such reports for correctness and accuracy. It is estimated that F/H Form D will take less than 20 minutes to complete.

A second new form will be required to be submitted to the Board by handlers for each shipment of substandard filberts/hazelnuts to an approved user. F/H Form D1 will list the quantities of substandard product disposed of or shipped. It is estimated that the form will take less than 5 minutes to complete.

Notice of this action was published in the Federal Register on March 21, 1989 (54 FR 11545). Written comments were invited from interested persons until April 20, 1989. No comments were received.

Based on available information, the Administrator of the AMS has determined that the issuance of this final rule will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the new information collection provisions that are included in this final rule have been approved by the Office of Management and Budget (OMB) and assigned OMB No. 0581-0144.

After consideration of all relevant matter presented, including the Board's recommendation and other available information, it is found that the changes hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 982

Filberts/hazelnuts, Marketing agreements and orders, Oregon, and Washington.

For the reasons set forth in the preamble, 7 CFR Part 982 is amended as follows:

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR Part 982 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Subpart—Administrative Rules and Regulations

2. Section 982.453 is revised to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 982.453 Disposition of substandard filberts-hazelnuts.

The Board shall maintain a list of approved users who are crushers, livestock feed manufacturers, or livestock feeders, and of the locations of the facilities to which substandard filberts/hazelnuts may be shipped. Users interested in purchasing substandard filberts/hazelnuts or filbert/hazelnut waste must make prior application to the Board on F/H Form D to be included on the approved list of such users. Each handler who disposes of substandard filberts/hazelnuts to an approved user shall, upon shipment, report to the Board on F/H Form D1 the quantities disposed of or shipped. Substandard filberts/hazelnuts disposed of to an approved user may only be shipped directly to an approved location where the crushing, feed manufacture, or feeding is to take place. The Board may deny approval to any user application, or may remove any user from the approved list when such denial or removal is deemed necessary to ensure control over disposition of substandard filberts/hazelnuts. This may occur if the Board determines that substandard filberts/hazelnuts are not properly shipped to, or utilized at, approved facilities, in compliance with this requirement. F/H Form D includes the location and description of the disposal facilities to be used as well as a certification to the Board and the Secretary of Agriculture that the applicant will:

(a) Crush, manufacture feed, or feed to livestock such filberts/hazelnuts at the location;

(b) Use such filberts/hazelnuts for no other purpose than for crushing into oil, manufacturing into livestock feed, or livestock feeding;

(c) Permit such inspection of premises and of filberts/hazelnuts received and held, and such examination of books and records covering filbert/hazelnut transactions as the Board may require;

(d) Keep a record of receipts, holdings, and use of substandard filberts/hazelnuts available for examination by authorized representatives of the Board and the U.S. Department of Agriculture for a period of two years after the end of the marketing year in which the recorded transactions are completed; and

(e) Make such reports, certified to the Board and the Secretary of Agriculture as to their correctness, as the Board with the approval of the Secretary may require.

Dated: June 2, 1989.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable
Division.

[FR Doc. 89-13484 Filed 6-6-89; 8:45 am]
BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Part 97**

[Docket No. 25916; Amdt. No. 1401]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESS: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800

Independence Avenue SW, Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoke Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the *Federal Register* expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure

identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule under Executive Order 12293; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.

Issued in Washington, DC on May 26, 1989.

Robert L. Goodrich,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is

amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the dates specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421, and 1510; 49 U.S.C. 106(g) (revised, Pub. L. 97-449, January 12, 1983; and 14 CFR 11.49(b)(2)).

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

... Effective August 24, 1989

Kankakee, IL—Greater Kankakee, VOR RWY 4, Amdt. 5

Kankakee, IL—Greater Kankakee, VOR RWY 22, Amdt. 6

Kankakee, IL—Greater Kankakee, ILS RWY 4, Amdt. 5

Kankakee, IL—Greater Kankakee, RNAV RWY 22, Amdt. 3

Lansing MI—Capital City, VOR RWY 6, Amdt. 23

Lansing MI—Capital City, VOR RWY 24, Amdt. 7

Lansing MI—Capital City, NDB RWY 28L, Amdt. 23

Lansing MI—Capital City, ILS RWY 10R, Amdt. 8

Lansing MI—Capital City, ILS RWY 28L, Amdt. 24

Lansing MI—Capital City, RADAR-1, Amdt. 13

... Effective July 27, 1989

Nogales, AZ—Nogales Intl, VOR-A, Amdt. 2

Nogales, AZ—Nogales Intl, VOR/DME-B, Amdt. 2

Nogales, AZ—Nogales Intl, NDB-C, Amdt. 2

Paragould, AR—Kirk Field, VOR RWY 4, Orig.

Paragould, AR—Kirk Field, NDB RWY 4, Amdt. 1

Coeur D'Alene, ID—Coeur D'Alene Air Terminal, VOR RWY 1, Orig.

Tell City, IN—Perry County Muni, VOR RWY 31, Amdt. 3

Tell City, IN—Perry County Muni, NDB RWY 31, Amdt. 6

Bowling Green, KY—Bowling Green-Warren County, VOR/DME RWY 21, Amdt. 4

Hawesville, KY—Hancock Airfield, VOR RWY 15, Amdt. 4

Hawesville, KY—Hancock Airfield, VOR RWY 33, Amdt. 4

Hawesville, KY—Hancock Airfield, NDB-A, Amdt. 4

Owensboro, KY—Owensboro-Daviess County, VOR RWY 17, Amdt. 6

Owensboro, KY—Owensboro-Daviess County, VOR RWY 35, Amdt. 14

Owensboro, KY—Owensboro-Daviess County, NDB RWY 35, Amdt. 6

Owensboro, KY—Owensboro-Daviess County, ILS RWY 35, Amdt. 8

Lovelock, NV—Derby Field, VOR-C, Orig.

Lovelock, NV—Derby Field, VOR/DME-A, Orig.

Elizabeth City, NC—Elizabeth City CG Air Station/Muni, VOR RWY 19, Amdt. 9

Centerville, TN—Centerville Muni, VOR RWY 2, Amdt. 6

Centerville, TN—Centerville Muni, VOR/DME/RWY 2 Amdt. 1

Evanston, WY—Evanston-Uinta County Burns Field, VOR/DME RWY 23, Amdt. 2

... Effective June 28, 1989

Jacksonville, FL—Craig Muni, ILS RWY 32, Orig.

Monroe, NC—Monroe, VOR-A, Amdt. 10

... Effective May 22, 1989

Palm Springs, CA—Palm Springs Regional, VOR-B, Amdt. 2

The FAA published an Amendment in Docket No. 25901, Amdt. No. 1400 to Part 97 of the Federal Aviation Regulations (VOL 54 FR No. 99 Page 22418; dated Wednesday, May 24, 1989) under § 97.27 effective June 28, 1989, which is hereby amended as follows: Bay City, TX—Bay City Muni, NDB RWY 13 Amdt. 2 is hereby rescinded. Amendment 1 remains in effect.

[FR Doc. 89-13456 Filed 6-6-89; 8:45 am]

BILLING CODE 4910-13-M

SECURITIES AND EXCHANGE COMMISSION**17 CFR Parts 200, 202 and 203**

[Release No. 34-26875]

Privacy Act of 1974, Specific Exemptions; Organization, Information and Requests, and Investigations, Technical Amendments

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Chairman of the Securities and Exchange Commission has exempted a system of records from certain provisions of the Privacy Act, to the extent that the system contains investigatory material compiled for law enforcement purposes. The system of records is a consolidation of a number of preexisting systems of records, and includes investigatory records for which the exemptions had previously been provided. The specific exemptions that had previously been claimed are preserved by the Chairman's action. Because these exemptions may only be asserted with respect to investigatory material compiled for law enforcement purposes, they are not being extended to public material, including public litigation files, that have been made part of the consolidated system of records.

The Securities and Exchange Commission has also amended certain rules regarding assistance to foreign

governments, to reflect the terminology contained in the Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100-704, 102 Stat. 4677 ("ITSFEA"). The ITSFEA authorizes increased cooperation with "foreign securities authorities," a term defined therein. These rule amendments will clarify that assistance may be provided to foreign securities authorities under rules that now provide generally for assistance to, or otherwise refer to, foreign governmental authorities.

The Commission has also adopted amendments that delegate authority to the Director of the Division of Enforcement to grant requests made by trustees in bankruptcy for access to enforcement files, and that remove a provision regarding concurrence by the General Counsel in determinations to grant access requests in matters in which the Commission has entered a formal order of investigation.

EFFECTIVE DATE: June 7, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Hall, Senior Counsel, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

1. Privacy Act Exemptions.

Notice is hereby given that the Chairman of the Securities and Exchange Commission has exempted a system of records from specified provisions of the Privacy Act of 1974, 5 U.S.C. 552a. The exempted system of records is a consolidation of previously-announced systems of records, maintained by the Division of Enforcement, the Commission's Records Officer, and the Commission's Regional and Branch Offices. The consolidated system contains nonpublic investigatory records, as well as litigation files and other public records.

Section 552a(k)(2) of the Act provides that the head of an agency may promulgate rules to exempt any system of records within the agency from sections 552a (c)(3), (d), (e)(1), (e)(4) (G), (H) and (I), and (f) of the Act, if the system of records is "investigatory material compiled for law enforcement purposes." These sections of the Act from which exemption may be had generally require the Commission to notify an individual, upon request, of the existence of information contained in a record pertaining to the individual; permit access to such record and permit amendment or correction of such record; make available to an individual any required accounting of disclosures to third parties; publish the sources of information in the system of records;

and screen records to insure that only such information is maintained about the individual as is necessary and relevant to a required purpose of the Commission. The exemptions that may be asserted with respect to investigatory systems of records permit an agency to protect information when disclosure would interfere with the conduct of the agency's investigations.

Rule 312(a) of the Commission's Rules of Information and Requests was previously promulgated to exempt the investigatory records that have been included in the consolidated system of records. Rule 312(a) was based upon a finding that, among other things, disclosure of information in these investigatory files or disclosure of the identity of confidential sources would seriously undermine effective enforcement of the federal securities laws by prematurely alerting individuals to the fact that they are under investigation or by giving them access to the evidentiary bases for a Commission enforcement action.

In connection with the consolidation of the Commission's enforcement systems of records, the Chairman has amended Rule 312(a) to delete references to the separate systems of records that have been consolidated, and to add a reference to the new system. In addition, Rule 312(a) has been amended to reflect the name change of the Securities Violations Records and Bulletin to its present designation as the Litigation, Actions and Proceedings Bulletin. The amendment of Rule 312(a) preserves the exemptions applicable under the prior version of Rule 312(a) with respect to investigatory materials compiled for law enforcement purposes. The amendment does not extend the exemption to public records, including public litigation files, that have been included in the consolidated system but were not previously in systems of records that were exempted as investigatory materials compiled for law enforcement purposes.

The Chairman of the Securities and Exchange Commission is therefore promulgating the amendments to Rule 312(a) set forth below.

2. "Foreign Securities Authorities"

Notice is further given that the Securities and Exchange Commission has adopted technical rule amendments to Rules 19b and 30-4(a)(7) of the Commission's Rules of Organization (17 CFR 200.19b and 30-4(a)(7)), Rules 80(b) and 402 of the Rules of Information and Requests (17 CFR 200.80(b) and 402), Rule 5 of the Rules of Informal and Other Procedures (17 CFR 202.5), and

Rule 2 of the Rules Relating to Investigations (17 CFR 203.2), each of which relates or refers to cooperation by Commission staff with foreign governments.

Rule 19b describes the functional responsibilities of the Director of the Division of Enforcement. Rule 30-4(a)(7) delegates authority to the Director of the Division of Enforcement to grant requests from foreign governmental authorities, among others, for access to materials in the Commission's files concerning nonpublic investigations. Rule 80(b) sets forth the exemptions that may be asserted by the Commission under the Freedom of Information Act ("FOIA"). Rule 402 sets forth the exemptions that may be asserted by the Commission under the Government in the Sunshine Act ("Sunshine Act"). Rule 5 provides an informal description of the Commission's procedures in conducting investigations. Rule 2 permits members of the Commission's staff to engage in discussions with various entities, including representatives of foreign governmental authorities, concerning nonpublic investigations.

The amendments adopted by the Commission with respect to these rules were made as a result of the enactment of the ITSFEA, which, among other things, expands the Commission's authority to undertake investigations at the request of foreign securities authorities. The ITSFEA amends the Securities Exchange Act of 1934 by adding section 3(a)(50) which defines "foreign securities authority" as "any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters."

The rule amendments update the language of Rules 19b, 30-4(a)(7), 80(b), 402, 5 and 2 by adding the term "foreign securities authority," as defined in new section 3(a)(50), to existing references to foreign governmental authorities. The amendments will thereby clarify that assistance under the rules will be provided to the foreign authorities specified in section 3(a)(50) in addition to other foreign authorities, or will otherwise conform the rules to the new statutory language.

3. Delegation of Authority. The Commission has a statutory advisory role in proceedings under the Bankruptcy Code, see 11 U.S.C. 1109(a), and, from time to time, provides assistance to trustees in bankruptcy by granting access to nonpublic information in enforcement files. The Commission has amended Rule 30-4(a)(7), the

Commission's rule delegating authority to the Director of the Division of Enforcement, to delegate authority to the staff to grant such requests from trustees in bankruptcy. The Commission has also amended Rules 19b and 2 to reflect this delegation.

In light of its experience in responding to access requests, the Commission has further amended Rule 30-4(a)(7) to remove the provision regarding concurrence by the General Counsel in determinations to grant access requests in matters in which the Commission has entered a formal order of investigation. The Commission has also amended Rules 19b and 21 (17 CFR 200.21) to reflect the removal of the concurrence requirement.

The Commission has determined that the rule amendments relate solely to agency organization, procedure or practice. Therefore, the provisions of the Administrative Procedure Act ("APA") regarding notice of proposed rulemaking and opportunities for public participation, 5 U.S.C. 553, are not applicable. Similarly, the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, which apply only when notice and comment rulemaking are required by the APA or other law, are not applicable. The Commission finds that the rule amendments will not impose any burden on competition. The Commission further finds, because of the technical nature of the amendments, that the APA requirement with respect to delay in the effective date of substantive rules, 5 U.S.C. 553(d), is also inapplicable to the amendments.

List of Subjects

17 CFR Part 200

Organization; conduct and ethics; and information and requests

17 CFR Part 202

Informal and other procedures

17 CFR Part 203

Rules relating to investigations.

For the reasons set out in the preamble, Title 17 of the Code of Federal Regulations is amended as follows:

PART 200—(AMENDED)

Subpart A—Organization and Program Management

1. The authority citation for Part 200, Subpart A, is amended by adding the following citations, and the authority citations following §§ 200.21 and 200.30-4 are removed:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended; sec. 20, 49 Stat. 833; sec. 319, 53

Stat. 1173; secs. 38, 211, 54 Stat. 841, 855; sec. 308, 101 Stat. 1254 (15 U.S.C. 77a, 78d-1, 78d-2, 78w, 79t, 77aaa, 80a-37, 80b-11), unless otherwise noted.

Section 200.21 is also issued under 15 U.S.C. 77l, 78u, 79r, 77uuu, 80a-41, 80b-9; 11 U.S.C. 901, 1109(a); and (5 U.S.C. 552a(d)(2)(B)(ii)).

Section 200.30-4 is also issued under 15 U.S.C. 77l, 78u, 79r, 77uuu, 80a-41, 80b-9.

2. Section 200.19b is revised to read as follows:

§ 200.19b Director of the Division of Enforcement.

The Director of the Division of Enforcement is responsible to the Commission for the supervision and conduct of all of the enforcement activities under each of the acts administered by the Commission and the investigations relating thereto. The Director is responsible also for recommending the institution of administrative and injunctive actions arising out of such investigations and enforcement activities and for the determination of whether the available evidence supports the allegations in the proposed complaint. In addition, the Director is responsible, in collaboration with the General Counsel, for the review of cases to be referred to the Department of Justice with a recommendation for criminal prosecution. The Director is responsible for granting or denying requests by domestic and foreign governmental authorities, foreign securities authorities, self-regulatory organizations, receivers, special counsels, and other similar persons appointed in Commission litigation, the Securities Investor Protection Corporation, trustees and counsel for trustees appointed pursuant to section 5(b) of the Securities Investor Protection Act, and trustees in bankruptcy, for access to materials in the Commission's enforcement files and, in collaboration with other involved Commission offices and divisions, regulatory files.

§ 200.21 [Amended]

3. Section 200.21(a) is amended by removing the fourth sentence.

4. Section 200.30-4 is amended by revising the first clause of the introductory paragraph, and paragraph (a)(7) to read as follows:

§ 200.30-4 Delegation of authority to Director of Division of Enforcement.

Pursuant to the provisions of Pub. L. No. 100-181, 101 Stat. 1254, 1255 (15 U.S.C. 78d-1, 78d-2), . . .

(a)(1) . . .
(7) To grant requests for access to, or copies of, materials in the Commission's enforcement and regulatory files upon written request for such access

submitted by domestic and foreign governmental authorities, foreign securities authorities, self-regulatory organizations, receivers, special counsels, and other similar persons appointed in Commission litigation, the Securities Investor Protection Corporation, trustees and counsel for trustees appointed pursuant to section 5(b) of the Securities Investor Protection Act, and trustees in bankruptcy; *Provided That* requests for access to, or copies of, materials in the Commission's regulatory files shall be granted only with the concurrence of the head of the Commission division or office responsible for such files or his or her delegate.

Subpart D—Information and Requests

5. The authority citation for Part 200, Subpart D, continues to read as follows:

Authority: 80 Stat. 383, as amended, 31 Stat. 54, secs 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 85, 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 5 U.S.C. 552, as amended, 15 U.S.C. 77f(d), 77a, 77ggg(a), 78m(f)(3), 78w, 79t, 79v(a), 77aaa, 80a-37, 80a-44(c), 80a-44(b), 80b-10(a), 80b-11.

Section 200.80 is also issued under 5 U.S.C. 552b; Pub. L. 87-562, 76 Stat. 394, 15 U.S.C. 78d-1, 78d-2; Pub. L. 93-502; Pub. L. 93-579; 15 U.S.C. 78a *et seq.*, as amended by Pub. L. 84-29 (June 4, 1975) and by secs. 11A, 15, 19 and 23 of Pub. L. 96-38 (June 6, 1983) (15 U.S.C. 78k-1, 78a, 78b and 78w); 11 U.S.C. 901, 1109(a).

6. Section 200.80 is amended by revising paragraphs (b)(7)(i) introductory text, (b)(7)(i)(A), (b)(7)(ii), and (b)(8) to read as follows:

§ 200.80 Commission records and information.

(b) . . .
(7)(i) Records or information compiled for law enforcement purposes to the extent that the production of such records or information:

(A) Could reasonably be expected to interfere with enforcement activities undertaken or likely to be undertaken by the Commission or the Department of Justice, or any United States Attorney, or any Federal, state, local, foreign governmental authority or foreign securities authority, any professional association, or any securities industry self-regulatory organization;

(ii) The term "investigatory records" includes, but is not limited to, all documents, records, transcripts, evidentiary materials of any nature, correspondence, related memoranda, or work product concerning any

examination, any investigation (whether formal or informal), or any related litigation, which pertains to, or may disclose, the possible violation by any person of any provision of any statute, rule, or regulation administered by the Commission, by any other Federal, state, local, or foreign governmental authority or foreign securities authority, by any professional association, or by any securities industry self-regulatory organization. The term "investigatory records" also includes all written communications from, or to, any person complaining or otherwise furnishing information respecting such possible violations, as well as all correspondence or memoranda in connection with such complaints or information.

(8) Contained in, or related to, any examination operating, or condition report prepared by, on behalf of, or for the use of, the Commission, any other Federal, state, local, or foreign governmental authority or foreign securities authority, or any securities industry self-regulatory organization, responsible for the regulation or supervision of financial institutions.

Subpart H—Regulations Pertaining to the Privacy of Individuals and Systems of Records Maintained by the Commission

7. The authority citation for Part 200, Subpart H, continues to read as follows:

Authority: Pub. L. 93-579, sec. (f), 5 U.S.C. 552a(f), unless otherwise noted.

Section 200.312 is also issued under Pub. L. 93-579, sec. k, 5 U.S.C. 552a(k).

8. Section 200.312 is amended by revising paragraph (a) introductory text and (a)(1)-(8), and by removing (a)(9)-(29), to read as follows:

§ 200.312 Specific exemptions.

(a) Pursuant to, and limited by 5 U.S.C. 552a(k)(2), the following systems of records maintained by the Commission shall be exempted from 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f) and 17 CFR 200.303, 200.304, and 200.306, insofar as they contain investigatory materials compiled for law enforcement purposes:

- (1) Enforcement Files;
 - (2) Litigation, Actions and Proceedings Bulletin;
 - (3) Office of the General Counsel Working Files;
 - (4) Office of the Chief Accountant Working Files;
 - (5) Complaint processing System;
 - (6) Investor Service Complaint Index;
 - (7) Name-Relationship Index System;
- and

(8) Rule 2(e) of the Commission's Rules of Practice—Appearing or Practicing Before the Commission.

Subpart I—Regulations Pertaining to Public Observation of Commission Meetings

9. The authority citation for Part 200, Subpart I, continues to read as follows, and the authority citation following section 200.402 is removed:

Authority: 5 U.S.C. 552b, unless otherwise noted.

10. Section 200.402 is amended by revising paragraphs (a)(5)(iv), (a)(7)(i)(A), (a)(7)(ii), (a)(8), and (a)(9)(ii) to read as follows:

§ 200.402 Closed meetings.

(a) * * *

(iv) Transmit, or disclose, with or without recommendation, any Commission memorandum, file, document, or record to the Department of Justice, a United States Attorney, any federal, state, local, or foreign governmental authority or foreign securities authority, any professional association, or any securities industry self-regulatory organization, in order that the recipient may consider the institution of proceedings against any person or the taking of any action that might involve accusing any person of a crime or formally censuring any person; or

(7)(i) * * *

(A) Interfere with enforcement activities undertaken, or likely to be undertaken, by the Commission or the Department of Justice, or any United States Attorney, or any Federal, State, local, or foreign governmental authority or foreign securities authority, any professional association, or any securities industry self-regulatory organization;

(ii) The term "investigatory records" includes, but is not limited to, all documents, records, transcripts, evidentiary materials of any nature, correspondence, related memoranda, or work product concerning any examination, any investigation (whether formal or informal), or any related litigation, which pertains to, or may disclose, the possible violation by any person of any provision of any statute, rule, or regulation administered by the Commission, by any other Federal, State, local, or foreign governmental authority or foreign securities authority, by any professional association, or by

any securities industry self-regulatory organization. The term "investigatory records" also includes all written communications from, or to, any person complaining or otherwise furnishing information respecting such possible violations, as well as all correspondence or memoranda in connection with such complaints or information.

(8) Disclose information contained in, or related to, any examination, operating, or condition report prepared by, on behalf of, or for the use of, the Commission, any other federal, state, local, or foreign governmental authority or foreign securities authority, or any securities industry self-regulatory organization, responsible for the regulation or supervision of financial institutions.

(9) * * *

(ii) Significantly frustrate the implementation, or the proposed implementation, of any action by the Commission, any other federal, state, local or foreign governmental authority, any foreign securities authority, or any securities industry self-regulatory organization: *Provided, however*, That this paragraph (a)(9)(ii) shall not apply in any instance where the Commission has already disclosed to the public the precise content or nature of its proposed action, or where the Commission is expressly required by law to make such disclosure on its own initiative prior to taking final agency action on such proposal.

PART 202—INFORMAL AND OTHER PROCEDURES

11. The authority citation for Part 202 is amended by adding the following citation, and the authority citation following § 202.5 is removed:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855; 15 U.S.C. 77s, 78w, 79f, 77sss, 80a-37, 80b-11, unless otherwise noted.

Section 202.5 is also issued under sec. 20, 48 Stat. 86, sec. 21, 48 Stat. 899, sec. 18, 49 Stat. 831, sec. 321, 53 Stat. 1174, sec. 1, 76 Stat. 394, 15 U.S.C. 77t, 78u, 79f, 77uuu, 80a-41, 80b-9, 78d-1.

12. Section 202.5 is amended by revising paragraph (b) to read as follows:

§ 202.5 Enforcement activities.

(b) After investigation or otherwise the Commission may in its discretion take one or more of the following actions: Institution of administrative proceedings looking to the imposition of remedial sanctions, initiation of

injunctive proceedings in the courts, and, in the case of a willful violation, reference of the matter to the Department of Justice for criminal prosecution. The Commission may also, on some occasions, refer the matter to, or grant requests for access to its files made by, domestic and foreign governmental authorities or foreign securities authorities, self-regulatory organizations such as stock exchanges or the National Association of Securities Dealers, Inc., and other persons or entities.

PART 203—RULES RELATING TO INVESTIGATIONS

13. The authority citation for Part 203 continues to read as follows:

Authority: Secs. 19, 23, 48 Stat. 85, 901, as amended, sec. 20, 49 Stat. 833, sec. 319, 53 Stat. 1173, secs. 38, 211, 54 Stat. 841, 855 as amended; 15 U.S.C. 77s, 78w, 79f, 77sss, 80a-37, 80b-11, unless otherwise noted.

Subpart A—In General

14. Section 203.2 is revised to read as follows:

§ 203.2 Information obtained in investigations and examinations.

Information or documents obtained by the Commission in the course of any investigation or examination, unless made a matter of public record, shall be deemed non-public, but the Commission approves the practice whereby officials of the Division of Enforcement at the level of Assistant Director or higher, and officials in Regional Offices at the level of Assistant Regional Administrator or higher, may engage in, and may authorize members of the Commission's staff to engage in, discussions with representatives of domestic and foreign governmental authorities, foreign securities authorities, self-regulatory organizations, receivers, special counsels, and other similar persons appointed in Commission litigation, the Securities Investor Protection Corporation, trustees and counsel for trustees appointed pursuant to section 5(b) of the Securities Investor Protection Act, and trustees in bankruptcy, concerning information obtained in individual investigations, including examinations and formal investigations conducted pursuant to Commission order.

By the Commission.

Date: May 30, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-13516 Filed 6-6-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1902, 1903, 1908, 1910, 1915, 1917, 1918, and 1926

Display or Removal of Management and Budget Control Numbers Assigned to Collections of Information Contained in Regulations; Technical Amendments to CFR

AGENCY: Occupational Safety and Health Administration, Labor.

ACTION: Technical Amendments to CFR.

SUMMARY: This document amends certain OSHA regulations to include or remove a control number assigned by the Director of the Office of Management and Budget (OMB). The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq. and 5 CFR Part 1320) requires display of an OMB control number on all information collection provisions.

EFFECTIVE DATE: June 7, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Public Affairs, Room N-3649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 523-8151.

SUPPLEMENTARY INFORMATION: The Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq. and 5 CFR Part 1320) requires the display of an OMB control number for all regulations containing information collection requirements. In certain instances, the Department inadvertently did not include the OMB number at the end of the appropriate section of the regulatory text. In addition, the agency has found numbers incorrectly displayed; typographical errors; and OMB numbers displayed in sections where the information collection requirements were removed. The Agency, therefore, is making technical amendments to the regulations cited, adding parenthetically the OMB approval numbers; removing numbers where information collection is no longer required; and correcting the typographical error.

Since these are minor technical amendments to the regulations, OSHA finds good cause, under 5 U.S.C. 553 and 29 CFR 1911.5, for not providing notice and public procedure and delayed effective dates for these amendments.

Parts 1902, 1903, 1908, 1910, 1915, 1917, 1918 and 1926 of Title 29 of the Code of Federal Regulations are amended as set forth below:

PARTS 1902, 1903, 1908, 1910, 1915, 1917, 1918, and 1926—(AMENDED)

§ 1902.3 [Amended]

1. In § 1902.3, by adding a parenthetical, as follows, at the end of the regulatory text:

(Approved by the Office of Management and Budget under control number 1218-0004)

§ 1903.11 [Amended]

2. In § 1903.11, by adding a parenthetical, as follows, at the end of the regulatory text:

(Approved by the Office of Management and Budget under control number 1218-0064)

§ 1908.6, 1908.7, 1908.9 and 1908.10 [Amended]

3. In §§ 1908.6, 1908.7, 1908.9, and 1908.10, by adding a parenthetical, as follows, at the end of the regulatory text of each section:

(Approved by the Office of Management and Budget under control number 1218-0110)

§ 1910.7 [Amended]

4. In § 1910.7, the parenthetical displaying the OMB control number at the end of Appendix A is transferred to the end of the regulatory text preceding the appendix.

§ 1910.20 [Amended]

5. In § 1910.20, by adding a parenthetical, as follows, at the end of the regulatory text:

(Approved by the Office of Management and Budget under control number 1218-0065)

§ 1910.66 [Amended]

6. In § 1910.66, by adding a parenthetical, as follows, at the end of the regulatory text:

(Approved by the Office of Management and Budget under control number 1218-0121)

§ 1910.95 [Amended]

7. In § 1910.95, the parenthetical displaying the OMB control number at the end of Appendix I is transferred to the end of the regulatory text preceding Appendix A.

§ 1910.217 [Amended]

8. In § 1910.217, by revising the parenthetical at the end of the regulatory text to read as follows:

(The information collection requirements contained in paragraph (g) were approved by the Office of Management and Budget under control number 1218-0070. The information collection requirements contained in paragraph (h) were approved by the Office of Management and Budget under control number 1218-0143)

9. In § 1910.272, the parenthetical displaying the OMB control number at the end of Appendix C is transferred to the end of the regulatory text preceding Appendix A.

§ 1910.421 [Amended]

10. In § 1910.421, by revising the parenthetical at the end of the regulatory text to read as follows:

(Approved by the Office of Management and Budget under control number 1218-0069)

§ 1910.1001 [Amended]

11. In § 1910.1001, the parenthetical displaying the OMB control number at the end of Appendix H is transferred to the end of the regulatory text preceding Appendix A.

§ 1910.1015 [Amended]

12. In § 1910.1015, by revising the parenthetical at the end of the regulatory text to read as follows:

(Approved by the Office of Management and Budget under control number 1218-0044)

§ 1910.1017 [Amended]

13. In § 1910.1017, by adding a parenthetical, as follows, at the end of the regulatory text immediately preceding Appendix A:

(Approved by the Office of Management and Budget under control number 1218-0010)

§ 1910.1018 [Amended]

14. In § 1910.1018, by adding a parenthetical, as follows, at the end of the regulatory text immediately preceding Appendix A:

(Approved by the Office of Management and Budget under control number 1218-0104)

§ 1910.1025 [Amended]

15. In § 1910.1025, the parenthetical displaying the OMB control number at the end of Appendix D is transferred to the end of the regulatory text preceding Appendix A.

§ 1910.1028 [Amended]

16. In § 1910.1028, by adding a parenthetical, as follows, at the end of the regulatory text immediately preceding Appendix A:

(Approved by the Office of Management and Budget under control number 1218-0129)

§ 1910.1029 [Amended]

17. In § 1910.1029, by adding a parenthetical, as follows, at the end of the regulatory text immediately preceding Appendix A:

(Approved by the Office of Management and Budget under control number 1218-0128)

§ 1910.1043 [Amended]

18. In § 1910.1043, the parenthetical at the end of Appendix E is removed and a new parenthetical is added at the end of the regulatory text immediately preceding Appendix A to read as follows:

(Approved by the Office of Management and Budget under control 1218-0061)

§ 1910.1044 [Amended]

19. In § 1910.1044, the parenthetical displaying the OMB control number at the end of Appendix C is transferred to the end of the regulatory text preceding Appendix A.

§ 1910.1045 [Amended]

20. In § 1910.1045, by adding a parenthetical, as follows, at the end of the regulatory text immediately preceding Appendix A:

(Approved by the Office of Management and Budget under control number 1218-0126)

§ 1910.1047 [Amended]

21. In § 1910.1047, the parenthetical displaying the OMB control number at the end of Appendix D is transferred to the end of the regulatory text preceding Appendix A.

§ 1910.1048 [Amended]

22. In § 1910.1048, the parenthetical at the end of Appendix E is removed and a new parenthetical is added at the end of the regulatory text immediately preceding Appendix A to read as follows:

(Approved by the Office of Management and Budget under control number 1218-0145)

§ 1910.1101 [Amended]

23. In § 1910.1101, the parenthetical at the end of the regulatory text is amended by removing control number "1218-0010" and inserting control number "1218-0133".

§ 1910.1200 [Amended]

24. In § 1910.1200, the parenthetical displaying the OMB control number at the end of Appendix D is transferred to the end of the regulatory text preceding Appendix A.

§§ 1910.68, 1910.252, and 1910.268 [Amended]

25. In §§ 1910.68, 1910.252, and 1910.268, the parenthetical displaying OMB control numbers at the end of the regulatory text are removed.

§ 1915.7 [Amended]

26. In § 1915.7, by adding a parenthetical, as follows, at the end of the regulatory text:

(Approved by the Office of Management and Budget under control number 1218-0011)

§ 1915.95 [Amended]

27. In § 1915.95, the parenthetical at the end of the regulatory text is removed.

§ 1926.250 [Amended]

28. In § 1926.250, the parenthetical at the end of the regulatory text is amended by correcting OMB control number "1218-0003" to read "1218-0093".

§ 1926.404 [Amended]

29. In § 1926.404 the parenthetical at the end of the regulatory text is revised to read as follows:

(Approved by the Office of Management and Budget under control number 1218-0130)

§ 1926.550 [Amended]

30. In § 1926.550 the parenthetical at the end of the regulatory text is revised to read as follows:

(The information collection requirements contained in paragraph (a)(1) are approved by the Office of Management and Budget under control number 1218-0115. The information collection requirements contained in paragraph (a)(6) are approved by the Office of Management and Budget under control number 1218-0113. The information collection requirements contained in paragraph (a)(11) are approved by the Office of Management and Budget under control number 1218-0054.)

31. In §§ 1915.99, 1917.28, 1918.90, and 1926.59, the parenthetical displaying the OMB control number at the end of Appendix D is transferred to the end of the regulatory text preceding Appendix A.

Signed at Washington, DC, this 26th day of May 1989.

Alan C. McMillan,
Acting Assistant Secretary of Labor.

(FR Doc. 89-13460 Filed 6-5-89; 8:45 am)
BILLING CODE 4510-26-M

ENVIRONMENTAL PROTECTION
AGENCY

40 CFR Part 52

[FRL-3551-2]

Approval and Promulgation of State
Implementation Plans for Colorado,
Montana, North Dakota, South Dakota,
Utah, Wyoming; Stack Height Analyses
and Regulations

AGENCY: Environmental Protection
Agency (EPA).

ACTION: Final Rule.

SUMMARY: EPA is today approving (1) the stack height regulations for Utah, Montana and Colorado, (2) two stack height definitions for South Dakota, (3) the stack height demonstration analyses for North Dakota, South Dakota, and Wyoming, and (4) the stack height demonstration analyses for Montana and Utah with the exceptions noted below. Each State was required to review its State Implementation Plan (SIP) for consistency within nine months of final promulgation of the stack height regulations (July 8, 1985, 50 FR 27892). The intended effect of this action is to formally document that these States have satisfied their obligations under Section 406 of the Clean Air Act (CAA) to review their SIPs with respect to EPA's revised stack height regulations.

The July 8, 1985, stack height regulations were challenged by the Natural Resource Defense Council (NRDC) and resulted in the remand of three provisions of the regulations to EPA for reconsideration. The remand is not believed to significantly affect the Utah, Montana, Colorado and South Dakota stack height regulations submittals. EPA's approval of the stack height regulations is given with the understanding that should EPA promulgate revisions to the stack height regulations as a result of the remand, the States will and have agreed to modify their regulations accordingly.

Today's action does not include the ASARCO stack analyses which were submitted as part of the Montana SIP revision. EPA had proposed approval of the ASARCO stacks in 53 PR 3052 (February 3, 1988). Because of procedural concerns relating to discussion of the stacks analyses in the February 3 proposal, EPA is not acting on the ASARCO stacks in this notice. The ASARCO stacks analyses will be repropounded to correct these procedural issues. In addition, the ASARCO facility is being evaluated because of a recent Lead SIP Call on October 1, 1988 (see 53 FR 48642, December 2, 1988). The Lead SIP also must address the stack height issue for the affected emissions. EPA will coordinate with the State to complete the stack height analyses required by the July 8, 1985, promulgation concurrently with Lead SIP (i.e., the Lead SIP submitted by the State in response to the October 1, 1988, Lead SIP Call).

Today's action, also, does not include the Kennecott stack height analyses which were submitted as part of the Utah SIP revision. EPA has addressed that part of the Utah stack height SIP, analyses of the Kennecott stack, in a

separate action at 53 FR 48942 (December 5, 1988).

Wyoming originally submitted a commitment to insure consistency with the federal stack height regulations through its new sources review process until its stack height rules were finalized. Such regulations have since been submitted; EPA is acting on them in a separate rulemaking. North Dakota originally submitted a commitment to comply with the Federal regulations until the State adopted the required regulations. North Dakota has since submitted the regulations; EPA has addressed them in a separate rulemaking at 53 FR 45783 (November 14, 1988).

EPA received the Colorado stack height demonstration analyses much latter than the above mentioned States. EPA has addressed the Colorado demonstration analyses in a separate action at 53 FR 47730 (November 25, 1988).

EPA proposed to approve this action in 53 FR 3052 (February 3, 1988). No comments were received.

EFFECTIVE DATES: The rule will become effective on July 7, 1989.

FOR FURTHER INFORMATION CONTACT: Laurie Ostrand, Air Programs Branch, Environmental Protection Agency, Denver Place, Suite 500, 999 18th Street, Denver, Colorado 80202, (303) 293-1814, FTS 564-1814.

SUPPLEMENTARY INFORMATION:

Background

On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credits and other dispersion techniques as required by Section 123 of the CAA. These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*. On October 11, 1983, the court issued its decision ordering EPA to reconsider portions of the stack height regulations, revising certain portions and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition, and on July 18, 1984, the Court of Appeals mandate was formally issued, implementing the court's decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November

9, 1984 (49 FR 44878), and promulgated on July 8, 1985 (50 FR 27892). The revisions redefined a number of specific terms including "excessive concentrations", "dispersion techniques", "nearby", and other important concepts, and modified some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of the CAA, all States were required to (1) review and revise, as necessary, their State Implementation Plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credits above GEP or any other dispersion techniques. For any limitations so affected, States were to prepare revised limitations consistent with their revised SIPs. ALL SIP revisions and revised emission limits were to be submitted to EPA within 9 months of the EPA stack height regulations promulgation.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, States were to prepare inventories of stacks greater than 65 meters in height and sources with emissions of sulfur dioxide (SO₂) in excess of 5,000 tons per year. These limits correspond to the *de minimis* stack height and the *de minimis* SO₂ emission exemption from prohibited dispersion techniques. These sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

Subsequent to the July 8, 1985 promulgation, the stack height regulations were again challenged in *NRDC v. Thomas*, 838, F.2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Court of Appeals for the D.C. Circuit issued its decision affirming the regulations for the most part, but remanding three provisions to the EPA for reconsideration. These are:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements [40 CFR 51.100(kk)(2)];
2. Dispersion credit for sources originally designed and constructed with merged or multi-flue stacks [40 CFR 51.100(hh)(2)(ii)(A)]; and
3. Grandfathering pre-1979 use of the refined H+1.5L formula [40 CFR 51.100(ii)(2)].

State Submissions

A. Demonstration Analyses

EPA has received stack height reviews from Montana, North Dakota, South Dakota, Utah and Wyoming. The Montana review was submitted with a letter dated November 25, 1985, and a subsequent submittal dated January 28, 1986; the North Dakota review with a letter dated April 18, 1986, and subsequent submittal dated July 21, 1987; the South Dakota review with a letter dated August 20, 1986, and subsequent submittal dated December 3, 1986; the Utah review with a letter dated May 2, 1986; and the Wyoming review with a letter dated August 5, 1986. Each State has found that no existing emissions limitations have been affected by stack height credits above GEP or

any other dispersion technique prohibited by EPA regulations.

EPA has determined that the States' inventories above *de minimis* height and *de minimis* emission level are complete. EPA has carefully reviewed the States' findings that no emission limits have been affected by prohibited dispersion techniques. EPA concurs in those findings, except with regard to the ASARCO stacks in Montana and the Kennecott stack in Utah. EPA has not completed its evaluation of the ASARCO stacks, which will thus be addressed in a separate action. EPA is not evaluating the Kennecott stack in this Federal Register action. The Kennecott stacks have been addressed in a separate action at 53 FR 48942 (December 5, 1988). Summaries of the States' findings are presented in the

tables below. Detailed documentation of the States' findings and of EPA's review is contained in EPA's technical support document, its air compliance files, and state files, all of which are available for public inspection.

With this notice, the actual height of those stacks whose GEP height was calculated to be greater than the actual height will now become the GEP height. The GEP height of those stacks whose GEP height was calculated to be less than the actual height and whose emissions were determined or modeling conducted at the lower height will remain the GEP height.

A summary of each State's findings is provided below.

Wyoming

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO ₂ ^a (t/yr)
Basin Electric (Laramie River)	Unit 1	182.9	H+1.5L ^a	193.6	5000+
	Unit 2	182.9	H+1.5L ^a	193.5	
	Unit 3	182.9	H+1.5L ^a	193.5	
Pacific Power & Light (Jim Bridger Power Plant)	Unit 1	152.7	H+1.5L ^a	199.0	5000+
	Unit 2	152.7	H+1.5L ^a	199.0	
	Unit 3	152.7	H+1.5L ^a	199.0	
	Unit 4	152.7	H+1.5L ^a	199.0	
(Dave Johnson Power Pll)	Unit 1	151.1	H+1.5L ^a	160.3	5000+
	Unit 2	151.1	H+1.5L ^a	160.3	
	Unit 3	151.1	H+1.5L ^a	160.3	
	Unit 4	76.3	H+1.5L ^a	160.3	
(Wyodek Power Plant)	Unit 1	122.3	H+1.5L ^a	143.7	5000+
Utah Power & Light (Naughton)	Unit 2	88.21	Grandfathered ^a (1968) ^a		^b 5000+
	Unit 3	143.29	H+1.5L ^a	144.8	
Black Hills P&L (Neil Simpson)	Unit 5	76.2	H+1.5L ^a	92.96	
FMC Wyoming (Green River)	NS-1-A	91.4	H+1.5L ^a	119.75	5000+
	NS-1-B	91.4	H+1.5L ^a	119.75	
Wyoming Refinery	TCC Unit	69.2	H+1.5L ^a	69.77	

^a The emissions given below are total SO₂ emissions for those sources above the 5000 tons/yr *de minimis* level. The state has determined that all the listed facilities below did not use dispersion techniques described by 40 CFR 50.100(hh)(1)(ii)-(iii) and prohibited by 40 CFR 50.118(a).

^b Documentation provided. Grandfathered means stack in existence in given year.

^c State monitors emissions annually by emission inventory updates and/or inspections. Facility is reviewed on its sulfur in coal content, operating rates and on the SO₂ CEM monitor on the unit stacks (unit stack #3).

^d EPA guidance was provided to the State in November 1985 on stack evaluation. Because of various conversations between the Region VIII office and the State, Region VIII is confident that the stacks were evaluated for dispersion techniques. Dispersion techniques as defined in 40 CFR 51.100(hh) were not applicable to these sources.

^e In this analysis, the State used the H+1.5L formula but because of the construction date of the stack, the applicable formula should have been 2.5H. Regardless of the formula used (H+1.5L or 2.5H) the actual stack height is less than the GEP stack height. According to the guidance memorandum dated October 10, 1985, G.T. Helms to Air Branch Chiefs, showing reliance on the 2.5H formula can be accomplished by showing that the stack was actually built to a height less than or equal to 2.5H. EPA believes that reliance on the 2.5H formula can be shown for the stacks indicated.

North Dakota

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO ₂ ^a (t/yr)
Amoco Oil Refinery		60.7	<i>de minimis</i>		5583
ANG Coal Gasification Co.		125.2	H+1.5L	127.2	9948
Basin Electric Power Corp.:					
AVS	1	182.9	H+1.5L	189	5615
AVS	2	182.9	H+1.5L	189	
AVS	3	182.9	H+1.5L	210.2	
L. Olds	1	106.7	H+1.5L ^a	191	8718
L. Olds	2	152.4	H+1.5L ^a	191	18110
KOCH Hydrocarbon		65.5	(^b)	65.5	1298
Minnkota Power Coop.: M.R. Young	1	91	2.5H ^a	199	12353
Square Butte Elec. Power Corp.: M.R. Young	2	168	2.5H ^a	199	13206
Montana Dakota Utilities:					
Coyote ^c	1	151.8	2.5H ^a	221	15780

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO ₂ ^a (t/yr)
Heskett	1	91.5	H+1.5L ^a	97.5	4635
	2	91.5	H+1.5L ^a	94	4414
Nokota Company		152.4	H+1.5L	152.4	
United Power Association ^b	1 & 10	78	H+1.5L	111.3	11121
UPA/GPA:					
Coal Creek	1	201	2.5H ^a	222	20196
Coal Creek	2	201	2.5H ^a	222	21322

^a A stack height of 65m is used in all dispersion modeling scenarios conducted by the company and the State.

^b Documentation provided to show reliance.

^c This is a merged stack. The merging did not result in any increase in the allowable emissions and was associated with the installation of a new boiler (Unit 10) meeting NSPS.

^d The emissions given below are total SO₂ emissions for those sources above the 5000 tons/yr *de minimis* level. The state has determined that all the listed facilities below did not use dispersion techniques described by 40 CFR 50.100(hh)(1)(ii)-(iii) and prohibited by 40 CFR 50.118(a).

^e In this analysis, the State used the H+1.5L formula, but because of the construction date of the stack, the applicable formula should have been 2.5H. Regardless of the formula used (H+1.5L or 2.5H), the actual stack height is less than the GEP stack height. According to the guidance memorandum dated October 10, 1985, G.T. Helms to Air Branch Chiefs, showing reliance on the 2.5H formula can be accomplished by showing that the stack was actually built to a height less than or equal to 2.5H formula. EPA believes that reliance on the 2.5H formula can be shown for the stacks indicated.

Utah

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO ₂ ^a (t/yr)
Deseret	Unit 1	182.9	H+1.5L	^b 177.9	
	Unit 2 ^a	182.9	H+1.5L	^b 177.9	
U.P.&L Hunter	Unit 1	183.08	2.5H ^c	185.05	
	Unit 2	183.08	2.5H ^c	185.05	
	Unit 3	183.1	H+1.5L	185.0	
U.P.&L Huntington	Unit 1	182.93	2.5H ^c	^b 176.83	9448
	Unit 2	182.93	2.5H ^c	^b 176.83	
I.P.P.	Unit 1	216.46	H+1.5L	230.2	^b 10975
	Unit 2	216.46	H+1.5L	230.2	
U.S. Steel Blast Furnace	Unit 1	79.2	Grandfathered ^a (1946) ^a		
	Unit 2	79.2	Grandfathered ^a (1946) ^a		
	Unit 3	68.6	Grandfathered ^a (1946) ^a		
U.S. Steel Coke Combustion	Unit 1	76.2	Grandfathered ^a (1946) ^a		
	Unit 2	76.2	Grandfathered ^a (1946) ^a		
	Unit 3	76.2	Grandfathered ^a (1946) ^a		
	Unit 4	78.2	Grandfathered ^a (1946) ^a		
Chevron USA	HCC Cracker	88.4	Grandfathered ^a (1946) ^a		6085
Chevron Research	Cat. Dis. Air Heater	69.8	(^b)	(^b)	
Chevron Research	Retort	69.8	(^b)	(^b)	
AMAX	Melt Reactor	76.22	2.5H ^c	86.13	
	Electrolytics	76.22	2.5H ^c	86.13	
	Emerg. Off.	76.22	2.5H ^c	86.13	
	Gas				
	Spray Dryer 1	76.22	2.5H ^c	86.13	
	Spray Dryer 2	76.22	2.5H ^c	86.13	
	Spray Dryer 3	76.22	2.5H ^c	86.13	
Phillips Petro 5733	Thermal Cat. Cracking	80.8	Grandfathered ^a (1952) ^a		
White River (Phase I)	3 Boilers	76.2	H+1.5L	76.2	
White River (Phase II)	1 Boiler	76.2	H+1.5L	76.2	
	2 Retort	76.2	H+1.5L	111.26	
White River (Phase III)	2 Elutriators	76.2	H+1.5L	92.96	
	2 Shale Lifts	78.2	H+1.5L	92.96	
	1 Hydrogen Plant	76.2	H+1.5L	76.2	
	3 Power Plants	76.2	H+1.5L	76.2	
	2 Ball Heaters	76.2	H+1.5L	92.96	
Tosco	Preheat ^a	(^b)	H+1.5L	(^b)	
	Elutriators ^a	(^b)	H+1.5L	(^b)	
	Proc. Shale	(^b)	H+1.5L	(^b)	
	Wetters ^a	(^b)	H+1.5L	(^b)	
U.P.&L Gadsby	Unit 1	76.2	Grandfathered ^a (1951) ^a		
	Unit 2	76.2	Grandfathered ^a (1952) ^a		
	Unit 3	76.2	Grandfathered ^a (1955) ^a		

^a Source modeled; no significant difference in emission limitations found.

¹ Documentation provided. Grandfathered means stack in existence in year given.
² The emissions given below are total SO₂ emissions for those sources above the 5000 tons/yr. *de minimis* level. The state has determined that all the listed facilities below did not use dispersion techniques described by 40 CFR 50.100(hh)(1)(i)-(iii) and prohibited by 40 CFR 50.118(a).
³ Feasibility approval issued Dec. 28, 1983; construction still has not started; PSD permit has not been issued; EPA has advised the State that it is not approving a GEP height on these proposed stacks until a permit is issued and in compliance with the GEP regulation requirements. The State in a SIP revision, gives an actual and GEP height for these stacks. However, the State has committed to review plans for emission limitations based on PSD & stack height requirements.
⁴ Proposed stacks.
⁵ Permit expired; source shut down.
⁶ In the proposal of this action, the applicable GEP formula for these stacks was shown to be H+1.5L. However, in light of the remand, EPA reviewed these stacks and found that they were constructed prior to January 12, 1979, and hence should apply the 2.5H formula. EPA confirmed in a telephone conversation with the State on 6/22/88, that it did have dated and certified blueprints that showed the "H" of the nearby structure in all cases. EPA believes that these documents are sufficient enough to show reliance on the 2.5H formula.
⁷ In the proposal of this action, EPA indicated that the SO₂ emissions were 17,870 tons/year. Upon further review, EPA has found that the allowable SO₂ emissions are 10,975 tons/year.

Montana

Plant name	Stack I.D.	Actual stack height	Applicable GEP (M) formula	GEP height (M)	SO ₂ ¹ (t/yr)
Conoco (Billings).....	Boiler.....	82	H+1.5L.....	75.7 ¹	* 5000 +
Montana-Dakota (Sidney).....	Coal Boiler.....	76	H+1.5L ²	95.3	
Montana Power (Billings).....	Coal Boiler.....	107	Grandfathered ³	(1968) ²	
Montana Power (Colstrip):					
Coal Boiler 1.....		152.4	H+1.5L ⁴	164.6	
Coal Boiler 2.....		152.4	H+1.5L ⁴	164.6	
Coal Boiler 3.....		211	H+1.5L.....	212.6	
Coal Boiler 4.....		211	H+1.5L.....	212.6	
Exxon (Billings).....					* 5000 +
Cenex (Laurel).....					* 5000 +

¹ Modeling confirmed no violations of federal ambient SO₂ standard.
² Documentation provided. Grandfathered means stack in existence in given year.
³ The emissions given below are total SO₂ emissions for those sources above the 5000 tons/yr. *de minimis* level. The state has determined that all the listed facilities below did not use dispersion techniques described by 40 CFR 50.100(hh)(1)(i)-(iii) and prohibited by 40 CFR 50.118(a).
⁴ Montana Power (Billings), Exxon (Billings) and Cenex (Laurel). Emissions controlled by stipulations which are part of the SO₂ SIP for the Laurel nonattainment area; proposal 5/9/79 (44 FR 27187), final 1/10/80 (45 FR 2034).
⁵ In this analysis, the State used the H+1.5L formula, but because of the construction date of the stack, the applicable formula should have been 2.5H. Regardless of the formula used (H+1.5L or 2.5H), the actual stack height is less than the GEP stack height. According to the guidance memorandum dated October 10, 1985, G.T. Helms to Air Branch Chiefs, showing reliance on the 2.5H formula can be accomplished by showing that the stack was actually built to a height less than or equal to 2.5H. EPA believes that reliance on the 2.5H formula can be shown for the stacks indicated.

South Dakota

Plant name	Stack I.D.	Actual stack height (M)	Applicable GEP formula	GEP height (M)	SO ₂ ¹ (t/yr)
Big Stone Power Plant.....		152	H+1.5L ²	161.15	

¹ The State has determined that the listed facility below did not use dispersion techniques described by 40 CFR 50.100(hh)(1)(i)-(iii) and prohibited by 40 CFR 50.118(a).
² In this analysis, the State used the H+1.5L formula, but because of the construction date of the stack, the applicable formula should have been 2.5H. Regardless of the formula used (H+1.5L or 2.5H), the actual stack height is less than the GEP stack height. According to the guidance memorandum dated October 10, 1985, G. T. Helms to Air Branch Chiefs, showing reliance on the 2.5H formula can be accomplished by showing that the stack was actually built to a height less than or equal to 2.5H. EPA believes that reliance on the 2.5H formula can be shown for the stacks indicated.

B. Stack Height Regulation

EPA has received stack height regulation revisions from Utah, Montana and Colorado and the stack height definitions for good engineering practice and dispersion technique from South Dakota. Also, EPA received commitments to comply with the federal stack height regulations from North Dakota and Wyoming. The rules from Colorado, Utah and Montana, the definitions from South Dakota and the commitments from Wyoming and North Dakota apply to all new sources and modifications as required in 40 CFR 51.164 (old citation 51.16(1)), as well as existing sources as required in 40 CFR 51.118 (old citation 51.12 (j), (k), (l)). This means that these rules and commitments apply to all sources that were or are

constructed, reconstructed or modified subsequent to December 31, 1970. EPA has reviewed the above mentioned revisions and has determined that they are consistent with EPA's requirements for GEP stack height and dispersion techniques as revised on July 8, 1985. (Reference to the old citation is made because on November 7, 1986, 51 FR 40656, EPA restructured 40 CFR Part 51. The regulations themselves have not changed; the numbering sequence has changed.) Although the EPA generally approves Utah, Montana and Colorado's stack height rules and South Dakota's definitions on the grounds that they satisfy 40 CFR Part 51, the EPA also provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the

decision in *NRDC v. Thomas*, 838 F.2d 1224 (D. C. Cir. 1988). If the EPA's response to the NRDC remand modifies the July 8, 1985, regulations, the EPA will notify Utah, Montana, Colorado, and South Dakota that their rules must be changed to comport with the EPA's modified requirements. Although this potential regulation revision is not expected to result in revised emission limitations or other actions taken by Utah, Montana, Colorado, and South Dakota, EPA has obtained commitments from Utah, Montana, Colorado and South Dakota to change their regulations accordingly. EPA takes these commitments to mean that such States will proceed to process all regulatory changes, including those affecting new source programs, to comport with such

new requirements. Discussion on these States' submittals as well as the status of the North Dakota and Wyoming regulations are given below.

Colorado

In a letter dated May 8, 1986, Governor Richard Lamm submitted revisions to Colorado Regulation No. 3 (Regulation Requiring an Air Contaminant Emission Notice, Emission Permit Fees) of the Colorado SIP modifying stack height evaluations. The changes consisted of (1) new definitions of dispersion techniques, good engineering practice, nearby and excessive concentrations (Section XII. D.) and (2) rules clarifying technical modeling and monitoring requirements (Section XII. C.). These revised rules bring the Colorado regulations into conformity with regulations promulgated by the EPA.

In a letter dated May 9, 1988, Bradley J. Beckham, Director, Air Pollution Control Division, committed to revise Colorado's stack height regulations should the remand affect the July 8, 1985, federal stack height requirements. EPA interprets this to mean that Colorado will proceed to process all regulatory changes, including those affecting new source programs, to comport with such new requirements.

Montana

In a letter dated May 28, 1986, Governor Ted Schwinden, submitted modifications to the Montana SIP which revised rules governing stack height and dispersion techniques. The modifications repeal Administrative Rules of Montana (ARM) 16.8.1201, 16.8.1202 and 16.8.1203 in Sub-Chapter 12 and adds ARM 16.8.1204 (Definition), 16.8.1205 (Requirements), and 16.8.1206 (Exemptions).

Montana regulations do not specifically define "emission limitation and emission standards." However, the regulation, ARM 16.8.1205, subjects the source(s) to all emission limitation requirements in the Montana Clean Air Act. Montana regulations do not specifically define "stack in existence"; however, Montana implies its use in its definition of GEP and in its stack height requirements (ARM 16.8.1205) and exemptions (16.8.1206).

The Montana regulations are designed to limit the use of tall stacks. Further, the State underscores the change in its regulations as reflecting the policy of the State to achieve acceptable levels of ambient air quality through the use of continuous emission reduction and not through the use of dispersion techniques or tall stacks.

In a letter dated May 6, 1988, Jeffrey T. Chaffee, Chief, Air Quality Bureau, committed to revise Montana's stack height regulation should the remand affect the July 8, 1985, federal stack height requirements. EPA interprets this to mean that Montana will proceed to process all regulatory changes, including those affecting new source programs, to comport with such new requirements.

Utah

The Utah SIP revision to comply with the stack height requirement was submitted with a letter dated May 2, 1986, by Governor Norman H. Bangert. The submittal includes regulations to address (1) GEP Stack height/dispersion techniques (2) a new Section 17 of the SIP that lists all existing stacks in Utah greater than 65 meters and (3) a technical support document for Section 17 of the SIP.

New definitions are added to Part I of the Utah Air Conservation Regulations (UACR). Such regulations have since been recodified. EPA will address the recodified regulations in a separate rulemaking. They are dispersion techniques, UACR 1.1.128 (recodified UACR 1.49); excessive concentration, UACR 1.1.129 (recodified UACR 1.55); good engineering practice, UACR 1.1.130 (recodified UACR 1.71); nearby UACR 1.1.131 (recodified UACR 1.98); stack, UACR 1.1.132 (recodified 1.136); and stack in existence, UACR 1.1.133 (recodified UACR 1.137). Part III of the UACR (UACR 3.8), which defines the stack height exemptions and requirement for source owners or operators, was also revised to be more consistent with federal regulations.

In a letter dated May 27, 1988, F. Burnell Cordner, Director, Bureau of Air Quality, committed to revise Utah's stack height regulations should the remand affect the July 8, 1985, federal stack height requirements. EPA interprets this to mean that Utah will proceed to process all regulatory changes, including those affecting new source programs, to comport with such new requirements.

South Dakota

In a letter dated August 7, 1986, Governor William Janklow submitted revisions to the South Dakota SIP adopting federal stack height regulations. South Dakota has incorporated by reference EPA definitions for good engineering practices [40 CFR 51.1(ii)] and dispersion techniques [40 CFR 51.1(hh)], which were promulgated on July 8, 1985, into the Administrative Rules of South Dakota (ARSD) 74:26:01:12. This is to ensure that new sources comply with

emission limitations and other requirements of the CAA. (Note: As stated above, EPA restructured 40 CFR Part 51 on November 7, 1986 (51 FR 40656). The citation in ARSD 74:26:01:12 referenced regulations 40 CFR 51.1 (ii) and (hh) which are 40 CFR 51.100(ii) and 51.100(hh) in the new federal citation. The South Dakota regulation and the federal regulations are one and the same.)

In a letter dated January 30, 1987, Joel Smith, South Dakota Administrator for Air Quality and Solid Waste, committed to adopting the definitions "nearby" and "excessive concentration" (51.100 (jj) and (kk), new citation) with the next regulatory update (mid 1987). In August 1987, EPA received draft regulations from South Dakota which incorporated by reference in ARSD 74:26:01:12 the remainder of the stack height regulations (40 CFR 51.100 (z), (ff), (gg), (jj), (kk), and (nn)). South Dakota submitted such regulations on January 28, 1988. EPA has made a determination that the added stack height regulations in ARSD 74:26:01:12 are consistent with the federal stack height requirements and has addressed them in a separate rulemaking at 53 FR 34077 (September 2, 1988).

In a letter dated May 11, 1988, Joel C. Smith, Administrator, Office of Air Quality and Solid Waste, committed to revise South Dakota's stack height regulations should the remand affect the July 8, 1985, federal stack height requirements. In a separate rulemaking, EPA added this letter to 40 CFR 52.2180. EPA interprets this commitment to mean that South Dakota will proceed to process all regulatory changes, including those affecting new source programs, to comport with such new requirements.

For new or modifying sources, the new source review lies with the State and the prevention of significant deterioration review lies with EPA (this programs has not been delegated to the State).

Thus, EPA believes that requirements for any source in 40 CFR 51.118 are satisfied.

North Dakota and Wyoming

The State of North Dakota submitted a letter of commitment to comply with the federal stack height regulations until it adopted the required regulations. The North Dakota letter, dated April 18, 1986, was submitted by Mr. Dana Mount, Division Director of Environmental Engineering, North Dakota Health Department. The State of Wyoming submitted a letter of commitment insuring consistency with the federal stack height regulations

through its new source review process until its stack height rules were finalized. The Wyoming letter dated December 4, 1988, was submitted by Mr. Charles Collins, Administrator, Wyoming Air Quality Division. North Dakota has since submitted such regulations to EPA with a letter dated January 28, 1988. EPA has made a determination that the North Dakota stack height regulations are consistent with the federal stack height requirements and has addressed them in a separate direct final action at 53 FR 45763 (November 14, 1988). Wyoming has since submitted such rules to EPA with a letter dated September 6, 1988. EPA will be acting on them in a separate rulemaking action.

Final Action

EPA believes that the stack height regulations submitted by Utah, Montana and Colorado and the two definitions submitted by South Dakota are consistent with the revised federal regulations. Although EPA is approving the Utah, Montana and Colorado stack height rules and the two stack height definitions for South Dakota on the grounds that they satisfy 40 CFR Part 51, EPA provides notice that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). If the EPA's response to the NRDC remand modifies the July 8, 1985, regulations, the EPA will notify Utah, Montana, Colorado and South Dakota that their rules must be changed to comport with the EPA's modified requirements. Although this potential regulation revision is not expected to result in revised emission limitations or other actions taken by Utah, Montana, Colorado and South Dakota, EPA has obtained commitments from Utah, Montana, Colorado and South Dakota to change their regulations accordingly. EPA takes these commitments to mean that such states will proceed to process all regulatory changes, including those affecting new source programs, to comport with such new requirements.

Wyoming originally committed to insure consistency with federal regulations, until adequate state regulations were adopted. Wyoming has since submitted such regulations; EPA is acting on them in a separate rulemaking. North Dakota originally submitted a commitment to comply with the Federal regulations until the State adopted the required regulations. North Dakota has since submitted such regulations; EPA has addressed them in a separate rulemaking action at 53 FR 45763 (November 14, 1988).

The stack height CEP analyses submitted by Utah (with the Kennecott exception), Montana (with the ASARCO exception), Wyoming, North Dakota and South Dakota have been determined to be acceptable. Therefore, EPA is approving these stack height demonstrations. As noted earlier, the ASARCO stack height analyses submitted as part of the Montana SIP revision will be addressed in a separate rulemaking. The Kennecott stack height analysis submitted as part of the Utah SIP has been addressed in a separate action at 53 FR 48942 (December 5, 1988).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 7, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference. Particulate matter, Sulfur dioxide.

Note: Incorporation by reference of the State Implementation Plan for the States of Colorado, Montana, North Dakota, South Dakota, Utah and Wyoming was approved by the Director of the Federal Register on July 1, 1982.

Date: March 30, 1989.

William K. Reilly,
Administrator.

Part 52 Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation on for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart G—Colorado

2. Section 52.320 is amended by adding paragraph (c)(45) to read as follows:

§ 52.320 Identification of plan.

(c) . . .

(45) In a letter dated May 8, 1988, the Governor submitted revisions to the Colorado Regulation No. 3 (Regulation Requiring an Air Contaminant Emission Notice, Emission Permit Fees) of the Colorado SIP modifying stack evaluations. The changes consisted of (1) new definitions of dispersion

techniques, good engineering practice, nearby, and excessive concentrations (Section XII.D.) and (2) rules clarifying technical modeling and monitoring requirements (Section XII.C.).

(i) *Incorporation by reference.* (A) Revisions to the Colorado Regulation No. 3 (Regulation Requiring and Air Contaminant Emission Notice, Emission Permit Fees), Section XII, adopted March 20, 1986, by the Colorado Air Quality Control Commission.

3. Add a new § 52.345:

§ 52.345 Stack height regulations.

The State of Colorado has committed to revise its stack height regulations should EPA complete rulemaking to respond to the decision in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). In a letter to Mr. Douglas M. Skie, EPA, dated May 9, 1988, Bradley J. Beckham, Director of the Colorado Air Pollution Control Division stated:

" . . . We are submitting this letter to allow EPA to continue to process our current SIP submittal with the understanding that if EPA's response to the NRDC remand modified the July 8, 1985 regulations, EPA will notify the state of the rules that must be changed to comply with the EPA's modified requirements. The State of Colorado agrees to make appropriate changes.

Subpart BB—Montana

4. Section 52.1370 is amended by adding paragraph (c)(18) to read as follows:

§ 52.1370 Identification of plan.

(c) . . .

(18) In a letter dated March 28, 1988, the Governor submitted modifications to the Montana SIP which revised rules governing stack height and dispersion techniques. In a letter dated November 25, 1985, the Chief of the Air Quality Bureau, Montana, submitted the stack height demonstration analysis with supplemental information submitted on January 28, 1986. EPA is approving the demonstration analysis for all of the stacks except the ASARCO stacks.

(i) *Incorporation by reference.* (A) Revisions to the Administrative Rules of Montana effective on June 13, 1986. The modifications repeal Administrative Rules of Montana (ARM 116.8.1201, 116.8.1202 and 16.8.1203 in Subchapter 12 and adds ARM 16.8.1204 (Definitions), 16.8.1205 (Requirements), and 16.8.1206 (Exemptions).

(B) Stack height demonstration analysis submitted by the State on November 25, 1985 (except for materials pertaining to ASARCO), and January 28,

1986 (except for materials pertaining to ASARCO and Appendix A).

5. Add a new § 52.1387

§ 52.1387 Stack height regulations

The State of Montana has committed to revise its stack height regulations should EPA complete rulemaking to respond to the decision in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). In a letter to Douglas M. Skie, EPA, dated May 8, 1988, Jeffrey T. Chaffee, Chief, Air Quality Bureau, stated:

" . . . We are submitting this letter to allow EPA to continue to process our current SIP submittal with the understanding that if EPA's response to the NRDC remand modifies the July 8, 1985 regulations, EPA will notify the State of the rules that must be changed to comply with the EPA's modified requirements. The State of Montana agrees to make the appropriate changes.

Subpart JJ—North Dakota

6. Section 52.1820 is amended by adding paragraph (c)(17) to read as follows:

§ 52.1820 Identification of plan.

(c) . . .

(17) In a letter dated April 18, 1988, the Director of the Division of Environmental Engineering, North Dakota Department of Health, submitted the stack height demonstration analysis with supplemental information submitted on July 21, 1987. EPA is approving the demonstration analysis for all of the stacks.

(i) *Incorporation by reference.* (A) Stack height demonstration analysis submitted by the State on April 18, 1988 and July 21, 1987.

Subpart QQ—South Dakota

7. Section 52.2170 is amended by adding paragraph (c)(12) to read as follows:

§ 52.2170 Identification of plan.

(c) . . .

(12) In a letter dated August 7, 1986, the Governor submitted revisions to the South Dakota SIP adopting federal stack height regulations (Administrative Rules of South Dakota 74:26). In a letter dated August 20, 1986, the Administrator, Office of Air Quality and Solid Waste of South Dakota, submitted the stack height demonstration analysis with supplemental information submitted on December 3, 1986.

(i) *Incorporation by reference.* (A) Revisions to the Administrative Rules of South Dakota 74:26 effective on May 21, 1986. The changes consisted of incorporating definitions for good

engineering practices and dispersion techniques into 74:26:01:12, standard for the issuance of construction permit.

(B) Stack height demonstration analysis submitted by the State with letters dated August 20, 1986 and December 3, 1986.

Subpart TT—Utah

8. Section 52.2320 is amended by adding paragraph (c)(22) to read as follows:

§ 52.2320 Identification of plan.

(c) . . .

(22) In a letter dated May 2, 1988, the Governor submitted revisions to the Utah Air Conservation Regulations addressing CEP stack heights/dispersion techniques and a new Section 17 to the SIP addressing CEP stack height demonstration analysis.

(i) *Incorporation by reference.* (A) Revisions to the Utah Air Conservation Regulations adopted April 18, 1986. The revisions consist of adding stack height definitions (UACR 1.1.128 through UACR 1.1.133) and updating stack height exemptions (UACR 3.8).

(B) Stack height demonstration analysis submitted by the State in a letter dated May 2, 1986.

9. Add a new § 52.2347.

§ 52.2347 Stack height regulations.

The State of Utah has committed to revise its stack height regulations should EPA complete rulemaking to respond to the decision in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). In a letter to Douglas M. Skie, EPA, dated May 27, 1988, F. Burnell Cordner, Director, Bureau of Air Quality, stated:

" . . . We are submitting this letter to allow EPA to continue to process our current SIP submittal with the understanding that if the EPA's response to the NRDC remand modifies the July 8, 1985 regulations, the EPA will notify the State of the rules that must be changed to comply with the EPA's modified requirements. The State of Utah agrees to process appropriate changes.

Subpart ZZ—Wyoming

10. Section 52.2620 is amended by adding paragraph (c)(19) to read as follows:

§ 52.2620 Identification of plan.

(c) . . .

(19) In a letter dated August 5, 1986, the Administrator of the Air Quality Division of Wyoming, submitted the stack height demonstration analysis. EPA is approving the demonstration analysis for all of the stacks.

(i) *Incorporation by reference.* (A) Stack height demonstration analysis submitted by the State in a letter dated August 5, 1986.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

48 CFR Parts 301, 302, 303, 304, 305, 306, 307, 309, 314, 315, 316, 317, 319, 322, 324, 330, 333, 335, and 352

Acquisition Regulation; Miscellaneous Amendments

AGENCY: Department of Health and Human Services (HHS).

ACTION: Final rule.

SUMMARY: The Department of Health and Human Services is amending its acquisition regulation (HHSAR), Title 48 CFR Chapter 3, to make various administrative changes.

EFFECTIVE DATE: June 7, 1989.

FOR FURTHER INFORMATION CONTACT: Ed Lanham, Senior Procurement Analyst, Division of Acquisition Policy, telephone (202) 245-8890.

SUPPLEMENTARY INFORMATION: The Department is amending its acquisition regulation to make numerous administrative changes as a result of a recent reorganization within the Office of the Secretary. Specifically, office designations and approving officials' titles have been changed to reflect the new designations and titles caused by the reorganization.

Changes are also being made to add reference to the use of the "Taxpayer Identification Number" as required by Federal Acquisition Circular 84-40, which was published in the *Federal Register* (53 FR 43386) on October 26, 1988. Additionally, Subpart 324.2, Freedom of Information Act, is being revised as a result of the recent revision to the Department's implementation of the Act in 45 CFR Part 5.

The Department of Health and Human Services adheres to the policy that the public, or certain elements comprising it, should have the opportunity to provide comments on regulations which may have an impact on them. The Department has determined, however, that this rule contains no amendments that would have a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the Department. As a result, the Department

is not requesting comments on these acquisition regulations and is publishing them as a final rule.

The Department of Health and Human Services certifies this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.); therefore, no regulatory flexibility statement has been prepared. This document does not contain information collection requirements which require the approval of the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

The provisions of this regulation are issued under 5 U.S.C. 301; 40 U.S.C. 486(c).

List of Subjects in 48 CFR Parts 301, 302, 303, 304, 305, 306, 307, 308, 314, 315, 316, 317, 319, 322, 324, 330, 333, 335, and 352

Government procurement.

Accordingly, the Department amends 48 CFR Chapter 3 as set forth below.

Dated: May 31, 1989.

James F. Trickett,
Deputy Assistant Secretary for Management and Acquisition.

As indicated in the preamble, Chapter 3 of Title 48 Code of Federal Regulations is amended as shown.

1. The authority citation for Parts 301, 302, 303, 304, 305, 306, 307, 309, 314, 315, 316, 317, 319, 322, 324, 330, 333, 335, and 352 continues to read as follows:

Authority: 5 U.S.C. 301; 40 U.S.C. 486(c).

PART 301—[AMENDED]

301.102 [Amended]

2. The second sentence of section 301.102 is amended by replacing the title "Deputy Assistant Secretary for Procurement, Assistance and Logistics" with "Deputy Assistant Secretary for Management and Acquisition."

301.201 [Amended]

3. Paragraph (a) of section 301.201 is amended by replacing, in the first and second sentences, the title "Deputy Assistant Secretary for Procurement, Assistance and Logistics" with the title "Deputy Assistant Secretary for Management and Acquisition."; paragraph (b) is amended by replacing "Office of Procurement and Logistics Policy, Office of Procurement, Assistance and Logistics," with "Office of Acquisition and Grants Management." in the first sentence; in the second sentence, replace the title "Director, Office of Procurement and Logistics Policy" with "Director, Office of Acquisition and Grants Management".

301.270 [Amended]

4. Section 301.270 is amended by replacing, in paragraph (a), the title "Deputy Assistant Secretary for Procurement, Assistance and Logistics" with "Deputy Assistant Secretary for Management and Acquisition."; in paragraph (b), the first sentence is amended by replacing "Office of Procurement, Assistance and Logistics, Office of Management Services—OS," with "Office of Acquisition and Grants Management, Division of Contract Operations—OS,"; in the second sentence of paragraph (b), replace the term "Director, Office of Procurement and Logistics Policy" with "Director, Office of Acquisition and Grants Management".

301.304 [Amended]

5. Section 301.304 is amended as follows:

a. In paragraph (a), replace "Director, Office of Procurement and Logistics Policy" with "Director, Office of Acquisition and Grants Management" in the first and third sentences; in the fourth sentence, replace "Deputy Assistant Secretary for Procurement, Assistance and Logistics" with "Deputy Assistant Secretary for Management and Acquisition."

b. In paragraph (c), replace the title "Director, Office of Procurement and Logistics Policy" with "Director, Office of Acquisition and Grants Management."

c. In the last sentence of paragraph (d), replace the title "Director, Office of Procurement and Logistics Policy" with "Director, Office of Acquisition and Grants Management."

301.403 [Amended]

6. Section 301.403 is amended by replacing the title "Director, Office of Procurement and Logistics Policy" with "Director, Office of Acquisition and Grants Management."

301.404 [Amended]

7. Section 301.404 is amended by replacing the title "Director, Office of Procurement and Logistics Policy" with "Deputy Assistant Secretary for Management and Acquisition."

301.470 [Amended]

8. Section 301.470 is amended by removing the words "Director, Office of Procurement and Logistics Policy as stated" and replacing them with "official designated."

301.670-2 [Amended]

9. Section 301.670-2 is amended by removing paragraph (a), redesignating paragraphs (b) and (c) as (a) and (b), respectively, and changing the title in

newly relettered paragraph (a) to read "Deputy Assistant Secretary for Management and Acquisition; and."

PART 302—[AMENDED]

302.100 [Amended]

10. The term "Principal official responsible for acquisition" in section 302.100 is amended by replacing "Office of Administrative and Management Services (OAMS-OS)," with "Office of Management and Acquisition (OMAC-OS)," under the first entry in the list following the introductory paragraph, replace the designation "OAMS-OS" with "OMAC-OS".

PART 303—[AMENDED]

303.303 [Amended]

11. Section 303.303 is amended by replacing the title "Deputy Assistant Secretary for Procurement, Assistance and Logistics" with "Director, Office of Acquisition and Grants Management."

303.409 [Amended]

12. Paragraph (b)(4) of section 303.409 is amended by replacing, in the last sentence, the title "Deputy Assistant Secretary for Procurement, Assistance and Logistics" with "Director, Office of Acquisition and Grants Management."

303.502 [Amended]

13. Paragraph (b) of section 303.502 is amended by replacing, in the last sentence, the title "Deputy Assistant Secretary for Procurement, Assistance and Logistics" with "Director, Office of Acquisition and Grants Management."

PART 304—[AMENDED]

304.870 [Amended]

14. In the third sentence of paragraph (c)(4) of section 304.870, replace "Office of Procurement, Assistance and Logistics (OPAL), ASMB," with "Director, Office of Acquisition and Grants Management (DOAGM)."; and, in the following sentence, replace "OPAL" with "DOAGM."

304.7001 [Amended]

15. Section 304.7001 is amended as follows:

a. In paragraph (b)(1), replace the office designation "Division of Management Information Systems Services, OMAS, OS," with "Office of Financial Operations, Office of Finance";

b. In paragraph (c), replace "Division of Contract and Grant Operations, Office of Management Services," with "Division of Contract Operations,"

c. In paragraph (d), replace the term "Division of Management Information

Systems Services" with "Office of Financial Operations" in the three sentences in which it appears in the paragraph.

304.7101 [Amended]

16. Paragraph (c) of section 304.7101 is amended by removing, in the entry for the "Office of the Secretary," the comma and everything following the word "Operations."

PART 305—[AMENDED]

305.202 [Amended]

17. In paragraph (b) of section 305.202, replace the title "Deputy Assistant Secretary for Procurement, Assistance and Logistics (DASPAL)" with "Director, Office of Acquisition and Grants Management (DOAGM)" in the first sentence; in the remaining three sentences, replace "DASPAL" with "DOAGM."

PART 306—[AMENDED]

306.501 [Amended]

18. In the first sentence of section 306.501, replace "Director, Office of Procurement and Logistics Policy, OPAL" with "Deputy Assistant Secretary for Management and Acquisition," under the "OS" listing, replace "Deputy Assistant Secretary for Administrative and Management Services" with "Director, Office of Acquisition and Grants Management."

PART 307—[AMENDED]

307.7003 [Amended]

19. In paragraph (b)(2) of section 307.7003, replace the title "Deputy Assistant Secretary for Procurement, Assistance and Logistics" with "Director, Office of Acquisition and Grants Management."

307.7004 [Amended]

20. In paragraph (c) of section 307.7004, replace "Deputy Assistant Secretary for Procurement, Assistance and Logistics" with "Director, Office of Acquisition and Grants Management."

307.7102 [Amended]

21. In paragraph (e) of section 307.7102, replace "Office of Procurement and Logistics Policy in the Office of Procurement, Assistance and Logistics" with "Director, Office of Acquisition and Grants Management."

PART 309—[AMENDED]

309.403 [Amended]

22. Section 309.403 is amended by replacing, under the term "Initiating official," the title "Deputy Assistant Secretary for Procurement, Assistance

and Logistics," with "Deputy Assistant Secretary for Management and Acquisition,"

309.404 [Amended]

23. Section 309.404 is amended by replacing, in paragraph (c), "Office of Procurement, Assistance and Logistics (OPAL)" with "Office of Management and Acquisition (OMAC)."; in paragraph (c)(4), replace "OPAL" with "OMAC."

309.470-1 [Amended]

24. In section 309.470-1, replace "OPAL" with "OMAC."

PART 314—[AMENDED]

314.406-3 [Amended]

25. Paragraphs (e) and (g)(3) of section 314.406-3 are amended by replacing "Office of Procurement and Logistics Policy, OPAL-ASMB" with "Division of Acquisition Policy, Office of Acquisition and Grants Management (OAGM)."

314.406-4 [Amended]

26. Paragraph (c) of section 314.406-4 is amended by replacing "Office of Procurement and Logistics Policy, OPAL-ASMB" with "Division of Acquisition Policy, OAGM."

PART 315—[AMENDED]

315.406-2 [Amended]

27. Paragraph (a)(3) of section 315.406-2 is amended by removing the fourth sentence (in parentheses).

315.406-5 [Amended]

28. Paragraph (a)(2) of section 315.406-5 is amended by:

- Adding the word "and" after the semi-colon at the end of paragraph (xiv);
- Removing the semi-colon at the end of the paragraph in parentheses following paragraph (xv);
- Removing paragraph (xvi);
- Adding as newly designated paragraph (iii), "(iii) FAR, 52.204-3, Taxpayer Identification."; and
- Redesignating existing paragraphs "(iii)" through "(xv)" as "(iv)" through "(xvi)," respectively.

PART 316—[AMENDED]

316.702 [Amended]

29. Section 316.702 is amended as follows:

- In paragraph (d)(2), replace "Director, Office of Procurement and Logistics Policy" with "Director, Division of Acquisition Policy, OAGM."
- In paragraph (f)(1), replace "Director, Office of Procurement and Logistics Policy (OPLP)," in the second sentence, with "Director, Division of Acquisition Policy (DAP)."; in the third

sentence, replace "Director, OPLP" with "Director, DAP."

c. In paragraph (f)(4), replace the designations "Director, Office of Procurement and Logistics Policy" and "Director, OPLP" with "Director, DAP" as they appear throughout the paragraph; also, replace the reference to "OPLP" with "DAP."

PART 317—[AMENDED]

317.7002 [Amended]

30. Section 317.7002 is amended as follows:

a. In paragraph (b)(1), replace the present office designation with "Division of Contract Operations, Office of Acquisition and Grants Management, Office of the Secretary."

b. In paragraph (b)(2), replace the word "Materiel" with "Acquisition."

c. In paragraph (b)(3), replace the words "Administrative Services," with "Contracts and Grants,"

PART 319—[AMENDED]

319.201-70 [Amended]

31. In paragraph (a) of section 319.201-70, add the office designation "Indian Health Service (IHS)," between the existing designations "Health Resources and Services Administration (HRSA) (and each regional Office of Engineering Services)," and "National Institutes of Health (NIH)."

PART 322—[AMENDED]

322.604-2 [Amended]

32. Paragraph (c)(1) of section 322.604-2 is amended by replacing "Deputy Assistant Secretary for Procurement, Assistance and Logistics (DASPAL)," with "Director, Office of Acquisition and Grants Management (DOAGM)." in the first sentence, and "DASPAL" with "DOAGM" in the second sentence.

PART 324—[AMENDED]

33. Subpart 324.2 is revised to read as follows:

Subpart 324.2—Freedom of Information Act

324.202 Policy.

(a) The Department's regulation implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552, as amended, is set forth in 45 CFR Part 5.

(b) The contracting officer, upon receiving a FOIA request, shall follow Department and operating division procedures. As necessary, actions should be coordinated with the cognizant Freedom of Information (FOI) Officer and the Business and

Administrative Law Division of the Office of General Counsel. The contracting officer must remember that only the FOI Officer has the authority to release or deny release of records. While the contracting officer should be familiar with the entire FOIA regulation in 45 CFR Part 5, particular attention should be focused on sections 5.65 and 5.66; also of interest are sections 5.32, 5.33, and 5.35.

PART 330—[AMENDED]

34. Subpart 330.2 is added to read as follows:

Subpart 330.2—CAS Program Requirements

330.201-5 Waiver.

(c) The requirements of FAR 30.201-5 shall be exercised by the Director, Office of Acquisition and Grants Management (DOAGM). Requests for waivers shall be forwarded through normal acquisition channels to the DOAGM.

Subpart 330.3 [Removed]

35. Subpart 330.3 is removed.

PART 333—[AMENDED]

333.102 [Amended]

36. Section 333.102 is amended as follows:

a. In paragraph (c)(1), in the first sentence, replace "Office of Procurement and Logistics Policy (OPLP), OPAL, OASMB, OS," with "Office of Acquisition and Grants Management (OAGM)."; in the second sentence, replace "OPLP" with "OAGM."

b. In the last sentence of paragraph (c)(3), replace "OPLP" with "OAGM."

333.103 [Amended]

37. In paragraph (a) of section 333.103, replace "OPLP" with "OAGM."

333.104 [Amended]

38. Section 333.104 is amended as follows:

a. In paragraph (a)(6), replace "Office of Procurement and Logistics Policy (OPLP), OPAL," with "Office of Acquisition and Grants Management (OAGM)."

b. In paragraphs (b)(1) and (b)(2), replace the term "OPLP" with "OAGM" wherever it appears.

c. In paragraph (c)(2), replace "OPLP" with "OAGM."

d. In paragraph (f), replace "Deputy Assistant Secretary for Procurement, Assistance and Logistics" with "Director, Office of Acquisition and Grants Management."

333.213 [Amended]

39. Paragraph (a) of section 333.213 is amended by replacing "Director, Office of Procurement and Logistics Policy" with "Director, Division of Acquisition Policy."

PART 335—[AMENDED]

335.070-4 [Amended]

40. In paragraphs (c)(1) and (c)(2) of section 335.070-4, replace "Office of Procurement, Assistance and Logistics" with "Office of Acquisition and Grants Management."

PART 352—[AMENDED]

352.215-71 [Removed]

41. Section 352.215-71 is removed.

352.370 [Amended]

42. In paragraph (b) of section 352.370, replace "Director, Office of Procurement and Logistics Policy (OPLP); Office of Procurement, Assistance and Logistics (OPAL); Office of the Assistant Secretary for Management and Budget (OASMB-OS)," with "Director, Office of Acquisition and Grants Management." In the second and third sentences, replace "Director (OPLP)" with "Director, OAGM."

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 78-16; Notice 7]

RIN 2127-AA32

Federal Motor Vehicle Safety Standards; Steering Control Rearward Displacement

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petitions for reconsideration.

SUMMARY: On November 23, 1987, NHTSA published a final rule extending Standard No. 204's requirements regulating the rearward displacement of the steering control in a 30 miles per hour (mph) barrier crash test to additional light trucks, buses and multipurpose passenger vehicles (MPV's) manufactured on or after September 1, 1991. In order to minimize the impacts of this requirement on multistage manufacturers, the agency specified in the final rule that this new requirement will apply only to vehicles

with a gross vehicle weight rating of 10,000 pounds or less and an unloaded vehicle weight of 5,500 pounds or less.

NHTSA received two petitions for reconsideration of this rule filed separately by General Motors (GM) and the National Truck Equipment Association (NTEA). GM argued that the steering control displacement requirements were not practicable for those trucks, buses and MPV's made newly subject to Standard No. 204 with a GVWR greater than 8,500 pounds. NTEA alleged that the requirements were not reasonable, practicable and appropriate, insofar as they apply to multistage manufacturers. Petitioner believed that the standard, as amended, will impose a new testing obligation on multistage manufacturers, notwithstanding the agency's effort to minimize burdens on these manufacturers. It was argued that the agency should reconsider the standard and establish a mechanism by which multistage manufacturers would be excused from "unduly burdensome, cost-prohibitive and infeasible barrier testing requirements."

In the final rule, NHTSA said that the available evidence showed that the standard's requirements were both practicable and appropriate for these vehicles. The petitioners did not provide any new evidence to the contrary, nor did they refer to any previously available evidence that the agency failed to consider in its determination set forth in the final rule. Therefore, the agency reaffirms its prior determination regarding the practicability and appropriateness of these requirements.

NHTSA has reexamined the burdens imposed on multistage manufacturers. The burdens that multistage manufacturers will face in certifying the compliance of their vehicles with Standard No. 204 are not significantly different from the burdens they face currently in certifying that their vehicles comply with other standards whose compliance is determined by the agency in a 30 mph barrier crash. No information was provided showing that the certification responsibilities of multistage manufacturers currently in effect, or as expanded by the final rule at issue, are unduly excessive and that the certification scheme should be amended to reduce the alleged burden. Hence, this notice denies the petitions for changes to the steering control displacement protection requirements.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Strombotne, Chief, Crashworthiness Division, NRM-12, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION:

Background

Federal Motor Vehicle Safety Standard No. 204 prohibits more than five inches of rearward displacement by the vehicle's steering assembly in a 30 mph frontal barrier crash. The standard's purpose is to reduce driver injuries and fatalities by limiting the rearward motion of the steering column in a frontal crash.

In November 1978 (43 FR 53364; November 9, 1978), NHTSA acted to reduce steering assembly-related injuries and fatalities to drivers of light truck and van-type vehicles with a GVWR of 10,000 pounds or less, by proposing to extend Standard No. 204 (and two other frontal protection standards) to those vehicles. As proposed in the November 1978 notice, there was no limitation on the unloaded vehicle weight for vehicles proposed to be newly subject to Standard No. 204. During the course of that rulemaking proceeding, however, the agency became aware of possible certification difficulties that would have been experienced by final-stage manufacturers of vehicles manufactured in more than one stage and alterers, had the 1978 proposal been adopted as proposed. Thus, the agency adopted a final rule (44 FR 68470; November 29, 1979) that limited the extended applicability of Standard No. 204 to vehicles with a GVWR of not more than 10,000 pounds and an unloaded vehicle weight of 4,000 pounds or less while the agency studied methods for dealing with final-stage manufacturer certification difficulties.

The certification difficulties of the final-stage manufacturers stemmed from the difficulty of some of those manufacturers and alterers to dynamically test the vehicles they produce. There is a specialized class of small businesses involved in the final stage manufacture of a vehicle manufactured in two or more stages, and/or in the conversion or alteration of new vehicles. Under NHTSA's regulations, a final stage manufacturer must certify that the completed vehicle conforms to all applicable safety standards. Additionally, a business that converts or significantly modifies a new vehicle prior to its first sale to a consumer is a vehicle alterer under NHTSA's regulations. Alterers are required to certify that the altered vehicle continues to comply with all applicable Federal motor vehicle safety standards. (Throughout the rest of this preamble, the term "final stage manufacturer" is used to refer to both final stage manufacturers and alterers.)

While the overwhelming majority of final stage manufacturers do not have the engineering or financial resources to conduct dynamic testing of the vehicles they have completed, dynamic testing is not necessarily required for their certification. Instead, the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(a); the Safety Act) permits manufacturers, including final stage manufacturers, to use other means to certify their vehicles, provided that due care is exercised in making that determination of compliance with the Federal safety standards.

In 1980, NHTSA further addressed the appropriate balancing of safety concerns with the certification difficulties encountered by final stage manufacturers with respect to safety standards involving dynamic testing. NTEA, together with the Truck Body and Equipment Association, had asked NHTSA to provide relief to final stage manufacturers from certification difficulties arising from the crash test requirements of Standards No. 212, *Windshield Mounting*, and No. 219, *Windshield Zone Intrusion*. (Those certification difficulties were identical to the ones NHTSA acknowledged and addressed in the final rule on Standard No. 204 that is the subject of today's notice.) NHTSA responded by amending Standards No. 212 and 219 (45 FR 22044; April 3, 1980) to limit the maximum unloaded vehicle weight at which a vehicle is tested, to 5,500 pounds. The agency determined that limiting the application of the standards would reduce certification problems for final stage manufacturers while improving occupant safety.

The agency tentatively concluded that the unloaded vehicle weight limitation used in Standards No. 212 and 219 should be considered for Standard No. 204, since the 5,500 pound limit seemed successful in achieving increased occupant safety without unduly burdening final stage manufacturers. Further, the agency believed that its use in Standard No. 204 would achieve consistency with Standards No. 212 and 219.

On April 4, 1985 (50 FR 13403), NHTSA published a notice proposing to amend Standard No. 204, *Steering Control Rearward Displacement* (49 CFR § 571.204), by extending its applicability to certain trucks, buses and MPV's by raising the unloaded vehicle weight limitation from 4,000 pounds to 5,500 pounds. The agency subsequently issued a final rule extending the standard to trucks, buses and MPV's with a GVWR of 10,000 pounds or less and an unloaded vehicle weight of 5,500

pounds or less. (52 FR 44893; November 23, 1987.) The preamble to that rule explained in detail the agency's conclusion that there was a safety need to extend Standard No. 204's requirements to these vehicles and that compliance with those requirements was feasible for them. The preamble also reflected the agency's desire to minimize the impact of the steering control displacement requirements on small businesses involved in the manufacture of light trucks and MPV's.

With respect to vehicles that are produced by final stage manufacturers which have an unloaded vehicle weight of 5,500 pounds or less and thus are not exempted from the dynamic testing requirements, the final rule noted that the final stage manufacturers of those vehicles would still have means to certify compliance that would not require them to conduct crash testing. First, the final stage manufacturer could stay within the limits set by the incomplete vehicle manufacturer. NHTSA's certification regulations require the manufacturers of truck or van chassis used by final stage manufacturers to provide information on what center of gravity, weight, and other limitations must be observed in completing the vehicle in order not to disturb the vehicle's compliance with the safety standards. When the final stage manufacturer observes those limits, it simply states that fact on the certification label. Under these circumstances, its certification of the vehicle's compliance with the safety standards is based on the incomplete vehicle manufacturer's certification. Thus, if the final stage manufacturer observes all of the limits specified by the incomplete vehicle manufacturer, the final stage manufacturer does not have to conduct any testing or analysis to support its certification that the vehicle complies with the safety standards, including the requirements for which compliance is determined in accordance with dynamic test procedures.

Second, if the final stage manufacturer cannot stay within the incomplete vehicle manufacturer's limits in using a given chassis to produce a completed vehicle, the final stage manufacturer may choose to use a chassis with a higher GVWR to produce its vehicle. The higher rated chassis would give the final stage manufacturer greater flexibility in completing the vehicle, since it would have higher limits established by the incomplete vehicle manufacturer. It is also possible that the switch to a higher rated chassis would result in the completed vehicle not being subject to the dynamic testing

requirements, if the completed vehicle had an unloaded vehicle weight of more than 5,500 pounds or a GVWR of more than 10,000 pounds. Even if the completed vehicle were subject to those requirements, by switching to a heavier chassis and staying within the incomplete vehicle manufacturer's limits for that chassis, the final stage manufacturer would avoid the possible necessity of having to take steps such as conducting additional testing or analysis to support its certification that the completed vehicle conformed to all safety standards. The switch to a heavier chassis might offer other potential benefits as well, by reducing the possibility that chassis components, such as wheels, brakes, and axles, would be overloaded and fail during service.

The agency observed in the final rule that if the final stage manufacturer chose not to remain within the incomplete vehicle manufacturer's limits for the chassis under either of these approaches, the final stage manufacturer could do so. However, if a final stage manufacturer did so, it could no longer rely on the incomplete vehicle manufacturer's certification and limits as the basis for certifying the completed vehicle. In such cases, the final stage manufacturer would have to conduct the crash testing or engineering analysis necessary to enable it to certify, with due care, that the completed vehicle complies with applicable safety standards, including the steering control rearward displacement requirement.

Petitions for Reconsideration

Two petitions for reconsideration of the 1987 final rule were filed with the agency. One of the petitioners was General Motors (GM), which asked that the rule be reconsidered on the basis of its practicability. To cure this problem, GM asked that the upper GVWR limit be lowered from 10,000 pounds to 8,500 pounds. The second petitioner was the National Truck Equipment Association (NTEA), a trade association representing some final stage manufacturers and alterers. NTEA said that the rule should be reconsidered because it creates a "new testing obligation" that petitioner asserted is not practical since it "cannot be met by final-stage manufacturers and alterers."

A. GVWR Limits

GM gave two reasons for its request that the application of the requirements be limited to vehicles with a GVWR of 8,500 pounds. First, GM argued the standard is not "practicable," within the meaning of section 103(a) of the Safety Act, for vehicles with a GVWR between

8,500 pounds and 10,000 pounds. According to GM, although the upper limit on applicability was stated in the 1979 final rule in terms of both 10,000 pounds GVWR and 4,000 pounds unloaded vehicle weight, only the latter has as a practical matter been the determinant of applicability. GM said that vehicles with an unloaded vehicle weight of 4,000 pounds or less have a commensurate GVWR of 8,500 pounds or less. Therefore, GM apparently concluded that NHTSA has no information showing that the requirements of Standard No. 204 would be practicable for vehicles with a GVWR between 8,500 and 10,000 pounds.

The agency does not agree with GM that the GVWR limit should be set at 8,500 pounds. If the petitioner is correct that a GVWR of 8,500 pounds or less is commensurate with an unloaded vehicle weight of 4,000 pounds or less, its suggestion of a GVWR limit of 8,500 pounds would negate the increase of the unloaded vehicle weight limit from 4,000 pounds to 5,500 pounds. As discussed in the preamble to the final rule, information and data available to the agency indicate that the extended requirements are practicable with adequate leadtime. For example, Chrysler said that its forward control vehicles could comply with three years of leadtime, and that other types of its vehicles could comply with two years of leadtime. NHTSA believes that the steering column and chassis structural characteristics of vehicles with unloaded vehicle weights between 4,000 and 5,500 pounds do not differ from those vehicles with unloaded vehicle weights less than 4,000 pounds to the extent that there will be insurmountable practicability problems in designing compliant systems.

Further, NHTSA notes that some passenger cars and light trucks currently comply with Standard No. 204 by preventing the intrusion of the steering column through use of means such as a double "U" joint shaft, or a telescoping intermediate shaft. The current production of these compliant designs contradicts GM's assertion that Standard No. 204 is not practicable for the light trucks and vans to which the standard has been extended. In noting the existence of these vehicles, the agency wishes to emphasize that while the existence of currently-manufactured vehicles voluntarily meeting the rearward displacement requirements for new steering controls obviously aids the agency in concluding that the extension of Standard No. 204 is practicable, the existence of those vehicles is not a

prerequisite to such a conclusion. The agency may issue safety standards that require improvements in existing technology or which require the development of new technology, providing that sufficient leadtime is afforded the manufacturers. See, *Chrysler Corporation v. Department of Transportation*, 472 F.2d 659 (8th Cir. 1972).

In any event, in light of the steps Chrysler and other manufacturers have taken toward achieving compliance of their vehicles with Standard No. 204, NHTSA believes it is practicable for the manufacturers to improve on current designs or develop new ones to meet fully the requirements of 204 for all vehicles made newly subject to the standard within the leadtime provided by the final rule. The petitioner has not provided any information showing that this conclusion is incorrect.

Second, GM argued that a steering control rearward displacement rule should be limited to vehicles with a GVWR of 8,500 pounds or less, and not applied to vehicles with a GVWR of 10,000 pounds or less, to reduce "the potential problem for final stage manufacturers in attempting to assure that their efforts have not disturbed the basis of initial manufacturer's certification to FMVSS 204." The petitioner referred to NHTSA's final rule (52 FR 44898; November 23, 1987) amending Standard No. 208, *Occupant Crash Protection*, to require trucks, buses and MPV's with an unloaded vehicle weight of 5,500 pounds or less and a GVWR of 8,500 pounds or less equipped with manual lap/shoulder safety belts at the front outboard seats to comply with the injury criteria of the standard in a 30 mph barrier crash test. GM said that, in light of the fact that NHTSA set the 8,500 pound GVWR limit in the Standard No. 208 rule to reduce the potential problem for final stage manufacturers in certifying to that standard, the agency should recognize that the same certification difficulties exist with regard to FMVSS No. 204, and therefore, that the GVWR limits for the two rules should be the same. The NTEA also suggested that the GVWR limit in Standard No. 204 should be amended to be consistent with that of the dynamic testing requirements of Standard No. 208.

The agency does not believe that the 8,500 pounds GVWR limit in Standard No. 208 represents a valid reason for reducing the 10,000 pounds GVWR limit in Standard No. 204. The application of each of the two standards to the light truck and van vehicle types was determined by NHTSA based on the

involvement of final stage manufacturers (often small businesses) in the installation of the crash protection systems mandated by FMVSS 204 and 208 and the magnitude of the difficulties they may experience in meeting those requirements. Standard No. 208 involves components which are frequently installed by final stage manufacturers, such as seats, seat belt webbing, and retractors. The seat belt assemblies installed in multi-stage vehicles are frequently purchased separately from the chassis, and the anchorages for those belts are sometimes located on body components installed by the final stage manufacturer. NHTSA's decision to tailor the rule in the manner provided was partially based on information from the Truck Body and Equipment Association, which represents many final stage manufacturers, that 90 to 95 percent of the chassis used by TBEA members involved in final stage manufacturing have a GVWR of greater than 8,500 pounds and would have an unloaded vehicle weight greater than 5,500 pounds when the vehicle is completed. (52 FR 44901)

However, there are no equivalently compelling reasons for narrowing the extension of Standard No. 204. Since an "incomplete vehicle" by definition includes the steering system (49 CFR 568.3), components related to Standard No. 204 compliance—such as the steering system and the steering mounts—are already installed on the chassis by the incomplete vehicle manufacturer when the incomplete vehicle is obtained by the final stage manufacturer. Final stage manufacturers typically would not be installing or modifying this system in any manner. NHTSA notes that the incomplete vehicle manufacturer would also have installed the vehicle's braking system before the incomplete vehicle is delivered to the final stage manufacturer. The agency believes that the basis on which a final stage manufacturer may certify that its completed vehicles complied with the braking standards (Standard No. 105 for hydraulic brake systems and Standard No. 121 for air brake systems) should also enable such a manufacturer to certify compliance with Standard No. 204. That is, the incomplete vehicle manufacturers are responsible for the compliance of their incomplete vehicles, and the final stage manufacturers are responsible for certifying the compliance of the components they mount on the vehicle and that the mounting would not affect the conformance to which the incomplete vehicle manufacturer had previously certified. Since the

conformance of the steering system with Standard No. 204 falls in the former category (and is the responsibility of the incomplete vehicle manufacturer) and the conformance of the safety belt system is included in the latter (and is the responsibility of the final stage manufacturer), the agency has determined it is reasonable that the GVRW limits of the extensions of Standards No. 204 and No. 208 are not identical.

GM also argued that structural changes that would be made to vehicles to comply with Standard No. 204 "could drastically affect the aggressivity of those vehicles. This potential would limit the extent to which initial manufacturers would provide certification for efforts anticipated by final stage manufacturers or vehicle alterers."

By these statements, the agency believes GM was repeating its comment on the proposed rule, that the standard could result in stiffer (more "aggressive") front structures for some light trucks and vans which could inflict more damage to vehicles they struck. If GM is renewing this contention in its petition, the agency disagrees, for the reasons given in the preamble to the final rule which responded to this same comment. In that notice, NHTSA stated:

NHTSA disagrees with * * * GM that the extension will promote more aggressive vehicle designs and negatively affect the safety of occupants of passenger cars and vehicles not covered under today's rule. The vehicles affected by this final rule have already been designed to withstand the 30 mile per hour barrier impact tests required by Standards No. 212, 219 and 301.

* * * GM * * * [did not provide] any information indicating why and to what degree further strengthening of the vehicle's frontal structure is needed to comply with Standard No. 204. NHTSA believes steering column designs are capable of limiting steering column intrusion without having to increase frontal stiffness. Therefore, the agency believes that extending the applicability of the standard need not increase the aggressivity of the vehicles covered by the standard. 52 FR 44894.

GM has not provided any information in its petition showing that the agency based its conclusion on erroneous information, or that the agency should have considered other information in its analysis but failed to do so. Also, GM did not provide any data or information to substantiate its claims about the possibility of increased aggressivity of some light trucks and vans. In the absence of any information showing, for example, which structural changes may be necessary to meet the standard, the degree to which the front stiffness would allegedly increase, or that other

steering controls (such as the break-away column used by Volkswagen in the Vanagon) could not be used to meet the standard without increasing frontal structure stiffness. NHTSA will not further consider reducing the GVWR limit of the rule to 8,500 pounds because of alleged increases in aggressivity.

NHTSA has undertaken a careful evaluation of GM's petition for reconsideration of the extension of the steering control rearward displacement requirements of FMVSS No. 204. Based on the available information, the agency reaffirms its previous determination that the standard is appropriate for light truck and van type vehicles with a GVWR of 10,000 pounds or less and an unloaded vehicle weight of 5,500 pounds or less. Accordingly, the GM petition is denied.

B. Final Stage Manufacturers

The National Truck Equipment Association (NTEA), a trade association representing some distributors, manufacturers and alterers of trucks, asked NHTSA to reconsider the reasonableness and practicability of the steering control displacement requirements as applied to final stage manufacturers. These manufacturers are typically small businesses. NTEA believed that the final rule imposes "a new testing obligation" on final stage truck manufacturers "that realistically cannot be met," and that NHTSA should relieve small businesses from the barrier testing requirements. NTEA stated that it was "unreasonable for NHTSA to adopt a dynamic testing standard that the agency knows cannot be complied with by small business final stage manufacturers and alterers, and then force such small businesses to rely upon the amorphous due care provision."

Together with the petition for reconsideration of the agency's final rule on Standard No. 204, NTEA also submitted a petition requesting that NHTSA reconsider its November 1987 final rule, supra, amending Standard No. 208 to establish dynamic testing requirements for trucks, buses and MPV's with an unloaded vehicle weight of 5,500 pounds or less and a GVWR of 8,500 pounds or less equipped with manual lap/shoulder safety belts at the front outboard seats. Perhaps because both the Standard No. 204 and No. 208 final rules involve a dynamic test requirement, the two petitions submitted by the NTEA and the arguments raised therein are almost identical. In the latter petition, NTEA argued that the dynamic testing requirements were not "practicable" or "reasonable," within the meaning of the Safety Act, for

vehicles that were manufactured in two or more stages, for virtually the same reasons set forth in its petition for reconsideration of the agency's final rule on Standard No. 204. Simply stated, as regards the effect of both Standards Nos. 204 and 208 on final stage manufacturers, NTEA believes that the small businesses that complete multi-stage vehicles do not have the economic or technological expertise to conduct dynamic testing.

NHTSA responded to these arguments raised by the NTEA in the agency's denial of petitions for reconsideration of the November 1987 final rule on Standard No. 208. (53 FR 50221; December 14, 1988). In light of the similarity between the NTEA petitions and between the testing under the two standards, the agency has denied NTEA's petition for reconsideration of the FMVSS No. 204 final rule for the same reasons NHTSA has denied the NTEA petition on Standard No. 208. The arguments against dynamic testing presented in the petition regarding Standard No. 208 were essentially the same as those in the petition regarding Standard No. 204. The agency's reasons for denying the petition on Standard No. 208 are briefly summarized below.

In the notice denying the petition concerning Standard No. 208, NHTSA explained that it agreed with NTEA's assertion that most final stage manufacturers do not have the resources to conduct dynamic testing of their completed vehicles. Indeed, that was one of the reasons why the agency adopted a limited extension of both Standard No. 204 and No. 208 to trucks and vans. However, the agency also repeated its belief that these small manufacturers had several means which would obviate the need to conduct crash testing or engineering analyses in order to certify that their completed vehicles complied with the dynamic testing requirements.

The final stage manufacturer need not conduct any crash testing or engineering analyses if it completes its vehicles within the limits specified by the incomplete vehicle manufacturer. When the vehicle is completed within those limits, the final stage manufacturer simply states that fact in its certification of the vehicle. When a final stage manufacturer is unable to complete the vehicle within the specifications established by the incomplete vehicle manufacturer, the final stage manufacturer can build the vehicle on a heavier chassis, and remain within the limits specified for that heavier chassis. Again, the final stage manufacturer would not have to conduct any dynamic testing or engineering analyses prior to certifying the vehicle complies with the safety standards. Finally, if a final stage manufacturer chooses to complete a vehicle outside of the

specifications established by the incomplete vehicle manufacturer, the final stage manufacturer must conduct the necessary crash testing or engineering analysis to show that the completed vehicle complies with the dynamic testing requirement. (53 FR 50225)

The agency explained that the availability of these alternatives allowed the rule to strike a proper balance between two statutory goals:

First, the alternatives assure the public that the enhanced safety protection of vehicles that are certified as complying with dynamic testing requirements will be provided in all vehicles subject to those requirements. Second, the alternatives minimize the burdens imposed by the newly-established dynamic testing requirements on multistage manufacturers, most of which are small businesses. *Id.*

In its petition for reconsideration of both final rules on Standard No. 204 and No. 208, NTEA asserted that these alternatives were not sufficiently helpful to final stage manufacturers. With respect to the alternative of completing the vehicle within the specifications established by the incomplete vehicle manufacturer, NTEA asserted that this course of action might not be realistic, because "the customization demanded by the market often makes it impossible to stay within the arbitrary boundaries of the incomplete vehicle manufacturer." With respect to the possibility of using a heavier chassis and remaining within the specifications established for the heavier chassis, NTEA asserted that the contracts offered for bidding by final stage manufacturers often include the desired GVWR of the completed vehicle in the specifications, and that final stage manufacturers that use a heavier chassis would be unlikely to be awarded the contract. Finally, with respect to the possibility of the final stage manufacturers conducting engineering analysis or testing, NTEA asserted that this was not a viable option because the agency has acknowledged that most final stage manufacturers do not have the engineering or financial resources to conduct the necessary testing or engineering analysis.

In response to NTEA, this agency does not understand that group to be arguing that its members should be permitted to act in a manner inconsistent with the Vehicle Safety Act. The essential requirements of the Act and the certification regulations issued thereunder are beyond dispute.

Section 108 of the Safety Act requires that all vehicles subject to a standard comply with that standard. Each vehicle subject to a standard must comply with that standard at the time of sale. This means that a multi-stage vehicle must, as completed by the final stage

manufacturer, be in compliance. If a final stage manufacturer were allowed to complete a vehicle without regard to the vehicle's compliance with the standard, public safety would suffer.

Under section 114 of the Safety Act, the manufacturer of a vehicle subject to a standard must certify that the vehicle complies with that standard. To deal with instances in which there is more than one manufacturer, as in the case of multi-stage vehicles, the agency has issued regulations to allocate certification responsibility among the manufacturers. NHTSA believes that its allocation of responsibility is consistent with *Rex Chainbelt, Inc. v. Volpe*, 488 F.2d 757, 761-62 (7th Cir. 1973). In that case, the 7th Circuit held that

In instances where the customer purchases a chassis cab from its manufacturer and thereafter the mixer from the mixer manufacturer, the "entire vehicle" must be certified via two certifications, with the chassis-cab manufacturer certifying its chassis-cab, and with the mixer certifying its mixer and the effect of the mounting, if any, to obtain effective certification of the "entire vehicle."

To facilitate the modification and, if necessary, the certification of completed vehicles, the certification regulations provide several options for statements to be made by incomplete vehicle manufacturers to subsequent manufacturers. Two options available to incomplete vehicle manufacturers are relevant to manufacturers which expect to make significant changes to incomplete vehicles:

1. Certify that the completed vehicle will comply with the standards if it is completed within specifications established by the incomplete vehicle manufacturer; or
2. State that conformity with the standards is not substantially affected by the design of the incomplete vehicle.

When the incomplete vehicle manufacturer follows the first course of action listed above, it provides specifications that generally establish some limits on the parameters of the completed vehicle, such as its weight, height of center of gravity, and so forth. When the vehicle is completed within the incomplete vehicle manufacturer's specifications, the final stage manufacturer need only so state on its certification label and the responsibility for the vehicle's conformity with the standards rests entirely on the incomplete vehicle manufacturer.

However, when the final stage manufacturer chooses to complete the vehicle outside of the specifications established by the incomplete vehicle manufacturer, the final stage

manufacturer must assume the responsibility for the vehicle's conformity with the safety standards. This means that the final stage manufacturer cannot rely upon the incomplete vehicle manufacturer's specifications as the basis for certifying that the completed vehicle conforms with applicable safety standards. Instead, the final stage manufacturer must conduct its own testing or engineering analysis as the basis for certifying that the completed vehicle conforms with the safety standards.

As noted in the final rule requiring dynamic testing of front seat safety belts in light trucks and light multipurpose passenger vehicles under Standard No. 208 (52 FR 44898, November 23, 1987), very few final stage manufacturers and alterers have the technical and financial resources necessary to conduct testing or engineering analyses to determine compliance with dynamic test requirements. Absent the resources necessary to conduct such testing or engineering analyses, the final stage manufacturer cannot legally complete its vehicles outside the incomplete vehicle manufacturer's specifications. Thus, even before Standard No. 204 applied to final stage manufacturers' completed vehicles, very few of those manufacturers could legally complete vehicles outside the specifications established by the incomplete vehicle manufacturers, because the vast majority of final stage manufacturers lack the resources needed to assume responsibility for the certification of the completed vehicle. NHTSA believes the steering control protection requirements will have a minimal impact on these final stage manufacturers, since they are already obliged, as a practical matter, to complete all of their vehicles within the limits established by the incomplete vehicle manufacturer in any case.

The small percentage of these small businesses that have the necessary resources to conduct crash testing and brake testing or engineering analyses were the only final stage manufacturers that could complete vehicles outside of the incomplete vehicle manufacturer's specifications prior to the establishment of the dynamic testing requirements. These final stage manufacturers can evaluate compliance with the dynamic testing requirements during the engineering analyses or crash testing they now conduct to evaluate the compliance of their completed vehicles with Standard Nos. 212, 219, and 301. If they conduct crash testing at present, the only change would be that the final stage manufacturers would now have to test to FMVSS No. 204, which should not

be a significant burden since the test could be combined with testing conducted for the other crash-tested standards. Accordingly, NHTSA disagrees with the NTEA that the extension of Standard No. 204 will significantly affect final stage manufacturers engaged in the production of light trucks and vans.

When the incomplete vehicle manufacturer follows the second course of action listed above; i.e., states that conformance to a particular safety standard is not substantially affected by the design of the incomplete vehicle, the final stage manufacturer is responsible for certifying that the completed vehicle conforms to that safety standard. In this case, the final stage manufacturer is required by the Safety Act to exercise due care in certifying that the completed vehicle complies with the applicable safety standard. Any final stage manufacturer that has the necessary resources to do so may conduct the necessary testing or engineering analysis, and certify that the vehicles it completes from this manufacturer's incomplete vehicles comply with the applicable safety standards. On the other hand, if the final stage manufacturer lacks the financial or engineering resources to conduct the appropriate testing or engineering analyses to exercise due care in its certification, it cannot purchase any incomplete vehicles from manufacturers that state that conformance is not substantially affected by the design of the incomplete vehicle. Instead, these smaller final stage manufacturers must purchase their incomplete vehicles from those incomplete vehicle manufacturers that certify the completed vehicle will comply with the standard when completed within specifications.

When a final stage manufacturer decides not to stay within the specifications of an incomplete vehicle manufacturer, he must assume the responsibilities for compliance and provide certification. The agency cannot exempt the final stage manufacturer from the certification requirements.

The agency can, however, change the applicability of a standard to minimize the certification problems of final stage manufacturers to the extent consistent with the interests of safety. This is precisely what the agency did in specifying the limitations in Standard No. 204 on GVWR and unloaded vehicle weight.

Those vehicles completed by final stage manufacturers within the limits established in the final rule will be subject to Standard No. 204's requirements. The safety need for these

vehicles to comply with the dynamic testing requirements is identical to the safety need for compliance by the same size vehicles manufactured in a single stage by the larger manufacturers. Since the dynamic testing requirements also satisfy all other criteria in the Safety Act for vehicles produced by these small manufacturers that are within the established weight limits, NHTSA has no basis for excluding these vehicles from the dynamic testing requirements.

NTEA is correct in suggesting that the extended requirements of Standard No. 204 will impose some additional requirements on final stage manufacturers. However, they will do so only to the extent that those manufacturers do not adhere to the specifications of the incomplete vehicle manufacturers. Further, the dynamic testing requirements of Standard No. 204 do not represent either the first or only instance in which the agency has adopted safety requirements which carry with them compliance and certification costs that may exceed the resources which final stage manufacturers would need if they do not adhere to the specifications of the incomplete vehicle manufacturer and must certify that their vehicles comply with those safety requirements. Only final stage manufacturers that have the necessary resources to conduct 30 mph barrier crash test or engineering analyses of that condition could certify that their completed vehicles complied with the windshield mounting and windshield zone intrusion standards (Standard Nos. 212 and 219, respectively), or the fuel system integrity standard (Standard No. 301). Additionally, only those final stage manufacturers that have the necessary resources to conduct brake testing could certify that their completed vehicles complied with the braking standards (Standard No. 105 for hydraulic brake systems and Standard No. 121 for air brake systems). Notwithstanding the fact that to this agency's knowledge few, if any, of the final stage manufacturers have the necessary financial and technical resources to certify that their completed vehicles comply with these standards, the Safety Act expressly requires them to so certify.

With regard to NTEA's assertion that final stage manufacturers cannot use a heavier chassis because of contract restrictions, there is no indication at this time that the incomplete vehicle manufacturers will have to include limits on specifications in addition to the limits currently set for such specifications as vehicle weight, weight distribution, and center of gravity

height. There is no evidence that the specification established by the incomplete vehicle manufacturers for vehicles subject to the dynamic testing requirements will necessarily be more stringent than the specifications established at the present. The agency does not believe that any incomplete vehicle manufacturer can, as a practical matter, establish unreasonably stringent limitations for its incomplete vehicles, since the final stage manufacturers would then purchase their incomplete vehicles from other manufacturers, who would presumably establish reasonable

limitations for their incomplete vehicles. No incomplete vehicle manufacturer has submitted any testing or engineering analyses. It has conducted showing what additional limitations it will have to impose on its incomplete vehicles subject to the dynamic testing requirements. Until such evidence becomes available, the agency has no basis for changing the requirements established after considering the currently available information.

After considering these petitions, the agency has concluded that they have not presented any basis on which to change

the steering control rearward displacement requirements for light trucks and MPVs. These petitions are, therefore, denied. The requirements of Standard No. 204 set forth in the November 23, 1987 final rule will apply to all subject light trucks and MPVs manufactured on or after September 1, 1991.

Issued on June 1, 1989.
Jeffrey R. Miller,
Acting Administrator.
[FR Doc. 89-13408 Filed 6-6-89; 8:45 am]
BILLING CODE 4910-02-M

Proposed Rules

Federal Register

Vol. 54, No. 106

Wednesday, June 7, 1989

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL ELECTION COMMISSION

11 CFR Parts 100 and 110

[Notice 1989-6]

Contributions and Expenditures; Prohibited Contributions and Expenditures

AGENCY: Federal Election Commission.

ACTION: Second notice of proposed rulemaking.

SUMMARY: The Commission requests comments on proposed revisions to its regulations at 11 CFR 100.7(b)(8), 100.8(b)(9), and 110.4(a). Paragraphs 100.7(b)(8) and 100.8(b)(9) exempt certain unreimbursed payments for transportation and subsistence costs from the definitions of contribution and expenditure. These regulations implement section 431(8) of the Federal Election Campaign Act of 1971, as amended (the "Act" or "FECA") 2 U.S.C. 431 *et seq.* This Notice seeks comments on three versions of these rules.

11 CFR 110.4(a) prohibits foreign nationals from making contributions and other persons from accepting their contributions in connection with any election for local, State, or Federal public office. The proposed revision would add references to expenditures and would make clear that foreign nationals may not participate in certain election-related activities. Section 441e of the Act is the underlying statutory provision.

The proposed rules that follow do not represent the final views of the Commission on amendments to 11 CFR 100.7(b)(8), 100.8(b)(9), and 110.4(a). The section below on Supplementary Information provides additional information about the regulatory proposals.

DATE: Comments must be received on or before July 7, 1989.

ADDRESSES: Comments must be made in writing and addressed to Ms. Susan E. Propper, Assistant General Counsel,

Federal Election Commission, 999 E Street, NW., Washington, DC 20463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, Federal Election Commission, (202) 376-5890 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: The Commission seeks comments on proposed revisions to its regulations at 11 CFR 100.7(b)(8), 100.8(b)(9), and 110.4(a). Although these proposed rules address unrelated topics, the Commission decided that it is more efficient to combine them in a single rulemaking. The changes in §§ 100.7(b)(8) and 100.8(b)(9) concern discrete issues that do not require a large-scale rulemaking. The changes suggested for § 110.4(a) raise issues that the Commission did not address in its earlier rulemaking devoted to 11 CFR 110.3 through 110.8. See 51 FR 27183 (July 30, 1986).

On September 15, 1988, the Commission offered for comment proposed revisions of, *inter alia*, 11 CFR 100.7(b)(8) and 100.8(b)(9). 53 FR 35827. No comments were received. After further consideration of the issues presented by these rules, the Commission developed the several alternative suggestions that it now offers for comment.

A. Travel Expense Exemption

An individual's unreimbursed payments for personal travel expenses are exempt from the definition of contribution if the unreimbursed payments for travel on behalf of a candidate with respect to each election do not exceed \$1000 or if the unreimbursed payments for travel on behalf of all political committees of a political party do not exceed \$2000 in a calendar year. 2 U.S.C. 431(8)(B)(iv). The Commission's regulations implement this exemption at 11 CFR 100.7(b)(8) and 100.8(b)(9).

The Commission seeks comments on three alternative regulatory proposals. The first proposal, Alternative 1-A, is described within this narrative. The other two proposals, Alternative 1-B and Alternative 1-C, are set out formally as alternative regulations for §§ 100.7(b)(8) and 100.8(b)(9) and are also discussed here.

Alternative 1-A would retain the current regulations, which divide the exempt personal travel expenses into two components or separate categories:

transportation expenses and subsistence expenses. The term "subsistence expenses" here includes both meals and lodging. The regulations apply the dollar limitations specified in the governing statute only to unreimbursed transportation expenses incurred by individuals for travel on behalf of a candidate or a political party. No dollar limitations apply to unreimbursed payments by volunteers for usual and normal subsistence expenses that are incidental to the individuals' volunteer activities; these payments are neither contributions nor expenditures regardless of their aggregate value. The present regulations do not exempt unreimbursed payments by paid campaign and party committee workers for their subsistence expenses.

Alternative 1-B, like Alternative 1-A, differentiates between exempt transportation expenses and exempt subsistence expenses. Unlike Alternative 1-A, however, it includes within the subsistence exemption unreimbursed payments by paid campaign and party committee workers for the usual and normal subsistence expenses that they incur while traveling at their own expense on behalf of their candidate or their political party. Alternative 1-B is in substance the same as the proposed revision of 11 CFR 100.7(b)(8) and 100.8(b)(9) set out in the September 15, 1988, Notice of Proposed Rulemaking. 53 FR 35827.

As the September 15, 1988, Notice of Proposed Rulemaking pointed out, when the travel expense exemption was first added to the Act in 1974, it covered volunteers only. See 2 U.S.C. 431(e)(5)(D) and (f)(4)(E) (1974). The Commission's earliest regulations on this provision addressed, therefore, a volunteer's transportation and subsistence expenses. See 11 CFR 100.4(b)(6) and 100.7(b)(8) (1977). The 1979 amendments to the FECA expanded the class of persons who could travel under the exemption to include "individuals who are being paid by a candidate or party committee." H.R. Rep. 96-422, 96th Cong., 1st Sess. at 8. When the Commission redrafted its regulations in 1980 to reflect the new amendments, however, it broadened only the transportation exemption. The provision allowing only volunteers to incur unlimited personal subsistence expenses in the course of their volunteer activities remained unchanged.

Because the role of paid employees differs from that of volunteers. Alternative 1-B treats the two groups separately. Under the proposed rules, volunteers would continue to be able to pay all their subsistence costs incidental to their volunteer activities. In contrast, paid campaign and party committee workers would be permitted to defray their own subsistence expenses without thereby making a contribution or an expenditure only while they are paying their own transportation costs under the travel exemption.

Paid workers are likely to travel extensively on a candidate's or a party's behalf. An unlimited subsistence exemption for these persons could result in staff members' paying considerable amounts for such costs. Consequently, Alternative 1-B would limit payment of subsistence expenses by such workers to those expenses that they incur while they are traveling under the exemption. This makes it clear that costs paid by paid workers at other times must either be reimbursed or be considered contributions or expenditures. In paying their usual living costs when they are not on travel status, paid workers would not, however, be making contributions or expenditures.

Alternative 1-B differs from Alternative 1-A in two additional respects. First, it would divide 11 CFR 100.7(b)(8) and 100.8(b)(9) into two subsections. Paragraph (i) would cover transportation costs, and paragraph (ii) would cover subsistence costs. Second, it would provide in paragraph (ii) a definition of "usual and normal subsistence expenses." Only personal living expenses, such as the costs of food and lodging, of a volunteer or a paid worker would be included. Other expenses, such as the cost of renting a meeting room, would not come within the exemption. This proposed definition is consistent with the definition of "subsistence" recently promulgated at 11 CFR 106.2(b)(2)(iii). See 52 20864, 20875 (June 3, 1987).

Alternative 1-C would provide a new approach to the travel expenses exemption. Unlike the other two alternatives, this proposed revision would make no distinction between expenses incurred by paid campaign or party committee workers and expenses incurred by volunteers. In addition, the dollar limitations of the statutory travel exemption would apply not only to an individual's unreimbursed transportation expenses but also to that individual's unreimbursed lodging expenses. The two kinds of expenses would be aggregated, and the total counted against the pertinent dollar

limitations. The individual's own unreimbursed meal expenses, however, would be subject to no dollar limitations; they would be totally exempt.

The Commission welcomes comment on these three alternative approaches and suggestions for other approaches.

B. Foreign Nationals

Section 441e of the Act prohibits a foreign national, directly or through another person, from making a contribution in connection with any election for political office or in connection with any selection of candidates for political office. Neither the statute nor the current implementing regulation, 11 CFR 110.4(a), refers explicitly to expenditures by foreign nationals. When the Act prohibits contributions by a certain class of persons, it usually also prohibits expenditures by that class in order to ensure that the persons cannot accomplish indirectly what they are prohibited from doing directly. See, e.g., 2 U.S.C. 441b. To foreclose the indirect violation of section 441e, the Commission proposed to revise 11 CFR 110.4(a)(1) to explicitly prohibit expenditures as well as contributions. The clarifying language would cover independent expenditures by foreign nationals as well as other kinds of expenditures.

The revision also would add a new paragraph (a)(3), to prohibit a foreign national from participating in election-related decisions by corporations, labor organizations, or political committees, including their decisions concerning contributions and expenditures. Present paragraph (a)(3) would become paragraph (a)(4).

The prohibition on contributions by foreign nationals has its origin in legislation that predates the FECA, the 1966 amendments to the Foreign Agents Registration Act. In 1976, in addition to remedying the constitutional infirmities that *Buckley v. Valeo*, 424 U.S. 1 (1976), had found in the FECA, Congress incorporated into the FECA the foreign nationals provision, codified at 18 U.S.C. 613. The only change that Congress made was to replace the earlier statute's criminal penalties with new penalty and enforcement provisions.

Nothing in section 441e's legislative history suggests that Congress intended to deviate from the FECA's general pattern of treating contributions and expenditures in parallel fashion. See S. Rep. No. 94-677, 94th Cong., 2d Sess. 1, 11 (1976). Cf. H.R. Rep. No. 96-422, 96th Cong., 1st Sess. 11 (1979) ("Since all of these provisions are specific exemptions to the definition of contribution,

exemptions from the expenditure definition are not necessary.") Further, under the 1976 amendments to the FECA, "contribution" and "expenditure" are interrelated terms. For example, an expenditure made by a person in cooperation, consultation, or concert with a candidate or a committee is an in-kind contribution. 2 U.S.C. 441a(a)(7)(B). And when receiving an in-kind contribution, a political committee reports that activity as both an expenditure and a contribution. 11 CFR 104.13(a)(2). In general, a political committee reports the contributions that it makes to candidates as expenditures. See 11 CFR 100.8(a)(1) and 104.3(b).

The Commission faced an analogous problem in 1977 when it drafted regulations to implement section 441c(a) of the FECA (prohibition on contributions by Government contractors). See the Explanation and Justification of 11 CFR 115.2 found in "Communication from the Chairman," H.R. Doc. No. 95-44, 95th Cong. 1st Sess. 121 (January 12, 1977).

The Commission has not yet had to address directly the legality of expenditures by foreign nationals. For example, the advisory opinions concerning corporations owned by foreign principals have relied upon representations by the requesters that no foreign national would participate in the decisions by the corporations' separate segregated funds regarding the funds' contributions or expenditures. See e.g., Advisory Opinion 1982-10. Thus, although the Commission has never directly ruled on the propriety of foreign nationals' making expenditures or of their involving themselves in decisions affecting political committees, the Commission has consistently assumed that the statutory prohibition governing foreign nationals covers these activities.

The Commission did not expressly address this topic in its July 1986 Notice of Proposed Rulemaking on 11 CFR 110.3 through 110.6. See 51 FR 27183, 27186-87 (July 30, 1986). Nor did the public's comments raise the issue. Because reopening the 1986 rulemaking would further delay its completion, the Commission decided to include the proposed revisions to the foreign nationals regulations in this separate, miscellaneous rulemaking.

The Commission welcomes comments on these proposed revisions to 11 CFR 110.4(a).

List of Subjects

11 CFR Part 100

Elections.

11 CFR Part 110

Aliens, Political committees and parties.

Certification of No Effect Pursuant To 5 U.S.C. 605(b) [Regulatory Flexibility Act]

These proposed rules will not, if promulgated, have a significant economic impact on a substantial number of small entities. The basis for this certification is that any small entities affected are already required to comply with the requirements of the Act in these areas.

For the reasons set out in the preamble it is proposed to amend 11 CFR, Chapter I, Parts 100 and 110 as follows:

PART 100—SCOPE AND DEFINITIONS (2 U.S.C. 431)

1. The authority citation for Part 100 continues to read as follows:

Authority: 2 U.S.C. 431, 438(a)(6).

2. By revising §§ 100.7(b)(8) and 100.8(b)(9) to read as follows:

Alternative 1-B

§ 100.7 Contribution (2 U.S.C. 431(8)).

(b)
(8)(i) No contribution results if an individual's aggregate unreimbursed payments from his or her personal funds for transportation expenses incurred by that individual for travel on behalf of a candidate do not exceed \$1,000 with respect to a single election. No contribution results if an individual's aggregate unreimbursed payments from his or her personal funds for transportation expenses incurred by that individual for travel on behalf of all political committees of a political party do not exceed \$2,000 in a calendar year.

(ii) Any unreimbursed payment from an individual's personal funds for that individual's usual and normal subsistence expenses that the individual incurs while traveling under the exemption set forth in paragraph (b)(8)(i) of this section is not a contribution. Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses that the volunteer incurs at any time incidental to his or her volunteer activity is not a contribution. For purposes of this section, "usual and normal subsistence expenses" means costs incurred by an individual, including a volunteer, for his or her personal living expenses, such as the costs of food and lodging.

§ 100.8 Expenditure (2 U.S.C. 431(9)).

(b)
(9)(i) No expenditure results if an individual's aggregate unreimbursed payments from his or her personal funds for transportation expenses incurred by that individual for travel on behalf of a candidate do not exceed \$1,000 with respect to a single election. No expenditure results if an individual's aggregate unreimbursed payments from his or her personal funds for transportation expenses incurred by that individual for travel on behalf of all political committees of a political party do not exceed \$2,000 in a calendar year.
(ii) Any unreimbursed payment from an individual's personal funds for that individual's usual and normal subsistence expenses that the individual incurs while traveling under the exemption set forth in paragraph (b)(9)(i) of this section is not an expenditure. Additionally, any unreimbursed payment from a volunteer's personal funds for usual and normal subsistence expenses that the volunteer incurs at any time incidental to his or her volunteer activity is not an expenditure. For purposes of this section, "usual and normal subsistence expenses" means costs incurred by an individual, including a volunteer, for his or her personal living expenses, such as the costs of food and lodging.

Alternative 1-C

§ 100.7 Contribution (2 U.S.C. 431(8)).

(b)
(8)(i) No contribution results if an individual's aggregate unreimbursed payments from his or her personal funds for travel expenses incurred by that individual for travel on behalf of a candidate do not exceed \$1,000 with respect to a single election. No contribution results if an individual's aggregate unreimbursed payments from his or her personal funds for travel expenses incurred by that individual for travel on behalf of all political committees of a political party do not exceed \$2,000 in a calendar year.

(ii) Any unreimbursed payment from an individual's personal funds for his or her own meal expenses that are incidental to the individual's activity on behalf of a candidate or on behalf of a political committee of a political party is not a contribution.

§ 100.8 Expenditure (2 U.S.C. 431(9)).

(b)

(9)(i) No expenditure results if an individual's aggregate unreimbursed payments from his or her personal funds for travel expenses incurred by that individual for travel on behalf of a candidate do not exceed \$1,000 with respect to a single election. No expenditure results if an individual's aggregate unreimbursed payments from his or her personal funds for travel expenses incurred by that individual for travel on behalf of all political committees of a political party do not exceed \$2,000 in a calendar year.

(ii) Any unreimbursed payment from an individual's personal funds for his or her own meal expenses that are incidental to the individual's activity on behalf of a candidate or on behalf of a political committee of a political party is not an expenditure.

PART 110—CONTRIBUTION AND EXPENDITURE LIMITATIONS AND PROHIBITIONS

3. The authority citation for Part 110 continues to read as follows:

Authority: 2 U.S.C. 431(8), 431(9), 432(c)(2), 437d(8), 438(a)(6), 441a, 441b, 441d, 441e, 441f, 441g, 441h, and 441i.

4. By revising paragraph 110.4(a) to read as follows:

§ 110.4 Prohibited contributions (2 U.S.C. 441e, 441f, 441g, 432(c)(2)).

(a) *Contributions or expenditures by foreign nationals.* (1) A foreign national shall not directly or through any other person make a contribution or an expenditure, or expressly or impliedly promise to make a contribution or an expenditure, in connection with a convention, a caucus, or a primary, general, special, or runoff election in connection with any local, State, or Federal public office.

(2) No person shall solicit, accept, or receive a contribution as set out above from a foreign national.

(3) A foreign national shall not direct, dictate, control, or directly or indirectly participate in the decision-making process of any person, such as a corporation, labor organization, or political committee, with regard to such person's Federal or nonfederal election-related activities, such as decisions concerning the making of contributions or expenditures in connection with elections for any local, State, or Federal office or decisions concerning the administration of a political committee.

(4) For purposes of this section,

"foreign national" means—

(i) A foreign principal, as defined in 22 U.S.C. 611(b); or

(ii) An individual who is not a citizen of the United States and who is not lawfully admitted for permanent residence, as defined in 8 U.S.C. 1101(a)(20);

(iii) Except that "foreign national" shall not include any individual who is a citizen of the United States.

Dated: June 1, 1989.

Lee Ann Elliott,
Vice Chairman, Federal Election
Commission.

[FR Doc. 89-13486 Filed 6-6-89; 8:45 am]

BILLING CODE 9710-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR-88-6]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before August 7, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. —, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are

filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 287-3132.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 2, 1989.
Denise Donohue Hall,
Manager, Program Management Staff, Office
of the Chief Counsel.

Petitions for Rulemaking

Docket No.: 25849.

Petitioner: Victims of Pan Am Flight 103.

Regulation Affected: 14 CFR Part 108.

Description of Petition: To require the following on international flights: (1) A positive match of checked baggage with passengers; (2) hand-inspection of all carry-on baggage; (3) examination of all checked baggage by physical inspection, a Thermal Neutron Analysis (TNA) device or a colorized electronic x-ray; and (4) a ban of electronic equipment large enough to contain explosives that could destroy the plane until carriers have colorized electronic x-rays or TNA devices.

Petitioners' Reason for the Rule: The petitioners believe that there is a need for increased security because not all that is humanly possible has been done to safeguard air travel from terrorists.

Docket No.: 25850.

Petitioners: Aviation Consumer Action Project and Victims of Pan Am Flight 103.

Regulation Affected: 14 CFR Part 108.

Description of Petition: After FAA evaluation of the credibility of threats against international air travel and notification to air carriers, to require air carriers to—(1) Notify passengers and flight crewmembers of credible threats to flights, (2) establish a hotline to supply information about all threats, and (3) publicize the hotline number by signage at airports and imprinting of tickets.

Petitioners' Reason for Rule: The petitioners believe that airline passengers and crews should be able to determine for themselves whether to take the risk of flying in the face of a terrorist threat.

[FR Doc. 89-13449 Filed 6-6-89; 8:45 am]

BILLING CODE 4010-13-M

14 CFR Part 39

[Docket No. 89-NM-35-AD]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to supersede an existing airworthiness directive (AD), applicable to British Aerospace Model BAe 146 series airplanes, which currently requires repetitive inspections of the nose wheel steering cuff ring nut for broken locking wire and security of the ring nut, and repair, if necessary. That action was prompted by a report of the loss of nose gear steering. This proposal would require retorquing of the steering cuff ring nut, repetitive inspections for security and lockwire integrity at revised intervals, and installation of a modification which terminates the need for the repetitive inspections. This action is prompted by further investigation which revealed that loss of the ring nut torque can occur whether or not the lockwire is intact. This condition, if not corrected, could result in loss of control of the airplane on the ground.

DATES: Comments must be received no later than July 31, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-35-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, D.C. 20041. This information may be examined at the FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington, 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the

proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-35-AD." The post card will be date/time stamped and returned to the commenter.

Discussion

On October 6, 1988, FAA issued AD 88-22-05, Amendment 39-6047 (53 FR 41152; October 20, 1988), applicable to British Aerospace Model BAe 146 series airplanes, that requires repetitive inspections of the nose wheel steering cuff ring nut for broken locking wire and security of the ring nut, and repair, if necessary. That action was prompted by a report of the loss of nose gear steering. This condition if not corrected, could result in loss of control of the airplane on the ground.

Since issuance of that AD, the manufacturer has conducted further investigation which revealed that loss of ring nut torque can occur whether or not the locking wire is intact. Loss of torque, failure of the locking wire, and unscrewing of the nut can lead to the same unsafe condition that was addressed in the existing AD.

British Aerospace has issued Service Bulletin 32-A95, Revision 1, dated December 2, 1988, which describes additional procedures for retorquing the nose wheel steering cuff ring nut, in addition to the existing inspections for broken locking wire, security of the ring nut, alignment of the paint mark, and repair, if necessary. This revision to the service bulletin also recommends changes to the repetitive inspection intervals and references a modification

of the nose wheel steering cuff ring nut locking means, modification HCM70409A, which, if installed, eliminates the need for repetitive inspections.

British Aerospace has also issued Service Bulletin 32-95-70409A, dated December 12, 1988, which describes procedures for modification of the nose landing gear steering cuff ring nut locking means. This modification introduces an improved ring nut locking system, which, if installed, terminates the need for the repetitive inspections.

The United Kingdom Civil Aviation Authority (CAA) has classified these service bulletins as mandatory.

This airplane model is manufactured in the United Kingdom and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Administration and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design registered in the United States, an AD is proposed which would supersede AD 88-22-05, Amendment 39-6047, to require checks of the torque on the nose gear steering cuff ring nut; repetitive inspections of the nose wheel steering cuff ring nut for locking wire integrity, security of the cuff ring nut, and correct alignment of the nut paint mark; and repair, if necessary. This proposed AD would also require installation of an improved locking arrangement for the cuff ring nut, in accordance with the service bulletin previously mentioned. Installation of the improved cuff ring nut locking means is considered to be terminating action for the repetitive inspection requirements in the proposed AD.

It is estimated that 45 airplanes of U.S. registry would be affected by this AD. It would take approximately one-half manhour per airplane to accomplish the additional inspections required by this amendment. It would require approximately one and one-half manhours to accomplish the required modification at an average labor charge of \$40 per manhour. The parts will be provided by the manufacturer at no cost. Based on these figures, the total additional cost impact of this AD on U.S. operators is estimated to be \$3,600.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this proposal

would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 100(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 88-22-05, Amendment 39-6047 (53 FR 41152; October 20, 1988), as follows:

British Aerospace: Applies to all British Aerospace Model BAe 146 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent loss of control of the airplane on the ground, accomplish the following:

A. Within 100 landings after the effective date of this AD, or within 100 landings after the last inspection accomplished in accordance with AD 88-22-05, Amendment 39-6047, whichever occurs later, check the torque on and mark the nose wheel steering cuff ring nut, in accordance with the procedures in paragraph 2.A. of British Aerospace Service Bulletin 32-A95, Revision 1, dated December 2, 1988.

1. If the ring nut torque loading is found to be incorrect, prior to further flight, re-torque in accordance with paragraph 2.A.(2) of the service bulletin, and reinspect in accordance with paragraph 2.B. of the service bulletin within 30 days and thereafter at intervals not to exceed 300 landings.

2. If the ring nut torque loading is found to be within the limits specified in the service bulletin, repeat the inspections in accordance with paragraph 2.B. of British Aerospace

Service Bulletin 32-A95, Revision 1, dated December 2, 1988, at intervals not to exceed 300 landings.

Note: Paragraph 2.A. of British Aerospace Service Bulletin 32-A95 refers to British Aerospace Service Bulletin 32-29 for checking the steering friction damper torque.

B. Within 2,500 landings after the effective date of this AD, modify the nose wheel steering ring nut locking means in accordance with British Aerospace modification Service Bulletin 32-95-70409A, dated December 12, 1988. Installation of this modification constitutes terminating action for the inspection requirements of this AD.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base for the accomplishment of the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace PLC, Librarian for Service Bulletins, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on May 30, 1989.

Leroy A. Keith,
Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 89-13457 Filed 6-6-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-13]

Proposed Revision to Transition Area, Albemarle, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Albemarle, NC, transition area. A nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) is planned for Runway

22 at the Stanly County Airport. This revision would add an arrival area extension for protection of instrument flight rules (IFR) aircraft executing the new SIAP. Also, a minor correction would be made to the geographic position coordinates of the Stanly County Airport.

DATES: Comment must be received on or before July 14, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-13, P.O. Box 20636, Atlanta, Georgia 30320.

The Official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7648.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7648.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rule-making by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-13." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each

substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Albemarle, NC, transition area. This action would add an arrival area extension to afford airspace protection for IFR aircraft executing a NDB SIAP planned for Runway 22 at the Stanly County Airport. Also, a minor correction would be made to the geographic position coordinates of the airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69

§ 71.181 [Amended]

2. § 71.181 is amended as follows:

Albemarle, NC [Revised]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of Stanly County Airport (Lat. 35°24'54" N., Long. 80°09'04" W.); within three miles each side of the 208° and 041° bearings from the Stanly county NDB (Lat. 35°24'42" N., Long. 80°09'23" W.) extending from the 7-mile radius area to 8.5 miles southwest and northeast of the NDB.

Issued in East Point, Georgia, on May 23, 1989.

William D. Wood,
Acting Manager, Air Traffic Division
Southern Region.

[FR Doc. 89-13458 Filed 6-6-89; 8:45 am]

BILLING CODE 4910-13-M

RAILROAD RETIREMENT BOARD

20 CFR Part 335

RIN 3220-AA74

Sickness Benefits

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to revise Part 335 of its regulations, which relates to sickness benefits under the Railroad Unemployment Insurance Act (Act), in order to delete obsolete provisions, to liberalize certain time limits relating to the filing of claims, to incorporate the 1988 amendments to the Act, and to make the regulation easier to read and understand.

DATE: Comments must be submitted on or before July 7, 1989.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Railroad Retirement Board, Bureau of Law, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4513 (FTS 386-4513).

SUPPLEMENTARY INFORMATION: The Railroad Unemployment Insurance Act was amended to eliminate maternity benefits as a separate category of benefits available to female railroad

employees. The Railroad Unemployment Insurance Act now makes sickness benefits available to a female railroad employee for days on which she is not able to work, or working would be injurious to her health, because of pregnancy, miscarriage or childbirth. Accordingly, Subpart B, which treats maternity benefits as a separate and distinct category of benefits, is proposed to be removed.

In addition, the Board proposes to revise § 335.104, Filing a Statement of Sickness and Claim for Sickness Benefits, to more clearly define the circumstances under which late forms will be accepted as timely filed and to allow a claimant 15 days to file a claim for sickness benefits for a particular 14-day claim period. (See proposed § 335.4.)

The Board also proposes to amend § 335.103 to add clinical psychologists and certified nurse mid-wives to the list of medically qualified individuals who may issue statements of sickness in support of the payment of sickness benefits.

In addition, the Railroad Unemployment Insurance and Retirement Improvement Act of 1988 (Pub. L. 100-647) amended section 2(e) of the Railroad Unemployment Insurance Act so as to provide that no sickness benefits may be paid to an employee in his or her first registration period in a benefit year. Part 335 is proposed to be revised to explain how this waiting period will be applied to claims for sickness benefits under the Railroad Unemployment Insurance Act. See proposed § 335.6. Finally, all sections have been completely rewritten to make them easier to read and understand.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collections contemplated by this Part have been approved by the Office of Management and Budget.

List of Subjects in 20 CFR Part 335

Railroad employees, Railroad sickness benefits.

For the reasons set out in the preamble, Part 335 of Title 20 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 335—SICKNESS BENEFITS

Sec.
335.1 General.
335.2 Manner of claiming sickness benefits.
335.3 Execution of statement of sickness and supplemental doctor's statement.
335.4 Filing statement of sickness and claim for sickness benefits.

Sec.
335.5 Death of employee.
335.6 Payment of sickness benefits.
Authority: 45 U.S.C. 362(i) and 362(1).

§ 335.1 General.

(a) *Statutory basis.* The Railroad Unemployment Insurance Act provides for the payment of sickness benefits to a qualified railroad employee for days of sickness within a period of continuing sickness. To establish basic eligibility for sickness benefits, a qualified employee must have at least four consecutive days of sickness with respect to each period of continuing sickness. The terms "day of sickness" and "period of continuing sickness", as used in this part, are defined in sections 1(k) and 2(a) of the Act, respectively, and paragraphs (b) and (c) of this section. As evidence of days of sickness based upon illness or injury or upon pregnancy, miscarriage or childbirth, section 1(k) requires an employee to file a statement of sickness. Other information that is required to identify an employee's days of sickness is obtained by means of an application for sickness benefits at the beginning of each period of continuing sickness and by means of a claim for sickness benefits which is filed for each registration period within a period of continuing sickness. The term "registration period", generally refers to a period of 14 consecutive days and is defined in paragraph (d) of this section.

(b) *Day of sickness.* The term "day of sickness" means, in general, any calendar day, including days that would normally be rest days, on which an employee is not able to work because of any physical or mental illness or injury. With respect to a female employee, a "day of sickness" also includes any calendar day on which she is not able to work, or working would be injurious to her health, because of pregnancy, miscarriage or childbirth.

(c) *Period of continuing sickness.* (1) The term "period of continuing sickness" refers to a period of time when an employee is not able to work on account of illness, injury, sickness or disease, including inability caused by pregnancy, miscarriage or childbirth. An employee has a period of continuing sickness under either of these circumstances:

(i) He or she has any number of "consecutive" days of sickness based on one or more infirmities; or
(ii) He or she has any number of "successive" days of sickness based on a single infirmity and there is no interruption of more than 90

"consecutive" days which are not days of sickness.

(2) Days of sickness are "consecutive" when they occur one after another continuously and without interruption by any day that is not a day of sickness. Days of sickness are "successive" when one or more days of sickness follow any day of sickness with an interval of one or more days that are not days of sickness.

Example: An employee is sick for 11 "consecutive" days from October 1 through October 11, meaning that each day in the period October 1 through October 11 is a day of sickness and there is no day in that period that is not a day of sickness. If the employee also had days of sickness on October 16, 17, 18, 21 and 22, those five days are considered "successive" days of sickness.

(3) A period of continuing sickness with respect to any employee begins with the first day of a number of consecutive days of sickness or with the first day of a number of successive days of sickness attributable to a single cause with no interval of more than 90 days that are not days of sickness. In the example given in paragraph (c)(2) of this section, October 1 begins a period of continuing sickness. The days October 16, 17, 18, 21, and 22 are in the period of continuing sickness beginning October 1, and benefits are payable for them, provided that the employee's inability to work on those five days is due to one or more of the same infirmities that caused the employee to be unable to work on the days from October 1 through October 11. Otherwise, October 16 begins another period of continuing sickness.

(4) A period of continuing sickness ends when either of these circumstances occurs:

(i) 91 consecutive days have elapsed none of which is a day of sickness resulting from the infirmity that was the basis for the preceding days of sickness; or

(ii) One or more days that are not days of sickness have elapsed and a statement of sickness is filed with respect to a day of sickness based on an infirmity other than any infirmity causing inability on the preceding days of sickness. The end of a benefit year, generally the 12-month period beginning July 1 of any year and ending June 30 of the next year (see 45 U.S.C. 351(m)), does not end a period of continuing sickness. In the example in paragraph (c)(2) of this section, if the inability to work on October 16 was not due to an infirmity or infirmities that caused the inability to work on October 11, then a period of continuing sickness ends on October 11. A new application and statement of sickness would be required

in order for the employee to be paid sickness benefits for days beginning October 16. See § 335.2 of this part.

(5) A period of continuing sickness can be interrupted, provided that:

(i) The interruption is for not more than 90 consecutive days; and
(ii) The days of sickness after the interruption are due to one or more of the same causes as the days of sickness before the interruption.

A period of continuing sickness can be interrupted any number of times so long as each interruption is not more than 90 days and the days of sickness are all due to the same cause. If a period of continuing sickness is caused by more than one infirmity, any one of the infirmities can be considered as the single continuing cause that will permit the interruption of the period of continuing sickness for not more than 90 days without ending it.

(d) *Registration period.* The term "registration period" means, with respect to any employee, the period which begins with the first day with respect to which a statement of sickness for a period of continuing sickness is filed in his or her behalf in accordance with this part, or the first such day after the end of a registration period which will have begun with a day with respect to which a statement of sickness for a period of continuing sickness was filed in his or her behalf, and ends with whichever is the earlier of:

(1) The thirteenth day thereafter; or
(2) The day immediately preceding the day with respect to which a statement of sickness for a new period of continuing sickness is filed in his or her behalf. However, each of the successive 14-day periods in an extended sickness benefit period shall constitute a registration period.

(e) *Liability for infirmity.* When sickness benefits are paid to an employee on the basis of an infirmity for which he or she recovers a personal injury settlement or judgment, the Board shall receive reimbursement for the sickness benefits in accordance with Part 341 of this chapter.

§ 335.2 Manner of claiming sickness benefits.

(a) *Forms required for claiming benefits.* To claim sickness benefits for a period of inability to work due to an illness or injury, or in the case of a female employee, pregnancy, miscarriage, or childbirth, an employee must file the following forms:

(1) An application for sickness benefits at the beginning of each period of continuing sickness;

(2) A statement of sickness to accompany the employee's application;

(3) A claim for sickness benefits for each 14-day registration period during the employee's period of continuing sickness; and

(4) A supplemental doctor's statement, if the adjudicating office requests additional proof of the employee's inability to work.

(b) *Mailing or delivering the forms.* The forms required by paragraph (a) of this section may be mailed or delivered to any Board office. If the Board is satisfied that the employee is too sick or injured to execute the required forms, the Board may accept forms executed by someone in the employee's behalf. Instructions for completing and filing the forms are printed on the forms themselves.

(Approved by the Office of Management and Budget under control numbers 3220-0034, 3220-0039 and 3220-0045)

§ 335.3 Execution of statement of sickness and supplemental doctor's statement.

(a) *Who may execute.* A statement of sickness and any required supplemental doctor's statement shall be executed by any of the following individuals:

(1) A licensed medical doctor;
(2) A licensed dentist if the infirmity relates to the teeth or gums;
(3) A licensed podiatrist or chiropodist if the infirmity relates to the feet or toes;
(4) A licensed chiropractor;
(5) A clinical psychologist;
(6) A certified nurse mid-wife; or
(7) The superintendent or other supervisory official of a hospital, clinic, or group health association, or similar organization, in which all examinations and treatment are conducted under the supervision of licensed medical doctors or under the supervision of licensed chiropractors, and in which medical records are maintained for each patient.

(b) *Use of Board form or other form.*

The statement of sickness and supplemental doctor's statement referred to in paragraph (a) of this section shall be completed on the forms prescribed by the Board, except that other standardized medical forms may be substituted if they provide the same information as that called for by the Board's forms.

§ 335.4 Filing statement of sickness and claim for sickness benefits.

(a) *General requirement.* Except as provided in paragraph (e) of this section, statements of sickness and claims for sickness benefits must be filed within the time limits specified by this section. Failure to comply with the time restrictions on filing claims will result in a denial of benefits for days for which

timely statements and claims are not filed, as such days would not be considered days of sickness.

(b) *Statement of sickness.* An employee shall file a statement of sickness within ten calendar days of the first day that he or she wishes to claim as a day of sickness. For example, if an employee which to claim sickness benefits for days starting November 1, the statement of sickness should reach the Board no later than November 10. If the statement of sickness is received November 11, the employee cannot be paid sickness benefits for November 1. Such day would not be considered as a "day of sickness", unless the form may be considered as timely filed under paragraph (d) (3), (4) or (5) of this section.

(c) *Claim for sickness benefits.* An employee shall file a claim for sickness benefits within 15 days of the ending date shown on the claim form, or within 15 days of the date on which the Board mails the claim form to the employee, whichever date is later. Failure to comply with this provision shall bar the payment of sickness benefits with respect to any day included within the calendar period covered by the claim form.

Example: If a form for claiming sickness benefits is mailed to an employee on July 13 for the period from July 1 to July 14, the employee must file the claim within 15 days of July 14 (on or before July 29) to be paid benefits for the period July 1 to July 14. If the claim form was not mailed to the employee until July 16, the claim must be filed within 15 days of July 16 (on or before July 31).

(d) *When form considered timely filed.* The Board will consider a statement of sickness or a claim for sickness benefits as timely filed if:

(1) The statement or form was received in a Board office within the prescribed time; or

(2) The statement or form was mailed to a Board office in accordance with instructions printed on the form and was received as such office; or

(3) The employee made a reasonable effort to file the statement of sickness or claim form within the prescribed time but was prevented from doing so by circumstances beyond his or her control, and such statement or claim was received at a Board office within a reasonable time following the removal of the circumstances that prevented the employee from filing the form. The phrase "circumstances beyond his or her control" shall not include an employee's forgetfulness or lack of knowledge of the sickness benefit program or the time limit for filing for sickness benefits or any other lack of diligence by the employee. For the purposes of this

provision, if a statement of sickness is not received within the prescribed time but is received within 30 days of the first day that an employee intends to claim as a day of sickness, the Board will consider that the employee made a reasonable effort to file the statement within the prescribed time, unless it is clear on the basis of affirmative evidence that the delay was not the result of circumstances beyond the employee's control; or

(4) The employee mistakenly registered for unemployment benefits when he or she should have applied for sickness benefits for the day or days claimed and the appropriate statement of sickness was then received at an office of the Board within a reasonable time after unemployment benefits were denied; or

(5) A female employee not able to work because of pregnancy, miscarriage, or childbirth filed an incorrect statement of sickness form within the prescribed time and after being so informed, filed the correct statement of sickness form within a reasonable period of time thereafter.

Notwithstanding the foregoing, any claim that is not filed within two years of the day or days claimed shall not be considered as timely filed, and such day or days shall not be considered as days of sickness.

(e) *Days for which no statement of sickness deemed filed.* A statement of sickness shall not be deemed to be filed with respect to any day in a benefit year in which the employee is not a qualified employee as defined in section 3 of the Railroad Unemployment Insurance Act or has exhausted his or her rights to sickness benefits under the Act. See Part 337 of this chapter.

§ 335.5 Death of employee.

If an employee dies before filing one or more of the required forms, the form or forms may be filed by or in behalf of the person or persons to whom benefits would be payable pursuant to section 2(g) of the Railroad Unemployment Insurance Act. Such form or forms shall be filed within the time prescribed in § 335.4 of this part. Under these circumstances, the word "employee" as used in § 335.4(b) of this part and as used in § 335.4(d)(3) of this part shall include the individual or individuals by or in behalf of whom the form is filed. The order of distribution for benefits due but unpaid as of the date of an employee's death is the same as the order of distribution for annuities unpaid at death under the Railroad Retirement Act and may be found at § 234.31 of this title.

§ 335.6 Payment of sickness benefits.

(a) *Waiting period.* A qualified employee's first registration period in any benefit year is his or her waiting period, provided that such employee has at least five days of sickness in such registration period, four or which must be consecutive, and files a timely claim for sickness benefits for such period. No benefits are payable for any day of sickness in such registration period.

(b) *Subsequent registration period.* With respect to any subsequent registration period in the same benefit year and the same period of continuing sickness, the Board will pay benefits for each day of sickness in excess of four during such registration period.

(c) *Examples:*

Example 1: An employee has a period of continuing sickness running from May 1 through May 31. All of those days are days of sickness. The employee returned to work June 1. His first registration period in that period of continuing sickness is May 1 to May 14. That registration period, if it is the employee's first one in the benefit year, is a waiting period, and no benefits are payable for any day of sickness therein. The employee's second registration period is May 15 to May 28, and benefits will be paid for each day of sickness in excess of four during such period. The employee's third registration period is May 29 to June 11, but since he or she returned to work on June 1 the employee has only three days of sickness (May 29, 30 and 31), and hence no sickness benefits are payable for that period.

Example 2: An employee has a period of continuing sickness beginning on May 1 and ending on July 31, with all days in the period being days of sickness. The employee's first registration period in the period of sickness is May 1 to May 14. Because that registration period is the employee's first one in the benefit year, the period is the employee's waiting period and no benefits are payable for any of the days therein. Benefits are payable for each day in excess of four during each of the employee's next four registration periods of May 15 to May 28, May 29 to June 11, June 12 to June 25, and June 26 to July 9. July 10 is the beginning date of a new benefit year for the employee. Because the registration period July 10 to July 23 is the employee's first one in the new benefit year, the period is the employee's waiting period and no benefits are payable for any of the days of sickness in the period. The employee's second registration period in the new benefit year is July 24 to August 6. The employee has eight days of sickness in that period, having been found able to return to work as of August 1. Benefits are payable for four days of sickness in that period.

(d) The gross amount of sickness benefits for any registration period in a benefit year, following the waiting period for such year, shall be computed by multiplying the number of days of sickness in excess of four by the employee's daily benefit rate, as

computed under Part 330 of this chapter. From such gross amount the Board will deduct the amount of any social insurance payment apportionable to days of sickness in the registration period, any tier I railroad retirement employment tax imposed under Chapter 22 of the Internal Revenue Code of 1986, and the amount of any overpayment being recovered under Part 340 of this chapter. The net amount remaining shall then be certified to the United States Treasury Department for payment to the employee, unless a portion of such amount has been attached in accordance with Part 350 of this chapter.

(e) Sickness benefits shall continue to be certified for payment pursuant to the foregoing paragraphs for the duration of the employee's period of continuing sickness, subject to the statutory maximums prescribed in section 2(c) of the Railroad Unemployment Insurance Act. See also Part 336 of this chapter.

Dated: May 30, 1989.

By authority of the Board.

Beatrice Ezarski,

Secretary to the Board.

[FR Doc. 89-13455 Filed 6-6-89; 8:45 am]

BILLING CODE 7905-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 795 and 799

[OPTS-42094B; FRL 3599-5]

Cyclohexane; Proposed Test Rules; Reopening of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is reopening the comment period on its proposed rule under section 4 of the Toxic Substances Control Act (TSCA), to require testing on cyclohexane (52 FR 19096; May 20, 1987). This additional period will permit comment on an additional finding supporting the proposed rule.

DATES: Written comments must be received by July 7, 1989. If persons request an opportunity to submit oral comments by July 7, 1989, EPA will hold a public meeting on this proposed rule in Washington, DC. For further information or arranging to speak at the meeting see Unit III. of this preamble.

ADDRESS: Submit written comments in triplicate identified by the document control number (OPTS-42094B) to: TSCA Public Docket Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection

Agency, Room NE-G004, 401 M Street, SW., Washington, DC 20460.

The public record supporting this action is available for inspection at the above address from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

Information submitted in any comment concerning this proposed rule may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR Part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be disclosed publicly by EPA by placing it in the public record without prior notice to the submitter.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm EB-44, 401 M Street, SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-1404.

SUPPLEMENTARY INFORMATION: In the Federal Register of May 20, 1987 (52 FR 19096), EPA issued a proposed rule for cyclohexane for health effects testing (Ref. 1). EPA is reopening the comment period to permit comment on an additional finding supporting the proposed rule. The non-confidential information on which this additional finding is based is now available for review in the public docket.

I. Background

EPA proposed health effects testing for cyclohexane under section 4 of the Toxic Substances Control Act (TSCA) (Ref. 1). EPA concluded in its proposed rule (Ref. 1) that there is substantial production of cyclohexane and there is or may be substantial human exposure to cyclohexane; that there are insufficient data and experience to determine the effects of manufacturing, processing, and use of cyclohexane on human health; and that testing is necessary to develop these data.

II. Emissions/Releases to the Environment

On the basis of recently compiled information obtained pursuant to section 313 of the Superfund Amendments and Reauthorization Act (SARA), Pub. L. 99-499, EPA also finds under section 4 of TSCA that cyclohexane " * * * enters or may reasonably be anticipated to enter the environment in substantial quantities * * * " (15 U.S.C. sec. 2603(a)(1)(B)(i)).

EPA is reopening the comment period to solicit comment on this additional finding.

Title III of SARA, also known as "The Emergency Planning and Community Right-to-Know Act of 1986," requires owners and operators of facilities that manufacture, process, or otherwise use certain listed toxic chemicals to provide information on the amount of release of such chemicals to EPA by July 1 of each year. Cyclohexane is on the list of toxic chemicals provided by Congress (see 40 CFR 372.65 (1988)). EPA has reviewed the 1988 submissions of 1987 release data and has determined that cyclohexane is released into the environment in substantial quantities. Specifically, EPA has determined that 1987 emissions of cyclohexane exceeded 4.77 million kilograms (10.5 million pounds (Ref. 2)) and EPA has concluded that such release is sufficient basis for a finding of substantial release under TSCA section 4(a)(1)(B). EPA has added the Toxic Release Inventory System (TRIS) data base printout of SARA section 313 submissions on cyclohexane (Ref. 3) to the rulemaking record for this proposed test rule and solicits comment on inclusion of this additional finding in the final rule.

III. Public Meeting

If persons indicate to EPA that they wish to present oral comments on this additional proposed finding, EPA will hold a public meeting after the close of the public comment period in Washington, DC. Persons who wish to attend or present comments at the meeting should call the TSCA Assistance Office (TAO): (202) 554-1404 by July 7, 1989. Oral comments at this meeting will be limited solely to this additional finding and may not address any other aspect of the proposed rule. A meeting will not be held if members of the public do not indicate that they wish to make oral presentations. While the meeting will be open to the public, active participation will be limited to those persons who arranged to present comments and to designated EPA participants. Attendees should call the TAO before making travel plans to verify whether a meeting will be held.

Should a meeting be held, EPA will transcribe the meeting and include the written transcript in the public record. Participants are invited, but not required, to submit copies of their statements prior to or on the day of the meeting. All such written materials will become part of EPA's record for this rulemaking.

IV. Rulemaking record

EPA has established a record for this rulemaking (docket number OPTS-42094B). This record includes all information considered in the development of the proposed rule and appropriate Federal Register notices. EPA will continue to supplement the record with additional information as it is received.

The record includes all information referenced in support of the May 20, 1987 proposal and the following information:

References

- (1) Notice of Proposed Rulemaking, Cyclohexane (52 FR 19096; May 20, 1987).
- (2) USEPA. Engineering Assessment: Cyclohexane: Environmental Releases. Prepared by Pankaj Garg, Environmental Protection Agency, Office of Pesticides and Toxic Substances, Washington, DC (December 3, 1988).
- (3) USEPA. Toxic Release Inventory System: Chemical Profile Report for Cyclohexane. Environmental Protection Agency, Office of Pesticides and Toxic Substances, Washington, DC (April 20, 1989).

V. Other Regulatory Requirements

EPA discussed Executive Order 12291, The Regulatory Flexibility Act, and the Paperwork Reduction Act in detail in the May 20, 1987, proposal; and no changes are indicated for this notice.

List of Subjects in 40 CFR Parts 795 and 799

Testing, Environmental protection, Hazardous substances, Chemicals, Recordkeeping and reporting requirements.

Dated: May 30, 1989.

Dwain Winters,

Acting Director, Office of Toxic Substances.

[FR Doc. 89-13477 Filed 6-6-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. 106; Notice 1]

Transportation of Hydrogen Sulfide by Pipeline

AGENCY: Research and Special Programs Administration (RSPA), U.S. Department of Transportation (DOT).

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: This notice requests information to determine the need for regulations to control the concentration

of hydrogen sulfide (H₂S) in natural gas pipeline systems. There have been several instances in which H₂S has entered pipelines inadvertently. High concentrations may be extremely toxic if released and H₂S is detrimental to steel pipe.

DATES: Interested parties are invited to submit comments by September 5, 1989.

ADDRESSES: Send comments in duplicate to the Dockets Unit, Room 8417, Office of Pipeline Safety, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Identify the docket and notice numbers stated in the heading of this notice. All comments and docketed material will be available for inspection and copying in Room 8428 between 8:30 a.m. and 5:00 p.m. each business day. **FOR FURTHER INFORMATION CONTACT:** Cesar De Leon, (202) 366-4583, regarding the subject matter of this document, or the Dockets Unit, (202) 366-5046, for copies of this document or other material in the docket.

SUPPLEMENTARY INFORMATION:

Background

Natural gas produced from some gas production wells has significant concentrations of toxic H₂S. This gas, commonly called "sour gas" is "sweetened" by removing the H₂S from the natural gas in treatment plants before the natural gas is introduced into the transmission pipelines. The Mary Ann Field in Mobile Bay in Alabama produces natural gas averaging 7 1/2 percent or 75,000 parts per million (PPM) of H₂S.

At present, the federal gas pipeline safety regulations, 49 CFR Part 192, do not specifically address all the safety risks associated with the presence of H₂S in natural gas, such as those involving sulfide stress cracking and toxicity effects.

Hydrogen sulfide is a toxic, colorless, flammable gas which is poisonous, if inhaled, especially at concentrations in excess of 300 PPM (1/10 of 1 percent). Persons will lose consciousness after 5 minutes of breathing H₂S at concentrations of 100 PPM and death results very quickly thereafter.

Considerable research has been conducted to describe the effects of H₂S on the sulfide stress cracking of line pipe and to additionally describe the effects of stress corrosion cracking mechanisms in line pipe [1]. Research has shown a substantial increase in threshold stress (stress below which H₂S has no effect on sulfide stress cracking) with decreasing H₂S concentration [2]. For H₂S

concentrations of 5 PPM or less there is no measurable effect on the sulfide stress cracking potential for high strength steel pipe. For high concentration of H₂S (>3,000 PPM) and applied stress levels above 70 percent of the yield stress, the time to failure decreases dramatically [2, 3].

Recent Incidents Reported by NTSB Involving Releases of H₂S Into Gas Pipeline Systems

California. One incident [4] arose on December 28, 1983, when the Pacific Offshore Pipeline Company's (POPCO) Las Flores Canyon Gas Treatment Plant was placed in service. Impurities, including H₂S, were to be removed from producing wells in the Santa Ynez Unit (an offshore field in the Santa Barbara Channel). The cleaned gas would be delivered by pipeline to the Las Flores Canyon Gas Treatment Plant where POPCO would then deliver it to the Southern California Gas Company (SCG) system for distribution to its natural gas customers.

Due to the failure of an automatic gas analyzer, gas was contaminated by 200 PPM of H₂S and entered the SCG distribution system. The analyzer was repaired following the interruption of gas flow. After the gas flow was re-initiated, further analysis indicated 16 PPM H₂S in the gas stream and flow was again stopped. The Occupational Safety and Health Administration (OSHA) regulations limit long term exposure levels of people to H₂S at 10 PPM. This introduction of H₂S into the SCG distribution system resulted in a notification of evacuation for over 20,000 people.

A second incident [4] involving H₂S entering the SCG system occurred on May 12, 1984, at the Wilmington, California, gas delivery point. Following this incident, the California Public Utilities Commission (PUC) requested that all SCG locations that could receive contaminated gas be equipped with automatic H₂S analyzers and shut-off equipment. The shut-off concentration would be set at between 4 PPM and 10 PPM.

As a result of these incidents in California, the California PUC has required that its previously determined upper limit be monitored by automatic equipment on a daily basis at gas supply points.

Texas. On August 11, 1987, automatic H₂S monitoring equipment at the KG Gas Processors, Limited, gas processing plant near Winters, Texas, indicated that an excessive amount of H₂S was entering the gas stream being delivered to Lone Star Gas Company [4]. The

supply was shut off and attempts to contact Lone Star personnel were initiated. Although no new contaminated gas was entering the Lone Star system, customer complaints were received triggering actions by Lone Star to analyze the gas. Gas company personnel found H_2S in concentrations of 1,600 PPM and greater and purged the entire system. The excessive concentrations of H_2S were not detected because automatic shut-off equipment at KG had failed to operate in response to the automatic monitor and Lone Star's monitoring equipment had been removed for repair at that time.

Incidents Reported in Canada

During a 25-year period, 22 instances have been reported [5] where workers at the Windfall sour gas field in Alberta, Canada, had been overcome by H_2S vapors emanating from tanks that were being filled by sour crude or gas condensates. Because H_2S is heavier than air, it will flow out of the top opening or vent line from tanks and in still air will accumulate in dangerous concentrations near ground level. Such an occurrence could be extremely hazardous if a pipeline carrying H_2S ruptured in a Class 3 or 4 location.

Recommendations by the National Transportation Safety Board (NTSB)

Current federal regulations in 49 CFR Part 192 do not require gas content and quality monitoring. Additionally, the RSPA gas incident reporting criteria (49 CFR 191.3) do not specifically require that events such as the preceding [4,5] be reported. Therefore, the full extent of the problems associated with H_2S in pipelines is not known. However, from its review of Lone Star's records, NTSB found that since 1977, 11 incidents involving the release of excessive quantities of H_2S into its pipeline system had occurred. In consideration of the potential for serious injury or death following the release of H_2S and resultant human exposure, the NTSB recommended that RSPA:

(1) Establish, based on known toxicological data, a maximum allowable concentration of hydrogen sulfide in natural gas pipeline systems, and amend 49 CFR Part 192 to reflect this determination. (Class II, Priority Action) (P-88-1)

(2) Revise 49 CFR Part 191 to require that pipeline operators report all incidents in which concentrations of hydrogen sulfide in excess of the maximum allowable concentration are introduced into pipeline systems that transport natural gas intended for domestic or commercial purposes. (Class III, Longer-Term Action) (P-88-2)

(3) Require gas pipeline operators to install on their systems equipment capable of automatically detecting and shutting off the flow of gas when the maximum allowable concentrations of hydrogen sulfide-contaminated gas are exceeded. (Class III, Longer-Term Action) (P-88-3)

Discussion

Generally speaking, operators of natural gas pipelines do not monitor gas quality at the custody transfer point. The producer is ordinarily contractually obligated to supply gas of a specified quality (moisture content, H_2S , elemental sulfur, BTU content, etc.). Gas quality monitoring is therefore the responsibility of the producer. At present, it is not clear how many operators monitor gas quality. In the case of the Las Flores Canyon Gas Treatment Plant supplying SCG, both producer and operator had gas monitoring and alarm systems.

H_2S poses risks to both health [6] and to the integrity of pipeline structures [1,2,3]. H_2S is a toxic, colorless, flammable gas which is poisonous if inhaled. It is considered to be immediately dangerous to life and health at concentrations of 300 PPM and at concentrations of 1,000 PPM it causes immediate unconsciousness and death. The OSHA has established an upper concentration level of 10 PPM for prolonged (8 hours) workplace exposure to H_2S .

The effects of H_2S on pipe metal depend to a large extent on pressure, steel chemistry, and duration of exposure [2,3]. Spontaneous cracking can be a problem even at low concentrations if the H_2S contamination is not eliminated. Conversely, if a high concentration (>3,000 PPM) of H_2S is accidentally introduced into a transmission or distribution system operating at, for example, 72 percent of specified minimum yield strength, failure could occur in as little as 10 hours.

The ratio of threshold stress (stress at which spontaneous cracking occurs) to yield stress is approximately 1.0 at an H_2S concentration of 100 PPM for API 5LX-65 pipe steel. However, for an H_2S concentration equal to or greater than 3,000 PPM, this ratio is about 0.7.

The time to failure for API 5LX-65 pipe steel is a very sensitive function of the applied stress to yield stress ratio from 100 percent of yield to about 70 percent of yield for a concentration of H_2S of 3,000 PPM. Below this level of applied stress, the time to failure increases dramatically from 10 to 20 hours to well beyond a thousand hours.

It has also been shown that high yield strength and high hardness (Rockwell C

above 22) steels are more susceptible to sulfide stress cracking than lower strength steels.

Recent studies [7] have shown that the pH level of condensates in the pipeline may be more important than the exact hydrogen sulfide level. Sulfide stress cracking tends to be enhanced at lower pH levels, especially in the presence of CO_2 .

In addition to sulfide stress cracking, hydrogen induced cracking or blistering can occur in the presence of H_2S . This type of cracking is sometimes referred to as stepwise cracking. Hydrogen induced cracking can occur in the absence of stress and it occurs in time periods as short as a few days from initial exposure.

Summary of Existing Regulations

1. Federal Regulations

49 CFR 192.125(d). Design of copper pipe

Copper pipe that does not have an internal corrosion resistant lining may not be used to carry gas that has an average hydrogen sulfide content of more than 0.3 grains per 100 standard cubic feet of gas.

49 CFR 192.475. Internal corrosion control: General

(a) Corrosive gas may not be transported by pipeline unless the corrosive effect of the gas on the pipeline has been investigated and steps have been taken to minimize internal corrosion.

(c) Gas containing more than 0.1 grain of hydrogen sulfide per 100 standard cubic feet may not be stored in pipe-type or bottle-type holders.

49 CFR 195.418. Internal corrosion control

(a) No operator may transport any hazardous liquid that would corrode the pipe or other components of its pipeline system, unless it has investigated the corrosive effect of the hazardous liquid on the system and has taken adequate steps to mitigate corrosion.

2. State Regulations

California General Order 58

At present California is seeking to establish a maximum allowable level of hydrogen sulfide in natural gas pipeline systems. The level to be proposed by General Order GO-58-A7 is set forth in Item 7, Purity of Gas, as follows:

(a) Hydrogen Sulfide. No gas supplied by any gas utility for domestic, commercial, or industrial purposes in

this state shall contain more than one-fourth (0.25) grain of hydrogen sulfide per one hundred (100) standard cubic feet.

(b) Total Sulfur. No gas supplied by any gas utility for domestic, commercial, or industrial purposes shall contain more than thirty (30) grains of total sulfur per one hundred (100) standard cubic feet.

(c) Test procedures used to determine the amounts of hydrogen sulfide and total sulfur shall be in accordance with accepted gas industry standards and practices.

Michigan Rule 299

The State of Michigan Department of Natural Resources, Geological Survey Division, Oil and Gas Operations, has a comprehensive set of regulations entitled "Hydrogen Sulfide Management." These regulations deal with definitions, set standards for equipment, establish duties of the well operator, define which wells are regulated, and define location of wells and processing equipment. In addition, the regulations establish training requirements of personnel, contingency plans for drilling, drilling operations, and briefing areas.

In addition, Michigan has a detailed H_2S Rules Supplement which further defines which class of well and associated gathering lines is affected by a particular rule or section of the rule.

Michigan Rule 460

The Michigan Department of Commerce, Public Service Commission, has established Rule 460, "Technical Standards for Gas Service." Rule R460.2381 deals with gas purity.

Michigan Rule 81 (R460.2381)

(1) Gas distributed by utilities to customers shall not contain more than 0.3 grains of hydrogen sulfide or more than 20 grains of total sulfur per 100 cubic feet (about 10 PPM), including the sulfur in any hydrogen sulfides.

(2) Gas distributed by utilities to customers shall not contain flammable liquids in quantities that interfere with the normal operation of customer's equipment.

Texas Rule 36

The Railroad Commission of Texas has adopted various versions to Rule 36 entitled "Oil, Gas, or Geothermal Resource Operation in Hydrogen Sulfide Areas," (revised September 15, 1985).

Rule 36 contains general provisions for determining the hydrogen sulfide concentration in the gaseous mixture in an operations or system. It explains how to determine the radius of exposure in

terms of concentration as a function of distance from the source. Storage tanks, warning markers, security, materials, and equipment selection requirements are all covered in the general provisions section.

The rule additionally provides guidance and regulations for contingency and emergency preparedness. The rule provides a framework for appropriate field operations, including inspection, drilling, training of personnel, accident notification, reporting requirements, and new well completion reporting of H_2S concentration levels.

3. Canadian Regulations

The Canadian Standard Z184-1975, "Gas Pipeline Systems," contains a number of provisions pertaining to sour gas service. Section 3.4 is entitled "Requirements for Sour Gas Service." This section sets forth special service requirements for piping and all components in contact with sour gas.

Section 4.10, "Inspection and Testing of Production Wells," includes a subsection 4.10.2.1.4 which requires that all welds in a sour gas system shall be radiographically inspected for 100 percent of the circumference.

Section 4.11.3.3 requires that there be no area of inadequate penetration or incomplete fusion between the root bead and pipe metal on welds in sour gas systems.

Section 4.11.4.4, "Welds in Sour Gas Systems." This section requires that welds be free of unrepaired burn-through.

Section 4.11.8.4 requires that there be no undercutting adjacent to the root bead on welds in sour gas systems.

Section 6.4.8.1.2 permits testing with sour gas only in remote Class 1 locations when other test media are not available.

Section 6.4.5.1(c)—suitable measures shall be taken to prevent failures due to such mechanisms as metal loss corrosion, hydrogen embrittlement, stress corrosion cracking and hydrogen blistering (in sour gas systems), and provisions shall be made for monitoring stations to assess internal corrosion.

Request for Information

Since RSPA has no regulations regarding maximum H_2S concentration in gas pipeline systems (other than gas holders and copper pipeline), RSPA would like to have additional information to appropriately assess the need for establishing such regulations.

To assist RSPA in evaluating the need for additional regulations, interested parties are invited to answer the following questions and submit relevant information including any accident

experience (if applicable) associated with H_2S release(s).

(1) What factors should be considered in determining the need for a maximum allowable concentration of hydrogen sulfide in natural gas pipeline systems? What should this concentration be?

(2) Describe events you know of in which hydrogen sulfide has been released from, or into, a pipeline in dangerous amounts and what were the H_2S concentrations? What were the consequences of such releases? What would be the burden associated with mandatory reporting of such events?

(3) If you are an operator receiving gas from a producer, do you have automatic H_2S detection and shut-off equipment? Do these devices operate reliably? For such operators that do not have this equipment, what costs and other burdens can be associated with requiring use of the equipment?

(4) Which pipelines transporting sour gas should be subject to an H_2S monitoring requirement? Should rural gas gathering lines be subject to H_2S monitoring requirements, even though they are not now subject to any of the Part 192 safety standards?

Commenters are not limited to filing comments only on the questions presented above and may submit any facts and views consistent with the intent of this advance notice. In addition, commenters are encouraged to provide comments on (1) "major rule" considerations under the terms of Executive Order 12291; (2) "significant rule" considerations under the terms of DOT regulatory procedures (44 FR 11634); (3) potential environmental impacts subject to the National Environmental Policy Act; (4) information collection burdens that must be reviewed under the Paperwork Reduction Act; (5) the economic impact on small entities under the Regulatory Flexibility Act; and (6) impacts on Federalism under Executive Order 12612.

Authority: 49 App. U.S.C. 1672 and 1604; 49 CFR 1.53; Appendix A of Part 1, and App. A of Part 100.

Issued in Washington, DC, on June 1, 1989.

Richard L. Beam,
Director, Office of Pipeline Safety.

References

[1] Williams, D.N., "Examination of the BP Test for Measuring the Resistance of Pipe Steels to Blistering and Internal Cracking When Exposed to Sour Gas," Battelle Columbus Labs for the American Gas Association, 1980.

[2] Watkins, M., and Vaughn, G.A., "Effects of H_2S Partial Pressure on the Sulfide Stress

Cracking Resistance of Steel," Materials Performance, Vol. 25, No. 1, 1986.

[3] Mayville, R.A., and Warren, T.J., "The Effect of H₂S Concentration on the Sulfide Stress Cracking Resistance of an X-65 Pipeline Steel," Ref. Paper 55746, Arthur D. Little, Cambridge, Massachusetts, June 1988.

[4] Burnett, James, Safety Recommendations P-88-1, P-88-2, and P-88-3, Transportation of H₂S by Pipeline, May 10, 1988, National Transportation Safety Board.

[5] Wichert, Edward, "Sour Gas Field Reflects Equipment, Operating Improvements," Oil and Gas Journal, Technology, April 25, 1988.

[6] Anon., "Occupational Health Guideline for Hydrogen Sulfide," Occupational Safety and Health Administration, 1978.

[7] Mayville, R.A., and Warren, T.J., "Chevron Point Arguello Pipeline System," Ref. Paper 61786-02, Arthur D. Little, Cambridge, Massachusetts, July 1988.

[FR Doc. 89-13409 Filed 6-6-89; 8:45 am]

BILLING CODE 4910-90-M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1003, 1160, 1162, and 1168

[Ex Parte No. 55 (Sub-No. 69)]

Rules Governing Applications for Operating Authority; Revision of Form OP-1

AGENCY: Interstate Commerce Commission.

ACTION: Proposed rule; extension of time to file comments.

SUMMARY: The deadline for filing comments in response to the notice of

proposed rulemaking in this proceeding (54 FR 20879, May 15, 1989) concerning applications for operating authority, revision of form OP-1 has been extended.

DATE: Comments are due June 28, 1989.

ADDRESSES: Send comments [an original and 10 copies] referring to Ex Parte No. 55 (Sub-No. 69) to: Interstate Commerce Commission, Office of the Secretary, Case Control Branch, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT:

Suzanne Higgins O'Malley, (202) 275-7292

Richard B. Felder, (202) 275-7691. (TDD for hearing impaired (202) 275-1721)

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone (202) 289-4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

This action will not significantly affect either the quality of the human environment or conservation of energy resources.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee, Secretary.

[FR Doc. 89-13506 Filed 6-6-89; 8:45 am]

BILLING CODE 7036-01-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Citizens' Advisory Committee on Equal Opportunity; Re-Establishment

Notice is hereby given that the Secretary of Agriculture intends to re-establish the Citizens' Advisory Committee on Equal Opportunity.

The purpose of the Committee is to strengthen the Department's efforts in the area of Civil Rights. The Committee will advise the Secretary and other Officials of the Department on all aspects of the Department's policies, practices, and procedures which promote equal opportunity.

The re-establishment of this Committee is in the public interest in connection with the performance of duties and responsibilities of the Department.

Written comments on the proposed re-establishment of the Committee may be sent to Naomi Churchill, Esq., Acting Director, Office of Advocacy and Enterprise, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Room 102-W Administration Building, Washington, DC 20250, 10 days after publication in the Federal Register.

John J. Franke, Jr.,
Assistant Secretary for Administration,
June 1, 1989.

[FR Doc. 89-13447 Filed 6-6-89; 8:45 am]
BILLING CODE 3410-04-M

Meeting of the Citizens' Advisory Committee on Equal Opportunity

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following committee meeting:

Name: Citizens' Advisory Committee on Equal Opportunity.

Date: June 19-21, 1989.

Place: The Warwick Hotel, 1778 Grant Street, Denver, Colorado 80203.

Time: 8:30 a.m.-5:00 p.m.

Purpose: Advise the Secretary on the effectiveness of program directives that are designed to achieve compliance; review all aspects of the Department's policies, practices, and procedures which promote equal opportunity; recommend changes in Department rules, regulations, and orders to assure that Departmental activities are free from discrimination based on race, color, sex, religion, national origin, age, marital status, and handicap; additionally, the Committee will focus on problems and issues affecting the elderly, Native Americans, and Small Scale Agriculture in USDA programs.

The meeting is open to the public. Persons may participate in the meeting as time and space permit. Persons who wish to address the Committee at the meeting or who wish to file written comments before or after the meeting should contact: William C. Payne, Jr., Deputy Associate Director, Equal Opportunity, Office of Advocacy and Enterprise, U.S. Department of Agriculture, 14th and Independence Avenue, SW., Room 1226 South Building, Washington, DC 20250, (202) 447-5681, TTD (202) 382-1130.

Written statements may be submitted until July 7, 1989.

Dana A. Froe,
Acting Deputy Associate Director, Equal Opportunity,
June 1, 1989.

[FR Doc. 89-13448 Filed 6-6-89; 8:45 am]
BILLING CODE 3410-04-M

Animal and Plant Health Inspection Service

[Docket No. 89-086]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to the Khapra Beetle Eradication Program

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service analyzing the potential environmental effects of the eradication of khapra beetle infestations from structures and conveyances. Based

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Wednesday, June 7, 1989

on the assessment, we have determined that no significant adverse effect on the environment will result from implementation of the selected alternative. Therefore, we will not prepare an environmental impact statement for this program.

ADDRESSES: Copies of the environmental assessment and finding of no significant impact may be obtained from Michael T. Werner, Deputy Director, Environmental Documentation, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

The environmental assessment is available for public inspection at the above address. Hours for inspection are between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Michael T. Werner, Deputy Director, Environmental Documentation, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8565.

SUPPLEMENTARY INFORMATION:

Background

The khapra beetle (*Trogoderma granarium* Everts) is a plant pest that damages grain and cereal products, seeds, cottonseed meal, nut meats, dried fruits, and other products. The pest can cause serious damage to stored plant products. When infested plant products are left undisturbed in storage for long periods of time, total loss can be expected. This insect is a threat to billions of bushels of important stored plant products in the United States.

The khapra beetle eradication program has the following primary goals: (1) To eradicate infestations of khapra beetle from structures and conveyances in a prompt, efficacious and environmentally-sound manner; (2) to prevent the spread of the khapra beetle to other uninfested areas in the United States; and (3) to maintain the khapra beetle-free status of the United States.

The following alternatives were considered in selecting the recommended course of action:

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- (1) No action,
- (2) Methyl bromide fumigation,
- (3) Malathion surface treatment, and
- (4) Integrated control.

The environmental assessment analyzed the alternatives with respect to program efficacy, potential environmental consequences, and cumulative effects. Program operational procedures and mitigative measures were also considered with respect to their ability to minimize environmental consequences. The preferred alternative, integrated control, will employ the component chemical alternatives, methyl bromide fumigation and/or malathion surface treatment, for structures and conveyances.

This khapra beetle eradication program will use treatment procedures within extremely restricted areas, such as warehouses, silos, ships, and containers. Only a few treatments, approximately five to ten, would be required in an average year.

After considering the effects of implementing the selected alternative, we have concluded there will be no primary or secondary effects on the human environment as a result of the program, and that no adverse effects are foreseen. We have also considered cumulative impacts, and anticipate that the program will have a beneficial effect on the environment through the coordination and planned reduction of current pesticide use.

In the environmental assessment, we evaluated the uniqueness or rareness of resources being affected and concluded that the selected alternative will not have an effect on the continued existence of any endangered or threatened species, or result in the destruction or adverse modification of the habitats of those species.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 1st day of June 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-13409 Filed 6-6-89; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 89-092]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Herbicide Tolerant Soybean Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Monsanto Agricultural Company, to allow the field testing of genetically engineered soybean plants in Whiteville, Tennessee. The soybean plants express a modified 5-enolpyruvyl-3-phosphoshikimate (EPSP) synthase, which is intended to make the plants tolerant to the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered soybean plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89-034-15.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant

pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Monsanto Agricultural Company, St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test soybean plants genetically engineered to express a modified 5-enolpyruvyl-3-phosphoshikimate (EPSP) synthase, which is intended to make the plants tolerant to the herbicide glyphosate. The field trial is to take place in Whiteville, Tennessee.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the soybean plants under conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding a modified 5-enolpyruvyl-3-phosphoshikimate synthase which is not inhibited by the herbicide glyphosate has been inserted into the soybean chromosome. In nature, chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the field test plot is a sufficient distance from any sexually compatible plants with which it might cross-pollinate.

2. Neither the 5-enolpyruvyl-3-phosphoshikimate synthase gene itself, nor its gene product, confer on soybean any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. The plant from which the 5-enolpyruvyl-3-phosphoshikimate synthase gene was isolated is not a plant pest.

4. The 5-enolpyruvyl-3-phosphoshikimate synthase gene does not provide the transformed soybean plants with any measurable selective advantage over nontransformed soybean plants in the ability to be disseminated or to become established in the environment.

5. The vector used to transfer the 5-enolpyruvyl-3-phosphoshikimate synthase gene to soybean plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to plants.

6. The vector agent, the bacterium that was used to deliver the vector DNA and the 5-enolpyruvyl-3-phosphoshikimate synthase gene into the plant cell, has been shown to be eliminated and no longer associated with the transformed soybean plants.

7. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in the plants.

8. Glyphosate is one of the new herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The field test site is small (less than 1 acre) and physically isolated by a surrounding area of cultivated land.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done at Washington, DC, this 1st day of June 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-13470 Filed 6-6-89; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 89-091]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Herbicide Tolerant Soybean Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Monsanto Agricultural Company, to allow the field testing of genetically engineered soybean plants in Jersey County, Illinois. The soybean plants express a modified 5-enolpyruvyl-3-phosphoshikimate (EPSP) synthase, which is intended to make the plants tolerance to the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered soybean plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this

same address. The environmental assessment should be requested under accession number 89-034-11.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Monsanto Agricultural Company, St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test soybean plants genetically engineered to express a modified 5-enolpyruvyl-3-phosphoshikimate (EPSP) synthase, which is intended to make the plants tolerant to the herbicide glyphosate. The field trial is to take place in Jersey County, Illinois.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the soybean plants under conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provided the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding a modified 5-enolpyruvyl-3-phosphoshikimate synthase which is not inhibited by the herbicide glyphosate has been inserted into the soybean chromosome. In nature,

chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the field test plot is a sufficient distance from any sexually compatible plants with which it might cross-pollinate.

2. Neither the 5-enolpyruvyl-3-phosphoshikimate synthase gene itself, nor its gene product, confer on soybean any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. The plant from which the 5-enolpyruvyl-3-phosphoshikimate synthase gene was isolated is not a plant pest.

4. The 5-enolpyruvyl-3-phosphoshikimate synthase gene does not provide the transformed soybean plants with any measureable selective advantage over nontransformed soybean plants in the ability to be disseminated or to become established in the environment.

5. The vector used to transfer the 5-enolpyruvyl-3-phosphoshikimate synthase gene to soybean plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to plants.

6. The vector agent, the bacterium that was used to deliver the vector DNA and the 5-enolpyruvyl-3-phosphoshikimate synthase gene into the plant cell, has been shown to be eliminated and no longer associated with the transformed soybean plants.

7. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in the plants.

8. Glyphosate is one of the new herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The field test site is small (less than 2 acres) and physically isolated by a surrounding area of cultivated land.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing

the Procedural Provisions of NEPA (40 CFR Parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50361-50384, August 28, 1979, and 44 FR 51274, August 31, 1979).

Done at Washington, DC, this 1st day of June 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-13471 Filed 6-6-89; 8:45 am]

BILLING CODE 3410-34-M

Commodity Credit Corporation

1989-Crop Honey Price Support Program

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Notice of final determinations.

SUMMARY: This notice sets forth the final determinations with respect to the level of price support, the adjustments to the loan rate, and the lower loan repayment provisions for the honey price support program for the 1989 crop of honey. These determinations are made pursuant to section 201(b) of the Agricultural Act of 1949, as amended.

EFFECTIVE DATE: This notice of determinations is effective for the 1989 crop of honey.

ADDRESS: Bruce R. Weber, Director, Commodity Analysis Division, USDA-ASCS, Room 3741, South Building, P.O. Box 2415, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Jane K. Phillips, Agricultural Economist, Commodity Analysis Division, USDA, Room 3754 South Building, P.O. Box 2415, Washington, DC 20013, (202) 447-7801. The Final Regulatory Impact Analysis describing the actions taken in this notice of final determinations and their impact is available from the above-named individual.

SUPPLEMENTARY INFORMATION: This notice of determinations has been made under USDA procedures implementing Executive Order 12291 and Departmental Regulation 1512-1 and has been classified "not-major." It has been determined that these determinations will not result in: (1) An annual effect on the economy of \$100 million or more; (2) major increases in costs or prices for consumers, individual industries, federal, state, or local government agencies or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to

compete with foreign-based enterprises in domestic or export markets.

The title and number of the federal assistance program to which these determinations apply are: commodity loans and purchases; 10.051, as found in the catalog of federal domestic assistance.

It has been determined that the regulatory flexibility act is not applicable to this notice of final determinations since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of this notice.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

This program/activity is not subject to the provisions of Executive Order No. 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 2015, Subpart V, published at 47 FR 29115 (June 24, 1983).

Section 201(b) of the Agricultural Act of 1949 (1949 Act), as amended, provides that the price support level for the 1989 crop of honey shall be 95 percent of the price support rate for the previous year's crop, but not less than 75 percent of the simple average price received by producers of honey for the preceding 5 crop years, excluding the high and low years. The Omnibus Budget Reconciliation Act of 1987 amended section 201(b) of the 1949 Act by adding subparagraph D which requires that, once the support level has been determined using the above method, the rate for the 1989 crop must be reduced by 0.5 cents.

The price support loan rate for the 1988 crop of honey was 59.85 cents per pound prior to being reduced in accordance with subparagraph D of the 1949 Act. This amount, when reduced by 5 percent, equals 56.86 cents per pound. Seventy-five percent of the simple average price received by producers in the 5 preceding crop years, excluding the highest and lowest years, is 50.46 cents per pound. Therefore, since the established loan rate (56.86 cents per pound) is in excess of the simple average price received by producers, 56.86 cents per pound is reduced by 0.5 cents per pound, resulting in a price support loan rate for 1989-crop honey of 56.36 cents per pound.

In accordance with section 403 of the 1949 Act, the loan rate for the 1989 crop

of honey may be adjusted to reflect floral source, color, class, grade, and other market differentials, such as location, which are applicable to the marketing of honey.

Under the provisions of section 201(b) of the 1949 Act, the Secretary may permit producers who have obtained price support loans with respect to the 1988-1990 crops of honey to repay such loans at a level that is the lesser of:

(a) The loan level determined for such crop; or

(b) Such level that the Secretary determines will:

(1) Minimize the number of loan forfeitures;

(2) Not result in excessive total stocks of honey;

(3) Reduce the costs incurred by the Federal Government in storing honey; and

(4) Maintain the competitiveness of honey in domestic and export markets.

This option of permitting repayment of loans at a rate less than the original loan rate has come to be known as the lower loan repayment (LLR) option. The lower repayment rates are known as LLR rates or levels.

Accordingly, on February 13, 1989, a notice of proposed determinations was published in the Federal Register (54 FR 6555) requesting comments concerning the conduct of the price support program for honey through the use only of loans and not purchase agreements, providing adjustments to the loan rate based on color, class, grade, and other market differentials, such as location, and permitting repayment of such loans at the lesser of the loan level for such crop or at a level determined by the Secretary or his designee.

Discussion of Comments

Fifty-one written comments were received in response to the notice of proposed determinations: 30 from producers, 9 from producer/packers, 7 from trade organizations, 3 from exporters/importers, and 2 from packers.

All respondents, who had an opinion, favored the honey price support program. No commenter opposed the program. Ten commenters wanted a different loan rate from the established national average. The national average loan rate is legislatively set and cannot be changed administratively.

A wide range of comments were received regarding adjustments to the national average loan rate. Eleven respondents favored the same adjustments as were in place for the 1988 program. Sixteen commenters opposed the use of floral source as an adjustment mainly because the

commenters felt that most honey was bought and sold by color. A floral source distinction is in the best interests of CCC because it is the main determinant of flavor. CCC attempts to blend flavors to suit taste preferences in various regions of the country for the purpose of school lunch and other donation programs.

Six respondents specifically requested that the "nontable" classification be eliminated. Nontable grade honey includes floral sources which are accepted for table use in areas where they are produced, but are not generally accepted nationally. The respondents opined that rating floral sources for taste preference and saleability is arbitrary. Nontable class honey has been supported at the same loan rate as amber honey because nontable honey could conceivably be used in CCC donation programs in areas where the honey is produced and accepted for table use. However, the overwhelming majority of nontable honey forfeitures cannot be used in the donation program and are sold on a bid basis at prices below the loan or LLR rate. (The "nontable" class would automatically disappear if floral source were no longer used to adjust honey loan rates because floral source determines honey class.)

Fifteen respondents opposed adjusting the loan rate according to location. Setting differentials by location would be a difficult, highly subjective task, because there is no central marketing point for honey and marketing patterns are hard to define.

Forty-seven commenters favored continuing the LLR option permitting loan repayments at levels lower than the established loan rates. Also, there were comments regarding the LLR levels. Two commenters favored locational differentials on the LLR levels while six commenters opposed such differentials. Three commenters wanted the differential between the loan and LLR rates to be the same for all colors and/or classes of honey. They felt this would result in all colors and classes of honey being treated fairly. Two respondents recommended "stable" LLR rates while three favored lower rates and four requested that the rates "not be reduced." The LLR rates are adjusted when market conditions and conditions in the honey loan program warrant changes. In order to achieve the 4 goals of the LLR option, repayment levels are set to approximate market prices. These market relationships are reflected in the adjusted loan rates which were determined by adding the difference between the weighted average of the current LLR rates and the national

average loan rate to the current LLR rate for each color and class of honey.

After taking the foregoing comments into consideration, and in order to implement the statutory requirement that the Secretary shall support the price of honey for the 1986 through 1990 crop years, the following final determinations are made with respect to the honey price support program for the 1989 crop:

Final Determinations

(a) The 1989-crop honey price support program will be a loan program with a loan rate of 56.36 cents per pound.

(b) The 1989-crop honey loan rate has been adjusted to reflect floral source, color, and class. However, the loan rate for the "nontable" class of honey will no longer be identical to the rate for table class amber honey, but will be designated separately and carry a loan rate less than table class amber. White honey will be supported at 57.93 cents per pound; extra light amber, 54.93 cents per pound; light amber, 53.93 cents per pound; amber, 52.93 cents per pound, and nontable honey, 50.93 cents per pound. The adjusted loan rates reflect current market relationships between the colors and classes of honey.

(c) Producers with price support loans for 1989-crop honey will be permitted to repay such loans at the lesser of the loan levels for such crop or at levels which the Secretary or a designee shall determine. The repayment levels shall be levels which will (1) minimize the number of loan forfeitures, (2) not result in excessive total stocks of honey, (3) reduce the costs incurred by the Federal Government in storing honey, and (4) maintain the competitiveness of honey in domestic and export markets.

The Secretary, or a designee, shall publicly announce the repayment levels for each color and class of honey on a weekly basis. Interest shall not be assessed on price support loans which are repaid at the lower repayment level announced by the Secretary or his designee.

Honey pledged as collateral for a price support loan which is redeemed at the lower repayment level shall not be eligible to be pledged as collateral for a new price support loan.

Signed at Washington, DC on June 1, 1989.

Keith D. Bjerke,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-13437 Filed 6-6-89; 8:45 am]

BILLING CODE 3410-06-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Machine Tool Special Issue Licenses; Request for Comments

AGENCY: Department of Commerce, Bureau of Export Administration.
ACTION: Notice of request for comments.

SUMMARY: The Department of Commerce hereby solicits public comments on a request for special issue licenses under Article 8 of the U.S.-Japan machine tool voluntary restraint agreement.

DATE: Comments must be submitted no later than June 19, 1989.

ADDRESS: Send all comments to John A. Richards; Deputy Assistant Secretary for Industrial Resource Administration; Room H3878; U.S. Department of Commerce; 14th Street and Constitution Avenue, NW.; Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Edward Levy; Section 232 Program Manager; Department of Commerce; Room H3878, U.S. Department of Commerce; 14th Street and Constitution Avenue, NW.; Washington, DC 20230.

SUPPLEMENTARY INFORMATION: Paragraph 8 of the Arrangement Between the Government of Japan and the Government of the United States of America Concerning Trade in Certain Machine Tools provides for the issuance of special issue licenses when it is determined "that there is a need for the importation into the USA of arrangement products in excess of the (VRA) export limit." Generally, the Department of Commerce is prepared to grant such requests (1) when the machine in question meets a unique national security need, (2) when the machine will directly support an increase in U.S. machine tool manufacturing capacity, or (3) when a customer can demonstrate that a comparable tool cannot be obtained from domestic or available foreign supplies. Special issue licenses are granted for a limited time period and for a specified number of machines.

The Department has received a request for special issue licenses to import 20 numerically controlled milling/turning centers from Japan over the third and fourth quarter of 1989. The machines meet the following specifications: 20 HP AC main spindle drive (60-8000 RPM) providing 6 axis CNC combination milling and turning with 1 1/2" bar and 5" chuck capacity, main spindle provides full contouring (C axis) capability. The machines are configured with 2 independent turrets

(12 tool capacity each) for 4 axis simultaneous machining or indexing. Each of the independent turrets has six 2 HP AC power driven tool stations with direct RPM programming (250-5000 RPM). The axis travel range for turret one is Z-axis 250 mm and X-axis 145 mm. The axis travel range for turret two is Z-axis 150 mm and X-axis 100 mm. The machine includes a rear work station with 3 HP AC sub-spindle (B-axis) with direct RPM programming (150-5000 RPM). The B-axis provides 500 mm movement in the Z-axis. Integral with the number two turret face are four power tool positions with direct RPM programming for the rear work station. All rapid traverse rates are 600 IPM.

Any party interested in commenting on this request should send written comments as soon as possible, and not later than (ten days after publication).

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly identify that portion of their submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Bureau of Export Administration's Office of Security and Management Support, Room 4886 at the above address; telephone (202) 377-2593.

James M. Lemunyon,
 Deputy Assistant Secretary for Export Administration.

(FR Doc. 89-13416 Filed 6-6-89; 8:45 am)
 BILLING CODE 3510-DT-M

Foreign-Trade Zones Board

[Order No. 433]

Resolution and Order Approving With Restriction the Application of Georgia Foreign-Trade Zone, Inc., for a Special-Purpose Subzone at the Yamaha Motor Manufacturing Corp., Golf Cart and Water Vehicle Plant in Coweta County, GA

Proceedings of the Foreign-Trade Zones Board, Washington, DC.

Resolution and Order

Pursuant to the authority granted in the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board has adopted the following Resolution and Order.

The Board, having considered the matter, hereby orders:

After consideration of the application of the Georgia Foreign-Trade Zone, Inc., filed with the Foreign-Trade Zones Board (the Board) on November 17, 1987, requesting

special-purpose subzone status at the golf cart and water vehicle manufacturing plant of Yamaha Motor Manufacturing Corporation of America in Coweta County, Georgia, the Board, finding that the requirements of the Foreign-Trade Zones Act, as amended, and the Board's regulations would be satisfied, and that the proposal would be in the public interest if approval were given subject to a restriction requiring privileged foreign status on all foreign merchandise admitted to the subzone for the manufacture of golf carts, beginning two years from the date of subzone activation, approves the application subject to the foregoing restriction.

The Secretary of Commerce, as Chairman and Executive Officer of the Board, is hereby authorized to issue a grant of authority and appropriate Board Order.

Grant of Authority To Establish a Foreign-Trade Subzone in Coweta County, Georgia

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment, operation, and maintenance of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes", as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized and empowered to grant to corporations the privilege of establishing, operating, and maintaining foreign-trade zones in or adjacent to ports of entry under the jurisdiction of the United States;

Whereas, the Board's regulations (15 CFR 400.304) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved, and where a significant public benefit will result;

Whereas, the Georgia Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone 28, has made application (filed November 17, 1987, FTZ Docket 35-87, 52 FR 45474) in due and proper form to the Board for authority to establish a special-purpose subzone at the golf cart and water vehicle manufacturing plant of Yamaha Motor Manufacturing Corporation of America (YMMC), located in Coweta County, Georgia, adjacent to the Atlanta Customs port of entry;

Whereas, notice of said application has been given and published, and full opportunity has been afforded all interested parties to be heard; and

Whereas, The Board has found that the requirements of the Act and the Board's regulations would be satisfied and that the proposal would be in the public interest if approval were given

subject to the restriction in the resolution accompanying this action, which limits full authority on golf cart activity to a two-year period;

Now, Therefore, in accordance with the application filed November 17, 1987, the Board hereby authorizes the establishment of a subzone at YMMC's Coweta County, Georgia, plant, designated on the records of the Board as Foreign-Trade Subzone No. 26D at the location mentioned above and more particularly described on the maps and drawings accompanying the application, said grant of authority being subject to the provisions and restrictions of the Act and the Regulations issued thereunder, to the restriction in the resolution accompanying this action, and also to the following express conditions and limitations:

Activation of the subzone shall be commenced within a reasonable time from the date of issuance of the grant, and prior thereto, any necessary permits shall be obtained from Federal, state, and municipal authorities.

Officers and employees of the United States shall have free and unrestricted access to and throughout the foreign-trade subzone in the performance of their official duties.

The grant shall not be construed to relieve responsible parties from liability for injury or damage to the person or property of others occasioned by the construction, operation, or maintenance of said subzone, and in no event shall the United States be liable therefor.

The grant is further subject to settlement locally by the District Director of Customs and District Army Engineer with the grantee regarding compliance with their respective requirements for the protection of the revenue of the United States and installation of suitable facilities.

In Witness Whereof, the Foreign-Trade Zones Board has caused its name to be signed and its seal to be affixed hereto by its Chairman and Executive Officer or his delegate at Washington, DC, this 31st day of May 1989, pursuant to Order of the Board.

Foreign-Trade Zones Board.

Eric I. Garfinkel,

Assistant Secretary of Commerce, for Import Administration, Chairman, Committee of Alternates.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

(FR Doc. 89-13428 Filed 6-6-89; 8:45 am)

BILLING CODE 3510-DS-M

International Trade Administration

[Application No. 89-00006]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an export trade certificate of review.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Sun International Trading, Ltd. (SITL). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

All products.

Services

All services.

Export Trade Facilitation Services (as they relate to the export of Products and Services)

All Export Trade Facilitation Services, including consulting; international market research; financing; export licensing; warehousing; shipping; transportation; taking title to goods; arranging for after-sales product servicing; providing information on the mechanics of exporting and on duties and other fees applicable to exporters; and providing information and training concerning quality control, advertising, and distribution.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members (in addition to applicant)

Sun Brokers, Inc. and Sun Galleries, Limited, both of Wilmington, North Carolina.

Export Trade Activities and Methods of Operation

SITL and/or any of its Members may:

1. Enter into exclusive and/or nonexclusive agreements with Suppliers individually to act as the Supplier's Export Intermediary, whereby SITL and/or any of its Members may agree to:

- a. Provide Export Trade Facilitation Services;
- b. Act as licensee or licensing agent for the sale of Products and Services in Export Markets, and/or
- c. Act as the Supplier's agent to identify and appoint exclusive and/or nonexclusive Export Intermediaries to deal in the Supplier's Products and Services in Export Markets;
2. Enter into exclusive and/or nonexclusive agreements with individual foreign buyers to act as a purchasing agent in any Export Market with respect to particular transactions for the individual buyers;
3. Enter into exclusive and/or nonexclusive agreements with individual end-users of Products and Services located in any Export Market under which such end-users may agree to purchase all or part of their requirements of Products and Services from or through SITL and/or any of its Members;
4. Enter into agreements mentioned in items 1 through 3 above that contain territorial, customer, price, and/or quantity or quality restrictions in the Export Markets;
5. Respond, as they become aware of invitations to bid or sales opportunities existing in the Export Markets, by:

- a. Contacting individual Suppliers of the Products and Services listed in the invitation to bid,
- b. Inviting the Suppliers to provide independent price quotations for the Products and Services, and/or
- c. Entering into agreements with Suppliers individually whereby SITL and/or any of its Members will submit a response to the bid invitation or request for quotation.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Date: June 1, 1989.

George Muller,
Acting Director, Office of Export Trading
Company Affairs.

[FR Doc. 89-13417 Filed 6-6-89; 8:45 am]
BILLING CODE 3510-08-M

Applications; for Duty-Free Entry of Scientific Instruments; University of Nevada-Reno et al.

Pursuant to section 6(c) of the Educational, Scientific and Cultural Materials Importation Act of 1966 (Pub. L. 89-651; 80 Stat. 897; 15 CFR Part 301), we invite comments on the question of whether instruments of equivalent scientific value, for the purposes for which the instruments shown below are intended to be used, are being manufactured in the United States.

Comments must comply with § 301.5(a) (3) and (4) of the regulations and be filed within 20 days with the Statutory Import Programs Staff, U.S. Department of Commerce, Washington, DC 20230. Applications may be examined between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 89-152. **Applicant:** University of Nevada-Reno, Department of Mining, Reno, NV 89557-0047. **Instrument:** Single Cylinder Engine Test Bed. **Manufacturer:** G. Cussons, Ltd., United Kingdom. **Intended Use:** The instrument will be used for the training of professional mining engineers in Mine Plant Design and Mine Environmental Control courses.

Application Received by Commissioner of Customs: May 10, 1989.

Docket Number: 89-153. **Applicant:** New York University Medical Center, 550 First Avenue, New York, NY 10016. **Instrument:** Electron Microscope, Model JEM-1200/EX/SEG/DP/DP.

Manufacturer: JEOL, Ltd., Japan. **Intended Use:** The instrument will be used for the study of the ultrastructure of animal cells and viruses during experiments concerned with:

- (1) Polarization of epithelial cells,
- (2) Biogenesis of cellular organelles, in particular rough endoplasmic reticulum, lysosomes, plasma membranes and secretory granules,
- (3) Morphological studies of respiratory epithelia

(4) EM crystallographic studies of Na,K-ATPase and other membrane proteins.

The instrument will also be used on a one-to-one basis in the training of medical and graduate students in the courses Cellular and Molecular Biology and Histology.

Application Received by Commissioner of Customs: May 11, 1989.

Docket Number: 89-154. **Applicant:** Medical University of South Carolina, 171 Ashley Avenue, Charleston, SC 29425. **Instrument:** Imaging Photon Detector **Manufacturer:** Instrument Technology Limited, United Kingdom.

Intended Use: The instrument will be used for studies of spinal cord injuries in order to obtain a better understanding of calcium sensitive processes.

Application Received by Commissioner of Customs: May 11, 1989.

Docket Number: 89-155. **Applicant:** Virginia Military Institute, Route 11, Lexington, VA 24450. **Instrument:** Ground Contactivity Electromagnetic Meter, Model EM-31DL. **Manufacturer:** Geonics Limited, Canada. **Intended Use:** The instrument will be used for educational purposes in the course Engineering Geology with the objective of allowing students to understand and become familiar with geophysical instruments.

Application Received by Commissioner of Customs: May 11, 1989.

Frank W. Creel,
Director, Statutory Import Programs Staff.
[FR Doc. 89-13426 Filed 6-6-89; 8:45 am]
BILLING CODE 3510-08-M

National Institute of Standards and Technology

[Docket No. 90520-9120]

[RIN No. 0693-AA65]

Proposed Federal Information Processing Standard (FIPS) for the User Interface Component of the Applications Portability Profile

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Request for comments.

SUMMARY: This proposed Federal Information Processing Standard (FIPS) will adopt the X Protocol, Xlib Interface, XT Intrinsics and Bitmap Distribution Format specifications of the X Window System, Version 11, Release 3 (X Window System is a trademark of the Massachusetts Institute of Technology (MIT)). This proposed standard is for use by computing professionals involved

in system and application software development and implementation. This proposed standard is part of a series of specifications needed for application portability. The Appendix contains a reference model for network-based bit-mapped graphic user interface standards.

Prior to the submission of this proposed FIPS to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain the specifications in machine-readable form from: D. Richard Kuhn, Technology Building, Room B266, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3337, FAX (301) 948-1784.

DATE: Comments on this proposed FIPS must be received on or before September 5, 1989.

ADDRESS: Written comments concerning the proposed FIPS should be sent to: Director, National Computer Systems Laboratory, ATTN: Proposed FIPS for User Interface Component of APP, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street Between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. D. Richard Kuhn, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3337.

Dated: May 31, 1989.

Raymond G. Kammer,
Acting Director.

Federal Information Processing Standards Publication

(date)

Announcing the Standard for the User Interface Component of the Applications Portability Profile

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Pub. L. 100-235.

Name of Standards. The User Interface Component of the Applications Portability Profile.

Category of Standard. Software Standard, Application Program Interface.

Explanation. This publication announces the adoption of the X Protocol, Xlib, Interface, Xt Intrinsics and Bitmap Distribution Format specifications of the X Window System, Version 11, Release 3 (X Window System is a trademark of the Massachusetts Institute of Technology (MIT)) as a Federal Information Processing Standard. This standard is for use by computing professionals involved in system and application software development and implementation. This standard is part of a series of specifications needed for application portability. The Appendix to this standard contains a reference model for network-based bit-mapped graphic user interface standards. This standard covers the Data Stream Encoding, Data Stream Interface, and Subroutine Foundation layers of the reference model. It is the intention of NIST to provide standards for other layers of the reference model as consensus develops within industry. This standard addresses the user interface functional area of the Applications Portability Profile that was announced in FIPS 151, POSIX: Portable Operating System Interface for Computer Environments.

Approving Authority. Secretary of Commerce.

Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (NIST), National Computer Systems Laboratory.

Cross Index. The X Window System, Version 11, Release 3.

Related Documents.
a. Federal Information Resources Management Regulation 201-8.1, Federal

ADP and Telecommunications Standards.

b. Draft Proposed American National Standard X3J11/87-140, "Programming Language C".

c. FIPS 151, POSIX: Portable Operating System Interface for Computer Environments.

Objectives. This FIPS permits Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources.

The primary objectives of this FIPS are:
a. To promote portability of computer application programs at the source code level.

b. To simplify computer program documentation by the use of a standard portable system interface design.

c. To reduce staff in porting computer programs to different vendor systems and architectures.

d. To increase portability of acquired skills, resulting in reduced personnel training costs.

e. To maximize the return on investment in generating or purchasing computer programs by insuring operating system compatibility.

f. To provide ease of use in computer systems through network-based bit-mapped graphic user interfaces with a consistent appearance. Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard specifications.

Applicability. This FIPS shall be used for network-based bit-mapped graphic systems that are either developed or acquired for government use where distributed/networked bit-mapped graphic interfaces to multi-user computer systems are required.

Specifications. The specifications for this FIPS are the following documents from the X Window System, Version 11, Release 3. These specifications define a C language source code level interface to a network-based bit-mapped graphic system. The computer program source code contained in Version 11, Release 3 is not part of the specifications for this FIPS. The specifications for this FIPS are the following documents from X Version 11, Release 3:

- a. X Window System Protocol, X Version 11,
- b. Xlib—C language X Interface,
- c. X Toolkit Intrinsics—C Language Interface,
- d. Bitmap Distribution Format 2.1.

Implementation. This standard is effective 6 months after date of publication in the Federal Register. The other elements identified in the Appendix should be considered in planning for future procurements.

a. **Acquisition of a Conforming System.** Organizations developing network-based bit-mapped graphic system applications which are to be acquired for Federal use after the effective date of this standard and which have applications portability as a requirement should consider the use of this FIPS. Conformance to this FIPS should be considered whether the network-based bit-mapped graphic system applications are:

1. Developed internally,
2. Acquired as part of an ADP system procurement,
3. Acquired by separate procurement,
4. Used under an ADP leasing arrangement, or
5. Specified for use in contracts for programming services.

b. **Interpretation of the FIPS for the User Interface Component of the Applications Portability Profile.** NIST provides for the resolution of questions regarding the FIPS specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of this FIPS should be addressed to: Director, National Computer Systems Laboratory, Attn: APP User Interface Component FIPS, Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

c. **Validation of Conforming Systems.** The X Testing Consortium has developed a validation suite for measuring conformance to this standard. NIST is considering the use of the X Testing Consortium validation suite as the basis for an NIST validation suite for measuring conformance to this standard.

Waivers. Under certain exceptional circumstances, the heads of Federal departments and agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

- a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or
- b. Cause a major adverse financial impact on the operator which is not offset by Governmentwide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on

which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B-154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Governmental Affairs of the Senate and shall be published promptly in the *Federal Register*.

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver determination must be published in the *Commerce Business Daily* as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under 5 U.S.C. Section 552(b), shall be part of the procurement documentation and retained by the Agency.

Where to Obtain Copies: Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the Massachusetts Institute of Technology and Digital Equipment Corporation.) When ordering, refer to Federal Information Processing Standards Publication—(FIPSPUB—), and title. Payment may be made by check, money order, or deposit account.

Appendix

The FIPS for User Interface is part of a series of FIPS for the Applications Portability Profile (APP), first announced in FIPS 151 (POSIX). The functional components of the APP constitute a "toolbox" of standard elements that can be used to develop and maintain portable applications. The APP is an open systems architecture based upon non-proprietary standards.

One of the most neglected aspects of applications software portability is the requirements to maintain a consistent user interface across all systems on which the application resides. The FIPS for User Interface is the first step in responding to a critical need within the Federal community for a set of tools to develop standard user interfaces. It is the first in a series which we intend to adopt as user interface technology progresses and consensus emerges.

This initial FIPS is based upon the X Window System developed by the Massachusetts Institute of Technology (MIT) X Consortium. The X Window System assumes a client/server model of distributed computing, and user interface applications based upon bit-mapped graphic displays. With this system, software vendors can develop applications that incorporate such interfaces without being concerned about the underlying display hardware on which the application runs. In addition, the application need not be resident on the same computer system as the one to which the user's display is attached.

This FIPS is not intended to specify a government-wide style or "look and feel", nor is it intended as a specification of a general programming interface for graphics applications. It is intended to lay a foundation for standards that will help Federal agencies develop and acquire network-based, bit-mapped graphic user interface applications.

The X Window System program services and interface specifications adopted by this FIPS provide the foundation for a set of vendor independent building blocks that can be used to develop user interface applications. These specifications, however, must be extended to provide the additional program services and interface specifications for user interface applications. These additional specification will be based on the NIST User Interface reference model shown in Figure 1.

The NIST User Interface reference model is a layered model which defines the program services and interfaces required for network-based, bit-mapped graphic user interface applications. This FIPS covers the Data Stream Encoding, Data Stream Interface and Subroutine Foundation layers of the framework. These layers provide a foundation upon which standard components for higher layers of the framework may be built.

NIST USER INTERFACE REFERENCE MODEL

Model layer	System component
6. Application.....	Application.
5. Dialogue.....	UIL, UIMS.
4. Presentation.....	UIL, UIMS.
3. Toolkit.....	Toolkit.
2. Subroutine foundation.....	Xt Intrinsics.
1. Data system interface.....	Xlib.
0. Data stream encoding.....	X protocol.

Figure 1.

Layer 0: Data Stream Encoding

Data Stream Encoding defines the format and sequencing of byte streams passed between client and server. In the X Window System, the Data Stream Encoding is the X "wire" or "network" protocol. As a specification of message formats, the Data Stream Encoding is independent of operating system, programming language, or network communication.

Layer 1: Data Stream Interface

The Data Stream Interface specifies a function call interface to build the messages defined in the Data Stream Encoding layer. In X, this interface is the Xlib function library. The Data Stream Interface converts parameters passed from a program into the bit stream that is transmitted over the network, and converts messages from the server into values passed to the program. The Data Stream Interface provides access to basic graphic functions from Layer 0, and may support system functions such as error handling and synchronization.

Layer 2: Subroutine Foundation

The Subroutine Foundation uses features of the Data Stream Interface to provide the means to build components of window interfaces such as scroll bars. Functions often provided by the Subroutine Foundation include initialization and destruction of objects, management of events and object hierarchy, and the saving and restoration of interface state. The Subroutine Foundation can be thought of as a toolkit with which to build toolkits. The X Window System's Xt Intrinsics set is a Subroutine Foundation for X.

Layer 3: Toolkit

Components such as menus, pushbuttons, scroll bars, or help boxes can be used to build an application interface. These "prefabricated" components make up the Toolkit. The components of Toolkits vary with vendors, but they typically contain most of the common user interface elements.

Layer 4: Presentation

The Presentation layer determines the appearance of the user interface, including aspects such as size, style, and color. It specifies how the components in the Toolkit should be composed to create windows. The appearance may be specified using a User Interface Language (UIL) and may be enforced by a window manager, which controls the size and location of windows, and decorates windows in the style specified by the user. For example, an application program will provide text for a title bar, but the window manager determines the appearance of the title bar.

Layer 5: Dialogue

The Dialogue layer coordinates the interaction between the computer system and the user. It can be thought of as a mediator between the user and the application program. Communication between user and application program is through the Dialogue layer, which may be implemented by a User Interface Management System (UIMS). The user/application interaction is specified by a "dialogue" that associates user actions, such as clicking on a menu item, with application actions. Some UIMS tools can accept a dialogue and a presentation style from which to generate an instance of the UIMS that controls the interaction between user and application.

Layer 6: Application

The application program implements the functions required by the user. Its interaction with the user is through the Dialogue layer.

Plans

The FIPS for User Interface is an integral component of the APP. As with other components of the APP, the specifications adopted by this FIPS are expected to evolve as the technology matures, as additional experience using the technology is gained, and as consensus broadens in the national and international standards arena. NIST has established a process to ensure that the FIPS will evolve in a manner that serves the interests of both users who employ these specifications to acquire products and vendors who use them to build products.

Both users and vendors are included in this process through an ongoing series of APP User Workshops and APP Implementor Workshops. The user workshops provide information on the evolving definition of the User Interface component as well as other APP specifications. They also serve as a forum for users to identify user priorities and to provide input and feedback. The implementor workshops provide a forum for vendors to discuss the APP specifications and to provide feedback on the technical merits of the NIST proposals. The implementor workshops are designed to ensure that there is consensus on the part of the vendors to building products to the evolving APP specifications.

[1] Scheifler, R.W., and J. Gettys, "the X Window System," *ACM Transactions on Graphics*, Vol. 5, No. 2, April, 1986.

[FR Doc. 89-13411 Filed 6-6-89; 8:45 am]

BILLING CODE 3510-CN-M

[Docket No. 90521-9121]

[RIN No. 0693-AA70]

Proposed Federal Information Processing Standard (FIPS) for Posix Shell and Tools: Shell and Application Utility Interface for Computer Operating System Environments

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Request for comments.

SUMMARY: This proposed Federal Information Processing Standard (FIPS) will adopt Draft 8 of the Institute of Electrical and Electronics Engineers (IEEE) Standard for Shell and Application Utility Interface for Computer Operating System Environments (IEEE 1003.2/POSIX Shell and Tools) on an interim basis. IEEE 1003.2/Draft 8 defines a command language interpreter and a set of utility programs. It is for use by computing professionals involved in system and application software development and implementation is part of a series of specifications needed for application portability. This proposed standard addresses the operating systems functional areas of the Applications Portability Profile that was announced in FIPS 151, POSIX.

Prior to the submission of this proposed FIPS to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

This proposed FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice. Interested parties may obtain copies of the technical specifications (IEEE 1003.2/Draft 8) from the IEEE Service Center, 445 Hoes Lane, P.O. Box 1331, Piscataway, NJ 08855-1331, telephone 1-800-678-4333.

DATE: Comments on this proposed FIPS must be received on or before September 5, 1989.

ADDRESS: Written comments concerning the revision should be sent to: Director, National Computer Systems Laboratory, ATTN: Proposed FIPS for POSIX Shell and Tools, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Mr. D. Richard Kuhn, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-3337.

Date: May 31, 1989.

Raymond G. Kammer,
Acting Director.

Federal Information Processing Standards Publication

(date)

Announcing the Standard for POSIX Shell and Tools; Shell and Application Utility Interface for Computer Operating System Environments

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the

Computer Security Act of 1987, Pub. L. 100-235.

Name of Standard. POSIX Shell and Tools: Shell and Application Utility Interface for Computer Operating System Environments

Category of Standard. Software Standard, Operating Systems.

Explanation. This publication announces the adoption of Draft 8 of the Institute of Electrical and Electronics Engineers (IEEE) Standard for Shell and Application Utility Interface for Computer Operating System Environments (IEEE 1003.2/POSIX Shell and Tools) as a Federal Information Processing Standard (FIPS) on an interim basis. IEEE 1003.2/Draft 8 defines a command language interpreter and a set of utility programs. It is for use by computing professionals involved in system and application software development and implementation and is part of a series of specifications needed for application portability. This standard addresses the operating systems functional area of the Applications Portability Profile that was announced in FIPS 151, POSIX.

Approving Authority. Secretary of Commerce.

Maintenance Agency. U.S. Department of Commerce, National Institute of Standards and Technology (NIST), National Computer Systems Laboratory.

Cross Index. The Institute of Electrical and Electronics Engineers Standard for Shell and Application Utility Interface for Computer Operating System Environments, IEEE 1003.2/Draft 8 (POSIX Shell and Tools).

Related Documents.

a. Federal Information Resources Management Regulation 201-8.1, Federal ADP and Telecommunications Standards.

b. FIPS 151, POSIX: Portable Operating System Interface for Computer Environments.

Objectives. This FIPS permits Federal departments and agencies to exercise more effective control over the production, management, and use of the Government's information resources. The primary objectives of this FIPS are:

- Promote portability of computer application programs at the source code level.
- Simplify computer program documentation by the use of a standard portable system interface design.
- Reduce staff hours in porting computer programs to different vendor systems and architectures.
- Increase portability of acquired skills, resulting in reduced personnel training costs.

e. Maximize the return on investment in generating or purchasing computer programs by insuring operating system compatibility.

Government-wide attainment of the above objectives depends upon the widespread availability and use of comprehensive and precise standard specifications.

Applicability. This FIPS should be used for command language interpreters and utilities that are either developed or acquired for Government use where POSIX-like interfaces are required. This FIPS is applicable to the entire range of computer hardware, e.g.:

- Micro-computer systems.
- Mini-computer systems.
- Engineering workstations.
- Mainframes.

Specifications. The specifications for this FIPS are the specifications contained in the Institute of Electrical and Electronics Engineers Standard for Shell and Application Utility Interface for Computer Operating System Environments, IEEE 1003.2/Draft 8 (POSIX—Shell and Tools) as modified below. IEEE 1003.2/Draft 8 defines a command language interpreter and a set of utility programs. IEEE 1003.2/Draft 8 refers to and is a complement to draft IEEE Standard 1003.1-1988, POSIX.

This FIPS makes the following modifications to IEEE Standard 1003.2, Draft 8:

1. The implementation must support the C Locale (see IEEE 1003.2/Draft 8, Section 2.8).

2. The xd (hexadecimal dump) utility is not required.

3. Application Installation Utilities specified in Chapter 5 are not required.

4. The "-v" option of the cc utility (Section 9.1) is not required to operate as specified in IEEE 1003.2/Draft 8.

5. The shell features listed below are not required. This modification of the requirements of IEEE 1003.2/Draft 8 has been made to minimize the impact of changes between Draft 8 and the final version of IEEE Standard 1003.2.

- Operators ([]).
- Reserved words [[]].
- Substring expansions:
\$(name#pattern)
\$(name%pattern)
\$(name##pattern)
\$(name%%pattern)
- String length expansion \${#name}.
- Command substitution syntax \$(command).
- Multi-digit positional parameters.
- Built-in commands alias, typeset, and unalias.
- Test operators -nt, -ot, and -ef.
- Assigning values with export and readonly.

j. Symbolic names for signals and traps.

k. Separation of positional parameters expanded from \$* and @\$ by the first character of the IFS. Only the capability to separate parameters by a space is required.

l. Functions.

m. Function option -f for the unset command.

Recommendations. Users of this standard should be aware that it does not require the Shell and Tools interface to be implemented on a FIPS 151 conforming implementation. Users should also be aware that certain utilities and functions are optional in IEEE Standard 1003.2. To provide the greatest support for application portability, it is recommended that an implementation conforming to this FIPS also provide the following features:

1. A FIPS 151 conforming applications interface.

2. The UUCP protocol and utilities as specified in Appendix C of IEEE Standard 1003.2/Draft 8.

3. Software Development Utilities Option (Chapter 7), when software will be developed on the systems being acquired.

4. C Language Bindings Option (Chapter 8).

5. C Language Development Utilities Option (Chapter 9), where software will be developed in C on the systems being acquired.

6. FORTRAN Development Utilities Option (Chapter 10), where software will be developed in FORTRAN on the systems being acquired.

Implementation. This standard is effective 6 months after publication in the Federal Register. The other elements identified in the Appendix should be considered in planning for future procurements.

a. Acquisition of a Conforming Portable Shell and Application Utility Interface. Organizations developing applications which are to be acquired after the publication date of this standard and which have applications portability as a requirement should consider the use of this FIPS. Conformance to this FIPS should be considered whether the operating system environments are:

- Developed internally,
- Acquired as part of an ADP system procurement,
- Acquired by separate procurement,
- Used under an ADP leasing arrangement, or
- Specified for use in contracts for programming services.

b. Interpretation of the FIPS for Shell and Application Utility Interface. NIST provides for the resolution of questions

regarding the FIPS specifications and requirements, and issues official interpretations as needed. All questions about the interpretation of this FIPS should be addressed to: Director, National Computer Systems Laboratory, Attn: POSIX Shell and Tools FIPS Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

c. Validation of Conforming Operating Systems Environments. NIST is developing cooperatively with industry a validation suite for measuring conformance to this standard. This suite will be available for testing conformance of POSIX Shell and Tool implementations.

Where to Obtain Copies: Copies of this publication are for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. (Sale of the included specifications document is by arrangement with the Institute of Electrical and Electronics Engineers, Incorporated.) When ordering, refer to Federal Information Processing Standards Publication — (FIPSPUB —), and title. Payment may be made by check, money order, or deposit account.

[FR Doc. 89-13412 Filed 6-6-89; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by the Gulf Oil Division, Cumberland Farms, Inc., From an Objection by the Connecticut Department of Environmental Protection

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of appeal.

On February 2, 1989, the Secretary of Commerce received a notice of appeal from the Gulf Oil Division, Cumberland Farms, Inc. (Appellant), pursuant to section 307(c)(3)(A) of the Coastal Zone Management Act, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's implementing regulations, 15 CFR Part 930, Subpart H. The appeal is taken from an objection by the Connecticut Department of Environmental Protection (State) to the Appellant's consistency certification for a United States Army Corps of Engineers (Corps) permit to dredge approximately 44,800 cubic yards of material in New Haven Harbor and to

dispose of it in the open waters of Long Island Sound at the Central Long Island Sound disposal site. The State's objection precludes the Corps from issuing the permit pending the outcome of the Appellant's appeal.

If the Appellant perfects the appeal by filling the supporting data and information required by the Department's implementing regulations, public comments will be solicited by a notice in the Federal Register and a local newspaper.

FOR ADDITIONAL INFORMATION CONTACT: Hugh C. Schratwieser, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 873-5200.

(Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: May 31, 1989.

William E. Evans,

Under Secretary for Oceans and Atmosphere.

[FR Doc. 89-13421 Filed 6-6-89; 8:45 am]

BILLING CODE 3510-08-M

Pacific Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Groundfish Management Team (GMT) of the Pacific Fishery Management Council (Council) will convene a public meeting to discuss 1989 catch projections for sablefish and other species and will calculate the projected closure date for the non-trawl sablefish fishery. A sablefish economic analysis will be reviewed for presentation to the Council at its July 12-13 meeting. The GMT will also discuss automated hook extractors, the accounting of discards in stock assessments and harvest management, bycatch of yellowtail rockfish in the joint venture fishery, and other issues related to management of the Pacific Coast Groundfish fisheries.

Date And Time: The meeting will be held at 8:00 p.m., June 20, 1989.

Place: The meeting will be held in the Commission Meeting Room, Oregon Fish & Wildlife (ODFW) Office, 506 SW. Mill Street, Portland, Oregon.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First

Avenue, Portland, OR 97201; telephone 503-328-6352.

(Authority: 16 U.S.C. 1301 et seq.)

Date: June 1, 1989.

Richard H. Schaefer,

Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-13429 Filed 6-6-89; 8:45 am]

BILLING CODE 3510-22-M

Travel and Tourism Administration

Travel and Tourism Advisory Board; Meeting

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. (App. 1978) notice is hereby given that the Travel and Tourism Advisory Board of the U.S. Department of Commerce will meet on June 26, 1989 at 9:00 a.m. at the Hyatt on Union Square, 345 Stockton Avenue, San Francisco, California. Meeting location will be posted on hotel directory.

Established March 19, 1982, the Travel and Tourism Advisory Board consists of 15 members, representing the major segments of the travel and tourism industry and state tourism interests, and includes one member of a travel labor organization, a consumer advocate, an academician and a financial expert.

Members advise the Secretary of Commerce on matters pertinent to the Department's responsibilities to accomplish the purpose of the National Tourism Policy Act (Pub. L. 97-63), and provide guidance to the Assistant Secretary for Tourism Marketing in the preparation of annual marketing plans.

Agenda items are as follows:

- Call to Order
- Approval of Minutes
- Strategic Plan
- Rural Tourism Study
- Visa Waiver Update
- Revision of National Tourism Policy Act
- EC 1992
- 1990 Berlin Meeting
- Miscellaneous
- Adjournment

A very limited number of seats will be available to observers from the public and the press. To assure adequate seating, individuals intending to attend should notify the Committee Control Officer in advance. The public will be permitted to file written statements with the Committee before or after the meeting. To the extent time is available, the presentation of oral statements is allowed.

Karen M. Cardran, Committee Control Officer, United States Travel and Tourism Administration, Room 1865,

U.S. Department of Commerce, Washington, DC 20230 (telephone: 202-377-0140) will respond to public requests for information about the meeting.

Eric C. Peterson,

Acting Under Secretary, for Travel and Tourism, U.S. Department of Commerce.

[FR Doc. 89-13451 Filed 6-6-89; 8:45 am]

BILLING CODE 3510-11-M

DEPARTMENT OF DEFENSE

Office of the Inspector General

Privacy Act of 1974; New System of Records

AGENCY: Inspector General, DOD.

ACTION: Notice of a new system of records subject to the Privacy Act.

SUMMARY: The Office of the Inspector, Department of Defense, is adding a new system of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a). Under the provisions of subsection (e)(4) and (11) of the Act, public notice for comment must be made of any proposed new record system.

DATE: This proposed action will be effective without further notice July 7, 1989, unless comments are received which would result in a contrary determination.

ADDRESS: Send any comments to the Assistant Director, FOIA/PA Division, Assistant Inspector General for Investigations, Room 1016, 400 Army Navy Drive, Arlington, VA 22202-2884.

FOR FURTHER INFORMATION CONTACT: Dominick D. Wasielewski, (202) 697-6035, AUTOVON: 227-6035.

SUPPLEMENTARY INFORMATION: The complete inventory of record system notices subject to the Privacy Act for the Office of the Inspector General, DoD, has been published in the Federal Register to this date as listed:

(50 FR 22279) May 29, 1985 (Compilation changes follow)
(52 FR 26547) July 15, 1987
(52 FR 35754) September 23, 1987

A new system report containing an advance copy of this notice has been provided to the U.S. House Committee on Governmental Operations, the U.S. Senate Committee on Governmental Affairs, and to the Administrator, Office of Information and Regulatory Affairs, Office of Management and Budget (OMB) on May 23, 1989, as required by subsection (r) of 5 U.S.C. 552a in order to permit an evaluation of the probable or

potential effect of this proposal on the privacy or other rights of individuals.
L. M. Bynum,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*
June 1, 1989.

CIG-10**SYSTEM NAME:**

Validation of Credentials of DoD
Contractors' Employees

SYSTEM LOCATION:

Department of Defense (DoD), Office
of the Assistant Inspector General for
Analysis and Followup, Analysis &
External Coordination, 400 Army Navy
Drive, Arlington, VA 22202-2884.

**CATEGORIES OF INDIVIDUALS COVERED BY THE
SYSTEM:**

Individuals employed by DoD
Contractors, to include Consultants to
the Contractors, selected on a random
basis for validation of credentials.

CATEGORIES OF RECORDS IN THE SYSTEM:

Résumés containing personal
information consisting of an individual's
name, social security number, schools
attended, location of schools, degree(s)
awarded, date(s) awarded, work history
and last known or current address.
Records also contain documents
validating the individual's educational
credentials, experience, and state,
federal and/or board certification(s).

**AUTHORITY FOR MAINTENANCE OF THE
SYSTEM:**

Pub. L. 95-452, the Inspector General
Act of 1978, as amended; 10 U.S.C.
Section 133, Secretary of Defense:
Appointment, Powers, Duties and
Delegation by: DoD Directive 5106.1,
"Inspector General of the Department of
Defense" (32 CFR Part 373).

PURPOSE:

To validate credentials such as
education, experience, and state, federal
and/or board certification of persons
employed by DoD Contractors, where
such credentials have been cited as part
of the cost basis for accomplishing
contract requirements.

**ROUTINE USES OF RECORDS MAINTAINED IN
THE SYSTEM INCLUDING CATEGORIES OF
USERS, AND THE PURPOSE OF SUCH USES:**

The Blanket Routine Uses that appear
at the beginning of the Office of
Inspector General's compilation of
record system notices apply to this
system of records.

**POLICIES AND PRACTICES FOR STORING,
RETRIEVING, ACCESSING, RETAINING, AND
DISPOSING OF RECORDS IN THE SYSTEM:****STORAGE:**

Paper records in file folders, computer
magnetic disks and paper printouts in
secure filing cabinets.

RETRIEVABILITY:

Paper records filed in folders and
computer magnetic disks retrieved by
using a computerized index of names.

SAFEGUARDS:

Paper records are filed in folders
stored in a locked filing cabinet.
Computer disks and printouts are stored
in a locked filing cabinet. Locked filing
cabinets are stored in a limited access
area.

RETENTION AND DISPOSAL:

Paper records and computer disks are
to be retained until completion of the
overall validation process and data
analysis, then destroyed. Where
discrepancies occur in the listed
credentials, during the validation
process, those credentials at issue will
be submitted to the Assistant Inspector
General for Investigation for follow-up
to resolve the issue.

SYSTEM MANAGER AND ADDRESS:

DoD Inspector General, Office of the
Assistant Inspector General for
Investigations, ATTN: Assistant
Director, FOIA/PA Division, 400 Army
Navy Drive, Arlington, VA 22202-2884.

NOTIFICATION PROCEDURE:

Written requests should be addressed
to the System Manager and should be
notarized.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records
pertaining to them should submit a
written request as indicated in
"Notification procedure." Individual
should provide his/her full name (first,
middle, last), former maiden and
married names or other aliases, name of
DoD Contractor for whom employed and
approximate dates, and current address.

CONTESTING RECORD PROCEDURES:

The rules for contesting contents and
appealing initial determination will be
provided upon request to the System
Manager

RECORD SOURCE CATEGORIES:

DoD Contractor bid packages and/or
personnel files, colleges/universities,
and state/federal licensing and/or
certification boards. To the extent that
follow-up to resolve discrepancies is
required, information collected directly
from the individual may be included in
investigative inquiries.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 89-13439 Filed 6-6-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary**Advisory Group on Electron Devices;
Advisory Committee Meeting**

SUMMARY: Working Group A (Mainly
Microwave Devices) of the DoD
Advisory Group on Electron Devices
(AGED) announces a closed session
meeting.

DATE: The meeting will be held at 0900,
Wednesday, 28 June 1989.

ADDRESS: The meeting will be held at
Palisades Institute for Research
Services, Inc., 2011 Crystal Drive, Suite
307, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT:
Harold Summer, AGED Secretariat, 201
Varick Street, New York, 10014.

SUPPLEMENTARY INFORMATION: The
mission of the Advisory Group is to
provide the Under Secretary of Defense
for Acquisition, the Director, Defense
Advanced Research Projects Agency
and the Military Departments with
technical advice on the conduct of
economical and effective research and
development programs in the area of
electron devices.

The Working Group A meeting will be
limited to review of research and
development programs which the
military propose to initiate with
industry, universities or in their
laboratories. This microwave device
area includes programs on
developments and research related to
microwave tubes, solid state microwave,
electronic warfare devices, millimeter
wave devices, and passive devices. The
review will include classified program
details throughout.

In accordance with section 10(d) of
Pub. L. No. 92-463, as amended (5 U.S.C.
App. II 10(d) (1982)), it has been
determined that this Advisory Group
meeting concerns matters listed in 5
U.S.C. 552b(c)(1) (1982), and that
accordingly, this meeting will be closed
to the public.

L.M. Bynum,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

June 1, 1989.

[FR Doc. 89-13492 Filed 6-6-89; 8:45 am]

BILLING CODE 3810-01-M

**Strategic Defense Initiative Advisory
Committee; Cancellation of Meeting**

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the
Strategic Defense Initiative Advisory
Committee scheduled for May 22-23,
1989 as published in the *Federal Register*
(Vol. 54, Page 18005, Wednesday, April
26, 1989, FR Doc 89-9972) has been
cancelled. In all other respects the
original notice remains unchanged.

L.M. Bynum,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

June 1, 1989.

[FR Doc. 89-13493 Filed 6-6-89; 8:45 am]

BILLING CODE 3810-01-M

**Defense Science Board Task Force on
Advanced Naval Warfare Concepts**

ACTION: Change in date of advisory
committee meeting notice.

SUMMARY: The meeting of the Defense
Science Board Task Force on Advanced
Naval Warfare Concepts scheduled for
May 25, 1989 as published in the *Federal
Register* (Vol. 54, No. 93, Page 21092,
Tuesday, May 16, 1989, FR Doc. 89-
11636) was held on May 31, 1989.

Linda M. Bynum,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

June 1, 1989.

[FR Doc. 89-13494 Filed 6-6-89; 8:45 am]

BILLING CODE 3810-01-M

**Defense Science Board Task Force on
Advanced Naval Warfare Concepts;
Cancellation of Meeting**

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the
Defense Science Board Task Force on
Advanced Naval Warfare Concepts
scheduled for May 26, 1989 as published
in the *Federal Register* (Vol. 54, No. 93,
Page 21092, Tuesday, May 16, 1989, FR
Doc 89-11636) has been cancelled.

Linda M. Bynum,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

June 1, 1989.

[FR Doc. 89-13495 Filed 6-6-89; 8:45 am]

BILLING CODE 3810-01-M

**Defense Science Board Task Force on
Defense Procurement With a Global
Technology Base; Cancellation of
Meeting**

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the
Defense Science Board Task Force on
Defense Procurement With a Global
Technology Base scheduled for June 1,
1989 as published in the *Federal Register*
(Vol. 54, No. 93, Page 21093, Tuesday,
May 16, 1989, FR Doc 89-11638.) has
been cancelled.

Linda M. Bynum,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

June 1, 1989.

[FR Doc. 89-13496 Filed 6-6-89; 8:45 am]

BILLING CODE 3810-01-M

**Defense Science Board Task Force on
Low Observable Technology, Air
Force Subgroup; Meetings**

ACTION: Notice of advisory committee
meetings.

SUMMARY: The Defense Science Board
Task Force on Low Observable
Technology, Air Force Subgroup will
meet in closed session on October 11-12
and November 28-29, 1989 at the
Pentagon, Arlington, Virginia.

The mission of the Defense Science
Board is to advise the Secretary of
Defense and the Under Secretary of
Defense for Acquisition on scientific and
technical matters as they affect the
perceived needs of the Department of
Defense. At these meetings the Task
Force will provide the Air Force with
scientific advice on its activities in this
area.

In accordance with section 10(d) of
the Federal Advisory Committee Act,
Pub. L. 92-463, as amended (5 U.S.C.
App. II, (1982)), it has been determined
that these DSB Task Force meetings,
concern matters listed in 5 U.S.C.
552b(c)(1) (1982), and that accordingly
these meetings will be closed to the
public.

June 1, 1989.

Linda M. Bynum,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

[FR Doc. 89-13497 Filed 6-6-89; 8:45 am]

BILLING CODE 3810-01-M

**Defense Science Board Task Force on
Low Observable Technology, Air
Force Subgroup; Meeting**

ACTION: Change in date of advisory
committee meeting notice.

SUMMARY: The meeting of the Defense
Science Board Task Force on Low
Observable Technology, Air Force
Subgroup scheduled for June 13-14 and

September 14-15, 1989 as published in
the *Federal Register* (Vol. 54, No. 73,
Page 15539, Tuesday, April 18, 1989, FR
Doc. 89-9247) will be held on June 20-21
and September 12-13, 1989.

Linda M. Bynum,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

June 1, 1989.

[FR Doc. 89-13498 Filed 6-6-89; 8:45 am]

BILLING CODE 3810-01-M

**Defense Science Board 1989 Summer
Study on Improving Test and
Evaluation Effectiveness; Meetings**

ACTION: Notice of advisory committee
meetings.

SUMMARY: The Defense Science Board
1989 Summer Study on Improving Test
and Evaluation Effectiveness will meet
in closed session on July 11-13, 1989, at
Science Applications International
Corporation, McLean, Virginia.

The mission of the Defense Science
Board is to advise the Secretary of
Defense and the Under Secretary of
Defense for Acquisition on scientific and
technical matters as they affect the
perceived needs of the Department of
Defense. At this meeting the Task Force
will examine the contributions of
modeling and simulation to Defense test
and evaluation so as to improve the
acquisition process.

In accordance with section 10(d) of
the Federal Advisory Committee Act,
Pub. L. 92-463, as amended (5 U.S.C.
App. II, (1982)), it has been determined
that this DSB Task Force meeting,
concerns matters listed in 5 U.S.C.
552b(c)(1) (1982), and that accordingly
this meeting will be closed to the public.

June 1, 1989.

Linda M. Bynum,

*Alternate OSD Federal Register Liaison
Officer, Department of Defense.*

[FR Doc. 89-13499 Filed 6-6-89; 8:45 am]

BILLING CODE 3810-01-M

**Defense Science Board Task Force on
SDIO Technology Assessment;
Cancellation of Meeting**

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the
Defense Science Board Task Force on
SDIO Technology Assessment
scheduled for May 3-4, 1989, as
published in the *Federal Register* (Vol.

54, No. 51, Page 11263, Friday, March 17, 1989, FR Doc. 89-6295) has been cancelled.

June 1, 1989.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 89-13500 Filed 6-6-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board 1989 Summer Study on Improving Test and Evaluation Effectiveness; Cancellation of Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board 1989 Summer Study on Improving Test and Evaluation Effectiveness scheduled for May 17-18, 1989 as published in the *Federal Register* (Vol. 54, No. 70, Page 14833-14834, Thursday, April 13, 1989, FR Doc. 89-8806) has been cancelled.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 1, 1989.

[FR Doc. 89-13501 Filed 6-6-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board 1989 Summer Study on Non-Cooperative Identification; Advisory Committee Meetings

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board 1989 Summer Study on Non-Cooperative Identification will meet in closed session on July 6-7, 1989 at Systems Planning Corporation, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will consider and make recommendations on future capabilities of military forces to distinguish enemy targets from friendly and civilian targets in offensive and defensive air operations and naval surface warfare.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C.

552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 1, 1989.

[FR Doc. 89-13502 Filed 6-6-89; 8:45 am]

BILLING CODE 3810-01-M

Department of the Army

Military Traffic Management Command; Military Personal Property Claims Symposium; Open Meeting

Announcement is made of meeting of the Military Personal Property Claims Symposium. This meeting will be held on 22 June 1989 at the Sheraton Crystal City Hotel, Arlington, Virginia, and will convene at 0830 hours and adjourn at approximately 1500 hours.

Proposed Agenda: The purpose of the symposium is to provide an open discussion and free exchange of ideas with the public on procedural changes to Personal Property Traffic Management Regulation, DOD 4500.34-R, and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, Attn: MTPP-M, at telephone number 756-1600, between 0800-1530 hours. Topics to be discussed should be received on or before 9 June 1989.

Dated: May 30, 1989.

Joseph R. Marotta,

Colonel, GS, Director of Personal Property.

[FR Doc. 89-13636 Filed 6-6-89; 8:45 am]

BILLING CODE 3710-08-M

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Survivability of Navy Tactical Communications in a Hostile Environment will meet on June 21-22, 1989. The meeting will be held at E Systems, MelPar Division, 7700 Arlington Blvd., Falls Church, Virginia. The meeting will commence at 9:00 a.m. and terminate at 4:00 p.m. on June 21 and 22, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members

related to the survivability of Navy tactical communications in a hostile environment. The agenda will include briefings and discussions on communications support systems and unified networking technology. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (202) 696-4488.

Date: June 2, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-13442 Filed 6-6-89; 8:45 am]

BILLING CODE 3810-AE-M

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Naval Research Advisory Committee Panel on Tactical Defense Suppression in the Year 2000 will meet on June 21 and 22, 1989. The meeting will be held at the Office of the Chief of Naval Research, 800 N. Quincy Street, Arlington, Virginia. The meeting will commence at 8:30 a.m. and terminate at 5:00 p.m. on June 21; and commence at 9:00 a.m. and terminate at 4:00 p.m. on June 22, 1989. All sessions of the meeting will be closed to the public.

The purpose of the meeting is to provide briefings for the panel members related to naval aviation's ability to conduct lethal defense suppression missions in the year 2000. The agenda will include briefings and discussions related to program objectives, the threat, and Tacit Rainbow/SEEK Spinner Programs. These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive Order to be kept secret in the

interest of national defense and is in fact properly classified pursuant to such Executive Order. The classified and non-classified matters to be discussed are so inextricably intertwined as to preclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander L.W. Snyder, U.S. Navy, Office of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (202) 696-4488.

Sandra M. Kay,

Department of the Navy Alternate Federal Register Liaison Officer.

[FR Doc. 89-13443 Filed 6-6-89; 8:45 am]

BILLING CODE 3810-AE-M

DELAWARE RIVER BASIN COMMISSION

Amendment to Comprehensive Plan and Water Code of the Delaware River Basin

AGENCY: Delaware River Basin Commission.

ACTION: Notice.

SUMMARY: At its May 24, 1989 business meeting the Delaware River Basin Commission amended its Comprehensive Plan and Water Code in relation to water conservation performance standards for plumbing fixtures and fittings. The amendment revises a rule adopted by the Commission on January 13, 1988. That rule, Resolution No. 88-2, established Basinwide water conservation performance standards for plumbing fixtures and fittings installed in new construction and renovation. The regulation required that all water conservation performance standards for plumbing fixtures and fittings adopted by the four Basin States or political subdivisions within the Basin comply with specified minimum standards for sink and lavatory faucets, shower heads, water closets, urinals and associated flushing mechanisms. Compliance dates were specified as were certain specialized fixtures and fittings not covered by the regulation. The regulation also required certification by manufacturers that their plumbing fixtures and fittings comply with the water conservation performance standards. In addition, Pennsylvania political subdivisions or

their agencies seeking Commission permit approval or renewal must document that water conservation performance regulations consistent with the adopted standards have been adopted within their area of jurisdiction. Finally, periodic review of the performance standards was also required to allow for incorporation of more stringent water conservation performance standards as technology advances.

Subsection 2.1.5(4) of the regulation required the Executive Director to conduct an initial review of the standards within a year to consider the modification of the current standard for water closets (a maximum of 3.5 gallons per flush) to require low consumption water closets (a maximum of 1.8 gallons per flush) effective January 1, 1990. A summary report documenting the results of this review was submitted to the Delaware River Basin Commission in January 1989. Based upon this review, the Commission proposed that the regulation be revised to require low consumption water closets effective January 1, 1991. It was also proposed that all water conservation performance standards for plumbing fixtures and fittings adopted by the Basin States or political subdivisions within the Basin comply with the low-consumption water closet requirement by January 1, 1991. In addition, the proposal called for modification of the schedule for state or local compliance with the performance standards in the Commonwealth of Pennsylvania, which does not yet have statewide performance standards for plumbing fixtures and fittings. The other Basin States already have statewide standards.

The proposal encouraged the Commonwealth of Pennsylvania to adopt water conservation performance standards for plumbing fixtures and fittings which comply with the Commission's standards for January 1, 1991. In the absence of Pennsylvania standards, the proposal called for the Commission to notify all municipalities within the Pennsylvania portion of the Basin of the requirement to adopt and enforce local regulations which comply with the Commission standards. Upon such notification by the Commission, municipalities would have one year to adopt local regulations.

EFFECTIVE DATE: May 24, 1989.

ADDRESS: Copies of the Commission's Water Code are available from the Delaware River Basin Commission, P.O. Box 7360, West Trenton, New Jersey 08628.

FOR FURTHER INFORMATION CONTACT: Susan M. Weisman, Commission

Secretary, Delaware River Basin Commission: Telephone (609) 883-9500.

SUPPLEMENTARY INFORMATION: The Commission held a public hearing on the proposed amendment on March 20, 1989 as noticed in the February 6, 1989 and March 13, 1989 issues of the *Federal Register* (Vol. 54, No. 23 and Vol. 54, No. 47). Based upon testimony received and further deliberation, the Commission added a provision to require that plumbing fixtures and fittings be certified and labeled by the manufacturer as meeting the Commission's water conservation performance standards. With that addition, the Commission has adopted its proposal and amended its Comprehensive Plan and Water Code of the Delaware River Basin.

Article 2 of the Water Code of the Delaware River Basin is hereby amended by the substitution of a new subsection 2.1.5 to read as follows:

2.1.5 Water conservation performance standards for plumbing fixtures and fittings.

(1)(a) All water conservation performance standards for plumbing fixtures and fittings adopted by any signatory state or political subdivision within the Delaware River Basin shall comply with the following minimum standards:

(i) For sink and lavatory faucets, maximum flow shall not exceed three gallons of water per minute when tested in accordance with American National Standards Institute (ANSI) A112.18.1M; and

(ii) For shower heads, maximum flow shall not exceed three gallons of water per minute when tested in accordance with ANSI A112.18.1M; and

(iii) For water closets and associated flushing mechanism, maximum volume shall not exceed an average of one and six-tenths gallons per flushing cycle when tested in accordance with the hydraulic performance requirements of ANSI A112.19.2M and ANSI A112.19.6M; and

(iv) For urinals and associated flushing mechanism, maximum flow shall not exceed one and one-half gallons of water per flush when tested in accordance with the hydraulic performance requirements of ANSI A112.19.2M and ANSI A112.19.6M.

(b) Any water conservation performance standards adopted prior to the effective date of this regulation that are not in compliance with the provisions of (a) shall be amended or revised to comply with the provisions of (a) by January 1, 1991.

(c) The Commonwealth of Pennsylvania is encouraged to adopt water conservation performance standards for plumbing fixtures and fittings that comply with the provisions of (a) by January 1, 1991. In the absence of such regulations, the Commission shall notify all municipalities within the Pennsylvania portion of the Basin of the requirement to adopt and enforce local regulations that comply with the provisions of (a). Upon notification by the Commission, municipalities shall have one year to adopt such local regulations.

(2)(a) The performance standards of subsection (1) shall apply to plumbing fixtures and fittings installed in new construction and, where provided in state or local regulations, in existing structures undergoing renovations involving replacement of such fixtures and fittings.

(b) The performance standards of subsection (1) shall not apply to fixtures and fittings such as emergency showers, aspirator faucets, and blowout fixtures that, in order to perform a specialized function, cannot meet the standards specified in subsection (1).

(3) To be acceptable for use in the Basin, plumbing fixtures and fittings shall be certified and labeled by the manufacturer as meeting the water conservation performance standards specified in subsection (1). Certification shall be based on independent test results. Plumbing fixtures and fittings shall be labeled in accordance with ANSI A112.18M and ANSI A112.19.2M.

(4) The Executive Director shall periodically review the performance standards and testing requirements set forth in subsection (1) to determine their adequacy in light of advances in technology for water conservation fixtures and fittings. The results of such reviews, including any recommendations for more stringent water conservation performance standards, shall be presented to the Commission.

(5) Municipalities of the Commonwealth of Pennsylvania seeking permit approval or renewal under § 3.8 of the Compact for water supply or wastewater discharge projects shall document that regulations consistent with subsection (1) have been adopted within their area of jurisdiction. Such documentation shall be a condition for permit approval or renewal.

(Delaware River Basin Compact, 75 Stat. 686)

Susan M. Weisman,

Secretary.

May 30, 1989.

[FR Doc. 89-13360 Filed 6-6-89; 8:45 am]

BILLING CODE 6360-01-04

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. P.L. 89-2-000 et al.]

Interstate Natural Gas Pipeline Rate Design; Black Marlin Pipeline Co. et al.

	Docket Nos.
In the matter of Interstate Natural Gas Pipeline Rate Design:	PL89-2-000
Black Marlin Pipeline Company	RP89-75-000
Chandeleur Pipeline Company	RP89-86-000
CNG Transmission Corporation	RP88-211-000
Columbia Gas Transmission Corporation	RP89-168-000
Columbia Gulf Transmission Company	RP89-167-000
El Paso Natural Gas Company	RP88-44-000
Florida Gas Transmission Company	RP89-50-000
High Island Offshore System	RP89-37-000
Inland Gas Company, Inc.	RP89-65-000
Kentucky West Virginia Gas Company	RP86-62-000
	RP89-146-000
	RP89-61-000
KN Energy, Inc.	RP87-86-005
	RP88-11-002
	RP85-11-019
	(Phase II)
	RP89-110-000
	RP89-111-000
Midwestern Gas Transmission Company	RP89-35-000
National Fuel Gas Supply Corporation	RP89-36-000
Northern Border Pipeline Company	RP89-49-000
Northern Natural Gas Company	RP89-33-000
Northwest Pipeline Corporation	RP88-259-000
Panhandle Eastern Pipe Line Company	RP88-47-000
Pacific Pipeline Company	RP88-262-000
Pelican Interstate Gas System	RP89-35-000
Sea Robin Pipeline Company	RP89-73-000
Tennessee Gas Pipeline Company	RP88-181-000
Texas Eastern Gas Transmission Corporation	RP88-228-000
Transcontinental Gas Pipe Line Corporation	RP88-67-000
Transwestern Pipeline Company	RP87-7-000
Trunkline Gas Company	RP89-43-000
U-T Offshore System	RP88-180-000
West Texas Gas, Inc.	RP89-38-000
West Texas Gathering Company	RP88-256-001
Williams Natural Gas Company	RP89-67-000
Williston Basin Interstate Pipeline Company	RP87-33-000
	RP88-197-000
	RP88-236-000
	RP89-34-000

Policy Statement Providing Guidance with Respect to the Designing of Rates

Issued May 30, 1989.

I. Purpose

In 1985, the Commission adopted Order No. 436¹ to launch a new era of open-access transportation by pipelines performing self-implementing transportation under either the Natural Gas Act² or the Natural Gas Policy Act (NGPA).³ The Commission codified its new open-access transportation program in Part 284 of its regulations.⁴ In Part 284, the Commission set forth its objectives and policies with respect to the designing of rates for a pipeline's open-access transportation services. As a result of its experience in designing transportation rates under the principles of Order No. 436, and in examining the design of the transportation component of sales rates, the Commission here states that the same goals and policies are equally applicable to both types of rates. The purpose of this order is to provide the administrative law judges (ALJs) and the participants (including the Commission staff) in the above-captioned proceedings with additional guidance on how to implement the Commission's rate objectives and policies under Part 284.⁵ This policy statement will enable the participants to develop factual records under which the ALJs, in the first instance, and the Commission on review can fashion comprehensive rate design schemes tailored to particular pipelines which will fulfill the intent of the NGPA that market forces play a "more significant role in determining the supply, the demand, and the price of natural gas,"⁶ and the mandate of the Natural Gas Act that a pipeline's rates must be just and reasonable and must not result in any undue preference or undue discrimination.⁷

¹ Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, [Reg. Preambles 1982-1985] § 30.665 (1985), vacated and remanded, *Associated Gas Distributors v. FERC*, 824 F.2d 981 (D.C. Cir. 1987), readopted on an interim basis, Order No. 500, FERC Stats. & Regs. § 30.761 (1987).

² Section 7, 15 USC 717f (1982).

³ Section 311, 15 USC 3371 (1982).

⁴ 18 CFR Part 284 (1986).

⁵ The Commission recognizes that the caption to this order only includes proceedings that are pending before the ALJs and not proceedings that are pending before the Commission. The Commission intends to apply the principles set out here to cases pending before it on a case-by-case basis.

⁶ *Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board of Miss.*, 474 U.S. 409, 422 (1986).

⁷ See, e.g., Order No. 497, Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, FERC Stats. & Regs. § 30.820 (1988) for a discussion of the Commission's concern about possible abuses in the relationship between pipelines and their marketing affiliates.

To date, the Commission has permitted transportation rates to be used that were not in strict compliance with the requirements of Part 284. This has been allowed in order "to encourage pipelines to begin transporting under the new regulations and to gain some experience with the operation of the new regulatory scheme."⁸ However, the Commission has now gained experience with the Part 284 ratemaking methodology and the "pipelines have had experience providing transportation under the Part 284 regulations."⁹ Hence, pipelines must demonstrate, and the Commission will ensure, that pipeline "rates comply with the requirements of Section 284.7 of the regulations."¹⁰ In addition, pipelines will "bear the burden of justifying any deviations from the requirements of the regulations."¹¹

This policy statement will deal with significant aspects of the rate design process and related matters. In particular, this policy statement will discuss seasonal rates, the division of fixed costs between the demand¹² and commodity¹³ charges, capacity adjustments, discounted transportation, maximum interruptible rates, and rates for forward haul and backhaul transportation and exchange arrangements.

II. Rate Design Objectives

1. General Principles

The ratemaking process begins with the establishment of a cost of service or revenue requirement, continues through a series of steps by which the costs are assigned to various services and customer groups, and concludes with development of unit rates.¹⁴ The

⁸ *El Paso Natural Gas Co.*, 46 FERC ¶ 61,079 at p. 61,349 (1989).

⁹ *Id.*

¹⁰ *Id.* See also *Northern Natural Gas Co.*, 45 FERC ¶ 61,097 at p. 61,318 (1988).

¹¹ 46 FERC ¶ 61,079 at p. 61,349.

¹² The appropriate transportation rate term is reservation fee. However, demand will be used in this order to refer to both the sales and transportation charges for the right to capacity.

¹³ Commodity is a misnomer for a transportation rate because transportation is a usage service. Nonetheless, commodity will be used in this order to refer to both the sales and transportation charge for units purchased or shipped.

¹⁴ The pipeline's cost of service or revenue requirement is assigned to its customers through the rate design process. The first step in the rate design process is to divide the cost-of-service among the pipeline's major operations or functions such as production, gathering, transmission and storage. This step is called cost functionalization. The next step is to categorize the pipelines functionalized costs as either fixed or variable costs. The pipeline's costs are then classified (*i.e.*, assigned) to the demand and commodity components of its rates. This step is traditionally called cost classification. Next, the classified costs are allocated between the pipeline's jurisdictional and nonjurisdictional

establishment of a cost of service thus of necessity links rate design to costs. However, it has been recognized that the assignment of costs "is not a matter for the slide rule . . . It has no claim to an exact science."¹⁵ It "is not reducible to a simple mathematical exercise."¹⁶ This means that cost assignment is more than simple mechanical accounting procedure of cost causation. Rather, cost assignment is a means for accomplishing a complex of sometimes contradictory goals and for reconciling often conflicting interests in the process of assigning revenue responsibility among the pipeline's diverse services and customers. The Commission's task is to weigh all relevant considerations by "integrat[ing] cost factors with non-cost factors and policy considerations" to fashion rates for each customer which are within the zone of reasonableness.¹⁷ Hence, the Commission is "not required to adopt any particular rate design."¹⁸ It is the "total effect" of the rate design method which counts rather than the particular rate design method employed.¹⁹ Thus, the Commission encourages the participants in these proceedings to develop different methods to achieve the rate objectives, set forth in the Commission's regulations and discussed below, that are tailored to the particular circumstances of a pipeline's system.

The Commission notes that to the extent a particular method is theoretically consistent with these objectives but leads to undesirable or inequitable results, pragmatic adjustments can and should be made. These concerns will be addressed in particular cases after designing rates in light of the other goals. Then, the Commission can make any necessary adjustments to mitigate harsh or undesirable results.

2. Theory-Economic Efficiency

Section 284.7 of the Commission's regulations sets forth the Commission's objectives in designing transportation rates. Sections 284.7(c)(1) states that "[r]ates for service during peak periods

should ration capacity." Section 284.7(c)(2) provides that "[r]ates for firm service during off-peak periods and for interruptible service during all periods should maximize throughput." As stated above, those objectives are of equal applicability to the transportation portion of bundled sales rates. The objectives provide guidance in the development of rates that promote economic efficiency; that is, the efficient functioning of natural gas markets. Transportation rates (and policies) which inhibit efficient operation of markets are themselves inefficient and can not result in an equitable assignment of the pipeline's costs or revenue responsibility. The Commission is concerned with allocative and productive efficiency. Hence, economic efficiency is a necessary, but not necessarily the only objective which will enable the Commission to fashion just and reasonable, nondiscriminatory rates for all customers through the rate design process.

Allocative efficiency simply means that those who value the product or service the most should be the ones to have it. Productive efficiency simply means that products and services should be provided at the least possible cost. A price or rate is inefficient if a different pricing scheme can be developed which would make all ratepayers and the company better off.²⁰ For example, discounting prices to or above marginal costs to attract business will benefit other customers by lowering their contribution to fixed costs. Hence, a scheme which inhibits discounting may be inefficient and inequitable.²¹

Section 284.7 of the Commission's regulations reflects the Commission's goals of allocative and productive efficiency in the fashioning of maximum rates by requiring that peak rates ration capacity and that rates maximize throughput during all periods. The Commission has recognized in § 284.7(d)(3)(i) that it will be necessary in certain instances to achieve those

²⁰ Put another way, an efficient pricing scheme is one where no one can be made better off without making someone else worse off.

²¹ See *Associated Gas Distributors v. FERC*, 824 F.2d 981, 1010-11 (D.C. Cir. 1987). ("[P]ipeline transportation service is marked by a degree of natural monopoly . . . In such an industry, 'value of service' ratemaking (*i.e.*, rates varying on the basis of differing demand characteristics) has an established place, though not an uncontested one. The equitable argument in favor of such differentials is that they may benefit captive customers by making a contribution to fixed costs that otherwise would not be made at all. (The efficiency argument is that such differentials will raise total volume closer to the level it would attain if all sales were priced at marginal cost.)" (Footnotes omitted)).

objectives by the use of seasonal rates for peak and off-peak periods. Moreover, the Commission has recognized in § 284.7(d)(5) that it may be necessary to selectively discount maximum rates to meet competition and attract or maintain business.²² Rates designed to attain those objectives should result in an efficient allocation of capacity to those who value it and in productive efficiency by eliminating disincentives in the transportation of gas.²³

In addition, a pipeline's sales and transportation services must be equivalent services in their treatment of the transportation of gas. Neither the transportation nor the sales service should provide a subsidy to the other service. In short, there should be no cross-subsidization between transportation and sales services. As the Commission has stated:

[I]n light of the goals of this rule, rates should be so designed that the transportation component will not differ whether the customer is purchasing sales or transportation service.²⁴ Of course, transportation and sales rates should recognize any differences in the quality of those services. For example, where firm sales customers have the benefit of all of a pipeline's production area facilities and firm transportation customers are limited in their access to receipt points to their aggregate mainline quantities, different maximum rate treatment would be justified. The absence for firm transportation customers of proportional access to production area facilities, flexible receipt points, and equal access to

system storage facilities would justify a lower maximum rate than that embedded in the sales rate. Since rates should reflect the quality of the service, a lower quality service should have a lower rate.

With this discussion in mind, the Commission turns to specifics of the rate design process on which it wants a record to be developed.

III. The Issues

The Commission observes that the issues to be discussed, such as the derivation of seasonal rates, demand charges, maximum interruptible rates, and discounted rates are interrelated because they encompass the division of costs (i.e., revenue responsibility) among various services and customers. The end result of the ratemaking process should as a whole promote the Commission's goals of, among other things, allocative and productive efficiency as discussed above.

The ALJs and the participants must develop records which delve into and resolve the following issues consistent with the directions of this policy statement. In addition, the participants must establish records on, and the ALJs must consider and articulate the impacts (benefits and detriments) of, the various rate design proposals on the participants, on the various segments of the industry, and on classes of customers. The ALJs are also directed to explicitly articulate equitable factors considered in designing the rates, for example, whether rates design changes should be phased in.²⁵

1. Annual Versus Seasonal Rates

Section 284.7(d)(3) provides that rates "must reasonably reflect any material variation in the cost of providing service due to . . . [w]hether the service is provided during a peak or off-peak period." The Commission has referred to the cost of fuel used to run compressors as an example of a cost that might differ or vary between peak and off-peak periods.²⁶ However, § 284.7(d)(3) only requires that at a minimum such marginal costs as the cost of compressor fuel be considered. Other factors such as differing demands for service between peak and off-peak periods may be considered. Based on experience, the Commission is concerned that the derivation of demand and commodity rates without regard to seasonal variations in use of, or demands on, the pipeline does not properly ration peak

capacity or lead to efficient use of the pipeline in periods of excess capacity.

Accordingly, evidence must be presented as to whether a pipeline has sufficiently differentiated patterns of usage to justify peak and off-peak demand or commodity rates or both to fulfill the goal of economic efficiency.²⁷ If seasonal rates are warranted, then costs incurred to perform peak season service (such as the cost of certain system storage facilities) should be assigned solely to that service and other costs assigned to the peak period based on demand factors.²⁸ That is, differences in the demand for service between periods should be recognized in rates to efficiently ration capacity. However, it should also be considered whether the costs associated with the peak service period are appropriately reflected in the demand charge but are merely billed throughout the year to reasonably soften the impact on consumers of otherwise high peak fuel bills. These rates are seasonal with only the payment schedule leveled. The payment schedule of rates should not affect how the rates are designed.

2. The Demand and Commodity Charges

a. *General.* The process of dividing (i.e., classifying) fixed transmission and storage costs between the demand and commodity components is closely related to the seasonal rate issue as both involve the assignment of costs for the purpose of peak pricing to achieve the Commission's goal of rationing peak capacity to those who value it the most. In addition, cost classification, by determining the level of costs in the commodity charge, is relevant to the Commission's goal of throughput maximization.

At present, most pipelines' costs are classified under the modified fixed variable method (MFV). The MFV method classifies all fixed production and gathering costs, all variable costs, and return on equity investment in transmission and storage facilities and related income taxes to the commodity component. The remaining fixed costs,

²⁷ It appears that many pipelines have a five-month winter peak from November 1 through March 31. The remaining seven-months are off-peak. This may vary by company.

²⁸ One approach would be to assign seasonal costs by seasonal load factors. Another might be to assign the cost of transmission facilities used to provide service above the annual load factor to the peak period. The remaining transmission costs could be divided evenly between the seasons. For example, if the peak period load factor is 90 percent, the annual load factor is 50 percent, and D-1 costs are \$100, then \$70 would be assigned to the peak period (90% - 50% = 40% × \$100 = \$40 + 50% × \$80 (\$100 - \$40) = \$30), and \$30 would be assigned to the off-peak period (50% × \$80 (\$100 - \$40)).

²⁵ See p. 5 *supra* on pragmatic adjustments.

²⁶ See, e.g., Texas Eastern Transmission Corp., 37 FERC ¶ 61,280 at p. 61,705-06 (1986).

²⁴ Order No. 436, *supra* n. 1, at p. 31,535.

including return of investment in transmission plant and storage facilities (i.e., depreciation expense), are classified to the demand component.²⁹ The MFV demand component currently consists of two demand charges. The first, or D-1 charge, reflects peak considerations. The second, or D-2 charge, reflects annual considerations. The costs classified to the demand component are assigned to the D-1 and D-2 charges on a 50-50 basis.

The Commission is concerned that MFV may be outdated in light of the significant changes in the nature of the gas pipeline industry since the adoption of Order No. 436 in 1985 and the further decontrol of gas under the NGPA.³⁰ In particular, the MFV division of costs between the demand and commodity components was designed to help pipelines in their role as a merchant.³¹ But today most major interstate pipelines are functioning primarily as transporters. In addition, the D-2 charge was adopted in part to soften the impact on low load factor customers of the shift of fixed costs from the commodity charge to the demand charge. However, those very customers have objected to the D-2 charge on the ground that D-2 nominations will, in fact, shift costs to the low load factor customers.³² Moreover, the transition period has been completed.³³ Hence a D-2 charge may no longer be warranted.³⁴

b. *The Central Question.* The task is to determine the division of fixed costs between the peak related charge (D-1) and the charges associated with annual usage (the D-2 and commodity charges). The central question is whether the costs assigned to the D-1 charge are appropriate in amount to ration peak capacity to those who value it the most.³⁵ The answer may depend on

²⁹ Upstream pipeline charges are assigned to the downstream pipeline's demand and commodity components in the same manner as the charges are billed by the upstream pipeline to the downstream pipeline. This is the "as-billed" doctrine.

³⁰ MFV was first adopted in 1983 in Natural Gas Pipeline Company of America, 25 FERC ¶ 61,178 (1983), *order on reh'g*, 26 FERC ¶ 61,203 (1984), *aff'd in relevant part*, Northern Indiana Public Service Co. v. FERC, 782 F.2d 730 (7th Cir. 1986).

³¹ MFV changed the assignment of fixed costs to the commodity charge from either the United method's 75 percent or the Seaboard method's 50 percent. In almost all cases, this reduced the share of fixed costs in the commodity charge.

³² E.g., Tennessee Gas Pipeline Co., 46 FERC ¶ 61,113 at p. 61,445-46 (1989).

³³ Transcontinental Gas Pipeline Corp., 46 FERC ¶ 61,394 at p. 62,139 (1989).

³⁴ See also *Id.*

³⁵ The Commission recognizes that customers on many pipelines do not have opportunity to adjust their contract demand volumes, but that such adjustments may be necessary to efficiently ration capacity. See *infra* Capacity Adjustments.

whether there is a waiting list for firm capacity. Such a queue may indicate that the present D-1 (peak) charge is not rationing capacity. If capacity is consistently underbooked, it may be that the D-1 (peak) charge is excessive. In either event, the price is not appropriate because it produces an inefficient allocation of capacity on the pipeline. If the D-1 charge needs to be increased to properly reflect the demand for peak service, costs (i.e., revenue responsibility) could be shifted from the D-2 charge or, if necessary, from the commodity charge. As to the latter, examples are fixed storage costs³⁶ or some portion of return on equity.³⁷ In addition, as discussed above, the D-2 charge may no longer be warranted. In that case, any costs remaining therein after a shift of costs to the D-1 charge should be moved into the commodity charge. Moreover, the use of seasonal rates may also obviate the need for a D-2 charge. In addition, the issue of whether and how undue cost shifts should be mitigated in the short run (such as by a phasing in mechanism) should be considered. The aim is to soften the initial impact not to change an otherwise just and reasonable assignment of cost or revenue responsibility. The ALJs and the participants must develop records to resolve the issues discussed here.

3. Capacity Adjustments

The use of peak and off-peak rates and a change in cost classification might result in a shifting of a substantial amount of costs to the charge for peak service. As stated above, the Commission's goal in any shifting of costs to peak service is to ration peak capacity by price to those who value it the most. Therefore, the participants to these proceedings must address and explore various ways to provide a contract demand adjustment option in tandem with increased charges for peak service due to the implementation of seasonal rates or classification changes to achieve the rationing capacity objective. For example, pipelines and their customers must pursue contract demand reductions in conjunction with peak rate increases. In addition, it might be appropriate for customers to have different daily contract demand rights for peak and off-peak periods. Or,

customers could be permitted the use of different daily contract demand rights on a monthly basis.³⁸

Additionally, the pipelines should consider offering a short-term contract demand adjustment option to its firm sales and transportation customers. Firm sales and transportation customers could agree to release their capacity to the pipeline for a fixed term to enable the pipeline to resell the capacity as firm transportation under Part 284. For example, a firm customer might conclude that it wants to retain its contract demand but that at present it is not needed to serve customers in one season or for one or two years. The firm customer would inform the pipeline of this. The pipeline might have other customers or potential customers that want the assurance of firm transportation service for short terms as opposed to interruptible service. The pipeline would be obligated to offer the capacity for transportation under Part 284 of the Commission's regulations. It would have to sell the released capacity on a nondiscriminatory basis and not favor affiliates and would charge rates pursuant to §§ 284.7 and 284.8. Under this kind of arrangement, the pipeline would share the proceeds with the firm customers releasing capacity.³⁹ The details of such capacity releasing, including the method of sharing proceeds and operational procedures,⁴⁰ would be determined in the individual proceedings.⁴¹

Nothing stated here should be viewed as preventing the participants from considering either capacity brokering⁴² or capacity reassignment by firm shippers.⁴³ The Commission has given

³⁸ See also Transcontinental Gas Pipe Line Corp., 46 FERC ¶ 61,364 at p. 62,139 (1989).

³⁹ If proceeds are shared with the customer releasing capacity, costs need not be allocated to the transportation service that would be provided with the released capacity.

⁴⁰ For example, the pipeline might establish a separate queue for this service with priority going to those in any current queue for firm service.

⁴¹ The capacity releasing described above differs from capacity brokering as described in the proposed capacity brokering rulemaking in Docket No. RM88-13-000 (Brokering of Interstate Natural Gas Pipeline Capacity, Proposed Regulations, Stats. & Regs. ¶ 32,460 (1988)) and the United experiment described in United Gas Pipe Line Co., 46 FERC ¶ 61,060 (1989) in the following ways. The pipeline, not its customer, would be the only supplier of the service. The pipeline would be subject to the unlawful discrimination proscription of its open-access certificate for these transactions. Last, the pipeline would receive a fee as an incentive for the resale of its customer's firm capacity.

⁴² See citations in footnote 41.

⁴³ See Wyoming-California Pipeline Co., 45 FERC ¶ 61,234, at p. 61,678 (1988), *reh'g denied*, 46 FERC ¶ 61,310 at pp. 61,927-28 (1989).

the pipelines and participants a wide range of options so that they can tailor their services to their particular needs.

4. Discounting and Maximum Interruptible Rates

a. *Discounting.* Section 284.7(d) requires a pipeline to file maximum and minimum transportation rates for both firm and interruptible service and permits the pipeline to charge rates to customers within the maximum and minimum range. Under this section a pipeline is permitted to discount in order to maximize throughput and thereby benefit customers by spreading fixed cost recovery over more units of service. Section 284.7(c)(3) states the rate objective that "[t]he pipeline's revenue requirement allocated to firm and interruptible services should be attained by providing the projected units of service in peak and off-peak periods at the maximum rate for each service."⁴⁴

Many have read this requirement to mean that a pipeline must assume in filing its next rate case that the volumes it has transported at discounted rates would still be transported if the maximum rate were charged. In light of the competitive market that has emerged in the gas industry, this assumption is not a realistic one. In other words, the problem with this objective is that if a pipeline must assume that previously discounted service will be priced at the maximum rate when it files a new rate case there may be a disincentive to pipelines discounting their services in the future to capture marginal firm and interruptible business. That would occur because the pipeline might not be able to recover its cost-of-service, if the maximum rates are based on throughput achieved by discounting. The court in *Associated Gas Distributors v. FERC* described this situation and stated that there was no reason to suppose that the Commission intended for a pipeline to calculate prices assuming the carriage of discounted traffic at a fully allocated price.⁴⁵

The objective set forth in § 284.7(c)(3) was designed to prevent subsidization of the discounts by the pipelines' nondiscounted rates.⁴⁶ That objective

⁴⁴ A pipeline's projected units of service may only be changed by the pipeline in a section 4 rate filing. The projected units of service concept involves giving pipelines an incentive to maximize throughput. Selective discounting furthers similar objectives, by allowing pipelines to retain and attract business by meeting competition. Order No. 436, *supra* n. 1 at p. 31,548; Order No. 436-A, [Reg. Preambles 1982-1985] FERC Stats & Regs. ¶ 30,875 at p. 31,679 (1985).

⁴⁵ 824 F.2d 981, 1012 (D.C. Cir. 1987).

⁴⁶ See Order No. 436, *supra* n. 1 at p. 31,545.

must be achieved in light of Order No. 436's goal of maximizing throughput. Therefore, the following discussion indicates ways to calculate a pipeline's rates after it has been discounting so as to achieve both objectives set out in the regulations.

At the outset, however, the Commission reiterates that pipelines must give discounts on a non-discriminatory basis, and the Commission is concerned about selective discounts that have the potential for giving rise to undue discrimination, including the potential for giving rise to undue discrimination, including discounts to affiliates.⁴⁷ The following discussion about how to design rates to avoid a disincentive to discounting transportation rates does not alter the standards that apply to the Commission's review of a pipeline's decision as to when and how to discount. That is, discounts must be given on a nondiscriminatory basis, and discounts to affiliates will be carefully scrutinized,⁴⁸ as will be the treatment of past discounts in projecting future units of service.

One approach would be that maximum rates can be derived using separate estimates of units to be transported at the maximum rate and at discounted rates. Projected revenues from volumes at the maximum rate would be derived using only the units projected to be transported at the maximum rate. Revenues for service which can be retained or acquired at less than the maximum rate should be derived by a separate estimate of revenues assuming the lower rates. Another approach to avoid penalizing the pipeline for discounted service would adjust the volumes attributable to "undiscounted" throughput by adding to those volumes some portion of the volumes that were transported under discounted rates. For example, if a unit of service can only be sold at one third of the maximum rate, one third of a unit would be added to projected "undiscounted" throughput.

The Commission also recognizes that in a rate case it may be difficult to forecast discounted units of service at particular prices. For example, discounts may depend on variables, such as the prices of alternative fuels. Accordingly, the ALJs and participants should consider methods which deal with the problem of the difficulty in forecasting revenues from discounting and which

⁴⁷ See Order No. 497, note 7 *supra* at p. 31,135.

⁴⁸ See Order No. 436, *supra* n. 1 at p. 31,546 and Order No. 436-A, *supra* n. 44 at p. 31,679 (1985).

also do not discourage the pipeline from transacting such business.⁴⁹

b. *Maximum Interruptible Rates.* This section deals with the determination of maximum interruptible rates. Section 284.7(d)(4) requires that maximum interruptible rates be determined by the allocation of volumes and costs to interruptible service. In practice, this has been accomplished by the use of the 100 percent load factor rate method.⁵⁰ As the Commission has recently stated, it is time to re-examine the appropriateness of 100 percent load factor rates.⁵¹ The Commission stated:

The Commission has hitherto found that rates derived on a 100 percent load factor basis are just and reasonable. The central rationale has been that such a rate does no more than require interruptible customers to pay a rate which includes all of the fixed costs of providing service. Moreover, the Commission has found that any difference in quality between interruptible and firm service is recognized by the fact that interruptible customers bear none of the risk of unused capacity because they pay only for service used.

⁴⁹ The Commission encourages the participants to develop approaches to this issue which are consistent with the overall objective of encouraging efficiency. The Commission is willing to consider, along with other proposals, the following two approaches in treating discounted transportation volumes.

One possible approach would be a benefit sharing approach whereby at one extreme no volumes or revenues are allocated to discounted interruptible service. The pipeline would share revenues with firm customers which did not use their total firm service, thereby making interruptible service available. The amount and method of sharing could be determined in the individual proceedings. In return, the pipeline would share the benefits of such service rather than keep all revenues from the discounted service. The firm customers would pay a higher rate for their service but in return would have the possibility of more than offsetting their higher rates by sharing the benefits of the pipeline's discounted service.

A less extreme approach could be to allocate costs or revenue responsibility to discounted service in the proceeding. If the pipeline's revenues above marginal costs are below the costs assigned to the service, the pipeline and firm customers not using their total firm capacity would share in the burden of the deficit. If the revenues above marginal cost are in excess of the assigned costs, the pipeline would share the excess revenues with its firm customers which did not use their total firm capacity. The amounts and methods of sharing the losses and gains would be determined in the proceeding. There also could be agreed upon predetermined amounts for the pipeline to absorb as losses or keep as gains before sharing begins.

⁵⁰ In formula form, where D means demand and C means commodity, the 100 percent load factor rate is computed as follows:

$$\frac{D-1}{365} \times 12 + D-2 + C = \text{rate per Mcf per day.}$$

⁵¹ Transcontinental Gas Pipe Line Corp., 46 FERC ¶ 61,364 at p. 62,143 (1989).

The Commission believes that its and the industry's increased experience with interruptible service demonstrates that it is time to re-examine the Commission's policy concerning 100 percent load factor rates with respect to both the cost incurrence and quality of service rationales and other factors, such as the customers' competitive posture *vis a vis* alternative fuels and the possible need for seasonally differentiated rates. Accordingly, the Commission will permit the parties in this proceeding as well as other proceedings where interruptible rates are at issue to explore the issue of whether lower rates than those derived on a 100 percent load factor basis are appropriate.⁵²

The issue is whether the 100 percent load factor rate yields a maximum interruptible rate which is too high to efficiently maximize throughput and is therefore an inefficient allocation of costs or revenue responsibility to interruptible service. The answer depends on an analysis of the pipeline's package of rates and services and not merely on an examination of the 100 percent load factor method by itself. For example, the 100 percent load factor method may be an appropriate way to set a maximum rate which acts as a cap on a pipeline's market power where it is efficiently discounting to maximize throughput or where the pipeline is using peak and off-peak rates.

Demand rates can also be viewed as both a charge for the right or option to use capacity and as a charge to cover the costs associated with the use of the capacity. If the demand rate is in part a charge for a right to capacity, some portion of the demand charge is not related to costs incurred in providing service. That is, a part of the demand charge will be associated solely with the value of the right to demand service. This approach may warrant excluding costs assigned to the demand charge in whole or in part when deriving maximum interruptible rates on an annual basis. Again, the use of peak and off-peak rates also may warrant the use of peak and off-peak maximum interruptible rates derived under the 100 percent load factor method.

Last, the Commission repeats that a rate for service should reflect the quality of the service as compared to other services.⁵³ For example, capacity releasing, capacity brokering, and capacity assignment would create new classes of firm service. In addition, the ability to release, assign, or broker a service adds value to the service itself. The participants should address how these new services affect the quality of other services. The pipelines and

⁵² *Id.* (Footnote omitted.)

⁵³ See *supra* p. 8.

participants can also consider different services which vary in quality from the traditional firm and interruptible services. The rates for both new and old services should reflect the different quality of the services.

5. Transportation Rates

The transportation of natural gas entails the movement of the gas from a point of entry into the pipeline to a point of delivery from the system. However, this is often accomplished by a process of displacement in which gas is delivered into the system and received from the system by adjusting pressure. At times, a shipper's gas will not make a continuous forward or direct haul. Section 284.7(d)(3) recognizes that there are different patterns of transportation in the pipeline industry by not mandating mileage-based rates. Section 284.7(d)(3) requires only that rates "reasonable reflect any material variation in the cost of providing service due to . . . (t)he distance over which the transportation is provided." Order No. 436 discussed this as follows:

[For example], on most pipeline systems the costs of providing service are materially affected by the distance the gas is transported. The rates for such a pipeline should reflect these differences. But on other pipelines or for particular types of services distance may not materially affect the cost of providing service. In these situations the rates need not be based on mileage or zones. In short, all that is required is what is required of all rates: that they reflect the cost of providing the service. Again, the rate standards imposed by the rule will be applied in individual fact-specific cases.⁵⁴

Where gas is moved in a forward haul an Mcf-file rate may be appropriate, however § 284.1 defines transportation to include an "exchange, backhaul, displacement or other methods of transportation." Those forms of transportation consist of a wide variety of factual scenarios which make it difficult to formulate one policy to encompass all situations. The following discussion deals with forms of transportation which do not use capacity in a forward haul and therefore may create additional capacity.

For example, backhaul transportation occurs when a shipper delivers gas to a pipeline downstream of the point where the shipper receives gas from the pipeline. Of course, there is no actual physical backhaul or reversal of flow. The transaction is effectively an exchange where the pipeline delivers either its own gas or another shipper's gas to the backhaul shipper in exchange

for the latter's gas.⁵⁵ The backhaul or exchange may create additional capacity on the pipeline between the exchange (receipt and delivery) points and results in cost savings through the pipeline's avoidance of marginal costs. Hence, the pipeline's backhaul and exchange services are efficient. The question is how to price those services. The ALJs and the participants must develop records with respect to the appropriate maximum rate a pipeline should charge for backhauls and exchanges.⁵⁶ In addition, backhaul and exchange rates are within the pipeline's selective discounting authority. While § 284.7(d)(4) requires that a minimum rate "be based on the average variable costs which are properly allocated to the service to which the rate applies," a no fee minimum rate may be warranted to permit pipelines and shippers to agree that no fee should be charged when an arrangement is mutually beneficial and produces substantially equal benefits. Last, backhauls and exchanges must be performed on a non-discriminatory basis.⁵⁷ In that regard, the Commission is concerned that pipelines generally might not offer no fee or minimum fee transactions to shippers other than other pipelines and pipeline affiliated shippers. The Commission intends that any pipeline offering such transactions to other pipelines and/or pipeline affiliated shippers must also extend the same opportunity to all other shippers under terms and conditions whereby all similarly situated shippers, regardless of pipeline or affiliate status, must have an equal opportunity to utilize such transactions. The Commission also notes that any such transactions between a particular pipeline and its affiliate would be subject to Order No. 497.

IV. Separating Services

Section 284.7(d) requires that a "rate . . . separately identify cost components attributable to transportation, storage, and gathering costs." However, section 284(d)(4)(i) also requires that rates "recover . . . solely those costs which are properly allocated to the service to which the rate

⁵⁵ In a more typical "exchange" arrangement, two or more parties would be delivering gas and two or more parties would be receiving gas. Quite often, the parties involved in such exchanges are interstate pipelines.

⁵⁶ Cases where the Commission permitted pipelines to use their direct haul rates no longer embody Commission policy. E.g., Texas Eastern Transmission Corp., 37 FERC ¶ 61,260 at p. 61,708 (1986); Northern Natural Gas Co., 37 FERC ¶ 61,272 at p. 61,815 (1986).

⁵⁷ See Northern Natural Gas Co., 37 FERC ¶ 61,272 at p. 61,815 (1986).

⁵⁴ Order No. 436, *supra* n. 1, at p. 31,538.

applies." Hence, a pipeline should only charge for gathering and storage services actually performed for a customer. The ALJs and the participants are directed to fashion records to determine whether the pipeline's storage functions and gathering and other production area services, such as processing and production area transportation, should be offered as separate services with separately charged rates and, if so, what would be the appropriate rates. This does not mean that a bundled rate is inappropriate. The Commission, however, prefers fully unbundled services. In addition, the pipelines and the participants should explore, in addition to traditional service, the pipeline separately selling gas (the commodity) without the transportation service, with the customer using its right to capacity to move the gas.

V. Conclusion

The ALJs and the participants (including the Commission staff) should develop records consistent with the content of this policy statement. The ALJs are directed to reopen the records, if necessary, to develop the records on the issues discussed above. The participants must establish records on, and the ALJs must consider and articulate the impacts (benefits and detriments) of, the various rate design proposals on the participants, on the various segments of the industry, and on classes of customers. The ALJs are also directed to explicitly articulate equitable factors considered in designing the rates.^{5*} However, the participants are not limited to the methodologies and issues discussed above. The Commission will consider other methods that will achieve the goals of rationing peak capacity and maximizing throughout. The Commission emphasizes that it is not mandating a particular end result. As stated earlier, the end result is to be tailored to the particular circumstances of a pipeline system. To the extent a pipeline has several rate cases pending, the ALJs and the participants should decide in which proceeding it would be appropriate to develop records on the issues discussed above.

In these proceedings the ALJs should not grant requests for late intervention by persons who seek to intervene to participate in the additional record development required by this order unless such late intervenors have a direct stake in the outcome of the proceeding and their interest would not

be adequately represented by existing parties. The Commission intends that the ALJs exercise their discretion to grant late intervention in these cases very sparingly. The Commission does not intend to transform any of these proceedings into generic industry-wide forums for policy development. Any persons that are not currently parties to the rate cases listed in the caption to this order and any party in one of those rate cases that wants to seek rehearing of the general policy statements in this order should file in Docket No. PL89-2-000.

By the Commission. Commissioner Stalon concurred with a statement to be issued later. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,
Secretary.

Trabandt, Commissioner, concurring:
1. General

I concur generally with this rate design policy statement, even though I would have preferred strongly to adopt a stronger and more precise policy statement. I also have very strong reservations about the discounting feature of the policy statement. While there have been several modifications to the draft discussed at the May 17, 1989, Commission meeting, I still have serious procedural and substantive concerns that have not been addressed. I discuss the following comments, recommendations, and revised text in an effort to sharpen the focus on those issues. I look forward to reviewing these matters further on rehearing. Hopefully, the Commission can resolve as many of these issues as possible in the final policy statement on rehearing.

2. Major Interstate Pipelines Not Included in the Policy Statement

A. Comment

This issue was discussed at the May 17 meeting, but remains unresolved. I am still concerned that our failure to address rate design issues on these pipelines is a large gap in the interstate system by any measure. That failure also could extend a competitive advantage to these pipelines over competing pipelines directly subject to this policy statement. It also virtually precludes any hope of near-term uniformity and consistency in general rate design. Additionally, the Policy Statement largely reiterates rate design principles first enunciated in Order No. 436 in October, 1985, after a Notice of Inquiry and a Notice of Proposed Rulemaking, so there has been more than abundant time over the past three and a half years to make adjustments to

conform. The OPRR memo of May 19, 1989, indicates that nine pipelines are not included in this policy statement. They fall into five distinct categories described below. The dates in parentheses for each pipeline indicate when the pipeline would be obligated by current regulations (which could change as a function of other policy initiatives) to file a new rate case where the rate design issues could be addressed. I would note that most are at least a year away and some are late 1992. The categories and included pipelines are as follows:

- (1) Settlement just approved: Southern (10/89)
- (2) Initial Decision Pending: CIG (7/90)
- (3) Settlement certified and pending: Arkla (6/91), Natural (1/92), Texas Gas (11/92), Questar (11/91)
- (4) Settlement approved, but rehearing still pending: Algonquin (5/90), United (11/91)
- (5) New rate case filed, suspension order pending on May 31 Agenda: ANR

Footnote 5 on page 2 of the slip op. acknowledges the fact that the caption does not include proceedings pending before the Commission, while stating an intent to apply the principles in the policy statement to those cases on a "case-by-case basis." Apparently, that case-by-case basis would involve a balancing of the degree of conformity with these rate design principles, the procedural status of the case, support or opposition and the overall acceptability of the rate proposal.

I do not support a case-by-case approach to this requirement, because there are always cogent arguments for approving a settlement once it gets to the Commission. As noted above, there has been abundant time to implement most of these principles first enunciated in Order No. 436. In that regard, I would not be surprised if the Natural settlement scheduled for the May 31, 1989, Commission Meeting is largely approved, even though it deviates materially from the thrust of this policy statement on certain key features. That could likely be the pattern for the other eight pipelines as well.

B. Recommendation

Modify the order to state that, consistent with the Commission's intention that the identified rate design principles be addressed on an industry-wide basis and also to avoid any competitive advantage to a non-included pipeline, the Commission states its intent to require that parties in categories (2), (3), (4), and (5) above and Southern when it files the rate case to be effective 10/89 will be required to address the matters set forth in the

policy statement. To that end, the Commission will issue supplemental orders in the respective dockets establishing expedited procedures to satisfy that requirement. The Commission notes that its failure to impose such a requirement would mean that those pipelines would not be required effectively to address these rate design issues for periods of from one to three and a half years, which would otherwise be unacceptable, and that those pipelines could obtain an important competitive advantage over the pipelines listed in the dockets in this order. (A compromise might be that the docket for any pipeline not required to file a new rate case within 6 months or 1 year would be subject to this requirement).

3. General Issue of Policy Direction or Guidance

A. Comment

While I appreciate that there apparently is some disagreement about mandating specific rate design results, I believe the current draft is still too weak under any circumstances as a general matter (with the exception of discounting, discussed below, on which I disagree with the mandated result). Legally, under *Pacific Gas & Electric Co. v. FPC*, 506 F.2d 33 (D.C. Cir. 1974), we could go much farther if we chose to do so, either generally or on any specific issues. The court there sustained a strong FPC policy statement on curtailment priorities as that issue became manifest in a series of cases. The FPC has stated its intention to follow a particular end use priority schedule, unless a particular company demonstrated that a different curtailment plan was more in the public interest or where extraordinary circumstances would preclude strict adherence to the curtailment policy in the policy statement. While opportunity would be afforded interested parties in specific cases to challenge or support the new policy through factual or legal presentations, the FPC concluded that, based on its review of the records of various proceedings and its general knowledge of the industry, the curtailment schedules should be applied to all jurisdictional pipelines, unless extraordinary circumstances could be established.

Given our express acknowledgement that we have permitted rates that were not completely consistent with the objectives and requirements of Order No. 436 and our general experience otherwise, I believe, as a matter of policy, we should at least consider a stronger position in the order, (1) on a

generic basis, and (2) with some of all of the individual rate design features. We would be on firm legal ground and we have full justification under the express requirements and preamble discussion in Order No. 436. In the alternative, if we adopt the more "wishy-washy" approach in the current order for the Order No. 436 items, it can only signal that we continue to lack the requisite commitment or resolve to force these rate design features as a general matter consistent with the clear intent of Order No. 436. I would prefer strongly not to support that result. The following recommendation addresses the generic approach in the current draft.

B. Recommendation

The discussion in the first paragraph on page 3 is a positive assertion of our current intent to enforce the requirements of § 284.7 and require pipelines to bear the burden of justifying any deviation. Subsequent discussion of specific issues and the conclusion on page 20, however, can, and probably will, be read as a far lesser requirement that the parties in each case only really are required to address these issues, but not satisfy the objectives and specific requirements of Order No. 436 and § 284.7, among others. To preemptively negate that general impression, add the following statement before the last paragraph on page 21.

"Finally, the Commission reiterates its commitment that the rates on any jurisdictional pipeline subject to Order No. 436 must comply with the requirements of Order No. 436 generally and specifically with the requirements of § 284.7 of the regulations, unless the pipeline persuasively establishes that a particular deviation is justified on that system. In that regard, based on our review of various Order No. 436 proceedings and our general knowledge of the industry in today's market situation, we have concluded generally that, barring extraordinary circumstances justifying such a deviation, the rate design features set forth in Order No. 436 must now be implemented on all subject pipelines. While opportunity will be afforded to interested parties in specific cases as set forth above, we have resolved to be guided generally in our review of the cases by that conclusion."

4. Annual Versus Seasonal Rates

A. Comment

Section 284.7 clearly establishes the requirement for much more than lip service to this rate design feature. The NGA petition (Appendix A, page 2) indicates that the following major

pipelines did not then have seasonal rates:

ANR, Columbia, Columbia Gulf, Consolidated, El Paso, Natural, Northern, Northwest, Panhandle, Southern (filed, but rejected), Tennessee, Texas Eastern, Transco, Transwestern, Trunkline, and United.

Today, most, if not all, of those pipelines still do not have seasonal rates in place, although there has been some increased interest by some pipelines in various statements or filings. On balance, it is still clear that pipelines are still objecting to this aspect of 284.7.

B. Recommendation

Modify the order to make clear that there is at least a presumption in support of seasonally differentiated rates. On page 9, add the following sentence at the end of the first paragraph under "1. Annual Versus Seasonal Rates."

"The Commission, therefore, concludes that seasonally differentiated rates generally should be adopted, unless the pipeline can demonstrate that exceptional circumstances exist which justify some deviation from fully seasonally differentiated rates. Where such deviation can be justified on an individual pipeline basis, the pipeline nevertheless would be expected to satisfy the stated objectives of section 284.7 in the context of the deviation."

Also, modify the second sentence of the next paragraph to remove the apparent ambiguity or "wishy-washiness," as follows:

Instead of "If seasonal rates are warranted . . .," modify to read, "For seasonal rates required unless there is a justified deviation, cost incurred . . ."

5. Demand and Commodity Charges

A. Comment

As discussed at the May 17 meeting, I remain concerned that, while we have questioned whether the Modified Fixed Variable Method (MFV) may be outdated, we have not been specific enough as to our general direction to provide any meaningful guidance to the parties. Although we honestly may not have a specific result in mind, we should do more than just raise the question alone as the issue in the cases. It is not enough to say (1) that most pipelines today are transporters (since only 10% of CD has been converted to F.T. and the vast bulk of transportation is I.T.) or (2) that the intended beneficiaries, the low load factor customers, have objected in some cases to the application of MFV. I

^{5*} See p. 5, *supra*, on pragmatic adjustments.

recommend we stake out at least an opening position for purposes of an analytical point of departure in the industry-wide reconsideration of MFV.

B. Recommendation

On page 11, before subparagraph "b. *The Central Question*," insert the following additional discussion:

In particular, the Commission is concerned that in today's natural gas market the MFV two-part demand charge has the effect of shifting costs of pipeline capacity to off-peak usage with rates for firm capacity largely unrelated to the value and true cost of the rendered service. The result can effectively insulate the firm customer from the true fixed costs of the firm service, such that the rates may provide an incentive for the uneconomic retention or "hoarding" of firm capacity rights leading to a major impediment to the availability of firm, rather than interruptible, service. A shift away from the MFV two-part demand charge, with a more reasonable balance in the assignment of fixed costs, could provide a greater incentive for customers to reserve only capacity rights actually needed. Such a shift also could prevent situations where firm customers are able to understate D-2 volumes and maintain a firm claim on pipeline capacity by paying relatively modest demand charges, by comparison to the real value of the firm service. (Cite to the *Tennessee, et al.* line of cases on D-2 nominations). One possible approach to respond to these concerns would be a return to the straight, as opposed to modified, fixed-variable allocation and rate design methodology. Other methodologies might conceivably address these concerns. However specifically resolved and addressed, the Commission intends that future demand and commodity charge allocation methodology should affirmatively remove any incentive for the uneconomic "hoarding" of firm capacity rights and otherwise ensure that demand costs are fairly allocated to customers on the basis of their respective contract demand.

6. Capacity Adjustments

A. Comment

The concept of CD reduction has been added to the order on page 12, but only in a fleeting way. Some embellishment should be added to ensure that there is no ambiguity about the message.

B. Recommendation

Insert the following after the new sentence (first full one) on page 12:

The Commission believes that the use of contract demand conversion without contract demand reduction would not support any significant shifting of costs to peak service, because the firm customer would not have a reasonable opportunity to adjust the total firm requirements to reflect current needs and reallocated costs. Additionally, in light of the Commission's intention to remove any identified incentive for firm capacity

hoarding and any disincentive to a more economically rational contract demand requirement, contract demand reduction probably is a necessary feature of an adjustment mechanism to provide firm customers with the capability to develop a reasonable firm and interruptible service portfolio as necessary to meet current and projected requirements over time.

7. Discounting

A. Comment

The order addresses the issue of discounting in a manner that appears to be clearly "results oriented," to the effect that there can be "no disincentive" to pipelines providing transportation rate discounts. I discussed the issue at the May 17 meeting and continue to believe that the order goes too far. The order effectively gives the pipelines a blank check in its current form, even though the clear intent of Order No. 436 was directly contrary to that result. Ironically, I would guess that at least 50% or more of the current transportation volumes on most pipelines (which nationwide approximate 75% of total throughput) are with discounted rates, because of competition in the marketplace. That's one part of Order No. 436 which has worked reasonably well and it is absurd in the extreme to conclude that current rate treatment is such a disincentive that pipelines must have a blank check, lest they discontinue discounting. Discounting will only be limited or ceased when, and only to the extent that, a pipeline has a competitively advantageous position to allow it to maintain maximum throughput levels at incrementally higher or maximum rates. The Commission must not open the door to understated volumes and, as a result, higher unit rates on such a flimsy analytical and evidentiary basis. To date, in fact, we have had only two related cases on this issue. Discounting is going to continue as a matter of competitive necessity, if not survival, in today's natural gas market. But, that is not a reason to invite the misallocation of costs that inevitably would result from this proposal. We already are confronted with the reality that selective discounting probably provides one of the greatest opportunities for affiliate preferences, which we must address in Order No. 497-A. I see no reason to further compound the discounting problem with potential cross-subsidies and needlessly higher transportation rates for non-affiliated shippers.

As noted, this issue has recurred directly in two specific cases worth

some attention. In *CNG Transmission Corporation*, 44 FERC ¶ 61,203 (1988). The pipeline included as a credit to its cost of service \$9 million in revenues related to transportation services of 35.5 million dt. The rate proposed to be charged for the transactions was significantly below CNG's proposed generally applicable transportation rate. The Commission rejected CNG's proposal stating that the pipeline "was shifting the cost burden of its transportation discounts from the company to other transportation customers," "regulations promulgated under Order No. 436 were designed to prevent such cross-subsidization," and "CNG would have a competitive advantage over pipelines that are bearing (such cost burden) responsibility." The Commission took the same position in *Questar Pipeline Company*, 43 FERC ¶ 61,127 (1988), but subsequently in its Order Granting In Part Appeal of Staff Action of February 1, 1989, with regard to the compliance filing in the same docket (46 FERC ¶ 61,115 (1989)) decided not to summarily reject a revision of the throughput projection, but rather made reasonableness of the projection an issue in the pending hearing. At the same time, the Commission reiterated the general view that led to the original rejection, and distinguished the revised throughput projection in the compliance filing on the narrow basis that it was arguably consistent with the Commission's prior order, even though it may later prove to be inaccurate or otherwise produce unlawful rates. It is unambiguously clear, therefore, that the Commission's interpretation of Order No. 436 and its consistent practice until today is directly contrary to the plain meaning and obvious result of this section of the policy statement.

While there may be a legitimate question of how to properly allocate historical, discounted volumes in calculating new transportation rates, several key principles of Order No. 436 remain relevant and applicable. First, the pipeline must remain at risk without question for the revenue results of discounting under any given rate structure, including any under-recovery. Second, there cannot be any cross-subsidy of the discounts by rates for other services. The current draft clearly "finesses," if not practically repeals, § 284.7(c)(3), and those key principles of Order No. 436 in the discussion, particularly paragraphs 2 and 3 on page 15 of the slip opinion. Also, although the text makes specific reference to Order

No. 497, the strong impression of the discussion is that there should be no *regulatory* (rate or otherwise) disincentive or impediment to otherwise unconstrained pipeline flexibility to engage in selective discounting for affiliated and non-affiliated shippers. Additionally, all calculations using past discounted volumes must take into account and properly balance/reflect the extent to which such volumes were discounted for affiliated shippers. I also am quite concerned that this feature of the policy statement is intended to lay the ratemaking foundation for the Incentive Rate of Return initiative and also the so called "productivity gain" concept. For all these reasons, I would modify it.

B. Recommendation

Modify the discussion to "neutralize" the statement of the problem and the Commission's response to make clear that the principles of Order No. 436 (as well as Order No. 497) will continue to apply, even where there may be a demonstrated need for some flexibility on throughput calculation and the effect of discounted volumes. Remove the "results oriented" discussion and examples memorializing support for cross-subsidies and reduced/eliminated pipeline risk of underrecovery due to discounting, such as under the benefit sharing approach. Require that all calculations of past approach. Require that all calculations of past discounted volumes take into account and properly reflect/balance the extent to which such volumes were discounted for affiliated shippers. (See Appendix for a proposed modified discussion). What evidence (e.g., *CNG, Questar*, the 1988 INGAA report, etc.) exists to support the conclusion that this may be a real world problem which, in fact, requires some generic policy response from the Commission? The current discussion provides no evidentiary or experiential antecedent to the extensive discussion. In effect, what is the need for any attention to discounting in this policy statement in the first place?

8. Maximum Interruptible Rates

A. Comment

The discussion of the 100% load factor method in the order appears to be a retreat from the Commission's most recent pronouncements. The better result would be to establish the general presumption that, all other things being equal, the Commission believes that the current usage of 100% load factor probably is inconsistent today with the reasonable and fair allocation of costs to shippers.

B. Recommendation

On page 17, insert a new sentence after the first sentence of text, as follows:

Based on its review to date, the Commission believes that generally the 100% load factor in current practice probably does not result in a reasonable and fair allocation of costs to shippers, in the absence of other compensating and offsetting adjustments, and today is not consistent with the stated rate objectives of Order No. 436.

9. Mileage-based Rates

A. Comment

The order again appears to retreat from the clear intent of Order No. 436 that rates be mileage based, unless there is an adequate justification for the departure. The NCSA petition, Appendix A, page 7, indicates that 10 major pipelines have implemented large zones approximating postage stamp rates (ANR, Columbia Gulf, El Paso, Natural, Northern, Panhandle, Southern, Transwestern, Trunkline, and United), three others have postage stamp rates (Columbia, Consolidated, and Northwest), and three others have four or more zones (Tennessee, Texas Eastern, Transco). For example, the issue will recur again in cases on the next agenda, with results that are inconsistent with Order No. 436. The point is that the Commission's failure to expressly support this requirement of § 284.7 is tantamount to acquiescence in its continued avoidance by pipelines in cases and settlements.

B. Recommendation

Insert a new paragraph after the text ending with footnote 55 on page 19.

The Commission emphasizes that Order No. 436 intends that rates be reflective of the distance gas is transported. Thus, pipelines generally should implement rates which do not constitute "postage stamp" rates where shippers pay the same charge whether the gas travels one mile or a hundred miles or more. That form of rate discourages alternative and more economically efficient transportation and market approaches, whereas rates based on mileage or small zones will foster competition and encourage the use of the most economically efficient alternative path to market. Thus, a pipeline is required to justify any deviation from rates which directly reflect differences in the distance of the transportation service.

10. Separating Services

A. Comment

The new section on page 20 is an improvement over the original draft, which was virtually silent on unbundling. The discussion, however, is too understated in its current form and,

thereby, suggests that the Commission is not totally committed to pursuing the unbundling objective clearly established in Order No. 436. The NCSA petition documents the fact that a significant number of pipelines have not unbundled storage costs, gathering and third party transportation costs (Account No. 858). The issue also comes up repeatedly in pending cases and this would be a timely opportunity to express the Commission's view in support of further unbundling. Also, we should make clear the importance of (1) FT equivalency and (2) the less restricted availability of storage, as we did in the recent *Transco and Tennessee GIC* "paper hearing" orders.

B. Recommendation

In the new paragraph on page 20, modify the sentence beginning, "This does not mean * * *" to read as follows:

This does not mean in every case that a bundled rate is necessarily inappropriate. However, the Commission reiterates here the clear objective of Order No. 436 that rates be unbundled for separate services, and costs be allocated fairly to those services. That general result will better ensure that there will be a more efficient use of the pipeline's facilities, that competition of a gas to gas nature will be on a more equal basis, and that the allocation of costs will reflect better the economic value of the services. For example, as a general matter, unbundled rates for gathering, treating, processing, storage, and transmission services will best reflect costs associated with each service and the value of the service to customers. Also, transportation rates generally should not include Account No. 858 costs related to transportation of system supply gas on upstream third party pipelines, since those costs are related solely to the sales service and are incurred only when the pipeline purchases gas for its sales to customers. Similarly, the Commission, as a general matter, has concluded that the transmission element of (1) a pipeline's sales service and (2) its firm transportation service should be functionally equivalent with comparable rate (cite to *Transco/Tennessee*). And, the pipeline should not unjustifiably restrict access to separate storage services provided with appropriately unbundled rates. Thus, the Commission has concluded generally that, unless otherwise justified in a particular rate case applicable to an individual pipeline, Order No. 436 requires pipelines to proceed now to develop rates which reflect this concept of unbundling.

11. Theory-Economic Efficiency

A. Comment

My view on the over-emphasis on economic efficiency in the earlier draft was discussed at the May 17, 1989 Commission Meeting. Suffice it to say that I remain very concerned that there

is an over-emphasis on the theory and the so-called "Commission goal" of allocating capacity (and by inference, other services) to those who value it the highest. That leads potentially to such ill-starred and analytically deceased initiatives as "auctioning" all transmission capacity, for which we have two consultant reports serving as an academic obituary, and the capacity brokering NOPR, where the staff technical conference proved that we could not, as a threshold matter, define the "right" to be brokered in the first instance, thus constituting a *de facto* funeral for the generic initiative. I would not want this "economic efficiency theory" discussion to serve as the Phoenix resurrecting those largely decomposed concepts from the well-deserved ranks of the analytical dead.

B. Recommendation

Interested parties should consider carefully the potential negative implications of this primacy of economic efficiency approach, in terms of today's transportation activities and considerations of equity, fairness and non-discrimination.

12. Order No. 497-A

As the preceding discussion makes abundantly clear, this Policy Statement would increase materially the concerns associated with undue discrimination against non-affiliates and preference for affiliates. The remedy for that increased concern lies in immediate and acceptable action on the rehearing of Order No. 497 including, but certainly not limited to, an extension of the reporting requirement for several years beyond December 31, 1989. We, therefore, should adopt the Policy Statement only if final and favorable action on Order No. 497-A is scheduled promptly.

13. Conclusion

These comments and recommendations are intended to facilitate with specific proposals the improvement of the overall posture of this Policy Statement, in terms of the degree of guidance provided to the parties in these cases and the industry at large. This policy statement provides us with a timely and effective opportunity to redirect pipeline rate design in a much more market-oriented and competitive direction this year. I look forward to reviewing these recommendations further on rehearing. In the end, I hope we can reach agreement to strengthen the guidance along these lines.

For these reasons, I concur.
Charles A. Trabandt,
Commissioner.

Appendix—Proposed Modified Discussion

4. Discounting and Maximum Interruptible Rates

a. Discounting

Section 284.7(d) requires a pipeline to file maximum and minimum transportation rates for both firm and interruptible service and permits the pipeline to charge rates to customers within the maximum and minimum range. Under this section a pipeline is permitted to discount in order to maximize throughput and thereby benefit customers by spreading fixed cost recovery over more units of service. Section 284.7(c)(3) states the rate objective that "[t]he pipeline's revenue requirement allocated to firm and interruptible services should be attained by providing the projected units of service in peak and off-peak periods at the maximum rate for each service."⁴⁴

Many have read this requirement to mean that a pipeline must assume in filing its next rate case that the volumes it has transported at discounted rates would still be transported if the maximum rate were charged. In light of the competitive market that has emerged in the gas industry, this assumption is not necessarily a realistic one in every case. Also, it may discourage some pipelines under certain circumstances from discounting their services to some extent in the future to capture marginal firm and interruptible business.

That would occur because the pipeline arguably might not be able to recover its cost-of-service, if the maximum rates are based on the exact throughput achieved by discounting, without any adjustment to reflect the impact of discounts on total throughput. The court in *Associated Gas Distributors v. FERC* described this situation and stated that there was no reason to suppose that the Commission intended for a pipeline to calculate prices assuming the carriage of discounted traffic at a fully allocated price.⁴⁵ The objective set forth in

⁴⁴ A pipeline's projected units of service may only be changed by the pipeline in a section 4 rate filing. The projected units of service concept involves giving pipelines an incentive to maximize throughput. Selective discounting furthers similar objectives, by allowing pipelines to retain and attract business by meeting competition. Order No. 436, *supra* n. 1 at p. 31,546; Order No. 436-A, [Reg. Preambles 1982-1986] FERC Stats. & Regs. ¶ 30,875 at p. 31,679 (1985).

⁴⁵ 824 F.2d 981, 1012 (D.C. Cir. 1987).

§ 284.7(c)(3) was designed to prevent subsidization of the discounts by the pipelines' non-discounted rates.⁴⁶ However, that objective also should take into account Order No. 436's goal of maximizing throughput. Therefore, the Commission will allow parties to develop a record on and explore ways to calculate a pipeline's rates after it has been discounting so as to achieve both objectives as set out in the regulations.

At the outset, however, the Commission reiterates that pipelines must give discounts on a non-discriminatory basis, and the Commission is concerned about selective discounts that have the potential for giving rise to undue discrimination, including discounts to affiliates.⁴⁷ The following discussion about how to design the rates does not alter the standards that apply to the Commission's review of a pipeline's decision as to when and how to discount. That is, discounts must be given on a non-discriminatory basis, and discounts to affiliates will be carefully scrutinized,⁴⁸ as will be the treatment of past discounts to affiliates in projecting future units of service.

While the Commission will consider some flexibility under § 284.7(c) in terms of adjustments to reflect the impact of discounts (particular discounts for non-affiliated shippers) on total throughput, the Commission emphasizes that there should be no cross-subsidization by sales customers or shippers at maximum rates. And, the pipeline in large measure must still bear the risk of underrecovery as a result of future discounts under the new maximum rate. Finally, the calculations using past discounted volumes must take into account and properly balance the extent of such volumes discounted for affiliated shippers.

The Commission also recognizes that in a rate case it may be difficult to forecast discounted units of service at particular prices in order to allocate costs to discounted service. For example, discounts may depend on variables, such as the prices of alternative fuels. Accordingly, the ALJs and participants should consider methods which deal with the problem of the difficulty in forecasting revenues from discounting.

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⁴⁶ See Order No. 436, *supra* n. 1 at p. 31,545.

[Docket Nos. CP89-1459-000 et al.]

United Gas Pipe Line Co. et al.; Natural Gas Certification Filings

May 30, 1989.

Take notice that the following filings have been made with the Commission.

1. United Gas Pipe Line Co.

[Docket No. CP89-1459-000]

Take notice that on May 19, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1459-000 a request, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to provide interruptible transportation service on behalf of FRM, Inc. (FRM), an intrastate pipeline company, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Pursuant to a gas transportation agreement dated March 8, 1989, United proposed to transport up to 15,450 MMBtu of natural gas per day, on an interruptible basis, for FRM. United states that such gas would be transported from various existing receipt points along its system in Louisiana and Mississippi to an existing delivery point in Lawrence County, Mississippi. FRM has informed United that it expects to have the full 15,450 MMBtu transported on an average day, and, based thereon, estimates that the annual transportation quantity would be 5,639,250 MMBtu. United advises that the transportation service commenced on March 12, 1989, as reported in Docket No. ST89-3413-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: July 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Transcontinental Gas Pipe Line Corp.

[Docket No. CP89-1372-000]

Take notice that on May 15, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1372-000 a request for authorization pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Transco's blanket certificate issued in Docket No. CP88-328-000 for authorization to provide gas for Sonat Marketing Company (Shipper), all as more fully set forth in the request which is on file with the Commission and available for public inspection.

Transco states that the total volume of gas to be transported for Shipper on a peak day would be 160,000 dt; on an average day would be 16,500 dt; and on an annual basis would be 6,022,500 dt.

Transco states that it would receive the gas at various existing receipt points in Onshore and Offshore Louisiana and Texas and onshore Mississippi and deliver the gas at various existing delivery points in Georgia, and South Carolina.

Transco also states that it would construct no new facilities in order to provide this transportation service.

Transco states that there is no agency relationship under which a local distribution company or an affiliate of Shipper will receive gas on behalf of Shipper.

Transco states that service for Shipper commenced April 10, 1989, pursuant to the 120-day automatic authorization in Docket No. ST89-3388.

Comment date: July 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Mississippi River Transmission Corp.

[Docket No. CP89-1431-000]

Take notice that on May 18, 1989, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP89-1431-000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to add a delivery point to one of its existing firm sales customers, Arkansas Louisiana Gas Company (ALG), under the certificate issued in Docket No. CP82-489-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request filed with the Commission and open to public inspection.

MRT proposes to establish the new delivery point by installing a tap and appurtenant facilities including a 2" meter and regulator station to be located within MRT's existing right-of-way, and right-of-way it is in the process of acquiring, on its mainline system in Randolph County, Arkansas. It is stated that ALG requires the delivery of gas at the proposed location to serve the City of O'Kean, Arkansas. MRT also states that it would supply 45 Mcf of natural gas on a peak day and 12,640 Mcf of natural gas on an annual basis at the proposed delivery point. It is estimated that the total for all costs associated with the installation of the proposed facilities would be \$30,000. MRT states that ALG would reimburse it for all costs associated with the installation of

these facilities and the application filing fee.

MRT states that its FERC Traffic does not prohibit the addition of new delivery points and that it has sufficient capacity to accomplish the deliveries proposed herein without detriment or disadvantage to its other customers. MRT states that it does not propose to increase or decrease the total daily and/or annual quantities it is authorized to deliver to ALG.

Comment date: July 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Northwest Pipeline Corp.

[Docket No. CP89-1486-000]

Take notice that on May 22, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1486-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Portland General Electric Company (P-G), an end user of natural gas, under Northwest's blanket certificate issued in Docket No. CP86-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport up to 120,000 MMBtu of natural gas on a peak day, 71,000 MMBtu on an average day and 26,000,000 MMBtu on an annual basis for P-G. Northwest states that it would perform the transportation service for P-G under Northwest's Rate Schedule TI-1 for a primary term continuing until April 1, 1993, and continue on a monthly basis thereafter, subject to termination upon 30 days notice. Northwest indicates that it would transport the gas from any transportation receipt point on its system to any transportation delivery point on its system.

It is explained that the service has commenced under the automatic authorization provisions of Section 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3470-000. Northwest indicates that no new facilities would be necessary to provide the subject service.

Comment date: July 14, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Co.

[Docket No. CP89-1505-000]

Take notice that on May 24, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1505-000

a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on behalf of Dow Chemical Company (Dow), an end-user, under United's blanket certificate issued in Docket No. CP88-8-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 50,293 MMBtu of natural gas on a peak day, 50,293 MMBtu on an average day and 18,356,945 MMBtu on an annual basis for Dow. United states that it would perform the transportation service for Dow under United's Rate Schedule ITS. United indicates that it would transport the gas from a receipt point in Bienville Parish, Louisiana to a delivery point located in Lafayette Parish, Louisiana.

It is explained that the service has commenced April 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3127. United Gas indicates that no new facilities would be necessary to provide the subject service.

Comment date: July 14, 1989, in accordance with Standard Paragraph C at the end of this notice.

Standard Paragraph

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the

Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13433 Filed 6-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C162-600-001 et al.]

BP Exploration Inc., et al.; Applications for Abandonment of Service and Amendment of Certificate¹

June 1, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to Section 7 of the Natural Gas Act for authorization to abandon service or to amend a certificate as described herein, all as

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said applications should on or before June 19, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

Filing Code

- A—Initial Service.
- B—Abandonment.
- C—Amendment to add acreage.
- D—Assignment of acreage.
- E—Succession.
- F—Partial Succession.

Docket No. and Date filed	Applicant	Purchaser and Location	Description
C162-600-001, B, 5-8-89	BP Exploration Inc., P. O. Box 4587, Houston TX 77210.	El Paso Natural Gas Company, Shackelford Spraberry Field, Reagan and Upton Counties, Texas.	El Paso is no longer able to take casinghead gas from various tracts in the Shackelford Spraberry Unit because of increased hydrogen sulfide levels that cannot be processed through the El Paso plant.
C188-150-002, C, 5-15-89	Conoco Inc., P. O. Box 2197, Houston, TX 77252.	Tennessee Gas Pipeline Company, South Timberline Blocks, 22, 23 and 27, Off-shore, Louisiana.	Application to add gas-well-gas pursuant to a contract amendment dated 11-29-88.

[FR Doc. 89-13480 Filed 6-6-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ST89-2913-000]

Sea Robin Pipeline Co.; Self-Implementing Transactions

June 1, 1989.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's Regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA)

and section 5 of the Outer Continental Shelf Lands Act.¹

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction. A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's

¹ Notice of a transaction does not constitute a determination that the terms and conditions of the

Regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's Regulations and section 311(a)(2) of the NGPA. In those cases where Commission approval of a transportation rate is sought pursuant to § 284.123(b)(2), the table lists the proposed rate and the expiration date of the 150-day period for staff action. Any

proposed service will be approved or that the noticed filing is in compliance with the Commission's Regulations.

person seeking to participate in the proceeding to approve a rate listed in the table should file a motion to intervene with the Secretary of the Commission on or before June 20, 1989.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's Regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G-S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines—pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's Regulations.

A "G-LT" or "G-LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "G-HT" or "G-HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's Regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's Regulations.

A "K-S" indicates transportation of natural gas on the Outer Continental Shelf by an intrastate pipeline on behalf of shippers other than interstate pipelines—pursuant to § 284.303 of the Commission's Regulations.

Lois D. Cashell,
Secretary.

Docket No. ¹	Transporter/seller	Recipient	Date filed	Subpart	Expiration date ²	Transportation rate (¢/MMBtu)
ST89-2913	Sea Robin Pipeline Co.	Seagull Louisiana Intra. Pipeline Co.	04-03-89	B		
ST89-2914	Sea Robin Pipeline Co.	First Energy Corp.	04-03-89	G-S		
ST89-1915	Sea Robin Pipeline Co.	Neches Gas Distribution Co.	04-03-89	B		
ST89-2916	Tennessee Gas Pipeline Co.	Summit Pipeline & Producing Co.	04-03-89	G-S		
ST89-2918	Natural Gas Pipeline Co. of America	Associated Intrastate Pipeline Co.	04-03-89	B		
ST89-2919	United Gas Pipe Line Co.	Atlanta Gas Light Co., et al.	04-03-89	B		
ST89-2920	Enogex Inc.	Phillips Gas Pipeline Co.	04-03-89	C	06-31-89	26.50
ST89-2921	Valero Transmission, L.P.	Transcontinental Gas Pipe Line Corp.	04-03-89	C		
ST89-2922	Valero Transmission, L.P.	Trunkline Gas Co.	04-03-89	C		
ST89-2923	Algonquin Gas Transmission Co.	Bay State Gas Co.	04-03-89	B		
ST89-2924	Algonquin Gas Transmission Co.	Connecticut Light & Power Co.	04-03-89	B		
ST89-2925	Algonquin Gas Transmission Co.	Colonial Gas Company	04-03-89	B		
ST89-2926	United Gas Pipe Line Co.	Atlanta Gas Light Co., et al.	04-03-89	B		
ST89-2927	United Gas Pipe Line Co.	Associated Intrastate P/L Co., et al.	04-03-89	B		
ST89-2928	United Gas Pipe Line Co.	Reliance Pipeline Co.	04-03-89	B		
ST89-2929	United Gas Pipe Line Co.	Vista Chemical Co.	04-03-89	G-S		
ST89-2930	United Gas Pipe Line Co.	Louisiana Power & Light Co.	04-03-89	B		
ST89-2931	United Gas Pipe Line Co.	Acadian Gas Pipeline System	04-03-89	B		
ST89-2932	Michigan Gas Storage Co.	Consumers Power Co.	04-03-89	B		
ST89-2933	Michigan Gas Storage Co.	Consumers Power Co.	04-03-89	B		
ST89-2934	Northwest Pipeline Corp.	Chevron U.S.A., Inc.	04-03-89	G-S		
ST89-2935	Columbia Gulf Transmission Co.	Texas Gas Transmission Corp.	04-03-89	G		
ST89-2936	Northern Natural Gas Co.	American Central Gas Marketing Co.	04-03-89	G-S		
ST89-2937	Northern Natural Gas Co.	Phillips Natural Gas Co.	04-03-89	B		
ST89-2938	Kentucky West Virginia Gas Co.	Equitable Gas Co.	04-04-89	B		
ST89-2939	Natural Gas Pipeline Co. of America	Cabot Gas Supply Corp.	04-04-89	B		
ST89-2940	Natural Gas Pipeline Co. of America	Hadson Gas Systems, Inc.	04-04-89	G-S		
ST89-2941	ONG Transmission Co.	Northern Natural Gas Co.	04-04-89	C	09-01-89	24.32
ST89-2942	Transwestern Pipeline Co.	Southern California Gas Co.	04-04-89	B		
ST89-2943	Arka Energy Resources	Entex, Inc.	04-04-89	B		
ST89-2944	Tennessee Gas Pipeline Co.	Louisiana Intrastate Gas Pipeline Corp.	04-03-89	B		
ST89-2945	Delhi Gas Pipeline Corp.	El Paso Natural Gas Co.	04-05-89	C		
ST89-2946	Texas Gas Transmission Corp.	Bridgeline Gas Distribution Co.	04-04-89	G-S		
ST89-2947	Texas Gas Transmission Corp.	Wintershall Corp.	04-04-89	G-S		
ST89-2948	Sun Gas Transmission Co., Inc.	Tennessee Gas Pipeline Co.	04-05-89	C		
ST89-2949	Louisiana Intrastate Gas Corp.	Trunkline Gas Co.	04-05-89	C	09-02-89	27.44
ST89-2950	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	04-05-89	G-S		
ST89-2951	Transwestern Pipeline Co.	Mobil Natural Gas, Inc.	04-05-89	G-S		
ST89-2952	Transcontinental Gas Pipe Line Corp.	Coastal Gas Marketing Co.	04-06-89	G-S		
ST89-2953	Transcontinental Gas Pipe Line Corp.	Bay State Gas Co., et al.	04-06-89	B		
ST89-2954	United Gas Pipe Line Co.	Pontchartrain Natural Gas System	04-05-89	B		
ST89-2955	United Gas Pipe Line Co.	Centran Corp.	04-05-89	G-S		
ST89-2956	Northwest Pipe Line Corp.	Enron Oil & Gas Co.	04-06-89	G-S		
ST89-2957	CNG Transmission Corp.	Peoples Natural Gas Co.	04-06-89	B		
ST89-2958	CNG Transmission Corp.	Peoples Natural Gas Co.	04-06-89	B		
ST89-2959	CNG Transmission Corp.	Gulf Ohio Corp.	04-06-89	G-S		
ST89-2960	Panhandle Eastern Pipe Line Co.	Marathon Oil Co.	04-05-89	G-S		
ST89-2961	CNG Transmission Corp.	Catamount Natural Gas, Inc.	04-06-89	G-S		
ST89-2962	CNG Transmission Corp.	Kogas Inc.	04-06-89	G-S		
ST89-2963	CNG Transmission Corp.	Kogas Inc.	04-06-89	G-S		
ST89-2964	CNG Transmission Corp.	Kogas Inc.	04-06-89	G-S		
ST89-2965	Texas Eastern Transmission Corp.	Allied Gas Co.	04-06-89	B		

Docket No. 1	Transporter/seller	Recipient	Date filed	Subpart	Expiration date 2	Transportation rate (¢/MMBtu)
ST89-2966	Texas Eastern Transmission Corp.	Boston Gas Co.	04-06-89	B		
ST89-2967	Texas Eastern Transmission Corp.	Commonwealth Gas Co.	04-06-89	B		
ST89-2968	Texas Eastern Transmission Corp.	Baltimore Gas and Electric Co.	04-06-89	B		
ST89-2969	Texas Eastern Transmission Corp.	Reliance Pipeline Co.	04-06-89	B		
ST89-2970	Northern Border Pipeline Co.	Northern Natural Gas Co.	04-07-89	G		
ST89-2971	El Paso Natural Gas Co.	NGC Intrastate Pipeline Co.	04-07-89	B		
ST89-2972	El Paso Natural Gas Co.	Gulf Gas Utilities Co.	04-07-89	B		
ST89-2973	Transcontinental Gas Pipe Line Corp.	City of Bessemer City	04-07-89	B		
ST89-2974	Texas Gas Transmission Corp.	Seagull Marketing Services, Inc.	04-07-89	G-S		
ST89-2975	Texas Gas Transmission Corp.	Central Illinois Public Service Co.	04-07-89	B		
ST89-2976	Texas Gas Transmission Corp.	TXG Gas Marketing Co.	04-07-89	G-S		
ST89-2977	Texas Gas Transmission Corp.	Proctor & Gamble Co.	04-07-89	G-S		
ST89-2978	Texas Gas Transmission Corp.	Special Metals Corp.	04-07-89	G-S		
ST89-2979	Texas Gas Transmission Corp.	Nestle Foods Corp.	04-07-89	G-S		
ST89-2980	United Gas Pipe Line Co.	Laser Marketing Co.	04-07-89	G-S		
ST89-2981	United Gas Pipe Line Co.	Boston Gas Co., et al.	04-07-89	B		
ST89-2982	United Gas Pipe Line Co.	Phoenix Gas Pipeline Co.	04-07-89	G-S		
ST89-2983	United Gas Pipe Line Co.	Sun Operating Limited Partnership	04-07-89	G-S		
ST89-2984	United Gas Pipe Line Co.	Marathon Oil Co.	04-07-89	G-S		
ST89-2985	United Gas Pipe Line Co.	South Carolina Gas Pipeline Corp.	04-07-89	B		
ST89-2986	Sea Robin Pipeline Co.	Connecticut Natural Gas Corp.	04-07-89	B		
ST89-2987	Sea Robin Pipeline Co.	United Gas Pipe Line Co.	04-07-89	G		
ST89-2988	United Gas Pipe Line Co.	Laser Marketing Co.	04-07-89	G-S		
ST89-2989	United Gas Pipe Line Co.	Coastal States Gas Transmission Co.	04-07-89	B		
ST89-2990	Delhi Gas Pipeline Corp.	Natural Gas Pipeline Co. of America	04-10-89	C		
ST89-2991	Delhi Gas Pipeline Corp.	Texas Gas Transmission Corp.	04-10-89	C		
ST89-2992	Delhi Gas Pipeline Corp.	Texas Gas Transmission Corp.	04-10-89	C		
ST89-2993	Delhi Gas Pipeline Corp.	Texas Eastern Transmission Corp.	04-10-89	C		
ST89-2994	Natural Gas Pipeline Co. of America	TXG Gas Marketing Co.	04-10-89	G-S		
ST89-2995	Tennessee Gas Pipeline Co.	North Penn Gas Co.	04-10-89	B		
ST89-2996	Tennessee Gas Pipeline Co.	Boston Gas Co.	04-10-89	B		
ST89-2997	El Paso Natural Gas Co.	Amoco Gas Co.	04-10-89	B		
ST89-2998	El Paso Natural Gas Co.	Southern California Gas Co.	04-10-89	G-S		
ST89-2999	El Paso Natural Gas Co.	Amoco Gas Co.	04-10-89	B		
ST89-3000	Sun Gas Transmission Co., Inc.	Transcontinental Gas Pipe Line Corp.	04-10-89	C		
ST89-3001	Transcontinental Gas Pipe Line Corp.	Loutex Energy, Inc.	04-10-89	G-S		
ST89-3002	Transcontinental Gas Pipe Line Corp.	Transco Energy Marketing Co.	04-10-89	G-S		
ST89-3003	Transcontinental Gas Pipe Line Corp.	Enron Gas Marketing, Inc.	04-10-89	G-S		
ST89-3004	Panhandle Eastern Pipe Line Co.	Union Pacific Resources Co.	04-10-89	G-S		
ST89-3005	Columbia Gulf Transmission Co.	Consolidated Edison Co. of NY, Inc.	04-10-89	B		
ST89-3006	Columbia Gulf Transmission Co.	Peoples Gas Light & Coke Co.	04-10-89	B		
ST89-3007	Valero Transmission, L.P.	Transcontinental Gas Pipe Line Corp.	04-11-89	C		
ST89-3008	Valero Transmission, L.P.	Texas Eastern Transmission Corp.	04-11-89	C		
ST89-3009	Trunkline Gas Co.	PSI, Inc.	04-10-89	G-S		
ST89-3010	Texas Gas Transmission Corp.	PPG Industries, Inc.	04-11-89	G-S		
ST89-3011	Tennessee Gas Pipeline Co.	Capitol Dist. Energy Ctr. Cogen. Assoc.	04-11-89	G-S		
ST89-3012	Texas Gas Transmission Corp.	PPG Industries, Inc.	04-11-89	G-S		
ST89-3013	Texas Gas Transmission Corp.	PPG Industries, Inc.	04-11-89	G-S		
ST89-3014	Texas Gas Transmission Corp.	PPG Industries, Inc.	04-11-89	G-S		
ST89-3015	Texas Gas Transmission Corp.	PPG Industries, Inc.	04-11-89	G-S		
ST89-3016	Northwest Pipeline Corp.	Conoco, Inc.	04-11-89	G-S		
ST89-3017	Natural Gas Pipeline Co. of America	Texas Gas Marketing, Inc.	04-12-89	G-S		
ST89-3018	Tennessee Gas Pipeline Co.	North Penn Gas Co.	04-12-89	B		
ST89-3019	Transcontinental Gas Pipe Line Corp.	Entrade Corp.	04-12-89	G-S		
ST89-3020	Texas Gas Transmission Corp.	PPG Industries, Inc.	04-12-89	G-S		
ST89-3021	Texas Gas Transmission Corp.	PPG Industries, Inc.	04-12-89	G-S		
ST89-3022	Texas Gas Transmission Corp.	PPG Industries, Inc.	04-12-89	G-S		
ST89-3023	Texas Gas Transmission Corp.	PPG Industries, Inc.	04-12-89	G-S		
ST89-3024	Texas Gas Transmission Corp.	PPG Industries, Inc.	04-12-89	G-S		
ST89-3025	United Gas Pipe Line Co.	Sandy Hook Pipeline Inc.	04-12-89	B		
ST89-3026	Tennessee Gas Pipeline Co.	Heath Petra Resources, Inc.	04-13-89	G-S		
ST89-3027	Tennessee Gas Pipeline Co.	LL & E Gas Marketing, Inc.	04-13-89	G-S		
ST89-3028	Texas Eastern Transmission Corp.	Dayton Power and Light Co.	04-13-89	B		
ST89-3029	ONG Transmission Co.	Northern Natural Gas Co.	04-13-89	C	09-10-89	24.32
ST89-3030	ONG Transmission Co.	Williams Natural Gas Co.	04-13-89	C	09-10-89	24.32
ST89-3031	ONG Transmission Co.	Williams Natural Gas Co.	04-13-89	C	09-10-89	24.32
ST89-3032	BP Gas Transmission Co.	ANR Pipeline Co., et al.	04-14-89	C	09-11-89	13.70
ST89-3033	Tennessee Gas Pipeline Co.	Channel Industries Gas Co.	04-14-89	B		
ST89-3034	Transwestern Pipeline Co.	Exxon Corp.	04-17-89	G-S		
ST89-3035	Transcontinental Gas Pipe Line Corp.	City of Bessemer City	04-14-89	B		
ST89-3036	See Robin Pipeline Co.	Ponchartrain Natural Gas System, et al.	04-14-89	B		
ST89-3037	Southern Natural Gas Co.	Stone Container Corp.	04-14-89	G-S		
ST89-3038	Southern Natural Gas Co.	Union Texas Products Corp.	04-14-89	G-S		
ST89-3039	Southern Natural Gas Co.	BP Gas Inc.	04-14-89	G-S		
ST89-3040	Southern Natural Gas Co.	Stone Container Corp.	04-14-89	G-S		
ST89-3041	United Gas Pipe Line Co.	Comerstone Natural Gas Co.	04-14-89	B		
ST89-3042	United Gas Pipe Line Co.	Mississippi Fuel Co.	04-14-89	B		
ST89-3043	United Gas Pipe Line Co.	Entrade Corp.	04-14-89	G-S		
ST89-3044	United Gas Pipe Line Co.	Houston Gas Exchange Corp.	04-14-89	G-S		

Docket No. 1	Transporter/seller	Recipient	Date filed	Subpart	Expiration date 2	Transportation rate (¢/MMBtu)
ST89-3045	United Gas Pipe Line Co.	Mobil Natural Gas, Inc.	04-14-89	G-S		
ST89-3046	United Gas Pipe Line Co.	Laser Marketing Co.	04-14-89	G-S		
ST89-3047	Southern Natural Gas Co.	Citizens Gas Supply Corp.	04-14-89	G-S		
ST89-3048	BP Gas Transmission Co.	Panhandle Eastern P/L Co., et al.	04-17-89	C	09-14-89	28.80
ST89-3049	United Texas Transmission Co.	Tennessee Gas Pipeline Co.	04-17-89	C		
ST89-3050	Monterey Pipeline Co.	Trunkline Gas Co., et al.	04-17-89	C	09-14-89	24.40
ST89-3051	Transcontinental Gas Pipe Line Corp.	Piedmont Natural Gas Co.	04-17-89	B		
ST89-3052	Superior Offshore Pipeline Co.	LGS Intrastate, Inc.	04-17-89	B		
ST89-3053	Tennessee Gas Pipeline Co.	Centran Corp.	04-17-89	G-S		
ST89-3054	Natural Gas Pipeline Co. of America	Mitchell Marketing Co.	04-17-89	G-S		
ST89-3055	Natural Gas Pipeline Co. of America	Sun Gas Transmission, L.P.	04-17-89	G-S		
ST89-3056	Texas Eastern Transmission Corp.	Philadelphia Electric Co.	04-17-89	B		
ST89-3057	Texas Eastern Transmission Corp.	Union Electric Co.	04-17-89	B		
ST89-3058	Texas Eastern Transmission Corp.	UGI Corp.	04-17-89	B		
ST89-3059	Texas Eastern Transmission Corp.	City of Anna	04-17-89	B		
ST89-3060	Texas Eastern Transmission Corp.	Columbia Gas of Ohio, Inc.	04-17-89	B		
ST89-3061	Texas Eastern Transmission Corp.	Creole Gas Pipeline Co.	04-17-89	B		
ST89-3062	Texas Eastern Transmission Corp.	Access Energy Pipeline Co.	04-17-89	B		
ST89-3063	Williston Basin Interstate P/L Co.	MGTC, Inc.	04-17-89	B		
ST89-3064	Williston Basin Interstate P/L Co.	Montana-Dakota Utilities Co.	04-17-89	B		
ST89-3065	Williston Basin Interstate P/L Co.	Northwestern Public Service Co.	04-17-89	B		
ST89-3066	Williston Basin Interstate P/L Co.	Quivira Gas Co.	04-17-89	B		
ST89-3067	Williston Basin Interstate P/L Co.	MGTC, Inc.	04-17-89	B		
ST89-3068	Williston Basin Interstate P/L Co.	Quivira Gas Co.	04-17-89	B		
ST89-3069	Northwest Pipeline Corp.	Meridian Oil Trading, Inc.	04-17-89	G-S		
ST89-3070	Northwest Pipeline Corp.	BP Gas Marketing Co.	04-17-89	G-S		
ST89-3071	Texas Eastern Transmission Corp.	Philadelphia Electric Co.	04-17-89	B		
ST89-3072	Texas Eastern Transmission Corp.	Elizabethtown Gas Co.	04-17-89	B		
ST89-3073	Texas Eastern Transmission Corp.	Connecticut Light & Power Co.	04-17-89	B		
ST89-3074	Texas Eastern Transmission Corp.	UGI Corp.	04-17-89	B		
ST89-3075	Enogex Inc.	Natural Gas Pipeline Co. of America	04-18-89	C	09-15-89	28.50
ST89-3076	Columbia Gulf Transmission Co.	Columbia Gas of Kentucky, Inc.	04-18-89	B		
ST89-3077	Colorado Interstate Gas Co.	NGC Intrastate Pipeline Co.	04-18-89	B		
ST89-3078	Northwest Pipeline Corp.	BP Gas Marketing Co.	04-18-89	G-S		
ST89-3079	Northwest Pipeline Corp.	Boise Cascade Corp.	04-18-89	G-S		
ST89-3080	Transcontinental Gas Pipe Line Corp.	Long Island Lighting Co.	04-18-89	B		
ST89-3081	Natural Gas Pipeline Co. of America	Superior Natural Gas Corp., et al.	04-18-89	G-S		
ST89-3082	Texas Eastern Transmission Corp.	United Cities Gas Co.	04-18-89	B		
ST89-3083	Texas Eastern Transmission Corp.	Seagull Shoreline System	04-18-89	B		
ST89-3084	ONG Transmission Co.	Northern Natural Gas Co.	04-19-89	C	09-16-89	24.32
ST89-3085	Panhandle Eastern Pipe Line Co.	Central Illinois Light Co.	04-19-89	B		
ST89-3086	Panhandle Eastern Pipe Line Co.	City of Pleasant Hill	04-19-89	G-S		
ST89-3087	Natural Gas Pipeline Co. of America	Texas Industrial Energy Co.	04-19-89	B		
ST89-3088	United Gas Pipe Line Co.	Gulf Coast Energy, Inc.	04-19-89	B		
ST89-3089	United Gas Pipe Line Co.	Centran Corp.	04-19-89	G-S		
ST89-3090	Texas Eastern Transmission Corp.	Public Service Electric and Gas Co.	04-19-89	B		
ST89-3091	Texas Eastern Transmission Corp.	Woodward Pipeline, Inc.	04-19-89	B		
ST89-3092	Texas Eastern Transmission Corp.	Public Service Electric and Gas Co.	04-19-89	B		
ST89-3093	Texas Eastern Transmission Corp.	Philadelphia Electric Co.	04-19-89	B		
ST89-3094	Texas Eastern Transmission Corp.	Columbia Gas of Ohio, Inc.	04-19-89	B		
ST89-3095	United Gas Pipe Line Co.	Catamount Natural Gas, Inc.	04-20-89	G-S		
ST89-3096	United Gas Pipe Line Co.	Amalgamated Pipeline Co.	04-20-89	B		
ST89-3097	United Gas Pipe Line Co.	Graham Energy Marketing Corp.	04-20-89	G-S		
ST89-3098	Texas Eastern Transmission Corp.	BP Gas Transmission Co.	04-20-89	B		
ST89-3099	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	04-20-89	C		
ST89-3100	Tennessee Gas Pipeline Co.	Oxy U.S.A., Inc.	04-20-89	G-S		
ST89-3101	ONG Transmission Co.	Panhandle Eastern Pipe Line Co.	04-20-89	C	09-17-89	24.32
ST89-3102	ONG Transmission Co.	Williams Natural Gas Co.	04-20-89	C	09-17-89	24.32
ST89-3103	Webb/Duval Gatherers	Tennessee Gas Pipeline Co.	04-21-89	C		
ST89-3104	Texas Gas Transmission Corp.	Indiana Gas Co.	04-21-89	B		
ST89-3105	Texas Gas Transmission Corp.	Total Minatome Corp.	04-21-89	G-S		
ST89-3106	Texas Gas Transmission Corp.	IP Investment Holdings, Ltd.	04-21-89	B		
ST89-3107	Texas Gas Transmission Corp.	Memphis Light, Gas and Water Division	04-21-89	B		
ST89-3108	Texas Gas Transmission Corp.	Washington Gas Light Co.	04-21-89	B		
ST89-3109	Texas Gas Transmission Corp.	Union Texas Petroleum Corp.	04-21-89	G-S		
ST89-3110	Texas Gas Transmission Corp.	Midwest Natural Gas Corp.	04-21-89	B		
ST89-3111	Panhandle Eastern Pipe Line Co.	City of Clarence	04-21-89	G-S		
ST89-3112	Panhandle Eastern Pipe Line Co.	City of Edinburg	04-21-89	G-S		
ST89-3113	Panhandle Eastern Pipe Line Co.	City of Fulton	04-21-89	G-S		
ST89-3114	Panhandle Eastern Pipe Line Co.	City of Macon	04-21-89	G-S		
ST89-3115	Transcontinental Gas Pipe Line Corp.	Corpus Christi Transmission Co.	04-21-89	B		
ST89-3116	Transcontinental Gas Pipe Line Corp.	Catamount Natural Gas, Inc.	04-21-89	G-S		
ST89-3117	Transcontinental Gas Pipe Line Corp.	UGI Corp.	04-21-89	B		
ST89-3118	Transcontinental Gas Pipe Line Corp.	TBG Cogen Partners, Inc.	04-21-89	G-S		
ST89-3119	Transcontinental Gas Pipe Line Corp.	Baltimore Gas and Electric Co.	04-21-89	B		
ST89-3120	Northern Natural Gas Co.	V.H.C. Pipeline Co.	04-21-89	B		
ST89-3121	United Texas Transmission Co.	Transcontinental Gas Pipe Line Corp.	04-21-89	C		
ST89-3122	United Texas Transmission Co.	Neches Gas Distribution Co.	04-21-89	C		
ST89-3123	Palo Duro Pipeline Co., Inc.	Natural Gas Pipeline Co. of America	04-21-89	C		

Docket No. 1	Transporter/seller	Recipient	Date filed	Subpart	Expiration date 2	Transportation rate (¢/MMBtu)
ST89-3124	Colorado Interstate Gas Co.	Llano, Inc.	04-21-89	B		
ST89-3125	Colorado Interstate Gas Co.	Santa Fe Minerals	04-21-89	G-S		
ST89-3126	Colorado Interstate Gas Co.	Santa Fe Minerals	04-21-89	G-S		
ST89-3127	United Gas Pipe Line Co.	Dow Chemical Co.	04-21-89	G-S		
ST89-3128	Columbia Gulf Transmission Co.	Baltimore Gas and Electric Co.	04-21-89	B		
ST89-3129	Columbia Gulf Transmission Co.	Alabama-Tennessee Natural Gas Co.	04-21-89	G		
ST89-3130	Nueces Co.	Colorado Interstate Gas Co.	04-24-89	C	09-21-89	38.81
ST89-3131	Paiute Pipeline Co.	Casars Tahoe	04-24-89	G-S		
ST89-3132	Transcontinental Gas Pipe Line Corp.	Brooklyn Interstate Natural Gas Corp.	04-24-89	G-S		
ST89-3133	Transcontinental Gas Pipe Line Corp.	Indiana Gas Co., et al.	04-24-89	B		
ST89-3134	Transcontinental Gas Pipe Line Corp.	Enron Gas Marketing, Inc.	04-24-89	G-S		
ST89-3135	Tennessee Gas Pipeline Co.	Transcontinental Gas Pipe Line Corp.	04-24-89	G		
ST89-3136	Tennessee Gas Pipeline Co.	East Tennessee Natural Gas Co.	04-24-89	G		
ST89-3137	Northwest Pipeline Corp.	Natgas U.S. Inc.	04-24-89	G-S		
ST89-3138	Northwest Pipeline Corp.	Casars World, Inc.	04-24-89	G-S		
ST89-3139	Northwest Pipeline Corp.	Southwest Gas Corp.	04-24-89	G-S		
ST89-3140	Colorado Interstate Gas Co.	Questar Energy Co.	04-24-89	G-S		
ST89-3141	Colorado Interstate Gas Co.	Marathon Oil Co.	04-24-89	G-S		
ST89-3142	Northern Natural Gas Co.	Panda Resources, Inc.	04-24-89	G-S		
ST89-3143	Stingray Pipeline Co.	Anadarko Trading Co.	04-24-89	K-S		
ST89-3144	Stingray Pipeline Co.	Shell Gas Trading Co.	04-24-89	K-S		
ST89-3145	Stingray Pipeline Co.	Chevron U.S.A., Inc.	04-24-89	K-S		
ST89-3146	Stingray Pipeline Co.	Tejas Power Corp.	04-24-89	K-S		
ST89-3147	Stingray Pipeline Co.	ARCO Natural Gas Marketing, Inc.	04-24-89	K-S		
ST89-3148	Stingray Pipeline Co.	Hadson Gas Systems, Inc.	04-24-89	K-S		
ST89-3149	Stingray Pipeline Co.	PSI, Inc.	04-24-89	K-S		
ST89-3150	Stingray Pipeline Co.	Bridgeline Gas Distribution Co.	04-24-89	B		
ST89-3151	Stingray Pipeline Co.	Dow Intrastate Gas Co.	04-24-89	B		
ST89-3152	Stingray Pipeline Co.	Enron Gas Marketing, Inc.	04-24-89	K-S		
ST89-3153	Stingray Pipeline Co.	Williams Gas Marketing Co.	04-24-89	K-S		
ST89-3154	Stingray Pipeline Co.	Sun Operating Limited Partnership	04-24-89	K-S		
ST89-3155	Trunkline Gas Co.	Manville Sales Corp.	04-24-89	G-S		
ST89-3156	Trunkline Gas Co.	Bethlehem Steel Corp.	04-24-89	G-S		
ST89-3157	Trunkline Gas Co.	Natural Gas Clearinghouse, Inc.	04-24-89	G-S		
ST89-3158	Trunkline Gas Co.	Heartland Gas Marketing, Inc.	04-24-89	G-S		
ST89-3159	Trunkline Gas Co.	PSI, Inc.	04-24-89	G-S		
ST89-3160	Trunkline Gas Co.	Seagulf Marketing Services, Inc.	04-24-89	G-S		
ST89-3161	Trunkline Gas Co.	Manville Sales Corp.	04-24-89	G-S		
ST89-3162	Panhandle Eastern Pipe Line Co.	City of Shelby	04-24-89	G-S		
ST89-3163	Panhandle Eastern Pipe Line Co.	Gas Energy Development	04-24-89	G-S		
ST89-3164	Panhandle Eastern Pipe Line Co.	Natural Gas Clearinghouse, Inc.	04-24-89	G-S		
ST89-3165	Panhandle Eastern Pipe Line Co.	Selling Public Works Auth.	04-24-89	G-S		
ST89-3166	Panhandle Eastern Pipe Line Co.	Illinois Power Co.	04-25-89	B		
ST89-3167	Panhandle Eastern Pipe Line Co.	City of Vici Public Works Auth.	04-24-89	G-S		
ST89-3168	Panhandle Eastern Pipe Line Co.	City of Hermann	04-24-89	G-S		
ST89-3169	Panhandle Eastern Pipe Line Co.	City of Roodhouse	04-24-89	G-S		
ST89-3170	Panhandle Eastern Pipe Line Co.	Manville Sales Corp.	04-24-89	G-S		
ST89-3171	Panhandle Eastern Pipe Line Co.	Bethlehem Steel Corp.	04-24-89	G-S		
ST89-3172	Panhandle Eastern Pipe Line Co.	Manville Sales Corp.	04-24-89	G-S		
ST89-3173	Panhandle Eastern Pipe Line Co.	City of Stonington	04-24-89	G-S		
ST89-3174	Panhandle Eastern Pipe Line Co.	PSI, Inc.	04-24-89	G-S		
ST89-3175	Panhandle Eastern Pipe Line Co.	City of Bushnell	04-24-89	G-S		
ST89-3176	Panhandle Eastern Pipe Line Co.	City of Taloga	04-24-89	G-S		
ST89-3177	Panhandle Eastern Pipe Line Co.	American Central Gas Marketing Co.	04-24-89	G-S		
ST89-3178	Panhandle Eastern Pipe Line Co.	Panhandle Trading Co.	04-24-89	G-S		
ST89-3179	Panhandle Eastern Pipe Line Co.	City of Paris	04-24-89	G-S		
ST89-3180	Panhandle Eastern Pipe Line Co.	City of Perry	04-24-89	G-S		
ST89-3181	Panhandle Eastern Pipe Line Co.	City of Rossville	04-24-89	G-S		
ST89-3182	Panhandle Eastern Pipe Line Co.	City of Westville	04-24-89	G-S		
ST89-3183	Panhandle Eastern Pipe Line Co.	Indiana Gas Co.	04-25-89	B		
ST89-3184	Panhandle Eastern Pipe Line Co.	Miami Pipeline Co.	04-25-89	B		
ST89-3185	Panhandle Eastern Pipe Line Co.	Consumers Power Co.	04-25-89	B		
ST89-3186	Panhandle Eastern Pipe Line Co.	United Cities Gas Co.	04-25-89	B		
ST89-3187	Panhandle Eastern Pipe Line Co.	City of Winchester	04-25-89	B		
ST89-3188	Panhandle Eastern Pipe Line Co.	Indiana Gas Co.	04-25-89	B		
ST89-3189	Eastex Gas Transmission Co.	Panhandle Eastern Pipe Line Co.	04-25-89	B		
ST89-3190	Panhandle Eastern Pipe Line Co.	Battle Creek Gas Co.	04-25-89	B		
ST89-3191	Northern Natural Gas Co.	Pacific Resources Co.	04-25-89	G-S		
ST89-3192	Louisiana Resources Co.	Louisiana Gas Marketing Co.	04-25-89	C	09-22-89	26.43
ST89-3193	Tennessee Gas Pipeline Co.	CNG Transmission Corp.	04-25-89	G		
ST89-3194	El Paso Natural Gas Co.	Houston Pipe Line Co.	04-25-89	B		
ST89-3195	Equitrans, Inc.	Equitable Gas Co.	04-26-89	B		
ST89-3196	Equitrans, Inc.	Equitable Gas Co.	04-26-89	B		
ST89-3197	Valero Transmission, L.P.	Natural Gas Pipeline Co. of America	04-26-89	C		
ST89-3198	Channel Industries Gas Co.	THC Pipeline Co.	04-26-89	C		
ST89-3199	Tennessee Gas Pipeline Co.	Enmark Gas Corp.	04-26-89	G-S		
ST89-3200	Stingray Pipeline Co.	Apache Corp.	04-26-89	K-S		
ST89-3201	Stingray Pipeline Co.	Texaco Gas Marketing, Inc.	04-26-89	K-S		
ST89-3202	Stingray Pipeline Co.	Elf Aquitaine, Inc.	04-26-89	K-S		

Docket No. 1	Transporter/seller	Recipient	Date filed	Subpart	Expiration date 2	Transportation rate (¢/MMBtu)
ST89-3203	Stingray Pipeline Co.	Panhandle Trading Co.	04-26-89	K-S		
ST89-3204	Stingray Pipeline Co.	Transaco Energy Marketing Co.	04-26-89	K-S		
ST89-3205	Stingray Pipeline Co.	Bishop Pipeline Corp.	04-26-89	B		
ST89-3206	Stingray Pipeline Co.	Associated Natural Gas Co., Inc.	04-26-89	K-S		
ST89-3207	Stingray Pipeline Co.	Pontchartrain Natural Gas System	04-26-89	B		
ST89-3208	Stingray Pipeline Co.	Consolidated Fuel Corp.	04-26-89	K-S		
ST89-3209	Stingray Pipeline Co.	Century Offshore Management Corp.	04-26-89	K-S		
ST89-3210	United Gas Pipe Line Co.	Tennessee Gas Pipeline Co.	04-26-89	G		
ST89-3211	United Gas Pipe Line Co.	Phoenix Gas Pipeline Co.	04-26-89	G-S		
ST89-3212	Sea Robin Pipeline Co.	SNG Intrastate Pipeline, Inc.	04-26-89	B		
ST89-3213	Sea Robin Pipeline Co.	Cullman-Jefferson Counties Gas Dist.	04-26-89	B		
ST89-3214	Stingray Pipeline Co.	Mobil Natural Gas, Inc.	04-26-89	K-S		
ST89-3215	Gas Co. of NM (Div. Public Serv. Co. NM).	El Paso Natural Gas Co.	04-27-89	G-HT		
ST89-3216	Gas Co. of NM (Div. Public Serv. Co. NM).	El Paso Natural Gas Co.	04-27-89	G-HT		
ST89-3217	Monterey Pipeline Co.	Trunkline Gas Co., et al.	04-27-89	C	09-24-89	24.40
ST89-3218	Channel Industries Gas Co.	Northern Natural Gas Co.	04-27-89	C		
ST89-3219	United Texas Transmission Co.	United Gas Pipe Line Co.	04-27-89	C		
ST89-3220	BP Gas Transmission Co.	ANR Pipeline Co., et al.	04-27-89	C	09-24-89	13.70
ST89-3221	BP Gas Transmission Co.	ANR Pipeline Co., et al.	04-27-89	C	09-24-89	13.70
ST89-3222	Sea Robin Pipeline Co.	Eccc, Inc.	04-27-89	G-S		
ST89-3223	United Gas Pipe Line Co.	Brandywine Industrial Gas, Inc.	04-27-89	G-S		
ST89-3224	United Gas Pipe Line Co.	American Central Gas Cos., Inc.	04-27-89	G-S		
ST89-3225	El Paso Natural Gas Co.	Houston Pipe Line Co.	04-27-89	B		
ST89-3226	Panhandle Eastern Pipe Line Co.	Bowling Green Gas Co.	04-27-89	G-S		
ST89-3227	Northern Natural Gas Co.	BP Gas Transmission Co.	04-27-89	B		
ST89-3228	Northern Natural Gas Co.	Apache Corp.	04-27-89	G-S		
ST89-3229	Northern Natural Gas Co.	City of Ponca	04-27-89	B		
ST89-3230	Northern Natural Gas Co.	Williams Gas Marketing Co.	04-27-89	G-S		
ST89-3231	Northern Natural Gas Co.	Amox Oil & Gas Inc.	04-27-89	G-S		
ST89-3232	Northern Natural Gas Co.	ARCO Natural Gas Marketing, Inc.	04-27-89	G-S		
ST89-3233	United Texas Transmission Co.	Florida Gas Transmission Co., et al.	04-28-89	C		
ST89-3234	Sabine Pipe Line Co.	BP Gas Transmission Co.	04-28-89	F		
ST89-3235	Sabine Pipe Line Co.	Mobil Vanderbilt-Beaumont Pipeline Co.	04-28-89	B		
ST89-3236	Sabine Pipe Line Co.	Mobil Vanderbilt-Beaumont Pipeline Co.	04-28-89	B		
ST89-3237	Western Gas Supply Co.	Cheyenne Light, Fuel & Power Co.	04-28-89	C		
ST89-3238	Northwest Pipeline Corp.	Suncor, Inc.	04-28-89	G-S		
ST89-3239	Transcontinental Gas Pipe Line Corp.	Washington Gas Light Co.	04-28-89	B		
ST89-3240	Transcontinental Gas Pipe Line Corp.	City of Shelby	04-28-89	B		
ST89-3241	Transcontinental Gas Pipe Line Corp.	Commissioner of Public Works, Greenwood	04-28-89	B		
ST89-3242	Transcontinental Gas Pipe Line Corp.	Delmarva Power and Light Co.	04-28-89	B		
ST89-3243	Transcontinental Gas Pipe Line Corp.	City of Danville	04-28-89	B		
ST89-3244	Transcontinental Gas Pipe Line Corp.	Atlanta Gas Light Co.	04-28-89	B		
ST89-3245	Transcontinental Gas Pipe Line Corp.	Public Service Co. of N. Carolina, Inc.	04-28-89	B		
ST89-3246	Transcontinental Gas Pipe Line Corp.	North Carolina Natural Gas Corp.	04-28-89	B		
ST89-3247	Transcontinental Gas Pipe Line Corp.	Long Island Lighting Co.	04-28-89	B		
ST89-3248	Transcontinental Gas Pipe Line Corp.	Elizabethtown Gas Co.	04-28-89	B		
ST89-3249	Transcontinental Gas Pipe Line Corp.	City of Laurens	04-28-89	B		
ST89-3250	Transcontinental Gas Pipe Line Corp.	North Carolina Gas Service Co.	04-28-89	B		
ST89-3251	Transcontinental Gas Pipe Line Corp.	Fort Hill Natural Gas Authority	04-28-89	B		
ST89-3252	Transcontinental Gas Pipe Line Corp.	Owens-Corning Fiberglass Corp.	04-28-89	B		
ST89-3253	Transcontinental Gas Pipe Line Corp.	Philadelphia Electric Co.	04-28-89	B		
ST89-3254	Transcontinental Gas Pipe Line Corp.	Eastern Shore Natural Gas Co.	04-28-89	G		
ST89-3255	Transcontinental Gas Pipe Line Corp.	Lynchburg Gas Co.	04-28-89	B		
ST89-3256	Transcontinental Gas Pipe Line Corp.	Consolidated Edison Co. of NY, Inc.	04-28-89	B		
ST89-3257	Transcontinental Gas Pipe Line Corp.	Brooklyn Union Gas Co.	04-28-89	B		
ST89-3258	Transcontinental Gas Pipe Line Corp.	City of Lexington	04-28-89	B		
ST89-3259	Transcontinental Gas Pipe Line Corp.	Public Service Electric and Gas Co.	04-28-89	B		
ST89-3260	Transcontinental Gas Pipe Line Corp.	Union Gas Co.	04-28-89	B		
ST89-3261	Transcontinental Gas Pipe Line Corp.	South Carolina Gas Pipeline Corp.	04-28-89	B		
ST89-3262	Transcontinental Gas Pipe Line Corp.	South Jersey Gas Co.	04-28-89	B		
ST89-3263	Transcontinental Gas Pipe Line Corp.	Pennsylvania Gas and Water Co.	04-28-89	B		
ST89-3264	Transcontinental Gas Pipe Line Corp.	Piedmont Natural Gas Co.	04-28-89	B		
ST89-3265	Transcontinental Gas Pipe Line Corp.	Commonwealth Gas Pipeline Corp.	04-28-89	B		
ST89-3266	Transcontinental Gas Pipe Line Corp.	Clinton-Newberry Nat. Gas Authority	04-28-89	B		
ST89-3267	El Paso Natural Gas Co.	Er-on Gas Marketing, Inc.	04-28-89	G-S		
ST89-3268	El Paso Natural Gas Co.	Natural Gas Processing Co.	04-28-89	G-S		
ST89-3269	El Paso Natural Gas Co.	Mendan Oil Inc.	04-28-89	G-S		
ST89-3270	El Paso Natural Gas Co.	Tngen Resources Corp.	04-28-89	G-S		
ST89-3271	El Paso Natural Gas Co.	Access Energy Pipeline Corp.	04-28-89	B		
ST89-3272	El Paso Natural Gas Co.	Hondo Oil & Gas Co.	04-28-89	G-S		
ST89-3273	El Paso Natural Gas Co.	Bay State Gas Co., et al.	04-28-89	B		
ST89-3274	El Paso Natural Gas Co.	Independents Gas Services	04-28-89	G-S		
ST89-3275	El Paso Natural Gas Co.	Southwest Gas Corp.	04-28-89	B		
ST89-3276	Western Transmission Corp.	Sinclair Pipeline Co.	04-28-89	B		
ST89-3277	Western Transmission Corp.	Williams Gas Co.	04-28-89	B		
ST89-3278	Western Transmission Corp.	Vesgas Co.	04-28-89	B		
ST89-3279	Western Transmission Corp.	Energy Pipeline Co.	04-28-89	B		

Docket No. ¹	Transporter/seller	Recipient	Date filed	Subpart	Expiration date ²	Transportation rate (¢/MMBtu)
ST89-3280	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	04-28-89	G-S		
ST89-3281	Columbia Gulf Transmission Co.	Alabama-Tennessee Nat. Gas Co., et al.	04-28-89	B		
ST89-3282	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	04-28-89	C		
ST89-3283	Williams Natural Gas Co.	B & A Pipeline Co.	04-28-89	B		
ST89-3284	Williams Natural Gas Co.	Kansas Power and Light Co.	04-28-89	B		
ST89-3285	Williams Natural Gas Co.	Board of Util., Springfield	04-28-89	B		
ST89-3286	Williams Natural Gas Co.	Terra Resources, Inc.	04-28-89	G-S		
ST89-3287	Trunkline Gas Co.	Anadarko Trading Co.	04-28-89	G-S		
ST89-3288	Trunkline Gas Co.	Ultramar Oil & Gas, Ltd.	04-28-89	G-S		
ST89-3289	Panhandle Eastern Pipe Line Co.	Seagull Marketing Services, Inc.	04-28-89	G-S		
ST89-3290	Panhandle Eastern Pipe Line Co.	Amgas, Inc.	04-28-89	J-S		
ST89-3291	Panhandle Eastern Pipe Line Co.	E.I. DuPont de Nemours & Co.	04-28-89	G-S		
ST89-3292	Panhandle Eastern Pipe Line Co.	Mountain Industrial Gas Co.	04-28-89	G-S		
ST89-3293	Panhandle Eastern Pipe Line Co.	Amgas, Inc.	04-28-89	G-S		
ST89-3294	Panhandle Eastern Pipe Line Co.	Mountain Industrial Gas Co.	04-28-89	G-S		
ST89-3295	Panhandle Eastern Pipe Line Co.	Mountain Industrial Gas Co.	04-28-89	G-S		
ST89-3296	Panhandle Eastern Pipe Line Co.	Interstate Gas Marketing	04-28-89	G-S		

¹ Notice of transactions does not constitute a determination that filings comply with Commission regulations in accordance with order No. 436 (Final Rule and Notice requesting supplemental comments, 50 FR 42,372, 10/18/85).

² The intrastate pipeline has sought Commission approval of its transportation rate pursuant to section 284.123(B)(2) of the Commission's regulations (18 CFR 284.123(B)(2)). Such rates are deemed fair and equitable if the Commission does not take action by the date indicated.

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[Docket No. PL89-1-000]

Interim Gas Supply Charges; and Interim Gas Inventory Charges, Proposed Policy Statement

May 30, 1989.

I. Introduction

The Federal Energy Regulatory Commission (the Commission) is proposing a policy statement for the implementation of interim gas inventory charges for pipelines while the Commission considers individual pipeline applications for permanent gas inventory charges.

II. Background

On August 7, 1987, the Commission issued Order No. 500 in which it adopted an interim rule and statement policy dealing with, among other things, the take or pay problems of the gas pipeline industry.¹ The Commission established a "one time only" mechanism of equitable sharing for the treatment of past take or pay costs, which expired March 31, 1989. In addition, Order No. 500 adopted a policy, codified in § 2.105 of the Commission's regulations, with respect to "the parameters in which a pipeline may file to recover the costs of maintaining supply for their customers."² As set forth in § 2.105, the gas supply or inventory charge for standing ready to supply gas must be in accordance with the following principles:

¹ FERC Stats. & Regs. § 30,761.

² *Id.* at 30,792.

(a) The pipeline may not recover take-or-pay or similar charges from suppliers by any other means.

(b) The pipeline must allow its sales customers to nominate levels of service freely within their firm sales entitlements or otherwise employ a mechanism for the renegotiation of levels of service at regular intervals.

(c) The pipeline must announce prior to nominations by the customers a firm price or pricing formula for the service, and hold that price or pricing formula firm during the interval arranged in paragraph (b) of this section.

(d) By nominating a new level of service lower than its current level, a customer has consented to any abandonment sought by the pipeline commensurate with the difference between the current level of service and the nominated level.³

Although the Commission has issued certificates authorizing gas inventory charges (GICs), to date, no pipeline has implemented a gas inventory charge.⁴ As a general matter, the Commission believes that in the current economic and regulatory environments for the natural gas industry, it is in the public interest for interstate gas pipelines to implement GIC mechanisms as soon as possible in order to prevent a recurrence of the take or pay problems of the past. A GIC is the most effective way to accomplish this objective.

³ 18 CFR 2.105 (1988).

⁴ To date, three vastly different gas inventory charge proposals have been approved by the Commission. Transwestern Gas Pipeline Co., 43 FERC ¶ 61,240 (1988), certificate pending acceptance; Natural Gas Pipeline Company of America, 44 FERC ¶ 61,163 (1988), certificate rejected; and Texas Eastern Transmission Corp., 44 FERC ¶ 61,413 (1988, reh'g denied, 47 FERC ¶ 61,100 (1989), certificate accepted.

Currently pipelines cannot reflect the cost of maintaining inventories of gas supplies in their rates on a current basis. This proposed policy statement addresses that problem. The Commission believes that providing for interim implementation of the gas inventory charge mechanism will benefit both pipelines and their customers by enabling them to plan and coordinate their relationship and their relationships with others pursuant to current needs and to contract for a portfolio of gas supplies within the framework of a rational, efficient pricing structure. As the Commission stated in Order No. 500:

The rate design is intended as a future-looking mechanism to recover the costs of contractually committing gas service that has been tailored to meet the customer's nominations whenever fewer than nominated volumes (or a reasonable percentage of nominated volumes) are taken by a customer, who is fully aware that such charges would be currently assessed on a monthly basis, based on its own service nomination. In brief, the Commission is seeking to establish a rational, efficient pricing structure for the pipeline merchant function with emphasis on reciprocity and consideration of service obligations under the increased options available to a pipeline's sales customers.⁵

The Commission's experience to date has been that the establishment of a permanent gas inventory charge that relies on the market to establish the prices to be charged involves an inquiry that can be quite time consuming. The Commission is attempting currently to deal with this dilemma.⁶

⁵ *Id.* at 30,794.

⁶ See El Paso Natural Gas Company, 47 FERC ¶ 61,106 (1989).

The purpose of this proposed policy statement is to propose methods for developing a limited term gas inventory charge, and to set forth related terms and conditions of service, for use on an interim basis until individual pipelines implement permanent gas inventory charges. The Commission has been concerned for some time about take or pay obligations in the natural gas industry. That is why the Commission issued Order No. 500. The Commission sees an interim GIC as a bridge between the expiration of one phase of addressing the take or pay problem—the equitable sharing direct billing mechanism—and the beginning of the next phase of dealing with future accumulations of take or pay—the implementation of gas inventory charges—throughout the gas pipeline industry.

The Commission's intent is to avoid the recurrence of significant amounts of unfunded pipeline take or pay costs. A pipeline must maintain adequate gas supplies to meet its entire service obligation. The Commission recognizes that if a mechanism does not exist to compensate a pipeline for maintaining these gas supplies, it will have a negative impact on the ability of the pipeline to serve as a merchant. For this reason, the Commission recognizes that action is needed in the near term to allow pipelines to put in place an interim GIC.

The proposed policy statement details several possible methods for developing an interim gas supply charge and a limited term gas inventory charge. There may be other equally appropriate methods that could be used. The Commission is interested in receiving comments on the methods outlined herein, as well as on any other method the commenters may wish the Commission to consider.

The Commission understands that factual circumstances vary from pipeline to pipeline that may require different GICs to be implemented. For example, pipeline will have different sales and transportation markets, customer demand profiles and gas supply contracts with varying terms and conditions, which need to be considered. Furthermore, the Commission continues to support strongly the use of settlement procedures, where appropriate, to fashion permanent GICs on a case by case basis.

III. The Proposals in a Nutshell

The Commission is seeking comments on several methods for a pipeline to use in establishing the two components of the interim gas supply charge. The first method would replace the current

pipeline purchased gas adjustment (PGA) mechanism by substituting an interim gas supply charge. The charge would be a two part charge. One part would be the interim gas inventory charge. The other part would be the gas commodity charge. The pipeline would base its interim gas commodity charge for sales service on a competitive market price composite (as illustrated in the appendix to this notice) and its gas inventory charge on that composite multiplied by a percentage factor as derived below. The gas inventory charge is thus a premium, where appropriate, over the gas commodity charge to compensate the pipeline for costs related to the merchant function not covered by the gas commodity charge.

Under the second method, the pipeline would continue to use the PGA mechanism as the basis for the interim gas commodity charge for sales service. The pipeline would be allowed to impose a charge equal to a percentage of its current weighted average cost of gas (WACOG) as its gas inventory charge. The gas inventory charge portion of the interim gas supply charge mechanism would be applicable only if a firm sales customer's actual purchases fall below a percentage of either its monthly or annual nominated purchase amounts as described below. A variant of this method would permit the pipeline to impose a charge in cents per MMBtu (rather than a charge based on a percentage of its WACOG) as its gas inventory charge. As with the first method, the gas inventory charge is a premium over the gas commodity charge to cover costs associated with the merchant function not covered by the gas commodity charge.

The instant gas inventory charge proposals are in no way intended to affect contractual rights and responsibilities arising under any pipeline's gas purchase contracts.

The Commission believes that the combination of the use of the interim gas supply charge and the reconciliation mechanism fulfills the intent of the Natural Gas Policy Act of 1978 that market forces play a "more significant role in determining the supply, the demand, and the price of natural gas,"⁷ and the mandate of the Natural Gas Act that a pipeline's rates must be just and reasonable.

For pipelines using the competitive price method, the Commission's proposed competitive price composite, as demonstrated by the appendix,^{7a}

represents a true and not a presumed market price. The deficiency charge method uses both the PGA mechanism and a WACOG measurement for the cost of gas. It is a cost based method. In addition, the Commission has coupled both pricing mechanisms with the reconciliation mechanism which forms a cost based price cap on the pipeline's rates. Hence, as an end result, it can be argued that the pipeline's customers will be ensured just and reasonable rates.⁸

IV. The First Method: The Competitive Price Concept

A. Introduction

As an interim measure, the Commission is considering, and seeking comments on, use of a composite price of competitive market prices as an appropriate basis for sales service (the gas commodity charge) and for the interim gas inventory charge if the following four conditions are satisfied: (1) That the competitive market functions properly, in the sense that price responds to changes in the demand and supply of gas, (2) that the competitive price average used by the pipeline is representative of actual competitive prices in supply areas from which the pipeline receives its gas, (3) that such competitive price reports are readily available (by subscription or otherwise) to the pipeline, its customers and to the Commission, and (4) that such reports should be published on a regular interval by an entity not engaged in the business of buying, selling, transporting or brokering natural gas. Any source that meets these conditions can be used. The appendix to this notice sets out an illustrative calculation.

Such available data on the competitive market may demonstrate that the competitive market is currently a well functioning market in the sense that it is broad (competitive sales, under varying terms and conditions, as a percent of total throughput are variously estimated at between 35 and 70 percent), and that it responds to forces of supply and demand (i.e., there is a pronounced seasonal effect on competitive prices). The appendix to this notice is the staff's report which discusses the use of competitive market prices as a basis for gas sales service and an interim gas inventory charge.

The staff has also examined the behavior of competitive price series published in four different trade periodicals and concludes that the series are in general agreement with one

⁷ Transcontinental Gas Pipe Line Corp. v. State Oil and Gas Board of Miss., 474 U.S. 408, 422 (1986).

^{7a} This appendix is available from the Commission's Public Reference Room.

⁸ FPC v. Texaco, 417 U.S. 380, 397-399 (1974); *Cf.* Farmers Union Central Exchange, Inc. v. FERC, 734 F.2d 1486, 1501-1503, 1509-1510 (DC Cir. 1984).

another, and that the competitive prices respond to the forces of supply and demand. Thus, competitive prices may serve as an appropriate basis for the gas commodity charge and the gas inventory charge where the competitive prices examined are representative of competitive prices in the supply areas to which they refer.

The gas inventory charge permits the pipeline to pay a premium, where appropriate, in the form of a fixed charge or a higher commodity price for long term supplies. Indeed, as discussed below, the gas inventory charge is intended to cover gas supply costs and not to provide additional profit for the pipeline.

B. Theory

An interim gas inventory charge may be developed from the perspective of the value of gas supply contracts to the pipeline and its customers. The focus is on the aggregated value of the pipeline's inventory of contracts.

From the pipeline's perspective, entering into gas supply contracts with producers is a necessary step in the process of offering firm merchant sales service to its customers. Without those contracts the pipeline could not provide reliable firm sales service. The benefits associated with those contracts are not realized, however, without some obligations and financial risk to the pipeline. For example, gas supply contracts can be viewed (at least in an operational sense) as providing something of value to the pipeline and customers demanding merchant service by the pipeline. But the pipeline may, nonetheless, be exposed to financial risks contained in the contracts. If the pipeline does not perform in accordance with the contracts, the pipeline may be exposed to the incurrence of added costs (e.g., take or pay liability claims, contract reformation costs, etc.).

For the purposes of quantifying an interim gas inventory charge, an analogy can be drawn before compensation for the "exposed value" of net depreciated fixed assets and compensation for the pipeline's exposure under its inventory of gas supply contracts. This approach derives the gas inventory charge based on the value of the pipeline holding an inventory to gas supply contracts for the benefits of its customers, not on the pipeline customer's "deficiency quantities." In other words, this approach derives the gas inventory charge by considering the gas supply insurance for the pipeline's customers due to the pipeline's inventory of gas supply contracts and the costs to the pipeline of holding and managing that inventory of contracts.

The approximate value of an inventory of gas supply contracts can be established for these purposes based on the expected value for which the pipeline could sell the gas in the competitive market. Although that price would be expected to vary over time, depending on competitive conditions, the adoption of the competitive price approach in the pipeline's major gas supply areas is reasonable. (See the appendix.)

Periodic changes in the competitive price index reflect market changes in natural gas supply and demand and incorporate the effects of inflation. This approach establishes the gas inventory charge based on an "instantaneous charge." By using a "variable" price index there is no need for any discounting (in a "present value" context) or for factoring in inflation of future expected prices.

Also, the instantaneous charge does not require any discounting (in a "present value" context) of the quantity of gas to be produced at future dates under individual or aggregated contracts. Rather, this approach assumes that the pipeline will maintain an inventory of gas supply contracts consistent with the service demands of, and under the terms and conditions, demanded by its customers. That is, the pipeline would be expected to add new contracts under varying terms and conditions when and where they are needed and shed other contracts when appropriate.

The net effect is that the pipeline would be expected to maintain an inventory or portfolio of contracts, providing the aggregate instantaneous deliverability, long-term reserves, if required, with contract provisions consistent with the merchant service demands of its customers. The mix of physical features (e.g., deliverability, rate of production decline, expected depletion period, etc.) related to the gas supply supporting individual contracts, and the contract parameters (e.g., term, price, take requirement, make-up provision, etc.) would be expected to satisfy these requirements. Thus, there is no need to examine the operation of individual contracts.

C. Quantification

The essential question is how to best recognize through the pipeline's current rates the value to the pipeline's customers for risks undertaken by the pipeline in assembling and maintaining an inventory of gas supply contracts, whether short or long-term, needed to fulfill its merchant function.

In the past, the pipeline has been compensated for its take or pay costs by

including gas prepayments in the pipeline's rate base and imputing the pipeline's overall pre-tax rate of return allowance to such costs. However, the pipeline foregoes this rate treatment (and any other means of collecting take or pay costs) when it elects the interim gas supply charge mechanism, which includes the gas inventory charge. Thus the risks attending the inventory of contracts held by the pipeline are shifted entirely to the pipeline.

The Commission is considering compensating the pipeline for costs reasonably associated with the risk of holding gas supply contracts at the same level that the Commission compensates the pipeline for holding its physical assets. That is, assuming the pipeline's approved pre-tax return utilizes the current 34 percent Federal tax rate, the proposal would not adjust the pipeline's approved pre-tax rate of return for use in developing the interim gas inventory charge.

The next step in quantifying the interim gas inventory charge developed here would require an estimation of a reasonable overall take or pay level to assign to the pipeline's inventory of contracts. On December 16, 1982, the Commission adopted § 2.103 of the Commission's regulations which established 75 percent of deliverability as the take level above which no presumption of prudence would attend for new contracts.⁹ Prior to this time, new gas supply contracts typically incorporated considerably higher take levels (e.g., 90 percent was not uncommon). In prescribing the 75 percent take or pay factor, however, the Commission made clear that 75 percent was the upper limit, and that it was not intended to be a floor. Nothing stated here should in any way be construed as suggesting that the 75 percent factor is anything other than an upper limit for use in the gas inventory charge formula described here.

It would not be appropriate to develop the interim gas inventory charge simply by multiplying the pipeline's pre-tax rate of return by the price of the gas. That is because the pipeline is not at risk for the full quantity of gas available under its inventory of gas supply contracts. It is only at risk for the quantity of gas subject to the take or pay requirement. And, as explained above, there is a

⁹ The Commission has referred to this policy in addressing take or pay issues in its orders. See, e.g., *State of Michigan and Michigan Public Service Commission v. Trunkline Gas Co.*, 24 FERC ¶ 61,013, at 61,060 (1983) and *Tennessee Gas Pipeline Co.*, 26 FERC ¶ 61,102 at 61,247-48, n. 13 (1984). The Commission does not intend to expand in any way the scope of "new" contracts covered by § 2.103.

ready reference point that recognizes that the pipeline is not at risk (or certainly it should not be) for the full quantity of gas supporting the contracts. That factor is the 75 percent deliverability factor that appears at § 2.103 of the Commission's regulations.

The Commission therefore is considering and is seeking comments on adopting the 75 percent factor as a reasonable generic approximation to compensate for the exposure that the pipeline would have under the operation of take or pay provisions in its contracts. This level of inferred take requirement should result in adequate compensation for the risks of exposure to take or pay and contract reformation costs undertaken by the pipeline or the risk of maintaining long-term supplies in a competitive market. At the same time, the "reconciliation mechanism"—which is described below—will provide adequate protection to the pipeline's customers.

In summary, the approach developed here would recognize and account for several features. First, it would recognize that the gas supply available to the pipeline and its customers through the pipeline's inventory of gas supply contracts provides something of value to the pipeline and its customers, i.e., gas supply insurance. This inventory of contracts takes on similarities to and provides the equivalent operational functions (in an operating sense, but not in a financial accounting sense) as though the pipeline itself owned the gas supply supporting the contracts. This feature would be recognized for ratemaking purposes by imputing an economic value based upon the pipeline's overall pretax rate of return and the price at which the gas would be available from time to time to the pipeline's customers.

Second, the approach recognizes that the pipeline is not at risk for all of the gas supply supporting the inventory of contracts held by the pipeline, but only to the extent of its take or pay and other contract requirements. This feature would be recognized for ratemaking purposes by, effectively, viewing the pipeline's inventory of contracts as one "umbrella contract" and imputing the generic 75 percent take factor discussed above. The use of this factor would also serve as an acknowledgment of the Commission's general policy against take obligations above the 75 percent threshold, thereby encouraging continued renegotiations of contracts that have not yet been reformed to reflect the realities of the natural gas market.

Under the approach outlined here, the overall level of a hypothetical pipeline's

gas inventory charge would be established by the product of the following three factors:

(1) The monthly average price of competitive purchases, estimated for illustrative purposes here to be \$2.00/MMBtu;

(2) An assumed overall pre-tax rate of return of 15 percent for illustrative purposes; and

(3) An inferred overall take requirement of 75 percent under the inventory of gas supply contracts.

Those factors in this illustrative computation would support an interim gas inventory charge level of: \$2.00/MMBtu $\times$ 11.25% = 22½¢/MMBtu. A customer's monthly entitlement times 22½¢ would equal its total monthly gas inventory charge obligation.

The interim gas supply charge would thus consist of the gas inventory charge and the gas commodity charge. Taken together, the charges are intended to cover the pipeline's total payments to producers such as the cost of gas it purchases (including any premium paid for long-term contracts in the form of higher prices), gas inventory charges paid to producers, carrying charges on prepayments, settlement payments, and contract reformation costs.

V. The Second Method: The Deficiency Charge Method

A. Introduction

Also as an interim measure, the Commission is considering, and seeking comments on, an interim gas supply charge composed of a pipeline's gas commodity charge based on the current PGA mechanism subject to a cap, plus an interim gas inventory charge (set at, for example, 20% of a pipeline's WACOG) that would be charged if a firm sales customers actual purchases fall below, for example, 60% of either its monthly or annual nominated purchase amounts. The percentages posed here are illustrative; they were included in a gas inventory charge proposal previously approved by the Commission (Texas Eastern Transmission Corp., 44 FERC ¶ 61,413 (1988), *reh'g denied*, 47 FERC ¶ 61,100 (1989)).

B. Theory

The Commission recognizes that if its customers desire it to remain as a merchant, the pipeline is obligated to enter into natural gas purchase contracts in order to secure sufficient supplies to meet the demands of its firm sales customers. Here the Commission continues to recognize the use of the PGA mechanism to establish the gas commodity charge component of the interim gas supply mechanism.

The gas inventory charge component of the mechanism is designed to compensate the pipeline for the cost of maintaining a ready supply of gas in those instances in which a customer's actual purchases fall significantly below its nominated purchase amounts.

Two aspects of the requirements imposed on a pipeline that wishes to use the interim gas supply mechanism are essential prerequisites to the Commission's view that this proposal is in the public interest.

First, a pipeline wishing to implement an interim gas inventory charge will be required to allow its customers to meaningfully nominate new purchase amounts within their firm service entitlements. Second, in cases when the nomination is less than a customer's firm service entitlement, the pipeline will be obligated to provide firm transportation at a rate comparable to the transportation component of the rate charged to its firm sales customers, if the customer desires. Thus, the Commission believes these customers should not be considered to be totally captive sales customers. This should encourage the supplying pipeline to exercise considerable discipline with respect to its purchasing practices during the pendency of the interim gas supply charge. In any event, it is appropriate for customers to pay the interim gas inventory charge to compensate the pipeline for costs incurred as a result of customers purchasing volumes below their nominated levels.

The interim gas inventory charge proposed here (as is the competitive price charge) is based upon various proposals made by various pipelines to date for permanent gas inventory charges. The interim gas inventory charge would go into effect if a firm sales customer's actual purchases fall below a percentage of either its monthly or annual nominated purchase amounts. The proposal is outlined in detail below.

C. Quantification

The Commission proposes to allow the pipeline to use the current PGA mechanism as the basis for the gas commodity charge. The Commission proposes further to allow the pipeline to charge 20% of its currently effective WACOG as the interim gas inventory charge that will be in effect whenever a customer's actual purchases fall below 60% of either its monthly or annual nominated purchase amounts.¹⁰ The

¹⁰ As in *Texas Eastern*, the charge would be billed on a monthly basis to each customer.

Commission requests comments on both the percentages proposed here.

D. Ceiling On Gas Cost Component

Prior to the nomination period for the gas inventory charge, the pipeline will also be required to post a ceiling price or prices for the gas cost component of the commodity charge, i.e., current cost of gas plus surcharge adjustment for the period the gas inventory charge nominations are in effect. The ceiling prices should be based on the pipeline's current PGA rates as adjusted for known and measurable changes that will occur during the period the gas inventory charge is in effect. Alternatively, the ceiling could also be revised to reflect changes in the average wellhead cost of gas as measured by reference to sources outside the control of the pipeline. For example, if the average wellhead price of gas increased by 10%, the ceiling could be increased by 10%.

The pipeline would not be precluded from filing to increase its price above the stated ceiling price. However, if it does so, the pipeline must offer its customers another opportunity to revise their sales nominations.

VI. Reconciliation Mechanism

As noted above, the interim gas supply charge mechanism, consisting of a two part rate including the gas commodity cost, plus the interim gas inventory charge, has been based on factors that are known at the time of its authorization (e.g., pre-tax rate of return, imputed take requirement) and various gas price mechanisms—which, although not known now, will be based on future events (i.e., changes in competitive prices, or WACOG, or PGAs) and will be known as those future events occur. What the Commission does not know, and is unable to project at this time, is the pipeline's actual level of gas commodity payments, take or pay payments, contract reformation costs, and other costs related to its merchant function. That is, because we are dealing with a new service, there are no "base period" data upon which projections of these future merchant-function costs could be made. To address this concern and to guard against excessive charges to the

purchasing less than its monthly inventory determinant. The sum of a customer's twelve monthly inventory determinant nominations must equal at least 60% of the customer's annual contract demand. However, monthly charges could be offset by purchases above monthly inventory determinants in other months. Thus, if a customer met the 60% level on an annual basis, the pipeline would refund the amounts previously collected from the customer.

pipeline's customers, a "reconciliation mechanism" would be adopted.

The reconciliation mechanism is straight forward. It would compare the sum totals of actual revenues and actual expenses for the following:

(1) The pipeline's revenue collection through (a) its charges for the gas actually sold by it as a merchant under either method and (b) its gas inventory charge under either method; and

(2) The pipeline's actual payments for (a) the gas it purchased and resold as a merchant, and (b) payments made to suppliers and sought to be recovered through gas inventory charges, including premiums paid to producers, take or pay buy-out/buy-down settlement payments, contract reformation costs (less any amounts recovered under the litigation exception of its Order No. 500 passthrough mechanism), and carrying charges on gas prepayments.

Within 90 days following the end of the limited term certificate authorizing the interim gas supply charge, including the gas inventory charge, the pipeline would file a reconciliation report with the Commission. To the extent that the report includes material that the pipeline believes is confidential and proprietary (e.g. take or pay settlement payments, etc.), the pipeline can seek confidential treatment of any such material consistent with the Commission's regulations. Customers and other affected parties will be entitled to comment on the pipeline's report, and any questions concerning the pipeline's purchasing practices could be explored at that time.

If the pipeline has qualified for a litigation exception to the Order No. 500 equitable sharing passthrough mechanism as established in Order No. 500-F,¹¹ it would have to exclude any costs covered by the litigation exception from the costs to be reflected under the gas inventory charge reconciliation mechanism. Additionally, if the pipeline makes nonjurisdictional sales or sales under a blanket interruptible sales certificate, it would have to exclude the associated costs and revenues from the gas inventory charge reconciliation. The pipeline would need to file provisions to reflect the gas inventory charge reconciliation mechanism in its tariff.

To conclude, the "reconciliation mechanism" for the interim gas supply charge would compare the pipeline's actual gas supply costs for sales service with the actual revenues received for the service during the period that the interim charge was in effect. Any excess revenues would be returned to the

pipeline's customers in proportion to their nominations or their deficiencies (depending on the method used) during the period that the particular interim gas supply charge was in effect. Interest on any over collections would be imputed from the end of the period that the interim gas supply charge is in effect at the rate of interest for refunds specified in the Commission's regulations. The pipeline would be at risk for any under collections of revenue, and the pipeline would not be permitted to file to recover the costs of any under collections. The Commission believes these proposed procedures strike an appropriate balance between the needs of the pipeline for funding its merchant function and protection against any excessive charges to the pipeline's customers during the period that the interim gas supply charge would be in effect.

VII. Other Generally Applicable Related Requirements

The Commission believes it would be in the public interest to condition the certificates to ensure, among other things, that any interim gas supply mechanism would not be anticompetitive or unduly discriminatory. The necessary conditions would be as follows:

A. Term and Applicability

The certificate would be for a period of two years from the date of a pipeline's acceptance of a certificate. This would provide adequate time for hearing and decision on and implementation of a permanent gas inventory charge proposal. In addition, this would provide sufficient time for pipelines to implement the interim gas supply charge mechanism and would provide maximum certainty to the pipeline and its customers. A pipeline must also have an application for a permanent gas inventory charge pending before the Commission.

B. Sales Schedules To Use

The pipeline would use its existing firm sales rate schedules for implementation of the interim gas supply mechanism,¹² and would use the interim gas supply mechanism for service under all its firm sales rate schedules.¹³ This would enable the

¹² The pipeline would need to modify its existing rate schedules to reflect the option service and gas commodity charges. The pipeline also would revise its tariff to include the methodology for calculating the option service and gas commodity charges.

¹³ Rate schedules which have a one-part rate would also be subject to the gas inventory charge.

Continued

pipeline's customers to continue service under existing rate schedules during the period of the interim mechanism and avoid disruption in service at the conclusion of the two-year period if the pipeline's permanent gas inventory charge has not gone into effect.

C. Standby Service

The pipeline would implement a 100 percent standby service under all its firm sales rate schedules whereby its firm sales customers may take their full daily entitlements as either sales, transportation, or any combination of sales and transportation. The pipeline's standby charge would be separately stated in each firm sales rate schedule and would be designed in accordance with Commission precedent.¹⁴ The pipeline's transportation under standby service would be performed under its firm transportation rate schedule. This condition would ensure that customers could make their gas purchase decisions based solely on the price of gas.

D. Nominations

The pipeline would permit its firm sales customers to freely nominate both monthly and annual requirements, provided that a customer's total of monthly entitlements cannot exceed its nominated annual entitlement. Any customer which nominates monthly and annual entitlements below its full current contract demand level during the period of this gas inventory charge would be considered to have consented to abandonment of the amount not nominated (subject to revival if the pipeline does not have a permanent gas inventory charge in place upon termination of its limited gas inventory charge).¹⁵

If, however, the charge is based on monthly entitlements, an imputed charge would not be needed.

¹⁴ E.g., Tennessee Gas Pipeline Co., 42 FERC ¶ 61,175 at 61,633. In short, the standby charge must "recover only those costs which [it] incurs to stand ready to resume sales service should the firm sales customer elect to purchase gas from [the pipeline rather than use its transportation service]." *Id.* In addition, the pipeline may recover gathering costs only once from shippers under its standby service. Thus, if a shipper pays for gathering as part of the cost of the pipeline standing ready to sell gas, the shipper should not also pay for gathering as part of its transportation charges.

In designing such charges, the pipeline's calculations must distinguish between sales rate schedules that contain one part rates and those which contain two-part rates. Additionally, the pipeline must agree to waive the firm transportation reservation charge when customers use the standby service to transport gas, in order to prevent a double collection of costs. For a further detailed discussion see *El Paso Natural Gas Company*, 35 FERC ¶ 61,440 at 62,070 (1985).

¹⁵ See 18 CFR 2.105 (1988).

E. Conversions

The pipeline would permit its firm sales customers to convert up to 100 percent of firm entitlements to firm transportation service. This provision and the one above concerning nominations would enable the pipeline to tailor its gas supply to meet customer nominations without guessing what supply may be needed or shed in the future.

F. Purchased Gas Adjustment Clause

The pipeline using method one, the competitive price method, would terminate the operation of its PGA clause for the period of its limited term certificate and would be entitled to direct bill its Account No. 191 balance. This will more closely match cost responsibility with cost incurrence and remove future uncertainty for pipelines and their customers as to the disposition of the monies in that account. The pipeline could only reinstate its PGA by complying with § 154.303(b) of the regulations or by establishing its right to a waiver therefrom. The Commission at the end of the limited term certificate will waive the three year rule to permit the pipeline to reinstate its PGA.

The pipeline would propose a plan for direct billing which would permit its customers to pay the direct bill either in installments or in a lump sum. Customers would be allowed to challenge the prudence of the direct billing amounts. In addition, the pipeline would make any applicable refunds to its customers.

As with the PGA process, the parties will have the opportunity to challenge the pipeline's expenditures and purchasing practices on grounds of prudence, fraud and abuse, and the affiliated entities test on a general and individual contract basis.

The interim gas supply charges and the interim gas inventory charges proposed here are primarily designed for pipelines that purchase exclusively or almost exclusively from producers.¹⁶ The Commission anticipates that those pipelines that purchase primarily from other pipelines will continue to maintain their PGA mechanisms and flow through the gas inventory charges in their rates on an as-billed basis.

The Commission recognizes that there are some pipelines that do not fall into either category, i.e., the pipeline purchases significant supplies from both other pipelines and producers. These

¹⁶ Those pipelines that purchase a small percentage of their supply from other pipelines may need to make minor modifications to the proposals to reflect the demand charges or GICs of their suppliers.

pipelines should propose a method for handling these two types of purchases in their certificate applications.

G. Open Access

The pipeline must remain an open access transporter under Part 284, Subpart G of the Commission's regulations for the term of the interim certificate.

H. Storage

The pipeline would be required to remove any restrictions on its customer's ability to inject gas purchased from others into contract storage.

I. Receipt Points

The pipeline would be required to permit flexible receipt points in its firm transportation contracts.

J. Take or Pay Costs

The pipeline would not recover future take or pay or similar charges from customers by any means other than the gas inventory charge except those costs which it is allowed to recover under the litigation exception. The pipeline would be required to demonstrate that it would not recover the same take or pay costs under which its gas inventory charge and its Order No. 500 charges. The pipeline would be required to delete tariff references to take or pay crediting and would not be entitled to require information with respect to take or pay crediting in customer requests for transportation or in contracts.

K. Judicial Review

In addition, a pipeline's acceptance of a limited term certificate would constitute a waiver of its right to seek judicial review of each and every aspect of the order issuing the certificate. The Commission believes that this is appropriate because the pipeline's acceptance of a certificate would be voluntary. It may reject the certificate and retain its current sales service pricing procedures and pursue its own gas inventory charge proposal. It would be inappropriate if the pipeline could accept the limited term certificate, which is a package, and litigate its individual components.

L. Future Rate Filing

The Commission would also require the pipeline to make a full Section 4 rate filing under § 154.63 of the Commission's regulations within 90 days of its acceptance of the certificate if it does not have a current rate case pending or rates which were established based on a base period ending within 12 months

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from the date a certificate would go into effect. This is necessary because such items as the pipeline's rate of return may be out of date and its allocation of costs and levels of service may not be synchronized.¹⁷

M. Competitive Price Filings

The pipeline using method one, the competitive price method, would be required to file with the Commission, on a quarterly basis, tariff sheets reflecting the competitive price utilized for purposes of computing the commodity sales rates and the interim gas inventory charge.

VIII. Additional Questions on Which Comments Are Sought

The Commission is particularly interested in receiving comments on the following issues:

(1) The proposed policy statement details two possible methods for developing an interim gas supply charge and an interim limited term gas inventory charge. The Commission is interested in receiving comments on the two proposals outlined herein, as well as on any other proposal for implementation on an interim basis.

(2) The purpose of providing a mechanism for an interim gas supply charge, and an interim gas inventory charge, is to provide a means to compensate pipelines for securing long-term natural gas supplies for firm sales customers and, in particular, to prevent a recurrence of the take or pay problems of the past. Would implementation of either of the methods proposed herein, if coupled with implementation of a permanent gas supply charge and a permanent gas inventory charge, accomplish those objectives?

(3) What effect would implementation of either method have on a pipeline's ability to market gas and on the purchasing practices of LDCs?

(4) The competitive pricing method for the interim gas supply charge uses 75 percent as an estimation of a reasonable overall take or pay level to assign to the pipeline's inventory of contracts. The rationale for doing so is outlined herein. Parties should address whether that level is appropriate. Commenters suggesting another level should specify their reasons for doing so.

(5) The competitive pricing method for the interim gas supply charge ties both the gas commodity price and the gas inventory charge to competitive prices.

¹⁷ The pipeline will be at risk for any undercollections of non-gas costs during the period between the effectiveness of its revised sales rates and the effective date of the new sales rates.

Would doing so have a positive or negative effect on long-term gas prices from both a producer's and a consumer's point of view? Further, would doing so have a positive or negative effect on long-term gas supplies?

(6) Would implementation of an interim gas inventory charge based on either a competitive price concept or a deficiency charge method affect the rights and responsibilities of parties under existing gas purchase contracts, if so, how?

(7) The deficiency charge method for the interim gas inventory charge has been illustrated with a charge equal to 20 percent of the pipeline's WACOG applicable only if a firm sales customer's actual purchases fall below 60 percent of its nominated purchase amounts. The illustration percentages are based on a gas inventory charge proposal approved by the Commission.¹⁸ Parties should address whether the 20 percent and 60 percent levels are appropriate. Commenters suggesting other levels should specify their reasons for doing so.

(8) As proposed, the deficiency charge would be based on a flat percentage of a pipeline's current WACOG. Does this type of charge provide a disincentive for pipelines to keep their costs of purchased gas down? Does the deficiency charge method need to have a cap on the WACOG and, if so, how should the cap be determined? Finally, should the WACOG used in developing a deficiency charge be calculated on a weighted average basis for all interstate pipelines?

(9) Does the proposed reconciliation method adequately protect a pipeline's customers from excessive charges as a result of the interim gas supply charge and interim gas inventory charge? Does it provide an adequate incentive to pipelines to hold down costs, enter into long-term contracts if appropriate, or otherwise file for an interim gas inventory charge?

(10) Do the proposed conditions regarding nominations and conversions provide sufficient flexibility for existing firm sales customers to make a realistic assessment of their current needs in light of current market circumstances?

(11) Should the Commission consider additional voluntary rights for customers, including conversions of service obligations to interruptible transportation, abandonment or scheduled abandonment of service obligations, or combinations of the foregoing to meet the new market environment?

¹⁸ Texas Eastern Transmission Corp., 44 FERC ¶ 61,413 (1988), *reh'g denied*, 47 FERC ¶ 61,100 (1989).

(12) What is the likely competitive effect of the two interim gas inventory charges discussed above on segments of the industry which would not be directly subject to the charge, such as marketers and industrial users?

(13) What is the likely competitive effect of the demand based and deficiency based gas inventory charges on the competitive nature of gas markets?

(14) Will either proposed gas inventory charge give any particular segment of the industry a competitive advantage or disadvantage?

(15) Should the Commission limit or prohibit extensions of an interim gas inventory charge in order to provide incentives for pipelines and their customers to put permanent gas inventory charges into place by the end of the two-year period?

(16) On alternative to the two methods proposed in this Notice would be to allow any pipeline to file tariffs immediately, pursuant to section 4 of the Natural Gas Act, to implement an interim GIC of 35 cents per MMBtu, for deficiencies below 80 percent of the volumes nominated, subject to refund. The amounts paid would be added to the PGA. The case would go to hearing on an expedited basis to determine the just and reasonable rate for a permanent GIC. Would this method work? Would it be preferable to the other two methods? Would consumers be protected under this proposal?

IX. Public Comment Procedures

This statement articulates the Commission's proposed policy. It does not have the force or effect of law. Though not required by section 553(b) of the Administrative Procedure Act (5 U.S.C. 553(b) (1982)), the Commission has determined that public notice and comment procedures should be adopted so that all interested person may have the opportunity to inform the Commission of their views. The Commission will consider all comments filed.

All comments should be submitted to the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, on or before the thirtieth day from the date of issuance of this notice and should refer to Docket No. PL89-1-000. Reply comments should be submitted on or before the forty-fifth days from the issuance of this notice and should also refer to Docket No. PL89-1-000. An original and fourteen copies should be filed. Written submissions will be placed in the public file established in this docket and will

be available for public inspection during regular business hours in the Division of Public Information, Room 1000, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

By Direction of the Commission. Commissioner Stalon concurred with a separate statement to be issued later. Commissioner Trabandt concurred with a separate statement attached.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13472 Filed 6-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 9221-002; Colorado]

Great Western Power and Light, Inc.; Surrender of Preliminary Permit

June 1, 1989

Take notice that Great Western Power and Light, Inc. Permittee for the Dallas Associates Project No. 9221, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 9221 was issued August 31, 1988, and would have expired July 31, 1991. The project would have been located on the Uncompahgre River in Ouray County, Colorado.

The Permittee filed the request on March 29, 1989, and the preliminary permit for Project No. 9221 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,
Secretary.

[FR Doc. 89-3482 Filed 6-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1497-000]

Canyon Creek Compression Co.; Application

May 31, 1989.

Take notice that on May 23, 1989, Canyon Creek Compression Company (Canyon Creek), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1497-000 an application pursuant to Section 7(c) of the Natural Gas Act and § 284.221 of the Commission's Regulations for a blanket certificate of public convenience and necessity authorizing firm and interruptible transportation of natural gas, all as more fully set forth in the

application which is on file with the Commission and open to public inspection.

Canyon Creek states that in the settlement of its general rate case in Docket No. RP88-95-000, it has agreed to become an open-access transporter, and that the settlement was approved by Commission order issued March 24, 1989, 46 FERC ¶ 61,348 (1989). It is further stated that Canyon Creek has filed along with this application *pro forma* tariff sheets identified as Volume No. 1A. These *pro forma* tariff sheets are intended to establish the rates, general terms and conditions under which Canyon Creek would perform firm and interruptible open-access transportation under Part 284 of the Commission's Regulations. Canyon Creek states that the rates for open-access transportation contained in the *pro forma* sheets are those agreed upon and approved by the Commission in the settlement and comply with the Commission's order at 43 FERC ¶ 61,191 (1988) which required Canyon Creek to develop rates for self-implementing services based on projected units of service.

Canyon Creek also states that pursuant to § 284.221(b)(1)(ii) of the Commission's Regulations, it will comply with the conditions in paragraph (c) of § 284.221.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 21, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and procedure, a hearing will be held with further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public

convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Canyon Creek to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13481 Filed 6-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP89-1121-000]

Mississippi River Transmission Corp.; Informal Technical Conference

May 31, 1989.

Take notice that on June 16, 1989, at 10:00 a.m., the Commission Staff will convene an informal technical conference in the above captioned proceeding to discuss issues and matters of general concern. The conference will be held at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All interested persons and Commission Staff are invited to attend. Attendance at the conference will not confer party status.

For further information, contact William L. Zoller, 825 North Capitol Street, NE., Washington, DC 20426. (202) 357-8203.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13432 Filed 6-6-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-68, et al.]

Transcontinental Gas Pipe Line Corp.; Filing of Settlement

June 2, 1989.

In the matter of RP87-7-012, RP87-7-000, RP89-122-000, RP89-123-000, TA88-1-29, TA88-4-29, TQ88-1-29, TA88-5-29, TQ89-1-29, TQ89-2-29, and TQ89-4-29.

Take notice that on April 3, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in the captioned dockets a proposed Stipulation and Agreement (S&A) pursuant to Rule 602 of the Commission's Rules of Practice and Procedure (18 CFR 385.602). Transco's proposed S&A, if approved by the Commission, would resolve the captioned dockets before the Commission. A copy of Transco's S&A

is on file with the Commission and open to public inspection.

The S&A contains three major components: Article I addresses Transco's Order No. 500 proceeding and the resolution of take-or-pay issues, contained in Docket Nos. RP88-88-000 and RP87-7-012, a consolidated proceeding before an administrative law judge.

Article II proposes an interim two-year program whereby Transco's jurisdictional merchant (sales) function would be transferred to TEMCO, a non-jurisdictional affiliate of Transco.

Article III addresses the throughput mix and fuel retention issues currently pending for hearing in Docket No. RP87-7-000 after remand of Transco's June 24, 1988 Reserved Issue Settlement proposal.

Approval of Transco's S&A would ratify and implement, for an interim period, fundamental changes in the certificated sales and service relationship between Transco and its sales customers. During this interim period, Transco has stated that it intends to complete negotiations with its sales customers on the long term restructuring of Transco's merchant services.

Any person, who is not already a party to one of the captioned proceedings, desiring to be heard or to make any protest with reference to said S&A should on or before June 9, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). Parties to the captioned proceedings have already been given opportunity to express their views pursuant to Rule 602 of the Commission's Rules of Practice and Procedure (18 CFR 385.602) and do not need to refile.

All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceedings. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulation Commission by sections 4, 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing may

be held without further notice before the Commission on this S&A.

If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that an additional formal hearing is required, further notice of such hearing will be duly given.

Lois Cashell,

Secretary.

[FR Doc. 89-13565 Filed 6-6-89; 8:45 am]

BILLING CODE 6717-01-8

Office of Hearings and Appeals

Issuance of Decisions and Orders Issued the Week of March 6 Through March 10, 1989

During the week of March 6 through March 10, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

Joseph William Parmelee, 3/6/89, KFA-0263

Joseph William Parmelee (Parmelee) filed an Appeal from a determination issued by the Chief of Freedom of Information and Privacy Acts, Office of Administration Services of the Department of Energy (DOE). This determination denied a Request for Information which Parmelee had submitted under the Freedom of Information Act on the ground that no responsive documents existed. In considering the Appeal, the DOE found that an adequate search had been conducted in response to Parmelee's request for all information in the DOE's records concerning himself. Accordingly, the Appeal was denied.

Remedial Order

J.D. Streett & Company, Inc., 3/8/89, HRO-0064

J.D. Streett & Company, Inc. (Streett) filed a Statement of Objections to a Revision to Proposed Remedial Order (RPRO) which the Economic Regulatory Administration issued to the firm on February 26, 1988. In the RPRO, the ERA alleged that during the period January 1, 1978 through November 30, 1979, Streett overcharged its customers in sales of motor gasoline in violation of the price regulations set forth at 10 CFR Part 212, Subpart F. In considering Streett's objections to the RPRO, the DOE rejected Streett's claims that: (i) The ERA used the wrong data in performing

its overcharge calculations, (ii) the ERA made methodological errors in its price calculations, (iii) the ERA improperly determined Streett's classes of purchasers, (iv) Streett was entitled to retroactive exception relief, (v) Streett had pre-audit period banks of unrecovered costs, and (vi) prejudgment interest should not be imposed on overcharges. Accordingly, the DOE determined that Streett's Statement of Objections be denied and the RPRO be issued as a final Remedial Order. The amount of the overcharges sustained in the Decision and Order is \$3,527,080.38.

Request for Modification and/or Rescission

Washington, 3/6/88, KER-0046

The DOE issued a Decision and Order concerning the Motion for Reconsideration filed by the State of Washington. Washington sought approval to use Stripper Well funds for a project which the DOE's Assistant Secretary for Conservation and Renewable Energy and the Office of Hearings and Appeals had previously held to be inconsistent with the terms of the Stripper Well Settlement Agreement. The DOE approved the State's Motion to provide \$750,000 in loans to rehabilitate branch rail lines that run through major grain producing areas of the State under the Agricultural Rail Program. The DOE found that the program would provide restitutionary benefits to the State's farmers by lowering their costs of grain and produce transportation. The DOE also found that the program would increase the fuel efficiency of trains traveling along the branch rail lines, reduce overall fuel consumption by substituting trains for trucks, and improve the quality of bulk commodity transportation services for the agricultural sector. Accordingly, the DOE concluded that the Agricultural Rail Program was an appropriate and worthwhile use of Stripper Well monies and approved Washington's Motion.

Supplemental Order

Phoenix Petroleum Company, 3/7/89, KRX-0062

The DOE issued a Supplemental Order that reduced the refund liability in a Remedial Order that was issued to Phoenix Petroleum Company on September 29, 1988. The Remedial Order found that the firm's crude oil reselling activities had violated the layering rule, 10 CFR 212.186, which prohibited crude oil resellers from applying a markup in any crude oil sale in which they did not perform any historical and traditional crude oil reselling function. Because the ERA had not convincingly matched

Phoenix's purchases and sales, the Remedial Order found that Phoenix's refund liability should be the amount of the firm's gross profits from all of its transactions, adjusted to allow the firm to retain its allowable markup in its non-layered transactions. The Remedial Order computed a tentative refund obligation and directed the ERA to provide additional information that was necessary to compute the amount of Phoenix's violation. In view of the information provided by the ERA, the DOE issued a Supplemental Order adjusting Phoenix's refund obligation.

Refund Applications

Atlantic Richfield Company/J. Meredith Bus Company, 3/9/89, RF304-1015, RF304-7448

The DOE issued a Decision and Order concerning two Applications for Refund filed by different parties on behalf of J. Meredith Bus Company (MBC). One applicant, Mr. Meredith, was the owner of the firm during the consent order period. The other applicant, National School Bus Service, Inc. (National), purchased the firm in 1987, and is the present owner. Each party claimed \$1,318, the full volumetric refund amount. The DOE determined that MBC, as an independent corporate entity, is the "individual" that was injured by purchasing ARCO products and, therefore, is the entity entitled to a refund. The DOE further determined that National, as the owner of MBC's stock, is the appropriate party to represent MBC in this proceeding. The DOE concluded that National should receive a refund totalling \$1,689, representing \$1,318 in principal and \$373 in accrued interest.

Atlantic Richfield Company/Northside Gas 'N' Wash, et al., 3/9/89, RF304-2202, et al.

The DOE issued a Decision and Order concerning forty-nine Applications for Refund filed in the Atlantic Richfield Company (ARCO) special refund proceeding. All of the applicants documented the volume of their ARCO purchases and were end-users or reseller/retailers requesting refunds of less than \$5,000. Therefore, each applicant was presumed injured. The refunds granted in this Decision totalled \$61,909, representing \$48,230 in principal and \$13,679 in interest.

Boyd Warehouse, 3/9/89 RA272-4

On January 10, 1989, the DOE issued a Decision and Order granting a refund of \$50 to Boyd Warehouse (Boyd), Case No. RF272-42643. Philip Seaholm, et al., 18 DOE ¶ _____ (Case Nos. RF272-42600, et al. (January 10, 1989).

The Appendix to that Decision and Order listed erroneous gallonage and refund figures for Boyd. Accordingly, to remedy the situation, the DOE issued a Supplemental Order granting Boyd an additional refund of \$118.

Crown Central Petroleum Corporation/Brumwell's Fuel Service, et al., 3/9/89, RF313-39, et al.

The DOE issued a Decision and Order granting Applications for Refund filed by ten purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in Crown Central Petroleum Corp., 18 DOE ¶ 85.326 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of refunds approved in this Decision was \$56,428, representing \$48,856 in principal and \$7,572 in interest.

Crown Central Petroleum Corporation/Home Oil Company of Jacksonville, Inc., et al., 3/7/89, RF313-2, et al.

The DOE issued a Decision and Order granting Applications for Refund filed by eight purchasers of Crown refined petroleum products in the Crown Central Petroleum Corporation special refund proceeding. According to the procedures set forth in Crown Central Petroleum Corp., 18 DOE ¶ 85.326 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Crown. The total amount of refunds approved in this Decision was \$33,373, representing \$28,894 in principal and \$4,479 in interest.

Dorchester Gas Corp./Farmland Industries, Inc., 3/7/89, RF253-26

The DOE issued a Decision and Order granting an Application for Refund in the Dorchester Gas Corporation refund proceeding. Farmland is an agricultural cooperative, which sold Dorchester petroleum products to its member cooperatives. Farmland adequately established that it purchased 4,347,564 gallons of Dorchester product. Because Farmland is an agricultural cooperative, it is not required to provide a detailed demonstration of injury. Instead, Farmland is presumed injured and is eligible for its full allocable share. The total gallonage approved in this Decision is 4,347,564 gallons, and the total refund approved is \$59,474, including both interest and principal.

Dorchester Gas Corp./Hardesty Oil Company, 3/9/89, RF253-33

The DOE issued a Decision and Order granting an Application for Refund in

the Dorchester Gas Corporation refund proceeding. Hardesty is a propane retailer and an indirect purchaser of Dorchester petroleum products. Hardesty has established that it purchased 362,060 gallons of Dorchester propane from Phillips Petroleum Co. Accordingly, Hardesty's allocable share is equal to the number of gallons it purchased from Phillips, multiplied by the volumetric and by Phillips' pass-through percentage (79.56%). Because Hardesty's refund is less than \$5,000, excluding interest, it is not required to provide a detailed demonstration of injury. The total refund approved in this Decision is \$3,940, including both interest and principal.

Exxon Corporation/Allen D. Ludwig, et al., 3/9/89, RF307-5100, et al.

The DOE issued a Decision and Order concerning 20 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share was less than \$5,000 or an end-user Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision was \$15,013, representing \$12,877 in principal and \$2,136 in interest.

Exxon Corporation/Delaware Valley Propane Company, R.B. Sahagen and Company, Inc., Arrow Gas Corporation, Delaware Valley Propane Company, 3/10/89, RF307-4184, RF307-4185, RF307-4186, RF307-4187

The DOE issued a Decision and Order granting Applications for Refund filed by Star Gas Corporation (Star) on behalf of Delaware Valley Propane Co., R.B. Sahagen and Co., and Arrow Gas Corp. The DOE treated the firms as one applicant for purposes of this proceeding. Accordingly, the volume totals from these applications were combined in order to determine Star's allocable share. Based upon its purchase of 46,666,067 gallons of Exxon refined petroleum products during the period August 19, 1973 through January 27, 1981, Star's allocable share is \$11,667 (46,666,067 gallons x \$0.00025 = \$11,667). Because Star did not provide a detailed demonstration of injury, it is eligible to receive \$5,000 or 40 percent of its allocable share, whichever is greater. Accordingly, Star received a total refund of \$5,830, representing \$5,000 in principal and \$830 in interest.

Exxon Corporation/Verdean Bodily Oil Co., et al., 3/7/89, RF307-1769, et al.

The DOE issued a Decision and Order granting a refund to five resellers of refined petroleum products from consent order funds collected from Exxon Corporation. Each firm's allocable share exceeds \$5,000. Because each firm chose to limit its refund claim to the greater of \$5,000 or 40 percent of its allocable share, each firm was presumed to have been injured by Exxon's alleged overcharges. Each firm received a refund of \$5,833, representing \$5,000 in principal and \$833 in interest. *Gulf Oil Corporation/C.C. Cochran, 3/7/89, RF300-4467*

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by C.C. Cochran, a reseller and consignee of covered Gulf products. The applicant elected to base its refund on the small claims and 10 percent presumptions of injury. The applicant's allocable share as a reseller is less than \$5,000, and its total principal refund for both reseller and consignee gallons is less than \$5,000. Therefore, it was not required to provide a detailed demonstration of injury. The applicant received a total refund of \$2,140, which includes both principal and interest.

Gulf Oil Corporation/E.W. Black, 3/6/89, RF300-2196

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by E.W. Black, a consignee and a reseller of Gulf refined products. E.W. Black elected to base his refund on the appropriate presumptions of injury. E.W. Black's allocable share as a reseller is less than \$5,000, and his total principal refund is less than \$5,000. Therefore, he was not required to provide a detailed demonstration on injury. The refund granted to E.W. Black in this Decision is \$386.

Gulf Oil Corporation/Gray's Butane Wholesale, Inc., 3/7/89, RF300-1824

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Gray's Butane Wholesale, Inc. Gray's Butane was owned and run by the same people who owned and ran Gray's Petroleum Wholesale, Inc. during the consent order period. On November 23, 1988, the DOE issued a Decision and Order granting a refund of \$2,597 (\$2,052 in principal and \$545 in interest) to Gray's Petroleum. *Gulf Oil Corporation/Hayden's Gulf, et al., 18 DOE ¶ 85,273 (1988)*. Because the two firms were under common ownership during the consent order

period, and because their combined allocable share exceeds \$5,000, it is appropriate to consider them together when applying the presumptions of injury. The refund granted in this Decision is \$10,982, representing \$8,468 in principal and \$2,514 in interest.

Gulf Oil Corporation/Gulf Oil Products J.T. Keen, 3/6/89, RF300-1933 RF300-2188

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Both applicants indicated that they were consignees of Gulf refined product during the consent order period. Each application was approved under the 10 percent presumption of injury for consignees. The sum of the refunds granted in this Decision is \$525.

Gulf Oil Corporation/Tuttle Dist. Co., Inc., 3/6/89, RF300-2014

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Tuttle Dist. Co., Inc., a consignee and a reseller of Gulf refined products. Tuttle Dist. Co. elected to base its refund on the appropriate presumptions of injury. Tuttle Dist. Co.'s allocable share as a reseller is less than \$5,000, and its total principal refund is less than \$5,000. Therefore, it was not required to provide a detailed demonstration of injury. The refund granted to Tuttle Dist. Co. in this Decision is \$150.

James Fleming Trucking, Inc., 3/8/89, RF272-23530

The DOE issued a Decision and Order denying an Application for Refund filed by James Fleming Trucking, Inc. (JFT), a motor carrier, in the Subpart V crude oil proceedings. The DOE denied JFT's application because JFT had already been granted a refund from the Surface Transporters Escrow that was created by the Stripper Well Settlement Agreement. Under the terms of the Settlement Agreement, the applicant had to waive its right to a refund in any Subpart V crude oil proceeding. Accordingly, JFT was ineligible for a Subpart V crude oil refund.

Palo Pinto Oil & Gas/Vermont Belridge Oil Co./Vermont National Helium/Vermont Coline Gasoline Corp./Vermont Standard Oil Co. (Indiana)/Vermont, 3/6/89, RQ5-502, RQ8-503, RQ3-504, RQ2-505, RQ21-506

The DOE issued a Decision and Order denying the second-stage refund application filed by the State of Vermont in the Palo Pinto, Belridge, National

Helium, Coline, and Standard Oil Co. (Indiana) special refund proceedings. Vermont requested permission to use all of its remaining second-stage refund monies for three programs. The DOE found the first two programs, involving drivers' education and curriculum development, to be insufficiently restitutionary because they would have primarily benefitted school children who were not consumers of petroleum during the periods of price controls (1973-1981). The DOE denied the third program, a plan to educate school administrators in energy efficient building management, because its beneficiaries would have been local government entities and local government officials rather than injured consumers.

Pennzoil Co./Alabama, Pennzoil Co./Alabama, 3/9/89, RQ10-479, RQ10-510

The DOE issued a Decision and Order dismissing a second-stage refund application filed by the State of Alabama in the Pennzoil Co. special refund proceeding, and approving a modified form of the same application. Alabama requested permission to use \$181,313 in Pennzoil monies to fund a program of energy-efficiency improvement grants for non-profit organizations in the State. The DOE found that this program would provide restitution to injured consumers of petroleum products. Accordingly, the DOE granted Alabama's application, and allocated \$181,313 to the State.

Randy's Supperette, Columbus Aircraft Maintenance, Inc., 3/10/89, RF272-35328, RF272-36867

The DOE issued a Decision and Order denying two Applications for Refund filed in connection with the Subpart V crude oil refund proceedings. Both applicants were retailers during the period August 19, 1973 through January 27, 1981. Because neither of the applicants demonstrated that it was injured by the crude oil overcharges, each was found to be ineligible for a crude oil refund.

Wallace & Wallace Fuel Oil Co./City of New York, et al., 3/6/89, RF69-5, et al.

The DOE issued a Decision and Order concerning refund applications filed by the City of New York, in the following five refund proceedings: *Wallace & Wallace Fuel Oil Co.*, 12 DOE ¶ 85,122 (1984), *Mobil Oil Corp.*, 13 DOE ¶ 85,339 (1985), *Oceana Terminal Corp.*, 13 DOE ¶ 85,363 (1986), *Bayside Fuel Oil Depot*, 13 DOE ¶ 85,139 (1985), and *Howard Oil Co.*, 15 DOE ¶ 85,072 (1988). The DOE found that the filings were all

incomplete, untimely, and that the City of New York had not shown good cause for the late filings. Consequently, the applications were dismissed.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to

end-user applicants in the following Decisions and Orders:

Name	Case No.	Date	No. of applicants	Total refund
Benny Ediger, et al. Harold Street III, et al.	RF272-20631 RF272-47400	3/9/89 3/6/89	105 165	\$49,296 \$3,804

Dismissals

The following submissions were dismissed.

Name	Case No.
Albert W. Jones Exxon Service	RF307-41
Arlington Grocery	RF307-2095
Bonier Exxon	RF307-1994
C and B Marbys Exxon	RF307-1885
Charles Pinkerton Farms	RF272-60414
Charles J. George, Inc.	RF272-74435
Dell Transportation Corp.	RF272-74436
Gauthier Exxon	RF272-75245
Hamby Station	RF307-974
Hwy 5 North Exxon	RF307-3679
Hwy 51 Grocery	RF307-2922
J and M Grocery	RF307-1984
J.F. Clevelley Company	RF307-1999
Jim Jauernig	RF272-75221
Joe Matthew Exxon	RF272-59480
Lamarque Independent School District	RF307-1981
Matthew Exxon	RF272-23133
Matthew Goodwin	RF307-2105
McLaughlin Schultz, Inc.	RF272-75255
Mid-Town Exxon	RF272-75223
Mort Distributing, Inc.	RF307-2088
Murpree Exxon	RF307-926
Norman E. Weller	RF307-2104
North Exxon	RF307-3856
North Y Exxon	RF307-1965
Proctors Exxon	RF307-1964
Service Motor Freight	RF307-2106
Sutton Exxon 2	RF300-2138
Sutton Exxon and Service	RF307-1971
Thorne Service Center	RF307-2093
Twin Lake Exxon	RF307-1977
Ulland Brothers, Inc.	RF307-3680
Uno Grocery Store	RF272-67764
W. Ashley Serv Station	RF307-2018
Wabash Independent Oil Co.	RF307-1969
Waldo's Exxon	RF300-4213
Wesco Oil Co., Inc.	RF307-1930
Westbrook Gardens	RF307-7901
Whitley Trucks, Inc.	RF272-75222
Willis Stop and Shop	RF272-75229
101 Boat Dock Service	RF307-2076
285 Central Park West	RF307-2921
	RF272-62030

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

May 31, 1989.

George B. Breznay,
Director, Office of Hearings and Appeals.
[FR Doc. 89-13503 Filed 6-6-89; 8:45 am]
BILLING CODE 4550-01-M

Issuance of Decisions and Orders Issued During the Week of March 13 Through March 17, 1989

During the week of March 13 through March 17, 1989, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Green Bay Energy Corporation, 3/16/89, KFA-0266

The Office of Hearings and Appeals (OHA) considered an Appeal by the Green Bay Energy Corporation from a determination made by the DOE's Office of Alcohol Fuels (OAF) which denied a request submitted under the Freedom of Information Act on the grounds that no responsive documents existed. After learning that an employee of Green Bay stated that he had submitted responsive documents to the DOE while he was employed by a third party, the OHA granted the Appeal and remanded the case to OAF with instructions to conduct a further search for responsive documents.

Kenneth P. Brooks, 3/17/89, KFA-0269

Kenneth P. Brooks (Brooks) filed an Appeal from a determination by the Freedom of Information Authorizing Official of the Albuquerque Operations Office of the U.S. Department of Energy (DOE). This determination denied a request for information which Brooks had submitted under the Freedom of Information Act (FOIA) and Privacy Act (PA). Brooks requested all notes used by James Culpepper, Deputy Manager of the Albuquerque Operations Office of the DOE, in a personnel action involving

Brooks. In considering the Appeal, the DOE found that Culpepper's notes, which were contained in his personal notebook, were not responsive to Brooks' request under the FOIA. Similarly, under the PA, the DOE found that no information existed in a DOE system of records which pertained to Brooks. Accordingly, the Appeal was denied.

Remedial Order

Tesoro Petroleum Corporation DeMenno-Kerdoon, Inc., 3/16/89, KRO-0630, KRD-0630, KRD-0631

Tesoro Petroleum Corporation (Tesoro) and DeMenno-Kerdoon, Inc. (DeMenno) objected to a Proposed Remedial Order (PRO) which the Economic Regulatory Administration (ERA) issued to the firms. Before a Remedial Order was issued by the DOE, the ERA signed Consent Orders with Tesoro and DeMenno. Subsequently, the ERA filed separate Motions to dismiss Tesoro and DeMenno-Kerdoon. In considering these Motions, the DOE determined that the consent Orders signed by the ERA with Tesoro and DeMenno settle the enforcement matters pending before the DOE in this proceeding. Accordingly, the DOE determined that the PRO issued to Tesoro and DeMenno and all related proceedings should be dismissed with prejudice.

Refund Applications

A & P Tea Company Edward Kraemer & Sons, Inc., 3/14/89, RF272-4497, RF272-7132

The DOE issued a Decision and Order granting Applications for Refund filed by A & P Tea Company (A & P) and Edward Kraemer & Sons, Inc. (Kraemer) in the crude oil overcharge refund proceeding. Both of the applicants relied on company records to determine their total consumption of refined petroleum products. Based on their volume of purchases, A & P received a refund of \$777 and Kraemer received a refund of \$3,692.

Airgood's Arco et al., 3/15/89, RF272-26538, et al.

The DOE issued a Decision and Order denying five applications for refund filed in connection with the Subpart V crude oil refund proceedings. Each applicant was either a reseller or retailer of refined petroleum products during the crude oil price control period. Because none of the applicants demonstrated that it was injured due to the crude oil overcharges, none is eligible for a crude oil refund.

Arcile Vidrine, et al., 3/17/89, RF272-18038, et al.

The DOE issued a Decision and Order concerning Applications for Refund filed by four claimants in the crude oil special refund proceeding. The four applicants, who were resellers of petroleum products, failed to demonstrate that they were injured by alleged crude oil overcharges. Accordingly, all four applications were denied.

Atlantic Richfield Company/Donald L. Wallace, et al., 3/17/89, RF304-2400, et al.

The DOE issued a Decision and Order concerning 40 Applications for Refund in the Atlantic Richfield Company special refund proceeding. All of the applicants were either end-users or resellers/retailers that applied for small claim presumption refunds. In addition, each applicant documented the volume of its purchases from ARCO and, therefore, was presumed to have been injured and entitled to a refund. The DOE concluded that the applicants should receive refunds totalling \$78,451, representing \$61,116 in principal and \$17,335 in accrued interest.

Brown Stove Works, Inc., 3/13/89, RC272-17

On October 7, 1988, the DOE granted Brown Stove Works, Inc., a refund of \$361 in connection with a special refund proceeding under 10 C.F.R. Part 205, Subpart V, for distribution of a portion of the crude oil funds obtained by the DOE. *Jon L. Neiman Trust*, 18 DOE ¶ 85,017 (1988). Brown Stove Works should not have received this refund because it was based on a duplicate refund claim. Accordingly, the DOE issued a Supplemental Order rescinding the duplicate refund granted to Brown Stove Works, Inc.

Crown Central Petroleum Corporation/Herring Petroleum Products Co., 3/13/89, RF313-58

The DOE issued a Decision and Order concerning an Application for Refund filed by Herring Petroleum Products Co., in the Crown Central Petroleum Corporation special refund proceeding.

Information submitted by Herring indicated that the firm was a spot purchaser of Crown refined petroleum products during the consent order period. According to the procedures set forth in *Crown Central Petroleum Corp.*, 18 DOE ¶ 85,326 (1988), a spot purchaser is presumed to be ineligible for a refund unless it demonstrates that its purchases of Crown products were sold to base period customers at a loss which was not subsequently recouped. Herring did not submit any information either to establish that it was not a spot purchaser or to rebut the spot purchaser presumption. Accordingly, Herring's request for a refund was denied.

Exxon Corporation/Lykes Steamship Co., 3/16/89, RF307-9635

The DOE issues a Supplemental Decision and Order to Lykes Steamship Company (Lykes) in the Exxon Corp. special refund proceeding. In *Exxon Corp./Lindstedt Oil*, 18 DOE ¶ 85,715 (1989), the DOE granted Lykes an incorrect refund due to the fact that the firm had been classified as a reseller. In fact, Lykes was an end-user and was eligible to receive its full allocable share. Accordingly, Lykes was granted a supplemental refund of \$4,347 (\$3,729 principal and \$618 interest).

Exxon Corporation/Newark Exxon et al., 3/14/89, RF307-5132 et al.

The DOE issued a Decision and Order concerning 44 Applications for Refund filed in the Exxon Corporation special refund proceeding. Each of the applicants purchased directly from Exxon and was either a reseller whose allocable share was less than \$5,000 or an end-user of Exxon products. The DOE determined that each applicant was eligible to receive a refund equal to its full allocable share. The sum of the refunds granted in this Decision, is \$29,420 (\$25,231 in principal and \$4,189 in interest).

Exxon Corporation/R.M. Massengill Bulk Plant Northeastern Oil Co., Inc. Jefferies Bros., Inc., 3/14/89, RF307-3287, RF307-4433, RF307-4499

The DOE issued a Decision and Order concerning three Applications for Refund filed in the Exxon Corporation special refund proceeding. The Applicants, wholesale distributors of Exxon products, each had an allocable share in excess of \$5,000, and was eligible to receive as its refund the larger of \$5,000 or 40% of its allocable share up to \$50,000. Each applicant was granted a refund of \$5,000, plus interest. The sum of the refunds granted in this Decision is \$17,490 (\$15,000 in principal and \$2,490 in interest).

Fairbury Light & Water Co., 3/13/89, RF272-24046

The DOE issued a Decision and Order approving an Application for Refund filed by Fairbury Light and Water Company in the Subpart V Crude Oil proceeding. Fairbury, a purchaser of petroleum products and a regulated utility, stated that it would notify the appropriate regulatory agency of any refund received and pass the entire amount through to its customers. Accordingly, it was not required to demonstrate injury. The total refund approved in this Decision was \$1,084.

Firstmiss Inc., 3/15/89, RF272-29279, RD272-29279

The DOE granted a fertilizer producer, FirstMiss, Inc., a refund from the crude oil monies made available for distribution by the Office of Hearings and Appeals. A group of States submitted objections and a Motion for Discovery which the DOE denied. FirstMiss will receive a refund of \$6,041.

Getty Oil Company/Getty of Fort Lee, 3/16/89, RF265-2549

The DOE issued a Decision and Order concerning an Application for Refund filed by Getty of Fort Lee (Fort Lee), a retailer of motor gasoline that was covered in the Getty Oil Company Special Refund Proceeding. Based on the profit margin data submitted by Fort Lee, the DOE approximated the firm's unrecovered costs for motor gasoline and determined that its cumulative cost bank for that product was in excess of its volumetric refund. Fort Lee also provided purchase cost data for motor gasoline for the relevant period. Using the competitive disadvantage methodology, the DOE determined that Fort Lee should receive a refund consisting of its full volumetric allocation amount for its purchases of motor gasoline from Getty. The total refund approved in this Decision is \$27,822, representing \$13,495 in principal and \$14,327 in accrued interest.

Groton School District #6-3, et al., 3/17/89, RF272-31756 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to nine applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant used petroleum products for a variety of purposes including farming, heating, and transportation, and each determined its volume claim either by consulting actual purchase records or by reasonably estimating its consumption. Each applicant was an end-user of the

products it claimed and was therefore presumed injured. The sum of the refunds granted in this decision is \$3,636.

Gulf Oil Corporation/Belmore Gulf Service, et al., 3/16/89, RF300-6413, et al.

The DOE issued a Decision and Order concerning 27 Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each application was approved using a presumption of injury. The sum of the refunds granted in this Decision is \$84,667.

Gulf Oil Corporation/Cass City Oil & Gas Co., Bestrom Oil Co., Inc., 3/24/89, RF300-4102, RF300-4103

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Both applications were approved using a presumption of injury. The sum of the refunds granted in this Decision, which includes both principal and interest, is \$24,308.

Gulf Oil Corporation/Crutcher Oil Company, Inc., 3/17/89, RF300-2738

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Crutcher Oil Company, a reseller and consignee of Gulf petroleum products. For its consigned gallons, Crutcher attempted to prove injury under the methodology employed in the first Gulf proceeding. Crutcher equated its level of economic harm to the percentage market share loss it experienced from 1973 to 1981, with no breakdown for the intervening years. The OHA decided that injury could be more accurately calculated on a yearly basis. Crutcher's injury calculation was recalculated on the basis of the market share loss during each individual year of the consent order period. While the DOE found that the revised calculation showed only a minimal injury, the DOE concluded that the method did not lead to the definitive conclusion of an injury below the presumptive level. Accordingly, Crutcher's application was approved under the 10 percent and small claims presumptions. The amount of the refund granted was \$2,366.

Gulf Oil Corporation/Flynn Oil Company, Inc., 3/15/89, RF300-2375

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Flynn Oil Company, Inc., a consignee and a reseller of Gulf refined products. Flynn

Oil Company elected to base its refund on the appropriate presumptions of injury. Flynn Oil Company's allocable share as a reseller is less than \$5,000, and its total principal refund is less than \$5,000. Therefore, it was not required to provide a detailed demonstration that it absorbed Gulf's alleged overcharges. The refund granted to Flynn Oil Company in this Decision is \$441.

Gulf Oil Corporation/Great Gas & Oil Company, 3/14/89, RF300-2038

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Great Gas & Oil Company, a consignee and a reseller of Gulf refined products. Great Gas & Oil elected to base its refund on the appropriate presumptions of injury. Great Gas & Oil's allocable share as a reseller is less than \$5,000, and its total principal refund is less than \$5,000. Therefore, it was not required to provide a detailed demonstration that it absorbed Gulf's alleged overcharges. The refund granted to Great Gas & Oil in this Decision is \$2,199.

Gulf Oil Corporation/Hagood Oil Company, S.W. Faunt, 3/16/89, RF300-4401, RF300-4404

The DOE issued a Decision and Order concerning two Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Both applicants indicated that they were consignees of Gulf products during the consent order period. Neither applicant attempted to prove injury, and instead, elected the 10 percent injury presumption for Gulf consignees. Therefore, each applicant will receive a refund equal to 10 percent of its allocable share (excluding interest). The sum of the refunds granted in this Decision, which includes both principal and interest, is \$1,620.

Gulf Oil Corporation/Polar Industries, Inc., 3/15/89, RF300-992

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Polar Industries, Inc. (Polar). Polar had filed another Application for Refund in this proceeding (Case No. RF300-1227), and on October 18, 1988, was granted a principal refund of \$5,000 under the 40 percent presumption of injury. *Gulf Oil Corporation/Buckley & Scott*, 18 DOE ¶ 85,067 (1988). In this current decision, the DOE determined that the gallons claimed by Polar in Case No. RF300-992 did not entitle the firm to an additional refund. Even after accounting for the gallons in Case No. RF300-992, \$5,000 still exceeded 40 percent of Polar's

allocable share. Therefore, because the DOE had already awarded Polar a principal refund of \$5,000 in Case No. RF300-1227, the DOE denied Polar's other Application (Case No. RF300-992).

Gulf Oil Corporation/Purmax Oil Company, et al., 3/15/89, RF300-5704, et al.

The DOE issued a Decision and Order concerning nine Applications for Refund submitted in the Gulf Oil Corporation special refund proceeding. Each applicant was approved using a presumption of injury. The sum of the refunds granted in this Decision is \$76,927.

Hawkins Farms, 3/14/89, RC272-20

A Subpart V crude oil refund was granted to Hawkins Farms in *Bob Abernathy*, Case Nos. RF272-10360 et al. (August 16, 1988). The U.S. Postal Service returned the refund check as undeliverable, however. Subsequent attempts to locate the applicant have failed. Accordingly, the DOE issued a supplemental order rescinding the refund granted to Hawkins Farms.

Intermountain Transportation, Co., 3/17/89, RF272-19199

The DOE issued a Decision and Order denying the Application for Refund filed by Intermountain Transportation Company in the Subpart V crude oil refund proceedings. Intermountain Transportation Company had previously received a refund from the Surface Transporter Escrow and thus was ineligible to receive a refund in the Subpart V crude oil proceedings.

IOWA Power & Light Co., 3/16/89, RA272-5

On April 8, 1988, the Office of Hearings and Appeals granted a refund of \$10,621 to Iowa Power & Light Company in the Crude Oil Subpart V refund proceeding (Case No. RF272-214). The refund amount granted in that decision was calculated incorrectly and is corrected to \$10,631 in the present decision.

Joliet Army Ammunition, 3/14/89, RF272-36797

The DOE issued a Decision and Order denying an Application for Refund filed by Uniroyal Chemical Company, Inc. (Uniroyal) on behalf of the Joliet Army Ammunition Plant (Joliet) in the Subpart V crude oil proceedings. Uniroyal was a government contractor under a cost-reimbursable plus fixed fee contract, and was found to be ineligible for a crude oil refund.

Ken's Professional Waterproofing, 3/15/89, RF272-65929

The DOE issued a Decision and Order granting a refund of \$208 from crude oil overcharge funds to Ken's Professional Waterproofing, an end-user of refined petroleum products. The DOE pointed out that Ken's had used a filing service, Federal Refunds, Inc. (FRI), to prepare and submit its refund application. After reviewing FRI's practices, the DOE determined that it did not have confidence in that firm's ability to accurately disburse refunds to its clients. Accordingly, the DOE determined that the refund should be sent directly to Ken's rather than to the agent, FRI.

Kingsford Products Company, 3/17/89, RF272-2466

The DOE issued a Decision granting Kingsford Products Company (Kingsford) a Subpart V crude oil refund. Kingsford demonstrated that it was an end-user of the petroleum products that form the basis of its refund claim. Because of the end-user presumption of injury, Kingsford was not required to submit a detailed demonstration of injury and is eligible to receive its full allocable share. Accordingly, Kingsford was granted a refund of \$3,699, which is based on its purchases of 18,497.166 gallons of refined petroleum products. Kingsford will automatically be granted additional refunds as additional crude oil refund monies become available.

Larry Biss, 3/16/89, RA272-6

The DOE issued a Supplemental Decision and Order to Larry Biss in the Subpart V crude oil refund proceeding. In *De Rose Distributors*, 18 DOE ¶ 85,307 (1988), the DOE granted Mr. Biss a refund based upon an incorrect volume. Accordingly, Biss was granted a supplemental refund of \$14.

Murphy Oil Corp., Deltic Farm & Timber Co., Inc., 3/13/89, RF309-254

The DOE issued a Decision and Order denying an Application for Refund filed in the Murphy Oil Corporation special refund proceeding by Deltic Farm & Timber Co., Inc., a wholly-owned subsidiary of Murphy. It is the general position of the DOE that subsidiaries are ineligible to receive refunds from consent order monies made available by their parent firm as this would effectively disburse a portion of the benefit of a refund to the consent order firm itself. Accordingly, the application of Deltic Farm & Timber Co., Inc. was denied.

Murphy Oil Corporation/K Oil Co., Inc. et al., 3/15/89, RF309-337 et al.

The DOE issued a Decision and Order granting applications filed by eight purchasers of Murphy refined petroleum

products in the Murphy Oil Corporation special refund proceeding. According to the procedures set forth in *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1988), each applicant was found to be eligible for a refund based on the volume of products it purchased from Murphy. The sum of the refunds approved in this Decision was \$25,012, representing \$21,720 in principal plus \$3,292 in accrued interest.

Murphy Oil Corp./Ulva Rhodes Murrell's Spur Station, 3/15/89, RF309-928, RF309-929

The Department of Energy issued a Supplemental Order concerning the Applications for Refund filed by Ulva Rhodes and Murrell's Spur Station in the Murphy Oil Corporation special refund proceeding. *Murphy Oil Corp.*, 17 DOE ¶ 85,782 (1988). In the case of Ulva Rhodes, the applicant was granted an additional \$29 to rectify an administrative error made in *Murphy Oil Corp./Lakehead Pipe Line Co.*, 18 DOE ¶ 85,557 (1989). In the case of Murrell's Spur Station, the applicant's duplicate refund payment granted in *Murphy Oil Corp./Florida Power Corp.*, 18 DOE ¶ 85,627 (1989) was rescinded.

New York State Electric and Gas Corporation, 3/16/89, RF272-31590

The DOE issued a Decision and Order granting a refund in the Subpart B crude oil proceeding to New York State Electric and Gas Corporation (NYSEG). During the period from August 19, 1973 through January 27, 1981, NYSEG operated an investor-owned utility. The DOE found that NYSEG submitted sufficient documentation to support its claim. Additionally, NYSEG certified that it would pass through any refund granted. In reaching its determination, the DOE rejected the comments submitted by a group of States in opposition to the granting of this refund. Specifically, the DOE found that the States had not demonstrated that NYSEG was ineligible to receive a refund as a utility. Accordingly, the DOE approved a refund of \$8,995 to NYSEG.

Ralph's Chevron Service et al., 3/14/89, RF272-27253 et al.

The DOE issued a Decision and Order denying six Applications for Refund from crude oil overcharge funds. The applicants were either retailers or resellers during the period August 19, 1973 through January 27, 1981. Because none of the applicants demonstrated that it was injured due to crude oil overcharges, none was fund eligible for a crude oil refund.

Sherherd Public Schools et al., 3/15/89, RF272-112 et al.

The DOE issued a Decision and Order granting refunds in the Subpart V crude oil refund proceeding to 35 applicants based on their purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user presumed to have been injured by the alleged crude oil overcharges. Each applicant submitted actual purchase volumes or reasonable estimates of its purchase volume. The sum of the refunds granted in this Decision is \$26,572.

Springfield Township, et al., 3/15/89, RF272-18003, et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 36 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant was an end-user of the products it claimed and was therefore presumed injured by the alleged crude oil overcharges. The sum of the refunds granted in this Decision is \$63,640. The applicants will be eligible for additional refunds as additional crude oil overcharge funds become available.

Standard Oil Co. (Indiana)/Nebraska, 3/16/89, RQ251-509

The DOE issued a Supplemental Order which authorized the use of \$264,150 by Nebraska for the second stage restitutionary program approved by the Office of Hearings and Appeals (OHA) on February 13, 1989 (Case No. RQ251-493). In doing so, OHA rescinded that part of the February 13 Order which granted Nebraska a total of \$251,571 for use in the program.

Tidwell's Express et al., 3/14/89, RF272-4279 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to 10 applicants based on their respective purchases of refined petroleum products during the period August 19, 1973, through January 27, 1981. Each applicant was an end-user of the products involved and was therefore presumed injured as a result of the alleged crude oil overcharges. The sum of the refunds granted in this Decision is \$1,711.

Total Petroleum, Inc./Criswell Petroleum Products Co. et al., 3/14/89, RF310-94 et al.

The DOE issued a Decision and Order concerning 18 Applications for Refund filed by purchasers of motor gasoline and/or No. 2 oils from Total Petroleum, Inc. The applicants sought a portion of the settlement fund obtained by the

DOE through a consent order entered into with Total. Each of the applicants was either an end-user or a reseller whose allocable share made it eligible for either a small claims or medium range presumption of injury refund. Under the standards established in *Total Petroleum, Inc.*, 17 DOE ¶ 85,542 (1988), the DOE granted refunds in this proceeding which total \$34,894 (\$30,011 principal plus \$4,883 interest).

Tri-County Implement et al., 3/15/89, RF272-31745 et al.

The DOE issued a Decision and Order granting refunds from crude oil overcharge funds to nine applicants based on their respective purchases of refined petroleum products during the period August 19, 1973 through January 27, 1981. Each applicant used petroleum products for a variety of purposes including farming, heating, and transportation, and each determined its volume claim either by consulting actual

purchase records or by reasonably estimating its consumption. Each applicant was an end-user of the products it claimed and was therefore presumed injured. The sum of the refunds granted in this decision is \$5,533.

Crude Oil End-Users

The Office of Hearings and Appeals granted crude oil overcharge refunds to end-user applicants in the following Decisions and Orders.

Name	Case No.	Date	No. of applicants	Total refund
Mrs. Hanna Eggers et al.	RF272-48800	3/14/89	139	\$3,895
Wilrite Realty Corp. et al.	RF272-49200	3/14/89	132	\$3,422

Dismissals

The following submissions were dismissed:

Name	Case No.
Bronx Municipal Hospital Center	RF272-31162
Chelsea London Co.	RF272-49193
City of Mineola	RF272-75312
City Wide Delivery Service	RF300-7891
Clarence E. Sanders	RF272-75325
Clarkdale Farms, Inc.	RF272-59899
Continental Grain Company	RF272-20929
Dave's Janitorial Cleaning Service	RF272-1847
Davison Community Schools	RF272-37375
Dayton Towers Corporation	RF272-59837
Dipietro's Gulf Service	RF300-8483
East Side Gulf	RF300-9891
El Paso Sand Products	RF272-69551
Erwin Bruhnoeber	RF300-10330
F H Sands Sons Inc.	RF300-8558
Falls Church Servicer	RF307-226
Finn Gulf/E.E. Finn	RF300-18
Garland Wayne Carruthers	RF300-10331
Gene Anderson	RF300-10342
Guy Noller	RF272-50282
Home Oil Co. of Jacksonville, Inc.	RF313-2
Jack's Service Station	RF300-7710
Janna Kirkwood	RF300-10328
Johnston Oil Company, Inc.	RF300-5601
James O'Neal	RF300-10301
Judith Basin County	RF272-75241
Lamb's Gulf Service	RF304-3748
Lynn Harvey	RF272-75232
Martin Bulk Plant	RF300-7658
Mass. Municipal Wholesale Electric Co.	RF272-59695
Mertz Oil Co.	RF300-8450
Murdock Service Station	RF300-7925
Nazionale Gulf	RF300-129
Page Oil, Inc.	RF313-31
R&F Coal Company	RF272-74478
Ray Balderson	RF272-60343
Ray Gray	RF300-10325
Riverside Sand & Gravel Co.	RF272-52254
Sals Gulf	RF300-7696
Schaefer Shell Service	RF315-1007
Teagues General Store	RF300-7308
Theodore E. Tinkham	RF272-53330
Thomas P. Reidy, Inc.	HRO-0265
Tom Country Corner IGA	RF300-7641
Trepanier Farms	RF272-49741
Unified School District #259	RF272-27990
Walter Harrison	RF272-51682
Wayland Bulk Plant	RF300-7657

Name	Case No.
Wayne Vickery	RF300-10327
Zimmerman Farms	RF272-70686
21 Gramercy Park South	RF272-49194
49 East Owners Corp.	RF272-49183

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1:00 p.m. and 5:00 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

May 31, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 89-13504 Filed 6-6-89; 8:45 am]

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ENVIRONMENTAL PROTECTION AGENCY

[OPTS-400031; FRL-3599-6]

Fee Waiver, Community Right-to-Know Pilot Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is announcing the establishment of a limited pilot program to waive fees for a small sample of Local Emergency Planning Committees (LEPCs) for accessing the national toxic chemical release inventory (TRI) data base. The TRI data base, which will be available in June through the National

Library of Medicine's TOXNET system, was established by EPA under section 313 of Title III of the Superfund Amendments and Reauthorization Act of 1986 (SARA). It is an inventory of yearly emissions of toxic chemicals to air, land, and water. Title III is the Emergency Planning and Community Right-to-Know Act of 1986. The legislative history of the Act makes clear that EPA has the authority to waive or reduce the fee for accessing the data base if it is in the public interest to do so. EPA has initiated this pilot program to evaluate the need for, and feasibility of implementing such a fee waiver program. LEPCs and those who wish to apply for a fee waiver in conjunction with their LEPC may contact their EPA Regional Office for the guidance document that explains how they can participate in the fee waiver pilot program. All requests for a fee waiver must be in writing and based on the guidelines described in that guidance document. The LEPCs will send all the requests and project descriptions to their State Emergency Response Commission and EPA Regional Office by July 21, 1989. Final selection of projects will be made at EPA headquarters by August 25, 1989.

DATES: By July 21, 1989, all project descriptions and requests for fee waivers must be submitted to the State Emergency Response Commission and EPA Regional Office representing the project proposer's area. Fee waiver pilot program projects will be selected by August 25, 1989.

FOR FURTHER INFORMATION CONTACT: Eileen A. Fesco, Project Manager, Emergency Planning and Community Right-to-know Hotline, Environmental Protection Agency, 401 M St., SW., Mail

Stop WH-562A, Washington, DC 20460, Toll free: 800-535-0202, in Washington, DC and Alaska, (202) 479-2449.

SUPPLEMENTARY INFORMATION: EPA is establishing a pilot program to waive fees for LEPCs to access the national toxic chemical release inventory data base. EPA has initiated this pilot program in order to evaluate the need for, and feasibility of implementing such a fee waiver program.

I. Introduction

A. Statutory Authority

Section 313(j) of Title III of SARA directs EPA to make the national toxic chemical release inventory (TRI) data base accessible by computer telecommunication to any person on a cost reimbursable basis. This section of the act was discussed in the Conference Report that accompanied H.R. 2005:

The Administrator is required to establish and maintain in a computer database a national toxic chemical inventory based on data submitted under this section. These data are required to be made accessible to any person by computer telecommunication and other means on a cost reimbursable basis. H. Rep. 962, 96th Con., 2nd Sess. 299 (1986). The Conference Report went on to note: However, the resulting fee schedule is not to be prohibitive with regard to public access, and the Administrator may reduce or waive otherwise applicable fees when, in the Administrator's judgment, such action is in the public interest and consistent with the purposes of this section.

By seeking to determine the need for a fee waiver program, EPA is responding to Congress' request that the public's access to the TRI data base not be limited by the public's inability to pay for the access as long as such waiver of fees is in the public interest and consistent with the purposes of section 313.

B. Background

The TRI data base will be available on-line in June through the National Library of Medicine's (NLM) TOXNET system. Hourly fees for the use of this system are \$25.70 for prime time and \$18.60 for non-prime time. Current prime time is 10 a.m. to 5 p.m. Eastern Time, Monday through Friday. All other time is non-prime. EPA proposes to establish a pilot program to waive fees for a limited number of LEPCs.

Title III provided for the States to establish LEPCs whose members must represent the broad constituencies of the communities they serve. The LEPCs receive information generated by various reporting requirements of Title III from local businesses and other facilities about the presence of and emissions of chemicals at these local

facilities. LEPCs use this information to plan their response to chemical emergencies. The LEPCs were selected to be the primary recipients of the fee waivers for this pilot project because they are ideally placed in their community to examine and respond to the information. The allotment of \$30,000 for this pilot will be sufficient to provide limited fee waivers for approximately \$1,200 to \$1,600 dollars for approximately 15 to 20 LEPCs.

A fee waiver policy has been under discussion in EPA for some time. Public interest groups and others have expressed concern that access to the data base not be limited by economic need. Further, EPA wants to encourage data access. The legislative history of the Act makes clear that EPA has the authority to waive fees for these purposes.

C. Objectives of a Fee Waiver Program

A fee waiver program serves a number of purposes: (1) ensures that access to the TRI data base is not limited by economic need; and (2) encourages initial data access with the long-term goal of increasing data use.

II. The Pilot Project

A. Objectives of the Fee Waiver Pilot Program

This fee waiver pilot program will help EPA meet the objectives mentioned in the previous paragraph but it will mainly serve three other purposes: (1) Assist EPA in its evaluation of the need for, interest in, and the utility of fee waivers; (2) assist EPA in its evaluation of the feasibility of implementing a fee waiver program; and (3) assist EPA in its evaluation of its choice of entities to receive fee waivers: LEPCs and others the LEPCs might sponsor for the waiver.

B. Selection Criteria

The following is a summary of criteria that EPA and State authorities will use in their review and selection of projects for the fee waiver pilot program.

1. The project must be in the public interest. The following are some general examples of projects that meet this criterion.

(a) **LEPC Project.** The LEPC could analyze the TRI data's relation to information reported to it under other Title III requirements to obtain a "chemical profile" of that district and apply this information in a variety of ways.

(b) **Library Project.** A public library that applies for a fee waiver and is accepted would be sponsored by their area LEPC and the LEPC would manage the fee waiver. The library personnel

could familiarize themselves with the TOXNET data base. They could then serve as resources for people in the community interested in accessing the data. The library personnel could access the data for the public or instruct the public in how to access the data base themselves. Any printed material produced could be kept on file at the library.

(c) **Local College or University.** The LEPC could sponsor and manage a fee waiver going to the local public college or university which offers evening courses. The college could offer a TRI course which would include instruction in the accessing and manipulation of the TRI data base. The fee waiver would cover costs incurred by the learning institution when accessing the data base (on-line cost).

(d) **Local Citizen's Groups.** The LEPC could sponsor and manage a fee waiver awarded to a public interest group who wishes to access the TRI data base and share the information with their members and/or other interested individuals. The group could give a number of presentations to groups using overhead projectors which will project the "live" image on the computer screen to a larger screen so a much larger number of people could see the data. These presentations could be geared toward explaining the purpose of section 313, what the TRI data are, and what individuals can do with this information. The fee waiver would cover the on-line time cost.

2. The fee waiver will be made available to the LEPCs established under Title III of SARA. As noted above, other individuals or organizations may work with their LEPC to apply for the fee waiver pilot program. If a project involves an entity other than an LEPC, the LEPC serving that entity's geographic area will serve as the sponsor of that entity and that LEPC will be responsible for managing the waiver given to that entity.

3. The LEPC which applies for the fee waiver for its own use, rather than sponsoring another individual or group, will have the following characteristics: (a) Broad-based representation as required under Title III of SARA; (b) viability (e.g., has held meetings, has developed or is developing an emergency plan); (c) demonstrated commitment to and involvement with their community; and (d) capacity to disseminate information to their community.

4. The project proposer (LEPC or those sponsored by their LEPC) must explain why they could not support the normal access charge.

5. The LEPC must ensure that the public will have direct access to the on-line data bases or whatever product(s) are generated by the pilot.

6. The project proposers must have reliability and convenient access to a computer with the necessary hardware and software to connect to the NLM system.

7. The project proposers must demonstrate an ability and a willingness to provide a brief evaluation report at the conclusion of the project.

8. The project must serve the evaluation purposes of the pilot. The pilot projects should help EPA evaluate:

- The need for, interest in, and utility of fee waivers.
- The feasibility of implementing a fee waiver program.
- The Agency's choice of entities to receive fee waivers.

EPA will seek a sample of projects which will: reflect Regional and LEPC diversity; present a broad range of project types; and represent a range of recipient types.

EPA will establish an agreement with each recipient that spells out: (1) That recipient's responsibility for monitoring the hours they have used; (2) their acceptance of responsibility for paying for any charges they incur in excess of their allotted time; and (3) their obligation to notify EPA when they have used up their allotted time.

C. Participating in the Fee Waiver Pilot

If you are eligible for a fee waiver and have a project that is in the public interest you may contact your EPA Regional Office for the guidance document that explains how you may participate in the fee waiver pilot project.

For Fee Waiver Pilot Program Applications Contact

EPA—Region I (CT, MA, ME, NH, RI, VT), Dwight Peavey, Section 313 Coordinator, Pesticides and Toxics Branch, USEPA Region 1 (APT2311), JFK Federal Building, Boston, MA 02203, (617) 565-3230.

EPA—Region II (NJ, NY, PR, VI), Nora Lopez, Section 313 Coordinator, Pesticides and Toxics Substances Branch, USEPA Region 2 (MS240), Woodbridge Avenue, Building 209, Edison, NJ 08837, (201) 906-6890.

EPA—Region III (DC, DE, MD, PA, VA, WV), Kurt Elser, Section 313 Coordinator, Toxics and Pesticides Branch, USEPA Region 3 (3HW42), 841 Chestnut Street, Philadelphia, PA 19107, (215) 597-1260.

EPA—Region IV (AL, FL, GA, KY, MS, NC, SC, TN), Jill Perry, Section 313

Coordinator, Pesticides and Toxic Substances Branch, USEPA Region 4, 345 Courtland Street, NE., Atlanta, GA 30365, (404) 347-5053.

EPA—Region V (IL, IN, MI, MN, OH), Dennis Wesolowski, Section 313 Coordinator, Pesticides and Toxic Substances Branch, USEPA Region 5 (5SPT-7), 230 South Dearborn Street, Chicago, IL 60604, (312) 353-5907.

EPA—Region VI (AR, LA, MN, OK, TX), Gerald Carney, Section 313 Coordinator, Pesticides and Toxic Substances Branch, USEPA Region 6 (6TPT), 1445 Ross Avenue, Dallas, TX 75202-2733, (214) 655-7244.

EPA—Region VII (IA, KS, MO, NE), Ed Vest, Section 313 Coordinator, Congressional and Intergovernmental Relations, USEPA Region 7 (CIGL), 726 Minnesota Avenue, Kansas City, KS 66101, (913) 238-2806.

EPA—Region VIII (CO, MT, ND, SD, UT, WY), Diane Groh, Section 313 Coordinator, Toxic Substances Branch, USEPA, Region 8 (8AT-TS), 999 18th Street, Denver, CO 80202-2405, (303) 293-1730.

EPA—Region IX (AS, AZ, CA, GU, HI, MP, NV), Kathleen Goforth, Section 313 Coordinator, Pesticide and Toxics Branch, USEPA Region 9 (A-4-3), 211 Main Street, San Francisco, CA 94105, (415) 974-7280.

EPA—Region X (AK, ID, OR, WA), Phil Wong, Section 313 Coordinator, Pesticides and Toxic Substances Branch, USEPA Region 10 (AT083), 1200 Sixth Avenue, Seattle, WA 98101, (206) 442-4016.

D. Project Selection Process

LEPCs and other interested entities will contact the EPA Regional Office in their area for the fee waiver guidance document. LEPCs interested in obtaining a fee waiver for a project will simultaneously submit their request and project description to their State Emergency Response Commission (SERC) and to the appropriate EPA Regional Office by July 21, 1989.

Individuals and other groups who wish to be sponsored for a fee waiver by their LEPC should submit their project description to the LEPC serving their geographic area. The SERCs and EPA Regional Offices will review each project description submitted by their LEPCs, confer, and highlight those projects that best meet the selection criteria discussed earlier in unit II.B. On or before August 11, 1989, the SERCs and EPA Regional Offices will forward all the project descriptions along with their recommendations for funding to the Office of Toxic Substances at EPA headquarters in Washington, DC.

Final selection of projects will be made at EPA headquarters in order to ensure a good distribution of projects for the purposes of the pilot. Recipients of the fee waivers will be notified of their selection by EPA headquarters on or before August 25, 1989. At that time the recipients will be given information on how to access the NLM data base. Those not chosen for the pilot will also be notified in writing by EPA.

Dated: May 30, 1989.

Dwain Winters,

Acting Director, Office of Toxic Substances.

[FR Doc. 89-13476 Filed 6-6-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-59869; FRL-3599-4]

Toxic and Hazardous Substances; Certain Chemicals Premanufacture Notices

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: Section 5(a)(1) of the Toxic Substances Control Act (TSCA) requires any person who intends to manufacture or import a new chemical substance to submit a premanufacture notice (PMN) to EPA at least 90 days before manufacture or import commences. Statutory requirements for section 5(a)(1) premanufacture notices are discussed in the final rule published in the Federal Register of May 13, 1983 (48 FR 21722). In the Federal Register of November 11, 1984, (49 FR 46066) (40 CFR 723.250), EPA published a rule which granted a limited exemption from certain PMN requirements for certain types of polymers. Notices for such polymers are reviewed by EPA within 21 days of receipt. This notice announces receipt of 7 such PMN(s) and provides a summary of each.

DATE: Close of Review Periods:

Y 89-125, 89-126, 89-127—May 28, 1989.

Y 89-128, 89-129—May 31, 1989.

Y 89-130—June 5, 1989.

Y 89-131—June 11, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Room EB-44, 401 M Street, SW, Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: The following notice contains information extracted from the nonconfidential version of the submission provided by the manufacturer on the PMNs received by EPA. The complete nonconfidential

document is available in the Public Reading Room NE-G004 at the above address between 8:00 a.m. and 4:00 p.m., Monday through Friday, excluding legal holidays.

Y 89-125

Manufacturer. Confidential.
Chemical. (G) Olyether urethane.
Use/Production. (G) Used in coatings applied by industrial manufacturers. Prod. range: Confidential.

Y 89-126

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) An additive used in the plastic industry. Prod. range: Confidential.

Y 89-127

Manufacturer. Confidential.
Chemical. (G) Polyester resin.
Use/Production. (G) An additive used in the plastic industry. Prod. range: Confidential.

Y 89-128

Manufacturer. Confidential.
Chemical. (G) Long oil alkyl resin.
Use/Production. (S) Architectural finishes. Prod. range: Confidential.

Y 89-129

Manufacturer. C.J. Osborn.
Chemical. (G) Alkyd.
Use/Production. (S) Pigmented and finishes. Prod. range: Confidential.

Y 89-130

Manufacturer. C.J. Osborn.
Chemical. (G) Saturated polyester.
Use/Production. (S) Pigmented and clear finishes. Prod. range: Confidential.

Y 89-131

Manufacturer. Confidential.
Chemical. (S) Polymer of neopentyl glycol, trimethylolpropane, isophthalic acid, 1,4-cyclohexanedicarboxylic acid.
Use/Production. (S) Polymer for appliance coating. Prod. range: 100,000-250,000 kg/yr.

Dated: May 26, 1989.

Steven Newburg-Rinn,
Acting Director, Information Management
Division, Office of Toxic Substances.

[FR Doc. 89-13475 Filed 6-6-89; 8:45 am]

BILLING CODE 6580-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200253
Title: Maryland Port Administration Terminal Agreement
Parties: Maryland Port Administration, Orient Overseas Container Line (OOCL), Clark Maryland Terminals, Inc. (CMTI)

Synopsis: The Agreement provides CMTI with the lease of 11.67 acres in Areas 503 and 504 at the Dundalk Marine Terminal to handle OOCL cargo. CMTI will receive a 50% discount from the applicable tariff rates for dockage, wharfage and crane hire for cargo attributable to OOCL and a 12% discount from the applicable tariff rates for acreage rentals attributable to OOCL.

Agreement No.: 224-200078-003
Title: Maryland Port Administration Terminal Agreement

Parties: Maryland Port Administration Clark Maryland Terminals, Inc. (CMTI)
Synopsis: The Agreement provides for: (1) Elimination of 8.7352 acres in Area 503 and 2.9348 acres in Area 504 at the Dundalk Marine Terminal from the basic lease agreement; (2) revision of the tonnage discount scale until October 1, 1989, at which time the discount scale will revert back to the scale in the basic agreement; and (3) reduces the CMTI minimum tonnage commitment to 250,000 tons and 150 vessel/barge calls annually.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,
Assistant Secretary.

Dated: June 2, 1989.

[FR Doc. 89-13528 Filed 6-6-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the

Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding pending agreement.

Agreement No.: 203-011240.

Title: Florida-Western Caribbean Shipowners and Operators Association Agreement.

Parties: Tropical Shipping & Construction Co., Ltd. Hybur Ltd.

Synopsis: The proposed Agreement would permit the parties to discuss and agree upon rates and conditions of service in the trade between U.S. Atlantic and Gulf Coast ports and points and Western Caribbean ports and points in Belize. The parties are not authorized to publish a common tariff and adherence to any agreement reached would be voluntary. The Agreement would also permit the parties to charter space aboard each other's vessels in the Agreement trade.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,
Assistant Secretary.

Dated: June 10, 1989.

[FR Doc. 89-13427 Filed 6-6-89; 8:45 am]

BILLING CODE 6730-01-M

GENERAL SERVICES ADMINISTRATION

Agency Information Collection Activities Under OMB Review

The GSA hereby gives notice under the Paperwork Reduction Act of 1980 that it is requesting the Office of Management and Budget (OMB) to renew expiring information collection 3090-0080, General Services Administration Acquisition Regulations Part 5342 Contract Financing, GSA Form 1142. This form is used by GSA regions or the contractors to ensure that all adjustments and claims have been made before contract closeout. Building service contractors are required to submit a release of claims before final payment.

AGENCY: Office of GSA Acquisition Policy and Regulations (V), GSA.

ADDRESSES: Send comments to Bruce McConnell, GSA Desk Officer, Room 3235, NEOB, Washington, DC, 20503, and to Mary L. Cunningham, GSA Clearance Officer, General Services Administration (CAIR), F Street at 18th, NW, Washington, DC 20405.

Annual Reporting Burden: Firms responding, 2,000; responses, 1 per year; average hours per response, .1; burden hours, 200.

For Further Information Contact: Shirley Scott, 202-523-4765.

Copy of Proposal: A copy of the proposal may be obtained from the Information Collection Management Branch (CAIR), Room 3014, GS Bldg., Washington, DC 20405, or by telephoning 202-535-7691.

Dated: May 25, 1989.

Emily C. Karam,
Director, Information Management Division (CAI).

[FR Doc. 89-13430 Filed 6-6-89; 8:45 am]

BILLING CODE 6820-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Child Support Enforcement; Applications for Grants

Pursuant to section 1110A of the Social Security Act, the Assistant Secretary for Planning and Evaluation (hereafter the Assistant Secretary) is seeking applications for research in the area of income security policy from States, public, non-profit, and for-profit organizations.

A. Type of Application Requested

This announcement seeks applications for projects to develop and conduct a program of research relating to national policy concerns in the area of child support enforcement. The following paragraphs describe this general area of interest in greater detail by enumerating high priority research areas. The questions they contain are intended to illustrate specific concerns. Applications should be for projects that will address one or more of the priority areas discussed below; other, closely related issues may also be included if they are shown to be relevant to the general area of interest.

A broad range of methodologies are acceptable for the purpose of this grant competition. However, all proposed projects should embody a sound theoretical base upon which new and original empirical work, employing the most useful and relevant data bases, is built. Applicants must demonstrate

knowledge of past and current research relating to the priority area under consideration. They must also demonstrate access to data adequate to conduct the proposed study.

Several national survey data sets are available for child support research and have been used in the past. Among them are the Current Population Survey (CPS), the Survey of Income and Program Participation (SIPP), the Panel Study of Income Dynamics (PSID), the National Longitudinal Study of the High School Class of 1972 (NLS-72), High School and Beyond (HSB), and the National Longitudinal Survey of Youth (NLSY).

The April CPS surveys for 1979, 1982, 1984, and 1986 had supplemental alimony and child support questions. As a result of the CPS sample design, (a rotating sample is used that has roughly three-fourths of the respondents for the current month participating in the survey the following month) the responses of a majority of the April participants could be matched with their responses to the annual income supplemental survey given each March. These March/April match files have become a primary informational source for child support research.

The SIPP is a relatively new longitudinal survey that asks respondents to provide detailed information concerning monthly income and welfare program participation. The first panel of interviews was begun in 1984. All nine waves of that panel are now available for analysis. In general, interviews are conducted every four months for 32 or 36 months. Along with core questions asked at each interview, various supplemental surveys are conducted. Support given for persons outside the current household, and the receipt of alimony and child support are among the additional questionnaire topics.

The PSID has tracked a high percentage of the members of the original 5,000 survey households since 1968 with annual follow-up interviews. Over that time two generations of households and families have formed and divided to provide researchers with extensive data on changes in family formation.

The National Longitudinal Study of the High School Class of 1972 (NLS-72) and the High School and Beyond (HSB) survey, similar to the PSID, have followed several thousand members of the 1972 high school graduation class and high school sophomores and seniors in 1980, respectively, with interviews every two or three years. These data sources provide information through the participants' early adulthood, the time

when most persons are making family formation changes through marriage, child bearing, and divorce.

The National Longitudinal Survey of Youth (NLSY) began in 1979 with a sample of 11,000 respondents age fourteen through twenty-one. The data set currently contains about 25,000 variables on anti-social behavior, fertility, child-care employment, training, and education over nine straight years. Unique to the NLSY is its information provided by the male respondents about their experience fathering children both in and out-of-wedlock, and their payment of child support.

Several other national surveys, while not having been used extensively for child support research, may also provide opportunities for examining some of the issues we present below. The National Survey of Consumer Finances of 1983 and the follow-up in 1986 contain detailed data about household accumulation of assets and debts. The 1986 follow-up asked in-depth about changes in the marital status of the household members since the first survey. Individuals were asked about court-ordered alimony, child support and health care, and the division of assets and debts as a result of the marital break-up. This information can be linked with employment and income responses from both surveys to examine, for example, the labor force response to changes in the family.

The National Survey of Children began in 1976 by interviewing children age seven through eleven in 1976. Since then two follow-up interviews have been conducted, wave 2 in 1981 and wave 3 in 1987. The recently completed third wave investigated the impact of early pregnancy and parenthood on the lives of teenage parents. The National Survey of Families and Households provides information about childhood family living arrangements, homeleaving experiences, marital and cohabitational experiences, and employment, educational, and fertility histories for adults in 13,000 households. With these surveys, questions concerning parenting outcomes for teenagers can be examined from the standpoint of the environment in which they grew up.

The National Survey of Family Growth, in its third cycle in 1982, interviewed 7,969 women between the ages of 15 and 44. While the first two surveys excluded never-married childless women, the third interviewed women regardless of their marital status. The surveys investigate the fertility histories of women from a family planning standpoint.

Applicants may also propose projects that utilize data bases other than national data sets. The Federal Office of Child Support Enforcement collects data from the states and publishes it in their *Annual Report to Congress*. The latest report was the twelfth annual. Applicants are encouraged to obtain copies of these reports by writing to The National Child Support Enforcement Reference Center, 370 L'Enfant Promenade, SW., Washington, DC 20447, or by telephoning the Reference Center at 202-252-5430.

While data collected by the Federal Office of Child Support Enforcement are generally not available in computer readable form, a public use data tape of the statistics published in the Annual Reports is under development. Applicants are encouraged to refer to the data published in the reports when developing their proposals, but to assume the data will be available in computer readable form by the time they are to begin their projects.

Researchers are also encouraged to approach state Child Support Enforcement offices to discuss what data may be available at the state and local level. For some issues state data bases may contain more data than are submitted to the Federal enforcement office. Other small scale data collection projects are likewise welcomed. Demonstration projects, however, will not be funded.

1. *The high priority research areas for which applications for a proposed research program are most desired are as follows:*

a. *Financing State Child Support Enforcement.* Legislation in 1975 authorized Federal matching funds to states for enforcing child support obligations. Along with enforcement services, the local child support enforcement (CSE) offices assist in locating absent parents, establishing paternity, and obtaining child and spousal support awards. The role of the Federal Government is to fund, monitor, and evaluate state programs, provide technical assistance, and in certain instances give direct assistance in locating absent parents and obtaining support payments from them. Basic responsibility for administering the program is left to the states.

The program requires the provision of child support enforcement services for both welfare and non-welfare families. Parents receiving benefits under the Aid to Families with Dependent Children (AFDC) program, the federally assisted foster care program, or the Medicaid program automatically receive services, and are required to work with the local child support enforcement agency to

establish and enforce a child support order unless it is determined not to be in the best interest of the child. Non-AFDC families may apply for the same services available to the AFDC families. Non-AFDC families may, however, be charged an application fee of up to 25 dollars.

Federal financing arrangements for state child support enforcement activities are very generous—a 68 percent reimbursement rate for state administrative costs, 90 percent reimbursement for state ADP system and genetic testing costs, incentive payments to the state of six to ten percent of all child support collections, plus the return to the state of its share of all collections made on behalf of AFDC recipients. In fiscal year 1987, states received \$349 million more in collections and Federal financing and incentive payments than they spent in state funds to administer the program. However, despite support collections made through these offices of almost \$4 billion, the net loss to the Federal government was the largest in the history of the program, \$327 million.

We have no evidence that the current Federal-state financing structure of the program is related to program effectiveness as measured by collections or other important program measures such as rates for paternity or support award establishment. With significant increases each year in Federal expenditures for child support enforcement, and annual increases in the amount of child support collected through the CSE program, the annual aggregate amount of child support collected nationally (as reported on the Current Population Survey) has remained relatively stable over the last decade. Is the Federal government paying for child support activities that would have been paid for by the states and/or families in the absence of the Federal program?

We would also like to know the effect of the CSE program on various aspects of child support enforcement given the current Federal-state financing structure. What effect have public enforcement services had on the enforcement of child support awards? What effect have they had on the size of the payments being made and the frequency of the payments? Does the effectiveness of public support enforcement vary between the AFDC population that is required to work with the local CSE office and the non-AFDC population that voluntarily seeks public support enforcement assistance?

b. *Paternity Establishment: The First Step to Receiving Child Support.* It is now a widely accepted fact that lacking

child support is a contributing factor to the high poverty and welfare dependency rates among households headed by unmarried mothers. Overall, of the 8.8 million women with children who do not have a father living in the home, sixty-one percent have child support awards. Never-married women, however, are substantially less likely to have awards than women who have been married. Only 18 percent of all never-married mothers have child support orders compared to 82 percent of the divorced women.

Paternity establishment is the first crucial step to obtaining child support for children of never-married mothers. Yet, paternity establishment is the area where we know the least. We do not even know for all children born out-of-wedlock how many have paternity established.

Paternity data are generally not available. At the center of the data issue is a very legitimate privacy concern. How does one collect paternity establishment information, especially information about fathers of children born out-of-wedlock, when legal paternity has yet to be established?

Case studies of states or local communities are potential research directions. Baseline data for the number of children born out-of-wedlock to mothers being assisted by the state CSE offices, and the number of them that have paternity established should be available in July, 1989, from the Federal Office of Child Support Enforcement. Do states or particular local jurisdictions differ in measurable ways in their paternity establishment practices so that meaningful comparisons about outcomes can be made? How do CSE paternity establishment procedures vary across jurisdictions with regard to law, process, activities, success, and costs? Do local CSE paternity establishment activities and paternity establishment rates for CSE clients differ for AFDC and non-AFDC cases? Does the paternity establishment rate for CSE clients vary with the local CSE caseload or the size of the CSE staff?

We are also interested in specific CSE techniques or activities that result in higher rates of paternity establishment for some CSE offices. Does the rate of voluntary paternity establishment vary with the time after birth? Does the speed with which a case is acted on affect the success or cost of establishing paternity for the case? Can paternity rates be increased by actively involving local social service workers or nurses in the hospital?

The Family Support Act of 1988 requires beginning in 1991 the disclosure

of both parents' social security numbers (SSN) at the time of the child's birth to assist in establishing paternity and child support orders. Several states already require SSN's. As of April 1989, Alabama, Connecticut, Florida, Georgia, Hawaii, Illinois, Kentucky, Maryland, Michigan, Mississippi, New York excluding New York City, Virginia, and West Virginia required both SSN's at the time of birth. To more smoothly implement the requirements of the Family Support Act we need to know what problems these states have encountered in obtaining the father's SSN in out-of-wedlock births. Have the local CSE agencies found the SSN helpful in establishing paternity or in other enforcement activities?

c. *The Relationship Between Guidelines, Awards, and Reviews.* Many child support experts have argued that the amount of support awarded women for their children is too low. Congress, partially in response to these claims, required states as part of the 1984 Child Support Enforcement Amendments to develop award guidelines to be considered in determining support obligations. The Family Support Act of 1988 went further to require judges and other officials to use the state guidelines when determining award amounts unless they find that applying the guidelines would be unjust or inappropriate in a particular case.

These are three basic conceptual child support guideline models.* First, the income sharing model is based on the concept that the child should receive the same proportion of parental income he or she would have received if the parents lived together. The specific proportion can vary with the number and ages of the children being ordered support, parental income levels, the definition of income being considered, who is given responsibility for child care and medical expenses, who is given custody, the number of other dependents in each household, and the current spouse's income. Second, the cost sharing model apportions between the parents the estimated dollar cost of providing the child with a minimum standard of living. The division of the

burden is usually based on the parents' respective incomes. Third, the income equalization model intends to equalize the standards of living between the separate households. The income of each parent is allocated between the households based on the number of persons in each.

Most guidelines being implemented by the states fall under the broad rubric of income sharing models. Examples of income sharing formulas that have been in use for several years include the Washington State Uniform Child Support Guidelines, the Wisconsin Percentage of Income Standard, the Minnesota Child Support Guidelines, and the Illinois Child Support Guidelines. Examples of more recently implemented income sharing guidelines are the Colorado Child Support Guideline and the New Jersey Child Support Guidelines. The Income Shares Model recommended by the National Advisory Panel on Child Support Guidelines has so far been adopted by Colorado, Maine, Michigan (in modified form), Nebraska, New Jersey, and Vermont.

We would like to know if mandatory guidelines, when implemented, increase the size of the awards being established or modified, or merely increase the equity across awards. Preliminary results in Wisconsin indicate that their guidelines have not increased award amounts. This outcome, however, may be the result of Wisconsin having established guidelines at or near the average award level prior to the implementation of the guidelines. Experiences may differ in other states. There may be different outcomes for the AFDC and non-AFDC cases handled by the local CSE office. Likewise, award amounts set using guidelines may vary between cases handled privately and cases serviced through the CSE agency. Of interest, as well, are why some cases have award amounts that significantly deviate (either high or low) from the award guideline amount.

The Family Support Act of 1988 also calls for periodic reviews of support orders already in effect beginning in October 1993. Currently, a support order is reviewed only when one of the parents or the local Child Support Enforcement Office requests it. What events lead to an award review? What are the obstacles to a modification? How do award reviews vary across states and local jurisdictions regarding frequency and procedure? Do the factors that affect the amount of the initial award differ from those that affect an award modification? How does the mandatory use of guidelines affect

award reviews? Are there interstate obstacles to establishing an award or modifying an award due to varying jurisdictional laws and practices? Examination of individual cases within and across jurisdictions may be the appropriate approach to addressing these important issues.

d. *Child Support Payment: Who are the Fathers Paying Child Support?* One of the activities of local child support enforcement offices is to enforce support orders. Yet, in 1985, according to custodial mothers less than half (48 percent) of the 4.4 million women owed child support payments received the full amount. Twenty-six percent of these women received less than they were owed, and 26 percent received no payment at all. The average amount of child support received for all women due payments was \$1,640. If the full amount had been paid, the average child support payment would have been \$2,500. Of the \$10.9 billion in child support due in 1985, \$3.7 billion went uncollected.

While we know about child support receipt, we have not been able to isolate non-custodial fathers, especially the fathers of children born to low-income mothers. Until recently, national surveys only asked custodial mothers whether their child support payments were being received regularly and in full. Now we have more surveys asking fathers about their support payments. In the SIPP survey, for example, non-custodial fathers are asked how much they pay in child support, but, unfortunately, not how much they are supposed to pay.

We would like to understand the non-custodial father's ability and/or willingness to pay child support. Generally, non-custodial fathers report paying more in support for their children than custodial mothers report receiving. Perhaps case studies or national surveys that allow the matching of at least a small number of parents' responses (e.g., NLS-72, the National Survey of Children, and the Consumer Expenditure Survey) can provide some information.

2. *Products.* The applicant should present a schedule for delivery of interim progress reports and a final report. For any project which significantly enhances a data base in the course of the work, a well-documented public use file should also be prepared.

3. *Potential users.* Potential users of the research include policy makers at Federal, State, and local levels of government, as well as professionals in social services, demography, economics, sociology, social work, and related fields. Because many of those who will be interested in this research lack

* Much of this discussion is taken from Part II of the "Development of Guidelines for Child Support Orders: Advisory Panel Recommendations and Final Report." Part II was prepared by Robert Williams for grant No. 18-P-20003 given to the National Center for State Courts by the Office of Child Support Enforcement, U.S. Department of Health and Human Services, to the National Center for State Courts. A copy of the final report is available from the ASPE Policy Information Center, Room 438-F, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or by calling Carolyn Solomon at 202-245-6445.

advanced technical training, it is important that the results of projects be presented in a fashion accessible to such an audience. This will involve the submission of a separate, non-technical executive summary.

4. *Types of projects excluded.* In consideration of the intent of this announcement, applications concentrating on narrow programmatic or policy issues, or not directed to concerns of national interest, will not be considered for funding.

In addition, this announcement seeks empirical analyses founded on a sound theoretical bases. Applications that are limited to theoretical development, or involve new demonstrations will not be considered.

5. *Content and organization of the applications.* The application must begin with a cover sheet, followed by the required application forms, and an abstract of the application (of not more than two pages). Failure to include the abstract may result in delays in processing the application. Each application should include a discussion of the relevant literature, a description of the models to be analyzed, the data sources to be used, and the methodologies proposed to test the models. Resumes of staff should be included, as should a full budget and a schedule of tasks for the proposed projects.

B. Applicable Regulations

1. "Grants Programs Administered by the Office of the Assistant Secretary for Planning and Evaluation" (45 CFR Part 63), *Code of Federal Regulations*, revised October 1, 1987.

2. "Administration of Grants" (45 CFR Part 74), *Code of Federal Regulations*, revised October 1, 1987.

C. Effective Date and Duration

1. The grants awarded pursuant to this announcement are expected to be made in September and October 1989; however some may be made subsequent to this date.

2. In order to avoid unnecessary delays in the preparation and receipt of applications, this notice is effective immediately. The closing dates for applications are specified in Section F and G below.

3. It is expected that projects will be completed within a twelve- to eighteen-month period. Longer projects will not be considered.

D. Statement of Funds Available

1. \$200,000 has been allocated for grants as a result of this announcement. \$100,000 is to be awarded in Fiscal Year 1989, which ends September 30, 1989,

and \$100,000 is to be awarded in Fiscal Year 1990, which begins October 1, 1989. Applications may be for any amount, but it is expected that most awards will be for single projects of no more than \$75,000, though projects proposing major data collection will not be limited to \$75,000.

Applicants are encouraged to seek additional funds from other sources for this project. Applicants should discuss any commitments, plans, or hopes for additional funds, including size and sources, in their application. When it is judged that successful completion of a proposed project depends on outside funding, this office's funding commitment will be made contingent on complete demonstration of that outside funding.

2. Funds may be obligated fully at the time of award of these grants or incrementally.

3. The government reserves the right to select for funding more than one application in a given priority area. Further, the selection of the priority areas from the entire set for which awards will be made, will be made in accordance with the quality of all proposals received. However, nothing in this application should be construed as committing the Assistant Secretary to make any awards.

E. Application Processing

1. Applications will be screened initially for relevance to the needs defined in section A (as well as additional areas of interest persuasively shown to be relevant by the applicant). If judged relevant, the application will then be reviewed by a government review panel, possibly augmented by outside experts. Three (3) copies of each application are required. Applicants are encouraged to send an additional seven (7) copies of their application to ease processing, but applicants will not be penalized if these extra copies are not included. Applicants should clearly indicate on their cover sheet into which of the priority topics listed above their application falls, or if none, indicate "OTHER".

2. Applications will be judged as to eligibility, quality, and relevance, according to the criteria set forth in item 5 of this section.

3. An unacceptable rating on any individual criterion may render the application unacceptable. Consequently, applicants should take care to ensure that all criteria are fully addressed in the application.

4. Applications should be as brief and concise as is consistent with the informational requirements of the reviewers. Applications should be

limited to 25 doubled-spaced typed pages, exclusive of forms, abstract, resumes, and proposed budget; they should neither be unduly elaborate nor contain voluminous supporting documentation.

5. *Criteria for Evaluation.* Evaluation of applications will employ the following criteria. The relative weights are shown in parentheses.

a. *Usefulness.* The potential usefulness of the objectives and anticipated results of the proposed project for providing individuals and organizations concerned with the issues discussed in section A above with improved bases for making decisions about these issues. The potential usefulness of the proposed project for the advancement of science. (25 points)

b. *Clarity and Understanding.* Understanding and knowledge of prior work in the area. The cost effectiveness of the proposal and the clarity of statement of objectives, methods, and anticipated results. (15 points)

c. *Research Design.* The appropriateness and soundness of methodology (which may include an interdisciplinary approach), including overall research design, statistical techniques, modeling strategies, choice of data, and other proposed procedures. Probability of successful completion of the study. (40 points)

d. *Experience and Qualifications of Personnel.* Principal Investigator's and other key staff's experience in this or related areas and indications of innovative approaches and creative potential. Indication of the ability of key staff to produce publishable quality reports or articles. (20 points)

F. Applications Sent by Mail

Applications may be sent by either the U.S. Postal Service or a commercial carrier. Applications sent by U.S. Postal Service will be considered to be received on time by the Grants Officer if the application was sent by first class, registered or certified mail not later than July 21, 1989, as evidenced by the U.S. Postal Service postmark on the wrapper or envelope, or on the original receipt from the U.S. Postal Service. Applications sent by a commercial carrier will be considered to be received on time by the Grants Officer if sent not later than July 21, 1989, as evidenced by a receipt from the commercial carrier.

G. Hand-Delivered Applications

An application to be hand-delivered must be taken to the Grants Officer at the address listed in section I of this announcement. Hand-delivered applications will be accepted daily

between 9:00 am and 4:30 pm, Washington, DC time, except Saturdays, Sundays, or Federal holidays. Applications will not be accepted after close-of-business on July 24, 1989.

H. Disposition of Applications

1. *Approval, disapproval, or deferral.* On the basis of the review of the application, the Assistant Secretary will either (a) approve the application as a whole or in part; (b) disapprove the application; or (c) defer action on the application for such reasons as lack of funds or a need for further review.

2. *Notification of disposition.* The Assistant Secretary will notify the applicants of the disposition of their application. A signed notification of grant award will be issued to the contact person listed on the checklist of the application.

I. Application Instructions and Forms

Copies of applications should be requested from and submitted to: Grants Officer, Office of the Assistant Secretary for Planning and Evaluation, Department of Health and Human Services, 200 Independence Avenue, SW., Room 426F, Hubert H. Humphrey Building, Washington, DC 20201. Phone (202) 245-1794. Questions concerning the preceding information should be submitted to the Grants Officer at the same address. Neither questions nor requests for application should be submitted after July 7, 1989.

*Important—*Application for Federal Assistance (Standard Form 424) must be the new form revised 4/88.

J. Federal Domestic Assistance Catalog

This announcement is not listed in the Federal Domestic Assistance Catalog.

K. Intergovernmental Review of Federal Programs

This program is not subject to Executive Order 12372, "Intergovernmental Review of Federal Programs" or its implementing regulations 45 CFR Part 100.

L. Cost Sharing

All applicants responding to this notice are required to share some part of the total cost of their proposed project. The amount to be shared is to be determined by the organization submitting the application. Applications received without some amount of cost sharing will not be considered for award.

Date: May 25, 1989.

[FR Doc. 89-13422 Filed 6-6-89; 8:45 am]

BILLING CODE 4150-04-M

Centers for Disease Control

[Announcement No. 937]

National Institute for Occupational Safety and Health; Grants for Education Programs in Occupational Safety and Health

Introduction

The National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC), announces the availability of funds in Fiscal Year 1989 for training grants in occupational safety and health.

Authority

This program is authorized under section 21(a)(1) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670(a)(1)). Regulations applicable to this program are in Part 86, "Grants for Education Programs in Occupational Safety and Health," of Title 42, Code of Federal Regulations (42 CFR Part 86).

Objectives

The objective of this grant program is to award funds to eligible institutions or agencies to pay part or all of the costs of the combinations of long-term and short-term training activities in occupational safety and health.

Eligible Applicants

Any public or private educational or training agency or institution located in a State, the District of Columbia, or U.S. Territories, is eligible to apply for a grant.

Availability of Funds and Recipient Activities

Funds in the total amount of \$10,455,000 will be available in Fiscal Year 1989. Approximately \$8,995,000 of the total funds available will be utilized as follows:

1. To award approximately 14 new, renewal and continuation Educational Resource Center (ERC) training grants ranging from approximately \$400,000 to \$800,000 with the average award being approximately \$600,000 (for specific activities refer to Federal Register Announcement, 51 FR 32963, September 1986);

2. To award approximately 25 new, renewal or continuation long-term training grants ranging from approximately \$10,000 to \$500,000 with the average award being \$50,000 to support academic programs in the fields of industrial hygiene, occupational health nursing, occupational/industrial medicine, and occupational safety (for specific activities refer to Federal

Register Announcement, 52 FR 3172, 1987); and

3. To conduct the peer review and evaluations of all new, competing renewal and supplemental applications received.

Awards will be made for a 1- to 5-year project period with an annual budget period. Funding estimates may vary and are subject to change. Continuation awards within the project period will be made on the basis of satisfactory progress and the availability of funds.

In addition, \$1,100,000 of the total funds available will be awarded to Educational Resource Centers to support research training programs (for specific activities refer to Federal Register Announcement, 51 FR 32963, September 17, 1986). Program support is available for faculty, staff, student support, and other resources to train teachers and researchers in the various occupational safety and health disciplines.

Approximately \$360,000 of the total funds available will be awarded to Educational Resource Centers to support the development and presentation of continuing education and short courses for professionals engaged in the management of hazardous substances. These funds were provided to NIOSH through an Interagency Agreement with the National Institute for Environmental Health Sciences as authorized by section 209(b) of the Superfund Amendments and Reauthorization Act (SARA) of 1986 (100 ST 1708-1710). The hazardous substance training funds are being used to supplement previous hazardous substance continuing education grant support provided to the ERC's in FY 1984 and 1985 under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) of 1980 for the ERC continuing education program (for specific activities refer to the Federal Register, 51 FR 32963, September 17, 1986). Program support is available for faculty, staff, and other resources to provide occupational safety and health training to practicing professionals in State and local health and environmental agencies and other professional personnel engaged in the evaluation, management, and handling of hazardous substances. The policies regarding project periods also apply to these activities.

Review and Evaluation Criteria

In reviewing long-term training grant applications, consideration will be given to:

1. The need for training in the program area outlined by the application. This

should include documentation of ability and a plan for student recruitment, projected enrollment, job opportunities, regional/national need both in quality and quantity, and similar programs, if any within the geographic area.

2. The potential contribution of the project toward meeting the needs for graduate or specialized training in occupational safety and health.

3. Curriculum content and design which should include formalized program objectives, minimal course content to achieve certificate or degree, course sequence, related courses open to students, time devoted to lecture, laboratory and field experience, nature and the interrelationship of these educational approaches.

4. Previous records of training in this or related areas, including placement of graduates.

5. Methods proposed to evaluate effectiveness of the training.

6. The degree of institutional commitment: is grant support necessary for program initiation or continuation? Will support gradually be assumed? Is there related instruction that will go on with or without the grant?

7. Adequacy of facilities (classrooms, laboratories, library services, books, and journal holdings relevant to the program, and access to appropriate occupational settings).

8. The competence, experience, training, time commitment to the program and availability of faculty to advise students; faculty/student ratio; and teaching loads of the program director and teaching faculty in relation to the type and scope of training involved.

9. Admission Requirements: Student selection standards and procedures, student performance standards and student counseling services.

10. Advisory Committee (if established): Membership, industries and labor groups represented; how often they meet; who they advise, role in designing curriculum and establishing program need.

In reviewing ERC grant applications, consideration will be given to:

1. Evidence of a needs assessment directed to the overall contribution of the training program toward meeting the job market, especially within the applicant's region, for qualified personnel to carry out the purposes of the Occupational Safety and Health Act of 1970. The needs assessment should consider the regional requirements for outreach, continuing education, information dissemination and special industrial or community training needs that may be peculiar to the region.

2. Evidence of a plan to satisfy the regional needs for training in the areas outlined by the application, including projected enrollment, recruitment and current workforce populations. The need for supporting students in allied disciplines must be specifically justified in terms of user community requirements.

3. The extent to which arrangements for day-to-day management, allocation of funds and cooperative arrangements are designed to effectively achieve *Characteristics of an Educational Resource Center* (Program Announcement 51 FR 32964, September 17, 1986).

4. The extent to which curriculum content and design includes formalized training objectives, minimal course content to achieve certificate or degree, course descriptions, course sequence, additional related courses open to occupational safety and health students, time devoted to lecture, laboratory and field experience, and the nature of specific field and clinical experiences including their relationships with didactic programs in the educational process.

5. Previous record of academic training including the number of full-time and part-time students and graduates for each core program, the placement of graduates, employment history, and their current location by type of institution (academic, industry, labor, etc.). Previous record of continuing education training in each discipline and record of outreach activity and assistance to groups within the ERC region.

6. Methods in use or proposed for evaluating the effectiveness of training and services including the use of placement services and feedback mechanisms from graduates as well as employers, critiques from continuing education courses, and reports from consultations and cooperative activities with other universities, professional associations, and other outside agencies.

7. The competence, experience and training of the Center Director, the Deputy Center Director, the Program Directors and other professional staff in relation to the type and scope of training and education involved.

8. Institutional commitment to Center goals.

9. Academic and physical environment in which the training will be conducted, including access to appropriate occupational settings.

10. Appropriateness of the budget required to support each academic component of the ERC program, including a separate budget for the

academic staff's time and effort in continuing education and outreach.

11. Evidence of a plan describing the research and research training the Center proposes. This shall include goals, elements of the program, research faculty and amount of effort, support faculty, facilities and equipment available and needed, and methods for implementing and evaluating the program.

12. Evidence of success in attaining outside support to supplement the ERC grant funds including other federal grants, support from states and other public agencies, and support from the private sector including grants from foundations and corporate endowments, chairs, and gifts.

Application Submission and Deadline

Application forms for new, competing renewal, or supplemental applications may be obtained from: Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road NE., Room 300, Atlanta, GA 30305.

Applications should be clearly identified as an application for an Occupational Safety and Health Long-Term Training Project Grant or ERC Training Grant. The submission schedule is as follows:

New, Competing Continuation and Supplemental Receipt Date: September 1.

An original and six (6) copies of new, competing continuation and supplemental applications should be submitted to: Henry S. Cassell, III, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Atlanta, GA 30305.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on/or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group.

(Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Non-Competing Continuation Receipt Date: November 15.

An original and two (2) copies of non-competing continuation applications should be submitted to: Henry S.

Cassell, III, Grants Management Officer, Procurement and Grants Office, Centers for Disease Control, Procurement and Grants Office, 255 East Paces Ferry Road NE., Room 300, Atlanta, GA 30305.

Catalog of Federal Domestic Assistance Number

This program is described in the Catalog of Federal Domestic Assistance Program No.13.263, Occupational Safety and Health Training Grants.

E.O. 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Information

Information on application procedures, copies of application forms, and other material may be obtained from Lisa G. Tamaroff, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road NE., Room 300, Atlanta, Georgia 30305, telephone (404) 842-6796.

Please refer to Announcement Number 937 when requesting information regarding this program.

Technical assistance may be obtained from John Talty, Chief, Educational Resource Development Branch, Division of Training and Manpower Development, National Institute for Occupational Safety and Health, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226, telephone (513) 533-8241.

Dated: June 1, 1989.

Larry W. Sparks,
Acting Director, National Institute for Occupational Safety and Health.

[FR Doc. 89-13441 Filed 6-6-89; 8:45 am]
BILLING CODE 4160-19-M

Food and Drug Administration

[Docket No. 89F-0156]

Alunique S.A.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Alunique S.A. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of the following additives as components of lubricants used in the

manufacture of metallic articles for food-contact use:

- (a) *N,N*-di(2-hydroxyethyl)butylamine
- (b) Bis(hydrogenated tallow-alkyl) aminoethanol
- (c) Isotridecyl alcohol, ethoxylated
- (d) Bis(hydrogenated tallow-alkyl)amine
- (e) Diethyleneglycol monobutylether

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4145) has been filed by Alunique S.A., 56 Grand Rue, CH 1700 Fribourg, Switzerland, proposing that § 178.3910 *Surface lubricants used in the manufacture of metallic articles* (21 CFR 178.3910) be amended to provide for the safe use of the following additives as components of lubricants in the manufacture of metallic articles for food-contact use:

- (a) *N,N*-di(2-hydroxyethyl)butylamine
- (b) Bis(hydrogenated tallow-alkyl) aminoethanol
- (c) Isotridecyl alcohol, ethoxylated
- (d) Bis(hydrogenated tallow-alkyl)amine
- (e) Diethyleneglycol monobutylether

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated: May 30, 1989.

Fred R. Shank,
Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-13445 Filed 6-6-89; 8:45 am]
BILLING CODE 4160-01-M

[Docket No. 89F-0178]

Sequa Chemicals; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Sequa Chemicals has filed a petition proposing that the food additive regulations be amended to provide for the increased use of ethanedial, polymer with tetrahydro-4-hydroxy-5-methyl-

2(1H) pyrimidinone, propoxylated as an insolubilizer for starch-based coatings in the production of paper and paperboard.

FOR FURTHER INFORMATION CONTACT: Gillian Robert-Baldo, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4134) has been filed by Sequa Chemicals, One Sequa Dr., Chester, SC 29706-0070, proposing that § 178.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 178.170) be amended to provide for the increased use of ethanedial, polymer with tetrahydro-4-hydroxy-5-methyl-2(1H) pyrimidinone, propoxylated as an insolubilizer for starch-based coatings in the production of paper and paperboard.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated: May 26, 1989.

Fred R. Shank,
Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-13414 Filed 6-6-89; 8:45 am]
BILLING CODE 4160-01-M

Food And Drug Administration

[Docket No. 89F-0179]

Uniroyal Chemical Co., Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Uniroyal Chemical Co., Inc. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of 4,4'-bis[α, α'-dimethylbenzyl]diphenylamine as an antioxidant for polypropylene intended for food-contact use.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFF-335), Food and

BEST COPY AVAILABLE

Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5890.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 7B4019) has been filed by Uniroyal Chemical Co., Inc., World Headquarters, Middlebury, CT 06749, proposing that § 178.2010 *Antioxidants and/or stabilizers for polymers* (21 CFR 178.2010) be amended to provide for the safe use of 4,4'-bis(α , α' -dimethylbenzyl)diphenylamine as an antioxidant for polypropylene intended for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: May 30, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-13448 Filed 6-6-89; 8:45 am]

BILLING CODE 4160-01-M

Food and Drug Administration

[Docket No. 89M-0170]

Meadox Medicals, Inc.; Premarket Approval of the Microvel® Double Velour Graft With Hemashield®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Meadox Medicals, Inc., Oakland, NJ, for premarket approval under the Medical Device Amendments of 1976, of the Microvel® Double Velour Graft with Hemashield®. After reviewing the recommendation of the Circulatory System Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of April 26, 1989, of the approval of the application.

DATE: Petitions for administrative review by July 7, 1989.

ADDRESS: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA-305), Food and Drug

Administration, Rm. 4-82, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Lisa M. Kennell, Center for Devices and Radiological Health (HFZ-450), Food and Drug Administration, 8757 Georgia Ave., Silver Spring, MD 20910, 301-427-7559.

SUPPLEMENTARY INFORMATION: On February 25, 1988, Meadox Medicals, Inc., Oakland, NJ 07436, submitted to CDRH an application for premarket approval of the Microvel® Double Velour Graft with Hemashield®. The graft is indicated for replacement or repair of arteries affected with either occlusive or aneurysmal disease. The graft is not indicated for use as a coronary artery replacement, arteriovenous access device, or patch material.

On November 28, 1988, the Circulatory System Devices Panel, an FDA advisory committee, reviewed and recommended approval of the application. On April 26, 1989, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

A copy of all approval labeling is available for public inspection at CDRH—contact Lisa M. Kennell (HFZ-450), address above.

Opportunity for Administrative Review

Section 515(d)(3) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under Part 12 (21 CFR Part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing

the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the Federal Register. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before July 7, 1989, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h), 90 Stat. 554-555, 571 (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Devices and Radiological Health (21 CFR 5.53).

Dated: May 30, 1989.

Walter E. Gundaker,

Acting Deputy Director, Center for Devices and Radiological Health.

[FR Doc. 89-13415 Filed 6-6-89; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Meeting of the Biomedical Research Support Subcommittee of the General Research Support Review Committee

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Biomedical Research Support Subcommittee (BRS) of the General Research Support Review Committee (GRSRC), Division of Research Resources (DRR), National Institutes of Health, June 21, 1989, Building 31A, Conference Room 3, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on June 21, from 9:30 a.m. to adjournment to discuss program policies and options concerning the Biomedical Research Support Grant Program. Attendance by the public will be limited to space available.

Mr. Michale Fluharty, Public Affairs Specialist, DRR, Westwood Building, Room 857, 5333 Westbard Avenue, Bethesda, Maryland 20892, (301) 496-5545, will provide a summary of the meeting and a roster of the Subcommittee members upon request.

Dr. John A. Beisler, Executive Secretary, Biomedical Research Support Subcommittee of the General Research Support Review Committee, (301) 496-6743, will furnish substantive program information upon request, and will receive any comments pertaining to this announcement.

(Catalogues of Federal Domestic Assistance Program No. 13.337, Biomedical Research Support, National Institutes of Health).

Dated: June 5, 1989.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 89-13648 Filed 6-6-89; 8:45 am]

BILLING CODE 4160-01-M

Public Health Service

National Institutes of Health; Statement of Organization, Functions, and Delegations of Authority

Part H. Chapter HN (National Institutes of Health) of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (40 FR 22859, May 27, 1975), as amended most recently at 54 FR 11080, March 16, 1989, is amended to reflect the changes indicated below in the titles of the programs of the National Institute of Allergy and Infectious Diseases (NIAID) (HNM). These changes will more clearly reflect the organizations' reporting relationship to the Director, NIAID.

Section HN-B, Organization and Functions is amended by retitling the following programs as indicated:

(1) Under the heading *National Institute of Allergy and Infectious Diseases (HNM)*:

Former Title	Revised Title
Intramural Research Program (HNM-2).	Division of Intramural Research (HNM2)
Acquired Immunodeficiency Syndrome Program (HNM-3).	Division of Acquired Immunodeficiency Syndrome (HNM3)
Microbiology and Infectious Diseases Program (HNM-5).	Division of Microbiology and Infectious Diseases (HNM5)
Allergy, Immunology and Transplantation Program (HNM-6).	Division of Allergy, Immunology and Transplantation (HNM6)
Extramural Activities Program (HNM-7).	Division of Extramural Activities (HNM7)

Date: May 26, 1989.

Wilford J. Forbush,

Director, Office of Management, PHS.

[FR Doc. 89-13487 Filed 6-6-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration; Statement of Organization, Functions and Delegations of Authority

Part H, Chapter HB (Health Resources and Services Administration) of the Statement of Organization, Functions and Delegations of Authority of the Department of Health and Human Services (47 FR 38418-24, August 31, 1982 as amended most recently at 54 FR 19238-39, May 4, 1989) is amended to reflect the establishment of the Division of Quality Assurance and Liability Management, Bureau of Health Professions, within the Health Resources and Services Administration. Under HB-10, Organization and Functions, amend the following functional statements within HRSA.

1. Under the *Bureau of Health Professions (HBP1)* add the following after the functional statement for *Division of Disadvantaged Assistance (HBP6)*:

Division of Quality Assurance and Liability Management (HBP7). Serves as the focal point within the Public Health Service (PHS) for medical, dental, nursing and other health professions' quality assurance efforts and holds lead responsibility for Departmental activities related to the National Vaccine Injury Compensation Program. Works in coordination with PHS Agencies, the Department and other Federal entities, State licensing boards, and national, State and local professional organizations.

Specifically: (1) Proposes PHS guidelines for (a) credentials assessment, granting of privileges, and monitoring and evaluation programs for physicians, dentists, and other health care professionals, (b) professional review of specified medical events in the health care system, and (c) risk management and utilization reviews; (2) collaborates with the public and private sectors regarding quality assurance and risk management issues; (3) participates with the entities involved with competency assurance activities; (4) encourages evaluation and demonstration projects and research concerning quality assurance, medical liability and malpractice; (5) upon request, provides technical assistance to States undertaking malpractice reform; (6) provides staff to and coordinates the activities of the PHS Interagency Advisory Council on Quality Assurance and Risk Management; (7) provides executive secretariat services for the Advisory Commission on Childhood Vaccines; (8) undertakes other quality assurance and risk management development efforts; (9) administers the

National Practitioner Data Bank as authorized under Title IV of the Health Care Quality Improvement Act of 1986 and section 5 of the Medicare and Medicaid Patient and Program Protection Act of 1987; (10) evaluates petitions for compensation under the National Vaccine Injury Compensation Program (NVICP) through a medical review and assessment of compensability for all complete claim files; (11) tracks awards for compensation under the NVICP; and (12) proposes revisions to the Vaccine Injury Table.

Date: May 25, 1989.

Wilford J. Forbush,

Director, Office of Management.

[FR Doc. 89-13488 Filed 6-6-89; 8:45 am]

BILLING CODE 4160-15-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*)

Applicant: Priour Brothers Ranch, Ingram, TX, PRT-707102

The applicant requests an amendment to their existing permit to cull excess male captive-bred Eld's deer (*Cervus eldi*) via sport-hunting for the purpose of continued maintenance of the herd and thereby enhancement of survival of the species. The applicant is already authorized to cull barasingha (*Cervus duvauceli*) and red lechwe (*Kobus leche*) via sport-hunting. Animals are to be hunted by both U.S. and foreign citizens. Export authorization, is therefore, also requested.

Applicant: Priour Brothers Ranch, Ingram, TX, PRT-738109

The applicant requests a permit to export the shoulder and head mount of one male barasingha (*Cervus duvauceli*), culled from applicant's captive herd, as authorized under PRT-707102. Trophy to be exported to Mr. Arnold Alward, New Brunswick, Canada.

Applicant: Hawthorn Corporation, Grayslake, IL, PRT-738103

The applicant requests a permit to import 2 male and 4 female captive born tigers (*Panthera tigris*) from Japan. These tigers are the progeny of applicant's own tigers currently on tour in Japan. The tigers will be imported for

purposes of exhibition and captive breeding. In the future, the applicant will export and reimpost these animals for the same purposes.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 432, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203-3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: May 30, 1989.

Karen S. Willson,

Acting Chief, Branch of Permits, U.S. Office of Management Authority.

[FR Doc. 89-13527 Filed 6-6-89; 8:45 am]

BILLING CODE 4310-AM-M

Bureau of Indian Affairs

Ranking of Applicants for Planning of New Institutes

ACTION: Notice of ranking.

SUMMARY: This notice is published to inform all Tribal applicants of the ranking for Planning of New Institutions (PONI) requests for construction and/or renovations of detention facilities in Indian country. The notice requesting applications was published in the *Federal Register* on December 9, 1988 (Vol. 53, No. 237, page 49796).

Thirty-seven (37) applications were received, four of which were not graded since they were postmarked after the established deadline of February 13, 1989.

Two other applications were not graded because they had already completed PONI programs. These two applications will be maintained at the Division of Law Enforcement Services Office until the 1989 PONI programs have been completed. Following that they will be in competitive status with the other applicants for the 1989 construction/renovation selection. Thirty-one applicants were received and evaluated by a five member committee with representation from Bureau of Indian Affairs, Division of Law Enforcement Services, Division of Drug, Alcohol and Substance Abuse, and the Branch of Judicial Services.

The thirty-one applications were scored by each of the five committee

members based upon established criteria and point values. The individual criteria scores were then accumulated, totaled and averaged. The results of this evaluation process are as follows:

Ranking and Applicant's Name

1. Sac and Fox Nation of Oklahoma
2. Ute Mountain Ute Tribe
3. Gila River Indian Community
4. Salt River Pima/Maricopa Indian Community
5. Colville Confederated Tribes
6. Confederated Tribes of the Umatilla Indians
7. Eight Northern Pueblos
8. San Carlos Apache Tribe
9. Three Affiliated Tribes of Fort Berthold
10. Mississippi Band of Choctaw Indians
11. Blackfeet Nation
12. Mescalero Apache Tribe
13. Spokane Tribe of Indians
14. Pascua Yaqui Tribe
15. Native Village of Kotzebue
16. Mille Lacs Band of Chippewa Indians
17. Lower Brule Sioux Tribe
18. Fort Mojave Tribe
19. Oglala Sioux Tribe
20. Navajo Nation—Shiprock
21. Shoshone and Arapaho Tribes
22. Colorado River Indian Tribes
23. Devil's Lake Sioux Tribe
24. Navajo Nation—Crownpoint
25. Navajo Nation—Chinle
26. Confederated Salish and Kootenai Tribes
27. Navajo Nation—Fort Defiance
28. Fort Belknap Agency
29. Cocopah Indian Tribe
30. Navajo Nation—Tuba City
31. Reno Sparks Indian Colony

FOR FURTHER INFORMATION CONTACT:

Mr. Warren LeBeau, Staff Assistant Detention, Division of Law Enforcement Services, Marana, Arizona, (602) 629-5406 or Mr. Robert Montoya, Facility Management and Construction Center, (505) 766-2846.

W.P. Ragsdale,

Assistant Secretary—Indian Affairs.

[FR Doc. 89-13413 Filed 6-6-89; 8:45 am]

BILLING CODE 4310-02-M

Bureau of Land Management

[ID-020-09-4410-08]

Burley District Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Meeting for Burley District Advisory Council.

SUMMARY: Notice is hereby given that the Burley District Advisory Council will

meet on July 19, 1989. The meeting will convene at 9:30 a.m. in the Conference Room of the Bureau of Land Management Office at 200 South Oakley Highway, Burley, Idaho.

Agenda items are: (1) Reorganization of the Council, (2) AD HOC Committee report on unauthorized dumping on public lands, (3) Wildlife programs in Idaho, (4) Broom snakeweed infestation update, (5) Noranda mining proposal update, and (6) Status of the deer feeding program. A field tour will leave the District Office at 1:30 p.m. and return at 4:00 p.m.

This meeting is open to the general public. The comment period for persons or organizations wishing to make oral statements to the Council will start at 11:30 a.m. Anyone wishing to make an oral statement should notify the District Manager, Bureau of Land Management, Route 3, Box 1, Burley, Idaho 83318, prior to the start of the meeting. Depending upon the number of persons wishing to make statements, a per time limit may be established by the District Manager. Written statements may also be filed. Individuals wishing to attend the field tour must provide their own transportation.

Minutes of the Council meeting will be maintained in the District Office and will be available for the public inspection during regular business hours.

DATE: July 19, 1989.

ADDRESS: Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT:

Gerald L. Quinn, Burley District Manager, (208) 678-5514.

Dated: May 30, 1989.

Gerald L. Quinn,

District Manager.

[FR Doc. 89-13453 Filed 6-6-89; 8:45 am]

BILLING CODE 4310-GG-M

[WY-010-09-4332-04]

Boundary Modification for the Cedar Mountain Wilderness Study Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Boundary Modification for the Cedar Mountain Wilderness Study Area (WY-010-222).

SUMMARY: Notice is hereby given that effective immediately, the boundary of the Cedar Mountain Wilderness Study Area (WY-010-222) has been modified (due to availability of new information) to exclude approximately 10 acres of public lands not meeting the minimum

mandatory wilderness characteristics. The location of the boundary modification is Sixth Principal Meridian, Washakie County, Wyoming T. 45 N., R. 94 W., Sections 15 and 22. A portion of these lands have been irrigated (prior to FLPMA) for cropland and are in agricultural trespass. The revised boundary description narrative would be changed from:

"* * * then east to the center of Section 21; then north to the east bank of the Big Horn River; then northeasterly along the east bank to the south line, NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 21; then east along that line to the east line of Section 21; then north to the NE corner of Section 21; then east and north along the property line between public and private lands in Section 15 to the center of the east line of Section 15; * * *

to:

"* * * then east to the center of Section 21; then north to the east bank of the Big Horn River; then northeasterly along the east bank to the south line, NE $\frac{1}{4}$ NE $\frac{1}{4}$, Section 21, then east along that line to the east line of Section 21; then north along the east line of Section 21 to the Muirhead allotment boundary fence. Then north easterly along the Muirhead allotment boundary fence (which is the lower edge of the native range) to the property line between public and private lands in Lot 10 (SW $\frac{1}{4}$ SW $\frac{1}{4}$) of Section 15; then east and north along the property line between public and private lands in Section 15 to the Muirhead allotment boundary fence. Then north easterly along the Muirhead allotment boundary fence (which is the lower edge of the native range) to the property line between public and private lands in Lot 9 (SE $\frac{1}{4}$ NW $\frac{1}{4}$) of Section 15; then east along that line to the center of the east line of Section 15; Sixth Principal Meridian, Washakie County, Wyoming. * * *

This boundary modification of the Cedar Mountain WSA (WY-010-222) will result in a small change in the WSA's size from 21,570 acres to 21,560 acres. Detailed maps of this boundary change are available in the Washakie Resource Area Office, Worland District, Wyoming.

EFFECTIVE DATE: June 7, 1989. This boundary modification will remain in effect for as long as the Cedar Mountain WSA remains in wilderness study area status.

FOR FURTHER INFORMATION CONTACT: Mark E. Goldbach, District Outdoor Recreation Planner, Worland District Office, Bureau of Land Management, P.O. Box 119, Worland, Wyoming 82401, telephone 307-347-9871.

Ray Brubaker,

State Director.

[FR Doc. 89-13452 Filed 6-6-89; 8:45 am]

BILLING CODE 4310-22-M

Minerals Management Service

Development Operations Coordination Document

AGENCY: Minerals Management Service.

ACTION: Notice of the Receipt of a Proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Falcon Offshore Operating Company has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 5183, Block 236, West Cameron Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Sabine Pass, Texas.

DATE: The subject DOCD was deemed submitted on May 25, 1989. Comments must be received within 15 days of the publication date of this Notice or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT:

Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 736-2867.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to Section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of the CFR, that the Coastal Management Section/Louisiana Department of

Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Dated: May 30, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-13454 Filed 6-6-89; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-299]

Certain Food Treatment Ovens, Component Parts Thereof and Processes Carried Out Therein; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on May 3, 1989, under section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), on behalf of Heat and Control, Inc., 225 Shaw Road, S. San Francisco, California 94060. The complaint was supplemented on May 19, and May 23, 1989. The complaint, as supplemented, alleged violations of section 337 in the importation into the United States, the sale for importation, and the use within the United States after importation of certain food treatment ovens, component parts thereof and processes carried out therein, by reason of alleged direct and induced infringement of (1) claims 1 through 7 of U.S. Letters Patent 3,947,241 and (2) claims 1, 3, 4 and 11 through 13 of U.S. Letters Patent 4,167,585; and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a full investigation, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained

therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Room 112, Washington, DC 20438, telephone 202-252-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810.

FOR FURTHER INFORMATION CONTACT: Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-252-1580.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988).

Scope of Investigation: Having considered the complaint, the U.S. International Trade Commission, on June 1, 1989, ORDERED THAT—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of the section 337(1) in the importation into the United States, the sale for importation, or the sale within the United States after importation, of certain food treatment ovens or component parts thereof, by reason of alleged direct or induced infringement of claims 1, 2, 3, 4, 5, 6 or 7 of U.S. Letters Patent 3,947,241, or (2) in the use of food treatment ovens within the United States, after importation, to carry out processes, by reason of alleged direct or induced infringement of claims 1, 3, 4, 11, 12 or 13 of U.S. Letters Patent 4,167,585, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—
Heat and Control, Inc., 225 Shaw Road, S. San Francisco, California 94080.

(b) The respondents are the following companies, alleged to be in violation of section 337, and are, the parties upon which the complaint is to be, served:

Koppens Machinefabriek B.V.,
Beekakker 11—pb, 5760 AA, Bakel, Netherlands.

Koppens Industries, Inc., 1625 S/T Rock Mountain Boulevard, P.O. Box 1599, Stone Mountain, Georgia 30086.

(c) Jeffrey R. Whieldon, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., Room 401E, Washington,

DC 20438, shall be the Commission investigative attorney, party to this investigation; and,

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 53 FR 33034, 33057 (Aug. 29, 1988). Pursuant to sections 201.16(d) and 210.21(a) of the Commission's Rules (19 CFR 201.16(d) and 53 FR 33034, 33057 (Aug. 29, 1988)), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: June 1, 1989.

(FR Doc. 89-13489 Filed 6-6-89; 8:45 am)

BILLING CODE 7020-02-M

[Investigation No. 701-TA-293 (Final) and Investigations Nos. 731-TA-412 Through 419 (Final)]

Industrial Belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany

Determinations

On the bases of the record¹ developed in its countervailing duty

¹ The record is defined in section 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)).

investigation, the Commission determines,² pursuant to section 705(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b)) (the act), that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports from Israel of industrial belts³ that have been found by the Department of Commerce to be subsidized by the Government of Israel.

On the basis of the record developed in its antidumping investigations, the Commission has made its determinations with respect to industrial belts, pursuant to section 735(b) of the Act (19 U.S.C. 1673d(b)). In the tabulation of the Commission's determinations which follows, a determination of "affirmative" indicates that the Commission determines that an industry in the United States is materially injured, or threatened with material injury, by reason of imports of the following products which have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV):⁴

Country	Investigation No.	Product	Determination
Israel	731-TA-412 (Final).	V-belts ¹	Negative. ²
		Synchronous belts ²	Negative. ²

² Commissioners Eckes and Newquist dissenting.

³ The products covered by these investigations are industrial belts and components and parts thereof, whether cured or uncured, currently classifiable under Harmonized Tariff Schedule (HTS) subheadings 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00 (formerly provided for under Tariff Schedules of the United States Annotated (TSUSA) items 358.0210, 358.0290, 358.0610, 358.6090, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520).

The merchandise covered by these investigations includes certain industrial belts for power transmission. These include V-belts, synchronous belts, round belts, and flat belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links. These investigations exclude conveyor belts and automobile belts as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

⁴ A determination of "negative" indicates that the Commission determines that an industry in the United States is not materially injured, nor threatened with material injury, nor is the establishment of an industry in the United States materially retarded, by reason of imports of such products.

Country	Investigation No.	Product	Determination
Italy	731-TA-413 (Final).	Other belts ⁴	Negative. ²
		V-belts	Affirmative. ^{5 6 7}
		Synchronous belts	Affirmative. ^{5 6 7}
		Other belts	Negative. ⁴
Japan	731-TA-414 (Final).	V-belts	Affirmative. ^{5 6 7}
		Synchronous belts	Affirmative. ^{5 6 7}
		Other belts	Affirmative. ^{5 6 7}
Singapore	731-TA-415 (Final).	V-belts	Affirmative. ^{5 6 7}
		Synchronous belts	Negative. ²
		Other belts	Negative. ²
South Korea	731-TA-416 (Final).	V-belts	Negative. ²
		Synchronous belts	Negative. ²
		Other belts	Negative. ²
Taiwan	731-TA-417 (Final).	V-belts	Negative. ²
		Synchronous belts	Negative. ²
		Other belts	Negative. ²
United Kingdom	731-TA-418 (Final).	V-belts	Negative. ²
		Synchronous belts	Negative. ²
		Other belts	Negative. ²
West Germany	731-TA-419 (Final).	V-belts	Negative. ²
		Synchronous belts	Negative. ²
		Other belts	Affirmative. ^{5 6 7}

¹ For purposes of these investigations, V-belts are defined as industrial V-belts and components and parts thereof, whether cured or uncured, for use in power transmission, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links, currently classifiable under HTS subheadings 3926.90.55, 4010.10.10, 4010.10.50, 5910.00.10, 5910.00.90, and 7326.20.00 (formerly provided for under TSUSA items 358.0210, 358.0290, 358.0610, 657.2520, and 773.3520).

² Commissioners Eckes and Newquist dissenting.

³ For purposes of these investigations, synchronous belts are defined as industrial synchronous belts and components and parts thereof, whether cured or uncured, for use in power transmission, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links, currently classifiable under HTS subheadings 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.58, 3926.90.59, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00 (formerly provided for under TSUSA items 358.0610, 358.6090, 358.0800,

358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520).

⁴ For purposes of these investigations, other belts are defined as industrial belts and components and parts thereof, other than V-belts and synchronous belts and components and parts thereof, whether cured or uncured, for use in power transmission, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loop) belts, or in belting in lengths or links, currently classifiable under HTS subheadings 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00 (formerly provided for under TSUSA items 358.0610, 358.6090, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510, and 773.3520).

⁵ Chairman Brundage, Vice Chairman Cass, and Commissioner Lodwick dissenting.

⁶ Commissioners Eckes and Newquist determine that an industry in the United States is materially injured by reason of the subject imports. Commissioner Rohr determines that an industry in the United States is threatened with material injury by reason of the subject imports. Commissioner Rohr further determines, pursuant to 19 U.S.C. 1673d(b)(4)(B), that he would not have found material injury but for the suspension of liquidation of entries of the merchandise under investigation.

⁷ Commissioners Eckes, Rohr, and Newquist also determine, pursuant to 19 U.S.C. 1673d(b)(4)(A), that critical circumstances do not exist such that it is necessary to impose the duty retroactively.

⁸ Commissioners Eckes and Newquist dissenting.

Background

Following preliminary determinations by the U.S. Department of Commerce that imports of industrial belts from Israel and South Korea^{5 6} are being subsidized by the Governments of Israel and South Korea and that imports of industrial belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany are being, or are likely to be, sold in the United States at less than fair value (LTFV), the U.S. International Trade Commission, effective December 2, 1988, instituted investigations Nos. 701-TA-293 and 295 (Final) and, effective February 1, 1989, instituted investigations Nos. 731-TA-412 through 419 (Final) under sections 705(b) and 735(b) of the Tariff Act of 1930 (19 U.S.C. 1671d(b) and 1673d(b)) to determine whether an industry in the United States is materially injured or threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports of such merchandise. Notice of the institution of the Commission's final investigations, and of the public hearing to be held in connection therewith, was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission,

Washington, DC, and by publishing the notice in the Federal Register of February 15, 1989 (54 FR 6970). The hearing was held in Washington, DC, on April 27, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on May 31, 1989. The views of the Commission are contained in USITC Publication 2194 (May 1989), entitled "Industrial Belts from Israel, Italy, Japan, Singapore, South Korea, Taiwan, the United Kingdom, and West Germany: Determinations of the Commission in Investigations Nos. 701-TA-293 (Final) and 731-TA-412 through 419 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations."

By Order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: June 1, 1989.

(FR Doc. 89-13490 Filed 6-6-89; 8:45 am)

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1319, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension
Bureau/Office: Bureau of Accounts
Title of Form: Recordkeeping rate-making organizations

OMB Form No.: 3120-0116

Agency Form No.: NA

Frequency: Recordkeeping

Respondents: Surface Transportation

Carriers (when required)

No. of Respondents: 70

Total Burden Hrs.: 140 (average 2

burden hours per rate-making

organization)

Brief Description of the need & proposed use: Carriers are required to produce the necessary records when needed

by the Commission in rate-adjustment proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-13505 Filed 6-6-89; 8:45 am]

BILLING CODE 7530-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50.344]

Portland General Electric Co.; Trojan Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

In the Matter of Portland General Electric Company, The City of Eugene, Oregon, Pacific Power and Light Company.

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-1 issued to Portland General Electric Company, et al., (the licensee), for operation of Trojan Nuclear Plant, located in Columbia County, Oregon.

Environmental Assessment

Identification of Proposed Action

The proposed amendment is a request to amend the Trojan license by a Technical Specification (TS) change that will allow modifications to be made to the Control-Auxiliary-Fuel Building Complex which will result in up to a net three percent increase in lateral shear forces on any story.

The proposed action is in accordance with the licensee's application for amendment dated February 10, 1989.

The Need for the Proposed Action

The proposed amendment would revise TS 5.7.2.2.a to allow modifications to the Control-Auxiliary-Fuel Building Complex (the Complex) which result in up to a net 3 percent increase in lateral shear forces on any story. Trojan Technical Specification 5.7.2 currently provides restrictions on the design provisions of the Complex. One of these restrictions, as stated in TS 5.7.2.2.a, is that no modifications which will result in a net 1 percent increase in lateral shear forces on any story of the Complex shall be performed without prior approval by the Nuclear Regulatory Commission.

In designing modifications to improve Control Building ventilation, the licensee determined that modifications would require up to a 3 percent increase in lateral shear forces for walls in the Control Building. Therefore, a reevaluation of the structure was performed using the same (STARDYNE)

finite element computer code, but assuming a 3 percent increase in lateral shear forces rather than the one percent originally assumed. For the reevaluation, all the weights used in the original STARDYNE code were increased by 3 percent, and the effects of those weights on the shear wall capacity-to-force ratios, intrastructure displacements, and floor response spectra were evaluated. The results of the reevaluation, based on an effective increase by 3 percent of all shear forces, indicate that all of the structural components remain well within their allowable stresses and their load capacities are greater than their load demands.

Environmental Impacts of the Proposed Action

In performing its evaluation, the staff determined that the increase in loading allowed by this amendment does not overstress any structural component. All remain well within allowable stresses so that margins of safety with which the building was designed are not reduced. Since margins of safety designed into the building are not reduced, the proposed action would not involve a significant change in the probability or consequences of any accident previously evaluated, nor does it involve a new or different kind of accident. Consequently, any radiological releases resulting from an accident would not be significantly greater than previously determined. The proposed amendment does not otherwise affect routine radiological plant effluents. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment. The Commission also concludes that the proposed action will not result in a significant increase in individual or cumulative occupational radiation exposure.

With regard to nonradiological impacts, the proposed amendment does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on May 4, 1989 (54 FR 19270). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Because the Commission has concluded that there are no significant environmental impacts associated with the proposed action, there is no need to examine alternatives to the proposed action.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the Final Environmental Statement related to operation to Trojan Nuclear Plant, dated August 1973.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request that supports the proposed amendment. The NRC staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendment.

Based upon the foregoing environmental assessment, the Commission concludes the proposed action will have no significant adverse effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated February 10, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 1st day of June 1989.

For the Nuclear Regulatory Commission,
Harry Rood,

Acting Director, Project Directorate V,
Division of Reactor Projects III, IV, V and
Special Projects, Office of Nuclear Reactor
Regulation.

[FR Doc. 89-13508 Filed 6-6-89; 8:45 am]

BILLING CODE 7590-01-M

Program for Resolution of Generic Issues Related to Nuclear Power Plants; Policy Statement

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy statement; withdrawal.

SUMMARY: The Nuclear Regulatory Commission is hereby revoking the 1978 Policy Statement "Program for Resolution of Generic Issues Related to Nuclear Power Plants" (43 FR 1565, January 10, 1978).

EFFECTIVE DATE: June 7, 1989.

FOR FURTHER INFORMATION CONTACT: William Milstead, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, extension 492-3742.

SUPPLEMENTARY INFORMATION: Policy Statements have generally been issued by the Commission to provide the staff, the industry and the public with guidance on new issues, programs, or concerns prior to formally implementing regulations or other actions to address these. Such was the case in 1978 when the Commission issued the Policy Statement "Program for Resolution of Generic Issues Related to Nuclear Power Plants" (43 FR 1565, 1/10/78). Since the issuance of this Policy Statement, the Commission's program to resolve generic issues has undergone many reviews and changes. These changes and the current program are described in the following documents:

RES Office Letter 1, Revision 1, "Procedure for Identification, Prioritization, and Tracking of the Resolution of Generic Issues," March 22, 1989.

RES Office Letter 2, "Procedure for Obtaining Regulatory Impact Analysis Review and Support," November 18, 1988.

RES Office Letter 3, "Revision 2, Procedure and Guidance for the Resolution of Generic Issues," March 27, 1989.

NUREG-0933, "A Prioritization of Generic Safety Issues," revised semiannually.

"Generic Issues Management Control System (GIMCS)," published quarterly.

"Safety Issues Management System (SIMS) Procedures" June 8, 1988.

"US Nuclear Regulatory Commission Annual Report to Congress," published annually.

Each of these documents is available for public inspection and copying at the Commission's Public Document Room, 2120 L Street NW., Washington, DC.

Accordingly, the 1978 Policy Statement no longer reflects the current Generic Issues Management Program and the Commission has elected to withdraw the 1978 Policy Statement from the public record.

Dated at Rockville, MD this 31st day of May, 1989

For The Nuclear Regulatory Commission,
Samuel J. Chilk,

Secretary of the Commission.

[FR Doc. 89-13407 Filed 6-6-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 30-16055 License No. 34-19089-01 EA 85-60]

Advanced Medical Systems, Inc., Geneva, Ohio; Order Imposing Civil Monetary Penalties

I

Advanced Medical Systems, Inc., 121 North Eagle Street, Geneva, Ohio, 44041 ("AMS" or the "licensee"), is the holder of Byproduct Material License No. 34-19089-01 issued by the Nuclear Regulatory Commission ("NRC" or "Commission") pursuant to 10 CFR Part 30. The license authorizes possession and use of 150,000 curies of cobalt-60 as solid metal, 150,000 curies of cobalt-60 sealed sources, and 40,000 curies of cesium-137. The license further authorizes the installing, servicing, maintaining, and dismantling of radiography and teletherapy units. The license, originally issued on November 2, 1979, was renewed on June 25, 1986, with an expiration date of October 31, 1986. The license is currently under timely renewal as specified in 10 CFR 2.109.

II

An NRC safety inspection of AMS' activities under the license was conducted on February 21 and 22, 1985. During the inspection, the NRC staff determined that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the licensee by letter dated June 28, 1985. The Notice states the nature of the violations, the provisions of the Commission's requirements that the licensee had violated, and the amount of the civil penalties proposed for the violations. Two responses to the Notice of Violation and Proposed Imposition of Civil Penalties were received from the licensee dated July 31, 1985. In its responses, the licensee denied all violations in the Notice and requested that the proposed civil penalties be remitted. As a result of apparently erroneous information contained in the licensee's response, the NRC Region III Office of Investigations (OI) conducted an investigation during the period August 16, 1985 through June 24, 1986. The investigation findings supported all violations set forth in the June 28, 1985 Notice. On May 24, 1988, the licensee amended its July 31, 1985 response to the Notice striking its response to Violation A and admitting that violation occurred.

III

After consideration of the licensee's responses and the statements of fact, explanation, and argument for remission or mitigation contained therein and the results of the OI investigation, the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operational Support has determined, as set forth in the Appendix to this Order, that the violation occurred as stated and that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalty should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended, 42 U.S.C. 2282, and 10 CFR 2.205, it is hereby ordered that:

The licensee pay civil penalties in the amount of Six Thousand Two Hundred Fifty Dollars (\$6,250) within thirty (30) days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy of the hearing request also shall be sent to the Assistant General Counsel for Hearings and Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the Regional Administrator, Region III, U.S. Nuclear Regulatory Commission, 799 Roosevelt Road, Glen Ellyn, Illinois 60137.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of

Civil Penalties referenced in Section II above; and

(b) Whether, on the basis of such violation, this Order should be sustained.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 30th day of May 1989.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operational Support.

Appendix—Evaluations and Conclusions

On June 28, 1985, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violations identified during an NRC inspection conducted on February 21 and 22, 1985. The licensee responded to the Notice in two letters dated July 31, 1985. In its response letters, the licensee denied the four violations that were identified in the Notice and protested the proposed civil penalties. In a letter dated May 24, 1988, the licensee amended its July 31, 1985 response to the Notice striking its response to Violation A and admitting that violation occurred. The NRC's evaluation and conclusion regarding the licensee's arguments are as follows:

I. Restatement of Violations, Licensee Response, and NRC Evaluation

A. Restatement of Violation A

10 CFR 20.101(a) limits the whole body dose of an individual in a restricted area to one and one quarter rems per calendar quarter, except as provided by 10 CFR 20.101(b). Paragraph (b) allows a whole body dose of three rems per calendar quarter, provided certain specified conditions are met.

Contrary to this requirement, an individual working in a restricted area received a whole body dose of 2.9 rems in the fourth calendar quarter of 1984 and did not meet the conditions specified in 10 CFR 20.101(b).

Licensee's Response

In a letter dated May 24, 1988 the licensee admitted that the violation occurred.

B. Restatement of Violation B

10 CFR 20.201(b) requires that each licensee make such surveys as may be necessary to comply with all sections of 10 CFR Part 20. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions.

Contrary to the above, adequate surveys were not made to evaluate the radiation hazard incident to the use of radioactive material to assure compliance with 10 CFR 20.201(a). Specifically, the only surveys made by the licensee on November 6 and November 21, 1984 were surveys at the hot cell door showing radiation levels of 17.5 R/hr and 18 R/hr, respectively. These surveys which were used to calculate personnel stay time in the hot cell did not accurately reflect radiation levels inside the hot cell where

individuals were required to work. A survey made by the licensee on April 25, 1985 showed radiation levels of up to 81 R/hr inside the hot cell. This was approximately four times the levels that were used by the licensee to calculate cell stay times. As a result, actual radiation doses to two individuals who were required to enter the hot cell on November 21, 1984 were greater than anticipated and one of these individuals exceeded the whole body dose limit specified in 10 CFR 20.101(a). In addition, neither the Radiation Safety Officer nor his designee adequately supervised the working times of the individuals in the hot cell to ensure that dosimeters were frequently checked for confirmation of the anticipated dose rates.

Licensee's Response

The licensee denied the violation in its letter dated July 31, 1985, and stated that a complete cell survey had been made with a remote probe prior to the November 6 and 21, 1984 hot cell entries. The licensee also stated that prior to any survey at the door a complete survey by a remote probe is always performed.

The licensee further stated it is not valid to assume that the readings obtained during the April 25, 1985 survey are similar to the radiation levels that existed in 1984, because work had been performed before the April 1985 survey that would have increased the hot cell radiation levels.

NRC Evaluation

During the Enforcement Conference that was held in the Region III office on March 13, 1985, the licensee's Radiation Safety Officer stated that the remote probe was erratic, was not calibrated, and was not used for cell radiation level surveys, and that use of the remote probe was limited to locating cobalt-60 pellets in the hot cell during decontamination procedures.

According to the licensee's survey records, the surveys that were made prior to cell entries on November 6 and 21, 1984 were made only at the entrance door to the cell and an evaluation of the radiation hazards within the cell incident to the presence of radioactive materials was not made.

The NRC staff did not conclude that the radiation levels found during the licensee's April 25, 1985 survey were similar to the radiation levels that existed in the hot cell on November 6 and 21, 1984. Rather, the April 25, 1985 survey indicated that, in April 1985, the radiation levels inside the hot cell were greater than four times higher than the radiation levels at the entrance door.

Since the radiation levels at the entrance door were the only ones used in November 1984 to determine stay time of individuals in the hot cell, and since the individuals' actual radiation exposure substantially exceeded that anticipated by the licensee using the entrance door survey results, the entrance door surveys did not provide an adequate evaluation of the radiation hazards incident to the presence of radioactive materials within the hot cell.

C. Restatement of Violation C

License Condition No. 16 requires that licensed material be possessed and used in accordance with statements, representations,

and procedures contained in "Radiation Safety Procedures Manual, ISP-1" dated July 1983.

Section 7.2.c. "Personnel Monitoring," of ISP-1 states, "Work in high dose areas will be preceded by a survey with appropriate monitoring equipment and an estimated total accumulated exposure determined The pencil type dosimeters will be read at intervals consistent with the anticipated dose rate to determine that the actual exposure is not greater than the anticipated exposure."

Contrary to this requirement, dosimeters were not read at intervals consistent with the anticipated dose rate to determine that the actual exposure was not greater than the anticipated exposure. Specifically, on November 21, 1984, two individuals worked in the licensee's hot cell, an area where high radiation levels existed. Individual A remained in the hot cell for 3.65 minutes and Individual B remained for 3.8 minutes without reading their dosimeters. When the individuals read their dosimeters after exiting the hot cell, both 1R dosimeters were off-scale. The licensee estimated the doses by reading the 5R dosimeter that Individual A was wearing. After reading the dosimeter, the licensee assigned a 1625 millirem dose to Individual A and a 1600 millirem dose to Individual B. This is more than twice the 750 millirem dose that was anticipated.

Licensee's Response

The licensee denied the violation in its letter dated July 31, 1985. In its response, the licensee stated that the Notice of Violation gave the impression that Individuals entered the hot cell and emerged approximately 3.5 minutes later.

The licensee stated that this was not the case and that four entries were made by each individual on November 21, 1984. The licensee further stated that between visits, dosimeters were checked to ascertain actual exposure and no re-entry would occur if a radiation exposure limit had been reached. The licensee further stated that all three involved individuals verified that the dosimeters were read prior to cell entry and at the completion of tasks.

NRC Evaluation

The focus of this violation is not the number of entries, but the licensee's failure to read dosimeters at intervals consistent with the anticipated radiological hazard to determine that the actual exposure was not greater than the anticipated exposure.

Sworn, transcribed interviews with the personnel involved have established that Individuals A and B made multiple entries from the decontamination room into the hot cell on the afternoon of November 21, 1984. The transcribed testimony of Individuals A and B, taken under oath on September 3 and 4, 1985, indicates that their dosimeters were not checked between those entries. Based on the evidence, the NRC staff concludes that, on the afternoon of November 21, 1984, the dosimeters worn by Individuals A and B were read only upon completion of all work in the hot cell. By this time, the dosimeters worn by Individual B had gone off-scale due to the high accumulated radiation dose and could therefore not be used to determine

Individual B's radiation exposure. Also by this time, the exposure limit for Individual A, as specified in 10 CFR 20.201(a), had been exceeded.

D. Restatement of Violation D

License Condition No. 16 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in the application received July 16, 1979, and in certain referenced letters.

Schedule E of the referenced application states that dosimeters will be calibrated at intervals of 180 days or less or before first use if longer than 180 days since last calibration.

Contrary to this requirement, dosimeters had not, in all cases, been calibrated at intervals of 180 days. Specifically, dosimeters used by individuals who entered the hot cell on November 6 and 21, 1984 had not been calibrated between January 1983 and January 1985.

Licensee's Response

The licensee denied the violation in its July 31, 1985 response. The licensee stated that the procedure for calibration submitted in 1979 was found to be unworkable in that it did not produce repeatable results and that the technique adopted as an alternative was the comparison of dosimeter readings with film badge reports on a monthly basis. The licensee further stated that this technique was used to determine that the dosimeters utilized during the November 1984 cell entries were within tolerances.

NRC Evaluation

The licensee is required, in accordance with the provisions of License Condition No. 16, to calibrate dosimeters by using a calibrated radiation source. Intercomparison between dosimeter and film badge readings is not an approved calibration technique. If the licensee concludes that the method required by License Condition No. 16 is unworkable, an alternative method may not be substituted without first submitting the alternative method to NRC for evaluation and without first having the license amended to authorize the alternative procedure. Using a radiation source is the method used throughout the industry and is the only calibration method currently approved by the NRC.

II. NRC Conclusion

The NRC staff has concluded that all violations did occur as herein stated and therefore the \$6,250 proposed civil penalty should be imposed.

[FR Doc. 89-13510 Filed 6-6-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-244]

Rochester Gas and Electric Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued Amendment No. 37 to Facility Operating

License No. DPR-18 issued to Rochester Gas and Electric Corporation (the licensee), which revised the Technical Specifications for operation of the R.E. Ginna Nuclear Power Plant located in Wayne County, New York. The amendment was effective as of the date of issuance.

The amendment revised the Technical Specifications to reflect testing requirements for snubbers that ensure structural integrity of systems following a seismic or other event initiating dynamic loads.

The application for amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which is set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the Federal Register on August 10, 1988 (53FR30123). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact related to the action and has concluded that an environmental impact statement is not warranted and that the issuance of this amendment will not have a significant adverse effect on the quality of the human environment.

For further details with respect to the action see: (1) The application for amendment dated July 24, 1987 as supplemented on May 4, 1988, June 21, 1988, September 16, 1988, February 16, 1989 and March 14, 1989, (2) Amendment No. to License No. DPR-18, and (3) the Commission's related Safety Evaluation and Environmental Assessment.

All of these items are available for public inspection at the Commission's Public Document Room, Gelman Building, Lower-Level, 2120 L Street, NW., Washington, D.C. and at the local public document room located in the Rochester Public Library, 115 South Avenue, Rochester, New York 14610. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Dated at Rockville, Maryland, this 30th day of May, 1989.

For the Nuclear Regulatory Commission.

Al Johnson,

Project Manager, Project Directorate I-3, Division of Reactor Projects I/II.

[FR Doc. 89-13509 Filed 6-6-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Proposed Policy Letter on Consultants and Conflicts of Interest; Invitation for Public Comment

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: The Office of Management and Budget (OMB) is requesting comments on a proposed new Office of Federal Procurement Policy (OFPP) policy letter dealing with consultants and conflicts of interest.

SUMMARY: This Office of Federal Procurement Policy (OFPP) Policy Letter establishes (a) government-wide policy relating to conflict of interest standards for persons who provide consulting services both to the United States Government and to persons who contract with the United States, and (b) procedures to promote compliance with those standards.

The policy is being published pursuant to the direction of the United States Congress as expressed in section 8141 of the 1989 Department of Defense Appropriation Act, Pub. L. No. 100-463, 102 Stat. 2270-47 (1988).

After OFPP issues this policy letter, § 8141 directs that government-wide regulations must be promulgated that implement the provisions of the section in the light of the guidance in this policy letter. These regulations are required by § 8141 to be promulgated no later than 180 days after the date of publication of the final version of the letter.

Before the issuance of the regulations required by section 8141, the President of the United States is empowered to make a determination that the regulations "would have a significantly adverse effect on the accomplishment of the mission of the Department of Defense or other federal government agencies" Submission of a report containing an adverse effect determination to Congress will automatically nullify and void the regulations.

Section 8141 also directs the Comptroller General to report to Congress no later than one year from the

date of enactment his assessment of the effectiveness of the regulations prescribed pursuant to the section.

DATE: Comments must be received on or before August 7, 1989.

ADDRESS: Comments should be submitted to the Office of Management and Budget, Office of Federal Procurement Policy, Room 9025, New Executive Office Building, 725 17th Street NW., Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Richard A. Ong, Deputy Associate Administrator, Office of Federal Procurement Policy, 725 17th Street NW., Washington, DC 20503. Telephone (202) 395-6810.

Allan V. Burman,
Acting Administrator and Deputy
Administrator.

Dated: June 1, 1989.

Policy Letter XX-X

To the Heads of Executive Departments and Establishments

Subject: Conflict of Interest Policies Applicable to Consultants.

1. *Purpose.* The purpose of this Policy Letter is (a) to establish policy relating to conflict of interest standards for persons who provide consulting services and (b) to provide procedures to promote compliance with those standards.

2. *Authority.* This directive is issued pursuant to section 8141 of the 1989 Department of Defense Appropriation Act, Pub. L. 100-463, 102 Stat. 2270-47 (1988) (hereinafter "the Act").

3. *Background.* This Policy Letter is intended to carry out the Congressional mandate in section 8141 of the Act. That section provides, in part, as follows:

Section 8141. (a) Not later than 90 days after the date of enactment of this Act, the Administrator of the Office of Federal Procurement Policy shall issue a policy, and not later than 180 days thereafter government-wide regulations shall be issued under the Office of Federal Procurement Policy Act which set forth:

(1) Conflict of interest standards for persons who provide consulting services described in subsection (b); and

(2) Procedures, including such registration, certification, and enforcement requirements as may be appropriate, to promote compliance with such standards.

(b) The regulations required by subsection (a) shall apply to the following types of consulting services:

(1) Advisory and assistance services provided to the government to the extent necessary to identify and evaluate the potential for conflicts of interest that

could be prejudicial to the interests of the United States;

(2) Services related to support of the preparation or submission of bids and proposals for federal contracts to the extent that inclusion of such services in such regulations is necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States; and

(3) Such other services related to federal contracts as may be specified in the regulations prescribed under subsection (a) to the extent necessary to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States.

4. *Definitions.* (a) "Act" means the Department of Defense Appropriations Act, 1989, Pub. L. 100-463, 102 Stat. 2270-47 (1988).

(b) "Advisory and assistance services" means advisory and assistance services as defined in OMB Circular No. A-120, "Guidelines for the Use of Advisory and Assistance Services," and any amendments thereto, excepting engineering, technical, legal and accounting services. Only those compensated services provided pursuant to contracts are covered by the policy document.

(1) Such services include—

(i) Services provided by individual experts and consultants;

(ii) Management and professional support services; and,

(iii) the conduct and preparation of studies, analyses, and evaluations.

(c) "Agency" means any executive department, a military department, or any independent establishment within the meaning of 5 U.S.C. 101, 102, and 104(1), respectively, and any wholly owned government corporation within the meaning of 31 U.S.C. 9101.

(d) "Conflict of interest" means a) that condition or circumstance wherein a person is unable or is potentially unable to render impartial, technically sound, or objective assistance or advice to the government in light of other activities or relationships with other persons, or b) wherein a person is given an unfair competitive advantage. Types of conflicts include, but are not limited to, the following:

(1) Evaluating another contractor's or potential contractor's products or services, where the evaluator is or has been substantially involved in the development of marketing of these products or services;

(2) Serving as a consultant to a contractor seeking the award of a contract (or seeking to be awarded the contract directly) after preparing or assisting substantially in the preparation

of specifications to be used in the same acquisition; and

(3) Serving as a consultant to a contractor seeking the award of a contract (or seeking to be awarded the contract directly) after having access to source selection or proprietary information not available to other persons competing for the contract.

(e) "Marketing Consultant" means any independent contractor who furnishes advice, information, direction, or assistance to any other contractor in support of the preparation or submission of a bid or proposal for a government contract by such contractor, except where such support relates directly to the technical requirements of the bid or proposal.

5. *Exemptions.* The following kinds of services may be exempted from the application of Executive Branch policies and regulations issued under the Act:

(i) Services rendered in connection with intelligence activities as defined in § 3.4(e) of Executive Order 12333 or a comparable definitional section in any successor order, or in connection with special access programs; and,

(ii) Services as to which the head of an agency, or his designee, grants a waiver on the basis of the public interest.

8. *Policy.* The policy of the Federal Government respecting conflicts of interest respecting marketing consultants and those providing advisory and assistance services is as follows:

(a) Responsibility for identifying and preventing potential conflicts of interest in government contracts is shared among the government contracting officer, the requester of the service and other government officials with access to applicable information. The responsibility for deciding whether to procure the service rests with the government contracting officer.

(b) Prior to contract award, contracting officers shall take appropriate steps to identify and evaluate the potential for conflicts of interest that could be prejudicial to the interests of the United States with regard to persons who provide advisory and assistance services to the government, and to take steps to avoid or mitigate such conflicts; similar actions will be taken to evaluate any unfair competitive advantage that marketing consultants might enjoy.

(c) Federal contracting officers shall require, for types of contract defined in this directive, that the apparent successful offeror provide certified information describing the nature and extent of any potential conflicts of

interest that may exist with respect to the proposed award. Marketing consultants shall also be required to certify that they have no unfair competitive advantage.

(d) Federal procurement activities shall encourage contractors to consider carefully the potential for conflicts of interest in all of their activities associated with federal procurement, and to establish internal standards of conduct and codes of ethics that address such conflicts; also, federal contracting officials shall be sensitive to the appearance of conflicts of interest in any contracting actions; and

(e) Finally, federal procurement regulations that implement this policy and address conflicts of interest shall take into account the need to (1) encourage participation of highly qualified persons and firms in federal procurement programs; (2) enhance and safeguard the Nation's industrial base; (3) increase competition in the award of government contracts; and (4) improve the overall effectiveness and efficiency of the government's procurement programs.

7. *Requirements.* Agency policies and regulations must define responsibilities of the persons described below as follows:

(a) *Defense Acquisition Regulatory Council and Civil Agency Acquisition Council.*

(1) *Promulgation of Regulations.* The Councils shall promulgate the government-wide regulations specified in § 8141 of the Act within 180 days of the effective date of this Policy Letter. Such regulations shall conform to the policies established herein and shall provide additional examples of conflict of interest situations.

(2) *Identification of Standards.* The Councils will identify characteristics of acceptable standards of conduct for use by contracting officers in assessing the adequacy of contractor codes or standards.

(3) *Regulatory Procedures.* The regulations established by the Councils shall reflect the procedural guidance below:

(i) *Prime contractors.* (A) A contractor who employs, retains, or engages one or more marketing consultants with respect to a federal acquisition must submit to the contracting officer, with respect to each marketing consultant, the certificates described below, if

(a) The marketing consultant provides services to the contractor that are related to the preparation or submission of bids or proposals for the contract in question; and,

(b) The contractor is notified that it is the apparent successful offeror.

(B) *Certification Process.*—(a) *Certificate required.* No certificates are required for government contracts under \$200,000. With respect to contracts equal to or greater than \$200,000, the contractor must file the certificate described in (b), below, with respect to each marketing consultant, or provide a statement to the contracting officer giving the reasons why no such certification can be made.

(b) *Contents of certificate.* The certificate to be submitted must contain the following:

(1) The name of the agency and the number of the solicitation in question,

(2) The name, address, business telephone number, and federal taxpayer identification numbers of the marketing consultant;

(3) The name, address, and business phone number of a responsible officer or employee of the marketing consultant who has personal knowledge of the marketing consultant's involvement in the contract;

(4) A description of the nature of the services rendered by or to be rendered by each marketing consultant;

(5) Based on information provided to the contractor by the marketing consultant, if any marketing consultant is rendering or, in the 12 months preceding the date of the certificate, has rendered services respecting the same or substantially similar subject matter of the instant solicitation to the government or any other client (including any foreign government or person), the name, address, and business phone number of the client or clients, and the name of a responsible officer or employee of the marketing consultant who is knowledgeable about the services provided to such client(s), and a description of the nature of the services rendered to such client(s);

(6) A statement that the person who signs the certificate for the prime contractor has informed the marketing consultant of the existence of this Policy Letter and associated regulations. In addition, the prime contractor will forward to the contracting officer a certificate addressed to the government and signed by the marketing consultant that (a) such consultant has been told of the existence of the regulations implementing this policy letter and (b) is satisfied that to the best of his or her knowledge or belief the marketing consultant enjoys no unfair competitive advantage with respect to the services rendered or to be rendered in connection with the solicitation, or that any unfair competitive advantage that does or may exist, to the best of his or her knowledge or belief, has been

communicated to the prime contractor; and

(7) The signature, name, title, employer's name, address, and business telephone number of the persons who signed the certificates or both the prime contractor and the marketing consultant.

(c) *Filing.* These statements and certificates must be filed by agency officials in the contract file.

(d) *Special Certification Provisions.* For solicitations for contracts for \$200,000 or more, but less than \$1,000,000, if the prime contractor has established internal standards of conduct possessing the characteristics developed by the Councils pursuant to § 7(a)(2), the certificate need only contain a statement to this effect and the information described in (1), (2), (6), and (7) in clause (b) immediately preceding. The marketing consultant must still submit the certificate described in (6).

(ii) *Those providing advisory and assistance services directly to the government.* Those providing advisory and assistance services must submit to the contracting officer the certificate or certificates described below if the contractor is notified that it is the apparent successful offeror.

(A) *Certification Process.*—(a) *Certificate required.* No certificates are required for relevant contracts under \$25,000. With respect to every contract equal to or greater than \$25,000, the certificate described in (b), below, must be filed or a statement provided to the contracting officer giving the reasons that no such certification can be made.

(b) *Contents of the certificate.* The certificate must contain the following:

(1) Name of the agency and the number of the solicitation in question;

(2) the name, address, business telephone number, and federal taxpayer identification number of the apparent successful offeror,

(3) A description of the nature of the services rendered by or to be rendered on the instant contract;

(4) If, in the 12 months preceding the date of the certification, services are being or were rendered to the government or any other client (including a foreign government or person) on the same or substantially similar subject matter to that described in (3), above, the name, address, business telephone number of the client of client(s), a description of the services rendered to the previous client(s), and the name of a responsible officer or employee of the offeror who is knowledgeable about the services rendered to each client. The agency for which and contract number under which

the services were rendered must also be included, if applicable;

(5) A statement that the person who signs the certificate has made inquiry and (a) is satisfied that to the best of his or her knowledge or belief no actual or potential conflict of interest or unfair competitive advantage exists with respect to the advisory and assistance services provided in connection with the instant contract, or (b) that any potential conflict of interest or unfair competitive advantage that does or may exist with respect to the contract in question, to the best of his or her knowledge or belief, has been communicated to the contracting officer or his or her representative; and

(6) The signature, name, employer's name, address, and business telephone number of the person who signed the certificate.

(c) *Filing.* The statement and certificate must be filed by agency officials in the contract file.

(d) *Special Filing Provisions.* For contracts of \$25,000 or more but less than \$500,000, if the contractor has established internal standards of conduct possessing the characteristics developed by the Councils pursuant to § 7(a)(2), the certificate required need only contain a statement to this effect and the information described in (1), (2), (5), and (6), in clause (b), immediately preceding.

(iii) *Executive Branch Agencies.*—(A) *Maintenance of data files.* Each agency must maintain the certificates described by this Policy Letter in the contract file. Agencies may extract and categorize such information from these files and consolidate them in a central registry, as appropriate, subject only to the requirement to safeguard information as requested by the submitter of the certificate as confidential, sensitive, privileged, proprietary, or otherwise not releasable, or based on independent agency determinations pursuant to the Freedom of Information Act, or other activity, not to release the information.

(B) *Availability of data.* Certifications of any kind must be made available to department or agency contracting officers or their designees, inspectors general, or government audit officials.

(C) *Retention of data.* The information required by this policy Letter must be retained by the agencies in the contract file in accordance with established procedures.

(D) *Nondisclosure of information.* Executive Branch agencies and departments must protect, to the fullest extent permitted by law, all sensitive business and other information submitted by consultants or contractors pursuant to any policy devised or

regulation promulgated pursuant to the Act. Contractors and consultants must take care to identify what trade secrets, proprietary information, and other commercially valuable information are confidential, sensitive, privileged, proprietary, or otherwise not releasable to afford the greatest protection possible under the Freedom of Information Act. Opportunity to so mark such information shall be afforded to submitter of the information at any time.

(E) *Preaward conflict of interest analysis; special contract provisions.* Using (a) information from any certificates or statements previously submitted or submitted with the bid or offer in question and (b) any other substantive information available to them, agency contracting (and program officials if the contracting officer in his or her discretion so requests) must, before an award of a contract is made, determine whether a conflict of interest exists with regard to those providing advisory and assistance services to the government or an unfair competitive advantage exists with respect to any marketing consultant in connection with a particular contract action. After conferring with the prime contractor and the marketing consultant, or the contractor rendering advisory and assistance services, the contracting officer shall deny the award to the apparent successful offeror if a conflict of interest or unfair competitive advantages exists, unless the conflict can be avoided by appropriate contract language, or unless the contracting officer finds that it is in the best interest of the United States to award the contract notwithstanding such conflict or unfair competitive advantage and so documents the file.

(F) *Inspection of contractor standards of conduct.* Any standards of conduct implemented pursuant to section 7 above must be in writing and contracting officers may require contractors to submit copies of standards of conduct as needed. If such codes and standards do not satisfactorily address the regulations implementing this Policy Letter, contracting officers may require contractors to provide information otherwise exempted above.

(G) *Other information.* This Policy Letter does not prohibit contracting officers from requesting any other information relevant to the goals of this Policy Letter, or for any other lawful purpose, if and as needed. In addition, in special cases, and if approved by the head of the contracting activity, the contracting officer may request that the certificates described in section 7 be made with respect to a period as long

as, but no longer than 36 months preceding the date of the certificate.

(b) *Office of Federal Procurement Policy.* All government-wide regulations to be issued pursuant to § 8141 of the Act will be provided to the Federal Acquisition Regulatory Council for review not less than thirty days prior to publication in the *Federal Register* for public comment, and these regulations shall be reviewed by the Administrator of the Office of Federal Procurement Policy pursuant to the authority of section 6 of the OFPP Act, codified at 41 U.S.C. section 405.

8. *Remedies.* Persons required to certify in accordance with this Policy Letter and associated regulations but who wilfully fail to do so may be determined to be non-responsible and therefore not be awarded a contract.

Those who wilfully misrepresent any fact in any certificate required to be submitted after such warnings and conferences as may be prescribed by the regulations, if any, may be subject to suspension and debarment, as well as to penalties associated with false certifications or such other provisions provided for by regulation.

9. *Information contract.* For information regarding this Policy Letter please contact Richard A. Ong, Deputy Associate Administrator, the Office of Federal Procurement Policy, 725 17th Street NW., Washington, DC 20503. Telephone (202) 395-6810.

10. *Sunset review date.* This Policy Letter will be reviewed three years from the state of issuance and every three years thereafter to assure accuracy and relevancy.

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BILLING CODE 3110-01-M

OFFICE OF UNITED STATES TRADE REPRESENTATIVE

Report of Trade Liberalization Priorities Pursuant to Section 310 of the Trade Act of 1974, as Amended

AGENCY: Office of the United States Trade Representative.

ACTION: Notice.

SUMMARY: Notice is hereby given that the United States Trade Representative (USTR) has submitted the report published herein to the Committee on Finance of the United States Senate and the Committee on Ways and Means of the United States House of Representatives, identifying trade liberalization priorities pursuant to section 310 of the Trade Act of 1974, as amended.

DATE: The report was submitted on May 26, 1989.

FOR FURTHER INFORMATION CONTACT: Office of the General Counsel, Office of the U.S. Trade Representative, 600 17th Street, NW., Washington, DC 20506, (202) 395-3432.

SUPPLEMENTARY INFORMATION: The text of the USTR report is as follows:

IDENTIFICATION OF TRADE LIBERALIZATION PRIORITIES PURSUANT TO SECTION 310 OF THE TRADE ACT OF 1974, AS AMENDED

I. Introduction Trade Liberalization Priorities

This report is submitted pursuant to section 310 of the Trade Act of 1974, as amended (19 USC 2420), popularly known as "Super 301." Section 310 requires the United States Trade Representative to identify trade liberalization priorities, including priority practices and countries that will be a focus of negotiations in 1989 and 1990 to broaden access for U.S. exports to foreign markets.

The first step in the Super 301 process was preparation of the National Trade Estimate (NTE) Report, which contains an inventory of practices affecting goods, services, investment, and intellectual property protection in 34 nations and two regional trading blocs. The NTE Report was submitted to the President and appropriate committees of the Senate and House of Representatives on April 28, 1989.

Using the NTE as a basis, and taking into account comments from the private sector, the USTR is required to identify foreign trade practices the elimination of which is likely to significantly increase U.S. exports. The statute also directs the USTR to identify priority countries, taking into account the number and pervasiveness of significant barriers to U.S. exports. By June 15 the USTR must initiate investigations under section 302 of the Trade Act of 1974, as amended, of priority practices of priority countries.

In implementing section 310, the Administration will aim to eliminate significant trade barriers and trade-distorting practices through multilateral and bilateral negotiations—not simply to increase U.S. exports, but to liberalize trade for the benefit of all nations.

This approach is consistent with the Administration's overall trade policy, which is to open markets not close them; to create an ever-expanding international trading system based upon clear and enforceable rules.

Accordingly, the highest trade liberalization priority identified by the USTR is to conclude successfully the Uruguay Round of multilateral trade

negotiations by December 1990. In those negotiations the United States seeks to achieve multilateral agricultural reform, to expand the scope of international rules to include trade in services, protection of intellectual property rights and trade-related investment measures, and to reduce or eliminate a wide variety of tariff and non-tariff barriers to trade.

Section 301 is a tool the Administration will use constructively to promote its trade policy objective. Its purpose is not to retaliate, but to provide negotiating leverage to remove trade barriers. Therefore, the Administration will initiate section 302 investigations selectively, where the leverage provided by the credible threat of retaliation will encourage its trading partners to honor existing agreements, and to abide by, or expand, GATT rules.

Accordingly, the USTR has identified the following priority practices and countries, which will be the subject of investigation and negotiation in this year's Super 301 process:

- *Quantitative import restrictions*—including import bans, quotas, and restrictive licensing regimes that inhibit imports of manufactured and agricultural products. Such practices in Brazil will be given priority attention.

- *Exclusionary government procurement*—where governments have adopted policies and practices that afford protection to domestic products and exclude foreign suppliers. Such practices affecting Japan's procurement of satellites and supercomputers will be given priority attention.

- *Technical barriers to trade*—where governments have adopted trade-restrictive technical standards and regulations that create unnecessary obstacles to international trade. Such standards affecting imports of forest products in Japan will be given priority attention.

- *Trade-related investment measures*—including requirements governments place on foreign investors to export a portion of what they produce, or to use locally-produced inputs, and other trade-distorting requirements. Such practices in India will be given priority attention.

- *Barriers to trade in services*—including government measures which prevent U.S. services industries from competing effectively in foreign markets. India's market, completely closed to foreign insurance companies, will be given priority attention.

Identification of these priority practices was based upon a number of considerations, including:

- the potential to increase U.S. exports if these practices are eliminated;
- the precedential effect of seeking and obtaining their elimination;
- the likelihood that 302 investigations would advance U.S. efforts to eliminate these practices; and
- the compatibility with U.S. objectives in the Uruguay Round.

Identification of priority countries took into account the number and pervasiveness of significant barriers to U.S. exports.

As was noted in the NTE Report, it is extremely difficult to estimate how much U.S. exports would increase if a non-tariff barrier to trade were removed. Estimating the trade impact of such barriers requires detailed information on price differences between countries and relevant supply and demand conditions, which is not readily available. Such information normally is gathered in the course of an investigation under section 302, in order to assess the burden or restriction on U.S. commerce caused by a particular foreign barrier.

The five categories of trade barriers identified above—and the individual countries' practices selected as representative of each category—do not encompass all of the major trade distortions facing American exporters, but they are among the most important.

A sixth category, intellectual property protection, is being addressed separately but simultaneously through the "Special 301" process under section 182 of the Trade Act of 1974, as amended (19 USC 2242). All six categories include practices the elimination of which is likely to have significant potential to increase U.S. exports, either directly or through establishing a beneficial precedent.

Many other trade barriers, including those listed in the NTE Report, are and will continue to be addressed in ongoing negotiations with our trading partners. Principal among them are trade-distorting subsidies and agricultural policies. These practices are no less important than those identified as priority practices under the statute. However, the Administration has determined that their elimination can be better pursued at this time outside of section 301, especially through multilateral negotiations in the Uruguay Round.

The Administration also will continue to pursue trade barriers already the subject of investigations, negotiations, and action under section 301 including, for example, Japan's practices affecting construction services and semiconductors.

Industries are free at any time to file petitions requesting 302 investigations; historically, most such petitions have been accepted by the USTR. Thus, additional investigations are likely to be initiated—either as the result of industries' petitions, or self-initiated by the USTR—during the coming year.

Finally, in implementing Section 310 next year, USTR will reevaluate the status of certain practices not identified this year, in light of progress made in bilateral and multilateral negotiations.

II. Priorities Under the Statute: Section 302 Investigations

The Administration's approach to Super 301 consists of a number of components that are integral parts of a comprehensive package. Super 301 is not simply an exercise in identifying specific practices or countries; rather it is one element of a broader strategy aimed at economic growth through trade expansion. The Super 301 process supports this strategy by concentrating U.S. efforts this year on the elimination of practices that, in addition to being serious barriers in themselves, are indicative of broader areas of concern. This approach enables the United States to advance general trade policy objectives through concrete, focused initiatives.

In accordance with the statute, the USTR will initiate by June 15 investigations under section 302 of the Trade Act on the priority practices of priority countries (Japan, Brazil, and India) identified below under Section 301. These investigations will include fact-finding, consultations with U.S. industry representatives, consultations with U.S. trading partners, and, where appropriate, reference to GATT dispute settlement panels.

In consultations with these trading partners, the United States will seek agreements to eliminate these priority practices within three years. If the investigatory and consultative period (12 to 18 months, depending on the nature of the investigation) does not produce favorable results, the USTR will determine whether a practice is actionable under section 301 and, if so, what action (if any) should be taken.

Initiation of an investigation does not prejudice a decision whether a practice is "unfair" or whether section 301 action would be effective in addressing it. The following specific practices will be investigated, and addressed in parallel with broader negotiations aimed at the generic problems of which these practices are emblematic:

A. Quantitative Import Restrictions, Import Bans and Restrictive Licensing

An important U.S. priority is the elimination of GATT-inconsistent quotas and licensing restrictions on imports. Such measures cause particular concern with respect to U.S. agricultural exports.

While quotas and restrictive licensing are becoming globally less pervasive, they continue to impede U.S. exports to a number of developing countries that claim their restrictions are justified under the balance-of-payments provisions of GATT Article XVIII:B. In some cases governments have imposed import bans which impair regular channels of trade and which are not progressively relaxed, as required by GATT rules. Moreover, some countries restrict imports through licensing products of particular industries, rather than imposing general balance-of-payments measures, contrary to a 1979 GATT Declaration on Trade Measures Taken for Balance-of-Payments Purposes.

In Uruguay Round negotiations the United States is seeking to strengthen and clarify the requirements of Article XVIII, to ensure that they are used as a temporary derogation from GATT obligations, rather than an open-ended mechanism to protect particular industries with measures that would otherwise be GATT-inconsistent. U.S. objectives include explicit requirements that measures taken for balance-of-payments reasons be temporary, transparent, and uniformly applied to all products, and that tariff measures be preferred over quantitative restrictions.

To support its Uruguay Round efforts, the United States will use all available GATT mechanisms to challenge balance-of-payments import restrictions that the United States believes run counter to GATT obligations.

The following import bans and other import restrictions are identified as a priority practice under section 310:

Brazil: Import Bans and Other Import Licensing Restrictions

Brazil maintains an import prohibition list which covers approximately 1000 items, barring U.S. exports of agricultural items and manufactured goods, including meat, dairy products, plastics, chemicals, textiles, leather products, electronic items, motor vehicles, and furniture. Brazil also uses its licensing regime to implement company and sectoral import quotas, which impede many important U.S. export items, including office machine parts, internal combustion engine parts, and electrical machinery.

The lack of transparency of Brazil's licensing system inhibits markets access and creates uncertainty for U.S. exporters to Brazil. Brazil maintains these restrictions despite GATT requirements with respect to restrictive import measures imposed for balance-of-payments purposes, including the principle that such measures should not be used to protect a particular industry or sector.

B. Exclusionary Government Procurement

Because governments are among the largest purchasers of goods and services in the world, the United States is working to ensure that opportunities to sell to governments are available to U.S. suppliers. In multilateral negotiations the United States seeks, on a reciprocal basis, the use of procedures that require government procurement decisions to be made on a competitive and non-discriminatory basis. The United States also seeks elimination of specific procurement practices that exclude foreign suppliers.

The following exclusionary government procurement practices are identified as priority practices under section 310:

Japan: Ban on Government Procurement of Foreign Satellites

As part of a "long range vision on space development" Japan prohibits the procurement of foreign satellites by government entities if such a purchase interferes with "indigenous development objectives." Japan's policy of promoting indigenous production capability by prohibiting government procurement of foreign satellites applies to the entire range of satellites (broadcast, communications, earth resource, weather). The United States has long been the world leader in satellite production, and is thus denied significant market opportunities by this policy.

Japan: Exclusionary Procurement of Supercomputers

The United States supercomputer industry has been effectively denied access to the Japanese public sector market despite a 1987 agreement with Japan on supercomputers. The Government of Japan has engaged in a variety of exclusionary practices that have the effect of thwarting the open procurement process, in order to ensure purchase of supercomputers by indigenous producers.

C. Technical Barriers to Trade

The United States places high priority on the elimination of trade-restrictive technical regulations and standards. While many legitimate reasons exist for governments to use standards—such as the protection of plant, animal, and human life, or the prevention of consumer fraud—governments sometimes impose technical standards that unnecessarily restrict imports. The European Community's ban on hormone-treated beef, already subject to countermeasures under section 301, is an example where unreasonable standards (in that case, not based on any legitimate scientific judgment) have created unnecessary trade barriers.

The GATT Agreement on Technical Barriers to Trade ("Standards Code") commits its signatories to ensure that technical regulations or standards, and related testing and certification schemes, do not create unnecessary obstacles to trade. While the Standards Code has improved the standards-related activities of many countries, an important Uruguay Round objective for the United States is to strengthen and expand the Code further. The administration also places high priority on ensuring that Code signatories abide by existing Code obligations.

The following standards-related practices of Japan have been identified as a priority practice under section 310:

Japan: Restrictive Standards on Wood Products

Access to Japan's market for forest products is impeded by a variety of tariff and non-tariff measures, including technical standards which favor Japanese producers. These practices include wood grading requirements which discriminate against U.S. wood products, as well as a variety of testing standards which impede U.S. exports. Japan maintains these practices despite its obligations under the GATT Agreement on Technical Barriers to Trade to ensure that technical regulations and standards are not adopted or applied in a way which creates unnecessary obstacles to international trade.

D. Trade-Related Investment Measures

The United States supports open investment policies worldwide; all nations will benefit from unrestricted foreign direct investment. In the Uruguay Round, the United States is seeking the elimination of trade-restricting measures imposed by government upon foreign investors. The result of such measures is the distortion

of import, export, and manufacturing patterns that would occur absent government intervention, impairing the ability of an enterprise to respond to developments in the marketplace. The United States has made investment restrictions a priority in both bilateral and multilateral negotiations.

The following practice, exemplary of an investment regime that seriously distorts trade, is identified as a priority practice under section 310:

India: Trade-Related Investment Measures

Government approval is required for all new or expanded foreign investment in India. Approval is conditioned upon a number of criteria, including requirements for foreign equity participation. Where approval is granted, the Indian Government often requires investors to use locally-produced goods in the items they produce in India, rather than allowing them to import the best quality and most cost-effective products. Some investors are also required to meet export targets. Such "performance requirements" burden foreign investors, and result in significant trade distortions.

E. Barriers to Trade in Services

Establishment of a comprehensive GATT agreement on trade in services is one of the key U.S. objectives in the Uruguay Round. The need for multilateral rules and disciplines covering services trade has become increasingly important as services have grown as a share of total world economic activity. In the Uruguay Round the United States has strongly supported efforts to establish a multilateral framework of principles and rules for services trade, as well as mechanisms for the progressive liberalization of services barriers. The services text adopted by Trade Ministers at the December 1988 Uruguay Round Mid-Term Review in Montreal does much to advance the eventual achievement of these objectives.

In the absence of multilateral rules on services trade, the United States has pursued the liberalization of foreign services markets through bilateral negotiations. In free-trade agreements with both Canada and Israel, bilateral agreement was reached on fundamental principles governing trade in services. In negotiations with Korea, initiated as part of a section 302 investigation in 1985, U.S. negotiators achieved a considerable liberalization of Korea's insurance market. Such bilateral initiatives

support and reinforce multilateral efforts to liberalize trade in services.

The following barrier to trade in services is identified as a priority practice under section 310:

India: Insurance Market Barriers

Private insurance companies are not permitted to sell insurance in India. The state-owned General Insurance Company of India and its four subsidiaries have a monopoly on sales of general insurance, and the Life Insurance Corporation of India has a monopoly on the sale of life insurance. India's is the largest remaining closed insurance market; liberalization of that market would create significant market opportunities for U.S. insurance companies, which are competitive worldwide.

III. Other Negotiating Priorities

Section 301 is an important market-opening tool, but it is not a substitute for multilateral negotiations. A key priority of U.S. trade policy is a successful outcome in the Uruguay Round of Multilateral Trade Negotiations. While the Administration is prepared to use section 301, the preferred long-term solution is to achieve improvements in multilateral disciplines and enforcement procedures in the Uruguay Round.

Many trade issues may be better resolved through multilateral agreements under GATT auspices than bilateral initiatives. Because GATT negotiations involve a broad range of issues and sectors, they facilitate a comprehensive approach to resolving a number of interrelated issues. In addition, it is often difficult for governments to agree to eliminate a trade barrier in bilateral negotiations, when other countries can act as "free riders" and take advantage of a more open trading situation without making equivalent concessions.

Thus, some problems, like agricultural subsidies, are difficult to solve absent broad multilateral agreement, since any government that agrees to eliminate subsidies in a bilateral agreement places its producers at a competitive disadvantage with respect to countries that have not assumed a similar obligation.

In this respect, the USTR has determined that certain practices, while important U.S. negotiating priorities, will be better pursued at this time outside of section 301, especially through multilateral negotiations in the Uruguay Round.

Agricultural practices in this category include:

- European Community variable

levies on imports of grains, sugar, dairy products, beef, poultry, eggs, pork and processed products made from these commodities, which afford protection to European producers of these products, adversely affecting U.S. exports to the EC.

- European Community agricultural export subsidies. The EC grants export "restitutions" on a wide range of agricultural products including wheat, wheat flour, beef, dairy products, poultry, and certain fruits, as well as some processed products. The result of such subsidies is downward pressure on world agricultural prices and unfair competition for U.S. exporters in third country markets.

- Japan's import barriers on rice. Japan's strict prohibition on the import of rice adversely affects U.S. rice producers and exporters, and is unjustifiable in light of Japan's GATT obligations.

U.S. priorities in the Uruguay Round agriculture negotiations include the elimination of all trade-distorting subsidies and market access barriers. Thus, elimination of practices such as the variable levy, export subsidies and Japan's rice ban will be pursued in these negotiations.

Another issue better addressed outside of section 301 at the present time is the substantial financial support European Airbus partner governments have provided to their Airbus consortium member companies. These supports have taken the form of "soft" loans, loan guarantees, general equity infusions and, more recently, a proposal for exchange rate guarantees. These practices have heavily subsidized both Airbus aircraft development and production, distorting world aircraft trade and threatening to cause serious prejudice to future U.S. aircraft exports. These practices will be pursued actively in both bilateral and multilateral fora.

The United States will continue to pursue negotiations in the Uruguay Round aimed at eliminating these trade-distorting practices and their effects on U.S. exports; and the USTR will assess the progress made toward that goal in the context of next year's Super 301 process.

Authority: Section 310(a)(1)(D) of the Trade Act of 1974, as amended, 19 U.S.C. 2420(a)(1)(D).

Joshua B. Bolten,
General Counsel.

[FR Doc. 89-13406 Filed 6-6-89; 8:45 am]

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SECURITIES AND EXCHANGE ACT

[Rel. No. 34-28882; File No. SR-CBOE-88-20, Amdt. No. 2]

Self-Regulatory Organizations; Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Market Basket Securities

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 12, 1989,¹ the Chicago Board Options Exchange, Incorporated filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

1. Text of Proposed Rule Change

The Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") proposes to amend and restate its filing SR-CBOE-88-20 relating to market baskets in stocks as set forth below. Chapter XXVI is entirely new.

CHAPTER XXVI

MARKET BASKETS

Introduction

The rules in this Chapter are applicable only to market basket contracts (as defined below). Market basket contracts are deemed to be index option contracts for purposes of the rules of the Exchange so that the rules in Chapter I through XIX and in Chapter XXIV are also applicable to market baskets, in some cases supplemented by rules in this Chapter, except for rules that have been replaced in respect of market baskets by rules in this Chapter and except where the context otherwise requires. Whenever a rule in this Chapter supplements, or for purposes of this Chapter, replaces rules in Chapter I through XIX or in Chapter XXIV, that fact is indicated following the rule in this Chapter.

Definitions

Rule 26.1(a) When used in Chapter I through XIX and in Chapter XXIV, the following terms have the following meanings in respect of the market basket contracts provided for in this

¹The Chicago Board Options Exchange, Incorporated originally filed SR-CBOE-88-20 with the Commission on November 1, 1988, and filed Amendment No. 1 to the filing with the Commission on January 13, 1989 and Amendment No. 2 on May 12, 1989.

Chapter, unless the context otherwise requires:

Class

(1) The term "class" means all market basket contracts based on the same stock index.

[Replaces Rule 1.1(q)]

Underlying Security

(2) The term "underlying security" means the stocks comprising the index on which the market basket is based. [Replaces Rules 1.1(u) and 24.1(e)]

(b) When used in this Chapter, unless the context otherwise requires:

Index Multiplier

(1) The term "index multiplier" means the amount specified in the market basket contract as the index multiplier for that contract.

[Replaces Rule 24.1(f)]

Market Basket, Market Basket Contract

(2) The term "market basket" or "market basket contract" means a contract obligating the seller to sell and the purchaser to purchase a designated number of shares of each of the stocks comprising the index on which the market basket is based (i.e., the "component stocks"), with delivery of such shares to be made as provided in the Rules of the Clearing Corporation and the rules of correspondent stock clearing corporations. Market basket contracts shall be designated solely by reference to the index on which the market basket is based. Component stocks need not satisfy the requirements of Rule 5.3.

[Replaces Rules 5.1, 5.3 and 24.2]

Terms of Market Basket Contracts

Rule 26.2(a) The quantity of the component stocks deliverable upon settlement of a market basket equals the weighted number of shares of each stock included in the index upon which the market basket is based, determined as of the opening of business on the trade date, multiplied by the index multiplier for that market basket and rounded to the nearest whole number of shares (a fraction of one-half or higher being rounded up).

(b) The index multiplier for market baskets based on the Standard & Poor's 100 Stock Price Index shall be 5,000. The index multiplier for market baskets on the Standard & Poor's 500 Stock Price Index shall be 5,000.

Interpretations and Policies:

.01 In determining the number of shares of each of the component stocks in a market basket that must be delivered upon settlement thereof, the total number of outstanding shares of each such stock, stated in millions of

shares, is divided by the index divisor for that class of market basket contract. The resulting quotient (the "weighted number of shares") is then multiplied by the index multiplier for that class of market basket to determine the number of shares of that component stock that are deliverable upon settlement, subject to the requirement that any fractional amount is to be rounded to the nearest whole share. In determining the weighted number of shares of a component stock (which number is to be rounded to four decimal places), the number of shares outstanding is expressed in millions of shares rounded to three decimal places and the index divisor is rounded to four decimal places.

For example, if on the opening of business on a given trade date XYZ Corp. has 130.257 million shares outstanding and the index divisor for the Standard & Poor's ("S&P") 500 Stock Price Index market basket is 3022.4168, the weighted number of shares of XYZ stock will be 0.0431 (130.257 ÷ 3022.4168). The number of shares of XYZ stock deliverable upon settlement of an S&P 500 market basket purchased in a trade on that day would be equal to the weighted number of shares (0.0431) multiplied by 5,000 (the index multiplier for S&P 500 market baskets), or 216 shares (0.0431 × 5,000 = 215.5).

.02 For the purpose of settling the obligations resulting from the purchase or sale of a market basket contract, the index divisor and the number of shares outstanding of each of the component stocks shall be determined by the Exchange based solely upon information provided to the Exchange by the reporting authority as of the opening of business on the trade date. The Exchange's determination shall be final and conclusive.

[Replaces Rules 5.6, 6.4 and 24.9]

Meaning of Bids and Offers

Rule 26.3 Bids and offers shall be expressed in terms of dollars and decimals per unit of the index to two decimal places and shall be multiplied by the index multiplier for the applicable contract to arrive at the total amount of the bid or offer (e.g., a bid of 250.00 for a market basket having an index multiplier of 5,000 would represent a bid of \$1,250,000 for that market basket).

[Replaces Rules 6.41, 6.42 and 24.8]

Dissemination of Information

Rule 26.4 (a) The Exchange shall disseminate or cause to be disseminated after the close of business and from time-to-time on days on which

transactions in market baskets are made on the Exchange: (i) the current index value; (ii) the price at which each transaction in market baskets has been effected and the transaction volume at such price; and (iii) the prices at which bids and offers are made on the floor of the Exchange. The Exchange shall maintain, in files available to the public, information identifying the component stocks whose prices are the basis for calculation of the index and the method used to determine the current index value.

(b) The Exchange shall, after the close of each trading day in which transactions in market baskets have been effected, disseminate or cause to be disseminated the volume of trading in each class of market basket contracts and the volume of trading in each of the component stocks represented by such market basket trading.

[Replaces Rule 24.3]

Opening of Trading

Rule 26.5 The Order Book Official shall conduct the opening procedures for each class of market baskets at or as soon as practicable after 8:30 a.m. Chicago time, or upon a resumption in trading after trading has been halted or suspended, in such a manner as to result in a single price opening.

Interpretations and Policies:

.01 Rule 24.13, Interpretation and Policy .03 shall apply to the opening of trading in market basket contracts. [Replaces Rules 6.2 and 24.13]

Position Limits

Rule 26.6 Market baskets shall not be subject to, or taken into account in connection with, the provisions of Rule 4.11.

[Replaces Rules 4.11 and 24.4]

Exercise Limits

Rule 26.7 Market baskets shall not be subject to, or taken into account in connection with, the provisions of Rule 4.12.

[Replaces Rules 4.12 and 24.5]

Delivery and Payment

Rule 26.8 Delivery of the component stocks upon the sale of a market basket contract, and payment of the contract price in respect thereof, shall be in accordance with the Rules of the Clearing Corporation and the rules of correspondent stock clearing corporations. As promptly as possible after the entry into such a contract, the member organization shall require the customer: (i) in the case of a purchase, to make full cash payment of the contract price; or (ii) in the case of a

sale, to deposit each of the component stocks, in the amount specified in Rule 26.2, of those stocks are not carried in the customer's account in amounts sufficient to make delivery; or (iii) in either case, to deposit the required margin in respect thereof, if the transaction is effected in a margin account, in accordance with the Rules of the Exchange and the applicable regulations of the Federal Reserve Board. Notwithstanding the foregoing, a Market-Maker that has on the same day purchased and sold one or more market baskets of the same class may settle the obligations arising from such purchase and sale by the payment or receipt, as the case may be, of the difference between the cost of such purchase and sale, as provided in the Rules of the Clearing Corporation.

[Replaces Rule 11.3]

Margins

Rule 26.9 The margin requirements for market basket contracts shall be determined in accordance with the provisions of Chapter XII of the Rules, which shall apply to the positions (long or short) in the component stocks deliverable pursuant to the market basket contract.

[Replaces Rule 24.11]

Doing Business With the Public

Rule 26.10(a) The provisions of Chapter IX of the Rules shall be applicable to market baskets except that Rule 9.7(b) (relating to the opening of customer accounts), Rules 9.7(e), 9.15, and 9.21(d) (relating to the options disclosure document and to the prospectus of The Options Clearing Corporation), and Rule 9.11 (relating to the confirmation of transactions) shall not be applicable to market basket contracts.

(b) In approving a customer's account for market basket transactions, a member organization shall exercise due diligence to learn the essential facts as to the customer and his investment objectives and financial situation, and shall make a record of such information which shall be retained in accordance with Rule 9.8. Based upon such information, the branch Office manager or other officer of the member organization shall approve in writing the customer's account for market basket transactions.

(c) At or before the time a member organization provides the first written confirmation to a customer of a market basket transaction, that member organization shall provide to such customer a written description, substantially in the form provided by

the Exchange, of the mechanics and risks of trading in market basket contracts.

(d) A member organization shall promptly furnish to each customer a written confirmation of each transaction in market basket contracts. Each such confirmation shall show the class of market basket (i.e., the stock index on which the contract is based), contract price, number of market basket contracts purchased or sold, number of shares of each of the component stocks to be purchased or sold in settlement of the market basket contract, commissions, date of transaction and settlement date, and shall indicate whether the transaction is a purchase or sale and whether a principal or agency transaction.

Interpretations and Policies:

.01 It shall be sufficient in any case where the customer has on the same date purchased and sold a market basket contract of the same class to provide a confirmation statement reflecting the terms of such purchase and sale, including the amount of any credit or debit to the customer's account, without regard to the component stocks underlying those contracts.

[Replaces Rules 9.7(b), 9.7(e), 9.11, 9.15 and 9.21(d)]

Market-Makers

Rule 28.11 (a) *Appointment*. On a form or forms prescribed by the Exchange, a registered Market-Maker may apply for an Appointment in one or more classes of market basket contracts. A Market-Maker that is so appointed shall have the obligations set forth in this Rule and also shall be subject to the provisions of Chapter VIII of the Rules, other than Rules 8.3 and 8.7. A Market-Maker that is not so appointed shall not be permitted to participate as a Market-Maker in market basket transactions. No Appointment for market basket contracts shall be made without the Market-Maker's consent to such Appointment. The Market Performance Committee may suspend or terminate any Appointment of a Market-Maker under this Rule and may make additional Appointments whenever, in the Committee's judgment, the interests of a fair and orderly market are best served by such action. A member or prospective member adversely affected by a determination made by the Market Performance Committee under this Rule may obtain a review thereof in accordance with the provisions of Chapter XIX.

(b) *Financial Requirements*. A Market-Maker shall not be subject to Appointment in any class of market

basket contracts unless that Market-Maker has satisfied such minimum financial requirements as may be established from time to time by the Floor Directors Committee. Failure to remain in compliance with such requirements shall be grounds for the suspension or termination of a Market-Maker's appointment in any class of market basket contracts.

(c) *Obligations*. Transactions of a Market-Maker in market basket contracts should constitute a course of dealings reasonably calculated to contribute to the maintenance of a fair and orderly market, and no Market-Maker should enter into transactions or make bids or offers that are inconsistent with such a course of dealings. A Market-Maker appointed for a class of market basket contracts has a continuous obligation to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for that class of market basket contracts, or a temporary distortion of the price relationships between market baskets of the same class. Without limiting the foregoing, a Market-Maker is expected to perform the following activities in the course of maintaining a fair and orderly market:

(i) To compete with other Market-Makers to improve the market in each class of market basket contract for which the Market-Maker has been appointed at the station where the Market-Maker is present.

(ii) At the request of another member of the Exchange or at the request of the Order Book Official, to make markets at the station where a Market-Maker is present by providing bid and/or offer quotations that are subject to immediate acceptance for one market basket contract.

(iii) To update market quotations in response to changed market conditions at the station where a Market-Maker is present.

Interpretations and Policies:

.01 Rule 8.7, Interpretation Policy .04 shall apply to market baskets.

.02 Market-Makers appointed to trade in any class of market basket contracts shall not effect purchases or sales on the floor of the Exchange except in a reasonable and orderly manner.

[Replaces Rules 8.3 and 8.7]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below and is set forth in sections (A), (B), and (C) below.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

CBOE previously has filed with the Commission rules relating to the trading of market basket contracts (File No. SR-CBOE-88-20). The purpose of the present filing is to restate and clarify the rules governing the trading of market baskets.

In essence, a market basket is a contract that it settled by the physical delivery of the stocks comprising a selected index (the "component stocks"), with the individual stocks delivered in proportion to their weighting in that index. Unlike the traditional options also traded on CBOE, market baskets will not have an exercise price or an expiration date. Instead, the buyer of a market basket will be obligated to purchase and the seller will be obligated to sell a specified quantity of shares of each of the component stocks of a designated stock market index. Settlement of the purchase and sale of the component stocks will take place on the fifth business day after trade date in accordance with the rules of a correspondent stock clearing corporation.

The rules relating specifically to market baskets will be set out in new Chapter XXVI of CBOE Rules. Although market baskets are not options, they will be treated as index options under CBOE Rules, so that the rules in Chapters I through XIX (the general rules of the Exchange) as well as the rules in Chapter XXIV (CBOE's index option rules) generally will be applicable to transactions in market baskets to the extent not supplemented or replaced by the rules in Chapter XXVI a description of the changes proposed to be made to CBOE Rules is set forth below, together with a discussion of the regulatory treatment of certain aspects of market basket contract trading.

A. Proposed Rule Changes

Rule 26.1 sets forth certain definitions that are applicable specifically to market baskets. The terms "market basket" and "market basket contract" are defined to mean a contract obligating the seller to sell and the purchaser to purchase a designated number of each of the stocks included in the index on which the market basket is based (the "component stocks"). The "index multiplier" is defined to mean the amount specified in the market basket contract as the index multiplier for that contract (see Rule 26.2). This differs from the definition of this term in Chapter XXIV and would be applicable solely to the market basket rules in Chapter XXVI.

Other terms—specifically, "class" and "underlying security"—have been defined to vary their meaning elsewhere in the rules of CBOE when those terms are used in the context of market basket contracts. In particular, "class" is specially defined in Rule 26.1 to mean all market basket contracts based on the same stock index. References in CBOE rules to a "class" of index options will mean, in the case of market basket contracts, all such contracts that are based on the same stock index. The term "underlying security" similarly has been defined to mean the stocks comprising the index on which the market basket is based (i.e., the component stocks).

The terms of the market basket contracts are set forth in Rule 26.2 which describes the quantity of component stocks that will be deliverable upon settlement of a market basket contract. That rule provides that each of the component stocks is deliverable in an amount equal to that stock's weighted number of shares in the index times the index multiplier (subject to any rounding to the nearest whole share). The weighted number of shares is determined by dividing the total number of shares outstanding (stated in millions of shares) by the divisor for that index.

To illustrate, the index multiplier for the Standard & Poor's ("S&P") 500 Stock Price Index market is 5,000. If XYZ Corp. has 130.257 millions shares outstanding and if the divisor for the S&P 500 (expressed to four decimal places) is 3022.4168, the weighted number of shares for XYZ Corp. would be 0.0431 (130.257 ÷ 3022.4168). The purchaser of the S&P 500 market basket would receive 216 shares (.0431 × 5,000) of XYZ stock, together with the stock of the other companies whose shares comprise the index in amounts corresponding to their respective weightings in the index (except to the extent that fractional

shares are rounded to whole numbers in accordance with Rule 26.2). In determining share weightings (and, correspondingly, the number of shares of each component stock that is to be delivered), the number of shares outstanding is expressed in millions and decimals thereof (e.g., 130.257).

As provided in Rule 26.2 the index multiplier for both S&P 100 and S&P 500 market baskets is 5,000, resulting in single S&P 100 (OEB) and S&P 500 (SPB) market baskets covering stocks having a value of approximately \$1,455,000 and \$1,545,000, respectively, at present index levels. Rule 26.3, in turn, provides that bids and offers are to be multiplied by the index multiplier for the contract in question.

Trading in market baskets ordinarily will be conducted between 8:30 a.m. and 3:15 p.m. Chicago time, and Rule 26.5 provides that it will be the responsibility of an Order Book Official ("OBO") to establish daily a single opening price for each class of market baskets (i.e., the S&P 100 class and the S&P 500 class). CBOE Rule 7.1 separately provides that the OBO, an Exchange employee, is responsible, among other things, for maintaining the limit order book and for displaying bids and offers in the book. As provided in Rules 7.7 and 7.8, the OBO is required continuously to display the highest bid and the lowest offer and the quantity at those prices and may disclose the price and number of contracts bid below or offered above the best bid and offer. The OBO also is authorized and directed to execute customer orders left on his book and, as provided in Rule 6.45, such bids and offers have priority over bids and offers in the trading crowd at the same price except in the circumstances specified therein. CBOE intends to cause these same procedures to be applied to the trading of market baskets.

Rules 26.6 and 26.7 provide that position limits and exercise limits will not apply to market baskets since there will be no open interest in, and no exercise of, market basket contracts. Instead, all transactions in market baskets will be settled by the delivery of the component stocks. Thus, exercise limits have no application to market baskets and, for the same reasons that there are no numerical restrictions on the ownership of shares of individual common stock, position limits should not apply.

Rule 28.8 provides that delivery of the component stocks by the seller of a market basket and payment therefor by the purchaser are to be in accordance with the rules of The Options Clearing Corporation ("OCC") and the rules of

correspondent stock clearing corporations. OCC will be responsible for the initial clearance and settlement of all trades in market basket contracts effected on CBOE, including the netting of offsetting market basket trades in the accounts of Market-Makers and the cash settlement of any differences between the trade price and the prices at which purchases and sales of the component stocks are settled at correspondent stock clearing corporations. It is anticipated that OCC will require both sides to the trade to maintain margin at a level adequate to cover the market risk of open positions during the interval between trade date and settlement date. (This will be addressed specifically in the rule change filing that OCC will make in respect of market basket contracts.) The actual settlement in all positions in stock resulting from the trading in market baskets will take place through correspondent stock clearing corporations, as currently is the case with the settlement of exercises of equity options, based upon information provided by OCC.

CBOE has not adopted special rules for the margining of market baskets, but instead proposes that market baskets be margined in respect of the positions in common stock that result from settlement of the market basket contract. This reflects that persons trading in these contracts will not have a position in "market baskets" as a separate security at the end of the trading day but will instead have an obligation to deliver or pay for and receive the component stocks on the settlement date. Rule 26.9 accordingly specifies that the provisions of Chapter XII of CBOE Rules, which sets our margin requirements generally applicable to all margins accounts of customers, will be applicable to the long or short positions in the component stocks resulting from the trading of market basket contracts. Among other things, Chapter XII incorporates the margin requirements of Regulation T of the Federal Reserve Board (Rule 12.1), establishes maintenance margin requirements for customers' securities positions held in margin accounts (Rule 12.3), and prohibits customers from engaging in "free riding," the practice of satisfying margin requirements by the liquidation of positions in the customer's account (Rule 12.9).

Applying Regulation T to long and short stock positions resulting from transactions in market basket contracts generally will mean that purchasers of market baskets in margin accounts will be required initially to deposit 50% margin in respect of each long stock

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position, and that sellers of market baskets who are short the component stocks as a result of those sales (that is, where the seller of the market basket does not own one or more of the stocks in an amount sufficient to deliver on settlement of the contract) will be subject to the 150% margin requirement of Regulation T in respect of those stocks sold short. Market-makers would not be subject to these general requirements. Instead, and as provided in Regulation T, a Market-Maker in market basket contracts would be entitled to "good faith" margin treatment for all market baskets transactions in the same manner as any other specialist who makes a market in a particular security.

The Exchange intends to apply substantially all of its customer protection rules to market basket trading. In considering the subject of customer protection, however, it is important to note that the unit of trading for market baskets will cover stocks having a value of approximately \$1.5 million, limiting interest in these contracts only to the largest and most sophisticated institutional investors. These investors, who can be assumed to understand the risks of buying and selling large blocks of stock in complex hedge or arbitrage strategies, and who have the financial means to carry such positions and assume the related risk, do not require the same degree of protection in matters of customer protection (such as suitability) as do retail investors.

Nevertheless, new Rule 28.10 provides that, with a small number of specific exceptions, Chapter IX of CBOE's rules ("Doing Business With the Public") will apply to CBOE members in respect of their customer business in market baskets. For purposes of Chapter IX, market baskets will be deemed to be index options, and therefore will be subject to the rules covering supervision suitability, restrictions on acting for persons affiliated with exchanges or other members, assuming losses, communications with customers and complaints.

Since a completed trade in a market basket contract does not result in the issuance of a separate security, but instead is settled by the delivery of the component stocks, there will be no registration statement or prospectus issued under the Securities Act of 1933 and no disclosure document issued or disseminated to customers in connection with market basket trading. Rule 28.10 accordingly provides that CBOE rules relating to those subjects are not applicable to market baskets. CBOE,

however, will prepare and make available to its members a written description of the mechanics and risks of market basket trading and CBOE member organizations will be required to provide this document to their customers.

CBOE Rule 9.11, relating to the confirmation of transactions to customers similarly will not be applicable to market baskets. In its place, Rule 26.10 specifies that Exchange member organizations must provide in customer confirmation statements details not only as to the market basket transaction itself, but also information identifying each of the component stocks deliverable in satisfaction of the obligations arising out of market basket trading.

CBOE Rule 9.7(b) establishes special procedures that govern the opening of accounts for option customers, including a requirement that a Registered Options Principal ("ROP") approve the opening of the account. As provided in Rule 9.2, ROP's are required to complete a qualification examination and must be approved by the Exchange. These additional qualifications are inapplicable to the trading of market baskets and also are not necessary for the protection of the customers that will be purchasers or sellers of market baskets. Rule 26.10 accordingly provides that accounts for customers who wish to purchase or sell a market basket may be approved by the branch office manager or some other officer of the member organization.

Like other contracts traded on CBOE, market baskets will be traded by competing Market-Makers, who act as dealer-specialists in trading for their own accounts (see Rule 8.1), and by floor brokers who represent customers' orders on an agency basis. Most of the Rules in Chapter VIII ("Market-Makers and Block Positioners") will apply to trading in market basket contracts. For example, the rules relating to Market-Maker registration (Rule 8.2), Clearing Member letters of guarantee (Rule 8.5), restrictions on acting as a Market-Maker and floor broker (Rule 8.8), and reporting of transactions in securities other than options (Rule 8.9) will apply these contracts.

Other provisions of the Exchange's Market-Maker rules have been modified in their application to market baskets, however. Whereas a CBOE Market-Maker ordinarily may trade in classes of options to which his appointment under Rule 8.3 does not extend as long as such trading is not in delegation of his obligations in his appointed classes (as provided in Rule 8.7), Rule 26.11(a)

provides that Exchange members will not be permitted to act as Market-Makers in market basket contracts absent an appointment by the Exchange for that class of market basket contract. An Exchange member that is not so appointed remains free to execute customer orders as a floor broker, however. Rule 26.11(b) separately authorizes the establishment of minimum financial requirements, in addition to the Clearing Member guarantee set forth in Rule 8.5, for Market-Makers that wish to trade in market basket contracts.

The responsibilities of a Market-Maker in market baskets parallel the provisions of existing Rule 8.7. As set forth in new Rule 26.11(c), a Market-Maker would be expected to engage, to a reasonable degree under the existing circumstances, in dealings for his own account when there exists, or it is reasonably anticipated that there will exist, a lack of price continuity, a temporary disparity between the supply of and demand for that class of market baskets, or a temporary distortion of the price relationships between market baskets of the same class. This is essentially the same standard as applies to all CBOE Market-Makers. More particularly, Market-Makers in these contracts will be expected to compete with other Market-Makers to improve the markets in each class of market basket contracts for which the Market-Maker has been appointed at the station where the Market-Maker is present. In addition, Market-Makers will be expected to make markets, at the request of another member or the Order Book Official, by providing bids and/or offer quotations that are subject to immediate acceptance for one contract. This standard, which differs from the five-contract requirement of Rule 8.7.05, is based upon the size of each market basket contract. Finally, and as with other contracts traded on the Exchange, Market-Makers would be expected to update market quotations in response to changed market conditions at the station where the Market-Maker is present.

B. Antimanipulative Rules

(i) *Rule 10a-1.* CBOE does not believe that the short sale rule (Securities Exchange Act Rule 10a-1) should apply to transactions in market basket contracts. It is readily apparent that a trading market in market baskets could not function if sales of such contracts were subject to the short sale rule. CBOE believes that sales of market baskets should be exempted from the short sale rule, however, essentially because the reasons for the rule do not

require it to be applied to market baskets. The fundamental purposes of the short sale rule are to prevent speculative selling from accelerating a decline in the price of equity securities and to prevent "bear raiding" (a form of manipulation). It is virtually inconceivable, however, that any person would seek to sell all of the stocks underlying a broad-based index such as the S&P 100 or the S&P 500 merely to affect the price of a single stock. Thus, no valid regulatory purpose would be served by causing transactions in market baskets, involving 100 or 500 stocks, to be subject to the provisions of a rule that is designed to prevent manipulative practices from affecting the price of individual stocks.

The "tick test" incorporated by the short sale rule also cannot be reasonably applied to market baskets. A tick test based upon the prices of all the component stocks is obviously unworkable because it is unrealistic to expect that the last reported sales in all of the stocks underlying a market basket will ever be on a plus tick or a zero-plus tick at any one time. Since there always will be sellers of market baskets who do not own all of the component stocks, application of the tick test to the 100 or 500 component stocks would adversely affect the liquidity of a market basket contract.

Although a tick test conceivably could be based upon the prices at which the baskets themselves trade (i.e., without regard to the prices of their component stocks), this approach fails to take into account the anticipated discontinuity in market basket trading. Specifically, CBOE expects that the extraordinary size of market basket trades (approximately \$1.5 million/contract) will result in no more than a small number of these trades being executed each day. As a result, a trade in market baskets could be made at a price that represents a minus or zero-minus tick from the preceding basket price at a time when the underlying stock market is rising. In effect, therefore, short sales would be prohibited under the rule, even in a rising market, until the last basket sale price could be bettered.

Application of the tick test to the market baskets themselves also could effectively preclude short sales of market baskets during a declining market—precisely the time when the "shock absorbing" benefits of market basket trading would be most useful. To deny institutions, broker-dealers, and arbitrageurs the ability to sell market baskets when the market is falling (unless they own and intend to deliver all 100 or 500 stocks) would leave those

traders with the same unsatisfactory alternatives as presently exist, including trading in stock index futures which are not subject to any type of short sale restrictions.

(ii) *Rules Adopted under Section 10(b).* In considering the application to market basket trading of the various antimaniipulative rules adopted under Section 10(b) of the Securities Exchange Act of 1934 ("Exchange Act"), it is important to keep in mind that a market basket contract is simply a mechanism for trading in stocks and is not itself a separate security. Purchasers and sellers of a market basket contract are, in effect, purchasers and sellers of the stocks that comprise the index on which the basket is based. Market basket transactions result in long or short positions in the component stocks, and do not result in any continuing or open positions in the baskets themselves. Thus, most of the antimaniipulative rules adopted under Section 10(b) will apply to transactions and positions in stocks effected through market basket trades to the same extent as those issued through ordinary stock trades.

Specifically, Rules 10b-2, 10b-3, 10b-5, 10b-6, 10b-7, 10b-8, 10b-13, 10b-16, 10b-18 and 10b-21(T) all would appear to apply to transactions in stocks effected through market basket contracts, even though, as discussed below, it may ultimately prove necessary to exempt market basket transactions from certain of these rules. Rules 10b-9 and 10b-17 would appear to have no application to market basket transactions.

Rule 10b-4, which addresses the practice of "short tendering" of securities, likewise should present no problem in its application to market basket trading, since a market basket contract represents, in the words of the rule, "an unconditional contract, binding on both parties thereto," to purchase or sell each of the stocks included in the contract. Thus, a purchaser of a market basket contract should be deemed to own each of the component stocks for purposes of Rule 10b-4, and a person's net long position in stocks should be reduced by the number of shares deliverable pursuant to any market basket contract that the person has sold.

Rule 10b-10, dealing with confirmations to customers, would apply to confirmations of market basket transactions as described above in the discussion of proposed CBOE Rule 26.10.

It is possible that after there has been some experience with trading in market basket contracts, there may appear to be a need for exemptive relief from certain of the foregoing rules. For example, it

may appear that rules such as Rule 10b-6, 10b-7 or 10b-13, each of which restricts transactions in securities under certain conditions, ought not to apply to restrict the purchase or sale of individual securities that occur in the context of a transaction in a broadly based, block-size market basket contract. To the extent that any such exemptions prove to be desirable, they will be the subject of appropriate written requests.

C. Other Regulatory Matters

(i) *Location of Trading Post.* CBOE contemplates that market baskets will be traded adjacent to the post or posts at which traditional index options are traded. The Exchange believes that this arrangement will enhance the efficiency of both markets by minimizing price disparities between market baskets and index options and facilitating hedging and other trading strategies involving both types of index contract. This arrangement should not present any of the potential abuses at which restrictions against certain forms of side-by-side trading are directed, since both market baskets and the related index options are priced derivatively in relation to the prices of component or underlying stocks in the principal markets in which such stocks are traded.

(ii) *"Front-Running."* CBOE has from time to time issued educational circulars for the purpose of informing the membership of CBOE policy with respect to certain matters arising under the rules of Exchange. To this end, the Exchange has issued Educational Circular No. 23 which presents the Exchange's enforcement policy with respect to certain practices generally known as "front-running." That Circular has been revised twice since its issuance in 1978, most recently in February 1986. The most recent version of that Circular makes clear CBOE's position that a person engaging in front-running (as defined) involving index options violates CBOE Rule 4.1 ("Just and Equitable Principles of Trade"). CBOE will make clear in announcements to its membership that existing prohibitions against front-running apply to market baskets and, if necessary, will further amend Educational Circular No. 23 to address trading in market baskets.

(iii) *Last Sale and Quotation Reports.* Since CBOE proposes to trade stocks only in the context of market basket contracts and not individually, the last sale and quotation information to be made available for market baskets will be limited to the price at which the

basket last traded, the size of the trade, and the current bid and offer for the basket. Last sale and quotation information will not be reported separately for each stock. To do otherwise would require "exploding" a basket trade or quote among the component stocks pursuant to an arbitrary allocation formula, which would not present an accurate picture of the market in these stocks.

Reflecting the derivative nature of bids and offers in market baskets, bids and offers for market baskets should not be subject to Exchange Act Rule 11Ac1-1 (governing securities quotations) for the same reason that put and call options traded on CBOE have never been subject to that Rule. A market basket bid or offer quotation necessarily depends upon the latest quotations in all of the component stocks of the basket and is subject to change whenever quotations in any of these stocks change. In such circumstances, it would be inappropriate to require a Market-Maker's bid or offer to remain firm for any stated period of time, during which the prices of the component stocks may have changed. As is the case for options, bids and offers for market baskets will be firm when made (i.e., bids and offers will be subject to immediate acceptance up to the quantity stated in the bid or offer) and the dissemination of these bids and offers will present an accurate and meaningful indication of the state of the market at that time.

The last sale and quotation reports for baskets will be disseminated on a current basis over the system of the Options Price Reporting Authority. CBOE also intends to make appropriate arrangements for the dissemination of total end-of-day volume in the market baskets and in each of the component stocks as a result of market basket trading.

(iv) *Exemption of Component Stocks from Section 12(a) of Exchange Act.* Insofar as the trading of market basket contracts on CBOE may be viewed as encompassing the exchange trading of the component stocks of the basket, the individual component stocks should be exempted from Section 12(a) of the Exchange Act in order to eliminate the need to list the component stocks on CBOE or to apply for unlisted trading privileges in the component stocks. Such an exemption would be comparable to the exemption for stocks underlying listed options provided for in Exchange Act Rule 12a-6, and would be based upon considerations similar to those that supported the adoption of that Rule. A similar exemption has recently been extended to the stocks underlying index

participations proposed to be traded on CBOE and other exchanges. (See Exchange Act Release No. 34-26709 (April 11, 1989)). As is the case with stocks underlying options and index participations, component stocks of market basket contracts may be thought of as traded on CBOE only in the most narrow sense, since component stocks will be traded only as part of a basket of at least 100 stocks, and will not be traded individually. Each of the component stocks will be listed on one or more other national securities exchanges or will be traded on the NASDAQ system, and therefore will be registered under Section 12 of the Exchange Act by virtue of such listing or trading. No benefit to investors would result from requiring the additional registration of such component stocks for CBOE. On the other hand, if registration were required, as a practical matter CBOE would have to be extended unlisted trading privileges ("UTP") in each present and future component stock.

In order to avoid the need for a blanket UTP application, CBOE believes the better approach would be for the Commission to amend Rule 12a-6 for the purpose of exempting from Section 12(a) those stocks that are traded on a national securities exchange only as component stocks of a market basket contract.

(iv) *Net Capital.* Broker-dealers taking positions in market baskets will, at the end of the trading day, be long or short the component stocks as a result of these basket transactions. The Exchange anticipates that the resulting position in stocks will be subject to the normal "haircuts" set out in paragraphs (c)(2)(vi)(I) and (f)(3)(ii) of the Commission's net capital rule (Exchange Act Rule 15c3-1). CBOE further anticipates that positions in the component stocks resulting from the trading of market baskets will be subject to lesser haircuts where those positions are offset by broad-based index options or futures contracts, consistent with positions taken previously by staff of the Commission.

The proposed rule change is consistent with the requirements of Section 6(b) of the Exchange Act in general, and furthers the objectives of Section 6(b)(5) in particular, in that the proposed rule change is intended to prevent fraudulent and manipulative acts and practices, remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

This proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 7, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: June 1, 1989.

[FR Doc. 89-13517 Filed 6-6-89; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26876; File No. SR-PSE-89-12]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change By Pacific Stock Exchange Incorporated Relating to Changes in PSE Membership Rates and Charges

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 18, 1989, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange, pursuant to Rule 19b-4 of the Act, is submitting this proposed rule change to amend the text of PSE Rule IX, Membership, in order to incorporate changes to membership-related fees which were previously approved by the Commission.

The amendments to the text of Rule IX, reflecting the current membership-related charges in the Fee Schedules for Equities and Options operations, are summarized as follows:

- Membership application fee increased from \$250 to \$350
- Joint Account Application fee increased from \$250 to \$350
- Inter-Firm and Intra-Firm transfer fee increased from \$200 to \$250
- Seat Sale Transfer fee \$200
- Lease fees increased from \$300 to \$350

The PSE believes that proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides an equitable allocation of reasonable dues, fees and other charges among members using the facilities of the PSE.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections (A), (B) and (C) below,

of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Changes in membership-related fees and charges were incorporated into the Fee Schedules, in conjunction with overall changes to the PSE's fee structure for Equities and Options operations, and submitted for Commission consideration in SR-PSE-88-11. Pursuant to section 19(b)(3)(A) of the Act, the proposed fees were effective upon filing with the Commission.¹ The changes in membership-related fees and charges were not, however, incorporated into the actual text of the PSE Membership Rule, Rule IX. The instant proposed rule change will incorporate the changes to membership related fees and charges previously adopted in SR-PSE-88-11 into PSE Rule IX. No additional changes are made by this proposed rule change.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PSE does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No comments were solicited or received on this proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule filing has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments,

¹ 15 U.S.C. 78s(b)(1)(1982).

² 17 CFR 240.19b-4 (1988).

all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-89-12 and should be submitted by June 28, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: May 30, 1989.

[FR Doc. 89-13518 Filed 6-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26877; File No. SR-PSE-89-11]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change By Pacific Stock Exchange Incorporated Relating to Changes in Basis for Calculating Initial Membership Fees

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 15, 1989, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE, pursuant to Rule 19b-4 of the Act, has submitted this proposed rule change to alter the basis for determining initial membership fees. PSE Rule IX, Section 9(a)(i)(a), currently provides that the initial fee for the purchase of a membership by an individual not associated with a member organization shall be 5 percent of the purchase price with a minimum of \$250 and a maximum of \$3,500. This language also appears in the PSE Schedule of Rates and Charges for Equities and for Options.

The proposed rule change would amend Rule IX, Section 9(a)(i)(a), to provide that the initial membership fee be 5 percent of the average of the purchase price plus the two preceding seat sales rather than 5 percent of the purchase price. Commentary .01(b) to Rule IX also references the basis for calculating the initial membership fee and would be similarly amended. In addition, the PSE Schedule of Rates and Charges for Equities and Options would be amended to reflect the change to Rule IX.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On December 10, 1987, certain options members submitted a petition to the PSE's Board of Governors proposing that the initial membership fee of 5 percent be based on the average of the purchase price plus the two preceding seat sales, rather than on the purchase price of the membership.

PSE Rule IX, Section 9(a)(i)(a) bases the initial membership fee on 5 percent of the last negotiated sale of a seat at the time of activation. The maximum initial membership fee is capped at \$3,500. This fee also appears in the PSE Schedule of Rates and Charges for Equities and for Options. At its December 21, 1987 meeting, the PSE Board of Governors instructed Exchange staff to conduct a study with regard to the basis the Exchange uses to determine the initial membership fee.

Exchange staff conducted a statistical analysis comparing seat sales from 1984-1987 on a 3 seat sale moving average basis versus a 13 week seat sale moving average basis. Staff found that the 3 seat sale moving average was a better indication of current seat values than the 13 week average. Also, the 3 seat sale average would be easier and less time consuming to calculate than the other. In comparison to current policy, the 3 seat sale average would prevent basing the initial membership fee on one very high or one very low

sale price by averaging it with two others.

The PSE believes that the proposed amendment is consistent with section 6(b)(4) of the Act in that it provides an equitable allocation of reasonable dues, fees and other charges among the members using the facilities of the PSE.

(B) Self-Regulatory Organization's Statement on Burden on Competition

PSE does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

On December 10, 1987, certain options members submitted a petition to the Board of Governors proposing that the basis for determining initial membership fees be changed as stated herein.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC, 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC, 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-89-11 and should be submitted by June 28, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 30, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-13519 Filed 6-6-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 34-26884; File No. SR-PSE-89-24]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Restructuring of PSE Committees and the Formalization of the Rules and Procedures Affecting Those Committees

On October 26, 1988, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission") pursuant to section 19(b)(1) under the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Article IV of the Exchange's Constitution relating to committees, and to provide formalized rules and procedures for committees in a new and separate Rule XXII in the Exchange's Rules of the Board of Governors. The proposed rule change was noticed in Securities Exchange Act Release No. 28359 (December 14, 1988), 53 FR 51611 (Dec. 22, 1988). No comments were received on the proposed rule change.

The Exchange states that the purpose of replacing Article IV of the Constitution with a new Article IV and creating new Rule XXII is to modernize the provisions in the Constitution that list and define committees, and to formalize the rules and procedures that affect all committees.

Currently, Article IV of the PSE Constitution identifies ten standing committees. The Exchange's proposal reduces the number of committees in Article IV to five, and places all other committees in a new Rule XXII of the Rules of the Board of Governors. In this regard, the Exchange notes that three of the committees currently listed in Article IV no longer exist.³ In addition, the PSE proposes to provide in new Rule XXII descriptions of additional committees which recently have been appointed.

¹ 15 U.S.C. 78a(b)(1) (1982).

² 17 CFR 240.19b-4 (1988).

³ Under the proposal, the Clearing Committee, the Organization Review Committee and the Public Relations Committee no longer will be identified as standing committees of the Exchange.

Article IV of the Constitution will be amended to provide a brief description of the powers and duties of the members of the five committees which have been in continuous existence at the Exchange: the Equity Allocation Committee, Equity Floor Trading Committee, Options Listing Committee, Options Floor Trading Committee, and the Ethics and Business Conduct Committee.⁴ The remainder of PSE's committees will become a part of Rule XXII and will be categorized into four types: Board, Equity, Options, and Exchange committees.⁵

New Rule XXII provides a more extensive description of the powers and duties of members of the committees set forth in Article IV, and provides for the powers and duties of the Board, Equity, Options⁶, and Exchange committees. The PSE proposes to add two new committees, as set forth in proposed new Rule XXII, which do not currently exist. In this regard, Rule XXII provides for an ongoing Membership Committee which the PSE notes is now required as a result of changes in membership composition and/or outmoded policies or rules regarding membership. Similarly, Rule XXII provides for a Market Performance Committee, which the PSE notes will replace the Quality of Markets Committee, to review specialists' and market makers' performance, oversee the evaluation process, and review capitalization of PSE members. The Market Performance Committee is intended to replace the Quality of Markets Committee as a more active Board Committee reviewing the

⁴ See Securities Exchange Act Release No. 28359, 53 FR 51611.

⁵ Proposed new Rule XXII provides for a Market Performance Committee, a Specialist Committee, an Audit Committee, a Board Appeals Committee, and Technology Services Committee under the heading of Board Committees; a National Market System Advisory Committee, a Listing Committee and a Marketing Committee under the heading of Equity Committees; an Options Appointment Committee and a Marketing Committee under the heading of Options Committees; and a Pension Committee, a Membership Committee and a New Products Committee under the heading of Exchange Committees.

⁶ Subsequent to the submission of the Exchange's proposed rule change, the Exchange revised the language in Rule XXII, Sec. 10(a) to provide that "the Options Appointment Committee shall be comprised of Floor Brokers and at least one office and/or office allied member" rather than require that this Committee consist of floor brokers only, as originally proposed. See letter from Craig R. Carberry, Director, Options Compliance, PSE to Sharon Itkin, Staff Attorney, Commission, dated May 11, 1989. The broader representation on the Options Appointment Committee is consistent with section 6(b)(3) of the Act in that it will "assure a fair representation of [Exchange] members in the * * * administration of its affairs."

overall regulation of specialists and market makers on the Exchange.⁷

New Rule XXII will set forth formalized procedures for selection and approval of committee members⁸, as well as establish and set forth the appeals procedure to be followed by a member wishing to appeal the decision or action of a committee to the Board Appeals Committee.⁹ In addition, all committees under the proposed rule are governed by a conflict of interest provision which prevents Board committee members from participating in matters in which they are directly or indirectly interested.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6,¹⁰ and the rules and regulations thereunder. By modernizing the provisions in the PSE Constitution relating to committees and formalizing the PSE's rules and procedures with respect to the powers and duties of committee members, the process for selection of committee members, and the procedures to be followed by a member who wishes to appeal the decision or action of a committee to the Board Appeals Committee, the proposed amendments are consistent with the requirements of section 6(b)(3), which requires that the rules of an exchange assure a fair representation of its members in the selection of its directors and administration of its affairs. The amendments are also consistent with section 6(b)(5) of the Act, which requires the rules of an Exchange be designed "to promote just and equitable principles of trade, [and] to foster cooperation and coordination with persons engaged in regulating * * * and facilitating transactions in securities, * * *". The last time Article IV of the PSE Constitution was reviewed was in 1982. Since that time additional committees have been appointed, and three

⁷ In a conversation on February 1, 1989 between Sharon Itkin, staff attorney, Commission, and John Katovich, Vice President, General Counsel and Corporate Secretary, PSE, the Exchange noted that the Quality of Markets Committee is a special committee which the PSE established to look at very specific and limited issues regarding specialists. In this regard, the Exchange noted that this Committee has been relatively inactive, meeting only a few times a year to review compliance and surveillance at the Exchange, and to review the PSE's regulatory department in general.

⁸ See Rule XXII, Sections 1(a), (b) and (c), and 6(a) and (b).

⁹ See Rule XXII, Section 7(a)-(n) regarding Hearings and Review of Committee Action.

¹⁰ 15 U.S.C. 78f (1982).

committees listed in the Constitution no longer exist. The proposed amendments will update Article IV to reflect more accurately the Exchange's committees as they operate today. In addition, new Rule XXII will provide members with a detailed description of the procedures for a member to appeal the decision or action of a committee to the Board Appeals Committee.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act,¹¹ that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Jonathan G. Katz,
Secretary.

Dated: June 1, 1989.
[FR Doc. 89-13521 Filed 6-6-89; 8:45 am]
BILLING CODE 8010-01-M

[34-26872; PHLXDEP-89-02]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Depository Trust Company Relating to Enhancement to PHILANET and Request for Permanent Approval

May 30, 1989.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78a(b)(1), notice is hereby given that on April 26, 1989, the Philadelphia Depository Trust Company ("PHILADEP") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Depository Trust Company ("PHILADEP") hereby submits as a proposed rule change pursuant to Rule 19b-4 under the Securities Exchange Act of 1934 ("Act") certain enhancements to its PHILANET Terminal Communication System ("PTCS") and requests the Commission to authorize PTCS to operate on a permanent basis.

¹¹ 15 U.S.C. 78a(b)(2) (1982).

¹² 17 C.F.R. 200.30-3(a)(12) (1988).

II. Self-Regulatory Organization's Statement Regarding the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and statutory basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements:

(A) Self-Regulatory Organization's Statement of Purpose of, and Statutory Basis for, the Proposed Rule Change

On December 30, 1983, the Commission approved SR-PHILADEP-83-03 establishing PHILADEP's PTCS on a pilot basis.¹ PTCS is an electronic communication system linking PHILADEP to its participants. The basic functions offered through this system as well as those offered through similar systems operated by the Depository Trust Company ("DTC") and the Midwest Securities Trust Company ("MSTC") are well documented in the 1983 Approval Order. In particular, the Commission stated in that Order that it "expects DTC, MSTC/MCC and PHILADEP to continue to adapt their systems to meet participant demand for additional uses, including interfaced clearing agency services." Consistent with this mandate, PHILADEP has implemented a number of system enhancements to PTCS which are detailed in Exhibit 2 attached hereto.

The 1983 Approval Order recognized DTC and MCC/MSTC's systems as permanent systems whereas PHILADEP's system was approved on a pilot basis due to its more recent implementation. At the time of the Order, the Commission noted that the permanently implemented systems both required participants usage on dedicated lines for access while PHILADEP's pilot system would permit access through dial-up lines.² In this regard, the Commission, while noting that PTCS employs many safeguards, requested PHILADEP's management to specifically assess the risk of unauthorized access through dial-up lines. Pursuant to this directive, PHILADEP's management has and will

continue to evaluate the efficacy of access to PTCS through dial-up lines.

PHILADEP believes that system access through dial-up lines, with appropriate safeguards, provides an economical alternative to the use of dedicated telephone lines and thereby promotes system access to a greater number of clearing participants, particularly those having smaller-volume. PHILADEP notes that this position is consistent with the Commission's approval of dial-up line access to MCC/MSTC's system³ and to The Options Clearing Corporation's ("OCC") on-line communication system.⁴

PHILADEP believes that dial-up access to PTCS currently provides sufficient safeguards to ensure system integrity against unauthorized access. One enhancement to the system is an "automated password expiration" procedure. In order to further assure secure access to the system, users' passwords will be automatically changed monthly although users have the ability to change their passwords at any time.

The six year experience under the pilot and the recent system enhancements reflect the maturing of PTCS into a full service system applauded by all participant users. With the current security safeguards in place, PHILADEP has not experienced any problems or instance of unauthorized system access. In light of the above, PHILADEP believes that it is appropriate for the Commission to authorize PTCS to be implemented on a permanent basis at this time.

The proposed rule change is consistent with section 17A(b)(3)(A) of the Act in that it enhances PHILADEP's "capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions for which it is responsible." The proposal is also consistent with the Congressional objectives of facilitating the development of a national system for clearance and settlement of securities transactions. In particular, the proposal represents "[n]ew data processing and communications techniques [that] create the opportunity for more efficient, effective and safe procedures for clearance and settlement." See Section 17A(a)(1)(C) of the Act.

² See Securities Exchange Act Release No. 21227 (August 8, 1984).

⁴ See Securities Exchange Act Release No. 22939 (February 24, 1986).

(B) Self-Regulatory Organization's Statement on Burden on Competition

PHILADEP does not believe that the rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Comments on the proposed rule change have not been solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at PHILADEP. All submissions should refer to File number Philadep-89-02 and should be submitted by June 28, 1989.

For the Commission by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-13522 Filed 6-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26879; File No. SR-PHLX-89-22]

Self-Regulatory Organizations; Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to Preferential Allocation of CIP Exercise Notices

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 9, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("Phlx" or the "Exchange") proposes to amend Rule 1009B governing Allocation of CIP Exercise Notices to provide a procedure for preferred allocation of such notices. Accordingly, the current text of Rule 1009B is to be completely rescinded and replaced with the following, all of which is new material:

Preferred Allocation of CIP Exercise Notices

Rule 1009B. (a) A holder of a short CIP position (seller of a CIP) desiring to receive priority consideration in being assigned an exercise notice of a holder of a long CIP position (purchaser of a CIP) may on a daily basis provide notice of such intent ("Notice") on or before a time specified and made public by the Exchange and which is in accordance with the Rules of the Options Clearing Corporation ("OCC"). Specific "acceptance of Notice" cut-off times will also be delineated for Exchange member organizations. A Notice may be tendered to the OCC in a form prescribed by the Exchange which is in accordance with the Rules of the OCC only by the clearing member in whose account with the OCC the CIP short position is carried. Members and member organizations shall establish fixed procedures, to the extent that they do not conflict with the rules and policies of the Exchange and the OCC, as to the latest hour at which they will accept Notices from their customers.

(b) A seller of a CIP who makes an effective tender of a Notice will receive priority consideration from the OCC in being assigned an exercise notice of a purchaser of a CIP. In the event that there are greater short CIP positions for

which Notices are received than long CIP positions for which exercise notices are received, the OCC will allocate exercise notices on a random basis among only short CIP positions for which Notices have been received. In this regard, all Notices, regardless of the time of day that they are received, so long as they are received by the OCC prior to the acceptance of Notice cut-off time, will be given equal priority in being considered for assignment of exercise notices. A Notice is effective for only the business day on which it is tendered and accepted. Notices may be tendered on any day that the OCC accepts notices of exercise of the CIP cash-out privilege from CIP purchasers.

(c) Each member organization shall establish fixed procedures for the allocation of exercise notices assigned in respect of a short position in CIPs in such member organization's customers' accounts. Such allocation procedures shall assure that customers who effectively tender Notices shall receive priority consideration and assignment of exercise notices over other customers holding CIP short positions with the member organization. In allocating exercise notices among customers of the same status holding short CIP positions, i.e., those who tendered effective Notices and those who did not, such allocations shall be made on a "first-in, first-out" or automated random selection basis that has been approved by the Exchange or on a manual random selection basis that has been specified by the Exchange. Each member organization shall inform its customers in writing of the method it uses to allocate exercise notices to its customers' accounts, explaining its manner of operation and the consequences of that system. Unless otherwise specified by the member organization, the allocation procedures established by a member organization for stock options will be deemed to apply to the allocation of exercise notices for CIPs.

(d) Each member organization shall report its proposed method of allocation to the Exchange and obtain the Exchange's prior approval thereof, and no member organization shall change its method of allocation unless the change has been reported to and approved by the Exchange.

(e) Each member organization shall preserve for a three-year period sufficient workpapers and other documentary materials relating to the allocation of exercise assignment notices to establish the manner in which allocation of such exercise notices is in fact being accomplished.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

On February 26, 1988, the PHLX submitted SR-PHLX-88-07 to the Commission establishing proposed rules for the trading of Cash Index Participations ("CIPs"). The initial rule filing established a "cash-out privilege" available to CIP purchasers to receive once each quarter a payment in cash based upon the value of the component stocks of an underlying CIP stock index at a specified point in time. SR-PHLX-88-07 was subsequently amended three times. In the second amendment, filed with the Commission on September 23, 1988, the PHLX amended the cash-out privilege to provide CIP purchasers the ability to exercise the cash-out privilege on a daily basis rather than just on a quarterly basis. The amendment also provided that those exercising the cash-out privilege on a daily basis would receive the pertinent CIP index value less one half of one percent of that value as calculated at the close of trading one business day following the date on which the cash-out privilege is exercised. With respect to quarterly exercises of the cash-out privilege, no modification was made to the initial filing. Accordingly, those exercising the cash-out privilege at the end of a quarter will receive the full CIP index value based on the next business day's opening stock prices.

Rule 1009B sets forth the procedures for determining which sellers of CIPs will be assigned and thereby become obliged to pay the cash index value to any purchaser exercising the cash-out privilege. The Rule, as currently in effect, generally provides for a random assignment to CIP sellers to CIP purchasers' exercise notices. Because certain CIP sellers may prefer not to be assigned such exercise notices at a time

¹ See Securities Exchange Act Release No. 20519 (December 30, 1983) (approving SR-PHILADEP-83-03, filed on February 11, 1983) ("1983 Approval Order").

² Dial-up access is an option as PHILADEP permits any user to access the system through dedicated lines as well.

when other CIP sellers may prefer to be so assigned, the proposed rule change will provide a mechanism to reflect such CIP seller preferences in the assignment procedures.

Pursuant to the proposal, a CIP seller who prefers to be given priority consideration in being assigned a CIP purchaser's exercise notice must tender a notice of such preference on each day he or she desires such priority consideration. In this regard, all notices, regardless of the time of day that they are received, so long as they are received by the Options Clearing Corporation ("OCC") for that day, will be given equal priority consideration.

The OCC has indicated that it has made the necessary technical system changes to accommodate the PHLX's proposal.

The proposed rule change is consistent with the provisions of the Securities Exchange Act of 1934 ("Act") and the rules and regulations thereunder applicable to the Exchange and, in particular, with section 6(b)(5) of the Act, which in pertinent part requires that exchange rules "foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities."

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days or such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or,

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 28, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 31, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-13523 Filed 6-6-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. PA-11]

Privacy Act of 1974; Modification of Systems of Records

AGENCY: Securities and Exchange Commission.

ACTION: Notification of consolidation of the descriptions of existing systems of enforcement records and clarification of existing routine uses for such records.

SUMMARY: The Commission has consolidated preexisting descriptions of its enforcement-related systems of records. The Commission has also clarified its routine uses with respect to the consolidated system of records by adding language that explicitly covers disclosure of records to trustees in bankruptcy, in litigation in which the Commission is not a party, and to foreign governmental authorities, including foreign securities authorities.

EFFECTIVE DATE: June 7, 1989.

FOR FURTHER INFORMATION CONTACT: Kenneth H. Hall, Senior Counsel, Division of Enforcement, Securities and

Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: Under the Privacy Act of 1974 (the "Act"), 5 U.S.C. 552a, the Commission had designated more than twenty enforcement-related systems of records. These systems of record are maintained by the Division of Enforcement, the Commission's Records Officer, and the Commission's Regional and Branch Offices. The descriptions of these systems of records were distinguished primarily by the status of a matter (e.g., as a matter under inquiry, formal investigation, closed investigation, or by various types of litigation) or by physical location of the records. However, for Privacy Act and other purposes, both the Commission and the public normally treat Commission enforcement-related systems of records as a single system. For example, individuals who seek to determine whether the Commission maintains information concerning them in its enforcement records generally do not frame their requests in terms of the status of a matter or the location of the records, nor does the Commission's Privacy Act Officer use these categories in responding to requests. The Commission thus determined that it was appropriate to consolidate these descriptions.¹ The consolidated description does not expand the categories of investigatory or litigation records maintained, the categories of individuals on whom such records are maintained, or the potential recipients of such information.

The consolidation of enforcement records is not intended to expand the routine uses that may be made of

¹ As a result of this consolidation, the descriptions of the following systems of records have been revoked: SEC-12—Administrative Proceedings; SEC-24—Division of Enforcement Investigative Working Files; SEC-25—Division of Enforcement Liaison Working Files; SEC-26—Division of Enforcement Preliminary Market Surveillance Inquiries; SEC-36—Investigatory Files; SEC-38—Litigation Files (Civil and Criminal); SEC-62—Atlanta Regional Office Investigative files; SEC-63—Boston Regional Office Investigation Index File; SEC-64—Boston Regional Office Investigative Files; SEC-66—Chicago Regional Office Investigative Files; SEC-71—Denver Regional Office Investigative Files; SEC-76—Detroit Branch Office Investigative Files; SEC-79—Forth Worth Regional Office Investigative Files; SEC-80—Houston Branch Office Investigative Files; SEC-82—Los Angeles Regional Office Investigative Files; SEC-85—Miami Branch Office Investigative Files; SEC-87—New York Regional Office Investigative Files; SEC-90—Philadelphia Branch Office Investigative Files; SEC-93—Salt Lake City Branch Office Investigative Files; SEC-94—San Francisco Branch Office Investigative Files; SEC-97—Washington Regional Office Investigative Files; and SEC-99—Washington Regional Office and Philadelphia Office Litigation Files.

records under previously-published system descriptions, and existing routine uses for records contained in enforcement-related systems of records continue to apply. The Commission has also clarified those uses by adding language that explicitly covers disclosure of records to trustees in bankruptcy, in litigation in which the Commission is not a party, and to foreign governmental authorities and foreign securities authorities.

The Commission has a statutory advisory role in proceedings under the Bankruptcy Code, *see* 11 U.S.C. 1109(a); in meeting its obligations under the Bankruptcy Code, the Commission occasionally provides information that is subject to the Act to bankruptcy trustees. Similarly, the Commission is often required to disclose information subject to the Act in response to subpoenas issued in litigation to which the Commission is not a party. Disclosure under these circumstances is covered by one or more existing routine uses. The language added by newly-added Routine Uses 21 and 22 makes that coverage explicit.

The Commission also provides assistance to foreign governmental authorities under several existing routine uses. The Insider Trading and Securities Fraud Enforcement Act of 1988, Pub. L. No. 100-704, 102 Stat. 4677, provides explicitly for investigatory assistance to foreign authorities. In addition, it amends the Securities Exchange Act of 1934 by adding a new section 3(a)(50), which defines the term "foreign securities authority" as "any foreign government, or any governmental body or regulatory organization empowered by a foreign government to administer or enforce its laws as they relate to securities matters." To clarify that assistance may be provided in appropriate cases to foreign governmental authorities, and, specifically, to foreign securities authorities, the Commission is amending existing Routine Uses 1, 2, 3, 5, 6, 8, 9 and 11, either by adding specific references to foreign securities authorities, or by making other amendments as appropriate.

SEC-102

SYSTEM NAME:

Enforcement Files.

SYSTEM LOCATION:

Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC. 20549. Files may be maintained in

Commission offices which conducted an investigation or litigation. Closed investigatory and litigation files are stored at a federal records center.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on persons who have been involved in Commission investigations or litigation, or in activities which violated or may have violated federal, state or foreign laws relating to transactions in securities, the conduct of securities business or investment advisory activities, and banking or other financial activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence relevant to the matter, internal staff memoranda, Commission Minutes and Commission Orders, copies of subpoenas issued in the course of the matter, affidavits, transcripts of testimony and exhibits thereto, copies of pleadings and exhibits in related private or governmental actions, documents and other evidence obtained in the course of the matter, computerized records, working papers of the staff and other documents and records relating to the matter, opening reports, progress reports and closing reports, and miscellaneous records relating to investigations or litigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Title 15, United States Code, Sections 77s, 77t, 78u, 79r, 77uuu, 80a-41, 80b-9, and 17 CFR 202.5.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USE:

1. To coordinate law enforcement activities between the SEC and other federal, state, local or foreign law enforcement agencies, securities self-regulatory organizations, and foreign securities authorities.
2. By SEC personnel for purposes of investigating possible violations of, or to conduct investigations authorized by, the federal securities laws.
3. Where there is an indication of a violation or potential violation of law, whether civil, criminal or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule or order issued pursuant thereto, the relevant records in the system of records may be referred to the appropriate agency, whether federal, state, or local, a foreign governmental authority or foreign securities authority, or a securities self-regulatory organization charged with the responsibility of investigating or prosecuting such violation or charged

with enforcing or implementing the statute or rule, regulation or order issued pursuant thereto.

4. In any proceeding where the federal securities laws are in issue or in which the Commission, or past or present members of its staff, is a party or otherwise involved in an official capacity.

5. To a federal, state, local or foreign governmental authority or foreign securities authority maintaining civil, criminal or other relevant enforcement information or other pertinent information, such as current licenses, if necessary to obtain information relevant to an agency decision concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant or other benefit.

6. To a federal, state, local or foreign governmental authority or foreign securities authority, in response to its request, in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant or other benefit by the requesting agency, to the extent that the information is relevant and necessary to the requesting agency's decision on the matter.

7. In connection with proceedings by the Commission pursuant to Rule 2(e) of its Rules of Practice, 17 CFR 201.2(e).

8. When considered appropriate, records in this system may be disclosed to a bar association, the American Institute of Certified Public Accountants, a state accountancy board or other federal, state, local or foreign licensing or oversight authority, foreign securities authority, or professional association or self-regulatory authority performing similar functions, for possible disciplinary or other action.

9. In connection with investigations or disciplinary proceedings by a state securities regulatory authority, a foreign securities authority, or by a self-regulatory organization involving one or more of its members.

10. As a data source for management information for production of summary descriptive statistics and analytical studies in support of the function for which the records are collected and maintained or for related personnel management functions or manpower studies, and to respond to general requests for statistical information (without personal identification of individuals) under the Freedom of Information Act or to locate specific

individuals for personnel research or other personnel management functions.

11. In connection with their regulatory and enforcement responsibilities mandated by the federal securities laws (as defined in Section 21(g) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(g)), or state or foreign laws regulating securities or other related matters, records may be disclosed to national securities associations that are registered with the Commission, the Municipal Securities Rulemaking Board, the Securities Investor Protection Corporation, the federal banking authorities, including but not limited to, the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, and the Federal Deposit Insurance Corporation, state securities regulatory or law enforcement agencies or organizations, regulatory law enforcement agencies of a foreign government, or foreign securities authorities.

12. To any trustee, receiver, master, special counsel, or other individual or entity that is appointed by a court of competent jurisdiction or as a result of an agreement between the parties in connection with litigation or administrative proceedings involving allegations of violations of the federal securities laws (as defined in Section 21(g) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(g)) or the Commission's Rules of Practice, 17 CFR 202.1 et seq., or otherwise, where such trustee, receiver, master, special counsel or other individual or entity is specifically designated to perform particular functions with respect to, or as a result of, the pending action or proceeding or in connection with the administration and enforcement by the Commission of the federal securities laws or the Commission's Rules of Practice.

13. To any person during the course of any inquiry or investigation conducted by the Commission's staff, or in connection with civil litigation, if the staff has reason to believe that the person to whom the record is disclosed may have further information about the matters related therein, and those matters appeared to be relevant at the time to the subject matter of the inquiry.

14. To any person with whom the Commission contracts to reproduce, by typing, photocopy or other means, any record within this system for use by the Commission and its staff in connection with their official duties or to any person who is utilized by the Commission to perform clerical or stenographic functions relating to the official business of the Commission.

15. Inclusion in reports published by the Commission pursuant to authority granted in the federal securities laws (as defined in Section 21(g) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(g)).

16. To members of advisory committees that are created by the Commission or by the Congress to render advice and recommendations to the Commission or to the Congress, to be used solely in connection with their official designated functions.

17. To any person who is or has agreed to be subject to the Commission's Rules of Conduct, 17 CFR 200.785-1 et seq., and who assists in the investigation by the Commission of possible violations of federal securities laws (as defined in Section 21(g) of the Securities Exchange Act of 1934, 15 U.S.C. 78u(g)), in the preparation or conduct of enforcement actions brought by the Commission for such violations, or otherwise in connection with the Commission's enforcement or regulatory functions under the federal securities laws.

18. Disclosure may be made to a Congressional office from the record of an individual in response to an inquiry from the Congressional office made at the request of that individual.

19. To respond to inquiries from Members of Congress, the press and the public which relate to specific matters that the Commission has investigated and to matters under the Commission's jurisdiction.

20. To prepare and publish information relating to violations of the federal securities laws as provided in 15 U.S.C. 78u(a), as amended.

21. To respond to subpoenas in any litigation or other proceeding.

22. To a trustee in bankruptcy.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records, microform, electronic and other media.

RETRIEVABILITY:

The records are retrieved by the name under which the investigation is conducted or administrative or judicial litigation is filed. Access to information about an individual may be obtained through the Commission's Name-Relationship Index system by the name of the individual. Information concerning an individual may also be obtained by reference to card or computer-maintained indices.

SAFEGUARDS:

Access to and use of investigatory records are limited to those persons

whose official duties require such access. Personnel screening is employed to prevent unauthorized disclosure. Files are maintained in buildings having a 24-hour security guard. During the course of a matter, relevant records are normally maintained by the individuals working on the matter. Information contained in indices is safeguarded by use of confidential access passwords, physical restrictions and/or other means. Most of the information contained in litigation files is public insofar as the documents were filed in public administrative proceedings or litigation (unless otherwise ordered).

RETENTION AND DISPOSAL:

Records are retained in the Commission's files while in use. Records of investigations are generally maintained until the case has been closed, at which time materials are destroyed, returned to owners, or transferred to the Federal Records Center for storage, as appropriate. Records sent to the Federal Records Center are retained in accordance with Commission guidelines.

SYSTEMS MANAGERS AND ADDRESSES:

Director, Division of Enforcement, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549; Records Officer, 450 Fifth Street, NW., Washington, DC 20549; Regional Administrator, Atlanta Regional Office, 1375 Peachtree Street, Suite 788, NE., Atlanta, GA 30367; Associate Regional Administration, Miami Branch Office, Dupont Plaza Center, 300 Biscayne Blvd. Way, Suite 500, Miami, FL 33131; Regional Administrator, Boston Regional Office, John W. McCormack Post Office and Courthouse Building, 90 Devonshire Street, Boston, Suite 700, MA 02109; Regional Administrator, Chicago Regional Office, Room 1204, Everett McKinley Dirksen Building, 219 South Dearborn Street, Chicago, IL 60604; Regional Administrator, Denver Regional Office, 410 Seventeenth Street, Suite 700, Denver, CO 80202; Assistant Regional Administrator, Salt Lake Branch Office, U.S. Post Office and Court House, 350 S. Main Street, Room 505, Salt Lake City, UT 84101; Regional Administrator, Fort Worth Regional Office, 8th Floor, 411 West Seventh Street, Fort Worth, TX 76102; Assistant Regional Administrator, Houston Branch Office, Suite 550, 7500 San Felipe Street, Houston, TX 77063; Regional Administrator, Los Angeles Regional Office, 5757 Wilshire Boulevard, Suite 500 East, Los Angeles, CA 90036-3648; Associate Regional Administrator, San Francisco Branch Office, 901 Market

Street, Suite 470, San Francisco, CA 94103; Regional Administrator, New York Regional Office, 26 Federal Plaza, Room 1028, New York, NY 10278; Regional Administrator, Philadelphia Regional Office, Federal Building, Room 2204, 600 Arch Street, Philadelphia, PA 19106; Regional Administrator, Seattle Regional Office, 3040 Jackson Federal Building, 915 Second Avenue, Seattle, WA 98174.

NOTIFICATION PROCEDURE:

Any request to determine whether this system of records contains a record pertaining to the requesting individual may be made in person during normal business hours at the SEC Public Reference Branch at 450 Fifth Street, NW., Washington, DC, or by mail addressed to the Privacy Act Officer, Securities and Exchange Commission, Washington, DC 20549.

RECORD ACCESS PROCEDURES:

See Notification Procedures above.

CONTESTING RECORD PROCEDURES:

Individuals desiring to contest or amend information maintained in this system of records should direct their requests to the Privacy Act Officer.

RECORD SOURCE CATEGORIES:

Information in these records is supplied by: Individuals including, where practicable, those to whom the information relates; witnesses, banks, corporations, or other entities; self-regulatory organizations; the Postal Inspection Service, the Department of Justice, state securities commissions, other Federal, state, or local bodies and law enforcement agencies or foreign governmental authorities, including foreign securities authorities; public sources, i.e., libraries, newspapers, television, radio, court records, filings with Federal, state, and local bodies; filings made with the SEC pursuant to law; electronic information sources; other offices within the Commission; documents, litigation, transcripts of testimony, evidence introduced into court, orders entered by a court and correspondence relating to litigation; pleadings in administrative proceedings, transcripts of testimony, documents, including evidence entered in such proceedings, and correspondence relating to the proceedings; and miscellaneous other sources.

By the Commission.

Jonathan G. Katz.

Secretary.

Date: May 30, 1989.

[FR Doc. 89-13524 Filed 6-6-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. IC-16978, 812-7296]

Bear, Stearns & Co. Inc.; Application

May 30, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Bear, Stearns & Co. Inc. ("Bear Stearns" or the "Applicant"), on behalf of Municipal Securities Trust, High Income Series (the "Trust").

Relevant Sections of the 1940 Act: Exemption requested under section 17(b) from the provisions of section 17(a) and under section 45(a) of the 1940 Act.

Summary of the Application: The Applicant seeks an order permitting it as sponsor of the Trust to purchase certain specified securities (the "Bonds") from the Trust and for an order granting confidential treatment for certain information made a part of the application regarding the Bonds.

Filing Date: The application was filed on April 13, 1989, and amendments to the application were filed on May 19 and 30, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 21, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicant, c/o Michael R. Rosella, Esq., Battle Fowler, 280 Park Avenue, New York, New York 10117.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel (202) 272-3030 (Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier who may be contacted at (800) 231-3282 (in Maryland (301) 258-43000).

Applicant's Representations

1. The Trust is an investment company registered under the 1940 Act that is sponsored by the Applicant whose units ("Units") are registered under the Securities Act of 1933, as amended (the "1933 Act"). The Trust was formed to provide a high level of interest income (including earned original issue discount) by investing in a fixed, diversified portfolio of long-term tax-exempt bonds.

2. Bonds such as those included in the Trust which generate high levels of interest income are, under most circumstances, subject to greater market fluctuations and risk of loss of income and principal (credit risk) than are investments in lower yielding bonds. Any such fluctuations will affect the value of the portfolio and the Units. Some of the bonds in the Trust are not rated by any national rating organization and the market for such bonds may not be as broad as the market for rated bonds.

3. The Trust has invested in bonds which were purchased on a privately negotiated basis. The Bonds in question were purchased for the Trust in the privately negotiated bond market. The terms of such bonds usually are negotiated between the issuer of the bonds and the purchasers. These types of bonds usually are issued to a small number of institutional investors in smaller dollar amounts than publicly traded bonds and are infrequently traded because there are fewer bonds available in the marketplace. As a result, the market for such bonds is not extensive because the terms of the instruments may reflect the particular and individualized needs of the original purchasers. In addition, there are fewer dealers making a market in these bonds because it is impractical for most dealers to allocate resources to follow issues structured by other underwriters. Therefore, there may not be a readily available market for such bonds if the Trust decides to sell them from the portfolio. The limited and specialized secondary market maintained by the original underwriter is generally the only market available for resales of these bonds.

Applicant's Legal Analysis

I. Section 17(b)

The Applicant is concerned that if a portfolio security is being disposed of by the Trust for credit reasons, the Applicant's exclusion from the market of dealers bidding for the security may be detrimental to the Trust and its Unit holders. To preclude Bear Stearns from

bidding for the portfolio security in this specialized market may prevent the Trust from getting the "best price" in the market or force the Trust to retain the security where the Applicant is the only prospective bidder for the Bonds. Neither consequence will be in the best interest of the Unit holders nor in furtherance of the policies of the 1940 Act. The inability of the Trust to sell the Bonds to Bear Stearns in these circumstances at a price at least equal to the Bonds' current value would be detrimental to Unit holders and not in furtherance of the 1940 Act or consistent with the 1940 Act's enunciated goal of protecting investors. Such may either (1) force the Trust to retain the Bonds under circumstances when the retention of such security would not be in the best interest of the Unit holders or (2) force the Trust to sell the Bonds at a price lower than the best available price in the marketplace. The application seeks an exemption from section 17(a) which would permit Bear Stearns, the sponsor of the Trust, to purchase these privately negotiated Bonds according to the terms of the application.

II. Section 45(a)

1. It is submitted that disclosure of the information regarding the Bonds is neither necessary nor appropriate in the public interest or for the protection of investors. The Unit holders of the Trust will be informed of the sale of the Bonds by the trustee ("Trustee") pursuant to the terms of the Trust indenture. Therefore, disclosure of this information will not further any interest of the Unit holders.

2. It is also submitted that no other public interest would be furthered by the disclosure of this information. While it is important for the SEC to review this information, public disclosure of this information would be inappropriate. The information regarding the Bonds has been obtained at the expense of the Bear Stearns and, therefore, should be considered its own proprietary information. By public disclosure, other investors and potential investors will unfairly gain the benefit of this proprietary information belonging to Bear Stearns.

3. The Bonds are being sold by the Trust because their credit quality is no longer consistent with the Trust's credit quality standards. This credit quality determination may not be applicable or appropriate for holders with different investment objectives from those of the Trust. As a significant market maker in these privately negotiated Bonds, Bear Stearns is concerned that public disclosure of this information may have an adverse effect on the value of both

the Bonds and privately negotiated bonds generally.

Applicant's Conditions

Applicant agrees that if the requested order is granted it will be expressly conditioned on the following:

1. *Best Price.* Before executing any sale of the privately negotiated Bonds to Bear Stearns, the particular Trust will first obtain such information as it deems necessary to determine the "best price" available with respect to the quantity of the security being sold and in doing so, the Trustee will be required to advertise the bond on national municipal bond broker wire services to obtain competitive bids. In each instance where other bids are obtained, a determination will be required, based upon the information available to the Trustee, that the price bid by the Applicant is "better than" the best price bid by the other sources in order for the Trustee to effect the sale with the Applicant. To be considered "better than" that available from other sources, Applicant's bid must be at least a standard minimum price increment (i.e., at least 1/8 of 1% of principal amount or \$1.25 per \$1,000 principal amount) better than the best bid from other sources. The Trustee will maintain records with respect to any transactions effected with the Applicant where the Applicant quotes the "best price" to the Trust, including documentation for having obtained bids from other dealers.

2. *Fair Price.* Before effecting a sale to the Applicant where it is only bidder and where there are no other bids available, the Trustee will be required to determine whether such price is a "fair price". Determining whether a price is a "fair price", the Trustee may consider, to the extent possible, price quotations for privately placed securities of comparable maturity and credit quality from dealers who are not making a market in this particular security but are actively engaged in the market making of privately negotiated bonds of the type in question and any other criteria it deems appropriate (e.g., appraisal of the underlying collateral or the net operating income of the project in question). Where appropriate, the factors the Trustee will examine in making the determination that securities are of "comparable maturity and quality" include, but are not limited to, (1) the respective current and projected earnings of the obligors, (2) the balance sheets or financial conditions of the respective obligors, (3) the industry outlooks for respective obligors, (4) the management of the respective obligors, (5) debt service coverage of the respective obligors, (6) securities of

comparable yield, (7) securities with comparable credit characteristics, and (8) securities of comparable maturity. The Trustee will maintain records with respect to any transactions effected with Bear Stearns, where Bear Stearns quotes the only price, and a "fair price", to the Trust, including documentation for having obtained bids from other dealers of comparable securities and any appraisals or records regarding the underlying collateral or obligors.

3. *Previous Institutional Repurchases.* Where the Applicant has repurchased a portion of the Bonds in question from other institutional holders within 30 days of the time the Trust makes its sale of the Bond, the price at which the Trust sells the Bond to Bear Stearns will not be less than the highest price paid to any such institutional holder. (This procedure offers further indication that the price at which Bear Stearns would purchase such Bonds is a "fair price" since other independent institutional investors will make judgments that the repurchase price is fair based upon their own arm's-length analysis.)

4. *Remittance of Future Profit.* Bear Stearns undertakes and represents that any net profit from future resale of the Bonds, liquidation of underlying collateral or recovery from litigation involving the Bonds would be paid to the Trust from which it was purchased (the Trust's pro rata portion of the amount ultimately realized by Bear Stearns less (i) the price previously paid to the Trust and (ii) the pro rata amount of the out-of-pocket costs incurred in connection with such realization including, real estate brokers' fees, selling expenses, outstanding real estate taxes and legal and other litigation related expenses), thus eliminating the profit possibility from any self-dealing. If the Trust has been completely liquidated at the time of this realization, the net profit will be paid to the Trust's Unit holders of record who received the final liquidating distribution from the Trust.

5. *Departmental Independence.* While the determination that the Bonds should be sold from the Trust was made by the Applicant as sponsor, the personnel of Bear Stearns making this decision are not the same personnel that are involved in the underwriting and market making of privately placed municipal securities. The unit investment trust department at Bear Stearns is involved in the selection and purchase of securities on the part of the Trust and has direct involvement in the administration and monitoring of the Trust. The public finance department and the municipal bond department of

Bear Stearns perform the underwriting and market making activities for municipal bonds. The decision to sell a portfolio security by the Trust originates and is made only by the unit investment trust department, although the municipal bond department may have been consulted on the evaluation of a portfolio security's investment quality. No solicitation of the Trust for the security is made by the public finance or municipal bond departments. The public finance and municipal bond departments will not attempt to influence or control in any way the placing of orders to sell the Bonds by the Trust with Bear Stearns.

6. *Segregated Records.* Bear Stearns undertakes to maintain complete and segregated records of all the relevant documentation required under the application and of all necessary support documentation implicit in satisfying the conditions set forth herein or otherwise referred to herein.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-13525 Filed 6-6-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. 35-24897]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 1, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by June 26, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so

requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Electric Systems ("NEES"), a registered holding company, and ten of its subsidiaries, Granite State Electric ("Granite"), Massachusetts Electric Company ("Mass Electric"), The Narragansett Electric Company ("Narragansett"), NEES Energy, Incorporated ("NEES Energy"), New England Electric Transmission Corporation ("NEET"), New England Energy Incorporated ("NEEI"), New England Hydro-Transmission Electric Company, Inc. ("Mass Hydro"), New England Hydro-Transmission Corporation ("NH Hydro"), New England Power Company ("Power Company") and New England Power Service Company ("Service Company"), all located at 25 Research Drive, Westborough, Massachusetts 01582, have filed a post-effective amendment to their application-declaration pursuant to sections 6(a), 7, 9(a), 10, and 12(b) of the Act and Rules 40, 45 and 50(a)(5) thereunder.

By prior Commission order, each of the above named subsidiaries and NEES were authorized, through October 31, 1990, to lend to, and, with the exception of NEES, NEES Energy, NEEI, Mass Hydro, and NH Hydro, to borrow from the NEES money pool ("Money Pool") and/or banks, and/or, in the cases of Mass Electric and Power Company, to issue commercial paper up to the following maximum outstanding amounts: Granite—\$7 million; Mass Electric—\$90 million; Narragansett—\$50 million; NEET—\$10 million; Power Company—\$300 million, and Service Company—\$10 million. However, the amounts requested for Mass Electric and Narragansett were subjected to a dollar for dollar reduction for any permanent financing, which was not earmarked to refund outstanding long-term securities, to levels not below \$75 million for Mass Electric and \$40 million for Narragansett (HCAR No. 24733, October 21, 1988). On December 8, 1988, Mass Electric issued and sold \$50 million of its First Mortgage Bonds, Series Q, pursuant to the Commission's orders dated October 9, 1987 (HCAR No. 24473) and November 29, 1988 (HCAR No. 24762). Consequently, Mass Electric's short-term borrowing authority was effectively reduced to an amount not exceeding \$75 million outstanding at any one time.

Mass Electric seeks to amend the application-declaration, only to the

extent that it concerns the amount of its short-term borrowing authority, by increasing its short-term borrowing authority from the current \$75 million to \$110 million outstanding at any one time. NEES and the other subsidiary companies propose to acquire short-term notes in the same increased amount.

The construction costs for the additions and improvements to Mass Electric's property and plant have significantly exceeded projected budgets. In 1988, Mass Electric's actual construction cost was \$96 million, as opposed to a \$74 million projection. Currently, the estimated construction budgets for 1989 and 1990 are approximately \$100 million and \$105 million, respectively, as opposed to the previous estimates of \$78 million and \$79 million. A further 20% increase from the estimated budgets will result in an additional funding need of more than \$40 million for these two years. While long-term financing will ultimately be used to satisfy the construction funding needs, the required external funds are expected to be provided initially in the form of additional short-term borrowings.

The additional commercial paper proposed to be issued and sold by Mass Electric will be in the form of unsecured promissory notes having varying maturities of not in excess of 270 days. It is requested that the issuance and sale of commercial paper be excepted from the competitive bidding requirements of Rule 50, pursuant to Rule 50(a)(5).

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-13526 Filed 6-6-89; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

ACTION: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the *Federal Register* notifying the public that the agency has made such a submission.

DATE: Comments should be submitted within 30 days of this publication in the

Federal Register. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Officer before the deadline.

COPIES: Request for clearance (S.F. 83), supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance officer: William Cline, Small Business Administration, 1441 L Street, NW., Room 200, Washington, DC 20416, Telephone: (202) 653-8538.

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Washington, DC 20503, Telephone: (202) 395-7340.

Title: Disaster Survey Worksheet
Form Number: SBA Form 987

Frequency: On Occasion

Description of Respondents: State or local governments as well as individuals in an area seeking disaster assistance.

Annual Responses: 4000

Annual Burden Hours: 333

Title: SBA Contract Requirements

Frequency: On Occasion

Description of Respondents: Vendors interested in obtaining SBA contracts

Annual Responses: 2,250

Annual Burden Hours: 112,500

William Cline,

Chief, Administrative Information Branch.
[FR Doc. 89-13435 Filed 6-6-89; 8:45 am]

BILLING CODE 8025-01-M

[Application No. 06/06-0299]

**First City, Texas Ventures, Inc.;
Application for a Small Business
Investment Company License**

An application for a license to operate a small business investment company under the provisions of section 301(c) of the Small Business Investment Act of 1958, as amended, (the Act), (15 U.S.C. 661, et seq.) has been filed by First City, Texas Ventures, Inc., 1001 Main Street, Suite 1550, Houston, Texas 77002, with the Small Business Administration (SBA) pursuant to 13 CFR 107.102 (1989).

The officers, directors, and sole shareholder of the Applicant are as follows:

Name	Title or relationship	Percent of ownership
J.R. Briarsky, 3908 Rice St., Houston, TX 77005.	President, general manager and director.	100
Frank C. Cihak, 11059 South Hoyne Ave., Chicago, IL 60643-4039.	Director	
Glen G. Magnuson, Jr., 2041 Westcreek Lane, #150 D, Houston, TX 77027.	Director and secretary.	
Robert W. Brown, 2011 CastleRock, Houston, TX 77090.	Director and treasurer.	
Sandy B. Ho, 7846 Breezeway, Houston, TX 77040.	Controller	
First City, Texas-Houston, N.A., 1001 Main St., Houston, TX 77002.		

First City, Texas Venture, Inc. (FCTV) is a wholly-owned subsidiary of First City, Texas-Houston, N.A.

The Applicant, FCTV, a Texas Corporation, will begin operations with \$2,000,000 paid-in capital and paid-in surplus. FCTV will conduct its activities primarily in the State of Texas, but will consider investments in businesses in the Southwestern United States.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owner and management, and the probability of successful operations of the company under their management, including adequate profitability and financial soundness, in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed Applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" St., NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in Houston, Texas.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

Dated: June 1, 1989.

[FR Doc. 89-13436 Filed 6-6-89; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02-02-5528]

**J. Paul Capital, Inc.; Application To
Operate as a Small Business
Investment Co. Licensee**

Notice is hereby given that an application has been filed with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1989)) by J. Paul Capital, Inc., 231 East 31st Street, New York, New York 10016 for a license to operate as a small business investment company (SBIC) under the Small Business Investment Act of 1958 (the Act), as amended (15 U.S.C. 661 et seq.).

The proposed officers, directors, and shareholders of the Applicant are as follows:

Name	Title
Baldev S. Sandhu, 231 East 31st St., New York, NY 10016.	President, director and sole shareholder.
Satwant Sandhu, 231 East 31st St., New York, NY 10016.	Secretary and director.
Divakar R. Kamath, 6 West Kincaid Dr., Cranbury, NJ 08512.	Assistant secretary, director.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operation of the company under their management, including adequate profitability and financial soundness in accordance with the Small Business Investment Act of 1958, as amended, and the SBA Rules and Regulations.

Notice is further given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed applicant. Any such communication should be addressed to the Deputy Associate Administrator for Investment, Small Business Administration, 1441 "L" Street, NW., Washington, DC 20416.

A copy of this notice shall be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies.)

Robert G. Lineberry,
Deputy Associate Administrator for Investment.

Dated: May 30, 1989.

[FR Doc. 89-13434 Filed 6-6-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-89-22]

**Petition for Exemption; Summary of
Petitions Received; Dispositions of
Petitions Issued**

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before June 27, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. —, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on May 31, 1989.
Denise Donohue Hall,
Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 21802.
Petitioner: Sowell aviation Co., Inc.
Regulations Affected: 14 CFR 141.65.

Description of Relief Sought: To extend Exemption No. 4551, as amended, that allows petitioner to recommend graduates of its FAA-approved certification courses for airline transport pilot and flight instructor certificates and associated ratings, without taking the FAA written test, in accordance with the provisions of Subpart D of Part 141. Exemption No. 4551, as amended, will expire on November 30, 1989.

Docket No.: 25605.

Petitioner: Ameriflight, Inc.

Sections of the FAR Affected: 14 CFR 135.89(b)(3).

Description of Relief Sought: To allow petitioner to operate jet aircraft between 35,000 and 41,000 feet MSL without requiring one pilot at the controls to wear an oxygen mask.

Docket No.: 25809.

Petitioner: Stapleton International Airport.

Sections of the FAR Affected: 14 CFR 107.14.

Description of Relief Sought: To allow petitioner to continue using existing security programs and equipment in place of a computer-controlled card access system.

Docket No.: 25859.

Petitioner: Air Treads.

Sections of the FAR Affected: 14 CFR 43, Appendix B, paragraph (b)(2).

Description of Relief Sought: To allow petitioner to use a Maintenance Release Tag to identify the work order number and certify the airworthiness of wheels and brakes in lieu of providing a customer with a copy of the work order as specified in Part 43, Appendix B, paragraph (b)(2).

Docket No.: 067CE.

Petitioner: Beech.

Sections of the FAR Affected: 14 CFR 23.903(b)(1).

Description of Relief Sought: To allow type certification of Beech Mode B300 airplane without showing compliance to "Design precautions must be taken to minimize the hazards to the airplane in the event of an engine rotor failure."

[FR Doc. 89-13459 Filed 6-6-89; 8:45 am]

BILLING CODE 4910-13-M

**Saint Lawrence Seaway Development
Corporation**

**Advisory Board; Correction of Notice
of Meeting**

This document corrects the Notice of Meeting published in Vol. 54, No. 103, page 23560, June 1, 1989. The above referenced notice should have read as follows:

Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463); 5 U.S.C. App. I) notice is hereby given of a meeting of the Advisory Board of the Saint Lawrence Seaway Development Corporation, to be held at 10:00 a.m., June 28, 1989, at The Kitchigammi Club, 831 East Superior Street, Duluth, Minnesota. The agenda for this meeting will be as follows: Opening Remarks, Consideration of Minutes of Past Meetings, Review of Programs; Business, Closing Remarks.

Attendance at meeting is open to the interested public but limited to the space available. With the approval of the Administrator, members of the public may present oral statements at the meeting. Persons wishing further information should contact not later than June 20, 1989, Marc C. Owen, Advisory Board Liaison, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590; 202/366-0091.

Any member of the public may present a written statement to the Advisory Board at any time.

Issued at Washington, DC on June 1, 1989.

Marc C. Owen,

Advisory Board Liaison.

[FR Doc. 89-13431 Filed 6-6-89; 8:45 am]

BILLING CODE 4910-61-M

DEPARTMENT OF THE TREASURY

**Public Information Collection
Requirements Submitted to OMB for
Review**

Dated: June 1, 1989.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0085

Form Number: CF 247

Type of Review: Extension

Title: Cost Submission

Description: The document is used by importers to furnish cost information to Customs which is used in the valuation of imported merchandise. It

is a guide for the importer to follow in compiling the cost elements supporting the entered values reported to Customs.

Respondents: Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 28
Estimated Burden Hours Per Response/

Recordkeeping: 52 hours

Frequency of Response: On occasion

Estimated Total Recordkeeping/

Reporting Burden: 11,420 hours

Clearance Officer: Dennis Dore (202)

535-9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue NW., Washington, DC 20229

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-13484 Filed 6-6-89; 8:45 am]

BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private, Non-Profit Organizations in Support of International Educational and Cultural Activities

The following announcement supersedes the one appearing in the *Federal Register*, Volume 54, Number 26 of Thursday, February 9, 1989, p. 6359.

The Office of Private Sector Programs of the United States Information Agency (USIA) announces a program whose primary purpose is to support international public diplomacy objectives of the United States by stimulating and encouraging increased private sector commitment, activity, and resources by means of limited grants to non-profit U.S. institutions. The Office gives high priority to project proposals that establish or promote linkages between American and foreign professional organizations.

Projects must include an international people-to-people component, have an educational or cultural focus, and demonstrate a substantial contribution to long-term communication and understanding between the United States and other countries. Subjects must be consistent with USIA themes and priorities and USIS post requirements.

The Office of Private Sector Programs works with U.S. non-for-profit organizations on cooperative international group projects which

introduce American and foreign participants to one another's traditions, arts, social, economic and political structures, and international interests. The Office will accord priority status to worldwide projects involving leaders or potential leaders in various fields and professions, including parliamentarians, jurists, journalists, development officials, and practicing artist in projects directly involving their art (with exceptions noted below). Proposals are welcome involving any area of the world, with special attention given to excellent projects involving regions and countries which have participated less frequently in exchanges, such as Africa, Eastern Europe, the Near East, South and Southeast Asia. Each private sector activity must meet the highest professional standards, be non-partisan, and address substantive areas of mutual interest. High priority is given to projects that involve United States Information Agency posts in the development of the program and the selection of the participants.

USIA grant assistance constitutes only a portion of total project funding. Proposals should list other anticipated sources of support—both financial and in-kind. Programs generally range from one to six weeks; the duration of the entire grant period does not normally exceed one year. Most funding assistance is limited to participant travel and per diem requirements with modest contributions to cover administrative costs. Grants are not ordinarily given to support performing arts tours, film festivals, plastic arts exhibitions, research projects or professional training, youth or youth-related activities, or to fund publications. Student exchanges or projects which are scholarly or academic in purpose should be directed to USIA's Office of Academic Programs. Youth or youth-related projects should be directed to USIA's Office of International Youth Exchange.

The Office of Private Sector Programs will accept proposals from July 1, 1989 through September 30, 1989, for projects whose activities will begin between January 1, 1990 and June 30, 1990. Project proposals must be received a minimum of four months in advance of the activity date and will be accepted only when they are in accord with Project Proposal Information Requirements (OMB #3118-0175). For proposed projects which begin after June 30, 1990, competition details will be announced in the *Federal Register* on or about October 15, 1989. Inquiries are welcome prior to submission of applications. Under compelling circumstances, the Office of Private Sector Programs will consider

applications for projects beginning as early as November 1, 1989, or outside the above-mentioned timeframe.

The Office of Private Sector Programs offers the following additional guidance to prospective applicants:

1. Office of Private Sector Programs guidelines indicate that full and complete proposals must be submitted a minimum of four months prior to the start of a program. The minimum timeframe is necessary for two reasons. First, the Office's Congressional mandate is best served when U.S. private sector organizations work with and through U.S. Information Service (USIS) posts in other countries in carrying out projects with a long view toward ongoing institutional linkages between foreign and U.S. professional institutions. Projects can serve these ends only when USIS officers have reasonable time and opportunity to make contacts and lay the groundwork necessary for successful educational and cultural programming. Second, the review process for proposals submitted to USIA is multilayered and time-consuming. The four-month minimum timeframe stipulated between the receipt of proposals and the date of the proposed activity is just barely sufficient to make a project work to the benefit of all concerned.

2. Projects supported by the Office of Private Sector Programs are intended to support USIS posts abroad as well as to assist U.S. private sector organizations in their efforts to advance mutual understanding between the people of the United States and the people of other countries, in areas and fields identified as important for bilateral relations. While the Office welcomes and seeks clearly defined projects in the wide gamut of U.S. private sector fields and interests, it gives preferential consideration to projects which reserve the nomination of foreign participants to the discretion of USIS posts, with a long view toward ongoing institutional linkages between foreign and U.S. professional institutions. Applicants should be aware that proposals for bilateral programs are subject to review and comment by the USIS post in the relevant country, and that pre-selected participants will be subject to USIS post review.

3. The Office of Private Sector Programs gives preferential consideration to proposals for activities in other countries when USIS posts are given wide latitude in matters relating to the design of the proposed program, invitations to the planned events, and choice of the most suitable venues for such programs.

4. The Office of Private Sector Programs does not encourage proposals for the partial support of conferences. The Office evaluates such proposals in the light of benefits going beyond the context of the conference itself, most importantly their potential for creating and strengthening ongoing linkages between foreign and U.S. professional organizations, and the extent to which key foreign audiences are addressed on topics of priority interest to USIA. Prospective applicants would be well-advised to call the Office to discuss possibilities and prospects long in advance of planned conference dates or

to submit concept papers including tentative agenda and names of conference participants.

5. Because of limited resources, the Office of Private Sector Programs encourages project proposals involving more than one country. Single-country projects that are clearly defined and possess the potential for creating and strengthening ongoing linkages between foreign and U.S. professional institutions, and address key USIS-post audiences on topics of priority interest to USIA, are certainly welcome. Prospective applicants would be well-advised to call the Office to discuss

possibilities and projects long in advance of planned activity dates or to submit concept papers including all pertinent information.

For further information, organizations should contact Christopher Paddock, Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, United States Information Agency, 301 4th Street SW., Washington, DC 20547, or call (202) 485-7319.

Dated: June 1, 1989.

Robert Francis Smith,
Director, Office of Private Sector Programs.

[FR Doc. 89-13491 Filed 6-6-89; 8:45 am]

BILLING CODE 5230-01-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 108

Wednesday, June 7, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:00 p.m., Tuesday, June 20, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-13604 Filed 6-5-89; 11:22 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 p.m., Tuesday, June 27, 1989.

PLACE: 2033 K St., NW., Washington, DC, 5th Floor Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED: Regulation of Hybrid Instruments/Final Rule.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 13605 Filed 6-5-89; 11:22 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 p.m., Tuesday, June 27, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-13606 Filed 6-5-89; 11:22 am]

BILLING CODE 6351-01-M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 p.m., Tuesday, June 27, 1989.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Rule Enforcement Review.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-13607 Filed 6-5-89; 11:22 am]

BILLING CODE 6351-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 2, 1989.

TIME AND DATE: 10:00 a.m., Thursday, June 8, 1989.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: In addition to the previously scheduled item, the Commission will consider and act upon the following:

2. *Utah Power & Light Company v. Secretary of Labor, MSHA*, Docket No. WEST 89-161-R. (Issues include consideration of Utah Power's application for temporary relief.)

It was determined by a unanimous vote of Commissioners that this item be included in the meeting and that no earlier announcement of the addition was possible.

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653-5629 / (202) 566-2673 for TDD Relay.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 89-13583 Filed 6-5-89; 8:45 am]

BILLING CODE 6735-01-M

UNITED STATES INTERNATIONAL TRADE COMMISSION

USITC SE-89-22

TIME AND DATE: Monday, June 12, 1989 at 4:00 p.m.

PLACE: Room 101, 500 E Street, SW., Washington, DC 20436.

STATUS: Open to the public.

MATTERS TO BE CONSIDERED:

1. Agenda
2. Minutes
3. Ratifications
4. Petitions and Complaints: Certain Doxorubicin and Doxorubicin Preparations (D/N 1508).
5. Any items left over from previous agenda.

CONTACT PERSON FOR MORE INFORMATION: Kenneth R. Mason, Secretary (202) 252-1000.

Kenneth R. Mason,

Secretary.

June 2, 1989.

[FR Doc. 89-13614 Filed 6-5-89; 12:14 pm]

BILLING CODE 7020-02-M

NATIONAL SCIENCE BOARD

TIME AND DATE:

June 15, 1989, 8:30 a.m. Open Session

June 16, 1989, 8:00 a.m. Closed Session

June 16, 1989, 8:15 a.m. Open Session

PLACE: National Science Foundation, 1800 G Street, NW., Room 540, Washington, DC 20550.

STATUS: Most of this meeting will be open to the public. Part of this meeting will be closed to the public.

MATTERS TO BE CONSIDERED:

Thursday, June 15, 1989

Open Session (8:30 a.m. to 12:30 p.m.)

1. Overview
 - NSF's Changing Role
 - Policy Environment
 - Priorities
 - Issues
2. Strategic Plan Review
 - Goals
 - Update
 - Projections
 - Agency Relationships
3. Human Resources development
 - Education
 - Minorities
 - Women
 - Undergraduate
 - Graduate Programs

Thursday, June 15, 1989

Open Session (1:30 p.m. to 5:30 p.m.)

4. Research Opportunities
 - Base Programs and Disciplinary Role
 - Centers
 - International Science Sharing
5. Roundtable: Research Frontiers
 - Global Environmental Change
 - Materials Science and Engineering
 - Math, Astronomy, Physics Programs
 - Computational Science and Engineering
 - Human Genome
6. Physical Infrastructure Requirements
 - Instrumentation
 - Capital Planning
 - Research Facilities

Friday, June 16, 1989

Closed Session (8:00-8:15 a.m.)

7. Minutes—May 1989 Meeting

8. NSB Nominees

9. Grants and Contracts

Friday, June 16, 1989

Open Session (8:15 to 12:00 noon) and 1:00 p.m. to 3:00 p.m.

10. NSB Biennial Report—Science and Engineering Indicators-1989

11. Budget Consideration

—Budget History

—Budget Outlook

—1991 Budget Assumption

12. Summary and Conclusion

Thomas Ubois,

Executive Officer.

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Part II

Nuclear Regulatory Commission

10 CFR Parts 2 and 26
Fitness-For-Duty Programs; Final Rule
and Statement of Policy

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 2 and 26

RIN: 3150-AC81

Fitness-for-Duty Programs

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule and statement of policy.

SUMMARY: The Nuclear Regulatory Commission (NRC) is issuing its regulations to require licensees authorized to construct or operate nuclear power reactors to implement a fitness-for-duty program. The general objective of this program is to provide reasonable assurance that nuclear power plant personnel are reliable, trustworthy, and not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties. A fitness-for-duty program developed under the requirements of this rule is intended to create an environment which is free of drugs and the effects of such substances.

The Commission is taking this action to significantly increase assurance of public health and safety. The scientific evidence is conclusive that significant decrements in cognitive and physical task performance result from intoxication due to illicit drug abuse, as well as the use and misuse of legal substances. Given the addictive and impairing nature of certain drugs, while recognizing that the presence of drug metabolites does not necessarily relate directly to a current impaired state, the presence of drugs does strongly suggest the likelihood of past, present, or future impairment affecting job activities. In addition, the NRC believes that the reliability, integrity, and trustworthiness of persons working within nuclear power plants is important to assure public health and safety. Since there is an underlying assumption that workers will abide by the licensee's policies and procedures, any involvement with illegal drugs shows that the worker cannot be relied upon to obey laws of a health and safety nature, indicating that the individual may not scrupulously follow rigorous procedural requirements with the integrity required in the nuclear power industry to assure public health and safety. In addition, the Commission is revising its enforcement policy to reflect this fitness-for-duty rule.

EFFECTIVE DATE: July 7, 1989. The information collection requirements in this final rule do not become effective until they are approved by the Office of Management and Budget (OMB). The NRC will announce the date that the information collection requirements are approved in the Federal Register.

FOR FURTHER INFORMATION CONTACT: Loren Bush, Reactor Safeguards Branch, Division of Reactor Inspection and Safeguards, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492-0944.

SUPPLEMENTARY INFORMATION:

Background

On September 22, 1988, the Nuclear Regulatory Commission published in the Federal Register (53 FR 36795) proposed amendments that would issue a new regulation 10 CFR Part 26, "Fitness-for-Duty Program," which would require licensees who are authorized to operate nuclear power reactors to implement a fitness-for-duty program that met uniform standards established by the rule to promote the public health and safety.

Interested parties were invited to submit comments in connection with the proposed amendments within 60 days after publication in the Federal Register. There were a total of 3,079 comments made by 378 responders and attendees during a public meeting held on October 17, 1988. A detailed summary and analysis of the comments are contained in NUREG-1354, "Fitness-for-Duty in the Nuclear Power Industry: Responses to Public Comments." Upon consideration of the comments received both in writing and during the public meeting and other factors involved, the Nuclear Regulatory Commission has adopted the proposed regulations, with certain modifications generally set forth below.

Copies of NUREG-1354 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013-7082. Copies are also available from the National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. A copy is also available for public inspection and/or copying at the NRC Public Document Room, 2120 L Street NW., lower level of the Gelman Building, Washington, DC.

Comments and Responses to the Proposed Rule

1.0 General Overview

Summary of Comments

The NRC received 378 comment letters in response to the Notice of

Proposed Rulemaking (NPRM). The NRC considered all comments submitted in a timely manner in response to the NPRM and comments and questions received during a public meeting on the draft rule held by the NRC. The comment period for the NPRM closed on November 21, 1988.

Comments were received from the general public; from workers in nuclear power plants; from union locals, national and international headquarters of unions; from the Nuclear Management and Resources Council (NUMARC), 55 power reactor licensees, several non-power reactor licensees; from several vendor and contractor organizations; and from other interested parties.

There were several major issues presented by the commenters. These are summarized along with the NRC responses in the sections that follow. An overview of these comments is provided in this section.

Of primary concern to roughly half of all commenters was the requirement for random drug testing. Although these commenters clearly objected to the use of illegal drugs within the nuclear power industry, this provision of the proposed rule drew a strong negative reaction from private citizens, labor unions, and workers covered by the proposed rule. Vigorous objections were stated based on the perceptions of invasion of privacy and conflict with Constitutional rights resulting from the drug testing provision. Many of these commenters stressed that the level of substance abuse in the nuclear power industry is insufficient to justify such strong action, that nuclear power plant workers have demonstrated their reliability over the years, and that it is both demoralizing and insulting to require proof of their reliability through random drug tests. Other issues were raised concerning the legality of the proposed rule, including its relationship to labor laws and state and local statutes. These objections are summarized more fully in the following sections.

Those commenters opposing random testing were usually supportive of one or more alternatives. Foremost among these was a combination of supervisor behavioral observation and for-cause testing. While a few commenters opposed chemical testing of any type, most of the commenters, including union organizations and members, expressed support for for-cause testing. Preaccess authorization testing also received some support and very little opposition.

A major criticism of the proposed rule was raised concerning whether the NRC was basing the rule on concerns about on-the-job impairment or on concerns

about basic employee reliability, or even upon more general concerns with public morality. Some commenters expressed the opinion that off-site drug use should not be a concern of the NRC, and that the NRC should not require a testing program that is not directly oriented to detecting current impairment.

In contrast, most licensees and NUMARC provided general support for the provision for random testing, viewing it as an effective deterrent to the use of illegal drugs. However, they did object to the possibility that they would be too severely limited by the provision that licensee testing programs must follow the HHS Guidelines. They wanted greater flexibility in the establishment of cut-off levels and the panel of drugs to be covered. Most of the licensees expressed concern over the testing rate to be required by the rule, indicating that it should be at an annual rate equivalent to or less than 100 percent of the workforce subject to testing. They further objected to any provisions that would make the licensee responsible for providing employee assistance program services to contractor personnel and objected to the extent and type of training required by the proposed rule. Other issues raised and more detail on these issues are provided in the sections that follow.

2.0 Need for Rule

2.1 Summary of Comments

A number of commenters raised the issue that there was insufficient evidence of a drug abuse problem in the nuclear power industry to justify the need for the rule. Several commenters indicated that the NRC has failed to establish a factual record regarding the nature and extent of the drug abuse problem. Also mentioned was the opinion that the apparent lack of uniformly among nuclear utility programs is not sufficient justification by the NRC for the rule.

2.2 Summary of Responses

Although drug use among nuclear power plant workers may not be as widespread as in other segments of the population, the NRC does have information to indicate that there is a sufficient problem in the nuclear power industry to warrant the fitness-for-duty rule. For example, data provided by one licensee indicates that 47 of approximately 4,000 random tests of employees were positive, 4 percent of the applicants for employment have tested positive for drug use, and 30 employees and 60 contractors tested positive for cause. Pre-access testing of nearly 12,000 contractor personnel

resulted in a 5 percent positive rate. Another licensee reported that approximately 2 percent of approximately 5,000 tests of employees and contractors were positive, 179 persons tested positive for cause, and that the drugs involved included PCP, marijuana, cocaine, amphetamines, barbiturates, alcohol and other drugs. Nationally, among licensees implementing random drug testing programs, an average of around 1 percent of the random tests are positive.

In the first nine months of 1988 there were 387 events involving drugs and alcohol reported to the NRC. These events included licensee and contractor employees in all organizational levels and disciplines. Of particular concern to the NRC is that during the last year (1988), 11 licensed reactor operators were reported as being involved with drugs and two were reported as abusing alcohol; none were using these substances while on duty.

The number of significant events reported to the NRC that involve drug use or abuse has been increasing dramatically since 1985. There was a 44 percent increase in reported events between 1985 and 1988. A 73 percent increase was experienced in 1987. This increase appears to be related to the emphasis on fitness for duty by nuclear power licensees and the recently revised safeguard reporting requirements that contained explicit guidance for reporting of drug-related events. However, the increase may also be an indication of an increase in the incidence of drug problems at nuclear power plants.

These data provide sufficient evidence of a significant level of drug use by those employed in the nuclear power industry to support the need for a fitness-for-duty rule. Pursuant to the NRC's statutory authority to protect the public health and safety, the NRC must acknowledge that nuclear power plant workers are not immune to, nor insulated from, drug use or abuse of substances that may affect safety-critical job performance. The NRC believes that any drug use in the nuclear power industry warrants prevention and proactive intervention by the NRC to ensure public safety. The NRC believes that this view is consistent with the increasing awareness of nuclear power licensees that have, as addressed in their comments, drug testing and rehabilitation programs for their workers.

3.0 Impairment vs. Reliability

3.1 Summary of Comments

A number of commenters questioned whether certain provisions of the rule,

such as random drug testing, were based on concern over on-the-job impairment or were based on concern over the reliability and trustworthiness of the worker. One set of commenters expressed the strongly held belief that mandatory chemical testing is only appropriate if there is evidence to suggest that workers are impaired on the job. Commenters also stated that, because urinalysis does not measure impairment, the detection of illicit drug use through urinalysis is irrelevant to the safe operation of nuclear power plants, and thus should not be an element of the rule. Two commenters requested further evidence regarding the impact of off-the-job drug use on job performance. One commenter stated that, although a positive urinalysis test result does not establish whether an individual was impaired at the time that the sample was given, it allows the employer to determine drug use and conclude reasonably that the possibility exists for future impairment which can impact workplace safety.

Other commenters noted that impairment is not the sole issue. A fundamental concern of drug abuse predominantly relates to the reliability and trustworthiness of the worker who knowingly uses drugs which are illegal. Several commenters, including NUMARC, noted the importance of worker reliability and trustworthiness in an access authorization program, and stated that the use of illegal drugs on or off the job could adversely affect the safety of nuclear power plant operations, or adversely reflect on the integrity, reliability and trustworthiness of workers with unescorted access who are responsible for nuclear power plant safety.

A number of commenters objected to specific wording in the proposed rule related to impairment. These commenters stated that the term "impairment" is imprecise and subject to various interpretations. Another commenter stated that few nuclear power plant workers are qualified to make a judgment of worker impairment, and that the term presumes an initial standard by which the worker's job performance can be measured.

3.2 Summary of Responses

The NRC recognizes that illicit drug abuse and the misuse of legal substances such as alcohol, prescription drugs, and over-the-counter medications can impair workers in the performance of their safety-related duties and result in significantly reduced workforce reliability. The scientific evidence is conclusive that significant decrements

in cognitive and physical task performance result from intoxication due to illicit drug abuse, as well as the use and misuse of legal substances. The NRC understands that, except in the case of alcohol, chemical test results do not reveal any direct information regarding drug impairment per se. However, the NRC disagrees with the argument made by commenters that, as a result, chemical tests do not provide information that is relevant to a fitness-for-duty program. The NRC believes that the reliability, integrity, and trustworthiness of workers within nuclear power plants are important to public health and safety. The granting of a license is based on the assumption that workers will abide by the licensees' policies and procedures in all areas. Indications of lack of reliability, integrity or trustworthiness, therefore, even so far as they pertain to off-site behaviors, are relevant to the NRC's need to assure that nuclear power plants are operated safely. The relationship between reliability, integrity and impairment is by no means indirect in the case of drug abuse. Most of the substances under consideration are either physically or psychologically addictive to many individuals. The NRC cannot be confident of the individual's ability to limit the use of addictive substances to situations that do not adversely affect plant safety.

Illegal drug use can result in on-duty impairment. There is a possibility that a worker who uses illegal drugs off-duty may be impaired from those drugs while on-duty, and, even if the worker does not use drugs while on duty he or she may be impaired from either hangover or withdrawal effects associated with drug use. In addition to impairment, any illegal drug use establishes that the worker cannot be relied upon to obey laws of a health and safety nature, indicating that the worker also may not be reliable in terms of scrupulously following the rules and regulations that have been established in the nuclear workplace to ensure the protection of public health and safety. For these reasons, a worker who uses illegal drugs may not be sufficiently trustworthy or reliable to perform his or her duties on the job in a manner that assures public health and safety. In contrast, the legitimate use of legal drugs does not automatically demonstrate this lack of reliability. However, workers who do use alcohol or legal drugs are expected to use those substances responsibly. Irresponsible use of these substances in a manner that results or is likely to result in on-duty impairment, or otherwise demonstrates a disregard for

public health and safety, is considered substance misuse within the scope of this rule.

The debilitating effects of long-term drug abuse are also well documented in the scientific literature, and have the potential for affecting complex physical and cognitive functions long after the effects of acute intoxication have dissipated. For example, residual effects of intoxication may persist when the worker returns to work the following day. Hangover effects, withdrawal symptoms, and cycles of drug abuse and abstinence can also result in decreased reliability and diligence. Off-site drug use may also result in increased absenteeism, medical costs, and staffing requirements, thus having adverse effects on overall workforce reliability. Ultimately, drug abuse directly and indirectly affects activities which bear on safety. It is therefore a reasonable conclusion that the abuse of illicit drugs and the misuse of licit drugs pose safety concerns in the nuclear power industry and is predictive of a lack of reliability, integrity, and trustworthiness.

The wide range of potential on-the-job impairment is complex in nature and difficult to observe, and therefore requires a broad approach to assure nuclear power plant safety. In addition to supervisory observation, other means are required to detect drug abuse, psychological stress, and physical injury or illness. To detect illicit drug abuse and the misuse of alcohol and other licit substances, the NRC has adopted a mandatory chemical testing protocol for these drugs. The rule provides for mandatory chemical testing prior to the initial granting of unescorted access or assignment to activities within the scope of the rule (§ 26.24(a)(1)). Mandatory chemical testing is to be conducted on a random basis to effectively detect and deter illicit substance abuse and misuse (§ 26.24(a)(2)). For-cause testing is to be conducted after an accident in which the contribution of employee performance cannot be ruled out or based on reasonable suspicion that an individual is intoxicated or demonstrates behavior indicative of substance abuse or other involvement with drugs (§ 26.24(a)(3)). Following a positive test for drug abuse, follow-up chemical testing will be used on an unannounced basis to verify abstinence from the use of drugs or misuse of alcohol and other licit drugs (§ 26.24(a)(4)).

The NRC agrees that on-the-job impairment is a result of many complex factors, and that impairment is a complex phenomenon, depending on the cause of impairment, individual circumstances, and the job task at hand.

The NRC recognizes that on-the-job impairment may result from substance abuse, psychological stress, or physical injury or ailment which can pose unacceptable safety risks, and the rule reflects this position. The NRC believes that trained, competent, reliable, and trustworthy workers are essential for the safe operation of nuclear power plants. The fitness-for-duty rule addresses the potential for worker impairment of any kind, including substance abuse that could affect the safe operation of nuclear power plants. In the assessment of a worker's application for access authorization, the background of the worker, psychological state, and criminal record are assessed. Similarly, any use of or involvement with illicit drugs, on or off duty, and the misuse of alcohol and other licit drugs provide evidence that the worker may not be fit for duty.

The NRC recognizes that even with a relatively high rate of random testing and with vigilance on the part of licensees to detect impairment or potential impairment in the workplace, the existence of drug problems within the workplace cannot be entirely eliminated. The undetected presence of drugs can be inferred from even a low positive test rate. However, the NRC concludes that the design features, redundancy of safety systems, and extensive training for unexpected equipment and personnel malfunctions provide reasonable assurance that the public health and safety is protected provided drug abuse continues to be aggressively addressed by the nuclear industry. The final rule provides reasonable measures to assure that nuclear power plant workers can safely, competently, and reliably perform their duties.

4.0 Scope of Rule

4.1 Summary of Comments

4.1.1 *Non-Power Reactors and other Licensees.* Several comments were received from universities and others involved with research reactors or other non-power reactors. The commenters stated that there is no need to extend coverage of the rule to these facilities because a drug-related problem has not been demonstrated to exist and that a relatively minor threat is posed by these facilities to the public safety. Unbearable costs and impracticality were also cited as arguments against inclusion of these facilities in the rule. A few comments were received from individuals involved with SNM handling, making the same general points. There were no comments

supportive of expanding coverage of the rule to facility types other than nuclear power reactors.

4.1.2 *Construction.* Comments were received from two licensees recommending that the language of the rule be changed to include plants during the construction phase.

4.1.3 *Types of Workers Covered.* The random testing provisions of the proposed rule would apply to all persons granted unescorted access to protected areas at operating nuclear power reactors. Most of the commenters who objected to this provision commented to the effect that including all individuals with unescorted access to protected areas is unnecessary, and asserted that many of these individuals, e.g., vendors, secretaries, clerks, and some engineering and management personnel, have no potential for precipitating or escalating a safety-related incident. As an alternative, it was suggested that only those licensee or contractor personnel with unescorted access to vital plant areas should be subject to random testing, since this more-limited group was viewed as including all individuals with the capacity to do significant, safety-related harm.

4.1.4 *Contractors.* Many commenters pointed out the lack of specificity concerning licensee vs. contractor responsibilities. Most of these, mainly from licensees, were of the opinion that the contractor should have full responsibility for a qualified fitness-for-duty program.

4.1.5 *Technical Support Center (TSC) and Emergency Operations Facility (EOF) Staff.* Several comments received on this issue stated that licensee or contractor personnel who may be required to respond to the TSC or EOF have been granted unescorted access and so are already covered under the rule and need not be specifically mentioned in § 26.3. Commenters questioned whether any non-licensee or non-contractor personnel involved with the TSC or EOF would have to be covered under the fitness-for-duty program.

4.1.6 *NRC Staff and NRC Representatives.* Many commenters contended that NRC staff should be subject to the same fitness-for-duty requirements, including random testing, as are licensee staff. Some thought that NRC representatives should be subject to these requirements also.

4.2 Summary of Responses

4.2.1 *Non-Power Reactors and other Licensees.* The NRC sees no reason at this time to extend coverage of the rule to other facility types. No modifications

to the rule are required to satisfy the concerns addressed by the comments, because the rule is presently limited to nuclear power reactors. The NRC may consider extending the coverage of the rule at a future time.

4.2.2 *Construction.* The NRC agrees with the comments received that licensees holding construction permits should fall under the scope of this rule to the extent that a minimum program is provided. Wording indicating the provisions of the rule that pertain to construction sites has been added at Sections 26.2(b) and (c).

4.2.3 *Types of Workers Covered.* The NRC believes that the inclusion of all workers with unescorted access to the protected area within the scope of the rule is the proper response to the threat constituted by substance abuse. All such workers have the ability to carry in and distribute impairing substances. All such workers can engage in deliberate or accidental actions that can lead to challenges to safety systems or interfere with the ability of other workers to safely operate and maintain the plant. Although Federal requirements preempt State and local concerns in the area of radiological safety, in those states that support an on-site presence requiring unescorted access, the NRC may consider providing access to the chemical testing portions of the NRC's fitness-for-duty program if so requested by the individual states.

4.2.4 *Contractors.* The NRC believes that it is appropriate to hold licensees responsible for all workers to whom the licensee grants unescorted access, whether the workers are licensee employees or contractor or vendor personnel. The manner in which the licensee assures that contractor and vendor personnel are subject to the requirements of the fitness-for-duty program described in this part is left to licensee discretion, however. For example, nothing in the rule prohibits licensees from accepting the fitness-for-duty programs of their large contractors and vendors when those programs are effective and meet the requirements of this part. At their discretion, licensees may also choose to provide chemical testing and training for contractor and vendor personnel who are granted unescorted access to protected areas of a plant. This provision would likely be used when the contracting organizations have insufficient resources to support their own fitness-for-duty programs. The rule would require the licensee to provide a procedure to enable a contractor employee to appeal a positive alcohol or drug determination; this would not apply where the contractor is administering his own alcohol and drug

testing. In recognition of the temporary relationship between licensees and most of their contractors and vendors, the NRC does not require the licensees to ensure that EAP services are provided to contract workers. However, nothing in the rule prohibits licensees from making these services available to contractor employees.

4.2.5 *Technical Support Center (TSC) and Emergency Operations Facility (EOF) Staff.* The NRC believes that it is particularly important that individuals who have TSC and EOF assignments related to nuclear power plant safety can be relied on to perform under the emergency conditions that would require them physically to report to the TSC or the EOF. To clarify the Commission's intentions in this matter, the words "physically report" have been added to § 26.2(a) of the rule. State and local representatives who may be present in licensee emergency facilities located outside the protected area and do not have responsibilities directly affecting reactor safety are not covered by the rule. Otherwise, these representatives would be covered by the licensee's program, or as an alternative, be covered by the NRC's program. Licensee employees, contractors, or vendor representatives who are unexpectedly called to licensee emergency facilities during an accident are also not covered by the rule as this group is ill defined and likely to be used only in supplementary capabilities.

4.2.6 *NRC Staff and NRC Representatives.* The NRC agrees with the commenters who asserted that NRC staff and representatives should also be subject to fitness-for-duty requirements. However, the NRC cannot allow the access of its employees to any part of the licensee's nuclear power facilities to be restricted. The NRC needs prompt, unfettered access to properly perform its regulatory duties and the proper performance of these duties requires public confidence that NRC employees not be intimidated or impeded in any way by those they are responsible for regulating. In general, the NRC expects that any NRC employee who requires unescorted access will be subject to the chemical testing provisions of the NRC's fitness-for-duty program. The Commission must reserve the right to obtain unescorted access for any of its employees.

The NRC also agrees that its contractors must be fit for duty and may cover certain of its contractors under the chemical testing provisions of the NRC plan. The Commission expects that NRC contractors who are granted unescorted access will either be subject to the

NRC's program, the licensee's program, or to a program that the NRC accepts as adequate. To be consistent with the Commission's intent, "representatives" has been deleted from § 26.2(a) of the rule, and replaced with "employees."

5.0 Chemical Testing

5.1 Summary of Comments

A large number of comments were received concerning the chemical testing provisions of the rule. These pertained primarily to the random testing provisions, but comments were also received concerning testing before granting unescorted access, for-cause testing, and follow-up testing.

The comments on random testing were directed both toward random testing, in general, and the proposed use of urinalysis as a testing technique, in particular. Comments were received that provided statements of general support or opposition to the random testing provisions. Comments were also received that raised questions about specific elements of the random testing program in the proposed rule.

5.1.1 Opposition to Random Testing. Opposition to random testing was expressed by numerous individuals; several unions including the Brotherhood of Carpenters and Joiners of America, the Utility Workers of America, and the International Brotherhood of Electrical Workers; over 200 union members as part of a letter writing campaign; one utility; and a few other organizations. While most explicitly supported the goal of a drug-free workplace, opposition to random testing as a means to achieve this goal was stated in the strongest terms.

A number of reasons were given for opposition to random testing. Many commenters were specifically opposed to random testing as an unwarranted invasion of privacy. Numerous commenters expressed the opinion that random testing is an infringement of Constitutional rights. Several questioned whether the extent of the drug problem in the nuclear industry warranted such drastic action.

Other reasons cited for opposition to random testing included:

- The view that random testing is ineffective in achieving the NRC's goals of deterrence and detection,
- Better techniques are available for deterring and detecting drug use,
- Random testing is excessively burdensome and expensive,
- Random testing is embarrassing and demeaning,
- Random testing creates morale problems and may thus lead to the loss

of qualified and drug-free workers from the industry, and

- Inaccuracies in the testing process will lead to innocent people being accused and punished for wrong-doing.

5.1.2 Support for Random Testing. While many licensees viewed random testing as only one part of a comprehensive fitness-for-duty-program, most licensees and NUMARC expressed strong support for random testing as a major component of an effective program. This view was shared by several other organizations, such as contractors and vendors, as well as many individuals. NUMARC cited industry experience that the implementation of random testing programs has typically resulted in lower levels of drug problems.

Local No. 51 of the International Brotherhood of Electrical Workers expressed support for random testing when it is supplemented by behavioral observation. The Local reported that the affected workforce at the Illinois Power Company Clinton Nuclear Station is tested on a random basis each day and that this testing program, coupled with behavioral observation, has apparently proven to be a deterrent to drug abuse. This testing program was achieved through collective bargaining and is considered by the Local to be a valuable working practice. A check with the utility revealed that 100 percent of the workforce is given an unannounced test on an annual basis; and in addition, all persons are subject to random testing at a 20 percent rate. Since the rate of positive tests has significantly declined, the utility may plan to lower the rates.

5.1.3 Alternatives to Random Testing. A number of comments were received in response to the NRC's request for information on alternatives to random testing. The unions and affiliated locals and individuals, a number of other individuals, two licensees, and a few other organizations expressed the opinion that the goals of random testing could better be addressed through other methods. The majority of these commenters stated that a combination of behavioral observation, primarily on the part of the supervisor, and for-cause testing was both adequate and effective. Opinions were expressed that behavioral observation and for-cause testing have the advantages of not subjecting everyone to needless tests, dealing with fitness-for-duty problems in addition to drug abuse, and being more likely to stand up under review of the courts than random urinalysis. Most licensees also supported behavioral observation and for-cause testing, although not as a substitute for random testing.

A number of commenters suggested specific observational techniques including computer-assisted neurophysiological and neuropsychological tests, physical skills tests such as those used by law enforcement personnel, and Ocular Kinetics. Others suggested that the annual physical be used to screen for drug abuse, either through chemical testing or observation. Unannounced, random medical examinations were also proposed. Sacramento Municipal Utility District provided a detailed description of its program based on screening by trained medical personnel. This program was also cited by a few other commenters.

Several commenters proposed that drug awareness and health education were more effective deterrents. Other commenters stated that greater emphasis on rehabilitation would be more effective than random drug testing.

A few commenters suggested that pre-employment or pre-access drug screening was adequate. A few additional commenters preferred announced or periodic unannounced testing to random testing. Finally, a few commenters suggested that the NRC direct its attention to the underlying causes of drug abuse, such as the alleged poor work environment at nuclear power plants, rather than at detecting and punishing drug users.

5.1.4 Specific Changes in Random Drug Testing Provisions. Among the commenters who generally accepted the provision for random drug testing, a number of comments were received concerning the specific approach outlined in the proposed rule. Many of these comments, such as those having to do with drug types and cut-off levels, are summarized elsewhere. One major concern, however, had to do with the rate of testing to be required by the NRC.

Although the NRC had specifically requested comments on the preferred rate of testing, many commenters felt that the intention of the NRC was to require testing at a rate of 300 percent annually. Most of the comments received, therefore, addressed whether a 300 percent annual rate of testing should be imposed.

The 300 percent testing rate received very little support among those who otherwise supported random testing. NUMARC and most licensees stated that industry experience demonstrated that many fitness-for-duty programs had been successful with substantially lower rates of testing. Several commenters stated the opinion that a 300 percent testing rate would be unnecessarily

burdensome to the licensee in terms of costs, and to the individual in terms of repeated testing. A number of commenters questioned whether information from military experience that was apparently used in the NRC's decision to propose a 300 percent testing rate was appropriate to the nuclear power industry with its older and more stable workforce. Finally, one commenter questioned whether the testing laboratories could effectively handle the workload implied by a 300 percent testing rate.

Numerous commenters suggested alternatives to the 300 percent testing rate. Proposals ranged from a 5 percent per year rate to a 200 percent per year rate. However, NUMARC and most licensees proposed a 100 percent annual test rate for the random testing program. They further requested that the 100 percent rate be reevaluated based on the experience of utilities, and be reduced to a 25 percent rate if warranted by experience. A few commenters requested that the testing rate be left to the discretion of the individual licensee, because licensee management would be most knowledgeable about their particular situations.

A number of other testing strategies were proposed. One basic approach that was favored by several commenters was to require unannounced annual testing of all workers, augmented by random testing at a lower rate, such as 25 percent per year. Several other commenters suggested techniques for protecting individuals from being over tested. These included a request that a worker not be re-tested until all other workers have been tested, a request that tested workers be subjected to a lower rate of testing for the balance of the year, and that there be limits imposed on the maximum number of tests for a particular worker in a given year.

Commenters also expressed the opinion that workers of different types should be tested at different rates. A few commenters expressed the opinion that the testing rate should be relaxed for workers in non-safety critical jobs. Many commenters requested that licensees be allowed to establish different testing programs for their own, versus contractor or vendor, employees. Specifically, a number of utilities stated that treating all workers as one population would result in those workers who are permanently on-site being tested more frequently than those workers who are on-site for only part of the year. By having separate testing populations for licensee and contractor or vendor employees, the commenters

felt that the burden of testing would be distributed more fairly.

Two inquiries were received concerning policy for those randomly selected individuals who are not on-site at the time they are selected. One commenter asked how they would be folded back into the testing population. The other stated the position that the workers should not be required to return to work solely for the drug test.

Several comments were received requesting changes in the definitions of random and unannounced tests contained in § 26.3.

5.2 Summary of Responses

The NRC is sensitive to the issues raised in opposition to random testing in general and to random urine testing in particular. Nevertheless, the NRC believes that there is sufficient evidence supporting the effectiveness of random testing in deterring and detecting substance abuse and that a carefully designed chemical testing program covering persons authorized for unescorted access to the protected area of nuclear power facilities is warranted at this time. As indicated below, in response to the sensitive issues of privacy and protection of individual rights, the NRC has taken great care to provide strict specimen collection procedures, chain-of-custody, laboratory certification, test confirmation, and confidentiality requirements within the rule. The NRC is convinced by evidence from the military and from licensees already implementing random testing procedures that random testing is an essential and effective component of the fitness-for-duty program. The NRC has designed the rule to minimize, to the extent possible, the expense and burden of the chemical testing component upon licensees, contractors, vendors, and upon their workers. Stringent quality assurance requirements are imposed upon the licensees, contractors, and vendors as well as upon the laboratories that will be conducting the chemical tests to ensure that test results will be accurate and that false positive results will be essentially eliminated.

Although the NRC believes that behavioral observation and for-cause testing comprise important elements of a substance abuse deterrence and prevention program, and has included them in its rule, it does not believe that, at present, these elements alone are sufficient to provide the level of deterrence and detection necessary. Nevertheless, the NRC appreciates the potential value of developing techniques in behavioral observation and detection of impairment through testing, and intends to monitor progress in these

areas. It is prepared to modify the requirements of the fitness-for-duty testing program to incorporate such elements as they become viable, as long as the techniques address the reliability and trustworthiness issue of use as well as the safety issue of current impairment.

The NRC is sensitive to the importance of employee morale to plant safety, and has taken care to provide safeguards in the program to assure the fairness, uniformity, and accuracy of the random testing. The NRC also recognizes the value of health education and rehabilitation programs in assisting workers and in deterring substance abuse, and notes evidence that random testing programs have been found to be an effective incentive for workers to seek information and assistance. To this end, the NRC has included in the rule, as discussed below, requirements for a licensed physician to review positive test results prior to notification of the licensee, and is requiring that licensee workers have access to an employee assistance program designed to provide assessment, short-term counseling, referral services, and treatment and follow-up monitoring.

The NRC has considered a number of alternative rates and sampling procedures to address the many comments received. The NRC agrees that the high rates of testing needed in the military may not be as essential for the nuclear power industry, as long as adequate coverage and deterrence is assured. In this regard, the NRC notes that the Navy, using a 300 percent per year testing rate, observes about 5 percent positive tests. Commenters in the nuclear industry, with random testing programs, reported less than 1 percent positive tests, with a utility using a 100 percent per year rate reporting 0.5 percent positive. This appears to be reflective of a substantially different workforce population. The approaches considered were:

- Alternative A from the proposed rule, which sets the two goals that at least 90 percent of the workforce be tested and that the testing rate for the already-tested population during a year not be set lower than a rate equal to 30 percent of the workforce. The disadvantage of this alternative is its complexity of administration and the provision of a lesser deterrent during part of the year.
- Alternative B from the draft rule that requires testing at a rate equal to 300 percent of the workforce. The disadvantage of this alternative is the possible excessive disruption of work

activities and the testing of a few individuals at a very high rate which may impact morale. The cost of this rate may be excessive given the reported low number of positive tests for testing rates at 100 percent per year or lower in the nuclear industry.

- A method whereby each worker is randomly assigned a day during the next 365 days on which to be tested, and then is randomly reassigned to a day in the following 365-day period. The worker could be tested several times in one year, but is guaranteed at least one test per year. This allows for testing of the entire workforce during any 365-day period and reduces the testing rate in comparison to Alternative B (estimated rate: 200 percent). However, there is a possibility that more workers may be selected for testing on a given day than the licensee has a capacity to test. The disadvantage of this alternative is the need to select testing dates well in advance and the security problems which may result.

- A method whereby all workers are subjected to unannounced testing once during the year, and random testing at a low rate (e.g., 25 percent-50 percent) is also used during the year to assure ongoing deterrence.

- A method whereby random testing is conducted at a rate equal to approximately 100 percent of the workforce, resulting in about two-thirds of the workers being tested during the course of a given year. This is the alternative selected by the Commission and is reflected in the final rule.

While the NRC has considered a number of alternatives, several of the alternatives proposed by commenters were eliminated. The proposals for testing rates lower than 100 percent per year cannot currently be supported, although the NRC will consider reducing testing rates after several years based on positive experience in the industry. For the time being, however, the NRC believes that testing rates substantially below the 100 percent rate would not assure adequate deterrence. The NRC does not anticipate licensees experiencing significant problems in finding laboratory capacity to support rates in excess of 100 percent. Because of the need to assure an adequate minimum rate of testing, the NRC cannot leave the choice of a testing rate solely to the discretion of the individual licensee.

The proposal that workers not be retested until all other workers are tested and the proposal that there be a specified maximum number of times that workers are tested within a year cannot be supported because they would make the process non-random and would

defeat some of the deterrent value of testing. Several of the above alternatives would have the effect of limiting the amount of retesting on particular individuals.

The NRC recognizes that vendor and contractor personnel could be subjected to lower rates of testing to the extent that they are not on-site for the entire year. The NRC believes that there are several strategies available to deal with the implied over-testing of licensee employees. The licensee can divide those being tested into discrete populations (e.g., employees and contractors, or even by contractor). The NRC expects that all categories of workers will be tested in accordance with the alternative rate and procedure selected for the final rule. The NRC will permit the licensee to sample within categories of workers, to sample randomly on at least a weekly basis among those currently on-site, or to employ some other method that satisfies the standards of the selected alternative for all categories of workers covered under this part.

The NRC does not believe that additional guidance is needed on how to deal with workers who are not on-site when they are randomly selected for testing. Current practice is to either test them immediately upon return to the site (with a supporting procedure that prevents disclosure of their selection), place them in a special pool of people to be randomly selected within a few weeks, or to return the person to the testing pool and select someone else. Usually, the licensee assures itself that there is a legitimate reason for the absence, and, if any patterns are evident an investigation is usually conducted along with for-cause tests. Current industry practice is considered adequate on this point.

6.0 Reliability of Test Results

6.1 Summary of Comments

The NRC received numerous comments pertaining to the reliability of test results. Several comments in this category expressed concern about the perceived high rate of false positive results and the possible consequences to workers. An official of the Utility Workers Union of America contended that immunoassay screening tests have false positive rates of 5 percent. A private individual cited a Human Relations Institute & Clinic's report claiming that laboratories using initial and confirmatory test procedures have had false positive rates ranging from 4.5 percent to 23.8 percent. Two commenters, a private individual, and an International Brotherhood of

Electrical Workers (IBEW) union member asserted that testing laboratories in general have had false positive rates of 30 percent to 60 percent, respectively. The United Brotherhood of Carpenters and Joiners of America and two union locals, one of the IBEW and another of the Coalition of California Utility Workers, cited Center for Disease Control (CDC) study data from the early 1980s to claim that testing technologies are too inaccurate. One set of comments, mostly from the IBEW, wanted the NRC to ensure a 100 percent, or error-free, testing rate. Commenters attributed false positives to low cut-off levels, cross reactivity between drugs, and the varying levels of voided metabolites in the body associated with marijuana use. One commenter, the Utility Workers Union of America, thought that individuals who had received false positives should be awarded monetary compensation. Another commenter, the United Brotherhood of Carpenters and Joiners of America, contended that the EMIT 100 test used in initial screening had too high false negative rates.

Some commenters, mostly NUMARC and 39 licensees supporting the NUMARC comment, thought that the validity of the test results could be challenged either by the generation of true positives from use of over-the-counter drugs and other legal substances or by the mishandling of samples. Four other commenters (Florida Power and Light, the Oil, Chemical and Atomic Workers Union [OCAW], an IBEW union worker, and a private individual) identified the following as possible challenges to the validity of test results: mislabeling or misidentification of samples; use of improper sample collection techniques; inadequate safeguards against tampering; failure of laboratory equipment; passive inhalation of marijuana; time of day of the sample; and erroneous reading of test results. NUMARC and OCAW recommended adherence to chain-of-custody procedures, in general, while the Wisconsin Electric Power Company and the United Brotherhood of Carpenters and Joiners of America specifically recommended those procedures outlined in the HHS Guidelines. The Duquesne Light Company recommended that chain-of-custody procedures be followed at the site and in the laboratory. Houston Lighting and Power asked the NRC to prohibit personnel from working in the "Fitness-for-Duty Program" (that is, the testing program) who have relatives working at the site.

6.2 Summary of Responses

The NRC acknowledges the concerns regarding the rate of false positives and specimen collection and handling techniques, and recognizes that these concerns are based upon problems that existed several years ago when drug testing programs were being introduced. The Federal Aviation Administration, in their response to public comments on the same matter (53 FR 47032, November 21, 1988), provided a clear response that we find no reason to improve:

... In the early years of drug testing and analysis, laboratory security and analytical procedures had not reached today's level of sophistication. False-positive test results occur primarily in analysis of a specimen during an initial screening test, although contemporary screening tests, such as immunoassay tests, have become extremely accurate and approach 99 percent accuracy levels. Despite its increased accuracy, the initial screening test remains a less expensive test used only to yield a preliminary indication of the possible presence of drugs or drug metabolites. In order to ensure the integrity and accuracy of any test result, each positive initial screening test result must be confirmed using GC/MS analysis. The GC/MS confirmation test is an extremely accurate and sophisticated test and is virtually error-free when used in compliance with the DHHS guidelines. ... The Mandatory Testing Guidelines will provide a system of checks and balances during collection and analysis of specimens. This system ensures the integrity and accuracy of the tests using appropriate scientific methods and rigid chain-of-custody procedures. ... Since the mid-1980s, laboratories have become increasingly sophisticated in their analytical methods and chain-of-custody procedures. Many laboratories have compiled extensive records demonstrating scientific accuracy and protection of individual specimens. For example, CompuChem Laboratories, a major drug testing laboratory, has analyzed over 500,000 urine samples, conducting discrete testing for nine different drugs which resulted in nearly five million distinct analyses of these specimens, since 1980. CompuChem also has analyzed approximately 750,000 urine samples for the presence of two different drugs, resulting in nearly 1.5 million analyses of these specimens, pursuant to its contract with the military. None of the over six million analyses performed for DOT, the military, and other private and public entities has resulted in a false-positive test result.

In late 1987, a CompuChem clerical worker incorrectly labeled two samples that belonged to DOT employees. Within hours after the test results were questioned by the Medical Review Officer, CompuChem and the Medical Review Officer had identified and corrected the error. CompuChem was not satisfied with its prompt resolution of the error. As stated in its comment to the NPRM, CompuChem has instituted an additional system of review by CompuChem personnel and computer checks, to ensure that "... this one in a million error will not reoccur.

Another drug testing firm, PharmChem Laboratories, has conducted over eight million nonmilitary drug tests nationwide. In its statement to FAA during the public hearing held in San Francisco on June 9, 1988, PharmChem notes that several courts have determined that the GC/MS confirmation test is virtually 100 percent accurate, assuming that proper chain-of-custody procedures are followed. ...

The NRC has adopted the provisions of the HHS Guidelines with some modifications to further ensure the integrity and accuracy of test results using appropriate scientific methods and rigid chain-of-custody procedures at the site and in the testing laboratory. The confirmatory testing process also eliminates any false presumptive positive tests resulting from a cross-reacting drug detected during initial screening. As cross-reacting substances are generally prescription or over-the-counter medications, testing procedures in a licensee's fitness-for-duty program will include an inquiry on the individual's use of these medications.

Chain-of-custody procedures and a system of reviews, checks, and balances during collection and analysis of specimens outlined in the NRC Guidelines limit and prevent errors and possible subversions. To protect the worker from inappropriate sanction due to any errors in the testing process, cross-reacting substances, or legitimate medical use of controlled substances, a Medical Review Officer (MRO) screens all presumed positive test results and may interview those individuals who have tested positive with the GC/MS confirmatory test. The MRO is trained in prescription and over-the-counter (OTC) drug interaction as well as the physical signs of illicit drug abuse. A comprehensive discussion of the MRO's responsibilities and a discussion of matters such as clinical signs of abuse are contained in the "Medical Review Officer Manual: A Guide to Evaluating Urine in Drug Analysis" (September 1988) published by the National Institute on Drug Abuse. The worker has an opportunity to identify any ingested licit, prescription, OTC drugs as well as certain food substances that may affect a test result. The chain-of-custody and collection procedures outlined in the NRC Guidelines, along with computer techniques of tracking specimens, limit the probability of mishandling, mislabeling, and misidentification of samples. The NRC Guidelines also outline procedures for the collection of samples to ensure the integrity of the samples and to limit opportunities for sample tampering. To further limit the possibility of subversion of the integrity of the testing process, the NRC

Guidelines require licensees to carefully select persons responsible for administering the testing program based upon the highest standards for honesty and integrity and to implement measures appropriate to ensure that these standards are maintained. Background evaluations of testing program personnel would be conducted to verify the integrity of such individuals given the potential misuse of that position. Behavioral observation and periodic re-conduct of the background evaluations would assure continued integrity. Supervisory personnel and an individual's co-workers would be prohibited from performing as collection site personnel and consequently from being involved in the chain-of-custody process.

The NRC does not believe that "passive inhalation" of marijuana smoke will lead to false positives. Studies conducted to simulate conditions that result in passive inhalation have not accurately reflected conditions outside the laboratory often using artificially devised and extremely confined areas with poor ventilation, followed by immediate testing after prolonged exposure. The cut-off levels in the NRC Guidelines will be set sufficiently high to preclude the possibility of controversy due to chances that a positive test resulted from passive inhalation. The NRC notes that a trustworthiness question may be raised even in the case of passive inhalation. The only effect associated with the time of day of the sample is that urine samples collected earlier in the day contain higher concentrations of drugs or drug metabolites. Samples collected earlier in the day do not generate more false positives as initial positives are still confirmed with the GC/MS test. Erroneous reading of test results would be limited by chain-of-custody procedures and the system of reviews required of testing laboratories.

7.0 Training and Behavioral Observation

7.1 Summary of Comments

The NRC received numerous comments regarding the scope of training required of licensee, contractor, and vendor personnel granted unescorted access to protected areas. Most commenters concurred that training should be provided to all employees covered under the rule to ensure that they understand the licensee's fitness-for-duty program, their responsibilities, the consequences of substance abuse, and the availability of assistance through the Employee

Assistance Program (EAP). In accordance with NUMARC, many commenters supported the training of supervisory and managerial personnel in behavioral observation techniques and procedures for initiating appropriate corrective action, including referral of employees for medical assessment or counseling. However, a majority of commenters also expressed strong opposition to the proposed level of training required of non-supervisory personnel assigned escort duties (§ 26.22(b)).

The NRC also received a significant number of comments regarding the requirement that initial training of licensee personnel be completed prior to assignment of duties within the scope of this rule and within three months of initial supervisory assignment, as applicable (§§ 26.21(b) and 26.22(c)). Most of these commenters requested that the NRC revise the proposed rule to allow drug awareness and behavioral observation training to be completed within six months of initial supervisory assignment. Commenters also suggested that refresher training be completed every two years rather than annually.

7.2 Summary of Responses

The NRC has revised the proposed rule to clarify its intent that escort personnel are not required to receive training in supervisory responsibilities. The revised rule requires that all non-supervisory personnel assigned to escort duties must be familiar with techniques for recognizing drugs and indications of the use, sale, or possession of drugs; be familiar with techniques for recognizing aberrant behavior; and be knowledgeable of the proper procedures for reporting incidents of aberrant behavior to the appropriate management authorities.

The NRC received many comments opposing the required completion of drug awareness and behavioral observation training of supervisory and managerial personnel within three months of initial supervisory assignment. However, because of the critical position that supervisory and managerial personnel serve in detecting impaired workers, the NRC has determined that the current provision regarding supervisory training is necessary and will remain as stated in the rule.

The NRC has also determined that the provision requiring licensee personnel to receive annual refresher training in drug awareness and behavioral observation techniques will remain as stipulated in the proposed rule. Because supervisory personnel represent the first line of defense against fitness-for-duty

problems, it is critical that they be trained to recognize these problems and handle them appropriately. Therefore, the NRC believes that the training of supervisory and managerial personnel in behavioral observation techniques will provide licensees with an invaluable tool for the detection and deterrence of drug and alcohol-related impairment and for the detection of impairment from other causes. Because of the significant level of knowledge and training required to accurately detect subtle indications of drug or alcohol impairment and the critical need to identify drug and alcohol abusers before they compromise public safety, the NRC believes it is prudent to require supervisory training on an annual basis, or more frequently when necessary. In addition, the NRC will continue to require annual refresher training of all non-supervisory personnel to ensure that licensee and contractor employees understand the requirements of the licensee's fitness-for-duty program, are aware of their responsibilities, and, in the case of licensee employees, are aware of opportunities for assistance available through EAP services. NRC audits of licensee programs and interviews with contractor and licensee personnel have indicated a need for this level of refresher training.

8.0 For-Cause Testing

8.1 Summary of Comments

8.1.1 Suitability of For-Cause Testing. As summarized earlier, many commenters stated that they were in favor of for-cause testing in place of alternative testing methods such as random testing.

8.1.2 Definition of Impairment. Several commenters including NUMARC stated that the current definition of for-cause testing is too broad. Suggestions for improvement included replacing "is impaired" with "may be impaired" or "may have demonstrated aberrant behavior." Finally, commenters stated that most of the examples in paragraph 26.24(a)(3) of when for-cause testing should be required need better definition. Several examples were suggested.

8.1.3 Testing Following an Accident. Several commenters stated that requiring for-cause testing following an accident would inhibit root cause analysis of the accident. One commenter stated that for-cause testing should be required after a serious accident.

8.1.4 Initiation of Testing. Several commenters addressed who should be allowed to initiate for-cause testing. Several commenters stated that "impaired behavior" can only be

determined by a physician or other health care professional. Others thought that a minimum of two management officials must document an employee's impairment. One commenter stated that for-cause testing should not be the result of a "discrete expression of concern by a nameless accuser."

8.2 Summary of Responses

The NRC agrees with the commenters that the definition of the circumstances in which "for-cause testing" is appropriate should be clarified. The definition provided in § 26.3 has been deleted and the language in § 26.24(a)(3) has been revised. The NRC does not agree that impaired behavior can only be determined by a physician or other health care professional. Supervisors are close to their workers and directly monitor worker performance, often on a daily basis. The NRC also does not agree that a minimum of two managers should be required to document a worker's impaired behavior. In some cases, the impaired behavior may be observed by only one manager during a task that cannot be easily repeated.

9.0 Sanctions

9.1 Summary of Comments

9.1.1 Period of Denial of Access. Sections 26.27(b)(2) and (b)(3) stipulate that, as a minimum, the first positive test confirmed by the Medical Review Officer shall result in immediate removal from access for at least 14 days and referral to an EAP for assessment and counseling. Any subsequent confirmed positive test would result in removal from unescorted access for a minimum of three years. A worker who is involved in the sale, use, or possession of illegal drugs while within the protected area of a power plant would be removed from covered activities for a minimum of five years. This section further specifies that the rule does not prohibit the licensee from taking more stringent actions.

This section prompted many and varied comments. Many licensee commenters including NUMARC argued that the entire § 26.27 should be deleted because licensee management has the responsibility to decide these issues. They believe that establishing sanctions is not within the Commission's statutory authority. Other licensees recommended that the rule should not prescribe any specific time periods for these events because each must be treated on a case-by-case basis. For instance, a licensee commented that some relatively minor situations do not require even fourteen days to assess the worker's drug usage,

determine a solution to the problem, and safely return the worker to unescorted access.

There was no particular consensus among those commenters who mentioned specific time periods for removal from access. Local No. 51 of the International Brotherhood of Electrical Workers recommended that a worker be suspended for five days after the first confirmed positive test and for ten days after the second. The System Council U-2 of the IBEW recommended discharge for six months after the second confirmed positive. Local No. 51 also believed that the three-year removal from access is too severe as it would almost certainly lead to dismissal. Permanent dismissal was recommended by Houston Lighting and Power even for the worker's first confirmed positive test. Carolina Power and Light believed that the 14-day requirement is adequate. Many licensees believed that they should have the option to undertake measures ranging from counseling through discharge following the first positive test result. They stress that they must have the flexibility to do whatever it takes to assure at least a chance at successful rehabilitation of the worker.

There was somewhat less variance in the comments on the appropriate response to a determination that a worker has been involved in the sale, use, or possession of illegal drugs within a protected area. Several licensees stated that the worker should be discharged in such circumstances. NUMARC recommended that the worker be permanently barred from access. Another licensee would discharge the employee but allow the person to be considered for rehiring after three years.

9.1.2 Follow-up Tests. Section 26.27(b)(3) of the proposed rule [§ 26.27(b)(4) in the final rule] would require that workers whose access is reinstated "shall be given unannounced follow-up tests at least once every three months for three years after reemployment to verify continued abstinence from drugs." This requirement prompted a variety of responses. Various union representatives stated that this testing rate and duration would be "excessive, harsh, and punitive" and argued for less frequent testing over a shorter probation period. NUMARC recommended that workers regaining access be tested once every three months but for one year only. On the other side of the spectrum of views, Public Service Electric and Gas stated that the condition of such workers requires "close monitoring, tracking, and continued urine sampling."

Rancho Seco's practice in such circumstances requires weekly urinalysis during the first quarter after return to work and monthly testing thereafter. (The length of the probation period was not mentioned.) A third set of commenters indicated that the frequency and duration of such follow-up tests need not be prescribed in the rule but should be left to the employer's determination.

9.2 Summary of Responses

9.2.1 Period of Denial of Access. The Commission's intent in § 26.27 is that a worker who may pose a threat to safety be removed from safety-sensitive duties as long as he or she remains such a threat. These sanctions are not meant to serve as punishment for substance abuse. Thus, the section allows but does not mandate the permanent denial of unescorted access to protected areas in any of the enumerated drug-related events. The section also recognizes that the severity of threat to safety is a complex matter. Obviously, a long-term heroin addict with an expensive habit would likely be a far more serious threat than a recreational marijuana user. Yet, an effective fitness-for-duty program must be prepared to deal with both types of problems.

It is the NRC's belief that § 26.27(b)(2) includes an appropriate mix of flexibility and stringency. The 14-day period seems reasonable in that, in almost all cases, it would take at least that long to diagnose a worker's problem, determine a solution, and assure that the problem is addressed before the worker can again be granted access; this may, in some cases, be limited to counseling. Also, the NRC believes that 14 days is needed to conclude that the first confirmed positive test may have resulted from behavior that does not in fact pose a serious safety threat. This minimum period is not meant to constitute punishment. Instead, this period is intended to ensure an adequate time for assessment of the worker's condition and requirements. The NRC does not take a position on whether a worker in this situation should be denied unescorted access longer than 14 days. That is to be decided by the licensee.

Removal from unescorted access for a minimum of three years after a second confirmed positive test is, on the other hand, quite a stringent requirement. Some commenters noted that dismissal may occur in such cases. The NRC believes that this measure is appropriate, however, in light of this rule's goal of assuring that workers are not impaired due to substance abuse. A second positive test would indicate that

the person is most likely not able to stop using the substance in question and could, therefore, pose a threat to safety. The severity of a three-year loss of unescorted access may also provide an incentive for employees to voluntarily enter into rehabilitation programs when they realize the seriousness of the substance abuse problem.

Section 26.27(b)(3) also appears to be well suited to the rule's goal. The tenor of most comments on this section favored more stringent measures than the section would require, and the NRC wishes these commenters to note that the five-year period is intended to be only the minimum removal from unescorted access necessary to protect public health and safety. The five-year period should operate as both a deterrent to the proscribed activities and as a measure that may in fact result in permanent denial of access in most cases where involvement in illegal drugs is detected in protected areas.

9.2.2 Follow-up Tests. The NRC recognizes the need to adjust the frequency of follow-up testing as required in § 26.27(b)(4). Research indicates that recidivism is most likely during the first 90 days following treatment (Hubbard and Marsden, 1986; Rounsaville, 1986). Most relapses to substance use will take place during that first 90-day period. If a person can remain substance-free during that period, he or she will have a chance to continue to be abstinent.

In light of this research, the Commission has amended this section. Rather than requiring a uniform frequency of testing for the entire three-year probation period, the heightened potential for recidivism during the early stages of that period should be recognized with a rate of testing more frequent than once every three months.

As amended, this section requires that workers whose access is reinstated be given unannounced follow-up tests at least once every month during the first four months of restored access. During the next two years and eight months, the worker should be tested at least once every three months to verify continued abstinence. As compared to the proposed rule's requirement, the higher testing rate during the first four months would provide the worker with an increased incentive to remain abstinent as well as create an increased probability of detecting any resumption of substance use that may occur. Thereafter, the lower testing rate would be less onerous for the worker while still providing added assurance that resumption of substance use would be detected.

10.0 Impairment From Other Causes

10.1 Summary of Comments

A number of commenters discussed issues pertaining to impairment from causes other than workers' use of illegal drugs.

10.1.1 *Identified Additional Sources of Impairment.* Workers' use of substances was mentioned most often in these comments, especially the use of alcohol, prescription medications, and over-the-counter medications; the use of caffeine was also mentioned. Comments were also made about the following specific sources of worker impairment: (1) Emotional and mental stress in general and stress specifically related to poor attitudes, poor morale, and family problems; (2) fatigue, including fatigue caused by mandatory long hours of duty, rotating shifts, and workers working shifts incompatible with their biological clocks; (3) illness, including allergies; and (4) physical and physiological impairments. One commenter noted that illnesses, particularly colds and flu, are major causes of impairment because both the illness and the medication a worker takes to treat the illness can cause impairment. With regards to fatigue, one commenter objected to the proposed rule because, under the rule, it was his interpretation that workers may be disciplined and possibly terminated due to fatigue caused by work schedules and overtime.

A number of commenters did not specifically address any one of these sources of impairment, but expressed one or more of the following general concerns: (1) The rule should be expanded to address several or all of these potential causes of impairment, regardless of the source of the impairment; (2) it is inappropriate for the rule to focus on illegal drug use and not to also address, in detail, the use of legal drugs, alcohol, or both; and (3) the rule requires licensees to address impairment from sources other than illegal drug use and to provide reasonable assurance that on-duty workers are not impaired from the use of any substance, but it provides no guidelines or direction towards this end.

Some commenters noted that urine testing is an inadequate means of detecting impairment caused by many of these factors, and thought that specific tests for impairment, medical clarification exams, or supervisors' observations should be used to detect impairment.

10.1.2 *Legal Drugs.* Some commenters thought that the rule should not address legal drugs. One commenter stated that impairment should not be addressed and that the concern should

be limited to illegal drug use. Another commenter thought that the language of the rule should be changed to state that the goal of the rule is to achieve a workplace free of *illegal drugs* and their effects rather than a "drug-free workplace." This commenter also noted that this change should not preclude a licensee from prohibiting on-site use of alcohol. Several commenters stated that expanding the rule to address legal drugs would raise substantial legal concerns (e.g., making the use of legal drugs illegal, forcing a violation of physician/patient confidences) and one commenter thought that these concerns merely highlight the fact that any drug testing is an affront to personal liberty.

NUMARC stated that prescription drugs should be addressed only generally; workers should be required to notify their supervisors of intended use of prescription drugs and care should be taken in response to positive tests that occur as a result of prescription drug use. If prescription drugs are included in the testing program, the response to positive test results should be based on medical advice and workers must not be penalized unless they are abusing the legal/prescription drug. This position was strongly supported, with about half of those commenters who discussed legal drugs supporting the NUMARC position.

Several commenters stated that only the drugs listed in the HHS Guidelines should be the basis for industry testing. The addition of drugs beyond those specified in the HHS Guidelines would create a conflict with HHS restrictions. Further, a number of commenters were concerned that the procedures specifying how licensees are to identify additional drugs and incorporate them into their programs would defeat the goal of establishing uniformity. Commenters also thought that these procedures were unworkable, burdensome, and open to legal challenges.

A number of commenters stated that the rule should not be expanded to address legal drugs, and that workers should not be denied the use of medications necessary or beneficial to their health and well-being. Several commenters stated that regulation on prescription drugs is outside of the appropriate scope of NRC regulations and that such decisions should be made by physicians and on an individual basis. Other commenters thought that testing for legal drugs is unnecessary, but workers should report the use of those drugs either to their supervisors or to the medical department for an individual decision to be made about what actions should be taken to ensure

against on-the-job impairment. One commenter indicated that the prescribing physician could be consulted when making this determination.

Other commenters stated that it was appropriate to expand the testing program to include legal drugs that may cause impairment. Some of these commenters want the rule to specifically state this, while others want the rule to address the testing protocol for these drugs in detail, as has been done for the classes of drugs for which the rule does require testing. The following drugs or drug classes were identified by various commenters as warranting special concern: barbiturates, benzodiazepine, methaqualone, methadone, and propoxyphene. For some of these drugs and drug classes, cut-off levels were proposed.

Commenters also pointed out that some of the classes of drugs currently tested for include drugs that can be used for legitimate medical reasons without creating significant impairment, and the rule should be expanded to ensure such legitimate use of these drugs is protected. Several commenters stated that requiring workers to report the use of prescription drugs to their supervisors adequately addressed the concerns surrounding the use of legal drugs.

10.1.3 *Alcohol.* Many commenters made statements about whether or not alcohol should be added to the rule. The majority of these commenters, about 60 percent, stated that the rule should be expanded to address alcohol, but that details of how alcohol will be addressed should be published for public comment before the changes are implemented. These commenters include NUMARC, a number of commenters who stated that they support the position stated by NUMARC, and a number of commenters who made this statement without linking it to NUMARC. About 25 percent of the commenters addressing this issue stated that alcohol should be addressed in the rule without such a qualification. About 15 percent of the commenters who addressed this issue stated that alcohol should not be addressed in the rule. Other commenters expressed the concern that the extent to which alcohol is addressed in the rule should not make implementation an insurmountable burden.

The following reasons were given for delaying implementation of an alcohol rule: (1) Time should be allowed for the industry to study and develop additional suitable and effective programs to handle alcohol-related problems, much the same as has been provided for drug program development, and (2) prior to final rulemaking, the details of the

alcohol requirements should be made available for public comment.

The following reasons were given for including alcohol in the rule: (1) Alcohol use and misuse is prevalent, (2) alcohol use can lead to on-duty impairment, (3) alcohol misuse creates fitness-for-duty problems comparable to and perhaps more substantial than the problems caused by illegal drug use, and (4) an NRC regulation requiring testing for alcohol would lend support to established programs.

The following reasons were given for excluding alcohol from the rule: (1) Programs already in place and guidance being produced by Edison Electric Institute (EEI) effectively deal with alcohol-related problems, making additional guidance or regulations unnecessary; (2) if additional prescriptive detail is provided, and if that guidance conflicts with established programs, the rule could result in a less effective approach to dealing with alcohol-related fitness-for-duty problems.

Many specific recommendations were made about the desirable characteristics of an alcohol testing program. A number of commenters recommended using breath tests for blood alcohol concentrations (BACs), although some commenters said that blood tests are more accurate and should therefore be used. Most commenters stated that alcohol should be treated in a manner similar to other drugs, and that testing for alcohol and other drugs should be done on the same occasions. NUMARC, along with about 35 other commenters, stated that tests for alcohol should be done on a random basis, as compared to three commenters who stated that alcohol should only be included in for-cause tests. A few commenters thought that alcohol testing as part of pre-access or preemployment screening was unnecessary. Several commenters addressed BAC cut-off levels by stating the level they recommended, stating the level they were currently using, or urging the NRC to establish a cut-off level. Recommended or currently used cut-off levels ranged from 0.04 percent to 0.10 percent, with the vast majority of commenters citing the 0.04 percent cut-off level. One licensee requested the NRC to establish the 0.04 percent cut-off level, but stated that if the NRC does not establish this level, they would use the 0.10 percent BAC cut-off level used in their local state motor vehicle codes. With regards to sanctions in the event of a violation of alcohol policy, commenters expressed both the opinion that it is appropriate to regard a positive alcohol test the same as a positive drug test, and the opinion that sanctions for

violations of the alcohol policy should differ from sanctions for violation of the drug policy and should be left to the discretion of the licensee.

One commenter recommended a rule requiring a period of pre-work abstinence from drinking, such as the eight-hour rule used in the aviation industry.

10.2 Summary of Responses

The NRC agrees that the possible sources of impairment identified by these commenters constitute important fitness-for-duty concerns that should be addressed in licensees' programs. Further, the NRC believes that the rule does address these issues, in that the rule requires licensees to provide reasonable assurance that workers are not impaired from any cause and requires licensees to make EAPs available to workers to assist them with these types of problems.

10.2.1 *Additional Sources of Impairment Not Warranting Action at This Time.* The NRC does not believe that the health and safety of the public is best served by the NRC providing, at this time, additional prescriptive regulations regarding emotional and mental stress, fatigue, illness, and physical and physiological impairments. The NRC believes that there are a number of ways of effectively addressing these problems, that often the approach used must be tailored to the specific case at hand, and that sound management practices, which are consistent with the licensee's management style, can be expected to be more fruitful than would detailed prescriptive regulations.

Additional Sources of Impairment Warranting Action at This Time

The NRC agrees with the commenters who stated that the rule should be expanded to address impairment that is caused by workers' use of alcohol and legal drugs. The NRC believes that these are especially significant areas of concern because of the negative effects of alcohol and prescription sedatives on vigilance and judgment, which are important components of many jobs within protected areas. The NRC also believes that there is often a relationship between illegal drug abuse and the abuse and misuse of legal drugs and alcohol. The distinction between some types of medication use and drug abuse is not absolute. All use of prescription and over-the-counter drugs lies somewhere in a spectrum that has responsible safe use at one end, dangerous abuse at the other end, and practices such as irresponsible misuse

and accidental misuse somewhere in the middle. For these reasons, the NRC believes that a licensee's policies regarding workers' use of legal drugs and alcohol is as important for ensuring public health and safety as the licensee's policy regarding illegal drug use.

The nexus between illegal drug abuse and the abuse or misuse of legal drugs and alcohol makes it difficult to separate these issues. For example, in some cases the proposed rule addresses classes of drugs that are both abused illegally and used in legal medications (e.g., opiates and amphetamines). Therefore, within a drug testing program adhering to the proposed rule, an overlap between illegal and legal drugs already exists.

Additionally, many of the issues that must be resolved when addressing each of these areas are very similar. For example, if chemical testing is to be used to detect the use of one or more legal drug(s) or alcohol, then the issues pertaining to the testing protocol that must be addressed when testing for illegal drugs—such as chain of custody, establishing cut-off levels, laboratory quality assurance—must all be addressed. Further, all of these issues should be addressed because individual workers may have closely-related substance abuse problems involving illegal drugs, legal drugs, and/or alcohol. Effectively detecting and deterring the abuse of some substances (illegal drugs) while failing to detect and deter the abuse or misuse of others (legal drugs, alcohol, or both) may result in some workers who have drug problems merely substituting one impairing drug with another rather than giving up the unacceptable use of any drugs. This close tie between illegal drug abuse as a fitness-for-duty concern and legal drugs and alcohol as fitness-for-duty concerns, along with the significance of these issues, warrants the NRC addressing all of these issues in a fitness-for-duty rule.

The NRC does not agree that it is beneficial to wait until licensees have studied these problems and attempted to develop their own solutions before taking action. The NRC believes that, as was the case when the NRC delayed rulemaking regarding illegal drug use, such a practice may contribute to inconsistent policies in the industry and that it is possible that some policies will be developed that prove to be inadequate. Further, such a waiting period would result in an unacceptable delay in the implementation of important components of the NRC's fitness-for-duty rule.

10.2.2 *Legal Drugs.* The NRC does not think that it is appropriate to publish

detailed regulations concerning legal medications at this time. The NRC acknowledges that the task of establishing the panel of drugs for which testing is warranted, and the appropriate testing protocols to be used when performing those tests, is an important and difficult task that warrants careful consideration. Further, the NRC believes that all of the approaches recommended by commenters regarding the regulation of workers' use of legal drugs may prove unacceptable. Some of the recommended approaches can be expected to provide inadequate assurance that a worker's use of legal drugs does not result in on-duty impairment. Other approaches may prove to be unnecessarily intrusive. For example, it may be unnecessary for workers to report to a supervisor or Medical Review Officer their use or intended use of some prescription drugs.

The NRC believes that requiring workers to report to the Medical Review Officer their use or intended use of some types of drugs is essential, however, and should be considered by licensees. However, the NRC believes that defining these drugs in terms such as "all prescription drugs" or "all drugs that may cause impairment" may be a poor method of developing such a list. There may be over-the-counter drugs, such as over-the-counter stimulants and sedatives, that have significant potential for causing on-duty impairment and thus warrant being reported. Conversely, there may be prescription drugs that have very little potential for causing impairment and do not warrant being reported. Specific policies could be produced that would eliminate the need for workers to report their use of these drugs. For example, it may be possible to assure that some drugs do not create significant problems simply by providing guidance to workers about when the drugs can be used or about the maximum doses of the drugs that can be used by on-duty workers. The development of such guidance could simplify licensees' fitness-for-duty programs, promote consistency throughout the industry, and reduce the intrusive nature of the fitness-for-duty programs. However, the NRC believes that such guidance should be developed by the industry. Input from the medical community would be especially valuable in this area and should be sought. Should timely progress not be made in this area, the NRC may institute additional rulemaking.

The rule has been modified to require licensees to educate workers about the effects legal drugs may have on job

performance. Also, in line with comments, the NRC accepts that chemical testing for some legal drugs is appropriate, however, whether to test for these drugs, such as barbiturates and benzodiazepines, is left to the discretion of each licensee. The Commission has asked the staff to explore with the Secretary, DHHS, the addition of these drugs to the required testing panel.

10.2.3. Alcohol. The NRC believes that alcohol is a fitness-for-duty concern. The NRC believes that no on-duty alcohol consumption should be permitted, and that conducting breath tests to determine workers' BACs is a necessary step towards detecting and deterring any on-duty use or any unacceptable off-duty use of alcohol.

Breath tests, when conducted following the protocols in the NRC "Guidelines for Nuclear Power Plant Drug and Alcohol Testing Programs" (Appendix A to Part 26), provide relatively accurate and reliable measures of BACs, and are sufficient for all alcohol tests. Workers should have the right to have further confirmatory tests performed at their request. Because of the improved accuracy obtained when using blood samples, further confirmatory tests will be performed using blood samples analyzed with gas chromatographic methods.

The NRC believes that the scientific literature strongly demonstrates that BACs can be correlated with impairment, and that a BAC cut-off level of 0.04 percent is appropriate. This cut-off level is low enough to provide reasonable assurance that alcohol-caused impairment will be detected when breath tests are performed, and high enough to eliminate practical and technological problems associated with very low cut-off levels. The NRC therefore requires that blood alcohol concentration cut-off levels be set at 0.04 percent. Licensees have the general responsibility for evaluating the fitness of their personnel whether or not some specified limit is indicated for either drugs or alcohol. Licensees may establish lower cut-off levels, but should recognize that there are practical problems associated with a zero or near-zero cut-off level for alcohol, and should consider the potential impacts of these problems carefully before using very low cut-off levels.

The NRC recognizes the value of a required period of abstinence from drinking that should precede all scheduled tours of work. The NRC therefore is requiring licensees to include an abstinence period of at least 5 hours in their fitness-for-duty programs.

The NRC does not agree with those commenters who state that chemical tests for on-duty alcohol-caused impairment need only be performed on certain drug testing occasions, such as when for-cause testing is performed. The NRC believes that licensees should not indicate to workers that alcohol use that results in on-duty impairment is of less concern than is illicit drug use. Further, the NRC believes that any use of alcohol that results in on-duty impairment poses a significant potential threat to public health and safety.

Finally, the NRC agrees with comments that state that it would be easy for a worker to pass an announced test for alcohol misuse, such as a pre-employment or pre-access authorization screening. However, this is true for many illicit drugs that, like alcohol, are eliminated from the body relatively quickly. As is the case when testing for these illegal drugs, detection of rule violations may be rare, as workers need only abstain for a reasonable period prior to the test to be assured of passing the test. However, it is also very likely that those who are detected through such tests will have a very substantial problem that must be addressed. Some licensees who currently include tests for alcohol in their preemployment screening process have discovered several alcohol abusers who would have gone undetected without the screening process. For these reasons, the NRC requires that chemical tests for the misuse of alcohol be conducted whenever tests for illegal substance abuse are performed. Furthermore, to assure deterrence against "lunch time drinking" the rule will require that random testing be conducted at various times during the day.

With regards to sanctions related to alcohol in the final rule, the NRC agrees that it may not be essential that the actions taken to address alcohol misuse be identical to the actions taken to address illegal substance abuse. However, the NRC does believe that it is essential that licensees test for the misuse of alcohol and that detected impaired workers are removed from duty. Further, sanctions must be adequately severe to deter drinking practices that result in on-duty impairment, and severe enough, as compared to the sanctions associated with illegal drug use, to ensure that workers who abuse illegal drugs are not encouraged to merely switch from a pattern of unacceptable drug taking activity to a pattern of unacceptable alcohol consumption. One way of doing this is to take actions in the event of a violation of the alcohol policy that are

the same as, or similar to, the actions taken when the illicit drug policy is violated. In the absence of such actions, an effective program must provide assurance that a high level of deterrence is present and that workers who are impaired as a result of alcohol misuse are removed from duty.

11.0 Confidentiality of Test Results

11.1 Summary of Comments

A number of commenters were concerned about the confidentiality of test results and the potential impact of the rule on the privacy of workers. There was concern that test results might be inappropriately released to the detriment of workers. A number of specific suggestions were made to protect workers' rights.

11.1.1 Confidentiality of Results. One commenter favored identifying samples by a number coded to an individual worker rather than by name. Other commenters believed that there should be a protocol defining which licensee's workers should have access to fitness-for-duty records at various stages of the testing process. Several commenters expressed the view that test results should not be releasable to licensees or contractors under 10 CFR 26.27(b) without the written approval of the affected worker. One commenter proposed that all medical personnel involved in the fitness-for-duty process adhere to the American Occupational Medical Association's (AOMA's) "Code of Ethical Conduct for Physicians Providing Occupational Medical Services," and the AOMA "Ethical Guidelines for Drug Screening in the Workplace."

11.1.2 Use of Samples for Other Purposes. A number of commenters were also concerned that specimens taken from workers would be used for purposes beyond the scope of the proposed fitness-for-duty rules and suggested that language be added to the regulations limiting use of the samples to designated purposes.

11.1.3 Tests Conducted by the Licensee. The proposed rule (10 CFR 26.24(d)) would allow licensees to conduct preliminary tests of a sample before forwarding it to a laboratory. Several commenters were concerned that results of such preliminary tests would be inappropriately disclosed and acted upon prior to confirmation by the contract laboratory. They proposed that access to the results of such preliminary tests should be strictly limited, perhaps to the licensee's laboratory staff only.

11.1.4 Confidentiality for Employee Assistance Programs. One commenter noted the lack of specific confidentiality

requirements in the proposed (§ 26.25) on employee assistance programs and stated that such protections were necessary for the programs to be successful. Another commenter stated that the term "safety considerations," as used in this section, should be defined. A commenter also requested that language be added that employee assistance program EAP counselors would notify management when a belief exists that any worker's condition (self-referred or not) may constitute a hazard to himself or others.

11.1.5 Access to Records. Several commenters suggested that access to the results of chemical testing should be limited to the greatest extent possible, especially given the potential damage to a worker from disclosure of false positive results. In particular, many commenters believed that test results should not be released to law enforcement agencies.

There were a number of comments concerning access to fitness-for-duty records by NRC employees and representatives. Several commenters expressed the view that the NRC has no need for access to individual names and that if such information were provided it might be inappropriately disclosed or made available to the public. It was noted that licensees are expressly directed not to include the names of individuals under the proposed reporting requirements to NRC (§ 26.73(a)(3)), but that NRC is eligible to receive names under proposed § 26.29(b).

Two commenters suggested that the Protection of Information (§ 26.29) include references to contractors and vendors as well as licensees. They further suggested that the reference to employment decisions be replaced by access decisions. Another commenter raised the question of whether contractors as well as licensees should be able to obtain fitness-for-duty information under the proposed regulation at § 26.29(b). An additional commenter suggested that release of fitness-for-duty information under a court order be added to the list of permitted disclosures under § 26.29(b).

11.2 Summary of Responses

11.2.1 Confidentiality of Results. The NRC believes that further requirements for the protection of worker records at the testing laboratory beyond the requirements of the NRC Guidelines are not needed at this time. Section 3.1 of the Guidelines contains specific protections for such records.

The NRC concurs in the comment that information on a worker denied unescorted access or removed from his position under a fitness-for-duty

program shall be provided to licensees and contractors subject to this part but only upon a written release by the affected worker. Appropriate language has been added to § 26.27(a). The effect of the language is that if the worker elects not to provide such a release to the hiring licensee or contractor, the worker would be denied unescorted access to protected areas.

The comment that Medical Review Officers subscribe to the AOMA Code of Ethical Conduct and their ethical guidelines for drug screening in the workplace has merit. The NRC will continue to study this suggestion. For purposes of the present rulemaking, however, the NRC is satisfied that the statement of qualifications for Medical Review Officers in § 2.9(b) of the NRC Guidelines is adequate and sufficient.

11.2.2 Use of Samples for Other Purposes. The NRC believes that provisions in the rule limiting use of laboratory results to the purpose and scope of the rule are adequate. The protections afforded by the NRC Guidelines and § 26.29(b) are deemed to be sufficient. Specifically, § 2.1(d) of the NRC Testing Guidelines requires that specimens collected under Part 26 may only be designated or approved for testing as described in Part 26, and shall not be used to conduct any other analysis or test without the permission of the tested individual. Moreover, there should be no incentive for employers to disclose the information to unauthorized persons because of the possibility of liability related to such disclosure.

11.2.3 Tests Conducted by the Licensee. The NRC concurs that there is a potential for abuse of positive test results from preliminary tests conducted by the licensee. These preliminary tests do not have the accuracy of laboratory-conducted confirmatory tests. Consequently, the final rule limits access to the preliminary test results to the licensee's testing personnel.

11.2.4 Confidentiality for Employee Assistance Programs. The EAP requirement at § 26.25 specifies that such programs are to provide confidential assistance except where safety considerations must prevail. The NRC believes that the plain meaning of these terms is sufficient for this rulemaking and that further clarification in the rule is not required. The NRC concurs in the suggestion that employee assistance program counselors notify management when there is a reasonable belief that any worker's condition may constitute a hazard to himself or herself or others, and the rule's language has been clarified.

11.2.5 *Access to Records.* The NRC has elected to retain the provisions on entities entitled to access to laboratory records as proposed in § 26.29(b) with the exception that release of the information under a court order is added. The NRC does not anticipate requesting the results of laboratory tests correlated to individual names. Nevertheless, the NRC wishes to reserve the right to have access to specific results when needed for particular situations involving safety and investigative matters such as malfeasance in the administration or management of the fitness-for-duty program. The NRC also has decided to retain the provision providing access to appropriate law enforcement officials, but has added the provision that such officials must be under court order. It is noted that there is no requirement to routinely provide such officials with laboratory results. Moreover, it is unlikely that such results would be requested because the officials would have no prior knowledge of the results of laboratory tests.

The NRC concurs in the comment that contractors within the scope of the rulemaking should be included in the disclosure and access provisions of § 26.29(b) and the final rule reflects this addition. The reference to employment decisions in the proposed rule has been replaced by access decisions.

12.0 Employee Assistance Programs

12.1 Summary of Comments

The NRC received a significant number of comments from licensees regarding employee assistance programs. The majority of commenters agreed that employee assistance programs services are an effective method of combatting the broad spectrum fitness-for-duty problems. However, most of the commenters specified that under the proposed rule the scope of licensee employee assistance program services should be limited to regular, full-time licensee personnel; contractor or vendor personnel should not be covered. Several other commenters indicated that employee assistance program services should not be regulated by the NRC rule in any manner, and would be better addressed by the licensees themselves.

12.2 Summary of Responses

The NRC believes that employee assistance program services provide a valuable tool in combatting fitness-for-duty problems in the nuclear power industry. Therefore, as currently stipulated in the rule, it is the responsibility of each licensee to ensure

that all licensee personnel have access to employee assistance programs services and that contractor employee assistance programs meet the criteria of the licensee's employee assistance programs. The NRC has also noted that supervisory personnel should not refer employees directly to counseling or treatment. Rather, supervisory personnel should refer employees to an employee assistance program counselor for assistance and further evaluation and referral.

13.0 Importance of Health and Human Services Guidelines

13.1 Summary of Comments

13.1.1 *Proposed Alternatives to the HHS Guidelines.* Several commenters suggested that an alternative to the HHS Guidelines is the College of American Pathologists (CAP) Forensic Urine Drug Testing (FUDT) program. The commenters contend that the CAP FUDT program is as equally rigorous as the HHS Guidelines but better suited to licensee's needs because: (1) It has an educational component for laboratories, (2) it has accredited 25 laboratories as of October 11, 1988, whereas NIDA has accredited none, (3) the CAP FUDT program allows laboratories to test for additional drugs and at other cut-off levels than those specified in the HHS Guidelines, and (4) the CAP FUDT program does not require approval from the HHS Secretary.

One commenter suggested that an alternative to the HHS Guidelines is the "AFL-CIO Guide for Drug and Alcohol Testing on the Job." Several commenters pointed out that stringent quality controls are required of testing laboratories under state programs; two commenters stated that New York State had a stringent laboratory certification program.

13.1.2 *Applicability of HHS Guidelines to the Nuclear Power Industry.* A few commenters indicated that the HHS Guidelines should be adopted by the NRC in their entirety. The large majority of commenters stated that, although the HHS Guidelines provide many excellent procedures for ensuring the quality of drug testing programs, the HHS Guidelines contain terminology and provisions that are inappropriate for application to the nuclear power industry. The inappropriate terminology and provisions noted by the commenters include (1) references to "agencies," to Pub. L. 100-71, to the Privacy Act, and to the HHS Secretary; (2) limitations in the panel of drugs for which certified laboratories can test; (3) cut-off level specifications defined for screening and

confirmatory tests; (4) requirements that a licensed physician, as a Medical Review Officer, review all test results; (5) the conflict with on-site testing created by the requirement that all testing be done by certified laboratories; (6) laboratory certification procedures; and (7) limitations on splitting specimen samples. To ensure that the HHS Guidelines are appropriately adapted to the proposed rule, many commenters recommended that the pertinent sections of the HHS Guidelines be incorporated into the rule itself.

13.1.3 *Limitations in the Panel of Drugs for Which Certified Laboratories Can Test.* A number of commenters specifically supported the intention and value of establishing uniformity across licensees in the panel of drugs, with a smaller number supporting a more flexible approach that allows licensees discretion to deal with local variability in drug use.

A number of commenters objected to the procedures specifying how licensees are to identify additional illegal drugs and incorporate them into their programs, on the grounds that these mechanisms defeat the purpose of uniformity, are unworkable, are burdensome, and open licensees to legal challenges. Some of these same commenters, along with others, recommended that the HHS-specified panel of drugs be expanded to include (for example) alcohol, methadone, barbiturates, benzodiazepine, propoxyphene, methaqualone, and prescription and over-the-counter drugs. Comments made at the public meeting expressed concern about the potential for intrusion into personal medical information if the panel of drugs is not strictly specified and limited.

13.1.4 *Cut-off Levels Defined for Screening and Confirmatory Tests.* A substantial number of comments were received on the cut-off levels for screening and confirmatory tests, many suggesting specific cut-off levels for particular drugs. An important disagreement among commenters centered around the issue of uniformity in cut-off levels. Some commenters recommended that standard cut-off levels be established and applied by all licensees in order to minimize inconsistency across licensees, maximize the defensibility of the cut-off levels, and avoid conflict with the certified laboratory testing procedures. These commenters thought that discretionary cut-off levels were unworkable because they would be challenged in court and were inconsistent with certified laboratory procedures specified in the HHS

Guidelines. Among these commenters, some supported the existing HHS cut-off levels and some recommended that the HHS levels be modified, generally to be more stringent. A number of commenters suggested standards matching those used by the military. Other commenters, particularly those representing licensees with ongoing drug testing programs, recommended that licensees be allowed discretion to establish cut-off levels more stringent than the minimum specified in the rule. As a compromise, some commenters suggested that laboratory procedures and testing be modified to require them to compile results at both the minimum uniform standard cut-off and the discretionary levels established by the licensees.

These commenters provided different reasons for establishing various cut-off levels, ranging from very stringent to more lenient. A few commenters supported the establishment of cut-off levels based on an objective of establishing a drug-free workplace, recommending essentially zero tolerance and setting cut-off levels just high enough to avoid positives from dietary consumption of legal substances. Others proposed the establishment of cut-off levels that were the lowest (most stringent) levels associated with impairment. Others, sometimes explicitly recognizing that the establishment of cut-off levels involves administrative considerations, recommended the use of "standard" and moderate levels that assist in the establishment of an accepted, widely-used standard and reduce vulnerability to legal challenges. Still others, generally those representing the workers and unions, supported cut-off levels that test for impairment rather than use and that set levels where job performance is probably affected.

A number of licensees commented that they are currently operating drug testing programs which have more stringent (lower) cut-off levels than the HHS Guidelines, especially for marijuana. Commenters were divided in their position regarding adoption of the HHS Guidelines for cut-off levels. Some supported the HHS Guidelines; others supported the more stringent levels proposed by NUMARC. A large number of commenters thought that the HHS cut-off level for marijuana was too lenient, citing experience from ongoing programs that a very high proportion (over 80 percent in Commonwealth Edison's 6-year-old program) of positive marijuana test results fall between 20 and 100 ng/ml. A number of commenters provided specific recommendations for

screening and confirmatory cut-off levels for individual drug types.

13.1.5 *Regulation of On-Site Screening Test.* Although the majority of comments in this category addressed specific aspects of on-site testing, several commenters objected to conducting on-site screening tests by licensees on the grounds that such testing should not be conducted by employers and that it would be more costly, create too high a risk of false results, and result in claims of inequitable treatment. Other commenters, principally representatives of licensees and a health care products manufacturer, supported on-site screening tests as effective, timely, and less costly, particularly if only specimens that tested positive in the on-site aliquot test are sent to the certified laboratory. Some commenters favored modification of the proposed rule (§ 26.24[d]) to allow licensees to establish HHS-certified on-site laboratories and to avoid conflict with the HHS Guidelines. Changes in the specified procedures for on-site testing were also recommended, including enabling certified laboratories to match the cut-off levels established by the on-site program. The need for careful attention to conflicts with specific wording in the HHS Guidelines was noted. (Further discussion of the cut-off level issue is provided elsewhere.)

13.1.6 *Requirements for Review of Test Results by a Medical Review Officer.* A number of comments were received concerning the qualifications and role of the Medical Review Officer as specified in the HHS Guidelines, paragraph 2.7(b) (53 FR 11985, dated April 11, 1988). Commenters recommended that, should the HHS Guidelines be generally adopted, these specifications should be modified to eliminate the requirement that the MRO be a licensed physician. They recommended broadening the definition to include other licensed medical care providers with training and knowledge in substance abuse disorders and their treatment, identification and use of controlled substances, and prescription practices of pharmacies, and to provide for consultation of the MRO with a licensed physician for resolution of unusual circumstances. One commenter recommended changing the term "Medical Review Officer" to "Medical Review Professionals" to avoid possible confusion with licensee executive officers.

13.1.7 *Laboratory Certification Procedures.* A number of commenters thought that the number of blind samples was excessive and

recommended that the requirement for licensees to submit blind samples be eliminated or substantially reduced. One commenter pointed out the potentially negative effects of having licensees prepare the false documentation associated with blind samples, and others questioned whether a sufficient supply of blind samples would be available on a timely basis. A number of commenters also questioned whether sufficient certified laboratory capacity would be available to implement the proposed rule. Comments both supported and opposed the requirement that laboratories be certified by HHS. Those supporting such certification recommended modification of the proposed rule to specify that licensees are to use HHS-certified laboratories that are directed to conduct drug tests consistent with NRC and licensee requirements. Several other commenters objected to the requirement for HHS certification, noting that it would likely prevent them from using high-quality local laboratories, and would prevent them from testing additional drugs or setting more stringent cut-off levels (unless such modifications are made in the application of the certification process, as discussed above). They recommended that the NRC adopt a provision authorizing licensees to utilize a drug testing laboratory that is either certified via the HHS Guidelines or is certified under a state program that is generally comparable to the HHS program. Other commenters suggested authorization of laboratories certified by The College of American Pathologists Forensic Urine Drug Testing (CAP FUDT) program.

13.1.8 *Splitting Specimen Samples.* A number of commenters recommended the use of split samples to provide an additional quality control measure and to further protect the rights of the workers by allowing a second check on confirmed positive results. Commenters differed in their specific recommendations concerning the number (2 or 3) and specific procedures for testing the reserved sample(s).

13.2 Summary of Responses

13.2.1 *Proposed Alternatives to the HHS Guidelines.* The NRC believes that the rigor required by the HHS Guidelines is not matched by any of the proposed alternatives. The NRC Guidelines address many of the concerns expressed by the commenters. The NRC believes that the highest standards are needed to assure that the testing process is accurate, produces valid results, and provides suitable protection for those being tested.

13.2.2 *Applicability of HHS Guidelines to the Nuclear Power Industry.* The NRC believes that many of the basic requirements of the HHS Guidelines must remain a vital component of the NRC drug testing regulations. However, the NRC is aware that the Guidelines, as written by HHS to apply to testing by Federal agencies, do not perfectly fit the circumstances of the licensees regulated by the NRC. There are many references to legal authorities and other matters that are peculiar to Federal agencies (e.g., references to the Privacy Act, to Executive Order 12564, to the Secretary) and terminology that may be confusing in the NRC-regulated industry context. In addition, the HHS drafted the Guidelines to apply to the physical and organizational circumstances of Federal agencies. Obviously, the circumstances of industries regulated by the NRC are very different from those of Federal agencies. Furthermore, as discussed below, other aspects of the rule, i.e., permission to expand the panel of drugs and establish more stringent cut-off levels, require modification of the HHS Guidelines to facilitate implementation. Consequently, the NRC agrees with many commenters and is, in its rule, directly implementing in its own regulations specific testing program guidelines (an adaption of the HHS Guidelines) that are applicable to NRC licensee fitness-for-duty programs. These testing guidelines are intended to leave intact the safeguards for accuracy and privacy in drug testing established by the HHS Guidelines while ensuring that the parties regulated by the NRC can practically implement the requirements. Editorial changes have been made to the HHS Guidelines to adapt the terminology to the NRC and its licensees' fitness-for-duty programs.

Special note should be made that the list of substances to be tested and cut-off levels established in the testing guidelines are subject to change by the NRC in response to industry experience and changes by the Department of Health and Human Services as advances in technology, additional experience, or other considerations warrant inclusion of additional substances and other concentration levels.

13.2.3 *Limitations in the Panel of Substances That Certified Laboratories Can Test.* Under the HHS Guidelines (2.1(a)), a Federal agency's random drug testing program may test a urine sample only for certain specified drugs. The NRC Guidelines at Section 2.1 modify this requirement by expanding the minimum panel of substances for which

specimens from the pre-access, for-cause, random, and follow-up testing program are to be tested by adding alcohol in addition to marijuana, cocaine, opiate metabolites, phencyclidine, and amphetamines. Furthermore, the rule will allow licensees to include additional drugs, especially those found to be prevalent in their geographic area. Licensees would be required to develop appropriate test protocols and cut-off levels. For-cause tests are not limited to a specified panel of substances.

In determining which drugs to include in the NRC Guidelines, the Commission assessed evidence regarding the extent of use of the various drugs recommended by commenters and the potential for impairment from the licit use, where appropriate, or abuse of those drugs. The NRC concluded that the panel of drugs in the HHS Guidelines adequately covers the most extensively abused illegal drugs, but does not sufficiently address the major drug class of sedatives (i.e., benzodiazepines and barbiturates). The use and abuse of sedatives by nuclear power plant workers are of significant concern for several reasons.

Although most sedative drugs are obtained legally through prescriptions or in over-the-counter medications, these drugs are subject to abuse. In fact, some researchers have suggested that sedative abuse is more prevalent than the abuse of opiates in this country. In addition, continued abuse of these substances can lead to dependency and "physician-hopping" or illegal behaviors to obtain supplies of the drugs. Consequently, detection of the use of sedatives and an evaluation by the Medical Review Officer of the manner in which a worker is using sedatives are important to prevent the development of sedative-abuse problems.

Of greater significance is that the use of sedatives while on the job, even at physician-prescribed doses, may result in significant impairment. Although many types of performance are detrimentally affected by the use of sedatives, attention and the ability to maintain vigilance are particularly impaired. And, when combined with alcohol, the impairing effects of sedatives, especially barbiturates, are long-lasting and severe. However, to maintain consistency with the HHS program the Commission has decided not to include benzodiazepines and barbiturates in the required panel of drugs at this time. The NRC will further explore this matter with the Secretary of the Department of Health and Human

Services, and may issue an amendment to Part 28 if deemed appropriate.

In response to objections by licensees to the requirement that they must consult with local law enforcement authorities and drug counseling services to determine whether other drugs are being used in the geographical locale of the facility and the local workforce and, where appropriate, add these drugs to the list of drugs being tested, the NRC has made this element of the program optional. To address the issue of changing drug use patterns, the NRC may conduct periodic reviews of the minimum drug panel that could result in the inclusion of additional substances.

13.2.4 *Cut-off Levels Defined for Screening and Confirmatory Tests.* In response to comments concerning the appropriate cut-off levels at which samples will be considered positive, the NRC proposes the screening and confirmatory cut-off levels set forth in the NRC "Guidelines for Nuclear Power Plant Drug and Alcohol Testing Programs." These levels define the standards for establishing presumptive positive and negative results for the minimum panel according to the NRC rule. However, in response to numerous comments by licensees, many of whom have existing drug programs with more stringent cut-off levels for the substances included in the proposed minimum drug panel, the NRC rule establishes minimum standards for the panel of drugs and allows licensees the discretion of setting more stringent cut-off levels for these drugs. For example, instead of using their normal cut-off levels for for-cause and follow-up testing, licensees could obtain data on any trace amounts of drugs for medical evaluation of at-risk persons. Certified laboratories are authorized to test and report results at these more stringent cut-off levels, if so requested by the licensee. In keeping with the objective of uniformity and the establishment of a comparable database, however, the laboratories are also required to report results for the "standard" cut-off levels established in the rule.

13.2.5 *Regulation of On-Site Screening Test.* Although the NRC is sensitive to the concerns of workers expressed in the comments, the stringent quality assurance requirements of the rule and the rigor of the HHS certification process have convinced the NRC to retain the option of on-site testing. Under the NRC rule, licensees may perform the breath tests for alcohol and the preliminary screening tests of urine specimens provided that the licensee's staff possess the necessary training and skills for the tasks

assigned, their qualifications are documented, and adequate quality controls are implemented. These requirements have been included in the NRC Guidelines. Following preliminary screening, these licensees would submit all presumptive positive specimens and a sample of negative specimens to an HHS-certified laboratory for a second screen and for confirmatory testing. This will substantially reduce the number of specimens that must be packaged, sent, and handled at the certified laboratory. The NRC rule does not prohibit licensees from establishing laboratories and seeking HHS certification. Should HHS certification be obtained, the licensee would be allowed to conduct both screening and confirmatory tests at this laboratory.

13.2.6 *Requirements for Review of Test Results by a Medical Review Officer.* After careful review of the comments received regarding the Medical Review Officer and examination of the *Medical Review Officer Manual* prepared by the Department of Health and Human Services (September 1988), which describes the role and responsibilities of the MRO, the NRC has concluded that this position does require the qualifications of a licensed physician. To maintain consistency with the HHS program, the NRC has decided to retain the title Medical Review Officer.

13.2.7 *Laboratory Certification Procedures.* The NRC has given careful consideration to the number of blind samples licensees must submit to the certified laboratory and has determined that the number specified in the NRC Guidelines is necessary to maintain adequate quality control. In addition, licensees which expand their drug panel beyond the NRC specified minimum panel are responsible for submitting a sufficient number of appropriately "spiked" blind samples to meet equivalent laboratory quality control requirements for those additional drugs. The NRC has consulted with personnel of the Office of Workplace Initiatives in the National Institute on Drug Abuse and has been assured that sufficient blind samples and laboratory capacity will be available to implement the proposed rule on a timely basis.

Given the importance of protecting workers from false positive test results and the absence of clear evidence that alternative certification procedures provide an equivalent level of rigor, the NRC rule maintains the requirement for laboratories to obtain HHS certification in order to perform confirmatory chemical tests on specimens submitted for tests under the provision of the NRC

rule. In addition to HHS certification, laboratories used by licensees must demonstrate comparable performance and rigor in testing for the additional substances included in the licensee's specified panel of substances (i.e., the NRC minimum panel plus any discretionary additions of the licensee).

13.2.8 *Splitting Specimen Samples.* The NRC is sensitive to the concerns of nuclear power plant workers regarding the adverse consequences of false positive test results and the advantages of using split samples to provide an additional quality control measure and further protect the rights of workers by allowing a second check on confirmed positive results. The first aliquot, along with appropriate chain-of-custody documentation could be (1) transmitted to the HHS-certified laboratory for screening and confirmatory testing or (2) transmitted to the authorized on-site screening laboratory for preliminary testing. The second aliquot of the split sample, along with appropriate chain-of-custody documentation, could be placed in a secure refrigeration unit or forwarded to a second laboratory for retention. Should the specimen test positive, the second aliquot could be tested by the second HHS-certified laboratory.

In the case of on-site screening, the second aliquot could be discarded if the preliminary test (screen) is negative. If the screening test is conducted off-site, the second aliquot could be discarded immediately upon notification of a negative test result for the specimen. Even though there is a high degree of assurance of the accuracy of the test results provided by the chain-of-custody and HHS-certified laboratory procedures, chain-of-custody concerns by tested workers would remain no matter how precise the process or valid the results. Therefore, the NRC has decided not to mandate nor prohibit split samples; the approach may be used by licensees where additional confidence in the process by the workforce is sought.

14.0 Relationship to Access Authorization

14.1 Summary of Comments

This section covers comments relating to the potential overlap of the proposed FFD rule and Industry Guidelines appended to the proposed Access Authorization Policy Statement (AAPS) appearing at 53 FR 7534, March 9, 1988.

14.1.1 *What is an Appropriate "Suitable Inquiry"?* A number of commenters raised the issue that the "suitable inquiry" requirement in § 26.27(a) is too severe and also

conflicts with the background investigation elements section of the AAPS. Proposed § 26.27(a) requires that licensees conduct a suitable inquiry prior to granting unescorted access to determine if a worker has tested positive for drugs in the past. The term "suitable inquiry" as defined in § 26.3 requires verification of employment history for the previous five years and to determine whether the worker had any positive drug tests. Many commenters pointed out that this requirement will be very difficult and costly to meet in part because prior employers will be reluctant, because of liability concerns, to release records of drug use, even with a signed release form. One commenter pointed out, for example, that under § 26.29(b) a licensee would not be authorized to release such information to another employer who is not also a licensee.

The commenters noted that the required background investigation in Section 6.2.1 of the Industry Guidelines appended to the AAPS covers similar material to the fitness-for-duty rule, but is not as severe. The investigation contains several elements, one of which is a check on an applicant's character and reputation including prior illegal use or possession of a controlled substance. Information is to be obtained from four references, two supplied by the applicant and two developed by the utility. Employment verification is to be obtained for a minimum of three years. In addition, the evaluation criteria in Section 7.1 of the AAPS require utilities to assess the impact of past illegal use or possession of a controlled substance.

One commenter pointed out that the proposed suitability inquiry requirements will conflict with the required background checks for security personnel in 10 CFR Part 73, Appendix B. These background checks require the licensee to investigate a number of elements related to selection of security personnel including whether an individual has any history of alcoholism or drug addiction. There are no specific time periods associated with the required background checks.

14.1.2 *Overlap in Training Requirements.* One commenter stated that the training requirements for supervisors and escorts in § 26.22 already exist in Section 9(c) of the Industry Guidelines and that the requirements in the fitness-for-duty rule could therefore be eliminated.

14.1.3 *Relationship of Employee Assistance Programs to the Proposed Access Authorization Policy Statement.* One commenter raised the question of whether a voluntary referral to an

employee assistance program raises an access authorization issue under the Industry Guidelines appended to the proposed access authorization policy statement. Under the Guidelines, illegal use of drugs is an evaluation criterion for unescorted access (§ 7.1(b)) and an element of the continual behavioral observation program (§ 9(a)).

14.1.4 Temporary Unescorted Access Authorization. One commenter noted the temporary unescorted access authorization in § 6.4 of the Guidelines and stated that it should be made clear that during the suitable inquiry period, the temporary access authorization would be available.

14.2 Summary of Responses

14.2.1 What is an Appropriate "Suitable Inquiry"? The NRC recognizes the potential overlap between the required background investigations in the fitness-for-duty rule and the proposed AAPS. The NRC agrees that the background investigation required in the fitness-for-duty rule may be difficult to conduct in some cases and that the desired information may not always be forthcoming. Consequently, the term "suitable inquiry" in § 26.3 has been modified to provide for a "best effort" verification, that is, attempts should be made to obtain information for the entire five year period, but under no circumstances may unescorted access be granted based on an employment check of less than three years. In addition, a requirement has been added to § 26.27(a) that a suitable inquiry will be conducted only after obtaining a signed release from the worker or prospective worker authorizing the inquiry.

The NRC recognizes the potential additional requirements under the fitness-for-duty rule as compared to currently required background checks for security personnel contained in Appendix B to Part 73. Nevertheless, the required checks with prior employers in the fitness-for-duty rule are considered necessary for the safety and security reasons noted earlier.

14.2.2 Overlap in Training Requirements. The NRC recognizes that there is some overlap in the two training requirements, but does not find any inconsistencies. Moreover, the fitness-for-duty requirements are more comprehensive, to include techniques for recognizing drugs and understanding the role and responsibilities of other fitness-for-duty program elements such as the employee assistance program. Consequently, no changes were made in the final rule.

14.2.3 Relationship of Employee Assistance Program to the Proposed

Access Authorization Policy Statement. The NRC recognizes that there is a connection between the employee assistance program and proposed access authorization policy statement requirements. Under Section 26.25, employee assistance program staff will provide confidential assistance except where safety considerations must prevail and when the employee assistance program counselor believes that a worker's condition poses a hazard to himself or herself or others. Otherwise, voluntary self-referrals to the employee assistance program are treated confidentially and are not reported to management; therefore, that information would not be available for disclosure in response to an inquiry of previous employers. The NRC is satisfied that there is not an inconsistency in the employee assistance program and proposed access authorization policy statement requirements and consequently no changes are made in the final rule.

14.2.4 Temporary Unescorted Access Authorization. NRC agrees that licensees may grant temporary unescorted access authorization provided that all requirements pertaining to the granting of temporary access have been completed and the prospective worker has passed a chemical test. Clarifying language has been added to § 26.27(a).

15.0 Reporting and Recordkeeping

15.1 Summary of Comments

15.1.1 Fitness-for-Duty Program Performance Data Form. Many comments on the data form were received. All were severely negative. The consensus was that the stated data requirements are excessive, unnecessary, and expensive and will contribute nothing to the public health and safety. Virtually all respondents asked for deletion of the form and its associated requirements.

15.1.2 Reports to NRC. Section 26.73 directs the licensee to provide information concerning fitness-for-duty events. This was presumed to include identities of violators and a record of the incident and its disposition. Some commenters thought that the NRC is not qualified to ensure the necessary degree of confidentiality demanded for these records, while others pointed out that the NRC handles much sensitive information including classified information and thus is well qualified to receive specific fitness-for-duty data. Among the latter, one commenter went so far as to suggest that the NRC, rather than the licensees, implement and administer the violations tracking

system. Public Citizen expressed general support of the reporting requirements and recommended that they be augmented to include additional information.

15.1.3 Reporting Time Requirements. Section 26.73(a)(2) requires detailed reports on all significant fitness-for-duty events and actions to be made to the NRC Operations Center by phone within 24 hours and in writing within 30 days. Many commenters claimed that the 24-hour requirement is excessive. Others pointed out conflicts or potential conflicts between reporting requirements in the fitness-for-duty rule and those cited in 10 CFR 73.71, 10 CFR 50.72, and Reg. Guide 5.62.

15.1.4 Incident Locale. Commenters posed questions as to whether drug or alcohol-related incidents should be reported if they occur outside protected areas—either on-site or off-site.

15.2 Summary of Responses

15.2.1 Fitness-for-Duty Program Performance Data Form. The NRC does not believe that collection of data in a standard format unnecessarily burdens licensees. Collecting data in a standard format would assure that appropriate data is collected, and would facilitate periodic analysis and audits. Certain information is necessary for the NRC to evaluate the effectiveness of the rule (and if necessary, make appropriate improvements or changes) and industry programs and a standard data format would provide a tool for the Commission's periodic review program. No specific improvements to the form were suggested by commenters. However, NUMARC has developed and proposed to the NRC a standard form for data collection. The NRC will specify only the general types of data to be collected in the rule with the expectation that all power reactor licensees will use an NRC-approved NUMARC form.

15.2.2 Reports to NRC. The NRC sees no reason to change the rule in response to comments that sensitive information not be provided. The reporting requirements in § 26.73 have been modified to add alcohol and delete written reports of reportable events. The rule has been modified to require periodic submittal of program performance data.

15.2.3 Reporting Time Requirements. The NRC will maintain the 24-hour reporting deadline for fitness-for-duty events involving licensed operators and supervisory personnel. Licensees should note that this provision supersedes and relaxes the 1-hour reporting period required for the fitness-for-duty

categories of safeguards events in 10 CFR 73.71. The NRC will publish a revision to Regulatory Guide 5.62 to ensure consistency with this rule.

15.2.4 Incident Locale. The NRC has modified the wording of § 26.73, "Reporting Requirements," to make it clear that incidents involving licensed operators or supervisory personnel occurring off-site or external to protected areas must be reported.

16.0 Audits of Fitness-for-Duty Programs

16.1 Summary of Comments

Approximately one-third of the comments received concerning audits of fitness-for-duty programs addressed the frequency requirement for the audits, which is 13 months in the proposed rule. The majority of these commenters stated that the rule should be revised to require an audit every three years, after an initial audit is performed within 13 months of implementation of the program. Most of the other commenters stated that the audit frequency should be once every three or five years. One commenter stated that the audit period should remain on a 13-month cycle.

Two commenters questioned how information that is protected under § 26.29(b) can be used when sharing audit results of contractors as described in § 26.80(a). Section 26.29(b) prohibits disclosing some of the information that would be collected during an audit.

Many commenters stated that the word "effectiveness" in §§ 26.80(a) and 26.80(b) is too subjective and that "compliance with the regulations" should be the requirement.

Several commenters stated that the phrase in § 26.80(b), "individuals qualified in the subjects being audited," should be clarified.

One commenter stated that § 26.80(a) should be revised to delete the requirement for the licensee to be responsible for the effectiveness of contractor programs and implementation of appropriate corrective action for contractor programs since this should be the contractor's responsibility.

Two commenters stated that § 26.80(a) should be clarified as to whether or not a licensee may accept audits for contractors conducted by other licensees.

One commenter stated that the requirement in §§ 26.80(a) and 26.80(c) that audit reports be maintained on-site and at corporate headquarters be changed to corporate headquarters only. The basis for this comment is that some utilities have several reactor sites and

maintaining the reports at each site would be a redundant effort.

16.2 Summary of Responses

The NRC has maintained the § 26.80(a) requirement for an audit frequency of nominally every 12 months. This decision is based on the need to assure the reliability and accuracy of chemical testing procedures. As industry experience with fitness-for-duty programs accumulates and is made available to the NRC, the Commission may re-evaluate the frequency of required audits, as warranted.

The NRC agrees that §§ 26.29(b) and 26.80(a) of the proposed rule contained a conflict concerning protection of information. Section 26.29(b) has been revised to explicitly allow licensees to have access to personal information that may need to be examined during audits.

The NRC intentionally has used the word "effectiveness" throughout the rule to ensure that all affected parties maintain an overall concern for the rule's objectives rather than focusing on documentation of program compliance with "the letter of the law." Although compliance is important, the Commission's over-riding concern is an answer to the question, "Is the program working?"

The NRC believes that current wording in the rule is adequate to define auditor qualifications. The intent of this section is to ensure that an individual, for example, who is not a licensed physician and has no knowledge of substance abuse is not assigned to evaluate the effectiveness of a particular Medical Review Officer's decision making. Similarly, the NRC expects that persons who are evaluating testing laboratories will be knowledgeable about the forensic implications of laboratory procedures. Because individuals who possess the requisite skills to conduct these audits are likely to be relatively rare and their services needed only infrequently, licensees will probably find it necessary to contract for appropriate audit staff rather than staffing an entire audit team from the licensee's Quality Assurance Program. Current wording in the rule is intended to recognize and encourage such an approach to staffing program audits.

The NRC does not agree with the commenter who suggested that licensees should not be responsible for contractor programs. As noted in the discussion of comments pertaining to the scope of the rule, the licensee is the granting authority for unescorted access to protected areas and so is responsible for the fitness-for-duty and the reliability of any individuals to whom unescorted access is granted, whether contractor or

licensee employee. Only by monitoring the effectiveness of contractor programs that the licensee accepts and requiring necessary changes can the licensee be assured that the trust implied by the granting of unescorted access is warranted.

The intent of the wording in the proposed rule is to reduce the burden on licensees by allowing audits of contractors to be shared between licensees and to reduce the burden on contractors who provide personnel to several utilities by reducing the number of required audits. However, each licensee has the ultimate responsibility to ensure that all contractors performing activities within the scope of the rule comply with the rule.

The NRC agrees it is unnecessary to dictate where the licensees should maintain copies of the audit reports as long as a copy is available for NRC inspection. Section 26.80(a) has been changed accordingly.

17.0 Implementation Schedule

17.1 Summary of Comments

The NRC received numerous comments on the proposed implementation schedule for the rule. Eighteen comments were received from individual licensees. In addition, a number of other licensees submitted letters endorsing the NUMARC position on the rule as a whole, including NUMARC's position on the implementation schedule. Commenters generally agreed that 90 days was insufficient time to implement the provisions of the rule. Problems with the development of training material, modification of existing EAPs, development of administrative procedures, negotiations with unions, and the establishment of contracts with chemical testing laboratories were cited by many of the commenters as reasons for the need for a longer period for implementation. Most commenters suggested that 180 days be allowed for implementation of all provisions of the rule. Some commenters proposed that additional time beyond 180 days be allowed for the implementation of the random testing provisions of the rule.

17.2 Summary of Responses

The NRC places a high priority on the implementation of the fitness-for-duty programs and policies required by the present rule. Many licensees already have in place most of the key program elements. However, because of the complex provisions of the rule, the need for some licensees to establish contractual relations with laboratories,

the need to develop implementation procedures, the need to augment existing training materials, and the need to coordinate the provisions of the rule with numerous contractors and negotiate with unions, the NRC is convinced that the quality of the programs will be enhanced by extending the implementation of all provisions of the rule until 180 days after the effective date of the final rule. Because of the importance of the rule, the NRC cannot support the further extension of the implementation of the random testing provision of the rule past the 180-day deadline.

Although licensees need not submit written policies and procedures to the NRC for approval prior to implementing their programs, the Commission has reserved to itself the authority to review the program at any time to assure that the program meets the performance objectives of the rule. If the review or other inspections detect a shortcoming in the program, the Commission can then require corrective action.

18.0 Legal Issues

18.1 Summary of Comments

18.1.1 Constitutionality of Rule. Several commenters noted that significant issues of constitutionality with regard to drug testing in the workplace have been raised under the Fourth Amendment and that these issues are currently being reviewed within the judicial system. Two drug testing cases are on the current calendar of the United States Supreme Court. (*National Treasury Employees Union v. Von Raab*, 816 F.2d 170 (5th Cir. 1987), cert. granted, 108 S.Ct. 1072 (1988); *Railway Labor Executives Association v. Burnley*, 839 F.2d 575 (9th Cir. 1988), cert. granted, 108 S.Ct. 2033 (1988)). Generally, commenters representing operators of power reactors support the constitutionality of the rule, while commenters representing labor organizations or individuals challenge the rule's constitutionality. A few of these commenters suggested that the Commission delay its rule until the Supreme Court has acted on the cases before it.

A few commenters stated that the taking of the urine sample for analysis presented a violation of a person's right of privacy under the First Amendment to the Constitution.

A few commenters questioned whether the rule might not violate the self incrimination provision of the Fifth Amendment to the Constitution, in particular with regard to the potential for release of adverse test results to local police.

18.1.2 Federal Rehabilitation Act. A few commenters suggested that the Commission should address the Federal Rehabilitation Act of 1973, as amended by the Rehabilitation, Comprehensive Services, and Developmental Disabilities Amendments of 1978 (29 U.S.C. 701-796) in relation to its fitness-for-duty rule.

18.1.3 Preemption of State and Local Laws. Several commenters noted that some states have enacted laws that appear to conflict with the Commission's rule, and requested clarification whether the Commission's rule would be preemptive of state and local law.

18.1.4 Appeal Procedure. Some commenters questioned the need for and scope of the appeal procedure required by the rule. Reference to due process was seen as importing unnecessarily complicated judicial type procedures, and that fairness was the goal. Reference to collective bargaining procedures was viewed as undesirable because those procedures often incorporate binding arbitration which would also unduly complicate the appeal of denial of unescorted access because of an adverse fitness-for-duty finding. Finally, appeals should be limited to permanent employees of the licensee and not be extended to the employees of contractors.

18.1.5 Protection of Information. Some commenters raised questions about the protection of information, specifically reporting of information to local police, and disclosure of information to arbitrators and the affected individuals. One commenter asked the Commission to address the relationship between protection of information under the Commission's rule and the information protection requirements of 42 CFR Part 2, dealing with drug and alcohol abuse treatment programs.

18.1.6 Collective Bargaining Rights. A commenter raised a question about the relationship of the Commission's rule to the rights of workers under the National Labor Relations Act to bargain over conditions of employment and asked that the Commission state its position.

18.1.7 Employee Assistance Program. A commenter asked for the Commission to indicate its legal authority for including employee assistance programs in the rule.

18.1.8 Administrative Procedures for Alcohol. A few commenters questioned whether the notice of proposed rulemaking was adequate to address issues regarding alcohol use and to support the inclusion of alcohol-related provisions in the final rule.

18.2 Summary of Responses

18.2.1 Constitutionality of Rule. It is the Commission's considered opinion at this point that continued assurance of nuclear safety in the operation of power reactors fully justifies the rule being promulgated. The imperatives of safe operation of nuclear power reactors demand a workplace where the reliability, integrity and physical and mental fitness for their assigned duties of all categories of workers with unescorted access to plant equipment is unquestioned. The program being mandated by this rule is reasonably related to the achievement of the Commission's safety objective. The Commission has no doubt that the rule will significantly enhance safety of operations at nuclear power reactors. It goes without saying, however, that the Commission will review this rule in light of relevant future Supreme Court decisions, and make whatever revisions those decisions require.

The two cases cited above were decided on March 21, 1989 in favor of drug testing as presented by the circumstances of those cases (*Skinner v. Railway Labor Executives Association*, No. 87-1555; and *National Treasury Employees Union v. Von Raab*, No. 88-1879). Neither presented issues to the Court for its consideration in the context of the imperatives of nuclear safety nor addressed random testing. However, the logic of those cases gives the Commission added assurance that this rule represents a proper and prudent regulatory action for the protection of public health and safety.

It is already well established that persons working in nuclear power plants have diminished expectations of privacy in the workplace with respect to fitness-for-duty issues. For example, control room operators are licensed under rules (10 CFR Part 55) that require medical examination biennially and general good health. Security personnel are subject to medical and mental qualifications, including use of alcohol and drugs (see 10 CFR Part 73, Appendix B). All personnel and their hand-carried items (such as lunch boxes) are subject to search upon entering the protected areas of nuclear power plants, including pat down searches when metal and explosive detectors are not working or when there is suspicion that the person may be attempting to bring proscribed items into the protected area (see 10 CFR 73.55). Most, if not all, licensees of nuclear power plants also are committed through their security plans under 10 CFR Part 73, to conduct background investigations, administer psychological

examinations, and observe employees for indications of aberrant behavior. Licensees also have behavioral observation programs that follow Edison Electric Institute guidelines. Finally, all persons with unescorted access to nuclear power plants are, by Federal law, subject to a criminal history records check that requires the taking of fingerprints and the submission of the fingerprints to the Federal Bureau of Investigation (see 10 CFR 73.57). The provision of a urine sample or taking of a breathalyzer test is a small increment in the diminished expectation of privacy under which persons work in a nuclear power plant. Accordingly, the Commission concludes that its rule does not constitute an unconstitutional invasion of the right of privacy. Indeed, persons working in nuclear power plants may already be considered to be highly regulated, and, in regard to Fourth Amendment issues, within the ambit of *Shoemaker v. Handel*, 795 F.2d 1135 (3rd Cir. 1986), cert. denied, 479 U.S. 986 (1986).

On the assumption that the rule being promulgated is within the Constitution in other respects, the rule's provisions on protection of information do not infringe upon the right of a person to not incriminate himself. In the Commission's view, the case of *Schmerber v. California*, 384 U.S. 757 (1966) controls the issue. In that case, the Court upheld the taking of a blood sample for alcohol analysis against a Fifth Amendment challenge. A urine sample is no more incriminating.

18.2.2 Federal Rehabilitation Act. The Federal Rehabilitation Act of 1973, as amended, does not include, within the concept of "handicapped person", an individual who is an alcohol or drug abuser whose current use of alcohol or drugs prevents that individual from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others (see 10 CFR 4.101(a) and 29 U.S.C. 706(7)(B)).

An individual whose urine or breath sample tests positive for drugs or alcohol is obviously a current user whose continued unescorted access to plant equipment constitutes a threat to nuclear safety. However, a person who enters into an employee assistance program and whose subsequent tests are negative is not a current user and would be entitled to the protection of the Federal Rehabilitation Act if it were applicable to his place of work because of his employer's receipt of or benefit from Federal financial assistance. Federal financial assistance is defined

at 10 CFR 4.4(d) and means essentially the provision by the Federal Government of any funds or personnel or property free of charge or at reduced rates. The Commission does not provide any Federal financial assistance to nuclear power reactor licensees. On the contrary, the Commission charges power reactor licensees for the regulatory services it renders (see 10 CFR Parts 170 and 171). Whether or not other Federal agencies provide such assistance is not known to the Commission. Each licensee implementing the Commission's fitness-for-duty rule will need to determine for itself whether it is receiving such assistance.

18.2.3 Preemption of State and Local Laws. The Atomic Energy Act of 1954, as amended, preempts to the Federal Government the field of regulation of nuclear power reactors in all matters pertaining to radiological safety of operation. See 10 CFR 8.4, *Pacific Gas and Electric Co., v. State Energy Resources Conservation and Development Comm.*, 461 U.S. 190 (1983). However, State laws on possession, sale or use of controlled substances and alcohol were enacted with broad social goals in mind rather than radiological safety. Thus, such laws would not be preempted. There would be preemption in the rare case where a State sought to control fitness-for-duty of nuclear plant employees for radiological safety purposes or a State law made compliance with NRC's fitness-for-duty rule difficult or impossible.

18.2.4 Appeal Procedure. The Commission believes that an appeal or review procedure with respect to positive alcohol or drug determinations is needed because elementary fairness to the adversely affected individual will help assure employee cooperation in the implementation of the licensee's program. Such cooperation should contribute to successful implementation of the rule. Fairness is represented in the rule by the employee assistance program, the appeal procedure, and the protection of information. Therefore, the appeal procedure is retained, but modified to replace reference to due process with reference to impartiality and objectivity and removal of reference to collective bargaining agreements. Because the focus of the rule is on fitness for unescorted access and not directed at an employment relationship, and because the licensee will be making the access determination based on fitness-for-duty for all persons needing unescorted access, whether they are permanent employees, temporary employees or contractor employees, the

procedure is not being limited to permanent employees of the licensee. The Commission notes, however, that in union plants the review procedure covers drug and alcohol issues subject to collective bargaining and that the removal of the reference to collective bargaining agreements in the rule does not preclude bargained for procedures, including binding arbitration, from being employed in resolving disputes over fitness-for-duty determinations. The allowance of an internal management review is discretionary only, and not mandatory except in the absence of any other procedure.

18.2.5 Protection of Information. It is not the Commission's intention that results of testing be routinely available to local law enforcement agencies except under court order since the test result does not, in and of itself, demonstrate whether the use of the drug or alcohol was on-site or off-site, legal or illegal. The Commission is, however, firmly convinced that on-site criminal conduct, such as sale or possession of illegal substances, not be protected by the Commission's rule. The Commission agrees that the individual to whom the information pertains should be able to see the records in which the information is contained. The Commission also agrees that such records should be available to an arbitrator, or other adjudicator who is being asked to resolve a fitness-for-duty dispute, provided the records are relevant to the particular dispute. Section 26.29 has been modified to clarify its application accordingly.

With regard to 42 CFR Part 2, it is the Commission's conclusion that it has no relationship to the Commission's rule. 42 CFR Part 2 comprises the regulations of the Department of Health and Human Services implementing Section 406 of the Drug Abuse Prevention, Treatment, and Rehabilitation Act (42 U.S.C. 290 et. seq.). It states the rules for maintaining confidentiality of patient records for persons in drug or alcohol abuse prevention and treatment programs regulated by or receiving assistance from the United States Government. First, the Commission is providing no assistance to any such program in the private sector. Second, it is not regulating such a program. The requirement for an employee assistance program does not mandate a treatment program that would fall under the regulations in 42 CFR Part 2. As noted in the response to the issue of preemption, the employee assistance program is not a preempted area. Its content is open to bargaining and the application of other nonconflicting State laws. Further,

licensees are not precluded from referring employees to treatment programs to which the HHS rules might apply as long as the minimum program required by section 28.25 is provided by the licensee. In that case outside patient records would be totally separate from records required by 10 CFR Part 26 and would be protected according to other applicable rules.

18.2.6 Collective Bargaining Rights. According to Memorandum GC 87-5, issued by the General Counsel of the National Labor Relations Board on September 8, 1987, drug or alcohol testing for current employees and job applicants is a mandatory subject of collective bargaining and that the implementation of a drug or alcohol testing program is a substantial change in working conditions. Although the Commission's rule requires a drug and alcohol testing program and sets certain standards for it, the rule is not one directed at labor relations, but rather at nuclear safety. The Commission's rule applies equally to union and nonunion workers. It does not affect, even indirectly, the right of self-organization provided by the National Labor Relations Act. The rule does not preclude collective bargaining over issues in drug or alcohol testing programs that are not addressed by it. In the Commission's view, its rule and the opinion of the NLRB General Counsel are compatible documents. See, *Metropolitan Life Insurance Co. v. Massachusetts*, 471 U.S. 724, 755 (1985).

18.2.7 Employee Assistance Program. The authority statement for the rule states that it is promulgated under Section 161, among others, of the Atomic Energy Act. Included within Section 161 is section 161(i)(3) which gives the Commission authority to promulgate rules to govern any activity authorized pursuant to the Atomic Energy Act, including operation of facilities, to protect health and safety. The employee assistance program required by the rule is an incremental addition to safety by giving persons with fitness-for-duty problems a nonthreatening avenue to resolve those problems, thus removing a potential for compromising the safety of operation of a nuclear power reactor. In the Commission's view the employee assistance program can be incorporated in a Commission rule under the broad scope of Section 161 of the Atomic Energy Act.

18.2.8 Administrative Procedures for Alcohol. Under the Administrative Procedure Act (5 U.S.C. 553) the Commission is obligated to provide in its notice of proposed rulemaking either

the terms or substance of the proposed rule or a description of the subject and issues involved. With respect to alcohol, the proposed rule specifically included it in the scope of the licensees' fitness-for-duty programs (§ 28.20). The performance objectives are applicable to any substance, legal or illegal, that can adversely affect a person's ability to perform. There is no doubt that alcohol is such a substance. The rule text did not, however, include prescriptive requirements for alcohol. However, the Commission expressly asked for comment on the extent to which guidance should be given as to alcohol and prescription drugs. Standards for blood alcohol content were extensively discussed in the Statement of Considerations along with a Commission request for comment on whether the Commission should prescribe a cutoff level for alcohol. Thus, the notice of proposed rulemaking clearly covered alcohol both in the terms of the proposed rule and in describing in some detail the subject and issues involved. The public was well advised that alcohol testing was a subject within the rulemaking and that the Commission expected to resolve basic issues regarding testing for alcohol in the comment period on the proposed rule. Therefore, the inclusion in the final rule of basic additional requirements for alcohol testing is, in the Commission's view, well within the scope of the proposal. There is no requirement that the additional rule text dealing with alcohol testing be published for separate comment, and not as part of the final rule.

19.0 Costs/Benefits

19.1 Summary of Comments

Several commenters stated that the NRC should justify the rulemaking under the provisions of § 50.109(a)(3), however, no commenters supported the alternative that a backfitting analysis is not necessary under the provisions of § 50.109(a)(ii).

Several commenters said that the estimated costs in the Backfit Analysis were substantially underestimated in the following cost element areas: costs to administer the testing and training programs, particularly the estimate of the numbers of additional staff that would be necessary to administer the program; length of time estimated for individual employee training, both initial and refresher; time to take a test between leaving and returning to work area; added cost of using HHS certified laboratories and quality control measures; and, costs to conduct background checks.

In addition to these comments, one person, whose comments were included as enclosures by two respondents from one union, contended that: the number of persons that would be tested is underestimated and did not include contractor personnel; incremental costs are incorrect because not all plants have fully developed programs; average life of plants should be 40 years rather than 25; use of 10 percent discount rate is unrealistic; and, costs associated with alcohol, legal drug use, and other kinds of performance impairment were ignored.

This commenter also contends that: written policies and procedures and labor contract modifications involve recurring as well as initial costs; employee turnover needs to be factored into training and testing; costs of employee assistance programs do not include medical and counseling staff, training materials, and medical testing and treatment; costs of legal challenges resulting from the program omitted awards of back pay and/or damages and underestimated volume of appeals; and, indirect costs to workers from false positives (lost jobs or wages, humiliation, etc.) are not included.

In addition to these cost comments, one person, whose comments were included as enclosures by two respondents from one union, contended that benefits are overestimated and not documented. In particular, the commenter challenged: benefits of reduction in lost productivity due to employees being unfit for duty; the nexus between use of illegal drugs and impairment of work performance; and, reduction in insurance rates resulting from more comprehensive drug testing.

19.2 Summary of Responses

The NRC agrees with the comments that the rulemaking should be justified under the provisions of 10 CFR 50.109 (a)(3). The Backfit Analysis has been modified based on consideration of the above cost comments as follows:

19.2.1 Cost to Administer the Testing and Training Programs. Staff agrees and has adjusted the cost estimate to include the costs of:

- Additional personnel to administer the testing and training programs;
- One person for program administration and recordkeeping;
- One person for collection and processing of specimens; and
- A Medical Review Officer.

Miscellaneous costs have also been increased to better reflect the costs of forms and record development, and the costs of protected storage for records.

19.2.2 Length of Time for Individual Training. Based on the comments, the estimate of training costs has been adjusted to reflect the following:

(a) At least one hour of initial training for all employees;

(b) At least four additional hours of initial training for supervisors.

19.2.3 Time to Take a Test. Several commenters noted that the estimate of 30 minutes of an employee's lost productive time is too low. Lost productive time can include time to secure and restart work in progress and travel between the employee's work station and the specimen collection station. The Backfit Analysis estimate was based on an assumption of 15 minutes for travel to and from the collection site and 15 minutes at the collection station. This was based on the assumption that the majority of employees tested would have work stations within the protected area, and that at most sites the collection station would be efficiently located in or near the protected area to accommodate the large number of tests to be conducted. Also, the staff had assumed that after selecting an individual for testing on a given day, selection of when the test will be conducted that day would take into account holding down lost production time. Staff discussed these assumptions with licensees who have been conducting testing. Some suggested 90 minutes might be appropriate. Other licensees questioned said that 30 minutes is adequate, but that longer times could result from administrative inefficiencies. Based on the comments and the further discussions the estimated time has been increased to 60 minutes.

19.2.4 Added Cost of Using HHS-Certified Laboratories and Quality Control Measures. Staff reexamined the

cost estimates of initial and confirmatory tests by contacting three laboratories to determine their charges for initial screening and confirmatory tests. Prices quoted were \$16, \$17, \$20, and \$25 per initial test, and \$50, \$65, and \$75 per confirmatory test. The lab that was on the high end for initial test cost was on the low end for confirmatory test cost, and had two prices, which depended on the number of samples in the contract. It is speculative to assess whether the labs contacted would have to undergo any additional expenditures to be so certified and whether they would pass such costs on to their customers or would absorb those costs to remain competitive. Costs could go down due to economies of scale, but could go up initially due to increased demand for certified labs exceeding the supply. Staff sees no compelling reason

to change the Backfit Analysis cost estimates of \$20 per initial screening and \$75 per confirmatory test.

An additional cost of quality control is the blind samples to be included along with the employee specimens. The Backfit Analysis included a cost to the utilities of \$50 per blind performance test specimen. This cost is in addition to the cost of initial screening and confirmatory tests on these specimens. Staff believes that this is a reasonable representation of the quality control costs that will be incurred, and has made no change to this cost.

19.2.5 Costs to Conduct Background Checks. The staff disagrees that there is a need to include the costs of conducting background checks in the incremental cost estimate. Industry has already committed to these background checks through NUMARC in its Access Authorization Program, and thus costs associated with background checks would be expended regardless of whether or not they were required by the Fitness-For-Duty Rule.

19.2.6 Number of Persons to be Tested. The Backfit Analysis assumed an average of 1500 employees and contractors would be tested randomly at each plant. This estimate was based on experience with the fingerprint cards submitted to the NRC in compliance with 10 CFR 73.57, which requires these cards to be submitted for all persons granted unescorted access to the protected area. This is the same population as would be covered by the Fitness-For-Duty Rule. After receiving the comments, staff checked these estimates with several licensees and was satisfied that the estimate is appropriate. Staff disagrees that any change is needed to this element of the cost estimate.

19.2.7 Incremental Costs. The comment that not all plants have fully developed programs would be inconsistent with full implementation of industry commitments to follow the EEI guidelines. Any costs incurred because commitments have not been met are considered costs for corrective action and not an impact of the present rulemaking.

19.2.8 Average Life of Plants. The NRC issues licenses with a 40 year limit. For many plants this time starts at the date of the construction permit, resulting in 30 years remaining for operation. Some plants are being licensed for 40 years from the date of the operating license, resulting in a longer operating period. Some plants are just beginning their operations while others have already been operating under license for many years. Whether the useful life of some will be extended through license

renewal is somewhat speculative and has not been considered. However, the effect on the total cost will be small in any event because costs beyond 25 years contribute little to the total cost in the present worth approach the NRC is using for its cost estimates.

19.2.9 Use of 10 Percent Discount Rate. The NRC uses a 10 percent discount rate in its regulatory impact analyses to be consistent with applicable OMB guidance. Because of concerns that this rate may be unrealistic at the present time, the NRC also shows the costs associated with a perhaps more realistic 5 percent discount rate.

19.2.10 Costs Associated with Other Performance Impairments. Staff disagrees that any change to the Backfit Analysis is needed for these costs. Activities associated with preventing alcohol abuse, legal drug use, and other kinds of performance impairment consist of training, testing and employee assistance programs. The costs assumed for these cost elements already cover these activities.

19.2.11 Recurring Costs. The staff disagrees that any change to the Backfit Analysis is needed for recurring costs of written procedures and contract modifications. Staff agrees that licensees incur recurring costs for periodic revision to these documents, but sees no significant difference to these recurring costs attributable to the Fitness-For-Duty Rule. Costs of periodic revisions would accrue even without the Fitness-For-Duty Rule. Furthermore, only the costs for compliance with the rule need be considered, not costs of elective changes. The Backfit Analysis contains only the one time cost to modify these documents to meet the rule requirements.

19.2.12 Employee Turnover. One commenter noted that the NRC seemed to assume an employee turnover rate of zero. Staff recognizes that newly hired workers also would need orientation training, but considers this to not add to the incremental costs because such training is already part of the industry's existing fitness-for-duty programs. Staff considers the one time cost for current employees to be an additional cost beyond the current industry fitness-for-duty costs because the revisions to the industry program at many plants will require retraining of existing staff in these new procedures and rules of employment insofar as they differ from existing fitness-for-duty procedures and rules of employment. Staff disagrees that any change to the incremental costs is needed for employee turnover.

19.2.13 Costs of Employee Assistance Programs. Staff agrees that the costs of medical and counseling staff, training materials, and medical testing and treatment were underestimated, and has revised the Backfit Analysis to include additional personnel to administer the testing and training programs, in addition to the additional employee assistance program staff provided for in the draft analysis.

19.2.14 Costs of Legal Challenges. Staff agrees that there may be some costs associated with these legal challenges, but has no basis for assessing these costs. Attention to quality controls, whose costs were included, should serve to minimize these legal costs.

19.2.15 Indirect Costs to Workers from False Positives. The program has been designed to essentially eliminate false positives by use of diverse state of the art testing procedures and quality controls, including the use of certified laboratories, blind samples, chains of custody, and retention of portions of specimens for retesting. The staff agrees that the costs to an individual could be substantial should such an event occur but has not included these indirect costs in a quantitative manner for lack of a means for estimating them fairly. The NRC has considered these indirect costs in a qualitative sense, and has determined that the benefits warrant any such indirect costs (which are highly unlikely) in addition to the quantified direct costs.

19.2.16 Benefits Overestimated. Benefits are described in Items 3 and 4 of the Backfit Analysis. The latter included the statement that, in addition to the more important benefits of preventing unacceptable risk to the public from radiological releases, benefits will likely accrue to licensees from the potential reduction in absenteeism, lost worker productivity, medical and insurance costs, and plant downtime. Staff agrees that these claimed benefits have not been quantified or documented. Staff did not intend to imply that the cost reductions associated with these benefits would outweigh the costs of implementation of the Fitness-For-Duty Program, only that these benefits would exist and would serve to somewhat offset the expenses of the program. Lack of quantification of these benefits tends to make the Backfit Analysis cost increase estimates conservative.

With respect to the relationship of illegal drugs and impairment of work performance, see discussion under Item 3, Impairment vs Reliability, above, and NUREG/CR 5227, "Fitness-For-Duty in

the Nuclear Power Industry: A Review of the Technical Issues."

Summary of Significant Changes From the Proposed Rule

The NRC amended several sections of the proposed rule in response to comments received from the public on the issues and in response to questions raised in the Notice of Proposed Rulemaking. The following is a summary of the significant changes.

The scope of the rule was amended to include power reactors under construction and to extend the date for implementation of all requirements to 180 days after the effective date of the rule.

The definition of "confirmed positive test" was amended to clarify that the test is not a confirmed positive until the Medical Review Officer has reviewed the test results. The Medical Review Officer's review must be completed and licensee management notified within 10 days of the initial presumptive positive screening test.

The definition of "suitable inquiry" was amended to clarify that a best-effort verification of employment history is intended. A conforming amendment was made to the management actions section that required the inquiry.

The general performance objectives were amended to clearly show that the reliability and trustworthiness of nuclear power plant personnel must also be assured.

The requirements for written policies and procedures were amended to include a prohibition against the consumption of alcohol prior to and during work, and the requirement to address situations where a person has been called in to perform unscheduled work.

The requirements for training of escorts have been amended to clarify NRC's intent that escorts need not be trained as supervisors.

The period in which a test must be performed prior to the initial granting of unescorted access was specified as 60 days.

The random testing rate was established as 100 percent per year.

The basis for for-cause tests was clarified.

NRC testing guidelines modeled after the HHS Guidelines, have been developed as the standards for the collection, protection, and testing of specimens for drugs and alcohol.

Licensees will be required to certify to the NRC that their fitness-for-duty programs have been implemented.

Testing laboratories shall be laboratories certified by the Department of Health and Human Services.

A requirement has been added to limit access to the results of preliminary tests.

Tests for alcohol are required to be performed in conjunction with other substance tests. Tests are to be administered by a breath analysis. A confirmatory test may be done with another breath measurement instrument, or if demanded by the person being tested, by gas chromatography analysis of blood.

The requirements for management actions were revised to add the use of alcohol which resulted in on-duty impairment as a subject of the inquiry to previous employers.

The requirement for making available information concerning prior violations of a fitness-for-duty program was amended to include a requirement that the inquiry be supported by a signed release from the individual being investigated.

The frequency of unannounced tests following reinstatement was amended to require more frequent testing for the first four months.

A requirement was added to the section on management actions for licensees to impose sufficient sanctions for alcohol, prescription drugs and over-the-counter drugs to deter substance substitution.

The appeals process requirements were clarified.

The requirements to protect information have been amended to clarify that personal information can be disclosed to persons deciding matters on review or appeal, to persons pursuant to a court order, and to auditors (in addition to those listed in the proposed rule).

Records retention periods have been changed to five years.

A requirement was added for licensees to periodically submit program performance data.

Reporting requirements have been amended to include abuse of alcohol onsite by a licensed reactor operator or supervisory personnel.

The requirement to maintain a copy of the audit report onsite has been deleted.

Modification of Enforcement Policy

The Commission is modifying its General Statement of Policy and Procedure for NRC Enforcement Actions, 10 CFR Part 2, Appendix C (Enforcement Policy) to reflect the Commission's new rule on Fitness-For-Duty, 10 CFR Part 26. The changes to the Enforcement Policy are being published concurrently with the new rule.

The modifications to the Enforcement Policy are being made in Supplement VII "Miscellaneous Matters" to provide

examples of violations of fitness-for-duty requirements. The examples are A.6, B.6, B.7, B.8, C.6, C.7, C.8, C.9, D.4, D.5, and E.4. As with the examples in the other Supplements to the Enforcement Policy, the new examples are neither controlling nor exhaustive nor do they establish new requirements. The examples are to be used as guidance in considering the severity levels of violations of requirements.

In developing the examples, the Commission notes that it is not the unfit person that establishes the violation but rather the licensee's failures, including those of its contractors and vendors, that create violation. For example, if the licensee has effectively implemented its fitness-for-duty program meeting NRC requirements and, based on behavior observation, identifies and removes a person not fit for duty, there may not be a regulatory violation.

The example for Severity Level I is of very significant concern because it represents the failure to implement a fitness-for-duty program. This example would be applicable to a situation where essentially the licensee does not have a program in place.

The examples for Severity Level II are also very significant because they involve the failure to take action when there is the potential to have a direct impact on safety-related activities.

The examples for Severity Level III are significant because they represent significant individual violations or significant breakdowns in basic elements of a fitness-for-duty program. Basic elements include important aspects of the program, such as: training, appeals, records, testing integrity, randomness in testing, audits, prescreening, management response, contractor oversight, and employee assistance. A breakdown in the program categorized at a Severity Level III will normally involve more than one significant failure of a single element or single failures of a number of elements.

In addition, a failure to ensure that specimens collected in accordance with 10 CFR Part 26 are not used for purposes other than those provided by the rule without the permission of the tested individual may also be considered a significant violation.

Severity Level IV and V violations are matters which, while requiring correction, are less significant to the overall fitness-for-duty program.

Enforcement in Other Licensed Activities

The Commission notes that this rule applies to 10 CFR Part 50 licensees only, it does not establish standards or criteria to be applied to licensed

activities conducted under any other Part of its regulations. This limited application of Part 26 does not mean, however, that the Commission will not respond to fitness-for-duty issues involving other licensees that affect health and safety. Under the Atomic Energy Act of 1954, as amended, and its regulations, the Commission may respond to such cases by the issuance of appropriate orders.

As explained in the Commission's Enforcement Policy (see 53 FR 40027, Thursday, October 13, 1988), the Commission may take enforcement action where the conduct of the individual places in question the NRC's reasonable assurance that licensed activities will be properly conducted. The Commission may take enforcement action for reasons that would warrant refusal to issue a license on an original application. Accordingly, enforcement action may be taken regarding matters that raise issues of integrity, competence, fitness for duty, or other matters that may not necessarily be a violation of specific Commission requirements. And, in taking such enforcement action, the Commission may exercise independent discretion as to the standard of fitness for duty to be applied, depending on the circumstances of the case and the significance of the issue to maintaining reasonable assurance in the protection of the public health and safety in the use and possession of nuclear materials. For example, the Commission could take action to modify, revoke or suspend the license of an individually licensed person seen as not fit for duty on standards more strict than provided in Part 26, if necessary to protect the health and safety of the public or other workers. Similarly, the Commission could take appropriate action regarding a materials licensee where an employee was seen as endangering health and safety because he or she was not fit for duty.

Individuals who are not reliable and trustworthy, under the influence of any substance, or mentally or physically impaired in any way that adversely affects their ability to safely and competently perform their duties, shall not be licensed or permitted to perform responsible health and safety functions.

Supplemental Provisions of the Drug-Free Workplace Act of 1988

In promulgating this rule the Commission has taken note of the fact that the Congress of the United States has recently enacted Subtitle D of Title V of the Anti-Drug Abuse Act of 1988 (Pub. L. 100-690, enacted November 18, 1988), entitled, "The Drug-Free

Workplace Act of 1988." This law requires any person being awarded a Government contract for property or services of a value of \$25,000 or more to certify to the contracting agency that it will provide a drug free workplace for the performance of the contract. The precise requirements are in Section 5152 to 5160 of the Anti-Drug Abuse Act. The Commission has compared the requirements of the Drug-Free Workplace Act to the requirements of its rule on Fitness-For-Duty and finds no inconsistency. Any licensee implementing 10 CFR Part 26 who may also be subject to Subtitle D should have no difficulty meeting the supplemental provisions of the latter concerning notification of the contracting agency of convictions of onsite criminal drug activities [Section 5152(a)(1)(D) of the Anti-Drug Abuse Act] for those employees within the scope of a program meeting the provisions of 10 CFR Part 26. Whether or not any licensee subject to 10 CFR Part 26 is also subject to the Drug-Free Workplace Act of 1988 is a question that the Commission cannot answer. Each licensee will have to examine its own contractual relationships with agencies of the United States Government, if any, to ascertain if those contractual relationships are of a kind that call the Drug-Free Workplace Act into play.

Finding of No Significant Environmental Impact: Availability

An environmental assessment was included in the notice of the proposed rulemaking at 53 FR 36822. The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in Subpart A of 10 CFR Part 51, that this rule is not a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required.

Paperwork Reduction Act Statement

This final rule contains information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). These requirements were approved by the Office of Management and Budget (OMB) at the proposed rule stage, approval number 3150-0146. The final rule adds new information collection requirements and increases records retention periods. Therefore, an amended clearance package is being submitted to OMB. The information collection requirements contained in the final rule will not become effective until they are approved by OMB.

Public reporting burden for this collection of information is estimated to average 8 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Records and Reports Management Branch (P-530), U.S. Nuclear Regulatory Commission, Washington, DC 20555; and to the Paperwork Reduction Project (3150-0146), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

An analysis of the costs and benefits of the final rule is included in the backfit analysis described below.

Backfit Analysis

Several commenters stated that the NRC should justify the rulemaking under the provisions of § 50.109(a)(3). The NRC agrees, and finds that the rule will provide a substantial increase in the overall protection of public health and safety, and that the direct and indirect costs of implementation are justified in view of the increased protection.

The backfit analysis is available for inspection and copying for a fee at the NRC Public Document Room at 2120 L Street NW., Washington, DC 20555. Single copies may be obtained by writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities. This new 10 CFR Part 26 applies to certain owners and operators of civilian nuclear power reactors and their contractors. The companies that own power reactor facilities do not fall within the scope of "small entities" set forth in the Regulatory Flexibility Act or the small business size standards set out in regulations issued by the Small Business Administration in 13 CFR Part 121. Any costs to the minor number of small entities affected, i.e., contractors, will apply only to those contractor employees working at the nuclear power reactors, and would probably be reimbursed through the contract.

List of Subjects

10 CFR Part 2

Administrative practice and procedure, Antitrust, Byproduct material, Classified information, Civil penalty, Enforcement, Environmental protection, Nuclear materials, Nuclear power plants and reactors, Penalty, Sex discrimination, Source material, Special nuclear material, Violations, Waste treatment and disposal.

10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Management actions, Nuclear power reactors, Protection of information, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 553, the NRC is adopting a new 10 CFR Part 26, and amending 10 CFR Part 2.

PART 2—RULES OF PRACTICE FOR DOMESTIC LICENSING PROCEEDINGS

1. The authority citation for Part 2 continues to read in part as follows:

Authority: Sec. 161, 68 Stat. 948, as amended (42 U.S.C. 2201); sec. 201, 88 Stat. 1242, as amended (42 U.S.C. 5841).

2. Appendix C, Supplement VII, is amended by adding example 8 to paragraph A, examples 6, 7, and 8 to paragraph B, examples 6, 7, 8, and 9 to paragraph C, examples 4 and 5 to paragraph D, and example 4 to paragraph E to read as follows:

Appendix C—General Statement of Policy and Procedure for NRC Enforcement Actions

• • • • •

Supplement VII—Severity Categories

A. Severity I. • • •

6. Failure to substantially implement the required fitness-for-duty program.¹⁸

B. Severity II. • • •

6. Failure to remove an individual from unescorted access who has been involved in the sale, use, or possession of illegal drugs within the protected area or to take action for on duty misuse of alcohol, prescription drugs, or over-the-counter drugs;

7. Failure to test for cause when observed behavior within the protected area or credible information concerning activities within the protected area indicates possible unfitness for duty based on drug or alcohol use; or

¹⁸ The examples for violations for fitness-for-duty relate to violations of 10 CFR Part 26.

8. Deliberate failure of the licensee's Employee Assistance Program to notify licensee's management when EAP's staff is aware that an individual's condition may adversely affect safety related activities.

C. Severity III. • • •

6. Failure to complete a suitable inquiry on the basis of 10 CFR Part 26, keep records concerning the denial of access, or respond to inquiries concerning such denials such that, as a result of the failure, a person previously denied access for fitness-for-duty reasons was improperly granted access;

7. Failure to take the required action for a person confirmed to have been tested positive for illegal drug use or take action for onsite alcohol use; not amounting to a Severity Level II violation;

8. Failure to assure, as required, that contractors or vendors have an effective fitness-for-duty program; or

9. Breakdown in the fitness-for-duty program involving a number of violations of the basic elements of the fitness-for-duty program that collectively reflect a significant lack of attention or carelessness towards meeting the objectives of 10 CFR 26.10.

D. Severity IV. • • •

4. Isolated failures to meet basic elements of the fitness-for-duty program not involving a Severity Level I, II, or III violation.

5. Failure to report acts of licensed operators or supervisors pursuant to 10 CFR 26.73.

E. Severity V. • • •

4. Minor violations of fitness-for-duty requirements.

3. Part 26 is added to 10 CFR Chapter I to read as follows:

PART 26—FITNESS FOR DUTY PROGRAMS

General Provisions

Sec.

26.1 Purpose.

26.2 Scope.

26.3 Definitions.

26.4 Interpretations.

26.6 Exemptions.

26.8 Information collection requirements: OMB approval.

General Performance Objectives

26.10 General performance objectives.

Program Elements and Procedures

26.20 Written policy and procedures.

26.21 Policy communications and awareness training.

26.22 Training of supervisors and escorts.

26.23 Contractors and vendors.

26.24 Chemical testing.

26.25 Employee assistance programs (EAP).

26.27 Management actions and sanctions to be imposed.

26.28 Appeals.

26.29 Protection of information.

Inspections, Records and Reports

26.70 Inspections.

26.71 Recordkeeping requirements.

26.73 Reporting requirements.

Sec.

Audits

26.80 Audits.

Enforcement

26.90 Violations.

Appendix A—Guidelines for Nuclear Power Plant Drug and Alcohol Testing Programs.

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

For the purposes of sec. 223, 68 Stat. 958, as amended (42 U.S.C. 2273) §§ 26.20, 26.21, 26.22, 26.23, 26.24, 26.25, 26.27, 26.28, 26.29 and 26.80 are issued under secs. 161b and i, 68 Stat. 948, and 949 as amended (42 U.S.C. 2201(b) and (i)); 26.70, 26.71, and 26.73 are issued under sec. 161o, 68 Stat. 950, as amended (42 U.S.C. 2201(o)).

General Provisions

§ 26.1 Purpose.

This Part prescribes requirements and standards for the establishment and maintenance of certain aspects of fitness-for-duty programs and procedures by the licensed nuclear power industry.

§ 26.2 Scope.

(a) The regulations in this Part apply to licensees authorized to operate a nuclear power reactor. Each licensee shall implement a fitness-for-duty program which complies with this Part. The provisions of the fitness-for-duty program must apply to all persons granted unescorted access to protected areas, and to licensee, vendor, or contractor personnel required to physically report to a licensee's Technical Support Center (TSC) or Emergency Operations Facility (EOF) in accordance with licensee emergency plans and procedures. The regulations in this Part do not apply to NRC employees, or to law enforcement personnel or offsite emergency fire and medical response personnel while responding on-site.

(b) Certain regulations in this Part apply to licensees holding permits to construct a nuclear power plant. Each construction permit holder, with a plant under active construction, shall comply with sections 26.10, 26.20, 26.23, 26.70, and 26.73 of this part; shall implement a chemical testing program, including random tests; and shall make provisions for employee assistance programs, imposition of sanctions, appeal procedures, the protection of information, and recordkeeping.

(c) The requirements in this Part must be implemented by each licensee authorized to construct or operate a nuclear power reactor no later than

(insert date 180 days after the effective date of the final rule).

§ 26.3 Definitions.

"Aliquot" means a portion of a specimen used for testing.

"Commission" means the Nuclear Regulatory Commission or its duly authorized representatives.

"Confirmatory test" means a second analytical procedure to identify the presence of a specific drug or drug metabolite which is independent of the initial screening test and which uses a different technique and chemical principle from that of the initial screening test in order to ensure reliability and accuracy. For determining blood alcohol levels, a "confirmatory test" means a second test using another breath alcohol analysis device. Further confirmation upon demand will be by gas chromatography analysis of blood.

"Confirmed positive test" means the result of a confirmatory test that has established the presence of drugs, drug metabolites, or alcohol in a specimen at or above the cut-off level, and that has been deemed positive by the Medical Review Officer (MRO) after evaluation. A "confirmed positive test" for alcohol can also be obtained as a result of a confirmation of blood alcohol levels with a second breath analysis without MRO evaluation.

"Contractor" means any company or individual with which the licensee has contracted for work or service to be performed inside the protected area boundary, either by contract, purchase order, or verbal agreement.

"Cut-off level" means the value set for designating a test result as positive.

"Follow-up testing" means chemical testing at unannounced intervals, to ensure that an employee is maintaining abstinence from the abuse of drugs or alcohol.

"Illegal drugs" means those drugs included in Schedules I through V of the Controlled Substances Act (CSA), but not when used pursuant to a valid prescription or when used as otherwise authorized by law.

"Initial or screening tests" means an immunoassay screen for drugs or drug metabolites to eliminate "negative" urine specimens from further consideration or the first breathalyzer test for alcohol. Initial screening may be performed at the licensee's testing facility; a second screen and confirmation testing for drugs or drug metabolites must be conducted by a HHS-certified laboratory.

"Medical Review Officer" means a licensed physician responsible for receiving laboratory results generated by an employer's drug testing program

who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

"Protected area" has the same meaning as in § 73.2(g) of this chapter, an area encompassed by physical barriers and to which access is controlled.

"Random test" means a system of unannounced drug testing administered in a statistically random manner to a group so that all persons within that group have an equal probability of selection.

"Suitable inquiry" means best-effort verification of employment history for the past five years, but in no case less than three years, obtained through contacts with previous employers to determine if a person was, in the past, tested positive for illegal drugs, subject to a plan for treating substance abuse, removed from, or made ineligible for activities within the scope of 10 CFR Part 26, or denied unescorted access at any other nuclear power plant or other employment in accordance with a fitness-for-duty policy.

"Vendor" means any company or individual, not under contract to a licensee, providing services in protected areas.

§ 26.4 Interpretations.

Except as specifically authorized by the Commission in writing, no interpretation of the meaning of the regulations in this Part by any officer or employee of the Commission other than a written interpretation by the General Counsel will be recognized to be binding upon the Commission.

§ 26.6 Exemptions.

The Commission may, upon application of any interested person or upon its own initiative, grant such exemptions from the requirements of the regulations in this Part as it determines are authorized by law and will not endanger life or property or the common defense and security and are otherwise in the public interest.

§ 26.8 Information collection requirements: OMB approval.

(a) The Nuclear Regulatory Commission has submitted the information collection requirements contained in this Part to the Office of Management and Budget (OMB) for approval as required by the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.). OMB has approved the information collection requirements

contained in this Part under control number 3150-0146.

(b) The approved information collection requirements contained in this Part appear in §§ 26.20, 26.21, 26.22, 26.23, 26.24, 26.27, 26.29, 26.70, 26.71, 26.73, 26.80 and Appendix A.

(c) The total burden for these recordkeeping requirements is estimated to be 313 hours per site per year. In implementing the recordkeeping requirements the affected licensee shall report to the Commission any comments concerning the accuracy of the estimate and any suggestions for reducing the burden.

General Performance Objectives

§ 26.10 General performance objectives.

Fitness-for-duty programs must:

(a) Provide reasonable assurance that nuclear power plant personnel will perform their tasks in a reliable and trustworthy manner and are not under the influence of any substance, legal or illegal, or mentally or physically impaired from any cause, which in any way adversely affects their ability to safely and competently perform their duties;

(b) Provide reasonable measures for the early detection of persons who are not fit to perform activities within the scope of this Part; and

(c) Have a goal of achieving a drug-free workplace and a workplace free of the effects of such substances.

Program Elements and Procedures

§ 26.20 Written policy and procedures.

Each licensee subject to this Part shall establish and implement written policies and procedures designed to meet the general performance objectives and specific requirements of this Part. Each licensee shall retain a copy of the current written policy and procedures as a record until the Commission terminates each license for which the policy and procedures were developed and, if any portion of the policies and procedures are superseded, retain the superseded material for three years after each change. As a minimum, written policies and procedures must address fitness for duty through the following:

(a) An overall description of licensee policy on fitness for duty. The policy must address use of illegal drugs and abuse of legal drugs (e.g., alcohol, prescription and over-the-counter drugs). Written policy documents must be in sufficient detail to provide affected individuals with information on what is expected of them, and what consequences may result from lack of adherence to the policy. As a minimum,

the written policy must prohibit the consumption of alcohol—

(1) Within an abstinence period of at least 5 hours preceding any scheduled working tour, and

(2) During the period of any working tour.

Licensee policy should also address other factors that could affect fitness for duty such as mental stress, fatigue and illness.

(b) A description of programs which are available to personnel desiring assistance in dealing with drug, alcohol, or other problems that could adversely affect the performance of activities within the scope of this Part.

(c) Procedures to be utilized in testing for drugs and alcohol, including procedures for protecting the employee and the integrity of the specimen, and the quality controls used to ensure the test results are valid and attributable to the correct individual.

(d) A description of immediate and follow-on actions which will be taken, and the procedures to be utilized, in those cases where employees, vendors, or contractors assigned to duties within the scope of this Part are determined to have been involved in the use, sale, or possession of illegal drugs; or to have consumed alcohol during the mandatory pre-work abstinence period, while on duty, or to excess prior to reporting to duty as demonstrated with a test that can be used to determine blood alcohol concentration.

(e) A procedure that will ensure that persons called in to perform an unscheduled working tour are fit to perform the task assigned. As a minimum, this procedure must—

(1) Require a statement to be made by a called-in person as to whether he or she has consumed alcohol within the length of time stated in the pre-duty abstinence policy;

(2) If alcohol has been consumed within this period, require a determination of fitness for duty by breath analysis or other means; and

(3) Require the establishment of controls and conditions under which a person who has been called-in can perform work, if necessary, although alcohol has been consumed. Consumption of alcohol during the abstinence period shall not by itself preclude a licensee from using individuals needed to respond to an emergency.

(f) The Commission may at any time review the licensee's written policy and procedures to assure that they meet the performance objectives of this Part.

§ 26.21 Policy communications and awareness training.

(a) Persons assigned to activities within the scope of this Part shall be provided with appropriate training to ensure they understand—

(1) Licensee policy and procedures, including the methods that will be used to implement the policy;

(2) The personal and public health and safety hazards associated with abuse of drugs and misuse of alcohol;

(3) The effect of prescription and over-the-counter drugs and dietary conditions on job performance and on chemical test results, and the role of the Medical Review Officer;

(4) Employee assistance programs provided by the licensee; and

(5) What is expected of them and what consequences may result from lack of adherence to the policy.

(b) Initial training must be completed prior to assignment to activities within the scope of this Part. Refresher training must be completed on a nominal 12 month frequency or more frequently where the need is indicated. A record of the training must be retained for a period of at least three years.

§ 26.22 Training of supervisors and escorts.

(a) Managers and supervisors of activities within the scope of this Part must be provided appropriate training to ensure they understand—

(1) Their role and responsibilities in implementing the program;

(2) The roles and responsibilities of others, such as the personnel, medical, and employee assistance program staffs;

(3) Techniques for recognizing drugs and indications of the use, sale, or possession of drugs;

(4) Behavioral observation techniques for detecting degradation in performance, impairment, or changes in employee behavior; and

(5) Procedures for initiating appropriate corrective action, to include referral to the employee assistance program.

(b) Persons assigned to escort duties shall be provided appropriate training in techniques for recognizing drugs and indications of the use, sale, or possession of drugs, techniques for recognizing aberrant behavior, and the procedures for reporting problems to supervisory or security personnel.

(c) Initial training must be completed prior to assignment of duties within the scope of this Part and within 3 months after initial supervisory assignment, as applicable. Refresher training must be completed on a nominal 12 month frequency, or more frequently where the

need is indicated. A record of the training must be retained for a period of at least three years.

§ 26.23 Contractors and vendors.

(a) All contractor and vendor personnel performing activities within the scope of this Part for a licensee must be subject to either the licensee's program relating to fitness for duty, or to a program, formally reviewed and approved by the licensee, which meets the requirements of this Part. Written agreements between licensees and contractors or vendors for activities within the scope of this Part must be retained for the life of the contract and will clearly show that—

(1) The contractor or vendor is responsible to the licensee for adhering to the licensee's fitness-for-duty policy, or maintaining and adhering to an effective fitness-for-duty program; which meets the standards of this Part; and

(2) Personnel having been denied access or removed from activities within the scope of this Part at any nuclear power plant for violations of a fitness-for-duty policy will not be assigned to work within the scope of this Part without the knowledge and consent of the licensee.

(b) Each licensee subject to this Part shall assure that contractors whose own fitness-for-duty programs are relied on by the licensee adhere to an effective program, which meets the requirements of this Part, and shall conduct audits pursuant to § 26.80 for this purpose.

§ 26.24 Chemical testing.

(a) To provide a means to deter and detect substance abuse, the licensee shall implement the following chemical testing programs for persons subject to this Part:

(1) Testing within 60 days prior to the initial granting of unescorted access to protected areas or assignment to activities within the scope of this Part.

(2) Unannounced tests imposed in a random manner. The tests must be administered so that a person completing a test is immediately eligible for another unannounced test. As a minimum, tests must be administered on a nominal weekly frequency and at various times during the day. Random testing shall be conducted at a rate equal to at least 100 percent of the workforce.

(3) Testing for-cause, i.e., as soon as possible following any observed behavior indicating possible substance abuse; after accidents involving a failure in individual performance resulting in personal injury, in a radiation exposure or release of radioactivity in excess of regulatory limits, or actual or potential

substantial degradations of the level of safety of the plant if there is reasonable suspicion that the worker's behavior contributed to the event; or after receiving credible information that an individual is abusing drugs or alcohol.

(4) Follow-up testing on an unannounced basis to verify continued abstinence from the use of substances covered under this Part.

(b) Testing for drugs and alcohol must at a minimum, conform to the "Guidelines for Nuclear Power Plant Drug and Alcohol Testing Programs," issued by the Nuclear Regulatory Commission and appearing in Appendix A to this rule, hereinafter referred to as the NRC Guidelines. Licensees, at their discretion, may implement programs with more stringent standards (e.g., lower cutoff levels, broader panel of drugs). All requirements in this Part apply to persons who fail a more stringent standard, but do not test positive under the NRC Guidelines; management actions must be the same as if the individual failed the NRC standards.

(c) Licensees shall test for all substances described in paragraph 2.1(a) of the NRC Guidelines. In addition, licensees may consult with local law enforcement authorities, hospitals, and drug counseling services to determine whether other substances with abuse potential are being used in the geographical locale of the facility and the local workforce. When appropriate, other substances so identified may be added to the panel of substances for testing. Appropriate cutoff limits must be established by the licensee for these substances.

(d) Licensees may conduct initial screening tests of an aliquot prior to forwarding selected specimens to a laboratory certified by the Department of Health and Human Services, provided the licensee's staff possesses the necessary training and skills for the tasks assigned, their qualifications are documented, and adequate quality controls are implemented. Quality control procedures for initial screening tests by a licensee's testing facility must include the processing of blind performance test specimens and the submission to the HHS-certified laboratory of a sampling of specimens initially tested as negative. Access to the results of preliminary tests must be limited to the licensee's testing staff, the Medical Review Officer, the Fitness-For-Duty Program Manager, and employee assistance program staff when appropriate.

(e) The Medical Review Officer's review of the test results must be completed and licensee management

notified within 10 days of the initial presumptive positive screening test.

(f) All testing of specimens for urine drug testing, except onsite testing under paragraph (d) above, must be performed in a laboratory certified by the U.S. Department of Health and Human Services for that purpose consistent with its standards and procedures for certification. Except for suspect specimens submitted for special processing (Section 2.7(d) of Appendix A), all specimens sent to certified laboratories shall be subject to initial screening by the laboratory and all specimens screened as presumptively positive shall be subject to confirmation testing by the laboratory. Licensees shall submit blind performance test specimens to certified laboratories in accordance with the NRC Guidelines (Appendix A).

(g) Tests for alcohol must be administered by breath analysis using breath alcohol analyses devices meeting evidential standards described in Section 2.7(O)(3) of Appendix A. A breath alcohol content indicating a blood alcohol concentration of 0.04 percent or greater must be a positive test result. The confirmatory test for alcohol shall be done with another breath measurement instrument. Should the person demand further confirmation, the test must be a gas chromatography analysis of blood.

§ 26.25 Employee assistance programs (EAP).

Each licensee subject to this Part shall maintain an employee assistance program to strengthen fitness-for-duty programs by offering assessment, short-term counseling, referral services, and treatment monitoring to employees with problems that could adversely affect the performance of activities within the scope of this Part. Employee assistance programs should be designed to achieve early intervention and provide for confidential assistance. The employee assistance program staff shall inform licensee management when a determination has been made that any individual's condition constitutes a hazard to himself or herself or others (including those who have self-referred).

§ 26.27 Management actions and sanctions to be imposed.

(a) Prior to the initial granting of unescorted access to a protected area or the assignment to activities within the scope of this Part to any person, the licensee shall obtain a written statement from the individual as to whether activities within the scope of this Part were ever denied the individual. The

licensee shall complete a suitable inquiry on a best-efforts basis to determine if that person was, in the past, tested positive for drugs or use of alcohol that resulted in on-duty impairment, subject to a plan for treating substance abuse (except for self-referral for treatment), or removed from activities within the scope of this Part, or denied unescorted access at any other nuclear power plant in accordance with a fitness-for-duty policy. If such a record is established, the new assignment to activities within the scope of this Part or granting of unescorted access must be based upon a management and medical determination of fitness for duty and the establishment of an appropriate follow-up testing program, provided the restrictions of paragraph (b) of this section are observed. To meet this requirement, the identity of persons denied unescorted access or removed under the provisions of this Part and the circumstances for such denial or removal, including test results, will be made available in response to a licensee's, contractor's, or vendor's inquiry supported by a signed release from the individual. Failure to list reasons for removal or revocation of unescorted access shall be sufficient cause for denial of unescorted access. Temporary access provisions shall not be affected by this Part provided that the prospective worker passes a chemical test conducted according to the requirements of 28.24(a)(1).

(b) Each licensee subject to this Part shall, as a minimum, take the following actions. Nothing herein shall prohibit the licensee from taking more stringent action.

(1) Impaired workers, or those whose fitness may be questionable, shall be removed from activities within the scope of this Part, and may be returned only after determined to be fit to safely and competently perform activities within the scope of this Part.

(2) Lacking any other evidence to indicate the use, sale, or possession of illegal drugs onsite, a confirmed positive test result must be presumed to be an indication of offsite drug use. The first confirmed positive test must, as a minimum, result in immediate removal from activities within the scope of this Part for at least 14 days and referral to the EAP for assessment and counseling during any suspension period. Plans for treatment, follow-up, and future employment must be developed, and any rehabilitation program deemed appropriate must be initiated during such suspension period. Satisfactory management and medical assurance of the individual's fitness to adequately

perform activities within the scope of this Part must be obtained before permitting the individual to be returned to these activities. Any subsequent confirmed positive test must result in removal from unescorted access to protected areas and activities within the scope of this Part for a minimum of three years from the date of removal.

(3) Any individual determined to have been involved in the sale, use, or possession of illegal drugs while within a protected area of any nuclear power plant must be removed from activities within the scope of this Part. The individual may not be granted unescorted access to protected areas or assigned to activities within the scope of this Part for a minimum of five years from the date of removal.

(4) Persons removed for periods of three years or more under the provisions of paragraphs (b) (2) and (3) of this section for the illegal sale, use or possession of drugs and who would have been removed under the current standards of a hiring licensee, may be granted unescorted access and assigned duties within the scope of this Part by a licensee subject to this Part only when the hiring licensee receives satisfactory medical assurance that the person has abstained from drugs for at least three years. Satisfactory management and medical assurance of the individual's fitness to adequately perform activities within the scope of this Part must be obtained before permitting the individual to perform activities within the scope of this Part. Any person granted unescorted access or whose access is reinstated under these provisions must be given unannounced follow-up tests at least once every month for four months and at least once every three months for the next two years and eight months after unescorted access is reinstated to verify continued abstinence from proscribed substances. Any confirmed use of drugs through this process or any other determination of subsequent involvement in the sale, use or possession of illegal substances must result in permanent denial of unescorted access.

(5) Paragraphs (b) (2), (3), and (4) of this section do not apply to alcohol, valid prescriptions, or over-the-counter drugs. Licensee sanctions for confirmed misuse of alcohol, valid prescription, and over-the-counter drugs shall be sufficient to deter abuse of legally obtainable substances as a substitute for abuse of proscribed drugs.

(c) Refusal to provide a specimen for testing and resignation prior to removal for violation of company fitness-for-duty policy concerning drugs must be

recorded as removals for cause. These records must be retained for the purpose of meeting the requirements of § 26.27(a).

(d) If a licensee has a reasonable belief that an NRC employee may be under the influence of any substance, or otherwise unfit for duty, the licensee may not deny access but shall escort the individual. In any instance of this occurrence, the appropriate Regional Administrator must be notified immediately by telephone. During other than normal working hours, the NRC Operations Center must be notified.

§ 26.28 Appeals.

Each licensee subject to this Part, and each contractor or vendor implementing a fitness-for-duty program under the provisions of § 26.23, shall establish a procedure for licensee and contractor or vendor employees to appeal a positive alcohol or drug determination. The procedure must provide notice and an opportunity to respond and may be an impartial internal management review. A licensee review procedure need not be provided to employees of contractors or vendors when the contractor or vendor is administering his own alcohol and drug testing.

§ 26.29 Protection of Information.

(a) Each licensee subject to this Part, who collects personal information on an individual for the purpose of complying with this Part, shall establish and maintain a system of files and procedures for the protection of the personal information. This system must be maintained until the Commission terminates each license for which the system was developed.

(b) Licensees, contractors, and vendors shall not disclose the personal information collected and maintained to persons other than assigned Medical Review Officers, other licensees or their authorized representatives legitimately seeking the information as required by this Part for unescorted access decisions and who have obtained a release from current or prospective employees or contractor personnel, NRC representatives, appropriate law enforcement officials under court order, the subject individual or his or her representative, or to those licensee representatives who have a need to have access to the information in performing assigned duties, including audits of licensee's, contractor's, and vendor's programs, to persons deciding matters on review or appeal, and to other persons pursuant to court order. This section does not authorize the licensee, contractor, or vendor to

withhold evidence of criminal conduct from law enforcement officials.

Inspections, Records, and Reports

§ 26.70 Inspections.

(a) Each licensee subject to this Part shall permit duly authorized representatives of the Commission to inspect, copy, or take away copies of its records and inspect its premises, activities, and personnel as may be necessary to accomplish the purposes of this Part.

(b) Written agreements between licensees and their contractors and vendors must clearly show that the—

(1) Licensee is responsible to the Commission for maintaining an effective fitness-for-duty program in accordance with this Part; and

(2) Duly authorized representatives of the Commission may inspect, copy, or take away copies of any licensee, contractor, or vendor's documents, records, and reports related to implementation of the licensee's, contractor's, or vendor's fitness-for-duty program under the scope of the contracted activities.

§ 26.71 Recordkeeping requirements.

Each licensee subject to this Part and each contractor and vendor implementing a licensee approved program under the provisions of § 26.23 shall—

(a) Retain records of inquiries conducted in accordance with § 26.27(a), that result in the granting of unescorted access to protected areas, until five years following termination of such access authorizations;

(b) Retain records of confirmed positive test results which are concurred in by the Medical Review Officer, and the related personnel actions for a period of at least five years;

(c) Retain records of persons made ineligible for three years or longer for assignment to activities within the scope of this Part under the provisions of § 26.27(b) (2), (3), (4) or (c), until the Commission terminates each license under which the records were created; and

(d) Collect and compile fitness-for-duty program performance data on a standard form and submit this data to the Commission within 60 days of the end of each 6 month reporting period (January-June and July-December). The data for each site (corporate and other support staff locations may be separately consolidated) shall include: random testing rate; drugs tested for and cut-off levels, including results of tests using lower cut-off levels and tests for other drugs; workforce populations tested; numbers of tests and results by

population and type of test (i.e., pre-badging, random, for-cause, etc.); substances identified; summary of management actions; and a list of events reported. The data must be analyzed and appropriate actions taken to correct program weaknesses. The data and analysis must be retained for three years.

§ 26.73 Reporting requirements.

(a) Each licensee subject to this Part shall inform the Commission of significant fitness-for-duty events including:

(1) Sale, use, or possession of illegal drugs within the protected area and,

(2) Any acts by any person licensed under 10 CFR Part 55 to operate a power reactor or by any supervisory personnel assigned to perform duties within the scope of this Part—

(i) Involving the sale, use, or possession of a controlled substance,

(ii) Resulting in confirmed positive tests on such persons,

(iii) Involving use of alcohol within the protected area, or

(iv) Resulting in a determination of unfitness for scheduled work due to the consumption of alcohol.

(b) Notifications must be made to the NRC Operations Center by telephone within 24 hours of the discovery of the event by the licensee.

(c) Fitness-for-duty events shall be reported under this section rather than reported under the provisions of § 73.71.

(d) By (insert date 180 days after the effective date of the final rule) each licensee shall certify to the NRC that it has implemented a fitness-for-duty program that meets the requirements of 10 CFR Part 26. The certification shall describe any licensee cut-off levels more stringent than those imposed by this Part.

Audits

§ 26.80 Audits.

(a) Each licensee subject to this Part shall audit the fitness-for-duty program nominally every 12 months. In addition, audits must be conducted, nominally every 12 months, of those portions of fitness-for-duty programs implemented by contractors and vendors. Licensees may accept audits of contractors and vendors conducted by other licensees and need not re-audit the same contractor or vendor for the same period of time. Each sharing utility shall maintain a copy of the audit report, to include findings, recommendations and corrective actions. Licensees retain responsibility for the effectiveness of contractor and vendor programs and the implementation of appropriate corrective action.

(b) Audits must focus on the effectiveness of the program and be conducted by individuals qualified in the subject(s) being audited, and independent of both fitness-for-duty program management and personnel directly responsible for implementation of the fitness-for-duty program.

(c) The result of the audit, along with recommendations, if any, must be documented and reported to senior corporate and site management. The resolution of the audit findings and corrective actions must be documented. These documents must be retained for three years. NRC Guidelines require licensee audits of HHS-certified laboratories as described in Appendix A.

Enforcement

§ 26.90 Violations.

(a) An injunction or other court order may be obtained to prohibit a violation of any provision of—

(1) The Atomic Energy Act of 1954, as amended;

(2) Title II of the Energy Reorganization Act of 1974; or

(3) Any regulation or order issued under these Acts.

(b) A court order may be obtained for the payment of a civil penalty imposed under section 234 of the Atomic Energy Act of 1954, for violations of—

(1) Section 53, 57, 62, 63, 81, 82, 101, 103, 104, 107, or 109 of the Act;

(2) Section 206 of the Energy Reorganization Act of 1974;

(3) Any rule, regulation, or order issued under these Sections;

(4) Any term, condition, or limitation of any license issued under these Sections; or

(5) Any provisions for which a license may be revoked under section 186 of the Atomic Energy Act of 1954.

(c) Any person who willfully violates any provision of the Atomic Energy Act of 1954, as amended, or any regulation or order issued under the requirements of the Act, include regulations under this Part, may be guilty of a crime and, upon conviction, may be punished by fine or imprisonment or both, as provided by law.

Appendix A—Guidelines for Nuclear Power Plant Drug and Alcohol Testing Programs

Subpart A—General

- 1.1 Applicability
- 1.2 Definitions

Subpart B—Scientific and Technical Requirements

- 2.1 The Substances
- 2.2 General Administration of Testing

- 2.3 Preventing Subversion of Testing
- 2.4 Specimen Collection Procedures
- 2.5 HHS-Certified Laboratory Personnel
- 2.6 Licensee Testing Facility Personnel
- 2.7 Laboratory and Testing Facility Analysis Procedures
- 2.8 Quality Assurance and Quality Control
- 2.9 Reporting and Review of Results

Subpart C—Employee Protection

- 3.1 Protection of Employee Records
- 3.2 Individual Access to Test and Laboratory Certification Results

Subpart D—Certification of Laboratories Engaged in Chemical Testing

- 4.1 Use of DHHS-Certified Laboratories

Subpart A—General

- 1.1 Applicability.

(1) These guidelines apply to licensees authorized to operate nuclear power reactors.

(2) Licensees may set more stringent cut-off levels than specified herein or test for substances other than specified herein and shall inform the Commission of such deviation within 60 days of implementing such change. Licensees may not deviate from the provisions of these guidelines without the written approval of the Commission.

(3) Only laboratories which are HHS-certified are authorized to perform urine drug testing for NRC licensees, vendors, and licensee contractors.

- 1.2 Definitions.

For the purposes of this part, the following definitions apply:

"Aliquot." A portion of a specimen used for testing.

"BAC." Blood alcohol concentration (BAC), which can be measured directly from blood or derived from a measure of the concentration of alcohol in a breath specimen, is a measure of the mass of alcohol in a volume of blood such that an individual with 100 mg of alcohol per 100 ml of blood has a BAC of 0.10 percent.

"Commission." The U.S. Nuclear Regulatory Commission or its duly authorized representatives.

"Chain-of-custody." Procedures to account for the integrity of each specimen by tracking its handling and storage from the point of specimen collection to final disposition of the specimen.

"Collection site." A place designated by the licensee where individuals present themselves for the purpose of providing a specimen of their urine, breath, and/or blood to be analyzed for the presence of drugs or alcohol.

"Collection site person." A person who instructs and assists individuals at a collection site and who receives and makes an initial examination of the specimen(s) provided by those individuals. A collection site person shall have successfully completed training to carry out this function or shall be a licensed medical professional or technician who is provided instructions for collection under this part and certifies completion as required herein. In any case where: (a) a collection is observed or (b) collection is monitored by nonmedical personnel, the collection site person must be a person of the same gender as the donor.

"Confirmatory test." A second analytical procedure to identify the presence of a specific drug or drug metabolite which is independent of the initial screening test and which uses a different technique and chemical principle from that of the initial test in order to ensure reliability and accuracy. (At this time gas chromatography/mass spectrometry [GC/MS] is the only authorized confirmation method for cocaine, marijuana, opiates, amphetamines, phencyclidine). For determining blood alcohol levels, a "confirmatory test" means a second test using another breath alcohol analysis device. Further confirmation upon demand will be by gas chromatography analysis of blood.

"Confirmed positive test." The result of a confirmatory test that has established the presence of drugs, drug metabolites, or alcohol in a specimen at or above the cut-off level, and that has been deemed positive by the Medical Review Officer (MRO) after evaluation. A "confirmed positive test" for alcohol can also be obtained as a result of a confirmation of blood alcohol levels with a second breath analysis without MRO evaluation.

"HHS-certified laboratory." A urine and blood testing laboratory that maintains certification to perform drug testing under the Department of Health and Human Services (HHS) "Mandatory Guidelines for Federal Workplace Drug Testing Programs" (53 FR 11970).

"Illegal drugs." Those drugs included in Schedules I through V of the Controlled Substances Act (CSA), but not when used pursuant to a valid prescription or when used as otherwise authorized by law.

"Initial or screening test." An immunoassay screen for drugs or drug metabolites to eliminate "negative" urine specimens from further consideration or the first breathalyzer test for alcohol.

"Licensee's testing facility." A drug testing facility operated by the licensee or one of its vendors or contractors to perform the initial testing of urine samples and to perform initial breath tests for alcohol. Such a testing facility is optional and not required to maintain HHS certification under this part.

"Medical Review Officer." A licensed physician responsible for receiving laboratory results generated by an employer's drug testing program who has knowledge of substance abuse disorders and has appropriate medical training to interpret and evaluate an individual's positive test result together with his or her medical history and any other relevant biomedical information.

"Permanent record book." A permanently bound book in which identifying data on each specimen collected at a collection site are permanently recorded in the sequence of collection.

"Reason to believe." Reason to believe that a particular individual may alter or substitute the urine specimen.

"Split sample." A portion of a urine specimen that may be stored by the licensee to be tested in the event of appeal.

Subpart B—Scientific and Technical Requirements

- 2.1 The Substances.

(a) Licensees shall, as a minimum, test for marijuana, cocaine, opiates, amphetamines, phencyclidine, and alcohol for pre-access, for-cause, random, and follow-up tests.

(b) Licensees may test for any illegal drugs during a for-cause test, or analysis of any specimen suspected of being adulterated or diluted through hydration or other means.

(c) Licensees shall establish rigorous testing procedures that are consistent with the intent of these guidelines for any other drugs not specified in these guidelines for which testing is authorized under 10 CFR 28, so that the appropriateness of the use of these substances can be evaluated by the Medical Review Officer to ensure that individuals granted unescorted access are fit for maintaining access to and for performing duties in protected areas.

(d) Specimens collected under NRC regulations requiring compliance with this part may only be designated or approved for testing as described in this part and shall not be used to conduct any other analysis or test without the permission of the tested individual.

(e) This section does not prohibit procedures reasonably incident to analysis of a specimen for controlled substances (e.g., determination of pH on tests for specific gravity, creatinine concentration, or presence of adulterants).

- 2.2 General Administration of Testing.

The licensee testing facilities and HHS-certified laboratories described in this part shall develop and maintain clear and well-documented procedures for collection, shipment, and accession of urine and blood specimens under this part. Such procedures shall include, as a minimum, the following:

(a) Use of a chain-of-custody form. The original shall accompany the specimen to the HHS-certified laboratory. A copy shall accompany any split sample. The form shall be a permanent record on which is retained identity data (or codes) on the employee and information on the specimen collection process and transfers of custody of the specimen.

(b) Use of a tamperevident sealing system designed in a manner such that the specimen container top can be sealed against undetected opening, the container can be identified with a unique identifying number identical to that appearing on the chain-of-custody form, and space has been provided to initial the container affirming its identity. For purposes of clarity, this requirement assumes use of a system made up of one or more pre-printed labels and seals (or a unitary label/seal), but use of other, equally effective technologies is authorized.

(c) Use of a shipping container in which one or more specimens and associated paperwork may be transferred and which can be sealed and initialed to prevent undetected tampering.

(d) Written procedures, instructions, and training shall be provided as follows:

(1) Licensee collection site procedures and training of collection site personnel shall

clearly emphasize that the collection site person is responsible for maintaining the integrity of the specimen collection and transfer process, carefully ensuring the modesty and privacy of the individual tested, and is to avoid any conduct or remarks that might be construed as accusatorial or otherwise offensive or inappropriate.

(2) A non-medical collection site person shall receive training in compliance with this appendix and shall demonstrate proficiency in the application of this appendix prior to serving as a collection site person. A medical professional, technologist, or technician licensed or otherwise approved to practice in the jurisdiction in which collection occurs may serve as a collection site person if that person is provided the instructions described in 2.2(3) and performs collections in accordance with those instructions.

(3) Collection site persons shall be provided with detailed, clearly-illustrated, written instructions on the collection of specimens in compliance with this part. Individuals subject to testing shall also be provided standard written instructions setting forth their responsibilities.

(4) The option to provide a blood specimen for confirmatory analysis following a positive breath test shall be specified in the written instructions provided to individuals tested. The instructions shall also state that failure to request a confirmatory blood test indicates that the individual accepts the breath test results.

- 2.3 Preventing Subversion of Testing.

Licensees shall carefully select and monitor persons responsible for administering the testing program (e.g., collection site persons, laboratory technicians, specimen couriers, and those selecting and notifying personnel to be tested), based upon the highest standards for honesty and integrity, and shall implement measures to ensure that these standards are maintained. As a minimum, these measures shall ensure that the integrity of such persons is not compromised or subject to efforts to compromise due to personal relationships with any individuals subject to testing.

As a minimum:

(1) Supervisors, co-workers, and relatives of the individual being tested shall not perform any collection, assessment, or evaluation procedures.

(2) Appropriate background checks and psychological evaluations shall be completed prior to assignment of any tasks associated with the administration of the program, and shall be conducted at least once every three years.

(3) Persons responsible for administering the testing program shall be subjected to a behavioral observation program designed to assure that they continue to meet the highest standards for honesty and integrity.

- 2.4 Specimen Collection Procedures.

(a) "Designation of Collection Site." Each drug testing program shall have one or more designated collection sites which have all necessary personnel, materials, equipment, facilities, and supervision to provide for the collection, security, temporary storage, and shipping or transportation of urine or blood specimens to a drug testing laboratory. A

properly equipped mobile facility that meets the requirements of this part is an acceptable collection site.

(b) "Collection Site Person." A collection site person shall have successfully completed training to carry out this function. In any case where the collection of urine is observed, the collection site person must be a person of the same gender as the donor. Persons drawing blood shall be qualified to perform that task.

(c) "Security." The purpose of this paragraph is to prevent unauthorized access which could compromise the integrity of the collection process or the specimen. Security procedures shall provide for the designated collection site to be secure. If a collection site facility cannot be dedicated solely to drug and alcohol testing, the portion of the facility used for testing shall be secured during that testing.

(1) A facility normally used for other purposes, such as a public rest room or hospital examining room, may be secured by visual inspection to ensure other persons are not present, and that undetected access (e.g., through a rear door not in the view of the collection site person) is impossible. Security during collection may be maintained by effective restriction of access to collection materials and specimens. In the case of a public rest room, the facility must be posted against access during the entire collection procedure to avoid embarrassment to the individual or distraction of the collection site person.

(2) If it is impractical to maintain continuous physical security of a collection site from the time the specimen is presented until the sealed container is transferred for shipment, the following minimum procedures shall apply: The specimen shall remain under the direct control of the collection site person from delivery to its being sealed in a mailer or secured for shipment. The mailer shall be immediately mailed, maintained in secure storage, or remain until mailed under the personal control of the collection site person. These minimum procedures shall apply to the mailing of specimens to licensee testing facilities from collection sites (except where co-located) as well as to the mailing of specimens to HHS-certified laboratories. As an option, licensees may ship several specimens via courier in a locked or sealed shipping container.

(d) "Chain-of-Custody." Licensee chain-of-custody forms shall be properly executed by authorized collection site personnel upon receipt of specimens. Handling and transportation of urine and blood specimens from one authorized individual or place to another shall always be accomplished through chain-of-custody procedures. Every effort shall be made to minimize the number of persons handling the specimens.

(e) "Access to Authorized Personnel Only." No unauthorized personnel shall be permitted in any part of the designated collection site where specimens are collected or stored. Only the collection site person may handle specimens prior to their securement in the mailing or shipping container or monitor or observe specimen collection (under the conditions specified in this part). In order to promote security of specimens, avoid distraction of the collection site person, and

ensure against any confusion in the identification of specimens, a collection site person shall conduct only one collection procedure at any given time. For this purpose, a collection procedure is complete when the specimen container has been sealed and initialed, the chain-of-custody form has been executed, and the individual has departed the collection site.

(f) "Privacy." Procedures for collecting urine specimens shall allow individual privacy unless there is reason to believe that a particular individual may alter or substitute the specimen to be provided. For purposes of this appendix the following circumstances are the exclusive grounds constituting a reason to believe that the individual may alter or substitute a urine specimen:

(1) The individual has presented a urine specimen that falls outside the normal temperature range, and the individual declines to provide a measurement of oral body temperature by sterile thermometer, as provided in paragraph (g)(14) of this appendix, or the oral temperature does not equal or exceed that of the specimen.

(2) The last urine specimen provided by the individual (i.e., on a previous occasion) was determined by the laboratory to have a specific gravity of less than 1.003 or a creatinine concentration below .2 g/L.

(3) The collection site person observes conduct clearly and unequivocally indicating an attempt to substitute or adulterate the sample (e.g., substitute urine in plain view, blue dye in specimen presented, etc.).

(4) The individual has previously been determined to have used a substance inappropriately or without medical authorization and the particular test is being conducted as a part of a rehabilitation program or on return to service after evaluation and/or treatment for a confirmed positive test result.

(g) "Integrity and Identity of Specimens." Licensees shall take precautions to ensure that a urine specimen is not adulterated or diluted during the collection procedure, that a blood sample or breath exhalant tube cannot be substituted or tampered with, and that the information on the specimen container and in the record book can identify the individual from whom the specimen was collected. The following minimum precautions shall be taken to ensure that authentic specimens are obtained and correctly identified:

(1) To deter the dilution of urine specimens at the collection site, toilet bluing agents shall be placed in toilet tanks wherever possible, so the reservoir of water in the toilet bowl always remains blue. There shall be no other source of water (e.g., no shower or sink) in the enclosure where urination occurs. If there is another source of water in the enclosure, it shall be effectively secured or monitored to ensure it is not used (undetected) as a source for diluting the specimen.

(2) When an individual arrives at the collection site for a urine or breath test, the collection site person shall ensure that the individual is positively identified as the person selected for testing (e.g., through presentation of photo identification or identification by the employer's representative). If the individual's identity

cannot be established, the collection site person shall not proceed with the collection.

(3) If the individual fails to arrive for a urine or breath test at the assigned time, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(4) After the individual has been positively identified, the collection site person shall ask the individual to sign a consent-to-testing form and to list all of the prescription medications and over-the-counter preparations that he or she can remember using within the past 30 days.

(5) The collection site person shall ask the individual to remove any unnecessary outer garments such as a coat or jacket that might conceal items or substances that could be used to tamper with or adulterate the individual's urine, breath, or blood specimen. The collection site person shall ensure that all personal belongings such as a purse or briefcase remain with the outer garments outside of the room in which the blood, breath, or urine sample is collected. The individual may retain his or her wallet.

(6) The individual shall be instructed to wash and dry his or her hands prior to urination.

(7) After washing hands prior to urination, the individual shall remain in the presence of the collection site person and shall not have access to any water fountain, faucet, soap dispenser, cleaning agent or any other materials which could be used to adulterate the urine specimen.

(8) The individual may provide his/her urine specimen in the privacy of a stall or otherwise partitioned areas that allows for individual privacy.

(9) The collection site person shall note any unusual behavior or appearance in the permanent record book and on the chain-of-custody form.

(10) In the exceptional event that a designated collection site is inaccessible and there is an immediate requirement for urine specimen collection (e.g., an accident investigation), a public or on-site rest room may be used according to the following procedures. A collection site person of the same gender as the individual shall accompany the individual into the rest room which shall be made secure during the collection procedure. If possible, a toilet bluing agent shall be placed in the bowl and any accessible toilet tank. The collection site person shall remain in the rest room, but outside the stall, until the specimen is collected. If no bluing agent is available to deter specimen dilution, the collection site person shall instruct the individual not to flush the toilet until the specimen is delivered to the collection site person. After the collection site person has possession of the specimen, the individual will be instructed to flush the toilet and to participate with the collection site person in completing the chain-of-custody procedures.

(11) Upon receiving a urine specimen from the individual, the collection site person shall determine that it contains at least 60 milliliters of urine. If there is less than 60 milliliters of urine in the container, additional urine shall be collected in a separate container to reach a total of 60 milliliters.

(The temperature of the partial specimen in each separate container shall be measured in accordance with paragraph (f)(13) of this section, and the partial specimens shall be combined in one container.) The individual may be given a reasonable amount of liquid to drink for this purpose (e.g., a glass of water). If the individual fails for any reason to provide 60 milliliters of urine, the collection site person shall contact the appropriate authority to obtain guidance on the action to be taken.

(12) After the urine specimen has been provided and submitted to the collection site person, the individual shall be allowed to wash his or her hands.

(13) Immediately after the urine specimen is collected, the collection site person shall measure the temperature of the specimen. The temperature measuring device used must accurately reflect the temperature of the specimen and not contaminate the specimen. The time from urination to temperature measurement is critical and in no case shall exceed 4 minutes.

(14) If the temperature of a urine specimen is outside the range of 32.5°–37.7 °C/90.5°–99.8 °F, that is a reason to believe that the individual may have altered or substituted the specimen, and another specimen shall be collected under direct observation of a same gender collection site person and both specimens shall be forwarded to the laboratory for testing. An individual may volunteer to have his or her oral temperature taken to provide evidence to counter the reason to believe the individual may have altered or substituted the specimen caused by the specimen's temperature falling outside the prescribed range.

(15) Immediately after a urine specimen is collected, the collection site person shall also inspect the specimen to determine its color and look for any signs of contaminants. Any unusual findings shall be noted in the permanent record book.

(16) All urine specimens suspected of being adulterated or found to be diluted shall be forwarded to the laboratory for testing.

(17) Whenever there is reason to believe that a particular individual may alter or substitute the urine specimen to be provided, a second specimen shall be obtained as soon as possible under the direct observation of a same gender collection site person. Where appropriate, measures will be taken to prevent additional hydration.

(18) Alcohol breath tests shall be delayed at least 15 minutes if any source of mouth alcohol (e.g., breath fresheners) or any other substances are ingested (e.g., eating, smoking, regurgitation of stomach contents from vomiting or burping). The collection site person shall ensure that each breath specimen taken comes from the end, rather than the beginning, of the breath expiration. For each screening test, two breath specimens shall be collected from each individual no less than two minutes apart and no more than 10 minutes apart. The test results shall be considered accurate if the result of each measurement is within plus or minus 10 percent of the average of the two measurements. If the two tests do not agree, the breath tests shall be repeated on another evidential-grade breath analysis device.

Confirmatory testing is accomplished by repeating the above procedure on another evidential-grade breath analysis device.

(19) If the alcohol breath tests indicate that the individual is positive for a BAC at or above the 0.04 percent cut-off level, the individual may request a confirmatory blood test, at his or her discretion. All vacuum tube and needle assemblies used for blood collection shall be factory-sterilized. The collection site person shall ensure that they remain properly sealed until used. Antiseptic swabbing of the skin shall be performed with a nonethanol antiseptic. Sterile procedures shall be followed when drawing blood and transferring the blood to a storage container; in addition, the container must be sterile and sealed.

(20) Both the individual being tested and the collection site person shall keep urine and blood specimens in view at all times prior to their being sealed and labeled. If a urine specimen is split (as described in Section 2.7(j)) and if any specimen is transferred to a second container, the collection site person shall request the individual to observe the splitting of the urine sample or the transfer of the specimen and the placement of the tamperevident seal over the container caps and down the sides of the containers.

(21) The collection site person and the individual shall be present at the same time during procedures outlined in paragraphs (h) through (j) of this section.

(22) The collection site person shall place securely on each container an identification label which contains the date, the individual's specimen number, and any other identification information provided or required by the drug testing program. If separate from the labels, the tamperevident seals shall also be applied.

(23) The individual shall initial the identification labels on the specimen containers for the purpose of certifying that it is the specimen collected from him or her.

(i) The individual shall be asked to read and sign a statement on either the chain-of-custody form or in the permanent record book certifying that the specimens identified as having been collected from him or her are in fact the specimen he or she provided.

(ii) The individual shall be provided an opportunity to set forth on the urine chain-of-custody form information concerning medications taken or administered in the past 30 days.

(24) The collection site person shall enter in the permanent record book all information identifying the specimens. The collection site person shall sign the permanent record book next to this identifying information.

(25) A higher level supervisor in the drug testing program shall review and concur in advance with any decision by a collection site person to obtain a urine specimen under the direct observation of a same gender collection site person based on a reason to believe that the individual may alter or substitute the specimen to be provided.

(26) The collection site person shall complete the chain-of-custody forms for both the aliquot and the split sample, if collected, and shall certify proper completion of the collection.

(27) The specimens and chain-of-custody forms are now ready for transfer to the laboratory or the licensee's testing facility. If the specimens are not immediately prepared for shipment, they shall be appropriately safeguarded during temporary storage.

(28) While any part of the above chain-of-custody procedures is being performed, it is essential that the specimens and custody documents be under the control of the involved collection site person. The collection site person shall not leave the collection site in the interval between presentation of the specimen by the individual and securement of the samples with identifying labels bearing the individual's specimen identification numbers and seals initiated by the individual. If the involved collection site person leaves his or her work station momentarily, the specimens and chain-of-custody forms shall be taken with him or her or shall be secured. If the collection site person is leaving for an extended period of time, the specimens shall be packaged for transfer to the laboratory before he or she leaves the site.

(h) "Collection Control." To the maximum extent possible, collection site personnel shall keep the individual's specimen containers within sight both before and after the individual has urinated or provided a breath or blood sample. After the specimen is collected and whenever urine specimens are split, they shall be properly sealed and labeled. A chain-of-custody form shall be used for maintaining control and accountability of each specimen from the point of collection to final disposition of the specimen. The date and purpose shall be documented on the chain-of-custody form each time a specimen is handled or transferred, and every individual in the chain of custody shall be identified. Every effort shall be made to minimize the number of persons handling specimens.

(i) "Transportation to Laboratory or Testing Facility." Collection site personnel shall arrange to transfer the collected specimens to the drug testing laboratory or licensee testing facility. To transfer specimens off-site for initial screening and for a second screen and confirmatory analysis of presumptive positive specimens and for transferring suspect specimens to a laboratory for analysis under special processing [Section 2.7(d)], the specimens shall be placed in containers designed to minimize the possibility of damage during shipment (e.g., specimen boxes, padded mailers, or bulk shipping containers with that capability) and those containers shall be securely sealed to eliminate the possibility of undetected tampering. On the tape sealing the container, the collection site person shall sign and enter the date specimens were sealed in the containers for shipment. The collection site personnel shall ensure that the chain-of-custody documentation is attached to each container sealed for shipment to the drug testing laboratory.

(j) "Failure to Cooperate." If the individual refuses to cooperate with the urine collection or breath analysis process (e.g., refusal to provide a complete specimen, complete paperwork, initial specimen), then the collection site person shall inform the

Medical Review Officer and shall document the non-cooperation in the permanent record book and on the specimen custody and control form. The Medical Review Officer shall report the failure to cooperate to the appropriate management. The provision of blood specimens for use to confirm a positive breath test for alcohol shall be entirely voluntary, at the individual's discretion. In the absence of a voluntary blood test the second positive breath test shall be considered a confirmed positive.

2.5. HHS-certified Laboratory Personnel.

(a) "Day-to-Day Management of the HHS-certified Laboratories."

(1) The HHS-certified laboratory shall have a qualified individual to assume professional, organizational, educational, and administrative responsibility for the laboratories' drug testing facilities.

(2) This individual shall have documented scientific qualifications in analytical forensic toxicology. Minimum qualifications are:

(i) Certification as a laboratory director by the appropriate State in forensic or clinical laboratory toxicology; or

(ii) A Ph.D. in one of the natural sciences with an adequate undergraduate and graduate education in biology, chemistry, and pharmacology or toxicology; or

(iii) Training and experience comparable to a Ph.D. in one of the natural sciences, such as a medical or scientific degree with additional training and laboratory/research experience in biology, chemistry, and pharmacology or toxicology; and

(iv) In addition to the requirements in (i), (ii), and (iii) above, minimum qualifications also require:

(A) Appropriate experience in analytical forensic toxicology including experience with the analysis of biological material for drugs of abuse; and

(B) Appropriate training and/or experience in forensic applications of analytical toxicology, e.g., publications, court testimony, research concerning analytical toxicology of drugs of abuse, or other factors which qualify the individual as an expert witness in forensic toxicology.

(3) This individual shall be engaged in and responsible for the day-to-day management of the testing laboratory even where another individual has overall responsibility for an entire multispecialty laboratory.

(4) This individual shall be responsible for ensuring that there are enough personnel with adequate training and experience to supervise and conduct the work of their testing laboratories. He or she shall assure the continued competency of laboratory personnel by documenting their inservice training, reviewing their work performance, and verifying their skills.

(5) This individual shall be responsible for the laboratory's having a procedure manual which is complete, up-to-date, available for personnel performing tests, and followed by those personnel. The procedure manual shall be reviewed, signed, and dated by this responsible individual whenever procedures are first placed into use or changed or when a new individual assumes responsibility for management of the laboratory. Copies of all procedures and dates on which they are in effect shall be maintained. (Specific contents

of the procedure manual are described in Section 2.7(f) of this appendix).

(6) This individual shall be responsible for maintaining a quality assurance program to assure the proper performance and reporting of all test results; for maintaining acceptable analytical performance for all controls and standards; for maintaining quality control testing; and for assuring and documenting the validity, reliability, accuracy, precision, and performance characteristics of each test and test system.

(7) This individual shall be responsible for taking all remedial actions necessary to maintain satisfactory operation and performance of the laboratory in response to quality control systems not being within performance specifications, errors in result reporting or in analysis of performance testing results. This individual shall ensure that test results are not reported until all corrective actions have been taken and he or she can assure that the test results provided are accurate and reliable.

(b) "Test Validation." The laboratory's urine drug testing facility shall have a qualified individual(s) who reviews all pertinent data and quality control results in order to attest to the validity of the laboratory's test reports. A laboratory may designate more than one person to perform this function. This individual(s) may be any employee who is qualified to be responsible for day-to-day management or operation of the drug testing laboratory.

(c) "Day-to-Day Operations and Supervision of Analysts." The laboratory's urine drug testing facility shall have an individual to be responsible for day-to-day operations and to supervise the technical analysts. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the laboratory, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; maintenance of chain-of-custody; and proper remedial actions to be taken in response to test systems being out of control limits or detecting aberrant test or quality control results.

(d) "Other Personnel." Other technicians or nontechnical staff shall have the necessary training and skills for the tasks assigned.

(e) "Training." The laboratory's testing program shall make available continuing education programs to meet the needs of laboratory personnel.

(f) "Files." Laboratory personnel files shall include: résumé of training and experience; certification or license, if any; references; job descriptions; records of performance evaluation and advancement; incident reports; and results of tests which establish employee competency for the position he or she holds, such as a test for color blindness, if appropriate.

2.6. Licensee Testing Facility Personnel.

(a) "Day-to-Day Management of Operations." Any licensee testing facility shall have an individual to be responsible for day-to-day operations and to supervise the

testing technicians. This individual(s) shall have at least a bachelor's degree in the chemical or biological sciences or medical technology or equivalent. He or she shall have training and experience in the theory and practice of the procedures used in the licensee testing facility, resulting in his or her thorough understanding of quality control practices and procedures; the review, interpretation, and reporting of test results; and proper remedial actions to be taken in response to detecting aberrant test or quality control results.

(b) "Other Personnel." Other technicians or nontechnical staff shall have the necessary training and skills for the tasks assigned.

(c) "Files." Licensees' testing facility personnel files shall include: résumé of training and experience; certification or license, if any; references; job descriptions; records of performance evaluation and advancement; incident reports; results of tests which establish employee competency for the position he or she holds, such as a test for color blindness, if appropriate and appropriate date to support determinations of honesty and integrity conducted in accordance with Section 2.3 of this appendix.

2.7 Laboratory and Testing Facility Analysis Procedures.

(a) "Security and Chain-of-Custody."

(1) HHS-certified drug testing laboratories and any licensee testing facility shall be secure at all times. They shall have in place sufficient security measures to control access to the premises and to ensure that no unauthorized personnel handle specimens or gain access to the laboratory processes or to areas where records and split samples are stored. Access to these secured areas shall be limited to specifically authorized individuals whose authorization is documented. All authorized visitors and maintenance and service personnel shall be escorted at all times in the HHS-certified laboratory and in the licensee's testing facility. Documentation of individuals accessing these areas, dates, and times of entry and purpose of entry must be maintained.

(2) Laboratories and testing facilities shall use chain-of-custody procedures to maintain control and accountability of specimens from receipt through completion of testing, reporting of results, during storage, and continuing until final disposition of specimens. The date and purpose shall be documented on an appropriate chain-of-custody form each time a specimen is handled or transferred, and every individual in the chain shall be identified. Accordingly, authorized technicians shall be responsible for each urine specimen or aliquot in their possession and shall sign and complete chain-of-custody forms for those specimens or aliquots as they are received.

(b) "Receiving."

(1) When a shipment of specimens is received, laboratory and licensee's testing facility personnel shall inspect each package for evidence of possible tampering and compare information on specimen containers within each package to the information on the accompanying chain-of-custody forms. Any direct evidence of tampering or discrepancies in the information on specimen containers and the licensee's chain-of-

custody forms attached to the shipment shall be reported within 24 hours to the licensee, in the case of HHS-certified laboratories, and shall be noted on the laboratory's chain-of-custody form which shall accompany the specimens while they are in the laboratory's possession. Indications of tampering with specimens at a testing facility operated by a licensee shall be reported within 8 hours to senior licensee management.

(2) Specimen containers will normally be retained within the laboratory's or testing facility's accession area until all analyses have been completed. Aliquots and the chain-of-custody forms shall be used by laboratory or testing facility personnel for conducting initial and confirmatory tests, as appropriate.

(c) "Short-Term Refrigerated Storage." Specimens that do not receive an initial test within 7 days of arrival at the laboratory or are not shipped within 8 hours from the licensee's testing facility and any retained split samples shall be placed in secure refrigeration units. Temperatures shall not exceed 6 °C. Emergency power equipment shall be available in case of prolonged power failure.

(d) "Specimen Processing." Urine specimens identified as presumptive positive by a licensee's testing facility shall be shipped to an HHS-certified laboratory for testing. Laboratory facilities for drug testing will normally process urine specimens by grouping them into batches. The number of specimens in each batch may vary significantly depending on the size of the laboratory and its workload. When conducting either initial or confirmatory tests at either the licensee's testing facility or an HHS-certified laboratory, every batch shall contain an appropriate number of standards for calibrating the instrumentation and a minimum of 10 percent controls. Both quality control and blind performance test samples shall appear as ordinary samples to laboratory analysts. Special processing may be conducted to analyze specimens suspected of being adulterated or diluted (including hydration). Any evidence of adulteration or dilution, and any detected trace amounts of drugs or metabolites, shall be reported to the Medical Review Officer.

(e) "Preliminary Initial Test."

(1) For the analysis of urine specimens, any preliminary test performed by a licensee's testing facility and the initial screening test performed by a HHS-certified laboratory shall use an immunoassay which meets the requirements of the Food and Drug Administration for commercial distribution. The initial test of breath for alcohol performed at the collection site shall use a breath measurement device which meets the requirements of Section 2.7(o)(3). The following initial cut-off levels shall be used when screening specimens to determine whether they are negative for the indicated substances:

Initial test cut-off level (ng/ml)	
Marijuana metabolites.....	100
Cocaine metabolites.....	300
Opiate metabolites.....	300*
Phencyclidine.....	25
Amphetamines.....	1,000
Alcohol.....	0.04% BAC

*25 ng/ml is immunoassay specific for free morphine.

In addition, licensees may specify more stringent cutoff levels. Results shall be reported for both levels in such cases.

(2) The list of substances to be tested and the cut-off levels are subject to change by the NRC in response to industry experience and changes to the HHS Guidelines made by the Department of Health and Human Services as advances in technology, additional experience, or other considerations warrant the inclusion of additional substances and other concentration levels.

(f) "Confirmatory Test."

(1) Specimens which test negative as a result of this second screening shall be reported as negative to the licensee and will not be subject to any further testing unless special processing of the specimen is desired because adulteration or dilution is suspected.

(2) All urine samples identified as presumptive positive on the screening test performed by a HHS-certified laboratory shall be confirmed using gas chromatography/mass spectrometry (GC/MS) techniques at the cut-off values listed in this paragraph for each drug, and at the cut-off values required by the licensee's unique program, where differences exist. All confirmations shall be by quantitative analysis. Concentrations which exceed the linear region of the standard curve shall be documented in the laboratory record as "greater than highest standard curve value."

Confirmatory test cut-off level (ng/ml)

Marijuana metabolite.....	15*
Cocaine metabolite.....	150**
Opiates:	
Morphine.....	300
Codeine.....	300
Phencyclidine.....	25
Amphetamines:	
Amphetamine.....	500
Methamphetamine.....	500
Alcohol.....	0.04% BAC
*Delta-9-tetrahydrocannabinol-9-carboxylic acid.	
**Benzoylcegonine.	

In addition, licensees may specify more stringent cut-off levels. Results shall be reported for both levels in such cases.

(3) The analytic procedure for confirmatory analysis of blood specimens voluntarily provided by individuals testing positive for alcohol on a breath test shall be gas chromatography analysis.

(4) The list of substances to be tested and the cut-off levels are subject to change by the NRC in response to industry experience and changes to the HHS Guidelines made by the Department of Health and Human Services as advances in technology, additional experience, or other considerations warrant the inclusion of additional substances and other concentration levels.

(5) Confirmatory tests for opiates shall include a test for 6-monooacetylmorphine (MAM) if the screening test is presumptive positive for morphine.

(g) "Reporting Results."

(1) The HHS-certified laboratory shall report test results to the licensee's Medical Review Officer within 5 working days after

receipt of the specimen by the laboratory. Before any test result is reported (the results of initial tests, confirmatory tests, or quality control data), it shall be reviewed and the test certified as an accurate report by the responsible individual at the laboratory. The report shall identify the substances tested for, whether positive or negative, the cut-off(s) for each, the specimen number assigned by the licensee, and the drug testing laboratory specimen identification number. The results (positive and negative) for all specimens submitted at the same time to the laboratory shall be reported back to the Medical Review Officer at the same time when possible.

(2) The HHS-certified laboratory and any licensee testing facility shall report as negative all specimens, except suspect specimens being analyzed under special processing, which are negative on the initial test or negative on the confirmatory test. Specimens testing positive on the confirmatory analysis shall be reported positive for a specific substance. Presumptive positive results of preliminary testing at the licensee's testing facility will not be reported to licensee management.

(3) The Medical Review Officer may routinely obtain from the HHS-certified laboratory, and the laboratory shall provide, quantitation of test results. The Medical Review Officer may only disclose quantitation of test results for an individual to licensee management, if required in an appeals process, or to the individual under the provisions of Section 3.2. (This does not preclude the provision of program performance data under the provisions of 10 CFR 26.71(d).) Quantitation of negative tests for urine specimens shall not be disclosed, except where deemed appropriate by the Medical Review Officer for proper disposition of the results of tests of suspect specimens. Alcohol quantitation for a blood specimen shall be provided to licensee management with the Medical Review Officer's evaluation.

(4) The laboratory may transmit results to the Medical Review Officer by various electronic means (e.g., teleprinters, facsimile, or computer) in a manner designed to ensure confidentiality of the information. Results may not be provided verbally by telephone from HHS-certified laboratory personnel to the Medical Review Officer. The HHS-certified laboratory must ensure the security of the data transmission and limit access to any data transmission, storage, and retrieval system.

(5) The laboratory shall send only to the Medical Review Officer a certified copy of the original chain-of-custody form signed by the individual responsible for day-to-day management of the drug testing laboratory or the individual responsible for attesting to the validity of the test reports and attached to which shall be a copy of the test report.

(6) The HHS-certified laboratory and the licensee's testing facility shall provide to the licensee official responsible for coordination of the fitness-for-duty program a monthly statistical summary of urinalysis and blood testing and shall not include in the summary any personal identifying information. Initial test data from the licensee's testing facility and the HHS-certified laboratory, and

confirmation data from HHS-certified laboratories shall be included for test results reported within that month. Normally this summary shall be forwarded from HHS-certified laboratories by registered or certified mail and from the licensee's testing facility not more than 14 calendar days after the end of the month covered by the summary. The summary shall contain the following information:

(i) Initial Testing:

(A) Number of specimens received;
(B) Number of specimens reported out; and
(C) Number of specimens screened positive for:

Marijuana metabolites
Cocaine metabolites
Opiate metabolites
Phencyclidine
Amphetamines
Alcohol

(ii) Confirmatory Testing:

(A) Number of specimens received for confirmation;
(B) Number of specimens confirmed positive for:

Marijuana metabolite
Cocaine metabolite
Morphine, codeine
Phencyclidine
Amphetamine
Methamphetamine
Alcohol

(7) The statistics shall be presented for both the cut-off levels in these guidelines and any more stringent cut-off levels which licensees may specify. The HHS-certified laboratory and the licensee's testing facility shall make available quantitative results for all samples tested when requested by the NRC or the licensee for which the laboratory is performing drug testing services.

(8) Unless otherwise instructed by the licensee in writing, all records pertaining to a given urine or blood specimen shall be retained by the HHS-certified drug testing laboratory and the licensee's testing facility for a minimum of 2 years.

(h) "Long-Term Storage." Long-term frozen storage (-20 °C or less) ensures that positive urine specimens will be available for any necessary retest during administrative or disciplinary proceedings. Unless otherwise authorized in writing by the licensee, HHS-certified laboratories shall retain and place in properly secured long-term frozen storage for a minimum of 1 year all specimens confirmed positive. Within this 1-year period a licensee or the NRC may request the laboratory to retain the specimen for an additional period of time, but if no such request is received, the laboratory may discard the specimen after the end of 1 year, except that the laboratory shall be required to maintain any specimens under legal challenge for an indefinite period. Any split samples retained by the licensee shall be transferred into long-term storage upon determination by the Medical Review Officer that the specimen has a confirmed positive test.

(i) "Retesting Specimens." Because some analytes deteriorate or are lost during freezing and/or storage, quantitation for a retest is not subject to a specific cut-off requirement but must provide data sufficient

to confirm the presence of the drug or metabolite.

(j) "Split Samples." Urine specimens may be split, at the licensee's discretion, into two parts at the collection site. One half of such samples (hereafter called the aliquot) shall be analyzed by the licensee's testing facility or the HHS-certified laboratory for the licensee's purposes as described in this appendix. The other half of the sample (hereafter called the split sample) may be withheld from transfer to the laboratory, sealed, and stored in a secure manner by the licensee until the aliquot has been determined to be negative or until the positive result of a screening test has been confirmed. As soon as the aliquot has tested negative, the split sample in storage may be destroyed. If the aliquot tests positive by confirmatory testing, then, at the tested individual's request, the split sample may be forwarded on that day to another HHS-certified laboratory that did not test the aliquot. The chain-of-custody and testing procedures to which the split sample is subject, shall be the same as those used to test the initial aliquot and shall meet the standards for retesting specimens [Section 2.7(i)]. The quantitative results of any second testing process shall be made available to the Medical Review Officer and to the individual tested.

(k) "Subcontracting." HHS-certified laboratories shall not subcontract and shall perform all work with their own personnel and equipment unless otherwise authorized by the licensee. The laboratory must be capable of performing testing of the five classes of drugs (marijuana, cocaine, opiates, phencyclidine, and amphetamines) and of whole blood and confirmatory GC/MS methods specified in these guidelines.

(1) "Laboratory Facilities."

(1) HHS-certified laboratories shall comply with applicable provisions of any State licensure requirements.

(2) HHS-certified laboratories shall have the capability, at the same laboratory premises, of performing initial tests for each drug and drug metabolite for which service is offered, and for performing confirmatory tests for alcohol and for each drug and drug metabolite for which service is offered. Any licensee testing facilities shall have the capability, at the same premises, of performing initial screening tests for each drug and drug metabolite for which testing is conducted. Breath tests for alcohol may be performed at the collection site.

(m) "Inspections." The NRC and any licensee utilizing an HHS-certified laboratory shall reserve the right to inspect the laboratory at any time. Licensee contracts with HHS-certified laboratories for drug testing and alcohol confirmatory testing, as well as contracts for collection site services, shall permit the NRC and the licensee to conduct unannounced inspections. In addition, prior to the award of a contract, the licensee shall carry out pre-award inspections and evaluation of the procedural aspects of the laboratory's drug testing operation. The NRC shall reserve the right to inspect a licensee's testing facility at any time.

(n) "Documentation." HHS-certified laboratories and the licensee's testing facility shall maintain and make available for at least 2 years documentation of all aspects of the testing process. This 2-year period may be extended upon written notification by the NRC or by any licensee for which laboratory services are being provided. The required documentation shall include personnel files on all individuals authorized to have access to specimens; chain-of-custody documents; quality assurance/quality control records; procedure manuals; all test data (including calibration curves and any calculations used in determining test results); reports; performance records on performance testing; performance on certification inspections; and hard copies of computer-generated data. The HHS-certified laboratory and the licensee's testing facility shall be required to maintain documents for any specimen under legal challenge for an indefinite period.

(o) "Additional Requirements for HHS-certified Laboratories and Licensee's Testing Facilities."

(1) "Procedure manual." Each laboratory and licensee's testing facility shall have a procedure manual which includes the principles of each test, preparation of reagents, standards and controls, calibration procedures, derivation of results, linearity of methods, sensitivity of the methods, cutoff values, mechanisms for reporting results, controls, criteria for unacceptable specimens and results, remedial actions to be taken when the test systems are outside of acceptable limits, reagents and expiration dates, and references. Copies of all procedures and dates on which they are in effect shall be maintained as part of the manual. Superseded material must be retained for three years.

(2) "Standards and controls." HHS-certified laboratory standards shall be prepared with pure drug standards which are properly labeled as to content and concentration. The standards shall be labeled with the following dates: when received; when prepared or opened; when placed in service; and expiration date.

(3) "Instruments and equipment."

(i) Volumetric pipettes and measuring devices shall be certified for accuracy or be checked by gravimetric, colorimetric, or other verification procedure. Automatic pipettes and dilutors shall be checked for accuracy and reproducibility before being placed in service and checked periodically thereafter.

(ii) Alcohol breath analysis equipment shall be an evidential-grade breath alcohol analysis device of a brand and model that conforms to National Highway Traffic Safety Administration (NHTSA) standards (49 FR 48855) and to any applicable State statutes.

(iii) There shall be written procedures for instrument set-up and normal operation, a schedule for checking critical operating characteristics for all instruments, tolerance limits for acceptable function checks, and instructions for major troubleshooting and repair. Records shall be available on preventive maintenance.

(4) "Remedial actions." There shall be written procedures for the actions to be taken when systems are out of acceptable limits or errors are detected. There shall be

documentation that these procedures are followed and that all necessary corrective actions are taken. There shall also be in place systems to verify all stages of testing and reporting and documentation that these procedures are followed.

(5) "Personnel available to testify at proceedings." The licensee's testing facility and HHS-certified laboratory shall have qualified personnel available to testify in an administrative or disciplinary proceeding against an individual when that proceeding is based on positive breath analysis or urinalysis results reported by the licensee's testing facility or the HHS-certified laboratory.

2.8 Quality Assurance and Quality Control.

(a) "General." HHS-certified laboratories and the licensee's testing facility shall have a quality assurance program which encompasses all aspects of the testing process including but not limited to specimen acquisition, chain-of-custody, security, reporting of results, initial and confirmatory testing, and validation of analytical procedures. Quality assurance procedures shall be designed, implemented, and reviewed to monitor the conduct of each step of the process of testing for drugs.

(b) "Licensee's Testing Facility Quality Control Requirements for Initial Tests." Because all positive preliminary tests for drugs are forwarded to an HHS-certified laboratory for screening and confirmatory testing when appropriate, the NRC does not require licensees to assess their testing facility's false positive rates for drugs. To ensure that the rate of false negative tests is kept to the minimum that the immunoassay technology supports, licensees shall process blind performance test specimens and submit a sampling of specimens screened as negative from every test run to the HHS-certified laboratory. In addition, the manufacturer-required performance tests of the breath analysis equipment used by the licensee shall be conducted as set forth in the manufacturer's specifications.

(c) "Laboratory Quality Control Requirements for Initial Tests at HHS-Certified Laboratories." Each analytical run of specimens to be screened shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the threshold (cut-off).

In addition, with each batch of samples, a sufficient number of standards shall be included to ensure and document the linearity of the assay method over time in the concentration area of the cut-off. After acceptable values are obtained for the known standards, those values will be used to calculate sample data. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall be documented. A minimum of 10 percent of all test samples shall be quality control specimens. Laboratory quality control samples, prepared from spiked urine samples of determined concentration, shall be included in the run and should appear as normal samples to laboratory analysts. One percent of each run, with a minimum of at

least one sample, shall be the laboratory's own quality control samples.

(d) "Laboratory Quality Control Requirements for Confirmation Tests." Each analytical run of specimens to be confirmed shall include:

(1) Urine specimens certified to contain no drug;

(2) Urine specimens fortified with known standards; and

(3) Positive controls with the drug or metabolite at or near the threshold (cut-off).

The linearity and precision of the method shall be periodically documented. Implementation of procedures to ensure that carryover does not contaminate the testing of an individual's specimen shall also be documented.

(e) "Licensee Blind Performance Test Procedures."

(1) Licensees shall purchase chemical testing services only from laboratories certified by DHHS or a DHHS-recognized certification program in accordance with the HHS Guidelines. Laboratory participation is encouraged in other performance testing surveys by which the laboratory's performance is compared with peers and reference laboratories.

(2) During the initial 90-day period of any new drug testing program, each licensee shall submit blind performance test specimens to each HHS-certified laboratory. It contracts within the amount of at least 50 percent of the total number of samples submitted (up to a maximum of 500 samples) and thereafter a minimum of 10 percent of all samples (to a maximum of 250) submitted per quarter.

(3) Approximately 80 percent of the blind performance test samples shall be blank (i.e., certified to contain no drug) and the remaining samples shall be positive for one or more drugs per sample in a distribution such that all the drugs to be tested are included in approximately equal frequencies of challenge. The positive samples shall be spiked only with those drugs for which the licensee is testing.

(4) The licensee shall investigate, or shall refer to DHHS for investigation, any unsatisfactory performance testing result, and based on this investigation, the laboratory shall take action to correct the cause of the unsatisfactory performance test result. A record shall be made of the investigative findings and the corrective action taken by the laboratory, and that record shall be dated and signed by the individuals responsible for the day-to-day management and operation of the HHS-certified laboratory. Then the licensee shall send the document to the NRC as a report of the unsatisfactory performance testing incident within 30 days. The NRC shall ensure notification of the finding to DHHS.

(5) Should a false positive error occur on a blind performance test specimen and the error is determined to be an administrative error (clerical, sample mixup, etc.), the licensee shall promptly notify the NRC. The licensee shall require the laboratory to take corrective action to minimize the occurrence of the particular error in the future; and, if there is reason to believe the error could have been systematic, the licensee may also

require review and reanalysis of previously run specimens.

(6) Should a false positive error occur on a blind performance test specimen and the error is determined to be a technical or methodological error, the licensee shall instruct the laboratory to submit to them all quality control data from the batch of specimens which included the false positive specimen. In addition, the licensee shall require the laboratory to retest all specimens analyzed positive for that drug or metabolite from the time of final resolution of the error back to the time of the last satisfactory performance test cycle. This retesting shall be documented by a statement signed by the individual responsible for day-to-day management of the laboratory's substance testing program. The licensee and the NRC may require an on-site review of the laboratory which may be conducted unannounced during any hours of operation of the laboratory. Based on information provided by the NRC, DHHS has the option of revoking or suspending the laboratory's certification or recommending that no further action be taken if the case is one of less serious error in which corrective action has already been taken, thus reasonably assuring that the error will not occur again.

2.9 Reporting and Review of Results

(a) "Medical Review Officer shall review results." An essential part of the licensee's testing programs is the final review of results. A positive test result does not automatically identify a nuclear power plant worker as having used substances in violation of the NRC's regulations or the licensee's company policies. An individual with a detailed knowledge of possible alternate medical explanations is essential to the review of results. This review shall be performed by the Medical Review Officer prior to the transmission of results to licensee management officials.

(b) "Medical Review Officer—qualifications and responsibilities." The Medical Review Officer shall be a licensed physician with knowledge of substance abuse disorders and may be a licensee or contract employee. The role of the Medical Review Officer is to review and interpret positive test results obtained through the licensee's testing program. In carrying out this responsibility, the Medical Review Officer shall examine alternate medical explanations for any positive test result (this does not include confirmation of blood alcohol levels obtained through the use of a breath alcohol analysis device). This action could include conducting a medical interview with the individual, review of the individual's medical history, or review of any other relevant biomedical factors. The Medical Review Officer shall review all medical records made available by the tested individual when a confirmed positive test could have resulted from legally prescribed medication. The Medical Review Officer shall not consider the results of tests that are not obtained or processed in

accordance with these Guidelines, although he or she may consider the results of tests on split samples in making his or her determination, as long as those split samples have been stored and tested in accordance with the procedures described in these Guidelines.

(c) "Positive Test Results." Prior to making a final decision to verify a positive test result, the Medical Review Officer shall give the individual an opportunity to discuss the test result with him or her. Following verification of a positive test result, the Medical Review Officer shall, as provided in the licensee's policy, notify the applicable employee assistance program and the licensee's management official empowered to recommend or take administrative action (or the official's designated agent).

(d) "Verification for opiates; review for prescription medication." Before the Medical Review Officer verifies a confirmed positive result and the licensee takes action for opiates, he or she shall determine that there is clinical evidence—in addition to the urine test—of unauthorized use of any opium, opiate, or opium derivative (e.g., morphine/codeine). Clinical signs of abuse include recent needle tracks or behavioral and psychological signs of acute opiate intoxication or withdrawal. This requirement does not apply if the GC/MS confirmation testing for opiates confirms the presence of 6-monoacetylmorphine. For other drugs that are commonly prescribed or commonly included in over-the-counter preparations (e.g., benzodiazepines in the first case, barbiturates in the second) and that are listed in the licensee's panel of substances to be tested, the Medical Review Officer shall also determine whether there is clinical evidence—in addition to the urine test—of unauthorized use of any of these substances or their derivatives.

(e) "Reanalysis authorized." Should any question arise as to the accuracy or validity of a positive test result, only the Medical Review Officer is authorized to order a reanalysis of the original sample and such retests are authorized only at laboratories certified by DHHS. The Medical Review Officer shall authorize a reanalysis of the original aliquot on timely request of the individual tested, and shall also authorize an analysis of any sample stored by the licensee.

(f) "Results consistent with responsible substance use." If the Medical Review Officer determines that there is a legitimate medical explanation for the positive test result and that use of the substance identified through testing in the manner and at the dosage prescribed does not reflect a lack of reliability and is unlikely to create on-the-job impairment, the Medical Review Officer shall report the test result to the licensee as negative.

(g) "Result scientifically insufficient." Additionally, the Medical Review Officer, based on review of inspection reports, quality control data, multiple samples, and other pertinent results, may determine that the

result is scientifically insufficient for further action and declare the test specimen negative. In this situation, the Medical Review Officer may request reanalysis of the original sample before making this decision. (The Medical Review Officer may request that reanalysis be performed by the same laboratory or, that an aliquot of the original specimen be sent for reanalysis to an alternate laboratory which is certified in accordance with the HHS Guidelines.) The licensee's testing facility and the HHS-certified laboratory shall assist in this review process as requested by the Medical Review Officer by making available the individual(s) responsible for day-to-day management of the licensee's test facility, of the HHS-certified laboratory or other individuals who are forensic toxicologists or who have equivalent forensic experience in urine drug testing, to provide specific consultation as required by the licensee. The licensee shall maintain records that summarize any negative findings based on scientific insufficiency and shall make them available to the NRC on request, but shall not include any personal identifying information in such reports.

Subpart C—Employee Protection

3.1 Protection of Employee Records

Licensee contracts with HHS certified laboratories and procedures for the licensee's testing facility shall require that test records be maintained in confidence, as provided in 10 CFR 28.29. Records shall be maintained and used with the highest regard for individual privacy.

3.2 Individual Access to Test and Laboratory Certification Results

Any individual who is the subject of a drug or alcohol test under this part shall, upon written request, have access to any records relating to his or her tests and any records relating to the results of any relevant laboratory certification, review, or revocation-of-certification proceedings.

Subpart D—Certification of Laboratories Engaged in Chemical Testing

4.1 Use of DHHS-certified laboratories

(a) Licensees subject to this part and their contractors shall use only laboratories certified under the DHHS "Mandatory Guidelines for Federal Workplace Drug Testing Programs", Subpart C—"Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," (53 FR 11970, 11986-11989) dated April 11, 1988, and subsequent amendments thereto for screening and confirmatory testing except for initial screening tests at a licensee's testing facility conducted in accordance with 10 CFR 26.24(d). Information concerning the current certification status of laboratories is

available from: The Office of Workplace Initiatives, National Institute on Drug Abuse, 5000 Fishers Lane, Rockville, Maryland 20857.

(b) Licensees or their contractors may use only HHS-certified laboratories that agree to follow the same rigorous chemical testing, quality control, and chain-of-custody procedures when testing for more stringent cut-off levels as may be specified by licensees for the classes of drugs identified in this Part, for analysis of blood specimens for alcohol, and for any other substances included in licensees' drug panels.

Dated at Rockville, MD this 24th day of May, 1989.

For The Nuclear Regulatory Commission,
John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 89-12806 Filed 6-6-89; 8:45 am]

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Wednesday
June 7, 1989

Part III

Department of Agriculture

Food and Nutrition Service

7 CFR Part 271 et al.

Food Stamp Program; Final Rule and
Interim Rule

fedderal register

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amdt. No. 314]

Food Stamp Program; Categorical Eligibility for Certain Public Assistance and Supplemental Security Income (SSI) Recipients

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rulemaking puts in final form Food Stamp Program interim regulations published August 5, 1988 which implemented the categorical eligibility provision contained in section 1507 of the Food Security Act of 1985 (Pub. L. 99-198; December 23, 1985). That provision mandates that households that only contain members who are recipients of public assistance (PA) or supplemental security income (SSI) benefits be categorically eligible for food stamp benefits.

This final action also addresses a provision of the Hunger Prevention Act of 1988 (Pub. L. 100-435, September 19, 1988) which eliminates the September 30, 1989 expiration date for testing categorical eligibility under the Food Security Act of 1985.

DATES: The new provisions contained in this final action at § 272.1(g)(108), § 273.2(j)(1)(iv), § 273.2(j)(2)(iii)(B), § 273.17 and § 273.18 are effective July 7, 1989 to be implemented no later than September 1, 1989. All the remaining provisions, which specifically adopt, as final, interim provisions as published at 51 FR 28200-28202, August 5, 1986 or modify the interim provisions for clarity only, are effective retroactively to December 23, 1985.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Chief, Eligibility and Certification Regulations Section, Certification Policy Branch, Program Development Division, Certification Policy Branch, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Room 706, Alexandria, VA. 22302, telephone (703) 756-3496.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12291

This action has been reviewed under Executive Order 12291 and the Secretary of Agriculture's Memorandum No. 1512-1. The Department has classified this action as non-major. The effect of this action on the economy will be less than

\$100 million and it will have an insignificant effect on costs or prices. Competition, employment, investment, productivity, and innovation will remain unaffected. There will be no effect on the competition or United States-based enterprises with foreign-based enterprises.

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the Final Rule and related Notice to 7 CFR 3015, Subpart V (48 FR 29115), this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, Stat. 1164, September 19, 1980). G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Food Stamp Program. Potential and current participants will be affected because of changes to various program policies and procedures.

Paperwork Reduction Act

The provision at 7 CFR 273.10(g)(1)(ii) requiring the State agency to tell households to inform the State agency of their eligibility for PA or SSI benefits on form FNS-442, Action Taken on Your Food Stamp Case, does not alter or change burden estimates for the FNS-442 as approved under OMB No. 0584-0084. The remaining provisions of this rule do not contain new or additional reporting or recordkeeping requirements subject to approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Background

Comments

On August 5, 1986, the Department issued an interim rule at 51 FR 28196 which implemented the Food Security Act of 1985 provision on categorical eligibility for certain PA and SSI households. A total of 15 comment letters were received on the interim rule—the majority from State agencies. All comments received were reviewed but only those issues that either arose repeatedly or those which can be

addressed by regulation are discussed in detail. Comments which proposed legislative changes or were unclear or not pertinent are not addressed in this preamble. A full explanation of the rationale of the rule is contained in the preamble of the interim rule. It is suggested that persons also refer to that rule for background information.

Reactivation of Denied Cases—§ 273.2(j)(1)(iv)

The interim rule established a procedure which required the State agency to reevaluate any application from a household with applied for both food stamps and Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI) but which was denied food stamps prior to action being taken on the AFDC or SSI application. The reevaluation would be done when the household was found to be eligible for or authorized for receipt of AFDC or SSI benefits and thus categorically eligible. The interim rule provided that the State agency shall not reinterview the household but shall use available information to update the application and/or make mail or phone contact with the household or authorized representative to determine any changes in circumstances. Any changes shall be initialed and the updated application resigned and dated by the authorized household member or procedure. In general, commenters preferred an outright denial and reapplication and, at the very least, wanted more flexibility in contacting the household to update information on the original application. One commenter was concerned that State agencies are not required to contact the household and, thus, the household may not be actively involved in the reevaluation process.

Because the Department considers that categorical eligibility begins at the point when the person or assistance unit becomes eligible for receipt of PA or SSI benefits, or becomes authorized for receipt of PA or SSI benefits, this final action retains the provision requiring reactivating a denied food stamp case which is later determined categorically eligible. However, to ensure that the household has an opportunity to participate in the reevaluation process and that the State agency has the latest information, this final action amends 7 CFR 273.2(j)(1) to require State agencies to first use available information to update the application and then contact the household to explain and confirm changes and determine if any other changes in circumstances have occurred. The final rule still requires

that the household initial changes and re-sign and date the application, unless the household does not supply new information or information supplied by the household does not deviate from the available information obtained by the State agency.

The interim rule provided that if AFDC or SSI eligibility is not determined within 30 days after the date the food stamp application is filed and the household is not eligible as a nonpublic assistance (NPA) household, the application shall be denied on the 30th day and reactivated when the AFDC/SSI eligibility determination is made. One commenter suggested that the application be pending on the 30th day in lieu of denial and reactivation. This suggestion is not adopted. The Food Stamp Act requires that a decision on food stamp eligibility be made within 30 days of the date the application is filed and the Department cannot justify keeping a case pending beyond 30 days when the household is ineligible for food stamps.

This same commenter suggested that categorical eligibility be effective on the same date AFDC/SSI is effective. The commenter explained her concern through the use of a case example: An AFDC application was filed October 6, 1988. Because the State agency opted to make AFDC effective the first of the month in which the 30th day after the date of the AFDC application falls, AFDC became effective November 1, 1988. The interim rules provide that any household determined PA eligible which is categorically eligible within the 30-day food stamp processing time shall be provided food stamp benefits back to the date of the food stamp application. The commenter pointed out that the household in the example will be considered categorically eligible effective for a period of time for which the household was not eligible for AFDC.

It is not clear from the commenter's example if the household was determined to actually be ineligible for PA for the period October 6 through October 31 and, thus, not entitled to receive PA benefits for that period or if the household was determined to be eligible for PA but the State agency opted, for various administrative reasons, not to provide PA benefits for October 6 through October 31 but rather to begin delivery of PA benefits on an ongoing basis in November, or opted to provide October benefits along with the subsequent full month's benefits for November. It was never the intent of the Department to extend categorical eligibility for food stamp benefits to a

person or assistance unit which is actually determined ineligible for PA for a given month and, thus, not entitled to PA benefits. The Department's concern, with regard to the interim provision at 7 CFR 273.2(j)(1)(iv), was that the effective date of categorical eligibility for a given household not be delayed simply because of when the State agency opts to begin the delivery of PA benefits to an eligible PA applicant. The date used by a State agency as the date on which an eligible PA applicant will actually begin to receive PA benefits can vary.

Using the commenter's example case, if the State agency determined in October that the person or assistance unit is an eligible PA applicant but opted, for some administrative reason, not to begin delivery of any PA benefits until November, it is the Department's intent that the household be considered categorically eligible for food stamps and receive food stamp benefits for October back to the date of the food stamp application (assuming the household applied for food stamps in October). It is the Department's opinion that such household is "authorized" to receive PA in October and should be considered a PA recipient for categorical eligibility purposes. On the other hand, if the State agency determined in October that the person or assistance unit is an ineligible PA applicant for the period October 6 through October 31 but PA-eligible for a period beginning November 1 or a period between November 1 and the end of the 30-day food stamp processing time, it is the Department's intent that the household be considered categorically eligible for food stamps beginning in November and receive food stamp benefits for the entire month of November.

Therefore, this final action retains the statement at 7 CFR 273.2(j)(1)(iv) which provides that any household determined PA eligible which is categorically eligible within the food stamp 30-day processing time shall be provided food stamp benefits back to the date of the food stamp application. However, to ensure uniform treatment and avoid misapplication of the effective date of categorical eligibility, this final action adds a clarifying statement to the provision which provides that in no event shall food stamps be back paid under categorical eligibility for a month in which the household has been determined to be ineligible for receipt of any PA benefits for that month, unless the household is eligible for food stamp benefits as an NPA case.

Disqualified/Ineligible Person—§ 273.2(j)(2)(ii)

The interim rules provided that under no circumstances shall any household be considered categorically eligible if any member of the household is disqualified for an intentional Program violation, failure to comply with monthly reporting requirements, or failure to comply with work requirements (in accordance with 7 CFR 273.7). At the time the interim rules were published, 7 CFR 273.7 provided that if any member of a household failed to comply with the work requirements of 7 CFR 273.7, the entire household would be disqualified from the Program. The August 5 interim rules governing categorical eligibility were consistent with this policy. However, a subsequent rule published at 51 FR 47378, December 31, 1986, amended 7 CFR 273.7 to provide that the entire household would be disqualified only if the head of the household failed to comply with the work requirements of 7 CFR 273.7. If another member failed to comply, only that member is disqualified. Therefore, as noted by a commenter, the categorical eligibility rules need to be revised to clarify how to handle both types of disqualification situations. Therefore, this final action amends 7 CFR 273.2(j)(2) to clarify that households disqualified because the "head of the household" failed to comply with the work requirements of 7 CFR 273.7 shall not be considered categorically eligible. Households which contain a member, other than the head of the household, who is disqualified because of a failure to comply with the requirements of 7 CFR 273.7, could be considered categorically eligible, if the household is otherwise eligible for food stamp benefits. This policy for handling categorical eligibility for households which contain a member, other than the head of the household, who fails to comply with 7 CFR 273.7 is consistent with the provision governing categorical eligibility of households which contain other types of ineligible members; i.e. an ineligible alien, an ineligible student, an SSI recipient in a cash-out State, or persons institutionalized in a nonexempt facility.

A question was asked on how to handle households disqualified for failure to comply with workfare. In accordance with rules published December 31, 1986, workfare can be a component of a State agency's Employment and Training (E&T) program. A State agency's E&T program is established in accordance with 7 CFR 273.7. Thus, failure to comply with

workfare as an E&T component is subject to the disqualification provisions of 7 CFR 273.7. Handling categorical eligibility for households or individuals disqualified under 7 CFR 273.7 is explained in more detail in the previous paragraph.

Where workfare is not a component of a State agency's E&T program, disqualification for failure to comply is subject to the disqualification provisions of 7 CFR 273.22. In accordance with 7 CFR 273.22, the entire household is disqualified if any member fails to comply with workfare. It is Congress' intent that households disqualified due to a violation of food stamp rules not be reinstated due to categorical eligibility. (H.R. Rpt. No. 89-447, 99th Cong., 1st Sess., Dec. 17, 1985, p. 521.) Thus, households disqualified in accordance with 7 CFR 273.22 cannot be considered categorically eligible. Accordingly, this final action amends 7 CFR 273.2(j)(2) to specifically prohibit households in accordance with 7 CFR 273.22 from being considered categorically eligible.

Another commenter asked that the statement contained in the preamble of the August 5 interim rule which clarifies Congressional intent that a household disqualified for Program violations cannot be reinstated to the Food Stamp Program because of categorical eligibility be included in the regulatory language. The Department adopted this suggestion and this final action amends 7 CFR 273.2(j)(2) accordingly.

Current rules at 7 CFR 273.11(c)(3) provide that whenever an individual is determined ineligible within the household's certification period, the State agency shall determine the eligibility or ineligibility of the remaining members based, as much as possible, on information in the case file. One commenter suggested that a reference to this policy be included in the rules to clarify that the provision applies for households that must be reevaluated because one of its members was disqualified for an intentional Program violation. The interim rules provide that households not entitled to categorical eligibility because of the Program's disqualification provisions are subject to all food stamp eligibility and benefit provisions and this would include all the provisions of 7 CFR 273.11(c). However, the Department agrees that a reference to the provisions of 7 CFR 273.11(c) would clarify this policy. Therefore, this final action amends 7 CFR 273.2(j)(2) to require, by regulatory reference, that State agencies apply all the provisions of 7 CFR 273.11(c) when determining the eligibility or ineligibility of remaining

household members when a member of the household is disqualified or otherwise considered ineligible to participate in the Program.

Suspension for Cases Entitled to Zero Benefits—§ 273.2(j)(2)(v)(F)

Several comments were received on the interim rule's procedures to suspend a case which is categorically eligible but the household's income is such that it is not entitled to food stamp benefits ("zero benefit" cases). The interim rule required that the case not be denied but that it be held in suspension in accordance with 7 CFR 273.10(e)(2)(iii)(A) to monitor if the household becomes entitled to benefits at any time during the certification period. Commenters preferred to give State agencies an option to deny rather than suspend such cases in accordance with 7 CFR 273.10(e)(2)(iii)(A). In the latter case, the household would reapply if its circumstances change so that it becomes entitled to benefits. State agencies have indicated that suspension of these cases is an administrative burden requiring extensive system changes, especially for computerized systems. The State agencies project that only a minimal number of households would be entitled to "zero benefits" and that the majority of those households would not become entitled to benefits within the certification period. Also, State agencies believe that the large majority of these households would always be ineligible for "zero" benefits. Further, these households could reapply at any time their circumstances change to become eligible.

This final action retains the interim provision. The Department cannot adopt this suggestion because categorical eligibility is determined based on a household's status as a PA/SSI recipient. The provision at 7 CFR 273.10(e)(2)(iii)(A) applies to households determined eligible based on the Program's gross and/or net income tests and whose net income exceeds the level at which benefits are issued. Categorically eligible households, by statute, cannot be subject to an income test for food stamp eligibility. To deny such households based on the fact that their net income exceeds the level at which benefits are applied would indirectly result in denial of eligibility based on a type of income test.

Restored Benefits—§ 273.2(j)(1)(iv)

The interim rule provided that denied households which later become categorically eligible are entitled to restored benefits from the beginning of the period for which PA or SSI benefits are paid, the original food stamp

application date, or December 23, 1985, whichever is later. The interim rule also provided that benefits be restored in accordance with 7 CFR 273.17.

Two commenters asked that the rule clarify whether or not the 12-month limit for restoring benefits under 7 CFR 273.17 applies to denied households which later become categorically eligible. Because the statute mandated that the categorical eligibility provision of the law was effective on December 23, 1985, restored benefits would be required to be paid back to that date for some households and the period of restoration could be longer than 12 months. Thus, the 12-month limit under the provisions of 7 CFR 273.17 cannot be applied and this final action amends 7 CFR 273.17 to clarify this matter for categorical eligibility purposes and other such legislative action which results in a restoration period of more than 12 months.

Income Deduction—§ 273.10(d)(7)

The interim rule provided that individuals entitled to the excess medical deduction at 7 CFR 273.9(d)(3) and the uncapped excess shelter expenses deduction at 7 CFR 273.9(d)(5), shall receive these two income deductions, if they incur such expenses, for the period for which SSI benefits are authorized to be paid, or from the date of the food stamp application, whichever is later as discussed in § 273.2(j) of the interim rule. The interim rule also provided that individuals entitled to restored benefits, in accordance with § 273.2(j)(1)(iv) of the interim rule, shall receive restored benefits using the medical and shelter expense deductions, if they incur such expenses. One commenter questioned whether households containing newly entitled SSI recipients but which do not meet the categorical eligibility criteria would be entitled to the medical and excess shelter expense deductions for the period for which the SSI recipient is authorized to receive SSI benefits.

All of the provisions of the interim rule are intended to change normal procedures for determining food stamp eligibility and benefit levels for categorically eligible households. Households which are not considered categorically eligible are subject to the normal food stamp eligibility and benefit level determination procedures, including the procedures for handling the medical and excess shelter expense deductions under 7 CFR 273.9(d)(3) and (d)(5). The Department believes that the commenter was misled and confused because the regulatory language of § 273.10(d)(7) of the interim rule used the

term "individuals" instead of "households" and the rule addressed the relationship of the provisions for categorically eligible households through regulatory reference to § 273.2(j) of the interim rule.

The preamble of the interim rule discussed the Department's intent that the procedures for handling the medical and excess shelter expense deductions for households denied as NPA households which later become categorically eligible, be consistent with the timeframes and procedures for paying benefits to households determined categorically eligible within the 30-day food stamp processing standard. The preamble also noted that the Department needed to address how to handle the medical and shelter expense deductions for households determined eligible as NPA households which later become categorically eligible.

In light of the commenter's confusion and possible misapplication of the provision, this final action amends 7 CFR 273.10(d)(7) to be more specific and clarify Departmental intent. This final action provides that a household which contains an SSI recipient that is determined, within the 30-day processing standard, to be categorically eligible, or eligible as an NPA household and later becomes categorically eligible, shall receive the medical and shelter deductions as discussed in 7 CFR 273.9(d)(3) and (d)(5), if it incurs such expenses, for the period for which SSI benefits are authorized to be received, or from the date of the food stamp application, whichever is later. A household, containing an SSI recipient, which is determined ineligible as an NPA household and later becomes categorically eligible, shall receive the medical and excess shelter expense deductions, if they incur such expenses, for the period for which restored benefits are to be paid in accordance with 7 CFR 273.2(j)(1)(iv); i.e., from the beginning of the period for which SSI benefits are paid, the original food stamp application date, or December 23, 1985, whichever is later.

Claims—§ 273.18

Some commenters wanted the Department to clarify how claims would be handled in the event a categorically eligible household was subsequently found to be ineligible for PA or SSI at the time they had received it. The preamble to the interim rule had stated that the food stamp claims recovery rules applied to categorically eligible households. However, it was not clear in the interim rule how claims would be treated for categorically eligible

households. For example, a household receiving PA might be subsequently determined ineligible for PA. The questions are whether a food stamp claim should be filed against such a household for the time when it was improperly receiving PA and if so, how would the amount of the claim be determined. The interim rule did not offer guidance, although it stated that there would not be a quality control variance if all members of the household actually received PA or SSI.

The Department carefully considered the issue of how claims should be treated in cases of categorical eligibility and is offering the following clarification. For claims purposes, categorical eligibility cannot be rescinded retroactively. As long as everyone in the household received PA or SSI during a given time, it would be considered to have been properly eligible for food stamps for claims purposes even if its PA or SSI eligibility was subsequently determined improper. This is consistent with the statute where the intent is that certain households would be determined eligible for food stamps not on the basis of factors such as income and assets but on the basis of receipt of PA or SSI. The Act does not specify that this eligibility would be considered provisional until such time as the PA or SSI eligibility was thoroughly validated. Therefore, the determination that the household was eligible for food stamps would be considered "accurate" so long as each member of the household had received PA or SSI. (Of course, once the State agency is aware that the household should not be receiving food stamps because it is no longer receiving PA or SSI, the State agency must take action to ensure that the household does not continue to receive food stamps.)

Although categorical eligibility cannot be rescinded retroactively, a claim to correct an improper benefit level can be established against a categorically eligible household whose PA or SSI eligibility is subsequently determined improper if the reason for the subsequent PA or SSI ineligibility was additional household income or changes in household size and/or deductions which directly affect the calculation of the food stamp benefit amount. A claim could not be established if the reason the household was subsequently declared ineligible for PA or SSI related to excess household resources.

Food stamp benefits are based on the difference between the maximum allotment for the household's size and 30 percent of the household's net income. This is true for categorically eligible

households and for noncategorically eligible households alike. Thus, claims could be collected from a categorically eligible household if the household's net income had changed. For example, if a four-person household was originally recorded as having \$1,100 earnings, they might be entitled to \$250 PA. Thus, their gross income was \$1,350, which was above the gross income limits, and they would not have received food stamps if it were not for categorical eligibility. After adding together their earned and PA income and after taking into account their deductions, the household would have had \$696 net income and would have been entitled to an allotment of \$91. If it was determined that the household had \$200 earnings that had been previously overlooked, the \$200 would be added to all of their other income, and their gross income would be \$1,550 for food-stamp purposes. Based upon the income and deductions actually available to the household, the household should have received an allotment of \$43. Subtracting this amount from the actual issuance of \$91 the household would owe a claim of \$48. Thus, a claim could be calculated for a categorically eligible household if the reason for a household's subsequent ineligibility for PA or SSI related to the discovery of additional income. A claim could not be calculated (and therefore established) if the reason the household was subsequently declared ineligible for PA related to excess household resources.

In some cases, the additional gross income would result in a net income amount so high that the household would be entitled to a zero allotment. Thus, the amount of the claim would be equal to the entire amount issued to the household. The household still would have been categorically eligible for food stamps but it would have been entitled to zero benefits. It should be noted that in the case of a household of one or two persons, the minimum benefit rules would apply when calculating the allotment the household was actually entitled to receive.

A claim could also be established if the reason for a household's subsequent PA or SSI ineligibility related to the discovery of an unreported household member that did not receive PA or SSI. Although the household still would have been considered categorically eligible for food stamps based on the fact that the reported members did receive PA or SSI, a claim can be established for the difference between the allotment the household received and the allotment the household should have received as an NPA household had the additional

member been properly reported and included in the calculation of a benefit amount based on household size and net income.

The Department is not restructuring its claims regulations or revising the FNS-209 in order to make a new category for households whose food stamp categorical eligibility was based on PA or SSI eligibility that was subsequently determined improper. Although no existing claims category precisely fits this circumstance, the Department has decided that the existing categories can be used. Once the State agency has determined that the household should not have received PA or SSI, it must determine the cause. This is important particularly to determine whether or not a claim can be calculated and whether the State agency is entitled to retain any portion of the value of the claim and how much. The three categories for claims are inadvertent household error, administrative error, and intentional Program violation. In accordance with 7 CFR 273.18(h), State agencies are entitled to retain 25 percent of the value of inadvertent household error claims they collect. They are entitled to retain 50 percent of intentional Program violation claims. They are not entitled to retain any portion of administrative error claims because they should not benefit from their own errors.

This final action amends 7 CFR 273.18 to provide that the category for inadvertent household errors will be used when the overissuance was caused by a misunderstanding or unintended error on the part of the household, as provided in 7 CFR 273.18(a)(1). In addition, since the SSI agency is not an agency of State government, instances of SSI agency error will also be considered inadvertent household errors, unless fraud has been determined. Thus, the State agencies would retain a portion of claims collected when the SSI agency would retain a portion of claims collected when the SSI agency has been in error. The category for administrative errors will be used if the overissuance was caused by State agency action or failure to take action. In some cases, the food stamp State agency may not be at fault, but another agency of State government may be. In those cases, in order to prevent the State from benefiting from their own errors, the State agency will be assessed as the responsible agency so long as the State or local welfare agency made the decision. In cases of recipient fraud, the category for intentional Program violation can be used. However, it is important to note

that this claims category can only be used where the food stamp State agency has pursued the case in accordance with 7 CFR 273.18. In other words, a fraudulent act to obtain PA or SSI benefits cannot automatically be considered a fraudulent act to obtain food stamp benefits. A separate and distinct food stamp action must be pursued by the State agency, in accordance with 7 CFR 273.18, before the State agency can use the claims category of intentional Program violation described in 7 CFR 273.18. Until such food stamp action is taken, the category for inadvertent household errors shall be used on the FNS-209.

Quality Control

Waiver of liability. The interim rule contained a special quality control (QC) provision about the implementation of the interim rule. According to that provision (§ 272.1(g)(78)(ii)), QC would not find a case in error solely because of the way a State agency implemented, or did not implement, the interim rule. This special procedure was to be in effect between August 5, 1986 and October 1, 1986. Some commenters asked that the special provision go beyond October 1. One commenter suggested 90 days, one six months. While the Department does not agree that a six-month period is necessary, or even desirable, it is appropriate to allow at least a 60-day period from the first day of the first full month after the August 5 publication date of the interim rule. Another commenter asked how QC should handle variances in cases with review dates before August 5, 1986. These cases are a problem because the interim rule was effective retroactively to December 23, 1985. QC would have found some active (or participating) households ineligible while the valid negative actions (denials and terminations) valid. Retroactively, the ineligible households became eligible while the valid negative actions became invalid. Accordingly, this final action amends 7 CFR 272.1(g)(78)(ii) to provide that QC reviewers shall not identify variances resulting solely from implementation or nonimplementation of the interim rule in cases with review dates between December 23, 1985 and October 31, 1986. For reviews already completed by State agency QC, the Federal QC system will review and change Federal subsample findings if State agency QC identifies the cases. The State agency QC findings will not be changed. The Department would like to emphasize that this provision applies only to the coding of variances for QC purposes. This provision does not relieve Federal and State QC of their responsibilities to

report information about households to the appropriate authorities. State agencies shall handle all resulting claims and restorations as provided elsewhere in this final action.

Erroneous Information. One commenter suggested that a QC variance should not be charged when the Food Stamp Program receives erroneous information from the State agency's AFDC Program. The commenter pointed out that there is a QC procedure for when a Federal agency provides erroneous information to the Food Stamp Program that a variance will not be charged. (See FNS Handbook 310, section 181.2).

The Department does not agree that QC should treat the provision of erroneous information by a State and Federal agency in the same manner. By law, the Department must not penalize a State agency through QC if the Federal government provided wrong information through automation. The State agency acted as it should have in relying upon the federally provided information. When AFDC payment information was incorrect the State agency itself erred. The State agency did not properly coordinate its AFDC and food stamp components in the transfer of information. Therefore, when the State agency overissues or underissues coupons, QC should charge the State agency with a variance.

Verification. One commenter recommended that QC should not verify income that the AFDC Program had already verified. Another commenter stated that QC should not review benefit levels (presumably AFDC and SSI benefits) because the verification of these levels is superseded by categorical eligibility.

The Department does not agree with these comments for two reasons. First, as explained earlier in this preamble, the amount of the AFDC benefit, SSI benefit, or other verified income is not necessarily deemed for food stamps. Rather, the Food Stamp Program deems (or considers) that the household has met the income eligibility limits. Since the Program still needs the exact income amounts to calculate an allotment, QC must still review those amounts.

Second, QC is usually reviewing a sample month which is not the month of the food stamp application. Between application and the sample month a household's AFDC grant, SSI benefit, or other income may change. The household must report changes in SSI and other non-AFDC income. The State agency must process changes in all three income sources. Therefore, QC must review the income amounts to ensure

that the sample month's allotment reflected all the changes that should have been processed.

Handling changes. One commenter asked how QC would review changes in a household's circumstances. For example, if a household became ineligible for SSI but failed to report the change, would there be an error for food stamps? For eligibility, no. QC does not review the five special factors for eligibility, because eligibility is assumed under the law. If the household members were all authorized (by SSA) to receive SSI, QC accepts that. QC does not verify whether the household members were eligible for SSI. In reviewing benefits, however, the answer may be different. If a household's SSI income changed, QC would review that change. A finding of error may result. As another example of a change, SSA may close a household member's SSI case. If the household did not report this change, would its categorical eligibility be affected? Yes. All households must report all changes in sources of income, like getting new sources and losing old ones. Loss of SSI is a change that must be reported. QC would charge the State agency with a variance if the household was ineligible under normal Program rules.

Review timeframes. In the preamble to the interim rule, the Department described the procedures for reviewing a household's categorical eligibility. As a first step, QC would verify the household's correct composition "as of the review date." The correct procedure is to verify the household's correct composition according to the eligibility system used—prospective or retrospective. Under prospective eligibility, QC verifies composition on the review date. Under retrospective eligibility, QC verifies composition on the last day of the budget month.

Other concerns

Several commenters raised concerns about requiring verification of income not verified by AFDC and whether individual income sources are assumed or just the gross and net tests. Households are only considered to have met the resource test and the gross and net income tests by virtue of FSP eligibility based on their status as PA/SSI recipients. Because the food stamp criteria are used in the benefit calculation, any income, deduction or factor not verified by AFDC or SSI must be verified if required under 7 CFR 273.2(f) for the purpose of a food stamp benefit calculation.

In preparing this action, it came to the Department's attention that the provision of the interim rule of August 5 which amended 7 CFR 273.2(k) could be

misleading. Specifically the phrase "authorized to receive PA or SSI benefits as defined in § 273.2(j)" should read "authorized to receive PA or SSI benefits as discussed in § 273.2(j)". The intent of the reference is to alert users to the fact that categorical eligibility is extended to persons "authorized" to receive AFDC/SSI benefits as well as those in actual receipt of such benefits. As currently written, the regulatory reference appears to direct users to a definition of PA or SSI benefits. To ensure proper use of the provision, this final action amends the regulatory reference phrase in 7 CFR 273.2(k) to clarify Departmental intent.

Implementation

A number of commenters expressed concern with the immediate implementation date and the retroactive effective date of the August 5 interim rule. While the Department understands these concerns, it had no discretion in this area. The Department had to make the provisions effective retroactively to December 23, 1985 because the statute specifically provided that the categorical eligibility provisions of the legislation were effective on that date.

This final action provides that the provisions of this action which adopt, as final without change, a provision of the interim rule or modify a provision of the interim rule for clarity only are retroactively effective to December 23, 1985. The clarifications do not represent any change in intended policy and, thus, do not require any special implementation efforts by State agencies. The QC provision in § 272.1(g)(78)(ii) is also effective retroactively to December 23, 1985 as it is directly related to implementation of the interim rule and has no impact on the implementation of this final rule.

This action further provides that the provisions of this final action which, as the result of changes resulting from the Department's response to comments on the interim rule, require the alteration of State procedures, are to be effective September 1, 1989. State agencies are afforded 60 days in which to complete implementation efforts of the new provisions. QC errors resulting from application of any new provision of this final action shall be handled in accordance with the interim rules published November 2, 1988 (53 FR 44171).

Recision of Expiration Date

In accordance with section 1507 of the Food Security Act of 1985 (Pub. L. 99-198, December 23, 1985) and the preamble of the August 5, 1986 interim regulations, categorical eligibility was to

be tested only through September 30, 1989. Thus, the provisions of the interim regulation and subsequent final action on those provisions contained in this action would have ceased to be effective on that date. Subsequent legislative action has changed this stipulation. In accordance with section 201 of the Hunger Prevention Act of 1988 (Pub. L. 100-435, September 19, 1988), the Department hereby announces that the provisions of the August 5, 1986 interim regulations which are adopted as final or modified by the provisions contained in this final action, are no longer subject to an expiration date and shall be retained as permanent regulatory policy.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, food stamps, Grant programs-social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, Claims Food stamps, Fraud, Grant programs-social programs, Penalties, Reporting and recordkeeping requirements, Social security, Students.

Accordingly, 7 CFR Part 272 and 273 are amended as follows:

1. The authority citation for Parts 272 and 273 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. The amendment to add a new paragraph (g)(78) to 7 CFR 272.1, as published at 51 FR 28200, August 5, 1986, is adopted as final. However, paragraph (g)(78)(ii) is revised for clarity.

3. In § 272.1, a new paragraph (g)(108) is added in numerical order, the revision and addition read as follows:

§ 272.1 General terms and conditions.

(g) Implementation. . . .

(ii) For quality control (QC) purposes only, QC reviewers shall not identify variances resulting solely from either implementation or nonimplementation of this rule in cases with review dates between December 23, 1985 and October 31, 1986, inclusive.

(108) Amendment No. 314. (i) The provision of Amendment No. 314 which adds five sentences to § 273.2(j)(1)(iv) and the provisions which add a new paragraph § 273.2(j)(2)(iii)(B) and amend §§ 273.17 and 273.18 are effective July 7,

1989 and shall be implemented no later than September 1, 1989.

(ii) All remaining provisions of Amendment No. 314, which adopt the interim provisions of August 5, 1986 as final without change or modify the interim provisions for clarity only, are effective retroactively to December 23, 1985 (the effective date of the interim rulemaking). These provisions do not reflect a change in intended policy and, therefore, do not require special implementation efforts by State agencies.

PART 273—CERTIFICATION OF PARTICIPATING HOUSEHOLDS

4. The amendment to § 273.2, as published at 51 FR 28200, August 5, 1986, to revise introductory paragraph (j) is adopted final without change.

5. The amendment to § 273.2, as published at 51 FR 28200, August 5, 1986, to revise the title of paragraph (j)(1), is adopted final without change.

6. The amendment to § 273.2, as published at 51 FR 28201, August 5, 1986, to revise the first two sentences of paragraph (j)(1)(iv) and add a new sentence after the second sentence is adopted final without change.

7. The amendment to § 273.2, as published at 51 FR 28201, August 5, 1986 to revise the seventh sentence of paragraph (j)(1)(iv) and add twelve new sentences after the seventh sentence, is adopted final with the following changes: The sentence which begins with the words "The State agency shall not reinterview the household" and the sentence which begins with the words "Any changes shall be initiated" are removed and three new sentences are added in their place; the sentence which begins with the words "Any household determined PA eligible" is removed and a new sentence is added in its place; and the sentence which begins with the words "Benefits shall be paid from" was revised by a subsequent regulation published on January 30, 1989 at 54 FR 4249.

8. The amendments to § 273.2, as published at 51 FR 28201, August 5, 1986, to redesignate paragraphs (j)(2) and (j)(3) as paragraphs (j)(3) and (j)(4), respectively, and to add a new paragraph (j)(2) are adopted final with the following changes:

§ 273.2 [Amended]

a. New paragraph (j)(2) is amended for clarity as follows:

1. Replacing the parenthetical phrase appearing in the first sentence of paragraph (j)(2)(i) with the phrase "(except those listed in paragraph (j)(2)(iii) of this section)";

2. Changing the reference to "paragraph (ii) of this subsection" appearing in paragraph (j)(2)(i)(D) to read "paragraph (j)(2)(iii) of this section";

3. Redesignating existing paragraphs (j)(2)(iii), (j)(2)(iv) and (j)(2)(v) as new paragraphs (j)(2)(v), (j)(2)(vi) and (j)(2)(vii), respectively;

4. Redesignating paragraphs (j)(2)(ii) introductory text, (j)(2)(ii)(A), (j)(2)(ii)(B), (j)(2)(ii)(C), and new paragraphs (j)(2)(iii) introductory text, (j)(2)(iii)(A), (j)(2)(iii)(B), (j)(2)(iii)(C), respectively;

5. Designating the last three sentences appearing at the end of paragraph (j)(2)(i)(D) as paragraph (j)(2)(ii);

6. Designating the last sentence appearing at the end of newly designated paragraph (j)(2)(iii)(C) as paragraph (j)(2)(iv);

7. Removing the words "any member of that household is disqualified for" from the introductory text of newly designated paragraph (j)(2)(iii);

8. Adding to newly designated paragraph (j)(2)(iii)(A) the words "any member of that household is disqualified for" immediately after the designation "(A)" and removing the semicolon after the reference to § 273.16 and replacing it with the words "or for";

9. Removing from newly designated paragraph (j)(2)(iii)(B) the regulatory designation "(B)" and replacing the word "Failure" with the word "failure";

10. Removing the word "Failure" in newly designated paragraph (j)(2)(iii)(C) and adding in its place the words "the head of the household is disqualified for failure"; and

11. Adding before the period at the end of newly designated paragraph (j)(2)(iv) the words "(including the provisions of § 273.11(c)) and cannot be reinstated in the Program on the basis of categorical eligibility provisions".

b. New paragraph (j)(2)(iii)(B) is added.

Pursuant to amendment numbers 7 and 8a through 8b stated above, § 273.2 (j)(1)(iv) and (j)(2) are revised to read as follows:

§ 273.2 Application processing.

(j) PA, GA, and categorically eligible households.

(1)

(iv) In order to determine if a household will be eligible due to its status as a recipient PA/SSI household, the State agency may temporarily postpone, within the 30-day processing standard, the food stamp eligibility determination if the household is not entitled to expedited service and appears to be categorically eligible.

However, the State agency shall postpone denying a potentially categorically eligible household until the 30th day in case the household is determined eligible to receive PA benefits. Once the PA application is approved, the household is to be considered categorically eligible if it meets all the criteria concerning categorical eligibility in § 273.2(j)(2). If the State agency can anticipate the amount and the date of receipt of the initial PA payment, but the payment will not be received until a subsequent month, the State agency shall vary the household's food stamp benefit level according to the anticipated receipt of the payment and notify the household. Portions of initial PA payments intended to retroactively cover a previous month shall be disregarded as lump sum payments under § 273.9(c)(8). If the amount or date of receipt of the initial PA payment cannot be reasonably anticipated at the time of the food stamp eligibility determination, the PA payments shall be handled as a change in circumstances. However, the State agency is not required to send a notice of adverse action if the receipt of the PA grant reduces, suspends or terminates the household's food stamp benefits, provided the household is notified in advance that its benefits may be reduced, suspended, or terminated when the grant is received. The case may be terminated if the household is not categorically eligible. The State agency shall ensure that the denied application of a potentially categorically eligible household is easily retrievable. For a household filing a joint application for food stamps and PA benefits or a household that has a PA application pending and is denied food stamps but is later determined eligible to receive PA benefits and is otherwise categorically eligible, the State agency shall provide benefits using the original application and any other pertinent information occurring subsequent to that application. Except for residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from a public institution in accordance with § 273.1(e)(2), benefits shall be paid from the beginning of the period for which PA or SSI benefits are paid, the original food stamp application date, or December 23, 1985 whichever is later. Residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution shall be paid benefits from the date of their release from the institution. In situations where the State agency must update and reevaluate the original application of a

denied case, the State agency shall not reinterview the household, but shall use any available information to update the application. The State agency shall then contact the household by phone or mail to explain and confirm changes made by the State agency and to determine if other changes in household circumstances have occurred. If any information obtained from the household differs from that which the State agency obtained from available information or the household provided additional changes in information, the State agency shall arrange for the household or it authorized representative to initial all changes, re-sign and date the updated application and provide necessary verification. In no event can benefits be provided prior to the date of the original food stamp application filed on or after December 23, 1985. Any household that is determined to be eligible to receive PA benefits for a period of time within the 30-day food stamp processing time, shall be provided food stamp benefits back to the date of the food stamp application. However, in no event shall food stamp benefits be paid for a month for which such household is ineligible for receipt of any PA benefits for the month, unless the household is eligible for food stamp benefits and an NPA case. Benefits shall be prorated in accordance with § 273.10(a)(1)(ii) and (e)(2)(ii)(B). Household that file joint applications that are found categorically eligible after being denied NPA food stamps shall have their benefits for the initial month prorated from the date from which the PA benefits are payable, or the date of the original food stamp application, whichever is later. The State agency shall act on reevaluating the original application either at the household's request or when it becomes otherwise aware of the household's PA and/or SSI eligibility. The household shall be informed on the notice of denial required by § 273.10(g)(1)(ii) to notify the State agency if its PA or SSI benefits are approved. Households who file joint applications for food stamps and PA and whose PA application are subsequently denied may be required to file new food stamp applications or may have their food stamp eligibility determined or continued on the basis of the original applications filed jointly for PA and food stamp purposes and any other documented information obtained subsequent to the application which may have been used in the PA determination and which is relevant to food stamp eligibility or level of benefits. State agencies shall notify households of the need for a new

application. If a required new application is filed within 30 days of the original application, the filing date of the new application shall be the original filing date of the joint application.

(2) *Categorically Eligible Households.* (i) Any household (except those listed in paragraph (j)(2)(iii) of this section) in which all members receive or are authorized to receive PA and/or SSI benefits shall be considered eligible for food stamps because of their status as PA and/or SSI recipients unless the entire household is institutionalized as defined in § 273.1(e) or disqualified for any reason from receiving food stamps. Residents of public institutions who apply jointly for SSI and food stamp benefits prior to their release from the institution in accordance with § 273.1(e)(2), shall not be categorically eligible upon a finding by SSA of potential SSI eligibility prior to such release. The individuals shall be considered categorically eligible at such time as a final SSI eligibility determination has been made and the individual has been released from the institution. The eligibility factors which are deemed for food stamp eligibility without the verification required in § 273.2(f) because of PA/SSI status are the resource, gross and net income limits; social security number information; sponsored alien information; and residency. If any of the following factors are questionable, the State agency shall verify, in accordance with § 273.2(f), that the household which is considered categorically eligible:

(A) Contains only members that are PA or SSI recipients as defined in the introductory paragraph § 273.2(j);

(B) Meets the household definition in § 273.1(a);

(C) Includes all persons who purchase and prepare food together in one food stamp household regardless of whether or not they are separate units for PA or SSI purposes; and

(D) Includes no persons who have been disqualified as provided for in paragraph (j)(2)(iii) of this section.

(ii) Households subject to retrospective budgeting that have been suspended for PA purposes as provided for in Aid to Families with Dependent Children (AFDC) regulations, or that receive zero benefits shall continue to be considered as authorized to receive benefits from the appropriate agency. Categorical eligibility shall be assumed at recertification in the absence of a timely PA redetermination. If a recertified household is subsequently terminated from PA benefits, the procedures in § 273.12(f)(3), (4), and (5) shall be followed, as appropriate.

(iii) Under no circumstances shall any household be considered categorically eligible if:

(A) Any member of that household is disqualified for an intentional Program violation in accordance with § 273.16 or for failure to comply with monthly reporting requirements in accordance with § 273.21;

(B) The entire household is disqualified because one or more of its members failed to comply with workfare in accordance with § 273.22; or

(C) The head of the household is disqualified for failure to comply with the work requirements in accordance with § 273.7.

(iv) These households are subject to all food stamp eligibility and benefits provisions (including the provisions of § 273.11(c)) and cannot be reinstated in the Program on the basis of categorical eligibility provisions.

(v) No person shall be included as a member in any household which is otherwise categorically eligible if that person is:

(A) An ineligible alien as defined in § 273.4;

(B) Ineligible under the student provisions in § 273.5;

(C) An SSI recipient in a cash-out State as defined in § 273.20; or

(D) Institutionalized in a nonexempt facility as defined in § 273.2.

(vi) For the purposes of work registration, the exemptions in § 273.7(b) shall be applied to individuals in categorically eligible households. Any such individual who is not exempt from work registration is subject to the other work requirements in § 273.7.

(vii) When determining eligibility for a categorically eligible household all provisions of this subchapter except for those listed below shall apply:

(A) Section 273.8 except for the last sentence of paragraph (a).

(B) Section 273.9(a) except for the fourth sentence in the introductory paragraph.

(C) Section 273.10(a)(1)(i).

(D) Section 273.10(b).

(E) Section 273.10(c) for the purposes of eligibility.

(F) Section 273.10(e)(2)(iii)(A).

9. The amendments to § 273.2, as published at 51 FR 28201, August 5, 1986, which amended the introductory text of newly designated paragraph (j)(3)(i), amended newly designated paragraph (j)(3)(ii), and amended the first sentence of newly designated paragraph (j)(4) are adopted final without change.

10. The amendment to § 273.2, as published at 51 FR 28201, August 5, 1986, to remove the third sentence of introductory paragraph (k) and add

three new sentences in its place is adopted final with the following clarity change: The sentence added by this earlier amendment which begins with the words "However, households in which all members are either PA or SSI" is amended by replacing the words "as defined in § 273.2(j)" with the words "(as discussed in § 273.2(j))".

11. The amendment to § 273.8, as published at 51 FR 28202, August 5, 1986, to remove the last sentence in paragraph (a) and add a new sentence in its place is adopted final without change.

12. The amendment to § 273.9(a), as published at 51 FR 28202, August 5, 1986, to add a new sentence after the third sentence in introductory paragraph (a) is adopted final without change.

13. The amendment to § 273.10, as published at 51 FR 28202, August 5, 1986, to add a new paragraph (d)(7) is adopted. However, new paragraph (d)(7) is revised for clarity.

14. The amendment to § 273.10, as published at 51 FR 28202, August 5, 1986, to add a new sentence to the end of paragraph (g)(1)(ii) is adopted final without change.

The revised § 273.10(d)(7) reads as follows:

§ 273.10 Determining household eligibility and benefit levels.

(d) *Determining deductions*
(7) Households which contain a member who is a disabled SSI recipient in accordance with paragraphs (2), (3), (4) or (5) of the definition of a disabled member in § 271.2 or households which contain a member who is a recipient of SSI benefits and the household is determined within the 30-day processing standard to be categorically eligible (as discussed in § 273.2(j)) or determined to be eligible as an NPA household and later becomes a categorically eligible household, shall be entitled to the excess medical deduction of § 273.9(d)(3) and the uncapped excess shelter expense deduction of § 273.9(d)(5) for the period for which the SSI recipient is authorized to receive SSI benefits or the date of the food stamp application, whichever is later, if the household incurs such expenses. Households, which contain an SSI recipient as discussed in this paragraph, which are determined ineligible as an NPA household and later become categorically eligible and entitled to restored benefits in accordance with § 273.2(j)(1)(iv), shall receive restored benefits using the medical and excess shelter expense deductions from the beginning of the period for which SSI benefits are paid, the original food stamp application date or December 23,

1985, whichever is later, if the household incurs such expenses.

15. In § 273.17, the last sentence of the introductory text of paragraph (a)(1) is amended by replacing the first word of the sentence "Benefits" with the words. "Furthermore, unless there is a statement elsewhere in the regulations that a household is entitled to lost benefits for a longer period, benefits".

16. In § 273.18:

a. paragraphs (a)(1) and (a)(2) are revised;

b. new paragraphs (b)(1)(iv), (b)(1)(v) and (b)(2)(vi) are added;

c. two sentences are added at the end of paragraph (c)(1)(ii).

The additions and revision read as follows:

§ 273.18 Claims against households.

(a)

(1) *Inadvertent household error claims.* A claim shall be handled as an inadvertent household error claim if the overissuance was caused by:

(i) A misunderstanding or unintended error on the part of the household;

(ii) A misunderstanding or unintended error on the part of a categorically eligible household provided a claim can be calculated based on a change in net income and/or household size amount;

(iii) SSA action of failure to take action which resulted in the household's categorical eligibility provided a claim can be calculated based on a change in net income and/or household size.

(2) *Administrative error claims.* A claim shall be handled as an administrative error claim if the overissuance was caused by State agency action or failure to take action or, in the case of categorical eligibility, an action by an agency of the State or local government which resulted in the household's improper eligibility for public assistance provided a claim can be calculated based on a change in net income and/or household size.

(b)
(1)

(iv) The household was receiving food stamps solely because of categorical eligibility and the household was subsequently determined ineligible for PA and/or SSI at the time they received it.

(v) The SSA took an action or failed to take the appropriate action, which resulted in the household improperly receiving SSI.

(2)

(vi) An agency of the State or local government took an action or failed to take an appropriate action, which

resulted in the household improperly receiving PA.

(c)
(1)

(ii) For categorically eligible households, a claim will only be determined when it can be computed on the basis of changed household net income and/or household size. A claim shall not be established if there was not a change in net income and/or household size.

Date: May 30, 1989.
G. Scott Dunn,
Acting Administrator.
[FR Doc. 89-13292 Filed 6-6-89; 8:45 am]
BILLING CODE 3410-30-M

resulted in the household improperly receiving PA.

(c)
(1)

(ii) For categorically eligible households, a claim will only be determined when it can be computed on the basis of changed household net income and/or household size. A claim shall not be established if there was not a change in net income and/or household size.

Date: May 30, 1989.
G. Scott Dunn,
Acting Administrator.
[FR Doc. 89-13292 Filed 6-6-89; 8:45 am]
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Acting Administrator.

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DEPARTMENT OF AGRICULTURE

7 CFR Parts 271, 272, 273, 274, and 277

[Amdt Number 316]

Food Stamp Program: Administrative Improvement and Simplification Provisions From the Hunger Prevention Act of 1988

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This rule amends Food Stamp Program regulations to implement several Food Stamp Program provisions contained in The Hunger Prevention Act of 1988. The provisions of that Act which are addressed in this rule are: (1) Verification; (2) telephone access to certification offices in order to receive program information or to report changes; (3) simplified applications; (4) joint applications; (5) expanding the definition of disabled; (6) annualizing self-employment income and expenses from farming; (7) resource exclusions for farm households in transition from farming; (8) simplified procedures for claiming the excess medical deduction; (9) program information for low-income households; (10) optional training for volunteer and non-profit organizations; (11) federally authorized demonstration projects which cash out benefits in other assistance programs; and (12) delivery of benefits to households which apply after the fifteenth of the month.

DATE: The provisions contained in § 274.2(b) of this rule are effective retroactively to January 1, 1989 to be implemented by State agencies no later than January 1, 1990. The remaining provisions are effective July 1, 1989 and

must be implemented by State welfare agencies on that date.

Comments must be received on or before August 7, 1989.

ADDRESS: Comments should be addressed to Judith M. Seymour, Supervisor, Eligibility and Certification Regulations Section, Certification and Policy Branch, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, Alexandria, Virginia 22302. All written comments will be open to public inspection during regular business hours (8:30 am to 5:00 pm Monday through Friday) at 3101 Park Center Drive, Alexandria, Virginia, Room 705.

FOR FURTHER INFORMATION CONTACT: Questions regarding this interim rule should be directed to Ms. Seymour at the above address or by telephone at (703) 758-3496.

SUPPLEMENTARY INFORMATION

Classification

Executive Order 12291/Secretary's Memorandum 1521-1

This interim rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1521-1. The rule will affect the economy by less than \$100 million a year. The rule will not significantly raise costs or prices for consumers, industries, government agencies or geographic regions. There will not be a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprise in domestic or export markets. Therefore, the Department has classified the rule as "not major".

Executive Order 12372

The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in 7 CFR 3015, Subpart V and related Notice (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act

This interim rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. 601-612). G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has certified that this action will not have a significant economic impact on a substantial number of small entities. This interim rule will affect Program participants and the State and local agencies which administer the Food Stamp Program.

Paperwork Reduction Act

The reporting and recordkeeping burden associated with the certification and continued eligibility of food stamp households is approved by the Office of Management and Budget (OMB) under OMB control number 0584-0064.

The food stamp application, as approved under this OMB number, already contains several important verification statements to the household. The requirement in § 273.2(c)(5) that State agencies develop a separate written general "Notice of Verification" versus including such information on the food stamp application or verbally conveying such information to households does not alter or change the methodologies used to determine the burden estimates approved under OMB No. 0584-0064.

The requirements in § 272.2(a), § 272.2(d) and § 272.5 relative to the submission and updating of an optional "Program informational activities planning document" as part of a State agency's Plan of Operation have been submitted to OMB and have been approved under OMB approval number 0584-0083. This rule amends the table at 7 CFR 271.8 "Information collection/recordkeeping—OMB assigned control numbers" to reflect the OMB control number for the approval of burden associated with § 272.5 of this rule.

The remaining provisions of this rule do not contain any reporting and/or recordkeeping requirements subject to approval by OMB under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Public Participation and Effective Date

This interim rule is being published without prior notice of proposed rulemaking or an opportunity for public comment prior to publication. Section 701(b)(5)(A)(i) of Pub. L. 100-435 mandates that except for the amendments in § 274.2, the provisions contained in this rule are effective on July 1, 1989. The amendments to the Food Stamp Act reflected in § 274.2 of this rule are effective January 1, 1989, to be implemented by the State agencies not later than January 1, 1990. Since prior notice and public comment procedures cannot be completed before the statutory effective date and because delays in implementation could adversely affect food stamp households and State agencies, G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has determined, pursuant to 5 U.S.C. 553(b)(B), that public comment on this interim rule prior to implementation is impracticable. The amendments reflected in the provisions of § 274.2 of this interim rule

are non-discretionary. However, because the Department believes that the administration of those provisions may be improved by public comments, the Department is soliciting comments on the entire rule for 60 days. All comments received will be analyzed and appropriate changes in the rule will be incorporated in the subsequent publication of a final rule.

Background

The Hunger Prevention Act (HPA) of 1988 (Pub. L. 100-435, 102 Stat. 1645, Sept. 19, 1988) made a number of changes to the Food Stamp Act of 1977, as amended (7 U.S.C. 2011 et. seq.). This interim rulemaking pertains to those provisions of Pub. L. 100-435 which simplify certain application procedures in the program and improve the administration of the Food Stamp Program. These provisions are discussed below.

Definition of Elderly or Disabled—7 CFR 271.2

The current definition of elderly or disabled persons contained in section 3(r) of the Food Stamp Act and reflected in 7 CFR 271.2 of the food stamp regulations includes recipients of certain old-age or disability benefits.

Persons identified as elderly or disabled are provided with certain special treatment in the determination of their food stamp eligibility and coupon allotment. Under 7 CFR 273.9, elderly or disabled persons: (1) Have the right to claim an allowable medical expense as a deduction from income; (2) may claim excess shelter costs as a deduction from income without regard to the shelter deduction limit imposed on other households, and (3) are exempted from the food stamp income eligibility test.

Section 350 of Pub. L. 100-435 adds three categories to the definition of elderly or disabled persons. These categories are: (1) Recipients of interim assistance benefits pending the receipt of supplemental security income; (2) recipients of disability-related medical assistance benefits under title XIX of the Social Security Act (SSA); and (3) recipients of disability-based State general assistance benefits. Recipients of any of these benefits must be treated as disabled persons for food stamp purposes provided the eligibility to receive the benefits is based upon disability or blindness criteria which are at least as stringent as those used under title XVI of the SSA. Accordingly, this rule amends 7 CFR 271.2 to bring the definition of disabled into conformance with the provisions of Pub. L. 100-435.

In addition, current rules at 7 CFR 273.2(f)(1)(viii)(A) require that the State agency verify disability as defined in 7 CFR 271.2 and discusses what documentation would be acceptable verification. Consequently, this rule makes a conforming amendment to 7 CFR 273.2(f)(1)(viii)(A) to add a new paragraph (A)(6) to specify the documentation the recipients of any of the benefits discussed above must provide to verify the receipt of these benefits.

Training—7 CFR 272(d)

Section 322(a) of Pub. L. 100-435 amended section 11(e)(6) of the Food Stamp Act by adding a phrase to specify that comprehensive training should be provided to state personnel "so that eligible households are promptly and accurately certified to receive allotments for which they are eligible." Current regulations at 7 CFR 272.4(d)(1)(i) already require State agencies to provide sufficient training. This statutory amendment expresses a Congressional concern that food stamps are delivered promptly and accurately to eligible households. To relay this concern, this rule amends 7 CFR 272.4(d)(1)(i) to specifically require that training provided by the State agency must convey the goals of and methods for promptly and accurately certifying eligible households.

In addition, section 322(b) of Pub. L. 100-435 added a new provision to section 11(e)(6) of the Food Stamp Act. This new statutory provision allows State agencies, at their option, to provide or contract to provide training and assistance to persons working with volunteer or nonprofit organizations that give information or perform eligibility screening to persons potentially eligible for food stamps.

Current rules do not prohibit State agencies from opening their training sessions to the public, at their discretion. However, in order to relay Congressional intent and specifically address training and assistance directed to persons working with volunteer or nonprofit organizations, this rule amends 7 CFR 272.4(d) to redesignate current paragraph (d)(2) as (d)(3) and add a new paragraph (d)(2) to allow State agencies, at their option, to offer training and assistance to persons working with certain volunteer or nonprofit organizations. This rule change also takes into consideration State agency staff and budget constraints, since the provision of this assistance and training is optional.

In addition, this rule adds a new paragraph (f) to 7 CFR 277.4 to provide that the expenses (e.g., travel costs,

lodging, or meals) of the persons working with the volunteer or nonprofit organizations who receive this training and assistance would not be reimbursed. For those State agencies choosing to provide or contract for this training and assistance, allowable costs would be matched at the fifty percent level by the Federal Government in accordance with 7 CFR 277.4. Procurement standards at 7 CFR 277.14 would apply if the State agency intends to contract to provide the training and assistance.

Information for Low-Income Households—7 CFR 272.5(c)

Section 204(a) of Pub. L. 100-435 amended section 11(e)(1)(A) of the Food Stamp Act to allow State agencies, at their option, to inform low-income households about the availability, eligibility requirements, application procedures and benefits of the Food Stamp Program and receive Federal funding for such outreach activities. Prior to Pub. L. 100-435, the Food Stamp Act generally prohibited Federal funding for outreach activities, but allowed State agencies the option of conducting informational activities directed only at homeless individuals; the costs of which were eligible for 50 percent Federal reimbursement. The statutory amendment made by Pub. L. 100-435 replaces the general prohibition and exception with a provision that State agencies, at their option, may conduct outreach activities aimed at low-income households. Section 204(b) of Pub. L. 100-435 also amended section 10(a)(4) of the Food Stamp Act to specify that costs of such program informational activities are eligible for Federal reimbursement at the 50 percent reimbursement rate.

Current rules at 7 CFR 272.5(c) provide that State agencies, at their option, may carry out program informational activities directed toward the homeless, that only such efforts specifically directed towards homeless individuals as defined in 7 CFR 271.2 will be funded according to procedures established at 7 CFR 277 and that State agencies must inform FNS in writing what they will do to direct the informational activities only towards individuals who are actually homeless. Current procedures at 7 CFR 277, Appendix A, paragraph C.(14) specify that costs incurred as a result of State agencies' outreach programs are not allowable costs, with the exception of program informational activities directed toward the homeless.

In accordance with Pub. L. 100-435, this rule revises 7 CFR 272.5(c) to specify that State agencies, at their option, may request reimbursement under 7 CFR 277 for Program informational activities

designed to inform low-income households about the availability, eligibility requirements, application procedures, and benefits of the Food Stamp Program.

In addition, current rules at 7 CFR 272.5(b)(3) require that all Program informational materials be available in languages other than English as specified in the bilingual requirements at 7 CFR 272.4(b). Consequently, this rule makes a conforming amendment to 7 CFR 272.5(c) to specify that if a State agency elects to request reimbursement for Program informational materials directed at low-income households, those materials must meet the bilingual requirements.

Before allowing costs for the subject program informational activities to be eligible for reimbursement, the Department wants to know which State agencies plan to claim such costs for reimbursement. Consequently, this rule further amends 7 CFR 272.5(c) to require that prior to claiming such costs, State agencies must receive FNS approval of an attachment to their Plans of Operation. A conforming amendment is made to 7 CFR 272.2(a)(2) to add a reference to the optional "Program informational activities plan" as a component of the States' Plan of Operation. A conforming amendment is also made to 7 CFR 272.2(d)(1) to add the requirement that State agencies submit the optional "Program informational activity" planning document to FNS for inclusion in the States' Plan of Operation. Lastly, a conforming amendment is also made to 7 CFR 277, Appendix A, to remove paragraph C.(14) which is made obsolete by this rule.

Under rules published November 6, 1979 (44 FR 64386), State agencies were required to conduct extensive Food Stamp Program outreach activities, including the annual submission for FNS approval of a detailed plan for such activities. The revisions to 7 CFR 272.5(c) contained in this rule would not require that information be provided in the Plan of Operation beyond a description of the socio-economic and demographic characteristics of the target population, types of media used, geographic areas warranting attention, and outside organizations which would be involved. At this time, the Department is not requiring that State agencies report this Program activity on the Program Activity Statement (Form FNS-366B). However, in accordance with current rules at 7 CFR 272.2 (c), (e) and (f), State agencies must update their Plans of Operation to reflect significant changes in their Program informational

activities plan. Also, current rules at 7 CFR 272.2(a) would require the State agency to report projected amounts budgeted for this program activity on the Budget Projection Statement (Form FNS-366A). The Department is not revising Form FNS-366A to provide a separate reporting line for this budget activity. State agencies should report budget estimates for this activity in the section of Form FNS-366A identified as "Other."

Waiver of the In-Office Interview—7 CFR 273.2(e)

In order to be certified for food stamp benefits, applicant households must complete an application and an interview and provide required documentation to verify statements on the application. Current rules at 7 CFR 273.2(c) require that an application must be submitted to the certification office either in person, by mail, or through an authorized representative (i.e., an adult person other than a household member who has been designated by the head of the household, or the head of the household's spouse, to represent the household during the certification process). Because benefits are calculated for eligible households as of the date the application is filed, State agencies are required to encourage households to file the application the same day the household contacts the food stamp office. If the household requests that an application be mailed, the State agency must send an application on the same day the household makes the request.

Current rules at 7 CFR 273.2(e) require all applicant households to have a face-to-face interview in a food stamp office or other certification site with an eligibility worker prior to all certification and recertification actions. However, the in-office interview must be waived, if requested by any household which is unable to appoint an authorized representative and is unable to send a household member to the food stamp office because they: (1) Are elderly or disabled as defined in 7 CFR 271.2; live in a location which is not served by a certification office; (3) are experiencing transportation difficulties as determined by the State agency on a case-by-case basis; or (4) are experiencing other hardships that the State agency determines warrants a waiver of the in-office interview such as illness, care of a household member, prolonged severe weather or work hours. If the in-office interview is waived, the State agency has the option to conduct a telephone interview or a home visit.

Section 330 of Pub. L. 100-435 amends section 11(e)(2) of the Food Stamp Act to explicitly specify, as the current rules do, the circumstances under which an applicant household must be waived from the in-office interview. The amendments are intended to assist some applicants (e.g., the elderly, disabled or rural poor) who may be eligible for participation in the Food Stamp Program but fail to submit or complete the application process because of transportation-related difficulties. Section 330, for the most part, adopts the current policy at 7 CFR 273.2(e) which specifies who may be waived from an in-office interview. However, in order for the regulations to be completely consistent with the law, some modification to the current rules is necessary.

Section 330 specifies that, in addition to considering the currently specified serious hardships, the State agency must also consider the hardships associated with living in a rural area and employment or training hours which may prevent an applicant from participating in a face-to-face interview in the certification office. Accordingly, this rule amends 7 CFR 273.2(e)(2) to include these two conditions as serious hardships warranting waiver of the in-office interview.

The Food Stamp Application Form—7 CFR 273.2(b)

Under section 11(e)(2) of the Food Stamp Act, and the regulations at 7 CFR 273.2(b), State agencies must use the food stamp application form designed by the Food and Nutrition Service (FNS) unless the State agency receives approval from FNS to deviate from the FNS food stamp application form. State agencies may deviate from the FNS food stamp application form in order to process joint applications with other assistance programs, meet the requirements of a State agency computer system or accommodate other State agency needs that are determined to be justifiable. State agency applications may be approved for these reasons provided the application is understandable and easy for applicants to use.

Whether the State agency uses the FNS application form or designs its own application, 7 CFR 273.2(b) requires that all applications contain: (1) A statement informing applicants that the information provided by the household is subject to verification by Federal, State and local officials and the consequences that may occur if information provided on the application is incorrect; (2) a description of the civil and criminal penalties for violations of

the Food Stamp Act; (3) a statement to be signed by one adult household member which certifies, under penalty of perjury, the truth of the information contained in the application; and (4) a statement to be signed by all household members (adults must sign for children under 18 years of age) attesting, under penalty of perjury, to their citizenship or alien status.

Section 310 of Pub. L. 100-435 amends section 11(e)(2) of the Food Stamp Act concerning the content of the food stamp application form. The legislative history (Senate Report No. 100-397, p. 24) to these provisions reflects Congressional concern that some State agency designed applications—especially applications which allow the household to simultaneously apply for benefits in the Food Stamp, Aid to Families with Dependent Children (AFDC), and Medicaid Programs—are either too lengthy and complex for applicants to use or do not provide applicants with sufficient information concerning the food stamp application process. There is a concern that, as a result of this complexity, eligible households may be discouraged from applying for benefits.

The first provisions in section 310 concerns the approval of State agency applications which deviate from the FNS food stamp application form. This provision mandates that, in addition to its current criteria for approving State agency application forms, FNS must also ensure that the application is brief. Accordingly, this rule amends 7 CFR 273.2(b) to include brevity as a condition for approving deviations from the FNS food stamp application form.

The second provision requires that the Department, in consultation with the Department of Health and Human Services (HHS), to provide guidance to those State agencies requesting assistance in the development of brief, simply-written application forms, including forms that allow for simultaneous application to participate in the Food Stamp, AFDC, and Medicaid Programs. Accordingly, this rule amends 7 CFR 273.2(b) to advise the State agency of its option to request assistance from FNS when developing its application. The Department intends for State agencies to request this assistance through the Deputy Administrator for the Food Stamp Program. The Deputy Administrator, or the Deputy Administrator's designee, would oversee the review of an application form by FNS officials at the Regional level and would coordinate the review of the application form with the HHS. The Regional officials will be

responsible for coordinating between the State agency and National Office.

The last provision under section 310 requires that all applications for food stamp benefits contain certain statements which advise the household of important information about the application process. These required statements include: (1) A place on the front cover where applicants can write their names, addresses, and signatures; (2) instructions that advise the household of their right to file the application without finishing all parts; (3) a statement describing the expedited service procedures; and (4) a statement that informs the household that benefits are provided only from the date of application. Accordingly, this rule amends 7 CFR 273.2(b) to require that the food stamp application form contain the above information. The Department is also taking this opportunity to restructure 7 CFR 273.2(b) in its entirety in order to display all information required to be on the application form in a more readable and understandable format.

The current six-page food stamp application form (FNS-385) designed by FNS contains statements advising the household of their right to file the application and a general description of the expedited service procedures. However, the application form does not contain a statement informing the applicant household that benefits are provided from the date of application. The Department is currently revising the FNS-385 to include this statement and to provide a more specific description of the expedited service process. The Department will distribute the revised application to the State agencies as soon as this revision is completed.

Joint Processing of Applications—7 CFR 273.2(j)

As previously mentioned, Congress has serious concerns about complex application procedures which may discourage eligible households from participating in the Program. Therefore, in addition to procedures which ensure that the application is simple and easy for applicants to use, section 352 of Pub. L. 100-435 includes provisions which ensure that applicants for public assistance (PA) or general assistance (GA) are able to apply for food stamp benefits on the same application form. This section reinstates practices that were initially required under the original Food Stamp Act of 1977 but were subsequently made optional. To clarify the current change, the Department is providing a brief history of these provisions from the enactment of the Food Stamp Act of 1977 until the

enactment of the Hunger Prevention Act of 1988.

Under section 11(i) of the Food Stamp Act of 1977 (Pub. L. 95-113, 91 Stat. 958, Sept. 29, 1977), the State agency was required to: (1) Conduct a single interview to determine the household's eligibility for food stamps and AFDC; (2) permit households in which all members are recipients of Supplemental Security Income (SSI) to apply for food stamp benefits by completing a simple application at the Social Security Office; (3) include the application for food stamps in the application for PA or GA for households in which all applicant household members were included in a PA or GA grant; and (4) certify households which had recently been denied or terminated from PA or GA on the basis of information that was available in the PA or GA casefile provided the information was sufficient for food stamp purposes. The intent of these provisions was to ensure that applicants would not have to repeat similar application procedures when applying for PA or GA and food stamp benefits at the same time.

In an attempt to relieve State agencies from certain administrative burdens while maintaining joint application procedures, the Omnibus Budget Reconciliation Act of 1982 (Pub. L. 97-253, 96 Stat. 763, Sept. 8, 1982) gave State agencies the option to implement sections 11(i) (3) and (4) noted above relative to combining the food stamp application with the PA or GA application and certifying recently denied or terminated PA or GA households based on information from the PA or GA casefile. The requirements relative to the single interview and the application procedures for pure SSI households continued to be mandatory.

Section 352 of Pub. L. 100-435 reflects a renewed desire to streamline the application process for applicant food stamp households. As a result, State agencies are required to implement the previously optional provisions under section 11(i) (3) and (4) of the Food Stamp Act of 1977, as amended. In addition, section 352 requires that the State agency notify all AFDC applicants of their right to apply for food stamps at the same time that they apply for AFDC benefits.

Accordingly, this rule amends 7 CFR 273.2 (j) and (j)(1)(i) to require the State agency to combine the application for food stamps with the application for PA and GA and to notify AFDC applicants of their right to file a joint application. This rule also amends 7 CFR 273.2(j)(1) to add a new paragraph (j)(1)(v), which specifies that households whose PA/GA

applications are denied or PA/GA eligibility terminated shall not be required to file a new application, but shall have their food stamp eligibility and benefits determined by available information from the PA/GA casefile provided the information is sufficient for food stamp purposes.

Application Process—Verification—7 CFR 273.2(f) and 273.21(j)

Current rules at 7 CFR 273.2(f) define verification as the use of third-party information or documentation to establish the accuracy of statements on the application. Information regarding gross non-exempt income, social security numbers, residency and the identity of the household member making the application must be verified by the State agency prior to certifying any applicant household for benefits. If applicable, the State agency must also verify the household's utility expenses, medical expenses and the alien status or disability of individual household members. Finally, the State agency must verify other factors of eligibility it determines are questionable, such as household composition.

There are three sources of verification currently identified in 7 CFR 273.2(f)(4). The first source is documentary evidence which consists of the written confirmation of a household's circumstances. The second source is a collateral contact, or the oral confirmation of a household's circumstances. The last source—which is used only when the other sources are insufficient to make a firm determination of eligibility—is a prearranged home visit.

Under the current rules at 7 CFR 273.2(f)(5), the household is primarily responsible for providing documentation to verify its income and to resolve any questionable information. However, if it would be difficult or impossible for the household to obtain documentary evidence in a timely manner, or if the household has provided insufficient documentation, the State agency must either offer assistance to the household, use a collateral contact, or arrange a home visit.

Section 311 of Pub. L. 100-435 contains five provisions which amend section 11(e)(3) of the Food Stamp Act. The first provision, section 311(A), requires the State agency to provide all applicant households with a clear written statement explaining what the household must do to cooperate in obtaining verification and completing the application. The second and third provisions, sections 311 (B) and (E), require the State agency to help

households obtain required verification when the household is cooperating with the State agency to complete the application process. The fourth provision, section 311(C), prohibits the State agency from requiring the applicant household to submit additional verification when the household has provided adequate sources of verification unless the State agency determines that the verification is inaccurate, incomplete, or inconsistent. Lastly, section 311(D) prohibits the denial of an application solely because a person outside of the household (who is not a person outside of the household because of a specific disqualification action or ineligible status) fails to cooperate with the State agency's processing of the application.

The legislative history (House Report No. 100-828, p. 23 and Senate Report No. 100-397, pp. 24-25) suggests that the above provisions should reduce error rates, establish uniform verification standards, and remove the possibility that households will be subject to excessive verification requirements.

In order to bring current rules into conformity with sections 311 (A), (B), and (E) of Pub. L. 100-435, this rule amends 7 CFR 273.2 to add a new paragraph (c)(5), which specifies the State agency requirements pertinent to the written statement. Under this provision, the State agency shall provide the household at each certification and recertification with a written statement that advises the household of the verification that must be submitted in order to be certified for food stamp benefits. In addition, the notice shall advise the household that the State agency will help the household obtain the required verification provided the household is cooperating with the State agency to complete the application. Also, the notice shall be written in clear and simple language and meet the bilingual requirements described in 7 CFR 272.4(b).

The Department is allowing the State agencies to design their own written statement. However, the Department encourages the State agencies to develop a general written statement that could be given to all applicant households, rather than a written statement which would need to be tailored to each applicant household. This would ensure that applicant households are treated consistently and would prevent the possibility that households are subject to multiple verification requests.

In addition, current rules at 7 CFR 273.2(h)(1)(i) specify the criteria the State agency must use to determine if the household or State agency caused a

delay in processing the application. Consequently, this rule makes a conforming amendment to 7 CFR 273.2(h)(1) to add a new paragraph (h)(1)(i)(C), which includes the requirement that the State agency must consider whether or not the State agency provided the household with the statement of required verification when determining if a delay in the application process was caused by the State agency or the household.

In respect to the fourth provision, section 311(C), the legislative history (House Report No. 100-828, p. 23) indicates that the intent of this provision is to prevent the State agency from requiring the household to provide multiple sources of verification when the household has already provided verification which adequately supports statements on the application. However, the State agency under this section may require the household to provide additional verification when the State agency determines that existing verification is incomplete, inaccurate or inconsistent.

Accordingly, this rule amends the verification standards for recertification at 7 CFR 273.2(f)(8)(i) (A) and (C), when changes are reported between certification actions at 7 CFR 273.2(f)(8)(ii), and for households subject to monthly reporting and retrospective budgeting (MRRB) at 7 CFR 273.21(i) (1) and (3) and (j)(3)(iii)(B). These changes specifically provide that the State agency cannot request verification for information when the household has provided sufficient verification or existing verification in the casefile adequately verifies the household's current circumstances. However, the State agency may request additional verification if the State agency determines that the verification provided by the household is incomplete, inaccurate, outdated, or inconsistent with recently reported information.

Finally, in respect to section 311(D), this rule amends 7 CFR 273.2(d)(1) to provide that the household may not be determined ineligible when a member outside of the household fails to cooperate with a request for verification. However, in accordance with section 311(D), this provision of the rule provides that the provision shall not apply when the person refusing to cooperate: (1) Is a member outside of the household because the person is either an ineligible student, ineligible alien, or SSI recipient in a "cash-out" State; or (2) has been disqualified for an intentional Program violation, a workfare sanction, or noncompliance with work requirements. The legislative history

(Senate Report No. 100-397, pp. 24-25) indicates that these nonhousehold members cannot be considered as persons outside the household because they would otherwise be a household member if not for a specific disqualification or ineligible status. Because the legislative history is specific about the treatment of nonhousehold members who would otherwise be included as a member in the food stamp household, it is the Department's view that two other categories of nonhousehold members who cannot be considered as a person outside of the household need to be included. These two categories are: individuals disqualified for failure to provide an SSN and persons who fail to attest to their citizenship or alien status. Accordingly, this rule amends 7 CFR 273.2(d)(1) to include a regulatory reference to 7 CFR 273.1(b)(2) to reflect this decision.

Demonstration Projects/Cash-Outs in Other Benefit Programs—7 CFR 273.9(c)(1) and 273.10(d)(1)

Current rules at 7 CFR 273.9 identify the sources of income that are either included or excluded from income in the determination of a household's food stamp eligibility and benefit level. One income exclusion specified under 7 CFR 273.9(c)(1) is any gain or benefit which is not in the form of money payable directly to the household, including nonmonetary or in-kind benefits such as meals, clothing, public housing, or produce from a garden, and vendor payments. Direct cash payments, however, are not excluded from income under 7 CFR 273.9 and therefore must be included in the determination of a household's food stamp eligibility and benefit level.

In order to test methods which may improve benefit delivery in other assistance programs, State agencies may conduct federally authorized demonstration projects which are established through Federal legislation or which are created by the waiver of provisions of Federal law. Should a State agency, as a condition of the demonstration project, convert an in-kind or vendor payment to a direct cash payment, the payments would no longer be excluded from income but would be included in the food stamp eligibility and benefit level computations. Thus, under current rules, if a food stamp household is participating in a demonstration project which converts an indirect payment to a direct cash payment, the household could experience a decrease in its food stamp

benefit level or could lose its eligibility for food stamps.

The legislative history to Pub. L. 100-435 (Senate Report No. 100-397, pp. 27-28 and House Report No. 100-828, pp. 24-25) reveals Congressional concerns in ensuring that State agencies have the flexibility to test alternate ways to deliver benefits in other assistance programs without adversely affecting those food stamp households which are participating in a federally authorized demonstration project. Section 340 of Pub. L. 100-435, in response to these concerns, amends section 5(d)(1) of the Food Stamp Act to specify that any income which would normally be excluded under 7 CFR 273.9(c)(1), but has been converted in whole or in part to a direct cash payment under the approval of a federally authorized demonstration project, must continue to be excluded from income in the determination of a household's food stamp eligibility and benefit level. This would also apply to demonstration projects created by the waiver or provision of Federal law.

Accordingly, this rule amends 7 CFR 273.9(c)(1) to specify that in-kind or vendor payments which would normally be excluded as income but are converted in whole, or in part, to a direct cash payment under the approval of a federally authorized demonstration project (including demonstration projects created by waiver of the provisions of Federal law) shall continue to be excluded from income.

This rule also addresses how expenses would be handled if an excluded vendor payment is converted to a direct cash payment under the approval of a federally authorized demonstration project. Under current rules at 7 CFR 273.10(d)(1)(i), any excluded vendor payment is not deductible as a household expense. Thus, in order to ensure that excluded vendor payments which have been converted to a direct cash payment are treated as an excluded vendor payment, this rule amends 7 CFR 273.10(d)(1)(i) to specify that expenses covered by an excluded vendor payment which is converted to a direct cash payment under the approval of a federally authorized demonstration project is not a deductible household expense.

Specified Procedures for Claiming the Medical Deduction—7 CFR 273.9, 273.12 and 273.21

Current rules at 7 CFR 273.9(d)(3) allow elderly and disabled household members as defined in 7 CFR 271.2 to claim certain medical expenses exceeding \$35 as an income deduction. Other household members who are not

elderly or disabled cannot claim their medical costs as a deduction.

Unless the household is subject to Monthly Reporting and Retrospective Budgeting (MRRB), the State agency must, in accordance with 7 CFR 273.12(a), calculate the medical deduction based on expenses the household expects to be billed for during the certification period. These households, in turn, are required to report any changes of more than \$25 in allowable medical expenses.

Households subject to MRRB are required to report and verify their allowable medical expenses monthly. However, because the MRRB procedures exclude households in which all adult members are elderly and disabled and have no earned income, most households which are eligible to receive an excess medical deduction are excluded from MRRB procedures.

The determination of the medical deduction and the requirements related to reporting changes in medical expenses have proven difficult for both participating households and State agencies. For example, households sometimes neglect to report information which would ensure that they receive the amount of benefits to which they are entitled. Similarly, State agencies have requested clarification of the requirements related to reporting changes in medical deductions because they are liable for errors resulting in the calculation of the medical deduction.

In order to reduce these administrative burdens and ensure that the medical deduction is properly applied to all households which are eligible to receive the deduction, section 351 of Pub. L. 100-435 amends section 5(e) of the Food Stamp Act and requires the State agency to offer eligible households a method for claiming a deduction for recurring medical expenses in place of provisions that require the household to report and verify expenses monthly. Legislative history surrounding this provision in the Hunger Prevention Act (House Report No. 100-828, p. 28) indicates that Congress intended this method to replace current reporting and verification procedures for those households subject to MRRB and, in its place, require these MRRB households to report changes in recurring medical expenses periodically.

In order to conform to the requirements of section 351, the Department is changing current reporting and verification requirements for allowable medical expenses under the MRRB system. Under this rule, households subject to MRRB are now given the option of reporting and

verifying all medical expenses monthly as currently required under the MRRB procedures, or of reporting and verifying only those changes in medical expenses during the certification period which exceed \$25. Whichever option is chosen, the household is only required to report changes on the monthly report. The State agency is not allowed to require the household to report changes outside of the monthly report. Accordingly, this rule amends 7 CFR 273.21(h) (3)(i) and (3)(ii), (i)(1), and (j)(3)(iii) to specify the household's options with regard to reporting and verifying medical expenses in an MRRB system.

In addition to the above change which is required as a result of Pub. L. 100-435, the Department believes that another change to the current regulations at 7 CFR 273.12(a)(1)(vi) would simplify reporting changes in medical expenses. This rule requires that changes in total medical expenses greater than \$25 must be reported, as opposed to a \$25 change in each individual allowable medical expense. For instance, under this requirement, if the household incurs a new ongoing \$50 medical expense at the same time the household stops incurring an ongoing \$40 expense, the household would not be required to report either change because the total change is \$10. However, if the household incurs two new ongoing expenses of \$20 each, the household would be required to report both changes because the total change is greater than \$25. Currently, the household is required to report the two changes in the first example although the effect of the changes is minimal. The changes in the second example are not required to be reported under current rules even though the total effect of the changes is a \$40 difference. The Department has received numerous policy requests which indicate that the current requirements are confusing in certain situations. Accordingly, this rule amends 7 CFR 273.12(a)(1)(vi) to specify that changes greater than \$25 in total medical expenses must be reported. A conforming amendment is made to 7 CFR 273.21(h)(3) to also reflect this policy for MRRB households.

Taken together, the Department believes the above changes satisfy the legislative requirement that households be provided with a method to report and verify recurring medical expenses and further simplify the requirements surrounding the medical deduction. However, given the complexity of this area, the Department welcomes any comments or recommendations which may provide alternative methods for eligible households to claim the medical deduction.

Reporting Responsibilities—7 CFR 273.12 and 273.21

Certified households which are not subject to MRRB must report changes in household circumstances within 10 days of the date the change occurs. The current rules at 7 CFR 273.12(a) identify the types of changes in household circumstances these certified households are required to report during the certification period. This method is known as "change reporting." Households subject to change reporting must be provided with a report form under 7 CFR 273.12(b)(1) at certification, recertification or whenever the household needs a new form. Households subject to the MRRB provisions in 7 CFR 273.21 must report changes monthly on the monthly report.

Section 323 of Pub. L. 100-435 amends section 11(e) of the Food Stamp Act and requires the State agency to provide a household, at the time of certification and recertification, with a statement describing the household's reporting responsibilities. Moreover, this section of the Act requires that the State agency provide all households with a toll-free number or a telephone number where collect calls will be accepted in order for the household to reach an appropriate representative of the State agency. The legislative history of Pub. L. 100-435 (Senate Report No. 100-397, p. 25) indicates that the intent of these provisions is to clearly inform a household of its reporting responsibilities and to increase a household's access to the State agency in order for the household to obtain information or report changes. By providing easier access to local offices, households would report more accurate information regarding their food stamp eligibility, and thus reduce the possibility of errors. Accordingly, this rule amends 7 CFR 273.12(b)(1) to specifically require the "change report" form to include a statement describing the household's reporting responsibilities as specified under 7 CFR 273.12(a)(1). In addition, this rule amends 7 CFR 273.12(b)(1) to specify that the "change report" form must contain the number of the Food Stamp Office and a toll-free number or a number where collect calls will be accepted.

The Department's model "change report" form (Form FNS-387) already contains the current list of changes households should be reporting in accordance with 7 CFR 273.12. However, the form does not specifically provide that the household is required to report the changes listed. While State agencies are not required to use this model form,

some State agencies do use it, therefore, the Department will revise the form to clarify that the list of changes in household circumstances contained on the form are *required* to be reported by the household. The revised FNS-387 will be distributed to the State agencies as soon as this revision is completed.

In respect to MRRB, current rules at 7 CFR 273.21 require that the State agency provide MRRB households with a toll-free number at certification in order for the households to ask questions regarding the monthly report. Current rules also require the State agency to provide the applicant households with a copy of a monthly report and a written description of how the report must be completed.

As a result of section 323, this rule amends 7 CFR 273.21(c)(5) to allow the State agency to provide either a toll-free number or a number where collect calls will be accepted. Also, because section 323 requires that a household be provided with the number for both certifications and recertifications, this rule amends 7 CFR 273.21(c) to specify that a toll-free or collect-call number must be provided at all certifications and recertifications. Finally, the current rules already require households subject to MRRB to receive a statement describing the household's reporting responsibilities. Therefore, the Department is not making any further revisions to 7 CFR 273.21(c)(5).

The Department is also amending the provisions relative to the Bilingual Notices, the Notice of Eligibility, the Notice of Denial, and the Notice of Adverse Action. These notices currently contain the telephone number of the Food Stamp Office. As a result of section 323 of Pub. L. 100-435, the Department believes that these notices also must include either a toll-free number or a number where collect calls will be accepted for those households living outside the local calling area. Therefore, this rule amends 7 CFR 272.4(b)(3)(ii)(B), 7 CFR 273.10(g)(1)(i)(A), 7 CFR 273.10(g)(1)(ii) and 7 CFR 273.13(a)(2), respectively, to specify that notices must contain either a toll-free number or a number where collect calls will be accepted.

Special Provisions for Farm Households—7 CFR 273.8, 273.11 and 273.21

Public Law 100-435 contains two provisions which will extend eligibility to farm households which are in need of program assistance but are determined ineligible due to current requirements relating to the treatment of income, deductions or resources.

The first provision, section 341 of Pub. L. 100-435, amends section 5(f)(1)(A) and specifies that self-employed farm households which incur irregular expenses must be given the option to average the income and expenses from the farm operation over a 12-month period. Under 7 CFR 273.11 of the current rules, self-employed farmers who are not subject to MRRB and receive income which represents the household's annual income, regardless of whether it is received monthly or more or less often than monthly, have the farm income annualized over a 12-month period. In accordance with current policy, self-employment income and expenses are annualized over a 12-month period.

These standards do not apply to farm households which are subject to MRRB and receive self-employment farm income monthly. These households must have their farm income counted in the month it is received and have their expenses counted in the month in which the expense is billed or otherwise becomes due. Thus, farm households subject to MRRB which incur irregular expenses may alternate between eligibility and ineligibility for food stamp benefits while other farm households which are allowed to average fluctuating expenses maintain their eligibility for food stamp benefits.

In order to eliminate this inconsistency in the treatment of farm income, section 341 of Pub. L. 100-435 requires that self-employed farm households be given the option of averaging income and expenses over a 12-month period (i.e., annualizing income and expenses). Accordingly, this rule amends 7 CFR 273.21(f)(2)(i) to specify that self-employed farm households which are subject to MRRB have the option to annualize their self-employment income and expenses over a 12-month period. A conforming amendment is made to the self-employment provisions at 7 CFR 273.11 by adding a new paragraph (f)(1)(v) to address this specific household option.

The second provision, section 342 of Pub. L. 100-435, addresses those households which are in the process of terminating their self-employment from farming. Under current rules at 7 CFR 273.8(b), households with resources which exceed \$2000 (\$3000 for households with an elderly member) are not eligible to participate in the program. Current rules at 7 CFR 273.8(c), (d), and (e) identify the resources which are included and excluded in the determination of a household's eligibility. For self-employed households, property that is essential to

self-employment (e.g., farm land and farm equipment or tools of a tradesman) is excluded in the resource determination of the household's eligibility as long as the household continues to be self-employed. Under current policy, once the household terminates its self-employment, excluded property continues to be excluded if the person intends to return to farming. No specific timeframe is established. For households which do not intend to return to farming, the excluded property is included in the resource determination from the date the household terminates its self-employment. To establish a time limit, section 342 of Pub. L. 100-435 provides that property essential to the self-employment of a household member engaged in farming would continue to be excluded as a resource for one year after a farm household has stopped farming.

Accordingly, this rule amends 7 CFR 273.8(e)(5) to specify that property essential to self-employment of a household member engaged in farming is excluded as a resource for one year from the date the household member terminates his/her self-employment from farming. A conforming amendment is also made to 7 CFR 273.8(h)(1)(i) to specify that any licensed vehicle which had been used over 50 percent of the time in the self-employment of a household member engaged in farming continues to be excluded as a resource for one year from the date the household member terminates his/her self-employment from farming.

Delivery of Benefits to Households Applying After the Fifteenth of the Month—7 CFR 274

Section 203 of Pub. L. 100-435 amends section 8(c) of the Food Stamp Act and requires State agencies to make available to eligible households which apply after the fifteenth of the month prorated benefits for the month of application and benefits for the first full month of participation in a combined allotment. Accordingly, this rule amends 7 CFR 274.2 (b)(2) and (b)(3) to address this statutory requirement. The rule neither changes the method of calculating benefit amounts, nor modifies current standards for application verification.

For eligible households applying under regular certification procedures (i.e., non-expedited service households), this rule clarifies that the combined allotment must be provided within thirty days after the date of application. If the application has not been completed or all information has not been verified

within 30 days, no combined benefits will be issued.

Under current rules at 7 CFR 273.2(i), eligible households which are entitled to expedited service must receive the prorated initial benefits within five days after the date of application. Under section 203 of Pub. L. 100-435, if the application is complete and all verification has been made within that five-day period, the combined allotment shall be issued at that time. If, at the end of the five-day period after the date of application, all verification has not been made, only the prorated benefits for the month of application will be issued. As soon as the verification has been completed, the benefits for the first full month of participation must be issued in accordance with 7 CFR 273.2(i)(4)(iii).

The verification requirements remain unchanged in the new benefit delivery schedules because section 203 only applies to "eligible households." Adherence to the normal requirements for verification is underscored by further reference to eligible households in the legislative history for section 203 of Pub. L. 100-435 (Senate Report No. 100-397, p. 23). The report states that, "[t]he allotment is for the remaining portion of the month in which they apply and for the next month (if they are eligible for benefits in that month)." Therefore, the household's eligibility for benefits in the first full month is not established until verification is complete. Accordingly, this rule amends 7 CFR 274.2 to add a new paragraph (b)(4) which provides that the provision for a combined allotment does not apply to households for which missing or postponed verification has not been received or to households determined ineligible for benefits for the initial application month or the next subsequent month.

In discussing this section's requirement for an "aggregate" allotment, the Senate Report described the Congressional expectation to assure a more timely delivery of initial benefits to eligible households, and to afford State agencies the opportunity to reduce costs associated with benefit delivery (Senate Report No. 100-397, p. 23). In this light the Department will allow State agencies the discretion as to the form of the combined benefit provided by the Section 203, so long as the total amount of benefits is provided at the same time. This would mean that a State agency using mail issuance, may mail the combined issuance in two envelopes; a State agency using an authorization document (ATP) system may issue two documents, for the two months, at the same time.

Section 8(c) of the Food Stamp Act, as amended, and current regulations at 7 CFR 273.10(iii)(C) provide that "no allotment may be issued to a household for the initial month or period if the value of the allotment * * * is less than \$10." This provision is not superceded by Section 203 of Pub. L. 100-435 and continues to apply. Therefore, under the provisions of this rule, eligible households whose benefit amount is less than \$10 in the initial month of application would receive the next full month's benefit more quickly, but the allotment cannot include the initial month's benefit of less than \$10. Accordingly, this rule adds a reference to 7 CFR 273.10(iii)(C) to the new paragraph 7 CFR 274.2(b)(4) to clarify this policy.

Section 203 of Pub. L. 100-435 supersedes the current provisions found at 7 CFR 274.2, paragraphs (b)(2) and (b)(3), which stipulates that eligible households (regular and expedited service) which apply after the fifteenth of the month shall receive benefits for the first full month of participation by the eighth day of the first full month, if any benefits were issued in the month of application.

Implementation—7 CFR 272.1(g)

Under section 701 of Pub. L. 100-435, the provisions contained in § 274.2(b) of this rule are effective January 1, 1989, to be implemented by State welfare agencies no later than January 1, 1990.

Under section 701 of Pub. L. 100-435, the remaining provisions of this rule are effective July 1, 1989 and must be implemented on that date for all households which newly apply for Program benefits on or after that date. The rule provides that the current caseload will be converted to these remaining provisions at recertification, at household request or when the case is next review, whichever occurs first and restored benefits provided back to July 1, 1989 or the date of the food stamp application, whichever occurred later. In addition, the rules provide that households which applied for Program benefits between July 1, 1989 and the date the State agency implements these remaining provisions, and were denied benefits, shall be entitled to restored benefits back to July 1, 1989 or the date of the food stamp application, whichever occurred later, if the household is otherwise entitled to benefits, and requests a review of its case or the State agency otherwise becomes aware that a review is needed.

Quality Control

Any variance resulting from the application of this regulation will be handled in accordance with 7 CFR 275.12 of the current rules.

List of Subjects

7 CFR Part 271

Administrative practice and procedure, Food stamps, Grant programs—Social programs.

7 CFR Part 272

Alaska, Civil rights, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedure, Aliens, claims, Food stamps, Fraud, Grant programs—social programs, Penalties, Records, Reporting and recordkeeping requirements, Social Security, Students.

7 CFR Part 274

Administrative practice and procedure, Food stamps, Grant programs—social programs, Reporting and recordkeeping requirements.

7 CFR Part 277

Food stamps, Government procedure, Grant programs—social programs, Investigations, Records, Reporting and recordkeeping requirements.

Accordingly, 7 CFR Parts 271, 272, 273, 274 and 277 are amended as follows:

1. The authority citation of Parts 271, 272, 273, 274 and 277 continues to read as follows:

Authority: 7 U.S.C. 2011-2029.

PART 271—GENERAL INFORMATION AND REGULATIONS

2. In § 271.2 the definition of "Elderly or disabled member" is amended by adding a new paragraph (11) to read as follows:

§ 271.2 Definitions.

"Elderly or disabled member" * * * (11) Is a recipient of interim assistance benefits pending the receipt of Supplemented Security Income, disability related medical assistance under title XIX of the Social Security Act, or disability-based State general assistance benefits provided that the eligibility to receive those benefits is based upon disability or blindness criteria which are at least as stringent as those used under title XVI of the Social Security Act.

3. In § 271.8, a paragraph designation and corresponding OMB Control Number for § 272.5, paragraph (c), is added in numerical order to read as follows:

§ 271.8 Information collection/recordkeeping—OMB assigned control numbers.

7 CFR section where requirements are described	Current OMB control No.
272.5(c).....	0584-0083

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

4. In § 272.1, a new paragraph (g)(110) is added in numerical order to read as follows:

§ 272.1 General terms and conditions.

(g) *Implementation.* * * * (110) *Amendment No. 316.* State welfare agencies shall implement the provisions of *Amendment No. 316* as follows:

(i) the provisions contained in § 274.2(b) of *Amendment No. 316* are effective retroactively to January 1, 1989 and shall be implemented by State welfare agencies no later than January 1, 1990 for all households which newly apply for Program benefits or apply for recertification on or after that date.

(ii) The remaining provisions are effective July 1, 1989 and must be implemented on that date for all households which newly apply for Program benefits or apply for recertification on or after that date. The current caseload shall be converted to these provisions at household request, at the time of recertification, or when the case is next reviewed, whichever occurs first and restored benefits shall be provided, if appropriate, back to July 1, 1989 or the date of the application, whichever is later. Additionally, households which applied for Program benefits between July 1, 1989 and the date the State agency implemented these provisions, and were denied benefits, shall be entitled to restored benefits back to July 1, 1989 or the date of the application, whichever occurred later, if the household:

(A) Is otherwise entitled to benefits, and

(B) Requests a review of its case or the State agency otherwise becomes aware that a review is needed.

5. In § 272.2, the seventh sentence of paragraph (a)(2) is amended by adding the phrase "the optional plan for

Program informational activities directed to low-income households," after the phrase "Nutritional Education Plan," and a new paragraph (d)(1)(ix) is added to read as follows:

The additions read as follows:

§ 272.2 Plan of operation.

(d) *Planning Documents.*
(1) * * *
(ix) A plan for Program informational activities as specified in § 272.5(c).

6. In § 272.4:
a. Paragraph (b)(3)(ii)(B) is amended by replacing the phrase, "the telephone number to call for more information," with the phrase, "the telephone number (toll-free number or a number where collect calls will be accepted for households outside the local calling area) which the household may call to receive additional information."

b. Paragraph (d)(1)(i) is amended by adding a sentence to the end of that paragraph.

c. Paragraph (d)(2) is redesignated as paragraph (d)(3) and a new paragraph (d)(2) is added.

The additions and revisions read as follows:

§ 272.4 Program administration and personnel requirements.

(d) *Training.*
(1) * * *
(i) * * * Training must convey the goals and methods for promptly and accurately certifying eligible households.

(2) *Additional training.* At their option, State agencies may provide or contract to provide training and assistance to persons working with volunteer or nonprofit organizations that provide program information activities or eligibility screening to persons potentially eligible for food stamps.

7. In § 272.5, paragraph (c) is revised to read as follows:

§ 272.5 Program informational activities.

(c) *Program informational activities for low-income households.* At their option State agencies may carry out and claim associated costs for Program informational activities designed to inform low-income households about the availability, eligibility requirements, application procedures, and benefits of the Food Stamp Program. Program informational materials used in such activities shall be subject to § 272.4(b).

which pertains to bilingual requirements. Before FNS considers costs for such activities eligible for reimbursement at the fifty percent rate under Part 277, State agencies shall obtain FNS approval for the attachment to their Plans of Operation as specified in § 272.2(d)(1)(ix). In such attachments, State agencies shall describe the subject activities with respect to the socioeconomic and demographic characteristics of the target population, types of media used, geographic areas warranting attention, and outside organizations which would be involved. State agencies shall update this attachment to their Plans of Operation when significant changes occur and report projected costs for this Program activity in accordance with § 272.2 (c), (e), and (f).

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

8. In § 273.2:
- a. Paragraph (b) is revised in its entirety.
 - b. Paragraph (c)(5) is redesignated as paragraph (c)(6) and a new paragraph (c)(5) is added.
 - c. Paragraph (d)(1) is amended by adding two new sentences to end of the paragraph.
 - d. The fourth sentence of paragraph (e)(2) is revised.
 - e. A new paragraph (f)(1)(viii)(A)(6) is added.
 - f. Paragraph (f)(5)(i), paragraph (f)(8)(i)(A), the first two sentences of paragraph (f)(8)(i)(C), and paragraph (f)(8)(ii) are revised.
 - g. The last sentence of paragraph (g)(2) is amended by removing the phrase, "when required."
 - h. The first sentence of paragraph (h)(1)(i)(C) is revised.
 - i. The first and last sentences of the introductory text of paragraph (j) are revised, the first two sentences of paragraph (j)(1)(i) are removed and three new sentences are added in their place, and a new paragraph (j)(1)(v) is added.

The additions and revisions read as follows:

§ 273.2 Application processing.

(b) *Food Stamp application form.*—(1) *Content.* Each application form shall contain:

- (i) In prominent and boldface lettering and understandable terms a statement that the information provided by the applicant in connection with the application for food stamp benefits will be subject to verification by Federal, State and local officials to determine if

such information is factual; that if any information is incorrect, food stamps may be denied to the applicant; and that the applicant may be subject to criminal prosecution for knowingly providing incorrect information;

- (ii) In prominent and boldface lettering and understandable terms a description of the civil and criminal provisions and penalties for violations of the Food Stamp Act;

- (iii) A statement to be signed by one adult household member which certifies, under penalty of perjury, the truth of the information contained in the application;

- (iv) A statement to be signed by each household member attesting, under penalty of perjury, to his or her citizenship or alien status (adults shall sign for household members under 18 years of age; however, if there are no adult members in the household, the applicant shall sign the statement for himself or herself and for all other members in the household who are under 18 years of age);

- (v) A place on the front page of the application where the applicant can write his/her name, address and signature;

- (vi) In plain and prominent language on the front page of the application, notification of the household's right to immediately file the application as long as it contains the applicant's name and address and the signature of a responsible household member or the household's authorized representative;

- (vii) In plain and prominent language on the front page of the application, a description of the expedited service provisions described in paragraph (i) of this section; and

- (viii) In plain and prominent language on the front page of the application, notification that benefits are provided from the date of application.

(2) *Income and eligibility verification system (IEVS).* All applicants for food stamp benefits shall be notified at the time of application and at each recertification through a written statement on or provided with the application form that information available through the State income and eligibility verification (IEVS) will be requested, used and may be verified through collateral contact when discrepancies are found by the State agency, and that such information may affect the household's eligibility and level of benefits. All applicants shall also be notified on the application form that the alien status of any household member may be subject to verification by INS through the submission of information from the application to INS, and that the submitted information

received from INS may affect the household's eligibility and level of benefits.

(3) *Deviations.* All State agencies shall use an application form designated by FNS. FNS may approve a deviation from that form to accommodate the use of a combined PA/food stamp application form, the requirements of a computer system, or other exigencies for which the State agency can submit adequate justification, provided the form is brief, understandable to applicants and easy to use. State agencies may request assistance from FNS in the development of a brief, simply-written and readable application, including application forms which cover the Food Stamp Program and the Aid to Families with Dependent Children Program or the Medicaid Program.

(c) *Filing an application.* * * *

(5) *Notice of Required Verification.* The State agency shall provide each household at the time of application for certification and recertification with a notice that informs the household of the verification requirements the household must meet as part of the application process. The notice shall also inform the household of the State agency's responsibility to assist the household in obtaining required verification provided the household is cooperating with the State agency as specified in (d)(1) of this section. The notice shall be written in clear and simple language and shall meet the bilingual requirements designated in § 272.4(b) of this chapter.

(d) *Household Cooperation.* (1) * * * The State agency shall not determine the household to be ineligible when a person outside of the household fails to cooperate with a request for verification. The State agency shall not consider individuals identified as nonhousehold members under § 273.1(b)(2) as individuals outside the household.

(e) *Interviews.* * * *

(2) * * * These hardship conditions include, but are not limited to: illness, care of a household member, hardships due to residency in a rural area, prolonged severe weather, or work or training hours which prevent the household from participating in an in-office interview.

(f) *Verification.* * * *

(1) *Mandatory verification.* * * *

(viii) *Disability.*

(A) * * *

(6) For individuals to be considered disabled under paragraph (11) of the definition, the household shall provide

proof that the individual receives interim assistance benefits pending the receipt of Supplemental Security Income; or disability-related medical assistance under title XIX of the SSA; or disability-based State general assistance benefits. The State agency shall verify that the eligibility to receive these benefits is based upon disability or blindness criteria which are at least as stringent as those used under title XVI of the Social Security Act.

(5) *Responsibility of obtaining verification.* (i) The household has primary responsibility for providing documentary evidence to support statements on the application and to resolve any questionable information. The State agency shall assist the household in obtaining this verification provided the household is cooperating with the State agency as specified under paragraph (d)(1) of this section. Households may supply documentary evidence in person, through the mail, or through an authorized representative. The State agency shall not require the household to present verification in person at the food stamp office. The State agency shall accept any reasonable documentary evidence provided by the household and shall be primarily concerned with how adequately the verification proves the statements on the application.

(8) *Verification subsequent to initial certification.* (i) *Recertification.*—(A) At recertification the State agency shall verify a change in income or actual utility expenses if the source has changed or the amount has changed by more than \$25. Previously unreported medical expenses and total recurring medical expenses which have changed by more than \$25 shall also be verified at recertification. The State agency shall not verify income, total medical expenses, or actual utility expenses claimed by households which are unchanged or have changed by \$25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated.

(C) Other information which has changed may be verified at recertification. Unchanged information shall not be verified unless the information is incomplete, inaccurate, inconsistent or outdated.

(ii) *Changes.* Changes reported during the certification period shall be subject to the same verification procedures as apply at initial certification, except that the State agency shall not verify changes in income, total medical

expenses or actual utility expenses which are unchanged or have changed by \$25 or less, unless the information is incomplete, inaccurate, inconsistent or outdated.

(h) *Delays in processing.* * * *

(1) *Determining cause.* * * *

(i) * * *

(C) In cases where verification is incomplete, the State agency must have provided the household with a statement of required verification and offered to assist the household in obtaining required verification and allowed the household sufficient time to provide the missing verification.

(j) *PA, GA and categorically eligible households.* Households applying for public assistance (PA) shall be notified of their right to apply for food stamp benefits at the same time and shall be allowed to apply for food stamp benefits at the same time they apply for PA benefits. * * * Households in which all members are applying for State agency administered GA benefits shall be allowed to apply for food stamps at the same time they apply for GA benefits but shall not be considered categorically eligible for food stamps.

(1) *Applicant PA households.* (i) The application for PA shall contain all the information necessary to determine a household's food stamp eligibility and level of benefits. Information relevant only to food stamp eligibility shall be contained in the PA form or shall be an attachment to it. The joint PA/food stamp application shall clearly indicate that the household is providing information for both programs, is subject to the criminal penalties of both programs for making false statements, waives the notice of adverse action as specified by both programs for making false statements, and waives the notice of adverse action as specified in paragraph (j)(1)(iv) of this section.

(v) Households whose PA applications are denied shall not be required to file new food stamp applications but shall have their food stamp eligibility determined or continued on the basis of the original applications filed jointly for PA and food stamp purposes and any other documented information obtained subsequent to the application which may have been used in the PA determination and which is relevant to food stamp eligibility or level of benefits.

9. In § 273.8:

a. Paragraph (e)(5) is amended by adding one sentence to the end of the paragraph.

b. Paragraph (h)(1)(i) is amended by replacing the semicolon with a period and adding a new sentence to the end of the paragraph.

The additions read as follows:

§ 273.8 Resource eligibility standards.

(e) *Exclusions from resources.* * * *

(5) * * * Property essential to the self-employment of a household member engaged in farming shall continue to be excluded for one year from the date the household member terminates his/her self-employment from farming.

(h) *Handling of licensed vehicles.*

(1) * * *

(i) * * * Licensed vehicles which have previously been used by a self-employed household member engaged in farming but are no longer used over 50 percent of the time in farming because the household member has terminated his/her self-employment from farming shall continue to be excluded as a resource for one year from the date the household member terminated his/her self-employment from farming.

10. In § 273.9, a new sentence is added between the first and second sentences of paragraph (c)(1) to read as follows:

§ 273.9 Income and deductions.

(c) *Income exclusions.* * * *

(1) * * * In-kind or vendor payments which would normally be excluded as income as specified in this section but are converted in whole or in part to a direct cash payment under the approval of a federally authorized demonstration project (including demonstration projects created by the waiver of provisions of Federal law) shall also be excluded from income.

11. In § 273.10:

a. A new sentence is added between the second and third sentences of paragraph (d)(1)(i).

b. The fourth sentence of paragraph (g)(1)(i)(A) and the first sentence of paragraph (g)(1)(ii) are amended by adding the phrase, "(a toll-free number or a number where collect calls will be accepted for households outside the local calling area)" after the phrase, "the telephone number of the food stamp office".

The addition reads as follows:

§ 273.10 Determining household eligibility and benefit levels.

(d) *Determining deductions.* * * *
 (1) *Disallowed expenses.* (i) * * * In addition, an expense which is covered by an excluded vendor payment that has been converted to a direct cash payment under the approval of a federally authorized demonstration project as specified under § 273.9(c)(1) shall not be deductible. * * *

12. In § 273.11, a new paragraph (a)(1)(v) is added to read as follows:

§ 273.11 Action on households with special circumstances.

(a) *Self-employment income.* * * *
 (1) *Annualizing self-employment income.* * * *

(v) Notwithstanding the provisions of paragraphs (i) through (iv) of this paragraph, households subject to MRRB who derive their self-employment income from a farming operation and who incur irregular expenses to produce such income shall have the option to annualize the allowable costs of producing self-employment income from farming when the self-employment farm income is annualized.

13. In § 273.12:
 a. Paragraph (a)(1)(vi) is revised.
 b. Paragraph (b)(1)(ii) is amended by removing the word "and" following the semicolon.
 c. Paragraph (b)(1)(iii) is amended by replacing the period at the end of the sentence with a semicolon.
 d. Paragraph (b)(1) is amended by adding two new paragraphs (b)(1)(iv) and (b)(1)(v).

The additions and revisions read as follows:

§ 273.12 Reporting changes.

(a) *Household responsibility to report.* (1) * * *
 (vi) Changes greater than \$25 in the total amount of allowable medical expenses.

(b) *Report form.*

(1) * * *
 (iv) The number of the food stamp office and a toll-free number or a number where collect calls will be accepted for households outside the local calling area; and

(v) A statement describing the changes in household circumstances contained in § 273.12(a)(1) that must be reported and a statement which clearly informs the household that it is required to report these changes.

14. In § 273.13, paragraph (a)(2) is amended by replacing the phrase "the telephone number" with the phrase, "the telephone number of the food stamp office (toll-free number or a number where collect calls will be accepted for households outside the local calling area)".

15. In § 273.21:

a. The introductory text of paragraph (c) and paragraph (c)(5) are revised.
 b. A new sentence is added to the end of paragraph (f)(2)(i).
 c. Paragraphs (h)(3)(i) and (h)(3)(ii) are amended by removing the word "medical."

d. Paragraph (h)(3)(iii) is redesignated as paragraph (h)(4) and a new paragraph (h)(3)(iii) is added.

e. Newly designated paragraph (h)(4) is amended by adding a heading after the designation of "(4)" to read, "Combined form."

f. Paragraph (i)(1) is amended by adding the phrase "changes in" before the words "utility expenses" and by adding the phrase "all allowable medical expenses (unless the household elects the option of reporting changes of more than \$25 in total allowable medical expenses)," in place of the phrase, "medical expenses."

g. Paragraph (i)(3) is revised.

h. Paragraph (j)(3)(iii)(B) is amended by adding the phrase "a change in" after the phrase, "does not verify."

i. Paragraph (j)(3)(iii)(C) is revised, paragraph (j)(3)(iii)(D) is redesignated as paragraph (j)(3)(iii)(E) and a new paragraph (j)(3)(iii)(D) is added.

The additions and revisions read as follows:

§ 273.21 Monthly Reporting and Retrospective Budgeting (MRRB).

(c) *Information on MRRB.* At the certification and recertification interview, the State agency shall provide the household with the following:

(5) A telephone number (toll-free number or a number where collect calls will be accepted outside the local calling area) which the household may call to ask questions or to obtain help in completing the monthly report; and

(f) *Calculating allotments for households not suffering serious hardship.* * * *

(2) *Income and deductions.* * * *

(i) * * * Except that, households which receive self-employment income from a farm operation monthly but incur irregular expenses to produce such self-employment farm income shall be given

the option to annualize the self-employment farm income and expenses over a 12-month period.

(h) *The monthly report form.* * * *
 (3) *Reporting information.* * * *

(iii) either all allowable medical expenses each month or changes of greater than \$25 in total allowable medical expenses.

(i) *Verification.* * * *

(3) The State agency may require the household to verify any other information on the monthly report. However, the State agency shall not require the household to verify such other information which has not changed since the last report unless the State agency believes the information is inaccurate, incomplete, outdated, or inconsistent with other casefile information.

(j) *State agency action on reports.*

(3) *Incomplete filing.* * * *

(iii) * * *
 (C) If the household which has elected to report allowable medical expenses monthly does not verify its monthly allowable medical expenses, the State agency shall not allow a deduction.

(D) If a household which has elected to report changes of greater than \$25 in allowable medical expenses does not verify a reported change, the State agency shall not allow a deduction.

PART 274—ISSUANCE AND USE OF COUPONS

15. In § 274.2, paragraphs (b)(2) and (b)(3) are revised and a new paragraph (b)(4) is added.

The addition and revisions read as follows:

§ 274.2 Providing benefits to participants.

(b) *Newly-certified households.* * * *
 (2) *Households certified under the normal processing timeframes.*

Households which apply for initial months benefits (as described in § 273.10(a)) during the last 15 days of the month who have completed the application and provided all required verification within 30 days of the date of application and have been determined eligible to receive benefits for the initial month of application and the next subsequent month, shall receive their prorated allotment for the initial month of application and their first full month's allotment at the same time. State agencies may opt to provide both

months' benefits in one combined allotment or as separate allotments so long as they are provided at the same time and within the timeframe specified in § 273.2(g).

(3) *Households certified under the expedited service processing timeframes.* Households which apply for initial benefits (as described in § 273.10(a)) during the last 15 days of the month under the expedited service procedures in § 273.2(i) who have completed the application and provided all required verification within the 5-day expedited service time limit and have been determined eligible to receive benefits for the initial month of application and the next subsequent month, shall receive their prorated allotment for the initial month of application and their first full month's allotment at the same time. State agencies may opt to provide both months' benefits in one combined

allotment or as separate allotments so long as they are provided at the same time and within the timeframe specified in § 273.2(i).

(4) *Households not entitled to combined allotments.* The provisions of paragraphs (b)(2) and (b)(3) of this section do not apply to households determined ineligible to receive benefits for the initial month of application or the next subsequent month or to households for which missing verification or postponed verification have not been provided. Households eligible for expedited service under § 273.2(i) may, however, receive benefits for the initial month under the verification standards set forth in § 273.2(i)(4). Additionally, in accordance with § 273.10(a)(iii)(C), benefits of less than \$10 shall not be issued under the provisions of paragraphs (b)(2) and (b)(3) of this section.

PART 277—PAYMENTS OF CERTAIN ADMINISTRATIVE COSTS OF STATE AGENCIES

16. In § 277.4, a new paragraph (f) is added to read as follows:

§ 277.4 Funding.

(f) The expenses (e.g. travel, lodging, meals) of persons working with the organizations which receive training and assistance pursuant to § 272.4(d)(2) are not allowable.

Appendix A to Part 277—[Amended]

17. In appendix A to Part 277, under Standards for Selected Items of Cost, paragraph-C.(14) is removed.

Date: May 30, 1989.

G. Scott Dunn,
 Acting Administrator, Food and Nutrition Service.

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June 7, 1989

Part IV

Department of Education

Office of Special Education and
Rehabilitative Services

Arbitration Panel Decision Under the
Randolph-Sheppard Act; Notice

DEPARTMENT OF EDUCATION

Office of Special Education and
Rehabilitative ServicesArbitration Panel Decision Under the
Randolph-Sheppard Act

AGENCY: Department of Education.

ACTION: Notice of arbitration panel
decision under the Randolph-Sheppard
Act.

SUMMARY: Notice is hereby given that on December 14, 1987, an arbitration panel rendered a decision in the matter of Don Hudson and Richard Jack, vendors, v. State of Colorado Department of Social Services, a "State Licensing Agency" (SLA) designated by the Secretary of Education. This panel was convened by the Secretary of Education pursuant to 20 U.S.C. 107d-1(a), upon receipt of a complaint filed by petitioners Don Hudson and Richard Jack on December 23, 1986 (Docket No. R-S/87-7).

Under this section of the Act, a blind licensee who is dissatisfied with the State's operation or administration of the vending facility program may request a full evidentiary hearing from the SLA. If the licensee is dissatisfied with the State agency decision, the licensee may complain to the Secretary, who is then required to convene an arbitration panel to resolve the dispute.

FOR FURTHER INFORMATION CONTACT: George F. Arsnow, Chief, Vending Facility Branch, Division for Blind and Visually Impaired, Rehabilitation Services Administration, Room 3230, Mary E. Switzer Building, Department of Education, 330 C Street, SW., Washington, DC 20202-2738, Area Code (202) 732-1317 or TTY (202) 732-1298. A synopsis of the panel's decision is appended. The full text of the arbitration panel decision can be obtained from this contact.

Dated: June 2, 1989.

Patricia McGill Smith,

*Acting Assistant Secretary for Special
Education and Rehabilitative Services.*

Synopsis of Arbitration Panel Decision

The origin of this arbitration is a dispute between two licensed blind vendors, Don Hudson and Richard Jack, and the Business Enterprise Program (BEP), a component of the Colorado Department of Social Services, the State Licensing Agency (SLA) for Colorado, on the number of blind vendors who should be licensed to operate vending facilities at the Terminal Annex, a building located in Denver, Colorado, and operated by the U.S. Postal Service. The Terminal Annex is a large building, four stories high and covering nearly an

entire city block, where between 2,000 and 3,000 employees work. The building is open 24 hours a day, seven days a week.

In 1981 Harold Powell, a BEP-licensed blind vendor, was awarded the vending facility to be located at the Terminal Annex. This facility proved to be very lucrative for Mr. Powell, providing him a net income of between \$84,000 and \$86,000 during fiscal year 1985, compared to the average net income for Randolph-Sheppard operators of \$28,743 in Colorado and \$20,946 nationally. In February of 1986, shortly after Powell announced his intention to retire, BEP informed Colorado's Blind Vendors Committee of its intention to split the Terminal Annex into two vending facilities. The Committee, on March 27, 1986, unanimously issued a resolution objecting to the proposed division of the Terminal Annex.

In April 1986, BEP announced its decision to divide the Terminal Annex into two facilities for blind vendors. Hudson and Jack then requested, pursuant to 20 U.S.C. 107d-1(a), a formal evidentiary hearing on this decision. The Colorado Department of Social Services, which conducted the hearing, concluded that BEP had failed to consider a number of relevant factors in reaching its decision to split the Terminal Annex and ordered BEP to reconsider this decision and allow the Committee of Blind Vendors to participate fully in this process.

Hudson and Jack, however, filed a complaint for arbitration of this matter with the U.S. Department of Education pursuant to 20 U.S.C. 107d-1(a). An arbitration panel was convened, held hearings on October 19 and 20, 1987, and rendered its decision on December 14, 1987.

The Panel ruled that BEP's decision to divide the Terminal Annex into two vending facilities "did not violate the Randolph-Sheppard Act, any regulation issued thereunder or any policy then in effect" and rejected the conclusion of the Colorado Department of Social Services that this decision was based on "inadequate information." Eight specific substantive and procedural issues, involving policies and procedures established at both the Federal and State levels, were addressed in the decision. The Panel's rulings on these issues are as follows:

1. BEP's decision to divide the Terminal Annex into two facilities did not constitute illegal rulemaking under Colorado law. A rule, as defined by Colorado law, is a statement of general applicability. The decision to split the Terminal Annex, however, does not involve rulemaking because its effect is

limited to that one case and is therefore not generally applicable.

2. The decision to divide the Terminal Annex did not constitute an unlawful limitation on income in violation of 20 U.S.C. 107d-3(a). This provision only applies to blind licensees who are currently operating a facility. Since Mr. Powell retired in May of 1986, there has been no licensee operating a vending facility at the Terminal Annex. The decision to split the Terminal Annex did not violate 20 U.S.C. 107d-3(a) because the income of no blind licensee was affected as a result.

3. The decision to split the Terminal Annex did not violate the requirement of 20 U.S.C. 107d-4 that blind vendors be given an opportunity to develop their maximum vocational potential. Precluding Hudson or Jack from having an opportunity to bid on a vending facility that has the potential of increasing their income from \$40,000 to \$80,000 does not violate this requirement. Moreover, it was reasonable for BEP to conclude that the best means of fulfilling this obligation towards all of its blind vendors is by increasing the total number of vending facilities.

4. BEP's decision to employ two blind vendors at the Terminal Annex does not violate BEP's policy against forced partnerships. The two vendors would not be, as the legal definition of partnership in Colorado provides, co-owners of a single enterprise, but operators of independent facilities that happen to be located in the same building. Any cooperation on pricing that the vendors might engage in would not preclude them from competing on other grounds or negate their status as operators of independent facilities.

5. The Randolph-Sheppard Act does not provide the Blind Vendors Committee with standing to participate in this arbitration proceeding. The relevant provisions of the Randolph-Sheppard Act, 20 U.S.C. 107d-1(a) and 107d-2(b), and its implementing regulations, 34 CFR 395.14(b)(2), only authorize blind vendors to file complaints for arbitration.

6. BEP did not violate the overall objectives and policies of the Randolph-Sheppard Act by its decision to divide the Terminal Annex into two facilities. The Act itself, in 20 U.S.C. 107(b)(2), specifically contemplates the location of more than one vending facility in Federal installations. Legislative history and policy interpretations issued by the U.S. Department of Education support the view that, where appropriate, more than one vending facility should be located in a Federal building.

7. BEP violated 20 U.S.C. 107b-1 by precluding meaningful participation by the Blind Vendors Committee in the decision to divide the Terminal Annex. This decision, however, was based on adequate information and did not constitute an abuse of the discretion on BEP's part.

8. Hudson and Jack are not entitled to damages or attorneys' fees. The conclusion and order of the Panel was

that BEP's decision to split the Terminal Annex into two facilities did not violate any substantive provisions of the Randolph-Sheppard Act. The Panel, however, admonished BEP to allow the Blind Vendors Committee to have meaningful participation in future decisions. One of the three members of the Panel dissented from its decision, arguing that splitting the Terminal Annex eroded the income of blind

vendors in violation of the basic purposes of the Act, which is to expand their opportunities. According to the dissenting panel member, such limitations have to be approved by the Secretary under 20 U.S.C. 107(b).

[FR Doc. 89-13514 Filed 6-6-89; 8:45 am]

BILLING CODE 4000-01-M

Arms and Munitions Federal Register

Wednesday
June 7, 1989

Part V

Department of State

Office of Munitions Control

Suspension of Munitions Exports to PRC;
Notice

DEPARTMENT OF STATE**Office of Munitions Control****[Public Notice 1109]****Suspension of Munitions Exports to PRC****AGENCY:** Department of State.**ACTION:** Notice.

SUMMARY: Notice is hereby given that all licenses and approvals to export defense articles and defense services from the United States to the People's Republic of China pursuant to section 38 of the Arms Export Control Act are suspended effective immediately.

EFFECTIVE DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT: Rose Biancaniello, Chief, Licensing Division, Office of Munitions Control, Department of State (703-875-6644).

SUPPLEMENTARY INFORMATION: All U.S. manufacturers and exporters are hereby notified that the Department of State has suspended until further notice all licenses and approvals authorizing the export of defense articles or defense services from the United States to the People's Republic of China. This suspension includes manufacturing license and technical assistance agreements.

This action has been taken pursuant to sections 38 and 42 of the Arms Export

Control Act (22 U.S.C. 2778, 2791) and § 126.7 of the International Traffic in Arms Regulations (ITAR) (22 CFR 126.7) in furtherance of the foreign policy of the United States.

In accordance with § 126.3 of the ITAR, affected U.S. persons desiring review of this decision with regard to a particular export in the interest of the security and foreign policy of the United States may petition the Director, Office of Munitions Control, within thirty days of publication of this Notice.

June 5, 1989.

William B. Robinson,*Director, Office of Munitions Control.*

[FR Doc. 89-13716 Filed 6-6-89; 8:45 am]

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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: June 15; at 9:00 a.m.

WHERE: Office of the Federal Register,
First Floor Conference Room,
1100 L Street, NW., Washington, DC

RESERVATIONS: 202-523-5240

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 953

[Docket No. FV-89-048]

Southeastern Potatoes; Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 953 for the 1989-90 fiscal period. Authorization of this budget will allow the Southeastern Potato Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers. **EFFECTIVE DATE:** June 1, 1989, through May 31, 1990.

FOR FURTHER INFORMATION CONTACT: Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-447-5331.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 104 and Marketing Order No. 953 (7 CFR Part 953), both as amended, regulating the handling of Irish potatoes grown in Southeastern States (Virginia and North Carolina). The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the

Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 60 handlers of Southeastern potatoes under this marketing order, and approximately 150 potato producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of the handlers and producers may be classified as small entities.

The budget of expenses for the 1989-90 fiscal year was prepared by the Southeastern Potato Committee (committee), the agency responsible for local administration of the order, and submitted to the Department of Agriculture for approval. The members of the committee are handlers and producers of Southeastern potatoes. They are familiar with the committee's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the committee was derived by dividing anticipated expenses by expected shipments of potatoes. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committee's expected expenses.

The Southeastern Potato Committee met on April 20, 1989, and unanimously recommended a 1989-90 budget of \$11,000 and an assessment rate of \$0.01 per hundredweight. This year's budget

and assessment rate are the same as last year's. Major expense items include committee staff salaries, travel expenses, and utilities. The assessment rate, when applied to anticipated fresh market potato shipments of 700,000 hundredweight, would yield \$7,000 in assessment revenue which, when added to \$4,000 from reserve funds, will be adequate to cover budgeted expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

A proposed rule was published in the *Federal Register* on May 12, 1989 (54 FR 20604). That document contained a proposal to add § 953.246 to authorize expenses and establish an assessment rate for the Southeastern Potato Committee. That rule provided that interested persons could file comments through May 22, 1989. No comments were received.

It is found that the specified expenses are reasonable and likely to be incurred and that such expenses and the specified assessment rate to cover such expenses will tend to effectuate the declared policy of the Act.

This action should be expedited because the committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. The 1989-90 fiscal period begins on June 1, 1989, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committee at a public meeting. Therefore, it is also found that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* (5 U.S.C. 553).

List of Subjects in 7 CFR Part 953

Marketing agreements and orders, potatoes (Virginia and North Carolina).

For the reasons set forth in the preamble, 7 CFR Part 953 is amended as follows:

PART 953—IRISH POTATOES GROWN IN SOUTHEASTERN STATES

1. The authority citation for 7 CFR Part 953 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. A new § 953.248 is added to read as follows:

Note: This section prescribes the annual expenses and assessment rate and will not be published in the Code of Federal Regulations.

§ 953.248 Expenses and assessment rate.

Expenses of \$11,000 by the Southeastern Potato Committee are authorized, and an assessment rate of \$0.01 per hundredweight of potatoes is established for the fiscal period ending May 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: June 2, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-13559 Filed 6-7-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 982

[FV-89-039FR]

Expenses and Assessment Rate for Filberts/Hazelnuts Grown in Oregon and Washington

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order No. 982 for the 1989-90 marketing year established under the filbert/hazelnut marketing order. The marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable filberts/hazelnuts handled from the beginning of such year. An annual budget of expenses is prepared by the Filbert/Hazelnut Marketing Board (Board), the agency responsible for local administration of the filbert/hazelnut marketing order, and submitted to the U.S. Department of Agriculture for approval. The members of the Board are handlers and producers of filberts/hazelnuts. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local area and are thus in a position to formulate an appropriate budget. The assessment rate recommended by the

Board is derived by dividing the anticipated expenses by expected shipments of filberts/hazelnuts. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: July 1, 1989, through June 30, 1990.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, Room 2524-S, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 982 (7 CFR Part 982), both as amended, regulating the handling of filberts/hazelnuts grown in Oregon and Washington. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "nonmajor" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 28 handlers of filberts/hazelnuts grown in Oregon and Washington subject to regulation under the filbert/hazelnut marketing order, and approximately 1,300 producers of filberts/hazelnuts in the production area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of filbert/hazelnut producers and handlers may be classified as small entities.

The filbert/hazelnut marketing order requires that the assessment rate for a particular fiscal year shall apply to all assessable filberts/hazelnuts handled from the beginning of such year. An annual budget of expenses is prepared by the Filbert/Hazelnut Marketing Board (Board) and submitted to the U.S. Department of Agriculture for approval. The members of the Board are handlers and producers of filberts/hazelnuts. They are familiar with the Board's needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate an appropriate budget. The budget is formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Board is derived by dividing anticipated expenses by expected shipments of the commodity. Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the Board's expected expenses. The recommended budget and assessment rate are usually acted upon by the Board shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approvals must be expedited so that the Board will have funds to pay its expenses.

The Board conducted a telephone vote on April 3, 1989, and unanimously recommended 1989-1990 marketing order expenditures of \$428,060 and an assessment rate of \$14.00 per ton of filberts/hazelnuts. In comparison, 1988-89 marketing year budgeted expenditures were \$424,100 and the assessment rate was \$14.00 per ton. Major expenditure categories in the 1989-90 budget are \$67,560 for administration, \$250,000 for promotion, and \$100,000 for the emergency reserve fund. Assessment income for 1989-90 is expected to total \$280,000 based on a crop estimate of 20,000 tons of filberts/hazelnuts. Interest and incidental income is estimated at \$35,000. Reserve funds are adequate to meet the anticipated \$111,060 deficit in assessment and other income.

While this final action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have

a significant economic impact on a substantial number of small entities.

This action adds a new § 982.334 and is based on Board recommendations and other information. A proposed rule was published in the May 5, 1989, issue of the *Federal Register* (54 FR 18377). Comments on the proposed rule were invited from interested persons until May 15, 1989. No comments were received.

After consideration of the information and recommendations submitted by the Board and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

This budget and assessment rate should be expedited because the Board needs to have sufficient funds to pay its expenses, which are incurred on a continuous basis. In addition, handlers are aware of this action, which was recommended by the Board at public meetings. Therefore, it is found that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* (5 U.S.C. 553).

List of Subjects in 7 CFR Part 982

Filberts, Hazelnuts, Marketing agreements and orders, Oregon, Washington.

For the reasons set forth in the preamble, 7 CFR Part 982 is amended as follows:

Note: This section will not appear in the annual Code of Federal Regulations.

PART 982—FILBERTS/HAZELNUTS GROWN IN OREGON AND WASHINGTON

1. The authority citation for 7 CFR Part 982 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. A new 982.334 is added to read as follows:

§ 982.334 Expenses and assessment rate.

Expenses of \$428,060 by the Filbert/Hazelnut Marketing Board are authorized, and an assessment rate payable by each handler in accordance with § 982.61 is fixed at \$14.00 per ton of assessable filberts/hazelnuts for the 1989-90 marketing year ending June 30, 1990. Unexpended funds may be carried over as a reserve.

Dated: June 2, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-13560 Filed 6-7-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1210

[FV-89-1, AMS-FV-89-063]

RIN 0581-AA32

Watermelon Research and Promotion Plan; Decision Establishing Final Plan Provisions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final decision establishes a Watermelon Research and Promotion Plan as authorized by the Watermelon Research and Promotion Act of 1985. The plan was favored by a majority of producers and a majority of handlers accounting for more than two-thirds of the total volume of watermelons produced and handled by both producers and handlers voting in a referendum conducted by the Department on February 6-21, 1989. The plan authorizes establishment of projects relating to research, development, advertising, and promotion to maintain and expand existing markets and establish new or improved markets and uses for watermelons. This plan also defines the powers and duties of the 29 member National Watermelon Board, provides for collection of assessments, specifies the objectives of Board activities, and provides a mechanism for terminating the plan if its continuance is not favored by producers and handlers as demonstrated in a referendum.

EFFECTIVE DATE: Final Rule is effective June 8, 1989.

FOR FURTHER INFORMATION CONTACT:

Richard H. Mathews, Marketing Specialist, Marketing Order Administration Branch, Room 2525-South, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 475-3915.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding include the following. A Notice of Hearing issued February 2, 1987, and published in the February 4, 1987, issue of the *Federal Register* (52 FR 3588). A seven day Extension of Time for Receipt of Post Hearing Briefs requested by proponents, granted on April 17, 1987, and published in the *Federal Register* on April 21, 1987 (52 FR 13086). A Recommended Decision and Opportunity to File Written Exceptions published in the March 24, 1988, issue of the *Federal Register* (53 FR 9637). A Secretary's Decision and Referendum Order on the Proposed Plan published in the December 20, 1988, issue of the *Federal Register* (53 FR 51110).

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the U.S. Code, and therefore is excluded from the requirements of Executive Order 12291.

Preliminary Statement

This plan is issued pursuant to the applicable rules of practice and procedure governing proceedings to formulate and amend an order (plan) (7 CFR Part 1200). This plan is effective pursuant to the provisions of the Watermelon Research and Promotion Act, hereafter referred to as the "Act" (Pub. L. 99-198, 99th Congress, effective January 1, 1986, 7 U.S.C. 4901-4916).

The plan was formulated on the record of a public hearing conducted in Las Vegas, Nevada, on February 18 and 19, 1987, and Atlanta, Georgia, on February 24 and 25, 1987. Notice of the sessions was published in the February 4, 1987, issue of the *Federal Register* (52 FR 3588). That notice contained a proposed plan submitted by the National Watermelon Association, Inc.

Upon the basis of evidence introduced at the hearing and the record thereof, a Recommended Decision and Opportunity to File Written Exceptions was published in the March 24, 1988, issue of the *Federal Register* (53 FR 9637). Eleven exceptions were received. Three favored the proposed plan as written in the recommended decision, seven expressed opposition to certain provisions in the proposed plan, and one was not in favor of the proposed plan. Each of the eleven exceptions was discussed and ruled upon in the Secretary's Decision.

The Secretary's Decision was issued December 20, 1988, directing that a referendum be conducted for the Watermelon Research and Promotion Plan in accordance with the procedure for the conduct of referenda (7 CFR Part 1210.200) as published in the December 20, 1988, issue of the *Federal Register* (53 FR 51089), to determine whether the issuance of the proposed plan was approved or favored by producers and handlers, as defined in the plan, who during the representative period were engaged in the production or first handling of watermelons within the contiguous 48 States. The representative period was determined to be the calendar year January 1, 1988, through December 31, 1988. The referendum ballot provided only for the approval or disapproval of the plan. In the referendum, a majority of producers (52 percent) and a majority of handlers (56 percent) voted in favor of the proposed plan. Those in favor of the plan accounted for 73 percent of the volume

voted in the referendum. Thus, the plan meets statutory criteria for industry approval.

The plan authorizes, with the approval of the Secretary, the collection of equal assessments on producers and handlers of watermelons. Handlers will be responsible for collecting and submitting assessments and for maintaining appropriate records. Refunds of collected assessments can be obtained by producers and handlers who do not support the plan. Assessment funds will be used to promote watermelons through a variety of market research and product promotion programs. These programs will be developed and administered by a national-level, Watermelon Promotion Board (Board) composed of 14 producer members, 14 handler members, and a public member. Daily administration of the plan will be carried out by a staff directly responsible to the Board. All administrative rules and regulations, as well as research and promotion programs developed by the Board, must be submitted to the Secretary of Agriculture for approval.

Pursuant to the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities as defined by the RFA. The purpose of the RFA is to fit regulatory action to the scale of business subject to such action, in order that small businesses will not be unduly or disproportionately burdened. Research and promotion programs, and their rules and regulations, are unique in that they are normally brought about through group action of essentially small entities acting for their own benefit.

As stated in the notice of hearing, interested persons were invited to present evidence at the hearing on the probable impact of the regulatory and informational requirements of the proposed plan on small businesses for the purposes of RFA. In that regard, such evidence was considered in arriving at the findings and conclusions contained in the recommended decision and the Secretary's decision. Those findings and conclusions are incorporated herein.

The record indicates that most handlers regulated under this program would meet the Small Business Administration's (SBA) definition of small agricultural service firms (13 CFR 121.2). Small agricultural service firms are defined as those having annual gross receipts for the last three years of less than \$3,500,000. There may be as many

as 300 such handlers of watermelons who will be subject to regulation under this plan. Small agricultural producers are defined by the SBA as having revenues for the last three years of less than \$500,000. Hearing evidence indicates that watermelons are produced on almost 12,000 farms in the United States. A vast majority of these farms would meet the SBA definition of small agricultural producers. Many farms produce less than five acres of watermelons, and thus will not be affected by the plan. The industry also includes a few large farms in excess of 400 acres.

Record evidence shows the majority of watermelons are produced for fresh market sales. Proponents of the plan testified that the watermelon industry is in serious trouble because of an apparent decrease in demand for watermelons. Record exhibits indicate a significant and steady decline in per capita consumption of watermelons between 1960 and 1981. Consumption fell 30 percent, from 17.2 pounds to 12.3 pounds per capita, during this period. No testimony was provided that would explain the decline in per capita consumption. However, the record indicates that under the plan, the issue would be studied, possible causes identified and corrective programs initiated.

While consumption declined during the 1960's and 1970's, total value of the crop increased by 400 percent. Most of this increase in value reflected inflationary changes rather than rises in real dollar income. In constant dollars the crop value increased only 15 percent in the 21 year period. Comparable values of vegetables and melons, fresh fruit market prices, and the consumer price index for all foods increased over 300 percent during the same period.

The plan will assess both producers and handlers at equal rates, not to exceed two cents per hundredweight on watermelons produced and two cents per hundredweight on watermelons handled. Testimony at the hearing indicates a unanimous agreement by those testifying that this amount will be relatively insignificant and will not impose a financial burden on large or small producers and handlers. The two cents per hundredweight assessment rate represents less than one percent of producer income and less than one percent of handler income based on a seasonal average selling price of \$6 per hundredweight. The benefits of the program are expected to exceed the costs. Producers and handlers who do not agree with the program may request a refund of assessments paid.

While the plan imposes certain recordkeeping and reporting requirements on handlers, information required to be reported under the plan can be compiled from records currently maintained by handlers. Such recordkeeping and reporting requirements are minimal and should not impose an undue burden on handlers. In addition, the plan provides for referenda to determine if watermelon producers and handlers favor termination or suspension of the plan or any provisions thereof. In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implement the Paperwork Reduction Act (PRA) of 1980 (44 U.S.C. Chapter 35) and section 3504(h) of the PRA, the information collection and recordkeeping requirements contained in the plan were submitted to the OMB for approval. The OMB approved the information collection provisions of the plan under OMB number 0581-0158.

Based on comparable research and promotion programs, it has been estimated that it takes an average of 15 minutes to complete required forms. Approximately 300 handlers could be affected by the reporting and recordkeeping requirements of the plan.

We have reviewed this action in view of the executive order on Federalism, Executive Order 12612 (52 FR 41686) and determined that the plan does not have sufficient Federalism implications to warrant the preparation of a Federalism assessment. This action is consistent with the principles and provisions of Executive Order 12612. Implementation of this national plan does not foreclose appropriate State Programs for watermelons.

Findings, Conclusions, and Rulings on Exceptions

The material issues, findings and conclusions, and rulings on exceptions contained in the Recommended Decision and the Secretary's Decision published in the *Federal Register* on March 24, 1988 (53 FR 9637) and December 20, 1988 (53 FR 51110) respectively, are incorporated by reference in this document and are hereby ratified and affirmed.

General Findings

Upon the basis of the evidence introduced at the hearing, and the record thereof, it is found that:

(1) The plan, and all of its terms and conditions thereof, as hereinafter set forth, will tend to effectuate the declared policy of the Act;

(2) The plan regulates the handling of watermelons in the contiguous 48 States

in the same manner as, and is applicable only to persons in the respective classes of commercial or industrial activity specified in, a proposed plan upon which a hearing has been held;

(3) The handling of watermelons in the contiguous 48 States, as defined in the plan, is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

(4) The plan is applicable only to persons involved in the production of and first handling of watermelons, as specified in the Act.

Additional Findings

It is necessary and in the public interest to make this plan effective upon publication in the *Federal Register* so that the Board, the administrative agency provided for in the plan, may be nominated, selected, and may start to function as soon as possible. The start of the 1990 marketing year is January 1, 1990. Before the program can begin, it will be necessary for the Board to recommend regulations for the Secretary's approval and publication in the *Federal Register*. In addition, the Board will have to draft bylaws for approval by the Secretary. It will also be necessary for the Board to recommend a budget of anticipated expenses to the Secretary for approval. Further, it will be necessary for the Board to hire a staff to carry out its necessary administrative functions. Therefore, it appears that no useful purpose would be served by postponing the effective date of this plan for 30 days beyond the date of its publication in the *Federal Register*.

In view of the foregoing it is hereby found and determined that good cause exists for not postponing the effective date of this plan until 30 days after publication in the *Federal Register* (5 U.S.C. 553(d), Administrative Procedure Act).

Conclusions

It is hereby determined that: (1) The issuance of the plan is favored or approved by producers and handlers who participated in a referendum on the question of its approval and who, during the period January 1, 1988, through December 31, 1988 (which was deemed to be a representative period for the purposes of the referendum), were engaged in the production of five or more acres and/or first handling of watermelons within the forty-eight contiguous States of the United States; and (2) The issuance of this plan is the appropriate means for carrying out the declared policy of the Act.

List of Subjects in 7 CFR 1210

Watermelons, Agricultural research, Agricultural promotion, Market development.

Order Relative to Production and Handling of Watermelons

It is hereby ordered, That, on January 1, 1990, the collection of assessments and the handling of watermelons shall be in conformity to and in compliance with the following terms and conditions:

Final Plan

The following plan shall be the detailed means by which the foregoing conclusions may be carried out.

For the reasons set forth in the preamble, 7 CFR Part 1210 is amended as follows:

PART 1210—WATERMELON RESEARCH AND PROMOTION PLAN

1. The authority citation for Part 1210 continues to read as follows:

Authority: 7 U.S.C. 4901-4916.

2. 7 CFR Part 1210, is hereby amended by adding Subpart—Watermelon Research and Promotion Plan (§§ 1210.301 through 1210.367), to read as follows:

Subpart—Watermelon Research and Promotion Plan

Definitions

Sec.	
1210.301	Secretary.
1210.302	Act.
1210.303	Plan.
1210.304	Board.
1210.305	Watermelon.
1210.306	Producer.
1210.307	Handle.
1210.308	Handler.
1210.309	Person.
1210.310	Fiscal period and marketing year.
1210.311	Programs and projects.
1210.312	Promotion.
1210.313	Research.

National Watermelon Promotion Board

1210.320	Establishment and membership.
1210.321	Nominations and selection.
1210.322	Term of office.
1210.323	Acceptance.
1210.324	Vacancies.
1210.325	Procedure.
1210.326	Compensation and reimbursement.
1210.327	Powers.
1210.328	Duties.

Research and Promotion

1210.330	Policy and objectives.
1210.331	Programs and projects.

Expenses and Assessments

1210.340	Budget and expenses.
1210.341	Assessments.
1210.342	Exemption from assessment.
1210.343	Producer and handler refunds.

Sec.
1210.344 Operating reserve.

Reports, Books, and Records

1210.350	Reports.
1210.351	Books and records.
1210.352	Confidential treatment.

Miscellaneous

1210.360	Right of the Secretary.
1210.361	Personal liability.
1210.362	Influencing government action.
1210.363	Suspension or termination.
1210.364	Proceedings after termination.
1210.365	Effect of termination or amendment.
1210.366	Separability.
1210.367	Patents, copyrights, inventions, and publications.

Subpart—Watermelon Research and Promotion Plan

Definitions

§ 1210.301 Secretary.

"Secretary" means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1210.302 Act.

"Act" means the Watermelon Research and Promotion Act of 1985 (Title XVI, Subtitle C of Pub. L. 99-198, 99th Congress, effective January 1, 1986, 99 Stat. 1622).

§ 1210.303 Plan.

"Plan" means this watermelon research and promotion Plan issued by the Secretary pursuant to the Act.

§ 1210.304 Board.

"Board" means the National Watermelon Promotion Board, hereinafter established pursuant to § 1210.320.

§ 1210.305 Watermelon.

"Watermelon" means all varieties of the Family Cucurbitaceae; Genus and Species: *Citrullus Lanatus*, popularly referred to as watermelon grown by producers in the 48 contiguous States of the United States.

§ 1210.306 Producer.

"Producer" means any person engaged in the growing of five acres or more of watermelons including any person who owns or shares the ownership and risk of loss of such watermelon crop.

§ 1210.307 Handle.

"Handle" means to grade, pack, process, sell, transport, purchase, or in any other way to place or cause watermelons to which one has title or

possession to be placed in the current of commerce. Such term shall not include the transportation or delivery of field run watermelons by the producer thereof to a handler for grading, sizing or processing.

§ 1210.308 Handler.

"Handler" means any person (except a common or contract carrier of watermelons owned by another person) who handles watermelons, including a producer who handles watermelons of the producer's own production. For the purposes of this subpart, the term "handler" means the "first" person who performs the handling functions.

§ 1210.309 Person.

"Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or other entity.

§ 1210.310 Fiscal period and marketing year.

"Fiscal period" and "marketing year" mean the 12 month period from January 1 to December 31 or such other period which may be approved by the Secretary.

§ 1210.311 Programs and projects.

"Programs" and "projects" mean those research, development, advertising, or promotion programs or projects developed by the Board pursuant to § 1210.331.

§ 1210.312 Promotion.

"Promotion" means any action taken by the Board, pursuant to the Act, to present a favorable image for watermelons to the public with the express intent of improving the competitive position of watermelons in the marketplace and stimulating sales of watermelons, and shall include, but not be limited to, paid advertising.

§ 1210.313 Research.

"Research" means any type of systematic study or investigation, and/or the evaluation of any study or investigation designed to advance the image, desirability, usage, marketability, production, or quality of watermelons.

National Watermelon Promotion Board

§ 1210.320 Establishment and membership.

(a) There is hereby established a National Watermelon Promotion Board, hereinafter called the "Board". The Board shall be composed of producers and handlers and one public representative appointed by the Secretary. An equal number of producer and handler representatives shall be nominated by producers and handlers pursuant to § 1210.321. The public

representative shall be nominated by the producer and handler Board members in such manner as may be prescribed by the Secretary. If producers and handlers fail to select nominees for appointment to the Board, the Secretary may appoint persons on the basis of representation as provided in § 1210.324. If the Board fails to adhere to procedures prescribed by the Secretary for nominating a public representative, the Secretary shall appoint such representative.

(b) Membership on the Board shall be determined on the basis of two handler and two producer representatives for each of seven districts in the contiguous States of the United States. Such districts as hereby established have approximately equal production volume according to the three-year average production as set forth in the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981. They are:

District #1—South Florida including all areas south of State Highway 50.

District #2—North Florida including all areas north of State Highway 50.

District #3—The States of Alabama and Georgia.

District #4—The States of South Carolina, North Carolina, Virginia, Delaware, Maryland, West Virginia, Pennsylvania, New Jersey, New York, Ohio, Michigan, Connecticut, Rhode Island, Massachusetts, Vermont, New Hampshire, and Maine.

District #5—The States of Mississippi, Kentucky, Tennessee, Louisiana, Arkansas, Missouri, Illinois, Indiana, Iowa, Kansas, Nebraska, Oklahoma, Wisconsin, Minnesota, North Dakota, South Dakota, Colorado, and New Mexico.

District #6—The State of Texas.

District #7—The States of Arizona, California, Nevada, Utah, Oregon, Idaho, Wyoming, Washington, and Montana.

(c) After two years, the Board shall review the districts to determine whether realignment of the districts is necessary and at least every five years thereafter the Board shall make such a review. In making such review, it shall give consideration to:

(1) The most recent three years USDA production reports or Board assessment reports if USDA production reports are unavailable;

(2) Shifts and trends in quantities of watermelon produced, and

(3) Other relevant factors.

As a result of this review, the Board may realign the districts subject to the approval of the Secretary. Any such realignment shall be recommended by the Board to the Secretary at least six months prior to the date of the call for nominations and shall become effective at least 30 days prior to such date.

§ 1210.321 Nominations and selection.

The Secretary shall appoint the members of the Board from nominations to be made in the following manner:

(a) Except for initial Board members whose nomination process should be conducted by the Secretary, the Board shall issue a call for nominations by February first of each year in which an election is to be held. The call shall include at a minimum, the following information:

(1) A list of the vacancies and qualifications as to producers and handlers by district for which nominees may be submitted.

(2) The date by which the nominees shall be submitted to the Secretary for consideration to be in compliance with § 1210.323 of this subpart.

(3) A list of those States, by district, entitled to participate in the nomination process.

(4) The date, time, and location of any next scheduled meeting of the Board, national and State producer or handler associations, and district conventions if any.

(b) Nominations for positions that will become vacant shall be made by district convention in the district entitled to nominate. Notice of such convention shall be publicized to all producers and handlers within such district, and the Secretary at least ten days prior to said event. The notice shall have attached to it the call for nominations from the Board. The responsibility for convening and publicizing the district convention shall be that of the then members of the Board from that district.

(c) All producers and handlers within the district may participate in the convention; *Provided*, That producers who handle 50 percent or less of their own production may vote for producer members only, and producers who handle more than 50 percent of their own production may vote for handler members only; *And provided further*, That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(d) The district convention shall conduct the selection process for the nominees in accordance with procedures to be adopted at each such convention, subject to the following requirements:

(1) There shall be two individuals nominated for each vacant position. Each nominee shall meet the

qualifications set forth in the call; *Provided*, That producers who handle 50 percent or less of their own production may be nominated for producer positions only, and producers who handle more than 50 percent of their own production may be nominated for handler positions only; *And provided further*, That if a producer or handler is engaged in the production or handling of watermelons in more than one State or district, the producer or handler shall participate within the State or district in which the producer or handler so elects in writing to the Board and such election shall remain controlling until revoked in writing to the Board.

(2) No State in Districts 3, 4, 5, and 7 as currently constituted shall have more than three representatives concurrently on the Board.

(3) Each State represented at the district convention shall have one vote for each producer position and one vote for each handler position from the District on the Board, which vote shall be determined by the producers and handlers from that State by majority vote. Each State shall further have an additional vote for each five hundred thousand hundredweight volume as determined by the three year average annual crop production summary reports of the USDA, or if such reports are not published, then the three year average of the Board assessment reports; *Provided*, That for the first two calls for nominees, the USDA Crop Production Annual Summary Reports for 1979, 1980, and 1981 will be controlling as to any additional production volume votes.

§ 1210.322 Term of office.

(a) The term of office of Board members shall be three years, except that the members of the initial Board shall serve terms as follows: The four producers and four handlers from district 1 (south Florida) and district 6 (Texas), and the public member shall serve one-year initial terms; four producers and four handlers from district 2 (north Florida) and district 3 (Georgia and Alabama) shall serve two-year initial terms; and the remaining six producers and six handlers from districts 4, 5, and 7 shall serve three-year initial terms.

(b) The term of office for the initial Board shall begin immediately following appointment by the Secretary. Time in the interim period, from appointment until the term begins pursuant to this section, shall not count towards the initial "term of office". In subsequent years, the term of office shall begin on January 1 or such other period which may be approved by the Secretary.

(c) Board members shall serve during the term of office for which they are selected and have qualified, and until their successors are selected and have qualified.

(d) No member shall serve more than two successive terms; *Provided*, That those members serving initial terms of one year may serve two additional consecutive three-year terms.

§ 1210.323 Acceptance.

Each person nominated for membership on the Board shall qualify by filing a written acceptance with the Secretary. Such written acceptance shall accompany the nominations list required by § 1210.321.

§ 1210.324 Vacancies.

(a) In the event any member of the Board ceases to be a member of the category of members from which the member was appointed to the Board, such position shall automatically become vacant.

(b) If a member of the Board consistently refuses to perform the duties of a member of the Board, or if a member of the Board engages in acts of dishonesty or willful misconduct, the Board may recommend to the Secretary that the member be removed from office. If the Secretary finds the recommendation of the Board shows adequate cause, the Secretary shall remove such member from office. Further, without recommendation of the Board, a member may be removed by the Secretary upon showing of adequate cause, if the Secretary determines that the person's continual services would be detrimental to the purposes of the Act.

(c) To fill any vacancy caused by the failure of any person selected as a member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member, a successor shall be nominated and selected in the manner specified in § 1210.321, except that said nomination and replacement shall not be required if the unexpired term of office is less than six months. In the event of failure to provide nominees for such vacancies, the Secretary may appoint other eligible persons.

§ 1210.325 Procedure.

(a) Fifteen Board members shall constitute a quorum and any action of the Board shall require the concurring votes of a majority of those present and voting. At assembled meetings all votes shall be cast in person.

(b) For routine and noncontroversial matters which do not require deliberation and the exchange of views, and for matters of an emergency nature

when there is not enough time to call an assembled meeting, the Board may act upon a majority of concurring votes of its members cast by mail, telegraph, telephone, or by other means of communication; *Provided*, That each member receives an accurate, full, and substantially identical explanation of each proposition. Telephone votes shall be promptly confirmed in writing. All votes shall be recorded in the Board minutes.

§ 1210.326 Compensation and reimbursement.

Board members shall serve without compensation but shall be reimbursed for reasonable expenses incurred by them in the performance of their duties as Board members.

§ 1210.327 Powers.

The Board shall have the following powers subject to § 1210.363:

(a) To administer the provisions of this Plan in accordance with its terms and conditions;

(b) To make rules and regulations to effectuate the terms and conditions of this Plan;

(c) To require its employees to receive, investigate, and report to the Secretary complaints of violations of this Plan; and

(d) To recommend to the Secretary amendments to this Plan.

§ 1210.328 Duties.

The Board shall, among other things, have the following duties:

(a) To meet, organize, and select from among its members a president and such other officers as may be necessary; to select committees and subcommittees of board members; to adopt such rules for the conduct of its business as it may deem advisable; and it may establish working committees of persons other than Board members.

(b) To employ such persons as it may deem necessary and to determine the compensation and define the duties of each; and to protect the handling of Board funds through fidelity bonds;

(c) To prepare and submit for the Secretary's approval, prior to the beginning of each fiscal period, a recommended rate of assessment and a fiscal period budget of the anticipated expenses in the administration of this Plan, including the probable costs of all programs and projects;

(d) To develop programs and projects, which must be approved by the Secretary before becoming effective, and enter into contracts or agreements, with the approval of the Secretary, for the development and carrying out of

programs or projects of research, development, advertising or promotion, and the payment of the costs thereof with funds collected pursuant to this Plan:

(e) To keep minutes, books, and records which clearly reflect all of the acts and transactions of the Board. Minutes of each Board meeting shall be promptly reported to the Secretary;

(f) To prepare and submit to the Secretary such reports from time to time as may be prescribed for appropriate accounting with respect to the receipt and disbursement of funds entrusted to the Board;

(g) To cause the books of the Board to be audited by a certified public accountant at least once each fiscal period, and at such other time as the Board may deem necessary. The report of such audit shall show the receipt and expenditure of funds collected pursuant to this part. Two copies of each such report shall be furnished to the Secretary and a copy of each such report shall be made available at the principal office of the Board for inspection by producers and handlers;

(h) To investigate violations of the Plan and report the results of such investigations to the Secretary for appropriate action to enforce the provisions of the Plan;

(i) To periodically prepare, make public, and make available to producers and handlers reports of its activities carried out.

(j) To give the Secretary the same notice of meetings of the Board and its subcommittees as is given to its members;

(k) To act as intermediary between the Secretary and any producer or handler;

(l) To furnish the Secretary such information as the Secretary may request;

(m) To notify watermelon producers and handlers of all Board meetings through press releases or other means;

(n) To appoint and convene, from time to time, working committees drawn from producers, handlers and the public to assist in the development of research and promotion programs for watermelons; and

(o) To develop and recommend such rules and regulations to the Secretary for approval as may be necessary for the development and execution of programs or projects to effectuate the declared purpose of the Act.

Research and Promotion

§ 1210.330 Policy and objective.

It shall be the policy of the Board to carry out an effective, continuous, and

coordinated program of research, development, advertising, and promotion in order to:

- (a) Strengthen watermelons' competitive position in the marketplace.
- (b) Maintain and expand existing domestic and foreign markets, and
- (c) Develop new or improved markets.

It shall be the objective of the Board to carry out programs and projects which will provide maximum benefit to the watermelon industry.

§ 1210.331 Programs and projects.

The Board shall develop and submit to the Secretary for approval any programs or projects authorized in this section. Such programs or projects shall provide for:

(a) The establishment, issuance, effectuation and administration of appropriate programs or projects for advertising and other sales promotion of watermelons designed to strengthen the position of the watermelon industry in the marketplace and to maintain, develop, and expand markets for watermelon;

(b) Establishing and carrying out research and development projects and studies to the end that the acquisition of knowledge pertaining to watermelons or their consumption and use may be encouraged or expanded, or to the end that the marketing and use of watermelons may be encouraged, expanded, improved, or made more efficient; *Provided*, That quality control, grade standards, supply management programs or other programs that would otherwise limit the right of the individual watermelon producer to produce watermelons shall not be conducted under, or as a part of, this Plan;

(c) The development and expansion of watermelon sales in foreign markets;

(d) A prohibition on advertising or other promotion programs that make any reference to private brand names or use false or unwarranted claims on behalf of watermelons or false or unwarranted statements with respect to the attributes or use of any competing product;

(e) Periodic evaluation by the Board of each program or project authorized under this Plan to insure that each program or project contributes to an effective and coordinated program of research and promotion and submission of such evaluation to the Secretary. If the Board or the Secretary finds that a program or project does not further the purposes of the Act, then the Board or the Secretary shall terminate such program or project; and

(f) The Board to enter into contracts or make agreements for the development

and carrying out of research and promotion and pay for the costs of such contracts or agreements with funds collected pursuant to § 1210.341.

Expenses and Assessments

§ 1210.340 Budget and expenses.

(a) Prior to the beginning of each fiscal period, or as may be necessary thereafter, the Board shall prepare and recommend a budget on a fiscal period basis of its anticipated expenses and disbursements in the administration of this Plan. Including probable costs of research, development, advertising, and promotion. The Board shall also recommend a rate of assessment calculated to provide adequate funds to defray its proposed expenditures and to provide for a reserve as set forth in § 1210.344.

(b) The Board is authorized to incur such expenses for research, development, advertising, or promotion of watermelons, such other expenses for the administration, maintenance, and functioning of the Board as may be authorized by the Secretary, and any referendum and administrative costs incurred by the Department of Agriculture. The funds to cover such expenses shall be paid from assessments collected pursuant to § 1210.341.

§ 1210.341 Assessments.

(a) During the effective period of this subpart, assessments shall be levied on all watermelons produced and all watermelons first handled for consumption as human food. No more than one assessment on a producer nor more than one assessment on a handler shall be made on any lot of watermelons. The handler shall be assessed an equal amount on a per unit basis as the producer. If a person performs both producing and handling functions, both assessments shall be paid by such person.

(b) Assessment rates shall be fixed by the Secretary in accordance with section 1647(f), of the Act; *Provided*, That the maximum assessment shall not exceed two cents per hundredweight for producers and two cents per hundredweight for handlers. No assessments shall be levied on watermelons grown by producers of less than five acres of watermelons.

(c) Each handler, as defined, is responsible for payment to the Board of both the producer's and the handler's assessment pursuant to regulations issued hereunder. The handler may collect producer assessments from the producer or deduct such assessments from the proceeds paid to the producer

on whose watermelons the assessments are made. The handler shall maintain separate records for each producer's watermelons handled, including watermelons produced by said handler. In addition, the handler shall indicate the total quantity of watermelons handled by the handler, including those that are exempt under this Plan, and such other information as may be prescribed by the Board.

(d) Assessments shall be paid to the Board at such time and in such manner as the Board, with the Secretary's approval, directs, pursuant to regulations issued hereunder. Such regulations may provide for different handlers or classes of handlers and different handler payment and reporting schedules to recognize differences in marketing practices or procedures used in any State or production area.

(e) There shall be a late payment charge imposed on any handler who fails to remit to the Board the total amount for which any such handler is liable on or before the payment due date established by the Board under paragraph (d) of this section. The amount of the late payment charge shall be set by the Board subject to approval by the Secretary.

(f) There shall also be imposed on any handler subject to a late payment charge, an additional charge in the form of interest on the outstanding portion of any amount for which the handler is liable. The rate of such interest shall be prescribed by the Board subject to approval by the Secretary.

(g) The Board is hereby authorized to accept advance payment of assessments by handlers that shall be credited toward any amount for which the handlers may become liable. The Board shall not be obligated to pay interest on any advance payment.

(h) The Board is hereby authorized to borrow money for the payment of administrative expenses subject to the same fiscal, budget, and audit controls as other funds of the Board.

(i) The Board may authorize other organizations to collect assessments in its behalf with the approval of the Secretary. Any reimbursement by the Board for such services shall be based on reasonable charges for services rendered.

§ 1210.342 Exemption from assessment.

The Board may exempt watermelons used for nonfood purposes from the provisions of this Plan and shall establish adequate safeguards against improper use of such exemptions.

§ 1210.343 Producer and handler refunds.

Any producer or handler against whose watermelons an assessment is made and collected under this Plan and who is not in favor of supporting the research, development, advertising, and promotion program provided for under this Plan shall have the right to demand and receive from the Board a refund of such assessment upon submission of proof satisfactory to the Board that the producer or handler paid the assessment for which refund is sought. Any such demand shall be made personally by such producer or handler on a form which the producer or handler shall sign and within a time period prescribed by the Board pursuant to regulations. Such time period shall give the producer or handler at least 90 days from the date of collection to submit the refund request form to the Board. Any such refund shall be made within 60 days after demand therefor.

§ 1210.344 Operating reserve.

The Board may establish an operating monetary reserve and may carry over to subsequent fiscal periods excess funds in a reserve so established; *Provided*, That funds in the reserve shall not exceed approximately two fiscal periods' expenses. Such reserve funds may be used to defray any expenses authorized under this subpart.

Reports, Books, and Records

§ 1210.350 Reports.

Each handler shall maintain a record with respect to each producer for whom watermelons were handled and for watermelons produced and handled by the handler. Handlers shall report to the Board at such times and in such manner as the Board may prescribe by regulations whatever information as may be necessary in order for the Board to perform its duties. Such reports may include, but shall not be limited to, the following information:

(a) Total quantity of watermelons handled for each producer and by the handler, including those which are exempt under this Plan;

(b) Total quantity of watermelons handled for each producer and by the handler, on which the producer assessment was collected;

(c) Name and address of each person from whom an assessment was collected, the amount collected from each person, and the date such collection was made; and

(d) Name and address of each person claiming exemption from assessment and a copy of each such person's claim of exemption.

§ 1210.351 Books and records.

Each handler subject to this Plan shall maintain, and during normal business hours make available for inspection by employees of the Board or Secretary, such books and records as are necessary to carry out the provisions of this Plan and the regulations issued thereunder, including such records as are necessary to verify any required reports. Such records shall be maintained for two years beyond the fiscal period of their applicability.

§ 1210.352 Confidential treatment.

(a) All information obtained from the books, records, or reports required to be maintained under §§ 1210.350 and 1210.351 shall be kept confidential and shall not be disclosed to the public by any person. Only such information as the Secretary deems relevant shall be disclosed to the public and then only in a suit or administrative hearing brought at the direction, or on the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this Plan: Except that nothing in this subpart shall be deemed to prohibit:

(1) The issuance of general statements based on the reports of a number of handlers subject to this Plan if such statements do not identify the information furnished by any person; or

(2) The publication by direction of the Secretary of the name of any person violating this Plan together with a statement of the particular provisions of this Plan violated by such person.

(b) Any disclosure of confidential information by any employee of the Board, except as required by law, shall be considered willful misconduct.

Miscellaneous

§ 1210.360 Right of the Secretary.

All fiscal matters, programs or projects, rules or regulations, reports, or other substantive actions proposed and prepared by the Board shall be submitted to the Secretary for approval.

§ 1210.361 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member or employee, except for acts of dishonesty or willful misconduct.

§ 1210.362 Influencing government action.

No funds collected by the Board under this plan shall in any manner be used for the purpose of influencing governmental policy or action, except for making

recommendations to the Secretary as provided in this subpart.

§ 1210.363 Suspension or termination.

(a) Whenever the Secretary finds that this Plan or any provision thereof obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall terminate or suspend the operation of this Plan or such provision thereof.

(b) The Secretary may conduct a referendum at any time, and shall hold a referendum on request of the Board or of 10 percent or more of the watermelon producers and handlers to determine if watermelon producers and handlers favor termination or suspension of this Plan. The Secretary shall suspend or terminate this Plan at the end of the marketing year whenever the Secretary determines that the suspension or termination is favored by a majority of the watermelon producers and handlers voting in such referendum who, during a representative period determined by the Secretary, have been engaged in production or handling of watermelons and who produced or handled more than 50 percent of the volume of watermelons produced or handled by those producers and handlers voting in the referendum. For purposes of this section, the vote of a person who both produces and handles watermelons will be counted as a producer vote if that person handles 50 percent or less of that person's own production during a representative period, and will be counted as a handler vote if that person handles more than 50 percent of that person's own production during a representative period. Any such referendum shall be conducted at county extension offices.

§ 1210.364 Proceedings after termination.

(a) Upon the termination of this Plan, the Board shall recommend not more than five of its members to the Secretary to serve as trustees for the purpose of liquidating the affairs of the Board. Such persons, upon designation by the Secretary, shall become trustees of all funds and property then in possession or under control of the Board, including claims for any funds unpaid or property not delivered or any other claim existing at the time of such termination.

(b) The said trustees shall:

(1) Continue in such capacity until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contracts or agreements entered into by it pursuant to § 1210.328(d);

(3) From time-to-time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of

the trustees, to person or persons as the Secretary may direct; and

(4) Upon the request of the Secretary execute such assignments or other instruments necessary or appropriate to vest in such person or persons full title and right to all the funds, property, and claims vested in the Board or the trustees pursuant to this section.

(c) Any person to whom funds, property, or claims have been transferred or delivered pursuant to this section shall be subject to the same obligation imposed upon the Board and upon the trustees.

(d) A reasonable effort shall be made by the Board or its trustees to return to producers and handlers any residual funds not required to defray the necessary expenses of liquidation. If it is found impractical to return such remaining funds to producers and handlers, such funds shall be disposed of in such manner as the Secretary may determine to be appropriate.

§ 1210.365 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this Plan or any regulation issued pursuant thereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability which shall have arisen or which may thereafter arise in connection with any provision of this Plan or any regulation issued thereunder; or

(b) Release or extinguish any violation of this Plan or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, or of the Secretary, or of any other person with respect to any such violation.

§ 1210.366 Separability.

If any provision of this Plan is declared invalid or the applicability thereof to any person or circumstance is held invalid, the validity of the remainder of this Plan or applicability thereof to other persons or circumstances shall not be affected thereby.

§ 1210.367 Patents, copyrights, inventions, and publications.

Any patents, copyrights, inventions, product formulations, or publications developed through the use of funds collected under the provisions of this Plan shall be the property of the United States government as represented by the Board. Funds generated by such patents, copyrights, inventions, product formulations, or publications shall be considered income subject to the same

fiscal, budget, and audit controls as other funds of the Board. Upon termination of this part, § 1210.364 shall apply to determine the disposition of all such property.

Signed at Washington, DC, on May 31, 1989.

Jo Ann R. Smith,
Assistant Secretary, Marketing and
Inspection Services.

[FR Doc. 89-13467 Filed 6-7-89; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL TRADE COMMISSION

16 CFR Part 13

[Docket No. C-3250]

Cooper Rand Corp.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order prohibits, among other things, a New York marketer of consumer products from representing that any lighter-to-lighter charger will restart a discharged battery instantly or as quickly as jumper cables, or from making any other performance claim for the product, unless respondent can substantiate such claims. In addition, the order requires respondent to prominently disclose in each advertisement and in the product instruction insert, either a statement concerning the product's limitations or the specific length of time needed to recharge a battery.

DATE: Complaint and Order issued April 18, 1989.¹

FOR FURTHER INFORMATION CONTACT: Allen Hile, FTC/H-238A, Washington, DC 20580. (202) 326-3122.

SUPPLEMENTARY INFORMATION: On Wednesday, February 8, 1989, there was published in the *Federal Register*, 54 FR 6141, a proposed consent agreement with analysis in the Matter of Cooper Rand Corporation, for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, DC 20580.

No comments having been received, the Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely Or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.175 Quality of product or service; § 13.190 Results; § 13.205 Scientific or other relevant facts; § 13.250 Success, use or standing. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-10 Corrective advertising; § 13.533-20 Disclosures; § 13.533-45 Maintain records; § 13.533-45(a) Advertising substantiation; § 13.533-45(k) Records, in general; § 13.533-50 Maintain means of communication. Subpart—Misrepresenting Oneself And Goods:—Goods: § 13.1590-20 Federal Trade Commission Act; § 13.1715 Quality; § 13.1730 Results; § 13.1740 Scientific or other relevant facts; § 13.1755 Success, use or standing.

List of Subjects in 16 CFR Part 13

Automobile battery chargers, Battery chargers, Trade practices.

Authority: Sec. 6, 38 Stat. 721; 15 U.S.C. 48. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45.

Donald S. Clark,
Secretary.

[FR Doc. 89-13581 Filed 6-7-89; 8:45 am]

BILLING CODE 6750-01-M

RAILROAD RETIREMENT BOARD

20 CFR Part 325

RIN 3220-AA45

Registration for Railroad Unemployment Benefits

AGENCY: Railroad Retirement Board.

ACTION: Interim final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby revises Part 325 of its regulations under the Railroad Unemployment Insurance Act. This revision to this part will eliminate the current requirement that unemployed railroad employees register in person at an employment office at seven-day intervals as a condition for payment of unemployment benefits and would replace that requirement with a provision permitting such employees to file their claims for unemployment benefits by mail.

DATE: This rule will be effective July 1, 1989. The Board will consider comments from the public. Comments must be received by July 10, 1989.

ADDRESS: Office of Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, General Attorney, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611; (312)751-4513 (FTS) 386-4513.

SUPPLEMENTARY INFORMATION: Part 325 of the Board's regulations have required an unemployed railroad employee to register in person at an employment office at weekly intervals in order to claim unemployment benefits under the Railroad Unemployment Insurance Act. The employment offices consist mainly of some 2500 railroad offices where the railroads have employees serving as unemployment claims agents. The agents perform their duties pursuant to agreements between the Board and each individual railroad employer.

In recent years, the number of unemployment claims agents has declined rapidly and, as a result, many unemployed railroad employees are no longer able to register at their usual place of employment and must travel a considerable distance to find another agent to take their claims. To ameliorate the inconvenience and hardship that thus occurs and to eliminate the burden entailed by in-person reporting, the Board is replacing its current registration procedures with a procedure that allows claims for unemployment benefits to be filed by mail. The new registration procedure will be phased in beginning July 1, 1989. In the initial phase-in period claimants in the geographic areas serviced by the Board's district offices in Chicago, Illinois, Decatur, Illinois, Joliet, Illinois, Detroit, Michigan, Indianapolis, Indiana, Milwaukee, Wisconsin, and Toledo, Ohio will file applications and claims for benefits as provided in the amended Part 325. Unemployment claims agents will, where available, provide information and assistance to claimants, but will not take applications and claims from claimants in the area serviced by the seven district offices.

Claimants in geographic areas not serviced by the seven district offices listed above will, until September 1, 1989, continue to file applications and claims in accordance with the procedures provided in Part 325 as in effect prior to July 1, 1989. Accordingly, unemployment claims agents will continue to take applications and claims for benefits during this two-month period. Effective September 1, 1989, the

new mail-in procedure established by the amended Part 325 will be effective for all applications and claims for benefits. Unemployment claims agents, where available, will provide information and assistance to claimants through the end of calendar year 1989, but will not take applications and claims.

The Board is also adding to Part 325 provisions requiring a waiting period before benefits are payable (proposed § 325.1(d)), and prepayment verification of claims (proposed § 325.6). Such provisions are required by the Railroad Unemployment Insurance and Retirement Improvement Act of 1988, Pub. L. 100-647.

The Board has determined that this is not a major rule for purposes of Executive Order 12291. Therefore, no regulatory analysis is required. The information collections contemplated by this part were submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act and have been approved for use in the test/phase-in period under OMB control number 3220-0166.

List of Subjects in 20 CFR 325

Railroad employees, Railroad unemployment benefits.

Title 20 CFR Chapter II, Part 325, is revised as follows:

PART 325—REGISTRATION FOR RAILROAD UNEMPLOYMENT BENEFITS

Sec.

- 325.1 General.
- 325.2 Procedure for registering for unemployment benefits.
- 325.3 Application for unemployment benefits and employment service.
- 325.4 Claim for unemployment benefits.
- 325.5 Death of employee.
- 325.6 Verification procedures.

Authority: 45 U.S.C. 362(i) and 362(l).

§ 325.1 General.

(a) *Statutory basis.* The Railroad Unemployment Insurance Act (Act) provides for the payment of unemployment benefits to qualified railroad employees for days of unemployment. The term "day of unemployment" is defined in section 1(k) of the Act. Section 12(i) of the Act authorizes and requires the Board to establish a procedure by which unemployed employees may register for unemployment benefits for days on which they are unemployed, able to work, and available for work and to pay benefits when such employees have complied with the Board's procedures.

(b) *Day of unemployment.* The amount of unemployment benefits payable to a qualified employee will be computed in accordance with section 2(a) of the Act. Under that section, benefits are payable to a qualified employee for each day of unemployment over four in each registration period, generally a period of 14 consecutive days. In a benefit year except that no benefits are payable for any day of unemployment during the employee's waiting period in each benefit year.

(c) *Registration period.* Except for registration periods in extended unemployment benefit periods, a "registration period" means a period of 14 consecutive days beginning with the first day for which an employee registers following:

- (1) His or her last day of work, or
- (2) The last day of the employee's last preceding registration period, and with respect to which the employee properly files a claim for benefits on such form and in such manner as the Board prescribes.

With respect to an extended benefit period, each of the successive 14-day periods in the extended unemployment benefit period is a registration period.

(d) *Waiting period.* An employee's first registration period in any benefit year is his or her waiting period, provided that such employee has at least five days of unemployment in such registration period and has complied with the requirements of this part. When the Board finds that an employee's unemployment is due to a stoppage of work because of a strike in the establishment, premises, or enterprise at which he was last employed, no benefits are payable for the first 14 days of unemployment due to such stoppage of work. For subsequent days of unemployment due to such stoppage of work, benefits shall be payable for days of unemployment in excess of four during any registration period within the same benefit year.

(e) *Pay for time lost.* An employee may claim unemployment benefits in accordance with this part even though he or she is also pursuing a claim for pay for time lost or other remuneration. If such pay is awarded to the employee with respect to any day for which the Board has paid him or her unemployment benefits, the Board will recover the amount of unemployment benefits that was paid for any day or days for which he or she was awarded pay for time lost. See Part 322 of this chapter. It is the employee's responsibility to tell the Board that he or she has filed or intends to file a claim for time lost.

§ 325.2 Procedure for registering for unemployment benefits.

(a) *Registering as unemployed.* To claim unemployment benefits for any day, an employee must register as unemployed by doing the following:

- (1) Apply for unemployment benefits and employment service in accordance with § 325.3;
- (2) File a claim in accordance with § 325.4; and
- (3) Provide any other information that the Board needs to properly adjudicate his or her right to unemployment benefits.

(b) *No benefits payable without registration.* No unemployment benefits shall be paid to any otherwise qualified employee with respect to any day claimed as a day of unemployment, and no waiting period credit shall be allowed, until such time as the employee has complied with the requirements of paragraph (a) of this section.

(c) *When a registration period may begin.* When registering for unemployment benefits, an employee may claim benefits for any calendar day on which he or she is unemployed and believes himself or herself to be eligible for benefits. A registration period may begin as early as the first calendar day on which an employee is unemployed following his or her last day of work even though such first calendar day would have been a rest day if the employee had not become unemployed. However, a registration period may not begin with any calendar day with respect to which an employee has received or will receive remuneration.

Example 1. An employee whose rest days are Saturday and Sunday is laid off on Friday, September 2 after working his regular shift on that day. His first 14-day registration period could start as early as Saturday, September 3. A registration period starting on September 3 would end on September 16. If he continues to be unemployed, his next registration period could begin September 17 and end September 30, and so forth.

Example 2. An employee whose rest days are Saturday and Sunday is laid off on Friday, September 2, but he decides to take two weeks' vacation pay covering days through Friday, September 16. Because he will have received remuneration for days through September 16, his claim for unemployment benefits could begin on Saturday, September 17, if he continues to be unemployed after his vacation ends.

Example 3. An employee whose rest days are Saturday and Sunday is laid off on Monday, September 5, after working his regular shift on that day. His first 14-

day registration period could begin on Tuesday, September 6, the first day on which he was unemployed following his last day of work.

(Approved by the Office of Management and Budget under control number 3220-0166)

§ 325.3 Application for unemployment benefits and employment service.

(a) *Requirement.* An unemployed employee who wishes to claim unemployment benefits shall apply for such benefits by completing the form prescribed by the Board for that purpose. Such form shall also constitute an application for employment service. An application will be required at the beginning of each period of unemployment in a benefit year unless:

- (1) The employee filed an application for an initial period of unemployment in a benefit year and has a subsequent period of unemployment within the same benefit year; or
- (2) The employee had filed an application for benefits for a period of unemployment that began in the preceding benefit year and the period of unemployment continued into the next ensuing benefit year.

In either of these circumstances, the initial application will be treated as an application for days in the subsequent period of unemployment or as an application for days in the next ensuing benefit year, as the case may be.

(b) *Purpose of application.* An application for unemployment benefits and employment service is a document that serves three purposes. First, it identifies an employee who has become unemployed and wishes to begin receiving unemployment benefits. Second, it assists the Board in determining whether the applicant is a qualified employee and if so, whether any of the information reported on the application affects his or her eligibility for payment of benefits. Third, it assists the Board in placing the employee in any suitable employment that may be available.

(c) *Time for filing application.* An employee may deliver or mail his or her application to any Board office, but such application must be received at a Board office within 30 calendar days of the first day that the employee intends to claim as a day of unemployment. For example, if an employee becomes unemployed on October 31 and intends to claim unemployment benefits for days starting November 1, the application must reach a Board office no later than November 30. If the application is received December 1, the employee may not be paid unemployment benefits for November 1 as such day would not be

considered as a "day of unemployment". If an employee returns to work and then becomes unemployed again within the same benefit year, he or she is not required to file a new application for benefits and employment service but need only contact the nearest Board office to obtain a claim form and file such form as described in § 325.4.

(d) *Extension of time for filing.* Notwithstanding paragraph (c) of this section, the Board will consider an application for unemployment benefits as timely filed if:

- (1) The employee can show that he or she made a reasonable effort to file the form on time but was prevented from doing so by circumstances beyond his or her control; provided, however, that lack of diligence, forgetfulness or lack of knowledge of the time limit for applying shall not be considered to be a circumstance beyond the employee's control; and
- (2) The employee files an application within one year of the day or days that he or she claims as a day or days of unemployment.

§ 325.4 Claim for unemployment benefits.

(a) *Requirement.* After an unemployed employee has applied for unemployment benefits in accordance with § 325.3, he or she shall claim a day as a day of unemployment by registering with respect to such day. Registration shall be made on the claim form provided by the Board to the employee.

(b) *Claim.* A claim for unemployment benefits shall cover a period of 14 consecutive calendar days. Each such 14-day period shall be a registration period. An employee shall provide the information called for by the claim form and shall file his or her claim in accordance with paragraph (c) of this section.

(c) *Time for filing.* A claim for unemployment benefits shall be filed at any Board office no later than 15 calendar days after the last day claimed or 15 calendar days after the date on which the claim form was mailed to the employee, whichever is later. In determining whether the time for filing the claim may be extended, the standards set forth in § 325.3(d) shall be applied. None of the days included in a claim that is not timely filed shall be considered a day of unemployment.

(d) *Claim for new period of unemployment.* An employee who has complied with the application requirement under § 325.3 with respect to a period of unemployment in a benefit year, and who again becomes unemployed in the same benefit year,

need not file a new application but may initiate a claim for benefits for days in such subsequent period by calling or visiting the nearest district office of the Board to request a claim form. Such request shall be made no later than 9 calendar days after the first day for which the employee wishes to claim benefits. Upon receipt of a request under this paragraph, the district office shall provide the employee with a claim form which shall show the beginning and ending dates of the registration period covered by the claim form, with the first day shown on the claim form being no earlier than the 9th day before the date on which the employee requested the claim form, unless the delay may be excused by applying the standards set forth in § 325.3(d).

(e) *Delayed claims.* If an employee makes an initial application and claim for benefits in accordance with this part but does not continue to file ongoing claims because he or she receives an initial determination denying his or her application or claim for benefits and if, upon review, the denial is reversed by an appeals referee or other authorized reviewing official, the employee shall have 30 days from the date of the notice of the reversal in which to file a claim or claims for benefits for the days that he or she would have claimed as days of unemployment but for the initial determination denying benefits. The appeals referee or other reviewing official, as appropriate, shall notify the employee of the 30-day time limit imposed by this paragraph. An employee whose claim for benefits has been denied may continue to claim any additional day or days for which he or she believes that he or she is eligible for benefits.

(f) *Claim required for waiting period.* The requirement to file a claim for unemployment benefits includes a requirement to file a claim for the non-compensable waiting period described in § 325.1(d), except that the Director of Unemployment and Sickness Insurance may waive such requirement in connection with unemployment resulting from a work stoppage or other labor dispute.

(g) *Withdrawal of claim.* An employee may withdraw his or her claim for unemployment benefits by submitting a written statement to that effect and by repaying any benefits paid on the claim, unless the employee's claim was intentionally false or fraudulent.

§ 325.5 Death of employee.

If an employee dies before filing one or more of the required forms, the form or forms may be filed by or in behalf of

the person or persons to whom benefits would be payable pursuant to section 2(g) of the Act. Such form or forms shall be filed within the time prescribed in § 325.3. Under these circumstances, the word "employee", as used in this part, shall include the individual or individuals by or in behalf of whom the form is filed.

§ 325.6 Verification procedures.

The Board's procedures for adjudicating and processing applications and claims for unemployment benefits filed pursuant to this part will include both pre-payment and post-payment procedures for verifying the validity of such applications and claims. Such procedures shall be designed with a view to obtaining substantial evidence as to the days of unemployment of the employees who register in accordance with this part. The verification procedures shall include, but are not limited to:

(a) Pre-payment contacts with railroad employers, utilizing data processing techniques to the extent feasible so as not to delay unduly the payment of valid claims; and

(b) Computer matching programs with state agencies or other entities that may have relevant data concerning non-railroad employment and benefit payments under state unemployment compensation laws.

Dated: May 30, 1989.
By Authority of the Board.
Beatrice Ezeraki,
Secretary to the Board.
[FR Doc. 89-13567 Filed 6-7-89; 8:45 am]
BILLING CODE 7995-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR PART 175

[Docket No. 86F-0111]

Indirect Food Additives; Adhesives and Components of Coatings

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of poly(oxypropylene)diamine as a

component of adhesives in food-packaging applications. This action is in response to a petition filed by Union Camp Corp.

DATES: Effective June 8, 1989; written objections and requests for a hearing by July 10, 1989.

ADDRESS: Written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-82, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Marvin D. Mack, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: In a notice published in the *Federal Register* of May 26, 1988 (53 FR 19046), FDA announced that a food additive petition (FAP 8B4058) had been filed by Union Camp Corp., P.O. Box 2668, Savannah, GA 31402, proposing that § 175.105 *Adhesives* (21 CFR 175.105) be amended to provide for the safe use of poly(oxypropylene) diamine as a component of adhesives in food-packaging applications.

FDA has evaluated data in the petition and other relevant material. The agency concludes that these data and material establish safety of the level of use of the additive in adhesives for food-packaging applications, and that the regulations should be amended in § 175.105(c)(5) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before July 10, 1989, file with the Dockets Management Branch (address above) written objections

thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 175

Adhesives, Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, Part 175 is amended as follows:

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

1. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 349); 21 CFR 5.10 and 5.61.

2. Section 175.105 is amended in the table in paragraph (c)(5) by alphabetically adding under "Polyamides derived from reaction of one or more of the following acids with one or more of the following amines:" two new entries under the heading "Substances" to read as follows:

§ 175.105 Adhesives.

• • • • •

(c) • • •

(5) • • •

Substances	Limitations
• • • • •	• • • • •
Polyamides derived from reaction of one or more of the following acids with one or more of the following amines:	• • • • •
Amines:	• • • • •
Poly(oxypropylene) diamine (weight average molecular weight 2010) (CAS Reg. No. 9046-10-0).	• •
Poly(oxypropylene) diamine (weight average molecular weight 440) (CAS Reg. No. 9046-10-0).	• •

Dated: May 30, 1989.

Fred R. Shank,
Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-13576 Filed 6-7-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF STATE

Office of Foreign Missions

22 CFR Part 151

RIN 1400-AA26

[Final Rule No. 108.885]

Compulsory Liability Insurance for Foreign Missions and Personnel

AGENCY: Office of Foreign Missions, State.

ACTION: Final rule.

SUMMARY: The Office of Foreign Missions of the Department of State is amending 22 CFR 151.4, which sets minimum limits of liability for motor-vehicle insurance for foreign diplomatic missions and their personnel. The minimum limits are changed from "not less than \$300,000 combined single limit for all bodily injury liability and property damage liability arising from a single incident," to "not less than \$100,000 per person and \$300,000 per incident for bodily injury liability and \$100,000 per incident for property damage or \$300,000 combined single limit for all bodily injury liability and property damage liability arising from a single incident." The adequacy of the changed minimum limits was confirmed as part of the Study and Report concerning the Status of Individuals with Diplomatic Immunity in the United States presented to Congress on March 18, 1988, as mandated by the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, section 137, Pub. L. 100-204. The changed minimum limits also more accurately reflect the Office of Foreign Missions practice and the

availability of insurance policies since combined single limit policies are not available in all cases.

EFFECTIVE DATE: June 8, 1989.

FOR FURTHER INFORMATION CONTACT: E. Richard Atkinson, Senior Operations Officer, Office of Foreign Missions, (202) 673-6266.

SUPPLEMENTARY INFORMATION: Section 6 of the Diplomatic Relations Act required the President to establish, by regulation, liability insurance requirements to be met by each mission, members of the mission and their families, and those officials of the United Nations who are entitled to diplomatic immunity. The President delegated this function to the Secretary of State, who issued regulations on May 21, 1979. Congress amended section 6 in 1983 to substitute the Director of the Office of Foreign Missions within the Department of State for the President, and added the condition that the liability insurance requirements "reasonably be expected to afford adequate compensation to victims."

The Director of the Office of Foreign Missions has determined that an adequate level of liability insurance is provided by policies with limits of \$100,000 per person and \$300,000 per incident for bodily injury and \$100,000 per incident for property damage or of \$300,000 combined single limit for all bodily injury and property damage from a single incident. The adequacy of these minimum limits was confirmed as part of the Study and Report concerning the Status of Individuals with Diplomatic Immunity in the United States presented to Congress on March 18, 1988, as mandated by the Foreign Relations Authorization Act, Fiscal Years 1988 and 1989, section 137, Pub. L. 100-204. These minimum limits also reflect the Office of Foreign Missions practice and the availability of insurance policies since combined single limit policies are not available in all cases.

A proposed rule was published in the *Federal Register* on February 21, 1989 (54 FR 7449). Comments received were considered.

List of Subjects in 22 CFR Part 151

Aircraft, Foreign officials, Insurance, Motor vehicles, Vessels.

For reasons set forth in the preamble, Title 22, Chapter I of the Code of Federal Regulations, Part 151 is amended as set forth below:

PART 151—[AMENDED]

1. The authority citation for Part 151 continues to read as follows:

Authority: Sec. 6, Diplomatic Relations Act (Pub. L. 95-393; 22 U.S.C. 254e) as amended (Pub. L. 98-164, sec. 602; 22 U.S.C. 254e).

2. Section 151.4 is revised to read as follows:

§ 151.4 Minimum limits for motor vehicle insurance.

The insurance shall provide not less than \$100,000 per person and \$300,000 per incident for bodily injury liability and \$100,000 per incident for property damage or \$300,000 combined single limit for all bodily injury liability and property damage liability arising from a single incident, except where the Director of the Office of Foreign Missions grants a special exception.

John Condeyan,

Acting Director, Office of Foreign Missions.

[FR Doc. 89-13585 Filed 6-7-89; 8:45 am]

BILLING CODE 4710-06-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD13 89-06]

Temporary Drawbridge Operation Regulations; Lake Washington Ship Canal, Seattle, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: At the request of the City of Seattle, the Coast Guard is issuing a temporary rule amending the regulations that govern the operation of the Montlake Bridge across the Lake Washington Ship Canal, mile 5.4, at Seattle, Washington. This temporary rule extends the weekday afternoon closed period by one half hour (3:30 p.m. to 6:00 p.m. instead of the present 4:00 p.m. to 6:00 p.m.) and allows openings only on the hour and half hour Monday through Friday, except holidays from 12:30 p.m. to 3:00 p.m. and 6:00 p.m. to 6:30 p.m. This amendment is being made to evaluate its effect on both vehicular and waterway traffic. This action should accommodate the needs of vehicular traffic and still provide for the reasonable needs of navigation.

EFFECTIVE DATE: This temporary regulation becomes effective on July 10, 1989, and terminates on September 8, 1989. Comments must be received by September 8, 1989.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174-1067. The comments and other materials

referenced in this notice will be available for inspection and copying at 915 Second Avenue, Room 3564. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: John E. Mikesell, Chief, Bridge Section, Aids to Navigation and Waterways Management Branch, (Telephone: (206) 442-5864).

SUPPLEMENTARY INFORMATION: Persons affected by these temporary regulations are invited to comment on their feasibility and impact on both marine and vehicular traffic. Comments should include observed effects, both beneficial and detrimental, and any suggestions for changes. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, opposition to, or any recommended changes in, the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal.

Drafting Information

The drafters of this notice are: John E. Mikesell, project officer, and Lieutenant Deborah K. Schram, project attorney.

Discussion of the Temporary Regulations

This temporary rule is being issued under 33 CFR 117.43 to evaluate the effects of requested changes to drawbridge operating regulations for the Lake Washington Ship Canal, 33 CFR 117.1051. Based upon the results of a test conducted by the City of Seattle (City) in 1987, the City requested the changes to relieve vehicular traffic congestion attributed to openings of the Montlake Bridge. Information provided by the City indicates that on weekday afternoons, a combination of capacity constraints in the Montlake Corridor and high traffic volumes of between 1800 and 2200 vehicles per hour (vph) on Montlake Boulevard, generates queues of traffic in both directions. Openings of the Montlake Bridge during this period causes further reductions in traffic capacity. With a traffic volume of 1600 vph it takes approximately 23 minutes for the queues to dissipate and at 1800 vph it takes 55 minutes to dissipate. Multiple openings of the bridge further lengthens the time it takes for queues to dissipate. The greatest number of bridge

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openings occur during the months of July and August, averaging over 800 each, with weekday afternoon openings averaging 1.3 per hour. The average duration of bridge openings is slightly more than four minutes with many of the openings passing multiple vessels.

The impact of this temporary regulation on vehicular and marine traffic will be evaluated to determine whether the change results in substantial improvements in vehicular traffic without unduly restricting marine traffic. Based upon the results of our evaluation, the temporary regulation may be made permanent as is, modified, or discarded.

Economic Assessment and Certification

These temporary regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 28, 1979).

The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The test conducted by the City indicates that the temporary regulation should relieve vehicular traffic congestion in the Montlake Corridor without causing unnecessary delays to navigation.

Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117

Bridges.

Temporary Regulations

In consideration of the foregoing, Part 117 of Title 33, Code of Federal Regulations is amended as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); 33 CFR 117.43.

2. Section 117.1051 is amended for the period July 10, 1989, through September 7, 1989 by revising the introductory text of paragraph (d) and adding paragraph (e) to read as follows.

Note: Because this is a temporary rule, the following amendment will not be codified in the Code of Federal Regulations.

§ 117.1051 Lake Washington Ship Canal.

(d) The draws of the Ballard Bridge, mile 1.1, Fremont Bridge, mile 2.6, and

University Bridge, mile 4.3, shall open on signal, except that:

(e) The draw of the Montlake Bridge, mile 5.2, shall open on signal, except that:

(1) The draw need not open for a period of up to 10 minutes after receiving an opening request, if needed to pass accumulated vehicular traffic. However, the draw shall open without delay, when requested by vessels engaged in towing operations.

(2) Monday through Friday, except Federal Holidays, for any vessel or watercraft of less than 1,000 gross tons, unless the vessel has in tow a vessel of 1,000 gross tons or over:

(i) The draw need not open from 7 a.m. to 9 a.m. and 3:30 p.m. to 6 p.m.

(ii) From 12:30 p.m. to 3:30 p.m. and from 6 p.m. to 6:30 p.m., the draw need open only on the hour and half hour.

(3) Between the hours of 11 p.m. and 7 a.m. the draw shall open if at least one hour notice is given by telephone, radiotelephone, or otherwise to the drawtender at the Fremont Bridge.

Dated: 23 May, 1989.

R. E. Kramek,

Rear Admiral, U.S. Coast Guard Commander, 13th Coast Guard District.

[FR Doc. 89-13543 Filed 6-7-89; 8:45 am]

BILLING CODE 491-014-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

Decrease in Maximum Permissible Interest Rates on Guaranteed Manufactured Home Loans, Home and Condominium Loans, and Home Improvement Loans

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is decreasing the maximum interest rates on guaranteed manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans. In addition, the maximum interest rates applicable to fixed payment and graduated payment home and condominium loans, and to home improvement and energy conservation loans are also decreased. These decreases in interest rates are possible because of recent improvements in the availability of funds in various credit markets. The decrease in the interest rates will allow eligible veterans to obtain loans at a lower monthly cost.

EFFECTIVE DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT: Mrs. Judy Caden, Loan Guaranty Service (284), Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202-233-3042).

SUPPLEMENTARY INFORMATION: The Secretary is required by section 1812(f), title 38, United States Code, to establish maximum interest rates for manufactured home loans guaranteed by VA as he finds the manufactured home loan capital markets demand. Recent market indicators—including the prime rate, the general decrease in interest rates charged on conventional manufactured home loans, and the decrease of other short-term and long-term interest rates—have shown that the manufactured home capital markets have improved. It is now possible to decrease the interest rates on manufactured home unit loans, lot loans, and combination manufactured home unit and lot loans while still assuring an adequate supply of funds from lenders and investors to make these types of VA loans.

The Secretary is also required by section 1803(c), title 38, United States Code, to establish maximum interest rates for home and condominium loans including graduated payment mortgage loans, and loans for home improvement purposes. Market indicators similarly favor reductions in the maximum interest rates for these types of loans. These lower interest rates should assist more veterans in the purchase of homes and condominiums or to obtain improvement loans because of the decrease in the monthly loan payments for principal and interest.

Regulatory Flexibility Act/Executive Order 12291

For the reasons discussed in the May 7, 1981 Federal Register (46 FR 25443), it has previously been determined that final regulations of this type which change the maximum interest rates for loans guaranteed, insured, or made pursuant to chapter 37 of title 38, United States Code, are not subject to the provisions of the Regulatory Flexibility Act, 5 U.S.C. 601-612.

These regulatory amendments have also been reviewed under the provisions of Executive Order 12291. VA finds that they are not "major rules" as defined in that Order. The existing process of informal consultation among representatives within the Executive Office of the President, OMB, VA and the Department of Housing and Urban Development has been determined to be

adequate to satisfy the intent of this Executive order for this category of regulations. This alternative consultation process permits timely rate adjustments with minimal risk of premature disclosure. In summary, this consultation process will fulfill the intent of the Executive order while still permitting compliance with statutory responsibilities for timely rate adjustments and a stable flow of mortgage credit at rates consistent with the market.

These final regulations come within exceptions to the general VA policy of prior publication of proposed rules as contained in 38 CFR 1.12. The publication of notice of a regulatory change in the VA maximum interest rates for VA guaranteed, insured or direct loans would deny veterans the benefit of lower interest rates pending the final rule publication date which would necessarily be more than 30 days after publication in proposed form. Accordingly, it has been determined that publication of proposed regulations prior to publication of final regulations is impracticable, unnecessary, and contrary to the public interest.

(Catalog of Federal Domestic Assistance Program numbers, 64.113, 64.114, and 64.119)

These regulations are adopted under authority granted to the Secretary by sections 210(c), 1803(c)(1), 1811(d)(1) and 1812 (f) and (g) of title 38, United States Code.

These decreases are accomplished by amending §§ 36.4212(a) (1), (2), and (3), and 36.4311 (a), (b), and (c) and 36.4503(a), title 38, Code of Federal Regulations.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing, Loan programs—housing and community development, Manufactured homes, Veterans.

June 2, 1989.

By direction of the Secretary.

Anthony J. Principi,

Deputy Secretary of Veterans Affairs.

38 CFR Part 36, Loan Guaranty, is amended as follows:

PART 36—(AMENDED)

1. In § 36.4212, paragraph (a) is revised to read as follows:

§ 36.4212 Interest rates and late charges.

(a) The interest rate charged the borrower on a loan guaranteed or insured pursuant to 38 U.S.C. 1812 may

not exceed the following maxima except on loans guaranteed or insured pursuant to guaranty or insurance commitments issued by VA prior to the respective effective date:

(Authority: 38 U.S.C. 1812(f))

(1) Effective June 5, 1989, 12½ percent simple interest per annum for a loan which finances the purchase of a manufactured home unit only.

(2) Effective June 5, 1989, 12 percent simple interest per annum for a loan which finances the purchase of a lot only and the cost of necessary site preparation, if any.

(3) Effective June 5, 1989, 12 percent simple interest per annum for a loan which will finance the simultaneous acquisition of a manufactured home and a lot and/or the site preparation necessary to make a lot acceptable as the site for the manufactured home.

2. In § 36.4311, paragraphs (a), (b), and (c) are revised as follows:

§ 36.4311 Interest rates.

(a) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by VA which specify an interest rate in excess of 10 per centum per annum, effective June 5, 1989, the interest rate on any home or condominium loan, other than a graduated payment mortgage loan, guaranteed or insured wholly or in part on or after such date may not exceed 10 per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

(b) Excepting loans guaranteed or insured pursuant to guaranty or insurance commitments issued by VA which specify an interest rate in excess of 10¼ per centum per annum, effective June 5, 1989, the interest rate of any graduated payment mortgage loan guaranteed or insured wholly or in part on or after such date may not exceed 10¼ per centum per annum.

(Authority: 38 U.S.C. 1803(c)(1))

(c) Effective June 5, 1989, the interest rate on any loan solely for energy conservation improvements or other alterations, improvements or repairs, which is guaranteed or insured wholly or in part on or after such date may not exceed 11½ per centum per annum on the unpaid principal balance.

(Authority: 38 U.S.C. 1803(c)(1))

3. In § 36.4503, paragraph (a) is revised as follows:

§ 36.4503 Amount and amortization.

(a) The original principal amount of any loan made on or after October 1, 1980, shall not exceed an amount which bears the same ratio to \$33,000 as the amount of the guaranty to which the veteran is entitled under 38 U.S.C. 1810 at the time the loan is made bears to \$27,500. This limitation shall not preclude the making of advances, otherwise proper, subsequent to the making of the loan pursuant to the provisions of § 36.4511. Except as to home improvement loans, loans made by VA shall bear interest at the rate of 10 percent per annum. Loans solely for the purpose of energy conservation improvements or other alterations, improvements, or repairs shall bear interest at the rate of 11½ percent per annum.

(Authority: 38 U.S.C. 1811(d)(1) and (2)(A))

[FR Doc. 89-13545 Filed 6-7-89; 8:45 am]

BILLING CODE 8320-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Anthropomorphic Test Dummies

CFR Correction

In Title 49 of the Code of Federal Regulations, Parts 400 to 999, revised as of October 1, 1988, in § 571.208, standard 208, S5.1 introductory text appearing on page 395 a portion of the text was inaccurate. It should read as follows:

"S5.1 Vehicles subject to S5.1 shall comply with either S5.1(a) or S5.1(b), or any combination thereof, at the manufacturer's option; except that vehicles manufactured before September 1, 1990 that comply with the requirements of S4.1.2.1(a) by means not including any type of seat belt or inflatable restraint shall comply with S5.1(a)."

The line of asterisks after the introductory text should be removed.

BILLING CODE 1505-01-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. AO-85-A9; FV-88-102]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Secretary's Decision and Referendum Order on Proposed Further Amendment of Marketing Agreement and Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule and referendum order.

SUMMARY: This decision recommends further amendment of Marketing Agreement and Order No. 905 (7 CFR Part 905), covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and directs that a referendum be conducted to determine if the growers of these fruits favor the various amendment proposals. If approved, these proposals would amend the provisions of the marketing agreement and order to: (1) Classify Canada and Mexico as export markets rather than domestic markets as they are now; (2) define the Interior District and the Indian River District in the marketing order; (3) authorize changing the eligibility requirements for grower members on the Citrus Administrative Committee; (4) authorize the committee to borrow money to fund committee operations in emergency situations; and (5) provide for the conduct of periodic referenda on continuance of the order every six years. The proposed amendments are designed to improve the administration and functioning of the marketing agreement and order.

DATE: The representative period for the purposes of the referendum herein ordered is May 1, 1988, through April 30, 1989.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and

Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: 202-475-3918, or John R. Toth, Officer-in-Charge, Southeast Marketing Field Office, Florida Citrus Building, 500 3rd Street NW., P.O. Box 2276, Winter Haven, Florida 33883-2276, telephone: 813-299-4770. Copies of this decision may be obtained from either of the above named individuals.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding: Notice of Hearing issued January 7, 1988, and published in the Federal Register [53 FR 898, January 14, 1988]; and Recommended Decision issued February 3, 1989, and published in the Federal Register [54 FR 6136, February 8, 1989].

This administrative action is governed by the provisions of sections 556 and 557 of Title 5 of the United States Code and therefore is excluded from the requirements of Executive Order 12291.

Preliminary Statement

This proposed amendment of the order was formulated on the record of a public hearing held at Lakeland, Florida on February 17, 1988, to consider the proposed further amendment of Marketing Agreement and Order No. 905 (7 CFR Part 905) regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to collectively as the order. The hearing was held pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), hereinafter referred to as the Act, and the applicable rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders (7 CFR Part 900). The Notice of Hearing contained amendment proposals submitted by the Citrus Administrative Committee (committee), which locally administers the order. Those proposals pertained to: (1) Classifying Canada and Mexico as export markets rather than domestic markets as they are now; (2) defining the Interior District and the Indian River District in the marketing order; (3) authorizing changes in the eligibility requirements for grower members on the committee; (4) authorizing the committee to borrow money to fund committee operations in emergency situations; and (5) providing for the conduct of periodic referenda on continuance of the order every six years.

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Vol. 54, No. 109

Thursday, June 8, 1989

The notice also included a proposal by the Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture (Department), to make any necessary conforming changes.

Upon the basis of evidence introduced at the hearing and the record thereof, the Administrator of the Agricultural Marketing Service (AMS), on February 3, 1989, filed with the Hearing Clerk, U.S. Department of Agriculture, a Recommended Decision containing a notice of the opportunity to file written exceptions thereto by March 10, 1989. The committee, the Florida Farm Bureau Federation, the Indian River Citrus League, and Florida Citrus Packers each filed an exception. Their comments supported the proposals and requested completion of the rulemaking action by September 1, 1989, the beginning of the 1989-90 shipping season.

In accordance with the provisions of the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*), the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities. Small agricultural growers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than \$500,000. Small agricultural service firms, which includes handlers under the marketing agreement and order, are defined as those with gross annual revenues of less than \$3,500,000.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Interested persons were invited in the notice of hearing to present evidence on the probable regulatory and informational impact of the proposed changes on small businesses. Marketing orders and rules issued thereunder are unique in that they are normally brought about through group action of essentially small entities acting on their own behalf. Thus, both the RFA and the Act are compatible with respect to small entities.

Approximately 100 shippers of Florida oranges, grapefruit, tangerines, and tangelos are regulated under the order. A minority of these shippers may be classified as small entities. In addition, there are approximately 13,000 orange,

grapefruit, tangerine, and tangelo growers in Florida. The majority of these growers may be classified as small entities.

The proposed amendments to the marketing order include classifying Canada and Mexico as export markets rather than domestic markets as currently provided. Such a change is expected to result in expanded Florida citrus sales by permitting shipment of the grades and sizes of fruit more consistent with the demand and preferences of the consumers in those markets, thereby benefitting Florida citrus growers and shippers. This change would not adversely affect small entities.

The proposal to make the Interior District synonymous with Regulation Area I and the Indian River District synonymous with Regulation Area II would facilitate the marketing of citrus through the use of commonly used terms, thus benefitting growers and shippers. This change would not adversely affect small entities.

The proposed amendment, which would authorize the committee with the approval of the Secretary, to change the eligibility requirements for grower members and grower alternate members to serve on the committee, would provide a means to increase the number of qualified growers who could serve on the committee. This change would have no adverse effect on small entities.

The proposed amendment to permit the committee to borrow money in emergency situations would provide the committee with additional flexibility in financing committee operations during such emergency situations, and thereby benefit growers and shippers who operate under the order. There would be no adverse effect on small entities due to the change.

The proposed amendment to require a continuance referendum every six years would provide growers the opportunity to periodically vote on whether the order should be continued. This change would not adversely affect small entities.

All of the proposed amendments set forth in this document are designed to enhance the administration, operation and functioning of the order and should result in an overall positive economic impact on small businesses.

The proposed amendments to the order would have no significant impact on the recordkeeping and reporting burdens of the affected industry. Moreover, the proposed amendments (including referenda every six years) would not change the reporting and recordkeeping requirements under the Paperwork Reduction Act of 1980, which

have been previously approved by the Office of Management and Budget (OMB) (Approval No. 0581-0094).

Findings and Conclusions

Discussions and rulings included in the discussions of the material issues, findings, and general findings of the Recommended Decision set forth in the Federal Register [54 FR 6136; February 8, 1989] are hereby approved and adopted subject to the following modifications and corrections:

The language in material issue number 3 is changed to correct the following typographical and printing errors: (1) The word "because" in the first line of the first column on page 6139 should read "became", and the word "ordered" in the fourteenth line of the second column on page 6139 should read "offered". In addition, the language in paragraph (a)(4) of § 905.52 is modified by changing "United States" to read "48 contiguous States and the District of Columbia of the United States" to conform with the recommended amendatory changes in § 905.9.

Rulings on Exceptions

In arriving at the findings and conclusions and the regulatory provisions of this decision, the exceptions to the Recommended Decision were carefully considered in conjunction with the record evidence. To the extent that the findings and conclusions and the regulatory provisions of this decision are at variance with the exceptions, such exceptions are hereby denied.

Marketing Agreements and Orders

Annexed hereto and made part hereof are the documents entitled, "Order Amending the Order, As Amended, Regulating The Handling Of Oranges, Grapefruit, Tangerines, And Tangelos Grown In Florida" and "Marketing Agreement, As Further Amended, Regulating The Handling Of Oranges, Grapefruit, Tangerines, And Tangelos Grown In Florida." These documents have been decided upon as the detailed and appropriate means of effectuating the foregoing conclusions.

It is hereby ordered, That this entire decision, except the annexed marketing agreement, be published in the Federal Register. The regulatory provisions of the marketing agreement are identical with those contained in the order as hereby proposed to be amended by the annexed order which is published with this decision.

Referendum Order

It is hereby directed that a referendum be conducted in accordance with the

procedure for the conduct of referenda (7 CFR 900.400 *et seq.*), to determine whether the issuance of the annexed order, as amended and as hereby proposed to be further amended, regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, is approved or favored by growers, as defined under the terms of the order, who were engaged in the production for market of oranges, grapefruit, tangerines, and tangelos in the production area in Florida. The representative period for such referendum is hereby determined to be May 1, 1988, through April 30, 1989.

The agents of the Secretary to conduct such referendum are hereby designated to be John R. Toth and William C. Pimental, Southeast Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Florida Citrus Building, 500 3rd Street, NW, P.O. Box 2276, Winter Haven, Florida 33883-2276, telephone: 813-299-4770, and Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: 202-475-3918.

Order Amending the Order, As Amended, Regulating the Handling of Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida¹

Findings and Determinations

The findings and determinations hereinafter set forth are supplementary and in addition to the findings and determinations previously made in connection with the issuance of the aforesaid order and of the previously issued amendments thereto; and all of said previous findings and determinations are hereby ratified and affirmed, except insofar as such findings and determinations may be in conflict with the findings and determinations set forth herein.

Findings Upon the Basis of the Hearing Record

Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601 *et seq.*), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR Part 900), a public hearing was held upon proposed further amendment of the marketing

¹ This order shall not become effective unless and until the requirements of § 900.14 of the rules of practice and procedure governing proceedings to formulate marketing agreements and marketing orders have been met.

agreement, as amended, and Order No. 905, as amended (7 CFR Part 905), regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida.

Upon the basis of the record it is found that:

General Findings

(1) The order, as amended, and as hereby further amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The order, as amended, and as hereby further amended, regulates the handling of fresh oranges, grapefruit, tangerines, and tangelos grown in the production area in the same manner as, and is applicable only to persons in the respective classes of commercial and industrial activity specified in the marketing agreement and order upon which hearings have been held;

(3) The order, as amended, and as hereby further amended, is limited in its application to the smallest regional production area which is practicable, consistent with carrying out the declared policy of the Act, and the issuance of several orders applicable to subdivisions of the production area would not effectively carry out the declared policy of the Act;

(4) The order, as amended and as hereby further amended, prescribes, so far as practicable, such different terms applicable to different parts of the production area as are necessary to give due recognition to the difference in the production and marketing of fresh oranges, grapefruit, tangerines, and tangelos grown in the production area; and

(5) All handling of fresh oranges, grapefruit, tangerines, and tangelos grown in the production area defined in the order is in the current of interstate or foreign commerce or directly burdens, obstructs, or affects such commerce.

List of Subjects in 7 CFR Part 905

Marketing agreements and orders, Florida, Oranges, Grapefruit, Tangerines, and Tangelos.

Order Relative to Handling

It is therefore ordered, that on and after the effective date hereof, the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida shall be in conformity to and in compliance with the terms and conditions of the order, as hereby amended, as follows:

With the exception of a conforming change in paragraph (a)(4) of § 905.52, the provisions of the proposed marketing agreement and order,

amending the order, contained in the Recommended Decision issued by the Administrator on February 3, 1989, and published in the Federal Register [54 FR 6136, February 8, 1989], shall be and are the terms and provisions of this order, amending the order, and are set forth in full herein.

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR Part 905 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 905.9 is revised, and § 905.52 is amended by revising paragraphs (a)(3), (a)(4), (a)(5), and (d) to read as follows:

§ 905.9 Handle or ship.

"Handle or ship" means (a) to sell, consign, deliver, or transport fruit, or in any other way to place fruit in the current of commerce between the production area and any point outside thereof in the 48 contiguous States and the District of Columbia of the United States; and (b) to export fruit from any point in the 48 contiguous States and the District of Columbia of the United States to any destination.

§ 905.52 Issuance of regulations.

(a) * * *

(3) Limit the shipment of the total quantity of any variety by prohibiting the shipment thereof: *Provided*, That no such prohibition shall apply to exports or be effective during any fiscal period with respect to any variety other than for one period not exceeding five days during the week in which Thanksgiving Day occurs, and for not more than two periods not exceeding a total of 14 days during the period December 20 to January 20, both dates inclusive.

(4) Provide that exports of any variety shall be limited to grades and sizes different from the grade and size limitations applicable to shipments of such variety in the 48 contiguous States and the District of Columbia of the United States, and specify condition requirements for such variety; and

(5) Fix the size, capacity, weight, dimensions, marking, or pack of the container or containers which may be used in the shipment of fruit for export: *Provided*, That such regulation shall not authorize the use of any container which is prohibited for use for fruit under the provisions of Chapter 601 of the Florida Statutes and regulations effective thereunder.

* * * * *

(d) Whenever any variety is regulated pursuant to paragraph (a)(3) of this section, no such regulation shall be deemed to limit the right of any person to sell, contract to sell, or export such variety but no handler shall otherwise ship any fruit of such variety which was prepared for market during the effective period of such regulation.

3. Section 905.15 is revised and § 905.16 is amended by revising the introductory text to read as follows:

§ 905.15 Regulation Area I.

"Regulation Area I" is defined as the "Interior District", and shall include all that part of the production area not included in Regulation Area II.

§ 905.16 Regulation Area II.

"Regulation Area II" is defined as the "Indian River District", and shall include that part of the State of Florida particularly described as follows:

* * * * *

4. Section 905.19 is revised to read as follows:

§ 905.19 Establishment and membership.

(a) There is hereby established a Citrus Administrative Committee consisting of at least eight but not more than nine grower members, and eight shipper members. Grower members shall be persons who are not shippers or employees of shippers: *Provided*, That the committee, with the approval of the Secretary, may establish alternative qualifications for such grower members. Shipper members shall be shippers or employees of shippers. The committee may be increased by one non-industry member nominated by the committee and selected by the Secretary. The committee, with approval of the Secretary, shall prescribe qualifications, term of office, and the procedure for nominating the non-industry member.

(b) Each member shall have an alternate who shall have the same qualifications as the member for whom this person is an alternate.

5. Section 905.41 is amended by adding a new paragraph (c) to read as follows:

§ 905.41 Assessments.

* * * * *

(c) In the case of an extreme emergency, the committee may borrow money on a short term basis to provide funds for the administration of this part. Any such borrowed money shall only be used to meet the committee's current financial obligations, and the committee shall repay all such borrowed money by the end of the next fiscal period from assessment income.

6. Section 905.83 is amended by redesignating paragraph (c) as paragraph (d) and adding a new paragraph (c) to read as follows:

§ 905.83 Termination.

* * * * *

(c) The Secretary shall conduct a referendum six years after the effective date of this paragraph and every sixth year thereafter to ascertain whether continuance of this part is favored by producers. The Secretary may terminate the provisions of this part at the end of any fiscal period in which the Secretary has found that continuance of this part is not favored by producers who during a representative period, determined by the Secretary, have been engaged in the production for market of the fruit in the production area. Such termination shall be announced on or before July 31 of the fiscal period.

* * * * *

Dated: June 1, 1989.

Robert Melland,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 89-13556 Filed 6-7-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 921, 922, 923 and 924

[Docket No. FY-89-054]

Proposed Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Order Nos. 921, 922, 923 and 924 for the 1989-90 fiscal year which began April 1, 1989. The proposal is needed for the marketing committees established under these orders to incur operating expenses during the 1989-90 fiscal year and to collect funds during that year to pay those expenses. This would facilitate program operations. Funds to administer these programs are derived from assessments on handlers.

DATE: Comments must be received by June 19, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposed rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection in the office of the Docket Clerk during regular

business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order Nos. 921 (7 CFR Part 921) regulating the handling of fresh peaches grown in designated counties in Washington; 922 (7 CFR Part 922) regulating the handling of apricots grown in designated counties in Washington; 923 (7 CFR Part 923) regulating the handling of cherries grown in designated counties in Washington; and 924 (7 CFR Part 924) regulating the handling of fresh prunes grown in designated counties in Washington and in Umatilla County, Oregon. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 65 handlers of Washington peaches, 60 handlers of Washington apricots, 85 handlers of Washington cherries, and 40 handlers of Washington-Oregon prunes subject to regulation under their respective marketing orders, and approximately 390 Washington peach producers, 190 Washington apricot producers, 1,115 Washington cherry producers and 375 Washington-Oregon prune producers in their respective production areas. Small

agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of these handlers and producers may be classified as small entities.

Each marketing order administered by the U. S. Department of Agriculture (Department) requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each marketing committee and submitted to the Department for approval. The members of the marketing committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each marketing committee is derived by dividing anticipated expenses by the expected shipments of the commodity (in tons). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Stone Fruit Executive Committee (SFEC) met on April 13, 1989, and unanimously recommended 1989-90 fiscal year expenditures and assessment rates for Marketing Order Nos. 921, 922, 923, and 924. The SFEC is made up of officers of the marketing committees established under these orders.

Expenditures of \$18,615 for the Washington Fresh Peach Marketing Committee and an assessment rate of \$2.00 per ton of peaches shipped under M.O. 921 were recommended by the SFEC. In comparison, 1988-89 budgeted expenditures were \$18,378 and the assessment rate was \$1.20 per ton. Assessment income for the 1989-90 fiscal year is estimated at \$22,000 based

on a crop estimate of 11,000 tons of peaches.

The SFEC recommended expenditures of \$6,942 for the Washington Apricot Marketing Committee and an assessment rate of \$3.00 per ton of apricots shipped under M.O. 922. In comparison, 1988-89 budgeted expenditures were \$6,970 and the assessment rate was \$2.00 per ton. Assessment income for the 1989-90 fiscal year is estimated at \$3,000 based on a crop estimate of 1,000 tons of apricots. Committee reserve funds are available to cover the anticipated \$3,942 deficit for the 1989-90 fiscal year.

Expenditures of \$98,503 for the Washington Cherry Marketing Committee and an assessment rate of \$3.00 per ton of cherries shipped under M.O. 923 were recommended. In comparison, 1988-89 budgeted expenditures were \$97,210 and the assessment rate was \$2.00 per ton. Assessment income for the 1989-90 fiscal year is estimated at \$135,000 based on a crop estimate of 45,000 tons of cherries.

Finally, the SFEC recommended expenditures of \$17,490 for the Washington-Oregon Fresh Prune Marketing Committee and an assessment rate of \$2.00 per ton of prunes shipped under M.O. 924. In comparison, 1988-89 budgeted expenditures were \$17,342 and the assessment rate was \$1.00 per ton. Assessment income for the 1989-90 fiscal year is estimated at \$18,000 based on a crop estimate of 9,000 tons of prunes.

The committees' proposed 1989-90 fiscal year budgets are similar in scope and size to those approved for 1988-89. The recommended expenditures are for program administration, prune research and cherry market development.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the levels of expenses and assessment rates for these programs should be expedited. The committees established under these programs need to have sufficient funds to pay their expenses,

which are incurred on a continuous basis.

List of Subjects in 7 CFR Parts 921, 922, 923 and 924

Marketing agreements and orders, Peaches, Apricots, Cherries, Prunes, Washington, Oregon.

For the reasons set forth in the preamble, it is proposed that 7 CFR Parts 921, 922, 923 and 924 be amended as follows:

1. The authority citation for 7 CFR Parts 921, 922, 923 and 924 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

PART 921—FRESH PEACHES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

2. A new § 921.228, is added to read as follows:

§ 921.228 Expenses and assessment rate.

Expenses of \$18,615 by the Washington Fresh Peach Marketing Committee are authorized, and an assessment rate of \$2.00 per ton of assessable peaches is established for the fiscal year ending March 31, 1990. Unexpended funds may be carried over as a reserve.

PART 922—APRICOTS GROWN IN DESIGNATED COUNTIES IN WASHINGTON

3. A new § 922.228 is added to read as follows:

§ 922.228 Expenses and assessment rate.

Expenses of \$6,942 by the Washington Apricot Marketing Committee are authorized, and an assessment rate of \$3.00 per ton is established for the fiscal year ending March 31, 1990. Unexpended funds may be carried over as a reserve.

PART 923—SWEET CHERRIES GROWN IN DESIGNATED COUNTIES IN WASHINGTON

4. A new § 923.229 is added to read as follows:

§ 923.229 Expenses and assessment rate.

Expenses of \$98,503 by the Washington Cherry Marketing Committee are authorized, and an assessment rate of \$3.00 per ton is established for the fiscal year ending March 31, 1990. Unexpended funds may be carried over as a reserve.

PART 924—FRESH PRUNES GROWN IN DESIGNATED COUNTIES IN WASHINGTON AND UMATILLA COUNTY, OREGON

5. A new § 924.229 is added to read as follows:

§ 924.229 Expenses and assessment rate.

Expenses of \$17,490 by the Washington-Oregon Fresh Prune Marketing Committee are authorized, and an assessment rate of \$2.00 per ton of assessable prunes is established for the fiscal year ending March 31, 1990. Unexpended funds may be carried over as a reserve.

Dated: June 2, 1989.

William J. Doyle,

Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-13558 Filed 6-7-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 946

[Docket No. FV-89-030-PR]

Irish Potatoes Grown in Washington; Proposed Amendment to Eliminate Exemption for Yellow Fleshed Potatoes and Require Potatoes Exported in 50-Pound Cartons to be at Least U.S. No. 1 Grade

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would eliminate current provisions of the Washington potato handling regulation which exempt yellow fleshed potatoes from grade, size, pack, maturity and inspection requirements. It would also require potatoes exported in 50-pound cartons to be at least U.S. No. 1 grade. The objectives of these actions are to uphold the quality image of the Washington State potato industry in domestic markets and to provide a means by which foreign buyers could obtain a high quality product when purchasing Washington State potatoes. **DATE:** Comments must be received by June 19, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket

number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone (202) 447-2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 113 and Marketing Order No. 946 (7 CFR Part 946), both as amended, regulating the handling of Irish potatoes grown in the State of Washington. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposal on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 50 handlers of Washington State potatoes subject to regulation under the marketing order, and approximately 490 producers in the production area. The Small Business Administration (13 CFR 121.2) has defined small agricultural producers as those having annual gross revenue for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of Washington State potatoes may be classified as small entities.

In 1988, Washington State potato production totalled 63.25 million hundredweight (cwt.), and a record high yield of 550 cwt. per acre was attained. Approximately 87 percent of Washington potatoes produced are processed, and the remaining 13 percent is shipped to fresh market outlets. Fresh shipments of the 1988-89 Washington State potato crop to date are running

slightly ahead of last season's level. As of April 14, 1989, fresh potato shipments amounted to 8,413,376 cwt. compared to 8,295,484 cwt. at the same time last year.

In 1988, total harvested potato acreage in Washington State amounted to 115,000 acres. About 88 percent of potato acreage was planted to long varieties, such as the Russet Burbank, Norgold Russet and Norkotah Russet. The remaining 12 percent was divided between round white and round red varieties, and this percentage has increased in recent years.

Since 1987, increases have been particularly significant for yellow fleshed varieties, which are generally classified as a round white type potato due to their shape and skin color. The State of Washington Potato Committee (committee) projects that yellow fleshed potato planted acreage exceeds 1,000 acres this season.

The handling requirements for fresh Washington potatoes are specified in § 946.336 (53 FR 8143, March 17, 1988, as amended in 53 FR 21794, June 10, 1988). Current requirements for round potatoes specify that they be shipped under the following conditions. Round potatoes must grade at least U.S. No. 2 and must have a minimum diameter of 1 1/2 inches (47.8 mm) except red skinned potatoes that are one inch in diameter may be shipped if they otherwise grade at least U.S. No. 1. Furthermore, the maturity requirement for round potatoes is that they shall not be more than "moderately skinned." Currently, the handling regulation exempts non-white fleshed potatoes and export shipments from these handling requirements.

This proposed rule would eliminate the current exemption for yellow fleshed potatoes and would require potatoes exported in 50-pound cartons to be at least U.S. No. 1 grade. These changes were unanimously recommended by the committee to become effective beginning with the 1989-90 season which commences July 1, 1989.

Prior to 1987, no distinction was made between white and non-white fleshed potatoes, and all were required to meet the grade, size, pack, maturity and inspection requirements of the handling regulation. Additionally, handlers were required to pay assessments on all fresh potatoes. In May 1987, an exemption from these handling requirements, published at 52 FR 15489 was provided for non-white fleshed potato varieties because very few potatoes of this type were being produced, and such potatoes were generally marketed in different outlets than white fleshed potatoes. Supplies of yellow fleshed potatoes in commercial fresh outlets are increasing, however, due to increasing production

and consumer acceptance. Currently, yellow fleshed potatoes are being sold to grocery and restaurant outlets in which they compete with round, white fleshed potatoes.

Based on an approximate yield of 400 cwt. per acre and estimated planted acreage of 1,000 acres, Washington State production of yellow fleshed potatoes could be as much as 400,000 cwt. during the 1989 season. Because the production of yellow fleshed potatoes has increased and these potatoes are now competing directly with white fleshed potatoes in commercial fresh markets, the committee unanimously recommended that yellow fleshed potatoes be required to meet the handling requirements set for round variety potatoes. These requirements are that potatoes grade at least U.S. No. 2 and be at least 1 1/2 inches in diameter.

Most of the round type potatoes that are grown in Washington and shipped to fresh market outlets are red-skinned varieties. To provide handlers with the opportunity to satisfy increased consumer demand for small-sized potatoes of this type, the current handling regulation provides that round, red-skinned potatoes that are one inch in diameter may be shipped if they otherwise grade at least U.S. No. 1.

The committee recommended that a comparable reduced size requirement be provided for yellow-fleshed potatoes, even though such potatoes are white-skinned. Since these potatoes are a relatively new item available from Washington, the committee believes that shippers should be provided with maximum flexibility in marketing yellow-fleshed potatoes. Accordingly, the proposal provides that yellow-fleshed potatoes that are one inch in diameter may also be shipped if they otherwise grade at least U.S. No. 1.

The committee believes that this action should help maintain the quality image of the Washington State potato industry. Other non-white fleshed varieties, such as purple or blue fleshed, would continue to be exempt because very few of these potatoes are being produced, and such potatoes are a specialty crop and generally do not directly compete with white fleshed potatoes. In addition, blue or purple fleshed potatoes are customarily marketed in different outlets than white and yellow fleshed potatoes.

Exports of Washington potatoes have increased considerably since the early 1980's. Fresh potato exports from Washington State in 1981 amounted to about 420,000 cwt. In 1988, fresh potato exports exceeded 590,000 cwt. A record high of about 665,000 cwt. was reached

In 1986. Fresh potato exports in 1987 were about 550,000 cwt. and had an estimated value of \$10,363,000. Destinations for these potatoes included Hong Kong, Sweden and Singapore. Possibly the greatest potential for export market expansion lies in the Pacific Rim countries.

Currently, export shipments of potatoes are exempt from the requirements of the handling regulation. To provide a means by which foreign buyers can continue to obtain high quality when purchasing Washington State potatoes, the committee unanimously recommended that all potatoes exported in 50-pound cartons be required to be at least U.S. No. 1 grade. This export pack requirement is similar to the domestic pack requirement which requires potatoes packed in 50-pound cartons to be at least U.S. No. 1; except that an additional tolerance for internal defects is provided for domestic shipments. These cartons are regarded as a premium pack and are the container most often used for export shipments. Shippers would continue to be able to fill specific orders for lower quality potatoes by packing them in other than 50-pound cartons, since only potatoes packed in such cartons would be required to meet this minimum quality requirement. This action should result in increased purchases and improve returns to growers.

Other exemptions currently provided would be unchanged. The grade, size, maturity, and pack requirements are not applicable to shipments of potatoes for livestock feed, charity, seed, prepeeling, or other processing. Shipments to these outlets are also free from inspection requirements.

Section 8e of the Agricultural Marketing Agreement Act of 1937 requires that when certain domestically produced commodities, including Irish potatoes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality, or maturity requirements. Section 8e also provides that whenever two or more marketing orders regulating a commodity produced in different areas of the United States are concurrently in effect, the Secretary shall determine which of the areas produces the commodity in most direct competition with the imported commodity. Imports then must meet the quality standards set for that particular area. Since yellow fleshed potatoes are generally considered to be a round white type, imported yellow fleshed potatoes are required to meet the same quality and

size requirements set for round white varieties of potatoes. Because the import requirements for round white potatoes are based on those established under the marketing orders covering Colorado Area 3 potatoes (M.O. 948) and Southeastern States (M.O. 953), the proposed changes to the handling requirements for Washington State potatoes will have no effect on the potato import regulation. Accordingly, the findings and determinations with respect to imports of Irish potatoes contained in section 980.1 of the regulations would not be changed by this action.

Based on the above, the Administrator of AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

A 10-day comment period is deemed appropriate because the shipping season is expected to begin in early July. The amendment, if adopted, would help the industry provide an acceptable quality product to consumers. Further, any change to the regulations that might be adopted should be made effective as close to the beginning of the shipping season as practicable so as to apply to as many shipments as possible during the season. All written comments received within the designated comment period will be considered before a final determination is made on this matter.

List of Subjects in 7 CFR Part 946

Marketing agreements and orders, Potatoes, Washington.

For the reasons set forth in the preamble, it is proposed that 7 CFR Part 946 be amended as follows:

PART 946—IRISH POTATOES GROWN IN WASHINGTON

1. The authority citation for 7 CFR Part 946 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31 as amended; 7 U.S.C. 601-674.

2. Section 946.336 is amended by revising the introductory text and paragraphs (a)(2)(i), (c), and (d)(7) to read as follows:

§ 946.336 Handling regulation.

No person shall handle any lot of potatoes unless such potatoes meet the requirements of paragraphs (a), (b), (c), and (g) of this section or unless such potatoes are handled in accordance with paragraphs (d) and (e), or (f) of this section, except that shipments of the blue or purple flesh varieties of potatoes shall be exempt from both this handling regulation and the assessment requirements specified in § 946.41.

(a) * * *

(2) * * *
(i) Round varieties—1 1/4 inches (47.6 mm) minimum diameter, except yellow fleshed and round red varieties may be 1 inch (25.4 mm) minimum diameter, if U.S. No. 1.

(c) Pack requirements. (1) Domestic: Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better, except that potatoes which fail to meet the U.S. No. 1 grade only because of internal defects may be shipped provided the lot contains not more than 10 percent damage by any internal defect or combination of internal defects but not more than 5 percent serious damage by any internal defect or combination of internal defects.

(2) Export: Potatoes packed in 50-pound cartons shall be U.S. No. 1 grade or better.

(d) * * *

(7) Export, except to Alaska and Hawaii and except as provided in (c)(2) of this paragraph.

Dated: June 2, 1989.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-13582 Filed 6-7-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 946 and 958

[Docket No. FV-89-053]

Expenses and Assessment Rates for Specified Marketing Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Orders 948 and 958 for the 1989-90 fiscal period. Authorization of these budgets would enable the Colorado Area III Potato Committee and the Idaho-Eastern Oregon Onion Committee to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs would be derived from assessments on handlers.

DATE: Comments must be received by June 19, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Comments should

reference the docket number and the date and page number of this issue of the Federal Register and will be available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-447-2431.

SUPPLEMENTARY INFORMATION: This rule is proposed under Marketing Agreement No. 97 and Order No. 948 (7 CFR Part 948), both as amended, regulating the handling of Irish potatoes grown in Colorado, and Marketing Agreement No. 130 and Order No. 958 (7 CFR Part 958), both as amended, regulating the handling of onions grown in designated counties of Idaho and Malheur County, Oregon. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of Colorado Area III potatoes under Marketing Order No. 948, and approximately 80 potato producers. Also, there are approximately 30 handlers of Idaho-Eastern Oregon onions under Marketing Order No. 958, and approximately 360 onion producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of the handlers and producers may be classified as small entities.

The budgets of expenses for the 1989-90 fiscal year were prepared by the Colorado Area III Potato Committee and the Idaho-Eastern Oregon Onion Committee (committees), the agencies responsible for local administration of the orders, and submitted to the Department of Agriculture for approval. The members of these committees are handlers and producers of Colorado potatoes and Idaho-Oregon onions. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rates recommended by the committees were derived by dividing anticipated expenses by expected shipments of potatoes and onions. Because the rates are applied to actual shipments, they must be established at rates which will produce sufficient income to pay the committees' expected expenses.

The Colorado Area III Potato Committee (potato committee) met April 13, 1989, and unanimously recommended a 1989-90 budget of \$3,619, up from \$3,537 last year. In Colorado, both a State and Federal marketing order operate simultaneously. The State order, however, authorizes promotion, including paid advertising, which the Federal order does not. Administrative expenses that are shared are divided so that 85 percent is paid under the State and 15 percent under the Federal order. All promotion and advertising expenses are financed under the State order. The potato committee also recommended a rate of assessment of \$0.005, an increase from last year's \$0.002. The major increases were for the manager's salary (\$600), payroll taxes (\$171), and manager's expenses (\$100). The recommended assessment rate, when applied to projected fresh market shipments of 729,250 hundredweight, would yield \$3,648 in assessment income which should be adequate to cover budgeted expenses. Projected reserve funds at the end of the 1989-90 fiscal period of \$4,019 are within the order's maximum of two fiscal periods' expenses.

The Idaho-Eastern Oregon Onion Committee (onion committee) met April 18, 1989, and unanimously recommended a 1989-90 budget of \$1,083,081. This compares with \$1,038,500 for last year. The onion committee recommended an assessment rate of \$0.09 per hundredweight, the same as last year.

Substantial increases were recommended in research (\$4,650), promotion (\$29,266), and export programs (\$16,500) as well as manager's and clerical salaries (\$7,500). Partially offsetting these increases is a decrease of \$20,000 in capital improvements, which was used to purchase a new computer system and office furnishings last year. The recommended assessment rate, when applied to anticipated fresh market shipments of 7,200,000 hundredweight, would yield \$648,000 in assessment income. This, when combined with \$30,000 in interest income and \$405,081 from the reserve, should provide adequate funding for budgeted expenses. Operating reserve funds, currently at \$482,280, are well within the limit of one fiscal period's expenses.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

This action should be expedited because the committees need to have sufficient funds to pay their expenses. The 1989-90 fiscal period for each program begins on July 1, 1989, and each marketing order requires that the rate of assessment for the fiscal period apply to all assessable potatoes or onions handled during the fiscal period. In addition, handlers are aware of this action which was recommended by the committees at public meetings. Therefore, it is found and determined that a comment period of less than 30 days is appropriate because the budget and assessment rate approvals for these programs need to be expedited. The committees need to have sufficient funds to pay their expenses, which are incurred on a continuous basis.

List of Subjects in 7 CFR Part 946 and 958

Marketing agreements and orders, potatoes, onions, Colorado, Idaho, Oregon.

For the reasons set forth in the preamble, it is proposed that 7 CFR Parts 946 and 958 be amended as follows:

1. The authority citation for 7 CFR Parts 946 and 958 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

PART 948—IRISH POTATOES GROWN IN COLORADO

2. A new § 948.202 is added to read as follows:

§ 948.202 Expenses and assessment rate.

Expenses of \$3,619 by the Colorado Area III Potato Committee are authorized, and an assessment rate of \$0.005 per hundredweight of assessable potatoes is established for the fiscal period ending June 30, 1990. Unexpended funds may be carried over as a reserve.

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO; AND MALHEUR COUNTY, OREGON

3. A new § 958.233 is added to read as follows:

§ 958.233 Expenses and assessment rate.

Expenses of \$1,083,081 by the Idaho-Eastern Oregon Onion Committee are authorized, and an assessment rate of \$0.09 per hundredweight of assessable onions is established for the fiscal period ending June 30, 1990. Unexpended funds may be carried over as a reserve.

Dated: June 2, 1989.

William J. Doyle,
Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-13563 Filed 6-7-89; 8:45 am]

BILLING CODE 3410-02-10

FEDERAL TRADE COMMISSION

16 CFR Part 13

[File No. 871 0048]

Arkla, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Shreveport, LA corporation to divest either the TransArk pipeline or a portion of its own pipeline that runs through the two states. Respondent would also be required to obtain prior Commission approval and would be required to apply to the Federal Energy Regulatory

Commission for approval under that agency's abandonment procedures.

DATE: Comments must be received on or before August 7, 1989.

ADDRESS: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Ronald B. Rowe, FTC/S-3302, Washington, DC 20580, (202) 326-2610.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

List of Subjects in 16 CFR Part 13

Natural gas, Pipelines, Trade practices.

Agreement Containing Consent Order

The Federal Trade Commission, having initiated an investigation of the acquisition of the assets of TransArk Transmission Company ("TransArk"), by Arkla, Inc. ("Arkla") and other matters and it now appearing that Arkla is willing to enter into an Agreement Containing a Consent Order ("Agreement") to divest certain assets and cease and desist from certain acts:

It is hereby agreed by and between Arkla, by its duly authorized officers and its attorneys, and counsel for the Federal Trade Commission that:

1. Arkla is a corporation organized and existing under the laws of the State of Delaware with its executive offices located at 525 Milam Street, Shreveport, Louisiana 71151.

2. TransArk was a partnership owned by Lear Petroleum Corporation and ESCO Energy, Inc. through their respective subsidiaries Producer's Gas Company and Omega Pipeline Company.

3. Arkla admits all the jurisdictional facts set forth in the attached draft of complaint.

4. Arkla waives:

- (a) Any further procedural steps;
- (b) The requirement that the Federal Trade Commission's decision contain a

statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All rights under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record unless and until it is accepted by the Federal Trade Commission. If this agreement is accepted by the Federal Trade Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Federal Trade Commission thereafter may either withdraw its acceptance of this agreement and so notify Arkla in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Arkla that the law has been violated as alleged in the draft of complaint here attached.

7. This agreement contemplates that, if it is accepted by the Federal Trade Commission, and if such acceptance is not subsequently withdrawn by the Federal Trade Commission pursuant to the provisions of § 2.34 of the Federal Trade Commission's Rules, the Federal Trade Commission may, without further notice to Arkla, (1) issue its complaint corresponding in form and substance with the draft of complaint attached hereto and its decision containing the following order to divest and to cease and desist in disposition of the proceeding, and (2) make information public with respect thereto. When so entered, the order to divest and to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to Arkla's address as stated in this agreement shall constitute service. Arkla waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

8. Arkla has read the draft complaint and order contemplated hereby. Arkla understands that once the order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the order. Arkla further understands that it may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

ORDER

It is hereby ordered, that, as used in this Order, the following definitions shall apply:

(a) "Acquisition" means Arkla's acquisition of the assets of TransArk.

(b) "Arkla" means Arkla, Inc., its subsidiaries, divisions, groups, and affiliates controlled by Arkla and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

(c) "TransArk" means TransArk Transmission Company, a partnership of Producer's Gas Company and Omega Pipeline Company.

(d) The "Affected Portion of the Arkoma Basin" means the following counties in Arkansas: Sebastian, Crawford, Logan, Franklin, Johnson, Pope, Scott and Yell.

(e) An "Affected Portion of the Arkoma Basin Pipeline" means a pipeline facility other than one owned by Arkla that extends from a point within the Affected Portion of the Arkoma Basin to a point outside of such area with the capacity to transport at least twenty-five (25) million cubic feet per day of natural gas through such facilities out of the Affected Portion of the Arkoma Basin.

(f) The "Russellville-Morrilton-Conway Corridor" means the area within the State of Arkansas that is within 10 miles in any direction of that portion of the TransArk pipeline that is west of Conway, Arkansas and east of Russellville, Arkansas.

(g) A "Russellville-Morrilton-Conway Corridor Pipeline" means a pipeline facility other than one owned by Arkla that extends to a point within the Russellville-Morrilton-Conway Corridor from a point outside of such area with the capacity to deliver through such facilities at least twenty-five (25) million cubic feet per day of natural gas into the Russellville-Morrilton-Conway Corridor.

(h) The "TransArk assets" means the assets, including the pipeline and right of way, acquired by Arkla from TransArk pursuant to the Acquisition, except for the 2.45 miles of pipeline and other assets that were sold by Arkla to Arkansas Oklahoma Gas Co., pursuant to that certain Purchase Agreement

dated September 7, 1987, as further identified in Schedule A hereof.

(i) The "TransArk pipeline" means the pipeline acquired by Arkla from TransArk.

(j) "Arkla Pipeline Assets" means an undivided interest, consisting of the capacity to receive and deliver in the aggregate 75 million cubic feet of gas per day, in the portions of Arkla Energy Resources gas pipeline transmission system and gas gathering facilities identified in Schedule B hereof.

II

It is further ordered, that:

(A) Within twelve (12) months of the date this Order becomes final, Arkla shall enter into a final agreement to divest (a) the TransArk assets, absolutely and in good faith, conditioned only on Commission approval and other regulatory approvals. Provided, however, Arkla may enter into a final agreement to divest, absolutely and in good faith, (b) the Arkla Pipeline Assets, if the Commission, in its sole discretion approves the substitute divestiture of the Arkla Pipeline Assets for the TransArk assets. Within eighteen (18) months of the date this Order becomes final, Arkla shall divest, absolutely and in good faith, (a) the TransArk assets or (b) if the Commission in its sole discretion approves the substitute divestiture, the Arkla Pipeline Assets.

(B) Divestiture shall be made only to an acquirer or acquirers that receive the prior approval of the Federal Trade Commission. The purpose of the divestiture of the TransArk assets or Arkla Pipeline Assets is to remedy the lessening of competition resulting from the acquisition as alleged in the Federal Trade Commission's complaint.

(C) Following the time that this Order becomes final and no later than thirty (30) days after receiving the prior approval of the Federal Trade Commission required by Paragraph II(B) hereof, Arkla shall in good faith (1) apply to the Federal Energy Regulatory Commission for abandonment of the TransArk assets or the Arkla Pipeline Assets and (2) apply for and cause the acquirer as part of the agreement to apply for approvals by the Federal Energy Regulatory Commission and any other state or federal agency from which approval must be obtained before Arkla may divest and the acquirer may acquire, own and operate the TransArk assets or acquire and own the Arkla Pipeline Assets. Arkla shall cooperate with and shall support in good faith with all due diligence and expedition the

acquirer in obtaining necessary regulatory approvals, including filing a statement that demonstrates Arkla's support for each such application. Arkla shall take no action to impede or interfere with the necessary regulatory approvals. Provided, however, that nothing herein shall preclude Arkla from seeking approval for the construction and operation by it of additional facilities as part of any application other than (a) the applications seeking abandonment of the TransArk assets or the Arkla Pipeline Assets or (b) the applications seeking approval of divestiture of the TransArk assets or the Arkla Pipeline Assets.

(D) In the agreement to divest the TransArk assets, Arkla may include such provisions as are necessary to provide for the exchange between Arkla and the operator of the TransArk assets of up to twenty (20) million cubic feet of gas per day between (a) points on the TransArk system proximate to the areas served at retail by Arkla, and (b) points on the Arkla system in Arkansas interconnected with or proximate to other pipelines to which the TransArk facility may be connected from time to time. This exchange agreement shall be subject to the prior approval of the Federal Trade Commission to ensure that it is consistent with the purposes of this Order.

(E) Arkla shall maintain the viability and marketability of the TransArk assets, until the divestiture required under Paragraph II(A) hereof is completed, and shall not cause or permit the destruction, removal or impairment of any assets to be divested except in the ordinary course of business and except for ordinary wear and tear. Arkla shall ensure that, until the divestiture required under Paragraph II(A) hereof is completed, the TransArk assets continue to be viable, and used in the business of transporting natural gas.

III

It is further ordered, that:

(A) If Arkla has not received prior Commission approval of a final agreement to divest, absolutely and in good faith, the TransArk assets or the Arkla Pipeline Assets within twelve (12) months of the date this Order becomes final, or has not divested, absolutely and in good faith, the TransArk assets or the Arkla Pipeline Assets within eighteen (18) months of the date this Order becomes final, Arkla shall consent to the appointment by the Federal Trade Commission of a trustee to divest the TransArk assets, in the event that the Federal Trade Commission brings an action pursuant to section 5(1) of the

Federal Trade Commission Act, 15 U.S.C. 45(1), or any other statute enforced by the Commission, Arkla shall consent to the appointment of a trustee in such action. The appointment of a trustee shall not preclude the Federal Trade Commission from seeking civil penalties or any other relief available to it for any failure by Arkla to comply with this Order. Provided, however, that if

(a) Arkla has, within six (6) months of the date this Order becomes final, entered into and filed for approval with the Commission a final agreement to divest, absolutely and in good faith, the TransArk assets or

(b) Arkla has, within three (3) months of the date this Order becomes final, entered into and filed for approval with the Commission a final agreement to divest, absolutely and in good faith, the Arkla Pipeline Assets or

(c) in the event that the Commission disapproves of a substitute divestiture of the Arkla Pipeline Assets, Arkla has, within six (6) months of the date of such disapproval, entered into and filed for approval with the Commission a final agreement to divest, absolutely and in good faith, the TransArk assets and

(d) Arkla has applied for all necessary regulatory approvals required for the consummation of the approved divestiture within thirty (30) days after receiving the Commission's approval of the divestiture,

the Commission shall not appoint a trustee or seek civil penalties or other relief until six (6) months after the Commission, Federal Energy Regulatory Commission or any other state or federal agency denies approval of the divestiture or acquisition, unless the Commission determines that Arkla has not in good faith, with all due diligence and expedition, supported obtaining the necessary regulatory approval required for the consummation of the divestiture of such assets to the acquirer approved by the Commission.

Provided, further, that if following any such denial by the Commission, Federal Energy Regulatory Commission or any other state or federal agency

(i) Arkla has, within six (6) months thereafter, entered into and filed for approval with the Commission a substitute final agreement to divest, absolutely and in good faith, the TransArk assets or the Arkla Pipeline Assets or

(ii) in the event that the Commission disapproves of the substitute divestiture of the Arkla Pipeline Assets, Arkla has, within three (3) months of the date of such disapproval, entered into and filed for approval with the Commission a

final agreement to divest, absolutely and in good faith, the TransArk assets and in either event

(iii) Arkla has applied for all necessary regulatory approvals required for the consummation of such divestiture within thirty (30) days after receiving the Commission's approval of the divestiture,

the Commission shall not appoint a trustee or seek civil penalties or other relief until the Commission, Federal Energy Regulatory Commission or any other state or federal agency denies approval of the divestiture or acquisition, unless the Commission determines that Arkla has not in good faith, with all due diligence and expedition, supported obtaining the necessary regulatory approvals required for the consummation of its divestiture of such assets to the acquirer approved by the Commission.

(B) If a trustee is appointed by the Federal Trade Commission or a court pursuant to Paragraph III(A) of this Order, Arkla shall consent to the following terms and conditions regarding the trustee's duties and responsibilities:

(1) The Federal Trade Commission shall select the trustee, subject to the consent of Arkla, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures.

(2) The trustee shall have the power and authority to divest the TransArk assets required to be divested by Paragraph II(A) of this Order.

(3) The trustee shall have eighteen (18) months from the date of appointment to accomplish the divestiture, which shall be subject to the prior approval of the Federal Trade Commission and, if the trustee is appointed by a court, subject also to the prior approval of the court. If, however, at the end of the eighteen-month period the trustee has submitted a plan of divestiture or believes that divestiture can be achieved within a reasonable time, the divestiture period may be extended by the Federal Trade Commission, or by the court for a court-appointed trustee. Provided, however, that the Federal Trade Commission or court may only extend the divestiture period two (2) times.

(4) No later than thirty (30) days after receiving the prior approval of the Federal Trade Commission, and if the trustee is appointed by a court, following also the prior approval of the court, of the divestiture proposed by the trustee, Arkla shall in good faith (1) apply to the Federal Energy Regulatory Commission for abandonment of the

TransArk assets; and (2) apply for (and cause the acquirer as part of the agreement to apply for) approvals by the Federal Energy Regulatory Commission and any other state or federal agency from which approval must be obtained before Arkla may divest and the acquirer may acquire, own and operate the TransArk assets. Arkla shall cooperate with and shall support in good faith with all due diligence and expedition the acquirer in obtaining necessary regulatory approvals, including filing a statement that demonstrates Arkla's support for each such application. Arkla shall take no action to impede or interfere with the necessary regulatory approvals. Provided, however, that nothing herein shall preclude Arkla from seeking approval for the construction and operation by it of additional facilities as part of any application other than the applications seeking abandonment of the TransArk assets or the applications seeking approval of divestiture of the TransArk assets.

(5) The trustee shall have full and complete access to the personnel, books, records, and facilities of any assets that the trustee has the duty to divest. Arkla shall develop such financial or other information as such trustee may reasonably request and shall cooperate with the trustee. Arkla shall take no action to interfere with or impede the trustee's accomplishment of the divestiture.

(6) The trustee shall use his or her best efforts to negotiate the most favorable price and terms available in each contract that is submitted to the Federal Trade Commission, subject to Arkla's absolute and unconditional obligation to divest at no minimum price and the purpose of the divestiture as stated in Paragraph II(B) of this Order. If the trustee receives bona fide offers from more than one prospective purchaser, the Commission shall determine whether to approve each such purchaser, and the trustee shall divest to the purchaser selected by Arkla from among those approved by the Commission.

(7) The trustee shall serve at the cost and expense of Arkla, on such reasonable and customary terms and conditions as the Federal Trade Commission or a court may set, including the employment of accountants, attorneys or other persons reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies and properties derived from the sale and all expenses incurred. Following accomplishment of the divestiture and

after approval by the Federal Trade Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Arkla and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's divesting the TransArk assets.

(8) Within sixty (60) days after appointment of the trustee, and subject to the prior approval of the Federal Trade Commission and, in the case of a court-appointed trustee, of the court, Arkla shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestiture.

(9) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III(A) of this Order.

(10) The trustee shall report in writing to Arkla and the Federal Trade Commission every sixty (60) days concerning the trustee's efforts to accomplish divestiture.

IV.

It is further ordered, That, within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Arkla has fully complied with the provisions of Paragraphs II and III of this Order, Arkla shall submit to the Federal Trade Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with those provisions. Arkla shall include in its compliance reports, among other things that are required from time to time, a full description of contacts or negotiations for the divestiture of assets specified in Paragraph II of this Order, including the identity of all parties contacted. Arkla also shall include in its compliance reports, copies of all written communications to and from such parties, all internal memoranda, reports and recommendations concerning divestiture, and a description of the status of all regulatory proceedings filed in accordance with this Order.

V.

It is further ordered, That, for a period commencing on the date this Order becomes final and continuing for ten (10) years from and after the date of this Order becoming final, Arkla shall cease and desist from acquiring, without the prior approval of the Federal Trade Commission, directly or indirectly,

through subsidiaries or otherwise, assets used or previously used by (and still suitable for use by), any interest in, or the stock or share capital of any Affected Portion of the Arkoma Basin Pipeline, of any Russellville-Morrilton-Conway Corridor Pipeline or of any entity that owns any assets, interest or stock or share capital in any such Pipeline. Provided, however, that these prohibitions shall not relate to (1) the construction of new facilities or (2) the continuation of the lease by Arkla from Arkansas Western Gas Company of those facilities described in that certain lease between those companies dated October 25, 1951. Provided further, if, and only if, Arkla has provided the Federal Trade Commission with thirty (30) days prior notice of either the reservation or acquisition set out in this proviso, these prohibitions shall not relate to (1) the reservation in the ordinary course of business of not more than twenty (20) percent of the firm capacity of any pipeline or (2) the acquisition by Arkla of any entity which, at the time of such acquisition, directly or indirectly owns any assets, interest, or stock or share capital in any such Pipeline, the fair market value of which assets, interest, or stock or share capital is in the aggregate no greater than twelve (12) million dollars. One year from the date this Order becomes final and annually for nine years thereafter Arkla shall file with the Federal Trade Commission a verified written report of its compliance with this paragraph.

VI.

It is further ordered, That, for the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Arkla made to its principal office, Arkla shall permit any duly authorized representatives of the Federal Trade Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Arkla relating to any matters contained in this Order; and

(B) Upon five days notice to Arkla and without restraint or interference from Arkla, to interview officers or employees of Arkla who may have counsel present, regarding such matters.

VII.

It is further ordered, That Arkla shall notify the Federal Trade Commission at least thirty (30) days prior to any

proposed change in the corporation such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change that may affect compliance obligations arising out of the Order.

Schedule A

The easements and line pipe in place and the records and equipment used in connection therewith beginning at Sun Milepost 216 + 4592' (1' east of ML Block Valve at State Hwy. 45 at Fort Smith, Sebastian County, Arkansas) and ending at Sun Milepost 371 + 4960' (at McRae, White County, Arkansas) as acquired by Arkla from the TransArk partnership (designated by Arkla as its AER Line No. BT-14 and the western most portion of its MRT Line No. A-294), together with the easements and line pipe in place and equipment used in connection therewith constructed by Arkla in conjunction with the foregoing as follows:

(i) The taps on such facilities necessary to connect them with Arkla's meter run at the interconnection between such facilities and (a) Arkla's AER Line No. BT-16 in Franklin County, Arkansas and (b) Arkla's AER Line No. JM-30 in Faulkner County, Arkansas;

(ii) The relocations of such facilities constructed by Arkla as follows:

(a) Approximately 5,360' of 12-inch pipe between old station numbers 5109 + 34' and 5141 + 46';

(b) Approximately 7,204' of 12-inch pipe between old station numbers 3799 + 36' and 3832 + 54';

(c) Approximately 23,369' of 12-inch pipe between old station numbers 5299 + 51' and 5406 + 64';

(d) Approximately 1,400' of 12-inch pipe between old station numbers 4375 + 63' and 4389 + 63';

(e) Approximately 1,731' of 12-inch pipe between old station numbers 5052 + 44' and 5069 + 75';

(f) Approximately 1,500' of 12-inch pipe between old station numbers 5670 + 61' and 5685 + 61';

(g) Approximately 300' of 12-inch pipe between old station numbers 6873 + 31' and 6870 + 31';

(h) Approximately 160' of 12-inch pipe between old station numbers 1349 + 07' and 1350 + 67';

(i) Approximately 121' of 12-inch pipe between Mileposts 364 + 2569' and 364 + 2690';

(iii) The additional facilities constructed by Arkla appurtenant to such facilities as follows:

(a) A pigging receiver, composed of a 12-inch valve, a 10 foot barrel made of heavywall 16-inch pipe and a 4-inch

blowdown valve, located between old station numbers 6873 + 31' and 6870 + 31';

(b) A 12-inch main line valve located between old station numbers 1349 + 07' and 1350 + 67'; and

(c) A 12-inch main line valve and 4-inch blowdown valve located at Milepost 346 + 4723'.

(iv) The tap to be constructed on such facilities necessary to connect them with Arkla's MRT meter run located at Milepost 371 + 4960' (at McRae, White County, Arkansas);

less that portion of the foregoing previously sold by Arkla to Arkansas Oklahoma Gas Company pursuant to that certain Purchase Agreement dated September 7, 1987.

Arkla hereby represents and warrants that the above includes all of the assets acquired by it from TransArk, together with all of the improvements and changes made thereto by Arkla from the date of such acquisition and as of March 7, 1989.

Schedule B

Arkla Pipeline Assets

(1) *Transmission.* The easements and line pipe in place and equipment in place associated with that portion of Arkla Energy Resources' transmission facilities as the same may exist as of March 1, 1989, and designated O, O-1-O, J, T, B (north of the intersection between line B and J in Pope County, Arkansas), BT-1, BT-1-A, B-106, BM-15, BM-10, BT-1-B, BT-16 and BT-14 commencing at the outlet side of Arkla's Chandler Compressor Station located in Latimer County, Oklahoma and extending easterly through Latimer and Le Flore Counties, Oklahoma and Sebastian, Crawford, Franklin, Logan, Johnson, Yell, Perry, Garland, Hot Spring, Pope, Conway, Faulkner, White, Grant, and Jefferson Counties, Arkansas to the points at which the lines designated J, BT-14, and T interconnect with the gas pipeline transmission system owned and operated by Mississippi River Transmission Corporation.

(2) *Gathering.* The easements and line pipe in place and equipment in place associated with that portion of Arkla Energy Resources' gathering facilities as the same may exist as of March 1, 1989, located in Haskell, Latimer and Le Flore Counties, Oklahoma, and Crawford, Pope, Yell, Franklin, Johnson, Logan and Sebastian Counties, Arkansas.

Analysis to Aid Public Comment on Consent Order Accepted Subject to Final Approval

The Federal Trade Commission ("Commission") has accepted for public

comment from Arkla, Inc. ("Arkla") an agreement containing consent order. The Commission is placing the agreement on the public record for sixty (60) days for reception of comments from interested persons.

Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Commission's investigation of this matter concerned Arkla's acquisition of the assets of the TransArk Transmission Company ("TransArk"). Arkla is involved in all sectors of the natural gas industry, including the production, purchase, gathering, storage, transmission, distribution, and sale of natural gas in Arkansas, Missouri, Louisiana, Texas, Mississippi, Tennessee, Oklahoma and Kansas. TransArk was a natural gas transmission company that owned natural gas pipeline assets in the affected portion of the Arkoma Basin, consisting of the Arkansas counties of Sebastian, Crawford, Logan, Franklin, Johnson, Pope, Scott, and Yell; and in the Russellville-Morrilton-Conway corridor in Arkansas. At the time of the acquisition, TransArk was a general partnership owned by subsidiaries of the Lear Petroleum Co. ("Lear") and Esco Exploration Co. ("Esco").

The Commission has reason to believe that Arkla's acquisition of TransArk substantially lessened competition in the transportation of natural gas out of the affected portion of the Arkoma Basin; and, that the acquisition substantially lessened competition in the transportation of natural gas to the Conway-Morrilton-Russellville corridor in the state of Arkansas in violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act.

The Agreement containing Consent Order ("Order") would, if issued by the Commission, settle the complaint that alleges anticompetitive effects in the transportation of natural gas from the affected portion of the Arkoma Basin and to the Conway-Morrilton-Russellville.

Under the terms of the proposed Order, Arkla must divest either: (1) The TransArk pipeline; or (2) an undivided interest in the Arkla system ("Arkla Pipeline Assets"). The Order gives Arkla twelve months to seek Commission approval of a buyer for the assets they must divest. Arkla has eighteen months to divest the assets, subject to exceptions set forth in the trustee provisions. The divestiture shall be

made only to an acquirer or acquirers that receive the prior approval of the Commission. If Arkla fails to satisfy the divestiture provisions set out in the Order, the Commission may appoint a trustee to divest the TransArk assets.

The Order also requires Arkla to: (1) Apply in good faith to the Federal Energy Regulatory Commission ("FERC") for abandonment of the TransArk assets or the Arkla Pipeline Assets; and, (2) apply for and cause the acquirer as part of the agreement to apply for approvals by the FERC and any other state or federal agency that must approve the transaction.

For a period of ten (10) years from its effective date, the proposed Order prohibits Arkla from making substantial acquisitions of any pipeline assets in any affected portion of the Arkoma Basin or in the Russellville-Morrilton-Conway corridor.

It is anticipated that the Order would resolve the competitive problems alleged in the Complaint. The purpose of this analysis is to invite public comment concerning the Order, in order to aid the Commission in its determination of whether it should make final the Order contained in the agreement.

This analysis is not intended to constitute an official interpretation of the agreement and Order, nor is it intended to modify the terms of the agreement and Order in any way.

Donald S. Clark,

Secretary.

[FR Doc. 89-13580 Filed 6-7-89; 8:45 am]

BILLING CODE 8750-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR 334

RIN 3067-AB35

Graduated Mobilization Response

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This rulemaking proposes to add a new part in Title 44 Code of Federal Regulations, Graduated Mobilization Response Guidance, Chapter 1, Federal Emergency Management Agency (FEMA), Subchapter E Preparedness. New Part 334 responds to Part 1 of Executive Order 12656 of November 18, 1988, which provides that the Director, FEMA, assists the National Security Council in the implementation of national security emergency preparedness policy.

Sections 1701(8) and 1701(11) of the Executive Order direct the Director, FEMA, to coordinate the implementation of policies and programs for efficient mobilization and to provide guidance to the Federal departments and agencies on the appropriate use of defense production authorities. This Part defines the Graduated Mobilization Response (GMR) System as part of the National Security Emergency Preparedness program of planning mobilization actions that will permit a timely reaction to early warning indicators. The GMR system is to be incorporated by Federal departments and agencies in their mobilization plans and programs.

DATES: Comments are requested and should be submitted in writing to the address listed below no later than August 7, 1989.

ADDRESSES: Submit written comments, in duplicate, on the proposed rule, to the Rules Docket Clerk, Federal Emergency Management Agency, Room 840, 500 C Street, SW., Washington, DC 20472.

FOR FURTHER INFORMATION CONTACT: Richard F. Marilley, Senior Planning Officer, Office of Mobilization Preparedness, Federal Emergency Management Agency, Room 827, 500 C Street, SW., Washington, DC 20472, Telephone (202) 646-2652.

SUPPLEMENTARY INFORMATION: This proposed guidance is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. It will not have an annual effect on the economy of \$100 million or more; will not result in a major increase in costs or prices to consumers, individual industries, Federal, State or local agencies, or geographic regions; and will not have a significant adverse impact on competition, employment, investment, productivity, innovation or the ability of United States-based enterprises to compete with foreign based enterprises in domestic or export markets.

This part applies to Federal government agencies. In accordance with the Regulatory Flexibility Act of 1980, it is hereby certified that this proposed rule will not have a significant economic impact on a substantial number of small entities.

This rule does not contain information requirements that are subject to the Paper Work Reduction Act of 1980 (44 U.S.C. 3501 et seq.) and OMB implementing regulations 5 CFR 1320.

The regulation in this part provides guidance to federal agencies which may or may not take an action which could be subject to environmental documentation requirements. The guidance has no environmental consequences and it is determined,

under FEMA's regulation published in 44 CFR 10.8, that it is not necessary to prepare either an environmental assessment or an environmental impact statement.

In promulgating these rules, FEMA has considered the President's Executive Order on Federalism issued on October 26, 1987 (E.O. 12612, 52 FR 41685). The purpose of the order is to assure the appropriate division of governmental responsibilities between national government and the States. Among other provisions, this rule implements the requirements that agency rules be in accordance with the so-called common rule, adopted by FEMA at 44 CFR Part 13, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and local Governments. The problem dealt with in this part is national in scope. In view of the joint federal-state responsibility for civil defense, and FEMA's role under the Federal Civil Defense Act of 1950, as amended, the regulation in this Part is determined to conform FEMA assistance to Executive Order 12612.

List of Subjects in 44 CFR 334

National defense, Emergency Graduated Mobilization Response.

Accordingly, Subchapter E Chapter 1, Title 44, Code of Federal Regulations proposes to be amended by adding a new Part 334 as follows:

PART 334—GRADUATED MOBILIZATION RESPONSE

Sec.

334.1 Purpose
334.2 Policy
334.3 Background
334.4 Definitions
334.5 GMR system description
334.6 Department and agency responsibilities

Authority: 50 U.S.C. 404; 50 U.S.C. App. 2061 et seq.; E.O. 12148 of July 20, 1979, 3 CFR 1979 Comp., p. 412; E.O. 10480 of August 14, 1953, 3 CFR 1949-53 Comp., p. 962; E.O. 12472 of April 3, 1984, 3 CFR 1948 Comp., p. 193; E.O. 12656 of November 18, 1988, 53 FR 47491;

§ 334.1 Purpose

This part:

(a) Provides policy guidance pursuant to the Defense Production Act of 1950, as amended; section 1-103 of Executive Order 12148, as amended, which includes functions continued from Executive Order 11051; section 104(f) of Executive Order 12656; and part 2 of Executive Order 10480.

(b) Establishes a Graduated Mobilization Response (GMR) system for developing and implementing mobilization actions that are responsive

to a wide range of national security threats and ambiguous or specific warning indicators. GMR allows for coherent decisions to proceed with responses to a crisis or emergency.

(c) Provides guidance to the Federal departments and agencies for developing plans that are responsive to a GMR system and for preparing costed option packages, as appropriate, to implement the plans.

§ 334.2 Policy.

(a) As established in Executive Order 12656, the policy of the United States is to have sufficient emergency response capabilities at all levels of government to meet essential defense and civilian needs during any national security emergency. Accordingly, each Federal department and agency shall prepare its national security emergency preparedness plans and programs to respond adequately and in a timely manner to all national security emergencies.

(b) As part of emergency response, the GMR system should be incorporated in each department's and agency's emergency preparedness plans and programs to provide appropriate and effective response options for consideration in reacting to ambiguous and specific warnings.

(c) Emergency resource preparedness planning is essential to ensure that the nation is adequately prepared to respond to potential national emergencies. Such emergency resource preparedness planning requires an exchange of information and planning factors among the various departments and agencies responsible for different resource preparedness activities.

(d) To carry out their emergency planning activities, civilian department and agencies require the Department of Defense's (DOD) assessment of potential military demands that would be made on the economy in a full range of possible national security emergencies. Similarly, DOD planning should be conducted using planning regimes consistent with the policies and plans of the civilian resource departments and agencies.

(e) Under section 104(c) of Executive Order 12656, FEMA is responsible for coordinating the implementation of national emergency preparedness policy with Federal departments and agencies and with state and local governments and, therefore, is responsible for developing a system of planning procedures for integrating the emergency preparedness actions of Federal, State and local governments.

(f) Federal departments and agencies shall design their preparedness measures to permit a rapid and effective transition from routine to emergency operations, and to make effective use of the period following initial indication of a probable national security emergency. This will include:

- (1) Development of a system of emergency actions that defines alternatives, processes, and issues to be considered during various stages of national security emergencies; and
- (2) Identification of actions that could be taken at the Federal and local levels of government in the early stages of a national security emergency or pending national security emergency to mitigate the impact of or reduce significantly the leadtime associated with full emergency action implementation.

§ 334.3 Background

The GMR system is designed to take into account the need to mobilize the Nation's resources in response to a wide range of crisis or emergency situations. GMR is a flexible decision making process of preparedness and response actions which are appropriate to warning indicators or an event. Thus, GMR allows the government, as a whole, to take small or large, often reversible, steps to increase its national security emergency preparedness posture.

(b) Crises, especially those resulting in major military activities, always have some political or economic context. As the risks of military action increase, nations undertake more extensive preparations over a longer period of time to increase their military power. These preparations shape the nature and gravity of the threat as well as its likelihood and timing of occurrence. These measures permit the development of reliable indicators of threat at an early time in the evolution of a crisis. Depending on the nature of the situation or event and the nation involved, these early warning indicators may emanate from the political, socio-economic and/or industrial sectors.

(c) The GMR system enables the nation to approach mobilization planning and actions as part of the deterrent response capability and to use it to reduce the probability of conflict. Alternatively, if deterrence should fail, the GMR system would enable the nation to undertake a series of phased actions intended to increase its ability to meet defense and essential civilian requirements. The GMR system integrates the potential strength of the national economy into U.S. national security strategy.

§ 334.3 Definitions

(a) *Graduated Mobilization Response (GMR)* is a system for integrating mobilization actions designed to respond to ambiguous and/or specific warnings. These actions are designed to mitigate the impact of an event or crisis and reduce significantly the lead time associated with a full national security emergency action implementation.

(b) *National security emergency* is any occurrence, including natural disaster, military attack, technological emergency, or other emergency, that seriously degrades or threatens the national security of the United States.

(c) *Mobilization* is the process of marshalling resources, both civil and military, to respond to and manage a national security emergency.

(d) *GMR Plans* are those agency documents that describe, in general, the actions that an agency could take in the early stages of a national security emergency, or upon receipt of warning information about a possible national security emergency. These actions would be designed to mitigate the impact of, or reduce significantly, the lead times associated with full emergency action implementation. Such plans are required by section 201(4)(b) of Executive Order 12656.

(e) *A Costed Option Package* is a document that describes in detail a particular action that an agency could take in the early stages of a national security emergency. The general content of a GMR costed option package includes alternative response options; the resource implications of each option; shortfalls, costs, timeframes and political feasibility.

§ 334.5 GMR system description.

The GMR system contains three stages of mobilization activity (additional intermediate GMR stages may be developed). For example, a federal department or agency might divide "Crisis Management" into two, three, or more levels as suits its needs:

(a) *Stage 3, Planning and Preparation.* During the planning and preparation stage, federal departments and agencies develop their GMR plans and maintain capability to carry out their mobilization-related responsibilities in accordance with section 201 of Executive Order 12656. General types of problems likely to arise in a crisis situation are identified along with possible methods for dealing with them. Investment programs can be undertaken to overcome identified problems.

(b) *Stage 2, Crisis Management.* During the crisis management stage, GMR plans are reviewed and capabilities will be re-examined in light

of an actual event or crisis perceived to be emerging.

(1) Federal departments and agencies may need to gather additional data on selected resources or increase their preparedness activities. Costed Option Packages may need to be updated or new ones prepared for the response option measures in each of the department's and agency's area of responsibility. For example, when it appears likely that increased national resources may be required, resource readiness could be improved through the procurement of essential long lead time items, especially those that can be used even if the situation does not escalate. In general, long lead time preparedness actions would be considered for implementation at this time.

(2) Many preparedness actions at this stage would be handled through reprogramming, but the Costed Option Packages may also request new funding.

(3) If the crisis worsens, and prior to the declaration of national emergency, it may be necessary to surge certain production and stockpile items for future use.

(c) *Stage 1, National Emergency/War.* During national emergency or war, declared by the Congress or the President, mobilization of all national resources escalates and GMR will be subsumed into the overall mobilization effort. As military requirements increase, the national resources would increasingly be focused on the national security emergency. This would involve diverting non-essential demand for scarce resources from peacetime to defense uses, and converting industry from commercial to military production. Both surge production and expansion of the nation's productive capacity may also be necessary. Supplemental appropriations may be required for most Federal departments and agencies having national security emergency responsibilities.

§ 334.6 Department and agency responsibilities.

(a) During Stage 3, each department and agency with mobilization responsibilities will develop costed option packages for the actions that it considers necessary in the early warning period. The actions would be steps that could be taken to improve the nation's ability to mobilize, should a crisis worsen or hostilities occur.

(b) Each department and agency should choose response options appropriate to the crisis or emergency situation. GMR plans should contain a menu of costed option packages that provide details of alternative measures

that may be used in an emergency situation.

(c) FEMA will provide guidance pursuant to Executive Order 12656 and will coordinate GMR plans and option packages of DOD and the civilian departments and agencies to ensure consistency and to identify areas where additional planning or investment is needed.

(d) Departments and agencies should rely on early warning information

developed by the intelligence community and policy statements of the President for guiding their appropriate responses under the GMR system.

(e) During Stage 2, departments and agencies will coordinate their recommendations for action with the National Security Council (NSC) to ensure consistency with the overall national strategy. FEMA will assist the NSC in this coordination.

(f) Plans developed by the departments and agencies under this guidance may be shared, as appropriate, with States, local governments and the private sector to provide a baseline for their development of supporting plans.

Dated: June 2, 1989.

Julius W. Becton, Jr.,
Director, Federal Emergency Management Agency.

[FR Doc. 89-13811 Filed 6-7-89; 8:45 am]

BILLING CODE 6710-01-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 2, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Extension

- Agricultural Stabilization and Conservation Service; 7 CFR Part 1427—Cotton Loan Program Regulations; CCC Cotton A, A1, A2, 879, 837, 813, 813-1, 813-2, 879, 881, 881-1, 833 and 877; On Occasion; Individual of households; Farms; Businesses or other for-profit; 728,280 responses; 182,070 hours; not applicable under 3504(h); Beverly Pritts, (202) 447-8374.

- National Agricultural Statistics Service; Monthly Cold Storage Report;

None; Monthly; Businesses or other for-profit; 10,668 responses; 4,429 hours; not applicable under 3504(h); Larry Gambrell, (202) 447-7737.

Larry K. Roberson,

Acting Departmental Clearance Officer.

[FR Doc. 89-13557 Filed 6-7-89; 8:45 am]

BILLING CODE 3410-01-M

Agricultural Marketing Service

[CN 89 002]

Advisory Committee on Universal Cotton Standards Conference; Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Committee on Universal Cotton Standards will meet during the Universal Cotton Standards Conference to be held on June 22-23, 1989, in Memphis, Tennessee. The meeting will consist of two sessions. Both sessions are open to the public.

First Session

DATE: 11:00 a.m. to 12:00 p.m., June 22, 1989.

ADDRESS: Holiday Inn—Crowne Plaza Hotel, 250 N. Main St., Memphis, Tennessee.

Second Session

DATE: 8:30 a.m., June 23, 1989.

ADDRESS: Cotton Division Offices, 4841 Summer Avenue, Memphis, Tennessee.

FOR FURTHER INFORMATION CONTACT: Dr. H. H. Ramey, Jr., Fiber Technology Branch, Cotton Division, AMS, USDA, 4841 Summer Avenue, Memphis, Tennessee 38122; (901) 521-2921.

SUPPLEMENTARY INFORMATION: The agendas for the two sessions of the meeting are as follows:

First Session: Organizational meeting including the election of a chairperson and a review of the responsibilities of the committee.

Second Session: Consideration of revisions to the Universal Standards for Grade of American Upland Cotton.

These sessions are open to the public. Time, however, will be inadequate to permit lengthy public comment on the day of the meeting. Written comments may be submitted in advance or following the meeting to Jesse F. Moore, Director, Cotton Division, AMS, USDA,

Federal Register

Vol. 54, No. 109

Thursday, June 8, 1989

P.O. Box 96456, Washington, DC 20090-6456, (202) 447-3193.

Dated: June 5, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-13740 Filed 6-7-89; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

North Fork of Illinois Bayou Proposed Municipal and Industrial Water Supply Dam and Reservoir

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement for a proposal to permit the construction of a municipal supply reservoir and dam on the North Fork of Illinois Bayou. The Corps of Engineers, Department of the Army, will participate as a cooperating agency. The agency invites written comments and suggestions on the scope of this analysis. In addition, the agency gives notice of the environmental analysis and decisionmaking process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning this proposal and the scope of analysis should be received by September 8, 1989 in order to ensure timely consideration.

ADDRESS: Submit written comments and suggestions concerning this proposal and the scope of analysis to Lynn C. Neff, Forest Supervisor, Ozark-St. Francis National Forests, P.O. Box 1008, Russellville, AR 72801.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and the environmental impact statement to Gerald Key, Ozark-St. Francis National Forests, P.O. Box 1008, Russellville, AR 72801, phone 501-968-2354.

SUPPLEMENTARY INFORMATION: The City Corporation, P.O. Box 458, Russellville, Arkansas, has applied to the Forest Service for a special use permit for a proposed reservoir and dam. The dam and reservoir will impact about 1,400 acres of National Forest System land. The purpose of the proposed project is

to impound water to serve as a water supply for the city of Russellville, Arkansas, and the surrounding tri-county area including Pope, Yell, and Logan Counties, Arkansas.

City Corporation has applied to the Department of the Army, Corps of Engineers, for a Clean Water Act section 404 permit. The scope of the environmental impact statement (EIS) will cover both the Forest Service and Corps of Engineers permit applications.

The Ozark-St. Francis National Forests Land and Resource Management Plan, completed in 1986, documented the eligibility of the North Fork of Illinois Bayou for National Wild and Scenic River status and recommended that a suitability study be conducted. The suitability study is currently being made and is scheduled for completion on September 30, 1989. A draft environmental impact statement on the suitability study was issued for public review and comment on January 13, 1989.

In deciding to issue or deny the proposed dam and reservoir permit, the Forest Service will use information from the EIS to determine if equal or better alternatives exist off the National Forest. Other alternatives may include other site locations, such as Huckleberry Creek, Hackers Creek, Shoal Creek, Lake Nimrod, Blue Mountain Lake, Piney Bay and Illinois Bayou Bay on Lake Dardanelle, increasing the size of existing sources, and combinations of these alternatives.

Lynn C. Neff, Forest Supervisor, Ozark-St. Francis National Forests, Russellville, Arkansas, is the responsible official for the Forest Service special use permit.

Colonel Anthony V. Nida, District Engineer, Little Rock District, Corps of Engineers is the responsible official for the Department of the Army 404 permit.

Public participation will be important at several points during the analysis. The first point is the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals and organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement. The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.

5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, cumulative effects).

6. Determining other potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, the Arkansas Department of Pollution Control and Ecology, the Arkansas Soil and Water Conservation Commission, the Arkansas Game and Fish Commission, and the Arkansas Department of Health will be invited to participate as cooperating agencies in the analysis.

The Forest Supervisor and District Engineer will hold scoping meetings in both Russellville and Little Rock, Arkansas. A public meeting will be held in Russellville, Arkansas, at Hughes Community Center, "D" and Knoxville Streets on July 18, 1989, at 7:00 p.m. A meeting for agencies and the public will be held in Little Rock, Arkansas, Room 7208, Federal Building, 700 West Capitol Street on July 19, 1989, at 10:00 a.m.

The draft environmental impact statement is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by December 1, 1990. At that time the EPA will publish a notice of availability of the draft EIS in the *Federal Register*. The comment period for this draft EIS will be 60 days from the date the EPA's Notice of Availability appears in the *Federal Register*. It is very important that those interested in this proposal participate at this time. To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation on the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewers' positions and contentions.

Vermont Yankee Nuclear Power Corp. v. NRDC, 435 U.S. 519, 533, 1978, and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS, *Wisconsin Heritage, Inc. v. Harris*, 490 F. Supp. 1334, 1338, (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

After the comment period ends on the draft EIS, the comments will be analyzed and considered in preparing the final EIS, scheduled to be completed by April 1, 1991. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4).

The responsible officials will consider the comments, responses, and environmental consequences discussed in the EIS and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible officials will document the decision and reasons for the decision in the Record of Decision.

The Forest Supervisor's decision will be subject to appeal under 36 CFR Part 217.

Lynn C. Neff,

Forest Supervisor.

Date: May 31, 1989.

[FR Doc. 89-13592 Filed 6-7-89; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Linganore Creek Watershed, MD

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Linganore Creek Watershed, Frederick and Carroll Counties, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Pearl S. Reed, State Conservationist, Soil Conservation Service, John Hanson Business Center, 339 Revell Highway, Suite 302, Annapolis, MD 21401, telephone (301) 757-0919.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Pearl S. Reed, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns watershed protection to protect long-term soil productivity. The planned measures

BEST COPY AVAILABLE

include stripcropping, diversions, grass waterways, structures for water control, waste management systems, and cropland conversion.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental evaluation are on file and may be reviewed by contacting Mr. Pearlle S. Reed.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the *Federal Register*. (This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials.)

Pearlle S. Reed,
State Conservationist.
May 30, 1989.

[FR Doc. 89-13593 Filed 6-7-89; 8:45 am]
BILLING CODE 3410-10-M

DEPARTMENT OF COMMERCE

Agency Information Collection Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of Export Administration

Title: Written Assurance for Exports of Technical Data Under General License GTDR

Form Number: Export Administration Regulations, Section 779.4 (e), (f), OMB-0694-0023

Type of Request: Extension of the expiration date of a currently approved collection

Burden: 550 respondents; 284 reporting/recordkeeping hours. Approximate time per response is 30 minutes

Needs and Uses: This procedure requires that certain written assurances be provided by foreign importers of specific U.S. origin technical data to assure that the data is not exported or reexported to proscribed destinations. The requirement of these letters provides a

measure of security and compliance with established export control policy. **Affected Public:** Businesses or other for-profit institutions; small businesses or organizations

Frequency: On occasion and recordkeeping

Respondent's Obligation: Required to obtain or retain a benefit

OMB Desk Officer: Donald Arbuckle, 395-7340

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Date: June 2, 1989.

Edward Michals,
Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 89-13579 Filed 6-7-89; 8:45 am]

BILLING CODE 3510-CW-M

National Oceanic and Atmospheric Administration

Coastal Zone Management; Federal Consistency Appeal by Michael Galgano From an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration; Commerce.

ACTION: Notice of appeal and request for comments.

On July 8, 1988, Michael Galgano (Appellant), filed with the Secretary of Commerce a notice of appeal under section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, 16 U.S.C. 1456(c)(3)(A), and the Department of Commerce's (Department) implementing regulations, 15 CFR Part 930, Subpart H. The appeal is taken from an objection by the New York Department of State to the Appellant's consistency certification for U.S. Army Corps of Engineers' (Corps) permit application No. 87-754 for the proposed construction of a timber bulkhead with backfill in Meyers Pond, Town of Southampton, Suffolk County, New York. The State's objection precludes the Corps from issuing to the Appellant a permit to perform construction of a timber bulkhead with backfill pending the outcome of the Appellant's appeal. The Appellant has now perfected his appeal by filing the

supporting data and information required by the Department's implementing regulations.

The CZMA provides that a timely objection by a state to a consistency certification precludes any Federal agency from issuing licenses or permits for the activity unless the Secretary of Commerce finds that the activity is either "consistent with the objectives" of the CZMA (Ground I) or "necessary in the interest of national security" (Ground II). Section 307(c)(3)(B). To make such a determination, the Secretary must find that the proposed project satisfies the requirements of 15 CFR 930.121 or 930.122.

The Appellant requests that the Secretary override the Commission's consistency objections based on Ground I. To make the determination that the proposed activity is "consistent with the objectives" of the CZMA, the Secretary must find that (1) the proposed activity furthers one or more of the national objectives or purposes contained in sections 302 or 303 of the CZMA; (2) the adverse effects of the proposed activity do not outweigh its contribution to the national interest; (3) the proposed activity will not violate the Clean Air Act or the Federal Water Pollution Control Act; and (4) no reasonable alternative is available that would permit the activity to be conducted in a manner consistent with New York's coastal management program. See 15 CFR 930.121.

Public comments are invited on the findings that the Secretary must make as set forth in the regulations at 15 CFR 930.121. Comments are due within thirty days of the publication of this notice and should be sent to Margo E. Jackson, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235. Copies of comments should also be sent to George Stafford, Director, Division of Coastal Resources and Waterfront Revitalization, Department of State, Albany, New York 12231-0001; and Michael Galgano, 7 Horse Hill Road, Brookville, Long Island, New York 11545. All nonconfidential documents submitted or received in this appeal are available for public inspection during business hours at the offices of the Division of Coastal Resources and Waterfront Revitalization, Department of State, and the Office of the Assistant General Counsel for Ocean Services, NOAA.

FOR ADDITIONAL INFORMATION CONTACT: Margo E. Jackson, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: June 1, 1989.

William E. Evans,
Under Secretary for Oceans and Atmosphere.
[FR Doc. 89-13637 Filed 6-7-89; 8:45 am]

BILLING CODE 3510-00-M

Coastal Zone Management; Decision and Findings in the Consistency Appeal of Texaco, Inc.

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

ACTION: Notice of decision and findings.

On May 19, 1989, the Under Secretary for Oceans and Atmosphere of the Department of Commerce issued the Decision and Findings in the Consistency Appeal of Texaco, Inc. from an Objection by the California Coastal Commission (Commission). The Commission had objected to Texaco's consistency certification for its proposed Plan of Exploration to drill up to eight exploratory oil and gas wells in an area located at the western end of the Santa Barbara Channel, approximately three miles west-southwest of Point Conception.

Texaco appealed to the Secretary of Commerce pursuant to section 307(c)(3)(B) of the Coastal Zone Management Act (CZMA). The Under Secretary found that Texaco's proposed project was consistent with the objectives of the CZMA. As a result of this finding, Texaco's proposed project may be permitted by Federal agencies.

FOR ADDITIONAL INFORMATION CONTACT: Katherine A. Pease, Assistant General Counsel for Ocean Services, Office of General Counsel, National Oceanic and Atmospheric Administration (NOAA), U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

(Federal Domestic Assistant Catalog No. 11.419 Coastal Zone Management Program Assistance)

Date: June 1, 1989.

William E. Evans,
Under Secretary for Oceans and Atmosphere.
[FR Doc. 89-13638 Filed 6-7-89; 8:45 am]

BILLING CODE 3510-00-M

Issuance of Marine Mammal Permit Modifications to Sea Life Park (P10D/E); Modification to Permits No. 629 and 660

Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), public display Permit No. 629 and 660 issued to Sea Life Park, Inc., (53 FR 10140 as modified March 27, 1989 (54 FR 12470)) and (54 FR 6564) respectively, are modified in the following manner:

Permit No. 629

Correction: The preamble to Modification No. 1 should read: " * * * public display Permit No. 629 * * * "

Section A.1 is deleted and replaced by:

1. Four (4) Pacific false killer whales (*Pseudorca crassidens*) of either sex may be taken or imported for public display. The minimum capture lengths for females and males shall not be less than 300 centimeters (9ft. 10in.) and 327 centimeters (10ft. 9in.) respectively.

Permit No. 660

Section B.5 is added:

B.5. The authority to capture or otherwise acquire the marine mammals authorized in Section A.1 shall extend from the date of issuance through December 31, 1990. The terms and conditions of this Permit (Sections B and C) shall remain in effect as long as one of the marine mammals taken hereunder is maintained in captivity under the authority and responsibility of the Permit Holder.

Documents pertaining to the Permits and Modifications are available for review in the following offices: Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Room 7324, Silver Spring, Maryland 20910; and Director, Southwest Region, National Marine Fisheries Service, 300 South Ferry Street, Terminal Island, California 90731-7415.

Date: June 1, 1989.

Nancy Foster,
Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 89-13538 Filed 6-7-89; 8:45 am]

BILLING CODE 3510-22-M

Application for Marine Mammals Permit; NMFS, Southwest Fisheries Center (P77#34)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing

the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. **Applicant:** NMFS, Southwest Fisheries Center, P.O. Box 271, La Jolla, California 92038

2. **Type of Permit:** Scientific Research

3. **Name and Number of Animals:** Harbor porpoise (*Phocoena phocoena*) 30

4. **Type of Take:** Each of the animals will be captured, measured, and a skin biopsy will be taken. Fifteen (15) of the animals will also be radio-tagged.

5. **Location of Activity:** California coast, initially Monterey Bay

6. **Period of Activity:** 3 years

Concurrent with the publication of this notice in the *Federal Register*, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East West Highway, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries.

Documents submitted in connection with the above application are available for review by interested persons in the following offices: Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910; and Director, Southwest Region, National Marine Fisheries Service, NOAA, 300 South Ferry Street, Terminal Island, California 90731.

Date: June 1, 1989.

Nancy Foster,
Director, Office of Protected Resources, and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-13539 Filed 6-7-89; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Department of the Army

Science Board; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB)

Dates of the Meeting: 27-28 June 1989
Time: 0800-1700 hours each day
Place: Fort Hood, Texas

Agenda: The Army Science Board 1989 Summer Study on Maintaining State-of-the-Art in the Army Command and Control System will meet for discussions focused on impacts on readiness and warfighting capabilities associated with introduction and conversion to new systems. A demonstration of operations in a tactical operations center utilizing emerging command and control automation will be provided. These meetings will be closed to the public in accordance with Section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). Contact the Army Science Board Administrative Officer, Sally Warner, for further information at (202)-695-3039 or 695-7046.

Sally A. Warner,
Administrative Officer, Army Science Board.
[FR Doc. 89-13582 Filed 6-7-89; 8:45 am]
BILLING CODE 3710-8-M

Office of the Secretary

Determination

By the authority vested in the Assistant Secretary of Defense (Production and Logistics) by the Strategic and Critical Materials Stock Piling Act (50 U.S.C. 98 *et seq.*), as delegated by Executive Order 12626 of February 25, 1988, and subsequently reauthorized by the Secretary of Defense and the Under Secretary of Defense (Acquisition), the Assistant Secretary of Defense (Production and Logistics), Jack Katzen, has determined that, pursuant to Section 3 of the Act (50 U.S.C. 98b), the following are strategic and critical materials to be included in the National Defense Stockpile with the indicated interim requirements:

Material	Requirement
Indium.....	1,350,000 Troy Ounces.
Rayon (Aerospace Grade Fiber).	3,000,000 Pounds.
Platinum Group Metal, Rhodium.	30,000 Troy Ounces.
Platinum Group Metal, Ruthenium.	65,000 Troy Ounces.

This determination is effective June 1, 1989.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
June 1, 1989.
[FR Doc. 89-13554 Filed 6-7-89; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project Nos. 1984-021 *et al.*]

Hydroelectric Applications; Wisconsin Power Co. *et al.*; Applications Filed With the Commission

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. Type of Application: Request for Authorization for a Change in Land Rights.

b. Project No: 1984-021.

c. Date Filed: January 25, 1989.

d. Applicant: Wisconsin Power Company.

e. Name of Project: Petenwell—Castle Rock.

f. Location: Wisconsin River in Adams and Juneau Counties, Wisconsin.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: M. O. Andrae, P.O. Box 50, Wisconsin Rapids, WI 54494, (715) 376-9042.

i. FERC Contact: Brian J. Romanek, (202) 376-9042.

j. Comment Date: July 7, 1989.

k. Description of Project: The Wisconsin Power Company (WPC), licensee for the Petenwell—Castle Rock Project, requests authorization to convey easements over or sell certain project land. The proposed conveyance consists of eight easements over 100' buffer strip (abutting the project water) and three fee simple sales of project land. All parcels would be used for recreational use of and or access to the water. Portions of the easement land would be designated for private use by residents of housing developments to be built adjacent to the buffer strip (upland of project land), while other portions of the easement land would be designated for public use. The portions designated for public use would be designated for trail walking, bank fishing, and in some cases swimming at enhanced beach areas.

Regarding the three parcels to be sold (fee simple), the public would not be permitted to use these parcels.

In total, about 6.5 miles of shoreline would be involved in the conveyance proposal, of which 2.2 miles would be sold to a private entity. The conveyances of project land and associated development of non-project land are proposed to occur in stages between the year 1989 and 1994.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

2a. Type of Application: Transfer of License.

b. Project No.: 4885-023.

c. Date Filed: May 5, 1989.

d. Applicant: South Fork Resources, Inc. (Transferor) and Twin Falls Hydro Associates (Transferee).

e. Name of Project: Twin Falls.

f. Location: On the South Fork Snoqualmie River in King County, Washington, partially occupying lands of the United States administered by the Bureau of Land Management.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: For Transferor: Samuel P. Evans, President, South Fork Resources, Inc., 5808 Lake Washington Boulevard, Suite 400, Kirkland, WA 98033, Telephone: (206) 822-0252.

Joel Bodansky, Esq., Hillis, Clark, Martin & Peterson, 500 Calland Building, 1221 Second Avenue, Seattle, WA 98101-2925, Telephone: (206) 623-1745.

For Transferee: Olof S. Nelson, President, Twin Falls Hydro Associates, c/o Consolidated Hydro, Inc., Two Greenwich Plaza, Greenwich, CT 06830, Telephone: (203) 661-4203.

Charles J. Micoleau, Esq., Curtis, Thaxter, Stevens, Broder & Micoleau, One Canal Plaza, Portland, ME 04112, Telephone: (207) 775-2361.

i. Commission Contact: Mr. James Hunter, (202) 376-1943.

j. Comment Date: July 6, 1989.

k. Description of Proposed Action: On May 6, 1985, a major license was issued to the Transferor for the construction, operation, and maintenance of the Twin Falls project. It is proposed to transfer the license to the Transferee. The purpose of this transfer is to provide a vehicle for the investment of equity and management expertise in the project by the Transferee.

The Transferor certifies that it has fully complied with the terms and conditions of the license. The Transferee accepts all the terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

l. This notice also consists of the following standard paragraphs: B and C.

3a. Type of Application: License (less than 5 MW).

b. Project No.: 10661-000.

c. Date Filed: September 14, 1988.

d. Applicant: Michigan Power Company.

e. Name of Project: Constantine Hydroelectric Project.

f. Location: On the St. Joseph River near Constantine, St. Joseph County, Michigan.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. R. W. Harmon, Senior Attorney, American Electric Power Service Corporation, 1 Riverside Plaza, Columbus, OH 43215, (614) 223-1638.

i. FERC Contact: Michael Dees (202) 376-9414.

j. Comment Date: July 3, 1989.

k. Description of Project: The Constantine Hydro Project would consist of the following features: (1) An uncontrolled concrete gravity overflow spillway with a height of approximately 12 feet, surmounted by 12-inch-high flash-boards, and with a total length of 241.25 feet including a 4-foot-wide fish chute at the left abutment; (2) a headgate structure 68 feet long containing seven gates approximately 8 feet wide by 20 feet high; (3) a 70-foot-long earthen embankment between the headgate structure and overflow spillway; (4) a 1,270-foot-long headrace channel with a bottom width of approximately 60 feet; (5) an earth-fill reservoir impoundment dike about 16 feet high by 650 feet long about 1,700 feet upstream from the left abutment of the dam; (6) a reservoir with a normal pool elevation of 782.94 feet and a surface area of approximately 525 acres; (7) a brick powerhouse with dimensions of 140 feet by 30 feet containing four 300-kW generating units connecting to four vertical-shaft, Francis turbines; (8) a switchyard adjacent to the powerhouse containing three 1.0-MVA, 2.4/12.4-kV stepup transformers; (9) a service drop; and (10) appurtenant facilities.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D1.

4a. Type of Application: Exemption (less than 5 MW).

b. Project No.: 10691-000.

c. Date Filed: November 9, 1988.

d. Applicant: Pea River Associates, Inc.

e. Name of Project: Elba.

f. Location: On the Pea River, tributary to the Choctawhatchee River, near the City of Elba, Coffee County, Alabama.

g. Filed Pursuant to: Energy Security Act of 1980, Section 408, 16 U.S.C. 2705 and 2709.

h. Applicant Contact: Andrew E. Sims, P.O. Box 576, Pittsfield, ME 04967, (207) 487-3328.

i. FERC Contact: Charles T. Raabe, (202) 376-9778.

j. Comment Date: July 3, 1989.

k. Description of Project: The proposed project would consist of: (1) An existing 29-foot-high, 400-foot-long gravity-type concrete dam having a 110-foot-long ogee-type spillway surmounted by 5-foot-high stoplogs; (2) a 6-foot-high, 200-foot-long concrete auxiliary spillway at the dam's left (east) bank; (3) a reservoir having a 95-acre surface area and a 950 acre-feet storage capacity at normal water surface elevation 168 feet MSL; (4) an inlet structure at the dam's right (west) bank leading to; (5) a 35-foot-wide, 400-foot-long forebay; (6) an existing powerhouse containing three new generating units having a total installed capacity of 2,500-kW; (7) a new 100-foot-long, 46 kV transmission line; and (8) appurtenant facilities. The applicant estimates that the average annual generation would be 11,000,000 kWh. The site is owned by the City of Elba, Alabama.

l. This notice also consists of the following standard paragraphs: A3, A9, B, C, and D3a.

5a. Type of Application: Preliminary Permit.

b. Project No.: 10735-000.

c. Date Filed: February 18, 1989.

d. Applicant: Pioneer and Settlers Irrigation Districts.

e. Name of Project: Twin Springs Water Power Project.

f. Location: On the North Fork and Middle Ford of the Boise River partially within the Boise National Forest in T2N, 3N, 4N, and 5N, R3E, 4E, 5E, 6E, 7E, and 8E near Idaho City in Elmore County, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Lawrence V. Gray, P. O. Box 426, Caldwell, ID 83606, (208) 459-3617.

i. FERC Contact: Ms. Julie Bernt, (202) 376-1936.

j. Comment Date: July 7, 1989.

k. Competing Application: Project No. 10669-000, Date Filed: October 3, 1988. Due Date: January 16, 1989.

l. Description: The proposed project would consist of: (1) A 470-foot-high rockfill dam at elevation 3,860 MSL; (2) a reservoir which at maximum pool elevation of 3,850 feet would have a gross storage of 600,000 acre-feet and a surface area of 4,300 acres and at minimum pool elevation of 3,650 feet would have a gross storage of 110,000 acre-feet and a surface area of 1,100 acres; (3) a concrete-ogee-shaped 1,200-foot-long spillway; (4) a powerhouse

containing 4 generating units each with a rated capacity of 40,000 kW; and (5) a 24-mile-long transmission line. Applicant estimates the average annual energy production to be 400,000 MWh and the cost of the proposed studies to be \$3,750,000.

m. Purpose of Project: The power produced would be sold to a local power company.

n. This notice also consists of the following standard paragraphs: A8, A10, B, C and D2.

6a. Type of Application: Preliminary Permit.

b. Project No.: 10747-000.

c. Date Filed: March 13, 1989.

d. Applicant: Iowa Hydropower Development Corporation.

e. Name of Project: Rathbun Hydro Project.

f. Location: On the Chariton River in Apponose County, Iowa.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Mr. Justin Rundie, IHDC, 708 Iowa Avenue, Iowa City, IA 52240, (319) 337-9875.

i. FERC Contact: Ed Lee (202) 376-5786.

j. Comment Date: July 10, 1989.

k. Description of Project: The proposed project would utilize the existing US Army Corps of Engineers Rathbun Dam and Reservoir and would consist of: (1) A proposed diversion penstock leading to a new powerhouse that will house a single 1.9-MW generating unit; (2) a new tailrace; (3) a short new 13.8-kv or equivalent transmission line; and (4) appurtenant facilities. The applicant estimates the average annual generation to be 5.15 MWh. The cost of the work and studies to be performed under the permit would be \$15,000.

l. Purpose of Project: The applicant intends to sell the project generation to a local utility or power company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

7. a. Type of Application: Preliminary Permit.

b. Project No.: 10766-000.

c. Date Filed: March 27, 1989.

d. Applicant: JDJ Energy Company.

e. Name of Project: Nimrod Dam.

f. Location: On the Fourche La Fave River in Perry County, Arkansas.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)-825(r).

h. Applicant Contact: Doyle W. Jones, P.E., Route 5, Box 483, Malvern, AR 72104, (501) 844-4435.

i. FERC Contact: Charles T. Raabe (202) 376-9778.

j. Comment Date: July 3, 1989.

k. Description of Project: The proposed project would utilize the U.S. Army Corps of Engineers' Nimrod Dam and would consist of: (1) A proposed intake structure; (2) a proposed 15-foot-diameter penstock about 25 feet long, bifurcating into a 9-foot-diameter and a 4.5-foot-diameter penstock each 55 feet long; (3) a proposed powerhouse, located at the right dam abutment about 80 feet downstream of the dam toe, containing two generating units with a total installed capacity of 2,500 kW; (4) a proposed tailrace about 100 feet long; (5) a proposed 4.16/13.8-kV switchyard; (6) a proposed 700-foot-long 13.8-kV transmission line to connect with an existing transmission system; and (7) appurtenant facilities.

Applicant estimates that the project average annual energy production would be 8,300,000 kWh and that the cost of the studies under the terms of the permit would be \$30,000. Project power would be sold to a local utility.

l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

8a. Type of Application: Preliminary Permit.

b. Project No.: 10787-000.

c. Date Filed: March 27, 1989.

d. Applicant: Hydro—Idaho.

e. Name of Project: Yellowstone Hydro.

f. Location: In Targhee National Forest, on Falls River in Fremont county, Idaho.

g. Filed Pursuant to: Federal Power Act 16 USC 791(a)—825(r).

h. Applicant Contact: Mr. Robert R. Lee, 1330 Barney Dairy Road; Rexburg, ID 83440.

i. FERC Contact: Michael Spencer at (202) 376-1889.

j. Comment Date: July 7, 1989.

k. Description of Project: The proposed project would consist of: (1) The existing Yellowstone Diversion Dam; (2) a new river inlet constructed as part of the existing dam; (3) the existing 4-mile-long Yellowstone Canal, that would be reconstructed; (4) a new 500-foot-long, 96-inch-diameter penstock; (5) a powerhouse containing two generating units with a combined capacity of 4.5 MW and an estimated average annual generation of 28.0 GWh; and (6) a 6-mile-long transmission line.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be \$40,000.

l. Purpose of Project: Project power would be sold to Utah Power and Light.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

9a. Type of Application: Preliminary Permit.

b. Project No.: 10770-000.

c. Date Filed: April 3, 1989.

d. Applicant: Trenton Falls Hydroelectric Company.

e. Name of Project: Morgan Dam Project.

f. Location: On the West Canada Creek in Oneida and Herkimer Counties, New York.

g. Filed Pursuant to: Federal Power Act 16 USC 791(a)—825(r).

h. Applicant Contact: Mr. Fred T. Samel, Trenton Falls Hydroelectric Company, P.O. Box 189, Prospect, NY, 13435, (315) 896-6351.

i. FERC Contact: Robert W. Bell (202) 376-9237.

j. Comment Date: July 8, 1989.

k. Description of Project: The proposed project would consist of: (1) An existing 175-foot-long, 8-foot-high, concrete gravity dam; (2) an impoundment having a surface area of 1 acre with negligible storage and a normal water surface elevation of 752 feet m.s.l.; (3) a proposed integral powerhouse containing one generating unit having an installed capacity of 250 kW; (4) a proposed 100-foot-long, 24-foot-long, tailrace; (5) a proposed 300-foot-long, 46-KV transmission line; and (6) appurtenant facilities. The applicant estimates the average annual generation would be 1,824,000 kWh. The dam and project facilities are owned by the New York State Department of Transportation. The applicant estimates the cost of studies under permit would be \$49,500.

l. Purpose of Project: All project energy generated would be sold to the Niagara Mohawk Power Corporation.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

10a. Type of Filings: Preliminary Permit.

b. Project No.: 10772-000.

c. Date Filed: April 4, 1989.

d. Applicant: Hydro-Power Electric of Nevada, Inc.

e. Name of Project: Boulder Rapids Project.

f. Location: On the Snake River near the town of Buhl, in Twin Falls and Gooding Counties, Idaho.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. Applicant Contact: Carl L. Myers, Myers Engineering Company, P.A., 750 Warm Springs Avenue, Boise, ID 83712, (208) 336-1425.

i. FERC Contact: Thomas Dean, (202) 376-9562.

j. Comment Date: July 8, 1989.

k. Description of Project: The proposed project would consist of: (1) A

concrete diversion facility with an inlet elevation of 2,965 feet msl; (2) a 1,100-foot-long canal measuring between 100 feet and 140 feet wide leading to; (3) 3,500-kw generating units with a combined capacity of 8,120-kW; (4) a tailrace outlet discharging to the Snake River; and (5) a 2,200-foot-long, 138-kV transmission line.

The applicant states that the average annual energy production is 33.9 GWh. The approximate cost of the studies under the permit would be \$300,000.

l. Purpose of Project: Applicant intends to sell the power generated from the proposed facility to the Idaho Power Company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36).

Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later

than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A8. Preliminary Permit—Public notice of the filing of the initial preliminary permit application, which has already been given, established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS",

"NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NW., Washington, DC 20428. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203-RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments—States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. No. 88-29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313 (b) of the Federal Power Act, 16 U.S.C. 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other federal, state, and local agencies that received this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If an agency does not respond to the Commission within the

time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D3a. Agency Comments—The U.S. Fish and Wildlife Service, the National Marine Fisheries Service, and the State Fish and Game agency(ies) are required, for the purposes set forth in Section 408 of the Energy Security Act of 1980, to file within 60 days from the date of issuance of this notice appropriate terms and conditions to protect any fish and wildlife resources or to otherwise carry out the provisions of the Fish and Wildlife Coordination Act. General comments concerning the project and its resources are requested; however, specific terms and conditions to be included as a condition of exemption must be clearly identified in the agency letter. If an agency does not file terms and conditions within this time period, that agency will be presumed to have none. Other Federal, state and local agencies are requested to provide any comments they may have in accordance with their duties and responsibilities. No other formal requests for comments will be made. Comments should be confined to substantive issues relevant to the granting of an exemption. If any agency does not file comments within 60 days from the date of issuance of this notice, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: June 2, 1989 Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13566 Filed 6-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. C163-1302 et al.]

Mesa Operating Limited Partnership, Agent for Mesa Midcontinent Limited Partnership; Application

June 5, 1989.

Take notice that on April 24, 1989, Mesa Operating Limited Partnership, as agent for Mesa Midcontinent Limited Partnership (Mesa) of P.O. Box 2009, Amarillo, Texas 79189, filed an

application pursuant to section 7 of the Natural Gas Act and Parts 154 and 157 of the Federal Energy Regulatory Commission's (Commission) regulations thereunder for certificates of public convenience and necessity to continue sales of natural gas previously made by Tenneco Oil Company (Tenneco) under the certificates listed in the Appendix hereto. Mesa also requests that Tenneco's rate schedules listed in the Appendix hereto be redesignated as those of Mesa, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states effective June 30, 1988, Tenneco transferred all of its interests in all of the properties subject to Tenneco's FERC Gas Rate Schedules listed in the Appendix hereto to TOC-Mid-Continent Inc. and TOC-Mid-Continent Inc. transferred all of said interests to Mesa Midcontinent Limited Partnership effective the same date.

Any person desiring to be heard or to make any protest with reference to said application should on or before June 20, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a petition to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Mesa to appear or to be represented at the hearing.

Lois D. Cashell,
Secretary.

APPENDIX

Tenneco Oil Company FERC Gas Rate Schedule No.	Certificate Docket No.	Purchaser
22.....	CI83-1302	Ringwood Gathering Company.
65.....	CI80-116	ANR Pipeline Company.
106.....	CI84-1062	Williams Natural Gas Company.
118.....	CI81-1815	Cimarron Transmission Company.
122.....	CI82-886	Lone Star Gas Company.
136.....	CI83-1182	Arkla Energy Resources, a division of Arkla, Inc.
139.....	CI84-948	ANR Pipeline Company.
169.....	CI85-110	Natural Gas Pipeline Company of America.
183.....	G-18178	ANR Pipeline Company.
184.....	G-18820	Natural Gas Pipeline Company of America.
187.....	CI81-717	ANR Pipeline Company.
209.....	CI87-381	Northern Natural Gas Company, Division of Enron Corp.
222.....	CI85-893	ANR Pipeline Company.
258.....	CI70-168	Northern Natural Gas Company, Division of Enron Corp.
290.....	CI74-625	ANR Pipeline Company.
325.....	CI77-357	ANR Pipeline Company.
340.....	CI78-863	Mississippi River Transmission Corporation.
349.....	CI79-186	Arkla Energy Resources, a division of Arkla, Inc.
350.....	CI79-205	ANR Pipeline Company.
357.....	G-18117	ANR Pipeline Company.
359.....	CI82-191	Natural Gas Pipeline Company of America.
361.....	CI83-401	ANR Pipeline Company.
362.....	CI83-489	ANR Pipeline Company.
367.....	CI78-436	Phillips 66 Natural Gas Company.
369.....	G-7230	Northern Natural Gas Company, Division of Enron Corp.
371.....	G-8847	Natural Gas Pipeline Company of America.
375.....	G-12788	K N Energy, Inc.
378.....	G-18916	ANR Pipeline Company.
383.....	CI84-423	Transwestern Pipeline Company.
384.....	CI84-446	Arkla Energy Resources, a division of Arkla, Inc.
386.....	CI84-844	Natural Gas Pipeline Company of America.
387.....	CI84-881	Northern Natural Gas Company, Division of Enron Corp.
388.....	CI84-886	Arkla Energy Resources, a division of Arkla, Inc.
389.....	CI84-1381	Arkla Energy Resources, a division of Arkla, Inc.
390.....	CI84-1422	Ringwood Gathering Company.
392.....	CI85-123	K N Energy, Inc.
393.....	CI85-441	Natural Gas Pipeline Company of America.
399.....	CI87-1086	ANR Pipeline Company.
404.....	CI87-717	Northern Natural Gas Company, Division of Enron Corp.
405.....	CI73-276	ANR Pipeline Company.
406.....	CI73-324	El Paso Natural Gas Company.
407.....	CI74-813	ANR Pipeline Company.
412.....	CI78-139	ANR Pipeline Company.
414.....	CI78-691	ANR Pipeline Company.
419.....	CI80-206	El Paso Natural Gas Company.
433.....	CI80-503	El Paso Natural Gas Company.
438.....	CI82-318	Northern Natural Gas Company, Division of Enron Corp.
483.....	CI84-213	ANR Pipeline Company.
505.....	CI84-258	Northern Natural Gas Company, Division of Enron Corp.
511.....	CI84-262	Northern Natural Gas Company, Division of Enron Corp.
543.....	CI78-364	K N Energy, Inc.
544.....	CI79-385	Lone Star Gas Company.
545.....	CI79-386	ANR Pipeline Company.
548.....	CI79-370	ANR Pipeline Company.

APPENDIX—Continued

Tenneco Oil Company FERC Gas Rate Schedule No.	Certificate Docket No.	Purchaser
549.....	CI79-371	ANR Pipeline Company.
553.....	CI79-377	Northern Natural Gas Company, Division of Enron Corp.
562.....	CI79-390	Northern Natural Gas Company, Division of Enron Corp.
563.....	CI79-392	Northern Natural Gas Company, Division of Enron Corp.
564.....	CI79-393	Northern Natural Gas Company, Division of Enron Corp.
565.....	CI79-394	Northern Natural Gas Company, Division of Enron Corp.
566.....	CI79-395	Northern Natural Gas Company, Division of Enron Corp.
570.....	CI79-401	Zenith Natural Gas Company.
573.....	CI83-5	Northern Natural Gas Company, Division of Enron Corp.
574.....	CI83-6	Northern Natural Gas Company, Division of Enron Corp.
575.....	CI83-336	Phillips 66 Natural Gas Company.
577.....	CI88-549	ANR Pipeline Company.

[FR Doc. 89-13567 Filed 6-7-89; 8:45 am]

BILLING CODE 4717-01-M

[Docket Nos. CI89-417-000 et al.]

Pelto Oil Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Pelto Oil Company

[Docket No. CI89-417-000]

June 1, 1989.

Take notice that on May 12, 1989, Pelto Oil Company (Pelto) of Suite 1800, 500 Dallas Street, Houston, Texas 77002, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for an unlimited-term blanket certificate with pregranted abandonment to authorize sales of uncommitted gas subject to the Commission's NGA jurisdiction and gas which has been permanently abandoned or has been released from a gas sales contract and which has not been otherwise abandoned under Order Nos. 490 and 490-A, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: June 20, 1989, in accordance with Standard Paragraph J at the end of this notice.

2. Southern Natural Gas Company

[Docket No. CP89-1517-000]

June 1, 1989.

Take notice that on May 26, 1989, Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham,

Alabama 35202-2563, filed in Docket No. CP89-1517-000 an application pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of the Stone Container Corporation, Resources and Energy Division (Stone), a marketer of natural gas, under Southern's blanket certificate issued in Docket No. CP88-316-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport, on an interruptible basis, up to 5,000 MMBtu of natural gas per day for Stone. Southern states that construction of facilities would not be required to provide the proposed service.

Southern further states that the maximum day, average day, and annual transportation volumes would be approximately 5,000 MMBtu, 5,000 MMBtu and 1,825,000 MMBtu respectively.

Southern advises that service under Section 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89-3040.

Comment date: July 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. Elf Aquitaine Operating, Inc. (Successor-in-interest to Huffco Petroleum Corporation)

[Docket Nos. CS84-65-001, CI85-479-001 and CI85-480-001]

June 1, 1989.

Take notice that on May 17, 1989, Elf Aquitaine Operating, Inc. (Applicant), c/o Newman & Holtzinger, P.C., 1615 L

Street, NW., Washington, DC 20036, filed an application pursuant to section 7 of the Natural Gas Act and the Commission's regulations thereunder requesting that the certificates previously issued to Huffco Petroleum Corporation (Huffco) be amended to reflect Elf Aquitaine Operating, Inc. as the certificate holder, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Applicant states that Huffco was acquired by Elf Aquitaine, Inc. on August 18, 1988, and renamed Elf Aquitaine Operating, Inc. Applicant requests that the small producer certificate issued to Huffco in Docket No. CS85-65-000 be redesignated in the name of Elf Aquitaine Operating, Inc. and that the certificates issued to Huffco in Docket Nos. CI85-479-000 and CI85-480-000 be amended to reflect the change in name to Elf Aquitaine Operating, Inc. and to redesignate Huffco's FERC Gas Rate Schedule Nos. 1 and 2 as Elf Aquitaine Operating, Inc. rate schedules.

Comment date: June 20, 1989 in accordance with Standard Paragraph J at the end of the notice.

4. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1519-000]

June 1, 1989.

Take notice that on May 26, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1519-000 a request pursuant to § 157.205 of the Commission's Regulations (18 CFR 157.205) for authorization to transport natural gas on behalf of Owens-Corning Fiberglas Corporation (Shipper), under Transco's blanket certificate issued in Docket No. CP88-328-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Transco proposes to transport, on an interruptible basis, up to 6,000 dt equivalent of natural gas on a peak day, 6,000 dt equivalent on an average day and 2,190,000 dt equivalent on an annual basis for Shipper. It is stated that Transco would receive the gas for Shipper's account at various existing points on Transco's system in Louisiana, Texas, Mississippi, and Georgia and

would deliver equivalent amounts at existing points in Louisiana and South Carolina. It is asserted that the transportation service would be effected using existing facilities and that no construction of facilities would be required. It is explained that the transportation service commenced April 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3252.

Comment date: July 17, 1989, in accordance with Standard Paragraph C at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP89-1506-000]

June 1, 1989.

Take notice that on May 24, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1506-000 a request pursuant to §§ 157.205 and 284.223(2)(b) of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for Fina Oil and Chemical Company (Fina), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

United states that it would transport, on an interruptible basis, up to a maximum of 11,845 equivalent of natural gas per day for Fina. United states that it would receive and redeliver the gas at existing interconnections between United and High Island Offshore blocks in offshore, Texas. United indicates that the total volume of gas to be transported for Fina on a peak day would be 11,845 MMBtu; on an average day would be 11,845 MMBtu; and on an annual basis would be 4,323,425. United indicates it would perform the proposed transportation service for Fina pursuant to a service agreement dated October 13, 1988, between United and Fina.

United states that it commenced the transportation of natural gas for Fina on May 4, 1989, at Docket No. ST89-3492-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. United indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: July 17, 1989, in accordance with Standard Paragraph C at the end of this notice.

6. Natural Gas Pipeline Company of America

[Docket No. CP89-1451-000]

June 1, 1989.

Take notice that on May 19, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1451-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport, on a firm basis under its blanket certificate Docket No. CP88-582, a maximum of 102,000 MMBtu (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule FTS) for PSI, Inc. (PSI) a marketer, all as more fully set forth in the request on file with the Commission and open to public inspection.

Natural indicates that service commenced May 1, 1989, under § 284.223(a) of the Commission Regulations, as reported in Docket No. ST89-3578 and estimates the volumes transported to be 102,000 MMBtu per day on peak day and average day, and 37,230,000 MMBtu on an annual basis.

Natural also states that no new facilities are to be constructed.

Comment date: July 17, 1989, in accordance with Standard Paragraph C at the end of this notice.

7. Tennessee Gas Pipeline Company

[Docket No. CP89-1511-000]

June 1, 1989.

Take notice that on May 25, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1511-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Chevron USA, Inc. (Chevron), a producer, under the blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated April 18, 1989, under its Rate Schedule IT, it proposes to transport up to 2,000 dekatherms (dt) per day equivalent of natural gas for Chevron. Tennessee states that it would transport the gas for Chevron for gas lift purposes from receipt points located offshore Louisiana to a platform at Eugene Island Block 215 C.

Tennessee advises that service under Section 284.223(a) commenced April 21,

1989, as reported in Docket No. ST89-3529 (filed May 15, 1989). Tennessee further advises that it would transport 2,000 dt on an average day and 730,000 dt annually.

Comment date: July 17, 1989, in accordance with Standard Paragraph C at the end of this notice.

8. Natural Gas Pipeline Company of America

[Docket No. CP89-1513-000]

June 1, 1989.

Take notice that on May 25, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1513-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Exxon Corporation (Exxon), a producer, under the blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Natural states that pursuant to a transportation agreement dated February 10, 1989, under its Rate Schedule ITS, it proposes to transport up to 75,000 MMBtu per day equivalent of natural gas for Exxon. Natural states that it would transport the gas (plus any additional volumes accepted pursuant to the overrun provisions of Natural's Rate Schedule ITS) from multiple receipt points in Texas, Oklahoma and New Mexico, as shown in Exhibit "A" of the transportation agreement, and would deliver the gas to multiple delivery points in Louisiana and Texas, as shown in Exhibit "B" of the agreement.

Natural advises that service under Section 284.223(a) commenced April 21, 1989, as reported in Docket No. ST89-3626-000. Natural further advises that it would transport 75,000 MMBtu on an average day and 27,375,000 MMBtu annually.

Comment date: July 17, 1989, in accordance with Standard Paragraph C at the end of this notice.

9. United Gas Pipe Line Company

[Docket No. CP89-1504-000]

June 2, 1989.

Take notice that on May 24, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1504-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR

157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to provide a transportation service for LaSER Marketing Company (LaSER), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 618,000 MMBtu of natural gas equivalent per day for LaSER pursuant to a transportation agreement dated December 12, 1988, as amended on March 2, 1989, between United and LaSER. United would receive natural gas at various receipt points in Louisiana and Mississippi and redeliver equivalent volumes of gas, less fuel and company used gas, at various delivery points in Louisiana and Mississippi.

United further states that the estimated average daily and annual quantities would be 618,000 MMBtu and 74,160,000 MMBtu respectively. Service under § 284.223(a) commenced April 21, 1989, as reported in Docket No. ST89-3487-000, it is stated.

Comment date: July 17, 1989, in accordance with Standard Paragraph C at the end of this notice.

10. Northwest Pipeline Corporation

[Docket No. CP89-1501-000]

June 2, 1989.

Take notice that on May 24, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1501-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to transport natural gas for Shell Oil Company (Shell), an end user of natural gas, under Northwest's blanket certificate issued in Docket No. CP88-578-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport, on an interruptible basis, up to 18,000 MMBtu of natural gas equivalent per day for Shell pursuant to a gas transportation agreement dated March 14, 1988, as amended on January 31, 1989, and April 4, 1989, between Northwest and Shell. Northwest would receive the gas at any receipt point on its system and redeliver equivalent volumes, less fuel and lost and

unaccounted for volumes, at any delivery point on its system.

Northwest further states that the estimated average daily and annual quantities would be 100 MMBtu and 36,500 MMBtu, respectively. Service under Section 284.223(a) commenced on April 12, 1989, as reported in Docket No. ST89-3469-000, it is stated.

Comment date: July 17, 1989 in accordance with Standard Paragraph C at the end of the notice.

11. United Gas Pipe Line Company

[Docket No. CP89-1527-000]

June 2, 1989.

Take notice that on May 26, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1527-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Marathon Oil Company (Marathon), a producer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated October 7, 1988, under its Rate Schedule ITS, it proposes to transport up to 4,120 MMBtu per day equivalent of natural gas for Marathon. United states that it would transport the gas from a receipt point as shown in Exhibit "A" of the transportation agreement and would deliver the gas to a delivery point shown in Exhibit "B" of the agreement.

United advises that service under Section 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3491 (filed May 11, 1989). United further advises that it would transport 4,120 MMBtu on an average day and 1,503,800 MMBtu annually.

Comment date: July 17, 1989, in accordance with Standard Paragraph C at the end of this notice.

12. Trunkline Gas Company

[Docket No. CP89-1416-000]

June 2, 1989.

Take notice that on May 17, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas, 77251-1642, filed in Docket No. CP89-1416-000 a request pursuant to §§ 157.205 and 284.223 of the Commission Regulations under the Natural Gas Act for authorization to transport natural gas for Manville Sales Corporation (Manville), a shipper and end user of natural gas, under Trunkline's blanket

certificate issued in Docket No. CP88-586-00 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Trunkline requests authority to transport up to 3,000 Dt. per day on a firm basis on behalf of Manville pursuant to a Transportation Agreement dated April 1, 1989, between Trunkline and Manville (Transportation Agreement). The Transportation Agreement provides for Trunkline to receive gas from Houston Pipeline (Katy) in Waller County, Texas. Trunkline will then transport and redeliver subject gas, less fuel and unaccounted for line loss, to Panhandle Eastern Pipeline Company in Douglas County, Illinois.

The Applicant further states that the estimated daily and estimated annual quantities would be 3,000 Dt. and 1,095,000 Dt., respectively. Service under § 284.223(a) commenced on April 1, 1989, as reported in Docket No. ST89-3161.

Comment date: July 17, 1989, in accordance with Standard Paragraph C at the end of this notice.

13. Natural Gas Pipeline Company of America

[Docket No. CP89-1496-000]

June 2, 1989.

Take notice that on May 24, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois, 60148, filed in Docket No. CP89-1496-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Yuma Gas Corporation (Yuma), under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Natural requests authorization to transport, on an interruptible basis, up to a maximum of 100,000 MMBtu of natural gas per day (plus any additional volumes accepted pursuant to the overrun provision's of Natural's Rate Schedule ITS) for Yuma from receipt points located in Colorado, New Mexico, Oklahoma, and Texas to delivery points located in Texas, Oklahoma, New Mexico, and Nebraska. Natural anticipates transporting, on an average day 20,000 MMBtu and an annual volume of 7,300,000 MMBtu.

Natural states that the transportation of natural gas for Yuma commenced April 1, 1989, as reported in Docket No. ST89-3615-000, for a 120-day period

pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Natural in Docket No. CP88-582-000.

Comment date: July 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Southern Natural Gas Company

[Docket No. CP89-1516-000]

June 5, 1989.

Take notice that on May 26, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 3502-2563 filed in Docket No. CP89-1517-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of Stone Container Corporation, Resources and Energy Division (Stone), a natural gas marketer, under its blanket authorization issued in Docket No. CP88-318-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern would perform the proposed interruptible transportation service for Stone, pursuant to an interruptible transportation service agreement dated March 17, 1989. The transportation agreement is effective for a primary term of one month and month-to-month thereafter subject to termination by either party giving five days written notice. Southern proposes to transport 20,000 MMBtu of natural gas on a peak and average day; and on an annual basis 7,300,000 MMBtu of natural gas for Stone. Southern proposes to receive the subject gas at various receipt points located in Alabama, Louisiana, offshore Louisiana, Mississippi, Texas and offshore Texas for redelivery to various points in Georgia and South Carolina. Southern avers that no new facilities are required to provide the proposed service.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. Southern commenced such self-implementing service on April 1, 1989, as reported in Docket No. ST89-3037-000.

Comment date: July 17, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Sea Robin Pipeline Company

[Docket No. CP89-1508-000]

June 5, 1989.

Take notice that on May 24, 1989, Sea Robin Pipeline Company (Sea Robin), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1508-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide interruptible transportation service on behalf of Ecee, Inc. (Ecee), a producer of natural gas, under its blanket certificate issued in Docket No. CP88-824-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Sea Robin states that it proposed to transport natural gas for Ecee from various points of receipt in offshore Louisiana to various point of delivery in Louisiana.

Sea Robin further states that the maximum daily, average daily and annual quantities that it would transport for Ecee would be 3,000 MMBtu equivalent of natural gas, 3,000 MMBtu equivalent of natural gas and 1,095,000 MMBtu equivalent of natural gas, respectively.

Sea Robin indicates that in a filing made with the Commission in Docket No. ST89-3222 filed on April 27, 1989, it reported that transportation service for Ecee had begun under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: July 20, 1989, in accordance with standard Paragraph G at the end of this notice.

16. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1518-000]

June 5, 1989.

Take notice that on May 26, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1518-000 a request for authorization to transport gas for Transco Energy Marketing Company (Shipper) under the prior notice procedure prescribed in §§ 157.205 and 284.223 of the Commission's Regulations and Transco's blanket certificate issued in CP88-328-000, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Transco states that the total volumes of gas to be transported for Shipper on a peak day will be 8,000 dt; on an average day will be 8,000 dt; and on an annual basis will be 2,920,000 dt.

Transco states it will receive the gas at various existing receipt points in onshore and offshore Louisiana, onshore and offshore Texas, Alabama, Georgia, Pennsylvania and New Jersey. Transco will deliver the gas at various existing delivery points in South Carolina and onshore Louisiana.

Transco states that it will construct no new facilities in order to provide this transportation service. Transco will utilize existing facilities as reflected in Exhibit A of the transportation agreement.

Transco states that there is no agency relationship under which a local distribution company or an affiliate of Shipper will receive gas on behalf of Shipper.

Transco states that service for Shipper commenced April 1, 1989, in Docket No. ST89-3609, pursuant to the 120-day automatic authorization provided in the Commission's Regulations.

Transco knows of no other applications that are related to this transaction.

Transco has verified that transportation hereunder will be pursuant to Subpart F, Part 157 and Subpart G, Part 284 of the Commission's Regulations.

Comment date: July 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

17. Northern Natural Gas Company, Division of Enron Corp.

[Docket No. CP89-1510-000]

June 5, 1989.

Take notice that on May 25, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-1510-000 a request pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate one delivery point to Midwest Gas, A Division of Iowa Public Service Company (Midwest), in order for Midwest to serve the community of Elk Point, South Dakota, under the certificate issued in Docket No. CP82-401-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern proposes to construct and operate one small-volume delivery point to accommodate natural gas deliveries under Northern's Rate Schedules CD-1, ACDS-1 and AOS-1 to Midwest for ultimate delivery to the community of Elk Point, in Union County, South Dakota. Northern states that the volumes to be delivered to Midwest at

the proposed delivery point would be 580 Mcf on a peak day and 13,510 Mcf annually. Northern maintains that the total volume to be delivered to Midwest at the proposed and existing delivery points would be within its currently authorized firm entitlement, as authorized by Commission orders issued November 9, 1987 at Docket Nos. RP85-206-11 through RP85-206-27 and on December 22, 1988, in Docket No. CP88-774-000. Northern states that delivery of such volume will therefore have no impact on Northern's peak day and annual deliveries. Northern further states that the required volume would be served from the existing firm entitlement currently designated by Midwest for delivery to Elk Point, South Dakota.

Comment date: July 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

18. Williams Natural Gas Company

[Docket No. CP89-1502-000]

June 5, 1989.

Take notice that on May 24, 1989, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP89-1502-000, an application pursuant to section 7(b) of the Natural Gas Act (NGA) for permission and approval to abandon by reclamation approximately 22 miles of 8-inch lateral pipeline and appurtenant facilities located in Allen and Bourbon Counties, Kansas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

It is stated that the 8-inch pipeline was installed in 1929 and certificated in Docket No. C-298, 4 FPC 471 (1943). It is alleged that Williams seeks authority to abandon by reclaim approximately 22 miles of this 8-inch lateral pipeline and appurtenant facilities beginning in Section 27, Township 26 South, Range 20 East, Allen County, Kansas and ending in Section 30, Township 26 South, Range 24 East, Bourbon County, Kansas. It is asserted that road crossings would be abandoned in place.

Williams states that a new pipeline would be constructed under the automatic provisions of Section 157.028 of the Commission's Regulations to replace the pipeline sought to be abandoned thus there would be no abandonment of service. Williams contends that the new pipeline would be in operation prior to the proposed abandonment of the existing 8-inch pipeline, therefore there would be no abandonment of service. It is alleged that the cost of the proposed abandonment is approximately \$258,000

with an estimated salvage value of \$77,000.

Comment date: June 26, 1989, in accordance with Standard Paragraph F at the end of this notice.

19. Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1503-000]

June 5, 1989.

Take notice that on May 24, 1989, Transcontinental Gas Pipe Line Corporation (Transco), Post Office Box 1396, Houston, Texas 77251, filed in Docket No. CP89-1503-000 a request for authorization pursuant to §§ 158.205 and 284.223 of the Commission's Regulations under the Natural Gas Act and Transco's blanket certificate issued in Docket No. CP88-328-000 for authorization to provide gas for TBC Cogen Partners, Inc. (Shipper), all as more fully set forth in the request which is on file with the Commission and available for public inspection.

Transco states that the total volume of gas to be transported for Shipper on a peak day would be 22,700 dt; on an average day would be 12,000 dt; and on an annual basis would be 4,380,000 dt.

Transco states it would receive the gas at various existing receipt points in Onshore and Offshore Louisiana and Texas and deliver the gas at various existing delivery points in New York.

Transco also states that it would construct no new facilities in order to provide this transportation service. It is stated that Long Island Lighting Company (LILCO) would be required to construct an 8-inch pipeline and appurtenances in Bethpage, New York at an approximate cost of \$2,200,000.

Transco states that there is no agency relationship under which a local distribution company or an affiliate of Shipper will receive gas on behalf of Shipper.

Transco states that service for Shipper commenced April 1, 1989, pursuant to the 120-day automatic authorization in Docket No. ST89-3118.

Comment date: July 20, 1989, in accordance with Standard Paragraph G at the end of this notice.

20. K N Energy, Inc.

[Docket No. CP89-1475-000]

June 5, 1989.

Take notice that on May 22, 1989, K N Energy, Inc. (K N), Post Office Box 15265, Lakewood, Colorado 80215, filed in Docket No. CP89-1475-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing K N to make a sale for resale of natural gas to the Kansas Power and

Light Co. (KPL) and to construct and operate interconnecting facilities needed to deliver the gas to KPL, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

K N proposes to sell up to 15,000 Mcf of natural gas per day to KPL for resale to KPL's customers, including residential and small commercial customers. It is stated that in order to make the deliveries, K N requests authorization to construct and operate approximately 7.1 miles of 16-inch pipeline in Grant County, Kansas, to connect K N's facilities with those of KPL and to construct and operate measurement and appurtenant facilities at the interconnection. K N estimates the cost of the facilities at \$1.887 million. It is asserted that K N has sufficient gas reserves and deliverability to make the sale without any adverse impact on K N's other customers. It is explained that K N would sell the gas at the applicable rates under K N's Rate Schedules CD-1 and IOR-1 of K N's FERC Gas Tariff, Third Revised Volume No. 1.

Comment date: June 26, 1989 in accordance with Standard Paragraph F at the end of the Notice.

21. Northwest Pipeline Corporation

[Docket No. CP89-1529-000]

June 5, 1989.

Take notice that on May 28, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1529-000 a request pursuant to § 157.205 (18 CFR 157.205) of the Commission's Regulations for authorization to transport natural gas on behalf of Georgia-Pacific Corporation (Georgia-Pacific), an end-user of natural gas, under Northwest's blanket certificate issued in Docket No. CP89-578-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northwest proposes to transport on an interruptible basis up to 25,000 MMBtu equivalent of natural gas in a peak day for Georgia-Pacific, approximately 1,000 MMBtu equivalent on an average day and 365,000 MMBtu equivalent on an annual basis. It is stated that Northwest would receive the gas for Georgia-Pacific's account at various existing points on Northwest's system, as designated in the transportation agreement, and that Northwest would deliver equivalent volumes at various existing points on Northwest's system. It is explained that the service commenced

April 17, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3568.

Comment date: July 20, 1989, in accordance with Standard Paragraph C at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy and Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a

protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rule of Practice and Procedure (18 CFR 385.211, 385.214). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13568 Filed 6-7-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP89-820-002]

Arkla Energy Resources, a Division of Arkla, Inc.; Proposed Change in FERC Gas Tariff

June 2, 1989.

Take notice that on May 24, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc. tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1-A:

Third Revised Sheet No. 11
Third Revised Sheet No. 22
Fourth Revised Sheet No. 82
Fourth Revised Sheet No. 83
Fourth Revised Sheet No. 85

AER states that these sheets are filed in compliance with Ordering Paragraph D of the Commission's order Issuing Certificate issued on December 22, 1988. Such order granted AER a blanket transportation certificate under part 284, Subpart G of the Commission's Regulations. AER proposes an effective date of June 1, 1989.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR §§ 385.214 and 385.211. All such motions or protests must be filed

by June 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13624 Filed 6-7-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. CP89-646-000 and CP89-654-000]

Champlain Pipeline Co., Proposed Pipeline Route Modifications

June 5, 1989.

On February 16, 1989 the Federal Energy Regulatory Commission (FERC) issued a Notice of Intent to Prepare a Draft Environmental Impact Statement for the Proposed Champlain Pipeline Project and Request for Comments on its Scope (54 FR 7860). On May 15 and 19, 1989, the applicant, Champlain Pipeline Company, filed supplemental information before the FERC in the above-referenced dockets, proposing 20 modifications to the alignment of its originally proposed pipeline route. These modifications were based upon the applicant's more detailed review of its original proposed routing and in response to concerns raised through the FERC's formal scoping process and at various public meetings held by state and local authorities.

The route modifications total approximately 62 miles or 18.5 percent of about 355 miles of proposed pipeline, and vary in length from about 0.1 mile to approximately 12 miles. The modified route still follows the same general trend as the original proposed route, and involves lateral shifts in the alignment varying from less than 100 feet to about 2.5 miles. The FERC considers these modifications to be the applicant's currently proposed route, which will be studied and presented as such in the staff's draft environmental impact statement (EIS).

The proposed modified route will affect the following towns:

Highgate, VT	Salisbury, VT	Milford, MA
Swanton, VT	Brandon, VT	Shirley, MA
St. Albans, VT	Rutland, VT	Ayer, MA
Fairfield, VT	Shrewsbury, VT	Groton, MA
Fairfax, VT	Cavendish, VT	Pepperell, MA
Westford, VT	Springfield, VT	Dunstable, MA
Williston, VT	Charlestown, NH	Shelburne, MA
Monkton, VT	NH	Deerfield, MA
Rockingham, VT	Langdon, NH	
Middlebury, VT	Lancaster, MA	

Detailed maps of the pipeline route have been provided to the Board of Selectmen and Planning Commission of each town listed above.

Further information about the route modification is available from Mr. Lonnie Lister, EIS Project Manager, Environmental Policy and Project Analysis Branch, Office of Pipeline and Producer Regulation, Room 7312, 825 North Capitol Street, NE., Washington, DC 20426, telephone (202) 357-9021 or FTS 357-9021.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13632 Filed 6-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-180-000]

El Paso Natural Gas Co.; Tariff Filing

June 2, 1989.

Take notice that on May 26, 1989, El Paso Natural Gas Company ("El Paso") filed, pursuant to Part 154 of the Federal Energy Regulatory Commission ("Commission") Regulations Under the Natural Gas Act ("NGA"), certain tariff sheets to its FERC Gas Tariff, First Revised Volume No. 1, Original Volume No. 1-A and Third Revised Volume No. 2.

El Paso states that the tendered tariff sheets, when accepted by the Commission and permitted to become effective, serve to establish the procedures under which El Paso proposes to discount its Order No. 500 Throughput Surcharge. Adjustment, or discounting, of such surcharge shall be applicable to transportation services subject to El Paso's mainline transportation rates and/or rate schedules, including certificated section 7(c) transportation arrangements and transportation performed pursuant to Part 284 of the Commission's Regulations.

El Paso states that effective December 1, 1988, El Paso placed certain tariff sheets into effect which implemented the "equitable sharing" procedures established by the Commission in Order No. 500. The Throughput Surcharge is assessed to all sales customers and shippers utilizing El Paso's interstate pipeline system. El Paso proposes to revise section 21, Take-or-Pay Buyout and Buydown Cost Recovery, of the General Terms and Conditions contained in its First Revised Volume No. 1 Tariff to permit the selective adjustment of the Throughput Surcharge applicable only to transportation service rendered on El Paso's interstate pipeline system.

El Paso states that as an open-access transporter, it makes this request in accordance with § 284.7(d)(5)(ii) of the Commission's Regulations which states that an individual customer may be charged any rate that is neither greater than the maximum rate nor less than the minimum rate on file for that service.¹ El Paso believes that selectively adjusting the Throughput Surcharge for transportation service is consistent with the Commission's Order Nos. 436 and 500.

El Paso states that as set forth in section 21 of El Paso's Volume No. 1 Tariff, the Throughput Surcharge is designed to recover a portion of the fixed costs which El Paso has paid to producers/suppliers in settlement of take-or-pay claims. In the event that El Paso adjusts the surcharge lower than the Maximum Rate, the shortfall becomes nonrecoupable and will not be made up from other customers or shippers utilizing El Paso's interstate pipeline system.

El Paso states that it is filing the Throughput Surcharge for transportation services with a Maximum Rate of \$.1291 per dth and a Minimum Rate of \$.0000 per dth.

El Paso requested pursuant to § 154.51 of the Commission's Regulations, that waiver of the notice requirements of § 154.22 of said Regulations be granted so as to permit the tendered tariff sheets to become effective June 1, 1989.

Copies of this filing were served upon all interstate pipeline system sales customers and shippers of El Paso and all interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission are available for

¹ By order issued April 28, 1989 at Docket No. RP89-130-899, *et al.*, Transwestern Pipeline Company was granted similar approval by the Commission to discount its throughput surcharge in accordance with applicable Commission regulations.

public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13625 Filed 6-7-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TA88-4-37-006 and RP89-1-011]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

June 2, 1989.

Take notice that on May 26, 1989, Northwest Pipeline Corporation ("Northwest") in compliance with Federal Energy Regulatory Commission ("Commission") order issued April 26, 1989, in the above-captioned dockets, submitted the following tariff sheets to be a part of its FERC Gas Tariff:

First Revised Volume No. 1

Second Substitute Second Amended Thirty-Ninth Revised Sheet No. 10 (Effective April 1, 1988)

Second Substitute Fourth Amended Thirty-Ninth Revised Sheet No. 10 (Effective June 1, 1988)

Second Substitute Seventh Amended Thirty-Ninth Revised Sheet No. 10 (Effective July 1, 1988)

Second Amended Substitute Fortieth Revised Sheet No. 10 (Effective July 3, 1988)

Second Revised Sheet No. 11 (Effective October 1, 1988)

Northwest states that these tariff sheets (Sheet Nos. 10) reflect the recalculation of the PGA surcharge for the period April 1 through September 30, 1988, and Second Revised Sheet No. 11 reflects the restatement of the Account No. 191 net direct-bill amount pursuant to the April 26, 1989, orders in the above referenced dockets.

Northwest states that it is also filing a Request for Rehearing and Reconsideration and a Request for Stay of the refund obligation in these dockets. Northwest respectfully requests that the Commission consider the instant filing concurrently with its consideration of the Request for Rehearing and Reconsideration and the Request for Stay.

A copy of this filing has been served on all parties and all jurisdictional sales customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 9, 1989. Protests will be

considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13626 Filed 6-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-185-000]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff and Request for Waiver of Tariff and Regulations

June 2, 1989.

Take notice that Panhandle Eastern Pipe Line Company (Panhandle) on May 31, 1989, tendered for filing the certain revised tariff sheets to its FERC Gas Tariff, Original Volume No. 1. Panhandle requests an effective date of July 1, 1989.

Panhandle states that the filed tariff sheets implement for a limited amount of time, from July 1, 1989 through March 31, 1991, a Seasonal Sales Program ("Program") that will be used to determine the commodity rate applicable to Panhandle's sales services in lieu of the Purchase Gas Adjustment (PGA) currently applicable to these services. Panhandle states that it is proposing the Seasonal Sales Program to:

- Provide its customers with long-term assurance of supplies at rates indexed to mid-continent spot market supplies;
- Enable its customers to simplify their gas purchasing;
- Enhance production of pipeline dedicated supplies in order to retain supply, achieve optimum purchasing levels and reduce inventory-related costs;
- Help define Panhandle's future role as a merchant; and
- Avoid burdening its sales rates with a substantial deferred account balance on March 1, 1990 (as would be required by the Commission's PGA rules), while giving Panhandle a fair opportunity to recover the deferred account.

Panhandle states that the Seasonal Sales Program to determine its commodity rates in lieu of the existing procedures. The Seasonal Sales Program is designed to give sales customers the option of purchasing gas from Panhandle at seasonal, spot market prices to the same extent they now can by purchasing gas on the spot market

with Panhandle providing open-access, interruptible transportation. To this end, Panhandle proposes to suspend its PGA mechanism and to determine its commodity rates in accordance with a formula, which is based on the following factors:

- The average prices for spot market gas delivered into pipelines in the mid-continent area;
- A fuel charge based on Panhandle's stated fuel components;
- Panhandle's stated ACA charge and GRI funding unit; and
- A Seasonal Delivery Allowance for the applicable season and zone of redelivery.

Panhandle states that the seasonal delivery rate utilizes the non-gas cost of service and billing determinants in Panhandle's most recent rate case, Docket No. RP88-262. The resulting delivery rate has been reduced by specific amounts for each season and zone of redelivery in accordance with Panhandle's discussion with its customers immediately preceding this filing.

Panhandle further states that it will create a new deferred purchase gas subaccount. The beginning balance of this account will be the existing deferred account balances of all the subaccounts, including carrying charges, at the start of the Program. The balance will be increased by Panhandle's actual cost of purchased gas during the Program. But no carrying charges will be added. The balance will be reduced by the amounts Panhandle recovers under the Program less the non-gas component that would otherwise be applicable to its sales rates, the ACA charge, and GRI funding unit. If at the end of the Program the balance exceeds the existing deferred account balance and Panhandle's actual purchased gas costs, Panhandle will refund the overrecovery, with interest computed in accordance with the Commission's regulations, from the termination of the Program on March 31, 1991. If the Program is permitted to operate until then and Panhandle has not recovered from its jurisdictional customers sufficient amounts to eliminate the existing deferred account and the actual purchased gas costs incurred during such term, Panhandle will be precluded from recovering any portion of the deficiency in future PGA filings.

Panhandle proposes to initiate the Seasonal Sales Program on July 1, 1989 and to terminate the Program on March 31, 1991. Thirty days before April 1, 1991, Panhandle will make an out-of-cycle PGA filing (with an April 1, 1991 proposed effective date) to re-establish the gas cost component for its rates,

consistent with the Commission's PGA rules, and the non-gas cost commodity component. When this filing becomes effective Panhandle's regular PGA provisions, which are contained in Section 18 of the General Terms and Conditions of Panhandle's tariff, will become effective again.

To implement the Seasonal Sales Program, Panhandle proposes to suspend the normal method of determining its sales commodity rates, including the provisions of its PGA in Section 18 except for the provisions of section 18.4, relating to pipeline supplier rate increases (other than commodity rate increases or decreases), and section 18.1 as it applies to section 18.4. During the Program Panhandle's commodity rates will be determined instead by the formula set forth in the tariff sheets submitted herewith. Panhandle will compute, however, the applicable commodity rates for each Season and Zone and post them by the fifteenth day of the month.

Panhandle requests, to the extent necessary to implement this Program, waiver of:

- (1) Sections 18.2, 18.3, 18.5, 18.6, 18.7 and 18.8 of its tariff during the Program;
- (2) Tariff Sheet Nos. 3-A and 3-B solely for the purpose of removing the stated non-gas commodity component as an element in the determination of commodity rates applicable to Panhandle's sales services during the Program; and
- (3) The Commission's PGA regulations, §§ 154.301 through 154.310, during the Program.

Panhandle also requests waiver of all other Commission Regulations as may be necessary to make the Program effective on July 1, 1989, including but not limited to § 154.22 so that Panhandle may post its commodity rate on the fifteenth day of the billing month to be effective on the first day of the billing month; § 381.204 so that no filing fee will be paid when Panhandle posts the monthly commodity rate; and § 154.36(c) as necessary to permit the filing of tariff sheets containing a formula rate.

Panhandle states that copies of its filing have been served on all affected customers and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 9, 1989. Protests will be considered

by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13630 Filed 6-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-87-006]

Questar Pipeline Co.; Filing

June 2, 1989.

Take notice that on May 23, 1989, Questar Pipeline Company (Questar) filed First Revised Sheet No. 109 to its FERC Gas Tariff, Original Volume No. 1-A, to be effective June 1, 1989.

Questar states that this tariff sheet was inadvertently omitted from its earlier compliance filing filed May 22, 1989, in Docket No. RP88-87-005. Questar states that this tariff sheet is needed to reflect the removal of the phrase "case or in kind, as set forth in the applicable transportation service agreement," which appeared at the top of Original Sheet No. 109. Questar states that this language, as revised, is now found on the proposed Original Sheet No. 108-A that was submitted with the earlier compliance filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before June 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13627 Filed 6-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-2-40-000]

Raton Gas Transmission Co.; Filing

June 2, 1989.

Take notice that on May 23, 1989, Raton Gas Transmission Company (Raton) filed Twelfth Revised Sheet No. 4 to its FERC Gas Tariff, Original Volume No. 1, to be effective May 1, 1989.

Raton states that this filing is made to track supplier, Colorado Interstate Gas Company (CIG) filings (numerous) to incorporate changed Demand charges and cost allocations required by FERC orders. The filing reflects a Demand Charge decrease of 27 cents per MCF and Commodity Charge increase of 3.32 cents per MCF.

Raton states that a copy of this filing has been mailed to its two customers.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such motions or protests should be filed on or before June 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13628 Filed 6-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-130-003]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 2, 1989.

Take notice that Transwestern Pipeline Company (Transwestern) on May 26, 1989 tendered for as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheets:

Effective April 1, 1989

- First Revised Sheet No. 5D(i)
- Substitute 1st Revised Sheet No. 5E
- Substitute 2nd Revised Sheet No. 87
- Substitute 2nd Revised Sheet No. 88

Effective June 1, 1989

- 82nd Revised Sheet No. 5
- 36th Revised Sheet No. 8
- 5th Revised Sheet No. 37

Transwestern states that these tariff sheets are filed to comply with the

Commission's order issued April 28, 1989 in Docket No. RP89-130-000, 001 (Order). The Order approved, effective April 1, 1989, Transwestern's March 31, 1989 filing (as revised on April 17, 1989), subject to refunds and conditions. Transwestern's March 31, 1989 filing set forth an additional amount of take-or-pay buyout and contract reformation costs that were actually paid and/or would have been obligated to be paid by March 31, 1989, wherein such costs were proposed to be recovered through the Order No. 500 mechanism approved by the Commission in Docket No. RP88-198-004 and -005.

Pursuant to the Order, Transwestern has adjusted the Transition Cost Recovery (TCR) Fee and TCR Surcharge to reflect Transwestern's actual commitments and carrying costs as of March 31, 1989. Transwestern was also directed to eliminate Williams Natural Gas Company from the TCR Fee allocation process as it relates to the March 31, 1989 filing.

Transwestern has revised the definition of the Litigation Exception on Sheet No. 87 contained in the General Terms and Conditions of its FERC Gas tariff, Second Revised Volume No. 1 to eliminate the reference "or administrative proceedings".

Transwestern requests that the Commission grant any and all waivers of its rules, regulations and orders as may be necessary so as to permit the above listed tariff sheets to become effective April 1, 1989, with the remaining tariff sheets to be effective June 1, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 9, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-13629 Filed 6-7-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EC88-2-000 and EC88-2-003]

Utah Power & Light Co.; PacifiCorp; PC/UP&L Merging Corp.; Filing

June 2, 1989.

Take notice that on May 30, 1989, PacifiCorp. in accordance with the Federal Energy Regulatory Commission's Opinion No. 318, 45 FERC ¶ 61,095 (1988), and Opinion No. 318-A, 47 FERC ¶ 61,209 (1989), filed its Compliance Filing consisting of the following:

1. Announcement of Availability of Remaining Existing Capacity (Announcement) available to Qualifying Entities for firm transmission service as provided for in Opinion Nos. 318 and 318-A;

2. Transmission Services Tariff (Tariff) of PacifiCorp;

3. Transition Period Generic Firm Transmission Services Agreement and Long Term Generic Firm Transmission Services Agreement; and

4. Estimated Pricing on Near-Term Transmission Services under the Tariff.

On or before August 28, 1989, those seeking status as Qualifying Entities must file with PacifiCorp, as provided in the Announcement, all executed contracts which they have negotiated for firm capacity and energy which would utilize the Remaining Existing Capacity.

Any utility wishing a copy of the Announcement should contact:

Thomas A. Lockhart, Vice President, Powers System, c/o Pacific Power & Light Company, 920 SW Sixth Avenue, Room 1314, Portland, Oregon 97204 or

J. Lynn Rasbund, Assistant Vice President, Planning and Engineering, Utah Power & Light Company, 1407 West North Temple, Salt Lake City, Utah 84140.

Copies of the Announcement and the Compliance Filing are on file with the Commission and are available for public inspection at the Commission's Public Information Room, Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Any person desiring to be heard or to protest said filing should file a protest or motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 285.214 (1988)). All such protests or motions to intervene should be filed no later than 30 days after PacifiCorp announces the proposed allocation of Remaining Existing Capacity, as specified in Opinion No. 318-A, 47 FERC

¶ 61,209, *mimeo* at pp. 41-42. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-13631 Filed 6-7-89; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY**[FEMA-829-DR]****Amendment to Notice of a Major Disaster Declaration; Louisiana**

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-829-DR), dated May 20, 1989, and related determinations.

DATED: June 1, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 648-3614.

Notice: The notice of a major disaster for the State of Louisiana, dated May 20, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 20, 1989:

The parish of Winn for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

George H. Orrell,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-13609 Filed 6-7-89; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-828-DR]**Amendment to Notice of a Major Disaster Declaration; Texas**

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-828-DR), dated May 19, 1989, and related determinations.

DATED: May 31, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 648-3614.

Notice: The notice of a major disaster for the State of Texas, dated May 19, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 19, 1989:

The counties of Angelina, Bell, Collin, Ellis, Hardin, Jefferson, Liberty, McCulloch, Montgomery, Navarro, Newton, Orange, Polk, and San Jacinto for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

George H. Orrell,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-13610 Filed 6-7-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION**Notice of Item Submitted for OMB Review**

The Federal Maritime Commission hereby gives notice that the following item has been submitted to OMB for review Pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3601, et seq.). Requests for information, including copies of the collection of information and supporting documentation, may be obtained from John Robert Ewers, Director, Bureau of Administration, Federal Maritime Commission, 1100 L Street, NW., Room 12211, Washington, DC 20573, telephone number (202) 523-5866. Comments may be submitted to the agency and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Maritime Commission, within 15 days after the date of the Federal Register in which this notice appears.

Summary of Item Submitted for OMB Review

46 CFR Part 515—Filing of Tariffs by Terminal Operators (Formerly 46 CFR Part 533)

FMC requests an extension of clearance for 46 CFR Part 515 which requires marine terminal operators performing services in connection with common carriers by water in the foreign and domestic offshore commerce of the United States to file with the

Commission a schedule or tariff in duplicate showing all its rates, charges, rules, and regulations relating to or connected with the receiving, handling, storing, and/or delivering of property at its terminal facility. Such persons must also keep the tariffs open for public inspection as well as file two copies of tariff changes. Total annual cost to the Federal Government Total is estimated at approximately \$55,000; total annual estimated manhours and cost to respondents is estimated at approximately 4,210 hours and \$72,000, respectively.

Joseph C. Polking,

Secretary.

[FR Doc. 89-13575 Filed 6-7-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM**B.M.J. Financial Corp. et al; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 29, 1989.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *B.M.J. Financial Corp.*, Bordentown, New Jersey; to acquire 100 percent of the voting shares of Bank of Delaware Valley, Fairless Hills, Pennsylvania, a *de novo* bank.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South La Salle Street, Chicago, Illinois 60690:

1. *Citizens National Bancorporation*, Charles City, Iowa; to acquire 100 percent of the voting shares of First Clarion Bancorporation, Clarion, Iowa, and thereby indirectly acquire First National Bank of Clarion, Clarion, Iowa.

C. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Ventura County National Bancorp.*, Oxnard, California; to acquire 100 percent of the voting shares of Frontier Group Incorporated, La Palma, California, and thereby indirectly acquire Frontier Bank, N.A., La Palma, California.

Board of Governors of the Federal Reserve System, June 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13551 Filed 6-7-89; 8:45 am]

BILLING CODE 6210-01-M

Illinois Holding Co. et al; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the

reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 23, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Illinois Holding Co.*, Moline, Illinois; to engage *de novo* in making and servicing loans or other extensions of credit such as would be made by mortgage and commercial finance companies pursuant to §§ 225.25 (b)(1)(iii) and (b)(1)(iv) of the Board's Regulation Y.

B. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *Vineyard National Bancorp.*, Rancho Cucamonga, California; to engage *de novo* through its subsidiary, Vineyard Escrow Company, Rancho Cucamonga, California in providing complete escrow services pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 1, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13552 Filed 6-7-89; 8:45 am]

BILLING CODE 6210-01-M

Provident Bancorp, Inc.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Co.

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under section § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of

Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 29, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Provident Bancorp, Inc.*, Cincinnati, Ohio; to merge with Northern Kentucky Trustcorp, Inc., Alexandria, Kentucky, and thereby indirectly acquire The Northern Kentucky Bank & Trust Company, Inc., Alexandria, Kentucky.

In connection with this application, Applicant also proposes to acquire Northern Kentucky Financial Corporation, Florence, Kentucky, and thereby engage in consumer finance activities, such as making, acquiring, and servicing loans for its own account or for the account of others pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 1, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-13553 Filed 6-7-89; 8:45 am]

BILLING CODE 6210-01-M

Federal Open Market Committee; Domestic Policy Directive of March 28, 1989

In accordance with § 271.5 of its Rules Regarding Availability of Information (12 CFR 271, *et seq.*), there is set forth below the domestic policy directive issued by the Federal Open Market Committee at its meeting held on March 28, 1989.¹ The directive was issued to the Federal Reserve Bank of New York as follows:

The information reviewed at this meeting suggests that activity in the nonfarm economy has expanded appreciably further in the current quarter. After strong gains in the fourth quarter, total nonfarm payroll employment rose markedly further in January and February. The civilian unemployment rate fell considerably to 5.1 percent in February. Industrial production was unchanged in February after rising substantially over the previous several months. After a weather-related surge in January, housing starts fell in February to a level somewhat below their average in the fourth quarter. Growth in consumer spending moderated in January and February. Recent indicators of business capital spending suggest a rebound after a decline in the fourth quarter. The nominal U.S. merchandise trade deficit was larger in the fourth quarter than in the third quarter; the preliminary estimate of the deficit for January was smaller than the average for the fourth quarter. The latest information on prices suggests some pickup in inflation from recent trends.

Interest rates in both short- and long-term markets have risen considerably since the Committee meeting in early February. On February 24 the Federal Reserve Board approved an increase in the discount rate from 6½ to 7 percent. In foreign exchange markets, the trade-weighted value of the dollar in terms of the other G-10 currencies rose somewhat on balance over the intermeeting period.

Growth of M2 and M3 strengthened in February and apparently picked up further in March; over the first quarter such expansion was about in line with Committee expectations. M1 appears to have declined marginally since December.

The Federal Open Market Committee seeks monetary and financial conditions that will foster price stability, promote growth in output on a sustainable basis, and contribute to an improved pattern of international transactions. In furtherance of these objectives, the Committee at its meeting in February established ranges for growth of M2 and M3 of 3 to 7 percent and 3½ to 7½ percent, respectively, measured from the fourth quarter of 1988 to the fourth quarter of 1989. The monitoring range for growth of total domestic nonfinancial debt was set at 6½ to 10½ percent for the year. The behavior of the

monetary aggregates will continue to be evaluated in the light of movements in their velocities, developments in the economy and financial markets, and progress toward price level stability.

In the implementation of policy for the immediate future, the Committee seeks to maintain the existing degree of pressure on reserve positions. Taking account of indications of inflationary pressures, the strength of the business expansion, the behavior of the monetary aggregates, and developments in foreign exchange and domestic financial markets, somewhat greater reserve restraint would, or slightly lesser reserve restraint might, be acceptable in the inter-meeting period. The contemplated reserve conditions are expected to be consistent with growth of M2 and M3 over the period from March through June at annual rates of about 3 and 5 percent, respectively. The Chairman may call for Committee consultation if it appears to the Manager for Domestic Operations that reserve conditions during the period before the next meeting are likely to be associated with a federal funds rate persistently outside a range of 8 to 12 percent.

By order of the Federal Open Market Committee, May 31, 1989.

Normand Bernard,
Assistant Secretary, Federal Open Market Committee.

[FR Doc. 89-13550 Filed 6-7-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Native Hawaiian Health Care Act of 1988; Delegation of Authority to Public Health Service

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, all of the authorities vested in the Secretary of Health and Human Services under the Native Hawaiian Health Care Act of 1988, as amended hereafter. Excluded was the authority to issue regulations and to submit reports to the Congress.

This delegation became effective upon the date of signature.

Date: May 26, 1989.

Louis W. Sullivan,

Secretary.

[FR Doc. 89-13617 Filed 6-7-89; 8:45 am]

BILLING CODE 4160-15-M

Alcohol, Drug Abuse, and Mental Health Administration

Advisory Committee Meetings in June

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.

ACTION: Correction of meeting notice.

SUMMARY: Public notice was given in the *Federal Register* on May 15, 1989, Volume 54, No. 92, on page 20923 that the Clinical Program Projects and Clinical Research Centers Subcommittee of the Treatment Development and Assessment Research Review Committee would meet at the Hyatt Regency Bethesda, on June 15-18. The meeting will take place on June 18 only, and will meet at the Parklawn Building, Conference Room B, 5600 Fishers Lane, Rockville, MD 20857.

Date: June 2, 1989.

Peggy W. Cockrill,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

[FR Doc. 89-13574 Filed 6-7-89; 8:45 am]

BILLING CODE 4160-20-M

Centers for Disease Control

National Institute for Occupational Safety and Health; Meeting on Human Neurobehavioral Effects of Combination Chemical Exposures

The following meeting will be convened by the National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control (CDC):

Name: Human Neurobehavioral Effects of Combination Chemical Exposures

Date: July 7, 1989

Place: Robert A. Taft Laboratories, 4676 Columbia Parkway, Room B32, Cincinnati, Ohio 45226

Time: 9:00 a.m.-5:00 p.m.

Status: Open to the public, limited only by space available.

Purpose: To review and discuss a research protocol involving combination chemical exposures, competition for metabolism, and physical workload conditions.

Additional information may be obtained from: Robert B. Dick, Ph.D., Applied Psychology and Ergonomics Branch, NIOSH, CDC, 4676 Columbia Parkway, Mail Stop C-24, Cincinnati, Ohio 45226, Telephone: Commercial: (513) 553-8383, FTS: 684-8383.

Dated: June 2, 1989.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control.

[FR Doc. 89-13571 Filed 6-7-89; 8:45 am]

BILLING CODE 4160-19-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N-89-1960; FR-2618]

Fair Housing Initiatives Program; Competitive Solicitation

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice of funding availability; Extension of time to file applications.

SUMMARY: On April 25, 1989, HUD published a notice soliciting applications for funding under the Education and Outreach Initiative and the Private Enforcement Initiative of HUD's Fair Housing Initiatives Program. Applications were due on June 18, 1989. Today's notice extends the application deadline to June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Maxine B. Cunningham, Director, Federal, State and Local Program Division, Office of Fair Housing and Equal Opportunity, Room 5212, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-0455. (V and TDD) (This is not a toll-free number.) Application kits are available upon written or telephone request. To ensure a prompt response, it is suggested that requests for application kits be made by telephone.

DATES: Applications for funding must be submitted by June 30, 1989, unless the application qualifies for a late application exception as specified in the application kit and is received before funds are awarded.

SUPPLEMENTARY INFORMATION: On February 10, 1989 (54 FR 6492), HUD published a final rule implementing the Fair Housing Initiatives Program (FHIP) authorized under section 561 of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). Under FHIP, HUD provides funding to State and local governments or their agencies, public or private nonprofit organizations, or other public or private entities formulating or carrying out programs to prevent or eliminate discriminatory housing practices.

A notice announcing the availability of funds under FHIP's Education and Outreach Initiative and Private Enforcement Initiative was published on April 25, 1989 (54 FR 17872). The notice stated that applications were due by June 16, 1989, unless the application is qualified for a late application exception

as specified in the application kit and is received before funds are awarded. Today's notice extends the application deadline to June 30, 1989.

Authority: Section 561, Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988); title VIII, Civil Rights Act of 1968 (42 U.S.C. 3600-20); sec 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Date: June 2, 1989.

Thomas D. Casey,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 89-13540 Filed 6-7-89; 8:45 am]

BILLING CODE 4210-28-M

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Fiscal Year 1988 Plan for Services to Indian Infants and Toddlers With Handicaps, and to Their Families

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of availability.

SUMMARY: The Office of Indian Education Program (OIEP), Branch of Exceptional Education, has completed the required application for Fiscal Year 1988 Funds under Part H (Infants and Toddlers Program) of the Education of the Handicapped Act, Pub. L. 94-142 as Amended by Pub. L. 99-457 (sec. 678). The application describes the major activities which will be implemented by the BIA/OIEP in planning, developing, and implementing a system of early intervention services for Indian infants and toddlers with handicaps and their families located on reservations served by the elementary and secondary schools operated for Indians by the Department of the Interior. Fiscal year 1988 funds are available for obligation by the Bureau of Indian Affairs (BIA) from the date the award is made by the U.S. Department of Education through September 30, 1990.

The application is available to all interested parties and members of the general public. Each BIA Area/Agency Education Office will conduct local public hearings on the application to provide an opportunity for comments by the general public.

FOR FURTHER INFORMATION CONTACT: Goodwin K. Cobb, Acting Chief, Branch of Exceptional Education or Carol L. Zilka, Education Specialist, Early Childhood Program, Office of Indian Education Programs, Bureau of Indian

BEST COPY AVAILABLE

Affairs, Telephone: (202) 343-6675 or FTS 343-6675.

Wilson T. Babby,
Deputy to the Assistant Secretary, Indian
Affairs/Director (Indian Education
Programs).

[FR Doc. 89-13594 Filed 6-7-89; 8:45 am]
BILLING CODE 4310-02-M

Consultation Hearings; Chapter I— Memorandum of Understanding Between Bureau of Indian Affairs and United States Department of Education

May 31, 1989.

AGENCY: Bureau of Indian Affairs.

ACTION: Notice of consultation hearings.

SUMMARY: The Office of Indian Education Programs of the Bureau of Indian Affairs (BIA) announces forthcoming consultation hearings with parents, school boards, tribal representatives and other interested parties on the Memorandum of Understandings, for Chapter I programs between the Bureau of Indian Affairs and the United States Department of Education.

DATE AND TIME: Date of the consultation hearings is June 15, 1989. The hearing will begin at 9 a.m. and conclude at 6 p.m. (local time) at each site.

ADDRESSES: The hearings will be held at the following locations:

Albuquerque, New Mexico
Phoenix, Arizona
Arlington, Virginia
Portland, Oregon
Aberdeen, South Dakota
Green Bay, Wisconsin
Oklahoma City, Oklahoma
Chinle, Arizona
Tuba City, Arizona
Crownpoint, New Mexico
Shiprock, New Mexico
Fort Defiance, Arizona

The following persons should be contacted for the exact location and for additional information:

New Mexico.....	Jeanette Cala.....	505/708-3180
Arizona.....	Peter Soto.....	602/241-2320
Oklahoma.....	Sam Johnson.....	405/247-0873
or	Jim Baker.....	918/687-2400
Wisconsin.....	Betty Walker.....	612/348-3635
Oregon.....	Van Peters.....	503/230-5082
South Dakota.....	Harry Eagle Bull.....	605/228-7431
Virginia.....	Larry Isaacs.....	703/235-3233
Chinle, Arizona.....	Dottie Hobson.....	602/674-4201
Tuba City, Arizona.....	Robert Jenkins.....	602/283-4531
Crownpoint, New Mexico.....	Larry Holman.....	505/708-6150
Shiprock, New Mexico.....	James Tomchee.....	505/388-4427
Fort Defiance, Arizona.....	Charles Johnson.....	602/729-5041

Interested persons may present oral testimony or file written statements. All written statements must be received no

later than June 23, in the Bureau of Indian Affairs, Office of Indian Education Programs, 18th and "C" Streets NW., Washington, DC 20240. Attn: Wilson Babby, Code 500.

FOR FURTHER INFORMATION CONTACT: Beverly Mestes, Bureau of Indian Affairs, Office of Indian Education Programs, 18th and "C" Streets NW., Washington, DC 20240, (202) 343-6364.

SUPPLEMENTARY INFORMATION: In accordance with 102 STAT. 976, Pub. L. 100-297, section 5111, notice is hereby given that hearings on the above entitled topic will be held for the purpose of consulting with parents, school boards, tribal representatives, and other interested parties. Consulting under the aforementioned statute means a process involving open discussion and joint deliberation of all options with respect to the documents referenced between the Bureau of Indian Affairs and all interested parties. During such discussions and joint deliberations, interested parties shall be given an opportunity to present issues including proposals regarding changes in current practices or programs. All interested parties shall be given an opportunity to participate and discuss the options presented or to present other alternatives.

On April 28, 1988, the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary Board Improvement amendments of 1988, was signed into law as Pub. L. 100-297. Title I of the Act amends the Elementary and Secondary Education Act of 1965 (ESEA) to include a number of new and reauthorized Federal education programs. One of these programs is Chapter I of the Education Consolidation and Improvement Act of 1981 (ECIA). Part A of Chapter I provides financial assistance to the U.S. Secretary of the Interior for Indian children. In reauthorizing the Chapter I LEA Program, basic goals and structures of the program were retained, however, the reauthorization also emphasizes accountability and program effectiveness, encourages program improvement in other ways, including innovative projects, projects that consider achievement not only in basic skills but in more advanced skills, encourages frequent and regular coordination of the curriculum of Chapter I projects with the LEA's regular instructional program. The reauthorization contains a number of provisions to provide greater flexibility in the use of funds received under Part A of Chapter I, the primary new provision that affords greater flexibility is section 1015 concerning schoolwide

projects which permits an LEA to use those funds to upgrade the entire educational program in the school. A strong new parental involvement requirement is contained as a part of the reauthorization. This section (1016) does not mandate particular forms that parental involvement should take but it does incorporate a number of specific requirements that an LEA must implement to ensure significant parent involvement, including strong emphasis on training parents to work with their children at home.

Linda K. Richardson,

Acting Deputy to the Assistant Secretary—
Indian Affairs (Operations).

[FR Doc. 89-13596 Filed 6-7-89; 8:45 am]

BILLING CODE 4310-02-M

Health Services Programs for Indian Infants, Children, and Youth

Memorandum of Agreement Between The Department of the Interior Bureau of Indian Affairs And The Department of Health and Human Services Indian Health Services To implement a coordinated, multidisciplinary, interagency program for services to handicapped Indian infants, children and youth from birth through twenty-one years of age in accordance with Pub. L. 94-142 as amended by Pub. L. 99-457, the 1986 Technical Amendments to the Education of the Handicapped Act.

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice: Request for Comments.

SUMMARY: This is a republication for additional comments. The first notice was published in volume 54FR9259.

Notice is hereby given that the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) have completed a Memorandum of Agreement (MOA) regarding the implementation of a coordinated, multidisciplinary, interagency program for services to handicapped Indian infants, children and youth from birth through twenty-one years of age. This agreement provides for the development and implementation of joint policies and procedures and a method to establish program priorities for the education and treatment of identified handicapped Indian children within the joint jurisdictions of the BIA and IHS.

DATE: Comments shall be submitted on or before July 10, 1989.

ADDRESSES: All comments concerning this Memorandum of Agreement should be addressed to Goodwin K. Cobb, Acting Chief, Branch of Exceptional

Education, Office of Indian Education Programs, Bureau of Indian Affairs, 1951 Constitution Avenue NW. (MS-3512 MIB, Code 523), Washington, DC 20245.

FOR FURTHER INFORMATION CONTACT: Carol L. Zilka, Education Specialist, Early Childhood Program, Telephone: (202) 343-3559.

SUPPLEMENTARY INFORMATION: This notice is published in exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 Department Manual 8. The authority for this Memorandum of Agreement is the Snyder Act (25 U.S.C. 13), Pub. L. 94-142, Education of the Handicapped Act (EHA) (20 U.S.C. Secs. 1400-1485), as amended by the Education of the Handicapped Amendments of 1986 (Pub. L. 99-457), and the Economy Act (31 U.S.C. 1535).

Pub. L. 99-457 (The Education of the Handicapped Act Amendments of 1986) amended the Education of the Handicapped Act (Pub. L. 94-142), reauthorized the discretionary programs under the Act, and authorized a new early intervention program for handicapped infants and toddlers and their families.

Under existing regulations (34 CFR 300.600), a State Education Agency (SEA) may utilize interagency agreements as a means of implementing its general supervision requirements. The 1986 Amendments require that State plans include policies and procedures for developing and implementing interagency agreements between the State and "other appropriate State and local agencies." The BIA, while not a State, is required to submit a State plan that meets the requirements of Pub. L. 99-457 sec. 1413 and an application which meets the requirements of section 1414, as well as, section 1484 of Part H (Infants and Toddlers Program).

This Memorandum of Agreement reflects the BIA's understanding of section 613(a)(13) of the statute that "other appropriate" agencies are those Federal, State, and local agencies other than the BIA that provide or pay for special education or related services for Indian children with handicapping conditions. The MOA describes the role that the BIA and IHS have in providing or paying for those services. The MOA also describes the responsibilities of each agency and establishes a mechanism for resolving interagency disputes.

The 1986 Amendments state that Part B shall not be construed to limit the responsibilities of agencies other than educational agencies for providing or paying for services provided to children

under Part B. The 1986 Amendments also state that Part B shall not be construed to permit a State to reduce assistance or alter eligibility under programs supported by Federal Medicaid and Maternal and Child Health Programs. This is intended to ensure that no child is treated differently under those two programs because the child is receiving services under an individual Education Plan (IEP), or for any other reason related to the existence or applicability of Part B.

While States have until 1990-1991 to provide services for handicapped children, ages three through five, the BIA was mandated under Pub. L. 99-457 to begin providing services for these children during the 1987-1988 school year.

The Education of the Handicapped Act Amendments of 1986 (Pub. L. 99-457) added a new State formula grant program to assist States in establishing a statewide system of early intervention services for infants and toddlers with handicaps and their families. This new program (designated as Part H of the EHA) replaces, and substantially expands, the State grant provisions established in 1983 under the Handicapped Children's Early Education Program (HCEEP). Part H focuses on similar activities, but limits the age range to children from birth through two years of age.

Part H is the only program administered by the Department of Education (DOE) that focuses exclusively on meeting the needs of infants and toddlers with handicaps. Children in this age group have been traditionally served through programs administered by the Department of Health and Human Services. The BIA has been designated as the Lead Agency under Part H. The Lead Agency is responsible for: (a) Submitting applications for, and receiving funds under this program, and (b) serving as the lead agency responsible for the general administration of program and activities carried out under Part H. The BIA is mandated under Part H to develop a comprehensive system of early intervention services for handicapped Indian infants and toddlers by 1990-1991 that fits the individual characteristics of the BIA.

Each comprehensive system of early intervention is to be planned and carried out as a coordinated, interagency, multidisciplinary program. Generally, no one agency has the funding resources, services, or authority to provide all appropriate early intervention services for all infants and toddlers with handicaps. The legislative history of Pub. L. 99-457 emphasizes the

concept of interagency coordination, by acknowledging that even in States requiring a free appropriate public education from birth, no single agency provides all services to all children with handicaps. Rather, existing service delivery systems represent interdependence among public and private agencies and organizations at the State and local levels.

While the BIA is the Lead Agency under Part H, it does not have available within its system, the full complement of services needed by handicapped infants and toddlers and their families, e.g., developmental disability programs, health services, education, social services, and mental health. Currently, the BIA has available special education, related services, and social services. The IHS provides, within the scope of its health program, direct medical, social, and mental health services to handicapped Indian infants and toddlers, children, and youth.

This MOA provides the mechanism for the development of a coordinated, multidisciplinary, interagency program between the Bureau of Indian Affairs and the Indian Health Service for the provision of services for handicapped Indian infants, toddlers, children, and youth. The MOA will remain in effect until such time as agreed upon by both parties. The MOA will be reviewed annually and modified as needed for compliance with law and regulation. A BIA and IHS Task Group will develop an Action Plan which will include: goals, objectives, related activities or products, names of responsible agency/person, timelines, and evaluation criteria for each objective. The Action Plan will be reviewed quarterly by the task group of appropriate BIA/IHS representatives and the Plan will be revised annually.

Wilson T. Babby,

Deputy to the Assistant Secretary—Indian
Affairs/Director (Indian Education
Programs), Memorandum of Agreement
(MOA).

This memorandum provides the terms of agreement for services to be shared by the Bureau of Indian Affairs (BIA) and the Indian Health Service (IHS) in fulfilling each agency's individual responsibilities and identified areas of joint cooperative needs for handicapped Indian children and youth.

I. Purpose

The purpose of this agreement is to provide for the development and implementation of joint policies and procedures and to establish program priorities for the education and treatment of handicapped Indian

children identified in the statute within our joint jurisdictions.

II. Authority

Snyder Act (25 U.S.C. 13) and 20 U.S.C. 1400-1485, Pub. L. 94-142, the Education of the Handicapped Act (EHA), as amended by the Education of the Handicapped Amendments of 1986 (Pub. L. 99-457), and the Economy Act, 31 U.S.C. 1535.

III. Introduction

The Assistant Secretary of the Interior—Indian Affairs (BIA) and the Director of Indian Health Service (IHS) as administrators of agencies responsible to serve Indian children and youth recognize that:

A. The BIA has responsibilities to the extent it receives set-aside funding under the EHA:

(1) to provide special education and related services to handicapped Indian children attending BIA schools;

a. *Related services* include diagnostic, developmental, corrective and supportive services such as (1) speech pathology and audiology, (2) psychological services, (3) physical and occupational therapy, (4) recreation, (5) counseling, and (6) medical diagnosis and evaluation but *not* other medical services (20 U.S.C. 1401(a)(17)).

(2) within a statewide system, to coordinate with State agencies for the provision of special education and related services to preschool aged Indian handicapped children, ages three through five, on reservations serviced by BIA schools;

(3) within a statewide system, to coordinate with State agencies for the provision of early intervention services to handicapped Indian infants and toddlers, ages birth through two, on reservations serviced by BIA schools.

a. *Early intervening services* include *related services* plus family training, counseling and home visits, case management services, and "health services necessary to enable the infant and toddlers to benefit from the other early intervention services" (20 U.S.C. 1472).

With respect to infants and toddlers, ages birth through two, EHA requires that the State Lead Agency ensure that each handicapped infant and toddler in the State (including Indian children) shall receive a multidisciplinary assessment of a child's unique needs and identification of service to meet those needs, a written individualized Family Service Plan (IFSP), and case management services to implement the IFSP. The House Report (Report 99-860) at page 11 states:

In State's (sic) serving significant numbers of Indian handicapped infants and toddlers, the lead agency must consult with and obtain input from Tribal education offices/committees, BIA schools, tribal schools, head start programs and other providers of service at the local and State level to ensure that the needs of these infants and toddlers are considered and accounted for in the statewide system.

Handicapped Indian infants and toddlers are clearly included within the intended statewide system of services and in carrying out its responsibilities the BIA is acting as part of the statewide system.

B. The IHS provides health services to Indians under the discretionary authority of the Snyder Act, some of which overlap with *related services* and *early intervention services* as defined in the EHA. The IHS has no responsibilities as such under the EHA. It is not an education agency funded under said act.

The BIA and IHS in recognizing that neither agency can provide a comprehensive program that would satisfy all the needs and services for different age groups and handicapped conditions further confirms their respective belief that services within their jurisdictions require a comprehensive, multidisciplinary, interagency approach to meet the needs of handicapped Indian infants and toddlers, children and youth.

In keeping with the intent to provide appropriate services and to extend present collaborative efforts, the purpose of this MOA is to identify areas of national and local cooperation needed to serve the needs of handicapped Indian children and youth within our joint jurisdictions. Local BIA/IHS agreements are to be developed based on the identified areas of this MOA to ensure the purpose of the MOA is fulfilled.

Tribal organizations, other Federal and State agencies providing services are to be included in agreements for handicapped services.

IV. Substance of Agreement

Areas of collaboration

The BIA and IHS recognize that the provision of services to handicapped Indian infants and toddlers, children and youth will require a comprehensive, interagency program which includes components for:

a. Prevention, early recognition and intervention activities to provide medical, mental health, dental, education, social and family support services to handicapped Indian infants and toddlers from birth to two years of age and their families.

b. Education, medical, dental, mental health, social and family support services for handicapped Indian children and youth from three through twenty-one years of age.

c. Transition, tracking and educational placement services for handicapped Indian children and youth.

The BIA will establish, on an as needed basis, task force groups to review programs and services under this agreement which will include appropriate representatives from the Indian Health Service. These groups will meet as needs arise to develop procedures, guidelines and service priorities for coordination with statewide systems. Major areas of focus are:

A. The development of administrative policies, procedures, and guidelines consistent with applicable Federal regulations which reflect program, staff and funding responsibilities needed for interagency cooperation and services for handicapped Indian infants and toddlers (birth to two years of age, inclusive) and children and youth (three through twenty-one years of age) including:

(1) Eligibility and placement criteria for "at risk" and developmentally delayed infants and toddlers.

(2) Coordinate agency efforts regarding Child Find and screening.

(3) Registry, tracking, and referral.

(4) Multidisciplinary team evaluation and assessment.

(5) Multidisciplinary team formulated Individual Education Plan (IEP) and Individualized Family Service Plan (IFSP), which give attention to education, medical, mental health and social needs for:

a. Special Education
b. Related Services
c. Medical Services
d. Social Services
e. Mental Health Services
f. Communication and Audiological Services
g. Physical and Occupational Therapy Services
h. Nutrition Services
i. Home Nursing Services
j. Dental Services
k. Vocational Services
l. Parent and Family Training
(6) Family involvement in formulating and implement the IEP and IFSP.
(7) Follow-up and non-BIA/IHS referrals.

(8) Transition Services

(9) Institutional Care

(10) Program Evaluation

B. As funds become available under EHA, the BIA and IHS will delineate responsibility within statewide systems for specific professional services and

financial resources for providing comprehensive handicapped care which includes:

(1) Guidance and consultation for determination of staffing and program needs to provide services at local levels.

(2) Determination of program cost and funding responsibilities for services.

(3) Establishing policy, procedures and accountability for interagency transfer of funds under the Economy Act.

(4) Establishing and publishing policies and guidelines for distribution to each Agency's programs and staff regarding program requirements and responsibilities.

(5) Guidance and consultation for establishing local procedures to ensure service delivery through interagency coordination, e.g., model agreements.

C. Develop an interagency, confidential system of data collection and tracking of those Indian individuals (ages birth through twenty-one) within joint jurisdictions in need of and/or receiving handicapped services in each area and for information exchange for program services which includes:

1. Development of a computerized program which will be used locally to track Indian infants and toddlers, children and youth in need of handicapped services.

2. Informing health, education and social service professionals about the handicapped differences and disputes for meaningful cooperation and coordination.

V. Responsibilities

The following areas of responsibilities are agreed to by the BIA and IHS.

A. Responsibility of the BIA: The BIA is responsible for serving handicapped Indian children on reservations serviced by BIA operated elementary and secondary schools. The BIA will assist individual States in the coordination of State services for handicapped children, ages birth through five, who live on reservations that are serviced by BIA elementary and secondary schools. The BIA will develop within the statewide system a comprehensive, multidisciplinary, interagency program of services for exceptional education and related services as specified in Pub. L. 94-142 as amended by Pub. L. 99-457.

The BIA will submit an Annual Application to the Department of Education for funding of the handicapped infants and toddlers program (Part H) and for Part B services under Pub. L. 94-142 as amended by Pub. L. 99-457 and Department of Education Regulations 34 CFR Parts 300, 301 and 303.

Provide task groups and provide for representation of members from IHS on these groups.

Provide staff to develop an interagency program to respond to the major focus of this MOA and to provide management of this MOA.

B. Responsibility of the IHS: The IHS will assist in the development of a systemwide, comprehensive, multidisciplinary, interagency program including identification and intervention services for handicapped infants and toddlers and their families by providing services consistent with the scope of IHS health care and within the limitations of available IHS resources and by coordinating services with other agencies responsible under 20 U.S.C. Subchapter VII.

The IHS will participate in the development of an action plan as specified in Section IV, Terms of Agreement and will include the following elements:

a. The IHS will assist in the development and implementation of a handicapped Indian children's registry and tracking system that will efficiently and effectively facilitate provisions of education and health care needs of handicapped Indian children, ages birth through twenty-one. Components of this system will include: definitions of "at risk" and handicapping conditions, computer hardware and software needs, and registry and tracking formats.

b. The IHS will coordinate, in cooperation with existing State and Federal coordination activities, multidisciplinary activities necessary to meet the comprehensive needs of handicapped Indian infants and toddlers and children through age twenty-one living on reservations where BIA operated or funded schools exist. As funds become available, IHS area coordination will be established in consultation with the BIA to initiate and maintain local registries and tracking systems, to develop and strengthen communication linkages between the IHS and BIA and other Federal agencies, to facilitate information exchange between the IHS and other agencies, as required to serve the needs of handicapped Indian children, and, by regulation and policy, establish services ensuring efficient transition of handicapped Indian children from one jurisdiction of responsibility to another.

c. This MOA focuses on the needs of handicapped Indian children who live on reservations served by BIA funded schools, however, this does not preclude the IHS from meeting its legal service mandates.

Such funds that may become available to the IHS during the first two

years of this MOA will be used in program development. Based on the specifics of the Action Plan, the IHS is responsible to submit a plan detailing program actions including any plan to contract activities before any funds will be transferred and to provide quarterly written progress reports to the BIA indicating program status.

If the specifics of the Action Plan requires the transfer of any portion of the BIA's Pub. L. 99-457, Part H funds to the IHS, the IHS agrees to maintain these funds separately and will account for these funds quarterly and will meet any applicable requirements of the Economy Act.

The IHS is currently providing within its health program, direct medical, social, and mental health services to handicapped Indian children. As program development progresses, and children are served, it is expected that additional special consultation, evaluation and intervention services will be necessary. The IHS has inadequate resources to meet all these health needs. However, the IHS is responsible to assist in arranging for the comprehensive health care needs of handicapped Indian children and is committed to meet the needs of handicapped Indian children and to collaborate with the BIA and other responsible agencies, to identify needs and funding sources to meet the needs of handicapped Indian children.

VI. Terms of Agreement

This MOA will remain in effect until such time as agreed upon by both parties. This MOA will be reviewed annually and modified as needed for compliance with law and regulation.

Within 45 days of the effective date of this agreement and thereafter, within 45 days of the beginning of each fiscal year (FY) beginning with 1990, a BIA and IHS Task Group will develop an Action Plan which will include the following:

a. Goals,
b. Specific objectives to be accomplished,
c. Related activities or products,
d. Names of responsible agency/person,
e. Timelines (beginning and ending) and,
f. Evaluation criteria for each objective.

This Action Plan will be reviewed quarterly by the Task Group of appropriate BIA/IHS representatives. The Action Plan will be revised annually.

[FR Doc. 89-13595 Filed 6-7-89; 8:45 am]
BILLING CODE 4310-02-M

Bureau of Land Management
[UTU-65418]**Invitation to Participate in Coal Exploration Program in Utah; Nevada Electric Investment Co.**

Nevada Electric Investment Company is inviting all qualified parties to participate in its proposed exploration of certain Federal Coal deposits in the following described lands in Emery County, Utah:

T. 15 S., R. 8 E., SLM, Utah
Sec. 23, S½S½;
Sec. 25, all;
Sec. 28, all;
Sec. 35, all.

T. 16 S., R. 8 E., SLM, Utah
Sec. 1, all.

T. 15 S., R. 7 E., SLM, Utah
Sec. 19, lots 1-12, SE¼;
Sec. 29, W½;
Sec. 30, all.

Containing 4,376.44 acres

Any party electing to participate in this exploration program must send written notice of such election to the Bureau of Land Management, Utah State Office, 324 South State Street, Suite 301, Salt Lake City, Utah 84111-2303 and to Nevada Electric Investment Company, 6226 West Sahara Avenue, Las Vegas, Nevada 89102. Such written notice must be received within 30 days after the publication of this notice in the *Federal Register*.

Any party wishing to participate in this coal exploration program must be qualified to hold a lease under the provisions of 43 CFR 3472.1 and must share all cost on a pro rate basis. A copy of the exploration plan, as submitted by Nevada Electric Investment Company, is available for public review during business hours in the same BLM office as mentioned above under Serial Number UTU-65418.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-13573 Filed 6-7-89; 8:45 am]

BILLING CODE 4310-00-M

[ES-970-09-4120-14-2410; WVES 39061]

Competitive Coal Lease Offering by Sealed Bid; Mingo County, WV

AGENCY: Bureau of Land Management, Interior.

ACTION: Competitive coal lease offering by sealed bid.

SUMMARY: Notice is hereby given that as a result of an application filed by the Lynn Land Company (WVES 39061), for

coal resources in Mingo County, West Virginia, these coal resources will be offered for competitive leasing by sealed bid in accordance with the provisions of the Mineral Leasing Act of 1947 (61 Stat. 913, 30 U.S.C. 351-359), as amended. The applicant has satisfactorily demonstrated under the emergency leasing regulation, 43 CFR 3425.1-4, that if the coal deposits are not leased, they will be bypassed in the reasonably foreseeable future.

The application is described as follows:

Kermit Poe Tract

Part of Tract 201 (Metes and Bounds)
Containing 20 acres, more or less.

The tracts will be leased to the qualified bidder of the highest cash amount provided that the high bid for the tract equals or exceeds the fair market value (FMV) of the tract as determined by the authorized officer after the sale. The Department has established a minimum bid of \$100 per acre for the tract. The minimum bid is not to be considered as representing the amount for which the tract may actually be leased, since FMV will be determined in a separate postsale analysis. If identical high sealed bids are received, the tying high bidders will be asked to submit follow up sealed bids until a high bid is received. All tie-breaking bids must be submitted within 15 minutes following the authorized officer's announcement at the sale that identical high bids have been received.

DATE: The sale will be held at 10:00 a.m., Thursday, July 20, 1989 in the Eastern States Office Public Room. All bids must be submitted to the Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304. The bids should be sent by certified mail, return receipt or be hand-delivered on or before 4:00 p.m., July 19, 1989. Any bids received after 4:00 p.m., Wednesday, July 19, 1989, will not be considered.

SUPPLEMENTARY INFORMATION: The coal resources being offered are to be surface mined via mountain top removal from an area located on the R.D. Bailey Watershed. The complete degal description is available at the Eastern States Office at 350 South Pickett Street, Alexandria, Virginia 22304.

The proximate analysis of the tract is as follows:

1. Moisture (percent)	9.0
2. Ash (percent)	9.2
3. Sulfur (percent)	0.67

4. BTU's per pound

5. Approximate tons in place

Other detailed chemical analysis are available upon request from the Bureau of Land Management, Eastern States Office, Branch of Fluid and Solid Minerals at 350 South Pickett Street, Alexandria, Virginia 22304.

Rental and Royalty

Any lease issued as a result of this offering will provide for payment of an annual rental of \$3 per acre and a royalty payable to the United States of 12½ percent of the value of the coal produced by surface mining methods. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

Notice of Availability

Bidding instructions and bidder qualifications are included in the Detailed Statement and Lease Sale. Copies of the Statement and of the proposed coal lease is available at the Bureau of Land Management, Eastern States Office and the Rolla, Missouri Office. Case file documents are available for public inspection at the Eastern States Office.

FOR FURTHER INFORMATION CONTACT: Ms. Pearl F. Tillman, Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304, (703) 461-1468.

G. Curtis Jones, Jr.,
State Director.

[FR Doc. 89-13750 Filed 6-7-89; 8:45 am]

BILLING CODE 4310-00-M

[OR-010-09-4410-13: GP9-231]

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Lakeview District Grazing Advisory Board has scheduled a tour for June 29, 1989. The tour agenda includes a look at a high intensity/short duration grazing system and riparian/wetlands habitat improvements in the Gerber Reservoir area.

The tour group will meet at the Gerber Guard Station at 10:00 a.m. Thursday, June 29. The public is invited to attend but must contact the Lakeview District by Thursday, June 20 in order for final transportation arrangements to be made.

FOR FURTHER INFORMATION CONTACT: Renee Snyder, Public Affairs Officer, telephone (503) 947-2177.

Judy Ellen Nelson,
District Manager.

[FR Doc. 89-13584 Filed 6-7-89; 8:45 am]

BILLING CODE 4310-33-M

Utah; Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease U-49053 for lands in Summit County, Utah, was timely filed and required rentals and royalties accruing from November 1, 1988, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of \$5 per acre and 16½ percent, respectively. The \$500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease U-49053 as set out in Section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective November 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Ted D. Stephenson,
Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-13589 Filed 6-7-89; 8:45 am]

BILLING CODE 4310-00-M

Utah; Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease U-63925 for lands in Uintah County, Utah, was timely filed and required rentals and royalties accruing from November 1, 1988, the date of termination, have been paid.

The lessee has agreed to new lease terms for rentals and royalties at rates of \$5 per acre and 16½ percent, respectively. The \$500 administrative fee has been paid and the lessee has reimbursed the Bureau of Land

Management for the cost of publishing this notice.

Having met all the requirements for reinstatement of lease U-63925 as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective November 1, 1988, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 89-13590 Filed 6-7-89; 8:45 am]

BILLING CODE 4310-00-M

Fish and Wildlife Service**Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act**

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018-0010), Washington, DC 20503, telephone 202-395-7340.

Title: Mourning Dove Call—Count Survey

OMB Approval Number: 1018-0010

Abstract: The Survey an annual, cooperative effort between State wildlife agencies and the U.S. Fish and Wildlife Service to obtain indices of mourning dove population size. The resulting assessment of the population status serves to guide both the Service and State wildlife agencies in the annual promulgation of regulations for hunting mourning doves. Survey data are also used to plan and evaluate dove management programs and provide specific information necessary for dove research.

Service Form Number: 3-159

Frequency: Annually

Description of Respondents: Service and State fish and wildlife agency biologists

Estimated Completion Time: The reporting burden is estimated to average

2.5 hours per response, including time for reviewing instructions (15 minutes), gathering data during survey stops (2 hours), and completion and review of form (15 minutes).

Annual Responses: 1,062

Annual Burden Hours: 2,655

Service Clearance Officer: James E. Pinkerton, 703-358-1943 (Commercial); FTS 921-1943, Room 224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Date: May 23, 1989.

Rollin D. Sparrows,

Acting Assistant Director—Refuges and Wildlife.

[FR Doc. 89-13549 Filed 6-7-89; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for Listed Cats of Arizona and Texas for Review and Comment.

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for Listed Cats of Arizona and Texas. They occur in south Texas and possibly parts of southern Arizona with suitable brushy habitat. The Service solicits review and comment from the public on this draft plan.

DATE: Comments on the draft recovery plan must be received on or before July 10, 1989 to receive consideration by the Service.

ADDRESSES: Written comments and materials regarding the plan should be addressed to Refuge Manager, Laguna Atascosa National Wildlife Refuge, P.O. Box 450, Rio Hondo, Texas 78583 (512/748-3607). The plan is available for public inspection, by appointment, during normal business hours at the Laguna Atascosa National Wildlife Refuge at the above address; Ecological Services Field Office, 3616 W. Thomas Rd., Suite #6, Phoenix, Arizona 85019 (602/261-4720 or FTS 261-4720); and Ecological Services Field Office, c/o Corpus Christi State University, Campus Box 338, 6300 Ocean Dr., Corpus Christi, Texas 78412 (512/888-3346 or FTS 529-3346).

FOR FURTHER INFORMATION CONTACT: Refuge Manager at Laguna Atascosa National Wildlife Refuge; Lesley Fitzpatrick, Biologist, Phoenix Ecological Services Field Office; or Roy Perez, Field Supervisor, Corpus Christi Ecological

Services Field Office (see ADDRESSES above).

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting them, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act as amended in 1988 requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan.

The primary species that are considered in this recovery plan are the ocelot (*Felis pardalis*) and jaguarundi (*F. yagouaroundi*), although the jaguar (*F. onca*) and margay (*F. wiedii*) are also included. The area of emphasis for recovery actions is south Texas, especially the Lower Rio Grande Valley. Habitat protection and land acquisition are major objectives of this recovery plan.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All comments received by the date specified above will be considered prior to approval of the plan.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: May 30, 1989.

James A. Young,

Acting Regional Director.

[FR Doc. 89-13599 Filed 6-7-89; 8:45 am]

BILLING CODE 4310-65-M

Minerals Management Service

Outer Continental Shelf Development Operations Coordination Document; Mobil Exploration and Producing U.S. Inc.

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of the receipt of a proposed Development Operations Coordination Document (DOCD).

SUMMARY: Notice is hereby given that Mobil Exploration & Producing U.S. Inc. has submitted a DOCD describing the activities it proposes to conduct on Lease OCS-G 4800, Block 271, Vermilion Area, offshore Louisiana. Proposed plans for the above area provide for the development and production of hydrocarbons with support activities to be conducted from an existing onshore base located at Morgan City, Louisiana.

DATE: The subject DOCD was deemed submitted on May 31, 1989. Comments must be received on or before June 23, 1989, or 15 days after the Coastal Management Section receives a copy of the plan from the Minerals Management Service.

ADDRESSES: A copy of the subject DOCD is available for public review at the Public Information Office, Gulf of Mexico OCS Region, Minerals Management Service, 1201 Elmwood Park Boulevard, Room 114, New Orleans, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). A copy of the DOCD and the accompanying Consistency Certification are also available for public review at the Coastal Management Section Office located on the 10th Floor of the State Lands and Natural Resources Building, 625 North 4th Street, Baton Rouge, Louisiana (Office Hours: 8 a.m. to 4:30 p.m., Monday through Friday). The public may submit comments to the Coastal Management Section, Attention OCS Plans, Post Office Box 44487, Baton Rouge, Louisiana 70805.

FOR FURTHER INFORMATION CONTACT: Michael J. Tolbert; Minerals Management Service, Gulf of Mexico OCS Region, Field Operations, Plans, Platform and Pipeline Section, Exploration/Development Plans Unit; Telephone (504) 738-2887.

SUPPLEMENTARY INFORMATION: The purpose of this Notice is to inform the public, pursuant to section 25 of the OCS Lands Act Amendments of 1978, that the Minerals Management Service is considering approval of the DOCD and that it is available for public review. Additionally, this Notice is to inform the public, pursuant to § 930.61 of Title 15 of

the CFR, that the Coastal Management Section/Louisiana Department of Natural Resources is reviewing the DOCD for consistency with the Louisiana Coastal Resources Program.

Revised rules governing practices and procedures under which the Minerals Management Service makes information contained in DOCDs available to affected States, executives of affected local governments, and other interested parties became effective May 31, 1988 (53 FR 10595).

Those practices and procedures are set out in revised § 250.34 of Title 30 of the CFR.

Date: June 1, 1989.

J. Rogers Pearcy,

Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 89-13591 Filed 6-7-89; 8:45 am]

BILLING CODE 4310-MR-M

INTERNATIONAL TRADE COMMISSION

Certain Concealed Cabinet Hinges and Mounting Plates; All Parties

[Investigation No. 337-TA-289]

In reference to Order No. 7 and 37, notice is hereby given that the prehearing conference in this matter is scheduled to commence 9:00 a.m., on Monday June 19 in Hearing Room B (Room 111) at the International Trade Commission Building at 500 E Street, SW., Washington, DC. The hearing will commence thereafter and continue through June 23. Non-parties wishing to attend should contact Mr. McKie at 202-252-1701 as to whether there have been any changes made in said schedule.

The Secretary shall publish this notice in the *Federal Register*.

Issued: June 1, 1989.

Paul J. Luckern,

Administrative Law Judge.

[FR Doc. 89-13535 Filed 6-7-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

Forms Under Review by Office of Management and Budget

The following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) is being submitted to the Office of Management and Budget for review and approval. Copies of the forms and supporting documents may be obtained from the Agency Clearance

Officer, Ray Houser (202) 275-6723. Comments regarding this information collection should be addressed to Ray Houser, Interstate Commerce Commission, Room 1319, 12th and Constitution Ave., NW., Washington, DC 20423 and to Gary Waxman, Office of Management and Budget, Room 3228 NEOB, Washington, DC 20503, (202) 395-7340.

Type of Clearance: Extension.

Bureau/Office: Office of Compliance and Consumer Assistance.

Title of Form: Owner-operator annual report form.

OMB Form No.: 3120-0061.

Agency Form No.: OCCA-143.

Frequency: Annually.

Respondents: Motor carriers of food products and certain agricultural supplies.

No. of Respondents: 1,560.

Total Burden Hrs.: 78 (estimated 3 minutes per response).

Brief Description of the need & proposed use: Enables owner-operators to file certifications of compliance as required by 49 USC and enables the Commission to monitor the success of these licensing provisions.

Noreta R. McGee,

Secretary.

[FR Doc. 89-13633 Filed 6-7-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-290 (Sub-No. 63)]

The Cincinnati, New Orleans and Texas Pacific Railway Co.—Abandonment—Between Crab Orchard and Crossville in Cumberland County, TN; Findings

The Commission has found that the public convenience and necessity permit The Cincinnati, New Orleans and Texas Pacific Railway Company to abandon its 12.5-mile line of railroad extending from Crab Orchard (milepost 141.5-H) to Crossville (milepost 129.0-H) in Cumberland County, TN.

A certificate will be issued authorizing abandonment unless within 15 days after the publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and the applicant no later than 10 days from the publication of this Notice. The following notation shall be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Rail Section, AB-OFA." Any offer previously

made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR Part 1152.

Decided: May 19, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Vice Chairman Simmons and Commissioner Lamboley dissented with separate expressions.

Noreta R. McGee,

Secretary.

[FR Doc. 89-13634 Filed 6-7-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Partial Consent Decree; Pollution Control Consent

In accordance with the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that on May 23, 1989, a proposed partial consent decree in *United States v. Union Research Co., Inc.*, Civ. No. 87-0355 B (D. Me.) was lodged with the United States District Court for the District of Maine. This partial consent decree settles the first of four claims of a lawsuit filed against eleven parties in 1987, and in which one-third party defendant was named as a third-party defendant in April 1989.

The first claim of the lawsuit seeks recovery, pursuant to Section 107(a) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. 9607(a), of costs EPA spent in conducting an emergency removal action (begun in 1984) at the Union Research Site in South Hope, Maine. The total cost of the removal, through May 22, 1987, was approximately \$1,848,256.70; all but \$481,753.11 was recovered in 1987 through two administrative settlements with 288 other potentially responsible parties connected with the Union Site. The other three counts in the lawsuit, not addressed in this partial consent decree, allege that three of the defendants failed to respond to information requests issued pursuant to Section 104 of CERCLA, 42 U.S.C. 9604, and Section 3007 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6927, and that one of the defendants violated Section 3008 of RCRA, 42 U.S.C. 6928, by failing to pay a \$12,000 administrative penalty imposed under RCRA.

The following eight of the eleven defendants have agreed to participate in this partial consent decree: C.M. Laboratories, Inc., IMC Magnetics Corp.,

Steego Auto Parts Corp., Rule Industries, Inc., Ethan Allen, Inc., Waterlac Industries, Inc., NYCO, Inc. and Spencer Press, Inc. WES, Inc. d/b/a/ Maine Coastal Services, the sole third-party in the case, also will participate in the settlement. The non-settling defendants are Union Research, Inc., its president Raymond Esposito, and R.S. Liquid Waste.

The partial consent decree requires the settling parties to pay 100% of the balance of EPA's pre-May 22, 1987 removal costs, or \$481,753.11, plus \$77,248.70 in interest on such costs, and \$42,852.00 in government enforcement costs, for a total of \$601,853.81. Payment of \$526,853.81 of this amount is due 90 days after the entry of the partial consent decree; the remaining \$75,000 must be paid in three equal installments at the end of each of the following three years. Deferral of the \$75,000 was granted due to an inability of one of the parties to pay its share of the amount otherwise. Finally, interest on any unpaid portion of the settlement must be paid from November 23, 1988, the date that the parties reached an agreement in principle.

The Department of Justice will receive comments relating to the proposed partial consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States v. Union Research Co., Inc.*, DOJ Ref. No. 90-11-2-227.

The proposed partial consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

United States Attorney's Office

David Collins, Esq., Assistant United States Attorney, District of Maine, P.O. Box 1588, 156 Federal Street, Portland, Maine 04104.

EPA Region I

Margery Adams, Esq., Office of Regional Counsel, U.S. Environmental Protection Agency, John F. Kennedy Building, Room 2203, Boston, Massachusetts 02203.

Copies of the proposed partial consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A

copy of the proposed partial consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of \$1.20 payable to Treasurer of the United States.

Donald A. Carr,
Acting Assistant Attorney General, Land and Natural Resources Division.
[FR Doc. 89-13600 Filed 6-7-89; 8:45 am]
BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 89-41; Exemption Application No. D-7886 et al.]

Grant of Individual Exemptions; Plastic and Reconstructive Institute of Seattle, Inc., Profit Sharing Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the *Federal Register* of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102

of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

- (a) The exemptions are administratively feasible;
- (b) They are in the interests of the plans and their participants and beneficiaries; and
- (c) They are protective of the rights of the participants and beneficiaries of the plans.

Plastic & Reconstructive Institute of Seattle, Inc. Profit Sharing Trust (the Plan) Located in Seattle, Washington

[Prohibited Transaction Exemption 89-41; Exemption Application No. D-7886]

Exemption

The restrictions of section 406(a), (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the Plan's proposed: 1) purchase (the Purchase) for cash of certain real property (the Discrete Space) from Dr. Eugene W. Goertzen (Dr. Goertzen) and his wife (the Applicants), parties in interest with respect to the Plan; and 2) lease-back of the Discrete Space to Plastic & Reconstructive Institute of Seattle, Inc. (the Employer), the Plan sponsor and, as such, a party in interest with respect to the Plan; provided that the terms and conditions of the transactions are at least as favorable to the Plan as to those obtainable by the Plan in an arm's-length transaction with an unrelated party.

Duration of Exemption: Ten years from the date of the grant of the proposed exemption.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 4, 1989 at 54 FR 13582.

FOR FURTHER INFORMATION CONTACT: Mrs. B.S. Scott of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Protech, Inc. Defined Benefit Pension Plan (the Plan) Located in San Diego, California

[Prohibited Transaction Exemption 89-42; Exemption Application No. D-7730]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to a series of loans (the Loans) by the Plan to Solana Beach Mini-Warehouse, Ltd. (the Partnership), a disqualified person with respect to the Plan and a general partnership in which the sponsor of the Plan, Protech, Inc., is the majority general partner, provided that at any time not more than twenty-five (25%) percent of the total assets of the Plan will be involved in such loans, and further provided that the terms of each of the Loans are not less favorable to the Plan than those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 20, 1989, at 54 FR 16020.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Blackhawk, Inc. Employees' Retirement Plan and Trust (the Plan) Located in Phoenix, Arizona

[Prohibited Transaction Exemption 89-43; Exemption Application No. D-7792]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the purchases of certain vacant land (the Land) by the Plan from Mr. Kenneth A. Wallace, a disqualified person with respect to the Plan, provided the purchase price does not exceed the Land's fair market value as of the date of the purchase and provided further that the purchase does not cause the Plan to be disqualified in accordance with the provisions of section 415 of the Code. Because Kenneth A. Wallace is the sole owner and employee of Blackhawk, Inc., the Plan sponsor, and the sole participant in the Plan, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b) and (c). However, there is jurisdiction under Title II of the Act under section 4975 of the Code.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 20, 1989, at 54 FR 16023.

FOR FURTHER INFORMATION CONTACT: Mrs. Miriam Freund, of the Department, telephone (202) 523-8194. (This is not a toll-free number.)

Columbia Orthopaedic Group Integrated Profit Sharing Plan and Trust (the Plan) Located in Columbia, Missouri

[Prohibited Transaction Exemption 89-44; Exemption Application No. D-7798]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) the acquisition of first mortgage bonds (the Bonds) issued by C.O.G. Leasing Company (COG Leasing) by the individual accounts (the Accounts) in the Plan, provided the terms of the Bonds are the same for the Accounts as for unrelated parties; and (2) the guarantees by the partners of COG Leasing to the Accounts to assure the repayment of the Bonds.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 4, 1989, at 54 FR 13588.

EFFECTIVE DATE: This exemption is effective November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Dr. Sam W. McCalla, P.A. Profit Sharing Plan and the Dr. Sam W. McCalla, P.A. Pension Plan (collectively, the Plans) Located in Greenville, SC

[Prohibited Transaction Exemption 89-45; Exemption Application No. D-7889]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed sale by the Plans of certain real property (Parcel A and Parcel B), for the total cash consideration of \$170,200, to Sam W. McCalla, M.D. (Dr. McCalla), a disqualified person with respect to the Plans, provided the amount paid for Parcel A and Parcel B is not less than

fair market value on the date the transaction is consummated.¹

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 26, 1989 at 54 FR 18046.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

White River Diagnostic Clinic, P.A. Retirement Plan (the Plan) Located in Batesville, Arkansas

[Prohibited Transaction Exemption 89-46; Exemption Application No. D-7907]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale for cash by the Plans of certain real property (the Real Property) to Paul Baxley, M.D., a disqualified person with respect to the Plan, provided that the price paid be no less than the fair market value of the Real Property as of the date of sale, as determined by an independent and qualified appraiser.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on April 26, 1989 at 54 FR 18049.

FOR FURTHER INFORMATION CONTACT: Joseph L. Roberts III of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

John R. Ciliberti, M.D., P.S., Pension Plan and Trust (the Plan) Located in Redmond, Washington

[Prohibited Transaction Exemption 89-47; Exemption Application No. D-7924]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the sale (the Sale) for cash of certain real property (the Property) by the Plan to John R. Ciliberti, M.D., a disqualified person with respect to the Plan, provided that the sales price for the Property is the higher of either the sum

of \$76,000 or the fair market value of the Property on the date of the Sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 20, 1989, at 54 FR 16024.

FOR FURTHER INFORMATION CONTACT: Mr. C. E. Beaver of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 2nd day of June, 1989.

Robert J. Doyle,
Director of Regulations and Interpretations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.

[FR Doc. 89-13533 Filed 6-7-89; 8:45 am]

BILLING CODE 4510-29-M

¹ Because Dr. McCalla is the only participant in the Plans and the sole shareholder of Sam W. McCalla, P.A., the Plans' sponsor, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to section 4975 of the Code.

NATIONAL COMMISSION ON CHILDREN**Meeting****Background**

The National Commission on Children was created by Pub. L. 100-203, December 22, 1987 as an amendment to the Social Security Act. The purpose of the law is to establish a nonpartisan Commission directed to study the problems of children in the areas of health, education, social services, income security, and tax policy.

The powers of the Commission are vested in Commissioners consisting of 36 voting members as follows:

1. Twelve members appointed by the President
2. Twelve members appointed by the Speaker of the House of Representatives
3. Twelve members appointed by the President pro tempore of the Senate.

This notice announces the second meeting of the National Commission on Children to be held in Washington, DC.

Time: 9:30 am—12:30 pm; Friday, June 23, 1989.

Place: Hart Senate Office Building; Room H-216.

Status: 9:30 am—12:30 pm; Open meeting.

Agenda: Discussion of the Commission's future agenda.

Contact: Jeannine Atalay; Telephone: (202) 254-3800.

John D. Rockefeller IV,
Chairman, National Commission on Children.

Date: June 2, 1989.

[FR Doc. 89-13555 Filed 6-7-89; 8:45 am]

BILLING CODE 6820-37-M

NATIONAL CREDIT UNION ADMINISTRATION**Public Information Collection Requirement Submitted to OMB for Review**

Date: May 31, 1989.

The National Credit Union Administration has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submissions may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Administrative Office, Room 7344, 1776 G Street, Washington, DC 20456.

National Credit Union Administration

OMB Number: 3133-0011.

Form Number: NCUA 9600 and 9600-1.

Type of Review: Renewal.

Title: Application for Insurance of Accounts, State Chartered Credit Unions.

Description: Federal credit unions converting to state charter and desiring to maintain federal insurance must reapply for federal insurance. All state chartered credit unions desiring federal insurance must apply as well.

Respondents: Certain federal credit unions and state chartered credit unions.

Estimated Number of Respondents: 65.

Estimated Burden Hours per Response: 2.3 hours.

Frequency of Response: One time.

Estimated Total Reporting Burden: 199.5 hours.

OMB Number: 3133-0076.

Form Number: NCUA 8040.

Type of Review: Renewal.

Title: Voluntary Liquidation Procedures for Insurance Federal Credit Unions.

Description: The booklet, Voluntary Liquidation Procedures for Insured Federal Credit, provides suggested forms and outlines procedures for voluntary liquidation of a federal credit union.

Respondents: Federal credit unions.

Estimated Number of Respondents: 25.

Estimated Burden Hours per Response: 20.

Frequency of Response: One time.

Estimated Total Reporting Burden: 500.

OMB Number: 3133-0098.

Type of Review: Renewal.

Title: Accuracy of Advertising—Section 740.2.

Description: Federally insured credit unions which offer or provide excess insurance coverage for their accounts must indicate the type and amount of such insurance, the name of the carrier and a statement in all advertising that mentions account insurance that the carrier is not affiliated with NCUSIF or the federal government.

Estimated Number of Respondents: 1,500.

Estimated Burden Hours per Response: 50 hours.

Frequency of Response: One time.

Estimated Total Reporting Burden: 1,500.

OMB Number: 3133-0099.

Type of Review: Renewal.

Title: Notice of Voluntary Termination or Conversion of Insured Status.

Description: A credit union proposing voluntary termination or conversion of federal insurance must notify its members that their accounts are no longer federally insured, name of the new carrier, amount of coverage and a statement that the carrier is not affiliated with NCUSIF or the federal government must also be provided.

Respondents: Federally Insured Credit Unions.

Estimated Number of Respondents: 30.

Estimated Burden Hours per Response: 25 hours.

Frequency of Response: 1,000.

Estimated Total Reporting Burden: 7,500.

Clearance Officer: Wilmer A. Theard, (202) 682-9700, National Credit Union Administration, Room 7344, 1776 G Street, Washington, DC 20456.

OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

Becky Baker,

Secretary of the NCUA Board.

[FR Doc. 89-13601 Filed 6-7-89; 8:45 am]

BILLING CODE 7535-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES**Meeting of Inter-Arts Advisory Panel**

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), as amended, notice is hereby given that a meeting of the Inter-Arts Advisory Panel (Dance on Tour Section) to the National Council on the Arts will be held on June 28-29, 1989, from 9:30 a.m.—5:00 p.m. in Room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on June 28, 1989, from 9:30 a.m.—10:00 a.m. and June 29, 1989, from 1:00 p.m.—5:00 p.m. The topics for discussion will be guidelines and policy issues.

The remaining portion of this meeting on June 28, 1989, from 10:00 a.m.—5:00 p.m. and on June 29, 1989, from 9:00 a.m.—1:00 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applications. In accordance with the determination of the Chairman published in the Federal Register of February 13, 1980, these sessions will be

closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682-5433.

June 1, 1989.

Yvonne M. Sabine,

Director, Council and Panel Operations,
National Endowment for the Arts.

[FR Doc. 89-13602 Filed 6-7-89; 8:45 am]

BILLING CODE 7637-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-353]

**Philadelphia Electric Co.;
Environmental Assessment and
Finding of No Significant Impact**

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of exemptions to Philadelphia Electric Company, for operation of the Limerick Generating Station, Unit 2, located in Montgomery and Chester Counties, Pennsylvania.

Environmental Assessment**Identification of Proposed Action****A. Containment Airlock Testing**

Identification of Proposed Action: The proposed exemption would eliminate the full pressure test required by Paragraph III.D.2(b)(ii) of Appendix J each time the air lock is opened during periods when containment integrity is not required and substitute a seal leakage test to be conducted at a pressure specified in the Technical Specifications. The proposed exemption is in accordance with the licensee's request dated September 14, 1984.

The Need for the Proposed Action:

The proposed exemption is required to provide the licensee with greater plant availability over the lifetime of the plant.

Environmental Impact of the Proposed Action: The proposed exemption would allow the substitution of an airlock seal test for an airlock pressure test while the reactor is in a shutdown or refueling mode. With respect to this proposed

exemption from Appendix J, the increment of environmental impact is related solely to the potential increased probability and the magnitude of containment leakage during an accident which could lead to potentially greater offset radiological consequences.

However, the potential increase due to this proposed exemption is small and would result from the potential leakage path through the door mechanism which will not be measured by this modified test. Other tests every six months or when maintenance is performed on the airlock, will measure the leakage through the door mechanism.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological impact. Additionally, it does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemption.

Alternative to the Proposed Action: Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts of the plant operations and would result in reduced operational impacts of the plant operations and would result in reduced operational flexibility.

B. Leak Rate Testing of Main Steam Isolation Valves

Identification of Proposed Action: The proposed exemption would (1) allow testing of the main steam isolation valves (MSIV) to be conducted at a differential pressure less than that required by Paragraphs III.H.4 and III.C.2 of Appendix J, and (2) allow exclusion of the measured MSIV leakage rates from the summation for the local leak rate tests as otherwise required by Paragraph III.C.3 of Appendix J. The proposed exemption is in accordance with the licensee's request dated September 14, 1984.

The Need for the Proposed Action: The proposed exemption from Paragraphs II.H.4 and II.C.2 is required because, due to the design of the main steam isolation system, a testing of the MSIVs at the calculated peak internal containment design basis pressure, Pa, would lift the disc of the inboard MSIV and result in a meaningless test. In lieu of testing at pressure Pa the licensee proposes to test at one-half of Pa. The proposed

exemption from Paragraph III.C.3 is requested because leakage that is to be collected by the MSIV leakage control system and processed by the standby gas treatment system need not be included in the determination of direct containment leakage to the environs.

Environmental Impact of the Proposed Action: The proposed exemption would allow the Appendix J Type C testing of the main steam isolation valves to be conducted at a differential pressure less than that required by Appendix J and would allow exclusion of the measured leakage from the combined local leak rate test results. With respect to this proposed exemption from Appendix J, the increment of environmental impact is related to the potential increased probability and the magnitude of leakage during an accident which could lead to potentially higher offsite radiological consequences. However, the potential increase due to the proposed exemption granted for the reduced differential pressure testing and exclusion of the measured MSIV leakage from combined local leak rate test results will not result in an increase in doses beyond those already accounted for and determined in the Chapter 15 Accident Analysis of the Final Safety Analysis report. Accordingly, the Commission concludes that this proposed action would result in no significant radiological impact. Additionally, it does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed exemptions.

Alternative to the Proposed Action: Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemptions. This would not reduce the environmental impact of plant operations.

C. Leak Rate Testing of Traversing Incore Probe Shear Valves

Identification of the Proposed Action: The proposed exemption would allow substitution of alternate provisions to ensure isolation capability of the traversing incore probe (TIP) guide tubes. These provisions are in lieu of the leak rate testing otherwise required by Paragraphs II.H.1 and III.C.2 of Appendix J for the guide tube explosively actuated shear valves. The proposed exemption is in accordance

with the licensee's request dated September 14, 1984.

The Need for the Proposed Action: The proposed exemption is required because it is impractical to leak rate test the shear valves since their destruction would be required.

Environmental Impacts of the Proposed Action: The proposed exemption would allow substitution of other isolation provisions for the TIP guide tube shear valves in lieu of leakage rate testing otherwise required by Appendix J. With respect to this proposed exemption from Appendix J, the increment of environmental impact is related to the potential increased probability and magnitude of containment leakage during an accident which could lead to potentially higher radiological consequences. However, there is no potential increase due to the exemption since leakage rate testing of a once actuated explosive shear valve would not provide any practical information about the leak-tight integrity of the valve used to replace the actuated valve. Instead alternate provisions are included in the Technical Specifications which periodically (a) verify the continuity of the valves' explosive charge, (b) initiate an explosive charge and (c) replace all explosive charges in accordance with a recommended lifetime.

Alternative to the Proposed Action: Since the Commission concluded that there is no significant environmental effect that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts of plant operations and would provide no greater assurance of TIP shear valve leak-tight integrity.

Alternative Use of Resources: These actions do not involve the use of any resources not previously considered in the Final Environmental Statements for the Limerick Generating Station, Unit 2, dated April 1984.

Agencies and Persons Consulted: The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemptions.

Based upon the foregoing environmental assessment, we conclude that the proposed exemptions will not have a significant effect on the quality of the human environment.

For further details with respect to these actions, see the application for amendment dated September 14, 1984, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Dated at Rockville, Maryland, this 31st day of May 1989.

For the Nuclear Regulatory Commission.

Walter Butler,

Director, Project Directorate I-2 Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13512 Filed 6-7-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards; Revised Meeting Agenda

In accordance with the purposes of Sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on June 8-10, 1989 in Room P-110, 7920 Norfolk Avenue, Bethesda, Md. Notice of this meeting was published in the *Federal Register* on May 17, 1989. The meeting on June 9, 1989 has been rescheduled and a session has been added.

Friday, June 9, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, Md.

8:30 a.m.-10:30 a.m.: *General Electric Company Advanced Boiling Water Reactor* (Open)—A briefing and discussion will be held regarding design features of this advanced reactor to address NRC severe accident policy considerations.

10:45 a.m.-12:15 p.m.: *LaSalle County Station, Unit 2* (Open)—The Committee will review and comment on proposed resolution of the BWR core power oscillation event which occurred at this plant.

1:15 a.m.-2:30 p.m.: *USI A-17, Systems Interactions* (Open)—The Committee will review and report on proposed final resolution of this unresolved safety issue.

2:45 p.m.-4:45 p.m.: *Education Requirements and Experience for Nuclear Power Plant Senior Operators and Control Room Supervisors* (Open)—Discuss and report on a proposed Commission policy statement regarding education and experience requirements for nuclear power plant Senior Operators and Control Room Supervisors.

4:45 p.m.-5:30 p.m.: *Preparation of ACRS Reports to NRC* (Open)—The Committee will discuss proposed ACRS reports to NRC regarding the status of

ATWS resolution and the scope of ACRS responsibilities.

5:30 p.m.-6:00 p.m.: *Nomination and Activities of ACRS Members* (Open/Closed)—The Committee will discuss qualifications of candidates proposed for nomination as members of the ACRS and outside activities of a member(s).

Portions of this session will be closed as required to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

I have determined in accordance with Subsection 10(d) Pub. L. 92-463 that it is necessary to close portions of this meeting as noted above to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(8)).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted can be obtained by a prepaid telephone call to the ACRS Executive Director, Mr. Raymond F. Fraley (telephone 301/492-8049), between 8:15 a.m. and 5:00 p.m.

Date: June 8, 1989.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 89-13731 Filed 6-7-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-317 and 50-318]

Baltimore Gas and Electric Co. Withdrawal of Application for Amendments to Facility Operating Licenses

The United States Nuclear Regulatory Commission (the Commission) has granted the request of the Baltimore Gas and Electric Company (the licensee) to withdraw a portion of its January 20, 1987, application, as supplemented on January 12, 1988, for proposed amendments to Facility Operating License Nos. DPR-53 and DPR-69 for the Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, located in Calvert County, Maryland.

The proposed amendments would have revised the Units 1 and 2 Technical Specifications by eliminating redundancy and consolidating containment purge valve TS requirements by relocating their surveillance test requirements from TS 3/4.6.4, "Containment Isolation Valves," and TS 3/4.9.9, "Refueling Operations—Containment Purge Valve Isolation System," into an expanded TS 3/4.9.4,

"Refueling Operations—Containment Penetrations."

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the *Federal Register* on May 1, 1989 (54 FR 18615). However, by letter dated June 28, 1988, the licensee had withdrawn this proposed change.

For further details with respect to this action, see the application for amendment dated January 20, 1987, as supplemented January 12, 1988, and the licensee's letter dated June 28, 1988, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and the Calvert County Library, Prince Frederick, Maryland.

Dated at Rockville, Maryland, this 31st day of May 1989.

For the Nuclear Regulatory Commission.

Scott Alexander McNeil,

Project Manager, Project Directorate I-1, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13619 Filed 6-7-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-282 and 50-306]

Northern States Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-42 and DPR-60, issued to the Northern States Power Company (the licensee), for operation of the Prairie Island Nuclear Generating Plant, Units Nos. 1 and 2, located in Goodhue County, Minnesota.

In accordance with the licensee's application for amendments dated January 12, 1989, the amendments would change the pressure temperature limits given in the specification Figures TS 3.1-1 and TS 3.1-2 and the specifications TS 3.1.B and TS 3.1.G to reflect the revised Commission position on the radiation effects on the embrittlement of the reactor vessel materials. The methods described in Revision 2 of Regulatory Guide 1.99 were used by the licensee in preparing the amendment request.

Prior to issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 10, 1989, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions that are sought to be litigated in the matter and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendments under consideration. A petitioner who fails to file such a supplement which satisfies these

requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Lawrence A. Yandell (petitioner's name and telephone number); (date petition was mailed); (plant name); and (publication date and page number of this *Federal Register* notice). A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Jay Silberg, Esq.; Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendments after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendments dated January 12, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Minneapolis Public

Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Dated at Rockville, Maryland, this 31st day of May 1989.

For the Nuclear Regulatory Commission.

John J. Stefano,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13622 Filed 6-7-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-277 and 50-278]

Philadelphia Electric Co., et al.; Notice of Partial Denial of Amendment to Facility Operating License and Opportunity for Hearing

In the matter of Philadelphia Electric Company Public Service Electric and Gas Company Delmarva Power and Light Company Atlantic City Electric Company.

The U.S. Nuclear Regulatory Commission (the Commission) has partially denied a request by Philadelphia Electric Company, (the licensee) for an amendment to Facility Operating License Nos. DPR-44 and DPR-58, issued to the licensee for operation of the Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, located in York County, Pennsylvania. Notice of Consideration of Issuance of this amendment was published in the *Federal Register* on April 27, 1989 (54 FR 18179).

The purpose of the Licensee's amendment request dated October 17, 1986 was to revise the Technical Specifications (TS) to delete certain thermal effluent monitoring requirements from the Environmental Technical Specifications (ETS) in view of the issuance of the National Pollutant Discharge Elimination System (NPDES) permit by the Commonwealth of Pennsylvania and to make other conforming changes of an administrative nature to the ETS.

The NRC staff has concluded that the licensee's request to delete the thermal effluent monitoring requirements can be granted but the other conforming changes of an administrative nature are being denied at this time because they have not been adequately supported in the licensee's application. The licensee was notified of the Commission's denial of the proposed change by letter dated April 21, 1989.

By July 10, 1989, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this

proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. A copy of any petitions should be also sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated October 17, 1986, and (2) the Commission's letter to the licensee dated April 21, 1989.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the State Library of Pennsylvania, Walnut St. and Commonwealth Ave., Box 1601, Harrisburg, PA 17105. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC, 20555, Attention Document Control Desk.

Dated at Rockville, Maryland, this 31st day of May 1989.

For the Nuclear Regulatory Commission.

Walter R. Butler,

Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13511 Filed 6-7-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-354]

Public Service Electric and Gas Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-57, issued to Public Service Electric and Gas Company, (the licensee), for operation of the Hope Creek Generating Station, located in Salem County, New Jersey.

Identification of Proposed Action

The amendment would consist of an addition to the Technical Specifications (TS) that would authorize the storage

capacity of the spent fuel pool at 1290 spent fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated October 28, 1988. The NRC staff has prepared an Environmental Assessment of the proposed action "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Expansion of the Spent Fuel Pool, Facility Operating License No. NPF-57, Public Service Electric and Gas Company, Hope Creek Generating Station, Docket No. 50-354," dated June 5, 1989.

Summary of Environmental Assessment

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG-0575), Volumes 1-3 (1979), concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

For Hope Creek Generating Station, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or non-radiological environmental impacts beyond those assessed in the Commission's Final Environmental Statement (FES) issued in December 1984 related to the operation of Hope Creek Generating Station, and in the Safety Evaluation Report issued October 1984 in support of a license amendment concerning storage capacity.

The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than one percent of the total annual occupational radiation exposure for this facility.

Finding of No Significant Impact

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR Part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action, see (1) the application for amendment dated October 28, 1988, (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG-0575), (3) the FES for Hope Creek Generating Station dated December 1984, and (4) the Environmental Assessment dated June 5, 1989.

These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Pennsylvania Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Dated at Rockville, Maryland, this 5th day of June, 1989.

For the Nuclear Regulatory Commission.

Mohan C. Thadani,

Acting Director, Project Directorate I-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13623 Filed 6-7-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Co.; Withdrawal of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Virginia Electric and Power Company (the licensee) to withdraw its December 13, 1985 application for amendments to Facility Operating License Nos. DPR-32 and DPR-37, issued to the licensee for operation of the Surry Power Station, Unit Nos. 1 and 2, located in Surry County, Virginia. Notice of Consideration of Issuance of this amendment was published in the *Federal Register* on April 23, 1986 (51 FR 15415).

The purpose of the licensee's amendment request was to amend the Facility Operating Licenses by adding a requirement for implementation of an integrated implementation schedule.

Subsequently, the licensee informed the staff that the amendment is no longer requested. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendment dated December 13, 1985, and (2) the staff's letters dated May 4, 1989 and May 25, 1989.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Swem

Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 25th day of May 1989.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Senior Project Manager, Project Directorate II-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13620 Filed 6-7-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Co.; Withdrawal of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has granted a request by Virginia Electric and Power Company (the licensee) to withdraw its December 13, 1985 application for amendments to Facility Operating License Nos. DPR-32 and DPR-37, issued to the licensee for operation of the Surry Power Station, Unit Nos. 1 and 2, located in Surry County, Virginia. Notice of Consideration of Issuance of this amendment was published in the *Federal Register* on April 23, 1986 (51 FR 15415).

The purpose of the licensee's amendment request was to amend the Facility Operating Licenses by adding a requirement for implementation of an integrated implementation schedule.

Subsequently, the licensee informed the staff that the amendment is no longer requested. Thus, the amendment application is considered to be withdrawn by the licensee.

For further details with respect to this action, see (1) the application for amendment dated December 13, 1985, and (2) the staff's letters dated May 4, 1989 and May 25, 1989.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 25th day of May 1989.

For the Nuclear Regulatory Commission.

Bart C. Buckley,

Senior Project Manager, Project Directorate II-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13621 Filed 6-7-89; 8:45 am]

BILLING CODE 7590-01-M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Meeting

Notice is hereby given that a meeting of the Nuclear Waste Technical Review Board will be held on Monday, June 26, 1989, from 8:30 a.m. to 5:00 p.m., and on Tuesday, June 27, 1989, from 8:30 a.m. to 5:30 p.m. at the Ramada Suite—St. Tropez Hotel Conference Center, 455 East Harmon Avenue, Las Vegas, NV 89109. On Wednesday, June 28, 1989, the Nuclear Waste Technical Review Board will take a field trip to the proposed Yucca Mountain Repository Site.

The purpose of the meeting and the field trip is to obtain information which the Board has requested. The Nevada Agency for Nuclear Projects, Nuclear Waste Project Office, State of Nevada, will brief the Board on Monday, June 26, 1989, and representatives of the Project Office will accompany the Board on the June 28, 1989, field trip to Yucca Mountain. This briefing will cover an Introduction, Overview of Technical Concerns, Tectonics, Faulting, Unsaturated Zone Hydrology, Saturated Zone Hydrology, Hydrologic Modeling, Performance Assessment, Geochemistry, Volcanism, Climate Change, Mineral Resources, and a Summary. On Tuesday, June 27, 1989, the Department of Energy will brief the Board and topics will include an Overview of the Briefing and Field Trip, Geologic Description of the Yucca Mountain Site, Volcanism in the vicinity of Yucca Mountain and the approach for assessing the potential for volcanic hazards, seismicity in the vicinity of Yucca Mountain and the approach for assessing the potential for volcanic hazards, seismicity in the vicinity of Yucca Mountain and the approach for assessing the potential for seismic hazards, current knowledge of the hydrologic conditions at the site and the approach to characterization, overview of plans for site characterization, summary and discussion, and plans for the field trip.

The public is permitted to attend these meetings only as observers. The meetings on June 26 and 27, 1989, will be transcribed and procedures to obtain transcripts will be provided at the meeting. To ensure that adequate facilities are provided for public attendance, persons planning to attend the meetings at the Ramada Suite—St. Tropez Hotel should contact Dennis Condie on (202) 254-4792 by 4:30 p.m. (EST), on June 20, 1989. Persons planning to visit the proposed Yucca Mountain Repository Site should contact

Christopher Hanus on (202) 586-4495 by 4:30 p.m. (EST) on June 12, 1989.

Further information on these meetings can be obtained from William Coons, Executive Director, Nuclear Waste Technical Review Board, 1111 18th Street, NW., Suite 801, Washington, DC 20036, (202) 254-4792.

Date: June 6, 1989.

William W. Coons,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 89-13678 Filed 6-7-89; 8:45 am]

BILLING CODE 9420-AM-M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

[Docket No. 301-63]

Request for Comments on Determination Under Section 304 of the Trade Act of 1974, As Amended, Relating to European Community Policies and Practices With Respect to, *Inter Alia*, Processing Subsidies on Oilseeds

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of request for written comments on determination under section 304 of the Trade Act of 1974 (the "Trade Act"), as amended, 19 U.S.C. 2414.

SUMMARY: Pursuant to section 304(a)(2) of the Trade Act, 19 U.S.C. 2414, as amended by section 1301 of the Omnibus Trade and Competitiveness Act of 1988, the United States Trade Representative ("USTR") is required to determine on or before July 5, 1989, whether United States' rights under a trade agreement are being denied by, *inter alia*, EC processing subsidies on oilseeds and the practices resulting from the EC's oilseed regime and whether the EC practices at issue are unjustifiable or unreasonable, and burden or restrict U.S. commerce, within the meaning of section 301(a)(1)(B) or 301(b)(1), 19 U.S.C. 2411(a)(1)(B) and 19 U.S.C. 2411(b)(1), respectively. The Trade Representative is also considering appropriate action (subject to the specific direction, if any, of the President) in response to the EC's practices. The USTR welcomes written comments regarding such determination or responsive action with respect to the subject EC practices.

DATES: Written comments from interested persons are due June 28, 1989.

ADDRESS: Comments should be addressed to the Chairman, Section 301 Committee, Office of the United States

Trade Representative, Room 223, 600 17th St., NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Timothy Reif, Assistant General Counsel ((202) 395-6800); Marilyn Moore, Advisor to the Assistant U.S. Trade Representative for Agricultural Affairs ((202) 395-5006); or Laura Anderson, Director, European Community Affairs ((202) 395-3074).

SUPPLEMENTARY INFORMATION: On December 18, 1987, the American Soybean Association filed a petition under section 302 of the Trade Act, 19 U.S.C. 2412, alleging that the EC has engaged in practices affecting imports of oilseeds, particularly soybeans, that deny rights of the United States under a trade agreement, and are unjustifiable, unreasonable and burden or restrict United States commerce. The practices complained of are, *inter alia*, subsidies provided to the EC processors of oilseeds that encourage purchase of EC oilseeds to the detriment of imports of oilseeds, particularly soybeans, from the United States.

On January 5, 1988, the USTR initiated an investigation of these practices and requested consultations with the EC, as required by section 303(a) of the Trade Act, 19 U.S.C. 2413. Consultations were held between representatives of the United States and the EC on January 28, 1988, February 19, 1988, and April 19, 1988. These consultations failed to result in the parties reaching a mutually satisfactory resolution of the issues. Thus, on May 4, 1988, the United States requested the Contracting Parties of the General Agreement on Tariffs and Trade to establish a dispute settlement panel to consider the matter. The EC did not accede to the United States' request until June 16, 1988 and did not agree to composition of the panel until May 19, 1989. The panel held its organizational meeting on May 31, 1989, and will hold its first meeting with the parties on June 27, 1989.

Pursuant to 19 U.S.C. 2414, as amended by section 1301 of the Omnibus Trade and Competitiveness Act of 1988, the USTR is required to determine whether the EC's practices deny "rights to which the United States is entitled" under the GATT and whether such practices are unjustifiable or unreasonable.

Public Comment: The public is invited to comment on: (1) Whether the EC policies and practices at issue are actionable under section 301, including comments on whether it violates a trade agreement; (2) the burden or restriction on U.S. commerce caused by the EC practices; and (3) appropriate action to

be taken in response to the EC practices. The comments submitted will be considered in determining actionability under section 301 and in recommending any action under section 301 to the USTR. All written submissions must be filed in accordance with 15 CFR part 2006.8. Submissions are to be submitted in twenty (20) copies, in English, by noon on June 28, 1989 to Chairman, Section 301 Committee, Office of the U.S. Trade Representative, Room 222, 600 17th Street, NW., Washington, DC 20506.

A. Jane Bradley,

Chairman, Section 301 Committee.

[FR Doc. 89-13536 Filed 6-7-89; 8:45 am]

BILLING CODE 3190-01-M

Trade Policy Staff Committee; Generalized System of Preferences

In the matter of: Trade Policy Staff Committee; solicitation of public comment: request for information regarding practices in Poland and Hungary relating to the criteria for designation under the U.S. Generalized System of Preferences (GSP); and review and solicitation of public comment: United States International Trade Commission public report assessing the domestic economic impact of removing certain unmanufactured cigarette leaf tobacco from eligibility for duty-free treatment under the U.S. Generalized System of Preferences: Cigar Association of America Petition.

The GSP Subcommittee of the Trade Policy Staff Committee hereby notifies interested parties of the opportunity to provide information regarding practices in Poland and Hungary relating to the criteria for designation under the U.S. GSP program. The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461-2465). The designation criteria are listed in subsections 502(a), 502(b), and 502(c) of the Act. All comments regarding the eligibility of Poland or Hungary for designation as GSP beneficiaries should be submitted in 20 copies, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, 600 17th Street, NW., Room 517, Washington, DC 20506. Comments must be received no later than 5:00 p.m. on Friday, June 30, 1989.

Interested parties are also notified of the opportunity to comment on the public version of the United States International Trade Commission (USITC) report assessing the domestic economic impact of the proposed removal of certain unmanufactured cigarette leaf tobacco from eligibility for duty-free treatment under GSP. The report is available from the USITC by calling William Lipovsky in the Agricultural Division at the USITC at

(202) 252-1331 (Room #514G). The USITC is located at 500 E Street, SW., Washington, DC. The report is also available for review by appointment at the GSP Information Center, Office of the USTR in Washington, DC; the GSP Information Center can be contacted at (202) 395-6971. All comments concerning the USITC report should be submitted in 20 copies, in English, to the Chairman of the GSP Subcommittee, 600 17th Street, NW., Washington, DC 20506. Comments on the USITC report must be received no later than 5:00 p.m. on Thursday, June 15, 1989.

Information and comments submitted on Poland, Hungary and the USITC report will be subject to public inspection by appointment with the staff of the GSP Information Center, except for information granted "business confidential" status pursuant to 15 CFR 2007.7. If the document contains business confidential information, twenty copies of a nonconfidential version of the submission along with twelve copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document.

The version that does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "non-confidential").

Questions concerning these comment periods or any other aspect of the GSP program may be directed to the GSP Information Center at (202)395-6971.

Sandra J. Kristoff,

Chairwoman, Trade Policy Staff Committee.

[FR Doc. 89-13577 Filed 6-7-89; 8:45 am]

BILLING CODE 3190-01-M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review of Office of Management and Budget

Agency Clearance Officer: Kenneth A. Fogash [(202) 272-2142].

Upon Written Request Copy Available From: Securities and Exchange Commission Public Reference Branch 450 Fifth Street, NW Washington, DC 20529

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 [44 U.S.C. 3501 et seq.], the Securities and Exchange Commission has submitted for OMB approval proposed Rule 15a-6 which provides an exemption from broker-dealer registration for foreign broker-dealers that effects trades for major U.S.

institutional investors through a U.S. registered broker-dealers affiliate, or that limit their activities entirely to certain non-U.S. persons. It is estimated that approximately 2,000 broker-dealers will incur an estimated average of three burden hours to comply with this rule. The estimated average burden hours are made solely for the purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of SEC rules.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with SEC rules and forms to Kenneth A. Fogash, Deputy Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-6004, and Gary Waxman, Clearance Officer, Office of Management and Budget (Paperwork Reduction Project 3235-040E), Room 3208, New Executive Office Building, Washington, DC 20503.

Jonathan G. Katz,

Secretary.

June 2, 1989.

[FR Doc. 89-13615 Filed 6-7-89; 8:45 am]

BILLING CODE 8010-01-M

[34-26883; DTC-89-1]

Self-Regulatory Organizations; Notice of Filing of Amendment No. 1 to Proposed Rule Change by The Depository Trust Co.

June 1, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 4, 1989, the Depository Trust Company ("DTC") filed with the Securities and Exchange Commission the amendment to the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission previously published notice of this File No. SR-DTC-89-1 to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Amendment to the Proposed Rule Change

The amendment to the proposed rule change being filed by DTC consists of the draft of detailed procedures for the new Rush Withdrawal Transfer service being offered in connection with DTC's planned elimination of most urgent withdrawals ("CODs") of corporate issues settling in next-day funds that are

not "full" FAST issues. It is DTC's belief that this amendment makes no substantive change to the previously filed terms of the Rush Withdrawal Transfer service and presents details of implementation only. DTC anticipates that it will file with the Commission the final version of the detailed procedures and the fees for the new service during the first week of June 1989, and that the final draft will embody no substantive changes to this draft but may involve some adjustment of details.

II. Self-Regulatory Organization's Statement of the Purpose of the Amendment to the Proposed Rule Change

The purpose of the amendment to the proposed rule change is to make available to the Commission and to the public the current draft of the detailed procedures for the new Rush Withdrawal Transfer service that is part of the proposed rule change.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

At present, certificates can be withdrawn from DTC in either of two ways:

(1) Withdrawals-by-Transfer (WTs), in which certificates are transferred routinely to the name of a Participant's customer or another party. Depending on the issue, its transfer agent, and the agent's location, newly registered certificates are generally available one to two weeks after DTC has received WT instructions.

(2) Urgent Certificate-on-Demand (COD) withdrawals, in which certificates registered in the name of DTC's nominee Cede & Co. or bearer certificates are released directly from the depository.

The reasons for discontinuing the subject COD withdrawals (for corporate issues settling in next-day funds that are not "full" FAST issues) are to realize cost savings and improve safety by eliminating a service that is no longer needed. Few corporate CODs are now needed because rules of the New York Stock Exchange, the National Association of Securities Dealers and other self-regulatory organizations now require, in general, that all delivery-vs.-

* Under DTC's Fast Automated Securities Transfer (FAST) program, DTC leaves securities with transfer agents in the form of balance certificates registered in the depository's nominee name, Cede & Co. The balance certificates are adjusted daily for DTC deposit and withdrawal activity. A "full" FAST issue is one where the transfer agent provides CODs as well as WTs.

payment settlements in depository-eligible corporate securities be settled by book-entry. For other kinds of settlement, and for purposes other than settlement, where Participants may need to deliver physical certificates, WTs will usually suffice because of recent improvements in transfer agent turnaround performance. In other situations, identified in Item 3 of the filing, DTC will provide rush transfer, exception CODs or other special arrangements.

DTC eliminated most same-day corporate CODs for issues settling in next-day funds in November 1987 and eliminated most same-day municipal CODs for issues settling in next-day funds in May 1988. DTC knows of no resulting adverse impact on any Participant or its customers. Participant comment and DTC's experience with phased COD elimination to date have shaped its current proposal. Summaries of significant Participant comments on the proposed rule change and DTC's responses are presented under Item 3 of the filing.

The proposed rule change is consistent with the requirements of the Exchange Act and the rules and regulations thereunder because it will reduce unnecessary costs in the safeguarding and other processing of securities certificates in the national clearance and settlement system. It will reduce vault and other physical security costs and concerns by substituting "jumbo" certificates for smaller denominations. It will eliminate a costly urgent withdrawal structure and staffing that is no longer needed on a routine basis and should reduce risks associated with that structure. It will cease to mutualize a cost that is better addressed and priced as exception processing.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

All comments received on the present and previous versions of the proposed rule change are summarized in substance under Item 3 of the filing, and DTC's detailed responses to any significant issues raised by those comments are presented under Item 3 of the filing. Copies of written comments constitute Exhibits 2(a) and 2(b) to the filing.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to file number SR-DTC-89-1 and should be submitted on or before June 26, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-13618 Filed 6-7-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26888; File No. S7-820]

Options Price Reporting Authority; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendment to Professional Subscriber Fees Under OPRA's National Market System Plan

Pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on May 19, 1989, the Options Price Reporting

Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information,¹ which was submitted to the Commission pursuant to section 11A(a)(3)(B) of the Act.

OPRA has designated this proposal as one establishing or changing a fee pursuant to Rule 11Aa3-2(c)(3)(i) under the Act, which renders the fee effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Description and Purpose of the Amendment

The proposed rule change will increase the access fees paid by vendors, news services and direct-connect subscribers from \$700 to \$1400 per month to reflect increases in OPRA's operating costs. In its filing, OPRA stated that its agreements with these entities provide that aggregate access fees are not intended to exceed OPRA's operating expenses, and that such fees are subject to being increased (or decreased) to reflect changes in the number of persons who pay these fees and changes in OPRA's costs. OPRA stated that it believes that the proposed increases are consistent with these provisions because they reflect increases in OPRA's operating costs that are entirely due to a substantial increase in the charges imposed by OPRA's processor, SIAC, to cover the cost of a significant expansion of the OPRA system to increase its message handling capacity.

II. Manner of Implementation of the Amendment

As noted above, pursuant to paragraph (c)(3)(i) of Rule 11Aa3-2, OPRA has designated this amendment as establishing or changing a fee or other charge collected on behalf of all OPRA participants in connection with access to or use of OPRA facilities. Although this would permit the fee change to be effective on filing, OPRA has determined that it will be implemented on July 1, 1989. OPRA also stated that, if SIAC experiences any unanticipated delay in the expansion of the OPRA system that would cause SIAC to delay beyond July 1, 1989, increasing its charges to OPRA, OPRA will in turn defer the effectiveness of the

¹ See Securities Exchange Act Release No. 17638 (March 18, 1981).

fee increase until the higher SIAC fees go into effect.

III. Request for Comments

Pursuant to Rule 11Aa3-2(c)(3) under the Act, the amendment and the revised fee schedule became effective upon filing with the Commission, except that OPRA has determined that delayed effectiveness shall apply, as described in Item II, above. The Commission, however, may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3-2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act. In order to assist the Commission in determining whether to abrogate the amendment and to require refiling and further review, interested persons are invited to submit their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 on or before June 26, 1989. All communications should refer to File No. S7-820.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(27).

Jonathan G. Katz,
Secretary.

Dated: June 2, 1989.

[FR Doc. 89-13612 Filed 6-7-89; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. 34-26889; File No. S7-820]

Options Price Reporting Authority; Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amendment to Professional Subscriber Fees Under OPRA's National Market System Plan

Pursuant to Rule 11Aa3-2 under the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on June 1, 1989, the Options Price Reporting Authority ("OPRA") submitted to the Securities and Exchange Commission ("Commission") an amendment to the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information,¹ which was

¹ See Securities Exchange Act Release No. 17638 (March 18, 1981).

submitted to the Commission pursuant to section 11A(a)(3)(B) of the Act.

OPRA has designated this proposal as one establishing or changing a fee pursuant to Rule 11Aa3-2(c)(3)(i) under the Act, which renders the fee effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Description of the Amendment

The proposed rule change will revise the fees paid by professional subscribers under the Plan for Reporting of Consolidated Options Last Sale Reports and Quotation Information ("Plan"). This will be accomplished by replacing the current fee structure whereby a professional subscriber must pay both a location charge (currently \$45.00 for each location at which options information is received) and a device charge of \$1.00 for each electronic display or interrogation device after the first at each location. The revised fee will consist of a device charge only, with the charge per device being reduced as the number of devices maintained by the subscriber is increased.²

II. Purpose of the Amendment

In its filing, OPRA stated that the amendment is intended to accomplish two objectives. First, the new fee structure is intended to provide added revenues to OPRA, in light of substantial increases in the expense of collecting and disseminating options last sale and quotation information. Second, it also will provide a volume discount on the device charge to more fairly allocate subscriber fees among professional subscribers.

OPRA also stated in its filing that since 1983, when OPRA last increased its professional subscriber fees, the costs involved in collecting and disseminating last sale and quotation information have increased considerably due to continued expansion of options trading, the addition of new products, large increases in the volume of quotation message traffic, increased personnel and administrative costs, and higher systems and communications costs.

Finally, OPRA stated in its filing that the aggregate 24.5% increase in professional subscriber fees that will result after both the first stage and second stage increases have been put into effect will still offset only a portion

² The revised fee schedule is reflected in Exhibit A of OPRA's submission (File No. S7-820), filed June 1, 1989. The submission and Exhibit are available for inspection and copying in the Commission's Public Reference Room.

of the costs incurred by the exchanges in collecting options market information and transmitting it to OPRA's processor.

III. Manner of Implementation of the Amendment

As noted above, pursuant to paragraph (c)(3)(i) of Rule 11Aa3-2, OPRA has designated this amendment as establishing or changing a fee or other charge collected on behalf of all OPRA participants in connection with access to or use of OPRA facilities. Although this would permit the fee change to be effective on filing, OPRA has determined that it will be implemented in two stages. The first stage will go into effect on July 1, 1989, and the second stage will go into effect on July 1, 1990. OPRA stated that the phase-in is designed to give professional subscribers advance notice of the revised fee structure and to lessen the impact of the revision.

IV. Request for Comments

Pursuant to Rule 11Aa3-2(c)(3) under the Act, the amendment and the revised fee schedule became effective upon filing with the Commission, except that OPRA has determined that delayed effectiveness shall apply, as described in Item III, above. The Commission, however, may summarily abrogate the amendment within 60 days of its filing and require refiling and approval of the amendment by Commission order pursuant to Rule 11Aa3-2(c)(2), if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors and maintenance of fair and orderly markets, to remove impediments to and perfect the mechanisms of a National Market System, or otherwise in furtherance of the purposes of the Act. In order to assist the Commission in determining whether to abrogate the amendment and to require refiling and further review, interested persons are invited to submit their comments to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 on or before June 26, 1989. All communications should refer to File No. S7-820.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(27).

Jonathan G. Katz,
Secretary.

Dated: June 2, 1989.

[FR Doc. 89-13613 Filed 6-7-89; 8:45 am]

BILLING CODE 8010-01-M

BEST COPY AVAILABLE

[Rel. No. 34-26878; File No. SR-PSE-89-05]

Self-Regulatory Organizations; Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to Increases in Capital Requirements for Specialist Posts and Competing and Alternate Specialists

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 3, 1989, the Pacific Stock Exchange Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the PSE.¹ The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to amend Rule V, sections 2(a) and 2(b) and to add Commentaries .01 and .02 to section 2 concerning capital requirements for specialist posts and competing and alternate specialists. The text of the proposed changes is set forth below (brackets indicate deletions and italics indicate additions).

*Specialist Post Capital***Sec. 2**

[Sec. 2](a)[.] Members registered as specialists shall at all times maintain for each specialist post [\$100,000] *a minimum of \$150,000* in either cash or marketable securities or an amount equal to 25% of the sum of the market value of its securities position both long and short, whichever is greater; provided, however, that a member organization operating more than one specialist post shall be deemed to meet the requirements for minimum post capital so long as the average capital per post operated by such member organization is equal to or greater than the greater of the two amounts stated above. Such specialist post capital shall be maintained on deposit with the Pacific Clearing Corporation or an entity duly authorized by the Exchange, except that the Board of Governors may grant an exception to such requirements for good and sufficient reasons.

¹ On May 12, 1989, the PSE filed Amendment No. 1 to SR-PSE-89-05.

Competing or Alternate Specialists Post Capital

[Sec. 2](b)[.] Unless a competing or an alternate specialist is subject to the provisions of [Section 2(a) above,] *paragraph (a) of this section*, the competing specialist or alternate specialist registered with the Exchange shall at all times maintain a minimum of [\$10,000] *\$15,000* in cash or marketable securities for each security in which such competing specialist or alternate specialist is so registered up to [\$100,000,] *\$150,000* or an amount equal to 25% of the aggregate long and short market value of all positions in securities [with respect to] *in which* such competing specialist or alternate specialist is registered, whichever is greater. Such competing or alternate specialist's capital shall be maintained on deposit with the Pacific Clearing Corporation or an entity duly authorized by the Exchange, except that the Board of Governors may grant an exception to such requirements for good and sufficient reasons.

Commentary

01 The specialist post capital requirement of \$150,000, pursuant to paragraph (a) above, shall become effective July 1, 1989.

02 The competing or alternate specialist post capital requirement of \$15,000, pursuant to paragraph (b) above, shall become effective July 1, 1989.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

Exchange Rule V, sections 2(a) and 2(b), currently requires each specialist post to maintain the greater of \$100,000 in cash or marketable securities or 25% of the market value of its securities position. Each competing or alternate specialist who is not subject to the

provisions under section 2(a) is required to maintain the greater of \$10,000 in cash or marketable securities or 25% of the market value of its securities position for each registered security. The proposed amendment would increase the minimum capital requirement to \$150,000 for each specialist post and \$15,000 for each competing or alternate specialist. These increases are intended to ensure that capital levels will be sufficient to enable specialists to perform their affirmative obligations during volatile markets.

The Exchange believes that the proposed rule change is consistent with the provisions of section 6(b) of the Act in general and, in particular, furthers the objectives of section 6(b)(5) in that it is designed to promote fair and equitable principles of trade and the protection of investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve such proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed

with the Commission and all written communications relating to the proposed rule change between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552 will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, N.W., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No., SR-PSE-89-5 and should be submitted by June 29, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: May 30, 1989.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-13520 Filed 6-7-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE**Advisory Committee on International Communications and Information Policy; Meeting**

The Department of State announces that the Subcommittee on Industrialized Country Policy Issues of the Advisory Committee on International Communications and Information Policy will meet on Wednesday, June 14, 1989 in room 1105 of the Department of State from 10:00 a.m. until 11:45 a.m.

The Committee serves the Department of State in an advisory capacity concerning major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy and the activities of international organizations with regard to communications and information, and developing country interests.

The Subcommittee will provide advice to the Department on policy issues of concern to industrialized countries, and will include advice on communications and information policy issues being addressed in the Organization for Economic Cooperation and Development (OECD) and, more particularly, the OECD's Committee on Information, Computers and Communications Policy (ICCP).

The June 14 meeting will consider the following matters:

(1) The current work of the ICCP Committee with regard to trade in telecommunications network-based services; a report on a March 17 meeting between the ICCP Committee and the OECD's Trade Committee on trade in telecommunication network-based services; and the future of ICCP work in this area in light of an early June meeting of the Negotiating Group on Services in Geneva which will consider application of trade principles in the telecommunications sector.

(2) the current work of the ICCP Committee with regard to trade in computer services and computerized information services.

(3) the work between the ICCP Committee and the Committee on Capital Movements and Invisible Transactions (CMIT) on answering a questionnaire to develop an inventory of barriers to trade in computer services, computerized information services and value-added network services; and

(4) other on-going work of the ICCP Committee's Working Party on Telecommunications and Information Services Policies (TISP). The TISP will meet June 20 and 21, 1989, and its agenda is expected to include, in addition to consideration of trade in services issues, discussion of papers on rate rebalancing and investment in telecommunications, as well as a presentation by a representative of the European Community on Open Network Provision. The TISP will also begin preparation for an ICCP Special Session on Telecommunications Policies to be held late 1990 or early 1991.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. Prior to the meeting, persons who plan to attend should so advise the office of Mrs. Lucy H. Richards, Department of State, Washington, DC, telephone (202) 647-5230. Attendees should use the C Street entrance to the Department of State, and plan to reach C Street with sufficient time to be processed into the building, as access to the Department of State building is controlled.

Date: May 24, 1989.

Lucy H. Richards,
Director, Office of Industrialized Country Policy, Executive Secretary, Advisory Committee on International Communications and Information Policy.

[FR Doc. 89-13587 Filed 6-7-89; 8:45 am]

BILLING CODE 4710-07-M

Shipping Coordinating Committee; Meeting

The U.S. Shipping Coordinating Committee (SHC) will conduct an open meeting at 0930 on Tuesday, 13 June 1989 in Room 4436/38/40 of the Department of Transportation Building, 400 Seventh Street, SW., Washington, DC. This special public meeting is being held in preparation for:

1. The upcoming 6th and final session of the International Maritime Organization (IMO)/United Nations Conference on Trade and Development (UNCTAD) Joint Intergovernmental Group of Experts (JIGE) on Maritime Liens and Mortgages (London, 25-29 September 1989); and

2. The ongoing consideration by the IMO Legal Committee of the question of liability and compensation related to maritime carriage of hazardous and noxious substances (HNS).

The agenda for the special public meeting will also include a report on the recent Diplomatic Conference on Marine Salvage held in London from 17-28 April 1989. The Conference adopted the International Convention on Salvage, 1989, which is expected to be open for signature by participating States in July 1989.

By way of background concerning the IMO/UNCTAD Joint Group of Intergovernmental Experts, this body has been considering possible changes in existing international conventions relating to maritime liens and mortgages and to the arrest of seagoing vessels since its 1st Session in December 1986. In view of progress to date, it is expected that a draft of a new International Convention on Maritime Liens and Mortgages will be finalized at the September 1989 session. Consequential revisions to the 1952 Convention on the Arrest of Seagoing Ships may also be developed.

The Joint Group has established a deadline of 20 June 1989 for submission of any proposals to be considered at its final session. In view of this important deadline, an article-by-article reading of both the latest draft of the proposed new Maritime Liens and Mortgages Convention and the 1952 Arrest Convention will be conducted at the 13 June 1989 public meeting.

With respect to HNS liability and compensation, the IMO Legal Committee has resumed work on this subject in an effort to develop an international HNS regime which will prove more acceptable than that which was considered but not adopted at the 1984 Diplomatic Conference on Liability and Compensation for Damage in

Connection with the Carriage of Certain Substances by Sea. It should be noted that development and implementation of an international HNS regime would have significant impacts on a wide range of U.S. interests related to the maritime and chemical industries, government and the environment.

Recent intergovernmental talks on HNS hosted by the United Kingdom indicate a strong international desire to expedite this work. In light of this desire, it is increasingly important that more detailed U.S. positions concerning the preferred approach to development of the proposed new international HNS regime are developed as soon as possible.

The foregoing topics will be discussed extensively at this special SHC meeting. The views of the public, and particularly those of affected maritime and environmental interests, are requested.

Members of the public are invited to attend the 13 June 1989 SHC meeting, up to the seating capacity of the room.

For further information or to submit views concerning any of the topics to be discussed at the SHC meeting, contact either Captain Frederick F. Burgess, Jr. or Lieutenant Commander Frederick M. Rosa, Jr., U.S. Coast Guard (G-LMI), 2100 Second Street, SW., Washington, DC 20593, telephone (202) 267-1527, telefax (202) 267-4183.

Date: May 24, 1989.

Thomas J. Wajda,
Chairman, Shipping Coordinating Committee.
[FR Doc. 89-13596 Filed 6-7-89; 8:45 am]
BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Elliott Bridge Replacement, King County, WA.

AGENCY: Federal Highway
Administration (FHWA), DOT
ACTION: Notice of Intent

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge replacement project in King County, Washington.

FOR FURTHER INFORMATION CONTACT: Barry F. Morehead, Federal Highway Administration, Division Administrator, 711 South Capitol Way, Suite 501, Olympia, Washington 98501, Telephone (206) 753-2120; or Paul Tanaka, Director, King County Department of Public Works, 900 King County Administration Building, 500 Fourth Avenue, Seattle,

Washington 98104, Telephone (206) 296-6590.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Washington State Department of Transportation and King County, will prepare an environmental impact statement (EIS) on a proposal to replace the Elliott Bridge in King County, Washington. The proposed action would involve removing and replacing the existing bridge and realigning approximately 3,000 feet of bridge approach roadway. Both the bridge and approach roadways would be widened from two to four lanes.

Replacement of the Elliott Bridge is considered necessary due to increased traffic volumes, inadequate vertical and horizontal clearances, and high accident rates on the bridge and its approaches. Alternatives under consideration include (1) taking no action; (2) realigning the bridge and approaches immediately downstream of the existing alignment; (3) realigning the bridge and approaches immediately upstream of the existing alignment; and (4) realigning the bridge and approaches approximately 1,100 feet upstream of the existing alignment.

Preparation of an environmental assessment (EA) was begun for this proposal in 1986. A scoping process (including notification of affected agencies and property owners by letter, and of the general public by notice in newspapers of general circulation and by posting of the notice at the site of the proposal, and an open house held November 18, 1986) was conducted in conjunction with preparation of the EA. It has since been determined that preparation of an EIS is necessary. The EIS will consider the same alternatives that were under consideration during preparation of the EA. Comments received during the EA scoping process will be considered in preparation of the EIS. All agencies with jurisdiction, special expertise, or that have previously expressed or are known to have an interest in the proposal, affected tribes, adjacent property owners, and members of the public who have expressed an interest in the project will be notified by mail that an EIS is being prepared for the proposal, and will be requested to submit any additional comments that they may have. A public hearing will be held. Public notice will be given of the time and place of the hearing. The draft EIS will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues

identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the persons listed above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this proposal.)

Issued on: May 31, 1989.

Patrick E. O'Neil,
Area Engineer, Olympia, Washington.
[FR Doc. 89-13598 Filed 6-7-89; 8:45 am]
BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

Announcement of Third Meeting of the Heavy Truck Subcommittee of the Motor Vehicle Safety Research Advisory Committee

AGENCY: National Highway Traffic
Safety Administration (NHTSA), DOT.
ACTION: Meeting announcement.

SUMMARY: This notice announces the third meeting of the Heavy Truck Subcommittee of the Motor Vehicle Safety Research Advisory Committee (MVSAC). The MVSAC established this subcommittee at the February 1988 meeting to examine research questions regarding crashworthiness and crash avoidance for vehicles over 10,000 pounds GVWR.

DATE AND TIME: The meeting is scheduled for June 29, 1989, from 10:00 a.m. to 5:00 p.m.

ADDRESS: The meeting will be held in Room 8236 of the U.S. Department of Transportation Building, which is located at 400 Seventh Street, SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In May 1987, the Motor Vehicle Safety Research Advisory Committee was established. The purpose of the Committee is to provide an independent source of ideas for safety research. The MVSAC will provide information, advice, and recommendations to NHTSA on matters relating to motor vehicle safety research and provide a forum for the development, consideration, and communication of motor vehicle safety research, as set forth in the MVSAC Charter.

At previous meetings of this subcommittee, tires have been identified as the component of a heavy truck that is critical to vehicle safety whose performance characteristics are least

understood. This meeting of the subcommittee will focus on the role of truck tires in highway safety. The subcommittee is interested in learning about available test facilities/procedures/capabilities; the type of data routinely gathered; the type of data capable of being obtained; what tire characteristics are important from a highway safety point of view; what is already known with regard to tire characteristics and their effect on braking, ride, traction and stability; and research projects being pursued and/or planned to expand the current database in the public literature. The question is how trucking industry thinking with regard to vehicle design can be related with the thinking of the tire industry with regard to tire design in order to optimize safety, as well as product performance in other key areas. For the purpose of this meeting, the focus will be limited to radial tubeless, single wide base, and low profile tires. To assist in these discussions, the subcommittee has scheduled presentations by representatives of the tire industry and the two private sector institutions known to have truck tire testing capability—Calpan and the University of Michigan's Transportation Research Institute.

The meeting is open to the public, and participation by the public will be determined by the Subcommittee Chairman.

A public reference file (Number 88-01—Heavy Truck Subcommittee has been established to contain the products of the subcommittee and will be open to the public during the hours of 8:00 a.m. to 4:00 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in Room 5108 at 400 Seventh Street, SW.,

Washington, DC 20590, telephone: (202) 368-2768.

FOR FURTHER INFORMATION CONTACT: William A. Leasure, Jr., Chairman, Heavy Truck Subcommittee, Office of Research and Development, 400 Seventh Street, SW., Room 6220, Washington, DC 20590, telephone: (202) 366-5663.

Issued on: June 1, 1989.

Howard M. Smolkin,
*Chairman, Motor Vehicle Safety Research
Advisory Committee.*
[FR Doc. 89-13542 Filed 6-7-89; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service; Meeting

AGENCY: Departmental Offices,
Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service. **DATE:** The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on June 23, 1989 at 9:30 a.m. in Room 4121 of the Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Dennis M. O'Connell, Director, Office of Trade and Tariff Affairs, Office of the Assistant Secretary (Enforcement), Room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Tel.: (202) 566-8435.

SUPPLEMENTARY INFORMATION: Agenda items for the third meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service on June 23, 1989 will include:

I. Old Business

1. User fees.
2. Impact of Customs Commercial operations on ports and carriers.
 - a. Trucks.
 - b. Rail carriers.
3. Adequacy of Customs resources to provide expected services and to implement new programs such as the Harmonized System and the Free Trade Agreement with Canada.

II. New Business

1. Enhancing the role of the import specialist.
2. Promoting consistency in Customs administration and enforcement of export licensing requirements.
3. Potential technological innovations to create a "21st century" customs system.
4. Other new business.

The meeting is open to the public. Owing to the security procedures in place at the Treasury Building, it is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give advance notice. In order to be admitted to the building to attend the meeting, contact Dennis M. O'Connell at (202) 566-8435, no later than June 19, 1989.

Dated: June 2, 1989.
Salvatore R. Martocchio,
Assistant Secretary, (Enforcement).
[FR Doc. 89-13569 Filed 6-7-89; 8:45 am]
BILLING CODE 4910-25-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 109
Thursday, June 8, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 23562, June 1, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, June 5, 1989.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: Consideration of legislation related to banking structure.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 5, 1989.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-13679 Filed 6-6-89; 9:56 am]
BILLING CODE 6210-01-M

NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE (NCLIS)

White House Conference Advisory Committee

DATE AND TIME: June 21, 1989.

PLACE: The National Science Foundation, Conference Room, Room 1242, 1800 G Street NW., Washington, DC 20550.

STATUS: June 21, 1989, 10:00 a.m.-4:40 p.m., Open.

MATTERS TO BE DISCUSSED: White House Conference on Library and Information, Services Conference II, Advisory Committee, Subcommittee Reports:

- Appropriation Bill Support Committee
- WHCLIS II Structure Committee
- Preconference Activities Committee
- Public Relations and Awareness Committee
- Public and Private Sector Liaisons Committee

Status Report on Administrative Items Review of Formula for Funding States Special provisions will be made for handicapped individuals by contacting John W.A. Parsons (1 202) 254-3100, no later than one week in advance of the meeting.

FOR FURTHER INFORMATION CONTACT: John W.A. Parsons, NCLIS Staff, 1111 18th Street NW., Suite 310, Washington, DC 20036, (1 202) 254-3100.

Dated: June 5, 1989.
John W.A. Parsons.
[FR Doc. 89-13690 Filed 6-6-89; 10:53 am]
BILLING CODE 7527-01-M

U.S. COMMISSION ON CIVIL RIGHTS

PLACE: 1121 Vermont Avenue, NW., Room 512, Washington, DC 20425.

DATE AND TIME: Friday, June 16, 1989, 1:30 p.m.-5:00 p.m.

STATUS OF MEETING: Open to the public.

MATTERS TO BE CONSIDERED:

- I. Approval of Agenda
- II. Approval of Minutes of May Meeting
- III. Announcements

- IV. Commission Conflict of Interest Regulations
- V. SAC Reports and Rechartrs
 - Bigotry and Violence in Georgia Administration of Justice for Homosexual Persons in New Orleans*
 - Notivism Rekindled: A Report on the Effort to Make English Colorado's Official Language*
 - Implementation in Texas of the Immigration Reform and Control Act: A Preliminary Review*
 - Alabama and Hawaii SAC Rechartrs
- VI. Commission Subcommittee Reports
 - A. Asian Roundtable
 - B. Set-aside Draft
 - C. Campus Tension
- VII. Review of the Immigration Reform and Control Act of 1986 Draft Report
- VIII. Staff Director's Report
 - A. Consideration of Project Designs
 - i. Financial Aid and Minority Student Enrollment in College
 - ii. Parental Choice and Equal Opportunity in Education
 - iii. Discriminatory Obstacles to Career Advancement of Minorities and Women in Professions and Management
 - iv. Discrimination Against the Elderly
 - v. Access to Transportation for Persons with Disabilities
 - B. FY '89 Budget and Update
 - C. Proposed FY '90 Budget
 - D. Proposed FY '91 Budget
- IX. Future Agenda Items

PERSON TO CONTACT FOR FURTHER INFORMATION: John Eastman, Press and Communications Division, (202) 376-8312.

William H. Gillers,
Solicitor, 376-8514.
June 6, 1989.

[FR Doc. 89-13811 Filed 6-6-89; 3:57 pm]
BILLING CODE 6335-01-M

Thursday
June 8, 1989

Part II

Department of Education

Office of Vocational and Adult Education

Invitation for Applications for New Awards Under Certain Vocational Education Direct Grant Programs To Be Made in Fiscal Year 1990; Notice

federa1 register

DEPARTMENT OF EDUCATION

Office of Vocational and Adult Education

[CFDA Nos.: 84.099, 84.101, 84.193, 84.199A]

Invitation for Applications for New Awards Under Certain Vocational Education Direct Grant Programs To Be Made in Fiscal Year (FY) 1990

Note to Applicants: This notice is a complete application package. Together

with the statute authorizing the programs and applicable regulations governing the programs, including the Education Department General Administrative Regulations (EDGAR), the notice contains information, application forms, and instructions needed to apply for a grant under the following program competitions:

- (a) Bilingual Vocational Instructor Training Program (CFDA No. 84.099).
- (b) Vocational Education Indian Program (CFDA No. 84.101).

- (c) Demonstration Centers for the Retraining of Dislocated Workers Program (CFDA No. 84.193).
- (d) Cooperative Demonstration Program (High Technology) (CFDA No. 84.199A).

NEW AWARDS UNDER CERTAIN VOCATIONAL EDUCATION DIRECT GRANT PROGRAMS

Title and CFDA Number	Deadline for Transmittal of Applications	Deadline for Intergovernmental Review	Available Funds	Estimated Range of Awards	Estimated Average Size of Awards	Estimated Number of Awards	Project Period in Months
Bilingual Vocational Instructor Training Program (CFDA No. 84.099).	July 13, 1989	Aug. 14, 1989	\$1,125,750	\$110,000 to \$190,000.	\$160,821	7	18 months.
Vocational Education Indian Program (CFDA No. 84.101).	July 28, 1989	Not applicable	\$2,808,990	\$50,000 to \$500,000.	\$187,266	15	12 to 36 months.
Demonstration Centers for the Retraining of Dislocated Workers Program (CFDA No. 84.193).	Sept. 15, 1989	Nov. 15, 1989	\$212,000	\$212,000	\$212,000	1	Up to 24 months.
Cooperative Demonstration Program (High Technology) (CFDA No. 84.199A).	July 21, 1989	Sept. 21, 1989	\$9,152,000	\$125,000 to \$475,000.	\$305,067	30	Up to 18 months.

Note: The Department is not bound by any estimates in this notice.

Additional Programmatic Details

Bilingual Vocational Instructor Training Program (84.099)

Purpose of Program: To provide financial assistance for conducting training for instructors, aides, counselors, or other ancillary personnel in bilingual vocational education and training programs for individuals with limited English proficiency.

Eligible Applicants: State agencies and public and private nonprofit educational institutions.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and (b) The regulations for this program in 34 CFR Part 408.

Priority: The Secretary is particularly interested in applications that meet the following invitational priority:

Under 34 CFR 75.105(c)(1), the Secretary invites applications that address a national or statewide need for inservice training for personnel in bilingual vocational education and training programs for individuals with limited English proficiency.

However, under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The Secretary assigns the 15 points reserved in 34 CFR 408.30(d) as follows: 10 points to the Selection Criterion (b)—Plan of Operation—in 34 CFR 408.31(b) for a total of 30 points for that criterion; and 5 points to the Selection Criterion (c)—Quality of Key Personnel—in 34 CFR 408.31(c) for a total of 25 points for that criterion. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) Need. (20 points) (1) The Secretary reviews each application for specific information that shows the need for the proposed training in the local geographic area.

(2) In making this determination the Secretary looks for information that shows—

- (i) The need for the proposed training;
- (ii) Specifically how the need will be met;

(iii) Ongoing and planned activities in the community that pertain to the need, where appropriate.

(b) Plan of operation. (30 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

- (i) High quality in the design of the project;
- (ii) An effective plan of management that ensures proper and efficient administration of the project;
- (iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

- (A) Members of racial or ethnic minority groups;
- (B) Women;
- (C) Handicapped persons; and

(D) The elderly.

(c) Quality of key personnel. (25 points) (1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

- (i) The qualifications of the project director (if one is to be used);
- (ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2)(i) and (ii) will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

- (A) Members of racial or ethnic minority groups;
- (B) Women;
- (C) Handicapped persons; and
- (D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) Budget and cost effectiveness. (10 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

- (i) The budget for the project is adequate to support the project activities; and
- (ii) Costs are reasonable in relation to the objectives of the project.

(e) Evaluation plan. (10 points) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) Adequacy of resources. (5 points) (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

- (i) The facilities that the applicant plans to use are adequate; and
- (ii) The equipment and supplies that the applicant plans to use are adequate.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

For Information Contact: Laura Karl, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4512, Mary E. Switzer Building), Washington, DC 20202-7242. Telephone (202) 732-2365.

Program Authority: 20 U.S.C. 2441(b).

Vocational Education Indian Program (84.101)

Purpose of Program: To provide financial support to Indian tribes to plan, conduct, and administer projects or portions of projects that are authorized by and consistent with the Carl D. Perkins Vocational Education Act.

Eligible Applicants: The tribal organization of any Indian tribe which is eligible to contract with the Secretary of the Interior under the Indian Self-Determination and Education Assistance Act or under the Act of April 16, 1934.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Higher Education, Hospitals and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments and Indian Tribal Governments), Part 81 (General Education Provisions Act—Enforcement), Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and (b) The regulations for this program in 34 CFR Part 410.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The Secretary assigns the 15 points reserved in 34 CFR 410.30(d) as follows: 5 points to the Selection Criterion (a)—Need—in 34 CFR 410.31(a) for a total of 20 points for that criterion; 5 points to the Selection Criterion (b)—Plan of Operation—in 34 CFR 410.31(b) for a total of 25 points for that criterion; and 5 points to the Selection Criterion (c)—Evaluation Plan—in 34 CFR 410.31(e) for a total of 10 points for that criterion. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) Need. (20 points) (1) The Secretary reviews each application for information

that shows the need for the proposed project.

(2) The Secretary looks for information that shows—

- (i) Specific evidence of the need for the proposed activity;
- (ii) Information which shows how the need will be met; and
- (iii) Ongoing and planned activities in the community which pertain to the need, where appropriate.

(b) Plan of operation. (25 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

- (i) High quality in the design of the project;
- (ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program; and

(iv) The way the applicant plans to use its resources and personnel to achieve each objective.

(c) Quality of key personnel. (10 points) (1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

- (i) The qualifications of the project director (if one is to be used);
- (ii) The qualifications of each of the other key personnel to be used in the project; and

(iii) The time that each person referred to in paragraphs (c)(2) (i) and (ii) will commit to the project.

(3) To determine personnel qualifications, the Secretary considers experience and training, in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) Budget and cost effectiveness. (10 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

- (i) The budget for the project is adequate to support the project activities; and
- (ii) Costs are reasonable in relation to the objectives of the project.

(e) Evaluation plan. (10 points) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(f) *Adequacy of resources.* (5 points) (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and
(ii) The equipment and supplies that the applicant plans to use are adequate.

(g) *Private sector involvement.* (10 points) (1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) The private sector involvement in the planning of the project; and
(ii) The private sector involvement in the operation of the project.

(h) *Employment opportunities.* (10 points) (1) The Secretary looks for information and documentation of the extent to which, upon the completion of their training under this program, more than 65 percent of the trainees will be employed in jobs related to their training (including military specialties), or will be pursuing additional training related to their training under this program.

(2) Information which shows that this employment is related to the tribal economic development plan.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

For Information Contact: Harvey Thiel, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4512, Mary E. Switzer Building), Washington, DC 20202-7242. Telephone (202) 732-2330.

Program Authority: 20 U.S.C. 2313.

Demonstration Centers for the Retraining of Dislocated Workers Program (84.193)

Purpose of Program: To provide assistance to establish one or more demonstration centers to retrain dislocated workers in order to demonstrate the applicability of general theories of vocational education to the specific problems of retraining displaced workers.

Eligible Applicants: Public or private agencies, institutions, or organizations.

Applicable Regulations: (a) The Education Department General

Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grants Programs), Part 77 (Definitions That Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and (b) The regulations for this program in 34 CFR Part 411.

Priority: The Secretary is particularly interested in applications that meet the following invitational priority:

Under 34 CFR 75.105(c)(1), the Secretary invites applications from community colleges having existing dislocated worker training programs for a project to establish and operate a demonstration center for the retraining of dislocated workers in which there is significant State, local, and/or private sector involvement, commitment, and support, and for which materials describing the establishment and operation of the project will be prepared, as appropriate, for dissemination to other dislocated worker training centers.

However, under 34 CFR 75.105(c)(1), an application that meets this invitational priority does not receive competitive or absolute preference over other applications.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for new grants under this competition. The Secretary assigns the 15 points reserved in 34 CFR 411.30(d) as follows: 5 points to the Selection Criterion (b)—Plan of Operation—in 34 CFR 411.31(b) for a total of 20 points for that criterion; 5 points to the Selection Criterion (c)—Quality of Training—in 34 CFR 411.31(c) for a total of 10 points for that criterion; and 5 points to the Selection Criterion (f)—Evaluation Plan—in 34 CFR 411.31(f) for a total of 10 points for that criterion. The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

(a) *Need.* (15 points) (1) The Secretary reviews each application for information that shows the need for the proposed demonstration center.

(2) The Secretary looks for information that shows—

(i) Specific evidence of the need for the proposed demonstration center, including evidence of a high concentration of dislocated workers in the area to be served;

(ii) How the need will be met; and
(iii) Ongoing and planned activities in the community pertaining to the proposed demonstration center, where appropriate.

(b) *Plan of operation.* (20 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;
(ii) An effective plan of management that ensures proper and efficient administration of the project;
(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;
(B) Women;
(C) Handicapped persons; and
(D) The elderly.

(c) *Quality of training.* (10 points) (1) The Secretary reviews each application for information that shows the quality of the training to be provided.

(2) The Secretary looks for information that shows that—

(i) The training is appropriate for the trainees in light of the labor market; and
(ii) Trainees will receive appropriate counseling.

(d) *Quality of key personnel.* (10 points) (1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);
(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (d)(2) (i) and (ii) will commit to the project; and
(iv) The extent to which the applicant as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that

have been traditionally underrepresented, such as—
(A) Members of racial or ethnic minority groups;
(B) Women;
(C) Handicapped persons; and
(D) The elderly.

have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;
(B) Women;
(C) Handicapped persons; and
(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(e) *Budget and cost effectiveness.* (10 points) (1) The Secretary reviews each application for information that shows that the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relating to the objectives of the project.

(f) *Evaluation plan.* (10 points) (1) The Secretary reviews each application for information that shows the quality of the evaluation plan for the project.

Cross-Reference. See 34 CFR 75.590 (Evaluation by the grantee).

(2) The Secretary looks for information that shows methods of evaluation that are appropriate for the project and, to the extent possible, are objective and produce data that are quantifiable.

(g) *Adequacy of resources.* (5 points) (1) The Secretary reviews each application for information that shows that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and
(ii) The equipment and supplies that the applicant plans to use are adequate.
(h) *Private sector involvement.* (5 points) (1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—
(i) The private sector involvement in the planning of the project; and
(ii) The private sector involvement in the operation of the project.

(i) *Employment opportunities.* (5 points) The Secretary looks for information on and documentation of the extent to which trainees will be employed in jobs related to their training upon completion of their training.

(j) *Dissemination.* (10 points) (1) The Secretary reviews each application for information that shows that the applicant has an effective and efficient

plan for disseminating information about the project, including the results of the project and any specialized materials developed by the project.

(2) The Secretary looks for information that shows—

(i) The design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;
(ii) A description of the types of materials the applicant plans to make available and the methods for making the materials available;

(iii) Provisions for demonstrating the methods and techniques used by the project;

(iv) Provisions for assisting others to adopt and successfully implement the project or methods and techniques developed by the project; and

(v) Provisions for publicizing the findings of the project at the local, State, or national level.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0013)

For Information Contact: Paul R. Geib, Jr., Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 4512, Mary E. Switzer Building), Washington, DC 20202-7242. Telephone (202) 732-2364.

Program Authority: 20 U.S.C. 2415

Cooperative Demonstration Program (High Technology) (84.199A)

Purpose of Program: To provide financial assistance through grants to conduct high technology training projects in vocational education that involve cooperation between the private sector and public agencies in vocational education.

Eligible Applicants: State educational agencies (SEAs), local educational agencies (LEAs), postsecondary educational institutions, institutions of higher education, and other public and private agencies, organizations, and institutions.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement), Part 85 (Governmentwide

Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)); and (b) The regulations for this program in 34 CFR Part 412 with certain exceptions as noted in the Notice of Final Priority, Required Activities, and Selection Criteria published in this issue of the *Federal Register*.

Priority: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the priority in the Notice of Final Priority, Required Activities, and Selection Criteria for this competition, as published in this issue of the *Federal Register*.

Under 34 CFR 75.105(c)(3), the Secretary funds under this competition only applications that meet this absolute priority.

Selection Criteria: For the Fiscal Year 1990 grant competition (for awards to be made in early fiscal year 1990 using fiscal year 1989 funds) under the Cooperative Demonstration Program (High Technology), the Secretary uses the selection criteria in the Notice of Final Priority, Required Activities, and Selection Criteria, as published in this issue of the *Federal Register*.

(Approved by the Office of Management and Budget under OMB Control No. 1830-0506)

For Information Contact: Robert L. Miller or Richard F. DiCola, Program Improvement Branch, Division of National Programs, Office of Vocational and Adult Education (Room 4512, Switzer Building), 400 Maryland Avenue SW., Washington, DC 20202-7242. Telephone (202) 732-2428 or 732-2362.

Program Authority: 20 U.S.C. 2411

Intergovernmental Review of Federal Programs

The Bilingual Vocational Instructor Training Program (CFDA No. 84.099), the Demonstration Centers for the Retraining of Dislocated Workers Program (CFDA No. 84.193), and the Cooperative Demonstration Program (High Technology) (CFDA No. 84.199A) are subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR Part 79. The Vocational Education Indian Program (CFDA No. 84.101), however, is not subject to these requirements.

The objective of the Executive Order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government

coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to find out about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should immediately contact the Single Point of Contact for each State and follow the procedure established in those States under the Executive Order. If you want to know the name and address of any State Single Point of Contact, see the list published in the *Federal Register* on November 18, 1987, pages 44338-44340.

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372-CFDA # (applicant must insert the appropriate number—including letter, if any), U.S. Department of Education, MS 6403, 400 Maryland Avenue, SW., Washington, DC 20202-0125. Proof of mailing will be determined on the same basis as applications. See 34 CFR 75.102.

Please note that the above address is not the same as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to:

U.S. Department of Education,
Application Control Center, Attention:
CFDA # (Applicant must insert the appropriate number—including letter, if any), Washington, DC 20202-4725.

or
(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Eastern Daylight Time) on the deadline date to:

U.S. Department of Education,
Application Control Center, Attention:
CFDA # (Applicant must insert the appropriate number—including letter, if any), Regional Office Building #3, Room #3633, 7th and D Streets SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number—and letter, if any—and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

This consolidated application notice has two appendices: Appendix A is divided into four parts, and includes several assurances and certifications. These parts are organized in the same

manner that the submitted application should be organized. The parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and instructions.

Part II: Budget Information and instructions.

Part III: Application Narrative and instructions.

Estimated Public Reporting Burden.

Part IV: Additional Assurances.

Assurances—Non-Construction Programs (Standard Form 424B).

Certification regarding Debarment, Suspension, and Other Responsibility Matters: Primary Covered Transactions (ED Form GCS-008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS-009) and instructions.

Note: ED Form GCS-009 is intended for the use of primary participants and should not be transmitted to the Department.

One or both of the following, as appropriate:

Certification Regarding Drug-Free Workplace Requirements: Grantees Other Than Individuals (ED 80-0004).

Certification Regarding Drug-Free Workplace Requirements: Grantees who are Individuals (ED 80-0005).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certifications. However, the application form, the assurances, and certifications must each have an original signature. No grant may be awarded unless a completed application form has been received.

Appendix B contains questions and answers to assist potential applicants.

Dated: May 24, 1989.

D. Kay Wright,
Acting Assistant Secretary, Office of
Vocational and Adult Education.

BILLING CODE 4000-01-M

Appendix A

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4-88)) and Instructions

OMB Approval No. 0348-0043

APPLICATION FOR FEDERAL ASSISTANCE		2. DATE SUBMITTED	Applicant Identifier
1. TYPE OF SUBMISSION: Application ☐ Construction ☒ Non-Construction		3. DATE RECEIVED BY STATE	State Application Identifier
Preapplication ☐ Construction ☐ Non-Construction		4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier
5. APPLICANT INFORMATION			
Legal Name:		Organizational Unit:	
Address (give city, county, state, and zip code):		Name and telephone number of the person to be contacted on matters involving this application (give area code):	
6. EMPLOYER IDENTIFICATION NUMBER (EIN): [] [] - [] [] [] [] [] []		7. TYPE OF APPLICANT: (enter appropriate letter in box) A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify):	
8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision If Revision, enter appropriate letter(s) in box(es): A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):		9. NAME OF FEDERAL AGENCY: U.S. Department of Education	
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER 8 4 a [] [] [] []		11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:	
12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):			
13. PROPOSED PROJECT: Start Date Ending Date		14. CONGRESSIONAL DISTRICTS OF: a. Applicant b. Project	
15. ESTIMATED FUNDING: a. Federal \$.00 b. Applicant \$.00 c. State \$.00 d. Local \$.00 e. Other \$.00 f. Program Income \$.00 g. TOTAL \$.00		16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS? a. YES. THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON: DATE b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372 ☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW	
		17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT? ☐ Yes If "Yes," attach an explanation. ☐ No	
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED			
a. Typed Name of Authorized Representative		b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed	

Previous Editions Not Usable

Standard Form 424 (REV. 4-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

- | Item: | Entry: | Item: | Entry: |
|-------|--|-------|--|
| 1. | Self-explanatory. | 12. | List only the largest political entities affected (e.g., State, counties, cities). |
| 2. | Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable). | 13. | Self-explanatory. |
| 3. | State use only (if applicable). | 14. | List the applicant's Congressional District and any District(s) affected by the program or project. |
| 4. | If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank. | 15. | Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate <u>only</u> the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15. |
| 5. | Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application. | 16. | Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process. |
| 6. | Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service. | 17. | This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes. |
| 7. | Enter the appropriate letter in the space provided. | 18. | To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.) |
| 8. | Check appropriate box and enter appropriate letter(s) in the space(s) provided:
— "New" means a new assistance award.
— "Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
— "Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation. | | |
| 9. | Name of Federal agency from which assistance is being requested with this application. | | |
| 10. | Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested. | | |
| 11. | Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project. | | |

BUDGET INFORMATION — Non-Construction Programs

OMB Approval No. 0348-0044

SECTION A — BUDGET SUMMARY						
Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.	84.	\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$

SECTION B — BUDGET CATEGORIES					
6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)
	(1)	(2)	(3)	(4)	
a. Personnel	\$	\$	\$	\$	\$
b. Fringe Benefits					
c. Travel					
d. Equipment					
e. Supplies					
f. Contractual					
g. Construction					
h. Other					
i. Total Direct Charges (sum of 6a - 6h)					
j. Indirect Charges					
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$
7. Program Income	\$	\$	\$	\$	\$

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program		(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS
8.		\$	\$	\$	\$
9.					
10.					
11.					
12. TOTALS (sum of lines 8 and 11)		\$	\$	\$	\$

SECTION D - FORECASTED CASH NEEDS					
	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
13. Federal	\$	\$	\$	\$	\$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$

SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT				
(a) Grant Program	FUTURE FUNDING PERIODS (Years)			
	(b) First	(c) Second	(d) Third	(e) Fourth
16.	\$	\$	\$	\$
17.				
18.				
19.				
20. TOTALS (sum of lines 16-19)	\$	\$	\$	\$

SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)	
21. Direct Charges:	22. Indirect Charges:
23. Remarks	

Part II—Budget Information**Instructions for the SF-424A**

General Instructions. This form is designed so that application can be made for funds from any one of the grant programs included in this consolidated application package. For the Bilingual Vocational Instructor Training Program (CFDA No. 84.099) and the Cooperative Demonstration Program (High Technology) (CFDA No. 84.199A), Sections A, B, and C should include budget estimates for the entire project period. For the Vocational Education Indian Program (CFDA No. 84.101) and the Demonstration Centers for the Retraining of Dislocated Workers Program (CFDA No. 84.193), Sections A, B and C should provide the budget for the first year of the project and Section E should present the need for Federal assistance in subsequent years.

Note: Section D need not be completed to apply for these programs.

All applications should contain a breakdown by the object class categories shown in Section B, Lines 6a through 6j.

Section A. Budget Summary. Line 1, Columns (a) through (g)—Enter on Line 1 the catalog program title in Column (a) and the catalog program number in Column (b). Leave Columns (c) and (d) blank. Enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for either the entire project period or the first year of the project, as appropriate.

Section B. Budget Categories. Lines 6a through 6i—Fill in the total requirements for Federal funds by object class categories for either the entire project period or the first year of the project, as appropriate.

Line 6a—Personnel: Show salaries and wages to be paid to personnel employed in the project. Fees and expenses for consultants must be included in Line 6f.

Line 6b—Fringe Benefits: Include contributions for Social Security, employee insurance, pension plans, etc. Leave blank if fringe benefits to personnel are treated as part of the indirect cost rate.

Line 6c—Travel: Indicate the amount requested for travel of employees.

Line 6d—Equipment: Indicate the cost of nonexpendable personal property which has a useful life of more than two years and an acquisition cost of \$300 or more per unit.

Line 6e—Supplies: Include the cost of consumable supplies to be used in this project. These should be items which cost less than \$300 per unit with a useful life of less than two years.

Line 6f—Contractual: Show the amount to be used for: (a) Procurement contracts (except those which belong on other lines such as supplies and equipment listed above); and (b) sub-grants or payments for consultants and secondary recipient organizations such as affiliates, cooperating institutions, delegate agencies, etc.

Line 6g—Construction: Construction expenses may be allowable under the Vocational Education Indian Program (CFDA No. 84.101).

Line 6h—Other: Indicate all direct costs not clearly covered by lines 6a through 6g. If there are trainee costs or stipends, enter the total cost of these expenses. The maximum allowance for stipends is \$3.35 per contact hour.

Line 6i—Total Direct Charges: Show total of Lines 6a through 6h.

Line 6j—Show the amount of indirect cost to be charged to the project.

Note: Except for grants to Federally recognized Indian tribes, the indirect cost rate for training projects cannot exceed eight percent of total direct charges.

Line 6k—Enter the total of the amounts on Lines 6i and 6j.

Section C. Non-Federal Resources.

Line 8—Enter any amounts of non-Federal resources that will be used on the grant. If any in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a)—Enter the catalog program title.

Column (b)—Enter the contribution to be made by the applicant.

Column (c)—Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency.

Applicants which are a State or State agencies should leave this column blank.

Column (d)—Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e)—Enter the totals of Columns (b), (c), and (d).

Note: Grant recipients under the Cooperative Demonstration Program (High Technology) are required to provide not less than 25 percent of the total cost of the demonstration project conducted under this program. In other words, the amount shown on Line 8, Column (e), must be at least 25 percent of the amount shown in Section A, Line 1, Column (g).

Section E—Budget Estimates of Federal Funds Needed for Balance of the Project

Note: This section applies only to the Vocational Education Indian Program and the Demonstration Centers for the Retraining of Dislocated Workers Program.

Line 16—Enter in Column (a) the catalog program title. In Columns (b) and (c), as appropriate, enter the amounts of Federal funds which will be needed to complete the project over the succeeding funding period(s) (usually in years).

Section F. Other Budget Information. Prepare a detailed Budget Narrative that explains, justifies, and/or clarifies the budget figures shown in Sections A, B, C, and E.

Part III—Application Narrative**Instructions for Part III—Application Narrative**

All applicants are urged to submit Application Narratives which are concise and clearly written. Before preparing the Application Narrative, applicants should read and become familiar with the law and the regulations covering the program to which they are applying.

Applicants should use the selection criteria for a program as an outline for preparing their Application Narratives, addressing the selection criteria *in the order the criteria are listed*. Applicants are encouraged to provide a table of contents and to number the pages of the Application Narrative. The Application Narrative should not exceed 25 double-spaced typed pages (on one side only). Supporting documentation (e.g., letters of support, footnotes, résumés, etc.) may be submitted as appendices to the Application Narrative.

Estimated Public Reporting Burden. Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in these collections of information. Public reporting burden for these collections of information is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of these collections of information, including suggestions for reducing this burden, to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202-4651; and to the Paperwork Reduction Project, OMB [applicant must insert OMB control number; see list below], Office of Management and Budget, Washington, DC 20503.

CFDA no.	OMB control number	Expiration date
84.099.....	1830-0013	03/91
84.101.....	1830-0013	03/91
84.193.....	1830-0013	03/91
84.199A.....	1830-0508	02/90

Part IV—Additional Assurances

In addition to the Assurance for Non-construction Programs (Standard Form 424B) contained elsewhere in this Appendix, for the Cooperative Demonstration Program (High Technology) (CFDA No. 84.199A) only, each applicant is required to submit, as part of its application, the following assurances:

1. A written assurance that the applicant will cooperate, if selected, with a planned national evaluation study of projects funded under this competition.
2. Written assurances from each public agency in vocational education and each private sector entity that they will participate in the planning and operation of the proposed project as described in the application.

BILLING CODE 4000-01-M

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a-276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

Certification Regarding Debarment, Suspension, and Other Responsibility Matters Primary Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:
 - (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
 - (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.
- (2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

BEST COPY AVAILABLE

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion Lower Tier Covered Transactions

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 Federal Register, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing a drug-free awareness program to inform employees about—
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- (e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;
- (f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—
 - (1) Taking appropriate personnel action against such an employee, up to and including termination; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

ED 80-0004

BILLING CODE 4000-01-C

Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions. In general these questions and answers are applicable to all direct grant competitions covered by this combined application package.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the *Federal Register* and apply to all applications. Waivers for individual applications cannot be granted, regardless of the circumstances.

Q. How many copies of the application should I submit and must they be bound?

A. Current Government-wide policy is that only an original and two copies need be submitted. However, an original and four copies will be greatly appreciated. The binding of applications is optional. At least one copy should be left unbound to facilitate any necessary reproduction. Applicants should not use foldouts, photographs, audio-visuals, or other materials that are hard-to-duplicate.

Q. We just missed the deadline for the XXX competition. May we submit under another competition?

A. Yes, however, the likelihood of success is not good. A properly prepared application must meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various competitions.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priorities. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 3 to 4 months of the

application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Once my application has been reviewed by the review panel, can you tell me the outcome?

A. No. Every year we are called by a number of applicants who have legitimate reasons for needing to know the outcome of the review prior to official notification. Some applicants need to make job decisions, some need to notify a local school district, etc. Regardless of the reason, because final funding decisions have not been made at that point, we cannot share information about the review with anyone.

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. The scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. We recommend that you address all of the selection criteria in a "Technical Narrative" of no more than twenty-five pages in length. Supporting documentation may be included in appendices to the Technical Narrative. Some examples:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information about his or her qualifications that are relevant to the proposed project. Qualifications of consultants and advisory council members should be provided and be similarly brief.

(2) Assurance of participation of an agency other than the applicant if such participation is critical to the project.

(3) Copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

Q. How can I be sure that my application is assigned to the correct competition?

A. Applicants should clearly indicate in Block 10 of the face page of their application (Standard form 424) the CFDA number—and letter, if any—and the title of the program representing the competition in which the application should be considered. If this information is not provided, your application may inadvertently be assigned and reviewed under a different competition from the one you intended.

Q. Will my application be returned if I am not funded?

A. We no longer return original copies of unsuccessful applications. Thus, applicants should retain at least one copy of the application.

Q. Can I obtain copies of reviewers' comments?

A. Upon written request, reviewers' comments will be mailed to unsuccessful applicants.

Q. How should my application be organized?

A. The application narrative should be organized to follow the exact sequence of the components in the selection criteria pertaining to the specific program competition for which the application is prepared. In each instance, a table of contents and a one-page abstract summarizing the objectives, activities, project participants, and expected outcomes of the proposed project generally enhances the review of the application.

Q. Is travel allowed under these projects?

A. Travel associated with carrying out the project is allowed (i.e. travel for data collection, etc.). Because we may request the principal investigator or director of funded projects to attend an annual staff development meeting, you may also wish to include a trip to Washington, DC in the travel budget. Travel to conferences is sometimes allowed when it is for purposes of dissemination.

Q. If my application receives high scores from the reviewers, does that mean that I will receive funding?

A. Not necessarily. It is often the case that the number of applications scored highly by the reviewers exceeds the dollars available for funding projects under a particular competition. The order of selection, which is based on the scores of all the applications and other relevant factors, determines the applications that can be funded.

Q. What happens during negotiations?

A. During negotiations technical and budget issues may be raised. These are issues that have been identified during panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you

feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. If my application is successful can I assume I will get the estimated/projected budget amounts in subsequent years?

A. No. The estimate for subsequent year project costs is helpful to us for planning purposes but it in no way represents a commitment for a particular level of funding in subsequent years. Grantees having a multi-year project will be asked to submit a continuation application and a detailed budget request prior to each new budget year of the project.

Q. What is a cooperative agreement and how does it differ from a grant?

A. A cooperative agreement is similar to a grant in that its principal purpose is to provide assistance for public support as authorized by a Federal statute. A cooperative agreement differs from a grant because of the substantial involvement anticipated between the Department of Education and the recipient during the performance of the contemplated activity.

Q. Is the procedure for applying for a cooperative agreement different from the procedure for applying for a grant?

A. No. If the Department of Education determines that a given award should be

made by a cooperative agreement rather than a grant, the applicant will be advised at the time of negotiation of any special procedures that must be followed.

Q. How do I provide an assurance?

A. Except for SF-424B, "Assurances—Non-Construction Programs," simply state in writing that you are meeting a prescribed requirement.

Q. Where can copies of the *Federal Register*, program regulations, and Federal statutes be obtained?

A. Copies of these materials can usually be found at your local library. If not, they can be obtained from the Government Printing Office by writing to: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783-3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The material referenced in this notice should be referred to as follows:

- (1) Carl D. Perkins Vocational Education Act, Public Law 98-524.
- (2) Education Department General Administrative Regulations, 34 CFR Parts 74, 75, 77, 79, 80, 81, or 85.
- (3) Office of Vocational and Adult Education, Department of Education, Part 408 (Bilingual Vocational Instructor Training Program), Part 410 (Indian and Hawaiian Natives Program), Part 411 (Demonstration Centers for the Retraining of Dislocated Workers), or Part 412 (Cooperative Demonstration Program).

Q. What is the significance of the Notice of Final Priority, Required

Activities, and Selection Criteria for the Cooperative Demonstration Program (High Technology)?

A. The regulations at 34 CFR 75.103(c)(3) specify that the establishment of an absolute priority for a program means that only applications that meet the absolute priority will be considered for funding. For the Cooperative Demonstration Program (High Technology) the absolute priority consists of three parts—training for high technology occupations, cooperation between the private sector and public agencies in vocational education, and a prohibition on the use of Federal funds to cover the costs of equipment used for project activities. In order to be considered for funding under this program, an application must meet all three parts of the absolute priority. Additionally, applicants are required to submit at least three written assurances—one regarding a planned national evaluation study of funded projects and others from each public agency in vocational education and each private sector entity participating in the planning and operation of the proposed project—as part of their applications. Any application that does not meet all three parts of the absolute priority and contain the written assurances described above will be designated "ineligible" and will be returned to the applicant.

[FR Doc. 89-13147 Filed 6-7-89; 8:45 am]

BILLING CODE 4000-01-M

es s s r e o r e a l r e g i s t e r f e d e r a l

Thursday
June 8, 1989

Part III

Department of Education

Office of Vocational and Adult Education

Cooperative Demonstration Program;
Notice of Final Priority, Required
Activities, and Selection Criteria for
Grants To Be Made in Fiscal Year 1990

DEPARTMENT OF EDUCATION

Cooperative Demonstration Program

AGENCY: Department of Education.

ACTION: Notice of final priority, required activities, and selection criteria for grants to be made in fiscal year 1990.

SUMMARY: The Secretary of Education establishes an absolute priority for a grant competition (for awards to be made in early fiscal year 1990 using fiscal year 1989 funds) under the Cooperative Demonstration Program. Under the priority, funds will be reserved for applications proposing to conduct high technology training projects in vocational education that involve cooperation between the private sector and public agencies in vocational education. The Secretary will also require applicants to submit certain written assurances, as described under the Activities section of this priority, as part of their applications for this program and to prohibit the use of Federal funds to cover the costs of equipment used for project activities. Lastly, the Secretary will use new selection criteria in evaluating applications submitted for this competition only.

EFFECTIVE DATE: The provisions in this notice take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date, call or write the Department of Education contact persons. A document announcing the effective date will be published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Robert L. Miller or Richard F. DiCola, Program Improvement Branch, Division of National Programs, Office of Vocational and Adult Education (Room 4512, Switzer Building), 400 Maryland Avenue, SW., Washington, DC 20202-7242. Telephone (202) 732-2428 or 732-2362.

SUPPLEMENTARY INFORMATION:

Program Information

Recent data compiled by the Bureau of Labor Statistics indicate faster than average growth in the demand for skilled technicians in high technology fields through the year 2000. The data also indicate that these emerging technologies will demand the efficiency and flexibility of a well-trained work force.

High technology training can be conducted most effectively with the active involvement and cooperation of the private sector. Effective partnerships between the private sector and public

agencies in vocational education are an important aspect of the Cooperative Demonstration Program which is designed, in part, to demonstrate ways in which public agencies in vocational education and the private sector can work together to assist students to attain the advanced level of skills needed to make the transition from school to work.

On February 14, 1989, the Secretary published a notice of proposed priority, required activities, and selection criteria for the Cooperative Demonstration Program (High Technology) in the *Federal Register* (54 FR 6846).

There are no changes between the proposed notice and this final notice.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priority, required activities, and selection criteria, eight parties submitted comments on the proposed notice. An analysis of the comments follows:

Cost-Sharing Requirement

Comments: One commenter stated that under some Federal legislation schools are prohibited from using industry contributions in the form of equipment, curriculum material, and staff time as a match for Federal dollars. The commenter urged the Department to allow industry contributions to be used as a match.

Discussion: Although some Federal statutes contain the prohibition described by the commenter, the Carl D. Perkins Vocational Education Act does not impose such a prohibition on the Cooperative Demonstration Program. Further, the regulations for the Cooperative Demonstration Program (34 CFR 412.40) permit the use of cash or in-kind contributions (including third party in-kind contributions), i.e., the fair market value of facilities, overhead, personnel, and equipment. While the notice of proposed priority, required activities, and selection criteria proposed prohibiting the use of Federal funds to cover the cost of equipment used for project activities, the notice specifically proposed allowing any necessary equipment costs (including those contributed by industry) to be counted toward the cost-sharing requirement for this program.

Changes: None.

Prohibition on Using Federal Funds for Equipment

Comments: Four commenters argued against the proposal to prohibit the use of Federal funds to cover the costs of equipment used for project activities. Three of the commenters noted that

such a prohibition seemed inconsistent with the priority for training persons for high technology occupations. Two of the commenters suggested that the proposal might discourage smaller institutions or those that have not already made investments in high technology equipment from submitting applications to the program. Two of the commenters proposed alternatives to the total ban on using Federal funds for equipment within the following limitations:

- (1) That Federal funds for equipment be limited to a percentage of total project costs; and
- (2) That proposed Federal funds for equipment be matched at least fifty-fifty with in-kind contributions of equipment by the training institution or the private sector.

Discussion: The Secretary does not believe that prohibiting the use of Federal funds to purchase (or lease) equipment is inconsistent with the priority to conduct high technology training projects.

Since the primary purpose of this competition is to focus on training, the most efficient and effective use of these funds is to promote training that will help students enter the job market. If Federal funds were to be used to purchase (or lease) equipment, the intended purpose of the competition would be diminished. This priority notice will help ensure that the funds available are used where they are most needed—to train students.

It is not the intent of the priority notice to exclude smaller institutions or those that have not already made investments in high technology equipment from submitting applications. Nor is it the intent of the priority notice to help institutions develop their own capabilities to work in an area of high technology. The intended purpose, rather, is to demonstrate the training of students to become skilled workers or technicians in high technology occupations.

One of the responsibilities of a partnership under this priority notice is to address the needs of new and changing technologies in the work place by sharing resources and searching for ways to improve training to meet their needs. Purchasing (or leasing), maintaining, and upgrading of high technology equipment is an ongoing commitment and responsibility that is best met by the local partnership rather than the Federal Government.

The Secretary feels the use of Federal funds for equipment purchases (or leases) based on a percent of the total project cost and on in-kind matching contributions as suggested by two

commenters is not a feasible alternative. Cooperative Demonstration projects must be capable of wide replication. If Federal funds are used to purchase (or lease) equipment, the possibilities for replication become somewhat limited. The Secretary believes it is therefore necessary to prohibit the use of Federal funds for equipment purchase (or lease) if project replication is to be more widely possible and if there is to be improved accountability for the use of Federal funds for the direct training of students.

Changes: None.

Scope of "High Technology Occupations"

Comments: Two commenters suggested that the intended areas of high technology be expanded to include: (1) Crafts (specifically those in the construction field that are traditional in nature but changing due to technological advances), and (2) emerging high technology areas such as health care, retailing, and the food service industry.

Discussion: The term "high technology," as defined in 34 CFR 400.4(b) of the regulations, means "state-of-the-art computer, microelectronic, hydraulic, pneumatic, laser, nuclear, chemical, telecommunication, and other technologies being used to enhance productivity in manufacturing, communication, transportation, agriculture, mining, energy, commercial, and similar economic activity, and to improve the provision of health care."

The Secretary believes that this definition is broad enough to include most of the areas specified by the commenters.

Changes: None.

High Technology Priority will Discourage Small, Rural Educational Institutions from Applying

Comments: One commenter asserted that high technology businesses are concentrated in large population areas of the country and that this would exclude small, rural educational institutions from the opportunity to submit applications under this competition.

Discussion: The Secretary agrees that high technology businesses tend to be concentrated in urban areas, but does not agree that this would exclude rural educational institutions from applying for program funds. Of the thirty-six grants awarded under last year's competition under this program, at least four are conducting high technology projects in rural areas. Two of these grantees are small community colleges.

Changes: None.

Designating the Military and Publicly Funded Institutions as "Private Sector" is Inappropriate

Comments: One commenter was

concerned that designating the military and publicly funded institutions as "private sector" would work to the disadvantage of applicants who are not located near those installations. The commenter wants consideration given to projects that could demonstrate effective use of small to mid-size employment sites.

Discussion: The priority calling for cooperation between the private sector and public agencies in vocational education is intended to be viewed not so much as a partnership between private and public sector entities as it is a partnership between employers and educational agencies, institutions and organizations. Although the military and other publicly funded institutions would not ordinarily be considered "private sector" entities, they are major employers and, in some areas, particularly where high technology training is concerned, are the only employers with whom a public sector entity could form a suitable partnership for the purposes of this competition.

While the designation of the military and publicly funded institutions as "private sector" makes the priority more inclusive than exclusive, it in no way provides an advantage to applicants involved in partnerships with large employers. Rather, the designation only makes provision for treating the military and publicly funded institutions as partners in a proposed project. The Secretary is interested in funding a variety of approaches, and therefore encourages applications involving partnerships with large, mid-size, and small employers.

Changes: None.

Selection Criteria

Comment: One commenter was concerned that no apparent special consideration is given to areas that have a critical economic development need or to populations to be served or retrained.

Discussion: The Secretary feels that the components of the evaluation criterion "Need" adequately address these concerns. Item (a), (2), (iii) addresses the area of critical economic need as it relates to activities regarding local, regional or State economic development. Item (a), (2), (iv) addresses the vocational training, services/re-training to be provided to individuals to meet occupational needs. Since specific populations are not part of the priority, it is not necessary for them to be identified in the evaluation criteria.

Changes: None.

Emphasize Certain Industries

Comments: One commenter suggested that the high technology priority should give special emphasis to industries that are significantly affected by foreign competition.

Discussion: Although the Secretary recognizes that some industries that are significantly affected by foreign competition are experiencing difficulties, he feels that there are other major problem areas of equal concern. Because of the varied problems affecting the workplace, the Secretary believes that this priority should remain broad enough to address as many problems as possible, including the problems of industries affected by foreign competition.

Changes: None.

Priority

In accordance with the Education Department General Administrative Regulations (EDGAR) at 34 CFR 75.105(c)(3), the Secretary establishes an absolute priority for the fiscal year 1990 grant competition under the Cooperative Demonstration Program for projects that focus on high technology training efforts that are also models of cooperation between the private sector and public agencies in vocational education. In order to maximize the use of Federal funds for the direct training of students and to enhance project replicability, the Secretary prohibits the use of Federal funds to purchase or lease equipment to conduct project activities. Any necessary equipment costs may be counted toward the cost-sharing requirement for this program.

Specifically, the Secretary supports projects that—

(1) Train persons to become skilled workers or technicians in high technology occupations (including providing related instruction to individuals undergoing apprenticeship training) or to become skilled workers or technicians involved in the production, installation, operation, and maintenance of high technology equipment, systems, and processes;

(2) Are examples of successful cooperation between the private sector (including employers, consortia of employers, labor organizations, building trade councils, and other private agencies, organizations, and institutions) and public agencies in vocational education (including State and local educational agencies, public postsecondary educational institutions, public institutions of higher education, and other public agencies, organizations, and institutions). For the purpose of this competition the military and publicly funded laboratories are considered employers that could be used as private sector partners in a proposed project; and

(3) Expend no Federal funds for equipment, as defined in 34 CFR 74.132.

Activities

In support of this priority, an applicant is required to submit, as part

of its application, a written assurance that it will cooperate, if selected, with a planned national evaluation study of projects funded under this competition.

An applicant is also required to submit, as part of its application, written assurances from each public agency in vocational education and each private sector entity that they will participate in the planning and operation of the proposed project as described in the application.

Criteria for Evaluation of Applications

For the Fiscal Year 1990 grant competition under the Cooperative Demonstration Program, the Secretary will use the following selection criteria and assign points to the selection criteria as indicated:

(a) *Need.* (15 points) (1) The Secretary reviews each application for information that shows the need for and the soundness of the rationale for the project.

(2) The Secretary looks for information that shows—

(i) A clear description of the need for the proposed project;

(ii) Specific evidence of the need for the project;

(iii) A description of any ongoing and planned activities in the community relative to the need, including, if appropriate, the relationship of any local, regional or State economic development plan;

(iv) Evidence that demonstrates the vocational training to be provided is designed to meet current and projected occupational needs;

(v) A clear statement of what the project seeks to demonstrate; and

(vi) Evidence that the project is likely to serve as a model in the future.

(b) *Plan of Operation.* (25 points) (1) The Secretary reviews each application for information that shows the quality of the plan of operation for the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the project;

(ii) An effective plan of management that ensures proper and efficient administration of the project;

(iii) A clear description of how the objectives of the project relate to the purpose of the program;

(iv) The way the applicant plans to use its resources and personnel to achieve each objective; and

(v) A clear description of how the applicant will provide equal access and treatment for eligible project participants who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(c) *Quality of Key Personnel.* (10 points) (1) The Secretary reviews each application for information that shows the qualifications of the key personnel the applicant plans to use on the project.

(2) The Secretary looks for information that shows—

(i) The qualifications of the project director (if one is to be used);

(ii) The qualifications of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraphs (c)(2)(i) and (ii) will commit to the project; and

(iv) The extent to which the applicant, as part of its nondiscriminatory employment practices, encourages applications for employment from persons who are members of groups that have been traditionally underrepresented, such as—

(A) Members of racial or ethnic minority groups;

(B) Women;

(C) Handicapped persons; and

(D) The elderly.

(3) To determine personnel qualifications, the Secretary considers experience and training in fields related to the objectives of the project, as well as other information that the applicant provides.

(d) *Budget and Cost Effectiveness.* (10 points) (1) The Secretary reviews each application for information that shows the project has an adequate budget and is cost effective.

(2) The Secretary looks for information that shows—

(i) The budget for the project is adequate to support the project activities; and

(ii) Costs are reasonable in relation to the objectives of the project.

(e) *Evaluation Plan.* (10 points) The Secretary reviews each application to determine the quality of the project's evaluation plan for the project, including the extent to which—

(1) The plan includes activities during the formative stages of the project to help to guide and improve the project, as well as a final evaluation that includes summary data and recommendations; and

(2) The plan includes, at a minimum, a description of the participant data to be collected based on the project objectives; tracking and follow-up of progress by all project participants throughout the project period; and outcomes measures to be used for each objective.

(f) *Adequacy of Resources.* (5 points)

(1) The Secretary reviews each application for information that shows

that the applicant plans to devote adequate resources to the project.

(2) The Secretary looks for information that shows—

(i) The facilities that the applicant plans to use are adequate; and

(ii) The equipment and supplies the applicant plans to use are adequate.

(g) *Private Sector Involvement.* (10 points) (1) The Secretary reviews each application for information that shows the involvement of the private sector.

(2) The Secretary looks for information that shows—

(i) Private sector involvement in the planning of the project; and

(ii) Private sector involvement in the operation of the project.

(h) *Employment Opportunities.* (5 points) The Secretary looks for information and documentation of the extent to which trainees, upon completion of their training, will be either employed in jobs related to their training or enrolled in postsecondary vocational education programs related to the training received during the project. Acceptable documentation includes letters of commitment from employers to hire training completers or descriptions of postsecondary vocational education programs that would be appropriate for subsequent training.

(i) *Dissemination.* (10 points) (1) The Secretary reviews each application for information that shows that the applicant has an effective and efficient plan for disseminating information about the demonstration project, including the results of the project and any specialized materials developed by the project.

(2) The Secretary looks for information that shows—

(i) High quality in the design of the dissemination plan and procedures for evaluating the effectiveness of the dissemination plan;

(ii) A description of the types of materials the applicant plans to make available and the methods for making the materials available;

(iii) Provisions for demonstrating the methods and techniques used by the project;

(iv) Provisions for assisting others to adopt and successfully implement the project or methods and techniques used by the project; and

(v) Provisions for publicizing the findings of the project at the local, State or national level.

(Authority: 20 U.S.C. 2411)

Dated: May 17, 1989.

Lauro F. Cavazos,
Secretary of Education.

[FR Doc. 89-13148 Filed 6-7-89; 8:45 am]
BILLING CODE 4000-01-M

Thursday
June 8, 1989

Part IV

Department of Education

34 CFR Parts 785, 786, and 787

National Diffusion Network Program; Final
Regulations and Notices Inviting
Applications

Federal Register

DEPARTMENT OF EDUCATION

34 CFR Parts 785, 786, and 787

RIN 1850-AA19

National Diffusion Network

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: The Secretary amends the regulations for the National Diffusion Network. These amendments implement this program as reauthorized in the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Amendments).

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person. A document announcing the effective date will be published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Dr. Lee E. Wickline, U.S. Department of Education, Programs for the Improvement of Practice, 555 New Jersey Avenue, NW., Room 510, Washington, DC 20208-5645. Telephone: (202) 357-6134.

SUPPLEMENTARY INFORMATION: The National Diffusion Network (NDN) supports efforts to recognize and further excellence in education, including the nationwide dissemination of exemplary education programs. These are programs that have been developed at the local level by classroom teachers and other practitioners with funds provided by a variety of sources including school districts, private businesses and foundations, colleges and universities, State educational agencies and other Federal programs. After field testing and evaluation, again at the local level, these programs have been validated by several different procedures established by the Department. Once programs have been validated, they are considered part of the NDN. The developers of validated programs may compete for funding by the NDN to operate as Developer Demonstrator projects to disseminate specific exemplary education programs nationwide, or as Dissemination Process projects for nationwide dissemination of information, instructional materials and services about content areas, bodies of research or fields of professional development.

On October 6, 1988 the Secretary published a notice of proposed

rulemaking (NPRM) for the NDN in the *Federal Register* at 53 FR 39406.

A discussion of major issues was included in the NPRM on page 39406. The Secretary has made several changes to certain of the selection criteria for Developer Demonstrator and Dissemination Process projects in the final regulations. The points assigned to the criteria "Innovative approach of exemplary education program" in §§ 786.21 and 787.21 have been reduced. In addition, the wording in these criteria and in the criteria "Accuracy of exemplary education program, in §§ 786.22 and 787.22 has been changed to provide that the Secretary will review, in addition to a representative sample of an exemplary education program's instructional, classroom or curriculum materials, a description of the exemplary education program including a description of the training that would be provided to install the program in new settings. Corresponding changes have been made to §§ 786.10 and 787.10, "What information and materials must an applicant submit to apply for an award?", §§ 786.20 and 787.20, "How does the Secretary evaluate an application?", and the criteria in §§ 786.23 and 787.23, "Plan of operation". A discussion of these changes appears in the Analysis of Comments and Changes section of this preamble.

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, forty-three parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Substantive issues are discussed under the section of the regulations to which they pertain.

Selection criterion—innovative approach of exemplary education program (§§ 786.21 and 787.21) and Selection criterion—accuracy of exemplary education program (§§ 786.22 and 787.22).

Definitions of Terms in Selection Criteria

Comments: Some commenters suggested that several terms in the selection criteria be defined. Sections 786.21 and 787.21 provide that the Secretary determines the extent to which an exemplary education program's approach is "innovative." Sections 786.22 and 787.22 provide that the Secretary determines the extent to which an exemplary education program is "accurate" and "up-to-date."

Discussion: The extent to which a program is accurate and up-to-date and represents an innovative approach can be determined only within the context of the subject or content area, or the specific area of staff development addressed by the program. The Secretary believes that definitions of those terms would have to be so broad and vague as to be useless. However, in preparing a grant application, an applicant has an opportunity to establish a context, and provide information to assist reviewers in determining the extent to which a program uses an innovative approach and is accurate and up-to-date.

Changes: None.

Review of Program Materials

Comments: Many commenters suggested that for both Developer Demonstrator and Dissemination Process projects, the Secretary should not review the instructional, classroom and curriculum materials used by an exemplary education program without also reviewing other components of the program such as a description of training provided to program participants.

Discussion: The Secretary recognizes that materials are only one component of an exemplary education program and that it would be appropriate to review other components of a program in determining whether the program is innovative and accurate.

Changes: Sections 786.21 and 786.22, and 787.21 and 787.22 have been changed to provide that in addition to reviewing the instructional, classroom and curriculum materials, the Secretary reviews a description of the program, including a description of the training provided. Corresponding changes have been made to §§ 786.10 and 787.10, "What information and materials must an applicant submit to apply for an award?" and §§ 786.20 and 787.20, "How does the Secretary evaluate an application?" The description of training formerly required under §§ 786.21 and 787.21 "Plan of operation," (now redesignated §§ 786.23 and 787.23) has been deleted from those sections.

Allocation of Points for Selection Criteria

Comments: Several commenters suggested that undue weight was given to the new selection criteria, *Innovative approach of exemplary education program* (§§ 786.21 and 787.21), and *Accuracy of exemplary education program* (§§ 786.22 and 787.22), because the two criteria combined would equal almost one third of the total available points for a grant application. They

suggested that this would place too great an emphasis on these criteria as compared to other aspects of a grant application and that the points allocated to these sections should be reduced.

Discussion: The Secretary believes that the selection criteria mandated in the Amendments should be of prime importance in reviewing grant applications.

Changes: None.

Executive Order 12291

These regulations have been reviewed in accordance with Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Education Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 785, 786 and 787

Dissemination, Education, Educational research, Grant programs—education, Reporting and recordkeeping requirements.

Dated: April 21, 1989.

Lauro F. Cavazos,
Secretary of Education.
(Catalog of Federal Domestic Assistance number: 84.073—National Diffusion Network)

The Secretary amends Parts 785, 786, and 787 of Title 34 of the Code of Federal Regulations as follows:

PART 785—NATIONAL DIFFUSION NETWORK: GENERAL PROVISIONS

1. The authority citation for Part 785 is revised to read as follows:

Authority: 20 U.S.C. 2962, unless otherwise noted.

2. Section 785.5(b) is amended by removing the definitions of "Dissemination Review Approval" and "Program Significance Panel", adding, in alphabetical order, a definition of "Joint Dissemination Review Panel", and revising the definitions of "Exemplary education program" and "Program Effectiveness Panel" to read as follows:

§ 785.5 What definitions apply?

(b) * * *
"Exemplary education program" means a program, product, practice, or Dissemination Process that has Program Effectiveness Panel approval.
"Joint Dissemination Review Panel" or "JDRP" means the Panel that was convened by the Secretary to approve exemplary education programs and that was the predecessor to the Program Effectiveness Panel.

"Program Effectiveness Panel" or "PEP" means a panel of experts in the evaluation of education programs and in other areas of education, at least two-thirds of whom are not Federal employees, who are appointed by the Secretary, and who review and assign scores to programs according to the criteria in §§ 786.12 or 787.12.

PART 786—NATIONAL DIFFUSION NETWORK: DEVELOPER DEMONSTRATOR PROJECTS

3. The authority citation for Part 786 is revised to read as follows:

Authority: 20 U.S.C. 2962, unless otherwise noted.

4. The table of contents for Part 786 is amended by revising Subparts B, C, and D to read as follows:

Subpart B—How Does One Apply for an Award?

786.10 What information and materials must an applicant submit to apply for an award?
786.11 What must an applicant submit for review by the PEP?
786.12 How does the PEP review a program, product, or practice?
786.13 How is PEP approval granted?
786.14 How long does PEP approval last?
786.15 How long does JDRP approval last?
786.16 What activities must an applicant propose to carry out if it receives an award?

Subpart C—How Does the Secretary Make an Award?

786.20 How does the Secretary evaluate an application?
786.21 Selection criterion—innovative approach of exemplary education program. (15 points)
786.22 Selection criterion—accuracy of exemplary education program. (15 points)
786.23 Selection criterion—plan of operation. (25 points)
786.24 Selection criterion—quality of key personnel. (20 points)
786.25 Selection criterion—budget and cost-effectiveness. (5 points)
786.26 Selection criterion—evaluation plan. (10 points)
786.27 Selection criterion—adequacy of resources. (5 points)
786.28 Selection criterion—monitoring plan. (5 points)
786.29 What additional criteria exist for new awards?
786.30 What additional criteria exist for continuation awards?

Subpart D—What Conditions Must Be Met by the Recipient of an Award?

786.31 What disclaimers are required on printed materials?
786.32 What are a recipient's responsibilities for serving students enrolled in nonprofit private schools?

5. Section 786.2 is amended by revising paragraphs (a)(1) and (b) and the authority citation to read as follows:

§ 786.2 Who is eligible for an award?

(a) * * *
(1) Any public or nonprofit private agency, organization, or institution that has developed a program, product, or practice that has Program Effectiveness Panel approval or JDRP approval and that is in use in a site that can be visited may apply for a new Developer Demonstrator award.

(b) Any Developer Demonstrator grantee, otherwise eligible to apply for a continuation award, may apply for the continuation award even if either the PEP approval period or the JDRP approval period has expired.

(Authority: 20 U.S.C. 2962)

6. Section 786.3 is amended by revising paragraph (b)(3) to read as follows:

§ 786.3 What priorities may the Secretary establish?

(b) * * *
(3) History, geography, and civics.

7. Section 786.10 is revised to read as follows:

§ 786.10 What information and materials must an applicant submit to apply for an award?

To apply for an award, an applicant shall submit a description of the exemplary education program, including—

- (a) A description of training required to install the exemplary education program in new settings; and
- (b) A representative sample of the instructional, classroom, or curriculum materials of the exemplary education program that would be disseminated by the project.

(Authority: 20 U.S.C. 2962)

§ 786.12 [Removed]**§ 786.11 [Redesignated as § 786.12]**

8. Section 786.12 is removed and § 786.11 is redesignated as § 786.12, and the section heading is amended by revising "Program Effectiveness Panel" to read "PEP".

9. A new § 786.11 is added to read as follows:

§ 786.11 What must an applicant submit for review by the PEP?

For PEP review of a program, product, or practice, an applicant shall submit to the Secretary qualitative or quantitative evidence of the effectiveness of the program, product, or practice.

(Authority: 20 U.S.C. 2962)

10. Section 786.13 is revised to read as follows:

§ 786.13 How is PEP approval granted?

PEP approval is granted if the PEP has given the program, product, or practice a score of at least 40 points for the criterion in § 786.12(d)(2) (*Results*) and a total score of at least 70 points.

(Authority: 20 U.S.C. 2962)

11. Section 786.14 is revised to read as follows:

§ 786.14 How long does PEP approval last?

PEP approval remains in effect for six years after the date of approval.

(Authority: 20 U.S.C. 2962)

§ 786.16 [Redesignated from § 786.15]

12. Section 786.15 is redesignated as § 786.16 and a new § 786.15 is added to read as follows:

§ 786.15 How long does JDRP approval last?

JDRP approval remains in effect for six years after the date of approval.

(Authority: 20 U.S.C. 2962)

13. Section 786.20 is revised to read as follows:

§ 786.20 How does the Secretary evaluate an application?

The Secretary evaluates an application, including the information and materials submitted under § 786.10 according to the criteria in §§ 786.21 through 786.29.

(Authority: 20 U.S.C.)

§ 786.27 [Removed]**§§ 786.21 through 786.26 and §§ 786.28 through 786.31 [Redesignated as §§ 786.23 through 786.32]**

14. Section 786.27 is removed, §§ 786.21, 786.22, 786.23, 786.24, 786.25, 786.26, 786.28, 786.29, 786.30 and 786.31 are redesignated as §§ 786.23, 786.24, 786.25, 786.26, 786.27, 786.28, 786.29, 786.30, 786.31 and 786.32 respectively.

15. New §§ 786.21 and 786.22 are added to read as follows:

§ 786.21 Selection criterion—innovative approach of exemplary education program. (15 points)

The Secretary reviews an application, including the information and materials submitted under § 786.10 to determine the extent to which the program's approach is innovative.

(Authority: 20 U.S.C. 2962)

§ 786.22 Selection criterion—accuracy of exemplary education program. (15 points)

The Secretary reviews an application, including the information and materials submitted under § 786.10 to determine the extent to which the program is accurate and up-to-date.

(Authority: 20 U.S.C. 2962)

16. Redesignated § 786.23 is amended by removing paragraph (b), redesignating paragraphs (c), (d), and (e) as paragraphs (b), (c), and (d) respectively, and by adding a new paragraph (e) to read as follows:

§ 786.23 Selection criterion—plan of operation. (25 points)

(e) The extent to which the applicant proposes dissemination strategies designed to meet specific characteristics of its program; and

§ 786.24 [Amended]

17. Redesignated § 786.24 is amended by removing "25" from the section heading, and replacing it with "20".

§ 786.25 [Amended]**§ 786.26 [Amended]**

18. Redesignated § 786.26 is amended by removing "20" from the section heading, and replacing it with "10".

§ 786.27 [Amended]**§ 786.28 [Amended]**

19. Redesignated § 786.28 is amended by removing "15" from the section heading, and replacing it with "5".

20. Redesignated § 786.29 is revised to read as follows:

§ 786.29 What additional criteria exist for new awards?

In determining the order of selection under 34 CFR 75.217(d) for new Developer Demonstrator awards, the Secretary seeks diversity of projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 2962)

PART 787—NATIONAL DIFFUSION NETWORK: DISSEMINATION PROCESS PROJECTS

21. The authority citation for Part 787 is revised to read as follows:

Authority: 20 U.S.C. 2962, unless otherwise noted.

22. The table of contents for Part 787 is amended by revising Subparts B, C and D to read as follows:

Subpart B—How Does One Apply for an Award?

787.10 What information and materials must an applicant submit to apply for an award?

787.11 What must an applicant submit for review by the PEP?

787.12 How does the PEP review a Dissemination Process?

787.13 How is PEP approval granted?

787.14 How long does PEP approval last?

787.15 How long does JDRP approval last?

787.16 What activities must an applicant propose to carry out if it receives an award?

Subpart C—How does the Secretary Make an Award?

787.20 How does the Secretary evaluate an application?

787.21 Selection criterion—innovative approach of exemplary education program. (15 points)

787.22 Selection criterion—accuracy of exemplary education program. (15 points)

787.23 Selection criterion—plan of operation. (25 points)

787.24 Selection criterion—quality of key personnel. (20 points)

787.25 Selection criterion—budget and cost-effectiveness. (5 points)

787.26 Selection criterion—evaluation plan. (10 points)

787.27 Selection criterion—adequacy of resources. (5 points)

787.28 Selection criterion—monitoring plan. (5 points)

787.29 What additional criteria exist for new awards?

787.30 What additional criteria exist for continuation awards?

Subpart D—What Conditions Must be Met by the Recipient of an Award?

787.31 What disclaimers are required on printed materials?

787.32 What are a recipient's responsibilities for serving students enrolled in nonprofit private schools?

§ 787.2 [Amended]

23. Section 787.2 is amended by removing the words "Dissemination Review Approval" and replacing them with "Program Effectiveness Panel Approval".

§ 787.12 [Removed]**§§ 787.10 and 787.11 [Redesignated as §§ 787.11 and 787.12 Respectively]**

24. Section 787.12 is removed, § 787.10 is redesignated as § 787.11, and § 787.11 is redesignated as § 787.12, and the section heading for § 787.12 is amended by revising "Program Effectiveness Panel" to read "PEP".

25. A new § 787.10 is added to read as follows:

§ 787.10 What information and materials must an applicant submit to apply for an award?

To apply for an award, an applicant shall submit a description of the Dissemination Process, including—

- (a) A representative sample of the information and instructional materials that would be disseminated through the Dissemination Process; and
- (b) A description of any training to education service providers the program might offer, if appropriate, in support of the use of the materials or information described above.

(Authority: 20 U.S.C. 2962)

26. Redesignated § 787.11 is amended by removing the paragraph designation for paragraph (a), removing paragraph (b), redesignating paragraphs (a)(1), (a)(2), and (a)(3) as paragraphs (a), (b), and (c), respectively, and revising the section heading and the undesignated text preceding paragraph (a) to read as follows:

§ 787.11 What must an applicant submit for review by the PEP?

For PEP review of a dissemination process, an applicant shall submit to the Secretary—

27. Section 787.13 is revised to read as follows:

§ 787.13 How is PEP approval granted?

PEP approval is granted if the PEP has given the procedures and criteria a score of at least 20 points for the criterion in § 787.12(d)(2) (*Results*) and a total score of at least 70 points.

(Authority: 20 U.S.C. 2962)

28. Section 787.14 is revised to read as follows:

§ 787.14 How long does PEP approval last?

PEP approval remains in effect for six years from the date of approval.

(Authority: 20 U.S.C. 2962)

§ 787.16 [Redesignated from § 787.15]

29. Section 787.15 is redesignated as § 787.16.

30. A new § 787.15 is added to read as follows:

§ 787.15 How long does JDRP approval last?

JDRP approval remains in effect for six years from the date of approval.

(Authority: 20 U.S.C. 2962)

§ 787.20 [Amended]

31. Section 787.20 is revised to read as follows:

§ 787.20 How does the Secretary evaluate an application?

The Secretary evaluates an application, including the information and materials submitted under § 787.10 according to the criteria in §§ 787.21 through 787.28.

(Authority: 20 U.S.C. 2962)

§ 787.27 [Removed]**§§ 787.21 through 787.26 and §§ 787.28 through 787.31 [Redesignated as §§ 787.23 through 787.32 Respectively]**

32. Section 787.27 is removed, §§ 787.21, 787.22, 787.23, 787.24, 787.25, 787.26, 787.28, 787.29, 787.30, and 787.31 are redesignated as §§ 787.23, 787.24, 787.25, 787.26, 787.27, 787.28, 787.29, 787.30, 787.31 and 787.32 respectively.

33. New §§ 787.21 and 787.22 are added to read as follows:

§ 787.21 Selection criterion—innovative approach of exemplary education program. (15 points)

The Secretary reviews an application, including the information and materials submitted under § 787.10 to determine the extent to which the program's approach is innovative.

(Authority: 20 U.S.C. 2962)

§ 787.22 Selection criterion—accuracy of exemplary education program. (15 points)

The Secretary reviews an application, including the information and materials submitted under § 787.10 to determine the extent to which the program is accurate and up-to-date.

(Authority: 20 U.S.C. 2962)

34. Redesignated § 787.23 is amended by removing "30" in the section heading and adding in its place, "25", removing the cross-reference "737.16" in paragraph (a) and adding, in its place, "787.16", removing paragraph (c), redesignating paragraphs (d), (e), and (f) as paragraphs (c), (d), and (e) respectively, and adding a new paragraph (f) to read as follows:

§ 787.23 Selection criterion—plan of operation. (25 points)

(f) The extent to which the applicant proposes dissemination strategies designed to meet specific characteristics of its program.

§ 787.24 [Amended]

35. Redesignated § 787.24 is amended by removing "10" from the section heading, and adding in its place "20."

§ 787.25 [Amended]

36. Redesignated § 787.25 is amended by removing "10" from the section heading, and adding in its place, "5".

§ 787.26 [Amended]

37. Redesignated § 787.26 is amended by removing "15" from the section heading, and adding in its place "10".

§ 787.27 [Amended]

38. Redesignated § 787.27 is amended by removing "10" from the section heading, and adding in its place "5".

§ 787.28 [Amended]

39. Redesignated § 787.29 is revised to read as follows:

§ 787.29 What additional criteria exist for new awards?

In determining the order of selection under 34 CFR 75.217(d) for new Dissemination Process awards, the Secretary seeks diversity of projects funded under a particular competition or under this program.

(Authority: 20 U.S.C. 2962)

[FR Doc. 89-13461 Filed 6-7-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.073E]

Invitation for Applications for New Dissemination Process Awards Under the National Diffusion Network for Fiscal Year 1989

Purpose of program: Provides grants for the nationwide diffusion of Dissemination Processes that have been previously approved by the Department of Education's Program Effectiveness Panel.

Deadline for transmittal of applications: July 24, 1989.

Deadline for intergovernmental review comments: September 22, 1989.

Applications available: June 12, 1989.

Available funds: \$100,000.

Estimated range of award: \$75,000 to \$100,000 per year.

Estimated number of awards: One.

Project period: Up to 48 months.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments); Part 81 (General Education Provisions Act—Enforcement); and (b) The regulations for this program in 34 CFR Parts 785, 786, and 787. (Final regulations for this program are published in this issue of the Federal Register.)

For further information contact: Mrs. Linda Jones, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 510, Washington, DC 20208-5645. Telephone: (202) 357-8134.

Program authority: 20 U.S.C. 2962.

Dated: June 1, 1989.

Bruno V. Manno,
Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-13462 Filed 6-7-89; 8:45 am]
BILLING CODE 4000-01-M

[CFDA No.: 84.073A]

Invitation for Applications for New Developer Demonstrator Awards Under the National Diffusion Network Program for Fiscal Year 1989

Purpose: Provides grants for the dissemination of exemplary education programs that have been previously approved by the Department of Education's Program Effectiveness Panel to new sites nationwide.

Deadline for transmittal of applications: July 24, 1989.

Deadline for intergovernmental review comments: September 22, 1989.

Applications available: June 12, 1989.

Available funds: \$1,382,000.

Estimated range of awards: \$50,000 to \$60,000 per year.

Estimated average size of awards: \$55,280.

Estimated number of awards: 25.

Project period: Up to 48 months.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), Part 75 (Direct Grant Programs), Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), Part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), Part 81 (General Education Provisions Act—Enforcement); and (b) The regulations for this program in 34 CFR Parts 785 and 786. (Final regulations for this program are published in this issue of the Federal Register.)

Absolute priorities: The Secretary has selected absolute priorities for this

competition from the list of priorities in 34 CFR 786.3. Only applications for projects in these priority areas will be considered. The Secretary seeks applications for projects in any of the following priority areas:

1. Science.
2. Mathematics.
3. Reading and adult literacy programs.
4. Written communications.
5. Health, including drug-abuse prevention programs.
6. History, geography and civics.
7. Programs that assist in improving school discipline and that foster an atmosphere conducive to learning.
8. Programs that improve students' skills in comprehension, analysis, and problem solving, including programs in philosophy.
9. Programs that improve teaching and the quality of instruction.
10. School-wide and district-wide improvement efforts.
11. Drop-out prevention programs and programs for at-risk youth.
12. Early childhood.
13. Gifted and talented students.
14. Programs that advance students' educational and occupational goals, such as courses in the fine and performing arts, vocational education, and industrial arts.
15. Physical education.
16. Programs for handicapped students.

However, this listing of priorities does not bind the Department of Education to a specific number of projects in each priority, or to selecting projects for funding in each priority.

For applications or information contact: Mrs. Trudy R. Turner, U.S. Department of Education, 555 New Jersey Avenue, NW., Room 510, Washington, DC 20208-5645. Telephone: (202) 357-6162.

Program Authority: 20 U.S.C. 2962.

Dated: June 1, 1989.

Bruno V. Manno,
Acting Assistant Secretary for Educational Research and Improvement.

[FR Doc. 89-13463 Filed 6-7-89; 8:45 am]
BILLING CODE 4000-01-M

Thursday
June 8, 1989

Part V

Department of Health and Human Services

Public Health Service

42 CFR Part 36

Indian Health Service, Contract Health Services; Proposed Rulemaking

federal register

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 36

[RIN 0905-AD00]

Indian Health Service; Contract Health Services

AGENCY: Indian Health Service, Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: We are proposing a clarification to the regulations governing receipt of contract health services from the Indian Health Service (IHS). Under this proposal, IHS would be specifically designated as payor of last resort for persons defined as eligible for IHS contract health services notwithstanding any State or local law to the contrary.

DATE: Written comments must be received on or before July 10, 1989.

ADDRESS: Written comments on these proposed rules may be sent to Richard J. McCloskey, Indian Health Service, Room 8A-23, 5600 Fishers Lane, Rockville, Maryland 20857. Comments will be made available for public inspection at this address from 8:30 a.m. to 5:00 p.m., Monday—Friday beginning approximately 2 weeks after publication of this notice.

FOR FURTHER INFORMATION CONTACT: Richard J. McCloskey, Telephone (301) 443-1116. (This is not a toll free number)

SUPPLEMENTARY INFORMATION: We are proposing this change in the regulations governing authorization of contract health services by the IHS to clarify that the IHS is the payor of last resort for persons defined as eligible for IHS contract health services notwithstanding any State or local law or regulation to the contrary.

The regulations governing authorization of contract health services found in the October 1, 1986, Edition of the Code of Federal Regulations (CFR) were amended on September 16, 1987 (52 FR 35046). Congress has delayed implementation of the September 16, 1987 regulations until October 1, 1989 (Pub. L. 100-446). The earlier regulations published in the October 1, 1986 CFR provided at 42 CFR 36.23(f):

(f) *Alternate resources.* Contract health services will not be authorized by the Indian Health Service when, and to the extent that, alternate resources for the provision of necessary medical services are available and accessible to the individual requesting the services or would be available and accessible upon application of the individual to the alternate resource.

While the courts have upheld 42 CFR 36.23(f) as consistent with Congressional intent and the Federal trust responsibility to Indians, the courts have nevertheless allowed State and local governments to adopt their own residuality requirements defeating the purpose of the Federal regulation. *McNabb v. Bowen*, 829 F2d 767 (9th Cir. 1987); *State of Arizona and Coconino County v. United States*, No. 87-2525 (9th Cir. Sept. 12, 1988—unpublished memorandum decision). These court decisions hinged on the wording of the Federal regulation published in the October 1, 1986 CFR. Because the regulation did not expressly supersede State laws to the contrary, and made IBS payment residual to other payment sources "available and accessible" to the individual, the court determined that if a State made its program the payor of last resort, then that program was not "available and accessible" under the Federal regulation.

The court noted that it was interpreting the Federal regulation quoted above, leaving us free to adopt new regulatory language. This proposed change in the Federal regulation will supersede State and local laws by establishing a direct conflict between this proposed amendment and State or local residuality requirements. This change in the regulation will clarify that IHS contract health services are the payor of last resort notwithstanding any State or local law or regulation to the contrary.

A number of conforming changes are also made.

Determination Concerning Impact of the Rule

This rule does not have cost implications for the economy of \$100 million or more independent of the IHS appropriation, nor will it result in a major increase in cost for consumers, industries, or Government agencies, nor will it adversely affect competition. Therefore, the Secretary has determined that the rule is not a major rule under Executive Order 12291, and a regulation impact analysis is not required. Further, these regulations will not have a significant economic impact on a substantial number of small entities, and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

E.O. 12612: Federalism

The Secretary has also determined that the rule has no significant impact on federalism under Executive Order No. 12612 because the rule simply clarifies what has been longstanding Federal policy for more than 30 years.

The alternate resource rule has been contained in Departmental regulations since 1956. The rule has been implemented consistently and openly with notice to the States during that period. This restatement of the alternate resource rule is designed to maintain the status quo regarding what has been and continues to be Federal policy.

Paperwork Reduction Act

There are no new paperwork requirements subject to the Office of Management and Budget approval under the Paperwork Reduction Act of 1980.

List of Subjects in 42 CFR Part 36

Alaska natives, Indians, Health, Health facilities, Health service delivery areas, Contract health services.

Dated: April 28, 1989.

James O. Mason,
Assistant Secretary for Health.

Approved: May 5, 1989.

Louis W. Sullivan,
Secretary.

For the reasons set out in the preamble, the Department proposes to amend Part 36 of Title 42, Code of Federal Regulations as follows:

PART 36—[AMENDED]

1. The authority citation for Part 36 continues to read as follows:

Authority: Sec. 3, 68 Stat. 674; 42 U.S.C. 2003, 42 Stat. 208, sec. 1, 68 Stat. 674; 25 U.S.C. 13, 42 U.S.C. 2001 unless otherwise noted.

§ 36.10 [Amended]

2. The definition of "Alternate resources" at 42 CFR 36.10 is removed.

§ 36.12 [Amended]

3. 42 CFR 36.12(c) is revised to read as follows:

* * * * *

(c) Contract health services will not be authorized when and to the extent that Indian Health Service or Indian Health Service funded facilities are available to provide the needed care. When funds are insufficient to provide the volume of contract health services needed by the service population, the Indian Health Service shall determine service priorities on the basis of medical need.

* * * * *

4. Subpart G is added as follows:

Subpart G—Residual Status

§ 36.61 Payor of last resort.

(a) The Indian Health Service is the payor of last resort for persons defined as eligible for contract health services under these regulations, notwithstanding

any State or local law or regulation to the contrary.

(b) Accordingly, the Indian Health Service will not be responsible for or authorize payment for contract health services to the extent that:

(1) The Indian is eligible for alternate resources, as defined in paragraph (c), or

(2) the Indian would be eligible for alternate resources if he or she were to apply for them, or

(3) the Indian would be eligible for alternate resources under state or local law or regulation but for the Indian's eligibility for contract health services, or other health services, from the Indian Health Service or Indian Health Service funded programs.

(c) "Alternate resources" means health care resources other than those of the Indian Health Service. Such resources include health care providers and institutions, and health care programs for the payment of health services including but not limited to programs under Title XVIII and XIX of the Social Security Act (i.e., Medicare, Medicaid), State or local health care programs and private insurance.

[FR Doc. 89-13206 Filed 6-7-89; 8:45 am]

BILLING CODE 4160-16-M

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Registered Federal

Thursday
June 8, 1989

Part VI

Housing and Urban Development Department

Office of the Assistant Secretary for
Housing—Federal Housing Commissioner

Section 8 Housing Voucher Program;
Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-1985; FR 2619]

Section 8 Housing Voucher Program

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability.

SUMMARY: The purpose of this Notice is to request State participation in a HUD special funding initiative. Bonus allocations of housing vouchers will be awarded to States that make available housing for very low income families through State funds appropriated for tenant-based subsidy programs. For purposes of this Notice, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and Guam. HUD will make available funds for use by State public housing agencies (PHAs) or local PHAs identified by State governments.

HUD has set aside funds from the Headquarters discretionary reserve for up to 1,500 housing vouchers for this initiative. Under the Housing Voucher Program, a family receives the benefit of a rental assistance payment equal to the difference between a payment standard for the area and 30 percent of its adjusted income. The family may select a unit renting for more than the payment standard, in which case it pays more than 30 percent of income towards rent. Alternatively, it may select a unit renting for less than the payment standard, in which case it pays less than 30 percent of income towards rent (but not less than 10 percent of gross income).

This Notice informs the public of the requirements for funding under this initiative and describes the pre-application and application process that must be followed when requesting participation in this special State funding initiative.

Because these 1,500 housing vouchers are being funded from the Headquarters discretionary reserve, the use of such funds must comply with section 213(d) of the Housing and Community Development Act of 1974. Accordingly, if the State applicant designates the State housing agency or one or more local public housing agencies as program administrator(s), the funds must be used only in Community Development Block Grant (CDBG) entitlement communities and urban counties. Such communities are required

to have HUD-approved Housing Assistance Plans (HAPs). The total number of HAP goals, including the units to be provided under this initiative, should not exceed the lower income housing needs described in a community's HAP. It is important to note that Freestanding HAPs (i.e., HAPs for non-CDBG entitlement communities) do not meet the statutory definition of HAPs and may not be considered for purposes of allocating funds from the Headquarters reserve.

FOR FURTHER INFORMATION CONTACT:

Gerald Benoit, Director, Housing Voucher Division, Room 6122, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 755-8477. (This is not a toll-free telephone number.)

SUPPLEMENTARY INFORMATION: The Department has developed an initiative under the Housing Voucher Program that makes available a bonus allocation of housing vouchers for State or local PHAs identified by State governments that operate tenant-based subsidy programs that are similar to HUD's Housing Voucher Program, using funds made available from State appropriations. For this purpose, "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands and Guam. HUD has set aside funding for up to 1,500 housing vouchers for this initiative during Fiscal Year 1989. Contingent upon the availability of funds in future years, HUD plans to continue making bonus allocations to States that make funds available from State appropriations for tenant-based subsidy programs.

This special State funding initiative is an extension of the tenant-based Housing Voucher Program. In a tenant based assistance program (such as the Housing Voucher or Section 8 Certificate Program), assistance is not tied to a particular property. Instead, the assisted unit is selected by the Family. The PHA enters into an assistance contract which only covers a single unit rented by a specific assisted family. If the family moves out of the unit, the assistance contract terminates. The family may find a new unit anywhere within the PHA's jurisdiction and move to the new unit with continued assistance under the Program.

State applicants that allocate funding for tenant-based rental assistance programs with the elements described above, using State funds, are invited to submit pre-applications for this special State funding initiative. HUD will only consider programs for which State funds

were made available by State legislation on or after July 1, 1988.

Under this initiative, State applicants must submit pre-applications to the Housing Voucher Division, Room 6124, 451 Seventh Street SW., Washington, DC 20410, by close of business June 30, 1989 (8:45 a.m. to 5:15 p.m. weekdays).

The State applicant shall identify in its pre-application the annual amount to be available for tenant-based subsidy programs under the State legislation as well as the number of years for which the annual amount will be available pursuant to the legislation.

I. Pre-application Requirements

Each pre-application shall contain the following information to assist HUD in determining the appropriateness of funding:

A. Funding. Submit a copy of the pertinent State legislation that authorizes the state funded tenant-based subsidy program.

B. Number of Recipients. State the total number of families with incomes at or below 50 percent of median income who are receiving, or are expected to receive, assistance under the State funded program during Fiscal Year 1989 (i.e., October 1, 1988 to September 30, 1989).

C. Designated PHA. The pre-application should designate the PHA(s) that will act as contract administrator of the HUD matching funds.

D. Certifications. Certify that State funds are available for a tenant-based rental assistance program and that the State funded program will be operated in a manner similar to HUD tenant-based housing programs. (A certification form is provided as an attachment to this Notice of Funding Availability.)

E. Signature. Pre-applications must be signed by an authorized State official.

F. Deadline Date. Pre-applications must be received by June 30, 1989 by the U.S. Department of Housing and Urban Development, Housing Voucher Division, Room 6124, Washington, DC 20410.

II. Funding Determinations

Pre-applications will be awarded funding based on the following:

A. The need for housing assistance in the designated PHA jurisdictions.

B. The designated PHA's performance record in administering the Section 8 Certificate and/or Housing Voucher Program.

C. The extent to which the designated PHA(s) are using housing vouchers and certificates previously allocated by HUD.

D. The number of housing vouchers that should be offered to the designated PHA(s) to facilitate program administration and economies of scale.

III. Application Requirements

Once HUD announces the selectees and the funding levels, a complete application for housing vouchers will be submitted to the appropriate HUD Field Office. HUD will notify the designated PHAs and invite those PHAs to submit applications for the approved levels of funding. All application requirements identified at 24 CFR 887.55 through 887.63(a) must be followed by designated PHAs. Applications must be submitted no later than July 31, 1989. All programs receiving HUD funds under this initiative must comply with the Housing Voucher Program regulations at 24 CFR Part 887.

IV. Findings and Other Matters

An environmental finding under the National Environmental Policy Act (42 U.S.C. 4321-4347) is unnecessary since the Housing Voucher Program is part of the Section 8 Existing Housing Program which is categorically excluded under HUD regulations at 24 CFR 50.20(d).

HUD has determined, in accordance with E.O. 12812, *Federalism*, that preparation of a Federalism Assessment is not warranted. This NOFA, by encouraging States to develop and fund their own programs to meet the needs of very low-income families for affordable housing, is clearly within and consistent with the fundamental Federalism principals set out in section 2 of the Executive Order.

HUD has determined that this Notice is not likely to have a significant impact on family formation, maintenance, and general well-being within the meaning of E.O. 12606, *The Family*, because the Notice concerns only HUD's method of allocating Housing Voucher Program funds. It does not affect the terms and conditions under which a family may qualify for assistance under the Housing Voucher Program. The Housing Voucher Program, itself, is a benefit to families because it assists families to afford decent, safe and sanitary housing of their choice.

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501-3520. Currently approved requirements have been assigned the OMB Control Number 2502-0398.

States that wish to participate in the HUD special funding initiative will be required to certify that State funds are available for a tenant-based rental assistance program and that the State funded program will be operated in a manner similar to HUD tenant-based housing programs. Pre-applications will be submitted to Headquarters for approval. HUD expects this Notice will apply only to about 20 states: Number of responses per respondent—1; total annual responses—20; 1 hour per response; total hours—20.

Send comments regarding these burden estimates or any other aspect of these collections of information, including suggestions for reducing this

burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

The Catalog of Federal Domestic Assistance Program number is 14.177—Housing Voucher Program.

Authority: Section 8(o) of the United States Housing Act of 1937 (42 U.S.C. 1437f(o)).

Dated: May 25, 1989.

James E. Schoenberger,
General Deputy Assistant Secretary for Housing—Deputy Federal Housing Commissioner.

Attachment

Certification of Availability of State Funds and Certification of Program Similarity to HUD Tenant-based Housing Programs

We do hereby certify that the Fiscal Year 1989 budget for the State/Commonwealth/District of _____ has earmarked \$_____ for a State tenant-based rental assistance program. Such funds are readily available for funding such a tenant-based rental assistance program.

We do further certify that the aforementioned tenant-based rental assistance program is/will be operated in a manner similar to currently operated HUD tenant-based housing programs.

Authorized State Official (Designee)

Date

[FR Doc. 89-13578 Filed 6-7-89; 8:45 am]

BILLING CODE 4210-27-M

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CFR PARTS AFFECTED DURING JUNE

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 29

[TB-89-001]

Tobacco Inspection; Flue-Cured and Burley Tobacco; Importation Prohibitions

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Dairy and Tobacco Adjustment Act of 1983, as amended, prohibits the importation of flue-cured and burley tobacco which contains any prohibited pesticide residue and establishes related certification and testing requirements. This rule will amend the implementing regulations to: (1) Substitute the term "prohibited pesticide residue" for "banned pesticide"; (2) revise the list of pesticides for which testing is conducted; (3) revise the maximum allowable concentrations of residues; and (4) require that shipments of imported flue-cured and burley tobacco not be altered or moved from the point of entry until it has been determined that the tobacco does not exceed the maximum allowable concentrations of residues. These changes will improve effective implementation of the 1983 Act, as amended.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Director, Tobacco Division, AMS, USDA, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, telephone: (202) 447-2567.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the Department will amend the regulations governing the inspection and grading of tobacco (7 CFR Part 29, Subpart B) as they pertain to the testing of imported flue-cured and

burley tobacco for prohibited pesticide residues and to related matters. The authority for these regulations is contained in the Dairy and Tobacco Adjustment Act of 1983, as amended (7 U.S.C. 511r) ("the Act") and the Tobacco Inspection Act (7 U.S.C. 511-511q).

A proposed rule was published in the Federal Register on March 9, 1989 (54 FR 10012) and interested persons were provided 30 days to submit comments. Thirty-two comments were received. The comments were submitted by domestic tobacco producers' organizations, tobacco trade associations, tobacco dealers, tobacco cooperatives, tobacco importers and exporters, tobacco manufacturers, chemical manufacturers, foreign governments, and other interested persons.

Ten of the comments supported the proposed rule in its entirety. Other comments, discussed below, questioned one or more aspects of the proposed rule.

This final rule will substitute the term "prohibited pesticide residue", which is defined as any pesticide residue exceeding the maximum concentration of residue for a specific pesticide or combination of pesticides as set forth in § 29.427, for the term "banned pesticide" (which was defined in § 29.401(p) as any pesticide which has been canceled, suspended, revoked, or otherwise prohibited under the Federal Insecticide, Fungicide and Rodenticide Act).

Conforming changes will also be made in two other sections which used the term "banned pesticide." Thus § 29.401(u), the definition of testing, will refer to chemical analysis to determine "levels of pesticide residues", rather than "levels of banned pesticides." Also, § 29.429, Disposition of imported tobacco exceeding pesticide residue standards, will refer to any lot which contains "prohibited pesticide residues" rather than "a banned pesticide exceeding the standards." This change in terminology is necessary because "banned pesticide" is a term that is used by various national and international organizations to refer to pesticides the use of which has been completely prohibited in a particular jurisdiction. These changes are made in order to avoid any possible confusion.

Ten comments expressed concern that the elimination of the specific reference to pesticides which have been canceled,

suspended, revoked, or otherwise prohibited under FIFRA could result in the inclusion of pesticides that are approved for use on tobacco on the list of prohibited pesticide residues in § 29.427. This was not the intent of the proposed rule and we do not believe this particular concern necessitates a change in our proposal in this regard.

When the initial regulations concerning pesticide residues in tobacco were issued (51 FR 30196, August 22, 1986), it was stated in the supplementary information that the list of pesticides for which residue limits were established would be subject to revision from time to time as the circumstances require. The list comprises those pesticides which are not approved for use on tobacco in the United States (i.e., those pesticides which have been canceled, suspended, revoked, or otherwise prohibited under FIFRA) but which are known or believed to be used on tobacco in foreign countries and for which reliable testing methodologies exist. The proposed rule called for the addition of six pesticides to the list in § 29.427; these were DDE, hexachlorobenzene (HCB), methoxychlor, cypermethrin, methamidophos, and lindane.

Four comments objected to the addition of any pesticides to the list in § 29.427 and also set forth the commenters' views about the perceived adverse economic effects of the Act. It is our view that effective implementation of the Act requires that the regulations be revised from time to time as changes occur in the use of pesticides and as additional information becomes available to us.

With respect to the specific additions proposed by us, thirteen comments questioned the inclusion of methamidophos because that pesticide is a metabolite of another pesticide, Orthene, which is approved for use on tobacco in the United States. The manufacturer of Orthene noted that methamidophos occurs as a plant metabolite from the application of Orthene and that such residues cannot always be distinguished from residues of methamidophos applied by itself. The agency believes that these comments have merit. Accordingly, methamidophos is not included in this final rule.

Twelve of the comments questioned the inclusion of lindane, correctly noting

that this pesticide is still approved for use on tobacco plant beds. The agency believes that these comments have merit. Accordingly, lindane is not included in this final rule.

The proposed rule also called for the revision of some maximum allowable concentrations of residues and the establishment of levels for the newly-added pesticides. With minor modifications, based upon the comments addressing the proposed revisions, the proposed maximum allowable concentrations of residues for individual pesticides and combinations of pesticides are adopted in this final rule.

The maximum allowable concentrations of residues were established in the following manner. The program for testing flue-cured and burley tobacco for pesticide residues has been under review since its inception. Initially, the maximum allowable concentrations of pesticide residues were established by analogy to the residue tolerances established by the Environmental Protection Agency (EPA), for food crops. The agency believes that the program can be placed upon a footing that is more specific for pesticide residues on tobacco. In establishing new maximum allowable concentrations of residues, we relied upon research conducted by several land-grant universities, information from the Codex Alimentarius Commission, published scientific literature, regulations of the Environmental Protection Agency, data from the Department's Agricultural Stabilization and Conservation Service (ASCS) domestic tobacco monitoring program, and data on pesticide residues in imported tobacco collected by testing imported tobacco under the present regulations.

During the two-and-a-half years that the regulations have been in place, over 14,000 samples of imported flue-cured and burley tobacco have been tested for pesticide residues. The resulting data provides norms for expected pesticide residue levels. Residues significantly in excess of expected levels indicate that good agricultural practices may not have been followed in the production of that tobacco. Consideration has been given to sources of pesticide residues which would not be inconsistent with good agricultural practices, such as incidental drift from the spraying of adjacent fields and unavoidable exposure to contaminated soil and ground water.

Some pesticides are persistent and degrade very slowly in the environment and thus may continue to occur in tobacco for many years after application of the pesticide has ceased. Limits for these unavoidable residues will be

based upon the levels that are unavoidable in domestically grown tobacco. The levels for persistent pesticides were derived by analyzing results of tobacco monitoring samples taken from various areas of the United States. The pesticides involved are DDT, TDE, DDE, aldrin, dieldrin, toxaphene, heptachlor, heptachlor epoxide, chlordane, hexachlorobenzene (HCB), formothion, and dibromochloropropane (DBCP).

The available data for the pesticides dicamba, 2,4-D, cypermethrin and permethrin are more limited than that for other pesticides. Although all of the maximum allowable concentrations of residue are subject to change as new data becomes available, the levels for these pesticides will be denominated "temporary" in order to indicate a greater likelihood of revision.

Four comments asked that the data used to determine the maximum allowable concentrations of residues be published for public comment before the final rule is issued. We do not believe the publication of this data in the *Federal Register* is either necessary or practical. We indicated in our proposed rule that this information was available for public inspection and it remains available to all interested parties. However, we do not believe this final rule should be delayed for this reason.

Four comments objected to the establishment of maximum allowable concentrations of residues for combinations of pesticides, arguing that the combinations could result in the inappropriate exclusion of tobacco containing only trace residues or in inaccurate measurements from the totaling of small amounts. The agency does not believe that the residue levels for combinations of pesticides pose any significant problem. Although not expressly stated in terms of combinations, the pre-existing regulations relied upon that concept. For example, residues of the pesticides chlordane, formothion, toxaphene, permethrin, DDT, and TDE can be measured only by measuring their component isomers and totaling the individual residue levels. In the two-and-a-half years in which the regulations have been in place, no problems have been encountered in this regard. The measurement of the residues of component isomers in increments of hundredths of a part per million and the totaling of the levels before rounding-off to the nearest tenth of a part per million is consistent with the practices of the Food and Drug Administration and the Environmental Protection Agency. The necessity of totaling the residue levels of component isomers was taken into

account when it was decided to set the maximum allowable concentrations of residue no lower than 0.1 ppm.

One comment suggested that, for combinations of pesticides, a minimum amount should be established for inclusion in the total residue level because different laboratories may have different lowest detectable levels. The agency believes, however, that private laboratories which cannot detect a particular pesticide or isomer at the hundredth part per million should, in those instances where such levels would be significant (i.e., where such levels, if present, could result in a total over that allowed), report the results as inconclusive and importers should not certify the tobacco as being free of prohibited pesticide residues.

Three comments concerned the designation of certain proposed maximum concentrations of residues as "temporary." These suggested that a minimum time period be specified before temporary maximum concentrations of residues for pesticides become "permanent" in order to give interested parties the opportunity to comment on any modification. The agency believes ample opportunity will be afforded for comment. Before any change would be made in these regulations, a proposed rule would be published in the *Federal Register*, allowing interested persons an appropriate period of time to comment. Accordingly, this final rule will not be modified in that respect.

Three comments were received concerning the temporary maximum allowable concentration of residue for dicamba. Comments from major tobacco manufacturing companies and the Pesticide Committee of the Tobacco Workers Conference supported the temporary maximum allowable concentration of residue for dicamba in the proposed rule. One comment questioned the increased temporary maximum allowable concentration of residue because of the sparsity of available information on dicamba residues in tobacco. Dicamba is approved for use on commodities other than tobacco and even under good agricultural practices may appear as a residue in tobacco. It is the agency's view that the maximum allowable concentration established in this rule for dicamba should recognize these factors. The agency recognizes that the available data on dicamba is limited and so the residue level should be designated as temporary. Accordingly, this final rule will not modify the residue level specified in the proposed rule for dicamba.

Four comments questioned the proposed establishment of separate maximum allowable concentration of residue for the o,p and for the p,p isomers of DDT, TDE, and DDE, noting that these classifications would not be consistent with the reporting procedures of other government agencies. The agency believes that these comments have merit. In order to remain consistent with the reporting procedures of other government agencies, a combined maximum allowable concentration of residues will be established in this final rule for all six isomers of DDT (o,p DDT, o,p TDE, o,p DDE, p,p DDT, p,p TDE, and p,p DDE). The maximum concentration of residues for the sum of DDT, TDE, and DDE will be 0.4 ppm, rather than 0.2 ppm each for the o,p and p,p isomers as in the proposed rule.

The Act prohibits the entry into the United States of imported flue-cured and burley tobacco which is found to contain prohibited pesticide residues. Tobacco which is not certified by the importer as being free of prohibited pesticide residues must be tested and found to meet the tobacco pesticide residue requirements. Tobacco certified as not containing prohibited pesticide residues is subject to random sampling and testing. If the test results are positive, the importer may request a retest. The testing process involves a delay between the time samples are taken and the time that test results are available. In order to prevent the entry and use of tobacco later found to be contaminated, and to preserve the integrity of the testing and retesting process, it is necessary to require that imported flue-cured and burley tobacco not be mixed, blended, manipulated, altered, processed, manufactured, moved, shipped or transported from the point of entry until it has been determined that the tobacco does not exceed the maximum allowable pesticide residue concentrations set forth in § 29.427. This final rule will establish these requirements in a new § 29.431.

Five comments opposed this new provision but suggested that, if the provision is adopted, exemptions should be provided which would allow tobacco to be partially processed under defined circumstances while awaiting the test results. These comments also expressed concern over delays in the receipt of test results and the costs associated with deferring processing until the test results are received. Although in the past there have been delays in providing test results, we believe the problems causing the delays have been corrected and the turnaround time is now approximately

ten working days. The agency believes that these new requirements do not impose unreasonable burdens on importers. The agency also believes that the proposed safeguards are the only practical means of assuring that imported tobacco containing prohibited pesticide residues is denied entry into the United States as the law requires. Accordingly, this final rule adopts § 29.431 as set forth in the proposed rule.

This final rule has been reviewed under USDA procedures established to implement Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be "nonmajor" because it does not meet any of the criteria established for major rules under the Executive Order.

The information collection requirements contained in the provisions of the regulations that would be amended by this final rule have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB No. 0581-0056.

Pursuant to the requirements set forth in the Regulatory Flexibility Act, full consideration has been given to the potential economic impact on small business of this final rule. Few, if any, of the firms which will be affected by this final rule meet the definition of small business because of their individual size. The Administrator, Agricultural Marketing Service, has determined that this action will not have a significant economic impact upon a substantial number of small entities.

List of Subjects in 7 CFR Part 29

Administrative practices and procedures, Tobacco.

For reasons set forth in the preamble, the regulations in 7 CFR Part 29, Subpart B, are amended as follows:

PART 29—[AMENDED]

1. An authority citation for Part 29, Subpart B, is added to read as follows:

Authority: 7 U.S.C. 511m and 511r.

Subpart B—Regulations

2. In § 29.401, paragraphs (p) and (u) are revised to read as follows:

§ 29.401 Definitions.

(p) *Prohibited pesticide residue.* The maximum concentration of residue allowable for a specific pesticide or combination of pesticides as set forth in § 29.427.

(u) *Testing.* The chemical analysis of a pesticide test sample to determine levels of pesticide residues.

3. Section 29.427 is revised to read as follows:

§ 29.427 Pesticide residue standards.

The maximum concentration of residues of the following pesticides allowed in flue-cured or burley tobacco, expressed as parts by weight of the residue per one million parts by weight of the tobacco (ppm) are:

CHLORDANE	3.0
DIBROMOCHLOROPROPANE (DBCP) ..	1.0
DICAMBA (Temporary)	5.0
ENDRIN	0.1
ETHYLENE DIBROMIDE (EDB)	0.1
FORMOTHION	0.5
HEXACHLOROBENZENE (HCB)	1.0
METHOXYCHLOR	0.1
TOXAPHENE	0.3
2,4-D (Temporary)	5.0
2,4,5-T	0.1
Sum of ALDRIN and DIELDRIN ..	0.1
Sum of CYPERMETHRIN and PER-	
METHRIN (Temporary)	3.0
Sum of DDT, TDE (DDD), and DDE ..	0.4
Sum of HEPTACHLOR and HEPTA-	
CHLOR EPOXIDE	0.1

4. Section 29.429 is revised to read as follows:

§ 29.429 Disposition of imported tobacco exceeding pesticide residue standards.

Within 10 days of the receipt of test results from pesticide test samples, the Director shall notify the importer or entity responsible for the lot of tobacco of the test results. If the test results indicate that the lot or any portion of the lot contains prohibited pesticide residues, the Director will notify the importer or entity responsible for the affected tobacco and the appropriate U.S. Customs officials that the tobacco cannot enter the United States. The importer or other entity shall notify the Director in writing of the methods by which the tobacco will be disposed of and provide 5 days advance notice of time and place of final disposition. The Department will monitor the disposition procedures to verify that the tobacco has been accurately identified as to lot, kind, type, and grade.

5. A new § 29.431 is added to read as follows:

§ 29.431 Handling of imported tobacco pending test results.

After an individual shipment of imported flue-cured or burley tobacco has been sampled, regardless of whether it is certified as being free from prohibited pesticide residues, it must be

kept in the original packages, and not be mixed, blended, manipulated, or altered in any manner, or moved, shipped, or transported from the point of entry until it has been determined that the tobacco does not contain prohibited pesticide residues.

Dated: June 6, 1989.
Kenneth C. Clayton,
Acting Administrator.
[FR Doc. 89-13739 Filed 6-8-89; 8:45 am]
BILLING CODE 3410-02-M

Food and Nutrition Service

7 CFR Parts 272 and 273

[Amendment No. 313]

Food Stamp Program; Employment and Training Requirements—Performance-Based Funding

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes provisions of a proposed rule published in the *Federal Register* on September 27, 1988 (53 FR 37582). Through this rule the Department is establishing a performance-based measure and allocation method to annually distribute \$15 million in Employment and Training (E&T) grant funds to State agencies for operation of their food stamp E&T programs, beginning in Fiscal Year 1990. The allocation method finalized in this rule is intended to provide financial incentives for State agencies to operate effective E&T programs.

DATES: This action is effective July 10, 1989. The funding discussed in § 273.7 of this final rule will be made available to State agencies for use in Fiscal Year 1990.

FOR FURTHER INFORMATION CONTACT: Ellen Henigan, Supervisor, Work Program Section, Program Development Division, Food Stamp Program, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia 22302, (703) 756-3762.

SUPPLEMENTARY INFORMATION

Classification

Executive Order 12291. This rule has been reviewed under Executive Order 12291 and Secretary's Memorandum No. 1512-1. The Department has classified this rule as non-major. The rule's effect on the economy will be less than \$100 million. The rule will have no effect on costs or prices. Competition, investment, productivity, and innovation will remain unaffected. This rule will have an effect on employment in that its goal is to

correct and clarify current rules, thereby improving efforts to place food stamp recipients in employment. There will be no effect on the competition of United States-based enterprises with foreign-based enterprises.

Executive Order 12372. The Food Stamp Program is listed in the Catalog of Federal Domestic Assistance Programs under No. 10.551. For the reasons set forth in the final rule related Notice of 7 CFR Part 3015, Subpart V (48 FR 29115), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

Regulatory Flexibility Act. This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, Stat. 1164, September 19, 1980). G. Scott Dunn, Acting Administrator of the Food and Nutrition Service, has certified that this rule does not have a significant economic impact on a substantial number of small entities. State and local welfare agencies will be the most affected to the extent that they administer the Program.

Paperwork Reduction Act. Reporting and recordkeeping requirements related to performance based funding as contained in 7 CFR 273.7(c)(6) are approved by OMB under approval # 0584-0339.

Background

This rule puts into final regulatory form a performance-based measure and allocation method to distribute annually \$15 million in E&T grants to State welfare agencies beginning in Fiscal Year 1990. This amount is part of the \$75 million Congress has authorized for the Department to provide, unmatched, to State welfare agencies to operate food stamp E&T programs.

The Department appreciates the effort which went into the preparation of the substantial number of comments received on the proposed rulemaking. These comments received full consideration and certain modifications have been made in response to them.

Implementation

The proposal to distribute incentive funding in Federal Fiscal Year 1989 received much unfavorable comment. Commenters said that distributing the funding for use during a year which has already begun would be counterproductive and deprive the State agencies of adequate time to plan for and absorb the funding. The Department concurs with the commenters and through this rule is delaying implementation until Fiscal Year 1990.

The \$7.5 million that was intended to be distributed based on a performance measure in Fiscal Year 1989 will be allocated to State agencies on the basis of Food Stamp Program participation in each State as a percentage of total nationwide participation. This is the same allocation method used to distribute all other unmatched E&T grant funding for FY 1989.

Measurement Period for Performance Based Funding

The proposed rule stated that the measurement period for each fiscal year's funding would be the calendar year which ends three quarters before the beginning of the pertinent fiscal year. The proposal would have begun distributing incentive funding in Fiscal Year 1989 using data from the second, third and fourth quarters of Calendar Year (CY) 1987. Many commenters pointed out that the December 31, 1988 regulation said that data from Fiscal Year 1988 would be used to calculate the incentive amount for Fiscal Year 1989. In addition, commenters insisted that it would be unfair to utilize Fiscal Year 1987 data, particularly since that time was a period of implementation for State agencies. The proposed measurement period for each fiscal year's funding will be retained. However, because the year of implementation has been moved to Fiscal Year 1990, the timeframe for the first measurement period will be altered. This final rule specifies that the Department will use data reported by State agencies for Calendar Year 1988 to determine the amount of the Fiscal Year 1990 performance based funding. These data should accurately reflect the level of service provided by each State agency. State agencies will be informed of the amounts they will receive with enough time for advance planning.

Process-Based Standards

A number of commenters suggested that the proposed use of a process measure is inappropriate in light of the provisions of the Hunger Prevention Act of 1988, (Pub. L. 100-435) which amended the Food Stamp Act to mandate that outcome-based performance standards be implemented by April 1991.

As announced in the preambles to the December 31, 1988 final regulation and the September 27, 1988 proposed rule, the Department originally intended to implement performance-based funding in Fiscal Year 1989. Since that became impractical, the date is being moved forward one year. The Department remains committed to and continues to

place a high priority upon the institution of a performance-based funding system. At this time, however, we believe the only feasible basis by which to reward performance is by measuring a process over which State agencies have control and for which there are reliable data, that is, the number of work registrants placed in Employment and Training Programs. The Food Stamp Program does not currently require State agencies to collect any E&T outcome data. Formulation and implementation of such a collection requirement would take many months. The Department will change to an outcome-based method of allocating incentive funding after implementation of the provisions of the Hunger Prevention Act. Moreover, we believe that the current basis of grant allocation—caseload—does not adequately reflect differences in State agency funding needs and that the overall equity of the funding system would be improved by the adoption of performance-based funding.

Commenters also said that the proposed rule failed to give credit to State agencies which chose to provide intensive services to fewer participants. The Department's position is that programs which have the greatest impact overall for the entire work registrant population are those which serve the largest number of work registrants possible. The Department is aware of research which suggests that for the Aid to Families With Dependent Children Program (AFDC) population, a greater net impact may be achieved by providing intensive services to the hard-to-serve. The Food Stamp Program population differs from that of the AFDC program and the results of that research are not directly generalizable to food stamp recipients. The Department is currently conducting a wide ranging evaluation of the impact of food stamp employment and training programs. We expect the evaluation to yield important information, which will guide future work policies. At this time however, the Department does not believe compelling evidence exists to indicate that high cost, lengthy interventions are superior for food stamp work registrants.

Method of Measurement

The Department proposed to allocate incentive funds based on the number of E&T mandatory participants (work registrants not exempted by the State agency from E&T participation) placed in the E&T program of an eligible State as a proportion of E&T mandatory participants placed in E&T programs nationwide. The definition of "placed" is found at § 273.7(o)(2) of the Food Stamp Program regulations. It includes E&T

mandatory participants sent a Notice of Adverse Action for failure to comply with work requirements. As discussed earlier, a good deal of comment was received about measuring placement in an E&T program rather than placement in employment. Another aspect of the methodology which received much comment was that only the placement of E&T mandatory participants was included in the calculation. Commenters objected to excluding volunteers from the number placed. Volunteer placements were intentionally excluded from the calculation in order to stress the importance the Department places on service to work registrants. Food Stamp work registrants are the main focus of Food Stamp E&T programs. Although service to volunteers is an allowable cost, the measure of effectiveness the Department has chosen is service to work registrants.

For these reasons the Department is retaining the methodology of the proposed rule and will consider only the placement of mandatory E&T participants in calculating the amount of incentive funding to be allocated to each State.

Eligibility for Performance Based Funding

The September 27, 1988 proposed rule limited eligibility for performance funding to State agencies which meet their E&T performance standards, as set forth in § 273.7(o) of the food stamp regulations, for the second prior fiscal year. For example, to be eligible for incentive funding in Fiscal Year 1991 the State agency would have had to have met its performance standard for Fiscal Year 1989. If a State agency fails to meet its performance standard in a given year, it would be ineligible for any share of performance funding two fiscal years later. The September 27, 1988 proposed rule established the March 1 prior to the FY for which performance-based funding would be distributed as the date beyond which no new information would be considered by the Department in making the determination of whether State agencies are eligible for performance-based funding.

The Fiscal Year 1989 performance standard is unique because it is split, i.e., States must serve 35% of eligibles in the first quarter and 35% over the remaining three quarters. To determine eligibility for performance-based funding in Fiscal Year 1991, the Department will average the two periods—this will not be done to determine whether or not State agencies have met their performance standards.

Comment was received saying that

establishing the March 1 a deadline would be unjust to State agencies which miscalculate performance and those which fail to meet a performance standard, appeal, and establish an acceptable performance rate after March 1. The Department concedes that this could be a problem. Altering the concept of a cut-off date would be at the expense of all other State agencies. The intent of a cut-off beyond which no further State agency performance data could be included is to ensure that FNS has time to review the performance data submitted by the State agencies, calculate performance rates, and inform State agencies of the amount of funding they can expect to receive early enough to incorporate the amount into their planned E&T budgets. The Department considered holding aside a portion of the performance based funding and distributing an amount less than \$15 million among State agencies, but this, also, could be to the detriment of State agencies which maintain accurate data and submit timely reports. The Department is retaining a March 1 cut-off date for determining whether a State agency has met its performance standard in the second preceding year. In recognition of problems which could result when State agencies fail to meet a performance standard, the Department will make every effort to resolve questions of a State agency's good cause prior to March 1. The Department's success in this endeavor, is dependent upon receipt of adequate documentation of good cause from the State agency, certainly no later than January 15 of the affected year. The Department will strive to ensure that State agencies which claim to have good cause for failing to meet a performance standard will not be denied the potential to receive performance funding.

The provision from the proposed rule saying that State agencies which are ineligible for performance-based funding in a given year will have their placements omitted in computing the national placement total when FNS calculates performance-based shares for eligible State agencies received no comment and is finalized in this rulemaking.

The Department did not receive comment on and is retaining the provision that if State agencies have their performance standards lowered by the Department prior to the start of a fiscal year, they will be eligible for performance funding if the approved lower standard is met.

List of Subjects

7 CFR Part 272

Alaska, Civil rights, food stamps, grant programs—social programs, reporting and recordkeeping requirements.

7 CFR Part 273

Administrative practice and procedures, Aliens, Claims, Food Stamps, Fraud, Grant programs—social programs, Penalties, Reporting and recordkeeping requirements, Social Security, Students.

For the reasons set out in the preamble, 7 CFR Parts 272 and 273 are amended as follows:

1. The authority citation of Parts 272 and 273 continues to read as follows:
Authority: 7 U.S.C. 2011–2029.

PART 272—REQUIREMENTS FOR PARTICIPATING STATE AGENCIES

2. In § 272.1 a new paragraph (g)(107) is added to read as follows:

§ 272.1 General terms and conditions.

(g) *Implementation.* * * *
(107) *Amendment No. 313.* The performance-based funding provisions for Employment and Training programs shall be effective October 1, 1989.

PART 273—CERTIFICATION OF ELIGIBLE HOUSEHOLDS

3. In § 273.7:
 - a. The title of paragraph (d)(1) is revised.
 - b. The first sentence of paragraph (d)(1)(i)(A) is amended by removing the words "paragraph (d)(1)(i)(B)" and adding the words "paragraphs (d)(1)(i)(B) and (C)" in their place.
 - c. Paragraphs (d)(1)(i)(B) through (d)(1)(i)(E) are redesignated as paragraphs (d)(1)(i)(C) through (d)(1)(i)(F), and a new paragraph (d)(1)(i)(B) is added to read as follows:

§ 273.7 Work requirements.

- (d) *Federal financial participation—*
 - (1) *Employment and training grants.*
 - (i) [B] The Secretary shall allocate \$15 million of the Federal funds available each fiscal year for unmatched employment and training grants based on the ratio of the number of E&T mandates placed (as defined in § 273.7(o)) in a food stamp E&T program in an eligible State to E&T mandatory participants placed in all eligible States in the calendar year that ends nine months before the beginning of the fiscal year. For example, Fiscal Year 1991

performance-based funding shall be based on mandatory participants placed in Calendar Year 1989. In order to be eligible for a share of performance-based funding for a given fiscal year, a State agency shall have met its performance standard (as established prospectively) for the second preceding fiscal year, e.g., to receive any performance-based funding for Fiscal Year 1991, a State agency must have met its performance standard for Fiscal Year 1989). Fiscal Year 1991 will be the first year this particular criterion will be imposed. Performance over the entire Fiscal Year of 1989 will be considered to determine eligibility for Fiscal Year 1991 funding. Corrections to reports required to be submitted in accordance with § 273.7(c) must be received by FNS, and State agency good cause appeals must be resolved no later than March 1 to be used in determining whether a State agency is eligible for performance-based funding and in calculating the performance-based funding share for the fiscal year beginning the following October. If the data on the reports show that a State agency did not meet its performance standard for the second preceding fiscal year or if missing reports prevent the Department from being able to determine if a State agency met such performance standard or a good cause determination was not made by FNS by March 1, the State agency would not be eligible for performance-based funding. Only data from eligible State agencies will be used when determining performance-based funding shares among those State agencies.

G. Scott Dunn,

Acting Administrator, Food and Nutrition Service.

Date: May 30, 1989.

[FR Doc. 89-13846 Filed 6-8-89; 8:45 am]
BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 669]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 669 establishes the quantity of fresh California-Arizona lemons that may be shipped to market at 400,000 cartons during the period June 11 through June 17, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the

period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 669 (§ 910.969) is effective for the period June 11 through June 17, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended (7 CFR Part 910), regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administration Committee (Committee) and upon other available information. It is found that

this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1988-89. The Committee met publicly on June 6, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is strong.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after the publication in the *Federal Register* because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is amended as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.969 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.969 Lemon Regulation 669.

The quantity of lemons grown in California and Arizona which may be handled during the period of June 11, 1989, through June 17, 1989, is established at 400,000 cartons.

Dated: June 7, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-13905 Filed 6-8-89; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 917

[Docket No. FV-89-058]

Pears, Plums and Peaches Grown in California; Modification of Pack Requirements for Plums for the 1989/90 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule relaxes pack requirements established for California plums for the 1989/90 season, to permit the shipment of plums packed in 24-pound net weight loose-filled or tight-filled packages or containers. Currently, such containers must contain 28 pounds, net weight, of plums. This action would provide handlers with more marketing flexibility.

DATES: This interim final rule becomes effective June 5, 1989. Comments received by July 10, 1989, will be considered prior to issuance of a final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this interim final rule. Comments should be sent to: Docket Clerk, U.S. Department of Agriculture, Agricultural Marketing Service, Fruit and Vegetable Division, P.O. Box 96456, Room 2025-S, Washington, DC 20090-6456. Three copies of all material should be submitted and will be available for public inspection in the office of the Docket Clerk during regular business hours. The comments should reference the docket number and the date and page number of this issue of the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: George J. Kelhart, Marketing Order Administration Branch, F&V, AMS, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone (202) 475-3919.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 917 (7 CFR Part 917), both as amended, regulating the handling of fresh pears, plums and peaches grown in California. The agreement and order are effective under the Agricultural

Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 390 handlers of plums subject to regulation under marketing order (7 CFR Part 917), and there are approximately 1,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than \$500,000. Small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of California plums may be classified as small entities.

Inspected shipments of California plums for the 1988 season totalled approximately 15,250,000—28-pound equivalent packages, and were marketed primarily in the fresh market. Inspected shipments of plums during the 1989 season are expected to total slightly more than 14 million 28-pound equivalent packages.

Shipments of California plums are regulated by container and pack under Plum Regulation 17 (7 CFR 917.454). Paragraph (a)(5) of § 917.454 specifies that each package or container of loose-filled or tight-filled plums other than bulk bin containers, master containers of consumer packages, and individual consumer packages, shall bear on one outside end in plain sight and in plain letters, the words "28 pounds net weight." Because these regulations do not change substantially from season to season, they have been issued on a continuing basis subject to amendment, modification, or suspension as approved by the Secretary.

On May 3, 1989, and again on May 24, 1989, the Plum Commodity Committee (committee) considered a request from one handler to test market plums packed in 24-pound net weight volume-filled containers which are 5 and 3/4 inches deep. The handler indicated that a market exists for 5 and 3/4 inch deep, 24-pound net weight containers. The 28-pound net weight containers currently in use are generally 8 and 1/2 inches deep. The 24-pound container is the same length and width as the larger container and is generally used for shipping plums packed in molded forms (tray-packs). According to the handler, an individual buyer prefers the small containers, volume filled, because their use reduces handling costs by allowing the buyer to ripen and display the fruit without the need for moving the plums from packing to display containers. The buyer also contends that because peaches and nectarines are packed in the smaller containers, similar use of smaller containers for plums enhances the display of summer fruit in the buyer's stores and thus increases sales.

At both meetings, some committee members opposed the use of the smaller 24-pound net weight container because they believe such use could cause confusion in the marketplace. They believe this could defeat the purpose of having one standard sized 28-pound net weight container. Also, previous research has shown that less fruit bruising results from fruit packaged in the 28-pound net weight container. In addition, some members believed that approval of this handler's request would set a precedent, and could require approval of future requests for different net-weight containers. Further, it was indicated that the 5 and 3/4 inch deep containers would limit the handler to using smaller sized fruit because larger fruit would either not fit in the smaller container or could be bruised during packaging or shipment. Other members indicated that the request to market fruit in a 24-pound net weight container should be approved if sales of fruit could be increased. One member was of the opinion that the use of a 24-pound net weight container would not cause confusion in the marketplace. It was suggested that information was needed from other retailers on the 24-pound pack. Representatives of the handler requesting the use of the 24-pound net weight container and of the retailer who wishes to purchase fruit in that container attended both meetings. The handler indicated that the 24-pound net weight container would only be used in shipments to the one buyer. The handler further indicated that the quantity

expected to be shipped to that buyer would be approximately 1 percent of total industry plum shipments during the 1989/90 season. Thus, the handler and retailer both felt that there is little possibility of confusion in the marketplace caused by the use of another sized/weight container. Most members agreed that additional marketing research on the 24-pound net weight container would be helpful in making a recommendation on the use of that shipping container in the future. The committee voted to authorize a study of the marketing effects of the smaller containers and of buyer interest before shipments are authorized. At both meetings, the committee voted to not recommend the use of the 24-pound net weight container.

The Department has carefully considered the votes of the committee, the differing viewpoints of the individual committee members, and other information. The Department believes that handlers should be permitted to take advantage of marketing outlets which desire 24-pound net weight containers of plums, while the committee conducts a study evaluating the effects of using such containers. Moreover, the Department believes that the limited use of the smaller container as discussed above for the 1989/90 season would not disrupt the market.

The Department also believes that approval of the 24-pound net weight container, packed loose-filled or tight-filled, will not necessarily result in additional handler requests for different sized containers with net weights other than 24 and 28 pounds. If this action should result in a proliferation of handler requests for other sized or weight containers, the committee should review such requests and recommend, when appropriate, the use of those containers.

In view of the above, it is the Department's view that this change in container requirements will provide additional marketing opportunities and should not disrupt the marketplace. Thus, to allow the shipment of plums in 24-pound net weight containers, paragraph (a)(5) of § 917.454 should be revised for the 1989/90 marketing season.

Based on available information, the Administrator of the AMS has determined that this interim final rule will not have a significant impact on a substantial number of small entities.

After consideration of all relevant information presented, including the committee's recommendation, and other information, it is found that the modification of the container

requirements, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that, upon good cause, it is impracticable, unnecessary, and contrary to the public interest to give notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because: (1) Shipments of the 1989/90 plum crop have already begun; (2) this action gives handlers the opportunity to use a smaller net-weight container to meet buyer preferences; and (3) no useful purpose would be served by delaying the effective date of the changed requirements.

Further committee recommendations, other information, and all written comments timely received in response to this publication will be considered prior to any finalization of this interim final rule.

List of Subjects in 7 CFR Part 917

Marketing Agreements and Orders, Pears, Plums, Peaches, California.

For the reasons set forth in the preamble, 7 CFR Part 917 is amended as follows:

PART 917—FRESH PEARS, PLUMS, AND PEACHES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 917 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 917.454 is amended by revising paragraph (a)(5) to read as follows:

Note: This section will appear in the Code of Federal Regulations.

§ 917.454 Plum Regulation 17.

(a) * * *

(5) Each package or container of loose-filled or tight-filled plums other than bulk bin containers, master containers of consumer packages, and individual consumer packages in master containers shall bear on one outside end, in plain sight and in plain letters, the words "28 pounds net weight" or, for the 1989/90 marketing season, "24 pounds net weight.", whichever is appropriate.

* * *

Dated: June 5, 1989.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-13655 Filed 6-8-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 989

[FV-89-016FR]

Raisins Produced From Grapes Grown in California; Suspension of a Provision Regarding Desirable Carryout Levels and Establishment of a Formula To Calculate Desirable Carryout Levels Under the California Raisin Marketing Order's Rules and Regulations

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule; Suspension of a rule.

SUMMARY: This action suspends, for an indefinite period, an order provision relating to desirable carryout levels for certain varietal types of raisins regulated under the marketing order for raisins produced from grapes grown in California. The final rule establishes a formula to calculate new desirable carryout levels to become part of the order's administrative rules and regulations. The suspension of the desirable carryout level will allow the Raisin Administrative Committee (Committee), the agency responsible for local administration of the order, to adopt a formula to calculate the desirable carryout levels used in the Committee's annual marketing policy deliberations for all varietal types of raisins.

EFFECTIVE DATE: July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, Room 2525-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 447-5120.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 989 (7 CFR Part 989), both as amended, regulating the handling of raisins produced from grapes grown in California and the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act. The agreement and order are effective under the Act.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation No. 1512-1 and

has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 23 handlers of raisins who are subject to regulation under the raisin marketing order, and approximately 5,000 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. A majority of producers and a minority of handlers of California raisins may be classified as small entities.

This action will not have a significant economic impact on small producers or handlers. The suspension of the desirable carryout levels and establishment of a formula to calculate new desirable carryout levels should allow greater flexibility in marketing consistent with recent market trends. Also, when the desirable carryout levels are increased, the free tonnage percentage will correspondingly increase, allowing more raisins to be available for immediate sale. Producers are usually paid at the time of delivery to handlers for the free tonnage portion of the crop. The reserve portion of the crop must be held by handlers for the account of the Committee to be sold in specified outlets throughout the crop year. Payments to equity holders (producers) from reserve sales are made periodically throughout the crop year. Therefore, an increase in the desirable carryout levels will provide returns to producers earlier in the season on more free tonnage raisins.

This action suspends the desirable carryout levels specified in § 989.54(a) of the order and establishes a formula to calculate new desirable carryout levels as part of the order's administrative rules and regulations. These actions

were unanimously recommended by the Committee at its December 7, 1988, meeting.

Section 989.54(a) of the order currently specifies the desirable carryout levels for certain varietal types of raisins. The desirable carryout level is the amount of tonnage from the prior crop year that is considered necessary for the industry to have available during the first part of each crop year to meet market needs, while waiting for the next crop to be harvested. Under current order provisions, the desirable carryout level for Natural (sun-dried) Seedless raisins is 60,000 tons. In 1984, the order was amended to increase the desirable carryout level by 5,000 tons each crop year from 45,000 tons, until it reached 60,000 tons (49 FR 48194, December 11, 1984). The Committee reached the 60,000-ton ceiling last season. The desirable carryout levels for Dipped Seedless and Oleate and Related Seedless raisins are also specified in § 989.54(a) at 1,500 tons.

The Committee has determined that the current desirable carryout levels for Natural (sun-dried) Seedless and Dipped Seedless raisins specified in the order are too low and that higher levels are more appropriate because they will allow handlers to have adequate inventory to meet shipment needs during the early months of the crop year. The Committee has also determined that the desirable carryout level for the Oleate and Related Seedless varietal type is too high and the specified tonnage in § 989.54(a) should be suspended regarding this varietal type since the specified tonnage no longer reflects the actual tonnage needed during the beginning of the season. Thus, the Committee has recommended that the two sentences in § 989.54(a) relating to desirable carryout levels for these varietal types of raisins be suspended indefinitely.

In addition, the Committee recommended that a formula to calculate desirable carryout levels be established in the order's rules and regulations. The Committee has recommended that total shipments (converted to a natural condition basis) for these raisin varietal types from August, September, and October (the first three months of the crop year) of the prior crop year be used to establish the desirable carryout levels each season. If prior shipments in a particular crop year are limited due to adverse crop conditions, the Committee may select the shipments during the August through October period of one of the three years preceding the prior crop year. The Committee has indicated that

this formula method is an appropriate procedure for determining desirable carryout levels, since it will better reflect changes in each season's marketing conditions.

The Committee has indicated that shipment levels during the beginning of the crop year (the three-month period of August, September, and October) have increased from 57,286 tons in 1982 to 95,323 tons in 1988 for Natural (sun-dried) Seedless raisins. The Natural (sun-dried) Seedless raisin varietal type comprises about 90 percent of the industry's annual raisin crop. If the new formula were in effect for the current season, the desirable carryout level would be increased by approximately 43,948 tons for Natural (sun-dried) Seedless raisins, to 103,948 tons (converted to a natural condition basis). Shipments of Natural (sun-dried) Seedless raisins during the first three months of the crop year totaled 83,410 tons in 1986; 87,688 tons in 1987; and 95,323 tons in 1988.

The formula would also be likely to result in an increase in carryout levels for the Dipped Seedless varietal type because shipments of this varietal type during the first three months of the crop year have increased in recent years. The desirable carryout level would be increased by approximately 1,860 tons for the Dipped Seedless varietal type to 3,360 tons (converted to a natural condition basis) if the new formula were in effect for the current season. Shipments of the Dipped Seedless varietal type during the first three months of the crop year totaled 1,108 tons in 1986; 1,822 tons in 1987; and 1,767 tons in 1988.

Shipment levels of the Oleate and Related Seedless varietal type, on the other hand, have been below the 1,500 ton level specified in the order. Shipments of this varietal type during the first three months of the crop year totaled 840 tons in 1986; 922 tons in 1987; and 114 tons in 1988. Therefore, the formula to calculate the desirable carryout levels for this varietal type results in a desirable carryout figure that more closely reflects the shipments during the August through October period.

The Committee also intends to use this formula to calculate desirable carryout levels for all varietal types listed under § 989.110 of the rules and regulations. The desirable carryout levels of the varietal types that are not currently specified under § 989.54(a) (Golden Seedless, Muscats, Sultanas, Zante Currants, Monukka, and Other Seedless raisins) are determined by the Committee each crop year based on the marketing conditions from the prior year

and anticipated marketing conditions for the upcoming year. The Committee has determined that the formula method will be more appropriate in determining the desirable carryout levels for these varietal types.

Recommendation of this action was published in the *Federal Register* (54 FR 10158) on March 10, 1989. Written comments were invited from interested persons until April 10, 1989.

One comment was received from Mr. Barry F. Kriebel, President of Sun-Maid Growers of California. The comment strongly supported the proposed action recommended by the Committee. The commenter also pointed out an inadvertent error in the supplementary information section of the proposed action. In the discussion relating to the calculations of the desirable carryout levels for Natural (sun-dried) Seedless raisins, the calculations were not converted to a natural condition basis as recommended in the new desirable carryout formula. This has been corrected in the supplementary information section of this action.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, including the Committee's recommendations, the comments received, and other available information, it is found that this final rule will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 989

California, Grapes, Marketing agreements and orders, Raisins.

For the reasons set forth in the preamble, 7 CFR Part 989 is amended as follows:

PART 989—RAISINS PRODUCED FROM GRAPES GROWN IN CALIFORNIA

1. The authority citation for 7 CFR Part 989 continues to read as follows:

Note:—These sections will appear in the annual Code of Federal Regulations.

Authority: Secs. 1-19, 48 Stat. 31, as amended, 7 U.S.C. 601-674.

§ 989.54 [Amended]

2. In paragraph (a) of § 989.54 *Marketing policy*, the sentences, "The desirable carryout shall be increased from 45,000 to 60,000 tons for Natural (sun-dried) Seedless raisins at a rate of 5,000 tons per year for the three crop years following the effective date of this amended subpart. The desirable carryout for Dipped Seedless raisins

shall be 1,500 tons, and for Oleate and Related Seedless raisins 1,500 tons.", are suspended indefinitely.

Subpart—Administrative Rules and Regulations

3. A new § 989.154 is added to read as follows:

§ 989.154 Desirable carryout levels.

The desirable carryout levels to be used in computing and announcing a crop year's marketing policy shall be equal to the shipments of free tonnage to all outlets for each varietal type during the period August through October of the prior crop year, converted to a natural condition basis, *Provided*, That if the prior year's shipments were limited because of crop conditions, the Committee may select the shipments during the August through October period of one of the three years preceding the prior crop year.

Dated: June 6, 1989.

Jo Ann R. Smith,
Assistant Secretary, Marketing and
Inspection Services.

(FR Doc. 89-13738 Filed 6-8-89; 8:45 am)

BILLING CODE 3410-02-M

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; Docket No. R-0655]

RIN: 7100-AA91

Truth in Lending; Home Equity Disclosure and Substantive Rules

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is revising Regulation Z (Truth in Lending) to implement the Home Equity Loan Consumer Protection Act of 1988. The law requires creditors to provide consumers with extensive information for open-end credit plans secured by the consumer's dwelling, and imposes substantive limitations on these plans. Creditors will have to provide information at the time an application is provided to the consumer, including information about the payment terms, fees imposed under the plan, and, for variable-rate plans, information about the index and a fifteen-year history of changes in the index values. Creditors will be required to provide consumers with a brochure prepared by the Board (or a suitable substitute) describing home equity plans. The regulation also imposes duties on third parties who

provide applications to consumers and modifies the rules relating to advertisements for home equity plans.

In addition to these disclosure requirements, the regulation limits a creditor's right to terminate a plan and accelerate any outstanding balance, or to change the terms of a plan after it has been opened, and limits the type of index that can be used for variable-rate plans.

EFFECTIVE DATE: June 7, 1989, but compliance is optional until November 7, 1989.

FOR FURTHER INFORMATION CONTACT: Sharon Bowman, Leonard Chanin or Thomas Noto, Staff Attorneys, or Michael Bylsma, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-3667 or 452-2412; for the hearing impaired only, contact Earnestine Hill or Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

In December 1987 the Board proposed amendments to Regulation Z to change the existing disclosure requirements for home equity lines of credit secured by the consumer's principal dwelling (52 FR 48702). Subsequently, the Home Equity Loan Consumer Protection Act was enacted on November 23, 1988 (Pub. L. 100-709). The law superseded the Board's proposal.

The statute and amendments to the regulation leave in place existing disclosure requirements for open-end plans. They add, however, two requirements to this framework. First, as is the case for certain closed-end adjustable-rate mortgages (see § 226.19(b) of Regulation Z), creditors generally will be required to provide detailed disclosures about their home equity plans when an application is provided to the consumer. Second, creditors will be required to provide additional information, along with the current disclosures, prior to the first transaction under the plan. In addition to these disclosures the statute and regulation place certain substantive limitations on home equity plans.

On January 23, 1989, the Board published a proposed rule to amend Regulation Z to implement the statute. (54 FR 3063). The Board received approximately 150 comments on the proposal. A number of commenters expressed concern about the new law, and in particular about the substantive requirements. They felt, however, that the Board had provided a workable

framework to provide guidance to creditors. Many commenters recognized that the statute provided the Board with little flexibility in implementing the act, but requested further guidance on various issues.

Based on a review of the comments and further analysis, the Board is adopting a final rule implementing the act. The statute provides that creditors must comply with the law five months after enactment of final regulations by the Board. Therefore, compliance is mandatory as of November 7, 1989. Creditors are free to comply with the new requirements prior to that date.

(2) Amendments To Regulation Z

The Home Equity Loan Consumer Protection Act is quite detailed and, for the most part, the regulatory amendments mirror the statutory requirements. The amendments to Regulation Z incorporate the disclosure provisions into a new § 226.5b of the regulation and into existing § 226.8. (A new § 226.5a was added to Regulation Z by the Board on April 6, 1989, to implement the Fair Credit and Charge Card Disclosure Act. See 54 FR 13855. The changes now being made amend the regulation as it has been modified by the amendments implemented under the Fair Credit and Charge Card Disclosure Act.) Modifications are made to the form and timing rules in § 226.5, the change in terms rules in § 226.9, the rescission provisions in section 226.15, and the advertising rules contained in § 226.16. Technical amendments also are made to §§ 226.1, 226.5a, and 226.14.

This notice contains a detailed section-by-section discussion of the new rules and provides guidance on a large number of technical questions raised by the commenters. In general, the amendments apply to open-end credit lines secured by the consumer's dwelling (not limited to the principal dwelling).

The new rules require that creditors provide disclosures and a brochure at the time an application for such a line of credit is given to the consumer, although extra time is permitted in certain cases, such as where applications are made on the telephone or through intermediaries. The disclosures generally have to be grouped together and separated from any unrelated information. Among other things, creditors must describe the payment terms of the plan, including how the minimum payment is determined. The disclosures cover both the draw period and any repayment period, although some information about the repayment period may be delayed until repayment begins. Creditors must itemize and provide the amount of any

fees they impose to open or use the plan, and an estimate of fees imposed by third parties to open the plan.

Detailed information about any variable-rate feature will be provided by creditors. This includes the index used to determine the rate adjustments, the frequency of changes in the annual percentage rate (APR), and a fifteen-year historical table showing how the APRs and payments would have been affected by index value changes over that time.

In addition to these early disclosures, the regulation requires that certain information (such as payment information) be given a second time along with the disclosures currently required when open-end credit accounts are opened. The regulation specifies which disclosures must be given a second time.

Though the regulation principally deals with creditors, third parties have a limited duty to provide information if they provide applications to consumers. The advertising rules also are modified. For example, if an advertisement states any payment information it must include other cost information.

In addition to disclosures, the regulation contains substantive limitations on the way home equity plans may be structured. The regulation limits the ability of a creditor to terminate a plan and accelerate any outstanding balance, or to change the terms of a plan after it has been opened. The regulation also limits the type of index a creditor can use for variable-rate plans.

Renewals and "conversions" of home equity lines raise a number of issues. Guidance on how these should be handled appears later in this notice, as well as how the effective date of the new rules will affect applications and new plans being offered on that date. Much of the information in this notice will be incorporated into the annual update to the Official Staff Commentary on Regulation Z that will be proposed for comment in the fall. Furthermore, a number of cross-references and modifications will be added to existing commentary provisions when the Official Staff Commentary is proposed. For example, comment 6(a)(2)-2 (dealing with the ability of a creditor to increase a rate without reference to an index) and comment 17(b)-2 (dealing with conversion of open-end credit to closed-end credit) will be modified to reflect the new home equity rules.

Section 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability

The amendments to § 226.1 are largely unchanged from the proposal, except that they add a reference to the credit and charge card rules adopted by the Board in April 1989. The amendments to § 226.1(b) reference the fact that variable-rate contracts secured by the consumer's dwelling must state a maximum interest rate. (This requirement was added to § 226.30 of the regulation in November 1987.) This section also references the limitations imposed on home equity plans. The addition of § 226.1(c) reflects the fact that certain requirements of the home equity rules apply to persons other than creditors who provide applications to consumers. The amendments to § 226.1(d) add a reference to the new home equity rules, and amendments made to implement the Fair Credit and Charge Card Disclosure Act (added to the regulation in April 1989).

Section 226.5—General Disclosure Requirements

Footnote 8 accompanying § 226.5(a) is amended to reflect the fact that the disclosures required at the time of application need not be in a form that the consumer can keep. The existing rule in § 226.5(a)(2) also applies to the early disclosure statement. Thus, when the term "annual percentage rate" is disclosed with a number, it must be more conspicuous than other required disclosures. A new paragraph (4) is added to § 226.5(a) to reflect the fact that § 226.5b disclosures have their own form rules. A new paragraph (4) is added to § 226.5(b) to reflect the fact that § 226.5b disclosures have their own timing rules.

Section 226.5a—Credit and Charge Card Applications and Solicitations

Section 226.5a(a)(3) is modified to substitute the new regulatory citation of the home equity rules for the statutory citation in § 226.5a. (Section 226.5a—dealing with credit and charge card applications and solicitations—does not apply to home equity plans accessible by a credit or charge card.)

Section 226.5b—Requirements for Home Equity Plans

Section 226.5b provides that the amendments to Regulation Z apply to all open-end credit plans secured by the consumer's dwelling. Several commenters asked whether the home equity rules apply only where the consumer's principal dwelling is involved. While the statute uses the

term "principal dwelling," it is specifically defined to include any vacation or second home of the consumer. The Board is using the term "dwelling" since it has an established meaning under Regulation Z. The final rules apply to all dwellings, a term defined in § 226.2(a)(19) of the regulation to include residential structures containing one to four units. Thus, the new rules are not limited to plans secured by the consumer's primary dwelling. The regulation does not set out special owner-occupancy rules. However, the existing commentary to § 226.3(a) (which discusses whether transactions are consumer or business purpose credit in part based on owner-occupancy criteria) provides guidance on whether a home equity plan is subject to Regulation Z at all.

The fact that coverage of these rules is broader than just principal dwelling does not affect the scope of any other provisions of the regulation. Thus, for example, the right of rescission applies only in cases where the consumer's principal dwelling secures the credit.

The APR referred to throughout new § 226.5b is the APR corresponding to the periodic rate, as determined by § 226.14(b). Since a number of commenters were concerned that the statement to that effect in footnote 10c in the proposal was ambiguous, the provision now appears in the introduction to the section.

Conversion Rules

A number of commenters requested guidance on what disclosures are required if the initial agreement calls for the draw phase of a plan to "convert" to a repayment phase, which has many aspects of closed-end credit. Some home equity plans provide in the initial agreement for a period during which repayment of the amount borrowed is made, but no further draws may be taken. In such cases, the disclosures must include information about both phases of the plan. All of the disclosures in § 226.5b, as applicable, must be given for the repayment phase. Thus, for example, creditors must provide payment information about the repayment phase as well as about the draw period, as required by § 226.5b(d)(5). The information set out in § 226.5b(d)(7), § 226.5b(d)(9) and, if the rate during repayment will be variable, in § 226.5b(d)(12) also must be given for the repayment phase. If the rate that will apply during the repayment phase is fixed at a known amount, the creditor must provide an APR under § 226.5b(d)(6) with regard to that phase. If, however, a creditor uses an index to determine the rate that will apply at the

time of conversion—even if the rate during the repayment phase will be fixed—creditors must provide the information in § 226.5b(d)(12), as applicable.

Although full disclosure of the terms about the repayment phase is required, creditors have a choice with regard to when it must be given. Creditors may provide all of this information at the time the other early disclosures are given to the consumer, in accordance with § 226.5b. As an alternative, creditors need disclose only the basic payment terms information under § 226.5b(d)(5)(i) and (ii) with the early disclosures, and defer all the other required disclosures about the repayment phase until conversion. If provided at conversion, disclosures must be based on information available at that later time. For example, the historical table as discussed under § 226.5b(d)(12)(xi) must reflect the index for the most recent fifteen years. Sample form C-14C has been added to the appendix to the regulation to illustrate how this later disclosure might look. Creditors using either of these alternative disclosure rules are required to provide information about the repayment phase as set forth in § 226.6 (See the discussion of this requirement under that section.)

Creditors providing these disclosures, whether early or at conversion, are not required to provide any additional disclosures under the rules in Subpart C of the regulation for closed-end credit. The existing rules (such as those in comments 17(b)-2 and 19(b)-2 of the Official Staff Commentary, which discuss converting an open-end account to a closed-end one) do not apply to home equity plans in which a repayment phase is provided for in the original agreement. The Congress, in the act, requires disclosures about the closed-end aspects of a home equity line to be given as part of the home equity "plan." The Board believes the Congress intended to provide special treatment for this product. Consistent with this approach of treating both phases as a single open-end credit plan, during the repayment phase creditors are required to continue providing periodic statements under § 226.7 and to comply with other open-end credit rules set forth in Subpart B of the regulation, as well as the substantive rules set forth in § 226.5b(f). For example, if the original agreement provides for a repayment phase with a variable-rate feature, rate changes must be tied to an index not within the control of the creditor, as discussed in § 226.5b(f)(1).

If the original home equity line agreement does not call for a repayment phase to follow the draw period, and the creditor and consumer later enter into a closed-end credit agreement to repay the outstanding balance, the creditor must give closed-end credit disclosures (including those under § 226.19(b) and 226.20(c), if applicable) since this would be deemed a new transaction. In such cases, the substantive rules in § 226.5b(f) do not apply to the closed-end credit transaction.

Section 226.5b(a)—Form of Disclosures

Unlike existing Truth in Lending requirements for closed-end and open-end credit, the disclosures provided at the time of application need not be in a form the consumer can keep. Thus, although the disclosures must be in writing, creditors are permitted to place the first set of disclosures on the application form the consumer returns to the creditor to apply for the plan. Although several commenters questioned this rule, the act and legislative history make it clear that creditors are not required to provide this information in a form the consumer can keep. (The disclosures provided under § 226.6(e) of the regulation, however, must be in a form the consumer can keep. See also the discussion under § 226.6(e) for special rules when the early disclosures are given in a retainable form.)

Section 226.5b(a) requires most of the disclosures to be grouped together and "segregated" from unrelated information provided to the consumer in connection with the application. The brochure and the variable rate information described in § 226.5b(d)(12) may be provided either separately from or with the other disclosures. Creditors choosing to provide a description of the items referred to in § 226.5b(d)(4)(iii)—for example, the conditions under which the creditor may prohibit additional extensions of credit—may give this information separately from or with the other disclosures. Similarly, creditors choosing to provide a good faith itemization of fees imposed by third parties—as set forth under § 226.5b(d)(8)—also may give those disclosures separately from or with the other disclosures. (The disclosures required under these sections are set forth in greater detail under the specific sections.)

Under the regulation, greater flexibility is permitted in complying with the segregation standard than currently exists for closed-end credit. Disclosures for home equity plans tend to be less concise and more narrative in form than those for closed-end credit. Therefore,

the regulation applies a more liberal standard that permits inclusion of information that explains or expands on other aspects of the plan that is not related to the required disclosures, such as underwriting criteria, however, is not permitted to be interspersed with the disclosures. Such information, of course, could be provided as long as it is separate from the required disclosures. The segregation requirement does not apply to the second set of disclosures, which are provided under § 226.6 prior to the first transaction.

In the first set of disclosures, that is, those given at application, § 226.5b(a)(2) of the regulation provides that certain items will be further highlighted by requiring them to precede the other disclosures. Consumers will be notified, for example, that: (1) They should keep a copy of the disclosures; (2) they have a right to obtain a refund of fees if terms change and they decide not to enter into the contract as a result; (3) they risk the loss of the dwelling in the event of default; and (4) a creditor may terminate a plan or suspend future advances under certain circumstances. With regard to the last item, if a creditor describes these conditions, the precedence rule does not apply to that descriptive disclosure. The precedence rule does not apply to the second set of disclosures at all.

If creditors give a single disclosure form covering all of their home equity offerings, all aspects of their plans must be described in the first set of disclosures. For example, if a creditor offers several payment options, all options have to be set forth. Furthermore, if any aspects of a plan are linked together—for example, if the consumer can obtain certain payment options only in conjunction with other plan features, such as a particular variable-rate feature—the creditor must clearly disclose the relation among those plan features. Creditors need not, however, reflect all payment options in providing the minimum payment example under § 226.5b(d)(5)(iii), the "worst case" example under § 226.5b(d)(12)(x), and the historical table under § 226.5b(d)(12)(xi). (See the comments accompanying these sections for the specific disclosure requirements.)

As an alternative to the combined disclosure method, creditors may prepare separate disclosure forms where multiple options exist. For example, creditors offering more than one payment option during the draw phase or during any repayment phase of a plan may choose to create separate disclosure forms for such variations.

Thus, creditors who offer consumers a choice during the draw period, for example, of (1) minimum payments equal to any accrued unpaid finance charge or (2) minimum payments equal to two percent of the outstanding balance, could choose to create separate disclosure forms for the two payment options. Creditors who follow this alternative of preparing separate disclosures must include a statement on each form that the consumer should ask about the creditor's other home equity programs. (This disclosure would be required only with respect to other programs available to the public and not, for example, employee preferred-rate plans.) Creditors would have to provide disclosures about their other programs as soon as reasonably possible in response to any request for the disclosures.

Section 226.5b(b)—Time of Disclosures

Section 226.5b(b) requires the disclosures and brochure to be given at the time an application is provided to the consumer. In the case of applications contained in publications such as magazines or received by the creditor through third parties, footnote 10a allows the creditor to mail or deliver the disclosures and brochure to the consumer within three business days of its receipt of the application. Several commenters suggested this three-day period begin upon receipt of a "completed application", recommending that the Board use the term as used in Regulation B (which implements the Equal Credit Opportunity Act). This has not been adopted in the final regulation. Regulation B uses the term "completed application" to begin the time period in which creditors must notify an applicant of action taken on an application. This is appropriate since a creditor may not be able to make a credit decision until all relevant information has been received. The purpose of the home equity early disclosure rules is quite different. They are meant to assist consumers in shopping for credit; thus it is important to provide information early in the shopping process.

The three-day delay applies where the creditor takes an application over the telephone. If, however, the consumer simply requests over the telephone that an application be mailed, the creditor must provide the disclosures and a brochure with the application sent to the consumer. (Creditors should consult the rules in § 226.5b(h) regarding the imposition of a nonrefundable fee before receipt of the disclosures.)

Some creditors use a general purpose application for their home equity plans

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as well as their other credit products. The home equity disclosures and brochure must accompany this type of application if the application or materials accompanying it indicate that it can be used to apply for a home equity line of credit. In addition, if a general purpose application is provided to a consumer as a result of an injury about a creditor's home equity plan, the disclosures and brochure must accompany the application, even if the application or accompanying materials do not specify that it can be used to apply for a home equity plan.

Commenters also asked how the disclosure rules relate to mail solicitations and so-called "take-ones." In cases where the creditor sends applications through the mail, the creditor must send the disclosures and a brochure along with the application. Applications made available to the public without need for a request, such as "take-ones," also have to be accompanied by (or combined with) the disclosures and a brochure.

Several commenters raised the issue of whether disclosures had to be provided with "response cards." Some creditors provide a response card instead of an application in solicitation materials sent to consumers. Consumers are requested to return the card to the creditor to indicate their interest in the home equity product. Creditors need not provide the home equity disclosures and brochure with the response card if the only action taken by the creditor upon receiving the card is to send an application form to the consumer (which would then be accompanied by the disclosures and a brochure), or to telephone the consumer regarding an application.

In any situation in which footnote 10a applies, thus permitting a delay in disclosures, the creditor may determine within the three-day period that the application will not be approved. In such a case, the creditor need not provide the disclosures or the brochure. The same would be true if the consumer withdraws the application within that time period.

If an application contained in a magazine or other publication is mailed to an intermediary or broker or if such a person takes an application over the telephone, footnote 10a permits that person to mail the disclosures and a brochure within three business days of receipt. (See the discussion below of when such third parties have a duty to provide disclosures.)

Section 226.5b(c)—Duties of third parties

In addition to requiring creditors to provide disclosures and a brochure to consumers at an earlier time, § 226.5b(c) of the regulation imposes a limited duty on third parties who provide applications to consumers.

Under § 226.5b(c), a third party is required to provide disclosures only if that party has the disclosures for a creditor's particular home equity plan in its possession. Third parties do not have an affirmative duty to obtain such disclosures about a creditor's program, or to create a set of disclosures based on what the third party knows about a creditor's program. The Board believes that requiring both a third party and a creditor to provide the consumer with identical information about the same plan would result in unnecessary duplication. If, however, a creditor supplies disclosures to a third party along with its application form, the third party must give the consumer the disclosures when the application form is given out. In all cases, consumers will be provided disclosures by the creditor within three days after the creditor receives the application. Furthermore, a nonrefundable fee cannot be collected from the consumer by the creditor or a third party until after the consumer receives the disclosures. (See § 226.5b(h).)

Although the duty of third parties to provide the disclosures may arise infrequently, the regulation requires third parties, in all cases, to give the home equity brochure at the time an application is given to the consumer. Because providing the brochure is not linked to the availability of information from a creditor about its specific plan, the Board believes third parties will have access to the brochure, and thus be able to provide it with the application.

This provision imposes duties on third parties and not on creditors. Therefore creditors are not responsible for ensuring that the third parties comply with the requirements of this section.

Section 226.5b(d)—Content of disclosures

Section 226.5b(d) of the regulation lists the information to be given to consumers when they receive an application for home equity plans. As is the case with existing Truth in Lending disclosure rules, the information would be provided only to the extent applicable; thus, for example, if negative amortization cannot occur in a program, no mention of it need be made.

Section 226.5b(d)(1)—Retention of information

Because the disclosures need not be in a form the consumer can keep, the consumer will be advised to make and retain a copy of the disclosures. Creditors need not include this statement if the disclosures are in a form the consumer can keep, for example, if the disclosures are not part of the form that must be returned to the creditor to apply for a plan.

Section 226.5b(d)(2)—Conditions for disclosed terms

Creditors will include a statement of any time by which an application must be submitted to obtain specific terms disclosed. A number of commenters misunderstood this provision in the proposal. Creditors are free to not guarantee any terms, in which case they must indicate that all of the terms are subject to change. In that case, they need not include a date or time period. The legislative history makes clear that a creditor also may choose to guarantee some of the terms of the plan and not others. If creditors choose to guarantee only some of the terms, they must indicate which terms may change prior to opening the plan. Creditors can provide a specific date or use a time period as long as the consumer can determine from the disclosure the specific date by which an application must be submitted to obtain any guaranteed terms.

Creditors also must notify the consumer of the right to a refund of all fees paid in connection with the application if any disclosed term changes before opening the plan and as a result the consumer chooses not to enter into the plan. The final regulation has been amended to clarify that this provision does not apply to changes resulting from fluctuations in the index value in a variable-rate plan; this includes changes in the APR and changes in the maximum rate or "cap" if it is expressed as an amount over the initial interest rate. (See the discussion of this provision at § 226.5b(g).)

Section 226.5b(d)(3)—Security interest and risk to home

Creditors will have to disclose the fact that a security interest is being taken in the consumer's dwelling and that the consumer may lose the home in the event of default.

Section 226.5b(d)(4)—Possible actions by creditor

Under § 226.5b(d)(4), a statement must be provided that, under certain circumstances, a creditor may terminate

the plan and accelerate any outstanding balance, prohibit additional advances or reduce the credit limit, and, if applicable, implement certain modifications to the original terms, as set forth in the initial agreement. The regulation, in conformity with the legislative history accompanying the act, also requires a statement that fees may be imposed if the account is terminated by the lender. This disclosure regarding fees is required, for example, if a penalty or prepayment fee may be imposed upon termination by the lender in such circumstances. The disclosure would not be required if the fees are the same ones that would be imposed when the plan expires in accordance with the agreement. The actual amount of such fees need not be provided. In response to commenters, the Board is clarifying that this disclosure is not required if the only fees that may be imposed upon termination are fees such as attorney fees or court costs involved with the collection of the debt. Additionally, an increase in the APR—such as a higher rate of interest if the consumer fails to make payments—does not trigger this disclosure.

Section 226.5b(d)(4)(ii) provides that consumers will be notified that they can receive, upon request, a description of the conditions that permit the creditor to terminate the plan, prohibit additional advances or reduce the credit limit, and implement modifications during the term of the plan. Upon receiving a request from a consumer for such information prior to the consumer opening the plan, the creditor must provide this information as soon as reasonably possible. This requirement had previously been incorporated in § 226.5b(g) of the proposal.

As an alternative to disclosing that the consumer has the right to receive a statement of the conditions under which the creditor may take the indicated actions, § 226.5b(d)(4)(iii) provides that the creditor may simply disclose what those conditions are. One way to make this disclosure is to provide a highlighted copy of the contract, security agreement or other document which contains such information. The relevant items must be distinguished in some fashion from the other information contained in the document, for example, by use of a cover sheet that specifically points out which contract provisions contain this information, or by marking the relevant items. If a creditor does not choose to provide a document of this sort, it may simply describe the conditions using the language in §§ 226.5b(f)(2) and 226.5b(f)(3)(vi). If specified changes may be implemented

during the plan as described in § 226.5b(f)(3)(i), a statement such as the following could be made: "The initial agreement permits us to make certain changes to the terms of the line at specified times or upon the occurrence of specified events." Whichever method is used to provide the list of conditions, it may appear with the segregated disclosures or apart from those disclosures. If it is with the segregated disclosures, it need not appear before other disclosures.

Section 226.5b(d)(5)—Payment terms

Under § 226.5b(d)(5), creditors are required to describe the payment terms of the plan, including the length of the draw period and any repayment period. (The combined length of the draw period and any repayment period does not have to be stated.) If the length is indefinite, creditors would state that fact.

Several commenters requested guidance on how renewal provisions should be handled in making these disclosures. If, under the credit agreement, a creditor retains the right to review a line at the end of the specified draw period and determine whether to "renew" or extend the original draw period of the plan, such provisions should be ignored for purposes of the disclosures. Thus if an agreement provides that the draw period is for five years and that the creditor may renew the draw period for an additional five years, the possibility of renewal should be ignored and the draw period should be considered five years. A creditor may discuss a renewal feature with the other disclosures without violating the segregation rules.

Where a creditor provides a combined disclosure form for all of its home equity offerings, all payment options must be stated, including any different payment terms that may exist during the draw period and during any repayment period, as well as any differences that may apply within either period. As mentioned in the discussion of conversion rules under § 226.5b, creditors may give some of the disclosures about the repayment phase at the time of conversion, rather than with the early disclosures. Whether those disclosures are delayed or not, creditors must provide the basic payment terms information under § 226.5b(d)(5)(i) and (ii) with the early disclosures about both the draw and repayment phases.

If the plan permits the consumer to convert any of the loan balance to a fixed repayment term, this feature must be disclosed under § 226.5b(d)(5)(ii). Such a provision would be ignored for

purposes of other disclosures, however, including the historical table under § 226.5b(d)(12)(xi).

The disclosures must set forth how the minimum periodic payment is determined, the frequency of payments, and whether making only the minimum payments may not repay any or all of the principal balance by the end of the plan. The regulation also calls for a disclosure of the possibility of any balloon payment. Under some programs, a balloon payment may occur under certain circumstances, but is not certain or even likely. In such cases the disclosure would indicate that a balloon payment may occur. In other cases, such as programs where payments include interest only, a balloon payment will occur as a matter of course and the disclosures should reflect that fact. If repayment of the entire outstanding balance would be required only in the case of termination and acceleration, the balloon disclosure would not apply. Section 226.5b(d)(5)(ii) does not require the amount of any balloon to be provided. (See the requirement under § 226.5b(d)(5)(iii), however.) The term "balloon payment" need not be used. Several commenters asked whether a final payment that is only slightly larger than any other payment (for example, because of rounding) must be considered a balloon payment. Creditors need not disclose there is a balloon payment if the final payment is not more than twice the amount of other minimum payments under the plan. An explanation of the balance computation method is not required by this section.

Section 226.5b(d)(5)(iii) requires creditors to disclose an example, based on an assumed \$10,000 outstanding balance and a recent APR, showing the amount of the minimum periodic payment and of any balloon payment, and the time it would take to pay off the balance if the consumer made only those payments. If it is relevant to calculating its payments, a creditor may assume the credit limit as well as the outstanding balance is \$10,000. The issue was raised of whether a creditor that only offers lines of credit for less than \$10,000 would have to use this amount in the example. If a creditor only offers lines of credit under \$10,000, the creditor may use an alternative assumed outstanding balance of \$5,000 rather than \$10,000.

Footnote 10c provides that, for fixed-rate plans, a recent APR is one that has been in effect under the plan within the twelve months prior to the date the disclosures are provided to the consumer. The footnote also provides that, for variable-rate plans, a recent

APR is the most recent index value and margin provided in the historical table (see § 226.5b(d)(12)(xi)), or a more recent rate.

As an alternative to providing examples for each payment option—in plans that have multiple payment options within the draw period or within any repayment period—creditors may provide representative examples. For purposes of this disclosure, as well as for the variable rate disclosures under § 226.5b(d)(12)(x) and (xi) the Board is establishing three categories of payment options. The first category consists of plans that permit minimum payment of only accrued finance charges ("interest only" plans). The second category includes plans in which a fixed percentage or a fixed fraction of the outstanding balance or credit limit (for example, 2% of the balance or 1/180th of the balance) is used to determine the minimum payment. The third category includes all other types of minimum payment options, such as a specified dollar amount plus any accrued finance charges. Creditors may classify their minimum payment arrangements within one of these three categories, even if other features exist, such as varying lengths of a draw or repayment period, required payment of any past due amounts, minimum dollar amounts, and the payment of late charges.

The creditor may use a single example within each category to represent the payment options in that category. For instance, if a creditor permits minimum payments of 1%, 2%, 3% or 4% of the outstanding balance, it may pick one of these four options and provide the § 226.5b(d)(5)(iii) example for that option alone. The example used to represent a category must be an option commonly chosen by consumers, or a typical or representative example. Creditors choosing to use a representative example within each category must use the same examples for purposes of the disclosures under § 226.5b(d)(5)(iii), 226.5b(d)(12)(x), and 226.5b(d)(12)(xi). Separate examples must be given for the draw and repayment periods unless the payments are determined the same way during both periods.

This approach of allowing a single example to represent a category of payment options does not apply to the requirements under any other provisions. Creditors must fully describe all payment options under § 226.5b(d)(5)(i) and (ii). Similarly, the payment information provided in accordance with § 226.6(e)(2) must reflect the actual payment option chosen by the consumer (or all of the options available if the

consumer retains several options during the plan).

Certain "reverse mortgages" (sometimes called "reverse annuity mortgages" or "RAMs") involve an open-end line of credit and require repayment in full only when certain events occur, such as the consumer's death. These RAMs are subject to the new rules if the line is secured by the consumer's dwelling. The payment disclosures will reflect that a single payment is due when one of the specified events happens. The single payment may be considered the "minimum periodic payment" and consequently would not be treated as a balloon payment. The example of the minimum payment under § 226.5b(d)(5)(iii) should assume a single, \$10,000 advance to the consumer when the plan is opened and should assume repayment will occur upon the consumer's death, if that is one of the events requiring repayment. In such cases, the disclosures may be based on a representative life expectancy, that is, one that is an average of, or is typical of, life expectancies recently used in developing the creditor's RAM. In making the disclosures, the creditor must assume that the \$10,000 advance and any accrued interest will be paid in full by the consumer and must disregard any non-recourse provision (which provides that the consumer is not obligated for an amount greater than the value of the dwelling). Some RAMs provide that some or all of the appreciation in the value of the property will be shared between the consumer and the creditor. As part of the disclosure of the payment terms, the creditor also must describe the shared appreciation feature. (See the discussion of this feature under § 226.5b(f)(3)(i).) (See also the discussion of RAMs under § 226.5b(d)(12)(x) and (xi).)

Section 226.5b(d)(6)—Annual percentage rate

Section 226.5b(d)(6) provides that, for fixed-rate plans, a recent APR will be provided. Consumers also must be told that the APR does not include costs other than interest. Some commenters argued that the proposal's reference to "the APR" was too broad since the "historical APR" on periodic statements does in fact include finance charges other than interest. The introduction to § 226.5b makes clear that APR as used throughout § 226.5b refers to the APR that corresponds to the periodic rate, as determined under § 226.14(b).

Section 226.5b(d)(7)—Fees imposed by the creditor

Under § 226.5b(d)(7), creditors will provide a description and the amount of charges they impose to open, use and maintain the account, and a statement of when the consumer must pay the charges. These fees include items such as application fees, points, annual fees, transaction fees, and fees imposed when the plan converts to a repayment phase (if the conversion is provided for in the original agreement). Fees imposed by third parties, that are initially paid by the consumer to the creditor, may be included in this disclosure or in the disclosures under § 226.5b(d)(8). As discussed in § 226.5b(f)(3)(i), a creditor may provide a step fee schedule in which a fee will increase a specified amount at a specified date. The amount of any fees and when the fee is payable must be disclosed under this section. Charges may be stated as an estimated dollar amount for each fee, or as a percentage of a typical or representative amount of credit or house value. Several commenters asked whether fees imposed for late payment, stop payment, exceeding the credit limit, or closing out an account would have to be disclosed under this section; they do not. Creditors need not use the term "finance charge" or "other charge" in describing the fees imposed by the creditor under this section or those fees imposed by third parties under § 226.5b(d)(8).

Some creditors provide that they will rebate closing costs, for example, to the extent any interest is paid during the first year of the plan. Regardless of such a provision, if closing costs are imposed—even if possibly "rebated" later—creditors must disclose such costs. (The existence of the rebate feature may be included in the disclosures.)

Section 226.5b(d)(8)—Fees imposed by third parties to open a plan

Under § 226.5b(d)(8), an estimate of the total fees imposed by third parties to open the account (such as appraisal, credit report, government agency and attorney fees) stated as a single dollar amount or a range will be provided. Fees imposed by third parties, even if initially paid to the creditor, may be included in this disclosure. Even if such fees may be "rebated" (as discussed in § 226.5b(d)(7)), they must be disclosed. In response to comments, the Board has modified the regulation to clarify that this section covers only those fees imposed by third parties to open the plan. Thus, for example, this section does not require disclosure of a fee

imposed by a third party, such as a government agency, at the end of a plan to release a security interest.

Creditors also must provide a statement that the consumer may request more specific cost information about such fees from the creditor. Upon receiving a consumer's request for such an itemization prior to the consumer opening the plan, the creditor must respond as soon as reasonably possible. As an alternative to including this statement, creditors may provide an itemization of such fees (by type and amount) with the early disclosures. Where impractical to provide the dollar amount, fees may be expressed on a unit cost basis, for example, \$.50 per \$100 of the credit line. If provided, this itemization may appear together with or separate from the other disclosures.

Section 226.5b(d)(9)—Negative amortization

Under § 226.5b(d)(9), a statement if the plan has negative amortization—which will increase the principal balance and reduce the consumer's equity in the dwelling—must be provided.

Section 226.5b(d)(10)—Transaction requirements

Section 226.5b(d)(10) requires creditors to state any limitations on the number of extensions or amount of credit that can be obtained during any time period, and any minimum draw or minimum outstanding balance requirement stated as a dollar amount or as a percentage. A limitation on ATM usage is not covered by this provision, unless that is the only means by which the consumer can obtain funds. This provision does not require a disclosure of the maximum credit limit offered by the creditor.

Section 226.5b(d)(11)—Tax implications

Section 226.5b(d)(11) requires that consumers be told to consult a tax advisor if further information regarding the deductibility of interest and charges under the plan is desired.

Section 226.5b(d)(12)—Disclosures for variable-rate plans

Section 226.5b(d)(12) requires creditors to provide information about any variable-rate feature contained in a plan. Many of these disclosures closely parallel the disclosures currently required for closed-end variable-rate transactions secured by a consumer's principal dwelling. (See § 226.19(b) of the regulation.) As discussed above in the general comments on § 226.5b, under this section information must be provided as to variable-rate features of

both the draw period and any period in which repayment occurs with no further ability to obtain advances. There is, however, some flexibility regarding the timing of the disclosures about the repayment period. These disclosures, like others, need be provided only as applicable. (See § 226.5b(f)(3)(i) for features that are not considered variable rate and thus do not require disclosure under this section.)

Subsection (i)—APR may change. Creditors are required to state that the APR may change and that the payment or term may change due to the fact that the APR is variable.

Subsection (ii)—APR includes only interest. A statement that the APR does not include costs other than interest must be provided. (See the discussion at § 226.5b(d)(6) about the fact that this refers to the APR that corresponds to the periodic rate.)

Subsection (iii)—Index information. Creditors have to identify the index used to determine rate adjustments and a source of information about the index. (See the comments accompanying § 226.5b(f)(1) for further discussion of what constitutes a source of information.)

Subsection (iv)—How the APR is determined. Creditors have to describe how the APR will be determined (for example, by stating that a margin is added to the index value). This provision does not require disclosure of the specific amount of the margin.

Subsection (v)—"Ask about" current rate information. Because the disclosure forms can be preprinted and rate information may not be current, consumers will be told to "ask about" the current index value, margin, discount or premium (if applicable), and APR.

Subsection (vi)—Discounted or premium rate. If the initial rate is discounted or is a premium, a disclosure of that fact as well as the period the discounted or premium rate will be in effect must be provided.

Subsection (vii)—Frequency of changes in the APR. The frequency of changes in the APR must be stated, for example, monthly or quarterly.

Subsection (viii)—Rules relating to index value, APR and related changes. Rules relating to changes in the index value and the APR and resulting changes in the payment amount must be set forth. This provision requires an explanation of preferred-rate provisions in variable-rate plans, where the rate will increase not only when the index increases but also upon the occurrence of some event, such as the borrower-employee leaving the creditor's employ, or the consumer closing an existing

account with the creditor. Similarly, an explanation must be given if the plan permits the consumer to switch from a variable rate to a fixed rate, including disclosure of whether a fee may be imposed for such a change. Any payment limitations and the possibility of rate carryover also must be provided.

Subsection (ix)—Rate limitations. The proposal required a statement of any annual limitations on rate increases. Several commenters raised concerns about how to comply if their rate caps were not expressed as annual limits (for example, if there were only monthly caps). In response to this concern, the regulation provides that an annual cap must be stated if there is one, and that a rate cap for a shorter period can be stated instead if there is no annual cap. Caps for shorter periods must be stated in terms of a specific amount of time (for example, six-month limitations). A limit based on twelve monthly billing cycles should be treated as an annual cap. If there are no annual (or shorter) limits on rate increases, the fact that there is no annual limit must be stated.

The maximum rate that may be imposed under each payment option over the life of the plan also must be provided. The life of the plan includes the draw period and any repayment period that is provided for in the original agreement. This rate may be stated as a specific rate (for example, 18%) or as a stated amount above an initial rate (for example, 5 percentage points above the initial interest rate). In either circumstance, creditors may use a range of the lowest and highest rate limitations that may be applicable in disclosing both the periodic limitations and the maximum overall rate in the early disclosures given at application. Creditors that disclose the caps as ranges and creditors that disclose the maximum rate as a stated amount above an initial rate must include a statement that the consumer should ask about the rate limitations that are currently applicable. This statement may be included with the other features consumers are told to ask about under § 226.5b(d)(12)(v).

Subsection (x)—Maximum payment example. Creditors must show the minimum periodic payment required when the maximum rate for each payment option is in effect, based on a \$10,000 outstanding balance. (See the discussion in § 226.5b(d)(5) for circumstances in which creditors may use a lower outstanding balance.) If a range is used to disclose the maximum cap under § 226.5b(d)(12)(ix), the highest rate in the range must be used for this disclosure. The disclosure also must

state the earliest time the maximum rate could be imposed; this would reflect, for example, the effect of periodic rate caps.

As an alternative to making disclosures based on each payment option, creditors may choose a representative example within the three categories of payment options upon which to base this disclosure. (See the discussion at § 226.5b(d)(5).) However, separate examples must be provided for the draw period and for any repayment period unless the payment is determined the same way in both periods.

In a single payment open-end reverse mortgage, creditors should assume that the APR reaches the maximum as quickly as permitted under the plan and that the maximum rate stays in effect until repayment is called for. (See the discussion at § 226.5b(d)(5) concerning the other assumptions that the creditor should make in disclosing RAMs.)

Subsection (xi)—Historical example. A 15-year historical table, based on an assumed \$10,000 initial extension of credit and showing how the APRs and payments would have been affected by the index value changes under the plan, must be provided. (See the discussion in § 226.5b(d)(5) for circumstances in which a creditor may use a lower outstanding balance.) Index values and APRs must be shown for the entire 15 years and must be based on the most recent 15 years. If the length of the plan is less than 15 years, however, payments need only be shown for as long as the plan lasts. If the values for an index have not been available for 15 years, creditors need only go back as far as the values have been available in giving the history and may start the example at the year for which values are first available. In providing this information, creditors should assume that the \$10,000 balance is an advance taken at the beginning of the first billing cycle and is reduced according to the terms of the plan. Creditors should assume that the consumer takes no subsequent draws. (If relevant, the creditor may assume the \$10,000 is both the advance and the credit limit.)

The history must reflect the method of choosing values for the plan. For instance, if an average of index values is used in the plan, averages would be used in the history, but if an index value as of a particular date is used a single index value would be shown. The creditor is required to assume one date within a year (or one period, if an average is used) on which to base the history of index values for each loan plan. The creditor may choose to use index values as of any date or period as long as the index value as of this date or

period is used for each year in the index history.

Only one index value per year need be shown, even if the plan provides for adjustments to the APR or payment more than once in a year. In such cases, the creditor can assume that the index rate remained constant for the full year for the purpose of calculating the APR and payment. Updating will be necessary only once each year to reflect the most recent year's index value. To assist creditors in constructing histories of certain common indices, the Board is publishing in this notice tables of index values for commonly used indices.

The payment figures in the example must reflect all significant program terms. For example, features such as rate and payment caps, a discounted APR, negative amortization, and rate carryover must be taken into account in calculating the payment figures if these would have been applicable. Both periodic and overall rate limitations must be reflected in the example. If ranges of rate limitations are provided under § 226.5b(d)(12)(ix), the highest annual and overall rates must be used in the example. Rate limitations that may apply more often than annually should be treated as if they were annual limitations. For example, if a creditor imposes a 1% cap every six months, this should be reflected in the example as if it were a 2% annual cap.

Creditors need show only one payment per year in the table, even though payments may vary during a year. (The calculations, however, should be based on the actual payment computation formula.) Creditors may assume that payments are made on the last day of the billing cycle, the billing date or the payment due date. Creditors must be consistent in the manner of selecting the month that is used to illustrate payment information.

A few commenters asked whether annual balance information or balloon payments could be added to the table. Information about the remaining balance and any balloon payment may, but need not, be reflected in the table.

Creditors need not provide the required historical disclosure for all of their various payment options, but may select a representative payment option within each of the three categories of payments upon which to base their disclosure. (See the discussion at § 226.5b(d)(5).)

An historical example is required for single payment plans such as RAMs. Although 15 years of index values and APRs would be shown, the payment column would be blank until the year that the single payment would be

required, assuming that payment is estimated to occur within 15 years. (See the discussion at § 226.5b(d)(5) for additional guidance in making RAM disclosures, including the assumptions to be made about the term for repayment.)

A value for the margin must be assumed in order to prepare the example. Creditors must select a margin that they have used during the six months preceding preparation of the disclosures and state that the margin is one that they have used recently. The margin selected may be used until the creditor annually updates the disclosure form to reflect the most recent 15 years of index values. Similarly, if the home equity plan has a discounted or premium initial rate, creditors will be permitted to select a discount or premium that has been used during the six months preceding preparation of the disclosures, and should disclose that the discount or premium is one that the creditor has used recently. The discount or premium should be reflected in the example for as long as it is in effect. A creditor may assume that a discount or premium that will be in effect for part of a year is in effect for the entire year for purposes of reflecting it in the example.

In setting forth the historical example under this section, creditors that choose to provide disclosures about the repayment phase as part of the early disclosures (see the general discussion about conversion under § 226.5b) must reflect all features of the repayment phase in the table, including the appropriate index values, margin, length of the phase, and payments. For example, if different indices are used during the draw and repayment phases, the index values for that portion of the 15 years that reflects the repayment phase must be the values for the appropriate index.

Creditors who choose to provide information about the repayment phase at the time the plan converts to the repayment phase, rather than with the early disclosures, need not reflect the repayment phase in the table (just as they may omit information about the repayment phase for purposes of all the disclosures under § 226.5b(d)(12)). In such cases, the index values and APRs relating to the draw period would be shown for the entire 15 years (even if the draw period is less than 15 years).

Section 226.5b(e)—Brochure

Section 226.5b(e) requires both creditors and third parties providing applications to furnish consumers with a brochure prepared by the Board describing home equity plans, or a

suitable substitute. The Board's brochure (which is expected to be published by the end of June 1989) describes home equity plans, including the potential advantages and disadvantages. The brochure also provides guidance on how to compare home equity plans with closed-end credit. The Board envisions that any substitutes must be comparable in substance and comprehensiveness, recognizing that some lenders' brochures may contain more detailed descriptions of their particular home equity programs than contained in the Board's brochure.

The regulation requires third parties to provide consumers with the brochure if an application is given to the consumer by the third party. The Board believes, however, that requiring a second brochure to be given by the creditor in such circumstances is unnecessary. Therefore, the creditor's duty to provide the brochure will be met if the third party provides the brochure to the consumer. This will avoid duplication.

A number of commenters misunderstood this provision in the proposal, thinking that the Board was attempting to make creditors directly liable for a duty that the act places on the third party. In fact, this provision does not affect the duty of the third party but merely relieves creditors of the need to give a second brochure to the consumer on condition that the creditor ensures that the brochure was actually given. If a creditor does not wish to rely on the actions of the third party, it of course may provide a copy of the brochure.

Section 226.5b(f)—Limitations on home equity plans

The substantive limitations in § 226.5b(f) apply to both actions creditors may take and the provisions that they include in contracts. These limitations apply to assignees and holders as well as the original creditor. The substantive rules apply to both the draw period and to any repayment period that is provided for by the initial agreement. (If the agreement does not call for a repayment period, and the parties subsequently enter into a closed-end transaction to pay off the outstanding balance, the later agreement is not subject to the substantive limitations.)

Section 226.5b(f)(1)—Changing the APR

Under § 226.5b(f)(1), a creditor may change the APR after the plan is opened only if the change is based on an index outside the creditor's control and the index value is available to the public.

This provision prohibits a creditor from using its own prime rate or its own "cost of funds" or simply retaining the right to change rates at its discretion. A creditor is permitted, however, to use the prime rate published in a publication or a newspaper, such as the *Wall Street Journal*, for example, even if the bank's own prime rate is one of several rates used to establish that rate. A creditor also may use any other index not within the creditor's control. A publicly available index need not always be published in a newspaper, but the creditor must make certain that a consumer could independently verify any rate information.

This provision does not prohibit specific rate changes if set forth in the initial contract, such as in preferred rate and step rate plans, as provided under § 226.5b(f)(3)(i).

Section 226.5b(f)(2)—Termination and acceleration

Under § 226.5b(f)(2), creditors are prohibited from terminating an account and accelerating payment of the outstanding balance prior to the scheduled expiration of the plan. If a creditor offers an "evergreen" account, that is, one that has a potentially indefinite draw period, a creditor may not terminate the plan or accelerate payment of the balance.

There are three exceptions to the rule against termination and acceleration. First, a creditor may terminate the plan if there has been fraud or material misrepresentation by the consumer in connection with the plan. This exception includes fraud or misrepresentation at any time, either during the application process or during the draw period and any repayment period. What constitutes fraud or misrepresentation is determined by State law and the agreement between the parties and may include acts of omission, as well as overt acts, as long as any necessary intent on the part of the consumer exists.

Second, a creditor may terminate the plan and accelerate the balance if the consumer has failed to meet the repayment terms of the agreement. This provision permits termination if the consumer actually fails to make payments. A creditor may not terminate a plan if, for example, the consumer, in error, sends a payment to the wrong location, such as a branch rather than the main office of the creditor. Filing for bankruptcy may permit termination, if the consumer fails to make payments under the plan.

Finally, a creditor is permitted to terminate and accelerate if the consumer acts or fails to act in a way

that adversely affects the creditor's security for the plan, or any right of the creditor in such security. In response to commenters, the Board has revised the regulation to more closely parallel the language used in the statute with regard to the creditor's rights in the security. The regulation limits the exception to action or inaction by the consumer (and not third parties) as provided in the statute.

This provision permits termination, for example, if the consumer transfers title to the property or sells the property without the permission of the creditor, or if the consumer fails to maintain required insurance on the dwelling. This exception also may be invoked if the consumer commits waste or otherwise destructively uses or fails to maintain the property such that it adversely affects the security.

Failure to pay taxes on the property or some other action by the consumer resulting in the filing of a lien senior to that held by the creditor also might impair the creditor's security. Death of the consumer and taking of property through eminent domain both permit termination since the title to the property transfers as a result. Commenters asked whether events such as the filing of a judgment against the consumer or illegal use of the property would permit termination. The Board believes that whether the creditor can terminate an account depends on the circumstances. For example, the filing of a judgment against the consumer would permit the creditor to terminate the plan if the amount of the judgment and collateral subject to the judgment is such that the creditor's security is adversely affected. Foreclosure by a prior lienholder would permit termination of the line if the creditor's security interest is adversely affected.

If an event occurs which allows termination and acceleration, a creditor may take action short of terminating an account and accelerating payment of the outstanding balance. Commenters raised a number of questions about the permissible extent of such action. Under the final regulation, if one of the exceptions would apply, a creditor is permitted to temporarily or permanently prohibit additional extensions of credit or reduce the credit limit without demanding payment in full. In addition, a creditor may take other action; for example, the creditor may change the payment terms or may require the consumer to pay a fee if the consumer fails to maintain required property insurance and the creditor subsequently purchases the insurance. A creditor may provide in its agreement

that a higher rate or higher fees apply, for example, if the consumer fails to meet the repayment terms or otherwise acts so that the creditor is permitted to terminate the plan and accelerate the balance. Furthermore, a creditor that does not immediately and permanently terminate an account and accelerate payment or take another permitted action may take such action at a later time, if the condition constituting an exception under § 226.5b(f)(2) still exists at that time (or if another of the exceptions applies).

Creditors are not permitted to specify in their contracts any other events that allow terminating an account or accelerating payment of the outstanding balance beyond those listed in the regulation. Thus, for example, the contract may not contain a demand provision that may be exercised before the end of the stated term nor may it provide that the account will be terminated and the balance accelerated if the rate cap is reached.

Section 226.5b(f)(3)—Change of terms

Section 226.5b(f)(3) provides that a creditor in general may not change the terms under the plan after the account has been opened. Generally, a creditor may not increase any fee or impose a new fee once the plan has been opened. There are several exceptions to the rule prohibiting the creditor from changing the terms of the plan after it has been opened.

Subsection (i)—Events provided for in the contract. This provision permits a creditor to implement specific changes set forth in the contract that are contemplated on the occurrence of a specific event. Both the triggering event and the resulting modification must be stated with specificity. For example, in an employee loan program, the contract could provide that a specified higher rate—or specified higher margin in a variable-rate plan—will apply if the borrower's employment with the creditor ends. A creditor also could have a step rate or step fee schedule in which specified changes in the rate or the fees are set to occur on certain dates or at specified time periods. A creditor also may provide in the initial agreement that it will be entitled to a share of the appreciation in the value of the property as long as the specific percentage of the appreciation and the specific circumstances in which it must be paid are set forth. A contract also may permit a consumer to switch among minimum payment options during the plan. This option could be provided in the initial agreement (as long as the specific features are described) or could be offered after the plan is opened since it

would constitute a "beneficial change" as discussed in § 226.5b(f)(3)(iv).

Because this provision applies only to specific changes that are contemplated on the occurrence of specific events, the regulation does not permit a creditor to include a general provision in its contract permitting changes to any or all of the terms of the plan. For example, creditors may not include "boilerplate" language in the agreement stating that they reserve the right to change the fees imposed under the plan.

The regulation also does not permit a creditor to include in the initial agreement any "triggering events" or permissible responses that the regulation expressly addresses. Based on public comment, the proposal may not have been clear on whether the prohibition was intended to cover the inclusion of triggering events, or responses, or both. The Board intends that both be covered. For example, an agreement may not provide that the margin in a variable-rate plan will increase if there is a material change in the consumer's financial circumstances, since the triggering event (a material change in the consumer's financial circumstances) is set forth in the regulation and the permissible response (freezing the line or lowering the credit limit) is spelled out. Similarly a contract cannot contain a provision allowing the creditor to freeze a line due to an insignificant decrease in property value since the regulation allows that response only for a significant decrease. A creditor may not freeze the line, reduce the credit limit, terminate the plan, or accelerate the balance except in those circumstances specified in the regulation, since such consequences are set forth in the regulation.

The Board solicited comment in the proposal on whether creditors should be permitted to specify a second index (for variable-rate plans) in the initial agreement, which would be used should the original index become unavailable. Based on further analysis, the Board believes the statute does not permit such an action since it expressly provides the conditions that must be met to substitute an index when the original index becomes unavailable. The Board has modified the requirement for this second index, however, as set forth under § 226.5b(f)(3)(ii), to provide greater flexibility to lenders if the original index becomes unavailable.

Subsection (ii)—Substitution of index. This provision provides that the creditor may change the index and margin used under the plan if the original index becomes unavailable, as long as historical fluctuations in the two indices

were substantially similar, and as long as the new index and margin will produce a rate similar to the rate that was in effect at the time the original index became unavailable. If the new index is newly established and therefore does not have any historical rate history, creditors may nevertheless use it as long as the new index and margin produce an interest rate substantially similar to the rate in effect when the original index became unavailable.

Subsection (iii)—Changes made by written agreement. The regulation prohibits unilateral changes; it permits creditors to change the terms after a plan is opened provided the consumer expressly agrees in writing to the change at that time. Thus, for example, under this subsection a consumer and a creditor could agree in writing to change the repayment terms from interest-only payments to payments that reduce the principal balance.

Any subsequent agreement must be consistent with the rules set out in § 226.5b(f). For example, a creditor and consumer could not enter into an agreement to base changes in the APR on the movement of an index controlled by the creditor, because § 226.5b(f)(1) provides that any index used as a basis for APR changes must be one not under the creditor's control. Similarly, an agreement could not specify events that will permit termination and acceleration beyond those set forth in the regulation.

In addition, creditors are not permitted to assume consent because the consumer uses an account, even if use of an account constitutes acceptance under state law. The Board believes this restriction will carry out the Congressional intent to limit changes after a plan is opened, yet accommodate the need for adjustments explicitly agreed to by the consumer.

Subsection (iv)—Beneficial changes. This provision permits creditors to make changes, after the plan has been entered into, that "unequivocally benefit" the consumer as long as the change is beneficial for the entire term of the agreement. In response to suggestions by commenters, the Board is providing additional examples of beneficial changes. A creditor may make changes that offer more options to consumers, as long as existing options remain. For example, a creditor could offer the consumer the option of making lower monthly payments or could increase the credit limit (although the right of rescission under § 226.15 may apply if the credit limit is increased). Similarly, a creditor could extend the length of the plan, as long as it was extended or renewed on the same terms. Creditors

are permitted to temporarily reduce the rate or fees charged under a plan. The rate or fees, however, may not later be increased to a level higher than that initially disclosed. (If fees are later increased up to the original level, creditors may need to comply with the requirements in § 226.9(c) concerning notification of changes in terms.) Creditors also may add additional means to access the line even if fees are associated with using the device, provided that the consumer retains the ability to use prior access devices on the original terms.

Subsection (v)—Insignificant changes. This subsection provides an exception to the general prohibition against changing terms after the plan has been entered into for changes to "insignificant terms." This is intended to address operational and similar problems, such as changing the address of the creditor for purposes of sending payments. In response to commenters, the Board is providing additional examples of items that would constitute insignificant changes. The provision permits minor changes to features such as the billing cycle date, the payment due date (as long as the consumer does not have a diminished grace period if one is provided), and the day of the month on which index values are used to determine changes to the rate for variable-rate plans. A creditor also may change its rounding rules, in accordance with the tolerance rules set forth in § 226.14. For example, a creditor may change its rules to state an exact APR of 14.333 percent as 14.3 percent, even if it previously stated the APR as 14.33 percent. A creditor may change the balance computation method it uses only if the change produces an insignificant difference in the finance charge paid by the consumer. For example, a creditor may switch from using the daily balance method (including new purchases) to the average daily balance method (including new purchases). This exception would not permit a creditor to unilaterally change a term such as a fee charged for late payments.

Subsection (vi)—Temporary suspensions of credit and reduction of credit limit. This subsection provides that a creditor may temporarily prohibit additional extensions of credit or reduce the credit limit in seven circumstances. First, a creditor may take such action if the value of the dwelling that secures the plan declines significantly below the property's appraised value for purposes of the plan. A number of commenters asked the Board to provide guidance on what constitutes a "significant" decline

in the property. The Board believes what constitutes a significant decline will vary according to individual circumstances. In any event, however, if the value of the dwelling declines such that the initial difference between the credit limit and the available equity (based on the property's appraised value for purposes of the plan) is reduced by fifty percent, that will be deemed a significant decline in the value of the dwelling for purposes of the regulation. For example, assume that a house with a first mortgage of \$50,000 is appraised at \$100,000 and the credit limit is \$30,000. The difference between the credit limit and the available equity is \$20,000. Therefore, the creditor could prohibit further advances if the value of the property declines from \$100,000 to \$90,000.

Second, a creditor may prohibit additional extensions of credit or reduce the credit line if the creditor reasonably believes the consumer will be unable to fulfill the repayment obligations under the plan due to a material change in the consumer's financial circumstances. Two conditions must be met for a creditor to use this exception. First, there must be a "material change" in the consumer's financial circumstances. For example, a significant decrease in the consumer's income could meet this part of the requirement. Second, as a result of this change, the creditor must have a reasonable belief that the consumer will be unable to fulfill the payment obligations of the plan. This second condition has been modified from the proposal. A creditor does not have to rely on specific "evidence" (such as the failure to pay other debts) to meet this test. This provision does require, however, that the creditor have some basis for believing that the consumer will be unable to make payments under the plan.

The third exception permits a creditor to prohibit additional extensions of credit or reduce the credit line if the consumer is in default of any material obligations under the agreement. The regulation does not define what qualifies as a default of a material obligation. Some commenters requested that the regulation provide examples of what is a material default. A number of other commenters, however, expressly asked that the regulation not define or provide examples of this provision. They stated that any definition or use of examples might limit the conditions considered a default of a material obligation.

The fourth exception permits a creditor to prohibit additional advances or reduce the credit line if action by a

governmental body precludes the creditor from imposing the agreed-upon APR. This exception will generally apply where, for example, a state usury law is enacted which prohibits a creditor from imposing the APR being used at the time of the action.

The fifth exception permits a creditor to prohibit additional advances or reduce the credit line if action by a governmental body adversely affects the priority of the creditor's security interest to the extent that the value of the security interest is less than 120 percent of the amount of the credit line (for example, through imposition of a tax lien).

The sixth exception enables creditors to suspend further advances or reduce the credit limit during any period in which the APR corresponding to the periodic rate reaches the maximum rate allowed under the plan. This provision permits a creditor to suspend credit advances even if a contract contains a "usury savings clause." For example, if a state enacts a rate ceiling lower than the maximum rate specified in the contract, a usury savings clause deems the new state ceiling to be the maximum rate permitted under the plan. Thus, the creditor may freeze the line during any period the APR reaches that maximum rate.

If the APR subsequently declines below the maximum APR, the creditor would have to reinstate credit privileges. This provision was contained in § 226.5b(f)(3)(i) of the proposal. It has been expanded to allow reduction in the credit limit as well as freezing of advances and therefore is part of § 226.5b(f)(3)(vi) which governs temporary suspensions.

Finally, a seventh exception has been added which permits a creditor to prohibit additional advances or reduce the credit line due to certain governmental actions. Several commenters expressed the concern that, because of the restriction on termination and change in terms, they might be required to continue to extend credit even when a federal or state regulatory agency had provided a notice that future extensions could constitute an unsafe and unsound banking practice. To avoid this problem the Board is adding a provision allowing a creditor to temporarily suspend further advances or reduce the credit limit when a regulatory agency with responsibility for supervising the creditor provides notification that continuing to advance funds may constitute an unsafe and unsound practice. The Board believes this limited exception is analogous to the statutory provisions which provide

that a creditor may prohibit additional advances as a result of specified government actions.

Under the regulation, creditors are permitted to prohibit additional extensions of credit or reduce the credit limit only as long as any of these seven circumstances exist. Thus, for example, if the creditor cuts off further advances due to a significant decline in the value of the dwelling and during the length of the draw period the value of the dwelling subsequently increases, the creditor would have to reinstate drawing privileges. If a second event occurs that would permit continuing the freeze, of course, the line need not be reinstated as long as that circumstance exists. The creditor's right to reduce the credit limit does not permit reducing the limit below the amount of the outstanding balance if this would require the consumer to make a higher payment. (Section 226.9(c)(3) provides that a creditor must notify the consumer of the decision to freeze the line or reduce the credit limit.)

Several commenters asked whether the creditor is required to automatically reinstate credit privileges when the circumstances allowing suspension cease to exist; they pointed out that some state laws provide that future advances "relate back" to the mortgage only if the creditor is obligated to make advances. The concern was expressed that any advances made after the suspension may not have priority over intervening liens. If there are intervening liens in such a case, the exception provided in section 226.5b(f)(2)(iii) for consumer action that adversely affects the creditor's security interest would apply. Therefore, the creditor could refuse to make further advances due to the intervening lien resulting from consumer action.

A number of commenters asked the Board to provide guidance as to when credit privileges have to be reinstated. They were most concerned about having to constantly monitor accounts, particularly in cases where the consumer is in the best position to know if the circumstances triggering the freeze have changed.

Because the statute states that freezing the line can be only temporary, creditors have the responsibility of ensuring that the freeze is temporary. The creditor must monitor on a regular basis and reinstate credit privileges as soon as reasonably possible if the condition that permitted the creditor to take such action ceases to exist.

As an alternative to this ongoing duty, the Board is providing that the creditor may shift the initial duty to the consumer to request reinstatement of

credit privileges. In this circumstance, when the creditor notifies the consumer of action taken, as discussed in § 226.9(c)(3), the creditor also must inform the consumer at the same time that reinstatement of credit privileges must be requested by the consumer. Once the consumer has made such a request, the creditor must investigate and determine whether the condition allowing the freeze has changed.

This section does not prohibit a lender from refusing to permit advances on a line if specifically requested to do so by a consumer. Thus, for example, if two consumers are obligated under a plan and each has the ability to take advances, the agreement may permit either of the two persons to direct the creditor not to make further advances; this section permits the creditor to honor such a request. This may be done only at the express request of one of the parties obligated under the plan. If that person subsequently requests reinstatement of draw privileges, the creditor must honor such a request, unless an event set forth in § 226.5b(f)(2) or § 226.5b(f)(3) permits a continued freeze or other action.

Section 226.5b(g)—Refund of Fees

Section 226.5b(g) imposes a duty on a creditor to refund all fees paid by the consumer in connection with an application if any term disclosed changes (other than one resulting from a variable rate index change) between the time the early disclosures are provided to the consumer and the time the plan is opened, and if, as a result of the change, the consumer decides to not enter into the plan. If a refund is required, it applies to all fees paid in connection with the plan, such as credit report fees, appraisal fees, and insurance premiums, whether such fees are paid directly to the creditor or to third parties. This requirement applies whether or not terms are guaranteed by the creditor under § 226.5b(d)(2)(i).

If a disclosure, such as the maximum rate cap, is stated as a range in the early disclosures, and the rate cap ultimately applicable to a plan falls within that range, a change will not be deemed to occur for purposes of this section. If, however, no range is used and the cap is changed, for example, from 5 to 6 percentage points over the initial rate, this change would permit the consumer to obtain a refund of fees. (See the discussion in § 226.5b(d)(2) dealing with changes in the maximum rate if tied to an initial variable rate.)

The fact that a term is stated in the early disclosures as an estimate does not render this section inapplicable if the term ultimately differs from that

disclosed. For example, in the case of fees imposed by the creditor described in § 226.5b(d)(7), an increase in those fees—even if they were stated as estimates in the early disclosures—would entitle the consumer to a refund if the consumer decides not to enter into the plan because of that increase. In the case of the estimated disclosure of fees imposed by third parties under § 226.5b(d)(8), however, a change will not be deemed to occur even if the fees increase later. As in all cases, however, creditors must use the best information available in providing disclosures about such fees.

The refund of fees must be made as soon as reasonably possible after the creditor is notified that the consumer is not entering into the plan because of the changed term, or that the consumer wants a refund of fees. Some commenters questioned the relationship between this provision and the requirement that application fees be charged to all applicants in order to be excluded from the finance charge (pursuant to comment 4(c)(1)–1 of the Official Staff Commentary to Regulation Z). Refunding fees under this section does not affect that test.

The right to a refund of fees under this provision is distinct from the existing right of rescission under § 226.15, which applies only when a plan secured by the consumer's principal dwelling is opened.

Section 226.5b(h)—Imposition of nonrefundable fees

Under § 226.5b(h) neither the creditor nor any other party may impose a nonrefundable fee in connection with an application until three business days after the disclosures and brochure have been provided to the consumer. If disclosures are mailed to the consumer, footnote 10d of the regulation provides that a nonrefundable fee may not be imposed until six business days after the mailing. Several creditors asked whether a refundable fee can become nonrefundable. A refundable fee may become nonrefundable after the three-day period expires. If a fee is collected before the consumer receives the disclosures, the fee must be refunded if, within three days of receiving the disclosures, the consumer decides not to enter into the agreement.

The interaction of this provision with existing rules as well as other parts of the new rules is complex. Comment 5(b)(1)–1 provides that the creditor cannot collect a fee—except an application fee or a refundable membership fee—prior to the time the creditor provides the disclosures under § 226.6. Since membership fees may be

collected prior to providing the § 226.6 disclosures only if they remain refundable (and since other fees such as appraisal and credit report fees may not be collected prior to providing the § 226.6 disclosures) the practical effect of § 226.5b(h) as to the fees collected by the creditor is limited to application fees, which may be collected at any time—provided they remain refundable until three business days after the consumer receives the § 226.5b disclosures. After the three-day period expires, an application fee may become nonrefundable except that, under § 226.5b(g), it must be refunded if the consumer elects not to enter into the plan because of a change in terms. (In addition, of course, all fees, including application fees, must be refunded if the consumer later rescinds under § 226.15.)

Section 226.6—Initial Disclosure Statement

Section 226.6(e)—Home equity plan information

In addition to the early disclosures given with an application, the amendments require certain additional disclosures at the time of opening a plan. Section 226.6(e) requires creditors to provide a few of the disclosures set forth in § 226.5b(d) along with the disclosures currently required under § 226.6. Creditors also must disclose a list of the conditions that permit the creditor to terminate the plan, freeze or reduce the credit limit, and implement specified modifications to the original terms. This requirement can be met by providing a separate list or by identifying the provisions in the contract which contain such conditions. (See the discussion under § 226.5b(d)(4) regarding the form of this information.) The disclosures must be provided prior to the first transaction under the plan, in accordance with the existing rule in § 226.5(b).

Whereas the proposal stated that § 226.5b disclosures that duplicate existing § 226.6 disclosures need not be given, the final rule states specifically which disclosures must be given at the later time. Creditors have to provide, as applicable: (1) A statement of the conditions under which the creditor may terminate the plan or change the terms as described in § 226.5b(d)(4)(i); (2) the information in §§ 226.5b(d)(5) (i) and (ii) relating to the payment terms of the plan (including both the draw period and any repayment period); (3) the information in § 226.5b(d)(9) relating to negative amortization; (4) the information in § 226.5b(d)(10) relating to transaction requirements; (5) the information in § 226.5b(d)(11) relating to tax

implications; and (6) a statement that the APR corresponding to the periodic rate imposed under the plan does not include costs other than interest.

Creditors also have to provide the payment example disclosure under § 226.5b(d)(5)(iii) and the variable-rate information under §§ 226.5b(d)(12) (viii), (x), (xi), and (xii) unless the following conditions are met: (1) The early disclosures were provided in a form a consumer could keep; and (2) the early disclosures of the payment example under § 226.5b(d)(5)(iii), the "worst case" example under § 226.5b(d)(12)(x) and the historical table under § 226.5b(d)(12)(xi) included a representative payment example for the category of payment options the consumer has chosen. For example, if a creditor offers three payment options (one in each of the categories described in § 226.5b(d)(5)) and describes all three options in its early disclosures and provides the disclosures in a retainable form, that creditor need not provide the § 226.5b(d)(5)(iii) or 226.5b(d)(12) disclosures again when the account is opened. If the creditor showed only one of the three options in the early disclosures (which would be the case if it chose to give a separate disclosure form rather than a combined form, as discussed under § 226.5b(a)), the § 226.5b(d)(5)(iii) information and §§ 226.5b(d)(12) (viii), (x), (xi) and (xii) disclosures must be given to any consumer who chose one of the other two options. If the § 226.5b(d)(5)(iii) and § 226.5b(d)(12) disclosures are provided with the second set of disclosures, they need not be transaction-specific, but may be based on a representative example of the category of payment option chosen.

In cases where the creditor has included complete information about both the draw and repayment phases in the § 226.5(b) disclosures given at application, the creditor should similarly make disclosures about both phases when giving the second set. In particular, such a creditor must include the disclosures in § 226.6(e) and the information required in footnote 12 (dealing with any variable-rate feature) for the repayment phase.

On the other hand, if the creditor defers providing the bulk of the § 226.5b disclosures for the repayment phase until conversion, the creditor does not have to provide any information about the repayment period under § 226.6 other than the basic payment items listed in § 226.6(c)(2). Thus, for example, if the disclosures are delayed, the creditor would not have to give the

variable-rate information set out in footnote 12 for the repayment phase.

The segregation standard set forth in § 226.5b(a) does not apply to the second set of disclosures provided by the creditor prior to the first transaction under the plan. Rather, they are governed by § 226.5(a)(1), which does not require segregation from other information. These disclosures may be integrated into the contract. In addition, the disclosure of conditions for certain actions described in § 226.5b(d)(4)(i) does not have to precede the other disclosures. Like the existing § 226.6 disclosures, the additional disclosures must be in a form the consumer can keep.

Section 226.9—Subsequent Disclosure Requirements

Section 226.9(c)—Change in terms

The Board is adding a new paragraph (3) to § 226.9(c) to require creditors to provide a notice to consumers if the creditor, under § 226.5b(f)(3)(vi), prohibits additional advances of credit or reduces the credit limit. Under § 226.9(c)(3), creditors have to mail or deliver a written notice of the action to each consumer who is affected. The notice may be provided within three business days after the time the action is taken, rather than in advance of the action. The creditor must notify the consumer of the action taken, and the reason such action has been taken (for example, due to reaching the rate cap under the plan). If the creditor requires the consumer to request reinstatement of the line, the notice shall also include a statement to that effect. (See the discussion under § 226.5b(f)(3)(vi) covering the creditor's duty with regard to reinstatement.)

Section 226.14—Determination of Annual Percentage Rate

Section 226.14(b)—Annual percentage rate for §§ 226.5a and 226.5b disclosures for initial disclosures and for advertising purposes

Section 226.14(b) is modified by adding a reference to new § 226.5b. The introduction to § 226.5b provides that, throughout § 226.5b, the term annual percentage rate is the APR as determined under § 226.14(b). Section 226.14(b) is modified to reflect this provision.

Section 226.14(b) also is modified to refer generally to §§ 226.6 and 226.16, rather than specifically to §§ 226.6(a)(2) and 226.16(b)(2). These provisions are modified because the APR described in the new home equity rules (added to §§ 226.6(e) and 226.16(d)) also is

calculated in accordance with the rules in § 226.14(b).

Section 226.15—Right of Rescission

Section 226.15(a)—Consumer's right to rescind

Section 226.15(a)(3) of the regulation states that the consumer may exercise the right of rescission until midnight of the third business day following the opening of the plan, delivery of the notice of the right to rescind, or delivery of all "material disclosures," whichever occurs last. Footnote 36 to this section contains the definition of material disclosures. In the proposal, the Board requested comment on whether to add to the definition certain payment information provided under § 226.6(e). The Board is amending footnote 36 to provide that the payment terms required under § 226.6(e)(2) be treated as a "material disclosure" for purposes of the right of rescission. Including such payment terms in the definition of "material disclosures" is consistent with what constitutes material disclosures in the closed-end credit rescission provisions, and the statutory definition of material disclosures. In addition the Board believes that payment information is important for a consumer to know in order to decide whether to exercise the right of rescission. Neither the payment terms nor any other information given with the first set of disclosures at the time of application is a material disclosure for purposes of rescission.

Section 226.16—Advertising

Section 226.16(d)—Additional advertising requirements for home equity plans

Under § 226.16(d)(1), any reference to a payment term in a home equity advertisement for the draw period or any repayment period (including the length of the plan and any reference to how the minimum payments are determined and the timing of such payments) will "trigger" further disclosures, including loan fees, estimates of other fees that may be imposed, and, for variable-rate plans, the maximum rate that may be imposed under the plan.

Furthermore, if any of the "triggers" set forth in § 226.6 (a) or (b) or any payment information is stated affirmatively or negatively, further disclosures must be given. For example, if a creditor states "no annual fee" or "no points" in an advertisement, additional information must be provided.

Section 226.16(d)(2) provides that if an advertisement states a "discounted"

APR or a "premium" APR it must state in equal prominence the APR derived by use of the fully-indexed value. Section 226.16(d)(3) provides that, if an advertisement contains a reference to any payment amount, it must state, if applicable, that the plan contains a balloon payment. (See footnote 10b accompanying § 226.5b(d)(5) for a discussion of when a balloon payment results.)

Under § 226.16(d)(4) of the regulation, if an advertisement states that any interest under the plan may be tax deductible, the advertisement must not be misleading about such deductibility. For example, an advertisement referring to deductibility would not be misleading if it includes a statement that the consumer should consult a tax advisor regarding the deductibility of interest.

Creditors are prohibited by § 226.16(d)(5) from referring to home equity plans as "free money," or from using other misleading terms. For example, an advertisement could not state "no closing costs" if consumers may be required to pay any closing costs, such as recordation fees.

Several commenters asked how this new section relates to the other advertising rules. Advertisements for home equity plans must comply with all provisions in § 226.16, including § 226.16(b), not solely the new § 226.16(d).

Several commenters asked whether an advertisement for a home equity plan would be required to provide information about any "closed-end" (repayment) phase in the ad. Even if an open-end home equity agreement provides for "conversion" to a repayment phase (during which further advances are not permitted), advertisements for such plans are governed exclusively by the requirements of § 226.16, and are not covered by the closed-end advertising rules under § 226.24. Thus, if a creditor states in an advertisement payment information about the repayment phase, this will trigger the duty to provide additional information under § 226.16, but not under § 226.24.

(3) Effective Date

The statute provides that the act and regulations apply to: (1) Any agreement to open a plan which is entered into five months after the regulations become final; and (2) any application to open a plan which is distributed by or received by a creditor five months after regulations become final. Thus, if an application is given to a consumer on or after November 7, 1989, the effective date of the new rules, the § 226.5b disclosures and the brochure must be

given to the consumer according to the normal rules. If an application given to the consumer before the effective date is received by the creditor on or after that date, the § 226.5b disclosures and the brochure must be given to the consumer but they may be provided within three business days of receipt of the application. If an application is received by the creditor prior to the effective date, none of the disclosures in § 226.5b or § 226.6(e) or the brochure need to be given to the consumer.

The substantive rules apply to all plans opened on or after the effective date, no matter when the application was provided to the consumer or received by the creditor.

Transition Rules

If a home equity plan is entered into prior to November 7, 1989, § 226.5b does not apply to that plan. Thus neither the substantive limitations nor the disclosure requirements apply to the plan. Furthermore, if an agreement is entered into prior to the effective date, and is renewed by the same consumer (with or without changes in terms) on or after the effective date, the renewed plan also is not subject to the new requirements. (Of course, creditors may have to provide a change in terms notice under § 226.9(c), if applicable.) However, if a line of credit not secured by a consumer's dwelling is entered into prior to the effective date and a security interest in a consumer's dwelling is added to the line on or after the effective date, the substantive provisions in § 226.5b(f)—but not the new disclosure rules—will apply to the plan from that point on.

(4) Disclosure Samples and Model Clauses

The Board is revising Appendix G of the regulation to incorporate disclosure samples and model clauses to assist creditors in preparing disclosures.

(A) *Sample forms.* Form G-14A illustrates a variable-rate plan with a 10 year draw period followed by a 5-year repayment period. The payments are based on a constant fraction of the outstanding balance so that, independent of rate changes, payments will vary each month. Accordingly, payments are stated as a range in the minimum payment example. In addition, one payment is shown each year in the historical example and the fact that payments would have varied each year is stated. The monthly payment in the historical example is the first payment that would have been due each year, based on the rate in effect for that year. (This assumption also has been used in

calculating the payments in Forms G-14B and G-14C.) The calculations for the disclosures, however, are done using the actual payment computation formula.

Form G-14B illustrates a significantly more complicated plan. Three payment options are available to the consumer during the draw period. Two of these are "interest-only" options and one involves the payment of interest and a fixed portion of the balance. In accord with the rules set forth in the discussion of payment terms under § 226.5b(d)(5), the form uses a representative example of the payment options within the "interest-only" category. Thus the minimum payment example, the "worst case" example and the historical example are based on the monthly interest-only payment option. This option, as well as the fixed portion of the balance option, are both illustrated in the same historical example.

In addition, form G-14B illustrates a plan with an initially discounted rate. Accordingly, the first rate in the historical example is discounted by a representative amount and the initial payments reflect the discount. Also, a different index is used during the repayment period from that used during the draw period, and the last five years of the historical example are based on the second index.

Finally, form G-14B illustrates the optional rule, described in the discussion of § 226.5b(d)(4), regarding the disclosure of possible creditor actions. Rather than just mentioning the possibility of termination, suspension of advances and reduction of the credit limit and indicating that more information is available, the form summarizes the provisions of §§ 226.5b(f)(2) and 226.5b(f)(3)(vi).

Form G-14C illustrates the disclosures that would be provided by a creditor who elected to provide disclosures illustrating the repayment phase of a line at the inception of the repayment phase rather than including them in the original § 226.5b disclosures given when the plan was opened.

(B) *Model clauses.* The Board has included a number of model clauses in Appendix G-15. In these clauses, language that may or may not be applicable is enclosed in brackets. Alternative phrases are enclosed in brackets and separated by slashes. Alternative clauses are separated by the italicized word "or."

(5) Tables of Certain Index Values

To assist creditors in constructing histories of various indices used in their home equity plans, the Board has prepared tables of values for commonly used indices for the years 1974 through

1989. The indices chosen represent those most frequently requested by commenters. January values are shown from 1975 through 1989, while July values are shown for 1974 through 1988 (since July values are not yet available for 1989). Earlier years in which index values are not available are marked "n.a."

Table 1 provides the values for United States Treasury securities adjusted to constant maturities of 1, 2, 3, and 5 years. Weekly average values are provided as of the first week ending in January and in July. Table 2 provides the January and July monthly average values for the Cost of Funds Ratio to 11th Federal Home Loan Bank District Institutions. Table 3 provides the values as of the last business day in January and July for the prime rate as published in the Wall Street Journal's Money Rates table. A single rate is shown except in cases where multiple rates were published. (Where a range of values are provided, creditors may base their disclosures on the high or low value, or an average depending on their method of figuring the rate.) Creditors need not use these tables in constructing their index histories. Moreover, the dates used in these tables were selected merely to provide index values at specific points within each year. Creditors may choose to use the applicable index values in these tables even if index values as of another date are used in their home equity plans.

TABLE 1—CONSTANT MATURITY YIELD ON UNITED STATES TREASURY SECURITIES

Year	1 Year	2 Year	3 Year	5 Year
Average for first week ending in January (percent)				
1975.....	7.29	n.a.	7.33	7.35
1976.....	6.18	n.a.	7.12	7.50
1977.....	5.02	5.53	5.83	6.24
1978.....	7.03	7.26	7.40	7.59
1979.....	10.51	9.93	9.58	9.30
1980.....	12.02	11.39	10.75	10.52
1981.....	13.86	13.00	12.81	12.54
1982.....	13.68	13.88	14.09	14.04
1983.....	8.62	9.35	9.65	10.04
1984.....	10.02	10.77	11.04	11.50
1985.....	9.19	10.05	10.58	11.16
1986.....	7.63	8.01	8.25	8.50
1987.....	5.97	6.36	6.54	6.79
1988.....	7.15	7.82	8.08	8.38
1989.....	9.17	9.28	9.30	9.26

Average for first week ending in July (percent)				
1974.....	9.04	n.a.	8.46	8.42
1975.....	6.92	n.a.	7.58	7.87
1976.....	6.46	7.01	7.27	7.58
1977.....	5.72	6.07	6.32	6.68
1978.....	8.34	8.45	8.51	8.50
1979.....	9.44	8.97	8.78	8.73
1980.....	8.51	8.94	9.15	9.47
1981.....	14.94	14.74	14.58	14.26
1982.....	14.41	14.75	14.81	14.73
1983.....	9.78	10.29	10.47	10.80

TABLE 1—CONSTANT MATURITY YIELD ON UNITED STATES TREASURY SECURITIES—Continued

Year	1 Year	2 Year	3 Year	5 Year
1984.....	12.17	13.12	13.38	13.67
1985.....	7.66	8.59	8.98	9.53
1986.....	6.36	6.78	6.99	7.21
1987.....	6.71	7.45	7.72	7.96
1988.....	7.52	8.04	8.21	8.46

TABLE 2—AVERAGE COST OF FUNDS RATIO TO 11TH FHLB DISTRICT INSTITUTIONS

Year	January (percent)	July (percent)
1974.....	n.a.	n.a.
1975.....	n.a.	n.a.
1976.....	n.a.	n.a.
1977.....	n.a.	n.a.
1978.....	n.a.	n.a.
1979.....	n.a.	n.a.
1980.....	8.76	9.67
1981.....	10.45	11.85
1982.....	11.95	12.23
1983.....	10.46	9.68
1984.....	10.03	10.71
1985.....	10.22	9.37
1986.....	8.77	8.20
1987.....	7.40	7.28
1988.....	7.62	7.59
1989.....	8.13	

TABLE 3—PRIME RATE AS PUBLISHED IN THE WALL STREET JOURNAL

Year	January (percent)	July (percent)
1974.....		10.75
1975.....	9-9.5	7.5
1976.....	6.75	7-7.25
1977.....	6.25	6.5-6.75
1978.....	8	9
1979.....	11.5-11.75	11.75
1980.....	15.25	10.75-11
1981.....	19.5-20	20.5
1982.....	15.75	15.5
1983.....	11	10.5
1984.....	11	13
1985.....	10.5	9.5
1986.....	9.5	8
1987.....	7.5	8.25
1988.....	8.75	9.5
1989.....	10.5	

(6) Economic Impact Statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the revisions to Regulation Z. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC, 20551, at (202) 452-3245.

List of Subjects in 12 CFR Part 226

Advertising; Banks; Banking; Consumer protection; Credit; Federal

Reserve System; Finance; Penalties; Rate limitations; Truth in lending.

(7) Text of Revisions

Pursuant to authority granted in section 105 of the Truth in Lending Act (15 U.S.C. 1604 as amended), the Board is amending Regulation Z (12 CFR Part 226) as follows:

PART 226—[AMENDED]

1. The authority citation for Part 226 continues to read as follows:

Authority: Truth in Lending Act, 15 U.S.C. 1604 and sec. 2, Pub. L. No. 100-583, 102 Stat. 2960; sec. 1204(c), Competitive Equality Banking Act, Pub. L. 100-86, 101 Stat. 552.

Subpart A—General

2. Section 226.1 is amended by revising paragraphs (b) and (d)(2) and adding paragraph (c)(3) to read as follows:

§ 226.1—Authority, Purpose, Coverage, Organization, Enforcement and Liability.

(b) *Purpose.* The purpose of this regulation is to promote the informed use of consumer credit by requiring disclosures about its terms and cost. . . . In addition, the regulation requires a maximum interest rate to be stated in variable-rate contracts secured by the consumer's dwelling, and imposes limitations on home equity plans that are subject to the requirements of § 226.5b. The regulation does not govern charges for consumer credit.

(c) *Coverage.* . . . (3) In addition, certain requirements of § 226.5b apply to persons who are not creditors but who provide applications for home equity plans to consumers. (d) *Organization.* . . . (2) Subpart B contains the rules for open-end credit. It requires that initial disclosures and periodic statements be provided, as well as additional disclosures for credit and charge card applications and solicitations and for home equity plans subject to the requirements of §§ 226.5a and 226.5b, respectively.

Subpart B—Open-End Credit

3. Section 226.5 is amended by revising footnote 8 to read as follows:

* The disclosures required under § 226.5a for credit and charge card applications and solicitations, the home equity disclosures required under § 226.5b(d), the alternative summary billing rights statement provided for in § 226.9(a)(2), the credit and charge card renewal disclosures required under § 226.9(e), and the disclosures made under § 226.10(b)

about payment requirements need not be in a form that the consumer can keep.

3a. Section 226.5 is further amended by adding paragraphs (a)(4) and (b)(4) to read as follows:

§ 226.5—General disclosure requirements.

(a) *Form of disclosures.* . . . (4) For rules governing the form of disclosures for home equity plans, see § 226.5b(a). (b) *Time of disclosures.* . . . (4) *Home equity plans.* Disclosures for home equity plans shall be made in accordance with the timing requirements of § 226.5b(b).

4. Section 226.5a is amended by revising paragraph (a)(3) to read as follows:

§ 226.5a Credit and charge card applications and solicitations.

(a) . . . (3) *Exceptions.* This section does not apply to home equity plans accessible by a credit or charge card that are subject to the requirements of § 226.5b; . . .

5. A new § 226.5b is added to read as follows:

§ 226.5b Requirements for home equity plans.

The requirements of this section apply to open-end credit plans secured by the consumer's dwelling. For purposes of this section, an annual percentage rate is the annual percentage rate corresponding to the periodic rate as determined under § 226.14(b).

(a) *Form of disclosures—(1) General.* The disclosures required by paragraph (d) of this section shall be made clearly and conspicuously and shall be grouped together and segregated from all unrelated information. The disclosures may be provided on the application form or on a separate form. The disclosure described in paragraph (d)(4)(iii), the itemization of third-party fees described in paragraph (d)(8), and the variable-rate information described in paragraph (d)(12) of this section may be provided separately from the other required disclosures. (2) *Precedence of certain disclosures.* The disclosures described in paragraph (d)(1) through (4)(ii) of this section shall precede the other required disclosures. (b) *Time of disclosures.* The disclosures and brochure required by paragraphs (d) and (e) of this section shall be provided at the time an application is provided to the consumer.^{10a}

(2) *Precedence of certain disclosures.* The disclosures described in paragraph (d)(1) through (4)(ii) of this section shall precede the other required disclosures.

(b) *Time of disclosures.* The disclosures and brochure required by paragraphs (d) and (e) of this section shall be provided at the time an application is provided to the consumer.^{10a}

^{10a} The disclosures and the brochure may be delivered or placed in the mail not later than three

(c) *Duties of third parties.* Persons other than the creditor who provide applications to consumers for home equity plans must provide the brochure required under paragraph (e) of this section at the time an application is provided. If such persons have the disclosures required under paragraph (d) of this section for a creditor's home equity plan, they also shall provide the disclosures at such time.^{10a}

(d) *Content of disclosures.* The creditor shall provide the following disclosures, as applicable:

(1) *Retention of information.* A statement that the consumer should make or otherwise retain a copy of the disclosures.

(2) *Conditions for disclosed terms.* (i) A statement of the time by which the consumer must submit an application to obtain specific terms disclosed and an identification of any disclosed term that is subject to change prior to opening the plan.

(ii) A statement that, if a disclosed term changes (other than a change due to fluctuations in the index in a variable-rate plan) prior to opening the plan and the consumer therefore elects not to open the plan, the consumer may receive a refund of all fees paid in connection with the application.

(3) *Security interest and risk to home.* A statement that the creditor will acquire a security interest in the consumer's dwelling and that loss of the dwelling may occur in the event of default.

(4) *Possible actions by creditor.* (i) A statement that, under certain conditions, the creditor may terminate the plan and require payment of the outstanding balance in full in a single payment and impose fees upon termination; prohibit additional extensions of credit or reduce the credit limit; and, as specified in the initial agreement, implement certain changes in the plan.

(ii) A statement that the consumer may receive, upon request, information about the conditions under which such actions may occur.

(iii) In lieu of the disclosure required under paragraph (d)(4)(ii) of this section, a statement of such conditions.

(5) *Payment terms.* The payment terms of the plan, including:

(i) The length of the draw period and any repayment period.

(ii) An explanation of how the minimum periodic payment will be

business days following receipt of a consumer's application in the case of applications contained in magazines or other publications, or when the application is received by telephone or through an intermediary agent or broker.

determined and the timing of the payments. If paying only the minimum periodic payments may not repay any of the principal or may repay less than the outstanding balance, a statement of this fact, as well as a statement that a balloon payment may result.^{10b}

(iii) An example, based on a \$10,000 outstanding balance and a recent annual percentage rate,^{10c} showing the minimum periodic payment, any balloon payment, and the time it would take to repay the \$10,000 outstanding balance if the consumer made only those payments and obtained no additional extensions of credit.

If different payment terms may apply to the draw and any repayment period, or if different payment terms may apply within either period, the disclosures shall reflect the different payment terms.

(6) *Annual percentage rate.* For fixed-rate plans, a recent annual percentage rate^{10c} imposed under the plan and a statement that the rate does not include costs other than interest.

(7) *Fees imposed by creditor.* An itemization of any fees imposed by the creditor to open, use, or maintain the plan, stated as a dollar amount or percentage, and when such fees are payable.

(8) *Fees imposed by third parties to open a plan.* A good faith estimate, stated as a single dollar amount or range, of any fees that may be imposed by persons other than the creditor to open the plan, as well as a statement that the consumer may receive, upon request, a good faith itemization of such fees. In lieu of the statement, the itemization of such fees may be provided.

(9) *Negative amortization.* A statement that negative amortization may occur and that negative amortization increases the principal balance and reduces the consumer's equity in the dwelling.

(10) *Transaction requirements.* Any limitations on the number of extensions of credit and the amount of credit that may be obtained during any time period, as well as any minimum outstanding balance and minimum draw

^{10a} A balloon payment results if paying the minimum periodic payments does not fully amortize the outstanding balance by a specified date or time, and the consumer must repay the entire outstanding balance at such time.

^{10b} For fixed-rate plans, a recent annual percentage rate is a rate that has been in effect under the plan within the twelve months preceding the date the disclosures are provided to the consumer. For variable-rate plans, a recent annual percentage rate is the most recent rate provided in the historical example described in paragraph (d)(12)(xi) of this section or a rate that has been in effect under the plan since the date of the most recent rate in the table.

requirements, stated as dollar amounts or percentages.

(11) *Tax implications.* A statement that the consumer should consult a tax advisor regarding the deductibility of interest and charges under the plan.

(12) *Disclosures for variable-rate plans.* For a plan in which the annual percentage rate is variable, the following disclosures, as applicable:

(i) The fact that the annual percentage rate, payment, or term may change due to the variable-rate feature.

(ii) A statement that the annual percentage rate does not include costs other than interest.

(iii) The index used in making rate adjustments and a source of information about the index.

(iv) An explanation of how the annual percentage rate will be determined, including an explanation of how the index is adjusted, such as by the addition of a margin.

(v) A statement that the consumer should ask about the current index value, margin, discount or premium, and annual percentage rate.

(vi) A statement that the initial annual percentage rate is not based on the index and margin used to make later rate adjustments, and the period of time such initial rate will be in effect.

(vii) The frequency of changes in the annual percentage rate.

(viii) Any rules relating to changes in the index value and the annual percentage rate and resulting changes in the payment amount, including, for example, an explanation of payment limitations and rate carryover.

(ix) A statement of any annual or more frequent periodic limitations on changes in the annual percentage rate (or a statement that no annual limitation exists), as well as a statement of the maximum annual percentage rate that may be imposed under each payment option.

(x) The minimum periodic payment required when the maximum annual percentage rate for each payment option is in effect for a \$10,000 outstanding balance, and a statement of the earliest date or time the maximum rate may be imposed.

(xi) An historical example, based on a \$10,000 extension of credit, illustrating how annual percentage rates and payments would have been affected by index value changes implemented according to the terms of the plan. The historical example shall be based on the most recent 15 years of index values (selected for the same time period each year) and shall reflect all significant plan terms, such as negative amortization, rate carryover, rate

discounts, and rate and payment limitations, that would have been affected by the index movement during the period.

(xii) A statement that rate information will be provided on or with each periodic statement.

(e) *Brochure.* The home equity brochure published by the Board or a suitable substitute shall be provided.

(f) *Limitations on home equity plans.* No creditor may, by contract or otherwise:

(1) Change the annual percentage rate unless:

(i) Such change is based on an index that is not under the creditor's control; and

(ii) Such index is available to the general public.

(2) Terminate a plan and demand repayment of the entire outstanding balance in advance of the original term unless:

(i) There is fraud or material misrepresentation by the consumer in connection with the plan;

(ii) The consumer fails to meet the repayment terms of the agreement for any outstanding balance; or

(iii) Any action or inaction by the consumer adversely affects the creditor's security for the plan, or any right of the creditor in such security.

(3) Change any term, except that a creditor may:

(i) Provide in the initial agreement that specified changes will occur if a specific event takes place (for example, that the annual percentage rate will increase a specified amount if the consumer leaves the creditor's employment).

(ii) Change the index and margin used under the plan if the original index is no longer available, the new index has an historical movement substantially similar to that of the original index, and the new index and margin would have resulted in an annual percentage rate substantially similar to the rate in effect at the time the original index became unavailable.

(iii) Make a specified change if the consumer specifically agrees to it in writing at that time.

(iv) Make a change that will unequivocally benefit the consumer throughout the remainder of the plan.

(v) Make an insignificant change to terms.

(vi) Prohibit additional extensions of credit or reduce the credit limit applicable to an agreement during any period in which:

(A) The value of the dwelling that secures the plan declines significantly

below the dwelling's appraised value for purposes of the plan;

(B) The creditor reasonably believes that the consumer will be unable to fulfill the repayment obligations under the plan because of a material change in the consumer's financial circumstances;

(C) The consumer is in default of any material obligation under the agreement;

(D) The creditor is precluded by government action from imposing the annual percentage rate provided for in the agreement;

(E) The priority of the creditor's security interest is adversely affected by government action to the extent that the value of the security interest is less than 120 percent of the credit line;

(F) The creditor is notified by its regulatory agency that continued advances constitute an unsafe and unsound practice; or

(G) The maximum annual percentage rate is reached.

(g) *Refund of fees.* A creditor shall refund all fees paid by the consumer to anyone in connection with an application if any term required to be disclosed under paragraph (d) of this section changes (other than a change due to fluctuations in the index in a variable-rate plan) before the plan is opened and, as a result, the consumer elects not to open the plan.

(h) *Imposition of nonrefundable fees.* Neither a creditor nor any other person may impose a nonrefundable fee in connection with an application until three business days after the consumer receives the disclosures and brochure required under this section.¹⁰⁴

6. Section 226.6 is amended by adding paragraph (e) to read as follows:

§ 226.6 Initial disclosure statement.

(e) *Home equity plan information.* The following disclosures described in § 226.5b(d), as applicable:

(1) A statement of the conditions under which the creditor may take certain action, as described in § 226.5b(d)(4)(i), such as terminating the plan or changing the terms.

(2) The payment information described in § 226.5b(d)(5) (i) and (ii) for both the draw period and any repayment period.

(3) A statement that negative amortization may occur as described in § 226.5b(d)(9).

¹⁰⁴ If the disclosures and brochure are mailed to the consumer, the consumer is considered to have received them three business days after they are mailed.

(4) A statement of any transaction requirements as described in § 226.5b(d)(10).

(5) A statement regarding the tax implications as described in § 226.5b(d)(11).

(6) A statement that the annual percentage rate imposed under the plan does not include costs other than interest as described in §§ 226.5b(d)(6) and 226.5b(d)(12)(ii).

(7) The variable-rate disclosures described in § 226.5b(d)(12) (viii), (x), (xi), and (xii), as well as the disclosure described in § 226.5b(d)(5)(iii), unless the disclosures provided with the application were in a form the consumer could keep and included a representative payment example for the category of payment option chosen by the consumer.

7. Section 226.9 is amended by adding paragraph (c)(3) to read as follows:

§ 226.9 Subsequent disclosure requirements.

(c) *Change in terms.*

(3) *Notice for home equity plans.* If a creditor prohibits additional extensions of credit or reduces the credit limit applicable to a home equity plan pursuant to § 226.5b(f)(3)(vi), the creditor shall mail or deliver written notice of the action to each consumer who will be affected. The notice must be provided not later than three business days after the action is taken and shall contain specific reasons for the action. If the creditor requires the consumer to request reinstatement of credit privileges, the notice also shall state that fact.

8. Section 226.14 is amended by revising paragraph (b) to read as follows:

§ 226.14 Determination of annual percentage rate.

(b) *Annual percentage rate for sections 226.5a and 226.5b disclosures, for initial disclosures and for advertising purposes.* Where one or more periodic rates may be used to compute the finance charge, the annual percentage rate(s) to be disclosed for purposes of §§ 226.5a, 226.5b, 226.6, and 226.16 shall be computed by multiplying each periodic rate by the number of periods in a year.

9. Section 226.15 is amended by revising footnote 36 to read as follows:

§ 226.15 Right of rescission.

(a) * * *

(3) * * * 36

10. Section 226.16 is amended by adding paragraph (d) to read as follows:

§ 226.16 Advertising.

(d) *Additional requirements for home equity plans—*(1) Advertisement of terms that require additional disclosures. If any of the terms required to be disclosed under § 226.6(a) or (b) or the payment terms of the plan are set forth, affirmatively or negatively, in an advertisement for a home equity plan subject to the requirements of § 226.5b, the advertisement also shall clearly and conspicuously set forth the following:

(i) Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range.

(ii) Any periodic rate used to compute the finance charge, expressed as an annual percentage rate as determined under section § 226.14(b).

(iii) The maximum annual percentage rate that may be imposed in a variable-rate plan.

(2) *Discounted and premium rates.* If an advertisement states an initial annual percentage rate that is not based on the index and margin used to make later rate adjustments in a variable-rate plan, the advertisement also shall state the period of time such rate will be in effect, and, with equal prominence to the initial rate, a reasonably current annual percentage rate that would have been in effect using the index and margin.

(3) *Balloon payment.* If an advertisement contains a statement about any minimum periodic payment, the advertisement also shall state, if applicable, that a balloon payment may result.¹⁰⁵

(4) *Tax implications.* An advertisement that states that any interest expense incurred under the home equity plan is or may be tax deductible may not be misleading in this regard.

(5) *Misleading terms.* An advertisement may not refer to a home

³⁶ The term "material disclosures" means the information that must be provided to satisfy the requirements in section 226.6 with regard to the method of determining the finance charge and the balance upon which a finance charge will be imposed, the annual percentage rate, the amount or method of determining the amount of any membership or participation fee that may be imposed as part of the plan, and the payment information described in § 226.5b(d)(5)(i) and (ii) that is required under § 226.6(e)(2).

equity plan as "free money" or contain a similarly misleading term.

11. Appendix G is amended by adding model forms and clauses G-14A, G-14B, G-14C, and G-15 to read as follows:

APPENDIX G—Open-End Model Forms and Clauses

G-14A Home Equity Sample
G-14B Home Equity Sample
G-14C Home Equity Sample (Repayment phase disclosed later)
G-15 Home Equity Model Clauses

By order of the Board of Governors of the Federal Reserve System, June 1, 1989.

William W. Wiles,
Secretary of the Board.

Billing Code 6210-01-M

G-14A -- Home Equity Sample

IMPORTANT TERMS of our HOME EQUITY LINE OF CREDIT

This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

Availability of Terms: To obtain the terms described below, you must submit your application before January 1, 1990.

If these terms change (other than the annual percentage rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees that you have paid to us or anyone else in connection with your application.

Security Interest: We will take a mortgage on your home. You could lose your home if you do not meet the obligations in your agreement with us.

Possible Actions: Under certain circumstances, we can (1) terminate your line, require you to pay us the entire outstanding balance in one payment, and charge you certain fees; (2) refuse to make additional extensions of credit; and (3) reduce your credit limit.

If you ask, we will give you more specific information concerning when we can take these actions.

Minimum Payment Requirements: You can obtain advances of credit for 10 years (the "draw period"). During the draw period, payments will be due monthly. Your minimum monthly payment will equal the greater of \$100 or 1/360th of the outstanding balance plus the finance charges that have accrued on the outstanding balance.

After the draw period ends, you will no longer be able to obtain credit advances and must pay the outstanding balance over 5 years (the "repayment period"). During the repayment period, payments will be due monthly. Your minimum monthly payment will equal 1/60th of the balance that was outstanding at the end of the draw period plus the finance charges that have accrued on the remaining balance.

Minimum Payment Example: If you made only the minimum monthly payments and took no other credit advances, it would take 15 years to pay off a credit advance of \$10,000 at an ANNUAL PERCENTAGE RATE of 12%. During that period, you would make 120

monthly payments varying between \$127.78 and \$100.00 followed by 60 monthly payments varying between \$187.06 and \$118.08.

Fees and Charges: To open and maintain a line of credit, you must pay the following fees to us:

- Application fee: \$150 (due at application)
- Points: 1% of credit limit (due when account opened)
- Annual maintenance fee: \$75 (due each year)

You also must pay certain fees to third parties to open a line. These fees generally total between \$500 and \$900. If you ask, we will give you an itemization of the fees you will have to pay to third parties.

Minimum Draw and Balance Requirements: The minimum credit advance you can receive is \$500. You must maintain an outstanding balance of at least \$100.

Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges for the line.

Variable-Rate Information: The line has a variable-rate feature, and the annual percentage rate (corresponding to the periodic rate) and the minimum payment can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. The index is the monthly average prime rate charged by banks and is published in the *Federal Reserve Bulletin*. To determine the annual percentage rate that will apply to your line, we add a margin to the value of the index.

Ask us for the current index value, margin and annual percentage rate. After you open a credit line, rate information will be provided on periodic statements that we will send you.

Rate Changes: The annual percentage rate can change each month. The maximum ANNUAL PERCENTAGE RATE that can apply is 18%. Except for this 18% "cap," there is no limit on the amount by which the rate can change during any one-year period.

Maximum Rate and Payment Examples: If you had an outstanding balance of \$10,000 during the draw period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be \$177.78. This annual percentage rate could be reached during the first month of the draw period.

If you had an outstanding balance of \$10,000 at the beginning of the repayment period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be \$316.67. This annual percentage rate could be reached during the first month of the repayment period.

Historical Example: The following table shows how the annual percentage rate and the minimum monthly payments for a single \$10,000 credit advance would have changed based on changes in the index over the past 15 years. The index values are from September of each year. While only one payment amount per year is shown, payments would have varied during each year.

The table assumes that no additional credit advances were taken, that only the minimum payments were made each month, and that the rate remained constant during each year. It does not necessarily indicate how the index or your payments will change in the future.

Year	Index (%)	Margin *	ANNUAL PERCENTAGE RATE (%)	Minimum Monthly Payment (\$)
1974	12.00	2	14.00	144.44
1975	7.88	2	9.88	106.50
1976	7.00	2	9.00	100.00
1977	7.13	2	9.13	100.00
1978	9.41	2	11.41	105.47
1979	12.90	2	14.90	126.16
1980	12.23	2	14.23	117.53
1981	20.08	2	18.00**	138.07
1982	13.50	2	15.50	117.89
1983	11.00	2	13.00	100.00
1984	12.97	2	14.97	203.81
1985	9.50	2	11.50	170.18
1986	7.50	2	9.50	149.78
1987	8.70	2	10.70	141.50
1988	10.00	2	12.00	130.55

* This is a margin we have used recently.

** This rate reflects the 18% rate cap.

G-14B - Home Equity Sample

IMPORTANT TERMS of our HOME EQUITY LINE OF CREDIT

This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

Availability of Terms: All of the terms described below are subject to change.

If these terms change (other than the annual percentage rate) and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees you paid to us or anyone else in connection with your application.

Security Interest: We will take a mortgage on your home. You could lose your home if you do not meet the obligations in your agreement with us.

Possible Actions: We can terminate your line, require you to pay us the entire outstanding balance in one payment, and charge you certain fees if:

- You engage in fraud or material misrepresentation in connection with the line.
- You do not meet the repayment terms.
- Your action or inaction adversely affects the collateral or our rights in the collateral.

We can refuse to make additional extensions of credit or reduce your credit limit if:

- The value of the dwelling securing the line declines significantly below its appraised value for purposes of the line.
- We reasonably believe you will not be able to meet the repayment requirements due to a material change in your financial circumstances.
- You are in default of a material obligation in the agreement.
- Government action prevents us from imposing the annual percentage rate provided for or impairs our security interest such that the value of the interest is less than 120 percent of the credit line.

• A regulatory agency has notified us that continued advances would constitute an unsafe and unsound practice.

- The maximum annual percentage rate is reached.

The initial agreement permits us to make certain changes to the terms of the agreement at specified times or upon the occurrence of specified events.

Minimum Payment Requirements: You can obtain advances of credit for 10 years (the "draw period"). You can choose one of three payment options for the draw period:

• **Monthly interest-only payments.** Under this option, your payments will be due monthly and will equal the finance charges that accrued on the outstanding balance during the preceding month.

• **Quarterly interest-only payments.** Under this option, your payments will be due quarterly and will equal the finance charges that accrued on the outstanding balance during the preceding quarter.

• **2% of the balance.** Under this option, your payments will be due monthly and will equal 2% of the outstanding balance on your line plus finance charges that accrued on the outstanding balance during the preceding month.

If the payment determined under any option is less than \$50, the minimum payment will equal \$50 or the outstanding balance on your line, whichever is less.

Under both the monthly and quarterly interest-only payment options, the minimum payment will not reduce the principal that is outstanding on your line.

After the draw period ends, you will no longer be able to obtain credit advances and must repay the outstanding balance (the "repayment period"). The length of the repayment period will depend on the balance outstanding at the beginning of it. During the repayment period, payments will be due monthly and will equal 3% of the outstanding balance on your line plus finance charges that accrued on the outstanding balance or \$50, whichever is greater.

Minimum Payment Examples: If you took a single \$10,000 advance and the ANNUAL PERCENTAGE RATE was 9.52%:

• Under the monthly interest-only payment option, it would take 18 years and 1 month to pay off the advance if you made only the minimum payments. During that period, you would make 120 payments of \$79.33, followed by 96 payments varying between \$379.33 and \$50 and one final payment of \$10.75.

• Under the 2% of the balance payment option, it would take 10 years and 8 months to pay off the advance if you made only the minimum payments. During that period, you would make 120 payments varying between \$279.33 and \$50, followed by 7 payments of \$50 and one final payment of \$21.53.

Fees and Charges: To open and maintain a line of credit, you must pay us the following fees:

- Application fee: \$100 (due at application)
- Points: 1% of credit limit (due when account opened)
- Annual maintenance fee: \$50 during the first 3 years, \$75 thereafter (due each year)

You also must pay certain fees to third parties to open a line. These fees generally total between \$500 and \$900. If you ask, we will give you an itemization of the fees you will have to pay to third parties.

Minimum Draw Requirement: The minimum credit advance that you can receive is \$200.

Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges for the line.

Variable-Rate Feature: The line has a variable-rate feature, and the annual percentage rate (corresponding to the periodic rate) and the minimum monthly payment can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. During the draw period, the index is the monthly average prime rate charged by banks. During the repayment period, the index is the weekly average yield on U.S. Treasury securities adjusted to a constant maturity of one year. Information on these indices is published in the *Federal Reserve Bulletin*. To determine the annual percentage rate that will apply to your line, we add a margin to the value of the index.

The initial annual percentage rate is "discounted" -- it is not based on the index and margin used for later rate adjustments. The initial rate will be in effect for the first year your credit line is open.

Ask us for the current index values, margin, discount and annual percentage rate. After you open a credit line, rate information will be provided on periodic statements that we send you.

Rate Changes: The annual percentage rate can change monthly. The maximum ANNUAL PERCENTAGE RATE that can apply is 18%. Apart from this rate "cap," there is no limit on the amount by which the rate can change during any one-year period.

Maximum Rate and Payment Examples: If the ANNUAL PERCENTAGE RATE during the draw period equaled the 18% maximum and you had an outstanding balance of \$10,000:

• Under the monthly interest-only payment option, the minimum monthly payment would be \$150.

• Under the 2% of the balance payment option, the minimum monthly payment would be \$350.

This annual percentage rate could be reached during the first month of the draw period.

If you had an outstanding balance of \$10,000 during the repayment period, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be \$450. This annual percentage rate could be reached during the first month of the repayment period.

Historical Example: The following table shows how the annual percentage rate and the monthly payments for a single \$10,000 credit advance would have changed based on changes in the indices over the past 15 years. For the draw period, the index values for the prime rate are from September of each year. For the repayment period, the index values for the yield on U.S. Treasury securities are from the first week ending in July. While only one payment amount per year is shown, payments under the 2% of the balance payment option and during the repayment period would have varied during each year.

The table assumes that no additional credit advances were taken, that only the minimum payments were made, and that the rate remained constant during each year. It does not necessarily indicate how the indices or your payments will change in the future.

	Year	Index %	Margin* %	ANNUAL	Monthly Interest- Only Payments (\$)	Monthly 2% of Balance Payments (\$)
				PERCENTAGE RATE %		
Draw Period	1974	12.00	2	10.00**	83.33	283.33
	1975	7.88	2	9.88	82.33	221.55
	1976	7.00	2	9.00	75.00	169.34
	1977	7.13	2	9.13	76.08	133.41
	1978	9.41	2	11.41	95.08	111.89
	1979	12.90	2	14.90	124.17	96.46
	1980	12.23	2	14.23	118.58	74.39
	1981	20.08	2	18.00***	150.00	64.13
	1982	13.50	2	15.50	129.17	50.00
	1983	11.00	2	13.00	108.33	50.00
Repayment Period	1984	12.17	2	14.17	418.08	50.00
	1985	7.66	2	9.66	264.01	
	1986	6.36	2	8.36	177.96	
	1987	6.71	2	8.71	124.45	
	1988	7.52	2	9.52	87.92	

* This is a margin we have used recently.
 ** This rate reflects a 4% "discount" we have used recently.
 *** This rate reflects the 18% rate cap.

G-14C -- Home Equity Sample (Repayment phase disclosed later)

IMPORTANT TERMS of our HOME EQUITY PLAN

This disclosure contains important information about our Home Equity Plan. You should read it carefully and keep a copy for your records.

Security Interest: We have a mortgage in your home. You could lose your home if you do not meet the obligations in your agreement with us.

Possible Actions: We can terminate your line, require you to pay us the entire outstanding balance in one payment, and charge you certain fees if:

- You engage in fraud or material misrepresentation in connection with the plan.

- You do not meet the repayment terms.

- Your action or inaction adversely affects the collateral or our rights in the collateral.

Minimum Payment Requirements: You must pay the balance on your account over 5 years. During that period, your payments will be due monthly. Your minimum monthly payment will equal 1/60th of the original outstanding balance on your line plus finance charges that have accrued on the remaining balance.

Minimum Payment Example: It would take 5 years to pay off a balance of \$10,000 at an ANNUAL PERCENTAGE RATE of 12.5%. During that period, you would make 60 monthly payments varying between \$270.83 and \$168.40.

Fees: You must pay us an initial fee of \$100 at the beginning of the repayment period.

Tax Deductibility: You should consult a tax advisor regarding the deductibility of interest and charges for the plan.

Variable-Rate Information: The plan has a variable-rate feature, and the annual percentage rate (corresponding to the periodic rate) and the minimum payment can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. The index is the highest prime rate published in the *Wall Street Journal* "Money Rates" table. To determine the annual percentage rate that will apply, we add a margin to the value of the index.

Ask us for the current index value, margin and annual percentage rate.

Rate Changes: The annual percentage rate can change each month. The maximum ANNUAL PERCENTAGE RATE that can apply is 18%. Except for this 18% "cap," there is no limit on the amount by which the rate can change during any one-year period.

Maximum Rate and Payment Example: If you had an initial balance of \$10,000, the minimum monthly payment at the maximum ANNUAL PERCENTAGE RATE of 18% would be \$316.67. This annual percentage rate could be reached during the first month.

Historical Example: The following table shows how the annual percentage rate and the minimum monthly payments for a starting balance of \$10,000 would have changed based on changes in the index over the past 15 years. The index values are from the last business day in January of each year. While only one payment amount per year is shown, payments would have varied during each year. This table does not necessarily indicate how the index or your payments will change in the future.

Year	Index (%)	Margin* (%)	ANNUAL PERCENTAGE RATE (%)	Minimum Payment (\$)
1975	9.50	2	11.50	262.50
1976	6.75	2	8.75	225.00
1977	6.25	2	8.25	207.92
1978	8.00	2	10.00	200.00
1979	11.75	2	13.75	189.58
1980	15.25	2	17.25	
1981	20.00	2	18.00 **	
1982	15.75	2	17.75	
1983	11.00	2	13.00	
1984	11.00	2	13.00	
1985	10.50	2	12.50	
1986	9.50	2	11.50	
1987	7.50	2	9.50	
1988	8.75	2	10.75	
1989	10.50	2	12.50	

* This is a margin we have used recently.
 ** This rate reflects the 18% rate cap.

G-15 -- Home Equity Model Clauses

(a) Retention of Information: This disclosure contains important information about our Home Equity Line of Credit. You should read it carefully and keep a copy for your records.

• You do not meet the repayment terms.

• Your action or inaction adversely affects the collateral or our rights in the collateral.

(b) Availability of Terms: To obtain the terms described below, you must submit your application before (date). However the (description of terms) are subject to change.

or

All of the terms described below are subject to change.

If these terms change [(other than the annual percentage rate)] and you decide, as a result, not to enter into an agreement with us, you are entitled to a refund of any fees you paid to us or anyone else in connection with your application.

We can refuse to make additional extensions of credit or reduce your credit limit if:

• The value of the dwelling securing the line declines significantly below its appraised value for purposes of the line.

• We reasonably believe you will not be able to meet the repayment requirements due to a material change in your financial circumstances.

• You are in default of a material obligation in the agreement.

(c) Security Interest: We will take a [security interest in/mortgage on] your home. You could lose your home if you do not meet the obligations in your agreement with us.

• Government action prevents us from imposing the annual percentage rate provided for or impairs our security interest such that the value of the interest is less than 120 percent of the credit line.

(d) Possible Actions: Under certain circumstances, we can (1) terminate your line, require you to pay us the entire outstanding balance in one payment [, and charge you certain fees]; (2) refuse to make additional extensions of credit; (3) reduce your credit limit [, and (4) make specific changes that are set forth in your agreement with us].

• A regulatory agency has notified us that continued advances would constitute an unsafe and unsound practice.

• The maximum annual percentage rate is reached.

If you ask, we will give you more specific information about when we can take these actions.

[The initial agreement permits us to make certain changes to the terms of the agreement at specified times or upon the occurrence of specified events.]

or

Possible Actions: We can terminate your account, require you to pay us the entire outstanding balance in one payment[, and charge you certain fees] if:

(e) Minimum Payment Requirements: The length of the [draw period/repayment period] is (length). Payments will be due (frequency). Your minimum payment will equal (how payment determined).

[The minimum payment will not reduce the principal that is outstanding on your line./The minimum payment will not fully repay the principal that is outstanding on your line.] You will then be required to pay the entire balance in a single "balloon" payment.

• You engage in fraud or material misrepresentation in connection with the line.

(f) **Minimum Payment Example:** If you made only the minimum payments and took no other credit advances, it would take *(length of time)* to pay off a credit advance of \$10,000 at an ANNUAL PERCENTAGE RATE of *(percent rate)*. During that period, you would make *(number)* *(frequency)* payments of \$____.

(g) **Fees and Charges:** To open and maintain a line of credit, you must pay the following fees to us:

(Description of fee) [\$____/____% of ____] *(When payable)*

(Description of fee) [\$____/____% of ____] *(When payable)*

You also must pay certain fees to third parties. These fees generally total [\$____/____% of ____/between \$____ and \$____]. If you ask, we will give you an itemization of the fees you will have to pay to third parties.

(h) **Minimum Draw and Balance Requirements:** The minimum credit advance you can receive is \$____. You must maintain an outstanding balance of at least \$____.

(i) **Negative Amortization:** Under some circumstances, your payments will not cover the finance charges that accrue and "negative amortization" will occur. Negative amortization will increase the amount that you owe us and reduce your equity in your home.

(j) **Tax Deductibility:** You should consult a tax advisor regarding the deductibility of interest and charges for the line.

(k) **Other Products:** If you ask, we will provide you with information on our other available home equity lines.

(l) **Variable-Rate Feature:** The plan has a variable-rate feature and the annual percentage rate (corresponding to the periodic rate) and the [minimum payment/term of the line] can change as a result.

The annual percentage rate includes only interest and not other costs.

The annual percentage rate is based on the value of an index. The index is the *(identification of index)* and is [published in/available from] *(source of information)*. To determine the annual percentage rate that will apply to your line, we add a margin to the value of the index.

[The initial annual percentage rate is "discounted" -- it is not based on the index and margin used for later rate adjustments. The initial rate will be in effect for *(period)*.]

Ask us for the current index value, margin, [discount,] and annual percentage rate. After you open a credit line, rate information will be provided on periodic statements that we send you.

(m) **Rate Changes:** The annual percentage rate can change *(frequency)*. [The rate cannot increase by more than ____ percentage points in any one year period./There is no limit on the amount by which the rate can change in any one year period.] [The maximum ANNUAL PERCENTAGE RATE that can apply is ____%/The ANNUAL PERCENTAGE RATE cannot increase by more than ____ percentage points above the initial rate.] [Ask us for the specific rate limitations that will apply to your credit line.]

(n) **Maximum Rate and Payment Examples:** If you had an outstanding balance of \$10,000, the minimum payment at the maximum ANNUAL PERCENTAGE RATE of ____% would be \$____. This annual percentage rate could be reached *(when maximum rate could be reached)*.

(o) **Historical Example:** The following table shows how the annual percentage rate and the minimum payments for a single \$10,000 credit advance would have changed based on changes in the index over the past 15 years. The index values are from *(when values are measured)*. [While only one payment amount per year is shown, payments would have varied during each year.]

The table assumes that no additional credit advances were taken, that only the minimum payments were made, and that the rate remained constant during each year. It does not necessarily indicate how the index or your payments will change in the future.

Year	Index	Margin	ANNUAL PERCENTAGE RATE	Minimum Payment
	(%)	(%)	(%)	(\$)
1975				
1976				
1977				
1978				
1979				
1980				
1981				
1982				
1983				
1984				
1985				
1986				
1987				
1988				
1989				

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 108

[Rev. 4, Amdt 20]

RIN 3245-AB78

Loans to State and Local Development Companies

AGENCY: Small Business Administration.
ACTION: Final rule.

SUMMARY: The two interim final rules published on March 30, 1988, (53 FR 10242) are now promulgated as final. The first of these, adopted without change, permits a small concern assisted by a section 503 loan to its *alter ego* to lease out up to one third of newly acquired space. The second rule, also adopted without change, permits a small concern to contribute land to its 503 project, at appraisal value instead of at the lower of cost or market value, if such land was acquired more than two years before the filing of the 503 application. In addition, the proposed rules published on October 21, 1988 at 53 FR 41351 are promulgated as final with changes. The first such rule permits the 503 company board to vote on a loan or servicing proposal in the absence of a member with commercial lending experience, if such member has made a documented recommendation on such proposal. The second such rule permits the contribution by the small concern to its project of needed land without buildings, but with site improvements. The third and last such rule permits the transfer of a pending economic development project, from a development company facing suspension or revocation of its 503 Certification, to another development company in good standing.

EFFECTIVE DATE: June 9, 1989.

FOR FURTHER INFORMATION CONTACT: LeAnn M. Oliver, Financial Analyst, Office of Economic Development, (202) 653-6988.

SUPPLEMENTARY INFORMATION: The interim final rules published March 30, 1988 are now published as final without change. One comment was received. The comment praised the change allowing valuation of land purchased more than 2 years prior to the relevant application to be based on appraised market value.

On the proposed regulations published for comment on October 21, 1988, 3 comments were received. All three comments opposed limiting the borrower's contribution to the 503 company's injection. All three commenters opposed the provision prohibiting the value of the borrower's

contribution to exceed either the amount of the 503 debenture or the value of the private (third-party) contribution to the project. The commenters point out that there are a variety of instances where it may be to the program's advantage to have the borrower's contribution exceed that of the other parties. These instances include single use facilities or situations where the collateral is inadequate and a greater borrower's equity would enhance the creditworthiness of the project. There are also instances where a larger project of significant economic importance to the community requires SBA assistance but the limitations on SBA's commitment to \$750,000 prevents the SBA from supporting its full share of the total project. If the private sector lender could not or would not provide the balance, the borrower's additional contribution would make possible a beneficial project. Accordingly, the provision proposing to so limit the borrowers contribution has been deleted.

The second prohibition limited the borrower's contribution to cash or land, valued pursuant to § 108.503-5(d)(2). One of the commenters objected to limiting it to the value of the land only, without improvements. After considering the comment, SBA adopted the comment in the final rule which allows for the borrower's contribution of land and site improvements (e.g., utilities). In summary, the final rule allows real property to be contributed as all or part of the CDC injection, but the borrower contribution is limited to land and site improvements, without buildings.

Section 108.503-1(b)(2) is adopted as proposed. The provision makes clear that the board of directors of a 503 company may vote on a proposed loan approval or servicing action even if no person with commercial lending experience is present at the meeting, if such a person has made a documented recommendation concerning such proposed action.

Lastly, final rule § 108.503-15(e)(1), adopted as proposed, authorizes SBA to transfer an existing or a pending 503 financing from a development company which is under temporary or other sanction, to a 503 company in good standing.

Compliance With Executive Orders 12291 and 12612, the Regulatory Flexibility Act and the Paperwork Reduction Act

For purposes of Executive Order 12291, SBA has determined that this rule, taken as a whole, does not constitute a major rule for the purposes of Executive Order 12291, because the

annual effect of this rule on the national economy does not attain \$100 million. In this regard, we estimate that the rule permitting increased leasing of newly acquired space will affect about 3% of the total annual loan volume, or \$9 million. The rule permitting land held over two years to be valued by appraisal will affect at the most \$12 million (4%) and the rule prohibiting the contribution of buildings by the small concern to its own project will affect no more than \$5 million. The other rules, concerning the vote by the board of directors of a development company on loan and servicing actions, and the rule permitting the transfer of projects from development companies facing sanction, to development companies in good standing, have no or only negligible impact on the economy. Accordingly, we estimate the aggregate impact of these rules on the national economy not to exceed \$26 million. Also, these rules do not result in a major increase in costs or price to consumers, individual industries, Federal, state and local government agencies or geographic regions, and will not have significant adverse effects on competition, employment, investment, productivity or innovation.

For purposes of compliance with Executive Order 12612, SBA certifies that these rules do not warrant the preparation of a Federal Assessment.

For the purpose of compliance with the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., the provisions of this rule will have a significant economic impact on a substantial number of small entities. The following analysis of the provisions is provided within the context of the review prescribed in the Regulatory Flexibility Act (5 U.S.C. 603).

1. *Need for and objective of the rule.* The first rule, promulgated without change from its interim final form, brings § 108.8(d) into line with another rule (§ 108.503-4(a)). Both rules now permit a small concern to lease out to others up to one-third of space newly acquired with the help of 503 assistance. The second rule permits land contributed to a 503 project by the small concern to be valued by appraisal if the land was acquired more than 2 years before the initial application to SEA. For a fuller explanation of these two rules, see 53 FR 10242 (March 30, 1988). The third proposed rule here promulgated, § 108.503-1(b)(2) would not have permitted an absentee ballot by the person whose vote is required for a loan approval or servicing action to control board action, a result which SBA did not intend. Under the new wording, the

board can proceed, whether the absentee vote is positive or negative.

The reasons for the fourth rule, § 108.503-10, are (1) that it was never SBA's intention to permit the 503 borrower to inject property other than cash into a project. The valuation of personal property and of buildings creates difficulties. Accordingly, the word "property" is qualified by the word "real" and such real property is subjected to the valuation rule, § 108.503-5(d), which applies to land. (2) The contribution by the small concern may include, or consist of, land with site improvements, valued pursuant to § 108.503-5(d). SBA limits the small concern's contribution, besides cash, to land only because the valuation of existing buildings owned by the borrower would give rise to controversy.

The purpose of the fifth rule is to permit the shift of an economic development project from a development company facing sanction, to another in good standing, in order to insulate a small business applicant from the consequences of such sanction (e.g., SBA's refusal to guarantee the resulting debenture).

2. *Summary and SBA assessment of public comments.* The 3 critical comments, all concerned with a proposed limitation on the size of the small concern's contribution to its own project, have been discussed above.

3. *Alternatives to the rule.* The only alternative to the rule here promulgated is to leave these regulations unchanged, an option which conflicts with SBA's administrative experience.

The legal basis of these proposed rule changes is Section 503(a)(2) of the Small Business Investment Act, 15 U.S.C. 697(a)(2).

These regulations contain no reporting or record keeping requirements which have not been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. Ch. 35).

There are no new reporting, recordkeeping and other compliance requirements inherent in these rules. There are no Federal rules which duplicate, overlap or conflict with these rules. There are no significant alternate means to accomplish the objectives of these rules.

List of Subjects in 13 CFR Part 108

Loan programs/business, Small businesses.

For the reasons set out above, 13 CFR Part 108 of the Code of Federal Regulations is amended as follows:

PART 108—[AMENDED]

1. The authority citation for Part 108 continues to read as follows:

Authority: 15 U.S.C. 687(c), 695, 696, 697, 697a, 697b, 697c, Pub. L. 100-590.

§ 108.8 [Amended]

2. The interim final rule amending 13 CFR 108.8(d) which was published at 53 FR 10244 on March 30, 1988 is adopted as a final rule without change.

3. Section 108.503-1(b)(2) is amended by revising the last sentence thereof to read as follows:

§ 108.503-1 Eligibility requirements for 503 companies.

• • • • •
 (b) • • •
 (2) • • • If loan approval or servicing actions are put to a vote, the quorum shall include at least one director with commercial lending experience, unless the 503 Company can document that such director or another person approved by SBA as possessing commercial lending experience has made a recommendation on such loan or servicing action.
 • • • • •

§ 108.503-5 [Amended]

4. The interim final rule amending 13 CFR 108.503-5 which was published at 53 FR 10242 on March 30, 1988, is adopted as a final rule without change.

5. Section 108.503-10 is revised to read as follows:

§ 108.503-10 503 Company Injection.

(a) *Contributions to 503 Company Injection.* The 503 Company shall be required to inject into each project an amount equal to at least ten percent (10%) of the project cost exclusive of administrative cost (see § 108.503-5 (a) and (b)). Subject to § 108.503-4(c)(4) and paragraph (b) of this section, such injection may come from any source and may consist of cash, or real property if the project requires such real estate. Any such contribution or loan to the 503 Company may not be conditioned on the granting of voting rights, stock options or any other actual or potential voting interest in the 503 Company or the Small Concern, but the 503 Company may issue shares of nonvoting stock in exchange therefor. The interest on such injection shall not exceed a rate which is legal and reasonable. Such injection shall be subordinate to the 503 Debenture and shall not be repaid at a faster rate than the 503 Loan.

(b) *Contribution by borrower.* The Small Concern may contribute part or all of such injection. If the project involves new construction, the Small

Concern may contribute, directly or indirectly, only cash or land with or without site improvements (e.g. grading, streets, parking lot, utilities, landscaping), valued pursuant to § 108.503-5(d)(2) of this part, if such land is needed for such construction. Without such need, the small concern may not contribute, directly or indirectly, real property, and in no event may the small concern contribute, directly or indirectly, land with buildings.

(c) *Contributions by others.* The injection into a project involving new construction may include, or consist of, needed real property if not contributed pursuant to paragraph (b) of this section. Such real property shall be valued pursuant to the same methods and requirements, and subject to the same limitations, as apply to land under § 108.503-5(d)(2).

6. Section 108.503-15 is amended by revising paragraph (e)(1) to read as follows:

§ 108.503-15 Oversight and evaluation; suspension and revocation.

• • • • •
 (e) *Revocation, suspension and other corrective actions—(1) Corrective Actions.* SBA reserves the right to revoke the certification of any 503 Company, to suspend temporarily the eligibility of any 503 Company, or to require any other corrective action (including, but not limited to, the transfer of existing or pending financings to a 503 Company in good standing) for a violation of law or SBA regulation, of the terms of a debenture or any agreement with SBA, or any inability to meet the operational requirements set forth in this part; but such action shall not invalidate any guarantee previously issued by SBA. Where a pending financing is completed pursuant to transfer, any deposit pursuant to § 108.503-6(b) of this part shall also be transferred. Other charges and fees shall be apportioned by SBA among the two 503 Companies in proportion to services performed.
 • • • • •

(Catalog of Federal Domestic Assistance 59.036 Certified Development Company Loans [503 Loans]; 59.041 Certified Development Company Loans [504 loans].)

Dated: April 7, 1989.

James Abdnor,
 Administrator.

[FR Doc. 89-13588 Filed 6-8-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 25

[Docket No. NM-36, Special Conditions No. 25-ANM-29]

Special Conditions: Airbus Industrie Model A320 Series Airplane

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Airbus Industrie Model A320 series airplane. This airplane will have non-traditional computerized Airplane Flight Manual (AFM) performance presentation features when compared to the manner in which AFM performance is now presented in chart form in compliance with the transport category airplane airworthiness standards of the Federal Aviation Regulations (FAR). These special conditions contain the additional standards which the Administrator considers necessary to establish a level of AFM preparation and usage equivalent to that established by the FAR.

EFFECTIVE DATE: May 31, 1989.

FOR FURTHER INFORMATION CONTACT: Colin Fender, Flight Test and Systems Branch, ANM-111, Transport Airplane Directorate, Aircraft Certification Service, FAA, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168; telephone (206) 431-2128.

SUPPLEMENTARY INFORMATION:

Background

On December 15, 1988, the FAA issued Type Certificate A28NM to Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France, for type certification of their Model A320-111 and Model A320-211 series airplanes. Subsequently, Airbus requested a change to the A320 type design to include non-traditional computerized Airplane Flight Manual (AFM) performance presentation features.

The Model A320 series airplane is a short to medium-range, twin-turboprop, transport category airplane with a seating capacity of 120 to 179 passengers, a maximum takeoff weight of 158,730 pounds, and a maximum operating altitude of 39,000 feet.

The manufacturer proposes to eliminate the traditional AFM takeoff performance charts and replace them with reference to a computer program, or programs, and corresponding data files which would yield the same

information. The computer program proposal is ground-based and not related to onboard processing or uplinking. If the proposal is adopted, existing relevant regulations, e.g., § 25.1587(b) of the FAR, would not provide adequate standards, since the required takeoff performance information would not be in a directly usable form in the AFM itself.

Under the provisions of § 21.101 of the FAR, Airbus Industrie must show that the Model A320, as modified to incorporate the computerized AFM, continues to meet the applicable provisions of the regulations incorporated by reference in Type Certificate A28NM, or the applicable regulations in effect on the date of application for the change. The regulations incorporated by reference in the type certificate are commonly referred to as the "original type certification basis." The certification basis for the A320 consists of Part 25 of the FAR, as amended by Amendments 25-1 through 25-56, and Special Conditions 25-ANM-23.

If the Administrator finds that the applicable airworthiness regulations (i.e., Part 25 as amended) do not contain adequate or appropriate standards for the Model A320 because of a novel or unusual AFM feature, special conditions are prescribed under the provisions of § 21.18 to establish a level of AFM preparation and usage equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.17(a)(2).

Novel or Unusual AFM Presentation Features

The Model A320 series airplane will incorporate the following novel or unusual AFM features:

Even though operators of large transport category airplanes have used performance analyses programs to determine regulatory compliant performance, the approved AFM charts have been available to represent the official minimum certified performance level of the airplane, as required by regulation. The current process includes engineering review and approval of the charts themselves as part of the type certification process. The availability of the charts to airplane operators and FAA operations personnel for establishing the acceptability of alternate ground-based computer performance analyses has apparently been a satisfactory means of providing

information concerning the minimum performance level of the airplane.

Airbus Industrie proposes elimination of the takeoff performance charts within the AFM, and instead proposes to show compliance with the intent of the applicable requirements of Part 25 concerning the AFM by cross-referencing (in the AFM) to equivalent results via certified performance computer programs and data files. Airbus Industrie states that, in fact, the results would be the exact digital images of the otherwise-provided AFM chart. The operators could generate equivalent "AFM charts" with appropriate interpolation/reading programs, in addition to running analysis or gross weight optimization programs.

Airbus Industrie intends at this time to still provide traditional enroute climb (driftdown) and landing performance charts in the AFM.

Discussion

In current operational practice, neither flightcrews nor dispatchers use the AFM on a day-to-day basis for determining limiting takeoff weights, field lengths, and speeds. Airline operations departments routinely reformat AFM source data into more usable schemes for specific airports, runways, etc. AFM charts are reviewed for accuracy and completeness, as part of the normal type certification process, prior to TC issuance. These data form the master source of performance data which are used by all parties to validate other data presentations. Federal Aviation Administration AFM master book libraries have been available to the public and other government agencies, such as NTSB and airport operators; therefore, the equivalent of current operational practice must continue if charts are to be removed from the A320 AFM.

Applicants who plan to implement computer programs and data files as a replacement for the performance charts in the AFM are expected to obtain approval from the FAA using the following process:

a. All initial-release, individual takeoff performance entities (for a particular airplane/engine combination) must be produced for the FAA in hard copy chart form (or table if appropriate) and included in a report. The report must be FAA approved prior to the AFM initial release in question, and will be used internally by the FAA to establish overall acceptability of the computerized presentation. This report will not be included in the FAA AFM "master book," nor will it be included as part of the public record. The "master

book" level of performance will be that which results from execution of the program and data files located in the AFM. Subsequent performance changes (e.g. same engine, but new rating) need not be produced in chart form, but the FAA certification office must have the capability to read and list the computerized performance modules referenced as AFM performance.

b. The report with hard-copy performance must have organization and identifiers to clearly relate specific charts to the performance determination process.

c. The report should present performance data with the same completeness, clarity, and legibility as typical AFM charts. Graphical presentation of performance data is the preferred format. Tabular presentations should be limited to simple relationships that do not require visualization to present relationships, trends, or important variations in parameters.

d. The applicant is responsible for ensuring that the FAA certification office is provided with the equipment specification to use the computer files and any required initial instruction on use of the computer program.

e. The applicant's total performance presentation to the air carrier must be such to allow that carrier to comply with §§ 91.183(a)(5) and 121.141.

Discussion of Comments

Notice of Proposed Special Conditions No. SC-89-1-NM for the Airbus Industrie Model A320 airplane was published in the Federal Register on March 10, 1989 (54 FR 10163). The following comments were received.

One commenter points out that in the background paragraph, the statement is made that "under the provisions of paragraph 21.101 of the FAR, Airbus Industrie must show that the Model A320, as modified to incorporate the computer program * * *." This commenter states that since the AFM has no interface with the airplane, the statement should read, " * * * the A320 AFM, as modified to incorporate the computer program * * *." Although the AFM may not be a physical part of the airplane, it is an integral part of the type design of the Model A320. Since it is the type design of the Model A320 that is being modified, and not the AFM per se, the commenter's proposed change is inappropriate.

Two commenters express concern over various items in paragraph a. of the discussion. Both commenters question the FAA's intent as to which medium would constitute the AFM "master book" and suggest a partial rewording for purposes of clarification. The FAA

agrees with these commenters. Accordingly, paragraph a. has been rewritten to reflect use of the electronic medium as the "master book," and its inclusion in the public record.

One commenter notes the statement concerning tabular presentation of the data is vague and should be clarified. The FAA agrees, and this statement has been deleted from paragraph a., rewritten, and moved to paragraph c. where it is more appropriately located.

One commenter suggests paragraph a. of the discussion be revised to allow microfiche and microfilm as acceptable forms of hard copy on the grounds that tabular data could be voluminous. The FAA disagrees. Hard copy charts are only required for the initial release AFM for a particular airplane/engine combination. Volume is not a consideration.

One commenter suggests deletion of the last sentence of paragraph a. which states the FAA must have the capability to read and list program performance modules. This commenter believes that allowing access would also allow modification of the data, which would contradict the requirements of Special Condition 2j. The FAA disagrees. The terminology "performance modules," as used in this document, refers to a data base extraction of performance information for a specific configuration (flaps, gear, etc.), and not the data base itself. The FAA shares this commenter's concern for program security, but in this case the referenced statement applies only to the ability to print information from the associated files, rather than attempt alteration.

Another commenter suggests paragraph d. of the discussion be revised to specify inclusion of the program, and material related to its use, in the FAA approved AFM master book. The FAA agrees with identifying the computer program as the source of master book performance and has incorporated this definition in paragraph a. of the discussion.

One commenter suggests the addition of a reference to § 25.1583(h) of the FAR to Special Condition 2 to cross-reference additional performance requirements that presently exist in paper AFMs. The FAA agrees, and this reference has been added.

One commenter suggest the deletion of Special Condition 2b as it is irrelevant. The FAA disagrees. The intent of this special condition is to establish equivalency of electronic and paper AFM presentation media. If, for example, interpolation intervals were large, or computed field lengths were rounded off to the nearest 100 feet, program differences could be generated

that would be outside the accuracy available with the paper AFM. This special condition assures that consideration will be given to maintaining the same level of accuracy and resolution presently available with paper presentations, and avoiding a degradation in result quality.

The same commenter suggests the deletion of Special Condition 2c, which requires two-way interrogation capability, as it is not a regulatory requirement. The FAA disagrees. This is an accepted capability in paper AFMs and would result in degradation of capability if it did not exist in the electronic presentation. Again, maintaining equivalence with the established utility of existing paper AFMs is the issue.

One commenter suggests clarification of Special Condition 2f by adding the words "approved limits of validity of performance data." The FAA concurs, and this change has been incorporated.

Another commenter suggests deletion of the requirement in Special Condition 2i that certain performance information be hard copy only. The FAA disagrees. Certain information (as listed) must remain accessible in hard copy form in the AFM. This does not prevent the ultimate digitization of these charts for operational use, but the FAA does not want the AFM to be devoid of these charts as a result of computerization.

Two commenters express concern over wording in Special Condition 2j. One commenter suggests changing "protected" to "adequately protected," and the other commented on the general inability to make any software 100 percent secure. The FAA does not agree with the addition of "adequately," as this makes the requirement vague and subjective. The FAA does agree with the concern that 100 percent security is unrealistic, but assumes that alteration protection will be provided to the maximum extent possible. An evaluation of program security will be made as part of the AFM approval process, and an assessment of its acceptability, or any required changes, will be made at that time.

One commenter suggests a revision to Special Condition 21 to add a reference to the computer hardware type. The FAA agrees, and has modified the wording accordingly.

Under standard practice, the effective date of these final special conditions would be 30 days after publication in the Federal Register; however, as Airbus plans delivery of the subject airplane as configured to a U.S. operator in late May, the FAA finds that good cause

exists to make these special conditions effective upon issuance.

Conclusion: This action affects only certain novel or unusual AFM features on one model series of airplanes. It is not a rule of general applicability, and it affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Parts 21 and 25

Air transportation, Aircraft, Aviation safety, Safety.

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the Airbus Industrie Model A320 series airplane.

1. The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f-10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983).

2. Replacement of Airplane Flight Manual (AFM) Takeoff Performance Charts with Reference to Equivalent Computer Programs and Data Files. In lieu of the AFM performance charts provided to comply with §§ 25.1583(h) and 25.1587(b) of the FAR, the following special conditions apply:

a. The system must provide the performance information which is required to be provided by the applicable provisions of Part 25 of the FAR concerning the content of Airplane Flight Manuals.

b. Interpolation, reading intervals, or round-off conditions must not result in any more significant variation than for current chart reading.

c. Two-way performance interrogation (ability to switch independent and dependent variables) must be provided as appropriate.

d. All notes and associated conditions must be consistently applied in performance calculations and clearly labeled on data file/analysis printouts.

e. Approved data must be clearly marked and segregated from unapproved (e.g., advisory) data.

f. Improper extrapolations or solutions outside of approved limits of validity of performance data must be precluded. A note must be added to the AFM performance section, where reference is made to computerized performance, to read essentially as follows: "The various gross weight, operational, and environmental limitations provided in the limitations section of the AFM take precedence over what otherwise may be listed as approved performance results from the computerized output."

g. Program performance output must be compatible with Configuration Deviation List (CDL) or Master Minimum Equipment List (M MEL) applications.

h. Suitable program usage documentation must be available to all users, including FAA certification and operations personnel.

i. Special performance charts such as thrust setting, stall speeds, stabilizer trim setting, and position error corrections must not be included in the computer-for-chart replacement process.

j. The program must be protected from inadvertent alteration, or deliberate alteration outside of an FAA-approved revision process.

k. All computerized performance software programs must be properly identified by a reference number which must be revised for each change in the data.

l. The program documentation must also identify the computer operating system and type of computer hardware for which the software is intended.

Issued in Seattle, Washington, on May 31, 1989.

Leroy A. Keith,

Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-13699 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-25]

Amendment to Control Zone, Fort Pierce, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adds an arrival area extension to the control zone, Fort Pierce, Florida. The St. Lucie County International Airport serves as a major Customs and Immigration port-of-entry for general aviation aircraft entering the United States from the Bahamas and the Caribbean. The airport has been without a Standard Instrument Approach Procedure (SIAP) since the Vero Beach VORTAC was destroyed by fire in January 1989. A SIAP has been developed based on the Fort Pierce Nondirectional Radio Beacon (NDB). This action will provide additional controlled airspace for protection of Instrument Flight Rule (IFR) aircraft executing the new NDB SIAP to St. Lucie County International Airport.

DATES: Effective date: 0901 u.t.c., July 27, 1989.

Comments must be received on or before July 21, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-25, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P. O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves adding an arrival area extension to the Fort Pierce, Florida, control zone, this action will provide urgently needed controlled airspace necessary to restore IFR arrival procedures at the St. Lucie County International Airport, Fort Pierce, Florida. Due to lack of time and the urgent need to establish a new NDB SIAP and although this action was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.171 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to amend the Fort Pierce, Florida, control zone. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in FAA Order 7400.6E dated January 3, 1989.

Under the circumstances presented, the FAA concludes that there is an

immediate need for a regulation to amend the Fort Pierce, Florida, control zone. This action will provide additional controlled airspace for protection of IFR aircraft executing a new NDB SIAP to the St. Lucie County International Airport. This rule will facilitate early restoration of the instrument operations at Fort Pierce which were disrupted when the Vero Beach, Florida, VORTAC was destroyed by fire in January 1989. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Fort Pierce, Florida [Amended]

Following the statement in the existing description which reads, "... 8 miles southeast of the Vero Beach VORTAC " insert the phrase, "within 3.5 miles each side of the 301° bearing from the Fort Pierce NDB (latitude 27°29'22"N., longitude 80°22'12"W.), extending from the 5-mile radius area to 9.5 miles northwest of the NDB."

Issued in East Point, Georgia, on May 19, 1989.

William D. Wood,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 89-13700 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-24]

Amendment to Transition Area, Vero Beach, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adds an arrival area extension to that portion of the Vero Beach, Florida, transition area surrounding the St. Lucie County International Airport, Fort Pierce, Florida. The airport serves as a major customs and immigration port-of-entry for general aviation aircraft entering the U.S. from the Bahamas and the Caribbean. The airport has been without a Standard Instrument Approach Procedure (SIAP) since the Vero Beach VORTAC was destroyed by fire in January 1989. A SIAP has been developed based on the Fort Pierce Nondirectional Radio Beacon (NDB). This action will provide additional controlled airspace for protection of Instrument Flight Rule (IFR) aircraft executing the new NDB SIAP to the St. Lucie County International Airport.

DATES: Effective Date: 0901 u.t.c., July 27, 1989.

Comments must be received on or before July 21, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-24, Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

Although this action is in the form of a final rule, which involves adding an

arrival area extension to the Vero Beach, Florida, transition area, this action will provide urgently need controlled airspace necessary to restore IFR arrival procedures at the St. Lucie County International Airport, Fort Pierce, Florida. Due to lack of time and the urgent need to establish the new NDB SIAP, and although this action was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to amend the Vero Beach, Florida, transition area. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to amend the Vero Beach, Florida, transition area. This action will provide additional controlled airspace for protection of IFR aircraft executing a new NDB SIAP to the St. Lucie County International Airport, Fort Pierce, Florida. This rule will facilitate early restoration of instrument operations at Fort Pierce, which were disrupted when the Vero Beach, Florida, VORTAC was destroyed by fire in January 1989. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is

so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Vero Beach, Florida [Amended]

By deleting the last phrase which reads, "excluding the portion outside the continental limits of the United States," and adding the following statement: "within 3.5 miles each side of the 301° bearing from the Fort Pierce NDB (latitude 27°29'22" N., longitude 80°22'12" W.), extending from the 6.5-mile radius area to 10.5 miles northwest of the NDB."

Issued in East Point, Georgia, on May 19, 1989.

William D. Wood,
Acting Manager, Air Traffic Division,
Southern Region.

[FR Doc. 89-13701 Filed 6-8-89; 8:45 am]

BILLING CODE 4810-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 606

[Docket No. 87N-0091]

Current Good Manufacturing Practice Regulations for Certain Blood and Blood Components

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is reissuing the current good manufacturing practice

regulations for blood and blood components (blood CGMP's) under the Medical Device Amendments of 1976. The agency is taking this action to enable enforcement of the blood CGMP's in the manufacture of unlabeled blood products that are device components or device raw materials. The products were subject to the blood CGMP's until the Medical Device Amendments of 1976 broadened the definition of a "device," with the inadvertent effect of removing these products from the applicability of these regulations.

EFFECTIVE DATE: July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph Wilczek, Center for Biologics Evaluation and Research (HFB-130), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-295-8188.

SUPPLEMENTARY INFORMATION: In the Federal Register on June 22, 1988 (53 FR 23414), FDA proposed to reissue the blood CGMP's (21 CFR Part 606) under section 520(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(f)) as these regulations apply to blood products that are device components or device raw materials. The blood CGMP's apply to all blood products other than those that are device components or device raw materials.

The blood CGMP's were intended to apply to all blood banks, transfusion facilities, plasmapheresis centers, compatibility testing establishments, and any other facility which collects, processes, or stores blood and blood components, regardless of whether the components are intended for (a) interstate or intrastate commerce or (b) in vitro or in vivo use.

Upon enactment of the Medical Device Amendments of 1976 to the act, the definition of the term "device" in section 201(h) of the act (21 U.S.C. 321(h)) was broadened to include several products, formerly regulated as "drugs." Among such products are human blood and blood components intended for further manufacture into in vitro diagnostics not subject to licensure under the Public Health Service Act (42 U.S.C. 282(d)). These products include blood, plasma, and serum which are intended for further manufacture into products such as clinical chemistry controls and control cells for automated cell counters now regulated as devices under the act.

In the Federal Register of June 22, 1988, FDA proposed to correct the current anomaly in which compliance with the blood CGMP's is not enforceable under the adulteration

provisions in section 501(h) of the act (21 U.S.C. 351(h)) for unlabeled blood products that are device components or device raw materials, even though these requirements are necessary to ensure the safety of donors and the safety and effectiveness of manufactured medical device products derived from blood and blood components. FDA proposed to reissue, under section 520(f) of the act, the blood CGMP's as these regulations apply to blood products that are device components or device raw materials. Section 520(f) of the act is the statutory section that currently authorizes CGMP's for medical devices in 21 CFR Part 820. Pursuant to section 520(f) of the act, FDA's Device Good Manufacturing Practice Advisory Committee had an opportunity to comment on the proposed amendment at an open public hearing. The committee unanimously recommended that FDA reissue the blood CGMP's under section 520(f) of the act to apply to blood and blood components used as device components or raw materials for devices. A copy of the advisory committee's minutes of this meeting has been placed on file under the docket number identified in the brackets at the heading of this final rule and is available from the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-82, 5600 Fishers Lane, Rockville, MD 20857.

In response to the proposed rule of June 22, 1988, FDA received one letter of comment. The comment completely supported the proposed rule.

Accordingly, FDA is adopting the proposed rule without revision, and is reissuing the CGMP's for blood and blood components (21 CFR Part 606). Blood products that are device components or device raw materials excluded from the scope of the device CGMP's under § 820.1 are now subject to the blood CGMP's in Part 606. Violations of Part 606 involving such device components or raw materials are now subject to enforcement action under section 501(h) of the act.

Environmental Impact

The agency has determined under 21 CFR 25.24(a)(10) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Paperwork Reduction Act

Part 606 of this final rule contains information collection requirements that were submitted for review and approval to the Director of the Office of

Management and Budget (OMB), as required by section 3507 of the Paperwork Reduction Act of 1980. The requirements were approved and assigned OMB control number 0910-0116.

Economic Assessment

The agency has examined the economic consequences of the final rule and has determined that it does not require either a regulatory impact analysis as specified in Executive Order 12291, or a regulatory flexibility analysis, as defined in the Regulatory Flexibility Act (Pub. L. 96-354). The final rule involves the reissuance of Part 606 of the regulations establishing CGMP's for manufacturers of blood and blood components under section 520(f) of the act. Thus, Part 606 applies to unlabeled blood products that are device components or device raw materials.

The agency believes that virtually all of the manufacturers of in vitro diagnostic products that would be subject to the final rule are already in compliance with the blood CGMP's in Part 606. Therefore, the agency has determined that the rule is not a major rule as defined in Executive Order 12291. Further, FDA certifies that the final rule will not have a significant impact on a substantial number of small entities, as defined in the Regulatory Flexibility Act.

List of Subjects in 21 CFR Part 606

Blood, Labeling, Laboratories, Reporting and recordkeeping requirements.

PART 606—CURRENT GOOD MANUFACTURING PRACTICE FOR BLOOD AND BLOOD COMPONENTS

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and under authority delegated to the Commissioner of Food and Drugs, the authority citation for 21 CFR Part 606 is revised to read as follows:

Authority: Secs. 201, 501, 502, 505, 510, 520(f), 701 [21 U.S.C. 321, 351, 352, 355, 360, 360j(f), 371] and sec. 301 of Pub. L. 87-781; the Public Health Service Act (secs. 351 and 361) (42 U.S.C. 262 and 264).

Dated: May 17, 1989.

John M. Taylor,
Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-13649 Filed 6-8-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 235

[Docket No. R-89-1443; FR-2666]

Mortgage Insurance; Changes in Interest Rates

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This change in the regulations decreases the maximum allowable interest rate on Section 235 (Homeownership for Lower Income Families) insured loans. This final rule is intended to bring the maximum permissible financing charges for this program into line with competitive market rates.

EFFECTIVE DATE: June 5, 1989.

FOR FURTHER INFORMATION CONTACT: John N. Dickie, Chief Mortgage and Capital Market Analysis Branch, Office of Financial Management, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Telephone (202) 755-7270. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: The following amendments to 24 CFR Chapter II have been made to decrease the maximum interest rate which may be charged on loans insured by this Department under Section 235 of the National Housing Act. The maximum interest rate on the HUD/FHA Section 235 insurance programs has been lowered from 10.50 percent to 10.00 percent.

Until recently, HUD regulated interest rates not only for the Section 235 Program, but also for fire safety equipment loans insured under section 232 of the National Housing Act. However, section 429(e)(2) of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) amended the National Housing Act to provide that interest on fire safety equipment loans under section 232(i) of the Act will be "at such rate as may be agreed upon by the mortgagor and the mortgagee." Accordingly, these loans, like most other National Housing Act-authorized loans, now have their interest rates determined by negotiation. Accordingly, this announcement of a change in interest rate ceilings for FHA-insured mortgages is limited to the Section 235 Program.

The Secretary has determined that this change is immediately necessary to meet the needs of the market and to prevent speculation in anticipation of a change.

As a matter of policy, the Department submits most of its rulemaking to public comment, either before or after effectiveness of the action. In this instance, however, the Secretary has determined that advance notice and public comment procedures are unnecessary and that good cause exists for making this final rule effective immediately. HUD regulations published at 47 FR 56266 (1982), amending 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969, contain categorical exclusions from their requirements for the actions, activities and programs specified in § 50.20. Since the amendments made by this rule fall within the categorical exclusions set forth in paragraph (1) of § 50.20, the preparation of an Environmental Impact Statement or Finding of No Significant Impact is not required for this rule. This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulation issued on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local governmental agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. In accordance with the provisions of 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule provides for a small decrease in the mortgage interest rate in programs of limited applicability, and thus of minimal effect on small entities. This rule was not listed in the Department's Semiannual Agenda of Regulations published on April 24, 1989 (54 FR 16708) pursuant to Executive Order 12291 and the Regulatory Flexibility Act. The Catalog of Federal Domestic Assistance program numbers are 14.108, 14.117, and 14.120.

List of Subjects in 24 CFR Part 235

Condominiums, Cooperatives, Low and moderate income housing, Mortgage

insurance, Homeownership, Grant programs: housing and community development.

Accordingly, the Department amends 24 CFR Part 235 as follows:

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

1. The authority citation for 24 CFR Part 235 continues to read as follows:

Authority: Secs. 211, 235, National Housing Act (12 U.S.C. 1715b, 1715z); Sec. 7(d), Department of Housing and Urban Development Act, (42 U.S.C. 3535(d)).

2. In § 235.9, paragraph (a) is revised to read as follows:

§ 235.9 Maximum interest rate.

(a) The mortgage shall bear interest at the rate agreed upon by the mortgagee and the mortgagor, which rate shall not exceed 10.00 percent per annum, except that where an application for commitment was received by the Secretary before June 5, 1989, the loan may bear interest at the maximum rate in effect at the time of application.

3. In § 235.540, paragraph (a) is revised to read as follows:

§ 235.540 Maximum interest rate.

(a) On or after June 5, 1989, the loan shall bear interest at the rate agreed upon by the lender and the borrower, which rate shall not exceed 10.00 percent per annum, with the exception of applications submitted pursuant to feasibility letters, or outstanding conditional or firm commitments, issued prior to the effective date of the new rate. In these instances, applications will be processed at a rate not exceeding the applicable previous maximum rates, if the higher rate was previously agreed upon by the parties. Notwithstanding these exceptions, the application will be processed at the new lower rate if requested by the mortgagee.

Date: June 2, 1989.

James E. Schoenberger,
General Deputy Assistant Secretary for
Housing—Federal Housing Commissioner.

[FR Doc. 89-13678 Filed 6-8-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD Regulation 6010.8-R, Amdt. No. 20]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Changes to the CHAMPUS Peer Review Organization Program

AGENCY: Office of the Secretary, DoD.

ACTION: Correction to final rule.

SUMMARY: This document corrects the inadvertent deletion of a paragraph in the Final Rule on the CHAMPUS Peer Review Organization Program which was published on March 6, 1989 (54 FR 9202), and which supplemented the rules and procedures currently applicable to the CHAMPUS Peer Review Organization Program.

FOR FURTHER INFORMATION CONTACT: Mr. A. Chris Armijo, Office of Program Development, OCHAMPUS, Aurora, Colorado 80045. Telephone (303) 361-3630.

SUPPLEMENTARY INFORMATION: On March 6, 1989, a final rule was published in the Federal Register to implement rules and procedures currently applicable to the CHAMPUS Peer Review Program. In the preparation of that package, it was intended that section 199.4(f)(7) of 32 CFR Part 199 be deleted. Instead § 199.4(f)(6) was omitted and 199.4(f)(7) was retained.

The enclosed materials rectify the error by reinserting the original § 199.4(f)(6) and deleting § 199.4(f)(7) as was originally intended. This rule was written to correct the inadvertent errors in a previous publication and we, therefore, certify that this amendment will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 32 CFR Part 199

Health Insurance, Military personnel, Handicapped.

Accordingly, 32 CFR Part 199 is amended to read as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086, 5 U.S.C. 301.

2. Section 199.4 is amended by removing paragraph (f)(7) and adding paragraph (f)(6) to read as follows:

§ 199.4 Basic program benefits.

(f) * * *

(6) *Amounts over CHAMPUS-determined allowable costs or charges.* It is the responsibility of the CHAMPUS fiscal intermediary to determine allowable costs for services and supplies provided by hospitals and other institutions and allowable charges for services and supplies provided by physicians, other individual professional providers, and other providers. Such CHAMPUS-determined allowable costs or charges are made in accordance with the provisions of Section 199.14. All CHAMPUS benefits, including calculation of the CHAMPUS or beneficiary cost-sharing amounts, are based on such CHAMPUS-determined allowable costs or charges. The effect on the beneficiary when the billed cost or charge is over the CHAMPUS-determined allowable amount is dependent upon whether or not the applicable claim was submitted on a participating basis on behalf of the beneficiary or submitted directly by the beneficiary on a nonparticipating basis and on whether the claim is for inpatient hospital services subject to the CHAMPUS DRG-based payment system. This provision applies to all classes of CHAMPUS beneficiaries.

Note: When the provider "forgives" or "waives" any beneficiary liability, such as amounts applicable to the annual fiscal year deductible for outpatient services or supplies, or the inpatient or outpatient cost-sharing as previously set forth in this section, the CHAMPUS-determined allowable charge or cost allowance (whether payable to the CHAMPUS beneficiary or sponsor, or to a participating provider) shall be reduced by the same amount.

(i) *Participating provider.* Under CHAMPUS, authorized professional providers and institutional providers other than hospitals have the option of participating on a claim-by-claim basis. Participation is required for inpatient claims only for hospitals which are Medicare-participating providers. Hospitals which are not Medicare-participating providers but which are subject to the CHAMPUS DRG-based payment system in § 199.14(a)(1) must sign agreements to participate on all CHAMPUS inpatient claims in order to be authorized providers under CHAMPUS. All other hospitals may elect to participate on a claim-by-claim basis. Participating providers must indicate participation by signing the appropriate space on the applicable CHAMPUS claim form and submitting it to the appropriate CHAMPUS fiscal intermediary. In the case of an institution or medical supplier, the claim must be signed by an official having

such authority. This signature certifies that the provider has agreed to accept the CHAMPUS-determined allowable charge or cost as payment in full for the medical services and supplies listed on the specific claim form, and further has agreed to accept the amount paid by CHAMPUS or the CHAMPUS payment combined with the cost-sharing amount paid by or on behalf of the beneficiary as full payment for the covered medical services or supplies. Therefore, when costs or charges are submitted on a participating basis, the patient is not obligated to pay any amounts disallowed as being over the CHAMPUS-determined allowable cost or charge for authorized medical services or supplies.

(ii) *Nonparticipating providers.* Nonparticipating providers are those providers who do not agree on the CHAMPUS claim form to participate and thereby do not agree to accept the CHAMPUS-determined allowable costs or charges as the full charge. For otherwise covered services and supplies provided by such nonparticipating CHAMPUS providers, payment is made directly to the beneficiary or sponsor and the beneficiary is liable under applicable law for any amounts over the CHAMPUS-determined allowable costs or charges. CHAMPUS shall have no responsibility for any amounts over allowable costs or charges as determined by CHAMPUS.

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
June 5, 1989.
[FR Doc. 89-13668 Filed 6-8-89; 8:45 am]
BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-89-13]

Special Local Regulations; Budweiser Spirit of Detroit Trophy Race—Detroit River

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: Special local regulations are being adopted for the Budweiser Spirit of Detroit Trophy Race to be held on the Detroit River. This event will be held on 8, 9, 10, and 11 June 1989. The regulations are needed to provide for the safety of life on navigable waters during the event.

EFFECTIVE DATES: These regulations become effective on 8 June 1989 and terminate on 11 June 1989.

FOR FURTHER INFORMATION CONTACT: MST1 Scott E. Befus, Office of Search and Rescue, Ninth Coast Guard District, 1240 E. 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The application to hold this event was not received by the Commander, Ninth Coast Guard District, until 13 February 1989, and there was not sufficient time remaining to publish proposed rules in advance of the event or to provide for a delayed effective date.

This has been an annual event for many years and no negative comments concerning it have been received.

Drafting Information

The drafters of this regulation are MST1 Scott E. Befus, project officer, Office of Search and Rescue and LCDR C.V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Budweiser Spirit of Detroit Trophy Race will be conducted on the Detroit River on 8, 9, 10 and 11 June 1989. This event will have an estimated 60 Hydroplanes which could pose hazards to navigation in the area. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group, Detroit, MI).

Economic Assessment and Certification

These regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because of the short duration of these regulations, their economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary.

Since the impact of these regulations is expected to be minimal the Coast Guard certifies that they will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order

12612, and it has been determined that this rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. Part 100 is amended to add a temporary § 100.35-0913 to read as follows:

§ 100.35-0913 Budweiser Spirit of Detroit Trophy Race—Detroit River.

(a) *Regulated area:* That portion of the Detroit River lying between Belle Isle and the U.S. shoreline, bounded on the west by the Belle Isle Bridge and on the east by a north-south line drawn through the Waterworks Intake Crib Light (LL 1022).

(b) *Special Local Regulations:* (1) The above area will be closed to navigation or anchorage from 8:00 a.m. (local time) until 5:30 p.m. on 8, 9, 10, and 11 June 1989.

(2) An escape zone for recreational craft will also be established from the Rooster Tail Marina out to Lake St. Clair.

(3) Special care shall be exercised by the Master or operator of every vessel proceeding up or down the main channel of the Detroit River between Belle Isle and Windmill Point.

(4) The Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(5) The Patrol Commander may direct the anchoring, mooring, or movement of

any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(6) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(7) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(8) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(c) **Effective dates:** This section is effective from 8 a.m. (local time) on 8 June 1989 until 5:30 p.m. on 11 June 1989.

Dated: June 1, 1989.

D.H. Ramsden,

Capt., U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 89-13674 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD1 89-39]

1989 Harvard-Yale Regatta

AGENCY: Coast Guard; DOT.

ACTION: Notice of Implementation of Regulations.

SUMMARY: This notice puts into effect the permanent regulations, 33 CFR 100.101, for the Harvard-Yale Regatta between 4 p.m. and 8 p.m. on June 10, 1989. The regulations in 33 CFR 100.103 are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations are effective from 4 p.m. until 8 p.m. on Saturday, June 10, 1989 and annually thereafter during the first or second Saturday of June or as specified in the Coast Guard Local Notice to Mariners and a Federal Register Notice.

FOR FURTHER INFORMATION CONTACT: Captain R.L. Blake, Chief Boating Safety Division (617) 223-8310.

SUPPLEMENTARY INFORMATION: The annual Harvard-Yale Regatta is a crew

race event held on the Thames River in New London, Connecticut. It is sponsored by the Harvard-Yale Regatta Committee and is well known to the boaters and residents of that area. This year the event will take place between the hours of 4 p.m. and 8 p.m. on June 10, 1989 which is the second Saturday in June. If it becomes necessary to postpone the races due to inclement weather this event will be held on June 11, 1989 between the hours of 7:30 a.m. and 11:30 a.m.. In order to provide for the safety of spectators and participants, the Coast Guard will continue to restrict vessel movement in the race course area and to establish spectator anchorages for what is expected to be a large spectator fleet.

Drafting Information

The drafters of this notice are CAPT R.L. Blake, project officer, First Coast Guard District Boating Safety Division, and LT. J.B. Gately, project attorney, First Coast Guard District Legal Division.

Dated: May 30, 1989.

R.I. Rybacki,

Rear Admiral, U.S. Coast Guard, Commander, First Coast Guard District.

[FR Doc. 89-13673 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-14-M

NATIONAL SCIENCE FOUNDATION

45 CFR Part 670

Conservation of Antarctic Animals and Plants

AGENCY: National Science Foundation.

ACTION: Final rule.

SUMMARY: Because of recommendations adopted at the 14th consultative meeting, NSF is amending its regulations at 45 CFR Part 670 implementing the Antarctic Conservation Act of 1978 to designate additional sites of special scientific interest in Antarctica. In addition, wording changes are being made to better clarify the relationship of the management plans for sites of special scientific interest and the management plans recommended at the consultative meetings.

EFFECTIVE DATE: This rule is effective June 9, 1989.

FOR FURTHER INFORMATION CONTACT: Questions concerning this regulation should be addressed to Anton L. Inderbitzen, Polar Coordination and Information Section, Division of Polar Programs, National Science Foundation, Washington, DC 20550, or by telephone on 202-357-7817.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published on February 16, 1989 at 54 FR 7071-7072. The only comment received supported the proposed rule. Accordingly, the final rule is the same as set forth in the notice of proposed rule-making.

This is not a major rule as defined by Executive Order 12291. This regulation will not have a significant impact on a substantial number of small businesses. No new information collection requirements are imposed by the proposed amendment.

List of Subjects in 45 CFR Part 670

Antarctica, Conservation.

Therefore, 45 CFR Part 670 is amended as set forth below:

PART 670—[AMENDED]

1. The authority citation for Part 670 continues to read as follows:

Authority: Sec. 11, Pub. L. 81-507, 64 Stat. 149 (42 U.S.C. 1870) as amended; Pub. L. 95-541, 92 Stat. 2048 (16 U.S.C. 2401).

2. Section 670.4(c) is revised to read as follows:

§ 670.4 Prohibited acts.

* * * * *

(c) *Entry into designated area.* It is unlawful for any United States citizen to enter any specially protected area or to enter sites of special scientific interest, except sites of special scientific interest for which section 670.34 states no permit is required.

3. Section 670.34 is revised to read as follows:

670.34 Designation of sites of special scientific interest and management plans for those sites.

(a) The Director is required to designate as a site of special scientific interest each area approved by the United States in accordance with Recommendation VIII-3 of the Eighth Antarctic Treaty Consultative Meeting. The Director is also required to prescribe a management plan for such sites which is consistent with any management plan approved by the United States in accordance with that Recommendation. Accordingly, the areas listed below are designated as sites of special scientific interest to be managed in accordance with the management plan recommended at the applicable consultative meeting and any subsequent amendments to that plan. The number of the recommendation, including any modifications made at subsequent consultative meetings, is included below after each site, as is the site number established at the

consultative meetings. If there are any variations or additional management measures required by the United States they shall also be included in the listing below. Any specific conditions or limitations included in permits issued under this regulation will be consistent with these plans. More detailed maps and descriptions of the sites and the complete management plans as recommended at the consultative meetings can be obtained from the National Science Foundation, Division of Polar Programs, Washington, DC 20550.

(b) The sites of special scientific interest are as follows:

(1) *Cape Royds, Ross Island:* Site No. 1 as described in Recommendation VIII-4 as revised by Recommendations X-8, XII-5 and XIII-9.

(2) *Arrival Heights, Hut Point Peninsula, Ross Island:* Site No. 2 as described in Recommendation VIII-4 as revised by Recommendations X-8, XII-5, XIII-7 and XIV-4. This site does not require an entry permit.

(3) *Barwick Valley, Victoria Land:* Site No. 3 as described in Recommendations VIII-4 as revised by Recommendations X-6, XII-5 and XIII-7.

(4) *Cape Crozier, Ross Island:* Site No. 4 as revised in Recommendation VIII-4 as revised in Recommendations X-6, XII-5 and XIII-7.

(5) *Fildes Peninsula, King George Island, South Shetland Islands:* Site No. 5 as described in Recommendation VIII-4 as revised in Recommendations X-6, XII-5 and XIII-7.

(6) *Byers Peninsula, Livingston Island, South Shetland Islands:* Site No. 6 as described in Recommendation VIII-4 as revised in Recommendations X-6, XII-5 and XIII-7.

(7) *Haswell Island:* Site No. 7 as described in Recommendation VIII-4 as revised in Recommendations X-6, XII-5 and XIII-7.

(8) *Western Shore of Admiralty Bay, King George Island:* Site No. 8 as described in Recommendation X-5 as revised in Recommendations XII-5 and XIII-7.

(9) *Rothera Point, Adelaide Island:* Site No. 9 as described in Recommendation XIII-8.

(10) *Caughley Beach, Cape Bird, Ross Island:* Site No. 10 as described in Recommendation XIII-8.

(11) *Tramway Ridge, Mt. Erebus, Ross Island:* Site No. 11 as described in Recommendation XIII-8.

(12) *Canada Glacier, Lake Fryxell, Taylor Valley, Victoria Land:* Site No. 12 as described in Recommendation XIII-8.

(13) *Potter Peninsula, King George Island, South Shetland Islands:* Site No.

13 as described in Recommendation XIII-8.

(14) *Harmony Point, Nelson Island, South Shetland Islands:* Site No. 14 as described in Recommendation XIII-8.

(15) *Cierva Point and nearby islands, Danco Coast, Antarctic Peninsula:* Site No. 15 as described in Recommendation XIII-8.

(16) *Bailey Peninsula, Budd Coast, Wilkes Land:* Site No. 16 as described in Recommendation XIII-8.

(17) *Clark Peninsula, Budd Coast, Wilkes Land:* Site No. 17 as described in Recommendation XIII-8.

(18) *White Island, McMurdo Sound:* Site No. 18 as described in Recommendation XIII-8.

(19) *Linnaeus Terrace, Asgaard Range, Victoria Land:* Site No. 19 as described in Recommendation XIII-8.

(20) *Biscoe Point, Anvers Island, Palmer Archipelago:* Site No. 20 as described in Recommendation XIII-8.

(21) *Shores of Port Foster, Deception Island, South Shetland Islands:* Site No. 21 as described in Recommendation XIII-8.

(22) *Yukirdori Valley, Langhovde, Lutzow-Holm Bay:* Site No. 22 as described in Recommendation XIV-5.

(23) *Svarthamaren, Muhlig-Hofmannfjella, Dronning Maud Land:* Site No. 23 as described in Recommendation XIV-5.

(24) *Summit of Mt. Melbourne, North Victoria Land:* Site No. 24 as described in Recommendation XIV-5.

(25) *Marine Plain, Mule Peninsula, Vestfold Hills, Princess Elizabeth Land:* Site No. 25 as described in Recommendation XIV-5.

(26) *Chile Bay (Discovery Bay), Greenwich Island, South Shetland Islands:* Site No. 26 as described in Recommendation XIV-5.

(27) *Port Foster, Deception Island, South Shetland Islands:* Site No. 27 as described in Recommendation XIV-5.

(28) *South Bay, Doumer Island, Palmer Archipelago:* Site No. 28 as described in Recommendation XIV-5.

Date: May 26, 1989.

Erich Bloch,

Director.

[FR Doc. 89-13603 Filed 6-8-89; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF DEFENSE

48 CFR Parts 247 and 252

Department of Defense Federal Acquisition Regulation Supplement; Ocean Transportation by U.S.-Flag Vessels

AGENCY: Department of Defense (DoD).

ACTION: Interim rule (extension of comment period).

SUMMARY: The Defense Acquisition Regulatory Council published an interim rule with request for public comment on April 21, 1989, 54 FR 16111, to revise the Department of Defense Federal Acquisition Regulation Supplement (DFARS) Parts 247 and 252. The interim rule implemented the requirements of the Cargo Preference Act of 1904, 10 U.S.C. 2631. The original date for submission of comments, May 22, 1989, has been extended to June 30, 1989, to accommodate the requests of interested parties.

DATE: Written comments on the interim rule should be submitted to the address shown below not later than June 30, 1989, to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: Defense Acquisition Regulatory Council, ATTN: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, ODASD(P)/DARS, c/o OASD(P&L) (MRS), Room 3D139, The Pentagon, Washington, DC 20301-3062. Please cite DAR Case 88-47 in all correspondence related to this subject.

FOR FURTHER INFORMATION CONTACT: Mr. Charles W. Lloyd, Executive Secretary, DAR Council, telephone (202) 697-7266.

Charles W. Lloyd,
Executive Secretary, Defense Acquisition Regulatory Council.

[FR Doc. 89-13653 Filed 6-8-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 24

[FHWA Docket No. 87-22]

RIN 2125-AB 85

Uniform Relocation Assistance and Real Property Acquisition Regulations for Federal and Federally Assisted Programs; Technical Corrections

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Final rule; technical corrections.

SUMMARY: This document contains technical corrections to the final rule on uniform relocation assistance and real property acquisition that appeared at pages 8912 through 8950 in the Federal Register of March 2, 1989 (54 FR 8912) FR Doc. 89-4543. These technical

corrections are necessary to correct certain references and misspelled words of the final rule text.

EFFECTIVE DATE: June 9, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. F.D. Luckow, Chief Program Requirements Division, Office of Right-of-Way, HRW-10, (202) 366-0116; or Mr. S. Reid Alsop, Office of the Chief Counsel, HCC-40, (202) 366-1371, Federal Highway Administration, 400 7th Street, SW., Washington, DC 20590.

In FR Doc. 89-4543, in the issue of Thursday, March 2, 1989, on pages 8912 through 8950, in the preamble and text of 49 CFR Part 24, the following corrections are as set forth below.

1. In the preamble on page 8914 under the subheading "Section 24.2 Definitions" in the first paragraph correct the reference " (§ 24.2)" to read " (§ 24.2(l))".

2. In the preamble on page 8920, under the subheading "Section 24.105 Acquisition of Tenant-owned Improvements," correct the reference "24.2(q)" to read as "24.2(s)" each time it appears.

§ 24.1 [Corrected]

3. In § 24.1(b), correct the word "personal" to read as "persons."

§ 24.2 [Corrected]

4. In 24.2, amend paragraph (a)(1) by correcting the words "as defined in paragraph (a)(2)" to read "as defined in paragraph (a)(4)" and amend paragraph (g)(2)(i) by correcting the reference "§ 24.403(e)" to read as "§ 24.403(d)."

§ 24.101 [Corrected]

5. In § 24.101, amend paragraph (a)(2) by capitalizing the word "Agency" the first time that it appears in the sentence.

§ 24.105 [Corrected]

6. In § 24.105, paragraphs (c) and (d)(2) are corrected by removing the capital letter from the word "property" and using the lower case.

§ 24.601 [Corrected]

7. In § 24.601, amend the word "Agency" by removing the capitalization and having it read as "agency".

§ 24.603 [Corrected]

8. In § 24.603(b), amend the word "Agency's" in the first sentence by removing the capitalization and having it read as "agency's".

Appendix A [Corrected]

9. Appendix A to Part 24 is amended by correcting the acronym "HU" to read as "HUD" in the fifth paragraph under the subheading "Section 24.2(d)(2) Definitions" on page 8948 of the Federal

Register; by correcting the words "fund raising" to read as one word "fundraising" in the paragraph under the subheading "Section 24.306(d) Nonprofit organizations"; by correcting the words "3 points on \$42,010.50" to read "3 points on \$42,010.18" in the fourth paragraph under the subheading "Section 24.401(d) Increased mortgage interest costs"; and by correcting the words "by \$42,010.18 = .83" to read "by \$42,010.18 = .8331;" in the fifth paragraph under the subheading "Section 24.401(d) Increased mortgage interest costs".

Appendix B [Corrected]

10. Appendix B to Part 24 is amended by correcting the words "Fiscal Year" to read "fiscal year" in the second paragraph "Report period" under the subheading "General" and by correcting the reference "section 20; (a)" to read as "section 206(a)" each time it appears in the fourth paragraph "Lines 12 A and B" under the subheading "Part B. Relocation payments and expenses."

This document is issued under the authority of 23 U.S.C. 315 and 49 CFR 1.48.

Issued on: June 1, 1989.

R.D. Morgan,

Executive Director.

(FR Doc. 89-13641 Filed 6-8-89; 8:45 am)

BILLING CODE 4910-22-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

(Docket No. 81132-9033)

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the portion of the total allowable catch (TAC) of sablefish allocated to trawl gear in the Central Regulatory Area of the Gulf of Alaska has been reached. The Secretary of Commerce is prohibiting further retention of sablefish by trawl vessels fishing in this district from 12:00 noon, Alaska Daylight Time (ADT), on June 8, 1989, through December 31, 1989.

DATES: Effective from 12:00 noon, a.d.t., on June 8, until midnight, Alaska Standard Time (a.s.t.), December 31, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director),

National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, Fishery Management Biologist, NMFS, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR Part 672. Section 672.20(a) of the regulations establishes an optimum yield range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. The TACs for target species and species groups are specified annually and apportioned among the regulatory areas and districts.

Section 672.24(b)(1) restricts the trawl catch of sablefish in the Central Regulatory Area to 20 percent of the TAC. The 1989 TAC specified for sablefish TAC in the Central Regulatory Area is 11,700 mt (54 FR 8524, February 13, 1989); 20 percent of the TAC is 2,340 mt. Under § 672.24(b)(3)(ii), if the share of the sablefish TAC assigned to any type of gear for any area or district is reached, further catches of sablefish must be treated as prohibited species by persons using that type of gear for the remainder of the year.

Sablefish are caught incidentally by vessels using trawl gear while fishing for other groundfish species. The Regional Director reports that 1,849 mt of sablefish have been harvested by catcher/processor vessels through May 20, 1989. Current daily catch rates by these vessels are as high as 28 mt per day. At this catch rate, the balance of the 2,340 mt allocated to trawl vessels will be harvested by 12:00 noon, a.d.t., June 6, 1989.

Therefore, pursuant to § 672.24(b)(3)(ii), the Secretary is prohibiting further retention of sablefish caught with trawl gear in the Central Regulatory Area effective 12:00 noon, a.d.t., June 8, 1989. After that date, any sablefish caught with trawl gear in the Central Regulatory Area must be treated as prohibited species and discarded at sea.

Allocation of the sablefish resource between hook-and-line and trawl gear in the Central Regulatory Area and the continued health of all components of the sablefish fishery will be jeopardized unless this notice takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to

the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited for a period of 15 days after the effective date of this notice. Public comments on this notice of closure may be submitted to the Regional Director at the address above until June 21, 1989. If written comments are received which oppose or protest this action, the Secretary will reconsider the necessity of this action, and, as soon

as practicable after that reconsideration, will publish in the Federal Register a notice either of continued effectiveness of the adjustment, responding to comments received, or that modifies or rescinds the adjustment.

Classification

This action is taken under §§ 672.22 and 672.24, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: June 6, 1989.

David S. Crestin,

National Marine Fisheries Service, Acting Director, Office of Fishery Conservation and Management.

[FR Doc. 89-13742 Filed 6-6-89; 4:10 pm]

BILLING CODE 3510-22-M

BEST COPY AVAILABLE

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 286

[INS. No. 1212-89]

RIN 1115-AA30

INS Immigration User Fee Review

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: Section 205 of the Department of Justice Appropriation Act, 1987 (Pub. L. 99-591; enacted October 30, 1986), requires that at the end of each 2-year period, the first 2-year period being December 1, 1986, through November 30, 1988, the Attorney General, following a public rulemaking with opportunity for notice and comment, must submit a report to the Congress concerning the status of the Immigration User Fee Account (IUFA), and recommend any adjustment in the prescribed fee. This rulemaking publishes the status of the IUFA as of December 1, 1988, provides ample opportunity for public comment, and recommends that the fee remain unchanged at the current \$5.00 level for the subsequent 2-year period.

DATES: Comments must be received on or before June 26, 1989.

ADDRESS: Please submit written comments, in triplicate, to Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street, NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Charles S. Thomason, Systems Accountant, Finance Branch, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633-4705.

SUPPLEMENTARY INFORMATION: The INS has undertaken the required study of the Immigration User Fee (IUF) and IUFA.

As of December 1, 1988, the status of the account is as follows:

FINANCIAL SUMMARY

[Dollar amounts in thousands]

	1987	1988
Revenue.....	\$62,788	\$96,643
Obligations.....	58,889	95,000
Surplus.....	3,899	1,643
Accumulated surplus.....	3,899	5,542

FUNDS UTILIZATION

[Dollar amounts in thousands]

	1987		1988	
	Amount	Per-cent	Amount	Per-cent
Inspections.....	\$38,676	66	\$61,652	65
Detention.....	5,388	9	11,043	11
Non-Immigrant systems	13,398	23	17,977	19
All other.....	1,427	2	4,328	5
Totals.....	\$58,889	100	\$95,000	100
Revenue.....	\$ 62,788		\$ 96,643	
Percent of Funds Utilized.....		94		98

All Other includes:

Anti-Smuggling/Investigations
Intelligence
Administrative Services
Executive Direction
Training
Construction & Engineering
Legal Proceedings
Refugees and Overseas

POSITION SUMMARY

Program	1987	1988
Inspections.....	857	1,066
Detention & deportation.....	50	50
Refugees & overseas.....	0	0
Data & communications.....	8	11
Anti-smuggling.....	15	15
Investigations.....	0	15
Intelligence.....	0	0
Administrative services.....	5	12
Legal proceedings.....	15	16
Training.....	0	0
Construction & engineering.....	0	0
Executive direction & control.....	0	0
Total.....	948	1,185

Based upon our study which covered the period from December 1, 1988, through November 30, 1988, it is our recommendation that the IUF remain

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unchanged at the \$5.00 level for the period December 1, 1988, through November 30, 1990. In compliance with 5 U.S.C. 605b, the Commissioner of INS certifies that the rule would not have a significant economic impact on a substantial number of small entities. This rule would not be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 286

Aircraft, Immigration, Reporting and recordkeeping requirements, Vessels.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulations would remain unchanged.

Dated: May 12, 1989.

Alan C. Nelson,
Commissioner.

[FR Doc. 89-13687 Filed 6-8-89; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASO-23]

Proposed Revision of Transition Area, Swainsboro, GA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the Swainsboro, Georgia, transition area. The Swainsboro Very High Frequency Omnidirectional Range Station (VOR) is planned to be decommissioned, thus eliminating the need for the existing arrival area extension based on the VOR. A new standard instrument approach procedure (SIAP) has been developed predicated on the Emanuel County nondirectional radio beacon (NDB). This revision would increase the radius of the transition area to provide additional airspace protection for instrument flight rules (IFR) aircraft executing the new NDB SIAP, and for existing IFR aeronautical operations. Also, a minor correction would be made to the

geographic position coordinates of the Emanuel County Airport.

DATES: Comments must be received on or before: July 17, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-23, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James C. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-23." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise the Swainsboro, Georgia, transition area. The existing arrival area extension based on the Swainsboro VOR would be eliminated since the VOR is planned to be decommissioned. The radius of the transition area would be increased from 6.5 to 7.5 miles to afford airspace protection for IFR aircraft executing a recently developed SIAP based on the Emanuel County NDB, and for existing IFR aeronautical operations. Also, a minor correction would be made to the geographic position coordinates of the Emanuel County Airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part

71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Public Law 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Swainsboro, Georgia [Revised]

That airspace extending upward from 700 feet above the surface within a 7.5-mile radius of the Emanuel County Airport [Lat. 32°36'27"N., Long. 82°22'05"W.].

Issued in East Point, Georgia, on May 23, 1989.

William D. Wood,

Acting Manager, Air Traffic Division,
Southern Region.

[FR Doc. 89-13702 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-13-M

Federal Highway Administration

23 CFR Part 630

[FHWA Docket No. 89-7]

RIN 2125-AC07

Advance Construction of Federal-Aid Projects; Revision

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The FHWA proposes to revise existing FHWA regulations relating to the advance construction of Federal-aid highway projects to implement the provisions mandated by section 113 of the Surface Transportation and Uniform Relocation Assistance Act (STURAA) of 1987 (Pub. L. 100-17, 101 Stat. 132). These new provisions provide States with additional flexibility in using advance construction procedures.

DATE: Written comments are due on or before August 8, 1989.

ADDRESS: Submit written, signed comments to: Federal Highway Administration, FHWA Docket No. 89-7, HCC-10, Room 4232, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., ET.

Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Max I. Inman, Office of Fiscal Services, (202) 366-2853, or Michael J. Laska, Office of the Chief Counsel, (202) 366-1383, Federal Highway Administration, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., ET, Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: Section 113 of the STURAA amended 23 U.S.C. 115 relating to advance construction. Section 115 allows States to advance the construction of Federal-aid highway projects without requiring that Federal funds be obligated at the time the FHWA approves that project. States may proceed with projects even though their available Federal funds have been exhausted and then request that Federal funds be made available at a later time. The STURAA made the following changes to Title 23, U.S.C.:

(a) Metropolitan planning, railway-highway crossings, hazard elimination, and highway planning and research funds were added to the list of funds eligible for advance construction approval.

(b) Primary projects were included in the special procedures previously applicable only to Interstate projects which allow States to proceed with an advance construction project without regard to fund balances and to be reimbursed for certain bond interest costs.

(c) A State may request advance construction of a project when it has used or demonstrates that it will use all obligation authority allocated to it.

(d) The limitation on the amount of approved advance construction applications was revised to allow increased use of the procedures.

In addition to incorporating these new requirements, the format of the proposed regulation is also being revised to improve the organization of the material. The following is a description of the specific changes being proposed for each section of the current regulation:

Section 630.701 Purpose

This section is revised to be more concise.

Section 630.702 Requirements and Conditions

This section is eliminated, but the provisions are incorporated in other new sections, i.e., Eligibility, Procedures, and Payment of Bond Interest.

Section 630.703 Programs

This section is eliminated, but the provisions are included in the new section, Procedures.

Section 630.704 Bond Proceeds Expended on Projects

The provisions of this section are included in the new section, Payment of Bond Interest.

Section 630.705 Approval Actions

This section is considered redundant and is eliminated. The general requirement to follow regular procedures is contained in the new section, Procedures.

Section 630.706 Project Agreements

This section is considered redundant and is eliminated.

Section 630.707 Construction

This section is considered redundant and is eliminated.

Section 630.708 Conversion from Advance Construction Status to Regular Federal-Aid Funded Status

The requirements of this section are included in the new section, Conversion to a Regular Federal-aid Project.

Section 630.709 Progress and Final Vouchers

The requirements of this section are included in the new section, Procedures.

Section 630.710 Cash Management

This section is removed to eliminate the reporting requirement.

Regulatory Impact

The FHWA has determined that this document does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. This rulemaking action is being initiated in order to implement a statutory mandate. A regulatory evaluation is not required because of the ministerial nature of this action. The primary impact of this action will be to provide the States with additional flexibility in using the procedures.

Based on the information available to the FHWA at this preliminary stage of the rulemaking, it does not appear that this action will have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act (Pub. L. 96-354).

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12812, and it has been determined that

the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

In consideration of the foregoing, FHWA proposes to amend Title 23, Code of Federal Regulations by revising Part 630, Subpart G as set forth below.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 630

Bonds, Government contracts, Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements.

Issued on: June 1, 1989.

R. D. Morgan,
Executive Director.

PART 630—PRECONSTRUCTION PROCEDURES

1. The authority citation for Part 630 continues to read as follows:

Authority: 23 U.S.C. 101(a), 104, 109, 110, 113, 115, 120(f), 121(c), 125, 315, and 320; 23 CFR 1.32; 49 CFR 1.48(b), unless otherwise noted.

2. Subpart G of Part 630 is revised to read as follows:

Subpart G—Advance Construction of Federal-Aid Projects

Sec.	
630.701	Purpose.
630.703	Eligibility.
630.705	Procedures.
630.707	Limitation.
630.709	Conversion to a regular Federal-aid project.
630.711	Payment of bond interest.

Subpart G—Advance Construction of Federal-Aid Projects

§ 630.701 Purpose.

The purpose of this subpart is to prescribe procedures for advancing the construction of Federal-aid highway projects without obligating Federal funds apportioned or allocated to the State.

§ 630.703 Eligibility.

(a) The State highway agency (SHA) may proceed with a highway substitute, secondary, urban, metropolitan planning, railway-highway crossings, bridge replacement and rehabilitation, hazard elimination, or planning and research project in accordance with this subpart, provided the SHA:

(1) Has obligated all funds apportioned or allocated to it under 23 U.S.C. 103(e)(4)(H), 104(b)(2), 104(b)(6), 104(f), 130, 144, 152, or 307, as the case may be for the proposed project, or

(2) Has used all obligation authority distributed to it, or

(3) Demonstrates that it will use all obligation authority distributed to it.

(b) The SHA may proceed with a primary, Interstate, or Interstate resurfacing, restoration, rehabilitation, and reconstruction (4R) project authorized under 23 U.S.C. 104(b)(1) and 104(b)(5) in accordance with this subpart without regard to apportionment or obligation authority balances.

(c) Total advance construction authorizations within a funding category shall not exceed the limitation established in § 630.707.

§ 630.705 Procedures.

(a) An advance construction project shall meet the same requirements and be processed in the same manner as a regular Federal-aid project, except,

(1) FHWA authorization does not constitute a commitment of Federal funds, and

(2) FHWA shall not reimburse the State until the project is converted under § 630.709.

(b) Project numbers shall be identified by the letters "AC" preceding the regular project number prefix.

(c) If the SHA plans to claim bond interest costs under § 630.711, it shall include in its request for authorization the estimated federally participating bond interest cost.

(d) The SHA shall submit a final voucher to the FHWA upon completion of the project even though the project has not been converted. If the SHA is claiming bond interest costs under § 630.711, it shall certify on the final voucher that the bond proceeds were expended in the construction of the project and shall include a computation of the eligible interest costs.

§ 630.707 Limitation.

(a) Through September 30, 1990, the Federal share of the cost of advance construction projects within each funding category is limited to:

(1) The amount of unobligated funds apportioned or allocated to the State, plus,

(2) The State's expected apportionment of the existing authorizations, plus,

(3) An additional amount equal to the State's expected apportionment from the last year of authorization. This additional amount is not applicable to Interstate projects authorized under 23 U.S.C. 104(b)(5)(A).

(b) Beginning October 1, 1990, the limitation will be restricted to the amount specified in paragraph (a)(1) plus paragraph (a)(2) of this section.

§ 630.709 Conversion to a regular Federal-aid project.

(a) The SHA may submit a written request to the FHWA that a project be converted to a regular Federal-aid project at any time provided that sufficient Federal-aid funds and obligation authority are available.

(b) The FHWA's approval of the SHA's request shall result in the obligation of the Federal share of project costs.

(c) The SHA may then claim reimbursement for the Federal share of project costs incurred provided the project agreement has been executed. If the SHA has previously submitted a final voucher, the FHWA will process the voucher for payment.

§ 630.711 Payment of bond interest.

(a) For Interstate projects authorized by the FHWA after January 6, 1983, and for Interstate 4R and primary projects authorized by the FHWA after April 2, 1987, interest earned and payable on bonds issued by a State is an eligible cost of construction as follows:

(1) Participating interest cost is based on the actual expenditure of bond proceeds on the Federal-aid project. The interest on the bonds is applied to the amount of bond proceeds expended on the project from the date of expenditure.

(2) The amount of interest determined in paragraph (a)(1) of this section shall not exceed the estimated increase in the physical construction cost of the project which would have occurred had the project been authorized on the date of conversion. The estimated increase in the physical construction cost is determined by applying the increase, if any, in the national construction cost index in effect on the date of conversion over the index in effect on the date of the FHWA authorization, to the actual cost of physical construction.

(b) For Interstate projects under physical construction on January 1, 1983, and converted to a regular Federal-aid project after January 1, 1983, bond interest is eligible in accordance with paragraph (a)(1) of this section. The restriction in paragraph (a)(2) of this section does not apply.

[FR Doc. 89-13642 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-22-M

Coast Guard

33 CFR Part 117

[CCGD2-89-01]

Drawbridge Operation Regulations; Red River Waterway, Louisiana

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a change to the regulations governing the operation of drawbridges on the Red River Waterway in Louisiana below Mile 283.1. A proposal to change the existing regulations is being made because the current requirements do not provide for the reasonable needs of navigation in conjunction with the opening of Lock and Dam No. 2 at Mile 75.0. A significant increase in the frequency and volume of traffic on the Red River Waterway for year-round use dictates the need for a more equitable regulation. The existing regulation requires that 48 hours advance notice be given to open the drawbridges. The proposed change would require that the draws of the bridges open with at least 8 hours advance notice except that highway bridges in Alexandria, Louisiana, need not be opened between the hours of 7:30 a.m.—8:30 a.m. and 4:00 p.m.—5:30 p.m. Monday through Friday.

DATE: Comments must be received on or before July 24, 1989.

ADDRESS: Comments should be mailed to Commander (ob), Second Coast Guard District, 1430 Olive Street, St. Louis, MO 63103-2398. The comments and other materials referenced in this notice will be available for inspection and copying at 1430 Olive Street, Room 400, St. Louis, MO 63103-2398. Normal office hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, (314) 425-4607.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with or any recommended changes to the proposal.

The Commander, Second Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal.

The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are B.J. Flahart, Assistant Chief, Bridge Branch, Project Officer, and Commander J.T. Orchard, District Legal Officer Project Attorney.

Discussion of Proposed Regulations

The Red River Waterway Project originated with the River and Harbors Act of August 13, 1968. The U.S. Army Corps of Engineers, Vicksburg District has opened Lock and Dam No. 2, Mile 75.0 providing year-round navigation. The establishment of aids to navigation has been completed by the Coast Guard marking the Red River Waterway at this time to Mile 140.0. The Corps of Engineers maintains an authorized project channel 9 feet deep by 200 feet wide. The opening of Lock No. 2 eliminated the seasonal use of the waterway based on fluctuation of water levels. Presently, all drawbridges on the Red River Waterway up to Mile 283.1 are required to open, provided 48 hours advance notice is given. This amount of time is considered excessive to accurately predict a towboat's estimated time of arrival. An 8 hour advance notice will provide a more realistic timeframe for Red River Waterway waterborne traffic; the daily closed periods will prevent the highway bridges in Alexandria, Louisiana, from opening during commuter peak times.

Economic Assessment and Certification

These proposed regulations are considered to be non-major under Executive Order 12291 on Federal Regulation and non-significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This proposal will lessen the advance notice for opening bridges. The purpose of decreasing the advance notice requirements should reduce operating costs to the waterway industry caused by inaccurately predicted arrival times at bridges. The bridges requiring the greatest amount of time to open are scheduled for alteration as part of the waterway project. Since the economic impact of this proposal is expected to be minimal, the Coast Guard certifies that this rule, if promulgated, will not have a significant impact on a substantial number of small entities.

List of Subjects in 33 CFR Part 117
Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 117 of Title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for Part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g); 33 CFR 117.43.

2. Section 117.491 is revised to read as follows:

§ 117.491 Red River Waterway.

(a) The draws of all bridges from mile 66.0 through mile 283.1 (1967 mileage) shall open on signal if at least 8 hours notice is given, except the Fulton Street and Jackson Street Drawbridges in Alexandria, Louisiana, need not be opened between the hours of 7:30 a.m.—8:30 a.m. and 4:00 p.m.—5:30 p.m., Monday through Friday. The draws of the bridges need not be opened for a vessel that arrives at any of these bridges more than two hours after the time specified in the notice, unless a second notice of at least 8 hours is given.

(b) The draws of the bridges above mile 283.1 need not be opened for the passage of vessels.

Date: May 16, 1989.

William J. Ecker,

Rear Admiral, U.S. Coast Guard Commander, Second Coast Guard District.

[FR Doc. 89-13675 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Parts 126, 154, and 156

[CGD 86-034]

RIN 2115-AC29

Hazardous Materials Pollution Prevention

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering making changes to its proposed regulations for waterfront facilities which transfer oil or hazardous materials in bulk. These changes were recommended by a commenter to the notice of proposed rulemaking for hazardous materials pollution prevention published in the Federal Register on June 13, 1988. This supplemental proposal is intended to

help simplify the administration and enforcement of the existing waterfront facility regulations by consolidating the Coast Guard's safety and pollution prevention requirements for bulk liquid terminals.

DATE: Comments must be received on or before July 24, 1989.

ADDRESSES: Comments must be submitted to the Commandant (G-LRA-2), Room 3600, U.S. Coast Guard, 2100 Second Street SW., Washington, DC 20593-0001. Comments may be delivered to and will be available for inspection and copying at the Executive Secretary, Marine Safety Council (G-LRA-2), Room 3600, 2100 Second Street SW., Washington, DC 20593-0001, (202) 267-1477. Normal office hours are between 8:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays. The Draft Economic Evaluation and Draft Environmental Assessment and Finding of No Significant Impact have been prepared and may also be inspected or copied at the Marine Safety Council at the same address.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth J. Szigety, Office of Marine Safety, Security and Environmental Protection (G-MPS-3), Room 1108, (202) 267-0491, between 7:00 a.m. and 3:30 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, data or arguments. Comments should include the name and address of the person making them, identify this supplemental notice (CGD 86-034) and the specific section of the proposal to which each comment applies, and give the reasons for the comments. If an acknowledgment is desired, a stamped, self-addressed postcard should be enclosed. The rules, as proposed, may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before further action is taken on the proposed rules. No public hearing is planned, but one may be held at a time and place to be set in a subsequent notice in the Federal Register if written requests for a public hearing are received from interested persons raising genuine issues and desiring to comment orally at a public hearing, and if it is determined that the opportunity to make oral presentations will be beneficial to the rulemaking process.

Drafting Information

The principal persons involved in drafting this proposal are: Mr. Kenneth J.

Szigety, Project Manager, and Mr. Stanley M. Colby, Project Counsel, Office of Chief Counsel.

Discussion

One of the proposals made by the Coast Guard in the June 13, 1988 issue of the Federal Register (53 FR 22118) was to extend the application of the oil pollution prevention regulations in 33 CFR Parts 154 and 156 to waterfront facilities that transfer bulk liquid hazardous materials, including those intended for incineration at sea. Additionally, to eliminate the confusion that presently occurs from having requirements for transfer operations published in both Part 126 and Part 156 of Title 33, Code of Federal Regulations (CFR), it was proposed to publish the requirements for all bulk liquid transfer operations (other than for liquefied gases) in only Part 156. While eliminating this confusion, waterfront facilities that transfer oil or liquid hazardous materials in bulk would continue to be subject to the "safety" requirements of 33 CFR 126.15 (a)-(n). Based upon comments submitted on the June 13th proposal, the Coast Guard is considering a further consolidation of the requirements for waterfront facilities that transfer oil or liquid hazardous materials in bulk other than liquefied gases. This consolidation would entail duplicating and clarifying the safety requirements of § 126.15 (a)-(n), and including them as a new section, § 154.735. Thus, under proposed § 154.735 the facility operator would be required to ensure compliance with safety rules that are similar to those presently contained in 33 CFR 126.15, such as smoking restrictions, storage restrictions, welding and hot work restrictions, access limitations, and similar basic safety concerns.

In addition, a new requirement that no facility previously had to meet is being proposed. This proposal would require facilities that conduct tank cleaning or gas freeing operations on vessels carrying oily residues or mixtures to conduct these operations in accordance with the International Safety Guide for Oil Tankers and Terminals (ISGOTT) 3rd edition. The Coast Guard is proposing this requirement because there have been a number of explosions at facilities during these operations. The Coast Guard is not aware of any domestic safety standard addressing vessel tank cleaning and gas freeing operations and believes that following the ISGOTT procedures will reduce the likelihood of explosions during these operations. The Coast Guard is also considering establishing a similar requirement for facilities conducting

tank cleaning or gas freeing operations on vessels carrying residues or mixtures of bulk hazardous materials other than oil. This requirement would incorporate appropriate sections of the upcoming revision of the Tanker Safety Guide (Chemicals), published by the International Chamber of Shipping. This incorporation by reference is not included in this proposal because the revision has not been published. If the revision is published and the relevant sections are considered acceptable by the Coast Guard while this proposal is being considered, the Coast Guard will publish a notice in the Federal Register proposing to incorporate this material. Comments on compliance costs and applicability of these proposed requirements are requested. Interested persons can contact the Project Manager as directed under FOR FURTHER

INFORMATION CONTACT to review the proposed ISGOTT and Tanker Safety Guide (Chemicals) standards.

Failure to comply with the requirements in proposed § 154.735 could result in a suspension order by the OCM or COTP to suspend operations, as proposed by § 156.112 in the June 13th notice. The title of Part 154 would have to be changed from the proposed title in the June 13th notice to reflect the fact that the new section will concern both "safety" and "pollution prevention" requirements. Regarding waterfront facilities that transfer oil or liquid hazardous materials in bulk, it is current Coast Guard policy to apply the safety requirements in Part 126 to only those facilities that transfer oil or hazardous materials which are flammable or combustible liquids. However, if the pollution prevention regulations in 33 CFR Parts 154 and 156 are extended to all liquid hazardous materials (many of which are not flammable or combustible) and if the proposed change in this supplemental notice is adopted, waterfront facilities which transfer only non-flammable or non-combustible liquid hazardous materials in bulk would be subject to safety requirements for the first time. The Coast Guard has been informed by industry sources that this group of facilities represents an insignificant portion of the total regulated industry.

If the new § 154.735 is added, § 154.100, Applicability, would be changed to indicate that Part 154 applies to each facility or marina capable of transferring, in bulk, to or from any vessel with a capacity of 250 barrels or more, oil or hazardous materials, other than liquefied gases, and that the safety requirements in § 154.735 apply to each facility or marina that transfers these

products in bulk in any quantity or when the facility has storage tanks containing these products, mixtures that include these products, or their residues.

In addition, a revised section incorporating industry standards would be added for clarity, and supporting changes necessitated by the addition of § 154.735 would also be included.

This contemplated change from the notice of June 13, 1988 is primarily editorial in nature. However, since it would apply safety requirements to facilities not presently covered, the Coast Guard is reopening the comment period for an additional 45 days. The Coast Guard invites interested persons to comment on the original notice as changed by this supplemental notice.

Regulatory Evaluation

The draft Economic Evaluation was prepared in conjunction with the June 13th notice and can be inspected or copied as discussed in ADDRESSES above. Since the proposal in this supplemental notice would apply to relatively few, if any, additional facilities it is not expected to have any impact on this evaluation.

Regulatory Flexibility Act

The Coast Guard believes that this proposal would not have a significant economic impact on a substantial number of small entities. The Coast Guard has determined that a small entity is a business whose annual receipts do not exceed 1 million dollars. The Coast Guard does not have accurate information on the number of businesses in this category. Any person affected by the proposed regulations who believes that they qualify as a small entity or has information concerning the impact of this proposal on a small entity is requested to submit any pertinent information on the basis of their qualification and the anticipated impact.

Environmental Impact

The draft Environmental Assessment and Finding of No Significant Impact were prepared in conjunction with the June 13th notice and can be inspected or copied as discussed in ADDRESSES above. The substantive changes in this supplemental notice are not expected to have any impact on these evaluations.

Paperwork Reduction

No significant paperwork burden to either industry or the government is expected to result from this supplemental notice.

Federalism Statement

This supplemental notice of proposed rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12812, and it has been determined that the concepts discussed herein do not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Regulatory Information Number

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects**33 CFR Part 126**

Explosive, Harbors, Hazardous substances, Reporting and record keeping requirements.

33 CFR Part 154

Oil and hazardous materials pollution, reporting and record keeping requirements.

33 CFR Part 156

Hazardous materials transportation, oil and hazardous materials pollution, reporting and record keeping requirements, water pollution.

In accordance with the preceding it is proposed to amend Subchapter O of Chapter I of Title 33, Code of Federal Regulations as follows:

PART 126—[AMENDED]

The authority citation for Part 126 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

§ 126.05 [Amended]

1. By amending § 126.05 (a) by removing the words "any flammable or combustible liquid in bulk, except methane, (48 CFR Parts 30-38)" and by inserting after the words "49 CFR Part 172.101" the words "and those carried as bulk liquids other than the cargoes listed in § 126.10(d)".

§ 126.07 [Amended]

2. By amending § 126.07 by adding after the semi-colon in paragraph (a) the word "or", by removing paragraph (b), and by redesignating paragraph (c) as paragraph (b).

PART 154—[AMENDED]

3. The authority citation for Part 154 is revised to read as follows:

Authority: 33 U.S.C. 1231; 49 CFR 1.46.

4. By revising the heading of Part 154 to read as follows:

PART 154—WATERFRONT FACILITIES TRANSFERRING OIL AND HAZARDOUS MATERIALS IN BULK

5. By revising § 154.100 to read as follows:

§ 154.100 Applicability.

This part applies to each facility or marina that transfers, in bulk, to or from any vessel with a capacity of 250 barrels or more, oil or any material, other than liquefied gases, determined to be hazardous under 48 CFR 153.40 (a), (b), (c), or (e), except that § 154.735 applies to each facility or marina that—

(a) Transfers in bulk any quantity of these products; or

(b) Has storage tanks containing these products, mixtures that include these products, or their residues.

Note: A storage tank that is not gas free and safe for entry is considered to have residues of these products or mixtures of these products.

6. By revising § 154.106 to read as follows:

§ 154.106 Incorporation by reference.

(a) Certain standards and specifications are incorporated by reference into this part with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a). To enforce any edition other than the one listed in paragraph (b) of this section, notice of the change must be published in the *Federal Register* and the material made available to the public. All approved material is on file at the Office of the Federal Register, 1100 L Street, NW., Washington, DC, and is available from the sources indicated in paragraph (b) of this section.

(b) The standards and specifications approved for incorporation by reference in this part are:

American National Standards Institute (ANSI)

1430 Broadway, New York, New York 10018

ANSI B16.5 Steel Pipe Flanges and Flange Fittings 1981 154.500

ANSI B16.24 Brass or Bronze Pipe Flanges 1976 154.500

ANSI B31.3 Chemical Plant and Petroleum Refinery Piping 1987 154.510

National Fire Protection Association (NFPA)

Batterymarch Park, Quincy, MA 02269

National Electrical Code, 1987 154.735

Oil Companies International Marine Forum (OCIMF)

8th Floor, Portland House, Stag Place, London SW1E 5BH

International Safety Guide for Oil Tankers and Terminals, Third Edition 1988 154.735

7. By adding a new section, § 154.735, to read as follows:

§ 154.735 Safety requirements.

Each facility operator shall ensure that—

(a) Access to the waterfront facility by firefighting personnel, fire trucks, or other emergency personnel is not impeded;

(b) Supplies classified as dangerous by 49 CFR Parts 170-179 are kept—

(1) Only in quantities needed for the operation or maintenance of the waterfront facility; and

(2) In storage compartments;

(c) Heating equipment has sufficient clearance to prevent unsafe heating of any nearby combustible materials;

(d) A sufficient number of Coast Guard approved fire extinguishers are in place throughout the waterfront facility and maintained to be ready for fighting small, localized fires;

(e) The location of each hydrant, standpipe, hose station, fire extinguisher, and fire alarm box is—

(1) Conspicuously marked; and

(2) Accessible;

(f) Each piece of protective equipment is ready to operate;

(g) "No smoking signs" are posted in unauthorized smoking areas;

(h) Trucks and other motor vehicles are operating or parked only in designated locations;

(i) All rubbish is kept in receptacles;

(j) All equipment with internal combustion engines used on the waterfront facility.

(1) Does not constitute a fire hazard; and

(2) Has Coast Guard approved fire extinguishers unless the waterfront facility meets 33 CFR 154.310(b)(10);

(k) Spark arresters are provided on chimneys or appliances if they—

(1) Use solid fuel; or

(2) Are located where sparks constitute a hazard to any nearby combustible material;

(l) Welding or hot work is not initiated unless a permit is obtained from the COTP;

(m) Gasoline or other fuel is not stored on a pier or wharf;

(n) Any equipment having an internal combustion engine is not refueled on a pier or wharf;

(o) There are no open fires or open flame lamps;

(p) Existing electric wiring is maintained in a safe condition to prevent fires;

(q) Electric wiring and electric equipment installed after June 9, 1989 meet the National Electrical Code;

(r) Electrical equipment, fittings, and devices used after June 9, 1989 show approval for that use by—

(1) Underwriters Laboratories;

(2) Factory Mutual Research Corporation; or

(3) Canadian Standards Association;

(s) Any tank cleaning or gas freeing operations conducted by the facility on vessels carrying oily residues or mixtures are conducted in accordance with sections 8.1-8.3 and 8.5 of the International Safety Guide for Oil Tankers and Terminals; and

(t) Guards are stationed to prevent unlawful access to the facility.

PART 156—[AMENDED]

8. The authority citation for Part 156 is revised to read as follows:

Authority: Subpart A is issued under 33 U.S.C. 1231; 49 CFR 1.46. Subpart B is issued under 48 U.S.C. 3715 (b); 49 CFR 1.46.

9. By revising the heading of Subpart A to read as follows:

Subpart A—Oil and Hazardous Material Transfer Operations

10. By revising 156.112(c) to read as follows:

156.112 Suspension order

(c) Includes a statement of each condition requiring correction to—

(1) Prevent the discharge of oil or hazardous material; or

(2) Comply with the requirements contained in § 154.735 of this chapter.

March 22, 1989.

J.D. Sipes,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-13544 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-14-M

FEDERAL COMMUNICATIONS COMMISSION**47 CFR Part 68**

[CC Docket No. 89-114; FCC 89-152]

DID Answer Supervision

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: The Commission proposes to amend Part 68 of its rules to require answer supervision for direct-inward-dialing (DID) calls to stations to the telephone company network through a private branch exchange (PBX) or similar system. These rule modifications are being made to ensure that PBXs and PBX-like customer premises equipment cause no harm to the public switched network.

DATES: Comments must be received on or before July 24, 1989 and reply comments on or before August 8, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert James, Common Carrier Bureau (202) 634-1831.

SUPPLEMENTARY INFORMATION: This is a summary of a Notice of Proposed Rulemaking (NPRM) in CC Docket No. 89-114 adopted by the Commission on May 11, 1989, and released June 1, 1989. The full text of the item may be examined in the Commission's Dockets Branch, Room 230, 1919 M Street, NW., Washington, DC, during regular business hours or purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M St., NW., Suite 140, Washington, DC 20037, telephone (202) 857-3800.

American Telephone and Telegraph Company (AT&T) seeks amendment of Part 68 of the rules to include standards for Direct Inward Dialing (DID) calls. AT&T alleges that the proposed rule amendment is necessary to assure that customers placing DID calls to stations behind (connected to) private branch exchanges (PBXs) and other customer premises equipment (CPE) are properly billed. According to AT&T, after it implemented new toll fraud detecting procedures it discovered many cases where PBXs are failing to return an answer supervision signal to telephone company equipment to indicate that DID calls have been completed. As a result of this failure, it alleges, telephone companies are wrongfully denied tens of millions of dollars or revenue each year. It asserts the problem can be ameliorated by its proposal.

AT&T explains that § 68.314 of the rules, Billing Protection, currently addresses the traditional network configuration, i.e., where the local exchange carrier central office powers the called station. Under this scheme, a special signal, called answer supervision, is returned to the central office when the called party lifts the telephone handset. (Lifting the handset closes the circuit between the caller and the central office and triggers the carrier's billing equipment.) For DID calls, however, the PBX is between the central office and the called station. The PBX provides continuous power to the central office and also powers the stations behind it. In this case, the PBX must provide an artificial signal to the central office to initiate billing. Current industry standards, e.g., EIA Standard RS-464, section 4.1.3.7.1.1, establish the convention that PBXs reverse battery, i.e., change the electrical polarity of the voltage on the line, to alert the central office that a call has been answered. But, AT&T explains, today's PBXs are software-controlled and many are programmed not to return proper answer supervision.

According to AT&T, the purpose of Part 68 is "to provide for uniform standards for the protection of the telephone network from harms caused by the connection of terminal equipment and associated wiring thereto." See § 68.1. The definition of harms includes "malfunction of telephone company billing equipment." See § 68.3(g). The prevalence of PBXs that do not return answer supervision, AT&T claims, creates a network harm by causing malfunction of central office billing equipment. AT&T further states that "[t]elephone company tariffs offer facilities for the transmission of communications between customers * * *. Failure to pay for any such communication violates the Communications Act and telephone company tariffs." AT&T Petition, p. 6. CPE that fails to return answer supervision abets violation, it asserts.

Industry PBX signalling standards and billing enforcement tariffs have been ineffective, AT&T contends, and the distribution of CPE which does not return the proper signalling must be deterred. To remedy the problem, AT&T requests that the Commission amend § 68.314 to require answer supervision on DID calls which are (1) answered by the called DID station, (2) answered by an attendant, (3) routed to a recorded announcement, (4) routed to a dialing prompt or (5) routed back to the public switched network by the PBX. It also requests that the Commission amend the

rules to require units manufactured for sale one year after the effective date of the rule to be programmed to return answer supervision and be programmed so that they cannot be readily altered by customers. Finally, AT&T proposes that (1) manufacturers of embedded equipment, within three months of the new rule's adoption, either reregister their equipment or file an affidavit with the Commission certifying that it complies with the proposal; (2) manufacturers and suppliers notify all customers owning PBXs which do not return answer supervision or which can be programmed not to return a signal that they must program their equipment to comply with the rule; (3) telephone companies may notify customers that their equipment is not in compliance with the rule; and (4) discontinue equipment installed prior to the effective date of the rule that is not reprogrammable need not return answer supervision on calls answered by the announcement, "this is not a working number." The Commission is asked to maintain a list of this equipment.

While those supporting AT&T's petition offer essentially the same reasons AT&T provides, their support is limited or conditional. All commenters seem to feel the compliance program as proposed by AT&T for embedded equipment poses too great a burden. Some commenters propose that the rule amendment be applied prospectively only. Those opposing the petition, particularly as to embedded equipment, note, among other things, that AT&T fails to include any documentation of the number of DID lines behind PBXs, what percentage of toll calls—by volume, dollar amount, or duration—flow through these lines, or the number of DID lines that return answer supervision as against those that do not. They also say AT&T does not offer any analysis of the costs its proposal is likely to impose. Others argue that industry standards and "marketplace" forces are adequate protection. AT&T disagrees, arguing industry standards are unenforceable and that "marketplace forces" encourage use of equipment that can evade toll charges.

All commenting parties acknowledge that the problem of some CPE not returning proper answer supervision exists. There is only disagreement as to the extent of the problem and the most economical and effective way of addressing it. The matter of billing protection is an integral component of Part 68 and the problem presented is the type intended to be addressed by § 68.314. Costs of detecting fraud, in

addition to the revenue lost, must be recovered from ratepayers.

To issue an NPRM supporting AT&T's entire proposal, including the embedded equipment re-registration/compliance program, appears unnecessarily burdensome, and would elicit the same kinds of criticisms already on record, e.g., AT&T's failure to provide specific data to support Commission intervention with regard to embedded equipment. Notification, retrofitting and other requirements AT&T proposes to place on manufacturers and others would be burdensome and potentially costly to manufacturers, carriers and users. AT&T does not discuss what impact its proposal would have on manufacturers and suppliers of embedded equipment that may be used in a manner that avoids toll charges. In view of the potential implementation costs of this approach, including Commission oversight and processing expenses, and the absence of a consensus supporting it from the commenters or clearly identified benefits from AT&T, it is recommended that this aspect of the proposal be rejected. Although it is recommended that this option be rejected, the NPRM does request commenters to file cost and statistical data related to calls to embedded equipment in order that a further assessment of this aspect of AT&T's proposal may be conducted.

An alternative—to proceed with an NPRM recommending a prospective registration requirement applicable to new equipment only—appears to be a more reasonable approach. The proposed rule would require all PBX-like devices manufactured after a year following the rule's effective date to be programmed to contain essentially tamper-proof means of assuring that answer supervision for DID calls is returned to the serving central office. PBXs manufactured before that one-year date but not yet installed in a customer's premises would have six additional months to comply. All other PBXs installed must comply with the new requirement, i.e., be registered anew. This kind of "grandfather-register only date" program has been successfully applied in Part 68 for the registration of terminal equipment, PBXs, key telephone systems attached to the public switched network and private line services. See § 68.2. This alternative proposes to solve the problem prospectively, minimizing disruption. Equipment manufacturers would have adequate lead time to develop means to comply with the new rule requirement. In the long run, the proposed requirement should help to save millions

of dollars of unpaid telephone charges, assuring that ratepayers do not subsidize users of faulty equipment. As to embedded PBXs, it appears that currently implemented toll fraud detection schemes should be relied upon to address existing problems. With the continuing growth of PBX sales, the proposed rule for new equipment in combination with toll fraud detection efforts should resolve the DID answer supervision problem over time. This option would accomplish that goal at minimal cost to all.

Our proposal is not expected to impose any additional burdens on manufacturers or suppliers, because they are already under an obligation to register their customer premises equipment.

In accordance with 5 U.S.C. 603(a), the Federal Communications Commission concludes that the proposed rules will not have a significant adverse economic impact on small entities.

Comments on the proposed rules are sought.

List of Subjects in 47 CFR Part 68

Billing protection.

Legal Basis

This NPRM seeking to amend Part 68 of the Commission's rules is issued pursuant to authority contained in sections 1, 4(i), 4(j), 201-205, 215, 218, 303(r), 313 and 412 of the Communications Act of 1934, as amended, and section 553 of the Administrative Procedure Act.

Federal Communications Commission.

William Caton,
Acting Secretary.

[FR Doc. 89-13748, Filed 6-8-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 76

[Docket No. 89-35]

Definition of a Cable System; Correction

AGENCY: Federal Communications Commission.

ACTION: Proposed Rule; correction.

SUMMARY: This notice corrects the filing dates previously prescribed in the Notice of Proposed Rule Making, 54 FR 14253 (April 10, 1989) for comments and replies to be submitted in the FCC's proposed rulemaking concerning the definition of a cable television system.

This also corrects the docket number to MM Docket No. 89-35.

DATES: Comments must be submitted on or before June 9, 1989, and reply comments on or before July 10, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Barrett L. Brick, Cable Television Branch, Video Services Division, Mass Media Bureau, (202) 632-7480.

Federal Communications Commission.

William Caton,
Acting Secretary.

[FR Doc. 89-13749 Filed 6-8-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 89-45]

Amendment of Part 90 of the Commission's Rules To Expand Eligibility and Shared Use Criteria in the Private Land Mobile Services

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; order extending reply comment period.

SUMMARY: The Chief, Private Radio Bureau has adopted an Order extending the time period in which to file reply comments to the Notice of Proposed Rule Making in this proceeding. The new reply comment date is July 5, 1989. This action is responsive to requests for

extension of the reply comment date filed by two parties, who require additional time to review the large volume of initial comments to the subject Notice.

DATE: Reply comments due July 5, 1989.

FOR FURTHER INFORMATION CONTACT: Rosalind Allen, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: The summary of the Notice of Proposed Rule Making in this proceeding was printed in the Federal Register on April 7, 1989, at 54 FR 14109.

Federal Communications Commission.

Ralph A. Haller,
Chief, Private Radio Bureau.
[FR Doc. 89-13747, Filed 6-8-89; 8:45 am]
BILLING CODE 6712-01-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-095]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit to Field Test Genetically Engineered Herbicide Tolerant Soybean Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Monsanto Agricultural Company, to allow the field testing of genetically engineered soybean plants in Stuttgart, Arkansas. The soybean plants express a modified 5-enolpyruvyl-3-phosphoshikimate (EPSP) synthase, which is intended to make the plants tolerant to the herbicide glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered soybean plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89-034-12.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulation article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulation article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Monsanto Agricultural Company, St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test soybean plants genetically engineered to express a modified 5-enolpyruvyl-3-phosphoshikimate (EPSP) synthase, which is intended to make the plants tolerant to the herbicide glyphosate. The field trial is to take place in Stuttgart, Arkansas.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the soybean plants under conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which

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are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene encoding a modified 5-enolpyruvyl-3-phosphoshikimate synthase which is not inhibited by the herbicide glyphosate has been inserted into the soybean chromosome. In nature, chromosomal genetic material can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the field test plot is a sufficient distance from any sexually compatible plants with which it might cross-pollinate.

2. Neither the 5-enolpyruvyl-3-phosphoshikimate synthase itself, nor its gene product, confer on soybean any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. The plant from which the 5-enolpyruvyl-3-phosphoshikimate synthase gene was isolated is not a plant pest.

4. The 5-enolpyruvyl-3-phosphoshikimate synthase gene does not provide the transformed soybean plants with any measurable selective advantage over nontransformed soybean plants in the ability to be disseminated or to become established in the environment.

5. The vector used to transfer the 5-enolpyruvyl-3-phosphoshikimate synthase gene to soybean plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to plants.

6. The vector agent, the bacterium that was used to deliver the vector DNA and the 5-enolpyruvyl-3-phosphoshikimate synthase gene into

the plant cell, has been shown to be eliminated and no longer associated with the transformed soybean plants.

7. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in the plants.

8. Glyphosate is one of the new herbicides that is rapidly degraded in the environment. It has been shown to be less toxic to animals than many herbicides commonly used.

9. The field test site is small (less than 1 acre) and physically isolated by a surrounding area of cultivated land.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 et seq.), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done at Washington, DC, this 5th day of June 1989.

Larry B. Slagle,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-13737 Filed 6-8-89; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Timber Management Entries Into the French Creek/Patrick Butte Roadless Area, Idaho

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) for proposed timber management entries into the French Creek/Patrick Butte roadless area, New Meadows and McCall Ranger Districts, Payette National Forest, Idaho. The proposal would construct roads and harvest timber within that portion of the roadless area which the Forest Plan allocates to timber management.

The agency invites comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement (DEIS). In addition, the agency gives notice of the full environmental analysis and decision-making process that is beginning on the proposal so that

interested and affected people know how they may participate and contribute to the final decision.

The Forest Service is holding two public scoping meetings to gather comments from the public on what issues the EIS should address. The first is Tuesday, June 13 at 7:00 p.m. in the new Smokejumper Base conference room, Mission Road, McCall, Idaho. The second is Thursday, June 15 at 7:00 p.m. in the Hall of Mirrors, 700 West State Street, Boise, Idaho. The meetings will cover both the French Creek/Patrick Butte roadless area EIS and the Rapid River roadless area EIS which is being prepared concurrently. Forest Service officials will explain the proposed actions and planning process, and accept public input on the issues.

DATE: Comments on the scope of the analysis must be received by July 10, 1989.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Pete Walker, EIS Team Leader, Payette National Forest, P.O. Box 1062, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Pete Walker, phone 208 634-8151.

SUPPLEMENTARY INFORMATION: The Payette National Forest Plan (1988) provides Forest-wide direction for management of the resources of Payette National Forest, including timber. The environmental impact statement for the Forest Plan (1988) analyzed a range of development and non-development alternatives for the French Creek/Patrick Butte roadless area. The Plan allocates a portion of the area to timber management and assigns it to Management Areas 10, 11, and 12. Several timber sales are being proposed, including the Fourmile, Hazard Helicopter, Freight Landing, French Creek, and Jenkins Timber Sales. The Fourmile sale would be the first entry into the roadless area.

As well as Forest-wide direction, the Plan gives specific direction for this management area. It requires integrated protection of multiple resources including recreation, range, soil and water, wildlife, timber, and fire/fuels.

Public participation will be especially important at several points during the analysis, particularly during scoping of issues and review of the DEIS.

The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those covered by a relevant previous environmental analysis.

4. Determining potential cooperating agencies and task assignments. The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat.

The Forest Service has conducted scoping on the some of these proposed sales during planning efforts begun previously. Public responses to this planning and input from Forest Service specialists have identified issues and concerns that fall into these categories:

- Economics
- Grazing
- Timber
- Watershed and fish
- Wilderness potential, roadless character, and recreation
- Wildlife

The second major opportunity for public input is the DEIS. The DEIS will analyze a range of alternatives to the proposed action, including the no-action alternative and alternative amounts of road building and timber harvesting. The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in March 1990. EPA will then publish a notice of availability of the DEIS in the *Federal Register*. Public comments are invited.

The comment period on the DEIS will be 60 days from the date the EPA's notice of availability appears in the *Federal Register*. It is important that those interested in the management of the French Creek/Patrick Butte roadless area participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. Federal court decisions have established that reviewers of draft EIS's must structure their participation of the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978)), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (*Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS (FEIS).

Comments on the DEIS will be analyzed and considered by the Forest Service in preparing the FEIS, which is scheduled to be completed in September, 1990. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for it in the Record of Decision. That decision will be subject to appeal under 36 CFR 217.

Veto J. LaSalle, Forest Supervisor of Payette National Forest, McCall, Idaho, is the responsible official for this EIS.

Date: June 1, 1989.

Phil Gilman,

Branch Chief, Planning, Programming, and Information.

[FR Doc. 89-13774 Filed 6-8-89; 8:45 am]

BILLING CODE 3410-11-M

Oil and Gas Leasing and the Federal Onshore Oil and Gas Leasing Reform Act of 1987; Pike and San Isabel National Forests and Comanche and Cimarron National Grasslands; Colorado and Kansas; Notice of Intent To Prepare an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

The U.S. Department of Agriculture, Forest Service is in the process of preparing an environmental impact statement (EIS) to analyze and disclose the expected environmental impacts, including possible cumulative effects, when consenting or not consenting to issuance of oil and gas leases on the Pike and San Isabel National Forests and Comanche and Cimarron National Grasslands. Notice of Intent to prepare an EIS was published in the *Federal Register* (Vol. 53, No. 249, 12/28/89). The public was asked to submit written comments and suggestions on the scope of the analysis. The EIS has been expanded to include analysis and disclosure of expected environmental impacts, including possible cumulative impacts on split estate lands where the minerals are federally owned and the surface estate is owned or managed by parties other than the Forest Service, where such lands are within the administrative boundaries of the Pike and San Isabel National Forests and Comanche National Grassland.

Colorado, and within the administrative boundary of the Cimarron National Grassland, Kansas. The analysis and the EIS will be used for a final decision to lease or not lease these lands. Accordingly, the scoping period is being extended to July 17, 1989 to allow the public, interested and affected parties, other agencies and industry to submit written comments and suggestions regarding the scope of the analysis on the expanded area to be covered in the EIS.

DATE: Comments and suggestions on the scope of the analysis now must be received on or before July 17, 1989.

ADDRESS: Send written comments or suggestions on the scope of the analysis to Jack Weissling, Forest Supervisor, Pike and San Isabel National Forests, 1920 Valley Drive, Pueblo, CO 81006.

FOR FURTHER INFORMATION CONTACT: Direct comments on the proposed action and the environmental impact statement should be made to Dan Bishop, Forest Engineer and Minerals Staff Officer, Pike and San Isabel National Forests, 1920 Valley Drive, Pueblo, CO 81006 [(719) 545-8737].

The Forest Supervisor, Pike and San Isabel National Forests, Comanche and Cimarron National Grasslands is the responsible official.

Jack Weissling,

Forest Supervisor.

[FR Doc. 89-13708 Filed 6-8-89; 8:45 am]

BILLING CODE 3410-11-M

Timber Management Entries Into the Rapid River Roadless Area, Idaho

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service revises its notice of intent published in the *Federal Register* of April 28, 1988 regarding an environmental impact statement (EIS) for proposed development of the Rapid River roadless area, Idaho. The EIS will be completed under a new schedule beginning with a scoping process to identify issues and concerns. Public comment already received in the previous scoping process will be considered in the new scoping.

The Forest Service will prepare an environmental impact statement (EIS) for proposed timber management entries into the Rapid River roadless area, New Meadows and Council Ranger Districts, Payette National Forest, Idaho. The proposal would construct roadless and harvest timber within that portion of the Rapid River roadless area which the

Forest Plan allocates to timber management. That area is outside the Rapid River drainage.

The agency invites comments and suggestions on the scope of the analysis to be included in the draft environmental impact statement (DEIS). In addition, the agency gives notice of the full environmental analysis and decision-making process that is beginning on the proposal so that interested and affected people know how they may participate and contribute to the final decision.

The Forest Service is holding two public scoping meetings to gather comments from the public on what issues the EIS should address. The first is Tuesday June 13 at 7:00 pm in the new Smokejumper Base conference room, Mission Road, McCall, Idaho. The second is Thursday June 15 at 7:00 pm in the Hall of Mirrors, 700 West State Street, Boise, Idaho. The meetings will cover both the Rapid River roadless area EIS and the French Creek/Patrick Butte roadless area EIS which is being prepared concurrently. Forest Service officials will explain the proposed actions and planning process, and accept public input on the issues.

DATE: Comments on the scope of the analysis must be received by July 10, 1989.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Pete Walker, EIS Team Leader, Payette National Forest, P.O. Box 1062, McCall, Idaho 83638.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action should be directed to Pete Walker, phone 208 634-8151.

SUPPLEMENTARY INFORMATION: The Payette National Forest Plan (1988) provides Forest-wide direction for management of the resources of Payette National Forest, including timber. The environmental impact statement for the Forest Plan (1988) analyzed a range of development and non-development alternatives for the Rapid River roadless area. The Plan allocates a portion of the area outside the Rapid River drainage to timber management and assigns it to Management Area #11. Two timber sales are being proposed, the Lockwood and the North Round Valley sales. The Lockwood sale would be the first entry into the roadless area.

As well as Forest-wide direction, the Plan gives specific direction for this management area. It requires integrated protection of multiple resources including recreation, range, soil and water, wildlife, timber, and fire/fuels.

Public participation will be especially important at several points during the analysis, particularly during scoping of issues and review of the DEIS.

The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those covered by a relevant previous environmental analysis.
4. Determining potential cooperating agencies and task assignments.

The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat.

The Forest Service has conducted scoping on the Lockwood Timber Sale during planning efforts begun previously. Public responses to this planning and input from Forest Service specialists have identified issues and concerns that fall into these categories:

- Economics
- Grazing
- Timber
- Watershed and fish
- Wilderness potential, roadless character, and recreation
- Wildlife

The second major opportunity for public input is the DEIS. The DEIS will analyze a range of alternatives to the proposed action, including the no-action alternative and alternative amounts of road building and timber harvesting. The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review in March 1990. EPA will then publish a notice of availability of the DEIS in the *Federal Register*. Public comments are invited.

The comment period on the DEIS will be 60 days from the date the EPA's notice of availability appears in the *Federal Register*. It is important that those interested in the management of the Rapid River roadless area participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. Federal court decisions have established that reviewers of draft EIS's must structure their participation of the environmental review of the proposal so that it is meaningful and alerts the agency to the reviewer's position and contentions (*Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978)), and that environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement.

(*Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS (FEIS).

Comments on the DEIS will be analyzed and considered by the Forest Service in preparing the FEIS, which is scheduled to be completed in September, 1990. In the FEIS the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the FEIS, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for it in the Record of Decision. The decision will be subject to appeal under 36 CFR 217.

Veto J. LaSalle, Forest Supervisor of Payette National Forest, McCall, Idaho, is the responsible official for this EIS.

Date: June 1, 1989.

Phil Gilman,

Branch Chief, Planning, Programming, and Information.

[FR Doc. 89-13775 Filed 6-8-89; 8:45 am]

BILLING CODE 3410-11-M

Castle Rock Analysis Area, Six Rivers National Forest, Trinity County, CA; Intent To Prepare an Environmental Impact Statement

The Six Rivers National Forest will prepare an environmental impact statement for timber management and road construction within the Castle Rock Compartment. This compartment is located along the east side of the South Fork Trinity River, approximately 14 air miles southeast of Willow Creek, California, in sections 32 and 33, T.5N., R.6E., and sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 15, 16, and 17, T.4N., R.6E., Humboldt Base Meridian. The analysis area is located on the Lower Trinity Ranger District within Trinity County.

The EIS will evaluate the environmental effects of timber management and road construction on visual quality along the South Fork Trinity River, long-term resource management, water quality, wildlife habitat, roadless area characteristics and other affected resources. Of the 8,231 acres which are included within the analysis area, approximately 750 acres will be considered for timber management.

A range of alternatives will be considered. One of these will be "No Action." Tentatively, the maximum harvest area proposed will not exceed

360 acres. Other alternatives will consider various combinations of harvest units and road construction that will emphasize timber, wildlife, visual resource values and retention of roadless characteristics. No clearcutting will be proposed under any of the alternatives.

We invite other Federal agencies, state and local agencies and interested individuals to participate in the project. The draft EIS should be completed by August 15, 1989, and the final EIS by November 15, 1989. If approved, development of sales would begin immediately thereafter.

No public meetings are planned. Written comments and questions are welcome and should be received by July 15, 1989. They should be directed to Larry Cabodi, District Ranger, Lower Trinity Ranger District, P.O. Box 68, Willow Creek, CA, 95573. The phone number is 916-629-2118.

Jan R. Seils,

Deputy Forest Supervisor.

Date: June 2, 1989.

[FR Doc. 89-13656 Filed 6-8-89; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[A-21-88; Order No. 434]

Approval for Rice Export Blending/Processing Activity, Foreign-Trade Zone 149, Brazoria County, TX (Freeport P.O.E.)

Pursuant to its authority under the Foreign-Trade Zones (FTZ) Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

The request of the Brazos River Harbor Navigation District, grantee of FTZ 149, Brazoria County, Texas, on behalf of American Rice, Inc. (ARI), which owns and operates a rice milling and marketing facility within the approved zone area, for authority to blend/process domestic and foreign rice under zone procedures for export is approved subject to the following conditions:

1. Authority for this activity shall expire on July 1, 1992, unless the FTZ Board is notified by the U.S. Customs Service on or before that date that the Customs control system for the operation has been successfully implemented.
2. ARI shall comply with U.S. phytosanitary requirements for rice of foreign origin, as well as the phytosanitary requirements of the countries receiving the blended rice.
3. ARI shall label bags or containers that include foreign rice blended with U.S. rice as follows: "Rice produced in the United States blended with foreign rice."

4. Formal Customs entry shall be made prior to the blending or processing of any foreign rice which is to enter the U.S. market.

This authority is granted subject to all other conditions in Board Order 385 (53 FR 26096, 7/11/88), which authorized establishment of the foreign-trade zone.

Signed at Washington, DC, this 31st day of May, 1989.

Foreign-Trade Zones Board.

Lisa B. Barry,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates.

Attest: John J. Da Ponte, Jr., Executive Secretary.

[FR Doc. 89-13651 Filed 6-8-89; 8:45 am]

BILLING CODE 3510-06-M

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

Background

Each year during the anniversary month of the publication of an antidumping or countervailing duty

order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930 may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

Opportunity to Request a Review

Not later than June 30, 1989, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in June for the following periods:

Antidumping duty proceeding	Period
BELGIUM: Sugar (A-423-077)	06/01/88-05/31/89
CANADA: Oil Country Tubular Goods (A-122-506)	06/01/88-05/31/89
CANADA: Red Raspberries (A-122-401)	06/01/88-05/31/89
FRANCE: Large Power Transformers (A-427-030)	06/01/88-05/31/89
FRANCE: Sugar (A-427-078)	06/01/88-05/31/89
THE HUNGARIAN PEOPLE'S REPUBLIC: Tapered Roller Bearing and Parts Thereof, Finished and Unfinished (A-437-601)	06/01/88-05/31/89
ITALY: Large Power Transformers (A-475-031)	06/01/88-05/31/89
ITALY: Rayon Staple Fiber (A-475-079)	06/01/88-05/31/89
JAPAN: Butadiene Acrylonitrile Copolymer Synthetic Rubber (A-588-706)	02/12/88-05/31/89
JAPAN: Fishnetting of Man-Made Fibers (A-588-029)	06/01/88-05/31/89
JAPAN: Forklift Trucks (A-588-703)	11/24/87-05/31/89
JAPAN: Large Power Transformers (A-588-032)	06/01/88-05/31/89
JAPAN: 64K DRAMS (A-588-503)	06/01/88-05/31/89
MEXICO: Elemental Sulphur (A-201-034)	06/01/88-05/31/89
ROMANIA: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-485-602)	06/01/88-05/31/89
SWEDEN: Stainless Steel Plate (A-401-040)	06/01/88-05/31/89
TAIWAN: Carbon Steel Plate (A-583-080)	06/01/88-05/31/89
TAIWAN: Fireplace Mesh Panels (A-583-003)	06/01/88-05/31/89
TAIWAN: Oil Country Tubular Goods (A-583-505)	06/01/88-05/31/89
TAIWAN: Polyvinyl Chloride Sheet and Film (A-583-081)	06/01/88-05/31/89
THE PEOPLE'S REPUBLIC OF CHINA: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished (A-570-601)	06/01/88-05/31/89
THE FEDERAL REPUBLIC OF GERMANY: Barium Carbonate (A-428-061)	06/01/88-05/31/89
THE FEDERAL REPUBLIC OF GERMANY: Sugar (A-428-082)	06/01/88-05/31/89
Countervailing duty proceeding	Period
CANADA: Oil Country Tubular Goods (C-122-505)	01/01/88-12/31/88
MEXICO: Carbon Black (C-201-012)	01/01/88-12/31/88

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, Room B-099, U.S. Department of Commerce, Washington, DC 20230.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review," for requests received by June 30, 1989.

If the Department does not receive by June 30, 1989 a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse,

for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Date: May 31, 1989.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 89-13652 Filed 6-8-89; 8:45 am]

BILLING CODE 3510-06-M

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an Export Trade Certificate of Review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the amendment and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and Federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the Federal Register identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87-2A001."

The Office of Export Trading Company Affairs has received the following application for a second amendment to Export Trade Certificate of Review #87-00001, which was issued on April 10, 1987 (52 FR 12578, April 17, 1987), and previously amended on March 25, 1988 (53 FR 10267, March 30, 1988).

Summary of the Application

Applicant: American Film Marketing Association ("AFMA"). 10000 Washington Boulevard, Suite S266, Culver City, California 90232. Contact: Jerald A. Jacobs, legal counsel. Telephone: 202/223-4400.

Application No.: 87-2A001.

Date Deemed Submitted: May 31, 1989.

AFMA seeks to amend its Certificate to:

1. Add each of the following companies (but not their controlling entities) as a "Member" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Angelika Films, Inc., New York, NY; Bandcompany, Los Angeles, CA; Cinetrust Entertainment Corp., Los Angeles, CA; Esquire Films, Inc., Burbank, CA; Film & Television Company, Beverly Hills, CA; Filmstar, Inc., Los Angeles, CA; Golden Harvest/Golden Communications, Beverly Hills, CA (controlling entity: Golden Communications); International Film Exchange, New York, NY; Morgan Creek International, Los Angeles, CA (controlling entity: Morgan Creek Film Productions, Inc.); Odyssey/Cinecom Int'l., Los Angeles, CA (controlling entity: Odyssey Entertainment Ltd.); Premiere Film Marketing, Beverly Hills, CA; Silver Star Film Corp., Los Angeles, CA; Sugar Entertainment Inc., Encino, CA; Tom Parker Motion Pictures, Tarzana, CA; and Vidmark Entertainment, Santa Monica, CA;

2. Delete each of the following companies as a "Member" of the Certificate: Globe Export Company; and Vista Organization Partnership.

3. Change the listing of the company name of the following two current "Members" as follows: change Cannon International, Inc. to Pathe Films N.V.; and F/M Entertainment Int'l. Inc./The Norkat Company to The Norkat Co. Ltd.

Date: June 2, 1989.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 89-13643 Filed 6-8-89; 8:45 am]

BILLING CODE 3510-DR-M

National Technical Information Service

Government-Owned Inventions; Availability for Licensing

June 1, 1989.

The inventions listed below are owned by agencies of the U.S. Government and are available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious

commercialization of results of federally funded research and development. Foreign patents are filed on selected inventions to extend market coverage for U.S. companies and may also be available for licensing.

Licensing information and copies of patent applications bearing serial numbers with prefix E may be obtained by writing to: Office of Federal Patent Licensing, U.S. Department of Commerce, P.O. Box 1423, Springfield Virginia 22151. All other patent applications may be purchased, specifying the serial number listed below, by writing NTIS, 5285 Port Royal Road, Springfield, Virginia 22161 or by telephoning the NTIS Sales Desk at (703) 487-4650. Issued patents may be obtained from the Commissioner of Patents, U.S. Patent and Trademark Office, Washington, DC 20231.

Please cite the number and title of inventions of interest.

Douglas J. Campion,

Associate Director, Office of Federal Patent Licensing, National Technical Information Service, U.S. Department of Commerce

Department of Agriculture

SN 6-922,616 (4,826,765) Yeast Strains Genetically Engineered to Produce Wheat Gluten Proteins
SN 7-055,265 (4,829,091) Process for the Preparation of Ketones and Novel Insecticides Produced Therefrom

Department of Health and Human Services

SN 6-479,182 (4,525,787) N-Heterocyclic Retinoic Acid Analogues
SN 6-727,919 (4,824,986) Metal Chelate Protein Conjugate
SN 6-867,027 (4,829,000) Reconstituted Basement Membrane Complex with Biological Activity
SN 7-044,021 (4,827,125) Confocal Scanning Laser Microscope Having No Moving Parts
SN 7-266,038 Probe to identify Enteroinvasive E. Coli and Shigella Species
SN 7-308,864 Process for the Purification of a 69,000 Da Outer Membrane Protein of Bordetella Pertussis
SN 7-324,664 Nucleotide and Amino Acid Sequences of the Four Variable Domains of Major Outer Membrane Proteins of Chlamydia Trachomatis
SN 7-351,502 Method of Treatment of Hepatitis
SN 7-351,519 Method of Treatment of Hepatitis

Department of the Air Force

SN 6-749,335 (4,821,671) Captive Volume Device as a Safe Life Monitor

SN 6-882,059 (4,815,855) Interferometric Load Sensor and Strain Cage
 SN 6-922,642 (4,815,339) Antenna Shaft Positioning Device
 SN 7-035,425 (4,821,982) Brain O2 Reverse Limiter For High Performance Aircraft
 SN 7-066,154 (4,815,283) Afterburner Flamholder Construction
 SN 7-095,000 (4,815,276) Borescope Plug
 SN 7-107,184 (4,815,315) Process for Assessing the Effect of Propellant Strain on Propellant Burn Rate
 SN 7-121,493 (4,819,496) Six Degrees of Freedom Micromanipulator
 SN 7-122,153 (4,815,933) Nozzle Flange Attachment and Sealing Arrangement
 SN 7-123,828 (4,815,314) Particulate Mass Measuring Apparatus
 SN 7-124,640 (4,819,340) Compact Focal Plane Precision Positioning Device and Method
 SN 7-128,839 (4,820,360) Method for Developing Ultrafine Microstructures in Titanium Alloy
 SN 7-136,255 (4,817,854) Led Soldering Method Utilizing a PT Migration Barrier
 SN 7-137,308 (4,815,799) Infrared Crystalline Spatial Light Modular
 SN 7-150,677 (4,822,432) Method to Produce Titanium Metal Matrix Coposites with Improved Fracture and Creep Resistance
 SN 7-171,494 Radiation-Induced Substrate Photo-Current Compensation Apparatus
 SN 7-280,807 Static Periodic Field Device for Free Electron Laser
 SN 7-285,900 Single Narrow Pulse Peak Detector Apparatus
 SN 7-323,577 Improved Search Detection Apparatus

Department of the Army

SN 7-335,849 Superconducting Shielded PYX PPM Stacks
 [FR Doc. 89-13715 Filed 6-8-89; 8:45 am]
 BILLING CODE 3510-04-M

COMMISSION ON CIVIL RIGHTS

New Jersey Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Jersey Advisory Committee to the Commission will convene at 3:15 p.m. and adjourn at 9:00 p.m. on Tuesday, June 27, 1989, in the Joint Free Public Library of Morris and Morris Township, 1 Miller Road, Morristown, NJ 07967. The Committee will convene a forum on student

segregation and racial isolation within schools and classrooms in the Morris School District. Invited speakers will address issues of equal educational opportunity, compensatory education, special education, tracking, and ability grouping. Invited are Dr. Saul Cooperman, commissioner, New Jersey Department of Education, the Honorable David V. Manahan, Mayor of Morristown, Dr. William D. McIvor, superintendent, Morristown public schools, and Ms. Reno O. Smith, president, NAACP Morris County Chapter. The Committee will also receive staff reports on the status of the agency and advisory committees and conduct program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Stephen H. Balch or John I. Binkley, Director, Eastern Regional Division at (202) 523-5284, TDD (202) 376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 2, 1989.
 Melvin L. Jenkins,
 Acting Staff Director.

[FR Doc. 89-13707, Filed 6-8-89; 8:45 am]
 BILLING CODE 6335-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of an Import Limit for Certain Man-Made Fiber Textile Products Produced or Manufactured in the People's Republic of China

June 5, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: June 12, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-6828. For information on

embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 611 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 50276, published on December 14, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,
 Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 4, 1989.

Commissioner of Customs
 Department of the Treasury
 Washington, DC 20229

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive of December 6, 1988 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on June 12, 1989, the directive of December 6, 1988 is amended further to increase to 4,530,339 square meters ¹ the limit for man-made fiber textile products in Category 611, as provided under the terms of the current bilateral textile agreement between the Governments of the United States and the People's Republic of China.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to

¹ The limit has not been adjusted to account for any imports exported after December 31, 1988.

the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-13644 Filed 6-8-89; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products and Silk Blend and Other Vegetable Fiber Apparel Produced or Manufactured in the Democratic Socialist Republic of Sri Lanka

June 5, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for a new agreement year.

EFFECTIVE DATE: July 3, 1989.

FOR FURTHER INFORMATION CONTACT: Kimbhang Phan, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6580. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A copy of the current bilateral textile agreement between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State, (202) 647-1998.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral

agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 5, 1989.

Commissioner of Customs
 Department of the Treasury
 Washington, DC 20229

Dear Mr. Commissioner: Under the terms of Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on July 31, 1986; pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated May 23 and 24, 1988, between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka; and in accordance with the provisions of Executive Order 11651 of March 3, 1972; as amended, you are directed to prohibit, effective on July 3, 1989, entry into the United States for consumption of cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel in the following categories, produced or manufactured in Sri Lanka and exported during the twelve-month period which begins on July 1, 1989 and extends through June 30, 1990, in excess of the following levels of restraints:

Category	Twelve-month restraint limit
237	180,200 dozen.
331/631	1,874,800 dozen pairs.
333/633	33,820 dozen.
334	238,500 dozen.
335/835	174,900 dozen.
336	80,560 dozen.
338/339	795,000 dozen of which not more than 662,500 dozen shall be in shirts other than T-shirts and tank tops (Categories 338-S/339-S). ¹
340	625,400 dozen of which not more than 212,000 dozen shall be in shirts made from fabrics of two or more colors in the warp and/or the filling (Category 340/Y). ²
341	625,400 dozen of which not more than 265,000 dozen shall be in shirts and blouses made from fabric of two or more colors in the warp and/or the filling (Category 341-Y). ³
342/642/842	413,400 dozen.
345/845	107,060 dozen.
347/348/847	826,800 dozen.
350/650	74,200 dozen.
351/651	174,938 dozen.
352/652	848,000 dozen.
359-C/659-C	721,212 kilograms.
363	7,685,000 numbers.

Category	Twelve-month restraint limit
369-D	576,970 kilograms.
369-S	480,808 kilograms.
434	3,030 dozen.
435	6,565 dozen.
442	13,815 dozen.
445/446	95,950 dozen.
448	8,060 dozen.
634	159,000 dozen.
635	233,200 dozen.
636/836	181,260 dozen.
638/639/838	545,900 dozen.
640	132,500 dozen.
641	625,400 dozen.
644	318,000 numbers.
645/646	127,200 dozen.
647/648	657,200 dozen.

¹ In Categories 338-S/339-S, only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0035, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0069, 6112.11.0030 and 6114.20.0005 in Category 338-S and 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3310, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022 in Category 339-S.

² In Category 340-Y, only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060.

³ In Category 341-Y, only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030.

⁴ In Categories 359-C/659-C, only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010 in Category 359-C; and 6103.23.0055, 6103.43.2020, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.69.1000, 6104.69.3014, 6114.30.3040, 6114.30.3050, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.15.10, 6204.69.1010, 6210.10.4020, 6211.33.0010, 6211.33.0017 and 6211.43.0010 in Category 659-C.

⁵ In Category 369-D, only HTS numbers 6302.60.0010 and 6302.91.0020.

⁶ In Category 369-S, only HTS number 6307.10.2005.

Imports charged to these category limits for the period June 1, 1988 through June 30, 1989 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The foregoing limits may be adjusted in the future under the provisions of the current bilateral agreement between the Governments of the United States and the Democratic Socialist Republic of Sri Lanka.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Auggie D. Tantillo,
Chairman, Committee for the Implementation
of Textile Agreements.
[FR Doc. 89-13645 Filed 6-8-89; 8:45 am]
BILLING CODE 3510-09-M

**Announcement of a Request for
Bilateral Consultations with the
Government of Thailand on Certain
Silk Blend and Other Vegetable Fiber
Textile Products**

June 5, 1989.

AGENCY: Committee for the
Implementation of Textile Agreements
(CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT:
Ross Arnold, International Trade
Specialist, Office of Textiles and
Apparel, U.S. Department of Commerce,
(202) 377-4212. For information on
categories on which consultations have
been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:
Authority. Executive Order 11651 of
March 3, 1972, as amended; section 204
of the Agricultural Act of 1956, as
amended (7 U.S.C. 1854); Article 3 of the
Arrangement Regarding International
Trade in Textiles.

On May 28, 1989, the Government of
the United States requested
consultations with the Government of
Thailand regarding trousers, breeches
and shorts of silk blend and other
vegetable fibers in Category 847,
produced or manufactured in Thailand.

The purpose of this notice is to advise
the public that, if no solution is agreed
upon in consultations with Thailand, the
Committee for the Implementation of
Textile Agreements may later establish
a limit for the entry and withdrawal
from warehouse for consumption of
textile products in Category 847,
produced or manufactured in Thailand
and exported during the twelve-month
period which began on May 28, 1989 and
extends through May 25, 1990, at a level
of 101,346 dozen.

A summary market statement
concerning Category 847 follows that
notice.

Anyone wishing to comment or
provide data or information regarding
the treatment of Category 847, or to
comment on domestic production or
availability of products included in this
category, is invited to submit 10 copies
of such comments or information to
Auggie D. Tantillo, Chairman,
Committee for the Implementation of
Textile Agreements, U.S. Department of
Commerce, Washington, DC 20230.

Because the exact timing of the
consultations is not yet certain,
comments should be submitted
promptly. Comments or information
submitted in response to this notice will
be available for public inspection in the
Office of Textiles and Apparel, Room
H3100, U.S. Department of Commerce,
14th and Constitution Avenue, NW.,
Washington, DC.

Further comment may be invited
regarding particular comments or
information received from the public
which the Committee for the
Implementation of Textile Agreements
considers appropriate for further
consideration.

The solicitation of comments
regarding any aspect of the agreement
or the implementation thereof is not a
waiver in any respect of the exemption
contained in 5 U.S.C. 553(a)(1) relating
to matters which constitute "a foreign
affairs function of the United States."

The United States remains committed
to finding a solution concerning
Category 847. Should such a solution be
reached in consultations with the
Government of Thailand, further notice
will be published in the *Federal
Register*.

A description of the textile and
apparel categories in terms of HTS
numbers is available in the Correlation:
Textile and Apparel Categories with the
Harmonized Tariff Schedule of the
United States (see *Federal Register*
notice 53 FR 44937, published on
November 7, 1988).

Auggie D. Tantillo,
Chairman, Committee for the Implementation
of Textile Agreements.

**Market Statement; Vegetable Fiber,
Other than Cotton, and Silk-Blend
Trousers, Slacks and Shorts**

(Category 847)

Thailand, May 1989

Summary and Conclusions

U.S. imports of vegetable fiber, other
than cotton, and silk-blend trousers,
slacks and shorts (Category 847) from
Thailand reached 133,438 dozen during
the year ending March 1989, more than
12 times the 10,580 dozen imported a
year earlier. During the first three
months of 1989 imports of Category 847
from Thailand reached 100,066 dozen, 11
times the 8,879 dozen importing during
the same period in 1988, and more than
double Thailand's imports for all of
1988.

Virtually all of the imports of trousers,
slacks and shorts in Category 847 are of
vegetable fiber, other than cotton, and
compete directly with domestically
produced cotton trousers, slacks and

shorts (Category 347/348). The U.S.
market for cotton trousers, slacks and
shorts (Category 347/348) is being
disrupted by imports. The sharp and
substantial increase of Category 847
imports in conjunction with imports of
Category 347/348 from Thailand is
causing market disruption.

Import Penetration and Market Share

U.S. production of cotton trousers,
slacks, and shorts (Category 347/348)
fell 15 percent in 1988 to its lowest level
in 13 years. The ratio of imports to
production in Category 347/348
increased to 84 percent in 1988. The
share of the cotton trousers, slacks, and
shorts market held by domestic
manufacturers dropped to 54 percent in
1988. Imports of Category 847 are
exacerbating the disruption.

U.S. imports of vegetable fiber, other
than cotton, and silk-blend trousers,
slacks and shorts (Category 847)—
adjusted for 1987 overshipments—
increased 38 percent from 1,653,741
dozen in 1987 to 2,287,800 dozen in 1988.
When imports of the directly
competitive Category 847 are included in
the market analysis, the import to
production ratio jumps to 92 percent and
the domestic manufacturers' share of the
market falls to 52 percent.

**Duty-Paid Value and U.S. Producers
Price**

Approximately 92 percent of Category
847 imports from Thailand during 1988
entered under HTS numbers:
6203.49.3060 men's and boys' shorts
other than 70 percent or more by weight
silk or silk waste, and 6204.69.9040—
women's and girls' trousers breeches
and shorts subject to other than cotton,
wool or man-made fiber restraints.
These trousers entered the U.S. at duty-
paid landed values below U.S.
producers' prices for directly competing
cotton garments.

[FR Doc. 89-13696 Filed 6-8-89; 8:45 am]

BILLING CODE 3510-09-M

**COMMITTEE FOR PURCHASE FROM
THE BLIND AND OTHER SEVERELY
HANDICAPPED**

Procurement List 1989; Additions

AGENCY: Committee for Purchase from
the Blind and Other Severely
Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to
Procurement List 1989 commodities to be
produced and services to be provided by

workshops for the blind or other
severely handicapped.

EFFECTIVE DATE: July 10, 1989.

ADDRESS: Committee for Purchase from
the Blind and Other Severely
Handicapped, Crystal Square 5, Suite
1107, 1755 Jefferson Davis Highway,
Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT:
Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April
7, 1989, the Committee for Purchase from
the Blind and Other Severely
Handicapped published notice (54 FR
14130) of proposed additions to
Procurement List 1989, which was
published on November 15, 1988 (53 FR
46018).

No comments were received
concerning the proposed additions to the
Procurement List. After consideration of
the material presented to it concerning
capability of qualified workshops to
produce the commodities and provide
the services at fair market prices and
impact of the additions on the current or
most recent contractors, the Committee
has determined that the commodities
and services listed below are suitable
for procurement by the Federal
Government under 41 U.S.C. 46-48c and
41 CFR 51-2.6.

I certify that the following actions will
not have a significant impact on a
substantial number of small entities. The
major factors considered for this
certification were:

- The actions will not result in any
additional reporting, recordkeeping or
other compliance requirements.
- The actions will not have a serious
economic impact on any contractors for
the commodities and services listed.
- The actions will result in
authorizing small entities to produce the
commodities and provide the services
procured by the Government.

Accordingly, the following
commodities and services are hereby
added to Procurement List 1989:

Commodities

Dressing, First Aid, Field, Camouflaged
6510-00-159-4883
Dressing, First Aid, Field, White
6510-00-083-5573

Services

Janitorial/Custodial
U.S. Army Reserve Center, 2501 Ford
Road, Bristol, Pennsylvania
Janitorial/Custodial
U.S. Army Reserve Center, 2838-98
Woodhaven Road, Philadelphia,

Pennsylvania
Beverly L. Milkman,
Executive Director.
[FR Doc. 89-13717 Filed 6-8-89; 8:45 am]
BILLING CODE 6820-33-M

**Procurement List 1989; Proposed
Additions**

AGENCY: Committee for Purchase from
the Blind and Other Severely
Handicapped.

ACTION: Proposed additions to
procurement list.

SUMMARY: The Committee has received
proposals to add to Procurement List
1989 commodities to be produced and
services to be provided by workshops
for the blind or other severely
handicapped.

**COMMENTS MUST BE RECEIVED ON OR
BEFORE:** July 10, 1989.

ADDRESS: Committee for Purchase from
the Blind and Other Severely
Handicapped, Crystal Square 5, Suite
1107, 1755 Jefferson Davis Highway,
Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT:
Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This
notice is published pursuant to 41 U.S.C.
47(a)(2) and 41 CFR 51-2.6. Its purpose is
to provide interested persons an
opportunity to submit comments on the
possible impact of the proposed actions.

If the Committee approves the
proposed additions, all entities of the
Federal Government will be required to
procure the commodities and services
listed below from workshops for the
blind or other severely handicapped.

It is proposed to add the following
commodities and services to
Procurement List 1989, which was
published on November 15, 1988 (53 FR
45018):

Commodities

Medical Packet, Individual Survival Kit,
Airman's
6545-00-231-9421
Pin, Tent, Metal
8340-00-985-7461

Services

Administrative Services
Department of Transportation, Library
and Distribution Services, 400 7th
Street SW., Washington, DC
Janitorial/Custodial
U.S. Courthouse, Ford and Walker
Streets, Augusta, Georgia
Janitorial/Custodial
Washington National Records Center
Complex, Suitland and Silver Hill

Roads, Suitland, Maryland.
Beverly L. Milkman,
Executive Director.
[FR Doc. 89-13718 Filed 6-8-89; 8:45 am]
BILLING CODE 6820-33-M

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 89-5-CRA]

Adjustment of Cable Royalty Rates

AGENCY: Copyright Royalty Tribunal.
ACTION: Notice.

SUMMARY: The Tribunal has received a
petition from the Community Antenna
Television Association (CATA)
requesting the Tribunal to eliminate the
syndicated exclusivity surcharge on the
cable royalty rates paid by cable
systems. CATA has petitioned the
Tribunal in response to action taken by
the FCC reinstituting its syndicated
exclusivity blackout rules. The Tribunal
is requesting comment on CATA's
petition.

DATE: Comments are due July 24, 1989.

ADDRESS: An original and five copies of
the comments should be addressed to:
Chairman, Copyright Royalty Tribunal,
1111 20th Street NW., Suite 450,
Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT:
Robert Cassler, General Counsel,
Copyright Royalty Tribunal, 1111 20th
Street NW., Suite 450, Washington, DC
20036, (202) 653-5175.

SUPPLEMENTARY INFORMATION: On May
28, 1989, the Community Antenna
Television Association (CATA), a trade
association which represents cable
television owners and operators in the
United States, filed a petition with the
Copyright Royalty Tribunal. The petition
asks the Tribunal to initiate a cable
royalty rate adjustment proceeding to
eliminate the syndicated exclusivity
surcharge which some cable operators
pay in addition to their basic royalty
rate.

The reason given by CATA is that
since the Tribunal instituted the
syndicated exclusivity surcharge to
adjust for the loss of blackout protection
for copyright owners that occurred when
the FCC deleted its syndicated program
exclusivity protection rules, there is no
longer any need for the surcharge now
that the FCC has reinstituted those
rules.

CATA has also requested that the
Tribunal waive \$ 301.63 of its rules to
allow for earlier consideration of the
petition than the ninety day waiting
period provided by that rule.

BEST COPY AVAILABLE

The Tribunal has recently amended § 301.63 so that it no longer provides that the Tribunal must wait ninety days before considering a rate adjustment petition. It now says that the Tribunal may wait ninety days. Therefore, no waiver of § 301.63 is necessary.

The purpose of § 301.63 is to allow a period in which the Tribunal can promote settlement, and/or ascertain who supports or opposes the petition and plan the most efficient disposition of the petition. Consequently, this notice is being issued to ask for comments on the petition. The comments should include:

1. Whether CATA has a significant interest in the cable rate.
2. Whether the commenter supports or opposes the petition.
3. Whether the commenter intends to participate in a hearing, if a hearing is necessary.
4. Whether the commenter knows of settlement talks that have taken place on this rate request, or whether future settlement talks are likely to take place.
5. Whether an oral hearing is necessary, or whether the petition can be best handled by written pleadings.
6. If a hearing is required, when the best scheduling of the hearing would be.
7. Whether, in light of the fact that the new blackout protection will also affect stations which are paid for by cable systems at the 3.75% rate, the proposed rate adjustment should also apply to the 3.75% rate.
8. To what extent the pending appeal of the FCC's action should affect the Tribunal's disposition of CATA's petition.
9. Any other comments the commenter deems appropriate.

Copies of CATA's petition are on file with the Tribunal, and are available from the Tribunal upon request.

Mario F. Aguero,
Acting Chairman.

Dated: June 6, 1989.

[FR Doc. 89-13667 Filed 6-8-89; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form and Applicable OMB Control Number: Application for Membership in Military Affiliate Radio System (MARS), DD Form 630 and OMB Control Number 0704-0013.

Type of Request: Extension.
Average Burden Hours/minutes per response: 375 hours.

Frequency of Response: As required.
Number of Respondents: 1,000.
Annual Burden Hours: 375 hours.
Annual Responses: 1,000.

Needs and Uses: 1. The information is necessary to assess the applicant's qualifications to meet membership criteria outlined in Naval Telecommunications Procedures Manual NTP 8(A) (U.S. Navy-Marine Corps Military Affiliate Radio System (MARS) Communications Instructions).

2. Information is provided by amateur radio operators interested in joining Navy-Marine Corps MARS. The information gathered is used by MARS officials to certify eligibility for membership.

Affected Public: Individuals or households.

Frequency: As required.
Respondent's Obligation: Required to become a MARS member.

OMB Desk Officer: Dr. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
June 5, 1989.

[FR Doc. 89-13669 Filed 6-8-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Defense Science Board Task Force on Brilliant Pebbles; Cancellation of Meeting

ACTION: Cancellation of meeting.

SUMMARY: The meeting notice for the Defense Science Board Task Force on Brilliant Pebbles scheduled for May 30-31, 1989 as published in the *Federal Register* (Vol. 54, No. 93, Page 21092-

21093, Tuesday, May 16, 1989, FR Doc. 89-11637) has been cancelled.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
June 5, 1989.

[FR Doc. 89-13670 Filed 6-8-89; 8:45 am]

BILLING CODE 3810-01-M

Defense Science Board 1989 Summer Study on National Space Launch Strategy; Meeting

ACTION: Change in date of advisory committee notice.

SUMMARY: The meeting of the Defense Science Board 1989 Summer Study on National Space Launch Strategy scheduled for June 7-8, 1989 as published in the *Federal Register* (Vol. 54, No. 68, Page 14377, Tuesday, April 11, 1989, FR Doc. 89-8512) will be held on June 6-7, 1989.

Linda M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
June 5, 1989.

[FR Doc. 89-13671 Filed 6-8-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF EDUCATION

Education Appeal Board Hearings; Applications for Review

AGENCY: Department of Education.

ACTION: Notice of applications for review accepted for hearing by the Education Appeal Board.

SUMMARY: This notice lists the applications for review accepted for hearing by the Education Appeal Board (the Board) between July 28, 1988, and May 26, 1989. The Chairman has prepared a summary of each appeal to help potential intervenors. In addition, the notice explains how interested third parties may intervene in proceedings before the Board.

FOR FURTHER INFORMATION CONTACT: The Honorable Ernest C. Canellos, Chairman, Education Appeal Board, 400 Maryland Avenue SW. (Room 3053, FOB-6), Washington, DC 20202-3724. Telephone: (202) 732-1754.

SUPPLEMENTARY INFORMATION: Under sections 451 through 454 of the General Education Provisions Act (20 U.S.C. 1234 *et seq.*), the Board has authority to conduct (1) audit appeal hearings, (2) withholding, termination, and cease and desist hearings initiated by the Secretary of Education (the Secretary),

and (3) other proceedings designated by the Secretary as being within the jurisdiction of the Board.

The Secretary has designated the Board as having jurisdiction over appeal proceedings related to final audit determinations, the withholding or termination of funds and cease and desist actions for most grant programs administered by the Department of Education (the Department). The Secretary also has designated the Board as having jurisdiction to conduct hearings concerning most Department-administered programs that involve (a) a determination that a grant is void, (b) the disapproval of a request for permission to incur an expenditure during the term of a grant, or (c) determinations regarding cost allocation plans or special rates negotiated with specified grantees.

Regulations governing Board jurisdiction and procedures are set forth in 34 CFR Part 78.

Applications Accepted

Appeal of the State of Idaho

Docket No. 15(279)88; ACN: 10-73001.

The State appealed a final letter of determination issued by the Assistant Secretary for Vocational and Adult Education. The underlying audit reviewed the vocational rehabilitation program conducted during fiscal year 1983, 1984 and 1985.

The Assistant Secretary determined that the State improperly used a journal voucher process to measure maintenance of efforts, resulting in the supplanting of Federal funds.

The Department seeks a refund of \$376,538. The State disputes all liability.

Appeal of the State of Florida

Docket No. 16(280)88; ACN: 04-72583.

The State appealed a final letter of determination issued by Grants and Contracts Service (GCS). The underlying audit reviewed the vocational rehabilitation program conducted between July 1, 1985 and June 30, 1986.

GCS disallowed expenditures because of the State's failure to provide evidence that services were approved or actually rendered to clients entitled to receive service. GCS also determined that the State failed to reconcile client service expenditures, known as SAMAS, with the State agency's Client Information System.

The Department seeks a refund of \$518. The State disputes all liability and objects to the non-monetary finding regarding reconciliation of the client eligibility reporting system which could

result in the potential liability of \$800,000.

Appeal of the State of Washington.

Docket No. 20(284)88; ACN: 10-73081.

The State appealed a final letter of determination issued by the Assistant Secretary for Special Education and Rehabilitative Services. The underlying audit reviewed programs conducted under Part B of the Education of the Handicapped Act (EHA-B) during fiscal years 1983, 1984 and 1985.

As relevant, the Assistant Secretary concluded that the combined State and Local Educational Agency expenditures for fiscal years 1983 and 1985 violated the non-supplanting provisions of EHA-B.

The Department seeks a refund of \$218,618. The State disputes all liability.

Appeal of Wyoming State Council on Vocational Education

Docket No. 25(289)88; ACN: 08-70501.

The Wyoming State Council (WSC) appealed a final letter of determination issued by the Assistant Secretary for Vocational and Adult Education. The underlying audit reviewed the vocational education programs conducted between January 1, 1983 and December 31, 1986.

The Assistant Secretary sustained the auditors' findings and disallowed specific costs for lunches, dinners and travel expenses as improper charges to vocational educational programs.

The Department seeks a refund of \$9,431. WSC disputes all liability.

Appeal of the State of New Hampshire

Docket No. 28(292)88; ACN: 01-62017.

The State appealed a final letter of determination issued by the Assistant Secretary for Special Education and Rehabilitative Services. The underlying audit reviewed the various Federal assisted education programs conducted by the State during fiscal year 1985.

The Assistant Secretary sustained the auditors' findings and concluded that the State failed to maintain appropriate time and attendance records for employees in the various programs.

The Department seeks a refund of \$161,000. The State disputes all liability.

Appeal of the Florida State Department of Education

Docket No. 29 (293) 88; ACN: 04-73010

The State appealed a final letter of determination issued by the Assistant Secretary for Vocational and Adult Education and the Assistant Secretary for Elementary and Secondary Education. The Assistant Secretary for

Vocational and Adult Education has been designated as the primary action official within the Department. The underlying audit reviewed Federally assisted education programs conducted by the State during the fiscal year ending June 30, 1985.

As relevant, the Assistant Secretaries sustained the auditors' findings and disallowed specific costs for the alleged failure to maintain adequate time distribution records reflecting the period of time attributable to Federal and non-Federal programs.

The Department seeks a refund of \$256,976. The State disputes all liability.

Appeal of the State of Washington

Docket No. 32 (296) 88; ACN: 10-73081

The State appealed a final letter of determination issued by Grants and Contracts Service (GCS), the Assistant Secretary for Vocational and Adult Education and the Assistant Secretary for Elementary and Secondary Education. GCS has been designated as the primary action official within the Department. The underlying audit reviewed Federally assisted programs conducted by the State between July 1, 1984 and June 30, 1985.

GCS determined that salary charges were not supported by appropriate time distribution records, and indirect costs were unallowable because of the absence of a "negotiated predetermined fixed" indirect cost rate.

The Department seeks a refund of \$1,908,825. The State disputes all liability.

Appeal of the Florida State Department of Education

Docket No. 33 (297) 88; ACN: 04-72583

The State appealed a final letter of determination issued by Grants and Contracts Service (GCS), the Assistant Secretary for Elementary and Secondary Education and the Assistant State for Vocational and Adult Education. The underlying audit reviewed Federally assisted education programs conducted during the fiscal year ending June 30, 1986.

The Assistant Secretaries and GCS sustained the auditors' findings and disallowed specific salary expenditures for the alleged failure to maintain appropriate time distribution records.

The Department seeks a refund of \$249,770. The State disputes \$235,905, noting that the remaining \$13,821 in dispute pertains to the Office of Postsecondary Education and is not subject to the jurisdiction of the Education Appeal Board.

Appeal of the California State Department of Education

Docket No. 34 (298) 88, ACN: 09-70600

The California State Department of Education (CSDE) appealed a final letter of determination issued by the Assistant Secretary for Elementary and Secondary Education. The underlying audit reviewed programs conducted under Chapter 2 of the Education Consolidation and Improvement Act for the period July 1983 through June 1986.

The Assistant State sustained the auditors' findings and concluded that CSDE supplanted program funds during the subject period.

The Department seeks a refund of \$4,191,740. The State disputes all liability.

Appeal of the State of New York

Docket No. 35 (299) 88, ACN: 02-50509

The State appealed a final letter of determination issued by the Assistant Secretary for Elementary and Secondary Education. The underlying audit examined various aspects of the New York City Board of Education's high school project funded under Chapter 1 of the Education Consolidation and Improvement Act for the period between October 1, 1982 through September 30, 1986.

The Assistant Secretary sustained the auditors' findings and disallowed salary costs, related fringe benefits and indirect costs as improperly charged against the program during fiscal year 1984.

The Department seeks a refund of \$229,879. The State disputes all liability.

Appeal of St. Paul Public Schools

Docket No. 37 (301) 88, ACN: 05-80300

St. Paul Public Schools appealed a final letter of determination issued by the Assistant Secretary for Elementary and Secondary Education. The underlying audit reviewed expenditures made under the formula grant program of Part A of the Indian Education Act for the period between July 1, 1987 and June 30, 1988.

The Assistant Secretary modified the auditors' findings regarding the actual pupil count, concluding that St. Paul Public Schools failed to maintain adequate documentation which would support the purported pupil populations. The Department seeks a refund of \$27,903. St. Paul Public Schools disputes all liability.

Appeal of Belcourt School District #7 (ND)

Docket No. 38 (302) 88, ACN: 08-82018

Belcourt School District #7 (District) appealed a final letter of determination issued by the Assistant Secretary for Elementary and Secondary Education and Grants and Contracts Service (GCS). The underlying audit reviewed programs conducted under Title IV of the Indian Education Act between July 1, 1984 and June 30, 1986.

The Assistant Secretary and GCS sustained the auditors' findings and concluded that the District exceeded the approved rate for indirect costs.

The Department seeks a refund of \$6,341. The District disputes all liability.

Intervention

Regulations in 34 CFR 78.43 provide that an interested person, group, or agency may file an application to the Board Chairman to intervene in an appeal before the Board.

An application to intervene must indicate to the satisfaction of the Board Chairman or, as appropriate, the Panel Chairperson, that the potential intervenor has an interest in, and information relevant to the specific issues raised in the appeal. If application to intervene is approved, the intervenor becomes a party to the proceedings.

Applications to intervene, or questions, should be addressed to the Board Chairman at the address provided above.

(20 U.S.C. 1234)

Dated: June 5, 1989.

Michelle Easton,

Deputy Under Secretary, Intergovernmental and Interagency Affairs.

(Catalog of Federal Domestic Assistance No. not applicable)

[FR Doc. 89-13730 Filed 6-8-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96-511, 44 U.S.C. 3501 *et seq.*).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, or management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before July 10, 1989.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT:

Jay Casselberry, Office of Statistical Standards (EI-73), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave., SW, Washington, DC 20585, (202) 586-2171.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.
2. FERC-534.
3. 1902-0057.
4. Application for Production-Related Costs.
5. Extension.

Federal Energy Regulatory Commission

[Docket No. G-5316-001 *et al.*]

Texaco Producing Inc., *et al.*; Applications for Termination or Amendment of Certificates¹

June 8, 1989.

Take notice that each of the Applicants listed herein has filed an application pursuant to section 7 of the Natural Gas Act for authorization to terminate or amend certificates as described herein, all as more fully described in the respective applications which are on file with the Commission and open to public inspection.

Any person desiring to be heard or to make any protest with reference to said

¹ This notice does not provide for consolidation for hearing of the several matters covered herein.

Docket No. and date filed	Applicant	Purchaser and location	Description
G-5316-001 D 4-28-89	Texaco Producing Inc., P.O. Box 52332, Houston, TX 77052.	El Paso Natural Gas Company, Blanco Field, San Juan County, New Mexico.	Assigned 6-1-88 to Meridian Oil Production Inc.
G-5317-001 D 4-28-89	Texaco Producing Inc.	El Paso Natural Gas Company, Blanco P.C. Field, San Juan County, New Mexico.	Assigned 6-1-88 to Meridian Oil Production Inc.
G-10849-001 D 5-8-89	ARCO Oil and Gas Company, Division of Atlantic Richfield Company, P.O. Box 2819, Houston, TX 75221.	Tennessee Gas Pipeline Company, Pedre Lumbre Field, Duval County, Texas.	Assigned 6-1-88 to Mobil Producing, Texas & New Mexico Inc.
G-16134-004 D 5-03-89	Sun Exploration and Production Company, P.O. Box 2880, Dallas, TX 75221-2880.	Natural Gas Pipeline Company of America, Camrick Field, Beaver County, Oklahoma.	Assigned 11-9-88 to Taylor-McIlhenny Operating Co., Inc.
G-17548-001 D 4-28-89	Texaco Producing Inc.	El Paso Natural Gas Company, Aztec Field, San Juan County, New Mexico.	Assigned 6-1-88 to Meridian Oil Production Inc.
CI60-604-000 D 5-05-89	Union Oil Company of California, P.O. Box 7600, Los Angeles, CA 90051.	El Paso Natural Gas Company, Spraberry Trend Area Field, Midland County, Texas.	Assigned 3-23-89 to Parker and Parsley Petroleum Company.
CI61-1206-001 D 4-28-89	Texaco Producing Inc.	El Paso Natural Gas Company, Basin Dakota Field, San Juan County, New Mexico.	Assigned 6-1-88 to Meridian Oil Production Inc.
CI63-648-001 D 4-28-89	Texaco Producing Inc.	El Paso Natural Gas Company, Basin Dakota Field, San Juan County, New Mexico.	Assigned 6-1-88 to Meridian Oil Production Inc.
CI77-71-001 D 4-28-89	Texaco Producing Inc.	El Paso Natural Gas Company, Basin Dakota Field, San Juan County, New Mexico.	Assigned 6-1-88 to Meridian Oil Production Inc.
CI78-616-003 D 5-5-89	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	El Paso Natural Gas Company, Millman Area, Eddy County, New Mexico.	Assigned 1-1-87 to Hondo Oil and Gas Company.
CI87-473-001 D 4-28-89	Texaco Producing Inc.	El Paso Natural Gas Company, San Juan Basin Field, La Plata County, Colorado.	Assigned 6-1-88 to Meridian Oil Production Inc.
CI89-390-000 (G-18053) D 4-26-89.	Mobil Oil Exploration & Producing Southeast Inc., 12450 Greenspoint, Drive, Houston, TX 77060.	Transcontinental Gas Pipe Line Corporation, Vachene Field, St. James Parish, Louisiana.	Assigned 1-1-88 to Vintage Petroleum, Inc.
CI89-393-000 (CI78-606) D 4-28-89.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	El Paso Natural Gas Company, Millman Field, Eddy County, New Mexico.	Assigned 1-1-87 to Hondo Oil and Gas Company.
CI89-408-000 (CI64-793) D 4-28-89.	Texaco Producing Inc.	Colorado Interstate Gas Company, Moccasin Field, Beaver County, Oklahoma.	Assigned 11-3-88 to Meridian Oil Production Inc.
CI89-414-000 (CI83-407-000) D 5-9-89.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Tennessee Gas Pipeline Company, Southwest Pheasant Field, Matagorda County, Texas.	Assigned 6-1-88 to Mobil Producing, Texas & New Mexico Inc.
CI89-415-000 (G-2922) D 5-8-89.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Tennessee Gas Pipeline Company, Seelingson Field Unit, Jim Wells County, Texas.	Assigned 6-1-88 to Mobil Producing, Texas & New Mexico Inc.
CI89-416-000 (G-4288) D 5-8-89.	ARCO Oil and Gas Company, Division of Atlantic Richfield Company.	Tennessee Gas Pipeline Company, Seelingson Field Unit, Jim Wells County, Texas.	Assigned 6-1-88 to Mobil Producing, Texas & New Mexico Inc.

Filing Code A—Initial service. B—Abandonment. C—Amendment to add acreage. D—Assignment of acreage. E—Succession. F—Partial succession.

[FR Doc. 89-13754 Filed 6-8-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-48-002]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 5, 1989.

Take notice that ANR Pipeline Company ("ANR"), on May 26, 1989, tendered for filing as part of its FERC Gas Tariff, Original Volume No. 1, the following tariff sheets to be effective June 1, 1989.

Substitute Third Revised Sheet No. 80A
(Alternate Substitute Third Revised Sheet No. 80A)

Original Sheet No. 80B

ANR states that the purpose of this filing is to revise its purchased gas adjustment clause to allow for demand deferrals to be collected and/or returned through a demand surcharge, pursuant to Ordering Paragraph (D) of the Federal Energy Regulatory Commission ("Commission") Order dated April 27, 1989, in Docket Nos. TA89-1-48-000 and 001.

ANR states that these tariff sheets reflect a change from a 2-part demand rate to a one-part demand rate, which was proposed in ANR's May 1, 1989 rate filing at Docket No. RP89-161-000. In the event that rates contained in that proceeding are suspended beyond the proposed June 1, 1989 effective date, ANR has submitted an alternate tariff sheet which sets forth proposed tariff changes under ANR's existing rate structure.

ANR states that copies of the filing were served upon all of its jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13755 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-135-002]

Arkla Energy Resources, a Division of Arkla, Inc.; Compliance Filing

June 5, 1989.

Take notice that on May 30, 1989, Arkla Energy Resources ("AER"), a division of Arkla, Inc., filed certain revised tariff sheets. AER states that these tariff sheets are being submitted in compliance with the Commission's April 28, 1989 order in this proceeding, which accepted, subject to certain conditions, AER's March 31, 1989 filing providing for the recovery of 50 percent of certain settlement costs pursuant to § 2.104 of the Commission's regulations.

AER states that the revised tariff sheets bear a June 1, 1989 effective date reflecting AER's acceptance on May 18, 1989 of a blanket certificate of public convenience and necessity in Docket No. CP88-820-000. AER states that its tariff sheets have been revised to provide that costs associated with claims in litigation as of March 31, 1989 will only be included in AER's amortization upon the effectiveness of additional tariff sheets providing for the recovery of such costs. The tariff sheets have also been revised to make clear that such costs shall not include any penalties or punitive damages awarded against AER. Finally, AER states that its tariff sheets have been revised to provide for the computation of carrying charges utilizing the rates prescribed by the Commission from time to time under § 154.67(c)(2)(ii)(4) of the regulations.

AER's filing includes a list identifying all claims in litigation as of March 31, 1989. AER states that, with the addition of this list, the documentation supporting AER's filing is complete.

Any person desiring to protest AER's filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.214 and 385.211 of the Commission's Rules of Practice and Regulations. All such protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13756 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-124-002]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 5, 1989.

Take notice that CNG Transmission Corporation ("CNG"), on May 30, 1989, pursuant to section 4 of the Natural Gas Act, Part 154 of the Commission's April 28, 1989, order in this proceeding, filed the following revised tariff sheets to Original Volume No. 1 of its FERC Gas Tariff:

Substitute First Revised Sheet Nos. 39 and 161
Substitute Fourth Revised Sheet No. 32
Substitute Seventh Revised Sheet No. 31
Substitute Eighth Revised Sheet No. 31

CNG states that this filing is made to comply with Ordering Paragraphs (D), (E) and (H) of the Commission's April 28th order which accepted and suspended, subject to refund and conditions, CNG's Order No. 500 filing made on March 31, 1989. In a separate filing also made on this date, CNG filed with the Commission certain documents and data requested by the Commission in its April 28th order.

Copies of the filing were served upon CNG's sales customers as well as interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214 and 385.211. All protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.
[FR Doc. 89-13757 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP89-181-000 and TM89-4-21-000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 5, 1989.

Take notice that Columbia Gas Transmission Corporation (Columbia) on May 30, 1989, tendered for filing the following proposed changes to its FERC

Gas Tariff, Original Volume No. 1, to be effective June 1, 1989:

Twenty-first Revised Sheet No. 16B
Eleventh Revised Sheet No. 16B1
Eleventh Revised Sheet No. 16B2

Columbia states that the foregoing tariff sheets modify and supplement Columbia's previous filings in Docket Nos. RP88-187 and TM89-3-21 in which Columbia established procedures pursuant to Order No. 500 to recover from its customers the take-or-pay and contract reformation costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to modify its earlier filings to permit it to flow through revised take-or-pay and contract reformation costs from (i) Texas Eastern Transmission Corporation pursuant to a filing made on April 21, 1989 which was accepted by the Federal Energy Regulatory Commission's (Commission) order issued on May 19, 1989 in Docket No. RP89-150, (ii) Texas Gas Transmission Corporation pursuant to a filing made on March 31, 1989 which was accepted by Commission's order issued on April 28, 1989 in Docket No. RP89-119, (iii) Transcontinental Gas Pipe Line Corporation pursuant to a filing made on March 31, 1989 in Docket No. RP89-122 which was accepted by Commission order dated April 28, 1989, (iv) Transcontinental Gas Pipe Line Corporation pursuant to a filing made on April 10, 1989 in Docket No. RP88-68-011 which was accepted by Commission order dated May 2, 1989, and (v) Panhandle Eastern Pipe Line Company pursuant to a filing made on April 17, 1989 in Docket No. TM89-4-28 (formerly RP88-240 and RP89-10) which was accepted by Commission order dated May 17, 1989.

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions and upon each person designated on the official service list compiled by the Commission's Secretary in Docket Nos. RP88-187-000 and TM89-3-21.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to

become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.
[FR Doc. 89-13758 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-132-004 and TA89-1-33-001]

El Paso Natural Gas Co.; Compliance Tariff Filing

June 5, 1989.

Take notice that on May 26, 1989, El Paso Natural Gas Company ("El Paso"), filed pursuant to Part 154 of the Federal Energy Regulatory Commission's ("Commission") Regulations Under the Natural Gas Act and in compliance with ordering paragraph (A)(6) of the Commission's order issued April 28, 1989 at Docket Nos. RP89-132-000, RP88-184-000, RP88-184-001 and TA88-1-33-000, certain tariff sheets for inclusion in El Paso's FERC Gas Tariff, First Revised Volume No. 1, Third Revised Volume No. 2 and Original Volume No. 2A.

El Paso states that in response to ordering paragraph (A)(6) of the Commission's order issued April 28, 1989 at Docket No. RP89-132-000, *et al.*, El Paso revised those PGA rates tendered in its Annual Adjustment on May 1, 1989 at Docket No. TA89-1-33-000 scheduled to go into effect on July 1, 1989. As more fully set forth in said Annual Adjustment, El Paso tendered primary and alternative tariff sheets. With respect to the primary tariff sheets, El Paso did not incorporate a Surcharge Adjustment and requested an extension of the waiver granted October 1, 1988 at Docket No. TQ89-1-33-000, *et al.*, to suspend collection of El Paso's Account 191 balance. The alternative tariff sheets were filed in the event that the Commission denies El Paso's request for waiver and institutes a Surcharge Adjustment.

El Paso states that in the primary tariff sheets, it has eliminated reformation and/or settlement costs attributable to the Order No. 500 recovery mechanism from its Account 191 balance which is to be direct billed to El Paso's customers upon implementation of a Gas Inventory Charge. El Paso states that the primary tariff sheets are filed with the Commission in order to incorporate a revised throughput surcharge and an Order No. 500 special surcharge. In the event the Commission denies El Paso's

request for waiver and accepts for filing El Paso's alternative tariff sheets which include a Surcharge Adjustment, El Paso tendered revised tariff sheets, which reflect a Surcharge Adjustment of \$4.3694 per dth after the elimination of costs attributable to the Order No. 500 recovery mechanism. The revised Surcharge Adjustment is \$3.5301 per dth less than the Surcharge Adjustment included in El Paso's May 1, 1989 Annual Adjustment. Said alternative tariff sheets also incorporate the revised throughput surcharge and the Order No. 500 special surcharge.

El Paso requested pursuant to § 154.51 of the Commission's Regulations, that waiver of the notice requirements of § 154.22 of the Commission's Regulations be granted to the extent necessary, so as to permit the tendered tariff sheets to become effective, in lieu of their previously tendered counterparts, on July 1, 1989, the same date as requested in El Paso's Annual Adjustment at Docket No. TA89-1-33-000.

Copies of the filing were served upon all parties of record in Docket Nos. RP89-132-000, RP88-184-000, and TA89-1-000 and, otherwise upon all interstate pipeline system sales customers and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.
[FR Doc. 89-13759 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-132-001]

El Paso Natural Gas Co.; Supplement to Compliance Filing

June 5, 1989.

Take notice that on May 26, 1989, El Paso Natural Gas Company ("El Paso") tendered for filing pursuant to Part 154 of the Federal Energy Regulatory

Commission's ("Commission") Regulations Under the Natural Gas Act, Substitute Sixth Revised Sheet No. 100-A for inclusion in its FERC Gas Tariff, First Revised Volume No. 1, to supplement the compliance filing made by El Paso on May 12, 1989 in Docket No. RP89-132-003, *et al.*, in compliance with the Commission's order issued April 28, 1989 at Docket Nos. RP89-132-000, RP89-184-000, RP89-184-001 and TA88-1-33-000.

Subsequent to such filing, El Paso states that it observed that the statement of rates for Rate Schedule IS-1 was inadvertently omitted from the May 12, 1989 compliance filing. Accordingly El Paso is supplementing its May 12, 1989 compliance filing by tendering Substitute Sixth Revised Sheet No. 100-A which incorporates the changes required in the Commission's April 28, 1989 order.

El Paso states it requested waiver of all applicable Commission Regulations as necessary to supplement the May 12, 1989 filing. Further, El Paso requested, pursuant to § 154.51 of the Commission's Regulations, that waiver of the notice requirements of 154.22 of the Commission's Regulations be granted, to the extent necessary to permit the tendered tariff sheet to become effective May 1, 1989, the same date as authorized in the Commission's April 28, 1989 order.

Copies of the filing were upon all parties of record in Docket Nos. RP89-132-000, RP89-184-000 and TA88-1-33-000 and, otherwise, upon all interstate pipeline system sales customers of El Paso and interested state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13780 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TM89-7-4-000]

**Granite State Gas Transmission, Inc.;
Proposed Change in Rates**

June 5, 1989.

Take notice that on May 30, 1989, Granite State Gas Transmission, Inc. (Granite State), 120 Royall Street, Canton, Massachusetts 02021, tendered for filing Nineteenth Revised Sheet No. 8 in its FERC Gas Tariff, First Revised Volume No. 1, effectiveness on May 1, 1989.

According to Granite State, it provides a storage service for Bay State Gas Company under its Rate Schedule GSS with storage capacity provided in a facility operated by CNG Transmission Corporation (CNG). It is further stated that Granite State's Rate Schedule GSS tracks changes made by CNG under its Rate Schedule GSS pursuant to which Granite State obtains storage capacity from CNG.

Granite State further states the CNG filed changes in its rates in Docket No. RP89-124-000 to pass through to its customers buyout and buydown costs paid to producers under the provisions of Order No. 500. According to Granite State, CNG's filing increased the Injection Charge in its Rate Schedule GSS by \$0.0033 which Granite State has tracked in the revised Injection Charge in its Rate Schedule GSS on Nineteenth Revised Sheet No. 8.

According to Granite State, copies of its filing were served upon Bay State Gas Company and the regulatory commission of the State of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 12, 1989. Protests will be considered by the Commission, in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13781 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA89-1-27-001]

North Penn Gas Co.; Compliance Filing

June 5, 1989.

Take notice that on May 24, 1989, North Penn Gas Company (North Penn) filed certain revised tariff sheets to its FERC Gas Tariff.

North Penn states that this filing makes the adjustments and includes the backup material as required by the Commission's May 1, 1989 order.

North Penn states that copies of this filing are being mailed to each of its jurisdictional customers and state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13786 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP88-174-003, RP88-195-004]

**Northern Border Pipeline Co.;
Proposed Changes in FERC Gas Tariff**

June 5, 1989.

Take notice that on May 30, 1989, Northern Border Pipeline Company (Northern Border) tendered for filing to become part of Northern Border Pipeline Company's FERC Gas Tariff, Original Volume No. 1, the following revised tariff sheet:

Substitute Second Revised Sheet No. 161

This tariff sheet was filed in compliance with the Commission's April 28, 1989 letter order in Docket Nos. RP88-174-001 and RP 88-195-002. Northern Border requests that Sheet No. 161 be effective on January 1, 1989 consistent with the effective date of the Interim Settlement approved in the Commission's March 16 order. Copies of this filing have been sent to all Rate

Schedule IT-1 Shippers and parties of record.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.11, 385.214). All such protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter.

Copies of this filing are on file with the Commission and are available for public inspection.

Lois Cashell,
Secretary.

[FR Doc. 89-13762 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-33-002]

Northern Border Pipeline Co.; Filing

June 5, 1989.

Take notice that on May 26, 1989, Northern Border Pipeline Company (Northern Border) filed and moved to effectuate First Revised Sheet No. 104 and Second Revised Sheet No. 111 to its FERC Gas Tariff, Original Volume 1, to be effective June 1, 1989.

Northern Border states that on December 30, 1988, the Commission issued an order accepting and suspending the filed tariff sheets for the maximum allowable period of five months to take effect on June 1, 1989, subject to refund from that date. Accordingly, the effective date of these tariff sheets is June 1, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1989)). All such protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this

filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13763 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-182-000]

**Northern Natural Gas Co., Division of
Enron Corp.; Proposed Changes in
FERC Gas Tariff**

June 5, 1989.

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern) on May 30, 1989, tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 (Volume 1 Tariff) the following tariff sheets:

Second Revised Sheet No. 52c
Second Revised Sheet No. 52c.2a
Second Revised Sheet No. 52c.10
Second Revised Sheet No. 52f
Third Revised Sheet No. 52f.3
Third Revised Sheet No. 52f.4
Second Revised Sheet No. 52f.12
First Revised Sheet No. 52f.15

Northern proposes modification on the above listed sheets in its Transportation Rate Schedules FT-1 and IT-1 in accordance with suggestions offered by the Commission in and Order issued April 10, 1989 in Docket No. RP89-23-001.

In addition to the foregoing, Northern is proposing to modify its transportation Rate Schedules in two respects.

First, in section 1, "Availability", of Rate Schedules FT-1 and IT-1, Northern is proposing to modify the provision which requires an amendment to the transportation service agreement to establish a transportation rate that is lower than the maximum rate.

Secondly, Northern is proposing that decreases in the daily transportation quantity be effectuated by an amendment to the respective Transportation Service Agreement.

The Company states that copies of the filing having been mailed to each of its customers purchasing gas and receiving transportation and gathering services under its FERC Gas Tariff and to interested State Commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with the Commission's Rules of Practice & Procedure (18 CFR 385.214, 385.211). All such motions or protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13764 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-136-003]

**Northern Natural Gas Co., Division of
Enron Corp.; Proposed Changes in
FERC Gas Tariff**

June 5, 1989.

Take notice that Northern Natural Gas Company, Division of Enron Corp., (Northern) on May 30, 1989, tendered for filing proposed changes to its FERC Gas Tariff.

Northern states that this filing is being submitted pursuant to the terms and conditions set forth in the Commission's order issued on April 28, 1989 in the above proceeding. An effective date of May 1, 1989 has been requested for this filing.

Northern further states that copies of this filing were served upon Northern's customers, parties to this proceeding and all interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE. 20426, in accordance with §§ 385.214 and 385.211 of this chapter. All such protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13765 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. ID-2411-000]

Henry A. Panasci, Jr.; Filing

June 5, 1989.

Take notice that on May 18, 1989, Henry A. Panasci, Jr. tendered for filing an application pursuant to section 305(h) of the Federal Power Act to hold the following positions:

Position	Corporation	Classification
Director	Niagara Mohawk Power Corporation.	Public Utility.
Director	Unity Mutual Life Insurance Company.	Other Corporation.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before June 19, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13767 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-134-002]

Panhandle Eastern Pipe Line Co.; Proposed Changes in FERC Gas Tariff

June 5, 1989.

Take notice that on May 30, 1989, Panhandle Eastern Pipe Line Company (Panhandle) tendered for filing the following tariff sheets to its FERC Gas Tariff, Original Volume No. 1:

First Substitute Original Sheet No. 3-C.18
First Substitute Original Sheet No. 3-C.17
First Substitute Original Sheet No. 3-C.16
First Substitute Third Revised Sheet No. 43-12
Second Revised Sheet No. 43-13

The effective date of these revised tariff sheets in May 1, 1989.

Panhandle states that on March 31, 1989 Panhandle filed tariff sheets to establish charges to recover 50% of its take-or-pay buyout and buydown costs in accordance with the provisions of Order No. 500. That filing included additional take-or-pay settlement costs not recovered in Docket Nos. RP88-241 and RP89-9.

Panhandle further states that on April 28, 1989 the Commission issued an order accepting the tariff sheets subject to refund and conditions. Panhandle also states that the revised tariff sheets and materials submitted herein satisfy the

requirements of the Commission's Order dated April 28, 1989.

Copies of the filing were sent to all of Panhandle's jurisdictional customers and interested state commissions, as well as the parties of the above-captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13768 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-120-002]

Questar Pipeline Co.; Tariff Filing

June 5, 1989.

Take notice the Questar Pipeline Company (Quesar Pipeline) on May 30, 1989, tendered for filing and acceptance the following tariff sheets of its FERC Gas Tariff:

First Revised Volume No. 1
Substitute Twentieth Revised Sheet No. 12
Alternate Substitute Twentieth Revised Sheet No. 12
Substitute Second Revised Sheet No. 17
Substitute Original Sheet No. 17-A
Substitute Original Sheet No. 17-B
Alternate Substitute Original Sheet No. 17-B
Original Volume No. 1-A
Ninth Revised Sheet No. 5
Alternate Ninth Revised Sheet No. 5
First Revised Sheet No. 5-A
Second Revised Sheet No. 20
Second Revised Sheet No. 43
Second Revised Sheet No. 67
Third Revised Sheet No. 79
Original Sheet No. 114-B
Alternate Original & Original Sheet No. 114-C
Substitute Third Revised Sheet No. 117
Third Revised Sheet No. 132

Original Volume No. 3
Twelfth Revised Sheet No. 8
Alternate Twelfth Revised Sheet No. 8

Questar Pipeline states that this filing is made pursuant to 18 CFR 154.63(a)(1) and in compliance with ordering paragraph (A) of the Commission's April

28, 1989, order issued in Docket No. RP89-120-000.

Questar Pipeline requests an effective date of May 1, 1989, and states it has provided a copy of this filing to all parties of record.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestant parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13769 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-93-003]

Sabine Pipe Line Co.; Filing

June 5, 1989.

Take notice that on May 28, 1989, Sabine Pipe Line Company (Sabine) filed Third Revised Sheet No. 204 and First Revised Sheet No. 205E to its FERC Gas Tariff, First Revised Volume 1, to be effective April 1, 1989.

Sabine states that it is filing these tariff sheets to correctly indicate the effective date as April 1, 1989, as requested by the Commission Staff. Sabine had previously submitted these proposed tariff sheets on May 9, 1989, indicating an effective date of May 10, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1989)]. All such protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this

filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13770 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-129-001]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

June 5, 1989.

Take notice that on May 26, 1989, Trunkline Gas Company (Trunkline) tendered for filing the following tariff sheet to its FERC Gas Tariff Original Volume No. 1:

First Substitute Fourth Revised Sheet No. 21-0

The effective date of this revised sheet is May 1, 1989.

Trunkline states that the proposed tariff sheet is being filed in compliance with the Commission's April 28, 1989 Order in the above-captioned proceeding accepting Trunkline's proposed recovery of take-or-pay settlement costs under Order No. 500.

Trunkline states that copies of the filing were sent to all of Trunkline's jurisdictional customers and interested state commissions, as well as the parties to the above-captioned proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with the Commission's Rules of Practice and Procedure (18 CFR 385.211 or 385.214). All such protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13771 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-114-002]

Trunkline Gas Co.; Proposed Changes in FERC Gas Tariff

June 5, 1989.

Take notice that Trunkline Gas Company (Trunkline), on May 30, 1989 tendered for filing the following

proposed changes in its FERC Gas Tariff, Original Volume No. 1:

First Substitute Eleventh Revised Sheet No. 3-A.1
First Substitute Original Sheet No. 9-JA
First Substitute Original Sheet No. 9-JB
First Substitute Original Sheet No. 9-JC
First Substitute Original Sheet No. 9-JF
First Substitute Original Sheet No. 9-JG
First Substitute Original Sheet No. 9-JN
First Substitute Original Sheet No. 9-JP

The proposed effective date of these revised tariff sheets is May 1, 1989.

Trunkline states that these revised tariff sheets are being refiled in accordance with Ordering Paragraph (C) and the Commission's Order issued April 27, 1989.

Copies of this letter and enclosure are being served on all jurisdictional customers and interested state agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13772 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-140-003]

Williams Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 5, 1989.

Take notice that on May 30, 1989, Williams Natural Gas Company (WNG) submitted the following revised tariff sheets to its FERC Gas Tariff:

Original Volume No. 1
Substitute Revised Eleventh Revised Sheet No. 6
Second Revised Original Sheet No. 6E
Revised Substitute Tenth Revised Sheet No. 7
Second Revised Third Revised Sheet Nos. 31 and 38
Second Revised Original Sheet Nos. 113-115

WNG states that these tariff sheets are filed in compliance with Commission order issued April 28, 1989 in Docket No. RP89-140-000 and 001.

WNG states that it made revisions to its tariff language and reduced the

settlement costs by \$2.2 million after computing the 25% to be absorbed by WNG to comply with Paragraph (C).

WNG states that it is submitting supporting documentation in compliance with Paragraph (D) and a list of all contracts in litigation on March 31, 1989 in compliance with Ordering Paragraph (E).

WNG states that pursuant to Art. 29.2(b) of the General Terms and Conditions, it has included an additional \$4,380.00 in Settlement Costs concerning disputes which were in litigation on March 31, 1989, but which have been subsequently settled with payments made by the Company.

WNG states that that proprietary material related to its Settlements with producers has been included in a non-public copy filed with the Commission and the sensitive material has been deleted from the public copies of the filing which have been mailed to WNG's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 12, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13773 Filed 6-8-89; 8:45 am]
BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3600-1]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget

(OMB) for review. The submission describes the nature of the information collection and its expected cost and burden.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.
SUPPLEMENTARY INFORMATION:

Office of Air and Radiation

Title: Request for Information on CFC/Halon Substitutes (EPA ICR # 1434.02). This is a one-time collection.

Abstract: This action requests chemical data from manufacturers of chemicals and aqueous cleaners that can be substituted for fully halogenated CFCs and halons. EPA will use the information to help assess environmental risks associated with the use and disposal of these products.

Burden Statement: The estimated public burden for this collection of information is 8 hours per response.

Respondents: Manufacturers of substitutes for fully halogenated CFCs and halons.

Estimated No. of Respondents: 59.

Estimated Total Burden on Respondents: 472 hours.

Frequency of Collection: One time only.

Expedited Review: The request for expedited review is made under the Paperwork Reduction Act (5 CFR, 1320.18). The Office of Air and Radiation is requesting information under authority of section 114 of the Clean Air Act. The requested data is needed to assist Agency staff in assessing the health and safety hazards associated with substitutes for fully halogenated CFCs and halons. EPA has contacted affected manufacturers and has discussed Agency plans for collecting the needed information. This fact combined with the need to prepare technical assessments for review by the international community later this summer, demands expedited review under the Paperwork Reduction Act. The Agency has requested OMB clearance by June 14, 1989.

Date: June 6, 1989.

Paul Lapsley,
Director, Information and Regulatory Systems Division.

Letter to Manufacturers of Aqueous Cleaners

Dear:

The U.S. Environmental Protection Agency (EPA) is developing additional background information on aqueous cleaners for use in possible further regulation of chlorofluorocarbon (CFC)-based solvents under section 157(b) of the Clean Air Act (CAA). That section authorizes EPA to regulate, as needed,

to protect stratospheric ozone, taking into account the feasibility and cost of such regulation. Fully halogenated CFCs, like CFC-113, have been found to endanger stratospheric ozone, and EPA has promulgated limits on future production and consumption of these CFCs. (See 53 FR 30566 notice). The Agency is still considering the need to target certain uses of CFCs, including the use of CFC-113 as a solvent, for further regulation. (See 53 FR 30604). In this context, EPA needs information on likely substitutes for CFC-113, so that it may assess the cost and feasibility of further regulating that substance. As the Agency noted in the ANPRM, aqueous and terpene cleaners are likely to replace up to 50% of the CFC-113 currently used in electronics precision and metal cleaning. EPA is therefore requesting that producers of aqueous cleaners provide the information specified in the enclosure.

The Agency requests this information under Section 114 of the CAA, which gives EPA authority to secure information, even confidential business information, needed to carry out the provisions of the Act, including section 157(b). You may assert a claim of business confidentiality for any of the information which you submit by clearly marking that information as "confidential". Such information will be treated in accordance with the EPA's procedures for handling information claimed as confidential under 40 CFR Part 2, Subpart B, and will only be disclosed if EPA determines that the information is not entitled to confidential treatment. Procedures to be used for making confidentiality determinations, substantive criteria to be used in such determinations, and special rules governing information obtained under Section 114 are set forth in 40 CFR Part 2. You must assert any claim of confidentiality at the time you submit this information. If no claim of confidentiality accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you (40 CFR 2.203).

EPA intends to utilize the services of ICF Incorporated, under contract number 68-02-460, to provide technical assistance and support for EPA's evaluation of the data requested here. This contractor will be designed as the authorized representative of the Agency and will be provided the information submitted in response to this request, including any information claimed to be confidential. Disclosure of this information to the contractor is necessary for the performance of this contract. As the authorized

representative, this contractor will be subject to the provisions of 40 CFR 2.301 (h). You may include in your submission any comments concerning such disclosure of confidential business information to ICF Incorporated. No disclosure of confidential information will be made sooner than 10 days after your receipt of this notice.

I would appreciate your providing a response to this letter no later than July 15, 1989. If you have specific questions on the information that is required under this request please call Karla Perri, Senior Policy Analysts, Division of Global Change, at (202) 475-7496.

I have attached an enclosure with an explanation and list of the specific information that EPA is requesting from you.

Sincerely,

Eileen B. Claussen,
Director, Office of Atmospheric and Indoor Air Programs.

Enclosure

cc: Office of General Counsel

Enclosure

As a party to the Montreal Protocol on Substances that Deplete the Ozone Layer, the U.S. recognizes that world-wide emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment. EPA is determined to protect the ozone layer by participating in the equitable control of total global emissions of substances that deplete the ozone layer.

In previous notices published in the **Federal Register**, the Agency issued a final rule implementing the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol; 53 FR 30566, August 12, 1988), and an Advance Notice of Proposed Rulemaking (ANPRM) on possible further efforts to protect stratospheric ozone (53 FR 30604, August 12, 1988). Currently, the Montreal Protocol and the EPA regulation require a 50 percent phased-in reduction in the production and consumption of specified fully-halogenated CFCs by 1998, and a freeze at 1986 levels of specified halons beginning in 1992. On March 3, 1989, however, President Bush announced that the United States would support a 100% phase-out of all fully-halogenated CFCs and halons by the year 2000, providing safe substitutes are available. This announcement makes imperative the need to find a replacement for all of the fully-halogenated CFCs and halons sooner than these rules indicate.

In the ANPRM EPA stated that it expects 50 percent of the CFC-113 currently used for electronics and metal cleaning to be replaced with aqueous and terpene solutions. EPA wants to evaluate the human health or environmental risks that these alternative solutions may pose. Therefore, the Agency is requesting confidential business data for every aqueous cleaner you produce, which can replace CFC-113 and any other chlorinated solvent used for electronics, precision, and general metal cleaning uses.

EPA is under extremely short deadlines in trying to address these human health and environmental concerns. The Agency appreciates that you have other priorities. Nevertheless, the EPA asks that you comply with the deadline of June 15, 1989, as requested in this letter. Please return this information to: Karla Perri, Division of Global Change, Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street SW, ANR-445, Washington, DC 20460.

Specific Information Requested

Please number your responses so that they correspond with each of the question listed below.

1. Company name, name of company official responding to this letter, title of that official, telephone number and address of that official.

2. How many plants do you have that produce aqueous cleaners? Where are they located (address)?

3. List the specific names of every aqueous cleaner you produce that can replace CFC-113 and any other chlorinated solvent used for electronics, precision, and in general metal cleaning or degreasing.

4. List the product formulation of each of these aqueous cleaners (i.e., list the percent composition of all chemicals present in the product). In addition, please include MSDSs and product specification sheets for each cleaner.

5. What are the primary, secondary, and other uses of your solution? What percent of the total production is used in each of these?

6. What are the costs of cleaning with your products including equipment, installation, and operating costs?

7. Please provide production estimates (pounds) for each of the terpene cleaners that you manufacture from 1983 to 1998 (include annual production levels for 1983 to 1988 and projected production level for 1989 to 1998).

8. Please give specific production projections for each of these products for the years 1989 through 1998.

9. Have you carried out or do plan to carry out any human health and environmental tests on any or all of the ingredients and solutions you have listed. Please provide any information, official or internal pertaining to these tests. Please tell us if you know of someone else who is planning to or has conducted these tests.

10. How do you recommend that your customers treat or dispose of the waste product from your solution? If your company makes a general statement like "please dispose of or treat according to local, state and federal regulations," please explain whether you could provide detailed instructions on proper disposal or treatment.

11. Can waste from each use of your cleaners.

(1) Be directly discharged into a body of water?

(2) Be pretreated and then discharged into a body of water?

(3) Be sent to a Publically Owned Treatment Works (POTW)?

(4) Be pretreated, sent to a POTW, and then discharged?

12. In addition to the aqueous cleaning waste, what additional trace metals or elements are discharged by processes using your aqueous cleaners. State the type of process and the trace metals being discharged.

13. If your customers pre-treat or dispose of waste from these aqueous solutions how much does it cost per year? Please provide EPA with a general cost breakdown, (e.g. transportation, treatment method, energy etc.)

14. In addition to the amounts of cleaner being disposed of, what specific trace metals or elements do you release into waterways?

15. Are you following any specific EPA guidelines for effluent discharges?

16. Do you currently have an EPA permit to discharge or pretreat?

17. If there is anything else you would like EPA to know about your products that may be useful in ascertaining whether there are any human health or environmental impacts associated with these ingredients please send that as well.

Letter to Manufacturers, Processors, or Importers, of CFC's, Halons, and CFC and Halon Substitutes

^F1^

Dear ^F2^: The U.S. Environmental Protection Agency (EPA) is developing additional background information on CFCs and halons, and chemicals that are currently being tested as substitutes for chlorofluorocarbons (CFCs) for use in possible further regulation of these chemicals. The information requested is

being collected under section 157(b) of the Clean Air Act (CAA). That section authorizes EPA to regulate, as needed, to protect stratospheric ozone, taking into account the feasibility and cost of such regulation. Fully halogenated CFCs and halons have been found to endanger stratospheric ozone, and EPA has promulgated limits on the future production and consumption of these chemicals. (See 53 FR 30566 notice).

EPA needs production, prices and health and safety data on fully-halogenated CFCs and halons and on the substitutes for CFCs. The substitutes for which EPA is currently requesting data are as follows:

Chemical	CAS No.
1349(a) 1,1,1,2-tetrafluoroethane	811-97-2
123 2,2-chloro-1,1,1-trifluoroethane	306-83-2
133(a) 2-chloro-1,1,1-trifluoroethane	75-88-7
132(b) 1,2-dichloro-1,1-difluoroethane	1649-08-7
141(b) 1,1-dichloro-1,1,2,2-tetrafluoroethane	1717-00-6
124 2-chloro-1,1,1,2-tetrafluoroethane	354-25-6
125 Pentafluoroethane	354-33-6

The fully-halogenated CFCs and halons on which EPA is collecting data are as follows: CFC-11, CFC-12, CFC-113, CFC-114, CFC-115, and halons 1211, 1301, and 2402.

The Agency requests this information under section 114 of the Clean Air Act, which gives EPA authority to secure information, even confidential business information, needed to carry out the provisions of the Act, including section 157(b). You may assert a claim of business confidentiality for any of the information which you submit by clearly marking that information as "confidential". Such information will be treated in accordance with the EPA's procedures for handling information claimed as confidential under 40 CFR Part 2, Subpart B, and will only be disclosed if EPA determines that the information is not entitled to confidential treatment. Procedures to be used for making confidentiality determinations, substantive criteria to be used in such determinations, and special rules governing information obtained under section 114 are set forth in 40 CFR Part 2. You must assert any claim of confidentiality at the time you submit this information. If no claim of confidentiality accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to you (40 CFR 2.203).

EPA intends to utilize the services of ICF Incorporated, under contract number 68-02-460, to provide technical

assistance and support for EPA's evaluation of the data requested here.

This contractor will be designated as the authorized representative of the Agency and will be provided the information submitted in response to this request, including any information claimed to be confidential. Disclosure of this information to the contractor is necessary for the performance of this contract. As the authorized representative, this contractor will be subject to the provisions of 40 CFR 2.301 (h). You may include in your submission any comments concerning such disclosure of confidential business information to ICF Incorporated. No disclosure of confidential information will be made sooner than 10 days after your receipt of this notice.

I would appreciate your providing a response to this letter no later than July 15, 1989. If you have specific questions on the information that is required under this request please call Karla Perri, Senior Policy Analyst, Division of Global Change, at (202) 475-7496.

I have attached an enclosure with an explanation and list of the specific information that EPA is requesting from you.

Sincerely,

Eileen B. Claussen,
Director, Office of Atmospheric and Indoor Air Programs.

Enclosure

cc: Office of General Counsel

Enclosure

As a party to the Montreal Protocol on Substances that Deplete the Ozone Layer, the U.S. recognizes that world-wide emissions of certain substances can significantly deplete and otherwise modify the ozone layer in a manner that is likely to result in adverse effects on human health and the environment. EPA is determined to protect the ozone layer by participating in the equitable control of total global emissions of substances that deplete the ozone layer.

In previous notices published in the Federal Register, the Agency issued a final rule implementing the Montreal Protocol on Substances that Deplete the Ozone Layer (Montreal Protocol; 53 FR 30566, August 12, 1988), and an Advance Notice of Proposed Rulemaking (ANPRM) on possible further efforts to protect stratospheric ozone (53 FR 30604, August 12, 1988). Currently, the Montreal Protocol and the EPA regulation require a 50 percent phased-in reduction in the production and consumption of specified fully-halogenated CFCs by 1988, and a freeze at 1986 levels of specified halons beginning in 1992. On March 3, 1989,

however, President Bush announced that the United States would support a 100% phase-out of all fully-halogenated CFCs and halons by the year 2000, providing safe substitutes are available. This announcement makes imperative the need to find a replacement for all of the fully-halogenated CFCs and halons sooner than these rules indicate.

EPA wants to evaluate the human health or environmental risks that these alternative chemicals may present. In addition, the Agency is requesting data on prices and production for the CFCs and halons that are scheduled to be phased out. Please fill in the attached form, and answer the additional questions listed on the attachment.

EPA is under extremely short deadlines in trying to address these human health and environmental concerns. The Agency appreciates that you have other priorities. Nevertheless, the EPA asks that you comply with the deadline of July 15, 1989, as requested in this letter.

Please return this information to: Karla Perri, Division of Global Change, Office of Air and Radiation, U.S. Environmental Protection Agency, 401 M Street SW., AIR-445, Washington, DC 20460.

Specific Information Requested

Please completely fill in the attached form and answer the questions listed below. Please number your responses so that they correspond with each of the questions listed below.

1. Which chemical do you manufacture of the CFCs, halons, and substitutes listed in the attached letter; what is the product formulation of each of these chemicals (i.e., list the percent composition of all chemicals present in the product). In addition, please include MSDSs and product specification sheets for each.

2. What are the (anticipated and actual) primary, secondary, and other uses of this chemical?

3. Please provide actual production figures for each of these chemicals that you manufactured in 1986, 1987, 1988 and 1989. Please present this data by total quantity produced for each year plus total revenues for each chemical.

4. If you produce any or all of the CFCs and halons listed, please list projected production and revenue figures for 1990-1998.

5. Please provide copies and lists of any and all unpublished health and safety studies that are completed or ongoing, initiated or planned, as defined at 40 CFR Part 718 on the substances listed, or on any other substance that could be used as alternatives to CFC-11,

CFC-12, CFC-113, CFC-114, and CFC-115.

6. Please provide the preliminary assessment information as requested above and set forth at 40 CFR 716.28 for each of these products. Attached is the form on which you should put that information. Please complete a separate form for each chemical.

7. If there is anything else you would like EPA to know about your products that may be useful in ascertaining whether there are any human health or environmental impacts associated with these ingredients, please send that as well.

[FR Doc. 89-13725 Filed 6-8-89; 8:45 am]

BILLING CODE 5560-50-M

[FRL-3600-2]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden; where appropriate, it includes the actual data collection instrument.

FOR FURTHER INFORMATION CONTACT: Sandy Farmer at EPA, (202) 382-2740.

DATE: Comments must be submitted on or before July 10, 1989.

SUPPLEMENTARY INFORMATION:

Office of Water

Title: State Revolving Fund Report to Congress Questionnaire (EPA ICR # 1390). This is a new collection.

Abstract: States will be asked to voluntarily provide information via questionnaire to EPA on the status of their State Revolving Fund programs. EPA will use this information to prepare a one-time report to Congress as required in section 516(g) of the Clean Water Act.

Burden Statement: The estimated public reporting burden for this collection of information is 26 hours per respondent, per year. This estimate includes the time for reviewing instructions, searching existing data sources, gathering the data needed, and completing and reviewing the questionnaire.

Respondents: States.

Estimated No. of Respondents: 39.

Estimated Total Annual Burden on Respondents: 1,014 hours.

Frequency of Collection: One-time only. To obtain a copy of the ICR package, contact Sandy Farmer on (202) 382-2740.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (PM-223), 401 M Street, SW., Washington, DC 20460

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place, NW., Washington, DC 20503, (Telephone (202) 395-3084).

OMB Responses to Agency PRA Clearance Requests

EPA ICR # 0168.02; NPDES Requirements for Approved State Programs; was approved 5/10/89; OMB # 2040-0057; expires 5/31/92.

EPA ICR # 0226.05; Application for Permit to Discharge Wastewater and Associated Regulations; was approved 5/10/89; OMB # 2040-0086; expires 5/31/92.

EPA ICR # 1460; Pharmaceutical Industry Survey (Phase I: Screener Questionnaire); was approved 5/11/89; OMB # 2040-0124; expires 9/30/90.

EPA ICR # 0029.04; Modification/Variance for Permit to Discharge Wastewater and Associated Regulations; was approved 5/11/89; OMB # 2040-0068; expires 5/31/92.

EPA ICR # 0138; State Concurrence and 301(H) Waiver from Secondary Treatment Requirement for POTW'S; was approved 5/12/89; OMB # 2040-0088; expires 5/31/92.

EPA ICR # 1396.02; National Residential Radon Survey; was approved 5/22/89; OMB # 2060-0173; expires 1/31/91.

Date: June 2, 1989

Paul Lapsley,
Director, Information and Regulatory Systems Division.

[FR Doc. 89-13787 Filed 6-8-89; 8:45 am]

BILLING CODE 5560-50-M

[ER-FRL-3599-9]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 22, 1989 through May 26, 1989 pursuant to the Environmental

Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1989 (54 FR 15006).

Draft EISs

ERP No. D-AFS-L67022-ID, Rating LO, Lightning Peak Open Pit Mine Development, Plan of Operation Approval, Payette National Forest, Krassel Ranger District, Valley County, ID.

SUMMARY: EPA has no objections to the preferred alternative as long as the final EIS commits to the mitigation and monitoring presented in the draft EIS.

ERP No. D-BLM-K67021-CA, Rating EC2, Castle Mountain Open Pit Heap Leach Gold Mine Project, Construction and Operation, Permit Approval, San Bernardino County, CA.

SUMMARY: EPA expressed environmental concerns due to project related ground water withdrawals, inadequate documentation of air quality and water quality impacts and mitigation, lack of detail on reclamation, and incompatibility with the East Mojave National Scenic Area, Wilderness Study Areas, and areas of critical environmental concern. EPA also expressed concerns because the draft EIS did not examine all reasonable alternatives.

ERP No. D-IBR-K28010-CA, Rating EU3, American River Service Area Water Contracting Program, Water Supply Project for Agricultural Municipal and Industrial Uses, Long-Term Contracting, San Joaquin, Sacramento and Placer Counties, CA.

SUMMARY: EPA found that the water contracting proposal could adversely affect already-stressed environmental resources such as Central Valley wetlands, instream beneficial uses, San Francisco Bay-San Joaquin Delta water quality, migratory bird populations, and anadromous fisheries. This document did not adequately portray cumulative environmental impacts, nor identify feasible mitigation alternatives. Accordingly, EPA rated this EIS as Category EU-3 (Environmentally Unsatisfactory-Inadequate) and notified the Bureau of Reclamation that unless the issues raised were adequately resolved, the EPA would consider the proposed project as a potential candidate for referral to the Council on Environmental Quality.

Note.—The above summary should have appeared in 5/26/89 FR Notice.

ERP No. D-IBR-K28011-CA, Rating EU3, Sacramento River Water Service Area Contracting Program, Water Supply Project for Municipal and Industrial, Wildlife Refuge and Agricultural Uses, Long-Term Contracting, Shasta, Tehama, Yolo, Solano, Colusa and Solano Counties, CA.

SUMMARY: EPA found that the water contracting proposal could adversely affect already-stressed environmental resources such as Central Valley wetlands, instream beneficial uses, San Francisco Bay-San Joaquin Delta water quality, migratory bird populations, and anadromous fisheries. This document did not adequately portray cumulative environmental impacts, nor identify feasible mitigation alternatives. Accordingly, EPA rated this EIS as Category EU-3 (Environmentally Unsatisfactory-Inadequate) and notified the Bureau of Reclamation that unless the issues raised were adequately resolved, the EPA would consider the proposed project as a potential candidate for referral to the Council on Environmental Quality.

Note.—The above summary should have appeared in 5/26/89 FR Notice.

ERP No. D-IBR-K28012-CA, Rating EU3, Delta Export Service Area Water Contracting Program, Water Supply Project for Agricultural, Municipal and Industrial and Wildlife Refuge Uses, Long-Term Contracting, Fresno, Kern, Kings, Madera, Merced, San Joaquin, Tulare, Monterey, San Benito, Santa Clara and Santa Cruz Cos., CA.

SUMMARY: EPA found that the water contracting proposal could result in unsatisfactory environmental impacts to the already stressed environment in such areas as Central Valley wetlands, instream beneficial uses, San Francisco Bay-San Joaquin Delta water quality, migratory bird populations, and anadromous fisheries. This document did not adequately portray cumulative environmental impacts, nor identify feasible mitigation alternatives. Accordingly, EPA rated this EIS as Category EU-3 (Environmentally Unsatisfactory-Inadequate) and notified the Bureau of Reclamation that unless the issues raised were adequately resolved, the EPA would consider the proposed project as a potential candidate for referral to the Council on Environmental Quality.

Note.—The above summary should have appeared in 5/26/89 FR Notice.

Final EISs

ERP No. F-FHW-L40183-WA, I-5 Widening, Main Street Interchange to I-205, Funding and 404 Permit, Clark County, WA.

SUMMARY: Review of the final EIS has been completed and the project found to be satisfactory.

Dated: June 8, 1989.

William D. Dickerson,
Deputy Director, Office of Federal Activities.
[FR Doc. 89-13789 Filed 6-8-89; 8:45 am]
BILLING CODE 6560-50-M

[ER-FRL-3599-7]**Environmental Impact Statements; Availability**

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements: Filed May 29, 1989 Through June 2, 1989; Pursuant to 40 CFR 1506.9.

EIS No. 890145, DSUpl, AFS, AK, Alaska Pulp Long-Term Timber Sale/Road Construction, Phase II 1981-86 and 1986-89 Operating Plan Amendments, Meed-Bay, Freshwater-Whitestone, Corner Bay, and Kuia Island Analysis Areas, Tongass National Forest, AK, Due: July 24, 1989, Contact: James Pierce (907) 586-8871.

EIS No. 890146, DSUpl, FHW, NB, Van Dorn Street Connection, NB-2/9th and 10th Street to US-77/West Bypass, Additional Alternatives Analysis, Funding, City of Lincoln, Lancaster County, NB, Due: July 24, 1989, Contact: Phillip Barnes (402) 437-5521.

EIS No. 890147, Druft, FHW, WI, US 18/151 Improvement, CTH-G to CTH-PD, City of Verona, Dane County, WI, Due: July 31, 1989, Contact: James Wenning (608) 264-5968.

EIS No. 890148, Draft, BOP, MD, Cumberland Minimum Security Federal Prison Camp and Correctional Institution Facility, Construction and Operation, Mexico Farms Industrial Park, Cumberland, Allegany County, MD, Due: July 24, 1989, Contact: William Patrick (202) 272-8871. Published FR 6-2-89—Review period reestablished.

Dated: June 8, 1989.

William D. Dickerson,
Deputy Director, Office of Federal Activities.
[FR Doc. 89-13788 Filed 6-8-89; 8:45 am]
BILLING CODE 6560-50-M

[FRL-3599-3]**Availability of U.S. EPA's Decisions Pursuant to Section 304(1) of the Clean Water Act and Opportunity To Petition**

AGENCY: Environmental Protection Agency (U.S. EPA).

ACTION: Notice.

SUMMARY: Notice of availability of decisions with regard to approving and disapproving lists of waters, point sources, and pollutants and individual control strategies for the States of California, Nevada, Hawaii, and for the Territories of Guam, American Samoa and the Northern Mariana Islands, and Notice of Opportunity for Public Comment and Petition.

ADDRESS: The U.S. EPA's decisions with regard to approving and disapproving the list of waters, point sources, and pollutants and the individual control strategies are available for public review and comment upon request at the following location. Comments and petitions are also mailed to the following address. Environmental Protection Agency, Region IX, Water Quality Branch (W-3), 215 Fremont Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Concerning the States and territories listed below.

California: Doug Eberhardt (W-3-2); telephone (415) 974-8327
Nevada and Hawaii: Jacques Landy (W-3-2); (415) 974-8294
Guam, American Samoa and Northern Mariana Islands: Norman L. Lovelace (E-4); (415) 974-7431

at the San Francisco address given above.

SUPPLEMENTARY INFORMATION: Section 304(1) of the Clean Water Act (CWS) as amended by the Water Quality Act of 1987 requires every State to develop lists of impaired waters, identify certain point sources and amounts of pollutants causing toxic impact, and to develop individual control strategies for each point source.

The deadline for submitting lists of waters, point sources, amounts of pollutants and the individual control strategies by each State to the U.S. EPA was February 4, 1989.

The administrative record containing the U.S. EPA's documentation on its decisions of approval and disapproval of submittals from the States of California, Hawaii, and Nevada, and from Guam, American Samoa, and the Northern Mariana Islands, is on file and may be inspected at the U.S. EPA, Region IX office between the hours of 9

a.m. to 4 p.m., Monday through Friday except holidays. To make arrangements to examine the administrative record, contact the persons named above.

Section 304(1) allows any person to submit to the U.S. EPA a petition to add waters to one or more of the three lists of waters, submitted by a State or territories under EPA administration. Petitions are due by October 13, 1989 and should be addressed to Harry Seraydarian, Director, Water Management Division, U.S. EPA, Region IX, 215 Fremont Street, San Francisco, CA 94105.

A copy of the petition should also be sent to the contact person who is named above. The petition should identify and describe the water with sufficient detail so that the U.S. EPA is able to determine the location and boundaries of the water.

The petition must also identify the list or lists for which the petitioner believes the water qualifies, and the petition must explain why the water satisfies the criteria for the list or lists.

Following the close of the comment and petition period, the Director of the Water Management Division will consider all petitions and comments received and will provide a written response to the comments and petitions no later than June 4, 1990. This response to comments and petitions will be made available to the public in the same manner as today's notice.

Dated: June 5, 1989.

Harry Seraydarian,
Director, Water Management Division.
[FR Doc. 89-13724 Filed 6-8-89; 8:45 am]
BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION**Information Collection Requirement Approval by Office of Management and Budget**

May 30, 1989.

The following information collection requirement has been approved by the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0139

Title: Request for Approval of Proposed Amateur Radio Antenna and Notification of Action

Form No.: FCC 854

The approval on form FCC 854 has been extended through 4/30/92. The

May 1986 edition with a previous expiration date of 3/31/89 will remain in use until updated forms are available.

Federal Communications Commission.

William Caton,

Acting Secretary.

[FR Doc. 89-13744 Filed 6-8-89; 8:45 am]

BILLING CODE 6712-01-M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

May 31, 1989.

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501-3520).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: None

Title: Section 68.5, Waivers (Application for Waiver of Hearing Aid Compatibility Requirement)

Action: New collection

Respondents: Businesses (including small businesses)

Frequency of Response: On occasion
Estimated Annual Burden: 10 responses;
30 hours; 3 hours each

Needs and Uses: Telephone

manufacturers seeking a waiver of 47 CFR 68.4 which requires that certain telephones be hearing aid compatible must demonstrate that compliance with the rule is technologically infeasible or too costly. The information is used by Commission staff to determine whether to grant or dismiss the request.

Federal Communications Commission.

William Caton,

Acting Secretary.

[FR Doc. 89-13745 Filed 6-8-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY**[FEMA-828-DR]****Amendment to Notice of a Major Disaster Declaration; Texas**

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-828-DR), dated May 19, 1989, and related determinations.

DATED: June 2, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice

The notice of a major disaster for the State of Texas, dated May 19, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 19, 1989: The counties of Anderson, Grayson, Gregg, Harrison, Henderson, Hill, Jack, Panola, Wise, and Young for Individual Assistance.

Grant C. Peterson,
Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

[FR Doc. 89-13719 Filed 6-8-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION**Ocean Freight Forwarder License Revocations**

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1716) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR 510.

License Number: 2439R

Name: P.A.C. Transport, Inc.

Address: 743 Bradfield, Houston, TX 77060

Date Revoked: April 5, 1989.

Reason: Surrendered license voluntarily

License Number: 3006

Name: Trax Cargo (U.S.A.), Ltd.

Address: 188 Lake Street, Rouses Point, NY 12979

Date Revoked: April 23, 1989.

Reason: Failed to maintain a valid surety bond

License Number: 1882

Name: New England Household International Division of New England Household Moving & Storage, Inc.

Address: 241 West Central Street,

Natick, MA 01760

Date Revoked: April 26, 1989.

Reason: Failed to maintain a valid surety bond

License Number: 2531

Name: George Thielen dba G.T.

International

Address: P.O. Box 38489, Denver, CO 80238

Date Revoked: May 3, 1989.

Reason: Failed to maintain a valid surety bond

License Number: 2066

Name: Charles Augustus Hanson dba Hanson Forwarding Co.

Address: 143 Meridian St., East Boston, MA 02128

Date Revoked: May 4, 1989

Reason: Failed to maintain a valid surety bond

License Number: 2286

Name: Donald W. Mosley dba Mosley Forwarders

Address: 404 N. Sibley, P.O. Box 23817, Metairie, LA 70003

Date Revoked: May 6, 1989.

Reason: Failed to maintain a valid surety bond

License Number: 3193

Name: Transit Cargo Corporation
Address: 8282 NW. 14th Street, Miami, FL 33126

Date Revoked: May 10, 1989

Reason: Failed to maintain a valid surety bond.

Robert G. Drew.

Due to: Bureau of Domestic Regulation

[FR Doc. 89-13723 Filed 6-8-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM**Banknorth Group, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies**

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications

are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 30, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Banknorth Group, Inc.*, Burlington, Vermont; to merge with Banknorth Group, Inc., Burlington, Vermont, and thereby indirectly acquire First Vermont Bank and Trust Company, Brattleboro, Vermont; Franklin-Lamoile Bank, St. Albans, Vermont; and Howard Bancorp., Burlington, Vermont, and thereby indirectly acquire The Howard Bank, National Association, Burlington, Vermont; Woodstock National Bank, Woodstock, Vermont; and Grunite Savings Bank and Trust Company, Barre, Vermont.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Meridian Bancorp, Inc.*, Reading, Pennsylvania; to acquire 24.9 percent of the voting shares of First Commercial Bank of Philadelphia, Philadelphia, Pennsylvania, a *de novo* bank.

C. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Pinnacle Banc Group, Inc.*, Oak Brook, Illinois; to acquire 100 percent of the voting shares of SBH Corp., Silvis, Illinois, and thereby indirectly acquire Bank of Silvis, Silvis, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Teton Bancshares, Inc.*, Fairfield, Montana; to acquire 19.94 percent of the voting shares of Choteau Bancorporation, Inc., Choteau, Montana, and thereby indirectly acquire The

Citizens State Bank of Choteau, Choteau, Montana.

Board of Governors of the Federal Reserve System, June 2, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-13680 Filed 6-8-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 21, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First Financial Corporation Employee Stock Ownership Plan Trust*, Terre Haute, Indiana; to acquire an additional 8.29 percent of the voting shares of First Financial Corporation, Terre Haute, Indiana, for a total of 18.08 percent and thereby indirectly acquire Terre Haute First National Bank, Terre Haute, Indiana; First State Bank, Poland, Indiana; First Citizens State Bank of Newport, Newport, Indiana; and First Farmers State Bank, Sullivan, Indiana.

2. *Roger L. Sigert*, Plymouth, Wisconsin; to acquire an additional 1.59 percent of the voting shares of Eastern Wisconsin Bancshares, Howards Grove, Wisconsin, for a total of 15.26 percent as the result of a stock redemption, and thereby indirectly acquire State Bank of Howards Grove, Howards Grove, Wisconsin.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. *Jim E. Johnson*, Sandra L. Johnson, Michael W. Johnson, and Mitchell W. Johnson, Fairfield, Montana; to each acquire 19.94 percent of the voting shares of Choteau Bancorporation, Inc.,

Choteau, Montana, and thereby indirectly acquire The Citizens State Bank of Choteau, Choteau, Montana.

C. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Richard C. Civerolo*, Gallup, New Mexico; to acquire an additional 2.63 percent for a total of 4.65 percent; D&D Enterprises, Albuquerque, New Mexico, to acquire an additional 2.21 percent for a total of 2.48; Basilio and Oliva DiGregorio, Gallup, New Mexico, to acquire an additional 2.42 percent for a total of 4.44 percent; George A. DuBois, Albuquerque, New Mexico, to acquire 0.34 percent; Dubois, Caffrey, Cooksey, Bischoff and Dickerson, P.A., Profit Sharing Plan, Albuquerque, New Mexico, to acquire an additional 3.67 percent for a total of 7.72 percent; William T. Fietz, Albuquerque, New Mexico, to acquire an additional 6.43 percent for a total of 9.46 percent; GAD Enterprises, Inc., Albuquerque, New Mexico to acquire 0.52 percent; Donald R. Holmes, individually and as trustee, Albuquerque, New Mexico, to acquire an additional 2.42 percent for a total of 4.44 percent; Steven P. Jackson, Albuquerque, New Mexico, to acquire an additional 1.79 percent for a total of 3.35 percent; Dennis Jontz, Albuquerque, New Mexico, to acquire 0.71 percent; Western Bank Employee Stock Ownership Plan, Albuquerque, New Mexico, to acquire an additional 1.90 percent for a total of 11.48 percent; Charles W. Williams, Albuquerque, New Mexico, to acquire an additional 2.42 percent for a total of 5.45 percent; William P. Gralow, Albuquerque, New Mexico, to acquire 0.71 percent; Dave Wintermute, Trustee, Albuquerque, New Mexico, to acquire an additional 3.15 percent for a total of 4.16 percent; Wayne Wolf, Albuquerque, New Mexico, to acquire 1.47 percent; Wayne Wolf, Trustee of Sarah Blue Trust, Albuquerque, New Mexico, to acquire 2.42 percent; ZHMC, Inc., Albuquerque, New Mexico, to acquire 5.06 percent of Western Bancshares of Albuquerque, Inc., Albuquerque, New Mexico, and thereby indirectly acquire Western Bank, Albuquerque, New Mexico.

D. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Joseph S. Bracewell*, Washington, DC; to acquire 3.10 percent of the voting shares of First University Corporation, Houston, Texas, and thereby indirectly acquire West University Bank, N.A., Houston, Texas.

2. *William D. Vaughan*, Paris, Texas; to acquire 10.75 percent; William B.

Vaughan, Paris, Texas, to acquire 3.23 percent; Earl D. Bellamy, Paris, Texas, to acquire 33.94 percent; J.W. Harrison, Paris, Texas, to acquire 3.23 percent; W.W. "Chip" Harper, Paris, Texas, to acquire 3.23 percent; David W. Glass, Paris, Texas, to acquire 10.75 percent; and Curtis Fendley, Paris, Texas, to acquire 5.38 percent of the voting shares of Executive Bancshares, Inc., Paris, Texas, and thereby indirectly acquire First National Bank of Paris, Paris, Texas.

Board of Governors of the Federal Reserve System, June 2, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-13681 Filed 6-8-89; 8:45 am]

BILLING CODE 6210-01-M

First Interstate Bancorp.; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than June 23, 1989.

A. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President), 101 Market Street, San Francisco, California 94105:

1. *First Interstate Bancorp.*, Los Angeles, California; to indirectly acquire 100 percent of the voting shares of Alex Brown Financial Group, Sacramento, California, and thereby indirectly acquire Bank of Alex Brown, Sacramento, California, and Meridian National Bank, Concord, California. In

connection with this application, First Interstate Bank of California, Los Angeles, California, has applied to become a bank holding company by acquiring all of the voting shares of Alex Brown Financial Group, immediately after the acquisition, Alex Brown Financial Group will be dissolved and liquidated into First Interstate Bank of California, all of the shares of Meridian National Bank will be transferred to First Interstate Bancorp., and Bank of Alex Brown will merge into First Interstate Bank of California.

Board of Governors of the Federal Reserve System, June 5, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-13682 Filed 6-8-89; 8:45 am]

BILLING CODE 6210-01-M

Merchants National Corp.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Merchants National Corporation*, Indianapolis, Indiana; to engage *de novo* in issuing travelers checks pursuant to § 225.25(b)(12) of the Board's Regulation Y. This activity will be conducted in the State of Indiana.

Board of Governors of the Federal Reserve System, June 2, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-13683 Filed 6-8-89; 8:45 am]

BILLING CODE 6210-01-M

Security Pacific Corp. Los Angeles, CA; Proposal To Engage in Private Placement of All Types of Securities, Combined Investment Advisory and Securities Brokerage Activities, and Various Other Financial Advisory and Real Estate Related Activities

Security Pacific Corporation, Los Angeles, California ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and 225.23(a) of the Board's Regulation Y (12 CFR 225.23(a)), to acquire Burns Fry Hoare Govett, Inc., New York, New York ("Company"), and for Company to engage in certain securities, financial advisory, and real estate related activities, some of which have not been previously approved by the Board in the manner proposed by Applicant.

Company would conduct the proposed activities on a nationwide basis. Company is currently a subsidiary of Security Pacific National Bank, Los Angeles, California, and would become a direct subsidiary of Security Pacific Corporation.

Applicant proposes that Company would engage in the following activities within the limitations previously approved by the Board:

- (1) Securities brokerage services pursuant to § 225.25(b)(15) of Regulation Y (12 CFR 225.25(b)(15));
- (2) Investment or financial advice as permitted by § 225.25(b)(4) (iii) and (iv) of Regulation Y (12 CFR 225.25(b)(4) (iii) and (iv));
- (3) Underwriting and dealing in securities that state member banks are permitted to underwrite and deal in under the Glass-Steagall Act as

permitted by § 225.25(b)(16) of Regulation Y (12 CFR 225.25(b)(16));

(4) Acting as an intermediary in arranging commercial real estate equity financing, providing portfolio investment advice with respect to real estate and providing real estate appraisals, pursuant to § 225.25 (b)(14), (b)(4), and (b)(13), respectively, of Regulation Y (12 CFR 225.25 (b)(14), (b)(4), and (b)(13));

(5) Providing advice for unaffiliated institutional customers in connection with merger, acquisition, divestiture and financing transactions, and valuations and fairness opinions in connection with merger, acquisition and similar transactions, as approved in *The Royal Bank of Canada*, 74 Federal Reserve Bulletin 334 (1988); and *Signet Banking Corporation*, 73 Federal Reserve Bulletin 59 (1987); and

(6) Providing financial advice to the Canadian federal, provincial and municipal governments, such as with respect to the issuance of their securities in the United States as approved in *The Royal Bank of Canada*, 74 Federal Reserve Bulletin 334 (1988).

Applicant also proposes to engage in the following activities through Company:

(1) Securities brokerage services in combination with investment advisory services to institutional customers and Company's employees ("full-service brokerage"); and

(2) Acting as agent for issuers and holders of securities of all types with respect to the placement of such securities with a limited number of financially sophisticated institutions and individuals:

(a) Making recommendations regarding the terms and timing of an issue or resale of securities;

(b) Assisting in the preparation of memoranda which describe the proposed terms of the issue or resale and the issuer of the securities being placed or sold;

(c) Contacting a limited number of financially sophisticated institutions and individuals to determine their interest in purchasing such securities, and arranging any such purchases;

(d) Gathering prospective investors' comments for the client;

(e) Arranging meetings and negotiations between the client and prospective investors; and

(f) Assisting in negotiations.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a

proper incident thereto." Applicant has applied to conduct its full-service brokerage and private placement activities in accordance with most of the limitations set forth in previous Board Orders approving these activities for a number of bank holding companies. See, e.g., *Bankers Trust New York Company*, 74 Federal Reserve Bulletin 695 (1988) ("*Bankers Trust*"); *Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988); *Bank of Montreal*, 74 Federal Reserve Bulletin 500 (1988); and *Bankers Trust New York Corporation*, 73 Federal Reserve Bulletin 138 (1987). However, Applicant has proposed certain modifications to the limitations set forth in previous Board Orders.

Regarding the full-service brokerage activity, Applicant proposes to expand the definition of institutional customers set forth in *Bankers Trust* to include: credit unions; small business investment companies; Canadian and United States government entities; and corporations, partnerships, proprietorships, organizations and institutional entities with assets exceeding \$1 million that do not regularly invest in the types of securities as to which investment advice is given or that do not regularly engage in transactions in securities.

Applicant's proposed private placement activities differ from prior Board approvals under the Bank Holding Company Act in the following respects. First, Company would privately place all types of securities. Second, Company would provide such services to individuals who meet the standards of an accredited investor within the Securities and Exchange Commission's Regulation D (17 CFR 230.501-230.506). Third, Company's nonbank affiliates (excluding Company's securities underwriting affiliate, Security Pacific Securities Inc., Los Angeles, California) may provide letters of credit or other credit enhancements to support securities placed by Company, subject to the conditions that (i) such letter of credit or other arrangement be extended on an arm's length basis and be subjected to the extender's normal credit review process, and (ii) the extender regularly extends letters of credit or provides other arrangements to persons who do not use Company's private placement services and the extender provides terms no more favorable to persons who use such services than to persons who do not. Fourth, Company's foreign securities affiliates may purchase for their own account securities placed by Company. Fifth, Company and its affiliates may purchase securities privately placed by Company for accounts (except for

accounts managed by trust departments) they advise or for which they have investment discretion, subject to the operational commitments of the full-service brokerage activity.

In addition, officers of Company's bank affiliates may be directors of Company, but such officers would not exercise any responsibility for customer interfaces or credit decisions in any lending activity involving any entity which at the time is a customer of Company for private placement, merger and acquisition or related advisory services, or involving any entity whose securities Company is at the time recommending purchase or sale. Company's officers and employees would not serve as officers or employees of Company's bank affiliates.

Applicant believes that its proposed acquisition of Company will benefit the public by permitting Company to continue as a competitor in the full-service brokerage, financial advisory and private placement markets. Additionally, Applicant believes that the expansion of services offered by Company will increase competition in these areas and provide greater convenience for Company's customers. Applicant submits that the proposal will not result in adverse effects such as unsound banking practices or conflicts of interest.

Applicant also contends that the proposed placement activities would not be barred by section 20 of the Glass-Steagall Act (12 U.S.C. 377), relying on *Securities Industry Ass'n v. Board of Governors*, 807 F.2d 1052 (D.C. Cir. 1986), cert. denied, 107 S. Ct. 3228 (1987). Section 20 of the Glass-Steagall Act prohibits the affiliation of a member bank, such as Security Pacific National Bank, with a firm that is "engaged principally" in the "underwriting, public sale or distribution" securities.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or the Glass-Steagall Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 7, 1989. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of

Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, June 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13688 Filed 6-8-89; 8:45 am]

BILLING CODE 6210-01-M

Society for Savings Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party

commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than June 29, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Society for Savings Bancorp, Inc.*, Hartford, Connecticut; to acquire CADRE, Inc., Avon, Connecticut, and thereby engage in providing emergency back-up data processing facilities to CADRE's shareholders, and the provision of computer electronic data processing, bookkeeping, statistical and other sources to other entities, to the extent that CARDE's processing resources are not used by its shareholders pursuant to § 225.25(b)(7) of the Board's Regulation Y.

B. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *CoreStates Financial Corp.*, Philadelphia, Pennsylvania; to acquire Shawmut Credit Corp., Boston, Massachusetts, and thereby engage in commercial finance lending pursuant to § 225.25(b)(1) of the Board's Regulation Y.

C. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *National City Corporation*, Cleveland, Ohio; to acquire Shawmut Mortgage Corporation, Miamisburg, Ohio, and thereby engage in mortgage banking activities including servicing, originating, and purchasing and selling mortgage loans, purchasing and selling mortgage servicing rights, and making construction loans pursuant to § 225.25(b)(1); and selling credit insurance only on mortgage loans it originates pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 2, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13684 Filed 6-8-89; 8:45 am]

BILLING CODE 6210-01-M

The Summit Bancorporation, et al; Formations of; Acquisitions by; and Mergers of Bank Holding Co.

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and

§ 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (17 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 30, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Summit Bancorporation*, Summit, New Jersey; to acquire 9.9 percent of the voting shares of Central Jersey Bancorp, Freehold Township, New Jersey, and thereby indirectly acquire Central Jersey Bank & Trust, Freehold, New Jersey.

B. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *First Tampa Bancorporation of Florida, Inc.*, Tampa, Florida; to become a bank holding company by acquiring 68 percent of the voting shares of Regency Bank of Tampa, Tampa, Florida.

Board of Governors of the Federal Reserve System, June 5, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13685 Filed 6-8-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Family Support Administration

Forms Submitted to the Office of Management and Budget for Clearance

The Family Support Administration (FSA) will publish on Fridays information collection packages

BEST COPY AVAILABLE

submitted to the Office of Management and Budget (OMB) for clearance, in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). Following is the **Federal Register** submission for FSA:

(For a copy of the proposed rules below, call the FSA Reports Clearance Officer on 202 252-5598.) Request for approval of a new submittal. Criteria for Determining Rebuttable Presumption of Mandatory Support Guidelines. Section 103 of Pub. L. 100-485 requires all States to establish criteria for rebuttable presumption in proceedings for the award of child support. The criteria will be used to determine whether the use of the guidelines is unjust or inappropriate. Respondents will be state agencies involved in child support activities. *Number of Respondents: 54, Frequency of Response: One time only, Average Burden per Response: 20 hours, Estimated Total (one time) Burden: 1,080. OMB Desk Clearance Officer: Justin Kopca.*

Consideration will be given to comments and suggestions received within 60 days of publication. Written comments and recommendations for the proposed information should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3201, 1725 17th Street, NW., Washington, DC 20503.

Date: May 30, 1989.
Naomi B. Marr,
Associate Administrator, Office of
Management and Information Systems, FSA.
[FR Doc. 89-13485 Filed 6-8-89; 8:45 am]
BILLING CODE 4150-04-M

Food and Drug Administration

[Docket No. 89E-0131]

Determination of Regulatory Review Period for Purposes of Patent Extension; CYGRO[®]; Correction

AGENCY: Food and Drug Administration.
ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the notice of its determination of the regulatory review period for purposes of patent extension for CYGRO[®] (maduramicin ammonium) that appeared in the **Federal Register** of May 16, 1989 (54 FR 21128). The notice stated that the testing phase of the regulatory period for animal drugs "begins on the

earlier date when either a major environmental effects test was initiated for the drug or when an exemption under section 512(j) of the Federal Food, Drug, and Cosmetic Act became effective * * *." It should have stated that it "begins on the earlier date when either a major health or environmental effects test was initiated * * *." The words "health or" were omitted from that statement in the notice. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: I. David Wolfson, Office of Health Affairs (HFY-20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1382.

SUPPLEMENTARY INFORMATION: In FR Doc. 89-11652, appearing at page 21128 in the **Federal Register** of Tuesday, May 16, 1989, the following correction is made: On page 21128, in the third column, in the first complete paragraph, in line 5, add the words "health or" to the end of that line.

Dated: June 2, 1989.
Stuart L. Nightingale,
Associate Commissioner for Health Affairs.
[FR Doc. 89-13650 Filed 6-8-89; 8:45 am]
BILLING CODE 4160-01-M

Health Resources and Services Administration

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1989:

Name: National Advisory Committee on Rural Health, Health Care Financing Work Group.

Date and Time: June 20, 1989, 4:00 p.m.
Place: Office of Rural Health Policy, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

The meeting is open to the public.
Purpose: The Work Group is concerned with financing issues related to rural health care delivery.

Agenda: This meeting will be conducted through a telephone conference call. The Work Group members will discuss recommendations presented at the Third Meeting of the National Advisory Committee on Rural Health.

Anyone requiring information regarding the subject Committee should contact Mr. Jeffrey Human, Executive Secretary, National Advisory Committee

on Rural Health, Health Resources and Service Administration, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0835. Persons interested in attending any portion of the discussion should contact Ms. Arlene Granderson, Director of Operations, Office of Rural Health Policy, Health Resources and Service Administration, Room 14-22, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-0835.

Agenda items are subject to change as priorities dictate.

Date: June 8, 1989.
Jackie E. Baum,
Advisory Committee Management Officer,
HRSA.
[FR Doc. 89-13692 Filed 6-8-89; 8:45 am]
BILLING CODE 4160-15-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance.

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on May 19, 1989.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package.)

1. Modified Benefit Formula Questionnaire-Employer-New—The information collected on the form SSA-50 is used by the Social Security Administration to verify or disprove a claimant's allegation that he or she is eligible for a pension based on noncovered employment after 1956. The form also shows whether or not the claimant was eligible for that pension prior to 1985. The respondents are people who are first eligible after 1985 for both Social Security benefits and a pension from noncovered employment.

Number of Respondents: 90,000
Frequency of Response: 1
Average Burden Per Response: 17 minutes
Estimated Annual Burden: 25,000 hours

2. Application For Supplemental Security Income—0960-0444—The information collected on the form SSA-8001 is used by the Social Security

Administration to determine eligibility for Supplemental Security Income payments. The respondents are applicants who need to establish nondisability eligibility, only.

Number of Respondents: 760,000
Frequency of Response: 1
Average Burden Per Response: 10 minutes
Estimated Annual Burden: 126,667 hours

3. Cessation or Continuance of Disability or Blindness and Transmittal—0960-0442—The information collected on the form SSA-833 is used by the Social Security Administration to determine whether individuals receiving title II disability benefits continue to be unable to engage in substantial gainful activity and are still eligible for benefits. The respondents are State disability determination services.

Number of Respondents: 54
Frequency of Response: 5,555
Average Burden Per Response: 30 minutes
Estimated Annual Burden: 150,000 hours

4. Disability Determination and Transmittal—0960-0437—The information collected on form SSA-831 is used by the Social Security Administration (SSA) to document the State agency's determination as to whether an individual applying for disability benefits is entitled to those benefits on the basis of his or her alleged disability. It is also used for program management and evaluation. The respondents are State agency employees who perform disability determination services for SSA.

Number of Respondents: 50
Frequency of Response: 56,000
Average Burden Per Response: 15 minutes
Estimated Annual Burden: 700,000 hours
OMB Desk Officer: Justin Kopca.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: June 2, 1989.
Ron Compston,
Social Security Administration, Reports
Clearance Officer.
[FR Doc. 89-13608 Filed 6-8-89; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-060-09-4212-17]

California: Emergency Area Closure; Riverside County, CA

Emergency Area Closure

The following Order, affecting Lots 18, 19, 20, and 21 of section 23, T. 4s., R. 4 W., San Bernardino Meridian, was issued on May 2, 1989.

I have determined that current use of this area is posing a threat to the health, safety, comfort, and property of the public. This problem is the result of people living in unauthorized sub-standard housing and with the unauthorized disposal of household, commercial, and industrial waste. In order to rectify this situation, I hereby order the above cited public land closed to entry pursuant to 43 CFR 8364.1.

This closure order shall remain in effect for a period of eighteen (18) months commencing on May 2, 1989. Persons exempt from this order shall include law enforcement personnel, fire fighting personnel actively engaged in fighting a fire, and those with specific authorization.

Any person who fails to comply with this CLOSURE ORDER may be subject to a fine not to exceed \$1,000 and/or imprisonment not to exceed 12 months. Russell L. Kaldenberg,

Area Manager.

[FR Doc. 89-13658 Filed 6-8-89; 8:45 am]
BILLING CODE 4310-40-M

[ID-030-4212-13]

Intent To Prepare a Planning Amendment to the Big Desert Management Framework Plan, Idaho

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare a planning amendment to the Big Desert Management Framework Plan.

SUMMARY: The following described public land in Bingham County, Idaho will be examined for possible disposal by exchange under Section 206 of the Federal Land Policy Management Act of 1976, 43 U.S.C. 1716:

Boise Meridian, Idaho
T. 2 N., R. 33 E.,
Sec. 3 All
Sec. 4 Lot 1, 2, 3, & 4 S1/2NE1/4, SE1/4
4NW1/4, NE1/4SW1/4, SE1/4
Sec. 8 S1/2S1/2
Sec. 17 All
Sec. 18 All
Sec. 19 All

Sec. 20 All
Sec. 29 All
Sec. 30 All
Sec. 31 All
Sec. 32 All
T. 1 N., R. 33 E.,
Sec. 5 All
Sec. 6 All
Total Selected Public Lands, 7,549.35 Acres
If these lands are found to be suitable for disposal, the United States will acquire by exchange the following described private land of equal value from the State of Idaho:

Boise Meridian, Idaho

T. 1 N., R. 29 E.,
Sec. 36 All
T. 1 N., R. 30 E.,
Sec. 16 All
T. 5 N., R. 26 E.,
Sec. 36 Lots 1-10, N1/2NE1/4, NE1/4NW1/4,
4, NE1/4SW1/4, N1/4SE1/4
T. 9 N., R. 25 E.,
Sec. 16 All
T. 1 S., R. 30 E.,
Sec. 16, 36 All
T. 2 S., R. 31 E.,
Sec. 36 All
T. 2 S., R. 32 E.,
Sec. 16 All
T. 3 S., R. 28 E.,
Sec. 16 All
T. 3 S., R. 30 E.,
Sec. 16 All
T. 4 S., R. 28 E.,
Sec. 16 All
T. 5 S., R. 28 E.,
Sec. 16 All
Total Offered State Lands 7,690.86 Acres

For a period of 30 days from the date of publication of this Notice, interested parties may submit comments to LeRoy Cook, Big Butte Area Manager, Bureau of Land Management, 940 Lincoln Road, Idaho Falls, Idaho 83401.

May 30, 1989.
Sandra K. Courtney,
Acting District Manager.
[FR Doc. 89-13710 Filed 6-8-89; 8:45 am]
BILLING CODE 4310-06-M

[ID-010-09-4320-02]

Boise District Grazing Advisory Board Meeting

AGENCY: Boise District, Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Boise District Grazing Advisory Board and the Boise District Advisory Council will conduct a joint field tour of the Cascade Resource Area on Thursday, July 6, 1989. The tour will focus on issues and projects that resulted from massive wildfires that struck the area in 1986.

DATES: The tour will begin at 8:00 a.m. on Thursday, July 6, 1989. It will leave from the Boise District Office.

ADDRESSES: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho 83705.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Boise BLM District, 208-334-9661.

J. David Brunner,
District Manager.
[FR Doc. 89-13659 Filed 6-8-89; 8:45 am]
BILLING CODE 4310-00-M

[AZ-040-09-4410-02]

Meeting of the Safford District Advisory Council; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780, that a meeting of the Safford District Advisory Council will be held.

DATE: Wednesday, July 19, 1989 at 10:00 a.m.

ADDRESS: BLM Safford District Office, 425 E. 4th St., Safford, Arizona 85546.

FOR FURTHER INFORMATION: Cindy Alvarez, Planning and Environmental Coordinator, Safford District, 425 E. 4th St., Safford, AZ 85546. Telephone (602) 428-4040.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes the following items:

1. Introduction of new members to the Advisory Council.
2. Nomination and election of Chairperson and Vice Chairperson.
3. Briefing on District Resource Management Plan (RMP).
4. Management update and Business from the floor.

The meeting is open to the public. Interested persons may make oral statements to the Council between 1:00 and 2:00 p.m. or may file written statements for consideration by the Council. Anyone wishing to make an oral statement must contact the BLM Safford District Manager by July 18, 1989. Depending upon the number of people wishing to make oral statements, a per person time limit may be considered.

Summary minutes of the meeting will be maintained in the District Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Date: May 31, 1989.

Ray A. Brady,
District Manager.
[FR Doc. 89-13660 Filed 6-8-89; 8:45 am]
BILLING CODE 4310-32-M

[CA-020-09-4050-90]

Notice of Susanville District Advisory Council Meeting, California

AGENCY: Bureau of Land Management, Interior, Susanville District Advisory Council, Susanville, California.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Susanville District Advisory Council, in accordance with Pub. L. 94-579 (FLPMA), that a meeting of the Susanville District Advisory Council has been scheduled for Thursday, June 29, 1989. The meeting will begin at 10 a.m. at the Susanville District Office, Bureau of Land Management, 705 Hall St., Susanville, CA. 96130, and end at 4 p.m. The agenda will include discussion of the Council's wilderness recommendations, Recreation 2000, an update on the East Lassen Deer Herd, and an update on the Eagle Lake Basin Management Plan. The meeting is open to the public, and interested persons may make oral statements or file a written statement for the Council's consideration.

Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 705 Hall Street, Susanville, CA, 96130, by June 23, 1989. Depending on the number of persons wishing to speak, a time limit may be imposed.

For further information, contact: Jeff Fontana, (916) 257-5381.

C. Rex Cleary,
District Manager.
[FR Doc. 89-13661 Filed 6-8-89; 8:45 am]
BILLING CODE 4310-40-M

[UT 080-09-4830-12]

Utah Vernal District Advisory Council; Tour and Business Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that the Vernal District Advisory Council has scheduled a tour and business meeting for Friday, July 14, 1989.

The purposes of the tour is to provide Council Members an on-the-ground look at District management concerns and practices and to receive the Council's input concerning the same.

Business meeting agenda items are as follows:

- Election of Chairperson and Vice Chairperson.
- The Green River Corridor Cooperative Management.
- Riparian Management in Browns Park.
- Land Exchanges.
- John Jarvie Historical Site Management.
- Big Game Wildlife Studies in Browns Park.
- Prescribed Burns, Actions, and Policy.
- District Recreation Program.
- Items at Large from the Council.

The meeting and associated tour activities are open to the public; however, the public would need to make their own travel and food arrangements.

Any person wishing to address the Advisory Council concerning District issues may do so by contacting District Manager David E. Little prior to Wednesday, July 12, 1989.

Tour activities will commence at 7:30 a.m. on July 14, 1989, at the Vernal District Office located at 170 South 500 East, Vernal, Utah. The Council will visit appropriate sites enroute to Browns Park, and have lunch at the John Jarvie Historical site. They will then drive to Little Hole and float the Green River back to the Jarvie Ranch where they will have supper and a brief business meeting prior to returning to the District office.

In the event of severe, inclement weather, the District Manager may opt to cancel part or all activities and reschedule the event.

For further information, phone R. Ray Tate, Advisory Council Coordinator, at (801) 789-1362.

Date: June 1, 1989.
David E. Little,
Vernal District Manager.
[FR Doc. 89-13662 Filed 6-8-89; 8:45 am]
BILLING CODE 4310-40-M

[CA-940-09-4111-15; CACA 6590]

California; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease CACA 6590 for lands in Kern County, California, was timely filed and was accompanied by all required rentals and royalties accruing from February 1, 1989, the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of \$5.00 per acre

and 16 2/3 percent, respectively. Payment of a \$500.00 administrative fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31(d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease effective February 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above, and the reimbursement for cost of publication of this notice.

Date: June 2, 1989.
Fred O'Ferrall,
Chief, Leasable Minerals Section.
[FR Doc. 89-13663 Filed 6-8-89; 8:45 am]
BILLING CODE 3210-40-M

[NV-930-09-4212-14; N-39873]

Battle Mountain District Shoshone-Eureka Resource Area; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action; noncompetitive sale of Federal lands in Lander County, Nevada.

SUMMARY: The following land has been found suitable for direct sale under Sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at no less than the appraised fair market value. The land will not be offered for sale until at least 60 days after the date of this Notice.

Mount Diablo Meridian
T. 24 N., R. 41 E.,
Sec. 9, NE 1/4 SE 1/4.

A parcel of land containing 40.00 acres, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this Notice, whichever occurs first.

J.P. Bowers has asked to buy this land to augment the farming operation he and his brothers own in Antelope Valley, Nevada. The sale is consistent with the Shoshone-Eureka Resource Management Plan. No conflicts with State or local land use plans have been identified. The subject lands are within the Cottonwood grazing allotment and grazing permits will be sent the required two-year grazing notices prior to sale.

It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the sale

offer will constitute an application for conveyance of those mineral interests. A nonrefundable fee of \$50 will be required from purchaser for purchase of the mineral interests.

The patent, when issued, will be subject to all valid existing rights and will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (28 Stat. 391; U.S.C. 945).

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 89820. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date Signed: June 1, 1989.
Thomas H. Jury,
Acting District Manager.
[FR Doc. 89-13664 Filed 6-8-89; 8:45 am]
BILLING CODE 4310-00-M

[NV-930-09-4212-14; N-48553]

Realty Action; Battle Mountain District, Tonopah Resource Area, Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty action; noncompetitive sale of Federal Land in Nye County, NV.

SUMMARY: In response to a request from Kathleen A. Hill, the following described Federal lands have been identified as suitable for direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 at not less than the appraised fair market value.

Mount Diablo Meridian
T. 2 N., R. 42 E.,
Sec. 1, lots 16, 18 and 19
A parcel of land containing 28.40 acres.

This is an isolated parcel of Federal land within Tonopah. Ms. Hill is the adjacent landowner and holds the mining claims which encumber the parcel. These lands are not required for any Federal purpose. Disposal is consistent with the Bureau's planning for this area and would be in the public interest. No conflicts with State or local planning have been identified.

The lands are within the Ralston Grazing Allotment. The permittee is

hereby notified that this sale may effect his AUMs.

Minimum bid for this parcel will be fair market value which will be determined by an appraisal and which will be made available prior to the sale.

Under no circumstances will these lands be sold sooner than 60 days after publication of this notice.

The patent, when issued, will contain the following reservation to the United States: A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

Segregation

Upon publication of this Notice in the **Federal Register** the above-described Federal lands will be segregated from all forms of appropriation under the public land laws, including locations under the mining laws.

Comments

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 89820. Objections will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date signed: May 19, 1989
James D. Curivan,
District Manager, Battle Mountain District
[FR Doc. 89-13709 Filed 6-8-89; 8:45 am]
BILLING CODE 4310-00-M

[OR-943-09-4214-10; GP9-237; OR-36826]

Conveyance of Public Land; Order Providing for Opening of Lands; Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action informs the public of the conveyance of 76.46 acres of public lands out of Federal ownership. This action will also open 159.14 acres of reconveyed lands to surface entry, mining and mineral leasing.

EFFECTIVE DATE: July 17, 1989.

FOR FURTHER INFORMATION CONTACT: Champ Vaughan, BLM Oregon State Office, P.O. Box 2965, Portland, Oregon, 97208, 503-231-6905.

SUPPLEMENTARY INFORMATION:

Notice is hereby given that in an exchange of lands made pursuant to section 206 of the Act of October 21, 1976, 90 Stat. 2756, 43 U.S.C. 1716, a patent has been issued transferring 76.46 acres of lands in Lane County, Oregon, from Federal to private ownership.

In the exchange, the following described lands have been reconveyed to the United States:

Willamette Meridian

T. 16 S., R. 3 E.,

Sec. 32, Government lots 13 and 14; SAVE AND EXCEPT those tracts conveyed to Lane County, Oregon, for South McKenzie road (Goodpasture Road) by Deed recorded August 25, 1958, Recorder's Reception No. 46588, and for the Goodpasture connector by Deed dated May 19, 1982, Recorder's Reception No. 82-14764, Lane County, Oregon Deed Records.

T. 17 S., R. 3 E.,

Sec. 5, SW¼NE¼ and Government lots 2 and 3; SAVE AND EXCEPT that tract conveyed to Lane County, Oregon, for South McKenzie Road (Goodpasture Road) by Deed recorded August 25, 1958, Recorder's Reception No. 46588, Lane County, Oregon Deed Records.

The areas described aggregate after making the aforesaid exceptions, approximately 159.14 acres in Lane County.

At 6:30 a.m., on July 17, 1989, the above described lands will be open to operation of the public lands laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 8:30 a.m., on July 17, 1989, will be considered as simultaneously filed at that time. Those received thereafter will be considered in the order of filing.

4. At 8:30 a.m., on July 17, 1989, the above described lands will be open to location and entry under the United States mining laws. Appropriation of land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

At 8:30 a.m., on July 17, 1989, the

above described lands will be open to applications and offers under the mineral leasing laws.

Robert E. Mollohan,

Acting Chief, Branch of Lands and Minerals Operations.

Dated: June 1, 1989.

[FR Doc. 89-13665 Filed 6-8-89; 8:45 am]

BILLING CODE 4310-33-M

[U-58162; UT-040-09-4212-14]

Realty Action; Sale of Public Lands in Kane County, UT

AGENCY: Bureau of Land Management, Interior.

ACTION: Under section 203 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716) public land described as SLM, Utah, T. 43 S., R. 4.5 W., section 31, Lots 1 & 2 (containing 79.8 acres), is proposed for direct sale to Charles and Carol Compas at the appraised fair market value of \$15,500.00. The lands described are hereby segregated from all forms of appropriation under the public land laws, including the mining laws, pending disposition of this action.

SUMMARY: The purpose of this sale is to dispose of public land that is difficult and uneconomical to manage by a governmental agency.

DATES: Comments will be accepted on or before July 24, 1989. The sale will be held no less than 60 days from the first date of publication of this notice.

ADDRESS: Detailed information concerning the sale is available at the Kanab Area Office, 318 North First East, Kanab Utah 84741, (801) 844-2672. Comments should also be sent to the same address. The sale will be held in the Kanab Area Office.

SUPPLEMENTARY INFORMATION: The terms and conditions applicable to the sale are:

1. The sale will be for surface estate only. Minerals will remain with the United States Government.
2. There is reserved to the United States a right-of-way for ditches or canals constructed by the Authority of the United States, Act of August 30, 1890, 26 Stat. 391, 43 U.S.C. 945.
3. Title transfer will be subject to valid existing rights, including a 66 foot wide county road right-of-way crossing the southeast corner of the 79.80 acre tract, and a 2.5 acre right-of-way for a water diversion and dike structure.

Any comments received during the comment period will be evaluated and the State Director may vacate or modify this realty action. In the absence of any

objections, this Realty Notice will become the final determination of the Department of the Interior.

Date: May 31, 1989.

Gordon R. Staker,

District Manager.

[FR Doc. 89-13666 Filed 6-8-89; 8:45 am]

BILLING CODE 4310-DQ-M

Fish and Wildlife Service**Moratorium on Importation of Raw and Worked Ivory From all Ivory Producing and Intermediary Nations**

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Effective immediately, the United States establishes a moratorium on importation of raw and worked African elephant ivory from all ivory producing and intermediary nations. This action is being taken under authority of sections 2202(a) and 2202(b) of the African Elephant Conservation Act, which require the Department of the Interior to establish moratoria on ivory trade with all nations which cannot meet its criteria for continuation of trade with the United States. Despite the existence of an Ivory Trade Control System set up by the parties to the Convention on International Trade in Endangered Species (CITES), most ivory is traded outside of the system and illegal and excessive taking of elephants is now taking place at unsustainable levels. Ivory producing nations are currently unable to effectively control taking of elephants, and intermediary nations cannot ensure that all ivory trade originates from legal sources. In October 1989, the 102 parties to CITES will decide whether to end all commercial trade in African elephant ivory, as recently proposed by the United States and a number of African nations. Import of legally taken sport hunted trophies will not be affected by this action.

DATES: The effective date of the moratoria established by this notice is June 9, 1989.

FOR FURTHER INFORMATION CONTACT: Marshall P. Jones, Chief, Office of Management Authority, or Mr. Frank McGilvrey, African Elephant Coordinator, Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22204-3507 (telephone 703/358-2093).

SUPPLEMENTARY INFORMATION: Background

The African elephant (*Loxodonta africana*) is protected by the provisions of an international treaty and two U.S. domestic laws. Internationally, in 1977 the African elephant was listed on Appendix II to the convention on International Trade in Endangered Species (CITES). Under provisions of this listing and subsequent resolutions adopted by the CITES party nations, commercial trade in African elephant ivory is allowed, subject to regulation by a system of export permits and an Ivory Control System administered by the CITES Secretariat. (The Asian elephant, *Elephas maximus*, is listed on CITES Appendix I and as endangered under the U.S. Endangered Species Act, prohibiting all commercial trade in its ivory).

Since 1978 the African elephant has been listed as a threatened species under the endangered Species Act of 1973 (16 U.S.C. 1531-1543). Trade in African elephant ivory is allowed by a special rule promulgated under the authority of section 4(d) of the Act and codified at 50 CFR 17.40(e). The principal conditions applied by the special rule to imports are that the ivory must originate in a CITES party country, must be imported from a CITES party country, and must be accompanied by proper CITES export permits and documentation. On 5 May 1989, the Service issued a rulemaking proposal (54 FR 19416) to revise the special rule to conform to the requirements of the African Elephant Conservation Act, which are discussed later in this notice. On 9 May 1989, the Service found pursuant to section 4(b)(3)(A) of the Act that a petition submitted in February 1989 presents substantial evidence that reclassification of the African elephants to endangered status may be warranted, but that the status of the species was not so precarious so as to require emergency reclassification to endangered status under section 4(b)(7) of the Act. The Service has initiated a status review of the species and must issue a finding by February 1990 as to whether reclassification to endangered status is in fact warranted.

The newest U.S. domestic measure, signed into law on 7 October 1988, is the African Elephant Conservation Act (the Elephant Act), which was Title II of the Endangered Species Act Amendments of 1988 (16 U.S.C. 4201 et seq.). The goal of the Elephant Act is for the United States to help perpetuate healthy populations of the African elephant by supporting conservation programs and ending its

participation in illegal or excessive ivory harvest and trade. In order to implement the latter requirement, the Service has undertaken three major actions. These are:

(1) On 27 December 1988 (53 FR 52242), in compliance with sections 2202 (a) and (b) of the Elephant Act, the Service placed a moratorium on all ivory imports into the United States from nations which are not parties to CITES.

(2) On 24 February 1989 (54 FR 8008), in response to information contained in a petition from the World Wildlife Fund and information obtained from other sources, the Service placed a moratorium on all ivory imports into the United States from the nation of Somalia under provisions of sections 2202 (a) and (b) of the Elephant Act.

(3) On 3 February 1989 (54 FR 5553), in compliance with section 2201(b) of the Elephant Act, the Service announced initiation of a review of the elephant conservation and protection programs of all ivory producing nations (defined by the Act as those African nations within which is located any part of the range of a population of African elephants). The comment period for this review closed on 5 June 1989. The Act contains five criteria on which this review is to be based:

(A) The country is a party to CITES and adheres to the CITES Ivory Trade Control System.

(B) The country's elephant conservation program is based on the best available information, and the country is making expeditious progress in compiling information on the elephant habitat condition and carrying capacity, total population and population trends, and the annual reproduction and mortality of the elephant populations within the country.

(C) The taking of elephants in the country is effectively controlled and monitored.

(D) The country's ivory quota is determined on the basis of information referred to in subparagraph (B) and reflects the amount of ivory which is confiscated or consumed domestically by the country.

(E) The country has not authorized or allowed the export of amounts of raw ivory which exceed its ivory quota under the CITES Ivory Control System.

Simultaneously, in letters to each of the 33 ivory producing nations, the Assistant Secretary for Fish and Wildlife and Parks requested comments on their ability to comply with these criteria and adequately conserve the species. The letters also explained that section 2202(a) of the Act requires the Service to establish a moratorium on all

ivory imports into the United States from any nation immediately upon finding that the country cannot meet all of the criteria of section 2201(b)(1). The letter noted that many of the nations addressed have already prohibited legal ivory exports, and that a moratorium by the Service would serve to bolster their laws in that case. It went on to state that the Service would assume that any nation which did not respond to the notice was requesting the Service to place a moratorium on ivory imports into the United States.

In the same 3 February 1989 Federal Register notice, the Service also requested information from interested parties on ivory trading practices of intermediary nations (defined by the Act as nations which export raw or worked ivory originating in another country), in order to determine whether there are intermediary nations which:

1. Are not parties to CITES;
2. Do not adhere to the CITES Ivory Control System;
3. Import raw ivory from countries which are not ivory producers;
4. Import raw or worked ivory from countries not party to CITES;
5. Import raw or worked ivory originating in an ivory producing country that was taken or exported in violation of the laws of that ivory producing country;
6. Substantially increases its exports of raw or worked ivory from a country that is subject to a moratorium; or
7. Imports raw or worked ivory from a country subject to a moratorium, after the first three months of that moratorium, unless the ivory is imported by a vessel during the first six months of the moratorium and is accompanied by shipping documents showing it was exported before establishment of the moratorium.

A finding that a country fails to meet any one of these criteria requires the Service to impose an immediate moratorium on ivory imports, in accordance with section 2202(b) of the Elephant Act.

At the time of publication of this notice, the Service already had on hand substantial information regarding general difficulties with control of the ivory trade. At a CITES African Elephant Working Group meeting in Nairobi, Kenya, in November 1988, the Service and other representatives in attendance received presentations from experts on the ivory trade and its effects on elephant populations. These presentations indicated that the volume of ivory trade taking place within the CITES system represents only a small fraction of the total ivory trade, and that

this total now greatly exceeds the annual sustainable harvest of ivory. Many ivory movements between African nations also were reportedly not being recorded within the CITES system, making it virtually impossible to track the original source of ivory shipments or the amount of ivory leaving source nations. The February 1989 petition to the Service for reclassification of the elephant to endangered status under the Endangered Species Act likewise presented information indicating that the ivory trade had become excessive and perhaps out of control.

Subsequent to publication of the 3 February 1989 notice, two additional significant events have occurred which have a major effect on the reviews. First, on 12 May 1989, proposals for changes in the listing of species on Appendix I and Appendix II of CITES were due to the CITES Secretariat for consideration at the October, 1989, CITES Conference of the Parties. Due to the failure of international efforts to control illegal trade in African elephant ivory and the resulting deteriorating status of wild populations of the species, at least seven African nations have called for a halt to the commercial ivory trade. Four of these nations, including Tanzania, Kenya, Gambia, and Somalia, have submitted formal proposals that the African elephant be reclassified to CITES Appendix I, which would end all international commercial trade in ivory and other elephant products. On 12 May 1989 the Department of the Interior submitted a similar United States proposal to the CITES Secretariat recommending reclassification of the African elephant to Appendix I and thus an end to the commercial trade.

These Appendix I proposals confirm and expand upon information available regarding failure of international ivory trade control efforts. The proposal from Tanzania, for example, notes the large worldwide volumes of illegal ivory trade and trade with non-CITES nations, as well as the amount of undocumented raw ivory trade between some African nations. It also presents statistics for 1987 (the most recent year for which such statistics are available) showing that the CITES registered legal ivory trade of 154 metric tons was only 20% of the total estimated world trade of 771 tons. Moreover, the Tanzanian proposal cites work by an ivory trade expert and contractor to the CITES Secretariat that most of the "official" ivory in trade is now seized contraband—i.e. ivory from illegal and excessive taking of elephants. It goes on to reference work by a noted population biologist to conclude that "the unauthorized offtake

presently far exceeds the species' maximum sustainable yield, i.e., CITES is in fact facilitating the continuing unsustainable offtake of elephants by allowing for very large amounts of ivory from poached elephants to enter the legal international trade."

Secondly, on 1 June 1989, the Ivory Trade Review (Ivory Group), a consortium of wildlife conservation groups which have been participating in a cooperative study of the ivory trade, released a public statement on its findings. The study was commissioned by the African Elephant and Rhino Specialist Group of the International Union for the Conservation of Nature and Natural Resources, was funded by Wildlife Conservation International (a division of the New York Zoological Society), the World Wildlife Fund, and the Service, and was carried out in collaboration with Trade Records Analysis of Flora and Fauna in Commerce (TRAFFIC), the CITES Secretariat, and the African Wildlife Foundation.

The Ivory Group's statement presents further evidence of the chaotic, uncontrolled conditions of the international ivory trade today. For example, it found that poaching has become so prevalent that "the legal (i.e. government controlled) and the illegal trades have become virtually indistinguishable" and that "exploitation of elephants to supply ivory, as currently practiced throughout most of the continent (of Africa) is quite unsustainable." The Ivory Group also points out that recent proposals for Appendix I status for the species will lead to a rapid rise in the price of ivory and very likely to "unprecedented poaching efforts". Thus its findings that illegal and legal trade can no longer be distinguished even by the most conscientious of governments, and that ivory harvests are unsustainable, will likely become even more critical factors over the next few months. For these reasons, the Group not only concluded that it would support proposals for CITES Appendix I status, but also recommended an immediate, voluntary ban on all ivory trade until the October meeting of the CITES Conference of the Parties, in order to help prevent an increasing slaughter of elephants this summer.

Review of Ivory Producing Nations

The Service has taken into the account both of these new developments in the course of its review of the adequacy of ivory producing nations to meet the criteria of the Act, in conjunction with all other available

information. Specifically, the Service notes that:

(1) Most of the ivory producing nations have such low elephant populations that they have determined that no sustainable harvest is possible and have requested no ivory export quota in 1989. No imports of ivory from these nations into the United States would be permissible.

(2) As noted in the Ivory Group's findings, there is now likely no sustainable harvest of elephants throughout most of Africa, even among nations which have CITES export quotas, due to the rapidly declining populations. Many nations which sincerely desire to effectively manage their elephant populations nevertheless lack the resources to adequately assess population levels and determine scientific harvest rates. Furthermore, any harvest of elephants may now represent a lack of effective control of taking, because of recent, drastic population declines for the species as a whole. The extensive ivory movements among African nations undocumented by the CITES system make it even more difficult to determine the amount of harvest being allowed within some nations.

(3) Among the nations which have ivory export quotas, the Service has also found that most now have significant poaching problems. Even those nations which have made diligent efforts to control poaching are finding that the high price of ivory and increasingly well-organized efforts of the poachers and middlemen, often from outside their national borders, make it impossible for them to control the illegal take with currently available resources. Furthermore, there is a great likelihood that the increasing price of ivory over the next few months, as warned by the Ivory Group, may lead to an even greater gap between available resources and those needed to overcome poaching problems. Under these new conditions the indistinguishability of legal and illegal ivory will become an even more critical problem, and the proportion of illegal ivory in trade will almost certainly increase even more from the 80% estimate of 1987.

Based on these considerations, the Service has determined that no ivory producing nation is able to comply with all of the criteria of section 2201(b)(1) of the Act. Furthermore, the Service has determined that the particular criterion 2201(b)(1)(C), effective control and monitoring of take, cannot be complied with by any ivory producing nation under the current chaotic condition of the ivory trade. Accordingly, as required

by section 2202(a) of the Act, the Service hereby imposes an immediate moratorium on all African elephant ivory imports from all ivory producing nations.

Review of Intermediary Nations

Many of the factors discussed above regarding ivory-producing nations have a significant bearing on the ability of intermediary nations to comply with the criteria of section 2202(b) of the Act. The Service has taken all available information into account in reaching the following findings:

(1) The Service's review of the ivory trading practices of all major intermediary nations which are parties to CITES has indicated that every one of these nations has engaged in import of raw ivory from other intermediary nations, a criterion for establishment of a moratorium under section 2202(b)(3). This is a pervasive practice among all of the major intermediary nations which they have not stopped, despite numerous communications from the Service, and which in many cases they apparently cannot stop if they are continue to deal in ivory at all under current market conditions.

(2) In addition, due to the virtual impossibility of distinguishing legal from illegal ivory (as described in the preceding discussion for ivory producing nations), it is also no longer possible for any intermediary nation to ensure that it is not importing raw or worked ivory from an ivory producer in violation of the laws of the ivory producer. In such cases, it is also impossible for intermediary nations to ensure that they are not importing ivory which originated in nation which is not a party to CITES or for which a moratorium on ivory imports into the United States has already been established. The Service notes that the United States itself, as an intermediary nation, would be subject to some of these same difficulties regarding the origin of ivory imports into this country.

Based on these considerations, the Service has determined that under current chaotic conditions no intermediary nation is able to comply with all of the criteria of section 2202(b) of the Elephant Act. Furthermore, the Service has determined that specific criterion 2202(b)(3), avoidance of import of raw or worked ivory taken in violation of the laws of the ivory producer, cannot be complied with by any intermediary nation. Accordingly, as required by section 2202(b) of the Act, the Service hereby imposes an immediate moratorium on imports of African elephant ivory from all intermediary nations.

Relationship of Elephant Act Moratorium to CITES Actions

The Service is taking this action in order to implement the requirements of the Elephant Act and in hopes of contributing to a reduction, rather than an increase, in demand for African elephant ivory between now and the CITES Conference of the Parties in October, 1989. At that time, the 102 CITES parties will determine what action should be taken with regard to the pending proposals for Appendix I status. Results of this meeting will be taken into account in deciding whether changes are necessary regarding the moratoria now placed on ivory imports under the Elephant Act.

Relationship of Elephant Act Moratoria to the Endangered Species Act

As noted previously in this notice, on 5 May 1989 (54 FR 19416), the Service published a proposed revision to the existing special rule for the African elephant, which was adopted under the authority of the Endangered Species Act and is codified at 50 CFR 17.40(e). As specifically indicated in that proposed rulemaking, however, the proposal does not serve to delay the effectiveness of the Elephant Act. It is rather intended to conform the provisions of the existing special rule to the terms of the new law. Section 2302 of the Elephant Act specifically provides that the authority of the Department of the Interior under the Elephant Act is in addition to, and shall not affect, the authority of the Department under the Endangered Species Act. Consistent with this additional authority, the Service has already imposed moratoria on all countries not party to CITES (53 FR 52241, 27 December 1988) and on the nation of Somalia (54 FR 8008, 24 February 1989). As indicated above, additional moratoria are now being imposed on all imports from ivory producing and intermediary nations, effective immediately. These actions will be taken into account as the Service continues its review of the proposed amendment to the African elephant special rule under the Endangered Species Act.

Sport-Hunted Trophies

Section 2202(e) of the Elephant Act makes a specific exception allowing import of legally taken sport-hunted trophies into the United States, from all countries which have CITES ivory export quotas, even if these countries are otherwise subject to a moratorium on ivory imports. Legal sport hunting is effectively controlled by the nations which permit it and has not been found

to be contributing to the African elephant's decline. On the contrary, it contributes substantial revenues to the wildlife management programs of these nations. On 20 March 1989 (54 FR 11449) the Service published a notice detailing the countries which have duly established quotas and from which legally taken sport-hunted trophies may be imported.

The Service will update this notice as additional quotas are established by the CITES Secretariat and will continue to accept import of legally taken sport-hunted trophies from all nations which have such a quota. The Service will also continue to review sport hunting take of elephants to ensure that it has not become a factor contributing to the species' decline.

The primary author of this rule is Marshall P. Jones, Chief, Office of Management Authority, U.S. Department of Interior, Fish and Wildlife Service.

Dated: June 7, 1989.

Susan Reece Lamson,
Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-13911 Filed 6-8-89; 8:45 am]

BILLING CODE 4310-55-M

Availability of a Draft Recovery Plan for Aplomado Falcon for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service announces the availability for public review of a draft recovery plan for northern aplomado falcon. These falcons historically occurred from Trans-Pecos, Texas, southern New Mexico, and southeastern Arizona southward into Central America. The plan calls for reestablishing aplomado falcon populations in portions of the U.S. historic range. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before July 10, 1989 to be considered by the Service.

ADDRESSES: Written comments and materials regarding the plan should be addressed to Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM, 87103. The plan is available for public inspection, by appointment, during normal business hours at the Regional Office of U.S. Fish and Wildlife Service, 500 Gold Avenue

SW., Room 4000, Albuquerque, NM (505/766-3972 or FTS 474-3972); at the headquarters of Laguna Atascosa National Wildlife Refuge located 18 miles off Highway 106 east of Buena Vista road, northeast of Harlingen, Texas (512/748-3607); and the Ecological Services Field Office, U.S. Fish and Wildlife Service, 3616 W. Thomas Road, Suite 6, Phoenix, Arizona (602/261-4720 or FTS 261-4720).

FOR FURTHER INFORMATION CONTACT: Dr. James Lewis at the Regional Office of U.S. Fish and Wildlife Service (see ADDRESSES above).

SUPPLEMENTARY INFORMATION:

Restoring endangered or threatened animals and plants to the point where they are again secure, self-sustaining members of their ecosystems is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions considered necessary for conservation of the species, criteria for recognizing the recovery levels for downlisting or delisting the species, and initial estimates of times and costs to implement the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan.

This plan discusses the northern aplomado falcon (*Falco femoralis septentrionalis*), an endangered species that, by the late 1950's, had disappeared from its historic range in the United States. These falcons inhabited desert grasslands and coastal prairies of Trans-Pecos, Texas, southern New Mexico, and southeastern Arizona and still occupy areas in Mexico and Central America. The plan discusses the bird's taxonomy, status, distribution, natural history, causes of population decline, research needs, and strategies for recovery. Recovery actions will include protection of habitat and hacking programs to reintroduce the birds.

Public Comments Solicited

The Service solicits written comments on the recovery plan. All comments received by the date specified above will be considered before approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: June 1, 1989.

James A. Young,
Acting Regional Director.

[FR Doc. 89-13657 Filed 6-8-89; 8:45 am]

BILLING CODE 4310-55-M

Migratory Bird Regulations Committee Meetings

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The U.S. Fish and Wildlife Service Migratory Bird Regulations Committee will meet to review preliminary information on the status of waterfowl on the breeding grounds and the status of other migratory birds in 1989.

DATE: June 20, 21, and 22, 1989.

ADDRESS: The meetings on June 20 and June 22 will be held in the Board Room of the American Institute of Architects Building, 1735 New York Avenue (at the corner of 18th and E Streets, NW.), Washington, DC. The meeting on June 21 will be held in Conference Room #2 of the American Institute of Architects Building.

FOR FURTHER INFORMATION CONTACT: Byron K. Williams, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Department of the Interior, Washington, DC 20240, telephone (703) 358-1714.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service Migratory Bird Regulations Committee, including Flyway Council Consultants to the Committee, will meet in Washington, DC on June 20 at 8:30 a.m. and on June 22 at about 2 p.m. in the Board Room of the American Institute of Architects Building, and on June 21 at 8:30 a.m. in Conference Room #2 of the American Institute Architects Building.

The meeting on June 20 is to receive and consider staff reports on the 1989 status of migratory birds and to discuss and develop recommendations for 1989-90 early season hunting regulations to be presented at the public hearing to be held in Washington, DC on June 22 at 9 a.m. The reports will include preliminary

waterfowl breeding population estimates, pond indexes, and other information on habitat conditions on the breeding grounds. The status of other migratory birds will be reviewed as is usual at the early season regulations meeting. The primary purpose of opening the meeting to the Consultants and others is to provide all interested parties with preliminary information about the impact of continuing drought conditions on prairie and parklands breeding habitats. Additional information and a more complete assessment of 1989 conditions will be presented to the Committee at the regularly scheduled waterfowl status meeting to be held in Denver, Colorado on July 25, 1989.

The June 21 meeting is to assure that the Service's regulations proposals presented at the public hearing reflect the Director's position with the benefit of full consultation on the issues. The June 22 meeting of the Service Regulations Committee is to review the public comments presented at the hearing and to determine on the basis of those comments whether any modifications need to be recommended to the Director in regard to the regulations recommendations presented at the hearing.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee that are attended by persons outside the Department, this meeting will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Dated: May 30, 1989.

Maryanne Bach,
Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-13694 Filed 6-8-89; 8:45 am]

BILLING CODE 4310-55-M

Annual Waterfowl Status Meeting and Meetings of the U.S. Fish and Wildlife Service Migratory Bird Regulations Committee

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: The U.S. Fish and Wildlife Service, Office of Migratory Bird Management, will conduct an open meeting on July 25 to review the status of waterfowl populations and the 1989 fall flight forecast for ducks. The Service Regulations Committee will meet August 1 and 2 to develop 1989-90 waterfowl hunting regulations recommendations

for presentation at the August 3 public hearing to be held in Washington, DC, and will meet immediately after the public hearing to review the public comments presented at the hearing and develop proposed 1989-90 waterfowl hunting regulations frameworks.

DATES: Waterfowl Status Meeting, July 25, 1989; Service Regulations Committee Meetings, August 1, 2, and 3, 1989.

ADDRESSES: The Waterfowl Status Meeting will be held at the Denver Sheraton-Airport Hotel, 3535 Quebec Street, in Denver, Colorado. The Service Regulations Committee Meetings on August 1, 2, and 3, 1989, will be held in the Board Room, American Institute of Architects, 1735 New York Avenue (corner of 18th & E Streets, NW.), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Byron K. Williams, Acting Chief, Office of Migratory Bird Management, U.S. Fish and Wildlife Service, Room 834—Arlington Square, Department of the Interior, Washington, DC 20240, telephone (703) 358-1714.

SUPPLEMENTARY INFORMATION: On July 25 at 8:30 a.m. at the Denver Sheraton-Airport Hotel in Denver, Colorado, the U.S. Fish and Wildlife Service, Office of Migratory Bird Management will review for State and Federal officials and any other interested parties or individuals results of the various field investigations and data analyses that are used annually to determine the status of waterfowl populations and the fall flight forecast for ducks. The information presented will have a bearing on regulations and the regulatory proposals; however, the meeting is not a regulations meeting. Public comment will be limited to that which supplements the status information presented.

The U.S. Fish and Wildlife Service, Migratory Bird Regulations Committee, including Flyway Council Consultants to the Committee, will meet in Washington, DC on August 1 and 2 at 8:30 a.m. and August 3 at about 2 p.m. in the Board Room, American Institute of Architects, 1735 New York Avenue (corner of 18th & E Streets, NW.). The meeting on August 1 is to review discussions that occurred at the flyway council meetings and to discuss and develop recommendations for 1989-90 waterfowl hunting regulations to be presented at the public hearing to be held in Washington, DC on August 3 at 9 a.m. The meeting on August 2 is to assure that the Service's regulations proposals presented at the public hearing reflect the Director's position with the benefit of full consultation on the issues. The August 3 meeting of the Service Regulations

Committee is to review the public comments presented at the hearing and to determine on the basis of those comments whether any modifications need to be recommended to the Director in regard to the regulations recommendations presented at the hearing.

In accordance with Departmental policy regarding meetings of the Service Regulations Committee that are attended by persons outside the Department, the meetings of August 1 and 3 will be open to public observation. Members of the public may submit to the Director written comments on the matters discussed.

Dated: May 12, 1989.

Susan R. Lamson,
Deputy Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-13695 Filed 6-8-89; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Yosemite National Park, CA; Development Concept Plan for South Entrance and Mariposa Grove; Notice of Intent To Prepare an Environmental Impact Statement

SUMMARY: In accordance with section 102(2)(C) of the National Environmental Policy Act of 1969, the National Park Service, Yosemite National Park is preparing an Environmental Impact Statement to assess the potential impacts of the proposed Development Concept Plan (DCP) for the South Entrance and Mariposa Grove areas of the park. The DCP proposal will provide for (1) relocation of the South Entrance Station on Highway 41 and enlargement of the parking lot; (2) relocation of the Mariposa Grove access road and staging area out of the Lower Mariposa Grove; (3) improvements in the utilities system including underground electrical service to the new area; and (4) restoration of the Lower Mariposa Grove after the relocation is completed. The proposed location of the new staging area visitor parking would require the use of a small portion of legislated wilderness but the relocation creates the opportunity to add to wilderness from the area vacated. Accordingly, wilderness boundary adjustments would be required and the provisions of 16 U.S.C. 1132(e) would be followed for such action. Alternatives to be assessed include no action and other locations for the Mariposa Grove access road and staging area.

The DCP proposals are in accord with the intent of the Yosemite General Management Plan (GMP) for the area.

However, further research of the natural resource protection and visitor needs of the area since adoption of the GMP in 1980 has resulted in alterations in location and nature of the proposed improvements from those shown in the GMP. The draft DCP and environmental statement will address the reasons for those changes.

Persons wishing to comment or having questions on the proposed DCP for the South Entrance and Mariposa Grove area should address any comments or questions to: Superintendent, Yosemite National Park, P.O. 577, Yosemite, CA 95389. Comments directed to scoping of the DCP and the environmental statement should be received no later than 60 days from the date of publication of this notice.

The responsible official is Stanley Albright, Regional Director, Western Region, National Park Service. The draft environmental statement is expected to be released for public review in early 1990, and the final environmental statement and Record of Decision expected to be completed approximately six months after that time.

Lewis Albert,

Regional Director, Western Region.

Dated: June 1, 1989.

[FR Doc. 89-13741 Filed 6-8-89; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development; Meeting

Pursuant to the provisions of the Federal Advisory Committee Act notice is hereby given of the Ninety-Fourth Meeting of the Board for International Food and Agricultural Development (BIFAD) on June 15 and June 16, 1989.

The purposes of the Meeting are: (a) Budget Panel Report, (b) Modification of the Guidelines for CRSP Projects, (c) Institutional Sustainability Project Proposal, (d) Agricultural Study Task Forces, (e) Report of Joint Panel on Sustainable Agriculture, (f) Special Program on African Agricultural Research, (g) Pond Dynamics CRSP Report, and (h) Fisheries and Stock Assessment CRSP Report.

Both the June 15 and June 16, 1989, Meeting will be held in the Department of State, Room 1105, 2201 C Street, Washington, DC 20523. Any interested person may attend and may present oral statements in accordance with procedures established by the Board

and to the extent the time available for the meeting permits.

Curtis Jackson, Bureau of Science and Technology, Office of University Relations, Agency for International Development, is designated as A.I.D. Advisory Committee Representative at this Meeting. It is suggested that those desiring further information write to Dr. Jackson, in care of the Agency for International Development, Rm. 309, SA-18, Washington, DC 20523, or telephone him on (703) 235-8929.

Dated: May 31, 1989.

Lynn Pesson,
Executive Director, BIFAD.
[FR Doc. 89-13647 Filed 6-8-89; 8:45 am]
BILLING CODE 6110-01-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731-TA-435
(Preliminary)]

Certain Steel Pails From Mexico; Import Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution of a preliminary antidumping investigation and scheduling of a conference to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731-TA-435 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Mexico of steel pails,¹ provided for in subheadings 7310.21.00 and 7310.29.00 of the Harmonized Tariff Schedule of the United States (previously reported under item 640.30 of the Tariff Schedules of the United States), that are alleged to be sold in the United States at less than fair value. As provided in section 733(a), the Commission must complete a preliminary antidumping investigation in 45 days, or in this case by July 17, 1989.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and

Procedure, part 207, subparts A and B (19 CFR part 207), and part 201, subparts A through E (19 CFR part 201).

EFFECTIVE DATE: May 31, 1989.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202-252-1177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background. This investigation is being instituted in response to a petition filed on May 31, 1989, by the Pail Producers' Committee of the Steel Shipping Container Institute, Union, NJ, the individual members of that committee, and two non-member steel pail producers.

Participation in the investigation. Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary of the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than seven (7) days after publication of this notice in the *Federal Register*. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list. Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with §§ 201.16(c) and 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited disclosure of business proprietary information under a protective order. Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)), the Secretary will make available business proprietary information gathered in this preliminary investigation to authorized applicants under a protective order, provided that

the application be made not later than (7) days after publication of this notice in the *Federal Register*. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been served on all the parties that are authorized to receive such information under a protective order.

Conference. The Director of Operations of the Commission has scheduled a conference in connection with this investigation for 9:30 a.m. on June 20, 1989, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jonathan Seiger (202-252-1177) not later than June 16, 1989 to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each collectively be allocated one hour within which to make an oral presentation at the conference.

Written submissions. Any person may submit to the Commission on or before June 22, 1989, a written brief containing information and arguments pertinent to the subject matter of the investigation, as provided in § 207.15 of the Commission's rules (19 CFR 207.15). A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of §§ 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a)) may comment on such information in their written brief, and may also file additional written comments on such information no later than June 26, 1989. Such additional comments must be

limited to comments on business proprietary information received on or after the written briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules (19 CFR 207.12).

By order of the Commission.

Kenneth R. Mason,
Secretary.

Issued: June 5, 1989.

[FR Doc. 89-13688 Filed 6-8-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Docket No. MC-C-30175]

St. Johnsbury Trucking Co., Inc.; Petition for Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Notice of institution of proceeding.

SUMMARY: The Commission is granting the request by St. Johnsbury Trucking Company, Inc. (St. Johnsbury), a motor carrier, for institution of a declaratory order proceeding. St. Johnsbury asks the Commission to determine that the transportation of property between points in Pennsylvania, through its Pennsauken, NJ terminal, is in interstate commerce.

DATES: Persons interested in participating in this proceeding should so advise the Commission in writing by June 26, 1989. A list of interested parties will then be compiled and served. St. Johnsbury will have 10 days after the service date of that list to serve each party on the list and the Commission with a copy of its petition and any additional comments. Other parties will then have 35 days after the service date of the service list to submit their comments to the Commission and to St. Johnsbury's representative. St. Johnsbury will have 50 days after the service date of the service list to reply.

ADDRESSES: Send written notice of intent to participate, and an original and, if possible, 10 copies of comments, referring to No. MC-C-30157, to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. Send one copy of comments to St. Johnsbury's representative: Karl Morell, 1025 Thomas Jefferson Street NW, Suite 700, East Lobby, Washington, DC 20007.

FOR FURTHER INFORMATION CONTACT:

Sam S. Taylor, (202) 275-7181
or
Richard B. Felder, (202) 275-7691
[TDD for hearing impaired: (202) 275-7691.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. [Assistance for the hearing impaired is available through TDD services: (202) 275-1721.]

Decided: June 5, 1989.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 89-13783 Filed 6-8-89; 8:45 am]

BILLING CODE 7035-01-M

[Ex Parte No. 55, Sub-No. 72]

Composition of the Motor Carrier Board

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: The Commission is changing the composition of the Motor Carrier Board, an employee board established under 49 CFR 1011.6(i). The Board now consists of 3 attorneys designated on a rotating basis from a 12-member pool of attorneys. In the future this Board will consist of the paralegals and supervisory paralegals employed in the Office of Proceedings' Motor Section. Determination of matters within the Board's jurisdiction will be based on the votes of one paralegal and one supervisory paralegal. In the event of a tie vote, the vote of a second supervisory paralegal will be secured to break the tie.

EFFECTIVE DATE: June 9, 1989.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275-7691. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION: Under 49 CFR 1011.6(i), the Commission has delegated to an employee board the less substantive matters involving pre-publication of motor carrier licensing applications, small carrier transfer applications, temporary authority applications related to finance proceedings, applications for certificates of registration by foreign motor carriers and foreign motor private carriers, and applications that have not involved taking testimony at a public hearing or

the submission of evidence by opposing parties in the form of affidavits, relating to: (a) The transfer of property brokers' licenses and changes in control of brokers, and (b) the transfer of Certificates of Registration and rights to operate pending determination of applications for Certificates of Registration. The Board has consisted of 3 members chosen on a rotating basis from a 12-member pool of attorneys approved annually by the Commission (see 49 FR 31070, August 3, 1984).

By this notice, the Commission is exercising its authority under 49 U.S.C. 10304 and 10305 to abolish the 12-attorney pool and rotating 3-member boards, and is replacing them with a permanent board comprised of all of the paralegals and supervisory paralegals employed in the Office of Proceedings' Motor Section. Determination of matters within the Board's jurisdiction will be based on the votes of one paralegal and one supervisory paralegal from the permanent Board. In cases where a paralegal and a supervisory paralegal do not agree, the vote of a second supervisory paralegal will break the tie.

Our decision to change the composition of the employee board acknowledges that the work of the Board is predominantly routine in nature. In the nearly 5 years since the Board was created, the paralegals and supervisory paralegals have assisted the Board in performing its function and have demonstrated their thorough understanding of the matters within the Board's jurisdiction. A more efficient use of personnel will result from this change in the composition of the Board.

Because the members of the Motor Carrier Board rotated approximately every 3 months, the membership was periodically announced in the *ICC Register*. Our decision to replace the 3-attorney rotating board with a permanent board comprised of Motor Section paralegals and supervisory paralegals eliminates the need for future announcements of Board membership.

Since this change in Motor Carrier Board membership affects internal Commission procedures only, it is issued in 49 CFR Part 1011.6(i) final form and public comment is not required. See 5 U.S.C. 553(b)(A).

This section does not affect significantly the quality of the human environment or the conservation of energy resources.

Authority: 5 U.S.C. 553 and 49 U.S.C. 10304-10305.

Decided: May 26, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Vice

¹ For purposes of this investigation, steel pails are defined as cylindrical containers of steel (excluding stainless steel) of 1 to 7 gallons (3.8 to 26.6 liters) in volume (capacity), with a diameter of 11 inches (279 millimeters) or greater and a wall thickness of 29-22 gauge steel (.292-.883 millimeters), presented empty.

Chairman Simmons dissented with a separate expression. Commissioner Lamboley dissented.

Norela R. McGee,

Secretary.

[FR Doc. 89-13784 Filed 6-8-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-14; Sub-No. 6X]

**Northwestern Pacific Railroad, Co.—
Discontinuance Exemption—
Operations in Marin County, CA**

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments and Discontinuances to discontinue service over its 9.95-mile line of railroad between milepost 25.821 at or near Ignacio, CA and milepost 15.71 at or near San Rafael, CA, in Marin County, CA.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the discontinuance shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 9, 1989 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues¹ and formal

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) * must be filed by July 19, 1989. Petitions for reconsideration must be filed by July 29, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: John MacDonald Smith, Gary A. Laakso, Southern Pacific Building, One Market Plaza, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this discontinuance.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 14, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 2, 1989.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Norela R. McGee,

Secretary.

[FR Doc. 89-13635 Filed 6-8-89; 8:45 am]

BILLING CODE 7035-01-M

**JUDICIAL CONFERENCE OF THE
UNITED STATES**

**Judicial Conference Committee on
Rules of Practice and Procedure;
Meeting**

AGENCY: Judicial Conference of the United States.

SUBAGENCY: Committee on Rules of Practice and Procedure.

ACTION: Notice of open meeting.

SUMMARY: There will be a two-day meeting of the Judicial Conference Committee on Rules of Practice and Procedure to consider proposed amendments submitted by the Advisory

* See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 [52 FR 48440-48446].

Committees under the provisions of Chapter 131 of Title 28, United States Code. The meeting will be open to public observation.

DATE: The meeting will be held on July 17 and 18, 1989, beginning at 9:00 a.m. and ending at approximately 5:00 p.m. each day.

ADDRESS: The meeting will be held at the Barat House, Boston College Law School, 885 Centre Street, Boston, Massachusetts.

FOR FURTHER INFORMATION CONTACT: James E. Macklin, Jr., Secretary, Committee on Rules of Practice and Procedure, Administrative Office of the United States Courts, Washington, DC 20544. Telephone: (202) 633-6021.

Dated: June 2, 1989.

James E. Macklin, Jr.,
Secretary, Committee on Rules of Practice
and Procedure.

[FR Doc. 89-13743 Filed 6-8-89; 8:45 am]

BILLING CODE 2210-01-M

DEPARTMENT OF JUSTICE

**Comprehensive Environmental
Response, Compensation and Liability
Act; Correction**

AGENCY: Department of Justice.

ACTION: Partial consent decree; correction.

SUMMARY: The Department of Justice (DOJ) is correcting an error in the Notice of Lodging of Consent Decree in *United States et al., v. Aerojet-General Corp., et al.*, which appeared in the *Federal Register* on September 15, 1988. [53 FR 35925]

FOR FURTHER INFORMATION CONTACT: Jerry Schwartz, U.S. Department of Justice, Environmental Enforcement Section, P.O. Box 7611, Washington, DC 20530, (202) 633-4059.

SUPPLEMENTARY INFORMATION: On September 15, 1988, DOJ published in the *Federal Register* a notice of lodging of a proposed partial consent decree ("Decree") in *United States et al., v. Aerojet-General Corp., et al.*, Nos. CIVS-86-0063 and CIVS-86-0064. The next to last sentence in the second paragraph of the notice states that "Aerojet must also pay the State of California \$2.4 million as reimbursement of past costs and \$2.0 million for civil monetary penalties." This sentence should be corrected to read as follows: "Aerojet must also pay the State of California \$2.4 million as reimbursement of past costs and \$2.0 million for civil monetary claims." This correction is necessary to conform the notice of

lodging with the description of the payment set forth in the Decree.

Correction

The next to the last sentence in the second paragraph of the notice in the above-referenced action is amended by deleting the word "penalties" and by adding the word "claims" after the word "monetary" and before the period.

Dated: June 1, 1989.

Donald A. Carr,

Acting Assistant Attorney General.

[FR Doc. 89-13776 Filed 6-9-89; 8:45 am]

BILLING CODE 4410-01-M

**Lodging of Consent Decree; American
Standard, Inc., et al**

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department of Justice, 28 CFR 50.7, notice is hereby given that a complaint styled *United States v. American Standard, Inc., et al.* was filed in the United States District Court for the Western District of Arkansas on May 26, 1989, and, simultaneously, a consent decree was lodged with the Court in settlement of the allegations in the complaint. This consent decree settles the government's claims in the complaint pursuant to sections 104, 106 and 107 of CERCLA, 42 U.S.C. 9604, 9606, 9607, for injunctive relief to abate an imminent and substantial endangerment to the public health, welfare or the environment because of actual or threatened releases of hazardous substances from a facility, and for the recovery of response costs incurred by the United States with respect to a facility located southeast of Fort Smith, Sebastian County, Arkansas, known as the "Industrial Waste Control Site." The complaint alleged, among other things, that the defendants are persons who by contract, agreement or otherwise arranged for disposal of hazardous substances at the industrial waste control site or who arranged for transport of hazardous substances to the site. The complaint further alleged that the United States has incurred and will continue to incur response costs in response to the release or threat of release of hazardous substances.

Under the terms of the proposed consent decree, the defendants agree to fund and implement a remedy at the Industrial Waste Control Site which includes excavation and offsite disposal of buried liquid-filled drums, installation of a slurry wall and french drain system,

stabilization of contaminated soil and debris, construction of a multi-layer cap and long-term monitoring of groundwater in the vicinity of the Site. The consent decree also calls for the defendant to pay the United States the sum of \$1,750,000.00 in reimbursement of government response costs incurred through September 30, 1988, and in settlement of the United States' anticipated future response and oversight costs related to the remedial action to be undertaken at the Site.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States v. American Standard, Inc.*, D.J. Ref. 90-11-2-193.

The proposed current decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Region VI

Contact: Carlos Zequeira, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733, (214) 655-2120.

United States Attorney's Office

Contact: Assistant United States Attorney, U.S. Post Office & Courthouse Building, 6th & Rogers, Fort Smith, Arkansas 72901, (501) 785-2442.

Copies of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. In requesting a copy of the decree, please enclose a check for copying costs in the amount of \$7.10 payable to Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-13713 Filed 6-8-89; 8:45 am]

BILLING CODE 4410-01-M

**Lodging of Consent Decree Pursuant
to the Safe Drinking Water Act**

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 28, 1989 a proposed Consent Decree in *United States v. Armour Fresh Meats Co. and Con Agra, Inc.*, Civil Action No. 86-1433, was lodged with the United States District Court for the District of Idaho. The Complaint sought penalties and injunctive relief against Armour Fresh Meats Co. and its parent corporation, Con Agra, Inc. ("defendants"), under section 209 of the Clean Water Act, 33 U.S.C. 1319, for their recurring violations of the terms and conditions of their National Pollutant Discharge Elimination System ("NPDES") permit.

The proposed Consent Decree imposes a permanent injunction against future violations of the Clean Water Act the terms and conditions of the NPDES permit, and imposes a civil penalty of \$150,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to *United States v. Armour Fresh Meats Co., and Con Agra, Inc.*, D.J. Ref. 90-5-1-2730.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Idaho, Room 342 Federal Building, 550 West Fort Street, Boise, Idaho 83724, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20004. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Donald A. Carr,
Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-13712 Filed 6-8-89; 8:45 am]

BILLING CODE 4410-01-M

**Lodging of Consent Decree; Atlantic
Richfield Co.**

In accordance with section 122 of the Comprehensive Environmental Response, Compensation and Liability Act, as amended ("CERCLA"), 42 U.S.C. 9622, and the policy of the Department

of Justice, 28 CFR 50.7, notice is hereby given that a complaint was filed in *United States v. Atlantic Richfield Company* in the United States District Court for the Northern District of Oklahoma on May 30, 1989 and, simultaneously, a consent decree between the United States, State of Oklahoma and Atlantic Richfield Company was lodged with the court. This consent decree settles the government's claims in the complaint pursuant to sections 106 and 107 of CERCLA, 42 U.S.C. 9606, 9607, and section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 6973, for an injunction to abate an imminent and substantial endangerment to the public health, welfare or the environment because of an actual or threatened release of hazardous substances from a facility and for the recovery of response costs incurred by the United States with respect to the facility located in Sand Springs, Oklahoma, and known as the "Sand Springs Site." The complaint alleged, among other things, that the defendant as an owner/operator of the facility at the time of disposal of hazardous substances at the Site and that the United States has incurred and will continue to incur response costs in response to the release or threat of release of hazardous substances.

Under the terms of the proposed consent decree, the defendant agrees to fund and implement a stabilization/solidification remedy involving the Source Control Operable Unit at the Site. The consent decree does not address remedial action associated with the Groundwater and Soils Operable Unit, nor does it resolve the claims of the United States relative to such work. The consent decree also calls for the defendant to reimburse the United States for \$1,710,872.80 in past government response costs incurred through August 30, 1987, and to reimburse the United States for all of its response and oversight costs related to the remedial action incurred after August 30, 1987.

The Department of Justice will receive comments relating to the proposed consent decree for a period of 30 days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. All comments should refer to *United States v. Atlantic Richfield Company*, D.J. Ref. 90-11-2-275.

The proposed consent decree may be examined at the following offices of the United States Attorney and the Environmental Protection Agency ("EPA"):

EPA Regional VI

Contact: Bruce Jones, Office of Regional Counsel, U.S. Environmental Protection Agency, Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733. (214) 655-2120.

United States Attorney's Office

Contact: Nancy Blevins, Assistant United States Attorney, U.S. Courthouse, 333 West Fourth Street, Tulsa, Oklahoma 74103, (918) 581-7463.

Copies of the proposed partial consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1515, 10th and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy of the decree, please enclose a check for copying costs in the amount of \$7.90 payable to Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-13714 Filed 6-8-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Water Act; Macclenny

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 25, 1989, a proposed consent decree in *United States v. City of Macclenny and the State of Florida*, Civil Action No. 89-454-CIV-J-14, was lodged with the United States District Court for the Middle District of Florida. The Complaint filed by the United States alleged that the City had violated the Clean Water Act by discharging pollutants to navigable waters without a valid permit issued pursuant to the National Pollutant Discharge Elimination System, and by failing to comply with the construction schedule and other requirements of Administrative Order No. 85-290 issued by EPA on August 20, 1985 and amended April 7, 1986. The complaint sought injunctive relief to require the City to comply with the Clean Water Act and civil penalties for past violations. The decree requires the City to achieve compliance with the Clean Water Act by complying with the final effluent

limits of its NPDES permit by no later than September 1, 1989. In addition, the City must comply with interim effluent limitations and must perform monitoring and reporting activities. Defendant must also pay a civil penalty for past violations of \$13,900.00.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044-7611, and should refer to *United States v. City of Macclenny and State of Florida*, D.J. Ref. 90-5-2-1-3206.

The proposed consent decree may be examined at the office of the United States Attorney, Middle District of Florida, 409 Post Office Building, 311 West Monroe Street, Jacksonville, Florida, and at the Region IV office of the Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30305. Copies of the proposed consent decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed consent decree may be obtained in person from the above Department of Justice address or by mail from the Chief, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044-7611. When requesting a copy, please refer to *United States v. City of Macclenny and State of Florida*, D.J. Ref. 90-5-2-1-3206, and enclose a check in the amount of \$1.90 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-13777 Filed 6-8-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act; McFarland Wrecking Corp., et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, notice is hereby given that on May 16, 1989, a Consent Decree in *United States v. McFarland Wrecking Corporation and Charles and Emma Frye Free Public Art Museum*, Civil Action No. 88-168R, was lodged with the United States District Court for the Western District of

Washington. The complaint filed by the United States alleged violations of the Clean Air Act, 42 U.S.C. 7401 *et seq.*, and the National Emissions Standards for Hazardous Pollutants ("NESHAP") for asbestos, 40 CFR Part 61, Subpart M. The Consent Decree requires the defendants to pay a civil penalty of \$15,000 and enjoins the defendants from future violations of the Clean Air Act and the asbestos NESHAP.

The Department of Justice will receive for thirty (30) days from the date of publication of this notice, written comments relating to the Consent Decree. Comments should be addressed to the Assistant Attorney General, Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States v. McFarland Wrecking Corporation and Charles and Emma Frye Free Public Art Museum*, D.J. Ref. No. 90-5-2-1-1189.

The Consent Decree may be examined at the Office of the United States Attorney, 3600 Seafirst 5th Avenue Plaza, Seattle, Washington 98101; at the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101; and the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, 10th Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree can be obtained in person or by mail from the Department of Justice.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-13711 Filed 6-8-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to Clean Air Act; Solar Turbines

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 16, 1989, a proposed consent decree in *United States v. Solar Turbines, Incorporated* Civil Action No. 89-0739-E(CM) was lodged with the United States District Court for the Southern District of California. The Complaint filed by the United States alleged that defendant Solar Turbines, Incorporated violated the emissions limitations for volatile organic compounds ("VOCs") contained in the federally-approved California State Implementation Plan ("SIP"), which is federally enforceable under Section 113 of the Clean Air Act ("CAA"), 42 U.S.C. 7413. The complaint sought injunctive

relief and the imposition of a civil penalty for defendant's past violations of these emission limitations. The consent decree, which would settle the case, will require defendant to maintain its previously achieved compliance with the VOC limitations and to pay a civil penalty in the amount of \$49,787, for past violations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Chief Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044, and should refer to *United States v. Solar Turbines, Incorporated*, D.J. Ref. 90-5-2-1-1183.

A copy of the proposed consent decree may be examined at the office of the United States Attorney, Southern District of California, 5-N-19 U.S. Courthouse, 940 Front Street, San Diego 92189, at the Region IX office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105; and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed consent decree may be obtained in person from the Department of Justice at the above address or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. When requesting a copy, please refer to *United States v. Solar Turbines, Incorporated*, D.J. Ref. 90-5-2-1-1183, and enclose a check in the amount of \$1.20 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-13778 Filed 6-8-89; 8:45]

BILLING CODE 4410-01-M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on May 31, 1989, a proposed consent decree in *United States of America v. Union Oil Company of California, d/b/a Unocal*, Civ. No. 89-962, was lodged with the United States District Court for the District of Colorado.

The proposed consent decree resolves a judicial enforcement action brought by the United States against Union Oil Company of California ("Unocal") for violations of the Clean Air Act. The complaint filed by the United States alleges that defendant violated the New Source Performance Standards ("NSPS") regulations at its facility in Parachute, Colorado.

The proposed consent decree enjoins defendant from violating the NSPS regulations in the future. The proposed consent decree also requires defendant to pay a civil penalty of \$25,000 to the United States Treasury.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice, Box 7611 Ben Franklin Station, Washington, DC 20044, and should refer to *United States of America v. Union Oil Company of California, d/b/a Unocal*, DOJ Ref. 90-5-2-1-1298.

The proposed consent decree may be examined at the office of the United States Attorney, District of Colorado, 1200 Federal Office Building, 1961 Stout Street, Denver, Colorado, 80294, and at the Region VIII office of the Environmental Protection Agency, Office of Regional Counsel, Attention: Thomas A. Speicher, 999 18th Street—Suite 500, Denver, Colorado, 80202. A copy of the proposed consent decree may also be examined at the Environmental Enforcement Section, Land and Natural Resources Division, U.S. Department of Justice, Room 1521, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed consent decree may be obtained in person, or by mail from the Environmental Enforcement Section, Land & Natural Resources Division, U.S. Department of Justice, Box 7611 Ben Franklin Station, Washington, DC 20044.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division, U.S. Department of Justice.

[FR Doc. 89-13779 Filed 6-8-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree Under Comprehensive Environmental Response, Compensation and Liability Act

In accordance with Departmental policy, notice is hereby given that on May 31, 1989, a proposed Consent

Decree in *United States v. Wausau Chemical Company, et al.*, Case No. 87-C-919-C, was lodged with the United States District Court for the Western District of Wisconsin. The proposed Consent Decree provides for reimbursement to the United States of \$390,000 in response costs incurred by the United States Environmental Protection Agency under the Comprehensive Environmental Response, Compensation, and Liability Act at the Wausau Groundwater Contamination Site through January 5, 1985.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Wausau Chemical Company, D.J.* reference #90-11-2-286.

The proposed Consent Decree may be examined at the office of the United States Attorney, Western District of Wisconsin, 120 North Henry Street, Madison, Wisconsin 53703, at the Region V office of the United States Environmental Protection Agency, 230 South Dearborn Street, Chicago, Illinois 60604, and at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1515, 10th Street and Pennsylvania Avenue NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of \$2.00 payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General Land and Natural Resources Division.

[FR Doc. 89-13780 Filed 6-8-89; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

[Docket No. 88-17]

Robert's Cape Coral Pharmacy; Grant of Registration

On January 25, 1988, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Robert's Cape Coral Pharmacy (Respondent), proposing to revoke DEA Certificate of Registration,

AR7370694, and to deny any pending applications for renewal of that registration. The statutory basis for the issuance of the Show Cause Order was that the pharmacy's continued registration with DEA would be inconsistent with the public interest as that term is used in 21 U.S.C. 823(f) and 824(a)(4).

Stanley Spiegel, owner of the pharmacy, timely requested a hearing which was held in Miami, Florida on April 15, 1988. The Government called two witnesses, and proffered ten exhibits into evidence. Mr. Spiegel, assisted by counsel, testified on his own behalf but offered no exhibits into evidence. Both parties filed proposed findings of fact and conclusions of law. On December 15, 1988, the Administrative Law Judge recommended that Respondent retain its DEA Certificate of Registration and that any pending applications for renewal be granted.

The Administrator has reviewed the entire file together with the judge's recommendation and makes the following findings: An audit of Respondent conducted by Florida state investigators in September 1983, revealed a shortage of Vicodin, a Schedule III controlled substance. On July 9, 1984, Mr. Spiegel was convicted of unlawfully dispensing a prescription drug in the Lee County Circuit Court for the State of Florida. According to Florida procedure, adjudication of guilt was withheld and Mr. Spiegel was placed on probation for five years. The probation was terminated after two years.

It appears from the record that Mr. Spiegel has successfully completed his probationary period and fulfilled all the conditions placed on him. Likewise there have been no recurring violations by the pharmacy since 1983. The Administrator therefore finds that it would be unduly harsh to revoke Respondent's registration in light of its rehabilitation.

Accordingly, the Administrator of the DEA, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, AR7370694, not be revoked, and that any outstanding applications for renewal of those registrations be granted.

This order is effective June 9, 1989.

John C. Lawn,

Administrator.

Dated: June 2, 1989.

[FR Doc. 89-13654 Filed 6-8-89; 8:45 am]

BILLING CODE 4410-09-M

[Docket No. 88-10]

Scott Pyper Wallace, M.D.; Partial Revocation of Registration

On December 22, 1987, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Scott Pyper Wallace, M.D. (Respondent) of Provo, Utah, proposing to revoke his DEA Certificate of Registration, AW1642431, and deny his application for renewal of that registration executed on April 15, 1986. The Order to Show Cause alleged that Respondent's continued registration would be inconsistent with the public interest in that: (1) he prescribed narcotic controlled substances to individuals for treatment of their narcotic dependence without being registered to do so; (2) he prescribed Schedule II and III controlled substances during a six-month period when his Utah Controlled Substances License for Schedules II and III was suspended; and (3) his Utah Controlled Substances License for Schedules II and III was again suspended on March 31, 1987.

Respondent, through counsel, requested a hearing in a letter dated January 25, 1988. The matter was docketed before Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Salt Lake City, Utah on June 21, 1988. On November 10, 1988, the Administrative Law Judge issued her opinion and recommended ruling. On December 2, 1988, counsel for the Government filed exceptions to the Administrative Law Judge's opinion, and on December 6, 1988, Respondent's counsel filed a response to the Government's exceptions. On December 12, 1988, Judge Bittner transmitted a record of these proceedings, including the aforementioned exceptions and response, to the Administrator. The Administrator has considered the record in its entirety and pursuant to 21 CFR 1316.87, hereby issues his final order in this matter based upon the findings of fact and conclusions of law as hereinafter set forth.

The Administrative Law Judge found that Respondent is a general family practitioner who has been in private practice since 1954. In February 1985, an investigator with the Utah Department of Business Regulation initiated an investigation concerning Respondent's prescribing practices with Schedule II and III controlled substances. The investigator specifically noted three individuals who received substantial quantities of controlled substances from

Respondent over lengthy periods of time. Respondent wrote prescriptions for Dolophine, a Schedule II narcotic, on a regular basis from September 24, 1984, through February 4, 1985, for one individual. Respondent knew that this individual was dependent on narcotics and testified at the hearing that he was trying to "wean" this individual from narcotics. Respondent was not registered by DEA as a narcotic treatment program, and was, therefore, not authorized to write prescriptions for narcotics for a narcotic dependent person in order to treat such dependency.

The Administrative Law Judge also found that Respondent prescribed large amounts of Percocet, a Schedule II narcotic, and Valium, a Schedule IV controlled substance, to an individual from March 1984 through February 1985. Respondent indicated that although he knew this individual had medical problems, she was addicted to these substances. To a third individual Respondent prescribed various controlled substances for weight control from 1980 through March of 1985, on at least a monthly basis. A physician who reviewed this individual's medical record at the State's request, indicated that Respondent prescribed these drugs long after they ceased to be effective, and that Respondent had not put this individual on any type of supervised weight-loss program.

The Utah Division of Registration of the Department of Business Regulation proposed the revocation of Respondent's license to practice medicine in April 1985. Following a hearing before the Utah Physicians Licensing Board, Respondent's license to prescribe Schedule II and III controlled substances in the State of Utah was suspended for six months, from August 5, 1985, until February 5, 1986. The Board found that Respondent had prescribed controlled substances to an individual knowing he was an addict, prescribed controlled substances to an individual in an excessive quantity, and that Respondent had prescribed controlled substances to an individual in excess of the amount necessary to treat her conditions.

Investigators for the Utah Department of Business Regulation discovered that Respondent had written at least 20 prescriptions for Schedule II and III controlled substances during the time that the Schedule II and III portion of his Utah license was suspended. At the DEA hearing, Respondent testified that he mistakenly believed the suspension only applied to situations involving prescriptions for treatment for drug addiction. In response to these

activities, Respondent and the Utah Division of Registration entered into a stipulation suspending Respondent's authority to handle Schedule II and III controlled substances for six months beginning on March 31, 1987. Respondent was required to apply for reinstatement of those privileges. Respondent has not applied for reinstatement of his Schedule II and III privileges in Utah, and is, therefore, not currently authorized to handle Schedule II and III controlled substances in the State of Utah.

The Administrative Law Judge found that since March 1986, Respondent has complied with the restrictions on his prescribing authority. She further found that in the past, Respondent demonstrated carelessness and lack of responsibility in his handling of controlled substances, but that Respondent recognizes his past mistakes and that he can be trusted with a registration limited to Schedules IV and V. The Administrative Law Judge recommended that Respondent's DEA Certificate of Registration in Schedules II and III be revoked, and that his pending application for renewal of DEA Certificate of Registration, AW1642431, be granted for Schedules IV and V only. The Administrator adopts the opinion and recommended ruling of the Administrative Law Judge. Based upon Respondent's lack of authorization to handle controlled substances in Schedules II and III in the State of Utah and Respondent's past conduct with respect to the prescribing of controlled substances in those schedules, Respondent's DEA registration in Schedules II and III must be revoked.

Accordingly, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100 (b), hereby orders that the Schedule II and III portion of DEA Certificate of Registration, AW1642431, previously issued to Scott Pyper Wallace, M.D., be, and it hereby is, revoked. Respondent's application for renewal of DEA Certificate of Registration, AW1642431, is hereby granted for Schedules IV and V and shall be restricted to only those schedules.

This order is effective July 10, 1989.

John C. Lawn,

Administrator.

Dated: June 2, 1989.

[FR Doc. 89-13691 Filed 6-8-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

Background: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting and recordkeeping requirements that will affect the public.

List of Recordkeeping/Reporting Requirements Under Review: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in. Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/reporting requirement.

The title of the recordkeeping/reporting requirement.

The OMB and Agency identification numbers, if applicable.

How often the recordkeeping/reporting requirement is needed.

Who will be required to or asked to report or keep records.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

Comments and Questions: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Paul E. Larson, telephone (202) 523-6331. Comments and questions about the items on this list should be directed to Mr. Larson, Office of Information Management, U.S. Department of Labor, 200 Constitution Avenue NW., Room N-1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management

and Budget, Room 3208, Washington, DC 20503 (Telephone (202) 395-6880).

Any member of the public who wants to comment on a recordkeeping/reporting requirement which has been submitted to OMB should advise Mr. Larson of this intent at the earliest possible date.

New

Occupational Safety and Health Administration
Occupational Exposures to Hazardous Chemicals in Laboratories
On occasion
Businesses or other for-profit; and small businesses or organizations 34,214 respondents; 455,564 response; 37 minutes per responses; 0 forms

Information collection	Burden hours
(1) Employee Exposure Determination	8,223
(2) Employee Notification of Exposure	5,483
(3) Chemical Hygiene Plan	90,502
(4) Employee Information & Training	47,360
(5) Medical Consult. & Exams	37,962
(6) Information Provided to Physician	4,079
(7) Physician's Written Opinion	4,079
(8) Carcinogen Provisions	65,349
(9) Hazard Identification	0
(10) Use of Respirators	0
(11) Medical & Monitoring Records	18,448
(12) Access (Employees & Rep.) to Records	2,358
(13) Access (OSHA Inspectors) to Records	1

This regulation requires laboratories to train their workers on hazardous chemicals used in the lab, conduct exposure monitoring and medical surveillance as needed as well as develop a Chemical Hygiene Plan.

Revision

Employment and Training Administration, Unemployment Insurance Quality Control Program, 1205-0245; ET Handbook No. 395, Weekly, State or local governments, 52 respondents; 141,525 total hours; 3 hours and 20 mins. per response.

The Unemployment Insurance Quality Control program audits a sample of individual effectiveness of State agencies. The Quality Control program will reduce errors, save money, and assure benefit payment integrity.

Extension

Occupational Safety and Health Administration;

Report of Injuries to employees operating mechanical power presses, Business and other for profit; Small businesses or organizations 191 respondents; 57 burden hours; 0.3 average burden hours per response; 0 forms;

OSHA is required to conduct an ongoing analysis of mechanical power press injuries to monitor the effectiveness of the standard and to evaluate causes of injuries to determine the need for revisions. This analysis cannot be made without collecting information on power press accidents.

Signed at Washington, DC this 5th day of June, 1989.

Paul E. Larson,

Departmental Clearance Officer.

[FR Doc. 89-13734 Filed 6-8-89; 8:45 am]

BILLING CODE 4510-26-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with the applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1. Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay

in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the Federal Register, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

Volume I	
District of Columbia	
DC89-1 (Jan. 6, 1989)	pp. 78-79, 81
Maryland:	
MD89-2 (Jan. 6, 1989)	pp. 418-419
MD89-11 (Jan. 6, 1989)	pp. 440-441
MD89-16 (Jan. 6, 1989)	p. 454

MD89-17 (Jan. 6, 1989)	p. 456
New York:	
NY89-2 (Jan. 6, 1989)	pp. 684-685
	pp. 688, 690
NY89-3 (Jan. 6, 1989)	pp. 702, 705
NY89-4 (Jan. 6, 1989)	pp. 710-712
NY89-5 (Jan. 6, 1989)	p. 718
NY89-6 (Jan. 6, 1989)	p. 728
NY89-7 (Jan. 6, 1989)	pp. 740-741
NY89-8 (Jan. 6, 1989)	pp. 756-757
NY89-9 (Jan. 6, 1989)	p. 768
NY89-10 (Jan. 6, 1989)	p. 770

Pennsylvania:

PA89-2 (Jan. 6, 1989)	pp. 850-852
	p. 856
PA89-4 (Jan. 6, 1989)	p. 870
PA89-7 (Jan. 6, 1989)	pp. 906-908
PA89-8 (Jan. 6, 1989)	pp. 916-918
	p. 921
PA89-11 (Jan. 6, 1989)	p. 938
PA89-15 (Jan. 6, 1989)	p. 958
PA89-16 (Jan. 6, 1989)	p. 962
PA89-19 (Jan. 6, 1989)	pp. 978-981
PA89-20 (Jan. 6, 1989)	pp. 984-985
PA89-22 (Jan. 6, 1989)	pp. 994-998

Virginia:

VA89-5 (Jan. 6, 1989)	p.1134
VA89-23 (Jan. 6, 1989)	p. 1186

Volume II

Louisiana:

LA89-5 (Jan. 6, 1989)	p.403
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Ohio:

OH89-1 (Jan. 6, 1989)	pp. 774-780
OH89-2 (Jan. 6, 1989)	pp. 788-790
	pp. 793-796
OH89-3 (Jan. 6, 1989)	p. 810
OH89-28 (Jan. 6, 1989)	pp. 864-867
	pp. 812-814

Wisconsin:

WI89-1 (Jan. 6, 1989)	p. 1138
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Volume III

None

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon and Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year,

regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 2 day of June 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 89-13529 Filed 6-8-89; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-21,790]

Baker Hughes, CAC Division, Oklahoma City, OK; Negative Determination on Remand

Pursuant to a remand by the U.S. Court of International Trade, dated May 3, 1989, in *Former Employees of Baker Hughes, CAC Division. v. Secretary of Labor* (USCIT 89-02-00096) the Department makes the following negative determination on remand for workers of the CAC Division of Baker Hughes, Oklahoma City, Oklahoma.

The Department's initial denial was based on the fact that U.S. imports of oilfield pumps are negligible. The record, however, did not contain sufficient data to support the Department's determination.

The Department requested the remand to include additional findings of U.S. imports of oilfield pumps. The new findings show negligible imports of oilfield pumps and support the Department's negative determination.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to former workers of the CAC Division of Baker Hughes, Oklahoma City, Oklahoma.

Signed at Washington, DC, this 25th day of May 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-13735 Filed 6-8-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,713 et al.]

Dixilyn-Field Drilling Co.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of: TA-W-21,713, Houston, Texas, TA-W-21,713A, Lafayette, Louisiana, TA-W-21,713B, All Other Locations in Texas, TA-W-21,713C, All Locations in Wyoming, TA-W-21,713D, All Locations in Idaho.

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 9, 1989 applicable to all workers of Dixilyn-Field Drilling Company, Houston, Texas.

An amended certification was issued on February 23, 1989 applicable to all workers of the subject firm in Houston, Texas and in Lafayette, Louisiana.

Based on an inquiry from the Idaho State agency, the Department obtained new information from the company showing worker separations in Idaho, Wyoming and in other locations in Texas. The notice, therefore, is amended by including the Dixilyn-Field workers in the States of Idaho, Wyoming and all other locations in Texas except Houston, where workers were certified previously.

The amended notice applicable to TA-W-21,713 is hereby issued as follows:

"All workers of Dixilyn-Field Drilling Company, Houston, Texas and in all other locations in Texas; Lafayette, Louisiana; all locations in Idaho and all locations in Wyoming who became totally or partially separated from employment on or after October 1, 1985 and before August 30, 1987 are eligible to apply for adjustment assistance under Section 222 of the Trade Act of 1974."

Signed at Washington, DC, this 30th day of May 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-13732 Filed 6-8-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,356, TA-W-22,356A, TA-W-22,356B]

Honeywell Bull Phoenix Operations et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with Section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on March 2, 1989 applicable to all workers of Honeywell Bull Phoenix Operations, Phoenix, Arizona. The Certification was amended on April 26, 1989 to include all workers of Honeywell Bull, U.S. Marketing, Sales & Services Division in Phoenix, Arizona.

Based on new information from the company, the Department, on its own motion expanded the investigation to include the Los Angeles Development

BEST COPY AVAILABLE

Center (LADC) of Honeywell Bull, Inc., in Los Angeles, California.

New investigation findings show that worker separations at Honeywell Bull's LADC unit in Los Angeles, California are directly attributable to the Phoenix operations. The notice, therefore, is amended by including all workers at Honeywell Bull LADC, Los Angeles, California.

The amended notice applicable to TA-W-22,356 is hereby issued as follows:

"All workers of Honeywell Bull Phoenix Operations, Phoenix, Arizona; Honeywell Bull's U.S. Marketing Sales & Services Division, Phoenix, Arizona and Honeywell Bull's Los Angeles Development Center (LADC), Los Angeles, California who became totally or partially separated from employment on or after November 26, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 25th day of May 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-13733 Filed 6-8-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22, 318]

Fitkin Petroleum Corp.; Oklahoma City, OK; Notice of Negative Determination of Reopening

On May 22, 1989, the Department on its own motion, reopened its investigation for workers of Fitkin Petroleum Corporation, Oklahoma City, Oklahoma. The initial investigation was terminated on February 15, 1989 because the petition did not meet the definition of "group" according to Section 90.1 of the Rules and Regulations for administering the Trade Act. The termination notice was published in the *Federal Register* on March 3, 1989 (54 FR 9096).

The company provided additional evidence showing that it meets the definition of "group" and requested the investigation to be reopened.

The investigation found on reopening that Fitkin Petroleum is an oil and gas producer with gas accounting for the preponderant share of sales and production in 1987 and 1988.

The retroactive provisions of Section 1421 (a)(1)(B) of the Omnibus Trade and Competitiveness Act of 1988 do not apply to workers who were engaged in the production of crude oil or gas if such workers were eligible to be certified for benefits under the Trade Act prior to the implementation of the retroactive provisions.

Other findings on reopening show that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. None of the respondents of the Department's survey of Fitkin Petroleum's customers reported import purchases of natural gas in the first 11 months of 1988 compared to the same period in 1987.

Conclusion

After careful review, on reopening, I determine that all workers of Fitkin Petroleum Corporation, Oklahoma City, Oklahoma are denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington D.C. on this 25th day of May 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-13738 Filed 6-8-89; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL SCIENCE FOUNDATION

Meeting of DOE/NSF Nuclear Science Advisory Committee

The National Science Foundation announces the following meeting:
Name: DOE/NSF Nuclear Science Advisory Committee.

Date and Time: June 26, 1989 from 8:30 am to 6:30 pm; June 27, 1989 from 8:30 am to 3:30 pm.

Place: Main Conference Room, Indiana University Cyclotron Facility, 2401 Milo B. Sampson Lane, Bloomington, Indiana.

Type of Meeting: Open.

Contact Person: Karl A. Erb, Program Director for Nuclear Physics, National Science Foundation, Washington, DC 20550, (202) 357-7993.

Minutes: May be obtained from contact person listed above.

Purpose of Meeting: To advise the National Science Foundation and the Department of Energy on scientific priorities within the field of basic nuclear science research.

Agenda:

Monday, June 26

- Charge to NSAC for Long Range Plan Preparation
- Reports from Nuclear Physics National Users Facilities
- Nuclear Physics University Laboratory Programs
- Development of Long Range Plan Workshop Agenda.

Tuesday, June 27

- Reports from NSF and DOE: Status of Programs

- Status Reports from NSAC Long Range Plan Working Groups
- Discussion of Long Range Plan Procedures and Issues
- Other Business and Public Comment.

June 5, 1989.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 89-13672 Filed 6-8-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-315]

Indiana Michigan Power Co.; Donald C. Cook Nuclear Plant, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-58 issued to the Indiana Michigan Power Company, the licensee, for operation of the Donald C. Cook Nuclear Plant, Unit No. 1, located in Berrien County, Michigan.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would revise the D.C. Cook Nuclear Plant, Unit No. 1 Technical Specifications to allow operation of the primary coolant system under reduced temperature and pressure (RTP) conditions. The proposed RTP program will reduce the amount of stress corrosion cracking of steam generator U-tubes similar to that observed on the Unit 2 steam generators.

The proposed amendment is in accordance with the licensee's application for amendment dated October 14, 1988 as supplemented by a letter dated December 30, 1988, and June 5, 1989.

The Need for the Proposed Action

The proposed change by the licensee reduces the amount of stress corrosion cracking of steam generator U-tubes; therefore, reduces the propensity for primary to secondary leaks due to cracking of steam generator U-tubes. Additionally, the proposed RTP program is expected to increase the life of the Unit 1 steam generators significantly.

Environmental Impact of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the Technical Specifications. The staff

concludes that the safety consideration associated with operation at the proposed reduced temperatures and pressures would not adversely affect plant safety. The proposed changes have no adverse effect on the probability or consequences of any accident previously analyzed. No changes are being made in the types or amounts of any radiological effluents that may be released offsite. There is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant environmental impact.

With regard to potential non-radiological impacts, the proposed amendment involves systems within the restricted area as defined in 10 CFR Part 20. It does not affect non-radiological plan effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on April 19, 1989 (54 FR 15851). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts but would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for Donald C. Cook Nuclear Plant, Units 1 and 2, dated August 1973.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons with exception to clarify certain portions of the licensee's proposal.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact

statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated October 14, as supplemented by letter dated December 30, 1988, and June 5, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Dated at Rockville, Maryland this 6th day of June.

For the Nuclear Regulatory Commission.

Lawrence A. Yandell,

Acting Director, Project Directorate III-1, Division of Reactor Projects—III, IV, V & Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-13875 Filed 6-8-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-302]

Florida Power Corp., et al.; Exemption

I.

Florida Power Corporation, et al. (FPC, the licensee) are the holders of Facility Operating License No. DPR-72, which authorizes operation of Crystal River Unit 3 (CR-3, the facility) at a steady-state power levels not in excess of 2544 megawatts thermal. The license provides, among other things, that the facility is subject to all the rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility is a pressurized water reactor (PWR) located at the licensee's site in Citrus County, Florida.

II.

10 CFR Part 50, Appendix A, General Design Criterion-4 (GDC-4) requires that structures, systems, and components important to safety be designed to accommodate the effects of postulated accidents. The structures, systems and components are required to be appropriately protected against dynamic effects, including missiles, pipe whipping, and discharging fluids that may result from equipment failures. At the time of licensing CR-3, the criteria employed by the licensee to analyze the effects of high energy line breaks (HELB) outside containment were consistent with the staff's position as contained in the AEC letter dated

December 22, 1972 from A. Giambusso. However, the licensee reported recently that modifications involving safety-related equipment outside containment installed since that time were made without adequate consideration of HELB criteria.

III.

The licensee promptly embarked on a comprehensive program to identify all break locations and safety-related systems and equipment which must function to mitigate the effects of HELB events to ensure safe shutdown of the plant, and to protect such equipment as necessary. FPC also performed an evaluation to show that continued operation of the facility while the identified deficiencies are being corrected does not constitute a threat to the health and safety of the public. The facility has been shut down for unrelated reasons during much of the time since identification of the HELB problem.

By letter dated December 16, 1988, as supplemented by letter dated May 24, 1989, the licensee requested a temporary exemption from the requirements of GDC-4 with respect to consideration of the environmental and dynamic effects of HELB. The licensee requested that the exemption remain in effect until all actions, including hardware modifications, have been completed. Because FPC's program may include areas accessible only during shutdown, this was originally expected to occur no later than restart from Refuel 8, then scheduled during the fall of 1991. The staff considered this proposed exemption period to be excessive, and continued discussions with the licensee indicated that elements of its proposed schedule could be completed earlier. In its letter of May 24, 1989, the licensee stated that completion in 1990 is anticipated. The first major schedule milestone, submittal of revised licensing and design basis criteria, was completed on March 31, 1989, on schedule. In addition, refueling outages have been delayed 6 months, so that the next fueling outages will start approximately March 1990 (Refuel 7) and March 1992 (Refuel 8), rather than September 1989 and September 1991, as previously anticipated. The licensee has committed to review the program and schedules to determine what portion of the high energy piping can be protected during near-term plant operation in order to maximize full protection of safety systems at the earliest possible time. It is believed that actions to protect most, if not all, systems important to safety

against the effects of HELB can be completed by the end of Refuel 7.

There is reasonable assurance that the proposed exemption will present no undue risk to public health and safety because:

—The likelihood of a HELB not previously analyzed and protected against in an area which could affect redundant safety systems required to mitigate that break is low. The licensee has reviewed the piping system stress analyses and has determined that the postulated terminal end break locations are not highly stressed and that breaks at these locations are low probability events. In addition, the contribution of seismic loads to the potential for HELBs appears to be overstated because of the location of the facility in a seismically inactive area. Further, although new components (primarily potential targets) have been added, they are generally in areas where other principal safety system components are located which were analyzed as targets during original plant licensing, and therefore many potential HELB interactions with the new components are likely to have been adequately treated by features of the original design. With regard to the main feedwater system, the licensee's program in response to Bulletin 87-01, Thinning of Pipe Walls in Nuclear Power Plants, reduces the probability of an HELB in this system. Also, the auxiliary steam line in the Auxiliary Building has been closed until permanent resolution of the HELB problem, leaving relatively few potential break locations in the Auxiliary Building.

—Due to imposition of other criteria, such as electrical separation and 10 CFR Part 50, Appendix R, Fire Protection, there is a reduced likelihood that one HELB can cause loss of safety function by impacting multiple trains of safety equipment. Additional confidence in the survivability of equipment required for reactor coolant system inventory control and the ability to shut down safety exists due to the previously postulated loss of the makeup function in each of 11 fire zones used during the 10 CFR Part 50, Appendix R review. Safe shutdown was demonstrated in each case, and since the effects of pipe breaks are more localized than those caused by a fire, the Appendix R analyses probably bound the HELB accident. The licensee also concluded that none of the identified breaks would prevent the makeup system from performing its inventory control function. Decay heat can be removed using either the emergency feedwater (EFW) system or high pressure injection (HPI) system. FPC has determined that no HELB event

in the Intermediate Building can affect HPI, and that no HELB in the Auxiliary Building will affect EFW. Therefore, in the unlikely event of an HELB, removal of decay heat could be accomplished. Additionally, since most plant modifications adding HELB targets were associated with the addition of automatic capability, the original manual capability to initiate safety functions should, in general, remain protected against an HELB. Finally, plant procedures and operator training regarding identification of leaks and compensatory measures in the event of an HELB will help in avoiding HELBs and if one should occur, in mitigating its effects.

This case involves special circumstances as set forth in 10 CFR 50.12(a)(v). This exemption "would provide only temporary relief from the applicable regulations" (GDC-4). The exemption is requested for a specific time period, after which the facility would be in conformance with the requirements of GDC-4. Therefore, the proposed exemption would provide only temporary relief until the licensee can permanently resolve identified deficiencies.

Since identification of the problem to the NRC, FPC has made good faith efforts to assure complete and expedited conformance to GDC-4. The licensee mounted a significant effort to identify all possible HELB targets. A complete program was defined to resolve the problem and the first important milestone has been completed. This action, preparation of pipe rupture analysis criteria, represents a significant effort to define HELB criteria to improve plant safety and reduce personnel exposure. The commitment to early protection of the maximum amount of safety equipment, as discussed above, is further evidence of FPC's good faith efforts.

IV

Based on the above, and on review of the licensee's submittals to date, the NRC staff concludes that: (1) The probability of an HELB which could affect public health and safety is low, and (2) in the event of an HELB, it is likely that no loss of safety function would occur and that the facility could be safely shut down. Therefore, the NRC staff finds the proposed exemption (with revised expiration date) from certain requirements of GDC-4 to Appendix A of 10 CFR Part 50 to be acceptable.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, this exemption is authorized by law, will not present an undue risk to the public health and safety, and is

consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption, namely that the exemption would provide only temporary relief from the applicable regulation and that FPC has made good faith effort to comply with the regulation.

Therefore, the Commission hereby approves the following exemption: The facility may operate without conforming to the requirements of GDC-4 with respect to the environmental and dynamic effects of HELB. This exemption shall expire by the end of Refuel 7, currently scheduled to begin in March 1990.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will have no significant effect on the quality of the human environment (June 5, 1989, 54 FR 24057).

For further details with respect to this action, see the licensee's request dated December 18, 1988 and its submittal dated March 31, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Crystal River Public Library, 668 NW, First Avenue, Crystal River, Florida 32629.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission,
Steven A. Varga,
Director, Division of Reactor Projects I/II,
Office of Nuclear Reactor Regulation.

Dated at Rockville, Maryland this 5th day of June 1989.

[FR Doc. 89-13721 Filed 6-8-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-315 and 50-316]

Indiana Michigan Power Co. Donald C. Cook Nuclear Plant, Units 1 and 2; Denial of Request for Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied, in part, a request by the Indiana Michigan Power Company for an amendment to Facility Operating License Nos. DPR-58 and DPR-74, issued to the Indiana Michigan Power Company (the licensee), for the operation of the Donald C. Cook Nuclear Plant, Units 1 and 2 (the facilities), located in Berrien County, Michigan.

The proposed amendments would provide upgraded Technical

Specifications (TSs) to promote diesel generator reliability as a result of Generic Letter 84-15. Additionally, changes in the AC and DC distribution systems are to provide standardization between Unit 1 and 2. The licensee's application for the amendments was dated January 16, 1987, and supplemented on June 25, September 28, and November 25, 1987, October 31, 1988, and January 24, March 23, and April 8, 1989. Notice of consideration of issuance of these amendments was published in the **Federal Register** on February 28, 1987 (52 FR 5857), July 29, 1987 (52 FR 28380), and December 30, 1987 (52 FR 49227).

The proposed amendments, in part, would delete several Technical Specifications (TSs) which determine the operability of the emergency load sequencing and timing circuits and provide detection of diesel generator interdependence in TSs 4.8.1.1.2.c.2 (Unit 2), 4.8.1.1.2.b.8 (Unit 1), and 4.8.1.1.2.d (Unit 2), respectively. The Commission has determined that inclusion of these TSs is necessary to provide assurance of the availability of the safety functions provided by the diesel generators and, therefore, shall not be deleted. Another proposed change to the TSs denied was the increase in time from 72 hours to 168 hours for restoration of an inoperable diesel generator.

All other provisions of the amendment request have been approved by Amendment Nos. 125 and 112 dated May 31, 1989. Notice of Issuance of Amendment Nos. 125 and 112 will be published in the Commission's biweekly **Federal Register** notice.

Indiana Michigan Power Company was notified of the Commission's denial of the proposed TSs changes by letter dated May 31, 1989.

By June 30, 1989, the licensee may request a hearing with respect to the denial described above and any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date.

A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated January 16, 1987, and supplemented on June 25, September 28, and November 25, 1987, October 31, 1988 and January 24, March 23, and April 8, 1989, and (2) the Commission's letter to Indiana Michigan Power Company dated May 31, 1989, which are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. A copy of item (2) may be obtained upon written request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 31st day of May 1989.

For the Nuclear Regulatory Commission,

Lawrence A. Yandell,

Acting Director, Project Directorate III-1,
Division of Reactor Projects—III, IV, V, and
Special Projects Office of Nuclear Reactor
Regulation.

[FR Doc. 89-13720 Filed 6-8-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-112]

University of Oklahoma (AGN 211P Nuclear Reactor); Order Authorizing Dismantling of Facility and Disposition of Component Parts

By application dated October 24, 1988, as supplemented, the University of Oklahoma (licensee) requested authorization to dismantle the AGN 211P Nuclear Reactor, Facility License No. R-53, located in Norman, Oklahoma, and to dispose of the component parts, in accordance with the plan submitted as part of the application. A "Proposed Issuance of Orders Authorizing Disposition of Component Parts, and Terminating Facility License" was published in the **Federal Register** on December 13, 1988 (53 FR 50144). No request for a hearing or petition for leave to intervene was filed following notice of the proposed action.

The Nuclear Regulatory Commission (the Commission) has reviewed the application in accordance with the provisions of the Commission's rules and regulations and has found that the dismantling and disposal of component parts in accordance with the licensee's dismantling plan will be in accordance with the regulations in 10 CFR Chapter I, and will not be inimical to the common

defense and security or to the health and safety of the public. The basis of these findings is set forth in the concurrently issued Safety Evaluation by the Office of Nuclear Reactor Regulation.

The Commission has prepared an Environmental Assessment and Finding of No Significant Impact, dated May 26, 1989, for the proposed action. Based on that Assessment, the Commission has determined that the proposed action will not result in any significant environmental impact and that an environmental impact statement need not be prepared.

Accordingly, the licensee is hereby ordered to dismantle the reactor facility and dispose of the component parts in accordance with its dismantling plan and the Commission's rules and regulations.

After completion of the dismantling and disposal, the licensee will submit a report on the radiation survey it will perform to confirm that radiation and surface contamination levels in the facility area satisfy the values specified in the dismantling plan and in the Commission's guidance. Following an inspection by representatives of the Commission to verify the radiation and contamination levels in the facility, consideration will be given to issuance of a further order terminating Facility License No. R-53.

For further details with respect to this action, see: (1) The licensee's application for authorization to dismantle the facility and dispose of component parts, dated October 25, 1988, as supplemented, (2) the Commission's related Safety Evaluation, and (3) the Environmental Assessment and Finding of No Significant Impact. These items are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC. Copies of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects—III, IV, V and Special Projects.

Dated at Rockville, Maryland, this 5th day of June 1989.

For the Nuclear Regulatory Commission
Lester S. Rubenstein,

Acting Director, Division of Reactor
Projects—III, IV, V and Special Projects,
Office of Nuclear Reactor Regulation.

[FR Doc. 89-13722 Filed 6-8-89; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

Privacy Act of 1974; Matching Program—Postal Service/State of Alabama Department of Human Resources

AGENCY: Postal Service.

ACTION: Notice of Computer Matching Program—U.S. Postal Service/State of Alabama Department of Human Resources.

SUMMARY: The Postal Service plans to participate as the matching agency in a computer matching program (1) to identify any postal employees who are receiving benefits to which they are not entitled under the public assistance or child support programs administered by the State of Alabama, (2) to identify any postal employees who owe delinquent debts to the State of Alabama, primarily as a result of being a former recipient of the food stamp public assistance programs, and (3) to identify any postal employees who owe child support obligations. This match will compare the Postal Service's Payroll System File with the State of Alabama's files of (a) Aid to Dependent Children (ADC) benefit recipients, (b) child support obligees, and (c) delinquent debtors.

DATE: The match is expected to begin in July 1989.

ADDRESS: Send any comments to USPS Records Officer, U.S. Postal Service, 475 L'Enfant Plaza, SW, Room 10670, Washington, DC 20260-5010. Copies of all written comments will be available for inspection and photocopying between 9:00 a.m. and 4:00 p.m. Monday through Friday at this address.

FOR FURTHER INFORMATION CONTACT: Barbara Fuller, Records Office, (202) 268-5161.

SUPPLEMENTARY INFORMATION: The USPS has agreed to assist the Office of Fraud/Abuse and Overpayments, State of Alabama Department of Human Resources (AL-DHR), in its efforts to identify current postal employees who owe child support obligations; are receiving public assistance benefits through the State of Alabama to which they are not entitled; or owe monies to the State of Alabama, primarily as former recipients of the above listed benefit programs. The AL-DHR has investigatory responsibility for these public assistance programs which are administered by the State of Alabama. Set forth below is the information required by paragraph 5.f.(1) of the Revised Supplemental Guidance for Conducting Computerized Matching Programs issued by the Office of Management and Budget (47 FR 21656,

May 19, 1982). A copy of this notice has been provided to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and to the Office of Management and Budget.

Report of a Matching Program: U.S. Postal Service (USPS) and State of Alabama Department of Human Resources (AL-DHS).

a. *Authority:* 39 U.S.C. 404.

b. *Program Description:* Under the planned program, the AL-DHS will submit to the USPS a computer tape of the names and social security account numbers (SSANs) from AL-DHS' files of (1) Aid to Dependent Children (ADC) benefit recipients, (2) child support obligees, and (3) delinquent debtors, primarily former recipients of the food stamp public assistance programs. The USPS will match that tape against its payroll system file (USPS 050.020, Finance Records—Payroll System). The purpose of this match is to identify any postal employees who are receiving benefits to which they are not entitled under these public assistance programs, to identify any postal employees who owe delinquent debts to the State of Alabama and Federal Government under programs administered by the State of Alabama, and to identify any postal employees who have failed to fulfill child support obligations so that those obligations may be enforced. USPS will disclose to the Office of Fraud/Abuse & Overpayments of the AL-DHS the following information about any resultant "hits": Name, SSAN, date of birth, home address, facility where employed, and gross wage information.

The validity of "matched" employee/benefit or obligee information will be verified by the AL-DHS. Subsequent actions concerning benefit program recipients may include the reduction, suspension, or termination of benefit payments; to collection of outstanding debts owed for past benefit overpayments; and other appropriate action against those employees fraudulently receiving benefits, but only after the individual has been afforded due process. Subsequent actions to collect outstanding debts owed by those employees for delinquent child support obligations may include enforcement of standing court orders, service of legal process when a court order has not been issued, or other appropriate action. Where there are reasonable grounds to believe there has been a violation of criminal law, the matter may be referred for Federal or State prosecution. Further, the USPS Inspection Service may

participate in the investigation of hits as a result of this matching program and establish investigative case files within the parameters of Privacy Act system USPS 080.010, Inspection Requirements Investigative File System (last published in 48 FR 10975 of March 15, 1983). Disclosure of this information is authorized by routine use Nos. 28 and No. 32 in USPS 050.020, Finance Records—Payroll System, most recently published in 53 FR 25025 of July 1, 1988.

c. *Period of the Match:* The matching program will be on a one-time basis and is expected to begin in July 1989 and end no later than January 1991.

d. *Security:* The USPS personnel who perform the match will (1) have the only USPS access to the AL-DHR computer tape, (2) use it for the sole purpose of the match as officially stated and for no other purpose, and (3) safeguard it from unauthorized access. Likewise, the postal employee information disclosed to the AL-DHR will be used by authorized AL-DHR personnel only for the purpose of the match and for no other purpose and will be safeguarded from unauthorized access. All information exchanged as a result of this matching program will be maintained in locked file areas when not in use.

e. *Disposition of Records:* The USPS will neither retain nor copy the tape provided by AL-DHR and must return it upon completion of the match. All information compiled as a result of this matching effort must be destroyed as soon as the determination is made that no fraud or irregularity has occurred.

f. *Further Comments:* No bestowed rights, privileges, or benefits will be terminated solely on the basis of a "hit" or the records provided by the USPS in connection with this program.

Fred Eggleston,

Assistant General Counsel, Legislative Division.

[FR Doc. 89-13640 Filed 6-8-89; 8:45 am]

BILLING CODE 7710-12-M

SECURITIES AND EXCHANGE COMMISSION

[34-26886; DTC-89-09]

Depository Trust Company; Filing of Proposed Rule Change Relating to Establishing an Interface with NSCC's Fund/SERV Service

June 2, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on April 25, 1989, the Depository

Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Depository Trust Company ("DTC") is filing herewith a proposed rule change providing for an interface with National Securities Clearing Corporation's ("NSCC") Mutual Fund Settlement, Entry and Registration Verification (Fund/SERV) service.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose for the proposed rule change is to provide DTC Participants who are not direct members of NSCC with access to NSCC's Fund/SERV service.

The proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to DTC since the proposed rule change will increase efficiency in trade securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

DTC proposed plans to expand mutual funds services for its Participants in a

memorandum issued March 13, 1989, to Participants, mutual funds, and mutual funds processing agents. The memorandum followed discussion papers on the subject issued by DTC in April and September 1988. Since that time, a user advisory committee—formed to assist DTC in developing interfaces with NSCC's Fund/SERV and Networking services—has closely examined DTC's proposal. Committee members include representatives from DTC, its bank and broker Participants, NSCC, Bank Depository User Group, New York Clearing House Association, Investment Company Institute, and load and non-load mutual funds.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (1) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-DTC-89-9 and should be submitted

by June 30, 1989. For the Commission, by the Division of Market Regulation pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-13751 Filed 6-8-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26887; File No. SR-MSE-89-2]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Filing of Proposed Rule Change To Establish a Secondary Trading Session for the Execution of Transactions in Portfolios of Securities

Pursuant to section 19(b)(1), 15 U.S.C. 78s(b)(1), of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, 17 CFR 240.19b-4, notice is hereby given that on April 28, 1989, the Midwest Stock Exchange, Inc. ("Midwest" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization.¹ Amendment No. 1, submitted by the Midwest on May 31, 1989, deletes changes to Article XX, Rule 12 and Article XXI, Rules 2, 3, 4, 8, 9, 12 and 13 as proposed in the Exchange's original filing submitted on April 28, 1989. Amendment No. 1 also adds an interpretation, to be set forth in Article VIII, Rule 9 of the Midwest's Rules, that clarifies the application of the Exchange's off-board trading restrictions to member transactions in securities listed or admitted to unlisted trading privileges on the Exchange.

¹ Concurrent with its April 28, 1989 filing, Midwest filed with the Commission's Division of Market Regulation ("Division") a proposed transaction reporting plan pursuant to Commission Rules 11A3-1 and 19b-4, 17 CFR 240.11A3-1, 240.19b-4. Additionally, Midwest has stated that it intends to submit an application to the Division for the granting of unlisted trading privileges pursuant to section 12(f) of the Act, 15 U.S.C. 781(f). See letter from J. Craig Long, Vice President and General Counsel, Midwest Stock Exchange to Richard G. Ketchum, Director, Division of Market Regulation, Securities and Exchange Commission, dated April 27, 1989.

Also concurrent with its April 28, 1989 filing, Midwest filed a separate request with the Division seeking alternatively either no-action relief or an exemption under Commission Rule 10a-1, 17 CFR 240.10a-1, the so-called "short sale rule". See letter from J. Craig Long, Vice President and General Counsel, Midwest Stock Exchange to Richard G. Ketchum, Director, Division of Market Regulation, Securities and Exchange Commission, dated April 27, 1989.

where the member acts as principal or agent on any organized exchange in any foreign country, or over-the-counter in any foreign country, outside of the trading hours of the Exchange's Primary Trading Session. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Midwest is proposing to establish a Secondary Trading Session to be conducted from 3:30 p.m. to 5:00 p.m., Central Time, for the purpose of permitting the execution of transactions in portfolios of securities. The rules governing the Secondary Trading Session are set forth in a new Article XXXV of Midwest's Bylaws. However, conforming and other technical changes are made in Midwest's existing rules.

The Secondary Trading Session is limited to transactions in "Portfolios" of "Eligible Securities," as those terms are defined in Article XXXV, Rule 2. All Portfolio transactions will be executed through the System maintained by Midwest. The Midwest floor will not be open during the Secondary Trading Session.

Members may enter unmatched bids or offers in accordance with Article XXXV, Rule 6 or matched bids and offers in accordance with Article XXXV, Rule 7. When matched orders are entered, the System will first search all open orders to determine whether there is an order in the System for the same Portfolio at the same or a better place. If there is such a quotation, the cross will not be permitted and a message to that effect will be sent to the member attempting to effect the transaction. If there is no better quotation, the matched bid and offer will be executed, provided the transaction price is within the applicable pricing parameters, as prescribed in Article XXXV, Rule 9.

Pursuant to Article XXXV, Rule 4, only orders for Portfolios may be executed during the Secondary Trading Session. No other orders for the purchase or sale of securities will be accepted for execution. Further, the rule provides that any orders for the purchase or sale of securities entered in the Primary Trading Session that remain open at the close will be held open for execution during the next Primary Trading Session. Thus, there will be no interaction between individual securities orders left open on Midwest during its Primary Trading Session and Portfolio executions during the Secondary Trading Session.

II. Self-Regulatory Organization's Statement of the Purpose of, the Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The rules Midwest is proposing would implement a Secondary Trading Session to be conducted from 3:30 p.m. to 5:00 p.m., Central Time. The Secondary Trading Session will permit the efficient execution of transactions in portfolios of securities subject to the regulatory oversight of Midwest and the Securities and Exchange Commission.

The Secondary Trade Session is designed to address some of the effects of New York Stock Exchange ("NYSE") Rule 390, which generally prohibits an NYSE member, or any broker or dealer affiliated with an NYSE member, from effecting any transaction in an NYSE listed security as a principal in the over-the-counter market or from acting as agent for both parties in an over-the-counter transaction. Because these prohibitions are not applicable with respect to transactions effected in any foreign country outside of NYSE trading hours, many brokers for large institutional investors in portfolios of securities that desire to execute transactions based on the closing prices of securities on the NYSE effect such transactions off-shore, usually in London.

This procedure is unsatisfactory from several viewpoints. First, these transactions take place without the benefit of SEC or exchange oversight and without the regulatory protections afforded participants in U.S. security markets. In addition, such transactions are not reported to the public or even to the SEC. Thus, issuers, the investing public and the regulatory agencies responsible for the oversight of the markets are deprived of important information regarding trading activity in various securities.

The Secondary Trading Session will permit broker-dealers to rapidly execute transactions in portfolios through an

automated Portfolio Trading System ("System") maintained by Midwest and will require disclosure to the public of necessary trade information. In addition, Midwest will maintain a complete audit trail of all transactions effectuated in the The Secondary Trading Session, permitting the SEC, Midwest and other regulators for the first time to understand and monitor the after-hours institutional market.

As discussed above, there will be no interaction between individual securities orders left open on Midwest during the Primary Trading Session and Portfolio executions during the Secondary Trading Session. This aspect of the System is a necessary consequence of the limited trading environment being supported during the Secondary Trading Session. The System is not designed or intended to be an after-hours automated execution system for individual securities and small groups of securities. At the present time, Midwest is not prepared to advocate an entirely electronic trading mechanism for these types of orders, which can benefit from open outcry or widespread dissemination of firm quotations reflecting buying and selling interest.

Integration of orders from the Primary Trading Session into the Secondary Trading Session would also require fundamental changes in the way open limit orders are handled. Brokers which do not want their customers' orders to be executed after hours would have to mark those orders of withdraw them prior to the close of the Primary Trading Session. Customers would be faced with the decision whether to obtain and after-hours execution or wait until the opening of the Primary Trading Session the following day when there could be an even greater price movement.

Finally, the price allocation process makes the entire notion of order interaction somewhat specious. Under the rules, individual stock prices have the potential to be set arbitrarily so long as they are within the applicable pricing parameters set forth in Article XXXV, Rule 9. Therefore, it seems inappropriate to initiate order executions based on that price. Similarly, if individual stock orders could interact with Portfolios, brokers would have the incentive to change their individual stock price allocation in order to avoid this result.

For all of the foregoing reasons, Midwest believes that the implementation of the Secondary Trading Session is consistent with the Act. More specifically, Midwest believes that the proposed Secondary Trading Session is consistent with section 6(b)(5) of the Act because it will promote just

and equitable principles of trade; foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities; remove impediments to and perfect the mechanism of a free and open market and a national market system; and, in general, protect investors and the public interest. Midwest also believes that the proposed Secondary Trading Session is generally consistent with Section 11A of the Act because it will facilitate the development of a national market system and the processing of securities information.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange believes that the Proposed Rule Change would not impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Other.

The Exchange has neither solicited nor received any comments on the Proposed Rule Change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding, or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the Proposed Rule Change, or

(B) Institute proceedings to determine whether the Proposed Rule Change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements addressing the Proposed Rule Change that are filed with the Commission, and all written communications relating to the Proposed Rule Change between the Commission and any person, other than those that may be withheld from the public in accordance with 5 U.S.C. 552, will be

available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by June 29, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: June 2, 1989.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-13752 Filed 6-8-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF STATE

[Public Notice 1107]

Notice Convening an Accountability Review Board on the Murder of the Chief of the Army Division, Joint U.S. Military Assistance Group, in Manila

Pursuant to section 301 of the Omnibus Diplomatic and Antiterrorism Act of 1986 (22 U.S.C. 4831 et seq.), I have determined that the April 21, 1989 murder in Manila of Col. James N. Rowe, USA, Chief of the Army Division of the Joint U.S. Military Assistance Group in the Philippines, involves loss of life related to a United States Government mission abroad. Therefore, I am convening an Accountability Review Board, as required by that statute, to examine the facts and circumstances of the loss of life in Manila and to report to me such findings and recommendations as the Board deems appropriate, in keeping with the attached mandate.

I have appointed Mr. Kenneth W. Dam as Chairperson of the Board. He will be assisted by Mr. Jay P. Moffat, Lt. Gen. Philip C. Gast, USAF (Ret.), Mr. John Cosenza, and Mr. Gordon K. Dibble. Mr. Moffat will also act as the Executive Secretary. The members bring to their deliberations extensive experience and distinguished backgrounds in government service and private life.

I have asked the Board to submit its findings and recommendations to me within sixty days of its first meeting, unless the Chairperson determines that additional time is needed. Appropriate action will be taken and reports submitted to Congress on any recommendations made by the Board.

Anyone with information related to the Board's examination of this incident should contact the Board promptly on 647-1800. The offices of the

Accountability Review Board are in Room 2426A of the Department of State.

Lawrence S. Eagleburger,
Acting Secretary of State.

[FR Doc. 89-13781 Filed 6-8-89; 8:45 am]

BILLING CODE 4710-10-M

[Public Notice 1108; Delegation of Authority No. 177]

Delegation of Authority to the Deputy Secretary of State

By virtue of the authority vested in me as Secretary of State, including section 4 of the Act of May 26, 1949 (63 Stat. 111; 22 U.S.C. 2658), I hereby delegate to the Deputy Secretary of State the functions vested in the Secretary of State by Title III of the Omnibus Diplomatic Security and Antiterrorism Act of 1986, as amended (100 Stat. 859; 22 U.S.C. 4831).

Unless otherwise directed, the Deputy Secretary of State may not redelegate this authority.

Date: June 1, 1989.

James A. Baker III,
Secretary of State.

[FR Doc. 89-13782 Filed 6-8-89; 8:45 am]

BILLING CODE 4710-10-M

DEPARTMENT OF TRANSPORTATION

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 2, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No. 46314

Date Filed: May 30, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 27, 1989.

Description: Application of Flagship America, Inc. d/b/a/ North American Airlines pursuant to Section 401 of the Act and Subpart Q of the Rules of

Practice applies for a certificate of public convenience and necessity authorizing interstate and overseas scheduled and charter air transportation of persons, property and mail: Between any point in any State in the United States or the District of Columbia, or any territory of possession of the United States, and any other point in any State of the United States or the District of Columbia, or any territory or possession of the United States.

Docket No. 46321

Date Filed: June 2, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 30, 1989.

Description: Application of Private Jet Expeditions, Inc., pursuant to Section 401(d)(1) of the Act and Subpart Q of the Economic Regulations applies for an amendment to the certificate of public convenience and necessity issued by Order 89-4-14 to provide scheduled and charter air transportation services of persons, property and mail in interstate and overseas transportation between any point or points in the United States, its territories or possessions.

Docket No. 42997

Date Filed: June 1, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: June 29, 1989.

Description: Amendment No. 2 to the Application of Florida West Airlines, Inc. further amends paragraph 3 and 4 of the initial application and Amendment No. 1 thereto so that they read as follows:

3. Florida West holds certificates authorized in scheduled domestic service (Order 84-3-8) worldwide charter authority (Order 84-1-10), and exemptions authorizing scheduled service transportation of property and mail between Miami and many points in Latin America (Orders 88-25 and 89-2-40).

4. Florida West requests the Department to issue a certificate under Section 401 of the Act authorizing it to engage in scheduled foreign air transportation of property and mail between a point or points in the United States, on the one hand, and a point or points in Costa Rica, Honduras, El Salvador, Panama, Colombia, Ecuador, Chile, Paraguay, Bolivia, Surinam, the Dominican Republic, Haiti, Trinidad & Tobago, Grenada, Aruba, the Netherlands Antilles, Uruguay, Guyana, Barbados, Belize, St. Maarten/St. Martin, Guadeloupe, Martinique, the United Kingdom (property only), the Netherlands, Belgium, Luxembourg, and West Germany, on the other.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 89-13688 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[Summary Notice No. PE-89-23]

Petition for Exemption; Summary and Dispositions

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking, provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 24, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 25728, 800 Independence Avenue, SW., Washington, D.C. 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, D.C. 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 5, 1989.
Denise Donohue Hall,
Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25728

Petitioner: Trans World Airlines, Inc.
Regulations Affected: 14 CFR Part 121, Appendix H

Description of Relief Sought: To allow petitioner to upgrade L-1011 flight engineers to L-1011 seconds in

command in a Phase II simulator without receiving any training or checking in the actual airplane.

[FR Doc. 89-13703 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-89-24]

Petitions for Exemption; Summary and Dispositions

AGENCY: Federal Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before: June 29, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 5, 1989.
Denise Donohue Hall,
Manager, Program Management Staff, Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 25195

Petitioner: Loral Systems Group
Sections of the FAR Affected: 14 CFR 45.27(b)

Description of Relief Sought: To extend Exemption No. 4861 that allows petitioner to place the nationality and registration marks (N-numbers) on the outboard surface of each propulsion duct (engine nacelle) on its GZ22 airship.

Docket No.: 25887

Petitioner: Empire Airlines
Regulations Affected: 14 CFR 135.111

Description of Relief Sought: To allow petitioner to operate specially equipped Cessna 208 cargo aircraft in single-pilot Category II operations. The Cessna 208 is certificated for single-engine, single-pilot operations.

Docket No.: 17067

Petitioner: MacAvia International Corporation

Regulations Affected: 14 CFR 91.27(a)

Description of Relief Sought/Disposition: To extend Exemption No. 4790 that allows petitioner to conduct ferry flights of its owned or operated four-engine McDonnell Douglas DC-6 aircraft with one engine inoperative when the aircraft is operated under contract with the U.S. Forest Service for forest fire control. Grant, May 26, 1989, Exemption No. 4790A

Docket No.: 23771

Petitioner: Cessna Aircraft Company
Sections of the FAR Affected: 14 CFR 91.213 and 91.31

Description of Relief Sought/Disposition: To extend Exemption No. 4050, as amended, that allows operators of Cessna Citation Models 550, S550, 552, and 560 to operate these airplanes without a second-in-command pilot, subject to certain conditions and limitations. The amendment to Exemption No. 4050, as amended, would rescind several conditions. Grant, May 19, 1989, Exemption No. 4050E

Docket Nos.: 25008 and 25524

Petitioner: Courtney Y. Bennett, et al., and John H. Baker, et al.

Sections of the FAR Affected: 14 CFR 121.383(c)

Description of Relief Sought/Disposition: To allow petitioners to continue to serve as pilots in Part 121 air carrier operations after reaching their 60th birthday. DENIAL, May 26, 1989, Exemption No. 5052

Docket No.: 25103

Petitioner: Air Wisconsin, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378

Description of Relief Sought/

Disposition: To extend Exemption No. 4803 that allows petitioner to use on its British Aerospace, Fokker, and Short Brothers, Ltd., aircraft certain engines, components, and spare parts that have been manufactured, overhauled, repaired, tested, or inspected by persons outside the United States who do not hold U.S. airman certificates. GRANT, May 9, 1989, Exemption No. 4803A

Docket Nos.: 25125 and 25128

Petitioner: Executive Air Fleet, Inc.
Sections of the FAR Affected: 14 CFR 91.191(a)(4) and 135.165(a)(1) and (5) and (b)(5) and (7)

Description of Relief Sought/Disposition: To extend Exemption No. 4821 that allows petitioner to operate airplanes in extended overwater operations with one long-range navigation system (LRNS) and one high-frequency (HF) communication system within certain named areas subject to certain conditions and limitations. GRANT, May 26, 1989, Exemption No. 4821A

Docket No.: 25173

Petitioner: Airlift International, Inc.
Sections of the FAR Affected: 14 CFR 121.371(a) and 121.378

Description of Relief Sought/Disposition: To extend exemption No. 4798 that allows the original equipment manufacturers and foreign repair stations certificated by the Civil Air Authorities of their respective countries to perform maintenance, preventive maintenance, and alterations outside the United States on engines, components, and spare parts of the petitioner's F-27/FH-227 aircraft. GRANT, May 9, 1989, Exemption No. 4798A

Docket No.: 25749

Petitioner: SkyDance Skydiving
Sections of the FAR Affected: 14 CFR 91.15(a)(2) and 105.43(a)(2)

Description of Relief Sought/Disposition: To allow foreign nationals to participate in petitioner's parachuting events from March 1, 1989, to February 28, 1991, without having to comply with parachute equipment and packing requirements. DENIAL, May 18, 1989, Exemption No. 5049

Docket No.: 25791

Petitioner: Braniff, Inc.
Sections of the FAR Affected: 14 CFR 121.411(a)(1), (2), (3), and (6); 121.411(b); and 121.413(b) and (c)

Description of Relief Sought/Disposition: To allow petitioner to utilize certain highly qualified pilot flight and simulator instructors from

Fokker Aircraft for the purpose of training petitioner's initial cadre of pilots in the Fokker 100 (F100) type airplane in Amsterdam, Holland, without holding appropriate U.S. certificates and ratings and without meeting all of the applicable training requirements of Subpart N of Part 121. GRANT, May 26, 1989, Exemption No. 5053

Docket No.: 25807

Petitioner: Joseph R. Hlavach
Regulations Affected: 14 CFR 121.411(a)(6)

Description of Relief Sought/Disposition: To allow petitioner to serve as a simulator flight engineer check airman without holding a third class medical certificate. DENIAL, May 23, 1989, Exemption No. 5050

Docket No.: 25830

Petitioner: Metro Express, Inc., dba Eastern Metro Express
Sections of the FAR Affected: 14 CFR 135.225(e)(1)

Description of Relief Sought/Disposition: To allow petitioner's pilots to operate its British Aerospace 3101 Jetstream (BAe 3101) aircraft from Myrtle Beach Air Force Base, S.C. (MBAFB), using takeoff visibility minimums, subject to the approval of the appropriate military authority, that are less than 1 mile and are equal to or greater than the landing visibility minimums established for this field. PARTIAL GRANT, May 30, 1989, Exemption No. 5054

Docket No.: 25862

Petitioner: Cessna Aircraft Company
Sections of the FAR Affected: 14 CFR 47.69(b)

Description of Relief Sought/Disposition: To allow petitioner to use its Dealer's Aircraft Registration Certificates outside the United States for demonstrating, testing, selling, and marketing of its aircraft. GRANT, May 2, 1989, Exemption No. 5042

[FR Doc. 89-13704 Filed 6-8-89; 8:45 am]

BILLING CODE 4910-13-M

Air Traffic Procedures Advisory Committee Meeting

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of air traffic procedures advisory committee meeting.

SUMMARY: The FAA is issuing this notice to advise the public that a meeting of the Federal Aviation Administration Air Traffic Procedures

Advisory Committee (ATPAC) will be held to review present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures.

DATES: The meeting will be held from July 11, at 9 a.m., through July 14, 1989, at 12 p.m.

ADDRESS: The meeting will be held at the Federal Aviation Administration, 222 W. 7th Avenue, Anchorage, Alaska.

FOR FURTHER INFORMATION CONTACT: Mr. Walter H. Mitchell, Executive Director, ATPAC, Air Traffic Operations Service, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267-3725.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. 1), notice is hereby given of a meeting of the ATPAC to be held from July 11, at 9 a.m., through July 14, 1989, at 12 p.m., at the Federal Aviation Administration, 222 W. 7th Avenue, Anchorage, Alaska. The agenda for this meeting is as follows: A continuation of the committee's review of present air traffic control procedures and practices for standardization, clarification, and upgrading of terminology and procedures. It will also include:

1. Approval of minutes.
2. Discussion of agenda items.
3. Discussion of urgent priority items.
4. Report from Executive Director.
5. Old Business.
6. New Business.
7. Discussion and agreement of location and dates for subsequent meetings.

Attendance is open to the interested public but limited to the space available. With the approval of the Chairperson, members of the public may present oral statements at the meeting. Persons desiring to attend and persons desiring to present oral statements should notify the person listed above not later than July 7, 1989. The next quarterly meeting of the FAA ATPAC is planned to be held from October 23 through October 27, 1989, in Washington, DC. Any member of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on June 1, 1989.
Walter H. Mitchell,
Executive Director, Air Traffic Procedures
Advisory Committee.
[FR Doc. 89-13705 Filed 6-8-89; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Gem, Payette, Washington and Adams Counties, ID

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of intent.

SUMMARY: The Federal Highway Administration is issuing this notice to advise the public that an Environmental Impact Statement will be prepared for a proposed highway project in Gem, Payette, Washington and Adams County, Idaho.

FOR FURTHER INFORMATION CONTACT: Robert Clour, Assistant Division Administrator, Federal Highway Administration, 3010 West State Street, Boise, Idaho 83703, telephone: (208) 334-1843; or Charles Rountree, Idaho Transportation Department, P.O. Box 7129, Boise, Idaho 83707-1129, telephone (208) 334-8484.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration in cooperation with the Idaho Transportation Department will prepare an Environmental Impact Statement on a proposed new highway location between the City of Emmett and the community of Mesa, Idaho. The proposed highway would be approximately 54 miles long and provide two travel lanes.

The new highway is considered necessary to relieve current and projected traffic congestion on State Highway 55 and U.S. Highway 95. Alternatives under consideration include (1) taking no action, (2) various location options within the study corridor, (3) improvements to existing highways, and (4) other alternatives determined appropriate as a result of scoping process.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. The scoping process will consist of a series of public meetings and a formal scoping meeting for involved or interested government agencies and private organizations. In addition, a location hearing will be held. Public notice will be posted as to the time and place of the meetings and hearing. The draft EIS will be available for public and agency review and comments prior to the public hearing.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions

are invited from all interested parties. Comments or questions concerning their proposed action and the EIS should be directed to the Federal Highway Administration at the address provided above. (Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on June 2, 1989.

Jack T. Coe,
Division Administrator, Boise, Idaho.

[FR Doc. 89-13667 Filed 6-8-89; 8:45 am]
BILLING CODE 4910-2-M

National Highway Traffic Safety Administration

[Docket No. IP89-03; Notice 2]

Volvo Cars of North America; Receipt of Petition for Determination of Inconsequential Noncompliance; Correction

This notice corrects a notice of receipt of a petition from Volvo Cars of North America for determination of inconsequential noncompliance with a Federal Motor Vehicle Safety Standard. On May 30, 1989, NHTSA published notice of a receipt of a petition from Volvo. This notice appeared starting at page 23009 of the Federal Register (54 FR 23009), and requested comment on Volvo's petition for exemption from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) for an apparent noncompliance with 49 CFR 571.110, Motor Vehicle Safety Standard No. 110, *Tire Selection and Rims*, on the basis that it is inconsequential as it relates to motor vehicle safety.

The notice inadvertently omitted a closing date for comments on the petition. Notice is hereby given that the comment closing date on the above petition, (FR Doc. 89-12726) is July 10, 1989.

(Sec. 102, Pub. L. 93-492, 88 Stat. 1470 (15 U.S.C. 1417); delegations of authority at 49 CFR 1.50 and 49 CFR 501.8).

Issued on June 2, 1989.

Barry Felrice,
Associate Administrator for Rulemaking.
[FR Doc. 89-13706 Filed 6-8-89; 8:45 am]
BILLING CODE 4910-59-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Privacy Act of 1974; Revised System of Records

AGENCY: Internal Revenue Service; Treasury.

ACTION: Notice of revision to Privacy Act system of records, 60.001, assault and threat investigation files.

SUMMARY: In accordance with the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), the Internal Revenue Service, Assistant Commissioner (Inspection), is publishing a notice of a proposed revision of the system of records 60.001, Assault and Threat Investigation Files, Inspection. The purpose of this modification is to include as potentially dangerous taxpayers (PDTs), persons who are active members in tax protest groups which advocate violence against Internal Revenue Service employees.

DATES: Comments must be received no later than July 10, 1989. The proposed revision will be effective August 8, 1989, unless IRS receives comments on the revision which would result in a contrary determination.

ADDRESSES: Please submit comments to: Internal Revenue Service, Assistant Commissioner (Inspection), Attn: Disclosure Officer IJS:OA, 1111 Constitution Avenue, NW., Washington, DC 20224. Comments received will be available for inspection at the same address from 9:00 a.m. to 4:00 p.m., Monday thru Friday.

FOR FURTHER INFORMATION CONTACT: Mr. Eugene Harwell, Disclosure Officer, Assistant Commissioner (Inspection), 1111 Constitution Avenue, NW., Room 6017, Washington, DC 20224, Telephone: (202) 566-3967. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: This system of records presently includes individuals attempting to interfere with the administration of Internal Revenue laws through threats, assaults or forcible interference of any officer or employee while discharging the official duties of his position. Also included are individuals classified as potentially dangerous taxpayers, based on verifiable evidence or information which falls within six (6) established criteria.

The revision to this system of records is the expansion of the subtitle "Categories of Individuals Covered by the System" to include a seventh (7th) criterion to identify individuals who attempt to interfere with the administration of Internal Revenue

laws. These individuals are referred to as potentially dangerous taxpayers (PDTs). The system revision will read as follows: (7) Persons who are active members in chapters of tax protest groups that advocate violence against IRS employees.

From FY 1981 to the present, there has been a 50% increase in assault/threat cases where the assailant is a member of a militant and/or tax protest organization.

The proposed membership criterion for designating PDTs survives the most rigid test of constitutionality. Protecting IRS employees in the course of their tax administration duties from serious bodily harm is certainly a substantial state interest which would justify infringement of taxpayers' rights of association and speech. Moreover, infringement of these taxpayers' constitutional rights is slight. The Service's designation of a taxpayer as a PDT has no bearing on the ultimate determination of that taxpayer's liability under the Internal Revenue laws. The PDT designation does nothing to regulate or otherwise affect the taxpayer's behavior. Rather, the designation of a taxpayer as a PDT merely affects the Service's behavior with respect to that taxpayer.

The Supreme Court has implied the freedom of association into the First Amendment, as being both intertwined with and as a necessary safeguard to, the freedoms of speech and assembly. The right of association, like the right of speech, is not absolute. Government regulation that serves a substantial or compelling and legitimate state interest may indirectly infringe upon the right of association. The Court adjudged the constitutionality of such regulation by weighing the gravity of the state interest against the degree of constitutional infringement. Once a substantial state interest is established, the Constitution tolerates significant infringement.

Association with an identified PDT or membership in a group, some of whose members advocate violent protest against tax laws, is not of itself sufficient for inclusion in the classification of PDT. Before an individual can be classified as a PDT because of group membership, there must be a reasonable indication that an individual is an active member of a chapter or group which advocates violence or commits violent acts against Service employees.

The Internal Security Division, which falls under the control of the Assistant Commissioner (Inspection), is authorized to investigate attempts to interfere with the administration of the tax laws through threats and assaults,

and to protect employees who may be the subject of an assault. Inspection is permitted to obtain information that concerns individuals involved in efforts to disrupt tax administration, is directly tax related, or involves potential assaults and threats against Service employees. Information which identifies active members of tax protest groups which advocate violence against IRS employees may be obtained from the law enforcement community and authorized information-gathering activities.

The system notice was published in its entirety most recently in the Federal Register Vol. 53, page 6436, March 1, 1988.

Dated: June 2, 1989.
David M. Nummy,
Acting Assistant Secretary of the Treasury
(Management).

Treasury/IRS 60.001

SYSTEM NAME:

Assault and Threat Investigation
Files, Inspection—Treasury/IRS.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Description of the change: Remove the "and" following the semicolon at the end of item (5), remove the period at the end of item (6) and substitute a semicolon followed by an "and", and add the following new category of individuals:

(7) persons who are active members in tax protest groups that advocate violence against IRS employees.

[FR Doc. 89-13693 Filed 6-8-89; 8:45 am]
BILLING CODE 4830-01-M

UNITED STATES INFORMATION AGENCY

Grants Program for Private Not-For-Profit Organizations; In Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the United States and Hong Kong, China, Malaysia and Singapore and to strengthen the ties which unite our societies. The information collection

Involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private, Non-Profit Organizations in Support of International and Cultural Activities," announced in the Federal Register February 9, 1989.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate.

Cantonese-Speaking Asian Journalists Program

Summary

The Office of Private Sector Programs of the United States Information Agency requests proposals for a three-week issues-oriented program for 10 Cantonese-speaking editors and reporters from local print organizations

in Hong Kong; Guangzhou, the Peoples Republic of China; Singapore; and Malaysia. Selected by USIA representatives, this program is scheduled for September of 1989 and will focus on multi-lateral trade issues and business/economic reporting.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming, and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to develop and conduct the above project successfully and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than 30 days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Please refer to these specific programs by name in your letter of interest.

Office of Private Sector Program, Bureau of Educational and Cultural Affairs, (ATTN: Initiative Programs, Cantonese-Speaking Journalists Project), United States Information Agency, 301 4th St. SW, Washington, DC 20547.

Date: May 17, 1989.

Robert Francis Smith,
Director, Office of Private Sector Programs.
[FR Doc. 89-13689 Filed 6-8-89; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, June 14, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposals regarding administration of the Federal Reserve's Contingency Processing Center at Culpeper, Virginia.
2. Proposed 1990 Federal Reserve Bank budget objective.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne,
Assistant to the Board; (202) 452-3204.

Dated: June 7, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-13826 Filed 6-7-89; 9:50 am]
BILLING CODE 8210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: Approximately 11:00 a.m., Wednesday, June 14, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed acquisition of computer equipment within the Federal Reserve System. (This item originally announced for a closed meeting on June 12, 1989.)
2. Proposed relocation and renovation of a data center within the Federal Reserve System.
3. Personnel actions (appointments, promotions, assignments, reassignments, and

salary actions) involving individual Federal Reserve System employees.

4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne,
Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 7, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-13827 Filed 6-7-89; 9:50 am]
BILLING CODE 8210-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Previously Held Emergency Meeting

TIME AND DATE: 1:37 p.m., Tuesday, June 6, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS CONSIDERED:

1. Merger under section 205 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
2. Administrative Actions under section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).

The Board voted unanimously that Agency business required that a meeting be held with less than the usual seven days advance notice.

The Board voted unanimously to close the meeting under the exemptions listed above. The General Counsel certified that the meeting could be closed under those exemptions.

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (202) 682-9600.

Becky Baker,
Secretary of the Board.
[FR Doc. 89-13886 Filed 6-7-89; 12:57 pm]
BILLING CODE 7535-01-M

NATIONAL CREDIT UNION ADMINISTRATION

Notice of Meeting

TIME AND DATE: 9:30 a.m., Thursday, June 15, 1989.

Federal Register

Vol. 54, No. 110

Friday, June 9, 1989

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Open Meeting.
2. Economic Commentary.
3. Central Liquidity Facility Report and Review of CLF Lending Rate.
4. Insurance Fund Report.
5. Appeal of the Denial of a Field of Membership Amendment by Marine Corps West Federal Credit Union, Camp Pendleton, CA.
6. NCUA Long Range Plan.

RECESS: 11:15 a.m.

TIME AND DATE: 11:30 a.m., Thursday, June 15, 1989.

PLACE: Filene Board Room, 7th Floor, 1776 G Street, NW., Washington, DC 20456.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meetings.
2. Proposed Field of Membership Expansion by a FCU. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
3. Special Assistance under section 206 of the FCU Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. Administrative Action under section 120 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
5. Appeals of Denial of Insurance Coverage. Closed pursuant to exemptions (6), (8), (9)(B), and (10).
6. Proposed Changes to Delegations of Authority. Closed pursuant to exemption (2).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, telephone (202) 682-9600.

Becky Baker,
Secretary of the Board.
[FR Doc. 89-13887 Filed 6-7-89; 12:57 pm]
BILLING CODE 7535-01-M

SECURITIES AND EXCHANGE COMMISSION Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [54 FR 24286 June 6, 1989].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, June 1, 1989.

CHANGES IN THE MEETING: Additional item/meeting.

The following item will be considered at a closed meeting on Wednesday, June 7, 1989, at 2:30 p.m.

Settlement of injunctive action.

The following item will be considered at a closed meeting on Thursday, June 8,

1989, following the 9:30 a.m. open meeting.

Reorganization proceedings.

Commissioner Cox, as duty officer, determined that Commission business required the above change.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further

information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Karen Burgess at (202) 272-2200.

Jonathan G. Katz,
Secretary.

June 5, 1989.

[FR Doc. 89-13873 Filed 6-7-89; 12:57 pm]

BILLING CODE 8010-01-M

Corrections

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Part 232

Department of Defense Federal Acquisition Regulation Supplement; DFARS Implementation of Section 1207 of Pub. L. 99-661 and Section 806 of Pub. L. 100-180; Contracting With Small Disadvantaged Business Concerns, Historically Black Colleges and Universities, and Minority Institutions

Correction

In proposed rule document 89-12268 beginning on page 22338 in the issue of Tuesday, May 23, 1989 make the following correction:

232.502-4 [Corrected]

On page 22338, in the third column, in 232.502-4 (S-75), in the fifth line, "small" should read "shall".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 178

[Docket No. 88F-0118]

Indirect Food Additives, Adjuvants, Production Aids, and Sanitizers

Correction

In rule document 89-12155 beginning on page 21938 in the issue of Monday, May 22, 1989, make the following correction:

On page 21938, in the third column, under "E. 2,6-Pyridinedicarboxylic Acid", in the third paragraph, in the first and second lines, "(21 CFR 1271.1(h))" should read "(21 CFR 171.1(h))".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Lincomycin and Salinomycin

Correction

In rule document 89-12154 beginning on page 21939 in the issue of Monday, May 22, 1989, make the following correction:

On page 21939, in the 3rd column, in the 16th line, "paragraph (b)(3)(xiii)" should read "paragraph (b)(1)(xiii)".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89N-0132]

Piascon-Gary, Inc.; Revocation of U.S. License No. 1020

Correction

In notice document 89-12153 beginning on page 22018 in the issue of Monday, May 22, 1989, make the following correction:

On page 22018, in the 3rd column, in the 28th and 29th lines, "(21 CFR 606.160(e))" should read "(21 CFR 606.160(e))".

BILLING CODE 1505-01-D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89M-0153]

Steridyne Laboratories, Inc.; Premarket Approval of DYNASOL®

Correction

In notice document 89-12157 appearing on page 22020 in the issue of Monday, May 22, 1989, make the following correction:

In the third column, in the second complete paragraph, in the third line, "520(d)" should read "520(h)".

BILLING CODE 1505-01-D

Federal Register

Vol. 54, No. 110

Friday, June 9, 1989

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Office of Surface Mining Reclamation and Enforcement

25 CFR Part 200

30 CFR Part 750

RIN 1029-AB04

Surface Coal Mining and Reclamation Operations; Federal Program for Indian Lands

Correction

In rule document 89-12062 beginning on page 22182 in the issue of Monday, May 22, 1989, make the following corrections:

1. On page 22182, in the first column, the heading of the document was inaccurate and should appear as set forth above.

2. On the same page, in the same column, under **SUMMARY**, in the ninth line, "Those" should read "These".

3. On the same page, in the third column, under "A. General Comments" in the first paragraph, in the fifth line, "rules" should read "rule".

4. On page 22184, in the 2nd column, in the 2nd complete paragraph, in the 18th line, "Clarifying the OSMRE" should read "Clarifying that OSMRE".

5. On the same page, in the third column, in the third paragraph, in the fifth line, "case" should read "cases".

6. On page 22185, in the 1st column, in the 1st complete paragraph, in the 14th line, "(D.C. Cir. 1958)" should read "(D.C. Cir. 1985)".

7. On the same page, in the 3rd column, in the 2nd complete paragraph, in the 22nd line, "boundaries, including" should read "boundaries, including".

8. On page 22188, in the second column, under **List of Subjects**, in the fourth line "30 CFR 750" should read "30 CFR Part 750"; and in the fifth line, "Indian-lands" should read "Indians-lands".

BILLING CODE 1505-01-D

DEPARTMENT OF STATE

Office of Munitions Control

[Public Notice 1109]

Suspension of Munitions Exports to
PRC*Correction*

In notice document 89-13716
appearing on page 24539 in the issue of
Wednesday, June 7, 1989, make the
following correction:

In the third column, in the file line at
the end of the document, "8:45 am"
should read "12:14 pm".

BILLING CODE 1805-01-D

Friday
June 9, 1989

Part II

**Environmental
Protection Agency**

40 CFR Part 60

Standards of Performance for New
Stationary Sources; Small Industrial-
Commercial-Institutional Steam
Generating Units; Proposed Rule and
Notice of Public Hearing

federal register

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 60

[AD-FRL-3568-3]

Standards of Performance for New Stationary Sources; Small Industrial-Commercial-Institutional Steam Generating Units

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: This proposal would add Subpart Dc to 40 CFR Part 60. Subpart Dc would apply standards limiting emissions of sulfur dioxide (SO₂), particulate matter (PM), and nitrogen oxides (NO_x) to new, modified, or reconstructed small industrial-commercial-institutional steam generating units with a maximum design capacity of 29 MW (100 million Btu/hour) heat input or less, but greater than or equal to 2.9 MW (10 million Btu/hour) heat input.

The proposed standards implement section 111 of the Clean Air Act (CAA) and are based on the determination that emissions from small industrial-commercial-institutional steam generating units cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. The intent of the proposed standards is to require new modified, and reconstructed small industrial-commercial-institutional steam generating units to control emissions to the level achievable by the best demonstrated technological system of continuous emission reduction, considering costs, nonair quality health and environmental impacts, and energy requirements.

DATES: Comments must be received on or before August 17, 1989.

Public Hearing. If anyone requests to speak at a public hearing by July 10, 1989, a public hearing will be held on July 17, 1989 beginning at 10:00 a.m. Persons interested in attending the hearing should call Ms. Ann Eleanor at (919) 541-5578 to verify that a hearing will be held. Assistance will be available for persons with hearing impairments.

Request to Speak at Hearing. Persons wishing to present oral testimony must request to speak at the public hearing by July 10, 1989.

Incorporation by Reference. The incorporation by reference of certain publications in these standards will be approved by the Director of the Federal

Register as of the date of publication of the final rule.

ADDRESSES: Comments. Comments should be submitted (in duplicate if possible) to: Air Docket (LE-131), Room M-1500, first floor, Waterside Mall, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Attention: Docket Number A-86-02. **Public Hearing.** If anyone requests a public hearing, it will be held at the EPA's Office of Administration Auditorium, Research Triangle Park, North Carolina. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Ann Eleanor, Standards Development Branch (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541-5578.

Background Information Documents. The background information documents (BID's) for the proposed standards consist of eight documents. See **SUPPLEMENTARY INFORMATION** for a listing of these documents. Persons wishing to review the BID's should contact their respective trade, professional, or environmental organization.

Docket. Docket Number A-86-02, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket, Room M-1500, first floor, Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Rick Copland ((919) 541-5265) or Mr. Fred Porter ((919) 541-5251), Standards Development Branch, Emission Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION:**Background Information Documents**

The BID's for the proposed standards consist of eight documents as follows:

1. Overview of the Regulatory Baseline, Technical Basis, and Alternative Control Levels for Particulate Matter (PM) Emission Standards for Small Steam Generating Units (EPA-450/3-89-11, May 1989).
2. Overview of the Regulatory Baseline, Technical Basis, and Alternative Control Levels for Sulfur Dioxide (SO₂) Emission Standards for Small Steam Generating Units (EPA-450/3-89-12, May 1989).
3. Overview of the Regulatory Baseline, Technical Basis, and

Alternative Control Levels for Nitrogen Oxides (NO_x) Emission Standards for Small Steam Generating Units (EPA-450/3-89-13, May 1989).

4. Model Boiler Cost Analysis for Controlling Sulfur Dioxide (SO₂) Emissions from Small Steam Generating Units (EPA-450/3-89-14, May 1989).

5. Model Boiler Cost Analysis for Controlling Particulate Matter (PM) Emissions From Small Steam Generating Units (EPA-450/3-89-15, May 1989).

6. Model Boiler Cost Analysis for Controlling Nitrogen Oxides (NO_x) Emissions from Small Steam Generating Units (EPA-450/3-89-16, May 1989).

7. Projected Impacts of Alternative New Source Performance Standards for Small Industrial-Commercial-Institutional Fossil Fuel-Fired Boilers (EPA-450/3-89-17, May 1989).

8. Projected Impacts of Alternative Particulate Matter New Source Performance Standards for Industrial-Commercial-Institutional Nonfossil Fuel-Fired Steam Generating Units (EPA-450/3-89-18, May 1989).

These reports are being provided at no cost to interested trade, professional, and environmental organizations upon request. However, because of the number of volumes involved and the associated printing and distribution costs, only a limited number of sets were printed. The reports are being provided to these organizations with the understanding that they allow members access to their document sets. Persons wishing to review the BID's should contact their respective organization. If the organization does not have a BID's, a set will be provided to the organization for the use of their membership.

Preamble Outline

- I. Introduction
 - A. New Source Performance Standards—General
 - B. NSPS Decision Scheme
 - C. Overview of This Preamble
- II. Summary of the Standards
 - A. Source Category to Be Regulated
 - B. Pollutants to Be Regulated
 - C. Best Demonstrated Technology
 - D. Format for the Standards
 - E. Actual Standards
 - F. Performance Testing and Monitoring Requirements
 - G. Reporting and Recordkeeping
 - H. Requests for Comments
- III. Impacts of the Standards
 - A. Air
 - B. Water and Solid Waste
 - C. Energy
 - D. Control Costs
 - E. Economic Effects
- IV. Rationale for the Standards
 - A. Selection of Source Category
 - B. Selection of Affected Facilities

- C. Selection of Best System of Nitrogen Oxides Emission Reduction
- D. Selection of Best System of Particulate Matter Emission Reduction
- E. Selection of Best System of Sulfur Dioxide Emission Reduction
- F. Modification and Reconstruction Provisions
- G. Performance Test Methods and Monitoring Requirements
- H. Reporting and Recordkeeping Requirements
- V. Administrative Requirements
 - A. Public Hearing
 - B. Docket
 - C. Clean Air Act Procedural Requirements
 - D. Office of Management and Budget Reviews
 - E. Regulatory Flexibility Act Compliance

I. Introduction**A. New Source Performance Standards—General**

New source performance standards (NSPS, or standards) implement section 111 of the CAA. The NSPS are issued for categories of sources which cause, or contribute significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare. They apply to new stationary sources of emissions (i.e., sources whose construction, reconstruction, or modification begins after a standard for them is proposed). An NSPS requires these sources to control emissions to the level achievable by the best system of continuous emission reduction, considering costs and other impacts.

B. NSPS Decision Scheme

An NSPS is the product of a series of decisions related to certain key elements for the source category being considered for regulation. The elements identified in this "decision scheme" are generally the following:

1. Source category to be regulated—usually an entire industry but can be a process or group of processes within an industry.
2. Pollutant(s) to be regulated—the particular substance(s) emitted by the source that the standards will control.
3. Best system of continuous emission reduction—the technology on which the standards will be based, i.e., application of the best system of continuous emission reduction which (taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impact and energy requirements) the Administrator determines has been adequately demonstrated. (Section 111(a)(1))
4. Affected facility—the pieces or groups of equipment that comprise the sources to which the standards will apply.

5. Emission points to be regulated—within the affected facility, the specific physical location emitting pollutants (e.g., vents, stacks, and equipment leaks).

6. Format for the standards—the form in which the standards are expressed, i.e., as a percent reduction in emissions, as pollutant concentrations (emission limits), as fuel specifications, or as equipment standards.

7. Actual standards—based on what the best demonstrated technology (BDT) can achieve, the maximum permissible emissions.

Note: In general, standards do not require that a specific technology be used to achieve them. The source owner/operator may select the method for achieving the pollution control required.

8. Other possible considerations—in addition, NSPS often include: standards for visible emissions, modification/reconstruction considerations, monitoring requirements, performance test methods, and reporting and recordkeeping requirements.

C. Overview of This Preamble

This preamble will:

1. Summarize the important features of this NSPS by discussing the conclusions reached with respect to each of the elements in the decision scheme.
2. Present a rationale for each of the decisions in the decision scheme.
3. Describe the environmental, energy, and economic impacts of this NSPS.
4. Discuss administrative requirements relevant to this action.

II. Summary of the Standards**A. Source Category To Be Regulated**

The proposed standards would apply to industrial-commercial-institutional steam generating units with heat input capacities of 29 MW (100 million Btu/hour) or less but greater than or equal to 2.9 MW (10 million Btu/hour). Industrial-commercial-institutional steam generating units include any devices, regardless of application, that combust fuel to produce steam or to heat water or any other heat transfer medium, including units that are part of a cogeneration system or combined cycle system.

B. Pollutants To Be Regulated

Emissions of SO₂, PM, and NO_x would be regulated under the proposed standards.

C. Best Demonstrated Technology

The determination of BDT reflects EPA's consideration of a wide variety of factors. These factors include the

feasibility and availability of technologies, the costs of control, and energy and environmental effects.

The proposed standards for SO₂ are based on a percent reduction requirement for coal-fired units greater than 22 MW (75 million Btu/hour) heat input capacity which operate at annual capacity factors above 55 percent (0.55) and the use of low sulfur coal for all other coal-fired units in this source category. The proposed standards for SO₂ are also based on the use of very low sulfur oil capable of meeting an emission limit of 215 ng/l (0.50 lb/million Btu) for oil-fired units. The EPA is proposing to conclude that these emission limits and percent reduction requirements represent the BDT's for reducing emission of SO₂ from small coal- and oil-fired steam generating units.

The proposed standards for PM are based on the use of: fabric filters or electrostatic precipitators (ESP's) for reducing PM emissions from small coal-fired units of 8.7 MW (30 million Btu/hour) heat input capacity or greater; wet scrubbers and ESP's for reducing PM emissions from small wood-fired units of 8.7 MW (30 million Btu/hour) heat input capacity or greater; and very low sulfur oil capable of meeting an SO₂ emission limit of 215 ng/l (0.50 lb/million Btu) heat input for reducing PM emissions from small oil-fired units. The EPA is proposing to conclude that these emission limits represent BDT's for reducing PM emissions from small coal-, wood-, and oil-fired steam generating units.

D. Format of the Standards

The proposed standards for SO₂ establish a percent reduction requirement for certain coal-fired units and an emission limit for coal- and oil-fired units. Emissions would be calculated as nanograms of pollutant per joule (ng/J) of heat input or pounds of pollutant per million Btu (lb/million Btu) heat input supplied by the fuel. As an alternative to meeting the SO₂ emission limit for oil, a fuel sulfur content specification is proposed. The proposed standards for PM and NO_x establish emission limits, which are also calculated on a ng/l or lb/million Btu heat input basis. The proposed standards for PM also include a percent opacity limit.

E. Actual Standards**1. Particulate Matter**

The proposed standards for PM would establish an emission limit of 22 ng/l (0.05 lb/million Btu) heat input for coal-

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fired units with a heat input capacity of 8.7 MW (30 million Btu/hour) or greater. An emission limit of 43 ng/J (0.10 lb/million Btu) heat input would be established under the proposed standards for wood-fired units with a heat input capacity of 8.7 MW (30 million Btu/hour) or greater. All coal-, oil-, and wood-fired units of 8.7 MW (30 million Btu/hour) heat input capacity or greater would be subject to an opacity limit of 20 percent (0.2).

2. Sulfur Dioxide

The proposed standards for SO₂ would require all small coal-fired industrial-commercial-institutional steam generating units greater than 22 MW (75 million Btu/hour) heat input capacity that operate at an annual capacity factor for coal of greater than 55 percent (0.55) to meet a 90 percent SO₂ emission reduction requirement and an SO₂ emission limit of 520 ng/J (1.2 lb/million Btu) heat input. All other coal-fired units in this source category would be required to meet only an SO₂ emission limit of 520 ng/J (1.2 lb/million Btu) heat input. Small oil-fired steam generating units would be required to meet an SO₂ emission limit of 215 ng/J (0.50 lb/million Btu) heat input. Alternatively, small oil-fired steam generating units could comply with the SO₂ emission limit by firing oil with a sulfur content of less than 0.5 weight percent.

3. Nitrogen Oxides

The proposed standards for NO_x would establish an emission limit of 430 ng/J (1.0 lb/million Btu) heat input of all small coal-, oil-, and natural gas-fired industrial-commercial-institutional steam generating units with a heat input capacity of 2.9 MW (10 million Btu/hour) or greater.

F. Performance Testing and Monitoring Requirements

The proposed SO₂ standards for small coal-fired steam generating units would require either use of a continuous emission monitoring system (CEMS), Reference Method 6B, or daily fuel sampling for sulfur content. Compliance with the standards would be determined on a continuous 30-day rolling average basis using the CEMS, Method 6B, or daily fuel sampling and analysis results to calculate SO₂ emission for 30 consecutive steam generating unit operating days. Calculations to determine compliance would be made in accordance with Reference Method 19. For units subject to the percent reduction requirement, SO₂ emissions at the outlet of the control device must be measured by a CEMS or Method 6B.

Compliance with the SO₂ standard for residual oil-fired units would be determined by use of a CEMS, Method 6B, or by fuel sampling and analysis. Compliance with the SO₂ emission limit would be determined on a continuous 30-day rolling average basis. Calculations to determine compliance would be made in accordance with Reference Method 19.

As mentioned, a residual oil-fired unit may demonstrate compliance through the use of fuel sampling and analysis. One method of fuel sampling would be to take daily as-fired fuel samples at the inlet of the steam generating unit and have them analyzed. However, the owner or operator of a residual oil-fired steam generating unit may also take and analyze a sample from the oil storage tank for each steam generating unit subject to the standard after each new shipment of oil is received and before any amount of oil is combusted. Results of the fuel analysis would be used as the daily value when computing 30-day rolling averages of SO₂ emissions until the next fuel shipment is received. Upon receipt of a new shipment, a new sample from the oil supply tank would be taken and analyzed, and then used as the new daily average. It is assumed that the oil in the tank is thoroughly mixed during filling; therefore, a sample taken from the tank after filling would accurately represent the sulfur content of the oil in the tank.

Performance tests to determine compliance with the PM emission limits would be conducted in accordance with Reference Method 5, Reference Method 5B, or Reference Method 17. Reference Method 3 would be used for gas analysis and Reference Method 1 for the selection of sampling points. Reference Method 9 (a 6-minute average of 24 observations) would be used to determine compliance with the opacity standard. Continuous opacity monitoring would be required for all small coal-, oil-, and wood-fired steam generating units with heat input capacities of 8.7 MW (30 million Btu/hour) or greater.

G. Reporting and Recordkeeping

The proposed standards would require owners or operators of all affected facilities to submit a notification of the intent to initiate operation of a new, modified, or reconstructed small steam generating unit. In addition, a report of the results of an initial performance and opacity test would be required for coal-, oil-, and wood-fired units to demonstrate initial compliance with the SO₂, PM, and opacity standards, as applicable.

Quarterly reports of the fuel sampling and analysis, Method 6B, or CEMS results would be required for coal- and residual oil-fired units under the proposed SO₂ standards. Records of all data, including the results of emission tests, fuel sampling and analysis results, Method 6B data, and CEMS data must be maintained for 2 years and made available for inspection by enforcement personnel.

The proposed SO₂ standards would require owners or operators of distillate oil-fired units to submit a quarterly report of fuels fired from these units. The report must include a certified statement signed by the owner of the unit that all oil combusted in the unit since the previous report complied with the American Society for Testing and Materials (ASTM) specifications for distillate oil. Owners or operators must maintain shipping receipts for 2 years to show that they have purchased distillate oil meeting ASTM specifications. The proposed PM standards would require owners or operators to submit quarterly excess emission reports for coal-, oil-, and wood-fired units. If no excess emissions occur in a particular quarter, then a semiannual report would be required stating that no excess emissions occurred during the reporting period.

H. Request for Comments

The Administrator will welcome comments on all aspects of the proposed standards, including economic and technological issues, proposed test methods, and monitoring requirements. All comments received will be considered in the development and selection of final standards. However, EPA specifically requests comment on three issues raised during development of the proposed standards which warrant special consideration and are discussed below.

Each issue involves a determination of the best system of continuous emission reduction taking into account the cost of achieving such emission reduction and the "reasonableness" of the proposed standards in terms of cost effectiveness (the cost to a small steam generating unit of complying with the proposed regulation divided by the emission reduction). Specific comment is requested from all interested parties including State agencies, Federal agencies, environmental groups, industry trade associations, and individual citizens.

1. Percent Reduction Requirement

As stated previously, the proposed standards limiting SO₂ emissions from

small coal-fired steam generating units would require a 90 percent reduction in SO₂ emissions from units with heat input capacities greater than 22 MW (75 million Btu/hour) that operate at annual capacity factors greater than 55 percent. The resulting cost effectiveness ranges from \$3,100/Mg to \$3,600/Mg (\$2,800/ton to \$3,300/ton) for individual steam generating units. These cost-effectiveness values are on the high end of the cost effectiveness range imposed by past NSPS for SO₂ control (i.e., up to \$3,000/ton). Therefore, the Administrator specifically requests comment on this portion of the proposed standards.

In this case, the only alternative would be to eliminate the percent reduction requirement from the standards and establish an emission limit of 520 ng/J (1.2 lb/million Btu) heat input. Past NSPS for steam generating units have provided relief from percent reduction requirements where the impacts of requiring percent reduction were considered unreasonable. The cost effectiveness of this alternative would range from \$800/Mg to \$2,100/Mg (\$500/ton to \$1,900/ton) for individual units.

2. Coal PM Standard

As stated earlier, the proposed standards limiting PM emissions from small steam generating units would establish an emission limit of 43 ng/J (0.1 lb/million Btu) heat input for coal-fired units with heat input capacities of 8.7 MW (30 million Btu/hour) or greater. The resulting cost effectiveness ranges from about \$2,800/Mg to \$7,200/Mg (\$2,500/ton to \$6,600/ton) for individual units. As stated below under "Selection of Best System of Particulate Matter Emission Reduction", these cost effectiveness values are high compared to the cost effectiveness imposed by past NSPS for PM control (i.e., up to \$3,000/ton). However, the affected facilities will be predominantly located in urban areas, and the particulate matter emissions will be mostly PM₁₀, have toxic characteristics, and be released through short stacks. Fabric filters/ESP's are clearly demonstrated technologies that provide the best emission reduction potential of any PM control device, and the economic impact of their use is negligible. As with the percent reduction requirement, the Administrator specifically requests comment on the proposed conclusion that fabric filters/ESP's represent best demonstrated technology for small coal-fired steam generating units.

Three regulatory alternatives were examined during development of the proposed standards. There are an infinite number of alternatives that

could have been examined, which could have included combinations of various control technologies with different size cutoffs and capacity factor cutoffs. For example, one alternative could have been an emission limit of 22 ng/J (0.05 lb/million Btu) heat input for coal-fired units with heat input capacities of 15 MW (50 million Btu/hour) or greater which operate at annual capacity factors of 55 percent or more, and an emission limit of 130 ng/J (0.30 lb/million Btu) heat input for coal-fired units with heat input capacities of 15 MW (50 million Btu/hour) or greater which operate at annual capacity factors below 55 percent. The resulting cost effectiveness of this alternative would range from \$1,800/Mg to \$3,600/Mg (\$1,600/ton to \$3,200/ton) for individual units. This alternative results in cost effectiveness values closer to those imposed by past NSPS for PM control, but would permit the use of less effective control technologies (double mechanical collectors) on certain units.

3. Wood PM Standard

As stated earlier, the proposed standards limiting PM emissions from small steam generating units would establish an emission limit of 43 ng/J (0.1 lb/million Btu) heat input for wood-fired units with heat input capacities of 8.7 MW (30 million Btu/hour) or greater. The resulting cost effectiveness ranges from about \$6,000/Mg to \$18,000/Mg (\$5,400/ton to \$16,000/ton) for individual units. As stated below under "Selection of Best System of Particulate Matter Emission Reduction", these cost effectiveness values are high compared to the cost effectiveness imposed by past NSPS for PM control (i.e., up to \$3,000/ton). As with the percent reduction requirement and the coal PM standard, the Administrator specifically requests comment on the proposed conclusion that wet scrubbers/ESP's represent best demonstrated technology for small wood-fired steam generating units.

Three regulatory alternatives were examined during development of the proposed standards. As with coal, there are an infinite number of alternatives that could have been examined, which could have included combinations of various control technologies with different size cutoffs and capacity factor cutoffs. For example, one alternative could have been an emission limit of 130 ng/J (0.30 lb/million Btu) heat input for all wood-fired units with heat input capacities of 15 MW (50 million Btu/hour) or greater. The resulting cost effectiveness of this alternative would range from \$900/Mg to \$2,900/Mg (\$800/ton to \$2,600/ton) for individual units.

This alternative results in cost effectiveness values closer to those imposed by past NSPS for PM control, but would be based on the use of double mechanical collectors (a less effective control technology) for small wood-fired units.

III. Impacts of the Standards

A. Air

Compared to SO₂ emission levels as currently controlled by a typical State Implementation Plan (SIP), the proposed standards would reduce emissions of SO₂ from a small industrial-commercial-institutional steam generating unit by about 70 to 80 percent, depending on the steam generating unit size and the type of fuel fired.

The proposed standards would reduce emissions of PM from a small industrial-commercial-institutional steam generating unit by about 80 to 90 percent, depending on the steam generating unit size and the type of fuel fired.

In the fifth year after this NSPS becomes applicable, nationwide emissions of SO₂ would be decreased by about 34,000 megagrams per year (Mg/year) or about 37,000 tons per year (tons/year) compared with projected emission levels under the regulatory baseline. Nationwide emissions of PM would be decreased by about 3,100 Mg/year (3,400 tons/year) compared with projected emission levels under the regulatory baseline.

B. Water and Solid Waste

Under the proposed standards, no significant water pollution impacts are projected, and the projected impacts on solid waste generation are small. In addition, the wastes produced by PM control processes are nonhazardous and can be disposed of using traditional treatment and disposal techniques. Therefore, no adverse water pollution or solid waste impacts are anticipated as a result of the proposed standards.

C. Energy

The proposed standards will not result in significant impacts on national fuel use markets. Some fuel switching from coal and residual oil to natural gas or distillate oil may occur, but the impact of any fuel switching on coal, oil, and natural gas markets would be negligible on a national basis. Energy consumption impacts resulting from the proposed standards would be small.

*D. Control Costs**1. Typical Steam Generating Unit Costs*

Under the proposed standards, the capital cost of a small coal-fired steam generating unit would increase by about 11 percent over the costs at the regulatory baseline. The magnitude of the increase would depend on steam generating unit size and type. Annualized costs for a small coal-fired steam generating unit would increase by approximately 6 percent over the costs at the regulatory baseline, depending on unit size and coal type. For a small oil-fired steam generating unit, the capital cost would increase by about 3 percent and annualized costs would increase by about 19 percent over the costs at the regulatory baseline, depending on unit size and oil type. For a small wood-fired steam generating unit, the capital cost would increase by about 19 percent and annualized costs would increase by about 10 percent over the costs at the regulatory baseline, depending on unit size and type.

2. Nationwide Costs

In the fifth year of applicability of the proposed standards, the nationwide annualized costs for small steam generating units would increase by about \$38 million.

E. Economic Effects

The economic effects of the proposed standards are considered negligible. For most of the six major industry groups analyzed, product prices under the "worse case" would increase by less than 1 percent. For the most steam intensive industries, product prices under the "worst case" are projected to increase by 2.8 percent. National product price impacts would be significantly less. Most commercial-institutional facilities would not be affected by the proposed standards because of the size of the steam generating unit and fuels fired at these facilities. Of the commercial-institutional facilities with steam generating units subject to the proposed SO₂ and PM standards, costs of services would generally increase by less than 0.5 percent. For the most steam intensive commercial facility, costs of services are projected to increase by 1.3 percent. Rental rates for office buildings that are affected by the proposed standards would increase by less than 1 percent.

*IV. Rationale for the Standards**A. Selection of Source Category*

On August 21, 1979, a priority list for development of additional NSPS was published in accordance with sections

111(b)(1)(A) and 111(f)(1) of the CAA (44 FR 49222). This list identified 59 major stationary source categories that were judged to contribute significantly to air pollution that could reasonably be expected to endanger public health or welfare. Fossil fuel-fired steam generating units ranked eleventh on this priority list of sources for which NSPS would be established in the future.

Of the 10 sources ranked above fossil fuel-fired steam generating units on the priority list, 9 were major sources of volatile organic compound (VOC) emissions. Because many areas have not attained the national ambient air quality standard (NAAQS) for ozone, major sources of VOC emissions were accorded a very high priority. Fossil fuel-fired industrial steam generating units were the highest ranked source of PM and SO₂ emissions when the priority list was published.

An amendment to the priority list was promulgated on November 25, 1986, that expanded the source category of industrial fossil fuel-fired steam generating units to cover all steam generating units, including both fossil fuel-fired and nonfossil fuel-fired steam generating units, as well as steam generating units used in commercial and institutional applications (51 FR 42796). Consistent with that amendment to the priority list, these proposed standards include both fossil fuel- and wood-fired small industrial, commercial, and institutional steam generating units.

Fossil fuel- and wood-fired steam generating units are significant sources of emissions of PM (including PM₁₀, which is PM with mean diameters smaller than 10 microns), SO₂, and NO_x. In particular, the expected construction of numerous new small steam generating units as a result of industrial, commercial, and institutional sector growth is expected to result in an increase in emissions of these pollutants.

National ambient air quality standards have been established for SO₂, PM₁₀, and NO_x because of their known adverse effects on public health and welfare. Impacts of these pollutants have been documented in criteria documents prepared under Section 108 of the CAA. These effects are a major basis for concluding that emissions from small steam generating units constitute a potential danger to public health and welfare. Also significant is the fact that many new small steam generating units will be located in urban areas where a large population may be exposed to the emissions.

B. Selection of Affected Facilities

This rulemaking focused on industrial-commercial-institutional steam generating units with heat input capacities of 29 MW (100 million Btu/hour) or less. Steam generating units are defined as devices, regardless of application, that combust fuel to produce steam or to heat water or any other heat transfer medium. This definition includes units that are part of a cogeneration or a combined cycle system, but does not include process heaters. A process heater is defined as a device that is primarily used to heat a material to promote a chemical reaction in which the material participates as a reactant or catalyst.

The population of steam generating units in the size range of 29 MW (100 million Btu/hour) heat input or less can be subdivided into two distinct segments: commercial-institutional and industrial units. Commercial-institutional units include those units located at offices and apartments, shopping centers, hospitals, laundries, hotels, elementary and secondary schools, colleges and universities, and other nonindustrial facilities. Commercial-institutional units are predominantly found in the size range below about 8.7 MW (30 million Btu/hour) heat input capacity. Industrial units include those units that provide steam for manufacturing and other production facilities. Industrial units are predominantly found in the size range above 8.7 MW (30 million Btu/hour) heat input capacity.

The commercial-institutional segment can be further subdivided into two principal groups. Above about 2.9 MW (10 million Btu/hour) heat input capacity, most commercial-institutional units serve major hospitals, large colleges and universities, large hotels, large commercial laundries, and other large commercial-institutional facilities. Below about 2.9 MW (10 million Btu/hour) heat input capacity, the majority of commercial-institutional units serve elementary and secondary schools, shopping centers, office buildings, and other smaller commercial-institutional facilities.

Consequently, the small industrial-commercial-institutional steam generating unit population is composed of units falling into one of three major size ranges. Units between 8.7 and 29 MW (30 and 100 million Btu/hour) heat input capacity are used primarily in industrial facilities. Units between 2.9 and 8.7 MW (10 and 30 million Btu/hour) heat input capacity are used primarily at larger commercial-institutional facilities

and some industrial facilities. Units below 2.9 MW (10 million Btu/hour) heat input capacity are used almost exclusively at smaller commercial-institutional facilities.

In addition to differences in end use application, the predominant type of steam generating unit varies according to these three major size ranges. In the industrial segment [above about 8.7 MW (30 million Btu/hour) heat input capacity], watertube units predominate. In the population segment of larger commercial-institutional units [between about 8.7 MW (30 million Btu/hour) and 2.9 MW (10 million Btu/hour) heat input capacity], both watertube and firetube units are found. In the small commercial-institutional population segment [below about 2.9 MW (10 million Btu/hour) heat input capacity], firetube and cast-iron designs predominate. Each of these unit types has noticeably different design and emission characteristics.

Fuel use patterns also vary according to the three major size ranges in the small steam generating unit population. Natural gas and distillate oil tend to be the predominant fuels combusted in commercial-institutional units below 2.9 MW (10 million Btu/hour) heat input, whereas residual oil is an important fuel in industrial and larger commercial-institutional units. Also, to the extent that coal is used as a fuel in the small steam generating unit population, it is generally used in industrial units above 8.7 MW (30 million Btu/hour) in size.

Because of the different applications, types of units, and fuels fired in the three major size ranges of the small steam generating unit population, the potential emissions reductions for each size range will vary. The major pollutants emitted from steam generating units are SO₂, PM, and NO_x. The actual amount of these pollutants emitted from each individual unit will vary according to size range. For instance, potential SO₂ emission reductions from a typical steam generating unit smaller than 2.9 MW (10 million Btu/hour) heat input capacity would be negligible; potential SO₂ emission reductions from a typical unit between 2.9 and 8.7 MW (10 and 30 million Btu/hour) heat input capacity would be about 70 Mg/year (80 tons/year); and potential SO₂ emission reductions from a typical unit between 8.7 and 29 MW (30 and 100 million Btu/hour) heat input capacity would be about 450 Mg/year (500 tons/year).

As with SO₂, emissions of PM from this source category also vary by size range. For example, potential PM emission reductions from a typical steam generating unit smaller than 2.9

MW (10 million Btu/hour) heat input capacity would be negligible. Potential PM emission reductions from a typical unit between 2.9 and 8.7 MW (10 and 30 million Btu/hour) heat input capacity would be about 2.7 Mg/year (3.0 tons/year). Potential PM emissions reductions from a typical unit above 8.7 MW (30 million Btu/hour) heat input capacity would be approximately 90 Mg/year (100 tons/year). The same pattern is evident with emissions of NO_x.

The preceding discussion generalizes the fuel use, unit type, and emission characteristics of small steam generating units. Other size ranges could have been selected and may, in some cases, be appropriate. The EPA solicits comments on whether the size ranges chosen will accurately represent the small steam generating units subject to the NSPS.

This comparison demonstrates that the greatest potential emission reductions are achievable from units in the largest size ranges (i.e., industrial and large commercial-institutional units) and that the potential emission reductions achievable from units in the smallest size range (i.e., small commercial-institutional units) are extremely small. Considerable administrative and enforcement resources, however, would be needed to apply standards to these small steam generating units because of the large number of units in the smallest size range. For example, an estimated 14,000 new units below 2.9 MW (10 million Btu/hour) in size are projected to be built through the fifth year after proposal, compared to about 1,300 units in the size range between 2.9 and 8.7 MW (10 and 30 million Btu/hour) in size, and about 500 units between 8.7 and 29 MW (30 and 100 million Btu/hour) in size.

Thus, even though a larger number of units is found in the smallest size range, a much greater emission reduction per unit would be gained by focusing the NSPS on industrial and large commercial-institutional units. Very little emission reduction would be gained by regulating a steam generating unit in the smallest size range, and substantial agency resources would be needed to review, monitor, and enforce the NSPS.

In addition to the extra burden on regulatory agencies, owners or operators of these smaller sized units would have the extra burden of dealing with these new national regulations. As stated previously, most of the smaller commercial-institutional units (i.e., those with heat input capacities less than 2.9 MW (10 million Btu/hour)) are located in places such as public schools or

churches. Because these facilities usually employ part-time or volunteer operators rather than full-time personnel, the testing and reporting requirements needed to demonstrate compliance with the standards would be much more difficult for small commercial-institutional establishments to meet. For example, it would be difficult and burdensome for personnel at an elementary school, church, or small apartment building to collect and analyze samples of fuels fired and submit reports on a regular basis to the respective enforcement agency.

Because of the extra burden required of both the unit owner/operator and regulatory agency personnel, and the small emission reductions involved, regulation of units in the smallest size range is not considered reasonable. Consequently, a lower size cutoff of 2.9 MW (10 million Btu/hour) heat input capacity was selected for determining applicability with the proposed regulations.

C. Selection of Best System of Nitrogen Oxides Emission Reduction

Because of the relatively small emission reductions and the relatively high costs associated with NO_x controls on small steam generating units, NO_x standards for small steam generating units are considered unreasonable. For example, a recent report by the South Coast Air Quality Management District regarding NO_x standards for small steam generating units located in southern California cited cost-effectiveness levels of \$6,600/Mg (\$6,000/ton). These cost-effectiveness levels are generally considered unreasonable for national NO_x standards. Consequently, to evaluate the reasonableness of NO_x standards for small steam generating units, a screening-type cost analysis was undertaken to estimate the cost effectiveness of NO_x control technologies available for setting national standards limiting NO_x emissions from small steam generating units.

Several control technologies are available to control NO_x emissions from small steam generating units: low excess air (LEA), flue gas recirculation (FGR), staged combustion (SC), thermal de-NO_x, and selective catalytic reduction (SCR). With LEA, the combustion air flow is reduced to near the minimum amount needed for complete combustion. In an FGR system, a portion of the flue gas is recycled from the stack to the burner windbox. Upon entering the windbox, the flue gas is mixed with the combustion air prior to being fed to

the burner or the grate. In one type of SC system, conventional burners are used to introduce the fuel and a portion of the combustion air (called primary air) into the steam generating unit. The remaining combustion air (secondary air) is introduced approximately one-third of the distance down the furnace through overfire air (OFA) ports. Alternatively, SC can be carried out in the burner rather than through the use of OFA ports. In thermal de-NO_x, ammonia (NH₃) is injected into the upper combustion chamber (convection section) of the combustor at a specified temperature window to reduce NO_x to nitrogen gas (N₂). In SCR, NH₃ injected into the flue gas downstream of the combustion chamber mixes with the NO_x contained in the flue gas and passes through a catalyst bed.

Of these control technologies, thermal de-NO_x was not considered further because the required temperature/residence time window generally cannot be achieved by units in the small steam generating unit size range. Selective catalytic reduction also was not considered further because the catalysts used in this technique are very expensive.

Low excess air, SC, and FGR are applicable to small steam generating units and could serve as the basis for national standards limiting NO_x emissions from such units. Low excess air has the potential for reducing NO_x emissions by about 20 percent, and FGR and SC have the potential for reducing emissions by about 50 percent.

The current data available on NO_x emissions from these three control techniques applied to small steam generating units are quite limited and very scattered. Conclusions regarding performance of these technologies cannot be drawn, and therefore, standards cannot be developed based on the existing data. Nevertheless, assumptions were made regarding the performance capabilities and costs of these technologies to determine whether the cost impacts of establishing NO_x standards for small steam generating units would be reasonable.

For the three NO_x control technologies examined, the costs for NO_x control were estimated for small steam generating units combusting natural gas, distillate oil, residual oil, and coal. For a typical 15 MW (50 million Btu/hour) heat input capacity unit operating at a capacity factor of 55 percent (0.55), costs were calculated for uncontrolled units and units equipped with LEA, FGR, and SC. Approximations of baseline and controlled NO_x emission levels were used to estimate the cost effectiveness

of applying LEA, FGR, or SC controls to these units.

The resulting cost-effectiveness levels for LEA ranged from \$3,300/Mg (\$3,000/ton) to \$33,000/Mg (\$30,000/ton), and the resulting cost-effectiveness levels for FGR and SC were in excess of \$3,300/Mg (\$3,000/ton). For this analysis of FGR and SC, NO_x emission reductions were assumed to be 70 percent over baseline, which is in the same range cited in the above-mentioned California report. These emission reduction projections, which are quite high, tend to overstate the actual achievable reductions so that the true cost-effectiveness values for FGR/SC on small steam generating units are expected to be higher.

Some costs were not included in these analyses, such as the cost of employing a full-time, highly trained steam generating unit operator, who may not be present at all facilities. Due to the sophistication of the technologies, the operation of NO_x controls requires full-time, skilled operators. Since no cost for the operator was included, the actual cost effectiveness of NO_x control on small steam generating units could be higher, and the performance capabilities of the technologies as well as the achievable emission reductions could be overestimated.

As mentioned earlier, there are some areas of the country that have acute air quality problems. In these areas, NO_x controls may well be considered necessary and reasonable even at higher cost-effectiveness levels. However, the estimated cost-effectiveness levels associated with NO_x standards for small steam generating units, discussed above, are considered unreasonable for national NO_x standards.

However, EPA is under Court order to issue " " proposed small boiler NSPS for particulate matter, nitrous oxides, and sulfur dioxide by June 1, 1989 " " (Sierra Club vs Reilly, D.D.C. N. 84-0325). While the Court's decision recognized EPA's discretion in determining which pollutants from a source category to regulate, the specific language of the Order could be interpreted to mean that EPA must propose NO_x standards. As stated above, EPA considers national NO_x standards based upon readily available combustion modification techniques or add-on control technologies to be unreasonable for small steam generating units. However, to avoid the possibility that EPA would be in violation of the letter of the Court order, a NO_x standard of 430 ng/J (1.0 lb/million Btu) heat input is proposed in today's notice for affected facilities combusting coal, oil, natural

gas, or mixtures of these fuels with any other fuels. The NO_x standard would be established at a level that can be met by all small steam generating units. For this reason, no source testing or monitoring would be required. The EPA will consider comments on the appropriateness of this standard for NO_x and specifically solicits comment on the appropriateness of applying the NO_x control techniques described above to this source category. As with the proposed SO₂ standards and PM standards, any unit which has commenced construction after today's proposal date must meet whatever final NO_x standard is promulgated.

D. Selection of Best System of Particulate Matter Emission Reduction

1. Natural Gas-Fired Small Steam Generating Units

The uncontrolled PM emissions from the combustion of natural gas in small steam generating units are very low. Uncontrolled PM emission levels of less than 9 ng/J (0.02 lb/million Btu) heat input are typical of natural gas-fired steam generating units. Because of these low uncontrolled PM emission levels, the application of any type of PM control technology to small natural gas-fired steam generating units would impose significant costs for no benefit. Consequently, the use of any conventional PM control technology to reduce PM emissions from small natural gas-fired steam generating units is considered unreasonable and no further consideration has been given to the development of standards to limit PM emissions from these units.

2. Oil-Fired Small Steam Generating Units

The SIP PM emission limits for small oil-fired units range from 130 to 190 ng/J (0.30 to 0.45 lb/million Btu) heat input, depending on unit size. These emission limits can generally be met when firing high sulfur oil with no add-on controls based on the correlation between fuel oil sulfur content and emissions of PM from oil combustion presented in the manual, "Compilation of Air Pollutant Emission Factors" (AP-42). This correlation, which is based on data from over 100 steam generating units, indicates that PM emissions from fuel oils having a sulfur content of 1,290 ng/J (3.0 lb/million Btu) heat input would be about 95 ng PM/J (0.22 lb/million Btu) heat input.

This correlation between PM emissions and oil sulfur content indicates that reductions in PM emissions are a secondary benefit

associated with reducing emissions of SO₂ through the combustion of low sulfur oils. As a result, the proposed standards limiting SO₂ emissions from oil combustion, which are based on the use of very low sulfur oil, also achieve reductions in PM emissions.

Based on the data from AP-42, firing very low sulfur oil with a sulfur content of 215 ng/J (0.50 lb/million Btu) heat input or less will reduce PM emissions to 43 ng/J (0.10 lb/million Btu) heat input or less. Thus, firing very low sulfur oil to comply with the SO₂ standard discussed below can be expected to reduce PM emissions to 43 ng/J (0.10 lb/million Btu) heat input or less.

Flue gas desulfurization (FGD) systems are also capable of reducing PM emissions from oil-fired steam generating units to 43 ng/J (0.10 lb/million Btu) heat input or less. As a result, if a small oil-fired steam generating unit were to fire a high sulfur oil and use an FGD system to comply with the proposed SO₂ standard, this system would also reduce PM emissions to 43 ng/J (0.10 lb/million Btu) heat input.

Use of add-on PM controls was considered for limiting emissions from small oil-fired units beyond levels achievable either from combusting very low sulfur oil or from using FGD systems if combusting high sulfur oil. Fabric filters were not considered because fly ash from oil combustion is sticky, making these control systems ineffective on oil-fired units in general. Mechanical collectors also were not considered because they are ineffective in collecting the small particle sizes of PM characteristic of oil combustion.

Electrostatic precipitators have been used to control PM emissions from some oil-fired units. Although few data are available, these data indicate that an ESP can reduce PM emissions to 22 ng/J (0.05 lb/million Btu) heat input or less. The cost effectiveness of this additional emission reduction from 43 ng/J (0.10 lb/million Btu) to 22 ng/J (0.05 lb/million Btu), however, is estimated to be over \$110,000/Mg (\$100,000/ton), which is considered unreasonable.

The proposed SO₂ standards would reduce PM emissions from oil-fired units by requiring the use of oils with a very low sulfur content that result in PM emissions of less than 43 ng/J (0.10 lb/million Btu) heat input or, if a high sulfur oil is fired, the use of an FGD system that will also reduce PM emissions to less than 43 ng/J (0.10 lb/million Btu) heat input. Any additional PM control on these units is considered unreasonable. Therefore, no PM emission limit is proposed for oil-fired units.

Although combustion of very low sulfur oil results in low PM emissions, it is possible through incomplete combustion for PM emissions to increase. Incomplete combustion can result from poor maintenance or improper operation. In both cases, incomplete combustion is easily identified by increased opacity at the stack, and if the opacity exceeds 20 percent this is a clear indication of incomplete combustion. For this reason, an opacity limit of 20 percent is proposed to allow identification of, and appropriate enforcement action to be taken regarding, oil-fired units operating with incomplete combustion.

3. Coal-Fired Small Steam Generating Units

Coal PM Emissions and Control Techniques. Unlike PM emissions from oil combustion, PM emissions from coal combustion cannot be correlated to fuel sulfur content. Consequently, limiting SO₂ emissions from coal combustion through the use of low sulfur coal will have little, if any, effect on PM emissions. Therefore, the proposed SO₂ standard for small coal-fired steam generating units achieves little, if any, reduction in PM emissions from these units.

The SIP emission limits for PM emissions from small coal-fired units range from 140 to 200 ng/J (0.33 to 0.46 lb/million Btu) heat input, depending on steam generating unit size. The PM control system historically used to meet these SIP emission limits is a single mechanical collector.

Mechanical collection is a well-established technology using centrifugal separation to remove particles from a gas stream. Mechanical collectors have been widely used for years to control PM emissions from steam generating units firing coal. More recently, they have been used as flue gas precleaning devices located upstream of more efficient PM control devices. Therefore, the regulatory baseline for PM emissions from small coal-fired units was based on the performance of a single mechanical collector.

The emission control techniques evaluated for limiting PM emissions from small coal-fired steam generating units include double mechanical collectors (DMC's), sidestream separators, wet FGD systems (wet scrubbers), fabric filters, and ESP's.

Double Mechanical Collectors. Most mechanical collectors consist of multiple small cyclone collectors connected in a parallel arrangement (multitube cyclone). A variation of this technology consists of two mechanical collectors connected in series. This latter

configuration is referred to as a DMC. This arrangement typically achieves lower PM emission levels than a single mechanical collector.

To assess the performance of DMC's on coal-fired units, PM emissions data from nine sites were reviewed. The units ranged in heat input capacity from 15 to 60 MW (60 to 206 million Btu/hour) and were operated at 33 to 100 percent of full load during the tests. In all the tests, PM emissions were less than 130 ng/J (0.30 lb/million Btu). Therefore, DMC's are considered a demonstrated control technique for reducing PM emissions to 130 ng/J (0.30 lb/million Btu) heat input or less on coal-fired units.

Although DMC's will reduce PM emissions from coal combustion, mechanical collectors in general are relatively ineffective for collecting PM₁₀. As particle size approaches PM₁₀, the control efficiency of mechanical collection systems drops sharply. Data from AP-42 indicate that the PM₁₀ removal efficiency of mechanical collection systems on coal-fired units is less than 40 percent. Consequently, a large amount of the PM emitted from coal-fired units operating with DMC's is PM₁₀. These smaller particle sizes are in the inhalable range and have a greater potential for adverse health impacts.

Sidestream Separators. A sidestream separator is a mechanical collector from which a slipstream or "sidestream" of flue gas is routed to a small fabric filter. In most cases, about 20 percent of the total flue gas volume passes through the fabric filter, although in some cases it may approach 50 percent of the total gas stream.

Data were available for eight spreader stoker units ranging in heat input capacity from 9 to 29 MW (31 to 100 million Btu/hour) and retrofitted with sidestream separators. The units operated at loads ranging from 68 to 108 percent of full capacity under relatively constant load conditions. The percentage of total flow sent to the fabric filter varied from 15 to 51 percent. Particulate matter emissions in all tests were less than 86 ng/J (0.20 lb/million Btu). Sidestream separators, therefore, are considered a demonstrated control technique for reducing PM emissions from small coal-fired units to 86 ng/J (0.20 lb/million Btu) or less.

The available PM₁₀ emission control performance data for sidestream separators applied to stoker steam generating units firing coal indicate an improvement in performance in comparison to mechanical collectors. The limited data available indicate sidestream separators remove approximately 70 to 80 percent of PM₁₀.

In addition, sidestream separators can be operated with a constant air flow rate through the fabric filter, thereby increasing the ratio of gas through the baghouse to total gas flow at reduced load and partially offsetting any deterioration in mechanical collector performance at reduced load. Over the full operating range, sidestream separators represent a method of improving mechanical collector performance; however, the mechanical collector component of a sidestream separator must be well maintained to ensure low overall emission rates. The small fabric filter used in the sidestream separator arrangement cannot offset poor performance of an inadequately maintained mechanical collector.

Wet Scrubbers or Wet FGD Systems. A wet scrubber system uses an aqueous stream to remove PM from a gas stream. The available emissions data for wet scrubbers consisted of data for three wet scrubbers servicing coal-fired spreader stoker units. The units ranged from 37 to 69 MW (125 to 236 million Btu/hour) heat input capacity and were operated at loads ranging from 73 to 92 percent of full load during the tests.

All three wet scrubbers were dual-alkali FGD systems designed with venturi devices for combined PM and SO₂ control and were preceded by mechanical collectors. Particulate matter emissions in all tests were less than or equal to 43 ng/J (0.10 lb/million Btu) heat input. Because unit size has little effect on wet scrubber operation, wet scrubbers are considered a demonstrated control technique for reducing PM emissions from small coal-fired units to 43 ng/J (0.10 lb/million Btu) heat input or less.

Fabric Filters. Fabric filters have been used on an increasing number of steam generating units in recent years. A fabric filtration system directs particle-laden flue gas through a number of fabric bags where the particles collect as a filter cake on the base surface. Data are available for five coal-fired spreader stoker units and two FBC units equipped with fabric filters. The units ranged in heat input capacity from 13 to 59 MW (48 to 208 million Btu/hour) and were operated at loads ranging from 71 to 100 percent of full capacity.

Fabric filters reduced PM emissions from each of the seven units to less than 22 ng/J (0.05 lb/million Btu) heat input. These data indicate that fabric filter performance is not affected by unit design or size. Thus, fabric filters are considered a demonstrated control technique for reducing PM emissions from small coal-fired steam generating units to 22 ng/J (0.05 lb/million Btu) heat input or less.

Fabric filters have also been shown to be one of the most efficient PM control techniques in controlling small particles, achieving more than 99 percent removal efficiency for PM₁₀. Fabric filters have been shown to be one of the most versatile high-efficiency PM emission control technologies and can readily be applied to steam generating units firing a wide range of coals.

Electrostatic Precipitators. Electrostatic precipitators remove PM from steam generating unit flue gases by electrically charging the suspended particles and precipitating them onto a collection plate or tube. Data were available for ESP's on coal-fired units ranging from 27 to 110 MW (92 to 375 million Btu/hour) in heat input capacity. All tests resulted in PM emissions of less than 22 ng/J (0.05 lb/million Btu) heat input.

All but one of the emission tests were conducted on units firing coals with sulfur contents of 1.0 weight percent sulfur or less. A larger collection area is generally required to achieve a given PM collection efficiency on low sulfur coal-fired units than on high sulfur coal-fired units. Thus, the above controlled emission levels would be achievable on units firing high sulfur coal with collection areas equal to or less than the collection areas for low sulfur coal. Therefore, ESP's are considered a demonstrated control technique for reducing PM emissions from coal-fired units to 22 ng/J (0.05 lb/million Btu) heat input or less.

The performance of ESP's is superior to mechanical collectors and sidestream separators, especially with respect to control of smaller particles. Tests of two coal-fired steam generators, for example, showed ESP's to have removal efficiencies of 99 percent for PM₁₀.

Analysis of Control Options. An emission rate of 130 ng/J (0.30 lb/million Btu) heat input was selected as Control Option A for standards limiting PM emissions from small coal-fired units. This option was based on the use of a DMC. Emission rates of 86 ng/J (0.20 lb/million Btu) heat input and 43 ng/J (0.10 lb/million Btu) heat input were selected as Control Options B and C, respectively. Control Option B was based on the use of a sidestream separator and Control Option C was based on the use of a wet scrubber. Finally, an emission rate of 22 ng/J (0.05 lb/million Btu) heat input was selected as Control Option D. This option was based on the use of an ESP or a fabric filter. A summary of the control options for limiting PM emissions from coal-fired units is presented in Table 1.

TABLE 1.—PM CONTROL OPTIONS FOR SMALL COAL-FIRED UNITS

Control option	PM emission level ng/J (lb/million Btu)	Basis *
Control Option A	130 (0.30)	DMC.
Control Option B	86 (0.20)	SSS.
Control Option C	43 (0.10)	WS.
Control Option D	22 (0.05)	FF or ESP.

* DMC=Double mechanical collector.
SSS=Sidestream separator.
WS=Wet flue gas desulfurization system.
FF=Fabric filter.
ESP=Electrostatic precipitator.

The costs associated with standards based on each of these control options were estimated for typical coal-fired units. For each control option, however, the least cost control system was used in estimating the costs associated with standards based on that control option.

For a typical 15 MW (50 million Btu/hour) heat input capacity unit operating at 55 percent (0.55) capacity factor, DMC's were the least cost option to meet standards based on Control Option A, sidestream separators were the least cost option to meet standards based on Control Option B, and fabric filters were the least cost option to meet standards based on Control Options C and D.

The potential impacts on capital and annualized costs of standards based on these options for this typical unit were also evaluated. Standards based on Control Option A would increase capital costs by 2.3 percent over the regulatory baseline, and standards based on Control Option B would increase capital costs by 3.7 percent over the baseline cost level. Standards based on Control Option C or D would increase capital costs by 11 percent over the regulatory baseline.

Standards based on Control Option A (DMC) would increase annualized costs by 2 percent over the regulatory baseline and standards based on Control Option B (sidestream separator) would increase annualized costs by about 5 percent. Standards based on Control Option C or D (fabric filters) would increase annualized costs by about 6 percent over the regulatory baseline.

The cost-effectiveness levels associated with these control options were also evaluated. Standards based on Control Option A have a cost effectiveness of \$1,400/Mg (\$1,200/ton). The incremental cost effectiveness of standards based on Control Option B over Control Option A is \$5,400/Mg (\$4,900/ton). The incremental cost effectiveness of standards based on

Control Options C and D over Control Option B is \$2,300/Mg (\$2,100/ton), and the incremental cost effectiveness of standards based on Control Options C and D over Control Option A is \$3,600/Mg (\$3,300/ton).

Because the incremental cost effectiveness of standards based on Control Options C and D is lower than that for standards based on Control Option B, Control Option B is considered an "inferior" option and was not considered further. Similarly, because Control Options C and D are effectively the same option (fabric filters are less expensive than wet scrubbers and, at the same time, achieve lower PM emissions), Control Option C was also not considered further. Therefore, only Control Options A and D were used to develop regulatory alternatives for further analysis.

Analysis of Regulatory Alternatives. As mentioned previously, EPA has

subdivided the small steam generating unit population into two distinct segments: commercial-institutional and industrial. The coal-fired units in these segments differ in both design and use. Whereas coal-fired units in the industrial segment are located in manufacturing and other production facilities, the commercial-institutional segment includes units located at hospitals, colleges and universities, and elementary and secondary schools. In general, commercial-institutional facilities are found in the size range below 8.7 MW (30 million Btu/hour) heat input capacity, whereas industrial units are found above this size.

Consequently, regulatory alternatives applying standards limiting PM emissions from small coal-fired steam generating units of 2.9 MW (10 million Btu/hour) heat input capacity or larger, and from small coal-fired steam generating units of 8.7 MW (30 million

Btu/hour) heat input capacity or larger, were evaluated for their potential impacts. Applying standards only to small coal-fired steam generating units of 8.7 MW (30 million Btu/hour) heat input capacity or larger effectively serves to focus the regulation on most industrial units and only the largest commercial-institutional units.

Regulatory Alternative I was based on Control Option A (i.e., a DMC) for all units of 8.7 MW (30 million Btu/hour) heat input capacity or larger. Regulatory Alternative II was based on Control Option D (i.e., a fabric filter or an ESP) for all units of 8.7 MW (30 million Btu/hour) or larger, whereas Regulatory Alternative III was based on Control Option D for all units of 2.9 MW (10 million Btu/hour) or larger. A summary of the regulatory alternatives for coal-fired units is presented in Table 2.

TABLE 2.—PM REGULATORY ALTERNATIVES FOR SMALL COAL-FIRED UNITS

Regulatory alternative	Size range MW (million Btu/hour)	PM emission level ng/J (lb/million Btu)	Basis *
I	>8.7 (30)	130 (0.30)	Control Option A.
II	>8.7 (30)	22 (0.05)	Control Option D.
III	>2.9 (10)	22 (0.05)	Control Option D.

* Control Option A: Double mechanical collector.
Control Option D: Electrostatic precipitator or fabric filter.

Some 105 small coal-fired steam generating units between 2.9 MW (10 million Btu/hour) and 29 MW (100 million Btu/hour) heat input capacity are projected to be constructed through the fifth year after proposal. Of these units, approximately 20 would be greater than 8.7 MW (30 million Btu/hour) heat input capacity.

National PM emission reductions from coal are estimated to be 500 Mg/year (600 tons/year) for standards based on Regulatory Alternative I; 900 Mg/year (1,000 tons/year) for standards based on Regulatory Alternative II; and 1,700 Mg/year (1,900 tons/year) for standards based on Regulatory Alternative III.

Solid wastes associated with PM standards for coal-fired units would result from the disposal of the PM captured by the control devices. However, in the absence of standards, steam generating units already generate a significant amount of solid waste in the form of ash. Compared to the regulatory baseline, solid waste generation would increase by about 1 percent, 2 percent, and 4 percent for standards based on Regulatory Alternatives I, II, and III, respectively. These projected impacts on solid waste generation are considered small. In addition, the wastes generated by PM

control processes are nonhazardous and can be disposed of using traditional treatment and disposal techniques without leading to adverse environmental impacts. No water pollution impacts are projected for any of these regulatory alternatives because they are all based on dry control techniques.

There would be no significant impacts on national fuel use markets from standards based on any of the regulatory alternatives. Some fuel switching may occur, but the impact of any fuel switching from coal would be negligible on a national basis. Energy consumption impacts resulting from standards based on any of the regulatory alternatives would be small.

Compared to the regulatory baseline, national annualized costs associated with PM standards for small coal-fired units are projected to increase by about \$970,000/year for standards based on Regulatory Alternative I, about \$3.2 million/year for standards based on Regulatory Alternative II, and about \$10 million/year for standards based on Regulatory Alternative III.

The national incremental cost effectiveness of standards based on Regulatory Alternative I over the regulatory baseline is projected to be

\$2,000/Mg (\$1,800/ton). The national incremental cost effectiveness of standards based on Regulatory Alternative II over I is projected to be \$5,300/Mg (\$4,800/ton). The national incremental cost effectiveness of standards based on Regulatory Alternative III over II is projected to be \$9,000/Mg (\$8,100/ton).

For individual steam generating units subject to standards based on Regulatory Alternative I, cost-effectiveness values range from \$900/Mg to \$4,200/Mg (\$800/ton to \$3,800/ton), depending on unit size and capacity factor. For individual units subject to standards based on Regulatory Alternative II, cost-effectiveness values range from \$2,800/Mg to \$7,200/Mg (\$2,500/ton to \$6,600/ton). For individual units subject to Regulatory Alternative III, cost-effectiveness values range from \$2,800/Mg to \$14,000/Mg (\$2,500/ton to \$13,000/ton).

Although the cost effectiveness of standards based on Regulatory Alternative II or III is relatively high, these regulatory alternatives reflect the use of the most effective PM emission control technologies available (i.e., fabric filters or ESP's). These control technologies have been used widely on

all sizes and types of steam generating units within the industrial segment of the small steam generating unit population and frequently serve as the basis for State emission limitations applicable to small coal-fired units. Furthermore, fabric filters are used as standard equipment on almost all fluidized bed combustion (FBC) units, and as the use of FBC technology becomes more widespread, fabric filters will become even more prevalent in the small steam generating unit size category.

In addition to providing effective control of total PM emissions, standards based on Regulatory Alternative II or III would be very effective in controlling emissions of PM_{10} . Particulate matter emissions from coal combustion contain considerable amounts of PM_{10} . Because PM_{10} emissions are in the inhalable size range, they can pose significant adverse health consequences. Health risks posed by both the penetration and the deposition of particles in various regions of the respiratory tract, and by biological responses to the deposited materials. Particles smaller than 10 microns in diameter can reach the deepest portion of the lung, the alveolar region. Clearance of deposited materials from this region through normal breathing can take months to years. Possible responses to the deposited particles include reduced lung function, damage to lung tissues, increased susceptibility to infection, and aggravation or potentiation of cardiopulmonary diseases.

Standards based on Regulatory Alternative II or III also represent the most effective control systems for controlling trace metals and other compounds from coal combustion that are considered toxic to humans. Trace metals in coal include arsenic, beryllium, cadmium, copper, chromium, manganese, mercury, and nickel. Certain trace metals are found in greater concentrations in the PM_{10} size range. Because of their effectiveness in controlling fine particulates, fabric filters and ESP's are considered the most effective technologies for controlling trace metal emissions from small coal-fired steam generating units.

The EPA solicits comments on how trace metals and PM_{10} should be considered in the analysis. The EPA also requests comment on how the proposed NSPS should interact with the existing new source review (NSR) program, prevention of significant deterioration (PSD) program, and national ambient air quality standards (NAAQS) for particulate matter.

Standards established under section III of the Act are part of the National Air Toxics Strategy adopted in 1985. Consequently, selection of Regulatory Alternative II or III (i.e., fabric filters or ESP's) as the basis of standards for small coal-fired steam generating units would further the policy objective contained in that strategy of reducing toxic compound emissions, including trace metal emissions.

The national incremental cost effectiveness associated with standards based on Regulatory Alternative III (i.e., units of 2.9 MW (10 million Btu/hour) heat input capacity or larger) is significantly higher than the national incremental cost effectiveness associated with standards based on Regulatory Alternative II (i.e., units of 8.7 MW (30 million Btu/hour) heat input capacity or larger). In addition, as mentioned previously, the potential burden imposed by standards differs significantly by population segment. This occurs because steam generating units smaller than 8.7 MW (30 million Btu/hour) heat input capacity are primarily commercial-institutional units. Operators at commercial-institutional facilities are more likely to work part-time or have other duties in addition to operating the steam generating unit. As a result, these operators frequently have little or no training or skills in terms of operating sophisticated emission control equipment such as fabric filters or ESP's. At industrial facilities, on the other hand, operators are employed full-time and generally have been provided the training necessary to run the systems effectively. Commercial-institutional facilities are also more likely to have a higher operator turnover rate than industrial facilities due to the lower pay for operators at commercial-institutional facilities.

In light of the higher cost-effectiveness of standards based on Regulatory Alternative III over Regulatory Alternative II and the significant burden standards based on Regulatory Alternative III would place on small commercial-institutional unit owners and operators, Regulatory Alternative III is considered unreasonable.

4. Wood-Fired Small Steam Generating Units.

Wood PM Emissions and Control Techniques. The SIP emission limits for PM emissions from small wood-fired steam generating units range from 160 to 170 ng/J (0.37 to 0.40 lb/million Btu) heat input, depending on unit size. The PM control system typically used to meet these limits is a single mechanical collector. Therefore, the regulatory baseline for PM emissions from small

wood-fired units was based on the performance of a single mechanical collector.

The emission control techniques evaluated for limiting PM emissions from small wood-fired steam generating units included DMC's, wet scrubbers, and ESP's. Fabric filters were not evaluated because of the potential fire hazard associated with the use of a fabric filter on wood-fired units.

Double Mechanical Collectors. As discussed previously, DMC's consist of two single mechanical collectors connected in series. Based on available data, DMC's are considered a demonstrated control technique for reducing PM emissions to 130 ng/J (0.30 lb/million Btu) heat input or less on wood-fired units.

Wet Scrubbers. As mentioned above, a wet scrubber system uses an aqueous stream to remove PM from a gas stream. Based on available data on wood-fired units, wet scrubbers are considered a demonstrated emission control technique for reducing PM emissions from wood-fired units to less than 43 ng/J (0.10 lb/million Btu) heat input.

Electrostatic Precipitators. As discussed above, ESP's remove PM from steam generating unit flue gases by electrically charging the suspended particles and precipitating them onto a collection plate. Based on available data for ESP's on wood-fired units, ESP's are considered a demonstrated technology for reducing PM emissions from wood-fired steam generating units to 43 ng/J (0.10 lb/million Btu) heat input or less.

Analysis of Control Options. An emission rate of 130 ng/J (0.30 lb/million Btu) heat input was selected as Control Option A for standards limiting PM emissions from small wood-fired units. This option was based on the use of a DMC. An emission rate of 43 ng/J (0.10 lb/million Btu) heat input was selected as Control Option B. This option was based on the use of a wet scrubber or an ESP. A summary of the control options for limiting PM emissions from wood-fired units is presented in Table 3.

TABLE 3.—PM CONTROL OPTIONS FOR SMALL WOOD-FIRED UNITS

Control option	PM emission level ng/J (lb/million Btu)	Basis*
Control option A	130 (0.30)	DMC.
Control option B	43 (0.10)	WS or ESP.

* DMC = Double mechanical collector.
ESP = Electrostatic precipitator.
WS = Wet flue gas desulfurization system.

The potential impacts on capital and annualized costs of standards based on these options were evaluated for a typical 15 MW (50 million Btu/hour) heat input capacity wood-fired steam generating unit operating at 55 percent (0.55) capacity factor. Standards based on Control Option A (DMC) would increase capital costs by 2.7 percent over the regulatory baseline, and standards based on Control Option B (wet scrubber or ESP) would increase capital costs by 19 percent over the regulatory baseline.

Standards based on Control Option A would increase annualized costs by 2.4 percent over the regulatory baseline, and standards based on Control Option B would increase annualized costs by 10

percent over the regulatory baseline. In calculating the annualized costs for the typical unit, the cost of the lowest cost coal was used to represent the cost of wood.

The cost effectiveness associated with standards based on each of these control options was also evaluated for a typical wood-fired unit. The incremental cost effectiveness of standards based on Control Option A compared to the regulatory baseline for a typical unit is \$1,400/Mg (\$1,300/ton). The incremental cost effectiveness of standards based on Control Option B over Control Option A for a typical unit is \$7,200/Mg (\$6,800/ton).

Analysis of Regulatory Alternatives. The potential national impacts of

TABLE 4.—PM REGULATORY ALTERNATIVES FOR SMALL WOOD-FIRED UNITS

Regulatory alternative	Size range MW (million Btu/hour)	PM emission level ng/J (lb/million Btu)	Basis*
I	>8.7 (30)	130 (0.30)	Control option A.
II	>8.7 (30)	43 (0.10)	Control option B.
III	>2.9 (10)	43 (0.10)	Control option B.

* Control Option A = Double mechanical collector.
Control Option B = Wet Scrubber or electrostatic precipitator.

Some 55 small wood-fired steam generating units between 2.9 MW (10 million Btu/hour) and 29 MW (100 million Btu/hour) heat input capacity are projected to be constructed through the fifth year after proposal of standards. Of these units, approximately 30 would be greater than 8.7 MW (30 million Btu/hour) heat input capacity.

National PM emissions from wood are expected to be reduced by 1,000 Mg/year (1,100 tons/year) if standards are based on Regulatory Alternative I, 1,700 Mg/year (1,800 tons/year) for standards based on Regulatory Alternative II, and 2,200 Mg/year (2,400 tons/year) for standards based on Regulatory Alternative III.

As stated previously, steam generating units generate a large amount of solid waste in the absence of standards. Solid wastes associated with PM standards for wood-fired units are projected to increase by about 3 percent over the regulatory baseline for standards based on Regulatory Alternative I, about 5 percent for standards based on Regulatory Alternative II, and about 6 percent for standards based on Regulatory Alternative III. These projected impacts on solid waste generation are considered small. In addition, the wastes produced by PM control processes are nonhazardous and can be disposed of using traditional treatment

and disposal techniques without leading to any adverse environmental impacts. No significant water pollution impacts are projected for any of these regulatory alternatives.

Significant impacts on national fuel use markets would not result from standards based on any of the regulatory alternatives. Some fuel switching may occur, but the impacts of any fuel switching from wood would be negligible on a national basis. Energy consumption impacts resulting from standards based on any of the regulatory alternatives would be small.

National annualized costs associated with PM standards for small wood-fired steam generating units are estimated to increase by \$1.4 million/year over the regulatory baseline for standards based on Regulatory Alternative I, \$6.2 million/year over the regulatory baseline for standards based on Regulatory Alternative II, and \$9.4 million/year over the regulatory baseline for standards based on Regulatory Alternative III.

For standards based on Regulatory Alternative I, the national cost effectiveness of the PM standards applied to small wood-fired steam generating units would be \$1,400/Mg (\$1,300/ton) over the regulatory baseline. The national incremental cost effectiveness of standards based on Regulatory Alternative II would be

standards based on three regulatory alternatives, were examined. Regulatory Alternative I would apply standards based on Control Option A (i.e., a DMC) to all units of 8.7 MW (30 million Btu/hour) heat input capacity or larger. Regulatory Alternative II would apply standards based on Control Option B (i.e., a wet scrubber or an ESP) to all units of 8.7 MW (30 million Btu/hour) heat input capacity or larger, whereas Regulatory Alternative III would apply such standards to all units of 2.9 MW (10 million Btu/hour) heat input capacity or larger. A summary of the regulatory alternatives for small wood-fired steam generating units is presented in Table 4.

\$7,100/Mg (\$6,500/ton) compared to standards based on Regulatory Alternative I, and the national incremental cost effectiveness of standards based on Regulatory Alternative III would be \$9,400/Mg (\$8,800/ton) compared to standards based on Regulatory Alternative II.

For individual steam generating units subject to standards based on Regulatory Alternative I, cost-effectiveness values range from \$900/Mg to \$4,300/Mg (\$800/ton to \$3,900/ton), depending on unit size and capacity factor. For individual units subject to standards based on Regulatory Alternative II, cost-effectiveness values range from \$6,000/Mg to \$18,000/Mg (\$5,400/ton to \$16,000/ton). For individual units subject to Regulatory Alternative III, cost-effectiveness values range from \$6,000/Mg to \$28,000/Mg (\$5,400/ton to \$25,000/ton).

The national incremental cost effectiveness of standards based on Regulatory Alternative II or III is relatively high. These regulatory alternatives, however, reflect the use of the most effective PM emission control technologies available (i.e., ESP's or wet scrubbers). Standards based on these alternatives would not only result in greater overall PM emission reduction, but would also result in much greater control of PM_{10} emissions. Standards based on Regulatory Alternatives II and

III would also result in reductions in emissions of polycyclic organic matter (POM), a carcinogenic substance that is emitted from small wood-fired steam generating units.

In addition, the control techniques that serve as the basis for Regulatory Alternatives II and III have also been used widely for control of emissions from small wood-fired steam generating units, and these control techniques frequently serve as the basis for State emission limitations applicable to small wood-fired units.

As mentioned previously, the potential burden imposed by standards differs significantly by population segment. This occurs because steam generating units smaller than 8.7 MW (30 million Btu/hour) heat input capacity are primarily commercial-institutional units. Operators at commercial-institutional facilities are more likely to work part-time, or have other duties in addition to operating the steam generating unit. As a result these operators frequently have little or no training in the operation of sophisticated emission control equipment such as fabric filters or ESPs. At industrial facilities, on the other hand, operators are employed full-time and generally have been provided the training necessary to run the systems effectively. Commercial-institutional facilities are also more likely to have a higher operator turnover rate than industrial facilities due to the lower pay for operators at commercial-institutional facilities.

In light of the higher cost effectiveness of standards based on Regulatory Alternative III over Regulatory Alternative II and the significant burden standards based on Regulatory Alternative III would place on small commercial-institutional unit owners and operators, Regulatory Alternative III is considered unreasonable.

E. Selection of Best System of Sulfur Dioxide Emission Reduction

1. Natural Gas-Fired Small Steam Generating Units

The uncontrolled SO₂ emissions from the combustion of natural gas in steam generating units are very low. Uncontrolled SO₂ emission levels of less than 0.43 ng/J (0.001 lb/million Btu) heat input are typical of natural gas-fired steam generating units. Because of these low uncontrolled SO₂ emission levels, the application of any control technology to natural gas-fired steam generating units would entail unreasonable costs, and no further consideration was given to the development of standards of

performance to limit SO₂ emissions from units firing natural gas.

2. Coal-Fired Small Steam Generating Units

Coal SO₂ Emissions and Control Techniques. The regulatory baseline SO₂ emission level for small coal-fired steam generating units is based on the national average SIP emission limit for small coal-fired units. Sulfur dioxide emission limits for small coal-fired units range from 1,400 to 1,510 ng/J (3.3 to 3.5 lb/million Btu) for units of 29 and 2.9 MW (100 and 10 million Btu/hour) heat input capacity, respectively. The overall national average SIP emission limit is 1,400 ng/J (3.4 lb/million Btu) heat input. Projected fuel prices, however, are available only for coals capable of meeting SO₂ emission limits of 1,550 and 1,120 ng/J (3.6 and 2.6 lb/million Btu) heat input. As a result, a regulatory baseline of 1,550 ng/J (3.6 lb/million Btu) heat input was selected for purposes of analysis.

A consideration that is always important when evaluating SO₂ control technologies for steam generating units is the selection of an appropriate averaging period. Sulfur dioxide emissions from steam generating units vary as a result of the normal variation in fuel sulfur content. As a result of this variability, data must be averaged over some period of time to assess emission control system performance. The longer the averaging period selected, the less the variability in fuel sulfur content affects the emission rate and the more accurate, or representative, the measured emission rate becomes as an indicator of the continuous performance of the system. From the perspective of enforcement, however, the longer the averaging period selected to measure performance, the longer the period between the time a source begins to operate and the time an initial assessment can be made of whether that source is in compliance.

An averaging period of 30 days is long enough to yield results that accurately represent the continuous performance of a control system, but is short enough to permit timely enforcement of a standard after a new source begins operation. In addition, a 30-day rolling average permits continued enforcement of the standard on a daily basis after the initial 30-day period had been completed. As a result, a 30-day rolling average was selected for assessing the performance of low sulfur fuels, FGD technologies (sodium scrubbing FGD systems, dual alkali FGD systems, lime/limestone FGD systems), and FBC for the purpose of developing standards of performance

limiting SO₂ emissions from new, modified, and reconstructed small steam generating units.

Low Sulfur Coal. Use of low sulfur coal limits SO₂ emissions by reducing the amount of sulfur available in the fuel for SO₂ formation. Low sulfur coal is defined as coal that can meet an emission limit of 520 ng/J (1.2 lb/million Btu) heat input on a continuous basis using a 30-day rolling average without additional SO₂ control.

Low sulfur coal is obtained primarily from naturally occurring low sulfur coal deposits. Low sulfur coal may also be produced through physical coal cleaning to reduce the naturally occurring sulfur content. Low sulfur coal can be burned in any small steam generating unit designed to fire coal, so its applicability is not limited by steam generating unit size.

Coal markets supplying coals with low sulfur contents [520 ng/J (1.2 lb/million Btu) heat input or less] have developed throughout the Nation. Because of widespread availability and extensive use of low sulfur coal for steam generating purposes, use of low sulfur coal is considered to be a demonstrated technique for reducing SO₂ emissions from small steam generating units.

Sodium Scrubbing FGD Systems. Sodium scrubbing FGD systems employ an aqueous solution of sodium hydroxide (NaOH) or sodium carbonate (Na₂CO₃) in the scrubber to absorb SO₂ from the steam generating unit flue gas. Sodium scrubbing FGD technology has been applied to small coal-fired units and is commercially available for all sizes of units.

Emission test data are available to document sodium scrubber performance for coal firing. Thirty days of certified CEM test data were gathered from a sodium scrubber applied to a pulverized coal-fired steam generating unit rated at 55 MW (188 million Btu/hour) heat input. The unit operated at loads between 40 and 60 percent of full load and averaged 48 percent of full load for the test duration. The sulfur content of the coal fired was 3.6 weight percent. The design SO₂ efficiency of this system was 90 percent at an inlet SO₂ concentration of 2,000 ppmv.

An analysis of available data shows consistently high SO₂ removal efficiencies, averaging 96 percent for the test period. The daily average outlet SO₂ emissions ranged from 58 to 270 ng/J (0.13 to 0.62 lb/million Btu) heat input, averaging 86 ng/J (0.20 lb/million Btu) heat input for the 30-day test period. This test shows that 90 percent or greater SO₂ removal can be consistently

achieved on a high sulfur coal-fired steam generating unit operated at normal, but less than maximum load. A sodium scrubbing system could also operate at this level of performance under full load conditions by adjusting the reagent addition rate and scrubbing liquor feed rate to maintain constant sodium-to-sulfur and liquid-to-gas ratios.

Although the sodium scrubber in this 30-day test was applied to a unit rated above 29 MW (100 million Btu/hour) heat input capacity, the performance data from this scrubber are applicable to small steam generating units. This application can be made because sodium scrubber design and operating characteristics (e.g., liquid-to-gas ratio, pH, gas distribution, etc.) do not vary significantly with unit size in this general size range. As a result, the performance of smaller sodium scrubbing FGD systems would be similar to that of the scrubber discussed above. Thus, achievement of a 90 percent SO₂ reduction by sodium scrubbing FGD systems on small coal-fired units on a 30-day rolling average basis is considered demonstrated.

Dual Alkali FGD Systems. The dual alkali FGD process is similar to sodium scrubbing FGD in the absorption stage; both technologies use a clear sodium solution for SO₂ removal. However, dual alkali FGD includes a regeneration stage where lime or limestone is used to regenerate the active sodium alkali for SO₂ sorption. Dual alkali FGD technology has been applied primarily to large coal-fired units, but is commercially available for units of all sizes. Tests of dual alkali FGD systems operating on coal-fired steam generating units have shown short-term SO₂ removal efficiencies of greater than 90 percent, with long-term efficiencies of around 92 percent.

Emission data are available from two long-term tests to document dual alkali FGD system performance for coal-fired steam generating units. The dual alkali FGD system tested consisted of two SO₂ absorbers, each serving a separate steam generating unit, and a single regeneration section. Seventeen days of test data were gathered from one absorber applied to a coal-fired spreader stoker steam generating unit rated at 40 MW (135 million Btu/hour) heat input capacity, and 24 days of test data were gathered from the other absorber applied to a unit rated at 23 MW (77 million Btu/hour) heat input capacity. Data were collected using continuous SO₂ emission monitors on both the inlet and outlet of the FGD system.

The sulfur content of the bituminous coal received at the plant during these

tests averaged 1,400 ng/J (3.4 lb/million Btu) heat input. During these tests, the steam generating units also burned oil with an average sulfur content of 330 ng/J (0.74 lb/million Btu) heat input. During both tests, the dual alkali FGD system operated at a reliability level of 100 percent.

In the 17-day test, the steam generating unit operated at an average load of 67 percent, with the load varying between 42 and 90 percent. The SO₂ removal efficiency averaged 92 percent. In the 24-day test, the steam generating unit operated at an average load of 62 percent, with loads varying between 5 and 95 percent. The SO₂ removal efficiency averaged 92 percent.

Results of the 24-day test show that 90 percent SO₂ removal can be reliably and consistently achieved on a small coal-fired steam generating unit. In addition, the result of the 17-day test indicates that the SO₂ removal efficiency achieved on a steam generating unit larger than 29 MW (100 million Btu/hour) heat input capacity is essentially the same as that achieved on a steam generating unit smaller than 29 MW (100 million Btu/hour) heat input capacity. This same level of performance can be achieved at full load conditions if vigorous gas-liquid contact is maintained in the absorber and the sodium-to-sulfur and liquid-to-gas ratios are maintained at a level sufficient to provide an adequate supply of active sodium species.

Based on these analyses of system performance, dual alkali FGD is a demonstrated technology for reducing SO₂ emissions from small coal-fired industrial-commercial-institutional steam generating units by 90 percent on a 30-day rolling average basis.

Lime/Limestone FGD Systems. Lime/limestone FGD systems employ a slurry of calcium oxide or calcium carbonate to remove SO₂ from industrial-commercial-institutional steam generating units. Emission data from two long-term tests are available to document lime/limestone FGD performance on six coal-fired stoker steam generating units with a total heat input capacity of 62 MW (210 million Btu/hour).

The tests were conducted using continuous SO₂ emissions monitors at both the inlet and outlet of the FGD system. Data were collected for a 29-day period while the system used a lime reagent and for 30 days while the system used a limestone reagent in the wet scrubbing system.

During the 29-day data collection period when lime was used as the reagent, the sulfur content of the bituminous coal fired averaged 2,200 ng/J (5.0 lb/million Btu) heat input. During this period, the steam generating unit

load varied from 34 to 65 percent of full load. The SO₂ removal efficiency averaged 92 percent, and the reliability of the lime wet scrubbing FGD system exceeded 93 percent.

During the 30-day test period when limestone was used as the reagent, the sulfur content of the bituminous coal burned averaged about 2,200 ng/J (5.0 lb/million Btu) heat input. During this period, the steam generating unit load varied from 30 to 67 percent of full load. The SO₂ removal efficiency averaged 94 percent, and the system reliability was 94 percent.

Although these results were obtained at less than maximum load conditions, new systems could achieve this level of performance at full load by operating at a higher liquid-to-gas ratio. In addition, a new system would likely be equipped with a spray tower or turbulent contact absorber to provide increased mass transfer area and gas residence time for improved SO₂ absorption. Therefore, lime/limestone FGD systems are considered to be a demonstrated SO₂ technology for achieving 90 percent SO₂ reductions on a 30-day rolling average basis from small steam generating units.

Lime Spray Drying FGD Systems. Lime spray drying is a dry scrubbing process that involves contacting the flue gas with an atomized lime slurry or a solution of sodium carbonate. The hot flue gas dries the droplets to form a dry waste product while the sorbent reacts with SO₂ in the flue gas. The dry waste solids, consisting of sulfite and sulfate salts, unreacted sorbent, and fly ash are collected in a baghouse or an ESP for disposal.

Emission test data from a series of four short-term tests are available to document lime spray drying performance for coal firing. These four short-term tests, which lasted from 1 to 8 hours, were conducted on units ranging in heat input capacity from 34 MW (115 million Btu/hour) to 82 MW (280 million Btu/hour). The sulfur contents of the coals fired in these units ranged from 410 ng/J (0.96 lb/million Btu/hour) heat input to 2,600 ng/J (7.0 lb/million Btu) heat input. The resulting SO₂ removal efficiencies from these tests averaged in excess of 93 percent.

These high removal efficiency values indicate that lime spray drying systems are capable of achieving 90 percent reduction in SO₂ emission from industrial-commercial-institutional steam generating units. Furthermore, due to similarities in design and operation between large and small systems, lime spray dryers are capable of achieving the 90 percent SO₂ reduction levels on small industrial-

commercial-institutional units. Therefore, lime spray drying is considered a demonstrated SO₂ control technology for achieving 90 percent SO₂ reductions on a 30-day rolling average basis from small coal-fired steam generating units.

Fluidized Bed Combustion. Fluidized bed combustion is a steam generating unit design which, because of its ability to incorporate limestone addition, can achieve significant SO₂ emission reductions. This technology offers a variety of advantages over conventional steam generating unit designs, including SO₂ emission reduction without the use of FGD systems as well as greater flexibility in fuel use.

Atmospheric fluidized bed combustion (AFBC) steam generating units have developed rapidly over the past 5 years and are now being applied to small steam generating unit sizes. The two primary AFBC design alternatives that are currently available are the bubbling fluidized bed (with or without solids recycle) and the circulating fluidized bed. Pressurized FBC technology has been under development for over a decade, but has not yet been used in commercial practice and is unlikely to be applied to small units.

Emission data were analyzed for one circulating bed and four bubbling bed FBC units ranging in size from 15 to 61 MW (50 to 210 million Btu/hour) heat input capacity. The results indicate that SO₂ removal efficiencies ranged from 86 to 99 percent for tests on the four bubbling bed units. The outlet SO₂ emissions for a 15 MW (50 million Btu/hour) heat input capacity bubbling bed unit at Prince Edward Island, Nova Scotia, averaged 28, 430, and 280 ng/J (0.06, 1.0, and 0.80 lb/million Btu) heat input for test durations of 5 hours, 15 hours, and 7.5 days, respectively. Based on coal sulfur content, these values correspond to a 91 to 99 percent SO₂ removal efficiency. Emission data were also collected over a 30-day test period for this unit, with an overall average for the 30 days of 94 percent. The daily average SO₂ removal efficiency ranged from 73 to 97 percent. The lower daily average SO₂ removal efficiency of 73 percent occurred on a single day and was attributed to operating the unit at a low calcium/sulfur ratio.

Although these performance levels are based primarily on bubbling bed designs, equal or better performance is expected from circulating and dual bed systems because of more rapid carbon burnout, higher limestone particle densities in the freeboard area, and more uniform gas-solid contact between SO₂ and limestone.

As a result, FBC is considered a demonstrated SO₂ control technology for achieving 90 percent reduction in SO₂ emissions on a 30-day rolling average basis from small coal-fired steam generating units.

Analysis of Control Options. The analysis of SO₂ control options examined, from the perspective of individual steam generating units, the potential impacts of various control options that could serve as the basis for regulatory alternatives limiting SO₂ emissions. The analysis compared the impacts for various control options based on demonstrated SO₂ emission control techniques relative to a regulatory baseline and to each other. A summary of the SO₂ control options analyzed for coal-fired units appears in Table 5 below.

TABLE 5.—SO₂ CONTROL OPTIONS FOR SMALL COAL-FIRED UNITS

Control option	SO ₂ emission level ng/J (lb/million Btu)	Basis
Coal:		
Control option A.	520 (1.2)	Low sulfur coal.
Control option B.	90% SO ₂ reduction.	FGD or FBC ^a .

^a FGD = Flue Gas Desulfurization.
FBC = Fluidized Bed Combustion.

As discussed above, the evaluation of SO₂ control techniques for small coal-fired units indicates that both low sulfur coal and FGD/FBC technology are demonstrated SO₂ control techniques for small coal-fired units. Low sulfur coal combustion will reduce SO₂ emissions to 520 ng/J (1.2 lb/million Btu) heat input or less. This technique, therefore, was selected as Control Option A for coal-fired units. Flue gas desulfurization systems and FBC units are capable of 90 percent SO₂ reduction from small coal-fired units. Consequently, 90 percent SO₂ reduction was selected as Control Option B for coal-fired units.

For a typical small coal-fired steam generating unit [i.e., 15 MW (50 million Btu/hour) size unit operating at a 55 percent (0.55) capacity factor], the SO₂ emissions at the regulatory baseline are 310 Mg/year (340 tons/year). The emission reduction achieved by Control Option A (i.e., standards based on the use of low sulfur coal) compared to the regulatory baseline is 190 Mg/year (210 tons/year), whereas the emission reduction achieved by Control Option B over the regulatory baseline is 280 Mg/year (310 tons/year).

Capital costs of SO₂ control relative to the regulatory baseline would increase by about 1 percent for standards based

on Control Option A and by about 30 percent for standards based on Control Option B. The annualized cost compared to the regulatory baseline would increase by about 6 percent for standards based on Control Option A and by about 30 percent for standards based on Control Option B.

The costs associated with standards based on Control Option B (i.e., standards requiring a 90 percent reduction in SO₂ emissions) were based on an average of the costs of sodium scrubbing and dual alkali FGD systems. The costs of the other three demonstrated percent reduction technologies—lime/limestone FGD, lime spray drying FGD, and FBC—are within the range of costs associated with sodium scrubbing and dual alkali FGD systems and, thus, an average of the costs of sodium scrubbing and dual alkali FGD systems is considered representative of the costs that would be imposed on small steam generating units by a requirement to achieve a 90 percent reduction in SO₂ emissions.

The cost effectiveness of SO₂ emission control associated with standards based on Control Option A over the regulatory baseline would be about \$630/Mg (\$570/ton). The incremental cost effectiveness of standards based on Control Option B over Control Option A would be about \$4,900/Mg (\$4,500/ton).

The incremental cost effectiveness of standards based on Control Option B relative to standards based on Control Option A is quite high. For small coal-fired steam generating units of less than 22 MW (75 million Btu/hour) heat input capacity, for example, the incremental cost effectiveness of standards based on Control Option B over standards based on Control Option A exceeds \$3,700/Mg (\$3,300/ton). Similarly, the incremental cost effectiveness of standards based on Control Option B over standards based on Control Option A for all coal-fired units within the source category operating at annual capacity factors less than 55 percent (0.55) exceeds \$3,700/Mg (\$3,300/ton). Consequently, no further consideration was given to options or alternatives requiring a percent reduction in SO₂ emissions for small coal-fired steam generating units of less than 22 MW (75 million Btu/hour) heat input capacity or small coal-fired steam generating units operating at annual capacity factors of less than 55 percent (0.55).

Analysis of Regulatory Alternatives. The analysis of regulatory alternatives examined the potential national impacts of various NSPS on both the industrial and commercial-institutional segments

of the small steam generating unit population. The national impacts that would occur in the fifth year after proposal of the standards for small steam generating units were analyzed in terms of national SO₂ emission reductions, national increased annualized costs, national incremental cost effectiveness, as well as secondary environmental and energy impacts.

As shown in Table 6, SO₂ standards for coal-fired steam generating units

were evaluated for three regulatory alternatives: Regulatory Alternative I, representing standards based on the use of low sulfur coal [520 ng/J (1.2 lb/million Btu)] for units with a heat input capacity of 8.7 MW (30 million Btu/hour) or greater; Regulatory Alternative II, representing standards based on the use of low sulfur coal for units with a heat input capacity of 2.9 MW (10 million Btu/hour) or greater; and Regulatory Alternative III, representing standards

requiring a 90 percent reduction in SO₂ emissions for small steam generating units greater than 22 MW (75 million Btu/hour) heat input capacity that operate at an annual capacity factor above 55 percent (0.55) and standards based on the use of low sulfur coal for all other small coal-fired steam generating units with heat input capacities of 2.9 MW (10 million Btu/hour) or greater.

TABLE 6.—SO₂ REGULATORY ALTERNATIVES FOR SMALL COAL-FIRED UNITS

Regulatory alternative	Size range MW (million Btu/hour)	SO ₂ Emission Level ng/J (lb/million Btu)	Basis ^a
I.....	>8.7 (30)	520 (1.2)	Control option A.
II.....	>2.9 (10)	520 (1.2)	Control option A.
III.....	>22 (75) and >55% CF ^b	90% SO ₂ reduction	Control option B.
	>2.9 (10)	520 (1.2)	Control option A.

^a CF = Capacity factor.

^b Control option A = Low sulfur coal.

Control option B = Flue gas desulfurization or fluidized bed combustion.

Some 105 small coal-fired steam generating units between 2.9 and 29 MW (10 and 100 million Btu/hour) heat input capacity are projected to be constructed through the fifth year after proposal. Of these units, approximately 20 would be greater than 8.7 MW (30 million Btu/hour) heat input capacity.

Estimated national SO₂ emission reductions of 4,200 Mg/year (4,600 tons/year) would result from a standard for coal-fired units based on Regulatory Alternative I, and SO₂ emission reductions of 9,500 Mg/year (11,000 tons/year) would result from a standard for coal-fired units based on Regulatory Alternative II as well as a standard for coal-fired units based on Regulatory Alternative III. Projected national impacts associated with standards for small coal-fired steam generating units based on Regulatory Alternatives II and III are the same since the analysis projects no new coal-fired steam generating units operating at annual capacity factors exceeding 55 percent (0.55).

No significant water pollution impacts are projected for small coal-fired steam generating units under any of the regulatory alternatives, and the projected impacts on solid waste generation are also negligible. Standards based on any of the regulatory alternatives for small coal-fired steam generating units would not result in significant energy impacts on national fuel use markets. Some fuel switching from coal to natural gas or distillate oil may occur, but the impact of any fuel switching on coal markets would be negligible on a national basis. Energy

consumption impacts resulting from standards based on any of the regulatory alternatives for small coal-fired steam generating units would be small.

National annualized emission control cost increases over baseline or coal-fired units are estimated to be \$1.8 million for a standard based on Regulatory Alternative I, and \$5.9 million for a standard based on Regulatory Alternative II or a standard based on Regulatory Alternative III.

The national incremental cost effectiveness of a standard based on Regulatory Alternative I would be about \$560/Mg (\$400/ton) compared to the regulatory baseline. The national incremental cost effectiveness of a standard based on Regulatory Alternative II or on Regulatory Alternative III would be about \$800/Mg (\$700/ton). Because no coal-fired units are projected to be built through the fifth year in the size range affected by the percent reduction requirement, the cost effectiveness of a standard based on Regulatory Alternative III would be the same as for Regulatory Alternative II.

For individual steam generating units subject to standards based on Regulatory Alternative I, cost-effectiveness values range from \$600/Mg to \$1,100/Mg (\$500/ton to \$1,000/ton), depending on unit size and capacity factor. For individual units subject to standards based on Regulatory Alternative II, cost-effectiveness values range from \$600/Mg to \$2,100/Mg (\$500/ton to \$1,900/ton). For individual units subject to Regulatory Alternative III, cost-effectiveness values range from

\$600/Mg to \$3,700/Mg (\$500/ton to \$3,300/ton).

3. Oil-Fired Small Steam Generating Units

Oil SO₂ Emissions and Control Techniques. The regulatory baseline SO₂ emission level for small oil-fired steam generating units is based on the national average SIP emission limit for small oil-fired units. The SIP emission limits for oil are essentially independent of steam generating unit size, and the national average SIP SO₂ emission limit for small oil-fired units is 1,010 ng/J (2.35 lb/million Btu) heat input. Projected fuel prices, however, are available for oils capable of meeting SO₂ emission limits of 1,290 and 690 ng/J (3.0 and 1.6 lb/million Btu) heat input, but not 1,010ng/J (2.35 lb/million Btu) heat input. As a result, a regulatory baseline of 1,290 ng/J (3.0 lb/million Btu) heat input was selected for purposes of analysis.

The control techniques considered for reducing SO₂ emissions from small oil-fired steam generating units include use of oils with reduced sulfur contents (i.e., medium sulfur oil, low sulfur oil, and very low sulfur oil), sodium scrubbing FGD, dual alkali FGD, and lime/limestone FGD.

Medium, Low, and Very Low Sulfur Oils. The sulfur content of fuel oil determines the SO₂ emission rate of oil-fired steam generating units. Table 7 presents the oil classification scheme used to represent fuel oils fired in steam generating units. In this classification scheme, oil is classified by its sulfur content. This classification scheme originated from classifications used by

the U.S. Department of Energy to study fuel oil use patterns and to report refinery production data. The classifications reflect the fact that many distillate and residual oils are produced to meet market demands created by existing Federal, State, and local SO₂ emission regulations. For example, "low sulfur" distillate and residual fuel oils can be fired to meet the 1971 NSPS (40 CFR Part 60, Subpart D) emission limit of 340 ng/J (0.80 lb/million Btu) heat input for steam generating units with a heat input capacity greater than 73 MW (250 million Btu/hour), or more stringent standards adopted by State or local governments.

TABLE 7.—SO₂ EMISSION RATES FOR VARIOUS OIL TYPES

Oil type	SO ₂ emission rate, ng/J (lb/million Btu)
Very Low Sulfur.....	215 (0.50)
Low Sulfur.....	340 (0.80)
Medium Sulfur.....	690 (1.6)
High Sulfur.....	1,290 (3.0)

Fuel oils with low sulfur contents are generally produced by refining low sulfur content crude oils. Although both distillate oils and low sulfur residual oils can be produced from any crude oil, most low sulfur residual oils are produced from low sulfur crude oils and/or by blending with lower sulfur oils. Low sulfur oils can be fired in any steam generating unit designed to fire oil, although different burners may be required to achieve good combustion and fuel heating may be required to reduce viscosity for pumping and proper atomization at the burner tip.

A distinction exists between the sulfur content of most residual oils and distillate oil. Residual oils are generally higher in sulfur content and generally have a wider range of sulfur contents than distillate oil. The sulfur content of residual oil, for example, can vary from as little as 0.3 weight percent to over 3.0 weight percent. Although the sulfur content of distillate oil can be as low as 0.2 weight percent, the maximum sulfur content is limited to 0.5 weight percent by fuel oil specifications adopted by the ASTM.

Medium sulfur residual oil is widely available throughout the United States. Generally speaking, low and very low sulfur residual oils are not widely available throughout the United States. Distillate oil, however, is widely available. The maximum sulfur content of distillate oil (0.5 weight percent), therefore, serves as a useful benchmark for identifying the sulfur content of those very low sulfur fuel oils that are

widely available throughout the United States. In a few areas, both distillate oil and very low sulfur residual oils with sulfur contents of less than 215 ng/J (0.5 lb/million Btu) heat input are available.

Because of their national availability and extensive use in small steam generating units, medium sulfur oils and very low sulfur oils (distillate oil and very low sulfur residual oils) are considered demonstrated control techniques for reducing SO₂ emissions from small steam generating units.

Sodium Scrubbing FGD Systems. Sodium scrubbers are the most extensively used wet FGD systems on industrial steam generating units and have been applied widely on small oil-fired units. Sodium scrubbers used in these applications are package systems that are skid-mounted, shipped to the site, and installed for operation with a minimum of on-site fabrication.

Sulfur dioxide emissions data were analyzed for 20 oil-fired steam generators equipped with sodium scrubbers and operated to produce steam for tertiary oil recovery. All SO₂ emission tests were short-term compliance tests (typically for a 3-hour period), and SO₂ removal efficiency ranged from 87.5 to 99.5 percent for oils having sulfur contents ranging from 0.6 to 1.7 weight percent. Steam generating unit operating loads ranged from 67 to 108 percent of full load. Sulfur dioxide removal efficiency for these 20 sodium scrubbers averaged 95 percent. The average SO₂ outlet emissions were 30 ng/J (0.07 lb/million Btu) heat input. Thus, the ability of sodium scrubbers to reduce SO₂ emissions by 90 percent on a 30-day rolling average basis from small oil-fired units is considered demonstrated.

Dual Alkali FGD Systems. Dual alkali technology has been applied primarily to coal-fired units. Emissions data are available, however, for one dual alkali system applied to an oil-fired steam generating unit. The SO₂ removal performance of the dual alkali system applied to the oil-fired unit is comparable to that of coal-fired units. The data for the oil-fired unit were obtained from a compliance test. The steam generating unit had a heat input capacity of 91 MW (310 million Btu/hour), and the sulfur content of the oil fired was 1.5 weight percent. The outlet emissions were 40 ng/J (0.09 lb/million Btu) heat input, and the SO₂ removal efficiency was 92 percent.

Long-term performance data are not available for dual alkali systems operating on small oil-fired steam generating units. However, the design and operating principles for dual alkali

technology are similar for both coal- and oil-fired units. Thus, the performance of these systems on oil-fired units can be evaluated from analyzing their performance on large and small coal-fired units. These test data were discussed above, and the average SO₂ removal efficiency of these scrubbers was 92 percent. Therefore, the ability of dual alkali scrubbers to reduce SO₂ emissions by 90 percent on a 30-day rolling average basis from small oil-fired steam generating units is considered demonstrated.

Lime/Limestone FGD Systems. Although no emission data are available to document the performance of lime/limestone FGD systems on oil-fired steam generating units, emission data are available for lime and limestone FGD systems applied to small and large coal-fired units. These data, which were discussed above, show SO₂ removal efficiencies for lime and limestone FGD systems of 91.5 and 94 percent, respectively. Due to the similarity in system design and operation, lime/limestone FGD is considered a demonstrated control technology for achieving a 90 percent reduction in SO₂ emissions on a 30-day rolling average basis from small oil-fired generating units.

Analysis of Control Options. The analysis of SO₂ control options examined, from the perspective of individual steam generating units, the potential impacts of various control options that could serve as the basis for regulatory alternatives limiting SO₂ emissions from small oil-fired units. The analysis compared the impacts for various control options based on demonstrated SO₂ emissions control techniques relative to a regulatory baseline and to each other. A summary of the SO₂ control options analyzed for oil-fired units appears in Table 8 below.

TABLE 8.—SO₂ CONTROL OPTIONS FOR SMALL OIL-FIRED UNITS

Control option	SO ₂ emission level ng/J (lb/million Btu)	Basis
Oil		
Control option A.	690 (1.6).....	Medium sulfur oil
Control option B.	215 (0.50).....	Very low sulfur oil.*
Control option C.	90% SO ₂ reduction.	FGD.*

* Distillate oil.
* FGD = Flue gas desulfurization.

The evaluation of SO₂ control techniques for small oil-fired units indicates that medium sulfur oil, very low sulfur oil, and FGD systems are

demonstrated techniques that could serve as the basis for developing NSPS for small units. The use of medium sulfur oil will reduce SO₂ emissions to 690 ng/J (1.6 lb/million Btu) heat input; therefore, this technique was selected as Control Option A for oil-fired units. Very low sulfur oil combustion will reduce SO₂ emissions to 215 ng/J (0.50 lb/million Btu) heat input; therefore, this technique was selected as Control Option B for oil-fired units. Flue gas desulfurization systems are capable of 90 percent SO₂ emission reduction and, as a result, 90 percent SO₂ reduction was selected as Control Option C for small oil-fired units.

Sulfur dioxide emission from a typical oil-fired unit [i.e., 15 MW (50 million Btu/hour) heat input size and 55 percent (0.55) capacity factor] at the regulatory baseline are 330 Mg/year (360 tons/year). Compared to the regulatory baseline, standards based on Control Option A (i.e., standards based on the use of medium sulfur oil) would reduce emissions by about 150 Mg/year (170 tons/year). Control Option B (i.e., standards based on the use of very low sulfur oils) would reduce emissions by about 300 Mg/year (325 tons/year). Control Option C (i.e., standards based on 90 percent SO₂ reduction) would reduce emissions by about 305 Mg/year (335 tons/year).

The potential impacts on capital costs of standards based on these options were evaluated for a typical oil-fired

unit. Compared to the regulatory baseline, standards based on Control Option A would increase capital costs by less than 1 percent, and standards based on Control Option B would increase capital costs by less than 1 percent. Standards based on Control Option C, however, would increase capital costs by about 80 percent.

Compared to the regulatory baseline, standards based on Control Option A would increase annualized costs for this unit by about 3 percent and standards based on Control Option B would increase annualized costs by about 20 percent. Standards based on Control Option C would increase annualized costs by about 40 percent.

The cost effectiveness of SO₂ control associated with standards based on Control Option A compared to the regulatory baseline is about \$330/Mg (\$300/ton), and the incremental cost effectiveness of SO₂ control associated with standards based on Control Option B compared to standards based on Control Option A is about \$1,500/Mg (\$1,400/ton).

The incremental cost effectiveness of SO₂ control associated with standards based on Control Option C compared to standards based on Control Option B is very high and exceeds \$11,000/Mg (\$10,000/ton) for all oil-fired steam generating units. Consequently, no further consideration was given to options or alternatives requiring a

percent reduction in SO₂ emissions from small oil-fired steam generating units.

Analysis of Regulatory Alternatives. The analysis of regulatory alternatives examined the potential national impacts of various NSPS on both the industrial and commercial-institutional segments of the small steam generating unit population. The national impacts that would occur in the fifth year after proposal of the standards for small steam generating units were analyzed in terms of national SO₂ emission reductions, national increased annualized costs, national incremental cost effectiveness, as well as secondary environmental and energy impacts.

As shown in Table 9, the proposed SO₂ standards for oil-fired steam generating units were evaluated for three regulatory alternatives: Regulatory Alternative I, representing standards based on the use of medium sulfur oil [690 ng/J (1.6 lb/million Btu) heat input] for units of 8.7 MW (30 million Btu) heat input capacity or greater; Regulatory Alternative II, representing standards based on the use of medium sulfur oil [690 ng/J (1.6 lb/million Btu) heat input] for units of 2.9 MW (10 million Btu/hour) heat input capacity or greater; and Regulatory Alternative III, representing standards based on the use of very low sulfur oil [215 ng/J (0.50 lb/million Btu) heat input] for all oil-fired units of 2.9 MW (10 million Btu/hour) heat input capacity or greater.

TABLE 9.—SO₂ REGULATORY ALTERNATIVES FOR SMALL OIL-FIRED UNITS

Regulatory alternative	Size range MW (million Btu/hour)	SO ₂ emission level ng/J (lb/million Btu)	Basis*
I.....	>8.7 (30).....	690 (1.6).....	Control option A.
II.....	>2.9 (10).....	690 (1.6).....	Control option A.
III.....	>2.9 (10).....	215 (0.50).....	Control option B.

* Control option A = Medium sulfur coal. Control option B = Very low sulfur oil (distillate oil).

Some 915 small oil-fired steam generating units between 2.9 and 29 MW (10 and 100 million Btu/hour) heat input capacity are projected to be constructed through the fifth year after proposal. Of these units, approximately 335 would be greater than 8.7 MW (30 million Btu/hour) heat input capacity.

Estimated national SO₂ emission reductions over the regulatory baseline are about 8,600 Mg/year (9,400 tons/year) for a standard for small oil-fired units based on Regulatory Alternative I; about 10,000 Mg/year (11,000 tons/year) for a standard based on Regulatory Alternative II; and about 25,000 Mg/year (27,000 tons/year) for a standard based on Regulatory Alternative III.

No significant water pollution impacts are projected for small oil-fired steam generating units under any of the regulatory alternatives, and the projected impacts on solid waste generation are also negligible. Standards based on any of the regulatory alternatives for small oil-fired steam generating units would not result in significant energy impacts on national fuel use markets. Some fuel switching from residual oil to natural gas or distillate oil may occur, but the impact of any fuel switching on oil and natural gas markets would be negligible on a national basis. Energy consumption impacts resulting from standards based on any of the regulatory alternatives for

small oil-fired steam generating units would be small.

National annualized emission control cost increases over baseline costs were estimated to be \$4.3 million for a standard based on Regulatory Alternative I; \$5.0 million for a standard based on Regulatory Alternative II; and \$22.8 million for a standard based on Regulatory Alternative III.

The national incremental cost effectiveness of a standard based on Regulatory Alternative I would be about \$500/Mg (\$400/ton) compared to the regulatory baseline. The national incremental cost effectiveness of a standard for small oil-fired units based on Regulatory Alternative II would be about \$600/Mg (\$500/ton), and the

national incremental cost effectiveness of a standard based on Regulatory Alternative III would be about \$800/Mg (\$700/ton).

For individual steam generating units subject to standards based on either Regulatory Alternative I or Regulatory Alternative II, cost-effectiveness values remain essentially constant at about \$400/Mg (\$300/ton), independent of unit size and capacity factor. For individual units subject to standards based on Regulatory Alternative III, cost-effectiveness values range from about \$1,400/Mg to \$1,600/Mg (\$1,300/ton to \$1,500/ton), depending on unit size and capacity factor.

4. National Economic Impacts

The analysis of the national economic impacts of standards was performed separately for the two major segments of the small steam generating unit population. For the industrial segment, the analysis focused on six major industry groups: food and kindred products, textile mill products, paper and allied products, chemicals and allied products, petroleum and coal products, and primary metals industries. An examination of potential product price impacts, assuming full cost pass through and 100 percent replacement of existing process steam, for "worst case" facilities in each of these six categories showed product price increases typically less than 1 percent. For the most steam intensive industries, product prices under the "worst case" were projected to increase by 2.8 percent. Potential price increases would be significantly less at the national level because only a small percentage of process steam in these industries would be affected by the proposed standard. Industries that are more likely to experience adverse impacts because of the steam intensity of their production process were selected for further analysis. None of the selected industries experienced significant adverse economic impacts as a result of the proposed standards.

For the commercial-institutional segment, economic impacts were assessed in terms of the costs of control as a percent of annual budgets (expressed as annual revenues) for five major categories of facilities. These five types of facilities included laundries, hotels, hospitals, colleges, and secondary schools. Most commercial-institutional facilities would not be affected by the proposed standards because most of these facilities use steam generating units with heat input capacities of less than 2.9 MW (10 million Btu/hour) and most use natural gas. Of the commercial-institutional

facilities with steam generating units subject to the proposed SO₂ and PM standards, the annual costs of pollution control were generally less than 0.5 percent of annual revenues. In other words, costs of services would typically increase by less than 0.5 percent. For the most steam intensive commercial facility, the annual costs of pollution control were 1.3 percent of annual revenues.

Economic impacts for the commercial-institutional segment were also measured in terms of the potential impact of the proposed standards on the rental rates of typical commercial and institutional buildings. Five different size categories of buildings were examined, ranging from less than 25,000 sq ft in size. In each case, small steam generating units sized for the building were assumed to be used for space and water heating purposes.

The analysis of rental rate impacts showed that the proposed standards could potentially increase building rental rates by about 1 percent for a typical building smaller than 25,000 sq ft in size and less than 0.5 percent for a building larger than 25,000 sq ft in size.

Actual rental rate impacts, however, are expected to be even less than this because these rental rate impacts assume the use of residual oil, and the relatively low baseline rental rates assumed for the analysis produce a somewhat exaggerated effect on percentage increases in rental rates. In addition, it is unlikely that steam generating units of 2.9 MW (10 million Btu/hour) heat input or larger would be installed in a building as small as 25,000 sq ft in size, and it is unlikely that owners/operators of buildings below 200,000 sq ft in size would install a new residual oil-fired unit. It is much more likely that a steam generating unit installed in a commercial-institutional building smaller than 200,000 sq ft in size would use natural gas or distillate oil since units firing these fuels require much less maintenance and operator attention than units firing residual oils. Thus, the projected impacts on building rental rates are considered "worst case."

The analysis of the potential national and economic impacts associated with various regulatory alternatives for standards limiting emissions from small steam generating units does not identify any potential impacts that are considered unreasonable. Based on the above-described analysis of control options, regulatory alternatives, national impacts, and economic impacts of standards limiting emissions of SO₂ and

PM from small steam generating units, the proposed standards are based on PM Regulatory Alternative II for coal and wood, and on SO₂ Regulatory Alternative III for coal and oil. The standards limiting PM emissions from small steam generating units would establish an emission limit of 22 ng/l (0.05 lb/million Btu) heat input for coal-fired units with a heat input capacity of 8.7 MW (30 million Btu/hour) or greater and would establish an emission limit of 43 ng/l (0.10 lb/million Btu) heat input for wood-fired units in the same size range. The standard limiting SO₂ emissions from small coal-fired steam generating units would require a 90 percent reduction in SO₂ emissions from units of greater than 22 MW (75 million Btu/hour) heat input capacity that operate at an annual capacity factor greater than a 55 percent (0.55). Sulfur dioxide emissions from small coal-fired steam generating units of 29 MW (100 million Btu/hour) or less, but greater than or equal to 2.9 MW (10 million Btu/hour), would be limited to 520 ng/l (1.2 lb/million Btu) heat input. The standard limiting SO₂ emissions from small oil-fired steam generating would limit emissions to 215 ng/l (0.50 lb/million Btu) heat input for all oil-fired units with heat input capacities of 29 MW (100 million Btu/hour) or less, but greater than or equal to 2.9 MW (10 million Btu/hour).

F. Modification and Reconstruction Provisions

Existing steam generating units that are modified or reconstructed would be subject to the requirements in the General Provisions (40 CFR 60.14 and 60.15) that apply to all NSPS. Few, if any, changes typically made to existing steam generating units would be expected to bring such steam generating units under the proposed SO₂ or PM standards.

A modification is any physical or operational change to an existing facility that results in an increase in emissions. Changes to an existing facility that do not result in an increase in emissions, either because the nature of the change has no effect on emissions or because additional emission control technology is employed to offset an increase in emissions, are not considered modifications. In addition, certain changes have been exempted under the General Provisions (40 CFR 60.14). These exemptions include: routine maintenance, repair, and replacement; production increases achieved without a capital expenditure as defined in section 60.2; production increases resulting from an increase in the hours of operation;

addition or replacement of equipment for emission control (as long as the replacement does not increase emissions); relocation or change of ownership of an existing facility; and use of an alternative fuel or raw material if the existing facility were designed to accommodate it. In addition, both Section III of the CAA and 40 CFR 60.14 of the General Provisions exempt mandatory conversions to coal.

Reconstruction of an existing facility could make that facility subject to an NSPS regardless of any change in the emission rate, depending on the cost of the replaced components and the feasibility of meeting the standards. Reconstructed steam generating units would become subject to the proposed standards under the reconstruction provisions, regardless of changes in emission rate, if the fixed capital cost of reconstruction exceeds 50 percent of the cost of an entirely new steam generating unit of comparable design and if it is technologically and economically feasible to meet the applicable standards. Costs associated with steam generating unit routine maintenance are not included in determining reconstruction costs.

G. Performance Test Methods and Monitoring Requirements

The performance testing and emission monitoring requirements included in the proposed regulation would apply to all small steam generating units subject to the proposed SO₂ or PM standards, except as noted below.

1. Sulfur Dioxide

The proposed SO₂ standard for small coal-fired steam generating units includes provisions for monitoring of SO₂ emissions to demonstrate continuous compliance with the standards. Use of a CEMS at the inlet and outlet of the SO₂ control device would be required for coal-fired units subject to a percent reduction requirement. Data collected from the CEMS would be used to determine compliance with the emission limits in accordance with Reference Method 19 (Appendix A). As-fired fuel sampling and analysis at the inlet to the steam generating unit or emissions measurement in accordance with Reference Method 6B could be used in lieu of CEMS.

Affected facilities for which only an emission limit has been proposed would be able to monitor SO₂ emissions using any of the procedures included in Method 19 (Appendix A) or other approved alternative procedures. These procedures include as-fired fuel sampling and analysis, stack sampling,

or operation of a single CEMS at the outlet of the SO₂ control device.

If fuel sampling and analysis is used, a representative sample would be collected each steam generating unit operating day and would be analyzed for sulfur content. This value would be used to calculate the emission rate for that day.

Compliance with the proposed SO₂ emission limit for small coal-fired steam generating units would be based on a 30-day rolling average of data collected during the previous 30 consecutive steam generating unit operating days. (Hourly values would be computed when using a CEMS; daily values would be computed when using Method 6B or fuel sampling.) The first 30-day average SO₂ emission rate calculated after initial unit start-up would serve as the initial performance test required under 40 CFR section 60.8. Thereafter, a new 30-day rolling average emission rate would be calculated each steam generating unit operating day.

Under the proposed SO₂ standards for small coal-fired steam generating units, each 30-day rolling average would be calculated using all of the data collected during the previous 30 consecutive steam generating unit operating days. Although all data collected must be used in calculating each 30-day average, the proposed standards include provisions to account for periods when data cannot be collected due to equipment failure. These provisions require that data must be gathered by fuel sampling and analysis or stack sampling for a minimum of 22 days within each 30 consecutive steam generating unit day period.

If a small coal-fired steam generating unit were to fire other fuels periodically, such as natural gas, distillate oil, or wood, 24-hour periods during which these other fuels are the only fuels fired would not be considered small steam generating unit operating days for purposes of determining compliance with the SO₂ standards. Emissions of SO₂ from the combustion of natural gas, distillate oil, and other such fuels are so low that including these emissions in the 30-day rolling average calculations for coal-fired units would serve only to "dilute" the reported emission values. Consequently, only those 24-hour periods (as defined in the proposed standards) during which some coal is fired in the small steam generating unit would constitute small steam generating unit operating days.

Twenty-four-hour periods during which both coal and other fuels are fired, however, would be considered small steam generating unit operating days. In such cases, one method of

determining compliance with the SO₂ standard would be the use of as-fired fuel sampling and analysis of the coal. If a small steam generating unit simultaneously combusts coal with another fuel and uses a CEMS to determine compliance with the SO₂ standard, an adjusted hourly SO₂ emission rate would be used in Equation 19-19 of Reference Method 19 to compute an adjusted 30-day average emission rate.

In order to ensure that CEMS provide accurate data, daily calibration drift checks and quarterly accuracy audits would be required for each CEMS. These quality assurance checks would be performed in accordance with 40 CFR Part 60, Appendix F, Procedure 1, "Quality Assurance Requirements for Gas Continuous Emission Monitoring Systems Used for Compliance Determination."

The proposed SO₂ standard for small oil-fired steam generating units includes provisions for monitoring of SO₂ emissions from small residual oil-fired steam generating units to demonstrate continuous compliance with the standards. No SO₂ monitoring requirement would apply to small distillate oil-fired steam generating units. Monitoring of SO₂ emissions from small residual oil-fired units would be accomplished through the use of fuel sampling and analysis, Method 6B, or CEMS. Data collected would be used to determine compliance with the proposed SO₂ emission limits in accordance with Reference Method 19 (Appendix A).

If fuel sampling and analysis is used to determine compliance at a small residual oil-fired steam generating unit, an as-fired daily oil sample can be taken and analyzed. As an alternative to the use of daily fuel sampling, a representative sample could be collected from the oil supply tank for the steam generating unit after each fuel delivery. This sample could be analyzed for sulfur content and then used as the daily value when calculating the 30-day rolling average SO₂ emission rate until the next oil shipment is received. Upon receipt of a new oil shipment, a new sample from the oil supply tank would be collected after the oil tank has been refilled, analyzed, and then used as the new daily average. It is assumed that adequate mixing would occur as the oil tank is being filled, so that a sample taken from the tank after filling would accurately represent the sulfur content of the oil in the tank.

As with coal, compliance with the proposed SO₂ emission limits for small residual oil-fired steam generating units would be based on a 30-day rolling

average of data collected during the previous 30 consecutive steam generating unit operating days (hourly values when using CEMS, daily values when using Method 6B or fuel sampling and analysis). The same minimum data requirements for coal-fired units also apply to oil-fired units. As with coal, if a small steam generating unit combusts oil with another fuel and uses CEMS to determine compliance with the SO₂ standard, an adjusted hourly SO₂ emission rate would be used in Equation 19-19 of Reference Method 19 to compute an adjusted 30-day average emission rate.

2. Particulate Matter

The performance test methods and monitoring requirements for PM would apply to coal- and wood-fired small steam generating units, except as noted below. Performance tests would be conducted in accordance with Reference Method 5, Reference Method 5B, or Reference Method 17 (40 CFR Part 60, Appendix A). Reference Method 1 would be used for determining the number and location of sampling points. Reference Method 3 would be used for flue gas analysis. After the initial performance test, subsequent performance tests may be required by enforcement personnel. All performance tests would consist of a minimum of three runs using Reference Method 5, Reference Method 5B, or Reference Method 17 at full-load operating conditions (i.e., full capacity). The average PM emission rate of the three runs would be used to determine compliance. Reference Method 17 could be used in place of Reference Method 5 for facilities without wet FGD systems that have stack gas temperatures of less than 160 °C (320 °F). For facilities with wet FGD systems, Reference Method 5B would be used.

The performance test methods and monitoring requirements for opacity would apply to coal-, oil-, and wood-fired units. Reference Method 9 (a 6-minute average of 24 observations) would be used to determine initial compliance with the proposed 20 percent opacity standard for all three fuels. A transmissometer would be used to demonstrate proper operation and maintenance of the control device after completion of the initial performance test for coal-, oil-, and wood-fired units.

The opacity standard provides an inexpensive indicator of PM control system performance. To account for factors such as unusually large diameter stacks or other site specific unique circumstances that might influence opacity, provisions are available in 40 CFR 60.11(e) to obtain a site-specific

opacity standard when a facility is unable to comply with the applicable opacity standard, but demonstrates compliance with the applicable PM emission limit.

H. Reporting and Recordkeeping Requirements

The proposed standards would require owners and operators of all small steam generating units to submit notifications of unit construction or reconstruction, date of anticipated startup, date of actual startup, and anticipated date of demonstration of the CEMS (if applicable), as required under the General Provisions (40 CFR 60.7). In addition, this notification would include a description of the fuel(s) to be fired in the small steam generating unit.

After the initial performance tests have been completed, the proposed standards would require submission of quarterly reports. For small coal- and residual oil-fired steam generating units, these reports would include all 30-day rolling average SO₂ emission rates calculated during the reporting period, as well as identification of any periods for which data were excluded from these calculations. In addition, each quarterly report would include the results of the daily CEMS drift checks and quarterly accuracy audits as required under Appendix F, Procedure 1. For small distillate oil-fired steam generating units, quarterly reporting of fuels fired would also be required. These reports must include a certified statement signed by the owner of the steam generating unit indicating that all fuels fired in the unit met the ASTM definition of distillate oil. For small coal-, wood-, and oil-fired steam generating units of 8.7 MW (30 million Btu/hour) heat input capacity or greater, these reports would also include an excess emission report for opacity. If no excess emissions of opacity occur during a quarter, then an excess emission report for opacity would not be required for that quarter, but would be required for the following quarter. Thus, as long as there are no excess emissions of opacity, only semiannual excess emission reports for opacity are required.

If the applicable SO₂ percent reduction requirement or emission limit is exceeded during the reporting period, the quarterly report would also describe the reason for the exceedance or failure to meet the requirement or limit and the corrective action taken. If the minimum amount of SO₂ data (as discussed in "Performance Test Methods and Monitoring Requirements") was not obtained for any 30-day rolling average period, reasons for failure to obtain

sufficient data and a description of corrective action taken would also be included, along with all information needed to calculate the 30-day average emission rates according to Method 19, Section 7. In addition, if the applicable PM emission limit or opacity standard is exceeded, the quarterly report would also describe the reason for the exceedance and the corrective action taken.

The proposed standards would also require that certain types of records be maintained. Records to be maintained include records of the types and amounts of each fuel fired on each steam generating unit operating day; all data outputs of the CEMS, or results of fuel sampling and analysis; all quarterly reports submitted under this rulemaking; and all records required under Appendix F, Procedure 1. All required records would be maintained for 2 years following the date of such records, after which they could be discarded.

The reporting and recordkeeping requirements in the proposed regulation are necessary to inform enforcement personnel as new small steam generating units begin operation. In addition, they would provide the data and information necessary to ensure continued compliance of small steam generating units with the proposed regulation. At the same time, these requirements would not impose an unreasonable burden on small steam generating unit owners or operators.

V. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standards in accordance with section 307(d)(5) of the CAA. Persons wishing to make oral presentations should contact EPA at the address given in the ADDRESSES section of this preamble. Oral presentations should be limited to 15 minutes each. Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be mailed to the Central Docket Section at the address given in the ADDRESSES section of this preamble.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket in Washington, DC (see ADDRESSES section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered in

the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to identify and locate documents so that they can effectively participate in the rulemaking process, and (2) to serve as the record in case of judicial review (except for interagency review materials (Section 307(d)(7)(A)). The docket number for this rulemaking is A-86-02.

C. Clean Air Act Procedural Requirements.

1. Administrator Listing—Section 111

As prescribed by section 111 of the CAA, as amended, establishment of standards of performance for industrial-commercial-institutional steam generating units is based on the Administrator's determination (40 CFR 60.16, 44 FR 49222, dated August 21, 1979, and 49 FR 25156, dated June 19, 1984) that these sources contribute significantly to air pollution which may reasonably be anticipated to endanger public health or welfare.

2. Periodic Review—Section 111

The regulation will be reviewed 4 years from the date of promulgation as required by the CAA. This review will include an assessment of such factors as the need for integration with other programs, the existence of alternative methods, enforceability, improvements in emission control technology, and reporting requirements.

3. External Participation—Section 117

In accordance with section 117 of the CAA, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including economic and technological issues.

4. Economic Impact Assessment—Section 317

Section 317 of the CAA requires the Administrator to prepare an economic impact assessment for any NSPS promulgated under section 111(b) of the Act. An economic impact assessment was prepared for the proposed standards and for other regulatory alternatives. All aspects of the assessment were considered in the formulation of the proposed standards to ensure that the proposed standards would represent the best system of emission reduction considering costs. Portions of the economic impact assessment are included in the BID's

and additional information is included in the docket.

D. Office of Management and Budget Reviews

1. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Comments on these requirements should be submitted to the Office of Information and Regulatory Affairs, OMB, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." Copies of these comments should also be submitted to Central Docket Section (LE-131), Attention: Docket Number A-86-02, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. The final rule will reflect consideration of any comments on the information collection requirements.

The average annual industry-wide burden of the reporting and recordkeeping requirements associated with the proposed regulation would be 22 person-years, based on an average of 351 respondents per year.

2. Executive Order 12291 Review

This regulation was submitted to the OMB for review as required by Executive Order 12291. Any written comments from OMB and any responses to those comments will be included in Docket A-86-02. This docket is available for public inspection at the EPA's Central Docket Section, which is listed under the ADDRESSES section of this notice.

E. Regulatory Flexibility Act Compliance

The Regulatory Flexibility Act requires consideration of the impacts of proposed regulations on small entities, including small businesses, organizations, and jurisdictions. A small business is defined as any business concern that is independently owned and operated and not dominant in its field as defined by the Small Business Administration (SBA) regulations under section 3 of the Small Business Act. Similarly, a small organization is defined by the SBA as a not-for-profit enterprise, independently owned and operated, and not dominant in its field. A small jurisdiction is defined as any government district with a population of fewer than 50,000 people.

The proposed standard would apply to small steam generating units in small businesses (defined as having 500 to

1,500 employees depending on the SIC classification) as well as large businesses. The proposed standard, however, would not affect a substantial number of small businesses. Most small businesses will not be affected by the proposed standards because sales of new steam generating units are expected to remain at their current low levels. New small steam generating units, therefore, are expected to be a relatively small percentage of the existing population of small steam generating units over the next five years. In addition, small steam generating units in the commercial segment are used primarily for space heating and hot water. A relatively small percentage of commercial buildings will be impacted because (1) steam is not the predominant choice for heating new buildings, (2) most steam generating units used in commercial applications will be smaller than 2.9 MW (10 million Btu/hour) heat input, and (3) the predominant fuels used in commercial applications are natural gas and distillate oil, which will incur little or no compliance costs.

An economic impact is considered significantly adverse if one of the following four criteria is met:

Annual costs of compliance with the standard increase process or product costs by more than five percent.

Compliance costs as a percent of sales are at least ten percentage points higher for small businesses than for large businesses.

Capital costs of compliance represent a significant portion of capital available to small businesses.

The standards are likely to result in closures of small businesses.

The proposed standards would increase production costs by less than five percent, assuming full cost pass through, for "worst case" facilities in the most steam intensive industries. Impacts on product prices at the national level are expected to be insignificant. In the commercial segment, rental rates for office buildings that are affected by the proposed standards would increase by less than 1 percent.

Compliance costs as a percent of sales or annual revenues were analyzed for small and large businesses. This measure of the regulatory burden of the proposed standards would not be significantly higher for small businesses.

The proposed standards would impose additional capital expenditures for fabric filters on new small coal-fired steam generating units. These additional capital costs, however, would increase the capital requirement for the purchase

of a new small steam generating unit by less than 10 percent.

Finally, the additional costs associated with the proposed standards are not expected to result in any business closures. Consequently, the proposed standard will not result in significant adverse economic impacts on small businesses.

List of Subjects in 40 CFR Part 60

Air pollution control, Incorporation by reference, Intergovernmental relations, Reporting and recordkeeping, Fossil fuel-fired steam generating units, Nonfossil fuel-fired steam generating units.

Date: June 1, 1989.

William K. Reilly,
Administrator.

For the reasons set out in the preamble, Title 40, Chapter I of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 60—STANDARDS OF PERFORMANCE FOR NEW STATIONARY SOURCES

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7411, 7414, and 7601(a).

2. Section 60.17 is amended by revising paragraphs (a)(1), (a)(10) and (a)(50) as follows:

§ 60.17 Incorporation by reference.

(a)

(1) ASTM D388-77, Standard Specification for Classification of Coals by Rank, incorporation by reference (IBR) approved January 27, 1983, for §§ 60.41(f); 60.45(f)(4) (i), (ii), (vi); 60.41a; 60.41b; 60.41c; 60.251 (b), (c).

(10) ASTM D396-78, Standard Specification for Fuel Oils, IBR approved January 27, 1983, for §§ 60.40b; 60.41b; 60.41c; 60.111(b); 60.111a(b).

(50) ASTM D1835-86, Standard Specification for Liquified Petroleum (LP) Gases, to be approved for §§ 60.41b; 60.41c.

3. Part 60 is amended by adding Subpart Dc to read as follows:

Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units

Sec.

60.40c Applicability and delegation of authority.

60.41c Definitions.

60.42c Standard for sulfur dioxide.

Sec.

60.43c Standard for particulate matter.

60.44c Compliance and performance test methods and procedures for sulfur dioxide.

60.45c Compliance and performance test methods and procedures for particulate matter.

60.46c Emission monitoring for sulfur dioxide.

60.47c Emission monitoring for particulate matter.

60.48c Reporting and recordkeeping requirements.

60.49c Standard for nitrogen oxides.

Subpart Dc—Standards of Performance for Small Industrial-Commercial-Institutional Steam Generating Units

§ 60.40c Applicability and delegation of authority.

(a) The affected facility to which this subpart applies is each steam generating unit for which construction, modification, or reconstruction is commenced after June 9, 1989 and which has a maximum heat input capacity from fuels combusted in the steam generating unit of 29 MW (100 million Btu/hour) or less, but greater than or equal to 2.9 MW (10 million Btu/hour).

(b) Affected facilities that also meet the applicability requirements under Subpart E (Standards of performance for incinerators; § 60.50) are subject to the particulate matter standards under this subpart.

(c) Affected facilities that also meet the applicability requirements under Subpart J (Standards of performance for petroleum refineries; § 60.100) are subject to the particulate matter standards under this subpart and the sulfur dioxide standards under Subpart J (§ 60.104).

(d) In delegating implementation and enforcement authority to a State under section 111(c) of the Act, § 60.48c(a)(4) shall be retained by the Administrator and not transferred to a State.

§ 60.41c Definitions.

As used in this subpart, all terms not defined herein shall have the meaning given them in the Act and in Subpart A of this part.

"Annual capacity factor" means the ratio between the actual heat input to a steam generating unit from the fuels listed in § 60.42c or § 60.43c, as applicable, during a calendar year and the potential heat input to the steam generating unit had it been operated for 8,760 hours during a calendar year at the maximum design heat input capacity. In the case of steam generating units that are rented or leased, the actual heat input shall be determined based on the combined heat input from all operations

of the affected facility in a calendar year.

"Coal" means all solid fuels classified as anthracite, bituminous, subbituminous, or lignite by the American Society of Testing and Materials in ASTM D388-77, Standard Specification for Classification of Coals by Rank (incorporated by reference—see § 60.17), coal refuse, and petroleum coke. Coal-derived synthetic fuels, including but not limited to solvent refined coal, gasified coal, coal-oil mixtures, and coal-water mixtures, are included in this definition for the purposes of this subpart.

"Coal refuse" means any by-product of coal mining or coal cleaning operations with an ash content greater than 50 percent, by weight, and a heating value less than 13,900 kJ/kg (6,000 Btu/lb) on a dry basis.

"Cogeneration steam generating unit" means a steam generating unit that simultaneously produces both electrical (or mechanical) and thermal energy from the same primary energy source.

"Combined cycle system" means a system in which a separate source, such as a gas turbine, internal combustion engine, or kiln, provides exhaust gas to a heat recovery steam generating unit.

"Conventional technology" means wet flue gas desulfurization (FGD) technology, dry FGD technology, atmospheric fluidized bed combustion, and oil hydrosulfurization technology.

"Distillate oil" means fuel oils that comply with the specifications for fuel oil numbers 1 or 2, as defined by the American Society for Testing and Materials in ASTM D396-78, Standard Specification for Fuel Oils (incorporated by reference—see § 60.17).

"Dry flue gas desulfurization technology" means a sulfur dioxide control system that is located downstream of the steam generating unit and removes sulfur oxides from the combustion gases of the steam generating unit by contacting the combustion gases with an alkaline slurry or solution and forming a dry powder material. This definition includes devices where the dry powder material is subsequently converted to another form. Alkaline slurries or solutions used in dry flue gas desulfurization technology include, but are not limited to, lime and sodium.

"Duct burner" means a device that combusts fuel and that is placed in the exhaust duct from another source, such as a stationary gas turbine, internal combustion engine, kiln, etc., to allow the firing of additional fuel to heat the exhaust gases before the exhaust gases

enter a heat recovery steam generating unit.

"Emerging technology" means any sulfur dioxide control system that is not defined as a conventional technology under this section, and for which the owner or operator of the facility has applied to the Administrator and received approval to operate as an emerging technology under § 60.48c(a)(4).

"Federally enforceable" means all limitations and conditions that are enforceable by the Administrator, including the requirements of 40 CFR Parts 60 and 61, requirements within any applicable State implementation plan, and any permit requirements established under 40 CFR 52.21 or under 40 CFR 51.18 and 40 CFR 51.24.

"Fluidized bed combustion technology" means a device (including but not limited to bubbling bed units and circulating bed units) wherein fuel is distributed onto a bed, or series of beds, of limestone aggregate (or other sorbent materials) for combustion and these materials together with solid products of combustion are forced upward in the device by the flow of combustion air and the gaseous products of combustion.

"Fuel pretreatment" means a process that removes a portion of the sulfur in a fuel before combustion of the fuel in a steam generating unit.

"Full capacity" means operation of the steam generating unit at 90 percent or more of the maximum design heat input capacity.

"Heat input" means heat derived from combustion of fuel in a steam generating unit and does not include the heat input from preheated combustion air, recirculated flue gases, or exhaust gases from other sources, such as gas turbines, internal combustion engines, or kilns.

"Heat transfer medium" means any material that is used to transfer heat from one point to another point.

"Maximum design heat input capacity" means the ability of a steam generating unit to combust a stated maximum amount of fuel on a steady state basis as determined by the physical design and characteristics of the steam generating unit.

"Natural gas" means (1) a naturally occurring mixture of hydrocarbon and nonhydrocarbon gases found in geologic formations beneath the earth's surface, of which the principal constituent is methane; or (2) liquified petroleum (LP) gas, as defined by the American Society for Testing and Materials in ASTM D1835-86, "Standard Specification for Liquid Petroleum Gases" (incorporated by reference—see 60.17).

"Noncontinental area" means the State of Hawaii, the Virgin Islands,

Guam, American Samoa, the Commonwealth of Puerto Rico, or the Northern Marianas Islands.

"Oil" means crude oil or petroleum or a liquid fuel derived from crude oil or petroleum, including distillate and residual oil.

"Potential sulfur dioxide emission rate" means the theoretical sulfur dioxide emissions (ng/l, lb/million Btu heat input) that would result from combusting fuel in an uncleaned state and without using emission control systems.

"Process heater" means a device that is primarily used to heat a material to initiate or promote a chemical reaction in which the material participates as a reactant or catalyst.

"Residual oil" means all fuel oil numbers 4, 5, and 6, as defined by the American Society for Testing and Materials in ASTM D396-78, Standard Specifications for Fuel Oils (incorporated by reference—see 60.17).

"Steam generating unit" means a device which combusts any fuel to produce steam or to heat water or any other heat transfer medium. This term includes any steam generating unit which combusts fuel and is part of a cogeneration system or a combined cycle system. This term does not include process heaters as defined in this subpart.

"Steam generating unit operating day" means a 24-hour period between 12:00 midnight and the following midnight during which any fuel is combusted at any time in the steam generating unit. It is not necessary for fuel to be combusted continuously for the entire 24-hour period.

"Very low sulfur oil" means a distillate oil or residual oil that when combusted without post-combustion sulfur dioxide control has a sulfur dioxide emission rate equal to or less than 215 ng/l (0.5 lb/million Btu) heat input.

"Wet flue gas desulfurization technology" means a sulfur dioxide control system that is located downstream of the steam generating unit and removes sulfur oxides from the combustion gases of the steam generating unit by contracting the combustion gases with an alkaline slurry or solution and forming a liquid material. This definition applies to devices where the aqueous liquid material product of this contact is subsequently converted to other forms. Alkaline reagents used in wet flue gas desulfurization systems include, but are not limited to, lime, limestone, and sodium.

"Wet scrubber system" means any emission control device that mixes an

aqueous stream or slurry with the exhaust gases from a steam generating unit to control emissions of particulate matter or sulfur dioxide.

"Wood" means wood, wood residue, bark, or any derivative fuel or residue thereof, in any form, including, but not limited to, sawdust, sanderdust, wood chips, scraps, slabs, millings, shavings, and processed pellets made from wood or other forest residues.

§ 60.42c Standard for sulfur dioxide.

(a) Except as provided in paragraphs (b), (c) and (e) of this section, on and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts coal shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 10 percent (0.10) of the potential sulfur dioxide emission rate (90 percent reduction) and that contain sulfur dioxide in excess of 520 ng/l (1.2 lb/million Btu) heat input.

(b) Except as provided in paragraphs (c) and (e) of this section, on and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that:

(1) Combusts coal refuse alone in a fluidized bed combustion steam generating unit shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 20 percent of the potential sulfur dioxide emission rate (80 percent reduction), and that contain sulfur dioxide in excess of 520 ng/l (1.2 lb/million Btu) heat input. If coal is fired with coal refuse, the affected facility is subject to paragraph (a) of this section. If oil or any other fuel (except coal) is fired with coal refuse, the affected facility is subject to an emission limit determined pursuant to paragraph (e) of this section, and to the percent of the potential sulfur dioxide emission rate specified in paragraph (a) of this section.

(2) Combusts coal and that uses an emerging technology for the control of sulfur dioxide emissions, shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 50 percent (0.50) of the potential sulfur dioxide emission rate and that contain sulfur dioxide in excess of 260 ng/l (0.60 lb/million Btu) heat input.

(c) On and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no

owner or operator of an affected facility that combusts coal and is listed in paragraph (c) (1), (2), (3), or (4) of this section shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 520 ng/j (1.2 lb/million Btu) heat input. Percent reduction requirements are not applicable to affected facilities under this paragraph.

(1) All affected facilities that have a heat input capacity of 22 MW (75 million Btu/hour) or less;

(2) All affected facilities that have an annual capacity factor for coal of 55 percent (0.55) or less and are subject to a Federally enforceable permit limiting the operation of the affected facility to an annual capacity factor for coal of 55 percent (0.55) or less;

(3) All affected facilities located in a noncontinental area; or

(4) All affected facilities that combust coal in a duct burner as part of a combined cycle system where 55 percent (0.55) or less of the heat input to the steam generating unit is from combustion of coal in the duct burner, and 45 percent (0.45) or more of the heat input to the steam generating unit is from exhaust gases entering the duct burner.

(d) On and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts oil shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of 215 ng/j (0.5 lb/million Btu) heat input.

(e) On and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that

(1) Combusts coal in combination with any other fuel,

(2) Has a heat input capacity greater than 22 MW (75 million Btu/hour) and

(3) Has an annual capacity factor for coal greater than 55 percent (0.55) cause to be discharged into the atmosphere any gases that contain sulfur dioxide from coal in excess of the percent of the potential sulfur dioxide emission rate required in paragraph (a) or (b)(2) of this section, as applicable. On and after the date on which the performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts coal, oil, or coal and oil with any other fuel, shall cause to be discharged into the atmosphere any gases that contain sulfur dioxide in excess of the emission

limit determined according to the following formula:

$$E_s = (K_s H_s + K_o H_o + K_f H_f) / (H_s + H_o + H_f)$$

where:

E_s is the sulfur dioxide emission limit, expressed in ng/j or lb/million Btu heat input,

K_s is 520 ng/j (or 1.2 lb/million Btu),

K_o is 260 ng/j (or 0.60 lb/million Btu),

K_f is 215 ng/j (or 0.50 lb/million Btu),

H_s is the heat input from combustion of coal, except coal combusted in an affected facility subject to paragraph (b)(2) of this section, in J (million Btu),

H_o is the heat input from the combustion of coal in an affected facility subject to paragraph (b)(2) of this section, in J (million Btu),

H_f is the heat input from the combustion of oil, in J (million Btu). Only the heat input supplied to the affected facility from the combustion of coal and oil is counted under this section. No credit is provided for the heat input to the affected facility from wood or other fuels or heat input to the affected facility from exhaust gases from another source, such as gas turbines, internal combustion engines, and kilns.

(f) Except as provided in paragraph (g) of this section, compliance with the percent reduction requirements and emission limit(s) of this section shall be determined on a 30-day rolling average basis.

(g) Compliance with the emission limits under this section are determined on a 24-hour average basis for affected facilities that:

(1) Have a Federally enforceable permit limiting the annual capacity for oil to 10 percent (0.10) or less;

(2) Combust only very low sulfur oil; and

(3) Do not combust any other fuel.

(h) The sulfur dioxide emission limits and percent reduction requirements under this section apply at all times, including periods of startup, shutdown, and malfunction.

(i) Reduction in the potential sulfur dioxide emission rate through fuel pretreatment are not credited toward the percent reduction requirement under paragraph (b)(2) of this section unless:

(1) Fuel pretreatment results in a 50 percent or greater reduction in potential sulfur dioxide emissions; and

(2) Emissions from the pretreated fuel (without combustion or post combustion sulfur dioxide control) are equal to or less than the emission limits specified in paragraph (b)(2) of this section.

§ 60.43c Standard for particulate matter.

(a) On and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts coal or combusts

mixtures of coal with other fuels and has a heat input capacity of 8.7 MW (30 million Btu/hour) or greater, shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter in excess of the following emission limits:

(1) 22 ng/j (0.05 lb/million Btu) heat input, if the affected facility combusts only coal, or combusts coal and other fuels and has an annual capacity factor for the other fuels of 10 percent (0.10) or less.

(2) 43 ng/j (0.10 lb/million Btu) heat input if the affected facility combusts coal and other fuels and has an annual capacity factor for the other fuels greater than 10 percent (0.10) and is subject to a Federally enforceable requirement limiting operation of the affected facility to an annual capacity factor greater than 10 percent (0.10) for fuels other than coal.

(b) On and after the date on which the initial performance test is completed or required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility that combusts wood or combusts mixtures of wood with other fuels, except coal, and has a heat input capacity of 8.7 MW (30 million Btu/hour) or greater shall cause to be discharged into the atmosphere from that affected facility any gases that contain particulate matter in excess of 43 ng/j (0.10 lb/million Btu) heat input.

(c) For purposes of these standards, the annual capacity factor is determined by dividing the actual heat input to the steam generating unit during the calendar year from the combustion of coal or wood, and other fuels, as applicable, by the potential heat input to the steam generating unit if the steam generating unit had been operating for 8,760 hours at the maximum design heat input capacity.

(d) On and after the date on which the initial performance test is completed or is required to be completed under § 60.8 of this part, whichever date comes first, no owner or operator of an affected facility having a heat input capacity of 8.7 MW (30 million Btu/hour) or greater that combusts coal, wood, or oil shall cause to be discharged into the atmosphere any gases that exhibit greater than 20 percent opacity (6-minute average), except for one 6-minute period per hour of not more than 27 percent opacity.

(e) The particulate matter and opacity standards apply at all times, except during periods of startup, shutdown, or malfunction.

§ 60.44c Compliance and performance test methods and procedures for sulfur dioxide.

(a) The sulfur dioxide standards under § 60.42c apply at all times, including periods of startup, shutdown, or malfunction.

(b) Except as provided under § 60.42c(g), compliance with the emission limits under § 60.42c is determined on a 30-day rolling average basis.

(c) Except as provided in paragraph (j) of this section, the owner or operator of an affected facility shall conduct an initial performance test using a continuous emission monitoring system (CEMS) or following the procedures of Method 6B to determine compliance with the percent of potential sulfur dioxide emission rate (%P_s) and sulfur dioxide emission rate pursuant to § 60.42c, as applicable, following the procedures listed below:

(1) In conducting the performance tests required under § 60.8, the owner or operator shall use the methods and procedures in Appendix A of this part or the methods and procedures as specified in this section, except as provided in § 60.8(b). Section 60.8(f) does not apply to this subpart. The 30-day notice required in § 60.8(d) applies only to the initial performance test unless otherwise specified by the Administrator.

(2) The initial performance test shall be conducted over the first 30 operating days of the steam generating unit. Compliance with the sulfur dioxide standards shall be determined using a 30-day average. The first operating day included in the initial performance test shall be scheduled within 30 days after achieving the maximum production rate at which the affected facility will be operated, but not later than 180 days after the initial startup of the facility.

(3) If only coal is combusted, the following procedures are used:

(i) Where a CEMS is used in conducting the initial performance test, the procedures in Method 19 are used to determine the hourly sulfur dioxide emission rate (E_{ho}) and the 30-day average emission rate (E_{ha}). The hourly averages used to compute the 30-day averages are obtained from the continuous emission monitoring system. The percent of potential sulfur dioxide emission rate (%P_s) emitted to the atmosphere is computed using the following formula:

$$\%P_s = 100 (1 - \%R_s / 100) (1 - \%R_f / 100)$$

where:

$\%R_s$ is the sulfur dioxide removal efficiency of the control device as determined by Method 19, in percent.

$\%R_f$ is the sulfur dioxide removal efficiency of fuel pretreatment as determined by Method 19, in percent.

(ii) Where Method 6B is used in conducting the performance test, daily averages are used to compute the 30-day average emission rate.

(4) If only oil is combusted, the following procedures are used:

(i) Where a CEMS is used in conducting the initial performance test, the procedures in Method 19 are used to determine the hourly sulfur dioxide emission rate (E_{ho}) and the 30-day average emission rate (E_{ha}). The hourly averages used to compute the 30-day averages are obtained from the CEMS.

(ii) Where Method 6B is used in conducting the performance test, daily averages are used to compute the 30-day average emission rate.

(5) If coal, oil, or coal and oil are combusted with other fuels, the same procedures required in paragraphs (c)(3) and (c)(4) of this section are used, except as provided in the following:

(i) An adjusted hourly sulfur dioxide emission rate (E_{ho}^o) is used in Equation 19-19 of Method 19 to compute an adjusted 30-day average emission rate (E_{ha}^o). The E_{ho}^o is computed using the following formula:

$$E_{ho}^o = [E_{ho} - E_w (1 - X_k)] / X_k$$

where:

E_{ho}^o is the adjusted hourly sulfur dioxide emission rate, ng/j (lb/million Btu);

E_{ho} is the hourly sulfur dioxide emission rate, ng/j (lb/million Btu);

E_w is the sulfur dioxide concentration in fuels other than coal and oil combusted in the affected facility, as determined by the fuel sampling and analysis procedures in Method 19, ng/j (lb/million Btu). The value E_w for each fuel lot is used for each hourly average during the time that the lot is being combusted.

X_k is the fraction of the total heat input from fuel combustion derived from coal or coal and oil, as determined by applicable procedures in Method 19.

(ii) To compute the percent of potential sulfur dioxide emission rate (%P_s), and adjusted $\%R_s$ ($\%R_s^o$) is computed from the adjusted E_{ho}^o from paragraph (c)(5)(i) of this section and an adjusted average sulfur dioxide inlet rate (E_{ai}^o) using the following formula:

$$\%R_s^o = 100 \left(1.0 - \frac{E_{ho}^o}{E_{ai}^o} \right)$$

To compute E_{ai}^o , an adjusted hourly sulfur dioxide inlet rate (E_{ai}^o) is used. The E_{ai}^o is computed using the following formula:

$$E_{ai}^o = [E_{ai} - E_w (1 - X_k)] / X_k$$

where:

E_{ai}^o is the adjusted hourly sulfur dioxide inlet rate, ng/j (lb/million Btu).

E_{ai} is the hourly sulfur dioxide inlet rate, ng/j (lb/million Btu).

(6) The owner or operator of an affected facility subject to paragraph (c)(5) of this section does not have to measure parameters E_w or X_k if the owner or operator elects to assume that $E_w = 0$.

(7) The owner or operator of an affected facility that qualifies under the provisions of § 60.42c (c) or (d) does not have to measure parameters E_w or X_k under paragraph (c)(5) of this section if the owner or operator of the affected facility elects to measure sulfur dioxide emission rates of the coal or oil using the fuel sampling and analysis procedures under Method 19.

(d) The owner or operator of an affected facility that combusts only very low sulfur oil and does not combust any other fuel, has an annual capacity factor for oil of 10 percent (0.10) or less, and is subject to a Federally enforceable requirement limiting operation of the affected facility to an annual capacity for oil of 10 percent (0.10) or less shall:

(1) Conduct the initial performance test over 24 consecutive steam generating unit operating hours at full capacity, using the methods and procedures in Appendix A of this part;

(2) Determine compliance with the standards after the initial performance test based on the arithmetic average of the hourly emissions data during each steam generating unit operating day if a CEMS is used, or based on a daily average if Method 6B or fuel sampling and analysis procedures under Method 19 are used.

(e) The owner or operator of an affected facility seeking to demonstrate compliance with the sulfur dioxide standards in this subpart pursuant to the provisions of § 60.42c (c)(1) or (c)(2) shall demonstrate the maximum design heat input capacity of the steam generating unit by operating the facility at this capacity for 24 hours. This demonstration will be made during the initial performance test and a subsequent demonstration may be requested at any other time. If the 24-hour average firing rate for the affected facility is less than the maximum design heat input capacity provided by the manufacturer of the affected facility, the 24-hour average firing rate shall be used to determine the annual capacity factor for the affected facility, otherwise the maximum design heat input capacity provided by the manufacturer shall be used.

(f) For the initial performance test required under § 60.8, compliance with

the sulfur dioxide emission limits and percent reduction requirements under § 60.42c is based on the average emission rates and the average percent reduction for sulfur dioxide for the first 30 steam generating unit operating days, except as provided under paragraph (d) of this section. The initial performance test is the only test for which at least 30 days prior notice is required unless otherwise specified by the Administrator. The steam generating unit load during the 30-day period does not have to be the maximum design heat input capacity, but must be representative of future operating conditions and include at least one 24-hour period at full capacity.

(g) After the initial performance test required under § 60.6, compliance with the sulfur dioxide emission limits and percent reduction requirements under § 60.42c is based on:

(1) Continuous emissions monitoring, as described in § 60.46c (a), (c), (d), and (e);

(2) Sampling of fuel sulfur content, as described in § 60.46c(b) (1) and (2); or

(3) Method 6B as described in § 60.46c(b)(3). Calculations to determine compliance must be made in accordance with Reference Method 19.

(h) Except as provided under paragraph (i) of this section, the owner or operator of an affected facility shall use all valid sulfur dioxide emissions data in calculating $\%P_p$ and E_{hs} under paragraph (c) of this section, whether or not the minimum emissions data requirements under § 60.46c are achieved. All valid emissions data, including valid sulfur dioxide emissions data collected during periods of startup, shutdown, and malfunction, shall be used in calculating $\%P_p$ or E_{hs} pursuant to paragraph (c) of this section.

(i) During periods of malfunction or maintenance of the sulfur dioxide control systems when very low sulfur oil is combusted, emission data are not used to calculate $\%P_p$ or E_{hs} under § 60.42c (a) or (b); however, the emissions data are used to determine compliance with the emission limit under § 60.42c(d).

(j) The owner or operator of an affected facility that combusts oil may, as an alternative to performance testing as required by paragraph (c)(4) of this section, demonstrate compliance with the sulfur dioxide emission limits of § 60.42c(d) by combusting residual oil having a sulfur content of 0.5 weight percent sulfur or less, or distillate oil. The owner or operator of the affected facility shall maintain records as required by § 60.48c(f).

§ 60.45c Compliance and performance test methods and procedures for particulate matter.

(a) The particulate matter emission and opacity standards under § 60.43c apply at all times, except during periods of startup, shutdown, or malfunction.

(b) The following procedures and reference methods are used to determine compliance with the standards for particulate matter under § 60.43c:

(1) Method 1 shall be used to select the sampling site and the number of traverse sampling points. The sampling time for each run shall be at least 120 minutes and the minimum sampling volume shall be 1.7 dscm (60 dscf) except that smaller sampling times or volumes may be approved by the Administrator when necessitated by process variables or other factors.

(2) Method 3 shall be used for gas analysis when applying Method 5, Method 5B, or Method 17.

(3) Method 5, Method 5B, Method 17 shall be used to measure the concentration of particulate matter as follows:

(i) Method 5 shall be used at affected facilities without wet flue gas desulfurization (FGD) technology; and

(ii) Method 17 may be used at facilities with or without wet scrubber systems provided the stack gas temperature does not exceed a temperature of 160° C (320° F). The procedures of §§ 2.1 and 2.3 of Method 5B may be used in Method 17 only if it is used in conjunction with wet FGD technology. Method 17 shall not be used in conjunction with wet FGD technology if the effluent is saturated or laden with water droplets.

(iii) Method 5B shall be used only in conjunction with wet flue gas desulfurization technology.

(4) For Method 5 or Method 5B, the temperature of the sample gas in the probe and filter holder shall be monitored and maintained at 160° C (320° F).

(5) For determination of particulate matter emissions, an oxygen or carbon dioxide measurement shall be obtained simultaneously with each run of Method 5, Method 5B, or Method 17 by traversing the duct at the same sampling location.

(6) For each run using Method 5, Method 5B, or Method 17, the emission rates expressed in ng/J (lb/million Btu) heat input shall be determined using:

(i) The oxygen or carbon dioxide measurements and particulate matter measurements obtained under this section;

(ii) The dry basis F factor; and

(iii) The dry basis emission rate calculation procedure contained in Method 19 (Appendix A).

(7) Method 9 (8-minute average of 24 observations) shall be used for determining the opacity of stack emissions.

§ 60.46c Emission monitoring for sulfur dioxide.

(a) Except as provided in paragraph (b) of this section, the owner or operator of an affected facility subject to the sulfur dioxide emission limits under § 60.42c (a), (b), (c), (d), or (e) shall install, calibrate, maintain, and operate a CEMS for measuring sulfur dioxide concentrations and either oxygen (O_2) or carbon dioxide (CO_2) concentrations at the outlet from the sulfur dioxide control device or the steam generating unit, and shall record the output of the system. The owner or operator of an affected facility subject to the percent reduction requirements of § 60.42c (a) or (b) shall monitor sulfur dioxide and either oxygen (O_2) or carbon dioxide (CO_2) concentrations at both the inlet and outlet of the sulfur dioxide control device.

(b) As an alternative to operating a CEMS at the outlet of the steam generating unit as required under paragraph (a) of this section, an owner or operator may elect to determine the average sulfur dioxide emissions by sampling the sulfur content of the fuel combusted or by using Method 6B. The sulfur content of the fuel combusted shall be determined pursuant to paragraph (b)(1) and (b)(2) of this section. Method 6B shall be conducted pursuant to paragraph (b)(3) of this section. For affected facilities subject to the percent reductions requirements of § 60.42c (a) or (b), a CEMS or Method 6B shall be used to measure sulfur dioxide emissions at the outlet of the sulfur dioxide control device.

(1) For affected facilities combusting coal or oil, coal or oil samples shall be collected in an as-fired condition at the inlet to the steam generating unit and analyzed for sulfur content and heat content according to Method 19. Method 19 provides procedures for converting these measurements into the format to be used in calculating the average sulfur dioxide input rate.

(2) For affected facilities combusting only oil, oil samples shall be collected from the fuel tank for each steam generating unit after each new shipment of oil is received and before any amount of oil is combusted. Results of the fuel analysis taken after each new shipment of oil is received shall be used as the daily value when computing the 30-day

rolling average until the new shipment is received. When the new shipment is received, a new sample shall be taken and analyzed, and a new daily value obtained. If a partially empty fuel tank is refilled, a new analysis of the fuel in the tank would be required upon filling.

(3) Method 6B may also be used in lieu of CEMS to measure sulfur dioxide at the inlet or outlet to the sulfur dioxide control system. An initial stratification test is required to verify the adequacy of the Method 6B sampling location. The stratification test shall consist of three paired runs of a suitable sulfur dioxide and carbon dioxide measurement train operated at the candidate location and a second similar train operated according to the procedures in § 3.2 and the applicable procedures in section 7 of Performance Specification 2. Method 6B, Method 6A, or a combination of Methods 6 and 3 or Methods 6C and 3A are suitable measurement techniques. If Method 6B is used for the second train, sampling time and timer operation may be adjusted for the stratification test as long as an adequate sample volume is collected; however, both sampling trains are to be operated similarly. For the location to be adequate for Method 6B 24-hour tests, the mean of the absolute difference between the three paired runs must be less than 10 percent (0.10).

(c) The owner or operator of an affected facility operating a CEMS pursuant to paragraph (a) of this section or sampling as-fired fuel samples pursuant to paragraph (b)(1) of this section shall obtain emission data for at least 75 percent of the operating hours in at least 22 out of 30 successive steam generating unit operating days. If this minimum data requirement is not met with a single monitoring system, the owner or operator of the affected facility shall supplement the emission data with data collected with other monitoring systems as approved by the Administrator.

(d) The 1-hour average sulfur dioxide emission rates measured by a CEMS shall be expressed in ng/J or lb/million Btu heat input and shall be used to calculate the average daily emission rates under § 60.42c. Each 1-hour average sulfur dioxide emission rate must be based on at least 30 minutes of operation and include at least 2 data points representing two 15-minute periods. Hourly sulfur dioxide emission rates are not calculated if the affected facility is operated less than 30 minutes in a 1-hour period and are not counted toward determination of a steam generating unit operating day.

(e) The procedures under § 60.13 shall be followed for installation, evaluation, and operation of the CEMS.

(1) All CEMS shall be operated in accordance with the applicable procedures under Performance Specifications 1, 2, and 3 (Appendix B).

(2) Quarterly accuracy determinations and daily calibration drift tests shall be performed in accordance with Procedure 1 (Appendix F).

(3) The span value of the sulfur dioxide CEMS at the inlet to the sulfur dioxide control device shall be 125 percent of the maximum estimated hourly potential sulfur dioxide emissions of the fuel combusted, and the span value of the CEMS at the outlet to the sulfur dioxide control device shall be 50 percent of the maximum estimated hourly potential sulfur dioxide emissions of the fuel combusted.

(f) The monitoring requirements of paragraphs (a) and (b) of this section shall not apply to any steam generating unit firing only distillate oil.

§ 60.47c Emission monitoring for particulate matter.

(a) The owner or operator of an affected facility combusting coal, oil, or wood that is subject to the opacity standard under § 60.43c shall install, calibrate, maintain, and operate a CEMS for measuring the opacity of emissions discharged to the atmosphere and record the output of the system.

(b) All CEMS for measuring opacity shall be operated in accordance with the applicable procedures under Performance Specification 1 (Appendix B).

§ 60.48c Reporting and recordkeeping requirements.

(a) The owner or operator of each affected facility shall submit notification of the date of construction or reconstruction, anticipated startup, and actual startup, as provided by § 60.7 of this part. This notification shall include:

(1) The design heat input capacity of the affected facility and identification of the fuels to be combusted in the affected facility.

(2) If applicable, a copy of any Federally enforceable requirement that limits the annual capacity factor for any fuel or mixture of fuels under § 60.42c or § 60.43c.

(3) The annual capacity factor at which the owner or operator anticipates operating the facility based on all fuels fired and based on each individual fuel fired.

(4) Notification that an emerging technology will be used for controlling emissions of sulfur dioxide. The Administrator will examine the description of the emerging technology and will determine whether the technology qualifies as an emerging

technology. In making this determination, the Administrator may require the owner or operator of the affected facility to submit additional information concerning the control device. The affected facility is subject to the provisions of § 60.42c(a) and (b)(1), unless and until this determination is made by the Administrator.

(b) The owner or operator of each affected facility subject to the sulfur dioxide or particulate matter emission limits of § 60.42c or § 60.43c or the opacity limits under § 60.43c shall submit to the Administrator the performance test data from the initial and any subsequent performance tests and, if applicable, the performance evaluation of the CEMS using the applicable performance specifications in Appendix B.

(c) The owner or operator of each affected facility subject to the opacity limits under § 60.43c(d) shall submit excess emission reports for any calendar quarter during which there are excess emissions from the facility. If there are no excess emissions during the calendar quarter, the owner or operator shall submit a report semiannually stating that no excess emissions occurred during the semiannual reporting period. The initial quarterly report shall be postmarked by the 30th day of the third month following the completion of the initial performance test, unless no excess emissions occur during that quarter. The initial semiannual report shall be postmarked by the 30th day of the sixth month following the completion of the initial performance test, or following the date of the previous quarterly report, as applicable. Each subsequent quarterly or semiannual report shall be postmarked by the 30th day following the end of the reporting period.

(d) The owner or operator of each affected facility subject to the sulfur dioxide emission limits or percent reduction requirements under § 60.42c shall submit quarterly reports to the Administrator. The initial quarterly report shall be postmarked by the 30th day of the third month following the completion of the initial performance test. Each subsequent quarterly report shall be postmarked by the 30th day following the end of the reporting period.

(e) The owner or operator of each affected facility subject to the sulfur dioxide emission limits or percent reduction requirements under § 60.42c shall keep records and submit quarterly reports as required by paragraph (d) of this section, including the following information, as applicable.

- (1) Calendar dates covered in the reporting period.
- (2) Each 30-day average (or 24-hour average, as applicable) sulfur dioxide emission rate [ng/J (lb/million Btu)] measured during the reporting period, ending in the last 30-day (or 24-hour, as applicable) emission rate calculated in the period; reasons for any noncompliance with the emission limits; and a description of corrective actions taken.
- (3) Each 30-day average percent reduction in sulfur dioxide emissions calculated during the reporting period, ending with the last 30-day period in the quarter; reasons for noncompliance with the emission standards; and a description of the corrective actions taken.
- (4) Identification of any steam generating unit operating days for which sulfur dioxide or diluent (oxygen or carbon dioxide) data have not been obtained by an approved method for at least 75 percent of the operating hours; justification for not obtaining sufficient data; and a description of corrective actions taken.
- (5) Identification of any times when emissions data have been excluded from the calculation of average emission rates; justification for excluding data; and description of corrective actions taken if data have been excluded for periods other than those during which coal or oil were not combusted in the steam generating unit.

- (6) Identification of F factor used for calculations, method of determination, and type of fuel combusted.
- (7) Identification of whether averages have been obtained based on CEMS rather than manual sampling methods.
- (8) If a CEMS is used, identification of any times when the pollutant concentration exceeded full span of the CEMS.
- (9) If a CEMS is used, description of any modifications to the CEMS that could affect the ability of the CEMS to comply with Performance Specification 2 or 3.
- (10) If a CEMS is used, results of daily CEMS drift tests and quarterly accuracy assessments as required under Appendix F, Procedure 1.
- (11) If residual oil is combusted, identification of any steam generating unit operating days for which the 30-day rolling average (or 24-hour average, as applicable) oil sulfur content of the fuel sample collected exceeded 0.5 weight percent sulfur.
- (12) If distillate oil is combusted, a certification from the owner or operator of the affected facility identifying the steam generating unit operating days during the previous quarter when the affected facility combusted distillate oil meeting the specifications for fuel oil number 1 or number 2 of the American Society for Testing and Materials' Standard Specification for Fuel Oils, ASTM D396-78.
- (f) For affected facilities combusting coal or oil that are subject to the sulfur

dioxide standards established under § 60.42c, the owner or operator shall keep a record of fuel supplies used or intended for use in the affected facility. Such fuel records shall include the following information.

- (1) For residual oil and coal, all measurements, data, calculations, and results of fuel sulfur sampling developed pursuant to § 60.46c(b);
- (2) For distillate oil, a certification from the fuel supplier that the fuel meets the specifications for fuel oils number 1 or 2, as defined by the American Society for Testing and Materials in ASTM D396-78, Standard Specification for Fuel Oils (incorporated by a reference—see § 60.17).
- (g) All records required under this section shall be maintained by the owner or operator of the affected facility for a period of 2 years following the date of such record.

§ 60.49c Standard for nitrogen oxides.

No owner or operator of an affected facility that combusts coal, oil, natural gas, or mixtures of these fuels with any other fuel shall cause to be discharged into the atmosphere any gases that contain nitrogen oxides in excess of 430 ng/J (1.0 lb/million Btu) heat input. No performance testing, monitoring, reporting, or recordkeeping requirements are required.

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Friday
June 9, 1989

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 200 and 206
Home Equity Conversion Mortgage
Insurance; Final Rule

federal register

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200 and 206

[Docket No. R-89-1415; FR-2481]

RIN 2501-AA67

Home Equity Conversion Mortgage Insurance

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This final rule adds a new Part 206 to Title 24, Chapter II of the Code of Federal Regulations. The rule implements section 417 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) which added a new section 255 to the National Housing Act (Act). Section 255 authorizes the Secretary to carry out a program for insuring mortgages on the homes of elderly homeowners, enabling the homeowners to convert the equity in their homes into cash. A total of 2,500 mortgages may be insured under this program until September 30, 1991.

EFFECTIVE DATE: July 24, 1989, except §§ 206.205 and 206.211 which have been submitted to OMB for approval. The approval number will be published in the Federal Register through a technical amendment.

FOR FURTHER INFORMATION CONTACT:

Judith V. May, Office of Economic Affairs, (202) 755-5426, Room 8218, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

All except two of the information collection requirements contained in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, as amended, and have been assigned OMB control number 2528-0133. The two new requirements have been submitted to OMB for review. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban

Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10270, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

1. Introduction

On October 25, 1988, a proposed rule for the Home Equity Conversion Mortgage Insurance Demonstration, also known as the FHA reverse mortgage program, was published in the Federal Register. Twenty-two comments were received, including three from potential borrowers and one from an advocate of sales-leasebacks. Comments were also received from the American Association of Retired Persons (AARP), the National Council on the Aging (NCOA), the Mortgage Bankers Association (MBA), the American Bankers Association (ABA), the Federal National Mortgage Association (FNMA), the Federal Home Loan Mortgage Corporation (FHLMC), the State of Connecticut (CN), the Rhode Island Housing and Mortgage Finance Corporation (RIHMF), the Virginia Housing Development Authority (VHDA), the Georgia Residential Finance Authority (GRFA), the Ohio Department of Aging (OHDA), Capital Holding Corporation (CHC), Riggs National Bank (RNB), Suncoast Schools Federal Credit Union (SSFCU), Eden Council for Hope and Opportunity (ECHO) of Walnut Creek, CA, Catholic Social Service (CSS) of Tucson, AZ, and a consultant.

In addition, a letter was received that was jointly signed by Senator Bob Graham, Member of the Senate Committee on Banking, Housing, and Urban Affairs, Senator John Heinz, Ranking Minority Member on the Senate Committee on Aging, Representative Don Bonker, Chairman of the Subcommittee on Housing and Consumer Interests of the House Select Committee on Aging, and Representative Edward R. Roybal, Chairman of the House Select Committee on Aging (Congressmen).

On the basis of these comments and further development of concepts in the proposed rule, the Department has made changes to the proposed rule which are discussed in the following sections.

2. Size of Demonstration

By statute, HUD is authorized to insure up to 2,500 mortgages on the homes of elderly homeowners under the demonstration. FNMA, FHLMC, and ECHO expressed the view that the size of the demonstration is too small and should be increased to 25,000 (FNMA) or 30,000 (FHLMC). Since the limit on the size of the program is statutory, this

concern cannot be addressed in the final rule. However, the statutory limitation of 2,500 mortgages and the September 30, 1991 statutory deadline for firm commitments are no longer specifically mentioned in the rule text. The Department has attempted to draft a rule which would continue to be suitable if Congress choose to extend the program, either in terms of volume or duration, without substantive changes. Of course, the statutory limitations continue to apply unless changed by law, and HUD Handbook 4235.1, *Home Equity Conversion Mortgages*, will clearly state the limitations.

The ABA expressed the concern that "limiting the insurance program to 2,500 mortgages will discourage many lenders who would otherwise be interested from participating because their involvement would be limited to so few mortgages that developing the expertise would not be productive." It recommended confining the program to "those lenders that have already developed their own reverse annuity mortgage programs." It is the Department's view that such a policy would not be consistent with the statutory objective "to encourage and increase the involvement of lenders and participants in the mortgage markets in the making and servicing of home equity conversion mortgages for elderly homeowners."

3. Legal Authority

Section 255(b)(3) of the National Housing Act limits the definition of home equity conversion mortgages to those mortgages which a lender is authorized to make under one of three sources of legal authority: (1) Section 804 of the Garn-St Germain Depository Institutions Act of 1982, which empowers Federal regulatory agencies to issue regulations to exempt State-chartered lenders from restrictions of State law on alternative mortgage transactions, such as reverse mortgages, unless a State later excludes itself from section 804 coverage; (2) other Federal law, such as the laws governing federally-chartered lenders, but not including section 255 of the National Housing Act; or (3) State law. This restriction was not expressly included in the proposed rule. It is included in the final rule to emphasize the fact that reverse mortgages do not necessarily conform to the normal legal constraints applicable to home mortgage lenders, so that a lender may need to rely on special legal authority which overcomes the normal constraints. It is important that each lender participating in the program review and confirm its legal authority to make reverse mortgages.

RNB recommended that "the HUD rule should specifically supersede any State law or court decision that prohibits the compounding of interest. State laws that prohibit or are silent on the compounding question would inhibit full implementation of the program." This final rule is intended only to implement section 255 of the National Housing Act, which does not empower HUD to supersede laws which prohibit compounding of interest. The Federal law designed specifically to address this question is section 804 of the Garn-St Germain Depository Institutions Act of 1982, mentioned above.

The Federal Home Loan Bank Board (FHLBB) is authorized to issue section 804 regulations concerning all types of lenders except commercial banks (regulations to be issued by the Office of the Comptroller of the Currency (OCC)) and credit unions (regulations to be issued by the National Credit Union Administration (NCUA)); they appear as the Appendix to 12 CFR Part 545. The FHLBB regulations authorize compound interest. HUD is currently seeking clarification regarding some ambiguities in these regulations. However, some States have exempted themselves from section 804 as permitted by law.

Neither the OCC nor the NCUA regulations specifically mention the question of compounding of interest. However, both agencies appear to have used their section 804 powers to permit State-chartered lenders to make any alternative mortgages, including reverse mortgages, which are insured by HUD. See NCUA policies published at 12 CFR 701.21(a) and (e), and OCC policies published at 12 CFR 34.3 (footnote 1) and 48 FR 40700.

Two other Federal laws may be relevant. Section 501 of the Depository Institutions Deregulation and Monetary Control Act of 1980 supersedes State laws "expressly limiting the rate or amount of interest" for many types of lenders; the implementing regulations issued by the FHLBB appear at 12 CFR Part 590. This law may apply if compounded interest is regarded as usury under State law. However, in some jurisdictions compounding of interest is prohibited as a matter of public policy as a separate matter from usury. HUD is not aware of any official interpretation of section 501 addressing this situation.

Section 529 of the National Housing Act is similar to section 501; it also supersedes State laws "expressly limiting the rate or amount of interest." However, its effect on compound interest is also unclear in those States which regard interest compounding as a prohibited practice distinct from usury.

Also, section 529 allows a State at any time to enact new interest restrictions which supersede section 529. No regulations have been issued to interpret section 529.

Finally, it may be noted that some States have laws which exempt FHA-insured loans from legal constraints which would otherwise apply, and some of these laws may have the effect of overcoming restrictions on compound interest.

Unfortunately, HUD is not in a position to make a blanket statement that all State restrictions on compound interest are superseded for lenders who make insured reverse mortgages. Lenders are urged to seek the advice of competent legal counsel.

4. Reservation of Insurance Authority

In the proposed rule, HUD announced its intention to invite HUD-approved lenders to apply for reservations of insurance authority prior to publication of the final rule, so that it could train HUD-approved housing counseling agencies about reverse mortgages and their alternatives in those areas where lenders plan to originate mortgages. HUD allocated its 2,500 reservations among its 10 Regional Offices in proportion to each Region's share of the Nation's elderly homeowners. On January 24, 1989, (54 FR 3584), the Department published a notice in the Federal Register inviting lenders to apply for reservations of home equity conversion mortgage authority from their Regional Offices of Housing. The notice contained application instructions for lenders and initial distribution instructions for Regional Offices of Housing which are not repeated in the final rule.

Two changes have been made to § 206.11 dealing with applications for reservations of insurance authority. First, the restriction in § 206.11(b) that lenders may apply for reservations of insurance authority "for not less than 10 but not more than 50 mortgages" has been replaced with "in accordance with instructions issued by the Secretary." Current instructions issued in the notice provide the reservations will be issued in lots of 50.

Second, § 206.11(d) dealing with expiration and extension of reservations has been amended to state that, if a conditional commitment has been issued, a reservation may be extended until the firm commitment for that application expires. This is consistent with other FHA procedures governing the duration of conditional and firm commitments. This will enable a lender to have up to nine months to complete the insurance application process. It is

also partially responsive to a concern expressed by the ABA that individuals who experience delays due to counseling should not be precluded from participating and to a recommendation by GRFA that the reservations expire after nine rather than six months.

5. Eligible Mortgages: Overview

Sections 206.17 through 206.31 dealing with eligible mortgages have been substantially redrafted. The proposed rule could be read to suggest that FHA proposed to insure three different types of mortgages. In fact, FHA intends to insure a reverse mortgage under which a borrower may initially choose among three basic payment options—tenure, term, and line of credit—and may combine a line of credit with tenure or term payments or change the pattern of payments to accommodate changes in the borrower's circumstances. In addition, a borrower may elect to receive a lump sum draw at closing to pay off an existing mortgage, to pay off a contractor's lien for repairs, or for other purposes. Given these options, any FHA-insured reverse mortgage resembles a line of credit under which the pattern of payments may be changed and varied.

In the final rule, the definition of "principal limit" has been clarified and will be used to calculate all payments to borrowers, including tenure monthly payments. This change will have little impact upon the size of a tenure monthly payment, but it will greatly increase the simplicity and flexibility of FHA-insured reverse mortgages. The AARP recommended that, "in the interests of consumer choice, . . . participating lenders be required to offer at least one type of tenure HECM (without appreciation-sharing) and one type of line-of-credit HECM." In fact, the final rule provides consumers with a broader array of choices.

6. Definitions

A. Expected Average Mortgage Interest Rate

The definition of "expected average mortgage interest rate," also known as the "expected rate," has been changed for adjustable rate mortgages. The expected rate is used to calculate the principal limit for all borrowers. For borrowers who have selected an adjustable rate mortgage, the expected rate is intended to be the market's best estimate of the average mortgage interest rate during the term of the mortgage.

In the proposed rule, the expected rate was defined as the lender's current 15-

year fixed rate or a comparable rate approved by the Secretary. However, not all lenders offer 15-year fixed rate mortgages, and fixed mortgage rates compensate lenders for certain risks which are not present in adjustable rate reverse mortgages. Section 206.3 of the final rule defines the expected rate as the lender's margin plus the 10-year Treasury bond rate. The lender's margin is defined as the initial mortgage interest rate minus the initial index rate—i.e., the one-year Treasury rate. It is also required to be the same margin used to adjust interest rates annually. This approach will discourage lenders from offering a teaser rate—i.e., an initial interest rate below the margin plus the index—because doing so results in a higher margin and consequently lower payments to the borrower. This definition of the expected rate is more technically defensible because the 10-year Treasury rate incorporates market expectations of future one-year interest rates, without including the inappropriate components of the 15-year fixed rate. It is also easier to adjust lender margins than the 15-year fixed rates.

To illustrate, VHDA asked what expected rate State housing finance agencies should use, since they "raise capital and set interest rates differently than do private lenders. Rates are set according to long-term bond prices and may not reflect current market conditions." If State housing finance agencies offer FHA-insured adjustable rate reverse mortgages, they will be bound by the definition of the expected rate in the final rule. However, they may offer a non-market rate by selecting a suitable margin over or under the one-year Treasury rate and still accurately calculate the expected rate for a particular mortgage.

Rates shall be adjusted in accordance with the procedures in 24 CFR 203.49, as amended by § 206.21 of the final rule.

B. Maximum Claim Amount

To simplify terminology, the final rule eliminates the concept of "maximum FHA claim amount," and defines "maximum claim amount" as the lesser of the appraised value of the property or the maximum dollar amount that FHA can insure for a one-family residence in an area under section 203(b)(2) of the National Housing Act (as adjusted where applicable under section 214 of the National Housing Act). Both the appraised value and the maximum insurable amount are to be determined as of the date that the conditional commitment is issued. Closing costs will not be taken into account in determining the appraised value, but closing costs

may be financed under the reverse mortgage.

CHC recommended that the program exclude homes with values in excess of the maximum dollar amount that FHA can insure in an area. Such a limitation on value was contained in section 255(d)(3) of the Act as originally passed by Congress, but it was recognized as a drafting error and eliminated by section 1066 of the Stewart B. McKinney Homeless Assistance Amendments Act of 1988.

MBA recommended that the maximum claim amount be increased substantially, and that, as an interim step, HUD should develop a second mortgage option for the program for homeowners who need help making their first mortgage payments to stay in their homes. Both of these recommendations are beyond the scope of the program as authorized by the Act.

C. Principal Limit

At the time of the proposed rule, the Department planned to use separate factors for calculating tenure payments and term and line of credit payments. It was subsequently determined that it would be easier to use a single factor to determine a principal limit for use in calculating all payments to borrowers. The definition of the principal limit has been modified to accommodate this change. A unique principal limit will be calculated based on the age of the youngest borrower, the expected rate, and the maximum claim amount using a factor provided by the Secretary. (Because the mortality table in the payments model is truncated at age 100, it will underestimate the life expectancy of borrowers over 95 years of age. For this reason, borrowers over 95 years of age will be treated as if they were 95 for the purpose of calculating payments.)

The principal limit is literally the maximum dollar amount that a borrower can withdraw on the first day that a mortgage is in effect. It increases each month at a compound rate of one-twelfth of the expected rate plus the monthly mortgage insurance premium (MIP). When the mortgage balance equals the principal limit, the borrower cannot receive any more payments (except as noted below), but is able to remain in the house until the borrower moves, sells, or dies. A borrower who has selected the tenure option and who becomes 100 years old will continue to receive payments even though the mortgage balance equals the principal limit. Likewise, borrowers who have selected the tenure or term options with adjustable interest rates will continue to receive payments for the duration of the selected term, even though the mortgage

balance exceeds the principal limit because the actual average mortgage interest rate exceeds the expected rate.

The initial principal limit may be regarded as the present value of the payments available to a borrower. Under the FHA reverse mortgage program, the borrower is able to control the timing of the payments by selecting among three basic payment options: tenure, term, and line of credit. The borrower may combine a line of credit with a term or tenure option and may alter the payment plan initially selected.

The Department believes that borrowers will value the flexibility afforded by the use of a principal limit since they cannot predict their future cash needs with certainty, yet, by statute, are entitled to remain in their homes until they move, sell, or die. The Department believes that lenders will also value the flexibility because the use of standard procedures will reduce the cost of responding to the borrower's changing needs. To cover these costs, lenders will be permitted to charge a fee of no more than \$20 each time that payments are recalculated. Detailed instructions for using the principal limit to determine payments are contained in HUD Handbook 4235.1.

7. Payment Options

New § 206.19 describes the reverse mortgage payments options available to a borrower. The description of the term option has been changed slightly: the duration of term payments is "chosen by the borrower" rather than "agreed upon between the borrower and lender," removing the unintended implication that the lender could veto a term selected by the borrower.

CN asked whether the regulations could be written to permit gradually increasing monthly payments. Such payments could be provided under the line of credit option which permits any pattern of draws. In this case, the borrower would make a one time request for a line of credit payment plan under which the lender would make monthly payments according to a schedule generated by the lender. The payment schedule should be calculated so that the mortgage balance equals the principal limit at the end of the desired term.

8. Interest Rate

New § 206.21 provides that an FHA reverse mortgage may have a fixed or an adjustable interest rate as agreed upon by the borrower and lender and modifies the proposed rule with respect to adjustable rates in response to comments received from FNMA and

FHLMC. Both secondary mortgage market agencies expressed the view that line of credit payments to borrowers create excessive interest rate risk for the lender, necessitating higher interest rates than for fixed payments. Since all FHA reverse mortgages may be regarded as line of credit mortgages, the Department has taken steps to reduce the interest rate risk to lenders and investors, and so, cost to borrowers.

The Department will insure reverse adjustable rate mortgages (ARMs) with and without interest rate caps. For capped reverse ARMs, the Department has retained the five percentage point life-of-loan limit on interest rate increases and decreases, but has increased the annual limit on rate increases and decreases from one percentage point to two. The annual limit was changed from one to two percentage points to permit the interest rate on reverse ARMs to adjust more rapidly to the market rate and so will reduce the compensation that lenders will seek from borrowers for capped reverse ARMs.

The Department will also insure a reverse ARM with monthly interest rate adjustments and no caps (except a maximum interest rate chosen by the lender for compliance with Section 1204 of the Competitive Equality Banking Act of 1987) as long as the lender also offers a comparable reverse ARM with annual interest rate adjustments and the above prescribed caps. Section 1204 requires each adjustable rate mortgage loan to include a limitation on the maximum interest rate that may apply during the term of the loan.

The Department has decided to offer an uncapped reverse ARM with monthly adjustments for several reasons. Numerous studies have shown that a borrower must compensate a lender by paying a higher margin (i.e., the spread between the ARM rate and the index) for a forward ARM with annual and life-of-loan caps than for an ARM without caps. The margin increase depends on the shape of the yield curve and the volatility of interest rates. Generally, lenders charge more for caps when the yield curve slopes upward and interest rate volatility is high than when the yield curve is flat or downward sloping and interest rate volatility is low.

Lenders will charge more for caps applied to reverse ARMs than to forward ARMs in all yield curve and volatility environments for two reasons. First, unlike forward ARM borrowers, reverse ARM borrowers have the option to withdraw funds (up to the principal limit) at any time. If interest rates go up above the cap, the borrower in effect has the option to borrow funds at a

below-market rate. While it is unlikely that all elderly borrowers in this demonstration would exercise this option in such circumstances, lenders will charge a higher margin for capped reverse ARMs than capped forward ARMs because there is a risk that some borrowers would exercise the option. Second, because reverse mortgage balances are initially low and increase over the life of the loan, a lender receives more compensation from a margin in later years. Discounting this deferred income stream will cause the lender to charge a higher rate for caps on reverse ARMs than on forward ARMs for which compensation is not deferred as far into the future.

An uncapped reverse ARM with monthly adjustments is similar to a forward home equity line of credit with monthly adjustments. An uncapped reverse ARM with monthly adjustments will have a lower margin over the index than one with annual adjustments because the borrower's option to withdraw funds at any time increases in value as the period between rate adjustments lengthens. In effect, annual adjustment places a cap on the rate for the year. For example, if rates were to rise rapidly one month after an annual rate adjustment was made, a borrower could receive a below-market rate loan for eleven months by withdrawing an amount up to the borrower's net principal limit. Again, it is unlikely that all elderly borrowers would exercise the option; nevertheless, the lender would price the effective cap created by the annual adjustment period based on some assumption about how the option may be exercised and would include the price of this cap in the margin. Indications are that the increase in the margin would be less for uncapped than for capped annual adjustments; yet, neither is likely to be insignificant. Monthly adjustments to the interest rate would allow borrowers to be charged the lowest possible margin as interest rate risk is virtually eliminated.

In summary, HUD believes that a lender will typically charge a lower margin for an uncapped reverse ARM with monthly adjustments than for a capped reverse ARM with annual adjustments because the margins include the cost of the interest rate risk introduced by the caps and the adjustment period. By offering a lower margin (and consequently, a lower expected rate) for an uncapped reverse ARM, the lender provides the borrower with the opportunity to receive higher payments.

Under a reverse ARM, payments to the borrower do not change when the interest rate changes. Thus, unlike

forward ARM borrowers whose payments to the lender change with the interest rate, reverse ARM borrowers are protected from "payment shock." Adjustments to the reverse ARM rate merely increase or decrease the rate at which remaining equity is consumed. It should also be recognized that a borrower with an uncapped reverse ARM may experience a lower reduction in equity than a borrower with a capped reverse ARM. During inflationary periods with sustained high interest rates, when caps would otherwise be in effect, the equity consumed under an uncapped reverse ARM would be offset by increased house value appreciation. During interest rate periods when the caps are not constraining, the more costly capped reverse ARM would consume equity at a faster rate. Thus, the Department feels that some borrowers may prefer the uncapped reverse ARM to the capped. Both will be offered under this demonstration.

Section 255(d)(5) of the Act permits a "fixed or variable interest rate * * * as agreed upon by the mortgagor and the mortgagee" with no reference at all to interest rate caps or frequency of rate adjustment. The House bill permitted only fixed interest. The Senate bill also permitted variable rates. The Senate report does not discuss caps, but the Conference report does, as follows: "The conferees make clear that they intend that variable interest should be capped at five points above the original rate * * *" without any mention of annual caps. Neither of the reports discusses frequency of rate adjustment.

Since the statute does not mention caps or frequency of rate adjustment, the Conference report statement has not been regarded as legally binding on HUD. However, borrowers are protected as desired by the Conferees, since each reverse ARM borrower will have the opportunity to choose a reverse ARMs with two percentage point annual and five percentage point life-of-loan caps on interest rate increases or decreases. Assessment of acceptable risk to HUD, within statutory restrictions, is a policy question committed to HUD's administrative discretion.

The Department believes that increasing the adjustability of interest rates for a reverse mortgage is preferable to the options proposed by FNMA and FHLMC. These options were to offer nonconvertible term and tenure mortgages; to fix the interest rate at the time of each line of credit draw, and to establish a new interest rate at the time of a change in a payment plan. The Department believes that each of these options is potentially more costly to the

borrower than capped or uncapped reverse ARMs for the following reasons.

If the Department agreed to insure term and tenure mortgages whose payment plans could not be altered by the borrower, servicing costs—and consequently, interest rates—could be expected to rise, because borrowers may nevertheless experience unanticipated needs for cash (e.g., money to repair the roof) that it will be in the lender's interest to meet. A lender faced with a choice between foreclosing upon a borrower for failure to maintain the property or advancing funds for repairs in most instances will prefer the latter. But the decision to advance funds on a special exception basis could often involve housing counselors, the HUD Field Office, and bank officers, and would likely lead to higher servicing costs than changes made according to standard operating procedures. Of course, lenders could ignore the declining house value in hopes that any loss would not exceed the maximum claim amount. By permitting the lender to advance funds for repairs, HUD hopes to discourage this option.

If the Department agreed to insure line of credit mortgages with interest rates fixed for each draw, a lender would have a sort of uncapped reverse ARM, but would be required to treat each draw as a separate loan—again, resulting in higher servicing costs than when the adjusted rate applies to the entire balance. In addition, special accounting rules would be needed to deal with partial prepayments—i.e., first-in, last-out; last-in, first-out; or weighted averaging. None of these are typical of current mortgage servicing practices.

Finally, if the Department agreed to allow the interest rate to change on tenure or term mortgages at the time of a change in payment plan, the lender would have only partial protection against interest rate risk compared with the alternative of capped or uncapped reverse ARMs which permit the interest rate to be adjusted at periodic intervals over the life of the loan. As a consequence, the lender should be able to offer a capped or uncapped reverse ARM at a lower cost to the borrower than the proposed option.

One commentator recommended the creation of a price-level-adjusted reverse mortgage. Such an option was considered, but rejected as beyond the scope of this program.

The requirements for disclosure of the adjustable rate features of a mortgage have been revised for two reasons. First, the proposed rule assumed that some insured mortgages would be "closed end" credit for purposes of Truth-in-

Lending regulations, which is no longer the case. HUD has received written advice from the Division of Consumer and Community Affairs of the Federal Reserve Board that all insured mortgages under the final rule will constitute open end credit. Second, Congress has passed the Home Equity Loan Consumer Protection Act of 1988 to cover disclosures for "open end" credit. The final rule provides for basic pre-loan disclosures similar to the regular FHA ARM program until the new law is implemented. The new law will require very extensive disclosure and will eliminate the need for any separate HUD pre-loan disclosure requirements. HUD will apply its regular FHA ARM policy requiring 25 days advance disclosure of interest rate adjustments since the new Consumer Protection Act does not mandate any advance disclosure.

9. Shared Appreciation

Section 206.23 provides that any mortgage may provide for shared appreciation between the borrower and the lender as long as the lender also offers a comparable mortgage without shared appreciation. This differs from the proposed rule under which shared appreciation was permitted only for fixed-rate tenure mortgages. Both the AARP and NCOA urged that shared appreciation be offered for term as well as tenure mortgages. Since it is the Department's intention to insure a reverse mortgage under which the borrower may choose among payment options, there is no reason to deny borrowers who choose shared appreciation the flexibility available to those who do not. The final rule corrects an oversight in the proposed rule by clarifying that appreciation will be measured by appraised value rather than sales price when no sale has occurred at the time the loan is repaid.

10. Initial Payment

The proposed rule placed a limit on the size of an initial payment to the borrower used to pay off an existing lien or to make repairs. Under the final rule in § 206.25(a), the size of any initial payment is limited only by the principal limit, and there are no limitations on the purposes for which it may be used. This change is consistent with the recommendations of the AARP, NCOA, and GRFA.

It is evident that some borrowers will be able to increase their cash flow by paying off existing mortgages. Others may use a reverse mortgage as a deferred payment rehabilitation loan: Some will choose to make the repairs before closing to take advantage of any

resulting increase in their home's appraised value, and others, after closing, under a line of credit or the provisions of § 206.47.

11. Calculation of Payments

Unlike the proposed rule, the final rule provides that a line of credit may be combined with term and tenure monthly payments. Term and tenure monthly payments are both calculated in the same way, except that the number of months used in the calculation for term payments is the number of months selected by the borrower, while for tenure payments it is the age of the youngest borrower subtracted from 100 and multiplied by 12. At origination, the principal limit is reduced by any initial payment and any amounts set-aside for a line of credit, for repairs after closing, and for the first year's payments of taxes, insurance, and other property charges. Then, monthly payments are calculated by determining the future value of the net principal limit at the end of the applicable number of months using a monthly compounding rate of one-twelfth of the expected rate plus the monthly MIP. This future value and the monthly compounding rate are used in a sinking fund formula for payments made at the beginning of a month to determine the maximum monthly term or tenure payment.

As long as the mortgage balance is less than the principal limit, a borrower may request a payment of any amount up to the principal limit or may change from one payment option to another. If the borrower changes payment options or makes a lump sum draw, a lender will recalculate payments to the borrower using a method similar to the one described above. Specifically, the lender will subtract the mortgage balance (and any unused amount set-aside for a line of credit or for other purposes) from the principal limit for the current month, project the net principal limit to the end of the term, and use a sinking fund formula to recalculate monthly payments, if any. The final rule provides that a lender may charge a fee, not to exceed twenty dollars, to change a borrower's payment plan.

Factors and detailed instructions for making these calculations are contained in HUD Handbook 4235.1. Computation screens for use on a personal computer are available from a computer bulletin board maintained by the Housing Information and Statistics Division in the Office of Housing. The screens (including the factors) and payments model can be downloaded using the caller's personal computer and communications software by

telephoning (202) 755-3102, selecting the HECM menu option, and following the instructions on the screen. Technical assistance is available by calling the Housing Information and Statistics Division (202) 755-6190. (These are not toll-free numbers.)

12. Size of Payments

The Congressmen, AARP, NCOA, and ECHO all urged that an effort be made to maximize payments to borrowers by fine-tuning the assumption used in the payments model. A technical explanation of the payments model was provided in the preamble to the proposed rule and is not repeated here. In addition to the mortality data (1979-81 female mortality tables, based on Census data and published by the U.S. Department of Health and Human Services), the model uses four critical assumptions. These assumptions and their values for the program are: The expected appreciation rate, .04; the variance of the appreciation rate, .01; the mortgage termination rate (i.e., terminations due to death, move-outs, and refinancings), 1.3 times the mortality rate; and the discount rate, which is set equal to the mortgage interest rate minus 50 basis points (one-half percentage point). The values for these assumptions were selected after extensive research, and they will be refined following the demonstration once data from the program are analyzed. They represent the Department's best estimates given the counterbalancing objectives of maximizing payments to borrowers and designing an actuarially sound program.

CHC questioned the use of population mortality rather than annuitant mortality rates:

Just as a person who did not anticipate that they would have a substantial additional life expectancy would not be likely to apply for a life annuity, so an individual who did not anticipate living in their home for a substantial additional period of time would not be likely to go through the time and expense of applying for a home equity conversion mortgage. This self-exclusion of the more high risk and ill portion of the elderly population makes the use of annuitant mortality tables necessary to make the program actuarially sound.

The Department rejects this argument on the grounds that the initial cost of a home equity conversion mortgage is much lower than the cost of a life annuity, so that it is likely that the program will appeal to a broader segment of the elderly homeowner population than those who expect to be long-lived. Some may use a reverse mortgage proceeds for a short time until they can make another living

arrangement. Some elderly homeowners who are ill or infirm may use reverse mortgage proceeds to purchase long-term care or other services to make their final years more comfortable. How borrower mortality rates compare with those of the general population will be among the topics studied in the course of the program.

CSHA asked whether a lender must use the age of the youngest borrower or could use joint mortality tables. For ease of administration, the Department is requiring use of the age of the youngest borrower. GRFA recommended that the payments model take the gender of the borrower into account. Gender-specific tables cannot be used because the Civil Rights Act of 1968, as amended in 1976, forbids discrimination on the basis of sex in the terms and conditions of a mortgage. Use of female mortality tables introduces an element of conservatism into the payment model's assumptions; however, a large majority of borrowers are expected to be female.

13. Treatment of Houses With Values in Excess of Maximum Claim Amount

By statute, Congress placed a limit on the maximum insurance claim that FHA can pay under the program. As a consequence, FHA will insure a reverse mortgage on a house of any value, but, for purposes of determining payments to borrowers, will disregard any house value above the maximum claim amount. HUD believes that limiting benefits available to borrowers whose house values exceed the maximum claim amount will have the salutary effect of encouraging the development of conventional reverse mortgages to complement those insurable under the FHA program.

Several commentators recommended special treatment of borrowers whose house values exceeded the maximum claim amount. CSHA recommended that HUD adopt one of the following: (1) Charge a lower MIP to elderly homeowners with houses above the maximum, (2) limit the liability of the borrower to an initial equity of \$101,250 plus appreciation, or (3) raise payments to all borrowers by taking into account the insurance of higher valued properties. AARP and NCOA also recommended charging a lower MIP. AARP, NCOA, ECHO, and the Congressmen also supported permitting borrowers to withhold a portion of their equity for later use by themselves or their heirs.

The Department believes that borrowers with house values in excess of the maximum claim amount should not be treated differently from others. Neither charging a lower mortgage

insurance premium nor permitting them to withhold a portion of their equity is practical or consistent with the apparent Congressional intent to limit benefits to elderly homeowners under the FHA reverse mortgage program. Charging a lower MIP would require redesign of the program since it is by holding the MIP structure constant that the payments model is able to solve for the unique principal limit that equates the present value of the expected MIP with the present value of the expected losses.

Permitting equity withholding is without precedent in FHA experience and would effectively give the homeowner or some other creditor of the homeowner a lien superior to the reverse mortgage. The statute requires the insured mortgage to be a first mortgage. In the case of long-lived borrowers in moderately appreciating houses, FHA would be in the position of paying insurance claims even though proceeds from the sale of the property exceeded the mortgage balance at the time that the mortgage became due and payable. Within the bounds of the program's design, however, the objective of equity withholding can be partially achieved. Under the final rule, a homeowner has the opportunity to combine a line of credit with term and tenure payments and effectively to withhold equity until such time as the homeowner chooses to draw upon it.

Raising payments to all borrowers by taking into account the insurance of high valued properties would also conflict with FHA practice. FHA insures lenders against default by borrowers with mortgages that meet FHA underwriting standards. Payments to a borrower with a reverse mortgage are uniquely based upon the age of the youngest borrower, the expected rate, and the maximum claim amount. The payments model sets the present value of the MIP expected to be collected equal to the present value of the losses expected to be incurred to solve for a unique principal limit for a borrower with the specified characteristics. The program does not take into account assumptions about the proportion of houses of different values in the pool of mortgages insured. It is not designed as a subsidy program under which some borrowers pay more so that other borrowers can receive higher payments. Each borrower is paying a premium which is estimated to be sufficient to compensate the insurer for the risks of the particular mortgage. From a practical point of view, it is impossible to know what the composition of house values in the pool of insured mortgages will be. In the beginning, the proportion of high-valued

properties may be relatively high, but their proportion should decline as private lenders and insurers develop products that permit owners of these properties to take fuller advantage of their equity.

Apart from the practicality of the individual recommendations, making the program more attractive to homeowners whose houses exceed the maximum claim amount would decrease the incentive to private lenders and insurers to provide conventional reverse mortgages. For these reasons, the recommendations have not been adopted.

14. Mortgage Provisions

A. Mortgage Forms

Section 206.27(a) states that: "The mortgage shall be in a form meeting the requirements of the Secretary." MBA and ABA recommended that HUD develop standardized mortgage forms for use by lenders. HUD will develop standardized mortgage provisions for use in mortgage forms developed by the lender. The mortgage forms will consist of a security instrument of the type typically used in the jurisdiction (mortgage or deed of trust), a promissory note, and a loan agreement specifying the lender's obligation to advance funds.

B. Timing of Payments to Borrowers

Section 206.27(b)(1) makes it clear that monthly payments to borrowers shall be mailed to the borrower or transferred to the account of the borrower on the first business day of each month beginning with the first month after closing. Line of credit draws shall be mailed or transferred within five business days after the lender has received a written request for payment.

FNMA requested that the lenders have 10 business days in which to make a line of credit payment. HUD believes that mortgage servicers should be able to advance payments to borrowers and receive reimbursement from investors, reducing the time that would otherwise be needed to complete the transaction.

C. Amount of Hazard Insurance

ABA recommended that § 206.27(b)(2) should be amended "so that the borrower is required to maintain hazard insurance on the property in an amount acceptable not only to HUD but also to the lender." This change has been made.

D. Property Maintenance

Section 206.27(b)(5) provides that: "The borrower must keep the property in good repair." ABA recommended that the mortgage "be structured so as to ensure adequate maintenance of the

property." RNB suggested that "a drive-by inspection of the property should qualify to determine that the property is in proper repair. Only if the drive-by indicates problems, should further investigation of the premises be required." CHC observed:

The proposed rules do not provide lender motivation to enforce (HUD's) property standards because the Department will suffer any loss up to the maximum FHA claim amount before lenders lose anything. We suggest that lender be required to regularly recertify, under penalty of potential loss of their FHA insurance, that the property is being maintained.

HUD requires that properties meet Minimum Property Standards at the time that they are insured and permits lenders to foreclose if borrowers fail to keep their property in good repair. The Department believes that borrowers will have a strong incentive to maintain their property throughout the duration of most mortgages, because sales proceeds in excess of the mortgage balance belong to the borrower or the estate of the borrower. The Department further believes that imposing an affirmative obligation upon a lender to inspect insured properties at regular intervals would be too costly. Instead, the Department has increased the borrower's ability to make lump sum withdrawals under a reverse mortgage, and so, in this way, enhanced the borrower's ability to maintain the property.

E. Payment of Property Charges

Sections 206.27(b)(6) and 206.205 deal with the payment of taxes, insurance premiums, and other property charges. The borrower is responsible for these payments, but may choose to have the lender pay them with money withheld from the borrower's monthly payments or charged to the borrower's line of credit. These payments are not made from an escrow account, as provided in the proposed rule. Instead, the payments will be added to the mortgage balance at the time that they are made, as explained in revised § 206.205.

MBA recommended that borrowers be required to establish escrows for taxes and insurance. This recommendation is not practicable because some borrowers will withdraw the maximum allowed on the first day or will reach the principal limit sooner than others and will be responsible for making these payments from their own funds as long as they reside in the property.

F. Preservation of First Lien

RNB recommended "that to protect both lenders and HUD, HUD should preempt all State mechanics liens and State

lien statutes (taxes, utility, etc.) that could affect the lien priority of the lender and HUD on the property." While HUD cannot preempt these State laws, § 206.27(b)(10) requires the lender to take affirmative action to preserve the mortgage's first lien status if State law limits the lien originally executed and recorded to a maximum amount of debt or a maximum number of years and further requires the lender to cause any other liens to be removed or subordinated. Many States require that a mortgage state a maximum principal amount which will be secured by the mortgage, and at least one State (Florida) limits the period during which loan advances after closing retain the original lien priority. The borrower can avoid foreclosure and continue to receive payments by signing necessary documents prepared by the lender and by keeping the property clear of other liens unless the junior lienholder agrees to be subordinated to the entire insured mortgage.

G. Lender's Late Fee

Section 206.25(g) clarifies the lender's late fee which is owed to the borrower if a monthly payment or requested line of credit payment is not mailed to the borrower or transferred to the borrower's account on time. The proposed rule would have required the lender to pay a 10 percent late charge for any late payment. The charge would have been due as soon as the payment was one day late and would not have increased in case of longer payment delays. HUD continues to believe that a "grace period" is inappropriate, so that a late charge should be imposed immediately. However, HUD has also determined that the late charge will be a more effective incentive for prompt payment if it increases as the length of the payment delay increases. Thus, the final rule adds to the basic 10 percent late charge a continuing late charge on the late payment calculated daily at a rate equivalent to the mortgage interest rate, subject to a cap of \$500.

H. Due and Payable

NCOA and RNB asked that the preamble to the final rule discuss the various bases for determining when a reverse mortgage becomes due and payable under § 206.27. These matters are dealt with in detail in HUD Handbook 4235.1.

15. Allowable Fees and Charges

MBA expressed concern about the limitations on allowable fees, stating that:

Mortgage bankers generally receive a substantial portion of their income from the servicing of mortgages. For example, for their duties in servicing FHA and VA mortgages, they receive 44 basis points to cover their costs and to create revenue for their companies. With the home equity conversion mortgage, such fees will not be available because of the structure of the program.

As a solution, MBA recommended permitting higher origination fees or discount points or permitting all mortgagees to share MIP income, not just those choosing the share premium option.

VHDA and RIHMFC feared that the prohibition against charging discount points might limit a lender's ability to sell reverse mortgages in the secondary market. FHLMC recommended that HUD allow "an explicit servicing fee to be charged against each payment under a HECM."

The Department does not support using MIP for purposes other than mortgage insurance, charging unearned interest—i.e., discount points, or charging origination fees in excess of actual costs. It does acknowledge, however, that the traditional method for setting a servicing fee for forward mortgages—namely, as a fixed percentage of the outstanding principal balance—is unlikely to work for reverse mortgages, because initial balances are generally low, reducing initial servicing income. In addition, servicers would demand higher fees to cover the risk that, due to unanticipated prepayments or underutilization of lines of credit, they would not recoup their out-of-pocket costs before a mortgage was assigned to HUD. Since a servicer's costs are most logically and economically covered by a flat monthly fee for the actual cost of the service, it was decided to set aside § 203.552(a)(12) of the basic FHA regulations which precludes a post-endorsement fee to a borrower for "charges for servicing activities of the mortgagee or servicer." Section 206.207(b) permits a mortgagee or servicer to charge a flat monthly fee set at the time of loan origination to compensate them for their costs. The department has been assured by FNMA and FHLMC that this policy will result in significant reductions in the interest rate that may be charged to borrowers and so will not affect the payments received by borrowers.

A mortgagee may choose whether to receive compensation for mortgage servicing as an implicit fee included in the interest rate or as an explicit flat monthly fee charged to the borrower. If the latter is chosen, the amount of the fee must be fixed at loan origination, disclosed to the borrower, and included

in the loan agreement. If a servicing fee is charged to the borrower, the lender will reduce the principal limit used to calculate payments to borrowers by an amount sufficient to fund the fee for the duration of the mortgage. The fee will be charged to the borrower's mortgage balance only as it is earned by the lender or servicer.

It is believed that permitting a post endorsement fee for servicing will benefit all parties to the transaction. Servicers will be compensated for the cost of services performed. Borrowers will pay a servicing fee only as services are received. In addition, they will pay a lower interest rate than would otherwise be charged, qualifying them for higher payments. To compare reverse mortgages with and without servicing fees, a borrower need focus only upon the size of the payments that the lender is offering. The higher the payments, the lower the cost to the borrower.

16. Eligible Borrowers

A. Minimum Age

Section 206.33 states that, to be eligible, the youngest borrower must be 62 years of age. CSHA asks whether individual lenders can set higher age limits? A lender may not since the statute states that elderly homeowners must be "at least 62 years of age or such higher age as the Secretary may prescribe," and the Secretary has not chosen to change the age in the statute.

B. General Credit Standing

Section 206.37 requires that a borrower have "a general credit standing satisfactory to the Secretary." VHDA, RIHMFC, and RNB asked for an explanation of this requirement. As spelled out in HUD Handbook 4235.1, borrowers will be asked to show that they are not currently in default with regard to any debt that they owe the Federal Government. It is understood that many applicants will be applying for a reverse mortgage to pay off other delinquent accounts. Certain financial information will be collected from borrowers using a standard mortgage credit analysis form to facilitate evaluation of the program.

C. Principal Residence

Section 206.39 defining "principal residence" has been revised to clarify the eligibility of borrowers with institutionalized spouses. Concern with this matter was expressed by AARP, NCOA, VHDA, RIHMFC, GRFA, and the Congressmen.

RNB recommended that: "The lender should be able to send a certification to the borrower to sign to ascertain

whether the residence is the principal residence and occupied by the borrower." A new § 206.211 has been added requiring lenders to determine on an annual basis whether or not the property is the principal residence of at least one borrower. A borrower will be asked to so certify, and the lender may rely on the certification unless it has information indicating that the certification may be false. This section is also responsive to a concern expressed by CHC that the Department needs a way of ascertaining whether the borrower has moved or died in order to prevent fraud.

D. Counseling

Section 206.41 deals with counseling. CHC and SSFCU opposed mandatory counseling by a HUD-approved housing counseling agency. CHC suggested that "the counsel of any adult advisor who is not connected with the lender and whose counsel is trusted by the prospective borrowers should be acceptable to the Department." In addition, CHC claimed that the counseling requirement "amounts to a challenge to the senior's right and ability to contract."

The statute authorizing the program requires that the borrower receive "adequate counseling by a third party (other than the lender)"; and that the lender "make available to the homeowner * * * a written list of the names and addresses of third-party information sources who are approved by the Secretary as responsible and able to provide the information required"; and that "the Secretary shall provide or cause to be provided by entities other than the lender" certain specific items of information which "shall be discussed with the borrower." These passages amply support the conclusion that Congress intended borrowers to receive counseling from HUD-approved counseling agencies.

OHDA expressed strong doubt regarding the ability of HUD-approved counseling agencies to provide reverse mortgage counseling, and asked how HUD would approve other agencies for reverse mortgage counseling. ABA and VHDA recommended that HUD expedite the approval of additional counseling agencies. HUD has taken several steps consistent with these recommendations. First, on December 2, 1988, Assistant Secretary Thomas T. Demery sent a memorandum to HUD Regional and Field Offices authorizing them to approve additional counseling agencies that specialize in reverse mortgage counseling as long as they meet the other requirements for

counseling agencies spelled out in HUD Handbook 7610.1 REV.

Second, under an Interagency Agreement with HUD, the Administration on Aging (AoA) is enlisting the assistance of its Regional Offices and its State Agencies on Aging to identify additional counseling agencies for approval by HUD Field Offices. In addition, HUD and AoA are jointly funding training for existing and new housing counseling agencies about reverse mortgages and their alternatives.

Third, in keeping with the ABA's recommendation, HUD is developing and distributing materials explaining the program to lenders, borrowers, and housing counselors. In keeping with CHC's recommendation, these materials will discuss home equity conversion mortgages available from other lenders who are not participating in the program, as well as those who are. Finally, in keeping with a recommendation from NCOA, to reduce the potential for adverse legal action by heirs, borrowers will be urged to invite heirs to counseling sessions. Of course, the homeowner is ultimately responsible for deciding whether or not to take out a reverse mortgage.

17. Eligible Properties

A. Title Evidence

HUD has clarified the title evidence requirements in § 206.45(a) by stating that the title insurance commitment is required with the application for insurance, while the title insurance policy is submitted after closing as provided in § 206.15(e).

B. Types of Dwellings

MBA recommended that two-to-four family dwellings be eligible as long as the owner occupies the property and meets other program criteria. This recommendation is inconsistent with section 255(d) of the statute which states that to be eligible for insurance, a mortgage shall "be secured by a dwelling that is designed principally for a 1-family residence."

C. Cooperatives

NCOA supported the inclusion of cooperatives and condominiums as properties eligible for an FHA reverse mortgage. Commenting on § 206.45(b), FNMA recommended: "Because of the unique relationship that exists between a cooperative unit owner and the cooperative association, there should be an agreement between the association and the cooperative owner indicating that the cooperative owner is

participating in a reverse mortgage program."

Section 206.45 of the proposed rule included both condominium and cooperative housing units as types of property eligible for reverse mortgage insurance. The condominium provisions have been retained, but cooperative housing units are not included in the final rule. The proposed rule had anticipated the use of special procedures and requirements applicable to mortgage insurance for cooperative housing units under section 203(n) of the Act. However, the section 203(n) program has rarely been used since it was announced over 10 years ago, and Field Offices have little or no experience in dealing with mortgages for cooperative housing units. The Department has now concluded that this lack of experience coupled with the many unusual features of reverse mortgages would probably result in significant delays in processing a reverse mortgage for a cooperative housing unit, and that the limited amount of insurance authority available during the demonstration stage would be better applied to other types of single-family housing more familiar to HUD Field Offices and Headquarters.

D. Appraisals

ABA and CHC recommended that HUD take steps to ensure that properties are properly appraised. Appraisals will be conducted by appraisers approved by the Secretary following established appraisal standards.

E. Repair Work

Section 206.47 dealing with repairs to meet minimum property standards has been revised. It permits such repairs to be made after closing if they are expected to cost less than 15 percent of the maximum claim amount. The lender may charge a fee of the greater of \$50 or one and one-half percent of the amount spent on these repairs as compensation for these services (see § 206.31).

F. Leases

Section 206.45(a) will now permit insurance of a mortgage on a leasehold property if the lease is for a 99 year term and is renewable. Other leasehold properties are eligible, but the lease term must be at least 50 years from the 100th birthday of the youngest borrower. Fifty years has been substituted for the 10 years in the proposed rule to eliminate any doubt that the leasehold interest will always have substantial value relative to the mortgage balance.

18. Mortgage Insurance Premiums

A. Automated Collection of MIP and Related Data

Sections 206.105(b), 206.111(b), and 206.115 dealing with the periodic MIP have been revised. Under section 530 of the Act, HUD is required to collect MIP from a lender immediately after it has been collected from a borrower. The initial MIP must be paid before a loan can be endorsed for insurance. It is earned when collected and therefore is not refundable after endorsement. Since the monthly MIP will accrue daily on the mortgage balance and be added to the borrower's account monthly, it will be collected monthly. It will be due to the Secretary on the first day of the month following its accrual.

To facilitate collection, all MIP transactions between HUD and the lender will be automated. HUD will use a contractor to collect initial MIP, monthly MIP, and all data needed to update its records. Each lender will be required to establish a banking account from which HUD will collect payments by means of Debit Automated Clearing House (ACH) transactions based on data transmitted electronically by the lender to the HUD contractor.

The lender will need to obtain a personal computer, printer, and modem which are compatible with the contractor's equipment. The HUD contractor will provide each lender with program format screens and complete instructions for each of the functions to be performed. Further details are contained in HUD Handbook 4235.1.

FHLMC recommended that HUD simplify the collection of the periodic MIP. It is believed that use of an ACH will simplify MIP and related data collection.

B. Shared Premium Option

To eliminate confusion with another program, the Department has changed the name of the "coinsurance" option to the "shared premium" option at § 206.107 of the final rule. Section 206.109 has been corrected to state that the lender's share of premium is based on the age of the youngest borrower and the expected rate (without regard to the maximum claim amount.) The amount of the lender's share of premium is determined each month by applying the specified number of basis points to the mortgage balance.

Preparation of the matrix of shared premiums for borrowers between the ages of 62 and 95 and for all interest rates between 7.0 and 15.875 percent has revealed that the lender share of MIP in some cases—those for younger

borrowers with high interest rates—exceeds 50 basis points, the size of the monthly premium. In HUD Handbook 4235.1, these premiums have been capped at 50 basis points and starred in the table to warn lenders that these mortgages carry added risk. Premiums below 5 basis points—those for the oldest borrowers with any interest rate, but also for older borrowers with low interest rates—have been raised to 5 basis points (and starred) to reward lenders for choosing this option.

C. Late Charges and Interest

The final rule at § 206.113(c), dealing with charges for late remittance of MIP, provides that "any late charge owed by the lender must be paid from the lender's funds and may not be added to the mortgage balance of the borrower."

ABA recommends that lenders have a grace period before payment of a late charge is required. Lenders will have a 10 day grace period; however, they will be unable to add the monthly MIP to the borrower's mortgage balance until it is actually paid to HUD.

19. Processing

MBA recommended that reverse mortgage processing be handled by HUD Regional rather than Field Offices. The Department believes that, with the guidance provided in HUD Handbook 4235.1, Field Offices will be fully capable of handling reverse mortgage processing.

Regarding § 206.129 dealing with payment of a claim, FNMA recommended that HUD agree to process a claim for an assignment within 90 days. HUD cannot guarantee payment of a claim by a particular date, but it does pay interest at the debenture rate from the date of a specified action which precedes filing a claim (e.g., notice to the borrower that the mortgage is due and payable, or recordation of a mortgage assignment to HUD).

20. Tax Treatment of Reverse Mortgage Proceeds

GRFA recommended that HUD seek an opinion from the Internal Revenue Service regarding the taxability of

reverse mortgage proceeds. HUD is planning formally to request a revenue ruling from IRS dealing with various aspects of reverse mortgages.

21. Evaluation of the Program

ABA recommended that HUD should report periodically on all aspects of the program. By statute, HUD is required to make an interim report to Congress on the program by September 30, 1989, conduct a preliminary evaluation by March 30, 1992, and file an updated report and evaluation every two years thereafter.

AARP recommended that counselors be involved in the data-gathering process and an accounting be provided for all waivers granted under § 206.5. These recommendations will be considered when the evaluation is designed.

Other Matters

This rule does not constitute a "major rule" as that term is defined in section 1(b) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not (1) have an annual effect on the economy of \$100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50 which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk at the above address.

Under 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a

significant economic impact on a substantial number of small entities. Participation in the program is voluntary by both lessees and mortgagors.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, *Federalism*, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. The rule pertains only to the regulation of lenders insured by the Federal Housing Administration.

The General Counsel, as the Designated Official under Executive Order 12606, *The Family*, has determined that this rule does not have a potentially significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule establishes insurance for loans by private lenders to the elderly based on the equity in their home. The use of the loan proceeds is without HUD discretion.

This rule was listed in the Department's Semiannual Agenda of Regulations published on October 24, 1988 (53 FR 41974) under Executive Order 12291 and Regulatory Flexibility Act.

The Home Equity Conversion Insurance program is not listed in the Catalog of Federal Domestic Assistance.

The Office of Management and Budget has approved the collection of information requirements of section 3504(h) of the Paperwork Reduction Act of 1980 under this rule at §§ 206.11, 206.15, 206.21, 206.23, 206.27, 206.41, 206.43, 206.45, 206.47, 206.105, 206.123, 206.125, 206.127, 206.131, 206.133, and 206.203. The OMB clearance number is 2528-0133. The final rule adds two new collection of information requirements at §§ 206.205 and 206.211 which have been submitted to OMB for review. These new collection of information requirements are not effective until such time that OMB grants its approval. The approval number will be published in the *Federal Register* through a technical amendment. Information on these requirements is provided as follows:

TABULATION OF ANNUAL REPORTING BURDEN APPROVED INFORMATION COLLECTIONS IN THE FINAL RULE HOME EQUITY CONVERSION MORTGAGE INSURANCE PROGRAM

Description of information collection	Section of 24 CFR affected final rule	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Application for reservation of insurance authority	206.11	50	1	50	5	25
Purchase commitment by loan correspondent's sponsor	206.11(e)	5	1	5	1	5
Application for insurance (2502-0059, 2502-0111)	206.15	50	25	1,250	1	1,250
Certification of receipt of counseling	206.15(c) 206.41(c)	50	25	1,250	05	62 5

TABULATION OF ANNUAL REPORTING BURDEN APPROVED INFORMATION COLLECTIONS IN THE FINAL RULE HOME EQUITY CONVERSION MORTGAGE INSURANCE PROGRAM—Continued

Description of information collection	Section of 24 CFR affected final rule	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Adjustable rate line of credit disclosures.....	206.21(c)	50	10	500	.1	50
Disclosure of new adjustable interest rate	206.21(d)	50	70	3,500	.02	75
Disclosure of shared appreciation mortgage terms and options.....	206.23(d)	50	15	750	.5	375
Mortgage provisions.....	206.27(b)	50	25	1,250	.05	62.5
Notification to Secretary of potential default conditions.....	206.27(c)(2)					
	206.125(a)(1)	50	1	50	.5	25
List of HUD-certified counseling organizations in mortgagor's area	206.41(a)	50	50	2,500	.05	125
Information provided by counselors to mortgagors.....	206.41(b)	100	50	5,000	1.5	7,500.0
Disclosure of mortgage terms and conditions.....	206.43(a)	50	25	1,250	.2	250
Written explanation of procedures in event of mortgagee default.....	206.43(b)	50	25	1,250	.05	125
Provision of title evidence to the Secretary.....	206.45(a)	50	25	1,250	.1	125
Certificate that no child under 7 lives in home with hazardous paint surfaces.....	206.45(d)	50	1	5	.2	2.5
Inspection of repairs by mortgagee.....	206.47(c)	50	1	50	.3	15
Amount of mortgage insurance premium.....	206.105	50	25	1,250	.01	12.5
Claim of mortgage insurance benefits (2502-0093).....	206.123(a)					
	206.127	50	1	5	1	5
Notification of mortgagor that mortgage is due and payable	206.125(a)(2)	50	.001	.05	.5	0.25
Notice to Secretary to initiate an appraisal pursuant to a claim	206.125(b)	50	1	5	.2	2.5
Notice to Secretary of foreclosure proceedings (2502-0347).....	206.125(d)(3)	50	.01	.5	.1	.5
Request to sell property at lower price.....	206.125(g)	50	.001	.05	.5	0.25
Certification of condition of condominium upon assignment of mortgage.....	206.131(c)	50	.01	.5	1	.5
Notice pursuant to termination of insurance.....	206.133(d)	50	1	50	.2	10
Statements to mortgagor of mortgage activity during the year.....	206.203	50	100	5,000	.1	500
Notice of prepayment of line of credit mortgage.....	206.209(c)	10	1	10	.3	3
Total annual burden.....						10,606.55

TABULATION OF ANNUAL REPORTING BURDEN NEW INFORMATION COLLECTIONS IN FINAL RULE HOME EQUITY CONVERSION MORTGAGE INSURANCE PROGRAM

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Notice of change in withholding for property charges.....	206.205(e)(3)	50	20	100	.25	25
Mortgagor's annual certification of occupancy	206.211	50	50	250	.1	25
Total Annual Burden.....						50

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Loan programs—Housing and community development, Insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards, Incorporation by reference.

24 CFR Part 206

Home equity conversion mortgage insurance.

Accordingly, 24 CFR Part 200 is amended and a new 24 CFR Part 206 is added, to read as follows:

PART 200—INTRODUCTION

1. The authority citation for 24 CFR Part 200 continues to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701–1715z–20); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. A new paragraph (d) is added to § 200.810 to read as follows:

§ 200.810 Single family insurance and coinsurance.

(d) *Home equity conversion mortgage insurance.* The requirements of this section, as modified by the following sentence, apply to a dwelling which is the subject of an application for mortgage insurance under section 255 of the National Housing Act (home equity conversion, insurance) unless the mortgagor provides the certification described in § 206.45(d) of this chapter. The defective paint surface may be treated after the mortgage is endorsed for insurance, provided that the defective paint surface is treated as expeditiously as possible in accordance

with the repair work provisions contained in § 206.47 of this chapter.

3. A new Part 206 is added to Chapter II of 24 CFR to read as follows:

PART 206—HOME EQUITY CONVERSION MORTGAGE INSURANCE

Subpart A—General

- 206.1 Purpose.
- 206.3 Definitions.
- 206.5 Waivers.
- 206.7 Effect of amendments.

Subpart B—Eligibility Applications

- 206.9 Eligible mortgagees.
- 206.11 Application for reservations of insurance authority.
- 206.13 Ineligible programs.
- 206.15 Application for insurance.

Eligible Mortgages

- 206.17 General.
- 206.19 Payment options.
- 206.21 Interest rate.
- 206.23 Shared appreciation.
- 206.25 Calculation of payments.

- 206.26 Change in payment option.
- 206.27 Mortgage provisions.
- 206.31 Allowable charges and fees.

Eligible Mortgagors

- 206.33 Age of mortgagor.
- 206.35 Title held by mortgagor.
- 206.37 Credit standing.
- 206.39 Principal residence.
- 206.41 Counseling.
- 206.43 Information to mortgagor.

Eligible Properties

- 206.45 Eligible properties.
- 206.47 Property standards; repair work.
- 206.51 Eligibility of mortgages involving a dwelling unit in a condominium.

Subpart C—Contract Rights and Obligations

Sale, Assignment and Pledge

- 206.101 Sale, assignment and pledge of insured mortgages.

Mortgage Insurance Premiums

- 206.103 Payment of MIP.
- 206.105 Amount of MIP.
- 206.107 Mortgagee election of assignment or shared premium option.
- 206.109 Amount of mortgagee share of premium.
- 206.111 Due date of MIP.
- 206.113 Late charge and interest.
- 206.115 Termination.

HUD Responsibility to Mortgagors

- 206.117 General.
- 206.119 Written statement of procedures to mortgagor.
- 206.121 Secretary authorized to make payments.

Claim Procedure

- 206.123 Claim procedures in general.
- 206.135 Acquisition and sale of the property.
- 206.127 Application for insurance benefits.
- 206.129 Payment of claim.

Condominiums

- 206.131 Contract rights and obligations for mortgages on individual dwelling units in a condominium.

Termination of Insurance Contract

- 206.133 Termination of insurance contract.

Subpart D—Servicing Responsibilities

- 206.201 Mortgage servicing generally; sanctions.
- 206.203 Providing information.
- 206.205 Property charges.
- 206.207 Allowable charges and fees after endorsement.
- 206.209 Prepayment.
- 206.211 Annual determination of principal residence.

Authority: Secs. 211 and 255 of the National Housing Act (12 U.S.C. 1715b, 1715z–20); sec. 7(b), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart A—General

§ 206.1 Purpose.

Section 417 of the Housing and Community Development Act of 1987

(Pub. L. 100–242) added a new section 255 to the National Housing Act (12 U.S.C. 1715z–20). Section 255 authorizes a program for the insurance of home equity conversion mortgages (also known as reverse mortgages) for elderly homeowners. This program of mortgage insurance is designed:

(a) To meet the special needs of elderly homeowners by reducing the effect of the economic hardship caused by the increasing costs of meeting health, housing and subsistence needs at a time of reduced income, through the insurance of home equity conversion mortgages to permit the conversion of a portion of accumulated home equity into liquid assets;

(b) To encourage and increase involvement of mortgagees and participants in the mortgage markets in the making and servicing of home equity conversion mortgages for elderly homeowners; and

(c) To evaluate data to determine the need and demand among elderly homeowners for insured and uninsured home equity conversion mortgages, the types of home equity conversion mortgages that best serve the interests of elderly homeowner mortgagors, mortgagees and the Federal Government, and the appropriate scope and nature of participation by the Secretary in connection with home equity conversion mortgages for the elderly.

§ 206.3 Definitions.

As used in this part, the following terms shall have the meaning indicated.

"Assessment" means a special assessment by a public body or an assessment by a condominium or homeowner association.

"Contract of insurance" means the agreement evidenced by the issuance of a mortgage insurance certificate, incorporating by reference Subpart C and the applicable provisions of the National Housing Act.

"Day" means calendar day, except where the term "business day" is used.

"Expected average mortgage interest rate" means the mortgage interest rate used to calculate monthly payments to the mortgagor and established when the mortgage interest rate is established. For fixed rate mortgages, it is the fixed mortgage interest rate. For adjustable rate mortgages, it is the sum of the mortgagee's margin plus the weekly average yield for U.S. Treasury Securities adjusted to a constant maturity of 10 years. The mortgagee's margin is defined as the initial mortgage interest rate minus the weekly average yield on U.S. Treasury Securities adjusted to a constant maturity of one

year. The mortgagee's margin is the same margin used to determine periodic adjustments to the interest rate.

"Insured mortgage" means a mortgage which has been insured as evidenced by the issuance of a mortgage insurance certificate.

"Maximum claim amount" means the lesser of the appraised value of the property or maximum dollar amount for an area established by the Secretary for a one-family residence under section 203(b)(2) of the National Housing Act (as adjusted where applicable under section 214 of the National Housing Act). Both the appraised value and the maximum dollar amount for the area shall be as of the date the conditional commitment is issued. Closing costs shall not be taken into account in determining appraised value.

"MIP" means the mortgage insurance premium paid by the mortgagee to the Secretary in consideration of the contract of insurance.

"Mortgage" means a first lien on real estate under the laws of the jurisdiction where the real estate is located. If the dwelling unit is in a condominium, the term "mortgage" means a first lien covering a fee interest or eligible leasehold interest in a one-family unit in a condominium project, together with an undivided interest in the common areas and facilities serving the project, and such restricted common areas and facilities as may be designated. The term refers both to a security instrument creating a lien, whether called a "mortgage," "deed of trust," "security deed," or another term used in a particular jurisdiction. The term "mortgage" also includes the credit instrument, or note, secured by the lien, and the loan agreement between the mortgagor, the mortgagee and Secretary.

"Mortgagee" means the original lender under an insured mortgage, any assign permitted by § 206.101 and the Secretary if the mortgage is assigned to the Secretary.

"Mortgagor" means each original borrower under a mortgage. The term does not include successors or assigns of a borrower.

"Principal limit" means the maximum disbursement that could be received in any month under a mortgage, assuming that no other disbursements are received, taking into account the age of the youngest mortgagor, the expected average mortgage interest rate, and the maximum claim amount. Mortgagors over the age of 95 will be treated as though they are 95 for purposes of calculating the principal limit. The principal limit is calculated for the first month that a mortgage could be

outstanding using factors provided by the Secretary. It increases each month thereafter by one-twelfth of the expected average mortgage interest rate, plus the monthly MIP. It is used to calculate payments to a mortgagor.

"Principal residence" means the dwelling where the mortgagor maintains his or her permanent place of abode, and typically spends the majority of the calendar year. A person may have only one principal residence at any one time. "Secretary" means the Secretary of Housing and Urban Development or his or her authorized representatives.

§ 206.5 Waivers.

The Secretary, in an individual case, may waive any requirement of Subpart B not required by statute if the Secretary finds that application of such requirement would adversely affect achievement of the purposes of this program. Each such waiver shall be in writing and supported by a statement of the facts and grounds forming the basis for the waiver. The authority under this section may be delegated to the Assistant Secretary for Housing-Federal Housing Commissioner, but shall not be delegated further.

§ 206.7 Effect of amendments

The regulations in this part may be amended by the Secretary at any time and from time to time, in whole or in part, but amendments to Subparts B and C shall not adversely affect the interests of a mortgagee under the contract of insurance on any mortgage already insured, and shall not adversely affect the interests of a mortgagee on any mortgage to be insured on which the Secretary has made a commitment to insure. Such amendments shall not adversely affect the interests of a mortgagor in the case of a default by a mortgagee where the Secretary makes payments to the mortgagor.

Subpart B—Eligibility Applications

§ 206.9 Eligible mortgagees.

(a) *Statutory requirements.* A mortgagee must be authorized to make reverse mortgages under a Federal law other than § 255 of the National Housing Act, including section 804 of the Garn-St Germain Depository Institutions Act of 1982, or the law of the State where the property to be mortgaged is located.

(b) *HUD approved mortgagees.* Any mortgagee authorized under paragraph (a) of this section and approved under Part 203 of this chapter, except an investing mortgagee approved under § 203.6 of this chapter, is eligible to apply for reservations of insurance authority in accordance with § 206.11 of

this chapter. A mortgagee approved under §§ 203.3, 203.4, 203.6 or 203.7 of this chapter may purchase, hold and sell mortgages insured under this part without additional approval.

§ 206.11 Application for reservations of insurance authority.

(a) *Definition.* A reservation of insurance authority is an assurance by the Secretary that the Secretary will be able to insure a mortgage which meets the requirements of this subpart.

(b) *Application.* An eligible mortgagee may apply for reservations of insurance authority in accordance with instructions issued by the Secretary. An eligible mortgagee may apply for additional reservations after its initial reservations are used or expire if reservations of insurance authority are available.

(c) *Approval.* If the application for the reservations is acceptable, the Secretary will then approve the request for reservations if reservations of insurance authority are available. A mortgagee may not originate a mortgage under this part without first obtaining a reservation of insurance authority for the mortgage.

(d) *Expiration and extension.* A reservation of insurance authority will expire six months after the date of issue. Reservations will be extended if a conditional commitment is secured from the Secretary before the reservation expires. Reservations of insurance authority will be extended until the firm commitment for that application expires.

(e) *Requirements for approval—loan correspondents.* At the time of application for reservations of insurance authority, a loan correspondent (as defined in § 203.5 of this chapter) shall provide evidence satisfactory to the Secretary that the mortgages to be insured under this part will be purchased by the loan correspondent's sponsor or sponsors. Such evidence shall include: (1) The name of each sponsor mortgagee which will purchase the mortgages originated under this part, and (2) a copy of each purchase agreement which obligates the sponsor mortgagee to purchase the mortgages originated under this part. The collective agreements must show that all the mortgages originated by the loan correspondent will be purchased if all insurance authority reserved by the loan correspondent under paragraph (c) of this section is used.

(Approved by the Office of Management and Budget under control number 2528-0133)

§ 206.13 Ineligible programs.

Mortgages originated through the Direct Endorsement or Coinsurance

programs are not eligible for insurance under this part.

§ 206.15 Application for insurance.

(a) *Submission.* A mortgagee with a reservation of insurance authority may submit an application for insurance of a mortgage which is about to be executed.

(b) *Form.* The application must be made upon a form prescribed by the Secretary.

(c) *Insurance of mortgage.* The Secretary approves an application for mortgage insurance by issuing a conditional commitment and a firm commitment. The Secretary shall establish in the commitment documents the terms and conditions upon which the mortgage will be insured. The mortgagee, upon closing the mortgage, submits to the Secretary the commitment documents, the certificate received by the mortgagor from the counseling entity that the mortgagor has received counseling as required under § 206.41, a title insurance policy, the mortgagee's election of either the assignment or shared premium option under § 206.107, a copy of the mortgage to be insured, the original second mortgage required by § 206.27(e), and any other documentation required by the Secretary. If the mortgagee has complied with the terms and conditions of the commitment documents and this paragraph (c), the Secretary will issue a Mortgage Insurance Certificate. Mortgages insured under this part shall be obligations of the General Insurance Fund.

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Eligible Mortgages

§ 206.17 General.

(a) *Payment options.* A mortgage shall initially provide for the tenure payment option (§ 206.19(a)), the term payment option (§ 206.19(b)), or the line of credit payment option (§ 206.19(c)), subject to later change in accordance with § 206.26.

(b) *Interest rate.* A mortgage shall provide for either fixed or adjustable interest rates in accordance with § 206.21.

(c) *Shared appreciation.* A mortgage may provide for shared appreciation in accordance with § 206.23.

§ 206.19 Payment options.

(a) *Term payment option.* Under the term payment option, equal monthly payments are made by the mortgagee to the mortgagor for a fixed term of months chosen by the mortgagor, unless the mortgage is prepaid in full or becomes due and payable earlier under § 206.27(c).

(b) *Tenure payment option.* Under the tenure payment option, equal monthly payments are made by the mortgagee to the mortgagor as long as the property is the principal residence of the mortgagor, unless the mortgage is prepaid in full or becomes due and payable under § 206.27(c).

(c) *Line of credit payment option.* Under the line of credit option, payments are made by the mortgagee to the mortgagor at times and in amounts determined by the mortgagor, if the mortgage balance after the payment will be less than or equal to the principal limit for the month in which the payment is drawn, excluding any portion of the principal limit set aside for repairs or servicing charges.

(d) *Principal limit set asides.* (1) Under the term or tenure options, the mortgagee shall, if requested by the mortgagor, set aside a portion of the principal limit to be drawn down as a line of credit.

(2) When repairs required by § 206.47 will be completed after closing, the mortgagee shall set aside a portion of the principal limit equal to 150% of the Secretary's estimated cost of repairs, plus the repair administration fee.

(3) When required by § 206.205(f), the mortgagee shall set aside a portion of the principal limit for payment of property charges consisting of taxes, ground rents, flood and hazard insurance premiums and assessments.

(4) When servicing charges will be made as permitted by § 206.207(b), the mortgagee shall set aside a portion of the principal limit sufficient to cover charges through a period equal to the payment term which would be used to calculate tenure payments under § 206.25(c).

(e) *Interest accrual and repayment.* The interest charged on the mortgage balance shall be added to the mortgage balance monthly as provided in the mortgage. Under all payment options, repayment of the mortgage balance including monthly MIP and interest is deferred until the mortgage becomes due and payable in full under § 206.27(c).

§ 206.21 Interest rate.

(a) *Fixed interest rate.* A fixed interest rate is agreed upon by the mortgagor and mortgagee.

(b) *Adjustable interest rate.* An initial interest rate is agreed upon by the mortgagor and mortgagee. The interest rate shall be adjusted in one of two ways depending on the option selected by the mortgagor. Whenever an interest rate is adjusted, the new interest rate applies to the entire mortgage balance. The difference between the initial interest rate and the index figure

applicable when the firm commitment is issued shall equal the margin used to determine interest rate adjustments.

(1) A mortgagee offering an adjustable interest rate shall offer a mortgage that limits the frequency and magnitude of rate increases and decreases as provided in § 206.49(a), (c) and (e) of this chapter, except that reference to "mortgagor's first debt service payment" in § 203.49(c) shall mean "closing," and references in § 203.43(e)(1) to "one percentage point" shall mean "two percentage points."

(2) If a mortgage meeting the requirements of paragraph (b)(1) of this section is offered, the mortgagee may also offer a mortgage which provides for monthly adjustments to the interest rate, corresponding to an index as provided in § 203.49(a) and (e)(2), and which sets a maximum interest rate that can be charged without limiting monthly or annual increases or decreases. The first adjustment must occur on the first day of the second full month after closing.

(c) *Pre-loan Disclosure.* (1) At the time the mortgagee provides the mortgagor with a loan application, a mortgagee also shall provide a mortgagor with a written explanation of any adjustable interest rate features of a mortgage. The explanation must include the following items:

(i) The circumstances under which the rate may increase;

(ii) Any limitations on the increase; and

(iii) The effect of an increase.

(2) After 12 CFR Part 226 (Truth in Lending) has been amended to implement the pre-loan disclosure provisions of the Home Equity Loan Consumer Protection Act of 1988, compliance with 12 CFR Part 226 shall constitute full compliance with paragraph (c)(1) of this section.

(d) *Post-loan disclosure.* At least 25 days before any adjustment to the interest rate may occur, the mortgagee must advise the mortgagor of the following:

(1) The current index amount; and

(2) The new mortgage interest rate.

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§ 206.23 Shared appreciation.

(a) *Additional interest based on net appreciated value.* Any mortgage for which the mortgagee has chosen the shared premium option (§ 206.107) may provide for shared appreciation. At the time the mortgage becomes due and payable or is paid in full, whichever occurs first, the mortgagor shall pay an additional amount of interest equal to a percentage of any net appreciated value of the property during the life of the

mortgage. The percentage of net appreciated value to be paid to the mortgagee, referred to as the appreciation margin, shall be no more than twenty-five percent, subject to an effective interest rate cap of no more than twenty percent.

(b) *Computation of mortgagee share.* The mortgagee's share of net appreciated value is computed as follows:

(1) If the mortgage balance at the time the mortgagee's share of net appreciated value becomes payable is less than the appraised value of the property at the time of loan origination, the mortgagee's share is calculated by subtracting the appraised value at the time of loan origination from the adjusted sales proceeds (i.e., sales proceeds less transfer costs and capital improvement costs incurred by the mortgagor, but excluding any liens) and multiplying by the appreciation margin.

(2) If the mortgage balance is greater than the appraised value at the time of loan origination but less than the adjusted proceeds, the mortgagee's share is calculated by subtracting the mortgage balance from the adjusted sales proceeds and multiplying by the appreciation margin.

(3) If the mortgage balance is greater than the adjusted sales proceeds, the net appreciated value is zero.

(4) If there has been no sale or transfer involving satisfaction of the mortgage at the time the mortgagee's share of net appreciated value becomes payable, "sales proceeds" for purposes of this section shall be the appraised value as determined in accordance with procedures approved by the Secretary.

(c) *Effective interest rate.* To determine the effective interest rate, the amount of interest which accrued in the twelve months prior to the sale of the property is added to the mortgagee's share of the net appreciated value. The sum of the mortgagee's share of the net appreciated value and the interest, when divided by the sum of the mortgage balance at the beginning of the twelve month period prior to sale plus the payments to or on behalf of the mortgagor (but not including interest) in the twelve months prior to the sale, shall not exceed an effective interest rate of twenty percent.

(d) *Disclosure.* At the time the mortgagee provides the mortgagor with a loan application for a mortgage with shared appreciation, the mortgagee shall disclose to the mortgagor the principal limit, payments and interest rate which are applicable to a comparable mortgage offered by the mortgage without shared appreciation.

(Approved by the Office of Management and Budget under control number 2528-0133)

§ 206.25 Calculation of payments.

(a) *Initial payment.* At closing an initial payment shall be made by the mortgagee in an amount equal to the sum of initial MIP under § 206.105(a) if not paid in cash by the mortgagor, fees and charges allowed under § 206.31(a) if not paid in cash by the mortgagor, and any additional payment requested by the mortgagor. The total initial payment, plus any amount set aside for repairs after closing under § 206.47, for property charges under § 206.205(f), or for servicing charges under § 206.207(b), shall not exceed the principal limit.

(b) *Monthly payments—term option.*

(1) Using factors provided by the Secretary, the mortgagee shall calculate the monthly payment so that the sum of (i) or (ii) added to (iii), (iv), (v) and (vi) shall be equal to the principal limit at the end of the payment term:

(i) An initial payment under paragraph (a) of this section plus any portion of the principal limit set aside for repairs, or property charges or servicing charges under § 206.19(d), or

(ii) The mortgage balance at the time of a change in payment pattern in accordance with § 206.26 plus any portion of the principal limit set aside for repairs or property charges under § 206.19(d) which remains unused; and

(iii) Any amount of the principal limit set aside as a line of credit; and

(iv) All monthly payments (including any amounts to be withheld for property charges) due through the payment term; and

(v) All MIP due through the payment term; and

(vi) All interest through the payment term. The expected average mortgage interest rate shall be used for this purpose.

(2) If the mortgage has an adjustable interest rate, the mortgagee shall make all monthly payments through the payment term even if the mortgage balance exceeds the principal limit because the actual average mortgage interest rate exceeds the expected average mortgage interest rate.

(c) *Monthly payments—tenure option.* Monthly payments under the tenure payment option shall be calculated as if the number of months in the payment term equals 100 minus the age of the youngest mortgagor multiplied by 12, but payments shall continue until the mortgage becomes due and payable under § 206.27(c).

(d) *Combining options.* If the mortgagor combines a line of credit set aside with the term or tenure payment option, the principal limit is divided into

one amount for the term or tenure payments and another amount for the line of credit payments. Each part of the principal limit increases independently at the same rate as the total principal limit increases under § 206.3. A payment under the line of credit may not exceed the difference between the current value of the principal limit set aside and the portion of the mortgage balance, including accrued interest and MIP, attributable to draws on the line of credit.

(e) *Payment of MIP and interest.* At the end of each month, interest accrued during the month shall be added to the mortgage balance. Monthly MIP shall be added to the mortgage balance when paid to the Secretary.

(f) *Mortgagee late charge.* The mortgagee shall pay a late charge to the mortgagor for any late payment. If the mortgagee does not mail or electronically transfer a scheduled monthly payment to the mortgagor on the first business day of the month or make a line of credit payment within 5 business days of the date the mortgagee received the request, the late charge shall be 10 percent of the entire amount that should have been paid to the mortgagor for that month or as a result of that request. For each additional day that the mortgagor does not receive payment, the mortgagee shall pay interest at the mortgage interest rate on the late payment. In no event shall the total late charge exceed five hundred dollars. Any late charge shall be paid from the mortgagee's funds and shall not be added to the mortgage balance.

(g) *No minimum payments.* A mortgagee shall not require, as a condition of providing a loan secured by a mortgage insured under this part, that the monthly payments under the term or tenure payment option or draws under the line of credit payment option exceed a minimum amount established by the mortgagee.

(h) *Change in payment option.*

(a) *General.* The initial payment option may be changed as provided in this section.

(b) *Change due to initial repairs.* (1) If initial repairs after closing under § 206.47 are completed without using all of the funds set aside for repairs, monthly payments shall be recalculated in accordance with § 206.25 when repairs are completed.

(2) If repairs after closing under § 206.47 cannot be completed with the funds set aside for repairs, the mortgagor may draw additional funds needed to complete repairs, within the principal limit, and monthly payments

shall be recalculated in accordance with § 206.25 when repairs are completed.

(3) If repairs are not completed when required by the mortgage, the mortgagee shall stop monthly payments and the mortgage shall convert to the line of credit payment option. Until the repairs are completed, the mortgagee shall make no line of credit payments except as needed to pay for repairs required by the mortgage.

(c) *Other changes.* As long as the mortgage balance is less than the principal limit, a mortgagor may request a change from any payment option to another or a payment of any amount (not to exceed the difference between the principal limit and the sum of the mortgage balance and any set asides for repairs or servicing charges. A mortgage will continue to bear interest at a fixed or adjustable interest rate as agreed between the mortgagee and the mortgagor at loan origination. The mortgagee shall recalculate any future monthly payments in accordance with § 206.25.

(d) *Fee for change in payments.* The mortgagee may charge a fee, not to exceed twenty dollars, whenever payments are recalculated.

(e) *Limitations.* The Secretary may prescribe a limitation on the frequency of payment changes, a minimum notice period that a mortgagor must provide with a request under paragraph (c) of this section, or other limitations on changes by the mortgagor.

§ 206.27 Mortgage provisions.

(a) *Form.* The mortgage shall be in a form meeting the requirements of the Secretary.

(b) *Provisions.* The mortgage shall explain how payments will be made to the mortgagor, how interest will be charged and when the mortgage will be due and payable. It shall also contain provisions designed to ensure compliance with this part and provisions on the following additional matters:

(1) Payments by the mortgagee under the term or tenure payment options shall be mailed to the mortgagor or electronically transferred to an account of the mortgagor on the first business day of each month beginning with the first month after closing. Payments under the line of credit payment option shall be mailed to the mortgagor or electronically transferred to an account of the mortgagor within five business days after the mortgagee has received a written request for payment by the mortgagor.

(2) The mortgagor shall maintain hazard insurance on the property in an

amount acceptable to the Secretary and the mortgagee.

(3) The mortgagor shall not participate in a real estate tax deferral program, if any liens created by the tax deferral are not subordinate to the insured mortgage and the second mortgage held by the Secretary.

(4) A mortgage may be prepaid in full or in part in accordance with § 206.209.

(5) The mortgagor must keep the property in good repair.

(6) The mortgagor must pay taxes, hazard insurance premiums, ground rents and assessments in a timely manner, except to the extent such property charges are paid by the mortgagee in accordance with § 206.205.

(7) The mortgagor shall be charged for the payment of monthly MIP.

(8) The mortgagor shall have no personal liability for payment of the mortgage balance. The mortgagee shall enforce the debt only through sale of the property. The mortgagee shall not be permitted to obtain a deficiency judgment against the mortgagor if the property is foreclosed.

(9) If the mortgage is assigned to the Secretary under § 206.121(b), the mortgagor shall not be liable for any difference between the insurance benefits paid to the mortgagee and the mortgage balance including accrued interest, owed by the mortgagor at the time of the assignment.

(10) If State law limits the first lien status of the mortgage as originally executed and recorded to a maximum amount of debt or a maximum number of years, the mortgagor shall agree to execute any additional documents required by the mortgagee and approved by the Secretary to extend the first lien status to an additional amount of debt and an additional number of years and to cause any other liens to be removed or subordinated.

(c) *Date the mortgage comes due and payable.* (1) The mortgage shall state that the mortgage balance will be due and payable in full if (i) a mortgagor dies and the property is not the principal residence of at least one surviving mortgagor, or (ii) a mortgagor conveys all of his or her title in the property and no other mortgagor retains title to the property in fee simple or on a leasehold interest as set forth in § 206.45(a).

(2) The mortgage shall state that the mortgage balance shall be due and payable in full, upon approval of the Secretary, if any of the following occur:

(i) The property ceases to be the principal residence of a mortgagor for reasons other than death and the property is not the principal residence of at least one other mortgagor;

(ii) For a period of longer than 12 consecutive months, a mortgagor fails to occupy the property because of physical or mental illness and the property is not the principal residence of at least one other mortgagor; or

(iii) An obligation of the mortgagor under the mortgage is not performed.

(d) *Second mortgage to Secretary.* A second mortgage to secure any payments by the Secretary as provided in § 206.121(c) must be given to the Secretary before a mortgage insurance certificate is issued for the first mortgage. The second mortgage shall be junior only to the insured mortgage and in a form meeting the requirements of the Secretary which shall be similar to requirements for the insured mortgage. The mortgagee shall pay all expenses of preparing and recording the second mortgage.

(Approved by the Office of Management and Budget under control number 2528-0133)

§ 206.31 Allowable charges and fees.

(a) *Fees at closing.* The mortgagee may collect, either in cash at the time of closing or through an initial payment under the mortgage, the following charges and fees incurred in connection with the origination of the mortgage loan:

(1) A charge to compensate the mortgagee for expenses incurred in originating and closing the mortgage loan; *Provided*, That the Secretary may establish limitations on the amount of any such charge which can be included in the mortgage loan.

(2) Reasonable and customary amounts, but not more than the amount actually paid by the mortgagee, for any of the following items:

(i) Recording fees and recording taxes, or other charges incident to the recordation of the insured mortgage;

(ii) Credit report;

(iii) Survey, if required by the mortgagee or the mortgagor;

(iv) Title examination;

(v) Mortgagee's title insurance;

(vi) Fees paid to an appraiser for the initial appraisal of the property; and

(vii) Such other charges as may be authorized by the Secretary.

(b) *Repair administration fee.* If the property requires repairs after closing in order to meet HUD requirements, the mortgagee may collect a fee as compensation for administrative duties relating to repair work pursuant to § 206.47(c), not to exceed the greater of one and one-half percent of the amount advanced for the repairs or fifty dollars. The mortgagee shall collect the repair fee by adding it to the mortgage balance.

Eligible Mortgagors

§ 206.33 Age of mortgagor.

The youngest mortgagor shall be 62 years of age or older at the time the mortgagee submits the application for insurance under § 206.15.

§ 206.35 Title held by mortgagor.

The mortgagor shall hold title to the entire property which is the security for the mortgage. If there are multiple mortgagors, all the mortgagors must collectively hold title to the entire property which is the security for the mortgage.

§ 206.37 Credit standing.

Each mortgagor must have a general credit standing satisfactory to the Secretary.

§ 206.39 Principal residence.

The property must be the principal residence of each mortgagor at closing. For purposes of this section, the property will be considered to be the principal residence of any mortgagor who is temporarily or permanently in a health care institution as long as the property is the principal residence of at least one other mortgagor who is not in a health care institution.

§ 206.41 Counseling.

(a) *List provided.* At the time of the initial contact with the prospective mortgagor, the mortgagee shall give the mortgagor a list of the names and addresses of housing counseling agencies which have been approved by the Secretary as responsible and able to provide the information described in paragraph (b) of this section. The mortgagor must receive counseling

(b) *Information to be provided.* A counselor shall discuss the following information with the mortgagor:

(1) Options other than a home equity conversion mortgage, including a mortgage insured under this part, that are available to the mortgagor, including other housing, social service, health, and financial options;

(2) Other home equity conversion options that are or may become available to the mortgagor, such as sale-leaseback financing, deferred payment loans, and property tax deferral;

(3) The financial implications of entering into a home equity conversion mortgage, including a mortgage insured under this part;

(4) A disclosure that a home equity conversion mortgage, including a mortgage insured under this part, may have tax consequences, affect eligibility for assistance under Federal and State

programs, and have an impact on the estate and heirs of the homeowner; and
(5) Any other information the Secretary may require.

(c) *Certificate.* The counselor will provide the mortgagor with a certificate stating that the mortgagor has received counseling. The mortgagor shall provide the mortgagee with a copy of the certificate.

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§ 206.43 Information to mortgagor.

(a) *Explanation of mortgage terms.* At the time the mortgagee provides the mortgagor with a loan application, the mortgagee shall provide each mortgagor with a copy of the mortgage forms. At that time the mortgagee shall identify and explain to the mortgagor the principal provisions of the mortgage.

(b) *Statement of payment procedures.* At the time the mortgagee provides the mortgagor with a loan application, the mortgagee shall give to each mortgagor an unsigned, written statement prepared by the Secretary of the procedures to be followed to ensure that timely payments are made by the mortgagee. After the mortgage insurance certificate is issued, the Secretary will provide a signed copy of this statement of procedures to the mortgagor, pursuant to § 206.119.

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Eligible Properties

§ 206.45 Eligible properties.

(a) *Title.* A mortgage must be on real estate held in fee simple, or on a leasehold (1) under a lease for not less than ninety-nine years which is renewable, or (2) under a lease having a remaining period of not less than 50 years beyond the date of the 100th birthday of the youngest mortgagor. The mortgagee shall submit to the Secretary with the application for insurance a commitment for mortgagee's title insurance satisfactory to the Secretary. If the Secretary determines that title insurance for reverse mortgages is not available for reasonable rates in a State, then the Secretary may specify other acceptable forms of title evidence in lieu of title insurance.

(b) *Type of property.* The property shall include a dwelling designed principally as a one-family residence. The dwelling may be connected with other dwellings by a party wall or otherwise. A condominium unit designed for one-family occupancy shall also be an eligible property.

(c) *Flood insurance and property location.* The provisions of § 203.16a of this chapter pertaining to flood

insurance and § 203.40 of this chapter pertaining to the location of the property are incorporated by reference.

(d) *Lead-based paint poisoning prevention.* If the appraiser of a dwelling constructed prior to 1978 finds defective paint surfaces, § 200.810(d) of this chapter shall apply unless the mortgagor certifies that no child who is less than seven years of age resides or is expected to reside in the dwelling.

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§ 206.47 Property standards; repair work.

(a) *Need for repairs.* Properties must meet the Minimum Property Standards of the Secretary in order to be eligible. Properties which do not meet the property standards must be repaired in order to ensure that the repaired property will serve as adequate security for the insured mortgage.

(b) *Assurance that repairs are made.* The mortgage may be closed before the repair work is completed if the Secretary estimates that the cost of the remaining repair work will not exceed 15 percent of the maximum claim amount and the mortgage contains provisions approved by the Secretary concerning payment for the repairs.

(c) *Role of mortgagee.* The mortgagee shall cause one or more inspections of the property to be made by an inspector approved by the Secretary in order to ensure that the repair work is satisfactory, and prior to the release of funds for the repairs. The mortgagee shall hold back a portion of the contract price attributable to the work done before each interim release of funds, and the total of the hold backs will be released after the final inspection and approval of the release by the mortgagee. The mortgagee shall ensure that all mechanics' and materialmen's liens are released of record. A fee as established in § 206.31(b) may be charged by the mortgagee as compensation for administration of the repair provisions of the mortgage.

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§ 206.51 Eligibility of mortgages involving a dwelling unit in a condominium.

If the mortgage involves a dwelling unit in a condominium, the project in which the unit is located shall have been committed to a plan of condominium ownership by deed, or other recorded instrument, that is acceptable to the Secretary.

Subpart C—Contract Rights and Obligations

Sale, Assignment and Pledge

§ 206.101 Sale, assignment and pledge of insured mortgages.

The provisions of §§ 203.430 through 203.435 of this chapter shall be applicable to mortgages eligible for insurance under this part.

Mortgage Insurance Premiums

§ 206.103 Payment of MIP.

The payment of any MIP under this subpart shall be made to the Secretary by the mortgagee in cash, until the contract of insurance is terminated.

§ 206.105 Amount of MIP.

(a) *Initial MIP.* The mortgagee shall pay to the Secretary an initial MIP of two percent of the maximum claim amount.

(b) *Monthly MIP.* Monthly MIP will accrue daily on the mortgage balance at a rate equivalent to one-half of one percent per annum and shall be added to the mortgage balance when paid to the Secretary.

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§ 206.107 Mortgagee election of assignment or shared premium option.

(a) *Election of option.* Before the mortgage is submitted for insurance endorsement, the mortgagee shall elect either the assignment option or the shared premium option.

(1) Under the assignment option, the mortgagee shall have the option of assigning the mortgage to the Secretary at the time that the mortgage balance, including accrued interest and MIP, equals the maximum claim amount, if:

(i) The mortgagee is current in making the required payments under the mortgage to the mortgagor;

(ii) The mortgagee is current in its payment of the MIP (and late charges and interest on the MIP, if any) to the Secretary;

(iii) The mortgage is not due and payable under § 206.27(c)(1); and

(iv) The mortgagee has not informed the Secretary of an event described in § 206.27(c)(2), or the Secretary has been so informed but has denied approval for the mortgage to be due and payable. At the mortgagee's option, the mortgagee may forgo assignment of the mortgage and file a claim under any of the circumstances described in § 206.123(a)(2)-(5).

(2) Under the shared premium option, the mortgagee may not assign a mortgage to the Secretary unless the

mortgagee fails to make payments and the Secretary demands assignment (§ 206.123(a)(2)), but the mortgagee shall only be required to remit a reduced monthly MIP to the Secretary. The mortgagee shall collect from the mortgagor the full amount of the monthly MIP provided in § 206.105(b) but shall retain a portion of the monthly MIP paid by the mortgagor as compensation for the default risk assumed by the mortgagee. The portion of the MIP to be retained by a mortgagee shall be determined by the Secretary as calculated in § 206.109. For a particular mortgage, the applicable portion shall be determined as of the date of the commitment. The mortgagee retains the right to file a claim under any of the circumstances described in § 206.123(a)(2)-(5).

(b) *No election for shared appreciation.* Shared appreciation mortgages shall be insured by the Secretary only under the shared premium option.

§ 206.109 Amount of mortgagee share of premium.

Using the factors provided by the Secretary, the amount of the mortgagee share of the premium shall be determined for each mortgage based upon the age of the youngest mortgagor and the expected average mortgage interest rate.

§ 206.111 Due date of MIP.

(a) *Initial MIP.* The mortgagee shall pay the initial MIP to the Secretary within fifteen days of closing and as a condition to the endorsement of the mortgage for insurance.

(b) *Monthly MIP.* Each monthly MIP shall be due to the Secretary on the first business day of each month except the month in which the mortgage is closed.

§ 206.113 Late charge and interest.

(a) *Late charge.* Initial MIP remitted to the Secretary after the payment date in § 206.111(a) and monthly MIP remitted to the Secretary 10 days after the payment date in § 206.111(b) shall include a late charge of one percent of the amount paid.

(b) *Interest.* In addition to any late charge provided in paragraph (a) of this section, the mortgagee shall pay interest on any initial MIP remitted to the Secretary more than 30 days after closing, and interest on any monthly MIP remitted to the Secretary more than 30 days after the payment date prescribed in § 206.111(b). Such interest rate shall be paid at a rate set in conformity with the Treasury Fiscal Requirements Manual.

(c) *Paid by mortgagee.* Any late charge owed by the mortgagee shall be paid from the mortgagee's funds and shall not be added to the mortgage balance of the mortgagor.

§ 206.115 Termination.

When the insurance contract is terminated, the mortgagee shall pay the monthly MIP which has accrued for the current month and which has not yet been paid to the Secretary.

HUD Responsibility to Mortgagors

§ 206.117 General.

The Secretary is required by statute to take any action necessary to provide a mortgagor with funds to which the mortgagor is entitled under the mortgage and which the mortgagor does not receive because of the default of the mortgagee. The Secretary will hold a second mortgage to secure repayment by the mortgagor, see § 206.27(d).

§ 206.119 Written statement of procedures to mortgagor.

When the mortgage is insured, the Secretary shall provide the mortgagor with a signed statement of procedures to ensure that all of the funds due under the mortgage will be received by the mortgagor, or paid to a third party on behalf of the mortgagor. The statement shall specify (a) the HUD office to contact in case of a late payment, and (b) the procedures which the mortgagor must follow to make a request for payment by the Secretary.

§ 206.121 Secretary authorized to make payments.

(a) *Investigation.* The secretary will investigate all complaints by a mortgagor concerning late payments. If the Secretary determines that the mortgagee is unable or unwilling to make all payments required under the mortgage, including late charges, the Secretary shall pay such payments and late charges to the mortgagor.

(b) *Reimbursement or assignment.* The Secretary may demand, that within 30 days from the demand, the mortgagee reimburse the Secretary, with interest from the date of payment by the Secretary, or assign the insured mortgage to the Secretary. Interest shall be paid at a rate set in conformity with the Treasury Fiscal Requirements Manual. If the mortgagee complies with the reimbursement demand, then the contract of insurance shall not be affected. If the mortgagee complies by assigning the mortgage for record within 30 days of the demand, then the Secretary shall pay an insurance claim as provided in § 206.129(e)(3) and assume all responsibilities of the

mortgagee under the first mortgage. If the mortgagee fails to comply with the demand within 30 days, the contract of insurance will terminate as provided in § 206.133(c).

(c) *Second mortgage.* If the contract of insurance is terminated as provided in § 206.133(c), all payments to the mortgagor by the Secretary will be secured by the second mortgage required by § 206.27(c). Payments will be due and payable in the same manner as under the insured first mortgage. The liability of the mortgagor under the first mortgage shall be limited to payments actually made by the mortgagee to or on behalf of the mortgagor (including MIP), and shall exclude accrued interest, whether or not it has been included in the mortgage balance, and shared appreciation, if any. Interest will stop accruing on the first mortgage when the Secretary begins to make payments under the second mortgage. The first mortgage will not be due and payable until the second mortgage is due and payable.

Claim Procedure

§ 206.123 Claim procedures in general.

(a) *Claims.* Mortgagees may submit claims for the payment of the mortgage insurance benefits if:

(1) The conditions of § 206.107(a)(1) pertaining to the optional assignment of the mortgage by the mortgagee have been met and the mortgagee assigns the mortgage to the Secretary;

(2) The mortgagee is unable or unwilling to make the payments under the mortgage and assigns the mortgage to the Secretary pursuant to the Secretary's demand, as provided in § 206.121(b);

(3) The mortgagor sells the property for less than the mortgage balance and the mortgagee releases the mortgage of record to facilitate the sale, as provided in § 206.125(c);

(4) The mortgagee acquires title to the property by foreclosure or a deed in lieu of foreclosure and sells the property as provided in § 206.125(g), for an amount which does not satisfy the mortgage balance; or

(5) The mortgagee forecloses and a bidder other than the mortgagee purchases the property for an amount that is not sufficient to satisfy the mortgage balance, as provided in § 206.125(e).

(b) *Expanded definition of mortgagor.* The term "mortgagor" as used in this subpart shall have the same meaning as stated in § 206.3, except that in reference to a sale by the mortgagor, the term

shall also mean the mortgagor's estate or personal representative.

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§ 206.125 Acquisition and sale of the property.

(a) *Initial action by the mortgagee.* (1) The mortgagee shall notify the Secretary whenever the mortgage is due and payable under the conditions stated in § 206.27(c)(1), or one of the conditions stated in § 206.27(c)(2) has occurred.

(2) After notifying the Secretary, and receiving approval of the Secretary when needed, the mortgagee shall notify the mortgagor that the mortgage is due and payable. The mortgage shall require the mortgagor to (i) pay the mortgage balance, including any accrued interest and MIP, in full; (ii) sell the property for at least 95% of the appraised value as determined under § 206.125(b), with the net proceeds of the sale to be applied towards the mortgage balance; or (iii) provide the mortgagee with a deed in lieu of foreclosure. The mortgagor shall have 30 days in which to comply with the preceding sentence, or correct the matter which resulted in the mortgage coming due and payable, before a foreclosure proceeding is begun.

(3) Even after a foreclosure proceeding is begun, the mortgagee shall permit the mortgagor to correct the condition which resulted in the mortgage coming due and payable and to reinstate the mortgage, and the mortgage insurance shall continue in effect. The mortgagee may require the mortgagor to pay any costs that the mortgagee incurred to reinstate the mortgagor, including foreclosure costs and reasonable attorney's fees. Such costs shall be paid by adding them to the mortgage balance. The mortgagee may refuse reinstatement by the mortgagor if:

(i) The mortgagee has accepted reinstatement of the mortgage within the past two years immediately preceding the current notification to the mortgagor that the mortgage is due and payable;

(ii) Reinstatement will preclude foreclosure if the mortgage becomes due and payable at a later date; or

(iii) Reinstatement will adversely affect the priority of the mortgage lien.

(b) *Appraisal.* The property may be appraised upon the mortgagor's request at the time the mortgagor is sent the notice that the mortgage is due and payable, or in connection with a pending sale. The property shall be appraised no later than 15 days before a foreclosure sale. Whenever an appraisal is requested or required, the mortgagee shall notify the Secretary to cause an appraisal of the property to be made. The Secretary shall inform the

mortgagee and the mortgagor in writing of the appraised value of the property. The appraisal shall be at the mortgagor's expense.

(c) *Sale by mortgagor.* Whether or not the mortgage is due and payable, the mortgagor may sell the property for at least the lesser of the mortgage balance or the appraised value (determined under § 206.125(b)). If the mortgage is due and payable at the time the contract for sale is executed, the mortgagor may sell the property for at least the lesser of the mortgage balance or five percent under the appraised value. The mortgagee shall satisfy the mortgage of record (and the Secretary will satisfy the second mortgage required under § 206.27(e) of record) in order to facilitate the sale, provided that there are no junior liens (except the mortgage to secure payments by the Secretary under § 206.27(e)) and all the net proceeds from the sale are paid to the mortgagee.

(d) *Initiation of foreclosure.* (1) The mortgagee shall commence foreclosure of the mortgage within three months of giving notice to the mortgagor that the mortgage is due and payable, or within such additional time as may be approved by the Secretary.

(2) If the laws of the State in which the mortgaged property is situated do not permit the commencement of the foreclosure within three months from the date of the notice to the mortgagor that the notice is due and payable, the mortgagee shall commence foreclosure within three months after the expiration of the time during which such foreclosure is prohibited by such laws.

(3) The mortgagee shall give written notice to the Secretary within 30 days after the initiation of foreclosure proceedings, and shall exercise reasonable diligence in prosecuting such proceedings to conclusion.

(4) The mortgagee shall bid at the foreclosure sale an amount equal to the appraised value of the property.

(e) *Other bidders at foreclosure sale.* If the party other than the mortgagee is the successful bidder at the foreclosure sale, the net proceeds of sale shall be applied to the mortgage balance.

(f) *Deed in lieu of foreclosure.* (1) In order to avoid delays and additional expense as a result of instituting and completing a foreclosure action, the mortgagee shall accept a deed in lieu of foreclosure from the mortgagor if the mortgagee is able to obtain good and marketable title from the mortgagor.

(2) In exchange for the executed and delivered deed, the mortgagee shall cancel the credit instrument and deliver it to the mortgagor and satisfy the mortgage of record.

(g) *Sale of the acquired property.* (1) Upon acquisition of the property by foreclosure or deed in lieu of foreclosure, the mortgagee shall make diligent efforts to attempt to sell the property within six months from the date the mortgagee acquired the property. The mortgagee shall sell the property for an amount not less than the appraised value (as provided under paragraph (b) of this section) unless written permission is obtained from the Secretary authorizing a sale at a lower price.

(2) Repairs shall not exceed those required by local law or the requirements of the Secretary of HUD or the Secretary of Veterans Affairs if the sale of the property is financed with a mortgage insured by the Secretary of HUD or guaranteed, insured or taken by the Secretary of Veterans Affairs.

(3) The provisions of § 204.305(b) of this chapter shall be followed by the mortgagee to avoid conflicts of interest.

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§ 206.127 Application for insurance benefits.

(a) *Mortgagee acquires title.* (1) The mortgagee shall apply for the payment of the insurance benefits within 15 days after the sale of the property by the mortgagee. Application shall be made by notifying the Secretary of the sale of the property, the sale price, and income and expenses incurred in connection with the acquisition, repair and sale of the property.

(2) If the property will not be sold within six months from the date the mortgagee acquired title, the mortgagee shall, at least 15 days prior to the expiration of the six month period, request the Secretary to cause another appraisal of the property to be made. Within 15 days of receipt of the appraisal, the mortgagee shall apply for the insurance benefits as provided in paragraph (a) of this section, substituting the appraised value for the sale price. The mortgagee shall bear the cost of the appraisal.

(b) *Party other than the mortgagee acquires title.* The mortgagee shall apply for the payment of the insurance benefits within 15 days after a party other than the mortgagee acquires title to the property. Application shall be made by notifying the Secretary of the sale of the property and the sale price.

(c) *Mortgagee assigns the mortgage.* The mortgagee shall file its claim for the payment of the insurance benefits within 15 days after the date the mortgage is assigned for record to the Secretary. The application for the

payment of the insurance benefits shall include the items listed in § 203.351(a) of this chapter and the certification required under § 203.353 of this chapter.

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§ 206.129 Payment of claim.

(a) *General.* If the claim for the payment of the insurance benefits is acceptable to the Secretary, payment shall be made in cash in the amount determined under this section.

(b) *Limit on claim amount.* In no case may the claim paid under this subpart exceed the maximum claim amount. The interest allowance provided in paragraphs (d)(2)(iii), (e)(2) and (f)(2) of this section shall not be included in determining the limit on the claim amount.

(c) *Shared appreciation mortgages.* The terms "mortgage balance" and "accrued interest" as used in this section do not include interest attributable to the mortgagee's share of the appreciated value of the property.

(d) *Amount of payment—mortgagee acquires title or is unsuccessful bidder.* This paragraph describes the amount of payment if the mortgagee acquires title by purchase, foreclosure, or deed in lieu of foreclosure, or when a party other than the mortgagee is the successful bidder at the foreclosure sale.

(1) The amount of the claim shall be computed by (i) totalling the mortgage balance, (including any accrued interest and MIP which have been added to the mortgage balance) and any accrued interest which have not been added to the mortgage balance as of the due date (defined in the following sentence), and allowances for items set forth in paragraph (d)(2) of this section, and (ii) subtracting from that total the amount for which the property was sold (or the appraised value determined under § 206.127(a)) and the items set forth in paragraph (d)(3) of this section. "Due date" means the date when the mortgagee notifies the Secretary under § 206.27(c)(1) that the mortgage became due and payable, or, if applicable, the date the Secretary granted approval under § 206.27(c)(2) for the mortgage to become due and payable.

(2) The claim shall include the following items:

(i) Items listed in § 203.402(a), (b), (c), (d), (e), (g) and (j) of this chapter, and § 204.322(l) of this chapter.

(ii) Foreclosure costs or costs of acquiring the property actually paid by the mortgagee and approved by the Secretary, in an amount not in excess of two-thirds of such costs or \$75.00, whichever is the greater. Costs of acquiring the property otherwise than by

foreclosure may include an additional amount not to exceed \$200 paid to the mortgagor for the execution of the deed in lieu of foreclosure.

(iii) An amount equal to the interest allowance which would have been earned, from the due date to the date when payment of the claim is made, if the claim had been paid in debentures, except that when the mortgagee fails to meet any one of the applicable requirements of §§ 206.125 and 206.127 of this subpart within the specified time, and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in such cash payment shall be computed only to the date on which the particular required action should have been taken or to which it was extended. The provisions of §§ 203.405 through 203.411 of this chapter pertaining to debentures are incorporated by reference.

(iv) Costs of any appraisal under § 206.127 if not otherwise included in the mortgage balance.

(3) There shall be deducted from the amount computed in paragraph (d)(1)(i) of this section:

(i) The items listed in § 203.402 of this chapter; and

(ii) Any adjustment for damage or neglect to the property pursuant to §§ 203.378 and 203.379 of this chapter.

(e) *Amount of payment—assigned mortgages.* This paragraph describes the amount of payment if the mortgagee assigns a mortgage to the Secretary under § 206.107(a)(1) or § 206.121(b).

(1) When a mortgagee assigns a mortgage which is eligible for assignment under § 206.107(a)(1), the amount of payment shall be computed by subtracting from the maximum claim amount the items set forth in § 203.404(b) of this chapter and any adjustments for damage or neglect to the property pursuant to §§ 203.378 and 203.379 of this chapter.

(2) The claim shall also include an amount equivalent to the interest allowance which would have been earned from the date the mortgage was assigned to the Secretary to the date the claim is paid, if the claim had been paid in debentures, except that if the mortgagee fails to meet any of the requirements of § 206.127(c), or § 206.131 if applicable, within the specified time and in a manner satisfactory to the Secretary (or within such further time as the Secretary may approve in writing), the interest allowance in the payment of the claim shall be computed only to the date on which the particular required action should have been taken or to which it was extended. The provisions of §§ 203.405 through 203.411 of this

chapter pertaining to debentures are incorporated by reference.

(3) When a mortgagee assigns a mortgage under § 206.121(b) after demand by the Secretary, the mortgagee will not receive the entire claim payment as contained in paragraphs (e)(1) and (2) of this section. The amount of the claim shall be computed by (i) totalling the payments made by the mortgagee to the mortgagor or for the benefit of the mortgagor (including MIP), and subtracting from the total (ii) the items set forth in § 203.404(b) of this chapter and any adjustments for damage or neglect to the property pursuant to §§ 203.378 and 203.379 of this chapter. The claim shall also be reduced by an amount determined by the Secretary to reimburse the Secretary for administrative expenses incurred in assuming the mortgagee's responsibility under the mortgage, which may include expenses for staff time. If more than one mortgage is assigned to the Secretary, the administrative expenses incurred for all the mortgages assigned shall be allocated among the mortgages as determined by the Secretary. The claim shall not include accrued interest whether or not it has been included in the mortgage balance.

(f) *Amount of payment—mortgagor sells the property.* This paragraph describes the amount of payment if the mortgagor sells the property to one other than the mortgagee for less than the mortgage balance, and the mortgagee releases the mortgage to facilitate the sale.

(1) The amount of the claim shall be computed by (i) totalling the mortgage balance (including any accrued interest and MIP which have been added to the mortgage balance) and any accrued interest which has not been added to the mortgage balance on the date the deed is recorded, and allowances for items set forth in paragraphs (d)(2)(i) and (iv) of this section as applicable, and subtracting from the total (ii) the net proceeds of the sale paid to the mortgagee and the items set forth in paragraph (d)(3) of this section.

(2) The claim shall also include an amount equivalent to the interest allowance which would have been earned from the date the deed is recorded to the date when payment of the claim is made, if the claim had been paid in debentures, except that when the mortgagee fails to meet any of the applicable requirements of §§ 206.125 and 206.127 of this subpart within the specified time (or within such further time as the Secretary may approve in writing), and in a manner satisfactory to the Secretary, the interest allowance in

such cash payment shall be computed only to the date on which the particular action should have been taken or to which it was extended. The provisions of §§ 203.405 through 203.411 of this chapter pertaining to debentures are incorporated by reference.

Condominiums

§ 206.131 Contract rights and obligations for mortgages on individual dwelling units in a condominium.

(a) *Additional requirements.* The requirements of this subpart shall be applicable to mortgages on individual dwelling units in a condominium, except as modified by this section.

(b) *References.* The term "property" as used in this subpart shall be construed to include the individual dwelling unit and the undivided interest in the common areas and facilities as may be designated.

(c) *Assignment of the mortgage.* If the mortgagee assigns the mortgage on the individual dwelling unit to the Secretary, the mortgagee shall certify:

(1) To any changes in the plan of apartment ownership including the administration of the property;

(2) That as of the date the assignment is filed for record, the family unit is assessed and subject to assessment for taxes pertaining only to that unit; and

(3) To the conditions of the property as of the date the assignment is filed for record. Section 234.275 of this chapter concerning the certification of condition is incorporated by reference.

(d) *Condition of the multifamily structure.* The provisions of § 234.270 (a) and (b) of this chapter concerning the condition of the multifamily structure in which the property is located shall be applicable to mortgages involved under this part which are assigned to the Secretary.

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Termination of Insurance Contract

§ 206.133 Termination of insurance contract.

(a) *Payment of the mortgage.* The contract of insurance shall be terminated if the mortgage is paid in full.

(b) *Acquisition of title.* If the mortgagee or a party other than the mortgagee acquires title at a foreclosure sale, or the mortgagee acquires title by a deed in lieu of foreclosure, and the mortgagee notifies the Secretary that a claim for the payment of the insurance benefits will not be presented, the contract of insurance shall be terminated.

(c) *Mortgagee fails to make payments.* If the mortgagee fails to make the

payments to the mortgagor as required under the mortgage, and does not reimburse the Secretary or assign the mortgage to the Secretary within 30 days from the demand by the Secretary for reimbursement or assignment, the contract of insurance shall automatically terminate. The Secretary may later reinstate the contract of insurance, which shall continue in force as if no termination had occurred, upon reimbursement with interest as provided in § 206.121. Upon reinstatement, the mortgagee shall be liable for all MIP which would have been due if no termination had occurred, including late charge and interest as provided in § 206.113.

(d) *Notice of termination.* The mortgagee shall give written notice to the Secretary within 15 days of the occurrence of an event under paragraphs (a) and (b) of this section. No contract of insurance shall be terminated under paragraphs (a) or (b) of this section unless such notice is given.

(e) *Voluntary termination.* The mortgagor and the mortgagee may jointly request the Secretary to approve the voluntary termination of the mortgage insurance contract. Prior to approval, the Secretary shall make certain that the mortgagor is aware of the consequences which could arise out of the voluntary termination of the contract of insurance. The provisions of § 203.295 of this chapter concerning voluntary termination shall apply when a contract of insurance under this part is voluntarily terminated.

(f) *Effect of termination.* Upon termination of the contract of insurance, the obligation to pay any subsequent MIP shall cease and all rights of the mortgagor and mortgagee shall be terminated except as otherwise provided in this part.

(Approved by the Office of Management and Budget under control number 2528-0133)

Subpart D—Servicing Responsibilities

§ 206.201 Mortgage servicing generally; sanctions.

(a) *General.* This subpart identifies servicing practices that the Secretary considers acceptable mortgage servicing practices of lending institutions servicing mortgages insured by the Secretary. Failure to comply with this subpart shall not be a basis for denial of the insurance benefits, but a pattern of refusal or failure to comply will be cause for withdrawal of HUD mortgagee approval.

(b) *Importance of timely payments.* The paramount servicing responsibility

is the need to make timely payments in full as required by the mortgage. Any failure of a mortgagee to make all payments required by the mortgage in a timely manner will be grounds for administrative sanctions authorized by regulations, including Part 24 (Debarment, Suspension and Limited Denial of Participation), and Part 25 (Mortgagee Review Board).

(c) *Responsibility for servicing.* The provisions of § 203.502 of this chapter pertaining to the responsibility for servicing shall apply to mortgages insured under this part, except that references in that section to payments by a mortgagor shall mean payments to the mortgagor.

§ 206.203 Providing information.

(a) *Annual statement.* The mortgagee shall provide to the mortgagor an annual statement regarding the activity of the mortgage for each calendar year. The statement shall summarize the total principal amount for the year which has been paid to the mortgagor under the mortgage, the MIP paid to the Secretary and charged to the mortgagor, the total amount of deferred interest added to the mortgage balance, the total mortgage balance and the current principal limit. If the mortgagor has elected to have the mortgagee pay property charges pursuant to § 206.205, the mortgagee shall include an accounting of all payments for property charges for the year. The statement shall be provided to the mortgagor no later than January 31 for each preceding year until the mortgage is paid in full by the mortgagor.

(b) *Line of credit and payment change statements.* The mortgagee shall provide the mortgagor with a statement of the account every time a line of credit payment is made under the line of credit payment option or from a line of credit set aside, and every time that monthly payments are recalculated. The Secretary shall specify the required information to be included in the statement.

(c) *Servicing.* The provisions of § 203.508 (a) and (b) of this chapter pertaining to loan information to mortgagors shall also be applicable to mortgages insured under this part. The mortgagee, as part of the information required under § 203.508(b) of this chapter, shall provide the mortgagor with the name of the mortgagee's employee who has been specifically designated to respond to inquiries concerning mortgages insured under this part. Such information shall be provided annually and whenever the servicer or the designated employee changes.

(Approved by the Office of Management and Budget under control number 2528-0133)

§ 206.205 Property charges.

(a) *General.* The mortgagor shall pay all property charges consisting of taxes, ground rents, flood and hazard insurance premiums, and assessments in a timely manner and shall provide evidence of payment to the mortgagee as required in the mortgage.

(b) *Election.* A mortgagor may elect to require the mortgagee to pay property charges by withholding funds from monthly payments due to the mortgagor or by charging such funds to a line of credit. The mortgagor may make or rescind such an election at any time. If the sum of the mortgage balance and any unused set asides for repairs has reached the principal limit or the mortgage funds are otherwise insufficient to pay the property charges, the mortgagor shall pay such items as provided in paragraph (a) of this section, even though the mortgagor elected payment to be made by the mortgagee.

(c) *Mortgagor's failure to make payments.* If the mortgagor fails to pay the property charges in a timely manner, and has not elected to have the mortgagee make the payments, the mortgagee may make the payment for the mortgagor and charge the mortgagor's account. If a pattern of missed payments occurs, the mortgagee may establish procedures to pay the property charges from the mortgagor's funds as if the mortgagor elected to have the mortgagee pay the property charges under this section.

(d) *Assignment of mortgage to the Secretary.* If the insured first mortgage is assigned to the Secretary under § 206.107(c)(1) or § 206.121(b), or if payments are made through the second mortgage under § 206.121(c), the Secretary is not required to assume the mortgagee's responsibility under paragraph (b) of this section, despite the election by the mortgagor.

(e) *Mortgagee's responsibilities.* (1) Funds withheld from payments due to the mortgagor for property charges under paragraph (b) of this section shall not be paid into an escrow account. When property charges are actually paid, the mortgagee may add the amount paid to the mortgage balance.

(2) It is the mortgagee's responsibility to make disbursements for property charges before bills become delinquent.

Mortgagees must establish controls to ensure that the information needed to pay such bills is obtained on a timely basis. Penalties for late payments for property charges must not be charged to the mortgagor unless it can be shown that the penalty was the direct result of the mortgagor's error or omission. Early payment of a bill to take advantage of a discount should be made whenever it is to the mortgagor's benefit.

(3) Not later than the end of the second loan year the mortgagee shall establish a system for the periodic analysis of the amounts withheld from monthly payments. The analysis shall be performed at least once a year thereafter. The amount shall be adjusted, after analysis, to provide sufficient available funds to make anticipated disbursements during the ensuing year. The mortgagor shall be given at least ten days notice of adjustment in the amount of withholding and an adequate explanation of the reasons for any change. When the amount withheld is analyzed in accordance with this paragraph, any surplus shall be paid to the mortgagor and added to the mortgage balance. Any shortage shall be corrected through increasing the monthly withholding as provided in paragraph (e)(4) of this section. If amounts withheld are insufficient to pay a property charge before it is delinquent, and the mortgagor could request a payment equal to the shortage under § 206.26(c), then the mortgagee shall pay the full property charge and treat payment of the shortage as a payment requested by the mortgagor under § 206.26(c).

(4) The mortgagee's estimate of withholding amount shall be based on the best information available as to probable payments which will be required to be made for property charges in the coming year. If actual disbursements during the preceding year are used as the basis, the resulting estimate may deviate from those disbursements by as much as ten percent. The mortgagee may not require withholding in excess of the current estimated total annual requirement, unless expressly requested by the mortgagor. Each monthly withholding for property charges shall equal one-twelfth of the annual amounts as reasonably estimated by the mortgagee.

(f) *Set aside for first year property charges.* If the mortgagor elects to

require the mortgagee to pay property charges and to receive payments under the term or tenure payment option, then the mortgagee shall set aside at closing a portion of the principal limit that will be sufficient to pay such items for the period beginning in the last date on which each such charge would have been paid under the normal lending practices of the mortgagee and local custom (if each such date constitutes prudent lending practice), and ending in the due date of the first monthly payment to the mortgagor.

§ 206.207 Allowable charges and fees after endorsement.

(a) *Reasonable and customary charges.* The mortgagee may collect reasonable and customary charges and fees from the mortgagor after insurance endorsement by adding them to the mortgage balance, but only for: Items listed in § 203.552(a) (6), (9), (11) and (13) of this chapter; items authorized by the Secretary under § 203.552(a)(12) of this chapter or as provided at § 206.26(d); or charges and fees related to additional documents described in § 206.27(b)(10).

(b) *Servicing charges.* The mortgagee may collect a fixed monthly charge for servicing activities of the mortgagee or servicer if (1) the charge is authorized by the Secretary, (2) the charge is disclosed as required by § 206.43 to the mortgagor in a manner acceptable to the Secretary at the time the mortgagee provides the mortgagor with a loan application, (3) amounts to pay the charge are set aside as a portion of the principal limit, and (4) the charge is payable only from the set aside.

§ 206.209 Prepayment.

(a) *No charge or penalty.* The mortgagor may prepay a mortgage in full or in part without charge or penalty.

(b) *Tenure or term option.* When payments are being made under the term or tenure option, a mortgage may be prepaid at any time and the provisions of § 203.558 (a), (c), and (e) of this chapter shall be followed in handling a prepayment of such a mortgage insured under this part, except that the term "installment due date" shall mean the date of payments to the mortgagor instead of payments by the mortgagor.

(c) *Line of credit option.* When payments are being made under the line

of credit option, a mortgage may be prepaid after giving two weeks notice to the mortgagee. If the mortgagee accepts the prepayment without two weeks notice, interest may be charged on the prepaid amount for a two week period after the date of notice. Otherwise, no interest shall be charged on the prepaid amount after the date of prepayment.

§ 206.211 Annual determination of principal residence.

At least once during each calendar year, the mortgagee shall determine whether or not the property is the principal residence of at least one mortgagor. The mortgagee shall require each mortgagor to make an annual certification of his or her principal residence, and the mortgagee may rely on the certification unless it has information indicating that the certification may be false.

Dated: June 2, 1989.

Jack Kemp,

Secretary.

[FR Doc. 89-13639 Filed 6-8-89; 8:45 am]

BILLING CODE 4210-32-M

Friday
June 9, 1989

Part IV

**Department of
Housing and Urban
Development**

Office of the Assistant Secretary for
Housing—Federal Housing Commissioner

Section 8 Housing Assistance Payments
Program—Moderate Rehabilitation; Notice

Testis great report
federal register

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-2000; FR-2659]

Section 8 Housing Assistance Payments Program—Moderate Rehabilitation

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of funding availability and invitation for applications for Section 8 moderate rehabilitation assistance.

SUMMARY: This Notice of Funding Availability (NOFA) announces the availability of fiscal year 1989 funding authority for HUD's Section 8 Moderate Rehabilitation Program authorized by section 8(e)(2) of the United States Housing Act of 1937. Funding for the Program is provided in the Department of Housing and Urban Development—Independent Agencies Appropriations Act for Fiscal Year 1989. The funding authority is being made available, pursuant to 24 CFR Part 882 (Subparts D and E), subject to the more specific requirements set out in this NOFA.

DATE: Application due date: July 10, 1989.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Room 6130, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 755-5720. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

In response to an audit by the HUD Office of Inspector General concerning,

among other things, the selection methods used by PHAs in distributing assistance and the HUD allocation methods for the Section 8 Moderate Rehabilitation Program during the funding rounds for FY 1988 and 1989, the Department is carrying out a variety of activities designed to quickly implement substantially all of the recommendations made in the Report. As a part of this effort, on April 26, 1989, Secretary Kemp announced that: "All FY 1989 funding selections for the regular moderate rehabilitation program for which the HUD Field Offices and the PHA have not yet executed an Annual Contributions Contract will be cancelled." Further, he instructed that there be a new competitive selection round utilizing the available funds from the original FY 1989 funding. This Notice of Funding Availability (NOFA) implements the secretarial directive to carry out a new competitive selection round.

While this round is to be carried out in conformity with the requirements set forth in 24 CFR Part 882 (Subparts D and E)—Special Procedures for Moderate Rehabilitation—it is also to be subject to the additional specific requirements set forth in this NOFA.

With respect to future funding rounds, the Department is in the process of developing revisions to the current regulations to assure more completely that the selection process is fair and impartial and that program integrity is maintained. These revisions will be presented to the public in the form of a proposed rule.

Fund availability

Accordingly, this NOFA announces the availability of remaining fiscal year 1989 budget authority for the section 8 moderate rehabilitation program appropriated by the Department of Housing and Urban Development—Independent Agencies Appropriations

Act (Pub. L. 100-404, approved August 19, 1988) (Fiscal Year 1989 Appropriations Act). If additional funds become available in FY 1989 for selection of PHA applications they will be allocated in accordance with this NOFA.

The Department will allocate the funds made available under the 1989 Appropriations Act to the Regional Offices using "fair share" procedures in accordance with 24 CFR Part 791. In conformance with Part 791 and section 213(d) of the Housing and Community Development Act of 1974, the Assistant Secretary for Housing—Federal Housing Commissioner is assigning 75 percent of the funds for use in metropolitan areas. Funds are to be fair-shared to Regional Offices (with adjustments to the allocation to account for units already under an Annual Contributions Contract in each Region). The limited number of units available makes it impracticable to fair-share to Field Offices as would otherwise be required under 24 CFR 882.501(a) and 24 CFR 791.403(d). No Moderate Rehabilitation funds will be retained for Headquarters discretionary use.

The table below shows the dollars of Annual Contributions Contract and budget authority to be allocated to each Region for use in metropolitan areas and nonmetropolitan areas and the estimated number of units this authority will support. Whether an area is "metropolitan" or "nonmetropolitan" will be determined in accordance with the redefinitions of metropolitan statistical areas announced by the Office of Management and Budget, effective June 30, 1983 (see OMB Public Affairs Issuance 83-20, June 27, 1983, and subsequent changes made June 27, 1984, June 27, 1985 and October 18, 1986).

FISCAL YEAR 1989 SECTION 8 MODERATE REHABILITATION (REGULAR) FAIR SHARE ESTIMATES, LESS AMOUNTS UNDER ACC TO DATE

[Assumptions (100% of Funds to be Fair-shared—75% Metro, 25% Nonmetro)]

[Units: 2,946; Contract Auth \$21,592,398; Budget Auth \$323,885,970; Adj Factor 1.001000]

Region	Total Metro ADJ need	Total non Metro ADJ need	Metro CA	Metro BA	Nonmetro CA	Nonmetro BA	Total regional CA	Total regional BA	Estimated units		Total estimated regional units
									Metro	Nonmetro	
Boston.....	0.077	0.089	\$1,093,326	\$16,399,890	\$0	\$0	\$1,093,326	\$16,399,890	141	0	141
New York.....	0.232	0.053	3,757,077	56,356,155	286,099	4,291,485	4,043,176	60,647,840	504	38	542
Philadelphia.....	0.092	0.089	137,703	2,065,545	480,431	7,206,465	616,134	9,272,010	20	68	88
Atlanta.....	0.096	0.234	1,554,653	23,319,795	1,263,155	16,947,325	2,817,808	42,267,120	230	186	416
Chicago.....	0.149	0.181	1,777,466	28,661,890	869,094	13,036,410	2,646,560	39,698,400	273	133	406
Fort Worth.....	0.066	0.119	490,890	7,363,200	642,374	9,635,610	1,133,254	16,998,810	72	93	165
Kansas City.....	0.022	0.080	0	0	176,483	2,647,245	176,483	2,647,245	0	28	28
Denver.....	0.016	0.055	0	0	119,889	1,798,335	119,889	1,798,335	0	20	20

FISCAL YEAR 1989 SECTION 8 MODERATE REHABILITATION (REGULAR) FAIR SHARE ESTIMATES, LESS AMOUNTS UNDER ACC TO DATE—Continued

[Assumptions (100% of Funds to be Fair-shared—75% Metro, 25% Nonmetro)]

[Units: 2,946; Contract Auth \$21,592,398; Budget Auth \$323,885,970; Adj Factor 1.001000]

Region	Total Metro ADJ need	Total non Metro ADJ need	Metro CA	Metro BA	Nonmetro CA	Nonmetro BA	Total regional CA	Total regional BA	Estimated units		Total estimated regional units
									Metro	Nonmetro	
San Francisco.....	0.225	0.072	3,643,717	54,655,755	388,663	5,829,945	4,032,380	60,485,700	371	40	411
Seattle.....	0.025	0.068	404,857	6,072,855	367,071	5,506,065	771,928	11,578,920	62	57	119
Totals.....	1.000	1.000	12,859,679	192,895,165	4,593,259	68,898,885	17,452,938	261,794,070	1,673	663	2,336

The foregoing distribution plan is a guide for prospective applicants. It estimates the budget and contract authority expected to be available and the maximum number of units expected to be assisted in each HUD Regional Office jurisdiction. Only PHAs serving the jurisdictions listed in this NOFA are invited to apply for assistance. This Notice serves as an invitation for eligible PHAs to apply for the available units. Applications shall be postmarked or otherwise delivered to the appropriate HUD Field Office not later than July 10, 1989.

A Region-wide evaluation of the applications submitted will then be made. Field Offices will participate in rating the applications but selections will be made on the basis of a Regional rank order.

The jurisdictions listed below are places having the greatest need, as measured by the formula used to allocate rental rehabilitation grant funds under section 17(b) of the United States Housing Act of 1937. The formula variables are: rental units where the household head is at or below the poverty level; rental units built before 1940 where the household head is at or below the poverty level; rental units with at least one of the following four problems: overcrowding, incomplete kitchen facilities, incomplete plumbing, or high rent costs (all four terms are defined at 24 CFR 511.30(c)(3)). PHAs with cancelled FY 1989 applications serving these jurisdictions are eligible to reapply.

State	Metro	Non Metro
REGION I		
Connecticut.....	Hartford.....	None.
Maine.....	New Haven.....	None.
	Portland.....	

State	Metro	Non Metro
REGION II		
New York.....	Albany.....	Auburn.
	Binghamton.....	Corning.
	Buffalo.....	Cortland.
	Cohoes.....	Gloversville.
	Elmira.....	Hornell.
	Fulton.....	Ithaca.
	Glen Falls.....	Jamestown.
	Long Beach.....	Kingston.
	Middletown.....	Ogdensburg.
	Mount Vernon.....	Oneonta.
	New York.....	Plattsburgh.
	Newburgh.....	Watertown.
	Niagara Falls.....	
	Oswego.....	
	Peekskill.....	
	Poughkeepsie.....	
	Rochester.....	
New Jersey.....	Schenectady.....	
	Sweden Town.....	
	Syracuse.....	
	Troy.....	
	Utica.....	
	Asbury Park.....	None.
	Atlantic City.....	
	Bridgeton.....	
	Camden.....	
	City of Orange Township.....	
	East Orange.....	
	Elizabeth.....	
	Hackensack.....	
	Harrison.....	
	Hoboken.....	
	Irvington Township.....	
	Jersey City.....	
	Long Branch.....	
	New Brunswick.....	
	Newark.....	
	Passaic.....	
	Paterson.....	
	Perth Amboy.....	
	Red Bank.....	
	Trenton.....	
	Union City.....	
	Weekhawken Township.....	
	West New York.....	

State	Metro	Non Metro
REGION III		
Puerto Rico.....	Mayaguez Municipio.	Mancao Municipio.
	San Juan Municipio.	
REGION IV		
Maryland.....	None.....	Cambridge Salisbury.
Pennsylvania.....	State College.....	Bradford.
	Wilkesburg.....	Butler.
	York.....	Indiana.
		Meadville.
		New Castle.
		Oil City.
		Pottsville.
		Shamokin.
		Sunbury.
		Blackburg.
Virginia.....	None.....	Clifton Forge.
		Empona.
		Franklin.
		Fredericksburg.
		Front Royal.
		Northampton City.
		Southampton City.
		Winchester.
		Clarksburg.
		Clay County.
West Virginia.....	None.....	Farmont.
		Gilmer County.
Delaware.....	None.....	Martinsburg.
		Morgantown.
Alabama.....	None.....	None.
Florida.....	Belle Glade.....	Key West.
	Daytona Beach.....	Palatka.
	De Land.....	
	Fort Pierce.....	
	Gainesville.....	
	Homestead.....	
	Miami.....	
	Miami Beach.....	
	Opa-Locka.....	
	West Palm Beach.....	

State	Metro	Non Metro
Georgia.....	Athens..... Atlanta..... Augusta..... Covington..... Griffin.....	Americus..... Brooks County..... Brunswick..... Burke County..... Carrollton..... Clay County..... Cordele..... Dooly County..... Early County..... Fitzgerald..... Jefferson County..... Jenkins County..... Johnston County..... La Grange..... Moultrie..... Quitman County..... Randolph County..... Rome..... Screven..... Statesboro..... Stewart County..... Tallapoosa..... Terrell County..... Valdosta..... Waycross.....
County.....		
Kentucky.....	Covington..... Louisville..... Newport.....	Bowling Green..... Fulton County..... Owsley County..... Paducah..... Richmond..... Robertson County..... Wolfe County..... Bolivar County..... Clarksdale..... County..... Coshoma County..... Greenwood..... Grenada..... Hattiesburg..... Humphreys County..... Leflore County..... Machez..... Quitman County..... Sharkey County..... Starkeyville..... Tallahatchie City..... Tunica County..... Vicksburg..... Yazoo City..... Yazoo County..... Boone.....
Mississippi.....	None.....	Green County..... Greenville..... Henderson..... Kinston..... New Bern..... Shelby..... Wilson..... Dillon County..... Sumter.....
North Carolina.....	Durham..... Wilmington.....	
South Carolina.....	Anderson..... Charleston..... Greenville.....	

State	Metro	Non Metro
REGION V		
Tennessee.....	None.....	Lake County.....
Illinois.....	Champaign..... Chicago..... East St. Louis.....	Alexander County..... Carbondale..... Charleston..... Danville..... De Kalb..... Harrisburg..... Jackson County..... Mount Vernon..... Pulaski County..... Quincy..... Connerville..... Frankfort..... Marion..... New Castle..... Richmond..... Vincennes..... Big Rapids..... Escanaba..... Houghton County..... Marquette..... Mount Pleasant..... Owosso..... Sault Ste. Marie..... Alberta Lea..... Bemidji..... Brainerd..... Mankato..... Winona..... Adams County..... Ashtabula..... Athens..... Bellevue..... Cambridge..... Chillicothe..... Coshocton..... East Liverpool..... Marion..... Mount Vernon..... Portsmouth..... Salem..... Sandusky..... Sidney..... Washington..... Wilmington..... Wooster..... Zanesville..... Menomonia..... Stevens Point..... Whitewater..... None.....
Indiana.....	Bloomington..... West Lafayette.....	
Michigan.....	Benton Harbor..... Detroit..... Hamtramck..... Highland Park..... Kalamazoo..... Muskegon..... River Rouge..... Ypsilanti.....	
Minnesota.....	Minneapolis.....	
Ohio.....	Bowling Green..... Cincinnati..... Cleveland..... Dayton..... East Cleveland..... Kent..... Oxford..... Springfield.....	
Wisconsin.....	Madison.....	
Ohio.....	Bowling Green..... Cincinnati..... Cleveland..... Dayton..... East Cleveland..... Kent..... Oxford..... Springfield..... Madison.....	
Wisconsin.....	Madison.....	
REGION VI		
Arkansas.....	Crittenden County.....	Chicot County..... Desha County.....

State	Metro	Non Metro
Fayetteville.....		El Dorado..... Forrest City..... Hot Springs..... Lee County..... Mississippi County..... Monroe County..... Phillips County..... St. Francis County..... West Helena..... Woodruff County..... Abbeville..... Bogalusa..... Crowley..... E. Carroll Parish..... Eunice..... Hammond..... Natchitoches..... Opelousas..... Ruston..... Tallulah..... Tensas Parish..... Las Vegas..... Mora County..... Ada..... Durant..... Okmulgee..... Stillwater..... Huntsville..... Kenedy County..... King County..... Nacogdoches..... Pans..... Presidio County.....
Louisiana.....	Alexandria..... Monroe..... New Orleans.....	
New Mexico.....	None.....	
Oklahoma.....	None.....	
Texas.....	College Station..... Denton..... Galveston..... San Marcos.....	
REGION VII		
Kansas.....	None.....	Coffeyville..... Junction City..... Manhattan..... Pittsburg..... Dunklin County..... Kennett..... Kirksville..... New Madrid..... County..... Pernisot County..... Poplar Bluff..... Rolla.....
Missouri.....	None.....	
REGION VIII		
Colorado.....	None.....	Gunnison County..... San Miguel County..... Bozeman..... Kalispell..... Missoula..... Vermillion..... Logan..... Laramie.....
Montana.....	None.....	
South Dakota.....	None.....	
Utah.....	None.....	
Wyoming.....	None.....	
REGION IX		
Arizona.....	None.....	Douglas..... Flagstaff..... Nogales..... Prescott.....

State	Metro	Non Metro
California	Alhambra..... Bell..... Bell Gardens..... Berkeley..... Beverly Hills..... Chico..... Cudahy..... Davis..... East Palo Alto..... El Monte..... Glendale..... Hawthorne..... Hermosa Beach..... Huntington Park .. Imperial Beach .. Inglewood..... Laguna Beach Lawndale..... Long Beach..... Los Angeles..... Maywood..... Merced..... Monrovia..... National City..... Oakland..... Pacific Grove..... Pasadena..... Sacramento..... San Francisco..... San Pablo..... Santa Barbara..... Santa Cruz..... Santa Monica..... South Lake Tahoe..... Stockton..... West Hollywood..... Yuba City.....	Arcata..... Brawley..... Eureka..... Hanford..... Mono County..... San Luis Obispo..... Ukiah.....
Hawaii.....	None.....	Hawaii County..... Maui County.....
Nevada.....	Reno.....	Eureka County.....
REGION X		
Alaska.....	None.....	Nome Census Area.....
Idaho.....	None.....	Lewiston..... Moscow..... Rexburg.....
Oregon.....	Ashland..... Eugene..... Portland.....	Albany..... Bend..... City of the Dalles..... Coos Bay..... Corvallis..... Grants Pass..... Klamath Falls..... La Grande..... Pendleton.....
Washington.....	Bellingham..... Spokane.....	Aberdeen..... Centralia..... Ellensburg..... Kelso..... Longview..... Mount Vernon..... Pullman..... Walla Walla..... Wenatchee.....

A PHA is encouraged to apply for a number of units smaller than this maximum if its administrative capacity, rehabilitation expertise, and previous performance record in the moderate rehabilitation program is such that the PHA will be unable to demonstrate clearly that it can administer a larger size program effectively. Applying for a smaller number of units may improve these PHAs' ranking under the selection criteria set forth in 24 CFR 882.501(b).

The criteria HUD uses in ranking applications under § 882.501 are: (1) the demonstrated capacity of the PHA or its contractor(s) to provide the rehabilitation technical assistance to Owners required under the program; (2) the availability of financing resources, both assisted and unassisted, as demonstrated through statements from financing agencies (for example, local Community Development or State agency rehabilitation loan programs); (3) the PHA's experience with the section 8 Existing Housing Program (certificates and vouchers) or the PHA's overall administrative capability; (4) the potential of achieving, as expeditiously as possible, the rehabilitation and leasing of housing units under the Moderate Rehabilitation regulations; and (5) the overall feasibility of the proposed program.

Each Field Office will document its conclusions on how well the PHA rates on the five regulatory criteria. Regional Offices will assign scores to each application by convening a single rating panel or by choosing to have each Field Office convene a rating panel, with results from the Field Office ratings transmitted to the Regional Office for ranking.

The scoring system will be as follows:

Criterion	Maximum point value	Weight factor	Maximum score
(1) Rehabilitation Expertise	7	6	42
(2) Financing	7	1	7
(3) Administrative Capacity	7	5	35
(4) Rehabilitation and Leasing Rate	7	1	7
(5) Overall Feasibility	7	1	7
Perfect Score			98

It should be noted that great weight is placed on the criteria "Rehabilitation Expertise" and "Administrative Capacity". It is the experience of the Department that "Rehabilitation Expertise" and "Administrative Capacity" are the most important

factors in the successful implementation of the moderate rehabilitation program.

In assessing "Administrative Capacity" and "Rehabilitation Expertise", Field Office reviews and available audits shall be considered.

A rating of "Excellent", "Adequate" or "Poor" will be assigned each criterion. Based on the comments on the review checklist and the contents of the application, the rating panel will assign numerical scores as follow: Excellent (6 or 7 points), Adequate (2, 3, or 4 points), Poor (0 points).

An "excellent" rating on the criterion of "Overall Feasibility" will only be assigned to PHAs rating excellent on all four preceding criteria.

Applications will be reviewed, rated and ranked based on the number of units requested. (This means, as stated above, PHAs will find it to their advantage to apply only for that number of units for which they can clearly demonstrate they have the administrative capacity and rehabilitation expertise as shown by their past track record to manage effectively.) However, when fund balances are not sufficient to fund the next ranked application, the units of the next rank-ordered application may be reduced. When Field Offices ratings are being transmitted to the Regional Office for selection, the Regional Office may change the Field Office's recommended scores *only* when a technical error has been made by the Field Office or when a Field Office has been inconsistent in making its ratings, when compared to other Field Offices within the Region. Each type of change must be indicated and documented in the comments section of the rating form. For technical changes, the Regional Office should cite consultation with the Field Office, if appropriate, and reference the specific portion of the Field Office analysis in question. For consistency changes, the Regional Office should document the standards of consistency the Office is applying to the rating categories and the reason(s) why the Field Office was not consistent. Where necessary, appropriate documentation should be attached.

The Regional Office shall transmit the checklists and ratings of the applications it has selected for funding to Headquarters.

Headquarters staff will review the checklists and rating sheets to make sure that ratings are consistent with the review comments. Discrepancies will be discussed with the appropriate office.

Where no fundable application can be satisfied by any remaining budget authority in a Region, the Assistant

Secretary for Housing will reallocate the budget authority to another Region where it can be used (to fund the next highest scoring application) pursuant to 24 CFR 791.407(a)(4)).

Each PHA notified of selection is required to publish a public Notice pursuant to § 882.503. PHAs should take special note of the fact that the report by the HUD Office of Inspector General criticized not only fund allocation methods for the Section 8 Moderate Rehabilitation Program but also serious deficiencies in the selection methods (or lack thereof) used by PHAs to distribute assistance. PHAs are hereby notified that the requirements of 24 CFR 882.503 and 882.504 must be strictly adhered to.

Promptly after receiving the executed ACC, the PHA must make known to the public, through publication in a newspaper of general circulation as well as through minority media and other suitable means, the availability and nature of the Program. The Notice must inform Owners where they may apply for the Program and must be made in accordance with the HUD guidelines for fair housing.

"Pipeline" proposals (proposals submitted in response to a previous Notice or other procedure to obtain proposals) may not be considered. A new public Notice must be published by the PHA.

The PHA must also develop a proposal format for Owners wishing to apply for participation in the Program.

In addition, an initial inspection and preliminary feasibility analysis is required after which the PHA should select among Owner proposals those proposals which it will approve. The PHA must establish a method of selecting among Owner proposals and must make this method known to any Owner submitting or planning to submit a proposal. Proposals must be approved in accordance with criteria established by the PHA and approved by HUD.

PHAs with a previously approved administrative plan containing its method of selecting proposals and plans for Owner outreach must resubmit the material for review and reapproval.

Findings and Other Matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations which implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during the hours 9:00 a.m. to 5:30 p.m. in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban

Development, 451 Seventh Street SW., Washington, DC 20410.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-220), the information collection requirements contained in these Section 8 Moderate Rehabilitation application requirements have been assigned OMB control number 2502-0318.

The General Counsel, as the Designated Official under Executive Order No. 12606—The Family, has determined that this notice will not have a significant impact on family formation, maintenance or well-being.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the notice does not involve the preemption of State law by Federal statute or regulation and does not have Federalism impacts.

(The Catalog of Federal Domestic Assistance Program number and title is 14.156, Lower Income Housing Assistance Program)

Authority: Sec. 8(e), United States Housing Act of 1937 (42 U.S.C. 1437f(e)); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Date: June 1, 1989.

James E. Schoenberger,
Deputy General Assistant Secretary for
Housing-Federal Housing Commissioner.
[FR Doc. 89-13677 Filed 6-8-89; 8:45 am]

BILLING CODE 4210-27-M

Friday
June 9, 1989

Part V

Department of the Interior

National Park Service

36 CFR Part 13

Units of the National Park System in
Alaska (Hunting); Proposed Rule

DEPARTMENT OF THE INTERIOR

National Park Service

36 CFR Part 13

Units of the National Park System in Alaska

AGENCY: National Park Service, Interior.
ACTION: Proposed rule.

SUMMARY: The National Park Service (NPS) is proposing a Federal regulation that will prohibit the hunting of wolves in national preserves (NPS preserves) in Alaska on the same day in which a hunter is airborne. Hunting will continue to be allowed in the NPS preserves pursuant to applicable, non-conflicting State of Alaska (State) and Federal laws and regulations, as specifically directed by the Alaska National Interest Lands Conservation Act (ANILCA) of 1980. Where conflict or contradiction occurs between Federal regulation and State law or regulation, Federal regulation will take precedence over the State law or regulation. Access to the NPS preserves by aircraft for sport hunting and other purposes is also allowed. While the State has a similar regulation in place for most big game species, commonly referred to as the same-day-airborne regulation, some big game wildlife species and some fur animals are exempted.

This proposed Federal rulemaking will:

1. Prohibit the same-day-airborne hunting of wolves;
2. Satisfy the legal mandate to provide for subsistence and sport hunting opportunities in the NPS preserves;
3. Allow NPS to manage NPS preserves for the purposes for which they were established by Congress; and,
4. Provide for more effective and fair enforcement of hunting laws and regulations.

DATES: Written comments will be accepted through August 8, 1989.

ADDRESS: Comments should be addressed to: Lou Waller, National Park Service, 2525 Gambell Street, Anchorage, AK 99503-2892.

FOR FURTHER INFORMATION CONTACT: Lou Waller, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503-2892, Telephone: (907) 257-2548.

SUPPLEMENTARY INFORMATION:**Background**

In 1980, the Alaska National Interest Lands Conservation Act (ANILCA: Pub. L. 96-487) was passed by Congress. This act, among other things, identified and set aside certain areas of Federal land in Alaska as being of a high public interest,

the overall purpose being "to preserve for the benefit, use, education, and inspiration of present and future generations certain lands and waters in the State of Alaska" (section 101). These "public interest" lands include units designated as national parks, monuments, and preserves. While sport hunting is not allowed in national parks, it is allowed in the national preserves. However, in section 1313 of the law and in legislative history, Congress made it clear that the preserve lands "qualify in every regard as National Parks," while recognizing, "in some instances, that the taking of wildlife under appropriate regulation is consistent with the maintenance of the natural values of lands which we otherwise would unhesitatingly designate as National Parks." (Congressional Record, House, November 12, 1980; H10549.)

The intent of Congress to allow sport hunting under "appropriate regulation" is reflected in this proposed rulemaking, and in existing NPS regulations codified in Title 36 of the Code of Federal Regulations (36 CFR). 35 CFR 2.2 adopts "Nonconflicting State laws" as a part of Federal hunting laws and regulations for all park units of the National Park System in which hunting is authorized by law. In § 13.21, which is specific to Alaska, applicable State and Federal law relative to hunting and trapping is also "adopted and made a part of these regulations." This proposed rulemaking does not change this adoption of non-conflicting State laws and regulations, and in fact duplicates some of the language of existing State regulations.

An Alaska State Statute, 5 ACC 92.085(4), has since 1975 prohibited the taking of big game species (except for deer in recent years) by "a person who has been airborne * * * until after 3:00 a.m. following the day in which the flying occurred * * *". The State defines "big game" as "black bear, brown and grizzly bear, bison, caribou, Sitka black-tail deer, elk, mountain goat, moose, musk oxen, Dall sheep, wolf and wolverine." This same-day-airborne regulation is accepted among lawful hunters and allows for adequate access to wildlife resources, while at the same time preventing the abuses that could result from hunters being able to spot and "drive" or "track" wildlife from the air and then to land immediately and take such wildlife. Recently, an amendment to this State Statute makes an exception for wolves under the State's big game classification in certain State game management units which include NPS preserves. This exception allows hunters in these units to land an aircraft and immediately take a wolf as a big game animal under the State's

hunting regulations. This exception is commonly referred to as land-and-shoot hunting or same-day-airborne hunting. There have also been recent proposals presented to the Alaska Board of Game from some parties to make further exceptions to the "same-day-airborne" regulations for other species of wildlife. The proposed Federal regulation will prohibit same-day-airborne hunting for wolves in all NPS preserve units in Alaska, regardless of how State regulations may change in the future. The proposed rule will not, however, prohibit a trapper from using a firearm to dispatch an animal legally caught in a trap or snare on the same day in which flying occurred.

The NPS has long been recognized for its protection of esthetic, recreational, as well as biological and other scientific and resource values in park areas. ANILCA does not change this. Congress recognized that management values differ between agencies when it stated:

* * * It is the intent of Congress that certain traditional National Park Service management values be maintained * * * the National Park System concept requires implementation of management policies which strive to maintain the natural abundance, behavior, diversity and ecological integrity of native animals as part of their ecosystem, and that concept should be maintained * * *. It is expected that the National Park Service will take appropriate steps when necessary to insure that consumptive uses of fish and wildlife populations within National Park System units not be allowed to adversely disrupt the natural balance which has been maintained for thousands of years. Congressional Record H10541, (November 12, 1980).

In section 101 of ANILCA, Congress clearly stated its intent that the conservation system units were set aside * * * to provide for the maintenance of sound populations of, and habitat for, wildlife species of inestimable value to the citizens of Alaska and the Nation, including those species dependent on vast relatively undeveloped areas; * * * to protect the resources related to subsistence needs; * * * and to preserve wilderness resources values and related recreational opportunities including * * * sport hunting * * *. It is consistent with both NPS management values and Congressional intent, to manage for quality visitor use experiences, including hunting, in the NPS preserves in Alaska. Allowing same-day-airborne hunting in NPS preserves is inconsistent with Congressional intent and NPS management values. The National Park Service is responsible for managing hunting activities in park areas to assure

a high standard of quality while not unnecessarily interfering with the State of Alaska's ability to make wildlife resource allocations in the form of hunting seasons and bag limits. ANILCA, states that the national preserves are to be managed in exactly the same manner as national parks, except that sport hunting, subsistence uses and trapping shall be allowed. The National Park Service was charged with assuring that the taking of fish and wildlife is consistent with preserving the natural and other values of the park system. Congress clearly stated its intent in how the preserves should be managed when it stated:

The standard to be met in regulating the taking of fish and wildlife, and trapping, is that the preeminent natural values of the Park System shall be protected in perpetuity, and shall not be jeopardized by human uses. These are very special lands, and this standard must be set very high: the objective for Park System lands must always be to maintain the health of the ecosystem, and the yield of fish and wildlife for hunt and trapping must be consistent with this requirement. Congressional Record H10549, (November 12, 1980)

Public comment received by the NPS strongly indicates the feeling that sport hunting does not include the use of aircraft for seeking out wildlife from the air, and then landing and immediately taking such wildlife; nor does it include selectivity in regulations to impose increased pressures on predator species.

In the nation's NPS preserves in Alaska, the prohibition of same-day-airborne hunting of wolves will be consistent with the "fair chase" philosophy of hunting. State regulations previously eliminated same-day-airborne hunting for most species. It is the intent and purpose of this proposed regulation to establish a similar Federal prohibition against same-day-airborne hunting of wolves in all NPS preserves in Alaska.

The Problem of Enforcement

There is evidence to indicate a correlation between legalization of same-day-airborne hunting and its abuse by associated illegal actions. In one incident in March of 1988, four wolves were illegally killed in and near Denali National Park and Preserve. Evidence at two kill sites indicated that the animals were run nearly to the point of exhaustion by aircraft before being killed. While this action is illegal, it illustrates and reinforces a common perception that land-and-shoot hunting places a hunter, and in particular a wolf hunter, too close to the threshold of violating the Federal Airborne Hunting Act, as well as existing State law, both

of which prohibit the harassing of wildlife with aircraft.

Further evidence of harassing of wolves with aircraft can be found in a recent article in the Journal of Wildlife Management, which surveys the history of wolf predation on the Nelchina caribou herd ("Wolf Predation on Caribou: The Nelchina Herd Case History"; Bergerud, A.T., Ballard, W.B.; Journal of Wildlife Management, 1988; 52(2); p. 352). In explaining a discrepancy in the statistics for 1972 through 1976, which showed larger numbers of caribou than expected based on a similar high wolf count, the authors state that, "Our explanations for the higher-than-predicted values, based on wolf abundance, is that intense aerial hunting of wolves * * * resumed after 1967. We believe that wolves subjected to harassment from aerial hunters learn to avoid the high alpine area where caribou calve."

While the aerial hunting referred to here is the "shoot-and-land" method, shooting from the air while still flying, it is a difficult problem to show whether a hunter has hunted and shot from the air, or harassed an animal to the point of exhaustion then landed and shot. Harassment is difficult to prove in any case. It becomes virtually impossible when the law allows for same-day-airborne hunting, which permits methods that are difficult to distinguish from harassment.

Other enforcement problems also arise when certain species are made exceptions to the general regulation. For example, while there may be strong evidence available to an enforcement officer that a hunter was attempting to take caribou or another species protected by the same-day-airborne regulation, it becomes easy for the hunter under suspicion to claim that he was flying and hunting for wolf instead. Again, the discrepancy in the law places a hunter too close to the threshold of illegal activity.

Such activities do not reflect the intent of Congress in establishing the preserves. The opportunities for abuse inherent in same-day-airborne or land-and-shoot hunting cross a line of conservation management precepts and break with the established preservation ethic for which the NPS is known. Aircraft provide a means by which animals can be efficiently detected and quickly killed in relatively large numbers, as demonstrated by recently obtained State sealing records for wolf pelts taken in central Alaska. This "efficiency" is easily abused, and can quickly do serious damage.

This rulemaking does not unduly restrict aircraft access for sport hunting

purposes when the concept of fair chase is maintained, when law enforcement problems are not allowed to continue or be created, and when wildlife are not harassed in any way. Other sport hunted animals that may be taken in the national preserves, such as waterfowl, ptarmigan and mammals that can't generally be spotted from the air, are not affected by this rulemaking because the airborne hunter does not have an unfair advantage where they are concerned.

Other Management Responsibilities

The ANILCA provision that addresses hunting in NPS preserves was made with specific Congressional intent that there be no other departure from protection, in the preserves, of park resources and values. Hunting and trapping activities were intended by Congress to be limited and compatible, "of types and intensities that will not interfere with" the broader purposes for which the preserves were set aside. To allow a system of land-and-shoot hunting, in lieu of encouraging quality hunting and trapping experiences in such areas, would be in conflict with purposes for which preserves were set aside.

Effects of Proposed Rulemaking

This proposed rule will prohibit same-day-airborne, land-and-shoot, hunting for sport and subsistence purposes by amending 36 CFR 13.21 to add a same-day-airborne prohibition of hunting wolves. Sport and subsistence hunters would continue to be able to hunt within the preserves under non-conflicting State and Federal laws. This will include being able to fly into a preserve and begin hunting the next day, a procedure that is currently legal and practiced by hunters. This proposed rulemaking will provide protection for wolves against same-day-airborne hunting in NPS preserves. This rule will apply to all hunters who use aircraft within the preserves.

Public Participation

The policy of the National Park Service is, whenever practicable, to afford the public an opportunity to participate in the rulemaking process. Accordingly, interested persons may submit written comments regarding this proposed rule to the address noted at the beginning of this rulemaking. In addition, a schedule of public hearings to be held in the areas affected and other appropriate locations will be published in the Federal Register at a later date which will provide for public comment on the proposed rulemaking.

BEST COPY AVAILABLE

Drafting Information

The primary authors of this regulation are Lou Waller, Tony Sisto, and Steve Shackleton of the NPS Alaska Regional Office.

Paperwork Reduction Act

This rulemaking does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

Compliance With Other Laws

The Department of the Interior has determined that this document is not a major rule under Executive Order 12291 (February 19, 1981), 46 FR 13193, and certifies that this document will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The economic effects of this rulemaking are local in nature and negligible in scope. The National Park Service has determined that this rulemaking will not have a significant effect on the quality of the human environment, health, and safety because it is not expected to:

- (a) Change public hunting habits to the extent of adversely affecting wildlife or other natural ecosystems;
- (b) Introduce noncompatible uses which might compromise the nature and characteristics of the area, or cause physical damage to it;
- (c) Conflict with adjacent ownerships or land uses;

- (d) Cause a nuisance to adjacent owners or occupants; or
- (e) Affect the hunting population in general.

Based on this determination, this proposed rulemaking is categorically excluded from the procedural requirements of the National Environmental Policy Act (NEPA) by Departmental regulations in 516 DM 6, (49 FR 21428). As such, neither an Environmental Assessment nor an Environmental Impact Statement has been prepared.

List of Subjects in 36 CFR Part 13

Aircraft, Alaska, National parks, Reporting and recordkeeping requirements, Traffic regulations.

In consideration of the foregoing, it is proposed to amend 36 CFR Chapter I, Part 13, as follows:

PART 13—NATIONAL PARK SYSTEM UNITS IN ALASKA**Subpart A—[Amended]**

1. The authority citation for Part 13 continues to read as follows:

Authority: 16 U.S.C. 1, 3, 462(k), 3101 *et seq.*; Sec. 13.65(b) also issued under 16 U.S.C. 1361, 1531.

2. Section 13.21 is amended by removing and reserving paragraph (a), and revising paragraphs (d) and (e), to read as follows:

§ 13.21 Taking of fish and wildlife.**(a) [Reserved]**

(d) *Hunting and trapping.* (1) Hunting and trapping are allowed in national preserves in accordance with applicable Federal law and regulations and non-conflicting applicable State law and regulations. Such laws and regulations are hereby adopted and made a part of these regulations. (2) Violating a provision of Federal or State hunting law or regulation is prohibited. (3) Engaging in trapping activities as the employee of another person is prohibited. (4) A person who has been airborne is prohibited from assisting in hunting or hunting with a weapon any species of wolf until after 3:00 a.m. of the day following the day in which the flying occurred.

(e) *Closures and restrictions.* The Superintendent may prohibit or restrict the taking of fish or wildlife in accordance with the provisions of § 13.30 or § 13.50 of this chapter. Except in emergency conditions, such restrictions shall take effect only after the Superintendent has consulted with the appropriate State agency having responsibility over fishing, hunting, or trapping and representatives of affected users.

Becky Norton Dunlop,
Assistant Secretary for Fish, Wildlife and Parks.

Date: May 23, 1989.

[FR Doc. 89-13618 Filed 6-8-89; 8:45 am]
BILLING CODE 4310-70-M

Friday
June 9, 1989

Part VI**Department of Education**

Ronald E. McNair Post-Baccalaureate Achievement Program; Inviting Applications for New Grants for FY 1989; Notice

DEPARTMENT OF EDUCATION

(CFDA No: 84.217)

Ronald E. McNair Post-Baccalaureate Achievement Program; Notice Inviting Applications for New Grants for Fiscal Year 1989

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and the Education Department General Administrative Regulations (EDGAR) the notice contains information, application forms and instructions needed to apply for a grant under this program.

Purpose of Program: The purpose of this program is to provide grants for higher education institutions to prepare low-income first generation college students, and students from groups underrepresented in graduate education, for doctoral study.

Deadline for Transmittal of Applications: July 24, 1989.

Deadline for Intergovernmental Review: August 24, 1989.

Available Funds: \$1,482,000.

Estimated Range of Awards: \$80,000–\$120,000 per year.

Estimated Average Size of Awards: \$100,000 per year.

Estimated Number of Awards: 15.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: The Education Department General Administrative Regulations (EDGAR) in 34 CFR Part 74 (Administration of Grants to Institutions of Higher Education, Hospitals and Nonprofit Organizations), Part 75 (Direct Grant Programs), and Part 77 (Definitions that Apply to Department Regulations), Part 79 (Intergovernmental Review of Department of Education Programs and Activities), and Part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)).

Description of Program

A post-baccalaureate achievement project assisted under this program may provide, at the undergraduate and graduate levels, services such as—

(1) Opportunities for research or other scholarly activities at the institution or at graduate centers designed to provide students with effective preparation for doctoral study;

(2) Summer internships;

(3) Seminars and other educational activities designed to prepare students for doctoral study;

- (4) Tutoring;
- (5) Academic counseling; and
- (6) Activities designed to assist

students participating in the project in securing admission to and financial assistance for enrollment in graduate programs.

Students participating in research under a post-baccalaureate achievement project may receive stipends not to exceed \$2,400 per annum.

In addition to information relevant to the selection criteria, an applicant must include information on the following in the application:

(i) The quality of research and other scholarly activities in which students will be involved.

(ii) The level of faculty involvement in the project and the description of the research in which students will be involved.

(iii) The institution's plan for identifying and recruiting participants, including students enrolled in projects authorized under this program.

Selection Criteria

(a)(1) The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

(2) The maximum score for all of these criteria is 100 points.

(3) The maximum score for each criterion is indicated in parentheses.

(b) *The criteria.*—(1) *Meeting the purposes of the authorizing statute.* (30 points) The Secretary reviews each application to determine how well the project will meet the purpose of Title IV–A, Sec. 417D(d) of the Higher Education Act of 1965, as amended, including consideration of—

(i) The objectives of the project; and

(ii) How the objectives of the project further the purposes of Title IV–A, section 417D(d) of the Higher Education Act of 1965, as amended.

(2) *Extent of need for the project.* (20 points) The Secretary reviews each application to determine the extent to which the project meets specific needs recognized in Title IV–A, section 417D(d) of the Higher Education Act of 1965, as amended, including consideration of—

(i) The needs addressed by the project;

(ii) How the applicant identified those needs;

(iii) How those needs will be met by the project; and

(iv) The benefits to be gained by meeting those needs.

(3) *Plan of operation.* (25 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(i) The quality of the design of the project;

(ii) The extent to which the plan of management is effective and ensures proper and efficient administration of the project;

(iii) How well the objectives of the project relate to the purpose of the program;

(iv) The quality of the applicant's plan to use its resources and personnel to achieve each objective;

(v) How the applicant will ensure that project participants who are otherwise eligible to participate are selected without regard to race, color, national origin, gender, age, or handicapping condition; and

(vi) For grants under a program that requires the applicant to provide an opportunity for participation of students enrolled in private schools, the quality of the applicant's plan to provide that opportunity.

(4) *Quality of key personnel.* (10 points)

(i) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(A) The qualifications of the project director (if one is to be used);

(B) The qualifications of each of the other key personnel to be used in the project;

(C) The time that each person referred to in paragraph (b)(4)(i) (A) and (B) will commit to the project; and

(D) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or handicapping condition.

(ii) To determine personnel qualifications under paragraphs (b)(4)(i) (A) and (B), the Secretary considers—

(A) Experience and training in fields related to the objectives of the project; and

(B) Any other qualifications that pertain to the quality of the project.

(5) *Budget and cost effectiveness.* (5 points) The Secretary reviews each application to determine the extent to which—

(i) The budget is adequate to support the project; and

(ii) Costs are reasonable in relation to the objectives of the project.

(6) *Evaluation plan.* (5 points) The Secretary reviews each application to determine the quality of the evaluation plan for the project, including the extent to which the applicant's methods of evaluation—

(i) Are appropriate to the project; and

(ii) To the extent possible, are objective and produce data that are quantifiable.

Cross-reference: See 34 CFR 75.590 Evaluation by the grantee.

(7) *Adequacy of resources.* (5 points) The Secretary reviews each application to determine the adequacy of the resources that the applicant plans to devote to the project, including facilities, equipment, and supplies.

Instructions for Transmittal of Applications

(a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and two copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.217), Washington, DC 20202–4725, or

(2) Hand deliver the original and two copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.217), Room #3633, Regional Office Building #3, 7th and D Streets SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary

does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) An applicant wishing to know that its application has been received by the Department must include with the application a stamped, self-addressed postcard containing the CFDA number and title of this program.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number—and letter, if any—of the competition under which the application is being submitted.

Application Instructions and Forms

The appendix to this application is divided into three parts. These parts are organized in the same manner that the submitted application should be organized. The parts are as follows:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and instructions.

Part II: Budget Information—Non-Construction Programs (Standard Form 424A) and instructions.

PART III: Application Narrative.

Assurances—Non-Construction Programs (Standard Form 424B).

Assurances—Ronald E. McNair Post-Baccalaureate.

Certification regarding Debarment, Suspension, and Other Responsibility

Matters: Primary Covered Transactions (ED Form GCS–008) and instructions.

Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form GCS–009) and instructions.

Note: ED Form GCS–009 is intended for the use of primary participants and should not be transmitted to the Department.

One or both of the following, as appropriate:

Certification Regarding Drug-Free Workplace Requirements: Grantees Other than Individuals (ED 80–0004).

Certification Regarding Drug-Free Workplace Requirements: Grantees Who Are Individuals (ED 80–0005).

An applicant may submit information on a photostatic copy of the application and budget forms, the assurances, and the certification. However, the application form, the assurances, and the certification must each have an original signature. No grant may be awarded unless a completed application form has been received.

FOR FURTHER INFORMATION CONTACT:

Mrs. May J. Weaver, Acting Chief, Special Services Branch, Division of Student Services, Office of Postsecondary Education, Department of Education, Room 3066 ROB–3 400 Maryland Avenue SW., Washington, DC, 20202–5249. Telephone: (202) 732–4804.

Program Authority: 20 U.S.C. 1070d–1b.

Dated: April 21, 1989.

James B. Williams,
Acting Assistant Secretary for Postsecondary Education.

BILLING CODE 4000–01–M

BUDGET INFORMATION — Non-Construction Programs						OMB Approval No. 0348-0044
SECTION A — BUDGET SUMMARY						
Grant Program Function or Activity (a)	Catalog of Federal Domestic Assistance Number (b)	Estimated Unobligated Funds		New or Revised Budget		
		Federal (c)	Non-Federal (d)	Federal (e)	Non-Federal (f)	Total (g)
1.		\$	\$	\$	\$	\$
2.						
3.						
4.						
5. TOTALS		\$	\$	\$	\$	\$
SECTION B — BUDGET CATEGORIES						
6 Object Class Categories	GRANT PROGRAM, FUNCTION OR ACTIVITY				Total (5)	
	(1)	(2)	(3)	(4)		
a. Personnel	\$	\$	\$	\$	\$	
b. Fringe Benefits						
c. Travel						
d. Equipment						
e. Supplies						
f. Contractual						
g. Construction						
h. Other						
i. Total Direct Charges (sum of 6a - 6h)						
j. Indirect Charges						
k. TOTALS (sum of 6i and 6j)	\$	\$	\$	\$	\$	
7 Program Income	\$	\$	\$	\$	\$	

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Standard Form 424A (4-88)
Prescribed by OMB Circular A-102

SECTION C - NON-FEDERAL RESOURCES					
(a) Grant Program	(b) Applicant	(c) State	(d) Other Sources	(e) TOTALS	
8.	\$	\$	\$	\$	
9.					
10.					
11.					
12. TOTALS (sum of lines 8 and 11)	\$	\$	\$	\$	
SECTION D - FORECASTED CASH NEEDS					
13. Federal	Total for 1st Year	1st Quarter	2nd Quarter	3rd Quarter	4th Quarter
	\$	\$	\$	\$	\$
14. NonFederal					
15. TOTAL (sum of lines 13 and 14)	\$	\$	\$	\$	\$
SECTION E - BUDGET ESTIMATES OF FEDERAL FUNDS NEEDED FOR BALANCE OF THE PROJECT					
(a) Grant Program	FUTURE FUNDING PERIODS (Years)				
	(b) First	(c) Second	(d) Third	(e) Fourth	
16.	\$	\$	\$	\$	
17.					
18.					
19.					
20. TOTALS (sum of lines 16-19)	\$	\$	\$	\$	
SECTION F - OTHER BUDGET INFORMATION (Attach additional Sheets if Necessary)					
21. Direct Charges:		22. Indirect Charges:			
23. Remarks					

INSTRUCTIONS FOR THE SF-424A

General Instructions

This form is designed so that application can be made for funds from one or more grant programs. In preparing the budget, adhere to any existing Federal grantor agency guidelines which prescribe how and whether budgeted amounts should be separately shown for different functions or activities within the program. For some programs, grantor agencies may require budgets to be separately shown by function or activity. For other programs, grantor agencies may require a breakdown by function or activity. Sections A, B, C, and D should include budget estimates for the whole project except when applying for assistance which requires Federal authorization in annual or other funding period increments. In the latter case, Sections A, B, C, and D should provide the budget for the first budget period (usually a year) and Section E should present the need for Federal assistance in the subsequent budget periods. All applications should contain a breakdown by the object class categories shown in Lines a-k of Section B.

Section A. Budget Summary
Lines 1-4, Columns (a) and (b)

For applications pertaining to a single Federal grant program (Federal Domestic Assistance Catalog number) and not requiring a functional or activity breakdown, enter on Line 1 under Column (a) the catalog program title and the catalog number in Column (b).

For applications pertaining to a single program requiring budget amounts by multiple functions or activities, enter the name of each activity or function on each line in Column (a), and enter the catalog number in Column (b). For applications pertaining to multiple programs where none of the programs require a breakdown by function or activity, enter the catalog program title on each line in Column (a) and the respective catalog number on each line in Column (b).

For applications pertaining to multiple programs where one or more programs require a breakdown by function or activity, prepare a separate sheet for each program requiring the breakdown. Additional sheets should be used when one form does not provide adequate space for all breakdown of data required. However, when more than one sheet is used, the first page should provide the summary totals by programs.

Lines 1-4, Columns (c) through (g.)

For new applications, leave Columns (c) and (d) blank. For each line entry in Columns (a) and (b), enter in Columns (e), (f), and (g) the appropriate amounts of funds needed to support the project for the first funding period (usually a year).

Lines 1-4, Columns (c) through (g.) (continued)

For continuing grant program applications, submit these forms before the end of each funding period as required by the grantor agency. Enter in Columns (c) and (d) the estimated amounts of funds which will remain unobligated at the end of the grant funding period only if the Federal grantor agency instructions provide for this. Otherwise, leave these columns blank. Enter in columns (e) and (f) the amounts of funds needed for the upcoming period. The amount(s) in Column (g) should be the sum of amounts in Columns (e) and (f).

For supplemental grants and changes to existing grants, do not use Columns (c) and (d). Enter in Column (e) the amount of the increase or decrease of Federal funds and enter in Column (f) the amount of the increase or decrease of non-Federal funds. In Column (g) enter the new total budgeted amount (Federal and non-Federal) which includes the total previous authorized budgeted amounts plus or minus, as appropriate, the amounts shown in Columns (e) and (f). The amount(s) in Column (g) should not equal the sum of amounts in Columns (e) and (f).

Line 5 — Show the totals for all columns used.

Section B Budget Categories

In the column headings (1) through (4), enter the titles of the same programs, functions, and activities shown on Lines 1-4, Column (a), Section A. When additional sheets are prepared for Section A, provide similar column headings on each sheet. For each program, function or activity, fill in the total requirements for funds (both Federal and non-Federal) by object class categories.

Lines 6a-i — Show the totals of Lines 6a to 6h in each column.

Line 6j — Show the amount of indirect cost.

Line 6k — Enter the total of amounts on Lines 6i and 6j. For all applications for new grants and continuation grants the total amount in column (5), Line 6k, should be the same as the total amount shown in Section A, Column (g), Line 5. For supplemental grants and changes to grants, the total amount of the increase or decrease as shown in Columns (1)-(4), Line 6k should be the same as the sum of the amounts in Section A, Columns (e) and (f) on Line 5.

INSTRUCTIONS FOR THE SF-424A (continued)

Line 7 — Enter the estimated amount of income, if any, expected to be generated from this project. Do not add or subtract this amount from the total project amount. Show under the program narrative statement the nature and source of income. The estimated amount of program income may be considered by the federal grantor agency in determining the total amount of the grant.

Section C. Non-Federal-Resources

Lines 8-11 — Enter amounts of non-Federal resources that will be used on the grant. If in-kind contributions are included, provide a brief explanation on a separate sheet.

Column (a) — Enter the program titles identical to Column (a), Section A. A breakdown by function or activity is not necessary.

Column (b) — Enter the contribution to be made by the applicant.

Column (c) — Enter the amount of the State's cash and in-kind contribution if the applicant is not a State or State agency. Applicants which are a State or State agencies should leave this column blank.

Column (d) — Enter the amount of cash and in-kind contributions to be made from all other sources.

Column (e) — Enter totals of Columns (b), (c), and (d).

Line 12 — Enter the total for each of Columns (b)-(e). The amount in Column (e) should be equal to the amount on Line 5, Column (f), Section A.

Section D. Forecasted Cash Needs

Line 13 — Enter the amount of cash needed by quarter from the grantor agency during the first year.

Line 14 — Enter the amount of cash from all other sources needed by quarter during the first year.

Line 15 — Enter the totals of amounts on Lines 13 and 14.

Section E. Budget Estimates of Federal Funds Needed for Balance of the Project

Lines 16 - 19 — Enter in Column (a) the same grant program titles shown in Column (a), Section A. A breakdown by function or activity is not necessary. For new applications and continuation grant applications, enter in the proper columns amounts of Federal funds which will be needed to complete the program or project over the succeeding funding periods (usually in years). This section need not be completed for revisions (amendments, changes, or supplements) to funds for the current year of existing grants.

If more than four lines are needed to list the program titles, submit additional schedules as necessary.

Line 20 — Enter the total for each of the Columns (b)-(e). When additional schedules are prepared for this Section, annotate accordingly and show the overall totals on this line.

Section F. Other Budget Information

Line 21 — Use this space to explain amounts for individual direct object-class cost categories that may appear to be out of the ordinary or to explain the details as required by the Federal grantor agency.

Line 22 — Enter the type of indirect rate (provisional, predetermined, final or fixed) that will be in effect during the funding period, the estimated amount of the base to which the rate is applied, and the total indirect expense.

Line 23 — Provide any other explanations or comments deemed necessary.

INSTRUCTIONS FOR PART III - Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the Description of Program and the Selection Criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should --

1. Begin with an Abstract; that is, a summary of the proposed project;
2. Describe the proposed project in light of the information required by the program legislation (See Description of Program (i) - (iii)) and each of the selection criteria in the order in which the criteria are listed in this application package; and
3. Include any other pertinent information that might assist the Secretary in reviewing the application.

Please limit the Application Narrative to no more than 25 double-spaced typed pages (on one side only).

Public reporting burden for this collection of information is estimated to average 25 hours (~~one hour~~) per response, including the time for reviewing instructions, searching existing data sources, and gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, D.C. 20202-4651; and to the Paperwork Reduction Project, OMB 1840-0619, Office of Management and Budget, Washington, D.C. 20503.

(Information collection approved under OMB control number 1840-0619.

Expiration date: March 31, 1990)

OMB Approval No. 0348-0048

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

- Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
- Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
- Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
- Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
- Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
- Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
- Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
- Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
- Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

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Prescribed by OMB Circular A-102

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- Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is \$10,000 or more.
- Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
- Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
- Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
- Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
- Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling, and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
- Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
- Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
- Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE	
APPLICANT ORGANIZATION		DATE SUBMITTED

SF 121B (4-88) B&C

ASSURANCES-RONALD E. MCNAIR POST-BACCALAUREATE ACHIEVEMENT PROGRAM

As the duly authorized representative of the applicant, I certify that the applicant will comply with the statutory requirements that:

1. Not less than two-thirds of the individuals participating in the project proposed to be carried out under this application be low-income individuals who are first-generation college students;
2. The remaining persons participating in the project proposed to be carried out be from a group that is underrepresented in graduate education;
3. Participants be enrolled in a degree program at an eligible institution in accordance with the provisions of Section 487 of the Higher Education Act of 1965, as amended; and
4. Participants in summer research internships, if any, have completed their sophomore year in post-secondary education.

Signature of Authorized Certifying Official	Title
Applicant Organization	Date Submitted

As these terms are used above,

1-A "low-income individual" means an individual whose family's taxable income did not exceed 150 percent of the poverty level (determined by using criteria of poverty established by the Bureau of the Census) in the calendar year preceding the year in which the individual participates in the project.

2-A "first generation college student" means an individual both of whose parents did not complete a baccalaureate degree; or in the case of any individual who regularly resided with and received support from only one parent, an individual whose only such parent did not complete a baccalaureate degree.

**Certification Regarding
Debarment, Suspension, and Other Responsibility Matters
Primary Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 *Federal Register* (pages 19160-19211). Copies of the regulations may be obtained by contacting the U.S. Department of Education, Grants and Contracts Service, 400 Maryland Avenue, S.W. (Room 3633 GSA Regional Office Building No. 3), Washington, D.C. 20202-4725, telephone (202) 732-2505.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

(1) The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
- (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- (c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and
- (d) Have not within a three-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

(2) Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.
2. The inability of a person to provide the certification required below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such person from participation in this transaction.
3. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.
4. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if at any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
5. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is being submitted for assistance in obtaining a copy of those regulations.
6. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.
7. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
8. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
9. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
10. Except for transactions authorized under paragraph 6 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

**Certification Regarding
Debarment, Suspension, Ineligibility and Voluntary Exclusion
Lower Tier Covered Transactions**

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, Section 85.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211). Copies of the regulations may be obtained by contacting the person to which this proposal is submitted.

(BEFORE COMPLETING CERTIFICATION, READ INSTRUCTIONS ON REVERSE)

- (1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.
- (2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.
2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.
8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification Regarding Drug-Free Workplace Requirements Grantees Other Than Individuals

This certification is required by the regulations implementing the Drug-Free Workplace Act of 1988, 34 CFR Part 85, Subpart F. The regulations, published in the January 31, 1989 *Federal Register*, require certification by grantees, prior to award, that they will maintain a drug-free workplace. The certification set out below is a material representation of fact upon which reliance will be placed when the agency determines to award the grant. False certification or violation of the certification shall be grounds for suspension of payments, suspension or termination of grants, or governmentwide suspension or debarment (see 34 CFR Part 85, Sections 85.615 and 85.620).

The grantee certifies that it will provide a drug-free workplace by:

- (a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;
- (b) Establishing a drug-free awareness program to inform employees about—
 - (1) The dangers of drug abuse in the workplace;
 - (2) The grantee's policy of maintaining a drug-free workplace;
 - (3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - (4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;
- (c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);
- (d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will—
 - (1) Abide by the terms of the statement; and
 - (2) Notify the employer of any criminal drug statute conviction for a violation occurring in the workplace no later than five days after such conviction;
- (e) Notifying the agency within ten days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction;
- (f) Taking one of the following actions, within 30 days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted—
 - (1) Taking appropriate personnel action against such an employee, up to and including termination; or
 - (2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;
- (g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e) and (f).

Organization Name

PR/Award Number or Project Name

Name and Title of Authorized Representative

Signature

Date

ED 80-0004

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federal register

Friday
June 9, 1989

Part VII

Department of Education

Rehabilitation Long-Term Training
Program, and Experimental and
Innovative Training Program; Notices

DEPARTMENT OF EDUCATION

Rehabilitation Services Administration

Rehabilitation Training Program

AGENCY: Department of Education.
ACTION: Notice of Final Priorities for Fiscal Years 1989 and 1990.

SUMMARY: The Secretary of Education announces funding priorities in fiscal years 1989 and 1990 for rehabilitation training activities to be supported under the following Rehabilitation Training Programs of the Rehabilitation Services Administration:

—Rehabilitation Long-Term Training
 —Experimental and Innovative Training

EFFECTIVE DATE: These final funding priorities take effect either 45 days after publication in the *Federal Register* or later if the Congress takes certain adjournments. If you want to know the effective date of the final funding priorities, call or write the Department of Education contact person. A document announcing the effective date will be published in the *Federal Register*.

FOR FURTHER INFORMATION CONTACT: Delores Watkins, Division of Resource Development, Office of Developmental Programs, Rehabilitation Services Administration, Office of Special Education and Rehabilitative Services, Department of Education, 400 Maryland Avenue, SW., (Switzer Building, Room 3324), Washington, DC 20202-2649. Telephone: (202) 732-1400.

SUPPLEMENTARY INFORMATION: Grants for the Rehabilitation Training Program are authorized by Title III, section 304 of the Rehabilitation Act of 1973, as amended. Program regulations for the Rehabilitation Long-Term Training Program are established in 34 CFR Part 386. The purpose of the Rehabilitation Long-Term Training Program is to support projects designed to increase the supply of qualified personnel available for employment in public and private agencies and institutions involved in the vocational and independent living rehabilitation of individuals with physical and mental disabilities, especially those who are the most severely disabled.

Program regulations for the Experimental and Innovative Training Program are established in 34 CFR Part 387. The purpose of the Experimental and Innovative Training Program is to support projects designed to develop new types of training programs for rehabilitation personnel, to demonstrate the effectiveness of these new types of training programs for rehabilitation personnel in providing rehabilitation

services to persons with severe disabilities, and to develop new and improved methods of training rehabilitation personnel and to achieve more effective delivery of rehabilitation services by State and other rehabilitation agencies.

The Department completed a study in 1989 to update data collected in a previous study of rehabilitation personnel shortages completed in 1987. Data collected through the 1989 study has been used to assist in directing Rehabilitation Training Program funds to areas of identified rehabilitation personnel shortage in fiscal years 1989 and 1990. Based on the results of the 1989 study, no revisions have been made in the funding priorities established for the Rehabilitation Training Program for fiscal years 1989 and 1990.

Awards are made under this program to State vocational rehabilitation agencies and other public and private agencies and organizations, including institutions of higher education.

On February 16, 1989, the Secretary published a notice of proposed priorities for this program in the *Federal Register* (54 FR 7152). Except for minor editorial and technical revisions, there are no differences between the proposed priorities and these final priorities.

Analysis of Comments and Responses

In response to the Secretary's invitation in the notice of proposed priorities, eight parties submitted comments on the proposed priorities. Three parties submitted comments on the proposed priority for Rehabilitation Counseling under the Rehabilitation Long-Term Training Program. Four parties submitted comments on the proposed priority under the Experimental and Innovative Training Program. One party submitted comments that recommended the establishment of a specific priority under the Rehabilitation Long-Term Training Program for the field of Speech-Language Pathology and Audiology. An analysis of the comments and of the changes in the priorities since publication of the proposed priorities follows. Technical and other minor changes are not addressed.

Rehabilitation Counseling

Comment: One commenter recommended that language be added to the priority to permit the support of training at the master's or doctoral level.

Discussion: The 1984 Amendments to the Rehabilitation Act mandate that Rehabilitation Training Program funds be directed to areas of identified personnel shortage. In accordance with this mandate, the Department of

Education initiated surveys of rehabilitation personnel shortages in 1986 and 1988 to identify areas of personnel shortage. The data collected through these surveys have substantiated the need for training at the master's degree level in the field of Rehabilitation Counseling. The Secretary has, therefore, reserved funds for the support of master's degree level training projects in Rehabilitation Counseling. The Department, on the other hand, does not currently have available data to substantiate the need for doctoral level training in the field of Rehabilitation Counseling.

Change: None.

Comment: One commenter suggested that language be added to the priority to require that rehabilitation counseling personnel have specialized skills and knowledge necessary to serve individuals who are Spanish-speaking and individuals who are deaf.

Discussion: The priority does not preclude the support of training that will prepare rehabilitation counseling personnel with specialized skills and knowledge in serving individuals who are Spanish-speaking and individuals who are deaf. The Department has published similar priorities for the field of Rehabilitation Counseling in recent fiscal years and is currently supporting training programs in the field of Rehabilitation Counseling that prepare specialized personnel to work with individuals who are deaf. The Department also provides separate funding to train rehabilitation professionals specializing in deafness under the Rehabilitation Long-Term Training Program. The Secretary believes that the described priority would also allow the support of projects designed to prepare specialized rehabilitation counseling personnel to serve individuals who are Spanish-speaking.

Change: None.

Comment: One commenter suggested the inclusion of a priority to train the present complement of rehabilitation counselors in the various State vocational rehabilitation agencies.

Discussion: The Department initiated surveys of rehabilitation personnel shortages in 1986 and 1988 that have indicated the need to increase the number of rehabilitation counselors available for employment in rehabilitation service delivery. In response to an identified area of personnel shortage, the Secretary has established a priority for master degree level training in the field of Rehabilitation Counseling. In addition to the training available under the

Rehabilitation Long-Term Training Program for rehabilitation counseling personnel, the present complement of rehabilitation counselors in State vocational rehabilitation agencies can be trained through funds available under the Rehabilitation Continuing Education Program and the State Vocational Rehabilitation Unit In-Service Training Program. These programs are specifically intended to provide training that will maintain and upgrade the skills and knowledge of currently employed rehabilitation service delivery personnel, including rehabilitation counseling personnel.

Change: None.

Comment: One commenter suggested that the rehabilitation long-term training field of Speech-Language Pathology and Audiology be identified as a priority.

Discussion: The Secretary does not believe that data from surveys initiated by the Department to identify areas of personnel shortage substantiate the need for funds to support new projects in the field of Speech-Language Pathology and Audiology. Based on data collected through personnel shortage surveys initiated by the Department, funds have been allocated for the field of Speech-Language Pathology and Audiology for the support of continuation projects only in fiscal year 1989.

Change: None.

Experimental and Innovative Training

Comments: Two commenters suggested that a priority be added to address the training of service providers and educators of service providers for individuals with severe disabilities, especially adults with traumatic brain injury. Another commenter recommended removal or alteration of the priority to include other types of experimental and innovative training.

Discussion: In addition to funding for the priority area, funds will be made available for the support of new Experimental and Innovative Training Program projects under a "Non-Priority" category. This will permit the Department the flexibility to support experimental and innovative training projects in areas that are not responsive to the described priority for this program, including the area of service delivery to adults with traumatic brain injury.

Change: None.

Comment: One commenter recommended that a priority be added to train personnel who can provide assistance technology services in the vocational rehabilitation process,

especially in the area of supported employment.

Discussion: Data collected by the Department in rehabilitation personnel shortage surveys it initiated in 1986 and 1988 have identified the need to train personnel in the area of Rehabilitation Engineering. In accordance with the data, the Department allocated funds in fiscal year 1987 for the support of new projects under the Rehabilitation Long-Term Training Program in the field of Rehabilitation Engineering. The Department considers it advisable at this time to permit currently funded grantees in the area of Rehabilitation Engineering to complete their projects and to assess the results of those projects before additional funds are identified for training in the area of assistive technology. Since funds will be available under the Experimental and Innovative Training Program for a "Non-Priority" category, training projects may be funded in areas under this program that are not responsive to the described priority, including assistive technology.

Change: None.

Final Priorities

In accordance with the Education Department General Administrative Regulations (EDGAR) in 34 CFR 75.105(c)(3), the Secretary will set aside funds and give an absolute preference to applications submitted under the Rehabilitation Long-Term Training Program in the field of Rehabilitation Counseling and under the Experimental and Innovative Training Program that address one of the priorities described in the notice. An absolute preference is one that permits the Secretary to select only those applications that meet the described priorities.

The publication of these priorities does not bind the United States Department of Education to fund projects in any or all of these training areas, unless otherwise specified in statute. Funding of particular projects depends on the availability of funds and the quality of the applications received.

Final Priorities for Rehabilitation Long-Term Training Program

Priority 1—Rehabilitation Counseling

Projects in the long-term training field of Rehabilitation Counseling must provide training at the master's degree level that is designed to improve and strengthen the capacity of rehabilitation counselors to serve and place individuals with severe disabilities in employment, especially competitive employment, and arrange for independent living rehabilitation services and promote community

options for individuals with severe disabilities. The training must directly involve trainees with business and industry in providing rehabilitation services, especially placement services, to individuals with severe physical and mental disabilities, and in providing independent living rehabilitation services to individuals with severe disabilities.

The coursework must be designed to provide trainees with skills and knowledge in: (1) Interpreting diagnostic, psychological, and educational background information to assess the functional capacities of, and do vocational and independent living rehabilitation planning for, individuals with disabilities, including traumatically brain-injured individuals, chronically mentally ill individuals, and learning-disabled individuals; and (2) planning effective vocational and independent living rehabilitation programs for, and delivering rehabilitation services to, individuals with disabilities, including traumatically brain-injured, chronically mentally ill, and learning-disabled individuals; (3) job development, job modification, and job restructuring; (4) workers' compensation programs; (5) providing vocational and independent living rehabilitation services to individuals with disabilities to facilitate their transition from school to employment; (6) providing supported employment services to individuals with disabilities; (7) providing services to individuals with disabilities to facilitate their integration in the community; (8) the applicability of sections 501, 502, 503, and 504 of the Rehabilitation Act and their implications for placement of individuals with disabilities, including the implications of section 504 for non-discrimination in all programs receiving Federal financial assistance; (9) utilizing rehabilitation engineering resources; (10) the services available under the Client Assistance Program; and (11) consulting with employers and potential employers to identify employment opportunities for individuals with disabilities, to educate and train employers in identifying and removing barriers to the employment of individuals with disabilities, and to educate or train employers and potential employers about various disabilities and the vocational implications of those disabilities. Practicum training must involve trainees directly with business and industry in developing jobs and placing individuals with disabilities in competitive employment and with agencies providing independent living rehabilitation services to individuals with disabilities. The practicum training may include trainee experiences in

business and industry settings and independent living programs.
Awards made in this field will be grants.

Priority 2—Other

Proposed projects under this priority must be directed to the collection, cataloging, storage, and dissemination of rehabilitation training materials.

This priority is intended to ensure that training materials of all types developed under the Rehabilitation Training Program and other training materials relevant for the training of rehabilitation personnel are available for dissemination to the rehabilitation community.

Proposed projects under this priority must demonstrate the need for the training support activity, define the proposed approach to be utilized, and substantiate the cost effectiveness of the proposed approach.

The award made under this priority will be a cooperative agreement.

Final Priority for Experimental and Innovative Training Program

The training under this priority must address the training of direct service delivery personnel to provide community-based supported employment services. The 1986 Amendments to the Rehabilitation Act of 1973 established a State supported employment formula grant program and added supported employment as an acceptable employment outcome under the State vocational rehabilitation services program under Title I of the Act. While supported employment is a viable rehabilitation method for achieving competitive employment for individuals with the most severe disabilities, there is a critical shortage of direct service delivery personnel, such as job coaches, to provide supported employment services. Unless this shortage is addressed, the full benefits of the new program and services under the vocational rehabilitation program may be delayed unnecessarily.

Training under this priority may be academic or non-academic in nature. Non-academic training may include a sequential series of workshops or seminars and practicum experiences in community-based settings that directly involve trainees in providing supported employment services to individuals with the most severe disabilities. Projects may provide intensive training in all skill areas necessary for direct service personnel to provide effective supported employment services.

Individuals who will be trained in the program may be currently employed, recruited from retirement, or already

participating in another educational program. The training may be supplementary to an existing training program.

The awards made under this priority will be grants.

(Authority: 29 U.S.C. 774)
(Catalog of Federal Domestic Assistance No. 84.129, Rehabilitation Training Program)

Dated: May 18, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89-13727 Filed 6-8-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF EDUCATION

[CFDA No.: 84.129]

Rehabilitation Long-Term Training Program; Invitation for Applications for New Awards in the Areas of Rehabilitation Counseling and "Other" for Fiscal Year (FY) 1989

Purpose of program: This program provides grants to State agencies and other public or nonprofit agencies and organizations, including institutions of higher education, for projects designed to increase the supply of qualified personnel available for employment in public and private agencies and institutions involved in the vocational and independent living rehabilitation of individuals with physical and mental disabilities and to maintain and upgrade basic skills and knowledge of personnel employed as providers of vocational, medical, social or psychological rehabilitation services.

Deadline for Transmittal of Applications: July 25, 1989.

Applications Available: June 13, 1989.
Estimated Total Available Funds: \$1,200,000.

Awards are to be made in two priority categories. Specific information regarding estimated funds and awards appears in the chart in this notice.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, and 85; and (b) The regulations for this program in 34 CFR Parts 385 and 386.

The priorities in the notice of final priorities for this program, as published in this issue of the **Federal Register**, also apply.

For Applications or Information Contact: Mary Ford, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332 (Switzer Building),

Washington, DC, 20202-2650. Telephone: (202) 732-1351.

Program Authority: 29 U.S.C. 774.

Dated: June 6, 1989.

Patricia McGill Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

Category	Estimated available funds	Estimated average size of awards	Estimated No. of awards
Priority 1—Rehabilitation counseling.....	\$1,000,000	\$100,000	10
Priority 2—Other	\$200,000	\$200,000	1

[FR Doc. 89-13728 Filed 6-8-89; 8:45 am]

BILLING CODE 4000-01-M

[CFDA No.: 84.129]

Experimental and Innovative Training Program; Invitation for Applications for New Awards for Fiscal Year (FY) 1989

Purpose of program: This program provides grants to State agencies and other public or nonprofit agencies and organizations, including institutions of higher education, to develop new types of training programs for rehabilitation personnel and to demonstrate the effectiveness of these new types of training programs for rehabilitation personnel in providing rehabilitation services to persons with severe disabilities and to develop new and improved methods of training rehabilitation personnel to achieve more effective delivery of rehabilitation services by State and other rehabilitation agencies.

Deadline for transmittal of applications: July 25, 1989.

Applications available: June 13, 1989.
Estimated total available funds: \$500,000.

Awards are to be made in one priority category and one non-priority category. Specific information regarding estimated funds and awards appears in the chart in this notice.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 36 months.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, and 85; and (b) The regulations for this program in 34 CFR Parts 385 and 387.

The priority in the notice of final priorities for this program, as published in this issue of the **Federal Register**, also applies.

For applications or information contact: Mary Ford, U.S. Department of Education, 400 Maryland Avenue, SW., Room 3332 (Switzer Building),

Washington, DC 20202-2650. Telephone: (202) 732-1351.

Program authority: 29 U.S.C. 774.

Dated: June 6, 1989.

Patricia McGill Smith,

Acting Assistant Secretary, Office of Special Education and Rehabilitative Services.

Category	Estimated available funds	Estimated average size of awards	Estimated No. of awards
Priority-training direct service delivery personnel to provide supported employment services to individuals with disabilities.....	\$300,000	\$150,000	2
Non-priority	\$200,000	\$100,000	2

[FR Doc. 89-13729 Filed 6-8-89; 8:45 am]

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federal register

Friday
June 9, 1989

Part VIII

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

**Terminal Control Area (TCA)
Classification and TCA Pilot and
Navigational Equipment Requirements;
Final Rule; Delay of Effective Date**

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25304; Amdt. No. 91-209]

RIN 2120-AC35

Terminal Control Area (TCA)
Classification and TCA Pilot and
Navigational Equipment RequirementsAGENCY: Federal Aviation
Administration (FAA), DOT.ACTION: Final rule; delay of effective
date.

SUMMARY: On October 6, 1988, the Federal Aviation Administration (FAA) issued Amendment Nos. 61-80, 71-11, and 91-205, Terminal Control Area (TCA) Classification and TCA Pilot and Navigational Equipment Requirements, (53 FR 40318). Those amendments require, among other things, all aircraft operating in a TCA to be equipped with Very High Frequency Omnidirectional Range (VOR) or tactical Air Navigation (TACAN) equipment, eliminating the previous exclusion for helicopters effective July 1, 1989. This action delays the effective date of the navigational equipment requirement for helicopter operations in a TCA until January 1, 1990.

The FAA by separate action intends to propose to amend the regulations requiring VOR or TACAN navigational equipment only for aircraft conducting operations under IFR. Consequently, the FAA is delaying the effective date of the TCA navigational equipment requirement for 180 days. This delay is necessary to allow interested parties to comment on the related equipment proposal and to delay purchase of equipment should that proposal be adopted.

EFFECTIVE DATE: June 6, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Robert L. Laser, Air Traffic Rules Branch, ATO-230, Airspace—Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-8783. Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-200, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 267-3484. Communications must identify the amendment number of the document.

SUPPLEMENTARY INFORMATION:

Background

On October 6, 1988, the Federal Aviation Administration (FAA) issued Amendment Nos. 61-80, 71-11, and 91-205, Terminal Control Area (TCA) Classification and TCA Pilot and Navigational Equipment Requirements (53 FR 40318). Those amendments require, among other things, all aircraft operating in a TCA to be equipped with VOR or TACAN navigational equipment thereby eliminating, effective July 1, 1989, the previous exclusion for helicopters from the navigation equipment requirement.

Since that time, the FAA has received numerous requests for exemption from the helicopter equipment requirement, and petitions to allow the use of certain area navigational equipment for operations in a TCA. Specifically, the National Association of State Aviation Officials, in its letter of January 14, 1989, stated that many new generation helicopters are operating with LORAN-C as a primary navigation system, and that LORAN-C equipment provides better position information than VOR equipment. The Experimental Aircraft Association (EAA), in its letter of January 5, 1989, advised the FAA that it had conducted an investigation concerning the TCA navigation equipment requirement. It was EAA's conclusion that LORAN-C produces more satisfactory results for many users and is much more useful for helicopter operations than VOR equipment. The Helicopter Association International (HAI) petitioned the FAA for a similar change to the equipment requirement—an exception to the VOR or TACAN requirements for visual flight rules (VFR) and special VFR helicopter operations. Several other organizations that use helicopters extensively have petitioned the FAA for exemption from the VOR/TACAN navigation equipment requirement citing that their aircraft are already equipped with LORAN-C.

Discussion

Section 91.33(d)(2) of the Federal Aviation Regulations (FAR) (14 CFR Part 91) specifies that all civil aircraft used to conduct instrument flight rules (IFR) operations must have " * * * navigational equipment appropriate to the ground facilities to be used." This provision is intentionally broad to allow the use of a variety of ground-based navigational facilities when conducting flight under IFR. However, the requirement is not applicable to public aircraft, i.e., aircraft used only in the service of a government, or a political subdivision, and foreign aircraft. Section 91.90 of the

FAR, Terminal Control Areas, provides a more specific navigational equipment requirement for both civil and public aircraft conducting IFR operations in a highly regulated air traffic control (ATC) environment. To illustrate, in the past, most departure and arrival procedures at TCA primary airports involved navigation via specific VOR radials to a given point along an airway, route, or precision instrument approach procedure. In the current radar environment the use of VOR radials in conjunction with departure and approach procedures is often replaced with radar vectoring procedures. However, the ATC system must be prepared to revert to a non-radar environment should the need arise, in which case, the VOR or TACAN requirement would be critical to the continued ATC separation of aircraft.

The need for specific navigational equipment for aircraft conducting operations in a TCA under VFR is a different issue. In a radar environment departure and arrival operations conducted by aircraft under IFR or VFR are handled by ATC in very much the same manner. Traffic operating under VFR is generally provided with radar vectors to points beyond which navigation within the TCA can be accomplished using pilotage or dead reckoning procedures. Should the radar become inoperative, ATC would simply allow VFR aircraft to navigate via visual reference to known checkpoints and landmarks where such routes can be procedurally separated from those used by IFR aircraft.

The Rule

Therefore, based on the foregoing, the FAA by separate action intends to propose to amend the regulations to require VOR or TACAN navigational equipment only for aircraft conducting operations under IFR. Consequently, the FAA is delaying the effective date of the TCA navigational equipment requirement for 180 days. This delay is necessary to allow interested parties to comment on the related equipment proposal and to delay purchase of equipment should that proposal be adopted.

Conclusion

For the above reasons the FAA has determined that this action is not a "major rule" under Executive Order 12291; and is a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). A full regulatory evaluation was prepared for the final rule in Docket No. 25304 and placed in the regulatory docket. This action to delay the effective date of one

part of that rule does not have any significant effect on the information and conclusions contained in that evaluation. Accordingly, the existing regulatory evaluation remain valid and no further evaluation is required. Also, for the reasons contained in the regulatory evaluation in the docket, I certify that this action will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Federalism Determination

The requirements proposed herein would not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore,

in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

Aviation safety, Safety, Aircraft, Air traffic control, Pilots, Airspace, Air transportation, and Airports.

The Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration amends Part 91 of the Federal Aviation Regulations (14 CFR Part 91) as follows:

PART 91—(AMENDED)

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(f), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 *et seq.*; E.O. 11514; 49 U.S.C. 160(g) (Revised Pub. L. 97-449, January 12, 1983).

§ 91.90 [Amended]

2. Section 91.90(c)(1) is amended by replacing the words "July 1, 1989," with the words "January 1, 1990."

Issued in Washington, DC, on June 6, 1989.

Robert E. Whittington,

Acting Administrator.

[FR Doc. 89-13753, Filed 6-6-89; 3:46 pm]

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: June 15; at 9:00 a.m.
WHERE: Office of the Federal Register,
 First Floor Conference Room,
 1100 L Street, NW., Washington, DC
RESERVATIONS: 202-523-5240

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Title 3—

Proclamation 5988 of June 7, 1989

The President

Flag Day and National Flag Week, 1989

By the President of the United States of America

A Proclamation

While the American flag has changed through the years, the principles for which it stands have not.

The Stars and Stripes were adopted as our Nation's emblem on June 14, 1777, when the delegates to the Continental Congress resolved "that the flag of the thirteen United States be thirteen stripes, alternate red and white; that the union be thirteen stars, white in a blue field, representing a new constellation." This design captured the character of our fledgling Nation—while each State retained its distinct identity, all were united in the struggle to secure America's freedom and independence. The stars portraying the United States as a new constellation conveyed the shining promise of this land of liberty and opportunity.

Over the years, as more States were formed and added to the Union, the flag changed in appearance. Today, it boasts 50 stars, each representing one of the 50 States. What time and history have not altered are the ideals celebrated by the Stars and Stripes: America's dedication to individual liberty and her respect for the God-given rights of all men. The flag's brilliant colors continue to reflect the diversity of the American people, while its tightly woven fabric recalls our national unity.

As our national emblem, the flag should be treated with reverence. Our regard for the flag is a measure of our respect for the men and women who devoted their lives to this noble experiment in self-government; for the veterans who have carried Old Glory into battle; and for the pioneers who have carried it across the continent, to the ends of the earth, and even into space. When we turn to the flag with hand held high and hand over heart, we give due honor to those who have fashioned and defended the great Republic for which it stands.

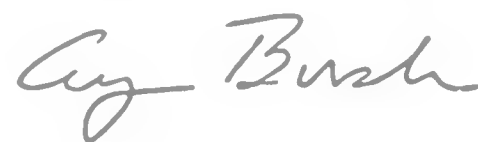
It is our solemn duty to ensure that the Stars and Stripes remain a symbol of a land that is good and free. We have a responsibility to ensure that generations yet unborn will be able to lift the flag with the same pride and sense of purpose as those who carried it at Yorktown, Gettysburg, Iwo Jima, and in every campaign for peace and liberty around the world. On Flag Day, and during National Flag Week, let us rededicate ourselves to the ideals of our forebears, so that our own children and grandchildren can always look to Old Glory as the emblem of "one Nation under God, indivisible, with liberty and justice for all."

To commemorate the adoption of our flag, the Congress, by a joint resolution approved August 3, 1949 (63 Stat. 492), designated June 14 of each year as Flag Day and requested the President to issue an annual proclamation calling for its observance and for the display of the flag of the United States on all government buildings. The Congress also requested the President, by joint resolution approved June 9, 1966 (80 Stat. 194), to issue annually a proclamation designating the week in which June 14 occurs as National Flag Week and calling upon all citizens of the United States to display the flag during that week.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim June 14, 1989, as Flag Day and the week beginning June 11 as National Flag Week. I direct the appropriate officials of the government to display the flag of the United States on all government buildings during that week. I urge all Americans to observe Flag Day, June 14, and Flag Week by flying the Stars and Stripes from their homes and other suitable places.

I also urge the American people to celebrate those days from Flag Day through Independence Day, also set aside by the Congress (89 Stat. 211), as a time to honor America by having public gatherings and activities at which they can honor their country in an appropriate manner, including publicly reciting the Pledge of Allegiance to the Flag of the United States of America.

IN WITNESS WHEREOF, I have hereunto set my hand this seventh day of June, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.



[FR Doc. 89-14060
Filed 6-8-89; 2:53 pm]
Billing code 3195-01-M

Rules and Regulations

Federal Register

Vol. 54, No. 111

Monday, June 12, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 918

[Docket No. FV-89-050]

Expenses and Assessment Rate for Marketing Order Covering Fresh Peaches Grown in Georgia

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule authorizes expenditures and establishes an assessment rate under Marketing Order 918 for the 1989-90 fiscal period which began March 1, 1989. This action is needed for the Georgia Peach Industry Committee (Committee) established under the order to incur operating expenses during the 1989-90 fiscal period and to collect funds during that period to pay those expenses. This will facilitate program operations. Funds to administer this program are derived from assessments on handlers.

EFFECTIVE DATES: March 1, 1989, through February 28, 1990 (§ 918.226).

FOR FURTHER INFORMATION CONTACT: George Kelhart, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2530-S, Washington, DC 20090-6456, telephone 202-475-3919.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Marketing Order No. 918 (7 CFR Part 918) regulating the handling of fresh peaches grown in Georgia. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has

been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 18 handlers of Georgia peaches regulated under this marketing order each season, and approximately 180 peach producers in Georgia. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of the handlers and producers of Georgia peaches may be classified as small entities.

The Georgia peach marketing order, administered by the Department of Agriculture (Department), requires that the assessment rate for each fiscal year shall apply to all assessable peaches handled from the beginning of such year. An annual budget of expenses is prepared by the Committee and submitted to the Department for approval. The members of the Committee are producers of Georgia peaches. They are familiar with the Committee's needs and with the costs for goods, services and personnel in their local area and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by the Committee is derived by dividing anticipated expenses by expected shipments of Georgia peaches (in bushels). Because that rate is applied to actual shipments, it must be established

at a rate which will produce sufficient income to pay the Committee's expected expenses. Recommended budgets and rates of assessment are usually acted upon by the Committee shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the Committee will have funds to pay its expenses.

The Committee unanimously recommended 1989-90 fiscal period expenditures of \$12,810 and an assessment rate of \$0.005 per bushel of assessable peaches shipped under M.O. 918. In comparison, 1988-89 fiscal period expenditures were \$11,122 and the assessment rate was \$0.005. The total budget, which is about the same as last year's, is for program administration.

Assessment income is estimated at \$7,486 for the 1989-90 fiscal period based on shipments of 1,497,200 bushels of fresh peaches. Interest income will amount to approximately \$1,587. Committee reserves funds will be utilized to cover the anticipated \$3,737 deficit for the 1989-90 fiscal period. In the 1988-89 fiscal period, assessment income totalled \$8,080 based on shipments of 1,339,000 assessable bushels of peaches and interest income totalled \$1,616.

Notice of this action was published in the Federal Register on May 15, 1989 (54 FR 20857). The comment period ended May 25, 1989. No comments were received.

While this action may impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed onto producers. However, these costs will be significantly offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of the information and recommendation submitted by the Committee, it is found that this final rule will tend to effectuate the declared policy of the Act.

This final rule should be expedited because the Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis. Therefore, it is also found that good cause exists for not postponing the

effective date of this action until 30 days after publication in the *Federal Register* (5 U.S.C. 553).

List of Subjects in 7 CFR Part 918

Marketing agreements and orders, Peaches, Georgia.

For the reasons set forth in the preamble, 7 CFR Part 918 is amended as follows:

Note: This section will not appear in the Code of Federal Regulations.

PART 918—FRESH PEACHES GROWN IN GEORGIA

1. The authority citation for 7 CFR Part 918 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. A new § 918.226, is added to read as follows:

§ 918.226 Expenses and assessment rate.

Expenses of \$12,810 by the Georgia Peach Industry Committee are authorized, and an assessment rate of \$0.005 per bushel of assessable peaches is established for the fiscal period ending February 28, 1990.

Dated: June 8, 1989.

William J. Doyle,
Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-13809 Filed 6-9-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

15 CFR Parts 773 and 775

[Docket No. 90408-9109]

Hong Kong Import Certificate; Replacing Hong Kong Import License as Required Support Document

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: Section 775.3 of the Export Administration Regulations (EAR) currently requires that applicants obtain the official duplicate copy of Form 3, Hong Kong Import License, in support of an individual validated license application (Form BXA-822P) for the export to Hong Kong of commodities identified by the code letter "A" following the Export Control Commodity Number. This final rule changes that requirement by instructing exporters to obtain the Hong Kong Import Certificate instead of the Hong Kong Import License. This rule also changes the name

and address of the Hong Kong authorities responsible for administering the Hong Kong Import Certificate/Delivery Verification procedure.

The Bureau of Export Administration has decided to make this change because the Hong Kong Import Certificate now complies with all the documentation elements considered essential by the Coordinating Committee on Multilateral Controls (COCOM).

Consistent with the grace period provided in § 775.9(b)(2) of the EAR, applicants for export licenses to Hong Kong may continue to use the Hong Kong Import License in support of their applications through July 27, 1989. Applications received by the Office of Export Licensing after that date must be supported by a Hong Kong Import Certificate.

EFFECTIVE DATE: This rule is effective June 12, 1989.

FOR FURTHER INFORMATION CONTACT: Willard Fisher, Regulations Branch, Bureau of Export Administration, Telephone: (202) 377-3856.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule complies with Executive Order 12291 and Executive Order 12661.

2. This rule does not contain a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The Hong Kong Import Certificate is issued by the Government of Hong Kong.

3. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

4. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

5. Section 13(a) of the Export Administration Act of 1979, as amended (EAA) (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553), including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the

EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

Therefore, this regulation is issued in final form. Although there is no formal comment period, public comments on this regulation are welcome on a continuing basis. Comments should be submitted to Willard Fisher, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Parts 773 and 775

Exports, Reporting and recordkeeping requirements.

Accordingly, Parts 773 and 775 of the Export Administration Regulations (15 CFR Parts 730-799) are amended as follows:

1. The authority citation for 15 CFR Part 773 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985, and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

2. The authority citation for 15 CFR Part 775 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981, by Pub. L. 99-64 of July 12, 1985, and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985).

PART 773—[AMENDED]

§ 773.8 [Amended]

3. In § 773.8, paragraph (d)(1) is amended by removing the phrase "a Hong Kong Import License," from the first sentence.

PART 775—[AMENDED]

§ 775.3 [Amended]

4. Section 775.3(b) is amended by removing the phrase "(see § 775.3(c)(3) of this section)" immediately following the words "Hong Kong" in the list of country destinations subject to the International Import Certificate/Delivery Verification Certificate System requirements.

5. Section 775.3(c) is amended by removing the phrase "Hong Kong Import License," from paragraph (c)(1) and by removing paragraph (c)(3).

6. Section 775.3(g)(1)(ii) is amended by removing the phrase "(or Hong Kong Import License)" from the first sentence of the certification and by removing the phrase "or Hong Kong Import License" from the second sentence of the certification.

7. Section 775.3(g)(2)(i) is amended by removing the phrase "(or Hong Kong Import License)" from the first sentence of the certification and by removing the phrase "or Hong Kong Import License" from the second sentence of the certification.

8. Section 775.3(g)(2)(ii) is amended by removing the phrases "(or Hong Kong Import License)" and "or Hong Kong Import License" from the certification.

§ 775.9 [Amended]

9. Section 775.9(f)(2) is amended by removing the phrase "(or Hong Kong Import License)" from the second certification.

Supplement No. 1 to Part 775—[Amended]

10. Supplement No. 1 to Part 775 is amended by revising the entry for Hong Kong to read as follows:

Authorities Administering Import Certificate/Delivery Verification System in Foreign Countries¹

Country	IC/DV authorities	System administered ²
Hong Kong.....	Trade Department, Ocean Centre, Canton Road, Tsimshalsui, Kowloon, Hong Kong.	IC/DV

² IC—Import Certificate and/or DV—Delivery Verification.

Dated: June 8, 1989.

James M. LeMunyon,
Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-13808 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-DT-M

¹ Facsimiles of Import Certificates and Delivery Verifications issued by each of these countries may be inspected at the Bureau of Export Administration Western Regional Office, 3300 Irvine Avenue, Suite 345, Newport Beach, California 92660-3198 or at any U.S. Department of Commerce District Office or at the Office of Export Licensing, Room 1099D, U.S. Department of Commerce, 14th Street and Pennsylvania Avenue, NW, Washington, DC 20230.

15 CFR Part 799

[Docket No. 80862-8162]

Revision of Validated License Controls on Low-Level Machine-Vision Systems

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Final rule.

SUMMARY: The Bureau of Export Administration maintains the Commodity Control List (CCL), which identifies those items subject to Department of Commerce export controls.

This rule amends the validated export license controls on certain low-level machine-vision systems controlled on the CCL when used as computer "related equipment" in ECCN 1565A(h). These commodities will now require a validated license for export only to destinations in Country Groups Q, S, W, Y and Z, the People's Republic of China, and Afghanistan for national security reasons. This action is in accordance with a finding of foreign availability under section 5(f) of the Export Administration Act of 1979, as amended.

Notice of the foreign availability determination on this equipment is published in the Notices section of this *Federal Register*.

EFFECTIVE DATE: This rule is effective June 12, 1989.

FOR FURTHER INFORMATION CONTACT: Maurice Cook, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-8074.

SUPPLEMENTARY INFORMATION:

Rulemaking Requirements

1. This rule is consistent with Executive Orders 12291 and 12661.

2. Section 13(a) of the Export Administration Act of 1979, as amended (50 U.S.C. app. 2412(a)), exempts this rule from all requirements of section 553 of the Administrative Procedure Act (APA) (5 U.S.C. 553) including those requiring publication of a notice of proposed rulemaking, an opportunity for public comment, and a delay in effective date. This rule is also exempt from these APA requirements because it involves a foreign and military affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in final form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

3. Because a notice of proposed rulemaking and an opportunity for

public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553), or by any other law, under sections 603(a) and 604(a) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. This rule involves a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control number 0694-0005.

5. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

Accordingly, this rule is being issued in final form. However, as with other Department of Commerce rules, comments from the public are always welcome. Comments should be submitted to Vincent Greenwald, Office of Technology and Policy Analysis, Bureau of Export Administration, Department of Commerce, P.O. Box 273, Washington, DC 20044.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, Part 799 of the Export Administration Regulations (15 CFR Parts 730-799) is amended as follows:

PART 799—[AMENDED]

1. The authority citation for Part 799 continues to read as follows:

Authority: Pub. L. 96-72, 93 Stat. 503 (50 U.S.C. app. 2401 *et seq.*), as amended by Pub. L. 97-145 of December 29, 1981 and by Pub. L. 99-64 of July 12, 1985 and by Pub. L. 100-418 of August 23, 1988; E.O. 12525 of July 12, 1985 (50 FR 28757, July 16, 1985); Pub. L. 95-223 of December 28, 1977 (50 U.S.C. 1701 *et seq.*); E.O. 12532 of September 9, 1985 (50 FR 36861, September 10, 1985) as affected by notice of September 4, 1986 (51 FR 31925, September 8, 1986); Pub. L. 99-440 of October 2, 1986 (22 U.S.C. 5001 *et seq.*); and E.O. 12571 of October 27, 1986 (51 FR 39505, October 29, 1986).

Supplement No. 1 to § 799.1 [Amended]

2. In Supplement No. 1 to § 799.1 (the Commodity Control List), Commodity Group 5 (Electronics and Precision Instruments), ECCN 1565A is amended by revising the *Validated License Required* paragraph to read "Country Groups QSTVWYZ. However, a validated license is required only to destinations in Country Groups QSWYZ, the People's Republic of China, and Afghanistan for low-level machine-vision systems controlled under

paragraph (h) that do not exceed any of the following:

- (1) Total number of image elements—65,536;
- (2) Shades of gray—256; or
- (3) Frames per second—3.3."

Dated: June 7, 1989.

James M. LeMunyon,
Deputy Assistant Secretary for Export
Administration.

[FR Doc. 89-13900 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-DT-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 87N-0246]

Certain Food, Cosmetic, and Miscellaneous Regulations; Editorial Amendments

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending certain of its food, cosmetic, and miscellaneous regulations to correct cross-references and typographical errors and to update the titles, mailing symbols, and addresses of certain organizations. This action will improve the accuracy and clarity of the regulations.

DATES: Effective June 12, 1989, except for: 21 CFR Parts 103, 108, 109, 131, 133, 135, 136, 137, 139, 145 (other than § 145.3), 146, 150, 155 (other than § 155.3), 156 (other than § 156.3), 160, 161, 163, 164, 166, 168, 169 (other than § 169.3), which are effective on July 13, 1989; written objections and requests for a hearing to 21 CFR Parts 103, 108, 109, 131, 133, 135, 136, 137, 139, 145 (except § 145.3), 146, 150, 155 (except § 155.3), 156 (except § 156.3), 160, 161, 163, 164, 166, 168, 169 (except § 169.3), 172, 173, 175, 176, 177, 178, 179, and 180 by July 12, 1989.

ADDRESSES: Written objections to 21 CFR Parts 103, 108, 109, 131, 133, 135, 136, 137, 139, 145 (except § 145.3), 146, 150, 155 (except § 155.3), 156 (except § 156.3), 160, 161, 163, 164, 166, 168, 169 (except § 169.3), 172, 173, 175, 176, 177, 178, 179, and 180 to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: T. Rada Proehl, Regulations Editorial Staff (HFC-222), Food and Drug

Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: FDA is revising certain of its food, cosmetic, and miscellaneous regulations to correct cross-references and typographical errors and to update the titles, mailing symbols, and addresses of certain organizations. The affected regulations are sections within 21 CFR Chapter I.

Publication of this document constitutes final action on the changes to 21 CFR Parts 70, 71, 80, 101, 102, 106, 110, 114, 130, 170, 181, 184, 189, 701, 1240, and 1250 and §§ 145.3, 155.3, 156.3, and 169.3 under the Administrative Procedure Act (5 U.S.C. 553). Notice and public procedure on these corrections are unnecessary because FDA is merely correcting outdated cross-references, typographical errors, and titles, mailing symbols, and addresses of certain organizations.

The portions of the final rule that revise 21 CFR Parts 103, 108, 109, 131, 133, 135, 136, 137, 139, 145 (except § 145.3), 146, 150, 155 (except § 155.3), 156 (except § 156.3), 160, 161, 163, 164, 166, 168, 169 (except § 169.3), 172, 173, 175, 176, 177, 178, 179, and 180 are being promulgated under authority of sections 409 and 701(e) of the Federal Food, Drug, and Cosmetic Act (the Act) (21 U.S.C. 348 and 371(e)), which require the agency to consider objections to final rulemaking. The agency notes, however, that none of the changes that the agency is making in these parts effect a substantive change. Any person who will be adversely affected by the revisions to these parts may at any time on or before July 12, 1989, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this

document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Therefore, under the authority of the Federal Food, Drug, and Cosmetic Act, the Federal Import Milk Act, and the Public Health Service Act, and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR Chapter I is amended as follows:

PART 70—COLOR ADDITIVES

1. The authority citation for 21 CFR Part 70 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376).

§ 70.19 [Amended]

2. Section 70.19 *Fees for listing* is amended in paragraph (p) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

PART 71—COLOR ADDITIVE PETITIONS

3. The authority citation for 21 CFR Part 71 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376).

§ 71.1 [Amended]

4. Section 71.1 *Petitions* is amended in paragraph (c) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

PART 80—COLOR ADDITIVE CERTIFICATION

5. The authority citation for 21 CFR Part 80 continues to read as follows:

Authority: Secs. 701, 706, 52 Stat. 1055-1056 as amended, 74 Stat. 399-407 as amended (21 U.S.C. 371, 376).

§ 80.10 [Amended]

6. Section 80.10 *Fees for certification services* is amended in paragraph (d) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 80.21 [Amended]

7. Section 80.21 *Request for certification* is amended in paragraphs (j) (1), (2), (3), and (4) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

PART 101—FOOD LABELING

8. The authority citation for 21 CFR Part 101 continues to read as follows:

Authority: Secs. 4, 6, Pub. L. 89-755, 80 Stat. 1297, 1299, 1300 (15 U.S.C. 1453, 1455); secs. 403, 701, Pub. L. 717, 52 Stat. 1047-1048 as amended, 1055-1056 as amended (21 U.S.C. 343, 371); 21 CFR 5.10 and 5.11; § 101.11 is issued only under secs. 201(s), 403(p), 409, 701(a), Pub. L. 717, 52 Stat. 1055, 72 Stat. 1784-1788 as amended 91 Stat. 1453 (21 U.S.C. 321(s), 343(p), 348, 371(a)) and Pub. L. 95-203, 91 Stat. 1451-1454 (21 U.S.C. 301 note); § 101.100(a)(4) is issued only under secs. 201(n) and (s), 403, 409, 701, 52 Stat. 1041 as amended, 1047-1048 as amended, 1055-1056 as amended, 72 Stat. 1784-1788 as amended (21 U.S.C. 321 (n) and (s), 343, 348, 371).

§ 101.9 [Amended]

9. Section 101.9 *Nutrition labeling of food* is amended in paragraph (a)(2) by removing "§ 105.3(a)(1)(iii) of this section" and replacing it with "§ 105.3(a)(1)(iii) of this chapter" and in paragraphs (c)(4) and (8) (i) and (ii) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 101.22 [Amended]

10. Section 101.22 *Foods; labeling of spices, flavorings, colorings and chemical preservatives* is amended in paragraph (a)(3) by removing "182.30".

§ 101.25 [Amended]

11. Section 101.25 *Labeling of foods in relation to fat and fatty acid and cholesterol content* is amended in paragraph (e)(3) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301" everywhere that it appears.

PART 102—COMMON OR USUAL NAME FOR NONSTANDARDIZED FOODS

12. The authority citation for 21 CFR Part 102 continues to read as follows:

Authority: Secs. 201(n), 403, 701(a), 52 Stat. 1041 as amended, 1047-1048 as amended, 1055 (21 U.S.C. 321(n), 343, 371(a)); 21 CFR 5.10 and 5.11.

§ 102.23 [Amended]

13. Section 102.23 *Peanut spreads* is amended in paragraph (c)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301" and in paragraph (c)(5) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

PART 103—QUALITY STANDARDS FOR FOODS WITH NO IDENTITY STANDARDS

14. The authority citation for 21 CFR Part 103 continues to read as follows:

Authority: Secs. 401, 403, 701, 52 Stat. 1046-1048 as amended, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 341, 343, 371); 21 CFR 5.10.

§ 103.35 [Amended]

15. Section 103.35 *Bottled water* is amended in the introductory text of paragraph (b) by removing "Division of Food Technology, Bureau of Foods (HFF-210)" and replacing it with "Division of Food Chemistry and Technology, Center for Food Safety and Applied Nutrition (HFF-410)".

PART 106—INFANT FORMULA QUALITY CONTROL PROCEDURES

16. The authority citation for 21 CFR Part 106 continues to read as follows:

Authority: Secs. 412, 701(a), 52 Stat. 1055, 94 Stat. 1190 (21 U.S.C. 350a, 371(a)).

§ 106.30 [Amended]

17. Section 106.30 *Finished product evaluation* is amended in paragraph (c)(2) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 106.120 [Amended]

18. Section 106.120 *New formulations and reformulations* is amended in paragraphs (a) and (b) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

PART 108—EMERGENCY PERMIT CONTROL

19. The authority citation for 21 CFR Part 108 continues to read as follows:

Authority: Secs. 402, 404, 701, 52 Stat. 1046-1047 as amended, 1048, 1055-1056 as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 342, 344, 371).

§ 108.5 [Amended]

20. Section 108.5 *Determination of the need for a permit* is amended in paragraph (a)(1) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition (HFF-310)".

§ 108.25 [Amended]

21. Section 108.25 *Acidified foods* is amended in paragraph (c)(1) by removing "FD-2541", and "Bureau of Foods, Industry Guidance Branch (HFF-342)." everywhere that it appears, and replacing it with "FDA 2541" and

"Center for Food Safety and Applied Nutrition, LACF Registration Coordinator (HFF-233)," respectively, in paragraph (c)(2) by removing "form FD-2541c (food canning establishment and process filing for other than still retort and agitating processes)." and "Bureau of Foods, Industry Guidance Branch (HFF-342)," everywhere that it appears, and replacing it with "form FDA 2541a (food canning establishment process filing form for all methods except aseptic)." and "Center for Food Safety and Applied Nutrition, LACF Registration Coordinator (HFF-233)," respectively, and in paragraph (h) by removing "Food Safety and Quality Service" and replacing it with "Food Safety and Inspection Service".

22. Section 108.35 *Thermal processing of low-acid foods packaged in hermetically sealed containers* is amended in paragraph (c)(1) by removing "FD-2541", and replacing it with "FDA 2541", by removing "Bureau of Foods, Industry Guidance Branch, HFF-326" and "Bureau of Foods, Division of Food Technology, HFF-419" and replacing them with "Center for Food Safety and Applied Nutrition, LACF Registration Coordinator HFF-233", by revising sentences two through four of the introductory text of paragraph (c)(2), in paragraph (c)(2)(ii) by removing "Bureau of Foods, 200 C St. SW., HFF-419," and replacing it with "Center for Food Safety and Applied Nutrition, DFCT, HFF-414, 200 C St. SW.," and in paragraph (j)(1) by removing "shall filed with the Bureau of Foods" and replacing it with "shall file with the Center for Food Safety and Applied Nutrition", to read as follows:

§ 108.35 *Thermal processing of low-acid foods packaged in hermetically sealed containers.*

(c) * * *

(2) * * * This information shall be submitted on the following forms as appropriate: Form FDA 2541a (food canning establishment process filing for all methods except aseptic), or Form FDA 2541c (food canning establishment process filing for aseptic systems). These forms are available from the Food and Drug Administration, Center for Food Safety and Applied Nutrition, LACF Registration Coordinator, HFF-233, 200 C St. SW., Washington, DC 20204, or at any Food and Drug Administration district office. The completed form(s) shall be submitted to the Food and Drug Administration, Center for Food Safety and Applied Nutrition, LACF Registration

Coordinator, HFF-233, 200 C St. SW., Washington, DC 20204.

PART 109—UNAVOIDABLE CONTAMINANTS IN FOOD FOR HUMAN CONSUMPTION AND FOOD-PACKAGING MATERIAL

23. The authority citation for 21 CFR Part 109 continues to read as follows:

Authority: Secs. 306, 402(a), 406, 408, 409, 701, 52 Stat. 1045-1046 as amended, 1046 as amended, 1055-1056 as amended, 68 Stat. 511-518 as amended, 72 Stat. 1785-1786 as amended (21 U.S.C. 336, 342(a), 346, 346a, 348, 371).

§ 109.30 [Amended]

24. Section 109.30 *Tolerances for polychlorinated biphenyls (PCB's)* is amended in paragraph (c) by removing "Bureau of Foods", "Bureau", and "Bureau's" and replacing it with "Center for Food Safety and Applied Nutrition", "Center", and "Center's", respectively, everywhere that they appear, and in paragraph (d) by removing "Program Manager for Chemical Contaminants" and replacing it with "Contaminants Program Unit" and by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition" everywhere that it appears.

PART 110—CURRENT GOOD MANUFACTURING PRACTICE IN MANUFACTURING, PACKING, OR HOLDING HUMAN FOOD

25. The authority citation for 21 CFR Part 110 continues to read as follows:

Authority: Secs. 302, 303, 304, 402(a), 701(a), 52 Stat. 1043-1046 as amended, 1055 (21 U.S.C. 332, 333, 334, 342(a), 371(a)); sec. 361, 58 Stat. 703 (42 U.S.C. 284); 21 CFR 5.10, 5.11.

§ 110.10 [Amended]

26. Section 110.10 *Personnel* is amended in paragraph (b)(4) by removing "insecure" and replacing it with "unsecured".

27. Section 110.35 is amended in the introductory text of paragraph (b)(1) by revising the third sentence up to the colon to read as follows:

§ 110.35 Sanitary operations.

(b)
(1) Only the following toxic materials may be used or stored in a plant where food is processed or exposed:

PART 114—ACIDIFIED FOODS

28. The authority citation for 21 CFR Part 114 continues to read as follows:

Authority: Secs. 402(a) (3) and (4), 701(a), 52 Stat. 1046, 1055 (21 U.S.C. 342(a) (3) and (4), 371(a)).

§ 114.90 [Amended]

29. Section 114.90 *Methodology* is amended in paragraph (a)(4)(ii) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 130—FOOD STANDARDS: GENERAL

30. The authority citation for 21 CFR Part 130 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended (21 U.S.C. 341, 371).

§ 130.17 [Amended]

31. Section 130.17 *Temporary permits for interstate shipment of experimental packs of food varying from the requirements of definitions and standards of identity* is amended in the introductory text of paragraph (c) by removing "Division of Food Technology, Bureau of Foods (HFF-211)" and replacing it with "Division of Food Chemistry and Technology, Center for Food Safety and Applied Nutrition (HFF-410)".

PART 131—MILK AND CREAM

32. The authority citation for 21 CFR Part 131 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056, as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 341, 371).

§ 131.110 [Amended]

33. Section 131.110 *Milk* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.111 [Amended]

34. Section 131.111 *Acidified milk* is amended in the introductory text of paragraph (f) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.112 [Amended]

35. Section 131.112 *Cultured milk* is amended in the introductory text of paragraph (e) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.115 [Amended]

36. Section 131.115 *Concentrated milk* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.120 [Amended]

37. Section 131.120 *Sweetened condensed milk* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.122 [Amended]

38. Section 131.122 *Sweetened condensed skimmed milk* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.123 [Amended]

39. Section 131.123 *Lowfat dry milk* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.125 [Amended]

40. Section 131.125 *Nonfat dry milk* is amended in the introductory text of paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.127 [Amended]

41. Section 131.127 *Nonfat dry milk fortified with vitamins A and D* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.130 [Amended]

42. Section 131.130 *Evaporated milk* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.132 [Amended]

43. Section 131.132 *Evaporated skimmed milk* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin

Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.135 [Amended]

44. Section 131.135 *Lowfat milk* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.136 [Amended]

45. Section 131.136 *Acidified lowfat milk* is amended in the introductory text of paragraph (f) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.138 [Amended]

46. Section 131.138 *Cultured lowfat milk* is amended in the introductory text of paragraph (e) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.143 [Amended]

47. Section 131.143 *Skim milk* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.144 [Amended]

48. Section 131.144 *Acidified skim milk* is amended in the introductory text of paragraph (f) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.146 [Amended]

49. Section 131.146 *Cultured skim milk* is amended in the introductory text of paragraph (e) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.147 [Amended]

50. Section 131.147 *Dry whole milk* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.149 [Amended]

51. Section 131.149 *Dry cream* is amended in the introductory text of paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.150 [Amended]

52. Section 131.150 *Heavy cream* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.155 [Amended]

53. Section 131.155 *Light cream* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.157 [Amended]

54. Section 131.157 *Light whipping cream* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.160 [Amended]

55. Section 131.160 *Sour cream* is amended in the introductory text of paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.162 [Amended]

56. Section 131.162 *Acidified sour cream* is amended in the introductory text of paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.170 [Amended]

57. Section 131.170 *Egg nog* is amended in the introductory text of paragraph (f) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.180 [Amended]

58. Section 131.180 *Half-and-half* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.185 [Amended]

59. Section 131.185 *Sour half-and-half* is amended in the introductory text of paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.187 [Amended]

60. Section 131.187 *Acidified sour half-and-half* is amended in the introductory text of paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.200 [Amended]

61. Section 131.200 *Yogurt* is amended in the introductory text of paragraph (e) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.203 [Amended]

62. Section 131.203 *Lowfat yogurt* is amended in the introductory text of paragraph (e) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 131.206 [Amended]

63. Section 131.206 *Nonfat yogurt* is amended in the introductory text of paragraph (e) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 133—CHEESES AND RELATED CHEESE PRODUCTS

64. The authority citation for 21 CFR Part 133 continues to read as follows:

Authority: Secs. 401, 701(e), 52 Stat. 1046, 70 Stat. 919 as amended (21 U.S.C. 341, 371(e)); 21 CFR 5.10 and 5.61.

§ 133.5 [Amended]

65. Section 133.5 *Methods of analysis* is amended in the text of the introductory paragraph by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 135—FROZEN DESSERTS

66. The authority citation for 21 CFR Part 135 continues to read as follows:

Authority: Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919, 1055-1056 as amended (21 U.S.C. 341, 371).

§ 135.110 [Amended]

67. Section 135.110 *Ice cream and frozen custard* is amended in paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 135.130 [Amended]

68. Section 135.130 *Mellorine* is amended in the introductory text of paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 136—BAKERY PRODUCTS

69. The authority citation for 21 CFR Part 136 continues to read as follows:

Authority: Secs. 401, 701(e), 52 Stat. 1046 as amended, 70 Stat. 919, as amended (21 U.S.C. 341, 371(e)).

§ 136.110 [Amended]

70. Section 136.110 *Bread, rolls, and buns* is amended in paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 136.160 [Amended]

71. Section 136.160 *Raisin bread, rolls, and buns* is amended in paragraph (a)(5) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 137—CEREAL FLOURS AND RELATED PRODUCTS

72. The authority citation for 21 CFR Part 137 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended (21 U.S.C. 341, 371).

§ 137.105 [Amended]

73. Section 137.105 *Flour* is amended in the introductory text of paragraph (a) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 137.180 [Amended]

74. Section 137.180 *Self-rising flour* is amended in the introductory text of paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 137.190 [Amended]

75. Section 137.190 *Cracked wheat* is amended by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 137.195 [Amended]

76. Section 137.195 *Crushed wheat* is amended by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 137.200 [Amended]

77. Section 137.200 *Whole wheat flour* is amended in paragraph (c)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 137.211 [Amended]

78. Section 137.211 *White corn flour* is amended in paragraph (b)(2) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 137.230 [Amended]

79. Section 137.230 *Corn grits* is amended in paragraph (b)(2) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 137.250 [Amended]

80. Section 137.250 *White corn meal* is amended in the introductory text of paragraph (b)(1) and in paragraph (b)(2) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 137.270 [Amended]

81. Section 137.270 *Self-rising white corn meal* is amended in the introductory text of paragraph (b) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 137.300 [Amended]

82. Section 137.300 *Farina* is amended in paragraph (b)(2) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200

Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 137.350 [Amended]

83. Section 137.350 *Enriched rice* is amended in paragraph (e) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 139—MACARONI AND NOODLE PRODUCTS

84. The authority citation for 21 CFR Part 139 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046, as amended, 1055-1056, as amended (21 U.S.C. 341, 371).

§ 139.110 [Amended]

85. Section 139.110 *Macaroni products* is amended in paragraph (a)(5) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 139.117 [Amended]

86. Section 139.117 *Enriched macaroni products with fortified protein* is amended in the introductory text of paragraph (a)(2) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 139.150 [Amended]

87. Section 139.150 *Noodle products* is amended in the undesignated paragraph concluding paragraph (a) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 145—CANNED FRUITS

88. The authority citation for 21 CFR Part 145 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended (21 U.S.C. 341, 371); 21 CFR 5.10.

§ 145.3 [Amended]

89. Section 145.3 *Definitions* is amended in paragraph (m) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 145.110 [Amended]

90. Section 145.110 *Canned applesauce* is amended in paragraph (a)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington,

DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 145.125 [Amended]

91. Section 145.125 *Canned cherries* is amended in paragraph (b)(2)(ii) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 145.135 [Amended]

92. Section 145.135 *Canned fruit cocktail* is amended in paragraph (b)(1)(i) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 145.145 [Amended]

93. Section 145.145 *Canned grapefruit* is amended in the introductory text of paragraph (a)(3)(iii) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 146—CANNED FRUIT JUICES

94. The authority citation for 21 CFR Part 146 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended (21 U.S.C. 341, 371).

§ 146.113 [Amended]

95. Section 146.113 *Canned fruit nectars* is amended in paragraph (a) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 146.114 [Amended]

96. Section 146.114 *Lemon juice* is amended in paragraph (a)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 146.120 [Amended]

97. Section 146.120 *Frozen concentrate for lemonade* is amended in paragraph (a) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 146.185 [Amended]

98. Section 146.185 *Pineapple juice* is amended in paragraph (b)(2)(i) by removing "P.O. Box 540, Benjamin

Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 150—FRUIT BUTTERS, JELLIES, PRESERVES, AND RELATED PRODUCTS

99. The authority citation for 21 CFR Part 150 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended (21 U.S.C. 341, 371).

§ 150.110 [Amended]

100. Section 150.110 *Fruit butter* is amended in paragraph (d)(3) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 150.140 [Amended]

101. Section 150.140 *Fruit jelly* is amended in paragraph (d)(3) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 150.160 [Amended]

102. Section 150.160 *Fruit preserves and jams* is amended in paragraph (d)(5) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 155—CANNED VEGETABLES

103. The authority citation for 21 CFR Part 155 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended (21 U.S.C. 341, 371).

§ 155.3 [Amended]

104. Section 155.3 *Definitions* is amended in paragraphs (a) and (e) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 155.120 [Amended]

105. Section 155.120 *Canned green beans and canned wax beans* is amended in paragraph (b)(2)(i) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 155.130 [Amended]

106. Section 155.130 *Canned corn* is amended in paragraph (b)(2)(i) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 155.170 [Amended]

107. Section 155.170 *Canned peas* is amended in paragraph (b)(1)(vi) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 156—VEGETABLE JUICES

108. The authority citation for 21 CFR Part 156 is revised to read as follows:

Authority: Secs. 401, 701(e) (21 U.S.C. 341, 371(e)).

§ 156.3 [Amended]

109. Section 156.3 *Definitions* is amended in paragraph (b) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 160—EGGS AND EGG PRODUCTS

110. The authority citation for 21 CFR Part 160 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046, 1055-1056 as amended (21 U.S.C. 341, 371); 21 CFR 5.10, 5.61.

§ 160.145 [Amended]

111. Section 160.145 *Dried egg whites* is amended in paragraph (c)(2) by removing "Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 160.180 [Amended]

112. Section 160.180 *Egg yolks* is amended by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 161—FISH AND SHELLFISH

113. The authority citation for 21 CFR Part 161 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended (21 U.S.C. 341, 371).

§ 161.145 [Amended]

114. Section 161.145 *Canned oysters* is amended in paragraph (c)(3) by removing "P.O. Box 540, Benjamin

Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 161.173 [Amended]

115. Section 161.173 *Canned wet pack shrimp in transparent or nontransparent containers* is amended in paragraph (c)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 161.175 [Amended]

116. Section 161.175 *Frozen raw breaded shrimp* is amended in paragraph (g)(1)(v) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 161.190 [Amended]

117. Section 161.190 *Canned tuna* is amended in paragraphs (a)(2) and (7)(iii) by removing "Division of Food Technology, Bureau of Foods (HFF-210)" and replacing it with "Division of Food Chemistry and Technology, Center for Food Safety and Applied Nutrition (HFF-410)" and in the introductory text of paragraph (a)(7) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 163—CACAO PRODUCTS

118. The authority citation for 21 CFR Part 163 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended (21 U.S.C. 341, 371).

§ 163.110 [Amended]

119. Section 163.110 *Cacao nibs* is amended in paragraph (a) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 163.111 [Amended]

120. Section 163.111 *Chocolate liquor* is amended in the undesignated paragraph concluding paragraph (a) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 163.112 [Amended]

121. Section 163.112 *Breakfast cocoa* is amended in the undesignated paragraph concluding paragraph (a) by removing "P.O. Box 540, Benjamin

Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 164—TREE NUT AND PEANUT PRODUCTS

122. The authority citation for 21 CFR Part 164 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056 as amended by 70 Stat. 919, 72 Stat. 948 (21 U.S.C. 341, 371).

§ 164.150 [Amended]

123. Section 164.150 *Peanut butter* is amended in paragraph (a) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 166—MARGARINE

124. The authority citation for 21 CFR Part 166 is revised to read as follows:

Authority: Secs. 201, 401, 403, 407, 701 (21 U.S.C. 321, 341, 343, 347, 371).

§ 166.110 [Amended]

125. Section 166.110 *Margarine* is amended in the introductory text of paragraph (a) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 168—SWEETENERS AND TABLE SIRUPS

126. The authority citation for 21 CFR Part 168 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046, as amended, 1055-1056, as amended by 70 Stat. 919 and 72 Stat. 948 (21 U.S.C. 341, 371).

§ 168.111 [Amended]

127. Section 168.111 *Dextrose monohydrate* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 168.120 [Amended]

128. Section 168.120 *Glucose sirup* is amended in the introductory text of paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 168.122 [Amended]

129. Section 168.122 *Lactase* is amended in the introductory text of paragraph (d)(1) by removing "P.O. Box 540, Benjamin Franklin Station,

Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 169—FOOD DRESSINGS AND FLAVORINGS

130. The authority citation for 21 CFR Part 169 continues to read as follows:

Authority: Secs. 401, 701, 52 Stat. 1046 as amended, 1055-1056, as amended by 70 Stat. 919 (21 U.S.C. 341, 371).

§ 169.3 [Amended]

131. Section 169.3 *Definitions* is amended in paragraph (b) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 170—FOOD ADDITIVES

132. The authority citation for 21 CFR Part 170 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701(a) (21 U.S.C. 321(s), 342, 348, 371(a)); 21 CFR 5.10.

§ 170.3 [Amended]

133. Section 170.3 *Definitions* is amended in the introductory texts of paragraphs (n) and (o) by removing "22151" and replacing it with "22161".

§ 170.6 [Amended]

134. Section 170.6 *Opinion letters on food additive status* is amended in paragraph (e) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 170.38 [Amended]

135. Section 170.38 *Determination of food additive status* is amended in paragraph (b)(3) by removing "Part 134" and replacing it with "Part 184".

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

136. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1786 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 172.105 [Amended]

137. Section 172.105 *Anoxomer* is amended in paragraphs (b) (1), (2), and (3) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 172.250 [Amended]

138. Section 172.250 *Petroleum naphtha* is amended in footnote 1 to paragraph (b)(3) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 172.320 [Amended]

139. Section 172.320 *Amino acids* is amended in paragraphs (b)(2) and (c)(1) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition" and in paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 172.340 [Amended]

140. Section 172.340 *Fish protein isolate* is amended in footnote 1 to the introductory text of paragraph (b) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 172.372 [Amended]

141. Section 172.372 *N-Acetyl-L-methionine* is amended in paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 172.385 [Amended]

142. Section 172.385 *Whole fish protein concentrate* is amended in paragraph (c)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 172.510 [Amended]

143. Section 172.510 *Natural flavoring substances and natural substances used in conjunction with flavors* is amended in footnote 1 to the table of paragraph (b) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 172.859 [Amended]

144. Section 172.859 *Sucrose fatty acid esters* is amended in paragraphs (b) (1), (5), and (9) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 172.860 [Amended]

145. Section 172.860 *Fatty acids* is amended in paragraphs (c)(1) and (2) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 172.864 [Amended]

146. Section 172.864 *Synthetic fatty alcohols* is amended in footnote 1 to

paragraph (b)(3) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 172.878 [Amended]

147. Section 172.878 *White mineral oil* is amended in paragraph (a)(3) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 172.882 [Amended]

148. Section 172.882 *Synthetic isoparaffinic petroleum hydrocarbons* is amended in paragraph (a) in the entry for "Synthetic isoparaffinic petroleum hydrocarbons" by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 172.886 [Amended]

149. Section 172.886 *Petroleum wax* is amended in footnote 1 to paragraph (b) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

PART 173—SECONDARY DIRECT FOOD ADDITIVES PERMITTED IN FOOD FOR HUMAN CONSUMPTION

150. The authority citation for 21 CFR Part 173 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 173.60 [Amended]

151. Section 173.60 *Dimethylamine-epichlorohydrin copolymer* is amended in paragraph (b)(3) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 173.145 [Amended]

152. Section 173.145 *Alpha-Galactosidase derived from Mortierella vinacea var. raffinosetutilizer* is amended in footnote 1 to paragraph (b) by removing "30852" and replacing it with "20852".

§ 173.160 [Amended]

153. Section 173.160 *Candida guilliermondii* is amended in footnote 1 to paragraph (b)(1) by removing "30852" and replacing it with "20852" and in paragraph (b)(2) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 173.165 [Amended]

154. Section 173.165 *Candida lipolytica* is amended in paragraph (b)(2) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 173.395 [Amended]

155. Section 173.395 *Trifluoromethane sulfonic acid* is

amended in paragraph (d) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 175—INDIRECT FOOD ADDITIVES: ADHESIVES AND COMPONENTS OF COATINGS

156. The authority citation for 21 CFR Part 175 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 175.300 [Amended]

157. Section 175.300 *Resinous and polymeric coatings* is amended in paragraph (b)(3)(ix) in the entry for "Maleic anhydride adduct of polypropylene" by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

158. The authority citation for 21 CFR Part 176 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 176.170 [Amended]

159. Section 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* is amended in the introductory text of paragraph (d)(3) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 176.210 [Amended]

160. Section 176.210 *Defoaming agents used in the manufacture of paper and paperboard* is amended in paragraph (d)(3) by removing "Kersosine" and replacing it with "Kerosine".

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

161. The authority citation for 21 CFR Part 177 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 177.1020 [Amended]

162. Section 177.1020 *Acrylonitrile/butadiene/styrene co-polymer* is amended in paragraphs (c)(2) and (d)(2) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

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§ 177.1030 [Amended]

163. Section 177.1030 *Acrylonitrile/butadiene/styrene/methyl methacrylate copolymer* is amended in paragraphs (c)(2) and (d)(2) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 177.1050 [Amended]

164. Section 177.1050 *Acrylonitrile/styrene copolymer modified with butadiene/styrene elastomer* is amended in the table of paragraph (b), in paragraphs (c)(2) and (3), in the introductory text of paragraph (d), and in paragraph (e)(4) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 177.1330 [Amended]

165. Section 177.1330 *Ionomeric resins* is amended in paragraph (e)(4) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 177.1390 [Amended]

166. Section 177.1390 *Laminate structures for use at temperatures of 250 °F and above* is amended in paragraph (c)(3)(i)(a)(2) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 177.1480 [Amended]

167. Section 177.1480 *Nitrile rubber modified acrylonitrile-methyl acrylate copolymers* is amended in the introductory text of paragraph (b)(2) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 177.1550 [Amended]

168. Section 177.1550 *Perfluorocarbon resins* is amended in footnote 1 to paragraph (e) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 177.1830 [Amended]

169. Section 177.1830 *Polyethylene phthalate polymers* is amended in paragraph (e)(4)(iii) in the entry for "Ethylene azelate-terephthalate copolymer" by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 177.1635 [Amended]

170. Section 177.1635 *Poly(p-methylstyrene) and rubber-modified poly(p-methylstyrene)* is amended in paragraph (c)(1) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 177.1810 [Amended]

171. Section 177.1810 *Styrene block polymers* is amended in paragraph (c)(2)(ii) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 177.1820 [Amended]

172. Section 177.1820 *Styrene-maleic anhydride copolymers* is amended in paragraph (c)(3) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 177.1990 [Amended]

173. Section 177.1990 *Vinylidene chloride/methyl acrylate copolymers* is amended in paragraph (c)(1) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 177.2210 [Amended]

174. Section 177.2210 *Ethylene polymer, chlorosulfonated* is amended in paragraph (b)(3) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 177.2450 [Amended]

175. Section 177.2450 *Polyamide-imide resins* is amended in paragraph (b)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301" and in paragraphs (b) (2) and (3) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 177.2470 [Amended]

176. Section 177.2470 *Polyoxymethylene copolymer* is amended in paragraph (c)(2) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 177.2480 [Amended]

177. Section 177.2480 *Polyoxymethylene homopolymer* is amended in paragraph (d)(2)(i) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 177.2490 [Amended]

178. Section 177.2490 *Polyphenylene sulfide resins* is amended in the introductory text of paragraph (a) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

PART 178—INDIRECT FOOD ADDITIVES: ADJUVANTS, PRODUCTION AIDS, AND SANITIZERS

179. The authority citation for 21 CFR Part 178 continues to read as follows:

Authority: Sections 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

§ 178.1010 [Amended]

180. Section 178.1010 *Sanitizing solutions* is amended in paragraph (b)(16) by removing "ethylenediamine-tetraacetate" and "average" and replacing it with "ethylenediaminetetraacetate" and "average", respectively.

§ 178.2650 [Amended]

181. Section 178.2650 *Organotin stabilizers in vinyl chloride plastics* is amended in paragraph (b)(1)(ii) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 178.3297 [Amended]

182. Section 178.3297 *Colorants for polymers* is amended in paragraph (c) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 178.3480 [Amended]

183. Section 178.3480 *Fatty alcohols, synthetic* is amended in the introductory text of paragraph (c) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 178.3610 [Amended]

184. Section 178.3610. *a-Methylstyrene-vinyltoluene resins, hydrogenated* is amended in paragraph (a) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 178.3620 [Amended]

185. Section 178.3620 *Mineral oil* is amended in paragraph (b)(1)(ii) and in footnote 1 to paragraph (c)(3) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 178.3690 [Amended]

186. Section 178.3690 *Pentaerythritol adipate-stearate* is amended in paragraph (b)(4) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Boulevard., Suite 400, Arlington, VA 22201-3301".

§ 178.3770 [Amended]

187. Section 178.3770 *Polyhydric alcohol diesters of oxidatively refined*

(Gersthoften process) montan wax acids is amended in footnote 1 to paragraph (a)(4) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 178.3780 [Amended]

188. Section 178.3780 *Polyhydric alcohol esters of long chain monobasic acids* is amended in paragraph (b)(1) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 178.3870 [Amended]

189. Section 178.3870 *Rosins and rosin derivatives* is amended in paragraph (f)(6)(iv) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 178.3910 [Amended]

190. Section 178.3910 *Surface lubricants used in the manufacture of metallic articles* is amended in footnote 1 to paragraph (a)(4)(iii) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition", and in the introductory text of paragraph (b) by removing "sampling" and replacing it with "stamping".

PART 179—IRRADIATION IN THE PRODUCTION, PROCESSING AND HANDLING OF FOOD

191. The authority citation for 21 CFR Part 179 continues to read as follows:

Authority: Sections 201(s), 409, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10; §§ 179.25 and 179.26 also are issued under sections 402, 403, 703, 704, 52 Stat. 1048-1048 as amended, 1057, 67 Stat. 477 as amended (21 U.S.C. 342, 343, 373, 374); 21 CFR 5.10, 5.11.

§ 179.45 [Amended]

192. Section 179.45 *Packaging materials for use during the irradiation of prepackaged foods* is amended in the introductory text of paragraph (b)(6) by removing "§ 177.1830(d)(4)(i)" and replacing it with "§§ 177.1830(e)(4) (i) and (ii)".

PART 180—FOOD ADDITIVES PERMITTED IN FOOD ON AN INTERIM BASIS OR IN CONTACT WITH FOOD PENDING ADDITIONAL STUDY

193. The authority citation for 21 CFR Part 180 continues to read as follows:

Authority: Sections 409, 701, 52 Stat. 1055-1056 as amended, 72 Stat. 1785-1788 as amended (21 U.S.C. 348, 371).

§ 180.22 [Amended]

194. Section 180.22 *Acrylonitrile copolymers* is amended in the introductory text of paragraph (a) and in

paragraphs (b), (e), and (f)(1) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition" and in paragraph (f)(2) by removing "Part 2" and replacing it with "Part 10".

PART 181—PRIOR-SANCTIONED FOOD INGREDIENTS

195. The authority citation for 21 CFR Part 181 continues to read as follows:

Authority: Sections 201(s), 402, 409, 701, 52 Stat. 1048-1047 as amended, 1055-1056 as amended, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10.

§ 181.32 [Amended]

196. Section 181.32 *Acrylonitrile copolymers and resins* is amended in the introductory text of paragraph (b) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

PART 184—DIRECT FOOD SUBSTANCES AFFIRMED AS GENERALLY RECOGNIZED AS SAFE

197. The authority citation for 21 CFR Part 184 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1048-1047 as amended, 1055-1056 as amended, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10, 5.61.

§ 184.1408 [Amended]

198. Section 184.1408 *Licorice and licorice derivatives* is amended in paragraph (b)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 184.1979 [Amended]

199. Section 184.1979 *Whey* is amended in footnote 2 to the introductory text of paragraph (b)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 184.1979a [Amended]

200. Section 184.1979a *Reduced lactose whey* is amended in footnote 2 to the introductory text of paragraph (b)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 184.1979b [Amended]

201. Section 184.1979b *Reduced minerals whey* is amended in footnote 2 to the introductory text of paragraph (b)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington,

DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 184.1979c [Amended]

202. Section 184.1979c *Whey protein concentrate* is amended in footnote 2 to the introductory text of paragraph (b)(1) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 189—SUBSTANCES PROHIBITED FROM USE IN HUMAN FOOD

203. The authority citation for 21 CFR Part 189 continues to read as follows:

Authority: Secs. 201(s), 402, 409, 701, 52 Stat. 1048-1047 as amended, 1055-1056 as amended, 72 Stat. 1784-1788 as amended (21 U.S.C. 321(s), 342, 348, 371); 21 CFR 5.10.

§ 189.1 [Amended]

204. Section 189.1 *Substances prohibited from use in human food* is amended in paragraph (c) by removing "Part 2" and replacing it with "Part 10".

§ 189.110 [Amended]

205. Section 189.110 *Calamus and its derivatives* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and "Bureau of Foods" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301" and "Center for Food Safety and Applied Nutrition", respectively.

§ 189.130 [Amended]

206. Section 189.130 *Coumarin* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 189.135 [Amended]

207. Section 189.135 *Cyclamate and its derivatives* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 189.145 [Amended]

208. Section 189.145 *Dulcin* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 189.155 [Amended]

209. Section 189.155 *Monochloroacetic acid* is amended in

paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 189.165 [Amended]

210. Section 189.165 *Nordihydroguaiaretic acid (NDGA)* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 189.175 [Amended]

211. Section 189.175 *P-4000* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

§ 189.180 [Amended]

212. Section 189.180 *Safrole* is amended in paragraph (c) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

§ 189.190 [Amended]

213. Section 189.190 *Thiourea* is amended in paragraph (c) by removing "P.O. Box 540, Benjamin Franklin Station, Washington, DC 20044" and replacing it with "2200 Wilson Blvd., Suite 400, Arlington, VA 22201-3301".

PART 701—COSMETIC LABELING

214. The authority citation for 21 CFR Part 701 continues to read as follows:

Authority: Secs. 601, 602, 701(a), 704, 52 Stat. 1054, as amended, 1055, 1057, as amended; 21 U.S.C. 381, 382, 371(a), 374.

§ 701.3 [Amended]

215. Section 701.3 *Designation of ingredients* is amended in paragraph (c)(2)(iv) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

PART 1240—CONTROL OF COMMUNICABLE DISEASES

216. The authority citation for 21 CFR Part 1240 continues to read as follows:

Authority: Secs. 215, 311, 381, 388, 58 Stat. 690, 693, 703 as amended, 706 (42 U.S.C. 216, 243, 264, 271); 21 CFR 5.10, 5.11.

217. The Cross-References following the Table of Contents for Part 1240 is revised to read as follows:

Cross-References: For Department of Health and Human Services regulations relating to foreign quarantine, sanitation measures, and control of communicable diseases, see Centers for Disease Control's

requirements as set forth in 42 CFR Parts 71 and 72.

§ 1240.10 [Amended]

218. Section 1240.10 *Effective bactericidal treatment* is amended in paragraph (f) by removing "Surgeon General" and replacing it with "Commissioner of Food and Drugs".

§ 1240.62 [Amended]

219. Section 1240.62 *Turtles intrastate and interstate requirements* is amended in paragraphs (c)(1) (i), (ii), (iii), (iv), and (v) and (c)(2) by removing "Bureau of Foods" and "Bureau" and replacing them with "Center for Food Safety and Applied Nutrition" and "Center", respectively, everywhere that they appear.

220. Section 1240.70 is amended by revising paragraph (a) to read as follows:

§ 1240.70 Lather brushes.

(a) *General requirements.* A person shall not transport, or offer for transportation by the owner or operator of a conveyance, nor shall the owner or operator of a conveyance knowingly transport for another person, in interstate traffic lather brushes made from animal hair or bristles unless such brushes have been manufactured in the United States, its territories, or possessions in compliance with the provisions of paragraphs (b), (c), (d), (e), and (f) of this section.

PART 1250—INTERSTATE CONVEYANCE SANITATION

221. The authority citation for 21 CFR Part 1250 continues to read as follows:

Authority: Secs. 215, 311, 381, 388, 58 Stat. 690, 693, 703, as amended, 706 (42 U.S.C. 216, 243, 264, 271).

222. The Cross-References following the Table of Contents for Part 1250 is revised to read as follows:

Cross-References: For Department of Health and Human Services regulations relating to foreign quarantine and control of communicable diseases, see Centers for Disease Control's requirements as set forth in 42 CFR Parts 71 and 72.

§ 1250.51 [Amended]

223. Section 1250.51 *Railroad conveyances; discharge of wastes* is amended in paragraph (d) by removing "Bureau of Foods, Sub-Program Manager, Interstate Travel Sanitation" and replacing it with "Center for Food Safety and Applied Nutrition, Manager, Interstate Travel Sanitation Sub-

Program", in paragraphs (f) (1) and (2) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition", in the introductory text of paragraph (f)(3) by removing "Bureau of Foods, Sub-Program Managers, Interstate Travel Sanitation" and replacing it with "Center for Food Safety and Applied Nutrition, Manager, Interstate Travel Sanitation Sub-Program", in paragraph (f)(4)(i) by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition", and in paragraph (f)(4)(iii) by removing "Subpart F of Part 2" and replacing it with "Part 16" and by removing "Bureau of Foods" and replacing it with "Center for Food Safety and Applied Nutrition".

Dated: May 25, 1989.

Ronald G. Chesemore,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-13830 Filed 6-9-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 510

Animal Drugs, Feeds, and Related Products; Change of Sponsor Name

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor name from Schering Corp. to Schering-Plough Corp.

EFFECTIVE DATE: June 12, 1989.

FOR FURTHER INFORMATION CONTACT:

Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Schering Plough Corp., Galloping Hill Rd., Kenilworth, NJ 07033, advised FDA of a change of corporate name from Schering Corp. to Schering-Plough Corp. The agency is amending the regulations in 21 CFR 510.600(c) to reflect the change.

List of Subjects in 21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 510 is amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Secs. 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in paragraph (c)(1) in the entry for "Schering Corp." and in paragraph (c)(2) in the entry for "000061" by revising the sponsor name to read "Schering-Plough Corp."

Dated: June 5, 1989.

Robert C. Livingston,

Deputy Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 89-13803 Filed 6-9-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin, Chlortetracycline, and Roxarsone

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by American Cyanamid Co. providing for the use of previously approved salinomycin, chlortetracycline, and roxarsone Type A medicated articles to make Type C medicated feeds for broilers. The feeds are indicated for use for the prevention of coccidiosis and as an aid in the reduction of mortality due to certain infections.

EFFECTIVE DATE: June 12, 1989.

FOR FURTHER INFORMATION CONTACT:

Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION:

American Cyanamid Co., Berdan Ave., Wayne, NJ 07470, filed NADA 140-867, providing for combining separately approved salinomycin, chlortetracycline, and roxarsone Type A medicated articles to make Type C feeds for broilers. The Type C medicated feeds contain salinomycin sodium 40 to 60 grams per ton, chlortetracycline 500 grams per ton, and roxarsone 45 grams per ton. The Type C medicated feeds are indicated for use for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, including some

field strains of *E. tenella* which are more susceptible to roxarsone combined with salinomycin than to salinomycin alone, and as an aid in the reduction of mortality due to *E. coli* infections susceptible to such treatment. The NADA is approved and the regulations are amended in 21 CFR 558.128, 558.530, and 558.550. The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended to read as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.128 is amended by redesignating paragraphs (c)(5) (vii) and (viii) as paragraphs (c)(5) (vi) and (vii), respectively, and by adding new paragraph (c)(5)(viii) to read as follows:

§ 558.128 Chlortetracycline.

(c) . . .

(5) . . .

(viii) Roxarsone and salinomycin in accordance with § 558.550.

3. Section 558.530 is amended by adding new paragraph (d)(4)(vii) to read as follows:

§ 558.530 Roxarsone.

(d) . . .

(4) . . .

(vii) Roxarsone may be used in combination with salinomycin and chlortetracycline as in § 558.550.

4. Section 558.550 is amended by adding new paragraph (b)(1)(xv) to read as follows:

§ 558.550 Salinomycin.

(b) . . .

(1) . . .

(xv)(a) *Amount per ton.* Salinomycin 40 to 60 grams, chlortetracycline 500 grams, and roxarsone 45 grams.

(b) *Indications for use.* For prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, including some field strains of *E. tenella* which are more susceptible to roxarsone combined with salinomycin than to salinomycin alone, and as an aid in the reduction of mortality due to *E. coli* infections susceptible to such treatment.

(c) *Limitations.* Do not feed to layers. In feeds containing 0.8 percent dietary calcium, not to be fed for more than 5 days. Not approved for use with pellet binders. Withdraw 5 days before slaughter. May be fatal if accidentally fed to adult turkeys or to horses. Chlortetracycline as provided by No. 010042 and roxarsone as provided by No. 017210 in § 510.600(c) of this chapter.

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Dated: June 1, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-13831 Filed 6-9-89; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD 09-89-01]

Special Local Regulations; Great International Duck Race, Black Rock Canal, Buffalo, NY

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Great International Duck Race. This event will be held on the Black Rock Canal on 2 July 1989 from 1:00 p.m. to 4:30 p.m. The regulations are needed to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATES: These regulations are effective from 1:00 p.m. (local time) to 4:30 p.m. on 2 July 1989.

FOR FURTHER INFORMATION CONTACT: MST1 Scott E. Befus, Office of Search and Rescue, Ninth Coast Guard District, 1240 E 9th St., Cleveland, OH 44199, (216) 522-4420.

SUPPLEMENTARY INFORMATION: On 7 April 1989 the Coast Guard published a notice of proposed rulemaking in the *Federal Register* for these regulations (54 FR 14099). Interested persons were requested to submit comments and no comments were received.

Drafting Information

The drafters of this regulation are MST1 Scott E. Befus, project officer, Office of Search and Rescue and LCDR C. V. Mosebach, project attorney, Ninth Coast Guard District Legal Office.

Discussion of Regulations

The Great International Duck Race will be conducted on the Black Rock Canal, in front of La Salle Park, on 2 July 1989. This event will have an estimated 30,000 rubber ducks "racing" to a finish line which will be established, within the regulated area, by the event sponsor. Shortly after the duck race there will be a boat parade within the same regulated area. Due to the nature of this event, and the threat vessel traffic would pose, a section of the Black Rock Canal will be closed. Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander (U.S. Coast Guard Group Buffalo, NY).

Economic Assessment and Certification

This proposed regulation is considered to be non-major under Executive Order 12291 on Federal Regulation and nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 28, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This event will draw a large number of spectator craft into the area for the duration of the event. This should have a favorable impact on commercial facilities providing services to the spectators. Any impact on commercial traffic in the area will be negligible.

Since the impact of this regulation is expected to be minimal, the Coast Guard certifies that it will not have a significant economic impact on a substantial number of small entities.

Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to

warrant the preparation of a Federalism Assessment.

List of Subject in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, the Coast Guard amends Part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35

2. Part 100 is amended to add a temporary § 100.35-0901 to read as follows:

§ 100.35-0901 **Great International Duck Race, Black Rock Canal, Buffalo, NY.**

(a) *Regulated Area:* That portion of the Black Rock Canal, from the southern entrance, up to and including the south wall at the entrance of the Buffalo Yacht Club.

(b) *Special Local Regulations.* (1) The above area will be closed to navigation or anchorage from 1:00 p.m. (local time) until 4:30 p.m. on 2 July 1989.

(2) The Coast Guard will patrol the regatta area under the direction of a designated Coast Guard Patrol Commander. The Patrol Commander may be contacted on channel 16 (156.8 MHz) by the call sign "Coast Guard Patrol Commander." Vessels desiring to transit the regulated area may do so only with prior approval of the Patrol Commander and when so directed by that officer. Vessels will be operated at a no wake speed to reduce the wake to a minimum, and in a manner which will not endanger the participants in the event or any other craft. The rules contained in the above two sentences shall not apply to participants in the event or vessels of the patrol operating in the performance of their assigned duties.

(3) The Patrol Commander may direct the anchoring, mooring, or movement of any boat or vessel within the regatta area. A succession of sharp, short signals by whistle or horn from vessels patrolling the area under the direction of the U.S. Coast Guard Patrol Commander shall serve as a signal to stop. Vessels so signaled shall stop and shall comply with the orders of the Patrol Commander. Failure to do so may result in expulsion from the area, citation for failure to comply, or both.

(4) The Patrol Commander may establish vessel size and speed limitations and operating conditions.

(5) The Patrol Commander may restrict vessel operation within the regulated area to vessels having particular operating characteristics.

(6) The Patrol Commander may terminate the marine event or the operation of any vessel at any time it is deemed necessary for the protection of life and property.

(c) These regulations will be effective from 1:00 p.m. (local time) to 4:30 p.m. on 2 July 1989.

Dated: May 25, 1989.

D.H. Ramsden,

Capt, U.S. Coast Guard, Acting Commander, Ninth Coast Guard District.

[FR Doc. 89-13816 Filed 6-9-89; 8:45 am]

BILLING CODE 4910-14-M

33 CFR Part 100

[CGD8-89-09]

Special Local Regulations; Popeye's Cajun Grand Prix, Lake Pontchartrain, LA

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: Special local regulations are being adopted for the Popeye's Cajun Grand Prix. This event will be held on June 10, 1989 from 12:00 p.m. until 3:00 p.m. at Lake Pontchartrain, LA. In case of postponement this event will be held on June 11, 1989 from 12:00 p.m. until 3:00 p.m. These regulations are needed to provide for the safety of life on navigable waters during the event.

DATES: *Effective Dates:* These regulations become effective on 10 June 1989 at 11:00 a.m. and terminate on 10 June 1989 at 3:00 p.m. In case of postponement due to inclement weather this regulation will take effect on 11 June 1989 at 11:00 a.m. and terminate on 11 June 1989 at 3:00 p.m.

Comments: Comments must be received by July 12, 1989.

FOR FURTHER INFORMATION CONTACT: QMCS J.C. Keith, Assistant Operations Officer, U.S. Coast Guard Group New Orleans, LA. Tel: (504) 942-3070.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. The details of the event were not finalized until 16 May 1989 and there was not sufficient time remaining

to publish proposed rules in advance of the event or to provide for a delayed effective date.

Nevertheless, interested persons wishing to comment may do so by submitting written views, data or arguments. Commentators should include their name and address, identify this notice (CGD8-89-09) and the specific section of the proposal to which the comments apply, and give reasons for comment. Receipt of comments will be acknowledged if a stamped self-addressed envelope is enclosed. The regulations may change in light of comments received.

Drafting Information

The drafter of this regulation is LT Michael F. Leonard, Project Officer, Coast Guard Group New Orleans, LA, and LT J.A. Wilson, Project Attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The marine event requiring this regulation is called "The Popeye's Cajun Grand Prix." This event is sponsored by the Southern Offshore Racing Association. It will consist of approximately 50-70 race boats traveling in excess of 90 MPH. The course followed by the race will be marked by buoys positioned at various points along its several straightaways and turns. The regulated area will encompass the entire race area.

Approximately 1,000 spectator boats are expected for the event. While viewing the event at any point outside the regulated area is not prohibited, spectators will be encouraged to congregate within designated spectator areas. These areas will be defined by buoys and are located as follows:

West Spectator Area: Along the west side of the regulated area between 17th Street Canal and the Causeway.

South Spectator Area: Along the sea wall on the south part of the regulated area at the mouth of Bayou St. John.

East Spectator Area: Along the south side of the regulated area between Pontchartrain Beach and New Orleans Lakefront Airport.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-89-09 is added to read as follows:

§ 100.35-89-09 **Lake Pontchartrain, Louisiana.**

(a) *Regulated Area.* The following area will be closed to all vessel traffic: A triangle starting at a point 1.7 statute miles east of the Causeway on the South shore of Lake Pontchartrain near the West End Boat Launch (latitude 30-01.8N, longitude 090-07.0W) along the south shore to a point 1.1 statute miles east of the Lake Front Airport (latitude 30-02.8N, longitude 090.00.1W) then northwesterly 13.2 statute miles to the Basculle Bridges on the Causeway (latitude 30-15.0N, longitude 090-06.6W).

(b) *Special Local Regulation.* All persons and/or vessels not registered with the sponsors as participants or official patrol vessels are considered spectators. The "official patrol" consists of any Coast Guard, public, state or local law enforcement and/or sponsor provided vessels assigned to patrol the event.

(1) No spectators shall anchor, block, loiter in or impede the through transit of participants or official patrol vessels in the regulated area during the effective dates and times, unless cleared for such entry by or through an official patrol vessel.

(2) When hailed and/or signaled, by an official patrol vessel, a spectator shall come to an immediate stop. Vessels shall comply with all directions given; failure to do so may result in a citation.

(3) The Patrol Commander is empowered to forbid and control the movement of all vessels in the regulated area. He may terminate the event at any time it is deemed necessary for the protection of life and/or property. He may be reached on VHF-FM Channel 16, when required, by the call sign "PATCOM".

(c) *Effective Dates.* These regulations will be effective from 11:00 a.m. to 3:00 p.m., 10 June 1989. In case of postponement due to inclement weather this regulation will take effect on day 11 June 1989 at 11:00 a.m. and terminate at 3:00 p.m. on 11 June 1989.

Dated: June 2, 1989.

W.F. Merlin,

Rear Admiral, U.S. Coast Guard, Commander, Eighth Coast Guard District.

[FR Doc. 89-13817 Filed 6-9-89; 8:45 am]

BILLING CODE 4910-14-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 62

[FRL-3599-1]

Approval and Promulgation of State Plans for Designated Facilities and Pollutants; Oklahoma; Plan for Controlling Total Reduced Sulfur From Existing Kraft Pulp Mills

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In Response to Section 111(d) of the Clean Air Act, the State of Oklahoma has submitted its plan for controlling total reduced sulfur emissions from the only existing kraft pulp mill in the State. EPA now approves that plan.

EFFECTIVE DATE: This approval will be effective August 11, 1989 unless EPA receives notice within 30 days that adverse or critical comments will be submitted. If the Agency receives such notice, it will propose approval of the plan in a future *Federal Register* to allow public comment.

ADDRESSES: Written comments (or notice of intent to submit adverse or critical comments) should be addressed to Mr. Thomas Diggs, Chief (6T-AN), SIP/NSR Section, Air Programs Branch, EPA Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733. Documents relevant to this action are available for public inspection during normal business hours at the same address and at the offices of the Oklahoma State Department of Health, 1000 N.E. Tenth Street, Oklahoma City, Oklahoma 73152 and the Public Information Reference Unit, EPA, 401 M Street, SW., Washington, DC 20460. Anyone wishing to examine those documents should make an appointment with the appropriate office at least 24 hours in advance.

FOR FURTHER INFORMATION CONTACT: Mr. Gregg Guthrie, SIP/NSR Section (6T-AN), Air Programs Branch, EPA Region VI, 1445 Ross Avenue, Dallas, Texas 75202-2733; Telephone (214) 655-7214 or FTS 255-7214. Reference File SIP 1-4-2-17-2.

SUPPLEMENTARY INFORMATION: Pursuant to Section 111 of the Clean Air Act, EPA promulgates standards of performance for new stationary sources of air pollution. After promulgating such a new source performance standard (NSPS), EPA publishes an emission control guideline document and announces its availability in the *Federal*

Register. Section 111(d) of the Act and implementing regulations at 40 CFR Part 60, Subpart B require that each state adopt a plan for controlling designated pollutants from existing facilities and submit it to EPA for approval. Today, EPA is approving a 111(d) plan submitted by the State of Oklahoma.

The TRS NSPS

Total Reduced Sulfur (TRS) consists of the sulfur compounds hydrogen sulfide, methyl mercaptan, dimethyl sulfide, and dimethyl disulfide, all of which are commonly emitted by kraft pulp mills. Although these TRS emissions have no demonstrated adverse effects on human health at low concentrations, they can corrode or tarnish exposed copper, zinc, and silver and discolor paints containing heavy metal salts, e.g., lead. More importantly, perhaps, TRS emissions have a distinctly unpleasant odor which may adversely affect property values and economic development in the vicinity of kraft pulp mills.

On February 23, 1978, EPA promulgated new source performance standards for kraft pulp mills at 43 FR 7568. In relevant part, the NSPS designated TRS as a welfare related pollutant to be controlled. Subsequently, in March 1979, the Agency's Office of Air Quality Planning and Standards issued "Kraft Pulp, Control of TRS Emissions from Existing Mills," a emission control guideline document for use by state governments developing controlling regulations. On May 20, 1986, EPA amended the NSPS at 51 FR 18538 to allow a higher level of TRS emissions from smelt dissolving tanks.

Oklahoma's Adoption of a 111(d) Plan

After public hearings, the Oklahoma State Board of Health adopted Oklahoma Air Pollution Control Regulation (OAPCR) 3.4(b)(4)(A) on November 15, 1983, imposing TRS emission limits on the State's only existing kraft pulp mill and requiring it to either comply with the new limits within two years or submit an alternate compliance schedule within six months for review and approval of the Oklahoma Air Quality Council (Council). The facility subject to the amended regulation is a kraft pulp mill owned and operated by Weyerhaeuser Paper Company (Weyerhaeuser) in Valliant, Oklahoma. In October 1983, Weyerhaeuser submitted a compliance schedule for its Valliant facility, committing to achieve compliance with the new TRS emission limit by May 9, 1989. After a hearing, the Council approved Weyerhaeuser's plan via verbal order duly recorded in its

minutes on November 15, 1983. Later, on January 20, 1987, the Council amended OAPCR 3.4(b)(4)(A)(i)(c), changing the TRS emission limit for smelt dissolving tanks from 0.0084 to 0.016 grams per kilogram of black liquor solids, rendering it consistent with the NSPS revision EPA promulgated on May 20, 1986.

On November 17, 1987, the Governor of Oklahoma submitted OAPCR 3.4(b)(4) and the State's administrative record on Weyerhaeuser's compliance schedule to EPA Region VI for review and approval as a revision to 40 CFR Part 62. After reviewing that submission, EPA noted that Weyerhaeuser's compliance schedule lacked incremental compliance dates required by 40 CFR 60.24(e)(1), was ambiguous with regard to the compliance test method required by 40 CFR 60.24(b)(2),¹ and would be difficult, if not impossible, to incorporate by reference in 40 CFR Part 62 because the Council did not reduce its approving order to written form.²

After EPA informed the State of its concerns, the Council issued a written consent order to Weyerhaeuser on May 3, 1988, incorporating an incremental compliance schedule and affirming EPA Method 16 or 18A from Appendix A to 40 CFR Part 60 as the required compliance test method. On June 1, 1988, the State submitted a copy of that order to EPA Region VI, thus resolving EPA's objections to approval of its 111(d) plan.

Relative Stringency of Emission Limits

As amended, OAPCR 3.4(b)(4)(A)(i) imposes the following TRS emission limits on Weyerhaeuser's Valliant kraft pulp mill:

(a) Forty (40) parts per million (ppm) of total reduced sulfur measured as hydrogen sulfide on a dry basis and on a 12 hour average, converted to eight (8)

¹ OAPCR 3.4(b)(4)(A)(ii) requires compliance testing "following the Oklahoma test procedure requirements." Such test procedures are found in an Appendix to OAPCR 5.1. EPA has not approved that Appendix and it is not part of Oklahoma's SIP.

² Pursuant to the Oklahoma Administrative Procedure Act, 75 O.S. 1983, § 312, only administrative orders "adverse to a party in an individual proceeding" (Weyerhaeuser in this case) need be reduced to writing. Moreover, § 1-1802(f) of the Oklahoma Clean Air Act requires that the State issue an administrative order to a violating source and provide opportunity for hearing thereon prior to enforcement of an emission limitation, including those imposed by prior order. In view of these statutory provisions, Oklahoma has sometimes reserved its resources for issuing written administrative orders to situations involving sources already in violation of a verbal compliance order. EPA and the State have discussed the problems this procedure posed for State/Federal coordination and the State has begun issuing written orders in source specific matters, formatted to facilitate Federal review and approval.

volume percent oxygen from any recovery furnace.

(b) Forty (40) parts per million of total reduced sulfur measured as hydrogen sulfide on a dry basis and on a 12-hour average, corrected to ten (10) volume percent oxygen from any lime kiln.

(c) 0.016 gram of total reduced sulfur measured as hydrogen sulfide per kilogram of black liquor solids for a 12-hour average from any smelt dissolving tank.

(d) Non-condensable gases from all evaporators and digesters shall be efficiently incinerated or otherwise treated to limit emissions to less than five (5) ppm by volume on a dry basis.

Although the limits imposed by subsections (c) and (d) of this regulation are identical to those recommended by EPA, "the 40 ppm emission limits of subsections (a) and (b) are less stringent than the 20 ppm limits recommended by the Agency's guidance document. Because TRS is a welfare related pollutant, 40 CFR 60.24(d) allows states flexibility in balancing EPA guideline recommendations against other factors of public concern, e.g., the effect of compliance costs on local economies, in developing their 111(d) plans. In this case, purchasing and installing control equipment to comply with the 20 ppm limits EPA recommended would, according to information submitted to the State by Weyerhaeuser, have incremental costs in excess of \$4 million. Because Weyerhaeuser's kraft pulp mill is Valliant's largest industry and must compete with kraft pulp mills (subject to similar 40 ppm limits) in nearby Arkansas, the Council believed this an excessive cost for incremental odor reduction. EPA has no quarrel with that decision.

The compliance schedule Oklahoma approved requires Weyerhaeuser to comply with the limitations of OAPCR 3.4(b) by May 9, 1989. This is the maximum approvable time for compliance under EPA's guideline document and was no doubt adopted in view of the same factors influencing the Council's emission limits decision.

EPA Action

Because EPA considers Oklahoma's 111(d) plan for TRS noncontroversial, it is now publishing a "direct final" approval, i.e., approving it without providing prior opportunity for public comment. In the absence of further developments, EPA's approval will be effective 60 days from today. If EPA receives notice within 30 days that someone desires to submit adverse or critical comments, however, it will withdraw the approval and publish a

notice of proposed approval and request for public comment in the **Federal Register**.

Pursuant to 5 U.S.C. 605(b), I certify that approval of Oklahoma's 111(d) plan will not have a significant economic impact on a substantial number of small entities. Weyerhaeuser Paper Company is not a small entity and is moreover already subject to the plan by virtue of State action.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12292.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this approval must be filed in the United States Court of Appeals for the appropriate circuit within 60 days from date of publication. This action may not be challenged later in proceedings to enforce its requirements (See section 307(b)(2)).

List of Subjects in 40 CFR Part 62

Administrative practice and procedure, Air pollution control, Intergovernmental relations, Paper and paper products industry, Reporting and recordkeeping requirements, Sulfuric oxides.

Date: June 1, 1989.

William K. Reilly,
Administrator.

40 CFR Part 62, Subpart LL is amended as follows:

PART 62—[AMENDED]

Subpart LL—Oklahoma

1. The authority citation for Part 62 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 62.9100 is amended by adding paragraphs (b)(2), (c)(2), and an

undesignated center heading preceding § 62.9140 to read as follows:

§ 62.9100 Identification of plan.

(b) . . .

(2) Control of total reduced sulfur from existing kraft pulp mills was submitted on November 17, 1987, and supplemented on June 1, 1988.

(c) . . .

(2) Kraft pulp mills.

Total Reduced Sulfur From Existing Kraft Pulp Mills

3. Section 62.9140 is added to read as follows:

§ 62.9140 Identification of source.

The plan includes the following kraft pulp mill:

(a) Weyerhaeuser Paper Company in Valliant, Oklahoma.

[FR Doc. 89-13478 Filed 6-9-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 1, 21, 22, 74, and 94 [General Docket 82-243]

Service and Technical Rules for Government and Non-Government Fixed Service Usage of the Frequency Bands 932-935 MHz and 941-944 MHz; Correction

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: The *Second Report and Order* concerning Government and non-Government fixed service usage of the frequency bands 932-935 MHz and 941-944 MHz contained an incorrect effective date of April 1, 1989, and errors in paragraphs 20, 21, 23, 30, 33, 37, and 38 relating to §§ 21.101, 21.107, 21.701,

22.501, 74.502, 94.65, and 94.67, respectively, of the FCC Rules. This document corrects the effective date to April 12, 1989, deletes a frequency range in § 21.101, corrects tables in §§ 21.107 and 21.701, corrects introductory language to a table in § 22.501, clarifies that a paragraph has been added to, and corrects a typographical error in, § 74.502, clarifies that table numbers have been redesignated in § 94.65, and corrects a table in § 94.67.

EFFECTIVE DATE: June 12, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Rodney Small, telephone (202) 653-8116.

SUPPLEMENTARY INFORMATION: See *Second Report and Order*, 54 FR 10328, March 13, 1989.

Rules Corrections

In FR Doc. 89-5124, published in the Monday, March 13, 1989, **Federal Register** the following corrections are made:

1. On page 10328, the Effective Date caption is revised to read: "Effective Date: April 12, 1989."

§ 21.101 [Corrected]

2. On page 10327, the amendatory language of paragraph 20 is corrected to read: "In § 21.101, the table in paragraph (a) is amended by removing the frequency range 512 to 1,000 MHz, and by adding the following frequency ranges in numeric order:"

3. On page 10328, the amendatory language and table of paragraph 21 is corrected to read: "In § 21.107, the table in paragraph (b) is amended by adding the following frequency ranges in numeric order:"

21.107 Transmitter power.

(b) . . .

Frequency band (MHz)	Maximum allowable transmitter power		Maximum allowable EIRP	
	Fixed(W)	Mobile(W)	Fixed (dBW)	Mobile (dBW)
932.5 to 935	20.0		+40	
941.5 to 944	20.0		+40	

§ 21.701 [Corrected]

4. On page 10328, in paragraph 23, the table in § 21.701(c)(1) is corrected by changing the second entry in the eighth row from "941.8375" to "943.8375".

§ 22.501 [Corrected]

5. On page 10329, in paragraph 30, the text of § 22.501(g)(1) is corrected by

revising the third sentence to read: "The 928/959 MHz frequencies may be used in paired or unpaired configurations; the 932/941 MHz frequencies are primarily intended for two-way use, but requests to utilize half of a channel pair to satisfy a single channel requirement will be considered upon a showing that spectrum efficiency will not be impaired,

and that unpaired spectrum is not available in other bands."

§ 74.502 [Corrected]

6. On page 10329, the amendatory language of paragraph 33 is corrected to read: "In § 74.502, paragraphs (a) through (d) are redesignated as paragraphs (b) through (e), and a new

paragraph (a) is added to read as follows. In newly redesignated paragraph (e), change the internal reference to read 'paragraph (b) of this section'."

7. On page 10329, in paragraph 33, the text of § 74.502(a) is corrected by revising the fifth word from "W.S.C." to "US" in the first sentence.

§ 94.65 [Corrected]

8. On page 10330, the amendatory language of paragraph 37 is corrected to read: "Section 94.65 is amended by redesignating paragraph (a)(1)(iv) as paragraph (a)(1)(v); adding a new paragraph (a)(1)(iv); redesignating paragraphs (a)(2)(i) through (a)(2)(iii) and Tables 7 through 9 as paragraphs (a)(2)(ii) through (a)(2)(iv) and Tables 9 through 11; adding a new paragraph (a)(2)(i); and adding additional frequency bands in new paragraphs (a)(2)(ii), (a)(2)(iii), and (a)(2)(iv) in numeric order to read as follows:"

9. On page 10330, the amendatory language and table of paragraph 38 is corrected to read: "In § 94.67, the table is amended by adding the following frequency ranges in numeric order to read as follows:"

§ 94.67 Frequency tolerance.

Frequency band (MHz)	Tolerance as percentage of assigned frequency
932-932.5, 941-941.5	0.00015
932.5-935, 941.5-944	0.00025

Federal Communications Commission.
William Caton,
Acting Secretary.
[FR Doc. 89-13748 Filed 6-9-89; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.
ACTION: Notice of inseason adjustments.

SUMMARY: NOAA has increased the quota for chinook salmon in the

commercial fishery from Humbug Mountain, Oregon, to Punta Gorda, California, beginning June 5, 1989, from 15,000 to 17,700 fish. The 2,700 fish increase is the number of fish that remained unharvested in the chinook salmon quota for the commercial fishery from Sisters Rocks to House Rock, Oregon, when that fishery closed on May 2, 1989. This action is necessary to conform with the preseason announcement of 1989 ocean salmon management measures. It is intended to allow maximum harvest of ocean salmon quotas established for the 1989 season. NOAA also has modified a boundary restricting deliveries of mixed loads of chinook and coho salmon or coho salmon-only loads in the commercial fishery from Cascade Head to Orford Reef Red Buoy, Oregon, which opens on July 1, 1989. The modification is necessary so that trollers may deliver their catch to Port Orford, Oregon, approximately one mile south of the management area. It is intended to accommodate fishermen's needs without substantially or adversely affecting the implementation of the 1989 ocean salmon management measures.

DATES: Effective Date: June 5, 1989.

Comments will be accepted until June 21, 1989.

ADDRESSES: Comments may be mailed to Rolland A. Schmitt, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731-7415.

Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, or Rodney R. McInnis at 213-514-6199.

SUPPLEMENTARY INFORMATION: The preseason notice of 1989 ocean salmon management measures (May 8, 1989, 54 FR 19798) announced that the ocean commercial fisheries from Humbug Mountain, Oregon, to Punta Gorda, California, would be managed not to exceed an overall quota of 30,000 chinook salmon through August 31. This overall quota is partitioned into three subquotas and seasons. Any overages or underages in meeting a subquota for one time period will be subtracted from or added to the next troll fishery prior to August 31.

The commercial fishery in the subarea between Sisters Rocks and House Rock, Oregon, closed on May 2, 1989, when it

was projected that the 7,500 chinook subquota would be reached (54 FR 19904, May 9, 1989). Actual landings through June 1, 1989, totaled approximately 4,800 chinook salmon in the subarea, a harvest of 2,700 fish under the subquota.

The next troll fishery begins on June 5, 1989, for the entire area between Humbug Mountain, Oregon, and Punta Gorda, California. Therefore, the subquota for this fishery should be increased by the number of chinook salmon not harvested in the May fishery from Sisters Rocks to House Rock. Accordingly, this notice increases the subquota for the commercial fishery from Humbug Mountain to Punta Gorda beginning on June 5, 1989, from 15,000 to 17,700 chinook salmon.

The preseason notice of 1989 management measures also announced that mixed loads of chinook and coho and coho-only loads that are caught in the commercial fishery from Cascade Head to Orford Reef Red Buoy, Oregon, must be delivered in that management area. This requirement is in effect from July 1 through the earliest of August 31 or attainment of the coho quota or coho ceiling. The Oregon Department of Fish and Wildlife has recommended that this restriction be modified to allow salmon caught in the management area to be landed in Port Orford, Oregon, approximately one mile south of the management area boundary. Trollers would like to be able to land their catch in Port Orford, Oregon, which is in the closed area between Orford Reef Red Buoy and Humbug Mountain, Oregon.

This modification of the management boundary would not substantially or adversely affect the implementation of the 1989 management measures since all salmon landed would count toward the overall catch quota and subarea catch ceiling for coho salmon. Enforcement problems are expected to be minimal. Therefore, the preseason notice of 1989 management measures (54 FR 19798, May 8, 1989) is modified as follows. In Table 1 on page 19803, for the area Cascade Head to Orford Reef Red Buoy and the season July 1 through earliest of August 31 or coho quota or coho ceiling, the paragraph in the column "Restrictions and exceptions" is revised to read as follows:

Cape Arago to Orford Reef Red Buoy is closed July 14-31 and August 18-31. Three-day closure at 75% of coho ceiling (C-7). A single daily landing limit per vessel of 50 coho is permitted. There is no limit on the number of chinook that may be landed. To land more than 50 coho, chinook must also be landed such that there is at least 1 chinook for each 3 coho landed over 50. Mixed loads

of chinook and coho or coho-only loads must be delivered between Cascade Head and Port Orford, Oregon. All chinook in possession must be delivered with the coho. There are no restrictions on the place of delivery of chinook-only loads. Chinook and coho salmon possessed or landed between Cascade Head and Port Orford may not be returned or transferred to any vessels except vessels licensed to buy salmon.

This notice does not apply to treaty Indian fisheries or to other fisheries that may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery Management Council, the Oregon Department of Fish and Wildlife, and

the California Department of Fish and Game regarding this action. The States of Oregon and California will manage the commercial fishery in State waters adjacent to this area of the exclusive economic zone in accordance with this federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through June 21, 1989.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: June 6, 1989.

David S. Crestin,

Acting Director of Office Fisheries,
Conservation and Management, National
Marine Fisheries Service.

[FR Doc. 89-13806 Filed 6-6-89; 4:24 pm]

BILLING CODE 3510-22-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 163

[Docket No. 86P-0297/CP]

Cacao Products; Proposal To Amend the Standard of Identity; Extension of Comment Period

AGENCY: Food and Drug Administration.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Food and Drug Administration (FDA) is further extending the period for submitting comments on the proposal to amend the standards of identity for certain cacao products. This action is based upon a request from the International Ice Cream Association (IICA).

DATE: Comments by August 11, 1989.

ADDRESS: Written comments, data, or other information to the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Arthur R. Johnson, Food and Drug Administration, Center for Food Safety and Applied Nutrition (HFF-414), 200 C Street, SW., Washington, DC 20204, 202-485-0112.

SUPPLEMENTARY INFORMATION: In the Federal Register of January 25, 1989 (54 FR 3615), FDA published a proposal to amend the standards of identity for cacao products in 21 CFR Part 163 and requested comments by March 27, 1989. Based upon requests from the American Dairy Products Institute and the Chocolate Manufacturers Association, the comment period was reopened and

extended 60 days, to June 12, 1989, in order to allow time for a full evaluation of the proposed amendments. The notice of extension was published in the Federal Register of April 12, 1989 (54 FR 14683).

In a letter dated May 18, 1989, IICA, which represents over 200 manufacturers of ice cream and frozen desert products, requested an additional 60-day extension to the comment period ending June 12, 1989. IICA stated that an extension was necessary to give IICA adequate time to canvass its large membership and to determine the consequences of the proposal to the members, to permit a review by an internal IICA committee, and to formulate meaningful comments. IICA further stated that the committee is scheduled to meet in mid-June and that it is not feasible to advance the date of that meeting. IICA also stated its belief that an extension is justified because it is in the best interest of the affected industries and consumes to allow sufficient time for a full evaluation of the proposed amendment and for the development of a complete response by interested parties.

FDA concludes that IICA has provided adequate grounds in support of extending the time period for comment. Therefore, FDA is extending the comment period for an additional 60 days to August 11, 1989.

Interested persons may, on or before August 11, 1989, submit to the Docket Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen at the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: June 6, 1989.

Richard J. Ronk,
Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-13829 Filed 6-7-89; 10:57 am]

BILLING CODE 4160-01-M

Federal Register

Vol. 54, No. 111

Monday, June 12, 1989

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Part 655

[FHWA Docket No. 89-18]

Uniform System for Handicapped Parking

AGENCY: Federal Highway Administration (FHWA), National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Notice of intent to form advisory committee for regulatory negotiation.

SUMMARY: The FHWA and NHTSA are considering the establishment of an advisory committee to develop a report which includes a recommended rulemaking proposal concerning a uniform system for handicapped parking. The committee would develop its recommendation using a negotiation process. The committee would be comprised of persons who represent the interests affected by handicapped parking regulations.

DATE: Comments and suggestions must be received on or before June 27, 1989.

ADDRESS: Comments and suggestions concerning the membership of the advisory committee, the issues that it should consider, the interests affected, the procedures that should be followed and any other matters relating to such a committee may be mailed in duplicate to: Federal Highway Administration, Room 4205, HCC-10, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m., E.T., Monday through Friday except Federal holidays. Those desiring notification of receipt of comments must include a self-addressed stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Vincent J. Nowakowski, Federal Highway Administration, Office of Traffic Operations (202) 366-2148, or Mr. E. William Fox, National Highway Traffic Safety Administration, Office of Chief Counsel, (202) 366-1834, 400 Seventh Street, SW., Washington, DC 20590. Office hours are 7:45 a.m. to 4:15 p.m., E.T., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION: Congress addressed the issue of parking for handicapped persons in Section 231 of the Department of Transportation Appropriations Act of 1984 (Pub. L. 98-78) enacted August 15, 1983. This section included statements of congressional findings regarding the needs of handicapped people and encouraged the States to adopt laws for special parking privileges. In addition Congress:

- Encouraged the use of the International Symbol of Access on either specialized licensed plates or a placard to identify vehicles carrying handicapped persons.

- Stated the need for reciprocity agreements among the States so the privileges would be available to the handicapped as they traveled throughout the country.

In response to that statute, the Secretary of Transportation wrote to the governor of each State on December 13, 1983, encouraging the adoption of the International Symbol of Access and agreement of reciprocity among the States for handicapped parking privileges.

Testimony before the Senate Committee on Commerce, Science, and Transportation in the spring of 1987, indicated mixed results regarding the adoption of the International Symbol of Access and reciprocity sought in Pub. L. 98-78. Some States made strides towards uniform model regulations for handicapped parking, but others failed to do so.

Congress next addressed the issue of parking for handicapped persons in Section 282 of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100-17) enacted April 2, 1987. This section required the Secretary of Transportation to conduct a study on parking for handicapped persons. The report was to address two areas:

- Problems encountered by handicapped persons in parking motor vehicles, and

- Whether or not each State should establish parking privileges for handicapped persons and grant to nonresidents of the State the same parking privileges granted to residents.

The report, Parking for Handicapped Persons Study, was delivered to Congress in November 1987. It found several inconsistencies among the States that caused problems for handicapped persons parking motor vehicles. These inconsistencies were:

- Lack of a uniform definition of who is entitled to special handicapped parking privileges,

- Lack of a uniform method for identifying motor vehicles owned by or transporting a handicapped person,
- Lack of uniform parking privileges extended to handicapped persons,
- Varying degrees of enforcement of handicapped parking laws and severity of penalties imposed to violators, and
- Lack of reciprocity between States in recognizing out-of-State handicapped parking permits, license plates, etc.

The report stated that if the States could agree on a definition of a handicapped person, on using the International Symbol of Access on Handicapped plates and placards, on establishing parking privileges, and recognizing out-of-State handicapped plates and placards, the parking problems facing the handicapped traveler would be greatly reduced. The report also noted that the issue of uniform handicapped parking regulations has been addressed by the National Committee on Uniform Traffic Laws and Ordinances in its Uniform Vehicle Code (VC). The UVC is a model set of vehicle laws based on experience under various State laws throughout the Nation.

The Parking for Handicapped Persons Study recommended the States to adopt sections 1-121.1, 11-1005, and 11-1003(a)1.k. of the UVC. Adoption of these sections would:

- Standardize the definition of a handicapped person,
- Ensure the right of any handicapped person, whether driver or passenger, to legally park in any designated handicapped parking space in any State,
- Require the use of the International Symbol of Access as the means of identifying handicapped parking spaces and vehicles carrying handicapped persons.

- Require the International Symbol of Access be displayed on license plates or placards issued to handicapped individuals, and

- Require that the placement of an identification card be such that it is easily visible through the front windshield of any vehicle.

In late March 1988, the Secretary of Transportation transmitted copies of the report to the governors of all States.

The report cited problems facing handicapped persons and recommended the States adopt these sections of the UVC. Most States have not adopted all the recommended sections of the UVC. Thus, Congress passed Pub. L. 100-641 which requires DOT to issue regulations for a uniform system for handicapped parking and which is the subject of this notice.

The legislative history of Pub. L. 100-641 clearly contemplates regulatory

negotiation in the processing of this rulemaking. Regulatory Negotiation (RN), is a procedure recommended by the Administrative Conference of the United States (Recommendation 82-4, "Procedures for Negotiating Proposed Regulations," 47 FR 30708, June 18, 1982) for handling certain regulatory actions. To ensure its legality, RN would be carried out by an advisory committee created under the Federal Advisory Committee Act, 5 U.S.C. app. 1. The purpose of RN is to have representatives of all affected interests fully discuss the issues under conditions that would provide incentives to narrow or eliminate their differences and to negotiate a proposed rule acceptable to each interest. The recommendation by the committee should be a proposal which reflects appropriate rulemaking objectives. The FHWA/NHTSA would take part in the discussions. While the FHWA/NHTSA is hopeful that RN will result in the issuance of an NPRM that would be acceptable to most parties, the FHWA/NHTSA is committed to developing a practical regulation.

If the RN process fails, the agency would issue a new NPRM based upon the complete regulatory record including the record of this process.

Regulatory Negotiation

The increasing complexity of some Government regulations, compounded by what some see as an increased formalization of the written rulemaking process, can make it difficult for an agency to develop a sound regulatory solution to some problems. The standard process often leads to participants developing adversarial relationships with each other. In this more formal structure, they may take extreme positions, withhold information from one another, or attack the legitimacy of opposing positions. The give and take sometimes necessary to develop a workable solution is not always possible through the comment and reply process. Public comments are often focused on finding problems with the proposals of others rather than helping to develop creative solutions.

With these problems in mind, participants often tell the agency that a better rule could be developed if we could all just sit around a table and work it out. Experience indicates that if the parties in interest were to work together to negotiate the text of a proposed rule, they might be able in some circumstances to identify the major issues, gauge their importance to the respective parties, identify the information and data necessary to resolve the issues, and develop a rule

that is acceptable to the respective interests, all within the contours of the substantive statute.

As a result of research on this problem, the Administrative Conference adopted Recommendation 82-4. The Administrative Conference's recommendation is essentially that agencies consider assembling a group of representatives of all affected interests who would be encouraged to reach consensus on a resolution of the issues and to draft, for the agency head's consideration, the text of a proposed regulation. Recognizing the experimental nature of this approach, we agree that the RN process may be useful in this particular case. We have set forth below a set of suggested procedures that we believe will provide a mechanism by which the benefits of negotiation can be achieved. We also believe that the procedures provide the appropriate safeguards suggested by the Administrative Conference, to ensure that affected interests have the opportunity to participate, that the resulting rule is within the discretion delegated by Congress, and that it is not arbitrary or capricious.

Procedures and Guidelines

The following proposed procedures and guidelines would apply to this process, subject to appropriate changes made as a result of comments received on this notice or as are determined to be necessary during the negotiating process. It should be noted that several necessary preliminary steps have already been taken.

1. *Convenor/Mediator/Facilitator.* The convenor/mediator/facilitator will chair the actual negotiations, participate in the "negotiations," and be expected to offer alternative suggestions toward the desired consensus. He/she may also ask the parties to present additional material or to reconsider their positions.

2. *Feasibility.* The FHWA/NHTSA have examined the issues and interests involved and have made a preliminary inquiry among representatives of the identified interests to determine whether it is possible to reach agreement on: (a) Individuals to represent those interests, (b) the preliminary scope of the issues to be addressed, and (c) a schedule for developing a notice of proposed rulemaking. The issues and interests are listed in subsequent sections of this document. On the basis of the preliminary inquiry, the FHWA/NHTSA believe that regulatory negotiation could be successful with respect to the development of a uniform system for handicapped parking and that the potential participants listed below could

adequately represent the affected interests.

3. *Participants:* There will be approximately 15 participants in the negotiating group. A number larger than this could make it difficult to have effective negotiations. One purpose of the present notice is to assist the identified interests to determine whether other interests, who would not be adequately represented by the proposed participants, may be substantially affected by the proposed rule to be developed. However, we do not believe that each potentially affected individual or organization must have its own representative. Rather, each interest should be adequately represented by the selected parties. To ensure a balanced group, we will make every effort to ensure that no one interest has more than a third of the members of the negotiating committee.

4. *Good Faith:* Participants must be willing to negotiate in good faith. In this regard, it is important that senior individuals within each organization be designated to represent that organization. No individual is required to "bind" the interests he or she represents, but the individual should be at a high enough level within his/her organization to personally commit their organization on most matters. The FHWA/NHTSA plan to issue the negotiated proposal in a notice of proposed rulemaking unless it is inconsistent with the statutory authority of the agency or other statutory requirements, or it is not appropriately justified. It is expected that, during the negotiating process, the participants will communicate to their respective organizations the progress of the negotiations. For the process to be successful, the interests represented should be willing to accept the final product of the advisory committee.

5. *Notice of Intent to Establish Advisory Committee and Request for Comment:* In accordance with the requirements of the Federal Advisory Committee Act, an agency of the Federal Government cannot establish or utilize a group of people in the interest of obtaining advice or recommendations unless that group is chartered as a Federal advisory committee in accordance with the requirements of the statute. It is the purpose of this notice to indicate our intent to create a Federal advisory committee as well as to:

- Identify the issues we believe are involved in the rulemaking,
- Identify the interests we believe are affected by those issues,
- Identify the participants we have initially determined will adequately

represent those interests in the negotiations, and

d. Ask for comment on the use of regulatory negotiation for this rulemaking and on whether the issues, parties, procedures, and guidelines are adequate and appropriate.

6. *Requests for Representation:* If, in response to this notice, an additional person or interest requests membership or representation in the negotiating group, the agency would determine (i) whether that interest would be substantially affected by the rule, (ii) if so, whether it would be adequately represented by an individual already in the negotiating group, and (iii) whether, in any event, the requester should be added to the group or whether interests can be consolidated and still provide adequate representation.

7. *Final Notice:* After evaluating comments and requests for representation received as a result of this notice, the FHWA/NHTSA would issue a final notice announcing the establishment of the Federal advisory committee. After the Federal advisory committee notice is published in the *Federal Register*, the negotiation process would begin.

8. *Administrative Support and Meetings:* Staff support would be supplied by the FHWA/NHTSA. Meetings would be held in the Washington, DC, area.

9. *Consensus:* The goal of the negotiating process is consensus. Generally, consensus means that each interest should concur in the result.

10. *Record of Meetings:* In accordance with the requirements of the Federal Advisory Committee Act, the FHWA/NHTSA would keep a record of all meetings of the advisory committee. This record would be placed in the public docket for this rulemaking. Meetings of the committee would be open to the public, subject to space availability, and would be announced in the *Federal Register* before being held.

11. *Committee Procedures:* Subject to any applicable legal requirements, the committee would establish the detailed procedures for committee meetings that it deemed most appropriate.

12. *Notice of Proposed Rulemaking:* The objective of the committee is to prepare a report containing a notice of proposed rulemaking (NPRM) and preamble. The FHWA/NHTSA would provide drafting assistance to the committee. The report should also describe the factual material on which the group relied. If consensus is not obtained on some issues, the report should identify the areas of agreement, the areas in which consensus could not

be reached, and the reasons for nonagreement. It is expected that, to the extent possible, the participants would address economic and regulatory flexibility requirements.

13. *Agency Action on NPRM:* The FHWA/NHTSA would issue the proposed rule as prepared by the committee unless the agency finds that it is inconsistent with the statutory authority of the agency or other statutory requirements or it is not appropriately justified. In that event, the agency would explain its reasons for its decision. If the agency wishes to modify the negotiated proposal, it would do so in a way that allows the public to distinguish its modifications from what the group proposed.

14. *Final Rule:* After the comments have been received on any notice of proposed rulemaking, the advisory committee would review the comments to determine whether its original recommendations to the agency should be modified. Any necessary changes would be negotiated by the committee in the same manner as the NPRM. The committee would prepare a final report, including a preamble responding to public comment and a proposed final rule. The final rule is the sole responsibility of the Administrators of the FHWA and NHTSA. It must be stressed that the Administrators want to use the regulatory negotiation process and intend to use any negotiated rule on which there is a committee consensus, if it is practicable and legally proper to do so.

Major Issues That Would Be Considered in RN on a Uniform System for Handicapped Parking

The FHWA/NHTSA have identified what it believes to be the major issues to be considered in RN. They are listed below. Persons who desire to suggest additional issues that should be considered during RN may do so by submitting comments and suggestions in the manner described under the paragraph entitled "ADDRESS." Other regulatory issues would be considered by the committee as they arise.

- Recognition of the International Symbol of Access (ISA). Adopt the ISA (as adopted by the Rehabilitation International in 1969 at its 11th World Congress on Rehabilitation of the Disabled) as the only recognized symbol for the identification of vehicles used for transporting individuals with handicaps which limit or impair the ability to walk.
- Issuance of Handicapped License Plates Displaying the ISA. Provide for the issuance of license plates displaying the ISA for vehicles which will be used to transport individuals with handicaps

which limit or impair the ability to walk, under criteria determined by the State.

3. Issuance of Removable Windshield Placards. Provide for the issuance of removable windshield placards to be displayed inside the vehicle on the passenger side of the vehicle dashboard (displaying the ISA) to individuals with handicaps which limit or impair the ability to walk, under criteria determined by the State.

4. Fees for Licensing and Registering Vehicles Transporting Handicapped Persons. Provide that fees charged for the licensing or registration of a vehicle used to transport individuals with handicaps do not exceed fees charged for the licensing or registration of other similar vehicles operated in the State.

5. Reciprocity. Recognize licenses and placards identifying handicapped persons and displaying the ISA which have been issued by other States and countries.

Interests Involved in the Establishment of a Handicapped Parking System

The following interests should be represented in negotiations to develop regulations for a uniform system for handicapped parking:

- Federal Government.
- Public/Consumer.
- National organizations representing persons with disabilities.
- State and local government.
- Motor vehicle agencies.
- Law enforcement agencies.

Comments and suggestions on this list of interests should be submitted as explained in the "ADDRESS" paragraph above.

Parties That Could Be Part of the RN Process

The advisory committee would recommend an NPRM to the FHWA/NHTSA. Therefore, it is important that the advisory committee be comprised of persons who possess substantial expertise or various viewpoints on the various issues which would be presented to it for discussion and preparation of recommendations.

They must also adequately represent their interests and be able to officially represent their organization to the fullest extent possible. The following is a list of possible representatives which the FHWA/NHTSA has tentatively identified.

- Federal Highway Administration.
- National Highway Traffic Safety Administration.
- American Association of Motor Vehicle Administrators.
- International Association of Chiefs of Police.

5. National Committee on Uniform Traffic Laws and Ordinances.

6. Paralyzed Veterans of America.

7. The Association for Persons with Severe Handicaps.

8. American Automobile Association.

9. Disabled American Veterans.

Comments and suggestions on this tentative list of representatives may be submitted as explained under the paragraph entitled "ADDRESS." Others who believe they should be a party to these proceedings should submit requests to the same location explaining who they represent and how they can represent an interest that would not be adequately represented by the parties listed above.

Tentative Schedule

In accordance with the importance the FHWA/NHTSA attaches to the uniform system for handicapped parking rulemaking, the FHWA/NHTSA plan to expedite the processing of any rulemaking. The FHWA/NHTSA believe that the use of RN should facilitate these plans by providing a consensus proposal and by providing for the input of interested persons early in the rulemaking process. The FHWA/NHTSA hope to be able to establish an advisory committee by July 12, 1989. The first meeting of the Advisory Committee is tentatively scheduled for August 21, 1989. The location and time for the meeting will be announced at a later date. In order to eliminate the possibility of disagreement during review of the notice that it required under DOT rulemaking procedures and Executive Order 12291 by the Office of the Secretary (OST) and Office of Management and Budget (OMB), the FHWA/NHTSA have already taken steps to ensure the involvement of OST and OMB during the process. The FHWA/NHTSA would plan to issue the NPRM by November 27, 1989, with a 30-day period for public comment being provided. The development of any final rule would, of course depend on the comments received and their consideration by the advisory committee, but the FHWA/NHTSA would strive to issue a final rule early in 1990.

Failure of Advisory Committee To Agree on Recommendations

In the event the advisory committee is unable to reach a consensus on a proposed NPRM for submission to the FHWA/NHTSA, the agency will proceed with prompt development of a NPRM the FHWA/NHTSA deem appropriate.

Because of the importance we attach to developing an NPRM in this matter, and to prevent the possibility that anyone would attempt to use the RN process simply to delay the development of an NPRM, the Administrators have directed that the committee be dissolved if it cannot reach agreement within 45 days after the final pre-NPRM meeting. Earlier dissolution will occur if the convener recommends or the agency believes that it will be impossible to meet the deadline because of a lack of sufficient progress.

Issued on: June 5, 1989.

R.D. Morgan,
Executive Director.

Jeffrey R. Miller,
Acting Administrator, NHTSA.
[FR Doc. 89-13813 Filed 6-9-89; 8:45 am]
BILLING CODE 4810-22-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Permanent Regulatory Program; Public Comment Period and Opportunity for Public Hearing on an Amendment

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule.

SUMMARY: New Mexico promulgated rules for its permanent regulatory program (hereinafter, the New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The promulgated rules pertain to permit and exploration fees, water control for coal mine waste banks, disposal of non-coal wastes, backfilling and grading, inspection and enforcement, and the training, examination, and certification of blasters. New Mexico's promulgated rules differ from the rules it previously proposed to OSMRE and OSMRE approved. OSMRE is reviewing the promulgated rules to ensure that they are consistent with SMCRA and the Federal regulations.

This notice sets forth the times and locations that the New Mexico promulgated rules are available for public inspection, the comment period during which interested persons may submit written comments on the amendments, and the procedures that

will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., m.d.t. July 12, 1989. If requested, a public hearing on the amendment will be held on July 7, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on June 27, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the amendments, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the amendments by contacting OSMRE's Albuquerque Field Office.

Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, S.W., Suite 310, Albuquerque, New Mexico 87102, Telephone: (505) 766-1486.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, N.W., Washington, DC 20240, Telephone: (202) 343-5492.

New Mexico Energy & Minerals Department, Mining & Minerals Division, 525 Camino de los Marquez, Santa Fe, NM 87501, Telephone: (505) 827-5970.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, at the address or telephone number listed in "ADDRESSES."

SUPPLEMENTARY INFORMATION:

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, *Federal Register* (45 FR 86459). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.12, 931.15, 931.16, and 931.30.

II. Proposed Amendment

On March 9 and 17, 1989, OSMRE published notices in the *Federal Register*

(54 FR 9980 and 54 FR 11183; Administrative Record Nos. NM-480 and NM-484) approving the June 17, 1987, (as revised and clarified on February 18, 1988, and August 10, 1988; Administrative Record Nos. NM-356, NM-383, and NM-438), and April 18, 1988 (as revised and clarified on October 20, 1988; Administrative Record Nos. NM-405 and NM-452) State-proposed amendments to the rules of the New Mexico program. The Director of OSMRE approved the amendments on the condition that New Mexico would adopt the rules in a form identical to that submitted to and reviewed by OSMRE and the public.

By letters dated March 29 and April 26, 1989 (Administrative Record Nos. NM-489 and NM-490), New Mexico submitted to OSMRE copies of the rules that it had promulgated (effective April 28, 1989) subsequent to OSMRE's approval. Upon comparing the OSMRE-approved rules and the State-promulgated rules, OSMRE identified differences in the two sets of rules. Because SMCRA requires consistency between State and Federal standards, OSMRE is further reviewing and soliciting public review of New Mexico's promulgated regulations to determine whether they are no less effective than the Federal regulations and no less stringent than SMCRA.

The rules for which OSMRE has noted differences between the OSMRE-approved and State-promulgated rules are: permit and exploration fees, Rule 80-1-5-25(b); water control for coal processing waste banks, Rule 80-1-20-83(b); disposal of noncoal wastes, Rule 80-1-20-89(a) and (d); backfilling and grading, Rules 80-1-20-102(b) and 80-1-20-103(a); inspection and enforcement, Rule 80-1-29-11(a); and training, examination, and certification of blasters, Rules 80-1-33-11, 80-1-33-14, and 80-1-33-15(e).

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the amendments satisfy the applicable program approval criteria of 30 CFR 732.15. If the amendments are deemed adequate, they will become part of the New Mexico program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the

commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office may not be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m., m.d.t. on June 27, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the amendments may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Raymond L. Lowrie,
Assistant Director, Western Field Operations.
Date: June 2, 1989.

[FR Doc. 89-13842 Filed 6-9-89; 8:45 am]

BILLING CODE 4310-05-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[TN-078; FRL-3600-7]

Approval and Promulgation of Implementation Plans; Tennessee: PM₁₀ Revisions for Nashville/Davidson County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: On December 14, 1988, the State of Tennessee submitted revisions to the Nashville/Davidson County portion of its State Implementation Plan (SIP) for particulate matter. The revisions became State-effective on June 8, 1988, and November 18, 1988. The revisions were adopted pursuant to the requirements of Section 110 of the Clean Air Act to provide for the attainment of EPA's new particulate matter standards, known as "PM₁₀" standards.

DATE: To be considered, comments must reach us on or before July 12, 1989.

ADDRESSES: Written comments should be addressed to Rosalyn D. Hughes of EPA Region IV's Air Programs Branch (see EPA Region IV address below).

Copies of the State's submittal are available for review during normal business hours at the following locations:

Environmental Protection Agency, Region IV, Air Programs Branch, 345 Courtland Street, N.E., Atlanta, Georgia 30365.

Tennessee Department of Health and Environment, Division of Air Pollution Control, 4th Floor, Customs House, 701 Broadway, Nashville, Tennessee 37219-5403.

Metropolitan Health Department, Bureau of Pollution Control, 311-23rd Ave. North, Nashville, Tennessee 37203.

FOR FURTHER INFORMATION: Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864.

SUPPLEMENTARY INFORMATION: Pursuant to the 1977 amendments to the Clean Air Act, EPA, on July 1, 1987 (52 FR 24634), promulgated revised primary and secondary National Ambient Air Quality Standards (NAAQS) for particulate matter by replacing the total suspended particulate matter standard with a standard that included only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. The particles are referred to as PM₁₀.

The PM₁₀ standards cover a size range of particles that is different than the range of particles covered by the former particulate standard for total suspended particulates (TSP). This means that states must develop and implement PM₁₀ control programs. The process being used generally follows the basic approach used in the development and implementation of TSP control programs. First, EPA evaluated the probabilities of PM₁₀ air quality levels predicted from actual TSP data and concluded that Nashville/Davidson County was a Group III area, which means that the existing particulate matter control strategy is believed to be largely adequate to attain and maintain the PM₁₀ standards. However, the Nashville/Davidson County portion of the Tennessee SIP still needs to be revised to address the PM₁₀ NAAQS in the following ways:

a. To include ambient air quality standards for PM₁₀ at least as stringent as the NAAQS.

b. To trigger preconstruction review for new or modified sources which would emit significant amounts of either PM or PM₁₀ emissions.

c. To invoke the emergency episode plan to prevent PM₁₀ concentrations from reaching the significant harm level of 600 µg/m³.

d. To meet ambient PM₁₀ monitoring requirements of 40 CFR Part 58, and

e. To meet the requirements of 40 CFR 51.322 and 51.323 to report actual annual emissions of PM₁₀ (beginning with emissions for 1988) for point sources emitting 100 tons per year or more.

In response to the above requirements, Nashville/Davidson County revised their regulations and the State of Tennessee submitted those regulations as revisions to the SIP. The definitions for "PM₁₀," "PM₁₀ emissions," "particulate matter," and "total suspended particulates" have been added. The old definition for "particulate matter" has been deleted in its entirety and replaced with the federal definition.

In section 4-1-6, Incinerator Regulations, paragraph (f) was added. This paragraph exempts certain incinerators from 4-1-6 if they are covered by another regulation. This revision would allow Nashville to adopt additional regulations for specific classifications of incinerators.

In section 4-1-16, Registration and Permits, several housekeeping revisions have been made. No action will be taken on the deletion of subsection (c)(2) because it deals with operating permit regulations. Subsection (f)(3), has been revised to allow Nashville to adopt

additional regulations for specific classifications of incinerators.

Regulation No. 3, New Source Review, has also been revised. Several definitions in section 3-1, Definitions, have been revised. Paragraph (dd), "Secondary Emissions," was revised so that it does not exclude vessel emissions which occur during loading/unloading at the facility or which are dockside emissions. In paragraph (ee), "Significant," subparagraph (1) was revised to add PM₁₀ when referencing net emissions increase or a source's potential to emit. Subparagraph (2) limits the emissions impact on a nonattainment area. The limits for particulate matter and carbon monoxide were deleted and replaced with limits for sulfur dioxide, nitrogen dioxide, carbon monoxide and particulate matter. The definition "Volatile Organic Compound (VOC)" was added to section 3-1 as paragraph (gg). This definition has already been approved as part of Regulation No. 7, Regulation for Control of Volatile Organic Compounds, on January 27, 1989 at 54 FR 4020.

Several sentences were added to section 3-2, Registration and Permits, paragraph (b)(2)(ii)(A), to explain if and how emissions from source shutdowns or curtailments in production or operating hours could be used for offsets. Added to paragraph (e) was a brief description of the procedural requirements of 40 CFR 51.102 which is to be used for construction permit applications for new major sources or major modifications.

Paragraph (a)(1) of section 3-3, Prevention of Significant Deterioration (PSD) Review, pertains to the list of sources which have the potential to emit or emit 100 tons per year of any regulated air pollutant that are subject to PSD. The phrase, "any regulated air pollutant," has been deleted and replaced with "any pollutant subject to regulation under the Federal Clean Air Act."

Since EPA has not developed any maximum increase in emissions over the baseline concentration for particulate matter, Nashville revised paragraph (e)(2)(i) of section 3-3. The title of part (i) has been changed from "Particulate Matter" to "Total Suspended Particulate."

Section 3-3 (f) has been updated to reference modeling guidance Supplement A (1987).

The de minimis air quality level for PM₁₀ has been added to section 3-3 (g)(6)(i). Also, the de minimis levels for lead, beryllium, and hydrogen sulfide have been revised to correspond to the federal levels.

Paragraphs g(7) and (8) were added to section 3-3. These paragraphs reference monitoring requirements for PM₁₀.

Emergency episode criteria were not included in this submittal. Nashville is in the process of developing those regulations. Action will be taken on the emergency episode criteria when they are submitted.

Proposed Action

EPA has reviewed the submitted material and found it to meet the requirements of 40 CFR Part 51. Therefore, EPA is proposing to approve the Tennessee PM₁₀ revisions, and is soliciting public comments.

For further information on EPA's analysis, the reader may consult a Technical Support Document which contains a detailed review of the materials submitted. This is available at the EPA address given above. Interested persons are invited to submit written comments within thirty days of the publication of this notice.

Under 5 U.S.C. 605(b), I certify that these revisions will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget (OMB) has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 46 CFR Part 52

Air Pollution control, Particulate matter, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401-7642.

Date: May 31, 1989.

Joe R. Franzmuthes,

Acting Regional Administrator.

[FR Doc. 89-13846 Filed 6-9-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 295

Withdrawal of NPRM—Suspension of ODS Agreements for all or a Portion of the Vessels Included Therein

AGENCY: Maritime Administration (MARAD), Department of Transportation.

ACTION: Withdrawal, notice of proposed rulemaking (NPRM).

SUMMARY: In 1983, MARAD issued a NPRM implementing provisions in section 1603 of the Omnibus Budget Reconciliation Act of 1981. MARAD is now withdrawing that NPRM because it

is most unlikely that any operators that may elect to suspend operating-differential subsidy (ODS) contracts will do so.

FOR FURTHER INFORMATION CONTACT: Raymond Barberesi, Office of Trade Analysis and Insurance, Maritime Administration, Department of Transportation, Washington, DC 20590, Telephone No. (202) 366-2282.

SUPPLEMENTARY INFORMATION: The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97-35), amended the Merchant Marine Act, 1936, by adding a new section 614 (Snyder Amendment). That amendment allows an operator receiving ODS to make an election to suspend subsidy under its ODS Agreement with respect to all or a portion of its vessels. ODS suspension results in termination of all attendant statutory and contractual restrictions in the ODS agreement, except those pertaining to the domestic trade, but requires a pro rata repayment of any construction-differential subsidy (CDS), where applicable.

MARAD issued a NPRM on August 18, 1983 (48 FR 37449), establishing procedures that would implement this privilege of suspending ODS agreements. Subsequently, in 1984, the Maritime Subsidy Board (Board) began consolidated proceedings in Docket No. S-764 to consider applications by U.S.-flag subsidized bulk operators to amend their ODS agreements to allow the carriage of preference cargoes (U.S. government-impelled cargoes reserved to U.S.-flag vessels) without subsidy.

In its Tentative Opinion and Order (September 25, 1985), tentatively granting conditional approval of these applications, the Board found that the Snyder Amendment does not by its terms limit the Board's ability to mutually amend an ODS agreement. The Board had previously found that the amendment was not intended to be exclusive, which finding was upheld on Court review.

The Board's Final Opinion and Order in Docket S-764 became effective on April 15, 1986. The six bulk operators that had elected to suspend their ODS Agreements, with respect to eight vessels, had reinstated them by that date. Since the Board's Order did not require the repayment of CDS as a condition for amending ODS agreements for the purpose of allowing the carriage of bulk preference cargoes without subsidy, bulk operators have found that procedure to be a preferable alternative to suspending their ODS agreements and repaying CDS. The operator of the only

liner vessels to make an election under the Snyder amendment is in bankruptcy.

Accordingly, since it appears most unlikely that any subsidized operators will elect in the future to suspend their ODS agreement pursuant to the Snyder Amendment, MARAD is hereby withdrawing its NPRM.

By order of the Maritime Administrator.
Dated: June 6, 1989.

James E. Saari,

Secretary, Maritime Administration.

[FR Doc. 89-13843 Filed 6-9-89; 8:45 am]

BILLING CODE 4610-01-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1002

[Ex Parte No. 246 (Sub 7)]

Regulations Governing Fees for Services Performed in Connection With Licensing and Related Services—1989 Update

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is required by the regulations in 49 CFR 1002.3 to update user fees annually. The Commission's update formula is contained in 49 CFR 1002.3. In this decision, the Commission is proposing its 1989 Update.

In 1989, the Commission conducted a Cost Study of various fee items to ensure that the fee for these items reflect current Commission cost for Performing those services. As a result of the cost study, various fees are proposed to be adjusted in this proceeding.

In Ex Parte No. 246 (Sub-No. 6), Regulations Governing Fees For Services Performed In Connection With Licensing And Related Services—1988 Update, 53 FR 33813, (September 1, 1988), the Commission deferred increases in the fees for complaint and declaratory order type proceedings, pending further study and review of the issues which relate to those fee items. Those matters are being resolved in this proceeding. Also, in this proceeding, the Commission proposes to modify 49 CFR 1102.2(d)(3) to clarify the fee policy relating to motor finance temporary authority proceedings.

The Commission does not believe that this proposal to increase fees will have a significant economic impact on a substantial number of small entities because the Commission's regulations provide for the waiver of filing fees when the required showing of financial hardship is established.

DATE: Comments are due by July 12, 1989.

ADDRESS: Send an original and 15 copies of the comment to: Ex Parte No. 246 (Sub-No. 7), Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Kathleen M. King, 202-275-7428.

For costing information contact: Michael A. Stolica, 202-275-7765.

TDD for hearing impaired: 202-275-1721.

SUPPLEMENTARY INFORMATION: The Commission is required by its regulations at 49 CFR § 1002.3 to update fees annually. The 1989 update factors are as follows:

	Percent
FY-1989 General Pay Increases.....	4.1
Government Fringe Benefits.....	49.55
Operation Overload.....	8.97
Office General & Administrative Expenses.....	22.66
Commission General & Administrative Expenses.....	10.69

As a result of these increases the fully distributed costs for all fees increased. However, due to the Commission's rounding procedures which are set forth in 49 CFR 1002.3(e), not all fees increased. The resulting proposed fee schedule is set forth below.

Also, in this proceeding, the Commission is modifying 49 CFR 1002.2(d)(3) to clarify that a separate fee is assessed for the filing of an application for temporary authority to operate a motor or water carrier as provided in 49 CFR 1002.2(f)(24) regardless of whether such application is related to a corresponding transfer proceeding as provided for in 49 CFR 1002.2(f)(25), an application under 49 U.S.C. 11343 as provided for in 49 CFR 1002.2(f)(21), or a notice of exemption as provided in 49 CFR 1002.2(f)(27).

A copy of the Commission's full decision in this matter is available from the Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423 (202-275-7428).

This decision will not have a significant impact upon the quality of the human environment or conservation of energy resources.

List of Subjects in 49 CFR Part 1002

Administrative practice and procedure, Common carriers, Freedom of information and user fees.

Title 49 of the Code of Federal Regulation is proposed to be amended as set forth below.

Decided: May 31, 1989.

By the Commission, Chairman Gradison,

Vice Chairman Simmons, Commissioners Andre, Lamboley and Phillips.

Noreta R. McGee,
Secretary.

For the reasons set forth in the preamble, Title 49, Chapter X, Part 1002, of the Code of Federal Regulations is proposed to be amended as follows:

PART 1002—FEES

1. The authority citation for Part 1002 will continue to read as follows:

Authority: 5 U.S.C. 552(a)(4)(A), 5 U.S.C. 553, 31 U.S.C. 9701 and 49 U.S.C. 10321.

§ 1002.1 [Amended]

2. In § 1002.1, the dollar amount of "18.00" in paragraph (b) would be revised to read "\$19.00."

3. In § 1002.1, the dollar amount of "\$12.00" in paragraph (c) would be revised to read "\$13.00."

4. In § 1002.1, the table in paragraph (f)(6) would be revised to read as follows:

Grade	Rate
GS-1.....	\$5.55
2.....	6.04
3.....	6.81
4.....	7.64
5.....	8.55
6.....	9.53
7.....	10.59
8.....	11.72
9.....	12.95
10.....	14.26
11.....	15.67
12.....	18.78
13.....	22.33
14.....	26.39
15 & over.....	31.04

5. In § 1002.2, paragraph (d)(3) would be revised to read as follows:

§ 1002.2 Filing fees

(d) . . .
(3) Separate fees will be assessed for the filing of temporary operating authority applications as provided in paragraphs (f) (8), (9) and (10) of this section, regardless of whether such applications are related to an application for corresponding permanent operating authority. A separate fee will be assessed for the filing of an application for temporary authority to operate a motor or water carrier as provided in paragraph (f)(24) regardless of whether such application is related to a corresponding transfer proceeding as provided for in paragraph (f)(25) or a notice of exemption as provided for in paragraph (f)(27).

6. In § 1002.2, paragraph (f) would be revised to read as follows:

(f) Schedule of filing fees.

Type of proceedings	Fees
Part I: Non-Rail Applications for Operating Authority or Exemptions	
(1) An application for motor carrier operating authority; a certificate of registration including a certificate of registration for certain foreign carriers; broker authority; water carrier operating or exemption authority; or household goods freight forwarder authority	\$200
(2) A fitness only application for motor common carrier authority under 49 U.S.C. 10922(b)(4)(E) or motor contract authority under 49 U.S.C. 10923(b)(5)(A) to transport food and related products	100
(3) A petition to interpret or clarify an operating authority under 49 CFR 1180.84	2,200
(4) A request seeking the modification of operating authority only to the extent of making a ministerial correction, when the original error was caused by applicant, a change in the name of the shipper or owner of a plant site, or the change of a highway name or number	40
(5) A petition to renew authority to transport explosives under 49 U.S.C. 10922 or 10923	150
(6) An application to remove restriction or broaden unduly narrow authority under 49 CFR 1180.107-1180.114	250
(7) An application for authority to deviate from authorized regular route authority under 49 U.S.C. 10923(a)	100
(8) An application for motor carrier or water carrier temporary authority under 49 U.S.C. 10928(b)	100
(9) An application for motor carrier emergency temporary authority under 49 U.S.C. 10928(c)(1)	70
(10) An extension of the time period during which an outstanding application for emergency temporary authority as defined in 49 U.S.C. 10928(c)(1) may continue	19
(11) Request for name change of carrier, broker, or household goods freight forwarder	8
(12) A notice required by 49 U.S.C. 10524(b) to engage in compensated intercorporate hauling including an updated notice required by 49 CFR 1187.4	60
(13) A notice of intent to operate under the agricultural co-operative exemption in 49 U.S.C. 10528(a)(5)	60
(14) [Reserved]	
(15) A joint petition to substitute applicant in a pending operating rights proceeding	22
(16) [Reserved]	
Part II: Non-Rail Applications to Discontinue Transportation	
(17) An notice or petition to discontinue ferry service under 49 U.S.C. 10908	9,000
(18) A petition to discontinue motor carrier of passenger transportation in one state	1,000
(19) [Reserved]	
Part III: Non-Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(20) An application for the pooling or division of traffic	1,700
(21) An application involving the purchase, lease, consolidation, merger or acquisition of control of a motor or water carrier or carriers under 49 U.S.C. 11343	850
(22) An application for approval of a non-rail rate association agreement, 49 U.S.C. 10706	11,000
(23) An application for approval of an amendment to a non-rail rate association agreement:	
(i) Significant amendment	1,800
(ii) Minor amendment	40
(24) An application for temporary authority to operate a motor or water carrier, 49 U.S.C. 11349	200
(25) An application to transfer or lease a certificate or permit, including a certificate of registration, and a broker's license or change of control of companies holding broker's license 49 U.S.C. 10926, or a transfer of a water carrier exemption authorized under 49 U.S.C. 10542 and 10544	200
(26) An application for approval of a motor vehicle rental contract, 49 CFR 1057.41(d)	150
(27) A petition for exemption under 49 U.S.C. 11343(e)	200
(28)-(32) [Reserved]	
Part IV: Rail Applications for Operating Authority	
(33) (i) An application for a certificate authorizing the construction, extension, acquisition, or operation of lines of railroad, 49 U.S.C. 10901	2,900
(ii) Exempt transaction under 49 CFR 1150.31	1,500
(34) Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(i)	3,500
(35) A Feeder Line Development Program application filed under 49 U.S.C. 10910(b)(1)(A)(ii)	2,000
(36) [Reserved]	
(37) [Reserved]	
Part V: Rail Applications to Discontinue Transportation Services	
(38) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by a railroad (except applications filed by Consolidated Rail Corporation pursuant to the North East Rail Service Act bankrupt railroads or exempt abandonments under 49 CFR 1152.50)	6,400
(39) An application for authority to abandon all or a portion of a line of railroad or operation thereof filed by Consolidated Rail Corporation pursuant to North East Rail Service Act	150
(40) Abandonments filed by bankrupt railroads, 49 CFR 1152.40	750
(41) Exempt abandonments, 49 CFR 1152.50	3,700
(42) A notice or petition to discontinue passenger train service	9,000
(43) [Reserved]	
Part VI: Rail Applications to Enter Upon a Particular Financial Transaction or Joint Arrangement	
(44) An application for use of terminal facilities or other applications under 49 U.S.C. 11103	7,800
(45) An application for the pooling or division of traffic, 49 U.S.C. 11342	4,100
(46) An application for two or more carriers to consolidate or merge their properties or franchisees (or a part thereof) into one corporation for ownership, management, and operation of the properties previously in separate ownership, 49 U.S.C. 11343:	
(i) Major transaction	148,200
(ii) Significant transaction	29,600
(iii) Minor transaction	2,500
(iv) Exempt transaction [49 CFR 1080.2(d)]	600
(v) Responsive application	2,500

Type of proceedings	Fees
(47) An application of a non-carrier to acquire control of two or more carriers through ownership of stock or otherwise, 49 U.S.C. 11343:	
(i) Major transaction	148,200
(ii) Significant transaction	29,600
(iii) Minor transaction	2,500
(iv) Exempt transaction [49 CFR 1080.2(d)]	600
(v) Responsive application	2,500
(48) An application to acquire trackage rights over, joint ownership in, or joint use of, any railroad lines owned and operated by any other carrier and terminals incidental thereto, 49 U.S.C. 11343:	
(i) Major transaction	148,200
(ii) Significant transaction	29,600
(iii) Minor transaction	2,500
(iv) Exempt transaction [49 CFR 1080.2(d)]	600
(v) Responsive application	2,500
(49) An application of a carrier or carriers to purchase, lease or contract to operate the properties of another, or to acquire control of another by purchase of stock or otherwise, 49 U.S.C. 11343:	
(i) Major transaction	148,200
(ii) Significant transaction	29,600
(iii) Minor transaction	2,500
(iv) Exempt transaction [49 CFR 1080.2(d)]	600
(v) Responsive application	2,500
(50) An application for a determination of fact of competition, 49 U.S.C. 11321 (a)(2) or (b)	29,600
(51) An application for approval of a rail rate association agreement, 49 U.S.C. 10706	27,900
(52) An application for approval of an amendment to a rail rate association agreement, 49 U.S.C. 10706:	
(i) Significant amendment	5,200
(ii) Minor amendment	40
(53) An application for authority to hold a position as officer or director, 49 U.S.C. 11322	300
(54) (i) An application to issue securities; an application to assume obligation or liability in respect to securities of another; an application or petition for modification of an outstanding authorization; or an application for competitive bidding requirements of Ex Parte No. 158, 49 CFR 1175, 49 U.S.C. 11301	1,300
(ii) An exempt transaction under 49 CFR 1175	600
(55) A petition for exemption (other than a rulemaking) filed by rail carriers, 49 U.S.C. 10505:	
(i) Financial exemption petitions	3,700
(ii) Abandonment exemption petitions	5,000
(iii) Other exemption petitions	3,000
(56) An application for forced sale of bankrupt railroad lines, 49 CFR 1180.40-49, 45 U.S.C. 915	1,500
(57) [Reserved]	
(58) [Reserved]	
(59) [Reserved]	
Part VII: Formal Proceedings	
(60) A complaint alleging unlawful rates or practices of carriers, property brokers or freight forwarders of household goods	500
(61) A complaint seeking or a petition requesting institution of an investigation seeking the prescription or division of joint rates, fares or charges, 49 U.S.C. 10705(f)(1)(A)	3,500
(62) A petition for declaratory order:	
(i) A petition for declaratory order involving dispute over an existing rate or practice which is comparable to a complaint proceeding	600
(ii) All other petitions for declaratory order	1,100
(63) Requests for nationwide and regional collectively filed general rate increases and major rate restructures accompanied by supporting cost and financial information justifying the increases	6,100
(64) A petition for exemption from filing tariffs by bus carriers	600
(65) An application for shipper antitrust immunity, 49 U.S.C. 10706(a)(5)(A)	2,800
(66) Petition for review of state regulation of intrastate rates, rules or practices filed by interstate rail carriers, 49 U.S.C. 11501	1,000
(67) Petition for review of state regulation of intrastate rates, rules or practices filed by interstate bus carriers, 49 U.S.C. 11501	1,700
(68)-(71) [Reserved]	
Part VIII: Informal Proceedings	
(72) An application for authority to establish released value rates or ratings under 49 U.S.C. 10730 (Except that no fee will be assessed for applications seeking such authority in connection with reduced rates established to relieve distress caused by drought or other natural disaster)	450
(73) An application for special permission for short notice or the waiver of other tariff publishing requirements	50
(74) The filing of tariffs, rate schedules and contracts including supplements	18
(75) Special docket applications from rail and water carriers. (There is no fee for requests involving sums of \$25,000 or less)	60
(76) Informal complaint about rail rate application	200
(77) (i) An application for original qualification as self-insurer for bodily injury and property damage insurance (BIPD)	3,000
(ii) An application for original qualification as self-insurer for cargo insurance	300
(78) A service fee for insurer, surety or self-insurer accepted certificate of insurance, surety bond other instrument submitted in lieu of a broker surety bond. The fee is based on a formula of \$10 per accepted certificate of insurance or surety bond as indication of ICC insurance activity. (There is a \$50 annual minimum; but the minimum does not apply to an instrument submitted in lieu of a broker surety bond)	10
(79) A petition for waiver of any provision of the lease and interchange regulations, 49 CFR 1057	300
(80) A petition for reinstatement of revoked operating authority	50
(81) [Reserved]	
(82) [Reserved]	
(83) Petition for reinstatement of a dismissed operating rights application	300
(84) Filing of documents for recordation, 49 U.S.C. 11303 and 49 CFR 1177.3(c)	15
(85) Valuations of railroad lines in conjunction with purchase offers in abandonment proceedings	1,100
(86) Informal opinions about rate applications (all modes)	40
(87)-(95) [Reserved]	
PART IX: Services	
(96) Messenger delivery of decision to a railroad carrier's Washington, DC, agent	11
(97) Request for service list for proceedings	8

BEST COPY AVAILABLE

Type of proceedings	Fees
(98) Requests for copies of the one-percent carload waybill sample.....	100
(99) Verification of surcharge level pursuant to Ex Parte No. 389, Procedures for Requesting Rail Variable Cost & Revenue Determination for Joint Rates Subject to Surcharge or Cancellation.....	* 15
(100) Application fee for Interstate Commerce Commission Practitioners' Exam.....	70

* Per series transmitted.
 * Per accepted certificate or other instrument submitted in lieu of a broker surety bond.
 * Per document.
 * Per delivery.
 * Per list.
 * Per movement verified.

[FR Doc. 89-13838 Filed 6-9-89; 8:45 am]
 BILLING CODE 7035-01-M

49 CFR Part 1054

Incidental Charter Rights; Simplification of Regulations

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules.

SUMMARY: The Commission proposes to revise its regulations, as set forth below, governing the exercise of "incidental charter rights" under 49 CFR 1054 and 49 U.S.C. 10932(c). The proposed rules would simplify and broaden somewhat the present rules, which have become practically obsolete as a consequence of the statutory amendments in the Bus Regulatory Reform Act of 1982.

DATE: Comments are due on July 27, 1989.

ADDRESS: Send an original and 10 copies of comments, referring to Ex Parte No. MC-29 (Sub-No. 5), to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275-7891

or

James L. Brown, (202) 275-7898
 (TDD for hearing impaired: (202) 275-1721.)

SUPPLEMENTARY INFORMATION: The Commission's decision contains additional information. To obtain a copy of the decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. (Assistance for the hearing impaired is available through TDD services (202) 275-1721.)

Environmental and Energy Considerations

The Commission's Section of Energy and Environment has reviewed the proposal and has determined that the proposed action will not significantly affect either the quality of the human

environment or the conservation of energy resources.

Regulatory Flexibility Analysis

The proposed amendment would simplify the regulations applicable to "incidental charter rights," eliminate a number of obsolete requirements, and broaden the territorial scope of incidental charter authority to that typically authorized in certificates specifically authorizing charter operations. Very few, if any, carriers actually use incidental charter rights at this time. Most small entities that do not hold qualifying regular-route authorities already have or can easily obtain specific charter authority through "fitness-only" application procedures. As a consequence, although all discernible impacts of this action would be positive, no significant impact is anticipated on any small entities.

List of Subjects in 49 CFR Part 1054

Buses, Motor carriers.

Authority: 5 U.S.C. 553 and 559 and 49 U.S.C. 10321, 10922, and 10932.

Decided: June 5, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,
Secretary.

For the reasons set forth in the preamble, Title 49, Chapter X, Part 1054 of the Code of Federal Regulations is proposed to be revised to read as follows:

PART 1054—INCIDENTAL CHARTER RIGHTS

Sec.

1054.1 Applicability.

1054.2 Authority.

1054.3 Exceptions.

Authority: 5 U.S.C. 553 and 559 and 49 U.S.C. 10321, 10922, and 10932.

§ 1054.1 Applicability.

The regulations in this part apply to incidental charter rights authorized under 49 U.S.C. 10932(c). These regulations do not apply to the interpretation of authority contained in

a certificate to transport passengers in special and/or charter operations.

§ 1054.2 Authority.

Motor carriers transporting passengers, in interstate or foreign commerce, over regular routes authorized in a certificate issued as a result of an application filed before January 2, 1967, may transport special or chartered parties, in interstate or foreign commerce, between any points and places in the United States (including Alaska and Hawaii). The term "special or chartered party" means a group of passengers who, with a common purpose and under a single contract, and at a fixed charge for the vehicle in accordance with the carrier's tariff, have acquired the exclusive use of a passenger-carrying motor vehicle to travel together as a group to a specified destination or for a particular itinerary.

§ 1054.3 Exceptions.

(a) Incidental charter rights do not authorize the transportation of passengers to whom the carrier has sold individual tickets or with whom the carrier has made separate and individual transportation arrangements.

(b) Service provided under incidental charter rights may not be operated between the same points or over the same route so frequently as to constitute a regular-route service.

(c) Passenger transportation within the Washington Metropolitan Area Transit District (as defined in the Washington Metropolitan Area Transportation Regulation Compact, Pub. L. No. 86-794, 74 Stat. 1031 (1960), as amended by Pub. L. No. 87-787, 76 Stat. 764 (1962)) is not authorized by these regulations, but is subject to the jurisdiction and regulations of the Washington Metropolitan Area Transportation Commission.

(d) A private or public recipient of governmental assistance (within the meaning of 49 U.S.C. 10922(c)(1)(F)) may provide service under incidental charter rights only for special or chartered parties originating in the area in which the private or public recipient provides regularly scheduled mass transportation

services under the specific qualifying certificate that confers its incidental charter rights.

[FR Doc. 89-13878 Filed 6-9-89; 8:45 am]

BILLING CODE 7035-01-M

49 CFR Part 1171

[Ex Parte No. 55 (Sub-No 74A)]

Applications for Certificates of Registration for Certain Foreign Carriers

AGENCY: Interstate Commerce Commission.

ACTION: Notice of proposed rules.

SUMMARY: The Truck and Bus Safety and Regulatory Reform Act of 1988 (Title IX, Subtitle B of the Anti-Drug Abuse Act of 1988; Pub. L. No. 100-690, 102 Stat. 4181) amends the requirements in 49 U.S.C. 10530 and 10922(1) for certain foreign motor carriers and foreign motor private carriers to obtain a certificate of registration to operate in the United States. The Act changed the coverage of the registration requirement, changed the duration of the certificates of registration, and authorized potential changes in insurance requirements. This rulemaking proceeding: (1) Discusses the statutory changes; and (2) proposes amendments to the rules governing applications for certificates of registration to implement the new law.

DATES: Comments are due July 12, 1989.

ADDRESSES: Send pleadings [original and 10 copies] referring to Ex Parte No. 55 (Sub-No. 74A) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 275-7891 or Joseph B. O'Malley, (202) 275-7928. (TDD for hearing impairment: (202) 275-1721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, Room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 275-7428. (Assistance for the hearing impaired is available through TDD services (202) 275-1721).

Energy and Environmental Considerations

The Commission's Section of Energy and Environment has reviewed the proposal and has determined that the proposed action will not significantly affect either the quality of the human

environment or conservation of energy resources.

Regulatory Flexibility Analysis

The Commission certifies that these rules will not have significant economic impact on a substantial number of small entities. The proposed modifications will continue an expedited procedure for foreign motor carriers and foreign motor private carriers to obtain certificates of registration consistent with statutory changes.

Paperwork Reduction Analysis

It is estimated that an average of 1 burden hour per response is required to complete the information elicited on the proposed revised licensing Form OP-2. This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments concerning the accuracy of this burden estimate or suggestions for reducing this burden should be directed to the Section of Administrative Services, Interstate Commerce Commission, and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 3120-0079), Washington, DC 20503.

List of Subjects in 49 CFR Part 1171

Administrative practice and procedure, Motor carriers, Insurance.

Decided: June 5, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Noreta R. McGee,
Secretary.

For the reasons set forth in the preamble, Title 49, Chapter X, Part 1171, of the Code of Federal Regulations is proposed to be amended as follows:

PART 1171—RULES GOVERNING APPLICATIONS FOR CERTIFICATES OF REGISTRATION BY FOREIGN MOTOR CARRIERS AND FOREIGN MOTOR PRIVATE CARRIERS UNDER 49 U.S.C. 10530

1. The authority citation for 49 CFR Part 1171 would continue to read as follows:

Authority: 49 U.S.C. 10922 and 10530, 5 U.S.C. 553.

2. Section 1171.1(a) is proposed to be revised to read as follows:

§ 1171.1 Controlling legislation.

(a) These rules govern applications filed under 49 U.S.C. 10530. Under this section certain foreign motor carriers

and motor private carriers must hold a certificate of registration to provide certain interstate transportation services otherwise outside the jurisdiction of the Commission. Neither a foreign motor carrier nor a foreign motor private carrier may provide interstate transportation of property unless the Commission has issued the carrier a certificate of registration. The service allowable under a certificate of registration is described in 49 U.S.C. 10922(1)(B).

3. Section 1171.2(a) is proposed to be revised to read as follows:

§ 1171.2 Definitions.

(a) *The Act.* The Truck and Bus Safety and Regulatory Reform Act of 1988.

4. Paragraph (b) of § 1171.2 is proposed to be removed.

5. Paragraphs (c), (d), (e), (f), (g), (h), and (i) are proposed to be redesignated as paragraphs (b), (c), (d), (e), (f), (g), and (h) in § 1171.2.

6. Newly redesignated paragraphs (b) and (c) are proposed to be revised to read as follows:

§ 1171.2 Definitions.

(b) *Foreign motor carrier.* A person transporting the goods of others for hire (including a motor carrier of property):

(1) Which does not hold a certificate or permit issued under 49 U.S.C. 10922 or 10923;

(2) Which is domiciled in any contiguous foreign country, or is owned or controlled by persons of any contiguous foreign country, and is not domiciled in the United States; and

(3) In the case of a person which is not a motor carrier of property, which provides interstate transportation of property under an agreement or contract with a motor carrier of property (except a motor carrier described in (2)).

(c) *Foreign motor private carrier.* A person transporting its own goods (including a motor private carrier):

(1) Which is domiciled in any contiguous foreign country;

(2) Which is owned or controlled by persons of any contiguous foreign country, and is not domiciled in the United States; and

(3) In the case of a person which is not a motor private carrier which provided interstate transportation of property by motor vehicle under an agreement or contract entered into with a person (other than a motor private carrier described in paragraphs (c) (1) and (2) of this section).

7. Section 1171.3(b) is proposed to be revised to read as follows:

§ 1171.3 Procedures used generally.

(b) Under the statute, the carriers covered must have a copy of a valid certificate of registration in any vehicle providing transportation within the scope of the statute.

8. Sections 1171.6(b) (2) and (c) are proposed to be revised to read as follows:

§ 1171.6 Commission review of the application.

(b)
(2) If the employee board grants all or part of the application, the Commission will issue a certificate of registration authorizing specified operations provided that applicant has demonstrated compliance with:

(i) 49 CFR Part 1044 (designation of process agent); and
(ii) 49 CFR Part 1043 (Insurance).

If applicant has not complied with these requirements, the Commission will issue a notice stating that a certificate of registration will be issued upon such compliance. No certificate of registration shall be issued prior to compliance.

(c) If the Department of Transportation intervenes under 49 CFR 1171.3(d), the proceeding will be decided by the Commission. If the Commission grants all or part of the application, it will issue a certificate in accordance with the procedure described in 49 CFR 1171.6(b)(2).

[FR Doc. 89-13877 Filed 6-9-89; 8:45 am]

BILLING CODE 7030-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 642

[Docket No. 90637-9137]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: The Secretary of Commerce issues a preliminary notice of change in the total allowable catch (TAC), allocations, and quotas for the Atlantic and Gulf of Mexico migratory groups of king and Spanish mackerel in accordance with the framework

procedure of the Fishery Management Plan for the Coastal Migratory Pelagic Resources (FMP). This notice proposes (1) for Gulf and Atlantic migratory groups of king mackerel, increases in TAC, allocations, and quotas; and (2) for Gulf and Atlantic migratory groups of Spanish mackerel, increases in TAC and allocations. The intended effects are to protect the mackerels and continue stock rebuilding programs while still allowing catch by the important recreational and commercial fisheries that are dependent on these species.

DATE: Written comments must be received on or before June 21, 1989.

ADDRESS: Comments may be mailed to Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The mackerel fisheries are regulated under the FMP, as amended, which was prepared jointly by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 642.

In accordance with § 642.27, the Councils appointed an assessment group (Group) to assess on an annual basis the condition of each stock of king and Spanish mackerel in the management unit, to report its findings, and to make recommendations to the Councils. Based on the Group's 1989 report and recommendations, advice from the Mackerel Advisory Panels and the Scientific and Statistical Committees, and public input, the Councils recommended to the Director, Southeast Region, NMFS (Regional Director), changes to TACs, allocations, and quotas.

Specifically, the Councils recommended that, effective with the fishing year beginning July 1, 1989, annual TACs be set at 4.25 million pounds (m. lbs.) for the Gulf migratory group of king mackerel and 5.25 m. lbs. for the Gulf migratory group of Spanish mackerel. The Councils further recommended that, effective for the fishing year which began April 1, 1989, annual TACs be set at 9.00 m. lbs. for the Atlantic migratory group of king mackerel and 6.00 m. lbs. for the Atlantic migratory group of Spanish mackerel. All TACs are within the range of acceptable biological catch determined by the Group.

Under the provisions of the FMP, the recreational and commercial fisheries are allocated a fixed percentage of each TAC and the Gulf king mackerel

commercial allocation is divided into quotas for eastern and western zones. Under the fixed percentages and the proposed TACs, these allocations and quotas would be as follows:

Species	Million pounds
Gulf King Mackerel—TAC.....	4.25
Recreational allocation (68%).....	2.89
Commercial allocation (32%).....	1.36
Eastern zone (89%).....	0.94
Western zone (31%).....	0.42
Gulf Spanish Mackerel—TAC.....	5.25
Recreational allocation (43%).....	2.26
Commercial allocation (57%).....	2.99
Atlantic King Mackerel—TAC.....	9.00
Recreational allocation (62.9%).....	5.66
Commercial allocation (37.1%).....	3.34
Atlantic Spanish Mackerel—TAC.....	6.00
Recreational allocation (24%).....	1.44
Commercial allocation (76%).....	4.56

The recreational fishery is regulated by both allocations and bag limits. The Councils recommended no changes in the bag limits applicable to the Gulf and Atlantic groups of king mackerel. For Spanish mackerel, the Councils recommended that the bag limits applicable to the eastern area of the Gulf migratory group and the southern area of the Atlantic migratory group (together, the two areas constitute the exclusive economic zone (EEZ) off Florida) be set at the number (not to exceed ten) proposed by the Florida Marine Fisheries Commission (FMFC) for Florida's waters for the 1989-90 fishing year. This recommendation was intended to ensure that the bag limits for Spanish mackerel in the EEZ off Florida would be compatible with the bag limit in Florida's waters. The FMFC met May 8-12, 1989, and acted to continue the current 4-fish bag limit for Spanish mackerel applicable to Florida's waters. Accordingly, no changes to the bag limits for Spanish mackerel in the EEZ off Florida are proposed.

The Regional Director initially concurs that the Councils recommendations are necessary to protect the stocks and prevent overfishing and that they are consistent with the goals and objectives of the FMP. Accordingly, the Councils' recommended changes are published for comment.

Other Matters

This action is authorized by 50 CFR 642.27, and complies with E.O. 12291.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: June 6, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator For Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR Part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 642.21 [Amended]

2. In § 642.21, the numbers are revised in the following places as follows:

Paragraph	Removed	Added
(a)(1), introductory text.....	1.09	1.36
(a)(1)(i).....	0.75	0.94
(a)(1)(ii).....	0.34	0.42
(a)(2), first sentence.....	2.60	3.34
(b)(1).....	2.31	2.89
(b)(2).....	4.40	5.66
(c)(1).....	2.85	2.99
(c)(2).....	3.04	4.56
(d)(1).....	2.15	2.26
(d)(2).....	0.96	1.44

[FR Doc. 89-13807 Filed 6-6-89; 4:24 pm]

BILLING CODE 3510-22-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-098]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Cotton Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to the Monsanto Agricultural Company, to allow the field testing in the State of Alabama of cotton plants genetically engineered to express a modified 5-enolpyruvyl shikimate-3-phosphate synthase, which is not inhibited by glyphosate. The assessment provides a basis for the conclusion that the field testing of these genetically engineered cotton plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. Quentin B. Kubicek, Biotechnologist,

Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession under 89-034-10.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

The Monsanto Agricultural Company, of St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test genetically engineered cotton plants modified to express 5-enolpyruvyl shikimate-3-phosphate synthase, which is not inhibited by glyphosate.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the cotton plant under the conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by the Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and

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analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene from *Petunia hybrida* encoding a modified 5-enolpyruvyl shikimate-3-phosphate synthase, which is not inhibited by glyphosate, has been inserted into a cotton chromosome. In nature, chromosomal genetic material of flowering plants is transferred to another sexually compatible plant by cross-pollination. In this field trial, the introduced gene cannot spread to another plant by cross-pollination because the field pest plot is located at a sufficient distant from any sexually compatible plant with the which these experimental cotton plants might cross-pollinate.

2. Neither the 5-enolpyruvyl shikimate-3-phosphate synthase gene itself, nor its gene product, confers on cotton any plant pest characteristic. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. The plant species (*Petunia hybrida*) from which the 5-enolpyruvyl shikimate-3-phosphate synthase gene was isolated is not a plant pest.

4. The 5-enolpyruvyl shikimate-3-phosphate synthase gene does not provide the transferred cotton plants with any measurable selective advantage over nontransformed cotton in their ability to be disseminated or to become established in the environment.

5. The vector used to transfer the 5-enolpyruvyl shikimate-3-phosphate synthase gene to cotton plants has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for pathogenicity have been removed from the vector. The vector has been tested and shown to be not pathogenic to any susceptible plant.

6. The vector agent, *Agrobacterium tumefaciens*, a phytopathogenic bacterium, was used to deliver the vector DNA and the 5-enolpyruvyl shikimate-3-phosphate synthase gene into cotton plant cells. The vector agent has been known to be eliminated and no

longer associated with any transformed cotton plant.

7. Horizontal movement of the 5-enolpyruvyl shikimate-3-phosphate synthase gene is not possible. The vector does not survive in or on any transformed cotton plant. No mechanism of horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organism.

8. Glyphosate is the active, ingredient of the herbicide Roundup®. Roundup® is a broad spectrum postmergence herbicide which is rapidly degraded in the environment and has low toxicity to organisms other than plants and micro-organisms.

9. The field test site is small and will be no greater than 0.5 acre. The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51274, August 31, 1979).

Done in Washington, DC, this 6th day of June 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-13883 Filed 6-9-89; 8:45 am]

BILLING CODE 3410-34-M

[Docket No. 89-093]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Potato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Monsanto Agricultural Company, to allow the field testing in the State of Idaho of potato plants genetically engineered to express the coat protein genes of potato virus X and potato virus Y. The assessment provides a basis for the conclusion that the field testing of these genetically engineered potato plants will not

present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT:

Dr. James White, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89-030-03.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced in the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Monsanto Agricultural Company, of St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test potato plants genetically engineered to express the coat protein genes of potato virus X and potato virus Y.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the potato plant under the conditions described in the Monsanto Agricultural

Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. Genes encoding the viral coat proteins of potato virus X and potato virus Y have been inserted into the potato chromosome. In nature, chromosomal genetic material of these plants can only be transferred to other sexually compatible plants by cross-pollination. In this field trial, the introduced gene cannot spread to other plants by cross-pollination because the potato plants are male sterile.

2. Neither the viral coat protein genes themselves, nor their gene products, confer on potato any plant pest characteristics. Traits that lead to weediness in plants are polygenic traits and cannot be conferred by adding a single gene.

3. The expression of the viral coat protein genes does not provide the transformed potato plants with any measurable selective advantage over nontransformed potato plants in their ability to be disseminated or to become established in the environment.

4. The vector used to transfer the plant viral genes to the potato plants has been evaluated for its use in this specific experiment and although derived from a DNA sequence with known plant pest potential, has been disarmed; that is, genes that are necessary for producing plant disease have been removed from the vector. The vector has been tested and shown to be nonpathogenic to any susceptible plant.

5. The vector agent, the bacterium that was used to deliver the vector DNA and the plant viral coat protein genes into the plant cell, has been shown to be eliminated and no longer associated with the transformed potato plants.

6. Horizontal movement of the introduced gene is not possible. The vector acts by delivering the gene to the plant genome (i.e., chromosomal DNA). The vector does not survive in the plants.

7. The field test site is small (less than 0.5 acre) and is physically isolated by a surrounding area of cultivated land.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC., this 6th day of June 1989.

James W. Glosser,
Administrator, Animal and Plant Health
Inspection Service.

[FR Doc. 89-13884 Filed 6-9-89; 8:45 am]
BILLING CODE 3410-34-M

[Docket 89-094]

Availability of Environmental Assessment and Finding of No Significant Impact Relative to Issuance of a Permit To Field Test Genetically Engineered Tomato Plants

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that an environmental assessment and finding of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of a permit to Monsanto Agricultural Company, to allow the field testing in Hughson, California, of genetically engineered tomato plants modified to express a gene from *Bacillus thuringiensis* var. *kurstaki* HD1 that encodes a protein called delta-endotoxin, which is lethal to the larvae of some lepidopteran insects. The assessment provides a basis for the conclusion that the field testing of these genetically engineered tomato plants will not present a risk of introduction or dissemination of a plant pest and will not have any significant impact on the quality of the human environment. Based upon this finding of no significant impact, the Animal and Plant Health Inspection Service has determined that an environmental impact statement need not be prepared.

ADDRESS: Copies of the environmental assessment and finding of no significant impact are available for public inspection at Biotechnology, Biologics, and Environmental Protection, Animal

and Plant Health Inspection Service, U.S. Department of Agriculture, Room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782.

FOR FURTHER INFORMATION CONTACT: Dr. James White, Biotechnologist, Biotechnology Permit Unit, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612. For copies of the environmental assessment and finding of no significant impact, write Ms. Linda Gordon at this same address. The environmental assessment should be requested under accession number 89-030-02.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340 regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article can be introduced into the United States. The regulations set forth procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

Monsanto Agricultural Company, of St. Louis, Missouri, has submitted an application for a permit for release into the environment, to field test tomato plants genetically engineered to express a gene from *Bacillus thuringiensis* var. *kurstaki* HD1 that encodes a protein called delta-endotoxin.

In the course of reviewing the permit application, APHIS assessed the impact on the environment of releasing the tomato plant under the conditions described in the Monsanto Agricultural Company application. APHIS concluded that the field testing will not present a risk of plant pest introduction or dissemination and will not have any significant impact on the quality of the human environment.

The environmental assessment and finding of no significant impact, which are based on data submitted by Monsanto Agricultural Company, as well as a review of other relevant literature, provide the public with documentation of APHIS' review and

analysis of the environmental impacts associated with conducting the field testing.

The facts supporting APHIS' finding of no significant impact are summarized below and are contained in the environmental assessment.

1. A gene from *B. thuringiensis* var. *kurstaki* HD1 encoding the delta-endotoxin protein has been inserted into a tomato chromosome. The expression of this gene provides tolerance against the larvae of select lepidopteran insects. In nature, genetic material contained in a chromosome is generally transferred to another sexually compatible plant by cross-pollination. In this field trial, no introduced gene can spread to another plant by cross-pollination, because the field test plot is located a sufficient distance from any sexually compatible plant with which these experimental tomato plants could cross-pollinate.

2. Neither the delta-endotoxin gene itself, nor its gene product confers on tomato any plant pest characteristic.

3. The bacterium from which the delta-endotoxin gene was isolated is not a plant pest and is widely distributed in the environment as a soil inhabitant.

4. The vector used to transfer the delta-endotoxin gene to tomato plant cells has been evaluated for its use in this specific experiment and does not pose a plant pest risk in this experiment. The vector, although derived from the DNA of a tumor inducing (Ti) plasmid with known plant pathogenic potential, has been disarmed; that is, genes that are necessary for pathogenicity have been removed from the vector. The vector has been tested and shown to be not pathogenic to any susceptible plant.

5. The vector agent *Agrobacterium tumefaciens*, a phytopathogenic bacterium, was used to deliver the vector DNA and the delta-endotoxin gene into tomato plant cells. The vector agent has been shown to be eliminated and no longer associated with any transformed tomato plant.

6. Horizontal movement or gene transfer of the delta-endotoxin gene is not possible. The vector acts by delivering and inserting the gene into a tomato chromosome (i.e., chromosomal DNA). The vector does not survive in or on any transformed tomato plant. No mechanism for horizontal movement is known to exist in nature to move an inserted gene from a chromosome of a transformed plant to any other organism.

7. The toxic polypeptide produced by the engineered gene is called delta-endotoxin. Upon ingestion, the toxin kills only the larvae of select lepidopteran insects. Delta-endotoxin is

not toxic to other insects, wild or domestic birds, fish, or mammals. Because of its safety, its topical application on crops is permitted up to the time of harvest.

8. The size of the field test plot is small (0.2 acre and a total of 600 transformed tomato plants) and will be located on a private research farm in a rural area. The field test plot will be located at least 30 feet from breeder or commercial tomato plants and is surrounded by other agronomic crops and orchards.

The environmental assessment and finding of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4331 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500-1509), (3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381-50384, August 28, 1979, and 44 FR 51272-51274, August 31, 1979).

Done in Washington, DC, this 6th day of June 1989.

James W. Glosser,
Administrator, Animal and Plant Health
Inspection Service.

[FR Doc. 89-13885 Filed 6-9-89; 8:45 am]

BILLING CODE 3410-34-M

Forest Service

Early Winters Alpine Winter Sports Site; Intent To Prepare a Supplement to an Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to an environmental impact statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare a Draft and Final Supplement to the Final Environmental Impact Statement (EIS) for the Early Winters Alpine Winter Sports Study, Winthrop, Washington, filed in July 1984. The Draft Supplement will reassess potential air pollution impacts on the Pasayten Wilderness due to off-site development which may result from the project. The Draft Supplement will also clarify project objectives and discuss reasonable alternatives to meet those objectives, in accord with the decision in *Methow Valley Citizens Council v. Regional Forester*, 833 F.2d 810, 815-818 (9th Cir. 1988). Finally, the Draft Supplement will consider the results of the study now in progress concerning the impacts of off-site development on

mule deer and any new off site mitigation commitments or plans.

The Agency invites written comments and suggestions that are within the scope of the proposed action and analysis for the Draft Supplement. The agency is giving notice of the Draft Supplement and the decision-making process that will occur so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by July 10, 1989.

ADDRESS: Submit written comments and suggestions concerning the scope of the analysis to Bill McLaughlin, Forest Supervisor, Okanogan National Forest, 1240 South Second, Okanogan, Washington 98840.

FOR FURTHER INFORMATION CONTACT: Direct questions about the Draft Supplement to Jim Gregg, Project Coordinator, Winthrop Ranger District, Box 579, Winthrop, Washington 98862, phone 509-996-2286.

SUPPLEMENTARY INFORMATION: The Early Winters Alpine Winter Sports Study was completed in July of 1984 with a Record Of Decision selecting an alternative to issue a special use permit for ski facilities on approximately 3900 acres of National Forest System land at Sandy Butte, in a previously undeveloped area in north central Washington. The project has been controversial since its inception and there has been extensive litigation. In December of 1987 the United States Ninth Circuit Court of Appeals overturned the decision of the district court, which had determined that the Early Winters Study fulfilled the Forest Service's environmental obligations. In May of 1989 the United States Supreme Court overturned two of the Ninth Circuit's rulings involving "worst case" analysis and "fully developed" mitigation plans. Two additional issues addressed by the Ninth Circuit were not presented to the Supreme Court and will be the major focus of this DSEIS.

1. *Pasayten Wilderness Air Quality Analysis.* The Court of Appeals found the discussion of air quality impacts on the Pasayten Wilderness to be inadequate for failing to consider that the Lost River drainage provides little elevation difference and, therefore, no barrier to pollution from the Methow Valley. The Draft Supplement will address this issue by using the most current air quality analysis information that has been developed to date. By updating the air quality values used in the valley bottom and projecting to the Lost River area, the Draft Supplement

will assess the effect on the Wilderness. Such an update will rely upon recent studies done in the Methow Valley on the effects of total suspended particulates, wood stoves carbon monoxide and effects on the prevention of significant deterioration to the program. The Draft Supplement will also include information on the air quality management ordinance which was adopted by Okanogan County since the original EIS was completed.

2. *Alternative Site Discussion.* The Court of Appeals further found that the discussion of alternative sites to the Early Winters site to be inadequate. The court directed the Forest Service to "... more clearly articulate its goal, specifically identifying the market and geographic pool of skiers targeted. This will provide a clear standard by which it can determine which alternatives are appropriate for investigation and consideration in its EIS." *Methow Valley*, 833 F.2d at 816. This will be done in the Draft Supplement.

In addition the initial Early Winters Study contemplates further study of the impacts of off-site development on mule deer and further development of off-site mitigation measures. The Draft Supplement will discuss the results of the current mule deer study and any new mitigation plans or commitments to date.

James F. Torrence, Regional Forester, Pacific Northwest Region, Portland, Oregon, is the responsible official.

The Draft Supplement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September 15, 1989. At that time EPA will publish a notice of availability of the Draft Supplement in the *Federal Register*.

The comment period on the Draft Supplement will be 45 days from the date the notice of availability appears in the *Federal Register*. It is very important that those interested in the Draft Supplement participate at that time. To be the most helpful, comments should be as specific as possible. In addition, federal court decisions have established that those who wish to participate in the process must do so in a meaningful way that alerts the agency to their position. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the Draft Supplement stage may be waived if not raised until after the Final Supplement. *City of Angoon v. Hodel* (9th Circuit, 1986), and *Wisconsin Heritage, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure

that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them.

After the comment period ends on the Draft Supplement, the comments will be analyzed and considered by the Forest Service in preparing the Final Supplement. The Final Supplement is scheduled to be completed by February 9, 1990. In the Final Supplement the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, environmental consequences discussed in the Final Supplement, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record Of Decision. That decision will be subject to appeal under 36 CFR Part 217.

Date: June 5, 1989.

Mary Jo Lavin,

Acting Regional Forester.

[FR Doc. 89-13814 Filed 6-9-89; 8:45 am]

BILLING CODE 3410-11-M

Committee on State Foresters; Meeting

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Committee of State Foresters will meet in Vail, Colorado, on July 13, 1989, from 8 a.m. to 12 p.m. The Committee is comprised of the seven members of the Executive Committee of the National Association of State Foresters. The purpose of the meeting is for the Committee to consult with the Secretary of Agriculture regarding the administration and application of various portions of the Cooperative Forestry Assistance Act of 1978 (Pub. Law 95-313). The Chief of the Forest Service will chair this meeting, which is open to public attendance; however, participation is limited to Forest Service personnel and Committee members. Persons who wish to bring cooperative forestry matters to the attention of the Committee may file written statements with the Executive Secretary of the Committee before or after the meeting.

DATE: The meeting will be held July 13, 1989.

ADDRESSES: The meeting will be held at Manor Vail, 595 East Vail Valley Drive, Vail, Colorado, (303) 476-5651.

Send written comments to Allan J. West, Executive Secretary, Committee of State Foresters, c/o Forest Service,

USDA, P.O. Box 96090, Washington, DC 20090-8090, (202) 447-6657.

FOR FURTHER INFORMATION CONTACT: Robert Breazeale, Office of the Deputy Chief for State and Private Forestry, (202) 447-9185.

Allan J. West,

Deputy Chief, State and Private Forestry.

Date: June 6, 1989.

[FR Doc. 89-13882 Filed 6-9-89; 8:45 am]

BILLING CODE 3410-11-M

CIVIL RIGHTS COMMISSION

State Advisory Committee: Washington, DC.; Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights that the United States Commission on Civil Rights will convene a consultation at 8:30 a.m. on June 16, 1989, and adjourn at 12:00 noon the same day, in the Commission's conference room, 1121 Vermont Avenue, NW, Room 512, Washington, District of Columbia. The purpose of the consultation is to receive presentations on the subject of the validity of testing in education and employment.

Persons desiring additional information should contact James Cunningham, Director, Office of Programs, Policy and Research, (202) 376-8582. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Staff Director's office at least five (5) days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 6, 1989.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 89-13810 Filed 6-9-89; 8:45 am]

BILLING CODE 6335-01

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: Bureau of the Census.

Title: November 1989 Immigration and Emigration Supplement to the Current Population Survey.

Form Number: CPS-1, CPS-260, CPS-686.

Agency Approval Number: 0607-0610.

Type of Request: New.

Burden: 2,850 hours.

Number of Respondents: 57,000.

Avg Hours Per Response: 3 minutes.

Needs and Uses: The Federal Government uses the immigration data collected in this supplement to evaluate immigration and naturalization policies; it uses the emigration data to evaluate both current population estimates and 1990 decennial census coverage.

Affected Public: Individuals or households.

Frequency: One time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle

395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room H8622, 14th and Constitution Avenue NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, Room 3208, New Executive Office Building, Washington, DC 20503.

Dated: June 6, 1989.

Edward Michals,

Department, Clearance Officer, Office of Management and Organization.

[FR Doc. 89-13791 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-07-M

Bureau of Export Administration

[Docket No. 80862-8162]

Foreign Availability Determination; Low-Level Machine-Vision Systems

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of foreign availability determination.

SUMMARY: Pursuant to section 5(f) and (h) of the Export Administration Act of 1979, as amended, the Office of Foreign Availability (OFA) of the Bureau of Export Administration initiates and reviews claims of foreign availability on items controlled for national security purposes.

OFA has completed an assessment of low-level machine-vision systems, which are computer "related equipment" controlled under ECCN 1565A(h) of the Commodity Control List. Based on this assessment and following consultation with the Department of Defense, the

Department of Commerce has found foreign availability for machine-vision systems operating at the following parameters: (a) Image analysis rate of 3.3 images per second; (b) Pixel resolution of 65,536 (256×256); and (c) Two hundred and fifty-six shades of gray.

FOR FURTHER INFORMATION CONTACT: Maurice Cook, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-8074.

SUPPLEMENTARY INFORMATION:

Foreign Availability Determination

The Office of Foreign Availability has completed an assessment on the foreign availability of low-level machine-vision systems that are controlled as computer "related equipment" in paragraph (h) of ECCN 1565A, operating at the following parameters: (a) Image analysis rate of 3.3 images per second; (b) Pixel resolution of 65,536 (256×256); and (c) Two hundred and fifty-six shades of gray.

The purpose of the assessment was to determine whether national security export controls should be continued. The Office of Foreign Availability has completed an assessment of the availability from foreign sources of the above mentioned equipment and has recommended a finding of foreign availability as defined by law. Based on such assessment and recommendation, I hereby determine that foreign availability of such equipment exists within the meaning of section 5(f) of the Export Administration Act of 1979, as amended.

Based on this determination, the Bureau of Export Administration is publishing regulations in the Rules section of this Federal Register to amend the national security export controls on these low-level machine-vision systems that are controlled under ECCN 1565A(h) by removing the individual validated license requirement to destinations in Country Groups T and V, except the People's Republic of China and Afghanistan. The Bureau of Export Administration also will begin the process whereby the United States Government will work with Coordinating Committee (COCOM) member governments to reach agreement on an orderly change in the multilateral controls maintained on such low-level machine-vision systems when exported to controlled countries.

If the Office of Foreign Availability receives substantive new evidence affecting this foreign availability determination, the assessment will be reevaluated. Inquiries concerning the

scope of this assessment may be directed to the Office of Foreign Availability at the above address.

This assessment also considered the foreign availability of low-level machine-vision systems that were then controlled under ECCN 1391(a)(1). The positive finding recommended by the assessment made a very significant contribution to the decontrol of "robot sensors" under that ECCN, which was agreed to by COCOM. Regulations implementing the decontrol were published in the Federal Register on September 15, 1988 (53 FR 35799).

Dated: June 7, 1989.

James M. LeMunyon,

Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-13901 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A-588-810]

Postponement of Preliminary Antidumping Duty Determination: Mechanical Transfer Presses From Japan

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice.

SUMMARY: This notice informs the public that we have received a request from the petitioner in this investigation to postpone the preliminary determination, as permitted in section 733(c)(1)(A) of the Tariff Act of 1930, as amended (the Act), (19 U.S.C. 1673 b(c)(1)(A)). Based on this request, we are postponing our preliminary determination as to whether sales of mechanical transfer presses from Japan have occurred at less than fair value until not later than July 21, 1989.

EFFECTIVE DATE: June 12, 1989.

FOR FURTHER INFORMATION CONTACT: Mary S. Clapp, James P. Maeder, Jr. or V. Irene Darzenta at (202) 377-3965, 377-4929 or 377-0186 Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: On February 7, 1989, we published a notice of initiation (54 FR 5993) of an antidumping duty investigation to determine whether mechanical transfer presses from Japan are being, or are likely to be, sold in the United States at less than fair value. The notice stated

that we would issue our preliminary determination by June 21, 1989.

On May 25, 1989, counsel for the petitioner requested that the Department extend the period for the preliminary determination by 30 days, until July 21, 1989, in accordance with section 733(c)(1)(A) of the Act. Section 733(c)(1)(A) of the Act provides that the Department may postpone its preliminary determination until not later than 210 days after the date on which a petition is filed if the petitioner makes a timely request for such an extension. Counsel for the petitioner has requested such postponement until not later than 190 days after the date on which the petition was filed. Accordingly, we are postponing the date of the preliminary determination until not later than July 21, 1989. The U.S. International Trade Commission is being advised of this postponement in accordance with section 733(f) of the Act.

This notice is published pursuant to section 733(c)(2) of the Act.

Eric L. Garfinkel,

Assistant Secretary for Import Administration.

May 31, 1989.

[FR Doc. 89-13792 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-580-804]

Initiation of Antidumping Duty Investigation: 12-Volt Motorcycle Batteries From Korea

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: On the basis of petition filed in proper form with the U.S. Department of Commerce, we are initiating an antidumping duty investigation to determine whether imports of 12-volt motorcycle batteries (motorcycle batteries) from Korea are being, or are likely to be, sold in the United States at less than fair value. We are notifying the U.S. International Trade Commission (ITC) of this action so that it may determine whether imports of batteries materially injure, or threaten material injury to, a U.S. industry. If this investigation proceeds normally, the ITC will make its preliminary determination on or before July 3, 1989. If that determination is affirmative, we will make a preliminary determination on or before October 23, 1989.

EFFECTIVE DATE: June 12, 1989.

FOR FURTHER INFORMATION CONTACT: Lydia La Ferla or Mary S. Clapp, Office

of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 377-1174 or (202) 377-3956, respectively.

SUPPLEMENTARY INFORMATION:

The Petition

On May 17, 1989, we received a petition filed in proper form by the Yuasa-Exide Battery Corporation on behalf of the domestic motorcycle battery industry. In compliance with the filing requirements of 19 CFR 352.12, petitioner alleges that imports of motorcycle batteries from Korea are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports materially injure, or threaten material injury, to a U.S. industry.

Petitioner has indicated that it has standing to file the petition and that it is in an interested party as defined under section 771(9)(C) of the Act and that it has filed the petition on behalf of the U.S. industry producing the product that is subject to this investigation. If any interested party as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act wishes to register support for, or opposition to, this petition, please file written notification with the Commerce officials cited in the "FOR FURTHER INFORMATION CONTACT" section of this notice.

Under our revised regulations, parties seeking exclusion are required to submit their requests within 30 days of the date of the publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 353.14 (54 FR 12773, March 28, 1989).

United States Price and Foreign Market Value

Petitioner's estimate of United States price (USP) for exporter's sales price transactions is based on 1988 list prices charged by the U.S. sale subsidiary of Global & Yuasa Battery Co., Ltd. (Global). Deductions were made for warranty rebates, credit, U.S. duty, ocean freight and insurance, foreign inland freight and insurance, U.S. inland freight and insurance, brokerage and handling, commissions, indirect selling expenses, and bank and other miscellaneous charges. Petitioner's estimate of USP for purchase price transactions is based on 1988 list prices of batteries sold by both Global and Korea Storage Battery Co., Ltd. to their

unrelated trading companies which were in turn sold to unrelated United States purchasers. These list prices, the most recent available to petitioner, were in effect through 1987. Petitioner made further adjustments, supported by affidavit, to account for price increases since that time. Deductions were made for foreign inland freight and insurance, ocean freight and insurance, U.S. duty, and brokerage, handling and miscellaneous fees.

Petitioner's estimate of foreign market value (FMV) is based on April 1989 price quotes by Global in Korea, less a sales discount. Where USP is ESP, f.o.b. prices were adjusted for inland freight and insurance, credit, and an ESP offset to U.S. commissions and indirect selling expenses. Where USP is PP, net prices were adjusted for inland freight and insurance, and credit.

Based on a comparison of FMV to USP, petitioner alleges dumping margins ranging from 51 to 124 percent.

Initiation of Investigation

Under section 732(c) of the Act, we must determine, within 20 days after a petition is filed, whether it sets forth the allegations necessary for the initiation of an antidumping duty investigation, and whether it contains information reasonably available to the petitioner supporting the allegations.

We examined the petition on motorcycle batteries from Korea and found that it meets the requirements of section 732(b) of the Act. Therefore, in accordance with section 732 of the Act, we are initiating an antidumping duty investigation to determine whether imports of motorcycle batteries from Korea are being, or are likely to be, sold in the United States at less than fair value. If our investigation proceeds normally, we will make our preliminary determination by October 26, 1989.

Scope of Investigation

The United States has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the *Harmonized Tariff Schedule* (HTS), as provided for in section 1201 et seq. of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s). The written description remains dispositive.

The products covered by this investigation are 12-volt motorcycle batteries. Motorcycle batteries are lead-acid storage batteries which are rated

from 2 to 32 ampere hours (10 hour rate) with voltage levels of either 8 or 12 volts. This investigation is limited to 12-volt motorcycle batteries. These batteries are mainly designed for use as replacement batteries for motorcycles, but may, to a very limited extent, be used in snowmobiles, lawnmowers, and other such equipment. Prior to 1987, such merchandise was classified under TSUSA items 683.05 and 683.01. In 1987 and 1988, such merchandise was classified under TSUSA item 683.0110. This merchandise is currently classifiable under HTS item 8507.10.00.

Notification of ITC

Section 732(d) of the Act requires us to notify the ITC of this action and to provide it with the information we used to arrive at this determination. We will notify the ITC and make available to it all nonprivileged and nonproprietary information. We will allow the ITC access to all privileged and business proprietary information in our files, provided it confirms in writing that it will not disclose such information either publicly or under administrative protective order without the written consent of the Assistant Secretary for Import Administration.

Preliminary Determination by ITC

The ITC will determine by July 3, 1989, whether there is a reasonable indication that imports of motorcycle batteries from Korea materially injure, or threaten material injury to, a U.S. industry. If its determination is negative, the investigation will be terminated; otherwise, it will proceed according to the statutory and regulatory procedures.

This notice is published pursuant to section 732(c)(2) of the Act.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

June 6, 1989.

[FR Doc. 89-13904 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-05-M

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of export trade certificates of review.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to the Cherrex Corporation ("Cherrex"), Application No. 89-00005, and Valve Manufacturers Association of America ("VMA"),

Application No. 89-00007. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the *Federal Register*. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Cherrex—Application 89-00005

Export Trade

1. *Products.* Processed red cherries (*prunus cerasus*) and cherry products, including cherry pie filling, water pack cherries, cherry juice concentrate, dried cherries, frozen pack cherries, individually quick frozen cherries, cherry sausage, and cherry jams, jellies, and sauces.

2. *Technology Rights.* Patents, trademarks, service marks, copyrights, trade secrets, know-how, and semiconductor mask works, involving cherry processing.

3. *Export Trade Facilitation Services (as they relate to the export of Products and Technology Rights).* Trade promotion, marketing, sales and transportation services (including packing, transportation, wharfing and handling, trade documentation, freight forwarding, storage, and customs clearance).

Export Markets

All parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members in Addition to the Applicant

Burnette Foods, Inc.; Buskirk Processing, Inc.; Cherry Central Cooperative, Inc.; Cherry Marketing Institute, Inc.; Comstock/Michigan Fruit Division, a division of Curtice Burns Foods; DeRuiter Farms; Great Lakes International Trading, Inc.; Great Lakes Packing Company; Ludington Fruit Exchange, Inc.; and Stanek & Sons, Inc.

Export Trade Activities and Methods of Operation

In connection with the export of Products and Technology Rights through Cherrex, Cherrex may, on behalf of and with the advice of the Members:

1. Negotiate and enter into agreements with buyers in the Export Markets;
2. Negotiate and enter into agreements with foreign governments and other persons in the Export Markets regarding the quantities, time periods, prices, terms, and conditions upon which the Members will export Products and/or Technology Rights through Cherrex;
3. Allocate export sales and/or Export Markets among the Members on the basis of each Member's commitment of Products and/or Technology Rights for export;
4. Establish prices and terms of sale for the Export Markets;
5. Use the Cherrex or other common brand or label;
6. Negotiate and enter into agreements, on behalf of and with the advice of the Members, for the provisions of Export Trade Facilitation Services (including trade shows, advertising, and contracting marketing services);
7. Share among the Members the cost of Export Trade Facilitation Services;
8. Grant exclusive distribution rights in Export Markets for Products and/or Technology Rights to non-Members. "Exclusive" means that the non-member distributor may agree not to represent any person or firm other than Cherrex in the export of Products and/or Technology Rights in any Export Market; and/or Cherrex may agree not to export Products and/or Technology Rights in any Export Market through any distributor other than that non-Member distributorship;
9. Advise and cooperate with the United States Government or any agency of the United States Government in establishing procedures regulating the export of Products and/or Technology Rights;
10. Conduct product research and design for Products (and develop, obtain, and license associated Technology Rights) only when conducted exclusively for export,

including meeting foreign regulatory requirements and foreign buyer specifications, and identifying and designing for foreign buyer preferences; provided, however, that the Export Trade Activities and Methods of Operation do not cover activity that relates to the use of Technology Rights for the U.S. domestic markets; and

11. Exchange information with and among the Members, and enter into and carry out agreements with and among the Members, as necessary to carry out the activities specified in paragraphs (1) through (10) above.

VMA—Application No. 89-00007

Export Trade

1. *Products.* Industrial valves, actuators, and related parts (SIC code 3494A); automatic valves (regulating and control type) and parts (SIC code 34947); solenoid operated valves and parts (SIC code 34948); nuclear valves (SIC code 34949); and other industrial valve related products.

2. *Services.* Engineering, design and services related to Products and to turnkey contracts that substantially incorporate Products; servicing of Products; and training with respect to the use of Products.

3. *Export Trade Facilitation Services (as they relate to the export of Products and Services).* Consulting; international market research; marketing and trade promotion; trade show participation; insurance; legal assistance; services related to compliance with customs requirements; transportation; trade documentation and freight forwarding; communication and processing of sales leads and export orders; warehousing; foreign exchange; financing; taking title to goods; and liaison with foreign government agencies, trade associations, and banking institutions.

4. *Technology Rights.* Patents, trademarks, service marks, trade names, copyrights (including neighboring rights), trade secrets, know-how, semiconductor mask works, utility models (including petty patents), industrial designs, and *sui generis* forms of computer software protection associated with Products or Services.

Export Markets

The Export Markets include all parts of the world except (a) the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands) and (b) Canada.

Members in Addition to the Applicant
See Appendix A of this notice.

Export Trade Activities and Methods of Operation

1. VMA and/or one or more of its Members may:

- Engage in joint bidding or other joint selling arrangements for Products and/or Services in Export Markets and allocate sales resulting from such arrangements;
- Establish export prices for sales of Products and/or Services by the Members in Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;
- Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers for Products for Export Markets;
- With respect to Products and/or Services, refuse to quote prices for, or to market or sell in, Export Markets;
- Solicit non-member Suppliers to sell their Products and/or Services or offer their Export Trade Facilitation Services through the certified activities of VMA and/or its Members;
- Coordinate with respect to the installation and servicing of Products in Export Markets, including the establishment of joint warranty, service, and training centers in such markets;
- Engage in joint promotional activities, such as advertising and trade shows, aimed at developing existing or new Export Markets; and
- Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product, Service, and/or Technology Rights requirements of specific export customers or particular Export Markets.

2. One or more Members may enter into agreements wherein one or more Members agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for Products and/or Services in that country or market. In such agreements, (i) the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through the Member(s) acting as exclusive Export Intermediary and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. VMA and/or any Member when acting as an exclusive Export Intermediary shall not unreasonably refuse to supply its

services on non-discriminatory terms to those Members that are parties to the exclusive arrangements and which request such services.

3. VMA Members may exchange and discuss the following types of information solely about Export Markets:

- Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies, or methods) that is already generally available to the trade or public;
- Information about sales and marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demand in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for Products in Export Markets;
- Information about the export prices, quality, quantity, source, available capacity to produce and delivery dates of Products available from Members for export, provided, however, that exchanges of information and discussions as to Product quantity, source, available capacity to produce, and delivery dates must be on a transaction-by-transaction basis only and involve only those Members who are participating or have a genuine interest in participating in such transaction;
- Information about terms and conditions of contracts for sales in Export Markets to be considered and/or bid on by Members;
- Information about joint bidding, selling, or servicing arrangements for Export Markets and allocation of sales resulting from such arrangements among the Members;
- Information about expenses specific to exporting to and within Export Markets, including without limitation transportation, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;
- Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and
- Information about Members' export operations, including without limitation sales and distribution networks established by Members in Export Markets and prior export sales by Members (including export price information).

4. VMA may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Service to facilitate the export of Products to Export Markets. This may be accomplished by VMA itself, or by agreement with one or more Members, or other parties.

5. The Members may meet to engage in the activities described in paragraphs one through four above.

6. VMA and/or its Members may forward to the appropriate individual Member requests for information received from a foreign government or its agent (including private pre-shipment inspection firms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

7. VMA and/or its Members may refuse to provide Export Trade Facilitation Services or participation in the other activities described in paragraphs one through five above to non-members.

8. Members may license and sub-license Technology Rights in Export Markets to non-members, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and such non-member without coordination with VMA or any other Member. Such licenses and sub-licenses may: convey exclusive or non-exclusive rights in Export Markets; impose requirements as to the prices at which Products or Services incorporating, or manufactured or produced using, Technology Rights may be sold or leased in Export Markets; impose requirements as to pricing and other terms and conditions of sub-licenses of Technology Rights in Export Markets; restrict licensees and sub-licensees as to fields of use, or maximum sales or operations, in Export Markets; impose territorial restrictions (relating to any Export Market) on foreign licensees and sub-licensees; require the assignment back or exclusive or non-exclusive grantback to the licensor Member of rights (in Export Markets) to all improvements in Technology Rights, whether or not such improvements fall within the field of use authorized in such license; require package licensing of Technology Rights; and require products or services (including, but not limited to, Products and Services) to be used, sold, or leased as a condition of the license of Technology Rights.

Abbreviated Amendment Procedure

New VMA members and current VMA members not listed in Appendix A may from time to time be incorporated in this Certificate pursuant to the abbreviated amendment procedure described below. An abbreviated amendment shall consist of an annual written notification to the Secretary of Commerce and the Attorney General stating changes in VMA membership, identifying all new VMA members that desire to become a member under this abbreviated amendment procedure and certifying for each new VMA member so identified its sales of Products and Services in its prior fiscal year. Notice of members so identified shall be published in the Federal Register. However, VMA may withdraw one or more individual members from the application for the abbreviated amendment. If 30 days or more following publication in the Federal Register, the Secretary of Commerce, with the concurrence of the Attorney General, determines that the incorporation in the Certificate of these members through the abbreviated amendment procedure is consistent with the standards of the Act, the Secretary of Commerce shall amend the Certificate of Review to incorporate such members, effective as of the date on which the application for amendment is deemed submitted. If the Secretary of Commerce does not within 60 days of publication in the Federal Register so amend the Certificate of Review, such amendment must be sought through the non-abbreviated amendment procedure. This same procedure may be used by VMA to delete one or more Members from the Certificate.

For each Export Trade Certificate of Review, Export Trade Activities and Methods of Operation are subject to terms and conditions set forth in the Certificate. A copy of each Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: June 6, 1989.

George Muller,
Acting Director, Office of Export Trading
Company Affairs.

Appendix A

AC Valve Inc., York, PA
American Cast Iron Pipe Co., Birmingham, AL
(including American-Darling Valve, Birmingham, AL; and American Valve & Hydrant Mfg. Co., Beaumont, TX)
Anchor/Darling Valve Co., Rosemont, PA
Armstrong International, Inc., Three Rivers, MI (including Everlasting Valve Company, Inc., South Plainfield, NJ)

Atwood & Morrill Co., Inc., Salem, MA
Automax, Inc., Cincinnati, OH
BW/IP International, Inc., Pump Division, Vernon, CA
C & S Valve Company, Westmont, IL
Cameron Iron Works, Inc., Houston, Texas
Cashco, Inc., Ellsworth, KS
Chicago Fluid Power Corporation, Fluid Torque Division, Streamwood, IL
Clow Corporation, Division of McWane Inc., Oskaloosa, IA
Control Components, Inc., Rancho Santa Margarita, CA
Contromatics, East Hartford, CT
Conval, Inc., Somers, CT
Copes-Vulcan, Inc., Lake City, PA
Crane Co., King of Prussia, PA
Crosby Valve & Gage Company, a Moorco Company, Wrentham, MA
Daniel Industries, Inc., Houston, TX (including Daniel Flow Products, Inc., Houston, TX; and Daniel Valve Company, Houston, TX)
DeZURIK, a unit of General Signal, Sartell, MN
Dresser Industries, Inc., Dresser Valve & Controls Division, The Woodlands, TX (including Industrial Valve Operations, Alexandria, LA; and Masoneilan North American Operations, Canton, MA)
Durabla Manufacturing Company, Lionville, PA
The Duriron Company, Inc., Cookeville, TN
Dyna-Torque Co., Muskegon, MI
EIM Valve Controls, Inc., Missouri City, TX
Fisher Controls International, Inc., Marshalltown, IA (including Posi-Seal International, Inc., North Stonington, CT)
Foster Oilfield Equipment Company, Houston, TX
Foxboro/Jordan, a division of Foxboro Co., Milwaukee, WI
GH Bettis, Waller, TX
Garlock, Inc.—Valve & Industrial Plastics, Camden, NJ
General Valve Company, Brookshire, TX
Grinnell Corporation, Exeter, NH (including Grinnell Supply Sales Co., Cranston, RI)
Groth Corporation, Houston, TX
Harold Beck & Sons, Inc., Newtown, PA
Henry Pratt Company, Aurora, IL
ITT Barton Instruments, City of Industry, CA
ITT Engineered Valves, Lancaster, PA
J.M. Huber Corporation, Equipment Division, Borger, TX
Jordan-Hex-Bestobell, Divisions of Richards Industries, Cincinnati, OH
Kennedy Valve, Elmira, NY
Kerotest Manufacturing Corp., Pittsburgh, PA
Keystone International, Inc., Houston, TX (including Anderson, Greenwood & Co., Bellaire, TX; Keystone Valve USA, Houston, TX; and Yarway Corporation, Blue Bell, PA)
Kunkle Industries, Inc., Kunkle Valve Division, Fort Wayne, IN (including Lonergan Valve Division, Fort Wayne, IN)
Leslie Controls, Inc., Tampa, FL
Limiterque Corporation, Lynchburg, VA
M&H Valve Company, Anniston, AL (including McWane, Inc., Birmingham, AL)
Mark Controls Corporation, Skokie, IL (including Center Line Unit, Tulsa, OK; and Pacific Valves/Flowseal Unit, Long Beach, CA)

The Mastergear Corporation, Stanardsville, VA
Milwaukee Valve Company, Inc., Milwaukee, WI
Mueller Water & Gas Products Division, Decatur, IL
Mueller Steam Specialty, Division of Core Industries, Lumberton, NC
Neles-Jamesbury, Worcester, MA
NIBCO Inc., Elkhart, IN
Norris/O'Bannon, Tulsa, OK
Orbit Valve Company, Little Rock, AR
Plast-O-Matic Valves, Inc., Totowa, NJ
Red Valve Company, Inc., Carnegie, PA
Rockwell International Corp., Measurement & Flow Control Division (including Edward Globe, Gate and Check, Raleigh, NC; MARPAC Business Unit, Niles, IL; McCanna Valve and Actuator Products Business Unit, Carpentersville, IL; and Plug Valves and Trunnion-Mounted Ball Valves Business Unit, Sulphur Springs, TX)
Rotork Controls, Inc., Rochester, NY
Smith Valve Corporation, Whitinsville, MA
Spirex Sarco, Inc., Allentown, PA
Stockham Valves & Fittings, Birmingham, AL
Target Rock Corporation, E. Farmingdale, NY
Technaflo Inc., Rovalve Division, Portland, OR (including L&M Division, Salem, VA)
Teledyne Farris Engineering, Palisades Park, NJ
Tom Wheatley Valve Company, Houston, TX
United States Pipe and Foundry Co., Birmingham, AL (including Valve & Fittings Plant, Chattanooga, TN)
Val-Matic Valve & Manufacturing Corp., Elmhurst, IL
Valtek Incorporated, Springville, UT
Valvcon Corporation, Milford, NH
Velan Valve Corporation, Williston, VT
Victaulic Company of America, Easton, PA (including TBV, Inc., Sutton, MA)
The Walworth Company, Houston, TX
Waterous Company, South Saint Paul, MN
The Wm. Powell Company, Cincinnati, OH
Worcester Controls Corp., Marlborough, MA
Xomox Corporation, Cincinnati, OH

[FR Doc. 89-13902 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-DR-M

Application No. 87-4A004

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an amended export trade certificate of review.

SUMMARY: The Department of Commerce has issued an amendment to the Export Trade Certificate of Review granted to the National Machine Tool Builders' Association on May 19, 1987. Notice of issuance of the Certificate was published in the Federal Register on May 22, 1987 (52 FR 19371).

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration,

202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (15 U.S.C. 4011-21) authorizes the Secretary of Commerce to issue Export Trade Certificate of Review. The regulations implementing Title II are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Amended Certificate:

Export Trade Certificate of Review No. 87-00004 was issued to the National Machine Tool Builders' Association ("NMTBA") on May 19, 1987. Notice of issuance of the Certificate was published in the Federal Register on May 22, 1987 (52 FR 19371).

The listing of "Members" named in NMTBA's Export Trade Certificate of Review, as previously amended, has been amended to include the following changes:

1. Each of the following companies has been added as a "Member" of the Certificate: Bryant Grinder Corporation, Springfield, VT; Command Corporation, Minneapolis, MN; Cross & Trecker Corporation, Bloomfield Hills, MI; Dayton Machine Tool Company, Dayton, OH; Empire Abrasive Equipment Corporation, Langhorne, PA; Fadal Engineering Company, Inc., N. Hollywood, CA; Genesis Systems Group Inc., Davenport, IA; Haumiller Engineering Company, Elgin, IL; Kleer-Flo Company, Eden Prairie, MN; Komo Machine, Inc., Sauk Rapids, MN; Lapmaster International, Morton Grove, IL; MHP Machines Inc., Cheektowaga, NY; Milman Engineering Inc., Chehalis, WA; Positech Corporation, Laurens, IA; Preco Industries, Lenexa, KS; PS Group, Inc., Telford, PA; R & B Machine Tool Company, Saline, MI; Rush Machinery Inc., Rushville, NY; Servo Products Company, Pasadena, CA; Siber Hegner North America Inc., Stamford, CT; Truxton Machinery, Inc., Hudson, NY; Unison Corporation, Ferndale, MI; Westech Automation Systems, Buffalo Grove, IL.

2. Each of the following companies has been deleted as a "Member" of the Certificate: ACRO LOC/CNC Systems; Laser Industries, Inc.; Oerlikon Mott Corporation; Quamco, Inc.; Roto Finish Company, Inc.; Superior Die Set Corporation; Turchan Enterprises, Inc.; and WCI Machine Tool & Systems Co.

3. The listing of the company name for each current "Member" cited in this paragraph has been changed to the new listing cited in this paragraph in parentheses as follows: Katy Industries, Inc. (American Machine & Science (Katy Inds.)); Cooper-Weymouth, Peterson (Cooper-Weymouth, Peterson Div., Reed National Corp.); Danley Machine Division/Connell Ltd. Partnership (Danley Machine Division/Connell Ltd. Partnership); Dake Division, JSS Corporation (Dake Division, JSJ Corporation); DeVlieg Machine Company (DeVlieg-Sundstrand); Drake Manufacturing Services, Inc. (Drake Manufacturing Services Company, Inc.); ES/Tech-Equipment Systems Technology Co. (Equipment Systems Technology Company); Gehring Corporation (Gehring L.P.); George Fischer-Bohle Machine Tool Corp. (George Fischer-Bohle Machine Tools Corp.); Giddings & Lewis—A Division of AMCO International Corp. (Giddings & Lewis, A Division of AMCA International Corp.); Greenfield Industries (Greenfield Industries—Geometric Division); Litton Industrial Automation System, Inc. (Litton Industrial Automation—Machining & Assembly Sys. Div.); MG Systems Division (MG Industries); National Broach & Machine (National Broach & Machine Company); P/A Industries Inc.; Schmidt, Geo. T. (Schmidt Inc., Geo. T.); Service Precision Grinding Co. (Service Precision Grinding Co., Inc.); Kayex-Spittfire (Spittfire, A Unit of General Signal); T-Drill (T-Drill Industries); Versa-Mil, Inc. (Versa-Mil Inc./Phillips Corporation); Vulcan Tool Corp. (Vulcan Tool Company); and Whitton Spindle Division (Whitton Spindle Division/GMN).

EFFECTIVE DATE: March 7, 1989.

A copy of the amended Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: June 6, 1989.

George Muller,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 89-13903 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-DR-M

[Application No.: 88-00017]

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of Issuance of an Export Trade Certificate of Review.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to Construction Industry Manufacturers Association ("CIMA"). This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202-377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. No. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the Federal Register. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

1. Products

Construction machinery and equipment, including parts and components (SIC code 3531); gas turbines and turbine generator set units, including parts and components (SIC code 3511); internal combustion engines, including parts and components (SIC code 3519); farm machinery and equipment, including parts and components (SIC code 3523); lawn and garden tractors and equipment, including parts and components (SIC code 3524); mining machinery and equipment, including parts and components (SIC code 3532), but excluding mineral beneficiation machinery (SIC code 35326); oil and gas field machinery and equipment, including parts and components (SIC code 3533); conveyors and conveying

equipment, including parts and components (SIC code 3535); overhead traveling cranes, hoists, and monorail systems, including parts and components (SIC code 3536); industrial trucks, tractors, trailers, and stackers, including parts and components (SIC code 3537); motors and generators, including parts and components (SIC code 3621); motor vehicles and bodies, including parts and components (SIC code 3711); truck bodies, including parts and components (SIC code 3713); truck trailers, including parts and components (SIC code 3715); ship building and repairing, including parts and components (SIC code 3731); and other construction equipment parts, attachments, accessories, components and assemblies not elsewhere classified.

2. Services

Engineering, technical, financial, and management services related to Products and to turn-key project contracts that substantially incorporate Products; servicing of Products; and training with respect to the use of Products.

3. Technology Rights

Patents, trademarks, service marks, copyrights, trade secrets, and know-how.

4. Export Trade Facilitation Services (as they relate to the Export of Products, Services, and Technology Rights)

Consulting; international market research; marketing; financing; trade promotion; insurance; legal assistance; transportation; trade documentation and freight forwarding; communication and processing of export orders; warehousing; foreign exchange; and taking title to goods

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

1. CIMA and/or one or more of its Members may:

a. Engage in joint bidding, financing, leasing or other joint selling arrangements for Products and Services in Export Markets and allocate sales resulting from such arrangements;

b. Establish export prices for sales of Products and Services by Members in

Export Markets, with each Member being free to deviate from such prices by whatever amount it sees fit;

c. Discuss and reach agreements relating to the interface specifications and engineering requirements demanded by specific potential customers of Products for Export Markets;

d. Refuse to quote prices for, or to market or sell in, Export Markets with respect to Products and Services;

e. Solicit non-member Suppliers to sell their Products and/or Services or offer their Export Trade Facilitation Services through the certified activities of CIMA and/or its Members; provided, however, that CIMA and/or one or more of its Members shall make such solicitations or offers to non-member Suppliers on a transaction-by-transaction basis only and then only when the Members are unable to supply, at a price competitive under the circumstances, the requisite Products or Services for such transaction; provided further that CIMA and/or such Member may exchange only such information with such non-member Suppliers as is reasonably required by such transaction;

f. Coordinate with respect to the delivery, installation, assembly, and servicing of Products in Export Markets, including the establishment of joint warranty, service, parts warehousing and training centers in such markets;

g. License associated Technology Rights in conjunction with the sale of Products, but in all instances the terms of such licenses shall be determined solely by negotiations between the licensor Member and the export customer without coordination with CIMA or any Member;

h. Engage in joint promotional activities, such as advertising, trade shows, trade missions, demonstrations and field trips aimed at developing existing or new Export Markets; and, i. Bring together from time to time groups of Members to plan and discuss how to fulfill the technical Product and Service requirements of specific export customers or particular Export Markets.

2. CIMA and/or one or more of its Members may enter into agreements wherein they agree to act in certain countries or markets as the Members' exclusive or non-exclusive Export Intermediary for Products and/or Services in that country or market. In such agreements, (i) CIMA or the Member(s) acting as an exclusive Export Intermediary may agree not to represent any other Supplier for sale in the relevant country or market, and (ii) Members may agree that they will export for sale in the relevant country or market only through CIMA or the Member(s) acting as exclusive Export

Intermediary, and that they will not export independently to the relevant country or market, either directly or through any other Export Intermediary. CIMA and/or any Member when acting as an exclusive Export Intermediary shall not unreasonably refuse to supply its services on non-discriminatory terms to those Members that are parties to the exclusive arrangement and which request such services.

3. CIMA and/or one or more of its Members may exchange and discuss the following types of information solely about Export Markets:

a. Information (other than information about the costs, output, capacity, inventories, domestic prices, domestic sales, domestic orders, terms of domestic marketing or sale, or United States business plans, strategies or methods) that is already generally available to the trade or public;

b. Information about sales or marketing efforts for Export Markets; activities and opportunities for sales of Products and Services in Export Markets; selling strategies for Export Markets; pricing in Export Markets; projected demands in Export Markets; customary terms of sale in Export Markets; the types of Products available from competitors for sale in particular Export Markets, and the prices for such Products; and customer specifications for Products in Export Markets;

c. Information about the export prices, quality, quantity, source, and delivery dates of Products available from Members for export, provided, however, that exchanges of information and discussions as to such prices, quality, quantity, source, and delivery dates must be on a transaction-by-transaction basis only and involve only those Members which are participating or have a genuine interest in participating in such transaction;

d. Information about terms and conditions and contracts for sale in Export Markets to be considered and/or bid on by CIMA and its Members;

e. Information about joint bidding, distribution, financing, selling, or servicing arrangements for Export Markets and allocations of sales resulting from such arrangements among the Members;

f. Information about expenses specific to exporting to and within Export Markets, including, without limitation, transportation, warehousing, intermodal shipments, insurance, inland freight to port, port storage, commissions, export sales, documentation, financing, customs, duties, and taxes;

g. Information about U.S. and foreign legislation and regulations affecting sales in Export Markets; and,

h. Information about CIMA's or its Members' export operations, including without limitation, sales and distribution networks established by CIMA or its Members in Export Markets, and prior export sales by Members (including export price information).

4. CIMA may provide its Members or other Suppliers the benefit of any Export Trade Facilitation Services to facilitate the export of Products to Export Markets. This may be accomplished by CIMA itself, or by agreement with Members or other parties.

5. CIMA and/or one or more of its Members may meet to engage in the activities described in paragraphs one through four above.

6. CIMA and/or one or more of its Members may forward to the appropriate individual Members requests for information received from a foreign government or its agent (including private pre-shipment inspection forms) concerning that Member's domestic or export activities (including prices and/or costs), and if such individual Member elects to respond, it shall respond directly to the requesting foreign government or its agent with respect to such information.

Members (within the meaning of Section 325.2(1) of the Regulations)

Barber-Greene Overseas, Inc.; Blaw-Knox Construction Equipment Corporation; J.I. Case Company; Caterpillar Inc.; Cedarapids Inc.; Century II Inc.; CMI Corporation; Etnyre International Ltd.; Gomaco Corporation; Ingersoll-Rand Company; Nordberg Inc.; Payhauler Corp.; Power Curbers, Inc.; Rexworks Inc.; Ross Company; ScanRoad, Inc.; Taylor Machine Works, Inc.; and Terex Corporation.

The Export Trade Activities and Methods of Operation described above are subject to standard and special terms, conditions and limitations set forth in the Export Trade Certificate of Review.

A copy of each Certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Date: June 6, 1989.

George Muller,
Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 89-13790 Filed 6-9-89; 8:45 am]
BILLING CODE 3510-DR-M

North Shore University Hospital et al.; Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes; Correction

In FR Doc. 89-12473 at page 22612 in the Federal Register of May 25, 1989, Column 3, line 12, "Applicant: Tulane University" should read "Applicant: University of Utah."

Frank W. Creel,

Director, Statutory Import Programs Staff.
[FR Doc. 89-13793 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Mid-Atlantic Fishery Management Council; Public Meeting

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The Mid-Atlantic Fishery Management Council and its Squid/Mackerel/Butterfish Committee will meet on June 20-22, 1989, at the Annapolis Ramada, 173 Jennifer Road, Annapolis, MD. The Council's public meeting will begin at 8:30 a.m., on June 21 and will adjourn in the afternoon of June 22 at 3 p.m. The Council will discuss habitat and environmental conditions, the Surf Clam and Ocean Quahog Fishery Management Plan (FMP) Amendment #8, the Swordfish and Billfish FMPs, the Bluefish FMP hearing schedule, squid and butterfish specifications for 1990, and other fishery management and administrative matters. The meeting may be lengthened or shortened depending on progress on the agenda. The Council also may hold a closed session (not open to the public) to discuss personnel and/or national security matters.

The Squid/Mackerel/Butterfish Committee will meet on June 20, 1989, from 1 p.m. to 4 p.m., to consider the squid and butterfish specifications for 1990.

For more information contact John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674-2331.

Date: June 6, 1989.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-13876 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit; Golden Nugget-Strip Corp. (P451)

Notice is hereby given that the Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Golden Nugget-Strip Corp., Operating as the Mirage, P.O. Box 610, Las Vegas, Nevada 89125.

2. *Type of Permit Requested:* Public display.

3. *Name and Number of Marine Mammals:* Bottlenose dolphins (*Tursiops truncatus*) 6.

4. *Type of Take:* The applicant proposes to maintain captive born or rehabilitated animals for the purpose of public display. If *Tursiops sp.* is not available other species (except *Orcinus orca*) will be considered for relocation. No take from the wild is requested or anticipated.

5. *Location and Duration of Activity:* No location is available at this time. Duration of request is 5 years.

In accordance with section 104(c) of the MMPA as amended, the applicant will offer a program for education purposes as a component of its proposed display program. The education program will include tours for schools with students in grades kindergarten through college, a program for visually impaired students, and a teacher training program. The applicant will offer free lectures and programs to local educational institutions and community groups. The applicant's facility will be open to the public on a regularly scheduled basis. To promote visitation the applicant will not charge admission.

The planned arrangements and facilities for transporting and maintaining the marine mammals requested in the above described application have been reviewed by a licensed veterinarian, who has certified that such arrangements and facilities will be adequate to provide for the well-being of the marine mammals involved.

Concurrent with the publication of this notice in the Federal Register, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and the Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, National Marine Fisheries Service, U.S. Department of Commerce, 1335 East

West Hwy., Room 7234, Silver Spring, Maryland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices:

Office of Protected Resources,
National Marine Fisheries Service, 1335 East West Hwy., Room 7324, Silver Spring, Maryland 20910; and

Director, Southwest Region, National Marine Fisheries Service, 300 South

Ferry Street, Terminal Island, California 90731-7415.

Nancy Foster,
Director, Office of Protected Resources and Habitat Programs.

Date: June 5, 1989.

[FR Doc. 89-13822 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-22-M

COMMODITY FUTURES TRADING COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of information collection.

SUMMARY: The Commodity Futures Trading Commission has submitted information collection 3039-0007, Regulation of Domestic Exchange-Traded Options, to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Commodity Futures Exchanges are

required to provide to the Commission weekly position data on any option trader who controls positions which are above reporting levels in any option expiration month and to provide the data by strike price for each option expiration. Such information is necessary for the exchanges and the Commission to enforce their option and futures speculative position limits.

ADDRESS: Persons wishing to comment on this information collection should contact Gary Waxman, Office of Management and Budget, Room 3228, NEOB, Washington, DC 20502, (202) 395-7340. Copies of the submission are available from Joseph G. Salazar, Agency Clearance Officer, (202) 254-9735.

Title: Regulation of Domestic Exchange-Traded Options.

Control Number: 3038-0007.

Action: Extension.

Respondents: Businesses (excluding small businesses).

Estimated Annual Burden: 72,882 hours.

Estimated Number of Respondents: 190,195.

Respondents	Regulation (17 CFR)	Estimated No. respondents	Annual responses	Estimated average hours per response
Reporting:				
Businesses.....	33.4(a)(d)(f)(g) and 33.5..... 33.4(b)(3)..... 33.7 and 33.4(b)(9)..... 33.7(d)..... 16.02.....	9 190,000 175 175 11	9 190,000 26,250 10,500,000 10,923	50 .17 .08 .003 .083
Recordkeeping:				
Businesses.....	33.8.....	225	225	25

Issued in Washington, DC on June 6, 1989.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-13836 Filed 6-9-89; 8:45 am]

BILLING CODE 6351-01-M

Membership of the Commission's Performance Review Board

AGENCY: Commodity Futures Trading Commission.

ACTION: Membership Change of Performance Review Board; Notice of correction.

SUMMARY: This notice corrects the membership change of the Performance Review Board previously published in the Federal Register May 22, 1989, (54 FR 22003) by adding Donald Tendick, Deputy Executive Director.

FOR FURTHER INFORMATION CONTACT: Stacy L. Dean, Director, Office of

Personnel, Commodity Futures Trading Commission, Room 202, 2033 K Street NW., Washington, DC 20581, (202) 254-3275.

Dated: June 6, 1989.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-13837 Filed 6-9-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF DEFENSE

Corps of Engineers, Department of the Army

Environmental Advisory Board; Meeting

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of Open Meeting.

Federal Register Citation of Previous Announcement, Federal Register Vol. 54, No. 93 / Tuesday, May 16, 1989 / Notices, page 21094.

The meeting will be held from 1:00 p.m. to 5:00 p.m., Thursday, June 22, 1989.

Changes in the Meeting: The meeting will commence at 1:00 PM on Thursday, June 22, 1989 and will end at 12:00 PM on Friday, June 23, 1989.

Contact Person for More Information: Dr. William L. Klesch, Chief, Office of Environmental Policy, Office of the Chief of Engineers, Washington, DC 20314-1000, (202) 272-0166.

Kenneth L. Denton,

Department of the Army, Alternate Liaison Officer, With the Federal Register.

[FR Doc. 89-13880 Filed 6-9-89; 8:45 am]

BILLING CODE 3710-08-M

Intent To Prepare a Draft Supplemental Environmental Impact Statement (DSEIS) for Proposed Chignik Small Boat Harbor at Chignik, AK

AGENCY: U.S. Army Corps of Engineers, DoD.

ACTION: Notice of intent.

SUMMARY: The recommended plan is to build a 1,460-foot breakwater within Anchorage Bay, and includes a 4.8-acre moorage basin, and access and entrance channels. The project area is in a sandy flat requiring 360,000 yd³ of construction dredging and 16,000 yd³ of maintenance dredging every 10 years. Project features include a 4.4 acre intertidal staging area and access road.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and DSEIS can be answered by: Mr. William D. Lloyd at (907) 753-2640 or by writing to the: U.S. Army Corps of Engineers, Alaska District, Attn: CENPA-EN-PL-ER (LLOYD), P.O. Box 898, Anchorage, Alaska 99506-0898.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

The recommended plan would consist of a 1,460-foot-long, rubblemound breakwater in Anchorage Bay protecting a 4.8-acre moorage basin and access and entrance channels. The project is in a sandy flat requiring 360,000 yd³ of construction of dredging and 16,000 yd³ of maintenance dredging every 10 years. The dredged material disposal site is in an upland site within the Chignik airport right-of-way. Project features include a 4.4-acre intertidal staging area and access road. The additional project feature presented in the DSEIS is the elimination of the designated quarry site in Castle Bay. The Alaska District Corps of Engineers will no longer designate quarry sites to be used in obtaining the armor stone for breakwaters. The Alaska District Corps of Engineers will evaluate the overall environmental impacts of existing, operating quarry sites using a typical, generic quarry site scenario.

2. Reasonable Alternatives

The alternative to the recommended plan is to construct a rubblemound breakwater less than a mile down the beach from the recommended harbor site. This plan would feature a rectangular basin and access channel, totaling 6.5 acres. A small staging area would be created between the harbor basin and the rocky beach. The rubblemound armor stone quantities are

higher at this site because of the deeper water. The plan requires dredging approximately 212,000 yd³ of sand/gravel material. The same maintenance dredging and disposal features as the recommended plan are applicable to the alternative plan.

3. Scoping Process

a. *Public Involvement.* A public notice will be prepared and distributed to Federal, State and local interests to invite their participation and comments. Draft and Final Environmental Impact Statements were distributed for public review in 1987 and 1988 respectively.

b. *Significant Issues.* At present, the significant issue is the introduction of the Alaska District's new procedure of not designating a specific armor rock quarry in water resource projects. In particular, deleting the designation of the Castle Bay quarry site in the Chignik small boat harbor project. The construction contract will allow the contractor to select a quarry site to provide specific rock necessary for construction of the project. The National Environmental Policy Act documentation will describe recurring environmental impacts associated with quarry operations by describing a typical quarry operation, assessing impacts, and describing possible mitigation measures.

c. *Assignments.* Other than normal coordination, no cooperating agency assignments have been made.

d. *Environmental Review and Consultation Requirements.* The DSEIS will be circulated for review and all comments will be incorporated into the final supplemental environmental impact statement.

4. Scoping Meeting

A scoping meeting is not planned at the present time.

5. Availability

The DSEIS is expected to be available to the Public by August, 1989.

William W. Kakel,
Colonel, Corps of Engineers, District Engineer.

[FR Doc. 89-13881 Filed 6-9-89; 8:45 am]

BILLING CODE 370-NL-M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of Proposed Information Collection Requests.

SUMMARY: The Director, Office of Information Resources Management, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before July 12, 1989.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Jim Houser, Desk Officer, Department of Education, Office of Management and Budget, 728 Jackson Place NW., Room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Margaret B. Webster, Department of Education, 400 Maryland Avenue SW., Room 5824, Regional Office Building 3, Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: Margaret B. Webster (202) 732-3915.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations.

The Director, Office of Information Resources Management, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following:

(1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Margaret Webster at the address specified above.

Dated: June 6, 1989.

Carlos U. Rice,

Director, Office of Information Resources Management.

Office of Bilingual Education and Minority Languages Affairs

Type of Review: New.

Title: Study of Academic

Disadvantaged Students.

Frequency: On Occasion.

Affected Public: Individuals or households; State or local government.

Reporting Burden:

Responses: 28,617.

Burden Hours: 14,676.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This study will collect information on the effectiveness of the curriculum and instruction experienced by students in elementary schools with high concentrations of disadvantaged students. The study will identify policies and procedures at the school and district level associated with the presence of effective practices in classrooms and schools.

Office of Educational Research and Improvement

Type of Review: New.

Title: National Household Education Survey (NHES).

Frequency: One Time Only.

Affected Public: Individuals or households.

Reporting Burden:

Responses: 22,020.

Burden Hours: 2,790.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This information is needed to collect data on education issues. The field test is designed to evaluate the use of methodology for collecting data on such topics as high school dropouts and early childhood education.

Office of Planning, Budget, and Evaluation

Type of Review: New.

Title: Profile of Child Care Settings Study.

Frequency: One time.

Affected Public: Businesses or other for-profit; Non-profit institutions; Small businesses or organizations.

Reporting Burden:

Responses: 2,620.

Burden Hours: 1,492.

Recordkeeping Burden:

Recordkeepers: 0.

Burden Hours: 0.

Abstract: This study will provide national estimates of the level and

characteristics of the supply of child care and early education from center-based programs and regulated home based providers. The information collected will be used by federal policymakers and those outside the federal government concerned with the national supply of child care and early education.

[FR Doc. 89-13821 Filed 6-9-89; 8:45 am]

BILLING CODE 4000-01-M

Office of Elementary and Secondary Education

Intent To Repay to the California State Department of Education Funds Recovered as a Result of a Final Audit Determination

AGENCY: Department of Education.

ACTION: Intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the California State Department of Education, the State educational agency (SEA), an amount equal to 75 percent of the funds recovered by the U.S. Department of Education (Department) as a result of a final audit determination. This notice describes the SEA's plan, submitted on behalf of Stockton Unified School District, the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATE: All written comments must be received on or before July 12, 1989.

ADDRESS: All written comments should be submitted to Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue SW. (Room 2043), Washington, DC 20202-6132.

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane. Telephone: (202) 732-4692.

SUPPLEMENTARY INFORMATION:

A. Background

The Department has recovered \$406,679 from the California SEA in partial satisfaction of final audit determinations issued to the LEA by the SEA on September 12, 1986. These funds represent two of three annual payments the LEA has agreed to make to the SEA

to resolve the final audit determinations. The LEA's final payment of \$203,339 is due to the SEA no later than July 31, 1989.

The claims arose from an audit by the California State Controller's Office of the LEA's administration during fiscal years (FYs) 1981 and 1982 of Title I of the Elementary and Secondary Education Act of 1965 (Title I), a program that addressed the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families. Specifically, the LEA expended Title I funds for costs that were not necessary and reasonable for proper and efficient administration of the program, a violation of Appendix C to 34 CFR Part 74. Title I funds were improperly expended for fringe benefits at sites where there were no Title I staff, capital outlay for replacement of lost or stolen equipment that was insured, instructional materials that were not necessary or in excess of those needed for the Title I program, and contract services for which there was no documentation to substantiate the appropriateness of the expenditures.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a) (1982), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this "grantback" arrangement if the Secretary determines that the—

(1) practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of the funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

BEST COPY AVAILABLE

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of \$457,513, which is 75 percent of the total of the amount the Department has already recovered and the amount the Department will recover when the LEA makes its final payment to the SEA. The SEA has submitted a two-part plan on behalf of the LEA for the use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended. Although the final audit determinations resulted from improper expenditures of Title I funds, that program has been repealed. Chapter 1 is a successor program that, like Title I, is designed to serve educationally deprived children in low-income areas.

According to the plan, the LEA would use \$305,009, which is 75 percent of the funds recovered to date by the Department, to provide a remedial program for Chapter 1 students from June 28 to July 28, 1989. The objective of the program would be to improve Chapter 1 students' performance in reading and mathematics. Services would be provided at two sites to approximately 750 children in pre-kindergarten through grade 6 from 25 public schools and 5 nonpublic schools. Students in the program would receive 80 minutes of instruction in the language arts component and 80 minutes in the mathematics component on a daily basis. Activities would also be provided for the children to develop self-esteem, health and safety habits, and social skills.

Additionally, teachers and instructional aides would participate in weekly staff development sessions and in workshops for training in instructional techniques for working with Chapter 1 students. A team of curriculum writers would develop and demonstrate literature and mathematics materials to assist Chapter 1 teachers. Parents would also be provided training to assist them in helping their children. They would be invited to observe the program during its implementation and to an assembly at the conclusion of the session.

Under the plan, the LEA also proposes to use \$152,504, which is 75 percent of the amount yet to be recovered, to purchase computers and printers to augment the regular school year 1989-90 Chapter 1 program in public and nonpublic schools. The computers and printers would be placed in four public

schools that are ranked highest according to educational deprivation. Chapter 1 students in these schools would receive computer-assisted instruction for 20 minutes per day in reading and mathematics. Equitable services would be provided to eligible nonpublic school students in these four school attendance areas.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon the review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 456 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the *Federal Register* a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the California SEA under a grantback arrangement. Specifically, the Secretary intends to make an initial payment of \$305,009, which is 75 percent of the funds recovered to date by the Department. An additional grantback payment of \$152,504 would be made if the SEA submits to the Department on a timely basis the balance of \$203,339 still to be repaid by the LEA.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agrees to comply with the following terms and conditions under which payments under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1989, in accordance with section 456(c) of GEPA and the SEA's plan.

(3) The SEA, on behalf of the LEA, will, not later than January 1, 1990, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget, and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(5) Before funds will be repaid pursuant to this notice, the SEA must repay to the Department all overdue debts, or enter into a repayment agreement for those debts.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

Dated: June 6, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89-13819 Filed 6-9-89; 8:45 am]

BILLING CODE 4000-01-M

Intent To Repay to the Virginia State Department of Education Funds Recovered as a Result of Final Audit Determinations

AGENCY: Department of Education.

ACTION: Intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA), the U.S. Secretary of Education (Secretary) intends to repay to the Virginia State Department of Education, the State Educational Agency (SEA), an amount equal to 75 percent of the funds recovered by the U.S. Department of Education as a result of final audit determinations. This notice describes the SEA's plan, submitted on behalf of the Richmond City Public Schools, the local educational agency (LEA), for the use of the repaid funds and the terms and conditions under which the Secretary intends to make those funds available. The notice invites comments on the proposed grantback.

DATE: All Written comments must be received on or before July 12, 1989.

ADDRESS: All written comments should be submitted to Dr. James Spillane, Director, Division of Program Support, Compensatory Education Programs, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2043), Washington, DC 20202-6132

FOR FURTHER INFORMATION CONTACT: Dr. James Spillane. Telephone: (202) 732-4694.

SUPPLEMENTARY INFORMATION:

A. Background

The Department has recovered \$898,461.98, plus interest, from the Virginia SEA in satisfaction of claims arising from two Federal audits. The claims involved the SEA's administration of Title I of the Elementary and Secondary Education Act of 1965 (Title I), a program that addressed the special educational needs of educationally deprived children in areas with high concentrations of children from low-income families.

Based on findings in the first audit, which covered the period July 1, 1976 through June 30, 1979, the Department recovered \$317,435. Specifically, two LEAs—Richmond City Public Schools and Portsmouth City Public Schools—used Federal funds for activities that did not meet basic program requirements. Title I funds were expended for activities to meet the general needs of schools or of student bodies at large, instead of the special needs of educationally deprived students residing in eligible Title I project areas. This was in violation of 20 U.S.C. 241e(a)(1)(A) (1976) and 45 CFR 116a.21 and 116a.22 (1976), which required that LEAs identify specific educational needs for the target group of Title I children, develop a project to address those needs, and use Title I funds only in addressing those needs. The amounts of misspent funds in the Portsmouth and Richmond LEAs were \$234,477 and \$82,958.

Based on findings in the second audit, which covered fiscal years 1978 and 1979, the Department recovered \$581,026.98, plus interest. The Richmond LEA's program was not in compliance with Title I comparability requirements. Those requirements provided that an LEA could receive Title I funds only if it used its State and local funds in each Title I area to provide services that "taken as a whole, [were] at least comparable to services being provided in [non-Title I] areas * * * 20 U.S.C. 241e(a)(3)(C) (1976); 45 CFR § 116a.26 (1976).

Of the two LEAs cited in the audits, Richmond and Portsmouth, the amounts recovered on behalf of misspent Title I

funds in each were \$663,984.98 and \$234,477, respectively.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA, 20 U.S.C. 1234e(a) (1982), provides that whenever the Secretary has recovered funds following a final audit determination with respect to an applicable program, the Secretary may consider those funds to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary determines that the—

(1) Practices and procedures of the SEA or LEA that resulted in the audit determination have been corrected, and the SEA or LEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement that meets the requirements of the program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exception; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA, the SEA has applied for a grantback of \$497,988 and has submitted a plan on behalf of the Richmond LEA for use of the grantback funds to meet the special educational needs of educationally deprived children in programs administered under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (Chapter 1). 20 U.S.C. 2701et seq. The SEA's request did not include the Portsmouth LEA because a separate request already had been made for a grantback payment for the funds recovered for misexpenditures in that LEA.

Under the SEA's plan, the Richmond LEA would expend the grantback funds to provide a 1989 summer school program. Remedial reading and math instruction would be provided by 83 teachers and 78 teacher aides to approximately 1,250 Chapter 1 students in grades 1-7. The program would be operative for four hours per day for five weeks in three schools. Students in grades 1-5 would be placed in either a diagnostic and prescriptive reading

program or a visual literacy program based on individual needs. The remedial mathematics program would focus on problem solving, numeration/concepts, and geometry. Students in grades 6 and 7 would receive instruction in basic and advanced skills that is evenly divided between reading and mathematics with emphasis placed on the practical use of such skills. High achieving academically gifted students in the LEA would function as peer counselors for children participating in the summer school program.

Parents of the Chapter 1 children would be involved in the program. Parents would participate in computer literacy workshops, and provide tutorial assistance.

D. The Secretary's Determinations

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon the review, the Secretary has determined that the conditions under section 456 of GEPA have been met.

These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action. In finding that the conditions of section 456 of GEPA have been met, the Secretary makes no determination concerning any pending audit recommendations or final audit determinations.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the *Federal Register* a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA, notice is hereby given that the Secretary intends to make funds available to the Virginia SEA under a grantback arrangement. The grantback award would be in the amount of \$497,988, which is 75 percent of the funds recovered by the Department as a result of the audit determinations relating to the Richmond LEA.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Would Be Made

The SEA and LEA agree to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan that the SEA submitted and any amendments to that plan that are approved in advance by the Secretary; and

(c) The budget that was submitted with the plan and any amendments to the budget that are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1989, in accordance with the SEA's plan.

(3) The SEA, on behalf of the LEA, will, not later than January 1, 1990, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budget; and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(Catalog of Federal Domestic Assistance Number 84.010, Educationally Deprived Children—Local Educational Agencies)

Dated: June 6, 1989.

Lauro F. Cavazos,
Secretary of Education.

[FR Doc. 89-13820 Filed 6-9-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Atomic Energy Agreement; Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the International Atomic Energy Agency (IAEA) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval for supply of 0.192 grams of uranium-233, 0.018 grams of uranium enriched to 33 percent in the isotope uranium-235, and 16.892 grams of plutonium, for use as standard reference materials for safeguards purposes, by the IAEA, Vienna, Austria.

Contract Number WC-IA-136 has been assigned to the transaction.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: June 7, 1989.

Richard H. Williamson,
Deputy Assistant Secretary for International Affairs.

[FR Doc. 89-13897 Filed 6-9-89; 8:45 am]

BILLING CODE 8450-01-M

Waste Isolation Pilot Plant (WIPP); Draft Supplement to the Environmental Impact Statement; Additional Public Hearing Locations

AGENCY: U.S. Department of Energy.

ACTION: Addition of two locations for public hearings on the draft Supplement to the Environmental Impact Statement (SEIS) on WIPP and the extension of the public comment period.

SUMMARY: On April 21, 1989, the Department of Energy (DOE) published a notice in the *Federal Register* (Volume 54, Number 76, pp. 16350-2) announcing the availability of the Draft SEIS, the subsequent 60-day public comment period, and the six public hearing schedules, locations, and procedures. Two additional public hearings on the SEIS are now scheduled to accommodate requests received by DOE. The first will be on June 22 at the Artesia Center, 612 North 8th Street, Artesia, New Mexico; the second on June 28 at the Odessa Holiday Inn Centre, 6201 East Highway 80, Odessa, Texas. Both will begin at 9:00 a.m. and will continue through the day and evening with recesses for meals.

Participation Procedures: To accommodate those interested, the public comment period for written comments has been extended 7 days. Comments should be mailed to the address below and postmarked by June 27, 1989. Persons wishing to preregister to make oral comments at the public hearings may call the DOE's WIPP SEIS Project Office at the phone number indicated below preferably one week prior to the hearing date. Commenters may also register at the door and will be accommodated as time allows.

ADDRESS: Written comments should be directed to: W. John Arthur III, Project

Manager, WIPP SEIS Project Office, U.S. Department of Energy, 8301 Indian School Road, NE., 7th Floor, Albuquerque, NM 87110. Those wishing to be placed on the list of preregistered oral commenters should call DOE's toll-free number 1-800-274-0585 and leave their name, phone number, and address with zip code.

FOR FURTHER INFORMATION CONTACT:

W. John Arthur, III, WIPP SEIS Project Manager, U.S. Department of Energy, Albuquerque Operations Office, P. O. Box 5400, Albuquerque, NM 87110 (505) 889-3038.

or
Carol Borgstrom, Director, Office of NEPA Project Assistance (EH-25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585 (202) 586-4600.

Dated in Washington, DC, this 7th day of June 1989, for the U.S. Department of Energy.

Geoffrey J. Judge,
Acting Assistant Secretary, Environment, Safety and Health.

[FR Doc. 89-14069 Filed 6-9-89; 8:45 am]

BILLING CODE 8450-01-M

Federal Energy Regulatory Commission

[Docket No. TQ89-3-1-000]

Alabama-Tennessee Natural Gas Co.; Proposed PGA Rate Adjustment

June 6, 1989.

Take notice that on June 1, 1989, Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), Post Office Box 918, Florence, Alabama, 35631, tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Fifteenth Revised Sheet No. 4

The tariff sheet is proposed to become effective July 1, 1989. Alabama-Tennessee states that the purpose of this filing is to adjust its rates to conform to the rates of its suppliers.

Alabama-Tennessee has requested any necessary waivers of the Commission's Regulations in order to permit the tariff sheets to become effective as proposed.

Alabama-Tennessee states that copies of the tariff filing have been mailed to all of its jurisdictional customers and affected State Regulatory Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 625 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211

or Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-13860 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-32-000]

Colorado Interstate Gas Co.; Quarterly Purchased Gas Adjustment

June 6, 1989.

On May 31, 1989, Colorado Interstate Gas Company ("CIG") filed the following proposed tariff sheets to reflect a quarterly purchased gas adjustment ("PGA"): Fortieth Revised Sheet No. 7; Fortieth Revised Sheet No. 8.

CIG requests that these proposed tariff sheets be made effective on July 1, 1989.

CIG states that this filing reflects no change in demand, and a 0.59¢ decrease in commodity rate for the G-1, P-1, SG-1, H-1, F-1, and PS-1 Rate Schedules, compared with rates filed by CIG on April 14, 1989 in Docket No. RP85-122, *et al.*, which rates were accepted by Commission Letter Order dated May 18, 1989, to become effective on May 1, 1989.

CIG states that copies of this filing have been served upon CIG's jurisdictional customers and public bodies, and are otherwise available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies

of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13851 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-1-23-000]

Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff

June 6, 1989.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on June 1, 1989, the following proposed change to its FERC Gas Tariff, Original Volume No. 1, Second Revised Sheet No. 6B. Such tariff sheet bears a proposed effective date of May 1, 1989.

ESNG states that such proposed change is being filed to revise the billing amounts shown on First Revised Sheet No. 6B to comply with the provisions of Ordering Paragraph (B) of the Commission's August 26, 1988 order in the subject docket. The referenced order requires ESNG to file revised billing amounts to "track" any modifications to Transcontinental Gas Pipe Line Corporation's (Transco) take-or-pay charges ordered by the Commission.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-13861 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-3-2-000]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 6, 1989.

Take notice that on May 31, 1989, East Tennessee Natural Gas Company (East Tennessee) is filing ten copies of Fiftieth Revised Sheet No. 4 to be effective July 1, 1989.

East Tennessee states that the purpose of the revisions to Fiftieth Revised Sheet No. 4 is to reflect a Purchased Gas Adjustment (PGA) to its Rates for the quarterly period of July 1989 through September 1989 pursuant to § 22.2 of the General Terms and Conditions of East Tennessee's Tariff.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-13862 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-201-006]

East Tennessee Natural Gas Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 6, 1989.

Take notice that on May 31, 1989, East Tennessee Natural Gas Company (East Tennessee) filed Original Sheet No. 5A and Second Revised Sheet No. 144 to its FERC Gas Tariff to be effective July 1, 1989.

East Tennessee states that the purpose of this filing is to flow through the third demand surcharge

implemented by Tennessee Gas Pipeline Company in Docket No. RP88-191 effective July 1, 1989. East Tennessee is flowing these charges to its customers pursuant to Article 30 of its FERC gas tariff, which was accepted by order of the Commission on July 28, 1988. The purpose of Second Revised Sheet No. 144 is to conform with the issuance of Original Sheet No. 5A.

East Tennessee states that copies of the filing have been mailed to all of its jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-13863 Filed 6-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-187-000]

Gas Research Institute; Annual Application and Procedural Schedule

June 5, 1989

On June 1, 1989, Gas Research Institute (GRI) filed an application requesting advance approval of its 1990-1994 Five Year R&D Plan and 1990 R&D Program and the funding of its R&D activities for 1990 pursuant to the Natural Gas Act and the Commission's regulations, particularly 18 CFR 154.38(d)(5) (1989).

GRI's application seeks approval of its 1990 R&D Program and approval to collect \$170,421,000 through jurisdictional rates and charges during the twelve (12) months ending December 31, 1990 to support GRI's R&D activities in 1990. GRI states that its application was filed in accordance with the provision of 18 CFR 154.38(d)(5)(iii) that requires "RD&D organizations" to submit, annually, a five-year plan at

least 180 days prior to the commencement of the five-year period of the plan scheduled in this proceeding to commence on January 1, 1990.

GRI states that the proposed unit cost of GRI's 1990 R&D Program is 1.47 cents per Dth (i.e., 1.51 cents per Mcf), the same unit cost now in effect. GRI proposes that current tariffs pertaining to GRI funding be continued in effect through December 31, 1990. GRI also states that this proposed annual R&D Funding Unit will be applied to the services included in GRI's Program Funding Services in 1989 including jurisdictional, direct sale and intrastate volumes of GRI's members estimated to be 11,557.0 MDth. The Commission notes any unit cost approved by the Commission in this application will be assessed under the direct billing procedures provided in 381.107 of the Commission's regulations.

GRI's filing was accompanied by workpapers providing detail about its application. These workpapers are available for inspection in the Commission's Public Reference Room.

The Commission's staff will analyze GRI's application and prepare a Commission Staff Report. This Staff Report will be served on all parties and filed with the Commission as a public document on July 31, 1989. Comments on the Staff Report, or other comments by all parties, except GRI, must be filed with the Commission on or before August 16, 1989. GRI's reply comments must be filed on or before August 30, 1989.

Any person desiring to be heard or to protest GRI's application must file, on or before June 26, 1989, with the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a comment, protest, or petition to intervene in accordance with the requirements of the Commission's Rules of Practice and Procedure. All comments or protests filed with the Commission will be considered in determining the appropriate action to be taken, but will not serve to make anyone a party to the proceeding.

Except for GRI members and state regulatory commissions, any person wishing to become a party to this proceeding or to participate as a party in any hearing that may be held in this proceeding must file a petition to intervene in accordance with the Commission's Rules of Practice and Procedure. GRI's members and the state regulatory commissions listed in the appendix to GRI's application are permitted to participate in this proceeding as intervenors and need not

file formal petitions to intervene or notices of intervention.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13850 Filed 6-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ89-7-51-001]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

June 6, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on May 28, 1989 tendered for filing Substitute Twenty-First Revised Sheet Nos. 57(i) and 57(ii) and Substitute Eighth Revised Sheet No. 57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states that these tariff sheets were filed in compliance with the Commission's orders dated May 12, 1989 and May 16, 1989 in Docket Nos. TQ89-7-51-000 and TQ89-8-51-000, respectively. These tariff sheets revised the current adjustment rates reflected in Docket No. TQ89-7-51-000, effective May 1, 1989, to track the PGA adjustment rates accepted by the Commission in Docket No. TQ89-8-51-000, effective April 1, 1989. The referenced tariff sheets reflected no change in the cumulative adjustment rates from those accepted by the Commission in Docket No. TQ89-7-51-000.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.308 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective May 1, 1989.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this

filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13852 Filed 6-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-193-005]

Midwestern Gas Transmission Co.; Rate Filing

June 6, 1989.

Take notice that on May 31, 1989, Midwestern Gas Transmission Company (Midwestern) filed the following revised tariff sheets to Volume No. 1 of its FERC Gas Tariff to be effective July 1, 1989:

Seventeenth Revised Sheet No. 7

Midwestern state that revisions to Sheet No. 7 are authorized by Article XVII of its gas tariff.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers on its Southern System and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13853 Filed 6-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ89-6-5-000]

Midwestern Gas Transmission Co.; Rate Filing Pursuant to Tariff Rate Adjustment Provisions

June 6, 1989

Take notice that on May 31, 1989, Midwestern Gas Transmission Company (Midwestern) filed Forty-Eighth Revised Sheet No. 5 to Original

Volume No. 1 of its FERC Gas Tariff, to be effective July 1, 1989.

Midwestern states that the current Purchased Gas Cost Rate Adjustments reflected on Forty-Eighth Revised Sheet No. 5 consist of a \$(1953) per dekatherm adjustment applicable to the gas component of Midwestern's sales rates, a \$(91) per dekatherm adjustment applicable to the Demand D-1 component, and a \$(0199) per dekatherm adjustment applicable to the Demand D-2 component.

Midwestern states that copies of the filing have been mailed to all of its jurisdictional customers on its Southern System and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in their proceeding is not required to file a further motion. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13854 Filed 6-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ89-3-16-000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

June 6, 1989.

Take notice that on June 1, 1989, National Fuel Gas Supply Corporation ("National") tendered for filing as part of its FERC Gas Tariff First Revised Volume No. 1, Sixth Revised Seventeenth Revised Sheet No. 4, proposed to become effective on July 1, 1989.

National states that the purpose of the proposed revised tariff sheet is to reflect the quarterly Purchased Gas Cost Adjustment ("PGA") required under the Commission's Regulations. The proposed tariff sheet results in a 19.39 cents per dekatherm (Dth) reduction in its commodity gas costs and a 44.0 cents

per Dth reduction in demand rates compared to those filed in its April 1989 quarterly PGA filing. The proposed quarterly PGA is said to result in a commodity sales rate under National's Rate Schedules RQ and CD equal to \$2.4680 per Dth.

National states that copies of this filing were posted in accordance with the Commission's Regulations and served upon the Company's jurisdictional customers and the Regulatory Commissions of the States of New York, Ohio, Pennsylvania, Delaware and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC, 20426, in accordance with Rule 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protest should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-13864 Filed 6-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ89-3-59-000]

Northern Natural Gas Co. Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

June 6, 1989

Take notice that Northern Natural Gas Company, Division of Enron Corp. (Northern), on May 31, 1989, tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern states that it is filing the revised tariff sheets to adjust its Base Average Gas Purchase Cost in accordance with the Quarterly PGA filing requirements codified by the Commission's Order Nos. 483 and 483-A. The instant filing reflects a Base Average Gas Purchase Cost of \$1.7841 per MMBtu to be effective July 1, 1989, through September 30, 1989. Northern further intends to use its flexible PGA, as necessary, to reflect actual market conditions throughout this time period.

Northern states that this filing establishes new D1 and D2 rates in compliance with the above referenced PGA Rulemaking, which required Northern to adjust its PGA demand rate components on a quarterly versus annual basis. This filing will establish a new D1 rate component of \$.858 per MMBtu. The D2 rate component will remain unchanged at \$.0369 in this filing. These rates will be effective July 1, 1989, through September 30, 1989.

Copies of the filing were served upon the company's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,
Secretary.
[FR Doc. 89-13855 Filed 6-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ89-4-38-000]

Ringwood Gathering Co.; Proposed Changes in FERC Gas Tariff

June 6, 1989.

Take notice that on May 31, 1989, Ringwood Gathering Company (Ringwood), 4828 Loop Central Drive, Loop Central Three, Suite 850, Houston, Texas 77081, filed Fiftieth Revised Sheet No. PGA-1 to its FERC Gas Tariff reflecting its current quarterly adjustment to its annual purchased gas adjustment (PGA) filing pursuant to 18 CFR Sections 154.304 and 154.308.

Copies of the filing were served upon Ringwood's jurisdictional customers and interested state agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.215,

385.211). All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.
[FR Doc. 89-13856 Filed 6-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-228-019]

Tennessee Gas Pipeline Co.; Filing of Tariff Sheets

June 6, 1989.

Take notice that on May 31, 1989, Tennessee Gas Pipeline Company (Tennessee) filed the following tariff sheets to its FERC Gas Tariff to be effective as indicated:

	Effective date
Second Revised Volume No. 1: Substitute Twelfth Revised Sheet No. 20.	Apr. 1, 1989.
Substitute Ninth Revised Sheet No. 20A.	Apr. 1, 1989.
Substitute Thirteenth Revised Sheet No. 21.	Mar. 1, 1989.
Substitute Fourteenth Revised Sheet No. 21.	Apr. 1, 1989.
Original Volume No. 2: Substitute Thirteenth Revised Sheet No. 5.	Apr. 1, 1989.
Substitute Twelfth Revised Sheet No. 6.	Apr. 1, 1989.

Tennessee states that it is filing these sheets in order to conform its tariff to the terms of the Interim Stipulation and Agreement dated March 9, 1989 in Docket Nos. RP88-228, *et al.* (Interim Stipulation) and approved by the Commission order dated May 24, 1989. Article I, Section 2 of the Interim Stipulation provides that for the Interim Period (February 1, 1989 to November 1, 1989), tariff sheets filed by Tennessee in Docket Nos. RP88-228 and RP89-29 shall not be effective. Tennessee states that the Interim Rates are the same as those rates filed by Tennessee on March 7, 1989 in Docket Nos. RP82-121, *et al.* to be effective January 1, 1989 as adjusted pursuant to Article I, Section 3 of the Interim Stipulation for the rate adjustment provisions of Tennessee's tariff including the Purchased Gas Adjustment provision. Therefore, the attached tariff sheets reflect Tennessee's rates effective January 1, 1989 as adjusted for the Interim

Adjustment to Tennessee's gas rates in Docket No. TF89-3-9 which was effective March 1, 1989 and the Quarterly Adjustment to Tennessee's gas rates in Docket No. TQ89-2-9 which was effective April 1, 1989.

In addition, Tennessee is withdrawing the following tariff sheets accepted by Commission letter order dated April 21, 1989 in Docket No. CP87-103 to be effective February 1, 1989.

Second Revised Volume No. 1

Second Revised Sheet No. 67
Second Revised Sheet No. 68
Second Revised Sheet No. 70
Second Revised Sheet No. 73
Second Revised Sheet No. 74
First Revised Sheet No. 76A

Tennessee states that these sheets were filed to supersede sheets which became effective November 1, 1988 pursuant to Commission order dated December 30, 1988 in Docket No. CP87-103 and the April 21, 1989 letter order in the same proceeding. The tariff sheets to be withdrawn reflect changes only to conform those sheets to Tennessee's filings in Docket No. RP88-228 (*e.g.*, references to rate sheets). As indicated above, those filings are not effective for the Interim Period. Tennessee will refile these sheets after the end of the Interim Period.

Tennessee respectfully requests that the Commission grant any waivers it deems necessary for the acceptance of this filing.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 89-13865 Filed 6-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP88-191-010]

Tennessee Gas Pipeline Co.; Filing

June 6, 1989.

Take notice that on May 31, 1989, Tennessee Gas Pipeline Company (Tennessee) filed Substitute Second Revised Sheet Nos. 40 through 44 to Second Revised Volume No. 1 of its FERC Gas Tariff. Tennessee states that the sheets set forth the Take-or-Pay Demand Rate Surcharge for each of Tennessee's Rate Schedule CD, G and GS customers to be effective July 1, 1989, based on 50 percent of the non-affiliate, non-recoupable take-or-pay and contract reformation costs paid by Tennessee on or before March 31, 1989 or which are known and measurable within 9 months of that date, including the amounts Tennessee has commenced recovery of pursuant to its June 10, 1988 and November 30, 1988 filings in this proceeding, and \$197,498,212 representing amounts incurred during the period December 1, 1988 through March 31, 1989 or known and measurable as of March 31, 1989. Additionally, the surcharge reflects carrying charges on costs incurred as of May 31, 1988 calculated at the FERC interest rate.

In accord with the terms of the protective order at Appendix D of the October 14, 1987 Stipulation and Agreement in Docket No. RP88-119, *et al.*, Tennessee is filing the Schedule 1 summary of payments in a sealed envelope which indicates that it is not to be placed in the Commission's public files. Tennessee has further indicated that it has provided a copy of Schedule 1 to each reviewing representative of each reviewing party that executed and delivered to Tennessee a certificate in the form provided in the protective order subsequent to Tennessee's March 31, 1989 filing in this proceeding. Tennessee is also submitting under separate cover to the Commission copies of each settlement agreement and summaries of each settlement applicable to costs incurred since March 31, 1989.

Tennessee states that copies of the filing have been mailed to all parties in this proceeding, affected customers and affected state regulatory commissions.

Any person desiring to protect said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in

determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 89-13868 Filed 6-9-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-184-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 8, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on May 31, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, certain revised tariff sheets.

Texas Eastern states that the purpose of this filing is to establish the procedures pursuant to which Texas Eastern will recover a portion of the take-or-pay charges billed to Texas Eastern by Southern Natural Gas Company (Southern) that are (1) to be paid by Southern to United Gas Pipe Line Company (United) attributable to United's Docket No. RP89-138 and (2) to be paid by Southern to United and to Sea Robin Pipeline Company (Sea Robin) attributable to Sea Robin's Docket No. RP89-141.

(1) Relating to United Docket No. RP89-138

Pursuant to the allocation methodology proposed by Southern, Southern will bill and recover from Texas Eastern an aggregate principal amount of \$691,640, exclusive of amortization interest, by means of a monthly charge of \$14,678, inclusive of amortization interest, for a period of 51 months effective June 1, 1989.

Sixth Revised Sheet Nos. 482 and 483 and Sixth Revised Sheet Nos. 64 through 67 are being revised to incorporate the procedures pursuant to which Texas Eastern will recover take-or-pay charges billed to Texas Eastern by Southern attributable to United's Docket No. RP89-138. Sixth Revised Sheet Nos. 64 through 67 set forth the principal amount plus the allocation factor for carrying costs that each customer will be required to pay in order to recover Southern's take-or-pay charges billed to Texas Eastern pursuant to United's Docket No. RP89-138 plus the previously authorized amounts attributable to

United's Docket Nos. RP88-27 and RP88-264.

(2) Relating to Sea Robin Docket No. RP89-141

Pursuant to the allocation methodology proposed by Southern to recover take-or-pay costs billed by Sea Robin to Southern, Southern will bill and recover from Texas Eastern an aggregate principal amount of \$2,250,739 by means of a monthly charge of \$55,307, inclusive of amortization interest, for a period of 60 months effective June 1, 1989. In order to recover Sea Robin's take-or-pay costs billed Southern by United, Southern will bill and recover from Texas Eastern an aggregate principal amount of \$353,413 by means of a monthly charge of \$9,011, inclusive of amortization interest, for a period of 51 months effective June 1, 1989.

First Revised Sheet Nos. 483G and 483H and Eighth Revised Sheet Nos. 80 through 83 are being revised to incorporate the procedures pursuant to which Texas Eastern will recover take-or-pay charges billed to Texas Eastern by Southern pursuant to Sea Robin's Docket No. RP89-141 flowed through to Southern by Sea Robin and United. Original Sheet Nos. 483G and 483H as filed by Texas Eastern on April 26, 1989 in Docket No. RP89-153 provide for the recovery of take-or-pay charges billed to Texas Eastern by United attributable to Sea Robin's Docket No. RP89-141. Eighth Revised Sheet Nos. 80 through 83 include the principal amount plus the allocation factor for carrying costs that each customer will be required to pay in order to recover Southern's take-or-pay charges billed to Texas Eastern attributable to Sea Robin's Docket No. RP89-141.

If at any time Southern is permitted by Commission order to change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto, Texas Eastern states it will likewise change its take-or-pay procedures and/or the amounts to be recovered pursuant thereto. In addition, Texas Eastern expressly agrees to refund to its customers all refunds received from Southern in the above proceedings.

The proposed effective date of the above tariff sheets is June 1, 1989.

Texas Eastern states that copies of the filing were served on its jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington,

DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-13866 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-130-004]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

June 6, 1989.

Take notice that Transwestern Pipeline Company (Transwestern) on May 31, 1989 tendered for filing as part of its FERC Gas Tariff, Second Revised volume No. 1, the following tariff sheet:

63rd Revised Sheet No. 5

On May 26, 1989, Transwestern filed to comply with Commission's order issued April 28, 1989, in Docket No. RP89-130-000 *et al.* to begin recovery of take-or-pay buyout and contract reformation costs (Transition Costs) for the period ending March 31, 1989.

Transwestern states that subsequent to the compliance filing of 5/26/89, it discovered that a pagination error occurred, wherein, 62nd Revised Sheet No. 5 should have been 63rd Revised Sheet No. 5. Therefore, this filing reflects only the change of pagination.

Transwestern requests waiver of any Commission Regulation such that 63rd Revised Sheet No. 5 become effective June 1, 1989 as originally proposed in the May 26, 1989 filing in Docket No. RP89-130-000 *et al.*

Copies of the filing were served on Transwestern's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13857 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-183-000]

Williams Natural Co.; Proposed Changes in FERC Gas Tariff

June 6, 1989

Take notice that on May 31, 1989, Williams Natural Gas Company (WNG) tendered for filing certain revised tariff sheets to Original Volume Nos. 1 and 2 of its FERC Gas Tariff. The proposed effective date of these tariff sheets is July 1, 1989.

WNG states that the filing proposes a change in its currently effective sales, transportation and other rates which would result in an increase in annual revenues of approximately \$29.6 million, based on the test period (the twelve months ended February 28, 1989, adjusted for known changes through November 30, 1989). The Company states that the increased rates are required to reflect an overall rate of return of 15.67 percent, increases in expenses and a decline in sales volumes. Additionally, WNB proposes new contract Firm Storage Service (FSS) and interruptible Storage Service (ISS) Rate Schedules and rates and certain revisions to the General Terms and Conditions and rate schedules in its tariff.

WNG states that a public copy of its filing was served on each of its customers and affected state commissions pursuant to Section 154.16(b) of the Commission's Regulations.

Any person desiring to be heard or protest said filing should file a motion to intervene protest with the Federal Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission Rules of Practice and Procedure (18 CFR 384.211, 385.214). All such motions or protests should be filed on or before June 13, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13859 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-34-003]

Williston Basin Interstate Pipeline Co.; Proposed Changes in FERC Gas Tariffs

June 6, 1989

Take notice that on May 31, 1989, Williston Basin Interstate Pipeline Company (Williston Basin) Suite 200, 304 East Rosser Avenue, Bismarck, ND 58501, tendered for filing and moved into effect certain revised tariff sheets to First Revised Volume No. 1, Original Volume No. 1-A, Original Volume No. 1-B and Original Volume No. 2 of its FERC Gas Tariff.

Williston Basin states that these tariff sheets, with supporting workpapers, are filed pursuant to the Commission's December 30, 1988 and May 26, 1989 Orders in Docket Nos. RP89-34-000, *et al.* In addition, these tariff sheets reflect the Company's Purchased Gas Adjustment (PGA) as filed in Docket No. TQ89-4-49-000.

Copies of the filing were served on Williston Basin's jurisdictional customers and interested state regulatory agencies.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such protests should be filed on or before 6/13/89. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13858 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-49-000]

Williston Basin Interstate Pipeline Co.; Annual Purchased Gas Adjustment Filing

June 8, 1989.

Take notice that on June 1, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, tendered for filing its annual Purchased Gas Cost Adjustment Filing (PGA) pursuant to 18 CFR 154.301, *et seq.* of the Commission's Regulations and section 21 of its FERC Gas Tariff (First Revised Volume No. 1), more specifically, Williston Basin filed the following revised tariff sheets:

First Revised Volume No. 1

Seventeenth Revised Sheet No. 10

Original Volume No. 1-A

Thirteenth Revised Sheet No. 11
Sixteenth Revised Sheet No. 12
Seventh Revised Sheet No. 97A

Original Volume No. 1-B

Sixth Revised Sheet No. 10
Sixth Revised Sheet No. 11

Original Volume No. 2

Nineteenth Revised Sheet No. 10
Eleventh Revised Sheet No. 11B

The proposed effective date of the tariff sheets is August 1, 1989.

Williston Basin requested that the Commission accept for filing Seventeenth Revised Sheet No. 10 (First Revised Volume No. 1) and Nineteenth Revised Sheet No. 10 (Original Volume No. 2) which effectuate a 48.343 cents per dkt increase in the Current Gas Cost Adjustment applicable to Rate Schedules G-1, SGS-1, E-1 and X-1, and a negative 56.835 cents per dkt surcharge adjustment applicable to Rate Schedules G-1 and SGS-1. These changes result in an overall 8.292 cent per dkt decrease in the cumulative adjustment applicable to Rate Schedules G-1 and SGS-1, as compared to that contained in the Company's May 1, 1989 Out of Cycle PGA filing in Docket No. TQ89-4-49-000.

The balance of the tariff sheets submitted in the instant filing reflect a 1.077 cents per dkt increase in the fuel reimbursement charge component of the Company's relevant transportation rates as compared to that contained in the Company's May 1, 1989 filing in Docket No. TQ89-4-49-000. Such increase in the fuel reimbursement charge is a result of the instant changes in Williston Basin's average cost of purchased gas.

Williston Basin states that on May 31, 1989 it filed with the Commission a

Motion to Make Suspended Tariff Sheets Effective and filed revised tariff sheets pursuant to the Commission's Orders of January 30, 1989 and May 26, 1989, in Docket Nos. RP89-34-000 *et al.* Williston Basin filed both primary and alternate tariff sheets in that filing requesting acceptance of the primary tariff sheets in anticipation of receipt of a Commission Order granting the necessary sales contract demand levels requested in Docket No. CP89-302-000, to be effective June 1, 1989.

Consistent with the May 31, 1989 filing in Docket Nos. RP89-34-000 *et al.*, Williston Basin also submitted primary and alternate tariff sheets in the instant PGA filing.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE, Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 26, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-13867 Filed 6-9-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Energy Research

Basic Energy Sciences Advisory Committee; Open Meeting

Pursuant to the provision of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Basic Energy Sciences Advisory Committee (BESAC).

Date and Time: July 10, 1989—8:30 a.m.—5:00 p.m.; July 11, 1989—8:00 a.m.—3:00 p.m.

Place: Sandia National Laboratories, 1515 Eubank, S.E., Albuquerque, NM 87123, Building 882, Conference Room A.

Contact: Louis C. Ianniello, Department of Energy, Office of Basic Energy Sciences (ER-11), Office of Energy Research, Washington, DC 20545. Telephone: 301-353-3081.

Purpose of the Committee: To provide advice on a continuing basis to the Secretary of the Department of Energy (DOE), through the Director of Energy Research, on the many complex scientific and technical issues that arise in the development and implementation of the Basic Energy Sciences (BES) program.

Tentative Agenda: Briefings and discussions of:

July 10, 1989

- Briefings on DOE Topics Related to BESAC
- Subcommittee Reports
- Public Comment (10 Minute Rule)

July 11, 1989

- Sandia Technical Presentations
- Discussion of BESAC Report
- Public Comment (10 Minute Rule)

Public Participation: The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact: Louis C. Ianniello at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on June 6, 1989.

J. Robert Franklin,
Deputy Advisory Committee Management Officer.

[FR Doc. 89-13899 Filed 6-9-89; 8:45 am]

BILLING CODE 6450-01-M

Office of Fossil Energy

Meeting: Invitation for Public Views and Comments on Improving the Economic Competitiveness and Increased Utilization of Western Fossil Energy Resources

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of meeting to invite public views and comments on the development of techniques which could offer the potential to improve the economic competitiveness and increased utilization of Western Fossil Energy Resources.

Introduction

The U.S. Department of Energy (DOE), Office of Fossil Energy (FE), is pursuing a National effort to develop technology for the improved utilization of domestic fossil energy resources, both Eastern and Western resources. The characteristics of Eastern and Western resources have distinct differences and require the structuring of a research and

development (R&D) effort that addresses issues specific to both sets of resources.

The FE pursues programs directed at identifying R&D opportunities and conducting R&D in extracting, processing, and utilizing domestic fossil fuel resources. The R&D in fossil fuel resources and technologies normally advances through several phases: basic sciences research, fundamental and exploratory research, process and engineering development, and demonstration and commercialization.

The R&D programs include work which is necessary to establish proof-of-concept, reduce technical and financial risk associated with deployment, and provide information for private-sector decisions regarding demonstration and commercialization decisions. The FE advanced research programs are focused on fundamental and exploratory research. As differentiated from process and engineering development, fundamental and exploratory research is oriented towards (1) exploring untried concepts that are unusual, novel, and highly innovative, and (2) developing ideas, understanding and theoretical knowledge that is broadly relevant to fossil energy technologies.

Purpose of the Meeting: The DOE recognizes that the R&D needs for Western fossil energy resources are determined by the effects of their unique properties and/or geologic and geographic locations. These factors are significant in the recovery, transportation, the technologies employed in their utilization or conversion, and environmental consequences. Therefore, in formulating its programs for the various fossil fuels, DOE would like to insure that consideration is given to important aspects of the Western fossil fuels. The DOE hopes to gather this information through interactive workshop discussions by groups of knowledgeable individuals with an interest in R&D or in the application of R&D results.

DOE plans to use the information gathered to formulate R&D plans for fossil energy. The intent of the meeting is to focus on R&D needs to advance the state-of-technology for the utilization of Western fossil fuel resources. Fossil fuels of interest include coal, oil, gas, oil shale and tar sands.

Subjects of Particular Interest: The subjects of particular interest are areas of R&D that are specifically applicable to Western fossil energy resources and include, but are not limited to: (a) Power

generation utilizing low rank coals; (b) development of coal-based fuels, including coal drying, cleaning and mild gasification; (c) improved techniques for extracting oil or gas; (d) oil shale extracting and processing.

The DOE is particularly interested in learning of any techniques for Western fossil energy resources that are not now commercially available but, if developed, offer the potential to improve the economic competitiveness and increased utilization of these resources.

Meeting, Location, and Date: There will be a public meeting at The Registry Hotel, 3203 Quebec Street, Denver, Colorado 80207 (Telephone: 303-321-3333), at 8:30 a.m., on Wednesday, July 26, 1989.

Format of the Meeting: The meeting will commence with a brief plenary session that will include introductory remarks and program overviews by DOE officials. At about mid-morning, there will be a brief recess, after which there will be concurrent Discussion Workshops led by panels of DOE officials. There will not be any formal presentations or statements in the Workshops. Attendees will be asked to engage in informal discussions with the panelists on the subjects described earlier in this Notice, and on such other subjects as may be introduced by the members of the audiences or by the panelists.

At the conclusions of the Workshops, attendees will meet in a closing plenary session. The discussions that ensued in the various Workshops, and the recommendations that resulted, will be reviewed and summarized.

The meetings are expected to adjourn in the late afternoon.

Public Participation: Individuals may attend the meetings without notification in advance to DOE, and there is no registration for or other charge for attendance. Attendees are responsible for making their own travel and lodging arrangements. The DOE will not provide any meals or other refreshments at the meetings.

Written Comments: Written comments may be submitted by individuals who are not able to attend the public meeting. Written comments will be considered if they are received by June 30, 1989. Written comments should be submitted in triplicate (if possible) to the address noted below:

Address for Comments: All written comments should be submitted to: George Rudins, Associate Deputy

Assistant Secretary for Research and Development, Fossil Energy, FE-23, U.S. Department of Energy, Washington, DC 20545, (301) 353-3991.

Issued in Washington, DC, June 6, 1989.
J. Allen Wampler,
Assistant Secretary, Fossil Energy.
[FR Doc. 89-13898 Filed 6-9-89; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3600-8]

Prevention of Significant Deterioration of Air Quality (PSD) Final Determinations

AGENCY: United States Environmental Protection Agency.

ACTION: Notice of final actions.

SUMMARY: The purpose of this notice is to announce that between October 1, 1988 and April 30, 1989, the United States Environmental Protection Agency (EPA), Region II Office, issued four final determinations, the New York State Department of Environmental Conservation (NYSDEC) issued twelve final determinations, and the New Jersey Department of Environmental Protection (NJDEP) issued one final determination pursuant to the Prevention of Significant Deterioration of Air Quality (PSD) regulations codified at 40 CFR 52.21. This notice also announces one final determination that was made by the NYSDEC on July 18, 1988 that was omitted from Region II's last Federal Register notice on final PSD actions.

DATES: The effective dates for the above determinations are delineated in the following chart (See **SUPPLEMENTARY INFORMATION**).

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Riva, Chief, Air and Environmental Applications Section, Permits Administration Branch, Office of Policy and Management, U.S. Environmental Protection Agency, Region II Office, 26 Federal Plaza, Room 505, New York, New York 10278, (212) 264-4711.

SUPPLEMENTARY INFORMATION: Pursuant to the PSD regulations, the EPA Region II, the NYSDEC, and the NJDEP have made final determinations relative to the sources listed below:

Name of applicant	Location	Project description	Reviewing agency	Final action	Date of final action
Long Island Lighting Co. *	West Babylon, NY	Construction of a 220 MW gas turbine generation facility.	NYSDEC	PSD permit approval.	7/18/88
Nassau District Energy Corp.	Uniondale, NY	Construction of a 57 MW cogeneration facility.	NYSDEC	do	10/07/88
Kamine Carthage Cogeneration Co., Inc.	Carthage, NY	Construction of a 50 MW gas turbine/steam generator.	NYSDEC	do	10/19/88
Morrill Press Co.	Fulton, NY	Construction of an 11 station rotogravure press and modification of an 8 station rotogravure press.	NYSDEC	do	12/05/88
Kamine South Glens Falls Cogeneration Co., Inc.	South Glens Falls, NY	Construction of a 50 MW gas turbine/steam generator.	NYSDEC	do	12/05/88
Indeck-Yerkes Energy Services, Inc.	Tonawanda, NY	Construction of a 53 MW gas turbine/steam generator.	NYSDEC	do	1/09/89
Boise Cascade Corp.	Beaver Falls, NY	Replacement of an existing oil-fired boiler with a new oil-fired boiler.	NYSDEC	PSD non-applicability determination.	1/11/89
Hoffmann La Roche Inc.	Belvidere, NJ	Revision of the nitrogen oxide emission limit previously permitted for a 23.3 MW cogeneration system.	EPA region II	PSD permit revision.	1/17/89
Hercules, Inc.	Parlin, NJ	Revision of the particulate matter emission limit previously permitted for three coal-fired boilers.	EPA region II	do	1/17/89
Long Island Lighting Co.	Shoreham, NY	Construction of a 220 MW gas turbine generation facility.	NYSDEC	PSD permit approval.	1/23/89
Life Savers, Inc.	Las Piedras, PR	Construction of a new steam boiler and a new generator and conversion of an existing generator and boiler to standby operation.	EPA region II	PSD non-applicability determination.	3/01/89
Abbott Laboratories	Barceloneta, PR	Revision of the PM emission limit previously permitted for a 20.2 MW cogeneration facility.	EPA region II	PSD permit revision.	3/06/89
Megan-Racine, Associates, Inc.	Canton, NY	Construction of a 49 MW gas turbine/steam generator.	NYSDEC	PSD permit approval.	3/06/89
United Development Group-Niagara, Inc.	Niagara Falls, NY	Construction of a coal fired cogeneration system.	NYSDEC	do	3/10/89
Town of North Hempstead Solid Waste Management Authority.	Port Washington, NY	Construction of a 990 tons per day municipal waste resources recovery facility.	NYSDEC	PSD applicability determination.	3/15/89
L&J Energy Systems, Inc.	Lowville, NY	Construction of a 49 MW gas turbine/steam generator.	NYSDEC	PSD permit approval.	3/20/89
Pennsauken Solid Waste Management Authority *	Pennsauken, NJ	Construction of two 250 tons per day municipal solid waste incinerators.	NJDEP	do	4/20/89

* On May 18, 1988, the Long Island Lighting Company (LILCO) was issued a PSD permit by the New York State Department of Environmental Conservation for a 220 Megawatt (MW) gas turbine cogeneration facility for its West Babylon plant. The permit was not considered effective and therefore was not included in EPA Region II's November 25, 1988 FEDERAL REGISTER notice on final PSD actions because adverse comments were received during the public comment period. However, all issues were resolved during an "issues conference" held by NYSDEC. Furthermore, the comments did not result in any change in the May 18, 1988 permit. Therefore, LILCO's PSD permit for the West Babylon plant is considered effective as of July 18, 1988.

* The Pennsauken Solid Waste Management Authority (PSWMA) was issued a PSD permit on February 10, 1989 by the New Jersey Department of Environmental Protection. This permit would have become effective on March 13, 1989 if no petition for administrative review was filed with the EPA Administrator in Washington, DC. However, a petition for review was filed by the Township of Cinnaminson, the Borough of Palmyra, and the Borough of Riverton on March 7, 1989. On April 20, 1989, the EPA Administrator decided, after careful review of the appeal, not to grant further review of the petition. Therefore, the PSWMA PSD permit is effective as of April 20, 1989.

This notice lists only the sources that have received final PSD determinations. Anyone who wishes to review these determinations and related materials should contact the following offices:

EPA Actions

United States Environmental Protection Agency, Region II Office, Permits Administration Branch—Room 505, 26 Federal Plaza, New York, New York 10278.

NYSDEC Actions

New York State Department of Environmental Conservation, Division of Air Resources, Source Review and Regional Support Section, 50 Wolf Road, Albany, New York 12233-0001.

NJDEP Actions

New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Engineering & Technology, 401 East

State Street, Trenton, New Jersey 08625.

If available pursuant to the Consolidated Permit Regulations (40 CFR Part 124), judicial review of these determinations under section 307(b)(1) of the Clean Air Act (the Act) may be sought only by the filing of a petition for review in the United States Court of Appeals for the appropriate circuit within 60 days from the date on which these determinations are published in the Federal Register. Under section 307(b)(2) of the Act, these determinations shall not be subject to later judicial review in civil or criminal proceedings for enforcement.

Dated: June 1, 1989.

William J. Muszynski,
Acting Regional Administrator.

[FR Doc. 89-13849 Filed 6-9-89; 8:45 am]
BILLING CODE 6560-50-M

[OPP-66136; FRL-3600-4]

Order Canceling Registration for Pesticide Products Containing Bromoxynil Butyrate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Cancellation notice and order.

SUMMARY: This notice announces EPA's decision to cancel all registrations issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for pesticide products containing the butyric acid ester of bromoxynil (3,5-dibromo-4-hydroxybenzonitrile). The registrant Rhone-Poulenc AG Company has requested voluntary cancellation of these products. Because of the developmental risks associated with exposure to these products, EPA will not permit and the cancellation order will explicitly prohibit the sale, distribution, and use of existing stocks of affected products.

DATE: The cancellation order incorporated in this notice will become effective June 13, 1989.

FOR FURTHER INFORMATION CONTACT:

Jude Andreasen, Special Review/Reregistration Division (H7508C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460
Office location and telephone number: Rm. 1006F, CM #2, 1921 Jefferson Davis Highway, Arlington, VA. (703) 557-1170.

SUPPLEMENTARY INFORMATION:

I. Request for Voluntary Cancellation

On May 1, 1989, as a result of discussion between EPA and Rhone-Poulenc AG Company concerning measures to minimize potential risk of developmental toxicity associated with exposure to bromoxynil, Rhone-Poulenc requested voluntary cancellation of its registered pesticide products containing bromoxynil butyrate (the butyric acid ester of 3,5-dibromo-4-hydroxybenzonitrile). Rhone-Poulenc stated in its request that it would institute a plan to recover remaining stocks of these products from distributors, dealers, and users. Under this plan, Rhone-Poulenc will replace these products with an equal quantity of a corresponding product containing bromoxynil octanoate, and will pay shipping and handling costs. Distributors and dealers holding stocks of affected products should contact Rhone-Poulenc customer service. Users holding stocks of affected products should return them to the dealer.

Rhone-Poulenc had previously requested voluntary cancellation of a number of registered bromoxynil products, including some but not all of its products containing bromoxynil butyrate, on October 27, 1988. EPA canceled certain bromoxynil products pursuant to this request, but was unwilling to accept the remaining requests for voluntary cancellation because those requests were made contingent on the Agency's permission to sell and use existing stocks of affected products. Given the unresolved concerns regarding the developmental toxicity of bromoxynil, EPA considered it inappropriate to issue an existing stocks order for such products.

II. Existing Stocks

In its May 1, 1989 letter, Rhone-Poulenc did not request that EPA permit the sale, distribution, or use of existing stocks of canceled products containing bromoxynil butyrate. EPA has determined that continued use of products containing bromoxynil

butyrate would present an unacceptable risk of developmental toxicity in persons handling such products. Accordingly, EPA will not permit the continued sale, distribution, or use of any canceled product containing bromoxynil butyrate. EPA encourages all persons holding stocks of canceled products containing bromoxynil butyrate to participate in the recovery program established by Rhone-Poulenc.

III. Cancellation Order

Effective June 13, 1989, the registrations for all pesticide products containing the butyric acid ester of bromoxynil (3,5-dibromo-4-hydroxybenzonitrile) are canceled pursuant to section 6(f)(1) of FIFRA, 7 U.S.C. 136d(f)(1). Effective June 13, 1989, it shall be unlawful under FIFRA section 12(a)(1)(A) and/or FIFRA section 12(a)(2)(K), 7 U.S.C. 136j(a)(1)(A), 136j(a)(2)(K), for any person to distribute or sell, or to use for any pesticidal purpose, any of the following canceled products containing the butyric acid ester of bromoxynil:

EPA registration No.	Previous registration No.	Product
264-339		Dragonmate.
264-340		ME 4 Brominal.
264-340		Torch Twin Pak
264-340		3 + 3 Brominal
264-394		Bromoxynil Butyrate
.....		Technical
264.421		Certral
264.474	359-718	Buctril 4 EC.

This Order does not prohibit any shipments of canceled products containing the butyric acid ester of bromoxynil which are associated with the program to recover stocks of such products established by Rhone-Poulenc AG Company, or which are otherwise necessary to facilitate proper storage or disposal of such products.

Dated: June 5, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-13848 Filed 6-9-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street,

NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010678-037.

Title: South Europe/U.S.A. Freight Conference ("Conference").

Parties:

Achille Lauro
Compania Trasatlantica Espanola, S.A.
Costa Container Line (a Division of Contship Containerlines Limited)
d'Amico Societa di Navigazione, S.p.A.
Evergreen Marine Corporation (Taiwan) Ltd.
Farrell Lines, Inc.
"Italia" di Navigazione S.p.A.
Jogolinija
Jugooceanija
Lykes Lines (Lykes Bros. Steamship Co., Ltd.)
A.P. Moller-Maersk Line
Nedlloyd Lines (Nedlloyd Lijnen B.V.)
Sea-Land Service, Inc.
P & O Containers (TFL) Ltd.
Zim Israel Navigation Company, Ltd.

Synopsis: The proposed modification would permit any member to disassociate itself from any Conference action on a rate or service item that would result in a reduction in the overall cost per cargo unit to the shipper by giving written notice to the other members prior to the time the rate or service item has been filed with the FMC and become effective.

Agreement No.: 217-010738-003.

Title: Barber Blue Sea/Open Bulk Carriers Chartering Agreement.

Parties:

Wilhelmsen Lines A/S
Open Bulk Carriers Limited

Synopsis: The proposed modification would authorize the parties to discuss and agree upon rates, charges and other competitive matters regarding intermodal movements. It would also permit the parties to agree upon sailing schedules, service frequency, and ports to be served by each party. It would further make other non-substantive administrative changes.

Agreement No.: 232-011184-002.

Title: Evergreen Marine Corporation (Taiwan) Ltd. Italia di Navigazione SpA

and Contship Containerlines Ltd./Costa Container Lines SpA Space Charter and Sailing Agreement in the Mediterranean—U.S. Trades.

Parties:

Evergreen Marine Corporation (Taiwan) Ltd.
Contship Containerlines Ltd./Costa Lines S.p.A.
Italia di Navigazione, S.p.A.

Synopsis: The proposed modification would add Compagnie Generale Maritime as a party to the Agreement and would change the name of the Agreement to reflect the change in membership.

Agreement No.: 202-011231-002.

Title: United States Gulf/Venezuela Freight Association.

Parties:

American Transport Lines, Inc.
Companhia Anonima Venezolana de Navegacion
Maritima Aragua, S.A.

Synopsis: The proposed amendment would modify the Alternate Port Service provision of the Agreement.

By Order of the Federal Maritime Commission.

Dated: June 6, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-13805 Filed 6-9-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Northwest Acquisition Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute

and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than June 30, 1989.

A. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Northwest Acquisition Corp.*, Chicago, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Northwest Financial Corp., Chicago, Illinois, and thereby indirectly acquire The National Security Bank of Chicago, Chicago, Illinois.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *American Bancorp of Ponca City, Inc.*, Ponca City, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of American National Bank, Ponca City, Oklahoma.

2. *Mountain Parks Financial Corporation*, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Bank of Evergreen, Evergreen, Colorado.

Board of Governors of the Federal Reserve System, June 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13823 Filed 6-9-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies; Reelfoot Bank Employee Stock Ownership Plan

The notificants listed below have applied under the change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 26, 1989.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Reelfoot Bank Employee Stock Ownership Plan*, Union City, Tennessee; to acquire 20.92 percent of the voting shares of Reelfoot Bancshares, Inc., Union City, Tennessee, and thereby indirectly acquire Reelfoot Bank, Union City, Tennessee.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *The Farmers State Bank of Fort Morgan Employees Stock Ownership Plan*, Fort Morgan, Colorado; to acquire an additional 9.12 percent of the voting shares of The Farmers State Bank of Fort Morgan, Fort Morgan, Colorado, for a total of 24.9 percent.

2. *Richard E. Martin*, Pryor, Oklahoma; to acquire an additional 1.4 percent of the voting shares of CNBO Bancorp, Inc., Pryor, Oklahoma, for a total of 18.44 percent, and thereby indirectly acquire Century National Bank of Oklahoma, Pryor, Oklahoma.

Board of Governors of the Federal Reserve System, June 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13824 Filed 6-9-89; 8:45 am]

BILLING CODE 6210-01-M

Society Corp.; Notice of Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources,

decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 5, 1989.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. *Society Corporation*, Cleveland, Ohio; to engage *de novo* through its subsidiary, *Society Capital Corporation*, Cleveland, Ohio, in making, acquiring, or servicing subordinated loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 6, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13825 Filed 6-9-89; 8:45 am]

BILLING CODE 3210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Program Announcement for Grants for Area Health Education Centers Special Initiatives

The Health Resources and Services Administration announces the acceptance of applications for Fiscal Year 1990 for Grants for Area Health Education Centers Special Initiatives under the authority of Section 781(a)(2) of the Public Health Service Act, extended by the Health Professions Reauthorization Act of 1988, Pub. L. 100-607, Title VI.

Section 781(a)(2) authorizes Federal Assistance to medical and osteopathic schools which have previously received Federal financial assistance for the Area Health Education Centers (AHEC) program under either section 802 of Pub. L. 94-484 in 1979 or under section 781. In addition, section 781(a)(2) authorizes medical and osteopathic schools currently receiving Federal support for an AHEC program to apply for project aid on behalf of an Area Health

Education Center that is no longer federally-funded as part of that program.

Section 781(a)(2) applications will be for the purpose of improving the distribution, supply, quality, utilization and efficiency of health personnel in the health services delivery system; to encourage regionalization of responsibility of the health professions schools; or to prepare, through preceptorships and other programs, individuals subject to a service obligation under the National Health Service Corps Scholarship program to provide effective health services in health manpower shortage areas.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

To receive support, programs must meet the requirements of regulations set forth in 42 CFR Part 57, Subpart MM.

Review Criteria

The review of applications will take into consideration the following criteria:

- (1) The relative merit of the proposed project; and
- (2) The relative cost-efficiency of the proposed project.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

Funding Preferences for Fiscal Year 1990

In making awards for Fiscal Year 1990, the following funding preferences will be used:

- (1) Competing continuation applications under section 781(a)(1);
- (2) New applications for planning and development projects under section 781(a)(1);

(3) New applications for Special Initiatives projects under Section 781(a)(2); and

(4) Supplements to existing awards, section 781(a)(1) and 781(a)(2).

Funding Priorities for Fiscal Year 1990

In determining the order of funding of approved applications a funding priority will be given to the following:

(1) Applications proposing to develop, expand or implement curricula concerning ambulatory and inpatient case management of those with HIV infection-related diseases.

(2) Applications demonstrating a commitment to geriatrics through development of innovative educational ways to provide improved and more effective care for the elderly.

(3) Applications which are innovative in their educational approaches to quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

These priorities were established in Fiscal Year 1989 and the Administration is extending these priorities for Fiscal Year 1990.

Requests for application materials and questions regarding grants policy should be addressed to: Grants Management Officer (U-76), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6857.

Completed applications should be forwarded to the Grants Management Officer at the above address.

If additional programmatic information is needed, please contact: Division of Medicine, Multidisciplinary Centers and Programs Branch, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C-04, Rockville, Maryland 20857, Telephone: (301) 443-6950.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

The deadline date for receipt of applications is July 20, 1989. Applications shall be considered as meeting the deadline if they are either:

- (1) Received on or before the deadline date, or
- (2) Postmarked on or before the deadline and received in time for submission to the independent review

group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications received after the deadline will be returned to the applicant.

This program is listed at 13.824 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: May 16, 1989.

John H. Kelso,

Acting Administrator.

[FR Doc. 89-13834 Filed 6-9-89; 8:45 am]

BILLING CODE 4160-15-M

Program Announcement for Grants for Faculty Development in Family Medicine

The Health Resources and Services Administration announces that applications for Fiscal Year 1990 for Faculty Development in Family Medicine are being accepted under the authority of section 786(a), Title VII, of the Public Health Service Act, Professions Reauthorization Act of 1988, (Title VI), Pub. L. 100-607.

Section 786(a) of the Public Health Service Act authorizes the award of grants to public or nonprofit private hospitals, schools of medicine or osteopathic medicine, or other public or private nonprofit entities to assist in meeting the cost of planning, developing and operating programs for the training of physicians who plan to teach in family medicine training programs. In addition, section 786(a) authorizes assistance in meeting the cost of supporting physicians who are trainees in such programs and who plan to teach in a family medicine training program.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR Part 57, Subpart Q.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The degree to which the proposed project provides for the project requirements;

(2) The administrative and management ability of the applicant to carry out the proposed project in cost-effective manner; and

(3) The potential of the project to continue on a self-sustaining basis.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

(1) Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

(2) Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

(3) Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

The following funding priorities and special consideration were established in Fiscal Year 1989 and the Administration is extending these priorities in Fiscal Year 1990.

Funding Priorities for Fiscal Year 1990

In determining the order of funding of approved applications, a funding priority will be given to:

(1) Projects which satisfactorily demonstrate enrollment of underrepresented minorities in proportion to or greater than their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e. Black, Hispanic, and American Indian/Alaskan Native minority trainees).

(2) Application proposing to develop faculty competence for teaching ambulatory and inpatient case management of those with HIV infection related diseases.

(3) Applications proposing to develop faculty competence for teaching quality assurance/risk management activities, monitoring and evaluation of health care services and utilization of peer-developed guidelines and standards.

(4) Applications designed to develop faculty competence for teaching geriatrics content and/or develop educational materials for teaching geriatric content to medical students, residents and practitioners.

Special Consideration

Special consideration will be given to applications demonstrating a commitment to family medicine.

Pub. L. 100-607, section 633(a), requires that for grants issued under sections 780, 784, 785 and 786 for Fiscal Year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for: applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation. Should a second cycle be necessary, the application deadline date will be approximately six months from the first deadline.

The deadline date for receipt of applications is September 18, 1989. Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline date and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline date will be returned to the applicant.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-15), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone: (301) 443-6960.

Completed applications should be forwarded to the Grants Management Officer at the above address.

The standard application form PHS 6025-1, HRSA Competing Training Grant Applications, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

Should additional programmatic information be required please contact: Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 4C-16, Rockville, Maryland 20857, Telephone: (301) 443-3614.

This program is listed at 13.895 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provision of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: May 12, 1989.

John H. Kelso,
Acting Administrator.
[FR Doc. 89-13833 Filed 6-9-89; 8:45am]
BILLING CODE 4160-15-M

Program Announcement and Proposed Funding Priority for Grants for Predoctoral Training in Family Medicine

The Health Resources and Services Administration announces that applications for Fiscal Year 1990 Grants for Predoctoral Training in Family Medicine are being accepted under the authority of section 786(a), Title VII, of the Public Health Service Act, as amended by the Health Professions Reauthorization Act of 1988, Pub. L. 100-607, Title VI). Comments are invited on the proposed additional funding priority stated below.

The Administration's budget request for Fiscal Year 1990 does not include funding for this program. Applicants should be advised that this program announcement is a contingency action being taken to ensure that should funds become available for this purpose, they can be awarded in a timely fashion consistent with the needs of the programs as well as to provide for even distribution of funds throughout the fiscal year. This notice regarding applications does not reflect any change in this policy.

Section 786(a) of the Public Health Service Act authorizes the award of grants to assist in meeting the cost of planning, developing and operating or participating in approved predoctoral training programs in the field of family medicine. Grants may include support for the program only or support both the program and the trainees.

To receive support, programs must meet the requirements of regulations as set forth in 42 CFR Part 57, Subpart Q. Eligible applicants are accredited public or nonprofit private schools of medicine or osteopathic medicine.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The potential effectiveness of the proposed project in carrying out the training purposes of section 786(a) of the Act;

2. The degree to which the proposed project adequately provides for the project requirements;

3. The administrative and management ability of the applicant to carry out the proposed project in a cost-effective manner; and

4. The potential of the project to continue on a self-sustaining basis after the period of grant support.

In addition, the following mechanisms may be applied in determining the funding of approved applications.

1. Funding preferences—funding of a specific category or group of approved applications ahead of other categories or groups of applications, such as competing continuations ahead of new projects.

2. Funding priorities—favorable adjustment of review scores when applications meet specified objective criteria.

3. Special considerations—enhancement of priority scores by merit reviewers based on the extent to which applicants address special areas of concern.

In determining the order of funding of approved applications, a funding priority will be given to:

Projects in which substantial training experience is in a PHS 332 health manpower shortage area and/or PHS 329 migrant health center, PHS 330 community health center or PHS 781 funded Area Health Education Center or State designated clinic/center serving an underserved population. This priority was established in Fiscal Year 1989 and the Administration is extending it for Fiscal Year 1990

Special Consideration

Special consideration will be given to applicants that demonstrate to the satisfaction of the Secretary a commitment to family medicine in their medical education training programs.

Additional Funding Priority for Fiscal Year 1990

It is proposed to give an additional funding priority to:

Projects which satisfactorily demonstrate enrollment of underrepresented minorities in proportion to or greater than their percentage in the general population or can document an increase in the number of underrepresented minorities (i.e., Black, Hispanic and American Indian/Alaskan Native minority trainees).

These population groups continue to be underrepresented in the medical profession and have insufficient access to primary medical care. Their representation should be increased to ensure equitable opportunities to a

career in medicine and equal access to health care services. Studies show that minority physicians provide a greater proportion of health care for medically underserved populations than other United States physicians. Therefore, this funding priority is designed to increase the number of underrepresented minority physicians.

Interested persons are invited to comment on the proposed funding priority. Normally, the comment period would be 60 days. However, due to the need to implement any changes for the Fiscal Year 1990 award cycle, this comment period has been reduced to 30 days. All comments received on or before July 12, 1989, will be considered before the final funding priority is established. No funds will be allocated or final selections made until a final notice is published stating whether the final additional funding priority will be applied.

Written comments should be addressed to: Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 4C-25, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Requests for application materials and questions regarding grants policy should be directed to: Grants Management Officer (D-15), Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8C-22, Rockville, Maryland 20857, Telephone (301) 443-6960.

Completed applications should be forwarded to the Grants Management Officer at the above address.

If additional programmatic information is needed, please contact: Primary Care Medical Education Branch, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-6820.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060.

Pub. L. 100-607, section 633(a), requires that for grants authorized under sections 780, 784, 785 and 786 for Fiscal

Year 1990 or subsequent fiscal years, the Secretary of Health and Human Services shall, not less than twice each fiscal year, issue solicitations for applications for such grants if amounts appropriated for such grants and remaining unobligated at the end of the first solicitation period, are sufficient with respect to issuing a second solicitation.

The deadline date for receipt of applications is July 24, 1989. Applications shall be considered as meeting the deadline date if they are either:

1. Received on or before the deadline date, or

2. Postmarked on or before the deadline and received in time for submission to the independent review group. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing. Applications received after the deadline will be returned to applicant.

This program is listed at 13.986 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

Dated: May 10, 1989.

John H. Kelso,
Acting Administrator.
[FR Doc. 89-13835 Filed 6-9-89; 8:45 am]
BILLING CODE 4160-15-M

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following National Advisory body scheduled to meet during the month of June 1989:

Name: National Advisory Council on the National Health Service Corps.

Date and Time: June 25-28, 1989, 7:00 p.m.-9:00 p.m.

Place: Mayflower Park Hotel, 405 Olive Way, Seattle, Washington 98101. The meeting is open to the public.

Purpose: The Council will advise and make appropriate recommendations on the National Health Service Corps (NHSC) program as mandated by legislation. It will also review and comment on proposed regulations promulgated by the Secretary under provision of the legislation.

Agenda: The agenda will include a Bureau and Division update; Panel discussions on residency match, residency programs, and NHSC/IHS Advocates Programs. Site visit to the

Country Doctor Community Center and the Sea Mar Center leaving at 8:30 a.m. on Tuesday, June 27. No transportation will be available to the public. At 1:30 p.m., the meeting will continue at the Mayflower Park Hotel.

Anyone requiring information regarding the subject Council should contact Anna Mae Voigt, National Advisory Council on the National Health Service Corps, Room 7A-39, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443-1470.

Agenda Items are subject to change as priorities dictate.

Date: June 6, 1989.

Jackie E. Baum,
Advisory Committee Management Officer,
HRSA.
[FR Doc. 89-13832 Filed 6-9-89; 8:45 am]
BILLING CODE 4160-15-M

Office of Human Development Services

Agency Information Collection Under OMB Review

AGENCY: Office of Human Development Services.

ACTION: Notice.

Under the provisions of the Paperwork Reduction Act (4 U.S.C. Chapter 35), the Office of Human Development Services (OHDS) has submitted to the Office of Management and Budget (OMB) a request for an extension of an information collection approval for Program Narrative Statement, Form SF-424, Application for Grant Under Title VI, Part A, Older Americans Act, Grants to Indian Tribes for Supportive and Nutrition Services. **ADDRESSES:** Copies of the information collection may be obtained from Larry Guerrero, OHDS Reports Clearance Officer, by calling (202) 245-6275.

Written comments and questions regarding the requested extension should be sent directly to Justin Kopca, OMB Desk Officer for OHDS, OMB Reports Management Branch, New Executive Office Building, Room 3208, 725 17th Street, NW., Washington, DC 20503, (202) 395-7318.

Information on Extension Document

Title: Program Narrative Statement, Form SF-424, application for Grant Under Title VI, Part A, Older Americans Act, Grants to Indian Tribes for Supportive and Nutrition Services.

OMB No.: 0980-0181.

Description: Indian Tribes must file applications with the Administration on Aging, showing eligibility, to obtain

grants under Title VI, Part A, Grants to Indian Tribes for Supportive and Nutrition Services.

Annual Number of Respondents: 181.
Annual Frequency: 1.

Average Burden Hours Per Response: 10.67.

Total Burden Hours: 1,931.

Dated: June 5, 1989.

Mary Sheila Gall,
Assistant Secretary, for Human Development Services.

[FR Doc. 89-13804 Filed 6-9-89; 8:45 am]

BILLING CODE 4130-01-M

Public Health Service

National Toxicology Program (NTP) Board of Scientific Counselors' Meeting; Review of Draft NTP Technical Reports

Pursuant to Pub. L. 92-463, notice is hereby given of the next meeting of the NTP Board of Scientific Counselors Technical Reports Review Subcommittee and associated *ad hoc* Panel of Experts (*Peer Review Panel*) on June 27, 1989, in the Conference Center, Building 101, South Campus, National Institute of Environmental Health Sciences, 111 Alexander Drive, Research Triangle Park, North Carolina. The meeting will begin at 8:30 a.m. and is open to the public. The primary agenda topic is the peer review of draft Technical Reports of long-term toxicology and carcinogenesis studies and toxicity studies from the National Toxicology Program.

Tentatively scheduled to be peer reviewed on June 27 are draft technical reports of long-term studies on six chemicals, listed alphabetically, along with supporting information including proposed levels of evidence of carcinogenic activity in Table 1. All studies were done using Fischer 344 rats (except the studies on allyl glycidyl ether which used Osborne Mendel rats) and B6C3F₁ mice. The order of review is given in the far right column of the table.

Also scheduled to be peer reviewed are draft Technical Reports of toxicity studies on two chemicals, listed alphabetically, along with supporting information in Table 2. Order of presentation is given in the far right column of the table.

Persons wanting to make a *formal* presentation regarding a particular Technical Report must notify the Executive Secretary by telephone or by mail no later than June 20, 1989 and provide a written copy in advance of the meeting so copies can be made and distributed to all Panel members and

staff and made available at the meeting for attendees. Oral presentation should supplement and not just repeat the written statement. Presentations should be about 5 minutes, and must be limited to no more than 10 minutes.

Those interested in having more information about any of the studies listed in this announcement, or wanting to provide input, should contact the particular NTP staff scientist as early as

possible by telephone or by mail to: NIEHS, P.O. Box 12233, Research Triangle Park, (RTP), North Carolina 27709. The staff scientists would welcome receiving toxicology and carcinogenesis data from completed, ongoing or planned studies by others as well as current production data, human exposure information, and use and use patterns.

The Executive Secretary, Dr. Larry G.

Hart, NTP, P.O. Box 12233, RTP, North Carolina 27709, telephone (919-541-3971), FTS (629-3971), will furnish final agendas, a roster of subcommittee and panel members, and other program information prior to the meeting, and summary minutes subsequent to the meeting.

Dated: March 16, 1989.

David P. Rall,
Director, National Toxicology Program.

TABLE 1.—SUMMARY DATA AND PROPOSED LEVELS OF EVIDENCE FOR NTP TECHNICAL REPORTS PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON JUNE 27, 1989

Chemical CAS Number	Staff Scientist/Technical Report Number	Use	Route/Exposure Levels	Laboratory	Proposed Levels of Evidence of Carcinogenicity ¹ Organ/Tissue (Neoplasm) ²	Order of Review
Allyl glycidyl ether, 106-92-3.	Dr. G. Boorman, 919-541-3440; TR-378, 06/27/89.	Stabilizer of chlorinated compounds, vinyl resins, rubber, resin intermediate.	Inhalation: R and M: 0.5, 10 ppm.	Battelle North-west Laboratory.	MR: Equivocal evidence—nasal cavity: adenoma 0/44 0/46 1/43 or adenocarcinoma 0/44 0/46 1/43 combined 0/44 0/46 2/43; squamous cell carcinoma 0/44 0/46 1/43. FR: No evidence MM: Some evidence—nasal cavity: adenoma 0/50 0/50 3/50 FM: Equivocal evidence—nasal cavity: adenoma 0/49 0/49 1/50 MR: No evidence FR: No evidence MM: Some evidence—forestomach: squamous cell papilloma 1/50 2/50 5/50 FM: Some evidence—forestomach: squamous cell papilloma 0/50 5/50 6/50	3
Benzaldehyde, 100-52-7	Dr. J. Bishop, 919-541-1876; TR-378, 06/27/89.	Synthetic and naturally occurring substance used in the synthesis of flavorings and fragrances.	Oral, Gavage (corn oil): R and MM: 0, 200, 400, FM: 0, 300, 600 mg/kg.	Southern Research Institute.	MR: No evidence FR: No evidence MM: Some evidence—forestomach: squamous cell papilloma 1/50 2/50 5/50 FM: Some evidence—forestomach: squamous cell papilloma 0/50 5/50 6/50	6
D-carvone, 2244-16-8	Dr. P. Chan, 919-541-7561; TR-381, 06/27/89.	Oil of caraway; flavoring agent for food and beverages; fragrance in perfumery and soaps. Naturally occurring.	Oral, Gavage (corn oil): M: 0, 375, 750 mg/kg.	International Research and Development Corp.	MM: No evidence FM: No evidence	5

TABLE 1.—SUMMARY DATA AND PROPOSED LEVELS OF EVIDENCE FOR NTP TECHNICAL REPORTS PROJECTED FOR PEER REVIEW AT THE BOARD OF SCIENTIFIC COUNSELORS' PEER REVIEW PANEL MEETING ON JUNE 27, 1989—Continued

Chemical CAS Number	Staff Scientist/Technical Report Number	Use	Route/Exposure Levels	Laboratory	Proposed Levels of Evidence of Carcinogenicity ¹ Organ/Tissue (Neoplasm) ²	Order of Review
3,3'-dimethoxybenzidine dihydrochloride, 20325-40-0.	Dr. D. Morgan, 919-541-2264; TR-372, 06/27/89.	Production of dyes	Oral with water (water): R: 0, 80, 170, 330 ppm.	Hazleton (Vienna).	MR: Clear evidence—skin (neoplasms) liver: neoplastic nodule 0/60 3/45 7/74 6/60; neoplastic nodule or carcinoma 1/60 1/45 0/74 2/60 combined 1/60 4/45 7/74 8/60; large intestine: adenomatous polyp 0/60 1/45 4/75 5/60 or adenocarcinoma 0/60 0/45 4/75 3/60 combined 0/60 1/45 8/75 8/60; small intestine: adenocarcinoma 0/60 4/45 7/75 5/60; oral cavity: squamous cell papilloma 1/60 7/45 10/75 9/60; squamous cell papilloma or squamous cell carcinoma 0/60 1/45 0/75 2/60 combined 1/60 8/45 10/75 11/60; zymbal gland: adenoma 0/59 4/45 11/75 9/60; carcinoma 0/59 7/45 14/75 21/60 preputial gland: adenoma 14/60 6/43 19/73 12/59 or carcinoma 2/60 6/43 15/73 19/59; combined 16/60 12/43 33/73 29/59; multiple sites: mesothelioma 2/60 1/45 7/75 9/60; may have been related: brain: astrocytoma 0/60 2/44 3/75 1/60. FR: Clear evidence—zymbal gland: adenoma 0/60 3/45 4/75 3/60 or carcinoma 1/60 10/45 17/75 13/60 combined 1/60 12/45 21/75 16/60; clitoral gland: adenoma 5/58 15/44 13/74 16/55; carcinoma 2/58 17/44 41/74 30/55; mammary gland: adenocarcinoma 1/60 2/45 14/75 20/60; may have been related: skin: squamous cell papilloma 0/60 0/45 3/75 0/60; oral cavity: squamous cell papilloma 2/60 2/45 3/75 3/60 or squamous cell carcinoma 0/60 0/45 3/75 2/60 combined 2/60 2/45 6/75 5/60; large intestine: adenomatous polyp 0/60 0/45 1/75 2/60 or adenocarcinoma 0/60 1/45 0/75 1/60 combined 0/60 1/45 1/75 3/60; liver: neoplastic nodule 0/60 1/44 0/75 2/60 or carcinoma 0/60 0/44 0/75 1/60 combined 0/60 1/44 0/75 3/60; uterus/cervix: adenoma 0/60 3/45 1/75 2/59 or carcinoma 0/60 4/45 2/75 2/59	
glycidol, 556-52-5	Dr. R. Irwin, 919-541-3340; TR-374, 06/27/89.	Intermediate for pharmaceuticals and cosmetics; stabilizer for natural oils and vinyl polymers.	Oral, Gavage (water): R: 0, 38, 75, M: 0, 25, 50 mg/kg.	Papanicolaou Research Institute.	MR: Clear evidence—peritoneum: mesothelioma 3/50 34/50 39/50; mammary gland: fibroadenoma 3/50 8/50 7/50; brain: glioma 0/50 5/50 6/50; forestomach: squamous cell papilloma 0/50 1/50 5/50 or squamous cell carcinoma 1/50 1/50 2/50 combined 1/50 2/50 6.50; intestines: adenomatous polyp 0/50 0/50 1/50 or adenocarcinoma 0/50 1/50 3/50 combined 0/50 1/50 4/50; skin: sebaceous gland adenoma 0/50 0/50 1/50, basal cell carcinoma 0/50 4/50 2/50, or sebaceous gland adenocarcinoma 0/50 0/50 1/50 combined 0/50 5/50 4/50; zymbal gland: carcinoma 1/50 3/50 6/50 thyroid gland: follicular celladenoma 0/50 2/50 2/50 or follicular cell carcinoma 1/50 2/50 5/50 combined 1/50 4/50 6/50.	

BEST COPY AVAILABLE

the Salt Lake District Office, 2370 South 2300 West, Salt Lake City, Utah 84119.
Deane H. Zeller,
Salt Lake District Manager.
 [FR Doc. 89-13828 Filed 6-9-89; 8:45 am]
 BILLING CODE 4310-DQ-M

Bureau of Reclamation

Notice of Realty Action; Competitive Sale of Public Land; Arizona

AGENCY: Bureau of Reclamation, Interior.

ACTION: Correction.

A Notice of Realty Action was published on May 8, 1989, pertaining to sale of surplus Bureau of Reclamation property at public auction to be held on July 12, 1989. The notice appeared on pages 19614 and 19615 and indicated that should the parcel of land remain unsold at the close of the scheduled auction, it could be purchased over the counter on a first come-first serve basis until September 12, 1989. It is hereby corrected that, should the parcel remain unsold at close of the scheduled auction on July 12, 1989, the property may be reoffered for sale at another public auction on a date to be determined by the Bureau of Reclamation. The property will not be available for purchase over the counter if unsold at the auction, as published on May 8, 1989.

William E. Rinne,
Acting Regional Director, Lower Colorado Region, Bureau of Reclamation.
 [FR Doc. 89-13841 Filed 6-9-89; 8:45 am]
 BILLING CODE 4310-08-M

National Park Service

Mississippi National River and Recreation Area; Boundary Description

AGENCY: National Park Service, Interior.
ACTION: Notice of boundaries.

This notice sets forth the boundary description and map of the Mississippi National River and Recreation Area as required in Pub. L. 100-696, authorized November 18, 1988, 102 Stat. 4600.

Legal Description of the River Corridor Ramsey

Commencing at the point where the west boundary line of Anoka County intersects with the north boundary line of Hennepin County;

Thence north along said Anoka County west boundary line to the NW corner of the NW quarter of the SW quarter of Section 19 (T 32 N, R 25 W);

Thence east along the north side of the NW quarter of the SW quarter of Section 19 (T 32 N, R 25 W), to its intersection with the center line of U.S. Highway 10;

Thence along said center line in a southeasterly direction to the intersection with the north side of Section 30 (T 32 N, R 25 W);
 Thence eastward along the north side of Section 30 to the NW corner of Section 29 (T 32 N, R 25 W);

Thence south along the west side of Section 29 to the SW corner of the NW quarter of said Section 29;

Thence east along the south side of the NW quarter of said Section 29 to the NW corner of the NE quarter of the SW quarter of the SW quarter of said Section 29;

Thence south along the west side of the NE quarter of the SW quarter of said Section 29 to SW corner of the NE quarter of the SW quarter of said Section 29;

Thence east along the north line of the southeast quarter of southwest quarter of said Section 29; to the west boundary line of Section 28 (T 32 N, R 25 W);

Thence east along the northern boundary of Government Lot 1, Section 28 (T 32 N, R 25 W) to the NE corner of said lot;

Thence south to the SE corner of said Government Lot 1, Section 28 (T 32 N, R 25 W);

Thence east along the north side of Section 33 (T 32 N, R 25 W) to the NE corner of Government Lot 2 in said Section;

Thence south along the east side of Government Lot 2, Section 33 (T 32 N, R 25 W) to the SW corner of the northern half of the NE quarter of the NE quarter of Section 33;

Thence east to the west side of Section 34 (T 32 N, R 25 W);

Thence south to the SW corner of the NW quarter of the SW quarter of the NW quarter of Section 34 (T 32 N, R 25 W);

Thence south along the west side of Section 35 (T 32 N, R 25 W) to the NW corner of Government Lot 1, Section 35 (T 32 N, R 25 W);

Thence east to the NW corner of the SW quarter of the NE quarter of the SW quarter of Section 35 (T 32 N, R 25 W);

Thence south to the SW corner of the SW quarter of the NE quarter of the SW quarter of Section 35 (T 32 N, R 25 W);

Thence east along the south side of the NE quarter of the SW quarter of Section 35 (T 32 N, R 25 W) to its intersection with the west boundary of Anoka;

Thence northeasterly along the west boundary of Anoka to the intersection with the center line of U.S. Highway 10.

Anoka

Thence southeasterly along said center line to the intersection with the center line of Park Street in the City of Anoka; south along the center line of Park Street to the intersection with the west side of Section 1 (T 31 N, R 25 W);

Thence south along said west side to the intersection with the center line of Benton Street;

Thence southeasterly along said center line to the intersection with the center line of State Avenue;

Thence south along the center line of State Avenue to the intersection with the center line of Rice Street;

Thence east along the center line of said street to the intersection with the center line of Ferry Street;

Thence easterly along a line from said intersection to the intersection of the center lines of Madison Street and River Avenue;

Thence east from said point along the center line of Madison Street to the intersection with the center line of 1st Avenue;

Thence south along 1st Avenue to the intersection with the center line of Jefferson Street;

Thence east along the center line of said street to the intersection with the center line of 2nd Avenue;

Thence south along said center line to the intersection with the center line of Adams Street;

Thence east along said center line to the intersection with the center line of 3rd Avenue;

Thence south along said center line to the intersection with the center line of Oakwood Drive;

Thence easterly along said center line to the intersection with the center line of Kings Lane;

Thence southwesterly along said center line to the intersection with the center line of Birch Street;

Thence southeasterly along said center line to the intersection with the center line of Queens Avenue;

Thence south along said center line to the intersection with the center line of Pine Street;

Thence southeasterly along said center line to the intersection with the center line of 9th Avenue;

Coon Rapids

Thence from this point, a straight line to the intersection of the center line of 115th Avenue with the west side of Section 17 (T 31 N, R 24 W);

From this point, east along a line to the intersection of the east side of the NW quarter of said Section 17 with the center line of Coon Rapids Boulevard;

From said point southeasterly along the center line of Coon Rapids Boulevard to the intersection with the center line of Mississippi Boulevard;

Thence southerly along said center line to the intersection with the center line of Hansen Boulevard;

Thence south along said center line to the intersection with the center line of 99th Avenue NW;

Thence east along said center line to the SW corner of the NW quarter of the NW quarter of Section 26 (T 31 N, R 24 W);

Thence east along the south side of the north half of the NW quarter of said Section 26;

Thence continuing east along the south side of the NW quarter of the NE quarter of said Section 26 to the intersection with the center line of East River Boulevard (Anoka County Highway 1);

Thence south along said center line to the intersection with the west side of the east half of the SE quarter of said Section 26;

Thence south along said line to the SW corner of the SE quarter of the SE quarter of said Section 26;

Thence continuing south along the west side of the east half of the NE quarter of Section 35 (T 31 N, R 24 W);

Thence continuing south along the west side of the NE quarter of the SE quarter of said Section 35 to the SW corner of the NE quarter of the SE quarter of said Section 35;

From this point, southeasterly along a diagonal to the NW corner of Section 3 (T 30 N, R 24 W);

From said corner, east along the north side of said Section 3 to the intersection with the center line of Anoka County Trunk Highway 1;

Fridley

Minneapolis

Thence south along said center line of said highway to the Anoka-Hennepin County common boundary line;

Thence continuing south along the center line of now Hennepin County Trunk Highway 23 to the center line of 30th Avenue NE;

Thence east along said center line to the intersection with the center line of Randolph Street;

Thence south along said center line to the intersection with the center line of 26th Avenue NE;

Thence east along said center line to the intersection with the center line of Grand Street;

Thence south along said center line to the intersection with the center line of 13th Avenue NE;

Thence southwesterly along said center line to the intersection with the center line of Ramsey Street;

Thence southeasterly along said center line to the intersection with the center line of 7th Avenue NE;

Thence northeasterly along said center line to the intersection with the center line of Main Street;

Thence southeasterly along said center line to the intersection with the center line of 5th Avenue NE;

Thence northeasterly along said center line to the intersection with the center line of University Avenue;

Thence southeasterly along said center line to the intersection with the center line of Oak Street;

Thence south along said center line to the intersection with the center line of Fulton Street;

Thence east along said center line to the intersection with the center line of Huron Street;

Thence southerly along said center line to the intersection with the center line of Interstate 94;

Thence southeasterly along said center line to the intersection with the Minneapolis-St. Paul common boundary line;

St. Paul

Thence south along said line to the intersection with the center line of Otis Avenue;

Thence southeasterly along Otis Avenue to the intersection with the center line of Exeter Place;

Thence south along said center line to the intersection with the center line of Mississippi River Boulevard;

Thence east along said center line to the intersection with the center line of Cretin Avenue;

Thence south along said center line to the intersection with the center line of Goodrich Avenue;

Thence west along said center line to the intersection with the center line of Woodlawn Avenue;

Thence south along said center line to the intersection with the center lines of Randolph Avenue, Woodlawn Avenue and Mount Curve Boulevard;

Thence south along the center line of Mount Curve Boulevard to the intersection with the center line of Ford Parkway;

From this point southeasterly along a diagonal to the intersection of the center lines of Hampshire Avenue and Finn Street;

Thence south along the center line of Finn Street to the intersection with the center line of Magoffin Avenue;

Thence east along said center line to the intersection with the center line of Cleveland Avenue;

Thence south along said center line to the intersection with the center line of Norfolk Avenue;

Thence southeasterly and easterly along said center line to the intersection of the center line of Stewart Avenue;

Thence northeasterly along said center line to the intersection with the center line of Alton Street;

Thence southeasterly along said center line to the intersection with the center line of Youngman Avenue;

Thence northeasterly along said center line to the intersection with the center line of Rankin Street;

Thence northwesterly along said center line to the intersection with the center line of Stewart Avenue;

Thence northeasterly along said center line to the intersection with the center line of Homer Avenue;

Thence northwesterly along said center line to the intersection with the south boundary line of the right-of-way of the Chicago, Milwaukee, St. Paul and Pacific Railroad;

Thence northeasterly along said boundary to the intersection with the center line of Watson Avenue;

Thence east along said center line to the intersection with the center line of Drake Street;

From this point, northeasterly along a diagonal to the intersection of the center lines of Randolph Avenue and Erie Street;

Thence north along the center line of Erie Street to the intersection with the center line of Jefferson Avenue;

Thence east along said center line to the intersection with the center line of Colburne Avenue;

From this point, northeasterly along a diagonal to the intersection of the center lines of St. Clair Avenue and Western Avenue;

Thence east along the center line of St. Clair Avenue to the intersection with the center line of Ann Street;

Thence north along said center line to the intersection with the center line of Superior Street;

Thence east along said center line to the intersection with center line of Dousman Street;

Thence north along said center line to the intersection with the center line of Banfil Avenue;

Thence east along said center line to the intersection with the center line of Smith Street;

Thence north along said center line to the intersection with the center line of Goodrich Avenue;

Thence east along said center line to the intersection with the center line of Leech Street;

Thence north along said center line to the intersection with the center line of McBoal Street;

Thence east along said center line to the intersection with the center line of Wilkin Street;

Thence north along said center line to the intersection with the center line of Exchange Street;

Thence northeasterly along said center line to the intersection with the center line of Kellogg Boulevard;

Thence easterly and northeasterly along said center line to the intersection with the center line of Interstate 94;

Thence southeasterly along center line to the intersection with the center line of Maria Avenue;

Thence southeasterly along said center line to the intersection with the south side of Section 33 (T 20 N, R 22 W);

Thence east along the south center line of said Section 33 to the center line of Burns Avenue;

Thence east along said center line to the intersection with the center line of Upper Afton Road;

Thence southeasterly along said center line to the intersection with the center line of Hazel Avenue;

Thence south along said center line to the intersection with the north side of Section 11 (T 28 N, R 22 W);

Thence east along said side to the NE corner of the NW quarter of said Section 11;

Thence south along the east side of the NW quarter of said Section 11 to the SE corner of the NW quarter of said Section 11;

Thence east along the north side of the SE quarter of said Section 11 to the NW corner of the east half of the SE quarter of said Section 11;

Thence south along the west side of the east half of the SE quarter of said Section 11 to the south line of said Section 11;

Thence east along the south side of said Section 11 to the intersection with the center line of McKnight Road;

Thence east along said center line to the intersection with the center line of Carver Avenue;

Maplewood

Thence east along said center line to the intersection with the west side of the east half of the NW quarter of Section 24 (T 28 N, R 22 W);

Thence south along said side continuing along the west side of the east half of the SW quarter of said Section 24, to the intersection with the center line of Interstate 494;

Thence southwesterly along said center line to the intersection with the center line of 1st Avenue in Newport;

Newport

Thence south along said center line to the intersection with the center line of 17th Street;

Thence east along said center line to the intersection with the center line of 3rd Avenue;

Thence south along said center line to the intersection with the center line of 12th Street West;

Thence east along said center line to the intersection with the center line of 4th Avenue;

Thence south along said center line to the intersection with the south side of the north half of Section 1 (T 27 N, R 22 W);

St. Paul Park

Thence east along said side to the center line of Third Street, City of St. Paul Park;

Thence south along said center line to the intersection of 6th Avenue (commonly known as Broadway);

Thence west along said center line to the intersection of the center line of Main Street;

Thence south along said center line to the intersection of the center line of Pullman Avenue;

Thence east along said center line to the intersection with the center line of 3rd Street;

Thence south along said center line to the South city limits of St. Paul Park;

Grey Cloud

Thence south along said center line to the intersection with the center line of Grey Cloud Trail;

Thence southeasterly along said center line to the intersection with the south side of Section 19 (T 27 N, R 21 W);

Cottage Grove

Thence east along said side to the SE corner of said Section 19;

Thence south along the west side of Section 29 (T 27 N, R 21 W) to the intersection with the NW corner of the SW quarter of the NW quarter of said Section 29;

Thence east along the north side of the SW quarter of the NW quarter of said Section 29 to the NE corner of the SW quarter of the NW quarter of said Section 29;

Thence south along the east side of the SW quarter of the NW quarter and along the east side of the NW quarter of the SW quarter of said Section 29 to the NW corner of the SE quarter of the SW quarter of said Section 29;

Thence east along the north side of the SE quarter of the SW quarter of said Section 29 to the NE corner of the SE

quarter of the SW quarter of said Section 29;

Thence south along the east side of the SW quarter of said Section 29 to the south side of said Section 29;

Thence east along the south side of Sections 29 and 28 to the southwestern corner of Section 27;

Thence north along the west side of said Section 27 to the NW corner of the SW quarter of said Section 27;

Thence east along the north side of the south half of said Section 27 to the east side of said Section 27;

Thence south along the east side of said Section 27 to the SE corner of said Section;

Thence east along the south side of Section 26 (T 27 N, R 21 W), to the intersection with the center line of U.S. Highway 61;

Denmark

Thence southeasterly along said center line to the intersection with the center line of U.S. Highway 10;

Thence easterly along said center line to the intersection with the south side of Section 6 (T 28 N, R 20 W);

Thence east to the SE corner of said Section 6;

Thence southeasterly along a diagonal to the SE corner of the north half of the NW quarter of Section 8 (T 28 N, R 20 W);

Thence east along the south side of the north half of the NE quarter of said Section 8 to the east side of said Section 8;

Thence south along the east side of Section 8 to the intersection with the northeasterly boundary of Dakota County;

Ravenna

Thence southeasterly along the Dakota County boundary to the intersection with the Dakota County-Goodhue County common boundary;

Thence south along said boundary to the intersection with the south side of Section 21 (T 114 N, R 16 W);

Thence west along the south side of said Section to the SW corner of said Section;

Thence north along the west side of said Section to the NW corner of said Section;

Thence north along the west side of Section 16 (T 114 N, R 16 W) to the intersection with the center line of Dakota CSAH 54;

Thence northwesterly along said center line to the intersection with the south side of Section 31 (T 115 N, R 16 W);

Thence west along said line to the SW corner of said Section 31;

Thence north along the east side of Section 36 (T 115 N, R 17 W) to the NE corner of the SE quarter of the SE quarter of said Section 36;

Thence west along the south side of the NE quarter of the SE quarter of said Section 36 to the SW corner of the NE quarter of the SE quarter of said Section 36;

Thence north along the west side of the east half of the SE quarter of said Section 36 to the NW corner of the NE quarter of the SE quarter of said Section 36;

Thence west along the north side of the south half of said Section 36 and Section 35 (T 115 N, R 16 W) to the west side of said Section 35;

Hastings

Thence north along the west side of said Section 35 and Section 26 (T 115 N, R 16 W) to the intersection with the center line of 3rd Street;

Thence west along said center line to the intersection with the center line of Washington Street;

Thence north along said center line to the intersection with the center line of 2nd Street;

Thence west along said center line to the intersection with the center line of Dakota County Road 42;

Nininger

Thence northwesterly along said center line to the intersection with the center line of Dakota County Highway 87;

Thence northwesterly along said center line to the intersection with the center line of 125th Street east;

Thence west along said center line to the intersection with the center line of Isadore Avenue;

Thence south along said center line to the intersection with the center line of 127th Street east;

Thence west along said center line to the intersection with the center line of Idell Avenue;

Thence south along said center line to the intersection with the center line of Dakota County Road 42;

Thence southwesterly along said center line to the intersection with the center line of Minnesota Highway 55;

Rosemount/Inver Grove Heights

Thence west and then north along said center line to the intersection with the center line of Dakota County Road 77;

Thence north along said center line to the intersection with the center line of Minnesota State Highway 58;

Thence north along said center line to the intersection with the center line of 70th Street east;

Thence west along said center line to the intersection with the center line of Delany Avenue east;

Thence north along said center line to the intersection with the center line of 69th Street east;

Thence west along said center line to the east side of Section 3 (T 27 N, R 18 W);

Thence north along said side to the NE corner of said Section 3;

Thence west along the north side of said section 3 to the intersection with the center line of Henry Avenue;

South St. Paul

Thence north along said center line to the intersection with the center line of Chestnut Street;

Thence east along said center line to a point directly in line with the southerly extension of Eldridge Avenue;

From this point, northwesterly along a diagonal to the intersection of the center lines of Spruce Street and Eldridge Avenue;

Thence north along said center line of Eldridge Avenue to the intersection with the center line of Dale Street;

Thence west along said center line to the intersection with the center line of Syndicate Avenue;

Thence north along said center line to the intersection with the center line of Warburton Street;

From this point, northwesterly, along a diagonal to the intersection of the center line of 8th Street South and 1st Avenue South;

Thence north along said center line of 1st Avenue South to the intersection with the center line of Southview Boulevard;

Thence west along said center line to the intersection with the center line of 2nd Avenue South;

Thence north along said center line to the intersection with the center line of Marie Avenue;

Thence west along said center line to the intersection with the center line of 3rd Avenue North;

Thence north along said center line to the intersection with the center line of 2nd Street North;

Thence west along said center line to the intersection with the center line of 4th Avenue North;

Thence north along said center line to the intersection with the center line of 3rd Street North and Grand Avenue;

Thence north along said center line of Grand Avenue to the intersection with the center line of 5th Avenue North;

From this point northwesterly along a diagonal to the intersection of the center line of Turin and Steward Avenues;

Thence north along said center line of Steward Avenue to the intersection of

the center lines of 8th Avenue North and Thompson Avenue;

From this point northwesterly along a diagonal to the intersection of the center line of Highland Avenue and 10th Avenue North;

From this point, northwesterly along a diagonal to the intersection of the center line of Bryant and Summit Avenues;

Thence north along said center line of Summit Avenue to the intersection with the center line of Orme Avenue;

From this point northwesterly along a diagonal to the intersection of the center line of Butler and Stickney Avenues;

From this point northwesterly along a diagonal to the intersection of the center lines of Stanley and Evans Avenues;

Thence north along the center line of Evans Avenue to the intersection of the Center lines of Stickney Avenue and Lewis Street;

Thence north along said center line of Stickney Avenue to the intersection with the St. Paul-South St. Paul common boundary;

St. Paul

Thence west along said boundary to the intersection with the center line of new State Highway 56;

Thence north along said center line to the intersection with the center line of East Page Street;

Thence west along said center line to the intersection with the center line of Woodbury Street;

Thence north along said center line to the intersection with the center line of Prescott Street;

Thence west along said center line to the intersection with the center line of Oakdale Avenue;

Thence north along said center line to the intersection with the center line of East King Street;

Thence west along said center line to the intersection with the center line of Robert Street;

Thence north along said center line to the intersection with the center line of George Street;

Thence west along said center line to the intersection with the center line of Humboldt Avenue;

Thence north along said center line to the intersection with the center line of Winifred Street;

Thence west along said center line to the intersection with the center line of Hall Street;

Thence north along said center line to the intersection with the center line of Delos Street;

Thence west along said center line to the intersection with the center line of Bidwell Street;

Thence south along said center line to the intersection with the center line of W. Congress Street;

Thence west along said center line to the intersection with the center line of Ohio Street;

Thence south along said center line to the intersection with the center line of Robie Street;

Thence west along said center line to the intersection with the center line of Manomin Avenue;

Thence south along said center line to the intersection with the center line of West George Street;

Thence west along said center line to the intersection with the center line of Smith Avenue;

Thence south along said center line to the intersection with the center line of West Stevens Street;

Thence west along said center line to the intersection with the center line of Ottawa Avenue;

Thence south along said center line to the intersection with the center line of Morton Street;

Thence west along said center line to the intersection with the center line of Delaware Avenue;

Thence south along said center line to the intersection with the center line of State Highway 13;

Mendota Heights

Thence west and southwesterly along said center line to the intersection with the center line of Sylvandale Road;

Thence south along said center line to the intersection with the center line of Woodridge Drive;

Thence southwesterly along said center line to the intersection with the center line of Cascade Lane;

Thence south along said center line to the intersection with the center line of Arcadia Drive;

From this point southwesterly along a diagonal to the northwest corner of Section 24 (T 28 N, R 22 W);

Thence west along the north side of Section 23 (T 28 N, R 22 W), to the intersection with the center line of Northern States Power Company utility easement;

Thence south along said center line to the intersection with the south side of the north half of the NE quarter of said Section 23;

From this point, southwesterly along a diagonal to the intersection of the center line of Victoria Road and Caren Road;

Thence westerly along the center line of Caren Road to the intersection with the center line of James Road;

Thence southwesterly along said center line to the intersection with the center line of Douglas Road;

Thence westerly along said center line to the intersection with the center line of James Road;

Thence westerly along said center line to the intersection with the center line of Lexington Avenue;

Thence south along said center line to the intersection with the center line of Orchard Place;

Thence westerly along said center line to the intersection with the center line of Hunter Lane;

Thence south along said center line to the intersection with the center line of State Highway 110;

Thence west along said center line to the intersection with the center line of Minnesota Highway 13;

Thence southerly along said center line to the intersection with the center line of Interstate 494;

Thence westerly along said center line to the intersection with the center line of State Highway 5;

Thence northeasterly along said center line to the intersection with the boundary line of the Fort Snelling State Park;

Thence northerly along said boundary line to the intersection with the center line of State Highway 55;

Minneapolis

Thence northwesterly along said center line to the intersection with the center line of 47th Avenue South;

Thence north along said center line to the intersection with the center line of Minnehaha Avenue;

Thence northwesterly along said center line to the intersection with the center line of Nawadaha Boulevard;

Thence easterly along said center line to the intersection with the center line of 46th Avenue South;

Thence north along said center line to the intersection with the center line of E. 46th Street;

Thence east along said center line to the intersection with the center line of 47th Avenue South;

Thence north along the center line of 47th Avenue South to the intersection with the center line of East 44th Street;

From this point north along a straight line to the intersection of the center lines of Dowling Street and 47th Avenue South;

Thence north along the center line of 47th Avenue South to the intersection with the center line of East 32½ Street;

Thence west along said center line to the intersection with the center line of 46th Avenue South;

Thence north along said center line to the intersection with the center line of East 35th Street;

Thence east along said center line to the intersection with the center line of 47th Avenue South;

Thence north along said center line to the intersection with the center line of East Lake Street;

Thence west along said center line to the intersection with the center line of 46th Avenue South;

Thence north along said center line to the intersection with the center line of Dorman Avenue;

Thence northwesterly along said center line to the intersection with the center line of 40th Avenue South;

Thence in a straight line northwest to the intersection of the center lines of Minneapolis Avenue and 34th Avenue South;

Thence northwest along the center line of Minneapolis Avenue to the intersection with the center line of 31st Avenue South;

Thence north along said center line to the intersection with the center line of Franklin Avenue;

Thence west along said center line to the intersection with the center line of Riverside Avenue;

Thence northwest along said center line to the intersection with the center line of 19th Avenue South;

Thence north along said center line to the intersection with the center line of 2nd Street South;

Thence northwest along the center line of 2nd Street South to the intersection of the center lines of 2nd Street South and Hennepin Avenue;

Thence north-northwest along the center line of 2nd Street North to the intersection with the center line of Mississippi Drive;

Thence north-northeast along said center line to the intersection with the center line of Lyndale Avenue North;

Thence north along said center line to the intersection with the center line of Interstate 94;

Thence north along said center line to the intersection with the center line of 52nd Avenue North;

Thence west along said center line to the intersection with the center line of 4th Street North;

Thence northwesterly along said center line to the intersection with the center line of 55th Avenue North;

Brooklyn Center

Thence westerly along said center line to the intersection with the center line of Camden Avenue North;

Thence north along said center line to the intersection with the center line of 62nd Avenue North;

Thence in a straight line northeasterly to the intersection of the center lines of State Highway 169 and Interstate 94;

Brooklyn Park

Thence north along the center line of State Highway 169 to the intersection with the center line of 89th Avenue North;

Thence west along said center line to the west side of Section 13 (T 31 N, R 24 W);

Thence north along said side of said Section 13 to the NW corner of said Section 13;

From this point west along the south side of Section 11 (T 31 N, R 24 W) to the SW corner of the SE quarter of the SE quarter of said Section 11;

Thence north to the NW corner of the SE quarter of the SE quarter of said Section 11;

Thence in a straight line northwest to the intersection of the center lines of Logan Avenue North and 95th Avenue North;

Thence northeast along the center line of Logan Avenue North to the intersection with the center line of 96th Avenue North;

Thence northwest along said center line to the intersection with the center line of Newton Avenue North;

Thence north along said center line to the intersection with the center line of 97th Avenue North;

Thence west along said center line to the SE corner of the NW quarter of said Section 11;

Thence north along the east side of the NW quarter of said Section 11 to the intersection with the center line of State Highway 169;

Thence northwest along said center line to the north side of the south half of the SW quarter of Section 2 (T 31 N, R 24 W);

Thence west along the said side to the west side of said Section 2;

Thence north-northwest in a straight line to the intersection of the center lines of Riverside Place and Sunset Road;

Thence northwest along the center line of Riverside Place to the intersection with the center line of France Avenue North;

Thence north-northeast along said center line to the intersection with the center line of U.S. Highway 169;

Champlin

Thence northwest along said center line to the intersection with the center line of Hayden Lake Road;

Thence west along said center line to the intersection with the center line of U.S. Highway 52;

Thence north along said center line to the intersection with the center line of U.S. Highway 169;

Thence northwest along said center line to the intersection with the center line of Hennepin County Road 12;

Thence northwest along said center line to the intersection with the east side of Section 14 (T 120 N, R 22 W);

Dayton

Thence north along said side of Section 14 to the SE corner of the NE quarter of the NE quarter of Section 14 (T 120 N, R 22 W);

Thence west along the south side of the NE quarter of the NE quarter of Section 14 to the SW corner of the NE quarter of the NE quarter of Section 14 (T 120 N, R 22 W);

Thence north along the west side of the NE quarter of the NE quarter of Section 14 to the south side of Section 11 (T 120 N, R 22 W);

Thence west along the south side of Section 11 (T 120 N, R 22 W) to the SW corner of the SE quarter of said Section;

Thence north along the west side of the SE quarter of Section 11 to the NW corner of the SW quarter of the SE quarter of Section 11 (T 120 N, R 22 W);

Thence west along the north side of the south quarter of Section 11 to the intersection with the east side of Section 10 (T 120 N, R 22 W);

Thence south along the west side of Section 11 to the SW corner of the N one-half of the NW quarter of the SW quarter of the SW quarter of Section 11 (T 120 N, R 22 W);

Thence west across Government Lot 6 to the east boundary of Government Lot 5, Section 10 (T 120 N, R 22 W);

Thence south along the east boundary of Government Lot 5 to the NE corner of the south 20 acres of Government Lot 5 (T 120 N, R 22 W);

Thence west to the SW corner of the NE quarter of the SE quarter of the SW quarter of Section 10 (T 120 N, R 22 W);

Thence north to the south side of Government Lot 4, Section 10 (T 120 N, R 22 W);

Thence west to the SW corner of the NE quarter of the SE quarter of the SW quarter of Section 10 (T 120 N, R 22 W);

Thence north to the south side of Government Lot 4, Section 10 (T 120 N, R 22 W);

Thence west to the SW corner of Government Lot 4, Section 10 (T 120 N, R 22 W);

Thence north along the west side of Government Lot 4 to the NW corner of Government Lot 4, Section 10 (T 120 N, R 22 W);

Thence west to the east side of Section 9 (T 120 N, R 22 W);

Thence north along the east side of Section 9 to the SE corner of Government Lot 1, Section 9 (T 120 N, R 22 W);

Thence west along the south side of Government Lot 1 to the SW corner of Government Lot 1 within Section 9 (T 120 N, R 22 W);

Thence north along the west side of Government Lot 1 in Section 9 to the north side of Section 9 (T 120 N, R 22 W);

Thence west along the north side of Section 9 to the NE corner of the NE quarter of the NW quarter of Section 9 (T 120 N, R 22 W);

Thence south along the east side of the NE quarter of the NW quarter to the SE corner of the NE quarter of the NW quarter of Section 9 (T 120 N, R 22 W);

Thence west along the south side of the north quarter of Section 9 to the SW corner of the NW quarter of the NW quarter of Section 9 (T 120 N, R 22 W);

Thence north along the east side of Section 8 (T 120 N, R 22 W) to the SE corner of the northern half of the NE quarter of the NE quarter of Section 8 (T 120 N, R 22 W);

Thence west along the south side of the northern half of the NE quarter of the NE quarter of Section 8 to the SW corner of the northern half of the NE quarter of the NE quarter of Section 8 (T 120 N, R 22 W);

Thence north along the west side of the northern half of the NE quarter of the NE quarter of Section 8 (T 120 N, R 22 W);

Thence west along the south side of the northern half of the NE quarter of the NE quarter in Section 8 to the SW corner of the northern half of the NE quarter of the NE quarter of Section 8 (T 120 N, R 22 W);

Thence north along the west side of the northern half of the NE quarter of the NE quarter of Section 8 (T 120 N, R 22 W) to the south side of Section 5 (T 120 N, R 22 W);

Thence west to the SW corner of Government Lot 4 in Section 5;

Thence north along the west side of Government Lot 4 to the SE corner of Government Lot 3, Section 5 (T 120 N, R 22 W);

Thence west along the north side of the south quarter of Section 5 to the SW corner of the NW quarter of the SW quarter of Section 5;

Thence north to the SW corner of Government Lot 2, Section 5;

Thence west to the SW corner of Government Lot 3, Section 6 (T 120 N, R 22 W);

Thence north along the western boundary of Government Lot 3 in Section 6 (T 120 N, R 22 W) to its intersection with the center line of Hennepin County Road 12;

Thence in a northwesterly direction along said center line traversing Government Lot 2 in Section 6 and continuing through Section 31 (T 120 N, R 22 W) to the intersection with the Hennepin-Wright County common boundary line at the mouth of the Crow River;

Thence northerly along said line to the Hennepin County-Sherburne County common boundary line

Thence easterly along said line to the point where the west boundary line of Anoka County intersects with the north boundary line of Hennepin County.

FOR FURTHER INFORMATION CONTACT:

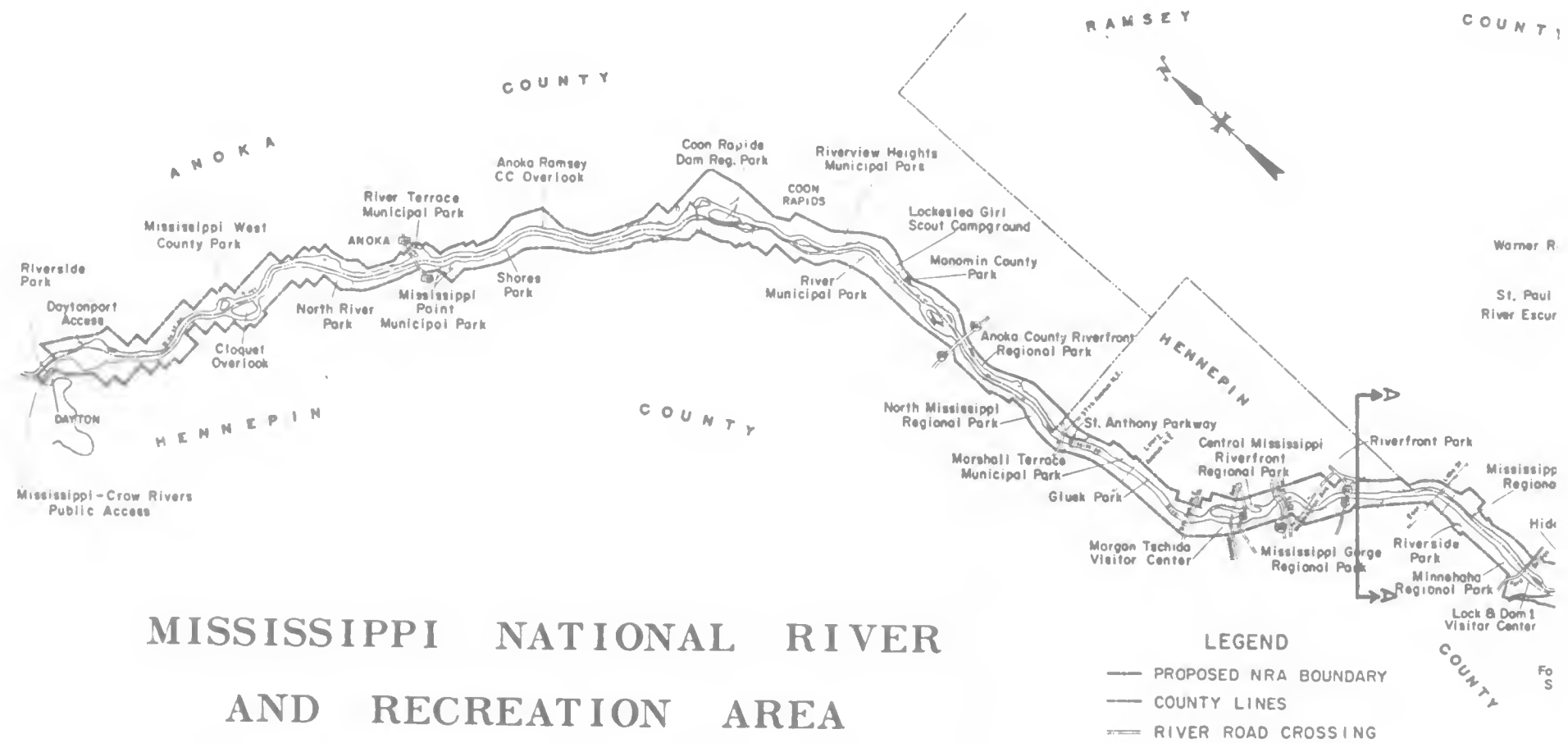
Regional Director, Midwest Region,
National Park Service, 1709 Jackson
Street, Omaha, Nebraska 68102 (402-
221-3431).

Don H Castleberry,

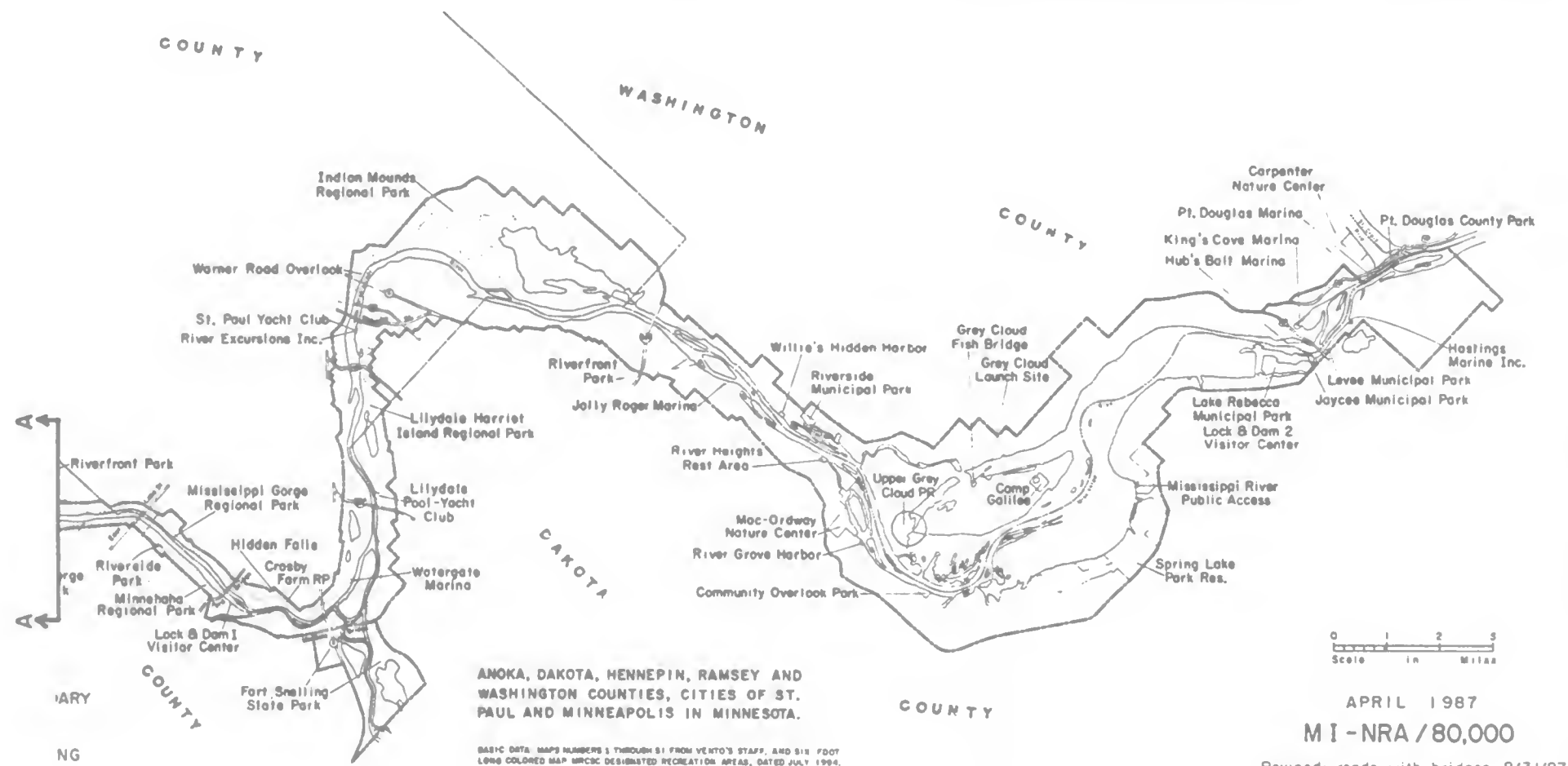
Regional Director, Midwest Region.

Date: March 29, 1989.

BILLING CODE 4310-70-M



UNITED STATES DEPARTMENT OF THE INTERIOR — NATIC



THE INTERIOR - NATIONAL PARK SERVICE

[FR Doc. 89-13798 Filed 6-9-89; 8:45 am]

BILLING CODE 4310-70-C

**INTERSTATE COMMERCE
COMMISSION**

[Finance Docket No. 31441]

**Indiana Hi-Rail Corporation—Lease
Exemption—Norfolk and Western
Railway Co. Line Between Beesons
and New Castle, IN****AGENCY:** Interstate Commerce
Commission.**ACTION:** Notice of Exemption.

SUMMARY: The Interstate Commerce Commission exempts Indiana Hi-Rail Corporation (IHR) and Norfolk and Western Railway Company (NW) from the prior approval requirements of 49 U.S.C. 11343–11345 to allow IHR's lease and operation of 20.5 miles of rail between Beesons and New Castle, IN, and an additional 1.92 mile of trackage at New Castle, now owned and operated by NW, subject to standard labor protective conditions. In addition, IHR's operation of the line is exempted from the requirements of 49 U.S.C. 10761 and 10762, and 49 U.S.C. 11145.

DATES: The exemption will be effective on June 15, 1989. Petitions for reconsideration must be filed by July 3, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31441 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and

(2) Petitioners' representatives:
For Indiana Hi-Rail Corporation: John D. Heffner, Gerst, Heffner, Foldes, & Podgorsky Suite 1107, 1700 K Street NW., Washington, DC 20006.

For Norfolk and Western Railway Company: Mark D. Perreault, Assistant General Solicitor, Law Department, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245 TDD for hearing impaired (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. Assistance for the hearing impaired is available through TDD services (202) 275-1721.

Decided: May 30, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner

Lamboley dissented in part with a separate expression.

Noreta R. McGee,
Secretary.

[FR Doc. 89-13879 Filed 6-9-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-52 (Sub-No. 52X)]

**The Atchison, Topeka and Santa Fe
Railway Co.—Abandonment
Exemption—In Buchanan County, MO**

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonment* to abandon its 6.05-mile line of railroad between milepost 65.25 at Bee Creek Junction to milepost 71.30 at St. Joseph, in Buchanan County, MO.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 12, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,¹

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),² and trail use/rail banking statements under 49 CFR 1152.29 must be filed by June 22, 1989.³ Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 3, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Michael W. Blaszk, The Atchison, Topeka and Santa Fe Building Company, 80 East Jackson Boulevard, Chicago, IL 60604.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 16, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 2, 1989.

By the Commission Jane F. Mackall,
Director, Office of Proceedings.

Noreta R. McGee,
Secretary.

[FR Doc. 89-13785 Filed 6-9-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE**Drug Enforcement Administration****Importation of Controlled Substances;
Notice of Application**

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(h)), the

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440-48448).

³ The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of Title 21, Code of Federal Regulations (CFR), notice is hereby given that on April 13, 1989, Wildlife Laboratories, Inc., 1401 Duff Drive, Suite 600, Fort Collins, Colorado 80524, made application to the Drug Enforcement Administration to be registered as an importer of carfentanil (9743), a basic class of controlled substance in Schedule II.

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections or requests for a hearing may be addressed to the Deputy Assistant Administrator, Drug Enforcement Administration, United States Department of Justice, 1405 I Street, NW., Washington, DC 20537, Attention: DEA Federal Register Representative (Room 1112), and must be filed on or before July 12, 1989.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e) and (f). As noted in a previous notice at 40 FR 43745-46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Deputy Assistant Administrator of the Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e) and (f) are satisfied.

Gene R. Haislip,

Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.

Dated: June 5, 1989.

[FR Doc. 89-13800 Filed 6-5-89; 8:45 am]
BILLING CODE 4410-08-M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Corps Advisory Committee; Change of Meeting Date

A public meeting of the Job Corps Advisory Committee (formerly named the Job Corps Center Assessment Advisory Committee) will be held on June 28, 1989, commencing at 8:30 a.m., at the U.S. Department of Labor, Frances Perkins Building, 3rd and Constitution Avenue NW., Room C5515, Seminar Room 3, Washington, DC 20210. This meeting is one day later than announced in the May 30, 1989 notice, 54 FR 22981.

The purpose of the meeting, as part of a long range training process, is to provide the opportunity for the Job Corps Advisory Committee and its subgroups to meet to discuss the Preliminary Report to the Secretary of Labor.

The Job Corps Advisory Committee's Subgroups have conducted a number of meetings and need to report their findings and conclusions to the Advisory Committee prior to the Job Corps Advisory Committee making its report to the Secretary of Labor.

Individuals or organizations wishing to submit written statements pertaining to Job Corps center assessment should send 20 copies to Peter E. Rell, Director, Office of Jobs Corps, U.S. Department of Labor, Room N-4508, Washington, DC 20210, telephone (202) 535-0550. Papers will be accepted and included in the record of the meeting if received on or before June 28, 1989.

Roberts T. Jones,

Assistant Secretary of Labor.

Signed at Washington, DC, this 6th day of June 1989.

[FR Doc. 89-13888 Filed 6-9-89; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-89-71-C]

Consol Pennsylvania Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consol Pennsylvania Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-1(f)(2) (type and quality of firefighting equipment) to its Bailey Mine (I.D. No. 36-07230) located in Greene County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a fire hose installed for use in underground coal mines have a bursting pressure at least 4 times the water pressure at the valve to the hose inlet with the valve closed.

2. As an alternate method, petitioner proposes the following procedures:

(a) All firefighting nozzles would be modified to prevent shut off; farthest closure would be a fog pattern. This modification would eliminate shock loads which could be imposed on the hose by nozzle closure;

(b) Delivery pressure would be maintained less than 600 pounds per square inch (psi);

(c) The fire hose utilized would be at least one and one-half inch in diameter;

(d) All fire hose to be deployed as firefighting equipment would be mildew resistant and contain a single polyester jacket with a manufacturers minimum specified burst strength of 750 psi; and

(e) The fire hose would only be used for emergency firefighting purposes;

3. Petitioner states that the proposed alternative method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 12, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

Dated: June 1, 1989.

[FR Doc. 89-13889 Filed 6-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-72-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-1(f)(2) (type and quality of firefighting equipment) to its Buchanan No. 1 Mine (I.D. No. 44-04858) located in Buchanan County, Virginia. The petition is filed

under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a fire hose installed for use in underground coal mines have a bursting pressure at least 4 times the water pressure at the valve to the hose inlet with the valve closed.

2. As an alternate method, petitioner proposes the following procedures:

(a) All firefighting nozzles would be modified to prevent shut off; farthest closure would be a fog pattern. This modification would eliminate shock loads which could be imposed on the hose by nozzle closure;

(b) Delivery pressure would be maintained less than 600 pounds per square inch (psi);

(c) The fire hose utilized would be at least one and one-half inch in diameter;

(d) All fire hose to be deployed as firefighting equipment would be mildew resistant and contain a single polyester jacket with a manufacturers minimum specified burst strength of 750 psi; and

(e) The fire hose would only be used for emergency firefighting purposes;

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 12, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

Date: June 1, 1989.

[FR Doc. 89-13890 Filed 6-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-73-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-1(f)(2) (type and quality of firefighting equipment) to its Dilworth Mine (I.D. No. 36-04281) located in Greene County, Pennsylvania. The petition is filed under

section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statement follows:

1. The petition concerns the requirement that a fire hose installed for use in underground coal mines have a bursting pressure at least 4 times the water pressure at the valve to the hose inlet with the valve closed.

2. As an alternate method, petitioner proposes the following procedures:

(a) All firefighting nozzles would be modified to prevent shut off; farthest closure would be a fog pattern. This modification would eliminate shock loads which could be imposed on the hose by nozzle closure;

(b) Delivery pressure would be maintained less than 600 pounds per square inch (psi);

(c) The fire hose utilized would be at least one and one-half inch in diameter;

(d) All fire hose to be deployed as firefighting equipment would be mildew resistant and contain a single polyester jacket with a manufacturers minimum specified burst strength of 750 psi; and

(e) The fire hose would only be used for emergency firefighting purposes;

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 12, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

Date: June 1, 1989.

[FR Doc. 89-13891 Filed 6-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-74-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-1(f)(2) (type and quality of firefighting equipment) to its Rend Lake Mine (I.D. No. 11-00601) located in Jefferson County, Illinois. The petition is filed

under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a fire hose installed for use in underground coal mines have a bursting pressure at least 4 times the water pressure at the valve to the hose inlet with the valve closed.

2. As an alternate method, petitioner proposes the following procedures:

(a) All firefighting nozzles would be modified to prevent shut off; farthest closure would be a fog pattern. This modification would eliminate shock loads which could be imposed on the hose by nozzle closure;

(b) Delivery pressure would be maintained less than 600 pounds per square inch (psi);

(c) The fire hose utilized would be at least one and one-half inch in diameter;

(d) All fire hose to be deployed as firefighting equipment would be mildew resistant and contain a single polyester jacket with a manufacturers minimum specified burst strength of 750 psi; and

(e) The fire hose would only be used for emergency firefighting purposes;

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 12, 1989. Copies of the petition are available for inspection at that address.

Date: June 1, 1989.

Patricia W. Silvey,
Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-13892 Filed 6-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-75-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-1(f)(2) (type and quality of firefighting equipment) to its Shoemaker Mine (I.D. No. 46-01437) and its Ireland Mine (I.D.

No. 46-01438) both located in Marshall County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a fire hose installed for use in underground coal mines have a bursting pressure at least 4 times the water pressure at the valve to the hose inlet with the valve closed.

2. As an alternate method, petitioner proposes the following procedures:

(a) All firefighting nozzles would be modified to prevent shut off; farthest closure would be a fog pattern. This modification would eliminate shock loads which could be imposed on the hose by nozzle closure;

(b) Delivery pressure would be maintained less than 600 pounds per square inch (psi);

(c) The fire hose utilized would be at least one and one-half inch in diameter;

(d) All fire hose to be deployed as firefighting equipment would be mildew resistant and contain a single polyester jacket with a manufacturers minimum specified burst strength of 750 psi; and

(e) The fire hose would only be used for emergency firefighting purposes;

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 12, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 1, 1989.

[FR Doc. 89-13893 Filed 6-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-76-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, Consol Plaza, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-1(f)(2) (type and quality of firefighting equipment) to its Blackville No. 1 Mine

(I.D. No. 46-01967), its Blackville No. 2 Mine (I.D. No. 46-01968), its Humphrey No. 7 Mine (I.D. No. 46-01453), its Osage No. 3 Mine (I.D. No. 46-01455), and its Arkwright No. 1 Mine (I.D. No. 46-01452) all located in Monongalia County, West Virginia, to its Loveridge No. 22 Mine (I.D. No. 46-01433) located in Marion County, West Virginia, and its Robinson Run No. 95 Mine (I.D. No. 46-01318) located in Harrison County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a fire hose installed for use in underground coal mines have a bursting pressure at least 4 times the water pressure at the valve to the hose inlet with the valve closed.

2. As an alternate method, petitioner proposes the following procedures:

(a) All firefighting nozzles would be modified to prevent shut off; farthest closure would be a fog pattern. This modification would eliminate shock loads which could be imposed on the hose by nozzle closure;

(b) Delivery pressure would be maintained less than 600 pounds per square inch (psi);

(c) The fire hose utilized would be at least one and one-half inch in diameter;

(d) All fire hose to be deployed as firefighting equipment would be mildew resistant and contain a single polyester jacket with a manufacturers minimum specified burst strength of 750 psi; and

(e) The fire hose would only be used for emergency firefighting purposes;

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 12, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 1, 1989.

[FR Doc. 89-13894 Filed 6-9-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-77-C]

Quarto Mining Co.; Petition for Modification of Application of Mandatory Safety Standard

Quarto Mining Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241 has filed a petition to modify the application of 30 CFR 75.1100-1(f)(2) (type and quality of firefighting equipment) to its Powhatan No. 4 Mine (I.D. No. 33-01157) located in Monroe County, Ohio. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a fire hose installed for use in underground coal mines have a bursting pressure at least 4 times the water pressure at the valve to the hose inlet with the valve closed.

2. As an alternate method, petitioner proposes the following procedures:

(a) All firefighting nozzles would be modified to prevent shut off; farthest closure would be a fog pattern. This modification would eliminate shock loads which could be imposed on the hose by nozzle closure;

(b) Delivery pressure would be maintained less than 600 pounds per square inch (psi);

(c) The fire hose utilized would be at least one and one-half inch in diameter;

(d) All fire hose to be deployed as firefighting equipment would be mildew resistant and contain a single polyester jacket with a manufacturers minimum specified burst strength of 750 psi; and

(e) The fire hose would only be used for emergency firefighting purposes;

3. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 12, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Dated: June 1, 1989.

[FR Doc. 89-13895 Filed 6-9-89; 8:45 am]

BILLING CODE 4510-43-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee on Materials and Metallurgy; Meeting

The ACRS Subcommittee on Materials and Metallurgy will hold a meeting on June 20, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting will be as follows:

Tuesday, June 20, 1989—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review low upper shelf energy concerns of reactor pressure vessels.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS Staff member, Mr. Elpidio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: June 5, 1989.

Gary R. Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-13794 Filed 6-9-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Subcommittee on Mechanical Components; Meeting

The ACRS Subcommittee on Mechanical Components will hold a meeting on June 21, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for subject meeting shall be as follows:

Wednesday, June 21, 1989—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review and discuss: (1) Bechtel/KWU Alliance Program on MOV operability, (2) concerns on the reliability of check valves, and (3) other related matters.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by member of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member identified below as far in advance as practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: June 5, 1989.

Gary Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-13795 Filed 6-9-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Extreme External Phenomena; Meeting

The ACRS Subcommittee on Extreme External Phenomena will hold a meeting on June 22, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, June 22, 1989—8:30 a.m. Until the Conclusion of Business

The Subcommittee will review GI-40, "Seismic Design Criteria."

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Elpidio Igne (telephone 301/492-8192) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: June 5, 1989.

Gary Quittschreiber,

Chief, Project Review Branch No. 2.

[FR Doc. 89-13796 Filed 6-9-89; 8:45 am]

BILLING CODE 7590-01-M

Advisory Committee on Reactor Safeguards, Meeting of the Subcommittee on Human Factors; Meeting

The ACRS Subcommittee on Human Factors will hold a meeting on June 15, 1989, Room P-110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, June 15, 1989—1:00 p.m. Until the Conclusion of Business

The Subcommittee will discuss a draft RES report of Chernobyl "spin-off" study on the nature, frequency, and procedural violations at U.S. nuclear power plants.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Recordings will be permitted only during those portions of the meeting when a transcript is being kept, and questions may be asked only by members of the Subcommittee, its consultants, and Staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC Staff, its consultants, and other interested persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACRS staff member, Mr. Richard Major (telephone 301/492-8109) between 7:30 a.m. and 4:15 p.m. Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., which may have occurred.

Date: June 5, 1989.

Gary R. Quittschreiber,
Chief, Project Review Branch No. 2
[FR Doc. 89-13797 Filed 6-9-89; 8:45 am]
BILLING CODE 7590-01-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Midwest Stock Exchange, Inc.

June 5, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

BP Prudhoe Bay Royalty Trust
Common Stock, No Par Value (File No. 7-4596)
Colonial Investment Grade Municipal Trust
Shares of Beneficial Interest, No Par Value (File No. 7-4597)
Putnam High Yield Municipal Trust
Shares of Beneficial Interest, Without Par Value (File No. 7-4598)
Bay State Gas Company
Common Stock, \$3.33 1/2 Par Value (File No. 7-4599)
Repsol, S.A.
American Depositary Shares, No Par Value (File No. 7-4600)
ROC Taiwan Fund (The)
Shares of Beneficial Interest, \$.01 Par Value (File No. 7-4601)
Van Kampen Merritt Limited High Income, Inc.
Common Stock \$.01 Par Value (File No. 7-4602)
Kemper Corporation
Common Stock, \$.50 Par Value (File No. 7-4603)
Storage Technology Corporation
Common Stock, \$.10 Par Value (File No. 7-4604)
Cabletron Systems, Inc.
Common Stock, \$.01 Par Value (File No. 7-4605)
Pan Am Corporation
Warrants expiring 5/1/93, No Par Value (File No. 7-4606)
TCF Financial Corp.
Common Stock, \$.01 Par Value (File No. 7-4607)
Utilicorp United Inc.
\$1.775 Cumulative Convertible Preference Stock, No Par Value (File No. 7-4608)
Waban, Inc.
Common Stock, \$.01 Par Value (File No. 7-4609)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 26, 1989, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.
[Fr Doc. 89-13871 Filed 6-9-89; 8:45 am]
BILLING CODE 8010-02-M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges and of Opportunity for Hearing; Pacific Stock Exchange, Inc.

June 5, 1989.

The above named national securities exchange has filed applications with the Securities and Exchange Commission pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder, for unlisted trading privileges in the following securities:

Houghton Mifflin Co.
Common Stock, \$1.00 Par Value (File No. 7-4591)
Howtek, Inc.
Common Stock, \$.01 Par Value (File No. 7-4592)
Philips Industries, Inc.
Common Stock, No Par Value (File No. 7-4593)
IGI, Inc.
Common Stock, \$.0 Par Value (File No. 7-4594)
KeyCorp
Common Stock, \$.50 Par Value (File No. 7-4595)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before June 26, 1989, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the

Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.
[FR Doc. 89-13872 Filed 6-9-89; 8:45 am]
BILLING CODE 8010-01-M

[File No. 22-19380]

Application and Opportunity for Hearing; National Medical Enterprises, Inc.

June 5, 1989.

Notice is hereby given that National Medical Enterprises, Inc. (the "Company") has filed an application pursuant to clause (ii) of section 310(b)(1) of the Trust Indenture Act of 1939 (hereinafter sometimes referred to as the "Act") for a finding by the Securities and Exchange Commission (the "Commission") that the trusteeship of Bankers Trust Company (the "Bank") under indentures dated as of June 15, 1981 (the "1981 Indenture") and February 8, 1986 (the "1986 Indenture") between the Company and the Bank which were heretofore qualified under the Act and under an indenture dated March 15, 1989 (the "1989 Indenture") between NME PIP Funding I, Inc., the Company and the Bank which has not been qualified under the Act, is not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as trustee under the aforementioned indentures.

Section 310(b) of the Act provides in part that if a trustee under an indenture qualified under the Act has or shall acquire any conflicting interest (as defined in the section), it shall, within ninety days after ascertaining that it has such conflicting interest, either eliminate such conflicting interest or resign. Subsection (1) of that section provides, with certain exceptions stated therein, that a trustee under a qualified indenture shall be deemed to have a conflicting interest if such trustee is a trustee under another indenture of the same obligor.

The Company Alleges:

(1) Pursuant to the 1981 Indenture, the Company has outstanding \$83,761,000 aggregate principal amount of its 9% Convertible Subordinated Debentures Due 2006, and pursuant to the 1986 Indenture, the Company has outstanding \$282,119,000 aggregate principal amount of its Liquid Yield Option TM Notes due December 4, 2004 (collectively, the "Debt Securities"). The Debt Securities were registered under the Securities Act of 1933 (the "1933 Act") and the 1981 and 1986 Indentures were qualified under the Act.

(2) Pursuant to the 1989 Indenture, NME PIP Funding I, Inc. has outstanding, and the Company has guaranteed on a subordinated basis, \$285,000,000 aggregate principal amount of Remarketed Notes SM Due April 3, 1996 (the "Notes"). The Notes have not been registered under the 1933 Act and the 1989 Indenture has not been qualified under the Act on the basis that the Notes were offered and sold in a private placement transaction exempt from registration under the 1933 Act pursuant to section 4(2) thereof.

(3) The Company is not in default under the 1981 Indenture, the 1986 Indenture or the 1989 Indenture. The Company's obligations under the 1981 Indenture, the 1986 Indenture and the 1989 Indenture are wholly unsecured and rank *pari passu*.

(4) The provisions of the 1981 Indenture, the 1986 Indenture and the 1989 Indenture are not so likely to involve a material conflict of interest as to make it necessary in the public interest or for the protection of investors to disqualify the Bank from acting as Trustee under said Indentures.

The Company has waived notice of hearing, hearing and any and all rights to specify procedures under the Rules of Practice of the Commission in connection with this matter.

For a more detailed statement of the matters of fact and law asserted, all persons are referred to said application which is on file in the Offices of the Commission's Public Reference Section, File Number 22-19380, 450 Fifth Street NW., Washington, DC 20549.

Notice if further given that any interested persons may, not later than June 30, 1989, request in writing that a hearing be held on such matter stating the nature of his interest, the reasons for such request and the issues of law or fact raised by such application which he desires to controvert, or he may request that he be notified if the Commission orders a hearing thereon. Any such request should be addressed: Secretary, Securities and Exchange Commission,

450-Fifth Street NW., Washington, DC 20549. At any time after said date, the Commission may issue an order granting the application, upon such terms and conditions as the Commission may deem necessary or appropriate in the public interest and for the protection of investors, unless a hearing is ordered by the Commission.

For the Commission, by the Division of Corporation Finance, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-13874 Filed 6-9-89; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Order 89-6-7]

Fitness Determination of R.I.C. Inc. D/B/A Skymaster Air Taxi D/B/A Skymaster

AGENCY: Department of Transportation.

ACTION: Notice of commuter air carrier fitness determination—Order 89-6-7, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that R.I.C., Inc. d/b/a Skymaster Air Taxi d/b/a Skymaster, is fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than June 21, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Bernardyne E. Williams, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9730.

Dated: June 6, 1989.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-13812 Filed 6-9-89; 8:45 am]
BILLING CODE 4910-62-M

Coast Guard

[CGD 89-046]

Towing Safety Advisory Committee; Meeting of Subcommittees**AGENCY:** Coast Guard, DOT.**ACTION:** Notice of meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of all Subcommittees of the Towing Safety Advisory Committee (TSAC). The subcommittee meetings will be held on July 12, 1989 at the Sheraton New Orleans Hotel, 500 Canal Street, New Orleans, Louisiana. The meeting will begin at 1:30 p.m. and end at 4:00 p.m. The agenda for the meeting consists of the following items:

1. Call to Order
2. Discussion of the following topics:
 - (a) Personnel Manning and Licensing
 - (b) Tug Barge Construction, Certification and Operations
 - (c) Port Facilities and Operations
 - (d) Personnel Safety and Work Place Standards
3. Presentation of any new items for consideration of the Subcommittees.
4. Adjournment.

Attendance is open to the interested public. Members of the public may present oral or written statements at the meeting.

FOR FURTHER INFORMATION CONTACT: CDR R.J. ASARO, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G-MP-3), Washington, DC 20593-0001, (202) 267-0449.

Dated: June 2, 1989.

J.D. Sipes,
Rear Admiral, U.S. Coast Guard Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-13815 Filed 6-9-89; 8:45 am]

BILLING CODE 4910-14-M

[CGD 89-045]

Towing Safety Advisory Committee; Meeting**AGENCY:** Coast Guard, DOT.**ACTION:** Notice of public meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given of a meeting of the Towing Safety Advisory Committee (TSAC). The meeting will be held on July 13, 1989, at the Sheraton New Orleans Hotel, 500 Canal Street, New Orleans, Louisiana. The meeting is scheduled to begin at 8:00 a.m. and end at 4:00 p.m.

Attendance is open to the interested public. Items to be discussed are expected to be as follows:

- TSAC Operations and Work Program
- Current Work Programs
- Subcommittee Reports
 - A. Personnel Manning and Licensing
 - B. Tug-Barge Construction, Certification and Operations
 - C. Port Facilities and Operations
 - D. Personnel Safety and Work Place Standards
- Briefing of Coast Guard related activities
- Any other matter properly brought before the Committee.

Where appropriate, reports on the above items may be followed by TSAC discussion, deliberation, and recommendations concerning these subjects, including rulemaking projects.

With advance notice, and at the discretion of the Chairman, if time permits, members of the public may present oral statements at the meeting. Persons wishing to present oral statements should notify the Executive Director of TSAC no later than the day before the meeting. Written statements or materials may be submitted for presentation to the Committee. To ensure distribution to each member of the Committee, 30 copies of written material should be submitted to the Executive Director no later than July 3, 1989.

FOR FURTHER INFORMATION CONTACT: CDR R. J. ASARO, Executive Director, Towing Safety Advisory Committee, U.S. Coast Guard (G-MP-3), Washington, DC 20593-0001, (202) 267-0449.

Dated: June 2, 1989.

J.D. Sipes,
Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 89-13818 Filed 6-9-89; 8:45 am]

BILLING CODE 4910-14-M

Maritime Administration

[Docket No. A-179]

Application for Acceptable Level of Domestic Carriage Under Section 506 of the Merchant Marine Act, 1936, as Amended

SUMMARY: Notice is hereby given inviting comments on the acceptable level of domestic carriage by operators under Section 506 of the Merchant Marine Act, 1936, as amended.

DATE: Comments must be received on or before July 14, 1989.

ADDRESS: Comments in triplicate are to be submitted to the Secretary, Maritime

Administration, Room 7300, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT:

Robert J. Patton, Jr., Deputy Chief Counsel, Maritime Administration, Washington, DC 20590, tel (202) 366-5711.

SUPPLEMENTARY INFORMATION: The Maritime Administrator on June 5, 1989, issued a Final Opinion and Order in Docket No. A-179. In that decision it was found that, among other things, it is appropriate for the Maritime Administration to establish guidelines on the acceptable level of domestic carriage for operators of vessels built with the aid of construction-differential subsidy (CDS) when engaged on a voyage in foreign trade on which such vessel may stop at the state of Hawaii, or an island possession or island territory of the United States under section 506 of the Merchant Marine Act, 1936, as amended (Act).

Interested persons are invited to submit comments on such acceptable level. Comments particularly would be helpful on whether that level should be: (1) A set percentage of foreign to total carriage by cargo (TEU or tonnage) or freight revenue; (2) a set TEU or tonnage level of foreign carriage; (3) a threshold percentage of domestic carriage with greater carriage permitted based on establishment of certain facts, and the nature of the facts to be considered; (4) measured on a voyage or annual basis for a CDS-built vessel or on the basis of all CDS-built vessels on a service; (5) a narrative standard; or (6) some other measure.

Interested persons are also invited to submit comments on the procedure by which the acceptable level is to be implemented: (1) Policy guidelines statement; (2) general rulemaking; (3) *ad hoc* determination; or (4) some other means.

The goal of the Maritime Administration in this matter is to establish guidelines that are minimally intrusive and as self-executing as possible, consistent with the concerns of Congress under the Act. The owners and operators of CDS-built vessels need to know the scope of operations which will not jeopardize or breach their CDS contracts. The Jones Act vessel operators and owners need to know such scope so that they can make reasonable business decisions on their operations.

(Catalog of Federal Domestic Assistance Program No. 20.600 Construction-Differential Subsidies (CDS))

By order of the Maritime Administration.
James E. Saari,
Secretary.

Date: June 6, 1989.

[FR Doc. 89-13844 Filed 6-9-89; 8:45 am]

BILLING CODE 4910-81-M

National Highway Traffic Safety Administration**Meetings**

AGENCY: National Highway Traffic Safety Administration.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, research and enforcement programs. This notice also announces two additional meetings to be held on the implementation of the automatic occupant protection requirements of Standard No. 208, *Occupant Protection*.

DATES: The agency's regular, quarterly public meeting relating to the agency's rulemaking, research and enforcement programs will be held on July 13, 1989, beginning at 10:30 a.m. Questions relating to the agency's rulemaking, research and enforcement programs, must be submitted in writing by July 5, 1989. If sufficient time is available, questions received after the July 5 date may be answered at the meeting. The individual, group or company submitting a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by July 5, and the issues to be discussed, will be mailed to interested persons by July 10, 1989. This list will also be available at the meeting.

ADDRESS: Questions for the July 13 meeting relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, Room 5401, 400 Seventh Street SW., Washington, DC 20590. The public meeting will be held in the Conference Room of the Environmental Protection Agency's Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular quarterly meeting to answer questions from the public and industry regarding the agency's rulemaking, research, and enforcement programs on July 13, 1989. The meeting will begin at 10:30 a.m., and will be held in the Conference Room of the Environmental Protection agency's

Laboratory Facility, 2565 Plymouth Road, Ann Arbor, Michigan. The purpose of the meeting is to focus on those phases of these NHTSA activities which are technical, interpretative or procedural in nature. A transcript of the meeting will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC within four weeks after the meeting. Copies of the transcript will then be available at twenty-five cents for the first page and five cents for each additional page (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, Room 5108, 400 Seventh Street SW., Washington, DC 20590.

The agency also wishes to announce that following the two public meetings which are scheduled for July 13 and in October, it will conduct a discussion of issues relating to the implementation of the automatic occupant protection requirements of Standard No. 208. Following the July 13 NHTSA/Industry/Public meeting, the agency will hold a meeting on issues regarding automatic safety belts. That meeting will begin at approximately 1:30 p.m. and end at approximately 6:00 p.m. If necessary, the meeting will reconvene at 9:00 a.m. July 14. Discussions will include usage rates of various types of belt systems, their effectiveness in reducing casualties when used, and consumer acceptance issues.

Following the tentatively scheduled October NHTSA/Industry/Public meeting, the agency will hold a meeting to discuss air bag-related issues, including their safety effectiveness, reliability, belt usage with air bags, threshold deployment strategies, sensor strategies, bag design (tethered, folded, type of material, venting, etc.), belt pretensioner use, data collection protocols, and consumer acceptance issues. Presentations by agency staff will be made at the July 13 session. Anyone desiring to make presentations at the July and October meeting should contact Mary Coyle, NRD-01, Room 6206, 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366-1537 by June 30 for the July 13 meeting, and by September 15 for the October meeting. The agenda for the July 13 meeting will be available by July 10.

Issued on June 7, 1989.

Barry Felrice,
Associate Administrator for Rulemaking.
[FR Doc. 89-13839 Filed 6-9-89; 8:45 am]

BILLING CODE 4910-59-M

UNITED STATES INFORMATION AGENCY**Cultural Property Advisory Committee; Meeting**

The Cultural Property Advisory Committee will conduct subcommittee meetings and a meeting of the full Committee on June 21, 22, 23 at 301 Fourth Street, SW., Washington, DC. Agenda for the meeting is as follows:

Wednesday, June 21

3-4:30 pm Open to the Public (from 3 to 3:45 pm): Meeting of Administrative/Financial Subcommittee in Room 840. The meeting will be closed to the public at 3:45 pm.

Thursday, June 22

9 am-9:30 am Open to the Public: Chairman convenes meeting in Room 840. Administrative/Financial Subcommittee reports and proposes recommendations.

9:30 am-10 am Closed to the Public: Administrative/Financial Subcommittee report from the closed Subcommittee meeting.

10 am to Noon and 1:30 pm to 4:30 pm Open to the Public: Legal Subcommittee meets in Room 840.

10 am to Noon Open to the Public: Communications Subcommittee meets in conference room in Room 849.

1:30 to 4:30 pm Closed to the Public: Drafting Subcommittee meets in conference room in Room 849.

Friday, June 23

9 am to 11 am Open to the Public: Committee meets in Room 840. Discussion of reports by the Legal and Communications subcommittees with recommendations for future action.

11 am to Noon Closed to the Public: Discussion of report by the Drafting Subcommittee with recommendations for future action.

Those portions of the Committee's meeting and the Administrative/Financial Subcommittee's meeting concerned with assessing performance and other aspects of staff support will be closed to the public in accordance with 5 U.S.C. 552b(c)(6). The meeting of the Drafting Subcommittee and the portion of the Committee's meeting concerned with the report of the Drafting Subcommittee will be closed to the public in accordance with 5 U.S.C. 552b(c)(9)(B) because there will be discussion of the effectiveness of U.S. import restrictions on artifacts from El Salvador and public disclosure of this

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information could lead to the circumvention of the restrictions and would be likely to frustrate significantly implementation of proposed actions and policies.

Members of the public wishing to attend the open sessions of Committee and Subcommittee meetings should contact Ms. Vicki Rose on 485-6812 by Noon on Tuesday, June 20. Public attendance will be limited due to the size of the meeting room and must be arranged in advance because of controlled access to the USIA Building.

Date: June 7, 1989.

Bruce S. Gelb,

Director, United States Information Agency.

Determination To Close Portions of the Meeting of the Cultural Property Advisory Committee, June 21-23, 1989

Based on information provided to me by the Cultural Property Advisory Committee, I hereby determine that certain portions of the meetings of the Cultural Property Advisory Committee and its Subcommittees scheduled on June 21-23 may be closed to the public.

The Committee has requested that those portions of the meetings of the Administrative/Financial Subcommittee and the committee be closed to the

public in accordance with 5 U.S.C. 552b(c)(6). Also, that the meeting of the Drafting Subcommittee and the portion of the Committee meeting where the Drafting Subcommittee reports on the effectiveness of U.S. import restrictions on artifacts from El Salvador be closed to the public in accordance with 5 U.S.C. 552b(c)(9)(B).

Date: June 7, 1989.

Bruce S. Gelb,

Director, United States Information Agency.

[FR Doc. 89-13896 Filed 6-9-89; 8:45 am]

BILLING CODE 8330-01-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Environmental Hazards; Meeting

The Department of Veterans Affairs gives notice under Pub. L. 92-463, section 10(a)(2), that a meeting of a subcommittee of the Veterans' Advisory Committee on Environmental Hazards will be held at the Department of Veterans Affairs Central Office, 810 Vermont Avenue, NW, Washington, DC 20420 on June 28, 1989. The purpose of the meeting is to assist the Department in the development of Agency policy

with respect to veterans' claims for compensation based upon exposure to herbicides containing dioxin compatible with the decision of the court in *Nehmer v. Veterans Administration, et al.*

The meeting will convene at 9:00 a.m. until 5:30 p.m. in Room 119. This meeting will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Ms. Sylvia Arrington, Veterans Affairs Central Office (phone 202/233-2115) prior to June 19, 1989.

Members of the public may direct questions or submit prepared statements for review by the Committee in advance of the meeting, in writing only, to Mr. Frederic L. Conway, Special Assistant to the General Counsel, Room 1034, Veterans Affairs Central Office. Submitted material must be received at least five days prior to the meeting. Such members of the public may be asked to clarify submitted material prior to consideration by the Committee.

Dated: June 1, 1989.

By direction of the Secretary.

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-13799 Filed 6-9-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

June 7, 1989.

The following notice of meeting is published pursuant to section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-49), 5 U.S.C. 552B:

DATE AND TIME: June 14, 1989, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary,

Telephone (202) 357-8400.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Public Reference Room.

Consent Power Agenda, 896th Meeting—June 14, 1989, Regular Meeting (10:00 a.m.)

- CAP-1. Project No. 663-003, Puerto Rico Electric Power Authority
- CAP-2. Project No. 7490-012, Commonwealth Hydroelectric, Inc.
- CAP-3. Docket No. UL89-16-001, Consolidated Hydro, Inc.
- CAP-4. Project No. 9838-002, Catalyst Energy Department Corporation
- CAP-5. Project Nos. 7802-006 and 10488-000, Natural Energy Resources Company
- CAP-6. Project No. 10477-001, Burke Dam Hydro Associates
- CAP-7. Docket No. EL88-29-001, Larry M. Taylor
- CAP-8. Project No. 3512-010, UAH-Braendly Hydro Associates
- CAP-9. Docket No. ER89-312-000, Vermont Yankee Nuclear Power Corporation
- CAP-10. Docket No. ER89-366-000, New York State Electric & Gas Corporation
- CAP-11. Docket No. ER80-259-012, Kansas Gas & Electric Company

- CAP-12. Docket No. EL88-38-001, Minnesota Power & Light Company
- CAP-13. Docket No. QF88-72-002, Walker Resources, Inc.
- CAP-14. Docket No. ER84-560-007, Union Electric Company
- CAP-15. Docket Nos. ER84-571-006, ER85-486-001 and ER86-300-001 (Phase II), Utah Power & Light Company
- CAP-16. Omitted
- CAP-17. Docket No. QF86-590-003, Coso Energy Developers
- Docket No. QF86-591-002, Coso Power Developers

Consent Miscellaneous Agenda

- CAM-1. Docket No. FA86-83-001, Public Service Company of Colorado
- CAM-2. Docket No. GP84-23-029 (Phase 2), Stowers Oil & Gas Company, Panhandle Energy Corporation, Prairie Oil Company, Sharon Oil Company, Almac Oil Company, Judy Oil Company, Kim Petroleum Company, Inc., Komanche Oil & Gas Company, Omega Energy, Tumbleweed Production, Panstar Oil & Gas, Inc., Dennis Mills Enterprises, Wy-Vel Corporation, Walker Operating Corporation, and 3W Oil, Inc.
- CAM-3. Docket No. GP86-51-001, Northern Natural Gas Company, Division of Enron Corp. v. Cabot Pipeline Corporation and Texaco Producing Inc.
- CAM-4. Docket No. SA88-13-002, Valero Interstate Transmission Company

Consent Gas Agenda

- CAG-1. Docket No. RP89-169-000, Southern Natural Gas Company
- CAG-2. Docket No. RP89-170-000, Williams Natural Gas Company
- CAG-3. Docket No. RP89-174-000, Southern Natural Gas Company
- CAG-4. Docket No. RP89-178-000, Colorado Interstate Gas Company
- CAG-5. Docket No. RP89-137-001, Northwest Pipeline Corporation
- CAG-6. Docket No. RP89-44-001, Florida Gas Transmission Company
- CAG-7. Docket No. RP89-119-002, Texas Gas Transmission Corporation
- CAG-8.

Federal Register

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- Docket No. TA89-1-26-000, Natural Gas Pipeline Company of America
- CAG-9. Docket Nos. TA89-1-4-000, 001, 002, TM89-2-4-000 and 001, Granite State Gas Transmission, Inc.
- CAG-10. Docket No. RP88-228-018, Tennessee Gas Pipeline Company
- CAG-11. Docket Nos. RP88-228-017 and RP89-29-004, Tennessee Gas Pipeline Company
- CAG-12. Docket Nos. RP85-177-062 and CP88-136-006, Texas Eastern Transmission Corporation
- CAG-13. Docket No. RP89-44-002, Florida Gas Transmission Company
- CAG-14. Docket Nos. RP89-140-002, 001, TA89-1-43-001 and RP88-39-002, Williams Natural Gas Company
- CAG-15. Docket No. OR88-1-001, Cook Inlet Pipe Line Company
- CAG-16. Docket No. RP85-47-005, East Tennessee Natural Gas Company
- CAG-17. Docket No. RP87-7-050, Transcontinental Gas Pipe Line Corporation
- CAG-18. Docket No. RP88-184-009, El Paso Natural Gas Company
- CAG-19. Docket Nos. RP88-198-006 and RP89-59-002, Transwestern Pipeline Company
- CAG-20. Docket No. RP89-73-001, Pelican Interstate Gas System
- CAG-21. Docket No. RP86-87-004, Questar Pipeline Company (formerly Mountain Fuel Resources, Inc.)
- CAG-22. Docket Nos. RP88-262-005 and CP89-917-002, Panhandle Eastern Pipe Line Company
- CAG-23. Docket Nos. TQ89-1-46-017, RP86-165-011 and RP86-166-011, Kentucky West Virginia Gas Company
- CAG-24. Docket Nos. CP86-578-022 and RP85-13-030, Northwest Pipeline Corporation
- CAG-25. Omitted
- CAG-26. Omitted
- CAG-27. Docket No. CP89-692-001, Amerada Hess Corporation
- CAG-18. Docket No. CI61-945-002, Pennzoil Products Company (Successor-in-Interest to Pennzoil Company)
- CAG-29.

- Docket No. C189-191-001, Shell Gas Pipeline Company
- CAG-30.
Docket Nos. ST89-1991-000, ST89-1992-000, ST89-1993-000, ST89-1994-000, ST89-1995-000, ST89-1996-000, ST89-1997-000, ST89-1998-000, ST89-1999-000, ST89-2000-000 and ST89-2001-000, TOMCAT, a Texas Intrastate Pipeline
- CAG-31.
Docket Nos. ST88-4888-000, ST88-4889-000 and ST88-5419-000, Gulf States Pipeline Corporation
- CAG-32.
Docket Nos. ST89-1257-000, ST89-1802-000 and ST89-2033-000, Cabot Pipeline Company
- CAG-33.
Docket Nos. ST81-260-003, 004, 005, ST85-559-000, ST85-630-000 and ST85-789-000, Mustang Fuel Corporation and Enogex Inc.
- CAG-34.
Docket Nos. ST88-5892-000, ST89-194-000, ST89-296-000, ST89-349-000, ST89-350-000, ST89-1505-000 and ST89-1506-000, BP Gas Transmission Company
- CAG-35.
Docket No. CP87-408-001, Owens-Corning Fiberglas Corporation v. Transcontinental Gas Pipe Line Corporation
- CAG-36.
Docket Nos. CP88-860-001 and CP89-248-001, Williams Natural Gas Company
- CAG-37.
Docket No. CP87-378-001, Midwestern Gas Transmission Company
- CAG-38.
Docket No. CP88-678-001, Natural Gas Pipeline Company of America
- CAG-39.
Omitted
- CAG-40.
Omitted
- CAG-41.
Omitted
- CAG-42.
Docket No. CP89-302-000, Williston Basin Interstate Pipeline Company
- CAG-43.
Docket No. CP89-1133-000, Tennessee Gas Pipeline Company
- CAG-44.
Docket No. CP87-784-001, Panhandle Eastern Pipe Line Company
- CAG-45.
Docket Nos. CP88-225-003, CP88-759-001 and CP87-389-002, National Fuel Gas Supply Company

I. Licensed Project Matters

- P-1.
Reserved

II. Electric Rate Matters

- ER-1.
Docket No. EL88-39-000, Northern States Power Company (Wisconsin)
- Docket No. EL89-9-000, Northern States Power Company (Minnesota). Order on recovery of minimum take payments.

Miscellaneous Agenda

- M-1.
Docket No. FA88-70-001, Missouri Public Service Company, A Division of UtiliCorp United, Inc. Opinion and order on accounting adjustment.

- M-2.
Reserved

- M-3.
Reserved

I. Pipeline Rates Matters

- RP-1.
Docket Nos. RP87-71-002 and RP88-182-002, Gas Research Institute. Order on remand concerning CRI's end-use research.
- RP-2.
Docket No. RP88-209-000, Natural Gas Pipeline Company of America. Order concerning settlement on allocation of demand costs, seasonal rates and mileage of transportation rates.

- RP-3.
Docket Nos. CP82-487-000 and TA87-4-49-002 (Phase V), Williston Basin Interstate Pipeline Company. Initial decision on take-or-pay buyout and buydown amounts in purchased gas costs.

- RP-4.
Docket Nos. CP82-487-018, CP82-487-001, TA84-2-49-000 and TA85-1-49-000 (Phase III), Williston Basin Interstate Pipeline Company. Concerning initial decision on gas purchase contracts being imprudent or abusive.

- RP-5.
Docket Nos. CP82-487-014, CP82-487-015, RP84-82-000 and RP84-83-000 (Phase II), Williston Basin Interstate Pipeline Company. Initial decision on costs allocation and storage and transportation rate design, rate base treatment of 1983 net injections into storage and rate of return.

II. Producer Matters

- CI-1.
Reserved

III. Pipeline Certificate Matters

- CP-1.
Docket Nos. CP88-6-001 and RP88-8-007, United Gas Pipe Line Company
- Docket Nos. CP78-545-000, CP79-129-000, CP80-164-000 and CP78-432-000, ANR

- Pipeline Company and ANR Storage Company
- Docket Nos. CP83-232-000 and CP84-196-000, Columbia Gulf Transmission Corporation
- Docket No. CP75-104-000, High Island Offshore Systems
- Docket No. CP78-433-000, Michigan Consolidated Gas Company
- Docket Nos. CP78-124-000 and CP86-395-000, Northern Border Pipeline Company
- Docket No. ST88-3071-000, Northern Natural Gas Company
- Docket No. CP79-78-000, Panhandle Eastern Pipe Line Company
- Docket Nos. CP78-262-000, CP78-418-000, CP78-428-000 and CP77-410-000, Sea Robin Pipeline Company
- Docket Nos. CP75-19-000, CP79-374-000 and CP80-509-000, Southern Natural Gas Company
- Docket No. CP74-89-000, Stingray Pipeline Company
- Docket Nos. CP78-545-000 and CP84-387-000, Tennessee Gas Pipeline Company
- Docket Nos. CP89-31-000 and CP81-26-000, Trunkline Gas Company
- Docket No. CP76-118-000, U-T Offshore System. Inquiry in response to requests for rehearing.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-14036 Filed 6-8-89; 3:52 pm]

BILLING CODE 6717-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice forwarded to Federal Register on June 7, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, June 14, 1989.

CHANGES IN THE MEETING: Deletion of the following open item(s) from the agenda:

Proposed 1990 Federal Reserve Bank budget objective.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13951 Filed 6-7-89; 5:00 pm]

BILLING CODE 6210-01-M

Monday
June 12, 1989

Part II

**Department of
Transportation**

Research and Special Programs
Administration

49 CFR Part 107 et al.
Requirements for Cargo Tanks; Final
Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 107, 171, 172, 173, 176, 177, 178, and 180

[Docket Nos. HM-183, 183A; Amdt. Nos. 107-20, 171-100, 172-115, 173-212, 176-27, 177-71, 178-89, 180-2]

RIN 2137-AA42

Requirements for Cargo Tanks

AGENCY: Research and Special Programs Administration (DOT).

ACTION: Final rule.

SUMMARY: This rule amends the Hazardous Materials Regulations (HMR) pertaining to the manufacture of cargo tanks and the operation, maintenance, repair and requalification of all specification cargo tanks (including specifications not authorized for new construction). This rule revises and clarifies certain commodity sections in Part 173, reorganizes the cargo tank specifications in Part 178, and provides for vacuum-loaded cargo tanks. It establishes a new Part 180 containing requirements governing the maintenance, use, inspection, repair, retest and requalification of cargo tanks used to transport hazardous materials. In response to comments, and as an alternative to another method included in the proposal, this rule establishes certain registration requirements in Part 107 for persons who are engaged in the manufacture, repair, or certification of any DOT specification cargo tank or any cargo tank manufactured under exemption to transport hazardous materials.

The intended effect of these regulatory changes is to improve safety in the transportation of bulk quantities of hazardous materials in cargo tank motor vehicles. This final rule includes improved standards for inspection and testing of cargo tanks, improved valves and closures to prevent leakage and the risk of fire in overturns and other accidents, and new qualification criteria for cargo tank manufacturers, repairers, and inspectors.

DATES: Effective December 12, 1989. See also specific applicability dates in the regulations adopted under this rulemaking. However, compliance with the regulations as amended in §§ 178.337, 178.338 and Part 180, with the exception of those concerning registration and design certification, is authorized from June 12, 1989.

For this final rule, the 30 day limitation for the receipt of a petition for

reconsideration (49 CFR 106.35) is hereby waived and 90 days provided in place thereof. Petitions for reconsideration must be received on or before September 12, 1989.

The incorporation by reference of certain publications listed in this amendment is approved by the Director of the Federal Register as of December 12, 1989.

FOR FURTHER INFORMATION CONTACT:

Charles Hochman, Jose Pena, Susan Murphy (202) 366-4545, or Hattie Mitchell (202) 366-4488, Office of Hazardous Materials Transportation, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590; or, Richard Singer (202) 366-2994, Office of Motor Carrier Safety, Federal Highway Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

I. Background

On September 17, 1985, RSPA published a notice of proposed rulemaking (NPRM) in the *Federal Register* under Docket HM-183,183A (50 FR 37786). The NPRM contained proposals to revise and clarify the HMR pertaining to the manufacture, maintenance, requalification and use of all specification cargo tanks. These proposals were based on research findings, petitions for rule change, requests for interpretation of the regulations, recommendations from other agencies, and RSPA's and the Federal Highway Administration's (FHWA) efforts to eliminate certain exemptions and to correct discrepancies and deficiencies appearing in the requirements for cargo tanks in the HMR. On December 5, 1985, RSPA published a document making certain corrections and changes to the NPRM (50 FR 49866), and on January 23, 1986, RSPA extended the time for filing written comments on the NPRM (51 FR 3085). Interested readers should refer to the aforementioned documents for additional background discussion.

During 1985 and 1986, RSPA and FHWA held a public briefing and three public hearings to allow interested persons to participate in this rulemaking proceeding. In addition, RSPA received over 100 written comments on the proposals contained in the NPRM. These comments were from trade associations, cargo tank manufacturers and repairers, shippers, carriers, disinterested inspectors, insurance organizations, State and local agencies, etc. All

comments, including late submission and hearing transcripts, were reviewed by RSPA and FHWA staff members. These comments contain many diverse views on how to improve the safe transportation of hazardous materials in cargo tanks. Some of the comments were vague or unsupported by data. RSPA and FHWA held a series of public working meetings with certain commenters to obtain clarification of their comments and additional supporting information on their alternate proposals. These meetings were held from March 1987 through February 1988.

Several well-defined aspects of the NPRM were the subject of most of the commentary. In some cases, a review of the costs and safety benefits involved has resulted in modification of the proposals. A listing of twenty-four of the most important proposals appeared in the preamble of the NPRM beginning at 50 FR 37766. These proposals are repeated below with an indication, in brackets, of whether the proposal is or is not adopted in this final rule. The NPRM proposed—

1. To require that each manufacturer of cargo tanks hold a current American Society of Mechanical Engineers (ASME) Certificate of Authorization. [adopted]
2. To require that each cargo tank designed with an internal design pressure of 15 pounds per square inch gauge (psig) or greater be "constructed and certified in conformance with the ASME Code", and each cargo tank with an internal design pressure less than 15 psig be "constructed in accordance with the ASME Code." [adopted with changes]
3. To require that all new specification cargo tanks be certified by an Authorized Inspector who is commissioned by the National Board of Boiler and Pressure Vessel Inspectors (National Board). [adopted with changes]
4. To require that ring stiffeners on a cargo tank be of a design that can be visually inspected. [adopted with changes]
5. To authorize the use of external self-closing stop valves in place of internal self-closing stop valves in certain circumstances. [adopted]
6. To require that the strength of connecting structures on a multi-tank cargo tank be equal to that required of the cargo tank motor vehicle. [adopted]
7. To specify minimum standards for the strength and size for a manhole on all new cargo tanks. [adopted with changes]
8. To require retrofit of any manhole closure not conforming to the prescribed

strength requirement, within five years from the date of this publication. [adopted with minor changes]

9. To specify the accident damage protection required for cargo tank motor vehicles [adopted with minor changes]

10. To specify in Parts 173 and 178 the relationship between the cargo tank and its lading to guide manufacturers and shippers. [adopted with changes]

11. To clarify that the prescribed minimum thickness for the tank shell and heads excludes materials added for cladding, lining or corrosion allowance. [adopted with changes]

12. To specify the parameters to be considered in determining the effective stresses on a cargo tank. [adopted with changes]

13. To clarify that a remote means of closure for all internal or external self-closing stop valves is required. [adopted with changes]

14. To require on all cargo tanks constructed after effective date of rule, all pressure relief devices be reclosing, except a frangible disc may be used in series with a reclosing pressure relief device. [adopted with changes]

15. To revise the MC 307 and MC 312 cargo tank specification to provide for the manufacture of vacuum-loaded cargo tanks. [adopted with changes]

16. To specify a minimum design pressure of 15 psig for Specification MC 312 cargo tanks. [adopted with changes]

17. To require that all specification cargo tanks be pressure retested. [adopted]

18. To require that all specification cargo tanks be visually inspected every year. [adopted with changes]

19. To require that the shell and head of an unlined cargo tank in a service corrosive to tank metal be thickness tested at least once every two years. [adopted]

20. To specify certain additional safety control measures for a cargo tank used to transport a lading having more than one hazard class. [adopted with changes]

21. To require that a cargo tank used to transport poisonous materials or certain hazardous materials having multiple hazards have a minimum design pressure of 25 psig. [adopted with changes]

22. To require that a cargo tank inspector or tester meet certain minimum knowledge and experience qualifications. [adopted with changes]

23. To require that major repairs on cargo tanks be performed by a facility that is a holder of an ASME U stamp, a National Board R stamp or be witnessed and certified by an Authorized Inspector. [adopted with changes]

24. To require that an owner of a cargo tank used in the transportation of hazardous materials keep certain records. [adopted]

Those proposed requirements which met with substantial objection by commenters are discussed in this preamble by subject. Following the subject-by-subject review is a review by section which briefly discusses each section of the rule and the significant changes that have been made since the NPRM. (As used in this preamble, "we" refers to "RSPA and FHWA".)

II. Specification Design And Construction Requirements—Part 178

Several commenters, including the Truck Trailer Manufacturers Association (TTMA) and the National Tank Truck Carriers (NTTC), stated that the proposed rule so fundamentally changes the design and construction of new cargo tanks that confusion will exist among inspectors, shippers, buyers, etc. unless designations other than MC 306, MC 307 and MC 312 are used. TTMA further stated that the MC specification numbers were changed in 1967 following minor changes in the specifications. We agree with these commenters and have revised the specification designations covering new cargo tank constructions. Instead of the "MC" prefix designation, these new specification designations are preceded with a "DOT" prefix for consistency with the prefix designations of other DOT packaging specifications. To eliminate confusion in the future to references for the now obsolete MC 306, MC 307 and MC 312 cargo tank specifications contained in §§ 178.340 through 178.343, we have revised the section numbering designations. These new individual specifications and section numbering designations are: DOT 406 (§ 178.346), DOT 407 (§ 178.347), and DOT 412 (§ 178.348). The general requirements applicable to these specification cargo tanks are contained in § 178.345.

In this preamble, we have used these specifications and section designations to distinguish between discussions of the existing cargo tanks and the new cargo tank construction requirements.

A. Application of the ASME Code to Low Pressure Cargo Tanks

Commenters objected to the proposed requirement that all new DOT specification cargo tanks be constructed in conformance with the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel Code (ASME Code), and that each cargo tank with an internal design pressure greater than 15 psig be "constructed and

certified in conformance with the ASME Code." They argued that the ASME Code does not apply to low-pressure (i.e. pressures below 15 psig) non-stationary vessels. Several commenters, including the TTMA and the NTTC, stated that DOT 406 cargo tanks, and DOT 407 cargo tanks with a working pressure less than 50 psig should be constructed by a manufacturer holding a current ASME Certificate of Authorization, but should not be "constructed in accordance with the ASME Code." Commenters also stated that requiring the design and construction of DOT 406 cargo tanks in accordance with the ASME Code would in practice eliminate oval tank designs and require the construction of tanks with a cylindrical shell and heads, with a knuckle radius larger than that currently used. This circular cross section design would create cargo tanks with a higher center of gravity that are less stable than the currently designed oval cross-section tanks. Commenters stated that compliance with the ASME Code for low pressure DOT 407 cargo tanks (design pressure less than 50 psig) would also eliminate the practice of manufacturing multi-cargo tank motor vehicles with inserted ("stuffed") heads and require a redesign of these cargo tanks to incorporate heads with a 6% knuckle radius. Commenters claimed that if these proposals were adopted, manufacturers would no longer be able to shape their own heads and would have to purchase them. TTMA maintained there is no adverse accident experience data to substantiate that the current knuckle radius and the "stuffed head" configuration have presented any safety problems. TTMA listed a number of sections in the ASME Code which they stated should not apply to the construction of DOT 406 cargo tanks, which included those sections on head formation and installation.

Although the ASME Code allows an exception for pressure vessels with an internal design pressure of less than 15 psig from the requirements of the ASME Code, we believe these vessels can be constructed in accordance with the ASME Code. Extending the application of the ASME Code to DOT 406 cargo tanks should enhance the overall quality of construction of DOT 406 cargo tanks. However, we recognize there are certain design configurations and construction practices used in constructing MC 306 and MC 307 cargo tanks for many years that have been proven to be reliable. Therefore, as adopted in this final rule, DOT 406 cargo tanks must be constructed in accordance with the ASME Code, with certain exceptions.

These exceptions, found in § 178.346-1, will allow the continued use of the "stuffed head" configuration and permit a knuckle radius of three times the material thickness and not less than one-half inch. Similar exceptions are provided for DOT 407 cargo tanks with a working pressure of 35 psig or less.

Currently only DOT Specification MC 307 cargo tanks with a working pressure greater than 50 psig are required to be designed in accordance with the ASME Code. The NPRM proposed that all DOT Specification MC 307 cargo tanks be constructed and certified in conformance with the ASME Code. In considering the design requirements for DOT 407 cargo tanks, we reviewed the data submitted showing the number and pressure rating of current MC 307 cargo tanks.

A review of the data showed that 35 psig is a natural breakpoint for cargo tank construction in the current fleet. Cargo tanks with a maximum allowable working pressure greater than 35 psig are generally not constructed with stuffed heads. Because of this natural breakpoint and the fact that the hazard to the public increases with pressure, we have required that all DOT 407 cargo tanks with a maximum allowable working pressure greater than 35 psig be constructed and certified in conformance with the ASME Code. Commenters did not object to the application of the ASME Code to higher pressure DOT 407 and most DOT 412 cargo tanks. This requirement has been included in the final rule.

B. Cargo Tank: Manufacturer Qualification, Registration, Quality Control, and Certification

The existing DOT certification system for cargo tanks, except for ASME Code tanks, allows a manufacturer to certify that a cargo tank conforms to all requirements of the applicable specification. The HMR contain no criteria for assessment of a manufacturer's knowledge and skills in exercising the certification process. As we stated in the NPRM, most cargo tank manufacturers exhibit great knowledge, skills, and integrity; however, a number of manufacturers have demonstrated very limited knowledge and skill about matters such as stress analyses, welding, metallurgy, recognized good design and quality control practices, and the HMR. We believe that a qualification system is necessary for all cargo tank manufacturers to assure quality control. Further, we believe that a qualification system is needed for those who inspect and certify cargo tanks to assure a high level of compliance with the design,

construction, and test requirements. To achieve this goal, the NPRM proposed:

- All cargo tank manufacturers hold a current ASME "U" Certificate of Authorization.
- An Authorized Inspector commissioned by the National Board must certify each DOT cargo tank in accordance with the ASME Code and the applicable specification.
- For repairs on cargo tanks involving welding on the tank wall, an Authorized Inspector certify the repair and the repair work must be performed by:
 - Manufacturers who hold an ASME "U" Certificate of Authorization;
 - Repairers who hold a National Board "R" Certificate of Authorization; or
 - Persons who do not hold an ASME or National Board Certificate, provided that the work is performed under the direct supervision of an Authorized Inspector and the cargo tank has a design pressure of less than 15 psig.

Commenters generally supported the requirement that all cargo tank manufacturers hold a current ASME Certificate of Authorization on the basis that it will assure a minimum level of manufacturing qualification, particularly for welding and quality control procedures. However, some commenters argued that the cost of obtaining an ASME Certificate of Authorization for use of the "U" stamp would be excessive. We should point out that existing § 178.340-2(a) prescribes that cargo tanks are to be "designed and constructed in accordance with the best known and available practices." The ASME Code is a nationally recognized industry standard for the design and construction of pressure vessels and ASME quality control procedures and qualified welders are among the best known and available. We believe that the cost of obtaining a "U" stamp will be minimal for those manufacturers currently using the "best known and available practices" as currently prescribed in the HMR. A number of cargo tank manufacturers currently hold an ASME Certificate of Authorization. We believe that requiring all new DOT specification cargo tanks be constructed by a manufacturer holding a current ASME Certificate of Authorization is necessary to enhance the qualifications of cargo tank manufacturers. Therefore, this requirement is adopted as proposed.

Commenters objected to the proposed use of Authorized Inspectors, to the exclusion of all other possible

inspectors, for the inspection and certification of cargo tanks. They argued that: (1) The manufacturer or the owner of a cargo tank is the person who is best qualified to certify that the cargo tank conforms to the applicable specification; (2) Authorized Inspectors are not knowledgeable in the DOT specification requirements and the experience of these persons is limited to stationary pressure vessels and not to cargo tank motor vehicles; and (3) requiring the use of an Authorized Inspector to certify each cargo tank would result in production delays due to inspection scheduling difficulties arising from the limited number of Authorized Inspectors currently commissioned by the National Board. In addition, commenters characterized the cost of employing an Authorized Inspector for cargo tank certification as excessive, adding as much as \$1,000 to the cost of each cargo tank.

As an alternative to requiring that all DOT specification cargo tanks be constructed in accordance with the ASME Code and inspected and certified by an Authorized Inspector, commenters recommended that all cargo tank manufacturers hold a current ASME "U" stamp, follow quality control procedures according to the ASME Code, and register with the DOT. Commenters suggested variations of the registration alternative ranging from a simple notification of activities to DOT approval of all cargo tank manufacturing facilities. Commenters presented similar arguments and alternative proposals with regard to cargo tank repairers. The NTTC, in its comments, recommended that manufacturers and repairers, as well as hazardous materials shippers and carriers, be required to register a notification of their activities with the Department. This registration would include an annual report of the organization's activities and operations and the name of the corporate officer responsible for compliance with the regulations.

In its comments to the docket, the TTMA simply stated that "MC specification cargo tank manufacturers should be registered with DOT." In the public working meeting held between the DOT and the National Petroleum Gas Association (NPGA; formerly the National L-P Gas Association) and Compressed Gas Association (CGA), the participants proposed that the DOT inspect and approve cargo tank manufacturers and repairers as a condition of their doing business in the area of DOT specification cargo tanks. In other public working meetings, representatives from the NTTC, TTMA,

American Petroleum Institute (API), NPGA, and CGA suggested that, in conjunction with the registration program, inspection and certification of cargo tank manufacturers be conducted by DOT inspectors or by "DOT approved" inspectors, who could be employees of the manufacturer. In summary, commenters have supported DOT's belief that qualification standards are necessary for persons who manufacture, assemble, repair, inspect, or certify cargo tanks and cargo tank motor vehicles.

With respect to the qualifications for persons who manufacture or repair cargo tanks, we believe a basic competency evaluation and approval is demonstrated by the person's having an ASME or National Board Certificate of Authorization. To obtain an authorization, the applicant's employees, facilities, and quality assurance plan must be audited and approved. These approval processes by the ASME and National Board are nationally and internationally recognized systems. Most commenters have agreed that this would provide an acceptable qualification standard. Because of the quality and broad acceptance of the ASME's and National Board's approval processes, we believe it is not necessary for DOT to further audit and approve persons who hold these certificates as proposed by several commenters. DOT approval of persons holding these certificates would be unnecessarily costly and burdensome. Furthermore, because cargo tank motor vehicle assemblers do not manufacture cargo tanks but only assemble cargo tanks to motor vehicles, we believe it is unnecessary to require these assemblers to obtain an ASME Certificate of Authorization.

With respect to the qualifications for persons who inspect or certify cargo tanks and cargo tank motor vehicles, we still believe that the current system of self-certification is inadequate since no qualification requirements are placed on persons who inspect and certify cargo tank design, construction, repair, and testing for conformance with the applicable specifications. However, because of the stringent qualification standards for persons who manufacture or repair cargo tanks, we agree with many commenters that these functions can be adequately performed by individuals other than "disinterested" Authorized Inspectors who have the necessary qualifications. We believe these qualifications can be developed through a combination of education and work experience, particularly experience in cargo tank design,

construction, or repair. To ease the economic and scheduling burden in requiring that the person performing the certification be an Authorized Inspector commissioned by the National Board, in this final rule we are allowing greater flexibility in the selection of inspectors, as recommended by commenters.

In place of the proposed requirement for independent review of each cargo tank by an Authorized Inspector, we have relaxed the provisions in the final rule to provide that the design be certified by a "design certifying engineer" and that construction, assembly, and repair of cargo tanks be certified by a "Registered Inspector." For certification of a cargo tank design, a design certifying engineer may be an Authorized Inspector who has the knowledge and ability to determine if a cargo tank design meets the applicable DOT specification, or a person other than an Authorized Inspector, such as a professional engineer (registered by the appropriate authority of a State of the United States or a Province of Canada) who has this knowledge and ability. The design certifying engineer must have at least one year of work experience in structural or mechanical design and an engineering degree. We believe these qualifications are necessary to ensure that the individual performing the functions of a design certifying engineer has knowledge and skill in areas such as stress analysis, welding, metallurgy, and recognized good design and quality control practices.

For certification of cargo tank construction, assembly or repairs, a Registered Inspector may be an Authorized Inspector who has the knowledge and ability to determine if a cargo tank conforms with the applicable DOT specification or a person other than an Authorized Inspector who has this ability. The Registered Inspector must have the following combination of work experience in cargo tank construction or repair, and education: One year of work experience and a bachelors degree in engineering, two years of work experience and an associate degree in engineering, or three years of work experience and a high school diploma. These qualifications are the same as those prescribed by the National Board for Authorized Inspectors. We believe these qualifications are necessary to ensure that the individual performing the functions of a Registered Inspector has knowledge and skill in areas such as welding, metallurgy, and recognized cargo tank design and quality control practices.

We agree with commenters that it is difficult at present for DOT to monitor compliance with and enforcement of the HMR, because it is difficult to identify and locate persons who manufacture, assemble, repair, inspect, or certify cargo tanks or cargo tank motor vehicles. The NPRM would have required that all DOT specification cargo tanks be constructed in conformance with the ASME Code, and inspected and certified by an Authorized Inspector who has been approved by the National Board. The repair of cargo tanks also would have been inspected and certified by an Authorized Inspector. This would have included an approval and registration process under both the ASME and the National Board but not with the DOT. We no longer believe this ASME and National Board approval process to be necessary for each cargo tank. We believe it is unnecessary for DOT to approve each cargo tank manufacturer or repairer, as suggested by some commenters, since as we have stated a basic competency evaluation and approval is demonstrated by having an ASME or National Board Certificate of Authorization. However, we believe that it is necessary for such persons to be identified to DOT. Therefore, in new Subpart F of Part 107, requirements for the registration by RSPA of cargo tank manufacturers, assemblers, and repairers have been adopted, in place of the more extensive approval and registration processes proposed in the notice and suggested by commenters.

Under the registration provisions in Subpart F to Part 107, as adopted herein, any person engaged in the manufacture, assembly, certification, inspection or repair of a DOT specification cargo tank or cargo tank motor vehicle, or a cargo tank manufactured under the terms of an exemption, must register with the Department. Information and documents required to be submitted as a part of the registration for manufacturers include:

- (1) A current ASME Certificate of Authorization.
- (2) A statement signed by the person who has oversight for ensuring compliance with the applicable requirements of the chapter. The person must certify knowledge of those requirements and that each employee who has responsibility for ensuring quality control during the manufacture of a cargo tank, or for ensuring compliance with other cargo tank specification, qualification or design requirements, will meet certain minimum qualification requirements.
- (3) A description of the specific function to be performed, e.g.

manufacture of cargo tanks, or the assembly of cargo tanks to a motor vehicle.

Information and documents required to be submitted by repairers are the same as those for manufacturers, except that a National Board Certificate of Authorization for use of the "R" stamp may be submitted instead of an ASME Certificate. Registration renewal will be every three years or upon reissuance of the ASME or National Board Certification, whichever occurs first.

III. Qualification, Maintenance—Part 180

This final rule establishes a new Part 180 containing all requirements applicable to persons who perform functions relating to maintenance and continuing qualification of packagings, such as prescribed inspections, testing, reconditioning and repair of cargo tanks. An outline of the subparts that will be contained in Part 180 and the present sections containing these requirements are as follows:

- Part 180—Continuing Qualification and Maintenance of Packagings.
- Subpart A—General.
- Subpart B—Non-bulk packagings (except cylinders); Qualification and maintenance (§ 173.28).
- Subpart C—Cylinders; Qualification and maintenance (§ 173.34).
- Subpart D—Portable Tanks; Qualification and maintenance (§§ 173.32, 173.32a, 173.32b, 173.32c).
- Subpart E—Cargo Tanks; Qualification and maintenance (§§ 173.33, 177.824).
- Subpart F—Tank Cars; Qualification and maintenance (§ 173.31).

Only the requirements contained in Subparts A and E are adopted in this final rule. Subpart A contains general requirements pertaining to the continuing qualification and use of packagings set forth in this Part. Subpart E contains requirements on the maintenance and retesting of DOT specification cargo tanks and cargo tanks used under an exemption, and the requirements for continuing qualification of a cargo tank as an authorized packaging for hazardous materials. Certain other provisions addressed in Subpart E are the continued use of existing cargo tanks made to an obsolete specification, and cargo tanks conforming to and used under a DOT exemption containing provisions that have been incorporated in the HMR.

A. Manhole Closures

Included in Subpart E are requirements pertaining to features on cargo tanks such as the leak-tightness of manhole closures. Proposed § 180.405(a) would have required that each cargo tank be equipped with a secure closure

on each manhole which is structurally capable of withstanding for at least 5 minutes, without leakage or permanent deformation, a static internal fluid pressure of at least 36 psig or the cargo tank test pressure, whichever is greater. Manhole assemblies on existing cargo tanks not meeting the proposed requirements would have been required to be retrofitted. Based on data furnished by a manufacturer, we estimated the cost to retrofit the affected cargo tanks to be between \$20 and \$250 per manhole when included as part of scheduled maintenance and testing.

Commenters expressed no objection to the proposal as it relates to manhole closures on MC 307 and MC 312 cargo tanks. Regarding MC 306 cargo tanks, commenters stated that requiring the manhole assembly to be structurally capable of withstanding 36 psig without permanent deformation is unrealistic and would not enhance safety. They stated that TTMA Recommended Practice (RP) No. 61–82, upon which the proposed structural capability requirement was based, allows some leakage, and deformation that does not affect lading retention capability. Commenters suggested a revision of the proposal to allow the use of manhole assemblies conforming to TTMA RP No. 61–82. We believe that to allow leakage of product from a manhole assembly creates an unsafe condition. Accordingly, as suggested by the commenters, we have revised proposed § 180.405(g) to adopt provisions consistent with a revised version of TTMA's standard for MC 306 type cargo tanks. These provisions specify no leakage, but allow deformation not affecting lading retention capability, and specify a quality control testing frequency of at least one percent (or one manhole closure, whichever is greater) of all manhole closures of each type produced, every three months. We believe that allowing deformation of the tank without leakage will not affect safety.

Commenters stated that we underestimated the cost of retrofitting affected cargo tanks and that the replacement cost for manholes requiring new collar installation could be as much as \$1,300. Commenters also stated there are many cargo tanks equipped with manhole closures conforming to the required structural capability, but which are not certified or marked as conforming to TTMA RP No. 61–82. We agree with commenters that many unmarked manhole closures conform to this standard. Accordingly, we have revised proposed § 180.407. In those cases where the manufacturer of the manhole closure has identified and

certified a particular model or series of closures as conforming to TTMA RP No. 61–82, the owner of the cargo tank may certify and mark the manhole closure in conformance with this standard. Commenters pointed out that, in some cases, the manufacturer of the manhole closure may not be known, or the manufacturer may not be willing to certify that the closure is structurally capable of conforming to the industry standard. To address this problem TTMA proposed a static test procedure for evaluating the integrity of existing manhole closures which are not marked and certified to RP No. 61–82 by the manufacturer. The test procedure contained in TTMA Technical Bulletin (TB) No. 107 specifies a 15 psig hydrostatic test, which the manhole closure must withstand without any evidence of leakage or permanent deformation. TTMA has submitted data to support its position that a manhole closure which has been tested in this manner is structurally capable of withstanding the 36 psig test without leakage. We believe the test procedures contained in TTMA TB No. 107 will be adequate in verifying the leak-tightness of unmarked closures. Accordingly, we are authorizing unmarked manhole closures that have been successfully tested in conformance with TTMA Technical Bulletin No. 107 to be marked and certified as conforming to the applicable requirements as prescribed in the technical bulletin.

B. Inspection and Testing

The table in proposed § 180.407(c) containing the testing and inspection schedule for DOT specification cargo tanks is revised for clarity, as suggested by NTTC. The specific scheduling intervals are adopted essentially unchanged.

Several commenters addressed the qualification requirements for persons performing certain prescribed tests. Commenters objected to the proposal in § 180.407 requiring that the periodic pressure retest be performed by, or witnessed and certified by, an Authorized Inspector. Commenters argued that the cost for the use of an Authorized Inspector to witness or perform the pressure retest is not justified. Several commenters stated that performing a pressure retest requires less knowledge and skill than performing a thorough visual inspection. Several commenters also cited incidents to support their claims that their company employees are as knowledgeable and qualified, if not more so, than some Authorized Inspectors that they have employed. As

an alternative to the use of an Authorized Inspector, several commenters urged DOT to permit the periodic pressure retest and inspection to be performed by a "certified" inspector, e.g., a motor carrier employee with appropriate training and experience. The NTTC stated that such training should be specified by DOT and monitored by DOT and state enforcement agencies. Based on full consideration of the merits of these comments the periodic pressure retest may be performed by a qualified person who is registered with the Department under the procedures prescribed in § 180.409. We believe this change will allow more flexibility in the selection of qualified individuals.

Commenters also argued that, in proposed § 180.407(i), the use of persons qualified under the American Society for Nondestructive Testing (ASNT) Level II for ultrasonic testing for the required thickness tests is unnecessary. Commenters pointed out that a Level II Technician is qualified to perform ultrasonic examination for weld defects, a far more complicated procedure than a thickness measurement. We believe that this comment has merit and are requiring, instead of the Level II qualifications, that the tester be trained in the use of the particular thickness testing device, according to the instructions provided by the manufacturer of the device.

C. Bottom Damage Protection—Wet Lines

Bottom loading and unloading outlets on cargo tanks, although very useful, present the inherent risk that if damaged the entire contents of the tank may be released. To counteract this risk the tank outlet, outlet valve and piping are specifically designed to prevent damage to the outlet and outlet valves that would result in the loss of lading in an accident. The tank outlet and outlet valve are designed to be nearly flush with the surface of the tank. In addition, piping attached to the outlet valve is provided with a sacrificial device that is designed to break under accident loads and thereby prevent the piping from causing damage to the outlet valve or tank wall. Because such piping under the current regulation is not specifically a part of the product containment vessel and is designed to fail in an accident, RSPA's position is that piping between the tank outlet valve and any loading valves is not an appropriate packaging for the transportation of hazardous materials.

As a part of the implementation of the Clean Air Act (CAA), EPA required that cargo tanks used in areas operating

under EPA's State Implementation Plan for the CAA must be equipped with a vapor recovery system. The petroleum industry chose to use bottom loading in conjunction with tank top vapor recovery as their method of compliance with the CAA. All motor fuels must be metered for tax purposes. Unfortunately, in implementing this system the industry did not provide for a way to drain product from the cargo tank piping back into the loading facility and maintain proper accounting for tax purposes. As a result, cargo tanks are currently operated with gasoline in external piping that is designed to fail in an accident. The operation of cargo tanks with lading retained in external piping is generally limited to petroleum distillate fuels metered for road fuel tax purposes and transported in bottom loaded MC 306 type cargo tanks. The scope of these operations encompasses the vast majority of all gasoline transported.

RSPA strongly believes the practice of transporting hazardous materials in exposed unprotected piping designed to fail, if impacted in an accident, is an unnecessary risk. Currently this practice is generally limited to gasoline transportation; expansion of this practice to other segments of the cargo tank transportation industry particularly for material with inherent hazards greater than gasoline is unacceptable. Accordingly, RSPA proposed in the NPRM a prohibition on the transportation of hazardous materials in external piping unless the piping is protected by very substantial guards.

Commenters from the petroleum industry, represented by the American Petroleum Institute (API) and several large petroleum companies, argued that the need for bottom damage protection structures to protect piping containing lading is not justified. They argued that, based on statistical data showing the infrequency of accidents involving these lines, the relatively small amount of product exposed, and the integrity and operation of current self-closing valves, the loss of lading from piping is not a significant problem.

RSPA agrees that accidents resulting in damage to unprotected external piping carrying lading are infrequent, but the consequences of such accidents can be substantial, particularly if the material released has inherent hazards greater than that of gasoline. For this reason, we have adopted the proposal to clarify that, with the exception of gasoline, the transportation of hazardous materials in external unprotected piping is prohibited. For hazardous materials other than gasoline, transportation in external unprotected

piping is less common and thus the prohibition of such transportation will have a much lower cost impact. However, if the transportation of gasoline in external unprotected piping were prohibited, the impact on the petroleum industry could be substantial.

Although we have very serious concerns with the practice of transporting gasoline in external unprotected piping, we do not have sufficient data regarding incidents that can be attributed to the dislodging of piping to justify prohibiting the practice for gasoline at this time. Nor do we have adequate information concerning possible alternative procedures or equipment for accomplishing vapor recovery and road fuel tax metering, and the costs associated with these alternatives. Many of the potential cost effective ways to eliminate the risk associated with the transportation of gasoline in external unprotected line may entail alterations to the cargo tank piping, fixed loading and unloading equipment, or both. For these reasons we are excepting gasoline from the prohibition on the transportation of hazardous materials in external unprotected piping. However, we encourage the petroleum industry to consider the risk they accept in employing this practice, and work to eliminate it. We believe the petroleum industry is best positioned to consider and evaluate all the possible ways to eliminate this risk in the most cost effective manner.

The final rule contains a new provision, at § 173.33(e), which permits the retention of fuels in piping outboard of a shear section provided certain conditions are met. These conditions limit the inside diameter and aggregate volume of all unprotected piping on the cargo tank transporting hazardous materials. The intent of these provisions is to limit the quantity of lading transported and thereby limit the level of risk to current levels. These provisions in § 173.33(e) are limited to fuels metered for road fuel tax purposes. The retention of any other hazardous material in external unprotected piping is prohibited.

IV. Use of Cargo Tanks

A. Gasoline—Design Pressure of Cargo Tanks

Several commenters addressed the proposal in § 173.33(c) on the application of the design pressure formula to gasoline. (See discussion of § 173.33 later in this preamble). In its comments, the American Petroleum Institute (API) pointed out that gasoline

is a blend of organic chemicals which have seasonal variations to enhance the efficiency of motor vehicles. For the winter, gasoline is blended with a higher volatility (higher vapor pressure) to ensure engine start up; whereas for the summer, a lower volatility (lower vapor pressure) is blended to prevent vapor lock. As a result of this seasonal blending, gasoline typically marketed in the winter could not, under the proposal, be transported in the existing fleet of gasoline cargo tanks, because the proposed design pressure formula and reference temperature would require the use of a cargo tank having a design pressure exceeding that of the existing MC 306 cargo tank. API further states that in order to provide uniform automotive performance year-round, the majority of gasoline is blended and marketed in accordance with a consensus standard, ASTM D439, which would prevent winter gasoline from being shipped during periods of elevated temperatures approaching 115 °F. API asserts that use of this standard would achieve the same condition sought under proposed § 173.33(c). The concluding recommendation from API was that ASTM D439 should be adopted as the safety standard for the transportation of gasoline. This would be achieved by exempting gasoline generally conforming to ASTM D439 from the design pressure formula.

At a subsequent public meeting, API provided additional information to support its recommendation, including a listing of States with requirements similar to ASTM D439, results of a gasoline marketing survey, and calculations supporting their proposal. The gasoline marketing survey provided by API documented divergence from ASTM D439, and in some cases the maximum allowed Reid Vapor Pressure (RVP) specified in ASTM D439 for classes of gasoline were exceeded. Further, only a few States have regulations requiring compliance with the ASTM D439 standard. Two States even allow marketing of winter gasoline with RVP's greater than 18 psia, which is not authorized for transport in MC 306 cargo tanks nor is it in compliance with ASTM D439. Based on comments and information we have received on ASTM D439, it is clear that the standard: (a) is a marketing standard designed towards consumer's satisfaction with automotive performance; (b) is not a safety standard; and (c) is not widely recognized by States nor strictly followed by shippers of gasoline.

However, the general concept that winter gasoline should not be marketed in the summer forms the basis for our

modifying the proposed design pressure requirement (herein an MAWP requirement) for gasoline transported in cargo tanks equipped with a 1 psig normal vent. In this final rule, in order for a hazardous material to be transported in a cargo tank equipped with a 1 psig normal vent, the sum of the tank static head and 1 psig (the maximum vapor pressure exerted by the lading) must be less than or equal to the MAWP of the cargo tank. In addition, the vapor pressure of the lading at 115 °F must be no greater than 1 psig. An exception from the vapor pressure limit is granted for gasoline under certain circumstances. A maximum ambient and lading temperature table appears in § 173.119(a)(17)(iii) in the final rule. The table prescribes the maximum ambient and lading temperature for the transportation of each class of gasoline and generally recognizes ASTM D439, as was recommended by API. This table is derived from the ASTM D439 gasoline class definitions, API technical documentation for the conversion of Reid Vapor Pressure to normal vapor pressure, and a revision of the maximum allowable working pressure equation appearing in proposed § 173.33(c). The derivation process involved calculation of the maximum ambient temperature for each ASTM D439 class of gasoline that would not exceed a 1 psig pressure measured at the top of the tank. Pressures in excess of 1 psig will be relieved by the 1 psig normal vent, which vents predominantly air. (See discussion on § 178.346). While ensuring adequate pressure capability of the cargo tank for each class of gasoline, use of the table will not prevent the transportation of any gasoline blended in accordance with ASTM D439.

B. Smaller Capacity Cargo Tanks in Flammable Liquid Service

The NPRM contained a proposal to remove, at § 177.824(a), an exception for cargo tanks with a capacity of 3,000 gallons or less used exclusively in flammable liquid service from inspection and periodic retest requirements. Most of these are MC 306 type cargo tanks. Comments from the petroleum marketing industry (i.e., distributors of gasoline, fuels and other petroleum products), took strong exception to the proposal. Many commenters supported the comments filed by the Petroleum Marketers Association of America (PMAA). PMAA stated, in part:

Contrary to DOT's assertion, these smaller vehicles are not "operated under similar conditions, and operated over the same roads . . . as typical 4000 to 8000 gallon cargo tanks motor vehicles." Rather, these

smaller vehicles are generally used in less populated, and therefore, less exposed, rural areas to deliver product intrastate to small accounts with an average tank capacity of between 500-1000 gallons.

While PMAA agrees that "periodic maintenance, inspection and retesting of any vehicle transporting hazardous material must be an integral part of any responsible operator's safety management program," DOT offers no evidence to show that owners of these vehicles do not already engage in periodic maintenance or that these vehicles present a hazard to the public. These vehicles are already subject to state regulations and local ordinance designed to meet community safety concerns, some of which may be more stringent than federal requirements.

Elimination of the small vehicle exemption will subject small business marketers to dual, and perhaps triple, regulation under federal, state and local requirements. Compliance with several layers of regulations will make it impractical. If not impossible for these small businesses to continue to supply the farm and bulk end user accounts solely dependent upon the largely rural network of marketers for their petroleum requirements.

RSPA acknowledges that information is not readily available on the type of periodic maintenance being performed by owners of these smaller cargo tanks. Several commenters asserted that they already perform periodic maintenance and inspection of their smaller cargo tanks and, therefore, the proposal to subject these vehicles to periodic inspections is unnecessary. One commenter asserted that their vehicles are inspected annually by State fire marshals and, therefore, the exception should be retained. However, we believe that few State and local agencies have enacted regulations governing the maintenance and testing of smaller cargo tanks. We find that many States have adopted or incorporated the HMR as a part of their laws, including the exception granted for smaller cargo tanks operating exclusively in flammable liquid service.

We believe that a cargo tank containing 3000 gallons of a flammable liquid presents a significant risk to the public. Furthermore, we believe that citizens in rural as well as urban areas must be provided protection from that risk. Many state public safety representatives have supported this proposal. The proposed requirement that the retest be performed or witnessed by an Authorized Inspector, as discussed earlier in this preamble, is not adopted in this final rule. Similarly, the proposal to require all repairs to pressure parts on cargo tanks be performed or witnessed by an Authorized Inspector is not adopted in this final rule. These changes will alleviate commenters'

concerns regarding potential cost increases in those areas. We believe that if the commenters' assertions that periodic maintenance, inspections, and repairs are presently being performed on these tanks are true, there should be minimal incremental costs to small businesses. The final rule contains requirements for the periodic maintenance, inspection, and retest of all cargo tanks.

V. Impact of this Rulemaking on Existing Exemptions

A number of cargo tanks are being operated under exemption. It is our intention that, to the maximum extent appropriate, existing cargo tanks authorized for use under an outstanding exemption be covered under this rule, thereby eliminating the need for the exemption. It is our position, however, that in order to be re-marked as a specification cargo tank, an existing cargo tank must, as a minimum, meet the basic provisions in this rule.

Accordingly, each owner or manufacturer of a cargo tank which is used in the transportation of liquid hazardous materials should examine the tank and the tank drawings to determine if the cargo tank meets the requirements of the applicable MC 306, MC 307 or MC 312 cargo tank specification in effect at the time of manufacture and the conditions prescribed in the applicable DOT exemption. The owner of a cargo tank meeting the applicable requirements should remove the DOT exemption number stenciled on the cargo tank and mark the identification plate (or a plate placed adjacent to the specification plate) as specified by § 180.407(f)(6) according to the applicable specification. A copy of the exemption in effect at the time the cargo tank is remarked must be retained on file at the owner's principal place of business during the period the cargo tank is in service, and for at least one year thereafter. DOT exemptions that may be affected by this rulemaking are as follows:

Hazardous waste tanks

3095	8640
5701	8706
6325	8742
7476	8751
7948	8761
8213	8822
8269	8844
8337	8904
8348	9143
8408	9463
8426	9486
8478	9512
8518	9515
8549	9536
8551	9543
8552	9568
8620	

VI. Delayed Effective Dates

Delayed effective dates are found in the following sections to provide for a smooth transition from the existing requirements to the new requirements:

1. Section 180.405—Authorizes the construction of DOT Specification MC 306, MC 307 and MC 312 cargo tanks conforming to the applicable specification requirements in effect on June 12, 1989 until December 12, 1990.

2. Section 180.413—Authorizes the repair of DOT Specification MC 300, MC 301, MC 302, MC 303, MC 305, and MC 306 cargo tanks, and non ASME MC 304, MC 307, MC 310, MC 311 and MC 312 cargo tanks by persons who do not presently hold an ASME or National Board Certificate of Authorization until December 12, 1990.

3. Section 180.405(g)—Allows owners of existing cargo tanks with manhole assemblies not meeting the requirements of § 178.345-5 until June 13, 1994 to retrofit the manhole assemblies.

4. Sections 178.345-10 and 180.405(h)—Require that after June 12, 1991 any reclosing pressure relief valve installed on a cargo tank must be capable of reseating to a leak-tight condition.

5. Section 178.345-10—Requires that each pressure relief system on a DOT Specification 406, 407 or 412 cargo tank be designed to withstand a dynamic pressure surge of 50 psig applied for at least 300 milliseconds without leakage of liquid regardless of vehicle orientation after June 13, 1994.

Review by Section

Readers are reminded that this review by section discusses only significant comments on the proposals in the NPRM and changes made to the NPRM in this Final Rule. For those provisions that are unchanged, readers are referred to the preamble discussion in the original NPRM (50 FR 37766) and subsequent correction document (50 FR 49866).

Sections 107.501-107.504. These new sections contain registration requirements for persons engaged in the manufacture, assembly, certification, inspection or repair of DOT specification cargo tanks or cargo tank motor vehicles, and cargo tanks manufactured under exemption. Section 107.502 contains general registration requirements applicable to manufacturers, assemblers, repair facilities, and other persons who perform the specified functions. Section 107.503 contains information on completing a registration statement. This section also grants an exception from requirements for an ASME Certificate of Authorization for

assemblers of cargo tanks who perform no welding on the cargo tank wall. Section 107.504 contains provisions on required documentation, required updates of registration information, and procedures for renewal. See earlier discussion in this preamble under the heading "Cargo tank; Manufacturer Qualification, Registration, Quality Control, and Certification."

Section 171.3. Proposed § 171.3(f)(1) would have authorized the continued use of nonspecification cargo tank motor vehicles for transportation of hazardous wastes in intrastate commerce under certain conditions. Upon further consideration, we realized that these tanks, which are not under exemption, are used only to transport waste materials that do not require the use of a DOT specification cargo tank. Therefore, the proposed provision is unnecessary and is not adopted in this rule.

Section 171.7. Several commenters requested that matter incorporated by reference not be identified by a specific edition number or date. The commenters stated that the absence of dated material would allow persons to use the most recently published edition of incorporated standards without delay and would eliminate the need for RSPA to publish periodic updates of incorporated matter in the Federal Register. The Director of the Federal Register (OFR) has the responsibility for approval of materials incorporated by reference into the Federal Register. Thus, OFR regulations require an agency that seeks approval for a change to a publication that is approved for incorporation by reference must publish notice of the change in the Federal Register and amend the Code of Federal Regulations. The language incorporating a publication by reference must state the title, date, edition, author, publisher, and identification number of the publication. See approval procedures for incorporation by reference in 1 CFR Part 51.

The proposed changes to reflect the new address of the American Welding Society (AWS), to revise the reference numbering of the AWS Code, and to incorporate the latest editions of the American Boiler and Pressure Vessel Code and CGA Technical Bulletin TB-2 were handled in other separate rulemaking actions.

The change to incorporate the Rubber Manufacturers Association (RMA) Technical Bulletin 13 is not adopted. The provisions contained in RMA Technical Bulletin 13 that were to be referenced are brief and, thus, are adopted in the rule. Also the change to incorporate the

American Society for Nondestructive Testing Standard for use by persons who perform ultrasonic thickness testing on cargo tanks is not adopted in this rule. See preamble discussion to § 180.409.

Section 171.8. The definitions for "Authorized Inspector," "Authorized Inspection Agency," and "Cargo tank motor vehicle," are adopted as proposed. The proposed definition for "cargo tank" as a tank with a capacity of over 110 gallons is revised to provide consistency with the definition of a "bulk packaging." A bulk packaging is defined in § 171.8 to mean a packaging with a capacity of greater than 118.9 gallons if used for a liquid. Since a cargo tank is considered a bulk packaging, this change eliminates discrepancies between the two definitions for tanks with a capacity between 110 gallons and 118.9 gallons. In addition, in the cargo tank definition, references are added to refer to the definitions of "tank" appearing in the MC 331 and MC 338 cargo tank specifications, in §§ 178.337-1 and 178.338-1, respectively, and new definitions are added for "Registered Inspector" and "Design certifying engineer."

Section 172.203. Paragraph (h) is amended to correct references to provisions contained in § 173.315.

Section 173.33. Proposed paragraph (a)(2) is revised, as suggested by NTTC and the Chemical Manufacturers Association (CMA), to make both the shipper and the carrier responsible for ensuring the compatibility of materials that are offered or loaded for transportation in a cargo tank motor vehicle. The CMA stated, "For customer pickup shipments, where a cargo tank in a multi-compartmental motor vehicle already contains a material when arriving at a shipper's facility, it should be the responsibility of the receiver (motor carrier) to ensure that mixture of the materials will not create an unsafe condition. A shipper may not be familiar with the characteristics of the chemical which is already contained in one or more of the cargo tanks in a multi-compartmental vehicle." RSPA agrees with the commenters that, in a case where a motor carrier receives hazardous materials from different shippers, the responsibility for ensuring an unsafe condition is not generated, should be a shared responsibility and not the exclusive responsibility of the shipper or the carrier. Accordingly, paragraph (a)(2) has been revised to provide that "two or more materials may not be loaded or accepted for transportation. . . ."

Proposed paragraphs (b) (1) and (2) are revised to clarify that a cargo tank

may not be loaded with any hazardous materials that may produce an unsafe condition.

A commenter objected to proposed paragraph (b)(4) which would require that the rate used to load or unload a cargo tank be less than or equal to the rate marked on the cargo tank specification plate. The commenter stated that a proposed requirement would have no effect if the manhole is open or if the closed system is protected by the pressure relief devices. We do not agree with the commenter. The use of a loading rate exceeding the maximum loading rate may lead to possible over pressurization and tank rupture in addition to leakage of lading through relief valves. In addition, we have revised proposed paragraph (b)(4) to specify the maximum pressure that may be used during loading and unloading when the loading/unloading rate is not marked on the cargo tank specification plate.

Proposed paragraph (c) would have required that prior to filling and offering a hazardous material for transportation, a shipper must confirm that the design pressure of the cargo tank is greater than or equal to 120 percent of the sum of the vapor pressure of the lading at 115 °F, the tank static head exerted by the lading, and any pressure exerted by the gas padding, including air, in the ullage space or dome. As is discussed later in this preamble (see discussion of § 178.345-1), the term "maximum allowable working pressure" (MAWP) has replaced the term "design pressure" in this final rule. The term MAWP will be used for the remainder of this discussion for consistency with the final rule. Commenters argued that the proposed formula is too restrictive, and would require a higher MAWP than is necessary for the commodity to be shipped, particularly for gasoline shipped in MC 306-type cargo tanks. These commenters suggested that either the safety factor of 1.2 or the vapor pressure reference temperature be reduced in order to present a more realistic approach. Additionally, commenters pointed out that the ASME Code provides a 4 to 1 factor of safety in the structural design of cargo tanks, eliminating the need for an additional safety factor in the MAWP equation.

We agree that a cargo tank constructed to the ASME Code or to the HMR is structurally designed with a substantial factor of safety. We are also aware that the use of a vapor pressure reference temperature of 115 °F is the extreme of what is experienced in normal transportation. However, we are concerned about the possible loss of hazardous materials lading from a cargo

tank involved in an accident involving a rollover. Under proposed § 178.340-10, safety relief valves would be set at the MAWP, and reclose at 90% of the set pressure. We believe that a safety factor must be included to ensure that the static head and vapor pressure of the lading, in addition to any gas padding in the tank, do not cause the relief valves to open in a rollover situation, and release product continuously without reseating.

The intent of the NPRM was to link the properties of the lading to the structural design of the tank and to the relief device settings. Our primary concern in relating a potential lading to the cargo tank MAWP is in the settings of the pressure relief valves, as discussed above, since an adequate factor of safety is included in the structural design of the tank itself. As a result of the written comments received and the public meetings held, we have modified the maximum allowable working pressure requirements in the final rule. This final rule requires an MAWP greater than or equal to 100 percent of the sum of the vapor pressure of the lading at 115 °F, plus the tank static head of the lading, plus the pressure exerted by any gas padding. The 20 percent safety cushion has been removed from the calculation of the MAWP where it results in increased wall thickness; but it has been retained in the pressure relief valve settings. The final rule requires that the primary pressure relief valve setting be no less than 120 percent of the MAWP of the tank, determined as described above.

It was not our intention in proposed paragraph (c) to change the existing pressure relief and venting requirements of cargo tanks used to transport compressed gases, including cryogenic liquids. This error has been corrected in the final rule.

Proposed paragraph (c)(4) would have required the use of a cargo tank motor vehicle having a design pressure of 25 psig or higher for any material that meets the definition of more than one hazard class. It was our intent in the NPRM to require a higher integrity tank for dual hazard materials, and to specifically exclude the MC 306 cargo tank from use in transporting flammable liquids that also meet the definition of a corrosive. However, the proposal would also have excluded MC 312 cargo tanks in the pressure range of 15-25 psig. Some commenters questioned the necessity of the required minimum pressure for low vapor pressure, high flash point (such as UN Packaging Group III) materials, while other commenters expressed support for the

proposed change. This proposal has not been adopted in this final rule. However, it will be given further consideration under a separate rulemaking action (Docket HM 181).

The NPRM contained proposals to standardize certain commodity requirements and eliminate several discrepancies in the requirements for transporting certain kinds of commodities in DOT specification cargo tanks. For example, it was proposed to require that all cargo tanks used to transport poisonous materials have a design pressure of 25 psig and to prohibit the use of non-reclosing pressure relief devices (except when in series with a reclosing relief valve) on cargo tanks transporting flammable liquids. The NPRM was not intended to be an extensive review and possible reclassification of those hazardous materials authorized to be shipped in cargo tanks.

On May 5, 1987, RSPA published a notice of proposed rulemaking under Docket HM-181, entitled "Performance-Oriented Packaging Standards; Miscellaneous Proposals". Among other things, the proposal called for the adoption of an internationally recognized classification system for hazardous materials and the placement of hazardous materials into groups of bulk packagings which provide equivalent levels of packaging integrity. The present packaging sections for the bulk transportation of hazardous materials were adopted on a piecemeal basis over the years. In some sections, materials with similar transportation hazards are not authorized in similar bulk packagings due to oversight or because the industry did not petition the DOT to authorize them. Specifically, the proposal would allow a hazardous material that can safely be carried in one type of cargo tank to be carried in all cargo tanks of similar or greater integrity. Additionally, the proposal would require bulk packagings of much greater integrity than presently required for materials that are toxic by inhalation. This final rule does not address any of the issues raised in Docket HM-181.

For the above stated reason, RSPA has not accepted a commenter's recommendation that a new provision be added to provide that whenever an MC 300, MC 301, MC 302, MC 305 or MC 306 cargo tank is authorized, the use of an MC 307, MC 312 or MC 331 cargo tank having an equal or higher marked design pressure be authorized. The use of a higher integrity tank in place of a currently authorized specification tank is being considered under a separate

rulemaking (Docket HM-181) and, therefore, has not been made a part of this final rule. The public and regulated industry should be aware that the final rule promulgated under Docket HM-181 might have significant impact on commodities authorized to be transported in DOT specification cargo tanks in the future.

Section 173.119. For discussion of the substantive changes affecting this section, refer to the preamble discussions under the heading "Use of Cargo Tank" and the discussion of changes to § 178.346.

Sections 173.135 and 173.136. A commenter suggested that transportation safety could be enhanced by authorizing only MC 330 and MC 331 cargo tanks for use in transporting the named chlorosilanes under this section. This same commenter requested that RSPA amend the provisions in this section to provide for the transportation of dimethyl chlorosilane in MC 330 and MC 331 cargo tanks. The commenter presented no data to support these more restrictive provisions nor is RSPA aware of any problems with the use of the cargo tanks authorized. RSPA will give this matter further consideration should information be received to support the change.

Section 173.154. A provision is added in proposed paragraph (a)(4) to specify the requirements for pressure relief devices on MC 310, MC 311, MC 312 and DOT 412 cargo tanks, which was inadvertently omitted from this section.

Section 173.240. NTTC recommended that RSPA amend § 173.240 by revising the definition of a "corrosive material" and the test requirements. NTTC stated, in part:

We believe that the regulatory testing of "corrosive materials" (at Section 173.240) must be changed. It bears little relevance to transportation practices; has been outdated by contemporary testing and analytical technology; and has [led] to premature deterioration of even newly-manufactured cargo tanks.

The current mandated tests allow the manufacturer of a corrosive to test under one set of circumstances and then offer the product for transportation under another. For example, the manufacturer may conduct the corrosive test with a product at a temperature of 70 degrees F. at a specified concentration while loading it aboard a cargo tank at 95 degrees F. and at a significantly different concentration. Metallurgists inform us that chemicals may be substantially more aggressive to tank parent and weld metal at a higher temperature. Such would accelerate internal corrosion, pitting, and (particularly) intergranular cracking.

Although NTTC's recommendation has merit, the suggested corrosive material definition and test criteria are beyond

the scope of this rule making and, therefore, has not been made a part of this rule. However, this matter may be considered under a rulemaking action in the future.

Section 173.247. A commenter requested a revision to authorize silicon chloride for transportation under § 173.280 instead of § 173.247. The commenter stated that this change would simplify the HMR and enhance safety. In the comments made to § 178.280, the commenter suggested that RSPA change the section heading from "Trichlorosilanes" to "Nonflammable Chlorosilanes (including silicon chloride)". The commenter stated that this change would provide for these chemicals to be more rationally grouped for appropriate packaging in MC 330 and MC 331 cargo tanks. The commenter provided no reason for this more restrictive provision. Without data to support these changes, no action has been taken under this final rule.

Section 173.252. A commenter disagreed with the clarification contained in proposed paragraph (a)(4) stating that the prescribed 3/8 inch minimum thickness for the tank shell and head excludes any lining, cladding or corrosion allowance. The commenter stated that the existing regulations required that each tank must have a head and shell thickness of at least 3/8 inch and a nickel cladding on the inside surface comprising at least 20 percent of the total thickness. RSPA also received a letter requesting clarification of the provision. In the reply, RSPA agreed that (1) where cladding is required by § 173.252(a)(4), the thickness of the cladding is based on a percentage of the minimum calculated shell thickness rather than the as-built thickness if the shell is thicker than required, and (2) the word "shell" as mentioned in § 173.252(a)(4) means the total thickness of steel plus nickel. In any case the steel portion of the composite shell must conform to the material, minimum thickness and structural integrity requirements of the applicable cargo tank specification. The composite steel/nickel plate must conform to the requirements of ASTM specification A-265-69. The final rule has been revised consistent with this clarification.

Section 173.264. In the NPRM, RSPA proposed to include a provision found in Note 1 to paragraph (a)(14) that authorized inhibited hydrofluoric acid solution of 60 percent to 65 percent concentrations in unlined cargo tanks. A commenter stated that 60 percent to 65 percent hydrofluoric acid is no longer being produced and, therefore, continuing to grant the provision is

unnecessary. The commenter also pointed out that the Manufacturing Chemists Association had filed a petition (P-440) seeking removal of the provision. Although not a part of the proposal, RSPA believes the request has merit and it is adopted in paragraph (a)(14) of this final rule.

The commenter also requested that we prohibit the use of bottom outlets on cargo tanks authorized under this section and § 173.265(a)(4). The commenter presented no data to support this change. RSPA is not aware of any safety problems with the use of bottom outlets on cargo tanks authorized under this section. In the absence of data to support the change, no action is being taken at this time.

Section 173.265. The proposed change to paragraph (a)(4) is corrected to apply to paragraph (b)(4) in the final rule.

Section 173.266. Proposed paragraph (r)(2) would have removed a provision that designs for venting and pressure relief devices be examined by the Bureau of Explosives and approved by the Director, OHMT. A commenter requested that the provision be retained to keep the continuous vent arrangement. RSPA did not intend to remove this provision and this proposal has not been adopted.

Section 173.273. A commenter stated that the wording "and consisting of a spring-loaded pressure relief valve" in proposed paragraph (a)(5)(i) implies that a frangible disc in series is prohibited. The commenter stated that the use of a frangible disc should be allowed to protect the spring-loaded valve and to provide additional containment. As an alternative, the commenter requested that the wording be removed, as proposed § 178.340-10 (§ 178.345-10 as adopted herein) requires the use of a spring-loaded pressure relief valve and allows the use of a frangible disc in series. We agree with the commenter and have revised paragraph (a)(5) accordingly. We have also revised proposed paragraph (b)(2)(iii) to allow the setting of a spring-loaded valve in series with a frangible disc at 125 percent of design pressure instead of 150 percent of design pressure.

Section 173.315. Paragraph (i) is revised to permit safety relief valves to be certified by the valve manufacturer in place of an Authorized Inspector.

Existing § 173.33(k), which requires that MC 330 cargo tanks used to transport certain gases be equipped with liquid discharge controls conforming to § 178.337-11(c) at each liquid discharge opening, would have been removed and placed in new paragraph (n) of this section. Proposed paragraph (n) would have required that each vapor or liquid

discharge opening on MC 330 and MC 331 cargo tanks be equipped as prescribed in proposed § 178.337-11. Several commenters expressed concern that, as proposed, these tanks would have to be retrofitted with internal valves on the vapor openings. It was not our intention to make any substantive change in the specification requirements for these tanks. Accordingly, the reference to the vapor discharge opening is removed.

Section 173.318. Consistent with other changes to the final rule and the reformatting of this section under a separate rulemaking, paragraphs (b)(2)(i) and (ii) are revised to require that the flow capacity and rating of pressure relief devices be verified and certified by the manufacturer of the device.

Section 173.348. A commenter requested a revision of proposed paragraph (a)(12) to authorize the continued use of a MC 306 cargo tank with a capacity of 3,000 gallons or less when operated by private carrier to transport formulated agricultural chemicals meeting the definition of Poison B. The transportation of Poison B materials was discussed in the preamble of the NPRM, and requires a cargo tank with a MAWP of 25 psig. We believe an MC 306 cargo tank is not adequate for the transportation of Poison B n.o.s. materials. Therefore, the final rule is adopted as proposed.

Sections 177.801 and 177.802. Section 177.801 is revised for clarity. After further consideration, we believe the provisions concerning the inspection of carrier facilities and records in proposed § 177.802(a), (b) and (c) are redundant. The provisions contained in paragraph (a) are adopted in this rule.

We proposed that the reporting and recordkeeping requirements presently found in § 177.824 be relocated to § 180.417. However, the provision in § 177.824(f) requiring motor carriers to file a report with FHWA listing all MC 330 or MC 331 cargo tanks in service, or being placed in or removed from service, was not included or discussed in the proposed rule. In the NPRM, the present requirement that motor carriers operating an MC 330 or MC 331 cargo tank in anhydrous ammonia service must complete a written report after testing and inspection was expanded to include cargo tanks motor vehicles operating in liquefied petroleum gas or any other service that may cause stress corrosion cracking of the tank. Therefore, we believe the reporting requirements appearing in present § 177.824(f) are no longer necessary, and they are not included in this final rule.

Section 178.320 General requirements applicable to all DOT specification cargo tanks. This new section contains general provisions pertaining to all DOT specification cargo tanks, including those used for compressed gases. Included are definitions of "manufacturer" and "design type."

As is discussed elsewhere in this document, the requirement that all cargo tanks be constructed and certified in conformance with the ASME Code is not adopted in this final rule. Independent inspection and certification of cargo tank design and construction by an Authorized Inspector is not required. The absence of independent review of each cargo tank by an Authorized Inspector has made necessary a new provision in § 178.320 which requires each design type (as defined in this section) be certified by a "Design Certifying Engineer" (as defined in § 171.8). Design certification by a qualified individual will ensure the integrity of a cargo tank design without requiring independent design review of each individual cargo tank.

Sections 178.337-3 and 178.338-3. Commenters emphasized that the NPRM proposed parameters for the determination of structural integrity would require cargo tanks with walls up to 25% thicker than presently required. The intent was not to increase the minimum wall thickness requirements. The parameters in this final rule are as follows:

For MC 331 cargo tanks. The stress values used are the same as that suggested in our research findings and recommendations. Further, for the dynamic pressure condition resulting from a deceleration of 2 g's in combination with the MAWP, the design stress value used for wall thickness calculations will be the lesser of the tank material's yield strength or 75 percent of the ultimate tensile strength of the material.

For MC 338 cargo tanks. The stress values used will be the same as that proposed for the MC 331, except that the "g" loads used will be those found in § 178.338-13.

In § 178.337-3(d), a requirement which was inadvertently omitted would be restored as paragraph (3).

Section 178.345-1 (proposed § 178.340-1) General Requirements. Several commenters objected to the use of the term "design pressure" throughout the general sections as well as in sections containing the individual cargo tank specifications. These commenters, including TTMA and the Fruehauf Corporation, suggested that the term

"maximum allowable working pressure (MAWP)" should be used. Commenters, at the public meetings held between the DOT and commenters, argued that an MC 306 cargo tank (DOT 406 herein), which is generally an oval cross-section tank not constructed in accordance with the ASME Code, is not "designed" through a series of calculations. Rather, the integrity of an MC 306 cargo tank is verified by hydrostatic test, and the use of the term "design pressure" for the MC 306 cargo tank is inaccurate. Further, commenters stated that use of the term "MAWP" maintains consistency with the ASME Code. It should be noted that the ASME Code uses both the terms "design pressure" and "MAWP." However, it is the MAWP which is used in the general structural design and pressure rating of the tank.

We understand cargo tank manufacturers' reluctance to use the term "design pressure," which is the term used in the existing cargo tank specification. Accordingly, the term "MAWP" is used in the final rule in place of the term "design pressure." The MAWP is the pressure used in the design of the cargo tank in the ASME Code and the individual cargo tank specifications. However, a shipper still must determine that the MAWP of a particular cargo tank is appropriate for the shipment of a commodity, as required by § 173.33.

Section 178.345-2 (proposed § 178.340-2) Material and material thickness. Several commenters requested, in addition to materials conforming to Section II, Parts A and B of the ASME Code, that materials conforming to ASTM standards be authorized for the construction of DOT specification cargo tanks. Specifically, TTMA listed two ASTM steel specifications, A676 and A715, and several aluminum alloy specifications for consideration. The aluminum alloy specifications that were listed are authorized in the HMR, and are suitable for use. We believe the two ASTM steel specifications are also suitable for use. Therefore, we have authorized those materials as well.

Commenters objected to a proposal to use a formula in place of the tables appearing in the current regulations to determine the minimum required thickness of a cargo tank shell or head. Commenters argued that it is easier to verify compliance with the specification requirements through the use of a table. TTMA, in its comments, requested that the thickness tables be retained in the individual specifications, with certain changes such as specifying the thickness by the use of decimals in place of fractions of inches or gauge

designations. TTMA's revised thickness tables were derived based on the knowledge and experience of the cargo tank manufacturers in its membership, rather than on specific calculations based on anticipated stress levels.

We agree that the minimum thickness tables are easier to use than a formula. The use of minimum thickness tables can also prevent unusual situations such as a cargo tank designed with a very thin shell, but with enough ring stiffeners to meet the maximum allowable stress level requirements. However, we believe that the minimum required thickness of a cargo tank shell or head must take into account the maximum allowable stress levels. We found that the thicknesses in the tables presented by TTMA were generally adequate only to accommodate the stresses due to internal pressure. Consequently, the minimum thickness tables are being retained in the individual specifications; however, the values appearing in these tables must be replaced by the results of the stress calculations of § 178.345-3 if those calculations require a greater thickness. The tables, which are revisions of the tables developed by TTMA, have been greatly simplified, and the thickness tables for the DOT 412 cargo tank are expanded to include product densities of 16 to 26 pounds per gallon. The minimum thicknesses for cargo tank shells and heads listed in the tables are equal to or somewhat greater than those listed in the current regulations.

Section 178.345-3 (proposed § 178.340-3) Structural integrity. The principal comments received on the structural integrity requirements came from the TTMA and its members. In addition to written comments, several public working meetings were held between representatives of the DOT and TTMA. TTMA agreed that provisions for structural integrity based on g-loadings were needed for low pressure cargo tanks. However, they stated that the proposed g-loadings were too great. Commenters argued that, although the preamble to the NPRM specifically stated that no increases in the shell thickness of cargo tanks were intended by the rulemaking, the proposed g-loadings would nearly double the required shell and head thicknesses. The g-loadings recommended by TTMA were: 1.7-g vertical, based on vertical road shocks and ANSI recommendations; and 0.75-g longitudinal, based on the maximum expected deceleration. TTMA also stated that a realistic lateral force would be 0.4-g, which research has proven is the force necessary to cause overturn.

The proposed g-loadings are the same as those specified for the MC 330 and MC 331 cargo tanks, since all cargo tanks experience the same over-the-road loading conditions. Commenters stated that the g-loadings for those high pressure cargo tanks were set artificially high in order to add more thickness to the tanks, and that the loadings recommended by the commenters have worked successfully for many years. Further, commenters pointed out that the ASME design requirements already include a 4 to 1 factor of safety. We agree that the g-loadings recommended by TTMA, combined with the factor of safety required by the ASME Code, will ensure that cargo tanks are designed with adequate structural integrity. These loadings of 1.7-g vertical, 0.75-g longitudinal, and 0.4-g lateral are adopted in this final rule.

With regards to the evaluation of specific stresses, TTMA opposed the proposed requirement to include, in the design of heads and shell, the load resulting from the design pressure in combination with the dynamic pressure resulting from a longitudinal deceleration of 2 "g." TTMA stated that such a requirement would eliminate oval cross section tanks, and that the tank would not experience this type of loading in normal transportation. This requirement was proposed in order to account for accident conditions in which such loadings could occur. However, we believe that since this load combination would only occur during an accident situation, and would not ordinarily be experienced in transportation, a lower factor of safety, and a higher allowable stress could be allowed in the design for the loading. Therefore, in the final rule, the MAWP in combination with the dynamic pressure resulting from a longitudinal deceleration of 2 "g" may not exceed the lesser of the yield strength or 75 percent of the ultimate tensile strength of the material of construction.

TTMA further stated that the shear stresses described in proposed § 178.340-3(b) (6), (7), and (8) need not be calculated or taken into account, since the effective stress calculated by the formula in proposed § 178.340-3(c) (§ 178.345-3(c) herein) is governed by the tensile and compressive stresses described in paragraphs (1), (2), (3), and (5). TTMA stated that the calculated shear stresses are much lower than the tensile and compressive stresses. Additionally, TTMA and other commenters pointed out that a calculation of the tensile or compressive stress resulting from accelerative and decelerative forces applied at the

horizontal pivot of the fifth wheel, as described in proposed § 178.345-3(b)(4), is unnecessary, as this result will not exceed that calculated under proposed paragraph (b)(3). We agree that in most cases, the stress levels will be largely governed by the tensile and compressive stresses. However, since shear stresses in addition to accelerative and decelerative forces at the fifth wheel, are also experienced by the cargo tank motor vehicle in transportation, we believe that they must be evaluated as part of the design.

Section 178.345-5 (proposed § 178.340-5) Manhole Assemblies. Commenters objected to the proposed requirement that manhole closures be capable of withstanding, without leakage or permanent deformation, static internal fluid pressure of 36 psig or test pressure, whichever is greater. These commenters recommended that we should allow de minimis leakage and deformation that does not affect the structural integrity of the closures. Commenters stated that if deformation of the tank were allowed, then manhole assemblies conforming to the industry consensus standard TTMA RP No. 61-82 could be used. We believe that a leak-tight condition is necessary. To allow a certain amount of leakage would open the question of how much leakage is acceptable, and how that amount of leakage can be accurately measured. However, we believe that to allow deformation that does not affect the structural integrity of the cargo tank should not adversely affect safety. TTMA has developed a revised RP. No. 61-89, which specifies no leakage, but allows some deformation. The revised standard also contains a requirement for testing every 3 months, one percent (or one manhole closure, whichever is greater) of all manhole closures of each type produced to verify compliance with this requirement. Provisions consistent with those found in revised TTMA RP No. 61-89 are being adopted for use in § 178.345-5 in this final rule.

Section 178.345-7 (proposed § 178.340-7) Circumferential reinforcements. The proposal would have required that all ring stiffeners conform to the ASME Code. Several commenters pointed out that the ASME Code requirements for ring stiffeners apply only to tanks under external pressure. We agree with the commenters that the ASME Code does not address ring stiffeners for tanks under internal pressure. Therefore, the existing requirements for ring stiffeners are retained under this final rule. This rule also allows ring stiffeners to be placed farther apart than 60 inches for vacuum-loaded tanks under certain conditions.

The NPRM contained a proposal to prohibit the use of hat shaped or open channel rings precluding visual inspection of the tank shell. Most commenters agreed that hat shaped or open channel rings should be prohibited on cargo tanks constructed of carbon steel which are used to transport corrosive materials, but did not believe that such rings should be prohibited on cargo tanks constructed of other materials or transporting other than corrosive materials. They argued that the proposal would require the use of "T" rings which are more susceptible to damage in a rollover accident where skidding is involved. They further stated that "T" rings create higher concentrated stress on the tank shell, which could lead to tearing of the shell and catastrophic loss of lading. We believe that this comment has merit; however, we do not agree that the prohibition against hat shaped or open channel rings should be limited to cargo tanks carrying corrosive material. We are aware of several accidents in which a cargo tank failed due to corrosion of the tank shell underneath a reinforcement ring, where such corrosion was caused externally by environmental elements rather than by the hazardous materials lading. Therefore, this final rule prohibits, on any cargo tank constructed of carbon steel, hat shaped or open channel rings which preclude visual inspection of the tank shell.

Section 178.345-8 (proposed § 178.340-8) Accident Damage Protection. The National Transportation Safety Board (NTSB), in its comments to the docket, supported the requirement in proposed 178.340-8(a) for accident damage protection for projections from the cargo tank shell. However, the NTSB stated that all projections from the cargo tank should be subject to the accident damage protection requirements, not just those extending more than 2 inches from the tank shell. NTSB stated, in part:

While we believe it is the intent of the NPRM to protect all projections from rollover damage, even if they protrude less than two inches, the language used in § 178.340-8 (a) and (c) is not entirely clear in that respect. The Safety Board believes that the proposed rule should indicate unequivocally that all protrusions should have rollover protection.

The NTSB cited an accident which occurred near Springville, Alabama, and involved the spillage of 3,000 gallons of a Poison B liquid from an overturned cargo tank. The spill occurred because two 3-inch diameter washout pipes, projecting about 3 inches above the ring stiffeners, were torn away from the tank

shell. These pipes were not protected by accident damage protection devices.

In contrast, TTMA commented that 2 inches from the tank was not adequate for most washouts and sumps. They stated that currently most sumps extend 4 inches from the tank and experience has shown little accident damage on such devices. TTMA requested that an exception from the accident damage protection requirements be granted for those projections which extend less than ½ their diameter and less than 4 inches from the tank shell.

It was our intention in the NPRM to provide an exception from the accident damage protection requirements for domes, sumps, and washout cover plates which have a relatively large diameter compared to their height and, therefore, are not likely to be torn from the cargo tank shell in a rollover accident on the roadway. Accordingly, we proposed an exception from the accident damage protection requirements for projections from the cargo tank which are of a material of a toughness equivalent to that of the tank shell and which extend not more than 2 inches from the tank shell. It was not our intent to except smaller diameter pipes, or projections whose diameter is smaller than the projection from the tank shell, from the accident damage protection requirements.

Upon consideration of both comments, we have clarified this section in the final rule. Proposed § 178.340-8(a)(1) (§ 178.345-8(a)(1) herein) has been revised to clarify that it applies specifically to domes, sumps, and washout cover plates, and that in order for these components to be excepted from the accident damage protection requirements, they must be of a strength, toughness, and thickness equal to the cargo tank shell thickness. In consideration of NTSB's comment, we believe that damage to projections from the tank is most likely to occur on the upper two thirds of the tank. Experience has shown that damage to large-diameter low-profile projections is very rare. We have clarified our proposal by adding a requirement that for the top ⅔ of the tank a projection may extend no more than 2 inches or ¼ its diameter from the tank without protection. Thus, a 2 inch high projection must be no less than 8 inches in diameter. For the bottom ⅓ of the tank, experience has shown TTMA's proposal to be adequate. Therefore, we have adopted TTMA's recommendation in the final rule for the lower ⅓ of the tank. However, proposed § 178.340-8(a)(2) (adopted as § 178.345-8(a)(2) herein) is revised to clarify that all piping, and other devices not identified

in § 178.345-8(a)(1), that may retain lading in any tank orientation must be protected from accident damage.

Commenters objected to the use of the term "fail safe" to describe a device designed to fail sacrificially in order to prevent loss of lading or failure of the cargo tank shell. According to one commenter, the implication of the use of the term "creates a situation wherein failure of the device to perform as expected, no matter what the situation, constitutes a design failure and exposes the designer, constructor, and tank owner to legal action." Commenters recommended that the term "shear section" be used, since that is the type of "fail safe" device which is used. TTMA proposed that the wall thickness of the shear section be at least 30 percent less than that of the adjacent piping or valve wall as opposed to the current 20 percent. We recognize the difficulty which may arise through the use of the term "fail safe." We proposed usage of the term "fail safe device" in the NPRM in order to provide some flexibility for cargo tank manufacturers and owners in meeting the safety requirements. We believe that the regulations should allow the development and use of other devices designed to fail sacrificially in order to protect the integrity of the cargo tank. Therefore, § 178.345-8(a)(4), as adopted herein, requires "a sacrificial device such as a shear section." We have adopted TTMA's proposal on the reduction of wall thickness in our definition of "Sacrificial device." The term "sacrificial device" is defined in § 178.345-1 as "a device designed to break at no more than 70 percent of the load that would be required to cause failure of the protected lading retention device, part, or tank wall." The term "shear section" is also defined, as "a sacrificial device fabricated so that the wall thickness of the adjacent piping is abruptly reduced by at least 30 percent." The failure of the sacrificial device must leave the protected lading retention device or part and its attachment to the tank wall intact and capable of retaining lading.

Recently RSPA received a letter requesting clarification on whether a groove which is cast, rather than machined, is permissible under the requirement in existing § 178.340-8(d)(1)(i). The existing regulation requires that a shear section "be machined in such a manner as to abruptly reduce the wall thickness of the adjacent piping (or valve) material by at least 20 percent." RSPA stated in its reply that although an "as-cast shear groove" may produce the same level of

safety as the "machined" shear section, § 178.340-8(d)(1)(i) does not provide for such an alternative. This final rule prescribes a performance requirement for a "sacrificial device" rather than requiring a specific type of device, such as a shear section. Therefore, an "as-cast" shear groove would satisfy the sacrificial device requirements if it can be proven through test or other supporting information that it meets the performance requirement. That is, the shear groove must break at no more than 70 percent of the load that would be required to cause the failure of the protected lading retention device, part, or the tank wall.

Commenters objected to the bottom damage protection requirements contained in proposed § 178.340-8(b), particularly the design specifications which require any bottom damage protection device to be able to withstand "an impact equivalent to an energy of 275,000 foot pounds." This energy was based on the impact of a 4,000 pound automobile at a speed of 50 miles per hour or the impact of an 80,000 pound truck backing into a stationary structure at 10 miles per hour. Commenters stated that it is not definitive in engineering technology to define something as an impact equivalent to an energy. As one commenter, Fruehauf, stated, "the strength of the guard needs to be defined as a force rather than an energy." Fruehauf further pointed out that this energy could be created by a light object travelling at a high velocity or a heavy object travelling at a low velocity. TTMA and several individual manufacturers recommended that the design force be a 45,000 pounds force, with the guard extending at least 6 inches from any component that may contain lading. TTMA stated that this recommended force is based on the results of a rear underride study sponsored by the National Highway Traffic Safety Administration (NHTSA). In that study, it was determined that 45,000 pounds is the force created by an automobile travelling at 35 miles per hour impacting a heavy tractor-trailer combination.

Our analysis of past studies sponsored by NHTSA and FHWA has shown that a 4000 pound automobile travelling at 50 miles per hour experiences a force well in excess of 45,000 pounds upon impacting an 80,000 pound tractor-trailer combination. As stated in the NPRM, according to the accident data from studies of underride accidents, a significant percentage of underride accidents occur at or near highway speed limits. The 45,000 pound

force obtained by NHTSA in its study of rear-underride accidents was recommended as the impact force above which the occupants of an automobile, travelling at 35 miles per hour, would not survive the impact of striking a tractor-trailer combination. A 1980 study sponsored by the FHWA entitled, "Performance Upgrading of Commercial Vehicle Rear Underride Guards," contains an equation for determining the maximum impact force experienced in a collision between an automobile and a truck. Assuming an automobile weight of 4000 pounds and width of 5 feet, a ground clearance of 24 inches, and an impact speed of 50 miles per hour, a maximum impact force of approximately 153,000 pounds is attained. That study recommends that a maximum impact force of 124,000 pounds be used in the design of underride guards. The purpose of the FHWA and NHTSA studies differ from our intent in this final rule, in that FHWA and NHTSA were designing a guard to minimize injury to passengers, including injury due to the force of impact, in occurrences where the automobile underrides a tractor-trailer combination. Our intention is to design a guard that will prevent loss of hazardous material lading from the cargo tank when lading retention components are struck in a collision. The maximum forces experienced in an automobile-tractor-trailer collision are the same regardless of the purpose of the guard. Therefore, we believe the guard must be designed to withstand a force of at least 155,000 pounds (based on the ultimate strength of the material) from the front, side, or rear, uniformly distributed over the surface of the device.

The NPRM proposed that the impact energy be applied over an area not greater than 6 square feet. Commenters objected to this design feature, declaring that it is too open for interpretation. This final rule establishes a design force of 155,000 pounds which must be applied over the surface of the device, but the allowable guard area and width over which the design force may be applied are limited.

It must be pointed out that the bottom damage protection device described above is only required if the optional external self-closing stop valve is used. An internal self-closing stop valve equipped with the proper sacrificial device need not be protected by an accident damage protection device. Further, in many cases, the vehicle frame, rear wheels, suspension system and rear end tank protection provide all or a significant portion of the necessary protection for external valves.

Comments addressing the proposed rear-end protection requirements were handled under a separate rulemaking action addressing rear bumpers on cargo tank trucks (Docket HM-183B, 54 FR 18820; May 2, 1989).

Section 178.345-9 (proposed 178.340-9) Pumps, piping, hoses, and connections. A commenter stated that the provisions in proposed § 178.340-9(a) apply only to loading pumps, as the cargo tank is not on the suction side of an unloading pump and need not be protected from the pump's outlet pressure. TTMA also stated that this paragraph should apply only to those pumps that may pressurize the cargo tank. The intent of this paragraph is to ensure that the cargo tank is protected from excessive rise in pressure due to the action of a pump. We do not believe this provision should be restricted to any one type of pump; however, we do believe that the paragraph can be restricted to those pumps which may pressurize the cargo tank. Therefore, the words "that may pressurize the cargo tank" are added to clarify that these pumps must be provided with an automatic means of closure.

Section 178.345-10 (proposed § 178.340-10) Pressure relief. Several commenters objected to the use of the term "spring-loaded," preferring the term "reclosing" to describe the required valves. We are accepting the term "reclosing"; however, we are prohibiting the use of gravity actuated reclosing valves since they may not reclose in the event of a rollover.

Most comments received on the requirements for pressure relief systems addressed the proposal requiring that a dual function vent be capable of withstanding a dynamic pressure surge of 50 psig applied for at least 300 milliseconds without leakage of liquid lading regardless of vehicle orientation, and be capable of functioning in the event of sustained pressure rise in excess of the prescribed set pressure. Most commenters, including TTMA and NTTC, stated that the proposed device does not exist, and that development and testing of such a vent would require time and extensive funding. Additionally, as NTTC stated, the device necessary to test this vent would require a high degree of sophistication, and funding. Since publication of the NPRM, we have been made aware that at least one manufacturer has developed a vent that purports to satisfy the "dual function" requirements. This manufacturer has publicly stated that the cost of such a vent would be about twice that of the currently used spring-loaded pressure relief device. We

believe that the development, testing, and use of the proposed dual function vent is desirable, and that such a device can be effectively and economically produced. However, we realize that a reasonable period must be provided for development, testing, and ultimately, installation of these devices on cargo tank motor vehicles. Therefore, the mandatory use of the dual function pressure relief device is delayed until June 13, 1994. Use of the "dual function" device is permissible until that time.

We believe that until use of the dual function vent is mandatory, provisions are needed to limit the amount of product that is released from a pressure relief device in the event of a dynamic pressure surge, such as during a rollover, and to ensure that the device reseats and does not leak within a reasonable period. As a result of the various public meetings held between DOT and TTMA, TTMA has adapted an Australian standard for testing the behavior of pressure relief devices in rollover situations. This standard requires that each spring-loaded pressure relief valve be subjected to a series of three drop tests, to simulate a rollover situation. The amount of liquid ejected during the test is measured each time, and the amount lost must be less than a specified amount, for all three tests, for the pressure relief device to meet the requirements of the standard. After June 12, 1991, each pressure relief valve must be capable of reseating after a pressure surge and not release a volume greater than one gallon. This allowable release volume was derived from a series of tests conducted by TTMA on existing pressure relief valves mounted in MC 306 dome covers. During these tests, the pressure relief valves remained open for an average of 53 milliseconds before reseating, with an average of 0.8 gallon of water ejected. Specific initial pressure conditions and calibration requirements are added to insure the magnitude and duration of the pressure generated in actual roll-overs is duplicated by the drop test.

Several commenters claimed that to install a valve on a tank which would withstand a 50 psig pressure surge for up to 300 milliseconds would create a greater hazard to safety than a valve which releases a small amount of product in a pressure surge. These commenters stated that the cargo tank could potentially rupture if the pressure of the surge is held inside the tank. Commenters presented no data to support their claim that the cargo tank will rupture if subjected to a 50 psig pressure surge. In the absence of data to support that claim, the requirements for

a dual function vent are adopted in the final rule.

The requirement contained in proposed § 178.340-11(f) that all pressure relief devices be certified in compliance with the design and testing requirements by a responsible official of the manufacturer and Authorized Inspector has been removed. These pressure relief devices must be certified by the device manufacturer (See preceding discussion in this preamble regarding the use of the Authorized Inspector). Certification in accordance with the ASME Code is required for relief devices built in accordance with the ASME Code.

Several commenters objected to the proposal to prohibit the use of non-reclosing pressure relief devices, specifically for MC 312 cargo tanks (DOT 412 cargo tanks herein). Commenters stated that non-reclosing devices, such as fusible and frangible (rupture) disks, provide a greater venting capacity and are less vulnerable to damage in a rollover accident than reclosing relief devices. Further, commenters argued that the MC 312 cargo tank is used primarily for corrosive materials. For corrosive materials, a large proportion of the required total venting capacity is for a fire situation and, in certain cases a single, lower capacity reclosing pressure relief device is more than adequate to relieve any pressure that will accumulate in the tank due to product expansion. Commenters also stated that to add several smaller capacity reclosing devices to replace a larger capacity non-reclosing device will unnecessarily add potential sources of leakage to the cargo tank.

As stated in the preamble to the NPRM, in a cargo tank accident, particularly an overturn followed by a fire, the functioning of a frangible disc or a fusible element would result in the release of a substantial quantity of lading, while a reclosing valve would minimize the quantity of lading released. Further, we believe that frangible discs are much more likely to fail as a result of impact and liquid surge than reclosing pressure relief devices. However, we recognize that low vapor pressure corrosive materials with no other hazards are not as susceptible to fire as flammable materials, and do not require the same total venting capacity. Therefore, instead of allowing frangible discs as a method of reducing the number of vents required, this final rule provides for a lower total venting capacity for cargo tanks transporting low vapor pressure corrosive materials with no other hazards. For these cargo

tanks, the total venting capacity must be determined by the equation appearing in the IM portable tank specification at § 178.270.11(d)(3). This equation relates the properties of the material to the required venting capacity. Cargo tanks with a total venting capacity determined in this manner must be in dedicated service for the corrosive material for which the required venting was calculated.

Several commenters argued that the proposed provisions on pressure relief devices were different from the pressure relief requirements of the ASME Code. It has always been our position that since cargo tanks are not stationary vessels, different pressure relief requirements are warranted.

Commenters also objected to the proposed elimination of the 1 psig "normal vent" from the DOT 406 cargo tank. Those comments are addressed in the discussion in § 178.346-1, on the design/operating pressure of the DOT 406, and in § 178.346-10 on pressure relief devices.

Section 178.345-11 (proposed § 178.340-11) Tank Outlets. Several commenters stated that a definition of the term "leak tight" should be established, since a drip-tight seal is extremely difficult to maintain, particularly for chemical tanks. Commenters requested that a limited amount of leakage be permitted for closures equipped with an additional leak tight cap or a closure outboard of the primary means of closure. TTMA and several manufacturers requested that leak tight be defined as no liquid leakage in excess of 30 cubic centimeters in 5 minutes with the tank pressurized to the maximum allowable working pressure. This amounts to in excess of one-third of a quart per hour. It is our position that any leakage from a closure presents an unsafe condition, even where such closure is provided with a secondary closure. A leak from the inboard closure would permit the accumulation of hazardous material lading between the inboard and the outboard closures, which would be spilled from the piping upon removal of the external closure. Such an occurrence could potentially injure transport workers or create a fire situation. Therefore, the term "leak tight" in this final rule means no leakage.

During the last several years, RSPA has received numerous inquiries concerning the required location of the self-closing stop valve required by the cargo tank specifications. The NPRM contained a proposal to allow the use of "external" valves in place of internal valves, provided the external valve is adequately protected against damage

which could result in loss of lading from the cargo tank shell. This provision is revised in the final rule to identify those situations (valve locations) where accident damage protection devices are required, and those situations where the use of a shear section would provide adequate protection against the loss of lading from the cargo tank.

The NTSB expressed its opposition to the proposed revision to permit the use of external valves in lieu of internal valves. NTSB stated: "The protection afforded by current requirements will be negated because an external valve will be more subject to damage from impacts that can render this essential safety device useless during emergencies." As was stated in the preamble to the NPRM, we believe that vacuum-loaded cargo tanks operating under DOT exemption, which have external self-closing stop valves protected by bottom damage protection, have demonstrated a high level of integrity. We have no experience data to indicate that this type of valve arrangement with adequate protection presents an unsafe condition. Therefore, we are permitting the use of adequately protected external valves. However, we have specified that the valve must be securely closed during transportation, and remain intact and capable of retaining product if the self-stored energy source is sheared off in an accident. Further, any piping extending beyond the accident damage protection device must be equipped with a sacrificial device which will fail under load in order to protect the external valve, piping and cargo tank wall.

Several commenters from the hazardous waste industry objected to the clarification that stop valves must be self-closing. Commenters stated that for cargo tanks transporting hazardous waste which may contain solids, semi-solids, or foreign objects which may interfere with the operation of the valve, a manually operated valve is preferable. A manually operated valve allows the operator to reopen the valve and remove the foreign object. A self-closing valve, commenters contended, would be damaged in a case where an obstruction blocks reseating of the valve. We recognize that solids or foreign objects may be present in waste materials and can potentially create an obstruction to effective seating of the discharge valve. However, many hazardous wastes which are transported in vacuum loaded cargo tanks do not contain solids or foreign objects. Also, the rule does not limit the use of these cargo tanks to hazardous wastes. We believe a safety feature must be available which will ensure that the discharge valve closes in an emergency situation such as a fire,

where the operator may not be able to reach the valve. Therefore, we have revised the proposal to allow the stop valve on a loading/unloading outlet to be manually operated in normal loading and unloading operations. In addition, the cargo tank outlet must be equipped with a self-closing feature that will close automatically in an emergency situation, such as a fire.

The requirements for remote operators and thermally activated closures have also been revised for clarity. Additionally, a time limit of 30 seconds maximum has been placed on the time permitted from the actuation of a self-closing valve system to full closure. This time limit was established based upon discussions which took place at the public working meetings.

Section 178.345-12 (proposed § 178.340-12) Gauging devices. The proposal would have required that each cargo tank, except a tank intended to be filled by weight, be equipped with a gauging device which indicates the maximum permitted liquid level. Fruehauf commented that, in addition to allowing tanks to be filled by weight, the filling of tanks by a meter should be included. It was not our intention in the NPRM to limit the authorized method of loading of these cargo tanks. Rather, it was our intention to allow any method that would measure the actual amount of product contained in the cargo tank at any one time, including any heel that remains in the tank when it is reloaded.

TTMA stated that cargo tanks filled by volume, or intended to be loaded through an open manhole, should also be exempted from the requirement for gauging devices. These methods of loading can perhaps accurately measure the quantity of hazardous material that is loaded in the tank at the time of filling, but will not measure any residual lading which remained in the tank from a previous load. A cargo tank which is loaded by weight will take into account the total lading in the cargo tank at one time. Therefore, the proposed gauging device requirement is adopted unchanged.

Section 178.345-13 (proposed § 178.340-13) Pressure tests. This section has been revised to clarify that the pressure test applies to the "tank" rather than the "cargo tank."

Section 178.345-14 (proposed § 178.340-14) Marking. Several commenters stated that the location of the required nameplate and specification plates should be the right or curb side of the vehicle, in order to ensure that the inspector is not placed in an unsafe position while inspecting these plates. Other commenters stated

that the location of the plates should be "on the same side as the NHTSA plate," in consideration of any changes made in the location of the NHTSA plate. The location of the certification plate was moved to the left side of the cargo tank several years ago to coincide with the location of the NHTSA identification plate. A change in the location of the plate was not proposed in this rulemaking. Therefore, any discussion of such a change is deferred to a future rulemaking.

Commenters also stated that, in addition to allowing the nameplate and specification plate to be attached directly to the tank, the integral supporting structure of the tank should be authorized as an attachment site for the plates. RSPA has reservations about allowing the plates to be attached to the chassis of the cargo tank motor vehicle, because in some instances, a tank will be placed on a new chassis, while the specification plate remains on the old chassis. In this scenario, the cargo tank is rendered out of specification due to the lack of a specification plate. However, we do not object to the attachment of the plates to an integral supporting structure, which will never be separated from the tank.

The provisions in this section are reorganized to consolidate and place in paragraph (a) the requirements on the location and attachment of the nameplate and specification plate, the information required to be marked on these plates, and the size of the lettering.

The proposal would have required that the nameplate be affixed to each cargo tank, and a specification plate be affixed to each cargo tank motor vehicle. It was our intention to allow the use of a single plate on a cargo tank motor vehicle composed of more than one cargo tank made to the same specification. These provisions are revised to clarify that only one plate is required for each cargo tank motor vehicle if: the cargo tank motor vehicle is composed of non-ASME cargo tanks, none of which are separated by a void space; all the information required by paragraphs (b) and (c) appears on the plate; and the plate is not covered or hidden by any insulation. If a single plate is used, the information required must be printed for each cargo tank, from front to rear, in the order of the corresponding cargo tanks.

NTTC stated that the color coding requirement in proposed paragraph (f)(2) for specification plates on multi-specification cargo tanks is redundant to the information appearing on the data plate and, therefore, is unnecessary. We agree with the NTTC, and proposed paragraph (f)(2) has been removed.

Section 178.345-15 (proposed § 178.340-15) Certification. The proposed provision to require that the certification certificate be signed by an Authorized Inspector, and that a cargo tank not requiring ASME Code certification be certified as "constructed in accordance with the ASME Code" are not adopted in this final rule. See the earlier preamble discussions under subject headings.

In addition, the proposed requirement that design drawings be attached to the certification certificate and be provided to the purchaser has been removed. We believe that it is important for drawings to be furnished to the final manufacturer in a multi-stage construction. However, based on the comments we received, we no longer believe it is necessary for DOT to require that the drawings be provided to the purchaser of the cargo tank motor vehicle.

Section 178.346 (Specification DOT 406 cargo tank motor vehicle). Numerous commenters addressed the proposed revision of the MC 306 cargo tank specification. Commenters objected to the designation of the MAWP (design pressure) range of an MC 306 cargo tank between 3 psig and 14.9 psig. Comments received from cargo tank manufacturers, motor carriers and shippers all stated that there is no need to set the minimum pressure of this cargo tank at 3 psig, as these cargo tanks have been operating successfully for many years at a working pressure of 1 psig, which is maintained through the use of the 1 psig normal vent. The normal vent was not included in the NPRM. A minimum MAWP of 3 psig would have required that pressure relief devices be set at 3 psig, identical to current MC 306 cargo tank specification requirements. Operators of MC 306 cargo tanks used to transport gasoline have stated that the normal vent, in normal operation, vents predominantly air. During transportation, the gasoline heats up and expands, increasing the pressure in the vapor space of the tank, which contains mostly air. This increased pressure is relieved when it reaches 1 psig. Without the normal vent, commenters stated, the cargo tank will be operated at higher pressures unnecessarily and perhaps unsafely, with a reduction in the fatigue life of the cargo tank.

As was stated earlier in this document, we are concerned that in an overturn situation, even with an undamaged cargo tank, relief valves set at a pressure less than that determined from the formula in § 173.33(c) will release product continuously without reseating. However, the design of the 1 psig normal vent is such that it will not

function in an overturn situation. We also point out that the MC 306 cargo tank is not used exclusively for gasoline, and higher vapor pressure materials could be transported in these cargo tanks, provided the MAWP of the tank complied with proposed § 173.33(c). A cargo tank equipped with a normal vent, carrying lading with a vapor pressure greater than 1 psig, would vent lading through the normal vent during normal transportation conditions. For this reason, in the final rule a 1 psig normal vent may be installed only on a DOT 406 (or MC 306-type) cargo tank which is used to transport a material for which the sum of the vapor pressure at 115 °F and 1 psig is less than or equal to the MAWP.

Manufacturers and carriers have maintained that there is no need to define a range of MAWP's for this cargo tank, since there are no cargo tanks currently built to the MC 306 specification which have a design pressure of "over 3 psig and less than 14.9 psig." They stated that the MC 306 is generally considered to be a "gasoline" cargo tank. Taking full consideration of these comments, we have established a minimum MAWP for a DOT 406 cargo tank based on the minimum pressure that any point on the cargo tank might see when in a rollover situation. The final rule establishes a minimum MAWP of 2.65 psig for the DOT 406 cargo tank. This pressure includes the static head of a gasoline lading in a typical MC 306-type cargo tank, plus a maximum of 1 psig of vapor pressure which will be seen in a tank equipped with a normal vent. For DOT 406 cargo tanks with a larger static head than that produced by gasoline in cargo tanks currently used, the MAWP must exceed 2.65 psig. In each case the required MAWP for the lading must be determined in accordance with § 173.33(c). The MAWP of a cargo tank not equipped with a normal vent may be as high as 4 psig to account for the variations in the lading. (See also discussion of maximum ambient temperature table for gasoline in § 173.119).

To accommodate situations where the ASME Code conflicts with current MC 306 design and construction practices, TTMA presented a list of sections of the ASME Code which they believe should not apply to construction of the new DOT 406 cargo tanks, including those sections relating to head formation and installation. We do not believe that adequate justification was presented for the elimination of many of the sections of the ASME Code cited by TTMA for exception in the DOT 406

specification. However, we agree that certain provisions in the ASME Code need not be applied to the construction of the DOT 406 cargo tank.

As discussed earlier in the preamble, § 178.345-1 provides certain exceptions to the ASME Code for the DOT 406 cargo tank. These exceptions include the required certification by a National Board authorized inspector, the use of "stuffed heads," and the construction of cargo tanks with an elliptical cross section. Other exceptions include the required loadings to be used in stress calculations, marking and certification of the cargo tank, material identification and recordkeeping requirements.

Thickness tables for shell, heads, bulkheads, and baffles for DOT 406 cargo tanks are contained in § 178.346-2. These tables have been greatly simplified, and are based on the volume of the cargo tank in gallons rather than on the volume capacity in gallons per inch, as has been used previously, because of the elliptical shape of most of these cargo tanks.

Section 178.346-10 contains a provision to allow the 1 psig "normal vent," as discussed earlier in this preamble. We are allowing the use of a 1 psig vent in order to extend the life of the cargo tank, on the basis that this vent releases predominantly air, and not hazardous material lading, during transportation. This section limits the use of cargo tanks equipped with normal vents to loadings meeting the requirements of § 173.33(c)(1)(i)(C).

As was discussed earlier in this document, the final rule requires pressure relief devices to be set at 120 percent of the MAWP of the cargo tank. Many commenters to proposed § 178.340-10 objected to the requirement that reclosing pressure relief devices close after discharge at not less than 90% of the set-to-discharge pressure, as it applies to the MC 306 cargo tank. For these cargo tanks, in order for a valve seat to lift high enough to allow the large airflows required in this specification, reclosing at 90% of the opening pressure will be nearly impossible. A commenter recommended that the reclosing pressure be reduced to 75% of the opening pressure. We believe that this comment has merit; however, in a cargo tank accident involving a rollover, the pressure exerted on the pressure relief device will be equal to the tank static head of lading plus the vapor pressure of the lading added to any gas padding. For cargo tanks equipped with a 1 psig normal vent transporting gasoline, the minimum pressure in this situation is 2.65 psig. Therefore the minimum reclosing pressure for a relief device on these tanks must be 2.65 psig, to ensure

that the device indeed reseats, particularly during an overturn situation. To allow this pressure to be 75% of the set-to-discharge pressure would necessitate a minimum set pressure of 3.5 psig. However, this pressure is 130 percent of the MAWP of the cargo tank. In order to balance the requirements for a minimum reclosing pressure, and the concerns of the industry regarding the necessary differential between the set pressure and the reclosing pressure, the final rule requires that the primary pressure relief valves on DOT 406 cargo tanks be set to discharge at 125 percent of the MAWP (or 3.3 psig for gasoline cargo tanks equipped with a normal vent), and reclose at not less than 80 percent of the set to discharge pressure. The higher setting of relief valves at 125 percent of the tank MAWP has precedence in the intermodal tank area, where an ASME Code case approved such an arrangement. The required minimum reclosing pressure of 80 percent of the set pressure will provide substantial relief from the general requirement which states that pressure relief devices must reseat at not less than 90 percent of the set to discharge pressure.

TTMA suggested certain additional testing requirements for MC 306 cargo tanks. These tests would be used to ensure the proper functioning of relief valves at the set-to-discharge pressure, and ensure that these devices retain the cargo tank pressure below the set-to-discharge pressure. These devices are required to be tested and certified by the device manufacturer at the time of manufacture, and will be periodically tested in accordance with the requirements of Part 180. We believe it is unnecessary to add these additional requirements to the cargo tank manufacturing specifications.

The required test pressure found in § 178.346-13 herein has been changed to the greater of 5 psig or 150 percent of the MAWP, and the inspection pressure to the MAWP, with a minimum of 2.65 psig, to coincide with the change to prescribe the minimum MAWP of 2.65 psig for a DOT 406 cargo tank.

Section 178.347 (Specification DOT 407 cargo tank motor vehicle). As discussed earlier in the preamble, certain requirements have been relaxed. DOT 407 cargo tanks with a design pressure of 35 psig or less must be constructed in accordance with the ASME Code, with certain exceptions which are found in § 178.347-1. These exceptions include the use of a Registered Inspector in place of an Authorized Inspector for inspection and certification; the use of the "stuffed head" configuration, and knuckle radius

of less than 6% of the tank diameter. Other exceptions include the required loadings to be used in stress calculations, marking and certification of the cargo tank, material identification and recordkeeping requirements.

Cargo tanks with a design pressure above 35 psig must be constructed and certified in full conformance with the ASME Code. These cargo tanks are of sufficiently high pressure to warrant the additional safety benefits of the ASME Code. Cargo tanks constructed to these pressures are generally not constructed with "stuffed heads."

Revised thickness tables, as discussed in the preamble to § 178.345-2, are found in § 178.347-2. Where the minimum thicknesses recommended by TTMA are lower than the thicknesses required by the current regulations, the higher values found in the current regulations are prescribed in the table.

Several commenters pointed out that vacuum relief devices should not be required on vacuum-loaded cargo tanks. We agree with the commenters and an exception has been added in § 178.347-10(b) which grants relief from the requirement for vacuum relief devices on cargo tanks designed to be loaded by vacuum. Cargo tanks not designed to be loaded by vacuum, however, must have a vacuum relief system capable of limiting the vacuum in the tank to less than 80 percent of the design vacuum capability of the cargo tank.

Section 178.348 (Specification DOT 412 cargo tank motor vehicle). A commenter stated that lower pressure (less than 15 psig design pressure) MC 312 cargo tanks, with elliptical cross-sections, are being used to transport low-density, low vapor pressure corrosive materials in oilfield servicing operations. The hazardous materials carried in these cargo tanks would require a design pressure less than 15 psig, based on the requirements of § 173.33(c). The commenter argued that there is no need to require a minimum design pressure of 15 psig, and full ASME construction, for these cargo tanks. Application of the ASME Code would require a circular cross-section to replace the elliptical cross-section currently used, and create cargo tanks with a higher center of gravity and less stability. Due to the lesser hazard and low vapor pressure of these materials, we agree that a 15 psig minimum design pressure is not necessary.

To permit the transportation of hazardous materials with low vapor pressure, we have revised the minimum MAWP for DOT 412 cargo tanks to 5 psig. The requirements of § 173.33(c) must be met for any material to be

transported in these cargo tanks. Any DOT 412 cargo tank with an MAWP between 5 and 15 psig must be constructed in accordance with the ASME Code with certain exceptions. These exceptions allow an elliptical cross-section, and all inspection and certification of these tanks may be performed by a Registered Inspector instead of an Authorized Inspector.

As stated in the discussion of § 178.345-10 earlier in this preamble, several commenters asked that non-reclosing pressure relief valves be authorized for MC 312 cargo tanks transporting corrosive materials. Alternatively, § 178.348-10 has been revised to allow a lower total venting capacity on these cargo tanks only when used in dedicated service for corrosive materials with no other hazard.

Subpart F, Part 180. This new subpart establishes the requirements for the retest, requalification and use of cargo tank motor vehicles.

Section 180.403. Several comments were received on the proposed definitions contained in this section.

Modification. Several commenters stated that the definition of "modification" should be revised to include only changes to the original cargo tank shell design. They stated that this change would ensure that the replacement of valves and fittings, and minor changes to appurtenances, such as fender attachments, lighting brackets, and ladder brackets would not be construed as modification. We agree that minor changes to non-lading retention components of the cargo tank, and replacement of valves and fittings, as long as they are in conformance with the original design criteria and appropriate specification, should not be considered "modifications." Therefore, the definition of "modification" is revised to clarify that modification means any change to a tank's original design and construction that would affect the structural integrity of the tank, and to exclude minor changes to and replacement of many appurtenances, fittings, valves, and vents. We have also removed "stretching," which is also defined in this section, from the definition of "modification."

Rebarrelling. Several commenters objected to the proposed definition of "rebarrelling" which was defined as "replacing more than 25 percent of the shell material of a cargo tank." Commenters stated that "rebarrelling" should mean replacement of 100 percent of the cargo tank shell, and that such replacement of the cargo tank shell material should not be subject to the requirements in § 180.413, which would require any rebarrelling to conform to

the specification in effect at the time of rebarrelling. We disagree with the commenters. It is our position that replacement of a large portion of the cargo tank wall constitutes the manufacture of a new cargo tank, and the cargo tank must conform to the specification requirements in effect at the time of manufacture. What constitutes rebarrelling was discussed at the public meetings. In consideration of those discussions, "rebarrelling" is defined in this final rule to mean replacing more than 50 percent of the cargo tank wall.

Repair. The definition of "repair" is revised to clarify that the term refers only to work involving welding on a cargo tank's pressure parts. Therefore, the replacement of a valve or fitting which involves no welding does not constitute a "repair" and, therefore, is not required to be performed in an ASME "U" shop or a National Board "R" shop.

Paragraph (c) of this section permits the modification of the pressure relief devices and outlets of certain cargo tank specifications previously authorized to conform to a new specification. For instance, the outlets on an MC 307 cargo tank may be modified to conform to the outlet requirements found in the DOT 407 specification. This provision will allow MC 307 cargo tanks to be equipped with external self-closing stop valves, provided the valves are adequately protected as required by § 178.345-8.

Section 180.405. Paragraph (f) of this section contains provisions for re-marking certain cargo tanks manufactured under the terms of an exemption as DOT specification cargo tanks, under certain circumstances. This provision generally refers to vacuum-loaded cargo tanks constructed under exemption, substantially in compliance with the MC 307 or MC 312 cargo tank. For many years we have required that vacuum-loaded cargo tanks must be equipped with self-closing valves. There has been a great deal of confusion and misunderstanding on the part of exemption holders regarding the self-closing and remote closure features of these valves. This has resulted in cargo tanks manufactured without these features. It still is our position that these valves must have a self-closing feature; however, this self-closing feature may be external to the valve. This will allow the use of a valve which may be manually operated in normal loading and unloading operations. In order to allow adequate time for owners of vacuum loaded hazardous waste cargo tanks currently under exemption to equip their cargo tanks with self-closing

valves, we are providing a 2-year compliance period. Cargo tanks meeting the requirements of § 180.405(f) except for the self-closing valve requirement, may be re-marked in accordance with that paragraph only after the self-closing valve has been installed.

The requirement currently in § 173.33(a)(2) granting a 36-month compliance period for certain cargo tank motor vehicles to be equipped with a rear accident damage protection device has been placed in § 180.405(1). The MC 303 cargo tank motor vehicle, which is a MC 306 type cargo tank, was not included in the final rule adopting those provisions (Docket HM-183B). It is added in this rule.

Section 180.407. Existing § 173.33(d)(i) contains an exception from the hydrostatic or pneumatic test for MC 330 and MC 331 cargo tanks used only in sodium metal service, since sodium metal presents a severe fire risk in contact with water, and the purity of the sodium metal must be maintained. A new Note 1 has been added to the Retest and Inspection Table in § 180.407(c) which retains this exception.

A commenter stated that lined or clad cargo tanks should not be hydrostatically retested. The commenter stated that a visual internal examination will reveal any problem with the lining that must be corrected. Further, the commenter pointed out that the tank car retest table in § 173.31 excepts glass, rubber, lead, or elastomeric lined tanks from periodic retest, and a similar exception should apply to cargo tanks. We agree with the commenter that for lower pressure cargo tanks, hydrostatic testing of a cargo tank which is lined or clad may not be a suitable indicator of the tank's structural integrity, particularly where the lining or cladding provides additional support to the tank. If a problem or defect in the lining or cladding exists, hydrostatic testing may cause deterioration of the tank under the lining, especially with acidic ladings. Therefore, a new Note 2 is added to the Retest and Inspection Table which contains an exception from the pressure test for uninsulated lined or clad tanks with a design pressure or MAWP less than 15 psig. These cargo tanks will be subject to the periodic lining inspection requirements. We believe that higher pressure (greater than or equal to 15 psig MAWP or design pressure) cargo tanks must be hydrostatically tested, and this requirement appears in the final rule.

Several commenters also noted that exceptions from the external and internal visual inspections which appear in the current regulations for certain

cargo tanks for which such inspection is impracticable or impossible were not included in the NPRM. These provisions were inadvertently omitted in the NPRM. Accordingly, paragraph (d), in the final rule, allows an internal visual inspection to be performed in place of the external visual inspection for cargo tanks which are insulated, and allows the pressure retest conducted in accordance with this section to be used in place of both the internal and external visual inspections when visual inspection of the cargo tank is precluded by both internal coating and external insulation, or when the cargo tank is not equipped with a manhole or inspection opening. Paragraph (e) contains an exception from the internal inspection requirements for cargo tanks not equipped with a manhole or inspection opening.

Paragraph (g) has been relaxed to allow inspectors other than Registered Inspectors to perform the pressure test. The inspector's qualification must be as prescribed in § 180.409, and the inspector must be identified to the Department in accordance with that section.

Several commenters objected to the proposed requirement in § 180.407(d)(2) to remove all spring-loaded pressure relief valves from the cargo tank for inspection and testing. These commenters pointed out that the pressure relief devices for MC 306-type cargo tanks are usually mounted in the dome cover. The removal of the dome cover on an annual basis for inspection and testing of the pressure relief valves would create unnecessary expense and downtime. Commenters recommended that the pressure relief devices be removed for inspection and testing at the time of the pressure test, which for most cargo tanks is at a 5 year interval. We believe the commenters' suggestion has merit. However, we do not believe that a 5-year frequency in removal, testing, and inspection is adequate for pressure relief devices which may be subject to corrosion damage due to the lading. Corrosion damage due to environmental elements can be detected during the annual external visual inspection. Therefore, as adopted in this final rule, pressure relief valves must be externally inspected for any corrosion or damage which might prevent safe operation, during the annual external visual inspection. Only those pressure relief valves on cargo tanks used to transport lading corrosive to the valve must be removed for testing and inspection on an annual basis. All pressure relief devices must be removed from the cargo tank for testing and

inspection at the time of the pressure test.

A new provision has been added to the external visual inspection requirements in § 180.407(d)(2) to address the inspection of the gaskets on full opening rear heads. Additionally, the frequency of visual inspection of cargo tanks with full opening rear heads has been increased to once every 6 months in lieu of once each year. At the suggestion of the National Propane Gas Association (NPGA) (formerly National Liquefied Petroleum Gas Association) and several other commenters, a requirement to inspect the tank head and shell areas covered by the upper skid plate for corroded and abraded areas has been added to the visual inspection requirements. This inspection must be conducted at the time of the internal visual inspection, since we do not believe it is necessary to inspect this area on an annual basis.

The hydrostatic pressure test described in § 180.407(g) has also been modified to include only the cargo tank, less fittings, as contained in the current regulations. Additionally, in accordance with NTTC's comments, this section has been revised to clarify that owners of fewer than 5 cargo tanks have 5 years in which to pressure test their cargo tanks. As stated earlier, the requirement for removal of pressure relief valves for inspection and testing must be performed at the time of the pressure test for most cargo tanks.

Proposed paragraph (g)(4) would have required that each MC 330 and MC 331 cargo tank constructed of quenched and tempered steel, or constructed of other than quenched and tempered steel but without postweld heat treatment, used for the transportation of anhydrous ammonia, liquefied petroleum gas, or any other hazardous material that may cause stress corrosion cracking, be inspected by the wet fluorescent magnetic particle method immediately prior to and in conjunction with the pressure test. Several commenters, including the NPGA and the CGA objected to the application of the requirements to all cargo tanks used to transport liquefied petroleum gas in this requirement. These commenters stated that only "corrosive" liquefied petroleum gas transported in cargo tanks constructed of quenched and tempered steel causes stress corrosion cracking, and liquefied petroleum gas which is transported in accordance with 49 CFR is not corrosive to the tank. They further indicated that the transportation of corrosive LP gas in quenched and tempered steel cargo tanks is a compliance problem rather than a

problem with existing regulations. The commenters claim that the addition of the proposed wet fluorescent magnetic particle inspection presents an unacceptable expense to those motor carriers who are currently complying with the requirements for transportation of liquefied petroleum gas.

We believe that in many cases, a load of "sour" LP gas will be transported in a cargo tank due to inadequate product testing on the part of shippers and carriers. We agree that this situation constitutes non-compliance with the current regulations, and there is insufficient data to indicate that "non-corrosive" LP gas causes stress corrosion cracking in cargo tanks constructed of other than quenched and tempered steel. Therefore, for cargo tanks transporting liquefied petroleum gas, we have limited the requirement for wet fluorescent magnetic particle inspection to cargo tanks constructed of quenched and tempered steel (Part UHT of the ASME Code). However, this includes the transportation of all liquefied petroleum gas and not only that which is considered "corrosive."

Several commenters argued that MC 330 and MC 331 cargo tanks should be excepted from the leakage test, since these tanks are effectively leak tested every refill. The requirements for the leakage test, which appear in paragraph (h), have been clarified to allow the leakage test to be evaluated with the hazardous materials lading in the tank for MC 330 and MC 331 cargo tanks.

Section 180.409. Paragraph (a) of this section has been clarified to indicate that all persons performing any prescribed inspection or test must be familiar with the cargo tank and skillful in the use of the inspection and testing equipment needed. As stated earlier in this preamble under the heading "Inspection and Testing", the requirement that the person performing thickness testing be qualified in accordance with ASNT Level II for ultrasonic testing has been dropped. The person performing thickness testing must be trained in the use of the thickness testing device by the employer of the tester in accordance with the instructions of the manufacturer of the thickness testing device. Additionally, the person performing, or witnessing and certifying, the pressure test may be a Registered Inspector or an employee of the motor carrier or the owner of the cargo tank who has training and experience in conducting pressure tests in accordance with the ASME Code.

Section 180.411. Several commenters objected to the acceptability of results of tests and inspections related to cuts, digs, or gouges. The NPRM stated that no cut, dig, or gouge may be greater than 4 inches in length. Commenters stated that the length of the cut, dig, or gouge is irrelevant; the important factor being the depth of the defect. We agree that the most important factor of any cut, dig, or gouge is its depth. Accordingly, we have removed the length specification and now require that the minimum thickness remaining beneath a cut, dig, or gouge not be less than that prescribed in the applicable specification.

Several commenters argued that this section is too restrictive in that it does not allow any reduction in thickness below that prescribed in the applicable specification. These commenters pointed out that CGA TB-2, which is referenced in the repair procedures for MC 330 and MC 331 cargo tanks, allows minor defects to be removed by grinding if the wall thickness is not reduced below that shown on the data plate minus 0.010 inch. It was recommended that some tolerance be allowed for isolated areas. We have consistently held that, as stated in the current regulations at § 177.824(i) (and in § 180.407(j) herein), the cargo tank metal certification plate must be removed or made illegible if for any reason a cargo tank no longer meets the applicable specification. This includes the minimum wall thickness. Shippers and carriers were made aware of these provisions in a rule related notice titled "Carriers and Shippers—Concerning Continuing Qualification of Cargo Tanks" (48 FR 15127; April 7, 1983).

Section 180.413. Commenters objected to the proposed requirement that any repair, modification, stretching, or rebarrelling be performed in accordance with the specification in effect at the time the work is done. Commenters stated that we should require only that the work conform to the specification at the time of manufacture. In many cases, the entire cargo tank could not be brought into compliance with the new specifications. We believe that a stretching or rebarrelling constitutes a major change to the cargo tank which effectively creates a new cargo tank, and that such work must be performed in accordance with the specification requirements in effect at the time of stretching or rebarrelling. The change in the definition of "rebarrelling" from 25 to 50 percent replacement of the cargo tank wall will limit the number of changes to a cargo tank which require conformance with the current specification rather than the

specification in effect at the time of manufacture. Additionally, we have made certain changes to clarify that only the parts affected by the stretching or rebarrelling need be in compliance with a new specification.

"Modifications" and "repairs" may conform to the original specification or to the specification in effect at the time the work is performed.

The requirement that repairs be certified by an Authorized Inspector has been relaxed to allow certification by a Registered Inspector. Proposed paragraph (b)(vi) of § 180.413 has been changed to require repairs to MC 330 and MC 331 cargo tanks to be performed in accordance with the National Board Inspection Code's "Provisions for Repair of Pressure Vessels" instead of section VIII of the ASME Code under which the cargo tank was built. The National Board Inspection Code more specifically addresses repair.

Section 180.415. The letter "K" has been added to designate the leakage test in cargo tank markings.

Section 180.417. Paragraph (a)(3)(i) has been revised to allow testing and certification of non-ASME Code stamped cargo tanks under the direct supervision of a Registered Inspector rather than an Authorized Inspector.

Administrative Notices

A. Executive Order 12291

This final rule has been reviewed under the criteria specified in section 1(b) of Executive Order 12291 and is determined not to be a major rule. However, it is a significant rule under the regulatory procedures of the Department of Transportation (44 FR 11034). This rule does not require a Regulatory Impact Analysis, or an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the Docket.

B. Executive Order 12812

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12812, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

C. Regulatory Flexibility Act

Based on limited information concerning the size and nature of entities likely to be affected by this rule, I certify this rule will not have a significant economic impact on a substantial number of small entities. A

regulatory flexibility analysis is available for review in the docket.

D. Paperwork Reduction Act

Information collection and recordkeeping requirements contained in this amendment have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. Chapter 35 and assigned control number 2137-0014.

List of Subjects

49 CFR Part 107

Practice and procedures.

49 CFR Part 171

Hazardous materials transportation, Incorporation by reference.

49 CFR Part 172

Hazardous materials transportation.

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Reporting and recordkeeping requirements.

49 CFR Part 176

Hazardous materials transportation, Maritime carriers, Cargo vessels.

49 CFR Part 177

Hazardous materials transportation, Motor carriers.

49 CFR Part 178

Hazardous materials transportation, Packaging and containers.

49 CFR Part 180

Hazardous materials transportation, Packaging and containers.

In consideration of the foregoing, Title 49, Chapter I, Subchapters B and C of the Code of Federal Regulations, are amended as follows:

PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for Part 107 continues to read as follows:

Authority: 49 App. U.S.C. 1421(c); 49 U.S.C. 1802, 1806, 1808-1811; 49 CFR 1.45 and 1.53, and Pub. L. 89-670 (49 App. U.S.C. 1653(d), 1655).

2. The Table of Sections of Part 107 is amended by adding a new Subpart F consisting of §§ 107.501, 107.502, 107.503 and 107.504 to read as follows:

Subpart F—Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers and Repairers and Cargo Tank Motor Vehicle Assemblers

Sec

- • • • •
- 107.501 Scope.
- 107.502 General registration requirements.
- 107.503 Registration statement.
- 107.504 Period of registration, updates, and record retention.
- • • • •

3. A new Subpart F is added to read as follows:

Subpart F—Registration of Cargo Tank and Cargo Tank Motor Vehicle Manufacturers and Repairers and Cargo Tank Motor Vehicle Assemblers

§ 107.501 Scope.

This subpart establishes registration procedures for persons who are engaged in the manufacture, certification, inspection or repair of a cargo tank or a cargo tank motor vehicle manufactured in accordance with a DOT specification under subchapter C of this chapter or under the terms of an exemption issued under this part.

§ 107.502 General registration requirements.

(a) No person may engage in the manufacture, assembly, certification, inspection or repair of a cargo tank or cargo tank motor vehicle manufactured under the terms of a DOT specification under subchapter C of this chapter or an exemption issued under this part unless the person is registered with the Department in accordance with the provisions of this subpart. A person employed as an inspector or design certifying engineer is considered to be registered if the person's employer is registered.

(b) A person who performs functions which are subject to the provisions of this subpart may perform only those functions which have been identified to the Department in accordance with the procedures of this subpart.

(c) Registration statements must be in English, contain all of the information required by this subpart, and be submitted to: Approvals Branch, Office of Hazardous Materials Transportation, Attn: DHM-32, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590.

(d) Upon determination that a registration statement contains all the information required by this subpart, the Department will send the registrant a letter confirming receipt of the registration application and assigning a registration number to that person. A separate registration number will be

assigned for each cargo tank manufacturing, assembly, repair facility or other place of business identified by the registrant.

(e) **Definitions.** Definitions for the terms "Authorized Inspector," "cargo tank," "cargo tank motor vehicle," "design certifying engineer," "person," and "Registered inspector" are set forth in § 171.8 of this chapter. Definitions for the terms "design type" and "manufacturer" are set forth in § 178.320, and the term "repair" in § 180.403 of this chapter.

§ 107.503 Registration statement.

(a) Each registration statement must contain the following:

- (1) Name;
- (2) Street address, mailing address and telephone number for each facility or place of business;
- (3) A statement signed by the person responsible for compliance with the applicable requirements of this chapter, certifying knowledge of those requirements and that each employee who is an inspector or design certifying engineer meets the minimal qualification requirements set forth in § 171.8 of this chapter for "registered inspector" or "design certifying engineer", respectively. For an organization, the certification must be signed by an official;
- (4) A description of the specific functions to be performed, e.g., manufacture or repair of cargo tanks, assembly of cargo tanks to cargo tank motor vehicles, inspection and testing, design or cargo tank certification, etc. For inspection and testing, identify the specific types of inspections and tests;
- (5) An identification of the types of DOT specification and exemption cargo tanks or cargo tank motor vehicles which the registrant intends to manufacture, assemble, repair, inspect, test or certify;
- (6) A statement indicating whether the registrant employs inspectors or design certifying engineers to conduct certification, inspection or testing functions addressed by this subpart. If a disinterested party is used, the name, address and registration number of that party; and
- (7) If the registrant is not a resident of the United States, the name and address of a permanent resident of the United States designated in accordance with § 107.7 to serve as agent for service of process.

(b) In addition to the information required under paragraph (a) of this section, each person who manufactures or assembles a cargo tank or cargo tank motor vehicle must submit a copy of the manufacturer's current ASME

Certificate of Authorization for the use of the ASME "U" stamp. This requirement does not apply to an assembler who performs no welding on a cargo tank wall.

(c) In addition to the information required under paragraph (a) of this section, each person who repairs a cargo tank or cargo tank motor vehicle must submit a copy of the repair facility's current National Board Certificate of Authorization for the use of the "R" stamp or ASME Certificate of Authorization for the use of the ASME "U" stamp.

(d) A registrant shall provide written notification to the Department within thirty days of any of the following occurrences:

§ 107.504 Period of registration, updates, and record retention.

(a) Registration will be for a maximum of three years from the date of the original submission.

(b) Any correspondence with the Department must contain the registrant's name and registration number.

(c) A registration must be renewed every three years or within thirty days of reissuance of an ASME or National Board Certification, whichever occurs first, by submitting an up-to-date registration statement containing the information prescribed by § 107.503.

(d) A registrant shall provide written notification to the Department within thirty days of any of the following occurrences:

(1) Any change in the registration information submitted under § 107.503;

(2) Replacement of the person responsible for compliance with the requirements in § 107.503(a)(3), if this occurs, the registrant shall resubmit the required certification;

(3) Loss of ASME or National Board Certificate of Authorization;

or

(4) A change in function; such as, from assembly to manufacture, an addition of a function, or a change to the types of inspections, tests or certifications of cargo tanks or cargo tank motor vehicles.

(e) Each registrant shall maintain a current copy of the registration information submitted to the Department and a current copy of the registration number identification received from the Department at the location identified in § 107.503(a)(2) during such time the person is registered with the Department and for two years thereafter.

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

4. The authority citation for Part 171 continues to read as follows:

Authority: 49 App. U.S.C. 1802, 1803, 1804, and 1808; 49 CFR Part 1.

5. In § 171.2, paragraph (e) is added to read as follows:

§ 171.2 General requirements.

(e) When a person performs a function covered by or having an effect on a specification prescribed in Part 178, 179 or 180 of this subchapter, an approval issued under this subchapter, or an exemption issued under Subpart B of this chapter, that person must perform the function in accordance with that specification, approval, or exemption, as appropriate.

6. In § 171.7, paragraphs (c)(33), (c)(34), (d)(29) and (d)(30) are added to read as follows:

§ 171.7 Matter incorporated by reference.

(c) * * *

(33) TTMA: Truck Trailer Manufacturers Association, 1020 Princess Street, Alexandria, Virginia 22314.

(34) National Board: National Board of Boiler and Pressure Vessel Inspectors, 1055 Crupper Avenue, Columbus, Ohio 43229.

(d) * * *

(29) National Board Inspection Code is titled "National Board Inspection Code, A Manual for Boiler and Pressure Vessel Inspectors" NB-23, Rev. 4, 1983 edition.

(30) Truck Trailer Manufacturers Association:

(i) TTMA RP No. 81 is titled "Performance of Spring Loaded Pressure Relief Valves on MC 306, MC 307, and MC 312 Tanks," May 24, 1989 edition.

(ii) TTMA TB No. 107 is titled "Procedure for Testing Inservice, Unmarked, and/or Uncertified MC 306 Type Cargo Tank Manhole Covers," May 24, 1989 edition.

7. In § 171.8, the definition of "cargo tank" is revised and definitions for "Authorized Inspector," "Authorized Inspection Agency," "Cargo tank motor vehicle," "Design certifying engineer," "Maximum Allowable Working Pressure or MAWP," and "Registered Inspector" are added in alphabetical sequence to read as follows:

§ 171.8 Definitions and abbreviations.

"Authorized Inspector" means an Inspector who is currently commissioned by the National Board of Boiler and Pressure Vessel Inspectors and employed as an Inspector by an Authorized Inspection Agency.

"Authorized Inspection Agency" means: (1) A jurisdiction which has adopted and administers one or more sections of the ASME Boiler and Pressure Vessel Code as a legal requirement and has a representative serving as a member of the ASME Conference Committee; or (2) an insurance company which has been licensed or registered by the appropriate authority of a State of the United States or a Province of Canada to underwrite boiler and pressure vessel insurance in such State or Province.

"Cargo tank" means a bulk packaging which—(1) Is a tank (including the appurtenances, reinforcements, fittings and closures) intended for the carriage of liquids or gases (For "tank", see §§ 178.345-1(c), 178.337-1, or 178.338-1), as applicable;

(2) Is permanently attached to or forms a part of a motor vehicle, or is not permanently attached to a motor vehicle but which by reason of its size, construction or attachment to a motor vehicle is loaded or unloaded without being removed from the motor vehicle; and

(3) Is not fabricated under a specification for cylinders, portable tanks, tank cars or multi-unit tank cars.

"Cargo tank motor vehicle" means a motor vehicle with one or more cargo tanks permanently attached to or forming an integral part of the motor vehicle.

"Design certifying engineer" means a person registered with the Department in accordance with Part 107, Subpart F of this chapter who is an Authorized Inspector and has the knowledge and ability to determine if a cargo tank design meets the applicable DOT specification, or a person other than an Authorized Inspector who has this ability, at least one year of work experience in structural or mechanical design and an engineering degree (such as a professional engineer registered by the appropriate authority of a State of the United States or a Province of Canada).

"Maximum Allowable Working Pressure" or "MAWP" For DOT specification cargo tanks used to transport liquid hazardous materials, see § 178.345-1(k).

"Registered Inspector" means a person registered with the Department in accordance with Part 107, Subpart F

of this chapter who is an Authorized Inspector who has the knowledge and ability to determine if a cargo tank conforms with the applicable DOT specification, or a person other than an Authorized Inspector who has this ability and, at a minimum, the following work experience, in cargo tank construction or repair, and education: one year of work experience and an engineering degree, two years of work experience and an associate degree in engineering, or three years of work experience and a high school diploma.

PART 172—HAZARDOUS MATERIALS TABLES AND HAZARDOUS MATERIALS COMMUNICATIONS REGULATIONS

8. The authority citation for Part 172 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1808; 49 CFR Part 1.

§ 172.203 [Amended]

9. In § 172.203, paragraph (h)(1)(i) is amended by removing the reference "§ 173.315(a)(1), Note 14" and inserting in its place the reference "§ 173.315(a), Note 15" and paragraph (h)(2)(i) is amended by removing the reference "§ 173.315(a)(1), Note 15" and inserting in its place the reference "§ 173.315(a), Note 15".

PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

10. The authority citation for Part 173 continues to read as follows:

Authority: 49 U.S.C 1803, 1804, 1805, 1806, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

11. Part 173, Subpart B of the Table of Sections is amended by revising the entry for § 173.33 to read as follows:

Subpart B—Preparation of Hazardous Materials for Transportation.

Sec.

173.33 Hazardous materials in cargo tank motor vehicles.

12. In § 173.22, the introductory text to paragraph (a)(2) is revised and paragraph (b) is removed and reserved to read as follows:

§ 173.22 Shipper's responsibility.

(a) * * *

(2) The person shall determine that the packaging or container is an authorized packaging, including all special requirements, and that the packaging has been manufactured, assembled, and marked in accordance with the following:

(b) [Reserved]

13. Section 173.33 is revised to read as follows:

§ 173.33 Hazardous materials in cargo tank motor vehicles.

(a) *General requirements.* (1) No person may offer or accept a hazardous material for transportation in a cargo tank motor vehicle except as authorized by this subchapter.

(2) Two or more materials may not be loaded or accepted for transportation in the same cargo tank motor vehicle if, as a result of any mixture of the materials, an unsafe condition would occur, such as an explosion, fire, excessive increase in pressure or heat, or the release of toxic vapors.

(3) A cargo tank motor vehicle for which the prescribed periodic retest or reinspection under Subpart E of Part 180 of this subchapter is past due may not be filled and offered for transportation until the retest or inspection has been successfully completed.

(b) *Loading requirements.* (1) A hazardous material may not be loaded in a cargo tank if during transportation any part of the tank in contact with the hazardous material lading would have a dangerous reaction with the hazardous material.

(2) A cargo tank may not be loaded with a hazardous material that will have an adverse effect on the tank's integrity or—

(i) May combine chemically with any residue or contaminants in the tank to produce an explosion, fire, excessive increase in pressure, release of toxic vapors or other unsafe condition.

(ii) Due to its density, exceeds the maximum weight of lading marked on the specification plate.

(iii) Is at a temperature outside of the design temperature range specified on the tank specification plate.

(iv) May severely corrode or react with the tank material at any concentration and temperature that will exist during transportation.

(v) Is prohibited by § 173.21 or § 173.24 of this subchapter.

(3) Air pressure may not be used to load or unload any lading if it may create an air-enriched mixture within

the flammability range of the lading in the vapor space of the tank.

(4) The loading or unloading rate used must be less than or equal to that indicated on the cargo tank specification plate, except as specified in § 173.318(b)(6). If no loading or unloading rate is marked on the specification plate, the loading or unloading rate and pressure used must be limited such that the pressure in the tank may not exceed 130% of the MAWP.

(c) *Maximum Lading Pressure.* (1) Prior to filling and offering a cargo tank motor vehicle for transportation, the person must confirm that the cargo tank motor vehicle conforms to the specification required for the lading and that the MAWP of the cargo tank is greater than or equal to the largest pressure obtained under the following conditions:

(i) For compressed gases and certain refrigerated liquids that are not cryogenic liquids, the pressure prescribed in § 173.315 of this subchapter.

(ii) For cryogenic liquids, the pressure prescribed in § 173.318 of this subchapter.

(iii) For liquid hazardous materials shipped in DOT specification cargo tanks equipped with a 1 psig normal vent, the sum of the tank static head plus 1 psig. In addition, for hazardous materials shipped in these cargo tanks, the vapor pressure of the lading at 115 °F. must be not greater than 1 psig, except for gasoline transported in accordance with § 173.119(a)(17)(iii).

(iv) For liquid hazardous materials not covered in paragraph (c)(1)(i), (ii), or (iii) of this section, the sum of the vapor pressure of the lading at 115 °F, plus the tank static head exerted by the lading, plus any pressure exerted by the gas padding, including air in the ullage space or dome.

(v) The pressure prescribed in Subpart B, D, E, F, G, or H of this part, as applicable.

(vi) The maximum pressure used to load or unload the lading.

(2) Any Specification MC 300, MC 301, MC 302, MC 303, MC 305, MC 306 or MC 312 cargo tank motor vehicle with no marked design pressure or marked with a design pressure of 2.65 psig or less may be used for an authorized lading where the largest pressure derived from § 173.33(c) or § 178.345-1(k) of this subchapter is less than or equal to 2.65 psig. These cargo tanks must be marked or remarked with an MAWP or design pressure in accordance with § 180.405(k).

(3) Any Specification MC 310 or MC 311 cargo tank motor vehicle may be

used for an authorized lading where the largest pressure derived from § 173.33(c) or § 178.345-1(k) of this subchapter is less than or equal to the MAWP or MWP, respectively, as marked on the specification plate.

(4) Any cargo tank manufactured prior to December 12, 1989, marked with a design pressure rather than an MAWP may be used for an authorized lading where the largest pressure derived from § 173.33(c) is less than or equal to the design pressure marked on the cargo tank.

(5) Any material that meets the definition of a Poison B material must be shipped in a cargo tank motor vehicle having a MAWP of 25 psig or greater.

(d) *Relief system.* (1) A non-reclosing pressure relief device, except when installed in series with a reclosing pressure relief valve, may not be fitted in a cargo tank used to transport hazardous materials. However, a cargo tank constructed before December 12, 1989, that is fitted with one or more non-reclosing pressure relief devices installed parallel to one or more reclosing pressure relief valves may continue to be used in hazardous material service for which the cargo tank was authorized on December 12, 1989. The requirements in this paragraph do not apply to MC 338 cargo tank motor vehicles transporting a cryogenic liquid or to MC 330, MC 331 and MC 338 cargo tank motor vehicles transporting a material described in part as a refrigerated liquid in § 172.101 of this subchapter.

(2) Each cargo tank used to transport a liquid hazardous material in its gaseous state must have a pressure relief system that provides the venting capacity prescribed in § 178.345-10(e) of this subchapter.

(3) A cargo tank made to a specification listed in column 1 may be upgraded or have the relief devices or outlets modified to meet the applicable requirement for the specification listed in column 2 without changing the markings on the tank specification plate.

Column 1	Column 2
MC 300, MC 301, MC 302, MC 303, MC 305.	MC 306 or DOT 406.
MC 306.....	DOT 406.
MC 304.....	MC 307 or DOT 407.
MC 307.....	DOT 407.
MC 310, MC 311.....	MC 312 or DOT 412.
MC 312.....	DOT 412.
MC 330.....	MC 331.

(e) *Fuel metered for road fuel tax purposes.* Notwithstanding the requirements in § 178.345-8(a), specification cargo tanks without

(18) [Reserved]

24. In § 173.190, paragraph (b)(4) is revised to read as follows:

§ 173.190 Phosphorus, white or yellow.

(b) * * *

(4) Specification MC 304, MC 307, MC 310, MC 311, MC 312, DOT 407, DOT 412, MC 330 or MC 331 (§§ 178.337, 178.345, 178.347, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The lading is completely immersed in water or completely blanketed with an inert gas. The loading temperature may not exceed 140 °F.

(ii) The cargo tank has foam or equivalent insulation at least 4 inches thick, or at least 2 inches thick if the tank is equipped with an exterior heating jacket. The cargo tank has no interior heating coils.

(iii) The cargo tank has no bottom outlets.

(iv) Each cargo tank is equipped with pressure relief devices meeting the requirements in § 178.347-10 of this subchapter.

(v) An empty cargo tank motor vehicle may not be offered for transportation unless the tank is cleaned, or is filled to capacity with water having a temperature not exceeding 140 °F.

25. In § 173.206, paragraph (c)(3) is revised to read as follows:

§ 173.206 Sodium or potassium, metallic; sodium amide; sodium potassium alloys; sodium aluminum hydride; lithium metal; lithium silicon, lithium ferro silicon; lithium hydride; lithium borohydride; lithium aluminum hydride; lithium acetylide-ethylene diamine complex; aluminum hydride; cesium metal; rubidium metal; zirconium hydride, powdered.

(c) * * *

(3) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The material is in a molten condition when loaded and solidified before being moved over a public highway.

(ii) The outage is 5 percent or more at a sodium temperature of 208 °F.

(iii) The design pressure of the cargo tank is at least 150 psig.

(iv) The tank is equipped with exterior heating coils fusion-welded to the tank shell and properly stressed relieved.

(v) The cargo tank is equipped with pressure relief devices meeting the requirements in § 178.337.9 of this subchapter.

(vi) The cargo tank has no bottom outlets.

26. In § 173.224, paragraph (a)(4) is revised to read as follows:

§ 173.224 Cumene hydroperoxide, dicumyl peroxide, diisopropylbenzene hydroperoxide, paramenthane hydroperoxide, pinane hydroperoxide, and tertiary butylisopropyl benzene hydroperoxide.

(a) * * *

(4) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Cargo tanks are authorized only for—

(A) Diisopropylbenzene hydroperoxide not over 60 percent strength in a nonvolatile solvent;

(B) Paramenthane hydroperoxide not over 60 percent strength in a nonvolatile solvent;

(C) Pinane hydroperoxide not over 45 percent strength in a nonvolatile solvent; or

(D) Cumene hydroperoxide not over 90 percent strength in a nonvolatile solvent, except that specification MC 310 cargo tanks are not authorized.

(iii) The cargo tank has no bottom outlets.

(iv) The pressure relief system on the cargo tank meets the requirements in § 178.347-10 of this subchapter.

27. In § 173.245, paragraphs (a)(30) and (a)(31) are removed and reserved; paragraph (a)(29) is revised to read as follows:

§ 173.245 Corrosive liquids not specifically provided for.

(a) * * *

(29) Specification MC 303, MC 304, MC 306, MC 307, MC 310, MC 311, MC 312, DOT 407 or DOT 412 (§§ 178.345, 178.346, 178.347, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) A Specification MC 303 or MC 306 cargo tank fabricated from Type 316 stainless steel not less than 0.100 inch thick is authorized only for monoethanolamine, *primary amyl alcohol*, phosphoric acid, and solutions thereof.

(ii) A Specification MC 306 cargo tank fabricated of aluminum is authorized only for monoethanolamine and *primary amyl alcohol*.

(iii) The cargo tank meets the corrosion protection requirements in § 178.345.2(c) of this subchapter.

(iv) Bottom outlets on the cargo tank are equipped with self-closing stop-

valves meeting the requirements in § 178.345-11 of this subchapter.

(30)-(31) [Reserved]

28. In § 173.247 paragraph (a)(12) is revised to read as follows:

§ 173.247 Acetyl bromide; acetyl chloride; acetyl iodide; antimony pentachloride; benzoyl chloride; boron trifluoride acetic acid complex; chromyl chloride; dichloroacetyl chloride; diphenylmethyl bromide solutions; pyrosulfuryl chloride; silicon chloride; sulfur chloride (mono and di); sulfur chloride; thionyl chloride; tin tetrachloride (anhydrous); titanium tetrachloride; trimethyl acetyl chloride.

(a) * * *

(12) Specification MC 310, MC 311, MC 312, DOT 412, MC 330, or MC 331 (§§ 178.345, 178.348, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(ii) Bottom outlets on the cargo tank are equipped with stop-valves meeting the requirements in § 178.345-11 of this subchapter, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter.

(iii) The cargo tank is not made of aluminum.

29. In § 173.247a, paragraph (a)(3) is revised to read as follows:

§ 173.247a Vanadium tetrachloride and vanadium oxytrichloride.

(a) * * *

(3) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tanks are authorized only for vanadium oxytrichloride padded with an inert non-soluble gas adequate to exclude the presence of air.

(ii) The cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(iii) Bottom outlets on the cargo tank are equipped with stop-valves meeting the requirements in § 178.345-11 of this subchapter.

(iv) The tank is not authorized for transportation by vessel.

(v) The cargo tank is not made of aluminum.

30. In § 173.248, paragraph (a)(6) is revised to read as follows:

§ 173.248 Spent sulfuric acid, or spent mixed acid.

(a) * * *

(6) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, if—

(i) The cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(ii) Bottom outlets on the cargo tank are equipped with stop valves meeting the requirements in § 178.345-11 of this subchapter.

31. In § 173.249, paragraphs (a)(1) and (a)(6) are revised to read as follows:

§ 173.249 Alkaline corrosive liquids, n.o.s.; alkaline liquids, n.o.s.; alkaline corrosive battery fluid; potassium fluoride solution; potassium hydrogen fluoride solution; sodium aluminate, liquid; sodium hydroxide solution; potassium hydroxide solution.

(a) * * *

(1) In packagings prescribed in § 173.245, except § 173.245(a)(29).

(6) Specification MC 303, MC 304, MC 306, MC 307, MC 310, MC 311, MC 312, DOT 407, DOT 412 (§§ 178.345, 178.347, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) A Specification MC 303 cargo tank—

(A) Is fabricated from steel or stainless steel;

(B) When fabricated of steel, is authorized only for alkaline corrosive liquid, n.o.s., and alkaline liquid, n.o.s.; and

(C) Is not authorized for transportation by vessel.

(ii) The cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(iii) A Specification MC 306 cargo tank is fabricated from Type 316 stainless steel of not less than 0.100 inch thick.

(iv) Bottom outlets on the cargo tank are equipped with self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

32. In § 173.249a, paragraph (d)(1) is revised and a new paragraph (d)(6) is added to read as follows:

§ 173.249a Cleaning compound, liquid; coal tar dye, liquid; dye intermediate, liquid; mining reagent, liquid; and textile treating compound mixture, liquid.

(d) * * *

(1) In specification packaging as prescribed in § 173.245, except § 173.245(a)(29).

(6) Specification MC 303, MC 304, MC 306, MC 307, MC 310, MC 311, MC 312, DOT 407 or DOT 412 (§§ 178.345, 178.347, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(ii) A Specification MC 303 cargo tank is made from steel or stainless steel. The cargo tank is not authorized for transportation by vessel.

(iii) A Specification MC 306 cargo tank is fabricated from Type 316 stainless steel of not less than 0.100 inch thick. The cargo tank is not authorized for transportation by cargo vessel.

(iv) Bottom outlets on the cargo tank are equipped with self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

33. In § 173.250a, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 173.250a Benzene phosphorus dichloride and benzene phosphorus trichloride.

(a) * * *

(1) In specification packagings prescribed in § 173.245, except § 173.245(a)(29), which are made of or lined with materials compatible with the lading.

(2) Specification MC 304, MC 307, MC 310, MC 311, MC 312, DOT 407 or DOT 412 (§§ 178.345, 178.347, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(ii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

34. In § 173.252, paragraph (a)(4) is revised to read as follows:

§ 173.252 Bromine.

(a) * * *

(4) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The total volume of bromine loaded into the cargo tank is at least 88 percent and not more than 96 percent of the volume of the tank.

(ii) The tank shell and heads are at least 3/8 inch thick, excluding lining, cladding or corrosion allowance.

(iii) The tank is of ASTM A-265 material having a nickel cladding material on the inside surface comprising at least 20 percent of the total minimum thickness, or steel at

least 3/8 inch thick lined with lead at least 3/16 inch thick. The cladding material must meet the requirements in ASTM B-162. The composite plate must meet the requirements in ASTM A-265.

(iv) The cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(v) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

35. In § 173.253, paragraph (a)(6) is revised to read as follows:

§ 173.253 Chloroacetyl chloride.

(a) * * *

(6) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is fabricated from at least 99 percent nickel, or Type 316 stainless steel.

(ii) The cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(iii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

36. In § 173.254, paragraph (a)(5) is revised to read as follows:

§ 173.254 Chlorosulfonic acid and mixtures of chlorosulfonic acid-sulfur trioxide.

(a) * * *

(5) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(ii) Bottom outlets on the cargo tank are equipped with self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

37. In § 173.255, paragraph (a)(5) is revised to read as follows:

§ 173.255 Dimethyl sulfate.

(a) * * *

(5) Cargo tank motor vehicles as prescribed in § 173.254(a)(5).

38. In § 173.257, paragraph (a)(4) is revised to read as follows:

§ 173.257 Electrolyte (acid) and alkaline corrosive battery fluid.

(a) * * *

(4) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is lined with rubber or material of equivalent or greater strength, durability, and acid-resistance.

(ii) Bottom outlets on the cargo tank are equipped with self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

39. In § 173.262, paragraphs (a)(11) and (b)(4) are revised to read as follows:

§ 173.262 Hydrobromic acid.

(a) * * *

(11) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is lined with rubber or other material of equivalent or greater strength, durability, and acid-resistance.

(ii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

(b) * * *

(4) Cargo tank motor vehicles as prescribed in paragraph (a)(11) of this section.

40. In § 173.263, paragraph (a)(10) is revised to read as follows:

§ 173.263 Hydrochloric (muriatic) acid; hydrochloric (muriatic) acid mixtures; hydrochloric (muriatic) acid solution, inhibited, sodium chlorite solution (not exceeding 42 percent sodium chlorite); and cleaning compounds, liquids, containing hydrochloric (muriatic) acid.

(a) * * *

(10) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is lined with rubber or other material of equivalent or greater strength, durability, and acid-resistance, except that an unlined tank made from Type 304 or Type 316 stainless steel is authorized for sodium chlorite solutions not exceeding 42 percent strength.

(ii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

41. In § 173.264, Note 1 to paragraph (a)(14) is removed; paragraphs (a)(14) and (b)(3) are revised to read as follows:

§ 173.264 Hydrofluoric acid; White acid.

(a) * * *

(14) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is lined with rubber or other material of equivalent or greater strength, durability, and acid-resistance, except that an unlined cargo tank is authorized for hydrofluoric acid solutions of 60 percent to 65 percent concentration provided the lading is inhibited so that the corrosive effect on steel is not greater than that of 65 percent hydrofluoric acid.

(ii) Bottom outlets on the cargo tank are equipped with self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

(b) * * *

(3) Specification MC 310, MC 311, MC 312 or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle. Bottom outlets on the cargo tank must be equipped with self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

42. In § 173.265, paragraph (b)(4) is revised to read as follows:

§ 173.265 Fluorosilicic acid (hydrofluorosilicic acid) (hydrofluosilicic acid).

(b) * * *

(4) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is lined with rubber or other material of equivalent or greater strength, durability, and acid-resistance.

(ii) Bottom outlets on the cargo tank are equipped with self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

43. In § 173.266, paragraph (f)(2) is revised to read as follows:

§ 173.266 Hydrogen peroxide solution in water.

(f) * * *

(2) Specification MC 310, MC 311, MC 312 or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The tank is fabricated—
(A) From aluminum meeting the requirements of Aluminum Association designation 1060, 1260, 5254 or 5262 alloy, and with a minimum wall thickness of 0.500 inches; or

(B) An MC 312 cargo tank may be fabricated of Type 304L, 316 or 316L stainless steel.

(ii) The MAWP of the cargo tank is at least 40 psig.

(iii) The tank is designed and fabricated so that the internal surfaces can be effectively cleaned and passivated. All openings are located on the top of the tank.

(iv) The cargo tank has no bottom outlets.

(v) A cargo tank in hydrogen peroxide service is used in hydrogen peroxide service only and the cargo tank specification plate is so marked. In addition to the required markings prescribed in § 172.328 of this subchapter, each such cargo tank is marked in letters at least 1 inch high "FOR HYDROGEN PEROXIDE SERVICE ONLY".

(iv) The designs for venting and pressure relief devices have been examined by the Bureau of Explosives and approved by the Director, OHMT.

44. In § 173.267, paragraph (a)(7) is revised to read as follows:

§ 173.267 Mixed acid (nitric and sulfuric acid) (nitrating acid).

(a) * * *

(7) Any cargo tank motor vehicle prescribed in § 173.254(a)(5).

45. In § 173.268, paragraph (b)(3) is revised to read as follows:

§ 173.268 Nitric acid.

(b) * * *

(3) Any cargo tank motor vehicle as prescribed in § 173.254(a)(5).

46. In § 173.271, paragraph (a)(8) is revised to read as follows:

§ 173.271 Methyl phosphonic dichloride, phosphorus oxybromide, phosphorus oxychloride, phosphorus trichloride, and thiophosphoryl chloride.

(a) * * *

(8) Specification MC 310, MC 311, MC 312 or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicles, subject to the following conditions:

(i) The tank is—

(A) Fabricated from mild steel, stainless steel or at least 99 percent nickel (with cast metal parts of tank in contact with lading at least 99.7 percent nickel);

(B) Clad with Type 316 stainless steel at least 20 percent as thick as the parent metal; or

(C) Lined with lead at least 1/2 inch thick or lined with at least 99 percent

pure nickel at least 1/2 inch thick at all points including rivets, welds and other joints, and edges of tank plates.

(ii) A tank fabricated from, or clad with, Type 316 stainless steel is authorized only for phosphorous oxychloride, phosphorous trichloride, and thiophosphoryl chloride.

(iii) A tank fabricated from mild steel or austenitic stainless steel, without cladding or lining, is authorized only for phosphorous trichloride service.

(iv) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

47. In § 173.272, paragraphs (i)(25) and (i)(28) are removed and reserved; paragraphs (c), (d), (e), (f) and (i)(21) are revised to read as follows:

§ 173.272 Sulfuric acid.

(c) Concentrations of 51 percent or less. Authorized packagings for sulfuric acid at concentrations of 51 percent or less are prescribed in paragraphs (i) (1)-(16), (21), (24), and (26) of this section.

(d) Concentrations of greater than 51 percent to not over 65.25 percent. Authorized packagings for sulfuric acid at concentrations of 51 percent to not over 65.25 percent are prescribed in paragraphs (i) (1)-(16), (21), and (27)-(29) of this section.

(e) Concentrations of greater than 65.25 percent to not over 77.5 percent. Authorized packagings for sulfuric acid at concentrations of 65.25 percent to not over 77.5 percent are prescribed in paragraphs (i) (1)-(16), (20)-(22), and (29) of this section.

(f) Concentrations of greater than 77.5 percent to not over 95 percent. Authorized packagings for sulfuric acid concentrations of 77.5 percent to not over 95 percent are prescribed in paragraphs (i)(1)-(22), and (29) of this section.

(g) Concentrations of greater than 95 percent to not over 100.5 percent. Authorized packagings for sulfuric acid concentrations of greater than 95 percent to not over 100.5 percent are prescribed in paragraphs (i)(1)-(4), (6), (9), (14)-(22), and (29) of this section.

(h) Concentrations of over 100.5 percent. Authorized packagings for sulfuric acid concentrations of over 100.5 percent are prescribed in paragraphs (i) (1)-(4), (17), and (19)-(23) of this section.

(i) * * *

(21) Specification MC 310, MC 311, MC 312 or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor

vehicle, subject to the following conditions:

(i) The cargo tank is lined with rubber or other material of equivalent or greater strength, durability, and acid-resistance.

(ii) An unlined steel cargo tank is authorized for sulfuric acid of 65.25 percent or greater concentration, provided the corrosive effect on steel is not greater than that of 65.25 percent sulfuric acid measured at 100 °F.

(iii) The temperature of the lading may not exceed the design temperature of the cargo tank marked on the cargo tank specification plate.

(iv) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter.

(25) [Reserved]

(28) [Reserved]

48. In § 173.273, paragraphs (a)(5) and (b)(2) are revised to read as follows:

§ 173.273 Sulfur trioxide.

(a) * * *

(5) Specification MC 310, MC 311, MC 312 or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is equipped with a pressure relief system meeting the requirements in § 178.345-10 of this subchapter and consisting of a spring-loaded pressure relief valve, or a combination spring-loaded pressure relief valve and a frangible (rupture disk) installed in series with the relief valve. When the pressure relief system consists of a spring-loaded pressure relief valve and a frangible (rupture disk) installed in series with the pressure relief valve, the spring-loaded pressure relief valve must be set-to-discharge at a pressure not exceeding 125 percent of the design pressure.

(ii) The tank is not equipped with interior heating coils.

(iii) Bottom outlets on the cargo tank are equipped with self-closing stop valves meeting the requirements in § 178.345-11 of this subchapter.

(b) * * *

(2) Specification MC 311, MC 312, DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is insulated.

(ii) The tank is not equipped with interior heating coils.

(iii) The cargo tank is equipped with a pressure relief system meeting the requirements in § 178.345-10 of this

subchapter and consisting of a spring-loaded pressure relief valve, or a combination spring-loaded pressure relief valve and a frangible (rupture) disk installed in series with the relief valve. When the pressure relief system consists of a spring-loaded pressure relief valve and a frangible (rupture) disk installed in series with the pressure relief valve, the spring-loaded pressure relief valve must be set-to-discharge at a pressure not exceeding 125 percent of the design pressure.

49. In § 173.274, paragraph (a)(4) is revised to read as follows:

§ 173.274 Fluosulfonic acid.

(a) * * *

(4) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle. Bottom outlets must be equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1) of this subchapter.

50. In § 173.276, paragraph (a)(6) is revised to read as follows:

§ 173.276 Anhydrous hydrazine and hydrazine solution.

(a) * * *

(6) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is fabricated from Type 304 or Type 347 stainless steel with molybdenum content not exceeding 1 percent.

(ii) The vapor space in the cargo tank is filled with nitrogen gas at not less than atmospheric pressure.

(iii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1)(i) of this subchapter, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self closing stop-valves meeting the requirements in § 178.337-11(c) of this subchapter.

51. In § 173.277, paragraph (a)(9) is revised to read as follows:

§ 173.277 Hypochlorite solutions.

(a) * * *

(9) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank is lined with rubber or other material of equivalent or greater strength, durability, and acid-resistance.

(ii) Bottom outlets are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1)(i) of this subchapter.

(iii) Continued use of nonspecification cargo tanks is authorized only if they were used to transport hypochlorite solutions prior to January 1, 1983.

52. In § 173.280, paragraph (a)(8) is revised to read as follows:

§ 173.280 Trichloroethanes.

(a) * * *

(8) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The tank is made of steel or stainless steel.

(ii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1) of this subchapter.

53. In § 173.287, paragraph (b)(8) is revised to read as follows:

§ 173.287 Chromic acid solution.

(b) * * *

(8) Any cargo tank motor vehicle prescribed in § 173.254(a)(5), except that the cargo tanks are not authorized for transportation by vessel.

54. In § 173.289, paragraphs (a)(1) and (a)(4) are revised to read as follows:

§ 173.289 Formic acid and formic acid solutions.

(a) * * *

(1) In packagings prescribed in § 173.245, except § 173.245(a)(14) and (a)(29) and DOT 5A steel drum.

(4) Any cargo tank motor vehicle prescribed in § 173.254(a)(5).

55. In § 173.292, paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 173.292 Hexamethylene diamine solution.

(a) * * *

(1) In packagings as prescribed in § 173.249, except § 173.249(a)(6).

(2) Specification MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, MC 312 or, DOT 406, DOT 407, DOT 412 (§§ 178.345, 178.346, 178.347, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The cargo tank meets the corrosion protection requirements in § 178.345-2(c) of this subchapter.

(ii) A Specification MC 306 or DOT 406 cargo tank is fabricated from Type 316 stainless steel not less than 0.100 inch thick.

(iii) A Specification MC 303 cargo tank is fabricated from steel or stainless steel.

(iv) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1) of this subchapter.

56. In § 173.294, paragraph (a)(3) is revised to read as follows:

§ 173.294 Monochloroacetic acid, liquid or solution.

(a) * * *

(3) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The tank is fabricated from Type 304 or Type 316 stainless steel, 99 percent pure nickel plates, titanium meeting the requirements in ASTM SA-265, or is suitably lined with nickel or stainless steel.

(ii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1)(i) of this subchapter.

57. In § 173.295, paragraph (a)(10) is removed and reserved; paragraph (a)(9) is revised to read as follows:

§ 173.295 Benzyl chloride.

(a) * * *

(9) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) A tank fabricated of steel is used to transport stabilized benzyl chloride.

(ii) A tank fabricated from at least 99 percent nickel is used for unstabilized benzyl chloride that is anhydrous and free from impurities such as iron. All cast metal parts of the tank in contact with the lading are fabricated from at least 98.7 percent nickel.

(iii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1)(i) of this subchapter.

(10) [Reserved]

58. In § 173.296, paragraph (a)(2) is revised to read as follows:

§ 173.296 Di isooctyl acid phosphate.

(a) * * *

(2) Any cargo tank motor vehicle prescribed in § 173.254(a)(5).

59. In § 173.297, paragraph (a)(1) is revised to read as follows:

§ 173.297 Titanium sulfate solution containing not more than 45 percent sulfuric acid.

(a) * * *

(4) Specification MC 310, MC 311, MC 312, or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) Each cargo tank is rubber-lined.

(ii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1) of this subchapter.

60. In § 173.315, the introductory text of paragraph (a), and Note 4 and paragraph 5 of Note 17 which follows the table in paragraph (a) are revised; and paragraphs (h)(4), (i)(1) and (k)(5) are revised; and paragraphs (n) and (o) are added to read as follows:

§ 173.315 Compressed gases in cargo tanks and portable tanks.

(a) A compressed gas offered for transportation in a cargo tank motor vehicle or a portable tank must be prepared in accordance with this section, §§ 173.32, 173.33 and Subpart E of Part 180 of this subchapter; for cryogenic liquids, see § 173.318; for marking requirements, see §§ 172.326 and 172.328 of this subchapter. A compressed gas must be loaded and offered for transportation in accordance with the following table:

Note 4: Material must be steel. Tank must have a corrosion allowance of 20 percent or 0.10 inch, whichever is less, added to the metal thickness. In chlorine tanks, the wall thickness must be at least 0.625 inch including corrosion allowance.

Note 17: * * *

(5) Has been inspected and tested in accordance with Subpart E of Part 180 of this subchapter as specified for MC 331 cargo tanks.

(h) * * *

(4) Except on a tank used exclusively for the transportation of carbon dioxide, refrigerated liquid or nitrous oxide, refrigerated liquid, each opening for a pressure gauge must be restricted at or inside the tank by an orifice no larger than 0.060 inch in diameter. For carbon dioxide, refrigerated liquid or nitrous oxide, refrigerated liquid service, the

pressure gauge need only be used during the filling operation.

(i) * * *

(1) The safety relief valves on each tank must meet the following conditions:

(i) The total relieving capacity, as determined by the flow formulas contained in Section 5 of CGA Pamphlet S-1.2, must be sufficient to prevent a maximum pressure in the tank of more than 120 percent of the design pressure;

(ii) The flow capacity testing and rating must be in accordance with Section 5 of CGA Pamphlet S-1.2 and certified by the valve manufacturer.

(iii) For an insulated tank, the required relieving capacity of the relief valves must be the same as for an uninsulated tank, unless the insulation will remain in place and will be effective under fire conditions. In this case, each insulated tank must be covered by a sheet metal jacket of not less than 16 gauge thickness.

(iv) An MC 330 cargo tank that has relief valves sized by Fetterly's formula dated November 27, 1928, may be continued in service. Copies of this formula may be obtained from the Bureau of Explosives.

(k) * * *

(5) Has been inspected and tested in accordance with Subpart E of Part 180 of this subchapter as specified for MC 331 cargo tanks;

(n) Each MC 330 and MC 331 cargo tank used to transport a flammable gas, anhydrous ammonia or hydrogen chloride, refrigerated liquid must have each liquid opening equipped in accordance with § 178.337-11 of this subchapter.

(o) *Chlorine cargo tanks.* Each cargo tank motor vehicle used for the transportation of chlorine must meet the requirements in the following:

(1) No piping, hose, or other device for loading or unloading may be attached to any valve, except at the time of loading or unloading. No hose, piping, or tubing used for loading or unloading may be mounted or carried on the motor vehicle. Except at the time of loading or unloading, the pipe connection of each angle valve must be closed with a screw plug which is chained or otherwise fastened to prevent misplacement.

(2) Each chlorine cargo tank angle valve must be tested to be leak free at not less than 225 psig using dry air or inert gas before installation and thereafter once every five loadings or once a week, whichever occurs first. Prior to each loading, the cargo tank must be inspected and the angle valves and gasketed joints must be examined

and tested at a pressure of not less than 50 psig to determine that they are not leaking and are in proper condition for transportation. Any leaks must be corrected before the cargo tank is offered for transportation.

(3) Excess flow valves on the cargo tank must meet the requirements in § 178.337-11(a)(4) of this subchapter.

61. In § 173.318, paragraphs (b)(2)(i)(C) and (g)(3), and a sentence at the end of paragraph (a)(2)(ii) are added to read as follows:

§ 173.318 Cryogenic liquids in cargo tanks.

* * * * *

(b) * * *

(2) * * *

(i) * * *

(C) The flow capacity and rating must be verified and certified by the manufacturer.

(ii) * * * The flow capacity and rating must be verified and certified by the manufacturer of the device.

(g) * * *

(3) Each cargo tank motor vehicle used to transport a flammable cryogenic liquid must be examined after each shipment to determine its actual holding time. The record required by § 177.840(h) of this subchapter may be used for this determination. If the examination indicates that the actual holding time of the cargo tank, after adjustment to reflect an average ambient temperature of 85 °F, is less than 90 percent of the marked rated holding time (MRHT) for the cryogenic liquid marked on the specification plate or adjacent thereto (see § 178.338-18(b) of this subchapter), the tank may not be refilled with any flammable cryogenic liquid until it is restored to its marked rated holding time value or it is re-marked with the actual marked rated holding time determined by this examination. If the name of the flammable cryogenic liquid that was transported and its marked rated holding time is not displayed on or adjacent to the specification plate, this requirement may be met by deriving the MRHT of the cargo tank for that flammable cryogenic liquid and comparing that derived MRHT with the actual holding time after adjustment.

62. In § 173.346, paragraph (a)(12) is revised to read as follows:

§ 173.346 Poison B liquids not specifically provided for.

(a) * * *

(12) Specification MC 304, MC 307, MC 310, MC 311, MC 312, DOT 407 or DOT 412 (§§ 178.345, 178.347, 178.348, 178.337 of this subchapter) cargo tank

motor vehicle subject to the following conditions:

(i) The design pressure of the cargo tank is at least 25 psig.

(ii) Bottom outlets on the cargo tank are equipped with self-closing stop-valves meeting the requirements in § 178.345-11(a)(1)(i) of this subchapter, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter.

(iii) Each tank is equipped with a steel pressure relief system meeting the requirements in § 178.347-10 of this subchapter, except that pressure relief devices on MC 330 or MC 331 cargo tanks must meet the requirements in § 178.337-9 of this subchapter.

63. In § 173.347, paragraph (a)(3) is revised to read as follows:

§ 173.347 Aniline oil.

(a) * * *

(3) Any cargo tank motor vehicle prescribed in § 173.346(a)(12).

64. In § 173.352, paragraph (a)(5) is revised to read as follows:

§ 173.352 Sodium and potassium cyanide solutions, and cyanide solution, n.o.s.

(a) * * *

(5) Any cargo tank motor vehicle prescribed in § 173.346(a)(12), except that the tank is at least 0.250 inch thick and the tank has no bottom outlets.

65. In § 173.353, paragraph (e) is revised to read as follows:

§ 173.353 Methyl bromide and methyl bromide mixtures.

* * * * *

(e) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(1) The design pressure of the cargo tank is at least 250 psig.

(2) The tank has sufficient outage so that it will not become liquid full with lading at 130° F.

(3) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter.

66. In § 173.354, Note 1 and footnote 1 are removed, and paragraph (a)(5) is revised to read as follows:

§ 173.354 Motor fuel antiknock compound or tetraethyl lead.

(a) * * *

(5) Specification MC 330 or MC 331 (§ 178.337 of this subchapter) cargo tank motor vehicle are authorized for motor fuel antiknock compound only.

67. In § 173.358, paragraph (a)(14) is revised to read as follows:

§ 173.358 Hexaethyl tetraphosphate, methyl parathion, organic phosphate compound, organic phosphorus compound, parathion, tetraethyl dithio pyrophosphate, and tetraethyl pyrophosphate, liquid.

(a) * * *
(14) Specification MC 310, MC 311, MC 312, DOT 412, MC 330, or MC 331 (§§ 178.345, 178.348, 178.337 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The lading is under no pressure except its own vapor pressure.

(ii) Only a Specification MC 330 or MC 331 cargo tank is authorized for hexaethyl tetraphosphate, parathion, tetraethyl dithio pyrophosphate or tetraethyl pyrophosphate, liquid.

(iii) Each Specification MC 310, MC 311, MC 312 or DOT 412 cargo tank has a minimum shell and head thickness of 0.187 inch for a steel tank and 0.266 inch for an aluminum tank. The tank is designed for a lading weight of at least 13 pounds per gallon.

(iv) The design pressure of the cargo tank is at least 25 psig.

(v) Transportation is authorized by private motor carrier only.

(vi) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11 of this subchapter, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter.

(vii) Each tank is equipped with a steel pressure relief system meeting the requirements in § 178.347-10 of this subchapter, except that pressure relief devices on MC 330 or MC 331 cargo tanks must meet the requirements in § 178.337-9 of this subchapter.

68. In § 173.359, paragraph (a)(16) is revised to read as follows:

§ 173.359 Hexaethyl tetraphosphate mixtures; methyl parathion mixtures; organic phosphorus compound mixtures; organic phosphate compound mixtures; parathion mixtures, tetraethyl dithio pyrophosphate mixtures; and tetraethyl pyrophosphate mixtures, liquid (includes solutions, emulsions, or emulsifiable liquids).

(a) * * *
(16) Specification MC 310, MC 311, MC 312, DOT 412, MC 330 or MC 331 (§§ 178.345, 178.348, 178.337 of this

subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The lading is under no pressure except its own vapor pressure.

(ii) Each Specification MC 310, MC 311, MC 312 and DOT 412 cargo tank has a minimum shell and head thickness of 0.187 inch for a steel tank and 0.266 inch for an aluminum tank. The tank is designed for a lading weight of at least 13 pounds per gallon.

(iii) The design pressure of the cargo tank is at least 25 psig.

(iv) Transportation is authorized by private motor carrier only.

(v) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1) of this subchapter, except that bottom outlets on Specification MC 330 and MC 331 cargo tanks must be equipped with internal self-closing stop-valves meeting the requirements in § 178.337-11(a) of this subchapter.

(vi) Each tank is equipped with a steel pressure relief system meeting the requirements in § 178.345-10 of this subchapter, except that pressure relief devices on MC 330 or MC 331 cargo tanks must meet the requirements in the § 178.337-9 of this subchapter.

69. In § 173.369, paragraph (a)(14) is revised to read as follows:

§ 173.369 Carbolic acid (phenol), not liquid.

(a) * * *
(14) Specification MC 304, MC 307, MC 310, MC 311, MC 312, DOT 407 or DOT 412 (§§ 178.345, 178.347, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The MAWP of the cargo tank is at least 25 psig.

(ii) The tank has sufficient outage so that it will not become liquid full with lading at 130° F.

(iii) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1) of this subchapter.

70. In § 173.373, paragraph (a)(6) is revised to read as follows:

§ 173.373 Ortho-nitroaniline and paranitroaniline.

(a) * * *
(6) Specification MC 304, MC 307, MC 310, MC 311, MC 312, DOT 407 or DOT 412 (§§ 178.345, 178.347, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The tanks are authorized only for ortho-nitroaniline loaded in a liquefied state at a temperature not over 180 °F.

(ii) Each cargo tank is made of steel and is insulated.

(iii) The MAWP of the cargo tank is at least 25 psig.

(iv) Bottom outlets on the cargo tank are equipped with internal self-closing stop-valves meeting the requirements in § 178.345-11(a)(1) of this subchapter.

(v) The tanks are not authorized for transportation by vessel.

71. In § 173.374, paragraph (a)(4) is revised to read as follows:

§ 173.374 Nitrochlorobenzene, meta or para.

(a) * * *
(4) Specification MC 312 or DOT 412 (§§ 178.345, 178.348 of this subchapter) cargo tank motor vehicle, subject to the following conditions:

(i) The tanks are authorized only for para nitrochlorobenzene, solid.

(ii) Each cargo tank is insulated and equipped with heating coils.

(iii) The MAWP of the cargo tank is at least 25 psig.

(iv) The tanks are not authorized for transportation by vessel.

(v) Bottom outlets on the cargo tank meet the requirements in § 178.345-11(a)(1) of this subchapter.

PART 176—CARRIAGE BY VESSEL

72. The authority citation for Part 176 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1805, 1808; 49 CFR 1.53, App. A to Part 1.

73. In § 176.76, a sentence is added at the end of paragraph (b) to read as follows:

§ 176.76 Highway vehicles, railroad vehicles, freight containers, and portable tanks containing hazardous materials.

(b) * * * A cargo tank motor vehicle containing hazardous materials may be transported—

(1) On a carfloat or trailership if the material is authorized aboard a cargo vessel by § 172.101 of this subchapter; or

(2) On a passenger ferry vessel or railroad car ferry vessel if the material is authorized aboard a passenger vessel by § 172.101 of this subchapter.

PART 177—CARRIAGE BY PUBLIC HIGHWAY

74. The authority citation for Part 177 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 49 CFR Part 1.

75-76. Sections 177.800, 177.801, and 177.802 are revised to read as follows:

§ 177.800 Purpose and scope.

(a) This part prescribes requirements, in addition to those contained in Parts 171, 172, 173, 178 and 180 of this subchapter, that are applicable to the acceptance and transportation of hazardous materials by private, common or contract carriers by motor vehicle.

(b) It is the duty of each motor carrier to comply with the prescribed regulations and to thoroughly instruct employees in relation thereto.

§ 177.801 Unacceptable hazardous materials shipments.

No person may accept for transportation or transport by motor vehicle any shipment of hazardous material that is not in accordance with the requirements of this subchapter.

§ 177.802 Inspection.

Records, equipment, packagings and containers under the control of a motor carrier, insofar as they affect safety in transportation of hazardous materials by motor vehicle, must be made available for examination and inspection by a duly authorized representative of the Department.

77. Section 177.814 is revised to read as follows:

§ 177.814 Retention of cargo tank motor vehicle manufacturer's certificate, maintenance and other reports.

Each owner of a cargo tank motor vehicle and each motor carrier must comply with the reporting and record retention requirements contained in § 180.417 of this subchapter.

§ 177.822 [Amended]

78. In § 177.822, paragraph (b) is amended by removing the reference "178.315" and inserting in its place "178.351".

79. Section 177.824 is revised to read as follows:

§ 177.824 Retesting and inspection of cargo tanks.

Except as otherwise provided in this subchapter, no motor carrier may operate a cargo tank motor vehicle containing a hazardous material unless the cargo tank motor vehicle conforms to the retest and inspection requirements set forth in Subpart E of Part 180 of this subchapter. This paragraph does not apply to any cargo tank filled prior to the retest or inspection due date.

80. In § 177.840, the section heading and paragraph (f) are revised to read as follows:

§ 177.840 Compressed gases.

(f) A cargo tank motor vehicle used for transportation of chlorine may not be moved, coupled or uncoupled, when any loading or unloading connections are attached to the vehicle, nor may it be left without the power unit attached unless the vehicle is chocked or equivalent means are provided to prevent motion. For additional requirements, see § 173.315(o) of this subchapter.

§ 177.835 [Amended]

81. In § 177.835, paragraph (k), the first sentence is amended by removing the reference to "178.315" and inserting in its place "178.351", and the last sentence is amended by removing the reference "178.318" and inserting in its place "178.352".

PART 178—SHIPPING CONTAINER SPECIFICATIONS

82. The authority citation for Part 178 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1808, 49 Part 1.

83-84. A new § 178.320 is added to subpart J to read as follows:

§ 178.320 General requirements applicable to all DOT specification cargo tank motor vehicles.

(a) *Definitions.* (1) For the purposes of this subpart, "design type" means one or more cargo tanks which are made—

(i) To the same specification;
(ii) By the same manufacturer;
(iii) To the same engineering drawings, and calculations;
(iv) Of the same materials of construction;

(v) To the same diameter;
(vi) To a length varying by no more than five percent;

(vii) With the volume varying by no more than five percent (due to a change in length only); and

(viii) For the purposes of § 178.338 only, with the same insulation system.

(2) "Manufacturer" means any person engaged in the manufacture or assembly of a DOT specification cargo tank or cargo tank equipment. A manufacturer shall register with the Department in accordance with subpart F of Part 107 in subchapter B of this chapter.

(b) *Design certification.* (1) Each cargo tank design type shall be certified in conformance with the specification requirements by a design certifying engineer registered in accordance with Subpart F of Part 107.

(2) The design certifying engineer shall furnish to the manufacturer a certificate, including sketches, drawings, and calculations, to indicate compliance

with the specification requirements. Each certificate shall be signed by the design certifying engineer.

(3) The manufacturer shall retain the design certificate at his principal place of business for as long as he manufactures DOT specification cargo tanks.

85. In § 178.337, the heading is revised to read as follows:

§ 178.337 Specification MC 331; cargo tank motor vehicle primarily for transportation of compressed gases as defined in Subpart G of Part 173 of this subchapter.

86. In § 178.337-1, paragraph (c) is revised to read as follows:

§ 178.337-1 General requirements.

(e) *Insulation.* (1) Each tank required to be insulated must conform with the use and performance requirements contained in §§ 173.315(a) Table, Note 11 and 178.337-1 (a)(3) and (e)(2) of this subchapter.

(2) Each tank intended for chlorine; carbon dioxide, refrigerated liquid; or nitrous oxide, refrigerated liquid service must have suitable insulation of such thickness that the overall thermal conductance is not more than 0.08 Btu per square foot per °F differential per hour. The conductance must be determined at 60 °F. Insulation material used on tanks for nitrous oxide, refrigerated liquid must be noncombustible. Insulating material used on tanks for chlorine must be corkboard or self-extinguishing polyurethane foam, with a minimum thickness of 4 inches.

87. In § 178.337-2, paragraph (c) is revised to read as follows:

§ 178.337-2 Material.

(c) A cargo tank in anhydrous ammonia service must be constructed of steel. The use of copper, silver, zinc or their alloys is prohibited. Baffles made from aluminum may be used only if joined to the tank by a process not requiring post weld heat treatment of the tank.

88. Section 178.337-3 is revised to read as follows:

§ 178.337-3 Structural integrity.

(a) The maximum calculated design stress value may not exceed the maximum design stress values prescribed in Section VIII of the ASME Code or 25 percent of the minimum specified tensile strength of the metal at any point in the cargo tank. The

calculated design stresses must take into account the weight of the tank, the maximum weight of lading, and the weight of structures supported by the cargo tank, but not including the weight of the structures supporting the tank in normal conditions. The stresses due to internal pressure and vertical loadings must be applied in all considerations. The accelerative, decelerative and lateral forces must be applied separately. The combination case which produces the maximum effective stress shall govern. Corrosion allowance material may not be used to satisfy the design requirements.

(1) The design and construction of each cargo tank must provide for all potential structural loadings, including but not limited to dynamic loads, superimposed loadings and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be considered in the calculation of the design stress value.

(2) Maximum concentrated stresses which might be created at pads, cradles or supports due to shear, bending and torsion shall also be considered and calculated in accordance with Appendix G of Section VIII of the ASME Code.

(b) Steel less than $\frac{1}{8}$ inch or aluminum less than 0.270 inch thick may not be used for the shell or heads of the tank unless the tank is evacuated or has a load bearing jacket. Steel at least 0.110 inch thick may be used for the shell or heads for a tank that is evacuated or has a load bearing jacket. Steel less than 0.110 inch thick may not be used for the shell or head under any circumstance.

(c) Analyses of basic cargo tank structural integrity must be made using the conditions specified in paragraph (a) of this section. The stresses involved are not necessarily uniform throughout the cargo tank. Stress calculations must be made by the following formula:

$$S = 0.5(S_t + S_x) \pm [0.25(S_t - S_x)^2 + S_y^2]^{0.5}$$

where at any given point under consideration, and for the worst combination of loadings that can occur at the same time, the stress levels produced at the point being considered are:

S = Effective stress as limited by this requirement, in psi.

S_t = The circumferential tensile stress due to internal pressure, in psi.

S_x = The following tensile or/and compressive stresses, in psi, that apply.

(1) The longitudinal tensile stresses due to internal pressure;

(2) The tensile or compression stress generated by the axial load resulting from a decelerative force equal to twice the static weight of the fully loaded vehicle applied independently to each suspension assembly at the road surface;

(3) The tensile or compression stress generated by the bending moment resulting from a decelerative force equal to twice the static weight of the fully loaded vehicle applied independently to each suspension assembly at the road surface;

(4) The tensile or compression stress generated by the axial load resulting from an accelerative force equal to the static weight of the fully loaded vehicle applied to the horizontal pivot of the fifth wheel supporting the vehicle;

(5) The tensile or compression stress generated by the bending moment resulting from an accelerative force equal to the static weight of the fully loaded vehicle applied to the horizontal pivot of the fifth wheel supporting the vehicle;

(6) The tensile or compression stress due to a bending moment produced by a vertical force equal to three times the static weight of the fully loaded vehicle.

S_y = The following shear stresses, in psi, that apply.

(1) The vertical shear stress due to a vertical force equal to three times the static weight of the tank and contents;

(2) The lateral shear stress due to a lateral accelerative force which will produce an overturn but not less than 0.75 times the static weight of the fully loaded vehicle, applied at the road surface; and

(3) The torsional shear stress due to a lateral accelerative force which will produce an overturn but not less than 0.75 times the static weight of the fully loaded vehicle, applied at the road surface.

(d) In addition to meeting the conditions specified in paragraph (a) of this section, the design calculations for the tank heads and shell must include the load resulting from the design pressure in combination with the dynamic pressure resulting from a longitudinal deceleration of 2 "g". For this loading condition, the design stress value used may not exceed the lesser of the yield strength or 75 percent of the ultimate tensile strength of the material of construction. The stress value requiring the greatest wall thickness derived from paragraphs (a), (b), (c) or (d) of this section must be used.

(e) A corrosion allowance of at least 20 percent of the minimum shell and head thickness or 0.100 inch, whichever is less, must be added to the thickness requirement for a cargo tank used in chlorine or sulfur dioxide service. The head and shell thickness for chlorine tanks must be at least $\frac{1}{8}$ inch, including corrosion allowance.

(f) The design, construction, and installation of any appurtenance to the shell or heads of the cargo tank must minimize the possibility of appurtenance damage or failure adversely affecting the lading retention integrity of the tank. Where a tank support is attached to any part of the tank head, the stresses imposed must meet the requirements in paragraph (a) of this section.

(1) A lightweight attachment, such as a conduit clip, brakeline clip or placard holder, must be constructed of a material of lesser strength than the tank shell or head material and may not be more than 72 percent of the thickness of the tank shell or head to which it is attached. The attachment may be secured directly to the tank shell or head if the device is designed and installed in such a manner that if damaged it will not affect the lading retention integrity of the tank. The lightweight attachment must be secured to the tank shell or head by continuous weld or in such manner as to preclude formation of pockets, which may become sites for incipient corrosion. Attachments meeting the requirements of this paragraph are not authorized for cargo tanks constructed under paragraph UHT of the ASME Code.

(2) Except as prescribed in §§ 178.337-3(f)(1) and 178.337-13(d), the welding of any appurtenance to a shell or head must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the tank if any force is applied to the appurtenance, from any direction. The thickness of a mounting pad may not be less than that of the shell or head to which it is attached, and not more than 1.5 times the shell or head thickness. However, a pad not less than 0.250 inch thick may be used when the shell or head thickness is over 0.250 inch thick. If weep holes or tell-tale holes are used, the pad must be drilled or punched at its lowest point before it is attached to the tank. Each pad must—

(i) Extend at least 2 inches in each direction from any point of attachment of an appurtenance;

(ii) Have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head; and

(iii) Be attached by a continuous weld around the pad, except for a small gap at the lowest point for draining, using filler material conforming to the recommendations of the manufacturer of the head or shell material.

(3) Where any tank support is attached to any part of a tank head, the stresses imposed upon the head must be as required in paragraph (a) of this section and § 178.337-13 with respect to maximum concentrated stresses at pads and cradles.

89. In § 178.337-4, the first sentence in paragraph (b) is revised to read as follows:

§ 178.337-4 Joints.

* * *

(b) Welding procedure and welder performance must be in accordance with Section IX of the ASME Code. * * *

90. In § 178.337-6, paragraph (a) is revised to read as follows:

§ 178.337-6 Closure for manhole.

(a) Each cargo tank manufactured after December 12, 1989, must be provided with a manhole conforming to paragraph UG-46(g)(1) and other applicable requirements of the ASME Code, except that a cargo tank constructed of NQT steel having a capacity of 3500 water gallons or less may be provided with an inspection opening conforming to paragraph UG-46 and other applicable requirements of the ASME Code instead of a manhole.

91. In § 178.337-8, paragraphs (a)(2) and (b) are revised to read as follows:

§ 178.337-8 Outlets.

(a) * * *

(2) With the exception of gauging devices, thermometer wells, and pressure relief valves, each opening in a cargo tank intended for use in transporting compressed gas (except carbon dioxide, refrigerated liquid) must be—

(i) Closed with a plug, cap or bolted flange;

(ii) Protected with an excess flow valve on product discharge openings or protected with a check valve on product inlet openings; or

(iii) Fitted with an internal self-closing stop valve as specified in § 178.337-11(a).

(b) Outlets on chlorine cargo tanks must meet the requirements in § 178.337-1(c)(2).

92. In § 178.337-9, the section heading, the paragraph (a) heading, and paragraphs (b) and (d)(1) are revised to read as follows:

§ 178.337-9 Pressure relief devices, piping, valves, hoses, and fittings.

(a) *Pressure relief devices.* * * *

(b) *Piping, valves, hose, and fittings.*

(1) The burst pressure of all piping, pipe fittings, hose and other pressure parts, except for pump seals and pressure relief devices, must be at least 4 times the design pressure of the tank.

Additionally, the burst pressure may not be less than 4 times any higher pressure to which each pipe, pipe fitting, hose or other pressure part may be subjected to in service. For chlorine service, see paragraph (b)(7) of this section.

(2) Pipe joints must be threaded, welded or flanged. If threaded pipe is used, the pipe and fittings must be Schedule 80 weight or heavier.

Malleable metals must be used in the construction of valves and fittings. Where copper tubing is permitted, joints shall be brazed or be of equally strong metal union type. The melting point of the brazing material may not be lower than 1000° F. The method of joining tubing must not reduce the strength of the tubing, such as by the cutting of threads.

(3) Each hose coupling must be designed for a pressure of at least 120 percent of the hose design pressure and so that there will be no leakage when connected.

(4) Piping must be protected from damage due to thermal expansion and contraction, jarring, and vibration. Slip joints are not authorized for this purpose.

(5) *Piping and fittings* must be grouped in the smallest practicable space and protected from damage as required by § 178.337-10.

(6) All *piping, valves, and fittings* on a cargo tank must be proved free from leaks. This requirement is met when such piping, valves, and fittings have been tested after installation with gas or air and proved leak tight at not less than the design pressure marked on the cargo tank. This requirement is applicable to all hoses used in a cargo tank, except that hose may be tested before or after installation on the tank.

(7) *Chlorine cargo tanks.* Cargo tanks used to transport chlorine must conform to the following:

(i) No hose, piping or tubing used for loading or unloading may be mounted or carried on the cargo tank motor vehicle.

(ii) Angle valves on chlorine cargo tank motor vehicles must conform to the standards of The Chlorine Institute, Inc., as follows:

(A) For a cargo tank manufactured before January 1, 1975, to either Drawing 104-4, dated May 5, 1958, or Drawing 104-5, dated September 1, 1972.

(B) For a cargo tank manufactured on or after January 1, 1975, to Drawing 104-5, dated September 1, 1972.

(iii) Before installation, each angle valve must be tested for leakage at not less than 225 psig using dry air or inert gas.

(d) *Refrigeration and heating coils.* (1) Refrigeration and heating coils must be securely anchored with provisions for thermal expansion. The coils must be pressure tested externally to at least tank test pressure, and internally to either the tank test pressure or twice the working pressure of the heating/refrigeration system, whichever is higher. A tank may not be placed in service if any leakage occurs or other

evidence of damage is found. The refrigerant or heating medium to be circulated through the coils must not be capable of causing any adverse chemical reaction with the tank lading in the event of leakage. The unit furnishing refrigeration may be mounted on the motor vehicle.

93. Section 178.337-11 is revised to read as follows:

§ 178.337-11 Emergency discharge control.

(a) *Excess flow valves, back flow check valves and stop valves.* (1) When required by § 178.337-8(a)(2):

(i) Each internal self-closing stop valve and excess flow valve must automatically close if any of its attachments are sheared off or if any attached hoses or piping are separated.

(ii) Each self-closing stop valve, excess flow valve, or check valve must be located inside the tank or inside a welded nozzle which is an integral part of the tank. The valve seat must be located inside the tank or within a welded flange, its companion flange, a nozzle or coupling. The installation must be made so as to assure that any undue strain which causes a failure requiring the functioning of the valve will not impair the operation of the valve.

(iii) All parts of the valve inside the tank, or within a nozzle, flange, companion flange, or coupling must be made of material not subject to corrosion or other deterioration in the presence of the lading.

(iv) Any liquid level gauging device must be constructed so that the outward flow of the tank lading does not exceed the flow through a 0.060-inch diameter opening.

(v) Each excess flow valve must close automatically at the rated flow of gas or liquid as specified by the valve manufacturer. The flow rating of the piping, fittings, valves, and hose on each side of the excess flow valve must be at least equal to that of the excess flow valve. If branching or other restrictions are incorporated in the system so that the flow rating is reduced to less than that of the excess flow valve at the tank, additional excess flow valves must be located where the flow rates are reduced. The additional valves must have sufficient flow rating so that total capacity equals or exceeds the excess flow valve capacity.

(vi) An excess flow valve may be designed with a bypass, not to exceed a 0.040-inch diameter opening, to allow equalization of pressures.

(2) Each liquid or vapor discharge opening in a cargo tank intended for the

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transportation of a flammable liquid, a flammable compressed gas, hydrogen chloride (refrigerated liquid), or anhydrous ammonia must be equipped with a remotely controlled internal self-closing stop-valve. For cargo tanks intended for use in chlorine service, see paragraph (a)(4) of this section.

(i) On a tank over 3,500 gallons water capacity, each internal self-closing stop-valve must be provided with remote means of automatic closure, both mechanical and thermal, that are installed at the ends of the tank in at least two, diagonally opposite locations. Cable linkage between closures and remote operators must be corrosion resistant and effective in all types of environment and weather. If the loading/unloading connection at the tank is not in the general vicinity of one of the two locations specified above, one additional fusible element must be installed so that heat from a fire in the loading unloading connection area will activate the emergency control system. Fusible elements must not have a melting point exceeding 250° F. The loading/unloading connection area is where hoses or hose reels are connected to the permanent metal piping.

(ii) On a tank of 3,500 gallons water capacity or less, each internal self-closing stop-valve must be provided with at least one remote means of automatic closure, which may be mechanical, installed on the end of the tank furthest away from the loading/unloading connection area. The loading/unloading connection area is where hoses or hose reels are connected to the permanent metal piping.

(3) Unless otherwise specified in paragraph (c) of this section, each outlet of a cargo tank intended for the transportation of a nonflammable gas (except carbon dioxide, refrigerated liquid) must be provided with an internal self-closing stop-valve or an automatic excess flow valve.

(4) Excess flow valves on chlorine cargo tank motor vehicles must conform to the standards of The Chlorine Institute, Inc., as follows:

(i) For a cargo tank manufactured before January 1, 1975:

(A) A valve conforming to either Drawing 101-4, dated May 16, 1969, or Drawing 101-6, dated September 1, 1973, must be installed under each liquid angle valve.

(B) A valve conforming to either Drawing 106-3, dated May 16, 1973, or Drawing 106-5, dated September 1, 1973, must be installed under each gas angle valve.

(ii) For a cargo tank manufactured on or after January 1, 1975:

(A) A valve conforming to Drawing 101-6, dated September 1, 1973, must be installed under each liquid angle valve.

(B) A valve conforming to Drawing 106-5, dated September 1, 1973, must be installed under each gas angle valve.

(b) *Shut-off valves.* Each filling and discharge line must be provided with a manual stop-valve located as close to the tank as practicable. However, if an internal self-closing stop-valve is used, the manual stop valve must be located in the line between the self-closing stop-valve and the hose connection. A single so-called "stop-check" or excess flow valve may not be used to satisfy the requirements of this paragraph, except as provided in paragraph (c) of this section.

(c) The requirements in paragraph (a) of this section do not apply to:

(1) A vapor or liquid discharge opening of less than 1 1/4 inch NPT equipped with an excess flow valve together with a manually operated external self closing stop valve, in place of a remotely controlled internal self-closing stop-valve.

(2) A vapor or liquid discharge opening of 1 1/4 inch NPT equipped with an excess flow valve together with a manually operated external stop valve installed before October 1, 1984.

(3) An engine fuel line, on a truck-mounted tank, of not over 3/4 inch NPT equipped with a valve having an integral excess flow valve.

94. In § 178.337-14, paragraph (b) is revised to read as follows:

§ 178.337-14 Gauging devices.

(b) *Pressure gauges.* (1) See § 173.315(h) of this subchapter.

(2) Each cargo tank used in carbon dioxide, refrigerated liquid or nitrous oxide, refrigerated liquid service must be provided with a suitable pressure gauge. A shut-off valve must be installed between the pressure gauge and the tank.

95. Section 178.337.15 is revised to read as follows:

§ 178.337-15 Pumps and compressors.

(a) Liquid pumps or gas compressors, if used, must be of suitable design, adequately protected against breakage by collision, and kept in good condition. They may be driven by motor vehicle power take-off or other mechanical, electrical, or hydraulic means. Unless they are of the centrifugal type, they shall be equipped with suitable pressure actuated by-pass valves permitting flow from discharge to suction or to the tank.

(b) A liquid chlorine pump may not be installed on a cargo tank intended for the transportation of chlorine.

96. In § 178.338-18, the first and second sentences of paragraph (a) are revised to read as follows:

§ 178.337-18 Certification.

(a) The tank vehicle manufacturer must supply and the owner must obtain, a tank manufacturer's data report as required by the ASME Code, and a certificate stating that the completed cargo tank motor vehicle conforms in all respects to Specification MC 331 and the ASME Code. The certificate must be signed by a responsible official of the manufacturer and a Registered Inspector. The manufacturer's and the Registered Inspector's registration number must appear on the certificate (See subpart F, Part 107 in subchapter B of this chapter.) * * *

97. Section 178.338-3 is revised to read and follows:

§ 178.338-3 Structural Integrity.

(a) The maximum calculated design stress value may not exceed the maximum design stress values prescribed in Section VIII of the ASME Code or 25 percent of the minimum specified tensile strength of the metal at any point in the cargo tank. The calculated design stresses must take into account the weight of the tank, the maximum weight of lading, and the weight of structures supported by the cargo tank, but not including the weight of the structures supporting the tank in normal conditions. The stresses due to internal pressure and vertical loadings must be applied in all considerations. The accelerative, decelerative and lateral forces must be applied separately. The combination case which produces the maximum effective stress shall govern. Corrosion allowance material may not be used to satisfy the design requirements.

(1) The design and construction of each cargo tank must provide for all potential structural loadings, including but not limited to dynamic loads, superimposed loadings and the effect of temperature gradients resulting from lading and ambient temperature extremes. When dissimilar materials are used, their thermal coefficients must be considered in the calculation of the design stress value.

(2) Maximum concentrated stresses which might be created at pads, cradles or supports due to shear, bending and torsion shall also be considered and calculated in accordance with Appendix G of Section VIII of the ASME Code.

(b) Steel less than 3/16 inch or aluminum less than 0.270 inch thick may not be used for the shell or heads of the tank unless the tank is evacuated or has a load bearing jacket. Steel at least 0.110 inch thick may be used for the shell or heads for a tank that is evacuated or has a load bearing jacket. Steel less than 0.110 inch thick may not be used for the shell or head under any circumstance.

(c) Analyses of basic cargo tank structural integrity must be made using the conditions specified in paragraph (a) of this section. The stresses involved are not necessarily uniform throughout the cargo tank. Stress calculations must be made by the following formula:

$$S = 0.5(S_t + S_x) \pm [0.25(S_y - S_z)^2 + S_x^2]^{0.5}$$

where at any given point under consideration, and for the worst combination of loadings that can occur at the same time, the stress levels produced at the point being considered are:

S = Effective stress as limited by this requirement, in psi.

S_y = The circumferential tensile stress due to internal pressure, in psi.

S_x = The following tensile and/or compressive stresses, in psi, that apply.

(1) The longitudinal tensile stresses due to internal pressure;

(2) The tensile or compression stress generated by the axial load resulting from a decelerative force applied independently to each suspension assembly at the road surface using applicable static loadings specified in § 178.338-13 (b) and (c);

(3) The tensile or compression stress generated by the bending moment resulting from a decelerative force applied independently to each suspension assembly at the road surface using applicable static loadings specified in § 178.338-13 (b) and (c);

(4) The tensile or compression stress generated by the axial load resulting from an accelerative force applied to the horizontal pivot of the fifth wheel supporting the vehicle using applicable static loadings specified in § 178.338-13 (b) and (c);

(5) The tensile or compression stress generated by the bending moment resulting from an accelerative force applied to the horizontal pivot of the fifth wheel supporting the vehicle using applicable static loadings specified in § 178.338-13 (b) and (c);

(6) The tensile or compression stress due to a bending moment produced by a vertical force using applicable static loadings specified in § 178.338-13 (b) and (c).

S_z = The following shear stresses (in psi) that apply.

(1) The vertical shear stress due to a vertical force equal to three times the static weight of the tank and contents;

(2) The lateral shear stress due to a lateral accelerative force applied at the road surface which will produce an overturn but not less than 0.75 times the static weight of the fully loaded vehicle; and

(3) The torsional shear stress due to a lateral accelerative force applied at the road surface which will produce an overturn but

not less than 0.75 times the static weight of the fully loaded vehicle.

(d) In addition to meeting the conditions specified in paragraph (a) of this section, the design calculations for the tank heads and shell must include the load resulting from the design pressure in combination with the dynamic pressure resulting from a longitudinal deceleration of 2 "g". For this loading condition, the design stress value used must not exceed the lesser of the yield strength or 75 percent of the ultimate tensile strength of the material of construction. The stress value requiring the greatest wall thickness derived from paragraph (a), (b), (c), or (d) of this section must be used.

(e) The design, construction, and installation of any appurtenance to the shell or heads of the cargo tank must minimize the possibility of appurtenance damage or failure adversely affecting the lading retention integrity of the tank. Where a tank support is attached to any part of the tank head, the stresses imposed must conform to the requirements of paragraph (a) of this section.

(1) A lightweight attachment, such as a conduit clip, brakeline clip or placard holder, must be constructed of a material of lesser strength than the tank shell or head material and may not be more than 72 percent of the thickness of the tank shell or head to which it is attached. The attachment may be secured directly to the tank shell or head if the device is designed and installed in such a manner that if damaged it will not affect the lading retention integrity of the tank. The lightweight attachment must be secured to the tank shell or head by continuous weld or in such manner as to preclude formation of pockets, which may become sites for incipient corrosion. Attachments conforming with this paragraph are not authorized for cargo tanks constructed under paragraph UHT of the ASME Code.

(2) Except as prescribed in §§ 178.338.3(f)(1) and 173.318(a), the welding of any appurtenance to a shell or head must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the tank if any force is applied to the appurtenance, from any direction. The thickness of a mounting pad may not be less than that of the shell or head to which it is attached, and not more than 1.5 times the shell or head thickness. However, a pad not less than 3/16 inch thick may be used when the shell or head thickness is over 3/16 inch. If weep holes or tell-tale holes are used, the pad must be drilled or punched at its

lowest point before it is attached to the tank. Each pad must:

(i) Extend at least 2 inches in each direction from any point of attachment of an appurtenance;

(ii) Be attached by a continuous weld around the pad except for a small gap at the lowest point for draining.

98. In § 178.338-8, paragraph (b) is revised to read as follows:

§ 178.338-8 Pressure relief devices, piping, valves, and fittings.

(b) * * *

(1) The burst pressure of all piping, pipe fittings, hoses and other pressure parts, except for pump seals and pressure relief devices, must be at least 4 times the design pressure of the tank. Additionally, the burst pressure may not be less than 4 times any higher pressure to which each pipe, pipe fitting, hose or other pressure part may be subjected to in service.

(2) Pipe joints must be threaded, welded or flanged. If threaded pipe is used, the pipe and fittings must be Schedule 80 weight or heavier. Malleable metals must be used in the construction of valves and fittings. Where copper tubing is permitted, joints shall be brazed or be of equally strong metal union type. The melting point of the brazing materials may not be lower than 1000 °F. The method of joining tubing may not reduce the strength of the tubing, such as by the cutting of threads.

(3) Each hose coupling must be designed for a pressure of at least 120 percent of the hose design pressure and so that there will be no leakage when connected.

(4) Piping must be protected from damage due to thermal expansion and contraction, jarring, and vibration. Slip joints are not authorized for this purpose.

(5) All piping, valves and fittings on a cargo tank must be proved free from leaks. This requirement is met when such piping, valves, and fittings have been tested after installation with gas or air and proved leak tight at not less than the design pressure marked on the cargo tank. This requirement is applicable to all hoses used in a cargo tank, except that hose may be tested before or after installation on the tank.

(6) Each valve must be suitable for the tank design pressure at the tank design service temperature.

(7) All fittings must be rated for the maximum tank pressure and suitable for the coldest temperature to which they will be subjected in actual service.

(8) All piping, valves, and fittings must be grouped in the smallest practicable space and protected from damage as required by § 178.338-10.

(9) When a pressure-building coil is used on a tank designed to handle oxygen or flammable ladings, the vapor connection to that coil must be provided with a valve or check valve as close to the tank shell as practicable to prevent the loss of vapor from the tank in case of damage to the coil. The liquid connection to that coil must also be provided with a valve.

99. Section 178.338-17 is revised to read as follows:

§ 178.338-17 Pumps and compressors.

(a) *Liquid pumps and gas compressors*, if used, must be of suitable design, adequately protected against breakage by collision, and kept in good condition. They may be driven by motor vehicle power take-off or other mechanical, electrical, or hydraulic means. Unless they are of the centrifugal type, they shall be equipped with suitable pressure actuated by-pass valves permitting flow from discharge to suction to the tank.

(b) A valve or fitting made of aluminum with internal rubbing or abrading aluminum parts that may come in contact with oxygen in the cryogenic liquid form must not be installed on any cargo tank used to transport oxygen, cryogenic liquid.

100. Sections 178.340, 178.341, 178.342 and 178.343 are removed, and §§ 178.345 through 178.345-15, 178.346 through 178.346-15, 178.347 through 178.347-15 and 178.348 through 178.348-15 are added to subpart J to read as follows:

§ 178.345 General design and construction requirements applicable to Specification DOT 406 (§ 178.346), DOT 407 (§ 178.347), and DOT 412 (§ 178.348) cargo tank motor vehicles.

§ 178.345-1 General requirements.

(a) Specification DOT 406, DOT 407 and DOT 412 cargo tank motor vehicles must conform to the requirements of this section in addition to the requirements of the applicable specification contained in §§ 178.346, 178.347 or 178.348.

(b) All specification requirements are minimum requirements.

(c) *Definitions*. The following terms apply to §§ 178.345, 178.346, 178.347 and 178.348.

"*Appurtenance*" means any cargo tank accessory attachment that has no lading retention or containment function and provides no structural support to the cargo tank.

"*Baffle*" means a non-liquid-tight transverse partition device that deflects,

checks or regulates fluid motion in a tank.

"*Bulkhead*" means a liquid-tight transverse closure at the ends of or between cargo tanks.

"*Charging line*" means a hose, tube, pipe, or similar device used to pressurize a tank with material other than the lading.

"*Companion flange*" means one of two mating flanges where the flange faces are in contact or separated only by a thin leak sealing gasket and are secured to one another by bolts or clamps.

"*Connecting structure*" means the structure joining two cargo tanks.

"*Constructed and certified in conformance with the ASME Code*" means the cargo tank is constructed and stamped in accordance with the ASME Code, and is inspected and certified by an Authorized Inspector.

"*Constructed in accordance with the ASME Code*" means the cargo tank is constructed in accordance with the ASME Code with the authorized exceptions (see §§ 178.346, 178.347, and 178.348) and is inspected and certified by a Registered Inspector.

"*External self-closing stop-valve*" means a self-closing stop-valve designed so that the self-stored energy source is located outside the tank and the welded flange.

"*Flange*" means the structural ring for guiding or attachment of a pipe or fitting with another flange (companion flange), pipe, fitting or other attachment. For size and shape, see ANSI B16.5.

"*Inspection pressure*" means the pressure used to determine leak tightness of the tank when testing with pneumatic pressure.

"*Internal self-closing stop-valve*" means a self-closing stop-valve designed so that the self-stored energy source is located inside the tank or tank sump, or within the welded flange, and the valve seat is located within one inch of the external face of the welded flange or sump of the tank.

"*Lading*" means the hazardous material contained in a cargo tank.

"*Loading/unloading connection*" means the fitting in the loading/unloading line farthest from the loading/unloading outlet to which the loading/unloading hose or device is attached.

"*Loading/unloading outlet*" means the tank outlet used for normal loading/unloading operations.

"*Loading/unloading stop-valve*" means the stop valve farthest from the tank loading/unloading outlet to which the loading/unloading connection is attached.

"*Maximum allowable working pressure*" or "*MAWP*" See § 178.345-1(k).

"*Multi-specification cargo tank motor vehicle*" means a cargo tank motor vehicle equipped with two or more cargo tanks fabricated to more than one cargo tank specification.

"*Nozzle*" means the subassembly consisting of a pipe section with a welded or forged flange on one end in which the flange is an integral part of the neck extension.

"*Outlet*" means any opening in the shell or head of a tank, (including the means for attaching a closure), except that the following are not outlets: A threaded opening securely closed during transportation with a threaded plug, a flanged opening securely closed during transportation with a bolted or welded blank flange, a manhole, or gauging devices, thermometer wells, and safety relief devices.

"*Outlet stop-valve*" means the stop-valve at the tank loading/unloading outlet.

"*Pipe coupling*" means a fitting with internal or external threads on both ends.

"*Rear bumper*" means the structure designed to prevent a vehicle or object from under-riding the rear of a motor vehicle. See § 393.86 of this title.

"*Rear-end tank protection device*" means the structure designed to protect a cargo tank and any lading retention piping or devices in case of a rear end collision.

"*Sacrificial Device*" means an element, such as a shear section, designed to fail under load in order to prevent damage to any lading retention part or device. The device must break under strain at no more than 70 percent of the strength of the weakest piping element between the tank and the sacrificial device. Operation of the sacrificial device must leave the remaining piping and its attachment to the tank intact and capable of retaining lading.

"*Self-closing stop-valve*" means a stop-valve held in the closed position by means of self-stored energy, which opens only by application of an external force and which closes when the external force is removed.

"*Shear section*" means a sacrificial device fabricated in such a manner as to abruptly reduce the wall thickness of the adjacent piping or valve material by at least 30 percent.

"*Shell*" means the circumferential portion of a tank defined by the basic design radius excluding the closing heads.

"*Stop-valve*" means a valve that stops the flow of lading.

"*Sump*" means a protrusion from the bottom of a tank shell designed to facilitate complete loading and unloading of lading.

"*Tank*" means a container, consisting of a shell and heads, that forms a pressure tight vessel having openings designed to accept pressure tight fittings or closures, but excludes any appurtenances, reinforcements, fittings, or closures.

"*Test pressure*" means the pressure to which a tank is subjected to determine pressure integrity.

"*Toughness of material*" means the capability of a material to absorb the energy represented by the area under the stress strain curve (indicating the energy absorbed per unit volume of the material) up to the point of rupture.

"*Vacuum tank*" means a tank that is loaded by reducing the pressure in the tank to below atmospheric pressure.

"*Variable specification cargo tank*" means a cargo tank that is constructed in accordance with one specification, but which may be altered to meet another specification by changing relief device, closures, lading discharge devices, and other lading retention devices.

"*Void*" means the space between tank heads or bulkheads and a connecting structure.

"*Welded flange*" means a flange attached to the tank by a weld joining the tank shell to the cylindrical outer surface of the flange, or by a fillet weld joining the tank shell to a flange shaped to fit the shell contour.

(d) A manufacturer of a cargo tank must hold a current ASME certificate of authorization and must be registered with the Department in accordance with Part 107, Subpart F of this chapter.

(e) All construction must be certified by an Authorized Inspector or by a Registered Inspector as applicable to the cargo tank.

(f) Each cargo tank must be designed and constructed in conformance with the requirements of the applicable cargo tank specification. Each DOT 412 cargo tank with a maximum allowable working pressure greater than 15 psig, and each DOT 407 cargo tank with a maximum allowable working pressure greater than 35 psig must be "constructed and certified in conformance with the ASME Code" except as limited or modified by the applicable cargo tank specification. Other cargo tanks must be "constructed in accordance with the ASME Code", except as limited or modified by the applicable cargo tank specification.

(g) Requirements relating to parts and accessories on motor vehicles, which are contained in Part 393 of the Federal Motor Carrier Safety Regulations of this title, are incorporated into these specifications.

(h) Any additional requirements prescribed in Part 173, 177, or 180 of this subchapter that pertain to the transportation of specific lading are incorporated into these specifications.

(i) *Cargo tank motor vehicle composed of multiple cargo tanks.*

(1) A cargo tank motor vehicle composed of more than one cargo tank may be constructed with the cargo tanks made to the same specification or to different specifications. Each cargo tank must conform in all respects with the specification for which it is certified.

(2) The strength of the connecting structure joining multiple cargo tanks in a cargo tank motor vehicle must meet the structural design requirements in § 178.345-3. Any void within the connecting structure must be vented to the atmosphere by a drain of at least 1 inch inside diameter which shall be kept open at all times. The connecting structure must have inspection openings of sufficient size and number to permit proper visual internal inspection of the connecting structure and cargo tank surfaces. Each drainage and inspection opening must be accessible.

(j) *Variable specification cargo tank.* A cargo tank that may be physically altered to conform to another cargo tank specification must have the required physical alterations to convert from one specification to another clearly indicated on the variable specification plate.

(k) *Maximum Allowable Working Pressure (MAWP).* The MAWP for each cargo tank must be greater than or equal to the largest of the following (The MAWP derived is the pressure to be used as prescribed in the ASME Code in the design of the tank):

(1) The pressure prescribed for the lading in Part 173;

(2) Vapor pressure of the most volatile lading, at 115 °F (expressed in psig), plus the maximum static pressure exerted by the lading at the maximum lading density, plus any pressure exerted by a gas padding (including air in the ullage space or dome), if used; or

(3) The maximum pressure in the tank during loading or unloading.

§ 178.345-2 Material and material thickness.

(a) All material for shell, heads, bulkheads, and baffles must be metal compatible with the lading intended to be transported therein and must

conform to Section II, Parts A and B, of the ASME Code except as follows:

(1) ASTM A 676 or ASTM A 715 steels are also authorized for cargo tanks "constructed in accordance with the ASME Code".

(2) Aluminum alloys suitable for fusion welding and conforming with the 0, H32 or H34 tempers of one of the following ASTM specifications may be used for cargo tanks "constructed in accordance with the ASME Code":

ASTM B-209 Alloy 5052
ASTM B-209 Alloy 5086
ASTM B-209 Alloy 5154
ASTM B-209 Alloy 5254
ASTM B-209 Alloy 5454
ASTM B-209 Alloy 5654

All heads, bulkheads and baffles must be of 0 temper (annealed) or stronger tempers. All shell materials shall be of H 32 or H 34 tempers except that the lower ultimate strength tempers may be used if the minimum shell thicknesses in the tables are increased in inverse proportion to the lesser ultimate strength.

(b) *Minimum thickness.* The minimum thickness for the shell and heads must be such that the maximum stress levels specified in § 178.345-3(a), (b), (c), or (d) of this subpart are not exceeded. In no case may the shell or head thickness be less than that specified in the applicable specification.

(c) *Corrosion or abrasion protection.* A cargo tank or a part thereof, subject to thinning by corrosion or mechanical abrasion due to the lading, must be protected by providing the tank or part of the tank with a suitable increase in thickness of material, a lining or some other suitable method of protection.

(1) *Corrosion allowance.* Material added for corrosion allowance need not be of uniform thickness if different rates of attack can reasonably be expected for various areas of the tank.

(2) *Lining.* Lining material must consist of a nonporous, homogeneous material not less elastic than the parent metal and substantially immune to attack by the lading. The lining material must be bonded or attached by other appropriate means to the tank wall and must be imperforate when applied. Any joint or seam in the lining must be made by fusing the materials together, or by other satisfactory means.

§ 178.345-3 Structural integrity.

(a) The maximum calculated design stress value (the effective stress on the tank shell in any plane normal to the longitudinal axis) may not exceed the maximum design stress value prescribed in Section VIII of the ASME Code or 25 percent of the minimum specified tensile

strength of the metal at any point in the cargo tank. The forces, loads and stresses must take into account the weight of the tank, the maximum weight of lading and the weight of structures supported by the tank but not including the weight of the structures supporting the tank in normal conditions. The accelerative, decelerative and lateral forces must be applied separately. The combination case which produces the maximum effective stress shall govern. Corrosion allowance material may not be used to satisfy the design requirements.

(1) The design and construction of each cargo tank must provide for all potential structural loadings, including but not limited to dynamic loads, superimposed loadings, and the effect of temperature gradients resulting from lading and ambient temperature extremes. Thermal coefficients of dissimilar materials must be considered in the calculation of the design stress value.

(2) Maximum concentrated stresses which might be created at pads, cradles or supports due to shear, bending and torsion shall also be considered and calculated in accordance with Appendix G of Section VIII of the ASME Code.

(b) Analysis of basic cargo tank structural integrity must be made using the conditions specified in paragraph (a) of this section. The stresses involved are not uniform through the length of the tank. Calculation of the basic structural integrity must be made by the following formula:

$$S = 0.5(S_1 + S_2) \pm (0.25(S_1 - S_2))^2 + S_3^2)^{0.5}$$

where at any given point under consideration, and for the worst combination of loadings that can occur at the same time, the stress levels produced at the point being considered are:

S = Effective stress as limited by this requirement, in psi.

S_1 = The circumferential tensile stress due to internal pressure, in psi.

S_2 = The following tensile or/and compressive stresses (in psi) that apply.

(1) The longitudinal tensile stresses due to internal pressure;

(2) The tensile or compression stress generated by the axial load resulting from a decelerative force equal to 0.75 times the static weight of the fully loaded vehicle applied independently to each suspension assembly at the road surface;

(3) The tensile or compression stress generated by the bending moment resulting from a decelerative force equal to 0.75 times the static weight of the fully loaded vehicle applied independently to each suspension assembly at the road surface;

(4) The tensile or compression stress generated by the axial load resulting from an accelerative force equal to 0.75 times the static weight of the fully loaded vehicle

applied to the horizontal pivot of the upper coupler (fifth wheel) supporting the vehicle;

(5) The tensile or compression stress generated by the bending moment resulting from an accelerative force equal to 0.75 times the static weight of the fully loaded vehicle applied to the horizontal pivot of the upper coupler (fifth wheel) supporting the vehicle;

(6) The tensile or compression stress due to a bending moment produced by a vertical force equal to 1.7 times the static weight of the tank and contents.

S_3 = The following shear stresses (in psi) that apply.

(1) The vertical shear stress due to a vertical force equal to 1.7 times the static weight of the tank and contents;

(2) The lateral shear stress due to a lateral accelerative force equal to 0.4 times the static weight of the tank and contents applied at the road surface; and

(3) The torsional shear stress due to a lateral accelerative force equal to 0.4 times the static weight of the tank and contents applied at the road surface.

(c) In addition to meeting the conditions specified in paragraph (a) of this section, the design calculations for the tank heads and shell must include the load resulting from the MAWP in combination with the dynamic pressure resulting from a longitudinal deceleration of 2 "g". For this loading, the design stress value used must not exceed the lesser of the yield strength or 75 percent of the ultimate tensile strength of the material of construction. The stress value requiring the greatest wall thickness derived from paragraph (a), (b), or (c) of this section must be used.

(d) If a tank is supported by a vehicle frame or other form of structural support, a tank shell or head thickness less than that specified in paragraph (c) of this section may be used provided that the effective stresses prescribed in paragraph (b) of this section are fully evaluated and considered.

(e) The design, construction, and installation of any appurtenance to the shell or head of the cargo tank must minimize the possibility of appurtenance damage or failure adversely affecting the lading retention integrity of the tank.

(1) Structural members, the suspension subframe, accident protection devices and external rings should be used as sites for attachment of appurtenances and other accessories to the cargo tank when practicable.

(2) A lightweight attachment, such as a conduit clip, brakeline clip, skirting structure, lamp mounting bracket or placard holder, must be constructed of a material of lesser strength than the tank shell or head material and may not be more than 72 percent of the thickness of the tank shell or head to which it is attached. The lightweight attachment

may be secured directly to the tank shell or head if the device is designed and installed in such a manner that if damaged it will not affect the lading retention integrity of the tank. The attachment must be secured to the tank shell or head by continuous weld or in such manner as to preclude formation of pockets, which may become sites for incipient corrosion.

(3) Except as prescribed in paragraphs (e)(1) and (e)(2) of this section, the welding of any appurtenance to a shell or head must be made by attachment of a mounting pad so that there will be no adverse effect upon the lading retention integrity of the tank, if any force less than that prescribed in § 178.345-8(b)(1) is applied. The thickness of a mounting pad may not be less than that of the shell or head to which it is attached and not more than 1.5 times the shell or head thickness. However, a pad not less than 3/16 inch thick may be used when the shell or head is over 3/16 inch thick. If weep holes or tell-tale holes are used, the pad must be drilled or punched at its lowest point before it is attached to the tank. Each pad must:

(i) extend at least 2 inches in each direction from any point of attachment of an appurtenance;

(ii) have rounded corners, or otherwise be shaped in a manner to minimize stress concentrations on the shell or head; and

(iii) be attached by a continuous weld around the pad except for a small gap at the lowest point for draining.

§ 178.345-4 Joints.

(a) All joints between tank shell, heads, baffles, baffle attaching rings, and bulkheads must be welded in conformance with the ASME Code welding procedures.

(b) Where practical all welds must be easily accessible for inspection.

§ 178.345-5 Manhole assemblies.

(a) Each cargo tank with capacity greater than 400 gallons must be accessible through a manhole at least 15 inches in diameter.

(b) Each manhole, fill opening and washout assembly must be structurally capable of withstanding, without leakage or permanent deformation that would affect its structural integrity, a static internal fluid pressure of at least 38 psig, or cargo tank test pressure, whichever is greater. The manhole assembly manufacturer shall verify compliance with this requirement by hydrostatically testing at least one percent (or one manhole closure, whichever is greater) of all manhole

closures of each type produced each 3 months, as follows:

(1) The manhole, fill opening, or washout assembly must be tested with the venting devices blocked. Any leakage or deformation that would affect the product retention capability of the assembly shall constitute a failure.

(2) If the manhole, fill opening, or washout assembly tested fails, then five more covers from the same lot must be tested. If one of these five covers fails, then all covers in the lot from which the tested covers were selected are to be 100% tested or rejected for service.

(c) Each manhole, filler and washout cover must be fitted with a safety device that prevents the cover from opening fully when internal pressure is present.

(d) Each manhole and fill cover must be secured with fastenings that will prevent opening of the covers as a result of vibration under normal transportation conditions or shock impact due to a rollover accident on the roadway or shoulder where the fill cover is not struck by a substantial obstacle.

(e) Each manhole cover must be permanently marked by stamping or other means with:

(1) Manufacturer's name;

(2) Test pressure _____ psig;

(3) A statement certifying that the manhole cover meets the requirements in § 178.345-5.

§ 178.345-6 Supports and anchoring.

(a) A cargo tank with a frame not integral to the tank must have the tank secured by restraining devices to eliminate any motion between the tank and frame that may abrade the tank shell due to the stopping, starting, or turning of the vehicle. The design calculations of the support elements must include the stresses indicated in § 178.345-3(b). Such restraining devices must be readily accessible for inspection and maintenance, except that insulation and jacketing are permitted to cover the restraining devices.

(b) A cargo tank designed and constructed so that it constitutes, in whole or in part, the structural member used in lieu of a frame must be supported in such a manner that the resulting stress levels in the tank do not exceed those specified in § 178.345-3(a). The design calculations of the support elements must include the stresses indicated in § 178.345-3(b).

§ 178.345-7 Circumferential reinforcements.

(a) A tank with a shell thickness of less than 3/16 inch must be circumferentially reinforced with bulkheads, baffles, ring stiffeners, or any

combination thereof, in addition to the tank heads.

(1) Circumferential reinforcement must be located so that the thickness and tensile strength of the shell material in combination with the frame and reinforcement produces structural integrity at least equal to that prescribed in § 178.345-3 (a) and (b) and in such a manner that the maximum unreinforced portion of the shell does not exceed 60 inches. Circumferential reinforcement spacing of cargo tanks designed to be loaded by vacuum may exceed 60 inches provided the maximum unreinforced portion of the shell conforms with the requirements of Section VIII, Division 1 of the ASME Code.

(2) Circumferential reinforcement must be located within one inch of points where discontinuity in the longitudinal shell sheet alignment exceeds 10 degrees unless otherwise reinforced with structural members capable of maintaining shell stress levels authorized in § 178.345-3(a).

(b) Except for doubler plates and knuckle pads, no reinforcement may cover any circumferential joint.

(c) A baffle or baffle attachment ring, if used as a required reinforcement member, must produce structural integrity at least equal to that prescribed in § 178.345-3 and must be circumferentially welded to the tank shell. The welded portion must not be less than 50 percent of the total circumference of the tank and the length of any unwelded space on the joint shall not exceed 40 times the shell thickness.

(d) *Stiffening rings.* (1) Stiffening rings, when used to conform with this section, must be continuous around the circumference of the tank shell and must have a section modulus about the neutral axis of the ring section parallel to the shell at least equal to that determined as follows:

I/C (min) = 0.00027 WL for MS, HSLA and stainless steels

I/C (min) = 0.000467 WL for aluminum alloys

Where:

I/C = Section modulus in inches

W = Tank width or diameter in inches

L = Ring spacing in inches; i.e., the maximum distance from the midpoint of the unsupported shell on one side of the ring stiffener to the midpoint of the unsupported shell on the opposite side of the ring stiffener.

(2) If a ring stiffener is welded to the tank shell, a portion of the shell may be considered as part of the ring section for purposes of computing the ring section modulus. This portion of the shell may be used provided at least 50 percent of the total circumference of the tank is welded and the length of any unwelded space on the joint does not exceed 40

times the shell thickness. The maximum portion of the shell to be used in these calculations is as follows:

Circumferential ring stiffener to tank shell welds	Distance between parallel circumferential ring stiffener to shell welds	Shell section
1	Less than 20t	20t
2	20t or more	20t + W
3		40t

where:

t = Shell thickness.

W = Distance between parallel circumferential ring stiffener to shell welds.

(3) Stiffening rings, when used to conform with the vacuum requirements of this section, must be as prescribed in the ASME Code.

(4) If configuration of internal or external ring stiffener encloses an air space, this air space shall be arranged for venting and be equipped with drainage facilities which shall be kept operative at all times.

(5) Stiffening rings must be of the type that can be visually inspected. Hat shaped or open channel rings which preclude visual inspection of the tank shell are prohibited on cargo tanks constructed of carbon steel.

§ 178.345-8 Accident damage protection.

(a) *General.* Each cargo tank and its associated piping, closures and valves must be designed and constructed to minimize the potential for the loss of lading due to an accident. The cargo tank design and construction should take into consideration the potential for puncture, abrasion, crush, dynamic pressure, and impact and inertial loadings.

(1) Any dome, sump, or washout cover plate projecting from the cargo tank wall that retains lading in any tank orientation, must be as strong and tough as the tank wall and have a thickness at least equal to that specified by the appropriate cargo tank specification. Any such projection located in the lower one-third of the tank circumference (or cross section perimeter for non-circular tanks) that extends more than half its diameter at the point of attachment to the tank or more than 4 inches from the tank wall, or located in the upper 2/3 of the tank circumference for circular tanks (or the upper 2/3 of the cargo tank cross section perimeter for non-circular tanks) that extends more than one-fourth its diameter or 2 inches from the point of attachment to the tank must have accident damage protection devices that are:

(i) As specified in this section;
(ii) 125 percent as strong as the otherwise required accident damage protection device; or

(iii) Attached to the cargo tank in accordance with the requirements of paragraph (a)(3) of this section.

(2) Outlets, valves, closures, piping, or any devices that if damaged in an accident could result in a loss of lading from the cargo tank must be protected by accident damage protection devices as specified in this section.

(3) Accident damage protection devices attached to the wall of a cargo tank must be designed, constructed, and installed so as to maximize the distribution of loads to the tank wall and minimize the possibility of adversely affecting the lading retention integrity of the cargo tank. Each accident damage protection device may be designed to prevent loss of the lading retention capability of the cargo tank by failure of the device from loads in excess of those required in this section. In this case, accident induced stresses resulting from the appropriate accident damage protection device requirements in combination with the stresses from the tank operating at the MAWP may not result in a tank wall stress greater than 75 percent of the ultimate strength of the tank material.

(4) Any piping that extends beyond an accident damage protection device must be equipped with a stop-valve and a sacrificial device such as a shear section. The sacrificial device must be located in the piping system outboard of the stop-valve and within the accident damage protection device to prevent any accidental loss of lading. The device must break at no more than 70 percent of the load that would be required to cause the failure of the protected lading retention device, part or tank wall. The failure of the sacrificial device must leave the protected lading retention device and its attachment to the tank wall intact and capable of retaining product.

(5) *Minimum road clearance.* The minimum allowable road clearance of any cargo tank component or protection device located between any two adjacent axles on a vehicle or vehicle combination shall be at least one-half inch for each foot separating such axles, and in no case less than 12 inches.

(b) *Bottom damage protection.* Each outlet, projection or piping located in the lower 1/3 of the tank circumference (or cross section perimeter for non-circular tanks) that could be damaged in an accident thereby resulting in the loss of lading must be protected by a bottom damage protection device, except as provided by § 178.345.8(a)(1).

(1) Any bottom damage protection device must be able to withstand or deflect away from the cargo tank a force of 155,000 pounds (based on the ultimate strength of the material) from the front, side, or rear, uniformly distributed over each surface of the device, over an area not to exceed 6 square feet, and a width not to exceed 6 feet. The device must extend an adequate distance, such that the piping or other component being protected will not be damaged, and in no case less than 6 inches beyond any component that may contain lading.

(2) A lading discharge opening equipped with an internal self-closing stop-valve need not conform to paragraph (b)(1) of this section provided it is protected so as to reasonably assure against the accidental loss of lading. This protection must be provided by a sacrificial device located outboard of each internal self-closing stop-valve and within 4 inches of the major radius of the tank shell or within 4 inches of a sump, but in no case more than 8 inches from the major radius of the tank shell. The device must break at no more than 70 percent of the load that would be required to cause the failure of the protected lading retention device, part or tank wall. The failure of the sacrificial device must leave the protected lading retention device or part and its attachment to the tank wall intact and capable of retaining product.

(c) *Rollover Damage Protection.* Each closure for openings, including but not limited to manhole, filling or inspection openings, and each valve, fitting, pressure relief device, vapor recovery system or other accessory located in the upper 2/3 of a cargo tank circumference for circular tanks (or the upper 1/3 of a cargo tank cross section perimeter for non-circular tanks) must be protected by being enclosed inside the body of the tank, by being enclosed inside a rollover damage protection device, or by being 125 percent as strong as the otherwise required damage protection device.

(1) A rollover damage protection device on a cargo tank motor vehicle must be designed and installed to withstand a load normal (perpendicular to the tank surface) and tangential from any direction (perpendicular to the normal load) to the tank shell equal to at least twice the weight of the loaded cargo tank motor vehicle, based on the ultimate strength of the material used. These design loads may be considered independently. If more than one rollover protection device is used, each device must be capable of carrying its proportionate share of the required loads and in each case at least one-fourth the required total tangential load. The design must be proven capable of

carrying the required loads by calculations, tests or a combination of tests and calculations. Deformation of the protection device is acceptable provided the devices being protected are not damaged.

(2) A rollover damage protection device that would otherwise allow the accumulation of liquid on the top of the tank, must be provided with a drain that directs the liquid to a safe point of discharge away from any structural component of the cargo tank motor vehicle.

(d) *Rear-end protection.* Each cargo tank shall be provided with a rear accident damage protection device to protect the tank and piping in the event of a rear-end collision and reduce the likelihood of damage which could result in the loss of lading. The rear-end tank protection device must conform to the following requirements (Nothing in this paragraph shall be construed to relieve a manufacturer of responsibility for complying with the requirements of § 393.86 of this title):

(1) The inboard surface of the rear-end tank protection device shall be located at least 6 inches to the rear of any vehicle component used for loading or unloading or that may contain lading while the vehicle is in transit, in order to prevent the device from applying force upon the cargo tank or tank components in the event of an accident.

(2) The dimensions of the rear-end tank protection device shall conform to the following:

(i) The bottom surface of the rear-end protection device must be at least 4 inches below the lower surface of any valve, fitting, or piping at the rear of the tank and not more than 60 inches from the ground with the vehicle empty.

(ii) The maximum width of a notch, indentation, or separation between sections of a rear-end tank protection device may not exceed 24 inches. A notched, indented, or separated rear-end protection device may be used only when the piping at the rear of the tank is equipped with a sacrificial device outboard of a shut-off valve.

(iii) The widest part of the motor vehicle at the rear may not extend more than 18 inches beyond the outermost ends of the device or (if separated) devices on either side of the vehicle.

(3) The structure of the rear-end tank protection device and its attachment to the vehicle must be designed to withstand, without leakage of lading, the impact of the cargo tank motor vehicle at rated payload, at a deceleration of 2 "g" using a safety factor of two based on the ultimate strength of the materials used. Such impact shall be considered

uniformly distributed and applied horizontally (parallel to the ground) from any direction at an angle not to exceed 30 degrees to the longitudinal axis of the vehicle.

§ 178.345-9 Pumps, piping, hoses and connections.

(a) Each loading or unloading pump mounted on a cargo tank motor vehicle that may pressurize the cargo tank must be provided with an automatic means of closure to prevent internal pressure from exceeding the MAWP of the tank and tank-mounted equipment.

(b) Each hose, piping, stop-valve, lading retention fitting and closure for each cargo tank must be designed for a bursting pressure of at least 100 psig, and not less than four times the cargo tank MAWP. Each hose coupling must be designed for a bursting pressure of not less than 120 percent of the design bursting pressure of the hose and must be so designed that there will be no leakage when connected.

(c) Suitable provision must be made to allow for and prevent damage due to expansion, contraction, jarring, and vibration. Slip joints may not be used for this purpose.

(d) Any heating device, when installed, must be so constructed that the breaking of its external connections will not cause leakage of the tank lading.

(e) Any gauging, loading or charging device, including associated valves, must be provided with an adequate means of secure closure to prevent leakage.

(f) The attachment and construction of each loading/unloading or charging line must be of sufficient strength, or be protected by a sacrificial device, such that any load applied by loading/unloading or charging lines connected to the cargo tank cannot cause damage resulting in loss of lading from the cargo tank.

(g) Use of a nonmetallic pipe, valve or connection that is not as strong and heat resistant as the tank material is authorized only if such attachment is located outboard of the product retention system.

§ 178.345-10 Pressure relief.

(a) Each cargo tank must be equipped with a pressure relief system and when required with a vacuum relief system in conformance with this section and the applicable individual specification. The pressure and vacuum relief system must be designed to operate and have sufficient capacity to prevent tank rupture or collapse due to over-pressurization or vacuum resulting from

tank heating, cooling, loading or unloading.

(b) Type and construction of relief systems and devices

(1) Each cargo tank must be provided with a primary pressure relief system consisting of one or more reclosing pressure relief valves. A secondary pressure relief system consisting of another pressure relief valve in parallel with the primary pressure relief system may be used to augment the total venting capacity of the cargo tank. Non-reclosing pressure relief devices are not authorized in any cargo tank except when in series with a reclosing pressure relief device. Gravity actuated reclosing valves are not authorized on any cargo tank.

(2) If a frangible (rupture) disk is inserted in series with a reclosing pressure relief valve, the space between the frangible (rupture) disk and the valve must be provided with a suitable tell-tale indicator to permit detection of any frangible (rupture) disk pinholing or leakage which may cause a malfunction of the pressure relief system. The frangible (rupture) disk must rupture at a tank pressure within the range specified in paragraph (d)(1) of this section.

(3) Each pressure relief system must be designed to prevent loss of lading from the system in case of pressure surges, vehicle upset or accident, regardless of vehicle orientation. A pressure relief system designed to withstand a dynamic pressure surge of 50 psig applied for at least 300 milliseconds without leakage of liquid lading may be considered to be in compliance with this requirement. After June 6, 1994, each pressure relief system must be designed to withstand a dynamic pressure surge of 50 psig applied for at least 300 milliseconds without leakage of liquid lading regardless of vehicle orientation. Each pressure actuated relief system must function in the event of sustained pressure rise in excess of the prescribed set pressure. After June 12, 1991, each pressure actuated relief valve must be capable of reseating to a leak-tight condition, after a pressure surge and release of a lading volume of not more than one gallon. This requirement shall be considered to be met if the pressure relief valve successfully withstands the testing procedure outlined in TTMA RP No. 81—"Performance of Spring-Loaded Pressure Relief Valves on MC 306, MC 307, and MC 312 Tanks," except that in addition:

(i) For this test, the drop height and cushioning must be calibrated to produce a measured pressure generated in the drop test vessel of not less than 50 psig for not less than 300 milliseconds

with the pressure actuated relief valve blocked closed;

(ii) The total pressure resulting from static head and pad pressure, exerted on the pressure actuated relief valve immediately before and after the drop test must be not less than the MAWP of the cargo tank; and

(iii) The total volume of liquid released during the test shall not exceed one gallon.

(4) Each reclosing pressure relief valve must be constructed and installed in such a manner that unauthorized adjustment of the relief setting can be detected and corrected.

(5) No shut-off valve or other device that could prevent venting through the pressure relief system may be installed in a pressure relief system.

(6) The pressure relief system must be mounted, shielded and drainable so as to minimize the accumulation of material that could impair the operation or discharge capability of the system by freezing, corrosion or blockage.

(c) *Location of relief devices.* Each pressure relief device must communicate with the vapor space of the tank in a position as near as possible to the longitudinal and transverse center of the tank. The discharge from any device must be unrestricted. Protective devices which deflect the flow of vapor are permissible provided the required vent capacity is maintained.

(d) *Settings of pressure relief system—(1) Primary pressure relief system.* Unless otherwise prescribed in the applicable individual specification, each primary pressure relief valve must be set to function at 120 percent of the MAWP and must start to open at not less than set pressure and not more than 110 percent of set pressure. The reclosing valve must reclose at a pressure not less than 90 percent of the set-to-discharge pressure and remain closed at lesser pressures, except as provided in § 178.346-10.

(2) *Secondary pressure relief system.* Each pressure relief valve used as a secondary relief device must be set-to-discharge at a pressure not less than 120 percent of the MAWP and be fully open at 150 percent of the MAWP.

(e) *Venting capacity of pressure relief systems.* The pressure relief system (primary and secondary, including any piping) in each tank, once fully opened, must have sufficient venting capacity to limit the tank internal pressure to a maximum of 150 percent of the tank's MAWP. This total venting capacity may not be less than that shown in Table 1 of this paragraph, except as provided in § 178.348-10.

TABLE 1.—MINIMUM EMERGENCY VENT CAPACITY

(in cubic feet free air/hour at 60 °F and 1 atm.)

Exposed area in square feet	Cubic feet free air per hour
20	15,800
30	23,700
40	31,600
50	39,500
60	47,400
70	55,300
80	63,300
90	71,200
100	79,100
120	94,900
140	110,700
160	126,500
180	142,300
200	158,100
225	191,300
250	203,100
275	214,300
300	225,100
350	245,700
400	265,000
450	283,200
500	300,600
550	317,300
600	333,300
650	348,800
700	363,700
750	378,200
800	392,200
850	405,900
900	419,300
950	432,300
1,000	445,000

Note 1: Interpolate for intermediate sizes.

(1) *Primary pressure relief system.* Unless otherwise specified in the applicable individual specification, the primary relief system must have a minimum venting capacity of 12,000 SCFH per 350 square feet of exposed tank area, but in any case at least one fourth the required total venting capacity for the cargo tank.

(2) *Secondary pressure relief system.* If the primary pressure relief system does not provide the required total venting capacity, additional capacity must be provided by a secondary pressure relief system.

(f) *Certification of pressure relief devices.* The manufacturer of any pressure relief device, including valves, frangible (rupture) disks, vacuum vents and combination devices must certify that the device model was designed and tested in accordance with this section and the appropriate cargo tank specification. The certificate must contain sufficient information to describe the device and its performance. The certificate must be signed by a responsible official of the manufacturer who approved the flow capacity certification.

(g) *Rated flow capacity certification test.* Each pressure relief device model must be successfully flow capacity

certification tested prior to first use. Devices having one design, size and set pressure are considered to be one model. The testing requirements are as follows:

(1) At least 3 devices of each specific model must be flow capacity tested at a pressure not greater than 130 percent of the MAWP of the cargo tank. For a device model to be certified, the capacities of the devices tested must fall within a range of plus or minus 5 percent of the average for the devices tested.

(2) The rated flow capacity of a device model may not be greater than 90 percent of the average value for the devices tested.

(3) The rated flow capacity derived for each device model must be certified by a responsible official of the device manufacturer.

(h) *Marking of pressure relief devices.* Each pressure relief device must be permanently marked with the following:

- (1) Manufacturer's name;
- (2) Model number;
- (3) Set-to-discharge pressure, in psig;

and

(4) Rated flow capacity, in SCFH at the rating pressure, in psig.

§ 178.345-11 Tank outlets.

Each tank outlet that may contain lading in any tank attitude must be equipped with a stop-valve or other leak tight closure in accordance with this section (such tank outlets, closures and associated piping must be protected in accordance with § 178.345-8).

(a) Each loading/unloading outlet must be equipped with an internal self-closing stop valve or with an external self-closing stop valve located as close as possible to the tank shell. Each self-closing valve system must be designed to close within 30 seconds of actuation. Each self-closing stop valve must be designed such that during transportation the valve is in a securely closed position such that if the actuating system is sheared off or damaged in an accident, the valve will remain closed and capable of retaining product. For external valves, the self-closing function is required only for emergency situations such as a fire or hose rupture. During normal loading/unloading operations the valve may be manually operated. In addition to normal means of closure, each internal or external self-closing stop valve must be fitted with a remotely activated means of closure located more than 10 feet from the stop valve, as specified below. Cable linkage to these closures must be corrosion resistant and effective in all types of environment and weather. Any loading/unloading connection extending beyond the self-closing stop valve must be fitted

with another stop valve at the end of such connection.

(1) For cargo tanks intended for flammable, pyrophoric, oxidizing or Poison B liquids, the remote means of closure must be activated for closure by manual or mechanical means. In addition, in case of fire each stop valve must be activated for closure by an automatic heat activated means located as close as possible to the loading/unloading connection. Thermally activated closures must activate at a temperature not over 250 °F.

(2) For cargo tanks intended exclusively for a lading other than those mentioned in paragraph (a)(1) of this section the remote means of closure may be actuated by manual or mechanical means only.

(b) Each tank outlet that is not a loading/unloading outlet must be equipped with a stop-valve or other leak tight closure located as close as practicable to the tank outlet. Any connection extending beyond this closure must be fitted with another stop-valve at the end of such connection.

§ 178.345-12 Gauging devices.

Each cargo tank except a tank intended to be filled by weight, must be equipped with a gauging device that indicates the maximum permitted liquid level to an accuracy of 0.5 percent. Gauge glasses are not permitted.

§ 178.345-13 Pressure and leakage tests.

(a) Each tank must be pressure and leak tested in accordance with this section and §§ 178.346-13(a), 178.347-13(a) or 178.348-13(a), as applicable.

(b) *Pressure test.* Each tank or tank compartment must be tested hydrostatically or pneumatically. Each tank of a multi-tank cargo tank motor vehicle must be tested with the adjacent tanks empty and at atmospheric pressure. Each closure, except pressure relief devices and loading/unloading venting devices rated at less than the prescribed test pressure, must be in place during the test. If the venting device is not removed during the test, such device must be rendered inoperative by a clamp, plug or other equally effective restraining device, which may not prevent the detection of leaks, or damage the device. Restraining devices must be removed immediately after the test is completed.

(1) *Hydrostatic method.* Each tank, including its domes, must be filled with water or other liquid having similar viscosity, the temperature of which may not exceed 100 °F. The tank must then be pressurized as prescribed in the applicable specification. The pressure

must be gauged at the top of the tank. The prescribed test pressure must be maintained for at least 10 minutes during which time the tank must be inspected for leakage, bulging, or other defect.

(2) *Pneumatic method.* A pneumatic test may be used in place of the hydrostatic test. The tank must be pressurized with air or similar gas. Test pressure must be reached gradually by increasing the pressure to one half of test pressure. Thereafter, the pressure must be increased in steps of approximately one tenth of the test pressure until test pressure is reached. Test pressure must be held for at least 5 minutes. The pressure must then be reduced to inspection pressure which must be maintained while the entire cargo tank surface is inspected for leakage or other sign of defects. The inspection method must consist of coating the entire surface of the tank, particularly each joint, with a solution of soap and water or other equally sensitive method. Suitable safeguards must be provided to protect employees and other persons should a failure occur.

(c) The cargo tank with all its accessories in place and operable must be leak tested at not less than 80 percent of tank's MAWP with the pressure maintained for at least 5 minutes.

(d) Any cargo tank that leaks, bulges or shows any other sign of defect must be rejected. Rejected cargo tanks must be suitably repaired and retested successfully prior to being returned to service. The retest after any repair must use the same method of test under which the cargo tank was originally rejected.

§ 178.345-14 Marking.

(a) *General.* The manufacturer shall certify that each cargo tank motor vehicle has been designed, constructed and tested in accordance with the applicable Specification DOT 406, DOT 407 or DOT 412 (§§ 178.345, 178.346, 178.347, 178.348 of this part) cargo tank requirements, and when applicable, with the ASME Code. The certification shall be accomplished by marking the tank as prescribed in paragraphs (b) and (c) of this section and by preparing the certificate prescribed in § 178.345-15. Metal plates prescribed by paragraphs (b), (c), (d) and (e) of this section must be permanently affixed to the tank or its integral supporting structure, by brazing, or welding around the plate perimeter. These plates must be affixed on the left side of the vehicle near the front of the cargo tank (or the front-most tank of a multi tank cargo tank motor vehicle), in a place readily accessible for inspection. The plates must be permanently and

plainly marked in English by stamping, embossing or other means in characters at least 3/16 inch high.

(b) *Nameplate.* Each cargo tank must have a corrosion resistant nameplate permanently attached to it. The following information, in addition to that required by the ASME Code, must be marked on the tank nameplate (parenthetical abbreviations may be used):

(1) DOT Specification number DOT XXX (DOT XXX), where "XXX" is replaced with the applicable specification number.

(2) Original test date, month and year (Orig. Test Date).

(3) Tank MAWP, in psig (MAWP).

(4) Tank test pressure (Test P), in psig.

(5) Tank design temperature range (Design temp. range), °F to °F.

(6) Nominal capacity (Water cap.), in gallons.

(7) Maximum design density of lading (Max. design lading dens.), in pounds per gallon.

(8) Material specification number—shell (Mat spec.—shell yyy***), where "yyy" is replaced by the alloy designation and "***" by the alloy type.

(9) Material specification number—heads (Mat. spec.—heads yyy***), where "yyy" is replaced by the alloy designation and "***" by the alloy type.

(10) Minimum thickness—shell (Min. thick.—shell), top _____, side _____, bottom _____, in inches.

(11) Minimum thickness—heads (Min. thick.—head), in inches.

(12) Manufactured thickness—shell (Mfd. shell thick.), top _____, side _____, bottom _____, in inches.

(13) Manufactured thickness—heads (Mfd. heads thick.), in inches.

(14) Weld material (Weld mat.).

(15) Exposed surface area, in square feet.

(c) *Specification plate.* Each cargo tank motor vehicle must have an additional corrosion resistant metal specification plate attached to it. The specification plate must contain the following information (parenthetical abbreviations may be used):

(1) Cargo tank motor vehicle manufacturer (CTM veh. mfr.).

(2) Cargo tank motor vehicle certification date (CTM veh. cert. date), if different from the cargo tank certification date.

(3) Cargo tank manufacturer (CT mfr.).

(4) Cargo tank date of manufacture (CT date of mfr.), month and year.

(5) Maximum weight of lading (Max. payload), in pounds.

(6) Maximum loading rate in gallons per minute (Max load. rate, GPM) at maximum loading pressure _____ psig.

(7) Maximum unloading rate in gallons per minute (Max. unload. rate, GPM), at maximum unloading pressure _____ psig.

(8) Lining material (Lining).

(9) Heating system design pressure (Heating sys. press.), in psig, if applicable.

(10) Heating system design temperature (Heating sys. temp.), in °F, if applicable.

(d) *Multi-tank cargo tank motor vehicle.* For a cargo tank motor vehicle having one cargo tank or having all its cargo tanks not separated by any void space, the information required by paragraphs (b) and (c) of this section may be combined on one specification plate. When separated by a void space, each cargo tank must have an individual nameplate as required in paragraph (b) of this section. The cargo tank motor vehicle may have a combined nameplate and specification plate. When only one plate is used, the plate must be visible and not covered by any insulation and the required information must be listed on the plate from front to rear in the order of the corresponding cargo tank location.

(e) *Variable specification cargo tank.* Each variable specification cargo tank must have a corrosion resistant metal variable specification plate attached to it. The mounting of this variable specification plate must be such that only the plate identifying the applicable specification under which the tank is being operated is legible.

(1) The following information must be included (parenthetical abbreviations are authorized):

Specification DOT XXX (DOT XXX), where "XXX" is replaced with the applicable specification number.

Equipment required	Required rating ¹
Pressure relief devices:	
Pressure actuated type	_____
Fusible type	_____
Frangible type	_____
Lading discharge devices	_____
Top	_____
Bottom	_____
Pressure unloading fitting	_____
Closures:	
Manhole	_____
Fill openings	_____
Discharge openings	_____

¹ Required rating—to meet the applicable specification.

(2) If no change of information in the specification plate is required, the letters "NC" must follow the rating required. If the cargo tank is not so equipped, the word "None" must be inserted.

(3) Those parts to be changed or added must be stamped with the appropriate MC or DOT Specification markings.

(4) The alterations that must be made in order for the tank to be modified from one specification to another must be clearly indicated on the manufacturer's certificate and on the variable specification plate.

§ 178.345.15 Certification.

(a) The manufacturer of a cargo tank motor vehicle made to any of these specifications must furnish the owner, at or before the time of delivery, the following:

(1) A certificate signed by a responsible official of the manufacturer and a Registered Inspector certifying that the cargo tank motor vehicle is constructed, tested and completed in conformance with the applicable specification. The manufacturer's and the Registered Inspector's registration number must appear on the certificate (See Subpart F, Part 107 in subchapter B of this chapter).

(2) For a variable specification cargo tank, a certificate signed by a responsible official of the manufacturer and a Registered Inspector that the cargo tank is constructed for variable specification service. The certificate must include all the information required and marked on the variable specification plate.

(b) In the case of a cargo tank motor vehicle manufactured in two or more stages, each manufacturer who performs a manufacturing operation on the incomplete vehicle or portion thereof shall furnish to the succeeding manufacturer, at or before the time of

delivery, a certificate covering the particular operation performed by that manufacturer and any certificate(s) received from previous manufacturers including the certificate received from the Design Certifying Engineer. The certificate(s) must include sufficient sketches or drawings, and other information to indicate the make, size, model and location of each valve and pressure relief device, and the arrangement of all piping associated with the tank. Each certificate must be signed by a responsible official of the manufacturing firm for the portion of the complete cargo tank motor vehicle represented thereby, such as basic tank fabrication, insulation, jacket, lining or piping. The final manufacturer shall furnish the owner with all certificates, excluding sketches and drawings.

§ 178.346 Specification DOT 406; cargo tank motor vehicle.

§ 178.346-1 General requirements.

(a) Each Specification DOT 406 cargo tank motor vehicle must meet the general design and construction requirements in § 178.345. In addition to the specific requirements contained in this section.

(b) *Maximum Allowable Working Pressure:* The MAWP of each cargo tank must be no lower than 2.65 psig and no higher than 4 psig.

(c) Vacuum loaded cargo tanks must not be constructed to this specification.

(d) Each cargo tank must be "constructed in accordance with the ASME Code" except as modified herein:

(1) The record-keeping requirements contained in the ASME Code Section VIII, Division I do not apply. Parts UG-

90 thru 94 of Section VIII, Division I do not apply. Inspection and certification must be made by an inspector registered in accordance with Subpart F of Part 107.

(2) Loadings must be as prescribed in § 178.346-3.

(3) Formed heads must have a knuckle radius of at least 3 times the material thickness, and in no case less than one-half inch. Inserted or stuffed head attachment to the shell by fillet weld is authorized when such head is of a thickness authorized by UG-32 and § 178.346-2. Shell sections of cargo tanks designed with a non-circular cross-section need not be given a preliminary curvature, as prescribed in UG-79.

(4) Marking, certification, data reports, and nameplates must be as prescribed in §§ 178.345-14, 178.346-14, 178.345-15, and 178.346-15.

(5) Manhole closure assemblies must conform to §§ 178.345-5 and 178.346-5.

(6) Pressure relief devices must be as prescribed in §§ 178.345-10 and 178.346-10.

(7) The hydrostatic or pneumatic test must be as prescribed in §§ 178.345-13 and 178.346-13.

(8) The following parts of the ASME Code, Section VIII, Division I do not apply: UG-12, UG-34, UG-77, UG-80, UG-81, and UG-96.

§ 178.346-2 Material and thickness of material.

(a) The type and thickness of material for DOT 406 cargo tanks must conform to § 178.345-2 of this Part, but may in no case be less than that indicated in Tables I and II below.

TABLE I.—MINIMUM THICKNESS OF HEADS (OR BULKHEADS AND BAFFLES WHEN USED AS TANK REINFORCEMENT) USING MILD STEEL (MS), HIGH STRENGTH LOW ALLOY STEEL (HSLA), AUSTENITIC STAINLESS STEEL (SS) OR ALUMINUM (AL)—EXPRESSED IN DECIMALS OF AN INCH AFTER FORMING

Material	Volume capacity in gallons per inch of length								
	14 or less			Over 14 to 22			23 and over		
	MS	HSLA	SS	AL	MS	HSLA	SS	AL	MS
Thickness	.100	.100	.160	.115	.115	.173	.129	.129	.187

TABLE II.—MINIMUM THICKNESS OF SHELL USING MILD STEEL (MS), HIGH STRENGTH LOW ALLOY STEEL (HSLA), AUSTENITIC STAINLESS STEEL (SS) OR ALUMINUM (AL)—EXPRESSED IN DECIMALS OF AN INCH AFTER FORMING¹

Rated capacity (gallons)	MS	SS/HSLA	AL
More than 0 to at least 4,500	0.100	0.100	0.151
More than 4,500 to at least 8,000	0.115	0.100	0.160
More than 8,000 to at least 14,000	0.129	0.129	0.173
More than 14,000	0.143	0.143	0.187

¹ Maximum distance between bulkheads, baffles, or ring stiffeners shall not exceed 60 inches.

§ 178.346-3 Structural integrity.

The structural integrity of each cargo tank motor vehicle must conform to § 178.345-3.

§ 178.346-4 Joints.

All joints in the fabrication of each cargo tank must conform to § 178.345-4.

§ 178.346-5 Manhole assemblies.

Each manhole assembly must conform to § 178.345-5.

§ 178.346-6 Supports and anchoring.

Supports and anchoring on each cargo tank motor vehicle must conform to § 178.345-6.

§ 178.346-7 Circumferential reinforcement.

The circumferential reinforcement on each cargo tank must conform to § 178.345-7.

§ 178.346-8 Accident damage protection.

Each cargo tank motor vehicle must be protected from accident damage in accordance with § 178.345-8.

§ 178.346-9 Pumps, piping, hoses and connections.

Each pump and all piping, hoses and connections on each cargo tank motor vehicle must conform to § 178.345-9.

§ 178.346-10 Pressure relief.

(a) Each cargo tank must be equipped with a pressure relief system in accordance with § 178.345-10 and this section.

(b) *Type and construction.* In addition to the pressure relief devices required in § 178.345-10:

(1) Each cargo tank must be equipped with one or more vacuum relief devices; and

(2) Each cargo tank may be equipped with one or more normal vents set to open at not less than 1 psig. Each normal vent must be designed to prevent loss of lading through the device in case

of cargo tank motor vehicle overturn. Cargo tanks equipped with a normal vent may be used only for those loadings meeting the requirements of § 173.33(c)(1)(i)(c).

(c) *Pressure settings of relief valves.* (1) Notwithstanding the requirements of § 178.345-10, each pressure relief valve must:

(i) Be set to function at 125 percent of the MAWP and not less than 3.3 psig;

(ii) Function at a pressure not greater than 110 percent of the set pressure and not less than the set pressure;

(iii) Reclose at a pressure not less than 80 percent of the set-to-discharge pressure.

(2) Each vacuum relief device must be set to open at no more than 6 ounces vacuum.

(d) *Venting capacities.*

(1) The total venting capacity of the pressure relief system must limit the cargo tank pressure to not greater than cargo tank test pressure. The total venting capacity rated at no greater than cargo tank test pressure, must be at least that specified in the table in § 178.345-10(e).

(2) The primary pressure relief valve must have a minimum venting capacity of at least 6,000 SCFH of free air, rated at not greater than the tank test pressure.

(3) Each vacuum relief system must have sufficient capacity to limit the vacuum to 1 psig.

(4) If pressure loading or unloading devices are provided, the relief system must have adequate vapor and liquid capacity to limit the tank pressure to 130 percent of MAWP at maximum loading or unloading rate. The maximum loading and unloading rates must be included on the metal specification plate.

§ 178.346-11 Outlets.

(a) All outlets on each tank must conform to § 178.345-11 and this section.

(b) External self-closing stop-valves are not authorized as an alternative to internal self-closing stop-valves on loading/unloading outlets.

§ 178.346-12 Gauging devices.

Any gauging device on DOT 406 cargo tanks must conform to § 178.345-12.

§ 178.346-13 Pressure and leakage tests.

(a) Each cargo tank must be tested in accordance with § 178.345-13 and this section.

(b) *Pressure test.* Test pressure must be as follows:

(1) Using the hydrostatic test method, the test pressure must be the greater of 5.0 psig or 1.5 times the cargo tank MAWP.

(2) Using the pneumatic test method, the test pressure must be the greater of 5.0 psig or 1.5 times the cargo tank MAWP, and the inspection pressure must be the cargo tank MAWP.

(c) *Leakage test.* Where applicable, the Environmental Protection Agency's "Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure—Vacuum Test" 40 CFR Part 60 Appendix A, is an acceptable alternate leakage test.

§ 178.346-14 Marking.

Each cargo tank motor vehicle must be marked in accordance with § 178.345-14.

§ 178.346-15 Certification.

Each cargo tank motor vehicle must be certified in accordance with § 178.345-15.

§ 178.347 Specification DOT 407; cargo tank motor vehicle.

§ 178.347-1 General requirements.

(a) Each specification DOT 407 cargo tank motor vehicle must conform to the general design and construction requirements in § 178.345 in addition to the specific requirements contained in this section.

(b) Each tank must be of a circular cross-section and have an MAWP of at least 25 psig.

(c) Any cargo tank built to this specification with a MAWP greater than 35 psig and each tank designed to be loaded by vacuum must be "constructed and certified in accordance with the ASME Code". The external design pressure for a cargo tank loaded by vacuum must be at least 15 psi.

(d) Each cargo tank built to this specification with MAWP less than 35 psig must be "constructed in accordance with the ASME Code" except as modified herein:

(1) The record-keeping requirements contained in the ASME Code, Section VIII, Division I, do not apply. The inspection requirements of parts UG-90 thru 94 do not apply. Inspection and certification must be made by an inspector registered in accordance with Subpart F of Part 107.

(2) Loadings must be as prescribed in § 178.347-3.

(3) Formed heads must have a knuckle radius of at least 3 times the material thickness, and in no case less than one-half inch. Inserted or stuffed head attachment to the shell by fillet weld is authorized when such head is of a thickness authorized by UG-32 and § 178.347-2.

(4) Marking, certification, data reports and nameplates must be as prescribed in §§ 178.345-14, 178.347-14, 178.345-15, and 178.347-15.

(5) Manhole closure assemblies must conform to §§ 178.345-5 and 178.347-5.

(6) Pressure relief devices must be as

prescribed in §§ 178.345-10 and 178.347-10.

(7) The hydrostatic or pneumatic test must be as prescribed in §§ 178.345-13 and 178.347-13.

(8) The following parts of the ASME Code do not apply: UG-12, UG-34, UG-77, UG-80, and UG-81, and UG-96.

§ 178.347-2 Material and thickness of material.

(a) The type and thickness of material for DOT 407 specification cargo tanks must conform to § 178.345-2 and this section. In no case may the thickness be less than that indicated in Tables I and II below.

TABLE I—MINIMUM THICKNESS OF HEADS, BULKHEADS AND BAFFLES WHEN USED AS TANK REINFORCEMENT USING MILD STEEL (MS), HIGH STRENGTH LOW ALLOY STEEL (HSLA), AUSTENITIC STAINLESS STEEL (SS) AND ALUMINUM (AL)—EXPRESSED IN DECIMALS OF AN INCH

Volume capacity in gallons per inch	10 or less	Over 10 to 14	Over 14 to 18	Over 18 to 22	Over 22 to 26	Over 26 to 30	Over 30
Thickness (MS).....	0.100	0.100	0.115	0.129	0.129	0.143	0.156
Thickness (HSLA).....	0.100	0.100	0.115	0.129	0.129	0.143	0.156
Thickness (SS).....	0.100	0.100	0.115	0.129	0.129	0.143	0.156
Thickness (AL).....	0.160	0.160	0.173	0.187	0.194	0.218	0.237

TABLE II—MINIMUM THICKNESS OF SHELL USING MILD STEEL (MS), HIGH STRENGTH LOW ALLOY STEEL (HSLA), AUSTENITIC STAINLESS STEEL (SS) AND ALUMINUM (AL)—EXPRESSED IN DECIMALS OF AN INCH

Volume capacity in gallons per inch	10 or less	Over 10 to 14	Over 14 to 18	Over 18 to 22	Over 22 to 26	Over 26 to 30	Over 30
Thickness (MS).....	0.100	0.100	0.115	0.129	0.129	0.143	0.156
Thickness (HSLA).....	0.100	0.100	0.115	0.129	0.129	0.143	0.156
Thickness (SS).....	0.100	0.100	0.115	0.129	0.129	0.143	0.156
Thickness (AL).....	0.151	0.151	0.160	0.173	0.194	0.216	0.237

§ 178.347-3 Structural integrity.

The structural integrity of each cargo tank motor vehicle must conform to § 178.345-3.

§ 178.347-4 Joints.

All joints in the fabrication of each cargo tank must conform to § 178.345-4.

§ 178.347-5 Manhole assemblies.

Each manhole assembly must conform to § 178.345-5, except that each manhole assembly must be capable of withstanding internal fluid pressures of 40 psig or test pressure of the tank, whichever is greater.

§ 178.347-6 Supports and anchoring.

Supports and anchoring on each cargo tank motor vehicle must be in conformance with § 178.345-6.

§ 178.347-7 Circumferential reinforcement.

The circumferential reinforcement on each cargo tank must conform to § 178.345-7.

§ 178.347-8 Accident damage protection.

Each cargo tank motor vehicle must be protected from accident damage in accordance with § 178.345-8.

§ 178.347-9 Pumps, piping, hoses and connections.

Each pump and all piping, hoses and connections on each cargo tank motor vehicle must conform to § 178.345-9.

§ 178.347-10 Pressure relief.

(a) Each cargo tank must be equipped with a pressure and vacuum relief system in accordance with § 178.340-10 and this section.

(b) *Type and construction.* Vacuum relief devices are not required for cargo tanks designed to be loaded by vacuum.

(c) *Pressure settings of relief valves.* The setting of pressure relief valves must be in accordance with § 178.345-10(d).

(d) *Venting capacities.*

(1) The total venting capacity of the pressure relief system must limit the cargo tank pressure to not greater than 150 percent of the cargo tank MAWP. The total venting capacity, rated at no greater than 150 percent of the cargo tank MAWP, must be at least that specified in the table in § 178.345-10(e).

(2) The vacuum relief system must limit the vacuum to less than 80 percent of the design vacuum capability of the cargo tank.

(3) If pressure loading or unloading devices are provided, the relief system must have adequate vapor and liquid capacity to limit the tank pressure to 130

percent of the MAWP at maximum loading or unloading rate. The maximum loading or unloading rate must be included on the metal specification plate.

§ 178.347-11 Outlets.

All outlets on each tank must conform to § 178.345-11.

§ 178.347-12 Gauging devices.

Any gauging device on DOT 407 cargo tanks must conform to § 178.345-12.

§ 178.347-13 Pressure and leakage test.

(a) Each cargo tank must be tested in accordance with § 178.345-13 and this section.

(b) *Pressure test.* Test pressure must be as follows:

(1) Using the hydrostatic test method, the test pressure must be at least 40 psig or 1.5 times tank MAWP, whichever is greater.

(2) Using the pneumatic test method, the test pressure must be 40 psig or 1.5 times tank MAWP, whichever is greater, and the inspection pressure is tank MAWP.

§ 178.347-14 Marking.

Each cargo tank motor vehicle must be marked in accordance with § 178.345-14.

§ 178.347-15 Certification.

Each cargo tank motor vehicle must be certified in accordance with § 178.345-15.

§ 178.348 Specification DOT 412; cargo tank motor vehicle.

§ 178.348-1 General requirements.

(a) Each specification DOT 412 cargo tank motor vehicle must conform to the general design and construction requirements in § 178.345 in addition to the specific requirements of this section.

(b) The MAWP of each cargo tank must be at least 5 psig.

(c) The MAWP for each cargo tank designed to be loaded by vacuum must be at least 25 psig internal and 15 psig external.

(d) Each cargo tank having a MAWP greater than or equal to 15 psig must be of circular cross-section.

(e) Each cargo tank having a—

(1) MAWP greater than or equal to 15 psig must be "constructed and certified

in conformance with the ASME Code"; or

(2) MAWP less than 15 psig must be "constructed in accordance with the ASME Code," except as modified herein:

(i) The record-keeping requirements contained in the ASME Code, Section VIII, Division I, do not apply. Parts UG-90 thru 94 of Section VIII, Division I do not apply. Inspection and certification must be made by an inspector registered in accordance with Subpart F of Part 107.

(ii) Loadings must be as prescribed in § 178.348-3.

(iii) Formed heads must have a knuckle radius of at least 3 times the material thickness, and in no case less than one-half inch. Inserted or stuffed head attachment to the shell by fillet weld is authorized when such head is of a thickness authorized by UG-32 and § 178.348-2. Shell sections of cargo tanks designed with a non-circular cross-

section need not be given a preliminary curvature as prescribed in UG-79.

(iv) Marking, certification, data reports, and nameplates must be as prescribed in §§ 178.345-14, 178.348-14, 178.345-15, and 178.348-15.

(v) Manhole closure assemblies must conform to §§ 178.345-5 and 178.348-5.

(vi) Pressure relief devices must be as prescribed in §§ 178.345-10 and 178.348-10.

(vii) The hydrostatic or pneumatic test must be as prescribed in §§ 178.345-13 and 178.348-13.

(viii) The following parts of the ASME Code, Section VIII, Division I do not apply: UG-12, UG-34, UG-77, UG-80, UG-81, and UG-96.

§ 178.348-2 Material and thickness of material.

(a) The type and thickness of material for DOT 412 cargo tanks must conform to § 178.345-2 of this Part, but in no case may the thickness be less than that indicated in Tables I and II below.

TABLE I.—MINIMUM THICKNESS OF HEADS (AND BULKHEADS AND BAFFLES WHEN USED AS TANK REINFORCEMENT) USING MILD STEEL (MS), HIGH STRENGTH LOW ALLOY STEEL (HSLA), AUSTENITIC STAINLESS STEEL (SS) OR ALUMINUM. EXPRESSED IN DECIMALS OF AN INCH

Volume capacity (gallons per inch)	10 or less				Over 10 to 14				Over 14 to 18				18 and over			
Lading density at 60 °F in pounds per gallon...	10 lbs and less	Over 10 to 13 lbs	Over 13 to 16 lbs	Over 16 to 26 lbs	10 lbs and less	Over 10 to 13 lbs	Over 13 to 16 lbs	Over 16 to 16 lbs	10 lbs and less	Over 10 to 13 lbs	Over 13 to 16 lbs	Over 16 to 16 lbs	10 lbs and less	Over 10 to 13 lbs	Over 13 to 16 lbs	Over 16 to 16 lbs
Thickness (inch), steel.....	.100	.129	.157	.187	.129	.157	.187	.250	.157	.250	.250	.157	.250	.250	.312	.312
Thickness (inch), aluminum.....	.144	.187	.227	.270	.187	.227	.270	.360	.227	.360	.360	.227	.360	.360	.450	.450

TABLE II.—MINIMUM THICKNESS OF SHELL USING MILD STEEL (MS), HIGH STRENGTH LOW ALLOY STEEL (HSLA) OR AUSTENITIC STAINLESS STEEL (SS)—EXPRESSED IN DECIMALS OF AN INCH

Volume capacity in gallons per inch	10 or less				Over 10 to 14				Over 14 to 18				18 and over			
Lading density at 60 °F in pounds per gallon...	10 lbs and less	Over 10 to 13 lbs	Over 13 to 16 lbs	Over 16 to 16 lbs	10 lbs and less	Over 10 to 13 lbs	Over 13 to 16 lbs	Over 16 to 16 lbs	10 lbs and less	Over 10 to 13 lbs	Over 13 to 16 lbs	Over 16 to 16 lbs	10 lbs and less	Over 10 to 13 lbs	Over 13 to 16 lbs	Over 16 to 16 lbs
Thickness (inch), steel.....	.100	.129	.157	.187	.129	.157	.187	.250	.157	.250	.250	.157	.250	.250	.312	.312
Thickness (inch), aluminum.....	.144	.187	.227	.270	.187	.227	.270	.360	.227	.360	.360	.227	.360	.360	.450	.450
Thickness (steel):																
Distances between heads (and bulkheads baffles and ring stiffeners when used as tank reinforcement):																
36 in. or less.....	.100	.129	.157	.187	.100	.129	.157	.187	.100	.129	.157	.187	.129	.157	.187	.187
Over 36 in. to 54 inches.....	.100	.129	.157	.187	.100	.129	.157	.187	.129	.157	.187	.187	.157	.250	.250	.250
Over 54 in. to 60 inches.....	.100	.129	.157	.187	.129	.157	.187	.250	.157	.250	.250	.187	.250	.250	.312	.312
Thickness (aluminum):																
Distances between heads (and bulkheads baffles and ring stiffeners when used as tank reinforcement):																
36 in. or less.....	.144	.187	.227	.270	.144	.187	.227	.270	.144	.187	.227	.187	.227	.227	.270	.270
Over 36 in. to 54 inches.....	.144	.187	.227	.270	.144	.187	.227	.270	.187	.227	.270	.157	.360	.360	.360	.360
Over 54 in. to 60 inches.....	.144	.187	.227	.270	.187	.227	.270	.360	.227	.360	.360	.270	.360	.360	.450	.450

Note: Thickness of aluminum material = Steel thickness from tables I and II times (3×10^{-4}) divided by $E/10^4$, where E = modulus of elasticity of material to be used.

§ 178.348-3 Structural integrity.

The structural integrity of each cargo tank motor vehicle must conform to § 178.345-3.

§ 178.348-4 Joints.

All joints in the fabrication of each cargo tank must conform to § 178.345-4.

§ 178.348-5 Manhole assemblies.

Each manhole assembly must conform to § 178.345-5.

§ 178.348-6 Supports and anchoring.

Supports and anchoring on each cargo tank motor vehicle must be in conformance with § 178.345-6.

§ 178.348-7 Circumferential reinforcement.

The circumferential reinforcement on each cargo tank must conform to § 178.345-7.

§ 178.348-8 Accident Damage Protection.

Each cargo tank motor vehicle must be protected from accident damage in accordance with § 178.345-8.

§ 178.348-9 Pumps, piping, hoses and connections.

Each pump and all piping, hoses and connections on each cargo tank motor vehicle must conform to § 178.345-9.

§ 178.348-10 Pressure relief.

(a) Each cargo tank must be equipped with a pressure and vacuum relief system in accordance with § 178.340-10 and this section.

(b) *Type and construction.* Vacuum relief devices are not required for cargo tanks designed to be loaded by vacuum.

(c) *Pressure settings of relief valves.* The setting of the pressure relief devices must be in accordance with § 178.345-10(d), except as provided in paragraph (d)(3) of this section.

(d) *Venting capacities.* (1) The vacuum relief system must limit the vacuum to less than 80 percent of the design vacuum capability of the cargo tank.

(2) If pressure loading or unloading devices are provided, the pressure relief system must have adequate vapor and liquid capacity to limit tank pressure to the cargo tank test pressure at the maximum loading or unloading rate. The maximum loading and unloading rates must be included on the metal specification plate.

(3) Cargo tanks used in dedicated service for materials classed as corrosive material, with no secondary hazard, may have a total venting capacity which is less than required by § 178.345-10(e). The total venting capacity for these cargo tanks must be

determined in accordance with the formula contained in § 178.270-11(d)(3).

§ 178.348-11 Outlets.

All outlets on each tank must conform to § 178.345-11 and this section.

§ 178.348-12 Gauging devices.

Any gauging device must conform to § 178.345-12.

§ 178.348-13. Pressure and leakage test.

(a) Each cargo tank must be tested in accordance with § 178.345-13 and this section.

(b) Pressure test. Test pressure must be as follows:

(1) Using the hydrostatic test method, the test pressure must be at least 1.5 times MAWP.

(2) Using the pneumatic test method, the test pressure must be at least 1.5 times tank MAWP, and the inspection pressure is tank MAWP.

§ 178.348-14 Marking.

Each cargo tank motor vehicle must be marked and certified in accordance with § 178.345-14.

§ 178.348-15 Certification.

Each cargo tank motor vehicle must be certified in accordance with § 178.345-15.

101. A new part 180 is added to Subchapter C of Title 49 to read as follows:

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS**Subpart A—General**

Sec.

180.1 Purpose and scope.

180.2 Applicability

180.3 General Requirements.

Subpart B-D [Reserved]**Subpart E—Qualification and Maintenance of Cargo Tanks**

180.401 Applicability.

180.403 Definitions.

180.405 Qualification of cargo tanks.

180.407 Requirements for test and inspection of cargo tanks.

180.409 Minimum qualifications for inspectors and testers.

180.411 Acceptable results of tests and inspections.

180.413 Repair, modification, stretching, or rebarrelling of cargo tanks.

180.415 Test and inspection markings.

180.417 Reporting and record retention requirements.

Authority: 49 U.S.C. 1803, 1804, 1806, 1808; 49 CFR Part 1, unless otherwise specified.

Subpart A—General**§ 180.1 Purpose and scope.**

This part prescribes requirements pertaining to the maintenance, reconditioning, repair, inspection and testing of packagings, and any other function having an effect on the continuing qualification and use of a packaging under the requirements of this subchapter.

§ 180.2 Applicability.

(a) Any person who performs a function prescribed in this part shall perform that function in accordance with this part.

(b) Any person who performs a function prescribed in this part is considered subject to the regulations of this subchapter when that person—

(1) Makes any representation indicating compliance with one or more of the requirements of this part; or

(2) Reintroduces a packaging into commerce that bears markings indicating compliance with this part.

§ 180.3 General requirements.

(a) No person may represent, mark, certify, sell, or offer a packaging or container as meeting the requirements of this part, or an exemption pertaining to this part issued under Subchapter B of this chapter, whether or not the packaging or container is intended to be used for the transportation of a hazardous material, unless it is marked, maintained, reconditioned, repaired, or retested, as appropriate, in accordance with this part, an approval issued thereunder, or an exemption issued under Subchapter B of this chapter.

(b) The representations, markings, and certifications subject to the prohibitions of paragraph (a) of this section include:

(1) Identifications that include the letters "DOT", "MC", "ICC", or "UN";

(2) Exemption, approval, and registration numbers that include the letters "DOT";

(3) Test dates displayed in association with specification, registration, approval, or exemption markings indicating conformance to a test or retest requirement of this subchapter, an approval issued thereunder, or an exemption issued under Subchapter B of this chapter;

(4) Documents indicating conformance to the testing, inspection, maintenance or other continuing qualification requirements of this part; and

(5) Sales literature, including advertising, indicating that the packaging or container represented therein conforms to requirements

contained in Subchapter B or C of this chapter.

Subparts B-D [Reserved]**Subpart E—Qualification and Maintenance of Cargo Tanks****§ 180.401 Applicability.**

This subpart prescribes requirements, in addition to those contained in Parts 171, 172, 173 and 178 of this subchapter, applicable to any person responsible for the continuing qualification, maintenance or periodic testing of a cargo tank.

§ 180.403 Definitions.

In addition to the definitions contained in §§ 171.8 and 178.345-1 of this subchapter, the following definitions apply to this subpart:

"*Modification*" means any change to a cargo tank's original design and construction which would affect the structural integrity or lading retention capability of the cargo tank. Changes to appurtenances, such as fender attachments, lighting brackets, and ladder brackets, are excluded from this definition. Replacement of components such as valves, vents, and fittings with a component of a similar design and the same size is not considered a modification. For the purposes of this Subpart, "stretching" is not considered a modification.

"*Owner*" means the owner of a cargo tank motor vehicle used for the transportation of hazardous materials, or his authorized agent.

"*Rebarrelling*" means replacing more than 50 percent of the combined shell and head material of a cargo tank.

"*Repair*" means any welding on pressure parts done to return a cargo tank to its original design and construction, or to a condition prescribed for that cargo tank specification in effect at the time of repair.

"*Stretching*" means any change in length, width or diameter of the cargo tank, or any change to a cargo tank motor vehicle's undercarriage that may affect the cargo tank's structural integrity.

§ 180.405 Qualification of cargo tanks.

(a) *General.* Unless otherwise provided in this subpart, each cargo tank used for the transportation of hazardous material must be an authorized packaging.

(b) *Cargo tank specifications.* To qualify as an authorized packaging, each cargo tank must conform to this subpart, the applicable requirements specified in part 173 of this subchapter for the

specific lading, and an applicable specification in effect on the date the initial construction began: MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311, MC 312, MC 330, MC 331, MC 338, DOT 406, DOT 407, or DOT 412 (§ 178.337, § 178.338, § 178.345, § 178.346, § 178.347, § 178.348 of this subchapter). However, construction of MC 306, MC 307, or MC 312 cargo tanks meeting the requirements of the applicable specification in effect on June 12, 1989, is authorized until December 5, 1990.

(c) *Cargo tank specifications no longer authorized for construction.* (1) A cargo tank made to a specification listed in Column 1 may be used when authorized in this Part, provided tank construction began before the date listed in Column 2:

Column 1	Column 2
MC 300	Sept. 2, 1967.
MC 301	June 12, 1961.
MC 302, MC 303, MC 304, MC 305, MC 310, MC 311.	Sept. 2, 1967.
MC 330	May 15, 1967.
MC 306, MC 307, MC 312	Dec. 5, 1990.

(2) A cargo tank of a specification listed in paragraph (c)(1) of this section may have its pressure relief devices and outlets modified as follows:

(i) A Specification MC 300, MC 301, MC 302, MC 303, or MC 305 cargo tank, to conform with a Specification MC 306 or DOT 406 cargo tank (See §§ 178.346-10 and 178.346-11 of this subchapter).

(ii) A specification MC 306 cargo tank to conform to a Specification DOT 406 cargo tank (§§ 178.346-10 and 178.346-11 of this subchapter).

(iii) A Specification MC 304 or cargo tank, to conform with a Specification MC 307 or DOT 407 cargo tank (See §§ 178.347-10 and 178.347-11 of this subchapter).

(iv) A Specification MC 307 cargo tank, to conform with a Specification DOT 407 cargo tank (See §§ 178.347-10 and 178.347-11 of this subchapter).

(v) A Specification MC 310 or MC 311 cargo tank, to conform with a Specification MC 312 or DOT 412 cargo tank (See §§ 178.348-10 and 178.348-11 of this subchapter).

(vi) A Specification MC 312 cargo tank, to conform with a Specification DOT 412 cargo tank (See §§ 178.348-10 and 178.348-11 of this subchapter).

(vii) A Specification MC 330 cargo tank, to conform with a Specification MC 331 cargo tank (See §§ 178.337-8 and 178.337-9 of this subchapter).

(d) *MC 338 cargo tank.* The owner of a cargo tank that conforms to and was used under the terms of an exemption

issued before October 1, 1984, that authorizes the transportation of a cryogenic liquid shall remove the exemption number stenciled on the cargo tank and stamp the specification plate (or a plate placed adjacent to the specification plate) "DOT MC 338" followed by the exemption number, for example, "DOT MC 338-E * * * *". (Asterisks to be replaced by the exemption number). The cargo tank must be remarked prior to the expiration date of the exemption. During the period the cargo tank is in service, the owner of a cargo tank that is remarked in this manner must retain at its principal place of business a copy of the last exemption in effect. No new construction of cargo tanks pursuant to such exemption is authorized.

(1) The holding time must be determined, as required in § 178.338-9 of this subchapter, on each cargo tank or on at least one cargo tank of each design. Any subsequent cargo tank manufactured to the same design type (see § 178.320), if not individually tested, must have the optional test regimen performed during the first shipment (see §§ 178.338-9 (b) and (c) of this subchapter).

(2) The holding time determined by test for one authorized cryogenic liquid may be used as the basis for establishing the holding time for other authorized cryogenic liquids.

(e) *MC 331 cargo tanks.* The owner of a MC 331 (§ 178.337 of this subchapter) cargo tank that conforms to and was used under an exemption issued before October 1, 1984, that authorizes the transportation of ethane, refrigerated liquid; ethane-propane mixture, refrigerated liquid; or hydrogen chloride, refrigerated liquid shall remove the exemption number stenciled on the cargo tank and stamp the exemption number on the specification plate (or a plate placed adjacent to the specification plate), immediately after the DOT Specification, for example, "DOT MC 331-E * * * *". (Asterisks to be replaced by the exemption number.) The cargo tank must be remarked prior to the expiration date of the exemption. During the period the cargo tank is in service, the owner of a cargo tank that is remarked in this manner must retain at its principal place of business a copy of the last exemption in effect.

(f) *MC 306, MC 307, MC 312 cargo tanks.* A Registered Inspector and the owner of a MC 306, MC 307 or MC 312 cargo tank motor vehicle constructed in accordance with and used under an exemption issued before December 12, 1989, that authorizes a condition specified in this paragraph shall

examine the cargo tank motor vehicle and its design to determine if it meets the requirements of the applicable MC 306, MC 307 or MC 312 specification in effect at the time of manufacture, except as specified herein.

(1) A cargo tank motor vehicle constructed after August 1, 1981, or the date specified in the applicable exemption, in conformance with the following conditions that apply, may be remarked and certified in accordance with paragraphs (f) (5) and (6) of this section:

(i) A vacuum-loaded cargo tank must have an ASME Code stamped specification plate marked with a minimum internal design pressure of 25 psig, and be designed for a minimum external design pressure of 15 psig.

(ii) A cargo tank having an outlet equipped with an external self-closing stop valve must have the stop valve and associated piping protected within the vehicle's rear-end tank protection device, the vehicle frame or an equally adequate accident damage protection device (See §§ 178.345-8 of this subchapter.) The external self-closing stop valve must be equipped with a remotely actuated means of closure consisting as follows:

(A) For a cargo tank used in other than corrosive service, the remote means of closure must be activated for closure by manual or mechanical means and, in case of fire, by an automatic heat activated means.

(B) For a cargo tank used in corrosive service, the remote means of closure may be actuated by manual or mechanical means only.

(iii) A cargo tank having an unreinforced portion of the shell exceeding 80 inches must have the circumferential reinforcement located so that the thickness and tensile strength of shell material in combination with the frame and circumferential reinforcement produces a structural integrity at least equal to that prescribed in § 178.345-3 of the specification in effect at time of manufacture.

(iv) A cargo tank having a projection from the tank shell or head that may contain lading in any tank position is authorized, provided such projection is as strong as the tank shell or head and is located within the motor vehicle's rear-end tank protection or other appropriate accident damage protection device.

(v) A cargo tank may be constructed of nickel, titanium, or other ASME sheet or plate materials in accordance with an exemption.

(2) A vacuum-loaded cargo tank constructed after August 1, 1981, or the date specified in the applicable

exemption, in conformance with paragraph (f)(1) of this section, except that an outlet is equipped with an external valve which is not equipped with a self-closing feature:

(i) Must be equipped with a self-closing valve prior to June 12, 1992.

(ii) May be remarked and certified in accordance with paragraphs (f) (5) and (6) of this section after the cargo tank motor vehicle has been equipped with the self-closing valve.

(3) A vacuum-loaded cargo tank constructed prior to August 1, 1981, in conformance with paragraph (f)(1) of this section, except for paragraph (f)(1)(i), may be remarked and certified in accordance with paragraphs (f) (5) and (6) of this section.

(4) A vacuum-loaded cargo tank constructed prior to August 1, 1981, in conformance with paragraph (f)(1) of this section, except for paragraph (f)(1)(i), and an outlet is equipped with an external valve which is not equipped with a self-closing feature:

(i) Must be equipped with a self-closing valve prior to June 12, 1992.

(ii) May be remarked and certified in accordance with paragraphs (f)(5) and (6) of this section after the cargo tank motor vehicle has been equipped with the self-closing valve.

(5) The owner of a cargo tank for which a determination has been made that the cargo tank is in conformance with paragraph (f) (1), (2), (3), or (4) of this section shall complete a written certification, in English, signed by the owner and containing at least the following information:

(i) A statement certifying that each cargo tank conforms to § 180.405 (f) (1), (2), (3), or (4);

(ii) The applicable DOT exemption number, the applicable specification number and the owner's and manufacturer's serial number for the cargo tank;

(iii) A statement setting forth any modifications made to bring the cargo tank into conformance with § 180.405(f) (1), (2), (3), or (4), or the applicable specification;

(iv) A statement identifying the person certifying the cargo tank and the date of certification.

(6) The owner of a certified cargo tank shall remove the exemption number stenciled on the cargo tank and must durably mark the specification plate (or a plate placed adjacent to the specification plate) "MC + + + -E *****" (where "+ + +" is to be replaced by the applicable specification number, "*****" by the exemption number and "# # # #" by the alloy.)

(7) During the period the cargo tank is in service, and for one year thereafter,

the owner of a cargo tank that is certified and remarked in this manner must retain on file at its principal place of business a copy of the certificate and the last exemption in effect.

(g) *Cargo tank manhole assemblies.*

(1) On or before June 13, 1994, each owner of a cargo tank manufactured prior to December 12, 1989, authorized for the transportation of a hazardous material, must have the cargo tank equipped with manhole assemblies conforming with § 178.345-5 except for the marking requirements in § 178.345-5(e) and the hydrostatic testing requirement in 178.345-5(b) of this section. Manhole assemblies installed on an MC 300, MC 301, MC 302, MC 303, MC 305, or MC 306 cargo tank prior to December 12, 1989, which are marked or certified in writing as conforming to TTMA RP No. 61 may be considered to be in compliance with this paragraph. Any manhole assembly installed on a cargo tank after December 12, 1989, must meet the requirements in § 178.345-5.

(2) The owner of an MC 300, MC 301, MC 302, MC 303, MC 305, or MC 306 cargo tank manufactured prior to December 12, 1989, which is equipped with a manhole assembly or assemblies manufactured prior to December 12, 1989, which are not certified in conformance with TTMA RP No. 61 may have them certified in accordance with the Recommended Practice by the manufacturer of the manhole closure. Those manhole closures which the manufacturer cannot identify and certify, or for which the manufacturer cannot be identified, may be tested and certified in accordance with TTMA TB No. 107. These certifications must be performed on or before June 13, 1994.

(3) The owner of five or more DOT specification cargo tanks requiring retrofit or certification of the manhole closure must retrofit or certify at least 20 percent of the affected cargo tanks each year beginning in 1990 until all affected manhole closures on cargo tanks have been retrofitted or certified. The owner of fewer than 5 DOT specification cargo tanks has until June 13, 1994 to retrofit or certify the manhole closures.

(h) *Pressure Relief System.* After June 12, 1991, any reclosing pressure relief valve installed on any cargo tank must be capable of reseating to a leak-tight condition, after a pressure surge and release of a lading volume of not more than one gallon. This requirement shall be considered to be met if the pressure relief valve successfully withstands the testing procedure outlined in TTMA RP No. 81.89 "Performance of Spring Loaded Pressure Relief Valves on MC

306, MC 307, and MC 312 Tanks." with the exceptions noted in § 178.345-10(b)(3). After June 13, 1994, any pressure relief system installed on a DOT 406, DOT 407, or DOT 412 cargo tank must meet the requirements in § 178.345-10(b).

(i) *Flammable cryogenic liquids.* Each cargo tank used to transport a flammable cryogenic liquid must be examined after each shipment to determine its actual holding time (See § 173.318(g)(3) of this subchapter.)

(j) *Withdrawal of certification.* A specification cargo tank that for any reason no longer meets the applicable specification may not be used to transport hazardous materials unless the cargo tank is repaired and retested in accordance with §§ 180.413 and 180.407 prior to being returned to hazardous materials service. If the cargo tank is not in conformance with the applicable specification requirements, the specification plate on the cargo tank must be removed, obliterated or securely covered. The details of the conditions necessitating withdrawal of the certification must be recorded and signed on the written certificate for that cargo tank. The vehicle owner shall retain the certificate for at least 1 year after withdrawal of the certification.

(k) *DOT specification cargo tank with no marked design pressure or a marked design pressure of less than 2.65 psig.* The owner of an MC 300, MC 301, MC 302, MC 303, MC 305, MC 306 or MC 312 cargo tank, which has a pressure relief system set at 3 psig, shall mark or remark the cargo tank with an MAWP or design pressure of not greater than 2.65 psig.

(1) *MC 300, MC 301, MC 302, MC 303, MC 305, MC 306 cargo tank—Rear accident damage protection.* (1) Notwithstanding the requirements in § 180.405(b), the applicable specification requirement for a rear bumper or rear-end tank protection device on MC 300, MC 301, MC 302, MC 303, MC 305, and MC 306 cargo tanks does not apply to a cargo tank truck (power unit) until July 1, 1992, if the cargo tank truck—

(i) Was manufactured before July 1, 1989;

(ii) Is used to transport gasoline or any other petroleum distillate product; and

(iii) Is operated in combination with a cargo tank full trailer. However, an empty cargo tank truck, without a cargo tank full trailer attached, may be operated without the required rear bumper or rear-end tank protection device on a one-time basis while being transported to a repair facility for installation of a rear bumper or rear-end protection device.

(2) Each cargo tank shall be provided with a rear accident damage protection device to protect the tank and piping in the event of a rear-end collision and reduce the likelihood of damage which could result in the loss of lading. The rear-end protection device must be in the form of a rear-end tank protection device meeting the requirements of § 178.345-8(d) or a rear bumper meeting the following:

(i) The bumper shall be located at least 6 inches to the rear of any vehicle component used for loading or unloading or that may contain lading while the vehicle is in transit.

(ii) The dimensions of the bumper shall conform to § 393.86 of this title.

(iii) The structure of the bumper shall be designed to withstand, without leakage of lading, the impact of the vehicle with rated payload, at a deceleration of 2 "g" using a safety factor of two based on the ultimate strength of the bumper material. Such impact shall be considered uniformly distributed and applied horizontally (parallel to the ground) from any direction at an angle not exceeding 30 degrees to the longitudinal axis of the vehicle.

§ 180.407 Requirements for test and inspection of cargo tanks.

(a) *General.* (1) A cargo tank constructed in accordance with a DOT specification for which a test or inspection specified in this section has become due, may not be filled and offered for shipment until the test or inspection has been successfully completed. This paragraph does not apply to any cargo tank filled prior to the test or inspection due date.

(2) Except during a pressure test, a cargo tank may not be subjected to a pressure greater than its design pressure or MAWP.

(3) A person witnessing or performing a test or inspection specified in this section must meet the minimum qualifications prescribed in § 180.409.

(4) Each cargo tank which has successfully passed a test or inspection specified in this section must be marked in accordance with § 180.415.

(5) A cargo tank which fails a prescribed test or inspection must:

(i) Be repaired and retested in accordance with § 180.413; or

(ii) Be removed from hazardous materials service and the specification plate removed, obliterated or covered in a secure manner.

(b) *Conditions requiring test and inspection of cargo tanks.* Without regard to any other test or inspection requirements, a cargo tank must be

tested and inspected in accordance with this section prior to further use if:

(1) The cargo tank shows evidence of bad dents, corroded or abraded areas, leakage, or any other condition that might render it unsafe for transportation service.

(2) The cargo tank has been in an accident and has been damaged to an extent that may adversely affect its lading retention capability.

(3) The cargo tank has been out of hazardous materials transportation service for a period of one year or more.

(4) The cargo tank has been modified from its original design specification.

(5) The Department so requires based on the existence of probable cause that the cargo tank is in an unsafe operating condition.

(c) *Periodic test and inspection.* Each cargo tank must be tested and inspected as specified in the following table by an inspector meeting the qualifications in § 180.409.

Test or inspection	Cargo tank, configuration, and service	Period
Inspections	External visual	All cargo tanks designed to be loaded by vacuum with full opening rear head. 6 mos.
	Internal visual	All other cargo tanks. 1 yr.
Lining/cladding	All insulated cargo tanks except MC 330, MC 331, MC 338.	1 yr.
	All cargo tanks transporting lading corrosive to the tank.	5 yr.
Tests	All lined or clad cargo tanks transporting lading corrosive to the tank.	1 yr.
	Leakage Pressure (hydrostatic or pneumatic) (See Notes 1 and 2)	All cargo tanks except MC 338. 1 yr.
Thickness over entire tank	All cargo tanks designed to be loaded by vacuum with full opening rear head.	2 yrs.
	MC 330 and MC 331 cargo tanks in chlorine service.	2 yr.
	All other cargo tanks.	5 yr.
	All unlined cargo tanks in corrosive service, except MC 338.	2 yr.

Note 1: Pressure testing is not required for MC 330 and MC 331 cargo tanks in dedicated sodium metal service.
Note 2: Pressure testing is not required for uninsulated lined or clad cargo tanks, with a design pressure or MAWP less than 15 psig, which receive an external visual inspection and lining inspection at least once each year.

(d) *External visual inspection and testing.* (1) Where insulation precludes external visual inspection, the cargo tank shall receive a visual internal inspection in accordance with § 180.407(e). Where visual inspection is precluded by both internal coating and external insulation, or when the cargo tank is not equipped with a manhole or inspection opening, the tank shall be hydrostatically or pneumatically tested in accordance with 180.407(c) and § 180.407(g).

(2) The external visual inspection and testing must include as a minimum the following:

(i) The tank shell and heads must be inspected for corroded or abraded areas, dents, distortions, defects in welds and any other conditions, including leakage, that might render the tank unsafe for transportation service;

(ii) The piping, valves, and gaskets must be carefully inspected for corroded areas, defects in welds, and other conditions, including leakage, that might render the tank unsafe for transportation service;

(iii) All devices for tightening manhole covers must be operative and there must be no evidence of leakage at manhole covers or gaskets;

(iv) All emergency devices and valves including self-closing stop valves, excess flow valves and remote closure devices must be free from corrosion, distortion, erosion and any external damage that will prevent safe operation. Remote closure devices and self-closing stop valves must be functioned to demonstrate proper operation;

(v) Missing bolts, nuts and fusible links must be replaced, and loose bolts and nuts must be tightened;

(vi) All required markings on the cargo tank must be legible;

(vii) The cargo tank motor vehicle must conform to Part 393 of this title (the Federal Motor Carrier Safety Regulations) and, where appropriate, Part 571 of this title (the Federal Motor Vehicle Safety Standards);

(viii) All major appurtenances on the cargo tank including, but not limited to, the upper coupler (fifth wheel) assembly, suspension system attachments, and connecting structures, must be inspected for any corrosion or damage which might prevent safe operation.

(3) All reclosing pressure relief valves must be externally inspected for any corrosion or damage which might prevent safe operation. All reclosing pressure relief valves on cargo tanks carrying lading corrosive to the valve must be removed from the cargo tank for inspection and testing. Each reclosing pressure relief valve required to be removed and tested must open at the required set pressure and reseal to a leak-tight condition at 90 percent of the set-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification.

(4) Corroded or abraded areas must be thickness tested in accordance with the procedures set forth in paragraphs (i) (2), (3), (5) and (6) of this section.

(5) The gaskets on any full opening rear head must be:

(i) visually inspected for cracks or splits caused by weather or wear; and
(ii) replaced if cuts or cracks which are likely to cause leakage, or are of a depth one-half inch or more, are found.

(6) The inspector must record the results of the external visual examination as specified in § 180.417(b).

(e) *Internal visual inspection.* (1) When the cargo tank is not equipped with a manhole or inspection opening, the tank shall be hydrostatically or pneumatically tested in accordance with § 180.407(c) and § 180.407(g).

(2) The internal visual inspection must include as a minimum the following:

(i) The tank shell and heads must be inspected for corroded and abraded areas, dents, distortions, defects in welds, and any other condition that might render the tank unsafe for transportation service.

(ii) If lined, the lining material must be inspected for defects. Tank liners must be inspected as specified in § 180.407(f).

(3) At the time of the internal inspection, tank head and shell areas covered by the upper skid plate must be inspected for corroded and abraded areas, dents, distortions, defects in welds, and any other condition that might render the tank unsafe for transportation service.

(4) Corroded or abraded areas must be thickness tested in accordance with paragraphs (i) (2), (3), (5) and (6) of this section.

(5) Degraded or defective areas of the tank liner must be removed and tank shell or head below the defect must be inspected. Corroded areas must be thickness tested in accordance with § 180.407(i).

(6) The inspector must record the results of the internal visual inspection as specified in § 180.417(b).

(f) *Lining inspection.* The integrity of the lining on all lined cargo tanks, when lining is required by this Subchapter, must be verified at least once each year as follows:

(1) Rubber (elastomeric) lining must be tested for leaks as follows:

(i) Equipment shall consist of: (A) a high frequency spark tester capable of producing sufficient voltage to insure proper calibration;

(B) A probe with an "L" shaped $\frac{3}{32}$ inch diameter wire with up to a 12-inch bottom leg or equally sensitive probe; and

(C) A steel calibration block with a known leak, equivalent to a puncture caused by a 22 gauge hypodermic needle, lined with the same material as that to be tested.

(ii) The probe shall be passed over the surface of calibration block in a constant uninterrupted manner until the

leak is found. The leak is detected by the white or light blue spark formed. (A leak-free lining causes a dark blue or purple spark). The voltage shall be adjusted to the lowest setting that will produce a minimum 0.5 inch spark measured from the top of the lining to the probe. The spark tester shall be calibrated periodically using a test calibration block, using the same power source, probe and cable length, and to assure that the setting on the probe has not changed.

(iii) After calibration, the probe must be passed over the lining in an uninterrupted stroke.

(iv) Leaks that are found shall be marked for repair using chalk.

(2) Linings made of other than rubber (elastomeric material) must be tested using equipment and procedures prescribed by the lining manufacturer.

(g) *Pressure retest.* (1) *Test Procedure.*—(i) As part of the pressure test, the inspector must perform an external and internal visual inspection, except that on an MC 338 cargo tank, or a cargo tank not equipped with a manhole or inspection opening, an internal inspection is not required.

(ii) All reclosing pressure relief valves must be:

(A) Removed from the cargo tank for inspection and testing. Each reclosing pressure relief valve must open at the required set pressure and reseal to a leak-tight condition at 90 percent of the set-to-discharge pressure or the pressure prescribed for the applicable cargo tank specification; or,

(B) Replaced.

(iii) Each cargo tank must be tested hydrostatically or pneumatically to the minimum internal pressure specified in the following table:

Specification	Test pressure
MC 300, 301, 302, 303, 305, 306.	3 psig or design pressure, whichever is greater.
MC 304, 307.....	40 psig or 1.5 times the design pressure, whichever is greater.
MC 310, 311, 312....	3 psig or 1.5 times the design pressure, whichever is greater.
MC 330, 331.....	1.5 times either the MAWP or the re-rated pressure, whichever is applicable.
MC 338.....	1.25 times either the MAWP or the re-rated pressure, whichever is applicable.
DOT 406.....	5 psig or 1.5 times the MAWP, whichever is greater.
DOT 407.....	40 psig or 1.5 times the MAWP, whichever is greater.
DOT 412.....	1.5 times the MAWP.

(iv) Each owner of 5 or more MC 300, MC 301, MC 302, MC 303, MC 304, MC 305, MC 306, MC 307, MC 310, MC 311,

or MC 312 cargo tanks must pressure test at least 20 percent of the cargo tanks in his ownership each year beginning in 1990. The owner of fewer than five MC specification cargo tanks has until June 13, 1994, to pressure test these units.

(v) Each cargo tank of a multi-tank cargo tank motor vehicle must be tested with the adjacent cargo tanks empty and at atmospheric pressure.

(vi) All closures except pressure relief devices must be in place during the test. All prescribed loading and unloading venting devices rated at less than test pressure may be removed during the test. If retained, the devices must be rendered inoperative by clamps, plugs, or other equally effective restraining devices. Restraining devices may not prevent detection of leaks or damage the venting devices and must be removed immediately after the test is completed.

(vii) *Hydrostatic test method.* Each tank, including its domes, must be filled with water or other liquid having similar viscosity, at a temperature not exceeding 100 °F. The tank must then be pressurized to not less than the pressure specified in paragraph (g)(1)(iii) of this section. The tank, including its closures, must hold the prescribed test pressure for at least 10 minutes during which time it shall be inspected for leakage, bulging or any other defect.

(viii) *Pneumatic test method.* The tank must be pressurized with air or a similar gas. The pneumatic test pressure in the tank must be reached by gradually increasing the pressure to one-half of the test pressure. Thereafter, the pressure must be increased in steps of approximately one-tenth of the test pressure until the required test pressure has been reached. The test pressure must be held for at least 5 minutes. The pressure must then be reduced to the MAWP, which must be maintained during the time the entire tank surface is inspected. During the inspection, a suitable method must be used for detecting the existence of leaks. This method must consist either of coating the entire surface of all joints under pressure with a solution of soap and water, or using other equally sensitive methods. When a pneumatic test is performed, suitable safeguards should be provided to protect employees and other persons should a failure occur.

(2) When testing an insulated cargo tank, the insulation and jacketing need not be removed unless it is otherwise impossible to reach test pressure and maintain a condition of pressure equilibrium after test pressure is reached, or the vacuum integrity cannot be maintained in the insulation space. If an MC 338 cargo tank used for the

transportation of a flammable gas or oxygen, refrigerated liquid is opened for any reason, the cleanliness must be verified prior to closure using the procedures contained in § 178.338-15 of this subchapter.

(3) Each MC 330 and MC 331 cargo tank constructed of quenched and tempered steel (Part UHT of the ASME Code), or constructed of other than quenched and tempered steel but without postweld heat treatment, used for the transportation of anhydrous ammonia, or any other hazardous materials that may cause corrosion stress cracking, must be internally inspected by the wet fluorescent magnetic particle method immediately prior to and in conjunction with the performance of the pressure test prescribed in this section. Each MC 330 and MC 331 cargo tank constructed of quenched and tempered steel (Part UHT of the ASME Code) used for the transportation of liquefied petroleum gas must be internally inspected by the wet fluorescent magnetic particle method immediately prior to and in conjunction with the performance of the pressure test prescribed in this section. The wet fluorescent magnetic particle inspection must be in accordance with Section V of the ASME Code and CGA Technical Bulletin TB-2. This paragraph does not apply to cargo tanks that do not have manholes. (See § 180.417(c) for reporting requirements.)

(4) All pressure bearing portions of a cargo tank heating system employing a medium such as, but not limited to, steam or hot water for heating the lading must be hydrostatically pressure tested at least once every 5 years. The test pressure must be at least 1.5 times the heating system design pressure and must be maintained for five minutes. A heating system employing flues for heating the lading must be tested to ensure against lading leakage into the flues or into the atmosphere.

(5) *Exceptions.* (i) Pressure testing is not required for MC 330 and MC 331 cargo tanks in dedicated sodium metal service.

(ii) Pressure testing is not required for uninsulated lined or clad cargo tanks, with a design pressure or MAWP less than 15 psig, which receive an external visual inspection and a lining inspection at least once each year.

(6) *Acceptance criteria.* A cargo tank that leaks, fails to retain test pressure or pneumatic inspection pressure, shows distortion, excessive permanent expansion, or other evidence of weakness that might render the cargo tank unsafe for transportation service, may not be returned to service.

(7) The inspector must record the results of the pressure test as specified in § 180.417(b).

(h) *Leakage test.* (1) Each cargo tank shall be leak tested in accordance with § 180.407(c). The cargo tank, with all valves and accessories in place and operative, must be tested at not less than 80 percent of the tank design pressure or MAWP, whichever is marked on the certification or specification plate. The pressure must be maintained for at least 5 minutes. The leakage test must include product piping. MC 330 and MC 331 cargo tanks may be leak tested with the hazardous materials contained in the tank during the test. Suitable safeguards shall be provided to protect employees and other persons should a failure occur.

(2) Where applicable, the Environmental Protection Agency's "Method 27—Determination of Vapor Tightness of Gasoline Delivery Tank Using Pressure-Vacuum Test," 40 CFR Part 60 Appendix A, is an acceptable alternative test.

(3) A cargo tank that fails to retain leakage test pressure may not be returned to service as a specification cargo tank.

(4) The inspector must record the results of the leakage test as specified in § 180.417(b).

(i) *Thickness testing.* (1) The shell and head thickness of all unlined cargo tanks used for the transportation of materials corrosive to the tank must be measured at least once every 2 years, except that cargo tanks measuring less than the sum of the minimum prescribed thickness, plus one-fifth of the original corrosion allowance, must be tested annually.

(2) Measurements must be made using a device capable of accurately measuring thickness to 0.002 of an inch.

(3) Any person performing ultrasonic thickness testing must be trained in the proper use of the thickness testing device used.

(4) Thickness testing must be performed in the following areas, as a minimum:

(i) Areas of the tank shell and heads and shell and head area around any piping that retains lading;

(ii) Areas of high shell stress such as the bottom center of the tank;

(iii) Areas near openings;

(iv) Areas around weld joints;

(v) Shell reinforcements;

(vi) Appurtenance attachments;

(vii) Upper coupler (fifth wheel) assembly attachments;

(viii) Suspension system attachments and connecting structures; and

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(ix) Known thin areas in the tank shell and nominal liquid level lines.

(5) An owner of a cargo tank that no longer conforms with the minimum prescribed thickness may not return the cargo tank to hazardous materials service. The tank's specification plate must be removed, obliterated or covered in a secure manner.

(6) The inspector must record the results of the thickness test as specified in § 180.417(b).

§ 180.409 Minimum qualifications for inspectors and testers.

(a) Any persons performing or witnessing the inspections and tests specified in § 180.407(c) must be familiar with the cargo tank and skillful in the use of the inspection and testing equipment needed.

(b) Additional requirements. (1) *Thickness test.* Persons performing thickness testing must be trained in the use of the thickness testing device used in accordance with the thickness testing device manufacturer's instruction.

(2) *Pressure test.* Persons performing the pressure test must be trained and experienced in conducting a pressure test in accordance with the requirements in the ASME Code. The person performing the pressure test may be a Registered Inspector or an employee of a carrier or cargo tank owner. If the person performing the pressure test is not a Registered Inspector;

(i) The employer of the tester must submit the following information to the Director, Office of Hazardous Materials Transportation, Attn: (DHM-32), Research and Special Programs Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590:

(A) Name; and
(B) Street address, mailing address and telephone number of each facility where pressure testing will be performed.

(ii) A copy of the tester's qualifications must be retained with the documents required by § 180.417(b).

§ 180.411 Acceptable results of tests and inspections.

(a) *Corroded or abraded areas.* The minimum thickness may not be less than that prescribed in the applicable specification.

(b) *Dents, cuts, digs and gouges.* (See CGA Pamphlet C-6 for evaluation procedures.)

(1) For dents at welds or that include a weld, the maximum allowable depth is 1/2 inch. For dents away from welds, the maximum allowable depth is 1/10 of the greatest dimension of the dent, but in no case may the depth exceed one inch.

(2) The minimum thickness remaining beneath a cut, dig, or gouge may not be less than that prescribed in the applicable specification.

(c) *Weld or structural defects.* Any cargo tank with a weld defect such as a crack, pinhole, or incomplete fusion, or a structural defect must be taken out of hazardous materials service until repaired.

(d) *Leakage.* All sources of leakage must be properly repaired prior to returning a tank to hazardous materials service.

(e) *Relief valves.* Any pressure relief valve that fails to open and reclose at the prescribed pressure must be repaired or replaced.

(f) *Liner integrity.* Any defect shown by the test must be properly repaired.

(g) *Pressure test.* Any tank that fails to meet the acceptance criteria found in the individual specification that applies must be properly repaired.

§ 180.413 Repair, modification, stretching, or rebarrelling of cargo tanks.

(a) Any repair, modification, stretching, or rebarrelling of a cargo tank must be performed in conformance with the requirements of this section. Except for work performed on a MC 300, MC 301, MC 303, MC 304, MC 305, MC 306, MC 307, MC 311, or MC 312 before December 5, 1990, the repair, modification, stretching, or rebarrelling must be performed by:

(1) A cargo tank manufacturer holding a valid ASME Certificate of Authorization for the use of the ASME "U" stamp and registered in accordance with Subpart F of Part 107 of Subchapter B of this Chapter; or

(2) A repair facility holding a valid National Board Certificate authorizing the use of the "R" stamp and registered in accordance with Subpart F of Part 107 of Subchapter B of this Chapter.

(b) *Repair and Modification.* (1) A cargo tank may be repaired or modified in accordance with the following:

(i) DOT 406, DOT 407, and DOT 412 cargo tanks must be repaired or modified in accordance with the specification requirements in effect at the time of manufacture or at the time of repair;

(ii) MC 300, MC 301, MC 302, MC 303, MC 305, and MC 306 cargo tanks must be repaired or modified in accordance with the original specification or with the DOT 406 specification in effect at the time of repair.

(iii) MC 304 and MC 307 cargo tanks must be repaired or modified in accordance with the original specification or with the DOT 407 specification in effect at the time of repair;

(iv) MC 310, MC 311, and MC 312 cargo tanks must be repaired or modified in accordance with the original specification or with the DOT 412 specification in effect at the time of repair;

(v) MC 338 cargo tanks must be repaired or modified in accordance with the specification requirements in effect at the time of manufacture or at the time of repair; and

(vi) MC 330 and MC 331 cargo tanks must be repaired or modified as follows:

(A) Repairs must be in accordance with the repair procedures described in CGA Technical Bulletin TB-2 and the National Board Inspection Code—Provisions for Repair of Pressure Vessels. Each cargo tank having cracks and defects requiring welded repairs must meet all of the requirements of § 178.337-16 of this subchapter, except that postweld heat treatment after minor weld repairs is not required. When any repair is made of defects revealed by the wet fluorescent magnetic particle inspection, including those by grinding, the cargo tank must again be examined by the wet fluorescent magnetic particle method after hydrostatic testing to assure that all defects have been removed.

(B) Modifications must be performed in accordance with the original specification or with the MC 331 specification requirements in effect at the time of repair.

(2) Prior to any repair work or modification the cargo tank must be emptied of any hazardous material lading. Cargo tanks containing flammable or toxic lading must be purged.

(3) Any repair or modification of a cargo tank involving welding on the shell or head must be certified by a Registered Inspector. Any repair or modification of an ASME Code "U" stamped cargo tank must be in accordance with the National Board Inspection Code.

(4) The suitability of any repair or modification affecting the structural integrity of the cargo tank must be determined by the testing prescribed in the applicable specification.

(5) Each owner of a cargo tank must retain at its principal place of business all records of repairs or modifications made to each tank during the time the tank is in service and for one year thereafter.

(c) *Repair or replacement of piping, valves, hoses or fittings.* In the event of repair or replacement, any piping, valve, or fitting must be tested in accordance with the provisions of the applicable specification before the cargo tank is

returned to hazardous materials service. Piping, valves and fittings must be tested after installation; hoses may be tested either before or after installation on the cargo tank.

(d) *Stretching and rebarrelling.* Stretching or rebarrelling of a cargo tank is authorized if:

(1) All new material and equipment, and equipment affected by the stretching or rebarrelling conforms with the requirements of the specification in effect at the time of such work. Stretching or rebarrelling must be performed as follows:

(i) For Specification MC 300, MC 301, MC 302, MC 303, MC 305 and MC 306 cargo tanks in accordance with Specification DOT 406;

(ii) For Specification MC 304 and MC 307 cargo tanks in accordance with Specification DOT 407;

(iii) For Specification MC 310, MC 311, and MC 312 cargo tanks in accordance with Specification DOT 412;

(iv) For Specification MC 330 cargo tanks in accordance with Specification MC 331.

(2) The person performing the stretching or rebarrelling must:

(i) Have knowledge of the original design concept, particularly with respect to structural design analysis, material and welding procedures;

(ii) Assure compliance with the rebuilt cargo tank's structural integrity, venting, and accident damage protection requirements;

(iii) Assure compliance with all applicable Federal Motor Carrier Safety regulations for any newly installed safety equipment;

(iv) Pressure retest each cargo tank in accordance with § 180.407(g);

(v) Change the existing specification plate to reflect the cargo tank as modified, or remove the existing specification plate and attach a new specification plate to the cargo tank;

(vi) On a variable specification cargo tank, install a new variable specification plate.

(3) The design of the rebarrelled or stretched cargo tank must be certified by a design certifying engineer registered in accordance with Subpart F of Part 107. The person performing the stretching or rebarrelling and a Registered Inspector must certify that the rebarrelled or stretched cargo tank has been constructed and tested in accordance with the applicable specification by issuing a new manufacturer's certificate. The registration number of the Registered Inspector must be entered on the certificate.

§ 180.415 Test and inspection markings.

Each cargo tank successfully completing the test and inspection requirements contained in § 180.407 must be marked as specified in this section. Each cargo tank must be durably and legibly marked, in English, with the test date (month and year) followed by the type of test or inspection. The marking must be in letters and numbers at least 1 1/4 inches high, on the front head or the tank shell near the specification plate. The type of test or inspection may be abbreviated as follows: V for external visual inspection and test; I for internal visual inspection; P for pressure retest; L for lining test, K for leakage test; and T for thickness test. For example, the marking "10-85 P, V, L" would indicate that in October 1985 the cargo tank received and passed the prescribed pressure retest, external visual inspection and test, and the lining inspection.

§ 180.417 Reporting and record retention requirements.

(a) *Vehicle certification.* (1) Each owner of a cargo tank shall retain the manufacturer's data report or certificate and related papers certifying that the cargo tank identified in the documents was manufactured and tested in accordance with the applicable specification. The owner shall retain the documents throughout his ownership of the cargo tank and for one year thereafter. In the event of change of ownership, the prior owner shall retain non-fading photo copies of these documents for at least one year.

(2) Each motor carrier who uses a specification cargo tank must obtain a copy of the manufacturer's certificate and related papers or the alternative report authorized in paragraph (a)(3) (i) or (ii) of this section and retain the documents as specified in this paragraph. A motor carrier who is not the owner of a cargo tank must retain a copy of the vehicle certification report at its principal place of business for as long as the cargo tank motor vehicle is used by that carrier and for one year thereafter. Upon a written request to, and with the approval of the Regional Director, Office of Motor Carrier Safety, Federal Highway Administration, for the region in which a motor carrier has its principal place of business, a motor carrier may retain the certificate and related papers required by this paragraph at a regional or terminal office. The addresses and jurisdictions of the various regional Motor Carrier Safety Offices are provided in § 390.40 of this title. The provisions of this section do not apply to a motor carrier

leasing a cargo tank for less than 30 days.

(3) *DOT Specification cargo tanks manufactured before December 12, 1989—*

(i) *Non-ASME Code stamped cargo tanks—*If an owner does not have a manufacturer's certificate for a cargo tank and he wishes to certify it as a specification cargo tank, the owner must perform appropriate tests and inspections, under the direct supervision of a Registered Inspector, to determine if the cargo tank conforms with the applicable specification. Both the owner and the Registered Inspector must certify that the cargo tank fully conforms to the applicable specification. The owner must retain the certificate, as specified in this section.

(ii) *ASME Code stamped cargo tanks.* If the owner does not have the manufacturer's certificate and data report required by the specification, the owner may contact the National Board for a copy of the manufacturer's data report, if the cargo tank was registered with the National Board, or copy the information contained on the cargo tank's identification and ASME Code plates. Additionally, both the owner and the Authorized Inspector must certify that the cargo tank fully conforms to the specification. The owner must retain such documents, as specified in this section.

(b) *Test or inspection reporting.* Each cargo tank which is tested or reinspected as specified in § 180.407 must have a written report, in English, prepared in accordance with this paragraph.

(1) The test or inspection report must include the following:

(i) Type of test or inspection performed and a listing of all items either tested or inspected (a checklist is acceptable);

(ii) Owner's and manufacturer's serial numbers;

(iii) DOT Specification;

(iv) Test Date (Month and year);

(v) Location of defects found and method used to repair each defect;

(vi) Name and address of person performing the test;

(vii) Disposition statement, such as "Cargo tank returned to service" or "Cargo tank withdrawn from service"; and

(viii) Dated signature of inspector and owner.

(2) The owner and the motor carrier, if not the owner, must each retain a copy of the test and inspection reports until the next test or inspection of the same type is successfully completed. This requirement does not apply to a motor

carrier leasing a cargo tank for less than 30 days.

(c) *Additional requirements for Specification MC 330 and MC 331 cargo tanks.* (1) After completion of the pressure test specified in § 180.407(g)(3), each motor carrier operating a Specification MC 330 or MC 331 cargo tank in anhydrous ammonia, liquefied petroleum gas, or any other service that may cause stress corrosion cracking, must make a written report containing the following information:

(i) Carrier's name, address of principal place of business, and telephone number;

(ii) Complete identification plate data required by Specification MC 330 or MC 331, including data required by ASME Code;

(iii) Carrier's equipment number;

(iv) A statement indicating whether or not the tank was stress relieved after fabrication;

(v) Name and address of the person performing the test and the date of the test;

(vi) a statement of the nature and severity of any defects found. In particular, information must be furnished to indicate the location of

defects detected, such as in weld, heat-affected zone, the liquid phase, the vapor phase, or the head-to-shell seam. If no defect or damage was discovered, that fact must be reported;

(vii) A statement indicating the methods employed to make repairs, who made the repairs, and the date they were completed. Also, a statement of whether or not the tank was stress relieved after repairs and, if so, whether full or local stress relieving was performed;

(viii) A statement of the disposition of the cargo tank, such as "cargo tank scrapped" or "cargo tank returned to service"; and

(ix) A statement of whether or not the cargo tank is used in anhydrous ammonia, liquefied petroleum gas, or any other service that may cause stress corrosion cracking. Also, if the cargo tank has been used in anhydrous ammonia service since the last report, a statement indicating whether each shipment of ammonia was certified by its shipper as containing 0.2 percent water by weight.

(2) A copy of the report must be retained by the carrier at its principal place of business during the period the

tank is in the carrier's service and for one year thereafter. Upon a written request to, and with the approval of, the Director, Regional Office of Motor Carrier Safety, Federal Highway Administration for the region in which a motor carrier has its principal place of business, the carrier may maintain the reports at a regional or terminal office.

(3) The requirement in paragraph (c)(1) of this section does not apply to a motor carrier leasing a cargo tank for less than 30 days.

(d) *Supplying reports.* Each carrier offering a DOT Specification cargo tank for sale or lease must make available for inspection a copy of the most recent report made under this section to each purchaser or lessee. Copies of such reports must be provided to the purchaser, or the lessee if the cargo tank is leased for more than 30 days.

Issued in Washington, DC on May 23, 1989 under authority delegated in 49 CFR Part 106.

Travis P. Dungan,
Administrator.

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Monday
June 12, 1989

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 864 et al.

Medical Devices; Exemptions From
Premarket Notifications for Certain
Classified Devices and Withdrawal of
Proposed Exemptions; Final Rule and
Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 864, 866, 868, 870, 876, 880, 882, 884, and 890

[Docket No. 87N-0005]

Medical Devices; Exemptions From Premarket Notifications for Certain Classified Devices

AGENCY: Food and Drug Administration. ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is exempting from the requirement of premarket notification, with limitations, 104 generic types of class I devices. For the exempted devices, FDA has determined that manufacturers' submissions of premarket notifications are unnecessary for the protection of the public health and that review of such notifications by the agency will not advance FDA's public health mission. Granting the exemptions will allow the agency to make better use of its resources and thus better serve the public. Elsewhere in this issue of the Federal Register, FDA is publishing a withdrawal of a proposed rule to grant an exemption from premarket notification for six other devices. These actions are being taken under the Medical Device Amendments of 1976 and are a step in implementing one of the goals in FDA's plan for action.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: The Medical Device Amendments of 1976 (Pub. L. 94-295, hereinafter called the amendments) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), establishes three classes of devices. Each class prescribes the regulatory controls needed to provide reasonable assurance of a device's safety and effectiveness. Class I (general controls), class II (performance standards), and class III (premarket approval) identify the classes set forth in section 513 of the act.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket

notification in section 510(k) of the act (21 U.S.C. 360(k)) and Subpart E of 21 CFR Part 807. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendments devices, the agency did not routinely evaluate whether it should grant to manufacturers of devices placed in class I an exemption from the requirement of premarket notification. Generally, FDA considered such exemptions only when the advisory panels included them in recommendations to the agency. Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification to reduce the number of unnecessary premarket notifications, thereby freeing agency resources for the review of more complex notifications.

FDA believes that exempting certain devices from premarket notification will allow the agency to make better use of its resources and thus better serve the public. In other words, the process of exempting devices from the premarket notification program of section 510(k) of the act (21 U.S.C. 360(k)), where premarket notification will not advance FDA's public health mission, will free additional resources to address more pressing regulatory concerns and will make the agency more efficient. The development of these criteria and the issuance of final rules exempting appropriate devices from the requirement of premarket notification will help implement a goal of FDA's May 1987 "A Plan for Action Phase II" (Ref. 1).

On January 20, 1988 (53 FR 1574), FDA proposed to exempt from premarket notification 110 generic types of class I devices. Interested persons were given until March 21, 1988 to comment.

Two letters of comment were received. Both letters agreed that the devices should be exempt from the premarket notification procedures as proposed. One of the comments suggested that the preamble to the final rule specify exactly the requirements of Subpart E of Part 807 from which the devices are to be exempt. A comment also suggested that Subpart E of Part 807 be amended cross-reference these exemptions.

FDA believes that the preamble to the proposed rule clearly identifies the scope of exemptions for exempt devices. Specifically, the limitations described in the proposed new section, "Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act

(the act)," Subpart A of each of the nine parts of the Code of Federal Regulations involved, and the limitations set forth in the codified language of each generic type of device, fully describe the nature of the exemption from Subpart E of Part 807 for each affected device. FDA believes that it is unnecessary and impractical to cross-reference these exemptions in Subpart E of Part 807.

Accordingly, FDA is adopting 104 of the 110 proposed regulations with minor clarifying changes. However, upon reconsideration, FDA has determined not to grant the proposed exemptions for the following six devices:

Section No. and Device

- 866.2860 Microorganism and differentiation and identification device.
- 868.1910 Esophageal stethoscope.
- 868.5340 Nasal oxygen cannula.
- 868.5820 Breathing mouthpiece.
- 868.5640 Medicinal nonventilatory nebulizer (atomizer).
- 868.6810 Tracheobronchial suction catheter.

Elsewhere in this issue of the Federal Register, FDA is publishing a withdrawal of its proposed rules proposing to grant an exemption from the premarket notification procedures for the six devices listed above. FDA's reasons for withdrawing its six proposals are given in that withdrawal document.

Criteria for 510(k) exemptions: FDA is exempting a generic type of class I device from the requirement of premarket notification, with the limitations described below, if FDA determines that premarket notification is unnecessary for the protection of the public health. FDA is granting an exemption if both of the following criteria are met:

1. FDA has determined that the device does not have a significant history of false or misleading claims or of risks associated with inherent characteristics of the device, such as device design or materials. When making these determinations, FDA may consider the frequency, persistence, cause, or seriousness of such claims or risks, or other factors.

2. FDA has determined that: (a) Characteristics of the device necessary for its safe and effective performance are well established; (b) anticipated changes in the device that are of the type that could affect safety and effectiveness will (i) be readily detectable by users by visual examination or other means, such as routine testing, e.g., testing of a clinical laboratory reagent with positive and negative controls, before causing harm; or (ii) not materially increase the risk of injury, incorrect diagnosis, or ineffective

treatment; and (c) that any changes in the device will not be likely to result in a change in the device's classification.

FDA will make the determinations above based on its knowledge of the device, including past experience and relevant reports or studies on device performance. FDA may, if it has concerns only about certain types of changes in a class I device, grant a limited exemption from premarket notification for the generic type of device. A limited exemption will specify what types of changes manufacturers must continue to report to FDA in the context of premarket notification. For example, FDA may exempt a device except when a manufacturer intends to use a different material.

FDA's decision to grant an exemption from the requirement of premarket notification for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic of a device that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

FDA is now exempting from the requirement of premarket notification, with limitations, the 104 generic types of class I devices below:

CFR Part and Title	Number of devices exempt
864—Hematology and Pathology Devices.....	24
866—Immunology and Microbiology Devices.....	37
868—Anesthesiology Devices.....	13
670—Cardiovascular Devices.....	3
876—Gastroenterology-Urology Devices.....	9
880—General Hospital and Personal Use Devices.....	6
882—Neurological Devices.....	7
884—Obstetrical and Gynecological Devices.....	3
890—Physical Medicine Devices.....	2
Total.....	104

Reference

The following information has been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action Phase II," Public Health Service, Department of Health and Human Services, May 1987, p. 19.

Environmental Impact

The agency has determined under 21 CFR 25.24(e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

Economic Impact

FDA has carefully analyzed the economic effects of this final rule and has determined that the final rule will not have a significant economic impact on a substantial number of small entities as defined by the Regulatory Flexibility Act. In accordance with section 3(g)(1) of Executive Order 12291, the impact of this final rule has been carefully analyzed and it has been determined that the final rule does not constitute a major rule as defined in section 1(b) of the Executive Order. The devices subject to this final rule are now subject only to the general controls provisions of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360f, 360h, 360i, and 360j), with certain exemptions. Under the final rule, the devices remain subject to such controls, other than premarket notification.

List of Subjects

21 CFR Part 864

Blood, Hematology and pathology devices, Medical devices, Packaging and containers.

21 CFR Part 866

Biologics, Immunology and microbiology devices, Laboratories, Medical devices.

21 CFR Part 868

Anesthesiology devices, Medical devices.

21 CFR Part 870

Cardiovascular devices, Medical devices.

21 CFR Part 876

Gastroenterology-urology devices, Medical devices.

21 CFR Part 880

General hospital and personal use devices, Medical devices.

21 CFR Part 882

Medical devices, Neurological devices.

21 CFR Part 884

Medical devices, Obstetrical and gynecological devices.

21 CFR Part 890

Medical devices, Physical medicine devices.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Parts 864, 866, 868, 870, 876, 880, 882, 884, and 890 are amended as follows:

PART 864—HEMATOLOGY AND PATHOLOGY DEVICES

1. The authority citation for 21 CFR Part 864 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

2. New § 864.9 is added to Subpart A to read as follows:

§ 864.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of

commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976, e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

3. Section 864.1850 is amended by revising paragraph (b) to read as follows:

§ 864.1850 Dye and chemical solution stains.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807. The devices are also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

4. Section 864.2220 is amended by revising paragraph (b) to read as follows:

§ 864.2220 Synthetic cell and tissue culture media and components.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

5. Section 864.2240 is amended by revising paragraph (b) to read as follows:

§ 864.2240 Cell and tissue culture supplies and equipment.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the devices are not labeled or otherwise represented as sterile, they are exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

6. Section 864.2260 is amended by revising paragraph (b) to read as follows:

§ 864.2260 Chromosome culture kit.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

7. Section 864.2360 is amended by revising paragraph (b) to read as follows:

§ 864.2360 Mycoplasma detection media and components.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

8. Section 864.2800 is amended by revising paragraph (b) to read as follows:

§ 864.2800 Animal and human sera.

(b) *Classification.* Class I. The devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

9. Section 864.2875 is amended by revising paragraph (b) to read as follows:

§ 864.2875 Balanced salt solutions or formulations.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

10. Section 864.3010 is amended by revising paragraph (b) to read as follows:

§ 864.3010 Tissue processing equipment.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in

Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

11. Section 864.3250 is amended by revising paragraph (b) to read as follows:

§ 864.3250 Specimen transport and storage container.

(b) *Classification.* Class I. If the device is not intended for over-the-counter (OTC) distribution, it is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

12. Section 864.3300 is amended by revising paragraph (b) to read as follows:

§ 864.3300 Cytocentrifuge.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

13. Section 864.3400 is amended by revising paragraph (b) to read as follows:

§ 864.3400 Device for sealing microsections.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

14. Section 864.3600 is amended by revising paragraph (b) to read as follows:

§ 864.3600 Microscopes and accessories.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The devices are also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

15. Section 864.3800 is amended by revising paragraph (b) to read as follows:

§ 864.3800 Automated slide stainer.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

16. Section 864.3875 is amended by revising paragraph (b) to read as follows:

§ 864.3875 Automated tissue processor.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

17. Section 864.4010 is amended by revising paragraph (b) to read as follows:

§ 864.4010 General purpose reagent.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

18. Section 864.4400 is amended by revising paragraph (b) to read as follows:

§ 864.4400 Enzyme preparations.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

19. Section 864.5800 is amended by revising paragraph (b) to read as follows:

§ 864.5800 Automated sedimentation rate device.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

20. Section 864.5850 is amended by revising paragraph (b) to read as follows:

§ 864.5850 Automated slide spinner.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

21. Section 864.6150 is amended by revising paragraph (b) to read as follows:

§ 864.6150 Capillary blood collection tube.

(b) *Classification.* Class I. If the device is not intended for over-the-counter (OTC) distribution, it is exempt from the premarket notification

procedures in Subpart E of Part 807 of this chapter.

22. Section 864.6160 is amended by revising paragraph (b) to read as follows:

§ 864.6160 Manual blood cell counting device.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

23. Section 864.6600 is amended by revising paragraph (b) to read as follows:

§ 864.6600 Osmotic fragility test.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

24. Section 864.6700 is amended by revising paragraph (b) to read as follows:

§ 864.6700 Erythrocyte sedimentation rate test.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

25. Section 864.8200 is amended by revising paragraph (b) to read as follows:

§ 864.8200 Blood cell diluent.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

26. Section 864.8540 is amended by revising paragraph (b) to read as follows:

§ 864.8540 Red cell lysing reagent.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

PART 866—IMMUNOLOGY AND MICROBIOLOGY DEVICES

27. The authority citation for 21 CFR Part 866 continues to read as follows:

Authority: Secs. 501 (f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

28. New § 866.9 is added to Subpart A to read as follows:

§ 866.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976 e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

29. Section 866.2050 is amended by revising paragraph (b) to read as follows:

§ 866.2050 Staphylococcal typing bacteriophage.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

30. Section 866.2170 is amended by revising paragraph (b) to read as follows:

§ 866.2170 Automated colony counter.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

31. Section 866.2300 is amended by revising paragraph (b) to read as follows:

§ 866.2300 Multipurpose culture medium.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

32. Section 866.2320 is amended by revising paragraph (b) to read as follows:

§ 866.2320 Differential culture medium.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

33. Section 866.2330 is amended by revising paragraph (b) to read as follows:

§ 866.2330 Enriched culture medium.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

34. Section 866.2350 is amended by revising paragraph (b) to read as follows:

§ 866.2350 Microbiological assay culture medium.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

35. Section 866.2360 is amended by revising paragraph (b) to read as follows:

§ 866.2360 Selective culture medium.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

36. Section 866.2450 is amended by revising paragraph (b) to read as follows:

§ 866.2450 Supplement for culture media.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

37. Section 866.2480 is amended by revising paragraph (b) to read as follows:

§ 866.2480 Quality control kit for culture media.

(b) *Classification.* Class I. The device is exempt from the premarket

notification procedures in Subpart E of Part 807 of this chapter.

38. Section 866.2500 is amended by revising paragraph (b) to read as follows:

§ 866.2500 Microtiter diluting and dispensing device.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

39. Section 866.2560 is amended by revising paragraph (b) to read as follows:

§ 866.2560 Microbial growth monitor.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

40. Section 866.2580 is amended by revising paragraph (b) to read as follows:

§ 866.2580 Gas-generating device.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

41. Section 866.3010 is amended by revising paragraph (b) to read as follows:

§ 866.3010 Acinetobacter calcoaceticus serological reagents.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

42. Section 866.3020 is amended by revising paragraph (b) to read as follows:

§ 866.3020 Adenovirus serological reagents.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

43. Section 866.3035 is amended by revising paragraph (b) to read as follows:

§ 866.3035 Arizona spp. serological reagents.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

44. Section 866.3065 is amended by revising paragraph (b) to read as follows:

§ 866.3065 Bordetella spp. serological reagents.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

45. Section 866.3125 is amended by revising paragraph (b) to read as follows:

§ 866.3125 Citrobacter spp. serological reagents.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

46. Section 866.3205 is amended by revising paragraph (b) to read as follows:

§ 866.3205 Echovirus serological reagents.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

47. Section 866.3250 is amended by revising paragraph (b) to read as follows:

§ 866.3250 Erysipelothrix rhusiopathiae serological reagents.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

48. Section 866.3255 is amended by revising paragraph (b) to read as follows:

§ 866.3255 Escherichia coli serological reagents.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

49. Section 866.3270 is amended by revising paragraph (b) to read as follows:

§ 866.3270 Flavobacterium spp. serological reagents.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

50. Section 866.3330 is amended by revising paragraph (b) to read as follows:

§ 866.3330 Influenza virus serological reagents.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

51. Section 866.3340 is amended by revising paragraph (b) to read as follows:

§ 866.3340 Klebsiella spp. serological reagents.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

52. Section 866.3400 is amended by revising paragraph (b) to read as follows:

§ 866.3400 Parainfluenza virus serological reagents.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

53. Section 866.3410 is amended by revising paragraph (b) to read as follows:

§ 866.3410 Proteus spp. (Well-Felix) serological reagents.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

54. Section 866.3470 is amended by revising paragraph (b) to read as follows:

§ 866.3470 Reovirus serological reagents.

(b) *Classification.* Class I. These devices are exempt from premarket notification procedures in Subpart E of Part 807 of this chapter.

55. Section 866.3490 is amended by revising paragraph (b) to read as follows:

§ 866.3490 Rhinovirus serological reagents.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

56. Section 866.3520 is amended by revising paragraph (b) to read as follows:

§ 866.3520 Rubella (measles) virus serological reagents.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

57. Section 866.3630 is amended by revising paragraph (b) to read as follows:

§ 866.3630 Serratia spp. serological reagents.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

58. Section 866.3700 is amended by revising paragraph (b) to read as follows:

§ 866.3700 Staphylococcus aureus serological reagents.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

59. Section 866.4500 is amended by revising paragraph (b) to read as follows:

§ 866.4500 Immunoelectrophoresis equipment.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

60. Section 866.4520 is amended by revising paragraph (b) to read as follows:

§ 866.4520 Immunofluorometer equipment.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

61. Section 866.4540 is amended by revising paragraph (b) to read as follows:

§ 866.4540 Immunonephelometer equipment.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

62. Section 866.4600 is amended by revising paragraph (b) to read as follows:

§ 866.4600 Ouchterlony agar plate.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

63. Section 866.4830 is amended by revising paragraph (b) to read as follows:

§ 866.4830 Rocket immunoelectrophoresis equipment.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

64. Section 866.4900 is amended by revising paragraph (b) to read as follows:

§ 866.4900 Support gel.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

65. Section 866.5800 is amended by revising paragraph (b) to read as follows:

§ 866.5800 Seminal fluid (sperm) immunological test system.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

PART 868—ANESTHESIOLOGY DEVICES

66. The authority citation for 21 CFR Part 868 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

67. New § 868.9 is added to Subpart A to read as follows:

§ 868.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into

interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976, e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

68. Section 868.1030 is amended by revising paragraph (b) to read as follows:

§ 868.1030 Manual algometer.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

69. Section 868.1930 is amended by revising paragraph (b) to read as follows:

§ 868.1930 Stethoscope head.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

70. Section 868.1965 is amended by revising paragraph (b) to read as follows:

§ 868.1965 Switching valve (ploss).

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

71. Section 868.5220 is amended by revising paragraph (b) to read as follows:

§ 868.5220 Blow bottle.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

72. Section 868.5280 is amended by revising paragraph (b) to read as follows:

§ 868.5280 Breathing tube support.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

73. Section 868.5365 is amended by revising paragraph (b) to read as follows:

§ 868.5365 Posture chair for cardiac or pulmonary treatment.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

74. Section 868.5420 is amended by revising paragraph (b) to read as follows:

§ 868.5420 Ether hook.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

75. Section 868.5560 is amended by revising paragraph (b) to read as follows:

§ 868.5560 Gas mask head strap.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

76. Section 868.5760 is amended by revising paragraph (b) to read as follows:

§ 868.5760 Cuff spreader.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. If the device is not labeled or otherwise represented as sterile, it is exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

77. Section 868.6100 is amended by revising paragraph (b) to read as follows:

§ 868.6100 Anesthetic cabinet, table, or tray.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

78. Section 868.6175 is amended by revising paragraph (b) to read as follows:

§ 868.6175 Cardiopulmonary emergency cart.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

79. Section 868.6225 is amended by revising paragraph (b) to read as follows:

§ 868.6225 Nose clip.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

80. Section 868.6700 is amended by revising paragraph (b) to read as follows:

§ 868.6700 Anesthesia stool.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

PART 870—CARDIOVASCULAR DEVICES

81. The authority citation for 21 CFR Part 870 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

82. New § 870.9 is added to Subpart A to read as follows:

§ 870.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

83. Section 870.3730 is amended by revising paragraph (b) to read as follows:

§ 870.3730 Pacemaker service tools.

(b) *Classification.* Class I. These devices are exempt from the premarket notification procedures of Subpart E of Part 807 of this chapter.

84. Section 870.4200 is amended by revising paragraph (b) to read as follows:

§ 870.4200 Cardiopulmonary bypass accessory equipment.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

85. Section 870.4500 is amended by revising paragraph (b) to read as follows:

§ 870.4500 Cardiovascular surgical instruments.

(b) *Classification.* Class I. The devices are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

PART 876—GASTROENTEROLOGY-UROLOGY DEVICES

86. The authority citation for 21 CFR Part 876 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

87. New § 876.9 is added to Subpart A to read as follows:

§ 876.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

88. Section 876.4370 is amended by revising paragraph (b)(2) to read as follows:

§ 876.4370 Gastroenterology-urology evacuator.

(b)
(2) Class I for the gastroenterology-urology evacuator when manually powered. The device subject to this paragraph (b)(2) is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

89. Section 876.4530 is amended by revising paragraph (b) to read as follows:

§ 876.4530 Gastroenterology-urology fiberoptic retractor.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

90. Section 876.4560 is amended by revising paragraph (b) to read as follows:

§ 876.4560 Ribdam.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

91. Section 876.4730 is amended by revising paragraph (b) to read as follows:

§ 876.4730 Manual gastroenterology-urology surgical instrument and accessories.

(b) *Classification.* Class I. The device is exempt from the premarket

notification procedures in Subpart E of Part 807 of this chapter.

92. Section 876.4890 is amended by revising paragraph (b)(2) to read as follows:

§ 876.4890 Urological table and accessories.

(b) * * *

(2) Class I for the manually powered table and accessories. The device subject to this paragraph (b)(2) is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

93. Section 876.5030 is amended by revising paragraph (b) to read as follows:

§ 876.5030 Continent ileostomy catheter.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

94. Section 876.5820 is amended by revising paragraph (b)(2) to read as follows:

§ 876.5820 Hemodialysis system and accessories.

(b) * * *

(2) Class I for other accessories of the hemodialysis system remote from the extracorporeal blood system and the dialysate delivery system, such as the unpowered dialysis chair, hemodialysis start/stop tray, dialyzer holder set, and dialysis tie gun and ties. The devices subject to this paragraph (b)(2) are exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

95. Section 876.5900 is amended by revising paragraph (b) to read as follows:

§ 876.5900 Ostomy pouch and accessories.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

95a. Section 876.5920 is amended by revising paragraph (b) to read as follows:

§ 876.5920 Protective garment for incontinence.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in

Part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

PART 880—GENERAL HOSPITAL AND PERSONAL USE DEVICES

96. The authority citation for 21 CFR Part 880 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

97. New § 880.9 is added to Subpart A to read as follows:

§ 880.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

98. Section 880.5110 is amended by revising paragraph (b) to read as follows:

§ 880.5110 Hydraulic adjustable hospital bed.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

99. Section 880.5120 is amended by revising paragraph (b) to read as follows:

§ 880.5120 Manual adjustable hospital bed.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

100. Section 880.5510 is amended by revising paragraph (b) to read as follows:

§ 880.5510 Non-AC-powered patient lifts.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

101. Section 880.6150 is amended by revising paragraph (b) to read as follows:

§ 880.6150 Ultrasonic cleaner for medical instruments.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter, except that any solutions intended for use with the device for cleaning or sanitizing the instruments are not exempt.

102. Section 880.6280 is amended by revising paragraph (b) to read as follows:

§ 880.6280 Medical insole.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

103. Section 880.6970 is amended by revising paragraph (b) to read as follows:

§ 880.6970 Liquid crystal vein locator.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

PART 882—NEUROLOGICAL DEVICES

104. The authority citation for 21 CFR Part 882 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

105. New § 882.9 is added to Subpart A to read as follows:

§ 882.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

106. Section 882.1200 is amended by revising paragraph (b) to read as follows:

§ 882.1200 Two-point discriminator.

(b) *Classification.* Class I. If the device is made of the same material (single, surgical-grade, stainless steel alloy) that was used in the device before

May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

107. Section 882.1500 is amended by revising paragraph (b) to read as follows:

§ 882.1500 Esthesiometer.

(b) *Classification.* Class I. If the device is composed entirely of a single material, the device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

108. Section 882.1525 is amended by revising paragraph (b) to read as follows:

§ 882.1525 Tuning fork.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

109. Section 882.1700 is amended by revising paragraph (b) to read as follows:

§ 882.1700 Percussor.

(b) *Classification.* Class I. If the device is a small, hand-held hammer with a rubber head, the device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, with respect to general requirements concerning records, and § 820.198, with respect to complaint files.

110. Section 882.1750 is amended by revising paragraph (b) to read as follows:

§ 882.1750 Pinwheel.

(b) *Classification.* Class I. If the device is made of the same material (single, surgical-grade, stainless steel alloy) that was used in the device before May 28, 1976, and it is manually operated, the device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

111. Section 882.4215 is amended by revising paragraph (b) to read as follows:

§ 882.4215 Clip rack.

(b) *Classification.* Class I. If the device is composed entirely of a single metal alloy having the same composition as the clips it is intended to hold, the device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

112. Section 882.4650 is amended by revising paragraph (b) to read as follows:

§ 882.4650 Neurosurgical suture needle.

(b) *Classification.* Class I. If the device is made of the same material (single, surgical-grade, stainless steel alloy) that was used in the device before May 28, 1976, the device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

PART 884—OBSTETRICAL AND GYNECOLOGICAL DEVICES

113. The authority citation for 21 CFR Part 884 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

114. New § 884.9 is added to Subpart A to read as follows:

§ 884.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing

or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976, e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

115. Section 884.2900 is amended by revising paragraph (b) to read as follows:

§ 884.2900 Fetal stethoscope.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

116. Section 884.4520 is amended by revising paragraph (b) to read as follows:

§ 884.4520 Obstetric-gynecologic general manual instrument.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

117. Section 884.5920 is amended by revising paragraph (b) to read as follows:

§ 884.5920 Vaginal insufflator.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter.

PART 890—PHYSICAL MEDICINE DEVICES

118. The authority citation for 21 CFR Part 890 continues to read as follows:

Authority: Secs. 501(f), 510, 513, 515, 520, 701(a), 52 Stat. 1055, 76 Stat. 794-795 as amended, 90 Stat. 540-546, 552-559, 565-574, 576-577 (21 U.S.C. 351(f), 360, 360c, 360e, 360j, 371(a)); 21 CFR 5.10.

119. New § 890.9 is added to Subpart A to read as follows:

§ 890.9 Limitations of exemptions from section 510(k) of the Federal Food, Drug, and Cosmetic Act (the act).

The Food and Drug Administration's (FDA's) decision to grant an exemption from the requirement of premarket notification (section 510(k) of the act) for a generic type of class I device is based upon the existing and reasonably foreseeable characteristics of commercially distributed devices within that generic type. Because FDA cannot anticipate every change in intended use or characteristic that could significantly affect a device's safety or effectiveness, manufacturers of any commercially distributed class I device for which FDA has granted an exemption from the requirement of premarket notification must still submit a premarket notification to FDA before introducing or delivering for introduction into interstate commerce for commercial distribution the device when:

(a) The device is intended for a use different from its intended use before May 28, 1976, or the device is intended for a use different from the intended use of a preamendments device to which it had been determined to be substantially equivalent; e.g., the device is intended for a different medical purpose, or the device is intended for lay use where the former intended use was by health care professionals only; or

(b) The modified device operates using a different fundamental scientific technology than that in use in the device before May 28, 1976; e.g., a surgical instrument cuts tissue with a laser beam rather than with a sharpened metal blade, or an in vitro diagnostic device detects or identifies infectious agents by using a deoxyribonucleic acid (DNA) probe or nucleic acid hybridization technology rather than culture or immunoassay technology.

120. Section 890.3700 is amended by revising paragraph (b) to read as follows:

§ 890.3700 Nonpowered communication system.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

121. Section 890.5125 is amended by revising paragraph (b) to read as follows:

§ 890.5125 Nonpowered sitz bath.

(b) *Classification.* Class I. The device is exempt from the premarket notification procedures in Subpart E of Part 807 of this chapter. The device is also exempt from the current good manufacturing practice regulations in Part 820 of this chapter, with the exception of § 820.180, regarding general requirements concerning records, and § 820.198, regarding complaint files.

Dated: February 22, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-13802 Filed 6-9-89; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 866 and 868

[Docket No. 87N-0005]

Medical Devices; Withdrawal of Proposed Exemptions

AGENCY: Food and Drug Administration.

ACTION: Withdrawal of proposed exemptions.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing proposals to exempt six generic types of devices from the requirement of premarket notification. Elsewhere in this issue of the *Federal Register*, FDA is publishing a final rule exempting from the requirement of premarket notification, with limitations, 104 generic types of class I devices. These actions are being taken under the Medical Device Amendments of 1976 and are a step in implementing one of the goals in FDA's plan for action.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: The Medical Device Amendments of 1976 (Pub. L. 94-295) (the amendments) establish a comprehensive system for the regulation of medical devices intended for human use. One provision of the amendments, section 513 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360c), established three classes of devices. Each class prescribes the regulatory controls needed to provide reasonable assurance

of a device's safety and effectiveness. Class I (general controls), class II (performance standards), and class III (premarket approval) are the identification of each class set forth in section 513 of the act.

Section 513(d)(2)(A) of the act (21 U.S.C. 360c(d)(2)(A)) authorizes FDA to exempt, by regulation, a generic type of class I device from the requirement of, among other things, premarket notification in section 510(k) of the act (21 U.S.C. 360(k)) and Subpart E of 21 CFR Part 807. Such an exemption permits manufacturers to introduce into commercial distribution generic types of devices without first submitting to FDA a premarket notification. When FDA was publishing its proposed classification regulations for preamendments devices, the agency did not routinely evaluate whether it should grant to manufacturers of devices placed in class I an exemption from the requirement of premarket notification. Generally, FDA considered such exemptions only when the advisory panel included them in recommendations to the agency.

Recently, FDA developed criteria for exempting certain class I devices from the requirement of premarket notification to reduce the number of unnecessary premarket notifications, thereby freeing agency resources for the review of more complex notifications. The development of these criteria and the issuance of final rules exempting appropriate devices from the requirement of premarket notification will help implement a goal of FDA's July 1985 "A Plan for Action" (Ref. 1).

On January 20, 1988 (53 FR 1574), FDA proposed to exempt from premarket notification 110 generic types of class I devices. Based upon that proposed rule, FDA is exempting 104 devices from such

requirements, with limitations. Upon reconsideration, FDA is withdrawing its proposals to exempt the six devices identified below because the agency has determined that the devices do not meet the criteria provided in the preamble for granting such exemptions.

Therefore, under the Federal Food, Drug, and Cosmetic Act (secs. 513, 701(a), 52 Stat. 1055, 90 Stat. 540-546 (21 U.S.C. 360c, 371(a)) and under 21 CFR 5.10, the proposed rule published in the *Federal Register* of January 20, 1988, is withdrawn with respect to the following six devices:

Proposed § 866.2660	Microorganism differentiation and identification device.
Proposed § 868.1910	Esophageal stethoscope.
Proposed § 868.5340	Nasal oxygen cannula.
Proposed § 868.5620	Breathing mouthpiece.
Proposed § 868.5640	Medicinal nonventilatory nebulizer (atomizer).
Proposed § 868.6810	Tracheobronchial suction catheter.

Reference

The following reference has been placed on display in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, and may be seen by interested persons from 9 a.m. to 4 p.m., Monday through Friday.

1. "Food and Drug Administration—A Plan for Action." Public Health Service, Department of Health and Human Services, July 1985, p. 18.

Dated: February 22, 1989.

Frank E. Young,

Commissioner of Food and Drugs.

[FR Doc. 89-13801 Filed 6-9-89; 8:45 am]

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Part IV

Environmental Protection Agency

Draft Guidance to Hazardous Waste
Generators on the Elements of a Waste
Minimization Program; Notice and
Request for Comment

ENVIRONMENTAL PROTECTION AGENCY

[OSWER-FR-3421-1]

Draft Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Draft guidance and request for comment.

SUMMARY: Comments are being solicited on the following document, entitled *Draft Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program*. This guidance was developed to assist hazardous waste generators in complying with the certification requirements of sections 3002(b) and 3005(h) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA), which became effective on September 1, 1985.

An effective waste minimization program as viewed by the Agency should have the following basic elements: (1) Top Management Support; (2) Characterization of Waste Generation; (3) Periodic Waste Minimization Assessments; (4) A Cost Allocation System; (5) Encouragement of Technology Transfer, and (6) Program Evaluation. While these elements provide guidance to generators on how a minimization program for hazardous waste may be structured, the Agency believes that they are equally valid for the design of a multi-media source reduction and recycling program. This guidance is consistent with EPA's belief that facilities should have broad pollution prevention programs with the goal of preventing or reducing wastes, substances, discharges and/or emissions to all environmental media—air, land, surface water and ground water.

Related Action: EPA published in the *Federal Register*, on January 26, 1989 (54 FR 3845), a proposed policy statement on source reduction and recycling. This policy commits the Agency to a preventive strategy to reduce or eliminate the generation of environmentally-harmful pollutants which may be released to the air, land, surface water or ground water. It further proposes to incorporate this preventive strategy into EPA's overall mission to protect human health and the environment by making source reduction a priority for every aspect of Agency decision-making and planning, with environmentally-sound recycling as

a second priority over treatment and disposal. Today's draft guidance is an example of the application of this policy in the RCRA program for hazardous waste.

DATES: EPA urges interested parties to comment on this draft notice in writing. The deadline for submitting written comments is September 11, 1989.

ADDRESSES: All comments must be submitted (original and two copies) to: EPA RCRA Docket (room SE-201) (mail code OS-305), 401 "M" Street, SW., Washington, DC 20460. Place the docket number, # F-88-WMPP-FFFFF, on your comments.

FOR FURTHER INFORMATION, CONTACT: James Lounsbury, Office of Solid Waste, (202) 382-4807, or the RCRA Hotline (800-424-9346).

Draft Guidance to Hazardous Waste Generators on the Elements of a Waste Minimization Program

I. Purpose

The purpose of today's notice is to provide non-binding guidance to generators of regulated hazardous wastes on what constitutes a "program in place" to comply with the certification requirements of sections 3002(b) and 3005(h) of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act (RCRA) and the Hazardous and Solid Waste Amendments of 1984 (HSWA). Such certifications require generators to implement programs to reduce the volume and toxicity of hazardous wastes generated to the extent economically practicable. This guidance is intended to fulfill a commitment made by EPA in its 1986 report to Congress entitled, *Minimization of Hazardous Waste*.¹

II. Background

With the passage of HSWA, Congress established a national policy declaring the importance of reducing or eliminating the generation of hazardous waste. Specifically, section 1003(b) states:

The Congress hereby declares it to be a national policy of the United States that, wherever feasible, the generation of hazardous waste is to be reduced or eliminated as expeditiously as possible. Waste that is nevertheless generated should be treated, stored, or disposed of so as to minimize present and future threat to human health and the environment.

In this declaration, Congress established a clear priority for reducing or eliminating the generation of

hazardous wastes (a concept referred to as waste minimization) over managing wastes that were "nevertheless" generated.

EPA believes that hazardous waste minimization means the reduction, to the extent feasible, of hazardous waste that is generated prior to treatment, storage or disposal of the waste. It is defined as any source reduction or recycling activity that results in either: (1) Reduction of total volume of hazardous waste; (2) reduction of toxicity of hazardous waste; or (3) both, as long as that reduction is consistent with the general goal of minimizing present and future threats to human health and the environment.²

Waste minimization can result in significant benefits for industry. EPA believes an effective waste minimization program will contribute to:

- (1) Minimizing quantities of regulated hazardous waste generated, thereby reducing waste management and compliance costs;
- (2) Improving product yields;
- (3) Reducing or eliminating inventories and releases of "hazardous chemicals" reportable under Title III of the Superfund Amendments and Reauthorization Act; and/or
- (4) Lowering Superfund, corrective action and toxic tort liabilities.

Besides establishing the national policy, Congress also enacted several provisions in HSWA for implementing hazardous waste minimization. These included a generator certification on hazardous waste manifests and permits for treatment, storage, or disposal of hazardous waste. RCRA 3002(b). These certifications (effective September 1, 1985) require generators certify two conditions: That (1) the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined by the generator to be economically practicable; and (2) the proposed method of treatment, storage or disposal is that practicable method currently available to the generator which minimizes the present and future

² Hazardous waste minimization involves volume or toxicity reduction through either a source reduction or recycling technique and results in the reduction of risks to human health and the environment. The transfer of hazardous constituents from one environmental medium to another does not constitute waste minimization. Neither would concentration conducted solely for reducing volume unless, for example, concentration of the waste allowed for recovery of useful constituents prior to treatment and disposal. Likewise, dilution as a means of toxicity reduction would not be considered waste minimization, unless later recycling steps were involved.

¹ 51 FR 44683 (12/11/86), Notice of Availability of the report to Congress.

threat to human health and the environment.

In addition, Congress also added a new provision in 1984 that requires hazardous waste generators to identify in their biennial reports to EPA (or the State): (1) The efforts undertaken during the year to reduce the volume and toxicity of waste generated; and (2) the changes in volume and toxicity actually achieved in comparison with previous years, to the extent such information is available prior to 1984 (RCRA 3002 (a)(6)).

Today's notice provides non-binding guidance to hazardous waste generators in response to the certification requirements in HSWA. Specifically, it addresses the first of the certification conditions that states that, "the generator of the hazardous waste has a program in place to reduce the volume or quantity and toxicity of such waste to the degree determined to be economically practicable."

EPA is not, however, providing guidance on the determination of the phrase "economically practicable". As Congress indicated in its accompanying report to HSWA³ the term "economically practicable" is to be defined and determined by the generator and is not subject to subsequent re-evaluation by EPA. The generator of the hazardous waste, for purposes of this certification, has the flexibility to determine what is economically practicable for the generator's circumstances. Whether this determination is made for all of its operations or on a site-specific basis is for the generator to decide.

EPA has received numerous inquiries on what constitutes a waste minimization program. In today's notice EPA is providing draft guidance to hazardous waste generators on what the Agency believes are the basic elements of a waste minimization program.

EPA believes that today's guidance may provide direction to large quantity and small quantity generators in fulfilling their manifest certification requirement. Small quantity generators, while not subject to the same "program in place" certification requirement as large quantity generators, have to certify that they have "made a good faith effort to minimize" their waste generation.

The elements discussed here reflect the results of agency analyses conducted over the last several years

³ S. Rep. No. 98-284, 98th Cong., 1st Sess. (1983)

and extensive interaction with private and public sector waste minimization program managers. EPA believes that an effective waste minimization program should include each of the general elements discussed below, although EPA realizes that some of these elements may be implemented in different ways depending on the preferences of individual firms.

A. Top Management Support. Top management should ensure that waste minimization is a company-wide effort. There are many ways to accomplish this goal. Some of the methods described below may be suitable for some firms and not others. However, some combination of these techniques should be used by every firm to demonstrate top management support.

—Make waste minimization a company policy. Put this policy in writing and distribute it to all departments. Make it each person's responsibility to identify opportunities for minimizing waste. Reinforce the policy in day-to-day operations, at meetings and other company functions.

—Set specific goals for reducing the volume or toxicity of waste streams.

—Commit to implementing recommendations identified through assessments, evaluations or other means.

—Designate a waste minimization coordinator at each facility to ensure effective implementation of the program.

—Publicize success stories. It will trigger additional ideas.

—Reward employees that identify cost-effective waste minimization opportunities.

—Train employees on aspects of waste minimization that relate to their job. Include all departments, such as those in product design, capital planning, production operations, and maintenance.

B. Characterization of Waste Generation. Maintain a waste accounting system to track the types, amounts and hazardous constituents of wastes and the dates they are generated.

C. Periodic Waste Minimization Assessments. Track materials that eventually wind up as waste, from the loading dock to the point at which they become a waste.

—Identify opportunities at all points in a process where materials can be prevented from becoming a waste (for example, by using less material, recycling materials in the process,

finding substitutes, or making equipment changes). Individual processes or facilities should be reviewed periodically. Larger companies may find it useful to establish a team of independent experts.

—Determine the true costs of the waste. Calculate the costs of the materials found in the waste stream based on the purchase price of those materials. Calculate the cost of managing the wastes that are generated, including costs for personnel, recordkeeping, transportation, liability insurance, pollution control equipment, treatment and disposal and others.

D. A cost allocation system. Departments and managers should be charged "fully-loaded" waste management costs for the wastes they generate, factoring in liability, compliance and oversight costs.

E. Encourage Technology Transfer. Seek or exchange technical information on waste minimization from other parts of your company, from other firms, trade associations, State and university technical assistance programs or professional consultants. Many techniques have been evaluated and documented that may be useful in your facility.

F. Program Evaluation. Conduct a periodic review of program effectiveness. Use these reviews to provide feedback and identify potential areas for improvement.

Although waste minimization practices have demonstrated their usefulness and benefits to those generators that have implemented such programs, many others still have not practiced waste minimization. Today's guidance on effective waste minimization practices may help encourage regulated entities to investigate waste minimization alternatives, implement new programs, or upgrade existing programs. Although the approaches described above are directed toward minimizing hazardous solid waste, they are equally valid for design of multi-media source reduction and recycling programs.

EPA requests comments on all aspects of this guidance.

Date: June 2, 1989.

William K. Reilly,
Administrator.

[FR Doc. 89-13845 Filed 6-9-89; 8:45 am]

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Monday
June 12, 1989

Part V

Department of Defense
General Services
Administration

National Aeronautics and
Space Administration

48 CFR Parts 1, 5, 19, 27, 45, and 52
Federal Acquisition Regulation (FAR);
Miscellaneous Amendments

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 1, 5, 19, 27, 45, and 52

[Federal Acquisition Circular 84-48]

RIN 9000-AC85, 9000-AC82, 9000-AC73

Federal Acquisition Regulation (FAR);
Miscellaneous Amendments

AGENCY: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rules with request for comments, and final rules.

SUMMARY: Federal Acquisition Circular (FAC) 84-48 amends the Federal Acquisition Regulation (FAR) with respect to the following: Blind and Handicapped Organizations; Nonmanufacturers Rule; Small Business Directors' Responsibilities; Breakout Appeals; Commerce Patent Regulations; Commerce Business Daily Numbered Notes; Facsimile Numbers in Synopses; Synopsis Classification Codes; and Physical Inventories.

DATES: *Effective Dates:* June 12, 1989, for Parts 1, 19, 27, and the relevant clauses in Part 52 (Items I thru V) and July 12, 1989, for Parts 5 and 45 (Items VI thru IX).

Comment date: Comments on the interim rules (Items I, II, and V) should be submitted to the FAR Secretariat at the address shown below on or before August 11, 1989, to be considered in the formulation of a final rule. Please cite FAC 84-48, and the appropriate FAC Item Number, in all correspondence on this subject.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets NW., Room 4041, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755. Please cite FAC 84-48.

SUPPLEMENTARY INFORMATION:

A. Determination To Issue Interim Regulations

FAC 84-48, Items I, II, and V. A determination has been made under authority of the Secretary of Defense (DoD), the Administrator of General

Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) to issue the regulations in Items I, II, and V, FAC 84-48, as interim rules.

Item I. This action is necessary to implement in the FAR section 133 of Pub. L. 100-590.

Item II. This action is necessary to implement in the FAR section 303(h) of Pub. L. 100-656 which amended section 8(a) of the Small Business Act.

Item V. This action is necessary to implement in the FAR the contractual requirements of the Department of Commerce (DOC) final rule, pursuant to Pub. L. 98-620.

However, pursuant to Pub. L. 98-577 and FAR 1.501, public comments received in response to these interim rules will be considered in formulating each final rule.

B. Background

FAC 84-48, *Item II.* Revisions to 19.102, 19.502-2, and associated clauses implement section 303(h) of Pub. L. 100-656, which amended section 8(a) of the Small Business Act to permit regular dealers to offer any domestically produced product for any class of products for which the Small Business Administration determines that there are no small business manufacturers.

FAC 84-48, *Item IV.* Revisions to 19.403 and 19.505 implement section 110 of the SBA Reauthorization Act of 1988 (Pub. L. 100-590). Revisions in 19.403 expand the type of technical data and procurement records that will be made available to the SBA breakout procurement center representative, and provide for appeals of unfavorable procurement center decisions subject to the procedures in 19.505. Section title 19.505 is also revised to reflect its broader application.

FAC 84-48, *Item V.* The DOC published a final rule in the Federal Register on March 18, 1987 (52 FR 8552), implementing Pub. L. 98-620 that shifts the authority to issue regulations under Chapter 18 of Title 35, United States Code (Rights in Inventions Made with Federal Assistance), from the Office of Federal Procurement Policy to the DOC. This rule implements in the Federal Acquisition Regulation the contractual aspects of the DOC rule.

C. Regulatory Flexibility Act

FAC 84-48, *Item I.* This interim rule implements section 133 of Pub. L. 100-590, the Small Business Reauthorization and Amendment Act, to permit organizations for the handicapped to participate in small business set-asides for fiscal years 1989 through 1993.

Impact on small entities is unknown at this time. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and is on file in the FAR Secretariat. The IRFA will be submitted to the Chief Counsel for Advocacy, Small Business Administration. However, publication of this rule as an interim rule will afford the public the opportunity to make comments with respect to this rule's economic impact on small entities, and such comments will be considered in the formation of the final rule. Such comments must be submitted separately and cite 89-610 (FAC 84-48, Item I).

FAC 84-48, *Item V.* This interim rule will not have a significant effect beyond the internal operating procedures of procuring agencies, or a significant cost or administrative impact on contractors or offerors independent from the impact of the final rule prescribed by DOC in the Federal Register on March 18, 1987 (52 FR 8552). Comments from small entities concerning the affected FAR subparts will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 89-610 (FAC 84-48, Item V).

FAC 84-48, *Items II, III, IV, VI, VII, VIII, and IX.* DoD, GSA, and NASA certify that the Regulatory Flexibility Act (Pub. L. 96-354) does not apply because each revision is not a "significant revision" as defined in FAR 1.501-1; i.e., it does not alter the substantive meaning of any coverage in the FAR having a significant cost or administrative impact on contractors or offerors, or a significant effect beyond the internal operating procedures of the issuing agencies.

D. Paperwork Reduction Act

FAC 84-48, *Items I, II, III, IV, VI, VII, VIII, and IX.* The Paperwork Reduction Act (Pub. L. 96-511) does not apply because these rules do not impose any reporting or recordkeeping requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

FAC 84-48, *Item V.* The information collection requirements contained in this interim rule were approved by the Office of Management and Budget and have been assigned OMB Control Number 9000-0095.

List of Subjects in 48 CFR Parts 1, 5, 19, 27, 45, and 52

Government procurement.

Dated: June 7, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Federal Acquisition Circular

[Number 84-48]

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 84-48 is effective:

Items I through V June 12, 1989, for Parts 1, 19, 27, and the relevant clauses in Part 52; and

Items VI through IX June 12, 1989, Parts 5 and 45.

Harry S. Rosinski,

Acting Associate Administrator for Acquisition Policy, GSA.

Eleanor Spector,

Assistant Secretary of Defense for Procurement, DOD.

[Number 84-48]

S.J. Evans,

Associate Administrator for Procurement, NASA.

Federal Acquisition Circular (FAC) 84-48 amends the Federal Acquisition Regulation (FAR) as specified below:

Item I—Blind and Handicapped Organizations

FAR 19.501, 19.508 are revised and the clause at 52.219-15 is added to authorize participation of public or private organizations for the handicapped in small business set-asides during fiscal years 1989 through 1993. The revisions provide for self-certification by handicapped organizations, but provide for challenge of the certification by interested parties. The revisions also provide notice that small business concerns which experience severe economic injury as a result of a set-aside award to a handicapped organization may file an appeal with the Small Business Administration.

Item II—Nonmanufacturers Rule

FAR 19.102, 19.502-2, and the clauses at 52.219-5, 52.219-6, and 52.219-7 are revised to permit small business regular dealers to offer any domestically produced or manufactured product under a small business set-aside or award under section 8(a) of the Small Business Act when the acquisition is for a product in a class of which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market.

Item III—Small Business Director's Responsibilities

FAR 19.201 and 19.202 are revised to implement section 603, Pub. L. 100-656 and section 12, Pub. L. 100-496.

Item IV—Breakout Appeals

FAR 19.403 and 19.505 are revised to implement section 110 of the SBA Reauthorization Act of 1988 (Pub. L. 100-590).

Item V—Commerce Patent Regulation, Pub. L. 98-620

FAR 1.105, Subpart 27.3, and the clauses at 52.227-11, 52.227-12, and 52.227-13 are revised to implement the contractual aspects of a final rule issued by the Department of Commerce on March 18, 1987 (52 FR 8552).

Item VI—Commerce Business Daily Numbered Notes

FAR 5.205(c)(1), 5.206, 5.207(b)(6) #17, 5.207(d), 5.207 (e)(1) and (e)(3) are revised to accommodate the updated Commerce Business Daily Numbered Notes, and to establish a system to review and revise Numbered Notes.

Item VII—Facsimile Numbers in Synopses

FAR 5.207(c)(2)(xv) is revised to provide for the insertion of machine numbers and routing instructions in synopsis Item 17, if the contracting office will accept requests for solicitations through alternate means.

Item VIII—Synopsis Classification Codes

FAR 5.207(b)(4) #6, 5.207 (g)(1) and (g)(2) are revised to clarify that only one classification code shall be included in synopses submitted to the Commerce Business Daily (CBD) and further, that failure to include a classification code or submission of more than one code, will result in rejection of the synopsis by the CBD. For information, contracting offices are advised that CBD personnel will no longer edit the selected classification code for potential errors; accordingly, additional care should be taken in selecting the single code most appropriate for the acquisition.

Item IX—Physical Inventories

FAR 45.508 is revised to recognize electronic and automated inventory techniques.

Therefore, 48 CFR Parts 1, 5, 19, 27, 45, and 52 are amended as set forth below.

1. The authority citation for 48 CFR Parts 1, 5, 19, 27, 45, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 1—FEDERAL ACQUISITION
REGULATIONS SYSTEM

2. Section 1.105 is amended by adding in numerical order, a FAR segment and corresponding OMB Control Number to read as follows:

§ 1.105 OMB Approval under the
Paperwork Reduction Act.

FAR segment	OMB Control No.
27.3	9000-0095

PART 5—PUBLICIZING CONTRACT
ACTIONS

3. Section 5.205 is amended by adding in paragraph (c)(1) a second sentence to read as follows:

5.205 Special situations.

(c) * * *
(1) * * * Reference shall be made to the appropriate CBD Numbered Note.

5.206 [Amended]

4. Section 5.206 is amended by removing paragraph (a) and by redesignating paragraph (b) as § 5.206.

5. Section 5.207 is amended by revising Format Item 6, Classification Code, in paragraph (b)(4); by removing in paragraph (b)(6) Format Item 17, Description, the words "See notes 4, 55," and inserting in their place "See note 9."; by adding paragraph (c)(2)(xv); and by revising paragraphs (d), (e)(1), (e)(3), and the introductory text in paragraph (g)(1) and (g)(2) to read as follows:

5.207 Preparation and transmittal of
synopses.

(b) * * *
(4) * * *

6. CLASSIFICATION CODE. (Service or supply code number; see 5.207(g). Each synopsis shall classify the contemplated contract action under the one classification code which most closely describes the acquisition. If the action is for a multiplicity of goods and/or services, the preparer should select the one category best describing the overall acquisition based upon value. Inclusion of more than one classification code, or failure to include a classification code, will result in rejection of the synopsis by the Commerce Business Daily).

(c) * * *

(2) * * *

(xv) If the contracting office will accept requests for solicitations through alternate means (e.g., facsimile machine, Telex), provide the machine number and routing instructions.

(d) *Set-asides*. When the proposed acquisition provides for a total or partial small business or labor surplus area (LSA) set aside, the appropriate CBD Numbered Note will be cited.

(e) *CBD Numbered Notes*. (1) Numbered Notes are footnotes. The purpose of the Numbered Notes is to conserve space and simplify the identification of repetitive notices. An explanation of the Numbered Notes appears each week in the Monday edition of the CBD. If the Monday edition of the CBD is not printed because of a holiday, an explanation of the Numbered Notes will appear in the next day's issue. When one or more of the Notes applies to a synopsis, contracting officers should reference the note at the end of Item 17 of the synopsis; e.g., "See Note(s). . . ." Requests to add or change Notes will be submitted through channels for approval by the DAR Council and the CAA Council. The Councils will review the Numbered Notes periodically and, as appropriate, after consultation with the initiating agency, advise the Department of Commerce to delete or modify outdated or unused notes from the CBD. Contracting officers shall also include the substance of Numbered Notes whenever a proposed contract is publicized by means other than the CBD (see 5.101).

(3) If the synopsis is for a proposed contract action intended to be awarded on a sole source basis, the synopsis shall refer to Numbered Note 22. If it is anticipated that award will be made via a delivery order to an existing basic ordering agreement, the synopsis shall so state.

(g) * * *

(1) Contracting officers shall use one of the following classification codes when the contemplated contract action is for services or when the overall acquisition can best be described as services based upon value:

(2) Contracting officers shall use one of the following classification codes when the contemplated contract action is for supplies or when the overall acquisition can best be described as supplies based upon value:

PART 19—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

6. Section 19.001 is amended by alphabetically adding the definitions "Handicapped individual" and "Public or private organization for the handicapped" to read as follows:

19.000 Definitions.

"Handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

"Public or private organization for the handicapped" means one which (a) is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; (b) complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and (c) employs in the production of commodities and in the provision of services, handicapped individuals for not less than 75 percent of the direct labor required for the production or provision of the commodities or services.

7. Section 19.102 is amended by revising the first sentence in paragraph (f)(1) and by adding paragraph (f)(5) to read as follows:

19.102 Size standards.

(f) * * *

(1) Except as provided in subparagraph (f)(5) of this section, in the case of Government acquisitions set aside for small businesses, such nonmanufacturer must furnish in the performance of the contract the product of a small business manufacturer or producer, which end product must be manufactured or produced in the United States.

(5) As provided in 15 U.S.C. 637(a)(17), in the case of Government acquisitions set aside for small business or awarded under section 8(a) of the Small Business Act, such nonmanufacturer may furnish any domestically produced or manufactured product when the acquisition is for a product in a class for which the Small Business Administration has determined that

there are no small business manufacturers or processors in the Federal market, and when such nonmanufacturer is primarily engaged in the wholesale or retail trade and is a regular dealer, as defined pursuant to 41 U.S.C. 35(a) (see 22.601), in the product to be offered unless specifically exempted from section 35(a) by section 7(j)(13)(C) of the Small Business Act. Classes for which a waiver has been granted are as follows: None.

8. Section 19.201 is amended by revising paragraph (c)(5) and by adding paragraph (c)(9) to read as follows:

19.201 General policy.

(c) * * *

(5) Assist small business concerns in obtaining payments under their contracts, late payment, interest penalties, or information on contractual payment provisions;

(9) Make recommendations in accord with agency regulations as to whether a particular acquisition should be awarded under Subpart 19.5 as a set-aside (including those involving Labor Surplus Areas), under Subpart 19.8 as a section 8(a) award, or under a procedure authorized by section 1207 of Pub. L. 99-661, if applicable.

9. Section 19.202 is revised to read as follows:

19.202 Specific policies.

In order to further the policy in 19.201(a), contracting officers shall comply with the specific policies listed below and shall consider recommendations of the agency Director of Small and Disadvantaged Business Utilization, or the Director's designee, as to whether a particular acquisition should be awarded under Subparts 19.5, 19.8, or under a procedure authorized by section 1207 of Pub. L. 99-661. The contracting officer shall document the contract file whenever the Director's recommendations are not accepted.

10. Section 19.403 is amended by revising in paragraph (a) the first two sentences; by removing in paragraph (c)(4) the words "unlimited-rights"; by revising paragraphs (c)(5) and (c)(8); by removing at the end of paragraph (c)(7) the word "and"; and by adding paragraphs (c)(9) and (c)(10) to read as follows:

19.403 Small Business Administration breakout procurement center representatives.

(a) The SBA is required by section 403 of Pub. L. 98-577 to assign a breakout

procurement center representative to each major procurement center. A major procurement center means a procurement center that, in the opinion of the administrator, purchases substantial dollar amounts of other than commercial items, and which has the potential to incur significant savings as a result of the placement of a breakout procurement representative.

(c) * * *

(5) Have access to procurement records and other data of the procurement center commensurate with the level of such representative's approved security clearance classification;

(8) Appeal the failure by the procurement center to act favorably on any recommendation made pursuant to subparagraphs (c) (1) through (7) of this section. Such appeal must be in writing and shall be filed and processed in accordance with the appeal procedures set out in 19.505;

(9) Conduct familiarization sessions for contracting officers and other appropriate personnel of the procurement center to which assigned. Such sessions shall acquaint the participants with the duties and objectives of the representative and shall instruct them in the methods designed to further the breakout of items for procurement through full and open competition; and

(10) Prepare and personally deliver an annual briefing and report to the head of the procurement center to which assigned. Such briefing and report shall detail the past and planned activities of the representative and shall contain recommendations for improvement in the operation of the center as may be appropriate. The head of such center shall personally receive the briefing and report and shall, within 60 calendar days after receipt, respond, in writing, to each recommendation made by the representative.

11. Section 19.501 is amended by adding paragraph (k) to read as follows:

19.501 General.

(k) Section 133 of Pub. L. 100-590 authorizes public and private organizations for the handicapped to participate for fiscal years 1989 through 1993 in acquisitions set-aside for small business concerns. An interested party may file a protest of an organization's status within 5 days after announcement of an award. Within 10 days after announcement of an award to an

organization for the handicapped, any small business concern which experiences or is likely to experience severe economic injury as a result of the award may file an appeal of the award. Such protests and appeals shall be filed with the Associate Administrator for Procurement Assistance, Small Business Administration, whose decision will be final, with a copy to the contracting officer. After receipt of notice of a protest or appeal, the contracting officer shall not award the contract until (1) SBA has made a decision or (2) 10 business days have expired since receipt of the protest or appeal, whichever occurs first; however, award shall not be withheld when the contracting officer determines in writing that an award must be made to protect the public interest.

12. Section 19.502-2 is amended by redesignating the section as paragraph (a) and revising the first sentence of new paragraph (a); and by adding paragraph (b) to read as follows:

19.502-2 Total set-asides.

(a) The entire amount of an individual acquisition or class of acquisitions, including contracts for architect-engineer services, research, development, test and evaluation, maintenance repair, and construction except small business-small purchase set-asides, shall be set aside for exclusive small business participation if the contracting officer determines that there is a reasonable expectation that (1) offers will be obtained from at least two responsible small business concerns offering the products of different small business concerns (but see paragraph (b) of this subsection); and (2) awards will be made at fair market prices.

(b) In industries where the SBA finds that there are no small business manufacturers, it may waive the nonmanufacturers rule for regular dealers (see 19.102(f)(5)). This would permit small business regular dealers to provide any domestically produced product. In these cases, the contracting officer's determination in subparagraph (a)(1) of this subsection will be based on offers from at least two responsible small business regular dealers offering the products of different domestic concerns.

13. Section 19.505 is amended by revising the section title and paragraph (a) to read as follows:

19.505 Rejecting Small Business Administration recommendations.

(a) If the contracting officer rejects a recommendation of the SBA procurement center representative or breakout procurement center

representative, written notice shall be furnished to the appropriate SBA center representative within 5 business days of the contracting officer's receipt of the recommendation.

14. Section 19.508 is amended by adding paragraph (f) to read as follows:

19.508 Solicitation provisions and contract clauses.

(f) The contracting officer shall insert the clause at 52.219-15, Notice of Participation by Organizations for the Handicapped, in solicitations and contracts issued through September 30, 1993, involving total or partial small business set-asides.

PART 27—PATENTS, DATA, AND COPYRIGHTS

15. Section 27.301 is amended by removing in the definitions "Nonprofit organization" and "Small business firm" the word "domestic" wherever it appears, and by revising the definitions "Inventions" and "Subject invention" to read as follows:

27.301 Definitions.

"Invention," as used in this subpart, means any invention or discovery that is or may be patentable or otherwise protectable under title 35 of the U.S. Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

"Subject invention," as used in this subpart, means any invention of the contractor conceived or first actually reduced to practice in the performance of work under a Government contract; provided, that in the case of a variety of plant, the date of determination defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d), must also occur during the period of contract performance.

16. Section 27.302 is amended by revising paragraphs (a), (b), (c), and (e); by revising the introductory text of paragraph (d); by redesignating existing paragraph (h) as (i) and adding a new paragraph (h); and by redesignating paragraph (i) as (j) and revising the second sentence to read as follows:

27.302 Policy.

(a) *Introduction*. (1) The policy of this section is based on Chapter 18 of title 35, U.S.C. (Pub. L. 95-517, Pub. L. 98-620, 37 CFR Part 401), the Presidential Memorandum on Government Patent

Policy to the Heads of Executive Departments and Agencies dated February 18, 1983, and Executive Order 12591, which provides that, to the extent permitted by law, the head of each Executive Department and agency shall promote the commercialization, in accord with the Presidential Memorandum, of patentable results of federally funded research by granting to all contractors, regardless of size, the title to patents made in whole or in part with Federal funds, in exchange for royalty-free use by or on behalf of the Government. The objectives of this policy are to use the patent system to promote the utilization of inventions arising from federally supported research or development; to encourage maximum participation of industry in federally supported research and development efforts; to ensure that these inventions are used in a manner to promote free competition and enterprise; to promote the commercialization and public availability of the inventions made in the United States by United States industry and labor; to ensure that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions; and, to minimize the costs of administering policies in this area.

(b) *Contractor right to elect title.* Under the policy set forth in paragraph (a) of this section, each contractor may, after disclosure to the Government as required by the patent rights clause included in the contract, elect to retain title to any invention made in the performance of work under the contract. To the extent an agency's statutory requirements necessitate a different policy, or different procedures and/or contract clauses to effectuate the policy set forth in paragraph (a) of this section, such policy, procedures, and clauses shall be contained in or expressly referred to in that agency's supplement to this subpart. In addition, a contract may provide otherwise (1) when the contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign-government (see 27.303(c)), (2) in exceptional circumstances when it is determined by the agency that restriction or elimination of the right to retain title in any subject invention will better promote the policy and objectives of Chapter 18 of title 35, U.S.C. and the Presidential Memorandum, (3) when it is determined by a Government authority which is authorized by statute or Executive order to conduct foreign

intelligence or counterintelligence activities that the restriction or elimination of the right to retain title to any subject invention is necessary to protect the security of such activities, or (4) when the contract includes the operation of a Government-owned, contractor-operated facility of the Department of Energy primarily dedicated to the Department's naval nuclear propulsion or weapons related programs and all funding agreement limitations under 35 U.S.C. 202(a)(iv) for agreements with small business firms and nonprofit organizations are limited to inventions occurring under the above two programs.

In the case of small business firms and nonprofit organizations, when an agency justifies and exercises the exception at subparagraph (b)(2) of this section on the basis of national security, the contract shall provide the contractor with the right to elect ownership to any invention made under such contract as provided by the clause at 52.227-11, Patent Rights—Retention by the Contractor (Short Form), if the invention is not classified by the agency within 6 months of the date it is reported to the agency, or within the same time period the Department of Energy (DOE) does not, as authorized by regulation, law or Executive order or implementing regulations thereto, prohibit unauthorized dissemination of the invention. Contracts in support of DOE's naval nuclear propulsion program are exempted from this paragraph. When a contract involves a series of separate task orders, an agency may apply the exceptions at subparagraph (b) (2) or (3) of this section to individual task orders, and it may structure the contract so that modified patent rights clauses will apply to the task order even though the clause at 52.227-11 is applicable to the remainder of the work. In those instances when the Government has the right to acquire title at the time of contracting, the contractor may, nevertheless, request greater rights to an identified invention (see 27.304-1(a)). The right of the contractor to retain title shall, in any event, be subject to the provisions of paragraphs (c) through (g) of this section.

(c) *Government license.* The Government shall have at least a nonexclusive, nontransferable, irrevocable, paid-up license to practice, or have practiced for or on behalf of the United States, any subject invention throughout the world; and may, if provided in the contract (see Alternative I of the applicable patent rights clause), have additional rights to sublicense any foreign government or international

organization pursuant to existing treaties or agreements identified in the contract, or to otherwise effectuate such treaties or agreements. In the case of long term contracts, the contract may also provide (see Alternate II) such rights with respect to treaties or agreements to be entered into by the Government after the award of the contract.

(d) *Government right to receive title.* (1) The Government has the right to receive title to any invention if the contract so provides pursuant to a determination made in accordance with subparagraph (b) (1), (2), (3), or (4) of this section. In addition, to the extent provided in the patent rights clause, the Government has the right to receive title to an invention—

• • • • •
(e) *Utilization reports.* The Government shall have the right to require periodic reporting on the utilization or efforts at obtaining utilization that are being made by the contractor or its licensees or assignees. Such reporting by small business firms and nonprofit organizations may be required in accordance with instructions as may be issued by the Department of Commerce. Agencies should protect the confidentiality or utilization reports which are marked with restrictions to the extent permitted by 35 U.S.C. 205 or other applicable laws and 37 CFR Part 401. Agencies shall not disclose such utilization reports to persons outside the Government without permission of the contractor. Contractors will continue to provide confidential markings to help prevent inadvertent release outside the agency.

• • • • •
(h) *Small business preference.* (1) Nonprofit organization contractors are expected to use efforts that are reasonable under the circumstances to attract small business licensees. They are also expected to give small business firms that meet the standard outlined in the clause at 52.227-11, Patent Rights—Retention by the Contractor (Short Form), a preference over other applicants for licenses. What constitutes reasonable efforts to attract small business licensees will vary with the circumstances and the nature, duration, and expense of efforts needed to bring the invention to the market. Subparagraph (k)(4) of the clause is not intended, for example, to prevent nonprofit organizations from providing larger firms with a right of first refusal or other options in inventions that relate to research being supported under long-term or other arrangements with larger

companies. Under such circumstances, it would not be reasonable to seek and to give a preference to small business licensees.

(2) Small business firms that believe a nonprofit organization is not meeting its obligations under the clause may report their concerns to the Secretary of Commerce. To the extent deemed appropriate, the Secretary of Commerce will undertake informal investigation of the concern, and, if appropriate, enter into discussions or negotiations with the nonprofit organization to the end of improving its efforts in meeting its obligations under the clause. However, in no event will the Secretary of Commerce intervene in ongoing negotiations or contractor decisions concerning the licensing of a specific subject invention. All the above investigations, discussions, and negotiations of the Secretary of Commerce will be in coordinations with other interested agencies, including the Small Business Administration; and in the case of a contract for the operation of a Government-owned, contractor-operated research or production facility, the Secretary of Commerce will coordinate with the agency responsible for the facility prior to any discussions or negotiations with the contractor.

• • • • •
(j) *Confidentiality of inventions.* * * * Accordingly, 35 U.S.C. 205 and 37 CFR Part 40 provide that Federal agencies are authorized to withhold from disclosure to the public information disclosing any invention in which the Federal Government owns or may own a right, title, or interest (including a nonexclusive license) for a reasonable time in order for a patent application to be filed.

• • • • •
17. Section 27.303 is revised to read as follows:

27.303 Contract clauses.

In contracts (and solicitations therefor) for experimental, developmental, or research work (but see 27.304-3 regarding contracts for construction work or architect-engineer services), a patent rights clause shall be inserted as follows:

(a) (1) The contracting officer shall insert the clause at 52.227-11, Patent Rights—Retention by the Contractor (Short Form), if all the following conditions apply:

(i) The contractor is a small business concern or nonprofit organization as defined in 27.301 or, except for contracts of the Department of Defense (DOD), the Department of Energy (DOE), or the National Aeronautics and Space

Administration (NASA), any other type of contractor.

(ii) No alternative patent rights clause is used in accordance with paragraph (c) or (d) of this section or 27.304-2.

(2) To the extent the information is not required elsewhere in the contract, and unless otherwise specified by agency supplemental regulations, the contracting officer may modify 52.227-11(f) to require the contractor to do one or more of the following:

(i) Provide periodic (but not more frequently than annually) listings of all subject inventions required to be disclosed during the period covered by the report.

(ii) Provide a report prior to the closeout of the contract listing all subject inventions or stating that there were none.

(iii) Provide, upon request, the filing date, serial number and title, a copy of the patent application, and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(iv) Furnish the Government an irrevocable power to inspect and make copies of the patent application file when a Federal Government employee is a coinventor.

(3) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement, or if the agency head or a designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, the contracting officer shall use the clause at 52.227-11, with its Alternate I. If other rights are necessary to effectuate the treaty or agreement, Alternate I may be appropriately modified. In long term contracts, Alternate II shall be added if necessary to effectuate treaties or agreements to be entered into.

(4) If the contracting officer includes the clause at 52.227-11, Patent Rights—Retention by the Contractor (Short Form), in a contract with a nonprofit organization for the operation of a Government-owned facility, the contracting officer will include Alternate III in lieu of subparagraph (k)(3) of the clause.

(5) If the contract is for the operation of a Government-owned facility, the contracting officer may include Alternate IV with the clause at 52.227-11.

(b) (1) The contracting officer shall insert the clause at 52.227-12, Patent Rights—Retention by the Contractor

(Long Form), if all the following conditions apply:

(i) The contractor is other than a small business firm or nonprofit organization.

(ii) No alternative clause is used in accordance with paragraph (c) or (d) of this section or 27.304-2.

(iii) The contracting agency is one of those excepted under subdivision (a)(1)(i) of this section.

(2) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement or if the agency head or a designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, the contracting officer shall use the clause at 52.227-12, with its Alternate I. If other rights are necessary to effectuate the treaty or agreement, Alternate I may be appropriately modified. In long term contracts, Alternate II shall be added if necessary to effectuate treaties or agreements to be entered into.

(c) (1) The contracting officer shall insert the clause at 52.227-13, Patent Rights—Acquisition by the Government, if any of the following conditions apply:

(i) No alternative clause is used in accordance with subparagraphs (c) (2) and (4) or paragraph (d) of this section or 27.304-2.

(ii) The work is to be performed outside the United States, its possessions, and Puerto Rico by contractors that are not small business firms, nonprofit organizations as defined in 27.301, or domestic firms. For purposes of this subparagraph, the contracting officer may presume that a contractor is not a domestic firm unless it is known that the firm is not foreign owned, controlled, or influenced. (See 27.304-4(a) regarding subcontracts with U.S. firms.)

(2) Pursuant to their statutory requirements, DOE and NASA may specify in their supplemental regulations use of a modified version of the clause at 52.227-13 in contracts with other than small business concerns or nonprofit organizations.

(3) If the acquisition of patent rights for the benefit of a foreign government is required under a treaty or executive agreement or if the agency head or a designee determines at the time of contracting that it would be in the national interest to acquire the right to sublicense foreign governments or international organizations pursuant to any existing or future treaty or agreement, the contracting officer shall

use the clause with its Alternate I. If other rights are necessary to effectuate the treaty or agreement, Alternate I may be appropriately modified. In long term contracts, Alternate II shall be added if necessary to effectuate treaties or agreements to be entered into.

(4) Section 401 of title 37 of the Code of Federal Regulations provides that in contracts with small business firms and nonprofit organizations, when an agency exercises the exceptions at 27.302(b) (2) or (3) it shall use the clause at 52.227-11, with such modifications as are necessary to address the exceptional circumstances or concerns which led to the use of the exception. The greater rights determinations provision of 52.227-13(b)(2) shall be included in the modified clause.

(d) (1) If one of the following applies, the contracting officer may insert the clause prescribed in paragraph (a) or (b) of this section as otherwise applicable, agency supplemental regulations may provide another clause and specify its use, or the contracting officer shall insert the clause prescribed in paragraph (c) of this section:

(i) The contractor is not located in the United States or does not have a place of business located in the United States or is subject to the control of a foreign government.

(ii) There are exceptional circumstances and the agency head determines that restriction or elimination of the right to retain title to any subject invention will better promote the policy and objectives of Chapter 18 of title 35 of the United States Code.

(iii) It is determined by a Government authority which is authorized by statute or executive order to conduct foreign intelligence or counterintelligence activities that restriction or elimination of the right to retain any subject invention is necessary to protect the security of such activities.

(iv) The contract includes the operation of a Government-owned, contractor-operated facility of the Department of Energy primarily dedicated to that Department's naval nuclear propulsion or weapons related programs.

(2) Before using any of the exceptions under subparagraph (d)(1) of this section in a contract with a small business firm or a nonprofit organization and before using the exception of subdivision (d)(1)(ii) of this section for any contractor, the agency shall prepare a written determination, including a statement of facts supporting the determination, that the conditions identified in the exception exist. A separate statement of facts shall be

prepared for each exceptional circumstances determination, except that in appropriate cases a single determination may apply to both a contract and any subcontract issued under it, or to any contract to which an exception is applicable. In cases when subdivision (d)(1)(ii) of this section is used, the determination shall also include an analysis justifying the determination. This analysis should address, with specificity, how the alternate provisions will better achieve the objectives set forth in 35 U.S.C. 200. For contracts with small business firms and nonprofit organizations, a copy of each determination, statement of facts, and, if applicable, analysis shall be promptly provided to the contractor or offeror along with a notification of its appeal rights under 35 U.S.C. 202(b)(4) in accordance with 27.304-1(a). In the case of small business and nonprofit contractors, except for determination under subdivision (d)(1)(iii) of this section, the agency shall, within 30 days after award of a contract, also provide copies of each determination, statement of fact, and analysis to the Secretary of Commerce. These shall be sent within 30 days after the award of the contract to which they pertain. In the case of contracts with small business concerns, copies will also be sent to the Chief Counsel for Advocacy of the Small Business Administration.

(e) To qualify for the clause at 52.227-11, a prospective contractor may be required by the agencies excepted under subdivision (a)(1)(i) of this section to certify that it is either a small business firm or a nonprofit organization. If one of these agencies has reason to question the status of the prospective contractor, the agency may file a protest in accordance with 13 CFR 121.3-5 if small business firm status is questioned, or require the prospective contractor to furnish evidence of its status as a nonprofit organization.

(f) Alternates I and II to the clauses at 52.227-11, 52.227-12, and 52.227-13, as applicable, may be modified to make clear that the rights granted to the foreign government or international organization may be for additional rights beyond a license or sublicense if so required by the applicable treaty or international agreement. For example, in some cases exclusive licenses or even assignment of title in the foreign country involved might be required. In addition, an Alternate may be modified to provide for direct licensing by the contractor of the foreign government or international organization.

18. Section 27.304-1 is revised to read as follows:

27.304-1 General.

(a) *Contractor appeals of exceptions.*

(1) In accordance with 35 U.S.C. 202(b)(4), a small business firm or nonprofit organization contractor has the right to an administrative review of a determination to use one of the exceptions at 27.303(d)(1)(i)-(iv) if the contractor believes that a determination is either (i) contrary to the policies and objectives of this subsection or (ii) constitutes an abuse of discretion by the agency. Subparagraphs (a) (2) thru (7) of this subsection specify the procedures to be followed by contractors and agencies in such cases. The assertion of such a claim by the contractor shall not be used as a basis for withholding or delaying the award of a contract or for suspending performance under an award. However, pending final resolution of the claim, the contract may be issued with the patent rights provision proposed by the agency; but should the final decision be in favor of the contractor, the contract will be amended accordingly and the amendment made retroactive to the effective date of the contract.

(2) A contractor may appeal a determination by providing written notice to the agency within 30 working days from the time it receives a copy of the agency's determination, or within such longer time as an agency may specify in its regulations. The contractor's notice should specifically identify the basis for the appeal.

(3) The appeal shall be decided by the head of the agency or designee who is at a level above the person who made the determination. If the notice raises a genuine dispute over the material facts, the head of the agency or designee shall undertake or refer the matter for fact-finding.

(4) Fact-finding shall be conducted in accordance with procedures established by the agency. Such procedures shall be as informal as practicable and be consistent with principles of fundamental fairness. The procedures should afford the contractor the opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront such persons as the agency may rely upon. A transcribed record shall be made and shall be available at cost to the contractor upon request. The requirement for a transcribed record may be waived by mutual agreement of the contractor and the agency.

(5) The official conducting the fact-finding shall prepare or adopt written findings of fact and transmit them to the head of the agency or designee promptly after the conclusion of the fact-finding

proceeding along with a recommended decision. A copy of the findings of fact and recommended decision shall be sent to the contractor by registered or certified mail.

(6) Fact-finding should be completed within 45 working days from the date the agency receives the contractor's written notice.

(7) When fact-finding has been conducted, the head of the agency or designee shall base his or her decision on the facts found, together with any argument submitted by the contractor, agency officials, or any other information in the administrative record. In cases referred for fact-finding, the agency head or designee may reject only those facts that have been found to be clearly erroneous, but must explicitly state the rejection and indicate the basis for the contrary finding. The agency head or designee may hear oral arguments after fact-finding provided that the contractor or contractor's attorney or representative is present and given an opportunity to make arguments and rebuttal. The decision of the agency head or designee shall be in writing and if it is unfavorable to the contractor, include an explanation of the basis of the decision. The decision of the agency or designee shall be made within 30 working days after fact-finding or, if there was no fact-finding, within 45 working days from the date the agency received the contractor's written notice. In accordance with 35 U.S.C. 203, a small business firm or a nonprofit organization contractor adversely affected by a determination under this section may, at any time within 60 days after the determination is issued, file a petition in the United States Claims Court, which shall have jurisdiction to determine the appeal on the record and to affirm, reverse, remand, or modify, as appropriate, the determination of the Federal agency.

(b) *Greater rights determination.* Whenever the contract contains the clause at 52.227-13, Patent Rights—Acquisition by the Government, the contractor (or an employee-inventor of the contractor after consultation with the contractor) may request greater rights to an identified invention within the period specified in such clause. Requests for greater rights may be granted if the agency head or designee determines that the interests of the United States and the general public will be better served thereby. In making such determinations, the agency head or designee shall consider at least the following objectives:

(1) Promoting the utilization of inventions arising from federally-supported research and development.

(2) Ensuring that inventions are used in a manner to promote full and open competition and free enterprise.

(3) Promoting public availability of inventions made in the United States by United States industry and labor.

(4) Ensuring that the Government obtains sufficient rights in federally supported inventions to meet the needs of the Government and protect the public against nonuse or unreasonable use of inventions.

(c) *Retention of rights by inventor.* If the contractor does not elect to retain title to a subject invention, the agency may consider and, after consultation with the contractor, grant requests for retention or rights by the inventor. Retention of rights by the inventor will be subject to the conditions in paragraph (d) (except subparagraphs (d)(1)), (f)(4), and paragraphs (h), (i), and (j) of the applicable Patent Rights—Retention by the Contractor clause.

(d) *Government assignment to contractor of rights in Government employees' inventions.* When a Government employee is a coinventor of an invention made under a contract with a small business firm or nonprofit organization, the agency employing the coinventor may transfer or reassign whatever right it may acquire in the subject invention from its employee to the contractor, subject at least to the conditions of 35 U.S.C. 202-204.

(e) *Additional requirements.* (1) If it is desired to have the right to require any of the following, when using the clause at 52.227-11, Patent Rights—Retention by the Contractor (Short Form), the contract shall be modified to require the contractor to do one or more of the following:

(i) Provide periodic (but not more frequently than annually) listings of all subject inventions required to be disclosed during the period covered by the report.

(ii) Provide a report prior to the closeout of the contract listing all subject inventions or stating that there were none.

(iii) Provide, upon request, the filing date, serial number, and title; a copy of the patent application; and patent number and issue date for any subject invention in any country in which the contractor has applied for patents.

(iv) Furnish the Government an irrevocable power to inspect and make copies of the patent application file when a Federal Government employee is a coinventor.

(2) To the extent provided by such modification (and automatically under the terms of the clauses at 52.227-12, Patent Rights—Retention by the Contractor (Long Form), and 52.227-13,

Patent Rights—Acquisition by the Government), the contracting officer may require the contractor to—

(i) Furnish a copy of each subcontract containing a patent rights clause (but if a copy of a subcontract is furnished under another clause, a duplicate shall not be requested under the patent rights clause);

(ii) Submit interim and final invention reports listing subject inventions and notifying the contracting officer of all subcontracts awarded for experimental, developmental, or research work;

(iii) Submit information regarding the filing date, serial number and title, and, upon request, a copy of the patent application, and patent number and issue date for any subject invention in any country for which the contractor has retained title; and

(iv) Submit periodic reports on the utilization of a subject invention or on efforts at obtaining utilization that are being made by the contractor or its licensees or assignees.

(3) The contractor is required to deliver to the contracting officer an instrument confirmatory of all rights to which the Government is entitled and to furnish the Government an irrevocable power to inspect and make copies of the patent application file. Such delivery should normally be made within 6 months after filing each patent application, or within 6 months after submitting the invention disclosure if the application has been previously filed.

(f) *Revocation or modification of contractor's minimum rights.* Before revocation or modification of the contractor's license in accordance with 27.302(i)(2), the contracting officer will furnish the contractor a written notice of intention to revoke or modify the license, and the contractor will be allowed 30 days (or such other time as may be authorized by the contracting officer for good cause shown by the contractor) after the notice to show cause why the license should not be revoked or modified. The contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency licensing regulations, any decisions concerning the revocation or modification.

(g) *Exercise of march-in rights.* The following procedures shall govern the exercise of the march-in rights set forth in 35 U.S.C. 203, paragraph (j) of the Patent Rights—Retention by the Contractor clauses, and subdivision (c)(1)(ii) of the Patent Rights—Acquisition by the Government clause:

(1) When the agency receives information that it believes might warrant the exercise of march-in rights,

before initiating any march-in proceeding in accordance with the procedures of subparagraph (g)(2) of this section, it shall notify the contractor in writing of the information and request informal written or oral comments from the contractor. In the absence of any comments from the contractor within 30 days the agency may, at its discretion, initiate the procedures below. If a comment is received, whether or not within 30 days, then the agency shall, within 60 days after it receives the comment, either initiate the procedures below or notify the contractor, in writing, that it will not pursue march-in rights based on the information about which the contractor was notified.

(2) A march-in proceeding shall be initiated by the issuance of a written notice by the agency head or a designee to the contractor and its assignee or exclusive licensee, as applicable and if known to the agency, stating that the Government has determined to exercise march-in rights. The notice shall state the reasons for the proposed march-in, in terms sufficient to put the contractor on notice of the facts upon which the action is based, and shall specify the field or fields of use in which the Government is considering requiring licensing. The notice shall advise the contractor, assignee, or exclusive licensee of its rights as set forth in this section and in any supplemental agency regulations or procedures. The determination to exercise march-in rights shall be made by the head of the agency or designee.

(3) Within 30 days after the receipt of the written notice of march-in, the contractor, its assignee or exclusive licensee, may submit in person, in writing, or through a representative information or argument in opposition to the proposed march-in, including any additional specific information which raises a genuine dispute over the material facts upon which the march-in is based. If the information presented raises a genuine dispute over the material facts, the head of the agency or designee shall undertake or refer the matter to another official for fact-finding.

(4) Fact-finding shall be conducted in accordance with the procedures established by the agency. Such procedures shall be as informal as practicable and be consistent with principles of fundamental fairness. The procedures should afford the contractor the opportunity to appear with counsel, submit documentary evidence, present witnesses, and confront such persons as the agency may present. A transcribed record shall be made and shall be

available at cost to the contractor upon request. The requirement for a transcribed record may be waived by mutual agreement of the contractor and the agency. Any portion of the march-in proceeding, including a fact-finding hearing that involves testimony or evidence relating to the utilization or efforts at obtaining utilization that are being made by the contractor, its assignee, or licensee shall be closed to the public, including potential licensees. In accordance with 35 U.S.C. 202(c)(5), agencies shall not disclose any such information obtained during a march-in proceeding to persons outside the Government except when such release is authorized by the contractor, its assignee, or licensee.

(5) The official conducting the fact-finding shall prepare or adopt written findings of fact and transmit them to the head of the agency or designee promptly after the conclusion of the fact-finding proceeding along with a recommended determination. A copy of the findings of fact shall be sent to the contractor, its assignee, or exclusive licensee by registered or certified mail. The contractor, its assignee or exclusive licensee, and agency representatives will be given 30 days to submit written arguments to the head of the agency or designee; and, upon request by the contractor, oral arguments will be held before the agency head or designee that will make the final determination.

(6) In case in which fact-finding has been conducted, the head of the agency or designee shall base his or her determination on the facts found, together with any other information and written or oral arguments submitted by the contractor, its assignee or exclusive licensee and agency representatives, and any other information in the administrative record. The consistency of the exercise of march-in rights with the policy and objectives of 35 U.S.C. 200 shall also be considered. In cases referred for fact-finding, the head of the agency or designee may reject only those facts that have been found to be clearly erroneous, but must explicitly state the rejection and indicate the basis for the contrary finding. Written notice of the determination whether march-in rights will be exercised shall be made by the head of the agency or designee and sent to the contractor, its assignee, or exclusive licensee, by certified or registered mail within 90 days after the completion of fact-finding or 90 days after oral arguments, whichever is later, or the proceedings will be deemed to have been terminated and thereafter no march-in based on the facts and reasons

upon which the proceeding was initiated may be exercised.

(7) An agency may, at any time, terminate a march-in proceeding if it is satisfied that it does not wish to exercise march-in rights.

(8) These procedures shall also apply to the exercise of march-in rights against inventors receiving title to subject inventions under 35 U.S.C. 202(d) and, for that purpose, the term "contractor," as used herein, shall be deemed to include the inventor and the term "exclusive licensee" shall be deemed to include partially exclusive licensee.

(9) An agency determination unfavorable to the contractor, its assignee, or exclusive licensee shall be held in abeyance pending the exhaustion of appeals or petitions filed under 35 U.S.C. 203(2).

(h) *Licenses and assignments under contracts with nonprofit organizations.* If the contractor is a nonprofit organization, the clause at 52.227-11 provides that certain contractor actions require agency approval, as specified below. Agencies shall provide procedures for obtaining such approval. Rights to a subject invention in the United States may not be assigned without the approval of the contracting agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions (provided that such assignee will be subject to the same provisions as the contractor).

27.304-2 [Amended]

19. Section 27.304-2 is amended by removing in the first sentence of paragraph (b) the words "27.304-1(f)(2), or 1.4".

20. Section 27.304-5 is amended by revising paragraph (c) to read as follows:

27.304-5 Appeals.

(c) Appeals procedures established under paragraph (b) of this subsection shall include administrative due process procedures and standards for fact-finding at least comparable to those set forth in 37 CFR Part 401.6(e)-(g) whenever there is a dispute as to the factual basis for an agency request for a conveyance of title under 27.302(d)(1) (i) through (v) including any dispute as to whether or not an invention is a subject invention.

21. Section 27.305-5 is amended by adding paragraph (c) to read as follows:

27.305-5 Publication or release of invention disclosures.

(c) As an additional protection for small business firms and nonprofit organizations 37 CFR Part 401 prescribes that agencies shall not disclose or release, in accordance with 35 U.S.C. 205, for a period of 18 months from the filing date of the application to third parties pursuant to request under the Freedom of Information Act or otherwise copies of any document which the agency obtained under contract which is part of an application for patent with the U.S. Patent and Trademark Office or any foreign patent office filed by the contractor (or its assignees, licensees, or employees) on a subject invention to which the contractor has elected to retain title. This prohibition does not extend to disclosure to other Government agencies or contractors of Government agencies under an obligation to maintain such information in confidence.

PART 45—GOVERNMENT PROPERTY

22. Section 45.508 is amended by removing the existing second sentence; by redesignating the existing third sentence as the second sentence; and by adding a new third sentence to read as follows:

45.508 Physical Inventories.

These may include electronic reading, recording and reporting or other means of reporting the existence and location of the property and reconciling the records.

23. Section 45.606-5 is amended in paragraph (d)(3) by adding a second sentence to read as follows:

45.606-5 Instructions for preparing and submitting schedules of contractor inventory.

(d) * * * In addition, hazardous material or property contaminated with hazardous material shall be identified as to the type of hazardous material.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

24. Section 52.219-5 is amended by adding Alternate I to read as follows:

52.219-5 Notice of total small business—labor surplus area set-aside.

Alternate I (JUN 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business

manufacturers or processors in the Federal market in accordance with 19.502-2(b), substitute the following subparagraph (c)(2) for subparagraph (c)(2) of the basic clause:

(c)(2) A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

52.219-6 [Amended]

25. Section 52.219-6 is amended by adding Alternate I to read as follows: *Alternate I* (JUN 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(b), substitute the following paragraph (c) for paragraph (c) of the basic clause:

(c) *Agreement.* A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

26. Section 52.219-7 is amended by adding Alternate I to read as follows:

52.219-7 Notice of partial small business set-aside.

Alternate I (JUN 1989). When the acquisition is for a product in a class for which the Small Business Administration has determined that there are no small business manufacturers or processors in the Federal market in accordance with 19.502-2(b), substitute the following subparagraph (c)(3) for subparagraph (c)(3) of the basic clause:

(c)(3) A regular dealer submitting an offer in its own name agrees to furnish, in performing the contract, only end items manufactured or produced in the United States, its territories or possessions, Puerto Rico, or the Trust Territory of the Pacific Islands.

27. Section 52.219-15 is added to read as follows:

52.219-15 Notice of participation by organizations for the handicapped.

As prescribed in 19.508(f), insert the following clause:

Notice of Participation by Organizations for the Handicapped (June 1989)

(a) *Definitions.*

"Handicapped individual" means a person who has a physical, mental, or emotional impairment, defect, ailment, disease, or disability of a permanent nature which in any way limits the selection of any type of employment for which the person would otherwise be qualified or qualifiable.

(b) The Offeror certifies that it is [] is not [] a public or private organization for the handicapped. An offeror certifying in the affirmative is eligible to participate in any resultant contract as if it were a small business concern.

(c) An Offeror certifying as a public or private organization for the handicapped agrees that at least 75 percent of the direct labor required in the performance of the contract will be performed by handicapped individuals.

"Public or private organization for the handicapped" means one which (1) is organized under the laws of the United States or of any State, operated in the interest of handicapped individuals, the net income of which does not inure in whole or in part to the benefit of any shareholder or other individual; (2) complies with any applicable occupational health and safety standard prescribed by the Secretary of Labor; and (3) employs in the production of commodities and in the provision of services, handicapped individuals for not less than 75 percent of the direct labor required for the production or provision of the commodities or services.

(End of clause)

28. Section 52.227-11 is revised to read as follows:

52.227-11 Patent Rights-Retention by the Contractor (Short Form).

As prescribed in 27.303(a), insert the following clause:

Patent Rights-Retention by the Contractor (Short Form) (Jun 1989)

(a) *Definitions.*

(1) "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

(2) "Made" when used in relation to any invention means the conception of first actual reduction to practice of such invention.

(3) "Nonprofit organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

(4) "Practical application" means to manufacture, in the case of a composition of product; to practice, in the case of a process or method; or to operate, in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or

Government regulations, available to the public on reasonable terms.

(5) "Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

(6) "Subject invention" means any invention of the contractor conceived or first actually reduced to practice in the performance of work under this contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(b) *Allocation of principal rights.* The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal Government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

(c) *Invention disclosure, election of title, and filing of patent application by contractor.*

(1) The Contractor will disclose each subject invention to the Federal agency within 2 months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. The disclosure to the agency shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after disclosure to the agency, the contractor will promptly notify the agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.

(2) The Contractor will elect in writing whether or not to retain title to any such invention by notifying the Federal agency within 2 years of disclosure to the Federal agency. However, in any case where publication, on sale or public use has initiated the 1 year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the agency to a date that is no more than 60 days prior to the end of the statutory period.

(3) The Contractor will file its initial patent application on a subject invention to which it elects to retain title within 1 year after

election of title, or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. The Contractor will file patent applications in additional countries or international patent offices within either 10 months of the corresponding initial patent application or 6 months from the date permission is granted by the Commissioner of Patents and Trademarks to file foreign patent applications where such filing has been prohibited by a Secrecy Order.

(4) Requests for extension of the time for disclosure election, and filing under subparagraphs (c) (1), (2), and (3) of this clause may, at the discretion of the agency, be granted.

(d) *Conditions when the government may obtain title.* The Contractor will convey to the Federal agency, upon written request, title to any subject invention—

(1) If the Contractor fails to disclose or elect title to the subject invention within the times specified in paragraph (c) of this clause, or elects not to retain title; provided, that the agency may only request title within 60 days after learning of the failure of the Contractor to disclose or elect within the specified times.

(2) In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in paragraph (c) of this clause, but prior to its receipt of the written request of the Federal agency, the Contractor shall continue to retain title in that country.

(3) In any country in which the Contractor decided not to continue the prosecution of any application for, to pay the maintenance fees on, or defend in reexamination or opposition proceeding on, a patent on a subject invention.

(e) *Minimum rights to Contractor and protection of the Contractor right to file.* (1) The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in paragraph (c) of this clause. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the contract was awarded. The license is transferable only with the approval of the Federal Agency, except when transferred to the successor of that part of the Contractor's business to which the invention pertains.

(2) The Contractor's domestic license may be revoked or modified by the funding Federal agency to the extent necessary to achieve expeditious practical application of subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor

has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.

(3) Before revocation or modification of the license, the funding Federal agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and agency regulations, if any, concerning the licensing revocation or modification of the license.

(f) *Contractor action to protect the government's interest.* (1) the Contractor agrees to execute or to have executed and promptly deliver to the Federal agency all instruments necessary to (i) establish or confirm the rights the government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal agency when requested under paragraph (d) of this clause and to enable the Government to obtain patent protection throughout the world in that subject invention.

(2) The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c) of this clause, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by subparagraph (c)(1) of this clause. The Contractor shall instruct such employees, through employee agreements or other suitable educational programs, on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.

(3) The Contractor will notify the Federal agency of any decisions not to continue the prosecution of a patent application, pay maintenance fees, or defend in a reexamination or opposition proceeding on a patent, in any country, not less than 30 days before the expiration of the response period required by the relevant patent office.

(4) The Contractor agrees to include, within the specification of any United States patent application and any patent issuing thereon covering a subject invention, the following statement, "The invention was made with Government support under (identify the contract) awarded by (identify the Federal

agency). The Government has certain rights in the invention."

(g) *Subcontracts.* (1) The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental, or research work to be performed by a small business firm or domestic nonprofit organization. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.

(2) The Contractor will include in all other subcontracts, regardless of tier, for experimental, developmental, or research work the patent rights clause required by Subpart 27.3.

(3) In the case of subcontracts, at any tier, the agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.

(h) *Reporting on utilization of subject inventions.* The Contractor agrees to submit, on request, periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the agency in connection with any march-in proceeding undertaken by the agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. 202(c)(5), the agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.

(i) *Preference for United States industry.* Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject invention in the United States unless such person agrees that any product embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

(j) *March-in rights.* The Contractor agrees that, with respect to any subject invention in

which it has acquired title, the Federal agency has the right in accordance with the procedures in 37 CFR 401.6 and any supplemental regulations of the agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal agency has the right to grant such a license itself if the Federal agency determines that—

(1) Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use;

(2) Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee, or their licensees;

(3) Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee, or licensees; or

(4) Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.

(k) *Special provisions for contracts with nonprofit organizations.* If the Contractor is a nonprofit organization, it agrees that—

(1) Rights to a subject invention in the United States may not be assigned without the approval of the Federal agency, except where such assignment is made to an organization which has as one of its primary functions the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;

(2) The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. 202(e) and 37 CFR 401.10;

(3) The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions will be utilized for the support of scientific research or education; and

(4) It will make efforts that are reasonable under the circumstances to attract licensees of subject inventions that are small business firms, and that it will give a preference to a small business firm when licensing a subject invention if the Contractor determines that the small business firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not small business firms; provided, that the Contractor is also satisfied that the small business firm has the capability and resources to carry out its plan or proposal.

The decision whether to give a preference in any specific case will be at the discretion of the contractor. However, the Contractor agrees that the Secretary of Commerce may review the Contractor's licensing program and decisions regarding small business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Secretary of Commerce when the Secretary's review discloses that the Contractor could take reasonable steps to more effectively implement the requirements of this subparagraph (k)(4).

(1) *Communications.*
(Complete according to agency instructions.)

(End of clause)

Alternate I (JUN 1989). As prescribed in 27.303(a)(3), add the following sentence at the end of paragraph (b) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments, their nationals and international organizations pursuant to the following treaties or international agreements:

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

Alternate II (JUN 1989). As prescribed in 27.303(a)(3), add the following sentence at the end of paragraph (b) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of the contract and effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

Alternate III (JUN 1989). As prescribed in 27.303(a)(4), substitute the following in place of subparagraph (k)(3) of the basic clause:

(3) After payment of patenting costs, licensing costs, payments to inventors, and other expenses incidental to the administration of subject inventions, the balance of any royalties or income earned and retained by the Contractor during any fiscal year on subject inventions under this or any successor contract containing the same requirement, up to any amount equal to 5 percent of the budget of the facility for that fiscal year, shall be used by the Contractor for the scientific research, development, and education consistent with the research and development mission and objectives of the facility, including activities that increase the licensing potential of other inventions of the facility. If the balance exceeds 5 percent, 75

percent of the excess above 5 percent shall be paid by the Contractor to the Treasury of the United States and the remaining 25 percent shall be used by the Contractor only for the same purposes as described above. To the extent it provides the most effective technology transfer, the licensing of subject inventions shall be administered by Contractor employees on location at the facility.

Alternate IV (JUN 1989). As prescribed in 27.303(a)(5), include the following subparagraph in paragraph (f) of the basic clause:

(5) The Contractor shall establish and maintain active and effective procedures to ensure that subject inventions are promptly identified and timely disclosed, and shall submit a description of the procedures to the Contracting Officer so that the Contracting Officer may evaluate and determine their effectiveness.

29. Section 52.227-12 is amended by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(JUN 1989)"; by revising and alphabetically inserting in paragraph (a) the definitions "Inventions", "Small business firm", and "Subject invention"; and by alphabetically adding the definition "Nonprofit organization"; by revising paragraphs (e)(3), (1), and Alternate I; by adding Alternate II; and by removing the derivation lines following "(End of clause)" and Alternate I to read as follows:

52.227-12 Patent rights-retention by the contractor (long form).

(a) * * *
"Invention" means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321 et seq.).

"Nonprofit organization" means a domestic university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c)) and exempt from taxation under section 501(a) of the Internal Revenue Code (26 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.

"Small business firm" means a small business concern as defined at section 2 of Pub. L. 85-538 (15 U.S.C. 532) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in

Government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.

"Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract; *provided*, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(e) * * *
(3) Before revocation or modification of the license, the funding Federal agency shall furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor shall be allowed 30 days (or such other time as may be authorized by the funding Federal agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable agency licensing regulations and 37 CFR 404 concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of its license.

(1) *Communications.*
(Complete according to agency instructions.)

Alternate I (JUN 1989). As prescribed in 27.303(b)(2), add the following sentence at the end of paragraph (b) of the basic clause:

The license shall include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements:

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties or agreements that are in effect on the date of the award but are not listed.]

Alternate II (JUNE 1989). As prescribed in 27.303(b)(2), add the following sentence at the end of paragraph (b) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract and effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under such treaties or international agreement with

respect to subject inventions made after the date of the amendment.

30. Section 52.227-13 is amended by removing in the title of the clause the date "(APR 1984)" and inserting in its place the date "(JUN 1989)"; by revising in paragraph (a) the definitions "Invention" and "Subject invention"; by removing in the second sentence in paragraphs (d) (2) and (3) the words "the Federal Property Management Regulations" and inserting in their place the words "37 CFR Part 404"; by revising paragraph (d)(4) and Alternate I; by removing the derivation lines following "(End of clause)" and Alternate I; and by adding Alternate II to read as follows:

52.227-13 Patents rights-acquisition by the government.

(a) * * *
"Invention," as used in this clause, means any invention or discovery which is or may be patentable or otherwise protectable under title 35 of the United States Code or any novel variety of plant that is or may be protectable under the Plant Variety Protection Act (7 U.S.C. 2321, et seq.).

"Subject invention," as used in this clause, means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this contract; *provided*, that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of contract performance.

(d) * * *
(4) When the Government has the right to receive title, and does not elect to secure a patent in a foreign country, the Contractor may elect to retain such rights in any foreign country in which the Government elects not to secure a patent, subject to the Government's rights in subparagraph (c)(1) of this clause.

Alternate I (JUN 1989). As prescribed in 27.303(c)(3), add the following sentence at the end of subdivision (c)(1)(i) of the basic clause:

The license will include the right of the Government to sublicense foreign governments, their nationals, and international organizations pursuant to the following treaties or international agreements:

[*Contracting Officer complete with the names of applicable existing treaties or international agreements. The above language is not intended to apply to treaties

or agreements that are in effect on the date of the award but are not listed.]

Alternate II (JUN 1989). As prescribed in 27.303(c)(3), add the following sentence at the end of subdivision (c)(1)(i) of the basic clause:

The agency reserves the right to unilaterally amend this contract to identify specific treaties or international agreements entered into or to be entered into by the Government after the effective date of this contract, and effectuate those license or other rights which are necessary for the Government to meet its obligations to foreign governments, their nationals, and international organizations under such treaties or international agreements with respect to subject inventions made after the date of the amendment.

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June 12, 1989

Part VI

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 801

Medical Devices; Labeling for Menstrual
Tampons; Ranges of Absorbency;
Reproposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 801

[Docket No. 86N-0479]

RIN 0905-AC54

Medical Devices; Labeling for Menstrual Tampons; Ranges of Absorbency; Reproposed Rule

AGENCY: Food and Drug Administration, HHS.

ACTION: Reproposed rule.

SUMMARY: The Food and Drug Administration (FDA) is reproposing amendments to its tampon labeling regulation. The repropose rule would require that manufacturers of menstrual tampons determine tampon absorbency using a test method specified in the reproposal, and, based on the results of that testing, express absorbency on tampon labeling by using one of six specified absorbency terms, each of which corresponds to a range of absorbency set forth in the reproposal. The repropose rule would enable consumers to compare the absorbency of one brand and style of tampons with the absorbency of other brands and styles before purchasing them.

Labeling of tampons to allow consumers to compare the absorbency of different brands and styles is important because the use of tampons is associated with toxic shock syndrome (TSS), a rare but serious and sometimes fatal disease, and the risk of contracting TSS increases with the use of tampons of higher absorbency. FDA is issuing this reproposal under the Federal Food, Drug, and Cosmetic Act (the act).

FDA is also announcing its tentative final response to a citizen petition submitted by the Public Citizen Health Research Group concerning absorbency labeling for tampons.

DATES: Written comments by August 11, 1989. The agency is proposing that any final rule based on the reproposal become effective for packages of tampons initially introduced or initially delivered for introduction into commerce after December 12, 1989.

ADDRESS: Written comments to the Dockets Management Branch (HFA 305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Les Weinstein, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of September 23, 1988 (53 FR 37250) (corrected 53 FR 44551, November 3, 1988, and 54 FR 1844, January 17, 1989), FDA proposed to amend its current regulation governing user labeling for menstrual tampons (21 CFR 801.430) to require uniform absorbency testing of tampons and to standardize a method of expressing absorbency on tampon package labels. The agency proposed such testing and labeling requirements to enable consumers to make interbrand comparisons and to choose the least absorbent tampon needed to control menstrual flow and, thus, reduce their risk of TSS.

Interested persons were given until December 22, 1988, to submit written comments on the proposal. The agency received more than 270 comments from tampon manufacturers, individual consumers, consumer groups, health-care professionals, and researchers. A summary of the comments received on the September 23, 1988, proposed rule and the agency's response to them are set out in section III of this preamble.

After analyzing all the comments, FDA has tentatively concluded that, with the modifications contained in the reproposal, the absorbency test methodology and sampling procedures in repropose § 801.430(f) are appropriate. However, after analyzing numerous comments from consumers, consumer groups, and manufacturers concerning the agency's initial proposal to use a system of letters to represent absorbency ranges and not to standardize currently used terms of absorbency (e.g., regular, super, and super plus), the agency has decided to repropose amendments to § 801.430 that would replace the letter designations with six absorbency terms that are different from currently used terms. The new terms, each of which would convey absorbency information, would correspond to the six absorbency ranges in the initial proposal (53 FR 37250). FDA is also now proposing to require that the applicable new term of absorbency be placed on the principal display panel(s) of tampon packages, separate from and more prominent than any other information except the corresponding numerical range of absorbency, if used. The agency believes that the repropose amendments would ensure truthful, accurate, and nonmisleading labeling and would facilitate interbrand comparisons of tampon absorbency.

The absorbency labeling scheme set forth in the reproposal is discussed under section II below and is based on FDA's analysis of comments on the initial proposal. FDA believes that the changes in the initial proposal are in character with the original labeling scheme and that they are a logical outgrowth of the initial proposal and the comments on it. Accordingly, FDA believes that it could justify publishing these repropose amendments as a final rule. However, neither tampon manufacturers nor consumers were afforded an opportunity to comment on the particulars of the labeling scheme included in the reproposal. Publication of this document as a final rule at this time, without further opportunity for public participation could, therefore, result in litigation challenging the rule on procedural grounds and delay promulgation of a final tampon absorbency labeling rule even further. Under these circumstances, FDA believes that publication of a reproposal, rather than a final rule, is the more prudent, and ultimately the more expeditious, course of action. The additional comment period is to ensure that all interested persons have sufficient opportunity to consider fully the feasibility of the repropose absorbency labeling scheme and its impact on consumers and manufacturers.

In addition to the comments on these revisions to the labeling, FDA is requesting comments on the likelihood of an outcome, due to the use of fixed nonoverlapping ranges, that would be inconsistent with the goal of enabling consumers to choose the least absorbent tampon needed to control menstrual flow and thus reduce their risk of TSS. This request for comments is discussed in section III B, paragraph 8 of this preamble (see also paragraph 5) and concerns the effects of product reformulation on consumers.

This reproposal contains information collection requirements which are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. The title, description, and respondent description of the information collection are shown below with an estimate of the annual reporting and recordkeeping burden. Included in the estimate is the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Title: Medical Devices; Labeling for Menstrual Tampons; Ranges of Absorbency; Reproposed Rule

Description: The proposed regulation requires that menstrual tampons be labeled

consistently so that purchasers can compare absorbency between brands.

consistently so that purchasers can compare absorbency between brands.

Description of Respondents: Businesses or other for profit.

Estimated Annual Reporting and Recordkeeping Burden:

Section	Annual number of respondents	Annual frequency	Average burden per response	Annual burden hours
801.430(e).....	5	0*	0	0
801.430(f).....	5	1	3,500 hrs.	17,500 hrs.
801.430(g).....	5	0*	0	0
Total	15	1	3,500 hrs.	17,500 hrs.

* Since tampon manufacturers are already required to provide labeling with the device, the minor labeling changes associated with this amendment will not be an additional burden.

FDA has submitted a copy of this reproposal to OMB for its review of these information collection requirements. Send comments regarding this burden estimate or any other aspect of these information collection requirements, including suggestions for reducing this estimated burden, to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, Washington, DC 20503.

II. Contents of the Reproposal

FDA is repropose to amend § 801.430 *User labeling for menstrual tampons* by revising paragraph (b), the introductory text of paragraph (d), paragraphs (d)(2), (d)(3), and (d)(4); by redesignating paragraphs (e) and (f) as paragraphs (g) and (h), respectively, and revising them; and by adding new paragraphs (e) and (f). These amendments, as repropose, are summarized as follows:

A. Introductory Information (§ 801.430(b))

The agency is not proposing any revisions to paragraph (b) beyond those included in the initial proposal. This paragraph would continue to state that data show that TSS, a rare but serious and sometimes fatal disease, is associated with the use of menstrual tampons and that to protect the public and to minimize the serious adverse effects of TSS, menstrual tampons are to be tested for absorbency and labeled as required in § 801.430.

B. Consumer Information (§ 801.430(d))

On its own initiative, the agency is proposing for the first time to amend the introductory text of paragraph (d) to remove any reference to a package insert or package and, instead, to refer to labeling, a term that includes all package labels as well as package inserts. (See section 201(m) of the act, 21 U.S.C. 321(m).) This revision would not affect the current provisions that allow the consumer information required by

paragraphs (d)(1) (i) and (ii), regarding the warning signs of TSS and what to do if they appear, to be included in a package insert rather than on the package label. (See current § 801.430(c).)

In response to comments and in light of new data, discussed in section III A, paragraph 3 of this preamble, FDA is proposing to update the estimate of the incidence of TSS contained in § 801.430(d)(2). The agency is now proposing, and requesting comment on, a revision of the estimated incidence of TSS to 1 to 17 (from 8 to 17) per 100,000 menstruating women and girls per year.

FDA is not proposing any revisions to § 801.430(d)(3) beyond those included in the initial proposal. Paragraph (d)(3) would state the advisability of using tampons with the minimum absorbency needed to control menstrual flow in order to reduce the risk of contracting TSS.

As discussed in section III A, paragraph 3 of this preamble, FDA is now proposing, and requesting comment on, a clarification of current § 801.430(d)(4) that would remove the word "possibly" from the phrase "possibly reducing the risk of getting TSS by alternating tampon use with sanitary napkin use during menstrual periods".

C. Absorbency Labeling (§ 801.430(e))

FDA had proposed requiring manufacturers to express absorbency on tampon package labels by the use of a letter, A-F, corresponding to one of six ranges of absorbency. The agency is now proposing, and requesting comment on, another approach. As repropose, § 801.430(e)(1) would establish a new set of standardized terms of absorbency (low absorbency, medium absorbency, medium-high absorbency, high absorbency, very high absorbency, and highest absorbency) for each of the six ranges of absorbency included in the initial proposal, instead of the letters.

FDA also is now proposing in § 801.430(e)(2) to require that the applicable new absorbency term be placed in a prominent and conspicuous

location on the principal display panel(s), separate from any other information on the principal display panel(s) except the corresponding numerical range of absorbency, if used. The reproposal would not, however, proscribe the use of currently used or other terms of absorbency so long as the resulting labeling were not false or misleading or otherwise in violation of section 502 of the act (21 U.S.C. 352) or any other provision of the act.

Repropose § 801.430(e)(3) would require that the package label include an explanation of the range of absorbency and its corresponding term and how consumers could use that information to make interbrand comparisons of tampon absorbency and, thereby, select tampons with the minimum absorbency needed to control menstrual flow in order to reduce the risk of contracting TSS.

Repropose § 801.430(e)(4) would provide that if a term of absorbency (e.g., junior, regular, super, or super plus), other than that required by repropose § 801.430(e)(1) is used in labeling, such as on an individual tampon wrapper, the absorbency term specified in paragraph (e)(1) must also be used.

D. Absorbency Testing (§ 801.430(f))

The agency is not proposing any revisions to the introductory text of paragraph (f) beyond those included in the initial proposal. Thus, under the reproposal, a manufacturer would have to measure the absorbency of individual tampons using the test method specified in paragraph (f)(2) and calculate the mean absorbency of a production run, lot, or batch by rounding to the nearest 0.1 gram.

The agency now proposes to further amend § 801.430(f)(1) to require that a manufacturer design and implement a sampling plan that would include collection of probability samples of adequate size to yield consistent tolerance intervals such that the probability would be 90 percent that at least 90 percent of the absorbencies of

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individual tampons within a package would be within the range of absorbency stated on the package label. The initial proposal would have required that the probability be 95 percent that at least 95 percent of the absorbencies of individual tampons within a brand and type were within the range of absorbency stated on the package label.

In response to comments on the initial proposal, § 801.430(f)(2) would be further revised to specify that the condom used in the test apparatus have a tensile strength between 17 Mega Pascals (MPa) and 30 MPa, as measured according to the standard procedure in the American Society for Testing and Materials (ASTM), D 3492-83, "Standard Specification for Rubber Contraceptives (Condoms)." FDA has also revised paragraph (f)(2) to state that the test is to be terminated when the tampon is saturated and the first drop of fluid either exits the apparatus or appears in the folds of the condom below the tampon, that the test results are to be discarded if fluid is detected in the folds of the condom before the tampon is saturated, and that the condom is to be replaced at the end of 10 tests or at the end of the day during which the condom is used in testing, whichever occurs first.

FDA is not proposing any revisions to § 801.430(f)(3) beyond those included in the initial proposal. Paragraph (f)(3) would provide procedures for an alternative absorbency test method subject to prior FDA approval and public notice of such approval.

E. Vending Machines (§ 801.430(g))

The reproposal includes a new provision that would redesignate paragraph (e) as paragraph (g) and revise it. Revised paragraph (g) would exempt any menstrual tampon intended to be dispensed by a vending machine from the requirements of § 801.430, except the requirement of paragraph (e)(4) of this section. Thus, under the repropose rule, vending machine tampons would not be required to contain any absorbency labeling. If, however, a nonstandardized term were used on the individual tampon wrapper, the absorbency term specified in § 801.430(e)(1) would also be required.

F. Effective Date (§ 801.430(h))

The reproposal also includes a new provision that would redesignate current paragraph (f) as paragraph (h) and revise newly designated paragraph (h). Revised paragraph (h) would require that any menstrual tampon that was not labeled as required by paragraphs (c), (d), and (e) of this section and that was initially introduced or initially delivered

for introduction into commerce 6 months after date of publication of the final rule would be misbranded under sections 201(n) and 502 (a) and (f) of the act.

III. Summary and Analysis of Comments

A. General Comments

1. Almost all the comments, including those from individual consumers, consumer groups, and manufacturers, supported FDA's overall goal to ensure that absorbency information be provided to consumers. One manufacturer supported the basic design of the proposed rule, another stated that the time has come for a meaningful tampon absorbency labeling requirement that will enable consumers to make appropriate interbrand comparisons and supported the proposal in that regard, and a third manufacturer generally supported the objective to standardize absorbency labeling among tampon brands. One consumer group specifically agreed with FDA's stated intentions, and the other consumer groups, and individual consumers, expressed general, overall support for the proposed rule. Specific suggestions included in the comments on how to improve the proposed rule to provide the most truthful, accurate, and nonmisleading information on tampon absorbency to consumers are addressed in subsequent paragraphs of this preamble.

For the reasons discussed in section I of this preamble, FDA has concluded that amendments to the regulations should be repropose. The reproposal would enable consumers to compare the absorbency of one brand and style of tampons with the absorbency of any brand and style, to choose the lowest absorbency needed to control menstrual flow, and, as a result, to reduce their risk of TSS.

2. One comment opposed any final rule on the grounds that consumers would not use the information, money would be wasted in enforcement, and the cost of tampons would increase.

Although the testing requirements and the labeling changes imposed by a final rule based on the initial proposal or on this reproposal would result in costs to manufacturers, the agency disagrees that enforcement costs or increases in the cost of tampons would be significant compared to the public health benefit of providing truthful, accurate, and nonmisleading information about tampon absorbency to consumers. The comment contained no data or information to support any changes in the cost estimates contained in the agency's initial economic impact analysis or to support the contention

that consumers would not use tampon absorbency information.

3. Five comments addressed the association of TSS with tampon absorbency. Two comments reviewed the data supporting that association, noting that there is still no scientific explanation for the association of tampon absorbency with TSS incidence. These comments claimed that absorbency may be a surrogate for some other risk factor, such as the introduction of oxygen into the vaginal environment with tampon insertion, citing Ref. 46 of the preamble to the initial proposal. The authors of one of these two comments stated that they had recently submitted for publication a paper reanalyzing epidemiology data that they claimed showed that TSS is more strongly linked to tampon oxygen content than to tampon absorbency. One comment noted that not all TSS cases are associated with tampon use, and wondered how such cases arise. Two other comments suggested that FDA needs to update the estimates of the incidence of TSS (contained in current § 801.430(d)(2)) in light of new data. One of these two comments specifically suggested that information presented at the International Symposium on TSS, held in Atlanta, Georgia on November 15-18, 1987, should be used as the basis for such an update.

FDA agrees that there is a lack of definitive information about the mechanism by which tampon absorbency is associated with an increased risk of TSS. FDA is unaware of any evidence that tampon oxygen content is more closely linked to TSS risk than is tampon absorbency; Ref. 46 of the preamble to the proposed rule merely speculates that absorbency is a surrogate for some other factor. Neither the reanalysis of epidemiology data nor the paper submitted for publication containing the reanalysis was provided to the agency. By contrast, and as explained in the preamble to the initial proposal, the available data (see 53 FR 37250 and 37251 and the references cited there) demonstrate that there is a statistically significant association between tampon absorbency and the incidence of TSS. Therefore, FDA continues to believe that additional labeling is necessary to ensure that women can make informed choices to select the least absorbent tampon needed and thus decrease their risk of the disease.

As stated in the preamble to the proposed rule (53 FR 37250), although there has been a decrease in cases of TSS reported to the Centers for Disease

Control (CDC), new cases continue to be reported to CDC, and deaths from TSS continue to be reported to FDA's medical device reporting system. The decrease in reported cases could represent a decrease in actual cases of TSS as a result of FDA-mandated labeling regarding TSS, FDA's education efforts, and other factors; it could also reflect fewer cases being reported to CDC. The agency is familiar with the November 1987 reference cited in the comment. The reference is to a recently published study based on a presentation made by CDC scientists at a November 1987 scientific conference on TSS.

The study (Ref. 1) shows that following active surveillance for TSS in Los Angeles County and in the states of Missouri, New Jersey, Oklahoma, Tennessee, and Washington a total of 83 menstrually related cases of TSS were reported. Extrapolating from these data, the study shows that the nationwide incidence of menstrual TSS in 1986 was estimated to be 1.05 per 100,000 per year. FDA recognizes that the actual incidence of TSS is not known and can be estimated only by extrapolating from the number of reported cases. In 1982, FDA was aware of three such estimates of the actual incidence of TSS: (1) 6.2 per 100,000 menstruating girls and women per year; (2) 17 per 100,000 menstruating girls and women per year; and (3) 6.6 per 100,000 menstruating girls and women per year. (See 47 FR 26982; June 22, 1982, and the references cited there.) Using these figures, the agency concluded that a reasonable estimate of the actual incidence was between 6 and 17 per 100,000 menstruating women and girls per year (47 FR 26982). Because the actual incidence of TSS can only be estimated, FDA believed then, as it does now, that consumers must be aware of the range in estimates. Combining this new estimate (Ref. 1) with the earlier data (47 FR 26982), FDA has tentatively concluded that a reasonable estimate of the current actual incidence of TSS is between the lowest and highest reported estimates, i.e., between 1 and 17 per 100,000 menstruating women and girls per year. Accordingly, FDA now proposes to revise the estimated incidence of TSS in current § 801.430(d)(2) to 1 to 17 (instead of 6 to 17) per 100,000 menstruating women and girls per year.

FDA also proposes to revise § 801.430(d)(4) to remove "possibly" from the phrase "possibly reducing the risk of getting TSS by alternating tampon use with sanitary napkin use during menstrual periods". Another recently published study based on a presentation at the November 1987

scientific conference on TSS was a multistate case-control study of risk factors for menstrual TSS that compared 108 TSS cases in 1986-1987 with 185 controls selected from friends of the patients and 187 telephone exchange-matched controls (Ref. 2). This study confirmed that tampon use is a risk factor for developing TSS during menstruation, and that the risk increases with increasing tampon absorbency. The study also confirmed an earlier finding by CDC (47 FR 26986) that continuous use of tampons throughout the menstrual period increases the risk of TSS, and, further, demonstrated that each day of continuous tampon use increases the risk of TSS. Beginning in 1982, FDA had required manufacturers to include the advice that women could "possibly" reduce their risk of TSS by alternating tampon use with sanitary napkin use, based on CDC's earlier finding (47 FR 26986). In view of the new data, the agency now proposes to revise current § 801.430(d)(4) by removing the word "possibly" from the phrase "possibly reducing the risk of getting TSS by alternating tampon use with sanitary napkin use during menstrual periods".

4. Several manufacturers commented on FDA's statement in the preamble to the proposed rule (53 FR 37254) that tampons are misbranded under section 502(f)(1) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 352(f)(1)) because current tampon labeling does not contain any information with which a woman can determine the relative absorbency of different brands of tampons. One manufacturer commented that FDA never communicated this view to the industry in any of the several reviews done by FDA staff of tampon package and package insert labeling provided to the agency in premarket notification submissions under section 510(k) of the act (21 U.S.C. 360(k)) and Subpart E of Part 807 of FDA's regulations (21 CFR Part 807 Subpart E). Another manufacturer disagreed that the failure to provide such information rendered tampons "misbranded" under current law, and argued that a product should be considered misbranded only if it failed to comply with a labeling rule after its effective date. Yet another manufacturer expressed a similar view and sought to support its position by quoting the agency itself, "[i]n the absence of the regulation, however, violation of that specific authority does not necessarily occur by conduct that the regulation would have covered." (47 FR 39147 at 39154; September 7, 1982), and by citing *National Nutritional Foods*

Ass'n v. Weinberger, 512 F.2d 688 (2d Cir.), cert. denied, 423 U.S. 825 (1975). This comment recommended that, to avoid any possible confusion and misinterpretation, the preamble to any final rule make clear that tampons currently on the market are not misbranded, and that a tampon could not be considered misbranded for noncompliance with a final rule unless the tampon were introduced into commerce after the rule became effective. Two consumer groups supported the statement in the preamble to the effect that, without the additional absorbency information, tampons are misbranded.

As the agency tentatively concluded (53 FR 37254), omission of uniform absorbency information does render tampons misbranded within the meaning of sections 201(n) and 502(a) and (f)(1) of the act (21 U.S.C. 321(n) and 352(a) and (f)(1)). But, rather than act against individual tampons to remedy the deficiency, FDA has proposed, consistent with its authority, to address the misbranding by requiring a uniform labeling system through rulemaking. Thus, FDA stated in the preamble to the proposed rule (53 FR 37254) that "any tampon that is not labeled as required and that is initially introduced * * * after the effective date of the rule would be misbranded * * ." (Emphasis added.) And, as provided in § 801.430(h) of the reproposal, any tampon that is not labeled as required by any final rule and that is initially introduced or initially delivered for introduction into commerce after the effective date of the final rule would be misbranded under sections 201(n) and 502(a) and (f)(1) of the act. (The effective date of the final rule is discussed in section III E, paragraph 17 of this preamble.) FDA advises, however, that those and the other device misbranding provisions of the act are self-executing and apply to all labeling of all tampons, and that compliance with the labeling requirements of any final rule would not preclude FDA from taking action against any tampon the labeling of which misbranded the product in any respect, or which otherwise caused the product to be in violation of the act.

B. Approaches to Absorbency Labeling

Many comments were received from consumers, consumer groups, and tampon manufacturers on FDA's initial proposal to require that tampon absorbency be expressed by a letter representing a range of absorbency rather than as a single number.

5. One consumer group and one manufacturer argued that a single

number is necessary to adequately convey tampon absorbency information to consumers. These comments claimed that the use of ranges would prevent women from being able to distinguish between tampon brands or styles of known absorbency at either the low or high end of a given absorbency range. The consumer group further claimed that the use of ranges would limit the choices available to consumers to only three. The group also argued that single numbers are more informative and clearer than ranges and "will more easily facilitate interbrand comparisons." The manufacturer commented that a range concept would be acceptable to define broad categories, but that manufacturers should be allowed to state where in a range a product falls, using a single number for absorbency derived from averaging test results from a sample of 16 tampons.

Most individual consumers who commented favored the use of nonoverlapping ranges, as did three other consumer groups, and three other manufacturers. These comments generally agreed with FDA's tentative conclusion (53 FR 37260) that variations in tampon production and tampon absorbency testing make the use of ranges necessary, and that the ranges chosen by FDA were appropriate and as narrow as possible given current production and testing capabilities. Two consumer groups argued that the need for accurate, clear, and easily comprehensible absorbency disclosure far outweighs the theoretical disadvantage of limiting the variety of new formulations.

As stated in the preamble to the initial proposal (53 FR 37260), FDA tentatively concluded that the data show that a single numerical designation does not and cannot accurately represent the contents of a given box of tampons. Because of the variations in tampons, as described in the preamble to the proposed rule (53 FR 37260 and 37261), and in the syngyna testing method, as discussed in section III C, paragraph 11 of this preamble, currently the only truthful, accurate, and nonmisleading representation of the contents of a box can be that it contains tampons with absorbencies within a given range. A single number, representing the average absorbency of any sample of tampons, would and could not accurately represent the absorbency of individual tampons. (See section III C, paragraphs 11 and 12 of this preamble for a complete discussion of sampling.) For these reasons, FDA continues to believe that the use of single numbers is not

feasible at this time. If future advances in technology allowed the production of tampons and the measurement of their absorbency such that only slight variations from an average absorbency were found, FDA would consider proposing amendments to any final rule. The reproposal would permit, but not require, a manufacturer to include on tampon labeling the numerical range of absorbency corresponding to the applicable term of absorbency (see section III B, paragraphs 7 and 10 of this preamble and § 801.430(e)(2) of the reproposal) whenever the term is used, e.g., medium absorbency (6-9 grams).

Further, FDA disagrees that the use of ranges would limit the choices available to consumers to only three: The reproposal would establish six ranges. To be sure, the initial proposal and the reproposal would limit the choices available to consumers to only those brands or styles that fall within one of six nonoverlapping ranges and would preclude marketing of any products which fall at or near the limits of the ranges, i.e., average absorbency of 6, 9, 12, 15, or 18 grams. Although most currently manufactured products would meet the requirements of this reproposal as to absorbencies and tolerance intervals, a manufacturer might have to improve its quality control or reformulate a few of its products if these products were to remain on the market. However, based on previous studies (53 FR 37260), consumer choice in terms of currently marketed products would not be significantly decreased by limiting the ranges to six. Although hypothetical future choices available to the consumer could be increased by allowing overlapping ranges (53 FR 37255), FDA continues to believe that if overlapping ranges were allowed they would not provide unambiguous absorbency information (53 FR 37260).

6. Three consumers commented that single numbers would be better than ranges, one claiming that single numbers are used successfully for sunscreens, and another claiming that disadvantaged populations would have difficulty understanding ranges. Another consumer favored using ranges, but indicated that six categories are too many and recommended that there be only three categories. Finally, one consumer suggested that the ranges be clarified as follows: 6 and under, over 6 to 9, over 9 to 12, over 12 to 15, over 15 to 18, and over 18.

FDA continues to believe that the use of single numbers to represent grams of fluid absorbed is technically infeasible. (See section III B, paragraph 5 of this preamble.) Therefore, although the

agency agrees that the use of a sun protection factor is effective and appropriate in labeling for sunscreens, single numbers to indicate tampon absorbency would be misleading. As stated in section III B, paragraph 5 of this preamble, however, the reproposal would permit, but not require, a manufacturer to include on tampon labeling the numerical range of absorbency corresponding to the applicable term of absorbency whenever the term were used. FDA disagrees with the recommendation that the ranges of absorbency be reduced from six to three. Such a reduction is unnecessary, and would diminish consumer choices among currently marketed products. FDA also rejects as unnecessarily complex the suggestion that the word "over" be added to four of the numerical ranges to eliminate confusion about overlap.

The agency is unaware of any basis for concluding that disadvantaged persons would have difficulty understanding ranges and, therefore, rejects this comment. The agency intends to revise and continue its TSS education campaign to include explanations of the new absorbency information. (See also section III I, paragraph 22 of this preamble.)

7. FDA received many comments on the use of letters to designate ranges of absorbency. One manufacturer, one consumer group, and several individual consumers, opposing the use of letters, contended that their use would create confusion because consumers are accustomed to numbers, not letters, representing quantity or size, because the use of letters would require that consumers learn two systems (the letters and the numerical ranges to which they refer), and because consumers would not know whether "A" were high or low. A comment from an individual consumer argued that "A" commonly indicates "most desirable" and, thus, would be misinterpreted by consumers. By contrast, comments from two manufacturers, two consumer groups, and most individual consumers, supported the use of letter designations. These comments supported the use of a labeling scheme that does not use numbers, arguing that letter designations would provide an accurate and simple labeling approach incorporating notions familiar to most consumers, and that, because consumers are accustomed to thinking that higher numbers are better in terms of increased protection or decreased risk (as with sunscreen labeling), any final rule should use a different system, one that would not encourage the use of higher

absorbencies. Another consumer group stated that letter designations would be easy for women to accept, noting that letters are used by the pantyhose industry. Individual consumers, also supporting the use of letter designations, claimed that most people will believe that "A" offers the least amount of absorbency, and that a letter rating would make the categories more distinct and informative and would influence consumers to use less absorbent tampons.

Although the agency agrees that the use of sun protection factors on labeling for sunscreens is effective and appropriate, FDA believes that this is so because the public understands that the higher the number, the greater the blockage of ultraviolet radiation and the greater the health benefit. In the case of tampons and TSS, the reverse would be true: the higher the number the higher the risk of TSS and the lower the public health benefit. FDA, therefore, believes that the analogy to sunscreen labeling is unpersuasive. Also, the agency continues to believe that the use of single numbers to represent grams of fluid absorbed by tampons is not feasible at this time. (See section III B, paragraph 5 of this preamble.)

FDA agrees, however, with the comments that the use of letters representing numerical ranges might be confusing and that consumers might not be able to readily ascertain which letters represented high or low absorbency. For example, if consumers assumed that the letters represented a hierarchy similar to that commonly used in educational grading systems, consumers could select a "D" thinking it was a very low absorbency product, when, in fact, it is highly absorbent. The agency has tentatively concluded, therefore, that letter designations would not provide to consumers the clear, nonmisleading absorbency information that was intended in the proposed rule, and, accordingly, has removed letter designations from the reproposal.

FDA, however, also agrees that a numerical system, by itself, would pose the problems discussed in other comments. The agency has tentatively concluded that a system in which a new set of standardized, clear, nonmisleading terms of absorbency, corresponding to standardized nonoverlapping ranges of absorbency, would best facilitate interbrand comparison of tampon absorbencies and selection of the least absorbent tampon needed. Accordingly, FDA now proposes to further revise § 801.430(e)(1) to require the use of the following absorbency terms in lieu of letters: low

absorbency, medium absorbency, medium-high absorbency, high absorbency, very high absorbency, and highest absorbency (see section III B, paragraph 10 of this preamble), each corresponding to one of the six nonoverlapping ranges provided for in the initial proposal. The applicable term, which must be on the principal display panel(s), would readily convey absorbency information to consumers. In addition, repropose § 801.430(e)(2) would permit a manufacturer to include on tampon labeling the numerical range of absorbency corresponding to the applicable term of absorbency whenever the manufacturer used a term.

8. One manufacturer claimed that, if promulgated as proposed with respect to ranges of absorbency, a final rule would require the manufacturer to reformulate two of its tampon styles to increase the absorbency of one product so that it would fit into the 12 to 15 absorbency range, and to decrease the absorbency of another product so that it would fit into the 6 to 9 absorbency range. The comment maintained that the consequence of increasing absorbency would be inconsistent with the goal of encouraging the use of less absorbent tampons, and that the consequence of reducing absorbency could be an ineffective product, which in turn would lead consumers to switch to a more absorbent product and thus incur an increased risk of TSS.

FDA recognizes that, although the reproposal would not actually require reformulation, some manufacturers would need to reformulate to maintain a product in each of the specified ranges and to retain the diversity of products comparable to their current product lines. FDA believes, however, that if two of a manufacturer's product styles were so close in absorbency as to fall within a single range, it would be misleading to consumers to allow those products to be labeled as if there were a significant difference in absorbency, when the absorbencies of the two styles of tampons significantly overlapped. FDA also recognizes that reformulating could result in increased absorbency in some styles of tampons and decreased absorbency in others. FDA believes, however, that the risk posed by any increases in absorbency involved would be outweighed by the benefits to consumers of having a truthful, accurate, and nonmisleading labeling system that allowed interbrand comparison of tampon absorbencies and selection of the least absorbent tampon needed. FDA does not have any evidence to support the contention that a manufacturer would actually lower the

absorbency of one of its products to the point where it would be ineffective for all consumers, and thereby lead consumers to shift to a higher absorbency product.

FDA solicits comments on the possibility that some tampons might be reformulated and some consumers might buy more absorbent tampons than they are currently using as a result of a final rule requiring fixed nonoverlapping ranges, and on the agency's view that the benefit of truthful, nonmisleading, and accurate labeling would outweigh the potential for product reformulation or consumer use of more absorbent tampons.

9. One manufacturer argued that the dividing point between the 9 to 12 absorbency range and the 12 to 15 absorbency range should be 11.5 instead of 12 grams of fluid, as specified in proposed and repropose § 801.430(e)(1), to minimize the absorbency increase the manufacturer would be required to make in one of its tampon styles that it claims is used by about 1.5 million consumers.

FDA acknowledges that some styles of currently marketed tampons have absorbencies that are close to the boundaries between the ranges specified in the reproposal (see section III B, paragraph 8 of this preamble), and recognizes that, if the ranges of absorbency set out in repropose § 801.430(e)(1) were included in any final rule, a manufacturer might have to make small modifications in composition to ensure that its products did not have a significant number of individual tampons in a box outside the labeled range. The agency believes, however, that such small changes in composition, or in other design or production factors influencing absorbency, are routine for the tampon industry as evidenced by the repeated changes in product absorbency reported to FDA in premarket notification submissions, yet never communicated to consumers. Consistent with the data supporting the ranges of absorbency initially proposed (see 53 FR 37260), the comments supporting those ranges, and the purposes of the reproposal, FDA has tentatively concluded that the 3-gram absorbency ranges represent the narrowest ranges that can be accurately defined given current technology. The agency therefore does not believe that the 9 to 12 absorbency range should be narrowed or the 12 to 15 absorbency range broadened.

In sum, based on the data discussed and cited, and for the reasons discussed, in the preamble to the initial proposal and in section III B, paragraphs 5

through 9 of this preamble, the reproposal contains no changes in the proposed ranges of tampon absorbency.

10. FDA received many comments in response to its request for comment (53 FR 37260) on the need to standardize the absorbency terms currently used by manufacturers (e.g., regular, super, and super plus).

The agency received more than 250 comments from individual consumers, consumer groups, and manufacturers arguing that FDA should standardize or eliminate existing absorbency terms. These comments contended that letter designations combined with nonstandardized terms would be confusing, could mislead consumers as to the difference (or lack of difference) in absorbency between products, or could lead consumers to reject the letter designations in favor of the familiar terms.

Two manufacturers, three consumer groups, and most individual consumers favored standardizing currently used terms rather than eliminating them, because the terms are familiar and would be useful to consumers if they were standardized. One consumer group and several individual consumers preferred eliminating currently used terms, arguing that they are misleading.

One of the two manufacturers recommended that four terms be standardized as follows: junior, under 6; regular, 6-9; super, 9-12; and super plus, 12-15, with no terms for the two top ranges. This comment also argued that, although some manufacturers would be required to change product or production processes to comply with the ranges specified in the proposed rule, those manufacturers would not have to make any additional changes if FDA also standardized existing terms.

One manufacturer opposed standardization of the terms—junior, regular, super, and super plus—currently used by a manufacturer whose tampons account for approximately 60 percent of the market. Such standardization, the comment argued, would go unnoticed by the purchasers of that manufacturer's tampons, and, therefore, would dilute the benefit the agency is striving to achieve. The comment further argued that, if any terms were standardized, the agency should instead adopt terminology such as extra light, light to moderate, moderate, moderate to heavy, heavy, and extra heavy, for absorbency ranges A to F, respectively.

FDA has tentatively concluded, based on the comments and on its own analysis, that letter designations and nonstandardized terms would not provide consumers with clear and nonmisleading information about the

absorbency of tampons at the time of purchase. (See section III B, paragraph 7 of this preamble.) FDA agrees with the majority of the comments that the unrestricted combination of currently used absorbency terms with letters might confuse some consumers who would not immediately understand the significance of the letters and would rely instead on the nonstandardized familiar terms. To eliminate this potential problem, the agency considered standardizing currently used terms, but rejected that approach for two reasons. First, there are six ranges for which terms are needed and only three or four (depending on whether junior is included) widely used terms. Second, FDA believes that an effective labeling scheme can be established such that manufacturers may continue to label currently marketed products with their familiar terms without compromising the intent of the rule, which is to facilitate interbrand comparisons.

FDA has tentatively concluded that by requiring the use of new absorbency terms, each of which conveys absorbency information, and by requiring that a new term be on the principal display panel(s), separate from, and more prominent than any other information except the corresponding numerical range of absorbency, the reproposal would ensure truthful, accurate, and nonmisleading labeling and would facilitate accurate interbrand comparisons.

Each principal display panel would be required to contain one of the following terms, each corresponding to a specific range: low absorbency (less than or equal to 6 grams); medium absorbency (from 6 to 9 grams); medium-high absorbency (from 9 to 12 grams); high absorbency (from 12 to 15 grams); very high absorbency (from 15 to 18 grams); and highest absorbency (greater than 18 grams). As discussed in section III F, paragraph 18 of this preamble, FDA proposes to ensure that these new absorbency terms not be confused with existing terminology (e.g., junior, slender, light flow, regular) by requiring that the new absorbency terms be more prominent than, and separate from, any other information on the principal display panel except the corresponding numerical range of absorbency; by requiring that consumers be referred to the location on the package label where further explanation of the new terms and their corresponding ranges would be provided; and by not allowing any information other than the corresponding numerical range of absorbency to be used in conjunction with the new standardized absorbency

terms (e.g., junior, low absorbency would be prohibited).

Because these new absorbency terms would be clear and nonmisleading and because their prominence would be ensured, FDA has tentatively concluded that there is no need to proscribe the use of existing terminology (e.g., junior, slender, light flow, regular). In addition, FDA believes that consumer familiarity with current terms and the absorbency of the products that bear those particular terms provides a useful frame of reference for consumers that would be eliminated if such terms were proscribed.

Although the reproposal would not eliminate the use of current terms, the agency believes that consumers, including first-time users, would focus on the new absorbency information communicated by the new terms on the principal display panel(s), and, aided by the explanation elsewhere on the package label and by the FDA educational campaign (see section III I, paragraph 22 of this preamble), would rely on the new absorbency terms to make interbrand comparisons of absorbency. As stated in section III A, paragraph 4 of this preamble, FDA would regard a product as misbranded if the labeling, by virtue of the use of other absorbency information in conjunction with the required terms, were false, misleading, or otherwise in violation of section 502 of the act (21 U.S.C. 352). Manufacturers might elect to eliminate their current terms, especially after consumers became familiar with the new absorbency terms. If a manufacturer chose to retain its current terms, it would have to ensure that its tampon labeling was neither false nor misleading and was otherwise in compliance with the act.

C. Absorbency Testing

FDA requested comment (53 FR 37281) on whether a tolerance interval of 90 percent, as opposed to 95 percent as provided in the initial proposal, would be sufficient to ensure that only a small number of tampons of a particular style fell outside the given absorbency range for that style. Several comments addressed this and related issues.

11. Four manufacturers objected to the agency's proposal on the ground that it would not be technically feasible.

The first manufacturer provided an analysis of components of variation which allegedly showed that the total variability in absorbency test data is due largely (85 percent) to the syngyna test rather than to production variability (15 percent). According to the comment,

it would be feasible to establish a 90 percent tolerance interval.

The second manufacturer argued that in addition to demonstrated inherent variability in the syngyna test methodology, there is a significant variance in the absorbent quality of the materials used to make tampons, that humidity levels in storage and production facilities affect absorbency, and that even small variations in the compression process used in manufacturing could affect absorbency. This comment provided summary data on syngyna tests conducted in 1988 using retail products made by its competitors. The summary data purported to show that between 22 and 48 percent of individual tampons fell outside the 2-gram range of absorbency listed on the box. The comment concluded that it was technically feasible only to require that the statistical confidence level be 90 percent that at least 90 percent of the individual tampons within a brand and style be within the labeled range.

The third manufacturer proposed that tolerance intervals be established such that the probability be 95 percent that no more than 5 percent of the tampons in a given package would exceed the upper limit and a 95 percent probability that no more than 20 percent would be below the lower limit. The comment argued that such an approach would allow manufacturers to focus primarily on those aspects of product design or process changes that would ensure that the upper limit is not exceeded, while recognizing that products below the low end of the range do not present as great a risk. The comment requested that FDA, if it failed to accept this proposal, adopt a tolerance interval such that there be a 95 percent probability that 90 percent of the production fell within the labeled range.

The fourth manufacturer maintained that the proposed tolerance interval of 95 percent might be practical for tampons of lower absorbency, but that it would be difficult to routinely conform to that requirement for the two highest ranges because of the normally larger variability in manufacturing for tampons of higher absorbency. This manufacturer recommended either broadening the ranges for the higher categories (e.g., instead of 12 to 15, use 12 to 16) or establishing a 90 percent tolerance interval.

FDA has carefully reviewed the analysis of the components of variation provided by the first manufacturer and believes that the analysis is deficient in several respects. Although a classical component of variation analysis was provided, the manufacturer attempted to

further subdivide the components of error to attribute 15 percent to the product and 85 percent to the test method. To do this, the manufacturer assumed a model for tampon absorbency that attributed actual absorbency only to the dry weight of the fibers in a tampon. FDA believes that this model is overly simplistic because it ignores factors other than dry weight and test method and also assumes that all factors operate independently. As discussed in the preamble to the initial proposal (53 FR 37261) and in the comments summarized elsewhere in this paragraph, production factors other than dry weight, e.g., compression, absorbent quality of the fiber, and humidity, can influence measured absorption. The agency has tentatively concluded that the simple model given, by ignoring these other factors inherent in the manufacturing process and the manufactured product, erroneously imparted the variation from these other factors to the remaining uncontrolled variable, the test method. FDA, therefore, does not accept the numerical results purporting to show that the test method is responsible for 85 percent of the variability.

The agency also has considered the summary data provided by the second manufacturer on its competitors' products. In the agency's view, it is not possible to apply these data to the proposed 3-gram absorbency ranges, because the data relate to 2-gram absorbency ranges. In addition, it is not possible to assess these summary data as they relate to the ability of a manufacturer to establish tolerance intervals based on sampling, because the raw data were not provided.

Further, FDA does not believe that the suggestion to allow up to 20 percent of tampons of a particular brand or style to be below the lower limit of a labeled range would be consistent with providing the consumer a truthful, accurate, and nonmisleading description of the individual tampons being purchased, either as regards the risk of TSS or product effectiveness.

As stated in the preamble to the proposed rule (53 FR 37261), FDA's intent is to ensure that only a small number of tampons of a particular style could fall outside the given absorbency range for that style. For that reason, the agency proposed to require the establishment of tolerance intervals. Such intervals provide limits based on the results of individual test observations in the overall test sample.

Establishing a tolerance interval requires defining both the proportion of individual observations that will be within a given range and the probability

of that proportion occurring. A tolerance interval is necessarily wider than the more common confidence intervals that apply to the standard deviation of the mean of the overall test sample. Thus, when the agency proposed that there be a 95 percent probability that 95 percent of the tampons (95/95) would be within the stated 3-gram (of absorbed fluid) range, the standard deviation of the mean of the test sample of 15 tampons could be no greater than 0.51. (If a manufacturer chose to use a larger sample size, the standard deviation of the mean could be larger than 0.51, but not substantially.) For a tolerance interval such that there was a 90 percent probability that 95 percent of the tampons (90/95) would be within a specified range, the standard deviation of the mean of the test sample could be no greater than 0.55. For a tolerance interval such that there was a 95 percent probability that 90 percent of the tampons (95/90) would be within a specified range, the standard deviation of the mean of the test sample could be no greater than 0.61. For a tolerance interval such that there was a 90 percent probability that 90 percent of the tampons (90/90) would be within a specified range, the standard deviation of the mean of the test sample could be no greater than 0.66.

Using any of these approaches to establish tolerance intervals, therefore, would require that the standard deviation of the mean of the test sample be small compared with the 3-gram range. FDA believes that this fact, coupled with the fact that manufacturers could always target the absorbency of their products at or near the middle of each range, and the data discussed in the preamble to the initial proposal (53 FR 37261), establish that the likelihood is great that only a small number of tampons of a particular style will fall outside of the range established for that style, whether the tolerance interval is 95/95, as first proposed, or 90/95, 95/90, or 90/90, as three manufacturers urged. Thus, FDA has tentatively concluded that there is no substantial difference in public health consequence between any of these tolerance intervals; they would all ensure that consumers would have a high degree of assurance that the risk of TSS is uniform for all tampons of a particular style. Accordingly, there would be no significant public health gain in requiring a 95/95 tolerance interval.

Moreover, FDA has tentatively concluded, based on the comments and on its reevaluation of all the available absorbency test data, that there is enough inherent variability in the

syngyna test method, in the quality of the fibers used to make tampons, and in production methods and conditions, particularly in the manufacture of higher absorbency tampons, to make it technically infeasible for manufacturers to comply with a requirement that there be a 95 percent probability that 95 percent of tampons fall within the labeled range. Such a tolerance interval would correspond to a standard deviation of the mean of the test sample of less than 0.51. On the other hand, the manufacturers' comments appear to establish that a tolerance interval is technically feasible such that there be a 90 percent probability that 90 percent of the tampons fell within the labeled range. Such a tolerance interval would correspond to a standard deviation of the mean of the test sample of less than 0.66. Because it is both adequate to ensure that few tampons will fall outside the labeled range and is technically feasible, FDA is repropounding in § 801.430(f)(1) to require manufacturers to design and implement a sampling plan to yield consistent tolerance intervals such that the probability be 90 percent that at least 90 percent of the absorbencies of the individual tampons within a package were within the range of absorbency stated on the package label.

12. Comments from consumers and three consumer groups argued that FDA should use a sampling scheme that gives the consumer the highest degree of certainty, such as 95 percent, that the individual tampons she is using are within the labeled range of absorbency, because of the serious nature of TSS and the risk of contracting the disease.

FDA believes that it is important to ensure a high degree of certainty that the individual tampon a woman uses is within the range stated on the package label. This certainty facilitates accurate interbrand comparisons and minimizes overlap between distinct absorbency ranges. As discussed in section III C, paragraph 11 of this preamble, FDA has tentatively concluded that establishing a tolerance interval such that there is a 90 percent probability that 90 percent of the tampons fall within the specified range is adequate to provide such a degree of certainty and is technically feasible. As also discussed in that paragraph, FDA has tentatively concluded that there is no significant increase in public health protection between requiring a 95/95, 95/90, 90/95, or 90/90 tolerance interval.

13. One manufacturer and several consumer groups argued that it was essential that consumer product testing be based on individual product unit

values and not on averages of large numbers of units. Another manufacturer objected to using measured values from individual tampons, arguing that it would unnecessarily force manufacturers to target the absorbency of their products to the middle of each range.

FDA has reconsidered the concept of using the average absorbency of a sample (of whatever size) as the basis for establishing that a brand or style is within a labeled range. The agency believes that such an approach is simply a technique for smoothing the variation in individual test results, and cannot be used to provide a high degree of certainty to consumers regarding the absorbency of an individual product. FDA, therefore, disagrees with that approach because it would not adequately describe to the consumer the range of absorbency of the individual tampons in a package of that brand or style. FDA recognizes that using measured values from individual tampons could require a manufacturer to target the absorbency of its product to the middle of each range. This targeting would not be a consequence of using nonoverlapping ranges, but of inadequate quality control. A manufacturer would not be required to target the absorbency of its products to the middle of the range if its quality control was sufficient to ensure that the absorbency of the individual tampons in the package all fell within the same range of absorbency. The agency agrees with the comments that it is essential that tampon testing be based on the results of individual product unit values and not on averages of large numbers of units.

14. A private citizen with a background in statistics complained that the figures in the preamble to the initial proposal used to represent the distribution of absorbencies of tampons were not adequately labeled, that the population tested was not described, and that the graphic technique was inappropriate. The comment also objected to the use of the word "representative" as an adjective to describe "samples" in proposed § 801.430(f)(1), contending that the term "representative" has no meaning in that context and urging that a suitable general term to describe such samples would be "probability." Finally, the comment objected to the use of the term "mean absorbency" in proposed § 801.430(f), introductory text, on the basis that "mean" implies an expectation of a population mean and suggested that the more proper term would be "average absorbency."

As clearly stated in the preamble to the proposal (53 FR 37255), the figures objected to were not intended to convey a detailed picture of particular absorbency data obtained by testing a given number of tampons, but rather were representations of the distribution of absorbencies to demonstrate FDA's concern about overlapping ranges. The agency concludes that the complaint is without merit and therefore does not require any change in the reproposal. FDA agrees that the general term "probability samples" is appropriate and has made that change in repropounded § 801.430(f)(1). The agency does not agree that there is any basis for concluding that the term "mean absorbency" is less proper than the term "average absorbency" for the purpose of describing the sample population, and, accordingly has not changed the reproposal in that respect.

15. Comments on the method proposed to test for absorbency were received from three consumer groups and three manufacturers.

Two consumer groups objected to any characterization of the proposed test method as having been adopted by the American Society for Testing and Materials (ASTM) tampon task force. These comments claimed that the proposed test was developed by the tampon manufacturers in the task force subcommittee on test methods, and that it would be correct to say only that the ASTM tampon task force attempted to develop a test method. These comments, however, supported the use of the test method for the time being, provided that more research be done to improve the absorbency test in light of data submitted on the validity of saline solution as a medium to measure absorbency. A third consumer group argued that the use of saline solution to measure the absorbency of a product that absorbs blood cannot be an accurate gauge of absorbency and that, since absorbency is so vital a factor in the risk of TSS, a test should be required that reflects true absorbency.

One manufacturer supported the use of the proposed absorbency test method, but recommended that a more complete general description of the method, as provided to FDA on April 17, 1986, by tampon manufacturers, be used. Two manufacturers submitted specific comments on the method, relating to the need (1) to specify the condom to be used in the test, (2) to specify the number of times the condom is to be used, (3) to terminate the test when the tampon is saturated and the first drop of fluid can be detected in the folds of the condom, and (4) to discard the test

result if fluid is detected in the folds of the condom before saturation of the tampon.

FDA agrees that the ASTM tampon task force failed to formally approve the syngyna test method for measuring tampon absorbency. As stated in the preamble to the initial proposal (53 FR 37253), ASTM actions regarding the test method were taken only at the subcommittee level. FDA notes that the comment incorrectly indicated that the subcommittee on test methods was comprised solely of manufacturers, since the agency also participated.

FDA disagrees that a reliable and reproducible laboratory test to measure the absorbency of a product that absorbs blood cannot be done using a saline test solution. The scientific data linking TSS risk with syngyna absorbency—data that FDA cited in the preamble to the proposed rule (53 FR 37250)—were obtained using a saline solution. With respect to the need for additional research regarding absorbency testing methodology, FDA does not intend to sponsor or undertake any such research of its own because the existing method adequately measures relative absorbencies. As FDA stated in the preamble to the proposed rule (53 FR 37261), however, the agency will consider citizen petitions proposing alternative test methods, and repropounded § 801.430(f)(3) would provide for the use of such methods in certain circumstances.

FDA has reviewed the detailed general description of the syngyna test method and the specific comments on the method that were submitted and agrees that some clarification is required. Accordingly, repropounded § 801.430(f)(2) would: (1) Specify that the unlubricated condom to be used in the test is one with a tensile strength between 17 Mega Pascals (MPa) and 30 MPa as measured according to the standard procedure in the existing ASTM standard for determining tensile strength of condoms (American Society for Testing and Materials, D 3492-83, "Standard Specification for Rubber Contraceptives (Condoms)"), which is incorporated by reference in accordance with 5 U.S.C. 552(a); (2) require that the test be terminated when the tampon is saturated and the first drop of fluid either exits the apparatus or appears in the folds of the condom below the tampon; (3) provide that the test result shall be discarded if fluid is detected in the folds of the condom before the tampon is saturated; and (4) require that the condom be replaced after 10 tests or at the end of each testing day, whichever occurs first.

D. Ingredient Labeling

16. Five consumer groups, numerous individual consumers, and two manufacturers responded to the request for comment (53 FR 37253) on the need for ingredient labeling.

Consumer groups and some individual consumers argued that all materials, additives, and fragrances should be listed on the product label so that consumers can choose the products they want to purchase or avoid on the basis of which ingredients are known to be or suspected of being hazardous, as well as which ingredients have the potential for causing allergic reactions, sensitivity, or irritation. On the other hand, several individual consumers argued against ingredient labeling, some stating that there were no data of which they were aware suggesting the need, others maintaining that it was simply not as important as absorbency labeling. One group of consumers claimed that consumers probably would not use ingredient labeling because concerns about ingredients were not sufficiently important.

Two manufacturers argued that there was no legal requirement or current regulatory basis for mandating ingredient labeling of tampons. These comments noted, however, that manufacturers, in response to consumer interest, have voluntarily implemented an ingredient labeling system for tampons, and argued, on that basis as well, that there is no need for FDA to require such labeling in any final rule.

None of the comments favoring ingredient labeling cited, discussed, or submitted any data showing an association between any ingredient in any currently marketed tampon and any risk to health, including allergic reaction, sensitivity, or irritation, and FDA is unaware of any such data. Moreover, none of the comments provided any legal theory under which the agency could require ingredient labeling for tampons. Absent information indicating that the disclosure of tampon ingredients on package labeling is necessary for the safe or effective use of the product, or that the omission of such information is material to the safe or effective use of tampons, FDA has tentatively concluded that it does not have the authority to require tampon manufacturers to list ingredient information on product labeling.

E. Effective Date

17. Several comments addressed the proposed 6-month effective date for any final rule.

Three manufacturers claimed they would have difficulty meeting a 6-month effective date because they would have to make labeling and product design changes that would affect manufacturing, including machinery, and testing protocols. They requested effective dates ranging from 12 to 24 months after publication of any final rule. One manufacturer commented that a 6-month effective date was appropriate.

Consumer groups, asserting that the risk of TSS would be greatly reduced simply by letting women know the absorbency of tampons, requested various effective dates ranging from 0 to 90 days.

The reproposal would not require significant reformulation of tampons; most currently marketed products would fall within the nonoverlapping ranges set forth in the reproposal. (See section III B, paragraphs 5 and 6 of this preamble.) The agency also believes that the testing methodology required by the reproposal has been accepted by manufacturers and should not be a delaying factor, based on successful interlaboratory comparisons in which manufacturers (and FDA) participated as part of the ASTM tampon task force. In addition, because appropriate quality assurance programs have been required of tampon manufacturers since the device current good manufacturing practice regulations (21 CFR 820.20) became effective in 1978, manufacturers would be faced only with the modification of existing quality assurance programs and not with the creation of new ones. For these reasons, and given the public health importance of tampon absorbency information, FDA believes that any time beyond 6 months would be neither necessary nor appropriate for implementation of the provisions of any final rule based on the reproposal. Accordingly, FDA has retained in the reproposal the 6-month effective date specified in the initial proposal.

F. Placement of Labeling

Many comments addressed the placement and prominence of absorbency information on tampon labeling, with suggestions regarding size, color, and content of the information required by any final rule.

18. Six consumer groups and many individual consumers argued that all information about tampon absorbency should appear prominently on the front panel of the tampon box, and that all required safety labeling should be set off from promotional material in such a way as to make clear that the safety

information is not promotional. To ensure prominence, various comments suggested a pictorial system, specified wording, color-codes, bold and large lettering, print in English and Spanish, and raised print for the blind.

FDA has tentatively concluded that information about tampon absorbency should appear prominently on the principal display panel(s) of the tampon box, and that this safety related information should be set off from other descriptive information, such as slender, super, or for medium flow. Accordingly, § 801.430(e) (1) and (2) of the reproposal would require that the new absorbency terms be on the principal display panel(s), that the new absorbency terms be in a prominent and conspicuous location separate from other information not required by the reproposal, and that reference be made with the new absorbency term on the principal display panel(s) to the location on the package of the explanation that would be required by repropoed § 801.430(e)(3). Reproposed § 801.430(e)(2) would allow manufacturers to include on the principal display panel(s), along with and as prominently as the new absorbency term, the numerical range of absorbency to which the new term corresponds, but would proscribe the use of any other descriptive information placed so as to modify the term.

The agency has taken this approach before in order to avoid misleading labeling. For example, FDA regulations in 21 CFR 330.1(c)(2)(i) require that approved indications for over-the-counter drugs be placed in a "prominent and conspicuous" location of the labeling, and in a boxed area if used in conjunction with the term "APPROVED USES."

19. One manufacturer agreed with the proposed rule that the letter designation should appear on all package panels where a term of absorbency is used, but stated that the word "Absorbency," as in "Absorbency C," should be required only on the front panel. One consumer group argued that the phrase "absorbency rating" should appear before the letter designation. Another consumer group argued that one manufacturer's current labeling, which includes the following phrase: "tampons come in a full range of absorbencies and it is suggested you use the lowest absorbency that meets your needs . . ." includes safety information that is not sufficiently set off from the promotional material.

In the reproposal, the agency has removed the requirement for letter designations. (See section III B, paragraph 7 of this preamble.) The

agency, however, is now proposing to require that the new standardized terms that would be required by repropoed § 801.430(e)(2) be placed on labeling in all locations where other descriptive information is stated (§ 801.430(e)(4)). Each term would be required to be accompanied by the word "absorbency." FDA believes these requirements are necessary to reinforce consumer awareness and understanding of the new standardized terms. On the other hand, FDA believes that it would be inappropriate to specify the exact wording of all the labeling that would be required by the reproposal to describe the use of the new terms and the ranges to make interbrand comparisons. Accordingly, the reproposal would afford manufacturers flexibility to provide the information required in repropoed § 801.430(e)(3) as would befit their products. Also, in that regard, FDA does not believe that the language quoted in the comment makes the safety information less prominent or legible.

G. Vending Machines

20. In the preamble to the initial proposal (53 FR 37261), FDA invited comment on whether to continue to exempt tampons sold in vending machines from the labeling requirements of current § 801.430 and on whether to exempt such tampons from the requirements of any final rule.

One consumer group and several individual consumers argued that the current vending machine exemption regarding TSS information should be revoked. These comments maintained that, as a minimum, the TSS information required by current § 801.430 should be on the outside of the vending machine just as the Surgeon General's warning about smoking appears on cigarette vending machines.

Six consumer groups and several individual consumers argued that tampons sold in vending machines should not be exempt from the absorbency labeling requirements of any final rule. These comments claimed that there is a need for wide dissemination of information about the association of tampon absorbency and TSS, that women could use the knowledge imparted by the labeling to decide to purchase and use a menstrual pad as opposed to a tampon, and that the cost of new labeling to manufacturers would be minimal. Other comments argued that a maximum absorbency should be established for tampons sold in vending machines, while one consumer commented that there was no need to label tampons sold in vending machines.

One manufacturer urged that the current exemption for tampons sold

through vending machines be continued and extended to the absorbency information required by any final rule. The manufacturer argued that tampons are purchased from vending machines in individual units based on immediate need, and that whatever product is available is selected independent of brand or absorbency, obviating the need for additional labeling.

FDA disagrees that it is appropriate to set a maximum allowable absorbency for tampons sold in vending machines, because no public health basis for so doing has been established. The agency has tentatively concluded that there would be only a minimal potential benefit to consumers in requiring that all TSS and absorbency information required by current § 801.430 be provided on labeling for tampons sold through vending machines, because only a small fraction of tampons are sold through such machines. On the other hand, FDA believes that it is important to provide consumers with consistent information and, therefore, that it would be inappropriate to have tampons sold through vending machines bear only nonstandardized labeling, such as super, that would mean different things from brand to brand. Accordingly, repropoed § 801.430(g) would not exempt tampons sold through vending machines from the provisions of repropoed paragraph (e)(4) of this section. Thus, if a term of absorbency other than the applicable term required by the reproposal, such as super, were used on a tampon sold through a vending machine, e.g., on an individual wrapper, repropoed § 801.430(e)(4) would require that the new absorbency term, corresponding to the range of absorbency listed in paragraph (e)(1) of that section, also be used prominently and conspicuously in a separate location. Conversely, if a nonstandardized term were not used on a tampon manufactured for sale through a vending machine, then use of the new absorbency term would not be required.

H. Public Citizen Health Research Group Petition

21. All comments specifically addressing the August 20, 1987, citizen petition from the Health Research Group (HRG) (see 53 FR 37252 and 37253) concerned issues relating to the initial proposal and have been addressed elsewhere in this preamble. FDA believes that the reproposal, requiring uniform absorbency testing and a standardized method of expressing absorbency, is both technically feasible and adequate to address the need for public health protection. It would enable women to compare absorbencies

between brands and styles and to choose the lowest absorbency needed and, thus, reduce their risk of TSS. To the extent that the reproposal does not include provisions requested by HRG in its August 20, 1987, citizen petition, the agency is tentatively denying the petition.

I. Education

22. Three consumer groups and many individual consumers urged FDA to implement a public education effort to inform users of the association between tampon absorbency and TSS risk. Specific suggestions included updating FDA's poster campaign, making public service announcements, disseminating brochures, publishing articles in women's magazines, and requiring store displays. One comment noted that any education effort should be repeated at regular intervals because there are always girls who are beginning menstruation and need the information.

FDA agrees with the intent of these comments. With the promulgation of any final rule, the agency would employ a variety of educational mechanisms to provide updated information to new tampon users, higher risk groups for TSS such as young women and teenage girls, and the general public. Accordingly, the agency would update and reprint its TSS poster learning unit, and target distribution of the poster to secondary school health teachers, nurses, and special interest groups such as Girl Scouts and Campfire Girls. Additional approaches could include a video news release, and a fact sheet that would be used by CDC in its Teenage Health Teaching Modules, by health editors of popular magazines and newspapers, by pharmacies, and by State maternal and child health offices. FDA believes that these informational activities will advise and remind women about TSS, its symptoms, what to do if symptoms appear, the advisability of using the least absorbent tampon needed to control menstrual flow, and, assuming that it promulgates a final rule requiring new standardized absorbency terms, how to use the new terms to select tampons and, thereby, help eliminate any consumer confusion.

J. Miscellaneous

23. One comment recommended that "ounces" be used instead of "grams" to indicate the quantity of fluid absorbed.

The purpose of the determination of the amount of fluid absorbed by a tampon is to provide a quantitative measure of absorbency that can be used in making interbrand comparisons. FDA does not believe that it is necessary to use English system units (ounces) to do

that, and has not adopted the recommendation in the reproposal.

24. Several comments recommended that the agency require warnings about possible abrasions or lacerations of the vaginal wall as a result of tampon use, and specific labeling directing users to wash their hands, remove tampons at specified time intervals, refrain from using tampons for a period of time after giving birth, and so forth.

None of these recommendations directly bears on the issue of tampon absorbency-related TSS risk addressed by the proposed and repropoed rules. Moreover, the comments did not provide any evidence to support such additional labeling requirements or to demonstrate an association between the claims underlying the recommendations and tampon absorbency-related TSS risk. FDA notes that it is unaware of any data demonstrating an association between tampon use and injury to the vaginal wall. Therefore, the agency has not adopted these recommendations in the reproposal.

K. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4:00 p.m., Monday through Friday.

1. Gaventa, S., et al., "Active Surveillance for Toxic Shock Syndrome in the United States, 1986," *Reviews of Infectious Diseases*, 11 (Supplement 1):S28-S34, January-February 1989.

2. Reingold, A. L., et al., "Risk Factors for Menstrual Toxic Shock Syndrome: Results of a Multistate Case-Control Study," *Reviews of Infectious Diseases*, 11 (Supplement 1):S35-S42, January-February 1989.

IV. Environmental Impact

The agency has tentatively determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Economic Impact

As stated in the preamble to the initial proposal (53 FR 37262), FDA examined the economic consequences of the proposal in accordance with the criteria in section 1(b) of Executive Order 12291 and found that the rule is not a major rule under the Executive Order. No comments were received in response to that statement or finding, or to FDA's assessment. Since its initial examination of the economic consequences of the

proposed rule, which estimated direct costs of \$66,000 on each tampon manufacturer, FDA has revised its assessment to take into account changes in the proposal reflected in this reproposal. FDA now estimates that the reproposal would impose direct costs of \$75,000 on each tampon manufacturer. Therefore, the agency continues to conclude that any final rule based on the reproposal would not be a major rule under the Executive Order. The agency also has considered the effect that this reproposal would have on small entities including small businesses. The agency believes that only one of the affected manufacturers meets the definition of a small entity under the Regulatory Flexibility Act (Pub. L. 96-354), and no comments were submitted on the matter. Therefore, FDA certifies under the Regulatory Flexibility Act that the reproposal would not have significant economic impact on a substantial number of small entities. A further description of these new costs and the methods for estimating them can be found in the revised threshold assessment on file with the Dockets Management Branch (address above).

VI. Paperwork Reduction Act

Section 801.430 (e), (f), and (g) of this reproposal contain information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980, FDA has submitted a copy of this reproposal to the Office of Management and Budget (OMB) for its review of these information collection requirements. Other organizations and individuals desiring to submit comments on the information collection requirements should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, OMB, Room 3208, New Executive Office Bldg., Washington, DC 20503, Attn: Desk Officer for FDA.

VII. Request for Comments

Interested persons may, on or before August 11, 1989, submit to the Dockets Management Branch (address above) written comments regarding this reproposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 801

Incorporation by reference, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act, it is proposed that Part 801 be amended as follows:

PART 801—LABELING

1. The authority citation for 21 CFR Part 801 is revised to read as follows:

Authority: Sec. 701, 52 Stat. 1055-1056 as amended (21 U.S.C. 371); 21 CFR 5.10, § 801.420 also is issued under secs. 201(h), (k), (m), and (n), 501(c), 502, 519, 520(e), 704, 52 Stat. 1041 as amended, 1050-1051 as amended, 87 Stat. 477 as amended, 90 Stat. 584-585, 587, 575 (21 U.S.C. 321 (h), (k), (m), and (n), 351(c), 352, 360i, 360j(e), 374); § 801.430 is issued under secs. 201(n), 502, 701(a), 52 Stat. 1041 as amended, 1050-1051 as amended, 1055 (21 U.S.C. 321(n), 352, 371(a)); 21 CFR 5.11.

2. Section 801.430 is amended by revising paragraph (b), the introductory text of paragraph (d), paragraphs (d)(2), (d)(3), and (d)(4), by redesignating paragraphs (e) and (f) as paragraphs (g) and (h), respectively, and revising them, and by adding new paragraphs (e) and (f) to read as follows:

§ 801.430 User labeling for menstrual tampons.

(b) Data show that toxic shock syndrome (TSS), a rare but serious and sometimes fatal disease, is associated with the use of menstrual tampons. To protect the public and to minimize the serious adverse effects of TSS, menstrual tampons shall be labeled as set forth in paragraphs (c), (d), and (e) of this section and tested for absorbency as set forth in paragraph (f) of this section.

(d) The labeling of menstrual tampons shall contain the following consumer information prominently and legibly, in such terms as to render the information likely to be read and understood by the ordinary individual under customary conditions of purchase and use:

(2) The risk of TSS to all women using tampons during their menstrual period, especially the reported higher risks to women under 30 years of age and teenage girls, the estimated incidence of TSS of 1 to 17 per 100,000 menstruating

women and girls per year, and the risk of death from contracting TSS;

(3) The advisability of using tampons with the minimum absorbency needed to control menstrual flow in order to reduce the risk of contracting TSS;

(4) Avoiding the risk of getting tampon-associated TSS by not using tampons, and reducing the risk of getting TSS by alternating tampon use with sanitary napkin use during menstrual periods; and

(e)(1) The principal display panel(s) (as defined in § 801.60) of a package of menstrual tampons shall bear one of the following six absorbency terms representing the absorbency of the production run, lot, or batch as measured by the test described in paragraph (f)(2) of this section, and a reference to the location on the package label of the information required by paragraph (e)(3) of this section:

Ranges of absorbency in grams ¹	Corresponding term of absorbency
6 and under	Low absorbency.
6 to 9	Medium absorbency.
9 to 12	Medium-high absorbency.
12 to 15	High absorbency.
15 to 18	Very high absorbency.
Above 18	Highest absorbency.

¹ These ranges are defined, respectively, as follows: less than or equal to 6 grams; greater than 6 grams up to and including 9 grams; greater than 9 grams up to and including 12 grams; greater than 12 grams up to and including 15 grams; greater than 15 grams up to and including 18 grams; and greater than 18 grams.

(2) The absorbency term required by paragraph (e)(1) of this section shall be more prominent than, and may not be modified by, any other descriptive information on the principal display panel(s), other than its corresponding numerical range of absorbency, and shall be in a prominent and conspicuous location, placed apart from any other information not required by this paragraph except its corresponding numerical range of absorbency.

(3) The package label shall include an explanation of the range of absorbency and a description of how consumers can use the range of absorbency, and its corresponding absorbency term, to make comparisons of absorbency of tampons to allow selection of the tampons with the minimum absorbency needed to control menstrual flow in order to reduce the risk of contracting TSS.

(4) If a term of absorbency other than that required by paragraph (e)(1) of this

section is used in labeling, such as on an individual tampon wrapper, the absorbency term specified in paragraph (e)(1) of this section shall also be used.

(f) A manufacturer shall measure the absorbency of individual tampons using the test method specified in paragraph (f)(2) of this section and calculate the mean absorbency of a production run, lot, or batch by rounding to the nearest 0.1 gram.

(1) A manufacturer shall design and implement a sampling plan that includes collection of probability samples of adequate size to yield consistent tolerance intervals such that the probability is 90 percent that at least 90 percent of the absorbencies of individual tampons within a package are within the range of absorbency stated on the package label.

(2) In the absorbency test, an unlubricated condom, with tensile strength between 17 Mega Pascals (MPa) and 30 MPa, as measured according to the standard procedure in the American Society for Testing and Materials (ASTM), D 3492-83, "Standard Specification for Rubber Contraceptives (Condoms)"¹ for determining tensile strength, which is incorporated by reference in accordance with 5 U.S.C. 552(a), is attached to the large end of a glass chamber with a rubber band (see Figure 1) and pushed through the small end of the chamber using a smooth, finished rod. The condom is pulled through until all slack is removed. The tip of the condom is cut off and the remaining end of the condom is stretched over the end of the tube and secured with a rubber band. A preweighed (to the nearest 0.01 gram) tampon is placed within the condom membrane so that the center of gravity of the tampon is at the center of the chamber. An infusion needle (14 gauge) is inserted through the septum created by the condom tip until it contacts the end of the tampon. The outer chamber is filled with water pumped from a temperature-controlled waterbath to maintain the average temperature at 27±1 °C. The water returns to the waterbath as shown in Figure 2. Syngyna fluid (10 grams sodium chloride, 0.5 gram Certified Reagent Acid Fuchsin, 1,000 milliliters distilled

¹ Copies of the standard are available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103, or available for inspection at the Office of the Federal Register, 1100 L St. NW., Washington, DC.

water) is then pumped through the infusion needle at a rate of 50 milliliters per hour. The test shall be terminated when the tampon is saturated and the first drop of fluid either exits the apparatus or appears in the folds of the condom below the tampon. (The test result shall be discarded if fluid is detected in the folds of the condom before the tampon is saturated.) The water is then drained and the tampon is removed and immediately weighed to the nearest 0.01 gram. The absorbency of the tampon is determined by subtracting its dry weight from this value. The condom shall be replaced after 10 tests or at the end of the day during which the condom is used in testing, whichever occurs first.

BILLING CODE 4190-01-M

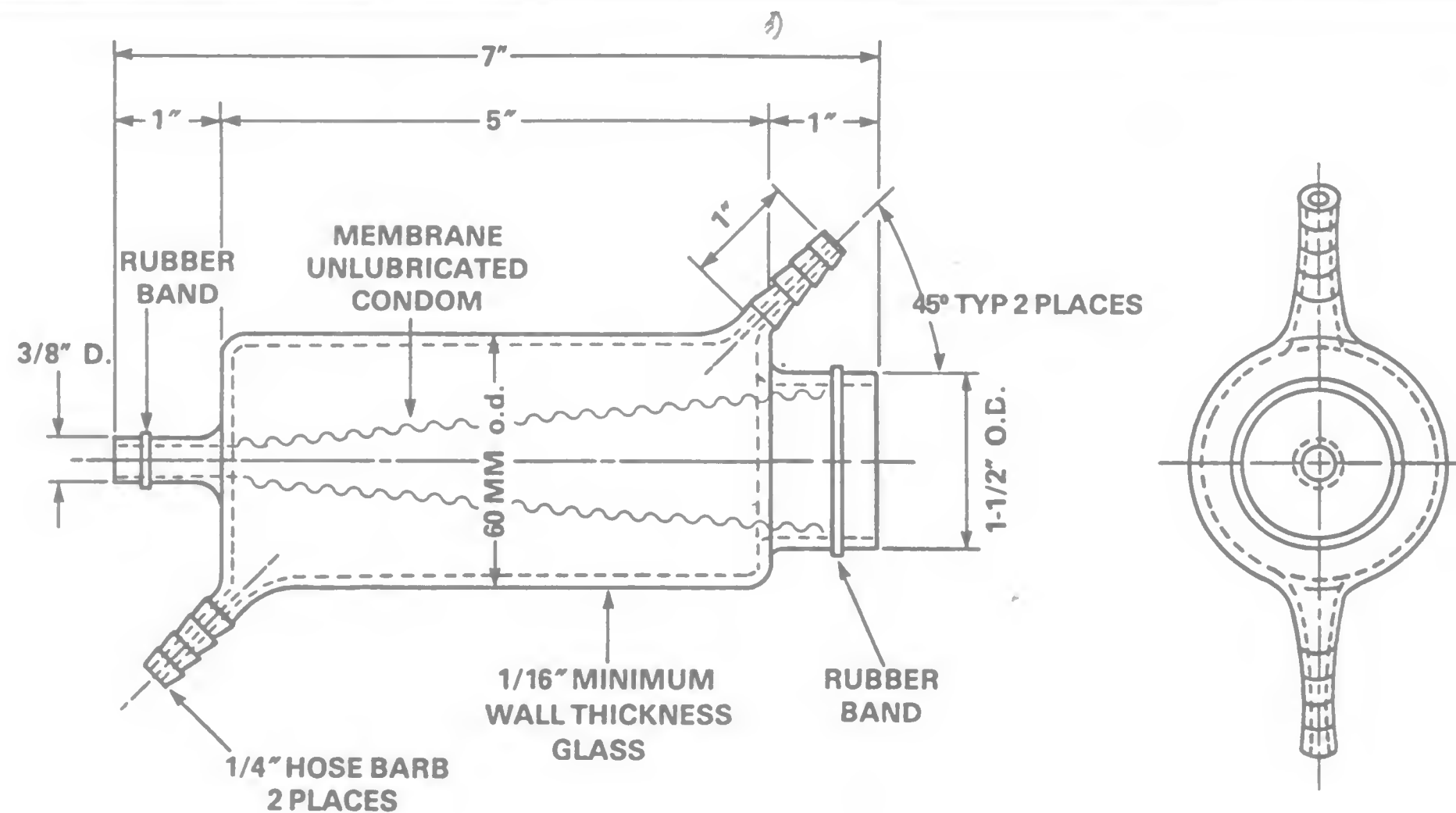


FIGURE 1 — SYNGYNA TEST CHAMBER

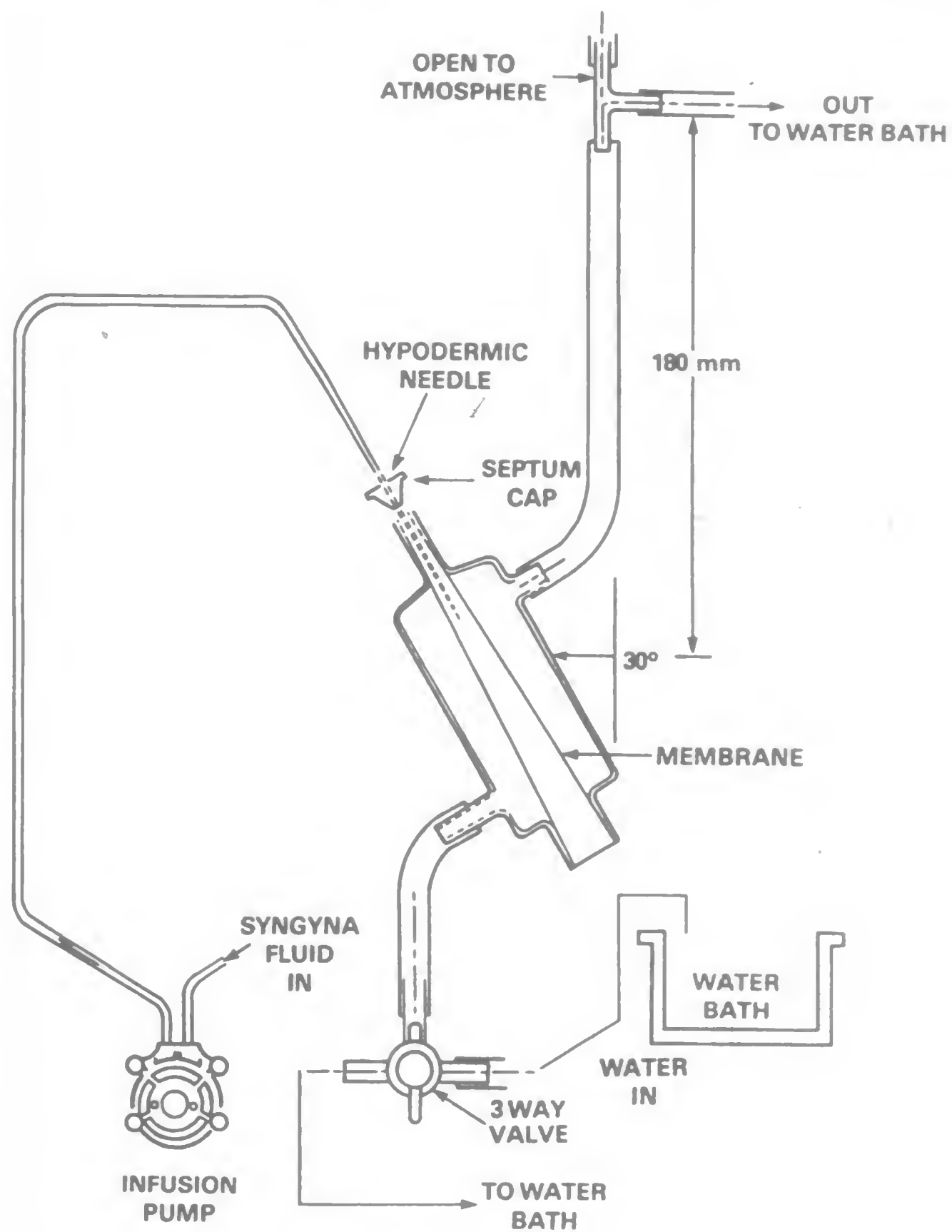


FIGURE 2—SYNGYNA TEST SET-UP

BILLING CODE 4160-01-C

(3) The Food and Drug Administration may permit the use of an absorbency test method different from the test method specified in this section if each of the following conditions is met:

(i) The manufacturer presents evidence, in the form of a citizen petition submitted in accordance with the requirements of § 10.30 of this chapter, demonstrating that the alternative test method will yield results that are equivalent to the results yielded

by the test method specified in this section; and

(ii) FDA approves the method and has published notice of its approval of the alternative test method in the **Federal Register**.

(g) Any menstrual tampon intended to be dispensed by a vending machine is exempt from the requirements of this section, except for paragraph (e)(4) of this section.

(h) Any menstrual tampon that is not labeled as required by paragraphs (c),

(d), and (e) of this section and that is initially introduced or initially delivered for introduction into commerce after December 12, 1989, is misbranded under sections 201(n), 502 (a) and (f) of the act.

Frank E. Young,
Commissioner of Food and Drugs.

Louis W. Sullivan,
Secretary of Health and Human Services.

Dated: June 3, 1989.

[FR Doc. 89-13959 Filed 6-8-89; 10:39 am]
BILLING CODE 4160-01-M

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⁴ No amendments to this volume were promulgated during the period Apr. 1, 1980 to March 31, 1988. The CFR volume issued as of Apr. 1, 1980, should be retained.		
⁵ The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.		
⁶ No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.		
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Tuesday
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Tuesday
June 13, 1989

Briefing on How To Use the Federal Register—
For information on briefing in Washington, DC, see
announcement on the inside cover of this issue.

Federal Register

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WASHINGTON, DC

WHEN: June 15; at 9:00 a.m.
WHERE: Office of the Federal Register,
 First Floor Conference Room,
 1100 L Street, NW., Washington, DC
RESERVATIONS: 202-523-5240

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Federal Register

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 294

Implementation of the Freedom of Information Act

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: On April 22, 1987, the Office of Personnel Management (OPM) published interim regulations which implemented the requirements of the Freedom of Information Reform Act of 1986. After considering comments received after publication, and fee waiver policy guidance from the Department of Justice, OPM has revised its regulations on waiver of fees by adding the standards that must be met to qualify for a waiver and by setting forth in greater detail the procedures for making a fee waiver determination. In addition, the regulations (1) update organizational information, and (2) now require prior notification of fees that apply when providing alternative records. In the interest of clarity, OPM is republishing the regulations here in their entirety. OPM is also publishing in a separate document proposed regulations that (1) outline material that OPM generally makes available for public inspection and copying, and (2) implement the requirements of Executive Order 12600 concerning the release of confidential commercial information.

EFFECTIVE DATE: This rule becomes effective July 13, 1989.

FOR FURTHER INFORMATION CONTACT: C. Ronald Trueworthy, (202) 632-0261.

SUPPLEMENTARY INFORMATION: OPM published interim rules with request for comment in the April 22, 1987, *Federal Register* (52 FR 13215). The rules brought the OPM into compliance with the

Freedom of Information Reform Act of 1986. Four organizations (a union, a public citizens group, a professional journalist society, and a Federal Government agency) commented on the regulations.

The public interest group included in its submission extensive comments on the Office of Management and Budget's (OMB) March 27, 1987 "Uniform Freedom of Information Act Fee Schedule and Guidelines". In addition to law, OPM relied heavily on OMB's guidance in developing the portions of these regulations which deal with fee schedules. In our view, these guidelines are a reasonable interpretation of the law. Since we view the guidance in this light, and since the Freedom of Information Reform Act requires that agencies issue regulations in conformance with guidelines promulgated by OMB, we believe that this reliance is prudent. In any event, the comments are pertinent to the OMB guidelines rather than OPM's regulations.

The same public interest group also provided extensive comments on the fee waiver guidance provided to agencies by the Department of Justice (DOJ) rather than OPM's regulations. OPM did not consider DOJ's fee waiver guidance in developing its interim regulations. However, we have now reviewed the DOJ guidance, have concluded that it is well reasoned, and have taken it into consideration in revising the fee waiver provisions in § 294.109(d) as described below. Since it is DOJ's responsibility to provide guidance to Federal agencies on this subject, we believe this is an entirely reasonable course of action.

The following paragraphs discuss comments received on the OPM regulations according to the section involved.

Section 294.103(c) Definitions. One commentator argues that the OPM definition of "representative of the news media" is too restrictive, runs counter to the legislative history, and allows OPM to judge what is current news before acting on the request. OPM believes its interpretation of "news media" is consistent with the statute and the OMB guidelines and has made no revision to its final rule.

The same commentator suggests that the definition for "free-lance journalist" be deleted as it does not accurately reflect the way free-lance journalists

work and discriminates against first-time free-lancers. The legislative history describes free-lance writers as those "who can demonstrate that their work is likely to be published * * *". OPM considers its definition to be consistent with the legislative history and OMB guidelines and has made no revision to its final rule.

Section 294.107(h) Creating records. One commentator suggested a revision of this section to require that OPM provide prior notification of any fees before transmitting alternative records. We agree that this is a reasonable requirement and have revised the section accordingly.

Section 294.109(b)(6) Payment of fees. One commentator suggested that this section should reflect only direct costs for searches and that it should not include computer time, supplies, or any "costs incurred as a result of malfunctioning equipment or other extraordinary problematic situations of the agency which may bear on the time spent in the search." Section 294.102 defines direct costs. If computer time and supplies satisfy the requirements of that definition, OPM shall include these costs in the computation of any fees. OPM does not, however, intend to include in fee computations, costs caused by malfunctioning equipment or other events which are clearly not related to a request. We believe that OPM can be expected to use reasonable judgment in situations such as this, and that the regulations do not need to provide for all aberrations from normalcy that may occur. Therefore we are not adopting this suggestion.

One commentator stated that there was nothing in the statute that permitted charges for unsuccessful searches and that this was contrary to the intent of the statute and basic fairness. The statute provides for the recovery of certain direct costs incurred in searching for records. It does not limit cost recovery to instances when records result from the search. Since the requestor is the initiator of such searches, OPM is incurring a cost that it would not normally incur. Under these circumstances, fairness dictates that the Government ought to be able to recover its costs. This provision is also consistent with the guidelines promulgated by OMB. For the reasons stated above we are not revising this section.

Section 294.109(c) Payment of fees in advance. One commentor stated that this Section does not reflect the clear presumption against advance payments in the wording of the Act. They suggest that OPM adopt wording closer to the OMB guidelines. Upon review, we have concluded that although the wording is not identical to the wording in the OMB guidelines, the meaning is the same and we are not adopting this suggestion.

One commentor objected to the potential interest charges provided for by paragraph (c)(3) of this section and pointed out that there is no statutory authorization for adding interest to FOIA charges. The regulations provide that OPM may begin assessing interest charges on an unpaid bill at the rate prescribed in 31 U.S.C. 3717, starting on the 31st day following the date on which the bill was sent. OPM does not include interest when computing fees for Freedom of Information Act requests. If a requester does not pay a fee on time, it becomes an overdue debt to the United States and is subject to interest. The interest is a charge for overdue indebtedness to the Government, and not a Freedom of Information Act fee component. OPM believes that this requirement complies fully with law and with OMB guidelines and for these reasons we are not revising this provision.

Section 294.109(d) Waiver of fees. One commentor objected to the provision of this section that allows an OPM official to deny a waiver of fees if a requestor does not provide an adequate explanation of why he or she is entitled to a waiver. The commentor pointed out that the regulations did not notify requestors of the standard they must meet in order to qualify for a waiver. Two commentors recommended that OPM should set forth in greater detail the procedures and standards it would use in making fee waiver determinations. After considering these comments, OPM has expanded on this section to provide more information on the evaluation of fee waiver requests.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 294

Administrative practice and procedure, Freedom of information.

U.S. Office of Personnel Management.
Constance Horner,
Director.

Accordingly, OPM is amending 5 CFR Part 294 as follows:

PART 294—AVAILABILITY OF OFFICIAL INFORMATION

1. The authority citation for Part 294 is revised to read as follows:

Authority: 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502, as amended by the Freedom of Information Reform Act of 1986, and Pub. L. 99-570.

2. Subparts A and D of Part 294 are revised to read as follows:

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

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294.102	General definitions.
294.103	Definitions of categories and assignment of requests and requesters to categories.
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Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

§ 294.101 Purpose.

This subpart contains the regulations of the Office of Personnel Management (OPM) implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552. Except as provided by § 294.105, OPM will use the provisions of this subpart to process all requests for records.

§ 294.102 General definitions.

All of the terms defined in the Freedom of Information Act, and the definitions included in the "Uniform Freedom of Information Act Fee Schedule and Guidelines" issued by the Office of Management and Budget apply, regardless of whether they are defined in this subpart.

"Direct costs" means the expenditures that an agency actually incurs in searching for, duplicating, and reviewing documents to respond to an FOIA request. Overhead expenses (such as the cost of space, and heating or lighting the facility in which the records are stored), are not included in direct costs.

"Disclose or disclosure" means making records available, on request, for examination and copying, or furnishing a copy of records.

"Duplication" means the process of making a copy of a document necessary to respond to an FOIA request. Among the forms that such copies can take are paper, microform, audiovisual materials or machine readable documentation (e.g., magnetic tape or disk).

"Records," "information," "document," and "material" have the same meaning as the term "agency records" in section 552 of title 5, United States Code.

"Review" means the process of initially examining documents located in response to a request to determine whether any portion of any document located may be withheld. It also includes processing documents for disclosure; e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal and policy issues regarding the application of exemptions.

"Search" means the time spent looking for material that is responsive to a request, including page-by-page, or line-by-line identification of material within documents. The definition assumes that searches will be carried out in the most efficient and least expensive manner so as to minimize the cost for both the agency and the requester.

§ 294.103 Definitions of categories and assignment of requests and requesters to categories.

OPM will apply the definitions and procedures contained in this section to assign requesters to categories. The four categories established by 5 U.S.C. 552(a) are requests for commercial use, requests for non-commercial use made by educational or non-commercial scientific institutions, requests for non-commercial use made by representatives of the news media, and all others.

(a) *Request for commercial use.* A "commercial use request" is from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person or institution on whose behalf the request is made. In determining whether a request properly belongs in this category, OPM will look first to the intended use of the documents being requested.

(b) *Request for non-commercial use made by an educational or non-commercial scientific institution.* OPM will include requesters in one of the two categories described in paragraphs (b)

(1) and (2) of this section when the request is being made as authorized by, and under the auspices of, a qualifying institution; and the records are sought, not for a commercial use, but in furtherance of scholarly or scientific research.

(1) "Educational institution" refers to any public or private, preschool, elementary, or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education, which operates a program or programs of scholarly or scientific research.

(2) A "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (a) of this section, and which is operated solely to conduct scientific or scholarly research, the results of which are not intended to promote any particular product or industry.

(c) *Request from a representative of the news media.* "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish, broadcast, or otherwise disseminate news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals who make their products available for purchase or subscription by the general public. Free-lance journalists may be regarded as representatives of the news media if they demonstrate a solid basis for expecting publication, or some other form of dissemination, through a particular organization even though they are not actually employed by it. OPM will assign news media officials to this category only when a request is not for commercial use. If a person meets the other qualifications for inclusion, OPM will not apply the term "commercial use" to his or her request for records in

support of a news dissemination function.

(d) *Requests from others.* The category "all others," consists of any requesters not covered by paragraphs (a), (b), or (c) of this section. However, as provided by § 294.105, OPM will use its Privacy Act regulations, rather than this subpart, when individuals ask for records about themselves that may be filed in OPM systems of records.

§ 294.104 Clarifying a requester's category.

(a) *Seeking clarification of a requester's category.* OPM may seek additional clarification before assigning a person to a specific category if—

(1) There is reasonable cause to doubt the requester's intended use of records; or

(2) The intended use is not clear from the request itself; or

(3) There is any other reasonable doubt about qualifications that may affect the fees applicable or the services rendered under § 294.109.

(b) *Prompt notification to requester.* When OPM seeks clarification as provided by paragraph (a) of this section, it will provide prompt notification either by telephone or in writing of the information or materials needed.

(c) *Effect of seeking clarification on time limits for responding.* When applying the time limits in section 552 of title 5, United States Code, OPM will not officially consider any request for records as being received until the official who is assigned responsibility for making a decision on releasing the records has—

(1) Received any additional clarification sought under paragraphs (a) and (b) of this section; and

(2) Determined that the clarifying information is sufficient to correctly place the requester in one of the categories prescribed in this section.

§ 294.105 Access to the requester's own records.

When the subject of a record, or a duly authorized representative of the

subject, requests his or her own records from a Privacy Act system of records, as defined by 5 U.S.C. 552a (a)(5), and the record is maintained so that it is retrieved by the subject's name or other personal identifier, OPM will process the request under the Privacy Act procedures in Part 297 of this chapter.

§ 294.106 Index of information.

(a) OPM publishes OPM Document No. 1, "Index to Information" annually and issues supplements during the year when there is a sufficient volume of new or revised material. This index contains material published and offered for sale or available for public inspection and copying.

(b) A copy of this index is available at no cost from the—

Internal Distribution Subunit, Office of Personnel Management, Room B443, 1900 E Street NW., Washington, DC 20415.

(c) OPM indexes material for the convenience of the public. Indexing does not constitute a determination that all of the material listed is within the category that is required to be indexed by 5 U.S.C. 552(a)(2). Most of OPM's publications may be found in OPM's Library in Room 5H27 at the address listed in paragraph (b) of this section.

(d) As provided by 5 U.S.C. 552(a)(2), OPM has determined that it is unnecessary and impractical to publish the "Index to Information" more frequently than annually because of the small number of revisions that occur.

§ 294.107 Places to obtain records

(a) Address requests for OPM records to the officials listed in paragraph (b), (c), or (d) of this section.

(b) The following is a list of key Washington, DC officials of OPM and their principal areas of responsibility. Address requests for records to the appropriate official using the address below and the official's title.

Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

Send to—	For subject-matter about—
Associate Director for Administration.....	Administrative services; information management, financial management, personnel.
Associate Director for Retirement and Insurance.....	Retirement; life and health insurance.
Associate Director for Personnel Systems and Oversight.....	Personnel management in agencies; pay; position classification, wage grade jobs; performance management; employee and labor relations.
Assistant Director for Workforce Information.....	Government-wide personnel statistics; official personnel and employee medical folders.
Associate Director for Investigations.....	Background investigations and related records on individuals.
Associate Director for Career Entry and Employee Development.....	Nationwide examining and testing for employment; promotions; administrative law judges; affirmative employment programs for minorities, women, veterans, and the handicapped; training.
Director, Washington Area Service Center.....	Examining, testing, and training operations in Washington, DC.
Director, Office of Government Ethics.....	Ethics and conflict of interest.

Send to—	For subject-matter about—
Director, Office of Executive Personnel.....	Senior Executive Service.

(c) Direct requests for records on subjects not specifically referred to in this section or in the Index to—

Plans and Policies Division, Office of Personnel Management, Room 6410, 1900 E Street NW., Washington, DC 20415.

(d) The following is a list of OPM regional offices. Address requests for regional records to the Regional Director, Office of Personnel Management in the appropriate region:

- Atlanta Region—Richard B. Russell Federal Building, Suite 904, 75 Spring Street, SW., Atlanta, GA 30303-3019.
- Chicago Region—John C. Kluczynski Federal Building, 30th Floor, 230 South Dearborn Street, Chicago, IL 60604.
- Dallas Region—1100 Commerce Street, Dallas, TX 75242.
- Philadelphia Region—William J. Green, Jr., Federal Building, 600 Arch Street, Philadelphia, PA 19106-1596.
- San Francisco Region—211 Main Street, 7th Floor, San Francisco, CA 94105.

(e) *When an organization does not have records in its custody.* When an OPM organization receives a Freedom of Information Act request for OPM records that it does not have in its possession, it will normally either—

(1) Retrieve the records from the organization that has possession of them; or

(2) Promptly forward the request to the appropriate organization. If a person has asked to be kept apprised of anything that will delay the official receipt of a request, OPM will provide notice of this forwarding action. Otherwise, OPM may, at its option, provide such notice.

(f) *Applying the time limits.* When applying the time limits in section 552 of title 5, United States Code, OPM will not officially consider any request to be received until it arrives in the OPM organization that has responsibility for the records sought.

(g) *Records from other Government agencies.* When a person seeks records that originated in another Government agency, OPM may refer the request to the other agency for response. Ordinarily, OPM will provide notice of this type of referral.

(h) *Creating records.* If a person seeks information from OPM in a format that does not currently exist, OPM will not ordinarily compile the information for the purpose of creating a record to respond to the request. OPM will advise the individual that it does not have records in the format sought. If other

existing records would reasonably respond to the request or portions of it, OPM may provide these. If fees as provided in § 294.109 apply to any alternative records, OPM will advise the requester before providing the records.

§ 294.108 Procedures for obtaining records.

(a) *Mailing or delivering a request.* Any person may ask for records under section 552 of title 5, United States Code, by directing a letter to one of the organizations listed in § 294.107, or by delivering a request in person at the addresses listed in that section during business hours on a regular business day.

(b) *Proper marking.* Each request for records should have a clear and prominent notation on the first page, such as "Freedom of Information Act Request." In addition, if sent by mail or otherwise submitted in an envelope or other cover, mark the outside clearly and prominently with "FOIA Request" or "Freedom of Information Act Request."

(c) *Contents of request letter.* A request must describe the records sought in sufficient detail to enable OPM personnel to locate the records with a reasonable amount of effort.

(1) OPM will regard a request for a specific category of records as fulfilling the requirements of this paragraph, if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive to OPM operations.

(2) Whenever possible, a request should include specific information about each record sought, such as the date, number, title or name, author, recipient, and subject matter of the record.

(3) If an OPM organization determines that a request does not reasonably describe the records sought, it will either provide notice of any additional information needed or otherwise state why the request is insufficient. OPM will also offer the record seeker an opportunity to confer, with the objective of reformulating the request so that it meets the requirements of this section.

(d) *Medical records.* OPM or another Government agency may disclose the medical records of an applicant, employee, or annuitant to the subject of the record, or to a representative designated in writing. However, medical records may contain information about

an individual's mental or physical condition that a prudent physician would hesitate to give to the individual. Under such circumstances, OPM may disclose the records, including the exact nature and probable outcome of the condition, only to a licensed physician designated in writing for that purpose by the individual or his or her designated representative.

(e) *Publications.* If the subject matter of a request includes material published and offered for sale (e.g., by the Superintendent of Documents, Government Printing Office), OPM will explain where a person may review and/or purchase the publications.

(f) *Responses within 10 working days.* Except in unusual circumstances (as defined in 5 U.S.C. 552(a)(8)(B)), OPM will determine whether to disclose or deny records within 10-working days after receipt of the request (excluding weekends and holidays) and will provide notice immediately of its determination and the fees required, if any, as prescribed by § 294.109 of this part.

§ 294.109 Fees.

(a) *Applicability of fees.* OPM entities will furnish, without charge, reasonable quantities of material that they have available for free distribution to the public. Subject to payment of fees as specified in this section, OPM may furnish other material. These fees are intended to recoup the full allowable direct costs of providing services.

(b) *Payment of fees.* Individuals may pay fees by check or money order, payable to the Office of Personnel Management.

(1) OPM will not assess fees for individual requests if the total charge would be less than \$25, except as provided in paragraph (b)(5) of this section.

(2) If a request may reasonably result in a fee assessment of more than \$25, OPM will not release records unless the requester agrees to pay the anticipated charges.

(3) If the request does not include an acceptable agreement to pay fees and does not otherwise convey a willingness to pay fees, OPM will promptly provide notification of the estimated fees. This notice will offer an opportunity to confer with OPM staff to reformulate the request to meet the requester's needs at a lower cost. Upon agreement to pay the

required fees, OPM will further process the request.

(4) As described in § 294.107 of this part, OPM ordinarily responds to Freedom of Information Act requests in a decentralized manner. Because of this, OPM may at times refer a single request to two or more OPM entities to make separate direct responses. In such cases, each responding entity may assess fees as provided by this section, but only for direct costs associated with any response the component has prepared.

(5) OPM may aggregate requests and charge fees accordingly, when there is a reasonable belief that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests to evade the assessment of fees.

(i) If multiple requests of this type occur within a 30-day period, OPM may provide notice that it is aggregating the requests and that it will apply the fee provisions of this section, including any required agreement to pay fees and any advance payment.

(ii) Before aggregating requests of this type made over a period longer than 30 days, OPM will assure that it has a solid basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees.

(iii) OPM will not aggregate multiple requests on unrelated subjects from one person.

(6) If fees for document search are authorized as provided in paragraph (f) of this section, OPM may assess charges for an employee's (or employees') time spent searching for documents and other direct costs of a search, even if a search fails to locate records or if records located are determined to be exempt from disclosure.

(7) Services requested and performed but not required under the Freedom of Information Act, such as formal certification of records as true copies, will be subject to charges under the Federal User Charge Statute (31 U.S.C. 483a) or other applicable statutes.

(c) *Payment of fees in advance.* If OPM estimates or determines that fees are likely to exceed \$250, OPM may require the payment of applicable fees in advance.

(1) If an OPM official, who is authorized to make a decision on a particular request, determines that the requester has a history of prompt payment of FOIA fees, OPM will provide notice of the likely cost and obtain satisfactory assurances of full payment.

(2) When a person, or an organization that a person represents, has previously failed to pay any fee charged in a timely

manner, OPM will require full payment of all fees in advance. In this section, an untimely payment is considered to be a payment that is not made within 30 days of the billing date.

(3) If a person, or an organization that a person represents, has not paid fees previously assessed, OPM will not begin to process any new request for records, until that individual has paid the full amount owed plus any applicable interest, and made a full advance payment for the new request.

(4) If a request, which requires the advance payment of fees under the criteria specified in this section, is not accompanied by the required payment, OPM will promptly notify the requester that he or she must pay the required fee within 30 days and that OPM will not further process the request until it receives payment.

(5) OPM may begin assessing interest charges on an unpaid bill starting on the 31st day following the date on which the bill was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

(6) To encourage the repayment of debts incurred under this subpart, OPM may use the procedures authorized by Pub. L. 97-365, the Debt Collection Act of 1982. This may include disclosure to consumer reporting agencies and the use of collection agencies.

(d) *Waiver of fees.* OPM will furnish documents under this subpart without any charge, or at a reduced charge, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and it is not primarily in the commercial interest of the requester.

(1) In determining whether disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, OPM shall consider the following factors:

(i) The subject of the request: Whether the subject of the requested records concerns "the operations or activities of the government";

(ii) The informative value of the information to be disclosed: Whether the disclosure is "likely to contribute" to an understanding of government operations or activities;

(iii) The contribution to an understanding of the subject by the general public likely to result from disclosure: Whether disclosure of the requested information will contribute to "public understanding"; and

(iv) The significance of the contribution to public understanding: Whether the disclosure is likely to

contribute "significantly" to public understanding of government operations or activities.

(2) In determining whether disclosure of the information is not primarily in the commercial interest of the requester, OPM will consider the following factors:

(i) *The existence and magnitude of a commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(ii) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(3) An OPM official may deny a waiver of fees or a request for a reduced fee without further consideration if the request does not include the following information:

(i) A clear statement of the requester's interest in the document(s);

(ii) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from OPM's release of the requested documents; and

(iv) If specialized use of the documents is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(4) In all cases the burden of proof shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(5) A requester may appeal the denial of a waiver request as provided by § 294.110 of this part.

(e) *Rates used to compute fees.* The following rates form the basis for assessing reasonable, standard charges for document search, duplication, and review as required by 5 U.S.C. 552(a)(4). The listing of rates below should be used in conjunction with the fee components listed in paragraph (f) of this section, the first-100-pages of paper copies exception in paragraph (g) of this section, and the first-2-hours manual records search exception in paragraph (h) of this section.

Employee time..	Salary rate plus 16% to cover benefits.
Photocopies (up to 8 1/2"x14").	\$0.13 a page.
Printed materials, per 25 pages or fraction thereof.	\$0.25.
Computer time..	Actual direct cost.

Supplies and other material. Actual direct cost.

Other costs not identified above. Actual direct cost.

(f) *Fee components by category of user.* For the purpose of assessing fees under this section, requests may have three cost components. These are the cost of document search, the cost of duplication, and the cost of review. When computing the fee applicable to a request, OPM will apply the rates in paragraph (e) of this section to the cost components that apply to the requester's category. Cost components apply to categories of requesters as follows:

(1) A commercial use requester. Pays actual direct costs for document search, duplication, and review.

(2) A requester from an educational and non-commercial scientific institution and a representative of the news media—Pays actual direct costs for document duplication when records are not sought for commercial use. (Requesters in this category do not pay for search and review.)

(3) All other requesters. Pay actual direct costs for document search and duplication. (Requesters in this category do not pay for review.)

(g) *First 100 pages of paper copies.* There will be no charge to categories of requesters included in paragraphs (f)(2) and (3) of this section for the first 100 pages of paper copies, size 8½" by 11" or 11" by 14" or for a reasonable substitute for this number of copies. An example of a reasonable substitute is a microfiche containing the equivalent of 100 pages.

(h) *First 2 hours of manual records search.* OPM will not charge requesters in the "all other" category for the first 2 hours of manual records search. If a person asks for records from a computerized data base, OPM will use the following formula, promulgated by the Office of Management and Budget, to provide the equivalent, in computer records search time, of 2 hours of manual records search.

(1) OPM will add the hourly cost of operating the central processing unit that contains the record information to the operator's hourly salary plus 16 percent.

(2) When the cost of a search (including the operator's time and the cost of operating the computer to process a request) equals the equivalent dollar amount of 2 hours of the salary of the person performing the search (i.e.,

the operator), OPM will begin assessing charges for computer search.

§ 294.110 Appeals.

(a) When an OPM official denies records or a waiver of fees under the Freedom of Information Act, the requester may appeal to the—

Office of the General Counsel, Office of Personnel Management, Washington, DC 20415

(b) A person may appeal denial of a Freedom of Information Act request for information maintained by OPM's Office of the General Counsel to the—

Deputy Director, Office of Personnel Management Washington, DC 20415

(c) If an official of another agency denies a Freedom of Information Act request for records in one of OPM's Government-wide systems of records, the requester should consult that agency's regulations for any appeal rights that may apply. An agency may, at its discretion, direct these appeals to OPM's Office of the General Counsel.

(d) An appeal should include a copy of the initial request, a copy of the letter denying the request, and a statement explaining why the appellant believes the denying official erred.

(e) The appeals provided for in this section constitute the final levels of administrative review that are available. If a denial of information or a denial of a fee waiver is affirmed, the requester may seek judicial review in the district court of the United States in the district in which he or she resides, or has his or her principal place of business, or in which the agency records are situated, or in the District of Columbia.

§ 294.111 Custody of records; subpoenas.

(a) The Chief, Plans and Policies Division, Administration Group, OPM, has official custody of OPM records. A subpoena or other judicial order for an official record from OPM should be served on the—

Chief, Plans and Policies Division, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415

(b) See § 297.505 of this chapter for the steps other officials should take on receipt of a subpoena or other judicial order for an official personnel record.

Subpart D—Cross References

§ 294.401 References.

The table below provides assistance in locating other OPM regulations in Title 5 of the Code of Federal Regulations that have provisions on the disclosure of records:

Type of information	Location
Classification appeal records.....	511.616.
Classified information.....	175.101.
Employee performance folders.....	293.311.
Examination and related subjects records.....	300.201.
Grade and pay retention records.....	536.307.
Investigative records.....	736.105.
Job grading reviews and appeals records.....	532.707.
Leave records.....	297 Subpart E.
Medical information.....	297.204 and 297 Subpart E.
Official Personnel Folders.....	293.311.
Privacy and personnel records.....	297.
Retirement.....	831.106.

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FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

(No. 89-1526)

RIN 3068-AA71

Bonds for Directors, Officers, Employees, and Agents; Form of and Amount of Bonds

Date: June 1, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Final rule.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), is amending its regulations pertaining to the permissible deductible amount for bonds for directors, officers, employees, and agents of institutions the accounts of which are insured by the FSLIC ("FSLIC-insured institutions"). The amendment modifies the current schedule for calculating the permissible deductible to provide for a minimum permissible deductible of \$50,000. This action is being taken in order to adjust the permissible deductible to corresponding increases in the insurance market and to relate deductibles to the additional protection offered the FSLIC by an institution's tangible capital.

EFFECTIVE DATE: July 13, 1989.

FOR FURTHER INFORMATION CONTACT: Cindy L. Hausch, Financial Analyst, (202) 906-7488; Kathleen O'Dea Willard, Assistant Director, (202) 906-6789; Patrick G. Berbakos, Director, (202) 906-6720, Office of District Banks, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; or Linda Matthias, Policy Analyst, (202) 331-4597; Edward J. Taubert, Deputy Director.

Policy (202) 331-4588, Office of Regulatory Activities, 801 17th Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: In order to adjust the permissible deductible to increases corresponding with the insurance market rates and to relate permissible deductibles to the additional protection offered FSLIC by an insured institution's tangible capital, the Board proposed to amend 12 CFR 563.19(b) to delete the current schedule for calculating the permissible deductible. The Board proposed to establish a new method for calculating the permissible deductible, allowing the permissible deductible to be the higher of either five percent of tangible capital as defined in § 563.9-8(b)(12) or \$50,000. Board Res. No. 88-1181, 53 FR 45484 (November 10, 1988). The comment period expired on January 9, 1989. The Board received 21 comments in response to this proposal. Twelve were submitted by savings institutions, seven by trade associations, one by an insurance broker and one by an insurance company which is the wholly owned subsidiary of a trade association.

Six of the commenters supported the proposal essentially as proposed, twelve commenters favored amending the proposal before adoption, two were opposed to the proposal, and one felt that the proposal was favorable but not necessary.

A majority of those commenting supported the need for the proposal citing that very few insurance companies have offered quotes on the blanket bond and those that have, did not offer quotes under \$100,000. One commenter pointed out that while fidelity bond coverage is extremely costly to a large number of institutions, such coverage is nearly out of reach for *de novo* institutions. Another commenter said that although its institution is currently eligible for fidelity bond coverage, the premium is at a level which has had a significant adverse impact on its regulatory capital.

Four of the commenters who favored adopting the proposal with amendments expressed the opinion that RAP or GAAP capital should be used in the base calculation instead of tangible capital. Several of the commenters cited the example of an institution within compliance under RAP or GAAP but with a negative tangible capital being unable to obtain bond coverage with a deductible within the proposed limitation.

One of the commenters suggested that

the permissible deductible be the higher of ten percent of the amount of the bond purchased or \$50,000. The commenter stated that if the permissible deductible is ten percent of the amount of the bond purchased, those institutions that wish to retain a higher amount of the risk and/or those forced to obtain a higher deductible, would not be in violation of the existing regulations regarding permissible deductible.

Four commenters suggested that exemptions from fidelity bond coverage be issued. One commenter urged that the Board permit insured institutions to apply for exemptions from fidelity bond coverage on an annual basis if they are able to show that they made a good faith effort to obtain a reasonably priced bond and were unsuccessful in securing them. Another commenter suggested that institutions be permitted to obtain the best fidelity bonds available, even if the deductibles exceed those outlined in the proposal or if the effective coverage amounts are less than those specified in the proposal. That commenter also supported a special exception, i.e., waiving the fidelity bond requirement in any one year. One commenter favored permitting an insured institution whose deductible exceeds the bond requirement to forego obtaining a fidelity bond and pursue self-insurance instead. Citing the same situation, another commenter concluded that the institution should be "exempt from obtaining coverage if its management concludes that going without coverage would be prudent on the basis of a cost/benefit analysis of the coverage offered and the premium quoted."

One of the commenters who disagreed with the proposal said that the deductible amount of \$50,000 for the bonds was too low. In addition, it pointed out that such a deductible would effectively increase premiums. Another commenter urged the Board to either remove the regulation requiring blanket bonds in its entirety or insert provisions allowing institutions to self-insure. They also stated that valuation allowances should be allowed to cover the types of losses that are covered by blanket bonds; e.g., based on percentage of liabilities, percentage of average cash maintained on bond, location in high crime areas, analysis of internal controls by Board examiners and other related factors.

The Board noted in its proposed rule that there was a possibility of the anomalous situation wherein the deductible as calculated would be higher than the \$3 million limit to bond

coverage pursuant to § 563.19(b). To address this as well as other areas of § 563.19, the Board is simultaneously issuing an advance notice of proposed rulemaking (ANPR) to solicit comments on the entire fidelity bond regulation. Specifically, the Board requests comments on the appropriate amount of bond needed as well as examples of what insured institutions are paying as premiums and for what amount of coverage.

In addition, the Board has deferred acting on the proposed five percent of tangible capital proposal until comments on the ANPR are received. The Board, however, is modifying the current deductible schedule to provide that the minimum deductible may be \$50,000. Also, the Board requested comment on the proposed removal of the sentence permitting an increase of the permissible deductible to a maximum of three times the permissible amount when losses exceed 50% of the premium. Since no comments were received in this area, the Board is hereby removing this sentence from the regulation.

Having considered the comments summarized above and noting the Board's issuance of an ANPR on the entire fidelity bond regulation, the Board is adopting a revised amendment to 12 CFR 563.19 to permit a permissible deductible of \$50,000 for bonds for directors, officers, employees, and agents of insured institutions.

Final Regulatory Flexibility Analysis

Pursuant to section 3 of the Regulatory Flexibility Act, 5 U.S.C. 604, the Board is providing the following final regulatory flexibility analysis.

1. *Need for and objectives of the rule.* These elements are incorporated above in the **SUPPLEMENTARY INFORMATION**.

2. *Issues raised by comments and agency assessment and response.* These elements are incorporated above in **SUPPLEMENTARY INFORMATION**.

3. *Significant alternative minimizing the small-entity impact and agency response.* The rule would in fact ease the burden on small institutions by allowing a more reasonable permissible deductible.

List of Subjects in 12 CFR 563

Bank deposit insurance, Currency, Investments, Reporting and recordkeeping requirements, Savings and loan associations.

Accordingly, the Board hereby amends Part 563, Subchapter D, Chapter

V, Title 12, Code of Federal Regulations, as set forth below.

SUBCHAPTER D—FEDERAL SAVINGS AND LOAN INSURANCE CORPORATION

PART 563—OPERATIONS

1. The authority citation for Part 563 continues to read as follows:

Authority: Sec. 1, 47 Stat. 725, as amended (12 U.S.C. 1421 *et seq.*); sec. 5A, 47 Stat. 727, as added by sec. 1, 64 Stat. 256, as amended (12 U.S.C. 1425a); sec. 5B, 47 Stat. 727, as added by sec. 4, 80 Stat. 824, as amended (12 U.S.C. 1425b); sec. 17, 47 Stat. 736, as amended (12 U.S.C. 1437); sec. 2, 48 Stat. 128, as amended (12 U.S.C. 1462); sec. 5, 48 Stat. 132, as amended (12 U.S.C. 1464); secs. 401–407, 48 Stat. 1255–1260, as amended (12 U.S.C. 1724–1730); sec. 408, 82 Stat. 5, as amended (12 U.S.C. 1730a); sec. 1204, 101 Stat. 662 (12 U.S.C. 3806); Reorg. Plan No. 3 of 1947, 12 FR 4981, 3 CFR, 1943–1948 Comp., p. 1071.

2. Amend § 563.19 by revising paragraph (b) to read as follows:

§ 563.19 Bonds for directors, officers, employees, and agents; form of and amount of bonds.

(b) No insured institution shall be required to maintain such bond coverage in an amount greater than \$3,000,000. Such bond coverage may provide for a deductible amount from any loss which otherwise would be recoverable from the bonding company. A deductible amount may be applied separately to one or more insuring agreements. The bond shall not provide for more than one deductible amount from all losses caused by the same person or caused by the same persons acting in collusion or combination in cases in which such losses result from dishonesty of employees (as defined in the bond). A deductible shall not exceed an amount determined according to the following schedule:

Base	Permissible deductible
\$75,000,000 and under.....	\$50,000.
75,000,001 to 250,000,000.....	\$25,000 plus .0005 of base over \$25 million.
Over 250,000,000.....	\$137,500 plus .0001 of base \$250 million.

By the Federal Home Loan Bank Board.
John F. Ghizzoni,
Assistant Secretary.
[FR Doc. 89–13915 Filed 6–12–89; 8:45 am]
BILLING CODE 8720–01–M

DEPARTMENT OF TRANSPORTATION Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 88-ASW-54]

Revision of Control Zone; Hood Army Airfield (AAF), TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the control zone located at Hood Army Airfield (AAF), TX. The existing Hood AAF Control Zone became effective on November 19, 1987, and was described as "Within 3-mile radius of the Hood AAF * * *." This 3-mile radius of the Hood AAF should have been large enough to touch the adjoining Robert Gray AAF Control Zone. However, it has been determined that the 3-mile radius of Hood AAF is not wide enough to touch the Robert Gray AAF Control Zone and must be enlarged to within a 3.5-mile radius of Hood AAF. This revision will allow the Hood AAF Control Zone and the Robert Gray AAF Control Zone to touch. The Robert Gray AAF Control Zone will not be affected by this revision.

EFFECTIVE DATE: 0901 utc, July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On February 15, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the control zone located at Hood AAF, TX (54 FR 8555).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise the control zone located at Hood AAF, TX. The existing part-time Hood AAF Control Zone became effective on November 19, 1987. The control zone

was described as "Within a 3-mile radius of the Hood AAF * * *" and was expected to be large enough to touch, but not overlies, the adjoining Robert Gray AAF Control Zone. It has been determined that a 3-mile radius of the Hood AAF is not wide enough to do this; therefore the Control Zone needs to be enlarged to within a 3.5-mile radius of the Hood AAF. This revision will cause the Hood AAF Control Zone and the Robert Gray AAF Control Zone to touch. This will be the only change to the Hood AAF Control Zone. The Robert Gray AAF Control Zone will not be affected by this revision.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows:

Hood Army Airfield (AAF), TX [Amended]

By changing the first sentence of the existing legal description to read: "Within a 3.5-mile radius of the Hood AAF (latitude 31°08'13"N., longitude 97°42'49"W.) * * *" The remainder of the legal description will remain unchanged.

Issued in Fort Worth, TX, on May 22, 1989.

Larry L. Craig,
Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89–13921 Filed 6–12–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 88-ASW-63]

Revision of Transition Area; Morrilton, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will revise the transition area located at Morrilton, AR. The development of a new standard instrument approach procedure (SIAP) to Runway 27 at the Morrilton Municipal Airport, utilizing the Bridge Nondirectional Radio Beacon (NDB), has made this revision necessary. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new NDB RWY 27 SIAP to the Morrilton Municipal Airport. Coincident with this action, the status of the Morrilton Municipal Airport will change from visual flight rules (VFR) to instrument flight rules (IFR).

EFFECTIVE DATE: 0901 u.t.c., July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On February 15, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Morrilton, AR (54 FR 8554).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise the transition area located at Morrilton, AR. The development of a new NDB RWY 27 SIAP to the Morrilton

Municipal Airport, utilizing the Bridge NDB, has necessitated this revision. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new NDB RWY 27 SIAP. Coincident with this action is the changing of the status of the Morrilton Municipal Airport from VFR to IFR.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Morrilton, AR [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Petit Jean Airport (latitude 35°08'17" N., longitude 92°54'34" W.), and within 3.5 miles each side of the 216° bearing from the Morrilton NDB (latitude 35°07'07" N., longitude 92°55'30" W.) extending from the 8.5-mile radius area to 11.5 miles southwest of the Morrilton NDB; and within a 10-mile radius of the Morrilton Municipal Airport (latitude 35°08'10" N., longitude 92°42'48" W.); excluding that portion that overlies the Little Rock, AR, Transition Area.

Issued in Fort Worth, TX, on May 22, 1989.

Larry L. Craig,
Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89–13923 Filed 6–12–89; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 88-ASW-48]

Revision of Transition Area; Lake Charles, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The amendment will revise the transition area located at Lake Charles, LA. The development of a new VOR RWY 33 standard instrument approach procedure (SIAP) to the Chennault Industrial Airpark, utilizing the Lake Charles Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC), has made this revision necessary. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new VOR RWY 33 SIAP to the Chennault Industrial Airpark.

EFFECTIVE DATE: 0901 utc, July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530, telephone (817) 624–5561.

SUPPLEMENTARY INFORMATION:

History

On March 17, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by revising the transition area located at Lake Charles, LA (54 FR 11231).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will revise the transition area located at Lake Charles, LA. The development of a new VOR RWY 33 SIAP to the Chennault

Industrial Airpark, utilizing the Lake Charles VORTAC, has necessitated this revision. The intended effect of this revision is to provide adequate controlled airspace for aircraft executing the new SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Lake Charles, LA [Revised]

That airspace extending upward from 700 feet above the surface within an 8.5-mile radius of the Lake Charles Municipal Airport (latitude 30°07'32" N., longitude 93°13'22" W.); and within an 8.5-mile radius of the Chennault Industrial Airpark (latitude 30°12'45" N., longitude 93°08'37" W.), and within 5 miles each side of the 155° radial of the Lake Charles VORTAC (latitude 30°08'29" N., longitude 93°06'20" W.), extending from the 8.5-mile radius area of the Chennault Industrial Airpark to 15 miles southeast of the Chennault Industrial Airpark.

Issued in Fort Worth, TX, on May 22, 1989.

Larry L. Craig,
Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-13922 Filed 6-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASW-01]

Establishment of Transition Area; Spearman, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment will establish a new transition area at Spearman, TX. There is an existing VOR/DME RWY 2 standard instrument approach procedure (SIAP) to the Spearman Municipal Airport, utilizing the Borger Very High Frequency Omnidirectional Radio Range/Tactical Air Navigation (VORTAC); however, there was never a transition area created for this SIAP. The intended effect of this amendment is to establish a new transition area, thus providing adequate controlled airspace for aircraft executing the existing VOR/DME RWY 2 SIAP to the Spearman Municipal Airport.

EFFECTIVE DATE: 0901 U.T.C., July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530, telephone (817) 624-5561.

SUPPLEMENTARY INFORMATION:

History

On February 15, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a new transition area at Spearman, TX (54 FR 8556).

Interested persons were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is that proposed in the notice. Section 17.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E, dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations will

establish a transition area at Spearman, TX. There is an existing VOR/DME RWY 2 SIAP to the Spearman Municipal Airport, utilizing the Borger VORTAC; however, a transition area was never created for this SIAP. This amendment will establish a transition area for the VOR/DME RWY 2 SIAP. The intended effect of this amendment is to provide adequate controlled airspace for aircraft executing the VOR/DME RWY 2 SIAP to the Spearman Municipal Airport.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Spearman, TX [New]

That airspace extending upward from 700 feet above the surface within a 7-mile radius of the Spearman Municipal Airport (latitude 36°13'05" N., longitude 101°11'47" W.).

Issued in Fort Worth, TX, on May 22, 1989.

Larry L. Craig,
Manager, Air Traffic Division Southwest Region.

[FR Doc. 89-13924 Filed 6-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AWP-9]

Establishment of VOR Federal Airway and Alteration of VOR Federal Airway; California

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action designates Federal Airway V-587 and alters Federal Airway V-283 in the vicinity of Daggett, CA. These airways provide a major feeder route for the Los Angeles Basin area. This action reduces controller workload and decreases the possibility of pilots confusing routing clearances.

EFFECTIVE DATE: 0901 u.t.c., July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations designates V-587 and alters V-283 in the vicinity of Daggett, CA. Federal Airway V-587 will encompass the dogleg portion of V-283 over the Daggett very high frequency omni-directional radio range and tactical air navigational aid (VORTAC). These airways provide a major feeder route for the southern portion of the Los Angeles Basin area. This action saves fuel, aids flight planning and reduces controller workload. Because this action renumbers airways that are presently established and does not involve any changes in airspace except to include the dogleg portion of V-283 in V-587, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a

regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-587 [New]

From Homeland, CA; via INT Homeland 007° and Hector, CA, 226° radials; INT Hector 226° and Daggett, CA, 187° radials; Daggett; INT Daggett 062° and Boulder City, NV, 228° radials; to Boulder City.

V-283 [Amended]

By removing the words "INT Hector 226° and Daggett, CA, 187° radials; Daggett; INT Daggett 062° and Boulder City, NV, 228° radials; to Boulder City," and substituting the words "Hector; to Boulder City, NV."

Issued in Washington, DC, on May 25, 1989.

Harold W. Becker,
Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-13980 Filed 6-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-ANM-2]

Alteration of VOR Federal Airway V-220; Colorado

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Federal Airway V-220 located in the vicinity of Meeker, CO. The V-220 extension from Meeker to

Grand Junction, CO, improves the flow of traffic in the Aspen, CO, area and around other snowbelt-area airports. This action improves flight planning and provides controlled airspace over mountainous territory.

EFFECTIVE DATE: 0901 u.t.c., July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

History

On August 15, 1988, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the description of Federal Airway V-220 located in the vicinity of Meeker, CO. (53 FR 30695) The V-220 extension from Meeker to Grand Junction, CO, improves the flow of traffic in the Aspen, CO, area and around other snowbelt-area airports. This action improves flight planning and provides controlled airspace over mountainous territory. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the description of VOR Federal Airway V-220 located in the vicinity of Meeker, CO. This alteration extends V-220 from Meeker to Grand Junction, CO, via a south dogleg. This action improves traffic flow in snow country airports located in the vicinity of Aspen, CO. These changes also support terminal procedures by providing missed approach routes for holding over en route fixes. This action improves flight planning and increases airport capacity during instrument weather conditions.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44

FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11-69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-220 [Amended]

By removing the words "From Meeker, CO;" and substituting the words "From Grand Junction, CO, 25 miles, 90 MSL, 28 miles, 120 MSL, INT Grand Junction 075° and Meeker, CO, 167° radials; Meeker;"

Issued in Washington, DC, on June 1, 1989.
Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-13981 Filed 6-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AWP-17]

Realignment of VOR Federal Airway V-2; Hawaii

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment changes the width of a segment of Federal Airway V-2 located between Upolu Point, HI, and Lanai, HI. The FAA has determined that the distance between the airway and Restricted Areas R-3104A and R-3104B is less than 4 miles from the

centerline of V-2. This action corrects the description of V-2 in that area by reducing the airway width on the south side to 3 miles which eliminates the airway's intrusion into R-3104A and R-3104B. This action increases safety in that area.

DATES: Effective date—0901 u.t.c., July 27, 1989. Comments must be received on or before July 24, 1989.

ADDRESSES: Send comments on the rule in triplicate to: Manager, Air Traffic Division, AWP-500, Docket No. 89-AWP-17, Federal Aviation Administration, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, weekdays, except Federal holidays, between 8:30 a.m. and 5:00 p.m. The FAA Rules Docket is located in the Office of the Chief Counsel, Room 916, 800 Independence Avenue, SW., Washington, DC.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Lewis W. Still, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9250.

SUPPLEMENTARY INFORMATION:

Request for Comments on the Rule

This action is in the form of a final rule, which involves reducing the airway width of a segment of V-2 between Upolu Point, HI, and Lanai, HI, to assure that V-2 does not penetrate R-3104A and R-3104B. This action reduces the airway width from 4 miles to 3 miles on the south side. Although this action was not preceded by notice and public procedure, comments are invited on the rule. When the comment period ends, the FAA will use the comments submitted, together with other available information, to review the regulation. After the review, if the FAA finds that changes are appropriate, it will initiate rulemaking proceedings to amend the regulation. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in evaluating the effects of the rule and determining whether additional rulemaking is needed. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the rule that might suggest the need to modify the rule.

The Rule

The purpose of this amendment to Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is to reduce the width of VOR Federal Airway V-2, located between Upolu Point, HI, and Lanai, HI. The current alignment of V-2 penetrates R-3104A and R-3104B. This action reduces the width of V-2 on the south side from 4 miles to 3 miles, thereby increasing safety in that area. Section 71.127 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

Under the circumstances presented, the FAA concludes that there is an immediate need for a regulation to amend the description of V-2 located between Upolu Point, HI, and Lanai, HI, by reducing the airway width from 4 miles to 3 miles on the south side so that V-2 does not penetrate R-3104A and R-3104B. For the reasons discussed, good cause exists for making this amendment effective coincident with the next effective date. Therefore, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.127 [Amended]

2. Section 71.127 is amended as follows:

V-2 [Revised]

From Honolulu, HI, via Lanai, HI: INT Lanai 106° and Upolu Point, HI, 305° radials; Upolu Point (4 miles N and 3 miles S of centerline); INT Upolu Point 093° and Hilo, HI, 336° radials; Hilo. The airspace within R-3104A and R-3104B is excluded.

Issued in Washington, DC, on June 1, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-13982 Filed 6-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 88-AEA-10]

Alteration of VOR Federal Airways; Virginia

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the descriptions of Federal Airways V-4, V-92, V-144, V-174 and V-214. The FAA has scheduled to decommission the Shawnee very high frequency omnidirectional radio range and tactical air navigational aid (VORTAC) located at Winchester Regional Airport, VA. This action amends the descriptions of all airways affected by the decommissioning of the Shawnee VORTAC.

EFFECTIVE DATE: 0901 u.t.c., July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Jesse B. Bogan, Jr., Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9253.

SUPPLEMENTARY INFORMATION:

History

On March 30, 1989, the FAA proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to realign VOR Federal Airways V-4, V-92, V-144, V-174 and V-214 (54 FR 13071). Due to the planned decommissioning of the Shawnee VORTAC located at Winchester Regional Airport, VA, all airways affected by the planned decommissioning are being altered. Interested parties were invited to

participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.123 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations amends the descriptions of Federal Airways V-4, V-92, V-144, V-174 and V-214. The FAA has scheduled to decommission the Shawnee VORTAC located at Winchester Regional Airport, VA. This action amends the descriptions of all airways affected by the decommissioning of the Shawnee VORTAC.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, VOR Federal airways.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended, as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.123 [Amended]

2. Section 71.123 is amended as follows:

V-4 [Amended]

By removing the words "Shawnee, VA; to Armel, VA," and substituting the words "INT Kessel 097° and Armel, VA, 292° radials; to Armel."

V-92 [Amended]

By removing the words "INT Bellaire 107° and Grantsville 285° radials; Grantsville; Shawnee, VA," and substituting the words "INT Bellaire 107° and Grantsville, MD, 285° radials; Grantsville; INT Grantsville 124° and Armel, VA, 292° radials; to Armel."

V-144 [Amended]

By removing the words "Linden, VA; to INT Linden 104° and Casanova, VA, 348° radials;" and substituting the words "to Linden, VA."

V-174 [Amended]

By removing the words "Elkins, WV; to Shawnee, VA," and substituting the words "to Elkins, WV."

V-214 [Amended]

By removing the words "INT Bellaire, 108° and Indian Head, PA, 254° radials; Indian Head; Martinsburg, WV;" and substituting the words "INT Bellaire 107° and Grantsville, MD, 285° radials; Grantsville; Martinsburg, WV;"

Issued in Washington, DC, on June 1, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-13983 Filed 6-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 75

[Airspace Docket No. 88-AWP-20]

Alteration of Jet Route; Arizona

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment alters the description of Jet Route J-212 between Buckeye, AZ, and Palm Springs, CA. This action will aid in improving the traffic flow into Palm Springs and the Los Angeles Basin Airports by lowering the minimum en route altitude (MEA), northwest of Buckeye, from 31,000 feet mean sea level (MSL) to 26,000 feet MSL.

EFFECTIVE DATE: 0901 u.t.c., July 27, 1989.

FOR FURTHER INFORMATION CONTACT: Betty Harrison, Airspace Branch (ATO-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Operations Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

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**SUPPLEMENTARY INFORMATION:
History**

On March 3, 1989, the FAA proposed to amend Part 75 of the Federal Aviation Regulations (14 CFR Part 75) to alter Jet Route J-212 between Buckeye, AZ, and Palm Springs, CA (54 FR 9065). In the past, the MEA of 31,000 feet MSL between Buckeye and Palm Springs created air traffic control problems for aircraft arriving at Palm Springs and the Los Angeles Basin Airports. This jet route was altered by lowering the MEA, northwest of Buckeye, to 26,000 feet MSL. This action will aid in improving the flow of traffic to Palm Springs and the Los Angeles Basin Airports. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Section 75.100 of Part 75 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 75 of the Federal Aviation Regulations alters the description of Jet Route J-212 between Buckeye, AZ, and Palm Springs, CA. This jet route was altered by lowering the MEA, northwest of Buckeye, to 26,000 feet MSL. This action will aid in improving the flow of traffic to Palm Springs and the Los Angeles Basin Airports.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 75

Aviation safety, Jet routes.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 75 of the Federal

Aviation Regulations (14 CFR Part 75) is amended, as follows:

**PART 75—ESTABLISHMENT OF JET
ROUTES AND AREA HIGH ROUTES**

1. The authority citation for Part 75 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 75.100 [Amended]

2. Section 75.100 is amended as follows:

J-212 [Revised]

From Stanfield, AZ; Buckeye, AZ; INT Buckeye 283° and Palm Springs, CA, 093° radials; to Palm Springs.

Issued in Washington, DC, on May 24, 1989.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 89-13979 Filed 6-12-89; 8:45 am]

BILLING CODE 4910-13-M

FEDERAL TRADE COMMISSION**16 CFR Part 13**

[Dkt. C-3251]

**Alamo Rent-A-Car, Inc.; Prohibited
Trade Practices, and Affirmative
Corrective Actions**

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the Fort Lauderdale, Fla. rental company to disclose charges, terms and conditions that are mandatory or are not reasonably avoidable, to every consumer who inquires about the prices. **DATE:** Complaint and Order issued April 28, 1989.¹

FOR FURTHER INFORMATION CONTACT: Maria Gambale or Ronald Waldman, New York Regional Office, Federal Trade Commission, 2243 Federal Bldg., 26 Federal Plaza, New York, N.Y. 10278. (212) 264-1207.

SUPPLEMENTARY INFORMATION: On Thursday, January 12, 1989, there was published in the *Federal Register*, 54 FR 1181, a proposed consent agreement with analysis in the Matter of Alamo

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, DC 20580.

Rent-A-Car, Inc. for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely Or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.155 Prices; § 13.155-5 Additional charges unmentioned. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-20 Disclosures; § 13.533-50 Maintain means of communication. Subpart—Misrepresenting Oneself And Goods:—Prices: § 13.1776 Prices; § 13.1778 Additional costs unmentioned.

List of Subjects in 16 CFR Part 13

Automobiles, Rental cars, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,
Secretary.

[FR Doc. 89-13973 Filed 6-12-89; 8:45 am]

BILLING CODE 6750-01-M

16 CFR Part 13

[Dkt. C-3249]

**Associated Mills, Inc.; Prohibited Trade
Practices, and Affirmative Corrective
Actions**

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, a Chicago, Ill. corporation to have a reasonable basis for any claims of performance characteristics of the Bottled Water Maker or any other water treatment appliance or product. Respondent is also required to have a reasonable basis for claims of the expected life over which any environmental treatment product can treat or remove any contaminant or reduce any health-related risks.

DATE: Complaint and Order issued April 27, 1989.¹

FOR FURTHER INFORMATION CONTACT:

Steven A. Shaffer, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, Ca. 94103. (415) 995-5220.

SUPPLEMENTARY INFORMATION: On Wednesday, January 18, 1989, there was published in the *Federal Register*, 54 FR 1948, a proposed consent agreement with analysis in the Matter of Associated Mills, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered its order to cease and desist in disposition of this proceeding.

The prohibited trade practices and/or corrective actions, as codified under 16 CFR Part 13, are as follows: Subpart—Advertising Falsely Or Misleadingly: § 13.10 Advertising falsely or misleadingly; § 13.170 Qualities or properties of product or service; § 13.170-16 Cleansing, purifying; § 13.170-30 Durability or permanence; § 13.170-70 Preventive or protective; § 13.190 Results; § 13.205 Scientific or other relevant facts. Subpart—Corrective Actions And/Or Requirements: § 13.533 Corrective actions and/or requirements; § 13.533-45 Maintain records; § 13.533-45(a) Advertising substantiation; § 13.533-50 Maintain means of communication. Subpart—Misrepresenting Oneself And Goods:—Goods: § 13.1590-20 Federal Trade Commission; § 13.1710 Qualities or properties; § 13.1730 Results; § 13.1740 Scientific or other relevant facts.

List of Subjects in 16 CFR Part 13

Water treatment products, Trade practices.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interprets or applies sec. 5, 38 Stat. 719, as amended; 15 U.S.C. 45)

Donald S. Clark,
Secretary.

[FR Doc. 89-13974 Filed 6-12-89; 8:45 am]

BILLING CODE 6750-01-M

¹ Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, N.W., Washington, DC 20580.

DEPARTMENT OF ENERGY**Federal Energy Regulatory
Commission**

**18 CFR Parts 154, 157, 260, 284, 385,
and 388**

[Docket No. RM87-17-000]

**Natural Gas Data Collection System;
Availability of Record Formats and
Hard Copy Filing Formats for
Certificate and Tariff Filings**

Issued: June 8, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of availability of record formats and hard copy filing formats for certificate and tariff filings.

SUMMARY: This notice identifies revisions and additions to the record formats for certificate and tariff filings. Revision of these formats is based on staff review of comments submitted during and after the Order No. 493 implementation conference on February 1 and 2, 1989. Additional comments were also received and reviewed after draft certificate filing formats were issued on March 29, 1989.

DATE: The revised FERC certificate and tariff filing record formats and hard copy formats are available on June 8, 1989.

FOR FURTHER INFORMATION CONTACT: *Tariffs:* Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 7010, Washington, DC 20426, (202) 357-8995; *Certificates:* George Dornbusch, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Room 7300, Washington, DC 20426, (202) 357-9181.

SUPPLEMENTARY INFORMATION: The Commission staff is issuing revised record formats for certificate filings in response to comments on the draft formats issued March 29, 1989. In addition, staff is responding to tariff format issues raised at the Order No. 493 implementation conference on February 1 and 2, 1989. Technical revisions for tariff filings are described in Appendix A. Staff's response to comments on the certificate record formats and a description of the revisions to those formats are included in Appendix B. Staff is also releasing with this notice the recommended hard copy filing formats for a certificate filing and sample tariff sheet print formats using various print pitch and line densities.

The record formats for certificate filings are intended to standardize the electronic format in which certain data included in a certificate filing are reported to the Commission. The record formats are structured to encompass most of the data which staff frequently requires in supplemental data requests. However, there is no change in the regulations identifying the contents of a certificate filing. There is also no intent to require companies to file more information than they have previously been required to submit or to alter the timeframe in which certain information is submitted to the Commission. Companies may report data in more or less detail than specified in the record formats, as appropriate to support their applications.

Information in a certificate filing will be submitted in three files: A file containing only structured data (FILE1), a second file containing all of the footnotes to the structured data (FILE2), and a third file consisting of free form text records, header records and trailer records (FILE3).

Using the revised file structure, a company may elect to display a particular statement or schedule in the Commission-specified format or substitute its own free form display in FILE3. However, the formatted data in FILE1 and the accompanying footnotes in FILE2 on the electronic medium must be provided in either case. The revised structure also enables footnotes to be printed with the applicable statement or schedule instead of at the end of the hard copy. The General Instructions for the certificate filing record formats contain a more detailed description of the new method for submitting data on an electronic medium.

In addition to publishing the text of this notice in the *Federal Register*, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this notice, the associated record formats and the hard copy filing formats, during normal business hours in Room 1000 at the Commission's headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

This notice is also available through the Commission Issuance Posting System (CIPS), an electronic bulletin board service that provides access to formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed on a 24-hour basis using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity.

eight data bits and one stop bit. The text of the notice will be available on CIPS for 30 days from the date of issuance.

Due to the size of the record format and hard copy print format files, the formats will not be available through CIPS. However, the revised record formats and hard copy formats are available (1) on a single 5.25" (1.2MB) or 3.5" (1.44MB) double-sided, high density diskette in ASCII text file format, or (2) on paper (124 pages for certificates; 38 pages for tariffs). The diskettes and/or paper copy may be purchased from the Commission's copy contractor, La Dorn Systems Corp., located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426. To order the diskette or paper copy, you must refer to:

RM87-17-000, Record Formats for Certificate and Tariff Filings (June 8, 1989).

Specify diskette (5.25" or 3.5"), paper copy, or both.

The diskette contains a copy of this notice and an INFO file which describes the files on the diskette and specifies the margin, font and orientation required to print each file after importing the file into a word processing program.

Linwood A. Watson, Jr.,
Acting Secretary.

Appendix A—Revisions to Tariff Filing Formats

The record formats for tariff sheets have not been significantly revised. The formats and instructions issued with this

notice clarify the character and line limits for tariff pages and specify certain abbreviations to be used, if necessary, for tariff sheet identification.

After further review, staff has determined that tariff sheets must be printed at 10, 12, 15 or 17 characters per inch pitch. Sheets that are created using other than the specified print pitches (e.g., 18.6) will default to the next highest density for printing purposes. For readability considerations, print pitches greater than 17 cpi will not be accepted. Tariff sheets must be printed at a line density of either six or eight lines per inch. These specifications result in the following characters/line and lines/inch limits:

Page orientation	Max. line length (characters)				Maximum lines per page	
	10 cpi	12 cpi	15 cpi	17 cpi	6 lpi	8 lpi
Portrait	65	79	98	112	50	70
Landscape	98	118	148	168	31	44

Commenters have stated that sheet identification will require more than the 40 characters specified for both the Sheet ID and Superseded Sheet ID. These field lengths are limited by the number of characters that can be printed in the top margin in the format specified in the Commission's regulations. Therefore, staff has adopted abbreviation conventions that should be used when non-abbreviated sheet identification requires more than 40 characters. The standard abbreviations include:

Substitute: Sub
Alternate: Alt
Revised: /
First, Second, etc.: 1, 2, etc.
Sheet No.: (omit these words)

There are no abbreviations specified for "Original" and "Replacement". For original sheet identification, there should be little need for abbreviation. Staff prefers that the term "Substitute" be used in lieu of "Replacement".

Appendix B—Reply Comments of the Commission Staff to Comments Filed Pursuant to March 29, 1989, Certificate Formats, Docket No. RM87-17-000

Introduction

Ten interstate pipelines and one association filed comments in response to the certificate filing formats issued March 29, 1989. The commenters are: Northwest Pipeline Corporation, United

Gas Pipe Line Company, Texas Eastern Transmission Corporation, Algonquin Gas Transmission Company, Texas Gas Transmission Corporation, Columbia Gas Transmission Corporation, Enron Interstate Pipelines, Williston Basin Interstate Pipeline Company, El Paso Natural Gas Company, Natural Gas Pipeline Company of America, and the Interstate Natural Gas Association of America.

Commenters offered several suggestions that, where possible, have been adopted. The most significant change is a reduction in the number of record formats for Exhibit K. These changes have necessitated a renumbering of the record and item numbers. Item numbers in this appendix, unless otherwise indicated, are the item numbers associated with these final formats.

The comments focused on the following areas:

1. Record CA/03, and Exhibits F & G, all of which are related to the Environmental Report.
2. Records CA/04, 05, 06, 07, and 08, all of which are related to gas supply and market data, and;
3. Records CA/09 through CA/13, all related to facilities data in Exhibit K.

The general concern of the commenters in all three of these areas is that the Commission has designed record formats that go beyond what the regulations specifically require to be

filed in a certificate application or an abbreviated application.

The Commission staff has frequently issued formal data requests and deficiency letters to applicants in order to obtain additional information on applications. These requests and letters have been issued in both simple and complex proceedings. In more complex cases, there may be many formal requests during the course of the proceeding, not including informal data requests, even in most routine cases. The Commission staff has broad authority under §§ 157.8 and 157.14(c) of the regulations to request this additional information.

In an effort to lessen the instances where deficient applications are filed and to minimize the number of formal and informal data requests for information required in its analysis of an application, staff has designed a comprehensive structure for filing applications of all types. The formats maintain the flexibility of each applicant to determine the information it believes is necessary to insert in those filings. The Commission staff has added certain information to these structured records that it usually requests when the application involves certification of facilities and expansion into new or existing markets.

However, there is no change in the regulations identifying the contents of a

certificate filing. There is also no intent to require companies to file more information than they have previously been required to submit or to alter the timeframe in which certain information is submitted to the Commission. Applicants may report data in more or less detail than specified in the record formats, as appropriate to support an application.

General Information

Almost all of the commenters stated their concern that it will be onerous to submit executed service agreements for transportation services pursuant to § 284.223(b) on electronic media. While the service agreement itself is approximately five pages in length, the attachments indicating all of the possible receipt and delivery points can be several hundred pages in length. Staff agrees that executed service agreements pursuant to § 284.223(b) should not be required on electronic media and is clarifying the filing instructions accordingly. Refer to General Instruction 8.

Pro forma tariff sheets included in an application pursuant to § 157.14(a)(18)(i)(b) also will not be required on electronic media. These tariff sheets will not be part of the Commission's electronic tariff system. If changes to a pipeline's tariff are made necessary by the granting of a certificate, then the proposed tariff sheets will be filed on electronic media when the pipeline makes a separate tariff filing. These revisions are now reflected in formats under General Information, Part III(b).

A new sentence has been added to the end of General Information Part III (f) which states: "If these procedures are not adhered to, the filing will not be accepted."

A new subparagraph has been added to Part III (f) which reads:

The tape reel, cartridge, or diskette(s) must have a sticky label affixed indicating the company name and type of filing. Do not attach staples, paper clips, alligator clips, etc., to the electronic medium.

General Instructions

1. Several commenters noted that the certificate filing formats do not allow flexibility to insert nonstandard information in lieu of the required structured data records. This instruction specifically states that the structured data records are placed in FILE1. Footnotes to the structured data records are included in FILE2. Standard Header Record CA/12 (old record CA/15) is used in FILE3 if information from the appropriate records in FILE1 and FILE2

is to be printed in the standard FERC hard copy report format.

Alternatively, records CA/13 and CA/14 (old records CA/18 and CA/17) are to be used in FILE3 if the applicant desires to insert text or use a nonstandard report format in the hard copy report. The text or nonstandard report records are inserted between the header and trailer records. When the print software encounters a Record CA/13, the program will print all records following the header record and preceding the trailer record. The information in FILE1 and FILE2, although still required to be included on electronic media, will not be used for print purposes.

To add further flexibility as requested by several of the commenters, Exhibit C now contains codes for those exhibits excluded from the requirements for electronically filed data. This will give the applicant the option of inserting nonstandard text or data in FILE3 that it believes is necessary to accompany and further explain the exhibits not required to be filed on electronic media.

Also, additional text, data, or any other miscellaneous information may be inserted using Records CA/13 and CA/14 and Regulation Section Code 127 from Exhibit C for § 157.14(b), "Additional Exhibits."

8. Executed Contract Text

This instruction caused a great deal of confusion and it is now modified to state that executed service agreements related to prior notice filings pursuant to Order No. 500, because of their size, do not have to be submitted on electronic media.

12. Record Lengths

The standard record length has been changed from 240 to 255 bytes. This is consistent with the maximum record length used for other filings required on electronic media. However, none of the record formats for certificate filings require more than 240 characters.

13. Pipeline Facility/Segment Number

This instruction has been renamed and modified to indicate that the first segment or facility in a project or projects is to be Number 1 and so on in sequence, regardless of the number of the project(s).

14. Mile Post

Since there is bi-directional flow on many pipelines depending upon the season, the phrase "in the direction of gas flow" is deleted.

16. Year Reported

In order to provide more flexibility, this instruction is modified to give the

applicant the option of using another basis for determining a twelve-month period other than the current instruction of November 1 through October 31. This will be accomplished by use of a footnote on Record CA/01 item 14. The footnote should also define the basis and the parameters of the weather patterns used in making the forecasts.

17. Winter Period Volume

The same flexibility will be given to the applicant as in No. 16 above, with the footnote appearing on the appropriate record(s).

18. Summer Period Volume

See Nos. 16 and 17 above.

20. Corrections to Errors in Filings

This instruction pertains only to errors in filings. If an amendment is filed, it should include all the information which is new or revised from the original filing and should by reference include that information from the initial filing that is pertinent, utilizing different file names than the initial filing.

Supplements to an application or responses to data requests should be filed on the enclosed formats, both standard and nonstandard, utilizing different filenames than the initial filing.

23. Records Required

This is a new title for this instruction. Apparently, there is some confusion with regard to the records that are required with each type of application. This instruction is modified to show that Record CA/02 is generally not required for applications requesting certification of facilities related to system supply, relocation of facilities, or replacement of facilities (that result in no change to existing customer services).

The instruction is also clarified to indicate that the receipt and delivery points required in Schedule 2 of the hard copy format are not just those points that are to be constructed but all points that are affected by the services for which certification is sought. If the application is a prior notice filing, Schedule 2 is not required and the receipt and delivery point information that is part of the service agreement will be provided in hard copy only as noted in General Instruction 8.

These structured formats standardize certain significant portions of the exhibits required in certificate filings and other information usually requested by the Commission staff in formal data requests. The formats are not meant to be a complete replacement or substitute for specific exhibits or portions of a certificate application. The applicant

has always had to decide how to comply with the regulations regarding the information and the amount of detail required to submit a complete application. The regulations for abbreviated applications (§ 157.7) have not been changed. The applicant therefore still has the same flexibility as in the past to include that information which it believes is necessary to submit a complete filing.

24. Exhibit K, Schedule Records CA/09 and CA/10

This is a new instruction that clarifies the relationship between Exhibit K and the regulations regarding abandonment (§ 157.18) that do not require an Exhibit K.

Several commenters suggested that old Records CA/09 through CA/13 did not capture all the data for Exhibit K as required by the regulations. Based upon these suggestions and with additional input from staff, the five record formats for Exhibit K have been reduced to two record formats which now contain what the regulations require. This includes certain detailed cost information normally requested by the staff in filings with significant facilities. The specific changes to Records CA/09 and CA/10 will be discussed below in more detail.

These new records are also modified to solve a dilemma addressed by several of the commenters regarding the Exhibit K records when there is a joint application or an application that involves more than one project by the same applicant (some commenters consider a single segment or a series of segments as one project and another group of segments or equipment as a second project). This will be resolved by inserting a new item, "Project Number", on these records.

25. Joint Applications

This is a new instruction to clarify a situation that does not occur very often, but can be complex in a structured format.

Schedule Records

Schedule/Record CA/01

Item 1 Company ID

If company is a new entity, leave blank. Commission staff will assign new ID.

Item 3 Date Filed

Leave blank if not known. Commission staff will add to files.

Item 4 Filing Type

New "code=3, supplement" is added.

Item 5 Docket Number

Commission staff will add original Docket Number to files.

Item 6 Type of Case

Some commenters seek space for additional types of cases and case codes. This is not necessary. Applicant need only select up to four codes that, in general terms, most clearly describe the application.

Item 10a Total Miles

New item to indicate total miles of pipeline facilities in application.

Item 10b Total Horsepower

New item to indicate total compressor horsepower proposed in application.

Item 10c Total Cost

New item to indicate total cost of all new facilities in application.

Item 10d Net Present Cost of Abandoned Facilities

New item to indicate the approximate net cost of the facilities proposed to be abandoned. Applicant is still required to justify the accounting treatment of these facilities.

Item 10e Maximum Daily Volume/Capacity

New item indicating total volume or capacity proposed in the filing.

Item 12 Heat Content

Commenters stated that it is unclear what value should be used for heat content. Staff clarifies that an applicant should use the same value as in its FERC Form No. 2 filing.

Item 15 Data Sensitivity

New item added at request of commenters to indicate that privileged information is included in the application.

Note 1: Type of Case Codes:

Several commenters requested that a new "code=22, Other" be added, but did not give any examples of "other" types of cases. We do not believe a change is necessary. If the Commission's regulations are revised in the future to require additional types of applications or filings on electronic media, revisions to the record formats will be made at that time.

Schedule/Record CA/02

A new Note is inserted at the top of this record indicating how this record is to be used. Also several commenters requested that a new "code=8, none" be added to Item 16, Type of Customer/Shipper. This is unnecessary since this record need not be completed if the application does not propose any new or revised services for any customers. This could occur if the application proposes new facilities for system supply, relocations or replacements.

Item 22 Term of Service

Old Item 21. As requested by several commenters, the reporting units are changed from years to "months" for more flexibility.

Item 23 Evergreen Clause

As requested by some commenters, this is a new item to more accurately identify the true length of the contract.

Item 25 Receipt Point

The comment, "see general instruction 8" was added.

Item 26 Delivery Point

The comment, "see general instruction 8" was added.

Item 27a Project Number

This is a new item to associate a specific customer/shipper's service and volumes to an applicant's particular facility project as designated in Exhibit K of the application.

Note 2: This note has been modified to eliminate the reference to negative numbers, and that any facilities involved in an abandonment should be reported on Records CA/09 and CA/10.

Note 3: This note is clarified to indicate that receipt and delivery point(s) are to be reported when the construction and operation or abandonment of any facilities are proposed within the application.

Schedule/Record CA/03

Item 30 Factor Impact

Old item 28. A new "code=2, impact undetermined at time of filing, will provide as soon as possible" is added. All factors should be reported, even if Code=0, none. This will indicate that the applicant has analyzed the project and has made an initial determination that there is no impact associated with a particular factor.

Item 31 Facility/Segment Number

Old item 29. The name of this item is changed to coincide with item 110.

Item 34 Length (Miles)

Old item 32. The accuracy of two decimal places was included in this item to offer flexibility to the applicant. At their own option, several applicants in the past have reported lengths to this accuracy when the pipeline is routed through heavily congested or populated areas or through areas of significant environmental sensitivity such as wetlands, or sites with historical or archeological significance. Refer to discussion under Exhibit F for minimum precision required in reporting mile posts.

Schedule/Record CA/04

Item 39 Volume Reported Code

Old item 37. In the past the Commission Staff has requested gas supply information on a monthly basis. However, we have recently found that seasonal data is more meaningful for the types of analyses being undertaken today. Using

seasonal data rather than monthly data will reduce the amount of data required and thus reduce some of the burden on the industry. General instruction 16 was added to this item as well as items 53, 67, 81, and 95.

All supply and requirements codes not indicated as new or proposed are understood to be existing.

Item 40 Source of Supply

Old item 38. Code=1, pipeline contract, is to be specified in item 41. This was shown on the hard copy format but inadvertently left off the record format.

Code=4, the comment "(code 2 minus code 3)", is new.

Code=6, transportation; there is no indication on Record CA/04 or on the optional hard copy report format that this code was to be specified in Item 41, and it was not our intention for it to be so specified.

Transportation is to be reported in the aggregate and should be approximately in balance with that volume which is reported for transportation on Record CA/05, Code=5.

Items 49, 50, and 51

Old items 46, 47, and 48; Eighth, Ninth, and Tenth Year Forecast Volumes.

Under Exhibit H (§ 157.14(a)(10)), there is no specific time period described for a gas supply forecast. However, in the past the Commission has required twelve years and has modified this in recent years depending upon circumstances at the time. In Opinion 130, *Northern Natural Gas Co.*, 16 FERC 61,223 and two *Columbia Gas Transmission Corp.* cases, 15 FERC 61,243; 17 FERC 61,252 and 21 FERC 61,026, the Commission adopted a flexible supply standard that took the approach of each growth case being analyzed on its own merits and that no industry-wide deliverability standard was necessary during a time of great changes in the industry. The industry is still undergoing great changes due to a more competitive marketplace and constant restructuring of supply contracts and pricing.

This flexible standard has likewise given a pipeline greater flexibility in preparing its certificate applications such that, depending upon its sources of supply, its acquisition program, the size and scope of the services to be rendered, the number of customers involved, and the comparative nature of the applicant's filing to other applications proposing the same

services, pipelines have submitted gas supply information to the Commission on a routine basis for periods ranging from three to ten years.

Therefore, Records CA/04 through CA/08 have been devised to create a 10-year report (3 actual and 7 projected). If the information submitted for Exhibits H and I is insufficient (as well as any other lack of information) to make a decision on the merits, the Commission staff has the option under § 157.14(c) to request the additional information in the same formats presently under discussion.

Item 52 Production Area

Old item 50. This item is used to identify volumes in Item 40, code=5, field production. A new Note 4 has been added indicating that if the applicant uses a different method of describing these areas or aggregates them in some manner not easily broken out by these codes, it should choose a production area code from Exhibit D that most closely approximates the applicant's particular supply area and indicate in a footnote any differences.

Schedule/Record CA/05

Item 54 Requirements Code

Old item 52. The definition of Codes 8 and 9 are reversed to be consistent with the hard copy format.

The discussion under Schedule/Record CA/04 regarding Volume Reported Codes and Eighth, Ninth and Tenth Year Forecast Volumes also applies to this record.

Schedule/Record CA/06

Item 68 Source of Supply Code

Old item 66. In addition to Codes 9 and 13, Codes 1, 2, 6, 11, and 12 are also identified in Item 80, old item 78.

This information pertains to the supply sources of the pipeline's customers, not to the applicant. In the past, applicants have usually obtained the information required in Item 68 from any customer requesting new, increased, or modified services from the applicant.

The discussion under Schedule/Record CA/04 regarding Volume Reported Codes and Eighth, Ninth and Tenth Year Forecast Volumes also applies to this record.

Schedule/Record CA/07

No changes

The discussion under Schedule/Record CA/04 regarding Volume

Reported Codes and Eighth, Ninth and Tenth Year Forecast Volumes also applies to this record.

Schedule/Record CA/08

No changes

The discussion under Schedule/Record CA/04 regarding Volume Reported Codes and Eighth, Ninth and Tenth Year Forecast Volumes also applies to this record.

Schedule/Record CA/09

This schedule record has been renamed "Exhibit K, Physical and Location Factors"

Based upon the suggestions of several commenters and additional input from the Commission Staff, this record and Record CA/10 have been restructured to add flexibility for the applicant and to capture much of the data required by the regulations and certain other data that is normally requested by staff in larger applications.

Item 109 Project Number

This is a new item that has been added at the request of several commenters. It can be used to differentiate between facilities grouped into more than one project in an application.

Item 110 Facility/Segment Number

Old item 116. This item has been renamed.

Item 111 Information Reported Code

New item.

Item 112 Proposed Status

Old item 107. A new *general instruction 24* is added to code=2, abandonment.

Item 113 Type of Facility

This is a new item which in effect reduces the required number of records for each facility/segment to two. A new Note 5 has been added to indicate some examples of how the items in this record relate to each other.

code=02, river crossing
This code has been added to delineate between a significantly different type of pipeline segment and a typical segment.

code=04, compressor (addition)
This code has been added to differentiate between a totally new compressor station and additional new compressor units at an existing station. Also refer to Note 6.

Item 115 Type of Segment

Old item 122. This item has been renamed.
code=3, replacement facility
code=4, system supply/capacity
code=5, relocation
These three new codes are included at

the request of many commenters to give the applicant added flexibility.

Item 118 Length of Segment

Old item 119. The stated accuracy of 1/100 of a mile is for flexibility of the applicant. Applicants may report segment lengths to the same level of detail as in prior applications. Refer to discussion under Item 34.

Item 119 Valve Assemblies

This is a new item. Staff normally requires the number of valve assemblies in each segment on major projects to verify compliance with Department of Transportation regulations and cost projections.

Item 121 Wall Thickness

New item normally included in the detail of Exhibit K.

Item 124 Horsepower

Old item 130. A new Note 6 has been added to indicate that multiple compressors at one location should be described in a footnote. The note also indicates that other work performed at a compressor station to change the horsepower should be reported in item 113 (code=10) and item 114.

Item 125 County Location

Old item 124. A new Note 7 has been added to indicate that if a segment traverses one or more jurisdictions, only indicate that jurisdiction which contains the major portion of the segment.

Item 126 State Location

Old item 125. Refer to Note 7 for description of treatment if segment traverses more than one state.

Item 128 Cost

This is a new item which captures the total cost of a single facility/segment, a project, or all projects depending on the code reported for item 111. A new Note 8 has been added to indicate how the approximate cost for abandoned facilities is to be indicated.

Note 5, Note 6, Note 7, and Note 8

The above notes are all new on this schedule record.

Schedule/Record CA/10

This is a new record, named "Exhibit K, Cost Factors & Total Costs" which captures all of the detailed estimated costs for a specific facility/segment, project(s), and all projects within an application.

The following items are required by the regulations:

- Item 132 Right of Way
- Item 133 Damages
- Item 134 Surveys
- Item 135 Materials
- Item 136 Labor
- Item 137 Engineering and Inspection

- Item 144 Overheads
- Item 145 AFUDC
- Item 146 Contingencies
- Item 147 Legal Fees
- Item 148 Other Services and Costs
- Item 149 Regulatory Fees.

The following items are an optional detailing of costs that are normally requested by the Commission staff in cases where a significant amount of facilities are proposed:

- Item 138 Line Pack
- Item 139 Taxes
- Item 140 Freight
- Item 141 Pipe Coating
- Item 142 Cathodic Protection
- Item 143 Telecommunication Equipment.

Schedule/Record CA/11 (Old CA/14) Footnotes

There are no changes to this record except that the note at the bottom of the page has been renumbered to Note 9.

Schedule/Record CA/12 (Old CA/15) Standardized Format Header Record

Item 150 Regulation Section Code

This item name was missing a number in the earlier draft.

Schedule/Record CA/13 (Old CA/16) Nonstandard Format Header Record

Item 151 Regulation Section Code

This item was missing a number in the earlier draft; also the number of character positions has been corrected to 3.

Item 152 Orientation

An item number has been added.

Item 153 Pitch

An item number has been added.

Note 10 Old Note 5

Schedule/Record CA/14 (Old CA/17) Nonstandard Trailer Record

No changes.

Exhibits

Exhibit A

Certain minor typographical errors corrected. The word "amendment" has been changed to "supplement."

Exhibit B

Certain minor typographical errors corrected. The word "amendment" had been changed to "supplement."

Exhibit C

At the request of almost all of the commenters, new Regulation Section Codes have been assigned to those exhibits and materials which are excluded from the filing on electronic media. This has necessitated a renumbering of several of these codes. Also, Record CA/05, the applicant's

system market data required in Exhibit I (§ 157.14(a)(11)), is moved in order to print that data in conjunction with Record CA/04, the supply information required in Exhibit H (§ 157.14(a)(10)).

Exhibit D

No changes.

Exhibit E

No changes.

Exhibit F

Many comments, both general and specific, were received concerning this exhibit and Exhibit G, both of which pertain to the environmental aspects of an application. All comments have been noted and specific comments will be addressed under the factors to which they apply. In general, a great deal of concern has been generated by the apparent misunderstanding that all environmental data and information is required at the time of filing in order to be in compliance with the requirements of the regulations. While this is true in theory, it has been observed in practice that applicants almost always initially file less than is required by the staff and the regulations to fully analyze the environmental aspects of an application. This has necessitated voluminous data requests to the applicant throughout the processing of an application, and has lengthened the review period.

The information required in Record CA/03 and the accompanying instructions in this Exhibit F is information that staff has historically requested applicants to provide. As discussed below, Record CA/03 has been made more flexible to accommodate some of the concerns of the commenters.

Staff understands that not all necessary data can be obtained at the time of filing. For this reason, staff has included a new code=3 under "Item 30—Factor Impact" on Record CA/03, to indicate that the impact of a factor is undetermined at the time of filing. This will allow the applicant to forego the submission of certain data that can later be filed as a supplement in the same format. However, applicants should be aware that the more information and data that is available to the staff at the time of initial filing, the quicker staff can analyze the application since fewer data requests to the applicant will be required.

Code=3, "Impact undetermined at time of filing, will provide as soon as possible", should be used when information and data are legitimately not available. For example, much of the information requested in Record CA/03

may be determined from maps and aerial photography, as built drawings for looping projects, and consultations with the appropriate federal, state, and local authorities. To the extent that the pipeline route and the affected areas of impact are modified subsequent to the initial filing, such information, as it becomes available, should be filed as a supplement in the structured format of Record CA/03.

Commenters also argued that the accuracy of 0.05 mile (264 feet) required in Record CA/03, Item 34, is too refined, especially in submitting information in the initial filing. Staff realizes, as commenters have noted, that the final route of a pipeline may vary considerably from the route that is initially filed; however, the final route should not vary considerably from the route studied by staff under NEPA, except as modified by certificate conditions. The 0.05 mile is based on the filed route. Since an applicant is requested to file its route on USGS 7.5 minute topographical maps, the applicant should experience little difficulty in measuring mile posts to this precision (approximately 3/16 of an inch on a 7.5 minute scale) with respect to the proposed alignment. While the surveyed route may be different, it will certainly yield mile post locations with greater precision, which must be reported when available.

The following comments are factor specific with regard to Exhibit F:

Factor Number

1. Staff is concerned with the short-term turbidity and its effects on water supplies caused during actual instream construction. At this time the sediment plume can extend further than one mile downstream and some water systems may not have alternative water source or stream intake. During construction and depending on certain conditions, water quality, i.e., turbidity, can be affected further than 3 miles.

2. The applicant should provide the location of identified municipal watersheds, and the sites where construction would cross an area such as watersheds for reservoirs, well fields or a well recharge area.

3. Staff is seeking information from the applicant on streams already identified by the various appropriate regulatory agencies as being contaminated.

4. As specified in Report 2 of Exhibit G on Water Use and Quality, the application, and therefore the spreadsheet, must discuss perennial streams.

9. Use the best available information if National Wetland Inventory maps are not available for a specific area.

10. See 9 above.

16. We agree. This information would require consultation with the U.S. Fish and Wildlife Service.

17. The U.S. Fish and Wildlife Service designates both Federal threatened and endangered species (proposed and listed) and their critical habitats.

18. These locations should be determined as close as possible in consultation with state and local authorities. A code 3 can be utilized in the initial filing until this information becomes available and can be submitted in a supplemental filing.

19. This information is readily available from existing information and from the State Historic Preservation Officers in each state, or needs to be determined as a result of a survey.

20. See discussion in 19 above.

21. See discussion in 19 above.

22. See discussion above regarding new code on CA/03.

23. See 22 above; surveys may be required.

24. Information on known active faults is readily available.

30. Slopes can be determined from topo sheets and maps and soil types can generally be ascertained from general county soil maps or consultations with the Soil Conservation Service (SCS).

31. See 30 above.

32. The applicant can show in the resource report section of its exhibit that portion of the site to be converted to non-farm use. However, this is best shown on a map indicating soil series and the location of the applicant's facilities. It is necessary for staff to have an understanding of the characteristics of the entire site. While staff acknowledges that much of the site may remain undeveloped, the entire site must be studied. Many times, prime farmland is also the best site for an aboveground facility.

35. The staff routinely requests this information in response to many past concerns raised during the analysis of a project. A discussion of the information gathered appears in every environmental document published by the Commission's Office of Pipeline and Producer Regulation.

37. See discussion for factor 35 above.

52. See discussion for factor 35 above.

53. This information is readily available.

63. The definition is revised to: 55 dBA "or more stringent state or local values."

Exhibit G

The information required by Part 380 of the regulations regarding an environmental report has been structured into twelve resource reports by the staff. This has resulted in a more usable format that logically arranges the detailed information required by the regulations for the staff in publishing its environmental documents.

The use of this preferred format to obtain the necessary information for the environmental report as required by the regulations is optional, and the applicant may still file utilizing the structure for the report as required by Part 380. However, if the applicant chooses to use the preferred format as shown in this exhibit, this format will allow the staff to save valuable time in structuring the required information, preparing an analysis, and subsequently, issuing its environmental document.

Further, staff recognizes that some information required in the Environmental Report may not be available to the applicant at the time of the initial filing, and that this information will have to be submitted in supplemental filings prior to any certification. However, this information should be filed in the preferred format in order to expedite the processing of the applicant's filing.

The Commission has primary NEPA responsibility for interstate gas transmission facilities. To the extent that other agencies are involved, the certificate granted by the Commission to the applicant is the authorizing action upon which an applicant may proceed with its construction of facilities or other activities granted by the certificate.

The following comments are directed specifically to each report depending on the issues raised by the commenters.

Report Number

1. The instructions state that aerial photographic maps shall be provided "when available."

With respect to nonjurisdictional facilities as (f) and (g), the staff must analyze the entire project including nonjurisdictional facilities and report on the probable impacts. In addition, under the Threatened and Endangered Species Act, as amended, and the National Historic Preservation Act, staff must examine the impact that the entire project, both jurisdictional and nonjurisdictional, might have on threatened and endangered species and cultural resources.

2. As discussed above, where wetland maps are unavailable, use the best available information.

If the surface of the land is to be disturbed, the activity has the potential to affect water quality in the area.

3. See discussion under 2 above. Any activity, whether on existing or expanded right of way, has the potential to impact biological resources. It is the burden of the applicant to show why there would not be adverse impacts.

4. See discussion under 1, 2 and 3 above for the same reasons.

5. This report is required only for new major aboveground facilities such as compressor stations, LNG facilities and large aboveground nonjurisdictional facilities directly connected to the applicant's proposed project (such as power plants or cogeneration facilities, etc.).

6. See discussion under 1, 2 and 3 above for the same reasons.

7. See discussion under 1, 2 and 3 above for the same reasons. Also, see discussion under factor number 32.

8. The staff must be able to analyze all existing land uses in the vicinity of a proposed project. Identification of these areas including storage and production areas is required in order for staff to perform a complete assessment.

With regard to part (d) of this report, staff realizes that specific details with respect to compensation may not be resolved and therefore, seeks general information and descriptions as to how the value of the right of way is determined, who determines it, and how damages might be determined. Likewise, a concise description of the eminent domain process in the project area should be supplied using the same guidelines.

As a general rule however, such information regarding compensation is not confidential and may be requested in certain cases.

9. Since there are many times that equipment parameters can be provided to the Commission prior to the time that state permit applications are filed, the information requested is still valid and has not been changed. Waiting for state permits could delay processing by the Commission.

12. In (a), the reference to (ii)(a-k) is revised to (b)(i-xvi). In (b)(iv), "cut" surfaces means "pipe cuts."

Further, staff is responsible for formally transmitting the information required in this report to the Environmental Protection Agency (EPA) under the September 17, 1987 letter of agreement. If an EPA approved plan has already been obtained by the applicant, a copy should be provided to the Commission. If this report does not

apply to the applicant or the project, it is not required to be filed.

Exhibit H

Other than the changes already described above, the only significant change to the hard copy reports are those made to capture most of the significant physical, locational, and cost factors required by Exhibit K.

One commenter suggests that the 16.6 characters per inch (cpi) pitch and margin settings of 5 and 175 respectively, for the landscape reports in this exhibit are in excess of industry standards. The commenter recommends that hard copy reports be limited to print lines of 80 cpi for portrait and 132 cpi for landscape. While these print lines have been widely used, they were for a time one of the limiting factors for a typical mainframe line printer. However, laser printers have greater flexibility to compress characters than was possible utilizing older printers.

Staff reiterates that the hard copy report formats in this exhibit are optional. An applicant may utilize a different format for printing the structured data. However, the applicant must still submit the required data in the structured data formats of Records CA/01 through CA/11.

[FR Doc. 89-13999 Filed 6-12-89; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 520 and 556

Animal Drugs, Feeds, and Related Products; Albendazole Suspension

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by SmithKline Animal Health Products. The NADA provides for safe and effective use of albendazole suspension as an anthelmintic in cattle. The regulations are also amended to establish a tolerance for albendazole residues in edible cattle tissues.

EFFECTIVE DATE: June 13, 1989.

FOR FURTHER INFORMATION CONTACT: John L. Olsen, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION:

SmithKline Animal Health Products, Division of SmithKline Beecham Corp., 1600 Paoli Pike, West Chester, PA 19380, filed NADA 110-048 providing for oral use of an 11.36-percent albendazole suspension (Valbazen™) in cattle. It is used for removal and control of adult liver flukes, heads and segments of certain tapeworms, adult and 4th stage larvae of certain stomach worms (brown stomach worm, barberpole worm, small stomach worm), intestinal worms (thread-necked intestinal worm, small intestinal worm), and lungworms, 4th stage inhibited larvae of brown stomach worms, and adult stages of certain intestinal worms (hookworm, bankrupt worm, nodular worm).

The NADA is approved and the regulations are amended by adding new 21 CFR 520.45 and 520.45a to reflect the approval. Additionally, the regulations are amended to establish a tolerance for residues of albendazole in edible cattle tissues by adding new 21 CFR 556.34. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA 305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 556

Animal drugs, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 520 and 556 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR Part 520 continues to read as follows:

Authority: Sec. 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

2. New §§ 520.45 and 520.45a are added to read as follows:

§ 520.45 Albendazole oral dosage forms.

§ 520.45a Albendazole suspension.

(a) *Specifications.* The product contains 11.36 percent albendazole.

(b) *Sponsor.* See No. 000007 in § 510.600 of this chapter.

(c) *Related tolerances.* See § 556.34 of this chapter.

(d) *Conditions of use in cattle*—(1) *Amount.* 4.54 milligrams per pound of body weight (10 milligrams per kilogram).

(2) *Indications for use.* For removal and control of the following internal parasites of cattle: Adult liver flukes (*Fasciola hepatica*); heads and segments of tapeworms (*Moniezia benedeni*, *M. expansa*); adult and 4th stage larvae of stomach worms (brown stomach worms including 4th stage inhibited larvae (*Ostertagia ostertagi*), barberpole worm (*Haemonchus contortus*, *H. placei*), small stomach worm (*Trichostrongylus axei*)); adult and 4th stage larvae of intestinal worms (thread-necked intestinal worm (*Nematodirus spathiger*, *N. helvetianus*), small intestinal worm (*Cooperia punctata* and *C. oncophora*)); adult stages of intestinal worms (hookworm (*Bunostomum phlebotomum*), bankrupt worm (*Trichostrongylus colubriformis*), nodular worm (*Oesophagostomum radiatum*)); adult and 4th stage larvae of lungworms (*Dictyocaulus viviparus*).

(3) *Limitations.* Administer as a single oral dose using dosing gun or dosing syringe. Do not slaughter within 27 days of last treatment. Do not use in female dairy cattle of breeding age: Do not administer to female cattle during first 45 days of pregnancy or for 45 days after removal of bulls. Consult your veterinarian for assistance in the diagnosis, treatment, and control of parasitism.

PART 556—TOLERANCES FOR RESIDUES OF NEW ANIMAL DRUGS IN FOOD

3. The authority citation for 21 CFR Part 556 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

4. New § 556.34 is added to read as follows:

§ 556.34 Albendazole.

A tolerance is established for residues of albendazole in uncooked edible cattle tissues as follows:

(a) The tolerance for the 2-aminosulfone metabolite (marker residue) in cattle liver (target tissue) is 0.2 part per million. The tolerance refers to the concentration of marker residue in the target tissue used to monitor for total drug residues in the target animals.

(b) The safe concentrations for total albendazole residues in uncooked edible tissues of cattle are 0.6 part per million in muscle, 1.2 parts per million in liver, 1.8 parts per million in kidney, and 2.4 parts per million in fat. A safe concentration refers to the total residue concentration considered safe in edible tissues.

Dated: June 5, 1989.

Gerald B. Guest,

Director, Center for Veterinary Medicine.

[FR Doc. 89-13968 Filed 6-12-89; 8:45 am]

BILLING CODE 4160-01-M

21 CFR Part 558

New Animal Drugs for Use in Animal Feeds; Salinomycin and Chlortetracycline

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by the American Cyanamid Co. providing for the use of previously approved salinomycin and chlortetracycline Type A medicated articles to make Type C medicated feeds for broilers. The feeds are indicated for use for the prevention of coccidiosis and as an aid in the reduction of mortality due to certain infections.

EFFECTIVE DATE: June 13, 1989.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV-135), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4913.

SUPPLEMENTARY INFORMATION: American Cyanamid Co., Berdan Ave., Wayne, NJ 07470, filed NADA 140-859 providing for combining separately approved salinomycin and chlortetracycline Type A medicated articles to make Type C medicated feeds for broilers. The Type C medicated feeds contain salinomycin sodium, 40 to 60 grams per ton and chlortetracycline, 500 grams per ton. The Type C medicated feeds are indicated for use

for the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, and as an aid in the reduction of mortality due to *E. coli* infections susceptible to such treatment. The NADA is approved and the regulations are amended in 21 CFR 558.128 by redesignating paragraph (c)(5)(xi) as paragraph (c)(5)(xii) and by adding a new paragraph (c)(5)(xi) and in 21 CFR 558.550 by adding new paragraph (b)(1)(xvi). The basis for approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of Part 20 (21 CFR Part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, from 9 a.m. to 4 p.m., Monday through Friday.

The agency has determined under 21 CFR 25.24(d)(1)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 558

Animal drugs, Animal feeds.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Part 558 is amended as follows:

PART 558—NEW ANIMAL DRUGS FOR USE IN ANIMAL FEEDS

1. The authority citation for 21 CFR Part 558 continues to read as follows:

Authority: Sec. 512, 82 Stat. 343-351 (21 U.S.C. 360b); 21 CFR 5.10 and 5.83.

2. Section 558.128 is amended by redesignating paragraph (c)(5)(xi) as paragraph (c)(5)(xii) and by adding a new paragraph (c)(5)(xi) to read as follows:

§ 558.128 Chlortetracycline.

(c) . . .
(5) . . .
(xi) Salinomycin in accordance with § 558.550.
.

3. Section 558.550 is amended by adding new paragraph (b)(1)(xvi) to read as follows:

§ 558.550 Salinomycin.

(b) . . .
(1) . . .
(xvi)(a) Amount per ton. Salinomycin 40 to 60 grams and chlortetracycline 500 grams.

(b) Indications for use. For the prevention of coccidiosis caused by *Eimeria tenella*, *E. necatrix*, *E. acervulina*, *E. maxima*, *E. brunetti*, and *E. mivati*, and as an aid in the reduction of mortality due to *E. coli* infections susceptible to such treatment.

(c) Limitations. Do not feed to layers. In feeds containing 0.8 percent dietary calcium not to be fed for more than 5 days. Not approved for use with pellet binders. Withdraw 24 hours before slaughter. May be fatal if accidentally fed to adult turkeys or horses. Chlortetracycline as provided by No. 010042 in § 510.600(c) of this chapter.

Dated: June 1, 1989.

Gerald B. Guest,
Director, Center for Veterinary Medicine.
[FR Doc. 89-13960 Filed 6-12-89; 8:45 am]
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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Part 625

[FHWA Docket No. 89-15]

RIN 2125-AC 31

Design Standards for Highways; Guide Specifications for Bridge Railings

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Final rule and request for comments.

SUMMARY: The Federal Highway Administration (FHWA) is updating the guides and references list in 23 CFR Part 625 by adding the American Association of State Highway and Transportation Officials (AASHTO) 1989 "Guide Specifications for Bridge Railings." Also, FHWA is considering a possible future rulemaking action related to bridge railing design and is requesting public comment on the AASHTO guide specifications, on their possible application as a standard rather than as a guide on Federal-aid projects, and on any other bridge railing design related subjects.

DATES: The final rule is effective June 13, 1989. The comment period on bridge railing design will remain open until further notice.

ADDRESS: Submit written, signed comments to FHWA Docket No. 89-15, Federal Highway Administration, Room 4232, HCC-10, 400 Seventh Street SW., Washington, DC, 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 3:30 p.m. e.t., Monday through Friday, except legal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: James H. Hatton, Office of Engineering (202) 368-1329, or Michael J. Laska, Office of the Chief Counsel (202) 368-1383. Office hours are from 9:00 a.m. to 5:30 p.m. e.t., Monday through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION:

Background

Section 625.4(b)(1) of 23 CFR establishes requirements for bridge railing designs for Federal-aid highway projects as those contained in the AASHTO's Standard Specifications for Highway Bridges (standard specifications). Those specifications describe analysis procedures and minimum geometric and structural requirements for the design of bridge railings. They also provide an exemption from those requirements for bridge railing designs that successfully pass full-scale crash tests.

On August 28, 1986, the Executive Director of the FHWA directed field personnel of the FHWA to encourage State highway agencies to use only crash tested railings on Federal-aid bridges. Historically, although not expressed in the AASHTO specifications, the crash tests that have been accepted as the tests for qualifying bridge railings have been those described in the National Cooperative Research Program (NCHRP) Report 230—Recommended Procedures for the Safety Performance Evaluation of Highway Appurtenances (copy available for inspection in the public docket file) or similar predecessor documents. Specifically, the strength test for a railing has been accepted as one in which the railing is impacted with a 4500-pound automobile traveling at 60 mph and at an angle of 25 degrees to the railing. Although some inconsistencies have been revealed, the NCHRP Report 230 strength test and the AASHTO railing design requirements result in railings with reasonably comparable strengths. However, both imply a single-

performance level requirement for bridge railings, a level higher than needed for some sites and possibly lower than desirable for other sites. To overcome this deficiency in current railing design practice and to ensure the efficacy of railing designs, the AASHTO has adopted "Guide Specifications for Bridge Railings" (guide specifications), which recognizes three railing performance levels and defines those performance levels through specific full-scale crash tests each performance level railing must pass.

In the guide specifications, from the lowest to the highest performance level, the strength tests are, respectively, a 5400-pound pickup truck impacting at 20 degrees and 45 mph, an 18,000-pound single unit truck impacting at 15 degrees and 50 mph, and a 50,000-pound tractor-trailer truck impacting at 15 degrees and 50 mph. To test railings for safe performance with small vehicles, the guide specifications prescribe an 1800-pound automobile test for each performance level. At performance level 1 (PL-1) the test is run at 20 degrees and 50 mph. For PL-2 and PL-3 the test speed is increased to 60 mph. A 5400-pound pickup truck test is also prescribed for PL-2 and PL-3 railings to ensure safe performance with intermediate size vehicles. The pickup truck test for both of these levels is at 20 degrees and 60 mph. The guide specifications also provide procedures for determining conditions under which the use of a given performance level railing would be appropriate.

The FHWA will consider railings developed and used according to the procedures contained in the guide specifications as meeting the requirements of the railing design requirements of the standard specifications and, thus, Federal-aid requirements. The FHWA believes railing design and selection procedures such as those contained in the guide specifications will prove superior to those currently in the standard specifications and, therefore, will encourage use of the guide specifications and, possibly, their future adoption as requirements on Federal-aid projects. However, since application of the guide specifications is just beginning, the FHWA believes it would be premature to make the guide specifications a Federal-aid requirement at this time. Over the next two to three years the FHWA will be observing the application of the guide specifications, with the expectation that at some point in that period it will begin a formal notice and comment rulemaking action to adopt a version of the guide

specifications as a Federal-aid requirement. For this reason, the FHWA is requesting comments from the public on the guide specifications, their application, and any other bridge railing design related subjects.

Regulatory Evaluation and Impact

The FHWA has determined that this amendment does not contain a major rule under Executive Order 12291 or a significant regulation under the regulatory policies and procedures of the Department of Transportation. The revision contained in this amendment is primarily informational. The publication being added contains material that is not in fact a standard or requirement. Since this amendment does not alter the basic design criteria and the burden imposed on the States is not affected, the impact on the overall highway program is negligible. Therefore, a full regulatory evaluation has not been prepared.

The new nonregulatory publication cited in this amendment simply provides guidance and information for use at the discretion of the designer. Therefore, the FHWA finds good cause to make the amendment final without notice and comment and without a 30-day delay in effective date as provided by the Administrative Procedure Act. Owing to the nature of the document, notice and opportunity for comment are not required under the regulatory policies of the Department of Transportation because it is not anticipated that such action would result in the receipt of information that would be useful at this time. Accordingly, the amendment is effective upon publication. However, as stated previously, FHWA is considering a future notice and comment rulemaking action related to the subject of bridge railing design and is requesting comments on the guide specifications and any other bridge railing design related subjects for its future consideration.

Regulatory Flexibility Act and Federalism Assessment

Based on the discussion above and under the criteria of the Regulatory Flexibility Act (Pub. L. 96-354), the FHWA hereby certifies that this action will not have a significant economic impact on a substantial number of small entities.

The FHWA has carefully considered the federalism implications of this action in the light of the principles, criteria, and requirements of the President's Executive Order on Federalism, E.O. 12612, October 26, 1987. The FHWA has determined that this action does not have sufficient federalism implications

to warrant the preparation of a federalism assessment.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center Publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

List of Subjects in 23 CFR Part 625

Design standards, Grant programs—transportation, Highways and roads, Reporting and recordkeeping requirements.

In consideration of the foregoing, the FHWA is amending Chapter I of Title 23, Code of Federal Regulations, Part 625 as set forth below.

Issued on: June 7, 1989.

R.D. Morgan,
Executive Director.

The FHWA hereby amends 23 CFR Part 625 as follows:

PART 625—DESIGN STANDARDS FOR HIGHWAYS

1. The authority citation of Part 625 continues to read as follows:

Authority: 23 U.S.C. 109, 315, and 402; 49 CFR 1.48(b).

2. In § 625.5 a new paragraph (b)(8) is added to read as follows:

§ 625.5 Guides and references.

(b) . . .
(8) Guide Specifications for Bridge Railings, AASHTO 1989. [3]

[FR Doc. 89-13927 Filed 6-12-89; 8:45 am]
BILLING CODE 4910-22-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 64

[Docket No. FEMA 6834]

Suspension of Community Eligibility

AGENCY: Federal Emergency Management Agency, FEMA.
ACTION: Final Rule.

SUMMARY: This rule lists communities, where the sale of flood insurance has

been authorized under the National Flood Insurance Program (NFIP), that are suspended on the effective date shown in this rule because of noncompliance with the revised floodplain management criteria of the NFIP. If FEMA receives documentation that the community has adopted the required revisions prior to the effective suspension date given in this rule, the community will not be suspended and the suspension will be withdrawn by publication in the *Federal Register*.

EFFECTIVE DATE: As shown in fifth column.

FOR FURTHER INFORMATION CONTACT: Frank H. Thomas, Assistant Administrator, Office of Loss Reduction, Federal Insurance Administration, Federal Center Plaza, 500 C Street, SW., Room 416, Washington, DC 20472, (202) 646-2717.

SUPPLEMENTARY INFORMATION: The NFIP enables property owners to purchase flood insurance at rates made reasonable through a Federal subsidy. In return, communities agree to adopt and administer local floodplain management measures aimed at protecting lives and new construction from future flooding. Section 1315 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4022), prohibits flood insurance coverage as authorized under the NFIP (42 U.S.C. 4001-4128) unless an appropriate public body shall have adopted adequate floodplain management measures with effective enforcement measures.

On August 25, 1986, FEMA published a final rule in the *Federal Register* that revised the NFIP floodplain management criteria. The rule became effective on October 1, 1986. As a condition for continued eligibility in the NFIP, the criteria at 44 CFR 60.7 require communities to revise their floodplain management regulations to make them consistent with any revised NFIP regulation within 6 months of the effective date of that revision or be subject to suspension from participation in the NFIP.

The communities listed in this notice have not amended or adopted floodplain management regulations that incorporate the rule revision. Accordingly, the communities are not compliant with NFIP criteria and will be suspended on the effective date shown in this final rule. However, some of these communities may adopt and submit the required documentation of legally enforceable revised floodplain management regulations after this rule is published but prior to the actual suspension date. These communities

will not be suspended and will continue their eligibility for the sale of insurance. A notice withdrawing the suspension of the communities will be published in the *Federal Register*. In the interim, if you wish to determine if a particular community was suspended on the suspension date, contact the appropriate FEMA Regional Office or the NFIP servicing contractor.

The Administrator finds that notice and public procedures under 5 U.S.C. 533(b) are impracticable and unnecessary because communities listed in this final rule have been adequately notified. Each community receives a 90- and 30-day notification addressed to the Chief Executive Officer that the community will be suspended unless the required floodplain management measures are met prior to the effective

suspension date. For the same reasons, this final rule may take effect within less than 30 days.

Pursuant to the provision of 5 U.S.C. 605(b), the Administrator, Federal Insurance Administration, FEMA, hereby certifies that this rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As stated in Section 2 of the Flood Disaster Protection Act of 1973, the establishment of local floodplain management together with the availability of flood insurance decreases the economic impact of future flood losses to both the particular community and the nation as a whole. This rule in and of itself does not have a significant economic impact. Any economic impact results from the community's decision not to adopt

adequate floodplain management measures, thus placing itself in noncompliance with the Federal standards required for community participation.

List of Subjects in 44 CFR Part 64

Flood insurance and floodplains.

PART 64—[AMENDED]

1. The authority citation for Part 64 continues to read as follows:

Authority: 42 U.S.C. 4001 et. seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

2. Section 64.6 is amended by adding in alphabetical sequence new entries to the table.

§ 64.6 List of Eligible Communities.

State and community name	County	Community No.	Effective date
Colorado:			
Akron, town of	Washington.....	080177.....	June 19, 1989.
Buena Vista, town of	Chaffee	080030.....	Do.
Unincorporated areas	Clear Creek	080034.....	Do.
Crested Butte, town of	Gunnison.....	080079.....	Do.
Erie, town of	Weld.....	080181.....	Do.
Fort Morgan, city of	Morgan.....	080131.....	Do.
Unincorporated areas	Garfield.....	080205.....	Do.
Idaho Springs, town of	Clear Creek	080036.....	Do.
Milliken, town of	Weld.....	080187.....	Do.
Monte Vista, town of	Rio Grande.....	080155.....	Do.
Unincorporated areas	Montrose.....	080124.....	Do.
Unincorporated areas	Ouray.....	080136.....	Do.
Ouray, city of	Ouray.....	080137.....	Do.
Paonia, town of	Delta.....	080045.....	Do.
Rockvale, town of	Fremont.....	080221.....	Do.
Unincorporated areas	San Juan.....	080267.....	Do.
Unincorporated areas	San Miguel.....	080166.....	Do.
Silverthorne, town of	Summit.....	080201.....	Do.
Steamboat Springs, city of	Routt.....	080159.....	Do.
Superior, town of	Boulder.....	080203.....	Do.
Thornton, city of	Adams.....	080007.....	Do.
Wellington, town of	Lanier.....	080104.....	Do.
Wiggins, city of	Morgan.....	080204.....	Do.
Iowa:			
Carter Lake, city of	Pottawattamie	190492.....	Do.
Elberon, city of	Tama.....	190728.....	Do.
Kansas—unincorporated areas	Labette.....	200590.....	Do.
Nebraska:			
Unincorporated areas	Buffalo.....	310419.....	Do.
Paxton, village of	Keith.....	310130.....	Do.
Peru, city of	Nemaha.....	310157.....	Do.
Platte Center, village of	Platte.....	310178.....	Do.
Pleasanton, village of	Buffalo.....	310017.....	Do.
Raymond, village of	Lancaster.....	310138.....	Do.
Salem, village of	Richardson.....	310185.....	Do.
Scottsbluff, city of	Scotts Bluff.....	310206.....	Do.
Snyder, village of	Dodge.....	310319.....	Do.
St. Edward, city of	Boone.....	310010.....	Do.
Tecumseh, city of	Johnson.....	310127.....	Do.
Tekamah, city of	Burt.....	310024.....	Do.
Union, village of	Cass.....	310035.....	Do.
Weeping Water, city of	Cass.....	310036.....	Do.
Winnebago, village of	Thurston.....	310223.....	Do.
Winer, city of	Cuming.....	310049.....	Do.
Wymore, city of	Gage.....	310095.....	Do.
Unincorporated areas	York.....	310486.....	Do.
North Dakota—North River, city of	Cass.....	380623.....	Do.
South Dakota:			
Hudson, town of	Lincoln.....	460049.....	Do.
Mission, city of	Todd.....	460202.....	Do.
Rapid City, city of	Pennington.....	465420.....	Do.
Utah:			
Helper, city of	Carbon.....	490034.....	Do.

State and community name	County	Community No.	Effective date
Moab, city of	Grand	490072.....	Do.
Riverdale, city of	Weber.....	490190.....	Do.
Salt Lake City, city of	Salt Lake.....	490105.....	Do.
South Jordan, city of	Salt Lake.....	490107.....	Do.
Unincorporated areas	Utah.....	495517.....	Do.

Issued: June 8, 1989.

Harold T. Duryee,

Administrator, Federal Insurance
Administration.

[FR Doc. 89-13997 Filed 6-12-89; 8:45 am]

BILLING CODE 6710-21-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 294

Implementation of the Freedom of Information Act

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: These proposed regulations (1) outline that material that the Office of Personnel Management (OPM) generally makes available for public inspection and copying pursuant to the Freedom of Information Act, and (2) implement the requirements of Executive Order 12600 concerning the release of confidential commercial information requested under the Freedom of Information Act. In a separate document OPM has also published final regulations amending Part 294 which implement the requirements of the Freedom of Information Reform Act of 1986. In the interest of clarity, OPM is republishing the text of those final regulations here in their entirety, along with the changes to Part 294 that OPM proposes in this document.

DATE: Comments on §§ 294.106, Index of information and 294.112, Confidential commercial information, must be received on or before August 14, 1989.

ADDRESS: Comments may be sent or delivered to John F. Siegrist, Jr., Assistant Director for Information Management, Administration Group, Office of Personnel Management, Room 6410, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: C. Ronald Trueworthy, (202) 632-0261.

SUPPLEMENTARY INFORMATION: OPM is publishing in a separate document final rules which implement the Freedom of Information Reform Act of 1986. OPM proposes to revise § 294.106, Index of information, to clearly reflect OPM's practices and the requirements of the Freedom of Information Act. OPM also proposes to add § 294.112, Confidential commercial information, to comply with

Executive Order 12600, which was issued on June 23, 1987. This executive order directed each Executive department and agency subject to FOIA, to establish procedures for notifying submitters of records containing confidential commercial information, when those records were requested under the FOIA and it was determined that the records may have to be disclosed. This section contains OPM's proposed procedures for notifying submitters of confidential commercial information.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal employees and agencies.

List of Subjects in 5 CFR Part 294

Administrative practice and procedure, Freedom of Information, U.S. Office of Personnel Management.

Constance Hörner,
Director.

Accordingly, OPM is proposing to amend 5 CFR Part 294 to read as follows:

PART 294—AVAILABILITY OF OFFICIAL INFORMATION

1. The authority for Part 294 continues to read as follows:

Authority: 5 U.S.C. 552, Freedom of Information Act, Pub. L. 92-502, as amended by the Freedom of Information Reform Act of 1986, Pub. L. 99-570, and E.O. 12600, 52 FR 23781 (June 25, 1987).

2. In Subpart A, §§ 294.101-294.105 and §§ 294.107-294.111 and Subpart D are republished; § 294.106 is revised, and § 294.112 is added to read as follows:

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

Sec.
294.101 Purpose.
294.102 General definitions.
294.103 Definitions of categories and assignment of requests and requesters to categories.
294.104 Clarifying a requester's category.

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Sec.
294.105 Access to the requester's own records.
294.106 Index of information.
294.107 Places to obtain records.
294.108 Procedures for obtaining records.
294.109 Fees.
294.110 Appeals.
294.111 Custody of records; subpoenas.
294.112 Confidential commercial information.
* * *

Subpart D—Cross References

294.401 References.

Subpart A—Procedures for Disclosure of Records Under the Freedom of Information Act

§ 294.101 Purpose.

This subpart contains the regulations of the Office of Personnel Management (OPM) implementing the Freedom of Information Act (FOIA), 5 U.S.C. 552. Except as provided by § 294.105, OPM will use the provisions of this subpart to process all requests for records.

§ 294.102 General definitions.

All of the terms defined in the Freedom of Information Act, and the definitions included in the "Uniform Freedom of Information Act Fee Schedule and Guidelines" issued by the Office of Management and Budget apply, regardless of whether they are defined in this subpart.

"Direct costs" means the expenditures that an agency actually incurs in searching for, duplicating, and reviewing documents to respond to an FOIA request. Overhead expenses (such as the cost of space, and heating or lighting the facility in which the records are stored), are not included in direct costs.

"Disclose or disclosure" means making records available, on request, for examination and copying, or furnishing a copy of records.

"Duplication" means the process of making a copy of a document necessary to respond to an FOIA request. Among the forms that such copies can take are, paper, microform, audiovisual materials, or machine readable documentation (e.g., magnetic tape or disk).

"Records," "information," "document," and "material" have the same meaning as the term "agency records" in section 552 of title 5, United States Code.

"Review" means the process of initially examining documents located in

response to a request to determine whether any portion of any document located may be withheld. It also includes processing documents for disclosure; e.g., doing all that is necessary to excise them and otherwise prepare them for release. Review does not include time spent resolving general legal and policy issues regarding the application of exemptions.

"Search" means the time spent looking for material that is responsive to a request, including page-by-page, or line-by-line identification of material within documents. The definition assumes that searches will be carried out in the most efficient and least expensive manner so as to minimize the cost for both the agency and the requester.

§ 294.103 Definitions of categories and assignment of requests and requesters to categories.

OPM will apply the definitions and procedures contained in this section to assign requesters to categories. The four categories established by 5 U.S.C. 552(a) are requests for commercial use, requests for non-commercial use made by educational or non-commercial scientific institutions, requests for non-commercial use made by representatives of the news media, and all others.

(a) *Request for commercial use.* A "commercial use request" is from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or the person or institution on whose behalf the request is made. In determining whether a request properly belongs in this category, OPM will look first to the intended use of the documents being requested.

(b) *Request for non-commercial use made by an educational or non-commercial scientific institution.* OPM will include requesters in one of the two categories described in paragraphs (b) (1) and (2) of this section when the request is being made as authorized by, and under the auspices of, a qualifying institution; and the records are sought, not for a commercial use, but in furtherance of scholarly or scientific research.

(1) "Educational institution" refers to any public or private, preschool, elementary, or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education, which operates a program or programs of scholarly or scientific research.

(2) A "non-commercial scientific institution" refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph

(a) of this section, and which is operated solely to conduct scientific or scholarly research, the results of which are not intended to promote any particular product or industry.

(c) *Request from a representative of the news media.* "Representative of the news media" refers to any person actively gathering news for an entity that is organized and operated to publish, broadcast, or otherwise disseminate news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals who make their products available for purchase or subscription by the general public. Free-lance journalists may be regarded as representatives of the news media if they demonstrate a solid basis for expecting publication, or some other form of dissemination, through a particular organization even though they are not actually employed by it. OPM will assign news media officials to this category only when a request is not for commercial use. If a person meets the other qualifications for inclusion, OPM will not apply the term "commercial use" to his or her request for records in support of a news dissemination function.

(d) *Requests from others.* The category "all others," consists of any requesters not covered by paragraph (a), (b), or (c) of this section. However, as provided by § 294.105, OPM will use its Privacy Act regulations, rather than this subpart, when individuals ask for records about themselves that may be filed in OPM systems of records.

§ 294.104 Clarifying a requester's category.

(a) *Seeking clarification of a requester's category.* OPM may seek additional clarification before assigning a person to a specific category if—

(1) There is reasonable cause to doubt the requester's intended use of records; or

(2) The intended use is not clear from the request itself; or

(3) There is any other reasonable doubt qualifications that may affect the fees applicable or the services rendered under § 294.109 of this part.

(b) *Prompt notification to requester.* When OPM seeks clarification as provided by paragraph (a) of this section, it will provide prompt notification either by telephone or in writing of the information or materials needed.

(c) *Effect of seeking clarification on time limits for responding.* When applying the time limits in section 552 of title 5, United States Code, OPM will not officially consider any request for records as being received until the official who is assigned responsibility for making a decision on releasing the records has—

(1) Received any additional clarification sought under paragraphs (a) and (b) of this section; and

(2) Determined that the clarifying information is sufficient to correctly place the requester in one of the categories prescribed in this section.

§ 294.105 Access to the requester's own records.

When the subject of a record, or a duly authorized representative of the subject, requests his or her own records from a Privacy Act system of records, as defined by 5 U.S.C. 552a(a)(5), and the record is maintained so that it is retrieved by the subject's name or other personal identifier, OPM will process the request under the Privacy Act procedures in Part 297 of this chapter.

§ 294.106 Index of information.

(a) (1) OPM publishes OPM Document No. 1, "Index to Information" annually and issues supplements during the year when there is a sufficient volume of new or revised material. This index contains material published and offered for sale or available for public inspection and copying. Unless the material is published and offered for sale, OPM generally makes available for public inspection and copying:

(i) Final opinions made by OPM in the adjudication of cases, which are relied on and cited by the OPM as precedent;

(ii) OPM policy statements and interpretations adopted by OPM but not published in the *Federal Register*; and

(iii) OPM administrative staff manuals and instructions that affect a member of the public.

(2) OPM may not make available material (or portions of material) where release would constitute a clearly unwarranted invasion of personal privacy; or where the material is exempt from disclosure under the provisions of 5 U.S.C. 552(b); or where release is not in accordance with OPM regulations, administrative staff manuals or instructions, referenced in Subpart D of 5 CFR Part 294.

(b) A copy of this index is available at no cost from the Internal Distribution Subunit, Office of Personnel Management, Room B443, 1900 E Street NW., Washington, DC 20415.

(c) OPM indexes material for the convenience of the public. Indexing does not constitute a determination that all of the material listed is within the category that is required to be indexed by 5 U.S.C. 552(a)(2). Most of OPM's publications may be found in OPM's Library in Room 5H27 at the address listed in paragraph (b) of this section.

(d) As provided by 5 U.S.C. 552(a)(2), OPM has determined that it is unnecessary and impractical to publish the "Index to Information" more frequently than annually because of the small number of revisions that occur.

§ 294.107 Places to obtain records.

(a) Address requests for OPM records to the officials listed in paragraph (b), (c), or (d) of this section.

(b) The following is a list of key Washington, DC officials of OPM and their principal areas of responsibility. Address requests for records to the appropriate official using the address below and the official's title.

Office of Personnel Management, 1900 E Street NW., Washington, DC 20415

Send to—	For subject-matter about—
Associate Director for Administration.	Administrative services; information management; financial management; personnel.
Associate Director for Retirement and Insurance.	Retirement; life and health insurance.
Associate Director for Personnel Systems and Oversight.	Personnel management in agencies; pay; position classification; wage grade jobs; performance management; employee and labor relations.
● Assistant Director for Workforce Information.	Government-wide personnel statistics; official personnel and employee medical folders.
Associate Director for Investigations.	Background investigations and related records on individuals.
Associate Director for Career Entry and Employee Development.	Nationwide examining and testing for employment; promotions; administrative law judges; affirmative employment programs for minorities, women, veterans, and the handicapped; training.
Director, Washington Area Service Center.	Examining, testing, and training operations in Washington, DC.
Director, Office of Government Ethics.	Ethics and conflict of interest.
Director, Office of Executive Personnel.	Senior Executive Service.

(c) Direct requests for records on subjects not specifically referred to in this section or in the *Index*, to Plans and Policies Division, Office of Personnel Management, Room 6410, 1900 E Street NW., Washington, DC 20415.

(d) The following is a list of OPM regional offices. Address requests for regional records to the Regional Director, Office of Personnel Management in the appropriate region:

- Atlanta Region—Richard B. Russell Federal Building, Suite 904, 75 Spring Street, SW., Atlanta, GA 30303-3019
- Chicago Region—John C. Kluczynski Federal Building, 30th Floor, 230 South Dearborn Street, Chicago, IL 60604
- Dallas Region—1100 Commerce Street, Dallas, TX 75242
- Philadelphia Region—William J. Green, Jr., Federal Building, 600 Arch Street, Philadelphia, PA 19106-1596
- San Francisco Region—211 Main Street, 7th Floor, San Francisco, CA 94105

(e) *When an organization does not have records in its custody.* When an OPM organization receives a Freedom of Information Act request for OPM records that it does not have in its possession, it will normally either—

(1) Retrieve the records from the organization that has possession of them; or

(2) Promptly forward the request to the appropriate organization. If a person has asked to be kept apprised of anything that will delay the official receipt of a request, OPM will provide notice of this forwarding action. Otherwise, OPM may, at its option, provide such notice.

(f) *Applying the time limits.* When applying the time limits in section 552 of title 5, United States Code, OPM will not officially consider any request to be received until it arrives in the OPM organization that has responsibility for the records sought.

(g) *Records from other Government agencies.* When a person seeks records that originated in another Government agency, OPM may refer the request to the other agency for response. Ordinarily, OPM will provide notice of this type of referral.

(h) *Creating records.* If a person seeks information from OPM in a format that does not currently exist, OPM will not ordinarily compile the information for the purpose of creating a record to respond to the request. OPM will advise the individual that it does not have records in the format sought. If other existing records would reasonably respond to the request or portions of it, OPM may provide these. If fees as provided in § 294.109 of this part apply to any alternative records, OPM will advise the requester before providing the records.

§ 294.108 Procedures for obtaining records.

(a) *Mailing or delivering a request.* Any person may ask for records under

section 552 of title 5, United States Code, by directing a letter to one of the organizations listed in § 294.107 of this part, or by delivering a request in person at the addresses listed in that section during business hours on a regular business day.

(b) *Proper marking.* Each request for records should have a clear and prominent notation on the first page, such as "Freedom of Information Act Request." In addition, if sent by mail or otherwise submitted in an envelope or other cover, mark the outside clearly and prominently with "FOIA Request" or "Freedom of Information Act Request."

(c) *Contents of request letter.* A request must describe the records sought in sufficient detail to enable OPM personnel to locate the records with a reasonable amount of effort.

(1) OPM will regard a request for a specific category of records as fulfilling the requirements of this paragraph, if it enables responsive records to be identified by a technique or process that is not unreasonably burdensome or disruptive to OPM operations.

(2) Whenever possible, a request should include specific information about each record sought, such as the date, number, title or name, author, recipient, and subject matter of the record.

(3) If an OPM organization determines that a request does not reasonably describe the records sought, it will either provide notice of any additional information needed or otherwise state why the request is insufficient. OPM will also offer the record seeker an opportunity to confer, with the objective of reformulating the request so that it meets the requirements of this section.

(d) *Medical records.* OPM or another Government agency may disclose the medical records of an applicant, employee, or annuitant to the subject of the record, or to a representative designated in writing. However, medical records may contain information about an individual's mental or physical condition that a prudent physician would hesitate to give to the individual. Under such circumstances, OPM may disclose the records, including the exact nature and probable outcome of the condition, only to licensed physician designated in writing for that purpose by the individual or his or her designated representative.

(e) *Publications.* If the subject matter of a request includes material published and offered for sale (e.g., by the Superintendent of Documents, Government Printing Office), OPM will

explain where a person may review and/or purchase the publications.

(f) *Responses within 10 working days.* Except in unusual circumstances (as defined in 5 U.S.C. 552(a)(6)(B)), OPM will determine whether to disclose or deny records within 10-working days after receipt of the request (excluding weekends and holidays) and will provide notice immediately of its determination and the fees required, if any, as prescribed by § 294.109 of this part.

§ 294.109 Fees.

(a) *Applicability of fees.* OPM entities will furnish, without charge, reasonable quantities of material that they have available for free distribution to the public. Subject to payment of fees as specified in this section, OPM may furnish other material. These fees are intended to recoup the full allowable direct costs of providing services.

(b) *Payment of fees.* Individuals may pay fees by check or money order, payable to the Office of Personnel Management.

(1) OPM will not assess fees for individual requests if the total charge would be less than \$25, except as provided in paragraph (b)(5) of this section.

(2) If a request may reasonably result in a fee assessment of more than \$25, OPM will not release records unless the requester agrees to pay the anticipated charges.

(3) If the request does not include an acceptable agreement to pay fees and does not otherwise convey a willingness to pay fees, OPM will promptly provide notification of the estimated fees. This notice will offer an opportunity to confer with OPM staff to reformulate the request to meet the requester's needs at a lower cost. Upon agreement to pay the required fees, OPM will further process the request.

(4) As described in § 294.107 of this part, OPM ordinarily responds to Freedom of Information Act requests in a decentralized manner. Because of this, OPM may at times refer a single request to two or more OPM entities to make separate direct responses. In such cases, each responding entity may assess fees as provided by this section, but only for direct costs associated with any response the component has prepared.

(5) OPM may aggregate requests and charge fees accordingly, when there is a reasonable belief that a requester, or a group of requesters acting in concert, is attempting to break a request down into a series of requests to evade the assessment of fees.

(i) If multiple requests of this type occur within a 30-day period, OPM may

provide notice that it is aggregating the requests and that it will apply the fee provisions of this section, including any required agreement to pay fees and any advice payment.

(ii) Before aggregating requests of this type made over a period longer than 30 days, OPM will assure that it has a solid basis on which to conclude that the requesters are acting in concert and are acting specifically to avoid payment of fees.

(iii) OPM will not aggregate multiple requests on unrelated subjects from one person.

(6) If fees for document search are authorized as provided in paragraph (f) of this section, OPM may assess charges for an employee's (or employees') time spent searching for documents and other direct costs of a search, even if a search fails to locate records or if records located are determined to exempt from disclosure.

(7) Services requested and performed but not required under the Freedom of Information Act, such as formal certification of records as true copies, will be subject to charges under the Federal User Charge Statute (31 U.S.C. 483a) or other applicable statutes.

(c) *Payment of fees in advance.* If OPM estimates or determines that fees are likely to exceed \$250, OPM may require the payment of applicable fees in advance.

(1) If an OPM official, who is authorized to make a decision on a particular request, determines that the requester has a history of prompt payment of FOIA fees, OPM will provide notice of the likely cost and obtain satisfactory assurances of full payment.

(2) When a person, or an organization that a person represents, has previously failed to pay any fee charged in a timely manner, OPM will require full payment of all fees in advance. In this section, an untimely payment is considered to be a payment that is not made within 30 days of the billing date.

(3) If a person, or an organization that a person represents, has not paid fees previously assessed, OPM will not begin to process any new request for records, until that individual has paid the full amount owed plus any applicable interest, and made a full advance payment for the new request.

(4) If a request, which requires the advance payment of fees under the criteria specified in this section, is not accompanied by the required payment, OPM will promptly notify the requester that he or she must pay the required fee within 30 days and that OPM will not further process the request until it receives payment.

(5) OPM may begin assessing interest charges on an unpaid bill starting on the 31st day following the date on which the bill was sent. Interest will be at the rate prescribed in 31 U.S.C. 3717 and will accrue from the date of the billing.

(6) To encourage the repayment of debts incurred under this subpart, OPM may use the procedures authorized by Pub. L. 97-365, the Debt Collection Act of 1982. This may include disclosure to consumer reporting agencies and the use of collection agencies.

(d) *Waiver of fees.* OPM will furnish documents under this subpart without any charge, or at a reduced charge, if disclosure of the information is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, and it is not primarily in the commercial interest of the requester.

(1) In determining whether disclosure is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government, OPM shall consider the following factors:

(i) *The subject of the request:*

Whether the subject of the requested records concerns "the operations or activities of the Government";

(ii) *The informative value of the information to be disclosed:* Whether the disclosure is "likely to contribute" to an understanding of Government operations or activities;

(iii) *The contribution to an understanding of the subject by the general public likely to result from disclosure:* Whether disclosure of the requested information will contribute to "public understanding"; and

(iv) *The significance of the contribution to public understanding:* Whether the disclosure is likely to contribute "significantly" to public understanding of Government operations or activities.

(2) In determining whether disclosure of the information is not primarily in the commercial interest of the requester, OPM will consider the following factors:

(i) *The existence and magnitude of a commercial interest.* Whether the requester has a commercial interest that would be furthered by the requested disclosure; and if so

(ii) *The primary interest in disclosure.* Whether the magnitude of the identified commercial interest of the requester is sufficiently large, in comparison with the public interest in disclosure, that disclosure is "primarily in the commercial interest of the requester."

(3) An OPM official may deny a waiver of fees or a request for a reduced

fee without further consideration if the request does not include the following information:

(i) A clear statement of the requester's interest in the document(s);

(ii) The use proposed for the documents and whether the requester will derive income or other benefit from such use;

(iii) A statement of how the public will benefit from OPM's release of the requested documents; and

(iv) If specialized use of the documents is contemplated, a statement of the requester's qualifications that are relevant to the specialized use.

(4) In all cases the burden of proof shall be on the requester to present evidence or information in support of a request for a waiver or reduction of fees.

(5) A requester may appeal the denial of a waiver request as provided by § 294.110 of this part.

(e) *Rates used to compute fees.* The following rates form the basis for assessing reasonable, standard charges for document search, duplication, and review as required by 5 U.S.C. 552(a)(4). The listing of rates below should be used in conjunction with the fee components listed in paragraph (f) of this section, the first-100-pages of paper copies exception in paragraph (g) of this section, and the first-2-hours manual records search exception in paragraph (h) of this section.

Employee time	Salary rate plus 16 percent to cover benefits.
Photocopies (up to 8 1/2"x14")	\$0.13 a page.
Printed materials, per 25 pages or fraction thereof	\$0.25.
Computer time	Actual direct cost.
Supplies and other material	Actual direct cost.
Other costs not identified above	Actual direct cost.

(f) *Fee components by category of user.* For the purpose of assessing fees under this section, requests may have three cost components. These are the cost of document search, the cost of duplication, and the cost of review. When computing the fee applicable to a request, OPM will apply the rates in paragraph (e) of this section to the cost components that apply to the requester's category. Cost components apply to categories of requesters as follows.

(1) A commercial use requester—Pays actual direct costs for document search, duplication, and review.

(2) A requester from an educational and non-commercial scientific institution and a representative of the news

media—Pays actual direct costs for document duplication when records are not sought for commercial use.

(Requesters in this category do not pay for search and review.)

(3) All other requesters—Pay actual direct costs for document search and duplication. (Requesters in this category do not pay for review.)

(g) *First 100 pages of paper copies.* There will be no change to categories of requesters included in paragraphs (f) (2) and (3) of this section for the first 100 pages of paper copies, size 8 1/2" by 11" or 11" by 14" or for a reasonable substitute for this number of copies. An example of a reasonable substitute is a microfiche containing the equivalent of 100 pages.

(h) *First 2 hours of manual records search.* OPM will not charge requesters in the "all other" category for the first 2 hours of manual records search. If a person asks for records from a computerized data base, OPM will use the following formula, promulgated by the Office of Management and Budget, to provide the equivalent, in computer records search time, of 2 hours of manual records search.

(1) OPM will add the hourly cost of operating the central processing unit that contains the record information to the operator's hourly salary plus 18 percent.

(2) When the cost of a search (including the operator's time and the cost of operating the computer to process a request) equals the equivalent dollar amount of 2 hours of the salary of the person performing the search (i.e., the operator), OPM will begin assessing charges for computer search.

§ 294.110 Appeals.

(a) When an OPM official denies records or a waiver of fees under the Freedom of Information Act, the requester may appeal to the Office of the General Counsel, Office of Personnel Management, Washington, DC 20415.

(b) A person may appeal denial of a Freedom of Information Act request for information maintained by OPM's Office of the General Counsel to the Deputy Director, Office of Personnel Management, Washington, DC 20415.

(c) If an official of another agency denies a Freedom of Information Act request for records in one of OPM's Government-wide systems of records, the requester should consult that agency's regulations for any appeal rights that may apply. An agency may, at its discretion, direct these appeals to OPM's Office of the General Counsel.

(d) An appeal should include a copy of the initial request, a copy of the letter denying the request, and a statement

explaining why the appellant believes the denying official erred.

(e) The appeals provided for in this section constitute the final levels of administrative review that are available. If a denial of information or a denial of a fee waiver is affirmed, the requester may seek judicial review in the district court of the United States in the district in which he or she resides, or has his or her principal place of business, or in which the agency records are situated, or in the District of Columbia.

§ 294.111 Custody of records; subpoenas.

(a) The Chief, Plans and Policies Division, Administration Group, OPM, has official custody of OPM records. A subpoena or other judicial order for an official record from OPM should be served on the Chief, Plans and Policies Division, Office of Personnel Management, 1900 E Street, NW., Washington, DC 20415.

(b) See § 297.505 of this part for the steps other officials should take on receipt of a subpoena or other judicial order for an official personnel record.

§ 294.112 Confidential commercial information.

(a) In general, OPM will not disclose confidential commercial information in response to a Freedom of Information Act request except in accordance with this section.

(b) The following definitions from Executive Order No. 12600, apply to this section:

(1) "Confidential commercial information" means records provided to the Government by a submitter that arguably contain material exempt from release under Exemption 4 of the Freedom of Information Act, 5 U.S.C. 552(b)(4), because disclosure could reasonably be expected to cause substantial competitive harm.

(2) "Submitter" means any person or entity who provides confidential commercial information, directly or indirectly, to OPM. The term includes, but is not limited to, corporations, state governments and foreign governments.

(c) Submitters of information shall designate by appropriate markings, either at the time of submission or at a reasonable time thereafter, any portions of their submissions which they consider to be confidential commercial information. Such designations shall expire 10 years after the date of submission unless the submitter requests, and provides reasonable justification for, a designation period of greater duration.

(d) OPM shall, to the extent permitted by law, provide prompt written notice to

an information submitter of Freedom of Information requests or administrative appeals if:

(1) The submitter has made a good faith designation that the requested material is confidential commercial information, or

(2) OPM has reason to believe that the requested material may be confidential commercial information.

(e) The written notice required in paragraph (d) of this section shall either describe the confidential commercial material requested or include as an attachment, copies or pertinent portions of the records.

(f) Whenever OPM provides the notification and opportunity to object required by paragraphs (d) and (h) of this section, it will advise the requester that notice and an opportunity to object are being provided to the submitter.

(g) The notice requirements of paragraph (d) of this section shall not apply if:

(1) OPM determines that the information should not be disclosed;

(2) The information has been lawfully published or officially made available to the public;

(3) Disclosure of the information is required by law (other than 5 U.S.C. 552);

(4) The information was submitted on or after July 13, 1989, and has not been designated by the submitter as exempt from disclosure in accordance with paragraph (c) of this section, unless OPM has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The designation made by the submitter in accordance with paragraph (c) of this section appears obviously frivolous; except that, in such a case, OPM shall, within a reasonable number of days prior to a specified disclosure date, notify the submitter in writing of any final administrative decision to disclose the information.

(h) The notice described in paragraph (d) of this section shall give a submitter 10 working days (excluding weekends and holidays) from the date of the notice to provide OPM with a detailed written statement of any objection to disclosure.

The statement shall specify all grounds for withholding any of the material under any exemption of the Freedom of Information Act. When Exemption 4 of the FOIA is cited as the grounds for withholding, the specification shall demonstrate the basis for any contention that the material is a trade secret or commercial or financial information that is privileged or confidential. It must also include a specification of any claim of competitive harm, including the degree of such harm,

that would result from disclosure.

Information provided in response to this paragraph may itself be subject to disclosure under the FOIA. Information provided in response to this paragraph shall also be subject to the designation requirements of paragraph (c) of this section. Failure to object in a timely manner shall be considered a statement of no objection by OPM, unless OPM extends the time for objection upon timely request from the submitter and for good cause shown. The provisions of this paragraph concerning opportunity to object shall not apply to notices of administrative appeals, when the submitter has been previously provided an opportunity to object at the time the request was initially considered.

(i) OPM shall consider carefully a submitter's objections and specific grounds for nondisclosure, when received within the period of time described in paragraph (h) of this section, prior to determining whether to disclose the information. Whenever OPM decides to disclose the information over the objection of a submitter, OPM shall forward to the submitter a written notice which shall include:

(1) A statement of the reasons why the submitter's disclosure objections were not sustained;

(2) A description of the information to be disclosed; and

(3) A specified disclosure date.

(j) OPM will notify both the submitter and the requester of its intent to disclose material a reasonable number of days prior to the specified disclosure date.

(k) When applying the time limits in section 552 of title 5, United States Code, to items being processed under the provisions of this section, OPM will not officially receive a request or appeal, until expiration of the time provided in paragraph (h) of this section for any objection to disclosure.

(l) Whenever a requester brings suit seeking to compel disclosure of confidential commercial information, OPM shall promptly notify the submitter.

Subpart D—Cross References

§ 294.401 References.

The table below provides assistance in locating other OPM regulations in Title 5 of the Code of Federal Regulations that have provisions on the disclosure of records:

Type of information	Location
Classification appeal records	511.616
Classified information	175.101

Type of information	Location
Employee performance folders	293.311
Examination and related subjects records	300.201
Grade and pay retention records	536.307
Investigative records	736.105
Job grading reviews and appeals records	532.707
Leave records	297 Subpart E
Medical information	297.204 & 297 Subpart E
Official personnel folders	293.311
Privacy and personnel records	297
Retirement	831.106

[FR Doc. 89-13953 Filed 6-12-89; 8:45 am]

BILLING CODE 6325-01-00

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103 and 245

[Atty. Gen. Order No. 1350-89]

Immigration and Naturalization Service and the Executive Office of Immigration Review; Fee Review

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to amend the fee schedule of the Immigration and Naturalization Service and the Executive Office for Immigration Review by charging a fee for certain special services and benefits which are currently adjudicated free of charge. These changes are necessary to place the financial burden of providing these special services and benefits which do not accrue to the general public at large on the recipients of these special services and benefits. Charges have been proposed to reflect the current recovery cost of providing these special services and benefits, taking into account public policy and other pertinent facts.

DATES: Comments must be received on or before July 13, 1989.

ADDRESS: Please submit written comments, in triplicate, to Director, Policy Directives and Instructions, Immigration and Naturalization Service, Room 2011, 425 I Street, NW., Washington, DC 20536.

FOR FURTHER INFORMATION CONTACT: Charles S. Thomason, Systems Accountant, Finance Branch, Immigration and Naturalization Service, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 633-4705.

BEST COPY AVAILABLE

Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, 5203 Leesburg Pike, Falls Church, VA. 22041, Telephone: (703) 756-6470.

SUPPLEMENTARY INFORMATION: The INS and EOIR undertook a study of their fee schedule as required under 31 U.S.C. 9701 and OMB Circular A-25. Under that law and the OMB Circular, it is required that a special service or benefit provided to or for any person by a Federal agency be self-sustaining to the fullest extent possible. Charges are to be fair and equitable, taking into consideration direct and indirect cost to the Government, value to the recipient, public policy or interest served, and other pertinent facts. All services and benefits provided to the public by the INS and EOIR were reviewed for applicability of user charges. Costs which should be recovered from recipients of special services and benefits provided were identified in order to be fair and equitable to the taxpayers and the recipients of these special services and benefits.

Fee changes to the existing INS/EOIR fee schedule based upon the aforementioned study are the subject of a separate rulemaking proceeding. The following newly proposed fees are also a direct result of the aforementioned study.

1. Establish a fee for filing form I-485A, Application by Cuban Refugee for Permanent Residence, in the amount of \$60.

2. Establish a fee for filing form N-400, Application to File Petition for Naturalization, in the amount of \$60.

3. Establish a fee for filing form N-402, Application to File Naturalization Petition on Behalf of Child, in the amount of \$50.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that the rule will not have a significant economic impact on a substantial number of small entities.

This rule would not be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

This rule contains information collection requirements which have been submitted and/or approved by the Office of Management and Budget, under the provisions of the Paperwork Reduction Act. OMB control numbers are listed in 8 CFR 299.5.

List of Subjects in 8 CFR Part 103

Administrative practice and procedures, Archives and records, Authority delegation, Fees, Forms.

Accordingly, Chapter I of Title 8 of the Code of Federal Regulation is revised to read as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS: AVAILABILITY OF SERVICE RECORDS

1. The authority citation for Part 103 of Title 8 continues to read as follows:

Authority: 5 U.S.C. 522(a); 8 U.S.C. 1101, 1103, 1201, 1301-1305, 1351, 1443, 1454, 1455; 28 U.S.C. 1746; 7 U.S.C. 2243; 31 U.S.C. 9701; E.O. 12358, 3 CFR, 1982 Comp., p. 166.

2. In § 103.7, paragraph (b)(1) is revised by adding in numerical order:

§ 103.7 [Amended]

Form I-485A. For filing application by Cuban refugee for permanent residence—\$60.00.

Form N-400. For filing application to file petition for naturalization—\$60.00.

Form N-402. For filing application to file naturalization petition on behalf of child—\$50.00.

PART 245—[AMENDED]

3. The authority citation for Part 245 of Title 8 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255 and 1257.

§ 245.2 [Amended]

4. In § 245.2, paragraph (a)(3)(iv) is amended by removing the second sentence that reads "There is no fee required in the application for the benefits of this Act."

Dated: June 5, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89-13942 Filed 6-12-89; 8:45 am]

BILLING CODE 4410-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 310

RIN 3064-AA91

Privacy Act Regulations

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Proposed rule.

SUMMARY: The FDIC is proposing to exempt from certain provisions of its regulations implementing the Privacy Act of 1974 its proposed new Investigative Files and Records system.

DATE: Comments must be submitted by August 14, 1989.

ADDRESS: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, FDIC, 550-17th Street, NW., Washington, DC 20429, or hand-delivered to Room 6099 of the same address between 9:00 a.m. and 5:00 p.m., Monday-Friday. Comments are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Robert E. Feldman, Deputy Executive Secretary, FDIC, 550-17th Street, NW., Washington, DC 20429, telephone (202) 898-3811.

SUPPLEMENTARY INFORMATION: Elsewhere in today's issue of the *Federal Register*, the FDIC is proposing a new system of records under the Privacy Act of 1974. The system, entitled Investigative Files and Records system, will contain files on employees of the FDIC or other persons involved in the FDIC's programs or operations who are or have been under investigation by the FDIC's Office of Inspector General where fraud or abuse has been suspected.

Pursuant to subsections (k)(2) and (k)(5), respectively, of the Privacy Act (5 U.S.C. 552a (k)(2), (k)(5)), the FDIC proposes to exempt from the provisions of §§ 310.3 through 310.9 and § 310.10(d)(2) of its regulations (12 CFR 310.3-310.9 and 310.10(d)(2)) the following: (1) Investigatory material compiled for law enforcement purposes; provided, however, that if any individual is denied any right, privilege or benefit to which he/she would otherwise be entitled under Federal law, or for which he/she would otherwise be eligible, as a result of the maintenance of such material, such material shall be disclosed to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence; or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence; and (2) investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Corporation employment to the extent that disclosure of such material would reveal the identity of a source who furnished information to the Corporation under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence. As a result, an individual who is the subject of a record contained in the system will

generally not have access to the type of material described above or be able to request an amendment to any such record.

As the amendments neither alter any existing nor create any new record keeping or reporting requirements, the Paperwork Reduction Act is inapplicable. The Board of Directors of the FDIC hereby certifies that the rule will not, if promulgated, have a significant impact on a substantial number of small entities, as it simply implements an exemptive provision of the Privacy Act, which applies to records about individuals. Therefore, the provisions of the Regulatory Flexibility Act are inapplicable.

List of Subjects in 12 CFR Part 310

Privacy.

For the foregoing reasons, it is proposed that 12 CFR Part 310 be amended to read as follows:

PART 310—[AMENDED]

1. The authority citation for Part 310 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 310.13 is amended by revising paragraphs (a) and (b) thereof to read as follows:

§ 310.13 Exemptions.

(a) Investigatory material compiled for law enforcement purposes in the following systems of records is exempt from §§ 310.3 through 310.9 and § 310.10(d)(2) of these rules; *Provided, however*, That if any individual is denied any right, privilege, or benefit to which he/she would otherwise be entitled under Federal law, or for which he/she would otherwise be eligible, as a result of the maintenance of such material, such material shall be disclosed to such individual, except to the extent that the disclosure of such material would reveal the identity of a source who furnished information to the Government under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence:

30-64-0002—Financial institutions investigative and enforcement records system.

30-64-0010—Investigative files and records.

(b) Investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for Corporation employment to the extent that disclosure of such material

would reveal the identity of a source who furnished information to the Corporation under an express promise that the identity of the source would be held in confidence, or, prior to September 27, 1975, under an implied promise that the identity of the source would be held in confidence, in the following systems of records, is exempt from §§ 310.3 through 310.9 and § 310.10(d)(2) of these rules:

30-64-0001—Attorney-legal intern applicant system.

30-64-0010—Investigative files and records.

By direction of the Board of Directors.

Dated at Washington, DC, this 6th day of June, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-13949 Filed 6-12-89; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL HOME LOAN BANK BOARD

12 CFR Part 563

[No. 89-1523]

Bonds for Directors, Officers, Employees, and Agents; Form of and Amount of Bonds

Date: May 25, 1989.

AGENCY: Federal Home Loan Bank Board.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Home Loan Bank Board ("Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC"), has amended its regulations pertaining to the permissible deductible amount for bonds for directors, officers, employees, and agents of institutions the accounts of which are insured by the FSLIC ("FSLIC-insured institutions"). Such final rule is published elsewhere in today's issue of the *Federal Register*. The Board has determined that it is appropriate, in conjunction with the final rule, to raise the related issues of minimum bond coverage requirements and required bond coverage of Form No. 22 or its equivalent. The Board is seeking comment whether more substantive revisions to the fidelity bond regulations for all insured institutions are appropriate. The Board solicits any comments as to the advisability and scope of such rulemaking.

DATE: Comments must be received on or before July 13, 1989.

ADDRESS: Send comments to: Director, Information Services Division, Office of the Secretariat, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552. Comments will be available for public inspection at Information Services, Federal Home Loan Bank Board, 801 17th Street NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Cindy L. Hausch, Financial Analyst, (202) 906-7488; Kathleen O'Dea Willard, Assistant Director, (202) 906-6789; Patrick G. Berbakos, Director, (202) 906-6720, Office of District Banks, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552; or Linda Matthias, Policy Analyst, (202) 331-4597; Edward J. Taubert, Deputy Director, Policy (202) 331-4588, Office of Regulatory Activities, 801 17th Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION: The Board has recently amended the permissible deductible amount for fidelity bonds for directors, officers, employees, and agents of insured institutions. (Board Res. No. 89-1526, June 1, 1989). The final rule modifies the current schedule for calculating the permissible deductible to provide for a minimum permissible deductible of \$50,000.

The Board is considering, and by this Advance Notice is soliciting public comment on, substantive revisions to its fidelity bond regulations. The Board specifically requests comments on revisions to the minimum bond coverage requirements, the required bond coverage of Form No. 22, and information from insured institutions on the amount of bond purchased and the premium paid for that coverage.

The Board is considering possible revisions to Form No. 22. The American Surety Association Form No. 22 Blanket Bond was approved by the Board in 1982. At the same time, the Board issued a regulation requiring all FSLIC-insured institutions to have bond coverage equivalent to Form No. 22. On October 7, 1988, the Office of General Counsel disseminated an opinion regarding fidelity bond coverage. The opinion stated that bonds deviating materially from Form No. 22 do not comply with 12 CFR 563.19 and do not satisfy the regulatory requirement. Through this Advance Notice, the Board requests comments on possible revisions to Form No. 22. Additionally, the Board is considering revisions to the amount of bond required. Current regulations provide for coverage of \$3,000,000. The Board is considering increasing the maximum required bond amount to

reflect the increased asset sizes of insured institutions. Furthermore, the Board is requesting information from insured institutions on their bond coverage, specifically the amount of bond purchased and the premium paid for that coverage.

The Board invites comment on all aspects of this Notice and of § 563.19. After reviewing the comments received, the Board anticipates promulgating a notice of proposed rulemaking.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-13916 Filed 6-12-89; 8:45 am]

BILLING CODE 6720-01-M

SMALL BUSINESS ADMINISTRATION

13 CFR Part 122

Business Loans for 8(a) Program Participants

AGENCY: Small Business Administration.

ACTION: Proposed rule.

SUMMARY: The Small Business Administration is hereby proposing rules to implement section 302 of Pub. L. 100-656. This legislation provides a statutory basis for a program of direct, guaranteed and immediate participation financial assistance for small businesses which are participants in SBA's section 8(a) program, and are presently eligible to receive contracts under that program. These regulations, if promulgated in final form, would implement that legislation.

DATES: The public is afforded 60 days from the date of publication (on or before August 14, 1989) to comment on these proposed regulations.

ADDRESS: Written comments should be addressed to Allan S. Mandel, Assistant Deputy Associate Administrator for Financial Assistance, 1441 L Street NW., Room 804, Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Allan S. Mandel, (202) 653-6696.

SUPPLEMENTARY INFORMATION: As indicated above, section 302 of Pub. L. 100-656 gave SBA authority to conduct a specialized financial assistance (loan) program directed toward active participants in SBA's section 8(a) program. Proposed § 122.59-1 sets forth the statutory policy behind this program. In this regard, it is to be available to participants in the program which are eligible to receive 8(a) contracts at the time the financial assistance is sought. The assistance is to be available on much the same terms as SBA's other financial assistance is made available to

small businesses. (§ 122.59-2.) However, it is acknowledged by SBA that to the extent possible, without compromising the integrity of the program, criteria applied to this special loan program will recognize the economically disadvantaged nature of the applicants.

With respect to guaranteed loans made under this program, SBA shall guaranty no less than 90 percent of the principal balance at the time the loan is made of loans of a principal amount of less than \$155,000 and no less than 85 percent of loans of a principal amount of \$155,000, or more. The rate of interest on such loans will be calculated in the same way that it is calculated for SBA guaranteed business loans for small businesses. (See § 122.59-3.)

A direct loan note generated under this program will be subordinated by SBA to all past borrowings of the borrower from banks and other financial institutions, but not individuals. SBA will consider subordination to future borrowings on a case-by-case basis using normal credit criteria. (§ 122.59-4(b)(1).) The interest rate on direct loans made under this authority will be 1 percent less than direct loans made in the regular business loan program. (§ 122.59-4(b)(2).) There will be an administrative ceiling of \$200,000 on direct loans which may be waived upon the recommendation of the Associate Administrator for Minority Small Business and Capital Ownership Development for good cause shown, on a case-by-case basis. (§ 122.59-4(b)(5).)

For purposes of the Regulatory Flexibility Act (5 U.S.C. 605(b)), SBA certifies that this proposed rule will not, if promulgated in final form, have a significant impact on a substantial number of small entities. SBA's best estimates indicate that approximately 20 to 40 loans per year will be made under this authority.

SBA certifies that this proposed rule does not constitute a major rule for the purposes of Executive Order 12291, since the change is not likely to result in an annual effect on the economy of \$100 million or more because it is anticipated that no more than \$10,000,000 will be appropriated for this program in a given fiscal year.

The proposed rule, if promulgated in final form, would not impose additional reporting or recordkeeping requirements which would be subject to the Paperwork Reduction Act, 44 U.S.C. Chapter 35.

This proposed rule would not have federalism implications warranting the preparation of a Federal Assessment in accordance with Executive Order 12612.

List of Subjects in 13 CFR Part 122

Business loans.

Pursuant to the authority contained in section 5(b)(6) of the Small Business Act (15 U.S.C. 634(b)(6)) and section 302 of Pub. L. 100-656, SBA proposes to amend Part 122, Chapter I, Title 13, Code of Federal Regulations, as follows:

PART 122—[AMENDED]

1. The authority citation for Part 122 would continue to read as follows:

Authority: 15 U.S.C. 634(b)(6) and 636(a).

2-3. Section 122.7-1 would be revised to read as follows:

§ 122.7-1 Direct loans.

The statutory limit for direct loans made under the authority of section 7(a)(1)-(19) of the Small Business Act is \$350,000. SBA has established an administrative limit of \$150,000. Regional Administrators may authorize, in writing, the acceptance of an application that exceeds the administrative but not the statutory limit. The statutory limit for direct loans made under the authority of section 7(a)(20) is \$750,000. SBA has established an administrative limit of \$200,000; however, the Associate Administrator for Minority Small Business and Capital Ownership Development may authorize in writing the acceptance of an application up to \$750,000 that exceeds the administrative but not the statutory limit.

4. New §§ 122.59, 122.59-1, 122.59-2, 122.59-3, and 122.59-4 would be added to subpart B to read as follows:

§ 122.59 Loans to participants in the 8(a) program.

§ 122.59-1 Policy.

The Act authorizes the Administration to make loans either directly or in cooperation with banks or other financial institutions through agreements to participate on an immediate or deferred (guaranteed) basis to small business concerns receiving assistance under subsection 7(j)(10) and section 8(a) of the Act; i.e., firms which are presently participating in the section 8(a) program and are eligible for contractual assistance under section 8(a) of the Act; and not firms which may be eligible to apply for the program.

§ 122.59-2 Conditions.

(a) Any assistance provided under this section may be provided only if the Administration determines that—

(1) The type and amount of such assistance requested by such concern is

not otherwise available on reasonable terms from other sources. Every applicant for a direct loan, immediate participation or guaranty loan must show that the loan is not available without SBA assistance. In addition, an applicant for a direct loan must show that neither an immediate participation nor a guaranty loan is available; an applicant for an immediate participation must show that a guaranty loan is not available;

(2) With such assistance such concern has a reasonable prospect for operating soundly and profitably within a reasonable period of time;

(3) The proceeds of such assistance will be used within a reasonable time for plant construction, conversion, or expansion, including the acquisition of equipment, facilities, machinery, supplies, or material; or to supply such concern with working capital to be used in the manufacture of articles, equipment, supplies, or material for defense or civilian production or as may be necessary to insure a well-balanced national economy; and

(4) Such assistance is of such sound value as reasonably to assure that the terms under which it is provided will not be breached by the small business concern. No financial assistance shall be extended under this section unless there is reasonable assurance that the loan can be paid from the earnings of the business.

(b) No loan shall be made under this authority if the total amount outstanding and committed (by participation or otherwise) to the borrower would exceed \$750,000.

§ 122.59-3 Conditions applicable to deferred participation assistance (guaranteed).

(a) Subject to the provisions of § 122.59-2(b), in agreements to participate in loans on a deferred (guaranteed) basis, participation by the Administration shall be no less than 90 per centum of the balance of the financing outstanding at the time of disbursement of loans of a principal amount of less than \$155,000 and no less than 85 per centum of loans of a principal amount of \$155,000 or more.

(b) The rate of interest on financings made on a deferred (guaranteed) basis shall be legal and reasonable, and shall be calculated in accord with §§ 122.8-3 and 122.8-4 of this part.

§ 122.59-4 Conditions applicable to immediate participation and direct assistance.

(a) All immediate participation and direct financings made pursuant to this section shall be subject to the applicable

provisions of this Title and the following limitations:

(1) No immediate participation may be purchased unless it is shown that a deferred participation is not available.

(2) No direct financing may be made unless it is shown that a participation is unavailable.

(b) A direct loan or the Administration's share of an immediate participation loan made pursuant to this section shall be accomplished by the issuance of a secured debt instrument—

(1) That is subordinated by its terms to all other borrowings of the issuer from banks or other financial institutions which are in existence at the time that the SBA assistance is made. SBA will consider subordination of assistance it makes available under this subsection to subsequent borrowings on a case-by-case basis based upon reasonable credit criteria;

(2) The rate of interest on which shall be the same as that calculated pursuant to § 122.8-1 of this part, less one per centum;

(3) The term of which is not more than twenty-five years;

(4) The principal on which is amortized at such rate as may be deemed appropriated by the Administration, and the interest on which is payable not less often than annually;

(5) The maximum principal amount of which may be no more than \$200,000; however, the Associate Administrator for Minority Small Business and Capital Ownership Development may authorize, in writing, the acceptance of an application that exceeds \$200,000 but does not exceed \$750,000.

Dated: March 29, 1989.

James Abdnor,

Administrator.

[FR Doc. 89-13931 Filed 6-12-89; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASO-20]

Proposed Establishment of Transition Area; Fayette, AL

AGENCY: Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish the Fayette, AL, Transition Area to provide additional controlled airspace for protection of Instrument

Flight Rule (IFR) operations at the Richard Arthur Field Airport. This action will lower the base of controlled airspace from 1,200' to 700' above the surface in the vicinity of the airport. A Nondirectional Radio Beacon (NDB) Standard Instrument Approach Procedure (SIAP) has been developed to serve Richard Arthur Field. Concurrent with publication of the SIAP, the operating status of the airport will change from Visual Flight Rule (VFR) to IFR.

DATES: Comments must be received on or before July 11, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, ASO-530, Manager, Airspace and Procedures Branch, Docket No. 89-ASO-20, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James C. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-20." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for

examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2 which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to establish the Fayette, AL, Transition Area. This proposal will lower the base of controlled airspace from 1,200' to 700' in vicinity of Richard Arthur Field Airport. The additional controlled airspace is needed for protection of IFR aircraft executing a new SIAP to the airport. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition area.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Fayette, AL [New]

That airspace extending upward from 700' above the surface within a 6.5-mile radius of Richard Arthur Field Airport (Lat. 33°43'00" N., Long. 87°48'30" W.); within 3.5 miles each side of the 343° bearing of the Fayette NDB (Lat. 33°43'05" N., Long. 87°48'40" W.), extending from the 6.5-mile radius area to 11.5 miles north of the NDB.

Issued in East Point, Georgia, on May 25, 1989.

William D. Wood,
Acting Manager, Air Traffic Division,
Southern Region.

[FR Doc. 89-13926 Filed 6-12-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASW-08]

Proposed Establishment of Control Zone; Norman, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish a part-time control zone at Norman, OK. This proposed action is necessary because the University of Oklahoma (OU) Westheimer Airpark meets the criteria for the establishment of a control zone since there is a part-time, nonfederal airport traffic control tower (ATCT) at the OU Westheimer Airpark, and a new automated weather observation system (AWOS III) is scheduled for installation by June 30, 1989. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing the standard instrument approach procedures (SIAP) now serving the OU Westheimer Airpark. The Thomas International Airport

(private) would be excluded from this proposed control zone.

DATES: Comments must be received on or before July 24, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 89-ASW-08, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASW-08." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM'S

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of the Federal Aviation Regulations (14 CFR Part 71) by establishing a part-time control zone at Norman, OK. The fact that the OU Westheimer Airpark meets the criteria for the establishment of a control zone, since the airpark is served by a part-time nonfederal ATCT and an AWOS III, and is scheduled for implementation by June 30, 1989, has necessitated this action. Designation of a control zone would allow the OU Westheimer Airpark to be used as an alternate airport under instrument flight rules (IFR). The effective date of this proposed part-time control zone would depend entirely upon installation and certification of the AWOS III. The Thomas International Airport (private) will be excluded from this proposed part-time control zone. The intended effect of this proposal is to provide adequate controlled airspace for aircraft executing any of the SIAP's now serving the OU Westheimer Airpark. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

71.171 [Amended]

2. Section 71.171 is amended as follows:

Norman, OK [New]

Within a 5-mile radius of the University of Oklahoma Westheimer Airport (latitude 35°14'30" N., longitude 97°28'00" W.), excluding that airspace within a 1.5-mile radius of the Thomas International Airport (latitude 35°15'20" N., longitude 97°32'21" W.). This control zone is effective during the specific dates and times established in advance by a notice to airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

Issued in Fort Worth, TX on May 31, 1989.

Francis J. Johns,
Acting Manager, Air Traffic Division,
Southwest Region.
[FR Doc. 89-13925 Filed 6-12-89; 8:45 am]
BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 100

[CGD 05-89-46]

Special Local Regulations for Marine Events; Southern Legislative Conference Fireworks Display; Patapsco River, Fort McHenry, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is proposing special regulations for the Southern Legislative Conference fireworks display to be held on the Patapsco River in the vicinity of Fort McHenry, Baltimore, Maryland. The regulations restrict general navigation in the regulated area, to provide for the safety of life and property on the navigable waters during the event.

DATE: Comments must be received on or before July 3, 1989.

ADDRESSES: Comments should be mailed or hand-carried to Commander (bb), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004. The comments will be available for inspection and copying at Room 209 of this address. Normal office hours are between 8:00 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Billy J. Stephenson, Chief, Boating Affairs Branch, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004 (804) 398-6204.

SUPPLEMENTARY INFORMATION:

Interested persons are invited to participate in this rulemaking by submitting written views, data, or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD 05-89-46) and the specific section of the proposal to which their comments apply. Reasons should be given for each comment. All comments received before the expiration of the comment period will be considered before final action is taken. The regulations may be changed because of comments received. No public hearing is planned, but one may be held if written requests for a hearing are received and it is determined that the opportunity to make oral presentations will aid the rulemaking process. The receipt of comments will be acknowledged if a stamped self-addressed postcard or envelope is enclosed.

Drafting Information

The drafters of this notice are Mr. Billy J. Stephenson, project officer, Chief, Boating Affairs Branch, Fifth Coast Guard District, and Lieutenant Commander Robin K. Kutz, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Proposed Regulations

The Southern Legislative Conference fireworks display will be held only this year. The display will be launched from a barge anchored in the Patapsco River approximately 180 yards south of Fort McHenry Channel Range Front Light. A portion of the river will be closed to waterborne traffic during the display.

Economic Assessment and Certification

These proposed regulations are not considered major under Executive Order 12291 on Federal Regulation nor significant under Department of

Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). Because closure of the waterway is not anticipated for any extended period, commercial marine traffic will not be significantly inconvenienced. The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Since the impact of this proposal is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This rulemaking has been thoroughly reviewed by the Coast Guard and it has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend Part 100 of Title 33, Code of Federal Regulations as follows:

PART 100—[AMENDED]

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-0546 is added to read as follows:

§ 100.35-0546 *Patapsco River, Baltimore, Maryland.*

(a) *Definitions:* (1) *Regulated Area.* The waters of the Patapsco River bounded by the arc of a circle with a radius of 1,000 feet and with the center located at latitude 39°15'44.5" N., longitude 76°34'40.0" W.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations but may not block a navigable channel.

(c) *Effective Date.* The regulations are effective from 8:00 p.m. to 10:00 p.m., July 17, 1989.

Dated: June 2, 1989.

A.D. Breed,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 89-13920 Filed 6-12-89; 8:45 am]

BILLING CODE 4910-14-M

POSTAL RATE COMMISSION

39 CFR Part 3001

[Docket No. RM88-2]

Establishment of Special Rules of Practice and Procedure for Use in Consideration of Express Mail Market Response Filings; Amendment to Rules Applicable to Requests for Changes in Rates or Fees

Issued: June 7, 1989.

AGENCY: Postal Rate Commission.

ACTION: Notice of Proposed Rulemaking (Third Notice).

SUMMARY: In response to a petition filed by the Postal Service, the Postal Rate Commission initiated this rulemaking to consider whether to adopt special rules of practice and procedure for use in proceedings regarding Postal Service requests for changes in Express Mail rates prompted by developments in the market. Interested persons were invited to participate. 53 FR 16885-86 (May 12, 1988). After considering presentations of the participants, the Commission fashioned a set of procedural rules and published them for public comment. 54 FR 11394-413 (March 20, 1989). Having considered the thoughtful comments which present a wide diversity of views, the Commission has modified its set of proposed rules. The Commission is setting out the modified rules for public

comment. This set of rules compresses, to the extent consistent with due process, the time necessary for the procedural steps in an Express Mail Market Response case. The proposed rules also make provision for automatic intervention, and set out filing requirements. They are subject to a 5-year "Sunset" provision to provide a convenient time for assessing whether they have functioned as anticipated.

DATES: Comments on the proposed rules are due July 13, 1989.

ADDRESSES: Correspondence should be sent to Charles L. Clapp, Secretary of the Commission, 1333 H Street NW., Suite 300, Washington, DC 20268 (Telephone: 202/789-6840).

FOR FURTHER INFORMATION CONTACT: David F. Stover, General Counsel, 1333 H Street NW., Suite 300, Washington, DC 20268 (telephone: 202/789-6820).

SUPPLEMENTARY INFORMATION:

Introduction and Summary. The Postal Rate Commission proposes amending its rules of practice (39 CFR Part 3001) by providing for expedited proceedings on certain requests by the Postal Service for changes in rates for its Express Mail service. This rulemaking was initiated following a request by the Postal Service, which included a draft of suggested rules. The Commission established Docket No. RM88-2 and invited interested persons to participate. 53 FR 16885-86 (May 22, 1988). After considering testimony and other presentations by interested parties,¹ the Commission published a Second Notice of Proposed Rulemaking which invited comments on a proposed set of rules. 54 FR 11394-413 (March 20, 1989).

The Postal Service, the Commission's Office of the Consumer Advocate (OCA), Federal Express Corporation (Federal Express) and United Parcel Service (UPS) filed comments in response to the Second Notice. Having considered these comments, we have incorporated some of the suggestions into the set of proposed rules which we are offering for public comment before issuing a final rule. It is particularly appropriate to permit further public participation because the comments we have received show a wide diversity of views. We have incorporated in the set of rules we are publishing some changes

¹ The Postal Service presented direct and rebuttal testimony. A trial-type hearing was held on the rebuttal testimony. The Commission's Office of the Consumer Advocate and the staff of the Bureau of Economics of the Federal Trade Commission offered alternative suggestions. The American Newspaper Publishers Association suggested a modification. Other parties active in this phase of the rulemaking were Federal Express and United Parcel Service.

suggested by each of the commenters. We appreciate the efforts that the parties have made in responding to our Second Notice. We believe that their thoughtful suggestions have enabled us to fashion an improved set of rules for the treatment of this category of cases.

Background information. In the first phase of this rulemaking, the Postal Service presented considerable information on the need for an expedited method for changing Express Mail rates in response to changes in the expedited delivery market. The Commission decided that it was appropriate to proceed to fashion a set of rules that might answer the Postal Service's concerns while protecting the due process rights of interested parties. The Postal Service presented sufficient information to support the conclusion that a set of rules for expediting such proceedings might help the Commission in carrying out its statutory obligations. Because of the uncertainties involved, the Commission decided that the rules would be subject to a 5-year "Sunset" provision. They will expire at the end of 5 years after implementation if not re-enacted.

The rules which we presented in the Second Notice were designed to promote expedition in the type of cases the Postal Service had described. In our proposed rules, the two primary methods for shortening the proceedings are compressing procedural schedules as much as is consistent with due process and clearly setting out information requirements before the filing of the first case of this type. After considering the comments made to the Second Notice, we improved our set of rules by incorporating appropriate suggested changes.

General propositions made by commenters. Before discussing suggestions on the specifics of the proposed rules, we turn to some broad comments submitted in response to our notice. Federal Express says that it maintains its position that the Postal Service has not proved that a special set of procedural rules is necessary to expedite the cases anticipated by the Postal Service. Federal Express Comments at 1-2. Similarly, United Parcel Service states that the need for special rules has not been shown. UPS Comments at 1.

The Commission considered this argument previously in the rulemaking and decided that, although expedition in Express Mail Market Response cases would be possible without rule changes, the procedural rule modifications could prove useful. We noted that the set of special rules might reduce the time spent at the beginning of cases discussing

informational requirements and the best method of proceeding. The sunset provision retained in our rules will also require the Commission, and permit interested parties, to review the operation of the rules after the practical experience which will permit an assessment of whether they have achieved what was expected. See 54 FR 11398.

Although expressing some misgivings concerning specifics of the Commission's proposed rules, the Postal Service stated that, with some important changes, the approach found in the Second Notice is adequate. The Postal Service recommends the adoption of the Second Notice rules, after the modifications it lists in its comments. Postal Service Comments at 4. As all of the Postal Service's comments are referenced to specific rules, each will be included in the discussion of the individual rules.

Comments on specific rules. The comments come from competitors, the Postal Service, which requested the rule change to assist it in serving the expedited delivery market, and the OCA, whose function is to represent the public interest. With this diversity of viewpoints, we believe that the comments embrace an entire spectrum of interests regarding this issue. Therefore, we have been able to tailor the rules more closely to meet the legitimate concerns of all interested parties.

Another consequence of this diversity of views is that the commenters disagree on many particulars. However, each of the comments has been thoughtful and provided helpful insight. In many instances, the comments offered improvements which we have incorporated into the set of rules in this notice. We turn now to a discussion of the comments as they pertain to specific rules published in the Second Notice.

Rule 3001.57(a), purpose of rules. In its comments, the Postal Service suggested stating the intention of proposals filed under these rules as "minimizing the loss" of Express Mail's contribution to institutional costs rather than the original "preserving" that contribution. The language proposed by the Postal Service more clearly reflects its stated purpose for requesting the rule change and the anticipated intention when cases are filed under the new rules. We have, therefore, accepted this change.

The Postal Service also suggests adding a statement in this section that these rules recognize the need for expedited decisions in such cases. We are not including this statement. Our adoption of expedited rules of procedure, in response to the Postal

Service's request, is sufficient indication of our acceptance, at least for a trial period of 5 years, of the view that expedition in these situations is, as the Postal Service argued, important. The additional statement proposed by the Postal Service would not be a meaningful addition to the rules.

UPS suggests that the rules should contain the condition that they are to be used only when the Postal Service wishes to respond to price reductions in the market. UPS asserts that without that condition, the Postal Service could propose rate reductions in an expedited proceeding based merely on a decline in its service performance and volume. UPS Comments at 4.

We are not including the suggested limitation in our rules. The situation discussed by UPS is not covered in the Postal Service's explanation of why it wants these rules and when it would use them. We do not believe that the Postal Service would seek to propose rate reductions in an expedited case using such a justification.

It is not appropriate to include the suggested limitation in the rules during the trial period. The Postal Service has described a market in which firms compete on the basis of both price and service. It is possible that competitors could change their price/service mix in such a way that the Postal Service could reasonably seek to try to preserve Express Mail's contribution to institutional costs by changing rates. While we believe it would be more difficult to conduct an expedited proceeding given that rationale, we find it is not appropriate to take that option from the Postal Service at this time.

In this rule, we are also making a minor addition by specifying that the rules are to apply in filings in which the Postal Service has requested an expedited recommended decision.

Rule 3001.57(b), sunset provision. The Postal Service would make the first sentence of this section a separate paragraph. We have decided not to include this stylistic change. UPS states in its comments that the sunset provision found in this section is important, since it makes clear that the rules will be re-evaluated after the Commission has experience with how they operate in an actual case.

Rule 3001.57a (a), general information requirements. The Postal Service suggested two changes which we have incorporated. The Postal Service suggested that this section be moved to the beginning of rule 57a and that "with each request" be added to the end of the last sentence. UPS asked that the word "also" be added to emphasize that the

information to be provided under paragraphs (c) through (i) is to be in addition to the general requirements in this paragraph. We are making these changes.

UPS suggested that this section also specify that the Postal Service file information showing the proposed changes are in the public interest and in accordance with the policies and criteria in the Act. UPS argues that the inclusion of these requirements would eliminate any possibility of uncertainty that the Postal Service has the burden of proof in these cases. UPS Comments at 7.

The analyses requested require a summation and explanation of the evidence the Postal Service will present in support of its proposal. In cases to be considered under expedited procedures it is best to have such conclusions clearly delineated for ease of reference. Therefore, we are including these requirements, but putting them in paragraph (k) of this section, as they are more appropriate for inclusion in that rule requiring the more comprehensive analyses for these proposals.

Rule 3001.57a (b), incorporation of rule 3001.54. In the Commission's Second Notice, this rule stated that the Postal Service would be required to file, in Express Mail Market Response cases, the regular cost data described in rule 3001.54 (b) through (r) only for those subclasses and services for which it proposes a change.

In discussing this rule, the Postal Service opposed the incorporation of the regular rule 54 filing requirements. The Postal Service makes the argument that either the case will become bogged down in discovery, or a reviewing court might decide that due process has been denied by the foreclosure of issues. Postal Service Comments at 9-11. The Postal Service would solve this dilemma by having the Commission rely on decisions from the most recent rate case. *Id.* at 9. The Postal Service also opposes inclusion of the rule 54 data requirements on the grounds that they would undermine its efforts to compete with unregulated firms, and entail a significant amount of time and effort inappropriate in expedited proceedings. *Id.* at 10.

The Postal Service explains the difficulties involved in developing the demand analysis required in rule 54. The Postal Service points out that in any dynamic and recently initiated market, past purchasing decisions are not a reliable tool for predicting future sales. Postal Service Comments at 17-20. Additionally, much of data needed to develop a demand analysis for the market is held by competitors, who

cannot be expected to make it available to the Postal Service. *Id.* at 20-21.

The Postal Service also expresses particular concern about the requirement in rule 54 for a roll forward of attributable costs, pointing to the extensive work needed to develop and defend a complete roll forward of costs. Postal Service Comments at 12-15. The Postal Service also states that the test period used in rule 54—which anticipates a 10-month proceeding—is inappropriate for cases in which the new rates are expected to take effect in about 90 days. *Id.* at 14.

The Postal Service proposes that the rules call for an update of the roll forward model adopted by the Commission in the most recent rate case. Taking the base year Express Mail costs by segment and component, the Postal Service would bring them up to date, by adjusting for actual volumes and cost changes. As an alternative, the Postal Service suggests that the Commission rely on the Postal Service's regularly published Cost and Revenue Analysis. Postal Service Comments at 16-17.

To substitute for the revenue and volume information (including a demand analysis) required by rule 54 (j), the Postal Service proposes the filing of a description of the change in the market and the anticipated effect on Express Mail, together with an explanation of why the Postal Service believes its proposal is a reasonable response.

In its comments, Federal Express speaks with approval of the requirement that the Postal Service file all the information listed in rule 54. Federal Express Comments at 4.

UPS points out that changes in rates for one subclass can have a substantial impact on others, and recommends that the Postal Service be required to file information for all classes, subclasses and types of service which might be affected. At a minimum, information would have to be given concerning Priority Mail and each subclass of Express Mail.² UPS Comments at 5-6.

The Commission has decided to retain the rule 54 filing requirements for these cases, with the Commission's previously stated limitation that the Postal Service has to provide the information only for those subclasses and services for which it is requesting a change. We have also adopted some of the Postal Service's suggestions for alternative filing requirements that will produce relevant

² UPS notes that if the Postal Service proposed a change for only one of subclasses of Express Mail, the rule in the Second Notice—if interpreted literally—would not require information on the other three subclasses of Express Mail.

and usable information through less exacting methods.

It is best to retain the usual filing requirements of rule 54, with some modifications that permit the omission of information not necessary for the consideration of these cases as well as allow the substitution of more easily obtainable information for the usual requirements. Although we acknowledge the Postal Service's concern about the cases getting bogged down in the discovery phase, we believe that the Postal Service can do much to hasten the process by providing well-documented evidence and responding promptly to interrogatories. The Commission is always available to respond to any legitimate claim that discovery is going outside the bounds of the case or that the time and effort to provide particular information outweighs the contribution it might make to the proceeding.

With the type of case that the Postal Service has outlined, it does not appear inevitable that an unmanageable amount of discovery would be filed concerning information responsive to rule 54. As the Postal Service has pointed out previously, we expect that Express Mail will be litigated extensively in each omnibus rate case. With that experience, the Postal Service should be able to anticipate to a large degree what questions might be asked. Indeed, the Postal Service might be able to provide, in its direct case, information that the participants could be expected to request through discovery, since the most recent rate case can furnish a guide to questions interested parties may want answered.

We do not accept the Postal Service's position concerning the appropriate method of protecting parties' due process rights. The Postal Service appears to be saying that those rights could be preserved better by requiring reliance on previous litigation than by the usual procedure of the Postal Service presenting its case and providing participants the opportunity to examine the evidence and challenge assertions. See Postal Service Comments at 9-10. We do not agree that excluding otherwise relevant issues from market response rate cases through these procedural rules would be providing more adequate due process to interested parties than allowing for such issues, albeit on an expedited schedule.

The Postal Service has reasonable concerns about the speed with which competitors can change their prices, compared to the process mandated by law for the Postal Service. It is in response to this stated concern that we

have developed procedural rules, on a trial basis, to permit the Postal Service to change Express Mail rates with the expedition it seeks. We must, however, adhere to the statute which gives interested parties certain due process rights when the Postal Service wishes to change rates for its services.

With regard to the roll forward, we have modified our proposed rule to call for the information the Postal Service suggests in its Comments at 16.³ The test period will be four postal quarters beginning after its filing of a case. The projections are to be developed by updating the most recently approved cost model with regard to Express Mail. We believe that this level of data will be sufficient for the consideration of the narrow proposals that the Postal Service has told us it may want to bring.

With regard to a demand analysis, the Postal Service will be required to file projections giving its best estimates of volume and revenue if Express Mail rates are not adjusted to respond to the change in the market, as well as its estimates of volume and revenue if the proposed change is implemented. The Postal Service is to provide a complete description of how it arrived at its conclusion.

The Postal Service points out that its competitors are able to change their prices without an econometric estimate of the elasticity of their service offerings, and argues that the inability to develop such an estimate should not prevent it from responding to changes initiated by competitors. Postal Service Comments at 21-22. We recognize that the data to develop a complete demand analysis has not been available previously and may very well not be obtainable for these cases.

However, we believe that the Postal Service would not seek to change rates without reasonable and well thought out projections of the effect those rate changes will have in the market.⁴ Our rules anticipate the filing of the estimates of volume and revenue, along with the underlying calculations and reasoning, that would lead the Postal Service to propose the rate changes to

³ Since our rules adopt the proposal for an updated roll forward, we are not accepting the Postal Service's alternative suggestion that the Commission rely on the Cost and Revenue Analysis (CRA). We do not think the Postal Service's CRA would serve the purpose in any event, because the CRA costing methods are not always consistent with those from the most recent omnibus rate case. For example, at pages 29-30, the FY 1988 CRA does not attribute the fixed portion of Cost Segment 9, Special Delivery Messengers, contrary to the treatment approved in Docket No. R87-1, the most recent rate case. See PRC Op. App. J, CS IX at 12.

⁴ We assume that competitors act in the same manner.

help preserve Express Mail's contribution to institutional costs.

We are not accepting the UPS suggestion that information must be filed for types of mail other than those for which the Postal Service proposes changes. Unless there are startling changes in Express Mail and the other postal services, we believe that generally rate changes in Express Mail Market Response cases can be considered without bringing in other classes. The relationship between Express Mail and the other classes can be raised by either the Postal Service or other parties should it be relevant to a particular proposal, and it will be examined for adjustment in each omnibus rate case.

Express Mail is not a large class, and changes in its rates can be expected to have only a minimal effect on other classes, including Priority Mail. In considering the effect that changes in Express Mail might have on other classes, we note that current Express Mail rates (and costs) are higher than those for comparable Priority Mail pieces. If a particular Postal Service proposal involves suggested rates close to the rates for Priority Mail, then the potential for impact will be a relevant issue. Notwithstanding this possibility, we are not convinced that these rules should require the filing of substantial data about Priority Mail as suggested by UPS. The Service's declared purpose of preserving Express Mail's contribution to institutional costs is not unlike the profit maximization goals presumed to govern competitive markets.

Similarly, we are not including the UPS suggestion that this section specify that information be filed for each of the four subclasses of Express Mail. Currently, the Next Day Post Office to Addressee service overwhelmingly dominates the class, making up over 90% of its volume. The Postal Service does not collect cost data separately for the various subclasses. The data primarily reflect Next Day Post Office to Addressee service; the costs of the other services can be derived from it. The decision not to collect separate data appears reasonable, given the very large differences in volume and the small size of the class as a whole. Therefore, we will not add the requirements for data by Express Mail service proposed by UPS.

We will re-visit these rules within 5 years under the sunset provision—and sooner, if problems requiring immediate attention should arise. If the experience gained in that period indicates that information on additional services is appropriate for consideration of Express

Mail Market Response cases, or that circumstances have changed such that it is reasonable to require separate cost data on the subclasses, we will have a convenient opportunity to modify the rules to require that data.

Rule 57a (d), filing of changes to regulations. The original rule required that the Postal Service provide the Domestic Mail Manual sections as they would appear after the change in rates proposed. In its comments, the Postal Service stated that it believed the reference to be a typographic error. The Postal Service assumed that the Commission intended to refer to the Domestic Mail Classification Schedule.

The reference to the Domestic Mail Manual in our previous notice is not in error. The Postal Service has the discretion to change the Domestic Mail Manual without any participation by the Commission. In these Express Mail Market Response cases, which are to be handled under expedited procedures, we believe that in some instances, the filing of the contemplated Domestic Mail Manual changes might help by providing details of the Postal Service's proposed rate changes and giving clarifications that might not appear from the Domestic Mail Classification Schedule sections.

In light of the misinterpretation the original section gave rise to, we have added the clarification that the Postal Service is to file both the Domestic Mail Classification Schedule changes, as it does in all cases, and the Domestic Mail Manual changes. During the 5-year trial period, we will be able to ascertain whether the additional requirement of filing the Domestic Mail Manual changes does in fact assist in the expeditious consideration of these cases.

Rule 57a (e), attributable costs and methodology. This rule states that the Postal Service is to file attributable costs by segment and component according to the method the Commission adopted in the most recent rate case. The section also provides that the Postal Service may, in addition, file costs using an alternative method as long as a complete explanation is given.

The Postal Service suggested using the word "estimate" with regard to attributable cost projections. We are accepting this change, as it does appear to provide a clearer explanation of what is presented.

Federal Express and UPS address the provision that allows Postal Service also to present costs using a new costing method when it believes such a modification is warranted. Federal Express opposes inclusion of this provision, stating consideration of costing changes is inappropriate in

cases where the Postal Service is insisting on the utmost expedition. Federal Express Comments at 3. UPS does not object to the Postal Service having the option of also presenting cost data under new methods, but states that it should be emphasized that the presentation using new methods should be in addition to that using the methods adopted by the Commission in the most recent rate case. UPS Comments at 9.

We are retaining the option for the Postal Service to file cost data using a modified method with the conditions that a complete explanation be given and that the data also be filed in accordance with approved methods. We are adding the emphasis suggested by UPS to assure all interested parties that data using new methods are an optional addition rather than a substitute.

We do not expect that the Postal Service will often take advantage of this option, and we recognize that its use would increase the issues to be decided in these expedited proceedings. However, it is possible that significant improvements in costing methods can be made in the period following a rate case. Ideally, of course, they would be made elsewhere than in the time-constrained context of a Market Response case. But in these cases, as in all others, we want our recommended decisions to be based on the best possible data. We do not believe that the Postal Service should be foreclosed from offering modifications.

It will be up to the Postal Service to determine whether any modification is of sufficient importance to be included for consideration in an Express Mail Market Response case. We believe that it is possible to protect interested parties' due process rights with regard to a proposed change in costing methods in an expedited proceeding.

As suggested by UPS, we have added a phrase indicating that the information required by this section is in addition to that required for the test period. We are using the term "test period" because, as explained with regard to rule 57a(b), these rules for an expedited proceeding do not need the same test year requirement as with proposals which are not expected to become effective for at least 10 months.

Additionally, we are retaining the phrase "for which information is available" with regard to actual (rather than projected) cost data. We do not agree with UPS that the inclusion of a test year requirement makes the phrase unnecessary. A requirement for estimates of what will happen in the future is not related to the conditions under which historical data must be filed.

Similar to our previous discussion of rule 57a (b), we are not expanding the types of services for which the information for rule 57a (e) must be filed. For the reasons given with regard to section (b), we do not agree with UPS that information on types of mail other than those whose rates the Postal Service wishes to change can be expected to be necessary in these cases.

Rule 57a (f), notice of important operational changes. UPS suggests the addition of a requirement that the Postal Service filing under these rules include a description of all operational changes since the last rate case which have a measurable effect on costs, along with an analysis and estimate of that cost effect. UPS points to Docket No. R87-1, in which Commission used the costs from a new transportation network in setting rates. UPS Comments at 11-12.

It is appropriate to include a provision explicitly stating that the cost effects of significant operational changes are to be considered in these cases. The cost effects of important operational changes could be put at issue whether or not a specific provision in the rules referred to them. Therefore, it is in the interest of expedition to have the Postal Service address the question in its initial filing.

We have not used UPS's term of "measurable" to describe the type of changes that must be discussed, since it could include very minor adjustments in operations. We have, instead, described those changes as having an "important" impact on costs. The type of changes covered by this section are those similar in magnitude to the decision to establish a new air transportation network (See PRC Op. R87-1, paras. 3625-51) rather than local changes of the method of transportation used in carrying Express Mail (See R87-1, Tr. 8/5503-04).

Rule 57a (g), current Express Mail revenues. UPS suggests that the Postal Service be required to file a statement of actual Express Mail revenues for the most recent accounting periods, in addition to the Second Notice's requirement of the available information for the most recent four quarters. UPS explains that in cases highly dependent on current trends in the market, the Commission should have the most recent data available. UPS Comments at 10-11.

We have decided not to include this additional information as a filing requirement. Information compiled on the quarterly basis has long been the framework the Commission uses in its proceedings. The quarterly reports have been subject to a more complete audit process. In general, the quarterly data are a more reliable indication to trends and changes.

Rule 57a (h), change in market and identification of needs of customers. The Postal Service's suggested rules in response to the Second Notice omit the requirement for a description of the specific characteristics and needs of the customers and market segments which may be affected by the change in the market and whose needs the proposed rates are designed to meet. The Postal Service substitutes a more general condition of explaining why its proposed rates are a reasonable response to the change.

The Postal Service's suggested language would cover the more specific criteria used in our version, as an explanation of why proposed rates are a reasonable response would, perforce, include a description of the market affected, as well as the anticipated impact of the proposed rates. We are retaining our more detailed description of this requirement, since it is best that procedural rules give as much guidance as possible, particularly in cases which are to proceed on a very expedited basis.

Rule 57a (i), before-and-after estimates. The OCA suggests that the rules include a specific provision for estimates of volumes, costs, revenue and contribution to institutional costs for the base year and test year, with and without the proposed change. We are including such a provision in this set of rules. The information responsive to this rule will serve as a reference to the anticipated effects of the proposed changes, as well as to the situation that will prevail if the Postal Service does not respond to the change in the market.

Rule 57a (j), data requirements. In the Second Notice, we included a list of Express Mail periodic (quarterly) data filing requirements. The purpose of periodic filings was to promote speed in considering the Postal Service's requests, by compiling information providing a background to permit faster understanding of the data the Postal Service would file in support of its proposal.

The Postal Service strongly opposes the periodic filing of such detailed information, explaining the harm that could result from competitors' access to it. The Postal Service points out that competitors, who closely guard detailed information on their operations, could use the information to track Express Mail's progress and then take advantage of opportunities so revealed. Postal Service Comments at 8-9. The Postal Service states that presenting such information only infrequently might not be unduly damaging. *Id.* at 8.

Having considered the Postal Service's argument on this issue, we have decided to eliminate the requirement that these data be filed on a periodic basis. Although their presence could help expedite these cases, the Postal Service has pointed out clear indications of the potential for competitive disadvantage from regular periodic filings. Those disadvantages outweigh the potential contribution to expedition of having such information tracking Express Mail's progress. Therefore, we shall require that this information be provided when the Postal Service files a market response rate request, as the Service suggests in its Comments at 30.

Particularly in this 5-year trial period, it is important, however, to have sufficient information to assess the results of changing Express Mail rates in response to changes in the market. We are, therefore, requiring that the Postal Service file actual Express Mail data as listed in 57a (j) for the test period used in an expedited market response proceeding which resulted in changed rates. The rule allows a year to pass before the data must be filed. This information is to be presented on a quarterly basis.

We recognize the Postal Service's interests in protecting its competitive position by making this filing requirement a one-time (for each rate change under these rules) proposition, and by permitting a year to elapse before the information is made public.

As the filing requirement is no longer periodic, competitors will not be able to track Express Mail's progress at the level of detail that concerns the Postal Service. We note that the Postal Service does include Express Mail information (albeit in less detail) in regular periodic reports, such as the Cost and Revenue Analysis, that are available to the public and the Commission.

If we accept the Postal Service's view of the market as extremely volatile in the present as well as the past,⁵ it appears that the potential for competitive harm from the release of this information more than one year after the events occur will be slight. The information will, however, be very important to an assessment of whether the rules operate in the manner the Postal Service has outlined.

If we are to accept the idea that these rules will help in carrying out our statutory duties, we need to have this information in order to evaluate how well the rules operate in fact. The one-time filing of this information will permit

⁵ Postal Service Comments at 20.

a "real world" assessment of the Postal Service's assertion that it may be able to meet challenges in the expedited delivery market by changing Express Mail's rates. See Postal Service Comments at 1.

We are moving this section into rule 57a from its former location with the other rules for periodic filings. With regard to the particular items of information required, the Postal Service pointed out data collection problems with some of the precise requirements. We have modified the requirements, since the data then required would meet the needs of our original rules and be a reasonable recognition of the difficulties of data collection.

For the volume by rate cell, we have included the explicit recognition proposed by the Postal Service that the numbers are estimates. We have also changed the format for the pounds of Express Mail at various weight categories from pounds to the postage pounds that the Postal Service can provide without major additions to its data collection system. See Postal Service Comments at 5.

The Postal Service had two problems with the data to be filed reflecting use of hub contracts. The original rule asked for the pound-miles for each subclass carried. The Postal Service said that it was unclear what the rule called for, since data for Express Mail is not collected by subclass and providing data regarding any other subclass of mail would slow the proceedings. Postal Service Comments at 7.

We have modified the rule to make clear that the Postal Service is to use the same breakdown for the types of mail using hub contracts as in Docket No. R87-1. See Tr. 39/26699-702. We are not requiring a breakdown by the subclasses of Express Mail at this time. However, for costing purposes, it is important to know how much of other types of mail are using the hub system. In Docket No. R87-1, the Postal Service provided that information for the Express Mail and Priority Mail. We expect information disaggregated to that degree in Express Mail Market Response cases. Compare PRC Op. R87-1, para. 3629.

Additionally, the original rule called for pound-miles for each subclass. The Postal Service reports that it collects data on the basis of pounds rather than pound-miles. We have changed the data requirement to call for the pounds carried. Allocation of costs to the types of mail—including Express Mail—using the hub contracts can be made using this information.

Rule 57a (k), analyses required. This section provides for the inclusive

analyses to be filed in these cases. The Postal Service's suggested rule in response to the Second Notice somewhat lowered the standard for the evidence it is to file. The Postal Service would qualify its assessment of the projected impact of the proposed changes by adding the term that they are "reasonably expected" to help Express Mail's contribution to institutional costs. The Postal Service would also take out the term "analyses" in describing the presentations it must file.

We are not accepting the Postal Service's modifications. Although they do not appear to change the meaning of the section to a great degree, it is better to retain the better defined and somewhat higher standards.

As explained in our discussion of section 57a (a), we are including in this paragraph specific requirements that the Postal Service file analyses showing the proposals are in the public interest and in accordance with the policies and criteria of the Act. This section should not impose any added burden on the Postal Service as it is obligated to address these issues itself before submitting a rate request to the Commission.

Rule 57b (b), conditions for proposed rates. The Postal Service points out that the costs for Express Mail rate cells in an omnibus rate case are based on average attributable costs which have been distributed to the cells based on expert judgment. The Postal Service reasons that these rules should not give the Postal Service the evidentiary burden of showing that its proposed rates for each cell are above its costs. Postal Service Comments at 23. The Postal Service would eliminate the Second Notice's rule 57b (b) prohibition against proposing a rate for any rate cell lower than the attributable cost for it.

In response to the Postal Service's presentation, we have changed—rather than eliminated—this requirement. Rule 57b (b) now states that the Postal Service shall not propose a rate for any rate cell lower than the estimated attributable cost for providing service to that cell. This condition properly takes into account both the Postal Service's concerns about possibly burdensome data requirements and the interest of establishing schedules in which the rates for individual cells have a reasonable relationship to costs.

This change is also responsive to the comments of Federal Express, which pointed out that this section should be written with reference to test period, rather than historical costs. Federal Express Comments at 4. Our

requirement regarding the estimated costs for individual rate cells states that the costs to be used are those for the test period in these cases.

UPS agrees that the requirement that rates proposed for individual cells be higher than the costs for those cells should refer to test year costs. UPS Comments at 15. UPS also states that the prohibition against the Postal Service proposing rates lower than historical per piece attributable costs should be eliminated. UPS's first disagreement with the floor of average per piece attributable cost is that it contemplates, contrary to the statute, rates which make no contribution to institutional costs. *Id.* at 12-15.

We will retain this rate floor for proposals. We do not expect the Postal Service to file cases—as envisioned by UPS—asking for Express Mail rates which make no contribution to institutional costs. We cannot conceive of any fact situation where such rates would comply with the Act; and the rules we have developed explicitly require the Postal Service to demonstrate that its proposal is in accordance with the policies and criteria set out in the Act. Rule 57a (k). Additionally, our rule for decision similarly states that our recommendations will be in accordance with the policies of the Act. Rule 57c.

We are not accepting UPS's alternative which would prohibit proposed rates based on a particular cost coverage, such as one equal to First Class. UPS Comments at 14. Setting any particular cost coverage floor or reference in these rules would inject unnecessary issues into cases. In these cases we will be examining, with as much dispatch as possible, the appropriate rates and cost coverage for Express Mail. It is best to retain a rate floor for proposals which the Postal Service should have no difficulty demonstrating that it has met. In that manner, we can eliminate a potential controversy whose consideration would only be a digression away from the essential issues.

UPS also expresses concern about this section's reference to costs calculated in accordance with rule 57a (e). UPS interprets this section to mean that costs may be calculated under methods which the Postal Service has modified since the Commission approved them in the last omnibus rate case. UPS Comments at 15.

We are retaining the reference to rule 57a (e); as we stated previously, this section merely permits the Postal Service to propose costing changes in addition to presenting costs under the most recently approved methods. We do

not expect the option to be used often in these cases. However, if the Postal Service has developed a modification that it believes is such a significant improvement that it wishes to subject it to litigation in these cases, it should have that opportunity.

UPS states that the Commission should eliminate the prohibition against the Postal Service proposing a rate for any cell higher than the Governors approved in the most recent omnibus rate case. UPS argues that such a restriction would be contrary to the Act as well as unfair to competitors who would be subject to the risk of rate decreases while users would be protected from rate increases. UPS Comments at 16-17.

We are eliminating the restriction against rate increases in the Postal Service's proposals. In Express Mail Market Response cases—as suggested by UPS at footnote 3 of its Comments—the Postal Service might want to have the added flexibility of proposing increases for some rate cells.

Rule 57b (c)(2), service of registrants. In its comments, the Postal Service suggested that the requirement for it to serve its filing on registrants be specified as going Express Mail rather than simply "expedited delivery service." We have made this change; it appears to reflect what will actually occur.

Rule 57b (c)(3), notification of rate case participants. The Postal Service suggested that the required notification that it will send use Express Mail. We have accepted this modification. It may help in expediting the proceedings. We are also accepting the Postal Service's proposed deletion of the word "prominently" from the specifications of what it is to say in the notice. It should be sufficient that the document state that it is a notice of the filing of an Express Mail Market Response case on the first page.

The Postal Service would also delete the requirement that the notice briefly describe the proposal. We are retaining this requirement. The cases the Postal Service has given as examples in this rulemaking have been simple and straightforward, and easily described. The persons receiving the notice can decide more quickly whether they wish to participate in the case if they are given a short description of what it is about.

Rule 57b (d), costing and market demand. The Postal Service would eliminate the provision that it and other parties may, in demand analyses, use market segmentation that was not used in the last omnibus rate case. We are retaining this provision. If progress in

assessing market demand has been made after the close of the last rate case, we do not wish to prohibit such information from the Express Mail Market Response cases. We believe that the potential of such information to reduce the expedition of these proceedings is outweighed by its likely importance to the recommended decision.

Rule 57b (e)(1), request for a hearing. The Postal Service would delete "when possible" as a qualification to the responsibility of parties requesting a hearing to dispute facts stated in the Postal Service's filing to state what facts they believe to be true. We will not eliminate this condition. The parties have 28 days from the filing of the proposal to request a hearing. That period may not be long enough to allow a party to determine what it believes the true facts to be. However, if the party has developed an opinion concerning some or all the factual issues within that time, our rules properly call for its presentation.

The parties will be laboring under burdens necessitated by expeditious proceedings in these cases. Although it may not be easy, we think it reasonable to ask those who have decided to participate in these cases to analyze the Postal Service's filing sufficiently in 28 days to identify any factual statements they believe to be incorrect. We note that these cases are not expected to have a great number of issues, as the Postal Service has stated that what it wants is limited to the ability to change rates quickly when, and if, the market changes in the periods between omnibus rate cases.

We are including the Postal Service's suggestion that parties be asked to identify at that time the testimony they intend to present. Asking parties to give broad outlines of their testimony should help speed the proceeding, since all parties will have a general idea of the approaches that will be taken. This notification will help the parties and the Commission prepare for expeditious analysis of the evidence once it is filed.

This requirement also is conditioned by the phrase "when possible." Although we think that generally parties wishing to present evidence should be able to give a brief description of it within this period, in some instances a party may need to request a short extension of time. Our rules contemplate that the party requesting additional time provide an explanation of why the additional time is necessary.

Rule 57b (e)(2), genuine issue of material fact. The Postal Service suggests that we add the phrase "to be

resolved" following "genuine issue of material fact." We have made this minor editorial change. It might avoid some potential for ambiguity.

Rule 57b (e)(3), briefs and argument. The Postal Service suggests an editorial change, which it believes will remove any possible uncertainty concerning the Commission's notice that it may request briefs or schedule oral argument on an expedited basis in these cases. We are accepting that suggestion.

UPS suggests that an ambiguity may exist in this section, as it could be interpreted to mean that when no hearing is held, it is not necessary to permit the filing of briefs even if opposition exists to the Postal Service's proposal. We are not making this change. Having examined the sentence in light of UPS's concern, we do not believe there should be any doubt that briefs will be permitted in these cases, although their scheduling may be accelerated.

Rule 57b (e)(4), discovery disputes. The Postal Service proposes that the rule use the more common term "Objection to Discovery" rather than "Motion to Excuse from Answering." The Postal Service points out that the latter phrase is not used in our current rules. We are not making this change. We are trying to speed resolution of discovery disputes by eliminating one of the steps—the answer to the conventional motion to compel.

This rule contemplates that the party who receives the interrogatory, and believes there is a legitimate basis for not answering it, will put all the reasons and explanations in the Motion to Excuse from Answering. Therefore, if the party who asked the interrogatory decides to pursue the matter, the controversy will be ready for resolution when a motion is filed. Because the Motion to Excuse from Answering is to contain material often not appearing in an Objection to Discovery, it is best to retain the distinct title.

We are also not adopting the Postal Service's proposed elimination of the option of serving the Motion to Excuse from Answering on the questioning participant by facsimile. This option is available only with regard to the copy sent to the questioning participant. The Commission and the other participants in the case are to receive regular service of such Motions. Facsimile is an option which will permit the questioning participant time to decide whether to file a motion to compel while staying within the tight deadlines necessary in expedited cases.

The Postal Service suggested that the rules require objections—Motions to Excuse from Answering—to be made

within 10 days of the filing of the interrogatory. We are accepting this proposal. Setting a time limit for objections has worked in other Commission proceedings. It has been shown to help speed the discovery phase.

The Postal Service also suggested, in order to remove any possible doubt, to add a phrase specifying that if a Motion to Excuse from Answering is denied, the answer to the interrogatory is due within 7 days of the denial. We are adding the phrase.

Rule 57b (e)(5), schedule. In its comments, Federal Express said that there are potential difficulties in meeting the schedule in this rule. Federal Express Comments at 2. UPS asserts that there is not enough time in the schedule for sufficient analysis of complex problems that could be presented in an Express Mail Market Response case. UPS is concerned that the short deadlines may not give parties adequate time to prepare. UPS has provided a longer, alternative schedule. For example, the UPS schedule calls for the filing of reply briefs 120 days after the initiation of the case, while the Commission's schedule in the Second Notice calls for reply briefs 77 days after the case is filed.

We are retaining the schedule from the Second Notice. Although it has tight deadlines, we believe—with cooperation from everyone—that it is workable for the type of cases that the Postal Service has described. If any particular date causes difficulty, the Presiding Officer can grant an extension of time. In this trial period for the rules for market response rate cases, it is appropriate to establish the shortest time periods that appear workable. When the Commission reviews its experience with these rules, we will be to judge whether any of the scheduled dates should be changed in the rules.

Rule 57b (e)(6), changes in the schedule. Rule 57b (e)(6) explicitly provides that the Presiding Officer may adjust the schedule, gives the time period for requests to file rebuttal evidence to participants' cases, and the considerations to be used in requests for additional time.

The Postal Service would use the term "extend" rather than "adjust" when referring to schedule changes. We are retaining "adjust." It may appear in one of these cases (particularly after gaining some experience in handling them) that the Commission, through the Presiding Officer, may decide that it is possible to shorten some of the deadlines in these rules. Additionally, we are not accepting the Postal Service's proposed requirement that a party make a motion

before the schedule may be changed. The Presiding Officer should have the authority to lengthen or shorten deadlines as it seems appropriate, without any necessity of waiting for a party to file a motion.

The Postal Service would also increase the amount of time—from 3 days to 10 days—a participant has to request permission to file rebuttal testimony other than the Postal Service's direct case. We are not enlarging this time period in the rules. Our rules provide that early in the proceeding, parties are to give advance notice and a description of the evidence they intend to file. Furthermore, parties will have the participants' prepared testimony for at least 10 days before they must file a request if they want to file rebuttal testimony. We think this schedule is reasonable in a case with limited issues. We have added the specification that the 3 days is to run from the time the material is received in the evidentiary record, to eliminate any possibility that parties could misinterpret the amount of time they are given.

The Postal Service objected to the last sentence of this section, which provides considerations with regard to granting requests for extensions of time. The Postal Service pointed out that equitable concerns can be addressed under the Commission's general powers. We are retaining specific guidelines, with some modification of the wording. It is appropriate to emphasize in these expedited cases that motions for extensions of time will be considered in light of the efforts that participants have made to meet the admittedly short deadlines and events that may have hampered their progress.

Rule 57c, rule for decision. UPS states that the Commission does not need a rule for decision, since every recommended decision it makes must comply with the Act. UPS Comments at 20. UPS says that, if the Commission decides to retain a rule for decision, it should state that any recommendation will be based on the public interest and the policies of the Act. On the other hand, UPS says that it has no objection to the Commission stating in its rules that it intends to receive final briefs within 120 days of the Postal Service filing its request—with the proviso that the schedule is consistent with due process and other procedural rights of the participants. *Id.*

We are retaining the rule for decision, with an addition that should make it entirely clear that the Commission will issue its recommended decisions in compliance with the applicable policies of the Act. This set of rules is being

established in response to the Postal Service's concerns regarding a specific, identified situation. It is appropriate to refer to this situation in the rules for these cases. We are also retaining the statement of our goal of considering these cases within 90 days. That statement might help in providing guidance for interested parties who wish to participate in these cases.

Impact of Proposed Changes

Pursuant to Executive Order 12291, the Commission finds that this proposed rule change does not constitute a "major rule." It affects only rules of practice governing hearing procedures, not the substance of the proceeding. Its economic impact will be negligible, including its impact on the costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions. Additionally, the procedural rule change will have no measurable effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The above analysis that the rule change does not constitute a major rule applies, as well, to the Regulatory Flexibility Act.

The proposed rule change does not contain policies with Federalism implications, and therefore does not warrant preparation of a Federalism assessment under E.O. 12612.

List of Subjects in 39 CFR Part 3001

Administrative practice and procedure, Postal Service.

For the reasons set forth in the preamble, 39 CFR Part 3001 is proposed to be amended as follows.

PART 3001—RULES OF PRACTICE AND PROCEDURE

Subpart B—Rules Applicable to Requests for Changes in Rates or Fees

1. The authority citation for 39 CFR Part 3001 continues to read as follows:

Authority: 39 U.S.C. 404(b), 3603, 3622-3624, 3661, 3662, 84 Stat. 759-762, 764, 90 Stat. 1303; (5 U.S.C. 553), 80 Stat. 383.

2. Sections 3001.57, 3001.57a, 3001.57b, and 3001.57c are added to read as follows:

§ 3001.57 Market response rate requests for Express Mail service—purpose and duration of rules.

(a) This section and §§ 3001.57a through 3001.57c only apply in cases in

which the Postal Service requests an expedited recommended decision pursuant to section 3622 of the Postal Reorganization Act on changes in rates and fees for Express Mail service, where the proposed changes are intended to respond to a change in the market for expedited delivery services for the purpose of minimizing the loss of Express Mail contribution to institutional costs recommended in the most recent omnibus rate case. These rules set forth the requirements for filing data in support of such rate proposals and for providing notice of such requests, and establish an expedited procedural schedule for evaluating Market Response Rate Requests. These rules may not be used when the Postal Service is requesting changes in Express Mail rates as part of an omnibus rate case.

(b) This section and §§ 3001.57a through 3001.57c are initially to be effective for the limited period of five years from the date of their adoption by the Commission. During that period the Commission will continue to analyze the need for these rules to enable the Postal Service to respond to changes in the market for expedited delivery services, and the impact of these procedures on the ability of participants to review and comment on Postal Service proposals. These rules will cease to be effective at the end of this period unless they have been reissued by the Commission following a Notice of Proposed Rulemaking published in the *Federal Register* which provides an appropriate opportunity for public comments.

§ 3001.57a Market response rate requests—data filing requirements.

(a) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by such information and data as are necessary to inform the Commission and the parties of the nature and expected impact of the change in rates proposed. Except for good cause shown, the information specified in paragraphs (c) through (i) shall also be provided with each request.

(b) Except as otherwise expressly provided in this section, the information required by §§ 3001.54 (b) through (r) must be filed only for those subclasses and services for which the Postal Service requests a change in rates or fees. Test period volume, cost, and revenue estimates presented in satisfaction of rule 57a shall be for four postal quarters beginning after the filing date of the request. The cost roll-forward may be developed by extending the cost forecasting model used in the last omnibus rate case (utilizing

available actual data). Volume and revenue estimates required by these rules shall utilize, to the extent practicable, the factors identified in rule 54(j)(6), and must be fully explained, with all available supporting documentation supplied, but they need not be econometrically derived.

(c) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall contain an explanation of why the change proposed by the Postal Service is a reasonable response to the change in the market for expedited delivery services to which it is intended to respond.

(d) Every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by the then effective Domestic Mail Classification Schedule sections which would have to be altered in order to implement the changes proposed by the Postal Service, and, arranged in a legislative format, the text of the replacement Domestic Mail Classification Schedule sections the Postal Service proposes. The Postal Service shall also present the then effective Domestic Mail Manual sections which would have to be altered in order to implement the changes it has proposed, and, arranged in a legislative format, the text of the replacement Domestic Mail Manual sections the Postal Service intends to make effective to implement its proposed changes.

(e) In addition to the required test period cost estimates, every formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a statement of the attributable costs by segment and component for Express Mail service determined in accordance with the attributable cost methodology adopted by the Commission in the most recent omnibus rate case, for the base year used in that case, and for each fiscal year thereafter for which cost data is available. If the Postal Service believes that an adjustment to that methodology is warranted it may also provide costs using alternative methodologies as long as a full rationale for the proposed changes is provided.

(f) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include a description of all operational changes, occurring since the most recent omnibus rate case, having an important impact on the attributable cost of Express Mail. Postal Service shall include an analysis and estimate of the cost impact of each such operational change.

(g) Every formal request made under the provisions of §§ 3001.57 through

3001.57c shall be accompanied by a statement of the actual Express Mail revenues of the Postal Service from the then effective Express Mail rates and fees for the most recent four quarters for which information is available.

(h) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a complete description of the change in the market for expedited delivery services to which the Postal Service proposal is in response, a statement of when that change took place, the Postal Service's analysis of the anticipated impact of that change on the market, and a description of characteristics and needs of customers and market segments affected by this change which the proposed Express Mail rates are designed to satisfy.

(i) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include estimates, on a quarterly basis, of test period volumes, revenues, and attributable costs for each Express Mail service for which rate changes are proposed assuming:

(1) Rates remain at their existing levels, and

(2) Rates are changed after 90 days to the levels suggested in the request.

(j)(1) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by the following information, for each quarter following the base year in the most recent omnibus rate case:

(i) Estimated volume by rate cell, for each Express Mail service;

(ii) Total postage pounds of Express Mail rated at (a) up to ½ pound, (b) ½ pound up to 2 pounds, (c) 2 pounds up to 5 pounds; and

(iii) Total pounds of Express Mail and of each other subclass of mail carried on hub contracts.

(2) In each instance when rates change based on a proceeding under the provisions of §§ 3001.57 through 3001.57c the Postal Service shall provide, one year after the conclusion of the test period, the data described in § 3001.57a(j)(1)(i-iii), for each of the four quarters of the test period.

(k) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall include analyses to demonstrate:

(1) That the proposed rates are consistent with the factors listed in 39 U.S.C. 3622(b),

(2) That the proposed rate changes are in the public interest and in accordance with the policies and applicable criteria of the Act, and

(3) That the proposed rates will preserve, or minimize erosion of, the Express Mail contribution to

institutional costs recommended in the most recent omnibus rate case.

(l) Each formal request made under the provisions of §§ 3001.57 through 3001.57c shall be accompanied by a certificate that service of the filing in accordance with § 3001.57b(c) has been made.

§ 3001.57b Market Response Rate Requests—expedition of public notice and procedural schedule.

(a) The purpose of this section is to provide a schedule for expediting proceedings when a trial-type hearing is required in a proceeding in which the Postal Service proposes to adjust rates for Express Mail service in order to respond to a change in the market for expedited delivery services.

(b) The Postal Service shall not propose for consideration under the provisions of §§ 3001.57 through 3001.57c rates lower than

(1) The average per piece attributable cost for Express Mail service determined in the most recent omnibus rate case, or

(2) The average per piece attributable cost for Express Mail service as determined by the Postal Service in accordance with § 3001.57a(e) for the most recent fiscal year for which information is available, whichever is higher.

Neither shall the Postal Service propose a rate for any rate cell which is lower than the estimated test period attributable cost of providing that rate cell with service.

(c)(1) Persons who are interested in participating in Express Mail Market Response Rate Request cases may register at any time with the Secretary of the Postal Rate Commission, who shall maintain a publicly available list of the names and business addresses of all such Express Mail Market Response Registrants. Persons whose names appear on this list will automatically become parties to each Express Mail Market Response rate proceeding. Other interested persons may intervene pursuant to § 3001.20 within 28 days of the filing of a formal request made under the provisions of §§ 3001.57 through 3001.57c. Parties may withdraw from the register or a case by filing a notice with the Commission.

(2) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.57c it shall on that same day effect service by hand delivery of the complete filing to each Express Mail Market Response Registrant who maintains an address for service within the Washington metropolitan area and serve the complete filing by Express Mail service

on all other Registrants. Each Registrant is responsible for insuring that his or her address remains current.

(3) When the Postal Service files a request under the provisions of §§ 3001.57 through 3001.57c, it shall on that same day send by Express Mail service to all participants in the most recent omnibus rate case a notice which briefly describes its proposal. Such notice shall indicate on its first page that it is a notice of an Express Mail Market Response Rate Request to be considered under §§ 3001.57 through 3001.57c, and identify the last day for filing a notice of intervention with the Commission.

(d) In the absence of a compelling showing of good cause, the Postal Service and parties shall calculate Express Mail costs in a manner consistent with the methodologies used by the Commission in the most recent omnibus rate case. In the analysis of customers' reactions to the change in the market for expedited delivery services which prompts the request, the Postal Service and parties may estimate the demand for segments of the expedited delivery market and for types of customers which were not separately considered when estimating volumes in the most recent omnibus rate case.

(e)(1) In the event that a party wishes to dispute as an issue of fact whether the Postal Service properly has calculated Express Mail costs or volumes (either before or after its proposed changes), or wishes to dispute whether the change in the market for expedited delivery services cited by the Postal Service has actually occurred, or wishes to dispute whether the rates proposed by the Postal Service are a reasonable response to the change in the market for expedited delivery services or are consistent with the policies of the Postal Reorganization Act, that party shall file with the Commission a request for a hearing within 28 days of the date that the Postal Service files its request. The request for hearing shall state with specificity the fact or facts set forth in the Postal Service's filing that the party disputes, and when possible, what the party believes to be the true fact or facts and the evidence it intends to provide in support of its position.

(2) The Commission will not hold hearings on a request made pursuant to §§ 3001.57 through 3001.57c unless it determines that there is a genuine issue of material fact to be resolved, and that a hearing is needed to resolve this issue.

(3) Whether or not a hearing is held, the Commission may request briefs and/or argument on an expedited schedule, but in any circumstance it will issue its recommended decision as promptly as is

consistent with its statutory responsibilities.

(4) In order to assist in the rapid development of an adequate evidentiary record, all participants may file appropriate discovery requests on other participants as soon as an Express Mail Market Response Rate Request is filed. Answers to such discovery requests will be due within 10 days. Objections to such discovery requests must be made within 10 days in the form of a Motion to Excuse from Answering, with service on the questioning participant made by hand, facsimile, or expedited delivery. Responses to Motions to Excuse from Answering must be submitted within seven days, and should such a motion be denied, the answers to the discovery in question are due within seven days of the denial thereof.

(5) If, either on its own motion, or after having received a request for a hearing, the Commission concludes that there exist one or more genuine issues of material fact and that a hearing is needed, the Commission shall expedite the conduct of such record evidentiary hearings to meet both the need to

respond promptly to changed circumstances in the market and the standards of 5 U.S.C. 556 and 557. The procedural schedule, subject to change as described in paragraph (e)(6) of this section, is as follows: Hearings on the Postal Service case will begin 35 days after the filing of an Express Mail Market Response Rate Request; parties may file evidence either in support of or in opposition to the Postal Service proposal 49 days after the filing; hearings on the parties' evidence will begin 56 days after the filing; briefs will be due 70 days after the filing; and reply briefs will be due 77 days after the filing.

(6) The Presiding Officer may adjust any of the schedule dates prescribed in paragraph (e)(5) of this section, in the interests of fairness, or to assist in the development of an adequate evidentiary record. Requests for the opportunity to present evidence to rebut a submission by a participant other than the Postal Service should be filed within three working days of the receipt of that material into the evidentiary record, and should include a description of the evidence to be offered and the amount

of time needed to prepare and present it. Requests for additional time will be reviewed with consideration as to whether the requesting participant has exercised due diligence, and whether the requesting participant has been unreasonably delayed from fully understanding the proposal.

§ 3001.57c Express Mail Market Response—rule for decision.

The Commission will issue a recommended decision in accordance with the policies of 39 U.S.C., and which it determines would be a reasonable response to the change in the market for expedited delivery services. The purpose of §§ 3001.57 through 3001.57c is to allow for consideration of Express Mail Market Response Rate Requests within 90 days, consistent with the procedural due process rights of interested persons.

By the Commission. Chairman Steiger not participating.

Charles L. Clapp,

Secretary.

[FR Doc. 89-13975 Filed 6-12-89; 8:45 am]

BILLING CODE 7715-01-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TB-89-010]

Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following committee meeting:

Name: Flue-Cured Tobacco Advisory Committee.

Date: June 29, 1989.

Time: :30 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27605.

Purpose: To discuss market opening dates, selling schedules, and related matters for the 1989 flue-cured tobacco marketing season.

The meeting is open to the public. Persons, other than members, who wish to address the Committee at the meeting should contact the Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-2567, prior to the meeting. Written statements may be submitted to the Committee before, at, or after the meeting.

Date: June 8, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-13928 Filed 6-12-89; 8:45 am]

BILLING CODE 3410-02-M

[TB-89-011]

Subcommittee of the Flue-Cured Tobacco Advisory Committee; Meeting

In accordance with the Federal Advisory Committee Act (5 U.S.C. App. 1) announcement is made of the following committee meeting:

Name: Subcommittee of the Flue-Cured Tobacco Advisory Committee.

Date: June 28, 1989.

Time: 1:30 p.m.

Place: Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Flue-Cured Tobacco Cooperative Stabilization Corporation Building, 1306 Annapolis Drive, Raleigh, North Carolina 27605.

Purpose: To study the nested tobacco marketing situation. Nested tobacco is defined as tobacco that has been loaded, packed, or arranged to conceal tobacco of inferior grade, quality, or condition.

The meeting is open to the public. However, due to time constraints of the subcommittee, public participation will be limited to written statements submitted before or after the meeting. Any person desiring to submit a written statement should send it to: Director, Tobacco Division, Agricultural Marketing Service, U.S. Department of Agriculture, Room 502 Annex Building, P.O. Box 96456, Washington, DC 20090-6456.

Dated: June 8, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-13929 Filed 6-12-89; 8:45 am]

BILLING CODE 3410-02-M

[No. FV-89-208]

Perishable Agricultural Commodities Act; Industry Advisory Committee; Meeting

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: Pursuant to the Federal Advisory Act (Pub. L. No. 92-463 and Pub. L. No. 100-414), notice is hereby given of the second meeting of the Perishable Agricultural Commodities Act (PACA) Industry Advisory Committee. The Committee will meet on June 27, 1989 from 8:00 p.m. to 10:00 p.m. and on June 28, 1989 beginning at 8:30 a.m. through 4:30 p.m. at the Holiday Inn North, 4441 Highway 114, Dallas, Texas.

FOR FURTHER INFORMATION CONTACT: John D. Flanagan, (202) 447-2272.

SUPPLEMENTARY INFORMATION: The 20-member Perishable Agricultural Commodities Act Industry Advisory Committee, appointed by the Secretary of Agriculture, represents fruit and vegetable growers, shippers, brokers, processors, wholesalers, and retailers. The Committee was established pursuant to Pub. L. 100-414, to discuss policies and procedures relating to the administration of the Perishable Agricultural Commodities Act, 1930 (7

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U.S.C. 499a *et seq.*) and identify areas where the law and program might be enhanced to ensure program efficiency and equitable treatment among the various segments of the fruit and vegetable industry. The Committee will report on its findings and develop recommendations for consideration by Congress and the Secretary of Agriculture. Its interim report will be submitted to the Secretary of Agriculture, the House Committee on Agriculture, and the Senate Committee on Agriculture, Nutrition, and Forestry no later than September 30, 1989. A final report containing the results of the Committee's review and its recommendations will be submitted no later than May 1, 1990. The Committee's meeting will be open to the public. Due to the limitation of time, the public will not be allowed to participate in the meeting. Statements may be submitted before or after the meeting to Mr. John D. Flanagan at the address listed below.

The names of Committee members, agenda, and other information pertaining to the meeting may be obtained from John D. Flanagan, Chief, PACA Branch, Room 2095 So., Fruit and Vegetable Division, Agricultural Marketing Service, USDA, P.O. Box 96456, Washington, DC 20090-6456, telephone (202) 447-2272.

Done at Washington, DC, this 6th day of June, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-13930 Filed 6-12-89; 8:45 am]

BILLING CODE 3410-02-M

Forest Service

Mt. Vida Compartment Timber Harvest and Road Development, Modoc National Forest; Intent To Prepare an Environmental Impact Statement

SUMMARY: The Forest Service will prepare an environmental impact statement for proposed road construction and timber harvest on the Warner Mountain Ranger District, Modoc National Forest, Modoc County, California. The environmental impact statement will describe the environmental consequences of proposed road construction and timber harvesting in the Mt. Vida and Crane Mountain release roadless areas.

DATE: Comments concerning the scope of the analysis should be received by September 30, 1989.

ADDRESS: Written comments concerning the scope of the analysis must be sent to Karen Shimamoto, District Ranger, Warner Mountain Ranger District, Box 220, Cedarville, California 96104.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and environmental impact statement should be directed to Douglas D. Schultz, District Planning Officer, Warner Mountain Ranger District, Cedarville, California, 96104, or phone (916) 279-6116.

SUPPLEMENTARY INFORMATION: Approximately one quarter of the Compartment is currently unroaded, and was released for multiple use management in the California Wilderness Act of 1984. Harvest may be proposed in both roaded and unroaded areas. If approved, the timber sale(s) are scheduled to be sold in 1993 or soon thereafter.

Specific alternatives have not been formulated. The Forest Service will consider a range of alternatives, including no action and alternatives with variable levels of harvest. The EIS will also evaluate a range of harvest methods, and consider the impact of each alternative on other resources. Alternatives may include measures to protect or enhance other resources, such as cultural resources, fish and wildlife, soils productivity, visual resources, and water quality.

Douglas G. Smith, Forest Supervisor, Modoc National Forest, Alturas, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from federal, state and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS).

The scoping process will include:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating issues controlled by law, by normal project development constraints or those covered by a previous environmental analysis.
4. Exploring possible alternatives.
5. Identifying potential environmental consequences of the proposed action in terms of direct, indirect and cumulative effects of past, present and

connected activities (adjacent to project).

6. Determining potential cooperating agencies and task assignments.

Additional opportunities for public involvement will be announced through the local news media.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by January 1990. At that time EPA will publish a notice of availability of the DEIS in the *Federal Register*.

The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the *Federal Register*. It is very important that reviewers participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed. (See the Council on Environmental Quality (CEQ) regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, federal court decisions have established that DEIS reviewers must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency of the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp. versus NRDC*, 435 U.S. 519, 553 (1978), and environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS). *Wisconsin Heritage versus Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

After the comment period ends, the comments will be analyzed and considered by the Forest Service in preparing the FEIS. The FEIS is scheduled to be completed by June 1990. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The responsible official will consider the comments, responses, disclosures of environmental consequences, and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and rationale in the Record of Decision. The

decision will be subject to appeal under 36 CFR Part 217.

Douglas G. Smith,

Forest Supervisor.

Date: May 18, 1989.

[FR Doc. 89-14037 Filed 6-12-89; 8:45 am]

BILLING CODE 3410-11-M

North Fork of the Mokelumne River Wild and Scenic River Study

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement and wild and scenic river study.

SUMMARY: The Forest Service, Department of Agriculture, will be directing the preparation of an environmental impact statement and wild and scenic river study report to determine whether segments of the North Fork of the Mokelumne River will be recommended for inclusion in the National Wild and Scenic Rivers System. The decision on inclusion rests with the United States Congress.

The environmental impact statement and report will be prepared by a third party contractor. The portion of the North Fork of the Mokelumne River to be studied begins at Salt Springs Reservoir located in the SE ¼ of Section 33, T.8N., R.16.E. M.D.M. and extends about 17 miles downstream to the National Forest boundary at Lots 2 and 3 of Section 19, T.7N., R.14.E., M.D.C.

The agency invites written comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by July 31, 1989.

ADDRESSES: Submit written comments and suggestions concerning the scope of the analysis to Jerald N. Hutchins, Forest Supervisor, Eldorado National Forest, 100 Forni Road, Placerville, California 95667.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed study and environmental impact statement to Beth Paulson, Project Liaison, Eldorado National Forest, 100 Forni Road, Placerville, Calif. 95667, phone 916-822-5061.

SUPPLEMENTARY INFORMATION: The Eldorado National Forest Land and Resource Management Plan was completed in January 1989, and the

eligibility of the River was determined in that document. The management direction in the Plan called for completing a suitability study to determine whether the North Fork of the Mokelumne River below Salt Springs Reservoir should be recommended for inclusion in the National Wild and Scenic River System.

In preparing the environmental impact statement, a range of alternatives will be identified and considered. These will include no action and the suitability or unsuitability of the river for inclusion in the Wild and Scenic River System and the potential designation of the segments as Wild, Scenic or Recreational.

Paul F. Barker, Regional Forester, Pacific Southwest Region, San Francisco, California, is the responsible official.

Public participation will be especially important at several points during the analysis. The first point is during the scoping process (40 CFR 1501.7). The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).

6. Determining potential cooperating agencies and task assignments.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species habitat if any such species are found to exist in the study area.

The Forest Supervisor will be holding a public scoping meeting in Jackson, California. The time and place will be announced in local newspapers prior to the meeting.

The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review during the fall of 1989. At that time the EPA will publish a notice

of availability of the DEIS in the *Federal Register*.

The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the *Federal Register*. It is very important that those interested in the management of the North Fork Mokelumne River participate at that time. To be the most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see The Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 553 (1978), and that environmental objections that could have been raised at the draft stage may be waived if not raised after completion of the final EIS. *Wisconsin Heritage, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by January 1990. In the final EIS, the Forest Service is required to respond to the comments received (40 CFR 1503.4). The responsible official will consider the comments; responses; environmental consequences discussed in the EIS; and applicable laws, regulations, and policies in making a decision regarding this proposal. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal under 36 CFR 217.¹

Date: June 5, 1989.

Frank E. Mosbacher,

Acting Forest Supervisor.

[FR Doc. 89-13960 Filed 6-12-89; 8:45 am]

BILLING CODE 3410-11-M

¹ 36 CFR Part 17 does not apply to all actions. Consult 36 CFR 217.4 to determine matters excluded from appeal.

DEPARTMENT OF COMMERCE

International Trade Administration

(C-508-601)

Oil Country Tubular Goods From Israel; Preliminary Results Of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce has conducted an administrative review of the countervailing duty order on oil country tubular goods from Israel. We preliminarily determine that net subsidy to be 4.30 percent *ad valorem* for the period June 11, 1986 through December 31, 1986 and 4.30 percent *ad valorem* for the period January 1, 1987 through December 31, 1987. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: June 13, 1989.

FOR FURTHER INFORMATION CONTACT: Lorenza Olivas or Ilene Hersher, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 377-2786.

SUPPLEMENTARY INFORMATION:

Background

On March 6, 1987, the Department of Commerce ("the Department") published in the *Federal Register* (52 FR 6999) a countervailing duty order on oil country tubular goods from Israel. On March 31, 1988, Middle East Tube Co., Ltd. ("METCO"), the respondent, requested an administrative review of the order. We published the initiation on April 27, 1988 (53 FR 15083). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Scope of Review

The United States, under the auspices of the Customs Cooperation Council, has developed a system of tariff classification based on the international harmonized system of customs nomenclature. On January 1, 1989, the United States fully converted to the Harmonized Tariff Schedule (HTS), as provided for in section 1201 *et seq.* of the Omnibus Trade and Competitiveness Act of 1988. All merchandise entered, or withdrawn

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from warehouse, for consumption on or after that date is now classified solely according to the appropriate HTS item number(s).

Imports covered by this review are shipments of Israeli "oil country tubular goods (OCTG)," in both finished and unfinished condition. OCTG consists of hollow steel products of circular cross-section intended for use in drilling for oil or gas. These products include oil well casing and tubing, of carbon or alloy steel, whether welded or seamless, manufactured to either American Petroleum Institute ("API") or non-API (such as proprietary) specifications. During the review period, such merchandise was classifiable under the following items of the Tariff Schedules of the United States Annotated:

610.3218	610.3925	610.4954
610.3219	610.3935	610.4955
610.3233	610.4025	610.4956
610.3234	610.4035	610.4957
610.3242	610.4210	610.4968
610.3243	610.4220	610.4967
610.3249	610.4225	610.4968
610.3252	610.4230	610.4969
610.3254	610.4235	610.4970
610.3256	610.4240	610.5221
610.3258	610.4310	610.5222
610.3262	610.4320	610.5234
610.3264	610.4325	610.5240
610.3721	610.4335	610.5242
610.3722	610.4942	610.5243
610.3751	610.4944	610.5244

This merchandise is currently classifiable under the following HTS items:

7304.20.10.00	7304.20.80.00
7304.20.20.00	7304.20.10.30
7304.20.30.00	7304.20.10.90
7304.20.40.00	7304.20.20.00
7304.20.50.10	7304.20.30.00
7304.20.50.50	7304.20.40.10
7304.20.60.10	7304.20.60.10
7304.20.60.50	7304.20.80.50
7304.20.20.00	7304.20.80.10
7304.20.40.00	7304.20.80.50
7304.20.80.00	

The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive of the scope.

The review covers the period June 11, 1986 through December 31, 1987 and nineteen programs. METCO was the only known exporter of OCTG to the United States during the period of review.

Analysis of Programs

(1) Investment Grants under the Encouragement of Capital Investment Law ("ECIL")

The purpose of the ECIL is to attract capita to Israel. In order to be eligible for various benefits under the ECIL, including investment grants and long-term industrial development loans, the applicant must obtain approved enterprise status. Approved enterprise status is obtained after review of

information submitted to the Israel Ministry of Industry and Trade, Investment Center Division. The amount of the benefits received by approved enterprises depends on the geographic location of the eligible enterprise.

In order to receive a grant under the ECIL, an applicant must obtain an economic viability evaluation of the proposed investment from the Industrial Development Bank of Israel. METCO received approvals for grants in 1971, 1974, 1975 and 1976. According to the approval documents, these grants were contingent upon increased exports. Therefore, we preliminarily determine that the grants given to METCO are export subsidies.

Using the declining balance methodology, we allocated each grant received over 15 years, the average useful life of assets in the steel industry, according to the "Asset Guideline Classes" of the Internal Revenue Service. Because there is no fixed-rate long-term borrowing in Israel, we used as a discount rate a variable rate. The discount rate is the national average short-term borrowing rate for new Israeli shekels, adjusted for inflation, during the period of review as published in the Bank of Israel annual report. We allocated the benefit from these grants over METCO's total exports. On this basis, we preliminarily determine the benefit from this program to be 0.003 percent *ad valorem* for the period June 11, 1986 through December 31, 1986 and 0.001 percent *ad valorem* for the period January 1, 1987 through December 31, 1987.

(2) Insurance from Israel Foreign Trade Risk Insurance Corporation ("IFTRIC")

The Exchange Rate Risk Insurance Scheme ("EIRS"), which is operated by IFTRIC, insures exporters against losses occurring when the rate of devaluation of the shekel does not keep pace with the rate of inflation. If the rate of inflation is higher than the rate of devaluation, the exporter is compensated in an amount equal to the difference between the two rates multiplied by the value added by each exporter to the exported merchandise. If the rate of devaluation is higher than the change in the domestic price index, however, the exporter must compensate IFTRIC. The premium is paid on the basis of the value-added of the exports.

In determining whether an export insurance program provides a countervailable benefit, we examine whether the premiums and other charges are adequate to cover the program's long-term operating costs and losses. We found in the *Final Countervailing*

Duty Determination; Oil Country Tubular Goods from Israel ("OCTG"), (52 FR 1649, January 15, 1987), that this program conferred a countervailable benefit on exports of OCTG from Israel because the EIS operated at a loss in the five years from 1981 through 1985, and that five years is a sufficiently long period to establish that the premiums and other charges are inadequate to cover the long-term operating costs and losses of the program. In the *Final Affirmative Countervailing Duty Determination; Certain Fresh Cut Flowers from Israel* (52 FR 3316, February 3, 1987), we found that the EIS also operated at a loss in 1986. In 1987, we found that the EIS continued to operate at a loss. On this basis, we preliminarily determine that this program is countervailable.

We calculated the benefit from this program by dividing the net amount of compensation METCO received by the value of its total OCTG exports during the period of review. On this basis, we preliminarily determine the benefit from this program to be 4.30 percent *ad valorem* for the period June 11, 1986 through December 31, 1986 and 4.30 percent *ad valorem* for the period January 1, 1987 through December 31, 1987.

(3) Long-term Industrial Development Loans

METCO received long-term industrial development loans under the ECIL that had outstanding balances during the review period. In the final determination in OCTG, we determined that these loans were limited to a specific enterprise or industry, or group of enterprises or industries, because we had no information on the approval process or actual distribution of the loans. However, in the *Final Affirmative Countervailing Duty Determination; Industrial Phosphoric Acid from Israel ("Industrial Phosphoric Acid")* (52 FR 25448, July 7, 1987), we determined that long-term industrial development loans are countervailable only to the extent that the applicable interest rates are less than those on loans to companies located in the Central Zone (i.e., the heavily populated and developed zone). Because METCO is located in the Central Zone, it paid the highest rate charged for long-term loans at that time. Therefore, we preliminarily determine that these loans to METCO are not countervailable.

(4) Bank of Israel Export Loans

The Government of Israel provides short-term financing to exporters in

Israel through the following credit funds administered by the Bank of Israel:

- (a) Export Production Fund (EPF).
- (a) Export Shipment Fund (ESF).
- (a) Import-for-Export Fund (IEF).

We determined in *Industrial Phosphoric Acid* that loans under these funds were not provided at preferential rates after July 1985. Therefore, we preliminarily determine that these loans from the Bank of Israel are not countervailable.

(5) Other Programs

We also examined the following programs and preliminarily determine that METCO did not use them during the review period:

- a. Dividends and Interest Tax Benefits Under section 48 of the ECIL.
- b. Drawback Grants.
- c. ECIL Interest Subsidy Payments.
- d. ECIL Loans.
- e. ECIL Preferential Accelerated Depreciation.
- f. Encouragement of Industrial Research and Development Law.
- g. Equity Maintenance Allowance.
- h. Labor Training Grants.
- i. Special Export Financing.
- j. Reduced Corporate and Income Tax Rates Under Section 47 of the ECIL.
- k. Tax Deductible Inventory Adjustment.

Preliminary Results of Review

As a result of the review, we preliminarily determine the net subsidy to be 4.30 percent *ad valorem* for the period June 11, 1986 through December 31, 1986 and 4.30 percent *ad valorem* for the period January 1, 1987 through December 31, 1987.

Section 707 of the Act provides that the difference between the amount of a cash deposit, or the amount of any bond or security, for an estimated countervailing duty and the duty determined under a countervailing duty order shall be disregarded to the extent that the estimated duty is lower than the duty determined under the order, which was published on March 6, 1987. The rate in our preliminary determination (51 FR 21201, June 11, 1986) was 2.12 percent *ad valorem* and is lower than the rate determined in this review.

In accordance with section 705(a)(1) of the Act, the final determination in this case was extended to coincide with the final antidumping determination on the same products from Israel. Because, pursuant to Article 5.3 of the Subsidies Code, we cannot impose suspension of liquidation for more than 120 days without the issuance of a countervailing duty order, we terminated the suspension of liquidation for entries or withdrawals made on or after October 9,

1988 and before March 6, 1987, the date of publication of the countervailing duty order. We reinstated suspension of liquidation and the requirement for collection of estimated countervailing duties for entries or withdrawals of the subject merchandise made on or after the date of publication of the countervailing duty order.

Therefore, the Department intends to instruct the Customs Service to assess countervailing duties of 2.12 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after June 11, 1986 and before October 9, 1988. Entries or withdrawals made on or after October 9, 1986 and before March 6, 1987 are not subject to countervailing duties. The Department intends to instruct the Customs Service to assess countervailing duties of 4.30 percent of the f.o.b. invoice price on all shipments of this merchandise entered, or withdrawn from warehouse, for consumption on or after March 6, 1987 and exported on or before December 31, 1987.

Further, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Act, of 4.30 percent of the f.o.b. invoice price on all shipments of Israeli OCTG entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Interested parties may submit written comments on these preliminary results within 30 days of the date of publication of this notice and may request disclosure and/or a hearing within 10 days of the date of publication. Any hearing, if requested, will be held 44 days after the date of publication or the following workday. Any request for an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and § 355.22 of the Commerce Regulations published in the *Federal Register* on December 27, 1988 (53 FR 52354) (to be codified at 19 CFR 355.22).

Eric I. Garfinkel,
Assistant Secretary for Import Administration.

Date: June 8, 1989.
[FR Doc. 89-14045 Filed 6-12-89; 8:45am]
BILLING CODE 3510-DS-M

Short-Supply Review on Certain Rough Turned Railroad Axles; Request for Comments

AGENCY: Import Administration/International Trade Administration, Commerce.

ACTION: Notice and request for comments.

SUMMARY: The Department of Commerce hereby announces its review of a request for a short-supply determination under Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and the U.S.-South Africa Arrangement Concerning Trade in Certain Steel Products with respect to certain rough turned locomotive drive axles.

DATE: Comments must be submitted no later than June 23, 1989.

ADDRESS: Send all comments to Nicholas C. Tolerico, Director, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Richard O. Weible, Office of Agreements Compliance, Import Administration, U.S. Department of Commerce, Room 7866, 14th Street and Constitution Avenue, NW., Washington, DC 20230, (202) 377-0159.

SUPPLEMENTARY INFORMATION: Article 8 of the U.S.-EC Arrangement Concerning Trade in Certain Steel Products and the U.S.-South Africa Arrangement Concerning Trade in Certain Steel Products provide that if the U.S. determines that, because of abnormal supply or demand factors, the U.S. steel industry will be unable to meet demand in the USA for a particular product (including substantial objective evidence such as allocation, extended delivery periods, or other relevant factors), an additional tonnage shall be allowed for such product or products.

We have received a short-supply request for rough turned locomotive drive axles in the following outboard bearing sizes:

- (a.) 6½ × 12 axle with 9 inch body;
- (b.) 6¾ × 12 axle with 9 inch body; and
- (c.) 7 × 12 roller bearing axle.

Any party interested in commenting on this request should send written comments as soon as possible, and no later than June 23, 1989. Comments should focus on the economic factors involved in granting or denying this request.

Commerce will maintain this request and all comments in a public file. Anyone submitting business proprietary information should clearly so label the business proprietary portion of the submission and also provide a non-proprietary submission which can be placed in the public file. The public file will be maintained in the Central Records Unit, Room B-099, Import Administration, U.S. Department of Commerce, at the above address.

Eric I. Garfinkel,
Assistant Secretary for Import
Administration.

June 7, 1989.

[FR Doc. 89-14046 Filed 6-12-89; 8:45 am]

BILLING CODE 3510-05-M

Lehigh University; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-031. **Applicant:** Lehigh University, Bethlehem, PA 18015. **Instrument:** Mass Spectrometer, Model VG 1200. **Manufacturer:** VG Isotopes, Ltd., United Kingdom. **Intended Use:** See notice at 54 FR 4875, January 31, 1989.

Comments: None received. **Decision:** Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (February 2, 1988). **Reasons:** The foreign instrument provides analysis of small samples of He, Ne, Ar, Kr and Xe. The capability is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and

delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purposes of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, receive a no bid response to a formal request for quotation sent to the only known domestic manufacturer it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-14047 Filed 6-12-89; 8:45 am]

BILLING CODE 3510-05-M

University of California; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR Part 301). Related records can be viewed between 8:30 a.m. and 5:00 p.m. in Room 2841, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC.

Docket Number: 88-032. **Applicant:** Regents of the University of California, Riverside, CA 92521. **Instrument:** Mass Spectrometer, Model PRISM Series II. **Manufacturer:** VG Instruments, United Kingdom. **Intended Use:** See notice at 54 FR 4875, January 31, 1989.

Comments: None received. **Decision:** Approved. No domestic manufacturer was both "able and willing" to manufacture an instrument or apparatus of equivalent scientific value to the foreign instrument for such purposes as the instrument was intended to be used, and have it available to the applicant without unreasonable delay in

accordance with § 301.5(d)(2) of the regulations, at the time the foreign instrument was ordered (September 2, 1988). **Reasons:** The foreign instrument provides precise multi-element analysis of isotopes C, H, O, N and S. The capability is pertinent to the applicant's intended purposes. We know of no domestic manufacturer both able and willing to provide an instrument with the required features at the time the foreign instrument was ordered.

As to the domestic availability of instruments, § 301.5(d)(2) of the regulations provides that, in determining whether a U.S. manufacturer is able and willing to produce an instrument, and have it available without unreasonable delay, "the normal commercial practices applicable to the production and delivery of instruments of the same general category shall be taken into account, as well as other factors which in the Director's judgment are reasonable to take into account under the circumstances of a particular case." This subsection also provides that, if "a domestic manufacturer was formally requested to bid an instrument, without reference to cost limitations and within a leadtime considered reasonable for the category of instrument involved, and the domestic manufacturer failed formally to respond to the request, for the purpose of this section the domestic manufacturer would not be considered willing to have supplied the instrument."

The regulations require that domestic manufacturers be both "able and willing" to produce an instrument for the purposes of comparison with the foreign instrument. Where an applicant, as in this case, received a no bid response to a formal request for quotation sent to the only known domestic manufacturer it is apparent that the domestic manufacturer was either not able or not willing to produce an instrument of equivalent scientific value to the foreign instrument for such purposes as the foreign instrument was intended to be used at the time the foreign instrument was ordered.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 89-14048 Filed 6-12-89; 8:45 am]

BILLING CODE 3510-05-M

National Oceanic and Atmospheric Administration

Marine Mammals; Issuance of Permit No. 671, Jay Brueggeman, Envirosphere Co.

On April 6, 1989, notice was published in the *Federal Register* (54 FR 13930) that

an application (File No. P305A) had been filed by Envirosphere Company, Bellevue, WA, to take an unspecified number of an estimated 30 marine mammal species for systematic and coastal aerial surveys to develop baseline data on the abundance, distribution, diversity, and habitat use patterns of marine mammal populations from the effects of potential oil and gas development.

Notice is hereby given that on May 26, 1989, as authorized by the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216), the Endangered Species Act of 1973 (16 U.S.C. 1531-1544), and the National Marine Fisheries Service Regulations governing endangered fish and wildlife permits (50 CFR Parts 217-222), the National Marine Fisheries Service issued a Permit for the above activities subject to certain conditions set forth therein.

The Permit is available for review by interested persons in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Maryland 20910;

Director, Northwest Region, National Marine Fisheries Service, NOAA, 7600 Sand Point Way, NE, BIN C15700, Seattle, Washington 98115; and

Office of Management Authority, U.S. Fish and Wildlife Service, Department of the Interior, P.O. Box 3507, Arlington, Virginia 22203-3507.

Date: May 26, 1989.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 89-13950 Filed 6-12-89; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Joint Ventures Program; Establishment

AGENCY: National Technical Information Service, Commerce.

ACTION: Notice and request for public comment.

SUMMARY: As a result of the National Technical Information Act of 1988, the National Technical Information Service (NTIS) is establishing a joint ventures program designed to encourage private sector organizations to enter into partnerships with NTIS to disseminate

its acquired information to the business, academic and industrial communities more effectively. This notice describes the proposed program and requests comments from interested parties. Because of NTIS' desire to stimulate participation from private sector organizations, the agency is especially concerned with providing sufficient incentives to make the program attractive. NTIS will draw on these comments in formulating the policy and procedures for this program.

DATE: Comments must be received on or before July 28, 1989.

ADDRESSES: Comments may be sent to: Dr. Joseph Clark, Deputy Director, National Technical Information Service, Springfield, VA 22161.

FOR FURTHER INFORMATION CONTACT: Janet Geffner, Joint Ventures Coordinator, at the address given above; telephone (703) 487-4648.

SUPPLEMENTARY INFORMATION:

NTIS Joint Ventures Program

A. Introduction

The National Technical Information Act of 1988 empowers the Secretary of Commerce, acting through the Director of the National Technical Information Service (NTIS), to enter into contracts, cooperative agreements and joint ventures as may be necessary to further its mission of disseminating Federally-funded scientific and technical information to the business, industrial and academic communities. NTIS will actively pursue joint ventures as a means of developing new and improved products and services for information users that can best be developed through the combined resources of NTIS and one or more private sector organizations. A joint venture is an activity in which NTIS and a private sector partner work together to achieve a common goal whose accomplishment involves the investment of resources by both partners, with a formal agreement for sharing of risks and benefits associated with the venture.

B. NTIS Criteria for Entering into Joint Ventures

1. The combined NTIS/private sector effort should result in:

- A new or improved product or service which provides added value to the information user; or
- Broader dissemination of the information NTIS acquires; or
- Greater transfer of government developed information or technology to the industrial community.

2. A joint venture will require both NTIS and the private sector partner to invest resources (either monetary or

other), take risks and share in the resulting revenue.

3. Because NTIS is a self-supporting, user-financed government agency, its analysis of the business plan for the joint venture must indicate that the potential revenue resulting from the venture will enable NTIS to recover its costs.

C. Characteristics of Joint Ventures

NTIS normally operates in the capacity of a supplier of information and data to any and all private sector information organizations on the same terms. In the case of joint ventures, NTIS will establish special relationships with selected joint venture partners which it may not offer to other organizations interested in pursuing the same or similar ventures. Because each joint venture is likely to have unique characteristics, the specific terms and conditions of the joint venture instrument will vary from case to case. Each joint venture agreement will be tailored to protect the legitimate business interests of each of the parties to the extent possible. Because the purpose of these joint ventures is to tap the creativity and versatility of the private sector, NTIS expects to offer incentives to private organizations to encourage them to submit proposals as well as to stimulate the joint venture program. The intent of these incentives is to allow both parties to be compensated for their risks or recover their costs. Furthermore, NTIS will consider discussions about joint venture to be confidential to protect proprietary business interests of prospective partners to the full extent allowable under FOIA.

D. Plan for Conducting Joint Ventures Activities

The NTIS Joint Ventures Coordinator is charged with creating a receptive environment in which to consider joint ventures. As the focal point for all NTIS activities involving partnerships with the private sector, the Joint Ventures Coordinator will conduct preliminary discussions with private organizations and obtain access to NTIS information or personnel to assist the organization in preparing the proposal.

Joint ventures may be initiated in two ways.

1. When a private sector organization has a concept for a new or improved product or service, the organization will be encouraged to discuss this idea with the Joint Ventures Coordinator. These new products or service will generally be based on information that NTIS has

or can acquire from government agencies or foreign sources.

2. When NTIS has developed a concept for a new product or service, the agency will publish a notice to solicit private sector participation for a joint venture.

Before any joint venture is consummated, a business plan will be prepared that, at a minimum:

- Describes the proposed product or service.
- Describes the market and presents any market research that was conducted.
- Outlines the responsibilities of each partner.
- Provides a basis for the projected sales volume.
- Establishes estimates of revenues, sales volumes and costs along with the basis for the estimates.
- Sets forth the basis for allocating revenues between the partners.

NTIS' decision to enter into a joint venture will be based on its written judgment which will document how well the proposal meets the criteria discussed in Section B above.

Joseph F. Caponio,
Director, National Technical Information Service.

[FR Doc. 89-13961 Filed 6-12-89; 8:45 am]
BILLING CODE 3510-04-M

COMMISSION FOR THE IMPROVEMENT OF THE FEDERAL CROP INSURANCE PROGRAM

Meeting

Under the Federal Crop Insurance Commission Act of 1988 (7 U.S.C. 1508 note), notice is hereby given of the following meeting of the Commission for the Improvement of the Federal Crop Insurance Program:

Date: June 14-15, 1989

Time: 8:00 a.m.-Noon; 1:00 p.m.-5:30 p.m., June 14. 8:00 a.m.-Noon; 1:00 p.m.-5:30 p.m., June 15.

Place: Embassy Suites Hotel, 1250 22nd Street NW., Washington, DC 20037. Telephone: (202) 857-3388

Type of Meeting: Open to the public.

Comments: The public may file written comments before or after the meeting with the contact person listed below.

Purpose: To continue discussions on the development of recommendations to improve the Federal crop insurance program. The Commission will be meeting in plenary session from 1:00 p.m. to 5:30 p.m. on June 14, 1989, and again in plenary session at the times stated above on June 15, 1989. The Commission's three committees will

be meeting from 8:00 a.m. to noon on June 14, 1989.

At this meeting, the Commission will be drafting its principal report to the Secretary of Agriculture and the Congressional agriculture committees. The report will include: (1) Recommendations for legislation to improve the Federal crop insurance program, including alternative methods for achieving the desired goals; (2) a status report on the improvement of program administration by the Secretary based on the recommendations contained in the Interim report of the Commission that was filed in April with the Secretary and the Congressional agriculture committees; and (3) findings and recommendations setting forth means by which participation in the program may be increased and natural disaster protection for producers of agricultural commodities may be improved.

Contact Person: Kellye A. Eversole,
Executive Director, Commission for the Improvement of the Federal Crop Insurance Program, 1255 23rd Street NW., Suite 880, Washington, DC 20037. Telephone: (202) 887-6700.

Done at Washington, DC, this 2nd day of June 1989.

Kellye A. Eversole,
Executive Director.
[FR Doc. 89-14121 Filed 6-12-89; 8:45 am]
BILLING CODE 4310-PM-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Rescission of Requests to Consult on Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Thailand

June 7, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to cancel the outstanding requests to consult on imports of cotton

and man-made fiber coats in Categories 335 and 635.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see Federal Register notice 53 FR 44937, published on November 7, 1988). Also see 54 FR 4883, published on January 31, 1989; and 54 FR 14936, published on April 14, 1989.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-13972 Filed 6-12-89; 8:45 am]
BILLING CODE 3510-DR-M

CONSUMER PRODUCT SAFETY COMMISSION

Notification of Request for Extension of Approval For Information Collection Requirements; Baby-bouncers, Walker-jumpers, Baby-walkers

AGENCY: Consumer Product Safety Commission.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1981 (44 U.S.C. Chapter 35), the Consumer Product Safety Commission has submitted to the Office of Management and Budget a request for extension of approval, through May 31, 1992, of information collection requirements in regulations applicable to children's articles commonly called baby-bouncers, walker-jumpers, and baby-walkers.

These products, intended for use by young children, are subject to regulations issued under the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et. seq.* One regulation bans from distribution in commerce such products designed so that exposed parts present hazards of amputation, crushing, lacerations, fractures, hematomas, bruises or other injuries to children's fingers, toes, or other parts of the body. See 16 CFR 1500.18(a)(6). A second regulation sets forth criteria for exemption from the banning rule, under specified conditions, of baby-bouncers, walker-jumpers, and baby-walkers. See 16 CFR 1500.86(a)(4). This exemption regulation requires certain labeling on the products or their packaging to identify the product model and name and address of its manufacturer or distributor. The exemption regulation also requires that records be compiled

and maintained for three years relating to the sale, distribution, inspection, and testing of these articles.

If a product subject to the regulations were determined to be banned by provisions of § 1500.18(a)(6) and the hazard were severe enough to warrant recall, both the Commission and the manufacturer or distributor would use the records required by § 1500.86(a)(4) to conduct and monitor a public notification program and/or recall. Records of testing are useful for identifying the products subject to recall and for limiting recall to the products that present the hazards addressed by the banning regulation. Records of sales and distribution would enable the manufacturer involved to send notices concerning the hazard and recall to those customers who received the products subject to recall.

The records required by § 1500.86(a)(4) are maintained on an ongoing basis by manufacturers and importers of products subject to the regulation. They are subject to examination by Commission investigators during inspections or in conjunction with other compliance-related activities.

Additional Details About the Request for Extension of Collection of Information

Agency address: Consumer Product Safety Commission, Washington, DC 20207.

Title of information collection: Ban of Certain Articles Known as Baby-Bouncers, Walker-Jumpers, and Baby-Walkers, 16 CFR 1500.18(a)(6) and 1500.86(a)(4).

Type of request: Extension of approval of information collection requirements contained in regulations.

Frequency of collection: On-going compilation and maintenance of records.

General description of respondents: Manufacturers of baby-bouncers, walker-jumpers, and baby-walkers.

Estimated number of respondents: 20.

Estimated number of hours for each respondent per year: 2.

Estimated number of hours for all respondents per year: 40.

Comments: Comments on this request for extension of approval of information collection requirements should be addressed to Pamela Barr, Desk Officer, Office of Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; telephone: (202) 395-7340. Copies of the request for extension of approval of information collection requirements are available from Francine Shacter, Office of Planning and Evaluation, Consumer Product Safety

Commission, Washington, DC 20207; telephone: (301) 492-6416.

This is not a proposal to which 44 U.S.C. 3504(h) is applicable.

Dated: June 6, 1989.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 89-13908 Filed 6-12-89; 8:45 am]
BILLING CODE 6355-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Partially Closed Meeting; Army Science Board

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Dates of Meeting: 5-6 July 1989.

Time: 0830-1700, 5 July 1989; 0830-1200, 6 July 1989.

Note: All sessions are open except: 1030-1200, 6 July 1989.

Place: The Pentagon, Washington, DC.

Agenda: The Army Science Board Ad Hoc Subgroup on Software in the Army will hold its initial meeting. Included in the meeting will be an orientation, briefing on an overview of previous studies on this subject, briefing on USAISSC, and an executive session. The open portions of the meeting are open to the public. Any person may attend, appear before or file statements with the committee at the time and in the manner permitted by the committee. The closed portion of the meeting is closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d).

The ASB Administrative Officer, Sally Warner, may be contacted for further information at (202) 695-3039 or 7046.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 89-14038 Filed 6-12-89; 8:45 am]
BILLING CODE 3710-08-M

Corps of Engineers, Department of the Army

Withdrawal From Preparation of a Draft Environmental Impact Statement (DEIS) for a Proposed Debris Clearance Project in the Snake and Gros Ventre Rivers, Jackson Hole, Teton County, WY

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of withdrawal from preparation of a DEIS.

SUMMARY: The Walla Walla District Corps of Engineers is withdrawing its intent to prepare a DEIS for a proposed debris clearance project in the Snake and Gros Ventre Rivers in Jackson Hole, Wyoming. The project was constrained by the emergency authorization which required that the debris clearance be done before the 1989 spring runoff. A limited project was selected which had no significant impacts, therefore a DEIS was not required and is hereby terminated. The Corps prepared a draft Environmental Assessment for the project and conducted the removal in late April 1989. The Corps performed appropriate environmental coordination prior to the debris clearance, but because of the emergency nature of the project, was unable to complete final National Environmental Policy Act (NEPA) documentation prior to completing the project. The Final Environmental Assessment and Finding of No Significant Impact will be completed and available in summer 1989, as provided for in the Corps' regulations concerning the implementation of NEPA in emergency situations.

FOR FURTHER INFORMATION CONTACT: Comments concerning the debris clearance project and draft Environmental Assessment should be addressed to Chief, Environmental Resources Branch, Corps of Engineers, Walla Walla District, Walla Walla, WA 99362-9265. Comments or questions can be telephoned to Mr. William MacDonald at (509) 522-6625.

SUPPLEMENTARY INFORMATION:

1. This project is located along the Snake and Gros Ventre Rivers in Jackson Hole, Teton County, Wyoming. Property adjacent to the rivers is protected from floods by a series of levees built by Federal, State, and local agencies. High flows in the Snake and Gros Ventre Rivers in the spring of 1986 deposited large quantities of woody debris in the river channels. Most of the debris consists of large dead cottonwood trees that settled on gravel bars after high flows receded. The large quantity of debris reduced the channel carrying capacity, thereby increasing the potential for damage to the levees and subsequent flooding of areas protected by the levees. A number of dead trees also redirect river flow patterns and often cause the river to flow directly into the levees, causing damage to the levee system at relatively low flows.

2. In a letter dated July 31, 1986, the Teton County Commissioners asked the

Corps to perform a clearing and snagging operation to alleviate the flood damage potential to the levees. The project went through several modifications until September 1988, when it was designated as an emergency action under Pub. L. 84-99, Flood Control and Coastal Emergencies. Because of significant concerns from Wyoming Department of Game and Fish and the U.S. Fish and Wildlife Service, the Corps planned to delay the removal of snags and debris until the fall of 1989 and was preparing a draft EIS for the project. Because of the immediate need to complete the project before the 1989 spring runoff produced flooding, the Corps reduced the scope of the project from removal of about 3,000 snags which reduced channel capacity to removal of only snags directly affecting the levees (about 200 snags). After discussing the limited project and conducting on-site coordination with the U.S. Fish and Wildlife Service, Wyoming Department of Game and Fish, and Teton County officials, the Corps determined that the removal of the 200 snags would not have significant impacts to the environment and that an environmental assessment was sufficient for the project.

Dated: May 23, 1989.

James A. Walter,
Lieutenant Colonel, Corps of Engineers,
District Engineer.

[FR Doc. 89-13962 Filed 6-12-89; 8:45 am]

BILLING CODE 3710-GC-M

Department of the Navy

Government-owned Inventions; Availability for Licensing

AGENCY: Department of the Navy, DOD.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for \$1.50 each. Requests for copies of patents must include the patent number.

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161. Copies also may be ordered by telephone request to (703) 487-4650. Requests for copies of patent applications must include the patent application serial number. Claims are deleted from the patent application

copies sold to avoid premature disclosure.

DATE: June 13, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCIP), Arlington, Virginia 22217-5000, telephone (202) 696-4001.

Patent 4,227,249: INJECTED CODED REFERENCE FOR ADAPTIVE ARRAY SYSTEMS; filed 9 August 1978; patented 7 October 1980.

Patent 4,231,891: SOLID COMPOSITIONS FOR GENERATION OF GASES CONTAINING A HIGH PERCENTAGE OF HYDROGEN; filed 18 June 1978; patented 4 November 1980.

Patent 4,262,993: ELECTROOPTICALLY BALANCED ALTERNATING SWITCH; filed 11 January 1981.

Patent 4,309,105: METHOD AND APPARATUS FOR TESTING PERFORMANCE AND FIBER OPTIC CABLE COMPONENTS AND ASSEMBLIES; filed 3 March 1980; patented 5 January 1982.

Patent 4,311,649: N,N-BIS(2,2-DINITROETHYL) CARBAMATESTERS; filed 28 November 1982; patented 19 January 1982.

Patent 4,312,114: METHOD OF PREPARING A THIN-FILM, SINGLE CRYSTAL PHOTOVOLTAIC DETECTOR; filed 28 February 1979; patented 28 January 1982.

Patent 4,312,573: ELLIPTICIZED INFRARED LENS PROVIDING BALANCED ASTIGMATISM; filed 9 April 1980; patented 28 January 1982.

Patent 4,315,169: STAIRCASE ELECTRODE-WALL CONFIGURATION FOR MHD GENERATORS; filed 8 November 1979; patented 9 February 1982.

Patent 4,315,326: INERTIAL MEASUREMENT UNDERWATER TRACKING SYSTEM; filed 31 October 1980; patented 9 February 1982.

Patent 4,315,905: PROCESS FOR PRODUCING AN ELECTRONICALLY CONDUCTIVE OXIDIZER MATERIAL; filed 30 June 1980; patented 16 February 1982.

Patent 4,316,206: TWO COLOR NARROW BANDWIDTH DETECTOR; filed 14 April 1980; patented 16 February 1982.

Patent 4,317,610: HOLOGRAPHIC TERRAIN SURFACE DISPLAY SYSTEM; filed 20 July 1979; patented 2 March 1982.

Patent 4,321,043: RECOIL FORCE AND WEIGHT LOSS SIMULATION DEVICE; filed 20 November 1980; patented 23 March 1982.

Patent 4,321,954: GAS PRESSURIZER; filed 23 June 1980; patented 30 March 1982.

Patent 4,322,967: METHOD AND APPARATUS FOR MEASURING OPTICAL COUPLING COEFFICIENTS; filed 19 September 1980; patented 6 April 1982.

Patent 4,323,641: PHOTOGRAPHIC IMAGE ENHANCEMENT BY A GOLD-TONING NEUTRON-ACTIVATION PROCESS; filed 15 August 1980; patented 6 April 1982.

Patent 4,324,140: ELECTRONICALLY SIMULATED ROTATING PRISM FOR ULTRASONIC BEAM SCANNING; filed 31 July 1980; patented 13 April 1982.

Patent 4,326,119: PORTABLE BATTERY OPERATED SMOKE GENERATOR; filed 4 April 1980; patented 20 April 1982.

Patent 4,326,203: CORNER FED ELECTRIC NON-RECTANGULAR MICROSTRIP DIPOLE ANTENNAS; filed 28 September 1979; patented 20 April 1982.

Patent 4,327,576: ACOUSTIC LEAK DETECTOR; filed 5 May 1980; patented 4 May 1982.

Patent 4,328,436: OPTIMALLY LOADED ELECTROHYDRODYNAMIC POWER GENERATOR; filed 10 March 1980; patented 4 May 1982.

Patent 4,330,699: LASER/ULTRASONIC WELDING TECHNIQUE; filed 27 July 1979; patented 18 May 1982.

Patent 4,331,857: ALLOY-COATED TITANIUM WELDING WIRE; filed 30 January 1980; patented 25 May 1982.

Patent 4,332,199: ELECTROMAGNETIC ARMING RATE REGULATOR; filed 9 June 1980; patented 1 June 1982.

Patent 4,333,413: TRAVERSELY STIFFENED MEMBRANE SEAL; filed 23 January 1980; patented 8 June 1982.

Patent 4,335,656: UNDERWATER LAUNCHED PARACHUTE FLARE; filed 31 July 1980; patented 22 June 1982.

Patent 4,335,987: APPARATUS FOR VERTICALLY STACKING FLAT WEIGHTS; filed 28 April 1980; patented 22 June 1982.

Patent 4,336,018: ELECTRO-OPTIC INFANTRY WEAPONS TRAINER; filed 19 December 1979; patented 22 June 1982.

Patent 4,336,607: BEAMFORMER HAVING RANDOM ACCESS MEMORY DELAY; filed 10 December 1980; patented 22 June 1982.

Patent 4,337,111: METHOD OF OBTAINING STRONG AND DURABLE ADHESION TO RUBBER THROUGH CHEMICAL COVALENT BONDS; filed 2 October 1978; patented 29 June 1982.

Patent 4,337,701: ELECTROMECHANICAL WARHEAD SAFETY-ARMING DEVICE; filed 28 January 1980; patented 6 July 1982.

Patent 4,338,560: ALBEDD RADIATION POWER CONVERTER; filed 12 October 1979; patented 6 July 1982.

Patent 4,339,050: LOUVER BUFFER FIRE PREVENTION SYSTEM; filed 3 November 1980; patented 13 July 1982.

Patent 4,339,423: PEROXONIUM SALTS; filed 25 January 1980; patented 13 July 1982.

Patent 4,339,662: SAFETY SELECTOR SWITCH INCLUDING PHOTOELECTRIC DETECTION; filed 19 September 1980; patented 13 July 1982.

Patent 4,339,930: SYSTEM FOR SOLAR ASSISTED HEAT PUMP SYSTEMS; filed 3 July 1980; patented 20 July 1982.

Patent 4,342,984: HIGH SPEED DIGITAL TO ANALOG CONVERTER CIRCUIT; filed 5 December 1980; patented 3 August 1982.

Patent 4,343,424: CRACK SUSCEPTIBILITY TEST UTILIZING AN AIRPORT RESTRAINT SPECIMEN; filed 29 May 1980; patented 10 August 1982.

Patent 4,346,662: SELF CONTAINED BACKFLUSH/START SYSTEM FOR SUCTION LFC UNDERSEA VEHICLE; filed 7 May 1980; patented 31 August 1982.

Patent 4,347,025: REPLACEABLE FUEL NOZZLE NUT LOCKWASH; filed 17 September 1980; patented 31 August 1982.

Patent 4,347,439: LEVEL-SHIFT AND PULSE SHAPING CIRCUITRY; filed 1 February 1979; patented 31 August 1982.

Patent 4,347,515: A RADAR RADIOMETER AND ITS USE; filed 14 October 1980; patented 31 August 1982.

Patent 4,347,929: BLASTING CAP CONTAINER; filed 16 June 1982; patented 7 September 1982.

Patent 4,348,185: WIDE ANGLE INFINITY DISPLAY SYSTEM; filed 14 February 1980; patented 7 September 1982.

Patent 4,348,186: PILOT HELMET MOUNTED CIG DISPLAY WITH EYE COUPLED AREA OF INTEREST; filed 17 December 1979; patented 7 September 1982.

Patent 4,349,396: METAL-CUTTING PYROTECHNIC COMPOSITION; filed 22 September 1980; patented 14 September 1982.

Patent 4,349,723: ELECTRICALLY HEATED NON-TOXIC SMOKE GENERATOR; filed 4 April 1980; patented 14 September 1982.

Patent 4,350,413: MULTI-COLOR TURNABLE FILTER; filed 14 April 1980; patented 21 September 1982.

Patent 4,350,959: FEEDBACK SIGNAL AMPLIFIER; filed 14 April 1980; patented 21 September 1982.

Patent 4,352,542: CABLE CONNECTOR; filed 26 August 1980; patented 5 October 1982.

Patent 4,355,368: ADAPTIVE CORRELATOR; filed 6 October 1980; patented 19 October 1980.

Patent 4,357,855: RADIATION RESISTANCE PROJECTILE CANISTER LINER; filed 1 December 1980; patented 9 November 1982.

Patent 4,361,383: LASER BEAM DIRECTIONAL DEVIATION AND NOISE STABILIZATION DEVICE; filed 22 August 1980; patented 30 November 1982.

Patent 4,362,898: FLUSH MOUNTED LOW IMPEDANCE GROUNDING CONE; filed 9 December 1980; patented 7 December 1982.

Patent 4,364,530: PROPULSION/CONTROL MODULAR BOOSTER; filed 8 September 1980; patented 21 December 1982.

Patent 4,365,475: THERMOCHEMICAL ENERGY STORAGE AND MECHANICAL ENERGY CONVERTER SYSTEM; filed 29 August 1980; patented 28 December 1982.

Patent 4,368,983: ABSOLUTE REFLECTOMETER; filed 13 November 1980; patented 18 January 1983.

Patent 4,369,413: INTEGRATED DUAL TAPER WAVEGUIDE EXPANSION JOINT; filed 3 February 1981; patented 18 January 1983.

Patent 4,370,621: HIGH EFFICIENCY CYROTRON OSCILLATOR AND AMPLIFIER; filed 11 March 1980; patented 25 January 1983.

Patent 4,370,677: ROTATING SHUTTER SYSTEM FOR IMPROVING THE RESOLUTION OF A VISUAL DISPLAY SYSTEM; filed 11 December 1980; patented 25 January 1983.

Patent 4,371,232: GRADED GAP SEMICONDUCTOR OPTICAL DEVICE; filed 25 April 1980; patented 1 February 1983.

Patent 4,372,214: EXPLOSIVE AUTO-ENHANCEMENT DEVICE; filed 8 September 1980; patented 8 February 1983.

Patent 4,372,803: METHOD FOR ETCH-THINNING SILICON DEVICES; filed 26 September 1980; patented 8 February 1983.

Patent 4,375,451: IN SITU LEACH RATE MEASURING SYSTEM; filed 13 August 1981; patented 1 March 1983.

Patent 4,375,522: THIXOTROPIC RESTRICTOR, CURABLE AT ROOM TEMPERATURE FOR USE ON SOLID PROPELLANT GAINS; filed 21 July 1980; patented 1 March 1983.

Patent 4,377,403: METHOD OF FABRICATING A FUSED SINGLE

MODE FIBER BIDIRECTIONAL COUPLER; filed 29 September 1980; patented 22 March 1983.

Patent 4,377,807: COARSE/FINE DIGITAL PATTERN COMBINER FOR HIGH ACCURACY; filed 10 September 1981; patented 22 March 1983.

Patent 4,378,258: CONVERSION BETWEEN MAGNETIC ENERGY AND MECHANICAL ENERGY; filed 2 April 1981; patented 29 March 1983.

Patent 4,380,634: METHOD OF PREPARING 2-KETO-4,6,8-TETRAETHYL-8,9-DIHYDRO-2H-PYRANO-(3,2-G) QUINOLINE, A BLUE-GREEN LASER DYE; filed 5 October 1981; patented 19 April 1983.

Patent 4,380,745: DIGITALLY CONTROLLED TEMPERATURE COMPENSATED OSCILLATOR SYSTEM; filed 7 November 1980; patented 19 April 1983.

Patent 4,384,300: MULTIPLE SCANVALUE CONTROL DEVICE; filed 4 April 1980; patented 10 May 1983.

Patent 4,384,759: HOLOGRAPHIC CORRECTOR ELEMENT; filed 3 1980; patented 24 May 1983.

Patent 4,385,948: IN SITU CURED BOOSTER EXPLOSIVE; filed 7 August 1980; patented 31 May 1983.

Patent 4,386,855: HIGH PRESSURE MECHANICAL MIXER FOR EPOXY COMPOUNDS; filed 25 June 1981; patented 7 June 1983.

Patent 4,387,073: GOLD BASED ELECTRICAL CONTACT MATERIALS; filed 8 September 1981; patented 7 June 1983.

Patent 4,387,352: TRANSDUCER ARRAY CROSSOVER NETWORK; filed 3 March 1980; patented 7 June 1983.

Patent 4,387,865: METHOD FOR STEERING A SOLID PROPELLANT BALLISTIC VEHICLE; filed 25 August 1980; patented 14 June 1983.

Patent 4,387,869: MONO-ELEMENT COMBINED SUPERCRITICAL/HIGH LIFT AIRFOIL; filed 25 February 1981; patented 14 June 1983.

Patent 4,388,032: LIFTING AND STOWAGE SYSTEM; filed 30 October 1980; patented 14 June 1983.

Patent 4,388,593: COIL DEVICE FOR UNDERWATER MAGNETIC TESTING; filed 13 November 1980; patented 14 June 1983.

Patent 4,388,782: HANDHOLE SEAT RESURFACING TOOL FOR NAVAL PRESSURE FIRE BOILERS; filed 24 April 1981; patented 21 June 1983.

Patent 4,389,062: ROTARY LATCH; filed 15 December 1980; patented 21 June 1983.

Patent 4,389,274: ELECTROCHEMICAL DEOXYGENATION FOR LIQUID EPITAXIAL GROWTH; filed 23 March 1981; patented 21 June 1983.

Patent 4,392,895: IMPROVED RAMJET FUEL; filed 9 November 1981; patented 12 July 1983.

Patent 4,398,368: BI-PLANAR SWIRL COMBUSTOR; filed 5 September 1980; patented 2 August 1983.

Patent 4,398,275: LINEAR FREQUENCY SWEEP GENERATOR FOR CONTINUOUS TRANSMISSION FM SONAR; filed 2 October 1981; patented 9 August 1983.

Patent 4,398,445: GUN MUZZLE CLAMP; filed 27 August 1981; patented 18 August 1983.

Patent 4,398,687: THRUST DEFLECTOR AND FORCE AUGMENTOR; filed 27 August 1981; patented 16 August 1983.

Patent 4,398,978: HIGH DENSITY, LOW VISCOSITY AIRBREATHING FUEL; filed 28 April 1982; patented 18 August 1983.

Patent 4,399,564: FIBER OPTIC SYSTEM FOR TRANSMISSION OF VIDEO SIGNALS BY PULSE-FREQUENCY MODULATION; filed 29 February 1980; patented 18 August 1983.

Patent 4,399,764: PASSIVE SHOCK MITIGATION SYSTEM WITH SEA WATER METERING SHOCK ABSORBER; filed 6 July 1981; patented 23 August 1983.

Patent 4,402,069: ACOUSTIC ENVELOPE HAVING MINIMAL VIBRATION AND FLOW INDUCED NOISES; filed 3 July 1981; patented 30 August 1983.

Patent 4,402,539: REUSABLE CABLE TERMINATION; filed 2 July 1981; patented 8 September 1983.

Patent 4,405,102: VARIABLE WING POSITION SUPERSONIC BIPLANE; filed 20 November 1981; patented 20 September 1983.

Patent 4,405,198: EXTENDED FIBER OPTIC SENSOR USING BIREFRINGENT FIBERS; filed 25 August 1981; patented 20 September 1983.

Patent 4,406,050: METHOD FOR FABRICATING LEAD HALIDE SENSITIZED INFRARED PHOTODIODES; filed 17 March 1982; patented 18 August 1983.

Patent 4,406,035: PHTHALONITRILE RESIN FROM DIPHthalONITRILE MONOMER AND AMINE; filed 24 August 1981; patented 4 October 1983.

Patent 4,408,334: WAVEPLATE FOR CORRECTING THERMALLY INDUCED STRESS BIREFRINGENCE IN SOLID STATE LASERS; filed 13 March 1981; patented 4 October 1983.

Patent 4,409,821: SOLID PROPELLANT MEASUREMENT SYSTEM; filed 10 August 1981; patented 18 October 1983.

Patent 4,409,928: STANDARDIZED COMPACT MODULAR BOILER; filed 2 November 1981; patented 18 October 1983.

Patent 4,410,363: UNDERWATER APPLICABLE ANTIFOULANT PAINT COMPOSITION; filed 21 July 1981; patented 18 October 1983.

Patent 4,410,478: METHOD FOR MAKING RADIALLY COMPLIANT LINE ARRAY HOSE; filed 27 November 1981; patented 18 October 1983.

Patent 4,410,563: REPELLANT COATINGS FOR OPTICAL SURFACES; filed 22 February 1982; patented 18 October 1983.

Patent 4,410,878: PHENOLIC-CURED PHTHALONITRILE RESINS; filed 24 August 1981; patented 18 October 1983.

Patent 4,411,627: ARTICULATED LIGHT GUIDE; filed 28 January 1982; patented 25 October 1983.

Patent 4,412,387: DIGITAL COMPASS HAVING A RADIOMETRIC BEARING PROCESSOR; filed 10 May 1982; patented 1 November 1983.

Patent 4,413,740: ELECTRONIC PACKAGING TECHNIQUE; filed 24 August 1981; patented 8 November 1983.

Patent 4,414,605: POSITIVE LOCKING MECHANISM; filed 29 June 1981; patented 8 November 1983.

Patent 4,414,824: MULTIPLE-MICROCOMPUTER PROCESSING; filed 19 November 1980; patented 8 November 1983.

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- Patent 4,756,778: PROTECTING MILITARY TARGETS AGAINST WEAPONS HAVING IR DETECTORS; filed 4 December 1980; patented 12 July 1988.
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 Patent Application 246,702: AN UNDERWATER MATEABLE ELECTRICAL CONNECTOR; filed 20 September 1988.
 Patent Application 246,703: AN ELASTOMETRIC ELECTRICAL ISOLATION MEMBRANE; filed 20 September 1988.
 Patent Application 247,801: HIGH PRF HIGH CURRENT SWITCH; filed 16 September 1988.
 Patent Application 250,004: FILMS OF DITHIOLENE COMPLEXES IN GAS-DETECTING MICROSENSORS; filed 27 September 1988.
 Patent Application 253,635: CHEMILUMINESCENCE IN MICROEMULSIONS; filed 6 October 1988.
 Patent Application 254,552: LOW POWER CRYSTAL DISPLAY BACKLIGHT; filed 5 October 1988.
 Patent Application 254,553: INTERNAL SHIELD GROUND ADAPTER FOR KICKPIPE STUFFING TUBES; filed 5 October 1988.
 Patent Application 254,629: TECHNIQUE FOR IMPROVING LASER DRILLING AND CUTTING; filed 7 October 1988.
 Patent Application 258,433: POLYBUTADIENE COATED CARBON FIBER REINFORCED POLYMER COMPOSITES; filed 12 October 1988.

Patent Application 256,680: METHOD FOR THE PRODUCTION OF LIPID BASED TUBULES BY DOUBLE CYCLE; filed 16 September 1988.
 Patent Application 260,847: A NARROW-BANDWIDTH UNSTABLE LASER RESONATOR; filed 21 October 1988.
 Patent Application 262,765: MONOLITHIC MULTICHANNEL DETECTOR AMPLIFIER ARRAYS AND CIRCUIT CHANNELS; filed 25 October 1988.
 Patent Application 270,555: CPS ALARM SYSTEM; filed 14 November 1988.
 Patent Application 271,830: PROGRAMMABLE ANALOG VOLTAGE MULTIPLIER CIRCUIT MEANS; filed 16 November 1988.
 Patent Application 273,443: CURING AGENT FOR HIGH PERFORMANCE PHTHALONITRILE RESINS; filed 18 November 1988.
 Patent Application 273,444: FLUOROPOLYMER COATING OF OPTICAL FIBERS; filed 18 November 1988.
 Patent Application 276,987: FABRICATION OF A LOW FREQUENCY STRUCTUREBORNE ISOLATION VIBRATION MOUNT; filed 28 November 1988.
 Patent Application 280,049: MONOLITHIC RF PROTECTION DEVICE AND METHOD OF MANUFACTURE FOR USE IN EED; filed 5 December 1988.
 Patent Application 292,145: SYSTEM AND METHOD FOR AIRBORNE GRAVITY MEASUREMENT USING INTERFEROMETRIC POSITIONING FROM SATELLITES; filed 30 December 1988.
 Patent Application 293,788: OPTIC COMMUNICATION SYSTEM; filed 5 January 1989.
 Patent Application 294,621: BATTERY POWERED HANDHELD EDDY CURRENT INSTRUMENT; filed 9 January 1989.
 Patent Application 301,301: METHOD AND APPARATUS FOR ELIMINATING POLARIZATION-INDUCED SIGNAL FADING IN INTERFEROMETRIC FIBER-OPTIC SENSORS USING INPUT-POLARIZATION CONTROL; filed 25 January 1989.
 Patent Application 683,448: VARIABLE CAMBER TANDEM BLADE ROW FOR TURBOMACHINES; filed 19 December 1984.
 Patent Application 693,476: SELECTIVE DETECTION OF SPECIES IN COMPLEX MATRICES BY CHEMICAL DERIVATIZATION AND SECONDARY ION MASS SPECTROMETRY; filed 5 February 1985.

Patent Application 737,753: GAS RECIRCULATOR FOR ACYCLIC MACHINES; filed 16 December 1986.
 Patent Application 749,975: BIOCIDAL WAX COMPOSITION AND PREPARATION THEREOF; filed 23 December 1986.

Date: 8 June 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-13971 Filed 6-12-89; 8:45 am]

BILLING CODE 3810-AE-M

DEPARTMENT OF ENERGY

[Agreement No. DE-FC07-89ID12887]

Grant and Cooperative Agreement Awards; Babcock and Wilcox

AGENCY: Department of Energy.

ACTION: Intent to negotiate and award a Cooperative Agreement Babcock and Wilcox.

SUMMARY: Assessment of strength limiting flaws in ceramic heat exchanger components. The U.S. Department of Energy (DOE), Idaho Operations Office (ID) intends to negotiate on a noncompetitive basis with Babcock and Wilcox, Lynchburg, Virginia. The Cooperative Agreement will be for continuing work with DOE-ID for the development of a method to predict and detect the critical flaw size in a heat exchanger ceramic tube and to predict a minimum lifetime under industrial operating conditions. DOE has determined that continuing this project, under the proposed work, has a principal purpose of stimulation and support for the public purpose of promoting the greater industrial acceptance of ceramic heat exchanger or radiant tubes. This acceptance would increase national energy efficiency in high temperature industrial processes, such as: aluminum remelting furnaces, steel forging furnaces, glass melting furnaces, and hazardous or municipal waste incinerators. Babcock and Wilcox will: (1) Determine the effects of an industrial environment on crack growth in ceramic tubes, (2) predict and verify the expected industrial lifetime of ceramic tubes with flaws, and (3) develop acceptance criteria for a ceramic tube. The estimated budget is \$800,000. A "Determination of Noncompetitive Financial Assistance" (DNCFA) in accordance with the DOE financial assistance regulations 10 CFR Part 600.7 (2)(i) (A) and (D) was approved on May 10, 1989: (A) The activity to be funded is necessary to the satisfactory completion of or is a

continuation or renewal of, an activity presently being funded by DOE or another Federal agency, and for which competition for support would have a significant adverse effect on continuity or completion of the activity; (D) The application has exclusive domestic capability to perform the activity successfully, based upon such unique equipment, proprietary data, technical expertise, or other such unique qualifications. Public response may be addressed to the person given below.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Idaho Operations Office, 758 DOE Place, Idaho Falls, Idaho 83402, T. Wade Hillebrant, Contract Specialist, (208) 526-0547.

H. Brent Clark,

Director, Contracts Management Division.

[FR Doc. 89-13990 Filed 6-12-89; 8:45 am]

BILLING CODE 6450-01-M

Grant and Cooperative Agreement Awards; James W. Flatte

AGENCY: U.S. Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy announces that, pursuant to 10 CFR 600.7(h)(2)(i)(A), it is making a financial assistance award based on a continuation of an activity presently being funded by DOE under Grant Number DE-FG01-87CE15320, to James W. Flatte for additional development and testing of a wood burning stove. Mr. Flatte has previously received this grant to build a prototype of his wood burning stove and have performance tests conducted by the University of Arkansas.

The objectives of the proposed project are (1) to modify the second prototype to incorporate design changes recommended by the University of Arkansas and (2) to conduct additional performance tests on the second prototype.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, ATTN: Rose Mason, MA-453.2, 1000 Independence Avenue, SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division, Office of Procurement Operations.

[FR Doc. 89-13994 Filed 6-12-89; 8:45 am]

BILLING CODE 6450-01-M

[Agreement No. DE-FC07-89ID12882]**Grant and Cooperating Agreement Awards, Pulse Sciences, Inc.****AGENCY:** Department of Energy.**ACTION:** Intent to negotiate and award a Cooperative Agreement to Pulse Sciences, Inc.

SUMMARY: *Comminution via arc shattering.* The U.S. Department of Energy, Idaho Operations Office, intends to award on a noncompetitive basis, a cooperative agreement, as the result of an unsolicited proposal submitted by Pulse Sciences, Inc., 5330 Derry Avenue, Suite J, Agoura Hills, CA 91301. This unsolicited proposal was submitted in response to a Notice of Program Interest published in the Commerce Business Daily dated April 19, 1988, and is accepted for support pursuant to the provisions of 10 CFR 600.14(F). The cooperative agreement will support research to develop the concept of applying pulsed, electric arc induced shock waves to produce finely ground ores for subsequent beneficiation. Pulse Sciences will (1) investigate the application of the arc shattering concepts to the comminution of ores to minus 50 microns, (2) perform an assessment to determine if the arc shattering concept has the potential to achieve a 0.01 Quad/year energy savings and whether or not the process will be economically attractive to industry. DOE Funding for this project will amount to \$124,606 for Phase I, and \$250,159 for Phase II. Pulse Sciences unsolicited proposal has been accepted for DOE financial assistance based on its meeting the criteria outlined in the following paragraphs listed under 10 CFR Part 600.14: (a) The activity to be funded is an innovative approach relevant to a public purpose. (d) The applicant possesses the facilities and techniques necessary to achieve the proposed project's objectives.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy; Idaho Operations Office; Attention: J. P. McGowan, Contracts Management Division; 785 DOE Place, Idaho Falls, Idaho 83402, (208) 526-8779.

Issued this 1st day of June at Idaho Falls, Idaho.

H. Brent Clark,
Director, Contracts Management Division.

[FR Doc. 89-13991 Filed 6-12-89; 8:45 am]
BILLING CODE 6450-01-M

Grant and Cooperative Agreement Awards; State of Texas**AGENCY:** Bartlesville Project Office, DOE.**ACTION:** Notice of intent to negotiate a grant with the State of Texas.

SUMMARY: *A Field Laboratory for Improved Oil Recovery.* The U.S. Department of Energy (DOE), Bartlesville Project Office, through the DOE Idaho Operations Office, intends to negotiate on a noncompetitive basis, a cost-share grant with the State of Texas. All technical and scientific aspects will be conducted by the University of Houston, Houston Petroleum Research Center (HPRC) through a subcontract. The action is prompted by the consummation of Annex III to the Memorandum of Understanding between DOE and the State of Texas, which defines the research proposal and the participants, and specifies cost sharing. The grant will be used by the University of Houston, HPRC to establish a field laboratory for research in the area of improved oil recovery. Friendswood (Webster) field, which produces from multiple Frio Sands located 15 miles southeast of the University of Houston, will be the demonstration field. The participant shall (1) conduct a high resolution 3D seismic survey in the demonstration field, (2) develop a complete evaluation of local flood efficiency in different parts of the demonstration reservoir, (3) use diverse methodology to evaluate the potential recovery of the remaining oil in the test reservoir, (4) develop cross-well seismic tomography, and (5) transfer the learned technologies to oil operators through publications and workshops. The University of Houston, HPRC will make available to this research project the state well records, geological data archives, well samples, and computer resources.

The authority and justification for determination of noncompetitive financial assistance (DNCFA) is DOE Financial Assistance Rules 10 CFR 600.7(b)(2)(i), (B), (C) and (D). The activities proposed in Annex III to the agreement between the U.S. Department of Energy and the State of Texas are in support of a public purpose and are as directed by the agreement. This activity would be conducted by the State of Texas using their own resources, however, DOE support of the activity would enhance the public benefits to be derived by allowing more thorough interpretation of reservoir architecture. DOE knows of no other entity which is conducting or planning to conduct such an activity. The applicant is a unit of

Government and the activity to be supported is related to performance of a governmental function within the subject jurisdiction, thereby precluding DOE provision of support to another entity. The State of Texas through its subcontractor, University of Houston, Houston Petroleum Research Center, has exclusive domestic capability to perform the activity successfully based on unique equipment, proprietary data, technical expertise or other such unique qualifications. The applicant has access to data relative to the proposed activities that will be identified and structured and made available to developers, decision-makers, and researchers. The grant term is for two years at an estimated cost of \$800,000.00. This funding level will be shared 50 percent DOE and 50 percent State of Texas. Public response may be addressed to the contract specialist stated below.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, Idaho Falls, Idaho 83402, Trudy A. Thorne, Contract Specialist (208) 526-9519.

Date: May 25, 1989.

H. Brent Clark,
Director, Contracts Management Division.
[FR Doc. 89-13992 Filed 6-12-89; 8:45 am]
BILLING CODE 6450-01-M

Office of Fossil Energy**[ERA Docket No. 89-05-NG]****Tarpon Gas Marketing Ltd.; Order Granting Authorization to Export Natural Gas****AGENCY:** Office of Fossil Energy, DOE.**ACTION:** Notice of an order granting blanket authorization to export natural gas.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tarpon Gas Marketing Ltd. (Tarpon Gas) authorization to export natural gas from the United States to Canada. The order issued in ERA Docket No. 89-05-NG authorizes Tarpon Gas to export up to 100 Bcf of domestic gas over a two-year term from the date of first delivery.

A copy of this order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, June 5, 1989.

J. Allen Wampler,
Assistant Secretary, Fossil Energy.
[FR Doc. 89-13993 Filed 6-12-89; 8:45 am]
BILLING CODE 6450-01-M

Federal Energy Regulatory Commission**[Project No. 7841-007 New York]****Enerco Corp.; Availability of Environmental Assessment**

June 8, 1989.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for amendment to major license for the proposed New York State Dam Hydroelectric Project located on the Mohawk River in Saratoga and Albany counties, near the towns of Waterford and Cohoes, New York, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed project and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street NE., Washington, DC 20426.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 89-14035 Filed 6-12-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ89-3-31-000]**Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Quarterly PGA Adjustment**

June 7, 1989.

Take notice that on June 1, 1989, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets to become effective July 1, 1989:

Original Volume No. 3
4th Revised Sheet No. 185.1

First Revised Volume No. 1
51st Revised Sheet No. 4

First Revised Volume No. 1
4th Revised Sheet No. 7A

AER states that these tariff sheets reflect its first quarterly PGA filing made subsequent to its annual PGA effective April 1, 1989 under the Commission's Order Nos. 483 and 483-A.

AER states the proposed changes would decrease its system cost by \$41,064 and its revenue from jurisdictional sales and services by \$6,958 for the PGA period of July, August and September 1989 as adjusted.

AER states that included in this filing are copies of the following revised tariff sheet to correct the current adjustment rate filed in AER's annual PGA filing effective April 1, 1989 in Docket No. TA89-1-31 from (\$.0682) to (\$.05036) or \$.0146 per MMBTU.

First Revised Volume No. 1
2nd Substitute 50th Revised Sheet No. 4
Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Commission, 825 North Capitol Street NE., Washington, D.C. 20426, in accordance with §§ 1.8 and 1.10 of the Commission's rules of practice and procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 89-14021 Filed 6-12-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-98-005]**Colorado Interstate Gas Co.; Compliance Filing**

June 7, 1989.

Take notice that Colorado Interstate Gas Company ("CIG"), on June 1, 1989, tendered for filing the following tariff sheet to revise its FERC Gas Tariff, Original Volume No. 1:

Second Substitute First Revised Sheet No. 61G7

CIG states that the above-referenced tariff sheet is being filed in compliance with the Commission's Order issued May 17, 1989, in this docket and is to be effective April 1, 1989.

CIG states that copies of the filing were served upon all of the parties to

this proceeding and affected state commissions as well as all of CIG's firm sales customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 89-14025 Filed 6-12-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TA88-2-23-001, RP88-176-002, and TQ89-2-23-001]**Eastern Shore Natural Gas Co.; Proposed Changes in FERC Gas Tariff**

June 7, 1989.

Take notice that Eastern Shore Natural Gas Company (ESNG) tendered for filing on June 2, 1989 as part of its FERC Gas Tariff, Original Volume No. 1, the following proposed tariff sheets to be effective June 1, 1988.

FERC Gas Tariff Original Volume No. 1
6th Revised Sheet No. 247
3rd Revised Sheet No. 247A
2nd Revised Sheet No. 247B
2nd Revised Sheet No. 247C
Original Sheet No. 247D
6th Revised Sheet No. 248
5th Revised Sheet No. 249
4th Revised Sheet No. 250
4th Revised Sheet No. 251
2nd Revised Sheet No. 251A

ESNG states that the purpose of such revised tariff sheets is to comply with the Commission's directives issued in Docket Nos. TA88-2-23 and TQ89-2-23 with respect to certain tariff language regarding ESNG's PGA treatment of storage gas and to make certain revisions to its PGA in order to bring it into full and complete compliance with the Commission's Regulations at § 154.301 et al.

ESNG further states the tariff sheets filed herein reflect tariff language revisions only and thus have no impact on the PGA rates ESNG has implemented since June 1, 1988.

ESNG states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before June 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-14026 Filed 6-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-50-000, et al.]

Florida Gas Transmission Co.; Informal Settlement Conferences

June 7, 1989.

Take notice that informal settlement conferences will be convened in the above-captioned proceeding on June 20 and 21 and on June 27 and 28, 1989, at 10:00 a.m. at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC.

Participants, as defined by 18 CFR 385.102(b), are invited to attend. For additional information contact Donald A. Heydt, (202) 357-8570, or John J. Keating, (202) 357-5782.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-14034 Filed 6-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-9-51-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff Purchased Gas Adjustment Clause Provisions

June 7, 1989.

Take notice that Great Lakes Gas Transmission Company ("Great Lakes") on June 1, 1989, tendered for filing Second Substitute Twenty-First Revised Sheet Nos. 57(i) and 57(ii) and Second Substitute Eighth Revised Sheet No.

57(v) to its FERC Gas Tariff, First Revised Volume No. 1.

Great Lakes states the above tariff sheets reflected revised current PGA rates for the months of May, June and July, 1989. The tariff sheets were filed as an Out of Cycle PGA to reflect the latest estimated gas cost as provided to Great Lakes by its sole supplier of natural gas, TransCanada PipeLines Limited ("TransCanada"). These pricing arrangements were the result of contract renegotiation between each of Great Lakes' resale customers and the supplier.

Great Lakes requested waiver of the notice requirements of the provisions of § 154.309 of the Commission's Regulations and any other necessary waivers so as to permit the above tariff sheets to become effective as requested in order to implement the gas pricing agreements between Great Lakes' resale customers and TransCanada on a timely basis.

Any person desiring to be heard or to protest said filing should file a Motion to Intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-14022 Filed 6-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-186-000]

Great Lakes Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

June 7, 1989.

Take notice that on June 1, 1989, Great Lakes Gas Transmission Company ("Great Lakes"), tendered for filing proposed changes to the following tariff sheets of its FERC Gas Tariff, First Revised Volume No. 1 and Original Volume No. 2.

First Revised Volume No. 1

Nineteenth Revised Sheet No. 4

Twenty-Second Revised Sheet No. 57(i)

Twenty-Second Revised Sheet No. 57(ii)

Ninth Revised Sheet No. 57(v)

Original Volume No. 2

Twenty-Third Revised Sheet No. 53

Fourteenth Revised Sheet No. 77

Eighth Revised Sheet No. 223

Eighth Revised Sheet No. 245

Seventh Revised Sheet No. 294

Second Revised Sheet No. 437

First Revised Sheet No. 465

Second Revised Sheet No. 466

First Revised Sheet No. 603

First Revised Sheet No. 665

First Revised Sheet No. 666

First Revised Sheet No. 700

Great Lakes states that these tariff sheets were filed under protest pursuant to the Federal Energy Regulatory Commission's ("Commission") orders of March 31 and May 10, 1989, in Docket No. RP89-53-000. They were filed under the requirements of § 154.303(e) of the Commission's Regulations. Great Lakes states that it has filed a request for rehearing on the Commission's order of March 31, 1989, which request for rehearing was pending before the Commission at the time of the submission. Great Lakes further states that its filing is made under protest and without further prejudice to Great Lakes' position in its request for rehearing.

Great Lakes states that these tariff sheets establish new base tariff rates to be effective July 1, 1989, based on actual costs for the base period ended February 28, 1989 with annualizing adjustments as permitted by § 154.303(e)(1)(B) of the Commission's Regulations. The cost of gas purchased included in the cost of service study is based on the purchase gas adjustment filing approved by the Commission on May 12, 1989 in Docket No. TQ89-7-51-000. Great Lakes states TQ89-7-51-000. Great Lakes states that in this filing it is continuing to utilize the cost classification, allocation and rate design methodology previously approved by the Commission for use on its system.

Great Lakes states that the annualized volumes multiplied by its present base tariff rates, adjusted for the PGA approved by the Commission on May 12, 1989 in Docket No. TQ89-7-51-000, produce revenues in excess of the filed cost of service. Great Lakes states that the restated base tariff rates proposed in the filing have been determined on the basis of the filed cost of service and accordingly reflect a reduction in annual revenues of approximately \$17.4 million. The new base tariff rates are proposed to be effective July 1, 1989.

Great Lakes further states that copies of its filing have been served upon each of its customers and the Public Service Commissions of Minnesota, Wisconsin and Michigan.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1988)). All such motions or protests should be filed on or before June 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-14033 Filed 6-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM89-2-37-000]

Northwest Pipeline Corp.; Change in FERC Gas Tariff

June 7, 1989.

Take notice that on June 1, 1989, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets:

First Revised Volume No. 1

Fifty-Third Revised Sheet No. 10

Twenty-Ninth Revised Sheet No. 10-A

Original Volume No. 1-A

Seventh Amended Fifteenth Revised Sheet No. 201

Original Volume No. 2

Ninth Revised Sheet No. 2.3

Northwest states that the purpose of this filing is to update its Commodity SSP Charge (Order No. 500 buyout/buydown costs) to reflect interest applicable to April through June 1989. The proposed revised Commodity SSP charge is 1.80¢ per MMBtu, to be effective July 1, 1989.

Northwest states that a copy of this filing has been sent to all parties of record in docket No. RP89-137 and to all jurisdictional customers and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or

before June 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-14029 Filed 6-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ89-4-37-000]

Northwest Pipeline Corp.; Proposed Change in Sales Rates Pursuant to Purchased Gas Cost Adjustment

June 7, 1989.

Take notice that on June 1, 1989, Northwest Pipeline Corporation ("Northwest") submitted for filing a proposed change in rates applicable to service rendered under rate schedules affected by and subject to Article 16, Purchased Gas Cost Adjustment Provision ("PGA") of its FERC Gas Tariff. First Revised Volume No. 1. Such change in rates is for the purpose of reflecting changes in Northwest's estimated cost of purchased gas for the three months ending September 30, 1989.

Northwest states that the current PGA adjustment aggregates to a decrease of 27.61¢ per MMBtu in the commodity rate for all rate schedules affected by and subject to the PGA. The proposed change in Northwest's commodity rates for the third quarter of 1989 would decrease sales revenues by approximately \$965,798. The instant filing also provides for a minor reduction in the demand components of Northwest's gas sales rates. The proposed rate changes have been reflected on Fifty-Second Revised Sheet No. 10 with an effective date of July 1, 1989.

A copy of this filing is being served on Northwest's jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-14030 Filed 6-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-143-001]

Pacific Offshore Pipeline Co.; Compliance Filing

June 7, 1989.

Take notice that on June 1, 1989, Pacific Offshore Pipeline Company (POPCO) filed certain revised tariff sheets to its FERC Gas Tariff, Original Volume 1, to be effective April 1, 1989.

POPCO states that this filing complies with the Commission's order of May 2, 1989.

POPCO states that a copy of this filing is being served on all parties of record in this proceeding and on all jurisdictional customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 C.F.R. 385.214, 385.211 (1988)]. All such protests should be filed on or before June 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-14018 Filed 6-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-144-001]

Pacific Interstate Offshore Co.; Compliance Filing

Take notice that on June 1, 1989, Pacific Interstate Offshore Company (PIOC) filed certain revised tariff sheets to its FERC Gas Tariff, Original Volume 1, to be effective April 1, 1989.

PIOC states that this filing complies with the Commission's order of May 3, 1989.

PIOC states that a copy of this filing is being served on all parties of record in this proceeding and on all jurisdictional customers and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 385.214, 385.211 (1988)]. All such protests should be filed on or before June 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson,
Acting Secretary.
[FR Doc. 89-14019 Filed 6-12-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ89-3-6-000]

Sea Robin Pipe Line Co.; Filing of Revised Tariff Sheets

June 7, 1989.

Take notice that on May 31, 1989, Sea Robin Pipeline Company (Sea Robin) tendered for filing the following tariff sheet:

Original Volume No. 1.
Fifty-Seventh Revised Sheet No. 4

Sea Robin states that the proposed effective date of the above referenced tariff sheet in this docket is July 1, 1989. The above referenced tariff sheet is being filed pursuant to §§ 154.304 and 154.308 of the Commission's regulations to reflect the changes in the purchased gas cost adjustment provisions contained in Sections 1 and 4 of the General Terms and Conditions of Sea Robin's FERC Gas Tariff, Original Volume No. 1.

Sea Robin states that the tariff sheet is filed to reflect a decrease in gas cost of \$.0027 under Rate Schedule X-1 and X-2. This produces a current effective commodity charge of \$3.2207. Sea Robin states that there is no change in gas cost under Rate Schedules X-7 and X-8.

Sea Robin states that the revised tariff sheet and supporting data are being mailed to its jurisdictional sales

customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's regulations. All such motions or protests should be filed on or before June 14, 1989.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to proceedings. Any person wishing to become a party must file a motion to Intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 89-14027 Filed 6-12-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-141-002]

Sea Robin Pipeline Co.; Compliance Filing

June 7, 1989.

Take notice that on May 30, 1989, Sea Robin Pipeline Company (Sea Robin) submitted for filing a revised tariff sheet and certain workpapers with narrative descriptions in response to the Commission's April 28, 1989 Order in this proceeding. The revised tariff sheet tendered for filing is part of Sea Robin's Original Volume No. 1 of its FERC Gas Tariff.

To Be Effective April 1, 1989:

Substitute Original Sheet No. 4-D

Sea Robin states that certain workpapers and supporting narrative descriptions are being submitted under seal and subject to § 381.112 of the Commission's Regulations. On May 8, 1989, Sea Robin states that it filed for a Protective Order in this proceeding, but at the time of this filing, Sea Robin is not aware whether a Protective Order has been issued in Docket No. RP89-141. Once issued, Sea Robin will make this information available to all eligible parties who have executed a non-disclosure certificate pursuant to the Protective Order.

Sea Robin states that the remaining workpapers and supporting narrative descriptions will be available for review by appointment in Sea Robin's Houston, Texas or Washington, DC offices.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 825 N. Capitol Street NE., Washington, DC 20426, in such accordance with §§ 285.214 and 385.211 of the Commission's regulations. All such motions of protest should be filed on or before June 14, 1989.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 89-14020 Filed 6-12-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-119-003]

Texas Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 7, 1989.

Take notice that on June 1, 1989, Texas Gas Transmission Corporation (Texas Gas) tendered for filing the following revised tariff sheets to its FERC Gas Tariff, Original Volume No. 2

Second Revised Sheet No. 484
Sixth Revised Sheet No. 558
Fourth Revised Sheet No. 591
Third Revised Sheet No. 1085

Texas Gas states that these tariff sheets were omitted from its filing made in the above-referenced docket on March 30, 1989.

Copies of the revised tariff sheets are being mailed to Texas Gas's its sales and transportation customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before June 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 89-14023 Filed 6-12-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TA89-1-29-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

June 7, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on June 2, 1989, the following tariff sheets to its FERC Gas Tariff Second Revised Volume No. 1. Such sheets are proposed to be effective August 1, 1989.

Fifty-Ninth Revised Sheet No. 12
Fifty-Sixth Revised Sheet No. 15
Fourteenth Revised Sheet No. 15-A

Transco states these sheets reflect an overall rate increase as compared to the currently effective rates of 138.8¢ per dt in the commodity charge under the CD, G, OG, PS, E, ACQ and S-2 Rate Schedules.

Transco states that the increase of 138.9¢ per dt is comprised of (i) a 100.9¢ per dt increase related to the current gas portion of commodity rates, (ii) a 24.0¢ per dt increase in the Surcharge Adjustment, and (iii) a 14.0¢ per dt increase in the Special Transition Gas Cost Surcharge.

Transco states that the instant PCA filing reflects a projected average cost of purchased gas of 378.12¢/dt for the quarterly period August through October 1989. System Sales are projected to be approximately 335 MDT per day based on Transco's status as an open access pipeline.

Transco further states that it has filed the necessary schedules in order to comply with § 154.305 and FERC Form 542. Transco has also filed a 9-track magnetic tape as required by FERC Form 542.

Transco states that copies of the instant filing are being mailed to its jurisdictional customers, and interested State Commissions. In accordance with the provisions of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 27, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 89-14031 Filed 6-12-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-163-001]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

June 7, 1989.

Take notice that Transcontinental Gas Pipe Line Corporation (Transco) tendered for filing on June 2, 1989, the following tariff sheets to its FERC Gas Tariff Second Revised Volume No. 1. Such tariff sheets are proposed to be effective June 1, 1989.

Substitute Fifty-Eighth Revised Sheet No. 12
Substitute Fifty-Fifth Revised Sheet No. 15

Transco states that this filing incorporates its currently effective commodity cost of gas and fuel into the rates which became effective June 1, 1989 pursuant to the Commission's order issued May 31, 1989 in Docket Nos. RP89-163-000, *et al.*

Transco states that copies of the instant filing are being mailed to those customers, State Commissions, and interested parties which received copies of Transco's May 1, 1989 filing in Docket No. RP89-163-000. In accordance with the provision of § 154.16 of the Commission's Regulations, copies of this filing are available for public inspection during regular business hours, in a convenient form and place at Transco's main offices at 2800 Post Oak Boulevard in Houston, Texas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street N.E., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.
[FR Doc. 89-14032 Filed 6-12-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ89-3-11-000]

United Gas Pipe Line Co.; Filing of Revised Tariff Sheets

June 7, 1989.

Take notice that on May 31, 1989, United Gas Pipe Line Company (United) tendered for filing to its FERC Gas Tariff First Revised Volume No. 1, the following tariff sheets:

To Be Effective July 1, 1989
Eighty-Sixth Revised Sheet No. 4
Fifth Revised Sheet No. 4.1
Fifth Revised Sheet No. 4-G

United states that these tariff sheets are filed pursuant to §§ 154.304 and 154.308 of the Commission's regulations to reflect the changes in the purchased gas cost adjustment provisions contained in Section 19 of United's FERC Gas Tariff, First Revised Volume No. 1.

United states that these tariff sheets reflect a Current Adjustment to the commodity gas rate of \$(.0860) per Mcf a Cumulative Adjustment to the commodity gas rate of \$(.2016) per Mcf and a surcharge adjustment of \$.1264 per Mcf. This filing proposes an increase to the gas cost component of United's current effective commodity rates of \$.0540 per Mcf when compared to the gas cost component of rates currently in effect pursuant to TQ89-2-11-000.

United states that the revised tariff sheets and supporting data are being mailed to its jurisdictional sales customers and to interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426, in such accordance with Sections 385.214 and 385.211 of the Commission's regulations. All such motions of protest should be filed on or before June 14, 1989.

Protests will be considered by the Commission in determining appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file

BEST COPY AVAILABLE

with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-14028 Filed 6-12-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-43-003]

Williams Natural Gas Co. Proposed Changes in FERC Gas Tariff

June 7, 1989.

Take notice that Williams Natural Gas Company (WNG) on May 30, 1988, tendered for filing Revised Eleventh Revised Sheet No. 6 to its EFRC Gas Tariff, Original Volume No. 1. The proposed effective date of this tariff sheet is May 1, 1989.

WNG states that the above mentioned tariff sheet is being filed in compliance with Ordering Paragraph (B) of the Commission's Order issued April 27, 1989 in this Docket. WNG is also filing a separate binder for additional supplemental information required by Ordering Paragraph (C) of the order.

Revised Eleventh Revised Sheet No. 6 reflects increased rates which reflect:

(1) A \$.0033 per Mcf increase in the Cumulative Adjustment due to an increase in WNG's projected gas purchase costs. This Adjustment is unchanged from that previously proposed in the March 1, 1989 filing.

(2) A \$.4350 per Mcf increase in the Surcharge Adjustment (to a positive \$.2991 per Mcf from a negative \$.1359 per Mcf) to amortize the Deferred Purchased Gas Cost Subaccount Balance. This decrease in the Surcharge Adjustment from that previously proposed in the March 1, 1989 filing is the result of deleting the \$18.7 million of pricing disputes from this filing.

WNG states that certain information concerning its gas purchase contracts is privileged and confidential and has been deleted from public copies and that public copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington DC 20426, in accordance with §§ 385.211, 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All protests should be filed on or before June 14, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Persons that are already parties to this

proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-14024 Filed 6-12-89; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3601-4]

Availability of Report; Municipal Solid Waste

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Availability.

SUMMARY: The U.S. Environmental Protection Agency (EPA) today announces public availability of a document entitled, "Characterization of Products Containing Lead and Cadmium in Municipal Solid Waste in the United States, 1970 to 2000." This report characterizes the products contributing 1 percent or more of the lead and cadmium disposed in municipal solid waste over the time period 1970 to 1988, with projections to the year 2000. The Agency intends to use this document to further activities in the reduction of sources of toxicity in municipal solid waste.

ADDRESSES: The report is available for review at all EPA libraries and in the EPA RCRA docket, room 2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, from 9:30 am to 3:30 pm, Monday through Friday, except Federal holidays; telephone (202) 475-9327. The RCRA docket identification number for the report is F-89-CLCA-FFFFF.

The public may copy a maximum of 50 pages of material from any one regulatory docket at no cost. Additional copies cost 15 cents per page. This document is also available through the National Technical Information Service (NTIS), 5258 Port Royal Road, Springfield, Virginia 22161, telephone (703) 487-4650. The complete report is available by Order No. PB89-151039, cost \$28.95 or \$8.95 on microfiche.

FOR FURTHER INFORMATION CONTACT: For general information, or free copies of the Executive Summary of the report, call the RCRA Hotline at (202) 382-3000 or toll free at (800) 424-9346 outside the Washington, DC metropolitan area. For technical information on the report, contact Paul Kaldjian, Office of Solid Waste (OS-301), U.S. Environmental

Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-2349.

SUPPLEMENTARY INFORMATION: In 1979, under the authority of Section 1008(a)(3) and 4004(a) of Subtitle D of the Resource Conservation and Recovery Act (RCRA), EPA promulgated "Criteria for Classification of Solid Waste Disposal Facilities and Practices" (40 CFR Part 257). The criteria include environmental performance standards for determining which solid waste disposal facilities and practices pose a reasonable probability of adverse effects on human health and the environment. In 1984, Congress passed the Hazardous and Solid Waste Amendments (HSWA), which include major provisions regarding the solid waste regulatory program. These amendments require that EPA revise the criteria for facilities that may receive household hazardous waste or small quantity generator hazardous waste. Public concerns and landfill capacity issues also have focused EPA efforts on municipal solid waste issues.

State and local governments charged with municipal solid waste disposal are experiencing a growing shortage of landfill space in many regions of the country. As landfill capacity decreases, jurisdictions increasingly are turning to options such as recycling and municipal waste combustion (MWC) as means of reducing waste volume. Currently, there are approximately 140 combustion facilities operating in the U.S., many with resource recovery capabilities (typically steam or electricity generation).

Increased use of resource recovery (or incineration) has raised public concerns over health and environmental hazards of incineration and the disposal of the resulting ash. One concern associated with municipal waste combustion is that heavy metals lead and cadmium in particular have been found in analytical tests of the ash from these facilities. Inhalation of the ash derived from incinerator emissions and fugitive dust from handling/disposal operations as well as potential ground-water contamination from leaching of land-filled ash are major concerns expressed by the public.

As part of EPA's evaluation of MWC ash and its potential impacts, EPA commissioned this study to characterize the sources of lead and cadmium in products disposed in municipal solid waste over the time period 1970 and 1988, with projections to the year 2000. The results of this analysis are summarized in this report.

The general methodology for this study is called the materials flow methodology; it is based on a

methodology for estimating municipal solid waste that was developed at EPA in the mid-1970's and that has been used periodically for EPA reports ever since. The materials flow methodology applies to the United States as a whole; it is not tailored to any specific locality. Data series on production of the products and materials in the waste stream are used as a basis. Adjustments are then made for imports and exports of the products, for diversions away from the waste stream, for the lifetime of the products, and for materials recovery.

Application of the methodology to discard of lead and cadmium required some additional steps. Numerous assumptions were required to determine end uses of products that would enter the municipal waste stream rather than others, such as demolition wastes. Also, lead and cadmium occur in many intermediate products, such as pigments, that enter the waste stream as part of another product. All assumptions are documented.

While both lead and cadmium have been detected in analyses of ash from municipal waste combustors, discards of lead in products classified as NSW are, however, much greater than discards of cadmium. Over 100 times more lead and cadmium was discarded in 1986, and this relationship has been relatively constant since 1970.

Lead discarded in lead-acid batteries overwhelms all other sources. These batteries were the largest contributors to lead discards for all years from 1970 to 2000. Consumer electronics (primarily television sets, radios, and video cassette recorders) were the fourth largest contributors of lead in MSW in 1970, but by 1975 they were the second largest, a position they continue to hold.

Household batteries (primarily rechargeable nickel-cadmium batteries) have been the largest source of cadmium in NSW since 1980. Their growth has been rapid; they were the fifth largest source of cadmium in 1970. Plastics have ranked second only to household batteries as a source of cadmium since 1980. Cadmium is used as a stabilizer in polyvinyl chloride resin and as a pigment in a variety of resins.

As part of this study, the lead and cadmium content of the combustible and noncombustible fractions of MSW was examined. Removal of noncombustible products containing lead and cadmium before MSW is incinerated could have a significant impact on the heavy metal content of ash. Almost 98 percent of cadmium in MSW is found in noncombustibles, while 64 percent of cadmium is found in combustibles. If all noncombustibles were removed from the waste stream, the remaining lead

would come from plastics (71 percent) and pigments (24 percent), as would cadmium (plastics (88 percent and pigments (11 percent).

When interpreting these findings, the limitations of the study must be remembered, especially as they relate to municipal waste combustion (MWC) ash. First, in addition to MSW, other nonhazardous wastes contain lead and cadmium, and may in some instances be incinerated along with MSW. These wastes include municipal sludge, construction and demolition wastes, industrial and military wastes, and automotive and other transportation equipment wastes. Second, the MSW characterization presented in this report is on a national level, and may not represent the municipal solid waste stream for a particular community. Third, this characterization identifies the sources of lead and cadmium in municipal solid waste; it does not tell us whether these are major sources of leachable lead and cadmium in MWC ash. Finally, the identified compounds of lead and cadmium may recombine with other materials in the combustion chamber to form new compounds.

Date: May 24, 1989.

Jonathan Z. Cannon,

Acting Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 89-14001 Filed 6-12-89; 8:45 am]

BILLING CODE 6560-50-M

[OPTS-44531; FRL-3601-6]

TSCA Chemical Testing; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on methyl tert butyl ether (CAS No. 1634-04-4), aniline (CAS No. 62-53-3), 2,6-dichloro-4-nitroaniline (CAS No. 99-30-9), and 2-chloroaniline (CAS No. 95-51-2) submitted pursuant to testing consent orders and propylene dichloride (CAS No. 78-87-5) submitted pursuant to a final test rule under the Toxic Substances Control Act (TSCA). Publication of this notice is in compliance with section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA

Assistance Office (TS-799), Office of

Toxic Substances, Environmental

Protection Agency, Room EB-44, 401 M

Street, SW., Washington, DC 20460,

(202) 554-1404, TDD (202) 554-0551.

SUPPLEMENTARY INFORMATION: Section

4(d) of TSCA requires EPA to publish a

notice in the Federal Register reporting

the receipt of test data submitted pursuant to test rules promulgated under section 4(a) within 15 days after it is received. Under 40 CFR 790.60, all TSCA section 4 consent orders must contain a statement that results of testing conducted pursuant to these testing consent orders will be announced to the public in accordance with section 4(d).

I. Test Data Submissions

Test data for methyl tert butyl ether was submitted by the Methyl Tertiary Butyl Ether Committee (MTBE Health Effects Testing Task Force) pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on May 19, 1989. The submission describes a repeated exposure vapor inhalation study in rats for in vivo cytogenetics evaluation. Mutagenicity testing is required by this consent order.

Test data for aniline was submitted by the Synthetic Organic Chemical Manufacturers Association (SOCMA) pursuant to a consent order at 40 CFR 799.5000. It was received by EPA on May 19, 1989. The submission describes the flow through acute toxicity of aniline to the freshwater amphipod, *Gammarus fasciatus*. Acute toxicity testing with *Gammarus* is required by this consent order.

Test data for 2,6-dichloro-4-nitroaniline were submitted by SOCMA pursuant to a consent order at 40 CFR 799.5000. Two studies were received by EPA on May 19, 1989. The submissions describe: (1) The static acute toxicity of 2,6-dichloro-4-nitroaniline to the freshwater alga, *Selenastrum Capricornutum* and (2) the flow through acute 48-hour EC50 of 2,6-dichloro-4-nitrobenzenamine to *Daphnia magna*. Algal and daphnid acute toxicity testing are required by this consent order.

Test data for 2-chloroaniline were submitted by SOCMA pursuant to a consent order at 40 CFR 799.5000. Two studies were received by EPA on May 19, 1989. The submissions describe: (1) The flow through acute toxicity of 2-chloroaniline to freshwater amphipod, *Gammarus fasciatus* and (2) the flow through acute 96-hour LC50 of 2-chloroaniline to rainbow trout (*Salmo gairdneri*). *Gammarus* and rainbow trout acute toxicity testing are required by this consent order.

Test data for propylene dichloride were submitted by the DOW Chemical Company pursuant to a test rule at 40 CFR 799.1550. The submissions describe: (1) A dominant lethal study in Sprague-Dawley rats (received on May 23, 1989) and (2) an oral teratology study in Sprague-Dawley rats (received on May

24, 1989). Mutagenicity and teratology testing are required by this test rule.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency is unable to provide any determination as to the completeness of the submissions.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPTS-44531). This record includes copies of all studies reported in this notice. The record is available for inspection from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays, in the TSCA Public Docket Office, Room NE-G004, 401 M Street, SW., Washington, DC 20460.

Authority: 15 U.S.C. 2803.

Dated: June 1, 1989.

Gary E. Timm,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-14002 Filed 6-12-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; Proposed New System of Records

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of proposed system of records.

SUMMARY: In accordance with the Privacy Act of 1974, the FDIC is giving notice of the establishment of a new system of records, entitled Investigative Files and Records.

DATE: Comments on the establishment of the system must be submitted by August 14, 1989.

ADDRESS: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, FDIC, 550-17th Street, NW., Washington, DC 20429, or hand-delivered to Room 6099 of the same address between 9:00 a.m. and 5:00 p.m., Monday-Friday. Comments are available for public inspection.

FOR FURTHER INFORMATION CONTACT: Robert E. Feldman, Deputy Executive Secretary, FDIC, 550-17th Street, NW., Washington, DC 20429, telephone (202) 898-3811.

SUPPLEMENTARY INFORMATION: The FDIC is proposing to establish a new system of records, pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), entitled Investigative Files and Records. The system will consist of files and

records compiled by the FDIC's Office of Inspector General on FDIC employees or other persons involved with FDIC's programs or operations who have been under investigation for fraud and abuse with respect to the FDIC's programs or operations. The system is being proposed at this time because the Inspector General Act Amendments of 1988 amended the Inspector General Act of 1978 to require the FDIC, among other selected federal agencies, to establish an Office of Inspector General by April 19, 1989. The system of records being proposed herein will be essential for the FDIC's Office of Inspector General to carry out its mandate under the Inspector General Act of 1978 to undertake internal investigations where possible fraud or abuse has been detected.

The system will exempt from disclosure to the individual who is the subject of a record in the system investigatory material compiled for law enforcement purposes and investigatory material compiled solely for the purposes of determining suitability, eligibility, or qualifications for FDIC employment to the extent the disclosure of such material would reveal the identity of a source who furnished information to the FDIC under a promise of confidentiality. Those exemptions are the subject of a companion notice of proposed rulemaking that appears elsewhere in today's issue of the Federal Register.

Accordingly, the Board of Directors proposes the establishment of the following system of records.

FDIC 30-64-0010

SYSTEM NAME:

Investigative Files and Records.

SYSTEM LOCATION:

Office of Inspector General, FDIC, 550-17th Street, N.W., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Employees of the FDIC or other persons involved in the FDIC's programs or operations who are or have been under investigation by the FDIC's Office of Inspector General in order to determine whether such employees or other persons have been or are engaging in fraud and abuse with respect to the FDIC's programs or operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains complete files on individual investigations including investigation reports and related documents generated during the course of or subsequent to the investigation.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sec. 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); sec. 8E of the Inspector General Act of 1978, as amended.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

Information in the system may be disclosed:

(1) To the appropriate federal, state, or local agency or authority responsible for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order issued when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

(2) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings.

(3) To a congressional office in response to an inquiry made at the request of the individual to whom the records pertain.

(4) To a federal, state, or local agency maintaining civil, criminal, or other relevant enforcement information or other pertinent information, such as current licenses, if necessary for the FDIC to obtain information concerning the hiring or retention of an employee, the issuance of a security clearance, the letting of a contract, or the issuance of a license, grant, or other benefit.

(5) To respond to a federal agency's request made in connection with the hiring or retention of an employee, the issuance of a security clearance, the reporting of an investigation of an employee, the letting of a contract or issuance of a grant, license, or other benefit by the requesting agency, but only to the extent that the information disclosed is necessary and relevant to the requesting agency's decision on the matter.

(6) To other federal Offices of Inspector General for the purpose of requesting peer review of FDIC Office of Inspector General investigations, provided the record is transferred in a form that is not individually identifiable.

In addition to the foregoing, a record which is contained in this system and derived from another FDIC system of records may be disclosed as a routine use as specified in the Federal Register

notice of the system of records from which the records derived.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM

STORAGE:

File folders and computer discs.

RETRIEVABILITY:

Indexed by name of person under investigation, investigation number, referral number, or investigative subject matter.

SAFEGUARDS:

File folders are maintained in lockable metal file cabinets stored in offices that are locked after hours. Computer discs are accessed only by authorized personnel.

RETENTION AND DISPOSAL:

File folders are retained as long as needed and then destroyed by shredding. Computer discs are cleared, retired, or destroyed when no longer useful.

NOTIFICATION PROCEDURE:

Requests must be in writing and addressed to the Office of the Executive Secretary, FDIC, 550-17th Street, NW., Washington, DC 20429. Individuals requesting their own records must provide their name and address and a notarized statement attesting to the individual's identity.

RECORDS ACCESS PROCEDURE:

Same as "Notification" above.

CONTESTING RECORD PROCEDURE:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

Subject individuals, employees of the FDIC, other government employees, and witnesses and informants.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

Pursuant to § 310.13(a) of the FDIC's rules and regulations, investigatory material compiled as part of this system for law enforcement purposes is exempted from the provisions of §§ 310.3 through 310.9 and § 310.10(d)(2) of the FDIC's rules and regulations and may be withheld from disclosure to the extent that such withholding is permissible under any of the exemptive provisions of the Freedom of Information Act (5 U.S.C. 552). Pursuant to § 310.13(b) of the FDIC's rules and regulations, investigatory material compiled solely for the purpose of determining suitability, eligibility, or qualifications for FDIC employment is exempted from the provisions of

§§ 310.3 through 310.9 and § 310.10(d)(2) of the FDIC's rules and regulations and may be withheld from disclosure to the extent that disclosure of such material would reveal the identity of a source who furnished information to the FDIC under a promise of confidentiality and to the extent that such withholding is permissible under any of the exemptive provisions of the Freedom of Information Act.

By direction of the Board of Directors.

Dated at Washington, DC, this 6th day of June, 1989.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-13948 Filed 6-12-89; 8:45 am]

BILLING CODE 6714-01-M

Privacy Act of 1974; Amendment to Existing System of Records

AGENCY: Federal Deposit Insurance Corporation ("FDIC").

ACTION: Notice of amendment to a system of records—"Unofficial Personnel System."

SUMMARY: The FDIC is issuing for public comment a revision of its existing "Unofficial Personnel System" in order to reflect the inclusion of records related to the FDIC Savings Plan.

DATES: Comments must be submitted by August 14, 1989. The amendments will become effective on or before August 28, 1989 unless a superseding notice to the contrary is published before that date.

ADDRESS: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550-17th Street NW., Washington, DC 20429, or hand-delivered to Room 6099 at the same address, Monday through Friday, between the hours of 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Catherine Lundblad, Staff Specialist to the Deputy Director, Office of Personnel Management, FDIC, 550-17th Street, NW., Washington, DC 20429, (202) 898-8857, or M. Jane Williamson, Assistant Executive Secretary, FDIC, 550-17th Street NW., Washington, DC 20429, (202) 898-3713.

SUPPLEMENTARY INFORMATION: The FDIC's system of records entitled "Unofficial Personnel System" is being revised to reflect the inclusion of records pertaining to the FDIC Savings Plan as a new category of records covered by the system. Routine uses have been expanded to include the release of information to various agencies and firms such as the Department of Agriculture's National

Finance Center, which handles the FDIC's payroll/personnel processing, and T. Rowe Price, which invests the funds on behalf of the FDIC Savings Plan. Retrieval of FDIC Savings Plan records generally is by name and social security number. In some cases, however, where the tax code requires that minimum distributions be made to individuals of a certain age, retrieval may be by date of birth. Record source categories have also been expanded to reflect the inclusion of agency pay and leave records for information on the FDIC Savings Plan.

Accordingly, the Board of Directors of the FDIC proposes to revise the Unofficial Personnel System to read as follows:

FDIC 30-64-0015

System name: Unofficial Personnel System.

System location: Office of Personnel Management, FDIC, 550-17th Street, NW., Washington, DC 20429. In addition, records are maintained at the division or office levels in the FDIC Washington office, at the FDIC regional offices, and may be maintained at FDIC field offices. A list of the FDIC's regional offices is available from the Corporate Communications Office, FDIC, 550-17th Street NW., Washington, DC 20429. A list of the field offices may be obtained from the Director, Division of Bank Supervision, FDIC, 550-17th Street NW., Washington, DC 20429 in the case of supervision field offices, and the Operations Branch of Division of Liquidation, FDIC, 550-17th Street NW., Washington, DC 20429 in the case of liquidation field offices.

Categories of individuals covered by the system: All current and former FDIC employees and applicants to and graduates of the FDIC upward mobility program.

Categories of records in the system: This system consists of personnel-related records that are maintained in addition to those kept in the official personnel folder pursuant to the Federal Personnel Manual Suppl. 296-31, table 8, sec. 1. (The United States Office of Personnel Management has Privacy Act responsibility for those systems of records which are government-wide in nature, and it requires agencies to maintain them. Included among these is the Official Personnel Folder. While OPM has designated the FDIC as being responsible for disclosing to its current employees the contents of their Official Personnel Folder, notice of the existence and character of this system is published by the United States Office of Personnel Management as "General

Personnel Records," OPM/GOVT-1.) This system contains records of various types. They are: (1) Records maintained in the Washington, regional, and field offices which may contain information on individuals relating to: birth date; social security number; past and present salaries, grades, and position titles; home address and telephone number; emergency contacts, addresses and telephone numbers; employment and education experience; original applications, resumes, and letters of reference; record of equipment and material issued to the individual; record of leave and time-and-attendance; performance appraisals; written notes or memoranda on employee performance; counseling; employee assignments; lists of banks examined; records relating to on-the-job training; data documenting reasons for personnel actions, decisions, or recommendations made about an employee; disciplinary and adverse action backup material; claims for benefits under the Civil Service Retirement System; Federal Employees' Group Life Insurance; FDIC Employees' Group Life Insurance; documents related to on-the-job injuries; (2) parking permit records containing information (name, address, and type of automobile) about FDIC employees who have applied for (or are members of the applicants' carpool) a parking permit in the FDIC's Washington office garage; (3) FDIC personnel awards including information supporting the employee's nomination for one of these awards; (4) dental insurance records including information on earnings, number and name of dependents, sex, birth date, home address, and social security number; (5) employee locator records containing the employee's name, social security number, division or office assignment, office telephone number and office room number; (6) upward mobility program files coordinated by the FDIC Office of Personnel Management; and (7) FDIC Savings Plan records containing the employee's name, social security number, grade, salary, home address, date of birth, record of employee contributions and FDIC contributions, account earnings and balance, participant designated beneficiaries, date of participation, indication as to whether a participant's interest is vested, allocation of contributions to investment funds, documentation for reason of hardship withdrawal and amount of withdrawal request (including documents evidencing purchase of primary residence, proposals to evict from, or foreclose on the mortgage of, a participant's primary residence, educational expenses, medical

expenses, and other acceptable financial hardship), documentation to support participation in the FDIC Savings Plan Loan Program, and personal financial statement.

Authority for maintenance of the system: Sec. 9 of the Federal Deposit Insurance Act (12 U.S.C. 1819); For category (6), sec. 717 of the Equal Employment Opportunity Act (42 U.S.C. 2000e-16).

Routine uses of records maintained in the system, including categories of users and the purposes of such uses: With regard to category (1) above, the records are primarily maintained to be used by the employee's supervisor for preparation of general personnel action; however, in the case of categories (1), (2), (3), (6), and (7), disclosures may be made, where relevant:

(a) To financial and credit institutions for loan and credit reference purposes (solely to verify the employee's employment with the FDIC, date of employment, and pay grade);

(b) To the United States Office of Personnel Management, the Merit Systems Protection Board, the Office of Special Counsel, the Federal Labor Relations Authority, an arbitrator, and the Equal Employment Opportunity Commission, to the extent disclosure is necessary to carry out the government-wide personnel management, investigatory, adjudicatory and appellate functions within their respective jurisdiction;

(c) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations, or in connection with criminal proceedings;

(d) To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(e) To State authorities regarding reasons for a former employee's separation from FDIC service, where the inquiry is made pursuant to the former employee's application for unemployment compensation;

(f) To Federal and State regulatory agencies, for reasons related to FDIC business, as to the temporary work location of FDIC bank examiners.

Disclosure may be made, in the case of category (4) above, to the dental insurance carrier in support of a claim for dental insurance benefits. In category (5) above, except for the employee's Social Security Number, all information in the record is available to the public. In category (6) above, disclosure may be made to appropriate

FDIC managers, supervisors and Office of Personnel Management individuals who are involved in the assessment, evaluation and selection of an applicant for upward mobility training and/or in the monitoring and evaluation of the upward mobility participant during the training period. In categories (1), (2), and (4) above, disclosure may be made by the FDIC Office of Inspector General to vendors, carriers, or other appropriate third parties for the purpose of verification, confirmation, or substantiation during the performance of audits or investigations. In category (7) above, disclosure may be made, where relevant:

(a) To Federal, State, and local government tax enforcement agencies, upon request, so that they may enforce applicable tax laws;

(b) To annuity vendors so that these firms may provide retired employees with an annuity;

(c) To financial institutions that are qualified pension plan sponsors for purposes of transfer to an individual retirement account or to transfer into another qualified pension plan;

(d) To the Department of Agriculture's National Finance Center to assure correct amounts are deducted from an employee's salary;

(e) To beneficiaries so that they may exercise their entitlement rights;

(f) To audit firms so that they may perform audits;

(g) To T. Rowe Price so that they may carry out their functions as investors of the FDIC Savings Plan funds;

(h) To any person legally responsible for the care of an individual to whom a record pertains and who has been found legally incompetent or under other legal disability, to assure payment of entitled benefits;

(i) To the Department of Health and Human Services, upon its request, of the present address of an employee, former employee, or beneficiary for the purpose of enforcing child support obligations against such individual;

(j) To the appropriate Federal, State, or local agency or authority responsible for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto.

Disclosures to consumer reporting agencies: Disclosures may be made from this system, pursuant to 5 U.S.C. 552a(b)(12) to "consumer reporting

agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)(1)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

Policies and practices for storing, retrieving, accessing, retaining, and disposing of records in the system:

Storage: Maintained on index cards and in file folders. Category (5) is maintained on computer discs, categories (6) and (7) in file folders.

Retrievability: Retrieved by name or in category (7) by date of birth or social security number.

Safeguards: Maintained in lockable metal file cabinets; computer discs are accessed only by authorized personnel.

Retention and disposal: Records are destroyed when no longer relevant to the purpose for which they were compiled and maintained. Generally, records are destroyed when the employee no longer works in the division or office which compiled and maintained the information. Parking permit records are kept for one year and then destroyed. Records of unsuccessful upward mobility candidates are retained for four years after submission; records of successful applicants are maintained until two years after leaving the employ of the FDIC. Records of the FDIC Savings Plan are kept indefinitely.

System manager(s) and address:

Director, Office of Personnel Management, FDIC, 550-17th Street, NW., Washington, DC 20429, for Corporation level records. For FDIC division or office levels, the head of the appropriate division or office; for FDIC regional offices, the regional director; for FDIC field offices, the field office supervisor. For Parking Permit Records and Employee Locator Record, the Director, Division of Accounting and Corporate Services, FDIC, 550-17th Street, NW., Washington, DC 20429. For the upward mobility program and the FDIC Savings Plan, Director, Office of Personnel Management, FDIC, 550-17th Street, NW., Washington, DC 20429.

Notification procedure: Requests must be in writing and addressed to the Office of the Executive Secretary, FDIC, 550-17th Street, NW., Washington, DC 20429.

Record access procedures: Same as "Notification" above.

Contesting record procedures: Same as "Notification" above.

Record source categories: Individuals to whom the records pertain; their immediate supervisors or persons at other supervisory levels; other fellow employees. For upward mobility, record source categories would include educational institutions which the applicant has attended. For the FDIC Savings Plan, record source categories

would include agency pay and leave records.

Systems exempted from certain provisions of the act: None.

By direction of the Board of Directors. Dated at Washington, D.C., this 6th day of June 1989.

Federal Deposit Insurance Corporation,

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 89-13984 Filed 6-12-89; 8:45 am]

BILLING CODE 6714-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-826-DR]

Alaska; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Alaska (FEMA-826-DR), dated May 10, 1989, and related determination.

DATED: June 2, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

NOTICE: The notice of a major disaster for the State of Alaska, dated May 10, 1989, is hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 10, 1989: The communities of Akhiok, Tetlin, Slana, Whale Pass, Thorne Bay, Lime Village, Takotna, Nicolai, Telida, Birch Creek, and Hyder for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

George H. Orrell,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-13995 Filed 6-12-89; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal

Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202-010776-047.

Title: Asia North America Eastbound Rate Agreement.

Parties:

American President Lines, Ltd.
Kawasaki Kisen Kaisha, Ltd.
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Liner Systems, Ltd.
Nippon Yusen Kaisha Line
Sea-Land Service, Inc.

Synopsis: The proposed modification would provide that the parties by unanimous consent, may hold a meeting, including without limitation, a telex, telephone or other electronic meeting, on less than two working days' notice.

Agreement No.: 203-011237-001.

Title: Agreement 1237.

Parties:

Atlantic Container Line BV
Hapag Lloyd AG
P & O Containers (TFL) Limited
A.P. Moller-Maersk Line
Gulf Container Line (GCL), BV
Sea-Land Service, Inc.
Compagnie Generale Maritime (CGM)
Nedlloyd Lijnen BV

Synopsis: The proposed modification would enlarge the geographic scope of the Agreement to cover shipments of cargo from North Europe to and via U.S. West Coast and Gulf of Mexico ports in addition to and via U.S. Atlantic Coast ports. It would also add Incotrans BV as a party to the Agreement.

Agreement No.: 202-011241.

Title: USA-North Europe Rate Agreement.

Parties:

Atlantic Container Line BV
P & O Containers (TFL) Limited
Sea-Land Service, Inc.
Compagnie Generale Maritime (CGM)
Incotrans BV
Gulf Container Line (GCL), BV
Hapag Lloyd AG
Nedlloyd Lijnen BV
A.P. Moller-Maersk Line.

Synopsis: The proposed Agreement would authorize the parties to establish

a conference in the eastbound trade from the United States to North Europe.

Agreement No.: 202-011242.
Title: North Europe-USA Rate Agreement.

Parties:
Atlantic Container Line BV
P & O Containers (TFL) Limited
Sea-Land Service, Inc.
Compagnie Generale Maritime (CGM)
Gulf Container Line (GCL), BV
Hapag Lloyd AG
Nedlloyd Lijnen BV
Incotrans BV.

Synopsis: The proposed Agreement would authorize the parties to establish a conference in the westbound trade from North Europe to the United States.

Agreement No.: 206-011243.
Title: Trans-Atlantic Carrier Association.

Parties:
North Europe-USA Rate Agreement
USA-North Europe Rate Agreement.

Synopsis: The proposed Agreement would permit the parties to establish an interconference arrangement and would permit them to meet, discuss, consult, cooperate, agree upon and take joint or individual action with regard to matters of mutual interest concerning their respective rate agreements.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: June 7, 1989.

[FR Doc. 89-13909 Filed 6-12-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-003695-005.
Title: Port Everglades Authority Terminal Agreement.

Parties:

Port Everglades Authority (Authority)
Sea-Land Service, Inc. (Sea-Land)

Synopsis: The Agreement deletes and restates paragraph 6, 12, 12A, and 13 of the Amended Agreement No. 224-003695 to provide for: (1) Sea-Land to have preferential rights to a berth and any 2 cranes at the assigned berth for 3 vessels each week on a scheduled basis, provided Sea-Land provides appropriate notice; (2) a schedule of wharfage charges based on tonnage levels for a period beginning January 1, 1990; and (3) new crane rental charges and crane rental discounts.

Agreement No.: 224-200254.
Title: Georgia Ports Authority Terminal Agreement.

Parties:

Georgia Ports Authority (Authority)
Columbus Line

Synopsis: The Agreement provides for the one-year lease of container parking slots to be used for the storage and handling of containers, including trailers and chassis used to transport containers, to be loaded on or discharged from ocean-going vessels calling at the Authority's Garden City Terminal, Savannah, Georgia. The Agreement provides for tonnage incentive wharfage rates and provides a renewal option to convert the lease to a three-year Agreement.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

Dated: June 7, 1989.

[FR Doc. 89-13910 Filed 6-12-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Meeting of Consumer Advisory Council

The Consumer Advisory Council will meet on Thursday, June 22. The meeting, which will be open to public observation, will take place in Terrace Room E of the Martin Building. The meeting is expected to begin at 9:00 a.m. and to continue until 5:00 p.m. with a lunch break from 1:00 until 2:00 p.m. The Martin Building is located on C Street, Northwest, between 20th and 21st Streets in Washington, DC.

The Council's function is to advise the Board on the exercise of the Board's responsibilities under the Consumer Credit Protection Act and on other

matters on which the Board seeks its advice. Time permitting, the Council will discuss the following topics:

1. *Community Reinvestment Issues.* Discussion led by the Community Affairs Committee on options related to community reinvestment, and views of individual Council members on issues related to the Community Reinvestment Act.

2. *Community Development Credit Unions.* Discussion led by the Community Affairs Committee on the development of alternative institutions in low-income neighborhoods to provide basic banking services and community reinvestment.

3. *Development Lending Principles and Practices.* Discussion of a Federal Reserve-private sector undertaking to develop and publish a handbook on community development lending.

4. *The Use of Credit Cards in Telemarketing Operations.* Discussion led by the Consumer Credit Committee on problems related to the use of credit cards in telemarketing programs.

5. *Members Forum.* Views of individual Council members regarding (1) the state of community development lending in their communities, and (2) trends in consumer use of financial services.

6. *Committee Reports.* Progress reports from Council committees on their work for the year.

Other matters previously considered by the Council or initiated by Council members may also be discussed.

Persons wishing to submit to the Council their views regarding any of the above topics may do so by sending written statements to Ann Marie Bray, Secretary, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. Comments must be received no later than close of business Friday, June 16, and must be of a quality suitable for reproduction.

Information with regard to this meeting may be obtained from Bedelia Calhoun, Staff Specialist, Consumer Advisory Council, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, (202) 452-2412. Telecommunications Device for the Deaf (TDD) users may contact Earnestine Hill or Dorothea Thompson, (202) 452-3544.

Board of Governors of the Federal Reserve System, June 7, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-13956 Filed 6-12-89; 8:45 am]

BILLING CODE 6210-01-M

Canadian Imperial Bank of Commerce Toronto, Canada; Proposal To Underwrite and Deal In Debt and Equity Securities to a Limited Extent

Canadian Imperial Bank of Commerce, Toronto, Canada ("CIBC"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) ("BHC Act") and § 225.23(a), of the Board's Regulation Y (12 CFR 225.23(a)), for permission for its indirect subsidiary, Wood Gundy Corp., New York, New York ("Company"), to underwrite and deal in all types of debt and equity securities to a limited extent.

Company is currently authorized to: (1) Provide brokerage and investment advisory services to institutional customers and Company's affiliates; (2) provide advice in connection with financial transactions; (3) provide financial advice to the Canadian federal, provincial and municipal governments and their agents, such as with respect to the issuance of their securities in the United States; (4) provide discount brokerage services; (5) provide portfolio investment advice and research and furnish general economic information and advice; and (6) underwrite and deal in securities eligible to be underwritten and dealt in by U. S. member banks, 74 Federal Reserve Bulletin 571 (1988).

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has previously determined that underwriting and dealing in debt and equity securities that are not eligible to be underwritten and dealt in by member banks ("ineligible securities") are closely related and proper incidents to banking, subject to certain conditions. J.P. Morgan & Co. Incorporated, The Chase Manhattan Corporation, Bankers Trust New York Corporation, Citicorp and Security Pacific Corporation, 75 Federal Reserve Bulletin 192 (1989) ("Morgan Order").

CIBC has proposed to underwrite and deal in ineligible debt and equity securities under limitations that differ from those approved by the Board in its Morgan Order. Generally, CIBC

proposes that the framework of limitations established by the Board in the Morgan Order should not apply to its operations outside the United States. For example, under the terms of its proposal, CIBC, which is a foreign bank as well as a bank holding company, and its foreign offices and subsidiaries would be permitted to lend to and in support of Company. CIBC does not propose that any U.S. bank, branch or agency affiliate would lend or otherwise provide support to Company. CIBC has also made other commitments as alternatives to those approved in the Morgan Order.

CIBC has also requested additional authority for Company: (1) To underwrite and deal in ineligible debt and equity securities in amounts generating up to 10 percent of Company's gross revenues; (2) to underwrite and deal in equity securities immediately without regard to the one-year waiting period established by the Board in the Morgan Order; and (3) to underwrite and deal in securities representing interests in, or secured by, obligations originated or sponsored by its affiliates if such security is rated by a nationally-recognized rating agency or is issued or guaranteed by a U.S. government agency or a U.S. Government-sponsored agency. CIBC's commitments and application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of New York.

In publishing the proposal for comment, the Board does not take any position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act or the Glass-Steagall Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 10, 1989. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Board of Governors of the Federal Reserve System, June 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13957 Filed 6-12-89; 8:45 am]

BILLING CODE 6210-01-M

Dresdner Bank AG; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated and at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 1989.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Dresdner Bank AG*, Frankfurt/Main 11, Federal Republic of Germany; to acquire a joint venture interest in Oechsle International Advisors, L.P., Boston, Massachusetts, and thereby to engage in investment advisory activities

pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 7, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-13958 Filed 6-12-89; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 89F-0176]

American Cyanamid Co.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that American Cyanamid Co. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of disodium 4-isodecyl sulfosuccinate for use as a component of adhesives and as an emulsifier in the production of food-contact polymers.

FOR FURTHER INFORMATION CONTACT: Mary W. Lipien, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), 72 Stat. 1786 (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 9B4122) has been filed by American Cyanamid Co., One Cyanamid Plaza, Wayne, NJ 07470. The petition proposes to amend § 175.105 *Adhesives* (21 CFR 175.105) and § 178.3400 *Emulsifiers and/or surface-active agents* (21 CFR 178.3400) of the food additive regulations to provide for the safe use of disodium 4-isodecyl sulfosuccinate for use as a component of adhesives and as an emulsifier in the production of food-contact polymers.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the *Federal Register* in accordance with 21 CFR 25.40(c).

Dated: June 2, 1989.

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-13970 Filed 6-12-89; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee, et al; Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92-463, 86 Stat. 770-776), and section 402(b)(6) of the Public Health Service Act, (42 U.S. Code 282(b)(6)) as amended, the Director, NIH, announces the reestablishment, effective June 30, 1989, of the following committees:

Arteriosclerosis, Hypertension and Lipid Metabolism Advisory Committee
Blood Diseases and Resources Advisory Committee
Cardiology Advisory Committee
Clinical Applications and Prevention Advisory Committee
Pulmonary Diseases Advisory Committee

Unless renewed by appropriate action, these committees will terminate on June 30, 1991.

Dated: June 2, 1989.

Joseph E. Rall,

Acting Director, NIH.

[FR Doc. 89-13913 Filed 6-12-89; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Diabetes and Digestive and Kidney Diseases, National Diabetes Advisory Board; Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the National Diabetes Advisory Board's meeting date which will be July 17, 1989. The meeting will begin at 8:30 a.m. and end at approximately 4:30 p.m. The Board will meet at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The purpose of the meeting is to discuss the Board's activities and to continue evaluation of the implementation of the long-range plan to combat diabetes mellitus. Although the entire meeting will be open to the public, attendance will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

For any further information, please contact Mr. Raymond M. Kuehne, Executive Director, National Diabetes Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045. His office will provide,

for example, a membership roster of the Board and an agenda and summaries of the actual meetings.

Dated: June 6, 1989.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 89-13914 Filed 6-12-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Delaware Water Gap National Recreation Area Citizens Advisory Commission; Establishment

This notice is published in accordance with section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463). Following consultation with the General Services Administration, notice is hereby given that the Delaware Water Gap National Recreation Area Citizens Advisory Commission is established. The purpose of the Commission is to advise the Secretary of the Interior on matters pertaining to the management and operation of the Delaware Water Gap National Recreation Area, as well as on other matters affecting the recreation area and its surrounding communities.

Further information regarding the Commission may be obtained from the Regional Director, Mid-Atlantic Region, National Park Service, Philadelphia, Pennsylvania 19106.

The certification of establishment is published below.

Certification

I hereby certify that the Delaware Water Gap National Recreation Area Citizens Advisory Commission is in the public interest in connection with the performance of duties imposed on the Department of the Interior by 16 U.S.C., et seq., and 16 U.S.C. Sec. 431, et seq.

Date: May 1, 1989.

Manuel Luijan,

Secretary of the Interior.

[FR Doc. 89-13989 Filed 6-12-89; 8:45 am]

BILLING CODE 4310-70-M

Fish and Wildlife Service

Klamath River Basin Fisheries Task Force; Meeting

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of meetings.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss et seq.). The meetings are open to the public.

DATES: The Klamath River Basin Fisheries Task Force will meet from 8 a.m. to 5:00 p.m., Thursday, June 29, 1989.

ADDRESS: The meeting will be held at the Bureau of Indian Affairs Office, 2045 Salmon Avenue (directly behind the Post Office) Klamath, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, 1312 Fairlane Road, Yreka, California 96097, telephone (916) 842-5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force, please refer to the notice of their initial meeting that appeared in the *Federal Register* on July 8, 1987 (52 FR 25639).

The Task Force will hear a report on progress of projects being funded in the current fiscal year (Fiscal Year 1989), and a report on harvest management actions affecting anadromous fish stocks in the Klamath River Basin in 1989.

The Task Force will hear a report from technical staff on projects proposed for funding in Fiscal Year 1990, and will identify a set of projects to be recommended to the Fish and Wildlife Service and the California Department of Fish and Game for funding.

Dated: June 1, 1989.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 89-13964 Filed 6-12-89; 8:45 am]

BILLING CODE 4310-55-M

Bureau of Land Management

[NV-930-09-4212-14; N-42538]

Battle Mountain District; Shoshone-Eureka Resource Area

AGENCY: Bureau of Land Management, Interior.

ACTION: Realty Action; Noncompetitive Sale of Federal Lands in Lander County, Nevada.

SUMMARY: The following land has been found suitable for direct sale under sections 203 and 209 of the Federal Land Policy and Management Act of 1976 (90 Stat. 2750, 43 U.S.C. 1713) at no less than the appraised fair market value. The

land will not be offered for sale until at least 60 days after the date of this Notice.

Mount Diablo Meridian

T. 17 N., R. 42 E.,

Sec. 18, Lot 1, NE¼NW¼.

A parcel of land containing 79.06 acres, more or less.

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, pending disposition of this action or 270 days from the date of publication of this Notice, whichever occurs first.

Robert L. Foster has asked to buy this land to augment his farming operation in Reese River Valley, Nevada. The sale is consistent with the Shoshone-Eureka Resource Management Plan. No conflicts with State or local land use plans have been identified. The subject lands are within the San Juan grazing allotment and grazing permittees will be sent the required two-year grazing notices prior to sale.

It has been determined that the subject parcel contains no known mineral values; therefore, mineral interests may be conveyed simultaneously. Acceptance of the sale offer will constitute an application for conveyance of those mineral interests. A nonrefundable fee of \$50 will be required from purchaser for purchase of the mineral interests.

The patent, when issued, will be subject to all valid existing rights and will contain the following reservation to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, in accordance with the Act of August 30, 1890 (26 Stat. 391; U.S.C. 945).

For a period of 45 days from the date of publication of this notice in the *Federal Register*, interested parties may submit comments to the District Manager, Bureau of Land Management, P.O. Box 1420, Battle Mountain, Nevada 89820. Objections will be reviewed by the State Director who may sustain, vacate or modify this realty action. In the absence of any objections, this realty action will become the final determination of the Department of the Interior.

Date Signed: June 1, 1989.

Thomas H. Jury,

Acting District Manager.

[FR Doc. 89-13965 Filed 6-12-89; 8:45 am]

BILLING CODE 4310-HC-M

[ID-942-09-4730-12]

Idaho; Filing of Plats of Survey

The plat of survey of the following described land, was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 10:00 a.m., June 1, 1989.

The supplemental plat representing the revised lottings in section 26, T. 48 N., R. 4E., Boise Meridian, Idaho, was accepted May 25, 1989. This supplemental plat was prepared to meet certain administrative needs of this Bureau.

All inquiries about this land should be sent to the Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho, 83706.

June 1, 1989.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 89-13966 Filed 6-12-89; 8:45am]

BILLING CODE 4310-GG-M

[NV-930-09-4212-22]

Filing of Plats of Survey; Nevada

June 5, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

EFFECTIVE DATE: Filings were effective at 10:00 a.m. on May 26, 1989.

FOR FURTHER INFORMATION CONTACT: Lancel Bland, Chief, Branch of Cadastral Survey, Bureau of Land Management, (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702-328-6341.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on the date indicated.

Mount Diablo Meridian, Nevada

T. 31 N., R. 55 E.—Dependent Resurvey

T. 30 N., R. 56 E.—Dependent Resurvey

Both surveys were accepted on May 17, 1989. The surveys were executed to meet certain administrative needs of the Bureau of Land Management.

Both of the above-listed plats are now the basic record for describing the lands for all authorized purposes. The plats will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of

information. Copies of the plats and related field notes may be furnished to the public upon payment of the appropriate fee.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-14039 Filed 6-12-89; 8:45 am]

BILLING CODE 4310-HC-M

[NV-943-09-4220-10; N-50507, N-50566]

Proposed Withdrawal and Opportunity for Public Meeting

June 5, 1989.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management (BLM) proposes to withdraw 10 acres of public land in Eureka County and 5 acres of public land in Nye County to protect two proposed BLM administrative sites. This notice closes the land for up to 2 years from surface entry and mining. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by September 11, 1989.

ADDRESS: Comments and meeting requests should be sent to the Nevada State Director, BLM, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office (702) 328-6326.

SUPPLEMENTARY INFORMATION: On May 26, 1989, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

Mount Diablo Meridian

T. 2 N., R. 42 E.,

Sec. 1, W $\frac{1}{2}$ NW $\frac{1}{4}$ SE $\frac{1}{4}$ SW $\frac{1}{4}$;

T. 19 N., R. 53 E.,

Sec. 11, E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NE $\frac{1}{4}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$.

The area described aggregates 10 acres in Eureka County and 5 acres in Nye County.

The purpose of the proposed withdrawal is to protect two proposed BLM administrative sites.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the undersigned officer of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the undersigned officer within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **FEDERAL REGISTER** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR Part 2300.

For a period of 2 years from the date of publication of this notice in the **FEDERAL REGISTER**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are leases, licenses, permits, and rights-of-way.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 89-14040 Filed 6-12-89; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

National Register of Historic Places; Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before June 3, 1989. Pursuant to § 6013 of 36 CFR Part 60 written comments concerning the significance of these properties under National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by June 28, 1989.

Carol D. Shull,

Chief of Registration, National Register.

INDIANA

Clark County

French, Henry, House, 217 E. High St., Jeffersonville, 89000772

Delaware County

Kimbrough, Emily, Historic District (Boundary Increase), Roughly E. Gilbert, Beacon St., E. Charles St., Madison St., Muncie, 89000779

Fountain County

Hesler, Clinton F., Farm, Co. Rd. 450 S. between 200 E. and 300 E., Veedersburg vicinity, 89000770

Johnson County

Franklin Commercial Historic District, Roughly E. & W. Court St., Jefferson, Monroe, Main, Franklin, 89000773

Marion County

New Augusta Historic District, Roughly E. 71st St., E. 74th St., Coffman Rd., New Augusta Rd., Indianapolis, 89000780

Orange County

Braxton, Thomas Newby, House, 210 N. Gospel St., Paoli, 89000777

Owen County

Beem, David Enoch, House, 635 W. Hillside Ave., Spencer, 89000771

Rush County

Reeves, Jabez, Farmstead, Co. Rd. 900 N., Rushville vicinity, 89000778

MARYLAND

Prince George's County

Cottage, The, 11904 Old Marlboro Pk., Upper Marlboro vicinity, 89000789

MICHIGAN

Lenawee County

Adrian Engine House No. 1, 126 E. Church St., Adrian, 89000789

Oakland County

Casa del Rey Apartments, 111 Oneida Rd., Pontiac, 89000787

Ottawa County

Van Raalte, Benjamin, House, 1078 Sixteenth St., Holland, 89000790

Wayne County

St. Stanislaus Bishop and Martyr Roman Catholic Parish Complex, 5818 Dubois St., Detroit, 89000788

St. Theresa of Avila Roman Catholic Parish Complex, 8666 Quincy Ave., Detroit, 89000786

St. Thomas the Apostle Catholic Church and Rectory, 8363-8383 Townsend Ave., Detroit, 89000785

MISSISSIPPI

Adams County

Oakland, Lower Woodville Rd., Natchez vicinity, 89000781

Woodstock, Carmel Church Rd., 12 mi. SE of Natchez, Natchez vicinity, 89000782

Chickasaw County

Bynum Mound and Village Site (22CS501), Address Restricted, Houston vicinity, 89000783

Madison County

Boyd Mounds Site (22MD512), Address Restricted, Ridgeland vicinity, 89000784
Canton Courthouse Square Historic District (Boundary Increase), W. Peace St., Canton, 89000778

MONTANA

Flathead County

Cornelius Hedges Elementary School, 827 4th Ave., East, Kalispell, 89000765

Missoula County

East Pine Street Historic District, Roughly bounded by E. Pine St., Madison St., E. Broadway, and Pattee St., Missoula, 89000768

NEW JERSEY

Bergen County

Draw Bridge at New Bridge, Main St. and New Bridge Rd. over Hackensack River, River Edge, 89000775

Burlington County

Paul, Alice, Birthplace, 118 Hooten Rd., Mt. Laurel Township, 89000774

The following properties are also being considered for listing in the National Register:

MARYLAND

Montgomery County

Darnall Place (Boundary Decrease), 17615 White's Ferry Rd., Poolesville 79003919

MASSACHUSETTS

Middlesex County

Gardner, O.W., House, Winchester MRA, 5 Myrtle St., Winchester 89000791

[FR Doc. 89-13988 Filed 6-12-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31422]

Cagy Industries, Inc., Control Exemption, Chattooga & Chickamauga Railway Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Pursuant to 49 U.S.C. 10505, the Interstate Commerce Commission exempts CAGY Industries, Inc., (CAGY) from the prior approval requirements of 49 U.S.C. 11343, *et seq.*, to acquire control of the Chattooga & Chickamauga Railway Company (C&C). CAGY currently controls Columbus & Greenville Railway Company (C&G), which has granted C&C trackage rights over its line between milepost 4, at Davis, and milepost 6, at Waters, in Lowndes County, MS. The reporting requirements of 49 CFR 1105.7 are waived. The exemption is subject to employee protective conditions.

DATES: This exemption is effective on July 14, 1989. Petitions for stay must be filed by June 23, 1989. Petitions for reconsideration must be filed by July 3, 1989.

ADDRESSES: Send pleadings referring to Finance Docket No. 31422 to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

(2) Petitioner's representative: Lester A. Sittler, 137 Main Street, P.O. Box 128, Cooperstown, NY 13326.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. [TDD for hearing impaired: (202) 275-1721].

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 275-1721.]

Decided: May 24, 1989

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Kathleen M. King,

Acting Secretary.

[FR Doc. 89-14014 Filed 6-12-89; 8:45 am]

BILLING CODE 7035-01-M

[Finance Docket No. 31442]

Consolidated Rail Corp.; Joint Project for Relocation of a Line of Railroad; CSX Transportation, Inc.

On May 24, 1989, Consolidated Rail Corporation (Conrail) and CSX Transportation, Inc. (CSXT), filed a notice of exemption under 49 CFR 1180.2(d)(5) for exchange of trackage located in South Philadelphia, PA, that will confer ownership to: (1) Conrail, of CSXT's 3.21-mile line, the No. 4 Track and No. 4 Extension Track, between Valuation Station 130+27± at "Penrose" and Valuation Station 296+04± at Thorofare Crossover, including turnouts; and (2) CSXT, of Conrail's 3.03-mile line the No. 1 Harrisburg Track and No. 2 Thorofare Track, between Valuation Station 139+55± and 301+59±, including turnouts.

The joint project involves the relocation of lines of railroad that will not disrupt service to shippers and, thus, the exchange of trackage qualifies under the class exemption procedures at 49 CFR 1180.2(d)(5).

Use of this exemption will be conditioned on appropriate labor protection. Any employees affected by the joint relocation will be protected by the conditions in *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354

I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on:

Cheryl A. Cook, Consolidated Rail Corporation, 1138 Six Penn Center Plaza, Philadelphia, PA 19103-2959, and.

C.M. Rosenberger, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202.

Dated: June 7, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 89-14114 Filed 6-12-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Lodging of Two Consent Decrees Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; Deere and Co. et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on May 26, 1989, two proposed consent decrees in *United States v. Deere and Company, et al.*, Civil No. 82-C-268-E were lodged with the United States District Court for the Northern District of Oklahoma. The proposed consent decrees arise from a civil action filed under section 122(g) of CERCLA, 42 U.S.C. 9622(g) and section 107 for reimbursement of costs both past and future incurred by the United States in connection with releases and threatened releases of hazardous materials from an agricultural chemical facility ("the Pryor Plant") owned successively by Deere and Company, Nipak, Inc. and Kaiser Aluminum and Chemical Corporation, near the town of Pryor, Oklahoma. Under the terms of the Decrees, Deere and Company and Nipak, Inc. will remediate the site by onsite incineration of contaminated soils and will reimburse the United States \$50,000 towards its response costs incurred at the site. Kaiser Aluminum and Chemical Corporation will pay the United States \$18,000 towards its response costs incurred at the site.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decrees.

Comments should be addressed to the Acting Assistant Attorney General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Deere and Company, et al.*, DJ Ref. 90-5-1-6-254.

The proposed Consent Decrees may be examined at the Office of the United States Attorney, Northern District of Oklahoma, 3600 U.S. Courthouse, 333 West Fourth Street, Tulsa, Oklahoma 74103. Copies of the Consent Decrees may be examined at the Department of Justice, Environmental Enforcement Section, Room 1647, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decrees may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy please enclose a check in the amount of \$5.00 (10 cents per page reproduction cost) payable to, the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-13938 Filed 6-12-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Hunn, et al.

In accordance with Departmental policy, 28 C.F.R. 50.7, notice is hereby given that on May 30, 1989 a proposed Consent Decree in *United States v. Hunn, et al.* was lodged with the United States District Court for the District of Delaware. The proposed Consent Decree concerns the clean up of an abandoned landfill near Dover, Delaware—the Wildcat Landfill—by a group of settling defendants and the payment by the settlers of \$200,000 of the costs incurred by the Environmental Protection Agency (EPA) in investigation and enforcement activities related to this site pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9601 *et seq.* The proposed Consent Decree provides for the construction of the remedy at the Wildcat Landfill site, the performance of operation and maintenance activities, the payment of \$140,000 in oversight costs, and the payment of \$200,000 of EPA's past costs.

The Department of Justice will receive for a period of thirty (30) days from the date of publication comments relating to the proposed Consent Decree.

Comments should be addressed to the Acting Assistant Attorney General,

Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. Hunn, et al.* DJ. Ref. 90-11-2-300.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 844 King Street, Wilmington, Delaware 19801, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose \$5.80 (10 cents per page reproduction cost) payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General.

[FR Doc. 89-13939 Filed 6-12-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Partial Consent Decree Concerning Love Canal Hazardous Waste Site; Occidental Chemical Corp., et al.

In accordance with section 122(d) of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9622(d), and Department Policy, 28 CFR 50.7, 38 Fed. Reg. 19029, notice is hereby given that a proposed Partial Consent Decree in *United States, et al. v. Occidental Chemical Corporation, et al.*, Civil Action No. 79-990C, was lodged with the United States District Court for the Western District of New York on June 1, 1989. The proposed Partial Consent Decree provides that Occidental Chemical Corporation shall implement a portion of the Record of Decision issued by the United States Environmental Protection Agency on October 26, 1987, as modified by the Decree, concerning the destruction and disposal of sediments excavated from sewers and creeks near the Love Canal hazardous waste site in Niagara Falls, New York. Specifically, the proposed Partial Consent Decree requires Occidental Chemical Corporation to transport the sediments and other Love Canal remedial wastes to its Niagara Falls plant site, temporarily store the materials in a centralized storage facility, and incinerate the wastes in a thermal destruction unit at the plant site. In order to expedite cleanup of the Love Canal area creeks, the parties have agreed to commence work prior to entry of the Partial Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the

date of publication of this notice, written comments relating to the proposed Partial Consent Decree. Comments should be addressed to the Assistant Attorney General, Land and Natural Resources Division, United States Department of Justice, Washington, DC 20530, and should refer to *United States v. Occidental Chemical Corporation*, D.J. Ref. No. 90-5-1-1-1229.

The proposed Partial Consent Decree may be examined at the office of the United States Attorney, Western District of New York, 502 U.S. Courthouse, 68 Court Street, Buffalo, New York 14202; at the Region II office of the United States Environmental Protection Agency, 26 Federal Plaza, New York, New York 10278; and at the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Partial Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division, United States Department of Justice, at the above address. In requesting a copy, please enclose a check in the amount of \$10.50, payable to the Treasurer of the United States, to cover the costs of reproduction.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-13941 Filed 6-12-89; 8:45 am]

BILLING CODE 4410-01-M

Lodging of Consent Decree; Pacific Hide and Fur Depot, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7 and 42 U.S.C. 9622(d), section 122(d) of CERCLA, notice is hereby given that on May 30, 1989 a proposed Partial Consent Decree in *United States v. Pacific Hide and Fur Depot, Inc., et al.*, District of Idaho Civil Action No. 83-4052, was lodged with the United States District Court for the District of Idaho. This is a civil action against 6 individual and three corporate defendants under sections 106 and 107 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), 42 U.S.C. 9606 and 9607, section 7003 of the Resource Conservation and Recovery Act, 42 U.S.C. 8973, and Sections 7 and 17 of the Toxic Substances Control Act, 15 U.S.C. 2606 and 2616, for recovery of costs and injunctive relief in connection with the clean up of PCB contaminated

capacitors at a recycling and scrap facility in Pocatello, Idaho.

The proposed consent decree resolves some of the claims alleged in the complaint and provides for one defendant, Idaho Power Company, to implement the remedy selected by EPA in its Record of Decision. The Environmental Protection Agency estimates the remedy will cost approximately \$2.0 million. Full recovery of the costs previously incurred by the United States, anticipated future oversight costs associated with implementation of the remedial action at the Site, as well as operation and maintenance of the remedy, have been left to the remaining defendants. The remaining defendants will be pursued for these costs.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, P.O. Box 7611, Washington, DC 20044. Comments should refer to *United States v. Pacific Hide and Fur Depot, Inc., et al.*, D.J. Ref. 90-11-2-47.

The proposed Consent Decree may be examined at the Office of the United States Attorney, District of Idaho, Room 328 Federal Building, 550 West Fort Street, Boise, Idaho 83724, and at the

Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1732(R), Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20004. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-13940 Filed 6-12-89; 8:45 am]

BILLING CODE 4410-01-M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance; Chase Packaging Corp. et al.

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Chase Packaging Corp. (Workers)	Hudson Falls, NY	5/22/89	5/6/89	22,933	Packaging Bags
Coppedge Oil & Gas, Inc. (Company)	Plano, TX	5/22/89	5/1/89	22,934	Oil and gas
Encino Shirt Co. (ILGWU)	Moulton, AL	5/22/89	5/2/89	22,935	Men's sportshirts
Gearhart Industries, Inc. (Workers)	Fort Worth, TX	5/22/89	5/2/89	22,936	Oil and gas
Gower Pumping Service, Inc. (Workers)	Eldorado, TX	5/22/89	5/4/89	22,937	Oil and gas
Hudson Sewing, Inc. (Workers)	Hoboken, NJ	5/22/89	5/2/89	22,938	Ladies' loungewear and lingerie
Kennedy Mills, Inc. (ACTWU)	Janesville, WI	5/22/89	5/8/89	22,939	Wool fabric
Les Wilson, Inc. (Company)	Carmi, IL	5/22/89	5/21/89	22,940	Oil and gas
Mark Producing, Inc. (Workers)	Houston, TX	5/22/89	4/21/89	22,941	Oil and gas
Miami Carey (Workers)	Swainsboro, GA	5/22/89	5/4/89	22,942	Ventilation and door chimes
Mosler Inc. (UAW)	Hamilton, OH	5/22/89	5/5/89	22,943	Security products (safes, vault doors and security files)
Mundy Contract Maintenance, Inc.	Houston, TX	5/22/89	5/4/89	22,944	Maintenance services
Nortronics Co., Inc. (Workers)	Minneapolis, MN	5/22/89	5/1/89	22,945	Electronic tape heads
Santa Fe International Corp. (Workers)	Houston, TX	5/22/89	3/31/89	22,946	Oil and gas
Senior Drilling & Exploration Inc. (Workers)	Lafayette, LA	5/22/89	4/27/89	22,947	Oil and gas
Sherwood Medical, Inc. (Company)	Sherburne, NY	5/22/89	4/28/89	22,948	External feeding sets
Transmission Technology Co., Inc. (Company)	Fairfield, NJ	5/22/89	5/1/89	22,949	Propulsion systems
Tnstar Sports, Inc. (Company)	Middletown, CT	5/22/89	5/1/89	22,950	Alpine skis
USECB Joint Venture (Company)	Riverton, WY	5/22/89	5/5/89	22,951	Uranium
Wedge Wireline, Inc. (Workers)	Odessa, TX	5/22/89	5/1/89	22,952	Oil and gas
Yesterday's News, Inc. (Company)	New York, NY	5/22/89	4/28/89	22,953	Women's dresses
L.E.C., Ltd./Geosearch Inc. (Workers) ¹	Tulsa, OK	11/14/88	11/4/88	21,627	Oil and gas
Milpark Drilling Fluids (Workers) ¹	Houston, TX	10/3/88	9/11/88	21,208	Drilling fluids
Fitkin Petroleum Corp. (Company) ¹	Oklahoma City, OK	11/18/88	10/3/88	22,318	Oil

¹ Investigation reopened.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, on or before June 23, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than on or before June 23, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, DC 20213.

Signed at Washington, DC, this 22nd day of May 1989.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

U.S. DEPARTMENT OF LABOR

[TA-W-22,284 and TA-W-22-412]

Dismissal of Applications for Reconsideration; Heritage Cable TV and Shortway Products

Pursuant to 29 CFR 90.18 applications for administrative reconsideration were filed with the Director of the Office of Trade Adjustment Assistance for workers at the Heritage Cable TV, Branford, Connecticut, and Shortway Products, Clearfield, Pennsylvania. The reviews indicated that the applicants contained no new substantial information which would bear importantly on the Department's determinations. Therefore dismissal of the applications were issued.

TW-W-22,284; Heritage Cable TV, Branford, Connecticut (May 23, 1989)
TA-W-22,412; Shortway Products, Clearfield, Pennsylvania (May 23, 1989)

Signed at Washington, DC this 25th day of May 1989.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-13986 Filed 6-12-89; 8:45 am]

BILLING CODE 4510-30-M

DEPARTMENT OF LABOR

[TA-W-22, 197]

Terra Resources, Denver, CO.; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Terra Resources, Denver, Colorado. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-22, 197; Terra Resources, Denver, Colorado (May 24, 1989)

Signed at Washington, DC, this 25th day of May 1989.

Marvin M. Fooks,
Director, Office of Trade Adjustment Assistance.

[FR Doc. 89-13987 Filed 6-12-89; 8:45 am]

BILLING CODE 4510-30-M

Merit Systems Protection Board

Opportunity to Comment on the Coverage of a Review of Actions Taken By the Office of Personnel Management Since January 1988

AGENCY: U.S. Merit Systems Protection Board.

ACTION: Notice of opportunity to comment on the coverage of a review of action taken by the Office of Personnel Management (OPM) since January 1988.

SUMMARY: 5 U.S.C. 1209(b) requires the U.S. Merit Systems Protection Board (Board) to report annually to the President and the Congress on the "significant actions" of OPM, including an analysis of whether those actions are in accord with merit system principles and free from prohibited personnel practices. The Board is in the process of reviewing OPM's significant actions since January 1988. This notice explains the Board's study and invites public comment on OPM's programs and activities.

DATE: Comments must be received on or before July 28, 1989.

ADDRESS: Comments must be made in writing and sent to the Office of Policy and Evaluation, U.S. Merit System Protection Board, 1120 Vermont Avenue, NW., 8th Floor, Washington, DC 20419, Attention: Charles Friedman.

FOR FURTHER INFORMATION CONTACT: Charles Friedman, Project Manager, Office of Policy and Evaluation, U.S. Merit Systems Protection Board, 1120 Vermont Avenue, NW., 8th Floor, Washington, DC 20419, (202) 653-7208.

SUPPLEMENTARY INFORMATION:

The Civil Service Reform Act of 1978 established the merit principles (5 U.S.C. 2301) and prohibited personnel practices (5 U.S.C. 2302) as standards for personnel management in the Federal Government. The Board is responsible for protecting the public interest in a civil service administered according to these standards by adjudicating employee appeals, acting on actions brought by the Special Counsel, conducting special studies of the civil service and other merit systems, and reviewing the regulations and significant actions of OPM. The Office of Policy and Evaluation has principal responsibility within the Board for merit studies and OPM oversight, including the annual report on OPM's significant actions.

(a) What Is An OPM Significant Action?

The statutory provision at 5 U.S.C. 1209(b) does not specify criteria for the Board to use in determining which

actions of OPM are significant for purposes of preparing its report. In exercising its discretion as to which actions of OPM it will study, the Board considers the following:

(1) Any OPM policy or program which might conflict with the statutory merit principles or contribute to the commission of a prohibited personnel practice;

(2) The extent to which other major decisions made or actions taken by OPM are in accord with and promote the merit principles; and

(3) OPM's impact, overall, on personnel management within the merit systems of the Federal civil service.

(b) Public Comment on Significant Actions

The Board invites any interested person or organization to comment on: which actions of OPM since January 1988 were "significant" for the merit systems; whether those actions were consistent with the merit system principles and free from prohibited personnel practices; what types of data would be most pertinent in evaluating the significant action(s) being suggested; and where can the data be found.

Although comments are invited on any action taken by OPM since January 1988, comments should be consistent with the Board's criteria as described above. Consideration may also be given to the fact that a lack of action on an issue by OPM can constitute a significant action for purposes of this review.

Finally, the Board also invites comments on the relative priority that should be assigned to each of the significant actions being suggested.

(c) Format for Comments

The comments should contain for each topic a short statement of the issue being raised, a brief explanation as to why it should be reviewed, and a description of the favorable or adverse impact of the action on the Federal service.

Suggestions on what data (nature and sources) would be most useful in evaluating the issue and OPM's action(s), as well as comments on the relative priority of all potential study topics, should be shown in a separate paragraph.

(d) Acknowledgment of Comments

Owing to the nature of this notice (i.e., a request for suggestions), no acknowledgment or response will be provided to those who submit comments.

(e) Confidentiality

The Board will protect the identity of persons submitting comments and the confidentiality of such comments to the extent permitted by law.

Dated: June 7, 1989.

Robert E. Taylor,
Clerk of the Board.

[FR Doc. 89-14044 Filed 6-12-89; 8:45 am]

BILLING CODE 7400-01-M

NATIONAL CREDIT UNION ADMINISTRATION**Public Information Collection Requirement Submitted to OMB for Review**

June 6, 1989.

The National Credit Union Administration has submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submissions may be obtained by calling the NCUA Clearance Officer listed. Comments regarding information collections should be addressed to the OMB reviewer listed and to the NCUA Clearance Officer, NCUA, Administrative Office, Room 7344, 1776 G Street, Washington, DC 20456.

OMB Number: New Collection
Form Number: NCUA 4221, 4401, 4505, 4506 and 9600

Type of Review: Approval
Title: 12 U.S.C. 1771—Conversion from Federal to State Credit Union and from State to Federal Credit Union; 12 U.S.C. 1781—Insurance of Member Accounts—Eligibility

Description: Certain information must be submitted by a credit union requesting conversion from state to federal charter or from the federal to state charter. Information is also required to determine eligibility for federal share insurance.

Respondents: Credit Union Officials.
Estimated Number of Respondents: 50
Estimated Burden Hours per Response: 4 hours.

Frequency of Response: Once per respondent.

Estimated Total Reporting Burden: 200 hours.

OMB Number: 3133-0015
Form Number: NCUA 4000, 4001, 4006, 4012 and 9500

Type of Review: Renewal

Title: Application for Federal Credit Union Charter

Description: The forms contained in this information collection constitute the application for and investigation of a new federal credit union charter. The character and fitness of charter subscribers and the economic advisability of the proposed charter must be determined.

Respondents: Federal credit union organizers.

Estimated Number of Respondents: 46
Estimated Burden Hours per Response: 75 hours.

Frequency of Response: One time.

Estimated Total Reporting Burden: 300 hours.

Clearance Officer: Wilmer A. Theard, (202) 682-8700, National Credit Union Administration, Room 7344, 1776 G Street, Washington, DC 20456.

OMB Reviewer: Gary Waxman (202) 395-7340, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503
Becky Baker,

Secretary of the NCUA Board.

[FR Doc. 89-13967 Filed 6-12-89; 8:45 am]

BILLING CODE 7535-01-M

NUCLEAR REGULATORY COMMISSION**Advisory Committee on Nuclear Waste; Meeting**

The Advisory Committee on Nuclear Waste (ACNW) will hold its 12th meeting on June 28-30, 1989, 8:30 a.m.-5:00 p.m. each day, Room P-110, 7920 Norfolk Avenue, Bethesda, MD. The purpose of this meeting includes: completion of the ACNW review of the Site Characterization Analysis, a discussion of reporting mishaps in the management of low-level wastes, a status report on cementitious waste forms, a discussion of the approach to performance assessment for the high-level waste repository and status of activities, a discussion of research related to nuclear waste, and an administrative session to discuss anticipated and proposed Committee activities, future meeting agenda, and organizational matters.

Procedures for the conduct of and participation in ACNW meetings were published in the *Federal Register* on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, recordings will be permitted only during those portions

of the meeting when a transcript is being kept, and questions may be asked only by members of the Committee, its consultants, and Staff. The Office of the ACNW is providing Staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the Office of the ACNW as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by a prepaid telephone call to the Executive Director of the Office of the ACNW, Mr. Raymond F. Fraley (telephone 301/492-4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director if such rescheduling would result in major inconvenience.

Date: June 7, 1989.

John C. Hoyle.

Advisory Committee Management Officer.

[FR Doc. 89-13907 Filed 6-12-89; 8:45 am]

BILLING CODE 7590-01-M

Governors' Designees Receiving Advance Notification of Transportation of Nuclear Waste

On January 6, 1982, the Nuclear Regulatory Commission (NRC) published in the *Federal Register*, as final, certain amendments to 10 CFR Parts 71 and 73 (effective July 6, 1982), which require advance notification to Governors or their designees concerning transportation of certain shipments of nuclear waste and spent fuel. The advance notification covered in Part 73 is for spent nuclear reactor fuel shipments and the notification for Part 71 is for large quantity shipments of radioactive waste (and of spent nuclear reactor fuel not covered under the final amendment to 10 CFR Part 73).

The following list updates the names, addresses and telephone numbers of those individuals in each State who are responsible for receiving information on nuclear waste shipments. The list will be published annually in the *Federal Register* on or about June 30, to reflect any changes in information.

Individuals Receiving Advance Notification of Nuclear Waste Shipments

States	Part 71	Part 73
Alabama	Col. Thomas H. Wells, Director, Alabama Department of Public Safety, P.O. Box 1511, Montgomery, AL 36192-0501, (205) 261-4378.	Same.
Alaska	Mr. Dennis Kelso, Commissioner, Alaska Department of Environmental Conservation, Pouch O, Juneau, AK 99811, (907) 465-2600.	Same.
Arizona	Charles F. Tedford, Director, Arizona Radiation Regulatory Agency, 4814 South 40 Street, Phoenix, AZ 85040, (602) 255-4845, After hours: (802) 998-4662.	Same.
Arkansas	Greta J. Cicus, Director, Division of Radiation Control and Emergency Management Programs, Arkansas Department of Health, 4815 West Markham Street, Little Rock, AR 72201, (501) 661-2301, After hours: (501) 661-2136 or 661-2000.	Same.
California	Robert P. Rengstarff, Chief, California Highway Patrol, P.O. Box 942898, Sacramento, CA 94298-0001, (916) 445-3253.	Same.
Colorado	Captain Lonnie J. Westphal, Officer in Charge, Administrative Branch Services, Colorado State Patrol, 700 Kipling Street, Denver, CO 80215, (303) 239-4560, After hours: (303) 239-4501.	Same.
Connecticut	The Honorable Leslie Carothers, Commissioner, Department of Environmental Protection, State Office Building, 165 Capitol Avenue, Hartford, CT 06106, (203) 566-2110.	Same.
Delaware	Patrick W. Murray, Secretary, Department of Public Safety, P.O. Box 818, Dover, DE 19903, (302) 736-4321.	Same.
Florida	Harlan Keaton, Public Health Physicist Manager, Office of Radiation Control, Department of Health & Rehabilitative Services, P.O. Box 15490, Orlando, FL 32858, (305) 297-2095.	Same.
Georgia	Tom Doyal, Director, Transportation Division, Public Service Commission, 1007 Virginia Avenue, Hapeville, GA 30354, (404) 761-2229.	Same.
Hawaii	James K. Ikeda, Deputy Director for Environmental Health, Department of Health, P.O. Box 3378, Honolulu, HI 96813, (808) 548-4139.	Same.
Idaho	Ernest Ranieri, Radiation Physicist Supervisor, Division of Environment, 450 W. State, 3rd Floor, Boise, ID 83720, (208) 334-5879, After hours: (208) 344-4090.	Same.
Illinois	Dr. Terry Lash, Director, Illinois Department of Nuclear Safety, 1035 Outer Park Drive, 5th Floor, Springfield, IL 62704, (217) 785-9868, Emergency: (217) 782-6111, After hours: (217) 785-0600.	Same.
Indiana	Lloyd R. Jennings, Superintendent, Indiana State Police, 301 State Office Building, 100 North Senate Avenue, Indianapolis, IN 46204, (317) 232-8241, After hours: (317) 232-8246.	Same.
Iowa	Ellen M. Gordon, Director, Office of Disaster Services, Hoover State Office Building, Des Moines, IA 50319, (515) 281-3231.	Same.
Kansas	Leon H. Mannell, P.E., Administrator, Radiological Systems, The Adjutant General's Department, Division of Emergency Preparedness, P.O. Box C-300, Topeka, KS 66601, (913) 266-1409, After hours: (296-3176).	Same.
Kentucky	Donald R. Hughes, Sr., Manager, Radiation Control, Department for Health Services, 275 East Main Street, Frankfort, KY 40621, (502) 564-3700.	Same.
Louisiana	Capt. Bill Spencer, Louisiana State Police, 265 South Foster Drive, P.O. Box 66614, Baton Rouge, LA 70895, (504) 925-6113.	Same.
Maine	Chief of the State Police, Maine Dept. of Public Safety, 36 Hospital Street, Augusta, ME 04330, (207) 289-2155.	Same.
Maryland	Colonel James A. Jones, Chief, Services Bureau, Maryland State Police, 1201 Reisterstown Road, Pikesville, MD 21208, (301) 486-3101.	Same.
Massachusetts	Robert M. Hallisey, Director, Radiation Control Program, Massachusetts Department of Public Health, 150 Tremont Street, 2nd Floor, Boston, MA 02111, (617) 727-8214.	Same.
Michigan	James E. Cox, Captain, Commanding Officer, Operations Division, Michigan Department of State Police, 714 S. Harrison Road, East Lansing, MI 48823, (517) 337-6100.	Same.
Minnesota	John R. Kerr, Natural Disaster Planner, Minnesota Division of Emergency Management, B5 State Capitol, St. Paul, MN 55155, (612) 296-2233, After hours: (612) 649-5451.	Same.
Mississippi	James E. Maher, Director, Mississippi Emergency Management Agency, P.O. Box 4501, Fondren Station, Jackson, MS 39296-4501, (601) 392-9100 (24 hours).	Same.
Missouri	Richard D. Ross, Director, State Emergency Management Agency, 1717 Industrial Drive, P.O. Box 116, Jefferson City, MO 65102, (314) 751-9779, After hours: (314) 751-2748.	Same.
Montana	Mr. Larry Lloyd, Administrator, Environmental Sciences, Division, Department of Health & Environmental Sciences, Room A113, Cogswell Bldg., Helena, MT 59620, (406) 444-3948, After hours: (406) 442-1425.	F. Guy Youngblood, Administrator, Disaster & Emergency Services Division, P.O. Box 4789, Helena, MT 59604, (406) 444-6911.
Nebraska	Harold W. LeGrande, Superintendent, Nebraska State Patrol, P.O. Box 94907, State House, Lincoln, NE 68509, (402) 471-2406, After hours: (402) 471-4545.	Same.
Nevada	Stanley R. Marshall, Supervisor, Radiological Health Section, Bureau of Regulatory Health Services, Nevada Division of Health, 505 East King Street, Room 202, Carson City, NV 89710, (702) 885-5394.	Same.
New Hampshire	Richard M. Flynn, Commissioner, New Hampshire Dept. of Safety, James H. Hayes Building, Hazen Drive, Concord, NH 03305, (603) 271-3636 (24 hours).	Same.
New Jersey	Kent Tosch, Chief, Department of Environmental Protection, Bureau of Nuclear Engineering, CN 411, Trenton, NJ 08625, (609) 530-4022.	Same.
New Mexico	Dr. Robert Kemble, Cabinet Secretary, Department of Public Safety, P.O. Box 1628, Santa Fe, NM 87504-1628, (505) 827-3370, After hours: (505) 827-9126.	Same.
New York	Donald A. DeVito, Director, State Emergency Mgmt. Office, Division of Military and Naval Affairs, Public Security Building, State Campus, Albany, NY 12226, (518) 457-2222.	Same.
North Carolina	Major Walter K. Chapman, Director, Administrative Services, North Carolina Highway Patrol Headquarters, P.O. Box 27687, Raleigh, NC 27611, (919) 733-7952, After hours: (919) 733-3861.	Same.
North Dakota	Dana K. Mount, Director, Division of Environmental Engineering, Department of Health, 1200 Missouri Avenue, Box 5520, Bismarck, ND 58502-5520, (701) 224-2348, After hours: (701) 224-2121.	Same.
Ohio	James R. Williams, Chief of Staff, Ohio Emergency Management Agency, 2825 W. Granville Road, Worthington, OH 43235-2712, (614) 889-7150.	Same.
Oklahoma	Clent Dedek Commissioner of Public Safety, Oklahoma Department of Public Safety, 3600 N. King Avenue, P.O. Box 11415, Oklahoma City, OK 73136-0145, (405) 425-2424 (24 hours).	Same.
Oregon	William T. Dixon, Administrator, Siting and Regulation, Oregon Department of Energy, 625 Marion Street, NE, Salem, OR 97310, (503) 378-6489.	Same.

States	Part 71	Part 73
Pennsylvania	George M. Johnson, Director, Response and Recovery, Pennsylvania Emergency Management Agency, P.O. Box 3321, Harrisburg, PA 17105, (717) 783-8150, After hours: (717) 783-8150.	Same.
Rhode Island	William A. Maloney, Associate Administrator, Motor Carriers, Division of Public Utilities and Carriers, 100 Orange Street, Providence, RI 02903, (401) 277-3500.	Same.
South Carolina	Heyward G. Shealy, Chief, Bureau of Radiological Health, South Carolina Department of Health & Environmental Control, 2600 Bull Street, Columbia, SC 29201, (803) 734-4632, After hours: (803) 253-6497.	Same.
South Dakota	Robert D. Gunderson, Division Director, Emergency and Disaster Services, Capitol Building, Basement, Pierre, SD 57501, (605) 773-3231.	Same.
Tennessee	John White, Assistant Deputy Director, Tennessee Emergency Management Agency, State Emergency Operations Center, 3041 Sidco Drive, Nashville, TN 37204, (615) 252-3300, After hours: 1-800-258-3300.	Same.
Texas	Dr. Robert Bernstein, Commissioner, Texas Department of Health, Bureau of Radiation Control, 1100 West 49th Street, Austin, TX 78756, (512) 458-7375.	Col. Joe E. Miller, Director, Texas Department of Public Safety, 5805 N. Lamar Blvd., Austin, TX 78752, (512) 465-2000.
Utah	Larry F. Anderson, Director, Bureau of Radiation Control, 288 N. 1460 West, P.O. Box 16690, Salt Lake City, UT 84116-0690, (801) 538-6734, After hours: (801) 538-6333.	Same.
Vermont	Susan C. Crampton, Secretary, Vermont Agency of Transportation, 133 State Street, Montpelier, VT 05602, (802) 828-2657.	Same.
Virginia	Michael M. Cline, Director of Operations, Department of Emergency Services, Commonwealth of Virginia, 310 Turner Road, Richmond, VA 23225, (804) 674-2400.	Same.
Washington	Curtis P. Eschels, Chairman, Energy Facility Site Evaluation Council, Mail Stop PY-11, Olympia, WA 98504, (206) 459-6490.	Same.
West Virginia	Colonel J.R. Buckalew, Superintendent, Department of Public Safety, 725 Jefferson Road, South Charleston, WV 25309, (304) 746-2111.	Same.
Wisconsin	B.G. (Ret.) Richard I. Braund, Administrator, Wisconsin Division of Emergency Government, 4802 Sheboygan Ave., Room 99A, P.O. Box 7865, Madison, WI 53707, (608) 266-3232.	Same.
Wyoming	Julius E. Haes, Jr., Chief, Radiological Health Services, Department of Health & Social Services, Hathaway Building, Cheyenne, WY 82002-0710, (307) 777-6015, After hours: (307) 777-7244.	Same.
District of Columbia	Norma J. Stewart, Program Manager, Pharmaceutical and Medical Devices Control Division, Department of Consumer and Regulator Affairs, 614 H Street, NW., Washington, DC 20001, (202) 727-7219.	Same.
Puerto Rico	Santos Rohena, Jr., Chairman, Environmental Quality Board, P.O. Box 11488, Santurce, PR 00910, (809) 722-1175 or (809) 722-5140.	Same.
Guam	Charles P. Crisostomo, Administrator, Guam Environmental Protection Agency, P.O. Box 2999, Agaña, Guam 96910, (671) 646-7579.	Same.
Trust Territory of the Pacific Islands	R. Kent Harvey, Attorney General, Trust Territory of the Pacific Islands, Saipan, CM 96950, Saipan 9325 or 9364.	Same.
Virgin Islands	Honorable Juan Luis, Governor, Government House, Charlotte Amalie, St. Thomas, Virgin Islands 00801, (809) 774-0001.	Same.
American Samoa	Mr. Pati Falai, Government Ecologist, Environmental Protection Agency, Office of the Governor, Pago Pago, American Samoa 96799, (684) 633-2304.	Same.
Commonwealth of the Northern Mariana Islands	Nicholas M. Leon Guerrero, Director, Department of Natural Resources, Commonwealth of Northern Mariana Islands Government, Capitol Hill, Saipan, MP 96950, (670) 322-9830 or (670) 322-9834.	Same.

Questions regarding this matter should be directed to Mindy Landau at (301) 492-9308.

Dated at Rockville, MD, this 6th day of June 1989.

For the Nuclear Regulatory Commission.
Harold R. Denton,
Director, Office of Governmental and Public Affairs.

[FR Doc. 89-13906 Filed 6-12-89; 8:45 am]
BILLING CODE 7590-01-M

**[Docket Nos. 50-269, 50-270, and 50-287]
Duke Power Co.; Withdrawal of Application for Amendment to Facility Operating License**

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Duke Power Company (the licensee) to withdraw a portion of its October 8, 1984 application for proposed amendments to Facility Operating License Nos. DPR-38, DPR-

47, and DPR-55 for the Oconee Nuclear Station, Units 1, 2, and 3, located in Oconee County, South Carolina.

The withdrawn portion of the proposed amendments would have revised the Technical Specifications related to post-accident sampling and sampling and analysis of plant effluents.

The Commission has previously issued a Notice of Consideration of Issuance of Amendments published in the Federal Register on May 21, 1985 (50 FR 20975). However, by letter dated May 17, 1989, the licensee withdrew a portion of the proposed change.

For further details with respect to this action, see the application for amendment dated October 8, 1984, and the licensee's letter dated May 17, 1989, which withdrew a portion of the application for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and the Oconee

County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland this 6th day of June 1989.

For the Nuclear Regulatory Commission.
Lawrence P. Crocker,
Acting Director, Project Directorate II-3,
Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-14005 Filed 6-12-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket Nos. 50-321 and 50-366]

Georgia Power Co., Oglethorpe Power Corp., Municipal Electric Authority of Georgia; City of Dalton, GA; Issuance of Amendments to Facility Operating Licenses

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 163 to Facility Operating License No. DPR-57 and Amendment No. 100 to Facility

Operating License No. NPF-5 issued to Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, and City of Dalton, Georgia (the licensee), which revised the Technical Specifications for operation of the Edwin I. Hatch Nuclear Plant, Units 1 and 2, (the facility) located in Appling County, Georgia. The amendments were effective as of the date of issuance.

The amendments change the Unit 1 reactor protection system (RPS) and control rod block surveillance requirements to provide for consistency with the Unit 2 Technical specifications and change the RPS functional test frequencies and equipment outage times for both units.

The application for the amendments complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendments.

Notice of Consideration of Issuance of Amendments and Opportunity for Prior Hearing in connection with this action was published in the *Federal Register* on June 30, 1986 (51 FR 23610). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of the amendments will not have a significant effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendments dated March 27, 1986, as supplemented April 22 and December 27, 1988, (2) Amendment No. 163 to License No. DPR-57 and Amendment No. 100 to License No. NPF-5 and (3) the Commission's related Safety Evaluation and Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., and at the Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects I/II.

Dated at Rockville, Maryland this 6th day of June 1989.

For the Nuclear Regulatory Commission,
Lawrence P. Crocker,

*Project Manager, Project Directorate II-3,
Division of Reactor Projects—I/II, Office of
Nuclear Reactor Regulation.*

[FR Doc. 89-14007 Filed 6-12-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 50-498]

**Houston Lighting & Power Co.;
Consideration of Issuance of
Amendment to Facility Operating
License and Opportunity for Hearing**

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-78, issued to Houston Lighting & Power Company (the licensee), for operation of the South Texas Project, Unit 1 located in Matagorda County, Texas.

The amendment would permit the use of new core power distribution limits which are described in proposed changes to the Final Safety Analysis Report (FSAR). The licensee intends to increase the fuel enrichment in two of the three core regions, but for all three regions the fuel enrichment will remain lower than the approved maximum. The new enrichments required the calculation of new power distribution limits and a reconsideration of the accident analyses affected by the proposed changes.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 13, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the

Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR § 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceedings, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission,

Washington, DC, 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to Frederick J. Hebdon: petitioner's name and telephone number; date Petition was mailed; plant name; and publication date and page number of this *Federal Register* notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Newman & Holtzinger, P.C., 1615 L Street NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated June 1, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Wharton Junior College Library, Wharton, Texas 77488.

Dated at Rockville, Maryland this 6th day of June 1989.

For the Nuclear Regulatory Commission,
Frederick J. Hebdon,
*Director, Project Directorate—IV, Division of
Reactor Projects—III, IV, V and Special
Projects, Office of Nuclear Reactor
Regulation.*

[FR Doc. 89-14006 Filed 6-12-89; 8:45 am]

**SECURITIES AND EXCHANGE
COMMISSION**

[34-26896; File No. DTC-89-07]

**Self-Regulatory Organizations;
Depository Trust Company; Order
Approving a Proposed Rule Change
Concerning Invitations To Tender To
Cover Short Positions**

June 5, 1989.

On April 4, 1989, the Depository Trust Company ("DTC") filed a proposed rule change (File No. SR-DTC-89-07) under section 19(b) of the Securities Exchange Act of 1934 ("Act").¹ The proposal establishes a procedure for distributing invitations to tender to cover short positions over DTC's Participant Terminal System. The Commission published notice of the proposal in the *Federal Register* on April 24, 1989.² No public comments were received. For the reasons discussed below, the commission is approving the proposal.

**I. Description of the Proposed Rule
Change**

The proposed rule change will establish an automated procedure whereby DTC, at the request of a DTC Participant that has a short position in a certain security, may invite tenders to cover the short position of that DTC Participant from DTC Participants that have a long position in the same security.³ DTC will use an automated means of communication, the PTS system,⁴ to invite the tenders. The proposed rule change is the first part of a program that is being developed at the request of Participants and securities industry organizations to eliminate short positions.⁵

¹ 15 U.S.C. 78s (1988).

² Securities Exchange Act Release No. 26732 (April 17, 1989), 54 FR 16438-1.

³ Short positions may arise in any security for a number of reasons. Short positions primarily are caused by rejects of deposits of securities that the depositing participant already has delivered to another participant, and by deliveries of securities that, because of late notification to DTC of partial calls, subsequently are determined to be called securities in DTC's call lottery.

⁴ The Participant Terminal System ("PTS") is a computerized communications network available to DTC Participants only. Users of another, more simplified DTC communications system called PTS, Jr. also will be eligible to use the proposed procedures to invite tenders to cover short positions.

⁵ A user advisory committee that includes representatives from, among other groups, the New York Clearing House Association and the Reorganization and Securities Operations Divisions of the Securities Industry Association has been formed to advise DTC on methods of eliminating short positions.

Under the proposal, a Participant with a short position in any security may use the PTS system to send a message to DTC of its desire that DTC extend, on its behalf, an invitation to tender in an attempt to resolve its short position.⁶ In addition, if the participant holds a security similar to the one in which it has a short position, the invitation to tender may include an offer to sell, or swap, the similar security. This incoming message to DTC must include the Participant's identification number, date, identification number for the security, security description, quantity desired,⁷ and contact name and telephone number, and, if a swap is involved, also the CUSIP number and description of the substitute security.

DTC has reserved the period from 4:30 to 5:00 p.m. (Eastern time) for receipt of messages from Participants with a short position wishing to invite a tender to cover short positions. DTC's outgoing messages conveying invitations to tender are broadcast after receipt of the incoming messages. Invitations to tender to cover short positions are not broadcast continuously, but are broadcast only once each day. If the short position remains outstanding, the Participant with the short position may send a message to invite tenders to DTC on a daily basis until the short position is covered.

Upon receipt of the automated message from Participants with short positions, DTC will identify each Participant with a long position in the specified security, and will send an automated message to each such Participant informing them of an invitation to tender to cover a short position.⁸ Only Participants with a long position in the security will receive this message. DTC will provide the CUSIP number and security description for the security (and for the similar security if a swap is involved), quantity desired, date, and a contact name and telephone number at DTC.

If a Participant with a long position wishes to tender or swap securities, that Participant must contact the specified person at DTC. At that point, the DTC contact person will contact the Participant with a short position to

⁶ If a Participant has a short position due to an error on DTC's part, DTC also may use these procedures to invite tenders to cover the short position.

⁷ Although the quantity desired is listed, Participants are presumed to be interested in negotiating for amounts greater or less than the quantity desired to cover the short position.

⁸ DTC will not broadcast outgoing messages until it confirms that the Participant sending the incoming message has a short position in the security indicated on the incoming message.

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inform it of the names and telephone numbers of contact persons at each Participant with a long position that responded affirmatively to the automated invitation to tender message. DTC will relay the names of responding Participants in the order in which DTC receives the responses, and all responses will be relayed.

At this point, the Participants negotiate with each other the terms of the transaction,⁹ and assuming they reach an agreement to trade, arrange for the actual execution to take place.¹⁰ DTC will not be involved with the negotiations. Moreover, DTC's rules and procedures will not require Participants to reach agreement to trade.

In cases where a short position is successfully covered through use of these procedures, the Participant with a short position will notify DTC by telephone that the invitation to tender is no longer outstanding. DTC then will inform Participants that received the invitation to tender message that the invitation has been rescinded.

II. DTC's Rationale for the Proposed Rule Change

DTC states that the proposed rule change is designed to reduce the number of short positions at DTC. DTC believes the filing is consistent with Section 17A of the Act.

III. Discussion

The Commission believes the proposed rule change is consistent with Section 17A of the Act and therefore is approving the proposal. The Commission believes the procedures for inviting tenders to cover short positions are consistent with the duties of a clearing agency under Section 17A to facilitate the prompt and accurate clearance and settlement of securities transactions and to safeguard securities and funds in its custody or control or for which it is responsible.¹¹

Under DTC procedures, Participants are obligated to cover their short positions immediately.¹² A Participant

with an outstanding short position must pay a daily charge of 130% of the market value of the security until the position is covered. The 130% charge acts as an incentive for Participants to cover short positions as soon as possible, and also acts as a cushion to protect DTC in the event of a sharp rise in the market price of the security.

Notwithstanding the incentives inherent in the 130% charge, certain securities may be difficult to cover and the short position may be outstanding for several months.¹³ Moreover, it may be difficult and time-consuming for a Participant with a short position in a small, thinly-traded issue to locate securityholders willing to sell their positions, even if the buyer were willing to pay a substantial premium over the current market price.

Short positions in a depository also may create inventory deficiencies in the security so that certificates may not be available for withdrawal from the depository by Participants with a long position in that security.¹⁴ If such a Participant wishes to withdraw securities that DTC does not have in its vault, DTC generally must undertake to obtain the securities, either by demanding delivery from the Participant with a short position, or by buying sufficient shares or bonds to satisfy the withdrawal request and charging the Participant with a short position. If the Participant with a short position, for any reason, fails to satisfy the delivery or payment obligation, DTC may be liable for any shortfall in excess of the defaulting Participant's assets available to DTC.¹⁵ In these circumstances, DTC could choose to use retained earnings to cover the loss or to allocate the resulting loss to all Participants on a *pro rata* basis.¹⁶

In its filing, DTC estimated that short positions currently exist in approximately 3000 securities, and are valued at approximately \$90 million. At the request of its Participants and

securities industry organizations, DTC has developed these procedures that enable Participants with short positions to locate Participants with long positions in the security. DTC is in a unique position to know the identity of Participants that are long in a certain security, and has determined to use its facilities for automated communication of invitations to tender. The determination to invite tenders is made solely by the Participant that is short in a security, and the determination to tender is made solely by the Participants that are long in the security. DTC's function is to communicate the wishes of the Participants, keeping the identities confidential until the Participants with a long position respond to the invitation to tender. DTC has estimated that the procedures for invitations to tender to cover short positions may eliminate from 10% to 15% of all short positions currently outstanding.¹⁷

The Commission believes significant benefits will result from DTC's efforts to reduce or eliminate short positions. Participants with short positions will be able to locate interested security holders of the security (who also are DTC Participants) to negotiate a trade, and potentially will be able to cover more quickly, thereby avoiding the risk of a large move in the market price of the security. Reducing the number of short positions may help to reduce the number of inventory deficiencies at DTC, thereby reducing processing problems. Fewer short positions also will help DTC and Participants to avoid the financial risk associated with short positions. For these reasons, the Commission finds DTC's procedures to invite tenders to cover short positions to be consistent with the requirements of Section 17A of the Act that a clearing agency have the capacity to be able to facilitate the prompt and accurate clearance and settlement of securities transactions and to safeguard securities and funds in the clearing agency's custody or control or for which it is responsible.

In order to monitor the extent to which short positions continue to exist at DTC and to monitor the effectiveness of the procedures approved in this proposed rule change, the Commission expects DTC to provide the following information, on a quarterly basis: (1) The total number and value of short positions on the last day of the quarter; (2) the type of security involved in each such short position (e.g., municipal,

¹⁷ See DTC Memorandum to Participants, dated January 30, 1989.

equity, or corporate bond); (3) the number of invitations to tender to cover short positions extended through these procedures during the quarter, including both the number of invitations extended to DTC by Participants with a short position and the number of responses by Participants with a long position to invitations extended by DTC; (4) the number of short positions eliminated through use of these procedures during the quarter; and (5) the identities of the Participants that successfully used these procedures to cover short positions or to tender securities and the securities issues involved. DTC should file such information on a quarterly basis until notified otherwise.

IV. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and, in particular, with section 17A. The Commission believes the proposal is consistent with a clearing agency's duties to facilitate the prompt and accurate clearance and settlement of securities transactions and to safeguard securities and funds in its custody or control or for which it is responsible.

It is therefore ordered, pursuant to section 19(b) of the Act, that the proposed rule change (SR-DTC-89-07) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority (17 CFR 200.30-3).

Jonathan G. Katz,
Secretary.

[FR Doc. 89-14010 Filed 6-12-89; 8:45 am]
BILLING CODE 8010-01-M

[34-26896; File No. MSTC-89-03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule; Change by Midwest Securities Trust Company Relating to a Revised Fee Schedule for Legal Deposit Services.

June 6, 1989.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 3, 1989, the Midwest Securities Trust Company filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement on the Terms of Substance of the Proposed Rule Change

Hereinbelow is the revised reduced schedule of charges for Midwest Securities Trust Company's ("MSTC") Legal Deposit Services:

Items/Month	Cost per Item
1-1,000	\$5.00
1,001-4,001	\$3.00 (The first 1,000 at \$5.00 and the next 3,000 at \$3.00)
4,000 & over	\$3.00 (All items at \$3.00)
Legal Reclamations	No charge

II. Self-Regulatory Organization's Statement on the Purpose of and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to reduce the fees for providing Legal Deposit Services to Participants. The revised fee schedule offers discounts to Participants based on the volume of activity while allowing MSTC to remain competitive in the marketplace.

The revised fee schedule is consistent with section 17A of the Securities Exchange Act of 1934 (the "Act") in that it provides for the equitable allocation of reasonable dues, fees and other charges among MSTC's Participants.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Midwest Securities Trust Company does not believe that any burdens will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were solicited from Participants, however none were received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3) of the Securities Exchange Act of 1934 and subparagraph (e) of Securities Exchange Act Rule 19b-4. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filings will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization. All submissions should refer to File Number SR-MSTC-89-3 and should be submitted by July 5, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-14009 Filed 6-12-89; 8:45 am]
BILLING CODE 8010-01-M

[34-26897; File No. NSCC-89-05]

Self-Regulatory Organizations; National Securities Clearing Corporation; Filing and Immediate Effectiveness of Proposed Rule Change Relating to Cross Endorsed Settlement

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given

that on May 18, 1989, NSCC filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II, and III below, which Items have been prepared by NSCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change would modify NSCC's Rules and Procedures concerning its cross endorsed settlement program.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) The purpose of the proposed rule change is to allow NSCC to accept one payment from DTC reflecting the sum of all Members' cross endorsed settlement drafts.

Currently NSCC's rules specify that a Member must make settlement to NSCC with a check of the Member or a check of DTC payable to the order of the Settling Member and endorsed to the order of NSCC. This results in NSCC receiving and processing as many as 160 cross endorsed items a day. In addition, NSCC incurs approximately \$10,000 a year in bank processing fees, as well as considerable man-power spent on account reconciliation. Under the proposal, the rules will permit all the cross endorsed amounts owed by Members to NSCC as a result of settlement to be added together. One net check for the total of all money payable from DTC will be paid directly to NSCC. Under the new system, NSCC will still be able to identify the individual amounts owed by members which comprise the final amount paid by DTC.

(b) The proposed rule filing facilitates the prompt and accurate clearance and settlement of securities transactions for

which NSCC is responsible and, therefore, is consistent with the requirements of the Securities Exchange Act of 1934 (the "Act") and the rules and regulations thereunder applicable to NSCC.

B. Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule will have an impact or impose a burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments have been solicited or received. NSCC will notify the Commission of any written comments received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective, pursuant to section 19(b)(3) of the Securities Exchange Act of 1934. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Securities Exchange Act of 1934.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by July 5, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: June 6, 1989.

[FR Doc. 89-14008 Filed 6-12-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16981; (812-7096)]

Benham Government Income Trust et al.; Application

June 5, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption and Approval under the Investment Company Act of 1940 (the "1940 Act").

Applicants: Benham Government Income Trust ("BGIT"), Benham Equity Funds ("BEF"), Benham Variable Insurance Trust ("BVIT"), Benham California Tax-Free Trust ("BCTFT"), Benham National Tax-Free Trust ("BNTFT") and Capital Preservation Fund ("Money Market Fund") (each individually an "Applicant" or collectively the "Applicants").

Relevant 1940 Act Sections: Exemption requested pursuant to sections 6(c) and 17(b) from the provisions of sections 17(a) (1) and (2) and approval sought under section 17(d) and Rule 17d-1.

SUMMARY: Applicants seek an order (i) to permit BGIT and BEF to purchase shares of the Money Market Fund; (ii) to permit the Money Market Fund to sell its shares to BGIT and BEF; (iii) to permit BVIT, BCTFT and BNTFT to purchase shares in their respective money market portfolios (collectively the "Money Market Portfolios"); (iv) to permit the money Market Portfolios of BVIT, BCTFT and BNTFT to sell shares to other series of BVIT, BCTFT and BNTFT and (v) to permit the Benham Management Corporation ("BMC"), as investment advisor of Applicants, to effect such purchases and sales of the Money Market Fund and Money Market Portfolios.

Filing Dates: The application was filed on August 16, 1988, and amended on May 19, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June

29, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549; Applicants, c/o Jeffrey L. Steele, Esq., Dechert Price & Rhoads, 1500 K Street, NW., Suite 500, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Brian R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Each of the Applicants is registered under the 1940 Act as an open-end, diversified, management investment company. In addition, BGIT, BEF, BVIT, BCTFT and BNTFT are series funds currently consisting of two, one, eight, three and three series, respectively (the "Series"). Applicants request that the order sought hereby extend to any subsequently created Series of Applicants and any other investment company that might be subsequently created, managed and distributed by BMC, a wholly-owned subsidiary of Benham Management International, Inc. Applicants will not avail themselves of such relief except upon the terms and conditions set forth in the application.

2. The Money Market Fund invests exclusively in U.S. Treasury debt securities guaranteed by the direct "full faith and credit" pledge of the U.S. Government and is designed as a cash reserve investment vehicle. Two of BVIT's Series, U.S. Government and High Quality Money Market Portfolio, invest primarily in securities that are issued or guaranteed by the U.S. Government, its agencies or instrumentalities, and other high quality securities. One Series of BCTFT, Money Market Portfolio, invests primarily in short-term (maturity of one year or less) California municipal securities. One Series of BNTFT, Money Market Portfolio, invests primarily in short-term (one year or less) municipal securities within or of a quality comparable to, the two highest rating classifications of

either Standard & Poor's Corporation or Moody's Investors Service.

3. Applicants may have cash reserves emanating from a variety of sources, including interest received on portfolio securities, unsettled or "failed" securities transactions, cash arising from the liquidation of investment securities to meet anticipated redemptions, and new monies received from investors. According to the application, BMC will be in the best position to know at any given moment the cash reserves held by Applicants' to know the purpose and need for these reserves, and to make and implement decisions with respect to the investment of these reserves. BMC could immediately invest Applicants' uninvested monies into the Money Market Fund or Money Market Portfolios while considering the purchase of appropriate portfolio securities for Applicants. If BGIT or BEF were required to invest cash balances directly in U.S. Treasury debt securities rather than purchasing shares of the Money Market Fund, or if each Series of BVIT, BCTFT and BNTFT, other than the Money Market Portfolios, were required to invest cash balances directly in securities issued or guaranteed by the U.S. Government or municipal securities, each Applicant is likely to be adversely affected by increased transaction costs and reduced and lost investment opportunities. The relatively high transaction costs associated with making small investments in U.S. Treasury debt securities, and the frequent unavailability of such securities in small lots, often make it impractical to invest the small cash balances that Applicants often have.

4. The proposed transactions will comply with the limitations set forth in section 12(d)(1) of the 1940 Act and there will be no layering of sales charges, advisory fees or administrative expenses. BMC will receive no additional advisory fee based on the proposed investments in the Money Market Fund or Money Market Portfolios because such investments will be removed from the base upon which the advisory fee for Applicants is calculated. Benham Financial Services, Inc. ("BFS"), the Applicants' administrative services company and transfer agent, will receive no additional administrative fee based on the proposed investments in the Money Market Fund or Money Market Portfolios because such investments will be removed from the base upon which the administrative fee for Applicants is calculated. Applicants also note that the Money Market Fund and Money Market

Portfolios do not impose a fee pursuant to Rule 12b-1 plans.

5. Applicants assert that because Applicants retain the freedom to invest cash assets directly in U.S. Treasury debt securities, other securities issued or guaranteed by the U.S. Government, or municipal securities, there exists an independent check upon the investment of Applicants' assets in an investment which produces a noncompetitive rate of return. The Money Market Fund and Money Market Portfolios reserve the right to discontinue selling shares to Applicants if such sales adversely affect the portfolio management and operations of the Money Market Fund or Money Market Portfolios. In order to assure that the control of the Money Market Fund or Money Market Portfolios will not lead to any abuse, Applicants will vote their shares in the Money Market Fund and Money Market Portfolios in the same proportion as the vote of all other shareholders in the Money Market Fund and Money Market Portfolios.

Applicants' Legal Analysis

1. Applicants request an order pursuant to sections 6(c), 17(b) and 17(d) of the 1940 Act, and Rule 17d-1 thereunder, to permit BGIT and BEF to purchase shares of the Money Market Fund; the non-money market Series of BVIT, BCTFT, and BNTFT to purchase shares of each Applicant's respective Money Market Portfolios; and to permit BMC to effect the purchases and sales of shares of the Money Market Fund and Money Market Portfolios by Applicants. Since the Money Market Fund and Money Market Portfolios may be deemed affiliated persons of each of the other Applicants as defined in section 2(a)(3) of the 1940 Act, the issuance by the Money Market Fund and Money Market Portfolios of their shares to BGIT, BEF, and the Series of BVIT, BCTFT, and BNTFT, respectively, may be deemed a violation of section 17(a)(1) of the 1940 Act. Conversely, the purchase of shares in the Money Market Fund and Money Market Portfolios by Applicants may be deemed a violation of section 17(a)(2). Finally, the contemplated transactions may be deemed to involve a joint arrangement requiring prior SEC approval under Rule 17d-1.

2. The proposed transactions satisfy the section 17(b) standard for exemption from section 17(a). The consideration paid and received for the sale and redemptions of shares of the Money Market Fund and Money Market Portfolios is their net asset value and therefore is reasonable and does not

involve overreaching on the part of Applicants. BMC will waive its advisory fee on that portion of Applicants' assets invested in the Money Market Fund and Money Market Portfolios. The transactions will be effected in accordance with each Applicant's investment restrictions and will be consistent with the purposes of the 1940 Act.

3. Applicants' proposal provides no basis on which to predict that any Applicant, or series thereof, would receive greater benefits than another. Applicants will participate in the proposal on the same basis, and thus, none will participate in a transaction on a basis "different or less advantageous" than that of other participants. Although BMC may experience nominal cost savings and administrative convenience, the most significant benefit is the elimination of the need to invest relatively small sums of money in cash instruments. Finally, no "conflict of interest" exists between or among Applicants, and no inherent bias exists to favor one Applicant over another.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. The Money Market Fund and Money Market Portfolios will calculate their respective net asset values in accordance with Rule 2a-7 under the 1940 Act.

2. The Money Market Fund and Money Market Portfolios are not subject to a sales load, redemption fees, or distribution fees under a plan adopted in accordance with Rule 12b-1.

3. Applicants will comply with the requirements of Section 12(d) of the 1940 Act with respect to purchases of shares of the Money Market Fund and Money Market Portfolios under the order requested herein.

4. BFS will waive all administrative fees payable under its contracts with Applicants to the extent attributable to the net assets of the Money Market Fund and Money Market Portfolios held by them under the proposed investment policy.

5. BMC will waive all investment advisory fees payable under its contracts with Applicants to the extent attributable to the net assets of the Money Market Fund and Money Market Portfolios held by them under the proposed investment policy.

6. Applicants will vote their number of Money Market Fund and Money Market Portfolios shares in the same proportion as the votes of all other shareholders in the Money Market Fund and Money Market Portfolios.

7. The acquiring funds will purchase and redeem shares of the Money Market Fund, and BVIT, BCTFT, and BNTFT will purchase and redeem shares of their respective Money Market Portfolios, as of the same time and at the same price, and will receive dividends and bear their proportionate share of expenses on the same basis as other shareholders of the Money Market Fund and Money Market Portfolios. A separate account will be established in the shareholder records of the Money Market Fund for each acquiring fund, and in the shareholder records of the respective Money Market Portfolios for BVIT, BCTFT and BNTFT.

8. The investment in shares of the Money Market Fund and Money Market Portfolios will be in accordance with their respective investment restrictions and will be consistent with their policies as recited in their registration statements and prospectuses.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-14011 Filed 6-12-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. IC-16983; (811-4703)]

Simms Global Fund; Application

June 5, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for de-registration under the Investment Company Act of 1940 ("1940 Act").

Applicant: Simms Global Fund.
Relevant 1940 Act Section: Section 8(f) of the 1940 Act and Rule 8f-1 thereunder.

SUMMARY: Applicant requests an order under section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Dates: The application was filed on December 28, 1988, and an amendment thereto was filed on May 19, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 29, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests

should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, 7 East 76th Street, New York, New York, 10020.

FOR FURTHER INFORMATION CONTACT: James E. Banks, Staff Attorney, (202) 272-2190, or Brion R. Thompson, Branch Chief, (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier, (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant was organized as a Massachusetts Business Trust in the Commonwealth of Massachusetts.

2. On June 9, 1986, Applicant filed a registration statement pursuant to Section 8(b) of the 1940 Act to register as an open-end, diversified, management investment company. Applicant filed a registration statement pursuant to the Securities Act of 1933 (the "1933 Act") in order to register an indefinite number of shares of beneficial interest of \$.001 par value. The 1933 Act registration statement became effective on December 31, 1986, and the initial public offering of Applicant's shares commenced shortly thereafter.

3. On October 10, 1988, Applicant's Board of Trustees adopted a resolution that Applicant should cease its business operations as promptly as practicable, sell no new shares, convert its portfolio assets into money market instruments so as to preserve the net asset value of Applicant's shares, and take such necessary steps following the redemption of shares to cause the Applicant to be de-registered with the SEC.

4. On October 31, 1988, substantially all of Applicant's shares were redeemed in cash at its net asset value of \$9.47 per share. Pursuant to this redemption, Applicant's administrator, The First National Bank of Boston, distributed a total of \$5,474,088.71 during the first week of November to Applicant's shareholders. Thereafter, Robert A. Simms, the Chairman of Simms Global Fund, redeemed Applicant's remaining shares on November 4 and December 28,

1988. Accordingly, Applicant has no remaining shareholders.

5. Robert A. Simms and Simms Capital Management, Ltd., Applicant's investment adviser, are responsible for paying all of the liabilities that Applicant incurred during its normal operation prior to liquidation and those liabilities incurred subsequent to the winding up of Applicant's affairs.

6. Applicant's organization expenses were being amortized over a 60 month period and charged daily in its net asset value computation. Simms Capital Management, Ltd. paid all remaining organization expenses on the Applicant's behalf.

7. Applicant is not a party to any litigation or administrative proceeding, and it does not propose to engage in any business activities other than those necessary for the winding-up of its affairs.

8. Applicant plans to file a Notice of Termination with the Secretary of State of the Commonwealth of Massachusetts.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-14012 Filed 6-12-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16982; (812-7104)]

Westcore Trust; Application

June 5, 1989

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption and Approval under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Westcore Trust.
Relevant 1940 Act Sections: Exemption requested pursuant to sections 6(c) and 17(b) from the provisions of sections 17(a) (1) and (2) and approval sought under section 17(d) and Rule 17d-1.

Summary of Application: Applicant seeks an order to permit its money market series to sell its shares to, and redeem its shares from, its other existing and subsequently created series and to permit its investment advisers to effect such purchases and sales of its money market series by its other series.

Filing Dates: The application was filed on August 23, 1988, and amended on May 17, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a

hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on June 29, 1989, and should be accompanied by proof of service on the Applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicant, c/o John J. Tripodi, Esq., Drinker Biddle & Reath, 1100 Philadelphia National Bank Building, Broad and Chestnut Streets, Philadelphia, PA 19107.

FOR FURTHER INFORMATION CONTACT: Paul J. Heaney, Financial Analyst (202) 272-3420, or Brion R. Thompson, Branch Chief (202) 272-3016 (Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant is a Massachusetts business trust currently registered under the 1940 Act as an open-end management investment company. Applicant has established and currently offers shares in twelve investment portfolios. Eleven of these portfolios are stock and bond funds (each individually an "Acquiring Fund" or collectively "Acquiring Funds"). The twelfth portfolio is a money market fund (the "Money Market Fund"). First Interstate Bank of Denver, N.A. ("FIBD") and First Interstate Bank of Oregon, N.A. ("FIOR") serve as investment advisers to the Acquiring Funds. FIBD and FIOR are each wholly-owned bank subsidiaries of First Interstate Bancorp, a publicly-held, multi-state bank holding company. Denver Investment Advisors, Inc. ("Denver Investment"), a wholly-owned subsidiary of FIBD, serves as sub-advisor to certain of the Acquiring Funds. In addition, Denver Investment serves as investment adviser to the Money Market Fund ("FIBD, FIOR and Denver Investment are sometimes referred to as the "Advisers"). ALPS Securities, Inc. ("ALPS") serves as administrator and distributor for the Applicant. It is requested that the order sought extend to any subsequently

created series of Applicant which will avail itself of such prospective relief only upon the terms and conditions set forth in the application.

2. The Money Market Fund invests solely in U.S. dollar denominated debt securities determined to be of high quality and present minimal credit risk, and is designed as a cash reserve investment vehicle. Each Acquiring Fund invests its assets principally in either equity or non-money market debt securities. The Acquiring Funds may have relatively small cash reserves emanating from a variety of sources, including interest and dividends received on portfolio securities, unsettled or "failed" securities transactions, reserves held for investment strategy purposes, cash arising from the liquidation of investment securities to meet anticipated redemptions, and new monies received from investors.

3. The Advisers will be in the unique and best position to know at any given moment the cash balances held by each Acquiring Fund, to know the purpose and need for these balances, and to make and implement decisions with respect to the investment of these balances. If the requested order is granted, the Advisers could immediately invest the Acquiring Funds' uninvested monies into the Money Market Fund while considering the purchase of appropriate portfolio securities for the Acquiring Funds. If each Series were required to invest small cash balances directly in money market instruments, rather than purchasing shares of the Money Market Fund, each Series is likely to be adversely affected by a lower return and reduced and lost investment opportunities. The securities in which the Acquiring Funds invest are normally unavailable in small lots and it often proves impractical to invest the small cash balances of the Acquiring Funds.

4. The proposed transactions will comply with the limitations set forth in section 12(d)(1) of the 1940 Act and will not result in layering of advisory or administrative fees. Each Acquiring Fund has agreed to pay an advisory fee to the Advisers; however, the Money Market Fund does not pay an advisory fee. ALPS, as administrator and distributor for both the Acquiring Funds and the Money Market Fund, is entitled to receive fees from each portfolio for its administrative services at a maximum annual rate of .05 percent of the average net assets of each Acquiring Fund. (ALPS is not entitled to any fee for its services as distributor.) ALPS will waive its administrative fees with respect to

the Acquiring Funds to the extent attributable to the net assets of the Money Market Fund held by the Acquiring Funds. To effect the waiver, the net asset value of each Acquiring Fund's holdings in the Money Market Fund will be excluded from the net asset value of the Acquiring Fund in the calculation of its fees. Similarly, should the Money Market Fund ever pay an advisory fee to the Advisers in the future, advisory fees payable by the Acquiring Funds to the Advisers would be waived in a manner identical to the waiver proposed above for administrative fees. The Money Market Fund does not impose a fee pursuant to a plan adopted under Rule 12b-1 under the 1940 Act. Since the Acquiring Funds retain the freedom to invest some or all of their cash balances directly in money market instruments, there exists an independent check upon the investment of the Acquiring Funds' assets in an investment which produces a non-competitive rate of return. Conversely, the Money Market Fund reserves the right to discontinue selling shares to the Acquiring Funds if such sales adversely affect its portfolio management and operations.

Applicant's Legal Analysis

1. Applicant requests an order pursuant to sections 6(c), 17(b) and 17(d) of the 1940 Act, and Rule 17d-1 thereunder, to permit the Money Market Fund to sell to, and redeem its shares from, the Acquiring Funds and to permit the Advisers, to effect such purchases and sales of shares of the Money Market Fund by the Acquiring Funds. Because the Applicant's series are controlled by the same Board of Trustees, and have the same administrator and distributor and also have affiliated Advisers, the Money Market Fund and Acquiring Funds may be deemed affiliated persons within the meaning of section 2(a)(3) of the 1940 Act. Therefore, the issuance of Money Market Fund shares to the Acquiring Funds may be deemed a sale of securities to registered investment companies by an affiliated person of such companies in violation of section 17(a)(1) of the 1940 Act. Conversely, the redemption by Money Market Fund of its shares may be deemed a purchase of securities by a registered investment company from affiliated persons thereof, in violation of section 17(a)(2) of the 1940 Act. Finally, the contemplated transactions may be deemed a joint arrangement requiring prior SEC approval under Rule 17d-1.

2. The proposed transactions satisfy the section 17(b) standard for exemption from section 17(a). In this regard, Applicant points out that the

consideration paid and received for the sale and redemption of Money Market Fund shares is their net asset value and therefore is reasonable and does not involve overreaching on the part of the Acquiring Funds or the Money Market Fund. Moreover, the proposed arrangement does not involve the imposition of double advisory or administrative fees on the Acquiring Funds. Applicant also submits that the investment of the Acquiring Funds in Money Market Fund shares and issuance of Money Market Fund shares to the Acquiring Funds is consistent with their policies as recited in the Applicant's prospectuses.

3. Applicant contends that it has considered the relative benefits to the Acquiring Funds and to the Money Market Fund to be derived from the proposed arrangement and determined that operating in this proposed manner would be beneficial to each series and that there is no basis on which to predict greater benefit to any one series than to another. Applicant also contends that the Acquiring Funds participate in the arrangement on the same basis with one another and do not participate on a basis which is different from or less advantageous than one another. Applicant represents that to the extent the Money Market Fund participates on a basis which is different from or less advantageous than (or more advantageous than) the Acquiring Funds, the relative advantages and/or disadvantages vary randomly over time are within a range of fairness. Applicant notes that although the Acquiring Funds may derive administrative convenience and a nominal cost savings, the most significant benefit to the Acquiring Funds is the elimination of the need to maintain relatively small sums of money in cash. Finally, Applicant contends there are no "conflicts of interest" between or among the series, and there is no inherent bias favoring one series over another.

Applicant's Conditions

If the requested order is granted, Applicant agrees to the following conditions:

1. The Money Market Fund will calculate its net asset value in accordance with Rule 2a-7 of the 1940 Act.

2. The Money Market Fund is not subject to a sales load, redemption fees, investment advisory fees, or distribution fees under a plan adopted in accordance with Rule 12b-1 of the 1940 Act.

3. Each Acquiring Fund will purchase shares of the Money Market Fund within the limits of section 12(d) of the 1940 Act.

4. ALPS will waive its administrative fees with respect to the Acquiring Funds to the extent attributable to the net assets of the Money Market Fund held by the Acquiring Funds.

5. The Applicant will vote the number of Money Market Fund shares that are owned by the Acquiring Funds and are entitled to vote in regard to such matter in the same proportion as the votes of all other Money Market Fund shareholders.

6. The Acquiring Funds will purchase and redeem shares of the Money Market Fund as of the same time and at the same price, and will receive dividends and bear their proportionate share of expenses on the same basis, as other shareholders of the Money Market Fund. A separate account will be established in the shareholder records of the Money Market Fund for each Acquiring Fund.

7. The investment by the Acquiring Funds in shares of the Money Market Fund will be in accordance with each Fund's investment restrictions and will be consistent with their policies as recited in each Fund's registration statement and prospectus.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 89-14013 Filed 6-12-89; 8:45 am]

BILLING CODE 8010-01-M

[File No. 1-7107]

Issuer Delisting; Application To Withdraw From Listing and Registration; Louisiana-Pacific Corp.

June 5, 1989.

Louisiana-Pacific Corporation ("Company") (Common Stock, \$ par value), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the Pacific Stock Exchange ("PSE"). The Company's Common Stock is also listed on the New York Stock Exchange, Inc. ("NYSE")

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

While the Company has been generally satisfied with the service provided by the PSE, its analysis indicates that the costs of continued listing of the Common Stock on the PSE outweigh the benefits. The Company's

Common Stock is also listed on the New York Stock Exchange ("NYSE"). The Company believes that delisting from the PSE will not adversely affect holders of its Common Stock. Since approximately 98 percent of the trading volume of the Company's Common Stock occurs on the NYSE, the liquidity of the Common Stock should not be significantly impacted.

Any interested person may, on or before June 26, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2354; Amdt. 2]

Louisiana (and Contiguous Counties in the State of Texas & Arkansas); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notice of Amendment to the President's declaration, dated June 1, 1989, to include the parish of Winn, in the State of Louisiana, as a result of damages from severe storms and flooding which occurred May 4 through May 27, 1989.

All counties contiguous to the above-named primary county have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on July 18, 1989, and for economic injury until the close of business in February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: June 7, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-13978 Filed 6-12-89; 8:45 am]

BILLING CODE 8025-01-M

[Declaration of Disaster Loan Area #2354; Amdt. 1]

Louisiana (and Contiguous Counties in the States of Texas & Arkansas); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notices of Amendment to the President's declaration, dated May 26 and May 30, 1989, to include the parishes of Allen, Beauregard, Caddo, Caldwell, Calcasieu, Lincoln, Morehouse, Natchitoches, Red River, Richland, Sabine, Union, Vernon, and West Carroll, in the State of Louisiana, as a result of damages from severe storms and flooding, and to establish the incident period as May 4 through May 27, 1989.

In addition, applications for economic injury from small businesses located in the contiguous parishes of Bienville, Bossier, Cameron, Catahoula, Claiborne, De Soto, East Carroll, Evangeline, Franklin, Grant, Jefferson Davis, LaSalle, Madison, Rapides, and Winn, in the State of Louisiana; the counties of Ashley, Chicot, Lafayette, Miller, and Union, in the State of Arkansas; and the counties of Cass, Marion, Newton, Orange, and Sabine, in the State of Texas, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

The number assigned to the State of Arkansas for economic injury is 676900.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on July 18, 1989, and for economic injury until the close of business on February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: June 1, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-13936 Filed 6-12-89; 8:45 am]

BILLING CODE 8015-01-M

[Declaration of Disaster Loan Area #2353; Amdt. 2]

Texas; (and Contiguous Counties in the State of Oklahoma); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in order to assign economic injury disaster declaration number 676800 to the State of Oklahoma

for small businesses eligible to file applications for economic injury as a result of damages from severe storms, tornadoes, and flooding beginning on May 4, 1989.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on July 17, 1989, and for economic injury until the close of business on February 20, 1990.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.)

Date: June 1, 1989.

Bernard Kulik,

Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-13937 Filed 6-12-89; 8:45 am]

BILLING CODE 8015-01-M

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of action subject to Intergovernmental Review Under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund seventeen presently existent Small Business Development Centers (SBDCs) on October 1, 1989. Currently there are 53 SBDCs operating in the SBDC program. The following SBDCs are intended to be refunded, subject to the availability of funds: Alabama, Alaska, Connecticut, Delaware, Maryland, Mississippi, Missouri, New York (Downstate), North Dakota, Ohio, Puerto Rico, Texas (Dallas), Texas (Lubbock), Texas (San Antonio), Virgin Islands, West Virginia and Wyoming. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

EFFECTIVE DATE: October 11, 1989.

ADDRESSES: Comments should be addressed to Ms. Janice E. Wolfe, Associate Administrator for SBDC Program, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372. "Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically 135.4, SBA is publishing this notice to provide public awareness of the pending application of fifteen presently existent Small Business Development Centers (SBDCs) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published four months in advance of the expected date of refunding of these SBDCs. Relevant information identifying these SBDC and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to each affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business. If there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Ms. Janice E. Wolfe, Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 120 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 120-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentator prior to refunding the SBDC.

Description of the SBDC Program

The SBDC operates under the general management and oversight of SBA, but with recognition that a partnership exists between the Agency and the SBDC for the delivery of assistance to the small business community. SBDC

services shall be provided pursuant to a negotiated Cooperative Agreement with full participation of both parties. SBDCs operate on the basis of a state plan to provide assistance within a state or designated geographical area. The initial plan must have the written approval of the Governor. As a condition to any financial award made to an applicant, non-Federal funds must be provided from sources other than the Federal Government. SBDCs operate under the provisions of Pub. L. 96-302, as amended by Pub. L. 98-395, a Notice of Award (Cooperative Agreement) issued by SBA, and the provisions of this Program Announcement.

Purpose and Scope

The SBDC Program is designed to provide quality assistance to small businesses in order to promote growth, expansion, innovation, increased productivity and management improvement. To accomplish these objectives, SBDCs link resources of the Federal, State, and local governments with the resources of the educational system and the private sector to meet the specialized and complex needs of the small business community. SBDCs also coordinate with other SBA programs of business development and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the state, academic community and private sector to:

- (a) Strengthen the small business community;
- (b) Contribute to the economic growth of the communities served;
- (c) Make assistance available to more small businesses than is now possible with present Federal resources;
- (d) create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is

managed and directed by a full-time Director. SBDCs must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of indepth, high-quality assistance to small business owners or prospective small business owners in complex areas that require specialized expertise. These areas may include, but are not limited to: management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association,) exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State. The SBDC shall also ensure that a full range of business development and technical assistance services are made available to small businesses located in rural areas.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon

them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities:

(a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.

(b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small business that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

The Lead SBDC and all SBDC subcenters shall operate on a forty (40) hour week basis, or during the normal business hours of the State or Host Organization, throughout the calendar year. The amount of time allowed the Lead SBDC and subcenters for staff vacations and holidays shall conform to the policy of the Host organization.

Date: June 1, 1989.

Susan Engeleiter,
Administrator.

Addressees of Relevant SBDC Directors

Dr. Jeff Gibbs, State Director, University of Alabama/B'ham, 1717 11th Ave. South, Suite 419, Birmingham, Alabama 35294, (205) 934-7260

Mr. John O'Connor, State Director, University of Connecticut, Box U-41, Room 422, 368 Fairfield Road, Storrs, Connecticut 06268, (203) 486-4135

Ms. Linda Fayerweather, State Director, University of Delaware, Suite 005—Purnell Hall, Newark, Delaware 19711, (302) 451-2747

Ms. Carole Bordenkircher, State Director, ND Economic Dev. Commission, Liberty Memorial Building, Bismarck, North Dakota 58505, (701) 224-2310

Mr. Jose Romaguera, SBDC Director, University of Puerto Rico, Box 5253—College Station, Mayaguez, Puerto Rico 00709, (809) 834-3590 or 834-3790

Mr. Ted Cadou, Area Director, Texas Tech University, 2005 Broadway, Lubbock, Texas 79401, (806) 744-5343

Dr. Solomon Kabuka, Jr., SBDC Director, University of the Virgin Islands, Grand Hotel Building, Annex B, P.O. Box 1087, St. Thomas, US Virgin Islands, 00804, (809) 776-3206

Ms. Janet Nye, State Director, University of Alaska/Anchorage, 430 West 7th Avenue, Suite 115, Anchorage, Alaska 99501, (907) 274-7232

Mr. Raleigh Byars, Acting State Director, University of Mississippi, 3825 Ridgewood Road, Jackson, Mississippi 39211, (601) 982-6760

Mr. James L. King, State Director, State University of New York, SUNY (Downstate), SUNY Plaza, S-523, Albany, New York 12246, (518) 443-5398

Mr. Jack Brown, State Director, Ohio Department of Development, 30 East Broad Street, Columbus, Ohio 43266-1001, (614) 466-5111

Dr. Norbert R. Dettman, Area Director, Dallas Community College, 302 North Market, Third Floor, Dallas, Texas 75202-1806, (214) 324-7945

Mr. Henry Travieso, Area Director, University of Texas/San Antonio, San Antonio, Texas 78285-0660, (512) 224-0791

Ms. Eloise Jack, State Director, Governor's Office of Community and Industrial Development, 1115 Virginia Street, East Charleston, West Virginia 25310, (304) 348-2960

Mr. MacRay Bryant, State Director, Casper Community College, 130 North Ash, Suite A, Casper, Wyoming 82601, (307) 235-4825

Mr. Thomas A. Henderson, Director, Economic Development/Continuing Education Programs, University Extension, University of Missouri, 801 Clark Hall, Columbia, Missouri 65211, (314) 882-4321

Mr. A. Elliott Rittenhouse, State Director, MD Department of Economic and Employment Development, 217 East Redwood Street, 10th Floor,

Baltimore, Maryland 21202, (301) 333-6608.

[FR Doc. 89-13932 Filed 6-12-89; 8:45 am]

BILLING CODE 8025-01-M

Action Subject to Intergovernmental Review

AGENCY: Small Business Administration.

ACTION: Notice of action subject to intergovernmental review under Executive Order 12372.

SUMMARY: This notice provides for public awareness of SBA's intention to refund eight presently existent Small Business Development Centers (SBDCs) on September 30, 1989. Currently there are 53 SBDCs operating in the SBDC program. The following SBDCs are intended to be refunded: Iowa, Kentucky, Louisiana, Massachusetts, Michigan, New York (Upstate), Texas (Houston), and Vermont. This notice also provides a description of the SBDC program by setting forth a condensed version of the program announcement which has been furnished to each of the SBDCs to be refunded. This publication is being made to provide the State single points of contact, designated pursuant to Executive Order 12372, and other interested State and local entities, the opportunity to comment on the proposed refunding in accord with the Executive Order and SBA's regulations found at 13 CFR Part 135.

EFFECTIVE DATE: October 11, 1989.

ADDRESSES: Comments should be addressed to Ms. Janice E. Wolfe, Associate Administrator for SBDC Program, U.S. Small Business Administration, 1441 L Street, NW., Wash. DC 20416.

FOR FURTHER INFORMATION CONTACT: Same as above.

Action Subject to Intergovernmental Review

SBA is bound by the provisions of Executive Order 12372.

"Intergovernmental Review of Federal Programs." SBA has promulgated regulations spelling out its obligations under that Executive Order. See 13 CFR Part 135, effective September 30, 1983.

In accord with these regulations, specifically 135.4, SBA is publishing this notice to provide public awareness of the pending application of nine presently existent Small Business Development Centers (SBDCs) for refunding. Also, published herewith is an annotated program announcement describing the SBDC program in detail.

This notice is being published four months in advance of the expected date of refunding these SBDCs. Relevant information identifying these SBDCs and providing their mailing address is provided below. In addition to this publication, a copy of this notice is being simultaneously furnished to the affected State single point of contact which has been established under the Executive Order.

The State single points of contact and other interested State and local entities are expected to advise the relevant SBDC of their comments regarding the proposed refunding in writing as soon as possible. The SBDC proposal cannot be inconsistent with any area-wide plan providing assistance to small business, if there is one, which has been adopted by an agency recognized by the State government as authorized to do so. Copies of such written comments should also be furnished to Ms. Janice E. Wolfe, Associate Administrator for SBDC Programs, U.S. Small Business Administration, 1441 L Street, NW., Washington, DC 20416. Comments will be accepted by the relevant SBDC and SBA for a period of 120 days from the date of publication of this notice. The relevant SBDC will make every effort to accommodate these comments during the 120-day period. If the comments cannot be accommodated by the relevant SBDC, SBA will, prior to refunding the SBDC, either attain accommodation of any comments or furnish an explanation of why accommodation cannot be attained to the commentator prior to refunding the SBDC.

Description of the SBDC Program

The SBDC operates under the general management and oversight of SBA, but with recognition that a partnership exists between the Agency and the SBDC for the delivery of assistance to the small business community. SBDC services shall be provided pursuant to a negotiated Cooperative Agreement with full participation of both parties. SBDCs operate on the basis of a state plan to provide assistance within a state or designated geographical area. The initial plan must have the written approval of the Governor. As a condition to any financial award made to an applicant, non-Federal funds must be provided from sources other than the Federal Government. SBDCs operate under the provisions of Pub. L. 96-302, as amended by Pub. L. 98-395, a Notice of Award (Cooperative Agreement) issued by SBA, and the provisions of this Program Announcement.

Purpose and Scope

The SBDC Program is designed to provide quality assistance to small businesses in order to promote growth, expansion, innovation, increased productivity and management improvement. To accomplish these objectives, SBDCs link resources of the Federal, State, and local governments with the resources of the educational system and the private sector to meet the specialized and complex needs of the small business community. SBDCs also coordinate with other SBA programs of business development and utilize the expertise of these affiliated resources to expand services and avoid duplication of effort.

Program Objectives

The overall objective of the SBDC Program is to leverage Federal dollars and resources with those of the state, academic community and private sector to:

- (a) Strengthen the small business community;
- (b) Contribute to the economic growth of the communities served;
- (c) Make assistance available to more small businesses than is now possible with present Federal resources;
- (d) Create a broader based delivery system to the small business community.

SBDC Program Organization

SBDCs are organized to provide maximum services to the local small business community. The lead SBDC receives financial assistance from the SBA to operate a statewide SBDC Program. In states where more than one organization receives SBA financial assistance to operate an SBDC, each lead SBDC is responsible for Program operations throughout a specific regional area to be served by the SBDC. The lead SBDC is responsible for establishing a network of SBDC subcenters to offer service coverage to the small business community. The SBDC network is managed and directed by a full-time Director. SBDCs must ensure that at least 80 percent of Federal funds provided are used to provide services to small businesses. To the extent possible, SBDCs provide services by enlisting volunteer and other low cost resources on a statewide basis.

SBDC Services

The specific types of services to be offered are developed in coordination with the SBA district office which has jurisdiction over a given SBDC. SBDCs emphasize the provision of in-depth, high-quality assistance to small business owners or prospective small business

owners in complex areas that require specialized expertise.

These areas may include, but are not limited to: Management, marketing, financing, accounting, strategic planning, regulation and taxation, capital formation, procurement assistance, human resource management, production, operations, economic and business data analysis, engineering, technology transfer, innovation and research, new product development, product analysis, plant layout and design, agri-business, computer application, business law information, and referral (any legal services beyond basic legal information and referral require the endorsement of the State Bar Association), exporting, office automation, site selection, or any other areas of assistance required to promote small business growth, expansion, and productivity within the State. The SBDC shall also ensure that a full range of business development and technical assistance services are made available to small businesses located in rural areas.

The degree to which SBDC resources are directed towards specific areas of assistance is determined by local community needs, SBA priorities and SBDC Program objectives and agreed upon by the SBA district office and the SBDC.

The SBDC must offer quality training to improve the skills and knowledge of existing and prospective small business owners. As a general guideline, SBDCs should emphasize the provision of training in specialized areas other than basic small business management subjects. SBDCs should also emphasize training designed to reach particular audiences such as members of SBA priority and special emphasis groups.

SBDC Program Requirements

The SBDC is responsible to the SBA for ensuring that all programmatic and financial requirements imposed upon them by statute or agreement are met. The SBDC must assure that quality assistance and training in management and technical areas are provided to the State small business community through the State SBDC network. As a condition of this agreement, the SBDC must perform, but not be limited to, the following activities:

- (a) The SBDC ensures that services are provided as close as possible to small business population centers. This is accomplished through the establishment of SBDC subcenters.
- (b) The SBDC ensures that lists of local and regional private consultants are maintained at the lead SBDC and

each SBDC subcenter. The SBDC utilizes and provides compensation to qualified small business vendors such as private management consultants, private consulting engineers, and private testing laboratories.

(c) The SBDC is responsible for the development and expansion of resources within the State, particularly the development of new resources to assist small businesses that are not presently associated with the SBA district office.

(d) The SBDC ensures that working relationships and open communications exist within the financial and investment communities, and with legal associations, private consultants, as well as small business groups and associations to help address the needs of the small business community.

(e) The SBDC ensures that assistance is provided to SBA special emphasis groups throughout the SBDC network. This assistance shall be provided to veterans, women, exporters, the handicapped, and minorities as well as any other groups designated a priority by SBA. Services provided to special emphasis groups shall be performed as part of the Cooperative Agreement.

Advance Understandings

The Lead SBDC and all SBDC subcenters shall operate on a forty (40) hour week basis, or during the normal business hours of the State or Host Organization, throughout the calendar year. The amount of time allowed the Lead SBDC and subcenters for staff vacations and holidays shall conform to the policy of the Host organization.

Date: May 31, 1989.

Susan Engleiter,
Administrator.

Addressess of Relevant SBDC Directors

Mr. Norris Elliott, State Director,
University of Vermont Extension
Service, Morrill Hall, Burlington,
Vermont 05405, (802) 656-4479

Mr. Jerry Owen, State Director,
University of Kentucky, 18 Porter
Building, Lexington, Kentucky 40506-
0205, (606) 257-7668

Mr. John Ciccarelli, State Director,
University of Massachusetts School of
Management, Amherst, Massachusetts
01003, (413) 549-4930—Ext. 303

Mr. James L. King, State Director, State
University of New York, SUNY
(Upstate), State University Plaza,
Albany, New York 12246, (516) 443-
5398

Mr. Ronald Manning, State Director,
Iowa State University, College of
Business Administration, 137 Lynn
Avenue, Ames, Iowa 50010, (515) 292-
6351

Dr. John Baker, State Director, Northeast
Louisiana University, Administrative
Bldg.—Room 2-57, University Drive,
Monroe, Louisiana 71209, (318) 342-
2464

Dr. Norman Schlafmann, State Director,
Wayne State University, 2727 Second
Avenue, Detroit, Michigan 48201, (313)
577-4848

Dr. Jon Goodman, Area Director,
University of Houston, 401 Louisiana,
Eighth Floor, Houston, Texas 77002,
(713) 223-1141.

[FR Doc. 89-13933 Filed 6-12-89; 8:45 am]

BILLING CODE 8025-01-M

United Jersey Venture Capital, Inc.; Surrender of License

[License No. 02/02-0489]

Notice is hereby given that United
Jersey Venture Capital, Inc. (UJVC), 301
Carnegie Center, Princeton, New Jersey
08540, has surrendered its License to
operate as a small business investment
company under the Small Business
Investment Act of 1958, as amended
(Act) UJVC was licensed by the Small
Business Administration on January 20,
1987.

Under the authority vested by the Act
and pursuant to the Regulations
promulgated thereunder, the surrender
of the License was accepted on June 5,
1989, and accordingly, all rights,
privileges, and franchises derived
therefrom have been terminated.

(Catalog of Federal Domestic Assistance
Program No 59.011, Small Business
Investment Companies)

Robert G. Lineberry,
Deputy Associate Administrator for
Investment.

Dated: June 7, 1989.

[FR Doc. 89-13935 Filed 6-12-89; 8:45 am]

BILLING CODE 8015-01-M

[Application No 09/09-5384]

Vinh An Capital Investment, Inc.; Application for a Small Business Investment Company License

An application for a license to operate
as a small business investment company
under the provisions of section 301(d) of
the Small Business Investment Act of
1958, as amended, (the Act), (15 U.S.C
661, et. seq. 1989)) has been filed by
Vinh An Capital Investment, Inc. (the
Applicant), 9191 Bolsa Avenue, Suite 116
Westminster, CA 92683, with the Small
Business Administration (SBA) pursuant
to 13 CFR 107.102 (1989).

The officers, directors and
stockholders of the Applicant are as
follows:

Name and address	Title	Percent of capital stock
Tuong Van Nguyen, 9191 Bolsa Ave. #117, Westminster, CA 92683.	Chairman of the Board, Director	28
Sandy Louis Ward, 8454 Mercury Dr., Buena Park, CA 90621.	President	0
Dung Mercier, 1900 E Fourth St., #203, Santa Ana, CA 92705.	Secretary, Director, CFO.	9
Trong Van Nguyen, 2317 W. First St., Santa Ana, CA 92703.	Director	9

There are six other stockholders, each
has a nine percent interest in the
applicant.

The Applicant a California
Corporation, will begin operations with
\$1,000,000 of paid-in capital and paid-in
surplus. The Applicant will conduct its
activities primarily in the State of
California but will consider investments
in businesses in other areas of the
United States.

As an SBIC under section 301(d) of the
Act, the Applicant has been organized
and chartered solely for the purpose of
performing the functions and conducting
the activities contemplated under the
Small Business Investment Act of 1958,
as amended, from time to time, and will
provide assistance solely to small
business concerns which will contribute
to a well-balanced national economy by
facilitating ownership in such concerns
by persons whose participation in the
free enterprise system is hampered
because of social or economic
disadvantage.

Matters involved in SBA's
consideration of the application include
the general business reputation and
character of the proposed owner and
management, and the probability of
successful operations of the company
under their management, including
adequate profitability and financial
soundness, in accordance with the Small
Business Investment Act and the SBA
Rules and Regulations.

Notice is further given that any person
may, not later than 30 days from the
date of publication of this Notice, submit
written comments on the proposed
Application. Any such communication
should be addressed to the Deputy
Associate Administrator for Investment,
Small Business Administration, 1441 "L"
Street, NW., Washington, DC 20416.

A copy of this Notice shall be
published in a newspaper of general
circulation in Westminster, CA area.

(Catalog of Federal Domestic Assistance Program No 59.011, Small Business Investment Companies)
Robert G. Lineberry,
Deputy Associate Administrator for Investment.

Dated: June 6, 1989.
[FR Doc. 89-13934 Filed 6-12-89; 8:45 am]
BILLING CODE 8015-01-M

DEPARTMENT OF STATE

[Public Notice CM-8-1289]

Advisory Committee on International Communications and Information Policy; Meeting

The Department of State announces that the Advisory Committee on International Communications and Information Policy will meet on July 17 in the Loy Henderson Conference Room, Department of State, 2201 C Street NW., Washington, DC. The meeting will begin at 9:30 a.m.

The Committee serves the Department of State in an advisory capacity concerning major economic, social and legal issues and problems in international communications and information policy, especially as these issues and problems involve users of information and communications services, providers of such services, technology research and development, foreign industrial and regulatory policy and the activities of international organizations with regard to communications and information, and developing country interests.

The agenda will include a consideration of two issues. The first topic will be a discussion of telecommunications developments related to EC 1992. The second topic will be a discussion of the proposed EC directive on broadcasting.

Members of the general public may attend the meeting and join in the discussion, subject to the instructions of the Chairman. Admittance of public members will be limited to the seating available. In that regard, entrance to the

Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meeting. Prior to the meeting, persons who plan to attend should so advise the office of Mrs. Lucy H. Richards, Department of State, Washington, DC, telephone (202) 647-5230.

Date: June 2, 1989.

Lucy H. Richards,
Director, Office of Industrialized Country Policy, Executive Secretary, Advisory Committee on International, Communications and Information Policy.

[FR Doc. 89-14041 Filed 6-12-89; 8:45 am]
BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Fitness Determination of Columbia Pacific Airlines

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order 89-8-12, Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find Columbia Pacific Airlines fit, willing, and able to provide commuter air service under section 419(e)(1) of the Federal Aviation Act.

Responses: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with the Air Carrier Fitness Division, P-56, Room 6401, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than June 22, 1989.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590, (202) 366-9730.

Dated: June 7, 1989.
Patrick V. Murphy, Jr.,
Deputy Assistant Secretary for Policy and International Affairs.
[FR Doc. 89-13919 Filed 6-12-89; 8:45 am]
BILLING CODE 4810-02-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 7, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-0056
Form Number: 1023 and 872-C
Type of Review: Revision
Title: Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code; Consent Fixing Period of Limitation Upon Assessment of Tax Under section 4940 of the Internal Revenue Code
Description: Form 1023 is filed by applicants seeking Federal income tax exemption as organizations described in section 501(c)(3). IRS uses the information to determine if the applicant is exempt and whether applicant is a private foundation. Form 872-C extends the statute of limitations for assessing tax under section 4940.
Respondents: Non-profit institutions
Estimated Number of Respondents: 40,870
Estimated Burden Hours Per Response/Recordkeeping:

	Form 1023	Form 872-C
Recordkeeping.....	54 hrs. 17 mins.	1 hr. 12 mins.
Learning about the law or the form.....	4 hrs. 41 mins.	24 mins.
Preparing and sending the form to IRS.....	9 hrs. 22 mins.	26 mins.

Frequency of Response: On occasion
Estimated Total Recordkeeping/
Reporting Burden: 2,638,844 hours
OMB Number: 1545-0217

Form Number: 5735 and Schedule P
Type of Review: Revision
Title: Computation of Possessions Corporation Tax Credit Allowed Under

section 936; Allocation of Income and Expenses Under section 936(h)(5)
Description: Form 5735 is used to compute the possessions tax credit under section 936. Schedule P is used by

corporations that elect to share the income or expenses with their affiliates. Each form provides the IRS with information to determine if the corporations have correctly computed

the tax credit and the cost-sharing or profit-split method.
Respondents: Businesses or other for-profit

Estimated Number of Respondents: 1,371
Estimated Burden Hours Per Response/Recordkeeping:

	Form 5735	Schedule P (Form 5735)
Recordkeeping.....	12 hrs. 12 mins.	10 hrs. 2 mins.
Learning about the law or the form.....	2 hrs. 11 mins.	1 hr. 56 mins.
Preparing and sending the form to IRS.....	2 hrs. 29 mins.	
Preparing the form.....		4 hours 2 minutes
Copying, assembling, and sending the form to IRS.....		32 minutes

Frequency of Response: Annually
Estimated Total Recordkeeping/
Reporting Burden: 22,929 hours

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Officer of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 89-13976 Filed 6-12-89; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 7, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New
Form Number: None
Type of Review: New Collection
Title: 1989 Taxpayer Opinion Survey
Description: IRS needs to obtain trend data, that will enable the Service to monitor and evaluate the effectiveness of current tax policies and programs. Questions are duplicated from previous surveys and directed toward the general taxpaying population. Some new questions are also added.
Respondents: Individuals or households

Estimated Number of Respondents: 4,000

Estimated Burden Hours Per Response: 17 minutes

Frequency of Response: One Time Only Survey
Estimated Total Reporting Burden: 1,700 hours

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Officer of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Department Reports, Management Officer.
[FR Doc. 89-13977 Filed 6-12-89; 8:45 am]
BILLING CODE 4810-25-M

[General Counsel Designation No. 158]

Appointment of Members of the Legal Division to the Performance Review Board

Under the authority granted to me as General Counsel of the Department of the Treasury by 31 U.S.C. 301 and 26 U.S.C. 7801, Treasury Department Order No. 101-5 (Revised), and pursuant to the Civil Service Reform Act, I hereby appoint the following persons to the Legal Division Performance Review Board:

(1) For the General Counsel Panel—Jeanne S. Archibald, Deputy General Counsel, who shall serve as Chairperson;
Russell L. Munk, Assistant General Counsel (International Affairs);
Kenneth R. Schmalzbach, Assistant General Counsel (Administrative and General Law);
Paul Allan Schott, Chief Counsel, Office of the Comptroller of the Currency;
Leonard B. Terr, International Tax Counsel;
Marvin J. Dessler, Chief Counsel, Bureau of Alcohol, Tobacco, and Firearms; and
Michael T. Schmitz, Chief Counsel, United States Customs Service.

(2) For the Internal Revenue Service Panel—Chairperson, Deputy Chief Counsel, IRS, Deputy General Counsel; Two Associate Chief Counsel, IRS; and Two Regional Counsel, IRS.

I hereby delegate to the Chief Counsel of the Internal Revenue Service the authority to make the appointments to the IRS Panel specified in this Designation and to make the publication of the IRS Panel as required by 5 U.S.C. 4314(c)(4).

Edith E. Holiday,
General Counsel.

Date: June 6, 1989.
[FR Doc. 89-13912 Filed 6-12-89; 8:45 am]
BILLING CODE 4810-25-M

UNITED STATES INFORMATION AGENCY

1990-91 Fulbright Teacher Exchange Program

The United States Information Agency announces the 1990-91 Fulbright Teacher Exchange Program. Applications are invited from elementary and secondary school teachers and administrators and college faculty to teach in schools or colleges or to attend seminars abroad under the Mutual Educational and Cultural (Fulbright) Exchange Act of 1961. Not all categories of applicants are eligible for exchange or seminar positions with all countries. Eligibility requirements include: (1) U.S. citizenship; (2) bachelor's degree; (3) three years of full-time teaching experience for teaching positions; two years full-time teaching experience for seminar positions; (4) current full-time employment in appropriate subject areas and at appropriate teaching level for which application is made; and (5) fluency in foreign languages for certain non-English speaking countries. Participating countries are announced on a tentative basis: Argentina, Belgium/Luxembourg, Bulgaria, Canada, Chile, Colombia, Cyprus, Denmark, Egypt, Federal

Republic of Germany, France, Hungary, Iceland, Italy, Mexico, The Netherlands, Norway, the Philippines, Poland, Portugal, Senegal, South Africa, Switzerland, Turkey, and United Kingdom. Usually, U.S. and foreign teachers exchange teaching positions are for one academic year. U.S. and foreign teachers continue to receive a salary from their home institutions. A limited number of one-way teaching assignments are also available. In addition, seminars are presently planned in Italy and The Netherlands. Participants in seminars may be provided with transportation, room, board, and/or tuition, depending on the program. Applications for the 1990-91 competition must be submitted by October 15, 1989. The application packet is disseminated in August and September. Further information should be requested from the: Fulbright Teacher Exchange Program, E/ASX, United States Information Agency, 301 4th St. SW., Washington, DC 20547. (202) 485-2555.

Guy Story Brown,

Director, Office of Academic Programs.

Date: May 30, 1989.

[FR Doc. 89-13943 Filed 6-12-89; 8:45 am]

BILLING CODE 8230-01-M

A Grants Program for Private Not-for-Profit Organizations in Support of International Educational and Cultural Activities

The United States Information Agency (USIA) announces a program of selective assistance and limited grant support to non-profit activities of United States institutions and organizations in the Private Sector. The program is designed to increase mutual understanding between the people of the United States and Afghanistan and to strengthen the ties which unite our societies. The information collection involved in this solicitation is covered by OMB Clearance Number 3116-0175, entitled "A Grants Program for Private, Non-Profit Organizations in Support of International and Cultural Activities," announced in the *Federal Register* February 9, 1989.

Private Sector Organizations interested in working cooperatively with USIA on the following concept are encouraged to so indicate.

Afghan Broadcast Journalist Exchange

Summary

The Office of Private Sector Programs proposes the development of a program, which will bring six broadcast journalists from Afghanistan to the

United States for 28 days to give them a greater understanding of the theory and practice of journalism in this country.

A U.S. not-for-profit institution will design the programs and select the American speakers. The participants will be selected by the United States Information Agency (USIA) with the cooperation of its post in Pakistan.

USIA is most interested in working with organizations that show promise for innovative and cost-effective programming, and with organizations that have potential for obtaining private-sector funding in addition to USIA support. Organizations must have the substantive expertise and logistical capability needed to develop and conduct the above project successfully and should also demonstrate a potential for designing programs which will have lasting impact on their participants.

Interested organizations should submit a request for complete application materials—postmarked no later than 30 days from the date of this notice—to the address listed below. The Office of Private Sector Programs will then forward a set of materials, including proposal guidelines. Please refer to these specific programs by name in your letter of interest: Office of Private Sector Programs, Bureau of Educational and Cultural Affairs, (ATTN: Initiative Programs, Afghan Broadcast Journalists Exchange), United States Information Agency, 301 4th St. SW., Washington, DC 20547.

Date: May 19, 1989.

Curt Rasco,

Acting Director, Office of Private Sector Programs.

[FR Doc. 89-14042 Filed 6-12-89; 8:45 am]

BILLING CODE 8230-01-M

United States Advisory Commission on Public Diplomacy; Meeting

A meeting of the U.S. Advisory Commission on Public Diplomacy will be held June 21, 1989 in Room 600, 301 4th Street, SW., Washington, DC from 10:00 a.m. to 11:00 a.m.

The Commission will meet with Mr. Michael J. Kelly, Chairman of the Cultural Property Advisory Committee.

Please call Gloria Kalamets, (202) 485-2468, if you are interested in attending the meeting since space is limited and entrance to the building is controlled.

Dated: June 7, 1989.

Ledra L. Dildy,

Staff Assistant, Federal Register Liaison.

[FR Doc. 89-14043 Filed 6-12-89; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The agency responsible for sponsoring the information collection; (2) the title of the information collection; (3) the Department form number(s), if applicable; (4) a description of the need and its use; (5) frequency of the information collection, if applicable; (6) who will be required or asked to respond; (7) an estimate of the number of responses; (8) an estimate of the total number of hours needed to complete the information collection; and (9) an indication of whether section 3504(h) of Public Law 96-511 applies.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from John Turner, Veterans Benefits Administration, (203C), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233-2744.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, (202) 395-7316.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: June 2, 1989.

By direction of the Secretary:

Frank E. Lalley,

Director, Office of Information Management and Statistics.

Extension

1. Veterans Benefits Administration
2. Supplemental Physical Examination
3. VA Form 29-8100
4. The form is used to obtain complete information as to the physical and/or mental condition of a veteran who has submitted an application for insurance or reinstatement.
5. On occasion
6. Individuals or households
7. 1440 responses.
8. ¾ hour

9. Not applicable

[FR Doc. 89-13955 Filed 6-12-89; 8:45 am]

BILLING CODE 8320-01-M

Veterans Administration Advisory Committee on Native American Veterans; Availability of Final Report

Under section 10(d) of Pub. L. 92-463 (Federal Advisory Committee Act) notice is hereby given that the Final Report of the Veterans Administration

Advisory Committee on Native American Veterans has been issued. The report summarizes the Committee's actions relative to the examination and evaluation of programs and other activities of the Veterans Administration with respect to the needs of Native American veterans including American Indians, Alaska Natives, and Native Hawaiians. It is available for public inspection at two locations: Federal Documents Section, Exchange and Gift Division, LM 632,

Library of Congress, Washington, DC 20540, and Department of Veterans Affairs, Office of Director, Social Work Service (122), Room 938, 810 Vermont Avenue NW., Washington, DC 20420.

Dated: June 5, 1989.

By direction of the Secretary

Rosa Maria Fontanez,

Committee Management Officer.

[FR Doc. 89-13954 Filed 6-12-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

June 8, 1989.

The Federal Communications Commission will hold an Open Meeting on the subjects listed below on Thursday, June 15, 1989, which is scheduled to commence at 9:30 a.m., in Room 858, at 1919 M Street, N.W., Washington, D.C.

Agenda, Item No., and subject

General—1—*Title:* Amendment of Part 2 of the Commission's Rules regarding the Allocation of the 218-225 MHz band.

Summary: In this proceeding, the Commission considers whether to reaffirm its decision to provide a primary allocation to the land mobile service in the 220-222 MHz band and a primary allocation to the amateur service in the 222-225 MHz band.

Private Radio—1—*Title:* Amendment of the Frequency Allocation and Aviation Services Rules (Parts 2 and 87). *Summary:* The FCC will consider a Notice of Proposed Rule Making regarding the Frequency Allocation Table and the Aviation Services Rules, contained in Part 2 and 87 of the Commission's Rules, in light of the action taken at the 1979 Mobile World Administrative Radio Conference that reallocated the 136-137 MHz band on a primary basis to the Aeronautical Mobile (R) Service.

Private Radio—2—*Title:* Amendment of § 90.235 of the Rule to Permit Secondary Fixed Tone Signaling and Alarm Operations in Part 90 Radio Services. *Summary:* The Commission will consider whether to adopt a Report and Order concerning fixed signaling operations in all Part 90 Radio Services.

This meeting may be continued the following work day to allow the Commission to complete appropriate action.

Additional information concerning this meeting may be obtained from Sarah Lawrence, Office of Public Affairs, telephone number (202) 632-5050.

Issued: June 8, 1989.

Federal Communications Commission,
Donna R. Searcy,
Secretary.

[FR Doc. 89-14164 Filed 6-9-89; 3:18 pm]

BILLING CODE 6712-01-M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

June 8, 1989.

TIME AND DATE: 10:00 a.m., Thursday, June 15, 1989.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Part Open & Part Closed (Pursuant to 5 U.S.C. 552b(c)(10)).

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. In open meeting: *Utah Power & Light Company*, Docket No. WEST 87-210-R. (Issues include whether the judge properly found the operator violated 30 CFR 75.1704 and whether the judge properly found a second violation of 30 CFR 75.1704 to be the result of the operator's unwarrantable failure.)

2. In open meeting: *Rushton Mining Company*, Docket No. PENN 88-89-R. (Issues include whether the judge properly found the operator's violation of 30 CFR 75.1704-(a) was not significant & substantial.)

3. In closed meeting: *John A. Gilbert v. Sundry Fork Mining Co.*, Docket No. KENT 88-49-D, and *Secretary of Labor on behalf of Gilbert v. Sundry Fork Mining Co.*, Docket No. KENT 88-78-D. (Initial discussion of proceeding after remand from the U.S. Circuit Court of Appeals for the D.C. Circuit.)

4. In closed meeting: *Odell Maggard v. Chaney Creek Coal Corp.*, Docket No. KENT 88-1-D, and *Secretary of Labor on behalf of Maggard v. Chaney Creek Coal Corp.*, Docket No. KENT 88-51-D. (Initial discussion of proceeding after remand from U.S. Circuit Court of Appeals for the D.C. Circuit.)

Any person intending to attend the open portion of this meeting who requires special accessibility features and/or auxiliary aids, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(d).

It was determined by a unanimous vote of Commissioners that Items 3 & 4 be considered in closed session.

CONTACT PERSON FOR MORE

INFORMATION: Jean Ellen (202) 653-5829 / (202) 568-2873 for TDD Relay.

Jean H. Ellen,
Agenda Clerk.

[FR Doc. 89-14120 Filed 6-9-89; 8:45 am]

BILLING CODE 6735-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 11:00 a.m., Monday, June 19, 1989.

Federal Register

Vol. 54, No. 112

Tuesday, June 13, 1989

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE

INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Date: June 9, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-14182 Filed 6-9-89; 3:52 pm]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 10:00 a.m., June 19, 1989.

PLACE: 5th Floor, Conference Room, 805 Fifteenth Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of last meeting.
2. Thrift Savings Plan Activities report by the Executive Director.
3. Review of current Labor Department audit reports.

CONTACT PERSON FOR MORE

INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 523-5660.

Date: June 8, 1989.

Francis X. Cavanaugh,
Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 89-14073 Filed 6-8-89; 4:54 pm]

BILLING CODE 6760-01-M

NATIONAL LABOR RELATIONS BOARD

TIME AND DATE: Friday, June 9, 1989, immediately following a 9:00 a.m., Board adjudicatory meeting.

PLACE: Board Conference Room, Sixth Floor, 1717 Pennsylvania Avenue, NW., Washington, DC 20570.

STATUS: Closed to public observation pursuant to 5 U.S.C. Section 552b(c)(2) (internal personnel rules and practices).

MATTERS TO BE CONSIDERED: Personnel matters.

CONTACT PERSON FOR MORE

INFORMATION: John C. Truesdale, Executive Secretary, National Labor Relations Board, Washington, DC 20570, Telephone: (202) 254-9430.

Dated: Washington, DC, June 9, 1989.

By direction of the Board.

John C. Truesdale,

Executive Secretary, National Labor Relations Board.

[FR Doc. 89-14152 Filed 6-9-89; 2:15 pm]

BILLING CODE 7545-01-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of June 12, 19, 26, and July 3, 1989.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of June 12

Tuesday, June 13

2:00 p.m.

Briefing on Proposed Rule on Basic Quality

Assurance in Radiation Therapy (Public meeting)

Thursday, June 15

3:30 p.m.

Affirmation/Discussion and Vote (Public meeting) (if needed)

Week of June 19—Tentative

Tuesday, June 20

10:00 a.m.

Briefing on the Application of the Severe Accident Policy to the Lead Application for Advanced Light Water Reactors (Public meeting)

Thursday, June 22

10:00 a.m.

Briefing on Status of Proposed Rule for License Renewal (Public meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public meeting) (if needed)

Week of June 26—Tentative

Wednesday, June 28

11:30 a.m.

Affirmation/Discussion and Vote (Public meeting) (if needed)

Week of July 3—Tentative

Thursday, July 6

10:00 a.m.

Briefing on Study of Adequacy of Regulatory Oversight of Materials Under General License (Public meeting)

11:30 a.m.

Affirmation/Discussion and Vote (Public meeting) (if needed)

Friday, July 7

10:00 a.m.

Briefing on Agency Human Factors Initiatives (Public meeting)

ADDITIONAL INFORMATION: By a vote of 4-0 (Commissioner Curtiss was not present) on June 8, the Commission determined pursuant to 5 U.S.C. 552b(e) and § 9.107(a) of the Commission's rules that Commission business required that "Affirmation of Scheduling Order for Responses to Applicant's Request for Clarification of Licensing Status of Limerick Unit 2" (Public meeting) scheduled for June 8, be held on less than one week's notice to the public.

Note.—Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (301) 492-0292.

CONTACT PERSON FOR MORE

INFORMATION: William Hill, (301) 492-1661.

William M. Hill, Jr.,
Office of the Secretary,
June 8, 1989.

[FR Doc. 89-14155 Filed 6-9-89; 2:29 pm]

BILLING CODE 7599-01-M

Corrections

Federal Register

Vol. 54, No. 112

Tuesday, June 13, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 433]

Resolution and Order Approving With Restriction the Application of Georgia Foreign-Trade Zone, Inc., for a Special-Purpose Subzone at the Yamaha Motor Manufacturing Corp., Golf Cart and Water Vehicle Plant in Coweta County, GA

Correction

In notice document 89-13428 beginning on page 24370 in the issue of, Wednesday, June 7, 1989, make the following correction:

In the third column, in the next to last paragraph, the word "hard" should read "heard".

BILLING CODE 1505-01-D

DEPARTMENT OF COMMERCE

International Trade Administration

Export Trade Certificates of Review

Correction

In notice document 89-12960 beginning on page 23506 in the issue of Thursday, June 1, 1989, make the following correction:

1. On page 23506, in the first column, under **SUPPLEMENTARY INFORMATION**, in the second line, "Export" was misspelled.

2. On the same page, in the 2nd column, under **Request for Public Comments**, in the 1st paragraph, in the 16th line, "applicant" should read "application".

3. On the same page, in the same column, under "Summary of Application", in the fifth line, "Manager" was misspelled.

4. On the same page, in the same column, under "Summary of Application", in the 17th line, "Controls" was misspelled; in the 33rd line, after "international" insert a comma; and in the 35th line, "Mommoth" should read "Mammoth".

5. On page 23507, in the second column, in the paragraph designated "h", in the third line, "who" should read "how".

6. On the same page, in the third column, in the paragraph designated "c", in the sixth line, "discussions" was misspelled.

7. On page 23508, in the first column, in the paragraph designated "f", in the sixth line, "commission" should read "commissions".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Office of the Secretary

29 CFR Part 70

RIN 1290-AA08

Department of Labor Regulations Implementing Freedom of Information Act and Executive Order 12600

Correction

In rule document 89-12716 beginning on page 23142 in the issue of Tuesday, May 30, 1989, make the following corrections:

1. On page 23145, in the first column, under **Appendix A to Part 70—Disclosure Officers**, the authority citation should read as follows:

Authority: 5 U.S.C. 301, 5 U.S.C. 552, as amended; Reorganization Plan No. 6 of 1950, 5 U.S.C. Appendix; E.O. 12600, 52 FR 23781 (June 25, 1987).

§ 70.4 [Corrected]

2. On the same page, in the second column, in § 70.4(a)(1), in the first line, "options" should read "opinions".

§ 70.22 [Corrected]

3. On page 23147, in the second column, in the fourth line "solicitor" should be capitalized.

§ 70.38 [Corrected]

4. On page 23148, in the third column, in § 70.38(f), in the first line, "request" was misspelled.

5. On page 23149, in the first column, in § 70.38(h), in the fifth line, "solely" was misspelled.

§ 70.40 [Corrected]

6. On the same page, in the second column, § 70.40(a)(4) should appear as a paragraph.

BILLING CODE 1505-01-D

Tuesday
June 13, 1989

Part II

Department of Defense General Services Administration

National Aeronautics and Space Administration

48 CFR Parts 15, 32, and 52

**Federal Acquisition Regulation (FAR);
Reimbursement, Interest Charges, and
Penalties for Overpayment; Proposed
Rule**

BEST COPY AVAILABLE

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATION

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 15, 32, and 52

Federal Acquisition Regulation (FAR);
Reimbursement, Interest Charges, and
Penalties for Overpayment

AGENCIES: Department of Defense
(DoD), General Services Administration
(GSA), and National Aeronautics and
Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency
Acquisition Council and the Defense
Acquisition Regulatory Council are
considering revisions to Federal
Acquisition Regulation (FAR) 15.804-7,
Defective Cost or Pricing Data; Subpart
32.6, Contract Debts; and the clauses at
52.214-27, Price Reduction for Defective
Cost or Pricing Data-Modifications-
Sealed Bidding; 52.215-22, Price
Reduction for Defective Cost or Pricing
Data; 52.215-23, Price Reduction for
Defective Cost or Pricing Data-
Modifications; and 52.232-17, Interest.
The revisions concern penalties charged
under Department of Defense contracts
for submission of defective cost or
pricing data and interest charged from
the date of overpayment on all
Government contracts in defective
pricing cases.

DATE: Comments should be submitted to
the FAR Secretariat at the address
shown below on or before August 14,
1989 to be considered in the formulation
of a final rule.

ADDRESS: Interested parties should
submit written comments to: General
Services Administration, FAR
Secretariat (VRS), 18th & F Streets, NW.,
Room 4041, Washington, DC 20405.

Please cite FAR Case 89-37 in all
correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT:
Margaret A. Willis, FAR Secretariat,
Room 4041, GSA Building, Washington,
DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

The Civilian Agency Acquisition
Council and the Defense Acquisition
Regulatory Council are considering
changes to the various defective cost or
pricing data clauses and the interest
clause to contractually implement and
provide guidance to contracting officers
concerning the Truth in Negotiations

Act, 10 U.S.C. 2304a(e)(11). This section
of the Act requires that when an
overpayment is made to a contractor
under a contract with the Department of
Defense (DOD) that is subject to the
provisions of the Act and the
overpayment was due to submission of
defective cost or pricing data, the
contractor shall be liable to the United
States for interest from the date of the
overpayment. It also requires that if a
DoD contractor or subcontractor
knowingly submits such defective cost
or pricing data, a penalty is to be
assessed in the amount of the
overpayment. In the interest of
Governmentwide uniformity with
respect to interest requirements, the
Councils are proposing extension of the
statute's requirements regarding interest
in defective pricing cases to all
Government agencies

B. Regulatory Flexibility Act

The proposed changes are not
expected to have a significant economic
impact on a substantial number of small
entities under the Regulatory Flexibility
Act (5 U.S.C. 601, et seq.) because the
vast majority of the contracts held by
these entities are not subject to Pub. L.
87-653 or civilian agency defective
pricing rules. Therefore, an Initial
Regulatory Flexibility Analysis has not
been prepared. Comments are invited.
Comments from small entities
concerning affected FAR sections will
also be considered in accordance with
section 610 of the Act. Such comments
must be submitted separately and cite
89-610 in correspondence pertaining to
FAR Case 89-37.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L.
96-511) does not apply because the
proposed changes do not change any
reporting or recordkeeping requirements
or collection of information from
offerors, contractors, or members of the
public which require the approval of
OMB under 44 U.S.C. 3501, et seq.

**List of Subjects in 48 CFR Parts 15, 32,
and 52**

Government procurement.

Dated: June 7, 1989.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition
and Regulatory Policy.

Therefore, 48 CFR Parts 15, 32, and 52
are amended as set forth below:

1. The authority citation for 48 CFR
Parts 15, 32, and 52 continues to read as
follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C.
Chapter 137; and 42 U.S.C. 2473(c).

**PART 15—CONTRACTING BY
NEGOTIATION**

2. Section 15.804-7 is revised by
adding paragraph (b)(7) to read as
follows:

§ 15.804-7 Defective cost or pricing data.

(b) . . .

(7) (i) In addition to the price
adjustment amount, the Government is
also entitled to interest on any
overpayments. On DoD contracts only,
the Government is also entitled to
penalty amounts on certain of these
overpayments. Overpayment occurs
only when payment is made for supplies
or services accepted by the Government.
Overpayments would not result from
amounts paid for contract financing as
defined in 32.902.

(ii) In calculating the interest amount
due, the contracting officer shall—

(A) Determine the defective pricing
amounts that have been overpaid to the
contractor;

(B) Consider the date of each
overpayment (The date of overpayment
for this interest calculation shall be the
date payment was made for the related
completed and accepted contract
items.); and

(C) Apply the underpayment interest
rate(s) in effect for each quarter from the
time of overpayment to the time of
repayment, utilizing rate(s) prescribed
by the Secretary of the Treasury under
section 6621 of the Internal Revenue
Code of 1954.

(iii) In arriving at the amount due for
penalties on Department of Defense
contracts where the submission of
defective cost or pricing data was a
knowing submission, the contracting
officer shall obtain an amount equal to
the amount of overpayment made.
Before taking any contractual actions
concerning penalties, the contracting
officer shall obtain the advice of
counsel.

(iv) In the price reduction modification
or demand, the contracting officer shall
separately include—

(A) The repayment amount;

(B) The penalty amount (if any);

(C) The interest amount through a
specified date; and

(D) A statement that interest will
continue to accrue until repayment is
made.

PART 32—CONTRACT FINANCING

3. Section 32.610 is amended by
revising paragraph (b)(2) to read as
follows:

**§ 32.610 Demand for payment of contract
debt.**

(b) . . .

(2) Notification that any amounts not
paid within 30 days from the date of the
demand will bear interest from the date
of the demand, or from any earlier date
specified in the contract and that the
interest rate shall be the rate
established by the Secretary of the
Treasury, for the period affected, under
50 U.S.C. App. 1215(b)(2); or, in the case
of a debt arising from a price reduction
for defective pricing, that interest will
run from the date of overpayment by the
Government until repayment by the
contractor at the underpayment rate
established by the Secretary of the
Treasury, for the periods affected, under
section 6621 of the Internal Revenue
Code of 1954.

4. Section 32.613 is amended by
revising paragraph (h)(3) to read as
follows:

§ 32.613 Deferment of collection.

(h) . . .

(3) Notice of an interest charge, in
conformity with 32.614 and the clause at
52.232-17, Interest; or, in the case of a
debt arising from a defective pricing
overpayment, interest, as prescribed by
the applicable Price Reduction for
Defective Pricing clause.

**PART 52—SOLICITATION
PROVISIONS AND CONTRACT
CLAUSES**

5. Section 52.214-27 is amended by
removing in the title of the clause the
date "(APR 1988)" and inserting in its
place "(JUN 1989)", and by adding
paragraph (e) to read as follows:

**§ 52.214-27 Price reduction for defective
cost or pricing data-modifications-sealed
bidding.**

(e) . . .

(e) If any reduction in the contract price
under this clause reduces the price of items
for which payment was made prior to the
date of the modification reflecting the price
reduction, the Contractor shall be liable to
and shall pay the United States at the time
such overpayment is repaid—

(1) Simple interest on the amount of such
overpayment to be computed from the date(s)
of overpayment to the Contractor to the date
the Government is repaid by the Contractor
at the applicable underpayment rate effective
for each quarter prescribed by the Secretary
of the Treasury under section 6621 of the
Internal Revenue Code of 1954; and

(2) For Department of Defense contracts
only, a penalty equal to the amount of the
overpayment, if the Contractor or
subcontractor knowingly submitted cost or
pricing data which were incomplete,
inaccurate, or noncurrent.

6. Section 52.215-22 is amended by
removing in the title of the clause the
date "(APR 1988)" and inserting in its
place "(JUN 1989)", and by adding
paragraph (d) to read as follows:

**§ 52.215-22 Price reduction for defective
cost or pricing data.**

(d) If any reduction in the contract price
under this clause reduces the price of items
for which payment was made prior to the
date of modification reflecting the price
reduction, the Contractor shall be liable to
and shall pay the United States at the time
such overpayment is repaid—

(1) Simple interest on the amount of such
overpayment to be computed from the date(s)
of overpayment to the Contractor to the date
the Government is repaid by the contractor at
the applicable underpayment rate effective
for each quarter prescribed by the Secretary
of the Treasury under section 6621 of the
Internal Revenue Code of 1954; and

(2) For Department of Defense contracts
only, an amount equal to the amount of the
overpayment, if the Contractor or
subcontractor knowingly submitted cost or
pricing data which were incomplete,
inaccurate, or noncurrent.

7. Section 52.215-23 is amended by
removing in the title of the clause the
date "(APR 1988)" and inserting in its

place "(JUN 1989)", and by adding
paragraph (e) to read as follows:

**§ 52.215-23 Price reduction for defective
cost or pricing data-modifications.**

(e) If any reduction in the contract price
under this clause reduces the price of items
for which payment was made prior to the
date of the modification reflecting the price
reduction, the Contractor shall be liable to
and shall pay the United States at the time
such overpayment is repaid—

(1) Simple interest on the amount of such
overpayment to be computed from the date(s)
of overpayment to the Contractor to the date
the Government is repaid by the Contractor
at the applicable underpayment rate effective
for each quarter prescribed by the Secretary
of the Treasury under section 6621 of the
Internal Revenue Code of 1954; and

(2) For Department of Defense contracts
only, a penalty equal to the amount of the
overpayment, if the Contractor or
subcontractor knowingly submitted cost or
pricing data which were incomplete,
inaccurate, or noncurrent.

8. Section 52.232-17 is amended in the
introductory text; by removing in the
title of the clause the date "(APR 1984)"
and inserting in its place "(JUN 1989)";
by revising the first sentence of
paragraph (a) of the clause; and by
removing the derivation lines following
"(End of clause)" to read as follows:

§ 52.232-17 Interest.

As prescribed in 32.617 (a) and (b)
insert the following clause:

(a) Notwithstanding any other clause of
this contract, all amounts, except amounts
that are repayable and which bear interest
under a Price Reduction for Defective Cost or
Pricing Data clause, that become payable by
the Contractor to the Government under this
contract (net of any applicable tax credit
under the Internal Revenue Code (26 U.S.C.
1481)) shall bear simple interest from the date
due until paid unless paid within 30 days of
becoming due.

[FR Doc. 89-13945 Filed 6-12-89; 8:45 am]

BILLING CODE 6820-JC-M

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federal register

Tuesday
June 13, 1989

Part III

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

48 CFR Part 42
Federal Acquisition Regulation (FAR);
Quick-Closeout Procedures; Proposed
Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATION

NATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Part 42

Federal Acquisition Regulation (FAR);
Quick-Closeout Procedures

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to the Federal Acquisition Regulation (FAR) which provide additional guidance on the use of quick-closeout procedures as described in 42.708.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 14, 1989 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 89-40 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Background

Questions were raised concerning the need to define "relatively insignificant" as it is used in 42.708, and to provide more guidance concerning the quick-closeout procedure. The phrase "relatively insignificant" is defined through the use of two parameters: (1) The unsettled indirect costs applicable to any single contract cannot exceed \$500,000.00 and (2) unless otherwise provided in agency regulations, the cumulative unsettled indirect costs to be allocated to one or more contracts for a single fiscal year cannot exceed 15 percent of the total estimated unsettled indirect costs allocable to cost-type contracts for that fiscal year.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, et seq., because it does nothing more than clarify existing coverage. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR section will also be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite 89-610 (FAR Case 89-40) in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or collection of information from offerors,

contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et. seq.

List of Subjects in 48 CFR Part 42

Government procurement.

Dated: June 7, 1989.

Harry S. Rosinski,
Acting Director, Office of Federal Acquisition
and Regulatory Policy.

Therefore, 48 CFR Part 42 is amended as set forth below:

PART 42—(AMENDED)

1. The authority citation for 48 CFR Part 42 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

2. Section 42.708 is amended by revising paragraph (a)(2) to read as follows:

42.708 Quick-closeout procedure.

(a) . . .

(2) The amount of unsettled indirect cost to be allocated to the contract is relatively insignificant. Indirect cost amounts will be considered insignificant when—

(i) The total unsettled indirect cost applicable to any one contract does not exceed \$500,000.00; and

(ii) Unless otherwise provided in agency procedures, the cumulative unsettled indirect costs to be allocated to one or more contracts in a single fiscal year do not exceed 15 percent of the estimated, total unsettled indirect costs allocable to cost-type contracts for that fiscal year; and

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Part IV

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

**48 CFR Parts 7 and 52
Federal Acquisition Regulation (FAR);
Technical Corrections; Proposed Rules**

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 7 and 52

Federal Acquisition Regulation (FAR);
Technical Corrections to FAR Subpart
7.3

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering changes to Federal Acquisition Regulation (FAR) 7.300 and to the clauses at 52.207-1 and 52.207-2 to include technical corrections needed to comply with recent changes made to the Office of Management and Budget (OMB) Circular A-76.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 14, 1989 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Washington, DC 20405.

Please cite FAR Case 89-47 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:

A. Regulatory Flexibility Act

This proposed rule does not constitute a significant FAR revision within the meaning of FAR 1.501 and Pub. L. 98-577 and publication for public comment is not required. Therefore, the Regulatory Flexibility Act does not apply. However, any comments received will be considered in the formulation of a final rule. Also, comments from small entities concerning the affected FAR sections will be considered in accordance with section 610 of the Act. Such comments must be submitted separately and cite section 89-610 (FAR Case 89-47).

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping information collection requirements or

collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 7 and 52

Government procurement.

Dated: June 7, 1989.

Harry S. Rosinski,
Acting Director, Office of Federal Acquisition
and Regulatory Policy.

Therefore, 48 CFR Parts 7 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 7 and 52 continues to read as follows:

Authority: 40 U.S.C. 488(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

PART 7—ACQUISITION PLANNING

2. Section 7.300 is amended by revising paragraph (b) to read as follows:

7.300 Scope of subpart.

(b) The supplement of OMB Circular No. A-76.

7.302 [Amended]

3. Section 7.302 is amended by removing in the introductory text and in paragraph (c) the word "Handbook" and inserting in both places the word "Supplement".

4. Section 7.303 is amended by redesignating paragraph (b)(i) and (b)(ii) as (b)(1) and (b)(2) revising newly designated paragraph (b)(1) to read as follows:

7.303 Determining availability of private commercial sources.

(b) . . .

(1) Synopsizing the requirement in the Commerce Business Daily until a reasonable number of potential sources are identified. If necessary, synopsis shall be submitted at least three times in a 90-day period with a minimum of 30 days between notices (but, when necessary to meet an urgent requirement, this notification may be limited to a total of two notices in a 30-day period with a minimum of 15 days between them). If sufficient sources are not identified through synopses or from subparagraph (b)(2) of this section, a finding that no commercial source is available may be made and the cost comparison canceled; and

5. Section 7.304 is amended by removing in the first sentence of paragraph (a) the words "performance-oriented" and inserting in their place the

word "performance"; and by revising paragraph (b)(1) to read as follows:

7.304 Procedures.

(b) . . .

(1) Enter on a cost-comparison form (see part IV of the Supplement) the cost estimate and the other elements required to accomplish a cost comparison;

6. Section 7.306 is amended by removing in paragraph (a)(1)(iii) within the parentheses the words "(see Cost Comparison Handbook, Exhibit 1)" and inserting in their place the words "(see Supplement, part IV, Illustration 1)"; by removing in paragraph (a)(1)(iv) within the parentheses the figures "5" and "15 working days" and inserting in their place "15" and "30 working days" respectively; and by revising paragraphs (a)(2), (a)(3), and the third sentence in (b)(3) to read as follows:

7.306 Evaluation.

(a) . . .

(2) After evaluation of bids (see Subpart 14.4) and determinations of responsibility, the contracting officer shall provide the price of the low responsive, responsible bidder to the preparer of the cost estimate for Government performance, for final Government review of the cost-comparison form.

(3) Upon completion of the review process, including resolution of any request under 7.307, the responsible agency official shall make the final determination for performance by the Government or under contract and provide written notification to the contracting officer, who shall either award a contract or cancel the solicitation as required.

(b) . . .

(3) . . . Upon completion of the public review period and resolution of any questions raised under 7.307, the responsible agency official shall provide the contracting officer written notification of the final cost comparison decision. . . .

7. Section 7.307 is amended by revising the third sentence in paragraph (a) to read as follows:

7.307 Appeals.

(a) . . . This review must be completed within 30 days after the deciding official receives a request under paragraph (b) of this section. . . .

PART 52—SOLICITATION
PROVISIONS AND CONTRACT
CLAUSES

52.207-1 [Amended]

8. Section 52.207-1 is amended by removing in the title of the provision the date "(APR 1985)" and inserting in its place "(JUN 1989)"; and by removing in the italicized text within the brackets in

paragraph (c), the words "5 to 15" and inserting in their place "15 to 30".

9. Section 52.207-2 is amended by revising the introductory text of the provision; by removing the date "(APR 1984)" and inserting in its place "(JUN 1989)"; by removing in the italicized text within the brackets in paragraphs (c)(1) and (c)(2), the words "5 to 15" and inserting in both places "15 to 30"; and by removing the derivation line

following "(End of provision)" to read as follows:

52.207-2 Notice of cost comparison
(negotiated).

As prescribed in 7.305(b), insert the following provision:

[FR Doc. 89-13947 Filed 6-12-89; 8:45 am]
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federal register

Tuesday
June 13, 1989

Part V

Department of the Interior

Minerals Management Service

Outer Continental Shelf; Shumagin Sale
129; Notice

UNITED STATES
DEPARTMENT OF THE INTERIOR
MINERALS MANAGEMENT SERVICE

Shumagin Sale 129
Request for Interest

Purpose

Proposed Sale 129-Shumagin is being reviewed by the Secretary of the Interior to determine whether the Outer Continental Shelf (OCS) presale process should be initiated for this sale. The oil and gas industry is asked to assist in this process by providing up-to-date information on its interest in leasing and exploring in the Shumagin Basin Planning Area.

The responses will assist the Secretary of the Interior in determining if the presale process for the proposal should be started, delayed, or deferred for consideration in a future 5-year schedule. This approach is designed to add flexibility to the program by providing for the reasonable possibility that changes in geologic data and economic or other conditions could create bidding interest in areas which may now appear unattractive. For example, a substantial oil price increase (such as might result from an oil supply disruption), if anticipated to be relatively long term, could make an area presently unattractive to potential bidders into one which could be of interest. Other information of interest would include new geophysical data; new geologic data; new interpretations of existing data; and new estimates of costs of production. By requesting information and acting on it prior to the issuance of the Call for Information and Nominations, the risk of inappropriate expenditures for such sales would be reduced.

If the Request for Interest indicates sufficient interest to warrant proceeding with the sale, these prelease steps will follow: Call for Information and Nominations and Notice of Intent to Prepare an Environmental Impact Statement (EIS), Area Identification, draft EIS, Public Hearings, final EIS, proposed Notice of Sale, Governor's Comments, and final Notice of Sale. For Alaska sales, the entire process takes approximately 28 months.

Description of the Area

The Shumagin Basin Planning Area is located immediately south of the Alaska Peninsula. The planning area covers approximately 15,054 blocks or 83 million acres and is outlined on the map found at the end of this document.

Previous Sale-Related Activities

A Request for Information for Sale 86, Shumagin, was published on October 15, 1984. Information received in response to the request resulted in the continuance of the presale process. A Call for Information and Nominations was published on November 6, 1985, with comments due December 23, 1985. Comments were received from five companies, one company submitted nominations. On February 26, 1986, Sale 86 was canceled because of lack of industry interest.

Instructions on Request for Interest

Information regarding leasing and exploring in the Shumagin Basin Planning Area may be provided by mail, telephone, or, alternatively, an informal meeting with the Regional Director or designated representative. General or detailed information may be submitted. We request that you provide information on the following:

- (1) Are you interested in the area at this time?
- (2) Would your level of interest in this area change if oil and gas prices increase?
- (3) What general or detailed information can you provide regarding whether we should proceed in this planning area with the OCS presale process; delay the presale process for 1 year or more; or defer the sale for consideration in a future 5-year schedule?
- (4) Is your company spending money on any oil and gas activities in this area or are expenditures anticipated on activities such as geologic and geophysical work, etc.?
- (5) What comments and suggestions can you provide on your choice of minimum bid level, alternative bidding systems, and other procedures which may lead to the enhanced understanding of the oil and gas resources of the Shumagin Basin Planning Area?

In order to be included in the review process, information must be submitted no later than 45 days following publication of this document in the Federal Register. Receipt of the information will be facilitated if the envelope is marked "Request for Interest on Proposed Lease Sale 129-Shumagin." The telephone number and name of a person to contact in the respondent's organization for additional information should also be enclosed.

Letters should be mailed or hand delivered to the Regional Supervisor for Leasing and Environment, Minerals Management Service, Alaska OCS Region, 949 East 36th Avenue, Room 110, Anchorage, Alaska 99508-4302. Telephone responses may be made to Mr. Tom Warren at (907) 261-4691.

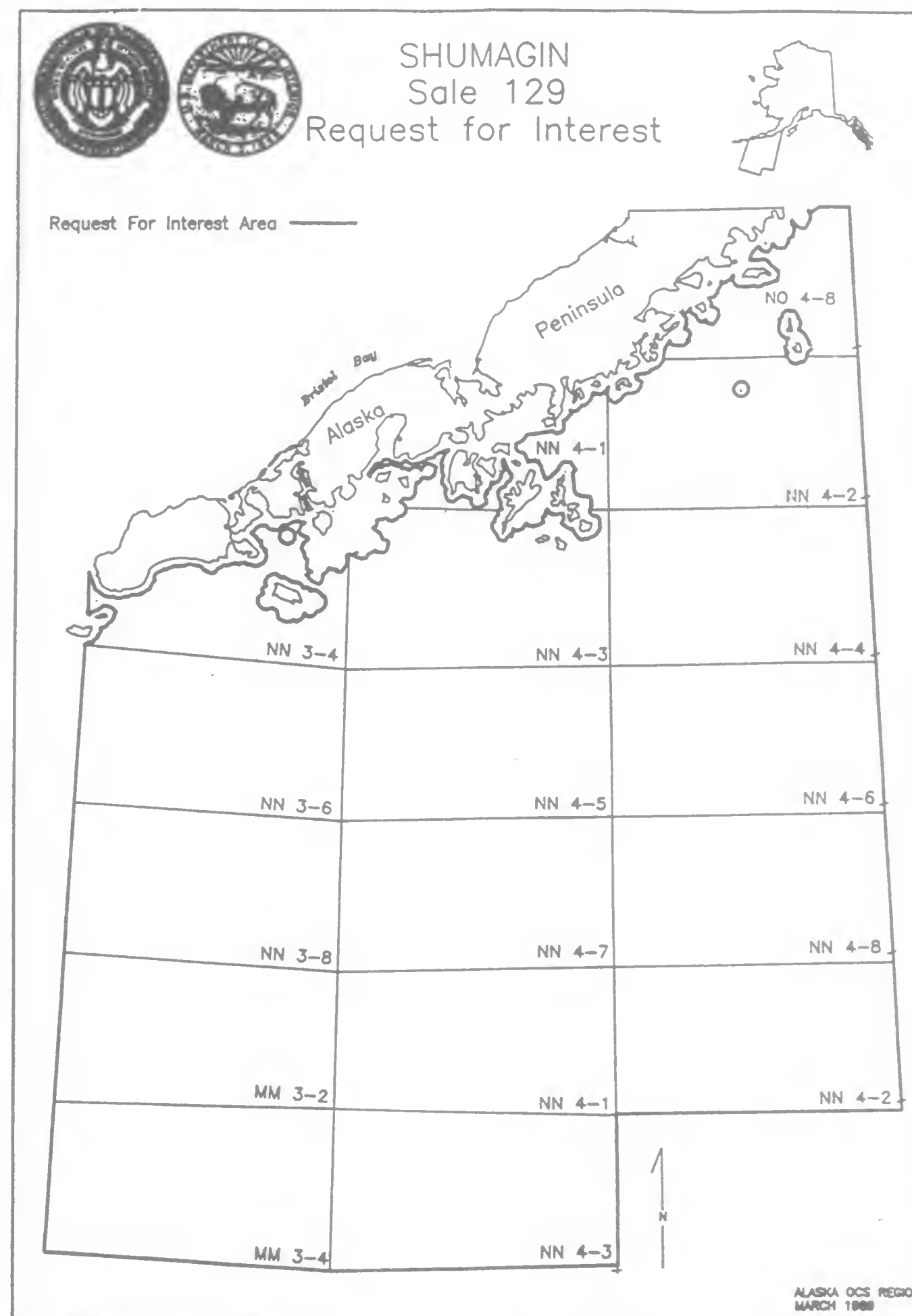
Barry Williams
 Director, Minerals Management Service
 BARRY WILLIAMSON

Approved:

DEPUTY

Assistant Secretary - Land and Minerals Management

Date 5/11/89 JAMES M. HUGHES



[FR Doc. 89-13998 Filed 6-12-89; 8:45 am]

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H.R. 1385/Pub. L. 101-30

Martin Luther King, Jr., Federal Holiday Commission Extension Act. (May 17, 1989; 103 Stat. 60; 3 pages) Price: \$1.00

H.J. Res. 135/Pub. L. 101-31

To designate the week beginning May 7, 1989, as "National Correctional Officers Week". (May 22, 1989; 103 Stat. 63; 1 page) Price: \$1.00

S.J. Res. 58/Pub. L. 101-32

To designate May 17, 1989, as "High School Reserve Officer Training Corps Recognition Day". (May 22, 1989; 103 Stat. 64; 1 page) Price: \$1.00

S.J. Res. 68/Pub. L. 101-33

To designate the month of May 1989, as "Trauma Awareness Month". (May 23, 1989; 103 Stat. 65; 1 page) Price: \$1.00

H.J. Res. 170/Pub. L. 101-34

Designating May 1989, as "National Digestive Disease Awareness Month". (May 25, 1989; 103 Stat. 66; 2 pages) Price: \$1.00

H.J. Res. 247/Pub. L. 101-35

Designating May 29, 1989, as the "National Day of Remembrance for the Victims of the USS IOWA". (May 25, 1989; 103 Stat. 68; 1 page) Price: \$1.00

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 550

Pay Differentials

AGENCY: Office of Personnel Management.

ACTION: Interim rule and request for comments.

SUMMARY: This rule will entitle General Schedule employees who are working in undeveloped tropical jungle regions outside the continental United States and who are exposed to unusual physical hardships and hazards to a pay differential of 25 percent. This rule is required by Pub. L. 89-512, which established hazardous duty pay for General Schedule employees.

DATES: This interim rule is effective June 14, 1989. Comments must be submitted on or before July 14, 1989.

ADDRESS: Send or deliver written comments to White Collar Pay and Allowances Division, Personnel Systems and Oversight Group, Office of Personnel Management, Room 7H30, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Don Paquin (202) 632-7858.

SUPPLEMENTARY INFORMATION: The Department of Justice has asked the Office of Personnel Management (OPM) to establish a 25 percent physical hardship/hazard pay differential for General Schedule employees working in primitive jungles. OPM is responsible for establishing hazardous duty pay differentials prescribed by section 5545(d) of title 5, United States Code.

The Department of Justice has Drug Enforcement Administration employees

working in natural tropical forests and other jungle regions in foreign countries. These employees are involved in the search and destruction of illicit narcotics, narcotic crops, and narcotic laboratories in Asia, the Caribbean, and Central and South America. These employees are exposed to various unusual physical hardships. Some of these are:

- Work in extreme heat and humidity.
- Exposure to torrential rains and other inclement conditions common to the jungle.

- Exposure to painful diseases such as amoebic and bacillary dysentery.

The employees are also exposed to several unusual and serious hazards. Some of these hazards are:

- Travel by 4-wheel drive vehicle over unimproved roads in mountainous areas.
- Fording deep streams and rivers by vehicle or foot.
- Crossing ravines by improvised bridges such as fallen trees.

- Exposure to poisonous snakes and insects and dangerous carnivores.
- Exposure to serious diseases, such as hepatitis, malaria, and typhoid fever.

OPM currently authorizes hazardous duty pay differentials for several categories which cover situations similar to those described. These categories include:

- Travel on secondary or unimproved roads in mountainous areas where there is limited visibility and danger of rock, mud, or snow slides. Differential is 25 percent.

- Work on cliffs, narrow ledges, and other difficult terrain where a slip could cause serious injury or death. Differential is 25 percent.

- Work on or around hazardous waterways such as search and rescue work at night or in high winds and transfer of personnel or cargo between vessels and rocky shorelines at night or in foul weather. Differential is 25 percent.

- Work with virulent microbiological materials which, if introduced into the body, are likely to cause serious illness or death and for which complete protection cannot be provided. Differential is 25 percent.

- Work in confined spaces where temperatures exceed 110 degrees Fahrenheit. Differential is 4 percent.

None of these categories is sufficiently broad to cover the range of hardships and hazards encountered in undeveloped jungle regions. The application of existing categories is administratively impractical and creates pay inequities. A new category is necessary.

The physical exertion of working in the heat and humidity of the jungle causes unusual physical hardship and fatigue. The fatigue and dangers create a sufficient hazard and hardship to warrant payment of a 25 percent differential—the maximum allowed by law.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are changes which will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 550

Administrative practice and procedure, Civil defense, Government employees, Wages.

U.S. Office of Personnel Management.
James M. Strock,
Acting Director.

Accordingly, OPM amends Subpart I of 5 CFR Part 550 as follows:

PART 550—PAY ADMINISTRATION (GENERAL)

Subpart I—Pay for Irregular or Intermittent Duty Involving Physical Hardship or Hazard

1. The authority for Subpart I of Part 550 continues to read as follows:

Authority: 5 U.S.C. 5545(d), 5548(b).

2. Appendix A to Subpart I of Part 550 is amended by adding a new category to the Hazard Pay Differential Table to read as follows:

Appendix A—Schedule of Pay Differential Authorized for Irregular or Intermittent Hazardous Duty Under Subpart I
HAZARD PAY DIFFERENTIAL, OF PART 550 PAY ADMINISTRATION (GENERAL)

Irregular or intermittent duty	Rate of hazard pay differential (percent)	Effective date
Tropical Jungle Duty: Work outdoors in undeveloped jungle regions outside the continental United States. Work must involve both of the following: (1) An unusual degree of physical hardship caused by high heat, humidity, or other inclement conditions; and (2) An unusual danger of serious injury or illness due to: (a) Travel on unimproved roads or rudimentary trails in rugged terrain (e.g., walking on narrow trails in steep mountainous areas, fording deep, fast-moving rivers, and crossing deep crevasses via log or other unsafe means); (b) Immediate presence of dangerous wildlife (e.g., venomous snakes, poisonous insects, and large carnivores); or (c) Known exposure to serious disease for which adequate protection cannot be provided.		25 June 14, 1989.

[FR Doc. 89-14054 Filed 6-13-89; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket 89-082]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by adding a commuted traveltime allowance for a location in North Carolina. Commuted traveltime allowances are the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of the commuted traveltime between these locations.

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Paul R. Eggert, Director, Resource Management Support, PPQ, APHIS, USDA, Room 823, Federal Building, Hyattsville, MD, (301) 436-7764.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR Part 354 require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals and animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR Part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as is practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by adding a commuted traveltime allowance for a location in North Carolina. The amendment is set

forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The number of requests for overtime services of a PPQ employee at the location affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule

effective less than 30 days after publication of this document in the Federal Register.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 354

Agricultural commodities, Exports, Government employees, Imports, Plants (Agriculture), Quarantine, Transportation.

Accordingly, 7 CFR Part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by adding, in alphabetical order, the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

COMMUTED TRAVELTIME ALLOWANCES (In hours)				
Location covered	Served from	Metropolitan area		
		Within	Outside	
Add:	.	.	.	.
North Carolina: Charlotte International Airport.	Laurinburg.....			5
	.	.	.	.

Done in Washington, DC, this 8th day of June 1989.
James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.
[FR Doc. 89-14050 Filed 6-13-89; 8:45 am]
BILLING CODE 3410-34-M

9 CFR Part 78

[Docket No. 89-097]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Florida from a split status of Class B/Class C to all Class B. We have determined that Florida now meets the standards for Class B status. This action relieves certain restrictions on the interstate movement of cattle from Florida.

DATES: Interim rule effective June 8, 1989. Consideration will be given only to comments received on or before August 14, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-097. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 731, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-5533.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*.

The brucellosis regulations contained in 9 CFR Part 78 (referred to below as the regulations) provide a system for classifying States or portions of States according to the rate of brucella infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C status are required to be placed under federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail maintaining (1) a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population (based on the percentage of brucellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and slaughtering establishments) not to exceed a stated level; (3) a surveillance system that includes testing of dairy herds, participation of all slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection—including herds adjacent to infected herds and herds from which infected animals have been sold or received, and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) minimum procedural standards for administering the program.

Before the publication of this interim rule, Florida was divided into a Class B area and a Class C area. The Class C area included the following counties: Brevard, Broward, Charlotte, Collier, Dade, De Soto, Glades, Hardee, Hendry, Highlands, Hillsborough, Indian River, Lee, Manatee, Martin, Monroe, Okeechobee, Osceola, Palm Beach, Polk, Saint Lucie, and Sarasota. The Class B area included the remainder of the State.

To attain and maintain Class B status, the regulations require that a State or area must have: (1) An adjusted MCI reactor prevalence rate not to exceed three reactors per 1,000 cattle tested (0.3 percent) for 12 consecutive months; (2) an accumulated 12-month herd infection rate for brucellosis in cattle not to exceed 15 herds per 1,000 (1.5 percent); (3) a surveillance system that includes testing of dairy herds, participation of all slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection, including herds adjacent to infected herds and herds from which infected animals have been sold or received, and having an individual herd plan in effect within a stated number of days after notification of brucellosis in a herd; and (4) minimum procedural standards for administering the program. After reviewing its brucellosis program records, we have concluded that the entire State of Florida meets the standards for Class B status.

Therefore, we are removing the counties in Florida from the list of Class C States in § 78.41(d) and are adding it to the list of Class B States in § 78.41(c)

so that this list includes the entire State of Florida. This action changes the split status of Florida from Class C/Class B to all Class B, and relieves certain restrictions on moving cattle interstate from Florida.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Florida.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the *Federal Register*. After the comment period closes, we will publish another document in the *Federal Register*, including discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Florida from Class C/Class B to all Class B reduces certain testing requirements and branding and spaying costs involved in the interstate movement of cattle from Class C areas.

The principal group affected by this change are the owners of herds in the

former Class C areas of Florida that are not certified brucellosis-free and are not known to be affected with brucellosis. Buyers and exporters of cattle, stockyards, feedlots, and intermediate handling facilities are affected to a negligible degree.

In accordance with 9 CFR 78.9, all cattle in Class C noncertified-free herds can move interstate only to slaughter, or to a quarantined feedlot if they are "S" branded, unless they are steers, spayed heifers, or bulls under 18 months of age. It is estimated that there are 409,000 cows in such herds in the Class C area of Florida. We anticipate that these cows will produce approximately 174,000 heifers during the next year. We estimate that at least 50,000 of these will be sold interstate. The change to Class B status makes it possible to sell them for purposes other than slaughter or consignment to a quarantined feedlot, without spaying them, in accordance with 9 CFR 78.9(c)(3).

The cost of spaying 50,000 heifers is estimated at \$550,000 or \$11 per head. Not all the heifers would be spayed if the Class C status remained unchanged; many would be sold for slaughter or "S" branded and moved to quarantined feedlots. However, \$550,000 can be considered one upper limit for benefits accrued by the change from Class C to Class B status.

Another cost of moving cattle from Class C areas is the cost associated with "S" branding, required if unspayed animals are moved to quarantined feedlots, or indirectly to slaughter through intermediate handling facilities, nonquarantined feedlots, or stockyards. Based on current prices and demand for light heifers, the net proceeds per animal will be increased by approximately \$20 if the heifers from nonquarantined herds are not required to be "S" branded or sold for slaughter, resulting in a maximum \$1,000,000 savings to the industry if 50,000 heifers were so moved.

The upper limit to the economic impact of this rule would be \$1,550,000 of financial benefit accrued primarily by owners of herds that are not certified brucellosis free and that are located in former Class C areas. This figure assumes that all cattle moved from these herds are not spayed, and are moved to destinations that require "S" branding. Actual savings will be less, since some cattle will be spayed or not "S" branded.

According to National Agricultural Statistics Service estimates, there are 7,144 cattle herds in the Class C area of Florida. Of these herds, 2,289 are certified free. Of the 4,875 noncertified-free herds, 4,606 are not quarantined. These 4,606 herds would be directly and

positively affected by the change. The owners of these 4,606 herds could each receive additional profits of up to \$20 per calf sold, or an average of \$217 per herd owner, assuming equal herd sizes. About 4,556 (99 percent) of the 4,606 herds are small businesses (annual revenues of less than \$500,000). Because the 50 herds that are large businesses have larger herd sizes, and because not all herd owners will sell their cattle in ways that do not require spaying or "S" branding, the actual profit to each small herd owner will be less.

We have therefore determined that changing Florida's brucellosis status will not significantly affect current market patterns, and will not have a significant economic impact on small entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 78

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are amending 9 CFR Part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.41 [Amended]

2. Section 78.41, paragraph (c) is amended by removing "(Counties of Alachua, Baker, Bay, Bradford, Calhoun, Citrus, Clay, Columbia, Dixie, Duval, Escambia, Flagler, Franklin, Gadsden, Gilchrist, Gulf, Hamilton, Hernando, Holmes, Jackson, Jefferson, Lafayette, Lake, Leon, Levy, Liberty, Madison, Marion, Nassau, Okaloosa, Orange, Pasco, Pinellas, Putman, Saint Johns, Santa Rosa, Seminole, Sumter, Suwanee,

Taylor, Union, Volusia, Wakulla, Walton, and Washington)" immediately after Florida.

3. Section 78.41, paragraph (d) is removed.

Done in Washington, DC, this 8th day of June 1989.

James W. Glosser,
Administrator, Animal and Plant Health
Inspection Service.

[FR Doc. 89–14105 Filed 6–13–89; 8:45 am]

BILLING CODE 3410–24–M

9 CFR Part 78

[Docket No. 89–099]

Brucellosis in Cattle; State and Area Classifications

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are amending the brucellosis regulations concerning the interstate movement of cattle by changing the classification of Kentucky from Class B to Class A. We have determined that Kentucky now meets the standards for Class A status. This action relieves certain restrictions on the interstate movement of cattle from Kentucky.

DATES: Interim rule effective June 8, 1989. Consideration will be given only to comments received on or before August 14, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies of written comments to Regulatory Analysis and Development, PPD, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89–099. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, D.C., between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Dr. Jan Huber, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, Room 731, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301–436–5533.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is a contagious disease affecting animals and man, caused by bacteria of the genus *Brucella*.

The brucellosis regulations contained in 9 CFR Part 78 (referred to below as the regulations) provide a system for

classifying States or portions of States according to the rate of brucella infection present, and the general effectiveness of a brucellosis control and eradication program. The classifications are Class Free, Class A, Class B, and Class C. States or areas that do not meet the minimum standards for Class C are required to be placed under Federal quarantine.

The brucellosis Class Free classification is based on a finding of no known brucellosis in cattle for the 12 months preceding classification as Class Free. The Class C classification is for States or areas with the highest rate of brucellosis. Class B and Class A fall between these two extremes. Restrictions on moving cattle interstate become less stringent as a State approaches or achieves Class Free status.

The standards for the different classifications of States or areas entail maintaining (1) a cattle herd infection rate not to exceed a stated level during 12 consecutive months; (2) a rate of infection in the cattle population (based on the percentage of brucellosis reactors found in the Market Cattle Identification (MCI) program—a program of testing at stockyards, farms, ranches, and slaughtering establishments) not to exceed a stated level; (3) a surveillance system that includes testing of dairy herds, participation of all slaughtering establishments in the MCI program, identification and monitoring of herds at high risk of infection—including herds adjacent to infected herds and herds from which infected animals have been sold or received, and having an individual herd plan in effect within a stated number of days after the herd owner is notified of the finding of brucellosis in a herd he or she owns; and (4) minimum procedural standards for administering the program.

Before the publication of this interim rule, Kentucky was classified as a Class B State because of its herd infection rate and its MCI reactor prevalence rate. However, after reviewing its brucellosis program records, we have concluded that the State of Kentucky meets the standards for Class A status.

To attain and maintain Class A status, a State or area must (1) not exceed a cattle herd infection rate, due to field strain *Brucella abortus* of 0.25 percent or 2.5 herds per 1,000 based on the number of reactors found within the State or area during any 12 consecutive months, except in States with 10,000 or fewer herds; (2) maintain a 12 consecutive months MCI reactor prevalence rate not to exceed one reactor per 1,000 cattle tested (0.10 percent); and (3) have an approved individual herd plan in effect

within 15 days of locating the source herd or recipient herd.

Therefore, we are removing Kentucky from the list of Class B States in § 78.41(c) and adding it to the list of Class A States in § 78.41(b). This action relieves certain restrictions on moving cattle interstate from Kentucky.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause to publish this interim rule without prior opportunity for public comment. Immediate action is warranted to remove unnecessary restrictions on the interstate movement of cattle from Kentucky.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the *Federal Register*. After the comment period closes, we will publish another document in the *Federal Register*, including discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

Cattle moved interstate are moved for slaughter, for use as breeding stock, or for feeding. Changing the status of Kentucky from Class B to Class A reduces certain testing and other requirements governing the interstate movement of cattle from Kentucky.

However, cattle from certified brucellosis-free herds moving interstate are not affected by this change.

The principal group affected would be the owners of noncertified herds in Kentucky not known to be affected with brucellosis seeking to sell cattle.

There are an estimated 60,000 herds in Kentucky, most of which are owned by small entities, that potentially would be affected by this rule. Last year Kentucky tested 379,121 eligible cattle at saleyards alone, to qualify cattle for sale in lieu of "S" branding and sales to quarantined feedlots. This testing costs approximately \$3 per head or \$1,140,000. Since herd sizes vary, larger herds will accumulate more savings than smaller herds. Also, not all herd owners will choose to market their cattle in a way that accrues these cost savings. The overall effect of this rule on small entities should be to provide very small economic benefit.

Therefore, we believe that changing Kentucky's brucellosis status will not significantly affect market patterns, and will not have a significant economic impact on the small entities affected by this interim rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 76

Animal diseases, Brucellosis, Cattle, Hogs, Quarantine, Transportation.

Accordingly, we are amending 9 CFR Part 78 as follows:

PART 78—BRUCELLOSIS

1. The authority citation for Part 78 continues to read as follows:

Authority: 21 U.S.C. 111-114a-1, 114g, 115, 117, 120, 121, 123-128, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 78.41 [Amended]

2. Section 78.41, paragraph (b) is amended by adding "Kentucky," immediately before "Missouri".

3. Section 78.41, paragraph (c) is amended by removing "Kentucky".

Done in Washington, DC, this 8th day of June 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-14104 Filed 6-13-89; 8:45 am]

BILLING CODE 3410-34-M

9 CFR Part 97

[Docket No. 89-102]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Veterinary Services (VS) by removing or adding commuted traveltime allowances for various locations in Arizona. Commuted traveltime allowances are the periods of time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by VS employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of the commuted traveltime between these locations.

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Louise R. Lothery, Acting Director, Resource Management Support, VS, APHIS, USDA, Room 740, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7517.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 97 require inspection, laboratory testing, certification, or quarantine of certain animals, animal products, plants, plant products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of VS on a Sunday or holiday, or at any other time outside the VS employee's regular duty hours, the Government charges a fee for the services in accordance with 9 CFR Part 97. Under circumstances described in § 97.1(a), this fee may include the cost of commuted traveltime.

Section 97.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 97.2 of the regulations by removing or adding commuted traveltime allowances for various locations in Arizona. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between these locations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The number of requests for overtime services of a VS employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional

relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 533, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the Federal Register.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

Accordingly, 9 CFR Part 97 is amended as follows:

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 97 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51 and 371.2(d).

2. Section 97.2 is amended by removing or adding, in alphabetical order, the information as shown below:

§ 97.2 Administrative instructions prescribing commuted traveltime.

COMMUTED TRAVELTIME ALLOWANCES

Location covered	Served from—	[In hours]	
		Within	Outside
Remove:			
Arizona:			
San Luis	Yuma		2
Add:			
Arizona:			
Douglas	Phoenix		6
Do	Sierra Vista		2
Nogales	Phoenix		6
Do	Sierra Vista		2
San Luis	Phoenix		6

Done in Washington, DC, this 8th day of June 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-14106 Filed 6-13-89; 8:45 am]

BILLING CODE 3410-10-M

9 CFR Part 97

[Docket No. 89-078]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Veterinary Services (VS) by removing or adding commuted traveltime allowances for various locations in Michigan and Oregon. Commuted traveltime allowances are the periods of time required for VS employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by VS employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of the commuted traveltime between these locations.

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT:

Louise R. Lothery, Acting Director, Resource Management Support, VS, APHIS, USDA, Room 740, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7517.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR Part 97 require inspection, laboratory testing, certification, or quarantine of certain animals, animal products, plants, plant products, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of VS on a Sunday or holiday, or at any other time outside the VS employee's regular duty hours, the Government charges a fee for the services in accordance with 9 CFR Part 97. Under circumstances described in § 97.1(a), this fee may include the cost of commuted traveltime. Section 97.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the time required for VS employees to travel from their

dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 97.2 of the regulations by removing or adding commuted traveltime allowances for various locations in Michigan and Oregon. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between these locations.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12291.

The number of requests for overtime services of a VS employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 533, we find upon good cause that prior notice and other public procedure

with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the Federal Register.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 9 CFR Part 97

Exports, Government employees, Imports, Livestock and livestock products, Poultry and poultry products, Transportation.

Accordingly, 9 CFR Part 97 is amended as follows:

PART 97—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS

1. The authority citation for Part 97 continues to read as follows:

Authority: 7 U.S.C. 2260, 49 U.S.C. 1741; 7 CFR 2.17, 2.51 and 371.2(d).

2. Section 97.2 is amended by removing or adding, in alphabetical order, the information as shown below:

§ 97.2 Administrative instructions prescribing commuted traveltime

COMMUTED TRAVELTIME ALLOWANCES

(In hours)

Location covered	Served from	Metropolitan area	
		Within	Outside
Remove:			
Michigan:			
Detroit	Blissfield and Port Huron.		3
Port Huron.	Saginaw		4
Oregon:			
Portland	Canby		3
Add:			
Michigan:			
Detroit		3	
Do	Beaverton		6
Do	Chelsoe		3
Do	Clara		6
Do	Kalamazoo		5
Do	Lansing		4
Do	Port Huron		4
Port Huron.		1	
Do	Beaverton		6
Do	Chelsoe		6
Do	Clara		6

COMMUTED TRAVELTIME ALLOWANCES—Continued

(In hours)

Location covered	Served from	Metropolitan area	
		Within	Outside
Do	Lansing		5
Do	Kalamazoo		6
Oregon:			
Portland	Tigard	2	

Done in Washington, DC, this 8th day of June 1989.

James W. Glosser,

Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-14049 Filed 6-13-89; 8:45 am]

BILLING CODE 3410-10-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-ASW-59; Amdt. 39-6237]

Airworthiness Directives; Aerospatiale (Societe Nationale Industrielle Aerospatiale) Model AS 355 Series Helicopters

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final rule.

SUMMARY: This action publishes in the Federal Register and makes effective as to all persons an amendment adopting Airworthiness Directive (AD) No. 88-25-09 which was previously made effective as to all known U.S. owners and operators of certain Aerospatiale AS 355 series helicopters by individual letter. The AD required a vibration level measurement, balance, and replacement, if necessary, of the tail rotor drive shaft. The AD was needed to prevent failure of the tail rotor drive shaft which could result in the loss of the helicopter.

DATES: Effective July 14, 1989, as to all persons except those persons to whom it was made immediately effective by priority letter AD No. 88-25-09, issued December 9, 1988, which contained this amendment.

Compliance: Required as indicated in the body of the AD.
ADDRESSES: The applicable service bulletins may be obtained from Aerospatiale Helicopter Corporation, 2701 Forum Drive, Grand Prairie, Texas 75053-4005, or may be examined in the Regional Rules Docket, Office of the

Assistant Chief Counsel, FAA, 4400 Blue Mound Road, Room 158, Building 3B, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Samuel E. Brodie, FAA, Fort Worth, Texas 76193-0110, telephone (817) 624-5116.

SUPPLEMENTARY INFORMATION: On December 9, 1988, Priority Letter AD No. 88-25-09 was issued and made effective immediately as to all known U.S. owners and operators of certain Aerospatiale Model AS 355 series helicopters. The AD required a vibration level measurement, balance, and replacement, if necessary, of the tail rotor drive shaft. AD action was necessary to prevent the failure of the tail rotor drive shaft and possible loss of the helicopter.

Since it was found that immediate corrective action was required, notice and public procedure thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued December 9, 1988, to all known U.S. owners and operators of certain Aerospatiale Model AS 355 series helicopters. These conditions still exist, and the AD is hereby published in the Federal Register as an amendment to § 39.13 of Part 39 of the FAR to make it effective as to all persons.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federal Assessment.

The FAA has determined that this regulation is an emergency regulation and that it is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Executive Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation or analysis is not required). A copy of it, when filed,

may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends § 39.13 of Part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Aerospatiale (Societe Nationale Industrielle Aerospatiale): Applies to all Aerospatiale Model AS 355 series helicopters containing Part Number (P/N) 355A34-1037-00, tailrotor drive shaft, certificated in any category. (Docket No. 88-ASW-59)

Compliance is required as indicated, unless already accomplished.

To prevent tail rotor drive shaft failure, which could result in the loss of control, accomplish the following:

(a) Within the next 50 hours' time in service after receipt of this AD, and thereafter at intervals not to exceed 100 hours' time in service, perform the vibration level measurement with the aircraft on the ground and with the rotor turning, in accordance with Maintenance Work Card 65-10-00-604.

(1) If the measured vibration level is equal to or above 3 inches per second (IPS)—

(i) Replace the tail rotor drive shaft with a serviceable part prior to further flight; or
(ii) The tail rotor drive shaft may be operated for no more than an additional 50 hours' time in service provided the vibration level is reduced to 1.75 IPS or below and no cracks are found by the following inspections. Before the next flight and thereafter at intervals not to exceed 10 hours' time in service, inspect the inside surface of the shaft in the area of the forward flange and splined fitting attachment (both ends of the shaft, adjacent to the Jo-bolts) for cracks. If cracks are found, replace the tail rotor drive shaft with an airworthy shaft prior to further flight.

(2) If the measured vibration level is above 1.75 IPS, but less than 3 IPS:

(i) Clean the fan assembly in accordance with maintenance Work Card 12-00-00-306.
(ii) Perform a new vibration level check.
(iii) If the vibration level is less than 1.75 IPS after cleaning, no further action is required.

(iv) If the vibration level is above 1.75 IPS, balance the fan assembly in accordance with

Maintenance Work Card 65-10-00-604, and perform a new vibration level check.

(A) If the vibration level is less than 1.75 IPS after balancing, no further action is required.

(B) If the measured vibration level measures above 1.75 IPS, inspect the sliding flange splines for wear and the fan bearings for abnormal play in accordance with the applicable Maintenance Work Cards. Replace parts found outside specified limits and perform a new vibration check. If the vibration level remains above 1.75 IPS, replace the tail rotor drive shaft with a serviceable part prior to further flight.

(3) If the measured vibration level is below 1.75 IPS, no further action is required.

(b) Accomplish the vibration level measurement and shaft replacement, as necessary, in accordance with the instruction of paragraph (a) before and after the replacement of any fan assembly component or any tail rotor drive shaft.

(c) Replace the tail rotor drive shaft in accordance with the instructions of paragraph (a)(1) if—

(1) The vibration level exceeded 3 IPS as measured during previous compliance with Aerospatiale Service bulletin 05.20, before issuance of this AD; or

(2) The tail rotor drive shaft was installed when the oil cooler fan was changed for foreign object damage or when the fan bearings were changed for bearing discrepancies.

(d) An alternate method of compliance with the AD which provides an equivalent level of safety may be used if approved by the Manager, Rotorcraft Standards Staff, ASW-110, FAA, Fort Worth, Texas 76193-0110.

This amendment becomes effective July 14, 1989 as to all persons except those persons to whom it was made immediately effective by AD No. 88-25-09, issued December 9, 1988, which contained this amendment.

Issued in Fort Worth, Texas, on June 2, 1989.

A.C. Caviness,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 89-14091 Filed 6-13-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-71-AD; Amdt. 39-6235]

Airworthiness Directives; McDonnell Douglas Model DC-10-15, -30, -30F, and KC-10A (Military) Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to McDonnell Douglas DC-10-15, -30, -30F, and KC-10A (Military) series airplanes, which currently

requires an optically aided visual inspection of the attach structure of the engine forward mount truss assembly on pylons 1 and 3. This amendment requires repetitive eddy current inspections of the engine forward mount truss assembly on pylons 1 and 3. This action is prompted by a report of fatigue cracks resulting in the failure of both lower legs of the engine forward mount truss assembly on pylon 1, and additional recent reports of fatigue cracks found by eddy current inspections. This condition, if not corrected, could result in the loss of structural integrity of the wing engine forward mount truss fitting and eventual loss of the wing engine from the airplane.

EFFECTIVE DATE: June 22, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, C1-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Dorenda Baker, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Northwest Mountain Region, Airframe Branch (ANM-120L), 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5231.

SUPPLEMENTARY INFORMATION: On March 30, 1989, the FAA issued Airworthiness Directive (AD) 89-05-53, Amendment 39-6189 (54 FR 14207; April 10, 1989), which requires an optically aided visual inspection of the attach structure of the engine forward mount truss assembly on pylons 1 and 3 on McDonnell Douglas Model DC-10 series airplanes. This action was prompted by a report of fatigue cracks resulting in the failure of both lower legs of the engine forward mount truss assembly. This condition, if not corrected, could result in the loss of structural integrity of the wing engine forward mount truss fitting and eventual loss of the wing engine from the airplane.

Subsequent to the issuance of AD 89-05-53, there have been nine additional reports of cracks extending from the attaching bolt holes that were found using an eddy current inspection technique developed for this application. These cracks had not yet propagated to the point where they would have been

detectable using the visual inspection method currently required.

The FAA has reviewed and approved McDonnell Douglas Alert Service Bulletin A54-99 Revision 1, dated March 31, 1989, which provides instructions for eddy current inspections of the engine forward mount truss assembly, repair, and ultimate replacement of the truss assembly.

Since this situation is likely to exist or develop on other airplanes of the same type design, this AD supersedes AD 89-05-53 to require repetitive eddy current inspections of the four forward horizontal flange attaching bolt holes of the engine forward mount truss assembly on pylons 1 and 3, and repair or replacement, if necessary, in accordance with the service bulletin previously described.

The requirements of this AD are considered interim action. The manufacturer is currently developing a modification which, if installed, will terminate the need for the repetitive inspections. Once the modification is developed and approved, the FAA may consider revising this AD to require its installation as terminating action for the required inspections.

Since a situation exists that requires immediate adoption of this regulation, it is found that notice and public procedure hereon are impracticable, and good cause exists for making this amendment effective in less than 30 days.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation and is not considered to be major under Executive Order 12291. It is impracticable for the agency to follow the procedures of Order 12291 with respect to this rule since the rule must be issued immediately to correct an unsafe condition in aircraft. It has been further determined that this document involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). If this action is subsequently determined to involve a significant/major regulation, a final regulatory evaluation or analysis, as appropriate, will be prepared and placed in the regulatory docket (otherwise, an evaluation is not

required). A copy of it, when filed, may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by superseding AD 89-05-53, Amendment 39-6189 (54 FR 14207; April 10, 1989), with the following new airworthiness directive:

McDonnell Douglas: Applies to Model McDonnell Douglas DC-10-15, -30, -30F, and KC-10 (Military) series airplanes, certificated in any category. Compliance required as indicated, unless previously accomplished.

To prevent the failure of the engine forward mount truss assembly, accomplish the following:

A. Prior to the accumulation of 9,000 landings or 30,000 flight hours, whichever occurs first, or within 20 days after the effective date of this AD, whichever occurs later, conduct an eddy current inspection of the engine forward mount truss assembly on pylons 1 and 3, in accordance with Paragraph 2, "Accomplishment Instructions," of McDonnell Douglas Alert Service Bulletin No. A54-99 Rev. 1, dated March 31, 1989 (hereafter referred to as the Service Bulletin):

1. If no cracks are found in either horizontal flange, conduct repetitive eddy current inspections in accordance with the Service Bulletin at intervals not to exceed 2,000 landings or 6,000 flight hours, whichever occurs first.

2. If a single crack indication in one bolt hole is found with no crack indication extending out from under the AUB7013-1 angle, and there are no crack indications in the opposite fitting:

a. Conduct repetitive eddy current inspections in accordance with the Service Bulletin at intervals not to exceed 450 flight hours.

b. Prior to the accumulation of 500 landings or 2,000 flight hours, whichever occurs first, after the initial detection of a crack, install SR10540003-3 Rev. A. strap on the horizontal flange of the cracked AUB7000-501 truss fitting, or SR10540003-4 Rev. A. strap on the horizontal flange of the cracked AUB7000-502 truss fitting, as applicable, in accordance with the Service Bulletin. After installation of the strap, conduct repetitive eddy current

inspections in accordance with the Service Bulletin at intervals not to exceed 900 flight hours.

3. If a single crack indication in one bolt hole is found with the crack extending out from under the AUB7013-1 angle, but not above the tangent point of the fillet radius to the vertical flange, as shown on Figure 2 (Condition III) of the Service Bulletin, and there are no crack indications in the opposite fitting:

a. Prior to further flight, install SR10540003-3 Rev. A. strap on the horizontal flange of the cracked AUB7000-501 truss fitting, or SR10540003-4 Rev. A. strap on the horizontal flange of the cracked AUB7000-502 truss fitting, as applicable, in accordance with the Service Bulletin.

b. Conduct repetitive eddy current inspections in accordance with the Service Bulletin at intervals not to exceed 225 flight hours.

4. If multiple crack indications in the bolt holes are found with no crack extending out from under the AUB7013-1 angle, and there are no crack indications in the opposite fitting:

a. Prior to further flight, install SR10540003-3 Rev. A. strap on the horizontal flange of the cracked AUB7000-501 truss fitting, or SR10540003-4 Rev. A. strap on the horizontal flange of the cracked AUB7000-502 truss fitting, as applicable, in accordance with the Service Bulletin.

b. Conduct repetitive eddy current inspections in accordance with the Service Bulletin at intervals not to exceed 900 flight hours.

5. If multiple crack indications in the bolt holes are found with a crack extending out from under the AUB7013-1 angle, but not progressing above the tangent point of the fillet radius to the vertical flange, as shown in Figure 2 (Condition V) of the Service Bulletin, and there are no crack indications in the opposite fitting:

a. Prior to further flight, install SR10540003-3 Rev. A. strap on the horizontal flange of the cracked AUB7000-501 truss fitting, or SR10540003-4 Rev. A. strap on the horizontal flange of the cracked AUB7000-502 truss fitting, as applicable, in accordance with the Service Bulletin.

b. Conduct repetitive eddy current inspections in accordance with the Service Bulletin at intervals not to exceed 225 flight hours.

6. If a crack is found to have extended out from under the AUB7013-1 angle, through the fillet radius into the vertical flange, as shown in Figure 2 (Condition VI) of the Service Bulletin: Prior to further flight, replace the cracked/repairs truss fitting with a new fitting and continue inspections in accordance with this AD.

7. If cracks are found in both AUB7000 truss fittings: Prior to further flight, replace the cracked/repairs truss fitting with a new fitting and continue inspections in accordance with this AD.

B. An alternate means of compliance or adjustment of compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los

Angeles Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service information from the manufacturer may obtain copies upon request to McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director, Publications and Training, CI-750 (54-60). This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California.

This amendment supersedes AD 89-05-53, Amendment 39-6189.

This amendment becomes effective June 22, 1989.

Issued in Seattle, Washington, on May 26, 1989.

Steven B. Wallace,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 89-14092 Filed 6-13-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-170-AD; Amdt. 39-6236]

Airworthiness Directives; McDonnell Douglas Model DC-9 and C-9 (Military) Series Airplanes, Including Model DC-9-80 Series and Model MD-88 Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Correction of final rule.

SUMMARY: This action corrects an airworthiness directives (AD), applicable to McDonnell Douglas Model DC-9 and C-9 (Military) series airplanes, including Model DC-9-80 series and Model MD-88 airplanes, which requires inspection and repair or replacement, if necessary, of the dorsal fin attach angles. This action corrects the initial compliance threshold, reflected in the published final rule, for the accomplishment of the inspections required on airplanes with dorsal fin one-piece attach angles.

EFFECTIVE DATE: June 14, 1989.

ADDRESSES: The applicable service information may be obtained from McDonnell Douglas Corporation, 3855 Lakewood Boulevard, Long Beach, California 90846, Attention: Director of Publications, C1-L00 (54-60). This information may be examined at FAA, Northwest Mountain Region, 17900 Pacific Highway South, Seattle, Washington, or 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: Mr. Michael N. Asahara, DC-9/MD-80 Program Manager, FAA, Northwest Mountain Region, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (213) 988-5321.

SUPPLEMENTARY INFORMATION: On March 30, 1989, the FAA issued AD 89-08-10, Amendment 39-6185 (54 FR 14644; April 12, 1989), applicable to McDonnell Douglas Model DC-9 series airplanes, which requires various visual and eddy current inspections for cracking in the dorsal fin attach angles, and repair or replacement, if necessary.

Paragraph B.1. of the final rule, which addressed the inspection requirements for airplanes equipped with dorsal fin one-piece attach angles, should have stated that the visual inspections from inside the airplane were to be initially accomplished "[W]ithin 500 landings from May 17, 1982, for airplanes with less than 22,500 landings * * *". However, due to a typographical error, that statement, as published, incorrectly identified the number of landings as 2,000 landings. Action is taken, therefore, to correct the final rule accordingly.

The Notice of Proposed Rulemaking, which was published in the Federal Register (53 FR 51820; December 23, 1988) prior to issuance of Amendment 39-6185, did identify the correct number of landings in paragraph B.1.

Since this action only corrects an editorial error in a final rule, it has no adverse economic impact and imposes no additional economic burden on any person. Therefore, notice and public procedures hereon are unnecessary and the amendment may be made effective in less than 30 days.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Correction

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by correcting paragraph B.1. of Amendment 39-6185 (54 FR 14644; April 12, 1989), AD 89-08-10, as follows:

B. For airplanes with dorsal fin one-piece attach angle, part number 591-188-5 or -6, accomplish the following:

1. Within 500 landings from May 17, 1982, for airplanes with less than 22,500 landings; and within 100 landings from May 17, 1982, for airplanes with 22,500 or more landings; conduct the visual inspections, from inside the airplane, in accordance with paragraph A.1., above. In addition, conduct a visual inspection of the dorsal fin attach angle, from the outside of the airplane, for cracks.

This amendment becomes effective June 14, 1989.

Issued in Seattle, Washington, on June 1, 1989.

Leroy A. Keith,
Manager, Transport Airplane Directorate,
Aircraft Certification Service.

[FR Doc. 89-14085 Filed 6-13-89; 8:45 am]

BILLING CODE 4910-13-M

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 142

RIN 3038-AA63

Indemnification of CFTC Employees

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: This rulemaking adds a new Part 142 to Title 17 of the Code of Federal Regulations. Part 142 parallels provisions adopted by the Department of Justice, the Small Business Administration and the Department of Health and Human Services in permitting indemnification of Commodity Futures Trading Commission employees in appropriate situations as determined by the Commission.

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: David W. Kuhnsmann, Esq., Office of the General Counsel, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581, (202) 254-9880.

SUPPLEMENTARY INFORMATION:

Presently, the CFTC has no rules to indemnify Commission employees who are sued in their individual capacities and who suffer an adverse judgment as a result of conduct taken within the scope of their employment; nor does it have rules to settle these claims with agency funds. The prospect of personal liability might adversely affect Commission operations. This potential liability increased substantially last year when the Supreme Court decided *Westfall v. Erwin*, 484 U.S. ____ (1988), which held that federal employees sued in their individual capacities are not entitled to immunity for common law torts unless their acts were both within the scope of their employment and involved an exercise of governmental discretion.

Congress responded to the *Westfall* case by enacting the "Federal Employees Liability Reform and Tort Compensation Act of 1988" (Pub. L. 100-694). This new law removes the potential personal liability of federal employees for common law torts committed within the scope of their employment, and would instead provide that the exclusive remedy for such torts is through an action against the United States under the Federal Tort Claims Act (FTCA) (28 U.S.C. 1291, 1346, 1402, 2401, 2402, 2411, 2412, 2671-80 (1982)). However, the 1988 law does not extend or apply to a civil action against a federal employee which is brought for a violation of the Constitution of the United States or for a violation of a statute of the United States which authorizes such action. Thus, while common law tort actions regarding federal employees are properly brought against the United States, individual federal employees are still at risk for actions based on constitutional or statutory grounds under exceptions to the FTCA.

Litigation against federal employees based on constitutional rights was first found to be actionable by the Supreme Court in *Bivens v. Six Unknown Named Agents of the Federal Bureau of Narcotics*, 403 U.S. 388 (1971). In the wake of *Bivens*, there has been a tremendous volume of litigation initiated against individual federal employees. According to recent Department of Justice statistics, since 1971, over 14,000 claims have been filed against individual federal employees with approximately 5,000 lawsuits currently pending. Despite the fact that only an extremely small amount of *Bivens*-type actions have resulted in adverse judgments, the risk of personal liability and the burden of defending a

constitutional tort suit as a result of one's employment duties continues. Relatedly, the potential for adverse judgments against a federal employee persists since private remedies recognized in federal statutes, such as the Right to Financial Privacy Act, were excluded from the FTCA as amended in 1988.

The Commission believes that the potential for a judgment against a Commission employee in his or her individual capacity could be detrimental to the Commission. The adoption of Part 142 reflects a change in CFTC policy to permit indemnification which would help alleviate this problem and afford CFTC employees the same protection now given to other federal employees in the Department of Justice, Small Business Administration and Department of Health and Human Services, where similar rules have been adopted.

This modification of CFTC policy permits, but does not require, the Commission to indemnify a Commission employee who suffers an adverse judgment, verdict, or monetary award, provided that the actions giving rise to the award were taken within the scope of employment and that such indemnification is in the interest of the United States as determined by the Commission.¹ The CFTC policy is designed to complement the protections afforded by the FTCA by permitting indemnification for adverse judgments stemming from constitutional and federal statutory torts. The policy also allows the Commission to settle a claim brought against an employee in his or her individual capacity by the payment of Commission funds, upon a determination by the Commission. However, absent exceptional circumstances, the Commission will not agree either to indemnify an employee or to settle a suit before entry of an adverse judgment.

Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to consider the impact of proposed rules on small entities. It is not anticipated that these new regulations, which deal solely with internal rules governing Commodity Futures Trading Commission personnel, will impose any new burden on small entities. Accordingly, the Chairman, on behalf of the Commission, hereby certifies pursuant to 5 U.S.C. 605(b) that the rule promulgated herein will not have a

¹ The officer or employee will generally be entitled to legal representation by the Department of Justice under 28 CFR 50.15-50.16.

significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The rule adopted herein does not contain a collection of information requirement, nor an "information collection request" within the meaning of 44 U.S.C. 3502(4), and relates solely to CFTC management and personnel. Therefore, the Commission has determined that the provisions of the Paperwork Reduction Act do not apply to this rule.

Waiver of Public Notice and Comment

The following regulations shall be effective immediately. The Commission finds that the amendments relate solely to agency organization, practice and procedure and that the public procedures and publication prior to the effective date of the amendments, in accordance with the Administrative Procedure Act, as codified, 5 U.S.C. 553, are not required.

List of Subjects in 17 CFR Part 142

Commodity futures, Administrative practice and procedure, Government employees, Employment, Tort claims.

For reasons stated in the preamble, Part 142, as set forth below, is added to Title 17 of the Code of Federal Regulations.

PART 142—INDEMNIFICATION OF CFTC EMPLOYEES

Sec.

142.1 Purpose and scope.

142.2 Policy.

Authority: 7 U.S.C. 4a(j).

§ 142.1 Purpose and scope.

This Part sets forth the policy and procedure with respect to the indemnification of Commission employees who are sued in their individual capacities and suffer an adverse judgment as a result of conduct taken within the scope of employment. (For purposes of this Part the term Commission employees includes all present and former Commissioners and employees of the Commission). This Part is intended to provide indemnification for adverse judgments for constitutional and federal statutory torts excepted from the Federal Tort Claims Act exclusive remedy provision 28 U.S.C. 2679(b) (as amended by the Federal Employees Liability Reform and Tort Compensation Act of 1988 (Pub. L. 100-694)). In any lawsuit which is filed against the employee alleging a common law tort occurring within the scope of employment, the United States may be substituted for the individual employee

and any liability which may be found will be assessed against the government, pursuant to the Federal Employees Liability Reform and Tort Compensation Act of 1988.

§ 142.2 Policy.

(a) The Commission may indemnify its employees by the payment of available funds, in whole, or in part, for any verdict, judgment or other monetary award which is rendered against any employee, provided that the conduct giving rise to the verdict, judgment or award was taken within the scope of his or her employment with the Commission and that such indemnification is in the interest of the United States, as determined by the Commission.

(b) The Commission may settle or compromise a personal damage claim against its employee by the payment of available funds, at any time, provided the alleged conduct giving rise to the personal damage claim was taken within the scope of employment and that such settlement is in the interest of the United States as determined by the Commission in its discretion.

(c) Absent exceptional circumstances, as determined by the Commission, the Commission will not entertain a request either to agree to indemnify or to settle a personal damage claim before entry of an adverse verdict, judgment or monetary award.

(d) When an employee of the Commission becomes aware that an action may be or has been filed against the employee in his or her individual capacity as a result of conduct taken within the scope of his or her employment, the employee should immediately notify the Commission's Office of General Counsel that such an action is pending or threatened.

(e) The employee may thereafter request either (1) indemnification to satisfy a verdict, judgment or award entered against the employee or (2) payment to satisfy the requirements of a settlement proposal. The employee shall submit a written request, with documentation including copies of the verdict, judgment, award or settlement proposal, as appropriate, to the head of his or her division or office, who thereupon shall submit to the General Counsel, in a timely manner, a recommended disposition of the request. The General Counsel shall also seek the views of the Department of Justice. The General Counsel shall forward the request, the division or office's recommendation and the General Counsel's recommendation to the Commission for decision.

(f) Any payment under this section either to indemnify a Commodity

Futures Trading Commission employee or to settle a personal damage claim shall be contingent upon the availability of appropriated funds of the Commodity Futures Trading Commission.

Issued in Washington, DC on June 7, 1989.

By the Commission.

Jean A. Webb,

Secretary of the Commission, Commodity Futures Trading Commission.

[FR Doc. 89-14053 Filed 6-13-89; 8:45 am]

BILLING CODE 6351-01-M

DEPARTMENT OF ENERGY**Federal Energy Regulatory Commission****18 CFR Part 154**

[Docket No. RM89-13-000; Order No. 514]

Revision of Formula for Computing Monthly Carrying Charges in PGA Filings; Interim Rule

Issued June 8, 1989.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Interim Rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing an interim rule to revise the formula used to compute the monthly carrying charge rate for Account No. 191 carrying charges required in the Commission's Purchased Gas Adjustment (PGA) filings. Under the revised regulations, the daily interest rate to be determined in the second step of the carrying charges formula in § 154.305(h)(4) of the Commission's regulations must be expressed to the nearest one ten-thousandth of one percent (*i.e.*, rounded to the sixth decimal place). The Commission's regulations currently require the daily interest rate to be expressed to the nearest one one-hundredth of one percent (*i.e.*, rounded to the fourth decimal place). The Commission is amending its regulations in this interim rule while, at the same time, seeking comments on the change. The Commission will issue a final rule in this proceeding, after reviewing these comments.

DATES: The effective date of this interim rule is June 8, 1989. Comments must be filed on or before July 24, 1989.

ADDRESS: An original and 14 copies of all written comments on this interim rule must be filed in the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 and should

refer to Docket No. RM89-13-000 on the outside of the envelope and on all documents submitted to the Commission.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the *Federal Register*, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this interim rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street, NE., Washington, DC 20426.

Before Commissioner: Martha O. Hesse, Chairman; Charles G. Stalon, Charles A. Trabandt, Elizabeth Anne Moler and Jerry J. Langdon.

Revision of Formula for Computing Monthly Carrying Charges in PGA Filings.**I. Introduction**

The Federal Energy Regulatory Commission (Commission) is issuing an interim rule revising the formula used to compute the monthly carrying charge rate for Account No. 191 carrying charges required in the Commission's Purchased Gas Adjustment (PGA) filings.¹ Under the revised regulations, the daily interest rate to be determined in the second step of the carrying charges formula in § 154.305(h)(4) of the Commission's regulations must be expressed to the nearest one ten-thousandth of one percent (*i.e.*, rounded to the sixth decimal place). The Commission's regulations currently

¹ See 18 CFR 154.305(h) (1988).

require the daily interest rate to be expressed to the nearest one one-hundredth of one percent (*i.e.*, rounded to the fourth decimal place). The Commission is amending its regulations in this interim rule while, at the same time, seeking comments on the change. After reviewing the comments, the Commission will issue a final rule in this proceeding.

II. Background

The Commission permits natural gas pipeline companies to recover changes in the cost of purchased natural gas through a purchased gas adjustment clause proceeding as an alternative to recovering these costs in a general rate proceeding pursuant to section 4 of the Natural Gas Act.³

The Commission's current PGA regulations⁴ require a natural gas pipeline company to determine its overrecovered or underrecovered purchased gas costs each month and to either credit or debit these amounts to Account No. 191 of the Uniform System of Accounts.⁴ Additionally, the Commission's regulations require a pipeline to compute carrying charges on the pipeline's Account No. 191 balances.⁵ According to the Commission's regulations, a pipeline must compute the monthly carrying charge by multiplying the carrying charge rate specified in § 154.305(h)(4) by the carrying charge base specified in § 154.305(h)(3). The pipeline's carrying charge base is calculated for the refunds, revenue credits or billing adjustments subaccount and a separate carrying charge base is calculated for all other subaccounts in Account No. 191. Under § 154.305(h)(4), the pipeline's monthly carrying charge rate is calculated by dividing the annualized quarterly rate provided for in § 154.67(c)(2)(iii)(A) of the Commission's regulations by the number of days in the year, and then multiplying the result by

the number of days in the applicable month.

The Commission's current PGA regulations specifically require that each result in the formula for determining the carrying charge rate must be expressed to the nearest one one-hundredth of one percent, *i.e.*, rounded to the fourth decimal place.⁶ The Commission added this specific requirement in its current PGA regulations to ensure that pipelines compute their interest rate factors for carrying charges in the same manner.⁷

Recently, the Commission has granted several pipelines a limited waiver of the carrying charges formula in § 154.305(h)(4) to permit them to express the daily interest rate calculated under § 154.305(h)(4)(ii), the second step of the carrying charges formula, to the nearest one ten-thousandth of one percent.⁸ The Commission granted these waivers because a Commission staff study found that expressing the daily interest rate in the second step of the carrying charges formula to the nearest one one-hundredth of one percent creates variances between the de facto annual rate used to compute carrying charges on a pipeline's Account No. 191 balance and the annual rate used to calculate refunds for a general NGA section 4 rate proceeding according to § 154.67(c)(2)(iii)(A) of the Commission's regulations.⁹

III. Discussion

Commission staff studied the difference between the de facto annual interest rates obtained by using four different rounding factors for the second step of the carrying charges formula in § 154.305(h)(4) and the original annual interest rate calculated on refunds in accordance with § 154.67(c)(2)(iii)(A), while still rounding the final step in the carrying charges formula, the monthly interest rate, to one one-hundredth of one percent, *i.e.*, four decimal places.¹⁰

³ See 18 CFR 154.305(h)(4) (ii) and (iii) (1988).

⁴ Prior to Order No. 483 establishing the Commission's current PGA regulations, pipelines would start with the average prime rate for each calendar quarter and then use their own computation to arrive at the monthly interest rate factor. For example, a pipeline might take the annual quarterly interest rate and divide it by either twelve or 365 to determine a daily interest rate. The pipeline would then round the daily interest rate to whatever decimal place the pipeline preferred. Finally, the pipeline would multiply the daily interest rate by the number of days in the month, expressed to one one-hundredth of one percent, to arrive at the monthly interest rate.

⁵ Algonquin Gas Transmission Co., Docket No. TA89-20-001, 46 FERC ¶ 61,367 at 62,268 (Mar. 23, 1989); Alabama-Tennessee Natural Gas Company, Docket No. TA89-11-000, 46 FERC ¶ 61,429 (Mar. 31, 1989).

⁶ 18 CFR 154.67(c)(2)(iii)(A) (1988).

⁷ The Commission's study is attached as Appendix A.

The Commission's study shows that calculations expressing the daily interest rate in the second step of the carrying charges formula in § 154.305(h)(4) to the sixth, eighth or float¹¹ decimal places does not create any significant variance with the annual rate used to calculate refunds in § 154.67(c)(2)(iii)(A) of the Commission's regulations, but that expressing it to the fourth decimal place does create a significant variance. In fact, the calculations for sixth, eighth or float decimal places result in similar final monthly interest rates.

Commission staff also prepared a worksheet highlighting the percentage of distortions or variances between the de facto annual rate used in the second step of the carrying charges formula on the Account No. 191 balance and the annual rate calculated for refunds in a pipeline's latest NGA section 4 rate filing pursuant to § 154.67(c)(2)(iii)(A) of the Commission's regulations.¹²

The distortion in the final carrying charge interest rate on a pipeline's Account No. 191 balance violates the principle underlying the PGA regulations that the carrying charges on Account No. 191 must equal the current interest rate on pipeline refunds prescribed by the Commission in § 154.67(c)(2)(iii)(A) of its regulations. The PGA regulations are designed to ensure that the pipelines and their customers are in the same financial position that they would have been in if there had been no delay in the recovery of the overcharges or undercharges held in a pipeline's Account No. 191.¹³

The Commission is revising § 154.305(h)(4)(ii) of its regulations to require that the daily interest rate must be expressed to the nearest one ten-thousandth of one percent (*i.e.*, rounded to the sixth decimal place). This will substantially eliminate the distortions in the calculations, so as to ensure that there is no significant variation between the interest rate determined under § 154.67(c)(2)(iii)(A) for refunds in a pipeline's NGA section 4 general rate proceeding and the carrying charge rate determined under § 154.305(h)(4) for Account No. 191 balances in a pipeline's PGA filing. Thus, the carrying charges

¹¹ *I.e.*, using no rounding factor at all.

¹² See Appendix B.

¹³ See Modification of Purchased Gas Cost Adjustment Clause Regulations, Order No. 13, 43 F.R. 50,167 (Oct. 27, 1978), FERC Stats. & Regs. [Regulations Preambles 1977-1981] ¶ 30,020A (1978); and Natural Gas Policy and Procedures: Final Regulation and Request for Comments, Order No. 47, 44 F.R. 53,493 (Sept. 14, 1979), FERC Stats. & Regs. [Regulations Preambles 1977-1981] ¶ 30,063 (Sept. 10, 1979).

calculated in pipelines' PGA filings will more accurately reflect the financial position of the pipelines and their customers for overrecovery and underrecovery of certain accounts.

IV. Administrative Findings and Effective Date

The Commission is revising the carrying charge rate computation formula by amending § 154.305(h)(4)(ii) in an interim rule prior to providing a notice and obtaining comments, as generally required by the Administrative Procedure Act (APA) for any rulemaking proceeding.¹⁴ In addition to the reasons set forth above, the Commission is invoking exceptions to this requirement in order to provide an immediate generic remedy to pipelines, and to ensure uniform treatment of all pipelines at the earliest date possible. It also will render unnecessary the filing of further petitions by pipelines for limited waiver of the carrying charges formula in § 154.305(h)(4).

The Commission, therefore, finds good cause to issue this rule without prior notice and comment. The Commission believes the public interest is best served in this instance with the promulgation of an interim rule consistent with the Commission's underlying principle that the carrying charge rate on Account No. 191 balances must accurately represent the interest rate calculated for refunds in pipelines' NGA section 4 general rate filings.

This interim rule is effective June 8, 1989.

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act generally requires a description and analysis of rules that will have a significant economic impact on a substantial number of small entities.¹⁵ The pipelines affected by this rule are too large to be considered "small entities" within the meaning of the Act.¹⁶ Accordingly, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

¹⁴ 5 U.S.C. 553 (b) and (c) (1982).

¹⁵ 5 U.S.C. 601-612 (1982).

¹⁶ The act defines a "small entity" as a small business, a small not-for-profit enterprise or a small governmental jurisdiction. 5 U.S.C. 601(b) (1982). A "small business" is defined by reference to section 3 of the Small Business Act, as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 5 U.S.C. 6.32(a) (1982). *

VI. National Environmental Policy Act Statement

Commission regulations require that an environmental assessment or an environmental impact statement must be prepared for any Commission action that may have a significant adverse effect on the human environment.¹⁷ The Commission has categorically excluded certain actions from this requirement as not having a significant effect on the human environment.¹⁸ This rule involves the review of natural gas rate filings and establishment of rates for the transportation and sale of natural gas under sections 4 and 5 of the Natural Gas Act. Pursuant to § 380.4(a)(25) of the Commission's regulations, the establishment of such rates is categorically excluded from these statements.¹⁹ The Commission, therefore, will not prepare an environmental assessment or an environmental impact statement for this rule.

VII. Paperwork Reduction Act Statement

The Paperwork Reduction Act²⁰ and the Office of Management and Budget (OMB)²¹ require that OMB approve certain information collection requirements imposed by agency rule. This final rule does not change the information collection requirements approved by OMB. The rule simply changes the decimal place that must be used in expressing the daily interest rate in § 154.305(h)(4)(ii), the second step of the carrying charges formula in § 154.305(h)(4) of the Commission's regulations. The Commission, therefore, is not required to notify OMB of this technical change.

VIII. Public Comment Procedures

Interested persons are invited to submit written comments on the interim rule to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20528. Comments should refer to Docket No. RM89-13-000 on the outside of the envelope and on all documents submitted to the Commission. Fourteen copies should be submitted with the original.

Comments must be filed on or before July 24, 1989. Copies of the written comments may be obtained from the Commission's Division of Public

¹⁷ Regulations Implementing National Environmental Policy Act, 52 F.R. 47,897 (Dec. 17, 1987); III FERC Stats. & Regs. ¶ 30,783 (Dec. 10, 1987).

¹⁸ 18 CFR 380.4 (1989).

¹⁹ 18 CFR 380.4(a)(25) (1989).

²⁰ 44 U.S.C. 3501-3520 (1982).

²¹ 5 CFR 1320.13 (1989).

Information, Room 1000, 825 North Capitol Street, NE., Washington, DC 20428. Comments are available for public inspection during business hours at the same location. Also, copies of comments will be available for purchase.

List of Subjects in 18 CFR Part 154

Alaska, Natural gas, Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 154, Chapter I, Title 18 of the Code of Federal Regulations as set forth below.

By the Commission.
Linwood A. Watson, Jr.,
Acting Secretary.

PART 154—RATE SCHEDULE AND TARIFFS

1. The authority citation for Part 154 continues to read as follows:

Authority: Natural Gas Act, 5 U.S.C. 717-717w (1982); Department of Energy Organization Act, 42 U.S.C. 7102-7352 (1982); E.O. 12009, 3 CFR 1978 Comp., p. 142; Independent Offices Appropriations Act, 31 U.S.C. 9701 (1982).

2. In § 154.305, paragraph (h)(4)(ii) is revised to read as follows:

§ 154.305 Annual PGA filing.

- • • • •
- (h) Carrying charges. • • • • •
- (4) Carrying charge rate. • • • • •
- (ii) Dividing the annual rate by 365 or 366, if a leap year, to compute a daily interest rate, expressed to the nearest one ten-thousandth of one percent; and
- • • • •

Note: These appendices will not be published in the Code of Federal Regulations

Appendix A—Study of Decimal Place Distortion in PGA Carrying Charges Computations

The following charts show the results of using different rounding factors or no rounding factor at all, *i.e.*, allowing the decimal place to float, to compute the daily interest rate and the resulting monthly interest rates for PGA carrying charges pursuant to § 154.305(h)(4) (ii) and (iii) of the Commission's regulations. The Summary Sheets compare the results of using four different rounding factors for each month in the study. As can be seen from the Summary Sheets, the calculations using six, eight or floating decimal places result in like monthly interest rates.

Column (1) on the Summary Sheets gives the decimal place that was used for the second step of the monthly interest rate. The working papers which support these Summary Sheets and from which these figures are taken appear in Column (2). Likewise, the Line Number where the figure

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can be found is given in Column (3). Columns (4) (5) and (6) show the annual interest rate, the monthly interest rate and the de facto (effective) rate. Column (4) shows the monthly effective rate as computed on the various backup examples. Column (5) shows the effective annual rate obtained by reversing the calculations. That is, each monthly carrying charge factor calculated by the divers methods is annualized. As may be seen by the example for the month of January, on Line One, when four decimal places are used pursuant to § 154.305, the annual rate is 10.98 percent even though the published refund rate is 12 percent. Likewise for April, the interest rate calculation using four decimal places again results in an annual rate of 10.98 percent instead of the 9.39 percent resulting from the

calculations which are expressed to the six and eight decimal places as well as the float (not rounded at all). The results in the summaries for July and November follow suit. The second type of example shows the computations behind the interest rates in the Summary. The amounts in Example A are computed using a rounding factor of four, i.e., in accordance with Order No. 483, the daily interest rate is expressed to four decimal places in the step to determine the daily interest rate for the computation to determine the monthly interest rate to be used to calculate carrying charges. As is shown, calculating the daily rate rounded to one hundredth of one percent results in an annual interest rate of 10.98 percent in three of the

four months for which the calculation occurred. The amounts in Example B are computed using a rounding factor of six, i.e., the quotient is rounded to six decimal places in the second step to determine the daily interest rate for the computation to determine the monthly interest rate. The amounts in Example C are computed using a rounding factor of eight, i.e., the quotient is rounded to eight decimal places in the second step to determine the monthly interest rate. The amounts in Example D are computed using a floating decimal factor, i.e., the quotient is not rounded in the second step to determine the daily interest rate for the computation to determine the monthly interest rate.

EXAMPLE A.—CARRYING CHARGE RATES PER § 154.305(h)

Line No.	Month	(1) Annual rate	(2) No. days in year	(3) Daily rate (1)/(2)	(4) No. days in month	(5) Monthly rate (3)(4)	(6) Check (5)/(4)*(2)	(7) Difference (1)-(6)
1	Jan	0.12	366	0.0003	31	0.0093	0.1098	0.0102
2	Apr	0.0934	366	0.0003	30	0.009	0.1098	-0.0164
3	Jul	0.1054	366	0.0003	31	0.0093	0.1098	-0.0044
4	Nov	0.1428	366	0.0004	30	0.012	0.1464	-0.0036

EXAMPLE B.—CARRYING CHARGE COMPUTATIONS ROUNDED TO SIX DECIMAL PLACES

Line No.	Month	(1) Annual rate	(2) No. days in year	(3) Daily rate (1)/(2)	(4) No. days in month	(5) Monthly rate (3)(4)	(6) Check (5)/(4)*(2)	(7) Difference (1)-(6)
1	Jan	0.12	366	0.000328	31	0.0102	0.120428	-0.000426
2	Apr	0.0934	366	0.000255	30	0.0077	0.09394	-0.00054
3	Jul	0.1054	366	0.000288	31	0.0089	0.105077	0.000323
4	Nov	0.1428	366	0.00039	30	0.0117	0.14274	0.00006

EXAMPLE C.—CARRYING CHARGE COMPUTATIONS ROUNDED TO SIX DECIMAL PLACES

Line No.	Month	(1) Annual rate	(2) No. days in year	(3) Daily rate (1)/(2)	(4) No. days in month	(5) Monthly rate (3)(4)	(6) Check (5)/(4)*(2)	(7) Difference (1)-(6)
1	Jan	0.12	366	0.00032787	31	0.0102	0.12042581	-0.00042581
2	Apr	0.0934	366	0.00025519	30	0.0077	0.09394	-0.00054
3	Jul	0.1054	366	0.00028798	31	0.0089	0.10507742	0.00032258
4	Nov	0.1428	366	0.00039016	30	0.0117	0.14274	0.00006

EXAMPLE D.—CARRYING CHARGE COMPUTATIONS WITH FLOATING DECIMAL PLACES*

Line No.	Month	(1) Annual rate	(2) No. days in year	(3) Daily rate (1)/(2)	(4) No. days in month	(5) Monthly rate (3)(4)	(6) Check (5)/(4)*(2)	(7) Difference (1)-(6)
1	Jan	0.12	366	0.000327868	31	0.0102	0.1204258065	-0.0004258065
2	Apr	0.0934	366	0.00025519	30	0.0077	0.09394	-0.00054
3	Jul	0.1054	366	0.00028798	31	0.0089	0.105077	0.000323
4	Nov	0.1428	366	0.00039016	30	0.0117	0.14274	0.00006

* For display purposes, the number of decimal places is limited to 10 places.

SUMMARY SHEET I.—INTEREST RATE COMPUTATION COMPARISON

Line No. and carrying charge rate computation per	From example	Line number	Refund interest rate from col. (1) (percent)	Monthly rate from col. (5)	Effective annual rate from col. (6) (percent)
(1)	(2)	(3)	(4)	(5)	(6)
January					
1 Sec. 154.305	A	1	12.00	0.0093	10.98
2 Six Dec	B	1	12.00	0.0102	12.04
3 Eight Dec	C	1	12.00	0.0102	12.04
4 Float	D	1	12.00	0.0102	12.04
April					
1 Sec. 154.305	A	2	9.34	0.008	10.98
2 Six Dec	B	2	9.34	0.0077	9.39
3 Eight Dec	C	2	9.34	0.0077	9.39
4 Float	D	2	9.34	0.0077	9.39

SUMMARY SHEET II.—INTEREST RATE COMPUTATION COMPARISON

Line No. and carrying charge rate computation per	From example	Line number	Refund interest rate from col. (1) (percent)	Monthly rate from col. (5)	Effective annual rate from col. (6) (percent)
(1)	(2)	(3)	(4)	(5)	(6)
July					
1 Sec. 154.305	A	3	10.54	0.0093	10.98
2 Six Dec	B	3	10.54	0.0089	10.51
3 Eight Dec	C	3	10.54	0.0089	10.51
4 Float	D	3	10.54	0.0089	10.51
November					
1 Sec. 154.305	A	4	14.28	0.012	14.64
2 Six Dec	B	4	14.28	0.0117	14.27
3 Eight Dec	C	4	14.28	0.0117	14.27
4 Float	D	4	14.28	0.0117	14.27

Appendix B

This work sheet highlights the percentage of distortions. The

percentage of error that occurs for an annual interest rate of 5.48 percent is 33.33 percent and the percentage of error

for an annual interest rate of 9.12 percent is 20 percent.

An example of the distortion caused by rounding the intermediate step by four places.

	Interest Rate per 154.67 (percent)	Daily Rate Col. (a)/365	De Facto Annual Rate Col (b) x 365 (percent)
	(a)	(b)	(c)
Calculation using four decimal places	5.48	0.0002	7.30
Calculation using six, eight or "float" decimal places	5.48	0.00015	5.48
Difference due to rounding			1.83
Percentage of error			33.33
Calculation using four decimal places	9.12	0.0002	7.30
Calculation using six, eight or "float" decimal places	9.12	0.00025	9.13
Difference due to rounding			-1.82
Percentage of error			-20.00

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 199

[DoD 6010.8-R, Amdt. No. 22]

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Administrative Remedies for Fraud, Abuse, and Conflict of Interest

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule amends Part 199 of Title 32, the regulation which implements CHAMPUS, by adding a new section that sets forth administrative remedies, including exclusion, suspension, and termination of CHAMPUS providers for fraud, abuse, or conflict of interest. The new section is designated as § 199.9 which was previously reserved. This amendment strengthens the Program's remedies when providers or beneficiaries violate laws pertaining to fraud or false claims. This amendment also strengthens the Program's remedies when providers or beneficiaries violate regulation provisions concerning Program fraud or abuse. The new section is responsive to the Administration's and DoD's concern with controlling and reducing fraud and abuse. The end result will be to minimize poor quality care and health risks for CHAMPUS beneficiaries and to reduce unnecessary costs to the Government.

EFFECTIVE DATE: July 14, 1989. For an administrative remedy on or after this date, CHAMPUS will follow the provisions of this final rule.

ADDRESS: Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS), Office of Program Development, Aurora, CO 80045-6900.

For copies of the Federal Register containing this notice, contact the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

The charge for the Federal Register is \$1.50 for each issue payable by check or money order to the Superintendent of Documents.

FOR FURTHER INFORMATION CONTACT: Tariq S. Shahid, Office of Program Development, OCHAMPUS, telephone (303) 361-3587.

To obtain copies of this document, see the "ADDRESS" section above.

SUPPLEMENTARY INFORMATION: In FR Doc. 77-7834, appearing in the Federal Register on April 4, 1977 (42 FR 17972),

the Office of the Secretary of Defense published its regulation, DoD 6010.8-R, "Implementation of the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)," as Part 199 of this title. Since 32 CFR Part 199 (DoD 6010.8-R) was reissued in the Federal Register on July 1, 1986 (51 FR 24008), with a new format, all references to section numbers in this final rule are in accordance with the new format.

I. Background/Analysis

Section 199.6(a)(4)(i) provided for denial of CHAMPUS payments for services of a provider found to have engaged in fraudulent activities against the Program and for disqualification of the provider from participation in CHAMPUS. In regard to unnecessary and poor quality care, the regulation provided for denial of CHAMPUS payments for services or supplies that are not medically necessary or that fail to meet professionally recognized standards for health care, but was silent on the administrative authority to exclude providers from the program for such abusive practices.

Section 199.6(a)(4)(ii) authorized denial of CHAMPUS reimbursements for services of any provider determined by the Secretary of the Department of Health and Human Services (DHHS) to have furnished supplies or services which were substantially in excess of the needs of individuals, or which were harmful to individuals, or which were of a grossly inferior quality, and where the Secretary, on the basis of such a determination, terminated the agreement of that provider for purposes of reimbursement under the Medicare and Medicaid programs. OCHAMPUS has remained dependent upon the DHHS determination as the basis for excluding those providers who engage in abusive practices. This weakness in the regulation has a potential for abuse under CHAMPUS since a provider could continue rendering poor quality or unnecessary services to beneficiaries of CHAMPUS while avoiding the termination by DHHS by not doing so under the Medicare and Medicaid programs. Also, CHAMPUS can be abused by a provider who could have avoided the termination by DHHS simply by electing not to participate in Medicare and Medicaid programs.

We believe that once a provider has been found to have a pattern of ordering or furnishing services or supplies for a CHAMPUS beneficiary that are medically unnecessary, inferior, or harmful, CHAMPUS should be able to exclude such a provider from the Program without having to rely on the DHHS. Such CHAMPUS authority is

needed to eliminate poor quality providers from the Program.

We believe the regulation should define fraud and abuse under the CHAMPUS and strengthen its authority. The criminal statutes defining fraud and abuse are enforced in courts of law. This final rule provides for provider exclusion when convictions or judgments involving fraud are entered in a court of law. In addition, it establishes what is fraud or abuse under the CHAMPUS by providing administrative definitions separate from any definitions found in criminal codes.

This amendment adds a new section in Part 199 that prescribes necessary definitions, more clearly expresses the administrative authority, and provides a range of administrative responses and remedies, including exclusion, suspension, and termination from the program for health care providers for fraud, abuse, or conflict of interest. Also, it authorizes CHAMPUS to exclude those providers who are sanctioned by other health care programs.

This final rule provides that for any CHAMPUS determination to exclude, suspend, or terminate a provider, the provider be given an opportunity to submit documentary evidence and written argument against the proposed adverse action or to submit a written request to present evidence or argument orally to a CHAMPUS official. It clarifies administrative appeal rights, provides criteria for reinstatement of a sanctioned provider, and provides other administrative guidelines.

Conforming changes to other sections of Part 199 have been made to insure consistency with the provisions of the new section.

This amendment is intended to facilitate administrative elimination of poor quality health care providers from CHAMPUS, protect the beneficiaries, deter program violators, and control fraud and abuse. The end result will be to minimize poor quality care and health risks for CHAMPUS beneficiaries and to reduce unnecessary costs to the Government. The strengthened regulation will allow more aggressive and more timely pursuit of suspected instances of fraud and abuse, and has a potential for positive impact on program costs. The direct value to CHAMPUS would include the fraud and abuse deterrent effect of the stepped-up actions against suspected and documented violators.

II. Proposed Rule and Comments

In FR Doc. 86-1443 appearing in the Federal Register on January 24, 1986, (51 FR 3210), the Office of the Secretary of

Defense published for public comment a proposed amendment regarding exclusion, suspension, and termination of CHAMPUS providers for fraud, abuse, and conflict of interest. We received comments from several government agencies, two national associations related to mental health institutions, and two law firms that represent mental health institutions. We express our appreciation to all the commenters for the time they took in providing their comments. The following summarizes the comments, suggestions, and the actions taken.

First, after additional review, we have concluded that the provisions defining fraud in the proposed rule appear to include a more rigorous standard for establishing fraud than is required by applicable case law. In civil cases involving false claims, it has generally been held that proof of intent is unnecessary, so long as the individual committing the fraudulent act knew (or with appropriate inquiry, would have known) that the claim was false. For example, see *United States v. Hughes*, 585 F.2d 284 (7th Cir. 1978) and *United States v. Cooperative Grain and Supply Co.*, 474 F.2d 47 (8th Cir. 1973). In addition, intent is not required in the majority of judicial circuits for proof of fraud under the Federal Civil False Claims Act (31 U.S.C. 3729) (a practice expected to be followed in enforcement of the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801) as it applies to CHAMPUS) or the Criminal False Claims or False Statements Acts (18 U.S.C. 287, 1001). Accordingly, we have eliminated the requirement to prove intent for fraud and have made necessary revisions in § 199.2(b) of this final rule.

Three commenters raised concerns regarding the definition of abuse. Essentially, two of them commented that the definition is too vague and broad and suggested that without provider pre-termination hearings, a more precise standard for abuse is needed. The third commenter suggested the regulations should at least require that OCHAMPUS make a finding that the participants in the alleged abuse knew or should have known either (1) that the alleged practice would result in excessive cost to CHAMPUS; (2) that the services or supplies were not medically necessary; or (3) the services or care failed to meet professionally recognized standards. These commenters suggested that isolated instances of providing medically unnecessary services or waiving patient cost-shares should not be construed as abuse.

The definition of abuse is reasonably similar to definitions of abuse established under other health care programs, including the definition used under Medicare. In addition, it is reasonable to expect providers of health care to be familiar with, and comply with, the recognized standards of care established for their profession; to be familiar with the requirements for being an authorized CHAMPUS provider and the criteria for CHAMPUS coverage of services and supplies furnished; and to be cognizant of acceptable sound fiscal business and medical practices or the reasonable financial consequences to CHAMPUS and CHAMPUS beneficiaries of the providers' practices. In view of these expectations, we do not believe the definition of abuse to be too vague or broad. In addition, specific examples of fraud and abuse were set forth in the amendment to provide further understanding of the types of practices which are considered abuse under CHAMPUS. Some revisions have been made in the examples of abuse in § 199.9. Therefore, we do not believe that OCHAMPUS should be required to find that a provider furnishing medically unnecessary services that result in excessive costs did so knowingly. Such a requirement could create a loophole permitting incompetent providers who are not knowledgeable of professional standards to continue rendering poor quality care to our beneficiaries. For these reasons we cannot add such a requirement.

It was not our intent that single, isolated incidents of abuse would, generally, result in the initiation of administrative remedies under this amendment. Unless a single, isolated incident is considered gross and flagrant, an improper pattern of practice will normally be the basis of a finding of abuse under CHAMPUS. We are clarifying this in the note that follows the definition of abuse in § 199.2(b).

We also have added a new provision in § 199.9(h)(2)(i)(D) that will, generally, give a provider an opportunity for a pre-sanction meeting to present evidence or argument to an OCHAMPUS official.

One commenter pointed out that the definition of abuse used in the proposed regulations adopts concepts from the Medicare program but does not provide for peer review organizations (PROs). The commenter noted that submitting claims for services that are not medically necessary is an abuse and this raises problems for residential treatment centers in that the distinction between what is and what is not medically necessary is open to more dispute in psychiatry than for treatment

in acute care facilities. This commenter raised concerns that these regulations would grant CHAMPUS extra powers over clinical issues.

OCHAMPUS will be utilizing Medicare PROs for review of inpatient hospital care paid for through the diagnosis related group (DRG) method. For this reason some clarifications have been included in this amendment to increase the similarities in certain selected CHAMPUS and Medicare provisions. For example, the CHAMPUS definition of appropriate medical care has been clarified by specific reference to services being economically furnished. This is considered only a clarification in that application of the CHAMPUS definition has always included the concept of economically furnished services.

Aside from the utilization of Medicare PROs, an effective CHAMPUS peer review mechanism currently exists. This involves medical reviewers of the CHAMPUS contractors and reviewers from national professional organizations. On medical issues, CHAMPUS relies on scientific studies, medical literature, national professional assessments, the general medical community and other appropriate sources for information. Providers and patient records are reviewed by professionals who are specialized in mental health care and, with adequate resources available, we do not believe that medical necessity determinations in such cases would be difficult. Further, with the submission of claims or appeals, providers are given the opportunity to submit any documentary evidence in support of their position. In addition, as noted above, a case of abuse will normally require a pattern of providing unnecessary services.

With reference to the records related requirements in § 199.2(b), § 199.9(b)(6), and § 199.10(a)(3), one commenter suggested that an adequate account of the importance of the physician-patient and psychotherapist-patient privileges be taken. The commenter suggested that OCHAMPUS should provide for protection of the confidentiality of records within OCHAMPUS.

OCHAMPUS must have adequate access to records in order to conduct audits and make determinations. Beneficiaries and providers do not have to provide medical records to CHAMPUS or its contractors; however, failure to provide access to medical records can result in the claim (or claims) being denied CHAMPUS cost-sharing. The burden is on the beneficiary and provider to establish entitlement to CHAMPUS cost-sharing.

OCHAMPUS procedures do account for privacy and confidentiality of records, and CHAMPUS records are maintained in accordance with the requirements of the Privacy Act.

With reference to the definitions of adequate medical documentation in § 199.2(b), a commenter suggested that no provider should be required to comply with "CHAMPUS issuances" unless notice of the issuance was sent to the provider.

In clarification, "CHAMPUS issuances" meant the CHAMPUS Policy Manual and the CHAMPUS operations manuals which provide interpretation of the CHAMPUS regulation, clarifying policy, and implementing procedures. However, in this final rule we have made some minor revisions in the definitions of adequate medical documentation in § 199.2(b) and have deleted the reference to "CHAMPUS issuances." In general, the source of this definition is the Joint Commission on Accreditation of Healthcare Organizations record keeping requirements, prior final decisions of the Assistant Secretary of Defense (Health Affairs), and the CHAMPUS regulation. Failure to produce adequate medical documentation of the care provided is a basis for denying CHAMPUS cost-sharing.

Several comments were received regarding the mandatory and discretionary periods of sanction set forth in the proposed rule. In order to simplify the sanction procedures and remedies, the pertinent subsections have been rewritten to consolidate the procedures and to eliminate mandatory sanction periods in most cases. The only mandatory sanction periods which remain are those which are adopted from sanctions imposed by other agencies of the federal government, state, or local licensing authority. Therefore, except for cases in which the CHAMPUS sanction is imposed *solely* on the basis of sanctions by other agencies, the period of CHAMPUS sanction may be appealed under CHAMPUS.

Two commenters raised concerns that the regulations defining conflict of interest in § 199.2(b) and § 199.9(d) are too broad. One of them suggested that an active duty member or a civilian Government employee should be deemed to have a conflict of interest in making a referral or influencing a referral only when they or a close relative have a financial interest in the referral. The other commenter suggested that the revisions be made to include language requiring personal gain or appearance of impropriety in influencing referrals to others. A third commenter

suggested that we also consider those situations as conflict of interest where service members and Government employees have the apparent opportunity to exert influence on the referrals.

The broader definition was intended to include all those situations as conflict of interest where an authorized CHAMPUS provider employs an active duty Uniformed Service member or civilian Government employee who has the opportunity to exert influence on the referral of CHAMPUS beneficiaries to the employing provider. However, we have made necessary revisions in the conflict of interest provisions in § 199.2(b) and § 199.9(d) where we have maintained the regulatory intent and have adopted some of the suggestions of the commenters.

Although no public comments were received on the "dual compensation" provisions of the proposed rule, we have recently received comments that the CHAMPUS regulation may be overly broad in its application of the dual compensation law to all civilian employees of the Government. We recognize that there are tests established by case law and decisions of the Comptroller General for determining whether the dual compensation provisions apply in each individual case. However, in administering a program in which millions of claims are processed annually, it is impracticable to apply the established tests to each individual claim to avoid expending appropriated funds in violation of law. Rather, it is necessary to have an easily administered policy which can be used in an automated claims processing system to exclude all cases in which a provider may be in violation of the law. In addition, all providers who fall within the general category covered by the "dual compensation" provisions (i.e., civilian employees of the Government) are subject to Government rules and policies regarding "conflicts of interest." Such rules and policies prohibit not only actual conflict of interest situations but also situations in which the appearance of conflict of interest may exist. Again, it is impossible to scrutinize each individual claim to ensure that no possible violation of the rules and policies regarding conflict of interest occur when adjudicating millions of claims each year in a highly automated claims processing system. The fact that an individual provider may not be able to include CHAMPUS beneficiaries within his or her medical practice is not a primary consideration and does not outweigh the government's interests in enforcing laws and policies intended to

maintain the public's confidence in the conduct of the Government and its employees.

The reason for the broad application of the dual compensation provisions to all Government employees under CHAMPUS, then, is simply one of administrative efficiency following a balancing of the interests involved. Considering that OCHAMPUS is faced with the adjudication of millions of health care claims each year and given the high degree of freedom among providers of health care to enter into or change their status of employment or associations of practice on a daily basis, it is deemed administratively impossible to apply the established tests to *each* provider on *each* claim to avoid expending appropriated funds in violation of law. The problem is further complicated given the numerous interagency arrangements (for example, resource sharing arrangements between the Department of Defense and the Veterans Administration in the provision of health care) and other unique arrangements existing at individual government health care facilities whereby civilian employees of one agency have *official duties and responsibilities* to provide health care to patients who are CHAMPUS eligible beneficiaries. This complication may be further aggravated if legislation currently pending before Congress is adopted and CHAMPUS funds are used directly to pay for care received by CHAMPUS beneficiaries in Veterans Administration facilities. Finally, in the administration of a health care program for Veterans Administration beneficiaries referred to as Civilian Health and Medical Program of the Veterans Administration (CHAMPVA), CHAMPUS authorized providers are deemed CHAMPVA providers. In view of the interagency arrangements between the Department of Defense and Veterans Administration, it is administratively impossible continually to screen providers who are civilian employees of the Veterans Administration to enforce the provisions of law and regulation relating to dual compensation and conflict of interest.

Therefore, we have changed § 199.6(a)(3) to clarify the agency's position on this issue. Specifically, to avoid the administrative nightmare of attempting to adjudicate each claim in relation to the multiple established tests, it is our position to exclude from authorization as a CHAMPUS provider (and, therefore, as a CHAMPVA provider) any active duty Uniformed Service member and any civilian employee of the Government. In

addition, a provider shall be required to certify on each CHAMPUS (CHAMPVA) claim that he/she is not an active duty Uniformed Service member or civilian employee of the Government. While an individual provider may be prevented from being an authorized CHAMPUS provider even though no dual compensation (or conflict of interest) situation exists in a specific claim, it is deemed essential for CHAMPUS to have an easily administered uniform rule which will ensure compliance with existing law and regulation.

It has also been suggested that we consider adopting regulatory provisions similar to authorities in use by the Department of Health and Human Services (DHHS) under section 1128(b) of the Social Security Act. Under section 1128(b), DHHS may exclude an entity from Medicare, and require the State agency to exclude the entity from Medicaid, whenever the entity is found to have a person, convicted of a Medicare or Medicaid related crime, with direct or indirect ownership or control interest of 5 percent or more of the entity. DHHS may also exclude an entity from both programs if such person is found to be an officer, director, agent or managing employee of such entity.

We have adopted the above suggestion by adding a note in § 199.9(f)(1)(i)(A) and the definitions of "entity" and "ownership or control interest" in § 199.2(b). While this provision allows CHAMPUS to suspend such entities, it also permits the entities to take proper action to divest themselves of any direct financial or controlling relationship with sanctioned individuals. The rule, then, provides reinstatement procedures for these entities.

With reference to § 199.9(f)(1)(iii), one commenter suggested that the provision be modified to apply only when the suspension from the other Federal program is for fraud or abuse as defined under CHAMPUS. We believe an authorized provider will be suspended from another Federal program based on a valid case of fraud or abuse, or lack of competence. It is the responsibility of a provider to comply with the requirements of the program under which he is seeking payment or reimbursement from the government; therefore, a violation of a requirement of any program of the government which rises to the level of fraud or abuse under that program's definition is a fraud against the government. It should not be necessary to establish that it would also have been a fraud or abuse under CHAMPUS.

Two commenters raised concerns that the proposed procedures for suspensions

and exclusions fail to meet due process requirements. They suggested that before OCHAMPUS excludes or suspends a provider, that the provider be given an opportunity for a hearing. Protection of the Government's program and its beneficiaries is traditionally a proper purpose for administrative action; therefore, it is precisely the function of the Director, OCHAMPUS, to protect the program and its beneficiaries from the practices that led to the administrative action of exclusion or suspension. To permit a provider to continue as an authorized CHAMPUS provider pending administrative appeal proceedings would not provide the program or its beneficiaries protection from further potential wrongdoing of a provider preliminarily found to be unfit to participate under CHAMPUS or protection from a provider who has been found unfit or unqualified to be a CHAMPUS provider. In addition, allowing the provider to remain in an authorized status during administrative proceedings gives the provider every incentive to delay the proceedings by taking advantage of any opportunity to prolong the administrative appeal proceedings. The fact that an individual provider may not be able to include CHAMPUS beneficiaries within his or her medical practice following a preliminary determination that the provider is unfit to participate under CHAMPUS is not a primary consideration and does not outweigh the Government's interests in protecting the program and its beneficiaries. As noted earlier, however, we have added a new provision in § 199.9(h)(2)(i)(D) that will, generally, give a provider an opportunity for a pre-sanction meeting to present evidence or argument to an OCHAMPUS official. On balance of the interests involved, the informal pre-sanction meeting and the post-sanction hearing adequately address any due process requirements.

One commenter objected that the rules governing claims processing suspensions, (e.g., § 199.9(h)(1)), provide for no pre-termination notice or hearings. This commenter also suggested that the sections regarding administrative penalties based on either civil or criminal judgments concerning fraud should make provision for revocation of the penalties if the court judgments are reversed on appeal.

The provisions for temporary suspension of claims processing in § 199.9(h)(1) is not a final or formal agency action. No notice will be given if it is considered detrimental to the criminal, civil, or administrative investigation. As noted in the rule, a temporary suspension only delays the

ultimate payment of appropriate claims; therefore, the decision to invoke the temporary suspension of claims processing is not an appealable issue under CHAMPUS.

With regard to the revocation of penalties, we have added a new provision as § 199.9(h)(4) that addresses reinstatement of a provider, including a provider whose conviction has been reversed or vacated on appeal. The previous § 199.9(e)(7) regarding the authority to enter into compromise settlements now applies to the entire § 199.9 and has been redesignated as § 199.9(1).

Finally, as specified in § 199.9(k), CHAMPUS also will notify DHHS of its exclusion, suspension, and termination actions.

III. Regulatory Procedures

Executive Order 12291 requires that a regulatory impact analysis be performed on any major rule. A "major rule" is defined as one which would:

Result in annual effect on the national economy of \$100 million or more;
Result in a major increase in costs or prices for consumers, any industries, any government agencies, or any geographic regions; or

Have significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The Regulatory Flexibility Act requires that each federal agency prepare, and make available for public comment, a regulatory flexibility analysis when the agency issues regulations which would have significant impact on a substantial number of small entities.

Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, examine regulatory alternatives which minimize unnecessary burden or otherwise assure that regulations are cost-effective.

The changes set forth in this final rule will facilitate administrative elimination of poor quality health care providers from CHAMPUS, protect the beneficiaries, deter program violators, and control fraud and abuse. The end result will be to minimize poor quality care and health risks for CHAMPUS beneficiaries and to reduce unnecessary costs to the Government.

It is hereby certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. Also, it is not a "major rule" under Executive Order 12291.

List of Subjects in 32 CFR Part 199

Claims, Handicapped, Health insurance, Military personnel.

Accordingly, 32 CFR Part 199 is amended as follows:

PART 199—[AMENDED]

1. The authority citation for Part 199 continues to read as follows:

Authority: 10 U.S.C. 1079, 1086; 5 U.S.C. 301.

2. Section 199.2, paragraph (b) is amended by adding or revising, in alphabetical order, the definitions for "Abuse," "Adequate Medical Documentation, Medical Treatment Records," "Adequate Medical Documentation, Mental Health Records," (paragraph (iii) of "Appropriate Medical Care," "Conflict of Interest," "Conviction," "Dual Compensation," "Entity," "Fraud," "Item, Service, or Supply," "Ownership or Control Interest," "Provider Exclusion and Suspension," "Provider Termination," "Sanction," and "Suspension of Claims Processing," to read as follows:

§ 199.2 Definitions.

(b) . . .

Abuse. For the purposes of this Part, abuse is defined as any practice that is inconsistent with accepted sound fiscal, business, or professional practice which results in a CHAMPUS claim, unnecessary cost, or CHAMPUS payment for services or supplies that are: (1) Not within the concepts of medically necessary and appropriate care, as defined in this part, or (2) that fail to meet professionally recognized standards for health care providers. The term "abuse" includes deception or misrepresentation by a provider, or any person or entity acting on behalf of a provider in relation to a CHAMPUS claim.

Note: Unless a specific action is deemed gross and flagrant, a pattern of inappropriate practice will normally be required to find that abuse has occurred. Also, any practice or action that constitutes fraud, as defined by this part, would also be abuse.

Adequate Medical Documentation, Medical Treatment Records. Adequate medical documentation contains sufficient information to justify the diagnosis, the treatment plan, and the services and supplies furnished. Under CHAMPUS, it is required that adequate and sufficient clinical records be kept by the health care provider(s) to substantiate that specific care was actually and appropriately furnished, was medically necessary and

appropriate (as defined by this part), and to identify the individual(s) who provided the care. All procedures billed must be documented in the records. In determining whether medical records are adequate, the records will be reviewed under the generally acceptable standards such as the applicable Joint Commission on Accreditation of Healthcare Organizations (JCAHO) standards, the Peer Review Organization (PRO) standards (and the provider's state or local licensing requirements) and other requirements specified by this part. In general, the documentation requirements for a professional provider are not less in the outpatient setting than the inpatient setting.

Adequate Medical Documentation, Mental Health Records. Adequate medical documentation provides the means for measuring the type, frequency, and duration of active treatment mechanisms employed and progress under the treatment plan. Under CHAMPUS, it is required that adequate and sufficient clinical records be kept by the provider to substantiate that specific care was actually and appropriately furnished, was medically or psychologically necessary (as defined by this part), and to identify the individual(s) who provided the care. Each service provided or billed must be documented in the records. In determining whether medical records are adequate, the records will be reviewed under the generally acceptable standards (e.g., the applicable JCAHO standards and the provider's state or local licensing requirements) and other requirements specified by this part. It must be noted that the psychiatric and psychological evaluations, physician orders, the treatment plan, integrated progress notes (and physician progress notes if separate from the integrated progress notes), and the discharge summary are the more critical elements of the mental health record. However, nursing and staff notes, no matter how complete, are not a substitute for the documentation of services by the individual professional provider who furnished treatment to the beneficiary. In general, the documentation requirements of a professional provider are not less in the outpatient setting than the inpatient setting. Furthermore, even though a hospital that provides psychiatric care may be accredited under the JCAHO manual for hospitals rather than the consolidated standards manual, the critical elements of the mental health record listed above are required for CHAMPUS claims.

Appropriate Medical Care

(iii) The services are furnished economically. For purposes of this part, "economically" means that the services are furnished in the least expensive level of care or medical environment adequate to provide the required medical care regardless of whether or not that level of care is covered by CHAMPUS.

Conflict of Interest. Includes any situation where an active duty member (including a reserve member while on active duty) or civilian employee of the United States Government, through an official federal position, has the apparent or actual opportunity to exert, directly or indirectly, any influence on the referral of CHAMPUS beneficiaries to himself or herself or others with some potential for personal gain or appearance of impropriety. For purposes of this part, individuals under contract to a Uniformed Service may be involved in a conflict of interest situation through the contract position.

Conviction. For purposes of this part, "conviction" or "convicted" means that (1) a judgment of conviction has been entered, or (2) there has been a finding of guilt by the trier of fact, or (3) a plea of guilty or a plea of *nolo contendere* has been accepted by a court of competent jurisdiction, regardless of whether an appeal is pending.

Dual Compensation. Federal Law (5 U.S.C. 5536) prohibits active duty members or civilian employees of the United States Government from receiving additional compensation from the government above their normal pay and allowances. This prohibition applies to CHAMPUS cost-sharing of medical care provided by active duty members or civilian government employees to CHAMPUS beneficiaries.

Entity. For purposes of § 199.9(f)(1), "entity" includes a corporation, trust, partnership, sole proprietorship or other kind of business enterprise that is or may be eligible to receive reimbursement either directly or indirectly from CHAMPUS.

Fraud. For purposes of this part, fraud is defined as (1) a deception or misrepresentation by a provider, beneficiary, sponsor, or any person acting on behalf of a provider, sponsor, or beneficiary with the knowledge (or who had reason to know or should have

known) that the deception or misrepresentation could result in some unauthorized CHAMPUS benefit to self or some other person, or some unauthorized CHAMPUS payment, or (2) a claim that is false or fictitious, or includes or is supported by any written statement which asserts a material fact which is false or fictitious, or includes or is supported by any written statement that (a) omits a material fact and (b) is false or fictitious as a result of such omission and (c) is a statement in which the person making, presenting, or submitting such statement has a duty to include such material fact. It is presumed that, if a deception or misrepresentation is established and a CHAMPUS claim is filed, the person responsible for the claim had the requisite knowledge. This presumption is rebuttable only by substantial evidence. It is further presumed that the provider of the services is responsible for the actions of all individuals who file a claim on behalf of the provider (for example, billing clerks); this presumption may only be rebutted by clear and convincing evidence.

Item, Service, or Supply. Includes (1) any item, device, medical supply, or service claimed to have been provided to a beneficiary (patient) and listed in an itemized claim for CHAMPUS payment or a request for payment, or (2) in the case of a claim based on costs, any entry or omission in a cost report, books of account, or other documents supporting the claim.

Ownership or Control Interest. For purposes of § 199.9(f)(1), a "person with an ownership or control interest" is anyone who

- (1) Has directly or indirectly a 5 percent or more ownership interest in the entity; or
- (2) Is the owner of a whole or part interest in any mortgage, deed of trust, note, or other obligation secured (in whole or in part) by the entity or any of the property or assets thereof, which whole or part interest is equal to or exceeds 5 percent of the total property and assets of the entity; or
- (3) Is an officer or director of the entity if the entity is organized as a corporation; or
- (4) Is a partner in the entity if the entity is organized as a partnership.

Provider Exclusion and Suspension. The terms "exclusion" and "suspension", when referring to a provider under CHAMPUS, both mean the denial of status as an authorized provider, resulting in items, services, or

supplies furnished by the provider not being reimbursed, directly or indirectly, under CHAMPUS. The terms may be used interchangeably to refer to a provider who has been denied status as an authorized CHAMPUS provider based on (1) a criminal conviction or civil judgment involving fraud, (2) an administrative finding of fraud or abuse under CHAMPUS, (3) an administrative finding that the provider has been excluded or suspended by another agency of the Federal Government, a state, or a local licensing authority, (4) an administrative finding that the provider has knowingly participated in a conflict of interest situation, or (5) an administrative finding that it is in the best interests of the CHAMPUS or CHAMPUS beneficiaries to exclude or suspend the provider.

Provider Termination. When a provider's status as an authorized CHAMPUS provider is ended, other than through exclusion or suspension, based on a finding that the provider does not meet the qualifications, as set forth in § 199.6 of this part, to be an authorized CHAMPUS provider.

Sanction. For purpose of § 199.9, "sanction" means a provider exclusion, suspension, or termination.

Suspension of Claims Processing. The temporary suspension of processing (to protect the government's interests) of claims for care furnished by a specific provider (whether the claims are submitted by the provider or beneficiary) or claims submitted by or on behalf of a specific CHAMPUS beneficiary pending action by the Director, OCHAMPUS, or a designee, in a case of suspected fraud or abuse. The action may include the administrative remedies provided for in § 199.9 or any other Department of Defense issuance (e.g. DoD issuances implementing the Program Fraud Civil Remedies Act), case development or investigation by OCHAMPUS, or referral to the Department of Defense-Inspector General or the Department of Justice for action within their cognizant jurisdictions.

3. Section 199.6 is amended by revising paragraphs (a), (a)(1), and (a)(3); by removing paragraph (a)(4); by redesignating paragraph (a)(5) as (a)(4); by redesignating paragraph (a)(6) as (a)(5) and revising it; by redesignating paragraphs (a)(7) as (a)(6); (a)(8) as (a)(7), and (a)(9) as (a)(8); by revising paragraph (b)(3)(iv) and removing paragraphs (b)(3)(iv)(A) through

(b)(3)(iv)(D); and by adding a new paragraph (f) to read as follows:

§ 199.6 Authorized providers.

(a) **General.** This section sets forth general policies and procedures that are the basis for the CHAMPUS cost-sharing of medical services and supplies provided by institutions, individuals, or other types of providers. Providers seeking payment from the Federal Government through programs such as CHAMPUS have a duty to familiarize themselves with, and comply with, the program requirements.

(1) **Listing of provider does not guarantee payment of benefits.** The fact that a type of provider is listed in this section is not to be construed to mean that CHAMPUS will automatically pay a claim for services or supplies provided by such a provider. The provider who actually furnishes the service(s) must, in fact, meet all licensing and other requirements established by this Part to be an authorized provider; the provider must not be the subject of sanction under § 199.9; and, cost-sharing of the services must not otherwise be prohibited by this part. In addition, the patient must in fact be an eligible beneficiary and the services or supplies billed must be authorized and medically necessary, regardless of the standing of the provider.

(3) **Dual Compensation/Conflict of Interest.** Title 5, United States Code, section 5536 prohibits medical personnel who are active duty Uniformed Service members or civilian employees of the Government from receiving additional Government compensation above their normal pay and allowances for medical care furnished. In addition, Uniformed Service members and civilian employees of the Government are generally prohibited by law and agency regulations and policies from participating in apparent or actual conflict of interest situations in which a potential for personal gain exists or in which there is an appearance of impropriety or incompatibility with the performance of their official duties or responsibilities. The Departments of Defense, Health and Human Services, and Transportation have a responsibility, when disbursing appropriated funds in the payment of CHAMPUS benefits, to ensure that the laws and regulations are not violated. Therefore, active duty Uniformed Service members (including a reserve member while on active duty and civilian employees of the United States Government shall not be authorized to be CHAMPUS providers. While

individual employees of the Government may be able to demonstrate that the furnishing of care to CHAMPUS beneficiaries may not be incompatible with their official duties and responsibilities, the processing of millions of CHAMPUS claims each year does not enable Program administrators to efficiently review the status of the provider on each claim to ensure that no conflict of interest or dual compensation situation exists. The problem is further complicated given the numerous interagency agreements (for example, resource sharing arrangements between the Department of Defense and the Veterans Administration in the provision of health care) and other unique arrangements which exist at individual treatment facilities around the country. While an individual provider may be prevented from being an authorized CHAMPUS provider even though no conflict of interest or dual compensation situation exists, it is essential for CHAMPUS to have an easily administered, uniform rule which will ensure compliance with the existing laws and regulations. Therefore, a provider who is an active duty Uniformed Service member or civilian employee of the Government shall not be an authorized CHAMPUS provider. In addition, a provider shall certify on each CHAMPUS claim that he/she is not an active duty Uniformed Service member or civilian employee of the Government.

(4) *For-profit institutions excluded under PFTH.*

(5) *Utilization review and quality assurance.* Providers approved as authorized CHAMPUS providers have certain obligations to provide services and supplies under CHAMPUS which are (i) furnished at the appropriate level and only when and to the extent medically necessary under the criteria of this part; (ii) of a quality that meets professionally recognized standards of health care; and, (iii) supported by adequate medical documentation as may be reasonably required under this part by the Director, OCHAMPUS, or designee, to evidence the medical necessity and quality of services furnished, as well as the appropriateness of the level of care. Therefore, the authorization of CHAMPUS benefits is contingent upon the services and supplies furnished by any provider being subject to pre-payment or post-payment utilization and quality assurance review under professionally recognized standards, norms, and criteria, as well as any standards or criteria issued by the Director OCHAMPUS, or a designee,

pursuant to this part. (Refer to §§ 199.4, 199.5, and 199.7 of this part.)

(8) *Provider required.* . . .
(7) *Participating provider.* . . .
(8) *Limitation to authorized institutional provider designation.* . . .

(b) . . .
(3) . . .
(iv) *Institutions not in compliance with CHAMPUS standards.* If a determination is made that an institution is not in compliance with one or more of the standards applicable to its specific category of institution, CHAMPUS shall take immediate steps to bring about compliance or terminate the approval as an authorized institution in accordance with § 199.9(f)(2).

(f) *Exclusion.* Regardless of any provision in this section, a provider who is suspended, excluded, or terminated under § 199.9 of this part is specifically excluded as an authorized CHAMPUS provider.

4. Section 199.7 is amended by removing paragraph (i) in its entirety; and by redesignating paragraphs (j) as (i) and (k) as (j) to read as follows:

§ 199.7 Claims submission, review and payment.

(h) . . .
(i) *Erroneous payments and recoupment.* . . .
(j) *General assignment of benefits not recognized.* . . .

5. Section 199.9 is added to read as follows:

§ 199.9 Administrative remedies for fraud, abuse, and conflict of interest.

(a) *General.* (1) This section sets forth provisions for invoking administrative remedies under CHAMPUS in situations involving fraud, abuse, or conflict of interest. The remedies impact institutional providers, professional providers, and beneficiaries (including parents, guardians, or other representatives of beneficiaries), and cover situations involving criminal fraud, civil fraud, administrative determinations of conflicts of interest or dual compensation, and administrative determinations of fraud or abuse. The administrative actions, remedies, and procedures may differ based upon whether the initial findings were made by a court of law, another agency, or the Director, OCHAMPUS (or designee).

(2) This section also sets forth provisions for invoking administrative remedies in situations requiring administrative action to enforce provisions of law, regulation, and policy in the administration of CHAMPUS and to ensure quality of care for CHAMPUS

beneficiaries. Examples of such situations may include a case in which it is discovered that a provider fails to meet requirements under this part to be an authorized CHAMPUS provider; a case in which the provider ceases to be qualified as a CHAMPUS provider because of suspension or revocation of the provider's license by a local licensing authority; or a case in which a provider meets the minimum requirements under this part but, nonetheless, it is determined that it is in the best interest of the CHAMPUS or CHAMPUS beneficiaries that the provider should not be an authorized CHAMPUS provider.

(3) The administrative remedies set forth in this section are in addition to, and not in lieu of, any other remedies or sanctions authorized by law or regulation. For example, administrative action under this section may be taken in a particular case even if the same case will be or has been processed under the administrative procedures established by the Department of Defense to implement the Program Fraud Civil Remedies Act.

(4) Providers seeking payment from the Federal Government through programs such as CHAMPUS have a duty to familiarize themselves with, and comply with, the program requirements.

(5) CHAMPUS contractors and peer review organizations have a responsibility to apply provisions of this regulation in the discharge of their duties, and to report all known situations involving fraud, abuse, or conflict of interest. Failure to report known situations involving fraud, abuse, or conflict of interest will result in the withholding of administrative payments or other contractual remedies as determined by the Director, OCHAMPUS, or a designee.

(b) *Abuse.* The term "abuse" generally describes incidents and practices which may directly or indirectly cause financial loss to the Government under CHAMPUS or to CHAMPUS beneficiaries. For the definition of abuse, see § 199.2 of this part. The type of abuse to which CHAMPUS is most vulnerable is the CHAMPUS claim involving the overutilization of medical and health care services. To avoid abuse situations, providers have certain obligations to provide services and supplies under CHAMPUS which are: Furnished at the appropriate level and only when and to the extent medically necessary as determined under the provisions of this part; of a quality that meets professionally recognized standards of health care; and, supported by adequate medical documentation as

may reasonably be required under this Part by the Director, OCHAMPUS, or a designee, to evidence the medical necessity and quality of services furnished, as well as the appropriateness of the level of care. A provider's failure to comply with these obligations can result in sanctions being imposed by the Director, OCHAMPUS, or a designee, under this section. Even when administrative remedies are not initiated under this section, abuse situations under CHAMPUS are a sufficient basis for denying all or any part of CHAMPUS cost-sharing of individual claims. The types of abuse or possible abuse situations under CHAMPUS include, but are not limited, to the following:

(1) A pattern of waiver of beneficiary (patient) cost-share or deductible.

Note: In a case of a legitimate bad debt write-off of patient cost-share or deductible, the provider's record should include documentation as to what efforts were made to collect the debt, when the debt was written off, why the debt was written off, and the amount of the debt written off.

(2) Improper billing practices. Examples include, charging CHAMPUS beneficiaries rates for services and supplies that are in excess of those charges routinely charged by the provider to the general public, commercial health insurance carriers, or other federal health benefit entitlement programs for the same or similar services. (This includes dual fee schedules—one for CHAMPUS beneficiaries and one for other patients or third-party payers. This also includes billing other third-party payers the same as CHAMPUS is billed but accepting less than the billed amount as reimbursement. However, a formal discount arrangement such as through a preferred provider organization, may not necessarily constitute an improper billing practice.)

(3) A pattern of claims for services which are not medically necessary or, if medically necessary, not to the extent rendered. For example, a battery of diagnostic tests are given when, based on the diagnosis, fewer tests were needed.

(4) Care of inferior quality. For example, consistently furnishing medical or mental health services that do not meet accepted standards of care.

(5) Failure to maintain adequate medical or financial records.

(6) Refusal to furnish or allow the Government (for example, OCHAMPUS) or Government contractors access to records related to CHAMPUS claims.

(7) Billing substantially in excess of customary or reasonable charges unless it is determined by OCHAMPUS that the

excess charges are justified by unusual circumstances or medical complications requiring additional time, effort, or expense in localities when it is accepted medical practice to make an extra charge in such cases.

(8) Unauthorized use of the term "Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)" in private business. While the use of the term "CHAMPUS" is not prohibited by federal statute, misrepresentation or deception by use of the term "CHAMPUS" to imply an official connection with the Government or to defraud CHAMPUS beneficiaries may be a violation of federal statute. Regardless of whether the actual use of the term "CHAMPUS" may be actionable under federal statute, the unauthorized or deceptive use of the term "CHAMPUS" in private business will be considered abuse for purposes of this Section.

(c) *Fraud.* For the definition of fraud, see § 199.2 of this part. Examples of situations which, for the purpose of this Part, are presumed to be fraud include, but are not limited to:

(1) Submitting CHAMPUS claims (including billings by providers when the claim is submitted by the beneficiary) for services, supplies, or equipment not furnished to, or used by, CHAMPUS beneficiaries. For example, billing or claiming services when the provider was on call (other than an authorized standby charge) and did not provide any specific medical care to the beneficiary; providing services to an ineligible person and billing or submitting a claim for the services in the name of an eligible CHAMPUS beneficiary; billing or submitting a CHAMPUS claim for an office visit for a missed appointment; or billing or submitting a CHAMPUS claim for individual psychotherapy when a medical visit was the only service provided.

(2) Billing or submitting a CHAMPUS claim for costs for noncovered or nonchargeable services, supplies, or equipment disguised as covered items. Some examples are: (i) Billings or CHAMPUS claims for services which would be covered except for the frequency or duration of the services, such as billing or submitting a claim for two one-hour psychotherapy sessions furnished on separate days when the actual service furnished was a two-hour therapy session on a single day, (ii) spreading the billing or claims for services over a time period that reduces the apparent frequency to a level that may be cost-shared by CHAMPUS, (iii) charging to CHAMPUS, directly or indirectly, costs not incurred or not

reasonably allowable to the services billed or claimed under CHAMPUS, for example, costs attributable to nonprogram activities, other enterprises, or the personal expenses of principals, or (iv) billing or submitting claim on a fee-for-service basis when in fact a personal service to a specific patient was not performed and the service rendered is part of the overall management of, for example, the laboratory or x-ray department.

(3) Breach of a provider participation agreement which results in the beneficiary (including parent, guardian, or other representative) being billed for amounts which exceed the CHAMPUS-determined allowable charge or cost.

(4) Billings or CHAMPUS claims for supplies or equipment which are clearly unsuitable for the patient's needs or are so lacking in quality or sufficiency for the purpose as to be virtually worthless.

(5) Billings or CHAMPUS claims which involve flagrant and persistent overutilization of services without proper regard for results, the patient's ailments, condition, medical needs, or the physician's orders.

(6) Misrepresentations of dates, frequency, duration, or description of services rendered, or of the identity of the recipient of the services or the individual who rendered the services.

(7) Submitting falsified or altered CHAMPUS claims or medical or mental health patient records which misrepresent the type, frequency, or duration of services or supplies or misrepresent the name(s) of the individual(s) who provided the services or supplies.

(8) Duplicate billings or CHAMPUS claims. This includes billing or submitting CHAMPUS claims more than once for the same services, billing or submitting claims both to CHAMPUS and the beneficiary for the same services, or billing or submitting claims both to CHAMPUS and other third-parties (such as other health insurance or government agencies) for the same services, without making full disclosure of material facts or immediate, voluntary repayment or notification to CHAMPUS upon receipt of payments which combined exceed the CHAMPUS-determined allowable charge of the services involved.

(9) Misrepresentation by a provider of his or her credentials or concealing information or business practices which bear on the provider's qualifications for authorized CHAMPUS provider status. For example, a provider representing that he or she has a qualifying doctorate in clinical psychology when the degree

is not from a regionally accredited university.

(10) Reciprocal billing. Billing or claiming services which were furnished by another provider or furnished by the billing provider in a capacity other than as billed or claimed. For example, practices such as the following: (i) One provider performing services for another provider and the latter bills as though he had actually performed the services (e.g., a weekend fill-in); (ii) providing service as an institutional employee and billing as a professional provider for the services; (iii) billing for professional services when the services were provided by another individual who was an institutional employee; (iv) billing for professional services at a higher provider profile than would be paid for the person actually furnishing the services, (for example, bills reflecting that an M.D. or Ph.D. performed the services when services were actually furnished by a licensed social worker, psychiatric nurse, or marriage and family counselor); or (v) an authorized provider billing for services which were actually furnished by an unauthorized or sanctioned provider.

(11) Submitting CHAMPUS claims at a rate higher than a rate established between CHAMPUS and the provider, if such a rate has been established. For example, billing or claiming a rate in excess of the provider's most favored rate limitation specified in a residential treatment center agreement.

(12) Arrangements by providers with employees, independent contractors, suppliers, or others which appear to be designed primarily to overcharge the CHAMPUS through various means (such as commissions, fee-splitting, and kickbacks) used to divert or conceal improper or unnecessary costs or profits.

(13) Agreements or arrangements between the supplier and recipient (recipient could be either a provider or beneficiary, including the parent, guardian, or other representative of the beneficiary) that result in billings or claims which include unnecessary costs or charges to CHAMPUS.

(d) *Conflict of Interest.* (1) Conflict of interest includes any situation where an active duty member of the Uniformed Services (including a reserve member while on active duty, active duty for training, or inactive duty training) or civilian employee of the United States Government, through an official federal position has the apparent or actual opportunity to exert, directly or indirectly, any influence on the referral of CHAMPUS beneficiaries to himself/herself or others with some potential for personal gain or the appearance of

impropriety. Although individuals under contract to the Uniformed Services are not considered "employees," such individuals are subject to conflict of interest provisions by express terms of their contracts and, for purposes of this Part, may be considered to be involved in conflict of interest situations as a result of their contract positions. In any situation involving potential conflict of interest of a Uniformed Service employee, the Director, OCHAMPUS, or a designee, may refer the case to the Uniformed Service concerned for appropriate review and action. If such a referral is made, a report of the results of findings and action taken shall be made to the Director, OCHAMPUS, by the Uniformed Service having jurisdiction within 90 days of receiving the referral.

(2) CHAMPUS cost-sharing shall be denied on any claim where a conflict of interest situation is found to exist. This denial of cost-sharing applies whether the claim is submitted by the individual who provided the care, the institutional provider in which the care was furnished, or the beneficiary.

(e) *Dual Compensation.* (1) Federal law (5 U.S.C. 5536) prohibits active duty members of the Uniformed Services or employees (including part-time or intermittent) appointed in the civil service of the United States Government from receiving additional compensation from the Government above their normal pay and allowances. This prohibition applies to CHAMPUS payments for care furnished to CHAMPUS beneficiaries by active duty members of the Uniformed Services or civilian employees of the Government.

(2) CHAMPUS cost-sharing of a claim shall be denied where the services or supplies were provided by an active duty member of the Uniformed Services or a civilian employee of the Government. This denial of CHAMPUS payment applies whether the claim for reimbursement is filed by the individual who provided the care, the institutional provider in which the care was furnished, or by the beneficiary.

Note: Physicians of the National Health Service Corps (NHSC) may be assigned to areas where there is a shortage of medical providers. Although these physicians would be prohibited from accepting CHAMPUS payments as individuals if they are employees of the United States Government, the private organizations to which they may be assigned may be eligible for payment, as determined by the Director, OCHAMPUS, or a designee.

(3) The prohibition against dual compensation does not apply to individuals under contract to the Uniformed Services or the Government.

(f) *Administrative Remedies.* Administrative remedies available under CHAMPUS in this section are set forth below.

(1) *Provider exclusion or suspension.* The Director, OCHAMPUS, or a designee, shall have the authority to exclude or suspend an otherwise authorized CHAMPUS provider from the program based on any criminal conviction or civil judgment involving fraud by the provider; fraud or abuse under CHAMPUS by the provider; exclusion or suspension of the provider by another agency of the Federal Government, a state, or local licensing authority; participation in a conflict of interest situation by the provider; or, when it is in the best interests of the program or CHAMPUS beneficiaries to exclude or suspend a provider under CHAMPUS. In all cases, the exclusion or suspension of a provider shall be effective 15 calendar days from the date on the written initial determination issued under paragraph (h)(2) of this section.

(i) *Criminal conviction or civil judgment involving fraud by a provider.*—(A) *Criminal conviction involving CHAMPUS fraud.* A provider convicted by a Federal, state, foreign, or other court of competent jurisdiction of a crime involving CHAMPUS fraud, whether the crime is a felony or misdemeanor, shall be excluded or suspended from CHAMPUS for a period of time as determined by the Director, OCHAMPUS, or a designee. The CHAMPUS exclusion or suspension applies whether or not the provider, as a result of the conviction, receives probation or the sentence is suspended or deferred, and whether or not the conviction or sentence is under appeal.

Note: Under the above paragraph (f)(1)(i)(A) of this section, an entity may be excluded or suspended from CHAMPUS whenever the entity is found to have a person, convicted of a crime involving CHAMPUS fraud, who has a direct or indirect ownership or control interest (see § 199.2) of 5 percent or more in the entity, or is an officer, director, agent or managing employee of the entity. The entity will have an opportunity to provide evidence to show that the ownership or control relationship has ceased. While an entity will not be excluded or suspended from CHAMPUS for employing a provider who has been sanctioned under this Section, the entity will be denied CHAMPUS payment for any services furnished by the sanctioned employee. As an authorized CHAMPUS provider, the entity is responsible for ensuring that all CHAMPUS claims involve services furnished to CHAMPUS beneficiaries by employees who meet all requirements under CHAMPUS for provider status.

(B) *Criminal conviction involving fraud of other Federal programs.* Any provider convicted by a Federal, state, or other court of competent jurisdiction of a crime involving another Federal health care or benefit program (such as plans administered under titles XVIII and XIX of the Social Security Act, Federal Workmen's Compensation, and the Federal Employees Program (FEP) for employee health insurance), whether the crime is a felony or misdemeanor, shall be excluded from CHAMPUS for a period of time as determined by the Director, OCHAMPUS, or a designee.

(iv) *Administrative determination that the provider has participated in a conflict of interest situation.* The Director, OCHAMPUS, or a designee, may exclude or suspend any provider who has knowingly been involved in a conflict of interest situation under CHAMPUS. The period of time of exclusion or suspension shall be determined by the Director.

(C) *Criminal conviction involving fraud of non-Federal programs.* Any provider convicted by a Federal, state, foreign, or other court of competent jurisdiction of a crime involving any non-Federal health benefit program or private insurance involving health benefits may be excluded or suspended from CHAMPUS for a period of time as determined by the Director, OCHAMPUS, or a designee.

(D) *Civil fraud involving CHAMPUS.* If a judgment involving civil fraud has been entered (whether or not it is appealed) against a provider in a civil action involving CHAMPUS benefits (whether or not other Federal programs are involved), the provider shall be excluded or suspended from CHAMPUS for a period determined by the Director, OCHAMPUS, or a designee.

(E) *Civil fraud involving other programs.* If a judgment involving civil fraud has been entered against a provider (whether or not it has been appealed) in a civil action involving other public or private health care programs or health insurance, the provider may be excluded or suspended for a period of time determined by the Director, OCHAMPUS, or a designee.

(ii) *Administrative determination of fraud or abuse under CHAMPUS.* If the Director, OCHAMPUS, or a designee, determines that a provider has committed fraud or abuse as defined in this part, the provider shall be excluded or suspended from CHAMPUS for a period of time determined by the Director, OCHAMPUS, or designee.

(iii) *Administrative determination that the provider has been excluded or suspended by another agency of the Federal Government, a state, or local licensing authority.* Any provider who is excluded or suspended by any other Federal health care program (for example, Medicare), shall be excluded

or suspended under CHAMPUS. A provider who has his/her credentials revoked through a Veterans Administration or Military Department credentials review process and who is excluded, suspended, terminated, retired, or separated, shall also be excluded or suspended under CHAMPUS. The period of time of exclusion or suspension shall be determined by the Director, OCHAMPUS, or a designee, pursuant to paragraph (g) of this section.

(iv) *Administrative determination that the provider has participated in a conflict of interest situation.* The Director, OCHAMPUS, or a designee, may exclude or suspend any provider who has knowingly been involved in a conflict of interest situation under CHAMPUS. The period of time of exclusion or suspension shall be determined by the Director.

OCHAMPUS, or a designee, pursuant to paragraph (g) of this section. For purposes of this administrative determination, it will be presumed that a CHAMPUS provider knowingly participated in a conflict of interest situation if the provider employs, in the treatment of a CHAMPUS beneficiary (resulting in a CHAMPUS claim), any medical personnel who are active duty members of the Uniformed Services or civilian employees of the Government. The burden of proof to rebut this presumption rests with the CHAMPUS provider. Two exceptions will be recognized to the presumption that a conflict of interest exists. First, indirect CHAMPUS payments may be made to private organizations to which physicians of the National Health Service Corps (NHSC) are assigned. Second, any off-duty Government medical personnel employed in an emergency room of an acute care hospital will be presumed not to have had the opportunity to exert, directly or indirectly, any influence on the referral of CHAMPUS beneficiaries; therefore, CHAMPUS payments may be made to the employing hospital provided the medical care was not furnished directly by the off-duty Government medical personnel in violation of dual compensation provisions.

(v) *Administrative determination that it is in the best interests of the CHAMPUS or CHAMPUS beneficiaries to exclude or suspend a provider.*—(A) *Unethical or improper practices or unprofessional conduct.* (1) In most instances, unethical or improper practices or unprofessional conduct by a provider will be program abuse and subject the provider to exclusion or suspension for abuse. However, in some cases such practices and conduct may

provide an independent basis for exclusion or suspension of the provider by the Director, OCHAMPUS, or a designee.

(2) Such exclusions or suspensions may be based on findings or recommendations of state licensure boards, boards of quality assurance, other regulatory agencies, state medical societies, peer review organizations, or other professional associations.

(B) *In any other case in which the Director, OCHAMPUS (or designee), determines that exclusion or suspension of a provider is in the best interests of CHAMPUS or CHAMPUS beneficiaries.* The Director, OCHAMPUS, or a designee, may exclude or suspend any provider if it is determined that the authorization of that particular provider under CHAMPUS poses an unreasonable potential for fraud, abuse, or professional misconduct. Any documented misconduct by the provider reflecting on the business or professional competence or integrity of the provider may be considered. Situations in which the Director, OCHAMPUS, or a designee, may take administrative action under this Section to protect CHAMPUS or CHAMPUS beneficiaries include, but are not limited to, a case in which it is determined that a provider poses an unreasonable potential cost to the Government to monitor the provider for fraud or abuse and to avoid the issuance of erroneous payments; or that the provider poses an unreasonable potential harm to the financial or health status of CHAMPUS beneficiaries; or that the provider poses any other unreasonable threat to the interests of CHAMPUS or CHAMPUS beneficiaries. One example of such circumstances involves a provider who, for his/her entire practice or for most of his/her practice, provides or bills for treatment that is not a CHAMPUS benefit, resulting in CHAMPUS frequently and repeatedly denying claims as non-covered services. This may occur when a professional provider furnishes sex therapy (a therapy which may be recognized by the provider's licensing authority but which is excluded from CHAMPUS coverage) and repeatedly submits CHAMPUS claims for the services.

(2) *Provider termination.* The Director, OCHAMPUS, or a designee, shall terminate the provider status of any provider determined not to meet the qualifications established by this part to be an authorized CHAMPUS provider.

(i) *Effective date of termination.* Except as provided in paragraph (g)(2)(ii) of this section, the termination shall be retroactive to the date on which

the provider did not meet the requirements of this Part.

(A) The retroactive effective date of termination shall not be limited due to the passage of time, erroneous payment of claims, or any other events which may be cited as a basis for CHAMPUS recognition of the provider notwithstanding the fact that the provider does not meet program qualifications. Unless specific provision is made in this part to "grandfather" or authorize a provider who does not otherwise meet the qualifications established by this part, all unqualified providers shall be terminated.

(B) Any claims cost-shared or paid under CHAMPUS for services or supplies furnished by the provider on or after the effective date of termination, even when the effective date is retroactive, shall be deemed an erroneous payment unless specific exception is provided in this Part. All erroneous payments are subject to collection under § 199.11 of this part.

(C) If an institution is terminated as an authorized CHAMPUS provider, the institution shall immediately give written notice of the termination to any CHAMPUS beneficiary (or their parent, guardian, or other representative) admitted to, or receiving care at, the institution on or after the effective date of the termination. In addition, when an institution is terminated with an effective date of termination after the date of the initial determination terminating the provider, any beneficiary admitted to the institution prior to the effective date of termination (or their parent, guardian, or other representative) shall be notified by the Director, OCHAMPUS, or a designee, by certified mail of the termination, and that CHAMPUS cost-sharing of the beneficiary's care in the institution will cease as of the effective date of the termination. However, any beneficiary admitted to the institution prior to any grace period extended to the institution under paragraph (f)(2)(ii)(A) of this section shall be advised that, if the beneficiary's care otherwise qualifies for CHAMPUS coverage, CHAMPUS cost-sharing of the care in the institution will continue in order to provide a reasonable period of transition of care; however the transitional period of CHAMPUS cost-sharing shall not exceed the last day of the month following the month in which the institution's status as a CHAMPUS provider is terminated. (This authorized CHAMPUS cost-sharing of the inpatient care received during the transition period is an exception to the general rule that CHAMPUS payment for care

furnished after the effective date of termination of the provider's status shall be deemed to be an erroneous payment.) If a major violation under paragraph (f)(2)(ii)(B) of this section is involved, in order to ensure immediate action is taken to transfer beneficiaries to an approved provider, CHAMPUS cost-sharing shall not be authorized after the effective date of termination of the provider's status.

(ii) *Institutions not in compliance with CHAMPUS standards.* If it is determined that an institution is not in compliance with one or more of the standards applicable to its specific category of institution under this Part, the Director, OCHAMPUS, or a designee, shall take immediate steps to bring about compliance or terminate the status of the provider as an authorized CHAMPUS provider.

(A) *Minor violations.* An institution determined to be in violation of one or more of the standards shall be advised by certified mail of the nature of the discrepancy or discrepancies and will be given a grace period of 30 days to effect appropriate corrections. The grace period may be extended at the discretion of the Director, OCHAMPUS, or a designee, but in no event shall the extension exceed 90 days.

(1) CHAMPUS will not cost-share a claim for any beneficiary admitted during the grace period.

(2) Any beneficiary admitted to the institution prior to the grace period (or the beneficiary's parent, guardian, or other representative) will be notified by the Director, OCHAMPUS, or a designee, in writing, of the minor violations and the grace period granted the institution to correct the violations. The beneficiary will also be advised that, if the beneficiary's care otherwise meets all requirements for CHAMPUS coverage, CHAMPUS cost-sharing will continue during the grace period.

(3) If the institution submits written notice before the end of the grace period that corrective action has been taken and if the Director, OCHAMPUS, or a designee, determines that the corrective action has eliminated the minor violations, the provider will be advised that the institution is restored to full status as an authorized CHAMPUS provider as of 12:01 a.m. on the day written notice of correction was received by the Director, OCHAMPUS, or a designee, or the day on which acceptable corrective action was completed in the judgment of the Director, OCHAMPUS, or a designee. Any beneficiary admitted to the institution prior to the grace period will be notified by the Director,

OCHAMPUS, or a designee, of the corrective action and that the provider continues to be an authorized CHAMPUS provider. CHAMPUS cost-sharing for any beneficiary admitted to the institution during the grace period shall be allowed only for care received after 12:01 a.m. on the day written notice of correction was received by the Director, OCHAMPUS, or a designee, or the day on which acceptable corrective action was completed in the judgment of the Director, OCHAMPUS, or a designee.

(4) If the institution has failed to give notification in writing before the end of the grace period that corrective action has been completed or, in the judgment of the Director, OCHAMPUS, or a designee, the institution has not completed acceptable corrective action during the grace period, the Director, OCHAMPUS, or a designee, may initiate action to terminate the provider as an authorized CHAMPUS provider.

(B) *Major violations.* If the Director, OCHAMPUS, or a designee, determines that an institution is in violation of standards detrimental to life, safety, or health, or substantially in violation of approved treatment programs, immediate action shall be taken to terminate the institution as an authorized CHAMPUS provider. The institution shall be notified by telegram, certified mail, or express mail of the termination under this subparagraph, effective on receipt of the notice. The notice shall include a brief statement of the nature of violations resulting in the termination and advise the institution that an initial determination formalizing the administrative action of termination will be issued pursuant to paragraph (h)(3)(ii) of this section within 15 days.

(3) *Beneficiary sanctions.* (i) With entitlement to CHAMPUS benefits based on public law, an eligible beneficiary will not be suspended or excluded from CHAMPUS. However, the Director, OCHAMPUS, or a designee, may take action deemed appropriate and reasonable to protect the Government from those beneficiaries (including sponsors, parents, guardians, or representatives of beneficiaries) who have submitted false claims.

(ii) Pursuant to § 199.11 of this part, the Director, OCHAMPUS, or a designee, may recover erroneous payments on claims involving fraud or false or misleading statements. Remedies for recovery of the erroneous payments include the use of offset against future CHAMPUS payments.

(iii) Under policies adopted by the Director, OCHAMPUS, or a designee,

individuals who, based on reliable information, have previously submitted fraudulent or false CHAMPUS claims, may be required to comply with any procedures (e.g., partial or total pre-payment audit or review, restriction to a designated primary care provider, etc.) which the Director, OCHAMPUS, or a designee, deems appropriate to ensure that their future medical care and CHAMPUS claims (including the medical care and CHAMPUS claims submitted by or for members of their family) are valid.

(g) *Period of exclusion, suspension, or termination—(1) Exclusions or suspensions.* Except as otherwise required by paragraph (g)(1)(i) of this section, the Director, OCHAMPUS, or a designee, shall determine the period of exclusion or suspension for a provider using the factors set forth in paragraph (g)(1)(ii) of this section.

(i) *Exclusion or suspension of a provider based on the provider's exclusion or suspension by another agency of the Federal Government, a state, or a local licensing authority.* If the administrative action under CHAMPUS is based solely on the provider's exclusion or suspension by another agency, state, or local licensing authority, the period of exclusion or suspension under CHAMPUS shall be for the same length of time of exclusion or suspension imposed by the other agency, state, or local licensing authority. The provider may request reinstatement as an authorized CHAMPUS provider if reinstatement is achieved under the other program prior to the end of the period of exclusion or suspension. If the administrative action under CHAMPUS is not based solely on the provider's exclusion or suspension by another agency, state, or local licensing authority, the minimum period of exclusion or suspension shall be for the same period of exclusion or suspension imposed by the other agency, state, or local licensing authority.

(ii) *Factors to be considered in determining the period of exclusion or suspension of providers under CHAMPUS.* In determining the period of exclusion or suspension of a provider, the Director, OCHAMPUS, or a designee, may consider any or all of the following:

(A) When the case concerns all or part of the same issues which have been the subject of criminal conviction or civil judgment involving fraud by a provider:

(1) The period(s) of sentence, probation, and other sanction imposed by court order against the provider may be presumed reasonable and adopted as

the administrative period of exclusion or suspension under CHAMPUS, unless aggravating or mitigating factors exist.

(2) If any aggravating factors exist, then cause exists for the Director, OCHAMPUS, or a designee, to consider the factors set forth in paragraph (g)(1)(ii)(B) of this section, in imposing a period of administrative exclusion or suspension in excess of the period(s) of sentence, probation, and/or other sanctions imposed by court order. Examples of aggravating factors include, but are not limited to:

(i) An administrative determination by the Director, OCHAMPUS, or a designee, that the basis for administrative exclusion or suspension includes an act(s) of fraud or abuse under CHAMPUS in addition to, or unrelated to, an act(s) of fraud included in the court conviction or civil judgment.

(ii) The fraudulent act(s) involved in the criminal conviction or civil judgment, or similar acts, were committed over a significant period of time; that is, one year or more.

(iii) The act(s) of fraud or abuse had an adverse physical, mental, or financial impact on one or more CHAMPUS beneficiaries.

(iv) The loss or potential loss to CHAMPUS is over \$5,000. The entire amount of loss or potential loss to CHAMPUS due to acts of fraud and abuse will be considered, in addition to the amount of loss involved in the court conviction or civil judgment, regardless of whether full or partial restitution has been made to CHAMPUS.

(v) The provider has a prior court record, criminal or civil, or administrative record or finding of fraud or abuse.

(3) If any mitigating factors exist, then cause may exist for the Director, OCHAMPUS, or a designee, to reduce a period of administrative exclusion or suspension from any period(s) imposed by court conviction or civil judgment. Only the existence of either of the following two factors may be considered in mitigation:

(i) The criminal conviction or civil judgment only involved three or fewer misdemeanor offenses, and the total of the estimated losses incurred (including any loss from act(s) not involved in the conviction or judgment) is less than \$1,000, regardless of whether full or partial restitution has been made.

(ii) The criminal or civil court proceedings establish that the provider had a mental, emotional or physical condition, prior to or contemporaneous with the commission of the act(s), that reduced the provider's criminal or civil culpability.

(B) The Director, OCHAMPUS, or a designee, may consider the following factors in determining a reasonable period of exclusion or suspension of a provider under CHAMPUS:

(1) The nature of the claims and the circumstances under which they were presented;

(2) The degree of culpability;

(3) History of prior offenses (including whether claims were submitted while the provider was either excluded or suspended pursuant to prior administrative action);

(4) Number of claims involved;

(5) Dollar amount of claims involved;

(6) Whether, if a crime was involved, it was a felony or misdemeanor;

(7) If patients were injured financially, mentally, or physically; the number of patients; and the seriousness of the injury(ies);

(8) The previous record of the provider under CHAMPUS;

(9) Whether restitution has been made or arrangements for repayment accepted by the Government;

(10) Whether the provider has resolved the conflict of interest situations or implemented procedures acceptable to the Director, OCHAMPUS, or a designee, which will prevent conflict of interest in the future; and

(11) Such other factors as may be deemed appropriate.

(2) *Terminations.* When a provider's status as an authorized CHAMPUS provider is ended, other than through exclusion or suspension, the termination is based on a finding that the provider does not meet the qualifications to be an authorized provider, as set forth in this part. Therefore, the period of termination in all cases will be indefinite and will end only after the provider has successfully met the established qualifications for authorized provider status under CHAMPUS and has been reinstated under CHAMPUS. Except as otherwise provided in this subparagraph, the following guidelines control the termination of authorized CHAMPUS provider status for a provider whose license to practice (or, in the case of an institutional provider, to operate) has been temporarily or permanently suspended or revoked by the jurisdiction issuing the license.

(i) Termination of the provider under CHAMPUS shall continue even if the provider obtains a license to practice in a second jurisdiction during the period of suspension or revocation of the provider's license by the original licensing jurisdiction. A provider who has licenses to practice in two or more jurisdictions and has one or more license(s) suspended or revoked will

also be terminated as a CHAMPUS provider.

(A) Professional providers shall remain terminated from the CHAMPUS until the jurisdiction(s) suspending or revoking the provider's license(s) to practice restores it or removes the impediment to restoration.

(B) Institutional providers shall remain terminated under CHAMPUS until their license is restored. In the event the facility is sold, transferred, or reorganized as a new legal entity, and a license issued under a new name or to a different legal entity, the new entity must submit an application to be an authorized CHAMPUS provider.

(ii) If the CHAMPUS provider status is terminated due to the loss of the provider's license, the effective date shall be retroactive to the date the provider lost the license; however, in the case of a professional provider who has licenses in two or more jurisdictions and submitted claims from a jurisdiction from which he/she had a valid license, the effective date of the termination will be 15 calendar days from the date of the written initial determination of termination for purposes of claims from the jurisdiction in which the provider still has a valid license.

(h) *Procedures for initiating and implementing the administrative remedies.*—(1) *Temporary suspension of claims processing.* (i) In general, temporary suspension of claims processing may be invoked to protect the interests of the Government for a period reasonably necessary to complete investigation or appropriate criminal, civil, and administrative proceedings. The temporary suspension only delays the ultimate payment of otherwise appropriate claims. When claims processing involving a participating provider is temporarily suspended, the participation agreement remains in full force and the provider cannot repudiate the agreement because of the delay in the final disposition of the claim(s). Once it has been determined appropriate to end the temporary suspension of claims processing, CHAMPUS claims which were the subject of the suspension and which are otherwise determined to be in compliance with the requirements of law and regulation, will be processed to completion and payment *unless* such action is deemed inappropriate as a result of criminal, civil, or administrative remedies ultimately invoked in the case.

(ii) When adequate evidence exists to determine that a provider or beneficiary is submitting fraudulent or false claims or claims involving practices that may be fraud or abuse as defined by this

part, the Director, OCHAMPUS, or a designee, may suspend CHAMPUS claims processing (in whole or in part) for claims submitted by the beneficiary or any CHAMPUS claims involving care furnished by the provider. The temporary suspension of claims processing for care furnished by a provider may be invoked against all such claims, whether or not the claims are submitted by the beneficiary or by the provider as a participating CHAMPUS provider. In cases involving a provider, notice of the suspension of claims processing may also be given to the beneficiary community either directly or indirectly through notice to appropriate military facilities, health benefit advisors, and the information or news media.

(A) Adequate evidence is any information sufficient to support the reasonable belief that a particular act or omission has occurred.

(B) Indictment or any other initiation of criminal charges, filing of a complaint for civil fraud, issuance of an administrative complaint under the Program Fraud Civil Remedies Act, or issuance of an initial determination under this part for submitting fraudulent or false claims or claims involving practices that may be fraud or abuse as defined by this part, shall constitute adequate evidence for invoking temporary suspension of claims processing.

(iii) The Director, OCHAMPUS, or a designee, may suspend CHAMPUS claims processing without first notifying the provider or beneficiary of the intent to suspend payments. Following a decision to invoke a temporary suspension, however, the Director, OCHAMPUS, or a designee, shall issue written notice advising the provider or beneficiary that:

(A) A temporary suspension of claims processing has been ordered and a statement of the basis of the decision to suspend payment. Unless the suspension is based on any of the actions set forth in paragraph (h)(1)(ii)(B) of this section, the notice shall describe the suspected acts or omissions in terms sufficient to place the provider or beneficiary on notice without disclosing the Government's evidence.

(B) Within 30 days (or, upon written request received by OCHAMPUS during the 30 days and for good cause shown, within 60 days) from the date of the notice, the provider or beneficiary may:

(1) Submit to the Director, OCHAMPUS, or a designee, in writing, information (including documentary evidence) and argument in opposition to the suspension, provided the additional

specific information raises a genuine dispute over the material facts, or

(2) Submit a written request to present in person evidence or argument to the Director, OCHAMPUS, or a designee. All such presentations shall be made at the Office of Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) in Aurora, Colorado, at the provider's or beneficiary's own expense.

(C) Additional proceedings to determine disputed material facts may be conducted unless:

(1) The suspension is based on any of the actions set forth in paragraph (h)(1)(ii)(B) of this section, or,

(2) A determination is made, on the basis of the advice of the responsible Government official (e.g., an official of the Department of Justice, the designated Reviewing Official under the Program Fraud Civil Remedies Act, etc.), that the substantial interests of the Government in pending or contemplated legal or administrative proceedings based on the same facts as the suspension would be prejudiced.

(iv) If the beneficiary or provider submits, either in writing or in person, additional information or argument in opposition to the suspension, the Director, OCHAMPUS, or a designee, shall issue a suspending official's decision which modifies, terminates, or leaves in force the suspension of claims processing. However, a decision to terminate or modify the suspension shall be without prejudice to the subsequent imposition of suspension of claims processing, imposition of sanctions under this § 199.9, the recovery of erroneous payments under § 199.11 of this part, or any other administrative or legal action authorized by law or regulation. The suspending official's decision shall be in writing as follows:

(A) A written decision based on all the information in the administrative record, including any submission by the beneficiary or provider, shall be final in a case:

(1) Based on any of the actions set forth in paragraph (h)(1)(ii)(B) of this section,

(2) In which the beneficiary's or provider's submission does not raise a genuine dispute over material facts, or

(3) In which additional proceedings to determine disputed material facts have been denied on the basis of advice of a responsible Government official that the substantial interests of the Government in pending or contemplated legal or administrative proceedings would be prejudiced.

(B) In a case in which additional proceedings are necessary as to

disputed material facts, the suspending official's decision shall advise the beneficiary or provider that the case has been referred for handling as a hearing under § 199.10 of this part.

(v) A suspension of claims processing may be modified or terminated for reasons such as:

(A) Newly discovered evidence;

(B) Elimination of any of the causes for which the suspension was invoked; or

(C) Other reasons the Director, OCHAMPUS, or a designee, deems appropriate.

(vi) A suspension of claims processing shall be for a temporary period pending the completion of investigation and any ensuing legal or administrative proceedings, unless sooner terminated by the Director, OCHAMPUS, or a designee, or as provided in this subparagraph.

(A) If legal or administrative proceedings are not initiated within 12 months after the date of the suspension notice, the suspension shall be terminated unless the Government official responsible for initiation of the legal or administrative action requests its extension, in which case it may be extended for an additional 6 months. In no event may a suspension extend beyond 18 months, unless legal or administrative proceedings have been initiated during that period.

(B) The Director, OCHAMPUS, or a designee, shall notify the Government official responsible for initiation of the legal or administrative action of the proposed termination of the suspension, at least 30 days before the 12-month period expires, to give the official an opportunity to request an extension.

(2) *Notice of proposed administrative sanction.* (i) A provider shall be notified in writing of the proposed action to exclude, suspend, or terminate the provider's status as an authorized CHAMPUS provider.

(A) The notice shall state which sanction will be taken and the effective date of that sanction as determined in accordance with the provisions of this Part.

(B) The notice shall inform the provider of the situation(s), circumstance(s), or action(s) which form the basis for the proposed sanction and reference the paragraph of this Part under which the administrative action is being taken.

(C) The notice will be sent to the provider's last known business or office address (or home address if there is no known business address.)

(D) The notice shall offer the provider an opportunity to respond within 30 days (or, upon written request received

by OCHAMPUS during the 30 days and for good cause shown, within 60 days) from the date on the notice with either:

(1) Documentary evidence and written argument contesting the proposed action; or,

(2) A written request to present in person evidence or argument to the Director, OCHAMPUS, or a designee. All such presentations shall be made at the Office of the Civilian Health and Medical Program of the Uniformed Services (OCHAMPUS) in Aurora, Colorado, at the provider's own expense.

(3) *Initial determination.* (i) If, after the provider has exhausted, or failed to comply with, the procedures specified in paragraph (h)(2) of this section, the Director, OCHAMPUS, or a designee, decides to invoke an administrative remedy of exclusion, suspension, or termination of a provider under CHAMPUS, written notice of the decision will be sent to the provider by certified mail. Except in those cases where the sanction has a retroactive effective date, the written notice shall be dated no later than 15 days before the decision becomes effective. For terminations under paragraph (f)(2)(ii)(B) of this section, the initial determination may be issued without first implementing or exhausting the procedures specified in paragraph (h)(2) of this section.

(ii) The initial determination shall include:

(A) A statement of the sanction being invoked;

(B) A statement of the effective date of the sanction;

(C) A statement of the facts, circumstances, or actions which form the basis for the sanction and a discussion of any information submitted by the provider relevant to the sanction;

(D) A statement of the factors considered in determining the period of sanction;

(E) The earliest date on which a request for reinstatement under CHAMPUS will be accepted;

(F) The requirements and procedures for reinstatement; and,

(G) Notice of the available hearing upon request of the sanctioned provider.

(4) *Reinstatement procedures.*—(i) *Restitution.* (A) There is no entitlement under CHAMPUS for payment (cost-sharing) of any claim that involves either criminal or civil fraud as defined by law, or fraud or abuse or conflict of interest as defined by this part. In addition, except as specifically provided in this part, there is no entitlement under CHAMPUS for payment (cost-sharing) of any claim for services or supplies furnished by a provider who does not

meet the requirements to be an authorized CHAMPUS provider. In any of the situations described above, CHAMPUS payment shall be denied whether the claim is submitted by the provider as a participating claim or by the beneficiary for reimbursement. If an erroneous payment has been issued in any such case, collection of the payment will be processed under § 199.11 of this part.

(B) If the Government has made erroneous payments to a provider because of claims involving fraud, abuse, or conflicts of interest, restitution of the erroneous payments shall be made before a request for reinstatement as a CHAMPUS authorized provider will be considered. Without restitution or resolution of the debt under § 199.11 of this part, a provider shall not be reinstated as an authorized CHAMPUS provider. This is not an appealable issue under § 199.10 of this part.

(C) For purposes of authorization as a CHAMPUS provider, a provider who is excluded or suspended under this § 199.9 and who submits participating claims for services furnished on or after the effective date of the exclusion or suspension is considered to have forfeited or waived any right or entitlement to bill the beneficiary for the care involved in the claims. Similarly, because a provider is expected to know the CHAMPUS requirements for qualification as an authorized provider, any participating provider who fails to meet the qualification requirements for CHAMPUS is considered to have forfeited or waived any right or entitlement to bill the beneficiary for the care involved in the CHAMPUS claims. If, in either situation, the provider bills the beneficiary, restitution to the beneficiary may be required by the Director, OCHAMPUS, or a designee, as a condition for consideration of reinstatement as a CHAMPUS authorized provider.

(ii) *Terminated providers.* A terminated provider who subsequently achieves the minimum qualifications to be an authorized CHAMPUS provider or who has had his/her license reinstated or the impediment to reinstatement removed by the appropriate licensing jurisdiction may submit a written request for reinstatement under CHAMPUS to the Director, OCHAMPUS, or a designee. If restitution or proper reinstatement of license is not at issue, the Director, OCHAMPUS, or a designee, will process the request for reinstatement under the procedures established for initial requests for authorized CHAMPUS provider status.

(iii) *Providers (other than entities) excluded or suspended under CHAMPUS.* (A) A provider excluded or suspended from CHAMPUS (other than an entity excluded under § 199.9(f)(1)(i)) may seek reinstatement by submitting a written request to the Director, OCHAMPUS, or a designee, any time after the date specified in the notice of exclusion or suspension or any earlier date specified in an appeal decision issued in the provider's appeal under § 199.10 of this part. The request for reinstatement shall include:

(1) Documentation sufficient to establish the provider's qualifications under this part to be a CHAMPUS authorized provider;

(2) A statement from the provider setting forth the reasons why the provider should be reinstated, accompanied by written statements from professional associates, peer review bodies, and/or probation officers (if appropriate), attesting to their belief that the violations that led to exclusion or suspension will not be repeated.

(B) A provider entity excluded from CHAMPUS under § 199.9(f)(1)(i) may seek reinstatement by submitting a written request to the Director, OCHAMPUS, or a designee, with documentation sufficient to establish the provider's qualifications under this Part to be a CHAMPUS authorized provider and either:

(1) Documentation showing the CHAMPUS reinstatement of the excluded individual provider whose conviction led to the CHAMPUS exclusion or suspension of the provider entity; or

(2) Documentation acceptable to the Director, OCHAMPUS, or a designee, that shows that the individual whose conviction led to the entity's exclusion:

(i) Has reduced his or her ownership or control interest in the entity below 5 percent; or

(ii) Is no longer an officer, director, agent or managing employee of the entity; or

(iii) Continues to maintain a 5 percent or more ownership or control interest in such entity, and that the entity due to circumstances beyond its control, is unable to obtain a divestiture.

Note: Under paragraph (h)(4)(iii)(B)(2) of this section, the request for reinstatement may be submitted any time prior to the date specified in the notice of exclusion or suspension or an earlier date specified in the appeal decision issued under § 199.10 of this part.

(iv) *Action on request for reinstatement.* In order to reinstate a provider as a CHAMPUS authorized provider, the Director, OCHAMPUS, or a designee, must determine that:

(A) The provider meets all requirements under this part to be an authorized CHAMPUS provider.

(B) No additional criminal, civil, or administrative action has been taken or is being considered which could subject the provider to exclusion, suspension, or termination under this section;

(C) In the case of a provider entity, verification has been made of the divestiture or termination of the owner, controlling party, officer, director, agent or managing employee whose conviction led to the entity's exclusion, or that the provider entity should be reinstated because the entity, due to circumstances beyond its control, cannot obtain a divestiture of the 5 percent or more ownership or controlling interest by the convicted party.

(v) *Notice of action on request for reinstatement—(A) Notice of approval of request.* If the Director, OCHAMPUS, or a designee, approves the request for reinstatement, he or she will:

(1) Give written notice to the sanctioned party specifying the date when the authorized provider status under CHAMPUS may resume; and

(2) Give notice to those agencies and groups that were originally notified, in accordance with § 199.9(k), of the imposition of the sanction. General notice may also be given to beneficiaries and other parties as deemed appropriate by the Director, OCHAMPUS, or a designee.

(B) *Notice of denial of request.* If the Director, OCHAMPUS, or a designee, does not approve the request for reinstatement, written notice will be given to the provider. If established procedures for processing initial requests for authorized provider status are used to review the request for reinstatement, the established procedures may be used to provide the notice that the provider does not meet requirements of this part for such status. If the provider continues to be excluded, suspended, or terminated under the provisions of this section, the procedures set forth in this paragraph (h) may be followed in denying the provider's request for reinstatement.

(5) *Reversed or vacated convictions or civil judgments involving CHAMPUS fraud.* (i) If a CHAMPUS provider is excluded or suspended solely on the basis of a criminal conviction or civil judgment involving a CHAMPUS fraud and the conviction or judgment is reversed or vacated on appeal,

CHAMPUS will void the exclusion of a provider. Such action will not preclude the initiation of additional independent administrative action under this section or any other administrative remedy based on the same facts or events which

were the subject of the criminal conviction or civil judgment.

(ii) If an exclusion is voided under paragraph (h)(5)(i) of this section, CHAMPUS will make payment, either to the provider or the beneficiary (if the claim was not a participating claim) for otherwise authorized services under CHAMPUS that are furnished or performed during the period of exclusion.

(iii) CHAMPUS will also void the exclusion of any entity that was excluded under § 199.9(f)(1)(i) based solely on an individual's conviction that has been reversed or vacated on appeal.

(iv) When CHAMPUS voids the exclusion of a provider or an entity, notice will be given to the agencies and others that were originally notified, in accordance with § 199.9(k).

(i) *Evidence required for determinations to invoke administrative remedies—(1) General.* Any relevant evidence may be used by the Director, OCHAMPUS, or a designee, if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil or criminal courts.

(2) *Types of evidence.* The types of evidence which the Director, OCHAMPUS, or a designee, may rely on in reaching a determination to invoke administrative remedies under this section include but are not limited to the following:

(i) Results of audits conducted by or on behalf of the Government. Such audits can include the results of 100 percent review of claims and related records or a statistically valid sample audit of the claims or records. A statistical sampling shall constitute *prima facie* evidence of the number and amount of claims and the instances of fraud, abuse, or conflict of interest.

(ii) Reports, including sanction reports, from various sources including a peer review organization (PRO) for the area served by the provider; state or local licensing or certification authorities; peer or medical review consultants of the Government, including consultants for Government contractors; state or local professional societies; or other sources deemed appropriate by the Director, OCHAMPUS, or a designee.

(iii) Orders or documents issued by Federal, state, foreign, or other courts of competent jurisdiction which issue findings and/or criminal convictions or civil judgments involving the provider, and administrative rulings, findings, or

determinations by any agency of the Federal Government, a state, or local licensing or certification authority regarding the provider's status with that agency or authority.

(j) *Suspending Administrative Action.* (1) All or any administrative action may be suspended by the Director, OCHAMPUS, or a designee, pending action in the case by the Department of Defense—Inspector General, Defense Criminal Investigative Service, or the Department of Justice (including the responsible United States Attorney). However, action by the Department of Defense—Inspector General or the Department of Justice, including investigation, criminal prosecution, or civil litigation, does not preclude administrative action by OCHAMPUS.

(2) The normal OCHAMPUS procedure is to suspend action on the administrative process pending an investigation by the Department of Defense—Inspector General or final disposition by the Department of Justice.

(3) Though OCHAMPUS administrative action is taken independently of any action by the Department of Defense-Inspector General or by the Department of Justice, once a case is forwarded to the Department of Defense-Inspector General or the Department of Justice for legal action (criminal or civil), administrative action may be held in abeyance.

(4) In some instances there may be dual jurisdiction between agencies; as in, for example, the joint regulations issued by the Department of Justice and the Government Accounting Office regarding debt collection.

(k) *Notice to Other Agencies.* (1) When CHAMPUS excludes, suspends, or terminates a provider, the Director, OCHAMPUS, or a designee, will notify other appropriate agencies (for example, the Department of Health and Human Services and the state licensing agency that issued the provider's license to practice) that the individual has been excluded, suspended, or terminated as an authorized provider under CHAMPUS. An exclusion, suspension, or termination action is considered a public record. Such notice can include the notices and determinations sent to the suspended provider and other public documents such as testimony given at a hearing or exhibits or depositions given in a lawsuit or hearing. Notice may also be given to Uniformed Services Military Treatment Facilities, Health Benefit Advisors, beneficiaries and sponsors, the news media, and institutional providers if inpatient care was involved.

(2) If CHAMPUS has temporarily suspended claims processing, notice of

such action normally will be given to the affected provider and Uniformed Services Medical Treatment Facilities, Health Benefits Advisors, beneficiaries, and sponsors. Notice may also be given to any information or news media and any other individual, professional provider, or institutional provider, as deemed appropriate. However, since a "temporary suspension of claims processing" is by definition not a final or formal agency action, the basis for the action generally will not be disclosed. It is noted that the basis for the action can be a result of questions arising from routine audits to investigation of possible criminal violations.

(l) *Compromise, Settlement, and Resolution Authority.* (1) In lieu of invoking any remedy provided by this Section, the Director, OCHAMPUS, or a designee, may elect to enter into an agreement with the provider intended to correct the situation within an established time period and subject to any remedies deemed appropriate by the Director, OCHAMPUS, or a designee.

(2) When it is in the best interest of CHAMPUS, the Director, OCHAMPUS, has the discretionary authority to waive an action or enter into compromise or settlement of administrative actions taken under this § 199.9.

6. Section 199.10 is amended by revising paragraph (a), paragraphs (a)(1)(i)(A), (a)(1)(i)(B), (a)(1)(i)(C), and (a)(1)(ii); redesignating previous (a)(2)(i)(B) through (a)(2)(i)(D) as (a)(2)(i)(C) through (a)(2)(i)(E); adding new paragraph (a)(2)(i)(B); revising paragraph (a)(3); redesignating previous paragraphs (a)(4) through (a)(7) as paragraphs (a)(5) through (a)(8); adding new paragraph (a)(4); revising (a)(5), revising paragraphs (a)(6)(iv)(A) and (a)(6)(iv)(C); adding new paragraph (a)(6)(v); revising paragraphs (a)(7)(iii), (a)(7)(iv)(C), (a)(8)(i)(A), and (a)(8)(ii)(A); by adding a new paragraph (a)(9); by revising paragraphs (b), (b)(1)(i), (b)(1)(ii), (b)(1)(iv), (b)(2), (b)(3), (b)(4) introductory text, (c), (c)(2), (c)(5)(i) and (ii), (d), (d)(1)(i), (d)(1)(iii), (d)(2), (d)(9)(iii)(A), (d)(9)(iv)(C) and (d)(9)(iv)(D); by removing paragraphs (d)(10)(ii) and (d)(10)(iv); by adding a new paragraph (d)(10)(ii); by removing paragraph (d)(11)(iii); and by redesignating the previous paragraphs (d)(11)(iv), (d)(11)(v), (d)(11)(vi), (d)(11)(vii), (d)(11)(viii), (d)(11)(ix), (d)(11)(x), (d)(11)(xi), (d)(11)(xii), and (d)(11)(xiii) as subparagraphs (d)(11)(iii), (d)(11)(iv), (d)(11)(v), (d)(11)(vi), (d)(11)(vii), (d)(11)(viii), (d)(11)(ix),

(d)(11)(x) (revising paragraph (d)(11)(x)(A)), and the heading of (d)(11)(xi).

§ 199.10 Appeal and hearing procedures.

(a) *General.* This Section sets forth the policies and procedures for appealing decisions made by OCHAMPUS, OCHAMPUSEUR, and CHAMPUS contractors adversely affecting the rights and liabilities of CHAMPUS beneficiaries, CHAMPUS participating providers, and providers denied the status of authorized provider under CHAMPUS. An appeal under CHAMPUS is an administrative review of program determinations made under the provisions of law and regulation. An appeal cannot challenge the propriety, equity, or legality of any provision of law or regulation.

(1) * * *

(i) * * *

(A) OCHAMPUS, OCHAMPUSEUR, and CHAMPUS contractors shall mail notices of initial determinations to the affected provider or CHAMPUS beneficiary (or representative) at the last known address. For beneficiaries who are under 18 years of age or who are incompetent, a notice issued to the parent, guardian, or other representative, under established CHAMPUS procedures, constitutes notice to the beneficiary.

(B) CHAMPUS contractors and OCHAMPUSEUR shall notify a provider of an initial determination on a claim only if the provider participated in the claim. (See § 199.7 of this part.)

(C) Notice of an initial determination on a claim processed by a CHAMPUS contractor or OCHAMPUSEUR normally will be made on a CHAMPUS Explanation of Benefits (CEOB) form.

(D) * * *

(E) * * *

(ii) *Effect of initial determination.* The initial determination is final, unless appealed in accordance with this Section, or unless the initial determination is reopened by OCHAMPUS or the CHAMPUS contractor.

(2) * * *

(i) * * *

(B) A beneficiary who has an interest in receiving care or has received care from a particular provider cannot be an appealing party regarding the exclusion, suspension, or termination of the provider under § 199.9 of this part.

(3) *Burden of proof.* The burden of proof is on the appealing party to establish affirmatively by substantial evidence the appealing party's entitlement under law and this part to

the authorization of CHAMPUS benefits, approval of authorized CHAMPUS provider status, or removal of sanctions imposed under § 199.9 of this part. If a presumption exists under the provisions of this part or information constitutes *prima facie* evidence under the provisions of this part, the appealing party must produce evidence reasonably sufficient to rebut the presumption or *prima facie* evidence as part of the appealing party's burden of proof. CHAMPUS shall not pay any part of the cost or fee, including attorney fees, associated with producing or submitting evidence in support of an appeal.

(4) *Evidence in appeal and hearing cases.* Any relevant evidence may be used in the administrative appeal and hearing process if it is the type of evidence on which reasonable persons are accustomed to rely in the conduct of serious affairs, regardless of the existence of any common law or statutory rule that might make improper the admission of such evidence over objection in civil or criminal courts.

(5) *Late filing.* If a request for reconsideration, formal review, or hearings is filed after the time permitted in this section, written notice shall be issued denying the request. Late filing may be permitted only if the appealing party reasonably can demonstrate to the satisfaction of the Director, OCHAMPUS, or a designee, that the timely filing of the request was not feasible due to extraordinary circumstances over which the appealing party had no practical control. Each request for an exception to the filing requirement will be considered on its own merits. The decision of the Director, OCHAMPUS, or a designee, on the request for an exception to the filing requirement shall be final.

(6) *Appealable issue.* . . .

(i) . . .

(iv) . . .

(A) Determination of a person's eligibility as a CHAMPUS beneficiary is the responsibility of the appropriate Uniformed Service. Although OCHAMPUS, OCHAMPUSEUR, and CHAMPUS contractors must make determinations concerning a beneficiary's eligibility in order to ensure proper disbursement of appropriated funds on each CHAMPUS claim processed, ultimate responsibility for resolving a beneficiary's eligibility rests with the Uniformed Services. Accordingly, disputed question of fact concerning a beneficiary's eligibility will not be considered an appealable issue under the provisions of this section, but

shall be resolved in accordance with § 199.3 of this part.

(C) Any sanction, including the period of the sanction, imposed under § 199.9 of this part which is based solely on a provider's exclusion or suspension by another agency of the Federal Government, a state, or a local licensing authority is not appealable under this section. The provider must exhaust administrative appeal rights offered by the other agency that made the initial determination to exclude or suspend the provider. Similarly, any sanction imposed under § 199.9 which is based solely on a criminal conviction or civil judgment against the provider is not appealable under this section. If the sanction imposed under § 199.9 is not based solely on the provider's criminal conviction or civil judgment or on the provider's exclusion or suspension by another agency of the Federal Government, a state, or a local licensing authority, that portion of the CHAMPUS administrative determination which is in addition to the criminal conviction/civil judgment or exclusion/suspension by the other agency may be appealed under this section.

(v) A decision by the Director, OCHAMPUS, or a designee, as a suspending official when the decision is final under the provisions of § 199.9(h)(1)(iv)(A).

(7) *Amount in dispute.* . . .

(iii) There is no requirement for an amount in dispute when the appealable issue involves a denial of a provider's request for approval as an authorized CHAMPUS provider or the determination to exclude, suspend, or terminate a provider's authorized CHAMPUS provider status.

(iv) . . .

(C) At least one of the claims so combined has had a reconsideration decision issued by OCHAMPUSEUR or a CHAMPUS contractor.

Note: A request for administrative review under this appeal process which involves a dispute regarding a requirement of law or regulation (paragraph (a)(6)(i) of this section) or does not involve a sufficient amount in dispute (paragraph (a)(7) of this section) may not be rejected at the reconsideration level of appeal. However, an appeal shall involve an appealable issue and sufficient amount in dispute under these paragraphs to be granted a formal review or hearing.

(8) *Levels of appeal.* The sequence and procedures of a CHAMPUS appeal vary, depending on whether the initial determination was made by OCHAMPUS, OCHAMPUSEUR, or a CHAMPUS contractor.

(i) *Appeal levels for initial determination made by*

POCHAMPUSEUR or CHAMPUS contractor.

(A) Reconsideration by OCHAMPUSEUR or CHAMPUS contractor.

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(C) . . .

(ii) . . .

(A) Formal review by OCHAMPUS except (1) initial determinations involving the suspension of claims processing where the Director, OCHAMPUS, or a designee, determines that additional proceedings are necessary as to disputed material facts and the suspending official's decision is not final under the provisions of § 199.9(h)(1)(iv)(A) or (2) initial determinations involving the sanctioning (exclusion, suspension, or termination) of CHAMPUS providers. Initial determinations involving these matters shall be appealed directly to the hearing level.

(B) Hearing.

(9) *Appeal decision.* An appeal decision at any level may address all pertinent issues which arise under the appeal or are otherwise presented by the information in the case record (for example, the entire episode of care in the appeal), and shall not be limited to addressing the specific issue appealed by a party. In the case of sanctions imposed under § 199.9, the final decision may affirm, increase or reduce the sanction period imposed by CHAMPUS, or otherwise modify or reverse the imposition of the sanction.

(b) *Reconsideration.* Any party to the initial determination made by OCHAMPUSEUR or the CHAMPUS contractor may request a reconsideration.

(1) . . .

(i) *Written request required.* The request must be in writing, shall state the specific matter in dispute, and shall include a copy of the notice of initial determination made by OCHAMPUSEUR or the CHAMPUS contractor such as the CEOB form.

(ii) *Where to file.* The request shall be submitted to the office that made the initial determination (i.e., OCHAMPUSEUR or the CHAMPUS contractor) or any other CHAMPUS contractor designated in the notice of initial determination.

(iv) *Official filing date.* A request for a reconsideration shall be deemed filed on the date it is mailed and postmarked. If the request does not have a postmark, it shall be deemed filed on the date received by OCHAMPUSEUR or the CHAMPUS contractor.

(2) *The reconsideration process.* The purpose of the reconsideration is to determine whether the initial determination was made in accordance with law, regulation, policies, and guidelines in effect at the time the care was provided or requested, or at the time of the initial determination and/or reconsideration decision involving a provider request for approval as an authorized provider under CHAMPUS. The reconsideration is performed by a member of the OCHAMPUSEUR or CHAMPUS contractor staff who was not involved in making the initial determination and is a thorough and independent review of the case. The reconsideration is based on the information submitted that led to the initial determination, plus any additional information that the appealing party may submit or OCHAMPUSEUR or the CHAMPUS contractor may obtain.

(3) *Timeliness of reconsideration determination.* OCHAMPUSEUR or the CHAMPUS contractor normally shall issue its reconsideration determination no later than 60 days from the date of receipt of the request for reconsideration by OCHAMPUSEUR or the CHAMPUS contractor.

(4) *Notice of reconsideration determination.* OCHAMPUSEUR or the CHAMPUS contractor shall issue a written notice of the reconsideration determination to the appealing party at his or her last known address. The notice of the reconsideration determination must contain the following elements:

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(v) . . .

(5) . . .

(c) *Formal Review.* Any party to the initial determination may request a formal review by OCHAMPUS if the party is dissatisfied with the reconsideration determination and the reconsideration determination is not final under the provisions of paragraph (b)(5) of this section. Any party to the initial determination made by OCHAMPUS may request a formal review by OCHAMPUS if the party is dissatisfied with the initial determination except for a party to an initial determination involving the exclusion, suspension, or termination of authorized CHAMPUS provider status, and a written decision issued pursuant to § 199.9(h)(1)(iv)(A) involving the temporary suspension of claims processing. A hearing, but not a formal review level of appeal, may be available to a party to an initial determination involving the sanctioning of a provider or to a party to a written decision

involving a temporary suspension of claims processing.

(2) *The formal review process.* The purpose of the formal review is to determine whether the initial determination or reconsideration determination was made in accordance with law, regulation, policies, and guidelines in effect at the time the care was provided or requested or at the time of the initial determination, reconsideration, or formal review decision involving a provider request for approval as an authorized CHAMPUS provider. The formal review is performed by the Chief, Appeals and Hearings, OCHAMPUS, or a designee, and is a thorough review of the case. The formal review determination shall be based on the information upon which the initial determination or reconsideration determination was based, and any additional information the appealing party may submit or OCHAMPUS may obtain.

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(5) . . .
(i) The issue is not appealable. (See paragraph (a)(6) of this section).
(ii) The amount in dispute is less than \$300. (See paragraph (a)(7) of this section).

(iii) . . .
(d) *Hearing.* Any party to the initial determination may request a hearing if the party is dissatisfied with the formal review determination and the formal review determination is not final under the provisions of paragraph (c)(5), of this section, or the initial determination involves the sanctioning of a provider under § 199.9 of this part and involves an appealable issue.

(1) . . .
(i) *Written request required.* The request shall be in writing, state the specific matter in dispute, include a copy of the appropriate initial determination or formal review determination being appealed, and include any additional information or documents not submitted previously.

(iii) *Allowed time to file.* The request shall be mailed within 60 days after the date of the notice of the initial determination or formal review determination being appealed.

(2) *Hearing process.* A hearing is an administrative proceeding in which facts relevant to the appealable issue(s) in the case are presented and evaluated in relation to applicable law, regulation, policies, and guidelines in effect at the time the care in dispute was provided or requested; at the time of the initial

determination, formal review determination, or hearing decision involving a provider request for approval under CHAMPUS as an authorized provider; or at the time of the act or event which is the basis for the imposition of sanctions under this part. A hearing, except for an appeal involving a provider sanction, generally shall be conducted as a nonadversary, administrative proceeding. However, an authorized party to any hearing, including CHAMPUS, may submit additional evidence or testimony relevant to the appealable issue(s) and may appoint a representative, including legal counsel, to participate in the hearing process.

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(9) . . .

(iii) . . .

(A) An appealing party shall be deemed to have abandoned a request for hearing, other than when personal appearance is waived in accordance with § 199.10(d)(11)(xii), if neither the appealing party nor an appointed representative appears at the time and place fixed for the hearing and if, within 10 days after the mailing of a notice by certified mail to the appealing party by the hearing officer to show cause, such party does not show good and sufficient cause for such failure to appear and failure to notify the hearing officer before the time fixed for hearing that an appearance could not be made.

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(iv) . . .

(C) When the issue is not appealable (see § 199.10(a)(6)).

(D) When the amount in dispute is less than \$300 (see § 199.10(a)(7)).

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(10) *Preparation for hearing.* . . .

(ii) *Discovery.* Upon the written request of a party to the initial determination (including OCHAMPUS) and for good cause shown, the hearing officer will allow that party to inspect and copy all documents, unless privileged, relevant to issues in the proceeding that are in the possession or control of the other party participating in the appeal. The written request shall state clearly what information and documents are required for inspection and the relevance of the documents to the issues in the proceeding. Depositions, interrogatories, requests for admissions, and other forms of prehearing discovery are generally not authorized and the Department of Defense does not have subpoena authority for purposes of administrative hearings under this Section. If the hearing officer finds that good cause

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exists for taking a deposition or interrogatory, the expense shall be assessed to the requesting party, with copies furnished to the hearing officer and the other party or parties to the hearing.

- (11) *Conduct of hearing.* . . .
- (iii) *Taking of evidence.* . . .
- (iv) *Questioning and admission of evidence.* . . .
- (v) *Relevant evidence.* . . .
- (vi) *CHAMPUS determination first.* . . .
- (vii) *Testimony.* . . .
- (viii) *Oral argument and briefs.* . . .
- (ix) *Continuance of hearing.* . . .
- (x) *Continuance for additional evidence.* . . .
- (A) *Continue hearing.* The hearing may be continued to a later date in accordance with § 199.10(d)(11)(ix), above.

- (xi) *Transcript of hearing.* . . .
- (xii) *Waiver of right to appear and present evidence.* . . .

L.M. Bynum,
Alternate OSD Federal Register Liaison
Officer, Department of Defense.
June 1, 1989.

[FR Doc. 89-13438 Filed 6-13-89; 8:45 am]
BILLING CODE 3810-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52, 65, and 67

[FRL-3451-8]

Air Program; Technical Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document removes outdated compliance data, reserved space, and reference material available from the Agency contained in 40 CFR Parts 52, 65, and 67. Removal of this material from the air program regulations is nonsubstantive in nature, and is designed to improve the cost effectiveness and useability of the regulations under these designated Parts.

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: John B. Rasnic, Office of Air Quality Planning and Standards, Environmental Protection Agency, Room 3202, 401 M St., SW., Washington, DC 20460, Telephone: (202) 382-2826.

SUPPLEMENTARY INFORMATION: EPA, in an effort to improve the effectiveness and useability of regulations currently

contained in 40 CFR Parts 52, 65, and 67, is removing certain material contained in these parts.

Under 40 CFR Part 52, outdated compliance entries are being removed from the compliance schedules under each State. The entries being removed remain listed in the State Implementation Plan; however, only compliance dates since January 1, 1982, remain in the listings in these sections.

Under 40 CFR Part 65, all reserved subparts and sections containing regulatory text in the State listings, that do not currently apply to a specific firm, are being removed. This will provide easier access to the actual regulations in force.

Under 40 CFR Part 67, the Appendices which are guidance documents that no longer need to appear in the Code of Federal Regulations, are being removed, and the regulatory text is being amended to provide availability information for those who may wish copies in the future.

This action is non-substantive in nature, therefore no notice and comment is necessary.

Regulatory Review Requirements

A. Executive Order 12291

Under E.O. 12291, issued February 17, 1981, EPA must judge whether a rule is a major rule and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this rule is not a major rule as the term is defined in section 1(b) of E.O. 12291.

B. Regulatory Flexibility Act

Under section 605(b) of the Regulatory Flexibility Act, the Administrator may certify that a rule will not, if promulgated, have a significant impact on a substantial number of small entities, and therefore does not require a regulatory flexibility analysis. Since no negative economic effect is expected upon any business entity from the promulgation of this rule, I certify that this rule will not have a significant economic impact on small entities.

C. Paperwork Reduction Act

EPA has determined that the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., does not apply to this final rule since no information collection or recordkeeping requirements are involved.

List of Subjects in 40 CFR Parts 52, 65, and 67

Air pollution controls, Carbon monoxide, Lead, Nitrogen dioxide, Ozone, Particulate matter, Penalties, Reporting and recordkeeping

requirements, Sulfur oxides, Volatile organic compounds.

Dated: March 31, 1989.

William K. Reilly,
Administrator.

Therefore, 40 CFR Chapter I is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

§§ 52.55, 52.429, 52.1023, 52.1080, 52.1125, 52.1274, 52.1383, 52.1830, 52.2036, 52.2077, 52.2123 and 52.2376 [Removed]

2. Sections 52.55, 52.429, 52.1023, 52.1080, 52.1125, 52.1274, 52.1383, 52.1830, 52.2036, 52.2077, 52.2123, and 52.2376 are removed.

§§ 52.84, 52.134, 52.240, 52.524, 52.576, 52.626, 52.677, 52.730, 52.778, 52.876, 52.927, 52.980, 52.1482, 52.1577, 52.1975, 52.2223, 52.2435, 52.2481, 52.2524 and 52.2578 [Amended]

3. Sections 52.84(b), 52.134(b), 52.240(e) and (f)(1), 52.524(c), 52.576(a), 52.626(a), 52.677(b), 52.730(c), 52.778(c), 52.876(c)(1), 52.927(c), 52.980(a) and (b), 52.1482(b), 52.1577(e), 52.1975(b), 52.2223(c), 52.2435(a), 52.2481(b), 52.2524(c) and 52.2578(d) are removed and reserved where appropriate.

§ 52.825 [Amended]

4. Section 52.825 is amended in the table by removing all but the last two entries in the table.

§ 52.1175 [Amended]

5. Section 52.1175(e) is amended in the table as follows:

a. Remove the entries for Allegan, Alpena, Baraga, Eaton, Emmet, Huron, Ingham, Ionia, Marquette, Oakland, Otsego, Ottawa and St. Clair Counties.

b. Under Charlevoix County remove the entries for the "East Jordan Iron Works, Inc." and the "Medusa Cement Co."

c. Under Genesee County remove both entries for "GMC".

d. Under Macomb County remove the entry for "Ford Motor Co."

e. Under Midland County remove the first entry for "Dow Chemical" and the entry for "Dow Building 830".

f. Under Monroe County remove the entries for "Consolidated Packing Corp. Boiler 8," "Detroit Edison (Monroe Plant) Units 1-4," and the second entry for the "Dundee Cement Company".

g. Under Muskegon County remove the entry for "Tech-Cast, Inc."

h. Under Saginaw County remove the entry for "GMC".

6. Section 52.1335 is amended by revising the table in paragraph (a) to read as follows:

§ 52.1335 Compliance schedules.
(a) . . .

MISSOURI

Source	Location	Regulation involved	Adopted date	Effective date	Final compliance date
Pilot Knob Pelleting Co.	Pilot Knob, MO	V(10 CSR 10-3.050)	Oct. 19, 1977	Immediately	Dec. 31, 1982
Union Electric Labadie power plant	Labadie, MO	10 CSR 10-5.090 and 10 CSR 10-5.030.	June 20, 1979	July 20, 1979	Mar. 1, 1984
St. Joe Minerals Corp., Pea Ridge Iron Ore Facility.	Washington County, MO.	10 CSR 10-3.050	Mar. 23, 1983	Mar. 23, 1983	Dec. 31, 1988
St. Joe Minerals Corp., Pea Ridge Iron Ore Facility.	do	do	Apr. 22, 1981	Dec. 28, 1981	July 1, 1985
Associated Electric Cooperative, Inc., Thomas Hill Power Plant—Unit 1.	Randolph County, MO	10 CSR 10-3.060 and 10 CSR 10-3.080.	June 17, 1981	Jan. 12, 1982	June 1, 1984
American Oil Co. (AMOCO)	Sugar Creek, MO	10 CSR 10-2.260	Feb. 18, 1991	Oct. 1, 1981	June 1, 1982
St. Joe Lead Co.	Herculaneum, MO	§ 203.050.1(5) RSM01978	Aug. 15, 1980	Immediately	Oct. 27, 1984
AMAX Lead Co.	Boss, MO	do	do	do	Apr. 27, 1985

§ 52.1425 [Amended]

7. Section 52.1425 is amended by removing all but the last entry in the table in paragraph (a).

§ 52.1524 [Amended]

8. Section 52.1524 is amended by removing all but the last entry in the table in paragraph (a).

§ 52.1626 [Amended]

9. Section 52.1626(b) is amended by removing all the entries in the table, except the entries for "DUVAL Corp." and "Int'l Minerals and Chem. Corp." under Eddy County.

PART 65—DELAYED COMPLIANCE ORDERS

10. The authority citation for Part 65 continues to read as follows:

Authority: Secs. 113 and 301 of the Clean Air Act, as amended, 42 U.S.C. 7413 and 7601.

Subparts B, C, E, F, G, H, I, J, M, N, P, Q, R, S, U, Y, Z, BB, CC, DD, EE, GG, HH, II, JJ, LL, MM, OO, PP, QQ, TT, UU, XX, ZZ, BBB, CCC, DDD and EEE [Removed and Reserved]

11. Subparts B, C, E, F, G, H, I, J, M, N, P, Q, R, S, U, Y, Z, BB, CC, DD, EE, GG, HH, II, JJ, LL, MM, OO, PP, QQ, TT, UU, XX, ZZ, BBB, CCC, DDD and EEE are removed and reserved.

§§ 65.71, 65.72, 65.140, 65.142, 65.151, 65.152, 65.181, 65.182, 65.230, 65.232, 65.251, 65.252, 65.261, 65.262, 65.300, 65.302, 65.351, 65.352, 65.401, 65.402, 65.430, 65.432, 65.470, 65.472, 65.480, 65.482, 65.511, 65.512, 65.520, 65.522, 65.541, 65.542, 65.561 and 65.562 [Removed]

12. Sections 65.71, 65.72, 65.140, 65.142, 65.151, 65.152, 65.181, 65.182, 65.230, 65.232, 65.251, 65.252, 65.261, 65.262,

65.300, 65.302, 65.351, 65.352, 65.401, 65.402, 65.430, 65.432, 65.470, 65.472, 65.480, 65.482, 65.511, 65.512, 65.520, 65.522, 65.541, 65.542, 65.561 and 65.562 are removed.

PART 67—EPA APPROVAL OF STATE NONCOMPLIANCE PENALTY PROGRAM

13. The authority citation for Part 67 continues to read as follows:

Authority: Sec. 120 of the Clean Air Act, as amended, 42 U.S.C. 7420.

14. Section 67.11 is amended by revising paragraph (b)(3) to read as follows:

§ 67.11 Standards for approval of State programs.

(b) . . .
(3) A capability to carry out the financial analysis and procedures specified in these regulations and the Technical Support Document, Instruction Manual, and related Computer Program, available from the Director of Stationary Source Compliance Division, EN-341, 401 M Street, NW., Washington, DC 20460, together with adequate provision for maintaining such capability. Such capability may be provided by trained State personnel or through qualified contractors;

15. Appendices A, B and C are revised to read as follows:

Appendix A—Technical Support Document

Note: EPA will make copies of Appendix A available from: Director, Stationary Source Compliance Division, EN-341, 401 M Street, SW., Washington, DC 20460.

Appendix B—Instruction Manual

Note: EPA will make copies of Appendix B available from: Director, Stationary Source Compliance Division, EN-341, 401 M Street, SW., Washington, DC 20460.

Appendix C—Computer Program

Note: EPA will make copies of Appendix C available from: Director, Stationary Source Compliance Division, EN-341, 401 M Street, SW., Washington, DC 20460.

[FR Doc. 89-14082 Filed 6-13-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

Final Flood Elevation Determinations

AGENCY: Federal Emergency Management Agency.

ACTION: Final rule.

SUMMARY: Final base (100-year) flood elevations are determined for the communities listed below.

The base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the National Flood Insurance Program (NFIP).

EFFECTIVE DATE: The date of issuance of the Flood Insurance Rate Map (FIRM) showing base (100-year) flood elevations, for the community. This date may be obtained by contacting the office where the maps are available for inspection indicated on the table below.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the final determinations of flood elevations for each community listed. Proposed base flood elevations or proposed modified base flood elevations have been published in the Federal Register for each community listed.

This final rule is issued in accordance with section 110 of the Flood Disaster Protection Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90-448)), 42 U.S.C. 4001-4128, and 44 CFR Part 67. An opportunity for the community or individuals to appeal proposed determination to or through the community for a period of ninety (90) days has been provided.

The Agency has developed criteria for floodplain management in flood-prone areas in accordance with 44 CFR Part 60.

Pursuant to the provisions of 5 USC 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies for reasons set out in the proposed rule that the final flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. Also, this rule is not a major rule under terms of Executive Order 12291, so no regulatory analyses have been prepared. It does not involve any collection of information for purposes of the Paperwork Reduction Act.

List of Subjects in 44 CFR Part 67

Flood insurance, Flood plains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 et seq., Reorganization Plan No. 3 of 1978, E.O. 12127.

Interested lessees and owners of real property are encouraged to review the proof Flood Insurance Study and Flood Insurance Rate Map available at the address cited below for each community.

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. No appeal was made during the ninety-day period and the proposed base flood elevations have not been changed.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
ALABAMA	
Houston County (unincorporated areas) (FEMA docket No. 6846)	
<i>Choctawhatchee River:</i>	
Just upstream of U.S. Highway 84	*141
At confluence of Little Choctawhatchee River	*146
<i>Little Choctawhatchee River:</i>	
At confluence with Choctawhatchee River	*146
About 1.2 miles upstream of Brannon Stand Road	*219
<i>Newton Creek:</i>	
About 1,700 feet upstream of U.S. Highway 84	*206
About 3,700 feet upstream of U.S. Highway 84	*206
<i>Beaver Creek:</i>	
About 300 feet upstream of Brannon Stand Road	*221
About 2.3 miles upstream of Brannon Stand Road	*239
<i>Limestone Creek:</i>	
Just upstream of State Highway 109	*170
About 1.7 miles upstream of State Highway 203	*225
<i>Chipola Creek:</i>	
At mouth	*174
Just downstream of County Road	*238
<i>Cowarts Creek:</i>	
Just downstream of County Highway 55	*161
About 1.1 miles upstream of County Highway 24	*204
Maps available for inspection at the County Courthouse, Dothan, Alabama.	
St. Clair County (unincorporated areas) (FEMA docket No. 6846)	
<i>Cocosa River:</i>	
At county boundary	*418
Just downstream of Logan Martin Dam	*426
Just upstream of Logan Martin Dam	*478
Just downstream of H. Neely Henry Dam	*483
Just upstream of H. Neely Henry Dam	*508
At county boundary	*510
<i>West Branch Fishing Creek:</i>	
Just downstream of Pleasant Valley Road	*518
About 0.76 mile upstream of Pleasant Valley Road	*536
<i>Little Cahaba River:</i>	
About 1.5 mile downstream of County Road 10	*653
About 0.85 mile downstream of County Road 10	*656
<i>Cahaba River:</i>	
About 1,000 feet downstream of county boundary	*579
At county boundary (upstream crossing)	*593
<i>Beaver Creek:</i>	
Just upstream of U.S. Highway 231	*607
About 1,500 feet upstream of County Road 30	*696
<i>Big Canoe Creek:</i>	
Just upstream of Double Bridge Road	*548
About 1.25 mile upstream of Pinedale Road	*556
Maps available for inspection at the County Courthouse, Asheville, Alabama.	
ARIZONA	
Cave Creek (town), Maricopa County (FEMA Docket No. 6841 and 6848)	
<i>Cave Creek:</i>	
At Carefree Highway	*1,869
At confluence with Andora Hills Wash	*2,007
At confluence with Willow Springs Wash	*2,057
Approximately 300 feet upstream of Cahava Ranch Road	*2,137
<i>Andora Hills Wash:</i>	
At confluence with Cave Creek	*2,007
Approximately 0.15 mile downstream of Grapevine Road	*2,074
Approximately 50 feet upstream of Basin Road	*2,143
Approximately 400 feet upstream of Piedra Grand Road	*2,277
<i>Galloway Wash:</i>	
At confluence with Cave Creek	*2,030
Approximately 60 feet downstream of School House Road	*2,170

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 170 feet downstream of Scope Trail	*2,310
<i>Rowe Wash:</i>	
At confluence with Galloway Wash	*2,111
Approximately 100 feet downstream of School House Road	*2,175
Approximately 1,730 feet upstream of Echo Canyon Road	*2,315
<i>Grapevine Wash:</i>	
At confluence with Galloway Wash	*2,180
Approximately 2,250 feet upstream of confluence with Galloway Wash	*2,227
Approximately 5,230 feet upstream of confluence with Galloway Wash	*2,297
<i>Octillo Wash:</i>	
At confluence with Cave Creek	*2,039
Approximately 50 feet upstream of Spur Cross Road	*2,117
Approximately 900 feet upstream of Lone Mountain Road	*2,244
<i>Willow Spring Wash:</i>	
At confluence with Cave Creek	*2,057
Approximately 50 feet downstream of Spur Cross Road	*2,135
Approximately 2,900 feet upstream of Spur Cross Road	*2,188
Maps are available for review at Town Hall, 37622 North Cave Creek Road, Cave Creek, Arizona.	
Maricopa County (unincorporated areas), (FEMA Docket No. 6932)	
<i>Sols Wash:</i>	
Approximately 50 feet downstream of Vulture Mine Road	*2,165
At Alchison, Topeka and Santa Fe Railway in Section 32, T. 8 N., R. 5 W	*2,235
Approximately 1.5 miles upstream of Alchison, Topeka and Santa Fe Railway in Section 32, T. 8 N., R. 5 W.	*2,292
At Yavapai-Maricopa County boundary in Section 35, T. 8 N., R. 6 W.	*2,386
Maps are available for review at the Flood Control District of Maricopa County, 3335 West Durango, Phoenix, Arizona.	
Pima County (unincorporated areas) (FEMA Docket No. 6903)	
<i>Alamo Wash:</i>	
3,330 feet north of the intersection of Swan Road and East Fort Lowell Road	*2,412
200 feet north of the intersection of East Fort Lowell Road and Swan Road	*2,424
700 feet east of the intersection of Arcadia Boulevard and East Fort Lowell Road	*2,432
<i>Alvemon Wash:</i>	
150 feet east from a point 150 feet north of the intersection of Kleindale Road and Alvemon Way	*2,390
200 feet north of the intersection of Alvemon Way and East Fort Lowell Road	*2,405
At the intersection of Alvemon Way and East Fort Lowell Road	*2,410
<i>Black Wash:</i>	
At the intersection of Valencia Road and Camino Verde Boulevard	#1
At the intersection of Valencia Road and Unnamed Road 1,900 feet east of the intersection of Valencia Road and Camino Verde Boulevard	#3
<i>Canada Del Oro Wash:</i>	
650 feet south of the intersection of Overton Road and Verch Way	*2,386
At the center of the Braided Channel, just downstream of La Canada Drive	*2,433
2,900 feet due west from the confluence of Sutherland Wash with Canada Del Oro Wash	*2,658
<i>Christmas Wash:</i>	
At the intersection of the wash and Roger Road	*2,351
East Embankment of the Southern Pacific Railroad	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Just north of a point 4,000 feet northwest along the railroad from a point where Hardin Road (extended) would intersect	*1,947
Approximately 200 feet southeast along the railroad from the El Camino De Manana Crossing	*2,123
1,550 feet northwest along the railroad from the northwest end of the railroad bridge over the Canada Del Oro Wash	*2,215
<i>Esperero Wash:</i>	
At the confluence of Esperero Wash with Ventana Canyon Wash	*2,667
Just upstream of Sunrise Drive	*2,723
500 feet south of a point 150 feet west of the northeast corner of the northwest quarter of Section 8, Township 13 South, Range 15 East	*2,877
<i>Rillito Creek:</i>	
Approximately 500 feet upstream of El Camino De La Tierra	*2,229
340 feet west of a point 760 feet north of the intersection of Rillito Lane and Elisa Avenue	*2,297
2,530 feet east of a point 280 feet north of the intersection of Westmore Road and North 1st Avenue	*2,329
<i>Robb Wash:</i>	
500 feet upstream from the confluence with Tanque Verde Creek	*2,521
Just downstream of Wnghtstown Road	*2,529
At the intersection of the wash and Pima Street	*2,549
<i>Ventana Canyon Wash:</i>	
100 feet downstream of Riverbend Circle	*2,471
Just upstream of River Road	*2,506
Just upstream of Sunrise Drive	*2,731
500 feet east of a point 500 feet north of the southwest quarter of Section 6, Township 13 South, Range 15 East	*3,108
<i>Tortolita Alluvial Fans:</i>	
<i>Cottonwood Canyon:</i>	
Approximately 2,000 feet west of the northeast corner of Section 23, Township 11 South, Range 11 East	#3
The northwest corner of Section 7, Township 11 South, Range 12 East	#4
<i>Cochie Canyon West:</i>	
The northwest corner of Section 17, Township 11 South, Range 12 East	#1
2,000 feet west of the southeast corner of Section 8, Township 11 South, Range 12 East	#2
In the wash approximately 500 feet west of the center of Section 9, Township 11 South, Range 12 East	#3
<i>Cochie Canyon East:</i>	
At the center of Section 20, Township 11 South, Range 12 East	#2
In the wash approximately 1,000 feet east of the northwest corner of the southwest quarter, Section 18, Township 11 South, Range 12 East	#3
In the wash approximately 1,000 feet south and 500 feet west of the center of the boundary between Sections 9 and 18, Township 11 South, Range 12 East	#4
<i>Unnamed Canyon:</i>	
The southwest corner of the southeast quarter, Section 16, Township 11 South, Range 12 East	#1
In the wash at the mountain front, approximately 2,000 feet north-northwest of the center of Section 15, Township 11 South, Range 12 East	#2
<i>Wild Burro Canyon:</i>	
Approximately 500 feet east of the northwest corner of Section 28, Township 11 South, Range 12 East	#1
The northeast corner of Section 28, Township 11 South, Range 12 East	#2
In the wash in the center of Section 14, Township 11 South, Range 12 East	#3
<i>Ruelas Canyon:</i>	
At the corner of Sections 33 and 34, Township 11 South, Range 12 East and Sections 3 and 4, Township 12 South, Range 12 East	#1

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
At the northwest corner of Section 26, Township 11 South, Range 12 East	#2
In the wash, at the center of Section 24, Township 11 South, Range 12 East	#3
<i>Prospect Canyon:</i>	
At the corner of Sections 3, 4, 9, and 10, Township 12 South, Range 12 East	#1
Tangerine Road, at the corner of Sections 34 and 35, Township 11 South, Range 12 East and Sections 2 and 3, Township 12 South, Range 12 East	#2
Tangerine Road, at the center of the boundary between Section 35, Township 11 South, Range 12 East, and Section 2, Township 12 South, Range 12 East	#3
<i>Canada Agua West:</i>	
On El Camino Road approximately 1 mile southwest of the intersection of El Camino Road and Tangerine Road	#1
On Tortillita Road approximately 200 feet west of the intersection of Thornydale Road and Tortillita Road	#2
<i>Canada Agua East:</i>	
At the intersection of Camino De Oeste Road and Oasis Road	#1
At the intersection of Potvin Road and Orange Ranch Road	#2
On Tangerine Road, approximately 1 mile east of the intersection of Tangerine Road and Thornydale Road	#3
<i>Coelescent Alluvial Fan Areas:</i>	
<i>Cochie Canyon East or Cochie Canyon West:</i>	
Approximately 1,000 feet north of the southwest corner of Section 19, Township 11 South, Range 12 East	#1
Approximately 1,000 feet east of the center of Section 19, Township 11 South, Range 12 East	#2
<i>Cochie Canyon East, Cochie Canyon West, or Unnamed Canyon:</i>	
Approximately 1,500 feet west of the northwest corner of Section 29, Township 11 South, Range 12 East	#1
In the center of Section 20, Township 11 South, Range 12 East	#2
<i>Cochie Canyon East, Unnamed Canyon, or Wild Burro Canyon:</i>	
Approximately 1,500 feet south of the corner of Sections 29, 30, 19, and 20, Township 11 South, Range 12 East	#2
<i>Cochie Canyon East, Unnamed Canyon, Wild Burro Canyon, or Ruelas Canyon:</i>	
On Tangerine Road approximately 3,000 feet east of the intersection of Tangerine Road and the Southern Pacific Railroad	#2
<i>Ruelas Canyon or Wild Burro Canyon:</i>	
At the intersection of Tangerine Road and the access road to the reservoir in Section 32, Township 11 South, Range 12 East	#1
At the southeast corner of Section 28, Township 11 South, Range 12 East	#2
At the northwest corner of the northeast quarter, Section 27, Township 11 South, Range 12 East	#3
<i>Ruelas Canyon, Wild Burro Canyon, or Prospect Canyon:</i>	
The northeast corner of the southeast quarter of Section 5, Township 12 South, Range 12 East	#2
<i>Ruelas Canyon or Prospect Canyon:</i>	
At the center of Section 4, Township 12 South, Range 12 East	#2
<i>Prospect Canyon or Canada Agua West:</i>	
At the northeast corner of the southeast quarter of Section 9, Township 12 South, Range 12 East	#1
<i>Canada Agua West or Canada Agua East:</i>	
At the intersection of Greenlock Drive and Bluebonnet Road	#1
Maps are available for review at the Pima County Transportation and Flood Control District, 1313 South Mission Road, Tucson, Arizona.	

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued

Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Pima County (unincorporated areas), (FEMA docket No. 6841)	
<i>Agua Caliente Wash:</i>	
City of Tucson corporate limits at Houghton Road	*2,567
Just downstream of Fort Lowell Road	*2,641
Just upstream of Soldier Trail	*2,692
At the confluence of Molina Wash	*2,748
<i>Pantano Wash:</i>	
At the confluence with Rillito Creek, approximately 530 feet downstream of Craycroft Road	*2,428
Approximately 50 feet upstream of Harrison Road	*2,726
Just upstream of Houghton Road	*2,771
Approximately 100 feet upstream of Los Reales Road	*2,916
Just downstream of Vail Road	*3,134
Just downstream of the dam at the Limit of Detailed Study	*3,193
<i>Rincon Creek:</i>	
At confluence with Pantano Wash	*2,830
Just upstream of Old Spanish Trail	*2,879
At Camino Loma Alta	*2,884
At the confluence of an unnamed tributary located approximately 1,500 feet east of Township Range R16E/R17E, in Section 17 of Township 15 South	*3,070
Maps are available for review at the Pima County Department of Public Works, Flood Control Division, 1313 S. Mission Road, Tucson, Arizona.	
Town of Wickenburg, Maricopa County (FEMA docket No. 6932)	
<i>Sols Wash:</i>	
At confluence with Hassayampi River	*2,050
At U.S. Highway 89	*2,059
Approximately 1 mile upstream of U.S. Highway 89	*2,103
Approximately 0.67 mile downstream of Vulture Mine Road	*2,135
At Vulture Mine Road	*2,166
Maps are available for review at the Town Hall, 120 East Apache, Wickenburg, Arizona.	
CALIFORNIA	
Butte County (unincorporated areas) (FEMA Docket No. 6846)	
<i>Butte Creek:</i>	
Just upstream of Skyway Road	*246
Approximately 8,700 feet upstream of Skyway Road	*276
Approximately 3,625 feet downstream of covered bridge	*324
Approximately 3,875 feet upstream of Honey Run Road	*361
<i>Wyman Ravine:</i>	
Just upstream of Stimpson Lane	*95
Approximately 1,400 feet upstream of Lone Tree Road	*120
Just upstream of Palermo Road	*153
Just downstream of Lincoln Boulevard	*174
Approximately 1,000 feet northwest of intersection of Messina Avenue and Lincoln Boulevard	#1
<i>Wyman Ravine Tributary 1:</i>	
At confluence with Wyman Ravine	*143
Just downstream of Malvina Avenue	*155
Just downstream of Palermo Huncut Highway Bridge	*174
<i>Palermo Tributary:</i>	
At confluence with Wyman Ravine Tributary 1	*148
Just upstream of Palermo Road	*159
Just downstream of Messina Avenue	*171
<i>Keeler Slough:</i>	
Just upstream of State Route 99	*177
Approximately 2,020 feet downstream of Landmark Lane	*209

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued	
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Approximately 860 feet upstream of Keefer Road.	*239	Approximately 1,600 feet downstream of Hollins Lake.	*289	Stanislaus County (unincorporated areas) (FEMA Docket No. 8946)	
Approximately 500 feet east of State Route 99 crossing.	#1	Approximately 1,300 feet upstream of Hollins Lake.	*305	Del Puerto Creek:	
Ruddy Creek:		At upstream corporate limits.	*318	Approximately 2,300 feet upstream of confluence with San Joaquin River.	*47
Approximately 2,520 feet downstream of Biggs Avenue.	*151	Green Valley Creek:		Approximately 100 feet upstream of Vineyard Avenue.	*89
At Grand Avenue.	*175	Approximately 210 feet upstream of Rio Road.	*499	Just upstream of State Highway 33.	*107
Just downstream of Nelson Avenue.	*191	Approximately 1,480 feet upstream of Rio Road.	*526	Just upstream of Raines Road.	*180
Ruddy Creek Tributary:		Murphy Canyon Creek:		Salado Creek:	
At confluence with Ruddy Creek.	*189	Approximately 200 feet upstream of Friars Road.	*71	Just downstream of the Southern Pacific Railroad.	*98
Just downstream of Sirentine Street.	*194	Approximately 50 feet upstream of culvert upstream of Friars Road.	*86	Just upstream of Ward Avenue.	*102
Just downstream of Twentieth Street.	*198	Just upstream of Aero Drive culvert.	*160	Just upstream of Sperry Avenue.	*128
Maps are available for review at the Butte County Department of Public Works, 7 County Center Drive, Oroville, California.		Just upstream of Interstate Highway 15/Balboa Avenue interchange culvert.	*208	Just downstream of Raines Road.	*181
Napa County (unincorporated areas) (FEMA Docket No. 8946)		Approximately 60 feet above upstream face of Claremont Mesa on-ramp to Interstate Highway 15.	*251	Orsamba Creek:	
San Pablo Bay:		Santa Ysabel Creek:		Approximately 1,000 feet downstream of River Road.	*62
At southeastern tip of Coon Island.	*7	At confluence with Lake Hodges.	*326	Approximately 150 feet upstream of Morris Road.	*90
Napa River:		Approximately 165 feet upstream of the confluence with Santa Maria Creek.	*370	At Southern Pacific Railroad.	*105
At northern tip of Bull Island.	*7	Approximately 60 feet upstream of Battle Monument Road.	*385	Approximately 100 feet upstream of Eastin Road.	*123
Approximately 1,400 feet upstream of State Highway 29.	*8	Just upstream of State Highway 78.	*426	At Delta-Mendota Canal.	*166
Approximately 200 feet upstream of Imole Avenue.	*13	Approximately 5,440 feet upstream of State Highway 78.	*444	Maps are available for review at the Stanislaus County Offices, Public Works Department, 1100 H Street, Modesto, California.	
Approximately 500 feet upstream of First Street.	*22	Santa Maria Creek:		COLORADO	
Approximately 500 feet upstream of Milliken Creek.	*29	Approximately 280 feet upstream of confluence with Santa Ysabel Creek.	*370	Fremont County (unincorporated areas) (FEMA Docket No. 8946)	
Just downstream of West Trancas Road.	*30	Approximately 60 feet upstream of Battle Monument Road.	*385	Arkansas River:	
Maps are available for review at the Napa County Department of Public Works, 1195 Third Street, Room 301, Napa, California.		Approximately 40 feet upstream of Bandy Canyon Road.	*398	Approximately 1,000 feet downstream of State Route 115.	*5,096
Palo Alto (city), Santa Clara County (FEMA Docket No. 8938)		Lake Hodges:		Approximately 250 feet downstream of State Route 67.	*5,148
Metadero Creek:		Above Interstate Highway 15.	*326	Approximately 1,400 feet upstream of confluence with Chandler Creek.	*5,180
Chestnut Avenue between Birch Street and Ash Street.	*30	At confluence with Kit Carson Park Creek.	*326	Approximately 500 feet downstream of Mackenzie Avenue.	*5,230
San Francisco Bay:		San Diego Bay:		Approximately 2,100 feet upstream of City of Canon City eastern corporate limits.	*5,300
At Palo Alto Municipal Airport.	*8	At mouth of Otay River.	#6	Oak Creek:	
Maps are available for review at City Hall, Public Works Department, 250 Hamilton Avenue, Palo Alto, California.		At Shelter Island (entire shoreline).	#6	Approximately 180 feet downstream of State Route 115.	*5,183
San Diego (city), San Diego County (FEMA Docket No. 8946)		At San Diego-Coronado Bay Bridge.	#8	Just upstream of the Denver and Rio Grande Western Railroad.	*5,195
Tijuana River:		Pacific Ocean:		Approximately 925 feet upstream of the Alchison, Topeka and Santa Fe Railway.	*5,284
At Hollister Street.	*27	Approximately 5,000 feet north and 1,700 feet west of southernmost extent of Point Loma.	#21	Coal Creek:	
At Tijuana Street.	*45	Approximately 300 feet west of intersection of Sunset Cliffs Boulevard and Point Loma Avenue.	#9	Approximately 100 feet upstream of City of Florence corporate limits.	*5,195
Approximately 4,400 feet above Tijuana Street.	*54	Approximately 550 feet west of intersection of Wilbur Street and Ocean Boulevard.	#13	Approximately 2,150 feet upstream of City of Florence corporate limits.	*5,209
Carmel Valley Creek:		Approximately 200 feet west of intersection of Calumet Avenue and Sea Ridge Drive.	#18	Approximately 4,200 feet upstream of City of Florence corporate limits.	*5,228
Approximately 125 feet downstream of Sorento Valley Road.	*12	Approximately 300 feet west of intersection of Palomar Avenue and Camino De La Costa Road.	#10	North East Canon Drainage Area (East Branch):	
At El Camino Real.	*26	Approximately 100 feet north and 250 feet west of intersection of Camino Del Grande and Calle Optima.	#8	Approximately 25 feet upstream of Central Avenue.	*5,372
Approximately 185 feet upstream of Shaw Valley Road.	*83	Approximately 3,000 feet west of intersection of North Torrey Pines and Miramar Roads.	#15	Just downstream of High Street.	*5,440
Approximately 75 feet downstream of confluence with Bell Valley Creek.	*93	Approximately 3,000 feet west of intersection of North Torrey Pines Road and Torrey Pines Scenic Drive.	#9	Approximately 1,400 feet downstream of New York Avenue.	*5,520
At confluence with Bell Valley Creek.	*93	Maps are available for review at the City of San Diego Engineering and Development Department, 202 C Street, San Diego, California.		Approximately 100 feet downstream of New York Avenue.	*5,545
Approximately 320 feet upstream of confluence of McGonigle and Deer Canyons.	*126	Shafter (city), Kern County (FEMA Docket No. 8946)		North East Canon Drainage Area (West Branch):	
Kit Carson Park Creek:		Intersection of Walker Street and Mannel Avenue.	*346	Approximately 1,260 feet downstream of confluence with Fruitland Ditch.	*5,392
At confluence with Lake Hodges.	*326	Just southeast of intersection of East Lardo Highway and Atchison, Topeka and Santa Fe Railway.	#1	Approximately 2,320 feet downstream of Washington Street.	*5,415
Los Penasquitos Creek:		Maps are available for review at City Hall, 320 James Street, Shafter, California.		Approximately 60 feet downstream of Washington Street.	*5,450
Approximately 340 feet downstream of Chambers Dam.	*341			Approximately 1,600 feet upstream of intersection of Vermont Avenue and High Street.	*5,498
Approximately 100 feet upstream of Chambers Dam.	*353			Chandler Creek:	
Approximately 1,550 feet below upstream corporate limits.	*393			Approximately 100 feet downstream of Denver and Rio Grande Western Railroad.	*5,202
At upstream corporate limits.	*408			Approximately 3,950 feet upstream of Denver and Rio Grande Western Railroad.	*5,280
San Diego River:				Just upstream of County Road 11A.	*5,360
Approximately 1,300 feet downstream of Friars Road.	*60			Approximately 1,560 feet upstream of County Road 11A.	*5,384
Approximately 60 feet upstream of Zion Avenue.	*80				
Approximately 2,080 feet upstream of Private Road.	*132				
San Diego River at Santee:					

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued	
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps are available for inspection at the Fremont County Planning Department, County Courthouse, 600 Macon Avenue, Canon City, Colorado.		Sterling (city), Logan County (FEMA Docket No. 8946)		About 10,000 feet upstream of the confluence of Rookery Branch and North Prong.	*4
Gunnison County (unincorporated areas) (FEMA Docket No. 8941)		South Platte River:		Along shoreline.	*26
Tomichi Creek:		Approximately 2,800 feet downstream of the Burlington Northern Railroad.	*3,922	Bacayne Bay:	
At confluence with Gunnison River.	*7,602	Approximately 1,800 feet upstream of the Burlington Northern Railroad.	*3,929	At the intersection of Old Deer Highway and State Road 905.	*8
Just upstream of bridge crossing which is located approximately 10,900 feet above the confluence with Gunnison River.	*7,637	Approximately 2,450 feet upstream of U.S. Highway 6.	*3,938	Along the shoreline at Snapper Point.	*17
Approximately 14,800 feet upstream of bridge crossing that is located approximately 10,900 feet above the confluence with Gunnison River.	*7,666	Pawnee Creek Overflow:		Florida Bay:	
Gunnison River:		Approximately 500 feet downstream from Elm Street.	*3,931	At the intersection of Bayview Drive and Palm Drive on Lower Matecumbe Key.	*6
At McCabe Bridge.	*7,571	At the intersection of Phelps Street and South Tenth Street.	*3,941	Along the northwest shoreline of Shell Key.	*15
Approximately 2,550 feet upstream of Footbridge.	*7,600	At the intersection of Faithurst Street and Westview Drive.	*3,949	Maps available for inspection at the County Building Offices in Stock Island, Plantation Key and Marathon, Florida.	
Just upstream of the westbound lane of U.S. Route 50.	*7,646	Sand Creek:		GEORGIA	
At confluence of Antelope Creek.	*7,682	At State Highway 138.	*3,923	Barlow County (unincorporated areas) (FEMA Docket No. 8946)	
At confluence of Ohio Creek.	*7,729	Approximately 150 feet downstream from North Seventh Avenue.	*3,931	Allatoona Lake: Within community.	*661
Approximately 50 feet upstream of State Route 135.	*7,763	At the intersection of North Eighth Avenue extended and Washington Street extended.	*3,937	Iowa River:	
North Fork Gunnison River:		On Hall Road approximately 400 feet north of the intersection of Hall Road and Main Street.	*3,961	At county boundary.	*618
Just upstream of the Delta County Line.	*5,898	Maps are available for review at the Department of Public Works, Centennial Square, Sterling, Colorado.		Just downstream of Thompson-Werman Dam.	*685
Approximately 4,525 feet downstream of Somerset Bridge.	*5,955			Just upstream of Thompson-Werman Dam.	*698
Approximately 1,570 feet upstream of Somerset Bridge.	*6,020			Just downstream of Allatoona Dam.	*701
Maps are available for review at the Office of County Planning, 200 East Virginia Avenue, Gunnison, Colorado.				Pumpkinvine Creek:	
Logan County (unincorporated areas) (FEMA Docket No. 8946)				At mouth.	*683
South Platte River:				About 2.0 miles upstream of U.S. Route 41.	*732
Approximately 7,000 feet downstream of Burlington Northern Railroad.	*3,917			Pettit Creek:	
Approximately 1,750 feet upstream of Burlington Northern Railroad.	*3,929			At mouth.	*678
Approximately 16,000 feet upstream of Burlington Northern Railroad.	*3,950			Just downstream of Interstate 75.	*776
Pawnee Creek Overflow:				Nancy Creek:	
At confluence with Sand Creek.	*3,929			At mouth.	*687
At confluence with Sterling No. 1 Ditch.	*3,951			About 300 feet upstream of Cassville Road.	*753
Sand Creek:				Maps available for inspection at the County Courthouse, Cartersville, Georgia.	
At State Highway 138.	*3,923			Burke County (unincorporated areas) (FEMA Docket No. 8946)	
Approximately 525 feet downstream of Hall Road.	*3,955			Mc Intosh Creek:	
Approximately 3,050 feet upstream of Hall Road.	*3,988			Just upstream of Thompson Bridge Road.	*199
Maps are available for review at the Logan County Courthouse, Zoning Administrator's Office, 300 Ash Street, Sterling, Colorado.				Just downstream of Waynesboro Bypass.	*214
Monument (town), El Paso County (FEMA Docket No. 8946)				Severn River:	
Crystal Creek:				At confluence of McBean Creek.	*108
Approximately 420 feet downstream of North Monument Lake Road.	*6,916			About 7 miles upstream from confluence of McBean Creek.	*115
Approximately 120 feet downstream of North Monument Lake Road.	*6,923			Maps available for inspection at the Tax Assessor's Office, Courthouse Office, Waynesboro, Georgia.	
Approximately 40 feet downstream of Washington Street.	*6,980			Cartersville (city), Bartown County (FEMA Docket No. 8946)	
Just downstream of Beacon Light Road.	*7,012			Etawah River:	
Approximately 1,040 feet upstream of Beacon Light Road.	*7,044			About 1.9 miles downstream of Rockmart Road.	*671
Dirty Woman Creek:				About 0.75 mile upstream of confluence of Pettit Creek.	*679
Approximately 50 feet downstream of Mitchell Avenue.	*6,886			Pettit Creek:	
Approximately 330 feet upstream of Old Denver Highway.	*6,926			About 3,200 feet downstream of Rockmart Road.	*678
Approximately 250 feet downstream of U.S. Highway 85/87.	*6,950			About 800 feet downstream of Peoples Valley Road.	*730
Maps are available for inspection at the Town Hall, 166 2nd Street, Monument, Colorado.				Nancy Creek:	
				Just upstream of Mission Road.	*682
				Just upstream of CSX railroad.	*712
				Maps available for inspection at the City Hall, Cartersville, Georgia.	
				Emerson (city), Bartow County (FEMA Docket No. 8946)	
				Pumpkinvine Creek:	
				About 1,900 feet downstream of U.S. Route 41.	*709
				About 1,800 feet upstream of U.S. Route 41.	*713
				Maps available for inspection at the City Hall, Emerson, Georgia.	
				Jenkins County (unincorporated areas) (FEMA Docket No. 8946)	
				Ogeechee River:	
				About 4.5 miles downstream of U.S. Route 25.	*142
				About 1.6 miles upstream of U.S. Route 25.	*145

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued	
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Buckhead Creek:		Maps are available for review at the Maui County Department of Public Works, Division of Land Use and Code Administration, 200 South High Street, Wailuku, Hawaii.		About 1,300 feet downstream of Pearl City Road.....	*814
At mouth.....	*144			About 500 feet upstream of Chicago and North Western railroad.....	*819
About 0.8 mile upstream of confluence of Little Buckhead Creek.....	*153			Maps available for inspection at the Village Hall, Pearl City, Illinois.	
The Canal:		IDAHO			
At mouth.....	*144	Cascade (city), Valley County (FEMA Docket No. 8927)			
Just upstream of Scarboro Road.....	*182				
Little Buckhead Creek:		North Fork Payette River:			
At mouth.....	*151	At southern-most corporate limit.....	*4,727		
Just upstream of Harvey Street.....	*157	Approximately 850 feet downstream of State Highway 55.....	*4,730		
Maps available for inspection at the County Clerk's Office, County Courthouse, Millen, Georgia.		Approximately 4,370 feet upstream of State Highway 55 (near Cascade Airport).....	*4,732		
		Approximately 140 feet upstream of State Highway 55 (near Cascade dam).....	*4,739		
Millen (city), Jenkins County (FEMA Docket No. 8946)		Maps are available for review at City Hall, 108 East Market, Cascade, Idaho.		Maps available for inspection at the City Hall, 115 West Superior, Clarksville, Iowa.	
Buckhead Creek:					
Just downstream of Norfolk Southern Railway.....	*144	ILLINOIS		Williamsburg (City), Iowa County (FEMA Docket No. 8941)	
At confluence of Little Buckhead Creek.....	*151	Clinton (city), De Witt County, (FEMA Docket No. 8948)		Old Mans Creek:	
The Canal:				About 1.2 miles downstream of State Street.....	*754
About 975 feet downstream of U.S. Route 25.....	*146			About 0.75 mile upstream of Highland Street.....	*766
About 1,800 feet downstream of Pine Avenue.....	*187			Maps available for inspection at the City Hall, 210 West State, Williamsburg, Iowa.	
Little Buckhead Creek:					
At mouth.....	*151			KENTUCKY	
Just upstream of Norfolk Southern Railway.....	*155			Ballard County (unincorporated areas) (FEMA Docket No. 8946)	
Maps available for inspection at the City Administrator's Office, City Hall, Millen, Georgia.				Mississippi River:	
				At confluence of Mayfield Creek.....	*329
				At confluence of Ohio River.....	*331
				Ohio River:	
				At mouth.....	*331
				About 7.6 miles upstream of Lock and Dam No. 53.....	*335
				Sugar Creek:	
				About 0.8 mile downstream of State Highway 1837.....	*352
				About 400 feet upstream of U.S. Highway 62.....	*362
				Sugar Creek Tributary:	
				At mouth.....	*359
				About 700 feet upstream of mouth.....	*360
				Mayfield Creek:	
				At mouth.....	*329
				At county boundary.....	*353
				Maps available for inspection at the County Courthouse, Wickliffe, Kentucky.	
				Barbourville (city), Knox County (FEMA Docket No. 8941)	
				Cumberland River:	
				About 0.8 mile downstream of State Route 11.....	*985
				About 1.2 miles upstream of State Route 11.....	*988
				Richland Creek: Within community.	*986
				Maps available for inspection at the City Hall, Barbourville, Kentucky.	
				Clay City (city), Powell County (FEMA Docket No. 8946)	
				Red River:	
				About 2,200 feet downstream of Mountain Parkway.....	*626
				About 1.6 miles upstream of 9th Street.....	*630
				Brush Creek:	
				At mouth.....	*628
				Just upstream of 6th Avenue.....	*631
				Maps available for inspection at the City Hall, Clay City, Kentucky.	
				Hartford (city), Ohio County (FEMA Docket No. 8946)	
				Rough River:	
				About 0.3 mile downstream of U.S. Route 231.....	*394
				About 0.8 mile upstream of U.S. Route 231.....	*395

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued	
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection at the City Hall, 114 Washington Street, Hartford, Kentucky.		Approximately 2.65 miles upstream of Isabel Highway.....	*95	At mouth.....	*343
Ohio County (unincorporated areas) (FEMA Docket No. 8946)		Gum Creek:		Just downstream of U.S. Highway 45 Bypass.....	*355
		At confluence with Old Channel.....	*23	Just upstream of U.S. Highway 45 Bypass.....	*362
		At State Route 36.....	*41	At confluence of Brandon Branch.....	*378
		Maps available for inspection at 426 East Boston, Covington, Louisiana.		Okanabee Creek:	
				About 2.4 miles downstream of Interstate 59.....	*288
				About 0.8 mile upstream of confluence of Suqualena Creek.....	*319
				Okanabee Creek Tributary:	
				At mouth.....	*310
				Just downstream of abandoned railroad.....	*313
				Just upstream of abandoned railroad.....	*319
				Just upstream of Old 6th Street.....	*324
				Owls Head (town), Knox County (FEMA Docket No. 8961)	
				Atlantic Ocean:	
				Western end of Ash Island.....	*12
				Western end of Monroe Island.....	*12
				Southwestern end of Monroe Island.....	*18
				Northwestern end of Sheep Island.....	*13
				Southwestern end of Sheep Island.....	*18
				Maps available for inspection at the Municipal Building, Star Route 32, Owls Head, Maine.	
				MISSISSIPPI	
				Adams County (unincorporated areas) (FEMA Docket No. 8946)	
				Mississippi River:	
				At county boundary.....	*67
				About 2.0 miles upstream of confluence of Coles Creek.....	*83
				St. Catherine Creek:	
				At mouth.....	*76
				About 0.7 mile upstream of U.S. Highway 81.....	*125
				Maps available for inspection at the Chancery Clerk's Office, County Courthouse, Natchez, Mississippi.	
				Batesville (city), Panola County (FEMA Docket No. 8946)	
				Cole Creek:	
				About 1,000 feet downstream of State Highway 8.....	*215
				Just downstream of State Highway 6.....	*217
				Little Tallahatchie River:	
				Just upstream of Panola Avenue.....	*194
				Whitten Creek:	
				About 0.5 mile downstream of U.S. Highway 51.....	*205
				About 0.5 mile upstream of State Highway 35.....	*232
				Maps available for inspection at the City Clerk's Office, City Hall, 103 College Street, Batesville, Mississippi.	
				Laurel County (unincorporated areas) (FEMA Docket No. 8946)	
				Black Creek:	
				Just upstream of State Highway 12.....	*210
				About 1.6 miles upstream of State Highway 12.....	*217
				Maps available for inspection at the Chancery Clerk's Office, Chancery Clerk's Building, County Courthouse Grounds, Lexington, Mississippi.	
				Laurel County (unincorporated areas) (FEMA Docket No. 8946)	
				Bayou Branch:	
				At mouth.....	*332
				About 1,400 feet upstream of Windsor Drive.....	*352
				Harper Creek:	
				At mouth.....	*315
				About 3.7 miles upstream of State Highway 19.....	*362
				Harper Creek Tributary:	
				At mouth.....	*315
				About 1.0 mile upstream of State Highway 19.....	*340
				Loper Creek:	
				At mouth.....	*302
				At confluence of Gunn Branch.....	*332
				Gunn Branch:	
				About 2,500 feet upstream of State Highway 493.....	*332
				Nanabe Creek:	

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PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued	
Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	# Depth in feet above ground. Elevation in feet (NGVD)
Maps are available for review at City Hall, 1004 Clark Street, Wasco, Oregon. PENNSYLVANIA Armwell (township), Washington County (FEMA Docket No. 6938) <i>Tennile Creek:</i> Confluence of Little Tennile Creek..... *898 Upstream corporate limits..... *958 <i>Little Tennile Creek:</i> Approximately 1,200 feet downstream from L.R. 62194..... *961 Approximately 2.8 miles upstream of upstream crossing of L.R. 62194..... *1,015 <i>Montgomery Run:</i> Confluence with Tennile Creek..... *931 Approximately 1,500 feet upstream of Interstate Route 79..... *992 <i>Brush Run:</i> Confluence with Little Tennile Creek..... *963 Approximately .7 mile upstream of T-726..... *1,122 Maps available for inspection at the Armwell Township Building, Armwell, Pennsylvania.		Falls Creek (borough), Jefferson and Clearfield Counties (FEMA Docket No. 6946) <i>Falls Creek:</i> Approximately 50 feet downstream of corporate limits..... *1,399 Approximately 100 feet upstream of corporate limits..... *1,440 Maps available for inspection in care of Patricia J. Gundrum, Borough Secretary, 117 Taylor Avenue, Falls Creek, Pennsylvania. Hopewell (borough), Bedford County (FEMA Docket No. 6938) <i>Raystown Branch Juniata River:</i> Approximately 715 feet downstream of State Route 915..... *872 Approximately 325 feet upstream of confluence of Sandy Run..... *881 Maps available for inspection at the residence of Jeanne Hall, Broad Street, Hopewell, Pennsylvania. Hopewell (township), Bedford County (FEMA Docket No. 6946) <i>Raystown Branch Juniata River:</i> Approximately 450 feet upstream of downstream corporate limits..... *876 Approximately 4.1 miles upstream of Legislative Route 05056..... *916 <i>Yellow Creek:</i> Approximately 500 feet downstream of T-655..... *878 Approximately 1,570 feet upstream of State Route 36..... *1,081 Maps available for inspection at the Township Building, Route 26—South of Kountry Kettle Restaurant (Voting Building), Everett, Pennsylvania. Jackson (township), Butler County (FEMA Docket No. 6938) <i>Connoquenessing Creek:</i> At downstream corporate limits..... *899 At upstream corporate limits..... *921 <i>Little Connoquenessing Creek:</i> At confluence with Connoquenessing Creek..... *912 At upstream corporate limits..... *931 <i>Breakneck Creek:</i> At confluence with Connoquenessing Creek..... *914 Approximately .1 mile upstream of corporate limits..... *928 <i>Scholars Run:</i> At confluence with Connoquenessing Creek..... *906 At upstream corporate limits..... *942 Maps available for inspection at the Township Secretary's Office, Box 69, Zelenople, Pennsylvania. Lilly (borough), Cambria County (FEMA Docket No. 6946) <i>Little Conemaugh River:</i> At downstream corporate limits..... *1,862 0.2 of a mile upstream of Church Street..... *1,905 <i>Bear Rock Run:</i> At confluence with Little Conemaugh River..... *1,881 At upstream corporate limits..... *1,935 Maps available for inspection at 503 Main Street, Lilly, Pennsylvania. Manns Choice (borough), Bedford County (FEMA Docket No. 6946) <i>Buffalo Run:</i> Downstream corporate limits..... *1,131 Approximately 540 feet upstream of State Route 31/96..... *1,135 <i>Raystown Branch Juniata River:</i> Upstream and downstream corporate limits..... *1,130		Maps available for inspection at the Borough Building, Main Street, Manns Choice, Pennsylvania. Nanty Glo (borough), Cambria County (FEMA Docket No. 6946) <i>South Branch Blacklick Creek:</i> At downstream corporate limits..... *1,700 At upstream corporate limits..... *1,711 <i>Devils Run:</i> At confluence with South Branch Blacklick Creek..... *1,710 Approximately 50 feet upstream of Bell Street..... *1,787 Maps available for inspection at the Nanty Glo Municipal Building, Chestnut Street, Nanty Glo, Pennsylvania. Napier (township), Bedford County (FEMA Docket No. 6946) <i>Raystown Branch Juniata River:</i> Approximately 0.4 mile downstream of State Highway 31..... *1,112 At confluence of Shawnee Branch..... *1,141 Approximately 0.4 mile upstream of T-418..... *1,170 Maps available for inspection at the Old Shellsburg Elementary School, Route 96, Shellsburg, Pennsylvania. Penn (township), Centre County (FEMA Docket No. 6946) <i>Elk Creek:</i> Approximately 1,400 feet downstream of L.R. 873..... *1,066 At upstream corporate limits..... *1,079 <i>Pine Creek:</i> At confluence with Penns Creek..... *1,028 At upstream corporate limits..... *1,036 <i>Penns Creek:</i> Approximately 2,100 feet downstream of L.R. 873..... *1,026 Approximately 1,900 feet upstream of L.R. 873..... *1,031 Maps available for inspection in c/o Barbara Shaffer, Township Secretary, R.D. 1, Box 15, Coburn, Pennsylvania (2 miles outside of Coburn on Long Lane). Pike (township), Clearfield County (FEMA Docket No. 6941) <i>Anderson Creek:</i> Approximately 33 mile downstream from downstream corporate limits..... *1,161 Approximately 25 mile upstream from T-206..... *1,199 Maps available for inspection at the Township Building, Route 879, Curwensville, Pennsylvania. Sandy (township), Clearfield County (FEMA Docket No. 6946) <i>Sandy Lick Creek:</i> At downstream corporate limits..... *1,396 Approximately 1.1 miles upstream of Platt Road..... *1,418 <i>Clear Run:</i> At confluence of Sandy Lick Creek..... *1,397 Approximately 0.6 mile upstream of Clear Run Road..... *1,445 Maps available for inspection at the Municipal Building, in care of Wick Marsh, 12th and Chestnut Streets, Sandy, Pennsylvania. Snyder (township), Jefferson County (FEMA Docket No. 6946) <i>Little Toby Creek:</i> Approximately .75 mile downstream of Pittsburgh and Shawmut Railroad..... *1,448 Approximately 1.9 miles upstream of T-572..... *1,469 <i>Rattlesnake Creek:</i> Approximately 350 feet downstream of CON-RAIL..... *1,449 Approximately 6 mile upstream of L.R. 33048..... *1,476	
Confluence (borough), Somerset County (FEMA Docket No. 6946) <i>Youghiogheny River:</i> Approximately 1,450 feet upstream of corporate limits..... *1,324 At upstream corporate limits..... *1,328 <i>Casselman River:</i> At confluence with Youghiogheny River..... *1,325 Approximately 250 feet upstream of corporate limits..... *1,348 <i>Laurel Hill Creek:</i> At confluence with Casselman River..... *1,326 Approximately 1,600 feet upstream of corporate limits..... *1,332 Maps available for inspection at the Borough Office, Confluence, Pennsylvania.					

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued	
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Maps available for inspection in care of John A. Ross, Township Supervisor, R.D. 1, Brockway, Pennsylvania.		About 2050 feet above unnamed road.....		Approximately 2,135 feet upstream of Buzianis Road.....	
Washington (township), Jefferson County (FEMA Docket No. 6946)		Maps available for inspection at the Chattanooga/Hamilton County Regional Planning Commission, City Hall Annex, 100 East 11th Street, Chattanooga, Tennessee.		Maps are available for inspection at the Engineering Department, City Hall, 90 North Main Street, Tooele, Utah.	
Falls Creek: Approximately 175 feet downstream of corporate limits.....		Martin (city), Weekley County (FEMA Docket No. 6946)		VIRGINIA	
Approximately 1.4 miles upstream of corporate limits.....		Cane Creek Tributary: At mouth.....		Appalachia (town), Wise County (FEMA Docket No. 6938)	
Maps available for inspection in care of V.E. Lundberg, R.D. 1, Falls Creek, Pennsylvania.		Just downstream of Illinois Central Gulf Railroad.....		Powell River: Approximately 840 feet downstream of confluence of Pigeon Creek.....	
TENNESSEE		Cane Creek: Just upstream of Mount Pele Road.....		Approximately 420 feet upstream of N&W Railroad.....	
Chattanooga (city), Hamilton County (FEMA Docket No. 6946)		Just upstream of K Street.....		Callahan Creek: At confluence with Powell River.....	
Ninemile Branch: About 0.5 mile downstream of Old Dayton Pike.....		Maps available for inspection at the City Hall, 101 University Street, Martin, Tennessee.		Approximately 1.10 miles upstream of Callahan Avenue.....	
About 1.9 miles upstream of Old Dayton Pike.....		TEXAS		Looney Creek: Approximately 40 miles downstream of North Main Street.....	
Frier Branch: At mouth.....		Muleshoe (city), Bailey County (FEMA Docket No. 6946)		Approximately 1.06 miles upstream of North Inman Street.....	
About 1.3 miles upstream of Silverdale Road.....		Blackwater Draw: At the downstream corporate limits.....		Maps available for inspection at the Town Hall, Appalachia, Virginia.	
Black Creek: At mouth.....		Approximately 1.4 miles upstream of upstream corporate limits.....		Floyd County, (unincorporated areas) (FEMA Docket No. 6939)	
About 0.6 mile upstream of U.S. Route 11.....		Plays No. 2—Outflow: At corporate limits.....		Little River (Lower Reach): Approximately 1.0 mile downstream of State Road 787.....	
Mackey Branch: At mouth.....		Approximately 125 feet upstream of Country Club Drive.....		Approximately 1,250 feet upstream of Old Mill Dam.....	
Just upstream of Shallowford Road.....		Blackwater Draw Diversion: Approximately 850 feet downstream of West Avenue J.....		Little River (Middle Reach): Approximately 1,025 feet downstream of State Road 706.....	
Ryall Springs Branch: At mouth.....		Approximately 6 mile upstream of upstream corporate limits.....		Approximately 2,300 feet upstream of State Road 706.....	
Just upstream of Mome Hill Road.....		Maps available for inspection at 215 South 1st Street, Muleshoe, Texas.		Little River (Upper Reach): Approximately 0.67 mile downstream of U.S. Route 221.....	
Maps available for inspection at the Chattanooga/Hamilton County Regional Planning Commission, City Hall Annex, 100 East 11th Street, Chattanooga, Tennessee.		UTAH		Approximately 0.64 mile upstream of U.S. Route 221.....	
Hamilton County (unincorporated areas) (FEMA Docket No. 6946)		Tooele (city), Tooele County (FEMA Docket No. 6946)		Dodd Creek (Lower Reach): Approximately 200 feet upstream of confluence with West Fork Little River.....	
Hurricane Creek: About 1,400 feet downstream of confluence of Hurricane Creek Tributary.....		Settlement Canyon: At corporate limits, approximately 200 feet downstream of Tooele Ordnance Depot Road.....		Approximately 1,700 feet upstream of State Highway 8.....	
At confluence of Johnson Branch.....		Approximately 1,150 feet downstream of West Vine Street.....		Dodd Creek (Upper Reach): Approximately 600 feet downstream of U.S. Route 221.....	
Johnson Branch: At mouth.....		Approximately 140 feet downstream of Airport Road.....		At State Road 720.....	
Just downstream of East Branard Road.....		Approximately 2,530 feet downstream of Coleman Street.....		West Fork Little River: Approximately 0.7 mile downstream of State Highway 8.....	
Poseum Creek: At mouth.....		Approximately 130 feet downstream of Pioneer Avenue.....		Approximately 0.8 mile upstream of State Highway 8.....	
About 1.3 miles upstream of Back Valley Road.....		Approximately 2,510 feet upstream of State Highway 36.....		Pine Creek: Approximately 1,440 feet downstream of U.S. Route 221.....	
Ryall Springs Branch: About 500 feet downstream of Private Drive.....		Middle Canyon Creek: Approximately 720 feet downstream of State Highway 36.....		Approximately 800 feet upstream of State Road 860.....	
About 1,300 feet upstream of Royal Shadows Drive.....		Approximately 2,610 feet downstream of 1000 North Road.....		Meadow Run: Approximately 1,450 feet downstream of State Road 842.....	
Savannah Creek: At mouth.....		Approximately 620 feet upstream of 1000 North Road.....		Approximately 1,050 feet upstream of U.S. Route 221.....	
Just downstream of Smith Road.....		Approximately 750 feet downstream of State Highway 178.....		Maps available for inspection at the County Administrator's Office, Courthouse Complex, Floyd, Virginia.	
Ninemile Branch: At mouth.....		Approximately 1,420 feet upstream of Third North Street.....		WASHINGTON	
About 1,050 feet downstream of Old Dayton Pike.....		Unnamed Canyon: Approximately 280 feet upstream of Second South Street.....		Auburn (city), King County (FEMA Docket No. 6946)	
North Chickamauga Creek: Just upstream of Lower Hill Road.....		Approximately 540 feet upstream of Seventh Street.....		Green River (With Levees): Approximately 0.1 mile downstream of corporate limits.....	
About 2.0 miles upstream of Thrasher Pike.....		Approximately 210 feet upstream of Skyline Avenue.....		Approximately 100 feet upstream of pedestrian bridge.....	
Pitts Branch: At mouth.....		Unnamed Canyon Tributary: At confluence with Unnamed Canyon.....		Approximately 0.5 mile upstream of 8th Street.....	
Just upstream of Boy Scout Road.....		Approximately 520 feet upstream of Skyline Avenue.....			
Mackey Branch: About 1,300 feet downstream of Shallowmeade Lane.....		Unnamed Canyon No. 2: Approximately 130 feet downstream of Buzianis Road.....			
About 0.4 mile upstream of Hickory Ridge Drive.....		Approximately 975 feet upstream of Buzianis Road.....			
Hurricane Creek Tributary: At mouth.....					
Just downstream of Ringgold Road.....					
Woffever Creek: At mouth.....					
Just downstream of McDonald Road.....					
Little Woffever Creek: At mouth.....					
Just downstream of White Oak Valley Road.....					
Falling Water Creek: At mouth.....					

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued	
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Green River (Without Levees):		King County (unincorporated areas) (FEMA Docket No. 6946)		Approximately 200 feet upstream of Interstate Highway 405.....	
Approximately 0.35 mile upstream of Green Valley Road.....	*87	Raging River:		Approximately 475 feet upstream of Interstate Highway 405.....	*27
Approximately 0.94 mile upstream of Green Valley Road.....	*92	At Interstate Highway 90.....	*426	Little Bear Creek:	
Mill Creek (Auburn):		Approximately 120 feet upstream of confluence with Lake Creek.....	*542	Just upstream of the confluence with Sammamish River.....	*24
Approximately 100 feet upstream of State Highway 167.....	*42	Approximately 1,800 feet upstream of Upper Preston Road SE.....	*672	Just downstream of State Route 522 Northbound.....	*74
Approximately 300 feet upstream of 29th Street.....	*48	Green River (without levees):		Approximately 3,100 feet upstream of 195th Street NE.....	*111
Approximately 1,200 feet downstream of West Main Street.....	*60	Approximately 1,050 feet downstream of Pacific Highway (State Route 99).....	*9	Bear Creek:	
Approximately 100 feet upstream of State Highway 18.....	*66	Just downstream of Interstate Highway 5.....	*13	At confluence with Sammamish River.....	*32
At State Highway 167.....	*69	Approximately 3,430 feet upstream of 56th Avenue South.....	*17	Approximately 1,050 feet upstream of confluence with Sammamish River.....	*32
Areas of Ponding:		Approximately 1,700 feet north of intersection of South 196th Street and Russell Road.....	*29	Approximately 1,650 feet upstream of confluence with Sammamish River.....	*34
Between 35th and 37th Streets, approximately 2,000 feet east of East Valley Highway.....	*52	Approximately 1,300 feet southwest of intersection of Frager Road and State Route 516.....	*39	Approximately 1,800 feet downstream of Burlington Northern Railroad bridge.....	*35
Approximately 300 feet east of end of 37th Street.....	*52	Approximately 2,300 feet west of intersection of South 262nd and South 68th Streets.....	*41	Approximately 1,500 feet downstream of Burlington Northern Railroad bridge (at corporate limits for Redmond).....	*36
On east side of Green River Road, approximately 1,000 feet east of end of 37th Street.....	*52	Approximately 800 feet north of intersection of South 79th Avenue and South 268th Street.....	*43	Approximately 100 feet upstream of Avondale Road.....	*91
On east side of Green River Road, approximately 1,300 feet east of end of 30th Street.....	*52	Approximately 1,000 feet east of intersection of 14th Street NE, and O Street NE.....	*61	Just downstream of 148th Street NE.....	*165
Area between Auburn-Black Diamond Road and State Highway 18, approximately 3,500 feet east of Burlington Northern Railroad crossing of Auburn-Black Diamond Road.....	*57	Approximately 900 feet downstream of State Route 18.....	*71	Approximately 3,550 feet upstream of private road off Woodville-Duvall Road.....	*258
Maps are available for inspection at City Hall, 25 West Main Street, Auburn, Washington.		Approximately 1,800 feet upstream of Auburn-Black Diamond Road.....	*77	Issaquah Creek	
Bellevue (city), King County (FEMA Docket No. 6946)		Approximately 1,600 feet upstream of Green Valley Road.....	*87	Approximately 175 feet upstream of May Valley Road SE.....	*236
Lake Sammamish:		Approximately 300 feet upstream of confluence with Newaukum Creek.....	*155	Just downstream of Cedar Grove Road.....	*293
Approximately 450 feet east of intersection of West Lake Sammamish Parkway NE, and Rosemont Place NE.....	*33	Just downstream of Flaming Geyser Bridge.....	*197	Approximately 60 feet downstream of confluence with Carey and Holder Creeks.....	*396
Approximately 550 feet east of intersection of West Lake Sammamish Parkway SE, and NE 2nd Street.....	*33	Green River (with levees):		West Fork Issaquah Creek	
Maps are available for review at City Hall, 11511 Main Street, Bellevue, Washington.		Approximately 7,200 feet upstream of bike trail bridge.....	*30	Approximately 100 feet downstream of 229th Drive SE.....	*232
Kent (city), King County (FEMA Docket No. 6946)		Approximately 3,000 feet downstream of South 212th Street.....	*32	Approximately 75 feet downstream of 217th Street SE.....	*314
Mill Creek (Kent):		At confluence with Mullen Slough.....	*38	Approximately 150 feet downstream of 128th Way SE.....	*325
Just upstream of South 228th Street.....	*31	Approximately 600 feet downstream of West Valley Highway.....	*41	Holder Creek:	
At Private Road Bridge.....	*36	At Chicago, Milwaukee, St. Paul and Pacific Railroad.....	*42	At confluence with Carey and Issaquah Creeks.....	*398
Just upstream of East Titus Street.....	*41	Approximately 750 feet downstream of Burlington Northern Railroad.....	*44	Approximately 3,000 feet upstream of confluence with Carey and Issaquah Creeks.....	*444
Mill Creek (Auburn):		Approximately 4,200 feet upstream of East Valley Highway.....	*46	Approximately 610 feet upstream of State Route 18 Access Road.....	*493
At confluence with Green River.....	*42	Approximately 5,600 feet downstream of pedestrian bridge.....	*52	May Creek:	
At West Valley Highway South.....	*42	Approximately 500 feet upstream of pedestrian bridge.....	*56	At Coal Creek Parkway.....	*265
Green River (without levees):		At State Route 18.....	*74	Just downstream of 148th Avenue SE.....	*310
Approximately 1,050 feet southwest of intersection of Andover Park West and C Drive.....	*29	Mill Creek:		Just downstream of Renton-Issaquah Road SE.....	*325
Approximately 1,000 feet northwest of intersection of Kent-Des Moines and Frager Roads.....	*36	Approximately 100 feet upstream of West Valley Highway (South 68th Street).....	*42	Approximately 150 feet downstream of 109th Avenue SE.....	*341
Approximately 600 feet north of confluence with Mill Creek (Auburn).....	*41	At South 269th Street.....	*42	May Creek Tributary:	
Approximately 1,000 feet north of South 266th Street, between Central Avenue and Burlington Northern Railroad.....	*43	Approximately 300 feet west of intersection of West Valley Highway and South 285th Street.....	*42	Approximately 300 feet upstream of confluence with May Creek.....	*328
Green River (with levees):		Approximately 700 feet downstream of State Route 187.....	*42	Just upstream of 188th Avenue SE.....	*329
Approximately 3,685 feet upstream of Bike Trail Bridge, at end of South 194th Street.....	*29	Big Soos Creek:		Toft River:	
Approximately 4,340 feet downstream of South 212th Street.....	*31	Approximately 200 feet downstream of Burlington Northern Railroad.....	*171	Approximately 6,300 feet upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.....	*128
Approximately 2,960 feet downstream of South 212th Street.....	*32	Approximately 100 feet upstream of confluence with Jenkins Creek.....	*273	Approximately 8,030 feet upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.....	*141
Just upstream of confluence with Midway Creek.....	*36	Approximately 325 feet downstream of 256th Street SE.....	*324	Approximately 17,480 feet upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.....	*196
At State Route 516.....	*39	Approximately 250 feet downstream of 208th Street SE.....	*355	Approximately 29,030 feet upstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.....	*275
Just downstream of Chicago, Milwaukee, St. Paul and Pacific Railroad.....	*42	At 182nd Street SE.....	*380	Maps are available for inspection at the Building and Land Development Division, 3600 136th Place SE, Bellevue, Washington.	
Just upstream of Burlington Northern Railroad.....	*44	Approximately 1,150 feet upstream of 122nd Place SE.....	*397	Redmond (city), King County (FEMA Docket No. 6946)	
Just west of intersection of Green River Road and 94th Place South.....	*47	Swamp Creek:		Bear Creek:	
Maps are available for review at City Hall, 220 Fourth Avenue South, Kent, Washington		Approximately 1,070 feet upstream of confluence with Sammamish River.....	*17	Approximately 1,500 feet downstream of Burlington Northern Railroad Bridge (at corporate limits).....	*36
		Just upstream of 73rd Avenue NE.....	*44	Downstream side of Burlington Northern Railroad Bridge.....	*39
		Approximately 100 feet downstream of 204th Street NE.....	*82	Upstream side of Burlington Northern Railroad Bridge.....	*40
		North Creek:		Approximately 100 feet upstream of State Highway 202.....	*42
		At confluence with Sammamish River.....	*23		
		Approximately 150 feet downstream of Interstate Highway 405.....	*26		

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued	
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
Bredhead (city), Green County (FEMA Docket No. 6946)		CALIFORNIA		Approximately 50 feet upstream of 12th Street Footbridge	
<i>Sugar River:</i>		Novato (city), Marin County (FEMA Docket No. 6946)		<i>Washington Creek:</i>	
About 1,000 feet downstream of Soo Line Railroad	*781	<i>Novato Creek:</i>		Just upstream of Madison Street	*37
About 1 mile upstream of confluence of Decatur Raceway	*784	Approximately 3,000 feet downstream of Southern Pacific Railroad, 1,600 feet east of U.S. Highway 101		Just upstream of Main Drive	*37
<i>Decatur Raceway:</i>		Approximately 120 feet downstream of Southern Pacific Railroad, 1,600 feet east of U.S. Highway 101		Approximately 70 feet downstream of corporate limits	*78
At confluence with Sugar River	*783	Just upstream of Old U.S. Highway 101 Bridge (Redwood Highway)		<i>East Washington Creek:</i>	
About 350 feet upstream of County Highway F	*787	Just downstream of Grant Avenue		Just upstream of Washington Street	*34
<i>Maps available for inspection at the City Hall, 1103 West 2nd Avenue, Bredhead, Wisconsin.</i>		Approximately 100 feet upstream of Sutor Avenue		Just upstream of Main Drive	*37
Rosendale (village), Fond du Lac County (FEMA Docket No. 6946)		Approximately 2,650 feet upstream of Sutor Avenue		Just upstream of Ely Boulevard	*56
<i>Unnamed Creek:</i>		<i>Warner Creek:</i>		Approximately 100 feet downstream of corporate limits	*82
About 2,300 feet downstream of Hill Road	*879	Approximately 100 feet downstream of South Novato Boulevard		<i>Lynch Creek:</i>	
About 0.84 mile upstream of Main Street	*906	Approximately 125 feet upstream of Tamaulais Avenue		At confluence with Petaluma River	*17
<i>Maps available for inspection at the Municipal Building, 208 North Main Street, Rosendale, Wisconsin.</i>		Approximately 1,000 feet upstream of McClay Avenue		Just upstream of U.S. Highway 101 (north-bound)	*20
WYOMING		<i>Vineyard Creek:</i>		Just upstream of Main Drive	*51
Rock Springs (City), Sweetwater County (FEMA Docket No. 6906)		At confluence with Warner Creek		Just downstream of Ely Boulevard	*63
<i>Bitter Creek:</i>		Approximately 80 feet upstream of Wilson Avenue		Just upstream of Ely Boulevard	*51
At downstream corporate limit	*8214	Just upstream of Trumbull Avenue		<i>Capri Creek:</i>	
At upstream corporate limit	*8267	Approximately 1,325 feet upstream of Mill Road		At confluence with Petaluma River	*20
<i>Sweetwater Creek:</i>		Approximately 1,400 feet upstream of confluence with Unnamed Tributary to Vineyard Creek		Approximately 200 feet upstream of McDowell Boulevard	*33
At downstream face of Railroad Access Road	*6231	<i>Unnamed Tributary to Vineyard Creek:</i>		Just downstream of Ely Boulevard	*45
At upstream corporate limit	*6255	Approximately 175 feet upstream of Angelica Court		<i>Corona Creek:</i>	
<i>Deadhorse Canyon Creek:</i>		Approximately 300 feet upstream of Private Drive		At confluence with Capri Creek	*20
700 feet west of intersection of Blair Avenue and Hickory Street	*6242	<i>Wilson Creek:</i>		<i>North Corona Channel:</i>	*20
660 feet downstream of Union Pacific Railroad crossing	*6256	At confluence with Warner Creek		At confluence with Petaluma River	*20
At upstream corporate limit	*6367	Approximately 100 feet upstream of Center Road		Just downstream of Old Redwood Highway	*40
50 feet north of a point located 1,000 feet southeast along State Route 430 from its intersection with Country Club Drive	#1	Approximately 50 feet upstream of McClay Avenue		<i>Shallow Flooding:</i>	
At intersection of Elk Street and 2nd Street	#2	Approximately 525 feet upstream of Shields Lane		Ponding at Napa Court	*20
<i>Tributary No. 1:</i>		<i>Arroyo San Jose Creek:</i>		At intersection of McDowell Boulevard North and Scott Street	*13
At downstream face of Sunset Drive	*6222	Just upstream of St. Andrews Drive		At intersection of Scott Street and Holm Road	*13
300 feet south of a point 1,500 feet southwest along Foothills Blvd. from its intersection with Ankeny Way	*6225	Approximately 970 feet upstream of St. Andrews Drive		<i>Maps are available for review at the Community Development and Planning Department, 11 English Street, Petaluma, California.</i>	
At downstream face of Dewar Drive at its intersection with Foothills Blvd.	*6233	Approximately 1,360 feet upstream of St. Andrews Drive		Redding (city), Shasta County (FEMA Docket No. 6946)	
Just upstream of Dewar Drive	*6234	<i>Pacheco Creek:</i>		<i>Churn Creek:</i>	
At southwesternmost intersection of Commercial Way and Foothills Blvd.	#1	Approximately 2,700 feet downstream of Skeet Range Road		Approximately 150 feet downstream of Interstate Highway 5	*629
At intersection of Sierra Road and Sandy Road	#2	Just upstream of Skeet Range Road		Approximately 60 feet downstream of Oasis Road	*64
<i>Tributary No. 2:</i>		Just upstream of Entrance Road		Approximately 3,325 feet upstream of Oasis Road	*66
At confluence with Deadhorse Canyon Creek, 228 feet upstream along Deadhorse Canyon Creek from the State Highway 430 bridge	*6383	<i>Maps are available for review at the Department of Community Development, Engineering Section, 901 Sherman Avenue, Novato, California.</i>		<i>Olney Creek:</i>	
400 feet upstream from the bridge crossing at the intersection of Donalyn Drive and Country Club Drive	*6406	Petaluma (city), Sonoma County (FEMA Docket No. 6932)		Approximately 1,010 feet upstream of Sacramento Drive	*46
<i>Kilpecker Creek:</i>		<i>Petaluma River:</i>		At upstream side of Southern Pacific Railroad	*47
At the confluence of Bitter Creek, located 3,050 feet downstream of Spring Drive	*8247	At U.S. Highway 101		Just upstream of Anderson Cottonwood Irrigation District Canal	*47
At upstream corporate limit	*6302	Just downstream of Payran Street		<i>Clover Creek:</i>	
<i>Maps are available for review at the Department of Public Works, 212 D Street, Rock Springs, Wyoming 82901.</i>		At confluence with North Corona Channel		Approximately 4,650 feet downstream of Meadow View Drive Bridge	*472
		Just upstream of North Petaluma Boulevard (southbound lane)		Approximately 2,700 feet upstream of Meadow View Drive Bridge	*485
		At upstream corporate limits		Approximately 400 feet downstream of Rancho Road Bridge	*504
		<i>Adobe Creek:</i>		Approximately 3,400 feet downstream of Forest Hills Drive	*515
		At confluence with Petaluma River		Approximately 1,280 feet upstream of Forest Hills Drive	*53
		Just downstream of South McDowell Boulevard exit		<i>Salt Creek:</i>	
		Just upstream of Sartori Drive		At confluence with Churn Creek	*614
		Just downstream of Casa Grande Road		Just downstream of Oasis Road	*630
		<i>Thompson Creek:</i>		Approximately 275 feet upstream of Crooked Lane	*64
		Approximately 90 feet downstream of 8th Street Bridge		<i>Boulder Creek:</i>	
		At corporate limits		At confluence with Churn Creek	*56
		<i>Kelly Creek:</i>		Approximately 2,125 feet downstream of Interstate Highway 5	*59
		Just upstream of 8th Street		Just upstream of Interstate Highway 5	*609
				At State Route 273	*621
				At Southern Pacific Railroad	*668
				<i>Oregon Gulch:</i>	
				Approximately 800 feet downstream of Shasta General Hospital	*460
				Approximately 100 feet upstream of Westside Road	

The base (100-year) flood elevations are finalized in the communities listed below. Elevations at selected locations in each community are shown. Any appeals of the proposed base flood elevations which were received have been resolved by the Agency.

PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued		PROPOSED BASE (100-YEAR) FLOOD ELEVATIONS—Continued	
Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)	Source of flooding and location	#Depth in feet above ground. Elevation in feet (NGVD)
At Cedar Street.....	*494	Approximately 10 feet upstream of 42nd Lane.....	*4,591	Approximately 1,500 feet east of Main Street.....	#1
Approximately 2,030 feet upstream of Cedar Street.....	*510	Approximately 10 feet upstream of Olsen Road.....	*4,627	Approximately 500 feet east of Main Street.....	#2
Approximately 3,625 feet upstream of Cedar Street.....	*539	Approximately 1,675 feet upstream of 40th Lane.....	*4,683	<i>West Branch Muddy River:</i>	
<i>Canyon Hollow Creek:</i>		<i>Wild-Horse Dry Creek:</i>		Approximately 1,100 feet downstream of Cooper Avenue.....	*1,259
At confluence with Sacramento River.....	*463	At Lowell Avenue.....	*4,764	Approximately 2,450 feet upstream of Cooper Avenue.....	*1,272
At Anderson Cottonwood Irrigation District Canal.....	*489	Approximately 200 feet downstream of U.S. Highway 50.....	*4,776	Approximately 200 feet downstream of Cottonwood Avenue.....	*1,299
Approximately 25 feet downstream of Market Street (northbound).....	*487	Approximately 200 feet downstream of confluence with Dry Creek.....	*4,610	<i>Dripping Springs Canyon (Alluvial Fan):</i>	
Approximately 50 feet downstream of Canyon Creek Road (upstream crossing).....	*510	Approximately 7,600 feet upstream of confluence with Dry Creek.....	*4,867	Approximately 3,000 feet west of intersection between State Highway 163 (SH163) and Needles Highway, along SH163.....	#1
Approximately 4,365 feet upstream of Canyon Creek Road (upstream crossing).....	*563	<i>Good Night Arroyo:</i>		Approximately 4,300 feet west of intersection between SH163 and Needles Highway along SH163.....	#2
<i>Buckeye Creek:</i>		At old railroad grade.....	*4,722	Approximately 5,300 feet west of intersection between SH163 and Needles Highway along SH163.....	#3
Approximately 2,650 feet downstream of Oasis Road.....	*639	Approximately 200 feet upstream of Aqua Drive.....	*4,750	<i>Bridge Canyon (Alluvial Fan):</i>	
Approximately 825 feet downstream of Oasis Road.....	*650	Approximately 4,500 feet upstream of Red Creek Road.....	*4,874	At intersection between Edison Road and Needles Highway.....	#1
At Oasis Road.....	*658	<i>Dry Creek:</i>		Approximately 4,300 feet south of intersection of State Highway 163 and Needles Highway.....	#1
Maps are available for review at City Hall, 760 Park View Avenue, Redding, California.		Approximately 1,050 feet downstream of Booth Canal.....	*4,621	Approximately 6,500 feet west of Needles Highway.....	#1
COLORADO		At Alchison, Topoka and Santa Fe Railway.....	*4,640	<i>Hiko Springs Canyon (Alluvial Fan):</i>	
Dolores (town), Montezuma County (FEMA Docket No. 8932)		Approximately 20 feet downstream of City of Pueblo corporate limits.....	*4,734	Approximately 9,000 feet due south of intersection of Needles Highway and Edison Road.....	#2
<i>Dolores River:</i>		Maps are available for review at the Pueblo County Department of Planning and Development, 1120 Court Street, Pueblo, Colorado.		Approximately 2,000 feet due west of intersection of Edison Road and Needles Highway.....	#3
Approximately 2,100 feet downstream of downstream edge of 4th Street Bridge.....	*6,924	Route County (unincorporated areas) (FEMA Docket No. 8938)		Approximately 3,100 feet north of intersection of Edison Road and Needles Highway.....	#4
Approximately 95 feet upstream of 8th Street extended.....	*6,943	<i>Yampa River:</i>		Approximately 6,000 feet west of Needles Highway.....	#4
Approximately 1,850 feet upstream of 12th Street extended.....	*6,961	Approximately 4,240 feet downstream of the Denver and Rio Grande Western Railroad.....	*6,573	<i>Southwest Unnamed Canyon (Alluvial Fan):</i>	
Approximately 50 feet upstream of 20th Street extended.....	*6,966	At the confluence with State Creek.....	*6,623	Approximately 11,000 feet south of intersection between Needles Highway and Edison Road, along Needles Highway.....	#1
At the intersection of Central Avenue and 9th Street.....	#2	Just upstream of Stock Drive.....	*6,678	<i>COALESCENT ALLUVIAL FAN AREAS</i>	
Maps are available for review at Town Hall, 420 Central Avenue, Dolores, Colorado.		Approximately 1,690 feet upstream of Stock Drive.....	*6,686	<i>Dripping Springs Canyon or Bridge Canyon (Alluvial Fan):</i>	
Morgan County (unincorporated areas) (FEMA Docket No. 8946)		Approximately 3,800 feet downstream of Tree Haus Road.....	*6,738	At intersection of Edison Road and Casino Road.....	#1
<i>Beaver Creek:</i>		Approximately 150 feet upstream of Routt County Road 14F.....	*6,777	Maps are available for review at the office of the Director of Public Works, Clark County Bridge Building, 225 Bridge Avenue, Las Vegas, Nevada.	
Between eastbound and westbound lanes of Interstate Highway 76.....	*4,229	At Routt County Road 22.....	*6,806		
At Old Old Road.....	*4,239	Approximately 1,115 feet downstream of Colorado State Highway 131.....	*6,836		
Approximately 9,800 feet upstream of confluence with Upper Platte River and Beaver Canal.....	*4,256	Approximately 7,460 feet upstream of Colorado State Highway 131.....	*6,861		
Maps are available for inspection at the Morgan County Planning and Zoning Department, 216 West Kiowa, Fort Morgan, Colorado.		<i>Elk River:</i>			
Pueblo County (unincorporated areas) (FEMA Docket No. 8946)		Approximately 370 feet downstream of Routt County Road 58.....	*7,162		
<i>St. Charles River:</i>		Just downstream of Routt County Road 62.....	*7,220		
Approximately 3,100 feet downstream of Ford Road.....	*4,572	Approximately 500 feet downstream of Colorado State Highway 129.....	*7,271		
At 27th Lane.....	*4,681	Maps are available for review at the Office of the County Engineer, Routt County, 136 6th Street, Steamboat Springs, Colorado 80477.			
Approximately 20 feet upstream of Denver and Rio Grande Western Railroad.....	*4,866	NEVADA			
Approximately 20 feet downstream of Interstate Highway 25.....	*4,965	Clark County (unincorporated areas) (FEMA Docket No. 8946)			
Approximately 1,600 feet upstream of confluence with Stinking Arroyo.....	*5,088	<i>Muddy River:</i>			
<i>Salt Creek:</i>		At Fish and Game Diversion Structure.....	*1,240		
At confluence with Arkansas River.....	*4,647	At Cooper Avenue.....	*1,280		
At U.S. Highway 277.....	*4,647	Approximately 150 feet upstream of Gubler Avenue.....	*1,358		
Approximately 100 feet downstream of U.S. Highway 50.....	*4,654	Approximately 6,000 feet upstream of State Highway 169.....	*1,422		
Approximately 50 feet upstream of Burlington Northern Railroad.....	*4,850	At confluence with Weiser Wash.....	*1,492		
Approximately 100 feet downstream of St. Charles Reservoir No. 3 Outlet.....	*4,960	At Interstate Highway 15.....	*1,521		
Approximately 5,500 feet upstream of old railroad grade.....	*5,110	Area west of intersection between Rice Street and Gubler Road.....	*1,556		
<i>Stamile Creek:</i>		At intersection of State Highway 169 and Navajo Road.....	#1		
Approximately 900 feet downstream of U.S. Highway 50.....	*4,525	Approximately 6,000 feet north and 1,400 feet west of the intersection of Cooper Avenue and Virginia Street.....	#1		
Approximately 110 feet downstream of Grant Road.....	*4,570	<i>Overton Wash:</i>			
		Approximately 350 feet downstream of Main Street.....	#2		
		Approximately 4,000 feet upstream of Union Pacific Railroad (UPRR).....	*1,311		
		Approximately 12,300 feet upstream of UPRR.....	*1,437		

SUMMARY: This document substitutes FM Channel 262C2 for Channel 261A at Grayling, Michigan, and modifies the license for Station WQON to specify the new channel in response to a counterproposal filed by Dittmer Broadcasting Company, Inc. The coordinates for Channel 262C2 are 44-28-36 and 84-47-30. The notice in this proceeding was issued in response to a petition filed by Andrew L. Banas requesting substitution of Channel 262C2 for 261A at Bear Lake, Michigan, and modification of its construction permit for Station WRQT to specify the higher class channel.

After comparative evaluation of the communities to determine which could provide a new service to the largest population within the gain areas of the predicted C2 service contours, the Commission concluded that the Grayling proposal should prevail. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 20, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-182, adopted May 15, 1989, and released June 5, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—(AMENDED)

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended, under Michigan by removing Channel 261A and adding Channel 262C2 at Grayling.

Federal Communications Commission.

Karl Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-14055 Filed 6-13-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

RIN 2127-AB91

[Docket No. 87-08; Notice 3]

Federal Motor Vehicle Safety Standards; Occupant Crash Protection

AGENCY: National Highway Traffic Safety Administration (NHTSA) DOT.
ACTION: Final rule.

SUMMARY: This rule establishes a new requirement for lap/shoulder safety belts to be installed at all forward-facing rear outboard seating positions in passenger cars. Rear-seat lap/shoulder belts are estimated to be even more effective than rear-seat lap-only belts in reducing fatalities and moderate-to-severe injuries. As safety belt use in the rear seat increases, the greater effectiveness of rear-seat lap/shoulder belts should yield progressively larger benefits in terms of reduced fatalities and moderate-to-severe injuries. NHTSA anticipates that this rule requiring rear-seat lap/shoulder belts will help increase safety belt use in the rear seats, by providing rear seat occupants with maximum safety protection when they buckle up.

DATES: This final rule takes effect on December 11, 1989. All passenger cars, other than convertibles, manufactured on or after that date must be equipped with rear-seat lap/shoulder belts that comply with this rule.

Any petitions for reconsideration of this rule must be received by NHTSA no later than July 14, 1989.

ADDRESS: Any petitions for reconsideration should refer to Docket No. 87-08; Notice 3 and be submitted to: Administrator, NHTSA, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Dr. Richard Strombotne, Chief, Crashworthiness Division, NRM-12, Room 5320, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202-366-2264).

SUPPLEMENTARY INFORMATION: Standard No. 208, *Occupant Crash Protection* (49 CFR 571.208) currently requires vehicle manufacturers to install a seat belt assembly that conforms to Standard No. 209, *Seat Belt Assemblies*, at every rear designated seating position in passenger cars, trucks, and multipurpose passenger vehicles. Manufacturers are permitted to choose between installing a Type 1 (lap-only) or Type 2 (lap/shoulder) safety belt system. Until recently, most

manufacturers chose to comply with this requirement by installing lap-only safety belts at rear designated seating positions.

When the agency gave manufacturers the option of installing either a lap-only or lap/shoulder belt at each rear designated seating position, the available evidence showed that both types of belt systems were effective in reducing the risk of death and serious injury in a crash. A number of studies since that time have evaluated thousands of cases and repeatedly concluded that lap-only belts are, in fact, substantially effective in preventing deaths and reducing injuries. While there are individual cases where lap-only belts may have failed to prevent injury, NHTSA knows of no comprehensive study by any person or organization that concludes that rear seat lap belts are anything less than effective in reducing overall crash risks for those occupants. The agency again strongly encourages rear seat occupants to use whatever type of safety belt is available, whether lap-only or lap/shoulder, just as front seat occupants should always buckle up.

Even so, NHTSA believes that lap/shoulder belts would be even more effective than lap-only belts in rear seating positions. In past years, however, rear seat occupants infrequently used their safety belts, which were almost always the lap-only type, with usage rates far lower than for front-seat occupants. For example, approximately 2 percent of rear seat occupants wore their safety belts in 1981-82. With that very low rate of belt use, the safety benefits (in terms of reduced deaths and injuries) of lap/shoulder belts vs. lap-only belts at those rear seating positions would have been negligible, but would have imposed substantially greater costs. In 1984, NHTSA estimated the cost differential to be an additional \$20 per rear seating position equipped with lap/shoulder belts. After considering these facts, and the far greater need for improved front seat occupant protection, the agency decided that it could not then justify a requirement for lap/shoulder belts at rear seating positions.

In August 1986, a petition was filed with the agency by the Los Angeles Area Child Passenger Safety Association. This petition asked NHTSA to require the installation of lap/shoulder belts in rear seating positions. The agency decided to grant this petition and reexamine the issue. Accordingly, on June 16, 1987, NHTSA published an advance notice of proposed rulemaking (ANPRM),

requesting comments on the need for rulemaking to require lap/shoulder belts in rear seating positions (52 FR 22818). Thirty-four commenters responded to the ANPRM.

After considering these comments, NHTSA concluded that several factors had changed since the previous considerations of this subject. Among the changed factors were the following:

1. *Safety Belt Use in Rear Seating Positions Had Increased Substantially.* Safety belt use in rear seats had increased eightfold from the two percent use rate in 1981-82 to 16 percent use in 1987. The primary factors responsible for the dramatic increase in safety belt use were State safety belt use laws. As of April 1989, these laws were in place in 32 States and the District of Columbia. As the number of States with safety belt use laws continues to grow, along with expanded belt-use campaigns and greater public awareness of the benefits of wearing safety belts, there is every reason to believe that the rate of belt use by rear-seat occupants will continue to increase as well.

2. *The Greater Effectiveness of Rear Seat Lap/Shoulder Belts Had Become a Significant Factor with the Increase in the Use of Rear Seat Belts.* NHTSA estimates that rear-seat lap-only belts are 32 percent effective in reducing the risk of death, while rear seat lap/shoulder belts would be 41 percent effective in reducing the risk of death. As more rear-seat occupants use their safety belts, the nine percentage point greater effectiveness for lap/shoulder belts will result in progressively greater safety benefits.

3. *As Manufacturers Voluntarily Chose to Equip Their Vehicles with Rear Seat Lap/Shoulder Belts, the Costs Associated with a Requirement for Rear Seat Lap/Shoulder Belts were Proportionally Diminished.* When the agency examined this issue on previous occasions, the vast majority of vehicles were equipped with lap-only safety belts at rear seating positions. The costs of adding lap/shoulder safety belts to the rear seating positions of nearly every new vehicle were substantial. In preparing the ANPRM on this subject, NHTSA assumed that rear outboard seat lap/shoulder belts would not otherwise be installed in passenger cars unless required by regulation, and estimated the total costs for equipping the new-car fleet to be approximately \$140 million annually.

However, vehicle manufacturers have voluntarily chosen to equip more and more of their vehicles with rear-seat lap/shoulder belts. For example, nearly every 1990 model year passenger car would have been voluntarily equipped

with rear outboard seat lap/shoulder belts. The incremental costs associated with a NHTSA requirement would reflect only the costs of installing rear-seat lap/shoulder belts in the small portion of the fleet that would not have those belts voluntarily installed, or approximately \$790,000, a substantial decrease from the agency's previous estimates of such costs.

After analyzing the effects of these changed factors and the comments received on the ANPRM, NHTSA tentatively determined that a requirement for lap/shoulder belts in rear seating positions would now be justified. Accordingly, NHTSA published a notice of proposed rulemaking (NPRM) on November 29, 1988 (53 FR 47982). This NPRM was a comprehensive proposal. It proposed to require that all passenger cars, other than convertibles, manufactured on or after September 1, 1989, be equipped with lap/shoulder safety belts at all forward-facing rear outboard seating positions. It proposed further that convertible passenger cars and trucks, multipurpose passenger vehicles, and buses with a gross vehicle weight rating of 10,000 pounds or less manufactured on or after September 1, 1991, be equipped with lap/shoulder safety belts at all forward-facing rear outboard seating positions. The NPRM also proposed that rear-seat lap/shoulder belts be equipped with a particular type of retractor, that such belts be integral (i.e., the lap belt could not be detachable from the shoulder belt), that rear-seat lap/shoulder belts comply with some of the comfort and convenience requirements specified in section S7.4 of Standard No. 208, and that the anchorages for the rear-seat lap/shoulder belt assemblies comply with the requirements of Standard No. 210, *Seat Belt Assembly Anchorages* (49 CFR § 571.210).

The comment period for the NPRM closed on January 30, 1989. More than 70 comments were received on the NPRM. The commenters generally agreed with the proposal to require lap/shoulder belts at forward-facing rear outboard seating positions, at least in passenger cars other than convertibles. However, the commenters raised a number of concerns with and objections to specific details of the NPRM, including the vehicle types other than passenger cars that should be required to be equipped with rear-seat lap/shoulder belts, the retractors with which those lap/shoulder belts should be equipped, compatibility with child restraint systems, the definition of an "outboard seat," the details of the comfort and convenience requirements, and the

requirements for tension-relieving devices on these belts.

NHTSA will need some additional time to properly analyze and evaluate each of these comments on the detailed aspects of the proposal, and to formulate the agency response and appropriate regulatory requirements for each of these aspects. If the agency were to take no final rulemaking action while it is preparing its position on each of these issues, the effect would be to delay the issuance and effective date of the basic requirement to install rear-seat lap/shoulder belts in all vehicles including passenger cars. Yet it is this basic requirement that will offer the public most of the safety benefits that were contemplated by the agency when it published the NPRM. While NHTSA believes that additional incremental safety benefits will result from requirements adopting detailed installation requirements, such as those proposed in the NPRM, it would appear unwise and inappropriate for the agency to deny the public the benefits of a basic requirement for rear-seat lap/shoulder belts until the agency can complete its work on those installation requirements.

To ensure the earliest possible implementation of a requirement for rear-seat lap/shoulder belts, NHTSA has decided to take final action on its proposal in two steps. The first step consists of this rule, which addresses only passenger cars other than convertibles with a general requirement for lap/shoulder belts at rear outboard seating positions. The second step will consist of NHTSA's decision regarding each of the detailed proposals for rear-seat lap/shoulder belts set forth in the NPRM. NHTSA will also treat the second step of this rulemaking as a high priority action, to ensure that the incremental benefits are available in a timely fashion.

With the exception of Ford Motor Company (Ford) and Subaru, the commenters were essentially unanimous in their support for the agency's proposal to require rear-seat lap/shoulder belts in all 1990 and subsequent model year passenger cars other than convertibles.

Ford commented that it had planned to voluntarily provide rear-seat lap/shoulder belts in most of its cars by September 1, 1989, regardless of any regulatory requirements. However, Ford stated that it had not planned to provide rear-seat lap/shoulder belts in one of its car lines by that date, because production of the current design of that line will be phased out during the 1990 model year. Accordingly, Ford commented that "a 1989 effective date

might well compel Ford to stop production of that line," but that Ford could meet the proposed passenger car requirements for all its cars manufactured on or after September 1, 1990. NHTSA contacted Ford to obtain more detailed information about these assertions.

Ford explained that its asserted problem arose from the proposed requirement that rear-seat lap/shoulder belts be integral. However, Ford did plan to offer retrofit shoulder belt kits for the rear seats of the single line which it was not planning to equip with rear-seat lap/shoulder belts for the 1990 model year. These retrofit kits would consist of separate manually adjustable shoulder belt and buckle assemblies to supplement the lap-only belts already installed in the vehicle. The installation of these retrofit kits involves no change to the existing lap belts. Instead, the upper ends of the shoulder belts are attached to the upper anchorages required by Standard No. 210 to be in the car at all forward-facing rear outboard seating positions. The lower ends of the shoulder belts are attached to the inboard anchorages for the existing lap belts, by loosening the bolt anchoring the lap belt, inserting the attachment hardware for both the lap belt and the shoulder belt on that bolt, and then retightening and properly torquing the bolt. After the retrofit, the installed safety belt system consists of a lap belt with its own buckle and retractor, and a shoulder belt with its own buckle and manual adjusting device. Such a design would not comply with the proposed requirement that the lap/shoulder belts be integral.

Ford asserted that it could not comply with a requirement for *integral* lap and shoulder belts for the rear outboard seating positions of this single line. According to Ford, it would not be acceptable simply to use an integral lap/shoulder belt assembly and attach the upper end of the shoulder belt assembly to the anchorages installed in the car in compliance with Standard No. 210. While such a system would comply with the applicable and proposed NHTSA regulatory requirements, Ford indicated that such a safety belt system would not necessarily be optimized for kinematic performance, belt comfort, restraint system integrity, and the like. Because of these concerns, Ford indicated that it was moving the anchorages for rear outboard seats in most of its car lines to optimally accommodate factory-installed integral lap/shoulder belts.

Ford also indicated that it was simply not possible for it to complete the necessary testing and design

modifications and incorporate those changes into production for the current design of the line in question within the period proposed in the NPRM (i.e., by September 1, 1989) Ford asserted that it would need at least 42 weeks of leadtime to begin production of cars in this line with integral lap/shoulder belts in the rear. Additionally, Ford stated that the successor vehicle for this line would have integral lap/shoulder belts at the rear outboard seating positions. Thus, instead of making the investment in design, testing, and production changes for a car line that will not be produced after April 1990, Ford indicated that it might stop production of that line eight months earlier than is now planned.

When NHTSA issued the NPRM, the agency believed that Ford would voluntarily install rear-seat lap/shoulder belts on all of its 1990 car lines. Since that is not the case, and since Ford faces special difficulties in bringing one of its car lines into compliance, the agency's must revise its tentative conclusion that a September 1, 1989 effective date was practicable for a requirement for *integral* rear-seat lap/shoulder belts. This final rule reflects a balancing of the need to ensure that any new requirements in the safety standards are "practicable" (as required by the Safety Act) with the public safety benefits from the earliest practicable effective date for these requirements. The agency is therefore adopting a schedule of effective dates that addresses both these needs, as described below.

Subaru's objection to the proposed requirement was based on the fact that one of its models (the Loyale station wagon) is already voluntarily equipped with rear-seat lap/shoulder belts, but the anchorage for the upper end of the shoulder belt is outside the anchorage location zones specified in Standard No. 210. Some background information on this situation may be helpful.

Subaru previously sought an interpretation from NHTSA as to whether the company would be permitted to use an anchorage location outside of the zones specified in Standard No. 210 for the upper anchorage of voluntarily-installed rear-seat lap/shoulder belts. In an October 13, 1988 interpretation letter to Mr. Paul Utans of Subaru, NHTSA responded that components voluntarily installed in addition to required safety systems are not themselves required to comply with the safety standards, provided that the additional components do not diminish the ability of the required systems to comply with the safety standards. In this case, the shoulder belts were voluntarily

installed by Subaru, so the shoulder-belt portions of the lap/shoulder belt systems were not required to comply with the anchorage location requirements in Standard No. 210 or any other of the requirements in the safety standards. Instead, the only limitation on the voluntarily installed shoulder-belts was that they could not diminish the ability of the required lap belts to comply with the safety standards. This letter concluded by noting that this interpretation would no longer apply if NHTSA adopted a final rule requiring rear-seat lap/shoulder belts in passenger cars, because the interpretation was based upon the voluntary nature of the shoulder-belt installation.

Because of this interpretation, Subaru correctly assumed in its comments that the upper anchorages for the rear-seat lap/shoulder belts in its Loyale station wagons would have to comply with all requirements of Standard No. 210, including the location requirements, if the proposed rule were adopted as a final rule and became effective. This would obligate Subaru to redesign the rear-seat lap/shoulder belt system in its Loyale station wagon, conduct testing of the redesign, and incorporate the redesign into production. In comments similar to those of Ford, Subaru asserted that the proposed leadtime until September 1989 was too short, but that vehicles manufactured after September 1990 could comply with the proposed requirements.

When NHTSA proposed that this rule become effective nine months after the NPRM was published, the agency recognized that this amount of leadtime was substantially less than is frequently proposed for other significant rulemakings. This foreshortened leadtime reflected NHTSA's belief that manufacturers would not need to make engineering or design changes to install lap/shoulder belts in the rear outboard seating positions of passenger cars other than convertibles, especially in view of the substantial commitments for voluntary installation of such belts. See the discussion under the heading, 9. *Proposed Timing for Applying These Requirements to Vehicle Types*, in the preamble to the NPRM (53 FR 47991). The Ford and Subaru comments show instances where the agency's tentative conclusions about the sufficiency of the leadtime were inaccurate, because those manufacturers would need to make engineering and design changes to comply with the proposed requirements.

After reviewing the comments, NHTSA does not believe that a final rule would be "practicable" if it were

effective in September 1989 and adopted all of the NPRM's proposed requirements for integral rear-seat lap/shoulder belts using anchorages that comply with Standard No. 210. However, a final rule adopting a general requirement for rear-seat lap/shoulder belts effective six months after publication of this final rule would be practicable, if the requirements did not require integral belts or complying anchorages. This general requirement would ensure all cars had lap/shoulder belts installed as original equipment in the rear-seat. Some production changes might still be needed, since Ford had not planned to install the shoulder belt retrofit kits as original equipment in the single line discussed above. However, these production changes would be practicable 180 days after publication of this rule.

Accordingly, NHTSA has decided to adopt a general requirement that passenger cars other than convertibles be equipped with rear-seat lap/shoulder belts, beginning 180 days after this rule is published. This general requirement specifically excludes these rear-seat safety belts from the existing requirements that lap/shoulder belts be integral and that anchorages comply with all requirements of Standard No. 210. These exclusions will expire August 31, 1990. Hence, all passenger cars other than convertibles manufactured on or after September 1, 1990, must have integral rear-seat lap/shoulder belts and use shoulder belt anchorages that comply with all requirements of Standard No. 210.

As noted above, the second step of the agency's final action in this rulemaking will address all of the detailed proposals set forth in the NPRM for all the vehicle types. The issue of the retractor type that should be required for passenger car rear-seat lap/shoulder belts, and its compatibility with child restraint systems, will be addressed during that second step, not in this rule. This rule leaves the existing provisions of S7.1.1 of Standard No. 208 in place. Those provisions require that the lap belt adjust by means of either an automatic locking retractor (ALR) or an emergency locking retractor (ELR), and the shoulder belt adjust by means of either an ELR or a manual adjusting device. That second rule will also address vehicles other than passenger cars, as well as the definition of an "outboard seat," details of the comfort and convenience requirements, special requirements for tension-relieving devices on these belts, and the other issues raised in comments on the NPRM.

Economic and Other Impacts of This Rule

NHTSA has analyzed this rule and determined that it is not "major" within the meaning of Executive Order 12291, but that it is "significant" within the meaning of the Department of Transportation regulatory policies and procedures, because of the public interest in this rule. Because the rule is "significant," NHTSA has prepared a Final Regulatory Evaluation (FRE), and a copy of the FRE has been placed in the docket for this rulemaking action. A copy of the FRE may be obtained by writing to: Docket Section, NHTSA, Room 5109, 400 Seventh Street, SW., Washington, DC 20590.

Additionally, the agency has analyzed the effects of this rule on small entities, in accordance with the Regulatory Flexibility Act. Based on this analysis, I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Few, if any, of the vehicle manufacturers qualify as small entities. To the extent that any vehicle manufacturers qualify as small entities, their number would not be substantial. The requirements will not affect the manufacturing process of any safety belt manufacturers that are small entities, nor will it significantly affect the retail price of vehicles purchased by any small organizations or small governmental units.

The agency has also analyzed this rule under the National Environmental Policy Act and determined that it will not have a significant effect on the human environment.

This rule has also been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

PART 571—[AMENDED]

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.208 [Amended]

2. S4.1.4 of Standard No. 208 is revised to read as follows:

S4.1.4 *Passenger cars manufactured on or after September 1, 1989.*

S4.1.4.1 Except as provided in S4.1.5 and S4.1.4.2, each passenger car manufactured on or after September 1, 1989 shall comply with the requirements of S4.1.2.1. Until September 1, 1993, each car whose driver's designated seating position complies with the requirements of S4.1.2.1(a) by means not including any type of seat belt and whose right front designated seating position is equipped with a manual Type 2 seat belt that meets the requirements of S5.1, with the Type 2 seat belt assembly adjusted in accordance with S7.4.2, shall be counted as a vehicle complying with S4.1.2.1. A vehicle shall not be deemed to be in noncompliance with this standard if its manufacturer establishes that it did not have reason to know in the exercise of due care that such vehicle is not in conformity with the requirement of this standard.

S4.1.4.2 (a) Each passenger car, other than a convertible, manufactured on or after December 11, 1989, and before September 1, 1990, shall be equipped with a Type 2 seat belt assembly at every forward-facing rear outboard designated seating position. Type 2 seat belt assemblies installed in compliance with this requirement shall comply with Standard No. 209 (49 CFR 571.209) and with S7.1.1 of this standard.

(b) Each passenger car, other than a convertible, manufactured on or after September 1, 1990, shall be equipped with an integral Type 2 seat belt assembly at every forward-facing rear outboard designated seating position. Type 2 seat belt assemblies installed in compliance with this requirement shall comply with Standard No. 209 (49 CFR 571.209) and with S7.1.1 and S7.2 of this standard.

§ 571.210 [Amended]

3. The introductory text of S4.3 of Standard No. 210 is revised to read as follows:

S4.3 *Location.* As used in this section, "forward" means the direction in which the seat faces, and other directional references are to be interpreted accordingly. Anchorages for automatic seat belt assemblies and for dynamically tested seat belt assemblies that meet the frontal crash protection requirements of S5.1 of Standard No. 208 (49 CFR 571.208) are exempt from the location requirements of this section. Anchorages are exempt from the requirements of S4.3.2 of this standard, if those anchorages are for the upper torso portion of a Type 2 seat belt

assembly installed at a forward facing rear outboard seating position of a passenger car, other than a convertible, that is manufactured on or after December 11, 1989 and before September 1, 1990.

Issued on June 9, 1989.

Jeffrey R. Miller,
Deputy Administrator.
[FR Doc. 89-14083 Filed 6-12-89; 10:00 am]
BILLING CODE 4910-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 675

[Docket No. 90369-9069]

Foreign Fishing, Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Emergency interim rule, extension of effective date.

SUMMARY: An emergency interim rule that closes certain areas of the Bering Sea to fishing with trawl gear is in effect until June 13, 1989. The Secretary of Commerce (Secretary) extends this emergency interim rule for an additional 90 days, through September 11, 1989. This action is necessary to maintain protection of the identified prohibited species, especially red king crab, from interaction with trawl gear. The intended effect is to assure the conservation of prohibited species until more permanent controls on bycatch are implemented.

EFFECTIVE DATES: June 13, 1989 until September 11, 1989.

ADDRESS: A copy of the environmental assessment (EA) supporting this action may be requested from Steven Pennoyer, Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802-1668.

FOR FURTHER INFORMATION CONTACT: Jay J.C. Ginter (Fishery Management Biologist, NMFS), 907-586-7229.

SUPPLEMENTARY INFORMATION: The Secretary promulgated an emergency interim rule under section 305(e)(1) of the Magnuson Fishery Conservation and Management Act (Magnuson Act) to prevent excessive bycatches of Pacific halibut, and *C. bairdi* Tanner and red king crabs in the Bering Sea groundfish fisheries (54 FR 11376, March 20, 1989; corrected at 54 FR 12989, March 29, 1989). This rule was effective for 90 days, from March 15, 1989 until June 13,

1989. The Secretary finds that conditions justifying the emergency action remain unchanged. At its meeting of April 12-14, 1989, the North Pacific Fishery Management Council (Council) reviewed the conditions warranting, and the effect of, the emergency interim rule and recommended that it should be extended for an additional period of time. Therefore, the Secretary is extending the effectiveness of the emergency interim rule by this repromulgation for an additional 90 days under section 305(e)(3)(B) of the Magnuson Act. Further background and descriptive information is contained in the preamble of the original promulgation of this emergency interim rule.

Comments Received

Comments on the EA supporting the original promulgation of the emergency interim rule were invited until April 14, 1989. One letter of comment was received during the comment period. It is summarized and responded to below. Numerous other letters were received before and after the comment period concerning bycatch management in the Bering Sea subarea. Letters in opposition to such management by the emergency interim rule focused on the issues raised in the comment summarized below. Other letters favored emergency action but requested implementation of the Council's specified bycatch limits. The Secretary decided against such action as it would imply approval of the recommended limits in Amendment 12a to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea/Aleutian Islands (Amendment 12a) prior to the statutory review period. Instead, the Secretary took the recommended limits under advisement and protected the area most critical to crab and halibut with a prohibition on trawling. For interim management purposes, this approach balances prevention of excessive bycatch of crab and halibut with the domestic harvest of allowable amounts of groundfish.

Comment: There is no bycatch-related emergency. There is no indication that current levels of crab or halibut bycatch in the groundfish fishery threaten biological harm to those resources or economic harm to commercial crab and halibut fisheries. The commercial king crab fishery actually has a high bycatch rate of immature males and females that must be discarded, and the Tanner crab fishery also may have a red king crab bycatch of millions of animals.

The need for the trawl fishery closure between 160° and 162° W. longitude south of 58° N. latitude should be re-

examined in light of the shift of the red king crab population to the west. There is no justification for closing the entire area between 162° and 163° W. longitude south of 58° N. latitude, since the northern half of this corridor has few female red king crabs. There is no justification for closing any part of the 162°-163° W. longitude corridor to midwater trawling since those operations have insignificant rates of crab bycatch, and such closures force midwater trawl operations into other areas such as the Gulf of Alaska. The period of any closure of the 162°-163° W. longitude corridor should be limited to the "soft shell" period for red king crab.

The imposition of bycatch limits only on the trawl fishery is unfair and discriminatory. A reasonable bycatch control regime must take into account the contribution of every fishery to the bycatch "problem." The crab bycatch limits are clearly inadequate and unfair to trawlers. Imposition of these limits would violate several national standards against which all Magnuson Act measures must be judged.

For the above reasons, the emergency interim rule should be modified to: (a) Allow midwater trawling throughout the 162°-163° W. longitude corridor, (b) allow bottom trawling in the northern half of the 162°-163° W. longitude corridor, and (c) allow trawlers with scientific observers on board to fish in the area between 160° and 162° W. longitude to collect data and evaluate the necessity of maintaining this as a closed area. No area closures or gear restrictions should be made in addition to those already imposed and any effort to protect crab stocks from trawl bycatch should evaluate the groundfish catches that are foregone by such action.

Response: No modification to the original promulgation of the emergency interim rule was made for the following reasons. An emergency did exist in the first quarter of 1989 and continues to exist. The purpose of this emergency interim rule is to prevent excessive bycatches of prohibited species while allowing the groundfish fisheries adequate opportunity to harvest the total allowable catch. The Secretary has determined that excessive bycatches of prohibited species would occur unless the emergency interim rule is in effect. NOAA is aware of the bycatch of immature male and female red king crabs in the commercial fishery for red king crabs and the bycatch of red king crabs in the Tanner crab fishery. These crab fisheries are managed by the State of Alaska Department of Fish and Game (ADF&G), which closed the Tanner crab

fishery in the Bering Sea on May 7, 1989, partly because of excessive red king crab bycatches (ADF&G emergency order No. 4-S-09-89). Other reasons included the imminent molting period, during which time bycatch mortality increases, and a lower than expected catch per unit effort. Further, a complete closure of the red king crab fishery is possible due to the current severe low abundance of this species, although this decision will not be made by the ADF&G until after the 1989 crab survey is complete. Hence, NOAA does not perceive an unfair bycatch regulatory burden being imposed on trawlers.

NOAA agrees that recent data on the distribution of red king crabs indicate a shift to the west. This is the principal reason why the Secretary closed the area between 162° and 163° W. longitude south of 58° N. latitude, in addition to the "traditional" closed area between 160° and 162° W. longitude south of 58° N. latitude. Currently, NOAA is re-examining the efficacy of redrawing the closed area boundaries. Based on the most recent crab survey data (distribution and abundance data collected during June and July 1988), about 26.5 percent of the total red king crab population in the eastern Bering Sea occurred between 160° and 162° W. longitude south of 58° N. latitude and north of the Alaska Peninsula. Although this proportion of the population is less than it has been in recent years, it is nevertheless significant. Based on the same data, the adjacent area, between 162°-163° W. longitude, contains about 48.4 percent of the total red king crab population in the eastern Bering Sea. Together, these two areas, which are closed (with certain exceptions) to trawling under the emergency interim rule, contain about 75 percent of the red king crab population.

NOAA agrees also that there are relatively few mature female red king crabs in the northern half (between 56°30' and 58° N. latitude) of the 162°-163° W. longitude corridor. Crab survey data indicate that within this corridor, the red king crab population seems most abundant between 55°30' and 56°30' N. latitude which contains about 41.2 percent of the total population in the eastern Bering Sea. However, a significant proportion of the mature male crabs, about 15.4 percent of the total mature male red king crab population, occurs in the northern half of the 162°-163° W. longitude corridor. The entire corridor contains about 27 percent of the mature male population

which is comparable to the 31 percent contained in the 160°-162° W. longitude area that is nearly twice the size of the corridor area. These mature male animals are the most valuable to the commercial red king crab fishery and would most immediately impact that fishery if the mature males were unprotected from interaction with trawl gear. For this reason, the Secretary is continuing the closure of the 162°-163° corridor and not limiting it to the mating and molting ("soft shell") period as recommended by the Council.

As its name implies, midwater or off-bottom trawl gear usually does not operate in contact with the sea bottom where crabs live. Therefore, such trawl gear often has substantially lower bycatch rates than bottom trawl gear. This appears especially true when midwater gear is used during the first 4 months of the year to harvest pollock in spawning aggregations. However, midwater trawl gear can be rigged at other times to catch fish very close to the sea bottom, for example, pollock in more dispersed feeding schools during the summer. The bycatch rates of midwater gear operated close to the bottom may be significantly greater than when the gear is operated higher in the water column. As such, there is no way for NOAA to verify whether any particular midwater trawl is being operated at a depth that will minimize its bycatch. Bycatch data from an on-board observer could indicate that at certain times a midwater trawl probably was fishing very close to the bottom relative to other times, but this would involve "after-the-fact" reconstruction of fishing behavior. Hence, regardless of the presence of observers, NOAA has no way of being certain that midwater trawl gear will not also catch crabs and halibut. Therefore, the Secretary is not modifying the constraint on using midwater trawl gear in the closed area. Although closed areas force fishing activities to relocate to other areas, NOAA is convinced that closure of the area will not prevent or significantly impede attainment of the allowable harvest of groundfish.

The emergency Interim rule does not impose the Council's recommended overall bycatch limits on the trawl fishing industry. The preamble to the original promulgation of the emergency Interim rule states (at 54 FR 11379) only that the bycatch limits recommended by the Council at its January 1989 meeting would guide the Secretary in deciding whether additional regulatory controls

on bycatch are warranted. This does not necessarily imply automatic closure of other areas when the recommended bycatch limits are attained. A final decision by the Secretary on whether to approve and implement the Council's recommended bycatch limits in Amendment 12a must be made by July 7, 1989.

List of Subjects

50 CFR Part 611

Fisheries, Foreign fishing.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Dated: June 9, 1989.

James E. Douglas, Jr.,
Deputy Assistant Administrator for Fisheries,
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR Part 611 is amended as follows:

PART 611—FOREIGN FISHING

1. The authority citation for Part 611 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*, 16 U.S.C. 971 *et seq.*, 22 U.S.C. 1971 *et seq.*, and 16 U.S.C. 1361 *et seq.*

§ 611.93 [Amended]

2. In § 611.93, the effective date for which paragraph (c)(2)(ii) was amended by temporarily suspending paragraphs (F) and (G) and temporarily adding new paragraphs (H) and (I) should be revised to read June 13, 1989 until September 11, 1989.

PART 675—GROUND FISH OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

3. The authority citation for Part 675 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 675.7 [Amended]

4. In § 675.7, the effective date for which paragraph (c) is temporarily added, is revised to read June 13, 1989 until September 11, 1989.

§ 675.22 [Amended]

5. The effective date for which § 675.22 is temporarily added should be revised to read June 13, 1989 until September 11, 1989.

[FR Doc. 89-14143 Filed 6-9-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-88-205]

Shelled Pistachio Nuts; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This rule proposes the establishment of voluntary United States Standards for Grades of Shelled Pistachio Nuts. The California Pistachio Association, an industry group, has requested the U.S. Department of Agriculture to develop these standards. One purpose of the standards would be to provide a common trading language for this product. The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and maintain current U.S. grade standards.

DATE: Comments must be postmarked or courier dated on or before August 14, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this proposal. Comments must be sent in duplicate to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, Room 2056 South Building, Washington, DC 20090-6456. Comments should make reference to the date and page number of this issue of the Federal Register and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Thomas G. Gambill, at the above address or call (202) 447-2185.

SUPPLEMENTARY INFORMATION: This rule has been reviewed under Executive Order 12291 and Departmental

Regulation 1512-1 and has been designated as "nonmajor."

Pursuant to the requirements set forth in the Regulatory Flexibility Act, the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. The proposed rule for establishment of U.S. Standards for Grades of Shelled Pistachio Nuts will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, the standards are voluntary, so members of the pistachio nut industry need not have their product certified under these standards, thereby incurring no costs at all.

The U.S. pistachio nut industry began in California in the late 1960's and early 1970's with the planting of several thousand acres of pistachio trees. Production began in 1977 and the first true commercial harvest of 17.2 million pounds occurred in 1979. Since that time, U.S. production has increased dramatically. In 1974, Iran, Turkey, and Syria accounted for 96 percent of the world pistachio crop. Eight years later, the U.S. industry harvested 43.4 million pounds, a record 32 percent of world production. The U.S. harvest increased to 63.1 million pounds in 1984 and according to the California Pistachio Commission production is expected to grow to 92 million or more pounds in 1990.

The U.S. industry began working toward a uniform trading language in the form of industry standards as early as 1977. However, these standards were subject to frequent changes, were not used industry wide, and were not recognized internationally. In late 1981, the California Pistachio Association formally asked the U.S. Department of Agriculture (USDA) to develop U.S. Standards for Grades of Pistachio Nuts in the Shell. A Final Rule was published in the Federal Register and the United States Standards for Grades of Pistachio Nuts in the Shell [7 CFR 51.2540-51.2546] became effective on August 4, 1986.

In 1988, the California Pistachio Association requested the USDA to develop U.S. Standards for Grades of

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Shelled Pistachio Nuts based on a proposal developed by their Grades and Standards Committee. According to the association, the demand for pistachio kernels is constantly increasing, both as a whole nutmeat or in a chopped form. At the onset of requesting U.S. standards for pistachio nuts in the shell, the association's intent was to eventually request the development of standards for shelled pistachios.

According to the California Pistachio Commission, 1,721,755 pounds of nutmeats were imported from major countries in the crop year 1986-87. U.S. shipments (those nutmeats grown and harvested in the United States) included 3,881,074 pounds shipped domestically and 628,560 pounds being exported for a total of 4,509,634 pounds. Thus, with an ever increasing volume of nutmeats and with the intent of developing a common trading language within the industry, the California Pistachio Association has requested the following proposed U.S. Standards for Grades of Shelled Pistachio Nuts.

The proposed standard would complement the internal (kernel) requirements of the standard for the in shell pistachios. The proposed standard is worded to the extent applicable with the same type language and provisions, including uniform grade nomenclature as used in other USDA fresh products standards. The standard would apply to kernels which are raw, roasted, or in a salted state. Provisions would include grades, tolerances, application of tolerances, sizes, definitions, qualifying terms and average moisture content. The standard provides for three grades, U.S. Fancy, U.S. No. 1, and U.S. No. 2. In addition to providing tolerances for damage, serious damage, and foreign material in each of the three grades, four different size designations have been created for whole kernels, whole and broken kernels, large pieces, and small pieces.

The following are the proposed voluntary United States Standards for Grades of Shelled Pistachio Nuts.

List of Subjects in 7 CFR Part 51

Fresh fruits, vegetables, and other products (Inspection, certification, and standards).

PART 51—[AMENDED]

For reasons set forth in the preamble, it is proposed that 7 CFR Part 51 be amended as follows:

1. The authority citation for 7 CFR Part 51 continues to read as follows:

Authority: Secs. 203, 205, 60 Stat. 1087, as amended, 1090 as amended [7 U.S.C. 1622, 1624].

2. By adding a new subpart, Subpart—United States Standards for Grades of Shelled Pistachio Nuts, as follows:

This action would provide standards in accordance with the provisions of the Agricultural Marketing Act of 1946 [7 U.S.C. 1621 *et seq.*] so that the agricultural products would be marketed to the best advantage, that trading would be facilitated and the consumers would be able to obtain the quality product they desire.

Subpart—United States Standard for Grades of Shelled Pistachio Nuts

Sec.
51.2555 General.
51.2556 Grades.
51.2557 Tolerances.
51.2558 Application of tolerances.
51.2559 Size.
51.2560 Definitions.
51.2561 Qualifying terms.
51.2562 Average moisture content.

§ 51.2555 General.

(a) Compliance with the provisions of these standards shall not excuse failure to comply with provisions of applicable Federal or State laws.

(b) These standards are applicable to pistachio kernels which may be in a raw, roasted, or salted state; or in any combination thereof. However, nuts of obviously dissimilar forms shall not be commingled.

§ 51.2556 Grades.

(a) "U.S. Fancy," "U.S. No. 1," and "U.S. No. 2" consist of pistachio kernels which meet the following basic requirements:

(1) Well dried, or very well dried when specified in connection with the grade.

(2) Free from:
(i) Foreign material, including in-shell nuts, shells, or shell fragments.

(3) Free from damage by:

- (i) Minor mold;
 - (ii) Immature kernels;
 - (iii) Spotting; and,
 - (iv) Other defects.
- (4) Free from serious damage by:
- (i) Mold;
 - (ii) Minor insect or vertebrate injury;
 - (iii) Insect damage;
 - (iv) Rancidity;
 - (v) Decay; and,

(vi) Other defects.

§ 51.2557 Tolerances.

(a) In order to allow for variations incident to proper grading and handling, the tolerances, by weight, in Table I are provided.

TABLE I

Factors (tolerances by weight)	Percent		
	U.S. fancy	U.S. No. 1	U.S. No. 2
(a) Damage.....	2.0	2.5	3.0
(b) Serious Damage.....	1.5	2.0	2.5
(1) Insect Damage (included in (b)).....	.3	.4	.5
(c) Foreign Material.....	.03	.05	.1

§ 51.2558 Application of tolerances.

The tolerances for the grades apply to the entire lot and shall be based on a composite sample representative of the lot. Any container or group of containers which have kernels obviously different in quality or size from those in the majority of containers shall be considered a separate lot and shall be sampled separately.

§ 51.2559 Size.

(a) Kernels may be considered as meeting the size designations as specified, provided they meet the applicable percentage requirements in either paragraph (a) (1), (2), (3), or (4) of this section.

(1) *Whole Kernels:* 80 percent or more by weight shall be whole kernels, and further provided that not more than 5 percent of the total sample shall pass through a $\frac{1}{16}$ inch round opening, including not more than 1 percent of which shall pass through a $\frac{3}{16}$ inch round opening.

(2) *Whole and Broken Kernels:* 40 percent or more by weight shall be whole kernels, and further provided that not more than 15 percent of the total sample shall pass through a $\frac{1}{16}$ inch round opening, including not more than 2 percent of which shall pass through a $\frac{3}{16}$ inch round opening.

(3) *Large Pieces:* Portions of kernels of which not more than 10 percent will remain on a $\frac{2}{16}$ inch round opening and further provided that not more than 20 percent of the total sample shall pass through a $\frac{1}{16}$ inch round opening, including not more than 2 percent of which shall pass through a $\frac{3}{16}$ inch round opening.

(4) *Small Pieces:* Portions of kernels of which not more than 10 percent will remain on a $\frac{1}{16}$ inch round opening

and further provided that not more than 3 percent of the total sample shall pass through a $\frac{3}{16}$ inch round opening.

§ 51.2560 Definitions.

(a) "Well dried" means the kernel is firm and crisp.

(b) "Very well dried" means the kernel is firm and crisp and the average moisture content of the lot does not exceed 7 percent or lower levels, if specified (See § 51.2562).

(c) "Foreign material" means leaves, sticks, in-shell, shells or pieces of shells, dirt, or rocks. No allowable tolerances for metal or glass.

(d) "Damage" means any specific defect described in paragraph (d) (1) through (3) of this section or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance or the edible or marketing quality of the individual kernel or of the lot. (For tolerances, see § 51.2557, Table I).

(1) "Minor white or gray mold" is mold that is not readily noticeable on the kernel and which can be easily rubbed off with the fingers.

(2) "Immature kernels" are excessively thin kernels.

(3) "Kernel spotting" refers to dark brown or dark gray spots aggregating more than one-eighth of the surface of the kernel.

(e) "Whole kernel" means $\frac{3}{4}$ of a kernel or more.

(f) "Serious damage" means any specific defect described in paragraph (f) (1) through (5) of this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance or the edible or marketing quality of the individual kernel or of the lot. (For tolerances see § 51.2557 Table I).

(1) "Mold" which is readily visible on the kernel.

(2) "Minor insect or vertebrate injury" means the kernel shows conspicuous evidence of feeding on the kernel.

(3) "Insect damage" is an insect, insect fragment, web, or frass attached to the kernel. No live insects shall be permitted.

(4) "Rancidity" means the kernel is distinctly rancid to taste. Staleness of flavor shall be classed as rancidity.

(5) "Decay" means any portion of the kernel is decomposed.

§ 51.2561 Qualifying terms.

The following terms may be used individually, or in combination, to qualify the U.S. grade:

(a) "Salted"—the kernels have had salt or a salt substitute added.

(b) "Roasted"—the kernels have been cooked to alter the flavor intentionally.

(c) "Raw"—the kernels have not been cooked.

§ 51.2562 Average moisture content.

(a) Determining average moisture content of the lot is not a requirement of the grades, except when kernels are specified as "very well dried." It may be carried out upon request in connection with grade analysis or as a separate determination.

(b) Kernels shall be obtained from a randomly drawn composite sample. Official certification shall be based on the air-oven method or other officially approved methods or devices. Results obtained by methods or devices not officially approved may be reported and shall include a description of the method or device and owner of any equipment used.

Dated: June 6, 1989.

Kenneth C. Clayton,

Acting Administrator.

[FR Doc. 89-14137 Filed 6-13-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Parts 905 and 928

[Docket No. FV-89-049]

Expenses and Assessment Rates for the Marketing Orders Covering Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida, and Papayas Grown in Hawaii

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would authorize expenditures and establish assessment rates under Marketing Orders Nos. 905 and 928 for the 1989-90 fiscal year for each marketing order program. These proposed expenditures and assessment rates are needed by the administrative committees established under these orders to pay program expenses and collect assessments from handlers to pay those expenses. The proposed action would enable these committees to perform their duties and the programs to operate.

DATE: Comments must be received by June 26, 1989.

ADDRESS: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Three copies of all written material shall be submitted, and

they will be made available for public inspection in the office of the Docket Clerk during regular business hours. All comments should reference the docket number and the date and page number of this issue of the Federal Register.

FOR FURTHER INFORMATION CONTACT:

Gary D. Rasmussen, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone: (202) 475-3918.

SUPPLEMENTARY INFORMATION: This proposed rule is issued under Marketing Agreement and Marketing Order Nos. 905 (7 CFR Part 905) regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida; and 928 (7 CFR Part 928) regulating the handling of papayas grown in Hawaii. These agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this proposed rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 100 handlers of Florida oranges, grapefruit, tangerines, and tangelos, and 122 handlers of Hawaiian papayas subject to regulations under their respective orders, and approximately 13,000 orange, grapefruit, tangerine, and tangelo producers in Florida, and 344 papaya producers in Hawaii. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.2) as those having average gross annual revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. A minority of the Florida citrus

handlers, and the majority of the Hawaiian papaya handlers and Florida citrus and Hawaiian papaya producers may be classified as small entities.

Each marketing order administered by the U. S. Department of Agriculture (Department) requires that the assessment rate for a particular fiscal year shall apply to all assessable commodities handled from the beginning of such year. An annual budget of expenses is prepared by each administrative committee and submitted to the Department for approval. The members of administrative committees are handlers and producers of the regulated commodities. They are familiar with the committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meeting. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rate recommended by each administrative committee is derived by dividing anticipated expenses by the expected shipments of the commodity (e.g., pounds, tons, boxes, cartons, bushels, etc.). Because that rate is applied to actual shipments, it must be established at a rate which will produce sufficient income to pay the committees' expected expenses. Recommended budgets and rates of assessment are usually acted upon by the committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, budget and assessment rate approvals must be expedited so that the committees will have funds to pay their expenses.

The Citrus Administrative Committee (CAC) met on April 18, 1989, and unanimously recommended a 1989-90 budget with expenditures of \$185,000, compared with \$190,000 budgeted for 1988-89. The proposed 1989-90 expenditures are comparable to those for 1988-89, except that CAC travel costs are expected to be substantially lower next year.

The CAC also unanimously recommended a 1989-90 assessment rate of \$0.0027 per $\frac{1}{2}$ bushel carton, compared with the 1988-89 assessment rate of \$0.003. Assessment income for 1989-90 is expected to total \$162,000, based on shipments of 60,000,000 cartons of fresh oranges, grapefruit, tangerines, and tangelos. Interest income is estimated at \$8,000, while an estimated \$15,000 will be drawn from the CAC's reserve.

The Papaya Administrative Committee (PAC) met on April 28, 1989.

and unanimously recommended a 1989-90 budget with expenditures of \$814,030, compared with \$743,360 budgeted for 1988-89. Most proposed expenditure items for 1989-90 are higher than those for 1988-89, reflecting for the most part inflationary price increases. Major proposed expenditure items in the 1989-90 budget are \$400,000 for advertising and promotion, including \$200,000 for mainland promotion, \$50,000 for Hawaii promotion, \$128,280 for Japanese promotion, and \$23,280 for contingencies. Research and development expenditures are projected at \$60,000. The advertising, promotion, and research projects will be submitted for approval as soon as they are fully evaluated and after the budget has been approved. Most of the remaining expenditure items, totaling \$354,030, are for program administration and management activities related to the advertising and promotional effort.

The PAC also unanimously recommended a 1989-90 assessment rate of \$0.0085 per pound of shipped fresh papayas, compared with the 1988-89 assessment rate of \$0.007 per pound. PAC income for 1989-90 is expected to amount to \$904,230, with assessment income estimated at \$595,000, based on shipments of 70,000,000 pounds of fresh papayas. Additional estimated income includes promotional grants of \$200,000 from the Hawaii Department of Agriculture, and of \$63,360 from the USDA's Foreign Agricultural Service. Other income includes \$7,000 from the Japan Inspection Program, \$15,000 from the Japan Trade Show, \$13,470 from the University of Idaho, and \$10,400 from miscellaneous sources including interest. Projected 1989-90 income over expenses (\$90,200) is intended to increase the PAC's relatively low operating reserve, projected at only \$26,874 on July 31, 1989.

While this proposed action would impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs would be significantly offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action would not have a significant economic impact on a substantial number of small entities.

Based on the foregoing, it is found and determined that a comment period of less than 30 days is appropriate because the budgets and assessment rate approvals for these programs need to be expedited. The committees need to have sufficient funds to pay their expenses,

which are incurred on a continuous basis.

List of Subjects in 7 CFR Parts 905 and 928

Marketing agreements and orders, oranges, grapefruit, tangerines, tangelos (Florida), papayas (Hawaii).

For the reasons set forth in the preamble, it is proposed that new §§ 905.228 and 928.219 be added as follows:

1. The authority citation for 7 CFR Parts 905 and 928 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. New §§ 905.228 and 928.219 are added to read as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

§ 905.228 Expenses and assessment rate.

Expenses of \$185,000 by the Citrus Administrative Committee are authorized, and an assessment rate of \$0.0027 per ¼ bushel carton of assessable fruit is established for the fiscal year ending July 31, 1990.

PART 928—PAPAYAS GROWN IN HAWAII

§ 928.219 Expenses and assessment rate.

Expenses of \$814,030 by the Papaya Administrative Committee are authorized, and an assessment rate of \$0.0085 per pound of assessable papayas is established for the fiscal year ending June 30, 1990. Unexpended funds may be carried over as a reserve.

Dated: June 9, 1989.

William J. Doyle,
Associate Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-14109 Filed 6-13-89; 8:45 am]

BILLING CODE 3410-02-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 89-NM-80-AD]

Airworthiness Directives; Boeing of Canada, Ltd., de Havilland Division, Model DHC-8-100 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain de Havilland Model DHC-8-100 series airplanes, which would require modification of the propeller alternate feather system. This proposal is prompted by a report of inadvertent operation of both alternate feather switches in lieu of the standby hydraulic pressure switches. This condition, if not corrected, could lead to unexpected loss of thrust and altitude in a critical flight regime.

DATE: Comments must be received no later than August 1, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-80-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the New York Aircraft Certification Office, ANE-174, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Mr. Pat Perrotta, Manager, Propulsion Branch, ANE-174, New York Aircraft Certification Office, Engine and Propeller Directorate, Federal Aviation Administration, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-7421.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by

interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-80-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: Transport Canada, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain de Havilland Model DHC-8-100 series airplanes. There has been a report of inadvertent operation of both alternate feather switches in lieu of the adjacent standby hydraulic pressure switches, thereby causing an unwanted feathering of the propellers. This condition, if not corrected, could lead to unexpected loss of thrust and altitude in a critical flight regime.

Boeing of Canada, Ltd., de Havilland Division, has issued Service Bulletin No. 8-61-10, Revision A, dated August 5, 1988, which describes procedures for the addition of condition lever microswitches and their associated wiring to the alternate feather system, which will negate the activation of the alternate feather switches unless the appropriate engine condition lever has been moved to the feather position. Transport Canada has issued Canadian Airworthiness Directive CF-88-13 addressing this subject.

This airplane model is manufactured in Canada and type certificated in the United States under the provisions of section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of this same type design registered in the United States, an AD is proposed which would require modification of the alternate feather system in accordance with the service bulletin previously described.

There are approximately 91 Model DHC-8-100 series airplanes of the affected design in the worldwide fleet. It is estimated that 44 airplanes of U.S. registry would be affected by this AD, that it would take approximately 4 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. The modification kit would be provided by the manufacturer at no cost to operators. Based on these figures, the

total cost impact of the AD on U.S. operators is estimated to be \$7,040.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised. Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing of Canada, Ltd., De Havilland Division: Applies to Model DHC-8-100 series airplanes, Serial Numbers 1 through 91, certificated in any category. Compliance is required within the next 400 hours time-in-service after the effective date of this AD, unless previously accomplished.

To prevent unwanted propeller feathering due to inadvertent activation of the alternate feather switches, accomplish the following:

A. Modify the alternate feather system in accordance with the Accomplishment Instructions of Boeing of Canada, Ltd., de Havilland Division, Service Bulletin No. 8-61-10, Revision A, dated August 5, 1988.

B. An alternate means of compliance or adjustment of the compliance time which

provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, FAA, New England Region, Engine and Propeller Directorate.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, New York Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing of Canada, Ltd., de Havilland Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the New York Aircraft Certification Office, Engine and Propeller Directorate, FAA, New England Region, 181 South Franklin Avenue, Room 202, Valley Stream, New York.

Issued in Seattle, Washington, on June 2, 1989.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 89-14086 Filed 6-13-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-48-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes Equipped With General Electric CF6-45 or CF6-50 Engines

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes equipped with General Electric CF6-45 or CF6-50 engines, which would require repetitive visual inspections of the thrust control cables near the idler pulleys for wear and strand separation, and cable replacement until incorporation of a pressure attenuator to the engine driven hydraulic pump. This proposal is prompted by reports of throttle control cable strand separation and wear due to chafing. This condition, if not corrected,

could lead to total cable rupture, resulting in uncommanded engine thrust.

DATE: Comments must be received no later than August 1, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-48-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Sulmo Mariano, Propulsion Branch, ANM-140S; telephone (206) 431-1972. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-48-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: There have been reports of throttle control cable strand separation and wear, due to chafing, on certain Boeing Model 747 airplanes. Investigation has revealed that the primary reason for control cable chafing is vibrations transmitted through the structure from the engine-driven hydraulic pump on airplanes equipped with General Electric CF6-45 and -50 engines. The incorporation of a hydraulic attenuator on the engine driven hydraulic pump will reduce pressure pulsations, thus reducing the wear on the control cables. Failure of an engine control cable could result in loss of control of the engine thrust.

The FAA has reviewed and approved Boeing Alert Service Bulletin 747-76A2071, Revision 1, dated January 26, 1989, which describes procedures for repetitive visual inspections of the thrust control cables near the idler pulleys for strand separation and wear, and cable replacement, if needed. The service bulletin also describes terminating action for the inspections, consisting of installations of a pressure attenuator and attaching hardware to the engine driven hydraulic pump.

Since this condition is likely to exist or develop on other airplanes of this same type design, an AD is proposed which would require repetitive visual inspections of the engine control cables for strand separation and wear, and cable replacement, if necessary, in accordance with the service bulletin previously described. Installation of a pressure attenuator and attaching hardware to the engine driven hydraulic pump would be required within one year after the effective date of this AD, and would terminate the requirements for the repetitive inspections.

There are approximately 132 Model 747 series airplanes of the affected design in the worldwide fleet. It is estimated that 8 airplanes of U.S. registry would be affected by this AD, that it would take approximately 14 manhours to accomplish the required actions, and the average labor cost will be \$40 per manhour. Cost of parts is estimated at \$3,870 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$26,580.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism

implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 747 series airplanes, equipped with General Electric CF6-45 and CF6-50 engines, listed in Boeing Alert Service Bulletin 747-76A2071, Revision 1, dated January 26, 1989, certificated in any category. Compliance required as indicated, unless previously accomplished.

To eliminate the potential for uncommanded thrust operation due to engine control cable rupture, accomplish the following:

A. Within the next 60 days or 450 flight hours after the effective date of this AD, whichever occurs first, visually inspect the thrust control cables near the idler pulley for wear and strand separation, in accordance with the accomplishment instructions of Boeing Alert Service Bulletin 747-76A2071, Revision 1, dated January 26, 1989. If wear or strand separation is identified, replace the cable prior to further flight, in accordance with the service bulletin. Repeat the inspection at intervals not to exceed 600 flight-hours.

B. Within one year after the effective date of this AD, install a pressure attenuator and attaching hardware to the engine-driven hydraulic pump in accordance with the accomplishment instructions of Service

Bulletin 747-76A2071, Revision 1, dated January 26, 1989. This installation constitutes terminating action for the repetitive inspections required by paragraph A., above.

C. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

D. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 2, 1989.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 89-14087 Filed 6-13-89; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 89-NM-82-AD]

Airworthiness Directives; Fokker Model F-27 Series Airplanes.

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes to revise an existing airworthiness directive (AD), applicable to certain Fokker Model F-27 series airplanes, which currently requires a revision to the Limitations Section of the Airplane Flight Manual (AFM) restricting the maximum turbulent air penetration airspeed for certain airplanes, and installation of a placard to this effect near each airspeed indicator. That action was prompted by a report of improper heat treatment of the wing structure, resulting in a reduction of the strength of the skin splice at Wing Station 7900. This condition, if not corrected, could lead to

reduced structural capability of the wing. This action would require a one-time inspection of the splice parts at Wing Station 7915, and repair if necessary. This proposal is prompted by the development of a repair procedure to reinforce unsatisfactory splice parts at Wing Station 7915.

DATES: Comments must be received no later than August 1, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 89-NM-82-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1978. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice

must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 89-NM-82-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: On January 18, 1989, the FAA issued AD 88-17-02 R1, Amendment 39-6127 (54 FR 4769; January 31, 1989), applicable to Fokker Model F-27 series airplanes, to require a revision to the Limitations Section of the Airplane Flight Manual (AFM) restricting the maximum turbulent air penetration airspeed for certain airplanes, and installation of a placard to this effect near each airspeed indicator. That action was prompted by a report of improper heat treatment of the wing structure, resulting in a reduction of the strength of the skin splice at Wing Station 7900. This condition, if not corrected, could lead to reduced structural capability of the wing.

Since issuance of that AD, Fokker has developed inspection and repair procedures, which, when accomplished, eliminates the need for the current airspeed restriction.

Fokker has issued Service Bulletin F27/57-63, Revision 1, dated January 25, 1989, which describes procedures for a one-time inspection of the outwing skin splices at Wing Station 7915, and repair, if necessary. The Rijksluchtvaartdienst (RLD), which is the airworthiness authority of the Netherlands, has classified this service bulletin as mandatory, and has issued Netherlands Airworthiness Directive BLA No. 88-55, Issue 3, dated September 7, 1988, addressing this subject.

This airplane model is manufactured in the Netherlands and type certificated in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on other airplanes of the same type design registered in the United States, an AD is proposed which would revise AD 88-17-02 R1, Amendment 39-6127, to require a one-time inspection of the outer wing skin splices at Wing Station 7915, and repair if necessary, in accordance with the service bulletin previously described. This action would also terminate the requirement for the airspeed restrictions.

It is estimated that 13 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the inspection, and that the average labor cost would be \$40 per manhour. The

required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$5,200.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by amending Amendment 39-6127 [54 FR 4769; January 31, 1989], AD 88-17-02 R1, as follows:

Fokker: Applies to Model F-27 series airplanes, serial numbers 10346 to 10684, inclusive; and serial numbers 10105 to 10345, inclusive, if retrofitted with outerwing serial number 246 or higher; certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent reduced structural capability of the wing, accomplish the following:

A. Within 24 hours after February 15, 1989 (the effective date of Amendment 39-6127), incorporate the following into the Limitations

Section of the Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD into the AFM.

"For airplanes operating at weights over 32,000 lbs.: Speed Limitation V₀: 165 KIAS (168 KTS CAS)"

B. Within 24 hours after February 15, 1989 (the effective date of Amendment 39-6127), install a placard near each airspeed indicator, stating the following:

FOR AIRPLANES OPERATING AT WEIGHTS OVER 32,000 LBS.: SPEED LIMITATION V₀: 165 KIAS (168 KTS CAS)

C. Within six months after the effective date of this amendment, perform a one-time inspection of the splice parts at Wing Station 7915, in accordance with the Accomplishment Instructions, Part 1, of Fokker Service Bulletin F27/57-83, Revision 1, dated January 25, 1989.

1. If no defective splice parts are found, and if the structural strength of the wing splice is determined to be satisfactory in accordance with the limits specified in the service bulletin, no further action is required. The airspeed restriction required by paragraphs A. and B., above, is no longer required, and the AFM limitation and placard may be removed.

2. If defective splice parts are found or if the structural strength of the wing splice is determined to be unsatisfactory in accordance with the limits specified in the service bulletin, within one year after the effective date of this amendment reinforce all unsatisfactory splice parts at Wing Station 7915 in accordance with the Accomplishment Instructions, Part 2, of Fokker Service Bulletin F27/57-83, Revision 1, dated January 25, 1989. Following this modification and a determination that the wing splice strength is satisfactory, the airspeed restriction required by paragraphs A. and B., above, is no longer required, and the AFM limitation and placard may be removed.

D. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Standardization Branch, ANM-113.

E. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Fokker Aircraft USA, Inc., 1199 N. Fairfax Street, Alexandria, Virginia 22314. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 2, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14088 Filed 6-13-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-191-AD]

Airworthiness Directives; SAAB-Scania AB Model SF-340A Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This notice proposes a new airworthiness directive (AD), applicable to certain SAAB-Scania AB Model SF-340A series airplanes, which would require installation of a modified engine electrical control unit (ECU). This proposal is prompted by two reports of engine failure during takeoff and the subsequent failure of the autocarsen system to coarsen the propeller on the failed engine due to torque spikes from the ECU. This condition, if not corrected, could lead to high propeller drag on the failed engine side of the airplane and loss of climb performance.

DATES: Comments must be received no later than August 1, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-191-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from SAAB-Scania, Aircraft Division, S.58188, Linköping, Sweden. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Standardization Branch, ANM-113; telephone (206) 431-1976. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as

they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped post card on which the following statement is made: "Comments to Docket Number 88-NM-191-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: The Luftfartsverket (LFV), which is the airworthiness authority of Sweden, in accordance with existing provisions of a bilateral airworthiness agreement, has notified the FAA of an unsafe condition which may exist on certain SAAB-Scania Model SF-340A series airplanes. There have been two reports of engine failure during takeoff, and the subsequent failure of the autocarsen system to coarsen the propeller on the failed engine. The failure of the autocarsen system has been attributed to spurious signals (torque spikes) being introduced from the engine electrical control unit (ECU) when the power lever is retarded below 64 degrees. This condition, if not corrected, could lead to high propeller drag on the failed engine side of the airplane and loss of climb performance.

General Electric (GE) Aircraft Engines has issued Service Bulletin 74-16, dated March 22, 1989, which describes procedures for installation of a modified engine ECU which eliminates the torque spikes.

This airplane model is manufactured in Sweden and type certificated in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement.

Since this condition is likely to exist or develop on airplanes of this model registered in the United States, an AD is proposed that would require the

installation of a modified ECU, in accordance with the service bulletin previously described.

It is estimated that 79 airplanes of U.S. registry would be affected by this AD, that it would take approximately 2.5 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. The parts will be furnished by the manufacturer at no cost. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$7,900.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Saab-Scania: Applies to Model SF-340A

series airplanes, Serial Numbers SF340A-004 through -159, certificated in any category. Compliance is required within 60 days after the effective date of this AD, unless previously accomplished.

To prevent high propeller drag and loss of climb performance during single engine operation (i.e., one engine failed) while operating with the autocarsen system on, accomplish the following:

A. Install modified electrical control units (ECU), in accordance with General Electric Service Bulletin 74-16, dated March 22, 1989.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment, and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to SAAB-Scania, Aircraft Division, S.58188, Linköping, Sweden. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 2, 1989.

Darrell M. Pederson,

Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 89-14089 Filed 6-13-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-167-AD]

Airworthiness Directives; British Aerospace Model BAe/DH/BH/HS 125 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Supplemental notice of proposed rulemaking (NPRM); reopening of comment period.

SUMMARY: This notice proposes to amend an earlier proposed airworthiness directive (AD), applicable to certain British Aerospace BAe/DH/BH/HS 125 series airplanes, which would have required inspection of the

elevator mass balance side plate assembly and spigot for corrosion, and repair, if necessary. This proposal would amend the proposal by clarifying the accomplishment procedures to ensure proper modification of the elevator balance weight structure.

DATES: Comments must be received no later than July 12, 1989.

ADDRESSES: Send comments on the proposal in duplicate to the Federal Aviation Administration, Northwest Mountain Region, Transport Airplane Directorate, ANM-103, Attention: Airworthiness Rules Docket No. 88-NM-167-AD, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168. The applicable service information may be obtained from British Aerospace, PLC, Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. William Schroeder, Standardization Branch, ANM-113; telephone (206) 431-1565. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments specified above will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this Notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA/public contact, concerned with the substance of this proposal, will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this Notice must submit a self-addressed, stamped

post card on which the following statement is made: "Comments to Docket Number 88-NM-167-AD." The post card will be date/time stamped and returned to the commenter.

Discussion: A proposal to amend Part 39 of the Federal Aviation Regulations, which would have required inspection of the elevator mass balance side plate assembly and spigot on certain British Aerospace BAe/DH/BH/HS series airplanes for corrosion, and repair, if necessary, was published as a Notice of Proposed Rulemaking (NPRM) in the *Federal Register* on December 8, 1988 (53 FR 49555).

That NPRM was prompted by reports of corrosion on the elevator mass balance side plate assembly and the balance weight spigot. This condition, if not corrected, could lead to displacement of the side plate which could cause control surface interference and jamming of flight controls.

Two comments were received in response to the proposal. Both commenters agreed with the initial inspection, but objected to the repetitive inspections at intervals not to exceed 3 years. Both commenters indicated that the maintenance manual requires follow-on repeat inspections for corrosion every 2,400 hours/48 months, and removal of the sideplate anchor nuts only if there is evidence of corrosion.

The FAA concurs in part with these comments, and has determined that clarification is necessary regarding the purpose of the referenced BAe Service Bulletin 27-142, Revision 2, dated June 10, 1987. One purpose of the service bulletin is to provide instructions for inspection of the elevator mass balance weight side plate assembly and balance weight spigot for corrosion. The service bulletin also describes procedures to apply corrosion protection treatment and to install corrosion resistant Monel Rivets, Part Number MS9318-052, or British Standard Specification SP88-304 rivets in the elevator balance weight structure.

In consideration of the comments received and the above discussion, and since the unsafe condition which initially prompted this rulemaking action is likely to exist or develop on airplanes of this model registered in the United States, the FAA is revising the proposal to require a one-time inspection for corrosion, and repair, if necessary; installation of corrosion protection treatment; and installation of corrosion resistant Monel Rivets specified in the service bulletin. The one-time inspection for corrosion and repair, if necessary, is incidental to, and will be accomplished when, the balance weight structure is

disassembled for installation of the corrosion protection treatment and Monel Rivets. The FAA has determined that after the above actions are taken, normal corrosion prevention procedures, as outlined in the maintenance manual, are sufficient.

To provide interested persons an opportunity to comment on the changes to this proposal, the period for public comment has been reopened for an additional 30 days.

It is estimated that 420 airplanes of U.S. registry would be affected by this AD, that it would take approximately 10 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of this AD to U.S. operators is estimated to be \$168,000.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising the Notice of Proposed Rulemaking, Docket 88-NM-167-AD, published in the *Federal Register* on December 8, 1988 (53 FR 49555), FR Doc. 88-28221, as follows:

British Aerospace (BAe), PLC: Applies to Model BAe/DH/BH/HS 125 series airplanes, certificated in any category. Compliance is required as indicated, unless previously accomplished.

To prevent control surface interference and jamming of the flight controls, accomplish the following:

A. Within 3 years since date of airplane manufacture or within 60 days after the effective date of this AD, whichever occurs later, accomplish the following:

1. Inspect the elevator mass balance weight side plate assembly and balance weight spigot for corrosion in accordance with BAe Service Bulletin 27-142, Revision 2, dated June 10, 1987. Any corrosion detected as a result of this inspection must be repaired prior to further flight, in accordance with the service bulletin.

2. Apply corrosion protection treatment and install Monel Rivets, Part Number MS9318-052, or British Standard Specification SP 88-304 rivets in the elevator balance weight structure, in accordance with BAe Service Bulletin 27-142, Revision 2, dated June 10, 1987.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Standardization Branch, ANM-113, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Standardization Branch, ANM-113.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to British Aerospace, PLC, Service Bulletin Librarian, P.O. Box 17414, Dulles International Airport, Washington, DC 20041. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

Issued in Seattle, Washington, on June 2, 1989.

Darrell M. Pederson,
Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 89-14090 Filed 6-13-89; 8:45 am]
BILLING CODE 4810-13-M

DEPARTMENT OF JUSTICE

28 CFR Part 74

[Order No. 1352-89]

Redress Provision For Persons of Japanese Ancestry

AGENCY: Department of Justice.

ACTION: Notice of proposed rulemaking.

SUMMARY: This rule establishes standards and procedures for enforcement of section 105 of the Civil Liberties Act of 1988, which authorizes the Attorney General to identify, locate, and when appropriated, make payments of \$20,000 to eligible individuals of Japanese ancestry who were evacuated, relocated or interned during World War II.

DATE: Comments must be received by July 14, 1989.

ADDRESS: Comments should be sent to Valerie O'Brian, Office of Redress Administration, Civil Rights Division, U.S. Department of Justice, 10th and Constitution Avenue NW., Washington, DC 20530.

Comments received will be available for public inspection at the Office of Redress Administration facility at 1000 Connecticut Avenue NW., Washington, DC in Suite 325 from 9:30 a.m. to 5:30 p.m., Monday through Friday except legal holidays. Copies of this notice will be available on tape for those with impaired vision. They may be obtained at the above address.

FOR FURTHER INFORMATION CONTACT: Valerie O'Brian, Office of Redress Administration, Civil Rights Division, U.S. Department of Justice, Washington, DC 20530; (202) 633-5119 (Voice) or (202) 786-5986 (TDD). These are not toll free numbers.

SUPPLEMENTARY INFORMATION: The Civil Liberties Act of 1988 (Pub. L. 100-383, 50 U.S.C. App. 1989b), enacts into law the recommendations of the Commission on Wartime Relocation and Internment of Civilians established by Congress in 1980 (Pub. L. 96-317). This bipartisan Commission was established to review the facts and circumstances surrounding Executive Order Numbered 9066, issued February 19, 1942, and the impact of such Executive Order on American citizens and permanent resident aliens of Japanese ancestry; to review directives of United States military forces requiring the relocation, and in some cases, detention in internment camps of these American citizens and permanent resident aliens, and to recommend appropriate remedies. The Commission submitted to Congress in February 1983 a unanimous report,

Personal Justice Denied, which extensively reviewed the history and circumstances of the decisions to exclude, remove and then to detain Japanese Americans and Japanese resident aliens from the West Coast, as well as the treatment of the Aleuts during World War II. The final part of the Commission's report, *Personal Justice Denied Part 2: Recommendations*, concluded that these events were influenced by racial prejudice, war hysteria, and a failure of political leadership, and recommended remedial action to be taken by the Congress and the President.

On August 10, 1988, President Ronald Reagan signed the Civil Liberties Act of 1988 into law. The purposes of the Act are to acknowledge and apologize for the fundamental injustice of the evacuation, relocation, and internment of Japanese Americans and permanent resident aliens of Japanese ancestry, to make restitution, and to fund a public education program to prevent the recurrence of any similar event in the future.

Section 105 of the Act, 50 U.S.C. App. 1989b-4, assigned the Attorney General the responsibilities and duties for the restitution provisions. The Attorney General delegated the responsibilities and duties assigned him by the Act to the Assistant Attorney General for Civil Rights, who, in turn, established the Office of Redress Administration in the Civil Rights Division to carry out the execution of the responsibilities and duties under the Act.

The Office of Redress Administration (ORA) is charged with the responsibilities of identifying and locating persons eligible under the Act, without requiring any application for payment, within twelve months after the date of enactment of the Act (August 10, 1988), or within twelve months after the appropriation of funds necessary to complete the identification process. To date no appropriations have been made. It was estimated by the Commission on Wartime Relocation and Internment of Civilians that approximately 120,000 American citizens and permanent resident aliens of Japanese ancestry were affected by the exclusion. Of these, an estimated 60,000 individuals survive and are eligible for redress payment.

In its efforts to identify and locate these individuals, the Office of Redress Administration has initiated a highly publicized outreach program to the Japanese American communities to encourage those persons thought to be eligible to notify the Office with information concerning their eligibility and current residence. On September 19,

1988, the Office of Redress Administration announced the establishment of a toll free telephone number and a U.S. Post Office Box specifically for individuals wishing to ask questions or volunteer information concerning their eligibility. This announcement also was publicized in Japanese American newspapers. The Office has also placed its West Coast staff in San Francisco in order to facilitate its outreach efforts. In addition, the Office has endeavored to establish close working relationships with the leaders of Japanese American organizations, as well as religious groups and senior citizens associations in Japanese American communities to ensure communicating information to all eligible persons.

Section 105 of the Act also requires that the Attorney General must notify each eligible individual in writing as to a determination of eligibility, and authorize the payment of \$20,000, to each eligible individual. The Act states that payment will be made to eligible persons in the order of the date of birth. Therefore, the oldest individual on the date of the enactment of this Act, or, if applicable, that individual's survivors, will receive payments first, until all eligible persons have received payment in full. For this purpose, the Act specifies that a total of \$1,250,000,000 is to be placed in the United States Civil Liberties Public Education Fund from which payments may be made, and no more than \$500,000,000 may be appropriated in any one year. Therefore, not all payments can be made at one time.

This proposed regulation in five subparts implements section 105 of the Act. Subpart A states the Purpose of the regulation and defines key terms; Subpart B lists the categories of individuals determined to be eligible or ineligible in accordance with the statute; Subpart C establishes a procedure through which the Office of Redress Administration will identify and locate all eligible individuals; Subpart D establishes the procedures for payment; and Subpart E establishes an appeals process whereby an individual who is not determined to be eligible by the Redress Administrator may petition for a reconsideration of the finding.

The purpose of this preamble is to highlight the following key issues raised by this proposed rule and specifically encourage public comment on them.

I. Standards of Eligibility

During the period of drafting the proposed regulations, many individuals and organizations in the Japanese American community contacted the

Civil Rights Division to ask questions and express concern regarding the determination of eligibility. In response to these concerns the Division published a Notice in the *Federal Register*, 53 FR 41252 (October 20, 1988), inviting the public to submit comments during the proposed regulation's drafting period on three issues that seemed to be of major concern to the public. These issues pertained to the eligibility of minors who were relocated to Japan between December 7, 1941 and September 2, 1945, persons of Japanese ancestry sent to the United States from other American republics during World War II as a result of international agreements, and voluntary evacuees who did not file "Change of Residence" cards.

In response to this Notice, the Office of Redress Administration received one hundred forty-eight comments regarding these and other issues of eligibility, all of which have been placed for public inspection in the public reading room of the ORA office. Some respondents were United States citizens of Japanese ancestry who were relocated to Japan without consent as minors during the war. These individuals expressed the belief that their constitutional rights had been violated at the time, and to exclude them now from compensation would brand them as disloyal Japanese Americans. Most other comments concerned the plight of individuals of Japanese ancestry who were brought to the United States from other American countries. Letters from those so interned, and others who were not, generally supported compensation to these persons. Comments regarding voluntary evacuees who did not file "Change of Residence" cards, provided further evidence that verification of these individuals will need to be done on a case by case basis in order to determine if such persons evacuated as a result of government action. Finally, the Office of Redress Administration received letters from Japanese American World War II veterans whose families had been evacuated. These soldiers were unable to return to unauthorized zones, and furthermore, were often prohibited from visiting their families in relocation centers. These veterans voiced the concern that the Act might not include them as eligible. All the comments received during the drafting period have been placed for public inspection in the public docket record of this proposed regulation.

In drafting the implementation regulations, the Division read and considered each comment. The decisions that the Office of Redress Administration made in response to these comments were not made on the

basis of the number of commentators addressing any one point but on a thorough consideration of the merits of the points of view expressed in the comments.

The first issue of eligibility is concerned with the threshold requirement that an eligible person must be an individual of "Japanese ancestry." Records of the evacuation period indicate that there were approximately 80 non-Japanese who were interned with their Japanese American spouses or children. (It is estimated that perhaps 40 such persons are still living.) The Government required these persons to sign a waiver of their rights as non-excluded individuals in order to accompany spouses or children to assembly centers and relocation camps. These wives, husbands and parents executed WPC Form PM-7, "Request and Waiver of Non-Excluded Person," which requested leave to accompany a member of his or her family through all the stages of evacuation and internment as if they were persons of Japanese ancestry. In reality these non-Japanese spouses and parents were confronted by a horrifying choice. They could either "elect" to accompany their spouses or children throughout the removal and internment process, or chose to be separated from them. In the event that there was no Japanese parent or adult relative to accompany the child the Government policy was to take the part-Japanese child and place him or her in an institution and later transfer the child to the Children's Center under the supervision of the War Relocation Authority at Manzanar, California. Obviously, every human instinct would compel these parents to "elect" evacuation.

Unfortunately, however, the Civil Liberties Act of 1988 limits an "eligible individual" in Section 108(2) specifically to "any individual of Japanese ancestry." Indeed, the focus throughout the Act is on those of Japanese ancestry and the discrimination they suffered based on their race. In light of the specificity with which Congress has spoken and its focus on the racial discrimination suffered, it must be concluded that the statute authorizes that compensation may be paid only to those of Japanese ancestry, and not to those who are of non-Japanese ancestry but who were nevertheless interned.

While the phrase "of Japanese ancestry" in the Civil Liberties Act of 1988 cannot be interpreted in the regulation to include non-Japanese family members for purposes of compensation, it is undeniable that these individuals suffered the very

injury that the Civil Liberties Act of 1988 is designed to redress and compensate, and that they should be compensated. Therefore, the Department will submit legislation to the Congress to amend the Civil Liberties Act of 1988 to render eligible those non-Japanese family members who suffered the effects of the government's internment policy by accompanying their spouses or children of Japanese ancestry through the evacuation and internment process.

Other questions regarding internment pertain to the "place" of confinement. It is clear from the findings by the Commission on Wartime Relocation or internment of the Japanese Americans and Japanese resident aliens was not a single uniform action. Indeed, in section 108(2)(B)(i) Congress specifically included language to ensure that the Act covered individuals confined, held in custody, relocated, or otherwise deprived of liberty or property as a result of any action taken by the United States or its agents solely on the basis of Japanese ancestry during the period from December 7, 1941 to June 30, 1946. Therefore, in addition to persons deprived of liberty or property solely on the basis of Japanese ancestry in relocation centers under the supervision of the Wartime Relocation Authority, or in camps under the authority of the Department of Justice or the U.S. Army, others who were similarly deprived of liberty would also be eligible. This category would include institutionalized persons who were unable to evacuate from the prohibited areas and were placed in the custody of the Wartime Relocation Authority.

In addition, some individuals who were members of the U.S. Armed Forces on or before mandatory evacuation on March 31, 1942, and not discharged from duty by that date, and whose domiciles were in excluded areas, would be determined to be eligible under section 108(2)(B)(i) as persons "otherwise deprived of liberty or property" as a result of the acts enumerated in subsections (I), (II), and (III). The Western Defense Command Public Proclamation No. 11 dated August 18, 1942, excluded all Japanese citizens and aliens from Military Area No. 1 and the California portion of Military Area No. 2 without first securing written permission of the Western Defense Command. As a result, there were some soldiers who were unable to re-enter unauthorized zones and safeguard their property. Such persons, as well as those whose property was confiscated by the government, were "deprived of property" as a result of the exclusion policy.

This issue was raised in the Attorney General Adjudication for the Japanese American Evacuation Act of 1948. In *Hirotohi Oda*, 1 Adjudications of the Attorney General 381 (No. 146-35-16597, November 5, 1954), it was held that persons of Japanese ancestry who were members of the Armed Forces and sustained property losses as a result of the exclusion policy were as much entitled to compensation under the Act as if they had been evacuated to assembly centers and relocation centers with the other members of their families. Therefore, in light of the statutory language of the Act and the given purpose of the Act, such persons are deemed eligible for redress.

Furthermore, some Japanese American soldiers were "deprived of liberty" by virtue of the fact that regulations prohibited them from entering relocation centers to visit their family members or forced Japanese American soldiers to submit to undue restrictions amounting to a deprivation of liberty prior to visiting their families. (This group could also include a small percentage of members of the United States Armed Forces of Japanese ancestry from Hawaii whose families were interned.)

Another major issue of eligibility concerns those persons who were not interned but who evacuated their places of residence during the evacuation, relocation and internment period. The central question in determining eligibility in all these cases is the same: whether the individuals concerned evacuated their places of residence "as a result of" one or other of the statutorily specified types of governmental action, see Section 108(2)(B). Thus, if the individuals in question were ordered by the military to evacuate an area, their evacuation was clearly a result of a governmental action. Similarly, if they evacuated in order to avoid internment, their evacuation resulted from governmental action. In contrast, if they evacuated voluntarily, not in response to any governmental order, it would seem that they are not eligible.

First, there are those individuals who evacuated as a result of specific governmental or military directives. President Roosevelt's Executive Order 9066, empowering the Secretary of War and the Military Commanders whom he might designate to prescribe military areas from which "any and all persons may be excluded" was issued on February 19, 1942. However, even as early as December 7, 1941, agents of the government were taking custody of enemy aliens, including Japanese. On

January 29, 1942, the Department of Justice announced the first of a series of zones prohibited to enemy aliens on the West Coast, ordering such persons not to enter or remain in such areas after February 24, 1942. On February 10, 1942, the Department of Justice warned all Japanese aliens (of a total Japanese and Japanese American population of about 3,500) to evacuate Terminal Island, near Los Angeles: that evacuation took place, under orders of the Navy, around February 25, 1942. Apart from these early evacuations preceding Executive Order 9066, there was at least one later case of evacuations undertaken in response to a specific military directive. On May 24, 1942, after the issuance of Executive Order 9066, but before evacuation from Military Area No. 1 was required by orders of the West Coast Military Commander, persons of Japanese ancestry were ordered to evacuate Bainbridge Island, near Seattle.

The statute reaches all these events. Even assuming that none of these evacuations "resulted from" Executive Order 9066, section 108(2)(B)(i)(III) declares evacuees eligible if their relocation resulted from any "directive of the Armed Forces of the United States, or other action taken by or on behalf of the United States or its agents, representatives, officers, or employees." Thus, actions of the Department of Justice, the FBI, the Army, the Navy, or any other federal entity, to exclude, relocate or intern persons of Japanese descent, whether taken pursuant to Executive Order 9066 or not, create eligibility for these groups of evacuees.

Another group of persons involuntarily evacuated who are also determined in the proposed regulation to be eligible, consists of those who left their places of residence on the West Coast between March 2, 1942, the issuance of Public Proclamation No. 1, and March 29, 1942, the date on which the Public Proclamation No. 4 took effect whereby persons of Japanese ancestry were prohibited from removing from parts of the West Coast area in preparation for later forced relocation. Section 108(2)(B)(ii) of the Act defines as eligible one who "was enrolled on the records of the United States Government during the period beginning on December 7, 1941, and ending on June 30, 1946, as being in a prohibited zone." The Conference Report explains this language as a reference to some 4,889 Japanese Americans who left the West Coast during the so-called "voluntary" phase of the government's evacuation program, and who filed "Change of Residence" cards with the Wartime

Civil Control Administration. "The conferees intend to include individuals who filed Change of Residence cards during the period between the issuance of Public Proclamation No. 1, on March 2, 1942 and Public Proclamation No. 4 on March 27, 1942 as being 'enrolled on the records of the U.S. Government.'" While some individuals may have evacuated after March 2, 1942 but not have been enrolled on such cards, they may be determined on a case by case basis to be eligible if such persons were directly ordered by the government to evacuate. (Clearly, any person of Japanese ancestry who was evacuated from an excluded zone after March 29, 1942 is eligible, since such an evacuation would have been a "result" either of Executive Order 9066 or of a military directive pursuant to it.)

There remain those cases, if any, of evacuations occurring before March 2, 1942, but not in response to a governmental order directed specifically at the evacuees. We believe that if there are any such evacuees, they cannot be considered eligible.

In addition, the Office of Redress Administration received questions pertaining to the eligibility of children born to parents after the parents had voluntarily relocated. While children born in assembly centers and relocation centers are included as eligible for compensation, the proposed regulation does not include as eligible children born after their parents had voluntarily relocated from prohibited military zones or from Assembly Centers or Relocation Centers.

A unique eligibility issue raised by the public pertains to minors who were relocated to Japan during the period beginning on December 7, 1941 and ending on September 2, 1945. Records indicate that some minors who were United States citizens were relocated with their families during this period. Indeed, the Division received several letters of comment from such citizens recounting their difficulties. However, in implementing section 105 of the Act, the Department must follow the clearly restrictive language in section 108(2) that specifically excludes any individual who during the period beginning on December 7, 1941, and ending on September 2, 1945, relocated to a country while the United States was at war with that country. Consequently, the exclusionary language of the Act would preclude from eligibility the minors, as well as adults, who were relocated during the aforementioned time period.

The last major eligibility issue pertains to persons of Japanese ancestry who were sent to the United States from

other American countries for restraint and repatriation pursuant to the international commitments of the United States Government for the security of the United States and its associated powers. The plight of these persons is described in the Appendix to Part I of *Personal Justice Denied*. While these individuals were evacuated, relocated or interned similarly to those of Japanese ancestry evacuated from the West Coast, the statute's threshold requirement that an eligible person must be a citizen of the United States or a permanent resident alien excludes most of these persons from redress payment. Records indicate that the people who entered the United States under these international agreements were determined by the Department of Justice to be illegal aliens. As such, they were not lawfully admitted to the United States for permanent residence. Consequently, the restrictive language of the Act pertaining to status, makes such persons ineligible. However, after World War II, some of the Latin American Japanese who were brought to the United States from other American republics for internment were permitted, under applicable statutes, to apply to the Attorney General of the United States for an adjustment of their immigration status, and obtained the status of permanent resident alien extending retroactively to the internment period. Such persons would meet the threshold requirement of being permanent resident aliens during the evacuation, relocation and internment period and, as such, be eligible for compensation. In addition, children born in the United States to the Latin American Japanese during their internment, would, by virtue of their place of birth, be United States citizens and therefore meet the threshold requirement for eligibility.

While this section has endeavored to discuss eligibility issues of public concern, § 74.3 of the proposed regulation specifically sets forth those categories of individuals who are eligible or ineligible for compensation under section 105 of the Act.

II. Verification Procedures

The Act forbids the Government from requiring persons to file claims for redress payments, but states that the Attorney General by using records already in the possession of the United States Government shall locate and identify all eligible persons. However, any eligible person may also notify the Attorney General. In addition, the Attorney General may use any facility or resource of any public or nonprofit organization or any other record

document or information that may be made available to the Government. Section 74.5 describes the sources that the Government anticipates using for identification and location of eligible persons. Both official and unofficial sources will be compiled in parallel files (§ 74.6) that will be compared in order to verify an individual's eligibility. However, in some cases names of eligible individuals might not be listed in the files from the official sources and further research will be done by a verification analyst. For example, a comparison of information in two files might not necessarily identify an individual whose name was inadvertently not recorded on a family card at a Relocation Center.

All information compiled in these files is subject to the statutory mandates of the Privacy Act. Therefore, the Civil Rights Division is prohibited from using or releasing this information for purposes other than those described in the Division's Privacy Act Notice of Records Systems.

After an individual is determined to be a potential candidate for redress payment, the regulation provides for a letter of notification to be sent to the individual to notify him or her of a preliminary finding of eligibility (§ 74.7). Enclosed with the letter will be a form and a request for proof of identification. The Division has completed draft forms which are appended to this proposal as Appendix A to Part 74. The forms pursuant to 28 U.S.C. 1746 are unsworn declarations under penalty of perjury. The purpose of these forms and the requests for documentation is to verify the identity of the individuals in order to prevent fraud or duplication of payments.

III. Notification and Payment

Upon receipt of a person's unsworn declaration, the Redress Administrator will make a final determination of eligibility and notify the individual in writing of his finding (§ 74.8). As required by statute, a person determined to be eligible has up to eighteen months after notification to accept payment. The statute states that a person that accepts payment waives all claims against the United States arising from the acts described in the Act (§ 74.3(a)(5)). The regulation also incorporates the statutory requirement that the refusal to accept payment by a person determined to be eligible must be in writing and such refusal will be final for that person and his or her survivors (§ 74.10).

After funds have been appropriated and actual payments are to be made, the regulations provide that the Assistant

Attorney General for Civil Rights will certify authorization for payment to the Assistant Attorney General for Justice Management who will give final authorization to the Secretary of the Treasury (§ 74.10). The oldest living eligible persons that have been identified at the date the notice goes out, or his or her survivors, will receive payment first (§ 74.12). In accordance with the statute, the categories of survivors who can receive redress payments are limited to spouses, children, and parents (§ 74.13). The methods for establishing proof of relationship to the deceased eligible person is set forth in § 74.14.

IV. Appeal Procedures

In order to fairly resolve those cases in which the Administrator makes a determination of ineligibility, the proposed regulation has established an appeal process. When an individual is notified in writing by the Administrator of a finding of ineligibility, the letter also shall inform the individual that he or she may petition for a reconsideration of the determination of ineligibility to the Assistant Attorney General for Civil Rights, or the official designated by the Assistant Attorney General for Civil Rights, and the right to submit documentation in support of his or her eligibility (§ 74.15). The procedures for filing a request for reconsideration are described in § 74.16.

Section 74.17 describes the appeal procedure in which the Assistant Attorney General for Civil Rights, or the official designated to act on his behalf, reviews the determination of the Redress Administrator and any documentation submitted by the requester, and then notifies the requester of his or her decision to reverse or affirm the Redress Administrator's determination of ineligibility. The decision shall constitute the final action of the Department on that appeal.

This rule is not a major rule within the meaning of Executive Order 12291 (46 FR 13193, 3 CFR 1981 Comp. p. 127). Moreover, a regulatory flexibility analysis has not been prepared under the Regulatory Flexibility Act (5 U.S.C. 601-612), because the rule is unlikely to have a significant economic impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 74

Administrative practice and procedure, Aliens, Archives and records, Citizenship and naturalization, Civil rights, Indemnity payments, Minority groups, Nationality, War claims.

For the reasons set forth in the

preamble and by the authority vested in me including 28 U.S.C. 509 and 510, Chapter I of Title 28 of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 74 is added to 28 CFR Chapter I to read as follows:

PART 74—CIVIL LIBERTIES ACT REDRESS PROVISION

Subpart A—General

Sec.

74.1 Purpose.

74.2 Definitions.

Subpart B—Standards of Eligibility

74.3 Eligibility determinations.

74.4 Exclusion from compensation.

Subpart C—Verification Procedures

74.5 Identification and location of eligible persons.

74.6 Determination procedures.

74.7 Notification of a preliminary finding of eligibility.

Subpart D—Notification and Payment

74.8 Notice of eligibility determination.

74.9 Conditions of acceptance of payment.

74.10 Effect of refusal to accept payment.

74.11 Authorization for payment.

74.12 Order of payments.

74.13 Payments to survivors of eligible individuals.

74.14 Determination of relationship of survivors.

Subpart E—Appeal Procedures

74.15 Notice of the right to appeal a finding of ineligibility.

74.16 Procedures for filing an appeal.

74.17 Action on appeal.

Appendix A to Part 74—Declarations of Eligibility by Persons Identified by the Office of Redress Administration and Requests for Documentation

Authority: 50 U.S.C. App. 1989b.

Subpart A—General

§ 74.1 Purpose.

The purpose of this part is to effectuate section 105 of the Civil Liberties Act of 1988, which authorizes the Attorney General to locate, identify, and make payments to all eligible individuals of Japanese ancestry who were evacuated, relocated, and interned during World War II as a result of government action.

§ 74.2 Definitions.

(a) "The Act" means the Civil Liberties Act of 1988, 50 U.S.C. App. 1989b et seq., Pub. L. 100-383 (August 10, 1988).

(b) "The Administrator" means the Administrator in charge of the Office of Redress Administration of the Civil Rights Division.

(c) "Assembly centers and relocation centers" means those facilities

established pursuant to the acts described in § 74.3(a)(4) (i)-(ii).

(d) "Child of an eligible individual" means a recognized natural child, an adopted child, or a step-child who lived with the eligible person in a regular parent-child relationship.

(e) "The Commission" means the Commission on Wartime Relocation and Internment of Civilians established by the Commission on Wartime Relocation and Internment Act, 50 U.S.C. App. 1981 note, Pub. L. 96-317.

(f) "Evacuation, relocation, and internment period" means that period beginning December 7, 1941, and ending June 30, 1946.

(g) "The Fund" means the Civil Liberties Public Education Fund established by section 104 of the Civil Liberties Act of 1988, 50 U.S.C. App. 1989b-3 in the Treasury of the United States and administered by the Secretary of the Treasury.

(h) "The Office" means the Office of Redress Administration established in the Civil Rights Division of the U.S. Department of Justice to execute the responsibilities and duties assigned the Attorney General pursuant to Section 105 of the Civil Liberties Act of 1988, 50 U.S.C. App. 1989b-4.

(i) "Parent of an eligible individual" means the natural father and mother, or fathers and mothers through adoption.

(j) "The Report" means published report by the Commission on Wartime Relocation and Internment of Civilians of its findings and recommendations entitled, *Personal Justice Denied*, Part I and Part II.

(k) "Spouse of an eligible individual" means a wife or husband of an eligible individual who was married to that eligible person for at least one year immediately before the death of the eligible individual.

Subpart B—Standards of Eligibility

§ 74.3 Eligibility determinations.

(a) An individual is found to be eligible if such an individual:

(1) Is of Japanese ancestry; and

(2) Was living on the date of enactment of the Act, August 10, 1988; and

(3) During the evacuation, relocation, and internment period was—

(i) A United States citizen; or

(ii) A permanent resident alien who was lawfully admitted into the United States; or

(iii) An alien, who after the evacuation, relocation and internment period, was permitted by applicable statutes to obtain the status of

permanent resident alien extending to the internment period; and

(4) Was confined, held in custody, relocated, or otherwise deprived of liberty or property as a result of—

(i) Executive Order Numbered 9066, dated February 19, 1942;

(ii) The Act entitled "An Act to provide a penalty for violation of restrictions or orders with respect to persons entering, remaining, leaving, or committing any act in military areas or zones," approved March 21, 1942 (56 Stat. 173); or

(iii) Any other Executive order, Presidential proclamation, law of the United States, directive of the Armed Forces of the United States, or other action taken by or on behalf of the United States or its agents, representatives, officers, or employees, respecting the evacuation, relocation, or internment of individuals solely on the basis of Japanese ancestry. (b) The following individuals are deemed to have suffered a loss within the meaning of paragraph (a)(4) of this section:

(1) Individuals who were interned under the supervision of the Wartime Relocation Authority, the Department of Justice or the United States Army; or

(2) Individuals enrolled on the records of the United States Government during the period beginning on December 7, 1941, and ending June 30, 1946, as being in a prohibited military zone, including those individuals who, during the voluntary phase of the government's evacuation program between the issuance of Public Proclamation No. 1 on March 2, 1942, and the enforcement of Public Proclamation No. 4 on March 29, 1942, filed a "Change of Residence" card with the Wartime Civil Control Administration; or

(3) Individuals ordered by the Navy to leave Bainbridge Island, off the coast of the State of Washington, or Terminal Island, near San Pedro, California; or

(4) Individuals who were members of the Armed Forces of the United States at the time of the evacuation and internment period and whose domicile was in a prohibited zone and as a result of the government action lost property; or

(5) Individuals who were members of the Armed Forces of the United States at the time of the evacuation and internment period and were prohibited by government regulations from visiting their interned families or forced to submit to undue restrictions amounting to a deprivation of liberty prior to visiting their families; or

(6) Individuals who, after March 29, 1942, evacuated and relocated from the West Coast as a result of government action, including those who obtained

written permission to travel to a destination outside of the unauthorized areas from the Western Defense Command and the Fourth Army; or

(7) Individuals born in assembly centers or relocation centers to parents of Japanese ancestry who had been evacuated, relocated or interned pursuant to paragraph (a)(4) of this section, including children born in the United States to parents of Japanese ancestry who were relocated to the United States from other countries in the Americas; or

(8) Individuals who, prior to or at the time of evacuation, relocation or internment period, were in institutions, such as a hospital, and placed under the custody of the Wartime Relocation Authority and confined within the grounds of the institution and not permitted to return to their homes or to go anywhere else pursuant to the acts described in paragraph (a)(4) of the section.

(c) Paragraph (b) of this section is not an exhaustive list of individuals who are deemed eligible for compensation; there will be other individuals determined to be eligible in accordance with the statute on a case-by-case basis by the Redress Administrator.

§ 74.4 Exclusion from compensation.

The term "eligible individual" does not include any individual who, during the period beginning on December 7, 1941, and ending on September 2, 1945, relocated to a country while the United States was at war with that country.

Subpart C—Verification Procedures

§ 74.5 Identification and location of eligible individuals.

(a) The Office shall compile a list of the names and other identifying information of potentially eligible individuals from the following official sources:

- (1) The National Archives;
- (2) The Department of Justice;
- (3) The Social Security Administration;
- (4) Internal Revenue Service;
- (5) University libraries;
- (6) State and local libraries;
- (7) State and local historical societies; and
- (8) State and local agencies.

(b) The Office shall compile a list of names and other identifying information pertaining to eligible information from the following unofficial sources:

- (1) Potentially eligible individuals;
- (2) Eligible individuals' relatives, legal guardians, representatives, or attorneys;
- (3) Civic Associations;
- (4) Religious organizations;

(5) Other.

§ 74.6 Determination procedures.

(a) Information described in § 74.5 will be maintained in two parallel files: One exclusively for officially supplied information; one exclusively for voluntarily supplied information.

(b) The initial verification of an eligible individual who, pursuant to the acts described in § 74.3(d), is listed on a United States Government records as having been—

- (1) Processed in an Assembly Center;
- (2) Interned in a camp under the supervision of the War Relocation Authority;
- (3) Filed a "Change of Residence" card; or
- (4) Other.

(c) Will be compared to voluntarily supplied information in the files described in paragraph (a) of this section to determine if the individual so located is the eligible person listed in the official file.

(d) The information to be compared includes:

- (1) Name;
- (2) Date of birth;
- (3) Place of birth;
- (4) Race;
- (5) Sex;
- (6) Current address;
- (7) Names of assembly centers and camps at which interned;
- (8) Social Security Number;
- (9) Other.

(e) The initial verification of an eligible individual not listed on United States Government records as described in paragraph (b) of this section, will be verified by other means on a case-by-case basis. For example, to verify a child born in a relocation camp who is not included on the camp roster, the Office would have to reconstruct the evidence based on the records of his or her parents as described in paragraph (b) of this section, and to receive from the individual where necessary, authoritative documentation of birth.

§ 74.7 Notification of a preliminary finding of eligibility.

(a) Each individual who has been preliminarily found to be eligible or their statutory heirs will be sent written notification of such status by the Office. Enclosed with the notification will be a declaration to be completed by the person so notified, or by his or her legal guardian and a request for documentation of identity.

(b) The declaration and submitted documents (Appendix A to this Part 74) will be used for a final determination of eligibility in order to ensure that the

person identified as eligible by the Office is in fact the person who will receive payment, and will include a request for the following information:

(1) Name as it appears on the official file; or

(2) In cases where a name as it appears on the official file is different from the current legal name, the individual must attach a marriage certificate or other evidence of the name change as described in Appendix A to this part;

(3) Date of birth; and

(4) Proof of date of birth as set forth in Appendix A to this part;

(5) Current address; and

(6) Proof of current address as set forth in Appendix A;

(7) Current telephone number;

(8) Social Security Number; and

(9) A signed and dated statement by the individual swearing under penalty of perjury to the truth of all the information provided on the declaration pursuant to 28 U.S.C. 1746; or

(10) A sworn declaration signed on behalf of a person who being otherwise eligible is incompetent or otherwise under legal disability, by the natural or legal guardian, or any other person, including the spouse of such eligible person, who the Administrator determines is charged with the care of the individual.

(c) Upon receipt of the declaration from a potentially eligible individual, the Administrator shall make a determination of eligibility or ineligibility by comparing the information in the official file as described in § 74.6 against the information submitted in the individual's declaration as described in paragraph (b) of this section.

(d) Each eligible individual will be notified as to a determination of eligibility by the procedure described in § 74.9; and

(e) Each person determined not to be eligible will be notified by the Redress Administrator of the finding of ineligibility and the right to petition for a reconsideration of such a finding.

Subpart D—Notification and Payment

§ 74.8 Notice of eligibility determination.

The Administrator shall, when funds are appropriated for payment, notify an eligible individual in writing of his or her eligibility for payment. Section 104 of the Act, 50 U.S.C. App. 1989b-3, limits any appropriation to not more than \$500,000,000 for any fiscal year.

§ 74.9 Conditions of acceptance of payment.

(a) Each eligible individual will be deemed to have accepted payment if

after receiving final notification of eligibility from the Redress Administrator, the eligible individual does not refuse payment in the manner described in § 74.10.

(b) Acceptance of payment shall be in full satisfaction of all claims arising out of the acts described in § 74.3(d).

§ 74.10 Effect of refusal to accept payment.

If an eligible individual who has been notified by the Administrator of his or her eligibility for payment refuses within 18 months, in a written document to accept payment, the written record of refusal will be filed with the Office and the amount of payment as described in § 74.11 shall remain in the Fund and no payment may be made as described in § 74.12 to such individual or his or her survivors at any time after the date of receipt of the written refusal.

§ 74.11 Authorization for payment.

(a) Upon determination by the Administrator as to the eligibility of an individual, the authorization for payment of \$20,000 to the eligible individual will be certified by the Assistant Attorney General of the Civil Rights Division to the Assistant Attorney General of the Justice Management Division who will give final authorization to the Secretary of the Treasury for payment out of the funds appropriated for this purpose.

(b) Authorization of payments made to survivors of eligible persons will be certified in the manner described in paragraph (a) of this section to the Secretary of the Treasury for payment to the individual member or members of the class of survivors entitled to receive payment under the procedures set forth in § 74.13.

(c) Any payment to an eligible person under a legal disability, may, in the discretion of the Assistant Attorney General for Civil Rights be certified for payment for the use of the eligible person, to the natural or legal guardian, committee, conservator or curator, or if there is no such natural or legal guardian, committee, conservator or curator, to any other person, including the spouse of such eligible person, who the Administrator determines is charged with the care of the eligible person.

§ 74.12 Order of payments.

(a) Payments will be made in the order of the date of birth with the oldest individual living on the date of enactment of the Act (August 10, 1988) receiving payment first; or

(b) With the survivors of the individual as set forth in § 74.13 receiving payment first until all

individuals have received payment in full.

§ 74.13 Payment to survivors of eligible individuals.

(a) In the case of an eligible individual as described in § 74.3 who is deceased, payment shall be made only as follows—

(1) If the eligible individual is survived by a spouse who is living at the time of payment, such payment shall be made to such surviving spouse.

(2) If there is no surviving spouse as described in paragraph (a)(1) of this section such payment shall be made in equal shares to all children of the eligible individual who are living at the time of payment.

(3) If there is no surviving spouse described in paragraph (a)(1) of this section, and if there are no surviving children as described in paragraph (a)(2) of this section, such payment shall be made in equal shares to the parents of the deceased eligible individual who are living at the time of payment.

(b) If there are no surviving spouses, children or parents as described in paragraph (a) of this section, the amount of such payment shall remain in the Fund and may be used only for the purposes set forth in section 106(b) of the Act, 50 U.S.C. App. 1989b-5.

§ 74.14 Determination of relationship of survivors.

(a) A spouse of a deceased eligible individual should establish his or her marriage by one (or more) of the following types of evidence in the following order of preference:

(1) Copy of the public records of marriage, certified or attested, or by an abstract of the public records, containing sufficient data to identify the parties, the date and place of marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage;

(2) Official report from a public agency as to a marriage which occurred while the deceased eligible individual was employed by such agency;

(3) The affidavit of the clergyman or magistrate who officiated;

(4) The original certificate of marriage accompanied by proof of its genuineness and the authority of the person to perform the marriage;

(5) The affidavits or sworn statements of two or more eyewitnesses to the ceremony;

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(6) In jurisdictions where "Common Law" marriages are recognized, the affidavits or certified statements of the spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage, including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife and whether they were generally accepted as such in the communities in which they lived; or

(7) Any other evidence which would reasonably support a belief by the Administrator that a valid marriage actually existed.

(b) A child should establish that he or she is the child of a deceased eligible individual by one of the following types of evidence:

(1) A birth certificate showing that the deceased eligible individual was the child's parent;

(2) If the birth certificate does not show the deceased eligible individual as the child's parent, the sufficiency of evidence will be determined in accordance with the facts of a particular case. Proof of the relationship may consist of—

(i) An acknowledgement in writing signed by the deceased eligible individual; or

(ii) Evidence that the deceased eligible individual has been identified as the child's parent by a judicial decree ordering the deceased eligible individual to contribute to the child's support or for other purposes; or

(iii) Any other evidence that reasonably supports a finding of a parent-child relationship, such as—

(A) A certified copy of the public record of birth or a religious record showing that the deceased eligible individual was the informant and was named as the parent of the child; or

(B) Affidavits or sworn statements of a person who knows that the deceased eligible individual accepted the child as his or hers; or

(C) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with the deceased eligible individual's knowledge, the deceased eligible individual was named as the parent of the child.

(c) Except as may be provided in paragraph (b) of this section, evidence of the relationship by an adopted child must be shown by a certified copy of the decree of adoption and such other evidence as may be necessary. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where the release of such documents or information is prohibited, a revised birth certificate will be sufficient to establish the fact of adoption.

(d) The relationship of a step-child to a deceased eligible individual shall be demonstrated by—

(1) Evidence of birth to the spouse of the deceased eligible individual as required by paragraphs (e) and (f) of this section; or

(2) If adopted by the spouse, evidence of adoption as required by paragraph (b) of this section; or

(3) Other evidence which reasonably supports the existence of a parent-child relationship between the child and the spouse; and

(4) Evidence that the step-child was either—

(i) Living with; or

(ii) In a parent-child relationship with the deceased eligible individual at the time of the eligible individual's death; and

(5) Evidence of the marriage of the deceased eligible individual and the spouse, as required by paragraph (a) of this section.

(e) A parent of a deceased eligible individual may establish his or her parenthood of the deceased eligible individual by providing the following types of evidences:

(1) A birth certificate that shows the person to be the deceased eligible individual's parent; or

(2) An acknowledgment in writing signed by the person before the eligible individual's death; or

(3) Any other evidence which reasonably supports a finding of such a parent-child relationship, such as—

(i) A certified copy of the public record of birth or a religious record showing that the claimant was the informant and was named as the parent of the deceased eligible individual; or

(ii) Affidavits or sworn statements of persons who know the person had accepted the deceased eligible individual as his or her child; or

(iii) Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with the deceased eligible individual's knowledge, the person had been named as parent of the child.

(f) An adoptive parent of a deceased eligible individual must show the following evidence—

(1) A certified copy of the decree of adoption and such other evidence as may be necessary; or

(2) In jurisdictions where petition must be made to the court for release of such documents or information, or where release of such documents or information is prohibited, a revised birth certificate showing the person as the deceased eligible individual's parent will suffice.

Subpart E—Appeal Procedures

§ 74.15 Notice of the right to appeal a finding of ineligibility.

Persons determined to be ineligible by the Administrator will be notified in writing of the determination and of the right to petition for a reconsideration of the determination of ineligibility to the Assistant Attorney General for Civil Rights, and the right to submit any documentation in support of eligibility.

§ 74.16 Procedures for filing an appeal.

A request for reconsideration should be made to the Assistant Attorney General for Civil Rights within 60 days of the receipt of the notice from the Administrator of a determination of ineligibility. The request shall be made in writing, addressed to the Assistant Attorney General of the Civil Rights Division, P.O. Box 65808, Washington, DC 20035-5808. Both the envelope and the letter of appeal itself must be clearly marked: "Redress Appeal." A request not so addressed and marked shall be forwarded to the Office of the Assistant Attorney General for Civil Rights, or the official designated to act on his behalf, as soon as it is identified as an appeal of eligibility. An appeal that is improperly addressed shall be deemed not to have been received by the Department until the Office receives the appeal, or until the appeal would have been so received with the exercise of due diligence by Department personnel.

§ 74.17 Action on appeal.

The Assistant Attorney General or the official designated to act on his behalf shall:

(a) Review the original determination; and

(b) Review additional information or documentation submitted by the individual to support a finding of eligibility; and

(c) Where a determination of ineligibility is reversed on appeal, the individual shall be so notified and the Redress Administrator shall be so informed; or

(d) Where there is a decision affirming the determination of ineligibility, the letter to the individual shall include a statement of the reason or reasons for the affirmation.

(e) A decision of affirmance shall constitute the final action of the Department on that redress appeal.

Appendix A to Part 74—Declarations of Eligibility by Persons Identified by the Office of Redress Administration and Requests for Documentation

Form A:

Declaration of Eligibility by Persons Identified by the Office of Redress Administration

U.S. Department of Justice, Civil Rights Division, Office of Redress Administration

This declaration shall be executed by the identified eligible person or such person's designated representative.

Complete the following information:

- (1) Current Legal Name: _____
 (2) Current Address: _____
 Street: _____
 City, State and Zip Code: _____
 (3) Telephone Number: _____

(Home)

(Business)

- (4) Social Security Number: _____
 (5) Date of Birth: _____
 (6) Name Used When Evacuated or Interned: _____

Read the following carefully before signing this document. A False Statement may be grounds for punishment by fine (U.S. Code, Title 31, Section 3729), and fine or imprisonment or both (U.S. Code, Title 18, Section 287 and Section 1101).

I declare under penalty of perjury that the foregoing is true and correct.

Signature

Date

Privacy Act statement: The authority for this information is contained in 50 U.S.C. app. 1989b. The information that you provide will be used principally for verifying eligible persons for payment under the restitution provision of the Civil Liberties Act of 1988.

Required Documentation

The following documentation must be submitted with the above Declaration to complete your verification.

Submit only *original* records, not copies. All documents attached to the Declaration will be returned to the sender within 15 working days.

Documentation:

I. Two Documents of Identification

1. Photo identification with your current legal name.
 2. A document to establish your current address: Preferred evidence would be bank or financial statements, monthly utility bills, employment identification cards.

II. One Document of Date of Birth

Attach to this declaration *ONE* of the following types of evidence to establish your date of birth:

1. An original birth certificate; or
 2. An original hospital birth record recorded before the age of five; or
 3. An original religious record which shows your date of birth and was recorded before age five; or
 4. An original family Bible or family record; or
 5. An original school record; or
 6. An expired passport; or
 7. An original employment record; or
 8. Affidavits of two or more persons attesting to the date of birth.

III. One Document of Name Change

If your current legal name is the same as your name when evacuated or interned this section does not apply.

This section is only required for persons whose current legal name is different from the name used when evacuated or interned.

Attach *one* of the following as evidence of the change of legal name:

1. A certified copy of the public record of marriage; or
 2. A certified copy of the divorce decree; or
 3. A certified copy of the court order of a name change; or
 4. Affidavits or sworn statements of two or more persons attesting to the name change.

IV. One Document of Evidence of Guardianship

If you are executing this document for the person identified as eligible, you must submit evidence of your authority.

If you are the legally-appointed guardian, committee, or other legally-designated representative of such an individual, the evidence shall be a certificate executed by the proper official of the court appointment.

If you are not such a legally-designated representative, the evidence shall be an affidavit describing your relationship to the recipient or the extent to which you have the care of the recipient or your position as an officer of the institution of which the recipient is institutionalized.

Form B:

Declaration of Verification by Persons Identified as Statutory Heirs by the Office of Redress Administration.

U.S. Department of Justice, Civil Rights Division, Office of Redress Administration

This declaration shall be executed by the spouse of a deceased eligible individual as statutory heir in accordance with Section 105(a)(7) of the Civil Liberties Act of 1988, 50 U.S.C. app. 1989b.

Complete the following information:

- (1) Current Legal Name: _____
 (2) Current Address: _____
 Street: _____
 City, State and Zip Code: _____
 (3) Telephone Number: _____

Home

Business

- (4) Social Security number: _____
 (5) Date of Birth: _____
 (6) Relationship to the

Deceased: _____

(7) Date of marriage to the Deceased: _____

Read the following carefully before signing this document.

A False Statement may be grounds for punishment by fine (U.S. Code, Title 31, Section 3729), and fine or imprisonment or both (U.S. Code, Title 18, Section 287 and Section 1101).

I declare under penalty of perjury that the foregoing is true and correct.

Signature

Date

Privacy Act statement: The authority for this information is contained in 50 U.S.C. app. 1989b. The information that you provide will be used principally for verifying eligible persons for payment under the restitution provision of the Civil Liberties Act of 1988.

Required Documentation

The following documentation must be submitted with the above Declaration to complete your verification.

Submit only *original* records, not copies. All documents attached to the Declaration will be returned to the sender within 15 working days.

Documentation:

I. One Document as Evidence of the Deceased Eligible Individual's Death

Submit *one* of the following as evidence. Preferred evidence would be:

1. A certified copy or extract from the public records of death, coroner's report of death, or verdict of a coroner's jury.
 2. A certificate by the custodian of the public record of death.

3. A statement of the funeral director or attending physician, or intern of the institution where death occurred.

4. A certified copy, or extract from an official report or finding of death made by an agency or department of the United States.

5. If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department, or a copy of public record of death in the foreign country.

6. If you cannot obtain the preferred evidence of a person's death, he or she will be asked to explain why and submit other convincing evidence to ORA such as the signed statements of two or more people with personal knowledge of the death, giving the place, date, and cause of death.

II. One Document as Evidence of Your Relationship to the Deceased Eligible Individual

1. A copy of the public records of marriage, certified or attested, or by an abstract of the public records, containing sufficient data to identify the parties, the date and place of marriage, and the number of prior marriages by either party if shown on the official record, issued by the officer having custody of the record or other public official authorized to certify the record, or a certified copy of the religious record of marriage;
 2. An official report from a public agency as to a marriage which occurred while the

deceased eligible individual was employed by such agency.

3. The affidavit of the clergyman or magistrate who officiated.

4. The original certificate of marriage accompanied by proof of its genuineness and the authority of the person to perform the marriage.

5. The affidavits or sworn statements of two or more eyewitnesses to the ceremony.

6. In jurisdictions where "Common Law" marriages are recognized, the affidavits or certified statements of the spouse setting forth all of the facts and circumstances concerning the alleged marriage, such as the agreement between the parties at the beginning of their cohabitation, places and dates of residences, and whether children were born as the result of the relationship. This evidence should be supplemented by affidavits or certified statements from two or more persons who know as the result of personal observation the reputed relationship which existed between the parties to the alleged marriage, including the period of cohabitation, places of residences, whether the parties held themselves out as husband and wife and whether they were generally accepted as such in the communities in which they lived.

7. Any other evidence which would reasonably support a belief by the Administrator that a valid marriage actually existed.

III. Two Documents of Identification

Submit *both* of the following as evidence.

1. An identification with your photograph and with your current legal name.

2. A document to establish your current address such as monthly utility bills, bank or financial statements, employment identification cards.

IV. One Document of Date of Birth

1. An original birth certificate.
2. An original hospital birth record recorded before the age of five.
3. An original religious record which shows your date of birth and was recorded before age five.
4. An original family bible or family record.
5. An original school record.
6. An expired passport.
7. An original employment record.
8. Affidavits of two or more persons attesting to the date of birth.

V. One Document of Name Change

If your current legal last name is the same as the last name of the deceased eligible individual or the same as at the time of marriage this section does not apply.

This section is only required for persons whose current legal last name is different from the last name of the deceased eligible. Submit *one* of the following as evidence of the change of legal name.

1. A certified copy of the public record of marriage.
2. A certified copy of the divorce decree.
3. A certified copy of the court order of a name change.
4. Affidavits or sworn statements of two or more persons attesting to the name change.

VI. One Document of Evidence of Guardianship

If you are executing this document for the person identified as eligible you must submit evidence of your authority.

If you are the legally-appointed guardian, committee, or other legally-designated representative of such an individual, the evidence shall be a certificate executed by the proper official of the court appointment.

If you are not such a legally-designated representative, the evidence shall be an affidavit describing your relationship to the recipient or the extent to which you have the care of the recipient or your position as an officer of the institution of which the recipient is institutionalized.

Form C:

Declaration of Verification by Persons Identified by the Office of Redress Administration as Statutory Heirs.

U.S. Department of Justice, Civil Rights Division, Office of Redress Administration

This declaration shall be executed by the child of a deceased eligible individual as a statutory heir in accordance with Section 105(a)(7) of the Civil Liberties Act of 1988, 50 U.S.C. app. 1989b.

Complete the following information:

- (1) Current Legal Name: _____
- (2) Current Address: _____
Street: _____
City, State and Zip Code: _____
- (3) Telephone Number: _____

Home _____

Business _____

- (4) Social Security Number: _____
- (5) Date of Birth: _____
- (6) Relationship to the Deceased: _____
- (7) List the names and addresses (if known) of all other children of the deceased eligible individual. This includes all recognized natural children, step children who lived with the deceased eligible and adopted children. Enter the date of death for any persons who are deceased.

Read the following carefully before signing this document. A False Statement may be grounds for punishment by fine (U.S. Code, Title 31, Section 3729), and fine or imprisonment or both (U.S. Code, Title 18, Section 287 and Section 1101).

I declare under penalty of perjury that the foregoing is true and correct.

Signature _____

Date _____

Privacy Act statement: The authority for this information is contained in 50 U.S.C. app. 1989b. The information that you provide will be used principally for verifying eligible persons for payment under the restitution provision of the Civil Liberties Act of 1988.

Required Documentation for Children of Deceased Eligible Individual

The following documentation must be submitted with the above Declaration to complete your verification.

Submit only *original* records, not copies. All documents attached to the Declaration will be returned to the sender within 15 working days.

Documentation:

I. One Document as Evidence of the Deceased Eligible Individual's Death

1. A certified copy or extract from the public records of death, coroner's report of death, or verdict of a coroner's jury.
2. A certificate by the custodian of the public record of death.
3. A statement of the funeral director or attending physician, or intern of the institution where death occurred.
4. A certified copy, or extract from an official report or finding of death made by an agency or department of the United States.
5. If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department; or a copy of public record of death in the foreign country.

6. If you cannot obtain the preferred evidence of a person's death, you will be asked to explain why and submit other convincing evidence to ORA such as the signed statements of two or more people with personal knowledge of the death, giving the place, date, and cause of death.

II. One Document as Evidence of Your Relationship to the Deceased Eligible Individual

Natural Child

1. A birth certificate showing that the deceased eligible individual was your parent.
2. If the birth certificate does not show the deceased eligible individual as your parent, other proof would be:
 - (a) An acknowledgment in writing signed by the deceased eligible individual.
 - (b) A judicial decree ordering the deceased eligible individual to contribute to your support or for other purposes.
 - (c) A certified copy of the public record of birth or a religious record showing that the deceased eligible individual was the informant and was named as your parent.
 - (d) Affidavits or sworn statements of a person who knows that the deceased eligible individual accepted the child as his or hers.
 - (e) A record obtained from a public agency or public records, such as school or welfare agencies, which shows that with the deceased eligible individual's knowledge, the deceased eligible individual was named as the parent of the child.

Adopted Child

Evidence of the relationship by an adopted child must be shown by a certified copy of the decree of adoption. In jurisdictions where petition must be made to the court for release of adoption documents or information, or where the release of such documents or information is prohibited, a revised birth certificate will be sufficient to establish the fact of adoption.

Step-Child

Submit all *three* as evidence of the step-child relationship.

1. One document as evidence of birth to the spouse of the deceased eligible individual.

Preferred evidence would be a birth certificate or other evidence of birth to the spouse of the deceased eligible individual as required in the section for a natural child of a deceased eligible. If adopted by the spouse, evidence of adoption as required in the section for an adopted child of a deceased eligible.

Other evidence would be a document which reasonably supports the existence of a parent-child relationship between the child and the spouse.

2. One document as evidence that the step-child was either living with or in a parent-child relationship with the deceased eligible individual at the time of the eligible individual's death.

3. One document as evidence of the marriage of the deceased eligible individual and the spouse, such as a copy of the record of marriage, certified or attested, or by an abstract of the public records, containing sufficient data to identify the parties and the date and place of marriage issued by the officer having custody of the record, or a certified copy of a religious record of marriage.

III. Two Documents of Identification

Submit *both* of the following as evidence.

1. An identification with your photograph and with your current legal name.
2. A document to establish your current address such as monthly utility bills, bank or financial statements, employment identification cards.

IV. One Document of Date of Birth

1. An original birth certificate.
2. An original hospital birth record recorded before the age of five.
3. An original religious record which shows your date of birth and was recorded before age five.
4. An original family bible or family record.
5. An original school record.
6. An expired passport.
7. An original employment record.
8. Affidavits of two or more persons attesting to the date of birth.

V. One Document of Name Change

If your current legal last name is the same as the last name of the deceased eligible this section does not apply.

This section is only required for persons whose current legal last name is different from the last name of the deceased eligible.

Submit *one* of the following as evidence of the change of legal name.

1. A certified copy of the public record of marriage.
2. A certified copy of the divorce decree.
3. A certified copy of the court order of a name change.
4. Affidavits or sworn statements of two or more persons attesting to the name change.

VI. One Document of Evidence of Guardianship

If you are executing this document for the person identified as an eligible beneficiary, you must submit evidence of your authority.

If you are a legally-appointed guardian, committee, or other legally-designated representative of such an individual, the evidence shall be a certificate executed by the proper official of the court appointment.

If you are not such a legally-designated representative, the evidence shall be an affidavit describing your relationship to the recipient or the extent to which you have the care of the recipient or your position as an officer of the institution of which the recipient is institutionalized.

Form D:

Declaration of Verification by Persons Identified by the Office of Redress Administration as Statutory Heirs.
U.S. Department of Justice, Civil Rights Division, Office of Redress Administration

This declaration shall be executed by the identified parent of a deceased eligible individual as statutory heir in accordance with Section 105(a)(7) of the Civil Liberties Act of 1988, 50 U.S.C. app. 1989b.

Complete the following information:

- (1) Current Legal Name: _____
- (2) Current Address: _____
Street: _____
City, State and Zip Code: _____
- (3) Telephone Number: _____

Home _____

Business _____

- (4) Social Security Number: _____
- (5) Date of Birth: _____
- (6) Relationship to the Deceased: _____
- (7) The name of the child's other parent and the address if known. This includes fathers and mothers through adoption. If the parent is deceased provide the date and place of death.

Read the following carefully before signing this document. A False Statement may be grounds for punishment by fine (U.S. Code, Title 31, Section 3729), and fine or imprisonment or both (U.S. Code, Title 18, Section 287 and Section 1101).

I declare under penalty of perjury that the foregoing is true and correct.

Signature _____

Date _____

Privacy Act Statement: The authority for this information is contained in 50 U.S.C. app. 1989b. The information that you provide will be used principally for verifying eligible persons for payment under the restitution provision of the Civil Liberties Act of 1988.

Required Documentation

The following documentation must be submitted with the above Declaration to complete your verification.

Submit only *original* records, not copies. All documents attached to the Declaration will be returned to the sender within 15 working days.

Documentation:

I. One Document as Evidence of the Deceased Eligible's Death

1. A certified copy or extract from the public records of death, coroner's report of death, or verdict of a coroner's jury.

2. A certificate by the custodian of the public record of death.

3. A statement of the funeral director or attending physician, or intern of the institution where death occurred.

4. A certified copy, or extract from an official report or finding of death made by an agency or department of the United States.

5. If death occurred outside the United States, an official report of death by a United States Consul or other employee of the State Department; or a copy of public record of death in the foreign country.

6. If you cannot obtain the preferred evidence of a person's death, you will be asked to explain why and submit other convincing evidence to ORA such as: the signed statements of two or more people with personal knowledge of the death, giving the place, date, and cause of death.

II. One Document as Evidence of Your Relationship to the Deceased Eligible Natural Parent

1. A birth certificate that shows you to be the deceased eligible individual's parent.
2. An acknowledgment in writing signed by the person before the eligible individual's death.

3. Any other evidence which reasonably supports a finding of such a parent-child relationship, such as a certified copy of the public record of birth or a religious record showing that the person was the informant and was named as the parent of the deceased eligible individual.

4. Affidavits or sworn statements of persons who know the person had accepted the deceased eligible individual as his or her child.

5. Information obtained from a public agency or public records, such as school or welfare agencies, which shows that with the deceased eligible individual's knowledge, you named as parent.

Adoptive Parent

1. A certified copy of the decree of adoption and such other evidence as may be necessary.

2. In jurisdictions where petition must be made to the court for release of such documents or information, or where release of such documents or information is prohibited, a revised birth certificate showing the person as the deceased eligible individual's parent will suffice.

III. Two Documents of Identification

Submit *both* of the following as evidence.

1. An identification with your photograph and with your current legal name.
2. A document to establish your current address such as monthly utility bills, bank or financial statements, employment identification cards.

IV. One Document of Date of Birth

Submit *one* of the following types of evidence to establish your date of birth.

1. An original birth certificate.
2. An original hospital birth record recorded before the age of five.
3. An original religious record which shows your date of birth and was recorded before age five.

4. An original family bible or family record.
5. An original school record.
6. An expired passport.
7. An original employment record
8. Affidavits of two or more persons attesting to the date of birth.

V. One Document of Name Change

If your current legal last name is the same as the last name of the deceased eligible individual this section does not apply.

This section is only required for persons whose current legal last name is different from the last name of the deceased eligible. Submit one of the following as evidence of the change of legal name.

1. A certified copy of the public record of marriage.
2. A certified copy of the divorce decree.
3. A certified copy of the court order or a name change.
4. Affidavits or sworn statements of two or more persons attesting to the name change.

VI. One Document of Evidence of Guardianship

If you are executing this document for the person identified as eligible you must submit evidence of your authority.

If you are the legally-appointed guardian, committee, or other legally-designed representative of such an individual, the evidence shall be a certificate executed by the proper official of the court appointment.

If you are not such a legally-designated representative, the evidence shall be an affidavit describing your relationship to the recipient or the extent to which you have the care of the recipient or your position as an officer of the institution of which the recipient is institutionalized.

Date: June 7, 1989.

Dick Thornburgh,

Attorney General.

[FR Doc. 89-14000 Filed 6-13-89; 8:45 am]

BILLING CODE 4410-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 261

[SW-FRL-3601-8]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Proposed Denial

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule and request for comment.

SUMMARY: The Environmental Protection Agency (EPA or Agency) today is proposing to deny a petition submitted by Rock Island Refining Corporation, Indianapolis, Indiana, to exclude certain solid wastes generated at its facility from the lists of hazardous wastes contained in 40 CFR 261.31 and 261.32. This action responds to a delisting petition submitted under 40 CFR 260.20,

which allows any person to petition the Administrator to modify or revoke any provision of Parts 260 through 268, 124, 270, and 271 of Title 40 of the Code of Federal Regulations, and under 40 CFR 260.22, which specifically provides generators the opportunity to petition the Administrator to exclude a waste on a "generator-specific" basis from the hazardous waste lists. Today's proposed decision is based on an evaluation of waste-specific information provided by the petitioner.

The Agency is also proposing the use of an organic leachate model and a fate and transport model and their application in evaluating the waste-specific information provided by the petitioner. These models have been used in evaluating the petition to predict the concentration of hazardous constituents released from the petitioned waste, once it is disposed of.

DATES: EPA is requesting public comments on today's proposed decision and on the applicability of the organic leachate and fate and transport models used to evaluate the petition. Comments will be accepted until July 31, 1989. Comments postmarked after the close of the comment period will be stamped "late". Any person may request a hearing on this proposed decision and/or the models used in the petition evaluation by filing a request with Joseph Carra, whose address appears below, by June 29, 1989. The request must contain the information prescribed in 40 CFR 260.20(d).

ADDRESSES: Send three copies of your comments to EPA. Two copies should be sent to the Docket Clerk, Office of Solid Waste (OS-305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A third copy should be sent to Jim Kent, Variances Section, Assistance Branch, PSPD/OSW (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Identify your comments at the top with this regulatory docket number: "F-89-RIDP-FFFFF".

Requests for a hearing should be addressed to Joseph Carra, Director, Permits and State Programs Division, Office of Solid Waste (OS-340), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

The RCRA regulatory docket for this proposed rule is located at the U.S. Environmental Protection Agency, 401 M Street, SW. (Room M2427), Washington, DC 20460, and is available for viewing from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding Federal holidays. Call (202) 475-9327 for appointments. The public may copy material from any regulatory docket at a cost of \$0.15 per page.

FOR FURTHER INFORMATION CONTACT:

For general information, contact the RCRA Hotline, toll free at (800) 424-9348, or at (202) 382-3000. For technical information concerning this notice, contact Terry Grist, Office of Solid Waste (OS-343), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 382-4782.

SUPPLEMENTARY INFORMATION:

I. Background

A. Authority

On January 16, 1981, as part of its final and interim final regulations implementing section 3001 of RCRA, EPA published an amended list of hazardous wastes from non-specific and specific sources. This list has been amended several times, and is published in 40 CFR 261.31 and 261.32. These wastes are listed as hazardous because they typically and frequently exhibit one or more of the characteristics of hazardous wastes identified in Subpart C of Part 261 (*i.e.*, ignitability, corrosivity, reactivity, and extraction procedure (EP) toxicity) or meet the criteria for listing contained in 40 CFR 261.11 (a)(2) or (a)(3).

Individual waste streams may vary, however, depending on raw materials, industrial processes, and other factors. Thus, while a waste that is described in these regulations generally is hazardous, a specific waste from an individual facility meeting the listing description may not be. For this reason, 40 CFR 260.20 and 260.22 provide an exclusion procedure, allowing persons to demonstrate that a specific waste from a particular generating facility should not be regulated as a hazardous waste.

To have their wastes excluded, petitioners must show that wastes generated at their facilities do not meet any of the criteria for which the wastes were listed. See 40 CFR 260.22(a) and the background documents for the listed wastes. In addition, the Hazardous and Solid Waste Amendments (HSWA) of 1984 require the Agency to consider any factors (including additional constituents) other than those for which the waste was listed, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. Accordingly, a petitioner also must demonstrate that the waste does not exhibit any of the hazardous waste characteristics (*i.e.*, ignitability, reactivity, corrosivity, and EP toxicity), and must present sufficient information for the Agency to determine whether the waste contains any other toxicants at hazardous levels. See 40 CFR 260.22(a), 42 U.S.C. 6921(f), and the

background documents for the listed wastes. Although wastes which are "delisted" (*i.e.*, excluded) have been evaluated to determine whether or not they exhibit any of the characteristics of hazardous waste, generators remain obligated to determine whether or not their waste remains non-hazardous based on the hazardous waste characteristics.

In addition to wastes listed as hazardous in 40 CFR 261.31 and 261.32, residues from the treatment, storage, or disposal of listed hazardous wastes and mixtures containing hazardous wastes also are eligible for exclusion and remain hazardous wastes until excluded. See 40 CFR 261.3 (c) and (d)(2). The substantive standard for "delisting" a treatment residue or a mixture is the same as previously described for listed wastes.

B. Approach Used to Evaluate This Petition

In making a delisting determination, the Agency evaluates each petitioned waste against the listing criteria and factors cited in 40 CFR 261.11 (a)(2) and (a)(3). If the Agency believes that the waste remains hazardous based on the factors for which the waste was originally listed, EPA will propose to deny the petition. If, however, the Agency agrees with the petitioner that the waste is non-hazardous with respect to the original listing criteria, EPA then will evaluate the waste with respect to other factors or criteria, if there is a reasonable basis to believe that such additional factors could cause the waste to be hazardous. The Agency considers whether the waste is acutely toxic, and considers the toxicity of the constituents, the concentration of the constituents in the waste, their tendency to migrate and to bioaccumulate, their persistence in the environment once released from the waste, plausible and specific types of management of the petitioned waste, the quantities of waste generated, and any other additional factors which may characterize the petitioned waste.

The Agency is proposing to use such information to identify plausible exposure routes for hazardous constituents present in the waste, and is proposing to use an organic leachate model and a particular fate and transport model to predict the concentration of hazardous constituents that may be released from the petitioned waste after disposal and to determine the potential impact of the unregulated disposal of Rock Island's petitioned waste on human health and the environment. Specifically, the models will be used to predict compliance-point

concentrations which will be compared directly to the levels of regulatory concern for particular hazardous constituents.

EPA believes that this fate and transport model represents a reasonable worst-case waste disposal scenario for the petitioned waste, and that a reasonable worst-case scenario is appropriate when evaluating whether a waste should be relieved of the protective management constraints of RCRA Subtitle C. Because a delisted waste is no longer subject to hazardous waste control, the Agency is generally unable to predict and does not control how a waste will be managed after delisting. Therefore, EPA currently believes that it is inappropriate to consider extensive site-specific factors. For example, a generator may petition the Agency for delisting of a metal hydroxide sludge which is currently being managed in an on-site landfill and provide data on the nearest drinking water well, permeability of the aquifer, dispersivities, etc. If the Agency were to base its evaluation solely on these site-specific factors, the Agency might conclude that the waste, at that specific location, cannot affect the closest well, and the Agency might grant the petition. Upon promulgation of the exclusion, however, the generator is under no obligation to continue to manage the waste at the on-site landfill. In fact, it is likely that the generator will either choose to send the delisted waste off site immediately, or will eventually reach the capacity of the on-site facility and subsequently send the waste off site to a facility which may have very different hydrogeological and exposure conditions.

The Agency also considers the applicability of ground-water monitoring data to its evaluation of delisting petitions. In this case, the Agency determined that it would be inappropriate to request ground-water monitoring data because Rock Island sends the petitioned waste off site for disposal. For petitioners using off-site management, the Agency believes that, in most cases, the ground-water monitoring data collected would not be meaningful. Most commercial land disposal facilities accept wastes from numerous generators. Any ground-water contamination or leachate would be characteristic of the total volume of waste disposed of at the site. In most cases, the Agency believes that it would be impossible to isolate ground-water impacts associated with any one waste disposed of in a commercial landfill. Therefore, the Agency did not request ground-water monitoring data.

Finally, the Hazardous and Solid Waste Amendments of 1985 specifically require the Agency to provide notice and an opportunity for comment before granting or denying a final exclusion. Thus, a final decision will not be made until all public comments (including those at requested hearings, if any) on today's proposal are addressed.

II. Disposition of Delisting Petition

A. Rock Island Refining Corporation, Indianapolis, Indiana

1. Petition for Exclusion

Rock Island Refining Corporation (Rock Island) located in Indianapolis, Indiana, is a petroleum refinery producing a wide range of fuels from the processing and fractionation of crude oil. Refinery processes include distillation, redistillation, and cracking. Rock Island petitioned the Agency to exclude its filter press cake generated from the treatment of the following sludges: EPA Hazardous Waste No. K049—"Slop oil emulsion solids from the petroleum refining industry"; EPA Hazardous Waste No. K050—"Heat exchanger bundle cleaning sludge from the petroleum refining industry"; and EPA Hazardous Waste No. K051—"API separator sludge from the petroleum refining industry". The listed constituents for EPA Hazardous Waste Nos. K049 and K051 are hexavalent chromium and lead; the listed constituent for EPA Hazardous Waste No. K050 is hexavalent chromium.

Rock Island petitioned to exclude its waste because it does not believe that the waste meets the criteria of the listing. Rock Island claims that its waste is not hazardous because the constituents of concern are present either in insignificant concentrations or, if present at significant levels, are essentially in immobile forms. Rock Island also believes that this waste is not hazardous for any other reason (*i.e.*, there are no additional constituents or factors that could cause the waste to be hazardous). Review of this petition included consideration of the original listing criteria, as well as the additional factors required by the Hazardous and Solid Waste Amendments of 1984. See Section 222 of the Amendments, 42 U.S.C. 6921(f), and 40 CFR 260.22(d) (2)-(4). Today's proposal to deny this petition for delisting is the result of the Agency's evaluation of Rock Island's petition.

2. Background

Rock Island submitted its petition to exclude its filter press cake from hazardous waste regulation on October 21, 1981. The Agency issued a temporary

exclusion for this waste by letter on March 12, 1982 after a preliminary review of the petition. (Prior to the passage of the Hazardous and Solid Waste Amendments (HSWA) of 1984, the Agency granted temporary exclusions if there was a likelihood that a final exclusion would be granted.) On January 6, 1984, November 26, 1984, and September 18, 1985, the Agency requested that Rock Island submit information necessary to complete its petition. The Agency requested that this information be submitted by November 15, 1985 so that the HSWA requirement, to finalize decisions on all temporary exclusions by November 8, 1986, could be satisfied. (See 42 U.S.C. 6921(f)(2)(B)). To date, the Agency has not received information believed necessary to fully characterize the petitioned waste. On January 17, 1986, EPA proposed to deny Rock Island's petition and revoke their temporary exclusion on the basis that Rock Island had failed to submit a complete petition (see 51 FR 2526-2529).¹

On October 24, 1986, EPA published a notice of availability and request for comment regarding EPA's technical reasons for requiring petroleum refining petitioners to submit analytical data for certain hazardous constituents in their various petitioned wastes (see 51 FR 37767-37768). This notice also indicated that Rock Island had not supplied these data. In response to this notice, Rock Island supplied (1) analytical data for one sample of vacuum filter cake, and (2) comments on the Agency's list of constituents of concern for petitions to exclude petroleum refining wastes. Rock Island strongly questioned whether EPA had the authority and a sufficient basis to require information on additional hazardous constituents of concern in its petitioned waste. As a result, Rock Island believed that EPA could not properly deny its petition for lack of information. Rock Island also requested a 30 day extension of the comment period. The Agency granted an extension on December 19, 1986 (51 FR 45485). The Agency received no additional data or comments.

The Agency did not make a final decision on Rock Island's petition by November 8, 1986, and, by operation of the statute, the facility lost its temporary exclusion and immediately became subject to the requirements of Subtitle C of RCRA. In addition, because the Agency did not finalize its decision, the delisting petition remained on file with

¹ On January 17, 1986, the Agency proposed to deny 23 petitions. The other 22 petitions have been or will be addressed in separate rulemakings and are not discussed in today's notice.

the Agency. In today's notice, EPA again proposes to deny the petition solely on technical grounds, because evaluation of information presented in the petition supports a finding that the waste is hazardous.

The Agency has the authority to deny petitions based on the lack of information. The Agency believes that it could have decided to issue a final denial based on the January 17, 1986 proposal because Rock Island has not submitted a complete petition, even after repeated Agency requests for information. Thus, the Agency largely disagrees with Rock Island's comments on the January 17 and October 24, 1986 notices. However, EPA declines to respond to those comments in detail in today's notice, since EPA no longer proposes to rely on the lack of information as a basis for denial of the petition. Rather than denying the petition based on the lack of information, the Agency has chosen instead to propose to deny Rock Island's petition based on a technical evaluation of the information, albeit deficient, that had been received. By so doing, the Agency is suggesting that it does not believe submittal of the requested additional data by Rock Island would lead the Agency to conclude that the petitioned waste is non-hazardous.

In support of its petition, Rock Island submitted (1) descriptions of its waste treatment processes, including schematic diagrams; (2) total constituent data for the EP toxic metals, nickel, antimony, and beryllium; (3) EP leachate analysis results for the EP toxic metals for representative waste samples; (4) OWEAP analysis results for the EP toxic metals, nickel, antimony, and beryllium for a single sample; (5) oil and grease data for a single sample; (6) total constituent data for volatile and semi-volatile organic compounds for a single sample; and (7) results from characteristics testing for ignitability, corrosivity, and reactivity.

At Rock Island's refinery, aqueous condensate from storage tanks, process waters, and oil laden waters (e.g., slop oil emulsions) are collected and transported by the refinery's oily water sewer to two API separators in series. (Rock Island's description of its manufacturing processes does not identify in detail what waste streams enter its waste treatment facility.) The API separators use physical means to separate the incoming waste into oil, water, and sludge components. The oil is recovered, and the water is further treated in on-site aeration lagoons. The API separator sludges are pumped into holding tanks before being conveyed to

a vacuum filter press. The resultant solid filter press cake is dumped continuously from the filter press into containers. The filter press cake is the subject of today's notice.

To collect representative samples from containers like Rock Island's, petitioners are normally requested to collect a minimum of four composite samples, each comprised of a full-depth core sample collected from one or more of the containers generated over a specific time period (e.g., collect a full-depth core sample from each container of waste generated during a week and composite the samples weekly). See "Test Methods for Evaluating Solid Wastes: Physical/Chemical Methods," U.S. EPA, Office of Solid Waste and Emergency Response, Publication SW-846 (third edition), November 1986, and "Petitions to Delist Hazardous Waste—A Guidance Manual," U.S. EPA, Office of Solid Waste, (EPA/530-SW-85-003), April 1985.

In March and April 1981, Rock Island collected one composite sample of the filter press cake from each of four containers. To construct these composite samples, Rock Island collected a shovel-full of waste from several different locations in one container and combined them; this procedure was repeated for three additional containers. Rock Island used sampling protocol presented in SW-846 Section 3.2-19 to sample its waste. Rock Island considered these samples to be representative of the petitioned waste because the filter press cake is believed to be homogenous due to the frequent mixing of the pre-filtered waste in the API separators and holding tanks. The four 1981 composite samples of the filter press cake were analyzed for extraction procedure (EP) leachate concentrations (i.e., mass of a particular constituent per unit volume of extract) of the EP toxic metals and hexavalent chromium. These four composite samples also were analyzed for total constituent concentrations (i.e., mass of a particular constituent per mass of waste) of chromium and lead, and the characteristics of ignitability, corrosivity, and reactivity. On February 19, 1982, Rock Island submitted EP leachate data for lead and chromium from a sample collected from the vacuum filter press. Rock Island did not provide a detailed description of procedures used to collect this filter press cake sample.

Rock Island also submitted data from one sample collected on March 29, 1984. Rock Island did not provide a detailed description of procedures used to collect this filter press cake sample. Rock

Island analyzed this sample for total constituent and Oily Waste EP (OWEP) leachate concentrations of the EP toxic metals, nickel, antimony, and beryllium. This sample was also analyzed for total constituent concentrations of volatile and semi-volatile organic compounds and total oil and grease content.

3. Agency Analysis

Rock Island used SW-846 methods to quantify the total constituent concentrations of lead and chromium, and procedures listed in 40 CFR Part 261, Appendix II to quantify the leachable concentrations of the EP toxic metals in the 1981 composite samples. Rock Island used SW-846 Method 1330 (the OWEP methodology) to quantify the leachable concentrations of the EP toxic metals, nickel, antimony, and beryllium in the 1984 sample. Rock Island used atomic absorption techniques to quantify the total constituent concentrations of the EP toxic metals, nickel, antimony, and beryllium in the 1984 sample. Table 1 presents the maximum reported total constituent and leachable concentrations of the EP toxic metals, nickel, antimony, and beryllium in the filter press cake samples. As noted in Table 1, the standard EP procedure yielded higher leachable concentrations for many of the EP toxic metals than the OWEP. The Agency believes that it is appropriate to use standard EP data, as well as OWEP data, in the evaluation of Rock Island's petitioned waste for two reasons. First a denial decision based, in part, on standard EP data is conservative because OWEP data are a more stringent measure of constituent concentrations that may be mobilized from a waste (i.e., OWEP concentrations are typically higher than EP leachate concentrations). Second, the Agency believes that the five samples analyzed using the standard EP procedure are more representative of constituent variability than the single sample analyzed using the OWEP (i.e., constituent variability in a waste cannot be distinguished from analytical data for a single sample).

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND OWEP LEACHATE CONCENTRATIONS (PPM) FILTER PRESS CAKE

Constituents	Total Constituent Analyses	Leachate Analyses ¹
Antimony	39	0.05
Arsenic	0.26	± 0.02
Barium	26	± 5.2
Beryllium	0.2	0.01
Cadmium	1	0.03
Chromium	3,062	± 1.18
Lead	362	± 0.4

TABLE 1.—MAXIMUM TOTAL CONSTITUENT AND OWEP LEACHATE CONCENTRATIONS (PPM) FILTER PRESS CAKE—Continued

Constituents	Total Constituent Analyses	Leachate Analyses ¹
Mercury	<0.01	<0.0005
Nickel	69	0.11
Selenium	<2.5	± 0.02
Silver	<0.25	± 0.02

<: Denotes that the constituent was not detected at the detection limit specified in the table.

¹ Results reported are for samples analyzed using SW-846 Method 1330 (OWEP) unless otherwise noted.

² Results obtained using SW-846 Method 1310 (standard EP).

The detection limits in Table 1 represent the lowest concentrations quantifiable by Rock Island, when using the appropriate analytical methods to analyze the petitioned waste. (Detection limits may vary according to the waste and waste matrix being analyzed, i.e., the "cleanliness" of waste matrices varies and "dirty" waste matrices may cause interferences, thus raising the detection limits.)

Normally, petitioners are required the oil and grease content of their waste in order to determine if the EP procedure has to be modified in accordance with the Oily Waste EP (OWEP) methodology. The OWEP is used to determine the leachability of toxic constituents from petitioned wastes if the oil and grease content of the waste exceeds one percent. Wastes having more than one percent total oil and grease either may have significant concentrations of constituents of concern in the oil phase which may not be assessed using the standard EP leachate procedure, or the concentration of oil and grease may be sufficient to coat the solid phase of the sample and interfere with the leaching of metals from the sample. (See SW-846 Method 1330.)

Rock Island used an unspecified liquid extraction technique to determine that the oil and grease level of their single 1984 sample was 14 percent. Although the Agency normally requests oil and grease data for a minimum of four representative samples using an EPA approved method, such as SW-846 Method 9071, the Agency is confident that Rock Island should have employed the OWEP methodology based on (1) the high level of oil and grease content reported for the 1984 sample, (2) the nature of Rock Island's waste, and (3) the results of the Agency's spot-check visit (discussed later in this notice). However, as stated previously, Rock Island provided standard EP data for its

four 1981 composite samples and only provided OWEP data for its one 1984 sample. The Agency, on numerous occasions, requested Rock Island to re-analyze its waste using the OWEP methodology. Rock Island did not respond to this request. The Agency did not pursue its request for this information because there was sufficient basis to propose denial of the petition without this information.

On the basis of test results provided by Rock Island, pursuant to 40 CFR 260.22, none of the samples analyzed exhibited the characteristics of ignitability, corrosivity, or reactivity. See 40 CFR 261.21, 261.22, and 261.23, respectively.

Rock Island used GC/MS methods similar to SW-846 Methods 8240 and 8270 to quantify, respectively, volatile and semi-volatile hazardous organic constituents concentrations in the filter press cake. A description of the methods used, and the compounds analyzed for, are presented in the public docket. Table 2 presents the reported concentrations for hazardous organics detected in the petitioned waste.

TABLE 2.—TOTAL CONSTITUENT ANALYSES (PPM) FILTER PRESS CAKE

Constituents	Total constituent concentrations
Anthracene	0.070
Benzene	11
Chrysene	0.12
Ethyl benzene	75
Fluoranthene	0.38
Fluorene	0.13
Naphthalene	1.7
Phenanthrene	0.87
Pyrene	0.08
Toluene	110

Rock Island submitted a signed certification stating that approximately 1,032 cubic yards of filter press cake are generated annually. The Agency reviews a petitioner's estimates and, on occasion, has requested a petitioner to re-evaluate estimate waste volume. EPA accepts Rock Island's certified estimate of 1,032 cubic yards.

The Agency has initiated a spot-check sampling and analysis program to verify the representative nature of the data for some percentage of delisting petitions. As part of this program, the Agency conducted a spot-check sampling visit to Rock Island. The results of this visit are discussed later in this notice.

4. Agency Evaluation

The Agency considered the appropriateness of alternative disposal scenarios for the filter press cake and decided that a landfill scenario is the most reasonable, worst-case scenario for this waste. Under a landfill disposal scenario, the major exposure route of concern for any hazardous constituents would be ingestion of contaminated ground water. The Agency evaluated Rock Island's petitioned filter press cake using its vertical and horizontal spread (VHS) landfill model which predicts the potential for ground-water contamination from wastes that are landfilled. See 50 FR 7882 (February 26, 1985), 50 FR 48896 (November 27, 1985), and the RCRA public docket for these notices for a detailed description of the VHS model and its parameters. This modeling approach, which includes a ground-water transport scenario, was used with conservative, generic parameters to predict reasonable worst-case contaminant levels in ground water at a hypothetical receptor well (i.e., the model estimates the ability of an aquifer to dilute the toxicant from a specific volume of waste). In addition, the Agency used its Organic Leachate Model (OLM) to estimate the leachable portion of the organic constituents in the petitioned waste. See 50 FR 48953 (November 27, 1985), 51 FR 41084 (November 13, 1986), and the RCRA public docket for these notices for a detailed description of the OLM and its parameters. The results of the OLM analysis were used in conjunction with the VHS model to estimate the potential impact of the organic constituents on the underlying aquifer. The Agency requests comments on the use of the OLM and VHS model as applied to the evaluation of Rock Island's waste.

Furthermore, despite the fact that the OWEF is normally used to evaluate the mobility of the inorganic constituents when oil and grease content exceeds one percent, the Agency believes that the modeling evaluation for Rock Island's petitioned waste (using EP data) is valid because OWEF concentrations are typically higher than EP leachate concentrations. A denial decision based, in part, on standard EP data is conservative because OWEF data are a more stringent measure of constituent concentrations that may be mobilized from a waste.

The Agency used the VHS model to evaluate the mobility of the hazardous inorganic constituents detected in the EP extract of Rock Island's filter press cake. The Agency's evaluation, using Rock Island's estimate of 1,032 cubic yards per year and the maximum reported EP

or OWEF leachate concentrations, generated the compliance-point concentrations shown in Table 3. The Agency did not evaluate the mobility of mercury from Rock Island's filter press cake because it was not detected in the EP extract using the appropriate analytical test method (see Table 1). The Agency believes that it is inappropriate to evaluate non-detectable concentrations of a constituent of concern in its modeling efforts if the non-detectable value was obtained using the appropriate analytical method. If a constituent cannot be detected (when using the appropriate analytical method), the Agency assumes that the constituent is not present and therefore does not present a threat to either human health or the environment.

TABLE 3.—VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) FILTER PRESS CAKE

Constituents	Compliance-Point concentrations	Levels of regulatory concern ¹
Antimony.....	0.003	0.01
Arsenic.....	.001	.05
Barium.....	.34	1.0
Beryllium.....	.0006	.2
Cadmium.....	.002	.01
Chromium.....	.076	.05
Lead.....	.026	.05
Nickel.....	.007	.5
Selenium.....	.001	.01
Silver.....	.001	.05

¹ See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The filter press cake exhibited chromium concentrations at the compliance point above the health-based level used in delisting decision-making. The filter press cake exhibited antimony, arsenic, barium, beryllium, cadmium, lead, nickel, selenium, and silver levels at the compliance point below the delisting health-based level for each constituent. Rock Island did not quantify the concentration of total cyanide or sulfide in the petitioned waste. Therefore, the Agency could not determine if the concentrations of reactive cyanide and sulfide would be below the Agency's interim standards of 250 and 500 ppm, respectively. See "Interim Agency Thresholds for Toxic Gas Generation," July 12, 1985, Internal Agency Memorandum in the RCRA public docket. Also because total constituent concentrations of cyanide and sulfide in the filter press cake were not provided, the Agency was unable to completely determine whether the waste exhibited the characteristic of reactivity. See 40 CFR 261.23.

On the basis of test results submitted by the petitioner, pursuant to 40 CFR 260.22, the Agency concludes that the filter press cake does not exhibit either of the characteristics of ignitability or corrosivity. See 40 CFR 261.21 and 261.22, respectively.

The Agency also evaluated the mobility of the hazardous organic constituents detected in Rock Island's waste using the OLM/VHS model. The Agency used the OLM to predict the leachable concentration of each of the ten organic constituents presented in Table 2. The resulting leachable concentrations then were used as inputs in the VHS model in order to assess the potential impacts of the constituents upon the ground water. The calculated compliance-point concentration for the ten organic constituents are presented in Table 4.

TABLE 4.—OLM/VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) FILTER PRESS CAKE

Constituents	Compliance-Point concentrations	Levels of regulatory concern ¹
Anthracene.....	0.000007	0.002
Benzene.....	.011	.005
Chrysene.....	.000003	.0002
Ethyl benzene.....	.02	.4
Fluoranthene.....	.00004	.2
Fluorene.....	.00004	.002
Naphthalene.....	.0007	.14
Phenanthrene.....	.0001	.002
Pyrene.....	.00001	.4
Toluene.....	.03	10

¹ See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of the Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The filter press cake exhibited benzene concentrations at the compliance point above the health-based level used in delisting decision-making. The filter press cake exhibited anthracene, chrysene, ethyl benzene, fluoranthene, fluorene, naphthalene, phenanthrene, pyrene, and toluene at the compliance point below the delisting health-based level for each constituent.

The Agency believes that other hazardous constituents could be present in Rock Island's filter press cake at levels of concern. As previously stated, the Agency requested, on numerous occasions, that Rock Island submit data on a minimum of four samples analyzed for leachable concentrations of the EP toxic metals, nickel cyanide, and other metals using the OWEF methodology, and also data on total constituent concentrations of inorganic and organic compounds potentially present in wastes like Rock Island's. To date, the

Agency has not received information believed necessary to fully characterize the petitioned waste. However, the Agency does not consider it necessary for Rock Island to complete its petition because there is sufficient basis to propose denial of the petition without this information.

On June 24, 1985, staff under contract to the Agency conducted a site visit to Rock Island as part of the Agency's spot-check sampling and analysis program. Eight samples were collected from various locations in Rock Island's waste treatment system. Rock Island's vacuum filter press was not in operation on the day of the spot-check visit and the dumpster containing the filter press cake was absent. Nevertheless, one grab sample of the waste was obtained from the disposal chute leaving the filter press. This grab sample was analyzed, using standard EPA methods, for total oil and grease content; total constituent concentrations of the EP toxic metals, nickel, cyanide, sulfide, antimony, and beryllium; and OWEF leachate concentrations of the EP toxic metals, nickel, cyanide, and beryllium. (The oil and grease level of this sample was determined to be 19.5 percent; therefore, the OWEF methodology was followed.) The sample was also analyzed for total volatile and semi-volatile organic compounds using SW-846 Methods 8240, 8270, and 8080, respectively. Analytical difficulties were encountered during analysis of this sample for inorganic constituents and semi-volatile compounds. However, analysis results for volatile organic compounds (SW-846 Method 8240) are considered valid, and the Agency considered these data in the review of Rock Island's petition. (See the RCRA public docket for today's notice for more detail.) Although this grab sample is not considered to be fully representative of the petitioned waste because the disposal chute contained only residual filter press cake, the Agency believes that this sample, to some extent, represents a portion of Rock Island's petitioned waste.² Table 5 presents the reported concentrations of hazardous volatile organic constituents detected in the spotcheck sample for which health-based levels exist.

² The remaining seven spot-check samples were collected from one of the API separators, one of the holding tanks, the suction pit, and the aeration lagoon. These samples were not considered in the evaluation of Rock Island's petition because they did not represent the composition of the petitioned filter press cake [e.g., samples were collected in various stages of the treatment process prior to filtering].

TABLE 5.—TOTAL CONSTITUENT ANALYSES (PPM) SPOT-CHECK SAMPLE FILTER PRESS CAKE

Constituents	Total constituent concentrations
Ethyl benzene.....	33
Methylene chloride.....	15
Toluene.....	36
Xylene.....	250

The Agency evaluated the mobility of the hazardous volatile organic constituents detected in the spot-check sample using the OLM/VHS model. The Agency used the OLM to predict the leachable concentration of each of the four organic constituents presented in Table 5. The resulting leachable concentrations then were used as inputs in the VHS model in order to assess the potential impacts of the constituents upon the ground water. The calculated compliance-point concentrations for the four organic constituents are presented in Table 6.

TABLE 6.—OLM/VHS MODEL: COMPLIANCE-POINT CONCENTRATIONS (PPM) SPOT-CHECK SAMPLE FILTER PRESS CAKE

Constituents	Compliance-point concentrations	Levels of regulatory concern ¹
Ethyl benzene.....	0.009	.4
Methylene chloride.....	.034	0.0047
Toluene.....	.02	10
Xylene.....	.04	70

¹ See "Docket Report on Health-based Regulatory Levels and Solubilities Used in the Evaluation of the Delisting Petitions," June 8, 1988, located in the RCRA public docket.

The filter press cake exhibited methylene chloride concentrations above the health-based level used in delisting decision-making. As stated previously, this spot-check sample is not fully representative of the petitioned waste. However, the Agency believes that these data do indicate that other hazardous organic constituents may be present in the petitioned waste at significant (i.e., hazardous) levels.

5. Conclusion

The Agency believes that Rock Island has not demonstrated that its petitioned waste is not hazardous. Specifically, the data provided by Rock Island indicate that the filter press cake exhibits significant concentrations of leachable chromium and benzene. In addition, as a result of the 1985 spot-check visit, the Agency strongly suspects that additional

hazardous constituents are present in the waste at levels of regulatory concern. Although Rock Island was requested to provide data, it has not provided sufficient information to satisfy these concerns. Thus, the Agency also considers the petition to be incomplete. The Agency proposes to deny Rock Island Refining Corporation's petition for exclusion of its filter press cake generated from the treatment of sludges described in its petition as EPA Hazardous Waste Nos. K049, K050, and K051 at its Indianapolis, Indiana facility. This waste continues to be subject to regulation under 40 CFR Parts 260 through 268 and the permitting standards of 40 CFR Part 270.

III. Effective Date

This rule, if promulgated, will become effective immediately. The Hazardous and Solid Waste Amendments of 1984 amended Section 3010 of RCRA to allow rules to become effective in less than six months when the regulated community does not need the six-month period to come into compliance. That is the case here, because this rule, if promulgated, would not change the existing requirements for persons generating hazardous wastes. This facility has been obligated to manage its waste as hazardous before and during the Agency's review of its petition (except for the period during which the temporary exclusion was in effect). Because a six-month deadline is not necessary to achieve the purpose of Section 3010, EPA believes that this denial should be effective immediately upon promulgation. These reasons also provide a basis for making this rule effective immediately, upon promulgation, under the Administrative Procedures Act, pursuant to 5 USC 553(d).

IV. Regulatory Impact

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. The proposed denial of this petition, if promulgated, would not impose an economic burden on this facility because prior to submission, during initial review of the petition, and again after November 8, 1986 (when its temporary exclusion ceased to be in effect), this facility should have handled its waste as hazardous. The denial of the petition means that petitioner is to continue managing its waste as hazardous in the manner in which it has been doing, economically, and otherwise. There is no additional economic impact, therefore, due to

today's rule. This proposal is not a major regulation, therefore, no Regulatory Impact Analysis is required.

V. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, 5 USC 601-612, whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis which describes the impact of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

This amendment, if promulgated, will not have an adverse economic impact on small entities. The facility included in this notice may be considered a small entity, however, this rule only affects one facility in one industrial segment. The overall economic impact, therefore, on small entities is small. Accordingly, I hereby certify that this proposed regulation, if promulgated, will not have a significant economic impact on a substantial number of small entities. This regulation, therefore, does not require a regulatory flexibility analysis.

VI. Paperwork Reduction Act

Information collection and record-keeping requirements associated with this proposed rule have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511, 44 USC § 3501 *et seq.*) and have been assigned OMB Control Number 2050-0053.

VII. List of Subjects in 40 CFR Part 261

Hazardous Materials, Waste Treatment and Disposal, Recycling.

Authority: Sec. 3001 RCRA, 42 USC 6921.

Dated: June 2, 1989.

Jonathan Z. Cannon,

Acting Assistant Administrator, Office of Solid Waste and Emergency Response.

[FR Doc. 89-14081 Filed 6-13-89; 8:45 am]

BILLING CODE 6560-60-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 60 and 83

RIN 3067-AB33

Federal Crime Insurance Program

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Proposed rule.

SUMMARY: These revisions to the Federal Crime Insurance Program are proposed to achieve the following: revise the basic classification and rating structure of the commercial rating plan; exclude coverage on vacant residential property and provide greater clarity to existing policy provisions under both the residential and commercial policies by providing more precise policy terminology.

DATES: All comments received on or before July 15, 1989 will be considered before final action is taken on the Proposed Rule.

ADDRESSES: Persons wishing to comment should submit comments in duplicate to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, Washington, DC 20472, Telephone (202) 646-4107.

FOR FURTHER INFORMATION CONTACT: Robert J. DeHenzel, Project Officer, Federal Emergency Management Agency, Federal Insurance Administration, Donohoe Building, 500 C Street SW., Room 433, Washington, DC 20472, Telephone number (202) 646-3440.

SUPPLEMENTARY INFORMATION: These amendments to the Federal Crime Insurance Program (FCIP) Regulations are the result of the experience gained over the past eighteen years the Program has been in operation. The Federal Insurance Administration (FIA) desires to improve service to policyholders and to more closely align the Program with the underwriting and rating methods used by the private insurance sector, while reducing the general taxpayers' burden with more equitable sharing of the cost of crime losses between the general taxpayers and the program insureds.

In 1985, the Federal Insurance Administration implemented a new commercial rating plan for the Federal Crime Insurance Program. This new plan had four major objectives: (1) That the plan be simple to apply, (2) that the plan be similar to the Insurance Services Office (ISO) rating plan in order for the results to be easily transferable to the voluntary market, (3) that the plan eliminate as many internal subsidies as possible, and (4) that the plan offer loss prevention incentives to mitigate losses. Three years have elapsed since the plan was implemented. Therefore, it was desirable for the FIA to conduct a classification rate level study in an actuarially sound manner to verify that the model rating plan was correct and permit the commercial crime rates to move to their indicated rate level based on actual experience. The study conducted for the FIA by its servicing

carrier, National Con Serv, Inc. and its actuary, Tillinghast, indicates that the Insurance Services Office (ISO) advisory rates have increased five times since 1985 and a substantial rate increase is appropriate for several of the FCIP business classifications. The Administration however proposes to balance the rate increase to no more than 5% for each business class. This action is in keeping with Congressional intent to limit an FCIP rate increase in 1989 to 5%.

Certain terminology in the residential and commercial policy forms could benefit from further definition and these proposed regulations bring greater clarity to the policy provisions by clarifying the policy exclusions relative to loss to business property, burglary loss from a motor vehicle and loss if a property is vacant. The FIA also proposes to limit recovery under the commercial policy to the amount of an advance or loan extended by an insured as a pledge or collateral and to specifically exclude coverage when an alarm system is found not to have been maintained in working order at the time of loss, for reasons within the control of the insured.

FEMA has determined that an environmental impact statement is not needed for this proposed rule. A copy of the finding of no significant impact and an environmental assessment is available from the Rules Docket Clerk.

FEMA has also determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, and so has not conducted a regulatory flexibility analysis.

This proposed rule is not a "major rule" as defined in Executive Order 12291, dated February 27, 1981, and hence no regulatory analysis has been prepared. Finally FEMA has determined that this rule does not contain a collection of information requirements as described in section 3504(b) of the Paperwork Reduction Act.

List of Subject in 44 CFR Parts, 80, 83

Federal crime insurance program.

Accordingly, 44 CFR Part 80, and 83 are proposed to be amended as follows:

Part 80—Description of Program and Offer to Agents

1. The authority citation for Part 80 continues to read as follows:

Authority: 12 U.S.C. 1749bbb *et seq.* Reorganization Plan No. 3 of 1978; EO 12127

2. Section 80.1(a) is amended by adding a new definition under paragraph (24) to read as follows:

§ 80.1 Definitions.

(24) "Vacant Property" means a property "without contents", that is, a premises from which all personal property has been removed.

§ 80.5 [Amended]

3. Section 80.5 paragraph (b)(7) is revised to read as follows:

(b) * * *

(7) Deposit the applicant's premium check in a special bank account. If no policy is issued, refund the amount of the premium to the applicant.

PART 83—COVERAGE, RATES, AND PRESCRIBED POLICY FORMS

1. The authority citation for Part 83 continues to read as follows:

Authority: 12 U.S.C. 1749bbb *et seq.* Reorganization Plan No. 3 of 1978; EO 12127.

Subpart A—Residential Crime Insurance Coverage

§ 83.5 [Amended]

2. Section 83.5(a) is amended by revising portions of the Residential Crime Insurance Policy Form in the following respects:

(a) Subparagraph entitled "Exclusions" is amended by revising Exclusion (d) and adding two additional exclusions (f) and (g).

This Policy does not apply:

(d) To loss of property pertaining to a business, trade, profession or occupation of an insured

(f) To any burglary loss from a motor vehicle.

(g) To loss while the property is vacant.

Subpart B—Commercial Crime Insurance Coverage

3. Section 83.25 paragraph (e) is revised to read as follows:

§ 83.25 Commercial crime insurance rates.

(e) The following tables shall be used to determine rates for commercial risks.

FEDERAL CRIME INSURANCE PROGRAM—COMMERCIAL CRIME INSURANCE RATES, SEPTEMBER 1989

[Annual Premiums]

Amount of insurance	Gross Receipts											
	Less than \$100,000		\$100,000 to \$199,999		\$200,000 to \$299,999		\$300,000 to \$499,999		\$500,000 to \$999,999		\$1,000,000 or greater	
	Option 1	Option 2	Option 1	Option 2	Option 1	Option 2	Option 1	Option 2	Option 1	Option 2	Option 1	Option 2
Class 1:												
\$1,000	86	118	130	176	130	176	172	234	214	290	342	464
\$2,000	164	210	246	312	246	312	326	418	406	520	648	834
\$3,000	240	302	360	452	360	452	478	602	598	752	958	1,202
\$4,000	310	384	468	576	468	576	624	766	780	958	1,244	1,530
\$5,000	368	434	554	654	554	654	738	870	920	1,086	1,472	1,734
\$6,000	388	476	582	714	582	714	778	954	970	1,188	1,550	1,900
\$7,000	404	508	604	760	604	760	806	1,014	1,006	1,266	1,610	2,024
\$8,000	420	538	626	806	626	806	836	1,074	1,044	1,340	1,670	2,148
\$9,000	424	548	634	824	634	824	844	1,096	1,054	1,368	1,686	2,188
\$10,000	432	570	648	852	648	852	866	1,136	1,078	1,418	1,726	2,268
\$11,000	458	620	686	930	686	930	914	1,240	1,140	1,548	1,824	2,476
\$12,000	476	662	714	994	714	994	954	1,320	1,188	1,648	1,902	2,640
\$13,000	488	680	730	1,022	730	1,022	972	1,362	1,214	1,702	1,942	2,722
\$14,000	492	694	738	1,040	738	1,040	980	1,382	1,226	1,726	1,964	2,764
\$15,000	496	702	746	1,054	746	1,054	994	1,402	1,240	1,754	1,980	2,806
Class 2:												
\$1,000	102	148	158	220	158	220	208	294	258	364	412	582
\$2,000	196	264	294	394	294	394	390	526	488	656	780	1,048
\$3,000	288	380	430	570	430	570	574	758	714	946	1,144	1,512
\$4,000	372	484	558	724	558	724	744	966	928	1,204	1,486	1,928
\$5,000	438	546	660	824	660	824	878	1,094	1,096	1,366	1,754	2,186
\$6,000	464	600	698	898	698	898	926	1,198	1,158	1,496	1,852	2,392
\$7,000	484	636	722	958	722	958	964	1,274	1,204	1,582	1,926	2,548
\$8,000	500	678	752	1,016	752	1,016	1,002	1,352	1,250	1,688	2,000	2,700
\$9,000	508	690	760	1,034	760	1,034	1,014	1,378	1,266	1,720	2,024	2,754
\$10,000	520	716	782	1,074	782	1,074	1,040	1,430	1,296	1,788	2,074	2,858
\$11,000	552	782	828	1,172	828	1,172	1,100	1,558	1,374	1,946	2,198	3,116
\$12,000	578	832	864	1,248	864	1,248	1,150	1,664	1,436	2,076	2,298	3,322
\$13,000	588	856	882	1,288	882	1,288	1,176	1,716	1,468	2,142	2,346	3,426
\$14,000	592	872	890	1,306	890	1,306	1,186	1,738	1,482	2,174	2,370	3,478
\$15,000	600	884	898	1,326	898	1,326	1,200	1,766	1,498	2,206	2,396	3,528
Class 3:												
\$1,000	118	156	176	228	176	228	234	304	290	380	464	606
\$2,000	218	274	328	412	328	412	436	546	544	680	872	1,092
\$3,000	322	394	484	592	484	592	642	790	800	984	1,282	1,578
\$4,000	416	502	626	754	626	754	834	1,006	1,040	1,254	1,664	2,008
\$5,000	492	572	738	854	738	854	980	1,140	1,224	1,422	1,958	2,276
\$6,000	518	624	780	936	780	936	1,038	1,246	1,294	1,556	2,070	2,488
\$7,000	540	664	810	998	810	998	1,082	1,328	1,348	1,660	2,156	2,650
\$8,000	562	706	842	1,056	842	1,056	1,122	1,410	1,400	1,758	2,240	2,814
\$9,000	570	718	852	1,078	852	1,078	1,136	1,436	1,418	1,794	2,268	2,866
\$10,000	582	746	874	1,118	874	1,118	1,164	1,488	1,454	1,858	2,326	2,974
\$11,000	618	810	928	1,220	926	1,220	1,234	1,624	1,542	2,026	2,468	3,244
\$12,000	648	868	970	1,298	970	1,298	1,292	1,730	1,612	2,160	2,580	3,456
\$13,000	660	892	990	1,340	990	1,340	1,318	1,782	1,648	2,230	2,638	3,566

FEDERAL CRIME INSURANCE PROGRAM—COMMERCIAL CRIME INSURANCE RATES, SEPTEMBER 1989—Continued

(Annual Premiums)

Amount of insurance	Gross Receipts											
	Less than \$100,000		\$100,000 to \$199,999		\$200,000 to \$299,999		\$300,000 to \$499,999		\$500,000 to \$999,999		\$1,000,000 or greater	
	Option		Option		Option		Option		Option		Option	
	1	2	1	2	1	2	1	2	1	2	1	2
\$14,000	668	908	1,002	1,360	1,002	1,380	1,334	1,812	1,666	2,262	2,662	3,620
\$15,000	874	920	1,012	1,380	1,012	1,380	1,348	1,840	1,682	2,296	2,682	3,672
Class 4:												
\$1,000	130	160	196	238	196	238	260	318	324	394	518	630
\$2,000	246	284	368	426	368	428	490	570	612	708	976	1,134
\$3,000	360	410	540	618	540	618	718	822	894	1,022	1,434	1,638
\$4,000	468	522	700	786	700	786	932	1,046	1,162	1,304	1,860	2,086
\$5,000	548	592	826	888	826	888	1,098	1,164	1,370	1,478	2,192	2,364
\$6,000	582	648	872	972	872	972	1,162	1,296	1,450	1,620	2,318	2,500
\$7,000	604	690	908	1,038	908	1,038	1,208	1,380	1,508	1,722	2,416	2,758
\$8,000	628	732	942	1,098	942	1,098	1,258	1,464	1,588	1,828	2,510	2,924
\$9,000	636	748	956	1,120	956	1,120	1,272	1,494	1,588	1,862	2,542	2,980
\$10,000	654	774	978	1,162	978	1,162	1,304	1,548	1,628	1,932	2,604	3,092
\$11,000	694	844	1,040	1,266	1,040	1,266	1,382	1,686	1,726	2,108	2,764	3,370
\$12,000	722	896	1,066	1,352	1,066	1,352	1,448	1,800	1,806	2,248	2,890	3,596
\$13,000	740	928	1,108	1,394	1,108	1,394	1,478	1,854	1,846	2,318	2,952	3,706
\$14,000	748	940	1,122	1,414	1,122	1,414	1,496	1,884	1,864	2,352	2,986	3,762
\$15,000	756	958	1,134	1,436	1,134	1,436	1,510	1,912	1,886	2,386	3,016	3,820
Class 5:												
\$1,000	124	140	186	212	186	212	248	282	308	348	492	560
\$2,000	228	254	346	380	346	380	458	504	572	628	916	1,006
\$3,000	336	364	502	546	502	546	670	726	836	908	1,338	1,452
\$4,000	432	464	652	696	652	696	866	926	1,078	1,156	1,726	1,848
\$5,000	504	526	758	788	758	788	1,008	1,050	1,258	1,310	2,014	2,096
\$6,000	538	578	806	864	806	864	1,076	1,148	1,342	1,434	2,150	2,294
\$7,000	564	614	846	918	846	918	1,128	1,224	1,408	1,526	2,252	2,442
\$8,000	588	648	884	974	884	974	1,178	1,296	1,470	1,620	2,352	2,592
\$9,000	598	662	896	994	896	994	1,194	1,324	1,494	1,648	2,388	2,640
\$10,000	618	686	924	1,030	924	1,030	1,230	1,372	1,536	1,714	2,458	2,738
\$11,000	658	748	988	1,122	988	1,122	1,314	1,496	1,640	1,866	2,626	2,988
\$12,000	684	798	1,040	1,198	1,040	1,198	1,382	1,594	1,726	1,990	2,764	3,186
\$13,000	710	824	1,062	1,234	1,062	1,234	1,418	1,644	1,768	2,054	2,830	3,286
\$14,000	716	836	1,078	1,252	1,078	1,252	1,434	1,670	1,792	2,084	2,864	3,334
\$15,000	724	848	1,090	1,270	1,090	1,270	1,452	1,692	1,812	2,114	2,900	3,386
Class 6:												
\$1,000	126	126	186	190	186	190	250	252	308	312	496	500
\$2,000	232	226	346	340	346	340	460	452	574	564	918	900
\$3,000	336	326	502	490	502	490	670	654	836	812	1,338	1,302
\$4,000	432	418	648	624	648	624	864	832	1,076	1,038	1,722	1,660
\$5,000	500	472	752	708	752	708	1,002	940	1,250	1,176	2,000	1,882
\$6,000	538	518	804	774	804	774	1,074	1,030	1,340	1,286	2,144	2,058
\$7,000	564	548	846	826	846	826	1,128	1,098	1,408	1,370	2,252	2,192
\$8,000	590	582	886	874	886	874	1,182	1,164	1,472	1,454	2,360	2,324
\$9,000	600	592	898	890	898	890	1,200	1,186	1,498	1,480	2,394	2,368
\$10,000	618	616	926	924	926	924	1,234	1,230	1,542	1,538	2,466	2,460
\$11,000	664	670	996	1,008	996	1,008	1,326	1,340	1,654	1,676	2,646	2,680
\$12,000	700	716	1,048	1,074	1,048	1,074	1,396	1,430	1,744	1,788	2,788	2,858
\$13,000	716	740	1,074	1,106	1,074	1,106	1,430	1,474	1,790	1,842	2,860	2,946
\$14,000	724	750	1,088	1,126	1,088	1,126	1,450	1,498	1,810	1,870	2,896	2,992
\$15,000	738	780	1,102	1,140	1,102	1,140	1,468	1,518	1,834	1,896	2,934	3,036

Option 1: Burglary only.
 Option 2: Robbery only.
 Option 3: A combination of coverages under options 1 and 2 in uniform or varying amounts. The premium for option 3 is the sum of the rates for amounts of coverage selected under options 1 and 2.
 Discounts on these rates are afforded for businesses with alarm systems/safes. A discount of 10% is given for policies with option 3.

§ 83.26 [Amended]

5. Section 83.26(b) is amended by revising portions of the "Commercial Crime Insurance Policy" in the following respects:

(a) Under the heading entitled "Exclusions", paragraph (f) is amended to read as follows:

(f) To any loss if the premises are not equipped with the protective devices required as a condition of eligibility for the purchase

of this policy or if the insured has failed to take reasonable action to maintain the protective devices in working order in accordance with the regulations of the Federal Insurance Administration, as published at the time of the inception of the current term of the policy in Subchapter B, Part 80 et seq., Chapter I, Title 44, Code of Federal Regulations.

(b) Under the heading "Conditions" Section 5 entitled "Limits of Liability;

settlement options", the second paragraph is revised to read as follows:

The limit of the insurer's liability for loss shall not exceed the applicable limit of insurance stated in the Application, nor what it would cost at the time of loss to repair or replace the property with other property of like kind and quality, nor as respects securities the actual cash value thereof at the close of business on the business day next preceding the day on which the loss was discovered, nor as respects other property to

the actual cash value thereof at the time of loss: provided, however, that the actual cash value of such other property held or originally acquired by the insured as a pledge, or as collateral for an advance or a loan, shall be deemed not to exceed the value of the property as determined and recorded by the insured when making the advance or loan, nor, in the absence of such record, the unpaid portion of the advance or loan plus accrued interest thereon at legal rates.

These Amendments issued under 12 U.S.C. 1749bbb-17

Harold T. Duryee,

Federal Insurance Administrator.

[FR Doc. 89-12732 Filed 6-13-89; 8:45 am]

BILLING CODE 6718-21-M

Notices

Federal Register

Vol. 54, No. 113

Wednesday, June 14, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-088]

U.S. Veterinary Biological Product and Establishment Licenses Issued, Suspended, Revoked, or Terminated

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: The purpose of this notice is to advise the public of the issuance, suspension, revocation, or termination of veterinary biological product and establishment licenses by the Animal and Plant Health Inspection Service during the month of April 1989. These actions are taken in accordance with the regulations issued pursuant to the Virus-Serum-Toxin Act.

FOR FURTHER INFORMATION CONTACT: Joan Montgomery, Program Assistant, Veterinary Biologics, Biotechnology, Biologics, and Environmental Protection, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 838, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-6332.

SUPPLEMENTARY INFORMATION: The regulations in 9 CFR Part 102, "Licenses For Biological Products," require that every person who prepares certain biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold an unexpired, unsuspended, and unrevoked U.S. Veterinary Biological Product License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, the Animal and Plant Health Inspection Service (APHIS) issued the following U.S. Veterinary Biological Product Licenses during the month of April 1989:

Product license code	Date issued	Product	Establishment	Establishment license No.
12M5.40	04-14-89	Bursal disease-Newcastle-bronchitis-Reovirus vaccine	Maine Biological Laboratories, Inc.	240
1751.00	04-24-89	Mycoplasma gallisepticum vaccine, live culture	do	240
1781.18	04-24-89	Newcastle-bronchitis vaccine, B; type, B; strain, Mass. type, live virus	Intervet America Inc.	286
1775.10	04-07-89	Newcastle-bronchitis, vaccine, killed virus	Schering Corp.	165A
17E1.20	04-17-89	Hemorrhagic enteritis vaccine, live virus	do	165A
1895.20	04-07-89	Pseudorabies vaccine, killed virus	Bio Vac Laboratories, Inc.	307
18C5.00	04-24-89	Pacheco's disease vaccine, killed virus	Maine Biological Laboratories, Inc.	240
1951.02	04-07-89	Tenosynovitis vaccine, modified live virus	Schering Corp.	165A
5850.00	04-19-89	Staphylococcus aureus antibody test kit	ProScience Corp.	372
7080.00	04-07-89	Bordetella bronchiseptica-pasteuratta multocide bacterin-toxoid	Schering Corp.	165A
7410.B0	04-26-89	Clostridium chauvoei-septicum-novyi-sordellii-perfringens types C & D bacterin-toxoid	BallistVet, Inc.	331
7423.00	04-27-89	Clostridium chauvoei-septicum-novyi-sordellii-perfringens types C & D-haemophilus somnus bacterin-toxoid	Coopers Animal Health, Inc.	107
A621.00	04-20-89	Fowl pox virus, live virus, for further manufacture	Maine Biological Laboratories, Inc.	240
C602.00	04-20-89	Normal serum, equine origin, for further manufacture	Central Biomedica, Inc.	328
E850.00	04-24-89	Staphylococcus aureus antibody test kit, antigen and antibody components, for further manufacture	VMRD, Inc.	332
G423.00	04-27-89	Clostridium chauvoei-septicum-novyi-sordellii-perfringens types C & D-haemophilus somnus bacterin-toxoid, for further manufacture	Coopers Animal Health, Inc.	107

The regulations in 9 CFR Part 102 also require that each person who prepares biological products that are subject to the Virus-Serum-Toxin Act (21 U.S.C. 151 *et seq.*) shall hold a U.S. Veterinary Biologics Establishment License. The regulations set forth the procedures for applying for a license, the criteria for determining whether a license shall be issued, and the form of the license.

Pursuant to these regulations, APHIS issued the following U.S. Veterinary Biologics Establishment License during the month of April 1989:

Establishment	Establishment license No.	Date issued
ProScience Corp.	372	04-19-89

The regulations in 9 CFR Parts 102 and 105 also contain provisions concerning the suspension, revocation, and termination of U.S. Veterinary Biological Product Licenses and U.S. Veterinary Biologics Establishment Licenses. Pursuant to these regulations, APHIS terminated the following U.S. Veterinary Biological Product License during the month of April 1989:

Product license code	Date terminated	Product	Establishment	Establishment license No.
2648.40	04-19-89	Escherichia coli bacterin	Beecham Laboratories	225

Done in Washington, DC, this 8th day of June 1989.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-14107 Filed 6-13-89; 8:45 am]

BILLING CODE 3410-34-M

Soil Conservation Service

Toa Vaca Lake Watershed, Puerto Rico

AGENCY: Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council of Environmental Quality Guidelines (40 CFR Part 1,500); and the Soil Conservation Service Guidelines (7 CFR Part 65), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Toa Vaca Lake Watershed, Puerto Rico.

FOR FURTHER INFORMATION CONTACT: Humberto Hernández, Director, Caribbean Area, Soil Conservation Service, GPO Box 4868, San Juan, PR 00936, Telephone (809) 766-5206.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicated that the project will not cause significant local, regional, or national impacts of the environment. As a result of these findings, Humberto Hernández, Director, Caribbean Area, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project concerns a plan for watershed protection. The planned works of improvement include accelerated technical and financial assistance to apply land treatment measures on 3,800 acres of cropland and native pasture.

A copy of the Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, commonwealth, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data

developed during the environmental assessment is on file and may be reviewed by contacting Humberto Hernández.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

Humberto Hernández,
Director, Caribbean Area.

Date: May 26, 1989.

[This activity is listed in the Catalog of Federal Domestic Assistance under No. 19.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.]

[FR Doc. 89-13840 Filed 6-13-89; 8:45 am]

BILLING CODE 3410-16-B

DEPARTMENT OF COMMERCE

International Trade Administration

[A-475-802]

Antidumping Duty Order of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Italy

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that industrial belts and components and parts thereof, whether cured or uncured, from Italy were being sold at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is materially injured or threatened with material injury by reason of imports of V-belts and synchronous industrial belts from Italy.

The ITC also determined that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of other industrial belts and components and parts thereof, whether cured or uncured, from Italy.

As a result, pursuant to section 735(c)(2)(B) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(c)(2)(B)) (the Act), estimated antidumping duties

deposited on entries of industrial belts except for V-belts and synchronous belts and components and parts thereof, whether cured or uncured from Italy shall be refunded and the appropriate bonds or other security released.

In addition, on April 11, 1989, the Department found that critical circumstances existed with respect to industrial belts and components and parts thereof, whether cured or uncured, from Italy. However, on May 31, 1989, the ITC notified the Department that critical circumstances do not exist with respect to any imports from Italy. As a result of the ITC's negative critical circumstances determination, pursuant to section 735(c)(3)(B) of the Act, the U.S. Customs Service will refund all cash deposits and release all bonds collected on industrial belts and components and parts thereof, whether cured or uncured, from Italy entered or withdrawn from warehouse, for consumption on or after November 3, 1988 and before February 1, 1989.

Based on the affirmative findings of the Department and the ITC, all unliquidated entries of V-belts and synchronous industrial belts from Italy, as described in this notice, which were entered, or withdrawn from warehouse, for consumption on or after February 1, 1989, the date on which the Department published its preliminary affirmative antidumping duty determinations in the Federal Register, will be liable for the possible assessment of antidumping duties.

A cash deposit of estimated antidumping duties must be made on all entries of V-belts and synchronous industrial belts from Italy entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this antidumping duty order in the Federal Register.

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Mark Wells, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1769, or 377-3798.

SUPPLEMENTARY INFORMATION: The products covered by this antidumping duty order are V-belts and synchronous

industrial belts and components and parts thereof, whether cured or uncured, from Italy currently classifiable under Harmonized Tariff Schedule (HTS) sub-headings 3926.90.55, 3926.90.58, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00. These products were previously provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510 and 773.3520.

The merchandise covered by this antidumping duty order includes V-belts and synchronous industrial belts used for power transmission. These include V-belts and synchronous belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loops) belts, or in belting in lengths or links.

In accordance with section 735(a) of the Act (19 U.S.C. 1673d(a)), on April 11, 1989, the Department made its final determination that industrial belts and components and parts thereof, whether cured or uncured, from Italy are being sold at less than fair value (54 FR 15483, April 18, 1989) and that critical circumstances exist with respect to Pirelli Trasmissioni Industriali. With respect to firms covered by the "All-Other" rate, we determined that critical circumstances did not exist. On May 31, 1989, in accordance with section 735(d) of the Act, the ITC notified the Department that imports of V-belts and synchronous industrial belts from Italy are materially injuring or threatening material injury to a U.S. industry and that critical circumstances do not exist with respect to any imports of industrial belts from Italy. The ITC also determined that imports of other belts and components and parts thereof, whether cured or uncured, from Italy are not materially injuring, threatening material injury to, or retarding the establishment of, a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of V-belts and synchronous industrial belts from Italy. These antidumping duties will be assessed on all unliquidated

entries of V-belts and synchronous industrial belts from Italy entered or withdrawn from warehouse, for consumption, on or after February 1, 1989, the date on which the Department published its preliminary determination notice in the Federal Register (54 FR 5103, February 1, 1989).

On or after the date of publication of this order, U.S. Customs officers must require a cash deposit equal to the margin percentage noted below for entries of V-belts and synchronous industrial belts from Italy:

Manufacturers/producers/exporters	Margin percentage
Pirelli Trasmissioni Industriali.....	74.90
All Others.....	74.90

This determination constitutes an antidumping duty order with respect to V-belts and synchronous industrial belts and components and parts thereof, whether cured or uncured, from Italy, pursuant to sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)). Interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of an updated list of antidumping duty orders currently in effect.

This notice is published in accordance with sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)).

June 7, 1989.

Eric I. Garfinkel,

Assistant Secretary for Import Administration.

[FR Doc. 89-14209 Filed 6-13-89; 8:45 am]

BILLING CODE 3510-05-M

[A-586-807]

Antidumping Duty Order of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that industrial belts and components and parts thereof, whether cured or uncured, from Japan were being sold at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is materially injured or threatened with material injury by

reason of imports of industrial belts from Japan.

In addition, on April 11, 1989, the Department found that critical circumstances existed with respect to industrial belts and components and parts thereof, whether cured or uncured, from Japan. However, on May 31, 1989, the ITC notified the Department that critical circumstances do not exist with respect to any imports from Japan. As a result of the ITC's negative critical circumstances determination, pursuant to section 735(c)(3)(B) of the Act, the U.S. Customs Service will refund all cash deposits and release all bonds collected on industrial belts and components and parts thereof, whether cured or uncured, from Japan entered or withdrawn from warehouse, for consumption on or after November 3, 1988, and before February 1, 1989.

Based on the affirmative findings of the Department and the ITC, all unliquidated entries of industrial belts from Japan, as described in this notice, which were entered, or withdrawn from warehouse, for consumption on or after February 1, 1989, the date on which the Department published its preliminary affirmative antidumping duty determinations in the Federal Register, will be liable for the possible assessment of antidumping duties.

A cash deposit of estimated antidumping duties must be made on all entries of industrial belts from Japan entered, or withdrawn from warehouse, for consumption, on or after the date of publication of this antidumping duty order in the Federal Register.

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Mark Wells, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 377-1789, or 377-3798.

SUPPLEMENTARY INFORMATION: The products covered by this antidumping duty order are industrial belts and components and parts thereof, whether cured or uncured, from Japan currently classifiable under Harmonized Tariff Schedule (HTS) sub-headings 3926.90.55, 3926.90.58, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00. These products were previously provided for under TSUSA item numbers 358.0210, 358.0290, 358.0610, 358.0690, 358.0800,

358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510 and 773.3520.

The merchandise covered by this antidumping duty order includes industrial belts used for power transmission. These include industrial belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loops) belts, or in belting in lengths or links.

In accordance with section 735(a) of the Act (19 U.S.C. 1673d(a)), on April 11, 1989, the Department made its final determination that industrial belts and components and parts thereof, whether cured or uncured, from Japan are being sold at less than fair value (54 FR 15485, April 18, 1989) and that critical circumstances exist with respect to Bando Chemical Industries, Ltd. With respect to firms covered by the "All-Other" rate, we determined that critical circumstances did not exist. On May 31, 1989, in accordance with section 735(d) of the Act, the ITC notified the Department that imports of industrial belts from Japan are materially injuring or threatening material injury to a U.S. industry and that critical circumstances do not exist with respect to any imports of industrial belts from Japan.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of industrial belts from Japan. These antidumping duties will be assessed on all unliquidated entries of industrial belts from Japan entered or withdrawn from warehouse, for consumption, on or after February 1, 1989, the date on which the Department published its preliminary determination notice in the Federal Register (54 FR 5114, February 1, 1989).

On or after the date of publication of this order, U.S. Customs officers must require a cash deposit equal to the margin percentage noted below for entries of industrial belts from Japan:

Manufacturers/Producers/Exporters	Margin percentage
Bando Chemical Industries, Ltd.	93.16
All others.....	93.16

This determination constitutes an antidumping duty order with respect to

industrial belts and components and parts thereof, whether cured or uncured, from Japan, pursuant to sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)). Interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of an updated list of antidumping duty orders currently in effect.

This notice is published in accordance with sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)). Eric I. Garfinkel,

Assistant Secretary for Import Administration.

June 7, 1989.

[FR Doc. 89-14210 Filed 6-13-89; 8:45 am]

BILLING CODE 3510-05-M

[A-559-802]

Antidumping Duty Order of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Singapore

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that industrial belts and components and parts thereof, whether cured or uncured, from Singapore were being sold at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is materially injured or threatened with material injury by reason of imports of industrial V-belts from Singapore.

The ITC also determined that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of other industrial belts, and components and parts thereof, whether cured or uncured, from Singapore.

As a result, pursuant to section 735(c)(2)(B) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(c)(2)(B)) (the Act), estimated antidumping duties deposited on entries of industrial belts except for V-belts and components and parts thereof, whether cured or uncured from Singapore shall be refunded and the appropriate bonds or other security released.

In addition, on April 11, 1989, the Department found that critical circumstances did not exist with respect to industrial belts and components and

parts thereof, whether cured or uncured, from Singapore.

Based on the affirmative findings of the Department and the ITC, all unliquidated entries of industrial V-belts and components and parts thereof, whether cured or uncured from Singapore, as described in this notice, which were entered, or withdrawn from warehouse, for consumption on or after February 1, 1989, the date on which the Department published its preliminary affirmative antidumping duty determination in the Federal Register, will be liable for the possible assessment of antidumping duties.

A cash deposit of estimated antidumping duties must be made on all entries of industrial V-belts from Singapore entered, or withdrawn from warehouse, for consumption on or after the date of publication of this antidumping duty order in the Federal Register.

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Mark Wells, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1789, or 377-3798.

SUPPLEMENTAL INFORMATION: The products covered by this antidumping duty order are industrial V-belts and components and parts thereof, whether cured or uncured, from Singapore currently classifiable under Harmonized Tariff Schedule (HTS) sub-headings 3926.90.55, 4010.10.10, 4010.10.50, 5910.00.10, 5910.00.90, and 7326.20.00. These products were previously provided for under TSUSA item numbers 358.0210, 358.0290, 657.2520, and 773.3520.

The merchandise covered by this antidumping duty order includes industrial V-belts used for power transmission. These include industrial V-belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loops) belts, or in belting in lengths or links.

In accordance with section 735(a) of the Act (19 U.S.C. 1673d(a)), on April 11, 1989, the Department made its final determination that industrial belts and components and parts thereof, whether cured or uncured, from Singapore are being sold at less than fair value (54 FR 15489, April 18, 1989) and that critical circumstances do not exist with respect to imports of industrial belts from Singapore. On May 31, 1989, in

accordance with section 735(d) of the Act, the ITC notified the Department that imports of industrial V-belts from Singapore are materially injuring or threatening material injury to a U.S. industry. The ITC also determined that imports of other industrial belts and components and parts thereof, whether cured or uncured, from Singapore are not materially injuring, threatening material injury to, or retarding the establishment of, a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of industrial V-belts from Singapore. These antidumping duties will be assessed on all unliquidated entries of industrial V-belts from Singapore entered or withdrawn from warehouse, for consumption, on or after February 1, 1989, the date on which the Department published its preliminary determination notice in the *Federal Register* (54 FR 5110, February 1, 1989).

On or after the date of publication of this order, U.S. Customs officers must require a cash deposit equal to the margin percentage noted below for entries of industrial V-belts from Singapore:

Manufacturers/producers/exporters	Margin percentage
Mitsubishi Belting (Singapore) Pte. Ltd.	31.73
All others	31.73

This determination constitutes an antidumping duty order with respect to industrial V-belts and components and parts thereof, whether cured or uncured, from Singapore, pursuant to sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)). Interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of an updated list of antidumping duty orders currently in effect.

This notice is published in accordance with sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)).

Eric I. Garfinkel,
Assistant Secretary for Import
Administration.

June 7, 1989.
[FR Doc. 89-14211 Filed 6-13-89; 8:45 am]

BILLING CODE 3510-DS-M

[A-428-802]

Antidumping Duty Order of Sales at Less Than Fair Value; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From the Federal Republic of Germany

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Notice.

SUMMARY: In its investigation, the U.S. Department of Commerce determined that industrial belts and components and parts thereof, whether cured or uncured, from the Federal Republic of Germany were being sold at less than fair value. In a separate investigation, the U.S. International Trade Commission (ITC) determined that a U.S. industry is materially injured or threatened with material injury by reason of imports of industrial belts other than V-belts and synchronous belts from the Federal Republic of Germany.

The ITC also determined that an industry in the United States is not materially injured or threatened with material injury, and the establishment of an industry in the United States is not materially retarded, by reason of imports of industrial V-belts and synchronous belts and components and parts thereof, whether cured or uncured from the Federal Republic of Germany.

As a result, pursuant to section 735(c)(2)(B) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(c)(2)(B)) (the Act), estimated antidumping duties deposited on entries of V-belts and synchronous belts and components and parts thereof, whether cured or uncured, from the Federal Republic of Germany shall be refunded and the appropriate bonds or other security released.

In addition, on April 11, 1989, the Department found that critical circumstances existed with respect to industrial belts and components and parts thereof, whether cured or uncured, from the Federal Republic of Germany. However, on May 31, 1989, the ITC notified the Department that critical circumstances do not exist with respect to any imports from the Federal Republic of Germany. As a result of the ITC's negative critical circumstances determination, pursuant to section 735(c)(3)(B) of the Act, the U.S. Customs Service will refund all cash deposits and release all bonds collected on industrial belts and components and parts thereof, whether cured or uncured, from the Federal Republic of Germany entered or withdrawn from warehouse, for

consumption on or after November 3, 1988 and before February 1, 1989.

Based on the affirmative findings of the Department and the ITC, all unliquidated entries of industrial belts other than V-belts and synchronous belts from the Federal Republic of Germany, as described in this notice, which were entered, or withdrawn from warehouse, for consumption on or after February 1, 1989, the date on which the Department published its preliminary affirmative antidumping duty determinations in the *Federal Register*, will be liable for the possible assessment of antidumping duties.

A cash deposit of estimated antidumping duties must be made on all entries of industrial belts other than V-belts and synchronous belts from the Federal Republic of Germany entered, or withdrawn from warehouse, for consumption on or after the date of publication of this antidumping duty order in the *Federal Register*.

EFFECTIVE DATE: June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Louis Apple or Mark Wells, Office of Antidumping Investigations, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 377-1769, or 377-3798.

SUPPLEMENTARY INFORMATION: The products covered by this antidumping duty order are industrial belts other than V-belts and synchronous belts and components and parts thereof, whether cured or uncured, from the Federal Republic of Germany currently classifiable under Harmonized Tariff Schedule (HTS) sub-headings 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10, 5910.00.90, and 7326.20.00. These products were previously provided for under TSUSA item numbers 358.0610, 358.0690, 358.0800, 358.0900, 358.1100, 358.1400, 358.1600, 657.2520, 773.3510 and 773.3520.

The merchandise covered by this antidumping duty order includes industrial belts other than V-belts and synchronous belts used for power transmission. These include industrial belts other than V-belts and synchronous belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loops) belts, or in belting in lengths or links.

In accordance with section 735(a) of the Act (19 U.S.C. 1673d(a)), on April 11,

1989, the Department made its final determination that industrial belts and components and parts thereof, whether cured or uncured, from the Federal Republic of Germany are being sold at less than fair value (54 FR 15505, April 18, 1989) and that critical circumstances exist with respect to Optibelt Corporation. With respect to firms covered by the "All-Other" rate, we determined that critical circumstances did not exist. On May 31, 1989, in accordance with section 735(d) of the Act, the ITC notified the Department that imports of industrial belts other than V-belts and synchronous belts from the Federal Republic of Germany are materially injuring the U.S. industry and that critical circumstances do not exist with respect to any imports from the Federal Republic of Germany. The ITC also determined that imports of V-belts and synchronous belts and components and parts thereof, whether cured or uncured, from the Federal Republic of Germany are not materially injuring, threatening material injury to, or retarding the establishment of, a U.S. industry.

Therefore, in accordance with sections 736 and 751 of the Act (19 U.S.C. 1673e and 1675), the Department will direct U.S. Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act (19 U.S.C. 1673e(a)(1)), antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of industrial belts other than V-belts and synchronous belts from the Federal Republic of Germany. These antidumping duties will be assessed on all unliquidated entries of industrial belts other than V-belts and synchronous belts from the Federal Republic of Germany entered or withdrawn from warehouse, for consumption on or after February 1, 1989, the date on which the Department published its preliminary determination notice in the *Federal Register* (54 FR 5106, February 1, 1989).

On or after the date of publication of this order, U.S. Customs officers must require a cash deposit equal to the margin percentage noted below for entries of industrial belts other than V-belts and synchronous belts from the Federal Republic of Germany:

Manufacturers/Producers/Exporters	Margin percentage
Optibelt Corporation	100.60%
All Others	100.60%

This determination constitutes an antidumping duty order with respect to industrial belts other than V-belts and synchronous belts and components and parts thereof, whether cured or uncured, from the Federal Republic of Germany, pursuant to sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)). Interested parties may contact the Central Records Unit, Room B-099, Import Administration, for copies of an updated list of orders currently in effect.

This notice is published in accordance with sections 735(d) and 736(a) of the Act (19 U.S.C. 1673d(d) and 1673e(a)).

Eric I. Garfinkel,
Assistant Secretary for Import
Administration.

June 7, 1989.

[FR Doc. 89-14212 Filed 6-13-89; 8:45 am]

BILLING CODE 3510-DS-M

Export Trade Certificate of Review

ACTION: Notice of application for an amendment to an export trade certification of review.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an amendment to an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be amended.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and Federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the *Federal Register* identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be

amended. An original and five (5) copies should be submitted not later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, Room 1223, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 87-2A009."

OETCA has received the following application for an amendment to Export Trade Certificate of Review No. 87-00009, issued on August 27, 1987 (52 FR 33465, September 3, 1987).

Summary of the Application

Applicant: California Cherry Export Association of San Joaquin County (CCEA), 48 E. Oak Street, Post Office Box 877, Lodi, California 95240.

Contact: Jack Johal, legal counsel, telephone: (916) 929-3614.

Application No.: 87-2A009.

Date Deemed Submitted: May 31, 1989.

The California Cherry Export Association of San Joaquin County (CCEA) seeks to amend its Certificate to:

1. Revise the name of the Certificate holder from the "California Cherry Export Association of San Joaquin County" to the "California Cherry Export Association" to reflect its statutory name change of September 19, 1988.

2. Add the following additional companies as "Members" within the meaning of § 325.2(1) of the Regulations (15 CFR 325.2(1)): Churchill Nut Company, Hollister, California; Dole Bakersfield, Inc., Victor, California; and Blue Anchor, Inc., Sacramento, California.

Date: June 9, 1989.

George Muller,
Acting Director, Office of Export Trading
Company Affairs.

[FR Doc. 89-14140 Filed 6-13-89; 8:45 am]

BILLING CODE 3510-DR-M

National Oceanic and Atmospheric Administration

Coastal Zone Management: Federal Consistency Appeal by Claire Pappas from an Objection by the New York Department of State

AGENCY: National Oceanic and Atmospheric Administration, Commerce.

BEST COPY AVAILABLE

ACTION: Notice of dismissal.

In February, 1939, Claire Pappas (Appellant) filed with the Department of Commerce (Department) a notice of appeal under Section 307(c)(3)(A) of the Coastal Zone Management Act of 1972, as amended, 16 U.S.C. 1456(c)(3)(A), and implementing regulations, 15 CFR Part 930, Subpart H. The appeal arose from an objection by the New York Department of State (State) to the Appellant's certification that her proposal to construct a deck at a restaurant in Freeport, New York would be consistent with New York's coastal management program.

In April, 1989, the State informed the Department that before the State lodged its consistency objection, the Corps of Engineers (Corps) had withdrawn without prejudice the Appellant's application for a permit to undertake the construction. The timing of the Corps' withdrawal of the application renders void the State's consistency objection. Moreover, it also eliminates both the Appellant's standing to appeal to the Secretary, and the Secretary's jurisdiction over this matter. Accordingly, the Department dismissed the appeal on May 23, 1989 for good cause pursuant to 15 CFR 930.128 (1988). That dismissal bars the Appellant from filing another appeal from the State's original objection to the aforementioned activities.

FOR ADDITIONAL INFORMATION CONTACT: Sydney Anne Minnerly, Attorney-Adviser, Office of the Assistant General Counsel for Ocean Services, National Oceanic and Atmospheric Administration, U.S. Department of Commerce, 1825 Connecticut Avenue, NW., Suite 603, Washington, DC 20235, (202) 673-5200.

Date: June 8, 1989.

[Federal Domestic Assistance Catalog No. 11.419 Coastal Zone Management Program Assistance]

B. Kent Burton,
Assistant Secretary for Oceans and Atmosphere.

[FR Doc. 89-14113 Filed 6-13-89; 8:45 am]
BILLING CODE 3510-06-M

Affirmation of Datum for Surveying and Mapping Activities

AGENCY: National Oceanic and Atmospheric Administration, National Ocean Service, Charting and Geodetic Services.

ACTION: Notice.

SUMMARY: The Office of Charting and Geodetic Services (C&GS), National Geodetic Survey Division, has

completed the redefinition and readjustment of the North American Datum of 1927 (NAD 27), creating the North American Datum of 1983 (NAD 83). The interagency Federal Geodetic Control Committee (FGCC) affirmed NAD 83 is the official civilian horizontal datum for U.S. surveying and mapping activities performed or financed by the Federal Government. Furthermore, to the extent practicable, legally allowable and feasible, all Federal agencies using or producing coordinate information should provide for an orderly transition from NAD 27 to NAD 83.

FOR FURTHER INFORMATION CONTACT: Mr. James E. Stem, N/CG1x4, Rockwall Building, Room 819, National Geodetic Survey, NOAA, Rockville, Maryland 20852; phone: (301) 443-8749.

SUPPLEMENTARY INFORMATION: A Federal Register notice published on June 29, 1979 (FR Doc. 79-20169, Vol. 44, No. 127) by the National Oceanic and Atmospheric Administration provided notice of the establishment of a new Datum (NAD 83) to which the geographic and plane coordinate values for the National Network of Horizontal Geodetic Control would be referenced. For all published horizontal stations in the National Geodetic Reference System, NAD 83 values of geodetic position (latitude and longitude), and all subsequently derived plane coordinates are available from the National Ocean Service/National Geodetic Survey Division. For a discussion of the plane coordinate systems published, see the "Policy on Publication of Plane Coordinates" in FR Doc. 77-8847, Vol. 42, No. 57, March 24, 1977. The FGCC, chaired by the Director, C&GS, is mandated by the Office of Management and Budget to coordinate geodetic surveying performed or financed by the Federal Government.

Dated: June 2, 1989.

Thomas J. Maginnis,

Assistant Administrator for Ocean Services and Coastal Zone Management, NOAA.

[FR Doc. 89-14076 Filed 6-13-89; 8:45 am]

BILLING CODE 3510-06-M

DEPARTMENT OF DEFENSE

Office of the Secretary

Public Information Collection Requirement Submitted to OMB Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the

Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Officer Training School Accessions; ATC Forms 1413 and 1422; and OMB Control Number 0701-0080.

Type of Request: Revision of currently approved collection.

Average Burden Hours/Minutes per Response: 1 hour and 15 minutes.

Frequency of Response: On occasion.

Number of Respondents: 2,000

Annual Burden Hours: 2,500.

Annual Responses: 2,000.

Needs and Uses: These forms are used by field recruiters in the processing of Officer Training School applications for commissioning in the Air Force.

Affected Public: Individuals or households.

Frequency: One-time only.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Dr. J. Timothy Sprehe.

Written comments and recommendations on the proposed information collection should be sent to Dr. J. Timothy Sprehe at Office of Management and Budget, Desk Officer, Room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Ms. Pearl Rascoe-Harrison.

Written request for copies of the information collection proposal should be sent to Ms. Rascoe-Harrison, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

June 8, 1989.

[FR Doc. 89-14070 Filed 6-13-89; 8:45 am]

BILLING CODE 3510-01-M

Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Industrial Cooperation With Pacific Rim Nations will meet in closed session on July 19, 1989 at the Hughes Corporation, Rosslyn, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of

Defense. At this meeting the Task Force will examine the potential for achieving US security objectives in the Pacific Rim area through defense industrial cooperation with the nations of that area.

In accordance with section 10(d) of the Federal Advisory Committee Act, Pub. L. No. 92-463, as amended (5 U.S.C. App. II, (1982)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1982), and that accordingly this meeting will be closed to the public.

Linda M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

June 8, 1989.

[FR Doc. 89-14071 Filed 6-13-89; 8:45 am]

BILLING CODE 3510-01-M

Defense Intelligence Agency Defense Intelligence College; Closed Meeting

AGENCY: Defense Intelligence Agency Defense Intelligence College.

ACTION: Notice of closed meeting.

SUMMARY: Pursuant to the provisions of Subsection (d) of Section 10 of Public Law 92-463, as amended by Section 5 of Public Law 94-409, notice is hereby given that a closed meeting of the DIA Defense Intelligence College Board of visitors has been scheduled as follows:

DATES: Wednesday, 14 June 1989, and Thursday, 15 June 1989, from 0900 to 1600, and Friday, 16 June 1989, from 0900 to 1130.

ADDRESS: The DIAC, Washington, DC

FOR FURTHER INFORMATION CONTACT: Dr. Robert L. De Cross, Provost, DIA Defense Intelligence College, Washington, DC 20340-5485. (202/373-3344).

SUPPLEMENTARY INFORMATION: The entire meeting is devoted to the discussion of classified information as defined in Section 552b(c) (1), Title 5 of the U.S. Code and therefore will be closed to the public. The Board will receive briefings on and discuss several current critical intelligence issues and advise the Director, DIA, as to the successful accomplishment of the mission assigned to the Defense Intelligence College.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

June 8, 1989

[FR Doc. 89-14072 Filed 6-13-89; 8:45 am]

BILLING CODE 3510-01-M

DEPARTMENT OF ENERGY

Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangements

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangements" under Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of the Canada concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangements to be carried out under the above-mentioned agreements involve approval of the following retransfers:

RTD/CA(EU)-17, for the transfer of 9,700 kilograms of heavy water from the United Kingdom Atomic Energy Authority, Harwell, England to Canada, for cleaning and de-tritiation, RTD/EU(CA)-9, for the return of 9,700 kilograms of heavy water to Harwell, England following cleaning and de-tritiation in Canada.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that these subsequent arrangements will not be inimical to the common defense and security.

These subsequent arrangements will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: June 9, 1989.

Richard H. Williamson,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 89-14130 Filed 6-13-89; 8:45 am]

BILLING CODE 6450-01-M

Advisory Committee on Nuclear Facility Safety; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770), notice is hereby given of the following advisory committee meeting:

Name: Advisory Committee on Nuclear Facility Safety.

Date & Time: Friday, June 30, 1989, 8:00 p.m. to 5:00 p.m.; 8:00 p.m. to 10:00 p.m.

Place: Park Inn International, 3706 National Parks Highway, Carlsbad, New Mexico 88220.

Contact: Wallace R. Kornack, Executive Director, ACNFS, S-2, 1000 Independence Avenue, SW., Washington, DC 20585, Telephone: 202/586-1770.

Purpose of the Committee: The Committee was established to provide the Secretary of Energy with advice and recommendations concerning the safety of the Department's production and utilization facilities, as defined in section 11 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2014).

Tentative Agenda

JUNE 30, 1989

8:00 Subcommittee Reports

Review of Waste Isolation Pilot Plant

Issues Presentations by Selected

Organizations Final Safety Analysis

Report (FSAR) Issues

Noon Lunch

1:00 FSAR Issues (Continued)

Supplemental Impact Statement

Selected Technical Issues Committee Business

5:00 Meeting Adjourned until 8:00 p.m.

8:00-10:00 p.m. Public Comment

Session

Public Participation: This meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Wallace R. Kornack at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. The Chairperson of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts: The transcript of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, IE-190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on June 8, 1989.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 89-14131 Filed 6-13-89; 8:45 am]

BILLING CODE 6450-01-M

Energy Information Administration**Agency Information Collections Under Review By the Office of Management and Budget**

AGENCY: Energy Information Administration, Energy.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Public Law 96-511, 44 U.S.C. 3501 et seq.). The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, or management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, or extension; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden, and (13) A brief abstract describing the proposed collection and the respondents.

DATES: Comments must be filed on or before July 14, 1989.

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards, at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Cesselberry, Officer of Statistical Standards (EI-73), Energy Information Administration, M.S. 1H-023, Forrestal Building, 1000 Independence Ave. SW., Washington, DC 20585, (202) 586-2171.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting

comments, but find it difficult to do so within the period of time allowed by this notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395-3084. (Also, please notify the DOE contact listed above.)

The energy information collection submitted to OMB for review was:

1. Federal Energy Regulatory Commission.

2. FERC-577.

3. 1902-0128.

4. Gas Pipeline Certificates: Environmental Impact Statement.

5. Extension.

6. On occasion.

7. Mandatory.

8. Businesses or other for profit.

9. 50 respondents.

10. 300 responses.

11. 321 hours per response.

12. 96,300 hours (total).

13. In accordance with the NGA and NCPA, the information is used to examine and project potential effects on soil, geology, water, land use, recreation, aesthetics, air and noise quality, vegetation, wildlife, cultural resource, and pipeline and LNG safety for construction proposals submitted by pipeline companies.

Statutory Authority: Sec. 5(a), 5(b), 13(b), and 52, Pub. L. 93-275, Federal Energy Administration Act of 1974, 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, June 8, 1989.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 89-14132 Filed 6-13-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. ER89-265-000 et al.]

Arizona Public Service Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 5, 1989.

Take notice that the following filings have been made with the Commission:

1. Arizona Public Service Company

[Docket No. ER89-265-000]

Take notice that on May 22, 1989 Arizona Public Service Company (APS) tendered an amendment to its filing which provides data in response to the Deficiency Letter dated April 20, 1989, from the Division of Electric Power Application Review.

APS requests waiver of notice of its amended filing for good cause shown in

order that its originally proposed effective date of June 1, 1989 may be granted. Copies of the amended filing have been served on all affected customers and applicable state regulatory agencies governing such customers who were originally served with the filing. Additionally, a copy of the Deficiency Letter has been provided to said entities.

Comment date: June 19, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Utah Power & Light Company

[Docket No. ER89-325-000]

Take notice that on May 22, 1989, Utah Power & Light Company (Utah) tendered for filing an amendment to Exhibit A of the Interconnected Operation Agreement between Utah Municipal Power Agency (UMPA) and Utah. The purpose of the Amendment is to state with specificity the currently-existing rate under Utah's FERC Electric Tariff Schedule RS-RP.

Copies of this filing were served on UMPA, the Towns of Levan and Nephi, Utah, the Utah Public Service Commission, and legal counsel for UMPA.

Comment date: June 19, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Duke Power Company

[Docket No. ER89-437-000]

Take notice that on May 15, 1989, Duke Power Company (Duke Power) tendered for filing estimated billing information for calendar year 1989 pursuant to which Piedmont Municipal Power Agency will be billed by Duke Power under Rate Schedule FERC No. 276.

Comment date: June 19, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Duke Power Company

[Docket No. ER89-438-000]

Take notice that on May 15, 1989, Duke Power Company (Duke Power) tendered for filing the 1988 Catawba Interconnect Annual Actual Statements for Rate Schedule FERC No. 273 between Duke Power and North Carolina Electric Membership Corporation.

Comment date: June 19, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Duke Power Company

[Docket No. ER89-447-000]

Take notice that on May 16, 1989, Duke Power Company (Duke Power)

tendered for filing estimated billing information for calendar year 1989 pursuant to which North Carolina Electric Membership Corporation will be billed by Duke Power under Rate Schedule FERC No. 273.

Comment date: June 19, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Southern California Edison Company

[Docket No. ER89-454-000]

Take notice that on May 23, 1989, Southern California Edison Company (Edison) tendered for filing Amendment No. 2 to the Edison-Azusa Interruptible Transmission Service Agreement (Amendment) designated Rate Schedule FERC No. 160, which has been executed by Edison and the City of Azusa, California (Azusa):

Amendment No. 2 to the Edison-Azusa Interruptible Transmission Service Agreement

This Amendment reflects the following changes: (1) Change in transmission losses associated with the construction of the 500 kV transmission facilities between the Devers, Valley, and Serrano Substations, the construction costs of which were reflected in rates July 1, 1988, per FERC Decision dated January 23, 1989, in Docket No. ER88-577-000; and (2) the addition of section 6.3 to the Agreement which allows the Authorized Representatives to change the transmission losses thereby eliminating the need to amend the Agreement each time there is a change in transmission losses.

The Amendment is proposed to become effective when executed by the Parties and accepted for filing by the Commission.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Azusa.

Comment date: June 19, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding.

Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14066 Filed 6-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES89-24-000 et al.]

Centel Corporation et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 7, 1989.

Take notice that the following filings have been made with the Commission:

1. Centel Corporation

[Docket No. ES89-24-000]

Take notice that on May 31, 1989, Centel Corporation (Applicant) filed an application with the Federal Energy Regulatory Commission, pursuant to Section 204 of the Federal Power Act, seeking an order authorizing the issuance of up to 1,500,000 shares of its common stock, \$2.50 par value, to be issued in connection with its Dividend Reinvestment Plan, the Retirement Savings Plan and the Nonexempt Employee Retirement Savings Plan.

Comment date: June 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Snohomish County Department of Public Works

[Docket No. QF89-209-000]

On May 26, 1989, Snohomish County Department of Public Works (Applicant), of Solid Waste Division, First floor Administration Annex, Everett, Washington 98201 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Snohomish, Washington. The facility will consist of six engine/generator sets. The electric power production capacity will be 6.6 megawatts. The primary energy source will be biomass in the form of landfill gas. The facility has no planned use of natural gas, oil, or coal.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs:

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14067 Filed 6-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ES89-25-000 et al.]

El Paso Electric Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

June 8, 1989.

Take notice that the following filings have been made with the Commission:

1. El Paso Electric Company

[Docket No. ES89-25-000]

Take notice that on June 2, 1989, El Paso Electric Company filed an application with the Federal Energy Regulatory Commission (the "Commission"), pursuant to Section 204 of the Federal Power Act, seeking authority to issue up to 300,000 additional shares of Common Stock, no par value (resulting in an authorized total of 600,000 shares), pursuant to the El Paso Electric Company Employee Stock Compensation Plan.

Comment date: July 3, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Potomac Electric Power Company

[Docket No. ER89-456-000]

Take notice that on May 24, 1989, Potomac Electric Power Company (Pepco) and the Potomac Edison Company (PE) tendered for filing a second amendment to their 1963 facility agreement (Pepco FERC Rate Schedule No. 16) governing the interconnection between the parties. The second amendment provides for PE's relocation for its convenience of one or more existing 230 kv circuit breakers to a new

PE substation in western Montgomery County, Maryland, in a manner which does not reduce the rating of the interconnection or affect existing facilities charges therefore.

Comment date: June 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Pacific Gas and Electric Company

[Docket No. ER89-457-000]

Take notice that on May 25, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing several modifications to rate schedules which cover services provided by PG&E to SMUD. The modifications consist of: (1) A Letter Agreement dated October 14, 1981; and (2) a Contract Amendment dated May 8, 1985, both of which modify Rate Schedule FERC No. 45, the June 4, 1970 Power Sale Exchange, and Integration Contract (Integration Contract); (3) A Contract Amendment dated July 16, 1986 modifying Rate Schedule FERC No. 88, the Slab Creek Interconnection and Transmission Service Agreement; and (4) a Contract Amendment dated July 16, 1986 modifying Rate Schedule FERC No. 88, the Camp Far West Interconnection and Transmission Service Agreement. The modifications were necessary respectively to: (1) Contractually accommodate changes SMUD made to its transmission system; (2) incorporate certain new resources into the Integration Contract; and (3) reconcile termination dates of these two interconnection and transmission service agreements with the Integration Agreement.

Copies of this filing were served upon SMUD and the California Public Utilities Commission.

Comment date: June 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Wisconsin Power and Light Company

[Docket No. ER89-459-000]

Take notice that on May 25, 1989, Wisconsin Power & Light Company (WPL) tendered for filing a new wholesale power agreement dated May 2, 1989, between the City of Richland Center and WPL. WPL states that this new wholesale power agreement supercedes the previous agreement between the two parties which was dated February 21, 1983, and designated Rate Schedule No. 134 by the Commission.

The purpose of this new agreement is to provide for terms of service on a similar basis to the terms of service for other wholesale customers.

WPL requests that an effective date concurrent with the contract effective date be assigned. WPL states that copies of the agreement and the filing have been provided to the City of Richland Center and the Wisconsin Public Service Commission.

Comment date: June 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Public Service Electric and Gas Company

[Docket No. ER89-461-000]

Take notice that Public Service Electric and Gas Company (PS) on May 25, 1989, tendered for filing proposed revised Schedules 1.01, 1.02, 1.03, 1.04, 2.01, and 3.04 and new Schedule 1.06 to the existing Interconnection Agreement between PS and Jersey Central Power and Light Company (JC) dated November 29, 1980, as supplemented (PS FERC Rate Schedule No. 28).

PS states that the reason for the filing is to cover supplying of service to JC's East Flemington and Newton Substations, supplying of service to PS' Greenbrook Substation, PS providing back-up transmission service to JC's southern area under an Agreement dated March 23, 1989, and termination of the Werner-Mechanic Street 28,000-volt interconnection.

PS requests that the filing be permitted to become effective as of the date of the Back-Up Transmission Agreement, March 23, 1989, therefore requests waiver of the Commission's notice requirements.

Comment date: June 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Carolina Power & Light Company

[Docket No. ER89-460-000]

Take notice that on May 24, 1989, Carolina Power & Light Company (CP&L) filed with the Commission pursuant to section 205 of the Federal Power Act § 35.13 of the Commission's Regulations, 18 CFR 35.13 (1988), a proposed rider to its Resale Service Schedules RS88-1B and RS88-2B. CP&L requests that the proposed rider be accepted for filing without suspension and that the Commission put it into effect 60 days from the date of filing.

CP&L states that the proposed rider is designed to set forth the appropriate billing procedures for those instances where full requirements customers of CP&L receive power from a qualifying facility, that term is defined in 18 CFR 292.101(b)(1) (1988). CP&L states that under the proposed rider, when a full requirements customer receives power from qualifying facility, the monthly

reduction in that customer's bill will be calculated at CP&L's full avoided-cost rate established the appropriate state utility commission.

Comment date: June 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Kansas Power and Light Company

[Docket No. ER89-455-000]

Take notice that on May 23, 1989, the Kansas Power and Light Company (KPL) tendered for filing proposed changes in its schedule of rates and charges applicable to its partial requirements municipal customers located in the State of Kansas, as follows:

Partial requirements, municipal customer	FERC rate schedule No.
City of Burlingame	250
City of Clay Center	241
City of Ellinwood	242
City of Herington	209
City of Holton	226
City of Larned	240
City of Minneapolis	211
City of Osage City	249
City of Sabetha	235
City of St. John	252
City of Stafford	243
City of Sterling	237
City of Wamego	184

Schedule WTU-6/89 includes new interruptible emergency service provisions. Additionally, the schedule provision which allows for the redesignation of peak period hours as non-peak hours by KPL has been modified.

The new interruptible emergency service provisions in the revised Schedule WTU-6/89 make interruptible service available to KPL's partial requirements municipal customers during peak period hours in order to help them cope with outages of their generating facilities which are beyond their control. The peak period redesignation provisions have been modified to improve the generation equipment utilization efficiency of both KPL and the partial requirements municipal customers.

Copies of the filing were served upon each affected customer and the Kansas Corporation Commission.

Comment date: June 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Pacific Gas and Electric Company

[Docket No. ER89-475-000]

Take notice that on June 1, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing, as a change

in rate schedule, an Interconnection Rate Schedule (IRS) covering rates, terms and conditions for services rendered by PG&E to the Sacramento Municipal Utility District (SMUD) under the IRS and for the interconnection of the Parties' electrical systems.

Prior to January 1, 1989 PG&E directly served SMUD under FERC Rate Schedule No. 45 (the June 4, 1970 Power Sale, Exchange and Integration Contract, as amended and supplemented). Upon its effective date the IRS will supersede and terminate Rate Schedule No. 45 and all FERC-jurisdictional amendments, agreements supplements and rate schedules filed thereunder, with the exception of Supplement No. 6 (transmission service for SMUD's share of the Coldwater Creek plant output).

Pursuant to the IRS, PG&E is offering to provide the following services to SMUD:

Forecasted Firm Power (Service Schedule A), Section K.2;

Support Power Service (Service Schedule B), Section K.3;

Firm Transmission Service (Service Schedule C), Section K.4.1;

Interruptible Transmission Service (Service Schedule D), Section K.4.2;

Transmission Service Associated With the Power Sale Agreement (Service Schedule E), Section K.4.3;

Scheduling Service (Service Schedule F), Section K.5.1;

Regulation Service (Service Schedule G), Section K.5.2;

Customer Charge (Service Schedule H), Section K.6.1;

Voltage Regulation (Service Schedule I), Section K.6.2;

Reactive Power Correction (Service Schedule J), Section K.6.3;

Standby Station Service (Service Schedule K), Section K.6.4;

Non-Spinning Reserve Charge (Service Schedule L), Section K.6.5;

In addition, the following are covered by the IRS: Ten-Minute Emergency Power Service, rate procedures for Diablo Canyon Nuclear Power Plant, rate adjustments and Fuel Cost Adjustment.

PG&E is requesting an effective date of January 1, 1990 to coincide with the termination of FERC Rate Schedule No. 45. PG&E also is requesting a waiver of the notice requirement in Section 35.3 of the Commission's regulations (18 CFR 35.3).

Copies of this filing were served upon SMUD and the California Public Utilities Commission.

Comment date: June 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Southeastern Power Administration

[Docket No. EF89-3011-000]

Take notice that on May 30, 1989, the Deputy Secretary of the Department of Energy confirmed and approved, on an interim basis effective midnight June 1, 1989, Rate Schedules GA-1-B, GA-2-B, GA-3-A, GU-1-B, ALA-1-F, ALA-3-B, MISS-1-F, MISS-2-B, SC-3-A, CAR-3-A, and SCE-2-A for power from Southeastern Power Administration (Southeastern) Georgia-Alabama Projects. The approval extends through September 30, 1990.

The Deputy Secretary states that the Commission, by order issued July 22, 1986, in Docket No. EF86-3011, confirmed and approved Rate Schedules GA-1-A, GA-2-A, GU-1-A, GAMF-2-E, ALA-1-E, ALA-3-A, MISS-1-E, MISS-2-A, SC-1-E, SC-2-E, CAR-1-F, and SCE-1-A through September 30, 1990.

Southeastern proposes in the instant filing to replace Rate Schedule GA-1-A with GA-1-B and GA-3-A, and replace GA-2-A, GU-1-A, ALA-1-E, ALA-3-A, MISS-1-E, and MISS-2-B, respectively. Rate Schedule SC-3-A, CAR-3-A, and SCE-2-A have been added to provide rates for preference customers in the South Carolina Public Service Authority, Duke Power Company Area, and South Carolina Electric & Gas Company area, and Rate Schedules GAMF-2-E, SC-1-E, SC-2-E, CAR-1-F, and SCE-1-A remain in effect. The rate adjustment was designed to increase annual revenues on an average by \$12,757,000 over the 16-month rate review period, an increase of approximately 12 percent. The increase is due primarily to increased operation and maintenance expenses at Corps of Engineers' projects and the drought.

Present contracts allow rate adjustment only on October 1, 1990, and every 5 successive years thereafter. Southeastern proposed a contract adjustment which would allow a rate increase to be effective on June 1, 1989. Some customers were not willing to agree to a rate increase which was not allowed by contract. Therefore, Southeastern is proposing to raise rates for those customers who will agree to the rate increase and leave existing rate schedules for those who will not agree to the rate increase. Southeastern will recoup the revenue shortfall in the October 1, 1990, rate increase. The interim rate schedules are submitted for confirmation and approval on a final basis pursuant to the authority vested in the Commission by Delegation Order No. 0204-108. Approval is requested for a period ending September 30, 1990.

Comment date: June 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.

[FR Doc. 89-14086 Filed 6-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1439-000 et al.]

ANR Pipeline Company et al.; Natural Gas Certificate Filings

June 8, 1989.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP89-1439-000]

Take notice that on May 18, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1439-000 a request pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas under the blanket certificate issued in Docket No. CP88-532-000 pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

ANR proposes to transport gas on an interruptible basis for Cornerstone Production Corp. (Cornerstone). ANR explains that service commenced April 1, 1989 under §§ 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3372-000. ANR further explains that the peak day quantity would be 150,000 dekatherms, the average daily quantity would be 150,000 dekatherms, and that the annual

quantity would be 54,750,000 dekatherms. ANR explains that it would receive natural gas at existing points of receipt in the Offshore Louisiana Gathering area. ANR states that it would deliver the gas to Cornerstone at existing interconnections located in the State of Louisiana.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Texas Eastern Transmission Corporation

[Docket No. CP89-1478-000]

Take notice that on May 22, 1989, Texas Eastern Transmission Corporation (Texas Eastern) P.O. Box 2521, Houston, Texas 77252, filed in Docket No. CP89-1478-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act to add ten delivery points to its existing Rate Schedule FTS-4 Service Agreement with Public Service Electric and Gas Company (PSE&G) all as more fully set forth in the request on file with the Commission and open to public inspection.

Texas Eastern states that the location of the ten delivery points are as follows:

Measuring Station No.	Location
0049	Middlesex County, New Jersey
0057	Middlesex County, New Jersey
0949	Morris County, New Jersey
1196	Somerset County, New Jersey
1207	Somerset County, New Jersey
1208	Morris County, New Jersey
1209	Passaic County, New Jersey
0066	Middlesex County, New Jersey
1464	Somerset County, New Jersey
2263	Middlesex County, New Jersey

Further, Texas Eastern states that no new facilities will be constructed, as the delivery points proposed to be added are existing points of interconnection between the pipeline systems of Texas Eastern and PSE&G.

Texas Eastern also states that the quantities of natural gas to be delivered are presently certificated and volumes will remain within the Maximum Daily Transportation Quantity (MDTQ) previously approved by the Commission.

In addition, Texas Eastern submits that the proposal herein will not cause any detriment or disadvantage to its other customers.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. ALG Gas Supply Company, et al.

[Docket No. C188-452-001, et al.]

Take notice that each Applicant listed herein has filed an application pursuant

to Section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of its blanket limited-term certificate with pregranted abandonment previously issued by the Commission for a term expiring March 31, 1989, to extend such authorization or for a blanket limited-term certificate with pregranted abandonment, all as more fully set forth in the applications which are on file with the Commission and open for public inspection.

This notice does not provide for consolidation for hearing of the several matters covered herein.

Comment date: June 27, 1989, in accordance with Standard Paragraph J at the end of this notice.

Docket no.	Date filed	Applicant
C188-452-001 ¹	5-25-89	ALG Gas Supply Company, et al. ² 400 East Capitol Street Little Rock, Arkansas 72202.
C189-424-000 ³	5-25-89	Enron Oil & Gas Marketing, Inc. P.O. Box 1188 Houston, Texas 77251.

¹ Applicant requests extension for an unlimited term.

² The et al. parties are ALG Gas Supply Company of Arkansas, ALG Gas Supply Company of Kansas, ALG Gas Supply Company of Louisiana, ALG Gas Supply Company of Oklahoma, and ALG Gas Supply Company of Texas.

³ Applicant requests authorization for a three-year term.

Transcontinental Gas Pipe Line Corporation

[Docket No. CP89-1566-000]

Take notice that on June 5, 1989, Transcontinental Gas Pipe Line Corporation (Transco), P.O. Box 1396, Houston, Texas 77251, filed in Docket NO. CP89-1566-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport gas on an interruptible basis for Brooklyn Interstate Natural Gas Corporation (Brooklyn Interstate) under its blanket certificate issued in Docket No. CP88-328-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Transco states that it would receive the gas for Brooklyn Interstate at various existing points of receipt in offshore Louisiana, Louisiana, offshore Texas and Texas, and would redeliver the gas at various existing delivery points located in offshore Louisiana, Louisiana, offshore Texas, Texas, Alabama, North Carolina, South

Carolina, Georgia, Virginia, Maryland, Mississippi, Pennsylvania, New York, New Jersey and Delaware.

Transco further states that the maximum daily, average daily and annual quantities that it would transport for Brooklyn Interstate would be 3,912,600 dt equivalent of natural gas, 25,000 dt equivalent of natural gas and 9,125,000 dt equivalent of natural gas, respectively.

Transco indicates that in a filing made with the Commission in Docket No. ST89-3132, it reported that transportation service for Brooklyn Interstate commenced on April 7, 1989 under the 120-day automatic authorization provisions of § 284.223(a).

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Trunkline Gas Company

[Docket No. CP89-1559-000]

Take notice that on June 2, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1559-000 a request pursuant to Section 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of PSI, Inc. (PSI), a shipper and marketer of natural gas, under its blanket certificate issued in Docket No. CP89-586-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on an interruptible basis, up to 20,000 dt of natural gas on a peak day; 10,000 dt on an average day; and 3,650,000 dt annually for PSI from receipt points located in the states of Illinois, Louisiana, Tennessee and Texas. Trunkline will then transport and redeliver the gas, less fuel and unaccounted for line loss, to Mississippi River Transmission Corporation in Clay County, Illinois. The transportation agreement dated January 13, 1989 (Contract No. T-PLT-1384), has a primary term of one month and shall continue in effect month-to-month thereafter until terminated by either party upon at least 30 days written notice.

Trunkline states that the transportation of natural gas for PSI commenced April 6, 1989, as reported in Docket No. ST89-3159-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1537-000]

Take notice that on May 30, 1989, Panhandle Eastern Pipeline Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642 filed in Docket No. CP89-1537-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas for Amarillo Natural Gas Company, Inc. (Amarillo), a marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP88-585-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to transport, on an interruptible basis, up to 400 dt equivalent of natural gas on a peak day for Amarillo, 400 dt equivalent on an average day and 146,000 dt equivalent on an annual basis. It is stated that the transportation service would be effected using existing facilities and would not require any construction of additional facilities. It is explained that Panhandle would receive the gas at designated points on its system and would deliver equivalent volumes of gas less fuel and unaccounted for line loss to designated points in Hansford County, Texas and Texas County, Oklahoma. It is explained that the service commenced April 8, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3397.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Northern Natural Gas Company, Division of Epron Corp.

[Docket No. CP89-1568-000]

Take notice that on June 5, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1568-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Exxon Corporation (Exxon), a producer of natural gas, under Northern's blanket certificate issued in Docket No. CP86-435-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Northern requests authorization to transport, on an interruptible basis, up to a maximum of 70,000 MMBtu of natural gas per day for Exxon from

receipt points located in Oklahoma, Kansas and Texas, to delivery points located in Texas, Kansas, Oklahoma, Iowa, Illinois, Minnesota and Nebraska. Northern anticipates transporting 52,500 MMBtu of natural gas on an average day and an annual volume of 25,550,000 MMBtu.

Northern states that the transportation of natural gas for Exxon commenced May 2, 1989, as reported in Docket No. ST89-3539-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Northern in Docket No. CP86-435-000.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

8. ANR Pipeline Company

[Docket No. CP89-1565-000]

Take notice that on June 2, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1565-000 on a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to provide an interruptible transportation service for American Central Gas Marketing Company (ACGM), a marketer, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open for public inspection.

ANR states that it would transport, on an interruptible basis, up to of 50,000 dth of natural gas per day for ACGM. ANR states that it would receive the gas at an existing point of receipt in the states of Kansas, Louisiana, Oklahoma, and Texas, and the offshore Texas and Louisiana gathering areas and redeliver the gas for the account of ACGM at existing interconnections located in the state of Wisconsin. ANR indicates that the total volume of gas to be transported for ACGM on a peak day would be 50,000 dth; on an average day would be 50,000 dth; and on an annual basis would be 18,250,000 dth. ANR indicates it would perform the proposed transportation service for ACGM pursuant to a service agreement dated November 12, 1988, between ANR and ACGM.

ANR states that it commenced the transportation of natural gas for ACGM on April 20, 1988, at Docket No. ST89-3520-000 for a 120-day period pursuant to § 284.223(a)(1) of the Commission's Regulations. ANR indicates that it proposes no new facilities in order to provide this transportation service.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

9. El Paso Natural Gas Company

[Docket No. CP89-1558-000]

Take notice that on June 2, 1989, El Paso Natural Gas Company, (El Paso) P.O. Box 1492, El Paso, Texas 7998, filed in Docket No. CP89-1558-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas under its blanket authorization issued in Docket No. CP88-433-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso proposes to transport natural gas on an interruptible basis for Apache Corporation (Apache). El Paso explains that the service commenced April 21, 1989, under § 284.223(a) of the Commission's Regulations, as reported in Docket No. ST89-3483. El Paso proposes to transport on a peak day up to 105,000 MMBtu; on an average day up to 52,750 MMBtu; and on an annual basis up to 19,253,750 MMBtu. El Paso proposes to receive the subject gas from various points of receipt on its system and redeliver the gas in the states of Texas, New Mexico, Oklahoma, and Colorado.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

10. Paiute Pipeline Company

[Docket No. CP89-1543-000]

Take notice that on May 31, 1989, Paiute Pipeline Company (Paiute), P.O. Box 94197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP89-1543-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible service for Basic Incorporated (Basic, Inc.) under the blanket certificate issued in Docket No. CP87-309-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Paiute states that pursuant to a Transportation Agreement dated November 14, 1988, under its Rate Schedule IT-1, it proposes to transport up to 2,500 MMBtu per day of natural gas for Basic, Inc. from the point of receipt at the interconnection between the facilities of Paiute and Northwest Pipeline Corporation at the Idaho-Nevada border. Paiute will transport

and redeliver the gas to Basic, Inc. at the Basic, Inc. delivery point located in Churchill County, Nevada.

Paiute also states that it will transport approximately 1,045 MMBtu on an average day and approximately 381,000 MMBtu on annual basis.

Paiute further states it commenced this service April 1, 1989, as reported in Docket No. ST89-3316-000.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

11. ANR Pipeline Company

[Docket No. CP89-1561-000]

Take notice that on June 2, 1989, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1561-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Texpar Energy, Inc., a marketer, under ANR's blanket certificate issued in Docket No. CP88-532-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR states that pursuant to an agreement dated April 5, 1989, it proposes to receive up to 50,000 dt equivalent of natural gas per day from specified points located in Kansas, Louisiana, Texas, Oklahoma, and Offshore Texas and Louisiana, and redeliver the gas at specified points located in Wisconsin. ANR estimates that the peak day and average day volumes would be 50,000 dt equivalent of natural gas and that the annual volumes would be in 18,250,000 dt equivalent of natural gas. It is stated that on April 20, 1989, ANR commenced a 120-day transportation service to Texpar under § 285.223(a) as reported in Docket No. ST89-2519-000.

ANR also states that no facilities need be constructed to implement the service. It is indicated that ANR would provide the service for a primary term expiring on March 31, 1992, but would continue the service on a month to month basis until terminated by either party upon thirty days prior written notice to the other party. ANR proposes to charge the rates and abide by the terms and conditions of its Rate Schedule ITS.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. ANR Pipeline Company

[Docket No. CP89-1584-000]

Take notice that on June 2, 1989, ANR Pipeline Company (ANR) filed in Docket No. CP89-1584-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act, to transport natural gas under its blanket certificate issued in Docket No. CP88-532-000 on behalf of Centran Corp. (Centran), a marketer, all as more fully set forth in the request of file with the Commission and open to public inspection.

ANR indicates that service commenced April 15, 1989, as reported in Docket No. ST89-3525-000 and estimates the volumes transported to be 5,000 MMBtu per day on a peak day and average day, plus 1,825,000 MMBtu on an annual basis for Centran.

ANR states that no new facilities are to be constructed.

Comment date: July 2, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Mobil Oil Exploration & Producing Southeast Inc., Mobil Producing Texas & New Mexico Inc., and Mobil Exploration and Producing North America Inc.

[Docket No. CI88-514-003, Docket No. CI88-57-002]

Take notice that on May 30, 1989, Mobil Oil Exploration & Producing Inc., Mobil Producing Texas & New Mexico Inc. and Mobil Exploration and Producing North America Inc. (Mobil) of 12450 Greenspoint Drive, Houston, Texas 77060, filed an application pursuant to section 7 of the Natural Gas Act and the Federal Energy Regulatory Commission's (Commission) regulations thereunder for amendment of the blanket certificates with pregranted abandonment authorizing sales of uncommitted gas previously issued in Docket Nos. CI88-514-002 and CI88-57-001 to change the reporting requirements from a quarterly basis to an annual basis, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Comment date: June 27, 1989 in accordance with Standard Paragraph J at the end of this notice.

14. Northern Natural Gas Company Division of Enron Corp.

[Docket No. CP89-1539-000]

Take notice that on May 30, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP89-1539-000 a request pursuant to Northern's blanket authority granted on September 1, 1982,

in Docket No. CP82-401-000 and §§ 157.205 and 157.212, of the Commission's Regulations (18 CFR 157.205 and 157.212) for authority to realign certain volumes for Iowa Electric Light and Power Company (Iowa Electric), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Northern is proposing, at Iowa Electric's request, to realign CD-1 firm sales service by increasing firm entitlements for five communities and reducing firm entitlements for one community served by Iowa Electric. The proposed realignment of entitlements will not affect the total level of firm sales service provided by Northern to Iowa Electric under Rate Schedule CD-1.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest of the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Standard Paragraph

J. Any person desiring to be heard or make any protest with reference to said filings should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.215). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party in any proceeding herein must file a petition to intervene in accordance with the Commission's rules.

Under the procedure herein provided for, unless otherwise advised, it will be

unnecessary for the applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14064 Filed 6-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1432-000 et al.]

Eastern Shore Natural Gas Co. et al.; Natural Gas Certificate Filings

June 6, 1989.

Take notice that the following filings have been made with the Commission:

1. Eastern Shore Natural Gas Company

[Docket No. CP89-1432-000]

Take notice that on May 18, 1989, Eastern Shore Natural Gas Company (Eastern Shore), P.O. Box 615, Dover, Delaware 19903-0615, filed in Docket No. CP89-1432-000, a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211 and 157.212) for authorization to construct and operate a sales tap and thereby, establish a new point of delivery for the Delaware Division of Chesapeake Utilities Corporation (Chesapeake Utilities), a local distribution company, under Eastern Shore's blanket certificate issued in Docket No. CP83-40-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Eastern Shore proposes to establish the sales tap at a point located 400 feet south of Southern Boulevard in Wyoming, Delaware around a railroad right-of-way. Chesapeake Utilities has informed Eastern Shore that the gas would be used to meet its system supply requirements and that it intends to resale the gas to its residential and commercial customers. Peak day and annual deliveries are estimated to be 260 MMBtu and 29,907 MMBtu, respectively, while an average day's delivery is expected to be 82 MMBtu. Eastern Shore states that the volumes delivered would be within the certificated entitlement of Chesapeake Utilities. Finally, Eastern Shore asserts that its tariff does not prohibit additional delivery points and that the proposed sales tap would have an insignificant impact on its peak day and annual deliveries.

Comment date: July 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP89-1490-000]

Take notice that on May 23, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1490-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas for Interstate Gas Marketing, Inc. (IGM), a marketer of natural gas, under Panhandle's blanket certificate issued in Docket No. CP86-585-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open for public inspection.

Pursuant to a gas transportation agreement dated December 9, 1989, Panhandle requests authority to transport up to 7,000 Dt. of natural gas per day, on an interruptible basis, on behalf of IGM. Panhandle states that the agreement provides for it to receive gas from various existing points of receipts along its system and deliver the gas, less fuel used and unaccounted for line loss, to Columbia Gas in Paulding, Drake, and Lucas Counties, Ohio. IGM has informed Panhandle that it expects to have 5000 Dt. transported on an average day and, based thereon, estimates that the annual transportation quantity would be 1,825,000 Dt. Panhandle advises that the transportation service commenced on April 1, 1989, as reported in Docket No. ST89-3296, pursuant to § 284.223 of the Commission's Regulations.

Comment date: July 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP89-1507-000]

Take notice that on May 24, 1989, United Gas Pipe Line Company (United), Post Office Box 1478, Houston, Texas 77251-1478, pursuant to Section 7(b) of the Natural Gas Act, as amended, filed in Docket No. CP89-1507-000 an application for permission and approval to abandon the transportation service it provides to Texas Eastern Transmission Corporation (Texas Eastern) under a gas transportation contract which expired November 1, 1988, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United was authorized to transport up to 75,000 Mcf of natural gas per day for Texas Eastern, however during the 12 month period ending November 1, 1988, United states it has not transported any gas in Texas Eastern's behalf.

Accordingly the parties have executed a letter agreement to terminate the transportation service performed pursuant to United's Rate Schedule X-14.

Comment date: June 27, 1989, in accordance with Standard Paragraph F at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP89-1520-000]

Take notice that on May 26, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1520-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to provide a transportation service for Interstate Gas Marketing, Inc. (Interstate) a marketer, under Tennessee's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee proposes, pursuant to a transportation agreement dated April 7, 1989, to transport natural gas for Interstate from points of receipt located in the states of Texas and Louisiana. It is stated that the point of delivery is located in the state of New York. Tennessee further states that under the contract the maximum daily and average daily quantities are 1,060 dekatherms (dt) and 386,900 dt on an annual basis. Tennessee states that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3528-000 filed May 15, 1989.

Comment date: July 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. Northwest Pipeline Corporation

[Docket No. CP89-1532-000]

Take notice that on May 30, 1989, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84108, filed in Docket No. CP89-1532-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Simpson Tacoma Kraft Company (Simpson Tacoma), an end user, under the blanket certificate issued in Docket No. CP86-578-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest states that pursuant to a transportation agreement dated April 4, 1989, as amended April 4, 1989, under its Rate Schedule TI-1, it proposes to transport up to 5,755.5 MMBtu per day equivalent of natural gas for Simpson Tacoma. Northwest states that it would transport the gas through its system from any transportation receipt point on its system to any transportation delivery point on its system, as defined in the amendment.

Northwest advises that service under § 284.223(a) commenced April 19, 1989, as reported in Docket No. ST89-3582 (filed May 19, 1989). Northwest further advises that it would transport 100 MMBtu on an average day and 36,500 MMBtu annually.

Comment date: July 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. Paiute Pipeline Company

[Docket No. CP89-1542-000]

Take notice that on May 31, 1989, Paiute Pipeline Company (Paiute), P.O. Box 84197, Las Vegas, Nevada 89193-4197, filed in Docket No. CP89-1542-000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Caesars Tahoe, an end-user, under the blanket certificate issued in Docket No. CP87-309-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Paiute states that pursuant to a transportation agreement dated March 20, 1989, under its Rate Schedule IT-1, it proposes to transport up to 500 MMBtu per day equivalent of natural gas for Caesars Tahoe. Paiute states that it would transport the gas through its system from the existing interconnection between the facilities of Paiute and Northwest Pipeline Corporation at the Idaho-Nevada border, and would redeliver the gas to Southwest Gas Corporation-Northern Nevada, a local distribution company, for the account of Caesars Tahoe at the Stateline City Gate No. 1 delivery point located in Douglas County, Nevada.

Paiute advises that service under § 284.223(a) commenced March 22, 1989, as reported in Docket No. ST89-3131. Paiute further advises that it would transport 304 MMBtu on an average day and 111,000 MMBtu annually.

Comment date: July 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. United Gas Pipe Line Company

[Docket No. CP89-1530-000]

Take notice that on May 26, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1530-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 2184.223) for authorization to provide a transportation service for LaSER Marketing Company (LaSER), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 618,000 MMBtu of natural gas equivalent per day for LaSER pursuant to a transportation agreement dated October 1, 1988, as amended on March 31, 1989, between United and LaSER. United would receive natural gas at various receipt points in Louisiana, Alabama, Texas and Mississippi and redeliver equivalent volumes of gas, less fuel and company used gas, at various delivery points in Louisiana, Mississippi, Texas, Florida and Alabama.

United further states that the estimated average daily and annual quantities would be 618,000 MMBtu and 74,160,000 MMBtu respectively. Service under § 284.223(a) commenced April 21, 1989, as reported in Docket No. ST89-3498-000, it is stated.

Comment date: July 21, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practices and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14063 Filed 6-13-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1536-000 et al.]

Trunkline Gas Co. et al.; Natural Gas Certificate Filings

June 7, 1989.

Take notice that the following filings have been made with the Commission:

1. Trunkline Gas Company

[Docket No. CP89-1536-000]

Take notice that on May 30, 1989, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1536-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation

service on behalf of Ultramar Oil & Gas Limited (Ultramar), under Trunkline's blanket certificate issued in Docket No. CP86-586-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline requests authorization to transport, on an interruptible basis, up to a maximum of 2,000 dt of natural gas per day for Ultramar from receipt points located in Illinois, Louisiana, Tennessee and Texas to a delivery point located in St. Mary Parish, Louisiana. Trunkline anticipates transporting, on an average day 1,000 dt and an annual volume of 365,000 dt.

Trunkline states that the transportation of natural gas for Ultramar commenced April 6, 1989, as reported in Docket No. ST89-3288-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Trunkline in Docket No. CP86-586-000.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

2. Carnegie Natural Gas Company

[Docket No. CP89-1549-000]

Take notice that on May 31, 1989, Carnegie Natural Gas Company (Carnegie), 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, filed in Docket No. CP89-1549-000 a request pursuant to §§ 157.205 and 284.223 (18 CFR 157.205 and 284.223) of the Commission's Regulations under the Natural Gas Act, for authority to provide interruptible transportation service for USS Division of USX Corp. (USX), under Carnegie's blanket transportation certificate issued by Commission order October 31, 1988, in Docket No. CP88-363-000 all as more fully set forth in the application which is on file with the Commission and open to public inspection.

USX indicates that pursuant to a transportation agreement dated April, 1989, it proposes to transport gas for USX from receipt points in Pennsylvania and redeliver the gas to various other points in Pennsylvania.

Carnegie states that it proposes to transport up to 40,000 Dth of gas per peak day, 10,000 Dth of gas per average day and approximately 3,650,000 Dth of gas annually. USX states that the transportation service commenced under 120-day automatic authorization of § 284.223(a) of the Commission's Regulations on May 1, 1989. USX notified the Commission of the commencement of the transportation

service on May 11, 1989, in Docket No. ST89-3485-000.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

3. United Gas Pipe Line Company

[Docket No. CP89-1528-000]

Take notice that on May 28, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1528-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205), for authorization to provide interruptible transportation service on behalf of LL&E Gas Marketing, Inc. (LL&E), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Pursuant to a gas transportation agreement dated October 3, 1988, United proposes to transport up to 20,600 MMBtu of natural gas per day, on an interruptible basis, for LL&E. United states that such gas would be transported from an existing receipt point located in Vermilion Parish, Louisiana to existing delivery points in Rapides Parish, Louisiana. LL&E has informed United that it expects to have the full 20,600 MMBtu transported on an average day and, based thereon, estimates that the annual transportation quantity would be 7,519,000 MMBtu. United advises that the transportation service commenced on May 5, 1989, as reported in Docket No. ST89-3488-000, pursuant to § 284.223(a) of the Commission's Regulations.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

4. Tennessee Gas Pipeline Company

[Docket No. CP89-1545-000]

Take notice that on May 31, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1545-000, a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas, on an interruptible basis, for BP Gas Inc. (BP), a producer, under Tennessee's blanket certificate issued in Docket No. CP87-115-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Tennessee states that pursuant to a transportation agreement dated April 26, 1989, as amended, it would transport natural gas for BP from points of receipt located offshore Louisiana and in the states of Alabama, Louisiana, Mississippi and Texas to multiple delivery points located off Tennessee's system. Tennessee further states that the location of the ultimate delivery points of the natural gas would be in the states of Alabama, Louisiana, Mississippi and Tennessee. Tennessee indicates that the peak day, average day and annual volumes that would be transported for BP would be 10,000 dekatherms, 100,000 dekatherms and 36,500,000 dekatherms, respectively.

Tennessee states that it commenced the transportation of natural gas for BP on May 2, 1989, as reported in Docket No. ST89-3646, for a 120-day period pursuant to § 284.223(a) of the Regulations (18 CFR 284.223(a)).

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

5. United Gas Pipe Line Company

[Docket No. CP89-1551-000]

Take notice that on June 1, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1551-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to transport natural gas on behalf of PSI, Inc. (PSI), under its blanket authorization issued in Docket No. CP88-6-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United would perform the proposed interruptible transportation service for PSI, a marketer of natural gas, pursuant to a gas transportation agreement dated March 14, 1988 (contract no. T1-21-2125/02916, ref# 4856). The term of the transportation agreement is for a primary term of one month from the date of first delivery and shall continue for successive one month terms thereafter until terminated. United proposes to transport on a peak day up to 154,500 MMBtu; on an average day up to 154,500 MMBtu; and on an annual basis 56,392,500 MMBtu for PSI. United proposes to receive the subject gas from existing points of receipt on its system for transportation and redelivery to PSI at an existing points of delivery. The proposed rate to be charged is contained in United's currently effective ITS rate schedule, or such other rates as may be

just and reasonable and acceptable to United.

It is explained that the proposed service is currently being performed pursuant to the 120-day self implementing provision of § 284.223(a)(1) of the Commission's Regulations. United commenced such self-implementing service on May 1, 1989, as reported in Docket No. ST89-3537-000.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

6. United Gas Pipe Line Company

[Docket No. CP89-1556-000]

Take notice that on June 1, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1556-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for OXY USA, INC. (OXY), a producer, under the blanket certificate issued in Docket No. CP88-6-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

United states that pursuant to a transportation agreement dated February 28, 1989, under its Rate Schedule ITS, it proposes to transport up to 10,300 MMBtu per day equivalent of natural gas for OXY. United states that it would transport the gas from receipt points as shown in Exhibit "A" of the transportation agreement and would deliver the gas to a delivery point shown in Exhibit "B" of the agreement.

United advises that service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3534-000 (filed May 15, 1989). United further advises that it would transport 10,300 MMBtu on an average day and 3,759,500 MMBtu annually.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

7. Upper Cumberland Gas Utility District of Cumberland County, Tennessee

[Docket No. CP89-1496-000]

Take notice that on May 23, 1989, Upper Cumberland Gas Utility District of Cumberland County, Tennessee (Applicant), P.O. Box 722, Crossville, Tennessee 38555, filed in Docket No. CP89-1496-000 an application pursuant to Section 7(a) of the Natural Gas Act for an order directing East Tennessee Natural Gas Company (ETNG) to establish an interconnection of its

facilities with those proposed by Applicant and to sell and deliver up to 1,354 Mcf of natural gas per day for the first year and up to 1,568 Mcf of natural gas per day by the third year for resale and distribution to approximately 1,444 customers in the proposed service area, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Applicant explains that the proposed service would be provided to an area within Cumberland County, Tennessee, north of Interstate I-40. Applicant estimates that by the third year of service there would be 1,269 residential customers, 82 mobile homes, 20 churches and 73 small businesses.

Applicant proposes to receive service from one meter station to be built by ETNG and located at Clarkrange, Tennessee, where the East Tennessee Natural Gas transmission main crosses Highway 127. This location is approximately 5,000 feet north of the Fentress County-Cumberland County Line.

Comment date: June 28, 1989, in accordance with the first subparagraph of Standard F at the end of this notice.

8. Questar Pipeline Company

[Docket No. CP89-1515-000]

Take notice that on May 28, 1989, Questar Pipeline Company (Questar Pipeline), 79 South State Street, Salt Lake City, Utah 84111, filed in Docket No. CP89-1515-000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing certain modifications at its Chalk Underground Storage Reservoir (Chalk Creek) located in Summit County, Utah. The modifications involve the conversion of the Texola Federal L No. 1 (Texola) observation well to an injection/withdrawal well and the conversion of 600 linear feet of four-inch diameter pipeline to an injection/withdrawal lateral, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Chalk Creek is an aquifer-type natural gas storage reservoir which was authorized by the Commission under orders issued in Docket No. CP75-33 on August 20, 1975, and September 22, 1983. It is used as a peak-shaving facility serving the Salt Lake City, Utah, market area of Mountain Fuel Supply Company (MFS). Questar Pipeline's local distribution company affiliate. It is also used as an emergency gas supply facility to sustain deliveries to MFS in the event of natural disasters or equipment malfunctions upstream of Chalk Creek.

Questar Pipeline states that the Government No. 1 well is the only injection/withdrawal well in the Chalk Creek storage reservoir, and that the conversion of the Texola well to an injection/withdrawal well will allow Questar Pipeline to increase the maximum withdrawal rate from Chalk Creek from 31,700 Mcf per day to 50,000 Mcf per day. Questar Pipeline states that this increased volume is still well below the maximum authorized daily withdrawal rate of 70,000 Mcf per day.

Comment date: June 28, 1989, in accordance with Standard Paragraph F at the end of this notice.

9. Great Lakes Gas Transmission Company

[Docket Nos. CP89-1452-000, and CP86-25-000]

Take notice that on May 19, 1989, Great Lakes Gas Transmission Company (Great Lakes), 2100 Buhl Building, Detroit, Michigan 48226, filed in Docket No. CP89-1452-000 pursuant to Section 7(c) of the Natural Gas Act (NGA) an application to amend the order issued December 27, 1985 in Docket No. CP86-25-000, so as to recommence the transportation arrangements and increase the daily contract quantity. Great Lakes was authorized to transport up to 13,000 Mcf of natural gas per day for TransCanada Pipeline Limited (TransCanada) from a point on the United States-Canadian International Boundary where the facilities of Great Lakes interconnect with the facilities of TransCanada near Emerson, Manitoba, to a point where the facilities of Great Lakes interconnect with those of Michigan Consolidated Gas Company (MichCon) near Belle River Mills, Michigan. The volumes to be transported by Great Lakes are an integral part of an energy exchange between Esso Chemical Company (Esso), a Division of Imperial Oil Limited (Imperial Oil), and MichCon.

MichCon and Esso have requested that the transportation and deliveries of these volumes at the Belle River Mills delivery point resume as soon as possible and that the daily contract quantity be increased by 37,000 Mcf per day to provide MichCon and Esso increased flexibility to prevent large exchange balances from occurring. To implement this request, Great Lakes and TransCanada have entered into an Amended Agreement, dated April 27, 1989, which provides for recommencement of the subject transportation in a quantity not to exceed 50,000 Mcf per day, consistent with MichCon's import authorization. The requested term of the service is for

a period ending January 23, 1992. Prior Commission authorization to provide this service in Docket CP86-25-000, terminated on January 23, 1989.

Comment date: June 28, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

10. Pan National Gas Sales, Inc.

[Docket No. CP89-1499-000]

Take notice that on May 24, 1989, Pan National Gas Sales, Inc. (Pan National), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1499-000 an application pursuant to Section 4 and 7 of the Natural Gas Act (NGA) and the regulations thereunder for a certificate of public convenience and necessity authorizing (a) sales made by Pan National of natural gas subject to the Commission's jurisdiction under the NGA for resale in interstate commerce, and (b) pregranted abandonment of all such sales for which authority is requested therein. Pan National states the volumes of natural gas proposed to be sold will be purchased as liquefied natural gas (LNG) by Pan National from Sonatrading, an affiliate of Sonatrach, the state oil and gas company of Algeria. Pan National indicates the gas will then be transported to the United States in LNG tankers to be supplied by Sonatrach and Pan Transport, Inc. received and regasified for Pan National at Lake Charles, Louisiana terminal of Trunkline LNG Company (TLC), and marketed by Pan National at competitive prices under spot, intermediate or longer term arrangements consistent with market requirements for peaking or base load requirements.

Pan National states that this application is submitted to implement a new proposal to make LNG available to U.S. gas purchasers under a new pricing and contract structure which is intended to be fully market responsive. Specifically, Pan National requests certificate authorization to sell the imported volumes of LNG that will be supplied by Sonatrading under a new contract and resold by Pan National in specific transaction to be negotiated subsequently with customers.

Regasified LNG will be marketed by Pan National through negotiation with individual customers in various segments of the increasingly "unbundled" U.S. gas markets under contract terms responsive to then current market conditions. The basic provisions of each prospective transaction, including price, volume and terms, will be subject to confirmation by Sonatrading, which will be paid FOB

volumes utilizing a price which is a percentage of the average selling price received from Pan Nationals customers.

Additionally, Pan National has contracted for Ocean transportation of LNG and U.S. terminal services under similarly flexible arrangements. Pan National will be obligated to pay at a minimum the incremented additional costs incurred in providing these services. In the case of Ocean transportation provided by Pan Transport, and terminal service provided by TLC, additional compensation will be provided to the extent that total revenues received by Pan National exceed the sum of the FOB cost of LNG, the incremental service costs and Pan Nationals' out-of-pocket costs. Thus, this proposal has been structured to accommodate change in market condition and to eliminate the necessity for inflexible import and regasification commitments to take-or-pay for purchases or services. Accordingly, all LNG imported by Pan National will be sold in the U.S. market at prices and on terms dictated by prevailing market conditions.

The purchase agreement Pan National has with Sonatrading is for a total volume of 3,300 million MMBTU over a period of up to 20 years. Pan National has already obtained the necessary authorization to import the proposed sales volumes.

Comment date: June 28, 1989, in accordance with the first subparagraph of Standard Paragraph F at the end of this notice.

11. Southern Natural Gas Company

[Docket No. CP89-1544-000]

Take notice that on May 31, 1989, Southern Natural Gas Company (Southern), Post Office Box 2563, Birmingham, Alabama 35202-2563 filed in Docket No. CP89-1544-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Union Texas Products Corporation (Union Texas), an end-user of natural gas, under Southern's blanket certificate issued in Docket No. CP88-316-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Southern proposes to transport, on an interruptible basis, up to 2,000 MMBtu equivalent of natural gas on a peak day, 1,000 MMBtu equivalent on an average day, and 365,000 MMBtu equivalent on an annual basis for Union Texas. It is stated that Southern would receive the gas at existing points on Southern's

system in Louisiana, offshore Louisiana, Texas, offshore Texas, Mississippi, and Alabama. It is stated that Southern would deliver equivalent volumes to Union Texas' processing plant in St. Bernard Parish, Louisiana. It is asserted that Southern would utilize existing facilities and that no construction of additional facilities would be required. It is explained that the transportation service commenced April 2, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3038.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

12. Panhandle Eastern Pipe Line Company

Docket No. CP89-1533-000]

Take notice that on May 30, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1533-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 284.223) for authorization to perform an interruptible transportation service for Tarpon Gas Marketing Limited (Tarpon), a marketer, under Panhandle's blanket certificate issued in Docket No. CP86-565-000, pursuant to Section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is one file with the commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated March 23, 1989, it proposes to receive up to 100,000 dt equivalent of natural gas per day from Tarpon at specified receipt points located in the states of Colorado, Kansas, Illinois, Michigan, Ohio, Oklahoma, and Texas and redeliver the gas at specified points in Wayne County, Michigan. Panhandle estimates that the peak day volumes, average day volumes, and annual volumes would be 100,000 dt equivalent of natural gas, 75,000 dt equivalent of natural gas, and 27,375,000 dt equivalent of natural gas, respectively. It is stated that on April 1, 1989, Panhandle commenced a 120-day transportation service for Tarpon under § 284.223(a) as reported in Docket No. ST89-3610-000.

Panhandle further states that no facilities need be constructed to implement the service. Panhandle states that the service would continue on a month to month basis until terminated by either Panhandle or Tarpon upon at least thirty days written notice to the other. Panhandle proposes to charge

rates and abide by the terms and conditions of its Rate Schedule PT.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. United Gas Pipe Line Company

[Docket No. CP89-156-000]

Take notice that on May 31, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1546-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas on behalf of Energy Transportation Management, Inc. (ETM), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport on an interruptible basis up to 3,090 MMBtu of natural gas on a peak day, 3,090 MMBtu on an average day and 1,127,850 MMBtu on an annual basis for ETM. United states that it would perform the transportation service for ETM under United's Rate Schedule ITS. United indicates that it would transport the gas from receipt points in Terrebonne and Webster Parishes, Louisiana and Shelby County, Texas, to delivery points located in Terrebonne Parish, Louisiana and Jackson and Rankin Counties, Mississippi.

It is explained that the service commenced April 1, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3535. United indicates that no new facilities would be necessary to provide the subject service.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. Valley Gas Transmission, Inc.

[Docket No. CP89-1531-000]

Take notice that on May 30, 1989, Valley Gas Transmission, Inc. (Valley), Suite 700, 1301 McKinney Street, Houston, TX 77010, filed in Docket No. CP89-1531-000 an application pursuant to Section 7(b) of the Natural Gas Act for an order permitting and approving abandonment of sales service provided to Tennessee Gas Pipeline Company (Tennessee) under Rate Schedule No. 1 and Rate Schedule No. X-1, and to Entex, a division of Arkla, Inc. (Entex) under Rate Schedule No. 12, all as more fully set forth in the application on file

with the Commission and open to public inspection.

Valley states that the sales service provided to Tennessee was certificated pursuant to requests for authorization in Docket Nos. G-19618 and CP83-458-000 and under Rate Schedule No. 1 and X-1, respectively. Valley also states that the sales service provided to Entex was certificated pursuant to a request for authorization in Docket No. CP85-891-000 under Rate Schedule No. 12.

It is stated that on January 30, 1989, and on May 1, 1989, Tennessee filed with the Commission notifications that it had abandoned its purchases in the aforementioned dockets under the gas sales contract pursuant to the provisions of Order No. 490 and 18 CFR 157.21. Since Entex, a local distributor, is not under the Commission's jurisdiction it need not receive Commission authorization to abandon its purchase, it is stated.

Valley states that it seeks to abandon these services and remove these rate schedules from its tariff inasmuch as these contracts have been terminated by mutual agreement of Tennessee and Valley and Entex and Valley, and the three services are no longer taking place, and cannot take place in the future since Valley states that it is no longer purchasing gas or making sales.

Comment date: June 28, 1989 in accordance with Standard Paragraph F at the end of the notice.

15. Natural Gas Pipeline Company of America

[Docket No. CP89-1521-000]

Take notice that on May 28, 1989, Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP89-1521-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to transport natural gas on behalf of Exxon Corporation (Exxon), a producer of natural gas, under Natural's blanket certificate issued in Docket No. CP86-582-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Natural proposes to transport on an interruptible basis up to 30,000 MMBtu of natural gas on a peak day plus excess volumes pursuant to the overrun provisions of its Rate Schedule ITS. 30,000 MMBtu on an average day and 10,950,000 MMBtu on an annual basis for Exxon. It is stated that Natural would receive the gas for Exxon's account at existing receipt points in Louisiana, and would deliver equivalent volumes at

existing points on Natural's system in Louisiana. It is asserted that the transportation service would be affected using existing facilities and would require no construction of additional facilities. It is explained that the transportation service commenced March 29, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in docket No. ST89-3626.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Union Gas Pipe Line Company

[Docket No. CP89-1541-000]

Take notice that on May 31, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1541-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Seagull Marketing Services, Inc. (Seagull), a marketer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

United requests authorization to transport, on an interruptible basis, up to a maximum of 515,000 MMBtu of natural gas per day for Seagull from receipt points located in Mississippi, Louisiana, Texas and Alabama to delivery points located in Louisiana, Texas, Mississippi, Alabama and Florida. United anticipates transporting an annual volume of 187,975,000 MMBtu.

United states that the transportation of natural gas for Seagull commenced April 13, 1989, as reported in Docket No. ST89-3459-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to United in Docket No. CP88-6-000.

Comment date: July 24, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said applications should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR

157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules [18 CFR 385.214] a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14065 Filed 6-13-89; 8:45 am]

BILLING CODE 6717-01-M

Office of Hearings and Appeals

Cases Filed During the Week of April 28 Through May 5, 1989

During the week of April 28 through May 5, 1989, the appeals and applications for other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from an earlier list also have been included.

Under DOE procedural regulations, 10 CFR Part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

June 6, 1989.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of April 28 through May 5, 1989]

Date	Name and location of applicant	Case No.	Type of submission
Apr. 24, 1989	Arco/Elwell's Arco, Hardin, KY	RR304-3	Request for modification/rescission. If granted: The April 17, 1989 Decision and Order issued to Elwell's Arco (Case No. RF304-95) would be modified, regarding the firm's application in the Atlantic Richfield Company refund proceeding.
Apr. 24, 1989	Arco/Edwards Arco, Hardin, KY	RR304-4	Request for modification/rescission. If granted: The April 17, 1989 Decision and Order issued to Edwards Arco (Case No. RF304-89) would be modified, regarding the firm's application in the Atlantic Richfield Company refund proceeding.
Apr. 24, 1989	Arco/Richard D. Thomason, Hardin, KY	RR304-15	Request for modification/rescission. If granted: The April 17, 1989 Decision and Order issued to Richard D. Thomason would be modified, regarding Mr. Thomason's application in the Atlantic Richfield Company refund proceeding.
May 1, 1989	Merle Oil Company, Hudson, NY	RR272-34	Request for modification/rescission. If granted: The February 2, 1989 Decision and Order issued to Merle Oil Company (Case No. RF272-74630) would be modified, regarding the firm's application in the crude oil refund proceeding.
May 1, 1989	Omega World Travel, Washington, DC	KFA-0282	Appeal of an information request denial. If granted: The April 4, 1989, Freedom of Information Request Denial issued by the Albuquerque Operations Office would be rescinded and Omega World Travel would receive access to information on the amount of rebate offered in Article 4 of Sandia National Laboratories bid #55-2000, awarded to Corporate Travel Consultants.
May 2, 1989	Knolls Active Project, Albany, NY	KFA-0283	Appeal of an information request denial. If granted: The March 27, 1989, Freedom of Information Request Denial issued by the Office of Naval Reactors would be rescinded and the Knolls Active Project would receive access to documents relating to activities at the Knolls Atomic Power Laboratory.
May 2, 1989	Knolls Active Project, Albany, NY	KFA-0284	Appeal of an information request denial. If granted: The March 24, 1989, Freedom of Information Request Denial issued by the Office of Naval Reactors would be rescinded and the Knolls Active Project would receive access to documents relating to activities at the Knolls Atomic Power Laboratory.
May 3, 1989	Gene De Fau, Old Bethpage, NY	KFA-0285	Appeal of an information request denial. If granted: The March 28, 1989, Freedom of Information Request Denial issued by the Office of Management and Information Systems, Economic Regulatory Administration would be rescinded and Mr. De Fau would receive access to information regarding the Northville Industries Corporation.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued

[Week of April 28 through May 5, 1989]

Date	Name and location of applicant	Case No.	Type of submission
May 5, 1989	Carol Balzer, Bakersfield, CA	KFA-0286	Appeal of an information request denial. If granted, Carol Balzer would receive access to all documents regarding the DOE grant award process concerning the KTM Logger.

REFUND APPLICATIONS RECEIVED WEEK OF APR. 28 THROUGH MAY 5, 1989

Date received	Name of refund proceeding/ name of refund applicant	Case No.
4/27/89	James River Corp. of VA	RF315-5568
4/27/89	J & W Shell	RF315-5569
4/28/89 thru 5/5/89	Crude Oil Refund Applications Received.	RF272-75482 thru RF272-75489
4/28/89 thru 5/5/89	Murphy Oil Refund Applications Received.	RF309-1344 thru RF309-1348
4/28/89 thru 5/5/89	Atlantic Richfield Refund Applications Received.	RF304-8992 thru RF304-9249
4/28/89 thru 5/5/89	Exxon Oil Refund Applications Received.	RF307-9929 thru RF307-9939
4/28/89 thru 5/5/89	Shell Oil Refund Applications Received.	RF315-5599 thru RF315-5687
5/1/89	Tucker's Peoples Station.	RF313-138
5/1/89	Cooper's Crown.	RF313-139
5/1/89	Russell Oil Company.	RF313-141
5/1/89	Vanguard Petroleum Corp.	RF139-206
5/1/89	Fox's Gulf	RF300-10797
5/1/89	Florin Center Gulf.	RF300-10798
5/1/89	Peoples Gas Station.	RF313-140
5/2/89	Brainerd Gulf Station.	RF300-10799
5/2/89	Kimber Petroleum Corp.	RF313-142
5/3/89	Moreau's Crown	RF313-143
5/3/89	Gary E. Wygle	RF300-10800
5/4/89	Don Brown's Crown Gas Station.	RF313-144
5/4/89	Don's Crown	RF313-145

[FR Doc. 89-14133 Filed 6-13-89; 8:45 am]
BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[OPP-30293A; FRL-3600-3]

Griffin Corp.; Approval of Pesticide Product Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of applications submitted by Griffin Corporation, to conditionally register the pesticide products Raid Ant Controller II and Raid Roach Controller II containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Phil Hutton, Product Manager (PM) 17, Registration Division (H7505C), Office of Pesticide Programs, 401 M Street SW., Washington, DC 20460. Office location and telephone number: Room 207, CM#2C, Environmental Protection Agency, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 557-2690.

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of December 20, 1988 (53 FR 51134), which announced that Griffin Corporation, P.O. Box 1847, Valdosta, GA 31601, had submitted applications to conditionally register the pesticide products Raid Ant Controller II and Raid Roach Controller II, containing the active ingredient *N*-ethyl perfluorooctanesulfonamide at 0.5 and 1.00 percent respectively; an active ingredient not included in any previously registered products.

The applications were approved on March 23, 1989, as Raid Ant Controller II (EPA Reg. No. 1812-330), and Raid Roach Controller II (EPA Reg. No. 1812-329). Both products were classified for general use indoors in child resistant bait stations to control ants and roaches.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition

that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of *N*-ethyl perfluorooctanesulfonamide and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of *N*-ethyl perfluorooctanesulfonamide during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is in the public interest.

These registrations were made conditional since certain data were lacking. Several data requirements must be fulfilled during the period of conditional registration. Such requirements include dermal sensitization test (81-6) and rat primary hepatocyte unscheduled DNA synthesis assay (84-4) which is due by March 1990; chronic oral toxicity in Beagle Dogs and Male Canine sterility reversal after subchronic exposure which is due by July 1989. These conditional registrations will expire on September 15, 1990.

Consistent with section 3(c)(7)(C), the Agency has determined that these conditional registrations are in the public interest. Use of this pesticide is of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticide will not result in unreasonable adverse effects to man and the environment.

More detailed information on these conditional registrations is contained in a Chemical Fact Sheet on *N*-ethyl perfluorooctanesulfonamide.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (H7505C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M Street SW., Washington, DC 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the Office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, Room 246, CM#2, Arlington, VA 22202, (703) 557-3262. Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M Street SW., Washington, DC 20460. Such requests should: (1) Identify the product's name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.
Dated: May 16, 1989.

Douglas D. Campt,
Director, Office of Pesticide Programs.
[FR Doc. 89-13847 Filed 6-13-89; 8:45 am]
BILLING CODE 6560-50-M

[OPTS-400033; FRL-3601-9]

Emergency Planning and Community Right-to-Know; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: EPA will hold a 1-day public meeting to discuss potential issues for obtaining additional detailed data under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA). In connection with this meeting the Agency has prepared an issues paper that will be available at no charge through the address or telephone number given under **FOR FURTHER INFORMATION CONTACT**.

DATE: The meeting will take place on Tuesday, July 11, 1989, at 9 a.m. and adjourn by 3 p.m.

ADDRESS: The meeting will be held at the: Environmental Protection Agency,

Auditorium, Education Center, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Eileen Gibson, Emergency Planning and Community Right-to-Know Information Hotline, U.S. Environmental Protection Agency, Mail Stop OS-120, 401 M St., SW., Washington, DC 20460, Toll Free: 1-800-535-0202, Washington, DC and Alaska (202) 479-2449, Attention: Docket No. 400033.

SUPPLEMENTARY INFORMATION: In 1986, Congress enacted the Emergency Planning and Community Right-To-Know Act (EPCRA). Section 313 of EPCRA requires certain businesses to submit reports each year on the amounts of toxic chemicals their facilities release into the environment. The purpose of this requirement is to inform the public and government officials about releases of specified toxic chemicals. The section 313 list includes more than 300 chemicals and 20 chemical categories.

In the Federal Register of June 4, 1987 (52 FR 21152), EPA issued a notice of proposed rulemaking for regulations to implement the provisions of section 313. In response to that proposal, the issue was raised of also having release data reported in terms of its frequency, duration, or peak value. EPA discussed the issue of peak release data in the preamble to the final rule for implementing section 313 of EPCRA February 16, 1988 (53 FR 4500). Although EPA did not include a requirement for peak release reporting in the final rule, EPA stated that it would conduct analyses to identify the type of data needed to understand better the risks associated with releases of toxic chemicals and determine how these data could best be reported by facilities.

The Agency convened a work group which has developed a paper representing the work group's analysis of the issues for collecting "peak release" type data. Copies of the issues paper will be available to the public on or after Friday, June 30, 1989, from the source listed under **FOR FURTHER INFORMATION CONTACT**.

The agenda for this public meeting will cover the data elements needed for "peak release" data collection and their uses in risk screening, and an overview of issues and statements by interested members of the public. Michael H. Shapiro, Director of the Economics & Technology Division, Office of Toxic Substances, will be the key note speaker at the public meeting.

Any member of the public wishing to provide written comments should submit them in triplicate to the address provided under **FOR FURTHER INFORMATION CONTACT**. Interested

persons may also file written statements in triplicate at the meeting, and may, upon advance request, present oral statements to the extent time permits.

Scheduling of oral statements will be on a first come first served basis by calling the number listed under **FOR FURTHER INFORMATION CONTACT**. All statements will be made part of the public record and will be considered in the development of any proposed rule amendment.

Dated: June 7, 1989.
Dwain Winters,
Acting Director, Office of Toxic Substances.
[FR Doc. 89-14101 Filed 6-13-89; 8:45 am]
BILLING CODE 6560-50-M

[OPP-30279A; FRL-3602-1]

E. I. Du Pont De Nemours and Co.; Approval of Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval an application submitted by E. I. Du Pont de Nemours and Co., to conditionally register the pesticide product Londax Herbicide containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(7) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Larry Schnaubelt, Product Manager (PM) 23, Registration Division (H7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237 CM#2C, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703-557-1830).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the Federal Register of May 13, 1987 (52 FR 18021), which announced that E. I. du Pont de Nemours and Co., Inc., Agricultural Products Dept., Barley Plaza, Wilmington, DE 19898, had submitted an application to conditionally register the pesticide product Du Pont Londax Herbicide containing the active ingredient methyl-2-[[[4,6-dimethoxy-pyrimidin-2-yl]amino]carbonyl]amino]-sulfonfylmethyl]benzoate at 60 percent; an active ingredient not included in any previously registered product.

The application was approved on February 17, 1989, as Londax Herbicide, for use on rice in the States of Arkansas,

California, Louisiana, Mississippi, Missouri, and Texas. The product was assigned EPA Registration Number 352-506.

A conditional registration may be granted under section 3(c)(7)(C) of FIFRA for a new active ingredient where certain data are lacking, on condition that such data are received by the end of the conditional registration period and do not meet or exceed the risk criteria set forth in 40 CFR 154.7; that use of the pesticide during the conditional registration period will not cause unreasonable adverse effects; and that use of the pesticide is in the public interest.

The Agency has considered the available data on the risks associated with the proposed use of bensulfuron methyl ester (methyl-2-[[[4,6-dimethoxy-pyrimidin-2-yl]amino]-carbonyl]amino]sulfonyl]-methyl]benzoate and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of bensulfuron methyl ester during the period of conditional registration will not cause any unreasonable adverse effect on the environment, and that use of the pesticide is, in the public interest.

This registration was made conditional since certain data were lacking. These data requirements must be fulfilled during the period of conditional registration.

Consistent with section 3(c)(7)(C), the Agency has determined that this conditional registration is in the public interest. Use of this pesticide is of significance to the user community, and appropriate labeling, use directions, and other measures have been taken to ensure that use of the pesticide will not result in unreasonable adverse effects to man and the environment.

More detailed information on this conditional registration is contained in a Chemical Fact Sheet on bensulfuron methyl ester.

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from Registration Division (H7505C), Environmental Protection Agency, Registration Support and Emergency Response Branch, 401 M St., SW., Washington, DC 20460.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public inspection in the Program Management and Support Division (H7502C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 246, CM#2, Arlington, VA 22202 (703-557-3282). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A-101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

Dated: May 28, 1989.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 89-14102 Filed 6-13-89; 8:45 am]

BILLING CODE 6660-50-M

[OPP-240085; FRL-3602-2]

State Registrations of Pesticides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received notices of registration of pesticides to meet special local needs under section 24(c) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, from 32 States. A registration issued under this section of FIFRA shall not be effective for more than 90 days if the Administrator disapproves the registration or finds it to be invalid within that period. If the Administrator disapproves a registration or finds it to be invalid after 90 days, a notice giving that information will be published in the Federal Register.

DATE: The last entry for each item is the date the State registration of that product became effective.

FOR FURTHER INFORMATION CONTACT: Owen F. Beeder, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC.

Office location and telephone number: Rm. 716A, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703)-557-7893.

SUPPLEMENTARY INFORMATION: This notice only lists the section 24(c)

applications submitted to the Agency. The Agency has 90 days to approve or disapprove each application listed in this notice. Applications that are not approved are returned to the appropriate State for action. Most of the registrations listed below were received by the EPA in February through April of 1989. Receipts of State registrations will be published periodically. Of the following registrations, none involve a changed-use pattern (CUP). The term "changed-use pattern" is defined in 40 CFR 162.3(k) as a significant change from a use pattern approved in connection with the registration of a pesticide product. Examples of significant changes include, but are not limited to, changes from a nonfood to food use, outdoor to indoor use, ground to aerial application, terrestrial to aquatic use, and nondomestic to domestic use.

Alabama

EPA SLN No. AL 89 0001. B&W Quality Growers, Inc. Registration is for Kocide 101 to be used on watercress to control cercospora leaf spot. February 1, 1989.

EPA SLN No. AL 89 0002. Coopers Animal Health, Inc. Registration is for Saber TM Insecticide Ear Tags to be used on beef and nonlactating dairy cattle to control horn flies and face flies. February 1, 1989.

EPA SLN No. AL 89 0003. Van Waters & Rogers, Inc. Registration is for Van Waters & Rogers Standard 2,4-D Amine to be used on ponds, lakes, reservoirs, marshes, bayous, canals, rivers, and streams to control water hyacinth. April 6, 1989.

EPA SLN No. AL 89 0004. Valent U.S.A. Corp. Registration is for Valent Diquat Herbicide to be used on fresh water lakes, reservoirs, rivers, and drainage and flood control canals to control water hyacinth. April 8, 1989.

EPA SLN No. AL 89 0005. Platte Chemical Co. Registration is for Clean Crop Curbit EC Herbicide to be used on cucumbers, melons, and watermelons for preemergence control of certain annual grasses and broadleaf weeds. April 17, 1989.

Arizona

EPA SLN No. AZ 89 0001. Ramsey Farms, Inc. Registration is for Prefar 4E to be used on onions grown for seed to control purslane, canary grass, watergrass, and sprangletop. January 3, 1989.

EPA SLN No. AZ 89 0002. Everkrisp Vegetables, Inc. Registration is for Ciba-Geigy D-Z-N Diazinon 50W to be used

on Chinese cabbage to control aphids. January 20, 1989.

EPA SLN No. AZ 89 0003. Britan Farms. Registration is for Manzate D to be used on Chinese cabbage to control downy mildew. January 20, 1989.

EPA SLN No. AZ 89 0004. Britan Farms. Registration is for Ciba-Geigy D-Z-N Diazinon 50W to be used on Chinese cabbage to control aphids. January 20, 1989.

EPA SLN No. AZ 89 0005. Britan Farms. Registration is for Prokil Ethyl-Methyl 6-3E to be used on Chinese cabbage to control aphids. January 20, 1989.

EPA SLN No. AZ 89 0006. Britan Farms. Registration is for Ethyl-Methyl Parathion 5 to be used on Chinese cabbage to control aphids. January 20, 1989.

EPA SLN No. AZ 89 0007. USDA/APHIS/ADC. Registration is for Compound DRC-1339 Concentrate to be used on feedlots to control blackbirds and starlings. February 6, 1989.

EPA SLN No. AZ 89 0008. Leffingwell/Uniroyal Chemical Co. Registration is for Maintain CF 125 to be used on ornamental olive trees for pollen and fruit prevention. March 1, 1989.

EPA SLN No. AZ 89 0010. Valent U.S.A. Corp. Registration is for Genep(R) EPTC 7EC to be used for idle season fallow ground treatment to control yellow and purple nutsedge. April 12, 1989.

EPA SLN No. AZ 89 0011. Micro Flo Co. Registration is for Dimethoate 4 EC to be used on citrus to control thrips. April 13, 1989.

EPA SLN No. AZ 89 0012. Envirochem. Registration is for Super IQ(R) Insecticide Latex Coating APT & LC to be used on water meter vault interior surfaces to control cockroaches, crickets, and spiders. March 31, 1989.

Arkansas

EPA SLN No. AR 89 0001. Coopers Animal Health, Inc. Registration is for Saber TM Insecticide Ear Tags to be used on beef and nonlactating dairy cattle and calves to control horn flies and face flies. March 14, 1989.

EPA SLN No. AR 89 0002. Chevron Chemical Co. Registration is for Monitor 4 Spray to be used on cotton to control aphids, fleahoppers, whiteflies, and several other pests. March 21, 1989.

EPA SLN No. AR 89 0003. Ciba-Geigy Corp., Agricultural Div. Registration is for Tilt Fungicide to be used on wheat, barley, and rye to control rusts, powdery mildew, leaf blight, and glume blotch. March 24, 1989.

EPA SLN No. AR 89 0004. ICI Americas, Inc. Registration is for Ordram 15G Herbicide to be used on

rice for postemergence application in emergency situations to control barnyardgrass. March 24, 1989.

EPA SLN No. AR 89 0005. Valent U.S.A. Corp. Registration is for Monitor 4 Spray to be used on cotton to control aphids and thrips. April 11, 1989.

EPA SLN No. AR 89 0006. Rohm and Haas Co. Registration is for Dithane(R) F-45 to be used on cotton to control *Rhizoctonia solani* and *Pythium spp.* April 14, 1989.

EPA SLN No. AR 89 0007. Fairfield American Corp. Registration is for Permanone 10 percent EC to be used outdoors and in homes and nonfood areas, on kennels, commercial buildings, etc. to control gypsy moth, caterpillars, and Japanese beetles. April 17, 1989.

California

EPA SLN No. CA 89 0001. University of California, South Coast Field Station. Registration is for Durham Metaldehyde Granules 3.5/7.5 percent to be used on kiwi to control brown garden snail, *Helix aspersa*. January 5, 1989.

EPA SLN No. CA 89 0003. Tuolumne County Agricultural Commissioner. Registration is for DuPont Benlate Fungicide to be used on greenhouse cucumbers to control gummy stem blight and target spot. January 13, 1989.

EPA SLN No. CA 89 0004. Mobay Corp., Agricultural Chemicals Div. Registration is for Sencor DF 75% Dry Flowable Herbicide to be used on irrigation furrows in alfalfa grown in rows to control several weeds. January 17, 1989.

EPA SLN No. CA 89 0005. Mobay Corp. Registration is for Sencor 4 Flowable Herbicide to be used on irrigation furrows in alfalfa grown in rows to control several weeds. January 17, 1989.

EPA SLN No. CA 89 0006. University of California. Registration is for Furadan 4F (Carbofuran) to be used on grapevines growing in containers in greenhouses, lath houses, shadehouses, and screen houses to control grape phylloxera, *Daktulosphaira vitifolia*. January 30, 1989.

EPA SLN No. CA 89 0007. Parks and Recreation Dept., City of Stockton, CA. Registration is for Summer Flowable Emulsion-Light-Medium to be used on ornamental trees along city street rights-of-way to control scale, aphids, and mite eggs. January 31, 1989.

EPA SLN No. CA 89 0008. Monrovia Nursery Co. Registration is for Dithane M-45 to be used on ornamentals not listed on the Federal label to control diseases listed on the Federal label. February 1, 1989.

EPA SLN No. CA 89 0009. Santa Barbara County Dept. of Agriculture.

Registration is for Goal 1.6 E Herbicide to be used on ornamental sweet peas grown for seed to control broadleaf weeds. February 2, 1989.

EPA SLN No. CA 89 0011. Tuolumne County Agricultural Commissioner. Registration is for Thiolux to be used on greenhouse grown tomatoes to control powdery mildew. February 14, 1989.

EPA SLN No. CA 89 0012. Rohm and Haas Co. Registration is for Goal(R) 1.6E Herbicide to be used on nondomestic almonds and walnuts to control several weeds. February 15, 1989.

EPA SLN No. CA 89 0016. Dow Chemical U.S.A., Agricultural Products Dept. Registration is for Lorsban 4E insecticide to be used on citrus with aerial application to control several pests. March 8, 1989.

EPA SLN No. CA 89 0017. Dow Chemical U.S.A., Agricultural Products Dept. Registration is for Lorsban 50W to be used on tree nuts with aerial application to control various insects infesting nut trees. March 8, 1989.

EPA SLN No. CA 89 0018. Dow Chemical U.S.A., Agricultural Products Dept. Registration is for Lorsban 4E Insecticide to be used on tree nuts with aerial application to control various insects infesting nut trees. March 8, 1989.

EPA SLN No. CA 89 0019. Dow Chemical U.S.A., Agricultural Products Dept. Registration is for Lorsban 50W to be used on apples to control various insects. March 14, 1989.

EPA SLN No. CA 89 0020. California Dept. of Food and Agriculture. Registration is for Rodent Bait Diphacinone-Treated Grain (0.005%) to be used on grain to control Norway rats, roof rats, ground squirrels, chipmunks, muskrats, jackrabbits, and several other pests. March 16, 1989.

EPA SLN No. CA 89 0021. California Dept. of Food and Agriculture. Registration is for Rodent Bait Block Diphacinone Treated Grain/Paraffin (0.005%) to be used on grain to control Norway rats, roof rats, ground squirrels, chipmunks, muskrats, jack rabbits, and several other pests. March 16, 1989.

EPA SLN No. CA 89 0022. California Dept. of Food and Agriculture. Registration is for Rodent Bait Diphacinone-Treated Grain to be used on grain to control ground squirrels, deer mice, and house mice. March 16, 1989.

EPA SLN No. CA 89 0024. California Dept. of Food and Agriculture. Registration is for Rodent Bait Chlorophacinone Treated Grain (0.01%) to be used on grain to control ground squirrels, deer mice, and house mice. March 16, 1989.

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EPA SLN No. CA 89 0026. California Dept. of Food and Agriculture. Registration is for Rodent Bait Zinc Phosphide Treated Grain (2%) to be used on grain to control ground squirrels, deer mice, and house mice. March 6, 1989.

EPA SLN No. CA 89 0027. California Dept. of Food and Agriculture. Registration is for Rodent Bait Zinc Phosphide Treated Grain (2%) to be used on grain to control ground squirrels, meadow mice, cotton rats, and Norway roof rats. March 16, 1989.

EPA SLN No. CA 89 0028. California Dept. of Environmental Horticulture. Registration is for Rubigan EC Fungicide to be used on greenhouse-container-grown eucalyptus cultivars to control powdery mildew and several other diseases. March 29, 1989.

EPA SLN No. CA 89 0029. Sunseed Genetics, Inc. Registration is for Gustafson Thiram 45 WP to be used on onion seed to control seed decay. March 29, 1989.

Delaware

DPE SLN No. DE 89 0001. FMC Corp., Agricultural Chemicals Group. Registration is for Command 4EC Herbicide to be used on soybeans to control selected weed species. January 22, 1989.

Florida

EPA SLN No. FL 89 0001. Coopers Animal Health, Inc. Registration is for Saber(R) Insecticide Ear Tags to be used on beef and nonlactating dairy cattle to control horn flies. January 19, 1989.

EPA SLN No. FL 89 0002. Valent U.S.A. Corp. Registration is for Dibrom 14 Concentrate to be used on residential areas, municipalities, tidal marshes, swamps, woodlands, livestock pastures, feed lots, and pastures including dairy cattle to control adult mosquitos. February 1, 1989.

EPA SLN No. FL 89 0003. Valent U.S.A. Corp. Registration is for Dibrom 14 Concentrate to be used on residential areas, municipalities, tidal marshes, swamps, woodlands, livestock pastures, feed lots, and pastures including dairy cattle to control adult mosquitos. February 1, 1989.

EPA SLN No. FL 89 0004. Valent U.S.A. Corp. Registration is for Diquat Herbicide H/A to be used on fresh water ponds, lakes, rivers, drainage and flood control canals, ditches, reservoirs, bayous, and other quiescent or slowly moving bodies of water to control noxious aquatic plants. February 1, 1989.

EPA SLN No. FL 89 0005. Valent U.S.A. Corp. Registration is for Diquat Herbicide H/A to be used on fresh water ponds, lakes, rivers, drainage and flood control canals, ditches, reservoirs,

bayous, and other quiescent or slowly moving bodies of water to control noxious aquatic plants. February 1, 1989.

EPA SLN No. FL 89 0006. Valent U.S.A. Corp. Registration is for Monitor 4 Spray to be used on crisp head lettuce to control vegetable leaf miners, aphids, and cabbage loopers. February 1, 1989.

EPA SLN No. FL 89 0007. Valent U.S.A. Corp. Registration is for Monitor 4 Spray to be used on tomatoes (fresh fruit only) to control aphids, fruitworms, leaf miners, and several other pests. February 1, 1989.

EPA SLN No. FL 89 0008. Valent U.S.A. Corp. Registration is for Dibrom 8 Emulsive to be used on lettuce to control adult vegetable leaf miners. February 1, 1989.

EPA SLN No. FL 89 0009. Valent U.S.A. Corp. Registration is for Orthene 75 S Soluble Powder to be used on celery to control green peach aphids. February 1, 1989.

EPA SLN No. FL 89 0010. Valent U.S.A. Corp. Registration is for Monitor Spray to be used on eggplant to control spidermites, aphids, leaf miners, and lepidopterous larvae. February 1, 1989.

EPA SLN No. FL 89 0011. Valent U.S.A. Corp. Registration is for Monitor 4 Spray to be used on melons to control rindworm complex. February 1, 1989.

EPA SLN No. FL 89 0012. Valent U.S.A. Corp. Registration is for Monitor 4 Spray to be used on cucumbers to control pickleworms, aphids, melonworms, and leaf miners. February 1, 1989.

EPA SLN No. FL 89 0013. Valent U.S.A. Corp. Registration is for Monitor 4 Spray to be used on cabbage to control cabbage loopers, imported cabbageworms, diamondback moth larvae, and aphids. February 1, 1989.

EPA SLN No. FL 89 0014. Valent U.S.A. Corp. Registration is for Monitor 4 Spray to be used on lettuce to control aphids, cabbage loopers, diamondback moth larvae, granulate cutworms, and leaf miners. February 1, 1989.

EPA SLN No. FL 89 0015. Valent U.S.A. Corp. Registration is for Bolero 8 EC to be used on dry-seeded rice to control barnyard grass and goosegrass. February 1, 1989.

EPA SLN No. FL 89 0016. Valent U.S.A. Corp. Registration is for Orthene 75 S Soluble Powder to be used on residential and commercial turf and golf courses to control sod webworm, leafhoppers, and mole crickets. February 1, 1989.

EPA SLN No. FL 89 0017. Valent U.S.A. Corp. Registration is for Orthene 75S Soluble Powder to be used on slash pine seed orchards to control slash pine flower thrips. February 1, 1989.

EPA SLN No. FL 89 0018. Valent U.S.A. Corp. Registration is for Orthene 75 S Soluble Powder to be used on southern pine seed orchards to control slash pine flower thrips, coneworms, and seedbugs. February 1, 1989.

EPA SLN No. FL 89 0019. Valent U.S.A. Corp. Registration is for Orthene 75 S Soluble Powder to be used on nonbearing citrus to control imported fire ants. February 1, 1989.

EPA SLN No. FL 89 0020. Monsanto Agricultural Co. Registration is for Roundup Herbicide to be used on atemoya, carambola, and sugar apples to control a variety of annual and perennial weeds. February 7, 1989.

EPA SLN No. FL 89 0021. Allied Universal Corp. Registration is for Pool Guard Chlorinated Solution to be used on irrigation systems to control bacterial slime in drip irrigation systems. February 21, 1989.

EPA SLN No. FL 89 0022. Valent U.S.A. Corp. Registration is for Orthene 75 S Soluble Powder to be used on nonbearing citrus trees to control citrus root weevil complex. March 8, 1989.

EPA SLN No. FL 89 0023. Agricultural Div., Ciba-Geigy Corp. Registration is for Ridomil 2E Fungicide to be used on citrus to control *Phytophthora* root rot. March 15, 1989.

EPA SLN No. FL 89 0024. Agricultural Div., Ciba-Geigy Corp. Registration is for D.Z.N. Diazinon 50 W to be used on nursery stock to control fire ants. April 4, 1989.

EPA SLN No. FL 89 0025. Agricultural Div., Ciba-Geigy Corp. Registration is for D.Z.N. Diazinon AG 500 to be used on nursery stock to control fire ants. April 4, 1989.

Georgia

EPA SLN No. GA 89 0001. Platte Chem. Co. Registration is for Clean Crop Curbit EC Herbicide to be used on cucumbers, melons, and watermelons to control certain annual grasses and broadleaf weed. January 12, 1989.

Hawaii

EPA SLN No. HI 89 0001. ICI Americas, Inc. Registration is for Gramoxone Super Paraquat Herbicide to be used on sugarcane harvest crop desiccation to control several weeds. March 3, 1989.

Iowa

EPA SLN No. IA 89 0001. Coulston International Corp. Registration is for Permanone Tick Repellent to be used as clothing treatment only to control ticks. February 21, 1989.

Louisiana

EPA SLN No. LA 89 0001. Agrolinz, Inc. Registration is for 2,4-D Amine No. 4 to be used on ponds, lakes, reservoirs, marshes, bayous, drainage ditches, canals, rivers, and streams to control water hyacinth. March 13, 1989.

EPA SLN No. LA 89 0001. Agricultural Division, Ciba-Geigy Corp. Registration is for Tilt Fungicide to be used on wheat, barley, and rye to control rusts, powdery mildew, leaf blight, and glume blotch. March 21, 1989.

EPA SLN No. LA 89 0003. Rohm and Haas Co. Registration is for Dithane (R) F-45 to be used on cottonseed in furrow-seed treatment to control *Rhizoctonia solani*, *Pythium* spp. March 29, 1989.

EPA SLN No. LA 89 0004. Valent U.S.A. Corp. Registration is for cotton in-furrow application to control aphids and thrips. April 7, 1989.

Maryland

EPA SLN No. MD 89 0001. Agricultural Division, Ciba-Geigy Corp. Registration is for Tilt Fungicide to be used on wheat, barley, and rye to control rusts (*Puccinia* spp.), powdery mildew, leafblight, and glume blotch. March 31, 1989.

Michigan

EPA SLN No. MI 89 0001. Dow Chemical, U.S.A., Agricultural Products Dept. Registration is for Lorsban 4E Insecticide to be used on Christmas trees to control tree and forest pests. March 1, 1989.

EPA SLN No. MI 89 0003. Coulston International Corp. Registration is for Permanone Tick Repellent to be used as clothing treatment to control ticks, chiggers, and mosquitos. April 17, 1989.

EPA SLN No. MI 89 0004. Mobay Corp. Registration is for Metasystox(R) Spray Concentrate to be used on Christmas trees to control several pests. April 17, 1989.

Mississippi

EPA SLN No. MS 89 0001. Agricultural Division, Ciba-Geigy Corp. Registration is for Tilt Fungicide to be used on cereals and grasses grown for seed to control certain diseases. March 20, 1989.

EPA SLN No. MS 89 0002. E.I. du Pont de Nemours & Co., Inc. Registration is for Velpar L Herbicide to be used on established Bermudagrass and Bahiagrass to control smut grass. March 20, 1989.

EPA SLN No. MS 89 0003. E.I. du Pont de Nemours & Co., Inc. Registration is for Velpar L Herbicide to be used on established bermudagrass and bahiagrass to control smut grass. March 20, 1989.

EPA SLN No. MS 89 0004. Valent U.S.A. Corp. Registration is for Orthene 90S to be used on cotton to control aphids and thrips. March 22, 1989.

EPA SLN No. MS 89 0005. Rohm & Haas Co. Registration is for Dithane(R) F-45 to be used on cotton to control cotton seedling diseases. April 10, 1989.

EPA SLN No. MS 89 0006. Kincaid Enterprises, Inc. Registration is for Chloroneb 65W to be used on cotton to control cotton seedling diseases. April 10, 1989.

Missouri

EPA SLN No. 89 0001. Agricultural Division, Ciba-Geigy Corp. Registration is for Tilt Fungicide to be used on wheat, barley, and rye to control rusts, powdery mildew, leaf blight, and glume blotch. March 28, 1989.

EPA SLN No. MO 89 0002. FMC Corp., Agricultural Chem. Group. Registration is for Furadan 4 Flowable to be used on strawberries after harvest to control root weevil. April 11, 1989.

EPA SLN No. MO 89 0003. Agricultural Division, Ciba-Geigy Corp. Registration is for Triumph 4E Insecticide to be used on tees and aprons of golf courses and sod farms to control several insects. April 11, 1989.

EPA SLN No. MO 89 0004. FMC Corp., Agricultural Chem. Group. Registration is for Furadan 4 Flowable to be used on alfalfa to control clover root curculio, crickets, grasshoppers, and nematodes. April 11, 1989.

Montana

EPA SLN No. MT 89 0002. Fairfield American Corp. Registration is for Permanone Pyrenone(R) Liquid Dust to be used on rodents to control plague vectoring arthropods. January 30, 1989.

EPA SLN No. MT 89 0004. Quality Technologies. Registration is for Hopper Bait II to be used on rangeland and cropland to control grasshoppers. February 17, 1989.

EPA SLN No. MT 89 0005. Fairfield American Corp. Registration is for Permanone(R) Tick Repellent to be used on clothing to control ticks, mosquitos, and chiggers. February 17, 1989.

EPA SLN No. MT 89 0006. E.I. du Pont de Nemours & Co., Inc. Registration is for Du Pont Vydate L Insecticide/Nematicide to be used on peppermint and spearmint to control nematodes. February 28, 1989.

EPA SLN No. MT 89 0007. Mobay Corp. Agricultural Chem. Div. Registration is for Di-Syston 8 to be used on seeded native and tame grass to control aphids. March 14, 1989.

EPA SLN No. MT 89 0008. Montana Dept. of Agriculture, Environmental Management Div. Registration is for

Treflan(R) TR-10 to be used on rapeseed, safflower, and sunflowers to control several weeds. April 14, 1989.

Nebraska

EPA SLN No. NE 89 0001. Natural Fibers Corp. Registration is for Sencor 4 to be used on milkweed to control various weeds. March 10, 1989.

EPA SLN No. NE 89 0002. Natural Fibers Corp. Registration is for Devrinol WP Herbicide to be used on milkweed to control annual grassy and broad leaf weeds. March 9, 1989.

EPA SLN No. NE 89 0003. E.I. du Pont de Nemours & Co., Inc. Registration is for Extrazine II 4L Herbicide to be used for preplant use on grain sorghum to control several weeds. March 24, 1989.

EPA SLN No. NE 89 0004. E.I. du Pont de Nemours & Co., Inc. Registration is for Extrazine II DF Herbicide for preplant use on grain sorghum to control several weeds. March 24, 1989.

EPA SLN No. NE 89 0005. Fermanta Plant Protection Co. Registration is for Bravo C/M to be used on dry edible beans to control bacterial and fungal diseases. March 24, 1989.

Nevada

EPA SLN No. NV 89 0001. Platte Chemical Co. Registration is for Clean Crop Botran 75 WDC to be used on potatoes to control white mold. February 22, 1989.

EPA SLN No. NV 89 0002. NOR-AM Chemical Co. Registration is for Botran 75-WDC to be used on potatoes to control white mold. March 9, 1989.

New Hampshire

EPA SLN No. NH 89 0001. Agricultural Division, Ciba-Geigy Corp. Registration is for Triumph 4E Insecticide to be used on greens and aprons of golf courses and sod farms to control various insects. January 26, 1989.

New Jersey

EPA SLN No. NJ 89 0001. Agricultural Division, Ciba-Geigy Corp. Registration is for Triumph 4E Insecticide to be used on tees, greens, and aprons of golf courses and sod farms to control various insects. January 25, 1989.

EPA SLN No. NJ 89 0002. Platte Chemical Co. Registration is for Clean Crop Captan 50-W to be used on blueberries to control anthracnose fruit rot and boyrytis gray mold. February 10, 1989.

EPA SLN No. NJ 89 0003. Prentiss Drug & Chemical Co. Registration is for Prentox(R) PBO-8 to be used on tomatoes and potatoes to control several insects. March 15, 1989.

EPA SLN No. NJ 89 0004. Prentiss Drug & Chemical Co. Registration is for Prentox(R) Rotenox TM 5 EC to be used on potatoes, tomatoes, and eggplant to control Colorado potato beetles. March 15, 1989.

New Mexico

EPA SLN No. NM 89 0001. Bell Laboratories, Inc. Registration is for Quintox Rat and Mouse Bait to be used in and around homes, industrial, commercial, agricultural, and poultry buildings and other structures to control rats and mice. January 18, 1989.

New York

EPA SLN No. NY 89 0001. Tennessee Chemical Co. Registration is for Copper Sulfate Powdered Instant to be used on grapes to control dormant powdery mildew. April 6, 1989.

North Carolina

EPA SLN No. NC 89 0001. Platte Chemical Co. Registration is for Clean Crop Curbit EC Herbicide to be used on cucumbers, melons, and watermelons to control certain annual grasses and broadleaf weeds. February 7, 1989.

EPA SLN No. NC 89 0002. Agricultural Division, Ciba-Geigy Corp. Registration is for Triumph 4E Insecticide to be used on Christmas tree plantings to control certain insects. February 7, 1989.

Ohio

EPA SLN No. OH 89 0003. E.I. du Pont de Nemours & Co. Registration is for Manzate 200DF Fungicide to be used on greenhouse tomato transplants to control certain diseases. April 13, 1989.

EPA SLN No. OH 89 0004. Mobay Corp. Registration is for Metasystox-R Spray Concentrate to be used on Christmas trees to control aphids, mites, and thrips. April 13, 1989.

Oregon

EPA SLN No. OR 89 0001. E.I. du Pont de Nemours & Co., Inc. Registration is for Du Pont Asana XL Insecticide 0.66 EC to be used on pears (prebloom) to control pear psylla. January 17, 1989.

EPA SLN No. OR 89 0002. FMC Corp. Agricultural Chemical Group. Registration is for Talstar 10 WP Insecticide/Miticide to be used on outdoor ornamentals to control many important mite and insect pests. April 10, 1989.

Pennsylvania

EPA SLN No. PA 89 0001. Tennessee Chemical Co. Registration is for Copper Sulfate Powdered Instant Bluestone to be used on impounded waters, lakes, ponds, and reservoirs to control algae. March 9, 1989.

EPA SLN No. PA 89 0003. FMC Corp., Agricultural Chem. Group. Registration is for Furadan 4F to be used on strawberries to control root weevils. April 5, 1989.

South Carolina

EPA SLN No. SC 89 0001. Platte Chemical Co. Registration is for Clean Crop Curbit EC Herbicide to be used on cucumbers, melons, and watermelons to control certain annual grasses and broadleaf weeds. February 21, 1989.

EPA SLN No. SC 89 0002. Agricultural Division, Ciba-Geigy Corp. Registration is for Tilt Fungicide to be used on wheat, barley, and rye to control rusts, powdery mildew, leaf blight, and glume blotch. April 8, 1989.

South Dakota

EPA SLN No. SD 89 0002. Coopers Animal Health, Inc. Registration is for Saber TM Insecticide Ear Tags to be used on beef and nonlactating dairy cattle and calves to control horn and face flies. December 12, 1988.

Tennessee

EPA SLN No. TN 89 0001. Tennessee Dept. of Agriculture. Registration is for Carboxide to be used on beekeeping equipment to control contaminants. February 13, 1989.

EPA SLN No. TN 89 0002. Agricultural Division, Ciba-Geigy Corp. Registration is for Tilt(R) Fungicide to be used on wheat, barley, and rye to control several pests. April 13, 1989.

Texas

EPA SLN No. TX 89 0001. USDA-APHIS-ADC. Registration is for DRC-1339 to be used on various locations in Texas to control feral pigeons and roosting birds, starlings, red-winged black birds, rusty blackbirds, Brewer's blackbirds, brown-headed cow birds, common grackles, and great-tailed grackles. January 18, 1989.

EPA SLN No. TX 89 0002. Platte Chemical Co. Registration is for Clean Crop Curbit EC Herbicide to be used on cucumbers, melons, and watermelons to control various weeds. February 9, 1989.

EPA SLN No. TX 89 0003. Chevron Chem. Co. Registration is for Orthene 75S Soluble Powder to be used on southern pine seed orchards to control thrips, coneworms and seedbugs. March 31, 1989.

Virginia

EPA SLN No. VA 89 0001. FMC Corp., Agricultural Chemical Group. Registration is for Command 4EC Herbicide to be used on soybeans for preemergence control of selected weeds. January 25, 1989.

EPA SLN No. VA 89 0002. FMC Corp. Registration is for Command 4EC Herbicide to be used as preemergence application to peas to control selected weed species. February 23, 1989.

EPA SLN No. VA 89 0003. Agricultural Division, Ciba-Geigy Corp. Registration is for Tilt Fungicide to be used on wheat, barley, and rye to control rusts, powdery mildew, leaf blight, and glume blotch. April 4, 1989.

Washington

EPA SLN No. WA 89 0001. E.I. du Pont de Nemours, Inc. Registration is for DuPont Asana XL Insecticide 0.66 EC to be used on pears to control pear psylla. January 12, 1989.

EPA SLN No. WA 89 0002. ICI Americas, Inc., Agricultural Products. Registration is for Gramoxone Super herbicide to be used on ornamental bulb crops to control annual broadleaf weeds and grasses and top kill of perennial weeds. January 13, 1989.

EPA SLN No. WA 89 0004. FMC Corp., Agricultural Chemicals Group. Registration is for Talstar 10 WP Insecticide/Miticide to be used on ornamental trees, shrubs, plants, and Christmas trees, nonbearing fruit and nut trees, and pine seed orchards to control mites. March 14, 1989.

EPA SLN No. WA 89 0005. Platte Chemical Co., Inc. Registration is for Chem Hoe 135 to be used on alfalfa to control winter annual grasses, volunteer grains, and wild oats. March 14, 1989.

EPA SLN No. WA 89 0006. Flora & Fauna Labs, Inc. Registration is for Deer-Away Big Game Repellent Powder BGR-P to be used on young Douglas-fir seedlings to control mountain beavers. April 7, 1989.

EPA SLN No. WA 89 0007. Platte Chemical Co. Registration is for Clean Crops Curbit EC Herbicide to be used on cucumbers, melons, and watermelons to control certain annual grasses and broadleaf weeds. April 12, 1989.

EPA SLN No. TN 89 0008. Chas. H. Lilly Co. Registration is for Lilly/Miller Rotefive to be used on vegetables, small fruits, and flowers to control several insect pests. April 12, 1989.

Wisconsin

EPA SLN No. WI 89 0001. Miller Chemical & Fertilizer Corp. Registration is for Hot Sauce Animal Repellent to be used on maple sap collecting tubing, lines, and fittings to control squirrels. March 17, 1989.

(Sec. 24, as amended, 92 Stat. 835 (7 U.S.C. 136).)

Dated: May 31, 1989.

Anne E. Lindsay,

Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 89-14103 Filed 6-13-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to the Office of Management and Budget for Review

June 1, 1989.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, 44 U.S.C. 3507.

Copies of these submissions may be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037, or telephone (202) 857-3815. Persons wishing to comment on an information collection should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, telephone (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Doris Benz, Federal Communications Commission, telephone (202) 632-7513.

OMB No.: 3060-0031.

Title: Application for Consent to Assignment of Broadcast Station Construction Permit or License.

Form No.: FCC 314.

Action: Revision.

Respondents: Business (including small business).

Frequency of Response: On occasion.

Estimated Annual Burden: 933

Responses, 80 hours each (average).

Needs of Uses: Filing is required to apply for assignment of a broadcast station construction permit or license. The data is used to determine whether the assignee meets basic statutory requirements.

OMB No.: 3060-0032.

Title: Application for Consent to Transfer of Control of Corporation Holding Broadcast Station Construction Permit or License.

Form No.: FCC 315.

Action: Revision.

Respondents: Business (including small business).

Frequency of Response: On occasion.

Estimated Annual Burden: 933

Responses, 80 hours each (average).

Needs of Uses: Filing is required to apply for consent to transfer of control

of corporation holding a broadcast station construction permit or license. The data is used to determine whether transferee meets basic statutory requirements.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-14058 Filed 6-13-89; 8:45 am]

BILLING CODE 6712-01-M

[Report No. 1782]

Petitions for Reconsideration and Clarification and Motions for Stay of Actions in Rule Making Proceedings

June 2, 1989.

Petitions for reconsideration and clarification have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR § 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcription Service (202-857-3800). Oppositions to these petitions must be filed June 30, 1989.

See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Review of Technical

Parameters for FM Allocation Rules of Part 73, Subpart B, FM Broadcast Stations. (MM Docket No. 86-144).

Number of petitions received: 1.

Subject: Amendment of § 73.202(b).

Table of Allotments, FM Broadcast Stations. (Lexington, Michigan) (MM Docket No. 88-255, RM-6211). Number of petitions received: 1.

Subject: Amendment of Part 97 of the Commission's Rules to Permit Use of the 17 Meter Band by the Amateur Radio Services. (PR Docket No. 88-467) Petitioner requests that Novice and Technician Class operators be permitted to operate between 18068-18110 kHz using emissions A1A & F1B. Number of petitions received: 1.

Subject: Revision of Part 15 of the Rules Regarding the Operation of Radio Frequency Devices Without an Individual License. (General Docket No. 87-389, RM's 5193, 5250 & 5575). Number of petitions received: 19.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-14057 Filed 6-13-89; 8:45 am]

BILLING CODE 6712-01-M

Applications for Consolidated Hearing

1. The Commission has before it the following mutually exclusive applications for three new FM stations:

Applicant, City, and State	File No.	MM Docket No.
I.		
A. Eda Gordon; Albuquerque, NM.	BPH-870514MB...	89-123
B. Southwest Educational Media Foundation of Texas, Inc.; Albuquerque, NM.	BPED-870515MA.	
C. Enchanted Broadcasting, Inc.; Albuquerque, NM.	BPH-870515MD	
D. Radio Property Ventures; Albuquerque, NM.	BPH-870515MM	
E. Bemalillo Communications, Inc.; Albuquerque, NM.	BPH-870515MY	
F. Radio New Mexico; Albuquerque, NM.	BPH-870515NA	
G. New Mexico/ Capitol Communications, Ltd.; Albuquerque, NM.	BPH-870515NR	
H. ALBU-O Broadcasting, Ltd.; Albuquerque, NM.	BPH-870515NT	
I. Bradley Broadcasting Ltd.; Albuquerque, NM.	BPH-870515NW	
J. Albuquerque Broadcast Limited Partnership; Albuquerque, NM.	BPH-870515NZ	

Issue Heading and Applicant(s)

1. City coverage A, B, C, D, E, F, G, I, J
2. Financial G
3. (See appendix) J
4. (see appendix) J
5. (see appendix) J
6. (see appendix) J
7. Air hazard F, J
8. Comparative All applicants
9. Ultimate All applicants

Applicant, City, and State	File No.	MM Docket No.
II.		
A. P & S Broadcasting, Inc.; Athol, MA.	BPH-880107MW.	89-121
B. Jackson-Neuhoff Partnership; Athol, MA.	BPH-880107ND	

Issue Heading and Applicant(s)

1. Air hazard, B
2. Comparative, A & B
3. Ultimate, A & B

Applicant, City, and State	File No.	MM Docket No.
III. A. Kansas Broadcast Limited Partnership; Manhattan, KS. B. Little Apple Broadcasting; Manhattan, KS.	BPH-871103MA... BPH-871104MB...	89-122

Issue Heading and Applicant(s)

1. (See appendix), A
2. (see appendix), A
3. (see appendix), A
4. (see appendix), A
5. Comparative, Both
6. Ultimate, Both

2. Pursuant to Section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 Fed. Reg. 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an Appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street NW., Washington, DC 20037. (Telephone (202) 857-3800).

Larry D. Eads,

Chief, Audio Services Division, Mass Media Bureau.

Appendix I (Albuquerque, NM)

3. To determine whether Sunrise Management Services, Inc. is an undisclosed party-in-interest to the application of J (Limited).
4. To determine whether J's (Limited) organizational structure is a sham; and
5. To determine whether J (Limited) violated Section 1.65 of the Commission's rules, and/or lacked candor, by failing to report the designation of character issues against other applicants in which one or more of its partners has an ownership interest and/or the dismissal of such ownership interest with unresolved character issues pending.
6. To determine, from the evidence adduced pursuant to issues 3 through 5 above, whether J (Limited) possesses the

basic qualifications to be a licensee of the facilities sought herein.

Appendix II (Manhattan, Kansas)

1. To determine whether Sunrise Management Services, Inc. is an undisclosed party-in-interest to the application of A (KBLP).
2. To determine whether A's (KBLP's) organizational structure is a sham.
3. To determine whether A (KBLP) violated Section 1.65 of the Commission's rules, and/or lacked candor, by failing to report the designation of character issues against other applicants in which one or more of its partners has an ownership interest and/or the dismissal of such ownership interest and/or the dismissal of such applications with unresolved character issue pending.
4. To determine, from the evidence adduced pursuant to issues 1 through 3 above, whether A (KBLP) possesses the basic qualifications to be a licensee of the facilities sought herein.

[FR Doc. 89-14056 Filed 6-13-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION**Compliance With Section 507 of the Competitive Equality Banking Act of 1987**

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice.

SUMMARY: The Federal Deposit Insurance Corporation hereby gives notice of compliance with section 507 of the Competitive Equality Banking Act of 1987, which requires that the FDIC fully consider the adverse economic impact on local communities of its actions taken during the administration and liquidation of loans of a closed bank, and that the FDIC adopt and publish procedures and guidelines to minimize such adverse economic effects.

FOR FURTHER INFORMATION CONTACT: Steven A. Seelig, Associate Director, Division of Liquidation, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429, (202) 898-7371.

SUPPLEMENTARY INFORMATION:**Compliance With Section 507 of the Competitive Equality Banking Act**

On August 10, 1987 President Reagan signed the Competitive Equality Banking Act of 1987. Section 507 of the Act amends section 11 of the Federal Deposit Insurance Act by adding to it Subsection J. This new subsection requires the FDIC to consider the adverse economic impact of its actions on local communities including businesses and farms, during the

administration and liquidation of loans of a closed bank.

Section 507(3) of the statute requires the FDIC to adopt guidelines to minimize the adverse economic effects caused by its actions. Specifically, the Corporation is requested to consider actions including the release of proceeds from the sale of products for living and business expenses and the shortening of the decision making process for the acceptance of settlement offers contingent upon third party financing. The Division's policies and guidelines as contained in its Delegation of Authority and the Credit and Agricultural Manuals address these concerns. Specifically, Bank Liquidation Specialists are directed to refer to the following:

1. *Release of Proceeds* (I.C.5.1, Agricultural Manual). This Section governs FDIC policies permitting the Release of Proceeds resulting from the sale of livestock or crops and permits release of such proceeds when it is in the interest of the Corporation, either in protecting the ongoing business or the FDIC's collateral position. Additionally, releases of proceeds for living expenses may be considered when loans remain secured. This section provides the relevant information necessary to make these decisions as well as providing an expedited format to assure quick approval. In those situations when time is of the essence, verbal approval received from the Regional Office is allowed.

2. *Borrower Requests for Additional Funding* (I.C.6.1, Agricultural Manual). While there are few instances in which the FDIC will advance money for anything other than the protection of collateral, this section provides alternatives to advancing funds which apply to agriculture and other business situations. Assisting the borrower in securing advances from another financial institution is one such alternative. Additionally, in the event of an Emergency Crop Advance Request, emergency case forms are provided to facilitate analysis and achieve expedited approvals.

3. *Delegations of Authority* (Appendix A of the Credit Manual and I.C.7.1 of the Agricultural Manual). The FDIC's Board of Directors amended its Delegations of Authority to enable the Division of Liquidation to more quickly reach decisions regarding credit matters and to reduce the number of decisions in the field which require either Washington or Regional Office approval. Additionally, provisions have been made for Regional Offices to provide further delegations to each Field Site. These delegations have enhanced the ability of Bank Liquidation

[FEMA-830-DR]**Major Disaster and Related Determinations; Maine**

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Maine (FEMA-830-DR), dated June 7, 1989, and related determinations.

DATES: June 7, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: Notice is hereby given that, in a letter dated June 7, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*, Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Maine, caused by severe storms and flooding on May 5-13, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Public Law 93-288, as amended by Public Law 100-707. I, therefore, declare that such a major disaster exists in the State of Maine.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288, as amended by Pub. L. 100-707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Albert A. Gammal, Jr. of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Maine to have been affected adversely by this declared major disaster:

The counties of Androscoggin, Cumberland, Franklin, and Oxford for Public Assistance.
(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,
Director, Federal Emergency Management Agency.

[FR Doc. 89-14127 Filed 6-13-89; 8:45 am]

BILLING CODE 6718-21-M

[FEMA-828-DR]**Amendment to Notice of a Major Disaster Declaration; Texas**

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-828-DR), dated May 19, 1989, and related determinations.

DATE: June 8, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice: The notice of a major disaster for the State of Texas, dated May 19, 1989, is hereby amended to add Public Assistance in the following areas determined to have been adversely affected by catastrophe declared a major disaster by the President in his declaration of May 19, 1989:

The counties of Angelina, Bell, Collin, Cooke, Dallas, Ellis, Fannin, Grayson, Hardin, Harris, Henderson, Hill, Hood, Jasper, Johnson, Kaufman, Liberty, McLennan, Montague, Montgomery, Nacogdoches, Navarro, Newton, Orange, Palo Pinto, Parker, Polk, Rusk, Sabine, Smith, Tarrant, Upshur, Williamson, and Wise for Public Assistance.

George H. Orrell,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

[FR Doc. 89-14128 Filed 6-13-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION**Agreement(s) Filed**

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal

Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200180-001

Title: Jackson County Port Authority Terminal Agreement

Parties: Jackson County Port Authority Board of Supervisors of Jackson County (County), Ryan-Walsh, Inc. (RW)

Synopsis: The Agreement amends the basic agreement (224-200180) to specify that any amendments to rentals negotiated shall not be made a permanent part of the Agreement until approved by the Commission. The basic agreement provides for RW's lease of County's Terminals G and H at the Port of Pascagoula.

By Order of the Federal Maritime Commission.

Dated: June 8, 1989.

Joseph C. Polking,
Secretary.

[FR Doc. 89-14079 Filed 6-13-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

June 7, 1989.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per CFR 1320.9, "to approve of and assign OMB control numbers of collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collection of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following report, which is being handled under this delegated authority,

has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within ten calendar days of the date of publication in the **Federal Register**.

ADDRESS: Comments, which should refer to the OMB Docket number should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 and 5:15 p.m. except as provided in section 261(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB Desk Officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal to Approve Under OMB Delegated Authority the Implementation of the Following Report:

Report title: 1989 Survey of Consumer Finances

Agency form number: FR 3059

OMB Docket number: 7100-0243

Frequency: One-time

Reporters: Sample of households nationwide

Annual reporting hours: 3600

Estimated average time per response: 80 minutes

Number of respondents: 2700

Small businesses are not affected.

General Description of Report

This information collection is voluntary (12 U.S.C. 225a, 1828(c), 1842 and 1843). No problem of confidentiality arises since names and other characteristics that would permit

personal identification of respondents will not be provided to survey sponsors.

This survey will collect data on the assets, debts, income, work history, pension rights, use of financial services, and attitudes of a sample of U.S. households. It will consist of in-person interviews from a sample of approximately 2700 households.

Board of Governors of the Federal Reserve System, June 7, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-14097 Filed 6-13-89; 8:45 am]

BILLING CODE 6210-01-M

Agency Forms Under Review

June 8, 1989.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collection of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following report, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen working days of the date of publication in the **Federal Register**.

ADDRESS: Comments, which should refer to the OMB Docket number should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 and 5:15 p.m. except as provided in section 261(a) of the Board's

Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB desk officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal to Approve Under OMB Delegated Authority the Extension, Without Revision, of the Following Report

Report title: Government Securities Dealers Reports

Agency form number: FR 2004 a, b, c, and d

OMB Docket number: 7100-0003

Frequency: Weekly, Daily, Semi-monthly

Reporters: Primary dealers in U.S. government securities

Annual reporting hours: 33,472

Estimated average hours per response: 1.10 to 1.33

Estimated number of respondents: 43
Small businesses are not affected.

General Description of Report

This information collection is voluntary (12 U.S.C. 248(a)(2) and 353-359(a)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

This group of reports submitted by Government Securities Dealers are used to collect daily positions, daily transactions, weekly financings and semi-monthly futures, forwards, and options data from the primary dealers in U.S. Treasury Securities. The data are used to assist in the appraisal of the financial health of reporting dealers, the soundness of their trading practices, and the adequacy of their market-making in all segments of the market.

Board of Governors of the Federal Reserve System, June 8, 1989.

William W. Wiles,

Secretary of the Board.

[FR Doc. 89-14098 Filed 6-13-89; 8:45 am]

BILLING CODE 6210-01-M

Roger L. Siegert et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 28, 1989.

A. Federal Reserve Bank of Chicago. (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. **Roger L. Siegert**, Plymouth, Wisconsin, and **Barbara A. Siegert**, Plymouth, Wisconsin; to increase their percent of the ownership to 15.63 percent of Eastern Wisconsin Bancshares, Howards Grove, Wisconsin, as a result of a stock redemption, and thereby indirectly acquire State Bank of Howards Grove, Howards Grove, Wisconsin.

B. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. **Rick L. Caruthers**, Cherokee, Oklahoma; to acquire 12.10 percent; **Orvel H. Fellers**, Byron, Oklahoma; **Ronald R. Hadwiger**, Cherokee, Oklahoma; **Larry Hammer**, Cherokee, Oklahoma; **Lyle Hawkins**, Cherokee, Oklahoma; **Earl W. Morgan**, Cherokee, Oklahoma; and **Ray N. Smith**, Byron, Oklahoma; to each acquire an additional 1.44 percent of the voting shares of Farmers Exchange Bancorporation, Inc., Cherokee, Oklahoma, for a total of 12.10 percent, and thereby indirectly acquire Farmers Exchange Bank, Cherokee, Oklahoma.

C. Federal Reserve Bank of Dallas (V. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. **Joseph A. Burke**, Orange, Texas; to acquire 11.98 percent; **Peter F. Cloeren, Jr.**, Orange, Texas; to acquire 7.98 percent; **Anton Dal Sasso**, Orange, Texas; to acquire 7.98 percent; **Michael M. Lucia, Jr.**, Orange, Texas; to acquire 7.98 percent; **Mary Lou Mott**, Beaumont,

Texas; to acquire 15.97 percent; **Lew C. Sheffler**, Orange, Texas; to acquire 7.98 percent; **William P. Sterling, Jr.**, Orange, Texas; to acquire 7.98 percent; **Carlos Ray Vacek**, Orange, Texas; to acquire 11.98 percent; and **Earl C. Wright, Jr.**, Orange, Texas; to acquire 11.98 percent of the voting shares of Unicorp Bancshares-Texas, Inc., Orange, Texas, and thereby indirectly acquire Orangebank, Orange, Texas.

2. **Charles R. Wiggins**, Liberty, Texas; to acquire 29.19 percent; and **Hillary G. Wiggins**, Liberty, Texas; to acquire 29.19 percent of the voting shares of First Liberty National Bancshares, Inc., Liberty, Texas, and thereby indirectly acquire First Liberty National Bank, Liberty, Texas.

D. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. **Capitol City Bank Profit Sharing Plan**, Salt Lake City, Utah; to acquire 15.9 percent of the voting shares of Capital Bancorp, Salt Lake City, Utah, and thereby indirectly acquire Capital Bank, Salt Lake City, Utah.

Board of Governors of the Federal Reserve System, June 8, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14099 Filed 6-13-89; 8:45 am]

BILLING CODE 6210-01-M

Somerset Bankshares, Inc., et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute

and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 5, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Somerset Bankshares, Inc.*, Somerville, Massachusetts, to acquire 100 percent of the voting shares of Central Co-operative Bank, Somerville, Massachusetts.

B. Federal Reserve Bank of Chicago (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *Minonk Bancshares, Inc.*, Minonk, Illinois, to acquire 100 percent of the voting shares of Citizens Group, Inc., Toluca, Illinois, and thereby indirectly acquire The Citizens National Bank of Toluca, Toluca, Illinois.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Reelfoot Bancshares, Inc.*, Union City, Tennessee, to acquire at least 82.99 percent of the voting shares of Dixie Bancshares, Inc., Dukedom, Tennessee, and thereby indirectly acquire Dukedom Bank, Dukedom, Tennessee, which engages in the sale, as agent, of credit related insurance sold in connection with extensions of credit made by the bank.

2. *Reelfoot Bancshares, Inc.*, Union City, Tennessee, to acquire 100 percent of the voting shares of Fulton Bancshares, Inc., Fulton, Kentucky, and thereby indirectly acquire Fulton Bank, Fulton, Kentucky, which engages in the sale, as agent, of credit related insurance sold in connection with extensions of credit made by the bank.

D. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *First Universal Bancorporation, Inc.*, Aurora, Colorado, to merge with Pioneer Bancorporation, Inc., Denver, Colorado, and thereby indirectly acquire City Center National Bank, Denver, Colorado, which engages in the sale of credit-related life and accident and health insurance only. Comments on this application must be received by June 30, 1989!

2. *Fourth Financial Corporation*, Wichita, Kansas, to acquire 100 percent of the voting shares of Exchange Holding, Inc., El Dorado, Kansas, and thereby indirectly acquire The First National Bank and Trust Company, El Dorado, Kansas, which engages in the sale of credit-related life and accident

and health insurance only, except the bank's branch office in Burns, Kansas, a town with a population of less than 5,000 sells general lines of insurance. Comments on this application must be received by June 23, 1989!

E. Federal Reserve Bank of San Francisco (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *BankAmerica Corporation*, San Francisco, California, and Seafirst Corporation, Seattle, Washington, to acquire American Savings Financial Corporation, Tacoma, Washington, and thereby indirectly acquire American Savings Bank, Tacoma, Washington.

Board of Governors of the Federal Reserve System, June 8, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 89-14100 Filed 6-13-89; 8:45 am]
BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

Anti-Drug Abuse Act of 1988; Delegation of Authority

Notice is hereby given that I have delegated to the Assistant Secretary for Health, with authority to redelegate, all the authorities vested in the Secretary under Title II, Section 2071 and 2073 and Title III, Section 3521 of the Anti-Drug Abuse Act of 1988, Public Law 100-690, as amended hereafter. This delegation excludes the authority to promulgate regulations and to submit reports to Congress.

This delegation became effective upon the date of signature. In addition, I hereby affirm and ratify any actions taken by the Assistant Secretary for Health and his subordinates which involved the exercise of the delegated authorities prior to the effective date of delegation.

Date: May 26, 1989.

Louis W. Sullivan,
Secretary.
[FR Doc. 89-14062 Filed 6-13-89; 8:45 am]
BILLING CODE 4160-20-M

Food and Drug Administration

[Docket No. 88D-0347]

FDA Access to Results of Quality Assurance Program Audits and Inspections; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of Compliance Policy Guide (CPG) 7151.02, "FDA Access to Results of Quality Assurance Program Audits and Inspections." The CPG has been revised to clarify that FDA will not review or copy reports and records that result from audits and inspections conducted under a written quality assurance program. The CPG further clarifies that FDA will continue to review and copy records and reports related to quality control investigations of product failures and manufacturing errors.

ADDRESSES: Submit written requests for single copies to CPG 7151.02 to the Division of Compliance Policy (HFC-230), Food and Drug Administration, Rm. 12A-55, 5600 Fishers Lane, Rockville, MD 20857. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist the division in processing your requests. CPG 7151.02 is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paul Lepore, Division of Compliance Policy (HFC-230), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2390.

SUPPLEMENTARY INFORMATION: In the Federal Register of March 24, 1989 (54 FR 12285), FDA announced a revision of CPG 7151.02, "Inspectional Authority: Access to Results of Internal Quality Assurance Audits." The CPG was revised to clarify the agency's policy regarding inspection or copying of reports and records related to audits performed in accordance with a written quality assurance program.

Subsequent to the revision announced on March 24, 1989, FDA received requests for clarification regarding the intent and applicability of the policy. In response to the requests, FDA conducted a comprehensive review of the policy and determined that, to assure consistent interpretation, further revision was necessary. Thus, CPG 7151.02 was retitled, "FDA Access to Results of Quality Assurance Program Audits and Inspections" and was revised to express the following policy:

FDA will not review or copy reports and records that result from audits and inspections of a written quality

assurance program, including written status reports required by 21 CFR 58.35(b)(4) and audits conducted under 21 CFR 820.20(b). This policy applies to any regulated entity which has a written quality assurance program that provides for periodic audits or inspections.

FDA may seek written certification that such audits and inspections have been implemented, performed, and documented and that any required corrective action has been taken. District personnel have been advised to consult with the appropriate headquarters office prior to seeking written certification.

In addition, FDA may seek access to reports and records of such audits and inspections during a "directed" or "for-cause" inspection of a sponsor or monitor of a clinical investigation, during litigation (under applicable procedural rules), or by an inspection warrant where access to records is authorized by statute.

FDA will continue to review and copy records and reports related to quality control investigations of product failures and manufacturing errors.

This notice is issued under 21 CFR 1085.

Dated: June 5, 1989.
John M. Taylor,
Associate Commissioner for Regulatory Affairs.
[FR Doc. 89-14094 Filed 6-13-89; 8:45 am]
BILLING CODE 4160-01-M

National Institutes of Health

National Cancer Institute; Amended Meeting

Notice is hereby given to amend the meeting of the Acrylonitrile Study Advisory Panel which was published in the Federal Register (54 FR 12684) on March 28, 1989.

The meeting of this Panel originally scheduled for June 8, 1989 is now being re-scheduled for June 28, 1989, Conference Room H, Executive Plaza North, 6130 Executive Blvd., Rockville, Maryland 20892. The meeting will be open from 10 a.m. to adjournment for discussion and review of the study progress. Attendance by the public will be limited to space available.

Date: June 8, 1989.
Betty J. Beveridge,
Committee Management Officer, NIH.
[FR Doc. 89-14051 Filed 6-13-89; 8:45 am]
BILLING CODE 4140-01-M

National Digestive Diseases Advisory Board Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the National Digestive Diseases Advisory Board on July 24, 1989, from 8:00 a.m. to approximately 5 p.m. at the Crystal City Marriott, 1999 Jefferson Davis Highway, Arlington, Virginia 22032. The meeting, which will be open to the public, is being held to discuss the Board's activities and to continue evaluation of the implementation of the long-range digestive diseases plan. Attendance by the public will be limited to space available. Notice of the meeting room will be posted in the hotel lobby.

Mr. Raymond M. Kuehne, Executive Director, National Digestive Diseases Advisory Board, 1801 Rockville Pike, Suite 500, Rockville, Maryland 20852, (301) 496-6045, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting his office.

Dated: June 7, 1989.
Betty Beveridge,
NIH Committee Management Officer.
[FR Doc. 89-14052 Filed 6-13-89; 8:45 am]
BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

ES-970-09-4120-04; ALES 39970

Invitation, Coal Exploration License; Alabama

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Invitation/Coal Exploration License.

SUMMARY: Any and all persons are invited to participate in the exploration plan for proposed Coal Exploration License ALES 39970.

ADDRESS: The license application is available for inspection at the Bureau of Land Management, Eastern States Office, 350 South Pickett Street, Alexandria, Virginia 22304.

FOR FURTHER INFORMATION CONTACT: Any person seeking to participate in this exploration plan should notify Ivy Garcia at the above Bureau of Land Management office and the applicant listed below in writing within 30 days after the publication of this notice in the Federal Register.

SUPPLEMENTARY INFORMATION: License Application ALES 39970 was filed by Chevron U.S.A. Inc., 6400 South Fiddlers Green Circle, Englewood, Colorado

80111, for the following lands in Fayette County, Alabama:

T. 16 S., R. 10 W., Huntsville Meridian
Sec. 14: S $\frac{1}{2}$ NE $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, E $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$ SW $\frac{1}{4}$, S $\frac{1}{2}$ SW $\frac{1}{4}$, N $\frac{1}{2}$ SE $\frac{1}{4}$;
Sec. 15: NE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 21: NE $\frac{1}{4}$, NE $\frac{1}{4}$ SW $\frac{1}{4}$, SE $\frac{1}{4}$;
Sec. 22: SW $\frac{1}{4}$ NE $\frac{1}{4}$, NE $\frac{1}{4}$ NW $\frac{1}{4}$, S $\frac{1}{2}$ NW $\frac{1}{4}$, N $\frac{1}{2}$ SW $\frac{1}{4}$, SW $\frac{1}{4}$ SW $\frac{1}{4}$, W $\frac{1}{2}$ SE $\frac{1}{4}$, SE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, less and except a 1 acre cemetery tract, NW $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$, S $\frac{1}{2}$ NE $\frac{1}{4}$ NE $\frac{1}{4}$ SE $\frac{1}{4}$;
Sec. 23: NW $\frac{1}{4}$, less and except a 2 acre tract in the SW $\frac{1}{4}$ corner SW $\frac{1}{4}$ SW $\frac{1}{4}$;
Sec. 26: NW $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 27: S $\frac{1}{2}$ NE $\frac{1}{4}$, W $\frac{1}{2}$ NW $\frac{1}{4}$, SE $\frac{1}{4}$ NW $\frac{1}{4}$;
Sec. 28: E $\frac{1}{2}$ NE $\frac{1}{4}$.
Total Acres: 1,712 more or less.

Terry L. Plummer,
Acting State Director.
[FR Doc. 89-14108 Filed 6-13-89; 8:45 am]
BILLING CODE 4310-GJ-M

[OR110-6310-11 OR910-GP9-240]

Medford District Advisory Council; Meeting

Notice is hereby given in accordance with Pub. L. 99-463 that a meeting of the Bureau of Land Management, Medford District Advisory Council will be held July 6, 1989.

On July 6, the meeting will begin at 9:00 a.m., in the Oregon Room of the Bureau of Land Management Office at 3040 Biddle Road, Medford, Oregon. The agenda for the meeting will include: Effect of the Northern Spotted Owl issue on the availability of timber on the Medford District.

Persons interested in making oral statements during the Council meeting, may do so following conclusion of the Council's other agenda items, or written statements may be submitted for the Council's consideration.

Anyone wishing to make an oral statement at the Council meeting must notify the District Manager, Bureau of Land Management, 3040 Biddle Road, Medford, Oregon 97504, by close of business July 5, 1989. Depending on the number of persons wishing to make oral statements, a per-person time limit may be established by the District Manager.

Summary minutes of the Council meeting will be maintained in the District Office and be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Date signed: June 2, 1989.
David A. Jones,
District Manager.
[FR Doc. 89-14119 Filed 6-13-89; 8:45 am]
BILLING CODE 4310-33-M

[OR-100-84-6310-02; GP9-244]

Roseburg District Advisory Council; Meeting**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Notice of meeting.

SUMMARY: The District Advisory Council for the Bureau of Land Management, Roseburg District will meet July 18, 1989, beginning at 10:00 a.m. in the Roseburg District Office Auditorium. The agenda will cover election of officers, orientation of new members, progress on the Resource Management Plan for the '90s, the North Umpqua Trail, Wild and Scenic status for the North Umpqua River, inmate work projects, FY 90 Timber Sale Plan, and an update on the spotted owl.

ADDRESS: Bureau of Land Management, Roseburg District Office, 777 NW Garden Valley Blvd., Roseburg, OR 97470.

FOR FURTHER INFORMATION CONTACT: Mel Ingeroi, Public Affairs Specialist, Roseburg District, (503) 672-4491. Ext. 245.

SUPPLEMENTARY INFORMATION: An opportunity for interested persons to make oral statements before the Council will be provided at 1 p.m. Written statements for the Council can be mailed to the District Manager prior to the meeting or presented to the Council during the meeting. Within 30 days after the meeting, summary minutes will be prepared for distribution and be available for public inspection at the District Office.

M.D. Berg,
District Manager.

Date: June 7, 1989.

[FR Doc. 89-14077 Filed 6-13-89; 8:45 am]

BILLING CODE 4310-84-M

[WY-920-09-4111-15; WYW66103]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Pursuant to the provisions of Pub.L. 97-451, 96 Stat. 2462-2466, and Regulation 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW66103 for lands in Hot Springs County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of \$5.00 per acre, or fraction thereof, per year and 18% percent, respectively.

The lessee has paid the required \$500 administrative fee and \$125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW66103 effective March 1, 1989, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Pamela J. Lewis,
Supervisory Land Law Examiner.

[FR Doc. 89-14118 Filed 6-13-89; 8:45am]

BILLING CODE 4310-22-M

[UT-942-09-4212-19; U-65091]

Public Lands, and Interest in Lands, Held in Trust for the Confederated Tribes of the Goshute, Indians**AGENCY:** Bureau of Land Management, Interior.**ACTION:** Correction.

SUMMARY: This notice corrects the Public Lands, and Interest in Lands, Held in Trust for the Confederated Tribes of the Goshute Indians previously published in the May 4, 1989, (Vol. 54 No. 85 FR 19245) **Federal Register**. The Notice is corrected by changing the following legal description to read:

T. 10 S., R. 19 W., SLM
Sec. 4, S½SW¼SE¼NW¼.

Ted D. Stephenson,
Chief, Branch of Land and Mineral Operation.
[FR Doc. 89-14075 Filed 6-13-89; 8:45 am]

BILLING CODE 4310-00-M

[NM-040-09-4120-10]

Kansas Resource Management Plan (KS RMP)**AGENCY:** Bureau of Land Management, Interior, Tulsa District, Oklahoma.**ACTION:** Notice of intent to prepare an RMP, invitation for public involvement, notice of public meetings and call for coal, other minerals and resource information.

SUMMARY: The Bureau of Land Management (BLM), Tulsa District, Oklahoma Resource Area, is initiating preparation of a Resource Management Plan (RMP) and Environmental Impact Statement (EIS) for BLM managed Federal lands and minerals throughout the State of Kansas. Title 43 Code of Federal Regulations (CFR) 1600 will be followed in the preparation of this plan.

The public is invited to participate in this land use planning effort beginning with the identification of issues and planning criteria.

Written comments or suggested issues and planning criteria will be accepted until July 26, 1989. The BLM will hold a series of public scoping meetings at which time oral comments and suggestions will be accepted. This Notice is also to solicit coal and other resource information and indications of interest and needs pursuant to 43 CFR 3420.1-2, for inclusion in the Kansas RMP. Coal companies, state and local governments, and the general public are encouraged to submit information to the BLM to assist in the determinations of coal development potential and possible conflicts with other resources. Where such information is determined to indicate development potential for an area, the area may be included in the land use plan for further consideration for leasing.

DATE: Comments relating to the identification of issues and planning criteria, and to this call for coal and other resource information will be accepted until July 26, 1989.

ADDRESS: Comments and requests to be included on the mailing list should be sent to: Paul Tanner, Area Manager, Bureau of Land Management, Oklahoma Resource Area, 200 NW Fifth Street, Room 548, Oklahoma City, Oklahoma 73102. Proprietary data should be identified as such to ensure confidentiality.

FOR FURTHER INFORMATION CONTACT: Paul W. Tanner, Area Manager, or Brian Mills, RMP Team Leader, Oklahoma Resource Area, (405) 231-5491, or FTS 736-5491.

SUPPLEMENTARY INFORMATION: The planning area for the Kansas RMP will include all BLM managed Federal surface and mineral estate within Kansas. The Federal mineral estate encompasses over 744,000 acres of both split estate minerals (Federal minerals under private or state surface) and minerals under other Federal surface management agencies lands, (Not included are Federal minerals under the U.S. Forest Service managed Cimarron National Grassland).

The anticipated issues to be addressed by this RMP/EIS effort include oil and gas leasing and the identification of areas acceptable for further consideration for coal leasing.

The issue of leasing the Federal oil and gas resource will include:

1. Determining which areas will be open for leasing and development

subject to standard lease terms and conditions.

2. Determining which areas will be open for leasing and development subject to minor constraints such as seasonal restrictions, (wildlife, recreation, ect. * * *).

3. Determining which areas will be open for leasing and development subject to major constraints such as no-surface occupancy (NSO) stipulations on areas larger than 40 acres in size or more than ¼ mile in width.

4. Determining which areas will be closed to leasing. The development of the coal resource may be one of the issues addressed in the RMP. The BLM hopes to acquire sufficient information from this call, as well as from its own data sources, to identify, and categorize areas of coal development potential within the planning area. Industry and other interested parties are asked to provide any information that will be useful in meeting the requirements of the Federal Coal Management Program defined in 43 CFR 3420, including application of the coal planning screens and future activity planning such as tract delineation, ranking and selection.

Information resulting from this call may be utilized in the application of the unsuitability criteria as well as formulation of other resource use screens.

The type of information needed includes, but is not limited to the following:

1. Location:
a. Tracts desired by mining companies should include a narrative description with areas delineated on a map with a scale of not less than ½ inch to the mile.
b. Descriptions of both public and private industry coal users in the general region.

2. Quantity needs (tonnage, dates) for both public and private industry coal users and coal developers.

3. Quality needs (by type and grade) for end users of the coal.

4. Coal reserve drilling data which may pertain to the planning area.

5. Information relating to surface and mineral ownership:
a. Surface owner consents previously granted, whether consent is transferrable, surface owner leases with coal companies.

b. Non-Federal, or fee coal ownership adjacent to Federal tracts currently leased or mined.

6. Other resource values occurring within the planning area which may conflict with coal development:

a. Identify the resource value, location by narrative description and map (½ inch to the mile) delineation.

b. State the reasons the particular resource would conflict with coal development.

Any individual, business entity, or public body may participate in this process by providing coal or other resource information under this call.

The proposed planning criteria include:

1. All proposed actions must comply with laws, executive orders, and regulations.

2. For each proposed action, the resource outputs must be reasonable and achievable with available technology.

3. All proposed actions must recommend resource allocations which are in accordance with the principles of multiple-use and sustained yield.

4. All proposed actions must evaluate and consider long term benefits to the public in relation to short term benefits.

5. All proposed actions must provide for the orderly development of leasable minerals while containing environmental impacts to a minimum. These planning issues and criteria are presented for public comment and are subject to change based upon such public comment. Comments should be received by July 26, 1989. The planning team will seek public involvement throughout the planning process. Public scoping meetings to gather comments on the preliminary issues and criteria are scheduled for:

July 18, 1989, 3-5 p.m., Diplomat Room, Embassy Suites Hotel, 10601 Metcalf Road, Overland Park, Kansas
July 19, 1989, 3-5 p.m., Ramada Inn, 1949 North 9th Street, Salina, Kansas
July 20, 1989, 3-5 p.m., Seville Inn, 1400 West U.S. Highway 54, Pratt, Kansas

Complete records of all phases of the planning process will be available for public review at the Oklahoma Resource Area Office, 200 NW 5th Street, Room 548, Oklahoma City, Oklahoma 73102. Draft and final RMP/EIS documents will be available upon request.

Dated: June 8, 1989.

Larry L. Woodard,
State Director.

[FR Doc. 89-14078 Filed 6-13-89; 8:45 am]

BILLING CODE 4310-FB-M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-227]

Annual Reports on the Impact of the Caribbean Basin Economic Recovery Act on U.S. Industries and Consumers**AGENCY:** United States International Trade Commission.

ACTION: Notice of deadline to submit comments in connection with 1988 annual report.

DATE: Comments by June 30, 1989.

FOR FURTHER INFORMATION CONTACT: Lee Tuthill (202-252-1288), Trade Reports Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

BACKGROUND: Section 215(a) of the Caribbean Basin Economic Recovery Act (CBERA) (19 U.S.C. 2704(a)) requires that the Commission submit annual reports to the Congress and the President of the impact of the act. The Commission instituted the present investigation under section 332(b) of the Tariff Act of 1930 (19 U.S.C. 1332(h)) on March 21, 1986, for the purpose of gathering and presenting such information through 1995. Notice of institution of the investigation and the schedule for such reports was published in the **Federal Register** of May 14, 1986 (51 FR 17678). The fourth report, covering calendar year 1988, is to be submitted by September 29, 1989.

In the original notice of investigation, it was announced that, as provided in section 215(b) of the CBERA, the Commission in such reports is required to assess the actual effect of the act on the United States economy generally as well as on appropriate domestic industries and to assess the probable future effect which the act will have on the United States economy generally and on such domestic industries.

WRITTEN SUBMISSIONS: The Commission does not plan to hold a public hearing in connection with the fourth annual report. However, interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted at the earliest practical date and should be received no later than June 30, 1989. All submissions should be

addressed to the Secretary of the Commission at the Commission's office in Washington, DC.

Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 252-1809.

By order of the Commission.

Issued: June 9, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-14146 Filed 6-13-89; 8:45 am]

BILLING CODE 7020-02-M

[Inv. No. 337-TA-289]

Certain Concealed Cabinet Hinges and Mounting Plates; Commission Decision Not To Review an Initial Determination Finding Seven Respondents in Default

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 32) issued by the presiding administrative law judge (ALJ) finding seven respondents in default in the above-captioned investigation.

ADDRESSES: Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street, SW., Washington, DC 20436, telephone 202-252-1000.

FOR FURTHER INFORMATION CONTACT: Calvin Cobb, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E. Street, SW., Washington, DC 20436, telephone 202-252-1103.

Hearing impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202-252-1810.

SUPPLEMENTARY INFORMATION: On April 4, 1989, pursuant to a motion by complainant Julius Blum Inc., the presiding administrative law judge (ALJ) issued an order (Order No. 22) directing seven respondents—Euro-Tech of New Jersey, A&M Supply Inc. of Florida, L&L Saw & Supply Co. of North Carolina, Trend Distributors of Florida, Metropolitan Millwork Supply Co. of Michigan, Woojin Industrial Co. of Korea, and Sunkyoung Ltd. of Korea—to show cause by April 18, 1989, why they

should not be found in default. The order to show cause was based on failure by each respondent to respond to the complaint and the notice of investigation, failure by Euro-Tech and Trend to file responses to complainant's discovery requests, and failure by A&M, L&L, Metropolitan, Woojin, and Sunkyoung to file notices of appearance. None of the seven respondents attempted to show cause why it should not be held in default. Accordingly, on April 28, 1989, the ALJ issued an ID (Order No. 32) finding each of the seven respondents in default for failure to respond to Order No. 22, and ordering that each has waived its right (i) to appear in the investigation, (ii) to contest the allegations at issue in the investigation, and (iii) to be served with documents by the parties.

This section is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337), and § 210.53 of the Commission's Interim Rules of Practice and Procedure (53 FR 33070, Aug. 29, 1988).

By order of the Commission.

Issued: June 5, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-14147 Filed 6-13-89; 8:45 am]

BILLING CODE 7020-02-M

Certain Cryogenic Ultramicrotome Apparatus and Components Thereof; Determination Not To Review Initial Determination Terminating Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Nonreview of initial determination terminating the above-captioned investigation.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) terminating the investigation.

FOR FURTHER INFORMATION CONTACT: Paul R. Bardos, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E. St., SW., Washington, DC 20436, Room 707M, telephone 202-252-1102. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal at 202-252-1810.

SUPPLEMENTARY INFORMATION: The authority for the Commission's disposition of this matter is contained in section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and in Part 210 of the

Commission's Rules of Practice and Procedure (19 CFR Part 210 (interim)).

On May 12, 1989, the presiding administrative law judge issued an initial determination (ID) (Order No. 18) granting complainant's motion to terminate the investigation under Commission rule 210.51 (19 CFR 210.51 (interim)). No petitions for review or Government agency comments have been received.

Notice of this investigation was published in the *Federal Register* on September 17, 1986 (51 FR 32972, September 17, 1986).

Copies of all non-confidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E. Street SW., Washington DC 20436, telephone 202-252-1000.

By Order of the Commission.

Issued: June 8, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-14148 Filed 6-13-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 22-50]

Ice Cream; Notice of Investigation

AGENCY: United States International Trade Commission.

ACTION: Institution of an investigation under section 22(d) of the Agricultural Adjustment Act (7 U.S.C. 624(d)) and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: On May 18, 1989, the Commission received a letter from the President stating that the President had been advised by the Secretary of Agriculture, and that he agreed with the Secretary, "that there is reason to believe that the country allocations of the quota on ice cream and mixtures classifiable as ice cream, wherever classified in the Harmonized Tariff Schedule of the United States, which were established under section 22 by Presidential Proclamation No. 4028, may need to be modified due to changes in the circumstances on which the country allocations were based."

As directed by the President, the Commission has instituted an investigation under section 22(d) of the Agricultural Adjustment Act (7 U.S.C. 624(d)) to determine whether the present country allocations of the quota on ice cream, provided for in subheading 2105.00.00 of the Harmonized Tariff

Schedule of the United States, should be modified to take into account circumstances that have changed since the quota was proclaimed.

The President asked that the Commission report its findings and recommendations at the earliest practicable date. The Commission anticipates submitting its report to the President on August 28, 1989.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 201, subparts A through E, and part 204 (19 CFR Parts 201, 204).

EFFECTIVE DATE: May 18, 1989.

FOR FURTHER INFORMATION CONTACT: Brian C. Walters (202-252-1198), Office of Investigations, U.S. International Trade Commission, or Fred Warren (202-252-1311), Agriculture, Fisheries, and Forest Products Division, Office of Industries, U.S. International Trade Commission, 500 E. Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Participation in the investigation.—Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the *Federal Register*. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service list.—Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) of the rules (19 CFR 201.16(c)), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Hearing.—The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on July 18, 1989, at the U.S. International Trade Commission Building, 500 E. Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on June 30, 1989. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on July 7, 1989, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is July 13, 1989.

Testimony at the public hearing shall be limited to a nonconfidential summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs. Post hearing briefs shall not exceed ten (10) pages of textual material, double spaced, on stationery measuring 8½ x 11 inches, and must be submitted not later than the close of business on July 25, 1989. In addition, the presiding official may permit persons to file answers to requests made by the Commission at the hearing within a specified time. The Secretary shall not accept for filing posthearing briefs or answers which do not comply with the provisions contained in this notice.

Written submissions.—As mentioned, parties to this investigation may file prehearing and posthearing briefs by the dates shown above. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before July 25, 1989.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR § 201.8). All written submissions except for confidential business information will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any information for which confidential treatment is desired shall be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Confidential Business Information." Confidential submissions and requests for confidential treatment must conform

with the requirements of § 201.6 of the Commission's rules (19 CFR 201.6).

This notice is published pursuant to § 204.4 of the Commission's rules (19 CFR 204.4).

By order of the Commission.

Issued: June 5, 1989.

Kenneth R. Mason,

Secretary

[FR Doc. 89-14149 Filed 6-13-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 337-TA-281]

Certain Recombinant Erythropoietin; Order

It is hereby ordered That:

1. Orders Nos. 28 and 30 of the presiding administrative law judge are deemed to be recommended determinations, and will be reviewed by the Commission.

2. The stay of Order No. 28 issued by the Commission on February 15, 1989, is lifted and is replaced by a stay that will remain in effect until the Commission has issued its final determination on review of Order No. 28.

3. The stay of Order No. 30 issued by the Commission on March 27, 1989, will remain in effect until the Commission has issued its final determination on review of Order No. 30.

4. The motion of Amgen, Inc., requesting reconsideration of the Commission's Order staying Order No. 28, is granted.

5. The parties to the investigation may file briefs addressing the propriety of declassifying and releasing the documents and findings of fact covered by Orders Nos. 28 and 30. Main briefs must be filed on or before June 30, 1989; reply briefs must be filed on or before July 21, 1989.

By order of the Commission.

Issued: June 8, 1989.

Kenneth R. Mason,

Secretary.

[FR Doc. 89-14150 Filed 6-13-89; 8:45 am]

BILLING CODE 7020-02-M

[Investigation No. 731-TA-433 (Preliminary)]

Certain Residential Door Locks From Taiwan

Determination

On the basis of the record¹ developed in the subject investigation, the

¹ The record is defined in § 207.2(h) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(h)) as amended in 53 FR 33039 (Aug. 23, 1988).

Commission determines,² pursuant to section 733(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from Taiwan of certain residential door locks,³ that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On April 24, 1989, a petition was filed with the Commission and the Department of Commerce by the Ad Hoc Committee of Door Lock Manufacturers,⁴ New York, NY, alleging that an industry in the United States is materially injured and threatened with material injury by reason of LTFV imports of residential door locks from Taiwan. Accordingly, effective April 24, 1989, the Commission instituted preliminary antidumping investigation No. 731-TA-433 (Preliminary).

Notice of the institution of the Commission's investigation and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the *Federal Register* of May 2, 1989 (54 FR 18707). The conference was held in Washington, DC, on May 15, 1989, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on June 8, 1989. The views of the Commission are contained in USITC Publication 2196 (June 1989), entitled "Certain Residential Door Locks from Taiwan: Determination of the Commission in Investigation No. 731-TA-433 (Preliminary) Under the Tariff Act of 1930, Together With the

² Commissioners Eckes and Rohr dissenting.

³ For purposes of the Commission's investigation, the term "certain residential door locks" includes three categories of residential door locks specified in the Department of Commerce's Notice of Initiation: (1) Tubular of cylindrical knob-type locksets with spring latches or dead latches, whether face-plated or drive-in type, including those with sectional handles; (2) dead locks, whether face-plated or drive-in type, the foregoing provided for in subheading 8309.1.40.60 of the Harmonized Tariff Schedule of the United States (HTS) and statistical reporting number 8301.40.6080 (previously reported under item 846.9210 of the *Tariff Schedules of the United States Annotated (TSUSA)*). See 54 FR 21996 (May 22, 1989).

⁴ The petitioning Ad Hoc Committee of Door Lock Manufacturers includes the following firms: Dexter Lock, Auburn, AL; Kwikset Corp., Anaheim, CA; National Lock Corp., Sikeston, MO; Schlage Lock Co., San Francisco, CA; Weiser Lock, Huntington Beach, CA; and Weslock Corp., Los Angeles, CA.

Information Obtained in the Investigation.

By Order of the Commission.

Issued: June 9, 1989.

Kenneth R. Mason,
Secretary.

[FR Doc. 89-14151 Filed 6-13-89; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31479]

Morristown and Erie Railway, Inc.— Trackage Rights—New Hope and Ivyland Railroad Company; Exemption

New Hope and Ivyland Railroad Company (NHI) has agreed to grant to Morristown & Erie Railway, Inc. (ME), local trackage rights over its line from milepost 25.4 at New Hope to milepost 8.0 at Warminster all in Bucks County, PA.

This notice is filed under 49 CFR 1180.2(d)(7).¹ Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on:

John D. Heffner (ME), 1700 K St. NW., Suite 1107, Washington, DC 20006
Andrew P. Goldstein (NHI), 1200 18th St., NW., Washington, DC 20036

As a condition to the use of this exemption, the parties shall within 30 days submit an executed copy of their trackage rights agreement.² As a further condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: June 7, 1989.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 89-14016 Filed 6-13-89; 8:45 am]

BILLING CODE 7035-01-M

¹ NHI notes that a prior trackage rights agreement with another carrier expired on May 31, 1989, the date this notice was filed. It asks that the 7-day notice period in 49 CFR 1180.4(g)(1) be waived to minimize service interruption. The request is denied. The 7-day notice may be modified only by amending the Commission's rules, an action that requires a decision by the entire Commission. The preparation and voting on such a modification usually requires more than 7 days.

² See 49 CFR 1180.6(a)(7).

[Docket No. AB-55 (Sub. 305X)]

CSX Transportation, Inc.; Abandonment Exemption; in Hillsborough County, FL

Applicant has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon its 0.39-mile line of railroad between milepost ARF-861.26 at Harney Avenue and milepost ARF-860.87 at Sligh Avenue, in Tampa, Hillsborough County, FL.

Applicant has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of services over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 years prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Coshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 14, 1989 (unless stayed pending reconsideration). Petitions to stay that do not involve environmental issues,¹ formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2),² and trail use/rail banking statements under 49 CFR 1152.29 must be filed by June 26, 1989.³

¹ A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See *Exemption of Out-of-Service Rail Lines*, 4 I.C.C. 2d 400 (1968). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

² See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C. 2d 164 (1967), and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440-48446).

³ The Commission will accept a late-filed trail use statement so long as it retains jurisdiction to do so.

Petitions for reconsideration and requests for public use conditions under 49 CFR 1152.28 must be filed by July 5, 1989, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Patricia Vail, 500 Water Street, Jacksonville, FL 32202.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses environmental or energy impacts, if any, from this abandonment.

The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA). SEE will issue the EA by June 19, 1989. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Acting Chief, SEE at (202) 275-7684. Comments on environmental and energy concerns must be filed within 15 days after the EA becomes available to the public.

Environmental, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: June 7, 1989.

By the Commission, Jane F. Mackall,
Director, Office of Proceedings.

Kathleen M. King,

Acting Secretary.

[FR Doc. 89-14129 Filed 6-13-89; 8:45 am]

BILLING CODE 7035-01-M

Intent To Engage In Compensated Intercompany Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercompany hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent Corporation and address of principal office: Safeway Stores Incorporated, 4th & Jackson Street, Oakland, California 94660.

2. Wholly-owned subsidiaries which will participate in the intercompany hauling operations, and states of incorporation:

- (i) Safeway Canada Holdings, Inc., a Delaware corporation;
- (ii) Safeway Australia Holdings, Inc., a Delaware corporation;
- (iii) Safeway U.S. Holdings, Inc., a Delaware corporation;
- (iv) Safeway Stores, Inc. of Wyoming, a Wyoming corporation;

- (v) Glencourt, Inc., a Delaware corporation;
- (vi) Canada Safeway, Limited, a Canadian corporation;
- (vii) Safeway Stores of W. Nebraska, Inc., a Delaware corporation;
- (viii) Salvage, Inc., a Delaware corporation;
- (ix) Oakland Property Brokerage, Inc., a Delaware corporation;
- (x) Safeway Trucking, Inc., a Delaware corporation;
- (xi) Pak-N-Save, Inc., a Delaware corporation;
- (xii) Safeway Dallas, Inc., a Delaware corporation;
- (xiii) Safeway Denver, Inc., a Delaware corporation;
- (xiv) Safeway Richmond, Inc., a Delaware corporation;
- (xv) Safeway Southern California, Inc., a Delaware corporation;
- (xvi) Safeway Supply, Inc., a Delaware corporation;
- (xvii) Safeway New Canada, Inc., a Delaware corporation;
- (xviii) Safeway Stores 18, Inc., a Delaware corporation;
- (xix) Safeway Stores 26, Inc., a Delaware corporation;
- (xx) Safeway Stores 28, Inc., a Delaware corporation;
- (xxi) Safeway Stores 31, Inc., a Delaware corporation;
- (xxii) Safeway Stores 42, Inc., a Delaware corporation;
- (xxiii) Safeway Stores 43, Inc., a Delaware corporation;
- (xxiv) Safeway Stores 44, Inc., a Delaware corporation;
- (xxv) Safeway Stores 45, Inc., a Delaware corporation;
- (xxvi) Safeway Stores 46, Inc., a Delaware corporation;
- (xxvii) Safeway Stores 47, Inc., a Delaware corporation;
- (xxviii) Safeway Stores 48, Inc., a Delaware corporation;
- (xxix) Safeway Stores 49, Inc., a Delaware corporation;
- (xxx) Safeway Stores 50, Inc., a Delaware corporation;
- (xxxi) Safeway Stores 58, Inc., a Delaware corporation;
- (xxxii) Safeway Stores 59, Inc., a Delaware corporation;
- (xxxiii) Safeway Stores 64, Inc., a Delaware corporation;
- (xxxiv) Safeway Stores 67, Inc., a Delaware corporation;
- (xxxv) Safeway Stores 68, Inc., a Delaware corporation;
- (xxxvi) Safeway Stores 69, Inc., a Delaware corporation;
- (xxxvii) Safeway Stores 70, Inc., a Delaware corporation;
- (xxxviii) Safeway Stores 71, Inc., a Delaware corporation;

- (xxxix) Safeway Stores 72, Inc., a Delaware corporation;
- (xl) Safeway Stores 73, Inc., a Delaware corporation;
- (xli) Safeway Stores 74, Inc., a Delaware corporation;
- (xlii) Safeway Stores 75, Inc., a Delaware corporation;
- (xliii) Safeway Stores 76, Inc., a Delaware corporation;
- (xliv) Safeway Stores 77, Inc., a Delaware corporation;
- (xlv) Safeway Stores 78, Inc., a Delaware corporation;
- (xlvi) Safeway Stores 79, Inc., a Delaware corporation;
- (xlvii) Safeway Stores 80, Inc., a Delaware corporation;
- (xlviii) Safeway Stores 81, Inc., a Delaware corporation;
- (xlix) Safeway Stores 82, Inc., a Delaware corporation;
- (l) Safeway Stores 85, Inc., a Delaware corporation;
- (li) Safeway Stores 86, Inc., a Delaware corporation;
- (lii) Safeway Stores 87, Inc., a Delaware corporation;
- (liii) Safeway Stores 88, Inc., a Delaware corporation;
- (liv) Safeway Stores 89, Inc., a Delaware corporation;
- (lv) Safeway Stores 90, Inc., a Delaware corporation;
- (lvi) Safeway Stores 91, Inc., a Delaware corporation;
- (lvii) Safeway Stores 92, Inc., a Delaware corporation;
- (lviii) Safeway Stores 96, Inc., a Delaware corporation;
- (lxi) Safeway Stores 97, Inc., a Delaware corporation;
- (lxii) Safeway Stores 98, Inc., a Delaware corporation;

Kathleen M. King,

Acting Secretary.

[FR Doc. 89-14115 Filed 6-13-89; 8:45 am]

BILLING CODE 7035-01-M

[Docket No. AB-3 (Sub-No. 81)]

Missouri Pacific Railroad Co.; Abandonment; Between Opelousas and Church Point in St. Landry Parish and Acadia Parish, LA (Church Point Branch); Findings

The Commission has found that the public convenience and necessity permit Missouri Pacific Railroad Company (MP) to abandon its 12.5 miles of railroad, known as the Church Point Branch, between Opelousas (milepost 36.2) and Church Point (milepost 48.7), in St. Landry Parish and Acadia Parish, LA, subject to standard labor protective conditions.

A certificate will be issued authorizing abandonment unless within 15 days after this publication the Commission also finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable the rail service to be continued; and (2) it is likely that the assistance would fully compensate the railroad.

Any financial assistance offer must be filed with the Commission and served on the applicant no later than 10 days from publication of this Notice. The following notation must be typed in bold face on the lower left hand corner of the envelope: "Rail Section, AF-OFA." Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27.

Decided: June 7, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Commissioner Lamboley concurred in the result.

Kathleen M. King,
Acting Secretary.

[FR Doc. 89-14118 Filed 6-13-89; 8:45 am]

BILLING CODE 7035-01-M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Timothy Ivey, M.D.; Revocation of Registration

On April 5, 1989, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration, issued an Order to Show Cause to Timothy Ivey, M.D., proposing to revoke his DEA Certificate of Registration, B10572265, and to deny any pending applications for its renewal. The Order to Show Cause alleged that the continued registration of Dr. Ivey would be inconsistent with the public interest, as set forth in 21 U.S.C. 823(f) and 824(a).

The Order was sent via registered mail and signed for on behalf of Dr. Ivey. The return receipt was received by the Agency on April 10, 1989. Title 21 of the Code of Federal Regulations 1301.54(a) requires the registrant to file a request for a hearing within 30 days of the date of receipt of the Order. Section 1301.54(d) provides that failure to timely file a request for a hearing acts as a waiver of the hearing. It has been more than 30 days since the receipt of the Order and Dr. Ivey has not filed a request for a hearing. Dr. Ivey is

therefore deemed to have waived his opportunity for a hearing before an Administrative Law Judge. Pursuant to 21 CFR 1301.57, the Administrator now issues his Final Order in this matter, based on the information contained in the investigative file.

The Administrator finds that in September 1987, a confidential informant informed DEA Investigators that Dr. Ivey had for some months been supplying various patients with Dilaudid prescriptions knowing they were to be sold on the street. This informant named at least five individuals who regularly bought and sold these prescriptions. The Investigators canvassed area pharmacies and found numerous prescriptions for Dilaudid issued by Dr. Ivey in the names given by the informant. The Investigators interviewed the individuals whose names were on the prescriptions. One individual (person A) denied ever seeing Dr. Ivey but admitted to driving a friend to see Dr. Ivey to obtain a Dilaudid prescription. This friend (person B) was also interviewed. He admitted to regularly obtaining Dilaudid from dealers who boasted that they could get Dilaudid anytime they wished from Dr. Ivey. Person B agreed to obtain a Dilaudid prescription directly from Dr. Ivey. In a tape-recorded buy, person B informed Dr. Ivey that his wife had become addicted to Dilaudid and requested a prescription. Dr. Ivey issued two prescriptions to person B using the name of Person A. Each prescription was for 30 Dilaudid, one dated, the other undated. A week later, Dr. Ivey again prescribed 30 Dilaudid tablets to person B. Both person B and the confidential informant confirmed that Dr. Ivey's prescriptions were regularly bought and sold among a small group of drug dealers who had access to Dr. Ivey. DEA Investigators interviewed another dealer (person C) who advised Investigators that he could buy Dilaudid supplied by Dr. Ivey from another dealer in exchange for cash or stolen merchandise. On several occasions, person C exchanged between \$500 to \$1,000 in stolen merchandise and received 20 Dilaudid 4mg tablets. This activity occurred on a daily basis for approximately three months. All such Dilaudid came from prescriptions issued by Dr. Ivey.

In September 1988, Dr. Ivey was interviewed by DEA Investigators. He denied any knowledge of an investigation into his prescribing practices. He admitted that at least four of the individuals selling his Dilaudid prescriptions were patients of his and that others had been referred to him by one of the dealers to whom Dr. Ivey

owed money. When asked to provide medical records for these individuals, Dr. Ivey admitted that there were no records. He also admitted to the Investigators that the dealers had informed him of the investigation.

Title 21 U.S.C. 823(f) and 824(a) provide for revocation upon a finding that a registrant has committed acts which would render his registration inconsistent with the public interest. Two factors which may be considered are the registrant's compliance with applicable State, Federal, or local laws relating to controlled substances, and/or such other conduct which may threaten the public health and safety. See section 823(f) (4), (5). The Administrator finds that Dr. Ivey knew or should have known that these prescriptions for Dilaudid were not issued for a legitimate medical purpose and therefore were issued in violation of both Federal and State controlled substance laws. He abused his authority to prescribe controlled substances by supplying Dilaudid which was sold at enormous profit and often in exchange for stolen merchandise. His lack of medical records and untruthfulness to Investigators confirm this abuse. He cannot be trusted to handle controlled substances. Therefore, in order to protect the public from further diversion of controlled substances, the Administrator concludes that Dr. Ivey's registration is contrary to the public interest, that the DEA Certificate of Registration currently held by Dr. Ivey should be revoked, and that any pending applications for renewal of that registration should be denied.

Accordingly, having concluded that there are lawful bases for the revocation of Dr. Ivey's registration, and for the denial of any pending applications for renewal, the Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that DEA Certificate of Registration, B10572265, previously issued to Dr. Ivey, be, and it hereby is, revoked. The Administrator further orders that any pending applications for renewal of that registration be, and they hereby are, denied.

This order is effective July 4, 1989.

Dated: June 8, 1989.

John C. Lawn,
Administrator.

[FR Doc. 89-14124 Filed 6-13-89; 8:45 am]

BILLING CODE 4410-09-M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Application No. D-710 et al.]

Proposed Exemptions; General American Life Insurance Co., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or requests for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this Federal Register Notice. Comments and requests for a hearing should state the reasons for the writer's interest in the pending exemption.

ADDRESSES: All written comments and requests for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Regulations and Interpretations, Room N-5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefit Programs, U.S. Department of Labor, Room N-5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the Federal Register. Such notice shall include a copy of the notice of pendency of the exemption as published in the Federal Register and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in

applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

General American Life Insurance Company (General American) Located in St. Louis, MO

[Application No. D-7107]

Proposed exemption

The Department is considering granting an exemption under the authority of section 408 (a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The proposed amendment (the Amendment) to an annuity contract (the Contract) and Separate Account agreement entered into by General American and the Carpenters' Pension Trust Fund of St. Louis (the Plan) which will provide that General American will insure that, in the event of a foreclosure upon a mortgage loan note (Note) held by General American's Separate Account No. 3 (the Account), the Account will receive the unpaid principal balance, any due and unpaid interest at the face rate of the Note, and any advances and foreclosure costs with respect to that Note; and (2) the proposed purchase of residential real property (the Property) or delinquent Notes by General American from the Account in accordance with the Amendment, provided that the terms and conditions of the transactions are at least as favorable to the Plan as those between unrelated parties would be.

Summary of Facts and Representations

1. The Plan is a multi-employer pension plan with approximately 10,601 participants as of May 30, 1986 and assets of approximately \$214,000,000 as of June 3, 1986.

2. General American is a mutual insurance company organized and operated under the laws of the state of Missouri, with its principal offices in St. Louis, Missouri. It is licensed to do business in Missouri and 48 other states and the District of Columbia. General American is among the forty largest life insurance companies in the United States and, as of December 31, 1985, had over three billion dollars in assets and one billion dollars in pension fund assets under management.

3. The Account was established in February, 1971 specifically to fund the Contract issued to the Plan. The Account has been utilized solely for that purpose. The Account is a "separate account" within the meaning of section 3(17) of the Act. That is, the Account is an account established by General American under which income, gains and losses from the investments allocated to the Account are directly and fully credited to or charged against the Account (and thus the Plan's interest under the Contract) without regard to any other business General American may conduct. The Account is not registered under the Investment Company Act of 1940.

The value of the assets allocated to the Account as of June 3, 1986 was \$102,751,253.03. This constituted approximately 48% of the total assets of the Plan as of that date.

The investment policy for the Account is investment in first mortgages secured by Missouri residential property in and around metropolitan St. Louis. Account funds may also be invested on a temporary basis in money market securities.

Mortgages in which the Account invests generally are originated by General American's field investment office in St. Louis and approved by the home office mortgage staff. All loans made by the Account are made in conformance with prevailing market practice. Any commitment fees paid by the borrower are at prevailing market rates and are paid to the Account. In addition, all such loans bear a market interest rate. The amount of each such loan does not exceed 75% of the value of the property securing the loan. As of December 31, 1985, the Account held 1,489 residential mortgage loans with a

total face amount of approximately \$85,000,000.¹

4. The applicant represents that the Account has experienced a negligible delinquency rate on its mortgage loans. For example, in each month between January 1, 1985 and December 31, 1985, an average of only 2.9 loans, and never more than 6 loans (out of more than 1,400), were 45 days or more in arrears. Only one loan became more than 75 days delinquent in 1985, and it was paid in full in January 1986. Loans for which foreclosure proceedings have commenced have, in all cases to date, been satisfied in full prior to a foreclosure sale; in the fifteen years since the Account was established, no mortgage loan held by the Account has been actually foreclosed.

5. The applicant represents that due to concerns that were raised by the Department that the percentage of the Plan's assets invested in St. Louis area residential real estate might increase the investment risk to the Plan, the Plan's trustees (the Trustees) approached General American to insure the repayment of the mortgage investments held by the Account. The Trustees and General American negotiated the terms and conditions of the Amendment, which the Trustees believe to be reasonable and protective of the Plan's interests. In addition, the Trustees have not made any further investment of Plan assets in the Account since March 15, 1985.

6. Under the Amendment, General American will effectuate this Insurance by entering a bid at any formal foreclosure sale of the property securing a delinquent Account Note in the amount of the lesser of: (a) The sum of the outstanding principal, accrued interest, advances and costs with respect to the Note; or (b) General American's estimate of the value of the Property being sold. If the foreclosure proceeds are less than the outstanding principal, accrued interest at the specified rate, advances and costs, General American will make a separate payment to the Account in the amount of such deficit. If a foreclosure sale does not occur within the first 180 days of loan delinquency, General American will purchase the Note from the Account for the total of the outstanding principal, accrued interest at the specified rate, advances and costs and then proceed with any foreclosure proceedings for General American's own account. The

¹ The applicant represents that General American makes only commercial mortgage loans on behalf of its general account and that residential mortgage loans are made only on behalf of its qualified plan separate accounts.

Trustees will have the right and authority to enforce all the terms of the Contract and the Amendment. Furthermore, the Trustees may terminate the arrangement upon 30 days written notice.

Other than its actions pursuant to the Amendment, General American's procedures with respect to the delinquency and foreclosure of loans made by the Account have been and will remain the same as those used for mortgages made by General American's other separate accounts. The applicant represents that these procedures are the result of General American's experience with mortgage investments for over fifty years. Delinquent loans are typically processed in accordance with these established procedures, although there may be some variation from these procedures where warranted by the circumstances.

7. If the Trustees determine it to be advantageous to the Plan, the Plan will also have the unilateral right either: (1) To bid for the Property for its own account at the foreclosure sale; or (2) to request that the Note be assigned to the Plan as an in-kind withdrawal from the Account (which will be permitted by the Amendment), in order to proceed with foreclosure or other resolution of the delinquency itself without the insurance protection provided by the Amendment.

8. The applicant represents that if General American acquires either the Property at a foreclosure sale or the Note from the Account, General American may or may not be able to recoup the payments made under the Amendment through subsequent satisfaction of the Note or sale of the Property. In any event, however, the Account, and thus the Plan, will receive the full amount of the outstanding principal balance, accrued interest at the specified rate, and advances and costs with respect to the delinquent loan. Accordingly, the Amendment will shift the risk of loss on mortgage loans by reason of the borrower's default from the Plan to General American and thereby will assure that the Plan, and in turn Plan participants, realize no loss and a full return on investments allocated to the Account.

9. In summary, the applicant represents that the proposed transactions satisfy the criteria of section 408(a) because: (a) The risk of loss associated with the investments in the Account will be shifted from the Plan to General American; (b) the Plan will receive no less than the sum of the outstanding principal, accrued interest, advances and costs with respect to any Note which is foreclosed upon; (c)

General American will utilize the same procedures in processing delinquent loans in the Account as it does with respect to those in its general and other separate accounts; and (d) the Trustees have the right, responsibility, and authority to enforce all the terms and conditions of the Contract and Amendment.

For Further Information Contact: David Lurie of the Department, telephone (202) 523-8671. (This is not a toll-free number.)

National Rural Utilities Cooperative Finance Corporation (CFC) Located in Washington, DC

[Application No. D-7364]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 408(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to certain transactions, described in the summary of facts and representations herein, between CPC and certain employee benefit plans (the Plans). CFC may be deemed to be a party in interest with respect to the Plans as a result of providing services to a trust in situations where the assets of the trust are considered to be "plan assets" as a result of the Plans acquiring significant equity interests in the trust in the form of pass-through certificates (the Certificates). The exemption will be effective provided that:

A. The decision by a Plan to engage in the transactions is made by a fiduciary of the Plan which is independent of CFC and the trustee of the trust; and

B. The terms of each such transaction are no less favorable to the Plan than the terms available in a similar transaction involving unrelated parties.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective July 22, 1987.

Summary of Facts and Representations

1. The transactions for which exemptive relief is requested primarily involve the acquisition of the Certificates by the Plans from CFC or the acquisition and/or holding of CFC debt instruments (CFC Debt) by the Plans in situations where CFC would be considered a party in interest with respect to the Plans. CFC may become a

party in interest under the Act as a result of providing services to a trust, established at the direction of CFC, where the assets of the trust are considered to be "plan assets" as a result of the Plans and other benefit plan investors, in the aggregate, acquiring significant equity interests (i.e., 25 percent or more) in the trust in the form of the Certificates.² The Certificates represent undivided fractional interests in a private note (the Private Note) which is held by the trust.

2. CFC is a tax-exempt, not-for-profit cooperative association organized in 1969 under the laws of the District of Columbia. CFC was established by certain non-profit cooperative electric utilities and service organizations (the Cooperatives) to provide the Cooperatives with a source of financing to supplement the loan programs of the Rural Electrification Agency (REA). CFC is a finance company that makes loans to the Cooperatives to enable them to acquire, construct and operate electric distribution, generation, transmission and related facilities. CFC obtains funding for its activities through a variety of means, including the issuance of CFC Debt in Underwritten public offerings. Most CFC long-term loans to the Cooperatives are made in conjunction with concurrent loans from REA and are secured equally and ratably with REA's loans by a single mortgage on the particular Cooperative's property. CFC also provides guarantees for tax-exempt financings of pollution control facilities and other properties constructed or acquired by the Cooperatives. In addition, CFC provides guarantees or other debt in connection with certain leases and other transactions of the Cooperatives. CFC presently has loans outstanding to the Cooperatives in the aggregate principal amount of approximately \$3.3 billion, and has guaranteed on behalf of Cooperatives an additional \$2.9 billion in obligations.

3. Since enactment of the Rural Electrification Act of 1936 (the RE Act), REA has financed the construction and operation of electric generating plants, transmission facilities and distribution systems in order to provide electricity to persons in rural areas who are without central station service. REA obtains a mortgage on all its borrowers' assets (the REA Mortgage), and generally exercises a high degree of financial and technical supervision over their operations.

During the 1970s, the expanding power requirements of rural consumers

² See 29 CFR 2510.3-101.

in many areas throughout the country resulted in the construction by the Cooperatives of many new generating plants and transmission facilities. To satisfy the major capital requirements for these projects, Congress passed legislation requiring the Federal Financing Bank of the United States Treasury (the FFB) to make long-term loans (the FFB Loans), at interest rates 1/8 of 1% above FFB's own borrowing costs, to the Cooperatives with repayment guaranteed by REA.

Most FFB Loans were made in the late 1970's and early 1980's at rates ranging up to approximately 15%. The applicant states that under current market conditions the FFB Loans could be made at considerably lower rates which would result in significant savings for the Cooperatives.

4. In June 1986, Congress passed legislation permitting rural electric utilities to take advantage of the reductions in interest rates by prepaying their high-interest FFB Loans, without any prepayment penalty or fees, through the issuance of REA-guaranteed debt to private lenders. REA has adopted regulations (the Regulations) implementing the legislation, and has accepted prepayment applications submitted by a number of the Cooperatives.

5. CFC represents that it has formulated a program (the Program) to permit the Cooperatives to refinance their FFB Loans in accordance with the Regulations at competitive rates. REA has approved the Program as complying with the Regulations.

Under the Program, one or more trusts (the Trusts) are established for each Cooperative intending to prepay its FFB Loans. The trustee of each Trust (the Trustee) is a commercial bank having capital and surplus of at least \$50,000,000. CFC makes a private loan (the Private Loan) to the Cooperative, the proceeds of which are used to prepay the FFB Loans being refinanced. CFC directs the Cooperative to issue a Private Note evidencing the Private Loan to the separate Trust. The Trust issues to CFC the Certificates, which represent the entire beneficial interest in the Trust. While CFC holds the Certificates, the Private Note bears interest at a variable rate reflecting CFC's cost of funding the Private Loan. CFC resells the Certificates in private placements or to the public in firm commitment underwritings, at which time the rate on the associated Private Note is reset to equal the fixed rate on the Certificates, increased by an amount equal to CFC's servicing fee and expense reimbursement. The Certificate

rate is fixed at the lowest rate acceptable to the marketplace that permits the Certificates to be resold by CFC at par. CFC resells the Certificates promptly, unless they cannot be sold bearing rates within the prescribed interest rate ceiling. Scheduled payments on the Private Notes must be sufficient to satisfy the scheduled payments on the Certificates, plus any amounts of servicing fees or other expenses payable by the Trust.

The applicant states that in order to insure that the Cooperatives derive significant benefit from the refinancing of the FFB Loans, the Regulations require that the interest rate on the Private Notes must be at least 50 basis points lower than the weighted average interest rate borne by the FFB Loans being repaid. CFC assumes all risks associated with interest rate fluctuations.

Each Trust's sole investment activity consists of receiving the Private Note, issuing the Certificates on the day of its formation, and collecting payments on the Private Note. The assets of each Trust consists of a single REA-guaranteed Private Note evidencing one Private Loan. The applicant states that in order to obtain the best rates by matching maturities to particular market segments, separate Certificates having sequential maturities are offered through separate Trust (i.e., one Trust receives a Private Note payable by the Cooperative in installments in years 6-10, a second receives a Private Note payable by that Cooperative in years 11-16, etc.). The Trustee is not authorized to modify the right to receive payments on the Certificates or to take any action that would reduce the principal amount or interest rate on the Private Note without the consent of the Certificateholders. No Trust can issue any security other than a single class of Certificates or hold more than a single Private Note.

The applicant states that any default with respect to one Private Note does not permit acceleration by the holder of any other Private Note. The Trust cannot acquire any assets in substitution for the Private Note or sell the Private Note, except in connection with the repayment of the Certificates in full and the termination of the Trust.

6. REA endorses on each Private Note a guarantee (the REA Guarantee) of the timely payment of principal and interest on the Private Note. The RE Act provides that the REA Guarantee is a full faith and credit obligation of the United States. REA is required to pay the Trust the amount of any principal and interest not paid when due on a Private Note within five business days

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of notice from CFC of such default. Although the REA Mortgage secures the Private Note, all rights under the REA Mortgage with respect to the Private Note are held by REA and will not inure to the benefit of CFC, the Trust, or any holder of Certificates.

7. CFC contracts with REA and each Trust to service the Private Loan thereby establishing an agency relationship with respect to the Trustee, as described in the terms of the Trust Agreement.

Under the Trust Agreement, the Trustee appoints CFC as its attorney-in-fact to prosecute any claims to enforce or collect on each Private Note and REA Guarantee. However, CFC as such attorney-in-fact may not rescind, cancel, release, waive or reschedule the right to collect the unpaid balance on any Private Note from the Cooperative or REA.

In administering, servicing and enforcing a Private Note or REA Guarantee, CFC is obligated to exercise the rights and powers vested in it by the Trust Agreement. Prior to a default in payment on a Private Note, CFC is obligated to perform only those duties that are specifically set forth in the Trust Agreement. CFC has no liability for any error of judgment made in good faith, unless it is proved that CFC was negligent in ascertaining the pertinent facts, or with respect to any action it takes or omits to take in good faith in accordance with a direction received by CFC from the Trustee or the Certificateholders.

In addition to enforcing the Trustee's rights under the Private Note and the REA Guarantee held by a Trust, CFC is obligated to fulfill a number of administrative and notice functions under the Trust Agreement. For example, CFC is obligated to deliver a notice to each Cooperative and the Trustee for the Trust specifying the date any payment is due on the Private Note held by the Trust and the amount of such payment. In addition, CFC is responsible for notifying REA of any default in the payment of interest and principal on the Private Note held by the Trust.

CFC must notify REA of any conditions which might lead to a default or violation by the Cooperative under the Loan Agreement, the Loan Guarantee Agreement or a Private Note. CFC is also obligated to notify REA of any optional redemption of the Private Note held by a Trust and to calculate the amount payable on such Private Note, and the related Certificates, pursuant to any redemption or purchase of the Private Note.

CFC handles the billing or Private Loan payments from the Cooperative,

but payments on the Private Note are made directly to the Trustee. CFC prepares for distribution by the Trustee to Certificateholders all regular semiannual reports concerning distributions on the Certificates and its fees, as well as tax information required by the Certificateholders. The applicant states that at least once a year, an independent public accountant audits the books and records of each Trust. Upon completion, copies of the auditor's reports are provided to the Trustee.

8. CFC is compensated out of payments on the Private Note in excess of the scheduled payments distributed to the Certificateholders. CFC estimates that its regular servicing fee will total not more than approximately 1/10 of 1% per annum of the principal amount of the Private Note. If REA consents, CFC receives from the Trust reimbursement for costs incurred by it in connection with the reoffering of the Certificates. However, the applicant states that such reimbursement does not reduce distributions to the Certificateholders.

CFC may not resign, but may be discharged by action of 51% of the Certificateholders or the Trustee following certain defaults or events of bankruptcy relating to CFC. The insolvency of either the Trustee or CFC will not affect the Certificateholders' rights, because CFC will not hold any Trust assets and the assets held in a fiduciary capacity by the Trustee are not subject to claims of the Trustee's general creditors.

9. CFC states that it may resell the Certificates, either in private placements pursuant to section 4(2) of the Securities Act of 1933 (the Securities Act), or in underwritten public offerings registered under the Securities Act, or possibly in distributions exempt from registration because they will come to rest outside the United States. CFC expects that the Certificates will be marketed principally to financial institutions, such as the Plans. CFC states further that the Certificates issued by each Trust will receive the highest investment grade rating ("AAA" or "Aaa") from at least two nationally recognized statistical rating organizations not affiliated with CFC or the Trusts.

10. Each Certificate represents an undivided fractional interest in a Trust. The Certificates are issued in denominations of \$1,000 or multiples thereof, and will not be divisible into Certificates with original principal amounts below that figure. The Certificates are transferable and are listed on a national securities exchange. Payments on the Certificates represent the pass-through of payments received by the Trustee on the Private Note held

by the Trust. Interest on both the Private Note and the Certificates are payable semiannually and principal payments on both the Private Note and the Certificates are payable annually for the period during which the Private Note and the Certificates amortize.

The Certificates can be prepaid at any time the Private Note is prepaid. The Private Notes are prepayable at the Cooperative's option, generally after a no-call period, at premiums declining each year until such premiums equal zero. The applicant states that the payment of principal, interest and premium in the event a Cooperative elects to prepay the Private Note are not covered by the REA Guarantee. However, the Cooperative is required to accompany its notice of prepayment with a cash deposit equal to the amounts that are due on the Private Note at the time of prepayment, thus assuring that funds are available at that time.

The applicant states that with the exception of the prepayment referred to above, all payments on the Certificates have back-to-back Private Note obligations which are supported by the full faith and credit of the United States. If the Cooperative defaults in making its payments or in its other obligations to REA, REA has the option either to pay under the REA Guarantee principal and interest as they fall due on the Private Note or to proceed against the Cooperative and to assume the Cooperative's obligations under the Private Note. In addition, if the Cooperative could at that time make an optional prepayment of the Private Note, REA may prepay or purchase the Private Note at the same premium as would then be applicable to a prepayment by the Cooperative. The Trustee or CFC, as its agent, will enforce payments due on the Private Note and the REA Guarantee. However, a specified percentage of Certificateholders may direct the time, method and place of conducting any remedy available to the Trustee or CFC. The Trustee may not resign until the Trust is liquidated and the proceeds distributed to Certificateholders unless a successor Trustee has been designated and has accepted the trusteeship.

11. Scheduled distributions on the Certificates are made approximately 11 days following the corresponding payment on the Private Note. The application states that this period of time allows CFC to notify REA if there is a default by the Cooperative in making a payment on the Private Note and allows five business days for REA to make a payment under the guarantee.

As a consequence, if the Cooperative defaults, the full faith and credit guarantee payment will fall due before the scheduled payment on the Certificates. The applicant states that if a Cooperative elects to prepay the Private Loan, distributions on the Certificates will be made only after advance receipt of the amounts to be prepaid, thus permitting notice of the resulting distribution to be given to the Certificateholders.

The applicant states further that during these periods pending distribution, payments on the Private Note received by the Trust will be invested, at the direction of CFC, in (i) obligations issued by the United States (and supported by its full faith and credit), or (ii) repurchase agreements with respect to such obligations, over-collateralized on a basis that will not result in a reduction in the ratings of the Certificates. All such investments must mature before the next scheduled distribution date on the Certificates. The obligations collateralizing the repurchase agreements in question would be marked-to-market on a daily basis and kept in the possession of the Trustee. Assuming all amounts then due on the Private Notes have been paid in full, any yield on these investments will be returned to the Cooperative, or to REA to the extent of any unreimbursed payments on the REA Guarantee.

12. *Prohibited Transactions.* The Department's regulations defining "plan assets" (29 CFR 2510.3-101) provide that if a plan acquires an equity interest in an entity that is not an operating company, such as the Certificates in a Trust, the plan will be required to treat the underlying assets of the entity as assets of the plan, if the class of equity interests in question are not (i) held by 100 or more investors independent of the issuer and of each other, (ii) freely transferable and (iii) sold as a part of an offering pursuant to an effective registration statement under the Securities Act, and then timely registered under section 12(b) or 12(g) of the Securities Exchange Act of 1934. The application represents that although there are no restrictions imposed on the transfer of the Certificates and CFC will satisfy the registration requirements, CFC anticipates that one or more series of the Certificates will be held by fewer than 100 independent investors at the conclusion of the initial offering.

The applicant states that a Plan's assets will be deemed to include assets of a Trust if employee benefit plan investors in the aggregate acquire Certificates representing a greater than

25% interest in a Trust.³ CFC represents that it is possible that more than 25% of the interests in one series of Certificates may be held by the Plans.

If the assets of a Trust are deemed to be "plan assets", the activities of CFC with respect to a Trust may be regarded as services being performed for the participating Plans, which would cause CFC to be a "service provider" and party in interest to the Plans investing in the Trust. Thus, CFC states that it is the possible existence of such "service provider" status which gives rise to the potential prohibited transactions for which an exemption is requested. However, CFC acts solely as an agent of the Trustee and does not have any authority or control, outside those duties specifically delineated in the Trust Agreement, which would make it a fiduciary of the assets of a Trust.

First, the applicant states that a Plan may acquire interests in more than one Trust. Since separate Trusts will be established with respect both to borrowings by different Cooperatives and with respect to borrowings of different maturities by the same Cooperative, it is possible that a Plan interested in the Certificates will acquire interests in multiple Trusts. In such event, the party in interest status assumed by CFC with respect to an investing Plan as a result of the Plan's first investment in an interest in a Trust might cause the acquisition by the Plan of an interest in a second Trust to violate the provisions of the Act. Such a transaction could occur if the Plan were to acquire a Certificate directly from CFC. However, the applicant states that some of the Certificates will be placed through a firm commitment underwriting.⁴

Second, in addition to the acquisition of Certificates, a Plan may acquire or already hold the CFC Debt (see Paragraph 1 above) which CFC issues to provide funding for its operations. CFC Debt consists of collateral trust bonds (CFC Bonds), commercial paper (CFC Paper), and medium term notes (CFC Notes). These debt securities are all high grade investments, according to two nationally recognized rating organizations, which are sold primarily to institutional investors. CFC Bonds are

³ See DOL Reg. § 2510.3-101(f).

⁴ The applicant represents where the Certificates are acquired by the Plans through an underwriting, the acquisition of the Certificates by the Plans may be covered by Part III of Prohibited Transaction Exemption (PTE) 75-1, 40 FR 50645, (October 31, 1975). However, this proposed exemption would provide exemptive relief for those additional prohibited transactions involving CFC not covered by PTE 75-1 that may arise as a result of the plan asset "look-through" rule and CFC's status as a service-provider to a Trust.

fixed rate unconvertible senior debt securities which have maturities ranging from five to thirty-five years. CFC Bonds are listed on the New York Stock Exchange and sold in firm commitment underwritten public offerings, registered under the Securities Act, to traditional buyers of corporate debt securities such as banks and insurance companies. CFC Paper is issued as senior promissory notes having maturities of up to nine months. CFC Paper is exempt from registration under the Securities Act and is sold through securities dealers mostly to banks and money-market funds. CFC Notes are unsecured senior unconvertible notes having maturities ranging from nine months to fifteen years. CFC Notes are registered under the Securities Act and are placed by securities dealers on a best-efforts basis with the usual buyers of this type of security, which are mostly banks and insurance companies. The applicant represents that all these debt securities are offered on the same terms and conditions to all investors, including the Plans. The applicant states that if a Plan were to acquire Certificates from CFC at any time during which the Plan held CFC Debt, and such acquisition of the Certificates resulted in CFC becoming a party in interest with respect to the Plan as a service provider to the Trust which issued the Certificates, then the holding by the Plan of such CFC Debt would become a prohibited extension of credit in violation of the Act. Likewise, if CFC were to become a party in interest with respect to a Plan as a service provider and if the Plan subsequently acquired CFC Debt, then such acquisition by the Plan of CFC Debt would become a prohibited extension of credit in violation of the Act.

CFC states that it will have no relationship to, or influence over the investment decisions made by, a Plan either to acquire CFC Debt or to acquire a Certificate under a Trust. The decisions of the Plans to participate in the Trusts, through the purchase of the Certificates, will be made by Plan fiduciaries independent of CFC and the Trustee.

Finally, CFC states that it is obligated to defend and indemnify the Trust and its Certificateholders against any and all costs, expenses, losses, damages, claims and liabilities, including reasonable fees and expenses of counsel and expenses of litigation, arising with respect to any action taken by CFC, except to the extent such charges may be attributable to the Trustee's negligence or bad faith. The applicant states that if CFC is considered to be a party in interest with respect to Plan Certificateholders, CFC's

indemnification of the Certificateholders against certain potential taxes and expenses may be deemed to be a guarantee which results in a prohibited extension of credit between CFC and the Plan under the act.

13. Soyland Power Cooperative, Inc. (Soyland), has refinanced its FFB Loans under the Program by borrowing from CFC and issuing five Private Notes evidencing these borrowings to separate Trusts. CFC has acquired the Certificates representing the ownership interest in these Trusts (the Soyland Transaction) and has sold the Certificates to various institutional investors, including the Plans. The applicant requests that the proposed exemption be effective as of July 22, 1987, the date of the delivery of the Certificates to the Plans with respect to the Soyland Transaction. The applicant states that four other Cooperatives, Cajun Electric Power Cooperative, Inc., Deseret Generation & Transmission Cooperative, Tex-La Electric Cooperative of Texas Inc., and Kansas Electric Power Cooperative, Inc., have planned to refinance their FFB Loans under the Program. However, CFC states that because the determination of eligibility under the Regulations rests solely with REA, CFC cannot determine which other borrowers will have prepayment applications approved. CFC anticipates that a substantial number of the Cooperatives may participate in the Program.

14. In summary, the applicant represents that the transactions satisfy the statutory criteria of section 408(a) of the Act because, among other things: (a) The decision of the Plans to purchase the Certificates was and will be made in all cases by a Plan fiduciary which is independent of CFC and the Trustee; (b) the Certificates are priced at market rates and will in all cases receive the highest investment grade rating from two nationally recognized statistical rating organizations; (c) the payments of principal and interest on the Private Notes held by the Trusts issuing the Certificates are guaranteed by REA; and (d) the Certificates are sold to the Plans with full disclosure to the independent fiduciaries for the Plans of the fees and expenses to be recovered by CFC and the Trustee from the Trust, which in all cases come only out of payments made on the Private Notes by the Cooperatives.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Dalton Foundries, Inc. Employee Stock Ownership Plan (the Plan) Located in Fort Wayne, Indiana

(Application No. D-7757)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the sale by the Plan of certain units in a limited investment partnership (the Partnership Units) to the Dalton Foundries, Inc. Pension Plan (the Pension Plan), a party in interest with respect to the Plan by reason of the Plan's ownership of more than 50 percent of Dalton Foundries, Inc. (Dalton), sponsor of the Pension Plan, provided that the price paid is the fair market value of the Partnership Units on the date of sale.

Summary of Facts and Representations

1. The Plan is an employee stock ownership plan sponsored by Dalton Foundries, Inc., manufacturers of foundry equipment doing business in Warsaw, Indiana. As of September 8, 1988, the Plan had 122 participants and \$3,460,000 in assets.

2. In 1982 the Dalton Foundries, Inc. Profit Sharing Plan (the Profit Sharing Plan) purchased the Partnership Units, 63,441 units of Balcort Pension Investors II (Balcort II) at an aggregate cost of \$60,000. Balcort II is a limited real estate investment partnership marketed by The Balcort Company (Balcort), a subsidiary of Shearson Lehman Hutton, Inc. At the time of the purchase of the Partnership Units the Profit Sharing Plan covered Dalton's salaried employees and the assets of the Profit Sharing Plan were allocated between an equity fund (the Equity Fund) and a money market fund, between which participants were given the right to exercise investment discretion. The Partnership Units then represented approximately 4.3% of the \$1.4 million in the Equity Fund. After formation of the Plan in 1985, Profit Sharing Plan participants were given the opportunity to direct that their accounts be invested in whole or in part in employer stock, and the Profit Sharing Plan was merged into the Plan. All Profit Sharing Accounts, however, were segregated within the Plan trust. As of December 31, 1987, the Profit Sharing

Equity Fund accounts totalled approximately \$161,000. The Partnership Units, valued as of September 1, 1988 at \$876.04 per unit, thus represent approximately 34.5% of the Equity Fund value.

3. The Partnership Units now represent more than a third of the value of assets in the Plan's Equity Fund. However, no satisfactory secondary market currently exists for the Partnership Units. Although Balcort maintains a repurchase plan for Balcort II investment units, the waiting period for repurchase is currently approximately four years, a waiting period which fluctuates on the basis of cash received each quarter.

Early in 1988 the waiting period was nine years. As a result, a severe liquidity problem exists with respect to the Profit Sharing Equity Fund accounts which limits the right of Plan participants to exercise their investment discretion between the Profit Sharing Equity Fund and money market accounts and the ability of the Plan to make distributions from the Profit Sharing Equity Fund to retiring or otherwise terminating Plan participants.

4. Accordingly, the Plan proposes to sell the Partnership Units to the Pension Plan for an amount in cash equal to the unit value of the Partnership Units as determined by Balcort. Balcort discounts the value of the Units by 10% due to lack of marketability and this amount represents the price at which Balcort will repurchase the Units from unitholders. On September 1, 1988, Sean O'Malley, of the Investor Services Department of Balcort, stated that the fair market value of the Partnership Units was \$876.04 per interest.

5. On April 4, 1989, Radd L. Riebe, (Mr. Riebe) Vice President of Ameritrust Company N.A. of Cleveland, Ohio, acting as independent fiduciary for the Plan, stated that the proposed transaction was in the best interest of the Plan and its participants and beneficiaries. In reaching this conclusion, Mr. Riebe took into consideration the Plan's overall investment portfolio, especially its liquidity requirements and the need of the Plan to diversify its assets.

6. On April 6, 1989, Barry F. Ebert (Mr. Ebert), President of Heartland Capital Management, Inc., a registered investment advisor, acting as independent fiduciary for the Pension Plan, stated that the proposed transaction was in the best interest of the Pension Plan and its participants and beneficiaries. In reaching this conclusion, Mr. Ebert took into consideration the Pension Plan's

average annual rate of investment return, the diversification of its assets, and its liquidity needs. The Partnership Units will represent approximately 3.5% of the assets of the Pension Plan.

7. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the Act because: (a) The sale represents a one-time transaction for cash, which can be easily verified; (b) the transaction will result in greater liquidity of the Plan's assets, enabling the Plan to make timely distributions; (c) the Plan will receive and the Pension Plan will pay the fair market value for the Partnership Units as determined by Balcort; and (d) Ameritrust Company, N.A., serving as independent fiduciary for the Plan, and Heartland Capital Management, Inc., serving as independent fiduciary for the Pension Plan, have determined that the transaction is in the interest of the Plan and its participants and beneficiaries and of the Pension Plan and its participants and beneficiaries.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8881 (This is not a toll-free number.)

Pension Plan for Employees of Merrill Lynch & Co., Inc. and Affiliates (the Plan) Located in New York, New York

(Application No. D-7859)

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The proposed cash sale by the Plan of certain parcels of improved real property (the Properties) and the transfer of all existing leases on the Properties, to Merrill Lynch & Co., Inc. (the Employer), the sponsor of the Plan, provided that the price paid for each of the Properties is the greater of either (i) the price originally paid for the particular Property by the Plan, plus the cost of all capital improvements made to the Property since the time of its acquisition by the Plan (the Book Value), or (ii) the fair market value of the Property as of the date of sale; and (2) the proposed cash sale by the Plan of a second mortgage note (the Note), which

is secured by another parcel of improved real property unrelated to the Properties, to the Employer, provided that the price paid for the Note is the greater of either (i) the outstanding principal balance on the Note, plus any accrued but unpaid interest (the Note's Book Value), or (ii) the fair market value of the Note on the date of sale.

Summary of Facts and Representations

1. The Plan is a defined benefit plan which, as of December 31, 1988, had total assets of approximately \$1 billion. The Plan covers approximately 32,542 active participants. In addition, the Plan covers 5,317 former participants, retirees and beneficiaries who are now receiving or who are entitled to receive benefits in the future. The trustees of the Plan are Courtney F. Jones (Mr. Jones), D. Bruce Brunson (Mr. Brunson), Robert J. Farrell (Mr. Farrell), Jack W. Lowery (Mr. Lowery), Arthur Zeikel (Mr. Zeikel), and Mary A. Wrenn (together, the Trustees). The Trustees are all officers of the Employer or its subsidiaries.

2. The Employer is a holding company incorporated in Delaware with its principal offices located at North Tower, World Financial Center, New York, New York. The Employer provides, through its subsidiaries, various investment, financial, real estate, insurance and related services. The Employer's principal subsidiary, Merrill Lynch, Pierce, Fenner & Smith, Inc., is one of the largest securities firms in the world.

3. The Plan provides for the appointment by the Board of Directors of the Employer of an investment committee for the Plan (the Committee) consisting of not less than three nor more than nine members. Members of the Committee may, but need not, be employees of the Employer or its subsidiaries. At the present time, there are five employees of the Employer or its subsidiaries that are serving as members of the Committee. These five Committee members are Mr. Jones, Mr. Brunson, Mr. Farrell, Mr. Lowery, and Mr. Zeikel.

The Committee has the exclusive power to establish and monitor the policies and guidelines for the investment of the Plan's assets. The Committee is also authorized to direct the purchase or sale of specific investments of the Plan, except to the extent that an investment manager has been appointed for any of the Plan's assets.

4. The Employer has decided to terminate the Plan effective December 31, 1988. In connection with the Plan's termination, the Committee intends to liquidate all of the Plan's assets, including the Properties and the Note.

The assets of the Plan, including the proceeds from the sale of the Properties and the Note, will be used to provide the participants and beneficiaries of the Plan with annuities in an amount equal to their Plan benefits as of December 31, 1988. The Employer anticipates that, following the satisfaction of Plan liabilities, there will be residual assets held by the Plan which will be transferred to an employee stock ownership plan sponsored by the Employer (the ESOP). The applicant states that the amount transferred to the ESOP will consist solely of cash or cash equivalents and will be used to purchase stock of the Employer.

5. The Properties are described as follows:

(1) A single six-story office building with approximately 82,800 square feet located at 523 North Belt, Houston, Texas (the Houston Property); (2) a single one-story warehouse containing 47,791 square feet located at 1383 Vapor Trail Road, Colorado Springs, Colorado (the Colorado Springs Property); (3) a business park consisting of four office and warehouse buildings containing approximately 86,544 square feet located at 1977 O'Toole Avenue, San Jose, California (the San Jose Properties); and (4) three single-story industrial warehouse buildings, known as Centreport 7, Valwood Park 1, and Valwood Park 4, containing a total of approximately 215,598 square feet, which are located, respectively, at 4501 Cambridge Road in Fort Worth, Texas, 13800 Hutton Drive in Dallas, Texas, and 13755 Benchmark Drive in Dallas, Texas (together, the Dallas/Ft. Worth Properties).

The Note is a nonrecourse second mortgage interest in a five-story, 104,000 square foot office building, located at 500 Sylvan Avenue, Bridgeport, Connecticut (the Bridgeport Property). The Bridgeport Property is owned by the Sylvan Executive Limited Partnership (Sylvan), an unrelated party.

6. The Plan purchased the Houston Property in December, 1980, from Messrs. Frank E. Allison and R.E. Walker, Jr., both of whom are unrelated parties, for \$4,875,000. The Plan has incurred capital expenditures of \$385,874 with respect to the Houston Property, making the current Book Value of the Property \$5,260,874.

The Houston Property was appraised by Thomas R. Kirby, M.A.I. (Mr. Kirby), of Murphy, Kirby & Associates, an independent, qualified real estate appraiser in Houston, Texas. Mr. Kirby states that the fair market value of the Houston Property, expressed in terms of the "leased fee estate" created by

existing and projected multiple tenant leases, was \$1,200,000, as of September 15, 1988. Mr. Kirby notes that a major tenant of the Houston Property vacated the premises in 1988 and that the property was approximately 85% vacant, as of the date of the appraisal. Mr. Kirby also notes that the Houston area real estate market is over-developed and extremely competitive.

The applicant represents that the value of the "leased fee estate" in the Houston Property was used to determine fair market value because the Houston Property is being sold subject to existing leases to parties unrelated to the Plan or the Employer. By letter dated February 3, 1989, Mr. Kirby states that in the real estate appraisal profession it is common practice, when a property is encumbered by either a single tenant lease or multiple tenant leases, to value the "leased fee estate" rather than the "fee simple estate." Mr. Kirby states further that the term "leased fee estate" is synonymous with the use of the term "fee simple encumbered by existing leases." Mr. Kirby notes that a "leased fee estate" valuation takes into consideration the future rental income from the current tenants, as well as the reversion of the property (unencumbered by those leases) at the expiration of the leases.

7. The Plan purchased the Colorado Springs Property on June 26, 1981, from Mr. James Barry Craddock, an unrelated party, for \$1,614,143. The Plan has incurred capital expenditures of \$61,562 with respect to the Colorado Springs Property, making the current Book Value of the property \$1,675,705.

The Colorado Springs Property was appraised by John D. Freeman, M.A.I. (Mr. Freeman), an independent, qualified real estate appraiser in Colorado Springs, Colorado, as having a fair market value of \$1,410,000, as of September 16, 1988. Mr. Freeman states that the only tenant in the Colorado Springs Property is the Schlage Lock Company, which will be vacating the premises in June 1989. Mr. Freeman states further that his valuation of the Colorado Springs Property has emphasized the income approach and has taken into consideration the present value of a future rental income stream, based on market rents for comparable properties in the area. Mr. Freeman notes that the current market for industrial warehouse space in Colorado Springs is over-developed and highly competitive.

8. The Plan purchased the San Jose Properties on September 16, 1983, from Public Storage, Inc., an unrelated party, for \$5,790,902. The Plan has incurred capital expenditures of \$258,659 with

respect to the San Jose Properties, making the current Book Value of such properties \$6,049,561.

The San Jose Properties were appraised by William A. Niethammer, M.A.I. (Mr. Niethammer), of the Real Estate Research Corporation, an independent, qualified real estate appraiser in San Francisco, California, as having a fair market value of \$5,000,000, as of September 23, 1988. Mr. Niethammer notes that the commercial real estate market in San Jose is over-developed and suffers from a high vacancy rate, although vacancy rates for similar properties have declined some in the past year. Mr. Niethammer states that his valuation of the San Jose Properties has correlated the market approach and the income capitalization approach in arriving at the current market value for such properties.

9. The Plan purchased the Dallas/Ft. Worth Properties on August 15, 1985, from Centre Development Company, an unrelated party, for a total of \$11,190,185 (i.e. \$5,727,825 for Centreport 7, \$2,567,825 for Valwood Park 1, and \$2,894,535 for Valwood Park 4). The Plan has incurred total capital expenditures of \$138,609 with respect to the Dallas/Ft. Worth Properties (i.e. \$108,441 for Centreport 7, \$15,084 for Valwood Park 1, and \$15,084 for Valwood Park 4), making the current aggregate Book Value of such properties \$11,328,794.

The Dallas/Ft. Worth Properties were appraised by Ronald W. Potts, M.A.I. (Mr. Potts), of Cushman & Wakefield Appraisal Division, an independent, qualified real estate appraiser in Dallas, Texas. Mr. Potts states that the aggregate fair market value of the Dallas/Ft. Worth Properties, expressed in terms of the "lease fee interest" in the subject properties, was \$8,770,000, as of November 1, 1988 (i.e. \$4,900,000 for Centreport 7, \$1,770,000 for Valwood Park 1, and \$2,100,000 for Valwood Park 4). Mr. Potts notes that several major tenants in the Dallas/Ft. Worth Properties have leases which are due to expire soon and that other tenants are seeking to sublet their space. Mr. Potts also notes that the Dallas/Ft. Worth industrial real estate market is over-developed and very competitive.

The applicant represents that the value of the "leased fee interest" in the Dallas/Ft. Worth Properties was used to determine fair market value because, as with the Houston Property, those Properties are being sold subject to the existing leases, all of which are with unrelated parties. By letter dated January 31, 1989, Mr. Potts states that a valuation of the "leased fee interest" or "leased fee estate" for the Dallas/Ft. Worth Properties is the relevant

valuation for such Properties. Mr. Potts states further that a "leased fee interest" valuation takes into consideration the market value of existing leases on the subject property, the probabilities of such leases being renewed or cancelled at their termination, and any residual fee simple interest value in the property when arriving at fair market value.

10. The Plan originated the Note in July 1982. The Note is a 30-year note, with a face value of \$3,200,000, which matures in 2012. The annual interest on the Note is 10% for the initial fifteen years and 12% for the remainder of the term. Amortization of the principal amount of the Note begins in the sixteenth year. Prepayment of the Note by Sylvan, the borrower, is prohibited until the sixteenth year. The Note allows the Plan an option to convert its debt interest in the Bridgeport Property, the underlying property which secures the Note, into an equity interest on six months prior written notice between the tenth and fifteenth year of the Note. The Bridgeport Property has a first mortgage interest held by the Aetna Life Insurance Company, an unrelated party, in the amount of \$5,500,000.

The Note was appraised by Mark B. Victor, M.A.I. (Mr. Victor), of Cushman & Wakefield of Connecticut, Inc. (the Appraiser), an independent, qualified appraiser in Stamford, Connecticut, as having a fair market value of \$3,200,000, as of September 20, 1988. Mr. Victor states that his valuation of the Note was based on the terms and conditions of the Note, the Note's lien position with respect to the other encumbrances, and the security for the Note. Mr. Victor notes that the Bridgeport Property was appraised by the Appraiser as having a fair market value of \$8,700,000, as of September 20, 1988.

11. The applicant represents that extensive efforts have been made to sell the Properties and the Note to unrelated parties. However, these efforts have been unsuccessful. The applicant states that it may be difficult to sell the Properties without incurring a significant economic loss because of the depressed state of the commercial and industrial real estate markets in the areas where the Properties are located. The Committee and the Employer would like to avoid the potential adverse economic impact upon the Plan of selling the Properties on the open market. Therefore, the Employer proposes to purchase the Properties from the Plan for cash at the greater of either (i) the Book Value for the particular Property, or (ii) the fair market value of the particular property as determined by qualified, independent

appraisers. The Employer is also willing to purchase the Note from the Plan for cash at the greater of either (i) the Note's Book Value, or (ii) the fair market value of the Note, as determined by a qualified, independent appraiser. The applicant states that the appraisals for each of the Properties and for the Note will be updated as of the date of sale.

12. The applicant represents that the proposed sale of the Properties and the Note to the Employer would be in the best interests of the Plan and its participants and beneficiaries. The applicant states that the proposed transactions would facilitate the timely liquidation of the Plan's assets and will ensure that the Plan at least recoups its investment in the Properties and the Note. The Plan will not pay any commissions or other expenses in connection with the proposed transactions.

The applicant states that the Properties are not now and have not been either leased to or used by the Employer, its subsidiaries, or any other party in interest with respect to the Plan. In addition, neither the Employer nor its subsidiaries own any property which is adjacent to the properties.

13. In summary, the applicant represents that the proposed transaction will satisfy the statutory criteria of section 408(a) of the act because: (a) The sale of the Properties and the Note will be one-time transactions for cash; (b) the plan will receive a price for the Properties which will be the greater of either the Book Value for the particular Property or the fair market value for the particular Property, as established by independent, qualified appraisers; (c) the Plan will receive a price for the Note which will be the greater of either the Note's Book Value or the fair market value of the Note, as established by an independent, qualified appraiser; (d) the Plan will not pay any commissions or other expenses with respect to the proposed sale of the Properties and the Note; and (e) the transactions will facilitate a prompt termination of the Plan and will allow the Plan's assets to be distributed to the participants and beneficiaries.

Tox Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal

Revenue Code, including sections 401(a)(4), 404 and 415.

For Further Information Contact: Mr. E.F. Williams of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

Complete General Construction Company Profit Sharing Plan (the Plan) Located in Columbus, Ohio

[Application No. D-7888]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed sale for cash by the Plan of certain real property (the Real Property) to Complete General Construction Company (the Employer), a party in interest with respect to the Plan, provided that the price paid be no less than the fair market value of the Real Property as of the date of sale, as determined by an independent and qualified appraiser.

Summary of Facts and Representations

1. The Plan is a profit sharing plan sponsored by the Employer, a construction company doing business in Columbus, Ohio. Lino A. Guzzo, President of the Employer, serves as trustee of the Plan. As of December 7, 1988, the Plan had 53 participants. As of March 31, 1988, the aggregate value of Plan assets was \$1,777,097.12.

2. On June 30, 1961, the Employer purchased 101.33 acres of unimproved land (the Employer Property) in Franklin and Delaware Counties, Ohio. On August 12, 1968, the Plan purchased the Real property, approximately 40 acres of undeveloped land in Liberty Township, Delaware County, Ohio, from an unrelated third party for \$52,000 in cash as an investment in anticipation of future appreciation. The Real Property, which includes approximately 20 acres of lake area, is contiguous to the Employer Property, and has no access to any road.

3. On January 17, 1989, James L. Murr, MAI (Mr. Murr), an independent and qualified real estate appraiser associated with James Petropoulos and Company, a real estate and appraisal firm in Columbus, Ohio, stated that the fair market value of the Real Property

was \$192,000, based on the highest and best use of the Real Property as to be developed in conjunction with the Employer Property.

4. The value of the Real Property is approximately 11% of Plan assets. The applicant represents that the Real Property, as undeveloped land, produces no income and has not been used by any party in interest with respect to the Plan.

5. Accordingly, the Plan proposes to sell the Real Property to the Employer for cash for the fair market value of the Real Property as of the date of sale as determined by an independent and qualified appraiser. The Plan desires to sell the Real Property in order to improve the liquidity of its assets and to realize a higher investment return. The applicant represents that the Employer will pay any and all costs relating to the sale of the Real Property.

6. In summary, the applicant represents that the proposed transaction will satisfy the criteria of section 408(a) of the Act because, among other things: (a) The sale represents a one-time transaction for cash, which can be easily verified; (b) the Plan will receive the fair market value of the Real Property as of the date of sale as determined by an independent and qualified appraiser; (c) the Plan will be able to divest itself of an illiquid asset which is producing no income, and will be able to diversify its assets in order to realize a higher return for the assets represented by the Real Property; (d) the Plan will not pay any commissions, taxes, or fees in connection with the sale of the Real Property; and (e) the trustee of the Plan has determined that the proposed transaction would be in the best interest and protective of the Plan and its participants and beneficiaries.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8881 (This is not a toll-free number.)

Advest Group, Inc. Incentive Savings Plan (the Plan) Located in Hartford, CT

[Application No. D-7947]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (D) of the Code shall not apply to the proposed purchase or sale

of zero-coupon obligations based on Treasury securities (STRIPS)⁶ between individually-directed accounts in the Plan and Advest, Inc. (AI), the trustee, Plan administrator and sponsor of the Plan, provided the following conditions are met: (a) The purchase or sale of the STRIPS will be on terms at least as favorable as those offered in the ordinary course of business to unrelated customers of AI; (b) purchases or sales will be made only upon the written direction of a Plan participant; and (c) purchases or sales directed by a participant will be only for the participant's individual account.

Summary of Facts and Representations

1. The Plan is a defined contribution plan covering employees of the Advest Group, Inc. (AGI), a holding company located in Hartford, Connecticut, and its seven subsidiaries. As of December 31, 1987, the Plan had net assets of \$16,791,251. As of February 16, 1989, the Plan had approximately 1,800 participants. AI, a wholly-owned subsidiary of AGI, is a broker-dealer which is also located in Hartford, Connecticut. AI is the Plan trustee, sponsor and administrator.

2. The Plan currently allows each participant to direct the investment and reinvestment of assets credited to such participant's individual account in one or a combination of nine different mutual funds, none of which are related to AI. Plan participants are also permitted to invest the assets in their individual accounts in money market accounts maintained for the participants at Advest Bank (Advest Bank), a Connecticut-chartered capital stock savings bank and a subsidiary of AGI.⁸ A participant may direct investment in funds currently in his or her account up to four times in any plan year by giving written notice to AI. Assets for which there is no effective participant direction are invested in Advest Bank money market accounts.⁷ Once given, an

investment direction is deemed to be continuing until it is explicitly changed in writing by the participant.

3. AI proposes to amend the Plan to allow all participants the additional option of investing in STRIPS. STRIPS represent direct ownership of future principal and interest payments on United States Treasury Bonds or Notes. STRIPS pay no semiannual interest, sell at a substantial discount and pay the full face value upon maturity. The total return, if held to maturity, is fixed at the time of purchase and equals the difference between the price an investor pays and the face value at maturity. The applicant represents that investment in STRIPS is particularly attractive to participants who wish to lock in a fixed rate of interest for a given period of time.

4. The applicant represents the STRIPS are marketed in the following manner. A primary government bond dealer purchases securities from the United States Government, and then, breaks the Treasury securities into the principal and interest component obligations of the underlying securities, which are traded separately.⁹ Broker-dealers, such as AI, purchase components by a transfer in book-entry form to the bank of the purchaser. At all times, regardless of who owns the STRIP, such investment is maintained as a book-entry account at a bank which participates in the book-entry system operated by the Federal Reserve Banks. Each particular Government security, representing an obligation to pay the owner of the STRIPS, will be identified by a Committee on Uniform Securities Identification Procedures (CUSIP) number assigned to the obligation. The payment is fully-backed by and is a direct obligation of the United States Government. Whether the payment is an interest payment or a principal payment is determinable from the CUSIP number assigned to that issue.

5. In marketing STRIPS, AI acts as a principal rather than as an agent. STRIPS are offered to the public in face amounts of \$1,000 and integral multiples thereof at discounts from their face amount. AI sells STRIPS to its regular customers in the ordinary course of its business at a selling price which is \$3 to \$22 per \$1,000 of face value above the price established and posted by AI for each particular STRIP on the trade date.

⁹ For example, if an investor wishes to purchase STRIPS which will pay \$25,000 on February 15, 1990, the underlying Treasury obligations may be in twenty-five \$1,000 interest payments due on that date or five \$5,000 principal payments due on that date or a \$25,000 principal payment due on that date, or any combination of interest and principal payments due on that date totaling \$25,000.

This mark-up will not be charged to Plan participants for the subject transactions.

6. AI represents that it establishes the selling price for STRIPS by examining the bid and asked prices for maturity dates of STRIPS established by primary dealers, secondary dealers, brokers and electronic screens such as Telerate and Bloomberg. During the course of a business day, AI receives quotations from three or more different dealers and brokers in these categories regarding their bid and asked prices for given maturity dates. AI, in turn, prices the STRIPS to its customers based on the round lot market (i.e., sales for a given maturity date of STRIPS in the face amount of \$1 million and multiple thereof) rather than the odd lot market, resulting in a higher yield-to-maturity for the customers. AI represents that it is not the only broker-dealer selling STRIPS and, therefore, the prices it establishes must be competitive with the marketplace. AI establishes its price at least once daily, at 4 p.m. on the business day preceding the actual trade. On a day when the market is particularly volatile, AI may change its price more frequently. The posted price applies to all sales to all customers.

7. The applicant seeks an exemption to allow any Plan participant to direct AI to invest all or a portion of the balance in such participant's individually-directed account in STRIPS currently available to AI's regular customers in the normal course of business. The only commitment of Plan funds will be by an individual participant for his or her individual account. Neither AGI, nor AI nor any subsidiary will recommend the purchase of STRIPS nor will any employee of AI, AGI or any other subsidiary, do anything which will serve as a primary basis for investment decisions with respect to any Plan assets by an individual participant. If a participant selects a particular STRIP that is not in AI's inventory, AI will obtain such STRIP, if available, for resale to the participant.

8. AI will sell STRIPS to participants at the base price established by AI at 4 p.m. on the business day before the STRIPS are purchased by the participant or the cost price of a subsequent purchase.¹⁰ The use of cost prices will occur only in rare instances when the volume of orders greatly exceeds the amount of inventory. If the cost price is lower than the base price, that lower price will apply to all purchases. In addition, AI will not charge Plan

¹⁰ The cost price is defined as the actual purchase price at which AI acquires a STRIP.

participants any of the normal mark-ups or commissions that it would charge to regular customers in the ordinary course of business.

9. AI will provide written notice to each Plan participant explaining that such participant will be able to direct the purchase of STRIPS at any time and up to the level of AI's then present inventory of STRIPS. A participant's investment direction must be in writing in a form acceptable to AI. Such direction must specify the particular STRIP (including maturity date(s)), to be acquired, the quantity of each STRIP to be acquired and the security of securities to be sold from the participant's other investments to fund the purchase of the STRIP, if applicable. A participant may place a conditional order directing the purchase of STRIPS only if it could be obtained at below a maximum price or above a minimum yield. A participant will be able to rescind any order prior to the trade date by notifying AI. A participant may modify an order should there be insufficient funds to pay for the STRIPS as of the trade date. The minimum investment in STRIPS shall be \$1,000.

10. AI will execute the orders on a first come, first serve basis, in the same manner as AI processes its orders for its regular customers in the normal course of business. The actual purchase will be made as soon as practicable after receipt of a participant's investment direction.

11. The applicant represents that the proposed exemptions is in the Plan's best interest because: (a) The proposal merely makes available an additional investment option to Plan participants; (b) the participant may direct purchases only for his or her individual account; (c) the purchase prices of STRIPS will be set by external market conditions which are not within the control of AI; and (d) the amount paid by the participant for a particular STRIP will be below the price available to a regular customer of AI because there will be no mark-up or commission charged, whereas the normal market price available to a regular customer of AI is \$3 to \$22 per \$1,000 of face value above the price established and posted by AI for each particular STRIP on the trade date.

12. The applicant also requests an exemption to permit Plan participants to have the opportunity to sell any or all of the STRIPS in their account to AI at any time. If the STRIPS are sold through AI in a principal transaction, the sale prices for the STRIPS will be the sale prices that would be available for the same STRIPS sold by AI in the ordinary course of business to its regular customers on the date of sale. Plan

participants will not be charged any mark-up from the base sale price or commission. The trade will otherwise be executed in the same manner as a sale in the ordinary course of business by a regular customer of AI. Any decision to sell STRIPS prior to distribution from the Plan will be voluntarily made by a participant. In making the sale option available, neither AGI, nor AI nor any subsidiary will recommend that any participant sell any STRIPS.

13. In summary, the applicant represents that the proposed transactions meet the criteria of section 408(a) of the Act because: (a) The purchase and sale of the STRIPS will be on terms at least as favorable as those offered in the ordinary course of business to unrelated customers of AI; (b) no commissions or mark-ups will be charged to Plan participants on either the purchase or the sale of the STRIPS; (c) purchases and sales may be made by Plan participants at any time and only on the written direction of such Plan participant; and (d) the purchases and sales of the STRIPS directed by a participant will only be for that participant's individual account.

For Further Information Contact: Ms. Jan D. Broady of the Department, telephone (202) 523-8881 (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and

protective of the rights of participants and beneficiaries of the plan; and

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 9th day of June, 1989.

Robert J. Doyle,
Director of Regulations and Interpretations,
Pension and Welfare Benefits Administration,
U.S. Department of Labor.

[FR Doc. 89-14144 Filed 6-13-89; 8:45 am]

BILLING CODE 4510-29-M

[Prohibited Transaction Exemption 89-48; Exemption Application No. D-7673 et al.]

Grant of Individual Exemptions; Local 705 International Brotherhood of Teamsters Pension Fund, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemption.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1954 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a

public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1987, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1987) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 406(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

- (a) The exemptions are administratively feasible;
- (b) They are in the interests of the plans and their participants and beneficiaries; and
- (c) They are protective of the rights of the participants and beneficiaries of the plans.

Local 705 International Brotherhood of Teamsters Pension Fund (the Plan) Located in Chicago, Illinois

[Prohibited Transaction Exemption 89-48; Exemption Application No. D-7673]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the purchase by the Plan of certain real property located at 300 South Ashland Avenue in Chicago, Illinois from the Local 705 Building Corporation, a party in interest with respect to the Plan; provided that all terms of such transaction are at least as favorable to the Plan as those which the Plan could obtain in an arm's length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 20, 1989 at 54 FR 16018.

For Further Information Contact: Ronald Willett of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

John Deere Optional Life Insurance Plan (the Plan) Located in Moline, Illinois

[Prohibited Transaction Exemption 89-49; Exemption Application No. D-7680]

Exemption

The restrictions of section 406(a) and (b) of the Act shall not apply to the reinsurance of risks and the receipt of premiums therefrom by John Deere Life Insurance Company (JDLIC) from the insurance contracts sold by Connecticut General Life Insurance Company, or another life insurance company unrelated to Deere & Company (Deere), to provide life insurance benefits to participants of the Plan, provided the following conditions are met:

- (a) JDLIC—
 - (1) Is a party in interest with respect to the Plan by reasons of a stock or partnership affiliation with Deere that is described in section 3(14) (E) or (G) of the Act.
 - (2) Is licensed to sell insurance or conduct reinsurance operations in at least one of the United States or in the District of Columbia.
 - (3) Has obtained a Certificate of Authority from the Department of Insurance of its domiciliary state, Illinois, which has neither been revoked nor suspended, and
 - (4)(A) Has undergone an examination by an independent certified public accountant for its last completed taxable year immediately prior to the taxable year of the reinsurance transaction; or
 - (B) Has undergone a financial examination (within the meaning of the law of its domiciliary state, Illinois) by the Superintendent of Insurance for the State of Illinois within 5 years prior to the end of the year preceding the year in which the reinsurance transaction occurred.

(b) The Plan pays no more than adequate consideration for the insurance contracts;

(c) No commissions are paid with respect to the direct sale of such contracts, or the reinsurance thereof; and

(d) For each taxable year of JDLIC, the gross premiums and annuity considerations received in that taxable year by JDLIC for life and health insurance or annuity contracts for all employee benefit plans (and their employers) with respect to which JDLIC is a party in interest by reason of a relationship to such employer described in section 3(14) (E) or (G) of the Act does not exceed 50 percent of the gross premiums and annuity considerations received for all lines of insurance (whether direct insurance or

reinsurance) in that taxable year by JDLIC. For purposes of this condition (d):

(1) The term "gross premiums and annuity considerations received" means as to the numerator the total of premiums and annuity considerations received, both for the subject reinsurance transactions as well as for any direct sale or other reinsurance of life insurance, health insurance or annuity contracts to such plans (and their employers) by JDLIC. This total is to be reduced (in both the numerator and denominator of the fraction) by experience refunds paid or credited in that taxable year by JDLIC.

(2) All premium and annuity considerations written by JDLIC for plans which it alone maintains are to be excluded from both the numerator and denominator of the fraction.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 20, 1989 at 54 FR 16018.

EFFECTIVE DATE: This exemption is effective January 1, 1983.

For Further Information Contact: Gary H. Lefkowitz of the Department, telephone (202) 523-8881 (This is not a toll-free number.)

Pillsbury, Madison & Sutro Keogh Plan (the Keogh Plan) Located in San Francisco, CA

[Prohibited Transaction Exemption 89-50; Exemption Application No. D-7741]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed loan of up to \$10 million by the Keogh Plan to Pillsbury, Madison & Sutro, provided that the terms of the transaction are not less favorable to the Keogh Plan than those obtainable in an arm's-length transaction with an unrelated party.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 20, 1989 at 54 FR 16022.

For Further Information Contact: Mrs. B.S. Scott of the Department, telephone (202) 523-8194 (This is not a toll-free number.)

Auto-Chlor System of Washington, Inc. Profit Sharing Retirement Plan (the Plan) Located in San Jose, California

[Prohibited Transaction Exemption 89-51; Exemption Application No. D-7777]

Exemption

The restrictions of section 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash by the Plan of certain real property (the Real Property) to Jerry L. Ivy, a party in interest with respect to the Plan, provided that the price paid be no less than the fair market value of the Real Property on the date of sale.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on January 19, 1989 at 54 FR 2244.

For Further Information Contact: Joseph L. Roberts III of the Department, telephone (202) 523-8881. (This is not a toll-free number.)

Merrill, Lynch, Pierce, Fenner & Smith Inc. Prototype Individual Self-Employment Retirement Plan (the Plan) Located in Greensboro, North Carolina

[Prohibited Transaction Exemption 89-52; Exemption Application No. D-7899]

Exemption

The sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the cash sale to the Plan of 125 shares of stock (the Shares) in Precision Fabrics Group Inc. by Charles H. Flynt, Jr., the sole participant in the Plan; provided that the sale price for the Shares is no greater than the fair market value of the Shares on the date of the sale.¹

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on April 26, 1989 at 54 FR 18047.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 523-8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

¹ Because Mr. Flynt is the sole participant in the Plan there is no jurisdiction under Title I of the Employee Retirement Income Security Act of 1974 (the Act) pursuant to 29 CFR 2510.3-3(b). However, there is jurisdiction under Title II of the Act pursuant to 4975 of the Code.

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 9th day of June, 1989.

Robert J. Doyle,

Director of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 89-14145 Filed 6-13-89; 8:45 am]

BILLING CODE 4510-29-M

NUCLEAR REGULATORY COMMISSION

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be

issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from May 18, 1989 through June 2, 1989. The last biweekly notice was published on May 31, 1989 (54 FR 23306).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW.,

Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By July 14, 1989 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of

the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the

Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: April 28, 1989.

Description of amendment request: The proposed amendments would delete the organization charts from Technical Specifications (TS), incorporate organizational changes to Section 6.0, Administrative Controls, and update TS Section 6.5.4.9 to reflect current 10 CFR 50.72 and 10 CFR 50.73 reporting requirements.

Basis for proposed no significant hazard consideration determination: The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3)

involve a significant reduction in a margin of safety. The Carolina Power & Light Company (CP&L) has reviewed the proposed changes to the Brunswick Steam Electric Plant Technical Specifications and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because deletion of the organization charts, updating of individual titles, and removal of two Plant Nuclear Safety Committee (PNSC) members from the Technical Specifications does not affect plant operation. As in the past, the NRC will continue to be informed of organizational changes through other required controls. The Code of Federal Regulations, Title 10, Part 50.34(b)(6)(i) requires that the organizational structure be included in the Final Safety Analysis Report (FSAR). Chapter 13 of the FSAR provides a description of the organization and detailed organization charts. As required by 10CFR5071(e), the company submits annual updates to the FSAR. Appendix B to 10CFR50 and 10 CFR 50.54(a)(3) govern changes to the organization described in the Quality Assurance Program. Some of these organizational changes require prior NRC approval. Also, it is CP&L's practice to inform the NRC of organizational changes affecting the nuclear facilities prior to implementation. The company intends to continue this practice for future organizational changes.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed changes are administrative in nature and involve no physical alterations of plant configuration or changes to setpoint or operating parameters.

3. The proposed amendment does not involve a significant reduction in the margin of safety because CP&L, through its Quality Assurance Programs, its commitment to maintain only qualified personnel in positions of responsibility, and other required controls assure that safety functions will be performed at a high level of competence.

Therefore, removal of the organization charts from the Technical Specifications will not affect the margin of safety.

Also, revising Section 6.0 to reflect current organization by revising individual titles, removing two Plant Nuclear Safety [Committee] (PNSC) members, and adjusting the quorum requirements will not affect the function of the organization or PNSC. The PNSC will continue to review, overview, evaluate, and maintain plant operational safety; therefore, the margin of safety will not be affected.

Updating the Technical Specifications to reflect current 10 CFR 50.72 and 10 CFR 50.73 reporting requirements which superseded the old reporting requirement of 24-hour written notification will not affect the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and,

therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. In addition, the NRC staff has observed from the proposed amendment that two members to be removed from the PNSC quorum are: Manager of Technical and Administrative Support and Assistant to Plant General Manager. These two positions had been dissolved due to a recent reorganization; however, the technical expertise on the PNSC quorum remains the same as before and, therefore, the effectiveness of the PNSC to evaluate changes to the plant operational safety issues will not be affected. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297. **Attorney for licensee:** R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602.

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: May 1, 1989.

Description of amendment request: The amendments would permit the licensee to use any Type A Containment Integrated Leak Rate Test methodology permitted by Appendix J of 10 CFR Part 50. Currently, the licensee can only use the "Mass Point" method, in accordance with the Technical Specifications. Appendix J permits the Total Time method, the Point-to-Point method, or the Mass Point method. The modified technical specification would simply reference Appendix J.

Basis for proposed no significant hazard consideration determination: The Commission has provided standards for determining whether a no significant hazard consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of

a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The Carolina Power & Light Company (CP&L) has reviewed the proposed changes to TS and has determined that the requested amendment does not involve a significant hazards consideration for the following reasons:

1. The proposed amendment does not involve a significant increase in the probability of any accident previously evaluated. ANSI N45.4-1972 specified data analysis methodologies (Total Time or Point-to-Point), ANSI/ANS 56.8-1987 specified Mass Point data analysis methodology, and BN-TOP-1, Revision 1, specified reduced duration criteria, using the Total Time data analysis method. Each of these is an NRC Staff endorsed methodology for the calculation of primary containment integrated leakage rates during tests. These methods, or any other calculational method used to determine containment leakage rate during testing, are not considered to be an initiator of any accident previously evaluated.

The proposed amendment does not involve a significant increase in the consequences of any accident previously evaluated. As stated in 10CFR50, Appendix J, the purpose of the required tests is to assure that "...leakage through the primary reactor containment and systems and components penetrating primary containment shall not exceed allowable leakage rate values..." 10CFR50, Appendix J endorses the data analysis methodologies (Total Time and Point-to-Point) specified in ANSI N45.4-1972 as well as the Mass Point method specified in ANSI/ANS 56.8-1987. Thus, the proposed change meets the purpose of the rule and therefore, does not significantly increase the consequences of a previously evaluated accident.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed amendment only provides for the use of NRC Staff endorsed and approved methodologies for the calculation of containment leakage rates during tests. No possibility of a new or different kind of accident is created since the technique used to calculate leak rates during tests, in itself, it not considered to be an initiator of an accident, transient, incident, or event.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed amendment allows BSEP to use either BN-TOP-1, Revision 1, which requires use of the Total Time method when performing reduced duration tests, or the Mass Point method with a minimum test duration of 24 hours.

As stated in the NRC February 17, 1988 SER, "The Mass Point method has been recognized by the professional community as superior to the two other methods, Point-to-Point and Total Time, which are referenced in ANSI N45.4-1972 and endorsed by the current regulations." The preference is based on the fact that the Total Time method is

dependent on selection of the first point and its (sic) relation to the remaining points, while the Mass Point method places equal emphasis on each point. Therefore, with the Mass Point method, an error in the first point is not as critical. This means that the upper 95% confidence interval of the leakage for the Total Time method may be higher than that of the Mass Point method. However, this does not decrease the margin of safety in that the acceptance criteria of an integrated leak rate test is based on leakage at the upper 95% confidence interval being less than the acceptance criteria. Therefore, any data scatter in the Total Time method is accounted for in the statistical analysis and must be within set limits for the test to pass. Such an error would typically yield test results which would pass using the Mass Point method, but would not pass using the Total Time method. Thus, to successfully perform a reduced duration BN-TOP-1, Revision 1, test, the test data must be more consistent than what is required for successful performance of a Mass Point test. For this reason, CP&L has concluded that the proposed amendment does not significantly decrease the margin of safety.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Appendix J permits the use of any one of the three test methods. The TS change will reference Appendix J. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room
location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company,
Docket No. 50-261, H. B. Robinson
Steam Electric Plant, Unit No. 2,
Darlington County, South Carolina

Date of amendment request: April 27, 1989

Description of amendment request:
The request proposes to amend the Technical Specifications (TS) to add surveillance requirements to Table 4.1-3 for the automatic bus transfers on the auxiliary feedwater (AFW) system valve V2-16A and service water (SW) system valve V6-16C. The proposed change would require a refueling interval test of the thermal and magnetic trip of

elements of the molded case circuit breakers associated with valves V2-16A and V6-16C.

Basis for proposed no significant hazards consideration determination:
The Commission has provided standards for determining whether a no significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

Carolina Power & Light Company has reviewed the proposed TS change request and determined that this change does not constitute a significant hazards consideration based upon the following:

1. Operation of the facility, in accordance with the proposed amendment, would not involve a significant increase in the probability or consequences of an accident previously analyzed because the testing proposed is performed while the reactor is in cold shutdown/refueling and the systems tested are not required to be operable. In addition, there is no accident previously analyzed that is initiated by the AFW or SW systems components involved. Also, since no accidents for which AFW provides a mitigation function occur while the reactor is in cold shutdown/refueling, no accident consequences can increase. The SW valve involved is redundant to other valves which isolate cooling to the nonsafety-related secondary system plant auxiliaries following a station blackout coincident with a Safety Injection actuation to minimize the nonsafety loads on SW during that event. The testing to be performed is done at a time when accidents coincident with station blackout are not postulated, therefore, no accident consequences can be increased.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated because no changes to existing equipment are involved, and the breakers being tested and their associated valves will be verified operable prior to returning the plant to a condition requiring their operability, therefore, no failure mechanisms are introduced.

3. Operation of the facility, in accordance with the proposed amendment, would not involve a significant reduction in a margin of safety since the testing noted will not alter any accident mitigating function required, and assures the breakers will perform their intended function. The existing margin of safety is preserved.

In addition, the proposed amendment is similar to Example II of amendments likely to involve no significant hazards consideration:

"[a] change that constitutes an additional ... control not presently included in the technical specifications," as published in the Federal Register on March 6, 1986.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposed to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room
location: Hartsville Memorial Library,
Home and Fifth Avenues, Hartsville,
South Carolina 29535.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Carolina Power & Light Company, et al.,
Docket No. 50-400, Shearon Harris
Nuclear Power Plant, Unit 1, Wake and
Chatham Counties, North Carolina

Date of amendment request: April 11, 1989

Description of amendment request:
The proposed Technical Specification changes will revise the limit of maximum fuel enrichment. This amendment request deals only with handling and storage of the higher enriched fuel. Plant operation using the higher enriched fuel will be demonstrated to be acceptable by a cycle specific reload safety evaluation performed prior to fuel loading. Specifically, the proposed changes will be as follows: (1) change Technical Specification 5.3.1, which currently requires that reload fuel have a maximum enrichment of 4.20 weight percent U-235, to allow a maximum enrichment of 5.0 weight percent U-235; (2) add to Technical Specification 5.6.1, concerning design requirements of the Spent Fuel Storage Racks, an additional requirement to require that a maximum core geometry infinite multiplication factor for PWR fuel assemblies be less than or equal to 1.470 at 68° F; and (3) revise the numbering sequence of Section 5.6.1, Criticality, to eliminate duplicate specification numbers.

Basis for proposed no significant hazards consideration determination:
The Commission has provided standards in 10 CFR 50.92(c) for determining whether a significant hazards consideration exists. A

proposed amendment to an Operating License for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

As required by 10 CFR 50.91(a), the licensee has provided the following no significant hazards consideration determination:

1. The proposed changes relate only to the consequences of an accident as they do not in any way impact the manner in which any systems or components involved in the initiation of an accident function. To evaluate the impact on consequences, three distinct areas are covered: 1) maintaining the fuel rack Keff less than or equal to 0.95; 2) maximum heat load generated by the fuel in the fuel pools; and 3) impact on radiological dose.

The proposed change specifies a new Technical Specification requirement on the maximum reactivity an assembly may have at any time in its life. Credit can be taken for burnable poison integral to the fuel in determining an assembly's reactivity.

This new requirement assures that Keff will remain below 0.95 in the fuel racks; therefore, the consequences of storage of higher enriched fuel remains unchanged.

An evaluation has been performed to determine the impact of higher enriched fuel on the pool heat load analysis presented in the FSAR.

An evaluation assuming batch average discharge exposures up to 50,000 MWD/MTU (lead rod exposures of 60,000 MWD/MTU) has shown that the current heat loads assumed in the FSAR remain bounding.

Westinghouse has performed an evaluation to determine the potential impact of higher enrichment (and burnup) on the radiological consequences of the accidents presented in the FSAR. They have concluded that the impact of enrichments up to 5.0 w/o and lead rod burnups up to 60,000 MWD/MTU can be bounded by assuming a 4 percent increase in radiological dose. The potential increase in consequences is not significant based on the large margins to the 10CFR100 limits present in the existing analyses. Furthermore, it is concluded that if one takes into consideration that the current FSAR analyses are based on a power level of 2900 MWT (for determining fission product inventory in the gap) instead of 2775 MWT, the current FSAR radiological dose consequences are bounding.

The changes to the numbering sequence of Section 5.6.1 are administrative in nature and, therefore, cannot involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create any new scenarios for system or equipment malfunctions. The changes are integral to the fuel and do not create any new

or special handling, storage, or operating concerns.

The changes to the numbering sequence of Section 5.6.1 are administrative in nature and, therefore, cannot create the possibility of a new or different kind of accident.

3. The proposed changes do not result in a significant reduction in the margin of safety. Evaluations have been performed that show the Keff in the racks can be maintained less than 0.95, that the change will not result in any spent fuel pool heat loads greater than those previously analyzed and that radiological dose consequences remain well within the 10CFR100 guidelines, and are not significantly different than those currently reported.

The licensee has concluded that the proposed amendment meets the three standards in 10 CFR 50.92 and, therefore, involves no significant hazards consideration.

The NRC staff has made a preliminary review of the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Accordingly, the Commission proposes to determine that the requested amendment does not involve a significant hazards consideration.

Local Public Document Room
location: Cameron Village Regional
Library, 1930 Clark Avenue, Raleigh,
North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

NRC Project Director: Elinor G. Adensam

Commonwealth Edison Company,
Docket Nos. 50-454 and 50-455, Byron
Station, Unit Nos. 1 and 2, Ogle County,
Illinois

Date of application for amendments:
April 7, 1989

Description of amendments request:
These amendments would remove two motor operated valves from Technical Specification Tables 3.8-2a and 3.8-2b.

Basis for proposed no significant hazards consideration determination:
The staff has evaluated this proposed amendment and determined that it involves no significant hazards consideration. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant safety hazards considerations if operation of the facility in accordance with the proposed amendment would not:

1. Involve a significant increase in the probability or consequence of an accident previously evaluated; or
2. Create the possibility of a new or different kind of accident from any accident previously evaluated; or
3. Involve a significant reduction in a margin of safety.

The proposed amendment removes motor-related valves OSX063A and OSX063B from Technical Specification Tables 3.8-2a and 3.8-2b. A modification was performed which converted the valves from motor-operated valves to manual valves by removing the electrical connections. The valves are maintained locked open and no longer require thermal overload protection devices and, therefore, do not meet the criteria for inclusion in Specification 3.8.4.2.

The basis for operability of the thermal overload protective devices on motor-operated valves is to ensure that these devices will not prevent safety related valves from performing their function. These valves are the essential service water inlet valves to the control room chillers. These valves were originally designed to isolate essential service water from the chillers if the essential service water temperature was near freezing. It has been determined that this function was not necessary because essential service water temperatures during winter conditions do not decrease to a point requiring chiller isolation. The modification converted the motor-operated valves to manual locked open valves, thereby, ensuring an essential service water supply to the control room chillers and minimizing the potential of an electrical or mechanical failure interrupting the water supply. Since the valves perform their required function and no longer have thermal overload protective devices, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously analyzed. The proposed amendment is essentially administrative in nature, removing valves from a Technical Specification table that no longer applies. This amendment does not affect the valves' functional ability to provide essential service water to the control room chillers.

The proposed amendment does not involve a significant reduction in the margin of safety. The change to the Technical Specifications is administrative and does not affect a margin of safety. Converting the valves from motor-operated to manual locked open enhances their reliability to provide essential service water to the control room chillers, since the service water supply path is less susceptible to electrical or mechanical failures.

Therefore, based upon the above analysis, the staff concludes that the proposed amendment to the Technical Specification does not involve a significant hazards consideration.

Local Public Document Room
location: The Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101.

Attorney to licensee: Michael Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Commonwealth Edison Company, Docket Nos. 50-237 and 50-249, Dresden Nuclear Power Station, Unit Nos. 2 and 3, Grundy County, Illinois

Date of application for amendment request: December 21, 1988 as supplemented May 4, 1989.

Description of amendment request: The December 21, 1988 application was previously noticed in the **Federal Register** on May 17, 1989 [54 FR 21300]. As originally submitted, the proposed amendment would remove excessive testing requirements for other systems or subsystems of the Emergency Core Cooling Systems or Standby Gas Treatment Systems when one system or subsystem is inoperable. The current supplement to the original submittal provides clarification to the wording of the footnote in proposed Table 4.5.1 concerning High Pressure Coolant Injection (HPCI) surveillance requirements and clarification of how the proposed amendment meets the intent of Standardized Technical Specification Section 4.5.1 provisions related to the Emergency Core Cooling System line "keep fill" requirements and valve position verifications. In addition, the following two changes were requested in this submittal to be added to the proposed amendment. One change proposes that a surveillance requirement (SR) be added to the Containment Cooling Service Water System (CCSW), to assure system readiness that is similar to the Standard Technical Specification for the Residual Heat Removal Service Water System (STS SR 4.5.1.a.3). The second change which is purely administrative inserts the words "not used" under Section 3/4.5.G to indicate that it was deleted by a previous amendment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility

in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application as follows:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The additional LCO action statement for the HPCI system and proposed SR for the CCSW system aid in the early detection of potential inoperability of essential systems. These additions and the Technical Specification Section 3/4.5.G administrative change will not affect the probability of any accident previously evaluated.

(2) Create the possibility of a proposed or different kind of accident from any previously evaluated because:

No new modes of operation will be created by these changes nor will the plant be allowed to operate beyond prescribed limits. These supplemental changes to the previously proposed amendment are all enhancements or administrative in nature. Therefore, the probability of new or different accidents has not been created.

(3) Involve a significant reduction in the margin of safety because: Implementing the proposed supplemental changes will not create any challenge to the existing safety analyses. The addition of valve position verifications can only aid in the early detection of inoperability of the CCSW system. The proposed HPCI system LCO action statement will not allow reactor startup to continue until HPCI operability is assured. The Technical Specification Section 3/4.5.G change is purely administrative. Therefore, the margin of safety is maintained.

The staff has reviewed the licensee's no significant hazards analyses given above. Based on this review, the staff proposes to determine that the proposed amendments meet the three 10 CFR 50.92(c) standards and do not involve a significant hazards consideration.

Local Public Document Room
location: Morris Public Library, 604 Liberty Street, Morris, Illinois 60450.

Attorney for licensee: Michael L. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60603.

NRC Project Director: Daniel R. Muller

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: December 28, 1988, as clarified May 10, 1989

Description of amendment request:

The proposed amendment would revise Technical Specification 4.16 to add a new surveillance test for the Safety Injection System low head injection line check valves 897A-D and Residual Heat Removal check valves 838A-D. The proposed amendment would also make certain editorial changes (e.g., delete underlines, add commas, move text to another page, etc.) which are administrative in nature.

Basis for proposed no significant hazards consideration determination:

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided the following analysis of the proposed changes:

In accordance with the requirements of 10 CFR §50.92, the proposed Technical Specification changes are deemed to involve "no significant hazards considerations."

1. Operation of Indian Point Unit 2 in accordance with these changes would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed Technical Specification test requirement is currently required by the February 11, 1980 Confirmatory Order Item A.5. This proposed amendment merely transfers the test requirement from the Confirmatory Order to the Indian Point Unit 2 Technical Specifications. Moreover, the consequences of doing or not doing this testing have been previously reviewed by NRC in various submittals; namely our March 14, 1980 response to NRC's February 25, 1980 Generic Letter "LWR Primary Coolant System Pressure Isolation Valves, and NRC's Confirmatory Order dated February 11, 1980 and subsequent Commission rescission of that Order dated July 5, 1985. By committing to test the SIS low head injection line check valves 897A-D and the RHR check valves 838A-D whenever RCS pressure has decreased to within 100 psig of the RHR system design pressure, the probability of coincident disc rupture of the two series check valves, as analyzed in the Indian Point Probabilistic Safety Study (IPSS), is reduced to approximately 2.9×10^{-7} /reactor year from 4.4×10^{-6} /reactor year. The latter value is based on IPSS methodology using five year average failure rates to represent the "no testing" case, which is consistent with WASH-1400. Since Indian Point Unit 2 has a normally closed motor-operated valve in the

injection flow path in addition to the two series check valves, the probability of an intersystem loss-of-coolant accident (Event V) via this path, as analyzed in the IPSS, is further reduced to approximately 2.6×10^{-9} /reactor year. All failure rates quoted above are mean values.

2. Operation of Indian Point Unit 2 in accordance with these changes would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed Technical Specification test requirement is currently required by NRC's February 11, 1980 Confirmatory Order. Item A.5, and is required to address the intersystem loss-of-coolant accident (Event V) identified in the WASH-1400.

By transferring the requirement to perform the particular test from the Order Item A.5 to the Technical Specifications, a new or different kind of accident from that previously evaluated cannot be created.

3. Operation of Indian Point Unit 2 in accordance with these changes would not involve a significant reduction in a margin of safety.

The proposed Technical Specification test requirement, which is currently required by the February 11, 1980 Confirmatory Order Item A.5, does not reduce nor change the margin of safety from that existing now. The proposed amendment only transfers the requirement to perform the particular test from the Order Item A.5 to the Technical Specifications. It has previously been demonstrated that by performing the test the margin of safety increases.

The Commission has provided guidance concerning the application of the standards for determining whether "significant hazards considerations" exist by providing certain examples at 48 FR 14870 (April 6, 1983; Interim Final Rule) and at 51 FR 7744 (March 6, 1986; Final Rule).

Example (ii) of 51 FR 7744 (Vol. 51, No. 44, Page 7751), which applies to the addition of the surveillance requirement in the Indian Point Unit 2 Technical Specifications, states: "(ii) a change that constitutes an additional limitation, restriction, or control not presently included in the technical specifications, e.g., a more stringent surveillance requirement."

In addition, example (i) of 51 FR 7744, which applies to the editorial changes, states:

"(i) A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature."

Therefore, since this application for amendment satisfies the criteria specified in 10 CFR §50.92, and is similar to examples for which no significant hazards considerations exist, the licensee has made a determination that the application involves no significant hazards considerations.

The staff agrees with the licensee's analysis. Therefore, based on the above, the staff proposes that the proposed amendment will not involve a significant hazards consideration.

Local Public Document Room
location: White Plains Public Library,

100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003

NRC Project Director: Robert A. Capra

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: April 28, 1989

Description of amendment request:

The proposed amendments would change the elevation at which seismic monitor 1MIMT 5010 is located from 613' + 8 9/16" to 588' + 6 1/8". This elevation is stated in Item 2.a. of Technical Specification (TS) Tables 3.3-7 and 4.3-4. The relocation of the monitor was required because of operability concerns associated with its previous location. A description of the inoperability and the plans to relocate the monitor were submitted by Duke Power Company in a special report dated February 24, 1989. The changes are applicable to Unit 1 only. Unit 2 is included administratively because the TSs are combined in one document for both units.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated because the new location of the monitor meets the intent of Regulatory Guide 1.12. The monitor will be operable and capable of performing its intended safety function. The new location would not have any impact on the operation of station and would not affect the previously evaluated accidents.

The proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated because the monitor relocation would not introduce any new modes of operation.

Moreover, the monitor would be operable and capable of performing its intended safety function.

The proposed amendments would not involve a significant reduction in a margin of safety because the proposed changes would alleviate the operability concern of the monitor. As such, they may enhance the safety margin.

Based on the above considerations, the Commission proposes to determine that the proposed amendments do not involve a significant hazards consideration.

Local Public Document Room
location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: May 9, 1989

Description of amendment request: The proposed amendment would revise the Technical Specifications and associated Basis pages to permit use of upgraded Westinghouse fuel design in fuel cycle 8 and future cycles. The upgraded fuel design features include the VANTAGE 5H design features, reconstitutable top nozzles, debris filter bottom nozzles, snag resistant grids and standardized fuel pellets. The licensee provided a Westinghouse report titled "Plant Safety Evaluation for Beaver Valley Power Station Unit 1 Fuel Upgrade and Increased Peaking Factors" to support the requested changes.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in accordance with 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazard consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee stated that the proposed changes have been assessed from a core design and safety analysis standpoint.

Extensive reanalyses were undertaken to demonstrate compliance with the revised technical specifications. The methods used to perform the analyses have been previously approved by the NRC. The results, which include transition core effects, show changes in the consequences of accidents previously evaluated. The results are all within NRC acceptance criteria. The major components that determine the structural integrity of the fuel assembly are the grids. Mechanical testing and analysis of the VANTAGE 5H Zircaloy grid and fuel assembly have demonstrated that the VANTAGE 5H structural integrity under seismic/LOCA loads will provide margins comparable to the currently used STD 17 x 17 fuel assembly design and will meet all design bases. Therefore, the proposed amendment does not result in an increase in the probabilities or consequences of a previously evaluated accident.

The proposed changes are improvements over, and are comparable to the existing core design. These changes do not significantly affect the overall method and manner of plant operation. Thus no new accidents could result from these changes.

Finally, while new analyses were performed, the acceptance criteria would not be changed from existing criteria. The new analyses show that the upgraded core design results in no significant change in safety margin.

The staff therefore proposes to determine that the requested amendment involves no significant hazards considerations.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of amendment request: May 4, 1989

Description of amendment request: The proposed amendment would revise the reactor trip system overtemperature delta T and overpower delta T response times listed in Table 3.3-2 from 4.0 seconds to 5.5 seconds. The current design basis requirements for each of these reactor trip total response time is 6.0 seconds. This total response time is defined as the delay from when the temperature in the reactor coolant loop

exceeds the trip setpoint until the control rods are free to fall into the core. An evaluation of the results of the initial startup test indicated that the 6.0 second time response assumed in the FSAR was not met. The licensee determined that the control rods were responding slower than expected. The proposed amendment would increase the above response times by 1.5 seconds to accommodate the slower response.

The licensee has evaluated the design-basis accidents affected by this increase and concluded that the negative effects on the consequences on these accidents are minimal and that all safety acceptance criteria continue to be met.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists in accordance with 10 CFR 50.92(c). A proposed amendment to an operating license for a facility involves no significant hazard consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

As stated above, since reanalyses of design-basis accidents show that the increased response times have minimal effects, it follows that the proposed amendment would not involve any increase in the probability or consequences of previously analyzed accidents.

No hardware, software or operational procedures are changed. Hence no new accidents could be created. Finally, since no previously analyzed accidents are affected, no safety margins need to be reduced.

The staff therefore proposes to determine that the requested amendment involves no significant hazards considerations.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of amendment request: May 9, 1989

Description of amendment request: The proposed amendment revises the action requirements and surveillance requirements of Technical Specification 3/4.6.1.6, "Containment Structural Integrity" and its bases. The proposed changes to action requirements would eliminate unnecessary shutdowns by allowing for the performance of engineering evaluations of non-conforming conditions. The proposed changes to surveillance requirements incorporate plant-specific design, installation, and material considerations, and provide greater detail regarding test methods and acceptance criteria.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change revises the action requirements and surveillance requirements of the Containment Structural Integrity Technical Specifications. The change does not involve any physical alteration of the containment or any change to a setpoint or operating parameter. The change does not add any new equipment which could be the source of a malfunction or accident. Since the change does not affect equipment involved in the initiation of previously evaluated accidents, the probability of such accidents is not increased. With respect to the consequences of previously evaluated accidents, the change ensures that the mitigation capability of the containment is not decreased. The proposed changes to action statements b and c are as restrictive as those in the current Technical Specifications in the sense that a condition of significant structural integrity degradation is

required to be corrected within 72 hours or the unit(s) shut down. For conditions not involving significant degradation, the proposed action statements do not dictate unit shutdown; however, continued structural capability is required to be verified within 72 hours. The proposed action statements continue to require an engineering evaluation of deviations from acceptance criteria. The proposed surveillance requirements provide greater detail regarding test methods and acceptance criteria, and incorporate Vogtle-specific design, installation, and material considerations. Removal of the upper limit on lift-off forces eliminates needless entry into an action statement for a condition not involving abnormal degradation. Revisions to tendon detensioning and retensioning requirements minimize the possibility of damage during testing. Performing visual inspections of end anchorages and adjacent surfaces during tendon surveillance as opposed to during Type A testing will result in more uniform application of test criteria. Based on the above discussion, the proposed action requirements and surveillance requirements assure that containment structural integrity will be maintained at or above the level required by the current Technical Specifications. The containment will, therefore, continue to be capable of mitigating accidents as discussed in FSAR Chapters 6 and 15. Hence, the consequences of previously evaluated accidents are not increased.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The change does not add any new equipment to the plant or require any existing equipment to be operated in a different manner from which it was designed to operate. Since a new failure mode is not introduced by the change, a new or different kind of accident could not result.

3. The proposed change does not involve a significant reduction in a margin of safety. The change does not affect any safety limits or limiting safety system settings. The change does not involve a reduction of acceptance criteria where the potential for significant structural integrity degradation exists. The proposed action statements and surveillance requirements assure that the capability to withstand the maximum containment pressure of 41.9 psig in the event of a main steam line break is maintained over the life of the facility. Margins of safety are therefore not decreased.

The NRC staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards considerations.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Candler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043.

NRC Project Director: David B. Matthews

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: April 24, 1989

Description of amendment request: The proposed amendment would revise Specification 3.12.A.1.b to correctly identify the High Pressure Water Fire Protection System boundary. As currently written, this specification could be misinterpreted to imply the existence of water flow alarms on the hose station risers. System design includes water flow alarms on the water spray and sprinkler systems, but does not include such alarms on the hose station risers.

The design of the system has been reviewed and approved in the Fire Protection Safety Evaluation Report issued by the NRC on August 1, 1979. Additionally, the monthly surveillance requirements in Specifications 4.12.A and 4.12.D ensure the integrity of the hose station and riser.

Basis for proposed no significant hazards consideration determination: In accordance with the Commission's Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination the staff must establish that operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment and determined that it is purely administrative in nature and provides a clarification to the Technical Specifications. Operation of the James A. FitzPatrick Nuclear Power Plant in accordance with the proposed amendment would not involve a significant hazards consideration as stated in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The intent of the proposed change is purely administrative in nature to clarify the Technical Specifications. There are no changes to setpoints, safety limits, surveillance requirements, or limiting conditions for operation. These changes will have no impact on previously evaluated accidents.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change is purely administrative in nature and is intended to clarify and improve the quality of the Technical Specification. The change cannot create the possibility of a new or different kind of accident.

3. Involve a significant reduction in a margin of safety. The proposed changes are purely administrative in nature and clarify and improves the quality of the Technical Specifications. This change does not contain any setpoint or safety limit changes regarding isolation or alarms. The proposed change does not affect the environmental monitoring program. This change does not affect the plant's safety systems and does not reduce any safety margins.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: April 24, 1989

Description of amendment request: The proposed amendment would remove the Technical Specification (TS) requirement to perturb the reactor vessel water level as part of the monthly functional test for the reactor water low level scram instruments. The test involves changing the reactor water level setpoint using the feedwater control system and visually noting that the level change is reflected by appropriate level instruments. The licensee noted that the test is an operational inconvenience, is not a regulatory requirement, is not required by the Standard Technical Specifications, and is superfluous to the existing level instrument checks required by TS Section 4.1, Table 4.1-1, Note (8). Specifically, the proposed amendment would remove the reference to Note (5) from Table 4.1-1 on page 44 and delete Note (5) from the "Notes for Table 4.1-1" on page 45a.

Basis for proposed no significant hazards consideration determination: In accordance with the Commission's

Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination the staff must establish that operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed TS change and determined that they are administrative in nature and promote consistency with the Standard Technical Specifications. The proposed changes do not involve modification of any existing equipment, systems, or components; nor do they alter the conclusions of the plant's accident analyses or radiological release analyses. Further, operation of the FitzPatrick Plant in accordance with the proposed amendment would not involve a significant hazards consideration as stated in 10 CFR 50.92 since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed Technical Specification changes to delete the requirements in Table 4.1-1 to perturb the reactor water level after functional tests of water level scram instruments is administrative in nature. The operability of the level sensors and trip channels are being adequately verified by other surveillance requirements which are consistent with the RPS design basis, the Standard Technical Specifications, and the vendor's (GE) recommendations for ATTS components (General Electric Topical Report NEDO-21617-A and accompanying NRC letter of approval dated June 27, 1978).

The proposed changes do not involve modification of any existing equipment, systems, or components; nor do they alter the conclusions of the plant's accident analyses or radiological release analyses as documented in the FSAR or the NRC Staff's SER.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes are administrative in nature and do not introduce any new failure modes. They do not involve modification to any of the plant's equipment, systems, or components; nor do they place the plant in an unanalyzed configuration.

3. Involve a significant reduction in a margin of safety. The proposed changes affect the capability for checking the operational availability of the sensor inputs to the Reactor Protection System (RPS). Consistent with the IEEE-279-1971, the deletion of the perturbation requirement does not degrade the RPS design basis because each of the reactor water level sensors are

being cross-checked with each other on a daily basis. The proposed change deletes a superfluous testing requirement and does not involve modification of the plant's systems, equipment, or components.

The staff has reviewed the licensee's no significant hazards consideration determination. Based on the review and the above discussion, the staff proposes to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of amendment request: May 5, 1989

Description of amendment request: Increase the channel functional test surveillance intervals for various Control Rod Block instrumentation.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. In accordance with 10 CFR 50.92 the licensee has reviewed the proposed changes and has concluded as follows that they do not involve a significant hazards consideration:

1. Do not involve a significant increase in the probability or consequences of an accident previously evaluated.

As detailed in NEDC-30851P-A, Supplement 1 the sequence of events necessary for an unmitigated rod withdrawal error includes failure of the Local Power Range Monitor (LPRM), failure of the Average Power Range Monitor (APRM) upscale trips, failure of the APRM upscale rod block, dual channel failure of the Rod Block Monitor, and of course operator failure to recognize and respond to any of these events. The BWR Owner's Group evaluated the impact of increased STIs on the probability of control rod block failure and concluded that a rather

small increase in scram frequency results. However, both the absolute and relative increase is acceptably low and offset by the benefits of extending the Reactor Protection System (RPS) test intervals [(see NEDC-30851P and the PSEA&G to NRC submittal dated February 9, 1989.)] Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability of an accident previously evaluated.

The consequences of an unmitigated rod withdrawal error were also addressed in NEDC-30851P-A, Supplement 1. Specifically, such an incident is very mild compared to the limiting reactivity accident - a control rod drop accident. The BWR Owner's Group indicated that the severity of a control rod drop accident bounds a rod withdrawal error due to the higher rate of reactivity addition. HCCS Updated Final Safety Analysis Report (UFSAR) Section 15.4.9 and Tables 15.4-15 and 15.4-21 provides the plant specific evaluation of the control rod drop accident. As a result of consequences of a rod withdrawal error were shown to be substantially less than those associated with a dropped rod accident and less than 1% of the specified site boundary dose limits. This low consequence combined with the low probability of an unmitigated rod withdrawal error results in a negligible increase in risk which is offset by decreased risks associated with reduced testing of rod block and RPS instrumentation.

2. Do not create the possibility of a new or different kind of accident from any previously evaluated.

The increased Control Rod Block surveillance test intervals do not alter the function of the instrumentation nor involve any type of plant modification. Additionally, no new modes of plant operation are involved with these changes. Therefore, it can be concluded that the proposed changes do not create the possibility of a new or different kind of accident than any accident previously evaluated.

3. Do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed and approved the generic study contained in Licensing Topical Report NEDC-30851P-A, Supplement 1 and has concurred with the BWR Owner's Group that the proposed changes do not significantly affect the reliability or availability of the Control Rod Block instrumentation. Hence it can be concluded that the proposed changes do not adversely affect plant safety margins.

The staff reviewed the licensee's determination that the proposed license amendment involves no significant hazards consideration and agrees with the licensee's analysis. Accordingly, the staff proposes to determine that the proposed license amendment does not involve a significant hazards consideration.

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Attorney for licensee: Troy B. Conner, Jr., Esquire, Conner and Wetterhahn,

1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Public Service Electric & Gas Company, Docket No. 50-311, Salem Generating Station, Unit No. 2, Salem County, New Jersey

Date of amendment request: May 5, 1989

Description of amendment request: The licensee proposes to revise Section 4.7.9.e.1 of the Salem Unit 2 Technical Specifications. The change will delete an aspect of mechanical snubber surveillance test acceptance criteria which requires a verification that the snubber drag force has not increased more than 50% since the previous functional test. This change was approved for Salem Unit 1 on an emergency basis on May 12, 1989.

Basis for proposed no significant hazards consideration determination: The existence of the 50% drag force increase criterion in the mechanical snubber inservice inspection program represents an unnecessary constraint on the verification of snubber operability. A snubber with a drag force greatly below the specified limit may experience an increase in drag force that is small in absolute terms, but exceeds 50% of the previous test result. This results in an increase in the test population under the present program.

The snubber manufacturer (Pacific Scientific) has published a test report related to mechanical snubber drag force loading (Test Report 871, dated April 13, 1984). The results of these tests indicate that an increase in drag force from one inspection period to the next does not establish a trend that can be used to predict pending snubber failure. The proposed change does not change the following aspects of the snubber surveillance program:

1. Visual inspections and associated acceptance criteria, which include manual certification of freedom of movement where possible.

2. Retesting of any snubbers and/or replacements which failed the previous test.

3. Testing of all snubbers of the same design as a snubber selected for functional testing that fails to move or fails to lockup due to a design or manufacturing defect.

4. Verification that the drag force is less than the specified allowable value.

5. Verification that activation is achieved within the range of velocity or acceleration specified for both tension and compression.

6. Verification of acceptable release rate or ability to withstand load without displacement, as applicable.

7. Compliance with ASME Section XI per Technical Specification 4.0.5.

The measures listed above comprise an adequate program for assuring snubber operability. Verifying that drag force is within its specified allowable limit (Item 4 above) is the primary means of determining that the drag force is acceptable. The requirement being deleted by this proposed change may cause an unnecessary increase in the snubber test population even if the drag force is well below the acceptance criteria. This represents an inappropriate use of resources and an increase in radiation worker exposure.

The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has analyzed the proposed amendment to determine if a significant hazards consideration exists:

- 1) Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The aspects of the snubber inspection program discussed in Section III) above address the needed snubber functional requirements and should therefore be deemed acceptable for determining snubber operability. The proposed change does not adversely affect the snubber inspection program. The relevant specified parameters for each snubber subjected to functional testing will still be verified to be within allowable limits. Consequently, the proposed change does not increase the likelihood of snubber inoperability, nor does it increase the adverse effects of such inoperability on the associated systems.

The snubbers are included in the system design to mitigate the effects of a seismic event and allow for thermal expansion of the piping. The functional testing described above will determine the capability of the snubber to meet these requirements. The 50% drag force load comparison currently required by Technical Specification 4.7.9.e.1 does not supplement the operability determination of the snubber and can be deleted without adverse impact on the associated system.

Therefore, it may be concluded that the proposed change does not involve a

significant increase in the probability or consequences of an accident previously evaluated.

- 2) Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change does not involve changes to the design or application of snubbers. It does not involve any design or configuration changes to the plant. No new accident scenarios or new component failure mechanisms are introduced. Therefore, it may be concluded that the proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

- 3) Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

Snubbers provide assurance that the structural integrity of the fluid systems subjected to dynamic loads is maintained. The margin of safety associated with snubbers is related to the specified allowable limits imposed on performance parameters, including maximum allowable drag force. This change proposes to delete a test acceptance criterion related to a change in the measured drag force, and does not increase the maximum allowable value. Therefore, it may be concluded that the proposed change does not involve a reduction in a margin of safety as defined by the Technical Specifications.

The staff has reviewed the licensee's submittal and significant hazards analysis and concurs with the licensee's determination that the proposed amendment does not involve a significant hazards consideration. Therefore, the staff proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Attorney for licensee: Mark J. Wetterhahn, Esquire, Conner and Wetterhahn, Suite 1050, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of amendment request: February 28, 1986, revised May 14, 1987, as supplemented August 31, 1988

Description of amendment request: The proposed Technical Specification amendment would change Table 3.6-1 of the Rancho Seco specifications. Table 3.6-1 contains a list of containment isolation valves with a notation

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indicating the maximum permissible closure time for each valve. The proposed change would include administrative changes to the table, add 12 previously installed valves to the table, decrease the maximum closure time for the reactor coolant pump seal return valve from 71 seconds to less than 60 seconds, and revise the maximum permissible closure time for selected valves. The maximum closure time for these valves is presently between 3 and 21 seconds and the proposed change would increase the permissible maximum closure time to 25 seconds.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

A discussion of these standards as they relate to the amendment request follows:

Standard 1 - Involve a Significant Increase in the Probability or Consequences of an Accident Previously Evaluated

The proposed amendment would increase the maximum closure time to 25 seconds for selected containment isolation valves that are not in direct flow paths from the containment atmosphere to the environment. The increase in closure time to 25 seconds of these selected isolation valves has, by licensee analysis, been determined to result in offsite doses that remain within 10 CFR Part 100.11 limits. The licensee determined that at a maximum closure time of 25 seconds, these selected containment isolation valves would not allow a radiation release to the Exclusion Area Boundary (EAB) or Low Population Zone (LPZ) during the worst accident condition (LOCA) that would exceed the limits of 10 CFR Part 100.11. This change would not involve an increase in the probability of an accident previously evaluated but does slightly increase the radiological releases above the values from the previous analysis. The licensee contends that the radiation releases to the EAB and LPZ under the worst

accident conditions would result in radiation exposures that are well below the guideline values allowed by 10 CFR Part 100.11.

The proposed amendment would decrease the maximum closure time of the reactor coolant pump seal return valve (SFV-24004) from 71 seconds to less than 60 seconds. This is a more restrictive requirement and complies with Standard Review Plan (SRP) 6.2.4, therefore, not increasing the probability or consequences of an accident.

The proposed amendment would add 12 valves to Table 3.6-1. These containment isolation valves were installed during the 1983 refueling outage and adding the valves to Table 3.6-1 is purely administrative.

Based on the above, the proposed amendment does not, therefore, significantly increase the probability or consequences of an accident previously evaluated.

Standard 2 - Create the Possibility of a New or Different Kind of Accident From Any Accident Previously Evaluated

The proposed amendment would not create the possibility of a new or different kind of accident from what had been previously evaluated. The increase of maximum closure times of the selected containment isolation valves does not introduce a design or operational change that could result in a new or different accident potential that would be worse than the LOCA already considered.

The proposed amendment would add 12 valves to Table 3.6-1. These containment isolation valves were installed during the 1983 refueling outage. Adding the valves to Table 3.6-1 does not change the function of the valves and is considered to be purely administrative.

Based on the above, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Standard 3 - Involve a Significant Reduction in a Margin of Safety

The proposed amendment would not involve a significant reduction in a margin of safety. Although increasing the maximum closure times of the containment isolation valves from the presently specified range of from 3 to 21 seconds, to 25 seconds, does represent a slight increase in exposure, licensee calculations confirm that there remains an adequate margin to the guideline exposures established in 10 CFR Part 100.11. Additionally, the proposed amendment would add 12 valves to Table 3.6-1. These containment isolation valves were installed during the 1983

refueling outage. Adding these valves to Table 3.6-1 does not affect the design bases or function of the valves, and is considered to be purely administrative. Based on the above, the proposed amendment does not involve a significant reduction in a margin of safety.

Based on the above reasoning, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Martin Luther King Regional Library, 7430 24th Street Bypass, Sacramento, California 95822.

Attorney for licensee: David S. Kaplan, Sacramento Municipal Utility District, 6201 S Street, P. O. Box 15830, Sacramento, California 95813

NRC Project Director: George W. Knighton

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: May 15, 1989 (TS 269)

Description of amendment requests: The proposed amendment would change the BFN technical specifications (TS) for Units 1, 2, and 3 to administratively revise the pilot cell voltage in 4.11.B.3.a(3). In addition, this proposed amendment would update TS SR 4.7.E.4 to include a newly installed damper in the control room emergency ventilation system.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. The proposed change does not involve a significant increase in the probability or consequence of any accident previously evaluated. These proposed changes do not change or amend any safety analysis for BFN.

Damper FCO-150 G is being added as a result of a Design Change Notice. This damper is required to close upon initiation of the control room emergency ventilation system (CREVS). Adding the damper to the CREVS system assists in the isolation function of the control room in the event of an accident requiring CREVS to operate. The

addition of this damper does not invalidate the safety analysis or bases in which BFN was licensed for.

The battery pilot cell voltage in BFN Surveillance Requirement 4.11.B.3.a(3) is currently 24 volts which is incorrect. The correct value is 2.0 volts. This is an administrative error which was not corrected in the BFN August 30, 1988 submittal. Changing this value is consistent with the current plant configuration which has been verified through surveillance testing. This change does not change the operation of any safety-related equipment. It only corrects an error in order to more accurately reflect the batteries currently installed in the plant.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The addition of the damper FCO-150 G, and changing the pilot cell voltage to 2.0 volts more accurately reflect the current design and operations of BFN. These changes do not create any new accident mode or release pathway of radioactive effluents to the environment.

3. The proposed amendment does not involve any significant reduction in a margin of safety. The proposed amendment brings the technical specifications more in compliance with the actual design and operation of BFN.

The addition of damper FCO-150 G, and changing the pilot voltage to read 2.0 volts are administrative in nature. Consistent with 10 CFR 50.36, damper FCO-150 G is being added to the TS. The addition of this additional damper not only reflects the current plant configuration but also provides additional isolation capability for the main control room. This will enhance the overall safety to the main control room operators. Revising the pilot cell voltage brings the current TS in compliance with the physical capabilities of the battery.

These changes provide an overall enhancement to plant safety with proper operation of plant equipment. These changes do not significantly decrease the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: May 15, 1989 (TS 270)

Description of amendment requests:

The proposed amendment would change the BFN technical specifications (TS) for Units 1, 2, and 3 to update surveillance requirement 4.6.A.3 and revise the Bases section 3.6/4.6 to comply with 10 CFR Part 50 Appendix H for reactor vessel test specimen testing frequency.

Basis for proposed no significant hazards consideration determination:

The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

1. The proposed change does not involve a significant increase in the probability or consequence of any accident previously evaluated. This is an administrative change in that it only updates the BFN technical specification to comply with the 10 CFR 50 Appendix H. This proposed amendment does not change or modify any safety related equipment, its operation, or safety analysis in which BFN is licensed for.

Updating the TS to ASTM E 185-82 increases the frequency for reactor vessel specimen withdrawal from 8 effective full power years (EFPY) to 6 EFPY. This increase in frequency does not involve any safety issue. The procedures and methods of with drawing these specimens will remain the same.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated. This change is administrative in that it only updates BFN reactor vessel specimen program to ASTM E 185-82. Implementation of this change does not change any equipment or modify any actions required for mitigation of any accident currently analyzed in the BFN FSAR. This change does not create any additional radiation release pathways to the environment.

3. The proposed amendment does not involve any significant reduction in a margin of safety. The change updates the BFN reactor vessel specimen withdrawal program in accordance with 10 CFR 50 Appendix H requirements. BFN has agreement with NRC to withdraw the first specimen from each unit after 8.0 EFPY. After the first specimen is pulled from each unit, subsequent specimens will be pulled at a 6.0 EFPY.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington,

DC 20555. Attention: Director, Division of Reactor Projects.

Alabama Power Company, Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of application for amendments: August 11, 1986, as supplemented July 22, 1987.

Description of amendments: The amendments extend the expiration dates of the licenses from August 16, 2012 to June 25, 2017 for Unit 1 and from August 16, 2012 to March 31, 2021 for Unit 2.

Date of issuance: May 19, 1989

Effective date: May 19, 1989

Amendment Nos.: 61 and 73

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Licenses.

Date of initial notice in Federal Register: September 24, 1986 (51 FR 33939). Because the July 22, 1987 submittal only clarified certain aspects of the original request, the substance of the changes noticed in the **Federal Register** and the proposed no significant hazards determination were not affected. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: George S. Houston Memorial Library, 212 W. Burdeshaw Street, Dothan, Alabama 36303.

Arizona Public Service Company, et al, Docket Nos. STN 50-528, STN 50-529 and STN 50-530, Palo Verde Nuclear Generating Station, Units 1, 2 and 3, Maricopa County, Arizona

Date of application for amendments: November 9, 1988

Brief description of amendments: The amendments revise Technical Specifications Section 3/4.4.5, "Reactor Coolant System Leakage" by changing the operability requirements of the containment radioactivity monitoring systems and the associated action statement.

Date of issuance: May 23, 1989

Effective date: May 23, 1989

Amendment Nos.: 43, 28, 17

Facility Operating License Nos. NPF-41, NPF-51 and NPF-74: Amendments changed the Technical Specifications.

Date of initial notice in Federal Register: March 8, 1989 (54 FR 9913). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 23, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Phoenix Public Library, Business and Science Division, 12 East McDowell Road, Phoenix, Arizona 85004.

Arkansas Power & Light Company, Docket No. 50-313, Arkansas Nuclear One, Unit 1, Pope County, Arkansas

Date of application for amendment: December 12, 1986

Brief description of amendment: This amendment changed the Arkansas Nuclear One, Unit 1 Technical Specifications to remove the text of several temporary specifications which are no longer applicable, regarding gross iodine determination, the sodium thiosulfate system, and the borated water storage tank. The amendment also made several changes to correct typographical errors, and revised wording to provide consistent terminology. It was noted that several of the typographical errors no longer existed and no change was therefore necessary.

Date of issuance: May 25, 1989

Effective date: May 25, 1989

Amendment No.: 121

Facility Operating License No. DPR-51. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 22, 1987 (52 FR 13333). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Arkansas Power & Light Company, Docket No. 50-368, Arkansas Nuclear One, Unit 2, Pope County, Arkansas

Date of applications for amendment: December 12, 1986

Brief description of amendment: This amendment changed the Arkansas Nuclear One, Unit 2 Technical Specifications (TS) which describe the design features of the Spent Fuel Storage Pool. These changes update the TS to conform with Amendment No. 43 which increased the spent fuel storage capacity for the plant.

Date of issuance: May 23, 1989

Effective date: May 23, 1989

Amendment No.: 95

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15821). The Commission's related evaluation of

the amendment is contained in a Safety Evaluation dated May 23, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Arkansas Power & Light Company, Docket Nos. 50-313 and 50-368, Arkansas Nuclear One, Units 1 and 2, Pope County, Arkansas

Dates of amendment requests: March 20 and 24, 1985

Brief description of amendments: The amendments deleted the remaining portions of the Appendix "B" Technical Specifications for Arkansas Nuclear One, Units 1 and 2, which consisted of a description of land use management for the site and the transmission line right of ways.

Date of issuance: June 1, 1989

Effective date: June 1, 1989

Amendment Nos.: 122 and 96

Facility Operating License Nos. DPR-51 and NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 29, 1985 (50 FR 25481) and May 21, 1985 (50 FR 20970). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 1, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: April 14, 1986 as supplemented on April 28, 1987

Brief description of amendments: These amendments modify Technical Specification 3/4.8.2.3, "Electrical Power Systems: D.C. Distribution - Operating," by deleting the dummy load profile for the 18-month station battery service test from TS Surveillance Requirement 4.8.2.3.2.d.2 and instead now specify that the load profile is documented in Chapter 8 of the Calvert Cliffs Nuclear Power Plant Units 1 and 2 Updated Final Safety Analysis Report (UFSAR) and shall be update in accordance with the 10 CFR 50.71(e). Modifications of the UFSAR load profile shall be made in accordance with the process described in 10 CFR 50.59.

Date of issuance: May 18, 1989

Effective date: 14 days after the licensee's issuance of a notarized letter the Commission providing official certification of the completion, approval and implementation, in accordance with the provisions of 10 CFR 50.59, of a new station battery design load study for current plant conditions.

Amendment Nos.: 137 and 120

Facility Operating License Nos. DPR-53 and DPR-69. Amendments revised the Technical Specifications.

Date of initial notice in Federal

Register: October 18, 1988 (53 FR 40982). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 18, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

NRC Project Director: Robert A. Capra

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: January 20, 1987 as supplemented on January 12, and June 28, 1988

Brief description of amendments: These amendments delete the current requirement of Units 1 and 2 Technical Specification (TS) Surveillance Requirement 4.8.4.1.2.c to verify that the containment purge air inlet valves (CPA-1410-CV and CPA-1411-CV) and the containment purge air outlet valves (CPA-1412-CV and CPA-1413-CV) close to their actuation positions upon receiving a safety injection actuation system (SIAS) test signal. In addition, reference to the SIAS action of the containment purge valves would be deleted from TS Tables 3.3-3, "Engineered Safety Feature Actuation System Instrumentation," Table 3.3-4, "Engineered Safety Feature Actuation System Instrumentation Trip Valves," and Table 4.3-2, "Engineered Safety Feature Actuation System Surveillance Requirements."

Date of issuance: May 31, 1989

Effective date: May 31, 1989

Amendment Nos.: 138, 121

Facility Operating License Nos. DPR-53 and DPR-69. Amendments revised the Technical Specifications.

Date of initial notice in Federal

Register: May 1, 1989 (54 FR 18615). The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated May 31, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

NRC Project Director: Robert A. Capra

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: February 1, 1989

Description of amendments: The amendments delete instrument tag numbers from the Technical Specifications, delete one-time TS exceptions that were added as footnotes, and provide other editorial and administrative changes.

Date of issuance: May 22, 1989

Effective date: May 22, 1989

Amendment Nos.: 130 and 160

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in Federal Register: April 5, 1989 (54 FR 13759). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 22, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of application for amendments: September 4, 1987, as amended and supplemented by letters dated April 5, 1988, February 20, 1989 and March 20, 1989.

Description of amendments: The amendments change the Technical Specifications to (1) modify specifications having cycle-specific parameter limits by replacing the values of those limits with a reference to the Core Operating Limits Report for the values of those limits and (2) delete the redundant linear heat generation rate limit from the specifications.

Date of issuance: May 25, 1989

Effective date: May 25, 1989

Amendment Nos.: 131 and 161

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15822). The Commission's related evaluation of

the amendments is contained in a Safety Evaluation dated May 25, 1989

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: February 22, 1989

Brief description of amendment: The amendment would modify (1) the most negative moderator temperature coefficient (MTC) limiting condition for operation (LCO), (2) the associated surveillance requirements (SR), and (3) the affected basis. The purpose of this LCO and SR is to ensure that the most negative MTC at end-of-cycle (EOC) remains within the bounds of the Harris safety analysis, in particular, for those transients and accidents that can lead to a moderator temperature decrease (cooldown) or, equivalently, a moderator density increase.

Date of issuance: May 22, 1989

Effective date: May 22, 1989

Amendment No.: 11

Facility Operating License No. NPF-63. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15823). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1989.

No significant hazards consideration comments received: No

Attorney for the Licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, P. O. Box 1551, Raleigh, North Carolina 27602

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket No. 50-454 and 50-455, Byron Station, Units 1 and 2, Ogle County, Illinois; Docket Nos. 50-456 and 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendment: December 23, 1987, supplemented April 3, 1989

Brief description of amendment: These amendments modify Technical Specification Tables 3.3-1 and 4.3-1, as requested in Generic Letter 85-09, for Reactor Trip System Automatic

actuation using shunt trip coil attachments.

Date of issuance: May 22, 1989

Effective date: May 22, 1989

Amendment No.: 28 for Byron and 17 for Braidwood

Facility Operating License Nos. NPF-37, NPF-66, NPF-72 and NPF-77: The amendment revised the Technical Specification

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15824). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: For Byron Station, Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois

Date of application for amendments: March 25, 1985, supplemented April 17, 1989 and May 10, 1989.

Brief description of amendments: These amendments revise Tables 3.1-1 and 4.1-1 of the Technical Specifications for Zion units to address operability and surveillance requirements for Reactor Trip Breakers in accordance with Generic Letter 85-09.

Date of issuance: May 30, 1989

Effective date: May 30, 1989

Amendment Nos.: 116, 105

Facility Operating License Nos. DPR-39 and DPR-48: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 21, 1985 (50 FR 20973) and April 28, 1989 (54 FR 18367). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 30, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: April 26, 1986, supplemented May 30, 1989.

Brief description of amendment: The amendment adds a new Technical Specification (TS) section on Reactor Coolant System Leakage Detection

Systems. This TS will provide limiting conditions of operation and surveillance requirements for the Reactor Coolant System Leakage Detection Systems. With the issuance of the Technical Specification, Systematic Evaluation Program (SEP) Topic V-5, "Reactor Coolant Pressure Boundary Leakage Detection" is considered closed.

Date of Issuance: May 31, 1989

Effective date: May 31, 1989

Amendment No.: 116

Facility Operating License No. DPR-61: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 21, 1986 (51 FR 18681). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 31, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: September 30, 1988, as supplemented December 30, 1988, January 20, 1989, February 7, 1989, March 3, 1989, and April 14, 1989.

Brief description of amendment: This amendment revises the Indian Point Unit 2 Technical Specifications to allow a fuel design transition to Westinghouse 15x15 Optimized Fuel Assemblies fuel.

Date of issuance: May 18, 1989

Effective date: May 18, 1989

Amendment No.: 140

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 8, 1989 (54 FR 6187). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

NRC Project Director: Robert A. Capra

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: November 21, 1985

Brief description of amendment: This amendment revises the TSs to require specific alternate shutdown system equipment and instrumentation to be

operable whenever the reactor coolant temperature is at or above 325° F and imposes periodic surveillance requirements to demonstrate operability of the system. The changes add Specification 3.25, including Table 3.25.1 and Specification 4.20, including Table 4.20.1. Other requests related to the emergency lighting facility are denied.

Date of issuance: May 19, 1989

Effective date: May 19, 1989

Amendment No.: 122

Provisional Operating License No. DPR-20: The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15826). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: March 10, 1987

Brief description of amendment: This amendment revises the Technical Specifications to clarify the sampling requirements for service water discharge, deletes the surveillance requirement for testing the HI Range Noble Gas Monitor high alarm annunciator, and makes editorial corrections to the Radiological Effluent Technical Specifications implemented by Amendment No. 85 to the Provisional Operating License.

Date of issuance: May 30, 1989

Effective date: May 30, 1989

Amendment No.: 123

Provisional Operating License No. DPR-20: The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15826). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: February 25, 1987

Brief description of amendment: This amendment revises the Technical Specifications to account for

modifications made to the recirculation actuation system (RAS). Those modifications altered the RAS from a two-out-of-four logic to a one-out-of-two-taken-twice logic. This amendment also includes an editorial correction related to a change previously approved by Amendment 31.

Date of issuance: May 31, 1989

Effective date: May 31, 1989

Amendment No.: 124

Provisional Operating License No. DPR-20: The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: April 8, 1987 (52 FR 11357). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Consumers Power Company, Docket No. 50-255, Palisades Plant, Van Buren County, Michigan

Date of application for amendment: March 14, 1983, supplemented by letters dated May 13, 1985 and February 2, 1988.

Brief description of amendment: This amendment revises the Appendix A TSs relating to peridotic testing of the station batteries. The proposed changes would add specifications 4.7.2.c and 4.7.2.d. Additionally, a change was made to the Basis to identify the purpose of the battery surveillance requirements, and a sentence was rearranged to improve clarity.

Date of issuance: May 31, 1989

Effective date: May 31, 1989

Amendment No.: 125

Provisional Operating License No. DPR-20: The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: August 23, 1983 (48 FR 38399). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Van Zoeren Library, Hope College, Holland, Michigan 49423.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 10, 1989

Brief description of amendment: This amendment revises TS Section 4.3.8.2c to allow a one-time extension to the disassembly and inspection interval for the turbine overspeed protection system valves, specifically, the turbine control

valves, high pressure turbine stop valves, low pressure turbine intercept valves, and low pressure turbine stop valves, until the first refueling outage, currently scheduled to begin in September 1989. These tests would have become overdue after May 20, 1989.

Date of issuance: May 19, 1989

Effective date: May 19, 1989

Amendment No.: 33

Facility Operating License No. NPF-43: The amendment revises the Technical Specifications

Date of initial notice in Federal Register: April 5, 1989 (54 FR 13763). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: April 21, 1989

Brief description of amendment: This amendment revised the TSs to reflect a design modification to the Reactor Building's railroad bay air lock doors. The modifications to the doors are a result of the licensee discovering the air supply to the inflatable seals on the doors was not safety related.

Date of issuance: May 31, 1989

Effective date: May 31, 1989

Amendment No.: 34

Facility Operating License No. NPF-43: The amendment revises the Technical Specifications.

Date of initial notice in Federal Register: April 28, 1989 (54 FR 18382). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: April 6, 1989, as supplemented April 21, 1989.

Brief description of amendments: The amendments modified the Technical Specifications to identify special Rod Cluster Control Assemblies which will be inserted in the Unit 2 core prior to Cycle 3 operation.

Date of issuance: May 23, 1989

Effective date: May 23, 1989

Amendment Nos.: 64 and 58

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15827). Because the April 21, 1989, submittal clarified certain aspects of the original request, the substance of the changes noticed in the Federal Register and the proposed no significant hazards consideration determination were not affected. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 23, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: August 29, 1988

Brief description of amendments: The amendments modify Technical Specification Tables 4.3-8 and 4.3-9 by adding a footnote regarding the location of the alarm annunciators for radiation monitors EMF-57 and EMF-58 and correct a reference in Table 4.11.1 to EMF-58 which should be EMF-57.

Date of issuance: May 26, 1989

Effective date: May 26, 1989

Amendment Nos.: 65 and 59

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: December 14, 1988 (53 FR 50325). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 26, 1989.

No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of application for amendments: March 16, 1987, as supplemented April 24, 1987

Brief description of amendments: The amendments changed the Technical Specifications (TS) regarding functional testing of fuses and relocated the

method of testing low voltage circuit breakers from the surveillance requirement section to the TS Bases.

Date of issuance: May 25, 1989

Effective date: May 25, 1989

Amendment Nos.: 96 and 78

Facility Operating License Nos. NPF-9 and NPF-17: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: March 8, 1989 (54 FR 9916). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 25, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: January 5, 1989

Brief description of amendments: The amendments revise Specification 3/4.1.3.1 regarding movable control assemblies limiting condition for operation to: (1) permit continued operation if one or more control rods are inoperable but trippable, and (2) make several administrative changes or corrections.

Date of issuance: May 31, 1989

Effective date: May 31, 1989

Amendment No.: 141 for Unit 1; 17 for Unit 2.

Facility Operating License Nos. DPR-66 and NPF-73: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 22, 1989 (54 FR 7633). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of applications for amendment: March 31, 1983, as supplemented June 22, 1983, and December 31, 1984, as superseded April 25, 1986 and revised November 28, 1986.

Brief description of amendment: This amendment removes Table 3.6.1, Containment Isolation Valves, from the TS and relocates it to the FSAR. References to Table 3.6.1 in other TS are

also removed. In addition, the amendment clarifies the requirement for stroke retest of valves following maintenance and adds surveillances which ensure that the isolation time of each power-operated valve is within its approved limits and that all purge isolation valves are verified shut at least once every 31 days when in Modes 1, 2, 3, or 4.

Date of issuance: May 22, 1989

Effective date: May 22, 1989

Amendment No.: 114

Facility Operating License No. DPR-72: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 21, 1983 (48 FR 56504), and November 30, 1988 (53 FR 48330). The November 28, 1988 letter provided clarifying information which did not alter the staff's initial determination of no significant hazards considerations. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: June 22, 1983, as superseded April 25, 1988 and clarified March 31, 1989

Brief description of amendment: The amendment adds operability, action and surveillance requirements for the chlorine and sulfur dioxide toxic gas detection systems.

Date of issuance: May 30, 1989

Effective date: May 30, 1989

Amendment No.: 115

Facility Operating License No. DPR-72: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: September 7, 1988 (53 FR 34604). The March 31, 1989 letter provided clarifying information which did not change the staff's proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: March 31, 1983, as supplemented June 22, 1983.

Brief description of amendment: This amendment provides TS for a reactor building high radiation monitor, a reactor building wide-range pressure monitor, and a reactor building flood level monitor. These changes are made in response to NUREG-0737, Item II.F.1.1.

Date of issuance: May 30, 1989

Effective date: May 30, 1989

Amendment No.: 116

Facility Operating License No. DPR-72: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 21, 1983 (48 FR 54504). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: February 16, 1984

Brief description of amendment: This amendment provides additional requirements for decay heat removal redundancy in the Crystal River 3 TS.

Date of issuance: May 31, 1989

Effective date: May 31, 1989

Amendment No.: 117

Facility Operating License No. DPR-72: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 25, 1984 (49 FR 17859). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of application for amendment: May 4, 1984, as amended September 12, 1984, August 19, 1987 and May 16, 1989.

Brief description of amendment: The amendment modified the Technical Specifications to change the definition of Operable.

Date of issuance: May 25, 1989

Effective date: May 25, 1989

Amendment No.: 162

Facility Operating License No. DPR-57: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: October 7, 1987 (52 FR 37545).

Because the May 16, 1989 submittal clarified certain aspects of the original request, the substance of the changes noticed in the Federal Register and the proposed no significant hazards determination were not affected. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513.

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: March 17, 1987

Brief description of amendment: The amendment revises Section 3.3, Reactor Coolant, of the Appendix A Technical Specifications regarding the requirements of Generic Letter 84-11. Specifically, the amendment limits the reactor coolant leakage system to a 2 gpm increase in unidentified leakage rate within any 24 hour period while operating at steady state power.

Date of Issuance: May 23, 1989

Effective date: May 23, 1989

Amendment No.: 133

Provisional Operating License No. DPR-16: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 20, 1987 (52 FR 18980). The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated May 23, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library,

Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: May 28, 1987

Brief description of amendments: The amendments will modify the Engineered Safeguards Features (ESF) and Storage Pool Ventilation System Technical Specifications (3/4.7.6.1 and 3/4.9.12, respectively). The proposed amendments will update the licensee's ventilation system testing standards and clarify several aspects of system operation. In addition, the amendment would also make several editorial and typographical changes.

Date of issuance: May 19, 1989

Effective date: May 19, 1989

Amendments Nos.: 124, 111

Facility Operating Licenses Nos. DPR-58 and DPR-74: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 15, 1987 (52 FR 26588). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Indiana Michigan Power Company, Dockets Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Units Nos. 1 and 2, Berrien County, Michigan

Date of application for amendments: January 16, 1987 and supplemented on June 25, September 28, and November 25, 1987, October 31, 1988, and January 24, March 23, and April 6, 1989.

Brief description of amendments: Letters from Indiana Michigan Power Company (the licensee) dated September 28, 1984 and April 24, 1985 for the D. C. Cook Nuclear Power Plant, Units 1 & 2 established initial groundwork addressing concerns regarding diesel generator reliability in Generic Letter 84-15. In a letter dated January 16, 1987, the licensee submitted a Technical Specifications (TSs) change request attempting to more closely reflect the Standard Technical Specifications (STS) enclosed in Generic Letter 84-15. Additional information and improved TSs are included in letters dated June 25, and September 28, 1987. A letter dated November 25, 1987, requests TS changes to two specific portions of the original submittal concerning diesel generator fuel oil

surveillance testing and the ten year diesel generator fuel oil storage tank cleaning. Additional information on the ten year diesel generator fuel storage tank cleaning is contained in a letter dated January 24, 1989. The portions of the TSs submittal dated January 16, 1987, concerning simulated load testing of the station batteries and N-train batteries were resubmitted in a letter dated April 29, 1988, to ensure timely compliance with an INPO commitment and to reduce outage time and were issued as Amendment Nos. 123 and 110 to Facility Operating License Nos. DPR-58 and DPR-74, respectively. A letter dated March 23, 1989, provides clarified and corrected TS pages for the 10-year tank cleaning and inspection portion. The licensee provided corrected TSs covering diesel generator surveillance testing in a letter dated April 6, 1989.

Date of issuance: May 31, 1989

Effective date: May 31, 1989

Amendments Nos.: 125 and 112

Facility Operating Licenses Nos. DPR-58 and DPR-74: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 26, 1987 (52 FR 5857), July 29, 1987 (52 FR 28380) and December 30, 1987 (52 FR 49227). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 31, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: October 13, 1986

Brief description of amendment: The amendment revised the Duane Arnold Energy Center Technical Specifications to conform to the Standard Technical Specifications for Boiling Water Reactors and to the ASME Boiler and Pressure Vessel Code requirements for Inservice Testing of pumps and valves. The surveillance intervals for certain pumps and valves were revised to reflect the use of the 1980 Edition (Winter 1981 Addendum) as required by 10 CFR 50.55a(g)(4)(ii).

Date of issuance: June 1, 1989

Effective date: June 1, 1989

Amendment No.: 180

Facility Operating License No. DPR-49: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 6, 1989 (54 FR 13966). The

Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 1, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room
location: Cedar Rapids Public Library, 500 First Street, S. E., Cedar Rapids, Iowa 52401.

Nebraska Public Power District, Docket No. 50-298, Cooper Nuclear Station, Nemaha County, Nebraska

Date of amendment request: January 27, 1989

Brief description of amendment: The amendment changed the Technical Specifications to specify revised Limiting Conditions for Operation and Surveillance requirements for the 250 Volt DC batteries and battery chargers.

Date of issuance: May 24, 1989

Effective date: May 24, 1989

Amendment No.: 130

Facility Operating License No. DPR-46. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15830). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 24, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room
location: Auburn Public Library, 118 15th Street, Auburn, Nebraska 68305

Niagara Mohawk Power Corporation, Docket No. 50-220, Nine Mile Point Nuclear Station, Unit No. 1, Oswego County, New York

Date of application for amendment: January 13, 1989

Brief description of amendment: This amendment revises Sections 3.1.4 and 4.1.4 Core Spray System; Section 3.3.7, Containment Spray; and the associated Bases for Sections 3.1.4, 4.1.4, and 3.3.7. In addition, the proposed amendment provides new limiting conditions for operation for the Core Spray system in the cold shutdown and refueling conditions and with the suppression pool inoperable.

Date of issuance: May 16, 1989

Effective date: May 16, 1989

Amendment No.: 105

Facility Operating License No. DPR-63: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: February 24, 1989 (54 FR 8030). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room
location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13128.

NRC Project Director: Robert A. Capra

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: March 14, 1989

Brief description of amendment: The amendment changes the Technical Specifications (TS) as follows: (1) TS 4.3.4.2, "Turbine Overspeed Protection," is deleted and replaced with a reference to the requirements of the "Turbine Overspeed Protection Maintenance and Testing Program," and (2) TS 6.5.1.6, "Responsibilities," is supplemented by adding item (j) which requires that the Plant Operations Review Committee (PORC) provide for "Review of Unit Turbine Overspeed Protection Maintenance and Testing Program and revisions thereto." In addition, a footnote is added to the applicability for TS 3.3.4 to state that the Turbine Overspeed Protection System need not be operable "... in MODE 2 and 3 with all main steam line isolation valves and associated bypass valves in the closed position and all other steam flow paths to the turbine isolated."

Date of issuance: May 23, 1989

Effective date: May 23, 1989

Amendment No.: 34

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15832). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 23, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room
location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: March 10, 1989

Brief description of amendment: The amendment changes Facility Operating License No. NPF-49, Paragraph 1.A., to delete the City of Burlington, Vermont, as a licensee for Millstone Unit 3.

Date of issuance: May 25, 1989

Effective date: May 25, 1989

Amendment No.: 35

Facility Operating License No. NPF-49. Amendment revised paragraph 1.A of the Facility Operating License.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15831). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 25, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room
location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: April 13, 1984 as supplemented by letters dated August 17, 1984; August 30 and November 27, 1985; February 19, 1987; June 6 and July 5, 1988.

Brief description of amendment: This amendment revises the Technical Specifications to add Limiting Conditions for Operation and Surveillance Requirements for installed control room habitability equipment in accordance with the provisions of TMI Action Plan Item III.D.3.4 (NUREG-0737).

Date of issuance: May 30, 1989

Effective date: May 30, 1989

Amendment No.: 65

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 23, 1984 (49 FR 21833) and September 28, 1984 (49 FR 38404). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room
location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pacific Gas and Electric Company, Docket Nos. 50-275 and 50-323, Diablo Canyon Nuclear Power Plant, Units 1 and 2, San Luis Obispo County, California

Date of application for amendments: December 19, 1988, as supplemented by letter dated March 23, 1989 (Reference LAR 88-10)

Brief description of amendments: The amendments revised the Technical Specifications to add operability and surveillance requirements for the Undervoltage Trip and Shunt Trip Attachments for compliance with the

guidance contained in Generic Letter 85-09.

Date of issuance: May 23, 1989.

Effective date: May 23, 1989.

Amendment Nos.: 38 and 37.

Facility Operating License Nos. DPR-80 and DPR-82: Amendments changed the Technical Specifications.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15833).

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 23, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room
location: California Polytechnic State University Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: February 24, 1989

Brief description of amendment: This amendment revised the Technical Specifications supporting modifications to eliminate the steam condensing of the residual heat removal system operation.

Date of issuance: May 22, 1989

Effective date: As of the date of issuance, to be implemented prior to startup, following the Unit 1 fourth refueling and inspection outage, expected to occur on June 2, 1989.

Amendment No.: 91

Facility Operating License No. NPF-14: This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15834). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room
location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: August 19, 1988

Brief description of amendment: The amendment revised the Technical Specifications to change the reporting requirements for iodine spiking from a short term to an item to be included in the Annual Report. The amendment also eliminates the existing requirement to shut down a plant if coolant iodine

activity limits are exceeded for 800 hours in a 12 month period.

Date of issuance: May 19, 1989

Effective date: May 19, 1989

Amendment No.: 20

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: March 12, 1987 (52 FR 7691).

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 19, 1989.

No significant hazards consideration comments received: Yes, however, the requests for hearing were considered by an Atomic Safety and Licensing Board and the amendment proceeding terminated on May 5, 1988. LBP-88-12, 27 NRC 495(1988), *aff'd*, ALAB-897, 28 NRC 33(1988).

Local Public Document Room
location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of application for amendment: January 23, 1989

Brief description of amendment: The amendment revises the Technical Specifications to permit use of filters with an increased pore size when periodically testing the amount of particulate contamination in the diesel generator fuel oil.

Date of issuance: May 31, 1989

Effective date: May 31, 1989

Amendment No.: 21

Facility Operating License No. NPF-39. This amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 22, 1989 (54 FR 7641). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room
location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: October 17, 1988

Brief description of amendments: These amendments revised the Environmental Technical Specifications

and Bases contained in Appendix B to the Operating Licenses Nos. DPR-44 and DPR-56 to reflect the issuance by the Commonwealth of Pennsylvania of National Pollution Discharge Elimination System (NPDES) Permit PA-0000733 on September 27, 1985.

Date of issuance: May 31, 1989

Effective date: May 31, 1989

Amendments Nos.: 146 and 148

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 27, 1989 (54 FR 18179). The Commission's related evaluation of the amendments is contained in the Commission's letter dated May 31, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room
location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126.

Portland General Electric Company, Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: September 30, 1986, as supplemented November 16, 1987 and April 14, 1988

Brief description of amendment: The amendment revises Technical Specifications 3/4.3.3.6 and 3/4.7.6.1, "Chlorine Detection Systems," and "Control Room Emergency Ventilation System," respectively, concerning control room habitability.

Date of issuance: May 15, 1989

Effective date: May 15, 1989

Amendment No.: 152

Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: May 6, 1987 (52 FR 16951). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 15, 1989.

No Significant hazards consideration comments received: No.

Local Public Document Room
location: Portland State University Library, 731 S. W. Harrison St., Portland Oregon 97207

NRC Project Director: George W. Knighton

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: November 20, 1987, as supplemented May 27 and August 12, 1988.

Description of amendment request: The amendment permits the use of

upgraded fuel assemblies which incorporate features of Westinghouse Vantage 5 fuel assemblies, and allows extended fuel burnup and higher nuclear peaking factors.

Date of issuance: May 24, 1989
Effective date: May 24, 1989
Amendment No.: 153
Facilities Operating License No. NPF-1: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: February 24, 1988 (53 FR 5495). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 24, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207.

NRC Project Director: George W. Knighton

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: May 18, 1989

Brief description of amendment: The amendment reduces the allowable outage times for the Main Control Room Emergency Ventilation System to 14 days with one filter train inoperable and three days with both trains inoperable.

Date of issuance: May 31, 1989
Effective date: May 31, 1989
Amendment No.: 129
Facilities Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in Federal Register: April 27, 1989 (54 FR 18182). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: December 6, 1984, as supplemented and superseded (in part) by letters dated October 18, 1985 and October 20, 1986.

Brief description of amendment: The amendment incorporates changes in response to the acceptance criteria and guidance of Generic Letters 83-02 and

83-38, "NUREG-0737 Technical Specifications." The following items are addressed by this amendments: Limit Overtime (I.A.1.3), Radiation Signal on Purge Valves (II.E.4.2.7), RCIC Restart and RCIC Suction (II.K.3.13 and II.K.3.22), Penetrations (II.E.4.1), Report Safety and Relief Valve Failures and Challenges (II.K.3.3), Post Accident Sampling (II.B.3), Noble Gas Effluent Monitors (II.F.1.1), Sampling and Analysis of Plant Effluents (II.F.1.2), Containment High-Range Monitor (II.F.1.3), Containment Pressure Monitor (II.F.1.4), Containment Water Level Monitor (II.F.1.5), and Containment Hydrogen Monitor (II.F.1.6).

Date of issuance: May 31, 1989
Effective date: May 31, 1989
Amendment No.: 130
Facilities Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in Federal Register: November 19, 1987 (51 FR 41866). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 31, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State University College of Oswego, Oswego, New York.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: April 10, 1988 and supplemented August 5, 1988

Brief description of amendment: The amendment deletes the requirement to disconnect an emergency bus from its normal power source and connect it to its reserve power source when the associated Emergency Diesel Generator system is inoperable.

Date of issuance: June 1, 1989
Effective date: June 1, 1989
Amendment No.: 131
Facilities Operating License No. DPR-59: Amendment revised the Technical Specification.

Date of initial notice in Federal Register: September 24, 1988 (51 FR 33957). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 1, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Penfield Library, State

University College of Oswego, Oswego, New York.

NRC Project Director: Robert A. Capra

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: October 17, 1985 and supplemented December 18, 1986

Brief description of amendments: The amendments changed the Technical Specifications pertaining to the reactor trip system instrumentation and surveillance.

Date of issuance: May 31, 1989
Effective date: Units 1 and 2, effective as of the date of issuance to be implemented within 30 days of the date of issuance.

Amendment Nos.: 97 and 74
Facilities Operating License Nos. DPR-70 and DPR-75: These amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 12, 1986 (51 FR 5277) and April 27, 1989 (54 FR 28183). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 31, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079.

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: February 24, 1989.

Description of amendment request: The proposed amendment would modify the rod insertion limits for the Cycle 19 fuel reload to ensure that all criteria for the reload are met. Since the change is not applicable to future cycles, it is presented as a change with a limited period of applicability.

Date of issuance: May 22, 1989
Effective date: Date of issuance.
Amendment No.: 36
Facilities Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15837). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 22, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Rochester Public Library, 115

South Avenue, Rochester, New York 14610.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: October 14, 1985 as supplemented February 13, 1986

Brief description of amendment: The amendment approved use of the Babcock and Wilcox Integrated Reactor Vessel Material Surveillance Program, withdrew the Exemption to Appendix H of 10 CFR Part 50 granted January 10, 1983, and deleted all references to current reactor vessel material surveillance requirements.

Date of issuance: May 16, 1989
Effective date: May 16, 1989
Amendment No.: 104
Facilities Operating License No. DPR-54: Amendment revised the License and Technical Specifications.

Date of initial notice in Federal Register: October 8, 1986 (51 FR 36103). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 16, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: October 7, 1988, as supplemented November 18, 1988, and March 27, 1989.

Brief description of amendment: The amendment clarifies the operational mode applicability of TS 3.4 and the definition of auxiliary feedwater (AFW) train, revises the surveillance requirements and frequency of verifying the AFW System flow path, and revises the surveillance requirement for AFW pump testing.

Date of issuance: May 23, 1989
Effective date: May 23, 1989
Amendment No.: 105
Facilities Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15837). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 23, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Martin Luther King Regional

Library, 7340 24th Street Bypass, Sacramento, California 95822.

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: March 19, 1985, as supplemented by letters dated June 17 and November 25, 1985

Brief description of amendment: This amendment revised Technical Specification 4.17, "Steam Generators," to provide for a more extensive inspection of steam generator tubes by defining special tube areas to complete 100% inspection where degradation is expected. Normal random sampling inspection of tubes will be done on other areas of the steam generator. This amendment also incorporated miscellaneous changes to paragraph numbers, section titles, and phrases for consistency.

In addition, this amendment revised the reporting requirements for the inspection results to make the reporting requirements consistent with 10 CFR 50.72(b)(2) and extended the deadline for reports on tube plugging to 30 days following each inservice inspection.

Date of issuance: May 23, 1989
Effective date: May 23, 1989
Amendment No.: 106
Facilities Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: June 18, 1986 (51 FR 22242). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 23, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Martin Luther King Regional Library, 7340 24th Street Bypass, Sacramento, California 95822.

South Carolina Electric & Gas Company, South Carolina Public Service Authority, Docket No. 50-395, Virgil C. Summer Nuclear Station, Unit No. 1, Fairfield County, South Carolina

Date of application for amendment: June 10, 1985, as supplemented December 6, 1985 and May 16, July 14, July 28, and November 18, 1988 and April 5, 1989.

Brief description of amendment: The amendment to Virgil C. Summer Nuclear Station Technical Specifications (TS) would reduce the number and severity of starts of the emergency diesel generators, thereby decreasing engine wear and increasing reliability, and restructures the action and surveillance statements for clarity and usability.

Date of issuance: May 30, 1989
Effective date: May 30, 1989

Amendment No.: 77
Facilities Operating License No. NPF-12: Amendment revises the Technical Specifications.

Date of initial notice in Federal Register: July 17, 1985 (50 FR 29016). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Fairfield County Library, Garden and Washington Streets, Winnsboro, South Carolina 29180.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: August 28, 1986, as supplemented November 21, 1986 and February 1, 1988

Brief description of amendments: The amendments add license conditions which require implementation of an integrated implementation schedule program plan for scheduling all capital modifications.

Date of issuance: May 15, 1989
Effective date: May 15, 1989
Amendment Nos.: 72 and 60

Facilities Operating License Nos. NPF-10 and NPF-15: Amendments changed the licenses.

Date of initial notice in Federal Register: April 22, 1987 (52 FR 13349). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 15, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Units 2 and 3, San Diego County, California

Date of application for amendments: April 26, October 11 and October 24, 1988, as supplemented March 20, 1989.

Brief description of amendments: The amendments revise the following Technical Specifications to increase the interval for the 18 month surveillance tests to at least once per refueling interval, which is defined as 24 months: 3/4.1.2.2, "Boration Systems, Flow Paths-Operating," 3/4.1.3.4, "CEA Drop Time," 3/4.5.1, "Safety Injection Tanks," 3/4.5.2, "ECCS Subsystems - T..."

Greater Than or Equal to 350° F," 3/4.6.2.1, "Containment Spray System," 3/4.6.2.3, "Containment Cooling System," 3/4.6.3, "Containment Isolation Valves," and 3/4.6.4.2, "Electric Hydrogen Recombiners."

Date of issuance: May 31, 1989
Effective date: May 31, 1989
Amendment Nos.: 73, 61
Facility Operating License Nos. NPF-10 and NPF-15: Amendments changed the Technical Specifications.

Date of initial notice in Federal Register: March 8, 1989 (54 FR 9929-30 and 54 FR 9932-33) and March 22, 1989 (54 FR 11842). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 31, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: General Library, University of California, P.O. Box 19557, Irvine, California 92713.

Tennessee Valley Authority, Dockets Nos. 50-529, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Brief description of amendments: The proposed change adds requirements 1.0.MM.6 per guidance of Generic Letter 88-01.

Date of issuance: May 19, 1989
Effective date: May 19, 1989
Amendments Nos.: 166, 165, 137
Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68:

Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: February 1, 1989 (54 FR 5175). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated: May 19, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: October 24, 1988 as supplemented by letter dated March 24, 1989. (TS 258)

Brief description of amendments: The amendments change the expiration date for the Browns Ferry Nuclear Plant (BFN) Operating Licenses DPR-33 (Unit 1) from May 10, 2007 to December 20, 2013, for BFN Operating License DPR-52 (Unit 2) from May 10, 2007 to June 28, 2014, and for BFN Operating License DPR-68 (Unit 3) from July 31, 2008 to July 2, 2016. The supplemental information

supplied in the March 24, 1989 letter did not change the substance of the Notice of Consideration of an amendment issued in the **Federal Register** on TVA's application for extension of operating license dates.

Date of issuance: May 19, 1989
Effective date: May 19, 1989
Amendments Nos.: 167, 166, 138
Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68:

Amendments revised the license for each facility.

Date of initial notice in Federal Register: January 11, 1989 (54 FR 1024). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated May 19, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: January 25, 1984 (TS 52)

Brief description of amendments: These amendments modify Section 3/4.4, Reactor Coolant System, of the Sequoyah Nuclear Plant, Units 1 and 2, Technical Specifications (TS). The changes add limiting conditions for operation (LCO), action statements if the LCO is not met and surveillance requirements for the reactor coolant system vents (RCSV). These are TS 3/4.4.11. A section on the RCSV is also being added to the Bases of the TS.

The proposed changes on the RCSV paths in TVA's application dated December 9, 1985 duplicated the changes in its application dated January 25, 1984. This latter application also included proposed TS changes for the following TMI Action Plan monitors: high range noble gas effluent monitors, containment area high range radiation monitors, containment pressure monitor and the instrumentation for detection of inadequate core cooling. These are TMI Action Plan items II.F.1.1, II.F.1.3, II.F.1.4 and II.F.2., respectively. Also included were proposed changes to the requirements for diesel generator testing to meet the NRC Generic Letter 83-30 dated July 25, 1983.

For the high-range noble gas effluent monitors and containment area radiation monitors, the staff approved changes to the TS in its letter dated April 28, 1989. For the containment pressure monitor and the instrumentation for detection of inadequate core cooling, the staff approved changes to the TS in its letter

dated September 16, 1988. For the diesel generator testing requirements, the staff approved changes to the TS in its letter dated October 28, 1986.

The amendments described above complete the staff's review of TVA application dated January 25, 1984.

Date of issuance: June 1, 1989
Effective date: June 1, 1989
Amendment Nos.: 116, 106
Facility Operating Licenses Nos. DPR-77 and DPR-79: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: September 28, 1984 (49 FR 38410). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated June 1, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: August 6, 1987

Brief description of amendment: The amendment deleted in its entirety the Appendix B "Environmental Technical Specifications" and those portions of License Conditions 2.C.(2) and 2.F.(1) which referred to the Environmental Technical Specifications.

Date of issuance: May 18, 1989
Effective date: May 18, 1989
Amendment No.: 133
Facility Operating License No. NPF-3: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: April 19, 1989 (54 FR 15839). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: September 18, 1985 as supplemented by letters dated March 23 and May 9, 1989.

Brief description of amendment: The amendment revised Section 3/4.6.1.8, Containment Vessel Structural Integrity, of the Callaway Technical

Specifications. The amendment provided both clarification and relaxation of some of the existing Surveillance Requirements as well as adding provisions which the staff found vital for monitoring the integrity of prestressed concrete containments. In addition, modifications were made to some of the reporting requirements and action statements found within the Limiting Condition for Operation.

Date of issuance: May 24, 1989
Effective date: May 24, 1989
Amendment No.: 46
Facility Operating License No. NPF-30: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: December 4, 1985 (50 FR 49794). The March 23 and May 9, 1989 submittals provided additional clarifying information and did not change the proposed finding of the initial notice. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 24, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251 and the John M. Olin Library, Washington University, Skinker and Lindell Boulevards, St. Louis, Missouri 63130.

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: March 30, 1988

Brief description of amendments: These amendments change TS Section 6.5.B.7, "Station Operating Records" by clarifying the requirement to retain photographs of scope traces of welds which are tested by ultrasonic examination and photographs of surface welds inspected by a visual or surface examination for the life of the plant.

Date of issuance: May 18, 1989
Effective date: May 18, 1989
Amendment Nos.: 127 and 127
Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: May 18, 1988 (53 FR 17796). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 18, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: February 14, 1979, as supplemented September 21, 1982, August 30, 1985, April 11, 1988 and May 12, 1989.

Brief description of amendments: These amendments remove obsolete inservice inspection and testing requirements and replaces them with more up-to-date NRC-approved requirements specified in 10 CFR 50.55a(g).

Date of issuance: May 24, 1989
Effective date: May 24, 1989
Amendment Nos.: 128 and 128
Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 23, 1983 (48 FR 38428) and October 23, 1985 (50 FR 43036).

The April 11, 1988 and May 12, 1989 letters provided supplemental information which did not alter the staff's initial determination of no significant hazards considerations. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 24, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Virginia Electric and Power Company, Docket Nos. 50-280 and 50-281, Surry Power Station, Unit Nos. 1 and 2, Surry County, Virginia

Date of application for amendments: March 20, 1989

Brief description of amendments: These amendments change Technical Specification Sections 3.14 and 3.23 by imposing additional system operating restrictions on the Main Control Room and Emergency Switchgear Room Air Conditioning System.

Date of issuance: May 30, 1989
Effective date: May 30, 1989
Amendment Nos.: 129 and 129
Facility Operating License Nos. DPR-32 and DPR-37: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: April 5, 1989 (54 FR 13770). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 30, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room location: Swem Library, College of William and Mary, Williamsburg, Virginia 23185

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: May 23, 1986

Brief description of amendment: The amendment changed the expiration date of the license from August 6, 2008 to December 21, 2013.

Date of issuance: May 26, 1989

Effective date: May 26, 1989

Amendment No.: 82

Facility Operating License No. NPF-43: Amendment revised the License.

Date of initial notice in Federal Register: April 25, 1989 (54 FR 17849). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 26, 1989 and the environmental assessment dated May 11, 1989 (54 FR 21510).

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: December 6, 1985 and amended March 29 and May 10, 1989.

Brief description of amendment: The amendment revised Section 3/4.6.1.6, Containment Vessel Structural Integrity, of the Wolf Creek Generating Station Technical Specifications. The amendment provided both clarification and relaxation of some of the existing Surveillance Requirements as well as added provisions which the staff found vital for monitoring the integrity of prestressed concrete containments. In addition, modifications were made to some of the reporting requirements and action statements found within the Limiting Condition for Operation.

Date of Issuance: May 24, 1989

Effective date: May 24, 1989

Amendment No.: 31

Facility Operating License No. NPF-42: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: January 15, 1986 (51 FR 1876). The March 29 and May 10, 1989 submittals provided additional clarifying information and did not change the finding of the initial notice.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated May 24, 1989.

No significant hazards consideration comments received: No.

Local Public Document Room
Location: Emporia State University,
William Allen White Library, 1200
Commercial Street, Emporia, Kansas
66801 and Washburn University School
of Law Library, Topeka, Kansas 66621.

**NOTICE OF ISSUANCE OF
AMENDMENT TO FACILITY
OPERATING LICENSE AND FINAL
DETERMINATION OF NO
SIGNIFICANT HAZARDS
CONSIDERATION AND
OPPORTUNITY FOR HEARING
(EXIGENT OR EMERGENCY
CIRCUMSTANCES)**

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for a Hearing. For exigent circumstances, the Commission has either issued a **Federal Register** notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an

opportunity to provide for public comment on its no significant hazards determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendments. By July 14, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose

interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (Project Director): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: March 31, 1989 as supplemented May 25, 1989

Brief description of amendment: The amendment revises the one-time relaxation of the containment integrity Technical Specification granted in Amendment No. 112 to allow cleaning or

replacement of the containment air fan motor heat exchangers while at power.

Date of Issuance: June 1, 1989

Effective date: June 1, 1989

Amendment No.: 117

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. Published in **Federal Register** May 12, 1989 (54 FR 20659). No comments were received.

The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluated dated

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

NRC Project Director: John F. Stolz
Dated at Rockville, Maryland, this 5th day of June, 1989.

For the Nuclear Regulatory Commission
Steven A. Varga,

Director, Division of Reactor Projects-I/II,
Office of Nuclear Reactor Regulation
[Doc. 89-14004 Filed 6-13-89; 8:45 am]

BILLING CODE 7590-01-D

Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide planned for its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the Commission's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG-1003 (which should be mentioned in all correspondence concerning this draft guide), is entitled "Assuring the Availability of Funds for Decommissioning Nuclear Reactors" and is intended for Division 1, "Power Reactors." This guide is being developed to provide guidance to nuclear reactor licensees on methods acceptable to the NRC staff for the provision of funds for decommissioning reactors. It also provides guidance on the content and form of the funding methods.

This draft guide is being issued to involve the public in the early stages of the development of a regulatory position in this area. It has not received complete staff review and does not represent an official NRC staff position.

Public comments are being solicited on the guide, including any implementation schedule. Comments should be accompanied by supporting data. Written comments may be submitted to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 2120 L Street, NW., Washington, DC. Comments will be most helpful if received by August 4, 1989.

Although a time limit is given for comments on these drafts, comments and suggestions in connection with (1) items for inclusion in guides currently being developed or (2) improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Information Support Services. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

(5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 1st day of June 1989.

For the Nuclear Regulatory Commission,
Guy A. Arlotta,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 89-14112 Filed 6-13-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-289]

GPU Nuclear Corp. et al.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of GPU Nuclear Corporation (the licensee) to withdraw

its November 9, 1987 application for proposed amendment to Facility Operating License No. DPR-50 for Three Mile Island, Unit No. 1, located in Dauphin County, Pennsylvania.

The proposed amendment would have removed the Radiological Environmental Monitoring Program from the Technical Specifications. Subsequent to this request, the NRC issued specific guidance as Generic Letter No. 89-01 that makes submittal of a new request necessary.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the *Federal Register* on January 13, 1988 (53 FR 828). However, by letter dated May 8, 1989, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated November 9, 1987, and the licensee's letter dated May 8, 1989, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and the Government Publications Section of the State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland this 8th day of June 1989.

For the Nuclear Regulatory Commission.

Ronald W. Herman,

Senior Project Manager, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-14110 Filed 6-13-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-315 and 50-316]

Indiana Michigan Power Co.; Denial of Amendment to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by Indiana Michigan Power Company, (licensee) for an amendment to Facility Operating License Nos. DPR-58 and DPR-74, issued to the licensee for operation of the D.C. Cook Nuclear Plant, Units Nos. 1 and 2, located in Berrian County, Michigan. Notice of Consideration of Issuance of this amendment was published in the *Federal Register* on December 22, 1987 (52 FR 48475).

The purpose of the licensee's

amendment request was to revise the Technical Specifications to delete the requirement to measure the moderator temperature coefficient near the end of the fuel cycle.

The NRC staff has concluded that the licensee's request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated June 8, 1989.

By July 14, 1989, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date.

A copy of any petitions should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendment dated October 20, 1987 and (2) the Commission's letter to the licensee dated June 8, 1989.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Maude Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085. A copy of Item (2) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 8th day of May.

For the Nuclear Regulatory Commission.

Lawrence A. Yandell,

Acting Director, Project Directorate III-1, Division of Reactor Projects-III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-14111 Filed 6-13-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Assessment of Current Rules for Determining the Country of Origin Under the "Buy American Act of 1933" as Amended; Public Hearing

AGENCY: Office of Federal Procurement Policy.

ACTION: Notice.

SUMMARY: The Office of Federal Procurement Policy (OFPP) is requesting comments on the reasonableness of the rules currently used to determine the origin of products procured by the Federal government for purposes of implementing the "Buy American Act of 1933" as amended (the Act). These comments should describe the current interpretation and application of these rules, as well as explore reasonable alternative "rules of origin," including one that requires determination to be made on the basis of total cost. All comments should be directed in writing to Donna Fossum, Deputy Associate Administrator, OFPP, 725 17th Street, NW. (NEOB), Room 9025, Washington, DC 20503, by July 28, 1989.

OFPP is holding a public hearing on this matter. Persons and organizations wishing to present views, ideas, suggestions, and alternatives to the current "rule of origin" are encouraged to attend this hearing. Persons and organizations with similar views are encouraged to select a common spokesperson for the presentation of their views. A written transcript will be made of this hearing for transmittal to Congress.

DATES: Receipt of Comments: Comments must be received on or before July 28, 1989. Public Hearing: A public hearing will be held on Friday, July 21, 1989, at 10:00 a.m. Person to Contact for Admission to Hearing: Persons wishing to attend and/or present statements at the public hearing must contact Ms. Brenda Harper at (202) 395-3300, prior to 3:30 p.m., July 19, 1989, to arrange for admittance to the New Executive Office Building (NEOB). Submission of Written Statements: Two copies of the written statements of those wishing to speak at this public hearing must be received by OFPP by 5:00 p.m., July 18, 1989. Length of Oral Statements: Oral statements presented at the public hearing will be limited to 10 minutes each.

ADDRESSES: Comments and statements should be submitted to Donna Fossum, Deputy Associate Administrator, OFPP,

725 17th Street NW., (NEOB), Room 9025, Washington, DC 20503.

The public hearing will be held in Room 2010, New Executive Office Building (NEOB), 725 17th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Donna Fossum, (202) 395-3300.

SUPPLEMENTARY INFORMATION: The Buy American Act (the Act) was enacted in 1933 to ensure that Federal agencies gave domestic products priority in competition for government contracts. The Act provides that, unless it is inconsistent with the public interest or unreasonably costly, all materials and supplies purchased by any department of the Federal Government, and all materials and supplies furnished by contractors doing work for the Federal Government, be produced within the jurisdictional limits of the United States.

Historically, for purposes of implementing the Act, the determination of what constitutes a domestic unmanufactured product has been based simply on the geographic origin of the product. Determining what constitutes a domestic manufactured product has been more difficult, however, and has ultimately come to be based on where the final manufacturing occurred and where the cost of mining, producing, or manufacturing the components of such a product was incurred. Depending on the method of acquisition and the agency involved, domestic products are given 6, 12, or 50 percent price evaluation preferences over foreign products in the award of Federal procurement contracts. Such price evaluation preferences are waived under certain conditions for signatory countries of the GATT Agreement on Government Procurement and in accordance with Title III of the Trade Agreements Act of 1979 and they do not apply to procurements conducted in accordance with appropriate reciprocal defense procurement Memoranda of Understanding.

In 1988, the Act was amended by several sections of Title VII of Pub. L. 100-418. Among other things, the 1988 amendments directed the Administrator of Federal Procurement Policy to "conduct an assessment of the rules currently used under this Act for making determinations of country of origin and alternatives to such rules." In conducting this assessment, the Administrator was directed to identify and evaluate reasonable alternative rules of origin, including one which requires that a determination be made on the basis of total cost. The results of this analysis, including policy guidance and recommended legislative changes, are to be submitted to designated

committees of Congress by February 1990.

In conducting this analysis, the Administrator was instructed to consult and seek comment from representatives of the United States labor and business communities, other interested United States persons, and other Federal agencies. To obtain such comment the Administrator was directed to hold public hearings. Consequently, the Administrator is calling the public hearing described in this notice.

To focus discussion at the public hearing announced in this notice, witnesses are requested to include a discussion of the following questions in their testimony:

How is the "rule of origin" under the Act currently interpreted and applied? In your experience, what has been the impact of this interpretation?

How would you describe the problem(s) that the "rule of origin" is intended to remedy?

How are costs currently factored into the determination of origin under the Act? What problems have you experienced in calculating origin based on current cost factors?

How should costs of mixed contracts (e.g., 40% service and 60% product) be calculated under the Act?

Where there are many products to be awarded under one contract (i.e., not competed on a line item basis), how should costs be calculated? How should the determination of manufacturing be made in this case?

How should assembly be treated in determining origin? For example, should the assembly of components into an integrated computer system be treated as manufacturing? Why?

What rule should be used to determine the origin of products from foreign countries which are subject to sanctions under the Act as amended (i.e., a country-specific rule of origin for foreign goods)?

What would happen if the determination of origin under the Act were based on the total cost of a product?

What specific cost factors should be used in determining the total cost of a product under the Act? Why? Are these factors auditable for purposes of certifying they were in fact incurred in the production of this product?

What other way(s) might costs be factored into the determination of origin under the Act?

What would be the effect of using the "rule of origin" under the Buy American Act as amended for the "rule of origin" for a designated country end-product under the Trade Agreements Act (i.e., manufactured in a designated country

and containing 51% combined-designated content)?

What other ways might reasonably be used to determine the origin of products for purposes of implementing the Act? How would these changes alter the remedial intent of the Act?

Allan V. Burman,
Deputy Administrator and Acting
Administrator.

[FR Doc. 89-14208 Filed 6-13-89; 8:45 am]

BILLING CODE 3110-01-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated June 8, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0147

Form Number: None

Type of Review: Extension

Title: Convention on Cultural Property Implementation Act

Description: The collection of information is necessary in order for Customs to effectively monitor the importation of items of cultural property. The information may be provided by declaration, certificate of ownership, etc.

Respondents: Individuals or households, Non-profit institutions, Small businesses or organizations

Estimated Number of Respondents: 5

Estimated Burden Hours Per Response: 1 hour

Frequency of Response: On occasion

Estimated Total Reporting Burden: 5 hours

Clearance Officer: Dennis Dore (202)

535-9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management

and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.
Lois K. Holland,
Department Reports, Management Officer.
[FR Doc. 89-14095 Filed 6-13-89; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

DATE: June 8, 1989.
The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub.L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service
OMB Number: 1545-0057
Form Number: 1024
Type of Review: Revision
Title: Application for Recognition of Exemption Under Section 501(a) or for Determination Under Section 210
Description: Organizations wanting to be exempt from Federal income tax under section 501(a) as organizations described in most paragraphs of section 501(c), or a legal service plan described in section 120, must apply to IRS for a determination or ruling

letter. The information supplied is used to determine whether the organization qualifies for exempt status.
Respondents: Non-profit institutions
Estimated Number of Respondents: 16,088
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping: 52 hours 51 minutes
Learning about the law or the form: 2 hours 45 minutes
Preparing, copying, assembling, and sending the form to IRS: 4 hours 56 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/Reporting Burden: 1,021,303 hours.
OMB Number: 1545-0073
Form Number: 1310
Type of Review: Extension
Title: Statement of Person Claiming Refund Due a Deceased Taxpayer
Description: Form 1310 is used by a claimant to secure payment of a refund on behalf of a deceased taxpayer. The information enables IRS to send the refund to the correct person.
Respondents: Individuals or households
Estimated Number of Respondents: 7,500
Estimated Burden Hours Per Response/Recordkeeping:
Learning about the law or the form: 3 minutes
Preparing the form: 14 minutes
Copying, assembling, and sending the form to IRS: 17 minutes
Frequency of Response: On occasion
Estimated Total Recordkeeping/Reporting Burden: 5,100 hours

OMB Number: 1545-0172
Form Number: 4562
Type of Review: Revision
Title: Depreciation and Amortization
Description: Taxpayers use Form 4562 to: (1) Claim a deduction for depreciation and/or amortization; (2) make a section 179 election to expense depreciable assets; and (3) answer questions regarding the use of automobiles and other listed property to substantiate the business use under section 274(d).
Respondents: Individuals or households, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations
Estimated Number of Respondents: 12,500,000
Estimated Burden Hours Per Response/Recordkeeping:
Recordkeeping: 29 hours 39 minutes
Learning about the law or the form: 3 hours 16 minutes
Preparing and sending the form to IRS: 3 hours 54 minutes
Frequency of Response: Annually
Estimated Total Recordkeeping/Reporting Burden: 522,250,000 hours
Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW, Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.
Lois K. Holland,
Departmental Reports, Management Officer.
[FR Doc. 89-14096 Filed 6-13-89; 8:45 am]
BILLING CODE 4810-25-M

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

NATIONAL TRANSPORTATION SAFETY BOARD
TIME AND DATE: 9:30 a.m. Tuesday, June 20, 1989.
PLACE: Board Room, Eighth Floor, 800 Independence Avenue, SW., Washington, DC 20594.

STATUS: Open.
MATTERS TO BE CONSIDERED:
1. Marine Accident Report: Explosion Aboard the Maltese Tank Vessel FIONA in Long Island Sound, Northport, New York, August 31, 1988.
2. Recommendation to NHTSA: Grade Crossing Accident Involving Ford Tractor Semitrailer and an Amtrak Passenger Train, Pontiac, Illinois, April 28, 1987.
Proposed Comments on Federal Aviation Administration (FAA) Proposed Rulemaking: "Special Federal Aviation Regulation (SFAR)

Federal Register
Vol. 54, No. 113
Wednesday, June 14, 1989

No. XX: Advanced Qualification Program," (FAA Docket No. 25804).
FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.
Bea Hardesty,
Federal Register Liaison Officer.
June 9, 1989.
[FR Doc. 89-14256 Filed 6-12-89; 2:46 pm]
BILLING CODE 7533-01-M

federal register

Wednesday
June 14, 1989

Part II
Environmental Protection Agency
40 CFR Part 704
Comprehensive Assessment Information Rule; Technical Amendment

ENVIRONMENTAL PROTECTION
AGENCY

40 CFR PART 704

[OFTS-82013; FRL-3601-7]

Comprehensive Assessment
Information Rule; Technical
AmendmentAGENCY: Environmental Protection
Agency (EPA).ACTION: Final rule; technical
amendment.

SUMMARY: This document amends the Comprehensive Assessment Information Rule (CAIR) by adding chemical substance trade names to the list of substances subject to reporting. This amendment is necessary because certain processors may purchase and process a CAIR regulated substance under a trade name and not realize they are required to report.

DATES: This rule is effective on June 14, 1989.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M St., SW., Washington, DC 20460, Telephone: (202-554-1404), TDD (202)554-0551).

SUPPLEMENTARY INFORMATION: Under TSCA section 8(a), EPA requires manufacturers, importers, and processors of chemical substances listed in the Comprehensive Assessment Information Rule (CAIR) to complete specified sections of the CAIR reporting form. For some of these substances, EPA is requiring processors in addition to the original manufacturer(s) or importer(s)

to report. Since some processors may purchase and process a listed substance under a trade name, they may not realize the substance is listed on the CAIR and that they are required to report.

EPA is hereby notifying those persons who purchase and process a substance known to them by any of the trade names listed in this amendment of their reporting and recordkeeping obligations under the CAIR. This method of notification was set forth in the **Federal Register** of December 22, 1988 (53 FR 51698).

There are two other reporting/notification options involving trade name substances under § 704.208(a) of the CAIR outlined in the above-mentioned **Federal Register**. Manufacturers, importers, or processors of CAIR listed substances who distribute the substance under a trade name but did not wish to submit a list of trade names to EPA for publication in this amendment had the option to do one of the following: (1) Report on behalf of each processor customer, or (2) notify each processor customer of their reporting obligations under CAIR.

EPA issued a notice of temporary administrative relief regarding the trade name reporting provisions of the CAIR on May 10, 1989 (54 FR 14324), in response to a petition EPA received from the Synthetic Organic Chemical Manufacturers Association (SOCMA) requesting EPA to stay certain aspects of the CAIR. In the **Federal Register** notice, EPA granted temporary administrative relief to persons who believe that compliance with each of the provisions under § 704.208(a) of the CAIR will result directly or indirectly in

the disclosure of a trade secret concerning the identity of substances in certain trade name products. The temporary administrative relief announced in the **Federal Register** notice also permitted those persons who had already submitted a trade name to EPA to subsequently notify EPA that the submitted trade name is Confidential Business Information (CBI).

Trade names that are listed in this trade name amendment were not submitted under claims of CBI or subsequently identified as CBI. In accordance with 40 CFR 704.708, EPA is publishing these trade names.

List of Subjects in 40 CFR Part 704

Chemicals, Environmental protection, Hazardous materials, Recordkeeping and reporting requirements.

Dated: June 6, 1989.

Gary E. Timm,

Acting Division Director, Existing Chemical Assessment Division.

Therefore, 40 CFR Part 704 is amended as follows:

1. The authority citation for Part 704 continues to read as follows:

Authority: 15 U.S.C. 2607(a).

2. Section 704.225 is amended by revising the section heading and adding paragraph (b) to read as follows:

§ 704.225 Chemical substance matrix by CAS registry number and trade name matrix in alphabetical order.

* * * * *

X/P=Each person who manufactured, imported, or processed the substance for commercial purposes and distributed the substance under a trade name

(b) List of trade names

CAS No./trade name	Who must report	Exemptions added (+) removed (-)	Coverage period	Question selection	Effective date
91-08-7/584-84-8 AD-20 Part A AD-20 Part B Andur 2-90 AP Andur 2-92 AP Andur 2-95 AP Andur 8 AP-LM Andur 9 AP-LM Andur 9000 APX Andur 2-72 DP Andur 5 DP-LM Andur 6 DP-LM Andur 7 DP-LM CC-130A CC-132A CC-133A Clear resin solution 920C134 CORROCOOL™/curling agent 700C540 COROTHANE/curling agency 975C823 COROTHANE/urethane clear glaze DP-1001-B Prepolymer DP-2077 Part A DP-3138 Part A	X/P		2/8/87-2/5/89	1, 2.04 thru 2.06, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.03 thru 7.06, 8.01, 8.05, 8.06, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.06 thru 10.16, 10.23	6/14/89

CAS No./trade name	Who must report	Exemptions added (+) removed (-)	Coverage period	Question selection	Effective date
DP-8448 Part A DP-8696-8 DP-8696-8 Part A DP-8798 Part A DP-8837 DP-9783 Part A DP-10469 DP-10476 Part A DP-10490 DP-10602 DP-10856 DP-10971 DP-10974 DP-10976 DP-10979 Part A DP-11304 DP-11933 Part A DP-11998 DP-12079 DP-12211 DP-12488 DP-12521 DP-12768 DP-12922 Part A DP-14381 DP-14811 DP-15227 Part A EN-4 Part A EN-5 Part A EN-6 Part A EN-7 Part A EN-8 Part A EN-9 OZR Part A EN-9 Part A EN-10 Part A EN-11 Part A EN-12 Part A EN-1554 Part A Mondur TDS RN-1501 RN-1505 RN-1511 RN-1512 RN-1513 RN-1526 RN-1527 Scuranate T 100 Solithane 790: 3.2% Solithane S-113:6 to 7% ST-115 MF Part A ST-115 Part A Stepanfoam A-206-T Stepanfoam A-210-T Stepanfoam A-216-T Stepanfoam BH-610-T Stepanfoam BH-614-T Stepanfoam BX-105-C-6-T Stepanfoam BX-105-C-10-T Stepanfoam BX-105-C-14-T Stepanfoam BX-105-C-20-T Stepanfoam BX-273-8-T Stepanfoam C-605-T Stepanfoam C-608-T Stepanfoam C-614-T Stepanfoam CA-620-T Stepanfoam F-302-A-T Modified Stepanfoam F-202-T Stepanfoam F-302-T Stepanfoam F-302-T (odorless C) Stepanfoam F-403-T Stepanfoam F-403-T (odorless C) Stepanfoam F-506-T Stepanfoam F-506-T (odorless C) Stepanfoam F-516-T Stepanfoam G-302-T Stepanfoam G-302-T modified Stepanfoam G-304-T Stepanfoam G-304-T modified Stepanfoam G-306-T					

CAS No./trade name	Who must report	Exemptions added (+) removed (-)	Coverage period	Question selection	Effective date
Stepanfoam G-306-T modified Stepanfoam G-308-T Stepanfoam G-308-T modified Stepanfoam G-502-T Stepanfoam G-504-T Stepanfoam G-506-T Stepanfoam G-508-T Stepanfoam H-102-N-T Stepanfoam H-402-N-T Stepanfoam H-802-N-T Stepanfoam H-103-T Stepanfoam H-104-T Stepanfoam H-106-T Stepanfoam J-108-T Stepanfoam KA8812 Stepanfoam KA8821 Stepanfoam KA8843 Stepanfoam KA8848 Stepanfoam KA8847 Stepanfoam KA8848 Stepanfoam KA8851 Stepanfoam KA8852 Stepanfoam KA8853 Stepanfoam KA8854 Stepanfoam KA8855 Stepanfoam KA8857 Stepanfoam KA8858 Stepanfoam KA8859 Stepanfoam KA8860 Stepanfoam KA8861 Stepanfoam KA8865 Stepanfoam KA8866 Stepanfoam P-502-T Stepanfoam P-506-T Stepanfoam R-109 Stepanfoam R-112 Stepanfoam R-222 Stepanfoam SX-195-T TDI 100 Toluene diisocyanate 100 Toluene diisocyanate R-30 700C753 UH3/hardener Uralite 1060 Part A Uralite 1070 Part A Uralite 1090 Part A Uralite 3143 Part A Uralite 3144 Part A Uralite 3204 prepolymer Uralite 3206 prepolymer Uralite 3207 prepolymer Uralite 3209 prepolymer Uralite 3213 prepolymer Uralite 3214 prepolymer Uralite 3215 prepolymer Uralite 3232 prepolymer Uralite 3237 prepolymer Uralite 3241 prepolymer Uralite 3242 prepolymer Uralite 3243 prepolymer Uralite 3263 prepolymer Uralite 3268 prepolymer 700C760 urethane/curing agent 975C831 urethane moisture/cured clear 50-00-0500-04 101-14-4 Activator M AH-5 AH-18 AH-20 AH-23 Andur 9000AS Part B Cumene M Curen 185 Curen 442 Curen 3005					
	X/P		2/8/87-2/5/89	1, 9.01, 9.03, 9.06, 9.08, 9.12, 9.15	6/14/89

CAS No./trade name	Who must report	Exemptions added (+) removed (-)	Coverage period	Question selection	Effective date
Cyanaset M DP-2077 Part B black DP-2077 Part B green DP-5801-B green DP-6322-2 Part B DP-6325 Part B tan DP-6332 Part B DP-7626 Part B black DP-8513-B DP-10000 Part B DP-10000 Part B gray DP-10744 Part B DP-10847 DP-11252 Part B DP-12105 Part B DP-14346 Part B EN-1554 Part B EN-1554 Part B black ST-80 Part B brown ST-80 Part B green ST-80 Part B med ST-80 Part B red ST-90 Part B Suncure M TU-50A Part B TU-65 Part B TU-65 Part B green TU-70 Part B TU-70 Part B blue TU-79 Part B TU-79 Part B green TU-79 Part B med. blue TU-79 Part B red TU-80 Part B TU-80 Part B blue TU-80 Part B red TU-89 Part B TU-89 Part B black TU-89 Part B green TU-89 Part B red TU-89 Part B white Uracure 3730 Part B Uralite 3111 Part B Uralite 3113 Part B Uralite 3115 Part B Uralite 3117 Part B Uralite 3120 Part B Uralite 3121 Part B Uralite 3122 Part B Uralite 3128 Part B Uralite 3167 Part B Zebron 385 Zebron 385 blue Zebron 385-6 Zebron 385-6 gray Zebron 386 Zebron 386 brown Zebron 386C Zebron 386 PC Zebron 486					
584-84-9 (See trade names listed under CAS No. entry 91-08-7.)					
1321-38-6/26471-62-5	X/P		2/8/87-2/5/89	1, 2.04 thru 2.09, 2.11 thru 2.16, 3 all, 4.01 thru 4.05, 5 all, 6.05, 7.01, 7.03 thru 7.06, 8.01, 8.05, 8.96, 8.23, 9.01 thru 9.15, 9.19, 9.20, 9.22, 10.01, 10.02, 10.05, 10.08, 10.08 thru 10.16, 10.23	6/14/89
AH-18 AH-20 AH-23 Andur 8 AP Andur 8 AP W/24% TXIB Andur 8 APF Andur 8 APF (Vail) Andur 8 APF-LM Andur 9 AP Andur 9 AP-LM Andur 9 APF Andur 9 APF-LM					

CAS No./trade name	Who must report	Exemptions added (+) removed (-)	Coverage period	Question selection	Effective date
Andur 70 DP					
Andur 80-5 AP					
Andur 90 AP					
Andur 93 AP					
Andur 95 AP					
Andur 520 DP					
Andur 700 AP					
Andur 720 DP					
Andur 800 AP					
Andur 800 DP					
Andur 850 AP					
Andur 900 AP					
Andur 920 AP					
Andur 930 AP					
Andur 950 AP					
Andur 3300 AS Part A					
Andur 5000 DP					
Andur 5500 DP					
Andur 6500 DP					
Andur 7000 AS					
Andur 7000 DP					
Andur 7200 DP					
Andur 7500 DP					
Andur 8000 AP					
Andur 8200 AP					
Andur 8500 AP					
Andur 9000 AP					
Andur 9200 AP					
Andur 9000 AS Part A					
Andur 9500 AP					
Andur CP-9000					
Andurcoat 60					
Autoflex component A					
Bayfit 540 A					
Bayfit 550 A					
Bayfit 551 A					
Bayfit 552 A					
Bayfit 554 A					
Bayfit 555 A					
Bayfit 556 A					
Bayfit 880-A					
CE-115-35 Part A					
CE-1157-30					
CE-1163					
CE-1164					
DP-1001-B prepolymer					
DP-1963 Part A					
DP-4541 Part A					
DP-4736 Part A					
DP-5758 A					
DP-6332 Part A					
DP-6872 Part A					
DP-8222					
DP-8348-3 Part A					
DP-8449					
DP-8536 black					
DP-8536 part A					
DP-8806					
DP-8806					
DP-9170					
DP-10000 Part A					
DP-10485					
DP-10561					
DP-10744 Part A					
DP-11021					
DP-11251 Part A					
DP-11252 Part A					
DP-11289 Part A					
DP-11321 Part A					
DP-11339 Part A					
DP-11373 Part A					
DP-12105 Part A					
DP-12390 Part A					
DP-12752 Part A					
DP-12768					
DP-12792 Part A					
DP-12816 Part A					
DP-14120 Part A					
DP-14346 Part A					

CAS No./trade name	Who must report	Exemptions added (+) removed (-)	Coverage period	Question selection	Effective date
DP-14455 Part A					
DP-14552 Part A					
DP-14726 Part A					
DP-14943 Part A					
DV-5159					
Elastan 6054U Iso					
Elastan 6055U Iso					
Elastan 6059U Iso					
Elastocast 7050U Iso					
Elastoflex C 2006U Iso					
Elastoflex C 2007U Iso					
Elastoflex C 2010U Iso					
Elastoflex C 2013U Iso					
Elastoflex C 2024U Iso					
Elastoflex C 2025U Iso					
Elastoflex C 2034U Iso					
Elastoflex C 2035U Iso					
Elastoflex C 2036U Iso					
Elastoflex C 2038U Iso					
Elastoflex C 2048U Iso					
Elastoflex C 2066U Iso					
Elastoflex R 2017U Iso					
Elastopan S 4500U Iso					
Elastopor P 1059U Iso					
EN-2 Part A					
EN-3 Part A					
EN-1554 Part B					
EN-1554 Part B					
FR-1259 black					
Hypol 2000					
Hypol 2002					
Hypol 2003					
Hypol 3000					
Isocyanate 05					
Isocyanate 37 Normal					
Isocyanate 37 Rev.					
Isocyanate 56					
Lupranate 7525					
Lupranate 8020					
Lupranate T80 Type 1					
Lupranate T80 Type 2					
Lupranate T80 Type 3					
Lupranate T80 Type 4					
Lupranate TM 105					
LX 700 Iso					
MDI/TDI Based Iso					
Mondur 000					
Mondur 102					
Mondur 425					
Mondur 428					
Mondur 437					
Mondur 445					
Mondur 446					
Mondur 450					
Mondur 452					
Mondur 466					
Mondur 473					
Mondur 494					
Mondur 510					
Mondur 521					
Mondur 531					
Mondur 532					
Mondur 536					
Mondur 537					
Mondur 539					
Mondur 545					
Mondur 569					
Mondur 574					
Mondur 595					
Mondur A-39-S					
Mondur HR					
Mondur MT-40					
Mondur T-422					
Mondur TD					
Mondur TD-80 all grades					
Mondur TD-564					
Multrathane 000					
PBA-2279 (Formerly 4397-32-5)					
Pecora Duramem 600CTF					

CAS No./trade name	Who must report	Exemptions added (+) removed (-)	Coverage period	Question selection	Effective date
Pecora Duramem H-500 Pecora Duramem R-500 Pecora Duramem V-500 Pecora Dynaflex Pecora Dynafred Pecora Dynatrol I Pecora Dynatrol II Pecora Dynaweld Pecora Urethpan NR-200 Pecora Urethpan NR-201 Pecora Urethpan NR-300 PX Iso 1 PX Iso 2 PX Iso 12 PXI SF-52 Iso PXI 3453M Iso PXI 4502-03 Iso PXI 4744-63 Iso PXI 4834-64 Iso PXI 5157-82 Iso PXO 38-01 Iso PXO 44U-39 Iso PXO 47-03 Iso PXO 68-12 Iso PXO 100-18 Iso PXO 135-32 Iso PXO 1091-36 Iso Resale Isocyanate RN-1503 RN-1515 RN-1520 RN-1521 RN-1525 RN-1558 RN-1559 RN-1560 RN-2000 RN-2025 RN-3000 RN-3038 RN-3038ER RN-3039 RN-3050 Rubinate TDI 80/20 Scuranate BT (inactive) Scuranate MT 37 (inactive) Scuranate T 65 Scuranate T 80 Scuranate T 80P Scuranate TB 826 Scuranate TB 831 Solithane 291: 3.2% Spunkel M 21-40X Spunkel M 21-47X Spunkel M 21-Z-40 Spunkel M 26 Spunkel M 37-A6X-42 Spunkel M 37-A6X-45 Spunkel M 60-A6X-50 Spunkel M 66-50CX Spunkel M 66-50E Spunkel M 66-A6X-50 Spunkel M 66-Z-50 Spunkel P 14-75S Spunkel P 49-A6-60 Spunkel P 49-A6X-60 Spunkel P 82-K4-75 Spunkel P 1978 Spunkel P 4146-80A1X Spunkel P 4448-40AX Spunkel P 4820-32A1X Spunkel P 5562 ST-80 Part A ST-90 Part A TDI Based Iso TDI 80 TDI 65/35 TDI 80/20 TDI/MDI Based Iso					

CAS No./trade name	Who must report	Exemptions added (+) removed (-)	Coverage period	Question selection	Effective date
Toluene diisocyanate 65/35 Toluene diisocyanate 80/20 Toluene diisocyanate T 80 Toluene diisocyanate T 80 P Tremthane Urethane Sealant 4995 TU-50A Part A TU-65 Part A TU-70 Part A TU-75 Part A TU-79 Part A TU-80 Part A TU-89 Part A UN-708 Isocyanate Uralite 0164 Part A Uralite 3109 prepolymer (Part A) Uralite 3110 prepolymer (Part A) Uralite 3111 Part A Uralite 3113 Part A Uralite 3115 Part A Uralite 3117 Part A Uralite 3121 Part A Uralite 3122 Part A Uralite 3124 Part A Uralite 3128 Part A Uralite 3167 Part A Uralite 3208 prepolymer Uralite 3211 prepolymer Uralite 3215 prepolymer Uralite 3216 prepolymer Uralite 3217 prepolymer Uralite 3231 prepolymer Uralite 3238 prepolymer Uralite 3239 prepolymer Uralite 3240 prepolymer Uralite 3257 prepolymer Uralite 3259 prepolymer Uralite 3261 prepolymer Uralite 3264 prepolymer Uralite 3267 prepolymer Uralite 3269 prepolymer Uralite 3270 prepolymer Uralite 3272 prepolymer Uralite 3274 prepolymer Uralite 3275 prepolymer Uralite 6108 Part A Urethane Windshield Sealant 2421-11 Voranate 3071 Isocyanate Voranate 3138 Isocyanate Voranate DAC Isocyanate Voranate T-80 Type I Toluene diisocyanate Voranate T-80 Type II Toluene diisocyanate Voranate T-7000 Isocyanate Voranate TCPA Isocyanate Voranate TM-821 Isocyanate WP-102 Wuc 3083T Iso Wuc 3104T Iso Wuc 3129T Iso Wuc 3133T Iso Wuc 3187T Iso Wuc 3205T Iso Wuc 3214T Iso Wuc 3240T Iso Wuc 3246T Iso XAS 1565.01L Experimental Isocyanate Type I XAS 1565.00L Experimental Isocyanate Type II XAS 10848.00 Experimental Isocyanate XUS 15116.00 Developmental Isocyanate Blend 5470-11-1 (See trade names listed under CAS No. entry 10039-54-0.) 10039-54-0/5470-11-1 C-41 Agfa Color Process F Kit-Color Developer Part A Agfa Color RSF 600 Rejuvenator Part B Agfa Color RSP 100 Regenerator Part C Agfa Color RSP 770 Regenerator Part C Agfa Pro CN Process Kit-Color Developer Replenisher Part C Aroclit LF Powder Aroclit LF Powder *					
	X/P		2/8/87-2/5/89	1, 2.07, 2.12 thru 2.14, 3.04, 6.03 thru 6.05, 9.01	6/14/89

CAS No./trade name	Who must report	Exemptions added (+) removed (-)	Coverage period	Question selection	Effective date
Choice Film Developer, Part B Choice Print Developer, Part B Colenta Paper Developer, Part A LV-48 Colorprint Developer Replenisher Colorprint Developer Regenerator Part B Colorprint 101 ER Developer Replenisher Colorprint 101 ER Developer Replenisher Part A Colorprint-XL Developer Replenisher, Part B CPR-3 Developer Replenisher, Part C Dealer Supply Opt III Developer, Part B Dealer Supply Phase III Developer, Part B Dealer Supply Phase IV Developer, Part B E-Prep Neutralizer Electro-Brite A-474 Electro-Brite E-Prep Neutralizer Electro-Brite N-466 Electro-Brite N-466L Fuji CN-160Q NQ1-R Color Developer Replenisher Fuji Color Developer Replenisher NQ1-R Fuji CP-25Q PQ1-R Color Developer Replenisher Hydroxylamine Reagent KIS DN Film Developer, Part B KIS Micro 2.002 Film Developer, Part B KIS Micro 2.002 Paper Developer, Part B KIS Super DN Film Developer, Part B KIS Super X-Press Developer Part B KIS Ultra X-Press Developer, Part A Kodak Developer Replenisher-Process R-3, MX 1238-1 Kodak Developer Replenisher-MX 1341 Kodak Developer Replenisher-RT MX-1286-2 Kodak Double Check Position Proofing Developer Replenisher Kodak EA-5 Neutralizer and Replenisher Kodak Ektachrome Movie Neutralizer and Replenisher Kodak Ektachrome R-3 Color Developer and Replenisher Kodak Ektachrome R-3000 Color Developer Kodak Ektaprint 2 Developer Kodak Ektaprint 2 Developer and Replenisher Kodak Ektaprint 2 Developer and Replenisher LORR Kodak Ektaprint 2 Developer and Replenisher LORR H Kodak Ektaprint 2 Developer and Replenisher LORR M Kodak Ektaprint 2 Developer and Replenisher RT Kodak Ektaprint 2 Processing Kit Kodak Ektaprint 200 Developer Kodak Ektaprint R-100 Color Developer and Replenisher Kodak Ektaprint R-1000 Color Developer Kodak Ektaprint R-1000 Processing Kit Kodak Flexicolor AR Developer Replenisher Kodak Flexicolor AR Developer Replenisher LORR Kodak Flexicolor Developer Kodak Flexicolor Developer Replenisher Kodak Flexicolor Developer Replenisher LORR Kodak Flexicolor Developer Regenerator, MX-1445 Kodak Flexicolor Developer Replenisher, MX-1210-3 Kodak Flexicolor Processing Kit for Process C-41 Kodak Flexicolor Replenisher, RT, MX-1398 Kodak Hobby-Pac Color Reversal Kit Kodak Hobby-Pac Negative Film Kit Kodak ME-4/ECO-3 Neutralizer and Replenisher Kodak MX1445 Developer Regenerator Kodak Neutralizer and Replenisher, Process E-4 Kodak Neutralizer, Process E-4 Kodak Neutralizing Agent NA-1 Konica Color-7 Developer Replenisher N-1 Konica Color Developer Replenisher N-1B Konica Color Developer Solution P-1 Konica Color Developer Replenisher Manver II Hardness Indicator (Reagent) Negacolor Developer Replenisher, Part B Negacolor-2 Developer Replenisher, Part B Negacolor-LR Developer Replenisher, Part B Photo KIS Developer, Part A Posakwik Developer Replenisher (Cat. No. 822271), Part A Posakwik Developer Replenisher (Cat. No. 821271, 821275) Part B Process 63 CDR Color Developer Replenisher Part C					

CAS No./trade name	Who must report	Exemptions added (+) removed (-)	Coverage period	Question selection	Effective date
Process 63 CDR Color Developer/Replenisher Working Strength Process 70 CDJ Color Developer Rejuvenator Part B Process 70 CDR Color Developer Replenisher Process 70 CDR Color Developer/Replenisher Working Strength Process 70 CD-LR Color Developer Replenisher Part B Process 70 CD-LR Color Developer/Replenisher Working Strength Process 71 CDR Color Developer/Replenisher Working Strength Process 71 CDR Color Developer Replenisher Part B Process 92 CDJ Color Developer Rejuvenator Part C Process 92 CDR Color Developer/Replenisher Part C Process 92 CDR Color Developer/Replenisher Working Strength Process 92 CDR Professional Color Developer Process 92 CDR Professional Color Developer Replenisher Part C Process 92 CD-LR Color Developer Replenisher Part B Process 92 CD-LR Developer/Replenisher Working Strength Process 92 CD-MR Color Developer Replenisher Part B Process 92 DC-MR Color Developer/Replenisher Working Strength Process 92 CDR-RT Part C Process 92 CDR-RT Working Strength Recoprint 92CDR-RT Color Developer/Replenisher Part C 26471-62-6 (See trade names listed under CAS No. entry 1321-38-6.)					

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Wednesday
June 14, 1989

Part III

Office of Management and Budget

Budget Rescissions and Deferrals, Notice

OFFICE OF MANAGEMENT AND BUDGET

Cumulative Report on Rescissions and Deferrals

June 1, 1989.

This report is submitted in fulfillment of the requirement of Section 1014(e) of the Impoundment Control Act of 1974 (Pub. L. 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year for which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of June 1, 1989 of six rescission proposals and 14 deferrals contained in the first four special messages of FY 1989. These messages were transmitted to the

Congress on September 30 and November 29, 1988, and January 9 and April 18, 1989.

Rescissions (Table A and Attachment A)

As of June 1, 1989, there are no funds being withheld related to rescission proposals. Two of the six rescission proposals made by the prior Administration (R89-5 and R89-6, as described in Attachment A) continue to be supported by President Bush as offsets to supplemental requests.

Deferrals (Table B and Attachment B)

As of June 1, 1989, \$5,094.9 million in budget authority was being deferred from obligation. Attachment B shows the history and status of each deferral reported during FY 1989.

Information From Special Messages

The special messages containing information on the rescission proposals and deferrals covered by this cumulative report are printed in the Federal Registers listed below:

Vol. 53, FR p. 39879, Wednesday,

October 12, 1988

Vol. 53, FR p. 49530, Wednesday,

December 7, 1988

Vol. 54, FR p. 1650, Friday, January 13, 1989

Vol. 54, FR p. 18234, Thursday, April 27, 1989

Richard G. Darman,

Director.

BILLING CODE 3110-01-M

TABLE A

STATUS OF 1989 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by President Reagan.....	143.1
Accepted by the Congress as of June 1, 1989.....	0
Funding made available.....	123.1
Funding never withheld.....	20.0

NOTE: President Bush continues to support two rescission proposals (identified as R89-5 and R89-6 in Attachment A) as offsets to pending supplemental requests, even though the related funds have been made available. They total \$6.4 million.

TABLE B

STATUS OF 1989 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President.....	9,156.2
Routine Executive releases through June 1, 1989... (OMB/Agency releases of \$4,067.3 million and cumulative adjustments of \$6.0 million)	-4,061.3
Overtaken by the Congress.....	0
Currently before the Congress.....	5,094.9

Attachments

Attachment A - Status of Rescissions - Fiscal Year 1989

As of June 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Rescission Number	Amount Previously Considered by Congress	Amount Currently before Congress	Date of Message	Amount Rescinded	Amount Made Available	Date Made Available	Congression Action
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs:								
Subsidized housing programs.....	R89-1	20,000		1-9-89		(See note below.)		
Community Planning and Development:								
Urban development action grants.....	R89-2	51,651		1-9-89		51,651	2-28-89	
DEPARTMENT OF THE INTERIOR								
Fish and Wildlife Service:								
Land acquisition.....	R89-3	30,000		1-9-89		30,000	2-28-89	
National Park Service:								
Land acquisition and State assistance.....	R89-4	35,000		1-9-89		35,000	2-28-89	
DEPARTMENT OF JUSTICE								
Office of Justice Programs:								
Justice assistance.....	R89-5	5,000		1-9-89		5,000	3-16-89	
DEPARTMENT OF LABOR								
Employment Standards Administration:								
Black lung disability trust fund.....	R89-6	1,445		1-9-89		1,445	3-16-89	
TOTAL, RESCISSIONS.....		143,096	0			123,096		

NOTE. - The \$20 million proposed for rescission in Rescission Proposal No. 89-1 was never withheld from obligation. Therefore, there was no need to release the funds.

Attachment B - Status of Deferrals - Fiscal Year 1989

As of June 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congres- sionally Required Releases (-)	Congres- sional Action	Cumulative Adjust- ments (+)	Amount Deferred as of 6-1-89
FUNDS APPROPRIATED TO THE PRESIDENT									
International Security Assistance									
Foreign military sales credit.....	D89-11	4,122,750		11-29-88	1,490,000				2,632,750
Economic support fund.....	D89-01	592,760		09-30-88					
	D89-01A		2,054,000	11-29-88	1,700,254				946,506
Military assistance.....	D89-12	457,000		11-29-88	291,250				165,750
International military education and training.....	D89-13	37,400		11-29-88	37,400				0
Agency for International Development									
International disaster assistance.....	D89-14	18,125		11-29-88	15,164				2,961
Special Assistance for Central America									
Promotion of stability and security in Central America.....	D89-2	1,000	.	09-30-88	1,000				0
DEPARTMENT OF AGRICULTURE									
Forest Service									
Expenses, brush disposal.....	D89-3	144,649		09-30-88	751				143,898
Cooperative work.....	D89-4	335,263		09-30-88					
	D89-4A		172,737	04-18-89	508,000				0
DEPARTMENT OF DEFENSE - CIVIL									
Wildlife Conservation, Military Reservations									
Wildlife conservation, Defense.....	D89-5	1,212		09-30-88					
	D89-5A		227	04-18-89					1,439
DEPARTMENT OF ENERGY									
Power Marketing Administration									
Southwestern Power Administration, Operation and maintenance.....	D89-6	2,800		09-30-88					
	D89-6A		5,600	04-18-89					8,400

Attachment B - Status of Deferrals - Fiscal Year 1989

As of June 1, 1989 Amounts in Thousands of Dollars Agency/Bureau/Account	Deferral Number	Amount Transmitted Original Request	Amount Transmitted Subsequent Change (+)	Date of Message	Cumulative OMB/Agency Releases (-)	Congres- sionally Required Releases (-)	Congres- sional Action	Cumulative Adjust- ments (+)	Amount Deferred as of 6-1-89
DEPARTMENT OF HEALTH AND HUMAN SERVICES									
Social Security Administration Limitation on administrative expenses (construction).....	D89-7 D89-7A	6,745		09-30-88 80 04-18-89					6,824
DEPARTMENT OF JUSTICE									
Office of Justice Programs Crime victims fund.....	D89-8 D89-8A	90,000		09-30-88 35,000 04-18-89					125,000
DEPARTMENT OF STATE									
Bureau for Refugee Programs United States emergency refugee and migration assistance fund, executive.....	D89-9 D89-9A	26,135		09-30-88 27,000 11-29-88	23,492			6,001	35,644
DEPARTMENT OF TRANSPORTATION									
Federal Aviation Administration Facilities and equipment (Airport and airway trust fund).....	D89-10 D89-10A	823,608		09-30-88 202,084 11-29-88					1,025,692
TOTAL, DEFERRALS.....		6,659,446	2,496,728		4,067,311	0		6,001	5,094,864

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Part IV

Environmental Protection Agency

40 CFR Part 148

**Underground Injection Control Program:
Hazardous Waste Disposal Injection
Restrictions, Additional Effective Dates;
First Third Wastes; Final Rule**

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 148

(FRL-3556-8)

Underground Injection Control Program: Hazardous Waste Disposal Injection Restrictions, Additional Effective Dates; First Third Wastes

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is today promulgating rules implementing the Congressionally-mandated prohibitions on the underground injection of selected hazardous wastes. This action is being taken in response to amendments to the Resource Conservation and Recovery Act (RCRA) enacted through the Hazardous and Solid Waste Amendments of 1984 (HSWA).

Today's rule sets effective dates for certain wastes prohibited under section 3004(g) of RCRA. The general framework for implementing the land disposal restrictions for injection of hazardous wastes was promulgated on July 26, 1988 (53 FR 28118 *et seq.*). That rule should be consulted for a more thorough explanation of the Agency's rationale concerning the implementation of the land disposal restrictions for hazardous waste injection.

DATE: This final rule is effective June 7, 1989.

ADDRESSES: The official record for this rulemaking is located in Room 1013C East Tower, Office of Drinking Water (WH-550), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, and is available for viewing from 9:30 a.m. to 3:30 p.m., Monday through Friday, excluding legal holidays. The public must make an appointment to review docket materials by calling Eric Callisto at (202) 382-5508.

FOR FURTHER INFORMATION CONTACT: Bruce Kobelski, Office of Drinking Water, EPA, (202) 382-5508.

SUPPLEMENTARY INFORMATION

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- I. Background

- A. Statutory Authority

The Hazardous and Solid Waste Amendments of 1984 (HSWA), enacted on November 8, 1984, impose substantial new responsibilities on those who handle hazardous waste. The amendments prohibit the continued land disposal of hazardous waste beyond specified dates unless the waste meets or is treated to meet levels established pursuant to RCRA § 3004(m) or the Administrator determines that the prohibition is not required in order to protect human health and the environment for as long as the wastes remain hazardous (RCRA sections 3004(d)(1), (e)(1), (f)(2), (g)(5)). Congress established a separate schedule in § 3004(f) for making determinations regarding the injection of dioxins and solvents and the list of wastes specified in § 3004(d)(2), termed the "California list."

Wastes meeting the treatment standards set by EPA under section 3004(m) of RCRA may be land disposed. The statute requires EPA to set "levels or methods of treatment, if any, which substantially diminish the toxicity of the waste or substantially reduce the likelihood of migration of hazardous constituents from the waste so that

short-term and long-term threats to human health and the environment are minimized" (RCRA section 3004(m)(1)).

Land disposal prohibitions are effective immediately upon the statutory or regulatory deadlines unless the Agency sets another effective date based on the earliest date that adequate alternative treatment, recovery, or disposal capacity which is protective of human health and the environment will be available (RCRA sections 3004(h)(1) and (2)). However, these effective date variances may not exceed 2 years beyond the otherwise applicable effective date. In addition, two 1-year, case-by-case extensions of the effective date may be granted under certain circumstances (see 53 FR 28124, July 28, 1988) (RCRA section 3004(h)(3)).

For the purposes of the land disposal restrictions program, the statute specifically defines land disposal to include, but not be limited to, any placement of hazardous waste in a landfill, surface impoundment, waste pile, injection well, land treatment facility, salt dome or salt bed formation, or underground mine or cave (RCRA section 3004(k)). The statute also sets forth a series of deadlines for Agency action.

The land disposal prohibitions apply to all hazardous wastes identified or listed under RCRA section 3001 as of November 8, 1984, the date of enactment of HSWA. For any hazardous waste identified or listed under RCRA section 3001 after November 8, 1984, EPA is required to make land disposal restriction determinations within 6 months of the date of identification or listing (RCRA section 3004(g)(4)). However, the statute does not impose an automatic prohibition on land disposal if EPA misses a deadline for any newly listed or newly identified waste.

1. Section 3004(f)

Section 3004(f) addresses the disposal by injection of solvents, dioxins, and California list wastes. Specifically, this section requires the Administrator to promulgate rules prohibiting the disposal of such wastes into wells if it may "reasonably be determined that such disposal may not be protective of human health and the environment for as long as the waste remains hazardous"

2. Section 3004(g)

Section 3004(g) of RCRA applies to all methods of land disposal. It requires the

Agency to set a schedule for making land disposal restriction decisions for all hazardous wastes listed in 40 CFR Part 261 under RCRA section 3001(c) as of November 8, 1984, other than the wastes referred to in sections 3004(d) and (e).

Section 3004(g)(5) provides that the regulations promulgated by the Administrator must prohibit methods of land disposal except methods "which the Administrator determines will be protective of human health and the environment for as long as the wastes remain hazardous"

Furthermore, the section provides that, except for wastes which comply with the standards expressed in section 3004(m), a method of land disposal may not be determined to be protective of human health and the environment, "unless, upon application by an interested person, it has been demonstrated to the Administrator, to a reasonable degree of certainty, that there will be no migration of hazardous constituents from the disposal unit or injection zone for as long as the wastes remain hazardous."

- B. Effect on State UIC Primacy

The land disposal restrictions are in effect in all States as a matter of federal law. However, the Agency expects that State agencies which have primacy for the UIC program will wish to implement Part 148, and receive authorization to grant "no migration" exemptions from land disposal restrictions as well as case-by-case extensions under section 3004(h)(3). However, before such authorization can be granted, the State would have to demonstrate that it has the authority to implement sections 3004(f) and (g) of RCRA, and receive authorization to do so. A thorough discussion of the conditions under which such authorization can take place can be found in 50 FR 28728 *et seq.*, July 15, 1985, 51 FR 40618 *et seq.*, Nov. 7, 1986, and 52 FR 25783 *et seq.*, July 8, 1987. In addition, where jurisdiction for UIC and RCRA do not reside in the same State agency, EPA will require a Memorandum of Understanding between the two entities, clearly outlining responsibility for granting exemptions.

- C. Regulatory Background

Hazardous waste disposal has been regulated through two programs: surface disposal through 40 CFR Parts 264, 265, and new Part 268, and underground injection through the UIC Program (40 CFR Parts 144 through 147).

EPA established treatment standards and effective dates for surface disposal of certain hazardous wastes on November 7, 1986 (for certain solvents

and dioxins, 51 FR 40572 *et seq.*, July 8, 1987 (for California list wastes, 52 FR 25760), and August 17, 1988 (for certain section 3004(g) wastes, 53 FR 31138 *et seq.*).

On July 26, 1988 (53 FR 28118 *et seq.*), the Agency published Part 148 which established the framework for implementing the HSWA prohibitions for injected wastes, and set effective dates for the ban against the injection of solvents and dioxins. An August 16, 1988, publication set effective dates for the ban against the underground injection of California list wastes as well as certain of the "First Third" wastes (53 FR 30908 *et seq.*). Today's rule was proposed on October 26, 1988 (53 FR 43400 *et seq.*) EPA is today setting effective dates for the ban against the underground injection of the remaining "First Third" wastes for which treatment standards have been finalized.

Often, several waste streams will share a common form of BDAT and, thus, form a treatability group. Biological treatment, for example, is BDAT for several waste codes. Where there is sufficient available treatment capacity in a given treatability group for all types of disposal, EPA will not grant national capacity variances. Where there is insufficient capacity for all types of disposal EPA must allocate or dedicate certain waste streams to the available capacity and may grant capacity variances for the others.

The allocation decisions have the short term effect of delaying an effective prohibition date for certain waste streams for up to two years. At the end of that time, all waste streams will be subject to the land disposal prohibitions. In view of this short time frame and the limited resources, the Agency has not developed sophisticated analyses to apportion treatment demand to the limited treatment capacity.

In previous rules the Agency has used a tiered hierarchy that apportions available treatment capacity first to surface disposal units, then to CERCLA remedial actions and RCRA section 3004(u) corrective actions, and finally to UIC facilities (52 FR 32450, August 27, 1987, and 53 FR 30908 *et seq.*, August 16, 1988). Parts of this decision rule are not a basis for today's rulemaking in light of recent regulatory actions and policy decisions. On February 27, 1989, the Agency amended the land disposal schedule to place in the "Third Third" of the schedule all multi-source leachate that is derived from hazardous wastes (other than dioxin-containing wastes) (54 FR 8264 *et seq.*). This decision effectively removes many CERCLA/RCRA cleanup wastes from

consideration in the above hierarchy until May 8, 1990, as many of these wastes are multi-source leachate.

Moreover, the Agency has banned the underground injection of wastes in instances where these wastes place little demand on available capacity. This decision is consistent with the purposes of the allocation scheme since such small volumes will not affect the availability of capacity for surface disposal or RCRA or CERCLA cleanups. This approach is also consistent with Congressional intent in expeditiously moving industry away from disposal and towards treatment.

Finally, the Agency believes the hierarchy is most appropriately used in situations where large volumes of waste are competing for a limited amount of treatment capacity on a nationwide basis. Today's rule bans the underground injection of a number of low-volume (less than 200,000 gallons injected/year) wastes that are injected at only a few facilities. EPA believes that the availability of truck and rail transportation to move these wastes to treatment facilities, the ability of industry to provide on-site tanks for treatment, and the options for managing treatment residuals for these wastes do not limit industry's ability to treat these relatively low volumes.

- II. Summary of Today's Rule—Additional First Third Scheduled Wastes

- A. Response to Comments

Only five commenters responded to the call for public comment of today's rule. Most of them supported the determinations made in the proposal. Specific comments were made on certain of the Agency's proposed effective dates and to the applicability of established treatment standards to injected wastes. These concerns are addressed below.

1. The Applicability of BDAT Treatment Standards to Injected Wastes

Two commenters discussed their concerns with the Agency's approach to leachate. In particular, they were concerned that (1) leachate may be physically and chemically unique from process generated waste and, therefore, require separate regulatory treatment, and (2) the Agency has not properly accounted for the impact on treatment capacity of banning leachate derived from given waste codes.

In general, EPA believes these comments may have some merit, and published a final rule at 54 FR 8264 (February 27, 1989) which reschedules multi-source leachate that is derived

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from hazardous wastes into the "Third Third" of the schedule described in section 3004(g)(4)(C) of RCRA. Thus, the Agency agreed that leachate may be physically and chemically unique from process generated waste and, therefore, require separate regulatory treatment.

The regulatory decision and rationale are described in the above Federal Register notice. The effect of that February 27 rule is that effective dates established in today's rulemaking do not apply to disposal of most multi-source leachate. Most of the leachate described by the commenters is multi-source and, thus, the negligible amount of single source leachate banned by today's rule will have a minimal effect on demand for treatment capacity.

One commenter requested that the Agency not set effective dates for the ban against the underground injection of K015 nonwastewaters, as they believe the BDAT treatment level for that waste is not achievable using the treatment standard promulgated on August 17, 1988 (53 FR 31154). That BDAT treatment standard ("No Land Disposal Based on No Ash") was rescinded for K015 nonwastewaters on May 2, 1989 (54 FR 18836 et seq.; see Section (II)(B) of today's preamble). As a result, K015 nonwastewaters are under the effect of the section 3004(g) "soft hammer". EPA is unable to set effective dates for a listed waste in the absence of an established treatment standard. Consequently, the Agency defers action on K015 nonwastewaters until May 8, 1990, or until a treatment standard is set for this waste code, whichever comes first.

2. The Establishment of Effective Dates

One commenter stated that EPA is failing to distinguish between methods of land disposal in promulgating these regulations. The Agency disagrees with this contention, noting that promulgated and proposed regulatory actions specifically delineate between surface and deep well disposal with regard to certain effective dates.

Specifically, the Agency is apportioning available treatment capacity to surface units before injection wells. This decision rule, which clearly distinguishes between methods of land disposal, often results in the establishment of different ban effective dates, based on type of disposal, within a waste code. For example, today's rule grants a 2-year treatment capacity variance to the 118 million gallons of dilute K016 wastes which are annually underground injected. This same waste was banned from surface disposal on August 8, 1988, as the available treatment capacity was adequate to

handle the dilute K016 being disposed in landfills and surface impoundments.

It is true that the Agency is setting the same effective date for all types of disposal for certain wastes. Such determinations are made in the context of the above hierarchy and in situations where the amount of available treatment capacity is adequate to accommodate all of the subject waste that is land disposed or, conversely, none of the waste that is land disposed. EPA believes that such decisions are both consistent with the intent of HSWA and protective of human health and the environment.

Another commenter noted that the preamble language at 53 FR 43405 seemed to ban absolutely the underground injection of the wastes listed in Table 2 (i.e., "First Third" Wastes With Established Treatment Standards Which Current Data Indicate Are Not Being Injected). It is EPA's intent to ban the underground injection of hazardous waste that do not meet the BDAT treatment standards and, while the proposed regulatory language explicitly stated this, today's preamble language has been changed to clearly indicate this intent. These wastes may continue to be underground injected if the wastes are treated to meet the BDAT standard or if a demonstration of "no mitigation" and the attendant requirements of the UIC program are met.

Several commenters stated that EPA's use of the term "soft hammer" as applied to UIC wells was misleading or incorrect. Moreover, they argued that any national capacity variances for injection wells should begin on May 8, 1990, or an earlier date which EPA may set by regulation after promulgation of a BDAT standard and a decision on the availability of national protective treatment or disposal capacity for that waste. EPA now agrees with this latter position. Under section 3004(h)(2), EPA "may establish an effective date different from the effective date which would otherwise apply under subsection (d), (e), (f), or (g) * * *" given certain findings concerning national treatment or disposal capacity. "Any such other effective date shall in no event be later than 2 years after the effective date of the prohibition which would otherwise apply under subsection (d), (e), (f), or (g)." (RCRA section 3004(h)(2))

Section 3004(g)(5) requires EPA to prohibit one or more methods of land disposal of the hazardous wastes listed in the section 3004(g)(4) schedule, except for methods of land disposal which the Administrator determines will be protective of human health and the environment as defined by the

standards in section 3004(g)(5). The schedule in section 3004(g)(4) divides wastes into thirds.

Section 3004(g)(6) describes what happens where EPA fails to promulgate effective dates on the schedule. If EPA has not promulgated effective dates by August 8, 1988, for the "First Third" wastes, disposal into landfills and surface impoundments is subject to the special restrictions in section 3004(g)(6)(A). There are no statutory prohibitions for disposal of wastes under section 3004(g) into UIC wells until May 8, 1990. See RCRA section 3004(g)(6)(C). This same framework is true for wastes in the "Second Third" where EPA has failed to promulgate regulatory prohibitions by June 8, 1989.

Thus, for UIC well operators, the "effective date that would otherwise apply" under section 3004(g) for purposes of section 3004(h)(2) is May 8, 1990, unless EPA sets an earlier effective date. Under section 3004(m) EPA may not set an earlier effective date for a waste unless the Agency has established a treatment standard under section 3004(m) for that waste. EPA intends to promulgate prohibitions by May 8, 1990, as it develops section 3004(m) standards and makes decisions on available treatment or disposal capacity.

The policy considerations underlying section 3004(h) support this interpretation. Congress provided a maximum variance of 2 years for treatment or disposal capacity to develop and for operations to adjust to any lack of capacity that will exist after two years. These business decisions can only be reasonably made after the Agency has set treatment standards for the waste and evaluated available treatment and disposal capacity. Thus, the maximum national capacity variance for the injection of dilute K016, for example, is in effect for two years from the effective date of this rule and not two years from August 8, 1988. That August 8, 1988 date only affects restrictions on disposal of wastes to surface impoundments and landfills, not UIC wells.

The effective date of the prohibition on the underground injection of dilute K016 is the only change from the proposal based on this Agency interpretation. EPA may examine the application of section 3004(g) and section 3004(h)(2) to surface disposal units in the "Second Thirds" final rulemaking. See proposal at 54 FR 1056 et seq. (January 11, 1989).

One commenter believes that the Agency should defer any action on effective dates for injection wells until

May 8, 1990, arguing that EPA must first make site-specific determinations of protectiveness before banning underground injection. RCRA section 3004(g)(5) mandates that the Agency shall prohibit land disposal of the "First Third" of scheduled wastes * * * except for methods of disposal which the Administrator determines will be protective of human health and the environment * * *. EPA believes this requires that the Agency ban such disposal unless protection is shown. The Agency is in the process of determining which injection sites will be protective of human health and the environment. Until successful petitions pursuant to Part 146 have been demonstrated, EPA believes the most prudent and environmentally sound action is to ban the underground injection of wastes unable to meet the BDAT treatment standards. As a practical matter, treatment capacity variances have been granted for a number of the large volume waste streams that are currently underground injected, thereby alleviating any short-term dislocation for industry.

B. "First Third" Waste for Which EPA Has Not Set Treatment Standards, and the Relationship of Today's Final Rule to the January 11, 1989, Proposal (54 FR 1056 et seq.) and the May 2, 1989, Final Rule (54 FR 18836 et seq.)

On January 11, 1989, EPA proposed treatment standards and effective dates for certain "First Third", "Second Third", and "Third Third" wastes (54 FR 1056 et seq.). "First Third" wastes addressed in the January proposal are marked with an asterisk in Table 1 below. The wastes in Table 1 are not prohibited from land disposal by this regulation, but may be affected by rulemaking in the very near future.

In the October 26, 1988, proposal to this rule, EPA proposed to ban the underground injection of K004 nonwastewaters and K008 nonwastewaters. The Agency had previously set a BDAT treatment standard of "No Land Disposal Based on No Generation" for these wastes (53 FR 31138 et seq., August 17, 1988). The January 11, 1989, proposal, however, proposed to change the BDAT treatment standards for these waste codes. To fully consider these changes, EPA is deferring setting an underground injection effective date in this final rule for these wastes and will make a determination concerning these wastes in the final rule to the January 11, 1989, proposal.

On May 2, 1989 (54 FR 18836 et seq.), the Agency revised BDAT treatment

standard determinations for the nonwastewater forms of the following ten wastes: (K004, K008, K015, K021, K025, K036, K060, K069, K083, and K100). EPA had originally set BDAT for these wastes as "No Land Disposal" based on either "no generation", "reactivity", "recycling", or "no ash" (see FR 31138 et seq., August 17, 1988). The May 2, 1989, rule narrows the set of wastes subject to the "No Land Disposal" BDAT. The new subset subject to this BDAT includes only nonwastewater forms of these wastes which are generated by the process described in the waste listing description and disposed after August 17, 1988. The current BDAT treatment standards, do not, however, apply to nonwastewater forms of these wastes which are generated in the course of treating wastewater forms of these wastes. Today's final rule sets effective dates only for the subset of these waste forms within the scope of the current BDAT treatment standards. For K004 nonwastewaters and K008 nonwastewaters, the Agency is not setting effective dates for the reasons discussed in the beginning of this section.

Table 1.—"First Third" Wastes for Which no Treatment Standards Have Been Established

- *F006 wastewaters—The wastewater component of treatment sludges from electroplating operations except from the following processes: (1) Sulfuric acid anodizing of aluminum; (2) tin plating on carbon steel; (3) zinc plating (segregated basis) on carbon steel; (4) aluminum or zinc-aluminum plating on carbon steel; (5) cleaning/stripping associated with tin, zinc and aluminum plating on carbon steel; and (6) chemical etching and milling of aluminum. (NOTE: The Agency has established a treatment standard for the nonwastewater component of the F006 waste category. See Section (II)(C) of today's preamble.)
- *F007—Spent cyanide plating bath solutions from electroplating operations.
- *F008—Plating bath sludges from the bottom of plating baths from the electroplating operations where cyanides are used in the process.
- *F009—Spent stripping and cleaning bath solutions from electroplating operations where cyanides are used in the process.
- *F019—Wastewater treatment sludges from the chemical conversion coating of aluminum.
- K004 wastewaters—The wastewater component of treatment sludge from the production of zinc yellow pigments. (NOTE: The Agency has established a treatment standard for some of the nonwastewater components of the K004 waste category. See Section (II)(C) of today's preamble.)

- K008 wastewaters—The wastewater component of oven residue from the production of chrome oxide green pigments. (NOTE: The Agency has established a treatment standard for some of the nonwastewater components of the K008 waste category. See Section (II)(C) of today's preamble.)
- *K011—Bottom stream from the wastewater stripper in the production of acrylonitrile.
- *K013—Bottom stream from the acetonitrile column in the production of acrylonitrile.
- *K014—Bottoms from the acetonitrile purification column in the production of acrylonitrile.
- K015 nonwastewaters—The nonwastewater component of still bottoms from the distillation of benzyl chloride. (NOTE: The Agency has established a treatment standard for the wastewater component of the K015 waste category. See Section (II)(C) of today's preamble.)
- K017—Heavy ends (still bottoms) from the purification column in the production of epichlorohydrin.
- K021 wastewaters—The wastewater component of aqueous spent antimony catalyst waste from fluoromethanes production. (NOTE: The Agency has established a treatment standard for some of the nonwastewater components of the K021 waste category. See Section (II)(C) of today's preamble.)
- K022 wastewaters—The wastewater component of distillation bottom tars from the production of phenol/acetone from cumene. (NOTE: The Agency has established a treatment standard for the nonwastewater components of the K022 waste category. See Section (II)(C) of today's preamble.)
- K031—By-product salts generated in the production of MSMA (monosodium methanearsenate and cacodylic acid).
- K035—Wastewater treatment sludges generated in the production of creosote.
- *K036 wastewaters—The wastewater component of still bottoms from toluene reclamation distillation in the production of disulfoton. (NOTE: The Agency has established a treatment standard for some of the nonwastewater components of the K036 waste category. See Section (II)(C) of today's preamble.)
- K046 wastewaters and explosive nonwastewaters—Both the explosive nonwastewater component and all wastewater components of treatment sludges from the manufacturing, formulation, and loading of lead-based initiating compounds. (NOTE: The Agency has established a treatment standard for the nonexplosive nonwastewater components of the K046 waste category. See Section (II)(C) of today's preamble.)
- K060 wastewaters—The wastewater component of ammonia still lime sludge from coking operations. (NOTE: The Agency has established a treatment standard for some of the nonwastewater components of the K060 waste category. See Section (II)(C) of today's preamble.)

- K061 wastewaters—The wastewater component of emission control dust/sludge from the primary production of steel in electric furnaces. (NOTE: The Agency has established a treatment standard for the nonwastewater component of the K061 waste category. See Section (II)(C) of today's preamble.)
- K069 wastewaters and calcium sulfate nonwastewaters—All wastewaters, and the calcium sulfate nonwastewater component of emission control dust/sludge from secondary lead smelting. (NOTE: The Agency has established a treatment standard for some of the noncalcium sulfate nonwastewater components of the K069 waste category. See Section (II)(C) of today's preamble.)
- K073—Chlorinated hydrocarbon waste from the purification step of the diaphragm cell process using graphite anodes.
- K083—Distillation bottoms from aniline production.
- K084—Wastewater treatment sludges generated during the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.
- K085—Distillation or fractionation column bottoms from the production of chlorobenzenes.
- K086—Solvent sludges, caustic washes and sludges, or water washes and sludges from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead. (NOTE: The Agency has established a treatment standard for K086 solvent washes. See Section (II)(C) of today's preamble.)
- K106—Wastewater treatment sludge from the mercury cell process in chlorine production.
- P and U wastes—All remaining "First Third" chemical specific wastes originally listed under §§ 261.33 (e) and (f) (i.e., those beginning with a "U" or a "P" (Note: A treatment standard has been proposed for P030, P039, P041, P063, P071, P089, P094, P097, U221, and U223. Until BDAT is finalized these wastes remain under the effect of the "soft hammer").
- * "First Third" waste addressed in January 11, 1989 proposal.

C. "First Third" Wastes with Established Treatment Standards which Current Data Indicate are Not Being Injected

The RCRA section 3004(g) "First Third" wastes listed in Table 2 below are "First Third" wastes with established BDAT standards which current data indicates are not being injected. (Refs. 1 and 2) (Note: Included in Table 2 are K025 nonwastewaters and K100 nonwastewaters. Originally "Second Third" and "Third Third" wastes, respectively, these wastes have established treatment standards and as

such are being addressed along with the "First Third" wastes.) Treatment standards were established for these wastes on August 17, 1988 (53 FR 31138 et seq.) (or revised on May 2, 1989 (54 FR 18836 et seq.)). Restricting the injection of these waste would have a negligible effect on the availability of treatment capacity. Therefore, EPA is banning the underground injection of these wastes on June 7, 1989, unless they are able to meet the BDAT treatment standards. The Agency believes these decisions will have no effect on the remaining national capacity available to treat RCRA/CERCLA remedial actions requiring the type of BDAT treatment associated with these wastes.

Table 2.—"First Third" Wastes With Established Treatment Standards Which Current Data Indicate Are Not Being Injected

- F006 nonwastewaters—The nonwastewater component of treatment sludges from certain electroplating operations. (NOTE: The Agency has not established a treatment standard for F006 wastewaters. See Section (II)(B) of today's preamble.)
- K001—Bottom sediment sludge from the treatment of wastewaters from wood preserving processes that use creosote and/or pentachlorophenol.
- K015 Wastewaters—The wastewater component of still bottoms from the distillation of benzyl chloride. (NOTE: On May 2, 1989, the Agency rescheduled K015 nonwastewaters to the Third Third. See Section (II)(B) of today's preamble.)
- K018—Heavy ends from the fractionation column in ethyl chloride production
- K020—Heavy ends from the distillation of vinyl chloride in vinyl chloride monomer production.
- †K021 nonwastewaters—The nonwastewater component of aqueous spent antimony catalyst waste from fluoromethanes production. (Note: The Agency has not established a treatment standard for K021 wastewaters. See Section (II)(B) of today's preamble.)
- K022 nonwastewaters—The nonwastewater component of distillation bottom tars from the production of phenol/acetone from cumene. (Note: The Agency has not established a treatment standard for K022 wastewaters. See Section (II)(B) of today's preamble.)
- K024—Distillation bottoms from the production of phthalic anhydride from naphthalene.
- †K025 nonwastewaters—The nonwastewater component of distillation bottoms from the production of nitrobenzene by the nitration of benzene. (Note: The Agency established a treatment standard for K025

nonwastewaters, originally listed with the "Second Third" wastes, on August 17, 1988. This determination was revised on May 2, 1989. The Agency has not established a treatment standard for K025 wastewaters. As such, K025 wastewaters remain a "Second Third" waste, and will be addressed at a later date.)

†K036 nonwastewaters—The nonwastewater component of still bottoms from toluene reclamation distillation in the production of disulfoton. (Note: The Agency has not established a treatment standard for K036 wastewaters. See Section (II)(B) of today's preamble.)

K037—Wastewater treatment sludge from the production of disulfoton.

K044—Wastewater treatment sludges from the manufacturing and processing of explosives.

K045—Spent carbon from the treatment of wastewater containing explosives.

K046 nonexplosive nonwastewaters—The nonexplosive nonwastewater component of treatment sludges from the manufacturing, formulation, and loading of lead-based initiating compounds. (Note: The Agency has not established a treatment standard for K046 wastewaters and the explosive nonwastewater component of the K046 waste category. See Section (II)(B) of today's preamble.)

K047—Pink/red water from TNT operations.

K048—Dissolved air flotation (DAF) float from the petroleum refining industry.

†K060 nonwastewaters—The nonwastewater component of ammonia still lime sludge from coking operations. (Note: The Agency has not established a treatment standard for K060 wastewaters. See Section (II)(B) of today's preamble.)

K061 nonwastewaters—The nonwastewater component of emission control dust/sludge from the primary production of steel in electric furnaces. (Note: The Agency has not established a treatment standard for K061 wastewaters. See Section (II)(B) of today's preamble.)

†K069 noncalcium sulfate nonwastewaters—The noncalcium sulfate nonwastewater component of emission control dust/sludge from secondary lead smelting. (Note: The Agency has not established a treatment standard for K069 wastewaters and the calcium sulfate nonwastewater component of the K069 waste category. See Section (II)(B) of today's preamble.)

K086 solvent washes—Solvent washes from cleaning tubs and equipment used in the formulation of ink from pigments, driers, soaps, and stabilizers containing chromium and lead. (Note: The Agency has not established a treatment standard for K086 solvent sludges, caustic washes and sludges, or water washes and

sludges. See Section (II)(B) of today's preamble.)

K087—Decanter tar sludge from coking operations.

K099—Untreated wastewater from the production of 2, 4-D.

†K100 nonwastewaters—The nonwastewater component of waste leaching solution from acid leaching of emission control dust/sludge from secondary lead smelting. (Note: The Agency established a treatment standard for K100 nonwastewaters, originally listed with the "Third Third" wastes, on August 17, 1988. This determination was revised on May 2, 1989. The Agency has not established a treatment standard for K100 wastewaters. As such, K100 wastewaters remain a "Third Third" waste, and will be addressed at a later date.)

K101—Distillation tar residues from the distillation of aniline-based compounds in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.

K102—Residue from the use of activated carbon for decolorization in the production of veterinary pharmaceuticals from arsenic or organo-arsenic compounds.

† A BDAT treatment standard has been established only for the subset of these wastes which are generated by the process described in the waste listing description and disposed after August 17, 1988. The established BDAT does not apply to nonwastewater forms of these wastes which are generated in the course of treating wastewater forms of these wastes (see generally 54 FR 18836 et seq., May 2, 1989, and Section (II)(B) of today's preamble). As such, the ban dates established for these waste codes in today's rule apply only to the subset of wastes within the scope of the BDAT treatment standards established on May 2, 1989.

D. Determination of Available Capacity and Effective Dates for Injected "First Third" Wastes (with Established Treatment Standards Not Addressed on August 16, 1988)

Table 3 summarizes the effective dates for the ban against the underground injection of certain "First Third" wastes. This table lists only those "First Third" wastes with established treatment standards for which underground injection effective ban dates were not promulgated on August 16, 1988, and which are injected. The Agency believes these decisions will have no effect on the remaining national capacity available to treat RCRA/CERCLA remedial actions requiring the type of treatment associated with these wastes. Discussions of all wastes addressed in Table 3 follow.

TABLE 3.—INJECTED "FIRST THIRD" WASTES (WITH ESTABLISHED TREATMENT STANDARDS) NOT ADDRESSED ON AUGUST 16

RCRA waste code	Effective date proposed on October 26, 1988	Effective date in final rule
K016	Dilute K016 (<1%)—variance until 8/8/90; Concentrated K016 (≥1%)—date of final promulgation of that proposal.	variance until June 7, 1991.
K019	Date of final promulgation of that proposal.	June 7, 1989.
K030	Date of final promulgation of that proposal.	June 7, 1989.
K103	Date of final promulgation of that proposal.	June 7, 1989.

1. K016

Wastes categorized as K016 consist of heavy ends or distillation residues from the production of certain halogenated hydrocarbons. The Treatment, Storage, Disposal, and Recovery (TSDR) Survey (Ref. 2) identified 118 million gallons of injected, dilute (<1%) K016 wastes with an identified BDAT treatment standard of wastewater treatment consisting of biological treatment followed by wet air oxidation. The survey also indicated that 170,000 gallons of K016 may be injected at concentrations equal to or greater than 1%. BDAT for these K016 wastes (≥1%) would be liquid combustion (Ref. 2).

The Agency has determined that there is 72 million gallons of available capacity for the treatment train applicable to injected, dilute K016 waste. Similarly, 246 million gallons of available capacity have been identified for injected wastes utilizing liquid combustion as treatment. As indicated earlier in the preamble, the Agency has decided to grant a 2-year variance not from August 8, 1988, as proposed, but rather from the effective date of this rule. EPA, therefore, is today granting a variance to dilute (<1%) K016, and banning its injection on June 7, 1991. The injection of concentrated (≥1%) K016, unless it meets or is treated to meet the BDAT treatment standards, is banned on June 7, 1989. (The determination as to whether a wastewater contains less than 1% K016 is to be made at the point of initial generation prior to any treatment, i.e., when the waste first meets the K016 listing description.)

2. K019

This waste stream is composed of heavy ends and distillation residues generated in the production of ethylene dichloride. The TSDR Survey has identified only 65,000 gallons of this relatively dilute waste that are being injected. The most appropriate treatment for this waste would be wastewater treatment based on biological degradation (Ref. 2). As mentioned above, the survey shows an alternative capacity of 72 million gallons for injected wastes amenable to this type of treatment. Because the Agency has identified adequate capacity for this particular waste stream, EPA is promulgating the effective date as proposed, prohibiting the underground injection of K019 wastes not meeting the BDAT treatment standards on June 7, 1989.

3. K030

This waste is generated in the production of trichloroethylene and perchloroethylene and consists of column bottoms and heavy ends. As with K019, the injected waste is dilute and is best treated by wastewater treatment based on biological degradation. As noted above, EPA has identified 72 million gallons of such treatment capacity for injected wastes. The survey shows less than 30,000 gallons of this waste being injected. The Agency believes that the information gathered from the survey shows sufficient capacity to treat this waste, and is therefore promulgating the effective date as proposed and banning the underground injection of K030 waste, unless it meets or is treated to meet the BDAT treatment standards, on June 7, 1989.

4. K103

This waste stream consists of residues from the production of aniline. The TSDR Survey indicates that 31,560 gallons of K103 are being injected each year (Ref. 2). The Agency believes that this waste is relatively concentrated. The specified BDAT for K103 is liquid combustion, which shows an available capacity of 246 million gallons for injected wastes. Based on this information, the Agency is banning the underground injection of such wastes, unless they meet or are treated to meet the BDAT treatment standards, on June 7, 1989.

E. Technical Correction

On July 26, 1988, the Agency set effective dates for the ban against the underground injection of solvents and dioxins. Included in the Part 148

language that established these bans was language referencing § 268.44, the regulatory section which allows for treatability variances (§ 148.10(c)(4) and § 148.11(b)(4)). EPA is today deleting these two provisions, and replacing them with language that would achieve the equivalent result in § 148.10(c)(1) and § 148.11(b)(1) (" * * * if the wastes meet or are treated to meet the applicable standards specified in Subpart D of Part 268 * * *").

The Agency is recodifying § 148.14 in order to make the waste-specific effective dates appear in chronological order. This recodification is included to enhance clarity and does not affect the decisions made on August 16, 1988, for K049-52, K062, K071, and K104 wastes, nor does it open these decisions for public comment.

III. Regulatory Requirements

A. Regulatory Impact Analysis

Executive Order 12291 requires EPA to assess the effect of contemplated Agency actions during the development of regulations. Such an assessment consists of a quantification of the potential benefits and costs of the rule, as well as a description of any beneficial or adverse effects that cannot be quantified in monetary terms. In addition, Executive Order 12291 requires that regulatory agencies prepare an analysis of the regulatory impact of major rules. Major rules are defined as those likely to result in:

1. An annual cost to the economy of \$100 million or more; or
2. A major increase in costs or prices for consumers or individual industries; or
3. Significant adverse effects on competition, employment, investment, innovation or international trade.

The Agency has performed an analysis of the regulation to assess the economic effect of associated compliance costs for the "First Third" list wastes (Ref. 3). Total compliance costs of the entire "First Third" list regulations (i.e., those finalized today, those finalized on August 16, 1988, and those for which treatment standards have not yet been defined) are estimated at \$28.5 million, or \$6.2 million annualized. Alternate treatment costs are estimated to total \$25.75 million (\$6.0 million annualized), and petition costs are estimated to be \$2.75 million (\$0.20 million annualized). These costs indicate that this rule does not constitute a major rule under Executive Order 12291.

B. Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, whenever an agency publishes a notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a regulatory flexibility analysis that describes the effect of the rule on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). This analysis is unnecessary, however, if the agency's administrator certifies that the rule will not have significant economic effect on a substantial number of small entities.

Owners and operators of hazardous waste injection wells are generally major chemical, petrochemical and other manufacturing companies. The Agency is not aware of any small entities that would be affected by this rule. Part 148.1(c)(3) of the regulatory framework for this rule exempts any small quantity generator, as defined in § 261.5, from the underground injection prohibitions established in that framework. The Administrator certifies that this rule will not have significant economic effects on a substantial number of small entities. As a result of this finding EPA has not prepared a formal Regulatory Flexibility Analysis.

C. Paperwork Reduction Act

The information collection requirements in this rule have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act, (44 U.S.C. 3501 *et seq.*) and have been assigned OMB control number 2040-0042.

Public reporting burden for this collection of information is estimated to average 290 hours per respondent, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M St. SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

IV. References

(1) Findings on Class I Hazardous Wells Affected by the Land Ban Rules; Temple, Barker and Sloane, December, 1987.

(2) Background Document for First Third Wastes to Support 40 CFR Part 268 Land Disposal Restrictions, Final Rule, First Third Waste Volumes, Characteristics, and Required and Available Treatment Capacity—Part II; U.S. EPA, OSW, August 1988.

(3) Regulatory Impact Analysis of Proposed Hazardous Waste Disposal Restrictions for Class I Injection of First Thirds List Waste; EPA Report, Contract No. 68-03-3348, Cadmus Group, Inc., October 1987.

List of Subjects in 40 CFR Part 148

Administrative practice and procedure, Confidential business information, Environmental protection, Hazardous materials, Hazardous materials transportation, Hazardous waste, Intergovernmental relations, Reporting and recordkeeping requirements, Waste treatment and disposal, Water supply, Water pollution control.

Dated: June 7, 1989.

William K. Reilly,
Administrator.

Therefore Chapter I of Title 40 is amended as follows:

PART 148—HAZARDOUS WASTE INJECTION RESTRICTIONS

1. The authority citation for Part 148 continues to read as follows:

Authority: Section 3004, Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*

2. In § 148.10, paragraph (c)(4) is removed and paragraphs (c)(1) and (c)(3) are revised to read as follows:

§ 148.10 Waste specific prohibitions—solvent wastes.

* * * * *

(c) * * *

(1) If the wastes meet or are treated to meet the applicable standards specified in Subpart D of Part 268; or

* * * * *

(3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4 of this part.

* * * * *

3. In § 148.11, paragraph (b)(4) is removed and paragraphs (b)(1) and (b)(3) are revised to read as follows:

§ 148.11 Waste specific prohibitions—dioxin-containing wastes.

* * * * *

(b) * * *

(1) If the wastes meet or are treated to meet the applicable standards specified in Subpart D of Part 268; or

* * * * *

(3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4 of this part.

4. Section 148.14 is revised to read as follows:

§ 148.14 Waste specific prohibitions—first third wastes.

(a) Effective June 7, 1989, the wastes specified in 40 CFR 261.31 as EPA Hazardous Waste numbers F006 (nonwastewaters) and the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K001, K015 (wastewaters), K016 (at concentrations greater than or equal to 1%), K018, K019, K020, K021 (nonwastewaters generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes), K022

(nonwastewaters), K024, K030, K036 (nonwastewaters generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes), K037, K044, K045, nonexplosive K046 (nonwastewaters), K047, K048, K060 (nonwastewaters generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes), K061 (nonwastewaters), noncalcium sulfate K069 (nonwastewaters generated by the

process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes), K066 solvent washes, K067, K099, K101, K102, and K103 are prohibited from underground injection.

(b) Effective August 8, 1990, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K049, K050, K051, K052, K062, K071, and K104 are prohibited from underground injection.

(c) Effective June 7, 1991, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K016 (at concentrations less than 1%) are prohibited from underground injection.

(d) The requirements of paragraphs (a), (b), and (c) of this section do not apply:

- (1) If the wastes meet or are treated to meet the applicable standards specified in Subpart D of Part 268; or
- (2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this Part; or
- (3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4 of this Part.

5. Section 148.15 is added to Subpart B to read as follows:

§ 148.15 Waste specific prohibitions—second third wastes.

(a) Effective June 7, 1989, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K025 (nonwastewaters generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these

wastes) are prohibited from underground injection.

(b) The requirements of paragraph (a) of this section do not apply:

- (1) If the wastes meet or are treated to meet the applicable standards specified in Subpart D of Part 268; or
- (2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this Part; or
- (3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4 of this Part.

6. Section 148.16 is added to Subpart B to read as follows:

§ 148.16 Waste specific prohibitions—third third wastes.

(a) Effective June 7, 1989, the wastes specified in 40 CFR 261.32 as EPA Hazardous Waste numbers K100 (nonwastewaters generated by the process described in the waste listing description and disposed after August 17, 1988, and not generated in the course of treating wastewater forms of these wastes) are prohibited from underground injection.

(b) The requirements of paragraphs (a) of this section do not apply:

- (1) If the wastes meet or are treated to meet the applicable standards specified in Subpart D of Part 268; or
- (2) If an exemption from a prohibition has been granted in response to a petition under Subpart C of this Part; or
- (3) During the period of extension of the applicable effective date, if an extension has been granted under § 148.4 of this Part.

[FR Doc. 89-14080 Filed 6-13-89; 8:45 am]
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federal register

Wednesday
June 14, 1989

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for
Housing—Federal Housing Commissioner

Fund Availability for Section 8 Existing
Housing Certificate Program for
Operation Bootstrap and Submission of
Proposed Information Collection to OMB;
Notices

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-2001; FR-2667]

Fund Availability for Section 8 Existing Housing Certificate Program for Operation Bootstrap

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of fund availability for Public Housing Agencies (PHAs) to participate in Operation Bootstrap.

SUMMARY: HUD is announcing the availability of Section 8 Certificates for PHAs wishing to participate in Operation Bootstrap. The Department is interested in encouraging communities to develop and implement innovative programs to enable unemployed or underemployed members of families to become economically independent through the cooperative efforts of the public and private sectors. Section 8 Existing Housing Certificates will be awarded to PHAs selected to participate in Operation Bootstrap.

DATE: Applications for participation must be received by the local Field Office (Attention: Operation Bootstrap) by 4:00 p.m. local time on August 4, 1989. After review and approval of this program's information collection requirements by the Office of Management and Budget, HUD will announce, by separate Federal Register notice, details for submission of applications.

FOR FURTHER INFORMATION CONTACT: Lawrence Goldberger, Director, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 755-5720. Hearing- or speech-impaired individuals may call HUD's TDD number (202) 426-0015. (These telephone numbers are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The collection of information requirements for Operation Bootstrap have been submitted to the Office of Management and Budget (OMB) for expedited review under section 3504(h) of the Paperwork Reduction Act of 1980. Expedited review has been requested by June 21, 1989, so that the application process described in a separate Notice published in today's Federal Register may be carried out after approval of the described collections of information. No person

may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the Federal Register.

I. Introduction

"Operation Bootstrap" is an initiative by HUD to encourage communities to develop and implement innovative programs to aid unemployed or underemployed members of low-income families to become economically independent through the cooperation efforts of the public and private sectors. The Department is initiating Operation Bootstrap to coordinate services to low-income families motivated to achieve economic independence, in conjunction with other Departmental goals.

Operation Bootstrap builds upon the Department's successful Project Self-Sufficiency demonstrations in 1984 and 1985, which confirmed the effectiveness of coordinating local resources toward the goal of economic independence for very low-income single parents. However, Operation Bootstrap includes modifications to reflect the current progress of welfare reform and lessons learned from the demonstration.

The Department will provide a special allocation of Section 8 Certificates to PHAs selected to participate in Operation Bootstrap. Approximately 3,000 Section 8 Certificates will be made available during Fiscal Year 1989 nationwide for this purpose. Certificates will be awarded according to the criteria described in this Notice. A PHA may apply for up to a maximum of 200 Certificates to be used for participants in the Operation Bootstrap programs, subject to the rules and regulations of 24 CFR Part 882. In addition to housing assistance, local Operation Bootstrap programs must provide other activities and assistance designed to enable families to achieve the goal of economic independence. HUD anticipates providing rental housing assistance resources for this purpose in Fiscal Year 1990.

II. Operation Bootstrap Objectives

The overall goal of Operation Bootstrap is to enable low-income families to become economically independent of government assistance programs. The specific objectives of the program are:

(a) To develop innovative local strategies that effectively coordinate public and private resources toward the goal of economic independence for low-income families.

(b) To integrate effectively the Section 8 Existing Housing Assistance Payments Program with other public and private benefit programs to assist low-income families achieve eventual independence from government assistance programs.

(c) To provide families with stable rental assistance support while participating in Operation Bootstrap, allowing them to participate in job training programs without undue concern for the welfare and safety of their families.

(d) To document the results of Operation Bootstrap and share the information with other communities.

Local communities may design Operation Bootstrap programs that reflect local needs and priorities, available resources, and the existing local public and private institutions to achieve the objectives described above. Local programs must contain the following components:

1. *Coordinating Body.* Each program must establish or use an existing local coordinating body to plan and implement its Operation Bootstrap program. The coordinating body must work with the PHA and other public and private agencies that have resources or programs available to assist low-income families. The coordinating body must develop an action plan outlining specific activities and services necessary to meet the problems of the target population; must secure commitments of local public and private resources; and must oversee the administration of the program.

The coordinating body must include representatives from the PHA, other local public and private agencies that have resources or programs available to assist low-income families, local businesses, and educational facilities. Communities are encouraged to involve the local Private Industry Council, if one exists, and to include members of the medical, religious, and financial communities in the coordinating body. The coordinating body should strive for equal representation from the private and public sectors.

2. *Chief Executive Officer Support.* The local Operation Bootstrap program must have the strong support and involvement of the chief executive officer of the community. Experience with the Project Self-Sufficiency demonstration indicated that this support and involvement was instrumental to program success.

3. *Private Resources.* Each program must utilize an active group of local private organizations that are willing to commit funds, staff, equipment, use of buildings and property, training

assistance, housing, employment opportunities, and other services to the program. Such organizations may include businesses, employee organizations, religious organizations, neighborhood organizations, medical institutions, educational institutions, cultural and civic organizations, voluntary and nonprofit service groups, foundations and corporate philanthropies, and individuals.

4. *Public Resources.* Each community with an Operation Bootstrap program must commit the resources of its local agencies to provide appropriate support for the program. Such resources may include, but are not limited to: Community Development Block Grant funds; Job Training Partnership Act funds; Department of Health and Human Services funds; transportation; the use of publicly-owned buildings and property; local government staff, labor and equipment, and general revenues.

To the extent necessary or appropriate to local circumstances, the following activities and services should be included in the program:

(A) *Child Care.* The availability of quality child care services is considered an important element of a successful Operation Bootstrap program. Lack of quality child care or unreliable child care services can contribute to the failure of participants to take full advantage of the range of available support services or job training programs. Operation Bootstrap programs should take appropriate steps to assure that child care services are available for program participants.

(B) *Transportation.* Local Operation Bootstrap programs should give attention to the transportation needs of program participants. The Project Self-Sufficiency demonstration indicated a high correlation between the availability of transportation and the degree to which participants are able to take full advantage of the activities provided by the program.

(C) *Personal and Career Counseling.* Participants should be provided opportunities for counseling in basic life skills training that enhance the participants' ability to find and retain employment.

(D) *Job Development and Placement.* Local programs should identify and recruit potential employers early in the planning process, so that job training programs can be tailored to the needs of the job providers. Involving the private sector members of the Operation Bootstrap program is especially critical to this element of the program. The program should make use of a skilled placement officer to match individual

participants with employment opportunities in the community.

(E) *Other Activities and Services.* Other activities and services that are important to the success of an Operation Bootstrap program are:

- Managing and monitoring the progress of individual participants to identify any problems and to make necessary adjustments to increase the potential for a participant's success in completing the program;
- General education training, such as GED programs;
- Support group discussions;
- Preventive health care training;
- Financial counseling;
- Household maintenance training; and
- Entrepreneurial training.

III. Operation Bootstrap Participants

The families selected for participation in Operation Bootstrap must be eligible for assistance under the Section 8 Certificate Program. Selected families must enroll in the Operation Bootstrap program before securing a Section 8 Certificate, except that the PHA may include current Certificate holders in the program. Families selected for participation using Certificates made available from this special allocation must be on the PHA's Section 8 waiting list.

To the extent possible, the PHA should assist program participants to locate suitable housing by providing them with a list of available units that facilitate participation in the Operation Bootstrap program, such as easy access to public transportation or job training sites. All housing must meet the program requirements for the Section 8 Existing Housing Program described in 24 CFR Part 882.

A community may find it feasible to encourage (but may not require) program participants to utilize the Certificates to obtain housing in a particular area if doing so would facilitate the coordination of other support services. However, participants in the Operation Bootstrap program may use the Certificates to rent housing anywhere in the PHA operating area. Consistent with a PHA's authority to use up to 15 percent of its total Certificate funding for project-based assistance, a PHA may choose to use some of the Operation Bootstrap Certificate funding for project-based assistance in accordance with HUD regulations, provided the projects do not consist of more than 100 assisted units each. Communities are also encouraged to use other available resources, including Community Development Block Grants, to provide additional suitable housing.

IV. Selection Criteria for PHAs

The following factors will be considered in selecting PHAs to receive an allocation of Section 8 Certificates for Operation Bootstrap:

(1) *Coordination and Speed of Implementation.* The community must establish or must utilize an existing coordinating body to develop and implement the program. Special consideration will be given to applications that evidence ability for rapid delivery of services for the participating families.

(2) *Commitment of Private and Public Resources.* Each participating community must demonstrate the commitment of the resources of private industry, profit and nonprofit groups, and local public agencies to provide services and assistance appropriate to the program.

(3) *PHA Administrative Capability.* Administrative capability of the PHA must be sufficient to administer the PHA's role in the program successfully within a reasonable period of time.

(4) *Innovative Mechanism for Coordination and Delivery of Services.* Preference will be given to applications that propose innovative means of developing public and private cooperative activities; programs addressing the needs of homeless families on the PHA's waiting list; employment programs related to local or State free enterprise zone initiatives; entrepreneurial opportunities; homeownership opportunities through cooperatives; tenant management; neighborhood revitalization with the assistance of neighborhood groups; or coordination with agencies implementing the Jobs Program of the Family Support Act or the Job Training Partnership Act.

V. [Reserved]

VI. Selection and Approval Procedures

When the application period is announced, the applications must be submitted to local HUD Field Offices. The HUD Field Offices will perform a preliminary review of all PHA applications to determine that the application is complete, that the PHA is currently administering a Section 8 Certificate Program, and that the PHA is capable of implementing Operation Bootstrap. All approvable applications meeting these eligibility threshold requirements will be sent to the appropriate Regional Office, with comments on the four selection factors and recommendations for funding.

Regional Office staff will review all applications submitted through their

**Application for
Existing Housing****Section 8 Housing Assistance Payments Program**Send original and two copies of this application form
and attachments to the local HUD Field OfficeU.S. Department of Housing
and Urban Development
Office of Housing
Federal Housing Commissioner

OMB Approval No. 2502-0123 (exp. 11/30/90)

Public reporting burden for this collection of information is estimated to average 0.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600 and to the Office of Management and Budget, Paperwork Reduction Project (2502-0123), Washington, D.C. 20503.

Name of the Public Housing Agency (PHA) requesting housing assistance payments:

Application/Project No. (HUD use only)

Mailing Address of the PHA

Requested housing assistance payments are for:
How many Certificates? How many Vouchers?

Signature of PHA Officer authorized to sign this application

Have you submitted prior applications: No Yes
... for Section 8 Certificates? ☐ ☐
... for Section 8 Housing Vouchers? ☐ ☐

X

Title of PHA Officer authorized to sign this application

Phone Number

Date of Application

Legal Area of Operation (area in which the PHA determines that it may legally enter into contracts)

A. Primary Area(s) from which families to be assisted will be drawn.

Locality (City, Town, etc.)	County	Congressional District	Units

B. Proposed Assisted Dwelling Units

Housing Program	Number of Dwelling Units by Bedroom Count								Total Dwelling Units
	Efficiency	1-BR	2-BR	3-BR	4-BR	5-BR	6-BR		
Certificates									
Housing Vouchers									

C. Need for Housing Assistance. Demonstrate that the project requested in this application is consistent with the applicable Housing Assistance Plan including the goals for meeting the housing needs of Lower-Income Families or, in the absence of such a Plan, that the proposed project is responsive to the condition of the housing stock in the community and the housing assistance needs of Lower-Income Families (including the elderly, handicapped and disabled, large families and those displaced or to be displaced) residing in or expected to reside in the community. (If additional space is needed, add separate pages.)

D. Qualification as a Public Housing Agency. Demonstrate that the applicant qualifies as a Public Housing Agency and is legally qualified and authorized to carry out the project applied for in this application. (check ☐ the appropriate boxes)

1. The relevant enabling legislation

2. Any rules and regulations adopted or to be adopted by the agency to govern its operations

3. A supporting opinion from the Public Housing Agency Counsel

Submitted with
this applicationPreviously
submitted

Retain this record for the term of the ACC.

Previous editions are obsolete

page 1 of 2

form HUD-52515 (7/88)
ref. handbook 7420.3

E. Financial and Administrative Capability. Describe the experience of the PHA in administering housing or other programs and provide other information which evidences present or potential management capability for the proposed program.

F. Housing Quality Standards. Provide a statement that the Housing Quality Standards to be used in the operation of the program will be as set forth in the program regulation or that variations in the Acceptability Criteria are proposed. In the latter case, each proposed variation shall be specified and justified.

G. Leasing Schedule. Provide a proposed schedule specifying the number of units to be leased by the end of each three-month period.

H. Average Monthly Adjusted Income (Housing Vouchers Only)

Efficiency	1-BR	2-BR	3-BR	4-BR	5-BR	6-BR

I. Attachments. The following additional items must be submitted either with the application or after application approval, but no later than with the PHA executed ACC.

	Submitted with this application	To be submitted	Previously submitted
1. Equal Opportunity Housing Plan			
2. Equal Opportunity Certifications, Form HUD-916			
3. Estimates of Required Annual Contributions, Forms HUD-52672 and HUD-52673			
4. Administrative Plan			
5. Proposed Schedule of Allowances for Utilities and Other Services, Form HUD-52667, with a justification of the amounts proposed			

HUD Field Office Recommendations

Recommendation of Appropriate Reviewing Office	Signature and Title	Date

[FR Doc. 89-14138 Filed 6-13-89; 8:45 am]

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BILLING CODE 4210-27-C

form HUD-52515

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federal register

Wednesday
June 14, 1989

Part VI

The President

Proclamation 5989—Father's Day, 1989

Presidential Documents

Title 3—

Proclamation 5989 of June 9, 1989

The President

Father's Day, 1989

By the President of the United States of America

A Proclamation

By tradition, the third Sunday in June is designated Father's Day. Each year, we Americans observe this special day with renewed appreciation for the many gifts fathers bestow upon their children and the Nation.

When a father cradles his first child in his arms he knows that he holds the wonder of life itself. In that tender moment, he becomes aware of the endless rewards and awesome responsibilities of fatherhood.

A father sees the future not as some distant time and remote concern, but as the place in history where his children will dwell. He thus regards the world with a profound sense of stewardship, taking active interest in the course of current events and pursuing every endeavor as an investment in his children's well-being.

Though their gratitude may often go unspoken, children long remember their father's affection, hard work, and generosity. The simple joys of dad's piggy-back rides, patient coaching, and countless little treats and surprises are memories that a child cherishes forever. What teenage girl who has winced at her father's scrutiny of her prom date, what boy who has rolled his eyes at dad's familiar lecture on driving carefully, has not also recognized these paternal "offenses" as signs of love and concern?

Most children, however, do not fully appreciate their father's concerns and sacrifices until they have children of their own. A father will carry the weight of the world on his shoulders for his family, but he will also leave the world and its distractions behind when his children need an attentive listener or another player in a game of catch. Though he may be worried about everything from a sick baby to the cost of shoes, his children are touched only by his quiet strength and faith in God.

Fathers also provide an example of discipline, concern, and commitment. Children learn from their fathers that unconditional love is the foundation of a family and that it cannot exist apart from respect, consideration, faithfulness, and responsibility. A father, in shaping the character of his children, helps to shape the character of our Nation.

While we have ample opportunity and infinite reasons throughout the year to express respect and gratitude for our dads, Father's Day enables us to recognize them in a special way. On this day, let us give thanks for and to our Nation's fathers. They have surely earned a place of honor in our hearts and prayers.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, in accordance with a joint resolution of the Congress approved April 24, 1972 (36 U.S.C. 142a), do hereby proclaim Sunday, June 18, 1989, as Father's Day. I invite the States and communities and people of the United States to observe that day with appropriate ceremonies as a mark of appreciation and abiding affection for their fathers. I direct government officials to display the flag of the United States on all Federal Government buildings, and I urge all Americans to display the flag at their homes and other suitable places on that day.

IN WITNESS WHEREOF, I have hereunto set my hand this ninth day of June, in the year of our Lord nineteen hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

George Bush

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S.J. Res. 128/Pub. L. 101-36
Authorizing a first strike ceremony at the United States Capitol for the Bicentennial of the Congress Commemorative Coin. (June 9, 1989; 103 Stat. 69; 1 page) Price: \$1.00

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Rules and Regulations

Federal Register

Vol. 54, No. 114

Thursday, June 15, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

GENERAL ACCOUNTING OFFICE

4 CFR Part 31

Claims Against the United States; General Procedure

AGENCY: General Accounting Office.

ACTION: Interim rule.

SUMMARY: This interim rule amends the provisions of the General Accounting Office's claims regulations concerning the Barring Act, 31 U.S.C. 3702(b), by allowing claims against the United States to be filed with the individual federal agencies. Under the prior regulations a claim must be filed with the General Accounting Office (GAO) to toll the 6-year statute of limitations established by the Act. This amendment provides that a claim is considered timely filed when it is filed either with GAO or with the agency whose activities gave rise to it within 6 years after it first accrues. Since this amendment relieves a restriction on the filing of claims, immediate implementation is desirable. We are therefore issuing it as an interim rule. After a 60-day comment period, we will consider the comments received and take them into account in developing a final rule.

This rule also makes editorial changes to update 4 CFR Part 31 and bring it into conformance with existing administrative practices of the General Accounting Office.

EFFECTIVE DATE: This interim rule is effective with respect to claims not barred by 31 U.S.C. 3702(b) as of June 15, 1989. Comments must be received by August 14, 1989.

ADDRESS: Comments should be addressed to: Robert L. Higgins, Associate General Counsel, U.S. General Accounting Office, Room 1830, 441 G Street NW., Washington, DC 20548.

FOR FURTHER INFORMATION CONTACT: Robert L. Higgins at FTS 275-6410 or commercial (202) 275-6410.

SUPPLEMENTARY INFORMATION: The so-called Barring Act, 31 U.S.C. 3702(b) (1982), provides that, with certain exceptions, a claim within the settlement jurisdiction of the General Accounting Office "must be received by the Comptroller General within 6 years after the claim accrues." Since enactment of the Barring Act in 1940, we have required that such claims be filed directly with GAO within the allowed 6 years. Therefore, claims filed with any agency other than GAO did not stop the running of the statute.

The fundamental purpose of a statute of limitations is to bar stale claims. It requires the assertion of claims before so much time has elapsed that evidence necessary to resolve the claim becomes difficult or impossible to obtain. We believe this purpose is served not only when a claim is filed with GAO within the required 6-year period, but also when it is filed with the agency in which the claim arose and which will initially adjudicate it.

Accordingly, GAO's claims regulations in 4 CFR Part 31 are being amended to provide that a claim, within GAO's settlement jurisdiction, which is received by the agency whose program or activity gave rise to the claim within the statutory 6-year period, shall be treated as having been timely filed for purposes of the Barring Act. Agencies are urged to develop procedures to ensure that the date of receipt is clearly stamped on the claim to avoid disputes over the filing date.

Request for Comments

Comments will be solicited for 60 days after publication of this document, and a final document discussing comments received and any amendments required will be published in the Federal Register as soon as possible.

List of Subjects in 4 CFR Part 31

Accounting, Claims, Filing procedures, General Accounting Office, Government employees, Military personnel.

For the reasons set forth in the preamble, 4 CFR Part 31 is amended as follows:

PART 31—CLAIMS AGAINST THE UNITED STATES; GENERAL PROCEDURE

1. The authority citation for Part 31 continues to read as follows:

Authority: 31 U.S.C. 711. Interpret or apply 31 U.S.C. 3702.

§ 31.1 [Amended]

2. The first sentence of § 31.1 is amended by adding the words "or in the agency out of whose activities the claim arose" after the words "the General Accounting Office."

3. Section 31.4 is revised to read as follows:

§ 31.4 Where claims should be filed.

A claimant should file his or her claim with the administrative department or agency out of whose activities the claim arose. Claims which cannot be resolved by the department or agency shall be transmitted to the Claims Group, General Accounting Office, for resolution. Claims referred by agencies to the General Accounting Office, or any correspondence regarding a claim, should be addressed to: Claims Group, General Government Division, U.S. General Accounting Office, Washington, DC 20548.

4. Section 31.5 paragraph (a) is revised to read as follows:

§ 31.5 Statutory limitations on claims.

(a) *Statutory limitations relating to claims generally.* All claims against the United States Government, except as otherwise provided by law, are subject to the 6-year statute of limitations contained in 31 U.S.C. 3702(b). To satisfy this statute of limitations, a claim must be received by the General Accounting Office, or by the agency out of whose activities the claim arose, within 6 years from the date it accrued. The burden of establishing compliance with the statute of limitations rests with the claimant.

§ 31.6 [Amended]

5. Section 31.6 is amended by removing the words "Accounting and Financial Management Division" wherever they appear and adding, in their place, the words "General Government Division."

§ 31.8 [Amended]

6. Section 31.8 paragraph (a) is amended by removing the words "Accounting and Financial Management Division" and adding, in their place, the words "General Government Division." Milton J. Socelar.

Acting Comptroller General of the United States.

[FR Doc. 89-14295 Filed 6-14-89; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF AGRICULTURE**Animal and Plant Health Inspection Service**

[Docket No. 89-096]

7 CFR Part 301**Mediterranean Fruit Fly; Removal of Regulations**

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule.

SUMMARY: We are removing the Mediterranean Fruit Fly regulations that designated a portion of Los Angeles County in California as a quarantined area and imposed restrictions on the interstate movement of regulated articles from that area. The regulations were established to prevent the artificial spread of the Mediterranean fruit fly into noninfested areas of the United States. We have determined that the Mediterranean fruit fly has been eradicated from Los Angeles County, California, and the regulations are no longer necessary. This rule relieves restrictions on the interstate movement of regulated articles from the quarantined area in Los Angeles County, California.

DATES: Interim rule effective June 12, 1989. Consideration will be given only to comments received on or before August 14, 1989.

ADDRESSES: To help ensure that your written comments are considered, send an original and three copies to Regulatory Analysis and Development, APHIS, USDA, Room 866, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 89-096. Comments received may be inspected at USDA, Room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Milton C. Holmes, Senior Operations Officer, Domestic and Emergency

Operations, PPQ, APHIS, USDA, Room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-8247.

SUPPLEMENTARY INFORMATION:**Background**

In an interim rule effective August 2, 1988, and published in the *Federal Register* on August 8, 1988 (53 FR 29633-29639, Docket Number 88-127), we established the Mediterranean fruit fly regulations (7 CFR 301.78 *et seq.*, referred to below as the regulations) and quarantined an area in Los Angeles County, California. The regulations were amended by two interim rules. The first one, effective October 14, 1988, and published in the *Federal Register* on October 19, 1988, added another portion of Los Angeles County, California, near Culver City, to the list of quarantined areas (53 FR 40865-40866, Docket Number 88-159). The later one, effective November 14, 1988, and published in the *Federal Register* on November 21, 1988, removed a separate portion of Los Angeles County, near Van Nuys, from the list of quarantined areas (53 FR 46844-46845, Docket Number 88-169). The amendments were affirmed in a document published in the *Federal Register* on March 21, 1989 (54 FR 11489-11490, Docket Number 89-025), and effective April 20, 1989.

The regulations imposed restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Mediterranean fruit fly to noninfested areas of the United States. The regulations also designated soil, and a large number of fruits, nuts, vegetables, and berries, as regulated articles.

Based on trapping surveys conducted by inspectors of the United States Department of Agriculture and state agencies of California, we have determined that the Mediterranean fruit fly has been eradicated from the quarantined areas in Los Angeles County in California. The last finding of Mediterranean fruit fly in the Los Angeles area was made on October 6, 1988. Since then, no evidence of infestations has been found. We have determined that infestations no longer exist in Los Angeles County in California.

Immediate Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that there is good cause for publishing this interim rule without prior opportunity for public comment. The areas in Los Angeles County in California were quarantined due to the possibility that the

Mediterranean fruit fly could be spread from these areas to noninfested areas of the United States. Since this situation no longer exists, and because the quarantined status of these portions of Los Angeles County imposes an unnecessary regulatory burden on the public, we are taking immediate action to remove these restrictions.

Since prior notice and other public procedures with respect to this interim rule are impracticable and contrary to the public interest under these conditions, and because this rule relieves a regulatory restriction, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this interim rule in the *Federal Register*. After the comment period closes, we will publish another document in the *Federal Register*, including discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than \$100 million; will not cause a major increase in costs or prices for consumers, individual industries, federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from a portion of Los Angeles County in California. It appears that there is very little commercial activity that may be affected by this rule in the quarantined area. Within the part of Los Angeles County that was quarantined, there are approximately 387 small entities, including 85 nurseries, 50 open fruit stands, 5 community gardens, 10 regularly scheduled swap meets (flea markets), 10 caterers who send lunch "chuckwagons" to job sites in the quarantined area, 200 mobile vendors, 7 wholesale distributors, and 20 dooryard

fruit producers. The effect of this rule on these entities should be insignificant, since it appears that most of their sales are for local intrastate markets, not interstate markets, and are therefore not affected by the regulatory provisions we are removing.

Those sales that were affected were generally of articles that could be moved, without significant added costs, after compliance with treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This interim rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V.)

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

Accordingly, 7 CFR Part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR Part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164-167; 7 CFR 2.17, 2.51, and 371.2(c).

§§ 301.78 through 301.78-10 [Removed]

2. "Subpart—Mediterranean Fruit Fly" (7 CFR 301.78 through 301.78-10) is removed.

Done in Washington, DC, this 12th day of June 1989.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-14261 Filed 6-14-89; 8:45 am]

BILLING CODE 3410-34-M

Agricultural Marketing Service**7 CFR Part 998**

[Docket No. FV-89-040]

Marketing Agreement 146 Regulating the Quality of Domestically Produced Peanuts; Relaxation of Outgoing Quality Regulations and Changes in the Terms and Conditions of Indemnification for 1989 Crop Peanuts

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule changes the current terms and conditions of indemnification and relaxes outgoing quality regulations for 1989 crop peanuts regulated under Marketing Agreement No. 146. Two changes are being made in the current outgoing quality regulations. The screen sizes applicable to whole kernels in lots of split peanuts are being changed to those in effect for 1987 crop peanuts. Also, the tolerances for sound whole kernels and split and broken kernels falling through specified screens in lots of No. 2 Virginia peanuts are being increased. These changes are intended to lessen the loss of sound edible splits and whole kernels and to reduce handler milling costs. No adverse impact on product quality is expected as a result of these relaxations. In addition to these changes, the printed outgoing quality regulations for the numerous types and grade categories of shelled peanuts are being changed from a narrative to a tabular format to make the requirements easier to read and understand. With regard to the change in the terms and conditions of indemnification, the cut-off date for weekly price calculations used to determine indemnification values is being changed to make the cut-off date for calculations consistent with the deadline for filing indemnification claims.

DATES: This interim final rule becomes effective July 1, 1989. Comments which are received by July 17, 1989, will be considered prior to issuance of a final rule.

ADDRESS: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456. Comments should reference the docket number and the date and page number of this issue of the *Federal Register* and will be

available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Patrick Packnett, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456, telephone 202-475-3862.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement 146 (7 CFR Part 998; 53 FR 20291, June 3, 1988), regulating the quality of domestically produced peanuts, hereinafter referred to as the Agreement. This agreement is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the Act.

This interim final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this interim final rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened.

There are approximately 67 handlers of peanuts subject to regulation under Peanut Marketing Agreement 146 (7 CFR Part 998), and there are about 46,950 peanut growers in the 16 states covered under the program. Small agricultural producers have been defined by the Small Business Administration (13 CFR § 121.2) as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. Some of the handlers signatory to the agreement are small entities, and a majority of the growers may be classified as small entities.

There are three major peanut production areas in the United States: (1) Virginia-Carolina, (2) Southeast, and (3) Southwest, covered under the agreement. These areas encompass 16 states. The Virginia-Carolina area (primarily Virginia and North Carolina) usually produces about 18 percent of the total U.S. crop. The Southeast area (primarily Georgia, Florida and Alabama) usually produces about two-thirds of the crop. The Southwest area (primarily Texas, Oklahoma, and New

Mexico) produces about 15 percent of the crop. Based upon the most current information, U.S. peanut production in 1988 totalled 3.98 billion pounds, a 10 percent increase from 1987, and 8 percent more than in 1986. The 1988 crop value is \$1.07 billion, and the 1987 crop is valued at \$1.02 billion.

The objective of the agreement is to insure that only wholesome peanuts enter edible market channels. Since aflatoxin was found in peanuts in the mid-1960's, the domestic peanut industry has sought to minimize aflatoxin contamination in peanuts and peanut products.

The agreement plays a very important role in the industry's quality control efforts. It has been in place since 1965 with over 90 percent of U.S. shellers (handlers) participating. The participating shellers handle about 95 percent of the crop. Requirements established pursuant to the agreement require farmers' stock peanuts with visible *Aspergillus Flavus* mold (the principal producer of aflatoxin) to be diverted to nonedible uses. Each lot of peanuts for edible use must be officially sampled and chemically tested for aflatoxin by the U.S. Department of Agriculture (Department) or in laboratories approved by the Peanut Administrative Committee (committee). The committee works with the Department in administering the marketing agreement program. The sampling and chemical analysis inspection programs are administered by the Department. Having complied with these requirements, provision is made for indemnification of sheller losses if the committee or the Food and Drug Administration (FDA) deems the peanuts unsuitable for consumption because of aflatoxin. All indemnification and administration costs are paid by assessments levied on shellers signatory to the agreement.

The incoming quality regulations specify the quality of farmers' stock peanuts which handlers may purchase from producers. Handlers are required to purchase only good quality, wholesome peanuts for edible products. The outgoing quality regulations require shellers to mill peanuts to meet certain quality specifications and have them inspected before such peanuts can be sold to edible outlets. Foreign material and damaged and immature peanuts are removed in the milling operation. Each lot of milled peanuts also must be sampled and the samples chemically analyzed for aflatoxin. If the chemical assay shows the lot to be positive as to aflatoxin, the lot is not allowed to go to edible channels. Lower quality peanuts

are crushed for oil and meal. The end result is that only good quality peanuts end up in human consumption outlets.

The committee unanimously recommended the following changes in the outgoing quality regulations and terms and conditions of indemnification for 1989 crop peanuts at its March 28-29, 1989, meeting.

In paragraph (a) of § 998.200 *Outgoing quality regulation*, the screen sizes used in determining fall-through of whole kernels in lots of split peanuts are being changed to those in effect for 1987 crop peanuts. This change relaxes the minimum size requirements for whole kernels in lots of split peanuts. Paragraph (a) is also being changed to increase the fall-through tolerances for No. 2 Virginia type peanuts. Under the agreement, the term "fall-through" means sound split and broken kernels and whole kernels which pass through specified sizes of screens. These changes will make more peanuts available for edible outlets.

Lots of split peanuts of the Runner type and the Spanish and Valencia types cannot contain more than four percent whole kernels. Lots of split peanuts of the Virginia type cannot contain more than ten percent whole kernels. Paragraph (a) currently specifies slotted screen openings used in determining fall-through of whole kernels of 1 1/4 x 3/4 inch for Runner type peanuts, 1 3/4 x 3/4 inch for Spanish and Valencia type peanuts and 1 3/4 x 1 inch for Virginia type peanuts. These screen sizes, which are larger than those used in prior years, were implemented in 1988 to remove small whole kernels from edible channels. Smaller kernels tend to be immature, less flavorful and have a higher incidence of aflatoxin contamination. The increased size requirements also were applicable to lots of split peanuts and No. 2 Virginia peanuts. No. 2 Virginia type peanuts are a mixture of whole and split kernels and generally are marketed with 20 percent or 30 percent whole kernels. However, since 1988 crop operations began, handlers have experienced difficulties in milling lots of split peanuts to meet current outgoing grade specifications. In milling this grade category of peanuts in 1988 to meet the current minimum fall-through requirements, handlers experienced substantial edible product loss and higher than usual milling costs. Such losses occurred when attempting to remove the lower quality small whole kernels (which fall through the larger screens implemented in 1988) from lots of splits. Handlers of No. 2 Virginia type peanuts also experienced milling losses

due to excessive fall-through caused by the new screen sizes.

In recognition of the unforeseen problems in processing lots of split peanuts, the committee unanimously recommended that the slotted screen sizes applicable to whole kernels in lots of splits be changed to those in effect for 1987 crop peanuts. The new slotted screen sizes applicable only to lots of splits are as follows: Runner type—1 1/4 x 3/4 inch; Virginia type—1 3/4 x 1 inch; and Spanish and Valencia type—1 3/4 x 3/4 inch.

Because No. 2 Virginia peanuts are generally marketed with 20 or 30 percent whole kernels, the committee determined that a change in the screen sizes to that being made for lots of Virginia split peanuts would not correct the problem of excessive milling losses. Instead, it recommended that the tolerances for fall through of sound split and broken kernels and sound whole kernels in No. 2 Virginia type peanuts be increased from 3.00 percent to 6.00 percent. These tolerances are similar to that prescribed for U.S. No. 2 Virginia grade peanuts in the U.S. Standards for Grades of Shelled Virginia Type Peanuts (7 CFR 2851.2750-2851.2763).

These changes in the outgoing quality regulations are expected to lessen the loss of sound edible whole kernels and splits and to reduce handler milling costs. The relaxations are not expected to have an adverse impact on the quality of peanuts entering edible channels because the volume of peanuts that will be affected by the change is minimal. This change will not increase the likelihood of aflatoxin contamination in lots of split peanuts because of the relatively low number of small whole kernels in these lots. Further, with regard to the increased tolerances in No. 2 Virginia type peanuts, the climate in the area where production of these peanuts is prevalent is not conducive to the growth of *Aspergillus flavus* mold. Thus, there is no increased risk of aflatoxin contamination with allowing more fall-through in No. 2 Virginia type peanuts.

In addition to these changes, in the printed regulations the outgoing quality requirements for the numerous types and grade categories of shelled peanuts are being changed from a narrative to a tabular format to make the requirements easier to read and understand. With the exception of the two changes mentioned above, which have been incorporated, the tables specify the same requirements that were in effect for 1988 crop peanuts.

The committee also recommended changing paragraph (u) of the terms and conditions of indemnification (§ 998.300)

to extend the cut-off date for making weekly price calculations used in determining indemnification values. These weekly calculations involve averaging the domestic market price of each category of indemnifiable peanuts during the most recent four week period. The cut-off date is being extended from May 31 to November 1, the deadline for filing indemnification claims. Making the cut-off date for calculations consistent with the deadline for filing indemnification claims will ensure that indemnification values at the time claims are filed or settled do not exceed the market value of the peanuts for which indemnification is requested. This has been a committee goal since the inception of the agreement in 1965.

The incoming quality regulations applicable to 1989 crop peanuts are not being changed from those in effect for 1988 crop peanuts. No changes were deemed necessary. In recognition of this, the heading of § 998.100 will be changed from "Incoming quality regulation—1988 crop peanuts" to "Incoming quality regulation—1989 crop peanuts".

Based on available information, the Administrator of the AMS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant information presented, the committee's

recommendation, and other information, it is found that the relaxation of the outgoing quality regulations, the change in the format of the printed regulations and the changes in the terms and conditions of indemnification, as set forth in this interim final rule, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause, it is impracticable, unnecessary, and contrary to the public interest to give notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the Federal Register because: (1) This action relaxes outgoing quality requirements on handlers and brings the terms and conditions of indemnification into conformity with industry practice; (2) the peanut crop year begins on July 1, and handlers should be given sufficient notice of changes in the regulations adopted as a result of this action to make preparations for 1989 crop operations; and (3) the committee's recommendation, other information, and all written comments timely received in response to this publication will be considered prior to finalization of this interim final rule.

List of Subjects in 7 CFR Part 998
Marketing agreement, Peanuts.

For the reasons set forth in the preamble, 7 CFR Part 998 is amended as follows:

Note: These sections will be published in the Code of Federal Regulations

PART 998—MARKETING AGREEMENT REGULATING THE QUALITY OF DOMESTICALLY PRODUCED PEANUTS

1. The authority citation for 7 CFR Part 998 (53 FR 20291, June 3, 1988) continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

§ 998.100 [Amended]
2. The heading of § 998.100 is revised to read "Incoming quality regulation—1989 crop peanuts".

3. In § 998.200, paragraph (a) *Shelled peanuts*, is revised for 1989 crop peanuts to read as follows:

§ 998.200 *Outgoing quality regulation—1989 crop peanuts.*

(a) *Shelled peanuts.* No handler shall ship or otherwise dispose of shelled peanuts for human consumption unless such peanuts are Positive Lot Identified and certified as meeting the following requirements:

"OTHER EDIBLE QUALITY" (NON-INDEMNIFIABLE) GRADES—WHOLE KERNELS AND SPLITS

Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign material (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total (percent)		
Maximum Limitations (excluding lots of "splits")							
Runner.....	1.50	2.50	3.00..... 1 ¹ / ₄ inch round screen.	3.00..... 1 ¹ / ₄ x 3 ³ / ₄ inch slot screen.	4.00..... Both screens	20	9.00
Virginia (except No. 2).....	1.50	2.50	3.00..... 1 ¹ / ₄ inch round screen.	3.00..... 1 ¹ / ₄ x 1 inch slot screen.	4.00..... Both screens	20	9.00
Spanish and Valencia.....	1.50	2.50	3.00..... 1 ¹ / ₄ inch round screen.	3.00..... 1 ¹ / ₄ x 3 ³ / ₄ inch slot screen.	4.00..... Both screens	20	9.00
No. 2 Virginia.....	1.50	3.00	6.00..... 1 ¹ / ₄ inch round screen.	6.00..... 1 ¹ / ₄ x 1 inch slot screen.	6.00..... Both screens	20	9.00
Lots of "splits"							
Runner (not more than 4% sound whole kernels).....	1.50	2.50	3.00..... 1 ¹ / ₄ inch round screen.	3.00..... 1 ¹ / ₄ x 3 ³ / ₄ inch slot screen.	4.00..... Both screens	20	9.00
Virginia (not less than 90% splits).....	1.50	2.50	3.00..... 1 ¹ / ₄ inch round screen.	3.00..... 1 ¹ / ₄ x 1 inch slot screen.	4.00..... Both screens	20	9.00
Spanish and Valencia (not more than 4% sound whole kernels).....	1.50	2.50	3.00..... 1 ¹ / ₄ inch round screen.	3.00..... 1 ¹ / ₄ x 3 ³ / ₄ inch slot screen.	4.00..... Both screens	20	9.00

Peanuts meeting the foregoing specifications must also be certified "negative" as to aflatoxin, prior to shipment, unless they are certified as meeting the following requirements which are applicable to indemnifiable grades:

INDEMNIFIABLE GRADES							
Type and grade category	Unshelled peanuts and damaged kernels (percent)	Unshelled peanuts, damaged kernels and minor defects (percent)	Fall through			Foreign material (percent)	Moisture (percent)
			Sound split and broken kernels (percent)	Sound whole kernels (percent)	Total (percent)		
Maximum Limitations							
Runner U.S. No. 1 and better	1.25	2.00	3.00..... 1 1/4 inch round screen.	3.00..... 1 5/8 x 3/4 inch slot screen.	4.00..... Both screens	.10	9.00
Virginia U.S. No. 1 and better	1.25	2.00	3.00..... 1 7/8 inch round screen.	3.00..... 1 5/8 x 1 inch slot screen.	4.00..... Both screens	.10	9.00
Spanish and Valencia U.S. No. 1 and better.	1.25	2.00	3.00..... 1 5/8 inch round screen.	2.00..... 1 5/8 x 3/4 inch slot screen.	4.00..... Both screens	.10	9.00
Runner U.S. Splits (not more than 4% sound whole kernels).	1.25	2.00	3.00..... 1 7/8 inch round screen.	3.00..... 1 5/8 x 3/4 inch slot screen.	4.00..... Both screens	.20	9.00
Virginia U.S. Splits (not less than 90% splits and not more than 3.00% sound whole kernels and portions passing through 3/4 inch round screen).	1.25	2.00	3.00..... 1 7/8 inch round screen.	3.00..... 1 5/8 x 1 inch slot screen.	4.00..... Both screens	.20	9.00
Spanish and Valencia U.S. splits (not more than 4% sound whole kernels).	1.25	2.00	2.00..... 1 5/8 inch round screen.	3.00..... 1 5/8 x 3/4 inch slot screen.	4.00..... Both screens	.20	9.00
Runner with splits (not more than 15% sound splits).	1.25	2.00	3.00..... 1 7/8 inch round screen.	3.00..... 1 5/8 x 3/4 inch slot screen.	4.00..... Both screens	.10	9.00
Virginia with splits (not more than 15% sound splits).	1.25	2.00	3.00..... 1 7/8 inch round screen.	3.00..... 1 5/8 x 1 inch slot screen.	4.00..... Both screens	.10	9.00
Spanish and Valencia with splits (not more than 15% sound splits).	1.25	2.00	3.00..... 1 5/8 inch round screen.	2.00..... 1 5/8 x 3/4 inch slot screen.	4.00..... Both screens	.10	9.00

The term "fall through," as used herein, shall mean sound split and broken kernels and whole kernels which pass through specified screens. Prior to shipment, appropriate samples for pretesting shall be drawn in accordance with paragraph (c) of the Outgoing Quality Regulation from each lot of indemnifiable grade peanuts. The lot size of edible quality shelled peanuts, in bulk or bags, shall not exceed 200,000 pounds.

4. The Section heading and paragraph (u) of § 998.300 *Terms and conditions of indemnification* are revised to read as follows:

§ 998.300 Terms and conditions of indemnification—1989 crop peanuts.

(u) For the purpose of paying indemnification beginning August 1 of the current crop year, the domestic market price for each category of peanuts shall be determined by averaging the price(s) listed in the Federal-State Market News—Peanut

Report, per category, during the most recent four week period. Such weekly price calculations shall extend to November 1 following the end of the current crop year.

Dated: June 9, 1989.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.

[FR Doc. 89-14135 Filed 6-14-89; 8:45 am]
BILLING CODE 3410-02-M

7 CFR Part 1139

[DA-89-020]

Milk in the Great Basin Marketing Area; Revision of Cooperative Manufacturing Plant Shipping Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Revision of rules.

SUMMARY: This action relaxes the shipping standards for cooperative

manufacturing plants regulated by the Great Basin Federal milk order beginning with the month of May 1989. The action relaxes from 45 to 40 percent the percentage of its producer milk that a pool manufacturing plant owned and operated by a cooperative association and located in the marketing area must deliver to pool distributing plants during any current month or during the 12-month period ending with the current month in order to meet the order's pooling standards. The revision is made in response to a request by a cooperative association representing a large proportion of the producers supplying the market, and will prevent uneconomic movements of milk.

EFFECTIVE DATE: May 1, 1989.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Revision of Cooperative Manufacturing Plant Shipping Standards: Issued April 26, 1989; published May 2, 1989 (54 FR 18666).

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action will provide greater assurance that handlers will not engage in uneconomic movement of the market's reserve milk supplies in qualifying such milk for pricing status under the order. The action will also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

This revision is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of § 1139.7(e) of the Great Basin order.

Notice of proposed rulemaking was published in the *Federal Register* (54 FR 18666) concerning a proposed relaxation of the percentage of its producer milk that a pool manufacturing plant owned and operated by a cooperative association and located in the marketing area must deliver to pool distributing plants during any current month or during the 12-month period ending with the current month in order to meet the order's pooling standards. The request for the revision specified no time period, and the notice of proposed revision stated that the revision would be effective beginning May 1989. The public was afforded the opportunity to comment on the notice by submitting written data, views and arguments by May 17, 1989.

Statement of Consideration

After consideration of all relevant material, data, views and arguments filed and other available information, it is hereby found and determined that the percentage of producer milk required to be shipped to pool distributing plants by a manufacturing plant owned and operated by a cooperative and located in the marketing area should be reduced by 5 percentage points, from 45 percent to 40 percent.

Pursuant to the provisions of § 1139.7(e), the Director of the Dairy Division may increase or decrease the cooperative manufacturing plant shipping percentage by up to 10 percentage points. Such changes may be made to encourage additional milk shipments needed to assure an adequate supply of milk to fluid handlers, or to prevent uneconomic shipments of milk merely for the purpose of assuring that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

Western Dairymen Cooperative, Inc. (WDCI), a cooperative association which represents a majority of the producers supplying the Great Basin market, requested that the cooperative manufacturing plant shipping percentage requirement be reduced by 5 percentage points.

The cooperative stated that a loss of sales and increasing production make necessary a reduction of the required level of shipments of producer milk by a cooperative-owned and -operated manufacturing plant to pool distributing plants from 45 percent of producer milk to 40 percent in order to maintain the pool status of its member producers who have long been associated with the marketing area.

According to WDCI, some of the milk of its member producers failed to qualify as producer milk during April 1989, and the revision is needed urgently to be effective beginning with May 1989 milk deliveries. According to the cooperative, the relaxation of the cooperative manufacturing plant shipping percentage requirement is necessary to prevent uneconomic shipments merely for the purpose of assuring that dairy farmers historically associated with the market will continue to have their milk priced under the order.

Comments opposing the revision were filed on behalf of Security Milk Producers, Incorporated, a small California cooperative association supplying milk to a bottling plant in Las Vegas, Nevada. The comments stated the cooperative's opposition to changing the cooperative manufacturing plant shipping standards without a public hearing, and urged that the 45-percent requirement be reinstated after the seasonal flush is over.

Without the revision, milk would have to be moved unnecessarily and uneconomically from farms to pool distributing plants for the sole purpose of maintaining the pool status of producers historically pooled under the Great Basin order. In addition to such movements of milk being inefficient and

uneconomic, the additional pumping to which the milk would be subject would be detrimental to the quality of the milk. It is concluded the relaxation of the producer milk diversion limit by 5 percentage points will prevent uneconomic movements of milk to pool plants merely for the purpose of qualifying it as a producer milk under the order. The provisions of the order allow the shipping requirement to be increased, as well as reduced, if such action were deemed appropriate at some later time.

It is hereby found and determined that 30 days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) This revision is necessary to reflect current marketing conditions and to maintain orderly marketing conditions in the marketing area;

(b) This revision does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of the proposed revision was given interested parties and they were afforded opportunity to file written data, views, or arguments concerning this revision.

Therefore, good cause exists for making this revision effective sooner than 30 days after publication in the *Federal Register*.

List of Subjects in 7 CFR Part 1139

Milk marketing orders, Milk, Dairy products.

It is therefore ordered, That the aforesaid provisions of § 1139.7(d) of the Great Basin milk order are hereby revised beginning with the month of May 1989.

PART 1139—MILK IN THE GREAT BASIN MARKETING AREA

1. The authority citation for 7 CFR Part 1139 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

§ 1139.7 [Amended]

2. In § 1139.7(d), the provision "45 percent" is revised to "40 percent" beginning with the month of May 1989.

Signed at Washington, DC, on June 9, 1989.

W.H. Blanchard,
Director, Dairy Division.

[FR Doc. 89-14134 Filed 6-14-89; 8:45 am]

BILLING CODE 3410-02-M

Commodity Credit Corporation

7 CFR Parts 1421, 1427, and 1434

RIN 0560-AB22

Price Support and Production Adjustment Programs

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: The regulations at 7 CFR Parts 1421, 1427, and 1434 set forth the terms and conditions of the Commodity Credit Corporation (CCC) price support loan programs for grain and similarly handled commodities; upland and extra long staple cotton; and honey, respectively. On March 21, 1989 an interim rule was published in order to make amendments to these regulations which would provide greater clarity, enhance the administration of CCC programs by providing uniformity between CCC price support programs, and eliminate obsolete provisions. This final rule adopts the interim rule with several technical changes and includes provisions which were inadvertently omitted by the interim rule.

EFFECTIVE DATE: June 15, 1989.

ADDRESS: Director, Cotton, Grain and Rice Price Support Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013. Telephone: (202) 447-8374.

FOR FURTHER INFORMATION CONTACT: Beverly Pritts, Program Specialist, Cotton, Grain, and Rice Price Support Division, USDA-ASCS, P.O. Box 2415, Washington, DC 20013. Telephone: (202) 447-8374.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under United States Department of Agriculture (USDA) procedures implementing Executive Order 12291 and Departmental Regulation No. 1512-1 and has been classified as "not major." It has been determined that the provisions of this rule will not result in: (1) An annual effect on the economy of \$100 million or more; (2) major increases in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation or on the ability of United States-based enterprises in domestic or export markets.

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since neither

the Agricultural Stabilization and Conservation Service (ASCS) nor the Commodity Credit Corporation (CCC) is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR Part 3015, Subpart V, published at 48 FR 29115 (June 24, 1983).

CCC previously published final rules on March 1, 1988 (53 FR 6131) and November 25, 1988 (53 FR 47658) with respect to CCC price support programs for feed grains, peanuts, rice, soybeans and wheat which are set forth at 7 CFR Part 1421. Those amendments were made to delete obsolete provisions and to provide greater uniformity between the programs. The changes made by this final rule will, to the maximum extent practicable, provide that the upland and extra long staple cotton and honey programs are administered in the same manner as the aforementioned programs.

The interim rule published on March 21, 1989 (54 FR 11494) deleted in 7 CFR Parts 1421 and 1427 references to specific amounts which are charged by CCC for loan-making and related services. Most of the current fees have been in effect since the 1974 crop year. Fees for loans to sugar processors were implemented for the 1982 crop. Since the current fees charged do not recover the cost of either the total loan administration function or the loanmaking activity alone, 7 CFR Parts 1421 and 1427 were amended to allow for increases in fees so that CCC may recover a greater portion of the current costs incurred. The interim rule provided that such rates will be as determined by CCC in order that CCC may more accurately determine such rates on a State by State basis by taking into account differences in State laws that affect loan-making activities and actual costs incurred by CCC when providing price support to producers.

The interim rule also amended the cotton and honey price support loan provisions with respect to lien

subordination agreements. Since CCC price support loans are nonrecourse loans, producers may forfeit the loan collateral in total satisfaction of the loan. Therefore, CCC has required all parties which have a lien on the commodity which has been pledged as collateral for such a loan to execute either a lien waiver or lien subordination agreement with respect to such commodity before a CCC price support loan is made to the producer. In order to fully protect CCC's interest in the commodity which may be forfeited upon the maturity of the loan, CCC no longer utilizes lien subordination agreements. Accordingly, 7 CFR Parts 1427 and 1434 were revised by deleting references to such agreements.

No comments were received in response to the interim rule.

The regulations at 7 CFR Part 1434 set forth the terms and conditions of the CCC price support program for honey. The interim rule amended 7 CFR Part 1434 to remove obsolete provisions and to amend this part for clarity. However, the interim rule inadvertently omitted references to delivery charges and the manner in which interest is assessed when a honey loan is repaid.

Prior to the interim rule, the regulations at 7 CFR 1434.14(b) provided for the payment of a delivery charge by the producer if the producer delivered honey to CCC under a price support loan or purchase agreement. In addition 7 CFR 1434.18(c) provided that interest shall not be assessed on a price support honey loan in certain instances. Accordingly, this final rule amends 7 CFR Part 1434 to set forth these provisions.

The interim rule amended 7 CFR 1427.14; however, the interim rule inadvertently designated § 1427.14 as § 1421.14. Accordingly, this final rule corrects this error.

List of Subjects**7 CFR Part 1421**

Grains, Loan programs—agriculture. Price support programs.

7 CFR Part 1427

Cotton, Loan programs—agriculture. Price support programs.

7 CFR Part 1434

Honey, Loan programs—agriculture. Price support programs.

Accordingly, the interim rule

published on March 21, 1989 (54 FR 11494) is adopted with the following changes:

PART 1427—(AMENDED)

1. The authority citation for 7 CFR Part 1427 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423 and 1444-1; 15 U.S.C. 714b and 714c; and sec. 501 of Pub. L. 99-198.

Subpart—Cotton Loan Program Regulations

§ 1427.14 [Amended]

2. The reference in the interim rule published on March 21, 1989 at 54 FR 11494, 11496 to the revision of § 1427.14 is corrected by amending the section heading to read "§ 1427.14 Fees, charges and interest."

PART 1434—(AMENDED)

3. The authority citation for 7 CFR Part 1434 continues to read as follows:

Authority: 7 U.S.C. 1421 and 1446; 15 U.S.C. 714b and 714c.

4. Section 1434.14 is revised to read as follows:

§ 1434.14 Fees, charges and interest.

(a) *Loan Service Fee.* A producer shall pay a nonrefundable loan service fee to CCC at a rate determined by CCC.

(b) Interest which accrues with respect to a loan shall be determined in accordance with Part 1405 of this chapter. Except with respect to called loans, loans which have not been repaid by the maturity date shall accrue interest in accordance with Part 1403 of this chapter beginning the day after the maturity date of the loan. With respect to called loans, interest shall accrue in accordance with Part 1403 of this chapter beginning on the required settlement date.

(c) *Delivery charge.* A delivery charge of 1 cent per hundredweight, in addition to the service charge, shall be paid by producers on the quantity of honey delivered to CCC. Such delivery charge shall be paid at time of settlement.

(d) Interest shall not be assessed on a price support loan for honey which has been repaid at a level which is less than the loan level determined in accordance with § 1434.25(d)(1)(ii).

Signed at Washington, DC on June 6, 1989.

Keith D. Björke,
Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-14259 Filed 6-14-89; 8:45 am]

BILLING CODE 3410-06-M

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration**

14 CFR Part 39

[Docket No. 89-ANE-04; Amdt. 39-6221]

Airworthiness Directives; GQ Parachutes, Ltd., Type 350 Parachute Assemblies (P/N's MRI GQ 1277, MRI GQ 1304 and MRI GQ 1325), 850 Parachute Assemblies (P/N's MRI GQ 1284, MRI GQ 1315 and MRI GQ 1330), and 4.8m SAC Parachutes (P/N's MRI GQ 1308 and MRI GQ D 22918/2)

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) which requires inspection, cleaning, and strength testing as required of each net mesh panel on certain GQ parachute assemblies. The AD is needed to detect the presence, and removal if necessary, of acid contamination in the canopy mesh panels. The presence of acid could result in weakening of the canopy fabric and subsequent failure of the canopy during use.

DATES: Effective July 31, 1989.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 31, 1989.

Compliance: As indicated in the body of the AD, unless already accomplished.

ADDRESSES: The applicable service bulletin (SB) may be obtained from GQ Parachutes Ltd., Portugal Road, Woking, Surrey, GU21 5JE England, or may be examined at the Regional Rules Docket, Room 311, Office of the Assistant Chief Counsel, Federal Aviation Administration.

FOR FURTHER INFORMATION CONTACT: Terry Fahr, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803; telephone (617) 273-7103.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations (FAR) to include an AD requiring inspection, cleaning, and strength testing as required of each net mesh panel on certain GQ parachute assemblies was published in the Federal Register on March 10, 1989.

The proposal was prompted by the FAA's determination that certain GQ Parachutes Ltd. parachutes may contain mesh panels that have been improperly treated with a chemical finish, which

could result in weakening of the adjacent canopy material and subsequent failure of the parachute during operation.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No objections were received. Accordingly, the proposal is adopted without change.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation involves approximately 50 parachutes at a minimal cost (postage) to the operator. Therefore, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Regional Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, and Incorporation by reference.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) amends Part 39 of the Federal Aviation Regulations (FAR) as follows:

PART 39—(AMENDED)

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421, and 1423; 49 U.S.C. 106(g) (Revised, Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive (AD):

GQ Parachutes Ltd: Applies to Type 350 Parachute Assemblies (P/N's MRI GQ 1277, MRI GQ 1304 and MRI GQ 1325), 850 Parachute Assemblies (P/N's MRI GQ 1284, MRI GQ 1315 and MRI GQ 1330), and 4.8m SAC Parachutes (P/N's MRI GQ 1308 and MRI GQ D 22918/2).

Compliance is required as indicated, unless already accomplished.

To prevent the use of FAA approved canopies which may contain understrength material, accomplish the following prior to next use after the effective date of this AD:

(a) Perform an acid test on each mesh panel, in accordance with page 11 of GQ Parachutes Ltd. Service Bulletin (SB) No. 25-01, dated January 18, 1989. Those canopies found to be free of acid contamination may be approved for return to service.

(b) For those canopies found to have acid contamination, perform the acid neutralization, pH test, and tensile test, in accordance with pages 5 and 6 of GQ Parachutes Ltd., (SB) No. 25-01, dated January 18, 1989. Those canopies having a pH value greater than 5.5 and a minimum tensile strength of 180 N/25mm (405.5 lbs./in.) may be approved for return to service. For those canopies found to have a pH value of 5.5 or less and/or a tensile strength less than 180 N/25mm (405.5 lbs./in.), remove or obliterate the TSO-C23c marking.

(c) In lieu of compliance with paragraphs (a) and (b) above, the TSO-C23c markings must be removed or obliterated and the parachute must not be used as an approved parachute.

(d) Upon submission of substantiating data by an owner or operator through an FAA Airworthiness Inspector, the Manager, Boston Aircraft Certification Office, Engine and Propeller Directorate, Aircraft Certification Service, Federal Aviation Administration, 12 New England Executive Park, Burlington, Massachusetts 01803, may adjust the compliance times specified in this AD or approve an equivalent means of compliance with this AD.

The repair and inspection procedures shall be done in accordance with GQ Parachutes Ltd. Service Bulletin No. 25-01, dated May 23, 1989. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from GQ Parachutes Ltd., Portugal Road, Woking, Surrey, GU21 5JE England. Copies may be inspected at the Federal Aviation Administration, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, Massachusetts 01803, or at the Office of the Federal Register, 1100 L Street, Room 8301, Washington, DC 20591.

This final amendment becomes effective on July 31, 1989.

Issued in Burlington, Massachusetts, on May 8, 1989.

Jack A. Sain,
Manager, Engine and Propeller Directorate,
Aircraft Certification Service.

[FR Doc. 89-14235 Filed 6-14-89; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AGL-6]

Alteration to Transition Area; Litchfield, MN

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Final Rule.

SUMMARY: The nature of this action is to alter the existing Litchfield, MN, transition area to accommodate new VOR-A, RNAV Runway 13, and RNAV Runway 31 Standard-Instrument Approach Procedures (SIAPs) to new Litchfield Municipal Airport, Litchfield, MN. The intended effect of this action is to ensure segregation of the aircraft using approach procedures in instrument conditions from other aircraft operating under visual weather conditions in controlled airspace.

EFFECTIVE DATE: 0901 u.t.c., September 21, 1989.

FOR FURTHER INFORMATION CONTACT: Harold G. Hale, Air Traffic Division, Airspace Branch, AGL-520, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (312) 694-7360.

SUPPLEMENTARY INFORMATION:

History

On Monday, March 20, 1989, the Federal Aviation Administration (FAA) proposed to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to alter the transition area airspace near Litchfield, MN (54 FR 11382).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Except for editorial changes, this amendment is the same as that proposed in the notice. Section 71.181 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The Rule

This amendment to Part 71 of the Federal Aviation Regulations alters the transition area airspace near Litchfield, MN. The present transition area is being modified to accommodate VOR-A, RNAV Runway 13, and RNAV Runway

31 SIAPs to new Litchfield Municipal Airport.

The new Litchfield Municipal Airport is being established at latitude 45°05'47" N., longitude 94°30'21" W., which is approximately 2.6 nautical miles south of the existing airport. The proposal to establish this new airport was circularized to the aviation public under Airspace Case Number 82-AGL-421-NRA.

The development of the procedures requires that the FAA alter the designated airspace to insure that the procedures will be contained within controlled airspace. The minimum descent altitude for these procedures may be established below the floor of the 700-foot controlled airspace.

Aeronautical maps and charts will reflect the defined areas which will enable other aircraft to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 71 of the Federal Aviation Regulations (14 CFR Part 71) is amended as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; Executive Order 10854; 49 U.S.C. 106(g)

(Revised Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Litchfield, MN [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Litchfield Municipal Airport (lat. 45°05'47" N., long. 94°30'21" W.); and within 3.25 miles each side of the 102° bearing extending from the 5-mile radius to 6.5 miles southeast of the airport; within 3.25 miles each side of the 137° bearing extending from the 5-mile radius to 6.5 miles southeast of the airport; within 3.25 miles each side of the 317° bearing extending from the 5-mile radius to 6.5 miles northwest of the airport.

Issued in Des Plaines, Illinois on June 2, 1989.

Teddy W. Burcham,
Manager, Air Traffic Division.

[FR Doc. 89-14230 Filed 6-14-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 514

[Docket No. 89N-0189]

New Animal Drugs; Removal of Obsolete Regulations; Correction

AGENCY: Food and Drug Administration.
ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting the inadvertent omission of a docket number in the heading of a final rule published in the Federal Register of May 26, 1989 (54 FR 22741). This document corrects that error by designating the docket number that is in the heading of this correction to that final rule.

EFFECTIVE DATE: June 15, 1989.

FOR FURTHER INFORMATION CONTACT: Rada Proehl, Regulations Editorial Staff (HFC-222), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2994.

SUPPLEMENTARY INFORMATION: In FR Doc. 89-12577, appearing on page 22741, first column, in the Federal Register of Friday, May 26, 1989, the docket number is added between the headings "21 CFR Parts 510 and 514" and "New Animal Drugs; Removal of Obsolete Regulations" to read as follows: "[Docket No. 89N-0189]".

Dated: June 8, 1989.

Alan L. Hoeting,
Acting Associate Commissioner for
Regulatory Affairs.

[FR Doc. 89-14239 Filed 6-14-89; 8:45 am]

BILLING CODE 4160-01-M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 2610

Payment of Premiums; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Interim rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's interim regulation on Payment of Premiums, which was published on June 30, 1988 (53 FR 24906). Appendix B to the interim regulation contains a table setting forth the interest rates that are required by statute to be used in valuing a plan's vested benefits for purposes of determining the amount of the premium due to the PBGC. This amendment adds to that table the interest rate applicable to plan years beginning in June 1989.

EFFECTIVE DATE: June 15, 1989.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Senior Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; telephone 202-778-8823 (202-778-8859 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: Section 9331 of the Omnibus Budget Reconciliation Act of 1987, Pub. L. 100-203, amended section 4006 of the Employee Retirement Income Security Act of 1974 ("ERISA") to establish a two-part premium structure for single-employer plans, i.e., a flat rate per capita assessment and a variable rate assessment based on a plan's unfunded vested benefits, effective for plan years beginning on or after January 1, 1988. Under amended ERISA section 4006(a)(3)(E)(iii)(II), the interest rate used in valuing a plan's vested benefits for purposes of determining the amount of the plan's unfunded vested benefits must equal 80% of the annual yield on 30-year Treasury securities for the month preceding the month in which the plan year begins.

The Pension Benefit Guaranty Corporation's (the "PBGC's") interim regulation on Payment of Premiums (53 FR 24906 (June 30, 1988)) implements these new premiums rules. Under § 2610.23(b)(1) of the regulation, the interest rate for valuing vested benefits is determined by reference to the annual yield for 30-year Treasury constant maturities as reported in Federal Reserve Statistical Release G.13 and H.15. The required interest rate for a given "premium payment year" (the plan year for which the premium is being paid) is 80% of this rate for the calendar month preceding the calendar month in which the premium payment year

begins. As a convenience, the PBGC established an Appendix B to the interim regulation containing a table setting forth the required interest rates for premium payment years beginning in January 1988 and thereafter.

The PBGC is amending Appendix B to add the required interest rate for premium payment years beginning in June 1989. Appendix B to the interim regulation does not prescribe the required interest rates for valuing vested benefits. These rates are prescribed by section 4006(a)(3)(E)(iii)(II) of ERISA and § 2610.23(b)(1) of the regulation. The purpose of Appendix B is merely to collect and to republish these rates in a convenient place. Thus, the interest rates in Appendix B are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. See 5 U.S.C. 553(b). For these same reasons, the PBGC also finds that good cause exists for making these amendments effective immediately. See 5 U.S.C. 553(d)(3).

The PBGC has determined that this amendment is not a "major rule" within the meaning of Executive Order 12291, because it will not have an annual effect on the economy of \$100 million or more; nor create a major increase in costs or prices for consumers, individual industries, or geographic regions, nor have significant adverse effects on competition, employment, investment, innovation or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2610

Employee benefit plans, Pension insurance, Pensions.

In consideration of the foregoing, Appendix B to Part 2610 of Chapter XXVI of Title 29, Code of Federal Regulations, is hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for Part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307, as amended by sec. 9331, Pub. L. 100-203, 101 Stat. 1330.

2. Appendix B to Part 2610 is amended by adding to the table of interest rates therein a new entry to read as follows. The explanatory text is republished for the convenience of the reader and remains unchanged.

Appendix B—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate ¹
June 1989.....	7.06

¹ The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premium payment year begins.

Issued in Washington, DC, on this 8th day of June 1989.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 89-14241 Filed 6-14-89; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2676

Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR Part 2676). The

regulation prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of the Employee Retirement Income Security Act of 1974. Section 2676.15(c) of the regulation contains a table setting forth, for each calendar month, a series of interest rates to be used in any valuation performed as of a valuation date within that calendar month. On or about the fifteenth of each month, the PBGC publishes a new entry in the table for the following month, whether or not the rates are changing. This amendment adds to the table the rate series for the month of July 1989.

EFFECTIVE DATE: July 1, 1989.

FOR FURTHER INFORMATION CONTACT: Deborah C. Murphy, Attorney, Office of the General Counsel (22500), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006; 202-778-8820 (202-778-8859 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

The PBGC finds that notice of and public comment on this amendment would be impracticable and contrary to the public interest, and that there is good cause for making this amendment effective immediately. These findings are based on the need to have the interest rates in this amendment reflect market conditions that are as nearly current as possible and the need to issue the interest rates promptly so that they are available to the public before the beginning of the period to which they apply. (See 5 U.S.C. 533 (b) and (d).) Because no general notice of proposed rulemaking is required for this

amendment, the Regulatory Flexibility Act of 1980 does not apply (5 U.S.C. 601(2)).

The PBGC has also determined that this amendment is not a "major rule" within the meaning of Executive Order 12291 because it will not have an annual effect on the economy of \$100 million or more; or create a major increase in costs or prices for consumers, individual industries, or geographic regions; or have significant adverse effects on competition, employment, investment, or innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

List of Subjects in 29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, Part 2676 of Subchapter H of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2676—VALUATION OF PLAN BENEFITS AND PLAN ASSETS FOLLOWING MASS WITHDRAWAL

1. The authority citation for Part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

2. In § 2676.15, paragraph (c) is amended by adding to the end of the table of interest rates therein the following new entry:

§ 2676.15 Interest
.....
(c) Interest rates.

For valuation dates occurring in the month:	The values of i_t are:															
	i_1	i_2	i_3	i_4	i_5	i_6	i_7	i_8	i_9	i_{10}	i_{11}	i_{12}	i_{13}	i_{14}	i_{15}	i_{16}
July 1989.....	.09625	.0925	.0875	.0825	.0775	.07125	.07125	.07125	.07125	.07125	.065	.065	.065	.065	.065	.06

Issued at Washington, DC, on this day of June 1989.

Kathleen P. Utgoff,

Executive Director, Pension Benefit Guaranty Corporation

[FR Doc. 89-14242 Filed 6-14-89; 8:45 am]

BILLING CODE 7708-01-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 17

RIN 2900-AD43

Internment Period Required for Eligibility for Dental Care for Former Prisoners of War

AGENCY: Department of Veterans Affairs.

ACTION: Final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its medical regulations (38 CFR Part 17) by changing the internment period required for dental care for former Prisoners of War (POWs) by striking out "six months" and inserting in lieu thereof "90 days." This reduced internment period expands the existing benefit for detained or interned prisoners of war for authorized and needed dental treatment.

EFFECTIVE DATE: This amendment is effective May 20, 1988, in accordance with Pub. L. 100-322.

FOR FURTHER INFORMATION CONTACT: Paul C. Tryhus, Chief, Policies and Procedures Division (136F), Veterans Health Services and Research Administration, Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2143.

SUPPLEMENTARY INFORMATION: Under VA's regulations regarding an internment period required for eligibility for dental care for former Prisoners of War (38 CFR 17.123(d)(e)) both class II(b) and class II(c) beneficiaries must have been detained or interned as prisoners of war for less than (class II(b))/or more than (class II(c)) six months to obtain authorized dental treatment.

This amendment would change the delimiting period from less than six months to less than 90 days for the correction of service-connected noncompensable dental conditions or disability as is authorized as reasonably necessary treatment for persons who had been detained or interned as Prisoners of War (38 CFR 17.123(d)). In addition, this amendment would change the delimiting period from six months or more to 90 days or more for persons who had been detained or interned as Prisoners of War in order to be

authorized reasonably necessary dental care. (38 CFR 17.123(e))

VA finds for good cause that advance publication for notice and public comment is not required. Section 106 of Pub. L. 100-322, the Veterans' Benefits and Services Act of 1988, reduced the period of internment for purposes of eligibility for dental care for former POWs from six months to 90 days. The proposed regulatory amendment merely updates VA regulations consistent with this recent change in the law and does not involve any substantive change in VA policy or regulations. Thus, in accordance with the provisions of 38 CFR 1.12 advance publication in the Federal Register is unnecessary. Accordingly, the change in the regulations is now published as final.

Since notice of proposed rulemaking is not required and will not be published, this change does not constitute a "rule" as defined in and made subject to the requirements of the Regulatory Flexibility Act, 5 U.S.C. 601(2). In any case, this change will not have a significant economic impact on a substantial number of small entities.

VA has also determined that this change is not a major rule under Executive Order 12291, Federal Regulation, because it will not have a \$100 million annual effect of the economy, will not cause a major increase in costs or prices, and will not have any other significant adverse economic effects.

Catalog of Federal Domestic Assistance Numbers: 64.009 and 62.001.

List of Subjects in 38 CFR Part 17

Alcoholism, Claims, Dental health, Drug abuse, Foreign relations, Government contracts, Grant programs—health, Health care, Health facilities, Health professions, Medical devices, Medical research, Mental health programs, Nursing home care, Philippines, Veterans.

Approved: May 23, 1989.

Edward J. Derwinski,

Secretary of Veterans Affairs.

PART 17—[AMENDED]

In 38 CFR Part 17, Medical, § 17.123 is amended by revising paragraphs (d) and (e) to read as follows:

§ 17.123 Authorization for outpatient dental treatment.

(d) Class II(b). Those having a service-connected noncompensable dental condition or disability and who had been detained or interned as prisoners of war for a period of less than 90 days may be authorized any treatment as reasonably necessary for

the correction of such service-connected dental condition or disability.

(Authority: Pub. L. 100-322; 38 U.S.C. 612(b)(1)(F))

(e) Class II(c). Those who were prisoners of war for 90 days or more, as determined by the concerned military service department, may be authorized any needed dental treatment.

(Authority: Pub. L. 100-322; 38 U.S.C. 612(b)(1)(F))

[FR Doc. 89-14226 Filed 6-14-89; 8:45 am]

BILLING CODE 8320-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3561-8]

Approval and Promulgation of Air Quality Implementation Plans, Louisiana; State Implementation Plan for PM₁₀ Standard

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Today's notice approves the Louisiana State Implementation Plan (SIP) for the PM₁₀ standard. (PM₁₀ is particulate matter less than or equal to ten microns in diameter.) The State adopted this plan in response to EPA's July 1, 1987, rulemaking that established a new national ambient air quality standard (NAAQS) for particulate matter. Under the terms of that rule, Louisiana had to revise its existing regulations for prevention of significant deterioration (PSD) and new source review (NSR) to reflect the new NAAQS. The State also revised appropriate definitions, emergency episode planning, and air quality standard regulations.

DATES: This action will become effective on August 14, 1989, unless notice is received within 30 days of publication that someone wishes to submit adverse comments. If the effective date is delayed, timely notice will be published in the Federal Register.

ADDRESSES: Copies of the State's submittal and other relevant documents may be reviewed at the following locations during normal business hours:

U.S. Environmental Protection Agency, Region 6, 1445 Ross Avenue (6T-AN), Dallas, TX 75202-2733

Louisiana Department of Environmental Quality, 625 N. 4th Street, 8th Floor, P.O. Box 44096, Baton Rouge, LA 70804-4096

Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460

If you plan to visit either of these offices, please contact the person named below to schedule an appointment.

Submit comments to Mr. Thomas H. Diggs, Chief, SIP/New Source Section, at the address given below for EPA Region 6.

FOR FURTHER INFORMATION CONTACT: Barbara Durso at (214) 655-7214, or FTS 255-7214.

SUPPLEMENTARY INFORMATION. On July 1, 1987, EPA adopted a new NAAQS for particulate matter. Previously, EPA used total suspended particulate (TSP) matter as the indicator for ambient particulate matter concentration. The new standard uses a measurement of particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (μm) as the indicator.¹

Based upon existing monitoring data, each area within a State was assessed a probability of violating the new standard. The areas least likely to have excessive PM_{10} measurements are classified as Group III areas and only need adjustments to the PSD/NSR provisions of their SIPs.² All areas in Louisiana were designated as Group III.

Louisiana has revised its PSD and NSR regulations as well as appropriate definitions, emergency episode planning and air quality standard regulations to comply with the new Federal standard for particulate matter. Because Louisiana applies its air quality regulations statewide, the Louisiana Department of Environmental Quality (LDEQ) submits this proposed SIP for all air quality control regions under its jurisdiction.

LDEQ adopted these revised regulations on May 5, 1988, after a public hearing, at which no comments were made. The State regulations became effective on June 20, 1988. LDEQ then submitted the revisions to EPA by letter dated July 26, 1988, for approval as part of the Louisiana SIP. After being reviewed according to the March 18, 1988, "Policy for Determining Completeness of SIP Submittals," EPA informed LDEQ in a letter dated September 13, 1988, that certain required supporting documents (e.g., formal request from the Governor) were missing. By letter dated October 4, 1988, LDEQ sent the Governor's request and the other documents needed to process the proposed Louisiana PM_{10} SIP.

EPA Region 6 worked closely with LDEQ in developing the PM_{10} SIP over

the past year. The proposed revisions are described below.

Definitions [LAC:33:III:111 (formerly regulation 4.0)]

LDEQ revised its definition of particulate matter and total suspended particulate and added definitions for particulate matter emissions, PM_{10} , and PM_{10} emissions. These definitions are essentially identical to the Federal definitions; however, in its definition of PM_{10} , the State does not refer to reference methods or equivalent samplers as designated under 40 CFR Part 53. For practical purposes, the State will only be able to use instrumentation and procedures that meet the requirements of 40 CFR Part 53, because monitoring networks must be approved by EPA. LDEQ also deleted its definition for suspended particulate matter, which EPA disapproved in a March 1979 rulemaking notice. EPA proposes to approve all these changes.

The State's proposal also includes two definitions not necessarily related to PM_{10} control. These two definitions are for control equipment and waste classification. The definition for control equipment is "any device, contrivance, operating procedure or abatement scheme used to prevent or reduce air pollution." The definition for waste classification is basically the same as the definition already approved but spells out Incinerator Institute of America instead of using the abbreviation "I.I.A." EPA proposes to approve these definitions.

PSD Regulations [LAC:33:III:509.B "Significant" (formerly regulation 90.2(22)) and LAC:33:III:509.1.8.a (formerly regulation 90.9(8)(i))]

LDEQ revised its limits for particulate matter that it considers to be significant and *de minimis* for its prevention of significant deterioration (PSD) program. The State's limits are the same as the Federal limits. EPA notes that it interprets the significance level for particulate matter at LAC:33:III:509.B to mean 25 tons per year particulate matter emissions. EPA proposes to approve these revisions.

Ambient Air Quality [LAC:33:III:709 (formerly regulations 15.5, 16.5, 13.5, 9.4, 12.5, and 10.3) and Tables 1, 1a, and 2]

The State revised its code to reflect the new primary and secondary standards for particulate matter as indicated by PM_{10} monitoring. The State's standards are more stringent than the Federal standards, because LDEQ uses a deterministic, rather than statistical, method for measuring compliance. LDEQ permits a maximum

concentration of 50 micrograms of PM_{10} per cubic meter of air as an annual arithmetic mean and a maximum 24-hour concentration of 150 micrograms of PM_{10} per cubic meter of air not to be exceeded more than once per year. EPA proposes to approve these revisions.

Emission Standards for Particulate Matter [LAC:33:III:1301.B, 1303.A, 1305.A, 1311.B, 1311.C, 1313.C, 1315, and 1319.G (formerly regulations 19.2.9.2.1, 19.3, 19.5, 19.5.1, 21.3, 21.6, and 20.0 respectively)]

LDEQ replaced the terms "particulate matter and/or suspended particulate matter" and "suspended particulate matter" with the term "particulate matter" to ensure consistency with the Federal rules. EPA proposes to approve these changes.

Emergency Episode Planning [LAC:33:III:5609.A.1, 2, and 3 (formerly regulation 27)]

LDEQ revised the alert, warning, and emergency levels for emergency episodes involving PM_{10} concentrations to match the Federal guidelines. EPA proposes to approve these revisions.

Narrative Supplement to the Louisiana PM_{10} SIP

LDEQ also provided a short, narrative supplement with the regulatory revisions. The narrative notes that yearly ambient air reports will be compiled and made available to the public with individual ambient values available upon request. The narrative also identifies those regulations that were revised to incorporate the intent of the PM_{10} ambient air quality standard. LDEQ notes that available air quality data indicate that the new standard is not being exceeded in Louisiana and that the emission inventory data base for PM_{10} will commence with the fiscal year 1988 emission inventory system (EIS) update. This data base will continue to be updated in future years. Because compliance with existing particulate emission limits appears to be adequate to assure compliance with the PM_{10} standard, the State decided that no additional compliance schedules are necessary. The State also notes that there are no additional resources available to implement the new standard, but the contemporaneous deletion of the TSP standard should allow the State to implement the new standard. LDEQ projects, however, that it will seek additional financial assistance of \$32,000 over the next five years to carry out its plan. The bulk of this money is to cover the cost of acquiring PM_{10} monitors. LDEQ also notes that "the ambient air monitoring

necessary to support the implementation of the new standard is described in the [National Air Monitoring System] and [State/Local Air Monitoring System] networks submitted to EPA in the first quarter of [fiscal year] 1988."

Final Action

EPA approves the Louisiana SIP for PM_{10} and the attendant regulations.

This action is being taken without prior public notice, because the changes are noncontroversial and EPA does not anticipate receiving any adverse comments on them. The public should be advised that this action is effective 60 days from the date of publication of this Federal Register notice. However, if notice is received within 30 days of publication that someone wishes to submit adverse or critical comments, this action will be withdrawn and a subsequent notice will be published that begins a new rulemaking period by announcing a proposal of the action and establishing a comment period.

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Incorporation by reference, Particulate matter.

Authority: 42 U.S.C. 7401-7642.

Note: Incorporation by reference of the State Implementation Plan for the State of Louisiana was approved by the Director of the Federal Register on July 1, 1982.

Date: April 18, 1989.

Robert E. Layton Jr., P.E.,
Regional Administrator.

40 CFR Part 52, Subpart T, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

Subpart T—Louisiana

2. Section 52.970 is amended by adding paragraph (c)(50) to read as follows:

§ 52.970 Identification of plan.

(c)

(50) The Louisiana State Implementation Plan for PM_{10} as submitted by the Governor in a letter

dated July 26, 1988, and adopted by the State effective June 20, 1988.

(i) *Incorporation by Reference.* (A) Revisions to the Louisiana Administrative Code, Title 33, Chapter III, Sections 111, 509.B, 509.1.8.a, 709, 1301.B, 1303.A, 1305.A, 1311.B, 1311.C, 1313.C, 1315, 1319.G, 5609.A.1, 5609.A.2, 5609.A.3, and Tables 1, 1a, and 2 of chapter 7 as adopted effective June 20, 1988.

(ii) Additional material.

(A) A letter dated July 26, 1988, from Paul H. Temple, Secretary, Louisiana Department of Environmental Quality, to the Governor of Louisiana approving the adoption of amendments to the Louisiana Air Quality Regulations to implement the new PM_{10} standard effective June 20, 1988.

(B) A narrative supplement to the Louisiana PM_{10} submitted by the Governor in a letter dated July 26, 1988.

[FR Doc. 89-13419 Filed 6-14-89; 8:45 am]

BILLING CODE 6560-50-M

[GA-013 (FRL-3601-3)]

40 CFR Part 52

Approval and Promulgation of Implementation Plans; Georgia; Stack Height Review

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves a declaration by Georgia that recent revisions to EPA's stack height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP). The State was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that Georgia has satisfied its obligations under section 406 of the Clean Air Act Amendments of 1977 to review its SIP with respect to EPA's revised stack height regulations. No emission limitations were affected by stack height credit above GEP or any other dispersion technique. This approval does not apply to fifteen sources identified below.

EFFECTIVE DATE: This action will be effective on July 17, 1989.

ADDRESSES: Copies of the materials submitted by Georgia may be examined during normal business hours at the following locations:

Public Information Reference Unit,
Library Systems Branch,

Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
Air Programs Branch, Region IV,
Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365.

Air Protection Branch, Georgia
Department of Natural Resources,
Floyd Towers East, Room 1162, 205 Butler Street, Atlanta, Georgia 30334.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV Air Programs Branch, at the above listed address, telephone (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On February 8, 1982 [47 FR 5864], EPA promulgated regulations limiting stack height credit and other dispersion techniques required by section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the DC Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, 719 F. 2d 436. On October 11, 1983, the court issued its decision, ordering EPA to reconsider portions of the stack height regulations, reversing certain portions, and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S. Ct. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate implementing its decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 [49 FR 44878], and finalized on July 8, 1985 [50 FR 27892]. The revisions redefine a number of specific terms, including "excessive concentration," "dispersion techniques," "nearby," and other important concepts, and modify some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of Pub. L. 95-95, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credit above GEP or any other dispersion techniques. For any limitations so affected, states were to

¹ See 52 FR 24634.

² See 52 FR 24672.

prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation, as required by statute.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 m in height and sources with emissions of sulfur dioxide (SO₂) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO₂ emission exemption from prohibited dispersion techniques. Sources were exempted from further review if they fell under the grandfathering clause (i.e., in existence before December 31, 1970), if their stack height was less than *de minimis* stack height (65m), or if their actual height was less than the calculated Good Engineering Practice (GEP) stack height.

The remaining sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory. Georgia has concluded that its SIP includes provisions that limit stack height credits and dispersion techniques in accordance with the revised EPA stack height regulations. They also found that no emission limitations have been affected by stack height credits above GEP or any other prohibited dispersion techniques. Georgia has indicated that the documentation is available for review at the State office (listed above).

On March 26, 1987, Georgia submitted for EPA's approval documentation for Good Engineering Practice (GEP) Stack Height. EPA proposed to approve the declaration on February 24, 1989 (54 FR 7964). At that time, the public was invited to submit written comments on the proposed action. Comments were submitted on behalf of Georgia Power Company, which owns and operates several plants with stacks that have been evaluated pursuant to the stack height regulations. Georgia Power wants EPA Region IV to clarify the status of the following five plants affected by the stack height regulations. EPA is not acting on Plant Yates in this notice. The analysis for this source is not yet completed and will be dealt with in a subsequent notice. EPA has concluded that Plant Bowen Units 3 & 4 are grandfathered and that no further analysis is needed. The remaining three plants—Scherer, Wansley and McIntosh—will not need to be remodeled since EPA accepts the explanation submitted by Georgia that

auxiliary boilers are not operated at the same time as the main steam units. EPA is therefore approving the State's declaration that no emission limitations were affected by stack height credit above GEP or any other dispersion technique, except as the declaration applies to Plant Yates and other sources identified below.

On January 22, 1988, the U.S. Court of Appeals for the District of Columbia issued its decision in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988), regarding the Environmental Protection Agency's (EPA's) stack height regulations (50 FR 27892, July 8, 1985); the court upheld most of the rules, but certain provisions were remanded to the EPA for further consideration. Accordingly, EPA is not acting on fifteen sources (Georgia Power Plants Mitchell (Albany), Hammond (Coosa), McDonough (Smyrna), Arkwright (Macon), Branch (Milledgeville), Wansley (Roopville), Scherer (Juliette), and Yates (Newnan); Savannah Electric Plants McIntosh (Rincon) and Port Wentworth (Port Wentworth); Inland (Rome); Buckeye Cellulose (Oglethorpe); Georgia Kraft (Macon); Union Camp (Savannah); and Stone Container (Savannah)) because they currently receive credit under one of the provisions remanded to EPA. Georgia and EPA will review these sources for compliance with any revised requirements when EPA completes rulemaking to respond to the *NRDC* remand.

EPA Review. EPA has reviewed Georgia's submittal and concurs with the conclusion that no revisions to Georgia's existing source emission limitations are necessary as a result of EPA's revised stack height regulations. Georgia has therefore met its obligations under Section 406 of Pub.L. 95-95 for existing source emission limitations. (EPA approved Georgia's stack height rules for new sources on February 15, 1989 (54 FR 6936).)

Final Action. EPA approves the declaration by Georgia that recent revisions to EPA's stack height regulations do not necessitate SIP revisions for specific sources in this State. EPA proposed to approve the declaration on February 24, 1989 (54 FR 7964). The declaration does not apply to the fifteen sources previously mentioned.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit on or before August 14, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Sulfur oxides.

Dated: June 5, 1989.

Joe R. Franzmathes,
Acting Regional Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart L—Georgia

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. A new § 52.578 is added to read as follows:

§ 52.578 Control strategy: Sulfur oxides and particulate matter.

In a letter dated March 26, 1987, the Georgia Department of Natural Resources certified that no emission limits in the State's plan are based on dispersion techniques not permitted by EPA's stack height rules. This certification does not apply to: Georgia Power Plants Mitchell (Albany), Hammond (Coosa), McDonough (Smyrna), Arkwright (Macon), Branch (Milledgeville), Wansley (Roopville), Scherer (Juliette), and Yates (Newnan); Savannah Electric Plants McIntosh (Rincon) and Port Wentworth (Port Wentworth); Inland (Rome); Buckeye Cellulose (Oglethorpe); Georgia Kraft (Macon); Union Camp (Savannah); and Stone Container (Savannah).

[FR Doc. 89-14218 Filed 6-14-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[TN-041; FRL-3600-5]

Approval and Promulgation of Implementation Plans; Tennessee; Stack Height Review

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves a declaration by Tennessee that recent revisions to EPA's stack height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP). The State

was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that Tennessee has satisfied its obligations under section 406 of the Clean Air Act Amendments of 1977 to review its SIP with respect to EPA's revised stack height regulations. No emission limitations were affected by stack height credit above Good Engineering Practice (GEP) or any other dispersion technique.

EFFECTIVE DATE: This action will be effective on July 17, 1989.

ADDRESSES: Copies of the materials submitted by Tennessee may be examined during normal business hours at the following locations:

Public Information Reference Unit,
Library Systems Branch,
Environmental Protection Agency, 401
M Street, SW., Washington, DC 20460.
Air Programs Branch, Region IV,
Environmental Protection Agency, 345
Courtland Street, NE, Atlanta,
Georgia 30365.
Tennessee Department of Public Health
and Environment, Customs House, 4th
Floor, 701 Broadway, Nashville,
Tennessee 37219-5403.

FOR FURTHER INFORMATION CONTACT:
Beverly T. Hudson, EPA Region IV Air
Programs Branch, at the above listed
address, telephone (404) 347-2864 or FTS
257-2864.

SUPPLEMENTARY INFORMATION: On
February 8, 1982 (47 FR 5864), EPA
promulgated final regulations limiting
stack height credit and other dispersion
techniques as required by Section 123 of
the Clean Air Act (the Act). These
regulations were challenged in the U.S.
Court of Appeals for the D.C. Circuit by
the Sierra Club Legal Defense Fund, Inc.,
the Natural Resources Defense Council,
Inc., and the Commonwealth of
Pennsylvania in *Sierra Club v. EPA*, 719
F. 2d 436. On October 11, 1983, the court
issued its decision, ordering EPA to
reconsider portions of the stack height
regulations, reversing certain portions,
and upholding other portions.

On February 28, 1984, the electric
power industry filed a petition for a writ
of certiorari with the U.S. Supreme
Court. On July 2, 1984, the Supreme
Court denied the petition (104 S. CT.
3571), and on July 18, 1984, the Court of
Appeals formally issued a mandate
implementing its decision and requiring
EPA to promulgate revisions to the stack
height regulations within six months.
The promulgation deadline was
ultimately extended to June 27, 1985.

Revisions to the stack height
regulations were proposed on November
9, 1984 (49 FR 44878), and finalized on

July 8, 1985 (50 FR 27892). The revisions
redefine a number of specific terms,
including "excessive concentration,"
"dispersion techniques," "nearby," and
other important concepts, and modify
some of the bases for determining good
engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of Pub. L.
95-95, all states were required to (1)
review and revise, as necessary, their
state implementation plans (SIPs) to
include provisions that limit stack height
credit and dispersion techniques in
accordance with the revised regulations
and (2) review all existing emission
limitations to determine whether any of
these limitations have been affected by
stack height credit above GEP or any
other dispersion techniques. For any
limitations so affected, states were to
prepare revised limitations consistent
with their revised SIPs. All SIP revisions
and revised emission limits were to be
submitted to EPA within 9 months of
promulgation, as required by statute.

Subsequently, EPA issued detailed
guidance on carrying out the necessary
reviews. For the review of emission
limitations, states were to prepare
inventories of stacks greater than 65 m
in height and sources with emissions of
sulfur dioxide (SO₂) in excess of 5,000
tons per year. These limits correspond
to the *de minimis* GEP stack height and
the *de minimis* SO₂ emission exemption
from prohibited dispersion techniques.
Sources were exempted from further
review if they fell under the
grandfathering clause (i.e., in existence
before December 31, 1970), if their stack
height was less than *de minimis* stack
height (65m), or if their actual height
was less than the calculated GEP stack
height.

The remaining sources were then
subjected to detailed review for
conformance with the revised
regulations. State submissions were to
contain an evaluation of each stack and
source in the inventory. Tennessee has
concluded that its SIP includes
provisions that limit stack height credits
and dispersion techniques in accordance
with the revised EPA stack height
regulations. They also found that no
emission limitations have been affected
by stack height credits above GEP or
any other prohibited dispersion
techniques. Tennessee has indicated
that the documentation is available for
review at the State office (listed above).

On March 9 and April 15, 1988,
Tennessee submitted for EPA's approval
documentation for GEP Stack Height.
EPA proposed to approve the
declaration on March 29, 1989 (54 FR
12926). At that time, the public was
invited to submit written comments on
the proposed action. However, no

comments were received. EPA is
therefore approving the State's
declaration that no emission limitations
were affected by stack height credit
above GEP or any other dispersion
technique, except as the declaration
applies to seven sources identified
below.

On January 22, 1988, the U.S. Court of
appeals for the District of Columbia
issued its decision in *NRDC v. Thomas*,
838 F.2d 1224 (D.C. Cir. 1988), regarding
the Environmental Protection Agency's
(EPA's) stack height regulations (50 FR
27892, July 8, 1985); the court upheld
most of the rules, but certain provisions
were remanded to the EPA for further
consideration. Accordingly, EPA is not
acting on seven sources (Dupont (43-07-
02); Tennessee Valley Authority—
Johnsonville (43-11-1 thru 10);
Tennessee Chemical Company (70-04-
21); Tennessee Eastman (82-03-15-19);
A.E. Staley (53-81-18, 19, 34, 31); Cargill
Inc., Memphis; and Grace Chemical
Company, Millington) because they
currently receive credit under one of the
provisions remanded to EPA. Tennessee
and EPA will review these sources for
compliance with any revised
requirements when EPA completes
rulemaking to respond to the *NRDC*
remand.

EPA Review. EPA has reviewed
Tennessee's submittal and concurs with
the conclusion that no revisions to
Tennessee's existing source emission
limitations are necessary as a result of
EPA's revised stack height regulations.
Tennessee has therefore met its
obligations under Section 406 of Pub. L.
95-95 for existing source emission
limitations. (EPA approved Tennessee's
stack height rules for new sources on
October 19, 1988 (53 FR 40881)).

Final Action. EPA approves the
declaration by Tennessee that recent
revisions to EPA's stack height
regulations do not necessitate SIP
revisions for specific sources in this
State. EPA proposed to approve the
declaration on March 29, 1989 (54 FR
12926). The declaration does not apply
to the seven sources previously
mentioned.

Under Section 307(b)(1) of the Act,
petitions for judicial review of this
action must be filed in the United States
Court of Appeals for the appropriate
circuit by August 14, 1989. This action
may not be challenged later in
proceedings to enforce its requirements.
(See 307(b)(2).)

The Office of Management and Budget
has exempted this rule from the
requirements of Section 3 of Executive
Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Sulfur oxides.

Dated: May 31, 1989.

Joe R. Franzmathes,
Acting Regional Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]**Subpart RR—Tennessee**

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.2231 is amended by making the phrase "Part D conditional approval" begin paragraph (a) and by adding a new paragraph (b) to read as follows:

§ 52.2231 Control strategy: Sulfur oxides and particulate matter.

(a) Part D conditional approval. . . .

(b) In letters dated March 9 and April 15, 1988, the Tennessee Department of Health and Environment certified that no emission limits in the State's plan are based on dispersion techniques not permitted by EPA's stack height rules. This certification does not apply to: Dupont (43-07-02); Tennessee Valley Authority—Johnsonville (43-11-1 thru 10); Tennessee Chemical Company (70-04-21); Tennessee Eastman (82-03-15-19); A.E. Staley (53-81-18, 19, 34, 31); Cargill Inc., Memphis; and Grace Chemical Company, Millington.

[FR Doc. 89-14217 Filed 6-14-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FL-024; FRL-3600-6]

Approval and Promulgation of Implementation Plans, Florida; Stack Height Review

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves a declaration by Florida that recent revisions to EPA's stack height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP). The State was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that

Florida has satisfied its obligations under Section 406 of the Clean Air Act Amendments of 1977 to review its SIP with respect to EPA's revised stack height regulations. No emission limitations were affected by stack height credit above GEP or any other dispersion technique.

EFFECTIVE DATE: This action will be effective on July 17, 1989.

ADDRESSES: Copies of the materials submitted by Florida may be examined during normal business hours at the following locations:

Public Information Reference Unit,
Library Systems Branch,
Environmental Protection Agency, 401
M Street, SW., Washington, DC 20460.
Air Programs Branch, Region IV,
Environmental Protection Agency, 345
Courtland Street, NE., Atlanta,
Georgia 30365.
Bureau of Air Quality Management,
Twin Towers Office Building, 2600
Blair Stone Road, Tallahassee, Florida
32301.

FOR FURTHER INFORMATION CONTACT:
Beverly T. Hudson, EPA Region IV Air
Programs Branch, at the above listed
address, telephone (404) 347-2864 or FTS
257-2864.

SUPPLEMENTARY INFORMATION: On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credit and other dispersion techniques as required by Section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, 719 F. 2d 438. On October 11, 1983, the court issued its decision, ordering EPA to reconsider portions of the stack height regulations, reversing certain portions, and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S. CT. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate implementing its decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms, including "excessive concentration," "dispersion techniques," "nearby," and

other important concepts, and modify some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of Pub. L. 95-95, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credit above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation, as required by statute.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 m in height and sources with emissions of sulfur dioxide (SO₂) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and the *de minimis* SO₂ emission exemption from prohibited dispersion techniques. Sources were exempted from further review if they fell under the grandfathering clause (i.e., in existence before December 31, 1970), if their stack height was less than *de minimis* stack height (65m), or if their actual height was less than the calculated Good Engineering Practice (GEP) stack height.

The remaining sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory. Florida has concluded that its SIP includes provisions that limit stack height credits and dispersion techniques in accordance with the revised EPA stack height regulations. They also found that no emission limitations have been affected by stack height credits above GEP or any other prohibited dispersion techniques. Florida has indicated that the documentation is available for review at the State office (listed above).

On October 10, 1986, Florida submitted for EPA's approval documentation for Good Engineering Practice (GEP) Stack Height. EPA proposed to approve the declaration on February 18, 1989 (54 FR 7068). At that time, the public was invited to submit written comments on the proposed action. However, no comments were received. EPA is therefore approving the State's declaration that no emission

limitations were affected by stack height credit above GEP or any other dispersion technique.

On January 22, 1988, the U.S. Court of appeals for the District of Columbia issued its decision in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988), regarding the Environmental Protection Agency's (EPA's) stack height regulations (50 FR 27892, July 8, 1985); the court upheld most of the rules, but certain provisions were remanded to the EPA for further consideration. Since no sources in Florida have received credit under any of the provisions remanded to EPA, none are affected by the remand.

EPA Review. EPA has reviewed Florida's submittal and concurs with the conclusion that no revisions to Florida's existing source emission limitations are necessary as a result of EPA's revised stack height regulations. Florida has therefore met its obligations under Section 406 of Pub. L. 95-95 for existing source emission limitations. (EPA approved Florida's stack height rules for new sources on February 8, 1989 (54 FR 6125)).

Final Action. EPA approves the declaration by Florida that recent revisions to EPA's stack height regulations do not necessitate SIP revisions for specific sources in this State. EPA proposed to approve the declaration on February 16, 1989 (54 FR 7068).

Under Section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Sulfur oxides.

Dated: May 31, 1989.

Joe R. Franzmathes,
Acting Regional Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]**Subpart K—Florida**

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.528 is amended by adding a new paragraph (a) to read as follows:

§ 52.528 Control strategy: Sulfur oxides and particulate matter.

(a) In a letter dated October 10, 1986, the Florida Department of Environmental Regulation certified that no emission limits in the State's plan are based on dispersion techniques not permitted by EPA's stack height rules.

[FR Doc. 89-14218 Filed 6-14-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[MS-011; FRL-3600-9]

Approval and Promulgation of Implementation Plans; Mississippi; Stack Height Review

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA today approves a declaration by Mississippi that recent revisions to EPA's stack height regulations do not necessitate source-specific revisions to the State Implementation Plan (SIP). The State was required to review its SIP for consistency within nine months of final promulgation of the stack height regulations. The intended effect of this action is to formally document that Mississippi has satisfied its obligations under Section 406 of the Clean Air Act Amendments of 1977 to review its SIP with respect to EPA's revised stack height regulations. No emission limitations were affected by stack height credit above GEP or any other dispersion technique.

EFFECTIVE DATE: This action will be effective on July 17, 1989.

ADDRESSES: Copies of the materials submitted by Mississippi may be examined during normal business hours at the following locations:

Public Information Reference Unit,
Library Systems Branch,
Environmental Protection Agency, 401
M Street, SW., Washington, DC 20460.
Air Programs Branch, Region IV,
Environmental Protection Agency, 345
Courtland Street, NE., Atlanta,
Georgia 30365.
Air Quality Control, Bureau of Pollution,
Department of National Resources,
P.O. Box 10385, Jackson, Mississippi
39209.

FOR FURTHER INFORMATION CONTACT:
Beverly T. Hudson, EPA Region IV Air
Programs Branch, at the above listed

address, telephone (404) 347-2864 or FTS
257-2864.

SUPPLEMENTARY INFORMATION: On February 8, 1982 (47 FR 5864), EPA promulgated final regulations limiting stack height credit and other dispersion techniques as required by Section 123 of the Clean Air Act (the Act). These regulations were challenged in the U.S. Court of Appeals for the D.C. Circuit by the Sierra Club Legal Defense Fund, Inc., the Natural Resources Defense Council, Inc., and the Commonwealth of Pennsylvania in *Sierra Club v. EPA*, 719 F. 2d 438. On October 11, 1983, the court issued its decision, ordering EPA to reconsider portions of the stack height regulations, reversing certain portions, and upholding other portions.

On February 28, 1984, the electric power industry filed a petition for a writ of certiorari with the U.S. Supreme Court. On July 2, 1984, the Supreme Court denied the petition (104 S. CT. 3571), and on July 18, 1984, the Court of Appeals formally issued a mandate implementing its decision and requiring EPA to promulgate revisions to the stack height regulations within six months. The promulgation deadline was ultimately extended to June 27, 1985.

Revisions to the stack height regulations were proposed on November 9, 1984 (49 FR 44878), and finalized on July 8, 1985 (50 FR 27892). The revisions redefine a number of specific terms, including "excessive concentration," "dispersion techniques," "nearby," and other important concepts, and modify some of the bases for determining good engineering practice (GEP) stack height.

Pursuant to section 406(d)(2) of Pub. L. 95-95, all states were required to (1) review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations and (2) review all existing emission limitations to determine whether any of these limitations have been affected by stack height credit above GEP or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within 9 months of promulgation, as required by statute.

Subsequently, EPA issued detailed guidance on carrying out the necessary reviews. For the review of emission limitations, states were to prepare inventories of stacks greater than 65 m in height and sources with emissions of sulfur dioxide (SO₂) in excess of 5,000 tons per year. These limits correspond to the *de minimis* GEP stack height and

the *de minimis* SO₂ emission exemption from prohibited dispersion techniques. Sources were exempted from further review if they fell under the grandfathering clause (i.e., in existence before December 31, 1970), if their stack height was less than *de minimis* stack height (65 m), or if their actual height was less than the calculated Good Engineering Practice (GEP) stack height. The remaining sources were then subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory. Mississippi has indicated that the documentation is available for review at the State Office (listed above).

On January 30, 1987, Mississippi submitted for EPA's approval documentation for Good Engineering Practice (GEP) Stack Height. EPA proposed to approve the declaration on February 18, 1988 (54 FR 7069). At that time, the public was invited to submit written comments on the proposed action. However, no comments were received. EPA is therefore approving the State's declaration that no emission limitations were affected by stack height credit above GEP or any other dispersion technique, except as the declaration applies to four sources identified below.

On January 22, 1988, the U.S. Court of appeals for the District of Columbia issued its decision in *NRDC v. Thomas*, 838 F.2d 1224 (D.C. Cir. 1988), regarding the Environmental Protection Agency's (EPA's) stack height regulations (50 FR 27892, July 8, 1985); the court upheld most of the rules, but certain provisions were remanded to the EPA for further consideration. Accordingly, EPA is not acting on four sources: Mississippi Power-Daniel; South Mississippi Electric Power, Hattiesburg-Morrow; E.I. Dupont, Delisle-Boilers 1 & 2; and International Paper, Vicksburg, because they currently receive credit under one of the provisions remanded to the EPA. Mississippi and EPA will review these sources for compliance with any revised requirements when EPA completes rulemaking to respond to the *NRDC* remand.

EPA Review. EPA has reviewed Mississippi's submittal and concurs with the conclusion that no revisions to Mississippi's existing source emission limitations are necessary as a result of EPA's revised stack height regulations. Mississippi has therefore met its obligations under section 406 of Pub. L. 95-95 for existing source emission limitations. (EPA approved Mississippi's

stack height rules for new sources on September 23, 1987 (52 FR 35704)).

Final Action. EPA approves the declaration by Mississippi that recent revisions to EPA's stack height regulations do not necessitate SIP revisions for specific sources in this State.

The declaration does not apply to: Mississippi Power-Daniel; South Mississippi Electric Power, Hattiesburg-Morrow; E.I. Dupont, Delisle-Boilers 1 & 2; and International Paper, Vicksburg.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by August 14, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

The Office of Management and Budget has exempted this rule from the requirements of Section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Particulate matter, Sulfur oxides.

Dated: May 26, 1989.

Joe R. Franzmathes,
Acting Regional Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart Z—Mississippi

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1278 is added to read as follows:

§ 52.1278 Control strategy: Sulfur oxides and particulate matter.

In a letter dated January 30, 1987, the Mississippi Department of Natural Resources certified that no emission limits in the State's plan are based on dispersion techniques not permitted by EPA's stack height rules. This certification does not apply to: Mississippi Power-Daniel; South Mississippi Electric Power, Hattiesburg-Morrow; E.I. Dupont, Delisle Boilers 1 & 2; and International Paper, Vicksburg.

[FR Doc. 89-14219 Filed 6-14-89; 8:45 am]

BILLING CODE 6560-60-M

40 CFR Part 52

[FRL 3572-9; [TN-046]

Approval and Promulgation of Implementation Plans, Tennessee; Revisions to the Memphis and Shelby County Portion of the State Implementation Plan

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On July 7, 1986, the State of Tennessee submitted the Memphis and Shelby County regulations (Board Order 17-86) as a revision to the State Implementation Plan (SIP). The regulations for Memphis and Shelby County were originally approved by EPA in 1972 as an appendix to the SIP. Since that time the regulations have been revised several times and today EPA is approving the regulations that are approvable and disapproving the regulations that are unapprovable and taking no action on those regulations that were never approved or disapproved for the State.

DATES: This action will be effective on August 14, 1989 unless notice is received by July 17, 1989 that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the *Federal Register*.

ADDRESSES: Copies of materials submitted by the State may be examined during normal business hours at the following locations:

Public Information Reference Unit,
Library Systems Branch,
Environmental Protection Agency, 401 M. Street, SW., Washington, DC 20460.

Environmental Protection Agency,
Region IV, Air Programs Branch, 345 Courtland Street, NE., Atlanta, GA 30365.

Division of Air Pollution Control,
Tennessee Department of Health and Environment, Customs House 4th Floor, 701 Broadway, Nashville, Tennessee 37219.

Memphis and Shelby County Health Department, Air Pollution Control, 814 Jefferson Avenue, Memphis, Tennessee 38105.

FOR FURTHER INFORMATION CONTACT: Ms. Rosalyn D. Hughes, Air Programs Branch, EPA Region IV, at the above address and telephone number (404) 347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: In 1967, the Memphis and Shelby County Health Department developed regulations for the control of air pollution. In 1972, the

State of Tennessee submitted its State Implementation Plan (SIP) for the control of air pollution. On May 31, 1972 (37 FR 10842 at 10894) EPA approved the SIP for Tennessee. The SIP contained a section that recognized the Air Pollution Control Section of the Memphis and Shelby County Health Department as the local agency for air pollution control and included a control strategy demonstration along with the Health Department regulations. Since that time, the Memphis and Shelby County Air Pollution Control Section (Memphis) has revised the regulations. Memphis adopted certain portions of the State regulations, revised their old regulations and recodified the air pollution control section of the Memphis and Shelby County Code accordingly.

The new regulations were submitted to EPA by the State of Tennessee as a SIP revision (Board Order 17-86) on July 7, 1986. This SIP revision was not processed earlier because it was unclear which Memphis/Shelby County regulations had already been approved as part of the Tennessee SIP. Also, EPA had to determine if the previous control strategy demonstrations were adequate in protecting the National Ambient Air Quality Standards (NAAQS). Once the federally approved Memphis/Shelby County portion of the Tennessee SIP was compiled and the previous control strategy demonstrations were deemed adequate, EPA decided to approve the Memphis/Shelby regulations as a transfer of enforcement authority from the State to the local. The following conditions and conclusions were used to arrive at this decision:

1. The local regulations must be equal to the corresponding federally approved State regulations.

2. The local regulations cannot be treated as separable from the SIP, which the State submits and implements, but must be considered part of it.

3. Tennessee State law requires that the local regulations be equivalent to or not less stringent than the corresponding State regulation; therefore, Tennessee must certify to EPA that each regulation has been reviewed by the State and found to meet this requirement.

4. Tennessee must retain overall authority and responsibility for developing and implementing, including enforcing, the SIP.

EPA compared the federally approved State regulations and the federally approved Memphis regulations to determine the approvability of the Memphis regulations. A summary of the review follows.

These sections are approvable in their entirety:

Section 16-47—Abbreviations, Acronyms & Symbols
Section 16-48—Words, Phrases Substituted in State Regulations Adopted by Reference

Section 16-50—Open Burning
Section 16-51—Severability of Parts of Articles

Section 16-56—Notice; Citation; Injunctive Relief

Section 16-57—Penalties, Misdemeanor, Civil, Noncompliance

Section 16-58—Variances

Section 16-59—Emergency Powers of Health Officer

Section 16-71—Created; Membership; Term of Office; Jurisdiction; Hearings; Appeals

Section 16-79—Nonprocess Emission Standards (State regulation 1200-3-6)

Section 16-80—Volatile Organic Compounds * (State regulation 1200-3-18)

Section 16-84—Particulate Matter from Incinerators

Section 16-85—Required Sampling, Recording and Reporting (State regulation 1200-3-10)

Section 16-86—Methods of Sampling and Analysis (State regulation 1200-3-12)

Section 16-87—Limits on Emissions due to Malfunctions, Startups and Shutdowns (State regulation 1200-3-20)

Section 16-89—Fugitive Dust

Section 16-90—General Alternative Emission Standards (State regulation 1200-3-21)

Section 16-91—Lead Emission Standards (State regulation 1200-3-22)

Sections 16-76 and 16-81 are the *New Source Performance Standards* and *Hazardous Air Contaminants*, respectively. These standards, which are not part of the SIP, are subdelegated to Memphis by the State.

In Section 16-77, *Construction and Operating Permits* (State regulation 1200-3-9) all portions are approvable except the following rules which are not approvable because they are inconsistent with EPA regulations and policies:

1200-3-9-.01(3)

1200-3-9-.01(4)(o)(2)

No action will be taken on the following because they are not part of the federally approved regulations for the State:

1200-3-9-.01(4)(b)(6) the last phrase

* Note: EPA Region IV notified both the Tennessee and Memphis agencies of the SIP deviations that have been identified within the Volatile Organic Compounds Regulation (Section 16-80) and the need for their correction in a letter dated November 9, 1987. The deviations, however, do not affect the approvability of the Volatile Organic Compounds Regulation for Memphis because approvability of the local regulations is based on a transfer of enforcement authority of federally approved regulations, which include the Volatile Organic Compounds Regulation, from the State to the local. Once Tennessee has corrected these deviations identified by EPA, Memphis will adopt the corrected regulation by reference.

1200-3-9-.02(1)-(3), (6)-(10) and the last section of (5)
1200-3-9-.03(2) the last sentence
1200-3-9-.03(5)

In Section 16-82, *Sulfur Oxide Emissions* (State regulation 1200-3-14), these rules are approvable because they are identical to the federally approved State regulation:

1200-3-14-.01

1200-3-14-.03(1)-(5) and (8)-(9)

No action will be taken on the following rules because they are not part of the federally approved State regulations:

1200-3-14-.02

1200-3-14-.03(5) and (6)

Section 16-88, *Nuisance Abatement*, was originally approved as part of the SIP in 1972. Since that time Memphis has added a paragraph (b) dealing with odor pollution which EPA will not take action on at this time. Paragraph (a) was approved and is reapprovable.

In Section 16-83, *Visible Emissions* (State regulation 1200-3-5), these are approvable because they are part of the federally approved State regulation:

1200-3-5-.01 (1) and (4)

1200-3-5-.03 (1)

1200-3-5-.04

No action will be taken on the following rules because they are not part of the federally approved State regulations:

1200-3-5-.01 (2) and (3)

1200-3-5-.02

1200-3-5-.03(2)

1200-3-5-.05

In Section 16-78, *Process Emissions Standards* (State regulation 1200-3-7), these rules are approvable because they are federally approved rules for the State:

1200-3-7-.01

1200-3-7-.02

1200-3-7-.03(1)

1200-3-7-.04 (1) and (2) except the last sentence

1200-3-7-.05

1200-3-7-.06

1200-3-7-.07(1)

1200-3-7-.08

1200-3-7-.10

1200-3-7-.11

1200-3-7-.12

No action will be taken on the following rules because they are not federally approved for the State:

1200-3-7-.03(2)

1200-3-7-.04(2) the last sentence

1200-3-7-.07(2)-(5)

1200-3-7-.09

Section 16-49, *Ambient Air Quality Standards* (State regulation 1200-3-3) is approvable in its entirety, except for the

last sentence in 1200-3-3-.05, on which no action will be taken.

In Section 16-48, *Definitions*, all the definitions are identical to the federally approved State regulations except for the definitions of modification, new source and new sulfuric acid plant. These definitions, however, were found to be equivalent to the State's definitions and are federally approvable.

Final Action

Since the Memphis regulations (Board Order 17-86) are consistent with EPA policy and requirements, they are hereby approved except for the following rules that are disapproved:

1200-3-9-.01(3)
1200-3-9-.01(4)(o)(2)

The public should be advised that this action will be effective 60 days from the date of this Federal Register notice. However, if notice is received within 30 days that someone wishes to submit adverse or critical comments, this action will be withdrawn and two subsequent notices will be published before the effective date. One notice will withdraw the final action and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by [60 days from date of publication]. This action may not be challenged later in proceedings to enforce its requirements. (See 307(b)(2).)

Regulatory Process

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA must assess the impact of proposed rules on small entities. These rules are equivalent to the federally approved State regulations and maintain the status quo. Sources have not been adversely affected by the State regulations; therefore the conclusion can be drawn that small sources in Memphis and Shelby County will not be adversely affected by this decision.

The Office of Management and Budget has waived review of this action, normally required under Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Carbon Monoxide, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides.

Note: Incorporation by reference of the State Implementation Plan for the State of Tennessee was approved by the Director of the Federal Register on July 1, 1982.

Dated: April 24, 1989.

Lee A. DeHihns, III,
Acting Regional Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

Subpart RR—Tennessee

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.2220 is amended by adding paragraph (c)(89) to read as follows:

§ 52.2220 Identification of plan.

(c) . . .

(89) Revised Memphis and Shelby County regulations (Board Order 17-86) submitted on July 7, 1986.

(i) Incorporation by reference.

(A) Memphis and Shelby County regulations, Board Order 17-86, which became State-effective June 18, 1986. The regulations that are approved are as follows:

Sections 16-46

Sections 16-47

Sections 16-48

Sections 16-49 except for Rule 1200-3-3-.05 (the last sentence)

Sections 16-50

Sections 16-51

Sections 16-56

Sections 16-57

Sections 16-58

Sections 16-59

Sections 16-71

Sections 16-77 except for Rules 1200-3-9.01(3); 1200-3-9-.01(4)(b)(6)(the phrase, "except the activities of any vessel.");

1200-3-9-.01(4)(o)(2); 1200-3-9-.02(1)-(3); (6)-(10) and the last sentence of (5);

1200-3-9-.03(2)(the last sentence),

.03(2)(a), and .03(2)(b)

Sections 16-78 except for Rules 1200-3-7-.03(2); 1200-3-7-.04(2)(the last sentence);

1200-3-7-.07(2)-(5); 1200-3-7-.09

Sections 16-79

Sections 16-80

Sections 16-82 except for Rules 1200-3-14-.02; 1200-3-14-.03(5) and (6)

Sections 16-83 except for Rules 1200-3-5-.01(2) and (3); 1200-3-5-.03(2)

Sections 16-84

Sections 16-85

Sections 16-86

Sections 16-87

Sections 16-88 except paragraph(b)

Sections 16-89

Sections 16-90

Sections 16-91

(B) Letter of July 7, 1986, from the Tennessee Department of Health and Environment.

(ii) Other material—none.

3. A new § 52.2229 is added to read as follows:

§ 52.2229 Rules and regulations.

(a) The following portions of the revised Memphis and Shelby County regulations submitted on July 7, 1986, are disapproved because they are inconsistent with EPA policy and requirements:

16-77, Rules 1200-3-9-.01(3); 1200-3-9-.01(4)(o)(2)

(b) [Reserved]

[FR Doc. 89-14154 Filed 6-14-89; 8:45 am]

BILLING CODE 8560-50-M

40 CFR Part 60

[FRL-3602-5]

Standards of Performance for New Stationary Sources; Surface Coating of Plastic Parts for Business Machines; Clarification

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule, clarification.

SUMMARY: This notice clarifies a final rule on standards of performance for new stationary sources for surface coating of plastic parts for business machines which appeared at page 2676 in the Federal Register of Friday, January 29, 1988 (53 FR 2676).

This action is necessary in order to clarify that electromagnetic interference and radio frequency interference (EMI/RFI) shielding coatings that are applied to the surface of plastic business machine parts to attenuate EMI/RFI signals were intended to be exempt from the regulation.

EFFECTIVE DATE: January 29, 1988.

FOR FURTHER INFORMATION CONTACT: Doug Bell or Laura Butler, Standards Development Branch, ESD (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541-5568 or (919) 541-5267.

SUPPLEMENTARY INFORMATION: The EMI/RFI shielding coatings were exempted because none of the options studied provided volatile organic compound emission control at a reasonable cost. The definition of prime coat specifically excluded EMI/RFI coatings to avoid erroneous consideration of EMI/RFI coatings as prime coatings.

The EMI/RFI shielding coatings were not specifically excluded from the definitions for color coat, texture coat, and touch-up coat in the regulation promulgated on January 29, 1988 (53 FR 2676) since there were not cases known where EMI/RFI shielding coatings serve principally to affect color, gloss, or texture, or to touch up a part. The EMI/RFI coatings principally serve a functional purpose, not a decorative purpose.

The lack of an exclusion of EMI/RFI coatings from these definitions could cause confusion in cases where EMI/RFI coating is the only coating applied to the interior of a part, since the EMI/RFI coating could affect the final appearance (color and gloss) of the coated part. Therefore, the definitions for color coat, texture coat, and touch-up coat are being revised to specifically exempt EMI/RFI coatings.

The definition for EMI/RFI shielding coating is also included in order to specify the material exempted by this clarification.

Date: June 7, 1989.

Don R. Clay,

Acting Assistant Administrator for Air and Radiation.

For reasons set out in the preamble, 40 CFR Part 60, § 60.721 is amended as follows:

PART 60—[AMENDED]

1. The authority citation for Part 60 continues to read as follows:

Authority: 42 U.S.C. 7401, 7411, 7414, 7416, and 7601.

2. Section 60.721(a) is amended by revising the definitions, "color coat," "texture coat," and "touch-up coat," and by adding the definition for "electromagnetic interference/radio frequency interference (EMI/RFI) shielding coating" in alphabetical order to read as follows:

§ 60.721 Definitions.

(a) . . .

"Color coat" means the coat applied to a part that affects the color and gloss of the part, not including the prime coat or texture coat. This definition includes fog coating, but does not include conductive sensitizers or electromagnetic interference/radio frequency interference shielding coatings.

"Electromagnetic interference/radio frequency interference (EMI/RFI) shielding coating" means a conductive coating that is applied to a plastic substrate to attenuate EMI/RFI signals.

"Texture coat" means the rough coat that is characterized by discrete, raised spots on the exterior surface of the part. This definition does not include conductive sensitizers or EMI/RFI shielding coatings.

"Touch-up coat" means the coat applied to correct any imperfections in the finish after color or texture coats have been applied. This definition does not include conductive sensitizers or EMI/RFI shielding coatings.

[FR Doc. 89-14263 Filed 6-14-89; 8:45 am]
BILLING CODE 8560-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 2 and 21

[General Docket No. 87-136; FCC No. 89-148]

Amendment To Reallocate the Local Television Transmission Service From the 11.7-12.2 GHz Band to the 14.2-14.4 GHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission released a Notice of Proposed Rule Making (NPRM) May 18, 1987, inviting comments on a proposal to reallocate the local television transmission service (LTTS) from 11.7-12.2 GHz to 14.0-14.5 GHz. However, in the NPRM the Commission limited its proposal to the band 14.2-14.4 GHz due to other government and non-government use of the 14.0-14.2 and 14.4-14.5 GHz portions of the band. The 11.7-12.2 and 14.0-14.5 GHz bands are also used on a primary basis by the fixed satellite service (FSS). LTTS is a secondary user of the 11.7-12.2 GHz band. This action orders that Parts 2 and 21 of the Commission Rules be amended to reflect the reallocation of LTTS to the 14.2-14.4 GHz band. The intent of this action is to eliminate the burden of frequency coordination for LTTS and the FSS.

EFFECTIVE DATE: July 17, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Raymond LaForge, telephone (202) 653-8117.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order, adopted May 9; Released June 1, 1989.

The full text of this Commission decision is available for inspection and copying during normal business hours in

the FCC Dockets Branch (Room 233), 1919 M Street NW., Washington, D.C. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice

1. The Commission released a Notice of Proposed Rule Making (NPRM) on May 18, 1987, proposing to reallocate the LTTS from the FSS downlink band at 11.7-12.2 (11.7) GHz to the FSS uplink band at 14.2-14.4 (14.2) GHz. The Commission found that frequency coordination efforts at 11.7 GHz were becoming increasingly burdensome as new satellite earth stations are built. The Commission stated that the reallocation of LTTS to 14.2 GHz should relieve the coordination problem, in that frequency coordination would not be necessary in the 14.2 GHz uplink band, because the receivers are located at the satellite in geostationary orbit, and the likelihood of interference over that long distance to the satellite is negligible.

2. Comments were mixed on the proposed rule. LTTS interests raised several arguments as to why the 11.7 GHz band should be maintained. They were also concerned with the reduction in spectrum as proposed by the Commission. FSS interests and microwave equipment manufacturers all support the reallocation of LTTS to the 14.2 GHz band because of the existing burdens to coordinate frequencies at 11.7 GHz.

3. Although reallocation of LTTS to the 14.2 GHz band would result in a net loss in spectrum, we believe that the reallocation would be an improvement for LTTS. We estimate that the number of new satellite earth stations will be in the thousands over the next several years rendering the 11.7 GHz band unusable for LTTS. Although the proposed reallocation results in a net loss of 300 MHz for LTTS (500 to 200 MHz), we believe that it will actually provide a substantial benefit to LTTS. As the proliferation of earth stations continues to occur, the 14.2 GHz band should remain 300 MHz of usable spectrum; however, the 11.2 GHz band, although it consists of 500 MHz, will most likely be unavailable to LTTS as FSS primary users continue to expand. Thus, the risk of interference to LTTS should be reduced by the reallocation. We have carefully considered all aspects of this situation and we believe that although the 11.7 GHz band was once suitable for LTTS on a secondary basis, it no longer is able to

accommodate LTTS due to the rapid growth of earth stations at 11.7 GHz. In fact the band is already unusable in many parts of the country.

4. We also have reviewed the need for a transition period for LTTS users to acquire new equipment and to phase out existing 11.7 GHz equipment. Since LTTS operates in the 11.7 GHz band on a secondary basis we will permit LTTS users to use the 11.7-12.2 GHz band indefinitely so that they will be able to use existing equipment for its normal life span. This should also provide an opportunity for manufacturers to design and build 14 GHz receivers for use by LTTS operators. In light of these considerations we are grandfathering LTTS operations in the 11.7-12.2 GHz band. However, in accordance with LTTS's secondary status, if interference is caused to the fixed-satellite service, the LTTS operator shall either immediately remedy the interference or cease operation. We are retaining the requirement for VSAT operators to maintain an up-to-date list of earth stations and to provide a point-of-contact to facilitate coordination of secondary LTTS operations.

5. Further, we have carefully reviewed the power limitations that are necessary to protect the FSS satellite receivers in the geostationary orbit. We continue to believe that the limits established in the international *Radio Regulations* are appropriate to protect FSS from harmful interference caused by LTTS transmissions and yet provide sufficient power for LTTS to operate effectively. Therefore, we believe the limit of +45 dBW is correct. However, we are not permitting operations within 1.5 degrees of satellites in the geostationary orbit. This should allow sufficient power for LTTS to establish links and yet afford adequate protection for the FSS receiver at the satellite.

6. We have also considered the proposal made by Conus Communications Inc. (Conus) requesting blanket authority for each licensee of a 14 GHz video satellite uplink to use the 14.2 GHz band, on a secondary basis, for terrestrial transmission of video signals. Although this proposal would allow operators of video uplinks to feed material to and from satellite facilities, it would also limit LTTS use of the band. We can not evaluate the merits of the Conus proposal unless we invite public comment on their specific proposal. Therefore, we find the Conus proposal to be beyond the scope of this proceeding.

7. Accordingly, *It is ordered*, That pursuant to the authority of sections 4(i), 301, and 303(r) of the Communications Act of 1934, as amended [47 U.S.C. 4(i),

301, and 303(r)], Parts 2 and 21 of the Commission's Rules, ARE AMENDED to reflect the changes discussed in this Order.

8. *It is further ordered* That this Order will become effective July 17, 1989.

9. *It is further ordered* that this proceeding is terminated.

List of Subjects

47 CFR Part 2

Frequency allocations.

47 CFR Part 21

Communications equipment.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Rule Changes

Parts 2 and 21 of Chapter I of Title 47 of the Code of Federal Regulations are amended as follows:

PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS

1. The authority citation in Part 2 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082 as amended; 47 U.S.C. 154, 303.

2. Section 2.106, the Table of Frequency Allocations, is amended by revising columns 4, 5 and 6 in the table for the 14.2-14.4 GHz bands as follows:

§ 2.106 Table of Frequency Allocations.

United States table		FCC use designators
Government	Non-Government	
Allocation GHz (4)	Allocation GHz (5)	Rule part(s) (6)
14.2-14.3	Fixed-satellite (Earth-to-space). Mobile except aeronautical mobile.	Satellite communications (25). Domestic public fixed (21).
US287	US287	
14.3-14.4	14.3-14.4 Fixed-satellite (Earth-to-space). Mobile except aeronautical mobile.	Satellite communications (25). Domestic public fixed (21).
US287	US287	

PART 21—DOMESTIC PUBLIC FIXED RADIO SERVICES

3. The authority citation in Part 21 continues to read:

Authority: Secs. 4, 303, 48 Stat. 1066, as amended, 1082, as amended; 47 U.S.C. 154, 303.

§ 21.801 [Amended]

4. Section 21.801(a) is amended by revising the list of available frequencies for assignment to television pickup and television non-broadcast pickup stations in the local television transmission service and adding a sentence to footnote 5 as follows:

8,425 to 8,525 MHz.⁶
11,700 to 12,200 MHz.³
13,200 to 13,250 MHz.¹
14,200 to 14,400 MHz.⁵
21,200 to 22,000 MHz.^{1, 2, 4, 5}
22,000 to 23,600 MHz.^{1, 2, 5}
31,000 to 31,300 MHz.⁷

[FR Doc. 89-14059 Filed 6-14-89; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 87-04; Notice 5]

RIN 2127-AC 73

Federal Motor Vehicle Safety Standards—Air Brake Systems

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Final rule; partial response to petitions for reconsideration; delay of effective date.

SUMMARY: In a final rule published in the Federal Register (53 FR 7931) on March 11, 1988, NHTSA amended Standard No. 121, *Air Brake Systems*, to clarify the standard's parking brake

¹ This frequency band is shared with fixed and mobile stations licensed under Part 21 and other parts of the Commission's Rules.

² This frequency band is shared with Government stations.

³ This frequency band is shared, on a secondary basis, with stations in the broadcasting-satellite and fixed-satellite services.

⁴ This frequency band is shared with stations in the earth-exploration satellite service.

⁵ Assignments to common carriers in this band are normally made in the segments 21,200-21,800 MHz and 22,400-23,800 MHz and to operational fixed users in the segments 21,800-22,400 MHz and 23,000-23,600 MHz. Assignments may be made otherwise only upon a showing that interference free frequencies are not available in the normally assigned band segments. The maximum power for the local television transmission service in the 14.2-14.4 GHz band is +45 dBW except that operations are not permitted within 1.5 degrees of the geostationary orbit.

⁶ This band is co-equally shared with mobile stations licensed pursuant to Parts 74, 78 and 94 of the Commission's rules.

⁷ Use of this spectrum for direct delivery of video programs to the general public or multi-channel cable distribution is not permitted.

requirements. The amendments permitted manufacturers to comply with the new requirements as an alternative to complying with the requirements being superseded effective April 11, 1988, and required mandatory compliance with those requirements effective September 7, 1988 (180 days after publication). In partial response to two petitions for reconsideration, NHTSA issued a notice on September 9, 1988, amending the standard by extending for one year (i.e., until September 7, 1989) the period for which manufacturers may comply with either the earlier or new requirements. Today's notice amends the standard by extending this period for one more year (i.e., until September 7, 1990). The agency expects to provide a response to the two petitions for reconsideration later this year.

DATES: The amendments made by this rule are effective July 17, 1989. Petitions for reconsideration must be received by July 17, 1989.

ADDRESSES: Petitions for reconsideration should be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Shadle, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC (202-366-5273).

SUPPLEMENTARY INFORMATION: In a final rule published in the Federal Register (53 FR 7931) on March 11, 1988, NHTSA amended Standard No. 121, *Air Brake Systems*, to clarify the standard's parking brake requirements. The amendments required actuation of a mechanical means for holding the parking brakes within three seconds after operation of the parking brake control. (For trailers, such actuation was required within three seconds after venting to the atmosphere of the front supply line connection is initiated.) In addition, vehicles were required to be capable of meeting requirements related to parking brake retardation force within the three second period. The amendments also required that the grade holding test (or alternative drawbar test) be met with only the mechanical means of holding the parking brakes in operation. The amendments required mandatory compliance effective September 7, 1988 (180 days after publication), while permitting manufacturers to comply with the new requirements as an alternative to complying with the requirements

being superseded effective April 11, 1988.

The agency stated in the March 1988 notice that it believed all parking brakes currently being sold complied with the amendments being adopted. The agency also stated its belief that since any necessary certification could be accomplished by engineering analysis and simple tests, 180 days provided a sufficient time for that purpose.

NHTSA received two petitions for reconsideration. One of the petitioners, Volvo GM Heavy Truck Corporation, requested that the agency rescind the application of the timing amendment to tandem trucks with spring brakes, and that one of the specified conditions for the timing tests (initial reservoir system pressure of 100 psi) be removed. That company asserted that compliance with the standard as amended is not practicable and is unreasonable. Volvo GM suggested that NHTSA was generally correct in stating that the rule did not affect parking brakes currently being sold, but that the agency had overlooked a significant segment of the vehicle population, heavy tandem trucks. That company submitted test results for two heavy trucks. According to Volvo GM, "one exceeds the limit and the other does not contain compliance margins sufficient to accommodate manufacturing tolerances." That company also argued that the test condition which specifies initial reservoir system pressure of 100 psi is design restrictive.

The other petitioner, Navistar International Transportation Corporation, stated that it has confirmed that in its parking brake systems the air pressure drops to zero within the allotted time. That company stated that based upon this fact and the agency's statements in the preamble, it believes that its vehicles comply with the timing requirements of the final rule. Navistar International added, however, that after actuation of the control knob, experience has shown that as much as one revolution of the braked wheels may be necessary to permit the brake shoes to be sufficiently energized to reach peak torque. That company stated that this "wrap up" process can take several seconds, depending on brake characteristics and driver finesse. Navistar International stated that should this "wrap up" movement not be considered permissible by the agency, it requested that its submission be considered a petition for reconsideration of the final rule, to permit the "wrap up" movement.

As is clear from the preamble to the March 1988 final rule, NHTSA did not

believe that the amendments would require changes in any parking brakes currently being sold. NHTSA is therefore concerned that the petitions raise the possibility that, contrary to the agency's belief in establishing the March 1988 final rule, some current parking brakes may not comply with the amendments that become effective, on a mandatory basis, on September 7, 1989. The agency has not yet completed its analysis of the two petitions for rulemaking due to the complexity of the issues. Although NHTSA expects to respond to the petitions by the end of the year, mandatory compliance with the new requirements is scheduled to become effective before then, on September 7, 1989. The Motor Vehicle Manufacturers Association, in a February 20, 1989 letter to NHTSA, indicated that in the absence of either an immediate clarification of the rule, or a delay in the effective date of the mandatory standard, the manufacturers' ability to determine compliance with the standard as written could be seriously undermined.

Accordingly, in partial response to the two petitions for reconsideration, NHTSA has decided to delay, for one additional year, the time the amendments become effective on a mandatory basis. This delay in effective date will permit the agency to complete its analysis of the arguments made by the petitioners, and provide a further response to the petitions. Thus, manufacturers may continue until September 7, 1990, to comply with either the March 1988 requirements or the requirements that were superseded by that notice.

NHTSA finds for good cause that it is in the public interest to establish an effective date 30 days after the publication of this notice for the amendments made by today's notice. The amendments impose no new requirements but instead increase manufacturer flexibility by extending the time they may comply with the alternative parking brake requirements. As discussed above, the new September 7, 1990, effective date will give sufficient time for the agency to complete its analysis of the arguments made by the petitioners, and provide a further response to the petitions. The new compliance date will also provide manufacturers with an adequate opportunity to take any steps needed to comply following the agency's forthcoming decisions on the petitions for reconsideration.

The agency has analyzed these amendments and determined that they are neither "major" within the meaning

of Executive Order 12291 nor "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has determined that the economic effects of the amendments are so minimal that a full regulatory evaluation is not required. Since the amendments impose no new requirements but simply add compliance alternatives until September 7, 1990, any cost impacts would be in the nature of slight, nonquantifiable cost savings.

In accordance with the Regulatory Flexibility Act, NHTSA has evaluated the effects of this action on small entities. Based upon this evaluation, I certify that the amendments will not have a significant economic impact on a substantial number of small entities. For the reasons discussed above, the only impacts of the amendments will be in the nature of slight, nonquantifiable cost savings. Thus, neither manufacturers of motor vehicles, nor small businesses, small organizations, and small governmental units which purchase motor vehicles, will be significantly affected by the amendments. Accordingly, no regulatory flexibility analysis has been prepared.

The agency has also analyzed this rule for the purpose of the National Environmental Policy Act, and determined that it will not have any significant impact on the quality of the human environment.

Finally, this rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12812, and it has been determined that the rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

PART 571—[AMENDED]

In consideration of the foregoing, 49 CFR Part 571 is amended as follows:

1. The authority citation for Part 571 continues to read as follows:

Authority: 15 U.S.C. 1302, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.121 [Amended]

2. Standard 5.6.3 of § 571.121 is revised to read as follows:

5.6.3 *Application and holding.* Each parking brake system shall meet the requirements of S5.6.3.1 through S5.6.3.4, except that, at the option of the manufacturer, vehicles manufactured

before September 7, 1990 may meet the requirements specified in S5.6.3.5.

S5.6.3.1 The parking brake system shall be capable of achieving the minimum performance specified either in S5.6.1 or S5.6.2 with any single leakage-type failure, in any other brake system, of a part designed to contain compressed air or brake fluid (except failure of a component of a brake chamber housing).

S5.6.3.2 For trucks and buses, with an initial reservoir system pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, at all times after three seconds from the time of actuation of the parking brake control, the parking brake system shall achieve the minimum parking retardation performance specified in S5.6.3.1. For trailers, with an initial supply line pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, at all times after three seconds from the time venting to the atmosphere of the front supply line connection is initiated, the parking brake system shall achieve the minimum retardation performance specified in S5.6.3.1.

S5.6.3.3 A mechanical means shall be provided which is capable, with zero air pressure and zero fluid pressure in the vehicle and without electrical power, of holding the parking brake application at a level meeting the minimum parking retardation performance specified in S5.6.3.1.

S5.6.3.4 For trucks and buses, with an initial reservoir system pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, no later than three seconds from the time of operation of the parking brake control, the mechanical means referred to in S5.6.3.3 shall be actuated. For trailers, with an initial supply line pressure of 100 psi and, if designed to tow a vehicle equipped with air brakes, with a 50 cubic inch test reservoir connected to the supply line coupling, no later than three seconds from the time venting to the atmosphere of the front supply line connection is initiated, the mechanical means referred to in S5.6.3.3 shall be actuated.

S5.6.3.5 *(Optional requirement for vehicles manufactured before September 7, 1990)* The parking brake system shall be capable of achieving the minimum performance specified either in S5.6.1 or S5.6.2 with any single leakage-type failure, in any other brake system, of a part designed to contain

compressed air or brake fluid (except failure of a component of a brake chamber housing). Once applied, the parking brakes shall be held in the applied position solely by mechanical means.

Issued on June 9, 1989.

Jeffrey R. Miller,
Acting Administrator.
[FR Doc. 89-14206 Filed 6-14-89; 8:45 am]
BILLING CODE 4910-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Response to public comments on 1989 fishery management measures.

SUMMARY: NOAA responds to written comments received from the public on the notice of 1989 management measures for the ocean salmon fisheries published in the Federal Register on May 8, 1989. The comments concern a proposal by some California commercial troll fishermen to modify commercial salmon seasons south of Horse Mountain, California.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS), 206-526-6140, or Rodney R. McInnis (Southwest Region, NMFS), 213-514-6199.

SUPPLEMENTARY INFORMATION: Management measures for the ocean salmon fisheries for 1989 were announced in a notice published in the Federal Register on May 8, 1989 (54 FR 19798). These management measures were adopted by the Pacific Fishery Management Council (Council) at its April 4-7 meeting and were submitted to the Secretary for his review, approval, and implementation by regulatory notice. After a full review of all the issues, and a determination that the Council's recommended measures were consistent with the Fishery Management Plan for Ocean Salmon Fisheries off the Coasts of Washington, Oregon, and California (FMP), the Magnuson Act, and other applicable law, the Secretary approved and implemented the season measures effective May 1. The three west coast states also adopted

regulations for their marine waters consistent with the Federal regulations.

During Council proceedings, commercial ocean salmon fishermen from California opposed the Council's proposed measures for managing Klamath River fall chinook salmon because of the restrictions these measures would impose on ocean trolling south and north of the Klamath Management Zone (KMZ). The trollers particularly objected to the season structure (quotas, areas, openings-closings) adopted by the Council because it included extensive closures both to the south and north of the KMZ (Orford Reef Red Buoy, Oregon, to Horse Mountain, California) that were considered necessary by the Council to allow a modest level of fishing within the KMZ. By the end of the Council's April meeting, certain commercial ocean fishermen requested total closure of the KMZ in order to provide maximum fishing opportunity outside the KMZ. The Council considered this option, but chose to moderate adverse socio-economic impacts on local fishermen in the KMZ by allowing some fishing time in the zone and spreading closures over a greater area while still meeting the spawning escapement rate required by Amendment 9 (implemented effective May 1). (It is noted that at its April meeting, the Council considered the option of a one week, coastwide closure during late June, but did not adopt it. This option was also one of the proposed management alternatives in preseason documents provided for public comment before the meeting.)

The season measures implemented May 1 followed the usual procedure required by the framework FMP and implementing regulations by inviting public comments for 15 days after promulgation. Because of the controversial aspects of the Council's management decisions for Klamath fall chinook salmon, the Secretary invited particular comment on this issue.

During the comment period, several letters were received from California commercial trollers' representatives requesting a redistribution of salmon fishing opportunity among California ports as a means of reallocating economic benefits and costs. The proposed redistribution of fishing opportunity involved closing commercial salmon fishing for seven days (June 17-23) in the area from Horse Mountain, California, to the U.S.-Mexico border to eliminate eight days of the scheduled closure set for July 15-28 in the area from Horse Mountain to Point Arena, California. The trollers stated that their proposed closure would distribute more

fairly the burden of conserving Klamath River salmon stocks within California and would reduce the economic hardship on small-scale fishermen operating around the northern California ports of Fort Bragg and Shelter Cove, while still fulfilling the conservation goals for the Klamath River chinook salmon. The measures suggested would not, according to the proponents, reduce fishing opportunities for fishermen from Oregon or Washington. The California commenters were also concerned that the scheduled extended closures in the Fort Bragg/Shelter Cove area would result in severe crowding on those fishing grounds to the south that will still be open to fishing, as well as posing greater risk to smaller Fort Bragg boats that might attempt to travel to open southern areas during rough sea conditions.

The California trollers' representatives estimated that their proposal to redistribute the necessary closures would increase the Fort Bragg/Shelter Cove area catch by some 30,400 fish, and that the concurrent (coastwide) closure would reduce shifts in fishing efforts and allow more orderly product flow to markets due to the shorter closed period. NMFS biologists projected that an overall catch reduction of nearly 24,000 salmon to California trollers would result if the adjustment were accepted. The trollers who could be affected by such a reduction were optimistic that a loss of that magnitude would not occur, and in any case, were willing to accept the risk of overall lower catches to redress what they perceived as an imbalance within the California catch distribution.

In its comments, a major association of California trollers indicated that, because the Council adopted the final option for the troll industry only minutes before adjourning its April meeting, it was unable to review the economic impacts of the combined 45 closed days on the area immediately south of the KMZ. Additionally, the association alleges that it was not fully apprised at the Council's April 7 meeting as to the projected Klamath impacts south of Point Arena. This association indicates that its membership unanimously supports a 7-day coastwide closure, which would eliminate 8 of the scheduled 45 days closed between Horse Mountain and Point Arena, and that this position is consistent with an earlier formal decision of the association's board of directors.

Letters supporting the California trollers' proposal were received from several Federal and State legislators and from local community officials.

Subsequent to its April meeting, the Council was requested by the California trollers to conduct a meeting by telephone conference call to reconsider the issue. On April 28, the Council Chairman determined that a majority of the Council members felt a meeting was unnecessary, and the telephone conference was therefore not held. The decision not to reconsider this issue was based on the Council's determination that no new information had become available since the April meeting, and that the issue had been sufficiently discussed by the Council and commented on by the public at that time.

The NOAA Assistant Administrator has reviewed all comments received on the season measures and was impressed that the salmon fishermen from the Fort Bragg and Shelter Cove areas presented a case for their proposal that was not objected to by fishermen who would be adversely affected by the specific season changes. The trollers' objections to the Council's decisions and to the season setting process deserves careful consideration by the agency and by the Council, particularly their belief that substantial improvements should be made in the annual procedure used by the Council to resolve user conflicts and to negotiate compromises necessary in allocating limited salmon resources.

The Council clearly was faced with a very difficult and complex problem in developing the 1989 salmon regulations. Multiple, and to a significant degree, incompatible management objectives had to be addressed: meeting the spawning escapement rate required by Amendment 9, satisfying in-river fisheries' needs, and addressing the social and economic needs of all coastal commercial and recreational fishermen and associated community businesses. Under these circumstances, necessary and numerous compromises still will not result in all users being fully accommodated. NOAA Fisheries believes that the Fishery Management Councils have the responsibility, under the Magnuson Act, for resolving these very difficult issues. Council decisions regarding fishery allocations or other measures will be supported by the Secretary unless evidence is presented to show that a Council decision is based on incorrect information, is inconsistent with an approved and implemented FMP or amendment, is reached in a manner denying the public reasonable opportunity for input, or violates the national standards for fishery conservation and management, other provisions of the Magnuson Act, or other applicable law. The agency has

encouraged the California trollers and coastal communities to work within the Council forum and process to resolve differences as early as possible in the annual season setting process. While the Council was not convinced to adopt the California trollers' suggested season change, considerable support was developed for their position which should be considered in any subsequent Council action.

In considering the California trollers' request, NOAA Fisheries reviewed the Secretary's authority to modify the Council's season measures. According to the framework FMP, the Secretary is limited to accepting or rejecting in total the Council's preseason recommendations for the annual management measures. If the Secretary rejects the Council's recommendations, the Council must be advised of the rejection and its basis as soon as possible so that it may reconsider its proposal. While this constraint is not a specific part of the FMP's implementing regulations, it is binding on the Secretary as an approved requirement of the FMP. The Secretary is able to depart from the recommendations of the Council without Council consent only by exercising his authority under Sections 304(c) [Secretarial amendment] or 305(e) [Secretarial emergency action] of the Magnuson Act. Any action pursuant to section 305(e) must be accompanied by a showing that an emergency exists involving the fishery. While the lengthy closures in the Fort Bragg area represent problems for the small-scale fishermen of this community, the information thus far presented by the Council and the public is insufficient to support a finding that an emergency exists in the fishery.

Use of the inseason management provisions at 50 CFR 601.21 (b) and Appendix section III.B. by the agency in responding to the troller's request was considered. These provisions give the Regional Director the authority to modify the regulations during the season to meet the Council's management objectives under limited circumstances following consultation with the Chairman of the Council and the appropriate State Directors of Fisheries. It was concluded that use of the inseason management authority is not appropriate in this case. Neither the Secretary nor his designee, the Regional Director, can take an action during the season which they could not have taken before the season without the consent of the Council. To interpret the Regional Director's authority otherwise would undermine the clear expression of Council intent to restrict the Secretary's authority without the Council's consent

to the use of sections 304(c) or 305(e) of the Magnuson Act. This principle is no less binding during the season than at the beginning of the season, before the annual management measures have been approved.

For the reasons indicated above, the Council's season measures will remain unchanged in response to the California trollers' request.

Dated: June 9, 1989.

James W. Brennan,
Assistant Administrator for Fisheries,
National Marine Fisheries Service.
[FR Doc. 89-14213 Filed 6-12-89; 8:45 am]
BILLING CODE 3510-22-M

50 CFR Part 672

[Docket No. 81132-9033]

Groundfish of the Gulf of Alaska; Notice of Closure

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the portion of the total allowable catch (TAC) of sablefish allocated to hook-and-line gear in the West Yakutat District of the Eastern Regulatory Area of the Gulf of Alaska has been reached. The Secretary of Commerce (Secretary) is prohibiting further retention of sablefish by longline vessels fishing in this district from 12:00 noon, Alaska Daylight Time (ADT), on June 9, 1989, through December 31, 1989.

DATES: This notice is effective from 12:00 noon, ADT, on June 9, 1989 until midnight, Alaska Standard Time, December 31, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, Fishery Management Biologist, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR Part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target

species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

Section 672.24(b)(1) of current regulations restricts the hook-and-line catch of sablefish in the Eastern Regulatory Area to 95 percent of the TAC. The Eastern Regulatory Area is divided into two districts, the West Yakutat District and the combined Southeast Outside and East Yakutat District (SE/EYT). The 1989 TAC specified for sablefish in the West Yakutat District is 4,550 mt; the portion of the TAC allocated to hook-and-line gear in this district is 4,320 mt. Under § 672.24(b)(3)(ii), if the share of the sablefish TAC assigned to any type of gear for any area or district is reached, further catches of sablefish must be treated as prohibited species by persons using that type of gear for the remainder of the year.

The directed hook-and-line fishery for sablefish began April 1, 1989. Both Districts were initially closed on April 17, based on reported catch rates and effort information (54 FR 16126, April 21, 1989). However, after reassessment of final reported catches, the Regional Director found that the quotas had not in fact been reached during the initial opening. Therefore, the West Yakutat District was reopened for 7 days for directed fishing for sablefish on May 3; after May 10 retention of bycatch amounts of sablefish was permitted (54 FR 19375, May 5, 1989).

The Regional Director reports that vessels using hook and line gear have landed 5,017 mt of sablefish through May 13 in the West Yakutat District. Therefore, pursuant to § 672.24(b)(3)(ii), the Secretary is prohibiting further retention of sablefish caught with hook-and-line gear in the West Yakutat District effective 12:00 noon, ADT, June 9, 1989. Any sablefish caught with hook-and-line gear after that date must be treated as prohibited species and discarded at sea.

The Secretary has already prohibited retention of sablefish caught with trawl gear in the West Yakutat District (54 FR 15411, April 16, 1989). Overharvesting of sablefish will result unless this notice takes effect promptly. NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited for a period of 15 days after the effective date of this notice. Public comments on this notice of closure may be submitted to the Regional Director at the address above

until June 24, 1989. If written comments are received which oppose or protest this action, the Secretary will reconsider the necessity of this action, and, as soon as practicable after that reconsideration, will publish in the Federal Register a notice either of continued effectiveness of the adjustment, responding to comments received, or modifying or rescinding the adjustment.

Classification

This action is taken under §§ 672.22 and 672.24, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: June 9, 1989.

David S. Crestin,
Acting Director, Office of Fishery
Conservation and Management, National
Marine Fisheries Service.
[FR Doc. 89-14214 Filed 6-12-89; 10:07 am]
BILLING CODE 3510-22-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 1139

[DA-89-023]

Milk in the Great Basin Marketing Area; Notice of Proposed Revision of Diversion Limits and of Cooperative Manufacturing Plant Shipping Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed revision of rule.

SUMMARY: This notice invites written comments on a proposal to increase the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the Great Basin Federal milk order. The proposed action would increase the percentage of producer milk that the operator of a pool plant may divert to nonpool plants from 60 percent to 70 percent during the months of April through August, and from 50 percent to 60 percent in other months. The action was requested by two proprietary pool plant operators whose milk is supplied by independent producers.

In addition, the percentage of its producer milk that a pool manufacturing plant owned and operated by a cooperative association and located in the marketing area must deliver to pool distributing plants during any current month or during the 12-month period ending with the current month in order to meet the order's pooling standards would be reduced from 40 percent to 35 percent. This action was requested by a cooperative association representing a large proportion of the producers supplying the market in order to prevent uneconomic movements of milk. At the request of the cooperative, the shipping percentage has already been reduced from 45 percent to 40 percent.

DATE: Comments are due no later than June 22, 1989.

ADDRESS: Comments (two copies) should be sent to: USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington DC 20090-6456, (202) 447-7183.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. Such action would provide greater assurance that handlers will not engage in uneconomic movement of the market's reserve milk supplies in qualifying such milk for pricing status under the order. The action would also tend to ensure that dairy farmers will continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), and the provisions of §§ 1139.7(e) and 1139.13(d)(4) of the order, the revision of certain provisions of the order regulating the handling of milk in the Great Basin marketing area is being considered.

All persons who desire to submit written data, views or arguments about the proposed revision should send two copies of their views to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, by the 7th day after publication of this notice in the *Federal Register*.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27(b)).

Federal Register

Vol. 54, No. 114

Thursday, June 15, 1989

Statement of Consideration

The provisions proposed to be revised are the diversion limitations set forth in § 1139.13(d)(3) and the shipping requirements set forth in § 1139.7(d). The revision would be effective beginning with the month of June 1989. The specific revisions would increase the diversion limitation percentages by 10 percentage points, from the present 60 percent to 70 percent during the months of April through August, and from 50 percent to 60 percent in other months. The cooperative manufacturing plant shipping requirements would be reduced by an additional 5 percentage points, from 40 percent to 35 percent.

Sections 1139.7(e) and 1139.13(d)(4) of the Great Basin milk order allow the Director of the Dairy Division to increase or reduce the diversion limitation percentage and the shipping percentage requirement by up to 10 percentage points to assure orderly marketing and efficient handling of milk in the marketing area.

Gossner Foods, Inc., and K.D.K., Inc., two proprietary handlers who obtain their milk supplies from independent producers pooled under the Great Basin order, requested that the percentage of producer milk allowed to be diverted to nonpool plants be increased 10 percentage points.

Western Dairymen Cooperative, Inc. (WDCI), a cooperative association which represents a majority of the producers supplying the Great Basin market, requested that the percentage of producer milk required to be shipped to pool distributing plants from a plant owned and operated by a cooperative association and located in the marketing area be reduced an additional 5 percentage points. WDCI had already requested a 5-percent reduction in the shipping percentage.

The handlers state that loss of sales and increasing production make necessary an increase in the percentage of producer milk allowed to be shipped directly to nonpool manufacturing plants rather than delivered to pool plants, and a reduction in the percentage of producer milk required to be shipped to pool distributing plants by a cooperative manufacturing plant. According to the handlers, such action is necessary in order to maintain the pool status of their producers who have long been associated with the marketing area.

Therefore, it may be appropriate to relax the aforementioned provisions of §§ 1139.7(d) and 1139.13(d)(3) to prevent uneconomic shipments of milk.

List of Subjects in 7 CFR Part 1139

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1139 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended (7 U.S.C. 601-674).

Signed at Washington, DC, on June 9, 1989.

W.H. Blanchard,

Director, Dairy Division.

[FR Doc. 89-14136 Filed 6-14-89; 8:45 am]

BILLING CODE 3410-02-M

FEDERAL MEDIATION AND CONCILIATION SERVICE

29 CFR Part 1425

Mediation Assistance in the Federal Service

ACTION: Proposed Rule.

SUMMARY: The following proposed revision is published in order to provide a complete and accurate Form F-53, *Notice To Federal Mediation and Conciliation Service*, and to revise the text of 29 CFR Part 1425, which accompanies the illustration of Form-F-53 (29 CFR 1425.2).

DATE: Comments on the proposed revision must be received on or before August 14, 1989.

ADDRESS: Interested organizations and individuals are invited to submit written comments, in three copies, to Eileen B. Hoffman, District Director, Federal Mediation and Conciliation Service, 2100 K Street, NW., Room 212, Washington, DC 20427. All comments received will be available for public inspection during working hours at the above address.

FOR FURTHER INFORMATION CONTACT: Eileen B. Hoffman, District Director, Federal Mediation and Conciliation Service, 2100 K Street, NW., Room 212, Washington, DC 20427, (202) 653-5390.

SUPPLEMENTARY INFORMATION: Form F-53 is made available to assist Federal agencies, and labor organizations representing Federal employees, to obtain FMCS services as provided for in Title 5 USC Section 7119(a). The proposed revision of Form F-53 allows parties to more clearly and accurately state the service requested and arranges information in a manner which aids the entry of data into FMCS computer records. The revised version of Form F-

53 is shown below in this proposed rule for purposes of identification.

The changes made to the text of 29 CFR Part 1425, and to Form F-53, are as follows:

29 CFR 1425.2—This section has been revised by designating the first paragraph as subsection (a), and inserting a new second paragraph designated as subsection (b). The third paragraph, containing only one sentence, has been designated as subsection (c). The text of subsection (c) remains unchanged.

29 CFR 1425.2(a)—The FMCS address has been revised to show that the correct designation is to the "Notice Processing Unit" rather than to the current designation of Case Control.

29 CFR 1425.2(a)—The last sentence of this section currently states that parties involved in mid-term bargaining, or impact bargaining, need not submit a Form F-53 to FMCS. In order to promote the submission of Form F-53 in these situations, the revised last sentence states that parties " " should also send a notice".

29 CFR 1425.2(b)—This new section provides information pertaining to an FMCS service not currently described in 29 CFR Part 1425, or indicated on the current FMCS Form F-53; that is, the mediation of grievances. Parties seeking to obtain grievance mediation are required to send a notice to FMCS, but the text of the subsection makes it clear that the agency does not undertake to furnish the service to all requestors. Rather, FMCS retains the discretion to determine those grievance situations for which mediation is appropriate. This new subsection also provides that requests for grievance mediation must be signed by both parties.

Form F-53—FMCS Form F-53 has been modified to provide for requests for grievance mediation, to inform parties that submission of a request does not commit FMCS to provide the service, and to advise that both sides are to sign the Form if grievance mediation is desired. Additional changes to Form F-53 are as follows:

References to FMCS Regional Offices which appear on the back of the current Form are deleted, as Form F-53 must now be sent to the Notice Processing Unit at FMCS headquarters, 2100 K Street, NW., Washington, DC 20427.

The current language on Form F-53, relating to a party's desire to "Amend, modify or terminate an existing agreement" has been replaced by categories allowing a more complete description; that is, "The expiration of an existing contract (and expiration date), "a contract reopener" (and reopener date), "impact and/or

implementation bargaining" (and description of issues), plus "other" (and a description of such other situation).

The current language calling for "date exclusive recognition granted" has been deleted as unnecessary.

In other respects the revised Form F-53 remains generally the same as that currently in use under 29 CFR Section 1425.2. No changes, other than to the language in section 1425.2, have been made in the text of Part 1425.

Executive Order 12291

This proposed rule is not a "major rule" under Executive Order 12291 because it is not likely to result in (1) an annual effect on the economy of \$100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions, or (3) a significant decline in productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Accordingly, no regulatory impact analysis is required.

Paperwork Reduction Act Notice

The collection of information in this proposed rule has been submitted to the Office of Management and Budget under section 3504(H) of the Paperwork Reduction Act (44 U.S.C. 3501 et. seq.). Comments regarding any aspect of this information collection should be submitted to the Federal Mediation and Conciliation Service, 2100 K Street, NW., Washington, DC 20427. Attention: District Director Eileen Hoffman, and to the Office of Management and Budget, Attention: Desk Officer for FMCS, OMB Room 3001, Washington, DC 20503.

Regulatory Flexibility Act Certification

The FMCS finds that this proposed rule will have no significant economic impact upon a substantial number of small entities within the meaning of section 3(a) of the Regulatory Flexibility Act, Pub. L. 96-354, 94 Stat. 1164 (5 U.S.C. 605(g)), and will so certify to the Chief Counsel for Advocacy of the Small Business Administration. This conclusion has been reached because the proposed rule does not, in itself, impose any additional economic requirements upon small entities. Accordingly, no regulatory flexibility analysis is required.

List of Subjects in 29 CFR 1425

Collective bargaining, Administrative practice and procedure, Labor management relations.

Date: June 6, 1989.

Robert P. Baker,

Acting Director.

Accordingly, Part 1425, is proposed to be amended as follows:

PART 1425—MEDIATION ASSISTANCE IN THE FEDERAL SERVICE

1. The authority citation for 29 CFR Part 1425 continues to read as follows:

Authority 5 U.S.C. 7119, 7134.

2. Section 1425.2 is revised to read as follows:

§ 1425.2 Notice to the Service of agreement negotiations.

(a) In order that the Service may provide assistance to the parties, the party initiating negotiations shall file a notice with the FMCS Notice Processing Unit, 2100 K Street, NW., Washington, DC 20427, at least 30 days prior to the expiration or modification date of an existing agreement. Parties entering negotiations for an initial agreement shall file such notice within 30 days after commencing negotiations. Parties engaging in mid-term or impact and/or

implementation should also send a notice.

(b) Parties requesting grievance mediation must send a notice signed by both the union and the agency involved. Receipt of such notice does not commit FMCS to offer its services. FMCS has the discretion to determine whether or not to perform grievance mediation, as such service may not be appropriate in all cases.

(c) The following form, FMCS Form F-53, has been prepared by the Service for use by the parties.

DRAFT**FMCS FORM F-53.—Notice to Federal Mediation and Conciliation Service**

(Pursuant to FMCS Regulations Published at 29 CFR 1425)

MAIL TO: NOTICE PROCESSING UNIT, Federal Mediation and Conciliation Service, 2100 K Street, N.W., Washington, D.C. 20427

1. The assistance of the Federal Mediation and Conciliation Service is requested in regard to (check one):
 - ☐ The expiration of an existing contract.
 - Expiration date:.....
 - ☐ An initial contract. ☐ A contract reopener.
 - Reopener date:
 - ☐ Impact and/or implementation Bargaining.
 - Issue(s).....
 - ☐ Grievance mediation (Joint signature required).....
 - Describe
 - ☐ Other (describe):.....
2. Name of agency.....
 - Name of subdivision or component if any.....
 - Address—Including zip code.....
 - Agency official to be contacted.....
 - (Area Code) Phone Number.....
3. Name of national union or parent body.....
 - Name or number of local (if not a local give name and number if any of organization).....
 - Address—Including zip code.....
 - Union official to be contacted.....
 - (Area Code) Phone Number.....
4. Location of negotiations (Address—Including zip code)
5. Brief description of issues involved.....
6. Number of employees in bargaining unit(s).....
7. This notice is submitted on behalf of ☐ union ☐ agency.....
8. Name of official submitting this notice.....
 - (Area Code) Phone Number.....
 - Title.....
 - Address—Including zip code.....

* Note: Notice requesting grievance mediation must be signed by both the union and the agency. Submission of this notice does not commit the FMCS to offer grievance mediation services.

Signature (Agency).....
 Date.....
 Signature (Union).....
 Date.....

Receipt of this form does not commit FMCS to offer its services. Receipt of this form will not be acknowledged in writing by FMCS. FMCS does not forward copies of this form. While use of this form is voluntary, its use will facilitate FMCS service to respondents. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to FMCS Division of Administrative Services, Washington, D.C. 20427, and to Office of Management and Budget, Paperwork Reduction Project (3076-XXXX) Washington, D.C. 20503.

[FR Doc. 89-14249 Filed 6-14-89; 8:45 am]

BILLING CODE 6732-01-M

DEPARTMENT OF VETERANS AFFAIRS**38 CFR Part 36**

RIN 2900-AD30

Loan Guaranty; Processing Assumptions of VA Guaranteed Home Loans

AGENCY: Department of Veterans Affairs.¹

ACTION: Proposed regulations.

SUMMARY: The Department of Veterans Affairs (VA) is proposing to amend its regulations for processing assumptions of VA guaranteed home loans to implement the requirements of The Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987. Extensive changes are proposed requiring holders of VA guaranteed loans to examine the creditworthiness of loan purchasers and, upon approval, to release obligors' liabilities to VA. These amendments will enable holders to declare a VA guaranteed loan immediately due and payable upon an unapproved transfer. Regulatory amendments are also proposed to require assumers of VA guaranteed loans to pay a fee of one-half of one percent of the loan balance to the Secretary immediately following loan settlement.

DATES: Comments must be received on or before July 17, 1989. Comments will be available for public inspection until July 25, 1989. VA proposes to make these regulatory amendments effective 30 days after publication of the final regulation.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 at the above address, between the hours of 8:00 a.m. and 4:30 p.m., Monday through Friday (except holidays) until July 25, 1989.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address contained in the Paperwork Reduction section of this preamble.

¹ On March 15, 1989, the Veterans Administration became the Department of Veterans Affairs (see 54 FR 10476).

FURTHER INFORMATION CONTACT: Mr. Leonard A. Levy, Assistant Director for Loan Management (261), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs (202) 233-6376.

SUPPLEMENTARY INFORMATION: The Veterans' Home Loan Program Improvements and Property Rehabilitation Act of 1987 (Pub. L. 100-198) created new section 1817A, later renumbered by Pub. L. 100-322 as section 1814 to Title 38, United States Code, which requires underwriting of assumed loans. VA must, accordingly, amend its regulations to implement the requirements of Pub. L. 100-198. The amendments to the 4200 series of 38 CFR Part 36 will affect VA guaranteed manufactured home loans. The changes to the 4300 series of 38 CFR Part 36 concern VA guaranteed loans and the amendments to the 4500 series affect VA direct loans.

Sections 36.4202 and 36.4301 are being amended to include the definition of, for VA purposes, "automatic lender," "credit package" and "servicing agent."

Several changes to §§ 36.4209 and 36.4303 are proposed to meet the requirement of Pub. L. 100-198 that holders of VA guaranteed loans and/or their authorized servicing agents examine the creditworthiness of loan purchasers and determine compliance with the provisions of 38 U.S.C. 1814. Only holders and/or servicing agents approved by VA as "automatic" lenders under 38 U.S.C. 1802(d) may examine and underwrite a proposed assumption without submitting it to VA for prior approval. 38 U.S.C. 1802(d) identifies two categories of lenders that may process loan automatically. They are: (1) Entities such as banks, savings and loan, and mortgage and loan companies that are subject to examination by an agency of the United States or any State, and (2) lenders approved by VA pursuant to standards established by VA. If the assumption is approved, holders and/or their authorized servicing agents are authorized to release obligors from liability to VA. Upon completion of this transfer, the holder or authorized agent must provide notice to VA regarding the status of the loan. If neither the holder nor its authorized servicing agent is an automatic lender, pursuant to 38 U.S.C. 1802(d), the proposed assumption must be submitted to VA for approval. In these cases the holder or its authorized servicing agent must submit to VA the status of the loan, a copy of the purchase contract and a complete credit package developed by the holder which

VA will use for determining the creditworthiness of the purchaser.

As required by Pub. L. 100-198, all transfers of VA guaranteed loans, for which commitments were issued on or after March 1, 1988, are now subjected to underwriting review. Accordingly, VA is amending §§ 36.4275 and 36.4308 to require the written instruments on VA guaranteed loans contain a provision, printed in a conspicuous position in capital letters on the first page of each such document, alerting holders and purchasers of the loan's restricted assumability. Amendments to these sections are also required to provide that security instruments evidencing VA guaranteed loans include a provision that the holder may declare the loan immediately due and payable upon an unapproved transfer.

Pursuant to 38 U.S.C. 1829, parties assuming VA guaranteed loans, for which commitments were issued on or after March 1, 1988, must pay a fee of one-half of one percent of the loan balance to VA. Accordingly, VA proposes to amend §§ 36.4232, 36.4254 and 36.4312 to require payment of this fee by a person assuming a loan to which 38 U.S.C. 1814 applies. In addition, the loan holder shall list the amount of this fee in every assumption statement provided and include a notice that the fee must be paid to the holder immediately following loan settlement. The fee shall be transmitted to VA within 15 days of the holder's notice of the transfer. These sections will also indicate that the instruments securing these loans shall contain a provision describing the right of the holder to act as trustee for VA in collecting this fee. In the event the holder does not collect this funding fee incident to the change of ownership, the holder will be required to exercise the right to advance the funds from the loan account and remit them to the Secretary with notice that assumption has been approved.

Pub. L. 100-198 requires other changes to VA regulations. VA loan holders will now be permitted to charge either the purchaser or seller of property purchased subject to assumption of the loan a fee, not to exceed the lesser of \$300 and the actual cost of required credit reports or a maximum charge prescribed by State law, for processing an assumption approval. Changes to the relevant sections of the 4200, 4300 and 4500 series of 38 CFR Part 36 are included in these proposed regulatory amendments.

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Paperwork Reduction Act

Sections 36.4209(h), 36.4232(e), 36.4254(d)(2), 36.4275(a)(3)(iii), 36.4303(k), 36.4312(d)(8) and 36.4312(e)(2) of this regulation contain information collection requirements. The public reporting burden for these collections, are as follows:

Sections 36.4209(h) and 36.4303(k) are estimated to average 5 hours and 33 minutes per response;

Sections 36.4232(e), 36.4254(d)(2), and 36.4312(e)(2) are estimated to average 10 minutes per response; and

Sections 36.4275(a)(3)(iii) and 36.4312(d)(8) are estimated to average 15 minutes per response.

The average estimated time per response includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

As required by section 3504(h) of the Paperwork Reduction Act, the Department of Veterans Affairs is submitting to the Office of Management and Budget (OMB) a request that it approve this information collection requirement. Organizations and individuals desiring to submit comments for consideration by OMB on these proposed information collection requirements should address them to the Office of Information and Regulatory Affairs, OMB, Room 3002, New Executive Office Building, Washington, DC 20503; Attention: Joseph F. Lackey.

The Secretary hereby certifies that these proposed regulations will not, if promulgated, have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601-612. Budget projections for the next five fiscal years indicate that fewer than 10,000 assumptions will be subject to the underwriting provisions of Pub. L. 100-198 and the information collection and fees required are "one time" collections. Pursuant to 5 U.S.C. 605(b), these proposed regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

The proposed regulations have been reviewed under Executive Order 12291, entitled Federal Regulation, and are not considered major regulatory changes as defined in the Executive Order. These regulations will not impact on the public or private sectors as major rules. They will not have an annual effect on the economy of \$100 million or more and will not cause a major increase in costs or prices for consumers, individual industries, government agencies, or geographic regions; nor will they have

other significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

These amendments are proposed under authority granted the Secretary by sections 210(c), 1812(g), and 1820 of Title 38, United States Code.

The Catalog of Federal Domestic Assistance Program Numbers are 64.114, 64.118 and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs-housing and community developments, Manufactured homes, Veterans.

Approved: March 3, 1989.

Thomas E. Harvey,
Acting Administrator.

38 CFR Part 36—LOAN GUARANTY is proposed to be amended as set forth below:

PART 36 [AMENDED]

1. In 38 CFR Part 36, in the Note following the undesignated centered heading, remove the word "1819" and insert in its place, the word "1812".

§ 36.4201 [Amended]

2. In § 36.4201, remove the word "1819" and insert in its place, the word "1812".

§ 36.4202 [Amended]

3. In § 36.4202, in the introductory text and in paragraphs (d) and (g), remove the word "1819" and insert in its place, the word "1812".

4. In § 36.4202, paragraph (e) is revised to read as follows:

§ 36.4202 Definitions.

• • • • •

(e) *Holder*. The lender or any subsequent assignee or transferee of the guaranteed obligation. For purposes of the assumption review required by 38 U.S.C. 1814, the term "holder" shall also apply to the servicer of a loan guaranteed or insured under 38 U.S.C. Chapter 37.

(Authority: 38 U.S.C. 1814)

• • • • •

5. In § 36.4202, remove paragraph designations (a) through (s), and add the following definitions in alphabetical order:

Automatic Lender. A lender that may process a loan or assumption without submitting the credit package to the Department of Veterans Affairs for underwriting review. Pursuant to 38 U.S.C. 1802(d) there are two categories

of lenders who may process loans automatically: (1) Entities such as banks, savings and loan, and mortgage and loan companies that are subject to examination by an agency of the United States or any State and (2) Lenders approved by the Department of Veterans Affairs pursuant to standards established by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 1802(d))

Credit Package. Any information, reports or verifications used by a lender, holder or authorized servicing agent to determine the creditworthiness of an applicant for a Department of Veterans Affairs guaranteed loan or the assumer of such a loan.

(Authority: 38 U.S.C. 1810 and 1814)

Servicing Agent. An agent designated by the loan holder as the entity to collect installments on the loan and perform other functions as necessary to protect the interests of the holder.

(Authority: 38 U.S.C. 1814)

§ 36.4203 [Amended]

6. In § 36.4203, in the section heading, paragraph (b), and in the authority citation following paragraph (c)(2)(ii), remove the word "1819" wherever it appears and insert in its place, the word "1812".

§ 36.4204 [Amended]

7. In § 36.4204, in the authority citation following paragraph (a)(7), remove the word "1819" and insert in its place, the word "1812".

§ 36.4208 [Amended]

8. In § 36.4208(c), remove the word "mobile" wherever it appears and insert in its place, the word "manufactured", and remove the word "1819" and insert in its place, the word "1812".

§ 36.4209 [Amended]

9. In § 36.4209, in paragraphs (a), (e), the authority citation following paragraph (e), paragraph (g) and the authority citation following paragraph (g), remove the word "1819" wherever it appears and insert in its place, the word "1812". and in paragraphs (e) and (g), remove the word "mobile" wherever it appears and insert in its place, the word "manufactured".

10. In § 36.4209, paragraph (h) is added to read as follows:

§ 36.4209 Reporting requirements.

• • • • •

(h) With respect to any loan for which a commitment was made on or after March 1, 1988, the Secretary must be notified whenever the holder receives

knowledge of disposition of a manufactured home and/or lot securing a Department of Veterans Affairs guaranteed loan.

(1) If the seller applies for prior approval of the assumption of the loan, then:

(i) A holder (or its authorized servicing agent) who is an automatic lender must examine the creditworthiness of the purchaser and determine compliance with the provisions of 38 U.S.C. 1814. The creditworthiness review must be performed by the party that has automatic authority. If both the holder and its servicing agent are automatic lenders, then they must decide between themselves which one will make the determination of creditworthiness, whether the loan is current and whether there is a contractual obligation to assume the loan, as required by 38 U.S.C. 1814. If the actual loan holder does not have automatic authority and its servicing agent is an automatic lender, then the servicing agent must make the determinations required by 38 U.S.C. 1814 on behalf of the holder. The actual holder will remain ultimately responsible for any failure of its servicing agent to comply with the applicable law and Department of Veterans Affairs regulations.

(A) If the assumption is approved and the transfer of the security is completed, then the notice required by this paragraph shall be submitted to the Department of Veterans Affairs with a copy of the Department of Veterans Affairs receipt for the funding fee provided for in §§ 36.4232(e)(3) or 36.4254(d)(3) of this part.

(B) If the application for assumption is disapproved, the holder shall notify the seller and the purchaser that the decision may be appealed to the Department of Veterans Affairs office of jurisdiction within 30 days. The holder shall make available to the Department of Veterans Affairs office copies of all used by the holder in making the holder's decision in case the decision is appealed to the Department of Veterans Affairs. If the application remains disapproved after 60 days (to allow time for appeal to and review by the Department of Veterans Affairs) then the holder must refund \$50 of any fee previously collected under the provisions of § 36.4275(a)(3)(iii) of this part.

(C) In performing the requirements of paragraphs (h)(1)(i)(A) or (h)(1)(i)(B) of this section the holder must complete its examination of the creditworthiness of the prospective purchaser and advise the seller of its decision no later than 45 days after the date of receipt by the

holder of an application for approval of the assumption. The 45-day period may be extended by an interval not to exceed the time caused by delays in processing of the application which are documented as beyond the control of the holder, such as employers or depositories not responding to requests for verifications, which were timely forwarded, or followups on those requests.

(ii) If neither the holder nor its authorized servicing agent is an automatic lender, the notice to the Department of Veterans Affairs shall include:

(A) Advice regarding whether the loan is current or in default;

(B) A copy of the purchase contract; and

(C) A complete credit package developed by the holder which the Secretary may use for determining the creditworthiness of the purchaser.

(D) The notice and documents required by this section must be submitted to the Department of Veterans Affairs no later than 35 days after the date of receipt by the holder of an application for approval of an assumption, subject to the same extensions as provided in paragraph (h)(1)(i) of this section. If the assumption is not approved by the holder or its authorized agent pursuant to the automatic authority provisions, one-half of any fee collected in accordance with § 36.4275(a)(3)(iii) of this part must be refunded. If an appeal under paragraph (h)(1)(i) (B) of this section is made to the Department of Veterans Affairs, then the review will be conducted at the Department of Veterans Affairs office of jurisdiction by an individual who was not involved in the original disapproval decision.

(2) If the seller fails to notify the holder before disposing of property securing the loan, the holder shall notify the Secretary within 60 days after learning of the transfer. Such notice shall advise whether or not the holder intends to exercise its option to immediately accelerate the loan or whether an opportunity will be extended to the transferor and transferee to apply for retroactive approval of the assumption under the terms of this paragraph.

(Authority: 38 U.S.C. 1814)

§ 36.4210 [AMENDED]

11. In § 36.4210(a) remove the word "mobile" wherever it appears and insert in its place, the word "manufactured".

§ 36.4219 [AMENDED]

12. In § 36.4219, remove the word "1819" and insert in its place, the word "1812".

§ 36.4220 [AMENDED]

13. In § 36.4220, paragraphs (a)(2), (a)(3), (a)(4), (a)(5), and (a)(6), are redesignated as (a)(3), (a)(4), (a)(5), (a)(6), and (a)(7), respectively, and in newly-designated paragraph (a)(7) and the authority citation following paragraph (a)(7), remove the word "1819" and insert in its place, the word "1812".

14. In § 36.4220, paragraph (a)(2) is added to read as follows:

§ 36.4220 Substantive and procedural requirements—waiver.

(a) • • •

(2) The requirements in § 36.4209(h) of this part concerning the giving of notice in assumption cases under 38 U.S.C. 1814.

(Authority: 38 U.S.C. 1814)

§ 36.4231 [Amended]

15. In § 36.4231, in paragraphs (b) and (c), remove the word "1819" wherever it appears and insert in its place, the word "1812".

§ 36.4232 [Amended]

16. In § 36.4232, in the authority citations in paragraphs (a)(5), (b), and (c)(1), the authority citation in paragraph (c)(2), and the authority citation in paragraph (d)(2), remove the word "1819" wherever it appears and insert in its place, the word "1812", and paragraphs (e)(2), (e)(3) and (e)(4) are redesignated as paragraphs (e)(3), (e)(4) and (e)(5), respectively.

17. In § 36.4232, the first sentence in paragraph (e)(1) is revised, paragraph (e)(2) is added, the first two sentences of newly-designated paragraph (e)(3) are revised, and newly-designated paragraph (e)(4) is revised, to read as follows:

§ 36.4232 Allowable fees and charges—manufactured home unit.

• • • • •

(e)(1) Subject to the limitations set out in paragraphs (4) and (5) of this section, a fee of 1 percent of the total amount must be paid to the Secretary in a manner prescribed by the Secretary before a manufactured home unit loan will be eligible for guaranty. • • •

(2) Subject to the limitations set out in paragraphs (4) and (5) of this section, a fee of one-half of one percent of the loan balance must be paid to the Secretary in a manner prescribed by the Secretary by a person assuming a loan to which section 1814 of Chapter 37 of 38 U.S.C.

applies. The instrument securing such a loan shall contain a provision describing the right of the holder to collect this fee as trustee for the Department of Veterans Affairs. The loan holder shall list the amount of this fee in every assumption statement provided and include a notice that the fee must be paid to the holder immediately following loan settlement. The fee must be transmitted to the Secretary within 15 days of receipt by the holder of notice of the transfer.

(Authority: 38 U.S.C. 1814, 1829)

(3) The lender is required to pay to the Secretary the fee described in paragraph (e)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraphs (e)(4) and (e)(5) of this section, who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. * * *

(4) The fee described in paragraphs (e)(1) and (e)(2) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in section 1801(b)(2) of Title 38, United States Code.

(Authority: 38 U.S.C. 1829(b))

§ 36.4233 [Amended]

18. In § 36.4233, in paragraph (a), remove the word "mobile" wherever it appears and insert in its place, the word "manufactured", and in paragraph (c), remove the word "1819" and insert in its place, the word "1812".

19. In § 36.4254, paragraphs (d)(2), (d)(3), and (d)(4) are redesignated as paragraphs (d)(3), (d)(4) and (d)(5), respectively, the first sentence in paragraph (d)(1) is revised, paragraph (d)(2) is added, the first two sentences in newly-designated paragraph (d)(3) are revised, and newly-designated paragraph (d)(4) is revised, to read as follows:

§ 36.4254 Fees and charges.

(d)(1) Notwithstanding the provisions of paragraph (c) of this section and subject to the limitations set out in paragraphs (d)(4) and (d)(5) of this section, a fee of 1 percent of the total loan amount must be paid to the Secretary in a manner prescribed by the Secretary before a combination manufactured home and lot loan (or a loan to purchase a lot upon which a manufactured home owned by the veteran will be placed) will be eligible for guaranty. * * *

(2) Subject to the limitations set out in paragraphs (d)(3) and (d)(4) of this section, a fee of one-half of 1 percent of the loan balance must be paid to the Secretary in a manner prescribed by the Secretary by a person assuming a loan to which section 1814 of Chapter 37 of 38 U.S.C. applies. The instrument securing such a loan shall contain a provision describing the right of the holder to collect this fee as trustee for the Department of Veterans Affairs. The loan holder shall list the amount of this fee in every assumption statement provided and include a notice that the fee must be paid to the holder immediately following loan settlement. The fee must be transmitted to the Secretary within 15 days of receipt by the holder of notice of the transfer.

(Authority: 38 U.S.C. 1814, 1829)

(3) The lender is required to pay to the Secretary the fee described in paragraph (d)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraphs (d)(4) and (d)(5) of this section, who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due. * * *

(4) The fee described in paragraphs (d)(1) and (d)(2) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in section 1801(b)(2) of Title 38, United States Code.

(Authority: 38 U.S.C. 1829(b))

§ 36.4275 [Amended]

20. In § 36.4275, in the authority citations in paragraphs (a)(1), (a)(2), and (f)(3), remove the word "1819" wherever it appears and insert in its place, the word "1812", and in paragraphs (c) and (e), remove the word "mobile" wherever it appears and insert in its place, the word "manufactured".

21. In § 36.4275, the introductory text of paragraph (a) is revised and paragraph (a)(3) is added to read as follows:

§ 36.4275 Events constituting default and acceptability of partial payments.

(a) Except as provided in paragraphs (a)(1), (a)(2) and (a)(3) of this section, the conveyance of or other transfer or title to property by operation of law or otherwise, after the creation of a lien thereon to secure a loan which is guaranteed in whole or in part by the Secretary, shall not constitute an event of default, or acceleration of maturity, elective or otherwise, and shall not of

itself terminate or otherwise affect the guaranty. * * *

(3) Any housing loan which is financed under 38 U.S.C. Chapter 37 and to which section 1814 of that chapter applies, shall include a provision in the security instrument that the holder may declare the loan immediately due and payable upon transfer of the property securing such loan to any transferee unless the acceptability of the assumption of the loan is established pursuant to section 1814.

(i) A holder may not exercise its option to accelerate a loan upon:

(A) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property;

(B) The creation of a purchase money security interest for household appliances;

(C) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(D) The granting of a leasehold interest of three years or less not containing an option to purchase;

(E) A transfer to a relative resulting from the death of a borrower;

(F) A transfer where the spouse or children of the borrower become joint owners of the property with the borrower;

(G) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse of the borrower becomes the sole owner of the property. In such a case the borrower shall have the option of applying directly to the Department of Veterans Affairs regional office of jurisdiction for a release of liability in accordance with § 36.4285 of this part; or

(H) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

(ii) Any instrument evidencing the loan (i.e., the retail installment contract, promissory note and/or mortgage or deed of trust) shall bear in a conspicuous position in capital letters on the first page of the document in type at least 2½ times larger in height than the regular type on such page the following warning: "THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT" Due to the difficulty in obtaining some commercial type sizes, which are exactly 2½ times

larger in height than other sizes, minor deviations will be permitted based on commercially available type sizes nearest to 2½ times the size of the print on the document.

(iii) On any loan to which 38 U.S.C. 1814 applies, the holder may charge a reasonable fee, not to exceed the lesser of (A) \$500 and the actual cost of any credit report required, or (B) any maximum prescribed by applicable state law, for processing an application for assumption and changing its records. A provision authorizing the collection by the holder of this fee shall be contained in the instrument securing the loan.

(Authority: 38 U.S.C. 1814)

22. In § 36.4276, paragraph (a) is revised, to read as follows:

§ 36.4276 Advances and other charges.

(a) A holder may advance any reasonable amount necessary and proper for the maintenance or repair of the security, or for the payment of accrued taxes, special assessments or other charges which constitute prior liens, or premiums on fire or other hazard insurance against loss of or damage to such property and any such advance so made may be added to the guaranteed indebtedness. A holder may also advance the one-half of one percent funding fee due on a transfer under 38 U.S.C. 1814 when this is not paid at the time of transfer. All security instruments for loans to which 38 U.S.C. 1814 applies must include a clause authorizing an advance for this purpose if it is not paid at the time of transfer.

(Authority: 38 U.S.C. 1814)

§ 36.4277 [Amended]

23. In § 36.4277, in paragraph (e)(3) remove the word "his" and insert in its place, the words "his or her".

24. In § 36.4277, paragraph (e)(5) is added, to read as follows:

§ 36.4277 Release of security.

(e) * * *

(5) The release of an obligor, or obligors, incident to the sale of property which the holder is authorized to approve under the provisions of 38 U.S.C. 1814.

(Authority: 38 U.S.C. 1814)

§ 36.4280 [Amended]

25. In § 36.4280, in paragraph (c) remove the word "his" and insert in its place, the words "his or her".

§ 36.4281 [Amended]

26. In § 36.4281, remove the word "him" and insert in its place, the words "him or her".

§ 36.4282 [Amended]

27. In § 36.4282, in paragraph (b) remove the word "his" and insert in its place, the words "his or her".

§ 36.4284 [Amended]

28. In § 36.4284, in the authority citation following paragraph (c), remove the word "1819(g)" and insert in its place, the word "1812(g)".

§ 36.4285 [Amended]

29. In § 36.4285, in paragraphs (d), (e) and (f), remove the word "1819" and insert in its place, the word "1812", and in paragraphs (e), (f) and (f)(3), remove the word "1817" and insert in its place, the word "1813".

30. In § 36.4285, the first sentence in paragraph (e) is revised and an authority citation is added, and paragraph (g) is added to read as follows:

§ 36.4285 Subrogation and indemnity.

(e) Whenever any veteran disposes of residential property securing a guaranteed loan obtained under 38 U.S.C. 1812, and for which the commitment to make the loan was made prior to March 1, 1988, the Secretary, upon application made by such veteran, shall issue to the veteran a release relieving him or her of all further liability to the Secretary on account of such loan (including liability for any loss resulting from any default of the transferee or any subsequent purchaser of such property) if the Secretary has determined, after such investigation as the Secretary may deem appropriate, that there has been compliance with the conditions prescribed in 38 U.S.C. 1813(a). * * *

(Authority: 38 U.S.C. 1813, 1814)

(g) If a veteran or any other person disposes of residential property securing a guaranteed or insured loan for which a commitment was made on or after March 1, 1988, and the veteran or other person notifies the loan holder in writing before disposing of the property, the veteran or other person shall be relieved of all further liability to the Secretary with respect to the loan (including liability for any loss resulting from any default of the purchaser or any subsequent owner of the property) and the application for assumption shall be approved if the holder determines that:

(1) The proposed purchaser is creditworthy

(2) The proposed purchaser is contractually obligated to assume the loan and the liability to indemnify the Department of Veterans Affairs for the amount of any claim paid under the guaranty as a result of a default on the loan, or has already done so; and,

(3) The payments on the loan are current.

Should these requirements be satisfied, the holder may also release the veteran or other person from liability on the loan.

(Authority: 38 U.S.C. 1813, 1814)

§ 36.4286 [Amended]

31. In § 36.4286, in paragraphs (b), (b)(1), and (b)(11) remove the word "1819" wherever it appears and insert in its place, the word "1812".

32. In § 36.4301, the definition for "Holder" is revised to read as follows:

§ 36.4301 Definitions.

Holder. The lender or any subsequent assignee or transferee of the guaranteed or insured obligation. For purposes of the assumption review required by 38 U.S.C. 1814, the "holder" shall also apply to the servicer of a loan guaranteed or insured under 38 U.S.C. Chapter 37.

(Authority: 38 U.S.C. 210(c), 1814)

33. In § 36.4301, add the following definitions in alphabetical order:

Automatic Lender. A lender that may process a loan or assumption without submitting the credit package to the Department of Veterans Affairs for underwriting review. Pursuant to 38 U.S.C. 1802(d) there are two categories of lenders who may process loans automatically: (1) entities such as banks, savings and loan and mortgage and loan companies that are subject to examination by an agency of the United States or any State and (2) lenders approved by the Department of Veterans Affairs pursuant to standards established by the Department of Veterans Affairs.

(Authority: 38 U.S.C. 1802(d))

Credit Package. Any information, reports or verifications used by a lender, holder or authorized servicing agent to determine the creditworthiness of an applicant for a Department of Veterans Affairs guaranteed loan or the assumer of such a loan.

(Authority: 38 U.S.C. 1810 and 1814)

Servicing Agent. An agent designated by the loan holder as the entity to collect installments on the loan and

perform other functions as necessary to protect the interests of the holder.

(Authority: 38 U.S.C. 1814)

34. In § 36.4303, paragraph (k) is added to read as follows:

§ 36.4303 Reporting requirements.

(k) With respect to any loan for which a commitment was made on or after March 1, 1988, the Secretary must be notified whenever the holder receives knowledge of disposition of residential securing a Department of Veterans Affairs guaranteed loan.

(1) If the seller applies for prior approval of the assumption of the loan, then:

(i) A holder (or its authorized servicing agent) who is an automatic lender must examine the creditworthiness of the purchaser and determine compliance with the provisions of 38 U.S.C. 1814. The creditworthiness review must be performed by the party that has automatic authority. If both the holder and its servicing agent are automatic lenders, then they must decide between themselves which one will make the determination of creditworthiness, whether the loan is current and whether there is a contractual obligation to assume the loan, as required by 38 U.S.C. 1814. If the actual loan holder does not have automatic authority and its servicing agent is an automatic lender, then the servicing agent must make the determinations required by 38 U.S.C. 1814 on behalf of the holder. The actual holder will remain ultimately responsible for any failure of its servicing agent to comply with the applicable law and Department of Veterans Affairs regulations.

(A) If the assumption is approved and the transfer of the security is completed, then the notice required by this paragraph shall be submitted to the Department of Veterans Affairs with a copy of the Department of Veterans Affairs receipt for the funding fee provided for in § 36.4312(e)(3) of this part.

(B) If the application for assumption is disapproved, the holder shall notify the seller and the purchaser that the decision may be appealed to the Department of Veterans Affairs office of jurisdiction within 30 days. The holder shall make available to that Department of Veterans Affairs office copies of all items used by the holder in making the holder's decision in case the decision is appealed to the Department of Veterans Affairs. If the application remains disapproved after 60 days (to allow time for appeal to and review by the

Department of Veterans Affairs) then the holder must refund \$50 of any fee previously collected under the provisions of § 36.4312(d)(8) of this part.

(C) In performing the requirements of paragraphs (k)(1)(i)(A) or (k)(1)(i)(B) of this section the holder must complete its examination of the creditworthiness of the prospective purchaser and advise the seller no later than 45 days after the date of receipt by the holder of an application for approval of the assumption. The 45-day period may be extended by an interval not to exceed the time caused by delays in processing of the application which are documented as beyond the control of the holder, such as employers or depositories not responding to requests for verifications, which were timely forwarded, or followups on those requests.

(ii) If neither the holder nor its authorized servicing agent is an automatic lender, the notice to the Department of Veterans Affairs shall include:

(A) Advice regarding whether the loan is current or in default;

(B) A copy of the purchase contract; and

(C) A complete credit package developed by the holder which the Secretary may use for determining the creditworthiness of the purchaser.

(D) The notice and documents required by this section must be submitted to the Department of Veterans Affairs no later than 35 days after the date of receipt by the holder of an application for approval of an assumption, subject to the same extensions as provided in paragraph (k)(1)(i) of this section. If the assumption is not automatically approved by the holder or its authorized agent, pursuant to the automatic authority provisions, one-half of any fee collected in accordance with § 36.4312(d)(8) of this part must be refunded. If an appeal under paragraph (k)(1)(i)(B) is made to the Department of Veterans Affairs, then the review will be conducted at the Department of Veterans Affairs by an individual who was not involved in the original disapproval decision.

(2) If the seller fails to notify the holder before disposing of property securing the loan, the holder shall notify the Secretary within 60 days after learning of the transfer. Such notice shall advise whether or not the holder intends to exercise its option to immediately accelerate the loan and whether or not an opportunity will be extended to the transferor and transferee to apply for retroactive approval of the assumption under the terms of this paragraph.

(Authority: 38 U.S.C. 1814)

§ 36.4308 [Amended]

35. In § 36.4308, in paragraph (a), remove the words "paragraph (c)" and insert in their place, the words "paragraphs (b) or (c)", and in paragraph (b) remove the words "paragraph (d)" and insert in their place, the words "paragraph (f)".

36. In § 36.4308, paragraph (e)(1) and (e)(2) are removed, paragraphs (b), (c), (d), (f) and (g) are redesignated as paragraphs (d), (e), (f), (g) and (h), respectively, and new paragraphs (b) and (c) are added to read as follows:

§ 36.4308 Transfer of title by borrower or maturity by demand or acceleration.

(b)(1) The Secretary may issue guaranty on loans in which a State, Territorial, or local governmental agency provides assistance to a veteran for the acquisition of a dwelling. Such loans will not be considered ineligible for guaranty if the State, Territorial, or local authority, by virtue of its laws or regulations or by virtue of Federal law, requires the acceleration of maturity of the loan upon the sale of conveyance of the security property to a person ineligible for assistance from such authority.

(2) At the time of application for a loan assisted by a State, Territorial, or local governmental agency, the veteran-applicant must be fully informed and consent in writing to the housing authority restrictions. A copy of the veteran's consent statement must be forwarded with the loan application or the report of a loan processed on the automatic basis.

(Authority: 38 U.S.C. 1803(c))

(c) Any housing loan which is financed under 38 U.S.C. Chapter 37, and to which section 1814 of that chapter applies, shall include a provision in the security instrument that the holder may declare the loan immediately due and payable upon transfer of the property securing such loan to any transferee unless the acceptability of the assumption of the loan is established pursuant to section 1814.

(1) A holder may not exercise its option to accelerate a loan upon:

(i) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to the transfer of rights of occupancy in the property;

(ii) The creation of a purchase money security interest for household appliances;

(iii) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(iv) The granting of a leasehold interest of three years or less not containing an option to purchase;

(v) A transfer to a relative resulting from the death of a borrower;

(vi) A transfer where the spouse or children of the borrower become a joint owners of the property with the borrower;

(vii) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse of the borrower becomes the sole owner of the property. In such a case the borrower shall have the option of applying directly to the Department of Veterans Affairs regional office of jurisdiction for a release of liability in accordance with § 6.4323 of this part; or

(viii) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

(2) The mortgage or deed of trust and the promissory note or bond evidencing a loan to which this paragraph applies shall bear in a conspicuous position in capital letters on the first page of the document in type at least 2½ times larger than the regular type on such page the following warning: "THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT." Due to the difficulty in obtaining some commercial type sizes which are exactly 2½ times larger in height than other sizes, minor deviations in size will be permitted based on commercially available type sizes nearest to 2½ times the size of the print on the document.

(Authority: 38 U.S.C. 1814)

37. In § 36.4312, paragraphs (e)(2), (e)(3) and (e)(4) are redesignated as paragraphs (e)(3), (e)(4) and (e)(5), respectively, paragraph (d)(8) is added, the first sentence in paragraph (e)(1) is revised, paragraph (e)(2) is added, the first two sentences in newly-designated paragraph (e)(3) are revised, and newly-designated paragraph (e)(4) is revised, to read as follows:

§ 36.4312 Charges and fees.

(8) On any loan to which section 1814 of 38 U.S.C. Chapter 37 applies, the holder may charge a reasonable fee, not to exceed the lesser of (i) \$500 and the

actual cost of any credit report required, or (ii) any maximum prescribed by applicable State law, for processing an application for assumption and changing its records.

(Authority: 38 U.S.C. 1814)

(e)(1) Subject to the limitations set out in paragraphs (e)(4) and (e)(5) of this section, a fee of 1 percent of the total loan amount must be paid to the Secretary in a manner prescribed by the Secretary before a home or condominium loan will be eligible for guaranty or insurance.

(2) Subject to the limitations set out in this section, a fee of one-half of one percent of the loan balance must be paid to the Secretary in a manner prescribed by the Secretary by a person assuming a loan to which section 1814 of Chapter 37 of 38 U.S.C. applies. The instrument securing such a loan shall contain a provision describing the right of the holder to collect this fee as trustee for the Department of Veterans Affairs. The loan holder shall list the amount of this fee in every assumption statement provided and include a notice that the fee must be paid to the holder immediately following loan settlement. The fee must be transmitted to the Secretary within 15 days of the receipt by the holder of the notice of transfer.

(Authority: 38 U.S.C. 1814)

(3) The lender is required to pay to the Secretary the fee described in paragraph (e)(1) of this section within 15 days after loan closing. Any lender closing a loan, subject to the limitations set out in paragraphs (e)(3) and (e)(4) of this section, who fails to submit timely payment of this fee will be subject to a late charge equal to 4 percent of the total fee due.

(4) The fees described in paragraphs (e)(1) and (e)(2) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in section 1801(b)(2) of Title 38, United States Code.

38. In § 36.4313, two sentences are added at the end of paragraph (a), to read as follows:

§ 36.4313 Advances and other charges.

(a) * * * A holder may also advance the one-half of one percent funding fee due on a transfer under 38 U.S.C. 1814 when this is not paid at the time of transfer. All security instruments for loans to which 38 U.S.C. 1814 applies must include a clause authorizing the collection of an assumption funding fee

and an advance for this fee if it is not paid at the time of transfer.

(Authority: 38 U.S.C. 1814)

§ 36.4323 [Amended]

39. In § 36.4323, in paragraph (a) remove the words "his contract" and insert in their place the words, "the contract", in paragraph (b) remove the word "him" and insert in its place, the words "him or her", in paragraph (g) remove the words "by him", in paragraph (g) remove the word "1817" and insert in its place, the word "1813", and in paragraph (g)(3) remove the word "he" and insert in its place, the words "he or she".

40. In § 36.4323, the first sentence in paragraph (f) is revised and an authority citation is added, and paragraph (h) is added to read as follows:

§ 36.4323 Subrogation and indemnity.

(f) Whenever any veteran disposes of residential property securing a guaranteed or insured loan obtained by him or her under 38 U.S.C. Chapter 37, and for which the commitment to make the loan was made prior to March 1, 1988, the Secretary, upon application made by such veteran, shall issue to the veteran a release relieving him or her of all further liability to the Secretary on account of such loan (including liability for any loss resulting from any default of the transferee or any subsequent purchaser of such property) if the Secretary has determined, after such investigation as may be deemed appropriate, that there has been compliance with the conditions prescribed in 38 U.S.C. 1813. * * *

(Authority: 38 U.S.C. 1814)

(h) If a veteran or any other person disposes of residential property securing a guaranteed or insured loan for which a commitment was made on or after March 1, 1988, and the veteran or other person notifies the loan holder in writing before disposing of the property, the veteran or other person shall be relieved of all further liability to the Secretary with respect to the loan (including liability for any loss resulting from any default of the purchaser or any subsequent owner of the property) and the application for assumption shall be approved if the holder determines that:

(1) The proposed purchaser is creditworthy;

(2) The proposed purchaser is contractually obligated to assume the loan and the liability to indemnify the Department of Veterans Affairs for the amount of any claim paid under the

guaranty as a result of a default on the loan, or has already done so; and,

(3) The payments on the loan are current.

Should these requirements be satisfied, the holder may also release the veteran or other person from liability on the loan.

(Authority: 38 U.S.C. 1813)

41. In § 36.4324, paragraph (f) is revised to read as follows:

§ 36.4324 Release of security.

(f) The release of the personal liability of any obligor on a guaranteed or insured obligation resultant from the act or omission of any holder without the prior approval of the Secretary shall release the obligation of the Secretary as guarantor or insurer, except when such act or omission consists of (1) failure to establish the debt as a valid claim against the assets of the estate of any deceased obligor, provided no lien for the guaranteed or insured debt is thereby impaired or destroyed; or (2) an election and appropriate prosecution of legally available effective remedies with respect to the repossession or the liquidation of the security in any case, irrespective of the identity or the survival of the original or of any subsequent debtor, if holder shall have given such notice as required by § 36.4317 of this part and if, after receiving such notice, the Secretary shall have failed to notify the holder within 15 days to proceed in such manner as to effectively preserve the personal liability of the parties liable, or such of them as the Secretary indicates in such notice to the holder; or (3) the release of an obligor, or obligors, from liability on an obligation secured by a lien on property, which release is an incident of and contemporaneous with the sale of such property to an eligible veteran who assumed such obligation, which assumed obligation is guaranteed on the assuming veteran's account pursuant to 38 U.S.C. Chapter 37; or (4) the release of an obligor or obligors as provided in § 36.4314(d) of this part; or, the release of an obligor, or obligors, incident to the sale of property securing the loan which the holder is authorized to approve under the provisions of 38 U.S.C. 1814.

(Authority: 38 U.S.C. 1814)

42. In § 36.4335, paragraph (h) is added, to read as follows:

§ 36.4335 Supplementary administrative action.

(h) The requirements in § 36.4303(k) of this part concerning the giving of notice

in assumption cases under 38 U.S.C. 1814.

(Authority: 38 U.S.C. 1814)

§ 36.4508 [Amended]

43. In § 36.4508, in paragraph (b) remove the word "1817(a)" and insert in its place, the words "1813(a) or 1814, as appropriate", and in paragraph (c) remove the word "1817(a)" and insert in its place, the word "1813(a)".

44. In § 36.4508, paragraph (a) is revised to read as follows:

§ 36.4508 Transfer of property by borrower.

(a) Direct loans for which commitments are made on or after March 1, 1988, are not assumable without the prior approval of the Department of Veterans Affairs or its authorized agent. The following shall apply:

(1) The Department of Veterans Affairs shall include in the mortgage or deed of trust and the promissory note or bond on any loan for which a commitment was made of or after March 1, 1988, the following warning in a conspicuous position in capital letters on the first page of the document in type at least 2½ times larger than the regular type on such page: "THIS LOAN IS NOT ASSUMABLE WITHOUT THE APPROVAL OF THE DEPARTMENT OF VETERANS AFFAIRS OR ITS AUTHORIZED AGENT." Due to the difficulty in obtaining some commercial type sizes which are exactly 2½ times larger in height than other sizes, minor deviations in size will be permitted based on commercial available type sizes nearest to 2½ times the size of the print on the document.

(2) The instrument securing a direct loan for which a commitment is made on or after March 1, 1988, shall include:

(i) A provision that the Department of Veterans Affairs or other holder may declare the loan immediately due and payable upon transfer of the property securing such loan to any transferee unless the acceptability of the assumption of the loan is established pursuant to section 1814. This option may not be exercised if the transfer is the result of:

(A) The creation of a lien or other encumbrance subordinate to the lender's security instrument which does not relate to a transfer of rights of occupancy in the property;

(B) The creation of a purchase money security interest for household appliances;

(C) A transfer by devise, descent, or operation of law on the death of a joint tenant or tenant by the entirety;

(D) The granting of a leasehold interest of three years or less not containing an option to purchase;

(E) A transfer to a relative resulting from the death of a borrower;

(F) A transfer where the spouse or children of the borrower become a joint owner of the property with the borrower;

(G) A transfer resulting from a decree of a dissolution of marriage, legal separation agreement, or from an incidental property settlement agreement by which the spouse of the borrower becomes the sole owner of the property. In such a case the borrower shall have the option of applying directly to the Department of Veterans Affairs regional office of jurisdiction for a release of liability under 1813(a); or

(H) A transfer into an inter vivos trust in which the borrower is and remains a beneficiary and which does not relate to a transfer of rights of occupancy in the property.

(ii) A provision that a funding fee equal to one-half of 1 percent of the loan balance as of the date of transfer shall be payable to the Department of Veterans Affairs or its authorized agent. Furthermore, this provision shall provide that if this fee is not paid it shall constitute an additional debt to that already secured by the instrument; and,

(iii) A provision authorizing an assumption processing charge, not to exceed the lesser of \$500 and the actual cost of a credit report or any maximum prescribed by applicable State law.

(Authority: 38 U.S.C. 1814)

45. In § 36.4511, paragraph (d) is added, to read as follows:

§ 36.4511 Advances after loan closing.

(d) The Department of Veterans Affairs may treat as an advance and add to the mortgage balance the one-half of 1 percent funding fee due on a transfer under 38 U.S.C. 1814 when this is not paid at the time of transfer.

(Authority: 38 U.S.C. 1814)

[FR Doc. 89-14225 Filed 6-14-89; 8:45 am]

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POSTAL SERVICE

39 CFR Part 111

Acceptance of Mailpieces Bearing an Incorrect Date in the Meter or Mailer's Precancel Postmark

AGENCY: Postal Service.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends postal regulations to specify the circumstances under which mail will be accepted with an incorrect date in the meter or mailer's precancel postmark. The proposal would establish more equitable and more uniform conditions for mail acceptance.

DATES: Comments must be received on or before July 17, 1989.

ADDRESS: Address all comments to the Director, Office of Classification and Rates Administration, U.S. Postal Service, 475 L'Enfant Plaza West, SW., Washington, DC 20260-5360. Copies of all written comments will be available for inspection between 9 a.m. and 4 p.m., Monday through Friday, in Room 8430, at the above address.

FOR FURTHER INFORMATION CONTACT: Leo F. Raymond, (202) 268-5199.

SUPPLEMENTARY INFORMATION: On March 14, 1989, the Postal Service published a proposed rule that would have changed existing procedures concerning the acceptance of mailings bearing an incorrect date in the meter or mailer's precancel postmark (54 FR 10563-10565). The Postal Service received twelve comments concerning the proposed rule.

One commenter supported the proposal. The remaining comments generally acknowledged the permits of requiring accurate postmarking of mail, but criticized the proposal for the manner it dealt with the problem of incorrect dates.

One commenter observed that notices of irregularity are not always provided promptly when errors in mail preparation are found, and that the final rule should require immediate notice so that the mailer can examine the mailing and determine the cause of an error. The revised proposal rule includes such a provision.

Two commenters suggested that dated mailings which the Postal Service failed to collect when it should have collected them should be excepted from any penalty since the stale date would not be the fault of the mail preparer. This has also been incorporated into the revised proposal.

Three commenters stated that errors in metered mail are not deliberate; they and three other commenters said that presort bureaus do their best in filtering-out misdated mail they receive, but neither they nor other customers should be penalized as a group if one customer has—for any reason—failed to submit correctly-dated mailpieces. Mail acceptance regulations cannot be based simply on good intentions, and the Postal Service cannot accept postmark errors in some mailings essentially

because the presenter tried to detect errors as the mailing was prepared. Nonetheless, the Postal Service realizes the circumstances that may affect some mailers, and the revised proposal seeks to offer them realistic means to deal with rejected mailings and pass the costs of such situations on to those who caused them.

Three commenters also cited secondary cost considerations, such as the cost to the mailer or presorter for reprocessing a rejected mailing, delays in the material being mailed and the impact on its value, and the ill-will that may arise against the Postal Service if it is perceived as excessively harsh in dealing with incorrectly-dated mail. The revised proposal seeks to mitigate the consequences of a rejected mailing, and effective quality control measures by mailers (including presort bureaus) should obviate the need for elaborate protections in cases of unacceptable mailings. Based on the comments, many mailers and bureaus already police their own mailing operations, or expect this of their clients; therefore, effective maintenance of these efforts should minimize instances of rejected mailings and occasions of or associated costs and delays.

Two commenters suggested that fees or penalties should be levied against the contributor of the misdated mail, not against the presenter of the mail that contained it (e.g., the presort bureau). The instinctive reaction to penalize the party who caused the problem is not without merit. However, it would be administratively burdensome for the Postal Service to construct a sampling and identification procedure that credibly showed whose errors were the cause of a rejected mailing, particularly when the offender's mailpieces are mingled in a mailing presented by a presort bureau. Further, it may be argued that the Postal Service cannot legally impose a penalty or fee for misdated pieces without further proceedings before the Postal Rate Commission. Therefore, the revised proposal only reflects this concept as a limited alternative.

Two commenters also suggested that the record of errors be limited to a specific lifespan, such as three to six months. The proposed rule failed to mention the period of retention for the record of error; the revised proposal specifies a 180-day retention period.

Three commenters favored more extensive research concerning the causes of misdated mail, including analysis of the mailstream and consultation with the mailing industry, before adoption of a final rule. The Postal Service recognizes the value of

information before taking action impacting its customers. However, since this is not a newly-discovered problem, and since the notice-and-comment process allows for extensive input by interested parties, the Postal Service is not satisfied that further delays are warranted or that a protracted dialogue alone will sufficiently ameliorate the problem through greater awareness or action on the part of mailers.

One commenter supported preserving the flexibility now allowed local postmasters to reject or accept misdated mail based on the local knowledge of the mailer's usual practices. The concept of local flexibility is a two-edged sword: it allows for accommodation of circumstances that cannot or need not be addressed on a national scale, but it also permits mailers to exert pressure on local postal managers or, conversely, allows some of those managers to grant relief from requirements to some mailers while other customers are held to a stricter standard. One of the specific reasons for the original proposed rule was to establish a consistent requirement, and this purpose is carried forward in the revised proposal.

Two commenters thought that terminology should be improved in defining who the "mailer" is—whether the meter holder or the presenter of the mail—and what is a sufficiently serious error to warrant rejection of a mailing. The revised proposal obviates the need for such a definition, largely because the Postal Service will deal with whoever presents the mail, and provide sufficient information for rejected mailings to allow the presenter (if a presort bureau) to settle the problem with its client within the terms of its own business relationship. Further, since this proposal relates to improper dating of meter or mailer's precancel postmarks, the range of potential errors is relatively finite and straight-forward; for that reason, a further listing of exemplary errors is not warranted.

The comments reflect the views of two distinct communities in this matter: one that prepares and presents its own mail, and another that receives premetered mail from customers and presorts it before submission to the Postal Service. None of the commenters from either community contests the need for accurate postmarking and for a reasonable expectation that the preparer of the mail should be held to a certain standard of accuracy in that regard. Both are in agreement that the proposed rule was insufficiently specific in placing that responsibility and in describing the threshold beyond which dating errors were excessive, as well as

being too demanding in giving a once-in-a-lifetime chance for error. As noted above, the Postal Service recognizes how these perceptions were formed and has amended its proposed rule accordingly.

The Postal Service considers that the preparer of the mail, i.e., the individual business authorized to use a mailer's precancel postmark or to whom the meter is licensed, should be held accountable for accurate predating of that mail. An intermediate party, such as a presort bureau, who prepares the mail for presentation to the Postal Service on the owner's behalf, but who does not have significant control over the dating of the mail, must be called upon to exercise appropriate control over what it receives and enters into the mails, but cannot be held to the same accountability as the originator of that mail. Therefore, the revised proposal is tailored to impose alternative penalties on the mailing presented to the Postal Service that are proportionate to the error. If the mailing is presented by the mailer, the penalty will, at once, reach the preparer whose error was detected and precipitated the rejection of the mailing. If the mailing is presented by a third party, such as a presort bureau, it is expected that the penalty will be passed back to the originator in a manner amendable to the parties by agreement.

The Postal Service also recognizes that a "lifetime" black mark against a mailer is excessive, as would be a rejection for a minor error. Although neither was intended by the original proposal, the absence of both a stated period of record and a detail of appropriate reasons for rejection led to understandable objections. The proposed rule is amended to note that a rejected mailing will be recorded for a period of 180 days, after which the slate will be cleaned.

Mailers generally understand that their mailings, as presented, will be expected to meet certain requirements, including accuracy in the mailer's precancel or meter postmark. In applying this expectation in practice, the Postal Service commonly employs sampling to detect errors, and allows a small tolerance for incidental proportions of error. Under this revised proposal, the Postal Service will examine at least fifty pieces at random from the mailing to check for incorrect dates. If any are found, further directed examination of another fifty pieces will be required. If those samples find a total of five or more pieces with incorrect dates, the mailing cannot be accepted.

Mailers who were concerned that circumstances beyond their control

would cause a mailing to be rejected should note that the proposed rule is amended to allow the mailer's file to be annotated with an error finding only (rather than having a mailing rejected), if a valid reason exists to warrant acceptance of the mailing and the acceptance has been made under specific, controlled circumstances.

Lastly, the procedures to be followed are more specific in describing the notification procedures so that mailers will always be aware of their status vis-a-vis this proposed rule.

Although exempt from the notice and comment provisions of the Administrative Procedure Act (5 U.S.C. 553(b), (c)) regarding proposed rulemaking by 39 U.S.C. 410(a), the Postal Service invites public comments on the following proposed amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR Part 111.

List of Subjects in 39 Part 111

Postal Service.

PART 111—[AMENDED]

1. The authority citation for Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001-3011, 3201-3219, 3403-3406, 3621, 5001.

PART 140—POSTAGE

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144—Postage Meters and Meter Stamps.

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144.4 Meter Stamps.

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144.47 Date of Mailing.

144.471 The date shown in a meter postmark must be the actual date of deposit, except when the mailpiece is deposited after the last scheduled collection of the day; or as provided by 144.54 or 374.22. When deposit is made after the last scheduled collection of the day, mailers are encouraged but not required to use the date of the next scheduled collection.

144.476 A ".00" postage meter impression used to correct the date of metered mail must be placed on the nonaddress side of envelopes in the upper right hand corner, or adjacent to the postage meter stamp on flats or parcels. The date of the ".00" impression must be the actual date of deposit.

144.5 Mailings.

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144.53 Handling.

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144.534 Examination.

a. Presorted Mail. From each metered mailing paid at a bulk or presorted rate, randomly select at least fifty pieces of mail and examine them according to the procedures in Handbook DM-102, *Bulk Mail Acceptance*. Handle metered bulk or presort rate mail bearing an illegible or incorrect date in the postmark, whether detected during acceptance or after clearance for distribution, as provided by 144.54 or 374.22, as applicable.

b. Nonpresorted Mail. Examine nonpresorted metered mail to determine that it is properly prepared and bears a correct date in the meter postmark. If individual mailings can be identified, randomly select at least fifty pieces from each. This examination may be made of pieces either awaiting or during distribution. Handle nonpresorted metered mail that is improperly prepared or does not bear a legible or correct date in the meter postmark as provided by 144.542.

144.54 Mailing Irregularities.

144.541 *Presorted Mail with Presort Errors*. Handle as directed by Handbook DM-102, *Bulk Mail Acceptance*, and 374.22, as applicable.

144.542 *Nonpresorted Mail and Presorted Mail without Presort Errors*.

a. Initial Detection. If the random check required by 144.534 reveals one or more pieces with incorrect or illegible meter dates, examine fifty additional pieces in the mailing to determine the extent of the problem. If as many as five or more pieces are found with incorrect or illegible meter dates, advise the mailer of the errors within 30 minutes. Provide the mailer with a specific description of the errors, including the meter number appearing on the improperly prepared pieces.

b. First Occurrence. On the first occurrence, use Form 3749, *Irregularities in the Preparation of Mail Matter*, as a follow-up notice to the mailer whose metered mailing bore an incorrect or illegible date in the meter postmark, or whose mailing was otherwise prepared improperly. Accept the mailing (if other preparation requirements are met), but maintain a record of the date and nature of the irregularity for 180 days from its occurrence. Postmark the misdated mailpieces to apply the correct mailing date.

c. Subsequent Occurrences. If future mailings (within the 180-day period) are submitted with similar errors (incorrect

or illegible date in the meter postmark, except as provided by 374.22, or other preparation deficiencies), do not accept the mailing. Contact the mailer within 30 minutes and give the mailer three options: (1) reclaim the mailing and reenvelope the mailpieces; (2) reclaim the mailing and apply a legible ".00" meter impression with the correct date; or (3) pay additional postage to satisfy payment of the full single-piece rate on the mailing in proportion to the rate of error detected. The mailer may reclaim only one segment of the mailing (such as that portion from one client, if the mailing is presented by a presort bureau), if it is demonstrated, to the satisfaction of the Postal Service, that such action will remove all the misdated pieces.

d. Postal Error. Do not treat as errors any pieces which are legibly postmarked the previous date if they were deposited in a collection box after the last collection (see 144.471), or were not collected by the Postal Service as scheduled on the date appearing in the meter postmark.

144.6 Security.

144.61 Quarterly Verification.

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g. Examine metered mail being sampled for improper mailing practices, such as incorrect or illegible postmarks and other preparation deficiencies. Follow the procedures in 144.54 if errors are detected.

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370 Mailing

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374 Presort Verification

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374.2 *When a Carrier Route First-Class, Presorted First-Class, Nonpresorted ZIP + 4, ZIP + 4 Presort, or ZIP + 4 Barcoded Rate Mailing is Disqualified*.

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374.22 *Correction of Dates on Resubmitted Metered and Mailer's Precancel Postmark Mailpieces*.

374.221 *General*. If a mailer elects to correct the presort or preparation problems in a mailing which had resulted in its disqualification when originally presented for acceptance, but is unable to resubmit that mailing on the same day, the date shown in the meter or mailer's precancel postmark must be corrected by reenveloping or applying a ".00" meter impression which includes the correct date of mailing.

374.222 *Limited Exception to Correction of Date of Mailing*. Subject to the following conditions, the postmaster of the office of mailing may waive the requirements of 374.221 on a limited basis, as specified in 374.223 and the following:

a. The presorted mailing with an incorrect date in the meter or mailer's precancel postmark is resubmitted on the day immediately following its initial presentation and disqualification;

b. The mailing meets all other applicable requirements; and

c. (1) The initial presort or other preparation deficiencies resulted from mailing equipment problems beyond the mailer's control; or

(2) It represents the customer's first mailing at the carrier route First-Class, Presorted First-Class, nonpresorted ZIP + 4, ZIP + 4 Presort, or ZIP + 4 Barcoded rate, and the improper presort or preparation resulted from misinformation or misunderstanding of the applicable presort or preparation requirements.

Note.—Nonpresorted mailings, full-rate mailings, and presorted mailings not being resubmitted after correction of presort or other preparation deficiencies must be handled as provided by DMM 144.54 if they are improperly prepared or bear the incorrect date in the meter or mailer's precancel postmark.

374.223 *Record of Waiver*. If the postmaster accepts the mailing under the provisions of 374.222, a record of the waiver must be maintained for 180 days from its occurrence. Future mailings (within the 180-day period) submitted with an incorrect date in the meter or mailer's precancel postmark cannot be accepted, and are subject to the provisions of 144.542.

An appropriate amendment to 39 CFR 111.3 will be published if the proposal is adopted.

Fred Eggleston,
Assistant General Counsel, Legislative
Division.

[FR Doc. 89-14162 Filed 6-14-89; 8:45 am]

BILLING CODE 7710-12-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 64a

RIN 0905-AC02

National Institute of Environmental Health Sciences Hazardous Waste Worker Training

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would establish a new Part 64a in Title 42 entitled: National Institute of Environmental Health Sciences Hazardous Waste Worker Training. Section 126(g) of the Superfund Amendments and Reauthorization Act of 1986, Pub. L. 99-499, 42 U.S.C. 9660a, authorizes the National Institute of Environmental Health Sciences (NIEHS) to administer these newly created training grants.

DATES: Comments must be received by August 14, 1989.

ADDRESSES: Comments should be addressed to Mr. John Migliore, NIH Regulations Officer, National Institutes of Health, Building 31, Room 3B11, 9000 Rockville Pike, Bethesda, Maryland 20892.

FOR FURTHER INFORMATION CONTACT: Mr. John Migliore at the address above, or telephone (301) 496-4606.

SUPPLEMENTARY INFORMATION: Pub. L. 99-499, section 126(g), enacted on October 17, 1986, authorizes a program of grants for the training and education of workers who are or are likely to be engaged in activities related to hazardous waste removal or containment or emergency response. The program is to be administered by the National Institute of Environmental Health Sciences. The intent of the Department of Health and Human Services to promulgate regulations to implement this new authority is announced in the latest HHS Regulatory Agenda, under the section for the National Institutes of Health, Public Health Service.

Section 126(g)(3) of Pub. L. 99-499 states that grants shall be awarded to nonprofit organizations which demonstrate experience in implementing and operating worker health and safety training and education programs and demonstrate the ability to reach and involve in training programs target populations of workers who are or are likely to be engaged in hazardous waste removal or containment or emergency response operations. In the *Federal Register* of December 19, 1986 [51 FR 45556] a full description of the program was given and the public was invited to an open meeting on this program on January 12, 1987.

The purpose of this notice is to invite public comment on the regulations which will be used to implement the authorization contained in section 126(g) of Pub. L. 99-499. Up to \$10 million per year for fiscal years 1987-1991 has been authorized to be appropriate to support

this grant program. These dollar amounts are budget ceilings and actual amounts will be appropriated each year consistent with the Federal budget process.

The following information is provided for the information of the public:

1. These proposed regulations would govern the award and administration of grants under section 126(g) of Pub. L. 99-499. The economic impact of this program is expected to be minor. For this reason, the Secretary had determined that this rule is not a "major rule under Executive Order 12291, and a regulatory impact analysis is not required. Further, these regulations will not have a significant economic impact on a substantial number of small entities, and therefore do not require a regulatory flexibility analysis under the Regulatory Flexibility Act of 1980.

2. Catalog of Federal Domestic Assistance program number affected by this proposed rule is: 13.142

3. Section 64a.4 of these proposed rules contains information collection requirements. As required by section 3504(h) of the Paperwork Reduction Act of 1980 [44 U.S.C. 3504(h)], we have submitted a copy of these proposed rules to the Office of Management and Budget for its review of these information collection requirements. Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the agency official designated for this purpose whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building (Room 3206), Washington, DC 20503, Attn: Desk Officer for HHS.

4. These proposed regulations do not require either a Federalism or Family Impact analysis. There is no effect on states or on the role and responsibilities of the family, as defined in Executive Order 12291 on Federalism and Executive Order 12806 on the Family, because the NPRM merely describes the Secretary's authority to issue grants under this program.

List of Subjects in 42 CFR Part 64a

Education study programs, Grant programs—education, Grant programs—health, Manpower training programs.

Dated: March 3, 1989.

Robert E. Windom,
Assistant Secretary for Health.

Approved: May 5, 1989.

Louis W. Sullivan,
Secretary.

Accordingly, it is proposed to amend Title 42 of the Code of Federal

Regulations to revise Part 64a to read as follows:

PART 64a—NATIONAL INSTITUTE OF ENVIRONMENTAL HEALTH SCIENCES HAZARDOUS WASTE WORKER TRAINING

Sec.

64a.1 To what projects do these regulations apply?

64a.2 Definitions.

64a.3 Who is eligible to apply for a grant?

64a.4 Project requirements.

64a.5 How will applications be evaluated?

64a.6 How long does grant support last?

64a.7 For what purposes may grant funds be spent?

64a.8 What additional Department regulations apply to grantees?

64a.9 Additional conditions.

Authority: 42 U.S.C. 9600a.

§ 64a.1 To what projects do these regulations apply?

(a) These regulations implement the program of grants for the training and education of workers who are or are likely to be engaged in activities related to hazardous waste removal, or containment, or emergency response that is authorized by section 126(g) of the Superfund Amendments and Reauthorization Act of 1980.

(b) Grants are available for curriculum and training materials development, technical support of training, direct student training, training program evaluation and related activities. Target populations for this training are workers and supervisors who are or are likely to be engaged in:

(1) Waste handling and processing at active and inactive hazardous substance treatment, storage, and disposal facilities;

(2) Clean up, removal, containment or remedial actions at waste sites;

(3) Hazardous substance emergency response;

(4) Hazardous substance disposal site risk assessment and investigation, clean up, or remedial actions; and

(5) Transportation of hazardous wastes. Target populations may also be regulated under standards promulgated by the Secretary of Labor under section 126 of the Act.

(c) Two types of grants are available: program grants covering the full range of activities, including program development, direct worker training, and program evaluation; and planning grants.

(1) Planning grants are intended to assist organizations which demonstrate potential for providing hazardous worker training but need additional developmental efforts prior to initiation of full curriculum development and training activities. A limited number of one-year planning grants may be funded

at a level determined appropriate by the Director. After successful completion of a one-year planning grant, a recipient may apply for a full program grant on a competitive basis.

(2) Full program grants will be awarded to organizations with demonstrated capability to provide worker health and safety training and education and demonstrated ability to identify, describe, and access target populations. Full program grantees must be able to immediately initiate curriculum development and worker training activities.

§ 64a.2 Definitions.

As used in this part:

"Act" means the Superfund Amendments and Reauthorization Act of 1980, Pub. L. 99-499.

"Award" or "grant" means a grant under section 126(g) of the Act.

"Director" means the Director, NIEHS, or any other officer or employee of NIEHS to whom the authority involved has been delegated.

"HHS" means the Department of Health and Human Services.

"NIEHS" means the National Institute of Environmental Health Sciences, an organizational component of the National Institutes of Health, as authorized by section 401(b)(1)(L) [42 U.S.C. 281] and section 463 [42 U.S.C. 2851] of the Public Health Service Act.

"NIH" means the National Institutes of Health.

"Nonprofit" as applied to any agency, organization, institution, or other entity means a corporation or association no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

"Stipend" means a payment to an organization that is intended to help meet that organization's subsistence expenses for trainees during the training period.

"Training grant" means an award of funds to an eligible entity for a project authorized under § 64a.1.

§ 64a.3 Who is eligible to apply for a grant?

Public and private nonprofit entities providing worker health and safety education and training may apply for grants under these regulations. Applicants for a grant may use services, as appropriate, of other public or private organizations necessary to develop, administer, or evaluate proposed worker training programs so long as the majority of the work is done by the applicant.

§ 64a.4 Project requirements.

In addition to meeting the requirements specified in the application, the instructions accompanying it, and the regulations referred to in Section 64a.8, each applicant must meet the following requirements:

(a) Two or more nonprofit organizations may join in a single application and share grant resources in order to maximize worker group coverage, enhance the effectiveness of training, and bring together appropriate academic disciplines and talents. Joint applications must describe the cooperative arrangements for program integration and effectiveness. Specific expertise, facilities, or services to be provided by each participating member must be identified.

(b) Each applicant must detail the nature, duration, and purpose of the training for which the application is filed. The proposed training program must meet the standards promulgated by the Secretary of Labor under section 126 of the Act, and such additional requirements as the Director may prescribe to assure appropriate health and safety training.

(c) The applicant must provide assurance that the applicant will not discriminate in the selection of trainees or instructors on the basis of membership or nonmembership in a union.

§ 64a.5 How will applications be evaluated?

(a) The Director shall evaluate applications through the officers and employees, and experts and consultants engaged by the Director for that purpose. The Director's first level of evaluation will be for technical merit and shall take into account, among other pertinent factors, the significance of the project, the qualifications and competency of the project director and proposed staff, the adequacy of selection criteria for trainees for the project, the adequacy of the detailed training plan, the adequacy of the applicant's resources available for the project, the amount of grant funds necessary for completion of its objectives, and how well the projects meet training criteria in OSHA's Hazardous Waste Operations and Emergency Response Regulation (29 CFR 1910.120). A second level of review will be conducted for program relevance.

(b) Within the limits of funds available, the Director may approve training grants for award to carry out those projects which have satisfied the requirements of these regulations; are

determined by the Director to be technically meritorious; and in the judgment of the Director best promote the purposes of the grant program authorized by section 126(g) of the Act, the regulations of this part, and program priorities.

§ 64a.6 How long does grant support last?

(a) The notice of grant award specifies how long NIEHS intends to support the project without requiring the project to recompute for funds. This period, called the project period, will usually be for 1-5 years.

(b) Generally, the grant will initially be for one year and subsequent continuation awards will also be for one year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decision regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices and the availability of funds. In all cases, continuation awards require a determination by the NIEHS that continued funding is in the best interest of the Federal Government.

(c) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application or portion of an approved application.

§ 64a.7 For what purposes may grant funds be spent?

Individuals receiving training shall be entitled only to the stipends and allowances included in a budget approved by the Director, taking into account the cost of living and such other factors as the needs of the program and the availability of funds.

§ 64a.8 What additional Department regulations apply to grantees?

Several other regulations and policies apply to grants under this part. These include, but are not limited to:

- 42 CFR Part 50, Subpart D—Public Health Service grant appeals procedures
- 45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
- 45 CFR Part 74—Administration of grants
- 45 CFR Part 76—Debarment and suspension from eligibility for financial assistance
- 45 CFR Part 80—Nondiscrimination under programs receiving federal assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964
- 45 CFR Part 81—Practice and procedure for hearings under Part 80 of this Title

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in Health and Human Services programs and activities receiving federal financial assistance

45 CFR Part 92—Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments (Effective October 1, 1988).

§ 64a.9 Additional conditions.

The Director may with respect to any award impose additional conditions prior to or at the time of any award when in his or her judgment such conditions are necessary to assure the carrying out of the purposes of the award, the interest of the public health, or the conservation of funds awarded.

[FR Doc. 89-14170 Filed 6-14-89; 8:45 am]

BILLING CODE 4140-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 87-563, RM-6078, RM-6710]

Radio Broadcasting Services;
Dyersburg, TN, and Jonesboro, Hoxie,
Newport, AR et al.

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on optional proposals to substitute either Channel 244C2 for Channel 288A at Newport, Arkansas, or Channel 264C2 for Channel 244A Heber Springs, Arkansas, and the modification of the licenses of Station KOKR(FM) and Station KAWW(FM), respectively, at the request of Newport Broadcasting Co. In order to accomplish the upgrade at Newport (Option I), channel substitutions are necessary at Heber Springs, Channel 264A for Channel 244A and De Witt, Arkansas, Channel 247A for Channel 244A (currently occupied by Station KDEW-FM). The Heber Springs upgrade (Option II) requires the substitution of Channel 244A for Channel 288A at Newport. In addition, the optional proposals can be accomplished consistent with the petition by Dr Pepper Pepsi-Cola Bottling Company of Dyersburg, Inc., licensee of Station WASL(FM), Channel

281A, Dyersburg, Tennessee, proposing the substitution of Channel 261C2 for Channel 261A at Dyersburg. See 52 FR 49181, December 30, 1987. A first wide coverage area FM service could be provided at Dyersburg and either Newport and Heber Springs. Channel 244C2 at Newport requires a site restriction of 17.3 kilometers (10.7 miles) southwest of the city. The coordinates are 35-29-00 and 91-22-30. Channel 264C2 at Heber Springs requires a site restriction of 8.7 kilometers (4.2 miles) south of the community, at coordinates 35-25-52 and 92-01-54. Channel 261C2 at Dyersburg requires a site restriction of 8 kilometers (3.7 miles) west of Dyersburg, in addition to channel substitutions at Hoxie, Jonesboro and Newport, Arkansas. **DATES:** Comments must be filed on or before August 3, 1989, and reply comments on or before August 18, 1989. **ADDRESS:** Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Edward S. O'Neill, Esquire, Peggy Kobacker Shiffrin, Esquire, Bryan. Cave McPheeters and McRoberts, Suite 1000, 1015 Fifteenth Street, NW., Washington, DC 20005 (Counsels for Dr Pepper); Arthur H. Harding, Esquire, Fleischman and Walsh, P.C., 1725 N Street, NW., Washington, DC 20036 (Counsel for Newport Broadcasting Company); and Newport Broadcasting Company, P.O. Box 989, Blytheville, AR 72315.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Further Notice of Proposed Rule Making, MM Docket No. 87-563, adopted May 22, 1989, and released June 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this

one, which involve channel allotments. SEe 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

The document also requests comments on four additional optional proposals. The allotment of Channel 244C2 to Newport, Arkansas, as that community's second local FM service, Option III. The substitution of Channel 264C2 for Channel 244A at Heber Springs, Arkansas and the allotment of Channel 244C2 to Newport, as a first wide area coverage service and a second local FM service, respectively, Option IV. The allotment of Channel 264C2 to Heber Springs, as a second local FM service and the substitution of Channel 261C2 for Channel 261A at Dyersburg, Tennessee, as that community's first wide coverage area FM service, Option V. Option VI which could permit substitutions of Channel 261C2 for Channel 261A at Dyersburg, Channel 264C2 for Channel 244A at Heber Springs and Channel 244C2 for Channel 288A at Newport, and provide each community with a first wide coverage area FM service.

Federal Communications Commission.
Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 89-14252 Filed 6-14-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-132, RM-6705]

Radio Broadcasting Services; Whitewater, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Caribbean Broadcasting Corporation proposing the allotment of Channel 293A to Whitewater, Wisconsin, as that community's second local FM service. The proposed channel allotment requires a site restriction of 7.4 kilometers (4.6 miles) north of the city, at coordinates 44-54-02 and 88-44-01.

DATES: Comments must be filed on or before August 3, 1989, and reply comments on or before August 18, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the

FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Marvin Rosenberg, Esquire, Frank R. Jazzo, Esquire, Fletcher, Heald & Hildreth, 1225 Connecticut Avenue NW., Suite 400, Washington, DC 20036 (Counsels for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-132, adopted May 23, 1989, and released June 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.
Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 89-14250 Filed 6-14-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-125, RM-6738]

Radio Broadcasting Services; Red Lodge, MT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Beartooth Stereo FM, proposing the substitution of Channel 257C for

Channel 258C1 at Red Lodge, Montana, and modification of the license for Station KAFM to specify Channel 257C. The coordinates for Channel 257C are 45-11-36 and 109-19-53.

DATES: Comments must be filed on or before August 3, 1989, and reply comments on or before August 18, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: C.R. Crisler, Beartooth Stereo FM, Box 664, Fayetteville, Arkansas 72702.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-125, adopted May 22, 1989, and released June 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts. For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.

Karl Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 89-14251 Filed 6-14-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-126, RM-6655]

Radio Broadcasting Services; Marlin, TX

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by KRZI, Inc., licensee of Station KRXX(FM), Channel 225A Marlin, Texas, proposing the substitution of Channel 225C2 for Channel 225A at Marlin and modification of the station's license to specify operation on the higher class co-channel. A site restriction of 26.8 kilometers (16.7 miles) west of the city is required, at coordinates 31-22-48 and 97-09-42.

DATES: Comments must be filed on or before August, 1989, and reply comments on or before August 18, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Laura B. Humphries, Esquire, Leventhal, Senter & Lerman, Suite 600, 2000 K Street, NW., Washington, DC 20006-1809 (Counsel for petitioner); and Mr. Van D. Goodall, KRZI, Inc., 1018 N. Valley Mills Dr., Waco, TX 76710 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-126, adopted May 22, 1989, and released June 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio Broadcasting.

Federal Communications Commission.
Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 89-19253 Filed 6-14-89; 8:45 am]

BILLING CODE 6712-10-M

47 CFR Part 73

[MM Docket No. 89-126, RM 6669]

Radio Broadcasting Services; Miramar Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Carol Renee Carter ("petitioner") seeking the allotment of Channel 292A to Miramar Beach, Florida, as its first local FM service. However, the petitioner is requested to provide additional information in an effort to establish that Miramar Beach is a *bona fide* "community" for allotment purposes. The coordinates for the allotment are North Latitude 30-22-30 and West Longitude 86-20-00.

DATES: Comments must be filed on or before August 3, 1989, and reply comments on or before August 18, 1989.

ADDRESS: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: David A. Gross, Sutherland, Asbill & Brennan 1275 Pennsylvania Avenue, NW., Washington, DC 20004-2404 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau (202) 634-6530

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-126 adopted May 22, 1989, and released June 12, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800,

2100 M Street, NW., Suite 140,
Washington, DC 20037.

Provisions of the Regulatory
Flexibility Act of 1980 do not apply to
this proceeding.

Members of the public should note
that from the time a Notice of Proposed
Rule Making is issued until the matter is
no longer subject to Commission
consideration or court review, all *ex
parte* contacts are prohibited in
Commission proceedings, such as this
one, which involve channel allotments.
See 47 CFR 1.1204(b) for rules governing
permissible *ex parte* contact.

For information regarding proper filing
procedures for comments, See 47 CFR
1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission
Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.
[FR Doc. 89-14255 Filed 6-14-89; 8:45 am]
BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-127; RM-6673]

Radio Broadcasting Services; Hilo, HI

AGENCY: Federal Communications
Commission.

ACTION: Proposed rule.

SUMMARY: This document requests
comments on a petition by Phillip Lee
Brewer ("petitioner") seeking the
substitution of Channel 250C1 for
Channel 250C2 at Hilo, Hawaii, and the
modification of its license for Station
KKBG-FM to specify the higher powered
channel. Channel 250C1 can be allotted
to Hilo in compliance with the
Commission's minimum distance
separation requirements and can be
used at Station KKBG-FM's present
transmitter site. The coordinates for this
allotment are North Latitude 19-44-11
and West Longitude 155-01-48. In
accordance with Section 1.420(g) of the
Commission's rules, we shall not accept
competing expressions of interest in use
of Channel 250C1 at Hilo or require the
petitioner to demonstrate the
availability of an additional equivalent
channel for use by interested parties.

DATES: Comments must be filed on or
before August 3, 1989, and reply
comments on or before August 18, 1989.

ADDRESS: Federal Communications
Commission, Washington, D.C. 20554. In
addition to filing comments with the
FCC, interested parties should serve the
petitioners, on their counsel or

consultant, as follows: Roger J. Metzler,
McQuaid, Bedford, Brayton, Clausen
and Metzler, 650 California Street, Suite
800, San Francisco, California 94108
(Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT:
Nancy J. Walls, Mass Media Bureau
(202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a
summary of the Commission's Notice of
Proposed Rule Making, MM Docket No.
89-127, adopted May 22, 1989, and
released June 12, 1989. The full text of
this Commission decision is available
for inspection and copying during
normal business hours in the FCC
Dockets Branch (Room 230), 1919 M
Street, NW., Washington, DC. The
complete text of this decision may also
be purchased from the Commission's
copy contractors, International
Transcription Service, (202) 857-3800,
2100 M Street, NW., Suite 140,
Washington, DC 20037.

Provisions of the Regulatory
Flexibility Act of 1980 do not apply to
this proceeding.

Members of the public should note
that from the time a Notice of Proposed
Rule Making is issued until the matter is
no longer subject to Commission
consideration or court review, all *ex
parte* contacts are prohibited in
Commission proceedings, such as this
one, which involve channel allotments.
See 47 CFR 1.1204(b) for rules governing
permissible *ex parte* contact.

For information regarding proper filing
procedures for comments, See 47 CFR
1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission,
Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.
[FR Doc. 89-14254 Filed 6-14-89; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 350 and 390

[FHWA Docket No. MC-89-5]

RIN 2125-AC27

Federal Motor Carrier Safety Regulations; General; Commercial Motor Vehicle Definition

AGENCY: Federal Highway
Administration (FHWA), DOT.

ACTION: Extension of comment period.

SUMMARY: The FHWA issued an
advance notice of proposed rulemaking
(ANPRM) which was published in the
Federal Register on February 17, 1989
(54 FR 7224). Through this ANPRM, the
FHWA requested comments from all
interested parties regarding the issue of
the gross vehicle weight rating (GVWR)
criterion used to define a "commercial
motor vehicle" subject to the Federal
Motor Carrier Safety Regulations
(FMCSRs). The comment period is
scheduled to close on June 19, 1989. The
FHWA has received requests from the
American Association of Motor Vehicle
Administrators (AAMVA), the
American Trucking Associations (ATA),
and the National Private Truck Council
(NPTC) for an extension of the comment
period. These organizations requested
the extension to allow them more time
to fully respond to the docket and to
have the issues raised in the ANPRM
discussed and voted on at their
respective national meetings. Because of
the significance of this ANPRM, the
FHWA is granting this request for an
extension.

DATE: Comments must be received on or
before November 3, 1989.

ADDRESS: Submit written, signed
comments to FHWA Docket No. MC-89-
5, Room 4232, HCC-10, Office of the
Chief Counsel, Federal Highway
Administration, 400 Seventh Street, SW.,
Washington, DC 20590. All comments
received will be available for
examination at the above address from
8:30 a.m. to 3:30 p.m. ET, Monday
through Friday, except legal holidays.
Those desiring notification of receipt of
comments must include a self-
addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT:
Mr. Thomas P. Kozlowski, Office of
Motor Carrier Standards, (202) 366-2981,
or Mr. Thomas P. Holian, Office of the
Chief Counsel, (202) 366-1350, Federal
Highway Administration, Department of
Transportation, 400 Seventh Street, SW.,
Washington, DC 20590. Office hours are
from 7:45 a.m. to 4:15 p.m., ET, Monday
through Friday, except legal holidays.

SUPPLEMENTARY INFORMATION: The
FMCSRs (49 CFR Parts 390-399)
generally apply to the operation of
commercial motor vehicles in interstate
commerce. 53 FR 18042, 18052 (49 CFR
390.3). Commercial motor vehicles are
defined to mean any self-propelled or
towed vehicle used on public highways
in interstate commerce to transport
passengers or property when: (a) The
vehicle has a gross vehicle weight rating
or gross combination weight rating of
10,001 or more pounds; or (b) the vehicle
is designed to transport more than 15

passengers, including the driver, or (c)
the vehicle is used in the transportation
of hazardous materials in a quantity
requiring placarding under regulations
issued by the Secretary under the
Hazardous Materials Transportation
Act (49 U.S.C. App. 1801-1813). 53 FR at
18053 (49 CFR 390.5). On February 27,
1989, the FHWA published an ANPRM
asking for comment on the issue of
whether the GVWR criterion of the
CMV definition should be changed from
10,000 lbs. to 26,000 lbs. 54 FR 7224. On
April 3, 1989, the FHWA, at the request
of the Maryland Department of
Transportation, extended the comment
period on the ANPRM to June 19, 1989.
54 FR 13391.

The FHWA has received a request
from the AAMVA for a further
extension of the comment period. The
AAMVA has advised the FHWA that the
issue of CMV size subject to Federal
and/or State safety regulations has
generated considerable debate within
the law enforcement community

The AAMVA Police Traffic Services
Subcommittee on Commercial Vehicle
Enforcement has developed a draft
recommendation requesting that the U.S.
Department of Transportation review
the FMCSRs weight threshold with the
aim of increasing that threshold to
26,001 pounds. This recommendation
will be presented to both the Regional
and International Conferences of the
AAMVA. In order to allow the AAMVA
time to summarize and forward
comments from these meetings, the
FHWA is granting the AAMVA's
request for an extension.

The FHWA also received separate
requests from the ATA and the NPTC
for extension of the comment period to
November 3 and August 21. Both
organizations cited similar reasons for
their respective requests as stated by
the AAMVA. As noted by both
organizations, the issues raised in the
ANPRM are significant and will have
far-reaching impacts on the safety of all
truck operations and the general public.

They would like to address these issues
at their respective national meetings.
The ATA annual meeting is scheduled
for October 30, 1989, and the NPTC
Board of Directors will be meeting in
late July. The comment period is
therefore extended through November 3,
1989.

Authority: 49 U.S.C. App. 2505 and 3102; 49
CFR 1.48.

List of Subjects in 49 CFR Parts 350 and 390

Grant Programs—transportation,
Highway safety, Highways and Roads,
Motor Carriers, Motor Vehicle Safety.

(Catalog of Federal Domestic Assistance
Program Number 20.217, Motor Carrier
Safety)

Issued on: June 9, 1989.

R.D. Morgan,

Executive Director.

[FR Doc. 89-14270 Filed 6-14-89; 8:45 am]

BILLING CODE 4910-22-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

June 9, 1989.

The Department of Agriculture has submitted to OMB for review the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) An indication of whether section 3504(h) of Pub. L. 96-511 applies; (9) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404-W Admin. Bldg., Washington, DC 20250, (202) 447-2118.

Extension

- Animal and Plant Health Inspection Service.

7 CFR 322 Honeybees and Honeybee Semen
None
On Occasion
Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 40 responses; 5 hours; not applicable under 3504(h)
Phillip Lima (301) 436-8677

- Animal and Plant Health Inspection Service.

7 CFR 319.76 Exotic Bee Diseases and Parasites
None
On occasion
Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 210 responses; 21 hours; not applicable under 3504(h)
Phillip Lima (301) 436-8677
Donald E. Hulcher,
Acting Departmental Clearance Officer.
[FR Doc. 89-14207 Filed 6-14-89; 8:45 am]
BILLING CODE 3410-01-M

Forest Service

Mendocino National Forest, Colusa County, CA; Intent To Prepare an Environmental Impact Statement

The Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for a proposal to implement commercial timber sales within the South Fork Stony Creek watershed area on the Stonyford Ranger District; this EIS will encompass a portion of the Snow Mountain (#B5144) released-roadless area.

A range of alternatives for this area will be considered. One of these will be no road construction or timber harvest. Other alternatives will consider implementing intensive timber management activities (including harvest of timber and road construction) to low intensity timber management (minimal harvest with no road construction).

Federal and State, and local agencies; and other individuals or organizations who may be interested in or affected by the decision will be invited to participate in the scoping process. This process will include:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues of those which have been covered by a previous environmental review.
4. Determination of potential cooperating agencies and assignment of responsibilities.

The Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species

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habitat if any such species are found to exist in the watershed.

The Forest Supervisor will hold a public meeting at the Willows City Hall (Council Chambers), 201 N. Lassen St., Willows, California, at 7:00 p.m., on July 17, 1989.

Daniel K. Chisholm, Forest Supervisor, Mendocino National Forest, is the responsible official.

The analysis is expected to take about 6 months. The draft environmental impact statement should be available for public review by January 1, 1990. The final environmental impact statement is scheduled for completion by March 1, 1990.

Written comments and suggestions concerning the analysis should be sent to James Glachino, District Ranger, Stonyford Ranger District, Mendocino National Forest, Stonyford, California, 95979, by August 20, 1989.

Questions about the proposed action and environmental impact statement should be directed to Janice Gauthier, Planning Forester, Stonyford Ranger District, Mendocino National Forest, Stonyford, California, 95979, phone 916-963-3128.

Date: June 8, 1989

Daniel K. Chisholm,

Forest Supervisor.

[FR Doc. 89-14279 Filed 6-14-89; 8:45 am]

BILLING CODE 3410-11-M

Willow Mountain Timber Sales and Roads, Rio Grande National Forest, Conejos County, CO

AGENCY: Forest Service, USDA.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement.

SUMMARY: The Department of Agriculture, Forest Service will prepare an environmental impact statement for a proposal to implement a number of timber sales, range and wildlife habitat improvement projects, water yield increase projects, and road building activities in the Willow Mountain area of the Conejos Peak Ranger District, Rio Grande National Forest.

DATE: Comments concerning the scope of the analysis should be received in writing by September 1, 1989.

ADDRESSES: Send written comments to James B. Webb, Forest Supervisor, Rio

Grande National Forest, 1803 W. Hwy. 160, Monte Vista, Colorado 81144.

FOR FURTHER INFORMATION CONTACT: Robert L. Mitchell, Conejos Peak District Ranger, 21481 State Highway 285, La Jara, Colorado 81140 (719) 274-5193).

SUPPLEMENTARY INFORMATION: This environmental impact statement is being written because the proposed timber harvest and road building projects are expected to have long-term effects on the character of the area. In addition, the recreation opportunities will shift from a more roadless, semi-primitive form to more roaded natural opportunities.

The Rio Grande National Forest Land and Resource Management Plan (Forest Plan) was approved on January 4, 1985. The Forest Plan identified the Willow Mountain area as one scheduled to have timber and road building activities by 1991.

The implementation of the intent of the Forest Plan in the Willow Mountain area relates to issues identified during the scoping process of the environmental analysis for the Forest Plan. Questions were raised regarding how the Forest can best support local dependent industries, and how should the Forest respond to the increased demand for water. Another issue related to the Forest and its ability to provide for primitive and semi-primitive recreation opportunities in the future. These issues were addressed in Chapters III and IV of the final environmental impact statement.

The Willow Mountain area is located in the south part of the Rio Grande National Forest-West Part, just west of La Jara, Colorado. The area comprises about 58,000 acres of forest and rangeland that is relatively undeveloped. The Willow Mountain area was considered for inclusion into the Wilderness System during the Roadless Area Review (RARE II) study of the 1970's. It was not included, and that decision was not appealed.

A range of alternatives will be presented and analyzed for environmental impacts. One of these will be the no action alternative, whereby no new management initiatives will be started in the area. Alternatives will include a variety of project combinations. Projects include timber sales for fiber production and utilization, wildlife habitat improvements, projects for water yield increases through vegetation treatments, and road building activities.

Federal, State, local agencies, concerned citizens, and other interested publics will be invited to share their issues and concerns regarding the

Willow Mountain projects. This scoping process will include:

1. Identification of potential issues through public meetings, media, citizens participation groups, newsletters, open houses, and personal contacts.
2. Identification of issues to be dealt with in depth.
3. Elimination of insignificant issues.
4. Determination of potential cooperating agencies.

The analysis is expected to take about 6 months. The draft environmental impact statement should be available for public review by September 1, 1989. The final environmental impact statement is scheduled to be completed by January 1, 1990.

James B. Webb,

Forest Supervisor.

Date: May 30, 1989.

Document Origination and Source: USDA, Forest Service, R-2, Rio Grande National Forest, J. Rawinski, 3-7-89, 719-852-5941.

[FR Doc. 89-14258 Filed 6-15-89; 8:45 am]

BILLING CODE 3410-11-M

Northern Region; Exemption of Salvage Timber Sale Project From Appeal

AGENCY: Forest Service, USDA.

ACTION: Notification that a salvage timber sale project is exempted from appeals under provisions of 36 CFR Part 217.

SUMMARY: This is a notification that the decision to implement the Cooke City Salvage Timber Sale in the area of the Storm Creek Fire on the Gallatin National Forest is exempted from appeal. This is in conformance with provisions of 36 CFR 217.4(a)(11) as published January 23, 1989, at Vol. 54, No. 13, pages 3342-3370.

EFFECTIVE DATE: Effective on issuance of the Decision Notice for the Cooke City Salvage Timber Sale.

FOR FURTHER INFORMATION CONTACT: Robert S. Gibson, Forest Supervisor, Gallatin National Forest, P.O. Box 130, Bozeman, MT 59715.

Background

In 1988, the Storm Creek fire burned over 46,000 acres of the Gallatin National Forest. Most of the burn was within the Absaroka-Beartooth Wilderness, but about 5000 acres was outside the wilderness, directly surrounding the communities of Cooke City and Silver Gate, Montana. Approximately 2500 acres of this is suitable for timber production. In September and October 1988, an interdisciplinary team surveyed much of

the burned area to assess the damage to the resources that had occurred. Burn damage included damage to vegetation, soils, and water resources plus damage to habitat essential to the endangered grizzly bears and habitat for other major species of wildlife.

In October of 1988, the rehabilitation team treated the most severely burned areas on steep slopes by placing log erosion barriers and seeding with grasses. Other areas were only seeded with grass.

A Forest interdisciplinary team identified the need to salvage the timber which was burned in as short a time as possible so the logs would remain merchantable. Merchantable timber in the area averages 12" in diameter at breast height with relatively little defect. Rapid drying of fire-killed trees is resulting in cracking or "checking", especially of the smaller diameter trees, which will quickly reduce their utilization as sawlogs.

It is also desirable to complete the logging before the seedlings which will regenerate naturally are large enough to be damaged. During this first season following the fire, there will be very little germination of seed. In some areas, the scarification of the soils by the logging operations and the site preparation will facilitate the natural regeneration of the burned stands and establish new stands more quickly.

Planned Actions

Early in 1989 the Gallatin National Forest Supervisor proposed the salvage harvest of the burned timber outside wilderness. The environmental analysis of this action was begun in mid-January. The interdisciplinary team assigned to the analysis began with an initial scoping session on January 20, 1989. After public meetings, press releases, and contacts with individuals and State and Federal agencies, four major issues were identified. These were:

1. Whether to harvest in roadless areas.
2. Whether to construct logging roads and use logging equipment on steep, wet, or rocky sites of low productivity.
3. Whether removing the dead timber would reduce grizzly bear habitat security and increase the risk of grizzly/human confrontations.
4. Whether removing the dead timber would reduce moose habitat security.

The interdisciplinary team developed four alternatives to analyze, including the No Action Alternative. The effects of these alternatives are disclosed in an Environmental Assessment which was prepared for the proposal. The Proposed Action (Alternative C) would harvest

about 1300 acres of burned land and produce about 12 MMBF of timber. Approximately 5 miles of temporary logging roads would be constructed and obliterated after harvest. Roadless areas would not be entered and security area adjacent to the harvest areas would be left to provide for grizzly bear security during the harvest. Steep and wet and rocky lands would be avoided in this alternative. Analysis shows that this alternative is the most cost effective for meeting the objectives of salvage.

The U.S. Fish and Wildlife Service was consulted about the effects of this proposal on the grizzly bear. They concurred with the biological evaluation done by the Forest that the project would have "no effect" on the bear.

The sale and accompanying work is designed to accomplish the objectives as quickly as possible and minimize the amount of salvage volume lost. To expedite this sale project and the accompanying work, and to prevent delays by appeals, the process according to 36 CFR Part 217 is being followed. Under this Regulation the following is exempt from appeal:

Decisions related to rehabilitation of National Forest System lands and recovery of forest resources resulting from natural disasters or other natural phenomena such as wildfires . . . when the Regional Forester . . . determines and gives notice in the *Federal Register* that good cause exists to exempt such decisions from review under this part.

Upon publication of this notice, The Decision Notice for the Cooke City Timber Salvage Sale project will be signed by the Forest Supervisor. Therefore, this project will not be subject to review under 36 CFR Part 217.

Date: June 7, 1989.
Christopher D. Risbrudt,
Deputy Regional Forester, Northern Region.
[FR Doc. 89-14153 Filed 6-14-89; 8:45 am]
BILLING CODE 3410-11-M

Packers and Stockyards Administration

Amendment to Certification of Central Filing System of Mississippi

The Statewide central filing system of Mississippi has been previously certified, pursuant to Section 1324 of the Food Security Act of 1985, on the basis of information submitted by Dick Molpus, Secretary of State, for specified farm products produced in that State (51 FR 33847, September 22, 1986).

The certification is hereby amended on the basis of information submitted by Dick Molpus, Secretary of State, for all farm products produced in that State.

This is issued pursuant to authority delegated by the Secretary of Agriculture.

Authority: Section 1324(c)(2), Pub. L. 99-198, 99 Stat. 1535, 7 U.S.C. 1631(c)(2); 7 CFR 2.17(e)(3), 2.56(a)(3), 51 FR 22795.

Dated: June 9, 1989.

Calvin W. Watkins,
Acting Administrator, Packers and Stockyards Administration.
[FR Doc. 89-14260 Filed 6-14-89; 8:45 am]
BILLING CODE 3410-KD-M

Soil Conservation Service

Camp Palmer Critical Area Treatment RC&D Measure, Ohio; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Camp Palmer Critical Area Treatment RC&D Measure, Fulton County, Ohio.

FOR FURTHER INFORMATION CONTACT: Joseph C. Branco, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614) 469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impact on the environment. As a result of these findings, Joseph C. Branco, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for critical area treatment along 500 feet of a step streambank escarpment that is eroding and endangering adjacent cabins. Planned works of improvement include the placement of fill along the escarpment, moving the centerline of the creek, and the placement of rock riprap on the streambanks adjacent to the escarpment.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and

interested parties. A limited number of copies of the FONSI are available to full single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Joseph C. Branco.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Roger A. Hansen,
Deputy State Conservationist.
June 7, 1989.
[FR Doc. 89-14273 Filed 6-14-89; 8:45 am]
BILLING CODE 3410-13-M

Fayetteville School Land Drainage RC&D Measure, Ohio; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Fayetteville School Land Drainage RC&D Measure, Brown County, Ohio.

FOR FURTHER INFORMATION CONTACT: Joseph C. Branco, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614) 469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impact on the environment. As a result of these findings, Joseph C. Branco, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for drainage improvement on eighteen acres of land the Fayetteville School uses for school and community activities. Planned works of improvement include

the installation of eighteen acres of systematic subsurface drainage to improve the use of the area for activities.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Joseph C. Branco.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Roger A. Hansen,
Deputy State Conservationist.
June 7, 1989.
[FR Doc. 89-14274 Filed 6-14-89; 8:45 am]
BILLING CODE 3410-16-M

Kenton High School Land Drainage RC&D Measure, Ohio; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Kenton High School Land Drainage RC&D Measure, Hardin County, Ohio.

FOR FURTHER INFORMATION CONTACT: Joseph C. Branco, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)-469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impact on the environment. As a result of these findings, Joseph C. Branco, State Conservationist, has determined that the

preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for drainage improvement of the land around the Kenton High School. Planned works of improvement include the installation of a grassed waterway with subsurface drain to carry away excess surface water.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Joseph C. Branco.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Roger A. Hansen,
Deputy State Conservationist.
June 7, 1989.
[FR Doc. 89-14275 Filed 6-14-89; 8:45 am]
BILLING CODE 3410-16-M

Opossum Run Critical Area Treatment RC&D Measure, Ohio; Finding of No Significant Impact

AGENCY: Soil Conservation Service, Department of Agriculture.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Opossum Run Critical Area Treatment RC&D Measure, Paulding County, Ohio.

FOR FURTHER INFORMATION CONTACT: Joseph C. Branco, State Conservationist, Soil Conservation Service, Federal Building, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone: (614)-469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this

federally assisted action indicates that the project will not cause significant local, regional, or national impact on the environment. As a result of these findings, Joseph C. Branco, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

This measure concerns a plan for critical area treatment along Garfield Avenue and Opossum Run Creek. The creek bank adjacent to Garfield Avenue is slipping and endangers the stability of Garfield Avenue. Planned works of improvement include the placement of rock riprap along 400 feet of Opossum Run, establishing a stable streambank slope and berm adjacent to Garfield Avenue, and establishing vegetation on the disturbed areas.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Joseph C. Branco.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.901—Resource Conservation and Development Program—and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Roger A. Hansen,
Deputy State Conservationist.
June 7, 1989.
[FR Doc. 89-14276 Filed 6-14-89; 8:45 am]
BILLING CODE 3410-16-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Polish People's Republic

June 9, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

BEST COPY AVAILABLE

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: June 16, 1989.

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

The current limits for certain wool and man-made fiber textile products are being increased variously, for carryover and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the **CORRELATION:** Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 53 FR 44937, published on November 7, 1988). Also see 53 FR 49584, published on December 8, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

June 9, 1989.

*Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.*

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 2, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Poland and exported during the twelve-month period which began on January 1, 1989 and extends through December 31, 1989.

Effective on June 16, 1989, the directive of December 2, 1988 is amend to include the following adjusted limits, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Polish People's Republic:

Category	Adjusted 12-month limit ¹
Sublevel in Group I (Aggregate):	
611.....	1,394,142 square meters.

Category	Adjusted 12-month limit ¹
Sublevel in Group III:	
433.....	8,135 dozen.
435.....	6,935 dozen.
Group V:	
443/643/644.....	206,796 numbers.

¹ The limits have not been adjusted to account for any imports exported after December 31, 1988.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-14228 Filed 6-14-89; 8:45 am]

BILLING CODE 3510-DR-M

Amendment of a Call Level for Certain Cotton and Man-Made Fiber Textile Products Exported From the Dominican Republic

June 12, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Amending a previous notice announcing a request for consultations.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212.

A **Federal Register** notice published on March 21, 1989 (54 FR 11560) announced that the United States Government requested consultations with the Government of the Dominican Republic with respect to imports of cotton and man-made fiber textile products in Categories 351/651. The notice further stated that, if no solution is agreed upon in consultations with the Dominican Republic, the Committee for the Implementation of Textile Agreements may establish a 12-month limit at 765,822 dozen for Categories 351/651.

The purpose of this notice is to advise the public that this limit is being amended to 944,744 dozen to take into account a previous specific limit for Category 351.

The United States remains committed to finding a solution concerning these categories. Should such a solution be reached in consultations with the Government of the Dominican Republic,

further notice will be published in the **Federal Register**.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 89-14296 Filed 6-14-89; 8:45 am]

BILLING CODE 3610-DR-M

DEPARTMENT OF DEFENSE

The Joint Staff; National Defense University Board of Visitors

AGENCY: Department of Defense.

ACTION: Notice of Meeting.

SUMMARY: The President, National Defense University, has scheduled a meeting of the Board of Visitors.

DATE: The meeting will be held on July 10, 1989.

ADDRESS: The meeting will be held in the Hill Conference Center of Theodore Roosevelt Hall, Building #61, Fort Lesley J. McNair.

FOR FURTHER INFORMATION CONTACT: The Director, University Plans and Programs, National Defense University, Fort Lesley J. McNair, Washington, DC 20319-6000. To reserve space, interested persons should phone (202) 475-1145.

SUPPLEMENTARY INFORMATION: The agenda will include present and future educational and research plans for the National Defense University and its components. The meeting is open to the public, but the limited space available for observers will be allocated on a first-come, first-served basis.

Linda M. Bynum,
*OSD Federal Register Liaison Officer,
Department of Defense.*

June 9, 1989.

[FR Doc. 89-14248 Filed 6-14-89; 8:45 am]

BILLING CODE 3810-01-M

Office of the Secretary

Education Benefits Board of Actuaries

AGENCY: Department of Defense.

ACTION: Notice of Meeting.

SUMMARY: A meeting of the Board has been scheduled to execute the provisions of Chapter 101, title 10, United States Code (10 U.S.C. 2006(e) et. seq.). The Board shall review DoD actuarial methods and assumptions to be used in the valuation of the GI Bill and determine per capita normal costs to be implemented by DoD in FY89. Persons desiring to attend the DoD Education Benefits Board of Actuaries meeting must notify Ms. Dorothy Hemby at 690-6336 by July 17, 1989. Notice of

this meeting is required under the Federal Advisory Committee Act.

DATE: July 20, 1989, 1:00 p.m. to 5:00 p.m.

ADDRESS: Room 1E801 (#1), the Pentagon (River Entrance).

FOR FURTHER INFORMATION CONTACT: Benjamin I. Gottlieb, Chief Actuary, DoD Office of the Actuary, 4th Floor, 1600 Wilson Boulevard, Arlington, Virginia 22209-2593, (202) 696-5869.

L.M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

June 9, 1989

[FR Doc. 89-14247 Filed 6-14-89; 8:45 am]

BILLING CODE 3810-01-M

DEPARTMENT OF ENERGY

Office of Assistant Secretary for International Affairs and Energy Emergencies

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Spain concerning Civil Uses of Atomic Energy.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following retransfer:

RD-EU(SP)-19, for the transfer from Spain to France of 29 fuel elements and 4 fuel plates containing 31.040 kilograms of uranium, enriched to an average of 82 percent in the isotope uranium-235, for use in material test reactors within the European Community.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: June 12, 1989.

Richard H. Williamson,

Deputy Assistant Secretary for International Affairs

[FR Doc. 89-14293 Filed 6-14-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

Application Filed With the Commission

June 9, 1989.

Take notice that the following hydroelectric application has been filed with the Federal Energy Regulatory Commission and is available for public inspection.

a. Type of Application: Transfer of License.

b. Project No.: 8438-042.

c. Date filed: May 1, 1989.

d. Applicant: Idaho Natural Energy, Inc. (Transferor) and Smith Falls Hydropower. (Transferee)

e. Name of Project: Smith Creek.

f. Location: On Smith Creek, in Idaho Panhandle National Forest, in Boundary County, Idaho.

g. Filed Pursuant to: Federal Power Act 18 U.S.C. 791(a)-825(r).

h. Applicant Contact:

Transferor: Mr. Carl W. Barton, Prince, Yeates & Geldzahler, City Centre I, Suite 900, 175 East Fourth South, Salt Lake City, UT 84111, (801) 524-1000
Transferee: Mr. McNeill Watkins II, Bishop, Cook, Purcell & Reynolds, 1400 L Street, NW., Washington, DC 20005, (202) 371-5785

i. FERC Contact: Michael Spencer at (202) 376-1669.

j. Comment Date: June 20, 1989.

k. Description of Proposed Action: On April 10, 1987, a major license was issued to Idaho Natural Energy, Inc. for the construction, operation, and maintenance of the Smith Creek project. It is proposed to transfer the license to Smith Falls Hydropower. The proposed transfer will not result in any changes to the proposed development. The Transferor certifies that it has fully complied with the terms and conditions of the license. The Transferee accepts all the terms and conditions of the license and agrees to be bound thereby to the same extent as though it were the original licensee.

l. This notice also consists of the following standard paragraphs: B and C.

Standard Paragraphs

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATIONS," "PROTEST" or "MOTION TO INTERVENE," as applicable, and the project number of the particular application to which the filing is in response. Any of these documents must be filed by providing

the original and the number of copies required by the Commission's regulations to: the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to: the Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 204-RB, at the above address. A copy of any notice of intent, competing application, or motion to intervene must also be served upon each representative of the applicant specified in the particular application.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-14186 Filed 6-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP86-87-007]

Questar Pipeline Co.; Tariff Filing

June 9, 1989.

Take notice that Questar Pipeline Company on June 5, 1989, tendered for filing and acceptance Substitute First Revised Sheet Nos. 81 and 106 to Original Volume No. 1-A of its FERC Gas Tariff.

Questar Pipeline states that this filing corrects certain typographical and transitional errors on tariff sheets that were filed in its May 22, 1989, compliance tariff filing in Docket No. RP86-87-005.

Questar Pipeline requests an effective date of June 1, 1989, and states it has provided a copy of this filing to Questar Pipeline's transportation and sales customers and interested public service commissions.

Any persons desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 N. Capitol St., NE., Washington, DC 20426, in accordance with Rules 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR

385.211 and 385.214). All such protests should be filed on or before June 18, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-14187 Filed 6-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-150-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

June 8, 1989.

Take notice that Texas Eastern Transmission Corporation (Texas Eastern) on June 2, 1989 tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, six copies of the following tariff sheet:

Substitute Original Sheet No. 483F

Texas Eastern states that this filing makes the revision to Texas Eastern's April 21, 1989 tariff filing in Docket No. RP89-150-000 as required by the Commission's May 19, 1989 order.

Texas Eastern states that it filed tariff sheets on April 21, 1989 in establish procedures to recover take-or-pay charges billed to Texas Eastern by Texas Gas Transmission Corporation (Texas Gas) proposed in Texas Gas's Docket No. RP89-119. Stating that the volumetric surcharge becomes an integral part of the sales or transportation rate to which it is attached and should not be separated from that rate and reassigned by the downstream pipeline,¹ the Commission in its May 19, 1989 Order directed Texas Eastern to eliminate a tariff reference to the recovery of Texas Gas's commodity surcharge through the PGA mechanism. Sheet No. 483F is being filed for the sole purpose of complying with the Commission's May 19, 1989 order by removing the above stated reference.

The proposed effective date of the above tariff sheet is May 1, 1989, the effective date granted by the Commission for Texas Eastern's original filing in Docket No. RP89-150-000 on April 21, 1989.

Copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

¹ May 19 Order Mimeo p. 1 (citation omitted).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before June 15, 1989.

Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-14188 Filed 6-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. OR89-2-000]

Trans Alaska Pipeline System; Petition for Declaratory Order

June 8, 1989.

Take notice that on May 26, 1989, Amerada Hess Pipeline Corporation, ARCO Pipe Line Company, BP Pipelines (Alaska) Inc., Exxon Pipeline Company, Mobil Alaska Pipeline Company, Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company (collectively "the Carriers") filed a petition for declaratory order requesting that the Commission institute an investigation of certain provisions of the Carriers' tariffs governing transportation service provided on the Trans Alaska Pipeline System (TAPS). Specifically, the Carriers request that the Commission investigate the provisions of the Carriers' tariffs governing monetary adjustments among shippers for differences in the quality of their petroleum (the Quality Bank provisions). The Carriers request that that investigation be conducted in corporation with the Alaska Public Utilities Commission (APUC), where such an investigation is already pending, and that the Commission and the APUC conduct concurrent hearings. The Carriers seek a declaratory order from the Commission that the Interstate Commerce Act requires such monetary adjustments to be uniform, regardless of whether the shipments affected are interstate or intrastate. Finally, the Carriers seek a declaration by the Commission that the methodology presently used by the Carriers for determining the level of the Quality Bank adjustment, which has previously

been approved by the Commission,¹ continues to be just and reasonable.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure [18 CFR 358.214, 385.211 (1988)]. All such motions or protests should be filed on or before June 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-14189 Filed 6-14-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TA89-1-52-000]

Western Gas Interstate Co.; Proposed Changes in FERC Gas Tariff

June 9, 1989.

Take notice that Western Gas Interstate Company ("Western"), on June 5, 1989, tendered for filing proposed changes to its FERC Gas Tariff, First Revised Volume No. 1, the following tariff sheet:

Sixteenth Revised Sheet No. 10

The proposed effective date for the tariff sheet is August 1, 1989.

Western also submitted for filing the following alternate tariff sheet:

Alternate Sixteenth Revised Sheet No. 10

The proposed effective date for the tariff sheet is August 1, 1989.

Western states that, among other things, its filing proposes changes to its rates in accordance with the terms of the Purchased Gas Adjustment Clause of its FERC Gas Tariff, which permits recovery of changes in the cost of gas and of unrecovered purchased gas costs.

Western further states that the proposed changes provide for under the primary sheet:

(1) a decrease in cost under Western's Rate Schedule G-N of 3.09 cents per Mcf; and (2) an increase in cost under Western's Rate Schedule G-S of 15.70 cents per Mcf.

¹ See Trans Alaska Pipeline System, 29 FERC ¶ 61,123 (1984).

The primary sheet reflects the direct refund or direct billing of Account No. 191 balances as proposed by Western in Docket No. 89-179-000.

Western further states that the proposed changes in the case of the alternate sheet provide for:

(1) A decrease in cost under Western's Rate Schedule G-N of 0.45 cents per Mcf; and (2) a decrease in cost under Western's Rate Schedule G-S of 31.59 cents per Mcf.

Western states that it was unable to make a timely filing of the instant changes 60 days prior to the proposed effective date of August 1, 1989. For the reasons set forth in its filing, Western is requesting appropriate waivers of the Commission's Regulations in order for the tariff sheet to become effective on August 1, 1989.

Finally, Western states that copies of the filing were served upon Western's transmission system customers and interested state regulatory commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before June 29, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 89-14190 Filed 6-14-89; 8:45 am]

BILLING CODE 6717-01-M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1783]

Petitions for Reconsideration of Actions in Rule Making Proceedings

Petitions for reconsideration have been filed in the Commission rule making proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in Room 239, 1919 M Street, NW., Washington, DC, or may be purchased from the Commission's copy contractor International Transcript Service (202-857-3800). Oppositions to

these petitions must be filed July 3, 1989. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b), Table of Allotments, FM Broadcast Stations. (Pinewood, South Carolina).

Number of petitions received: 1.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-14166 Filed 6-14-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Agency Forms under Review

June 9, 1989.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collection of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following report, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within five calendar days of the date of publication in the Federal Register.

ADDRESS: Comments, which should refer to the OMB Docket number should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 and 5:15 p.m. except as provided in 261(a) of the Board's Rules

Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB Desk Officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal to approve under OMB delegated authority the extension, with revision, of the following reports:

1. *Report title:* Report of Selected Borrowings; Daily Telephone Report of Selected Borrowings; and Report of Repurchase Agreements on U.S. Government and Federal Agency Securities with Specified Holders
Agency form number: FR 2415; FR 2415a; and FR 2415t

OMB Docket number: 7100-0074

Frequency: Daily and Weekly

Reporters: Depository institutions

Estimated number of reporters: 112 (FR 2415); 15 (FR 2415a); 63 (FR 2415t)

Average number of hours per response: 3.75 (FR 2415); 0.33 (FR 2415a); 0.75 (FR 2415t)

Annual reporting hours: 25,584

Small businesses are affected.

General description of report: This information collection is voluntary [12 U.S.C. 248(a), 353 *et seq.*] and is given confidential treatment [5 U.S.C. 552b(4) and b(8)].

This package of reports collects information on selected nonreservable borrowings. The weekly FR 2415 and 2415t, submitted by large commercial banks and thrifts, respectively, collect data on overnight and term repurchase agreements by type of customer. The data are necessary for the construction of the monetary aggregates. In addition, the FR 2415 obtains data on federal funds transactions and repurchase agreement lending. The FR 2415a collects information on repurchase agreements and federal funds from the large money center banks and subsequently provides the Open Market Trading Desk with timely information on these transactions for their market assessments.

Board of Governors of the Federal Reserve System, June 9, 1989.
William W. Wiles,
Secretary of the Board.

[FR Doc. 89-14220 Filed 6-14-89; 8:45 am]
 BILLING CODE 6210-01-M

**Banc One Corp. Columbus, OH;
 Proposal To Offer Investment Advice
 and Securities Brokerage Services on
 a Combined Basis to Institutional and
 Retail Customers and To Engage in
 Other Securities Related Activities**

Banc One Corporation, Columbus, Ohio ("Applicant"), has applied, pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and section 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), for permission to engage *de novo* through its wholly owned subsidiary, Banc One Brokerage Corporation, Columbus, Ohio ("Company"), in offering combined investment advice and securities brokerage services to institutional and retail customers. Applicant also proposes that Company engage in investment advisory activities and bank-eligible securities underwriting pursuant to sections 225.25(b)(4) and 225.25(b)(16) of the Board's Regulation Y, respectively (12 CFR 225.25 (b)(4) and (b)(16)).

Company currently conducts discount brokerage activities pursuant to section 225.25(b)(15) of the Board's Regulation Y (12 CFR 225.25(b)(15)). Company would conduct the proposed activities on a nationwide basis.

Section 4(c)(8) of the Act provides that a bank holding company may, with prior Board approval, engage directly or indirectly in any activities "which the Board after due notice and opportunity for hearing has determined [by order or regulation] to be so closely related to banking or managing or controlling banks as to be a proper incident thereto." The Board has previously found the provision of combined investment advisory and securities brokerage services to institutional and retail customers to be closely related and a proper incident to banking, subject to certain commitments. *See, e.g., Bank of New England Corporation*, 74 Federal Reserve Bulletin 700 (1988).

Applicant proposes certain modifications to the combined investment advisory and securities brokerage services previously approved by the Board. Applicant intends that Company's employees will be paid commissions based on customer

transactions involving mutual fund or unit investment trust shares. Applicant also proposes that Company be permitted to broker and recommend to customers shares of investment companies for which an affiliate serves as investment adviser, with disclosure to the customer.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally so similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (D.C. Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 Federal Register 806 (1984).

In determining whether an activity meets the second, or proper incident to banking, test of section 4(c)(8), the Board must consider whether the performance of the activity by an affiliate of a holding company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices."

Any views or requests for a hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than July 3, 1989. Any request for a hearing must, as required by section 282.3(e) of the Board's Rules of Procedure (12 CFR 282.3(e)), be accompanied by a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

The application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Board of Governors of the Federal Reserve System, June 9, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-14222 Filed 6-14-89; 8:45 am]
 BILLING CODE 6210-01-M

First Financial Bancorp; Correction

This notice corrects a previous *Federal Register* notice (FR Doc. 89-4576) published at page 16164 of the issue for Friday, April 21, 1989.

Under the Federal Reserve Bank of Cleveland, the entry for First Financial Bancorp is amended to read as follows:

1. *First Financial Bancorp*, Monroe, Ohio; to acquire 100 percent of the voting shares of Union Trust Company, Union City, Indiana, which engages in general insurance agency activities in a town with a population of less than 5,000.

Comments on this application must be received by June 29, 1989.

Board of Governors of the Federal Reserve System, June 9, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-14223 Filed 6-14-89; 8:45 am]
 BILLING CODE 6210-01-M

**United States National Bank of
 Oregon; Application for Corporation to
 do Business Under Section 25(a) of
 the Federal Reserve Act**

An application has been submitted for the Board's approval of the organization of a corporation to do business under section 25(a) of the Federal Reserve Act ("Edge Corporation"). The Edge Corporation would operate as a subsidiary of the applicant. The factors that are to be considered in acting on the application are set forth in section 211.4(a) of the Board's Regulation K (12 CFR 211.4(a)).

The application may be inspected at the offices of the Board of Governors or at the Federal Reserve Bank listed for that notice. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identify specifically any questions of fact that are in dispute, and summarize the evidence that would be presented at a hearing. Any person wishing to comment on the application should submit views in writing to be received not later than July 7, 1989.

A. Board of Governors of the Federal Reserve System (William W. Wiles, Secretary) Washington, DC 20551.

1. *United States National Bank of Oregon*, Portland, Oregon; to establish an Edge Act Corporation to be known as U.S. Bank International, Portland, Oregon. This application may be inspected at the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, June 9, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-14221 Filed 6-14-89; 8:45 am]
 BILLING CODE 6210-01-M

**DEPARTMENT OF HEALTH AND
 HUMAN SERVICES**

**Health Care Financing Administration
 Statement of Organization, Functions,
 and Delegations of Authority**

Part F. of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services, Health Care Financing Administration (HCFA), (49 FR 35247, dated September 6, 1984) is amended to include the Secretary's delegation of authority, to the Administrator, HCFA, to conduct a demonstration project to determine the cost-effectiveness of furnishing therapeutic shoes to Medicare beneficiaries with severe diabetic foot disease as authorized under section 4072(e) of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87), Pub. L. No. 100-203.

The specific change to Part F. is described below:

Section F.30., Delegations of Authority, is amended by adding paragraph AA. The new delegation of authority reads as follows:

AA. The authority under section 4072(e) of the Omnibus Budget Reconciliation Act of 1987, Pub. L. No. 100-203, to conduct a demonstration project to test the cost-effectiveness of furnishing therapeutic shoes under the Medicare program to beneficiaries with severe diabetic foot disease.

Reservation of Authority

The authority to make reports to Congress under section 4072(e) of OBRA '87 has been reserved by the Secretary and is not included in this delegation.

The authority herein delegated may be redelegated. This delegation of authority is effective immediately. In addition, I hereby affirm and ratify any actions taken by you which, in effect, involved the exercise of the subject authority prior to the effective date of this delegation.

Date: June 5, 1989.

Louis W. Sullivan,
Secretary, Department of Health and Human Services.

[FR Doc. 89-14169 Filed 6-14-89; 8:45 am]
 BILLING CODE 4120-03-M

**Alcohol, Drug Abuse, and Mental
 Health Administration**

Advisory Committee Meetings in July

AGENCY: Alcohol, Drug Abuse, and Mental Health Administration, HHS.
ACTION: Notice of meetings.

SUMMARY: This notice sets forth the schedule and proposed agendas of the forthcoming meetings of the agency's advisory committees in the month of July 1989.

The Extramural Science Advisory Board, NIMH, will discuss the peer review process that evaluates all grant applications to the NIMH extramural research program. Attendance by the public will be limited to space available.

The initial review committees will be performing initial review of applications for Federal assistance. Therefore, portions of the meetings will be closed to the public as determined by the Administrator, ADAMHA, in accordance with 5 U.S.C. 552(b)(6) and 5 U.S.C. app. 2 10(d).

Notice of these meetings is required under the Federal Advisory Committee Act, Pub. L. 92-463.

Committee Name: Biobehavioral/Clinical Subcommittee of the drug Abuse AIDS Research Review Committee, NIDA.

Date and Time: July 12-13: 9:00 a.m.
Place: Rockville Room, Holiday Inn, Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—July 12: 9:00-9:30 a.m.; Closed—Otherwise.

Contact: Iris O'Brien, Room 10-42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-2620.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Sociobehavioral Research Subcommittee of the Drug Abuse AIDS Research Review Committee, NIDA.

Date and Time: July 12-13: 9:00 a.m.
Place: Halpine Room, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—July 12: 9:00-9:30 a.m.; Closed—Otherwise.

Contact: H. Noble Jones, Room 10-42, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute on Drug Abuse for support of research and research training activities, and makes recommendations to the National Advisory Council on Drug Abuse for final review.

Committee Name: Extramural Science Advisory Board, NIMH.

Date and Time: July 17-18: 8:30 a.m.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20857.

Status of Meeting: Open.

Contact: Tony Pollitt, Room 17C-26, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-3175.

Purpose: The Committee advises the Secretary of Health and Human Services, the Administrator, Alcohol, Drug Abuse, and Mental Health Administration, and the Director, National Institutes of Mental Health, on the direction, scope, balance, and emphasis of the Institute's extramural science programs.

Committee Name: Mental Health AIDS Research Review Committee, NIMH.

Date and Time: July 17-19, 8:30 a.m.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Status of Meeting: Open—July 17: 8:30-9:15 a.m.; Closed—Otherwise.

Contact: Irma Fisher, Room 9C-15, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857, (301) 443-6470.

Purpose: The Committee is charged with the initial review of applications for assistance from the National Institute of Mental Health for support of activities in the fields of research and research training activities in the areas of psychoneuro-immunological, psychosocial, behavioral and psychological aspects of AIDS as they relate to mental health, with recommendations to the National Advisory Mental Health Council for final review.

Substantive information, summaries of the meetings, and rosters of committee members may be obtained as follows: Ms. Camilla Holland, NIDA Committee Management Officer, Room 10-42, (301) 443-2620; Ms. Joanna Kieffer, NIMH Committee Management Officer, Room 9-105, (301) 443-4333. The mailing address for the above parties is:

Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Peggy W. Cockrill,
Committee Management Officer, Alcohol, Drug Abuse, and Mental Health Administration.

Date: June 8, 1989.

[FR Doc. 89-14183 Filed 6-14-89; 8:45 am]
BILLING CODE 4160-20-M

Centers for Disease Control

[Announcement No. 941]

Development, Demonstration, and Evaluation of Statewide Public Health Surveillance Systems for Diabetes and Its Complications

Introduction

The Centers for Disease Control (CDC) announces that cooperative agreement applications are being accepted to assist State public health agencies in the development, demonstration, and evaluation of statewide public health surveillance systems for diabetes and its complications.

Authority

These cooperative agreements are authorized by section 301(a) [42 U.S.C. 241(a)] and section 317(k)(3) [42 U.S.C. 247b] of the Public Health Service Act, as amended.

Eligibility

Eligible applicants for this program are the official public health agencies of States, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands, and the Republic of Palau. Eligibility is limited to official state and territorial health agencies for the following reasons: (1) The purpose of this project is to develop systems that can be used to conduct statewide surveillance; and, (2) because state health agencies are responsible for protecting the public health within their jurisdiction, they traditionally collect and have the most need for these data to plan programs and justify the expenditure of public funds.

Availability of Funds

Approximately \$250,000 is available in Fiscal Year 1989 to fund up to three awards. Awards are expected to range from \$75,000 to \$125,000 with an average award of \$83,000. It is expected that awards will begin on or about September 15, 1989, for a 12-month budget period within a 3-year project

period. Continuation awards within the approved project period will be made on the basis of satisfactory progress in meeting project objectives and on the availability of funds. Funding estimates may vary and are subject to change.

Purpose

The purpose of these cooperative agreements is to develop, demonstrate, and evaluate (particularly in states that currently do not have diabetes surveillance systems) diabetes surveillance systems that could be used for 1) formulating health policy; 2) planning and evaluating public health interventions and programs designed to reduce the burden of diabetes and its complications; and, 3) stimulating epidemiologic research to better define diabetes prevention and control efforts.

Program Requirements

1. Recipient Activities

A. Develop, implement and operate a surveillance system with objectives that are based upon the anticipated uses of the data, incorporating the needs of potential users.

B. Determine the end points to be measured by the system and the frequency with which they need to be measured or monitored.

C. Identify and obtain existing data sources through which these end points could be measured.

D. Develop new data collection systems only if gaps exist in existing data sources. (This is especially relevant for racial/ethnic minority populations). Projects funded through a cooperative agreement that involves collection of information from 10 or more individuals will be subject to review under the Paperwork Reduction Act.

E. Develop a systematic approach to consolidating, organizing, interpreting, and reporting data.

F. Evaluate the surveillance system. Components of this evaluation should include the following:

- Usefulness of the system. Assess whether the system is meeting its objectives. Include a description of actions taken as a result of the data from the system.
- Acceptability of the system (i.e., willingness of participants in the system to provide accurate, complete, and timely data).
- Strengths and limitations of the data. Include a discussion of the representativeness of the data, the timeliness of the data, sources of error and bias in the data, and the ability to use the data to evaluate the impact of preventive and control efforts.

- The amount of resources (direct costs) required to operate the system. Include personnel resources, data costs, and cost of other resources (e.g., supplies, equipment, computer time).
- Recommendations for improving the quality and efficiency of the system.
- G. Provide for the maintenance of the surveillance system after completing the cooperative agreement.
- H. Collaborate in creating recommendations/guidelines for the development and operation of diabetes surveillance systems.

2. CDC Activities

A. Collaborate in the development of system design, including compilation of specified information in a periodic and standardized manner using uniform data elements, coding, and analytical techniques.

B. Assist in developing appropriate end points and in identifying and selecting appropriate data sources.

C. Assist in the development of appropriate evaluation strategies.

D. Assist in preparing surveillance reports.

E. Collaborate in developing recommendations/guidelines for establishing diabetes surveillance systems.

F. Collaborate in developing appropriate descriptive and analytic techniques for the application of diabetes surveillance methodologies to chronic disease surveillance.

Evaluation Criteria

1. Initial Application

The initial application for a new project period will be reviewed and evaluated according to the following criteria:

- A. Evidence of the applicant's understanding of the purpose and objectives of the project.
- B. The soundness, practicality, and feasibility of the proposed approach and work plan for developing, demonstrating, and evaluating a surveillance system.
- C. The applicant's understanding of the importance of minority group analyses.
- D. The applicant's ability to provide the experienced staff and the resources necessary to perform and manage the project.
- E. How well described are the availability and accessibility of potential data sources.
- F. The adequacy of the plan to evaluate the project.
- G. Evidence of intent and plans to ensure the surveillance system is useful

in planning and evaluating public health interventions and programs and is responsive to the needs of users or surveillance data.

H. The adequacy of the plan to sustain the surveillance after the completion of the project period.

In addition, consideration will be given to the extent to which the budget is reasonable, adequately justified, and consistent with the intended use of the cooperative agreement.

2. Continuation Application

Continuation awards within the approved project period will be made on the basis of the following criteria:

A. The degree to which accomplishments in the prior budget period show that the applicant is meeting the objectives.

B. The extent to which the objectives for the new budget period are consistent with the purpose of the cooperative agreement and the long-term objectives and are specific, realistic, measurable, and time related.

C. The extent to which proposed changes in the need for support, long-term objectives, methods of operation, evaluation plans, or personnel are likely to enhance or diminish the success of the project.

In addition, consideration will also be given to the extent to which the budget request and proposed use of project funds are appropriate and reasonable.

Funding Priorities

Priority will be given to eligible applicants developing new diabetes surveillance systems rather than enhancing existing diabetes surveillance systems.

E.O. 12372 Review

Applications are subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance Number is 13.988.

Application Submission and Deadline

The original and two copies of the application (form PHS-5161-1, 3/89) must be submitted to Candice Nowicki-Lehnher, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, on or before July 10, 1989.

1. Deadline: Applications shall be considered as meeting the deadline if they are either:

- a. received on or before the deadline date, or
 - b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of a timely mailing.)
2. Late Applications: Applications that do not meet the criteria in either 1. a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where to Obtain Additional Information

A complete program description, information on application procedures, and an application package may be obtained from Marsha D. Driggins, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, (404) 842-6575 or FTS 236-6575.

Please refer to Announcement Number 941 when requesting information or submitting an application in response to the Request for Assistance.

Technical assistance may be obtained from Stephen J. Sepe, Epidemiologist, Division of Diabetes Translation, Center for Chronic Disease Prevention and Health Promotion, Centers for Disease Control, Atlanta, Georgia 30333, (404) 639-1826 or FTS 236-1826.

Dates: June 8, 1989.

Robert L. Foster,
Acting Director, Office of Program Support Centers for Disease Control.

[FR Doc. 89-14215 Filed 6-14-89; 8:45 am]
BILLING CODE 4160-10-M

Food and Drug Administration

[Docket No. 89D-0195]

Certificate of Free Sale; Compliance Policy Guide; Availability

AGENCY: Food and Drug Administration.
ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of revised Compliance Policy Guide (CPG) 7150.01 "Certificate of Free Sale." CPG 7150.01 has been revised to express the agency's current policy regarding issuance of a "Certificate of Free Sale," "Certificate for Export," "Certificate to Foreign Governments," or similar statement in

response to a request for certification of an export.

ADDRESSES: Submit written requests for single copies of CPG 7150.01 to the Division of Compliance Policy (HFC-230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Requests should be identified with the docket number found in brackets in the heading of this document. Send two self-addressed adhesive labels to assist that office in processing your requests. CPG 7150.01 is available for public examination in the Dockets Management Branch (HFA-305), Food and Drug Administration, Rm. 4-62, 5600 Fishers Lane, Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Ernest L. Brisson, Division of Compliance Policy (HFC-230), Office of Enforcement, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

SUPPLEMENTARY INFORMATION: FDA receives requests for "Certificates of Free Sale" or similar requests from firms desiring to export products subject to the Federal Food, Drug, and Cosmetic Act and other acts administered by FDA. Many foreign countries require assurances, through certification, from an official U.S. government agency that products offered for entry into their country comply with U.S. laws for distribution in domestic commerce. However, laws administered by FDA do not provide for the kind of continuous supervision over regulated products that would be required for FDA to provide unqualified assurances concerning the compliance status of individual product lots. Thus, FDA's certification for export products must be limited to factual statements regarding the known compliance status of the product.

CPG 7150.01, "Certificate of Free Sale" (formerly titled "Requests for Certificate of Free Sale") has been revised to express the agency's current policy regarding issuance of a "Certificate of Free Sale," "Certificate for Export," "Certificate to Foreign Governments," or a similar statement in response to a request for certification of an export.

This notice is issued under 21 CFR 10.85.

Dated: June 9, 1989.

Alan L. Hoeting,
Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 89-14240 Filed 6-14-89; 8:45 am]
BILLING CODE 4160-01-M

Public Health Service**Application Announcement for Cooperative Agreements with Statewide Organizations for Development of Comprehensive Primary Health Care Services**

AGENCY: Health Resources and Services Administration, HHS.

ACTION: Notice.

SUMMARY: The Health Resources and Services Administration (HRSA) announces that applications are being accepted from qualified statewide organizations for cooperative agreements to provide assistance in the development and coordination of comprehensive primary health care services in areas that lack adequate health manpower or have populations lacking access to primary health care services. It is expected that approximately \$4 million will be available for approximately 30 new and competing continuation agreements, averaging \$130,000 each. It is anticipated that funding for new agreements will be very limited. These agreements will be entered into under the authority of section 333(g) of the Public Health Service Act.

DATE: To receive consideration, grant applications must be received by the appropriate Regional Grants Management Officer by July 17, 1989, to be considered timely. Applications shall be considered as meeting the deadline if they are either (1) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for submission to the review committee. A legibly dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be accepted as proof of timely mailing. Applications which do not meet the deadline will be considered late and will be returned to the applicant.

ADDRESS AND FURTHER INFORMATION: Application kits (Form PHS-5161 with revised facesheet DHHS Form 424, as approved by the Office of Management and Budget under control numbers 0348-0006 and 0937-0189) and additional information may be obtained from, and completed applications should be sent to, the appropriate Regional Grants Management Officer (see Appendix). This program is centralized in the Public Health Service headquarters in Rockville. However, individuals in the regional offices of the Department (Regional Grants Management Officers) are designated as having preliminary review and recommendation authority under the Department's procedures to

implement the recentralization authority under Pub. L. 100-388 "The Community and Migrant Health Centers Amendment of 1988". Additional information about the program can be obtained from Ms. Bonnie Lefkowitz, Director, Special Programs Branch, Division of Primary Care Services, Bureau of Health Care Delivery and Assistance, at 5600 Fishers Lane, Rockville, Maryland 20857, Room 7A-55, (301) 443-2270.

SUPPLEMENTARY INFORMATION: In order to qualify for a cooperative agreement, an applicant must be a State or a State agency or another Statewide public or private nonprofit entity that operates solely within one State and must complete an application with sufficient detail to satisfy the Secretary that it is able to carry out the health services delivery and systems integration functions required by the program. In addition, evaluations of the applications will address the following issues related to the cooperative agreement program:

1. *Mission:* Are the stated goals of the cooperative agreement consistent with HRSA's goals for assuring access to primary health care for the underserved populations most in need? An application under this announcement should describe the relationship between the State's programs and individual Community Health Centers and Migrant Health Centers (C/MHCs) and should describe the participation of the State primary care association, if any, in establishing and implementing the goals of the cooperative agreement.

2. *Structure/organization:* Is the entity responsible for the cooperative agreement located in a position organizationally within the State government or otherwise able to assure that it can bring together the various State, local and other agencies that impact or could impact on primary health care for the underserved? The application should demonstrate understanding by the entity's staff about programs for the delivery and financing of primary health care. Priority consideration in the award of cooperative agreements will be given to applicants which are State agencies due to their inherent ability to coordinate the activities of States and to deal with health issues on a statewide basis.

3. *State primary care activities:* To what extent will the State contribute funds, resources and/or technical assistance for the provision of primary health care to the underserved? If the State has a primary care office, are the cooperative agreement activities coordinated with that office? If State resources are available for primary care

generally, do C/MHCs receive some of these resources?

The cooperative agreement should be the focus, to the extent possible, for State recommendations on the awarding of primary care service grants and for statewide efforts to plan, coordinate and implement primary care delivery systems.

4. *State manpower activities:* Does the State express a commitment to assure an adequate supply of qualified health care providers for underserved populations and is this commitment carried out through or coordinated with the cooperative agreement activities? The application should address the organizational and functional relationships, including staffing and manpower benefits to C/MHCs, that may result from the State manpower efforts. The cooperative agreement should be the focus for Federal health personnel placement, including recruitment and assignment of National Health Service Corps (NHSC) personnel. The application should also address State manpower programs/initiatives, including loan repayment programs, Area Health Education Centers (AHECs) and training grants; malpractice policies and training/continuing medical education activities.

5. *State Maternal and Child Health (MCH) activities:* Are State MCH activities, including the Women's Infants' and Children's food programs (WIC) and Family Planning programs coordinated with primary care programs for the underserved through the cooperative agreement activities? State activities should benefit and involve C/MHCs through, for example, contracting for services with the C/MHCs or encouraging the participation of C/MHCs in the grants for Special Projects of Regional and National Significance (SPRANS).

6. *State activities for other special populations:* Are State activities regarding other special populations coordinated with primary care programs for the underserved through the cooperative agreement activities? State activities should involve C/MHCs as providers of primary health care services to these special populations, including new immigrants, migrant and seasonal farmworkers, the homeless, the elderly, substance abusers and HIV infected persons.

7. *Financing:* Are State programs of public financing for primary care to the underserved coordinated with primary care service delivery programs through cooperative agreement activities and do State public financing programs in their administration, treat C/MHCs

equitably? Applications should address issues of prepayment, reimbursement rates for C/MHCs, enrollment of providers, range of benefits, and eligibility levels.

Applicants will be evaluated competitively on the basis of their relative ability to carry out the goals of the cooperative agreement program as determined by the Secretary, based on an evaluation of cooperative activities issues listed above.

In conducting this evaluation, the Secretary will also consider:

- The ability of the applicant to integrate (or the progress the applicant has made in integrating) existing State and local resources with Federal assistance and health care delivery programs. Priority will be given to applicants that demonstrate use of combined resources in coordinated primary health care service delivery.

- Evidence that the applicant will be able to enter (or has entered) into a formal Memorandum of Agreement with the organization (if any) representing a majority of Federally funded C/MHCs within the State.

- The ability of the applicant to achieve the objectives of the cooperative agreement with cost-effective expenditure of funds.

- The applicant's plans to secure maximum self sufficiency and minimize dependence upon and need for subsequent Federal support.

Federal responsibilities under the cooperative agreements, in addition to the usual monitoring and technical assistance provided directly or by grants, will include the following:

1. Exercise of responsibility for final authority on the award of Federal grants, Federal health personnel placement, and overall stewardship and program management of Federal resources in the context of fulfilling the State program as developed under the agreement;

2. Participation in the development of statewide efforts to coordinate and implement primary care delivery systems; and

3. Assistance in the identification of special populations needing service within the State and assistance with the development of program approaches for reaching special populations for entry into the primary health care system and referral to specialized services.

Other Award Information

All agreements to be established under this notice are subject to the provisions of Executive Order 12372 as implemented by 45 CFR Part 100, which allows States the option of setting up a system for reviewing applications from

within their States for assistance under certain Federal programs. The application packages will contain a listing of States which have chosen to set up such a review system and will provide a point of contact in the States for that review. Since 60 days are allowed for this review, applicants are advised to discuss projects with and provide copies of their applications to contact points as early as possible. At the latest, an applicant should provide the application to the State for review at the same time it is submitted to the Bureau of Health Care Delivery and Assistance.

Catalog of Federal Domestic Assistance

The cooperative agreements for development and coordination of comprehensive primary health care services are listed as No. 13.130 in the OMB Catalog of Federal Domestic Assistance.

Dated: May 1, 1989.

John H. Kelso,

Acting Administrator.

Appendix—Regional Grants Management Officers

Mary O'Brien, DHHS—Region I, John F. Kennedy Federal Building, Room 1400, Boston, MA 02203, (617) 565-1482

Thomas Butler, DHHS—Region II, 26 Federal Plaza, Room 3337, New York, NY 10278, (212) 264-4496

Walter H. Ihle, Jr., DHHS—Region III, Room 10140, Mail Stop 14, P.O. Box 13716, 3535 Market Street, Philadelphia, PA 19104, (215) 596-6653

Wayne Cutchens, DHHS—Region IV, 101 Marietta Tower, Suite 1121, Atlanta, GA 30323, (404) 331-2597

Lawrence Poole, DHHS—Region V, 105 West Adams, Chicago, IL 60603, (312) 353-8700

Frank Cantu, DHHS—Region VI, 1200 Main Tower Building, Dallas, TX 75202, (214) 787-3885

Hollis Hensley, DHHS—Region VII, 801 East 12th Street, Room 501, Kansas City, MO 64108, (816) 428-5841

Jerry F. Wheeler, DHHS—Region VIII, 1961 Stout Street, Denver, CO 80294, (303) 884-4461

Alan Harris, DHHS—Region IX, 50 United Nations Plaza, San Francisco, CA 94102, (415) 556-2595

Neal Adams, DHHS—Region X, 2201 Sixth Avenue, Mail Stop RX 20, Seattle, WA 98121, (206) 442-7997

[FR Doc. 89-14238 Filed 6-14-89; 8:45 am]

BILLING CODE 4160-15-M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Malonaldehyde, Sodium Salt

The HHS' National Toxicology Program announces the availability of

the NTP Technical Report on the toxicology and carcinogenesis studies of malonaldehyde, sodium salt. Malonaldehyde occurs as a natural metabolic byproduct of prostaglandin biosynthesis and as an end product of polyunsaturated lipid peroxidation.

Toxicology and carcinogenesis studies of malonaldehyde, sodium salt were conducted by administering the chemical by gavage to groups of 50 F344/N rats of each sex at doses of 0, 50, or 100 mg/kg, five days per week for 103 weeks. Doses of 0, 60, or 120 mg/kg were administered on the same schedule to groups of 50 male and 50 female B6C3F₁ mice.

Under the conditions of these 2-year gavage studies, there was clear evidence of carcinogenic activity¹ for male and female F344/N rats administered malonaldehyde, sodium salt, as shown by the increased incidences of follicular cell adenomas or carcinomas (combined) of the thyroid gland. Pancreatic islet cell adenomas were also observed at an increased incidence in low dose male rats. There was no evidence of carcinogenic activity for B6C3F₁ mice administered 60 or 120 mg/kg malonaldehyde, sodium salt, in distilled water by gavage 5 days per week for 2 years.

Chemically related increased incidences of nonneoplastic lesions included ulcers and inflammation of the glandular stomach and epithelial hyperplasia of the forestomach; corneal inflammation, retinal atrophy, and cataracts of the crystalline lens; and cystic degeneration of the liver, bile duct fibrosis, and bile duct hyperplasia in rats. Most of these nonneoplastic lesions as well as the thyroid gland follicular cell neoplasms occurred primarily in the high dose rat groups, in which survival and final body weights were reduced in high dose male and female rats. Increased incidences of atrophy of the pancreatic acinus and pigmentation loss in hair shafts were seen in high dose mice.

The study scientist for this bioassay is Dr. J. W. Spalding. Questions or comments about the content of this Technical Report should be directed to Dr. Spalding at P.O. Box 12233, Research

¹ The NTP uses five categories of evidence of carcinogenic activity to summarize the strength of evidence of carcinogenicity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"); one category for uncertain findings ("equivocal evidence"); one category for no observable effects ("no evidence"); and one category for experiments that cannot be evaluated because of major flaws ("inadequate study").

Triangle Park, NC 27709 or telephone (919) 541-7936; FTS: 629-7936.

Copies of *Toxicology and Carcinogenesis Studies of Malonaldehyde, Sodium Salt in F344/N Rats and B6C3F₁ Mice (Gavage Studies)* (TR 331) are available without charge from the NTP Public Information Office, MD B2-04, P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541-3991; FTS: 629-3991.

Dated: June 8, 1989.

David P. Rall,
Director.

[FR Doc. 89-14185 Filed 6-14-89; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N-89-1917; FR-2606]

Unutilized and Underutilized Federal Buildings and Real Property Determined To Be Suitable for Use for Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized and underutilized Federal property determined by HUD to be suitable for possible use for facilities to assist the homeless.

DATE: June 15, 1989.

ADDRESS: For further information, contact Morris Bourne, Department of Housing and Urban Development, Room 9140, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 755-9075; TDD number for the hearing- and speech-impaired (202) 426-0015. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless v. Veterans Administration*, D.C.D.C. No. 88-2503-OG, HUD publishes a Notice, on a weekly basis, identifying unutilized and underutilized Federal buildings and real property determined by HUD to be suitable for use for facilities to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable this week.

Date: June 8, 1989.

James E. Schoenberger,

General Deputy, Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 89-14257 Filed 6-14-89; 8:45 am]

BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

[AA-323-09-4211-02-2410]

Bureau of Land Management

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0009), Washington, DC 20503, telephone number 202-395-7340.

Title: Land Use Application and Permit.

OMB Approval Number: (1004-0009).

Abstract: The regulations at 43 CFR 2920 provide for non-Federal use of Bureau administered land via lease, permit or easement. Uses include agriculture, trade or manufacturing concerns and business uses such as outdoor recreation concession. BLM will determine the validity of uses proposed by private individuals and other qualified proponents from information provided by the proponent on the Land Use Application and Permit form.

Bureau Form Number: 2920-1.

Frequency: Once.

Description of Respondents:

Individuals, State and local government entities, and other qualified proponents applying for use of Bureau administered land via lease, permit or easement.

Estimated Completion Time: 7.43 hours.

Annual Responses: 435.

Annual Burden Hours: 3,230.

Bureau Clearance Officer: Rick Iovaine 202-653-8853.

Date: May 26, 1989.

Billy R. Templeton,

Acting Assistant Director, Land and Renewable Resources.

[FR Doc. 89-14174 Filed 6-14-89; 8:45 am]

BILLING CODE 4310-04-M

[AA-323-09-4211-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the information collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0060), Washington, DC 20503, telephone number 202-395-7340.

Title: Application for Transportation and Utility Systems and Facilities on Federal Lands, Pub. L. 96-487 (Also applicable for 43 CFR 2800 and 2880)

OMB Approval Number: (1004-0060).

Abstract: Respondents supply information as to their identity and address and the nature, location and potential impacts of the proposed facility. The information enables the using agency to identify and communicate with the applicant and to locate and evaluate the effect of the proposed facility on the environment and other land uses.

Bureau Form Number: SF-299.

Frequency: On occasion.

Description of Respondents:

Applicants for rights-of-way on Federal lands.

Estimated Completion Time: 2 hours.

Annual Responses: 4,300.

Annual Burden Hours: 8,600.

Bureau Clearance Officer: Rick Iovaine 202-653-8853.

Date: May 26, 1989.

Billy R. Templeton,

Acting Assistant Director, Land and Renewable Resources.

[FR Doc. 89-14175 Filed 6-14-89; 8:45 am]

BILLING CODE 4310-04-M

[AA-320-09-4211-02-2410]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the information and collection requirement and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on extension of the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0107), Washington, DC 20503, telephone number 202-395-7340.

Title: 43 CFR 2800 and 2880, Rights-of-Way.

OMB Approval Number: (1004-0107).

Abstract: This information, supplied by an applicant for a right-of-way, is needed for the authorized officer to determine whether or not a right-of-way may be granted, establish terms and conditions of the grant, and administer the grant when made.

Bureau Form Number: N/A.

Frequency: Once when an application is filed.

Description of Respondents: Applicants needing a right-of-way on Federal lands.

Estimated Completion Time: 16.8 hours.

Annual Responses: 1,000.

Annual Burden Hours: 16,800.

Bureau Clearance Officer: Rick Iovaine 202-653-8853.

Date: May 26, 1989.

Billy R. Templeton,

Acting Assistant Director, Land and Renewable Resources.

[FR Doc. 89-14176 Filed 6-14-89; 8:45 am]

BILLING CODE 4310-04-M

[AA-320-09-4212-02]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms may be obtained by

contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the proposal should be made directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0056), Washington, DC 20503, telephone number (202) 395-7340.

Title: Exchanges—General Procedures, 43 CFR 2200.

OMB approval number: (1004-0056).

Abstract: This information collected is necessary for the initiation and completion of a land exchange with the Bureau of Land Management. The information would aid the Bureau in determining the non-Federal party's eligibility and whether all statutory requirements have not been met.

Bureau form number(s): (N/A).

Frequency: Once.

Description of respondents: Citizens of the United States, corporations, subject to the laws of any State or of the United States, a State, or a political subdivision of a State desiring to propose an exchange of lands or interests in lands.

Estimated completion time: 4 hours each report.

Annual responses: 130.

Annual burden hours: 520.

Bureau clearance officer: (Alternate) Rick Iovaine 202-653-8853.

May 24, 1989.

Billy R. Templeton,

Acting Assistant Director, Land and Renewable Resources.

[FR Doc. 89-14177 Filed 6-14-89; 8:45 am]

BILLING CODE 4310-04-M

[OR-087-4333-02; PG9-186]

Closures and Restrictions; Yaquina Head Outstanding Natural Area, Oregon

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closures and restrictions, Yaquina Head Outstanding Natural Area, Oregon.

SUMMARY: To fulfill the specific administrative mandate set forth in the Act of Congress dated March 5, 1980 (Pub. L. 96-199), and in accordance with 43 CFR 8364.1, notice is hereby given that the closures and restrictions listed below apply to lands within the Congressionally established Yaquina Head Outstanding Natural Area. This 100-acre area is located in Lincoln County, Oregon, along the Pacific Coast in Sections 29 and 30, T. 10 S., R. 11 W., Willamette Meridian.

1. The area is open to public visitation and use during daylight hours and closed at night.

2. Overnight camping is prohibited.

3. Domestic pets are not permitted on lands west of the centralized parking area at the tip of the headland (seeing-eye and hearing-ear dogs excepted). Elsewhere on the headland, domesticated pets must be physically restrained at all times.

4. Walking and hiking are limited to developed interior access roads, parking areas and foot trails.

5. Engaging in or soliciting any business is prohibited.

6. Hunting, shooting firearms, and igniting fireworks or other explosive devices are prohibited.

7. Damaging or removing plant and animal specimens or cultural resources are prohibited.

8. It is prohibited to enter an area posted as closed.

9. Flying radio-controlled model airplanes or kites is prohibited.

10. Hang gliding set up, launch, and flying are restricted to historically-used sites located east of the ridge which forms the western wall of the upper quarry. North of NW Lighthouse Drive (formerly known as Ocean Drive), hang gliding activity is not regulated seasonally and use may continue throughout the year. South of NW Lighthouse Drive, hang gliding activity is prohibited from March 1 through August 31, while unregulated use may occur throughout the remainder of the year.

11. Monitorized travel is limited to developed interior access roads and parking areas.

12. Research projects and scientific studies are regulated by permit.

This closure and restriction notice does not apply to:

1. Any Federal, state, or local official or member of an organized rescue, medical, or fire fighting unit while in the performance of fire, emergency, law enforcement, or other similar duty;

2. Any Bureau of Land Management, U.S. Coast Guard, or U.S. Fish and Wildlife Service employee, agent, contractor, or cooperator while in the performance of an official duty; and

3. Any person or member of a group or institution expressly authorized by permit, license, agreement, or other similar authorization while in the performance of activities covered by the authorization.

Copies of this closure and restriction notice are available at the Bureau of Land Management, Salem District Office, 171 Fabry Road SE, Salem, Oregon 97306.

Any person who violates this closure and restriction notice may be subject to a maximum fine of \$1,000 and/or imprisonment not to exceed 12 months under authority of 43 CFR 8360.0-7.

This closure and restriction notice supersedes the Notice of Closures and Restrictions, Yaquina Head Outstanding Natural Area, Oregon, published in the *Federal Register*, Vol. 52, No. 35, on February 23, 1989 (52 FR 5503). Furthermore, this closure and restriction order is effective immediately and shall remain in effect until revised, revoked, or amended.

SUPPLEMENTARY INFORMATION: The Act of Congress dated March 5, 1980 (Pub. L. 96-199), directed the Secretary of the Interior to administer the Yaquina Head Outstanding Natural Area in such a manner as will best provide for:

1. The conservation and development of the scenic, natural, and historic values of the area;
2. The continued use of the area for purposes of education, scientific study, and public recreation which do not substantially impair the purposes of which the area was established; and
3. Protection of the wildlife habitat of the area.

The purpose of this closure and restriction notice is to provide a means by which the Secretary of the Interior through the Bureau of Land Management, may control and manage public use of the area to effectively carry out the specific mandate set forth in the Act.

FOR FURTHER INFORMATION, CONTACT: Kathy J. Liska, Site Supervisor, Yaquina Head Outstanding Natural Area, Bureau of Land Management, P.O. Box 936, Newport, Oregon 97365 (telephone 503/285-2863).

Richard C. Prather,
Yamhill Area Manager.
[FR Doc. 89-14284 Filed 6-14-89; 8:45 am]
BILLING CODE 4130-33-M

[OR-054-4351-12; GP-195]

Permanent Seasonal Closure of Public Lands; Oregon

June 7, 1989.

AGENCY: Bureau of Land Management.
ACTION: Notice.

SUMMARY: Notice is hereby given that effective immediately all public lands as legally described below are closed seasonally to all vehicle access and travel with the exception of existing roads. This closure will be in effect from midnight, March 14, to midnight, May 31, annually.

This closure is part of the Horn Butte Long-billed Curlew Management Plan and is intended to protect the curlew during its normal breeding, nesting and brood-rearing period. The long-billed curlew is currently listed as a Category 2 Candidate species. This listing identifies those species which are being considered for addition to the list of Endangered the Threatened Wildlife. While Category 2 species do not receive the protection of listed species, it is the Bureau of Land Management's policy to manage its lands in a manner which may prevent listing as threatened and endangered.

The only exception to this order would be for authorized administrative use and emergency needs.

Township 2 North, Range 22 East of the Willamette Meridian

Section 2: All
Section 3: All
Section 8: SE¼
Section 10: All
Section 11: All
Section 12: All
Section 14: N¼
Section 15: N¼N¼

Township 3 North, Range 22 East of the Willamette Meridian:

Section 4: S¼, S¼NE¼, SE¼NW¼
Section 14: W¼
Section 22: W¼, W¼E¼, NE¼NE¼
Section 28: SW¼SW¼
Section 27: S¼SW¼
Section 34: All

The authority for this closure is 43 CFR 8341.2

This designation becomes effective upon publication in the *Federal Register* and will remain in effect until rescinded or modified by the Prineville District Manager. Information and maps are available at the Bureau of Land Management, Prineville District Office, 155 East 4th Prineville, OR 97754, Telephone (503) 447-4115.

Donald L. Smith,
Acting District Manager.
[FR Doc. 89-14288 Filed 6-14-89; 8:45 am]
BILLING CODE 4310-33-M

[NV-060-09-4333-02]

Battle Mountain District Advisory Council Meeting in Battle Mountain, NV

SUMMARY: Notice is hereby given in accordance with Pub. L. 94-579 and 43 CFR Part 1780 that a meeting of the Battle Mountain District Advisory Council will be held on Thursday, July 13, 1989. The meeting will convene at 9 a.m. in the Shoshone Eureka Conference Room at the Battle Mountain District Office.

SUPPLEMENTARY INFORMATION: The agenda for the meeting will include:

1. Opportunities for Recreation Development;
2. Cumulative Environmental Impacts and Mining; and
3. Update on Riparian Management.

The meeting is open to the public. Interested persons may make oral statements between 2:30 and 3:00 p.m. on July 13, 1989. If you wish to make an oral statement, please contact James D. Currihan, District Manager, by 4:30 p.m. July 7, 1989.

FOR FURTHER INFORMATION CONTACT: James D. Currihan, District Manager, P.O. Box 1420, Battle Mountain, Nevada 89820 or phone (702) 635-5181.

Date Signed: June 8, 1989.
Michael C. Mitchell,
Acting District Manager, Battle Mountain, Nevada.

[FR Doc. 89-14292 Filed 6-14-89; 8:45 am]
BILLING CODE 4310-33-M

[AZ-020-09-4213-01]

Phoenix District Advisory Council; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of meeting of the Phoenix District Advisory Council.

DATE: July 18, 1989, 9:00 a.m.
ADDRESS: 2015 West Deer Valley Road, Phoenix, Arizona 85027.

SUMMARY: The Phoenix District Advisory Council of the Bureau of Land Management meets July 18, 1989. The meeting will be held at the Phoenix District Office, 2015 West Deer Valley Road, Phoenix, at 9:00 a.m.

The Council has been established by and will be managed according to the Federal Advisory Committee Act of 1972, the Federal Land Policy and Management Act of 1978, and the Public Rangelands Improvement Act of 1978.

The agenda for the meeting includes:

- Land Exchanges
- Barry M. Goldwater Bombing Range Plan
- Phoenix Resource Management Plan Amendment
- BLM Management Updates
- Business from Floor
- Public Comments and Statements
- Future Meetings and Agenda Topics

SUPPLEMENTARY INFORMATION: This is a public meeting and the presentation of oral statements or the submission of written statements that address the

issues on the meeting agenda or related matters are welcome.

Dated: June 8, 1989.
Henri R. Blason,
District Manager.
[FR Doc. 89-14285 Filed 6-14-89; 8:45 am]
BILLING CODE 4310-32-M

[UT-050-09-4410-08]

Advisory Council Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: District advisory council meeting.

SUMMARY: The Richfield District Advisory Council will hold a meeting and field tour on July 11 and 12, 1989. The business meeting will be on July 11 in the Fillmore Area Office, 15 East 500 North, Fillmore, Utah, starting at 10:00 a.m. The agenda for the meeting is as follows:

1. District drought conditions.
2. The exchange in the Deep Creek Mountains.
3. Electronic Combat Test Capability.
4. Update on the District Recreation Program.
5. Update on the Wilderness Program.
6. Mining operations in WSA's.
7. Riparian management.
8. Update on the Henry Mountain CRM.

A field tour is scheduled for July 12 to review the rehabilitation efforts on the Clear Spot project work along with reviewing the Crystal Peak Mineral development.

The meeting is open to the public and interested persons may make oral statements to the Council between 2:00 p.m. and 3:00 p.m. or file written comments for the Council's consideration. Anyone wishing to make an oral statement must notify the District Manager, Bureau of Land Management, 150 East 900 North, Richfield, Utah 84701.

Date: June 7, 1989.
Larry R. Oldroyd,
Associate District Manager, Richfield District Office.
[FR Doc. 89-14286 Filed 6-14-89; 8:45 am]
BILLING CODE 4310-00-M

[AZ040-09-4351-02 SPCA]

Meeting of the San Pedro Advisory Committee

AGENCY: Bureau of Land Management.
ACTION: Notice of meeting.

SUMMARY: Notice is hereby given in accordance with Pub. L. 100-696 and 43

CFR 1780, that a meeting of the San Pedro Riparian National Conservation Area Advisory Committee will be held.

DATE: Tuesday, July 25, 1989 at 10:00 a.m.
ADDRESS: Chapman College, 77 Calle Portal, Suite C 200, Sierra Vista, Arizona.

FOR FURTHER INFORMATION: Erick Campbell, San Pedro Project Manager, BLM, Box 9853, Rural Rte. 1, Huachuca City, Arizona 85618. Telephone (602) 457-2265.

SUPPLEMENTARY INFORMATION: The agenda for the first meeting of the newly established San Pedro Advisory Committee includes the following items:

1. Introduction of members.
2. Nomination and election of Chairperson and Vice Chairperson.
3. Briefing on San Pedro Management Plan.
4. Briefing on San Pedro Monitoring Plan.
5. Management Update and Business from the Floor.

The meeting is open to the public. Interested persons may make oral statements to the Advisory Committee between 11:00 and 11:30 a.m. or may file written statements for consideration by the Advisory Committee. Anyone wishing to make an oral statement must contact the BLM San Pedro Project Manager by Friday, July 21, 1989. Depending upon the number of people wishing to make oral statements, a per person time limit may be considered.

Summary minutes of the meeting will be maintained in the San Pedro Project Office and will be available for public inspection and reproduction (during regular business hours) within 30 days following the meeting.

Date: June 8, 1989.
Ray A. Brady,
District Manager.
[FR Doc. 89-14287 Filed 6-14-89; 8:45 am]
BILLING CODE 4310-32-M

[ES-970-09-4120-04; FLES 32578]

Proposed Class II Reinstatement; Okaloosa, AL

AGENCY: Bureau of Land Management, Interior.

ACTION: Class II Reinstatement.

SUMMARY: Proposed reinstatement of terminated oil and gas lease FLES 32578.
FOR FURTHER INFORMATION CONTACT: Ivy Garcia at (703) 461-1452.

SUPPLEMENTARY INFORMATION: Federal oil and gas lease FLES 32578, for certain lands located in T. 5 N., R. 24 W.,

Okaloosa County, Alabama, terminated automatically by operation of law on October 1, 1988 (30 U.S.C. 188).

A petition for a Class II Reinstatement was filed by Mr. Thomas Connell (lessee) under Section 31D of the Mineral Leasing Act of 1920, as amended by the Federal Oil and Gas Royalty Management Act of 1982 (96 Stat. 2447).

The lessee has met all of the following requirements for a Class II Reinstatement:

- (a) \$500..... Administrative Fee.
- (b) \$130..... Publication Cost.
- (c) \$7,560..... Back Rental Payment.

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to \$5 per acre or portions thereof per year, and royalty at a rate of not less than 16% percent beginning October 1, 1988.

Terry L. Plummer,
Associate State Director.
[FR Doc. 89-14283 Filed 6-14-89; 8:45 am]
BILLING CODE 4310-02-M

Proposed Reinstatement of a Terminated Oil and Gas Lease; Fairbanks, AK

May 25, 1989.

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48685-T has been received covering the following lands:

Fairbanks Meridian, Alaska
T. 22 S., R. 2 E.,
Sec. 33 SENW.
(40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to \$5 per acre per year, and royalty increased to 16% percent. The \$500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from December 1, 1988, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48685-T as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease.

effective December 1, 1988 subject to the terms and conditions cited above.
Sue A Faughr,
Acting Chief, Branch of Mineral Adjudication.
 [FR Doc. 89-14289 Filed 6-14-89; 8:45 am]
 BILLING CODE 4310-JA-M

Proposed Reinstatement of a Terminated Oil and Gas Lease; Fairbanks, AK

In accordance with Title IV of the Federal Oil and Gas Royalty Management Act (Pub. L. 97-451), a petition for reinstatement of oil and gas lease AA-48685-U has been received covering the following lands:

Fairbanks Meridian, Alaska
 T. 22 S., R. 2 E.,
 Sec. 33 SESE.
 (40 acres)

The proposed reinstatement of the lease would be under the same terms and conditions of the original lease, except the rental will be increased to \$5 per acre per year, and royalty increased to 18% percent. The \$500 administrative fee and the cost of publishing this Notice have been paid. The required rentals and royalties accruing from December 1, 1988, the date of termination, have been paid.

Having met all the requirements for reinstatement of lease AA-48685-U as set out in section 31 (d) and (e) of the Mineral Leasing Act of 1920 (30 U.S.C. 188), the Bureau of Land Management is proposing to reinstate the lease, effective December 1, 1988, subject to the terms and conditions cited above.
Sue A Faughr,
Acting Chief, Branch of Mineral Adjudication.
 [FR Doc. 89-14290 Filed 6-14-89; 8:45 am]
 BILLING CODE 4310-JA-M

[MT-920-09-4111-11; SDM 74840]

Proposed Reinstatement of Terminated Oil and Gas Lease; Harding County, SD

Under the provisions of Pub. L. 97-451, a petition for reinstatement of oil and gas lease SDM 74840, Harding County, South Dakota, was timely filed and accompanied by the required rental accruing from the date of termination.

No valid lease has been issued affecting the lands. The lessee has agreed to new lease terms for rentals and royalties at rates of \$7 per acre and 18% percent respectively. Payment of a \$500 administration fee has been made.

Having met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C.

188), the Bureau of Land Management is proposing to reinstate the lease, effective as of the date of termination, subject to the original terms and conditions of the lease, the increased rental and royalty rates cited above, and reimbursement for cost of publication of this Notice.

Dated: June 6, 1989.
June A. Bailey,
Chief, Leasing Unit.

[FR Doc. 89-14291 Filed 6-14-89; 8:45 am]
 BILLING CODE 4310-DN-M

[ES-030-09-4212-11; ES-20066-0111]

Realty Action; Recreation and Public Purposes Classification—Land Classification for Recreation and Public Purposes, Carlton County, MN; Correction

SUMMARY: This notice corrects the total acreage of land being patented to the State of Minnesota, Department of Natural Resources as published in the *Federal Register* on December 1, 1988, Volume 53, No. 231, page 48588. The correct acreage is 4.30 acres.

FOR FURTHER INFORMATION CONTACT: Milwaukee District, Bureau of Land Management, Suite 225, 310 W. Wisconsin Avenue, Milwaukee, Wisconsin 53203.

Chris Hanson,
Acting District Manager.

[FR Doc. 89-14282 Filed 6-14-89; 8:45 am]
 BILLING CODE 4310-GJ-M

[NM-920-09-4120-10]

San Juan River Regional Coal Team (RCT); Availability of Revised Draft Data Adequacy Standards for New Mexico and Colorado

AGENCY: Bureau of Land Management (BLM), Interior.

ACTION: Notice of Availability.

SUMMARY: Revised draft Data Adequacy Standards for the San Juan River Coal Region are available upon request beginning Friday, June 16, 1989. There will be a 30-day public comment period.

DATES: Public comments on the revised draft Data Adequacy Standards are requested by Monday, July 17, 1989. Comments should be sent to Russell Jentgen at the address shown below.

ADDRESS: Copies of the revised draft Data Adequacy Standards may be obtained from either Russell Jentgen or

Ed Heffern, Bureau of Land Management, New Mexico State Office, Branch of Solid Minerals, NM (921), P.O. Box 1449, Santa Fe, New Mexico 87504-1449, telephone (505) 988-6109.

FOR FURTHER INFORMATION CONTACT: Russell Jentgen or Ed Heffern at the above address or telephone number.

SUPPLEMENTARY INFORMATION: The revised draft Data Adequacy Standards spell out levels of data to be acquired prior to the competitive leasing of Federal coal tracts, whether in the lease by application or regional leasing mode. Data standards are proposed for geology, soils, water, vegetation, wildlife, air, socioeconomic, cultural resources, paleontology, and land use disciplines within the San Juan River Region.

The standards are being prepared by a multidisciplinary task force composed of Federal and State resource specialists. The task force was appointed and guided by the San Juan RCT. The Data Adequacy Standards are being prepared, with public input, at the direction of the Department of the Interior as an outcome of the supplemental EIS to the Federal Coal Management Program.

The first draft of the Data Adequacy Standards was released on March 3, 1989, for a 45-day public comment period. We received eleven written comments, which ranged from one-page general policy statements to nine pages of detailed suggestions. Respondents included one utility company, one mining association, four individuals from State agencies, three BLM offices, and two other Federal agencies. Several public comments on the first draft perceived some standards as directed more to mine plan than pre-lease requirements, and lacking flexibility for the RCT to modify requirements on a case-by-case basis. Other comments asked that the standards emphasize determinations to be made rather than specific methods, that they be more flexible for small tracts next to existing operations, and that they address Indian concerns and needs of the Clean Water Act. In addition, it was pointed out that San Juan River is the first coal region to have to apply data adequacy standards to a specific surface mine lease application (the Fence Lake Project).

The RCT discussed these comments at its meeting on April 28, 1989, and decided that the task group would redraft the standards and send them out by mid-June for another 30-day comment period. After the close of this period and analysis of the comments, the RCT chairman would poll the team as to

whether a meeting is required to discuss and approve the standards. The date of August 24, 1989, has been reserved if a meeting is needed.

Larry L. Woodard,
Chairman, San Juan River Regional Coal Team.

Dated: June 5, 1989.
 [FR Doc. 89-14191 Filed 6-14-89; 8:45 am]
 BILLING CODE 4310-FB-M

Fish and Wildlife Service

Receipt of Applications for Permits

The following applicants have applied for permits to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-738296

Applicant: New York Zoological Society, Bronx, NY.

The applicant requests a permit to export red blood cells and plasma samples taken from a female Asian elephant (*Elephas maximus*) that has been in captivity at the Bronx Zoo since 1976. The samples are to be sent to Dr. Graham Burton, National Research Council, Division of Chemistry, Ottawa, Canada, for scientific research purposes.

PRT-738510

Applicant: Roar Foundation, Acton, CA.

The applicant requests a permit to export one pair of captive born Siberian tigers (*Panthera tigris altaica*) to the Beijing Zoo, People's Republic of China, for display and breeding purposes.

PRT-738264

Applicant: University of California, San Diego, La Jolla, CA.

The applicant requests a permit to import naturally shed hair and samples of blood of captive gibbons (*Hylobates lar*) and (*H. pileatus*) from Thai Zoological Organizations, Dusit Zoo, Bangkok, Thailand for the purpose of genetic research.

PRT-738755

Applicant: Hawthorn Corporation, Grayslake, IL.

The applicant requests a permit to import two male captive born tigers (*Panthera tigris*) from Japan. The tigers will be imported for purposes of exhibition and captive breeding. In the future, the applicant will export and reimport these animals for the same purposes.

PRT-738751

Applicant: International Animal Exchange, Inc., Ferndale, MI.

The applicant requests a permit to import one captive born female cheetah (*Acinonyx jubatus*) from the Wassenaar Zoo, Wassenaar, Holland, for sale to the Jackson Zoological Park, Jackson, Mississippi. The Jackson Zoo intends to use the cheetah for breeding and display purposes.

PRT-738554

Applicant: Ernest W. Foster, Jr., Worcester, MA.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) to be culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

PRT-738275

Applicant: Audubon Zoological Garden, New Orleans, LA.

The applicant requests a permit to purchase in interstate commerce one pair of golden conures (*Aratinga guarouba*) from Mr. Ed Locke, Largo, Florida, for captive breeding purposes. The birds were hatched in captivity at Busch Gardens, Tampa, Florida, and subsequently sent to Mr. Locke. Audubon Zoo will trade one captive-hatched hyacinth macaw (*Anodorhynchus hyacinthinus*) to Mr. Locke for the golden conures.

PRT-738519

Applicant: Michael Werner, Rock Springs, WY.

The applicant requests a permit to import the sport-hunted trophy of one male bontebok (*Damaliscus dorcas dorcas*) to be culled from the captive herd maintained by Mr. F.W.M. Bowker, Jr., Grahamstown, Republic of South Africa, for the purpose of enhancement of survival of the species.

Documents and other information submitted with these applications are available to the public during normal business hours (7:45 am to 4:15 pm) Room 432, 4401 N. Fairfax Dr., Arlington, VA 22203, or by writing to the the Director, U.S. Office of Management Authority, P.O. Box 3507, Arlington, Virginia 22203-3507.

Interested persons may comment on any of these applications within 30 days of the date of this publication by submitting written views, arguments, or data to the Director at the above address. Please refer to the appropriate PRT number when submitting comments.

Date: June 9, 1989.

R.K. Robinson,
Chief, Branch of Permits, U.S. Office of Management Authority.
 [FR Doc. 89-14173 Filed 6-14-89; 8:45 am]
 BILLING CODE 4310-55-M

Availability of a Final Environmental Impact Statement on Atlantic Salmon Restoration in New England

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Final Environmental Impact Statement on Atlantic Salmon Restoration in New England is available for public review. Comments and suggestions are requested. As the result of extensive review and comment by state agencies, conservation organizations, those involved with the hydropower industry, and interested private citizens on the Draft EIS, a modified Proposed Action has been developed. The principal change from the Draft EIS is in the list of rivers in New England that are targeted for restoration over the next 30 years. The Project Area is composed of nine New England coastal drainage basins from the Connecticut River to the St. Croix River plus the U.S. portions of two tributaries to the St. John River.

The Proposed Action will restore self-sustaining Atlantic salmon populations to the Connecticut, Pawcatuck, Merrimack, Saco, Union, Androscoggin, Kennebec, Penobscot, St. Croix, Meduxnekeag, and Aroostook Rivers by the Year 2021. Existing Service facilities would be used, without need for new fish hatcheries. The Service will stock over 5.3 million juvenile Atlantic salmon annually until self-sustaining populations are established in the target rivers. The retro-fitting or upgrading of fish passage facilities will be necessary at 105 existing dams. Fully restored annual salmon runs are projected to total an average 38,000 adults, and provide 90,000 man-days of sport fishing. Total discounted costs of the 30-year program is estimated to be \$79.4 million compared to an estimated benefit of \$87.8 million.

DATES: Written comments are requested by August 15, 1989.

ADDRESS: Comments should be addressed to Ronald E. Lambertson, Regional Director, U.S. Fish and Wildlife Service, One Gateway Center, Newton Corner, Massachusetts 02158.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph W. Abele or Dr. Dan C.

Kimball, One Getway Center, Newton Corner, Massachusetts 02158, telephone (617) 965-5100.

Individuals wishing copies of the FEIS should contact Dr. Kimball at the above address and telephone number (extension 208). Copies are being sent to groups and individuals who received the DEIS. Copies will be available for examination at the U.S. Fish and Wildlife Service Regional Office in Newton Corner, Massachusetts.

SUPPLEMENTARY INFORMATION: This Final Environmental Impact Statement addresses the restoration of Atlantic salmon to New England rivers where native populations have become extinct. It describes a Proposed Action and two Alternative Actions. The Proposed Action represents the continuation of the current Atlantic salmon restoration program that was initiated prior to the National Environmental Policy Act. It addresses eleven river basins where the restoration of self-sustaining populations is deemed feasible.

Alternative #1 represents a geographically limited implementation of the Proposed action. It would restore self-sustaining Atlantic salmon populations to those historical salmon rivers that are highest priority within each of the six New England states. These rivers are the Penobscot, St. Croix, Merrimack, Pawcatuck, and Connecticut Rivers. The same level of Service resources would be applied towards achieving restoration on these five rivers as is described for the Proposed Action. The resultant restored population would be approximately 25,000 adults or 34% less than the proposed action. A commensurate decline would occur in the sport harvest. New fish passage facilities would be required at 68 dams rather than 105 as under the Proposed Action. The present day value of all costs for Alternative #1 is 14% less than that of the Proposed Action.

Alternative #2 is the "No Action" alternative. It calls for the Service to terminate all discretionary actions relative to the restoration of Atlantic salmon and to carry out only legislatively mandated activities.

Alternative #2 eliminate the use of federal hatcheries for Atlantic salmon restoration and the associated field evaluation activities (habitat surveys, tagging, monitoring adult runs, etc.). Service research activities directed at Atlantic salmon restoration would essentially cease. The role of federal grant administration to the states remains essentially unchanged. The statutory responsibilities to review, comment, recommend or prescribe

mitigation to protect wildlife and fisheries resources in federally funded, permitted, or licensed projects also remain unchanged. It is assumed that the states currently producing salmon would maintain these programs, and would not expand them to replace the current Federal commitment of resources and production facilities. It is also assumed that mitigation measures incorporated into hydro operation licenses would not include requirements that licensees provide salmon smolts, fry or hatchery facilities. The projected sustainable adult salmon runs from past Service and future state restoration activities is 4,000, which would support a sport harvest of 800 salmon and 10,000 man days of recreational fishing.

James F. Gillett,
Acting Regional Director,
June 6, 1989.

[FR Doc. 89-14281 Filed 6-14-89; 8:45 am]
BILLING CODE 4310-35-M

National Park Service

Environmental Statements, Mining in Alaska National Park System Units

AGENCY: Extension of comment period on draft environmental impact statements and availability of information.

ACTION: Extension of comment period on draft Environmental Impact Statements and availability of information.

SUMMARY: The comment period for the Denali National Park and Preserve, Wrangell-St. Elias National Park and Preserve, and Yukon-Charley Rivers National Preserve draft environmental impact statements (DEIS) has been extended to August 14, 1989. Comments on the DEISs may be submitted to Steven Hunt, Project Coordinator, Minerals Management Division, National Park Service, Alaska Regional Office, 2525 Gambell St., Anchorage, Alaska 99503.

This notice also announces the availability of technical background material and environmental information used in developing the DEISs including the baseline values used for determining quantitative cumulative environmental impacts for target resources. This information is available for public review at the National Park Service, Alaska Regional Office at the above address.

Copies of the DEISs are available on request from the National Park Service, Alaska Regional Office (telephone (907) 275-2816), the Alaska Public Lands Information Center at 805 West Fourth Avenue, Anchorage, and the Alaska

Public Lands Information center at 250 Cushman, Suite 1A, Fairbanks.

Date: June 9, 1989.

James W. Steward,
Acting Associate Director, Planning and Development.

[FR Doc. 89-14158 Filed 6-14-89; 8:45 am]
BILLING CODE 4310-70-M

Office of Surface Mining Reclamation and Enforcement

[DES 89-13; Navajo Mining Lease No. 14-20-0603-8580 and Joint Use Area Mining Leases Nos. 14-20-0450-5743 and 14-20-0603-8910]

Availability of the Draft Environmental Impact Statement, on Proposed Permit Application for Black Mesa-Kayenta Mine, Navajo and Hopi Indian Reservations, AZ

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of availability of a draft environmental impact statement (OSMRE-EIS-25).

SUMMARY: The Office of Surface Mining Reclamation and Enforcement OSMRE is making available a draft environmental impact statement (EIS) on the proposed permit application for the Black Mesa-Kayenta mine. The EIS has been prepared to analyze the probable impacts on the human environment should the permit application submitted by Peabody Coal Company (PCC) for the Black Mesa-Kayenta mine be approved with conditions or disapproved. The operation is located approximately 125 miles northeast of Flagstaff, Arizona, and 10 miles southwest of Kayenta, Arizona. OSMRE is requesting that any interested party submit written comments on the draft EIS. In addition to receiving written comments, five public meetings will be held by OSMRE from August 7, 1989, to August 11, 1989, at various locations to receive oral comments on the draft EIS.

DATES: Comment Period: Written comments on the draft EIS must be received by 4:00 p.m. (MDT), August 18, 1989 at the location listed below, under **ADDRESSES**.

Public Meetings: The following public meetings have been scheduled to receive comments on the draft EIS.

August 7, 1989: Flagstaff, Arizona; 7 p.m. (local time), Best Western Little America Motel, American "B" Conference Room, 2515 East Butler Avenue.

August 8, 1989, Moenkopi, Arizona; 7 p.m. (local time), Moenkopi Community Building.

August 9, 1989, Kykotsmobi, Arizona; 2 p.m. (local time), Hopi Tribe Council Chambers.

August 10, 1989, Kayenta, Arizona; 7 p.m. (local time), Kayenta Chapter House.

August 11, 1989, Window Rock, Arizona; 2 p.m. (local time), North Conference Room, Navajo Tribal Council Chambers.

ADDRESSES: Written comments and/or requests for additional copies of the draft EIS should be hand-delivered or mailed to Peter A. Rutledge, Chief, Federal Programs Division, Office of Surface Mining Reclamation and Enforcement, Western Field Operations, Brooks Towers, Second Floor, 1020—15th Street, Denver, Colorado 80202, Attention: Sarah E. Bransom.

FOR FURTHER INFORMATION CONTACT: Sarah E. Bransom, Black Mesa-Kayenta mine EIS Project Leader (telephone: 303-744-2891) at the Denver, Colorado, location given under **ADDRESSES**.

SUPPLEMENTARY INFORMATION: The Black Mesa-Kayenta mine, located approximately 125 miles northeast of Flagstaff, Arizona, and 10 miles southwest of Kayenta, Arizona, consists of two separate but adjacent existing mining operations—the Black Mesa mine, which produces approximately 5 million tons of coal per year, and the Kayenta mine, which produces approximately 7 million tons of coal per year.

The proposed life-of-operations permit area would cover 62,753 acres of Hopi and Navajo tribal lands. PCC proposes to disturb 13,618 acres of land within the proposed life-of-operations permit area. PCC plans to produce 292 million tons of coal through the year 2011 and conduct reclamation related activities through the year 2032.

OSMRE has previously issued PCC two permits to mine coal at the mining complex. Between 1970 and December 31, 1985, mining activities disturbed approximately 4,480 acres within these two permit areas. The proposed Federal permit would (1) encompass the previously issued permits under one permit, (2) authorize PCC to disturb an additional 13,618 acres through the year 2023, and (3) authorize PCC to upgrade a number of existing mining-related facilities to meet current Federal performance standards.

The two alternatives evaluated in the EIS are (1) approval with conditions or (2) disapproval of the following three actions: OSMRE would approve the permit application package and issue a

Federal permit with conditions; the Bureau of Land Management would approve the life-of-mine mining plan; and the U.S. Army Corps of Engineers would issue a Section 404 permit. OSMRE has identified "approval of the proposed permit applications with conditions" as the preferred alternative. Date: June 8, 1989.

John H. Farrell,
Acting Director, Office of Environmental Project Review.

[FR Doc. 89-14168 Filed 6-14-89; 8:45 am]
BILLING CODE 4310-05-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-309X]

Cimarron River Valley Railway Co.—Discontinuance Exemption in Pawnee and Payne Counties, OK

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Interstate Commerce Commission exempts from the prior approval requirements of 49 U.S.C. 10903, *et seq.*, the discontinuance of operations by Cimarron River Valley Railroad over 25.47 miles of track leased from The Atchison, Topeka and Santa Fe Railway Company (ATSF), which extends from milepost 59.38 at Camp, Pawnee County, OK to milepost 84.85 at Cushing, Payne County, OK. Abandonment of this line by ATSF was approved in Docket No. AB-52 (Sub-No. 27), *The Atchison, Topeka and Santa Fe Railway Company—Abandonment—In Pawnee and Payne Counties, OK* (not printed), certificate and decision served June 25, 1984.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on July 17, 1989. Formal expressions of intent to file an offer¹ of financial assistance under 49 CFR 1152.27(c)(2) must be filed by June 26, 1989, petitions to stay must be filed by June 30, 1989, and petitions for reconsideration must be filed by July 10, 1989.

ADDRESSES: Send pleadings referring to Docket No. AB-309X to:

(1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

¹ See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the *Federal Register* on December 22, 1987 (52 FR 48440-48446).

(2) Petitioner's representative: Peter A. Greene, Thompson, Hine and Flory, 1920 N Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar, (202) 275-7245. TDD for hearing impaired: (202) 275-1721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 280-4357/4359. (Assistance for the hearing impaired is available through TDD Service (202) 275-1721.)

Decided: June 7, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips. Vice Chairman Simmons, joined by Commissioner Lamboley dissented with a separate expression.

Kathleen M. King,
Acting Secretary.
[FR Doc. 89-14264 Filed 6-14-89; 8:45 am]
BILLING CODE 7035-01-M

[Finance Docket No. 31424]

Acquisition by Tampa Bay & Western Transportation, Inc., of a CSX Transportation, Inc., Line Between Sulphur Springs and Broco, FL; Decision

AGENCY: Interstate Commerce Commission.

ACTION: Notice.

SUMMARY: The Commission is accepting for consideration the application filed May 12, 1989, by Tampa Bay & Western Transportation, Inc. (TBWT), the Estate of Roger L. Putnam, and CSX Transportation, Inc. (CSX), for TBWT to acquire the 55.34-mile CSX Line between Sulphur Springs and Broco, FL, and to issue securities to finance the transaction. Pursuant to 49 CFR Part 1180, the Commission finds this to be a minor transaction.

DATES: Written comments must be filed with the Interstate Commerce Commission no later than July 10, 1989. Comments from the Secretary of Transportation and Attorney General of the United States must be filed by July 25, 1989. Applicants' reply is due August 14, 1989.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 275-7245. [TDD for hearing impaired: (202) 275-1721.]

ADDRESSES: An original and 10 copies of all documents must be sent to: Office of the Secretary, Case Control Branch,

Attn: Finance Docket No. 31424, Interstate Commerce Commission, Washington, DC 20423.

In addition, one copy of all documents in this proceeding must be sent to each of applicants' representatives:

Lawrence H. Richmond, CSX Transportation, Inc., 100 North Charles Street, Baltimore, MD 21201.
Kevin M. Shays, Weiner, McCaffrey, Brodsky, & Kaplan, P.C., 1350 New York Avenue, NW., Washington, DC 20005-4797.

SUPPLEMENTARY INFORMATION: In an application filed May 12, 1988, Tampa Bay & Western Transportation, Inc. (TBWT), the Estate of Roger L. Putnam, and CSX Transportation, Inc. (CSX), seek approval under 49 U.S.C. 11343, *et seq.*, for TBWT to acquire a 55.34-mile CSX line between Sulphur Springs and Broco, FL. The applicants contend that this transaction meets the criteria for a minor transaction under 49 CFR 1180.2(c), and they submitted a conforming application in accordance with the railroad consolidation regulations at 49 CFR Part 1180. They also seek authority under 49 U.S.C. 11301 to issue securities to finance the transaction.

TBWT is a motor carrier with nationwide general commodities authority. It presently provides service to a patron in the Tampa, FL area, shipping frozen seafood to various points in the United States. It will be a Class III railroad following the proposed transaction. TBWT is a closely held corporation. The Estate of Roger L. Putnam controls it, but does not control any other carriers. CSX is a Class I common carrier by railroad operating in 19 states, the District of Columbia, and the Province of Ontario, Canada. It is a unit of CSX Corporation.

The line sought to be acquired includes: (1) Track from Sulphur Springs, FL (milepost SR-838.28), to Brooksville Yard, FL (milepost SR-792.98); (2) the Broco Spur, from Brooksville Yard to Broco, FL (4.33 miles); (3) the Shands Spur, from Brooksville to Shands (1.84 miles); and (4) Busch Leads #1 (2.91 miles) and #2 (0.98 miles) in Tampa, FL. The line has about 100 active patrons. Freight moving over it consists principally of malt liquors, coal, limestone, cement, and lumber. It carries no overhead traffic. In 1987 CSX handled about 7,450 carloads originating on the line, and about 6,200 carloads in the first 10 months of 1988. CSX provides no passenger service on the line.

The applicants state that the transaction will enable TBWT to develop new rail business and operate

in essentially a new market. It will thereby provide a revenue base permitting improved service to all of its patrons and improving its financial viability. The applicants maintain that the benefits in turn will preserve adequate rail transportation service and promote competition in the area.

The applicants contend the acquisition will not lessen any interstate or intrastate competition or create a monopoly or restrain trade in freight surface transportation. They state that TBWT and CSX do not serve any of the same shippers. The area that is served by the rail line is also served by many motor carriers, and it is well traversed by several U.S. highways, an interstate highway, and numerous state and local roads.

TBWT intends to operate the line to be acquired with its own employees working under TBWT rates of pay, rules, and working conditions. All nine CSX positions affected by the acquisition of the line will be abolished. However, CSX and two of the unions representing its employees have entered into implementing agreements under *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60, and CSX is negotiating with the representatives of the remaining affected employees to enter into *New York Dock* implementing agreements. These conditions are appropriate for employees affected by the acquisition.

The Purchase and Sale Agreement for the sought acquisition, provides that TBWT will pay \$2 million in cash for the line's improvements and \$28,000 per year for use of the real estate over which the line runs. To finance the transaction and provide working capital, TBWT will issue: (1) 100 shares of common stock with \$1 par value; (2) \$2 million of privately placed senior debt, secured with the assets that TBWT acquires from CSX; and (3) \$700,000 of subordinated unsecured debt placed with its equity owners under promissory notes. TBWT maintains that only the stock issuance is subject to Commission regulation, and that the debt issuances are not because they are not akin to publicly traded stocks or bonds. It contends, however, that if the Commission determines it has jurisdiction over both, then both should be approved as consistent with the public interest and pro-competitive. We ask for comments specifically addressing these jurisdictional and public interest/pro-competitive issues.

The railroad consolidation regulations, with appropriate modifications, are suitable for consideration of this application, even though the proposal involves a motorrail

rather than a rail-rail transaction (here, a Class I railroad and a motor carrier that will be a Class III railroad). See, e.g., *CSX Corporation and American Commercial Lines, Inc.—Control—SCNO Acquisition Corp.* (not printed), served May 25, 1988. Under § 1180.4(b)(2) of our regulations, we must determine initially whether a proposed transaction is major, significant, or minor. This transaction has no regional or national significance, and it will neither result in a major market extension nor reduce the present level of competition. We find the proposal is a minor transaction under § 1180.2(c). Since the application complies with our regulations governing minor transactions, with appropriate modifications, we are accepting it for consideration.¹

TBWT has asked for our approval under section 11301 of the securities issuance, i.e., the 100 shares of common stock. Since those shares are being issued in connection with a transaction under section 11344, the exemption from our regulation at 49 CFR 1175.1(a) does not apply. While a separate application for approval of the stock issuance need not be filed (49 CFR 1175.1(b)), the application does not contain sufficient information to make an affirmative finding under 49 U.S.C. 11301. Accordingly, applicants will need to file additional financial data regarding the stock issuance. For example, we are told that the shares to be issued have a one dollar per share par value, but we are not told the actual price at which the shares will be sold or whether the shares confer any voting power on the shareholders. We also need detailed information about the effect of the proposed stock issuance on the viability of the carrier. See 49 U.S.C. 11301(d)(B)-(D).

We will attempt to resolve this issue within the decisional time limit applicable to the minor transaction. Our ability to do so, however, will depend to a great extent on the timing of applicant's supplemental filings and any replies thereto.

The application and exhibits are available for inspection in the Public Docket Room at the Offices of the Interstate Commerce Commission in

¹ Since the transaction involves an acquisition of a rail line by a motor carrier, rather than *vice versa*, the intermodal acquisition criteria of 49 U.S.C. 11344(c) do not apply. See Finance Docket No. 31268, *The Pittston Company—Control Exemption—Buffalo Creek and Gauley Railroad Company, Et Al.* (not printed), served April 4, 1988; and Finance Docket No. 30743, *The Pittston Company—Control Exemption—Buffalo Creek and Gauley Railroad Company* (not printed), served February 26, 1986.

Washington, DC. In addition, they may be obtained upon request from applicants' representatives named above.

Any interested persons, including governmental entities, may participate in this proceeding by submitting written comments. Comments must be filed no later than July 10, 1989. The United States Secretary of Transportation and the Attorney General of the United States must file their comments no later than July 25, 1989. Applicants' reply is due August 14, 1989. An original and 10 copies of all pleadings must be filed with the Secretary, Interstate Commerce Commission, Washington DC 20423.

Written comments must be served concurrently by first class mail on the Secretary of Transportation, the Attorney General and applicants' representatives. Written comments must also be served on all parties of record within 10 days of service of the service list by the Commission. We plan to issue the service list by July 25, 1989. Any person who files timely written comments shall be considered a party of record if the person's comments so request. In this event, no petition for leave to intervene need be filed. Consistent with 49 CFR 1180.4(d)(1)(iii) written comments must contain:

- (a) The docket number and title of the proceeding;
- (b) The name, address, and telephone number of the commenting party and its representative upon whom service shall be made;
- (c) The commenting party's position, i.e., whether it supports or opposes the proposed transaction;
- (d) A statement of whether the commenting party intends to participate formally in the proceeding or merely comment on the proposal;
- (e) If desired, a request for an oral hearing with reasons supporting the request; the request must indicate the disputed material facts that can only be resolved at a hearing; and
- (f) A list of all information sought to be discovered from applicant carriers.

Because we have determined that the proposal constitutes a minor transaction, no responsive applications will be permitted. The time limits for processing a minor transaction are set forth at 49 U.S.C. 11345(d).

Discovery may begin immediately. We admonish the parties to resolve all discovery matters expeditiously and amicably.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. This proposal is found to be a minor transaction under 49 CFR 1180.2(c).

2. The application for acquisition in Finance Docket No. 31424 is accepted for consideration. The request for approval of the stock issuance will be handled as provided in the decision.

3. The parties shall comply with all provisions as stated above.

4. This decision is effective on the date of service.

Decided: June 7, 1989.

By the Commission, Chairman Gradison, Vice Chairman Simmons, Commissioners Andre, Lamboley, and Phillips.

Kathleen M. King,

Acting Secretary.

[FR Doc. 89-14117 Filed 6-14-89; 8:45 am]

BILLING CODE 7006-01-M

DEPARTMENT OF JUSTICE

Lodging of Consent Decree; S & K Plating, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on June 2, 1989, a proposed Consent Decree in *United States v. S & K Plating, Inc.*, Civil No. CV 85-7887-JGD, was lodged with the United States District Court for the Central District of California. The proposed Consent Decree concerns the prevention of the discharge of pollutants in violation of the Clean Water Act and the limits set forth in the general and categorical pretreatment regulations for the electroplating industry. The proposed Consent Decree requires S & K Plating to achieve and monitor compliance with the Act and the pretreatment regulations and to pay a civil penalty of \$50,000.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to S & K Plating, D.J. Ref. 89-5-1-1-2503.

The proposed Consent Decree may be examined at the office of the United States Attorney, Central District of California, 312 North Spring Street, Los Angeles, California 90012, and at the Region 9 Office of the Environmental Protection Agency, 215 Fremont Street, San Francisco, California 94105. Copies of the Consent Decree may be examined at the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, Room 1517, Ninth Street and Pennsylvania Avenue, NW., Washington, DC. A copy of the proposed Consent Decree may be obtained in person or by mail from the

Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044. In requesting a copy, please refer to the referenced case and enclose a check in the amount of \$1.90 (10 cents per page reproduction cost) made payable to the Treasurer of the United States.

Donald A. Carr,

Acting Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 89-14179 Filed 6-14-89; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

National Cooperative Research; Bell Communications Research, Inc.

Notice is hereby given that, pursuant to section 6(a) of the National Cooperative Research Act of 1984, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell Communications Research, Inc. ("Bellcore") on May 24, 1989 filed written notifications, on behalf of Bellcore and Bell-Northern Research Ltd., (hereinafter known as "BNR") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties of the joint venture and (2) the nature and objectives of the joint venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties to the joint venture, and its general areas of planned activities, are given below.

Bellcore is a Delaware corporation with its principal place of business at 290 W. Mt. Pleasant Avenue, Livingston, New Jersey 07039.

BNR is an Ontario corporation with its principal place of business at 2745 Iris St., Ottawa, Ontario, Canada K2C 3V5.

Bellcore and BNR entered into a written agreement effective April 28, 1989 to collaborate on research to gain further knowledge and understanding of technologies useful in connection with exchange and exchange access telecommunications services in the field of compressed digitally encoded moving video and design of video distribution services.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 89-14180 Filed 6-14-89; 8:45 am]

BILLING CODE 4410-01-M

BEST COPY AVAILABLE

LOWER MISSISSIPPI DELTA DEVELOPMENT COMMISSION

Public Hearing

Background

The Lower Mississippi Delta Development Commission was created by Pub. L. 100-480, signed on October 1, 1988. The purpose of the Commission is to identify and study the economic development, infrastructure, employment, transportation, resource development, education, health care, housing, and recreation needs of the Lower Mississippi Delta region by seeking and encouraging the participation of interested citizens, public officials, groups, agencies, and others in developing a 10-year plan that makes recommendations and establishes priorities to alleviate the needs identified. The Commission will make its report to Congress, the President, and the Governors of Arkansas, Illinois, Kentucky, Louisiana, Mississippi, Missouri, and Tennessee, no later than May 14, 1990.

This notice announces a public hearing of the Commission.

Time: 9:30 a.m.-2:30 p.m., June 29, 1989.

Place: University Center, University of Tennessee at Martin.

Status: Public oral, and written testimony welcomed.

Contact: Ann Sartwell, Telephone (901) 753-1400.

Wilbur F. Hawkins,

Executive Director.

[FR Doc. 89-14272 Filed 6-14-89; 8:45 am]

BILLING CODE 9820-SN-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Activities Under Office of Management and Budget Review

AGENCY: National Endowment for the Arts.

ACTION: Notice.

SUMMARY: The National Endowment for the Arts (NEA) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted by July 17, 1989.

ADDRESSES: Send comments to Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3002,

Washington, DC 20503; (202-395-7316). In addition, copies of such comments may be sent to Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401).

FOR FURTHER INFORMATION CONTACT: Mrs. Anne C. Doyle, National Endowment for the Arts, Administrative Services Division, Room 203, 1100 Pennsylvania Avenue, NW., Washington, DC 20506; (202-682-5401) from whom copies of the documents are available.

SUPPLEMENTARY INFORMATION: The Endowment requests a review of an extension of a currently approved collection of information. This entry is issued by the Endowment and contains the following information: (1) The title of the form; (2) how often the required information must be reported; (3) who will be required or asked to report; (4) what the form will be used for; (5) an estimate of the number of responses; (6) the average burden hours per response; (7) an estimate of the total number of hours needed to prepare the form. This entry is not subject to 44 U.S.C. 3504(h).

Title: Final Descriptive Report Form for State and Regional Arts Agencies.

Frequency of Collection: Annually.

Respondents: State or local governments; Non-profit institutions.

Use: Information is needed and will be used for monitoring of state and regional arts agency activities; coordination of Endowment activities with those of state and regional arts agencies; and reporting on the types of projects, groups, and localities benefiting from state and regional arts agency support.

Estimated Number of Respondents: 63.

Average Burden Hours per Response: 4.

Total Estimated Burden: 252.

Anne C. Doyle,

Administrative Services Division, National Endowment for the Arts.

[FR Doc. 89-14165 Filed 6-14-89; 8:45 am]

BILLING CODE 7537-01-M

Agency Information Collection Under Office of Management and Budget Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the

provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before July 17, 1989.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 310, Washington, DC 20506 (202-786-0494) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., Room 310, Washington, DC 20506 (202) 786-0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Extension

Title: Sample Certification Letter for NEH Federal Matching Funds.

Form Number: Not Applicable.

Frequency of Collection: On Occasion.

Respondents: NEH grantees with Matching grants.

Use: Certification required for release of Federal Matching funds.

Estimated Number of Respondents: 500.

Frequency of Response: On Occasion.

Estimated Hours for Respondents to Provide Information: .5 hours per respondent.

Estimated Total Annual Reporting and Recording Burden: 1,250 hours.

Title: NEH Final Financial Status Report.

Form Number: Not Applicable.

Frequency of Collection: Once.

Respondents: All NEH institutional grantees.

Use: To provide optional format for final report of expenditures.

Estimated Number of Respondents: 1,100.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: .5 hours per respondent.

Estimated Total Annual Reporting and Recording Burden: 2,200 hours.

Susan H. Metts,

Assistant Chairman for Administration.

[FR Doc. 89-14183 Filed 6-14-89; 8:45 am]

BILLING CODE 7594-01-M

Agency Information Collection Under Office of Management and Budget Review

AGENCY: National Endowment for the Humanities.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before July 17, 1989.

ADDRESSES: Send comments to Ms. Susan Daisey, National Endowment for the Humanities, Grants Office, Room 310, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202-786-0494) and Mr. Jim Houser, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., Room 3208, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, National Endowment for the Humanities, Grants Office, Room 310, 1100 Pennsylvania Avenue, NW., Washington, DC 20506 (202) 786-0494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, or extensions. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what form will be used for; (6) an estimate of the number of responses; (7) an estimate of the total number of hours needed to fill out the form. None of these entries are subject to 44 U.S.C. 3504(h).

Revisions

Title: Centers for Advanced Study category: Application Instructions, interim reports and annual performance reports for centers; fellows' final reports; guidelines for site visitors.

Form Number: Not applicable.

Frequency of Collection: Annual.

Respondents: Independent research libraries and museums, American research centers overseas, and centers for advanced study, and humanities scholars.

Use: Application for funding, program evaluation, and compliance.

Estimated Number of Respondents: 88 per year.

Frequency of Response: Once.

Estimated Hours for Respondents to Provide Information: 9.07 per respondent.

Estimated Total Annual Reporting and Recording Burden: 1,398.

Susan Metts,

Assistant Chairman for Administration.

[FR Doc. 89-14184 Filed 6-14-89; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget Review

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of the Office of Management and Budget review of information collection.

SUMMARY: The Nuclear Regulatory Commission (NRC) has recently submitted to the Office of Management and Budget (OMB) for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Extension.

2. The title of the information collection: 10 CFR Part 34—Licenses for Radiography and Radiation Safety Requirements for Radiographic Operations

3. The form number if applicable: Not applicable.

4. How often the collection is required: Required reports are collected and evaluated on a continuing basis as events occur. Applications for new licenses or amendments may be submitted at any time. Applications for renewal of licenses are submitted every five years.

5. Who will be required or asked to report: Persons holding or applying for a license for the use of radioactive byproduct material for purposes of industrial radiography.

6. An estimate of the number of responses: 400.

7. An estimate of the total number of hours needed to complete the

requirement or request: An average of 0.87 hours per response, plus approximately 123 hours per recordkeeper. The total industry burden is approximately 49,082 hours annually.

8. An indication of whether Section 3504(h), Pub. L. 96-511 applies: Not applicable.

9. Abstract: 10 CFR Part 34 establishes rules governing the domestic licensing of radioactive byproduct material for use in industrial radiography. The information collected will be evaluated during licensing reviews or inspections to ensure that the performance of industrial radiography will not endanger health or pose a danger to life or property.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Comments and questions may be directed by mail to the OMB reviewer: Nicolas B. Garcia, Paperwork Reduction Project (3150-0007), Office of Management and Budget, Washington, DC 20503.

Comments may also be communicated by telephone at (202) 395-3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492-8132.

Dated at Bethesda, Maryland, this 9th day of June 1989.

For the Nuclear Regulatory Commission.

R. Stephen Scott,

Acting Designated Senior Official for Information Resources Management.

[FR Doc. 89-14209 Filed 6-14-89; 8:45 am]

BILLING CODE 7590-01-M

(Docket No. 50-245)

Northeast Nuclear Energy Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR-21, issued to Northeast Nuclear Energy Company (the licensee), for operation of the Millstone Nuclear Power Station, Unit 1, located in New London County, Connecticut.

Identification of Proposed Action

The amendment would consist of an addition to the Technical Specifications (TS) that would authorize the storage capacity of the spent fuel pool at 3229 spent fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated June 24, 1988, as supplemented by

letters dated July 29, August 12, and December 2, 1988, and February 14, March 1, March 22, and April 10, 1989. The NRC staff has prepared an Environmental Assessment of the proposed action, "Environmental Assessment by the Office of Nuclear Reactor Regulation Relating to the Expansion of the Spent Fuel Pool, Facility Operating License No. DPR-21, Northeast Nuclear Energy Company, Millstone Nuclear Power Station, Unit 1, Docket No. 50-245," dated June 8, 1989.

Summary of Environmental Assessment

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG-0575), Volumes 1-3 (1979), concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis.

For Millstone Unit 1, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or non-radiological environmental impacts beyond those assessed in the Commission's Final Environmental Statement (FES) issued in June 1973 related to the operation of Millstone Unit 1, in the safety evaluation and environmental assessment issued June 30, 1977 in support of a license amendment concerning storage capacity, and in the Environmental Evaluation related to conversion to a Full-Term Operating License issued December 17, 1984. The 1984 Environmental Evaluation concluded that the FES was still adequate.

The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than one percent of the total annual occupational radiation exposure for this facility.

Finding of No Significant Impact

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR Part 51. Based on this assessment, the staff concludes that there are no significant radiological or non-radiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact

statement needs to be prepared for this action.

For further details with respect to this action, see (1) the application for amendment dated June 24, 1988, as supplement by letters dated July 29, August 12 and December 2, 1988, and February 14, March 1, March 22 and April 10, 1989; (2) the FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG-0575); (3) the FES for Millstone Unit 1 dated June 1973; (4) Amendment No. 39 to the Millstone Unit 1 license dated June 30, 1977; and (5) the Environmental Assessment dated June 8, 1989.

These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555 and at the Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Dated at Rockville, Maryland, this 7th day of June, 1989.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I-4, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-14266 Filed 6-14-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-498 and 50-499]

Houston Lighting & Power Co.; Consideration of Issuance of Amendments To Facility Operating Licenses and Opportunity for Hearing

The United States Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF-78 and NPF-80, issued to Houston Lighting & Power Company (the licensee), for operation of the South Texas Project, Units 1 and 2 (STP-1 and STP-2) located in Matagorda County, Texas.

The amendments would permit the licensee to retain the minimum reactor coolant system (RCS) flow rate of 395,000 gpm in the plants' technical specifications. After the licensee identified the presence of a thermal-hydraulic flow instability in STP-1 it followed with an immediate action to administratively increase the minimum RCS flow to 400,000 gpm to offset any loss of generic Departure from Nucleate Boiling (DNB) margin. Subsequent reevaluation of the condition concluded that operating at 395,000 gpm would result in only a slight increase in peak cladding temperature (10°F) for the limiting accident.

Prior to issuance of the proposed license amendment, the Commission will have made findings required by the

Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By July 17, 1989, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 1 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceedings, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall

be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram identification Number 3737 and the following message addressed to Frederick J. Hebdon: petitioner's name and telephone number; date Petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Newman & Holtzinger, P.C., 1615 L Street, NW., Washington, DC 20038, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petitioner and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated April 18, 1989, which

is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Wharton Junior College Library, Wharton, Texas 77488.

Dated at Rockville, Maryland this 8th day of June 1989.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate—IV, Division of Reactor Projects—III, IV, V and Special Projects, Office of Nuclear Reactor Regulation.

[FR Doc. 89-14265 Filed 6-14-89; 8:45 am]

BILLING CODE 7590-01-M

James River Corp.; Order Modifying License

[General License 10 CFR 31.5, Docket No. 99990001 EA 89-62]

I

The James River Corporation (the licensee), Tredegar Street, Richmond, Virginia 23219 holds a Nuclear Regulatory Commission ("NRC" or "Commission") general license issued pursuant to 10 CFR Part 31.5. This general license authorizes possession and use of byproduct material contained in devices designed and manufactured for the purpose of detecting, measuring, gauging or controlling thickness and structural integrity of materials in an industrial environment. Under this general license, the licensee operates fifty-one facilities throughout the United States where generally-licensed gauges are used.

II

On January 30, 1989, the NRC conducted an inspection at the James River Graphics Group, South Hadley, Massachusetts, a division of the licensee's corporation, to review the circumstances associated with the loss of a static eliminator bar (static bar) containing 22.5 millicuries of americium-241. The loss occurred on or after October 4, 1988. The licensee discovered and reported the loss to the NRC on October 11, 1988. The loss occurred when contractor personnel, who were dismantling a paper-coating machine for disposal, failed to remove one of three static bars mounted on the machine. As a result, a static bar containing the radioactive material was inadvertently transferred with the coating machine to an unlicensed waste disposal firm and was subsequently buried at an unlicensed commercial landfill. This improper disposal constitutes a violation of NRC requirements as described in the Notice of Violation and Proposed

Imposition of Civil Penalty issued on this date.

In a letter dated October 26, 1988, the Safety Manager of the South Hadley facility made certain commitments regarding corrective actions to prevent future loss of licensed material from that facility. At the time of the January 30, 1989 inspection, several of these commitments had not been fully implemented. Specifically, not all radioactive devices were properly labelled to indicate they contained radioactive material; a new "altered equipment and process safety checklist" had not been established; and the monthly safety audit program did not contain the necessary elements designed to detect and correct improper control and disposition of radioactive material. Furthermore, during a plant tour at the time of the inspection, the Safety Manager was unaware of the status of an Ohmart gauge which was marked as containing radioactive material, but which was not on the licensee's current inventory. It was later determined that the radioactive source had been removed from the Ohmart gauge and transferred to an authorized recipient in 1981.

III

NRC has serious concerns about the most recent improper disposal of radioactive material from the South Hadley, Massachusetts facility because this is the fourth incident since 1979 in which facilities owned by the licensee have improperly disposed of radioactive material.

On May 27, 1986, the NRC Region III office conducted an inspection at the licensee's facility in Parchment, Michigan to review the circumstances surrounding the loss of an industrial gauge containing a 250 millicurie krypton-85 source. The inspection disclosed that the gauge was removed from service in July 1984, and was presumed to have been placed in storage at the Parchment facility. However, when the licensee issued a purchase order to an authorized licensee in February 1986 in an effort to dispose of the gauge, the gauge was missing. Between July 1984, and May 27, 1986, the licensee had no bona fide inventory record of the location of the gauge, since audit records reflecting that the gauge was in storage were based on oral statements from unidentified licensee representatives and not on visual inspection. The licensee has never located that source and presumes it has been improperly transferred and/or lost.

On October 15, 1984, NRC Region I conducted an inspection at the

licensee's facility in Easton, Pennsylvania to review the circumstances surrounding the loss of an industrial gauge containing 55 millicuries of strontium-90. The inspection disclosed that sometime after April 27, 1984, the gauge was inadvertently disposed of. Apparently, it was buried in an unlicensed sanitary landfill after the licensee failed to return the gauge to its proper storage located following the performance of a leak test. The licensee did not discover the gauge was missing until August 1984.

Previously, on August 15, 1979, the licensee notified the NRC that a static eliminator bar containing radioactive material was lost from the South Hadley, Massachusetts facility. All efforts to locate the static bar were unsuccessful and it was never recovered.

Civil penalties of \$250 and \$500, respectively, were issued for the losses of licensed material in 1984 and 1986. In the licensee's September 5, 1986 response to the civil penalty issued for the 1986 loss of material from the Parchment, Michigan facility, the licensee committed itself to develop a corporate radiation protection program to prevent the recurrence of loss of radioactive material from its various facilities. However, the licensee's actions were not effective in preventing the loss of licensed material from the South Hadley, Massachusetts facility in October, 1988.

IV

The licensee's continued failure to maintain sufficient control of radioactive materials, resulting in the loss of generally-licensed material at the various licensee facilities, raises significant questions regarding the adequacy of oversight of these gauges by corporate management. Furthermore, although commitments were made to improve control of radioactive materials, the commitments described in the licensee's October 26, 1988, and September 5, 1986 letters in response to the losses at South Hadley and Parchment were not fully implemented. Of particular concern to the NRC is the licensee's failure, following its September 5, 1986 commitment, to develop a corporate radiation protection program capable of preventing the October 1988 loss of licensed material. Accordingly, without additional requirements, there is a substantial question as to whether these materials will be adequately controlled. Therefore, I have determined that the public health and safety require that the licensee's general license (10 CFR 31.5) be modified by supplementing the license.

V

Accordingly, pursuant to sections 81, 161b, 161i and 161o of the Atomic Energy Act of 1954, as amended, and the Commission regulations in 10 CFR Part 2.204 and Part 31, *It is hereby ordered That:*

A. Upon approval of the Regional Administrator as specified in V.B. below, the licensee, supplemented as necessary by a qualified consultant, shall conduct an on-site audit and prepare an audit report for each facility owned by the licensee where NRC-licensed material is used or stored. A written report of each audit shall:

1. Cover the previous 24 months of operation at each facility.
2. Specifically address each requirement in 10 CFR 31.5(c)(1) through (c)(10), as well as each commitment made by the licensee in prior letters to NRC describing corrective action, including letters dated March 25, 1985 (Easton, PA facility), September 5, 1986 (Parchment, MI facility), and October 28, 1988 (South Hadley, MA facility).
3. Describe (a) the means or method that the facility is using to comply with each requirement in 10 CFR 31.5 and commitment referenced in V.A.2. above; (b) any deviation from, or violation of, each requirement/commitment; (c) any other weaknesses identified during the audit; and (d) recommendations to address past violations and weaknesses.
4. Be submitted to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

B. Within 60 days of the effective date of this Order, the licensee shall submit to the Regional Administrator, NRC Region I, for approval, (1) an overall plan to conduct the required audits and (2) the qualifications, including the names and resumes, of the employees and any outside consultants who will perform the audits.

C. Within 120 days of the approval of the Regional Administrator as specified in V.B. above, the licensee shall assure that all audits are completed and that all audit reports have been forwarded to the Regional Administrator as specified above.

D. Within 30 days of the submission of all audit reports to the Regional Administrator as specified in V.C. above, the licensee shall have developed and shall submit to the Regional Administrator, NRC Region I, for approval, a corporate plan to ensure that the licensee's facilities meet all requirements of 10 CFR 31.5 as well as commitments made to NRC in letters describing corrective action, and to ensure that NRC-licensed materials are

adequately controlled and disposed of only in an authorized manner. The plan shall be developed and managed at the corporate level and shall identify, by position, an individual at each facility with the appropriate level of authority who will implement the plan. The plan shall include, but not be limited to:

1. Establishment of a system to (a) identify the locations of nuclear gauges and the number of gauges present, (b) distinguish these gauges from other plant equipment wherever they are used or stored, and (c) provide the name and phone number(s) of a designated, knowledgeable employee (such as the Radiation Protection Officer) who will serve as a contact. The system of identification should be sufficient to alert workers to the presence of devices containing radioactive material and to prevent the inadvertent handling, servicing, dismantling, removal, or disposal of such devices.
2. Requirement for the physical presence and direct supervision of a designated, knowledgeable employee (such as the Radiation Protection Officer) whenever activities specified in 10 CFR 31.5(c)(3) are carried out.
3. Establishment of a systematic corporate-based inventory, compliance audit, and reporting system with methods and frequency appropriate for the scope of the licensee's nuclear materials program and history of past problems involving these materials.
4. Establishment of a plant at each facility for securing nuclear gauges that are not installed in equipment and restricting access to such gauges to a designated, knowledgeable employee (such as the Radiation Protection Officer).
5. Establishment of a specific milestone schedule for initial implementation of the various aspects of the plan.

D. Within 7 days of the Regional Administrator's approval of the plan, the licensee shall implement the plan in accordance with the established milestone schedule.

The Regional Administrator, NRC Region I, may, in writing, relax or rescind any of these provisions for good cause shown.

VI

The licensee or any other person whose interest is adversely affected by this Order may request a hearing within twenty days of its issuance. Any request for a hearing shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555, with a copy to the Assistant

General Counsel for Hearings and Enforcement, Office of the General Counsel, at the same address, and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania, 19406. If a person other than the licensee requests a hearing, that person shall set forth with particularity the manner in which the petitioner's interest is adversely affected by this Order and should address the criteria set forth in 10 CFR 2.714(d). Upon failure of the licensee or any person adversely affected by this Order to request a hearing within the specified time, this Order shall be final without further proceedings.

If a hearing is requested by the licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such a hearing shall be whether this Order should be sustained.

For the Nuclear Regulatory Commission,
Hugh L. Thompson, Jr.

Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Dated at Rockville, Maryland this 2nd day of June 1989

[FR Doc. 89-14268 Filed 6-14-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-443-OL; 50-444-OL
(Offsite Emergency Planning Issues)]

Public Service Co. of New Hampshire
et al. (Seabrook Station, Units 1 and 2)
Oral Argument

Notice is hereby given that, in accordance with the Appeal Board's order of June 7, 1989, oral argument on the appeals of the Seacoast Anti-Pollution League and Attorney General of Massachusetts from the Licensing Board's March 8, 1989, memorandum and order will be heard at 10:00 a.m., Wednesday, July 12, 1989, in the NRC Public Hearing Room, Fifth Floor, East-West Towers Building, 4350 East-West Highway, Bethesda, Maryland.

For The Appeal Board,
Barbara A. Tompkins,
Secretary to the Appeal Board.

Dated: June 7, 1989.

[FR Doc. 89-14156 Filed 6-14-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 030-05980 et al.; ASLBP No. 89-590-01-OM]

Safety Light Corp. et al; Byproduct Material License No. 37-00030-02 et al.; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the *Federal Register*, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established to preside over the following proceeding. Safety Light Corporation, et al., Byproduct Material License Nos. 37-00030-02, -08, -07E, -09C, -10C (Order Modifying Licenses), E. A. 89-29.

This Board is being designated pursuant to Licensee's request for a hearing regarding an order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, dated March 16, 1989, entitled "Order Modifying Licenses and Demand for Information" in the matter of Safety Light Corporation, et al., United States Radium Corporation, USR Industries, Inc.; USR Lighting, Inc.; USR Chemical, Inc.; USR Metals, Inc.; USR Natural Resources, Inc.; Lime Ridge Industries, Inc.; Metreal, Inc.; Pinnacle Petroleum, Inc. and all other successor corporations to either USR Industries or U.S. Radium Corp. (54 FR 12035-38, March 23, 1989)

The Board is comprised of the following administrative judges:

Helen F. Hoyt, Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Oscar H. Paris, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Frederick J. Shon, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 2nd day of June 1989.

B. Paul Cotter, Jr.,
Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 89-14157 Filed 6-14-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-397]

Washington Public Power Supply System; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (Commission) has issued

Amendment No. 68 to Facility Operating License No. NPF-21, issued to Washington Public Power Supply System (the licensee), which revised the Technical Specifications for operation of the Nuclear Project No. 2, located in Benton County, Washington.

The amendment was effective as of the date of issuance.

The amendment revises Technical Specification section 4.8.2.1, "D.C. Sources Surveillance Requirements." Specifically, the discharge amperage profiles listed under subsection d are changed and subsections e and f are revised to reflect the more conservative aging factor used for sizing the division 1 250 vdc battery.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's regulations in 10 CFR Chapter 1, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment and Opportunity for Hearing in connection with this action was published in the *Federal Register* on May 18, 1988 (53 FR 17810). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined that an environmental impact statement will not be prepared and that issuance of this amendment will have no significant adverse effect on the quality of the human environment.

For further details with respect to the action see (1) the application for amendment dated March 18, 1988, as supplemented April 12, 1989, (2) Amendment No. 68 to License No. NPF-21, (3) the Commission's related Safety Evaluation and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Richland City Library, Swift and Northgate Streets, Richland, Washington 99352. A copy of items (2), (3) and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects III, IV, V and Special Projects.

Dated at Rockville, Maryland this 6th day of June, 1989.

For the Nuclear Regulatory Commission.
Robert B. Samwerth,
Senior Project Manager, Project Directorate
V, Division of Reactor Projects III, IV, V and
Special Projects, Office of Nuclear Reactor
Regulation.

[FR Doc. 89-14287 Filed 6-14-89; 8:45 am]
BILLING CODE 7550-01-02

RAILROAD RETIREMENT BOARD

Determination of Quarterly Rate of Excise Tax for Railroad Retirement Supplemental Annuity Program

In accordance with directions in section 3221(c) of the Railroad Retirement Tax Act (26 U.S.C. 3221(c)), the Railroad Retirement Board has determined that the excise tax imposed by such section 3221(c) on every employer, with respect to having individuals in his employ, for each work-hour for which compensation is paid by such employer for services rendered to him during the quarter beginning July 1, 1989, shall be at the rate of 26 cents.

In accordance with directions in section 15(a) of the Railroad Retirement Act of 1974, the Railroad Retirement Board has determined that for the quarter beginning July 1, 1989, 31.1 percent of the taxes collected under sections 3211(b) and 3221(c) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Account and 68.9 percent of the taxes collected under such sections 3211(b) and 3221(c) plus 100 percent of the taxes collected under section 3221(d) of the Railroad Retirement Tax Act shall be credited to the Railroad Retirement Supplemental Account.

By Authority of the Board.
Beatrice Kiseraki,
Secretary to the Board.
Dated: June 5, 1989.

[FR Doc. 89-14181 Filed 6-14-89; 8:45 am]
BILLING CODE 7550-01-02

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34-26907; File No. SR-NASD-89-15]

**Self-Regulatory Organizations;
National Association of Securities
Dealers, Inc.; Order Approving
Proposed Rule Change Relating to
Registration of Principals and
Representatives**

The National Association of Securities
Dealers, Inc. ("NASD") submitted on

March 23, 1989 copies of a proposed rule change, and an amendment thereto on April 25, 1989, pursuant to Section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, to amend Schedule C of the NASD By-Laws. The proposal would require members to submit applications for and maintain the registrations of only such persons who intend to engage or are engaged in the investment banking or securities business for the members.

Notice of the proposal together with its terms of substance was given by the issuance of a Commission release (Securities Exchange Act Release No. 26778, May 1, 1989) and by publication in the Federal Register (54 FR 19893, May 2, 1989). No comments were received regarding the proposal.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of Section 15A and the rules and regulations thereunder.

It is Therefore Ordered, pursuant to Section 19(b)(2) of the Act, that the proposed rule change be, and hereby is, approved.

For the Commission, by the Division of
Market Regulation pursuant to delegated
authority, 17 CFR 200.30-9(a)(12).
Jonathan G. Katz,
Secretary.

Dated: June 8, 1989.

[FR Doc. 89-14201 Filed 6-14-89; 8:45 am]
BILLING CODE 8010-01-02

[Rel. No. 34-26908; File No. SR-NYSE-89-5]
**Self-Regulatory Organizations; New
York Stock Exchange, Inc.; Notice of
Filing of Proposed Rule Change
Relating to Basket Trading**

Pursuant to Section 19(b)(1), 15 U.S.C. 78s(b)(1), of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder, 17 CFR 240.19b-4, notice is hereby given that on June 2, 1989, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC") a proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change sets forth a framework for trading "Exchange Stock Portfolios" ("ESPs") (standardized baskets of stocks) on the Floor of the Exchange.¹ The proposed rule change consists of changes to existing Exchange rules, the adoption of a new "800 series" of rules that apply solely to ESP trading, the adoption of guidelines to implement certain provisions of the proposed rules, and an ESP fee schedule.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) *Purpose*—The advent of trading in index futures and options in the early 1980s led to the development of stock trading strategies involving the acquisition and liquidation of offsetting positions in the underlying stocks. As those strategies matured, and as institutional investors became increasingly interested in holding portfolios that tracked the market as a whole, program trading evolved. Program trading can be described as the simultaneous entry, but separate execution, of orders in stocks in proportion to their relative representation in major indices.

In 1985, the Exchange addressed the cumbersome individual order entry of multiple orders in program trading by offering a service designed to simplify the process. This service, known as list processing, allows multiple orders to be assembled and transmitted to the Exchange's SuperDot system through a single entry. List processing enhanced multiple order entry, but did not address the separate execution of multiple orders.

¹ "Exchange Stock Portfolio" and "ESP" are service marks of the New York Stock Exchange, Inc.

Subsequently, suggestions for a product that would enable not only single entry, but also single execution, of multiple stocks began to surface. Such a product would allow multiple stocks, or baskets, to be bought and sold as a single unit.

The growing impact of the "Triple Witch" effect, which added a regulatory interest to the business interest in developing such a product, made the development of such a product a matter of industry-wide concern. By 1986, industry studies and the Commission were suggesting that the cash settlement feature of index options and futures be replaced with delivery at expiration of some, or all, of the underlying component stocks.

Studies of the October 1987 market break increased the calls for a single-execution basket market. The report issued by the Commission staff echoed the substance, if not the form, of a recommendation made in a December 1987 report commissioned by the Exchange and authored by Nicholas deB. Katzenbach, which suggested that the Exchange give serious consideration to trading one or two broad stock indices on the floor of the Exchange.

In 1988, the Exchange began to study intensively how it might respond to these recommendations. The Exchange recognized that a product of the type suggested could not succeed unless it met the needs of basket investors and gained the support of the firms whose capital would be key to trading such a product.

The Exchange thus conducted an interactive process with pension fund managers, investment managers, member firms and others to develop a product that would meet the needs of investors and address the concerns of regulators and other commentators. The outcome of this process is the ESP market.

The ESP market will provide a mechanism for the trading of standardized baskets of stocks at a single, aggregate price in a single execution on the Exchange's stock floor. An ESP trade will result in a transfer to the buyer of ownership of each of the stocks in the basket so traded. When the transaction is completed, the buyer will be entitled to all rights attending ownership of the basket stocks (including the rights to vote and receive dividends), and will be free to sell or hold each stock separately.

ESP Product Description

Initially, ESP trading will be available for executions of a standardized basket of stocks based on the "S&P 500

Portfolio Index".² At the commencement of ESP trading, each 500-stock ESP will have a value of approximately \$5 million.

The S&P 500 Portfolio Index is nearly identical to the S&P 500 Index,³ containing the same stocks and with virtually the same capitalization weighting. It differs in two respects to accommodate standardized basket trading.

First, the S&P 500 Portfolio Index is designed so that fractional share interests that would result from a basket derived directly from the S&P 500 Index are rounded up or down to the nearest whole share. Because of this factor, a basket based on the S&P 500 Portfolio Index will not contain fractional shares.

Second, in order to decrease the occasions when rebalancing is necessary to liquidate a basket position, the Exchange will not adjust the S&P 500 Portfolio Index every time S&P adjusts the S&P 500 Index.

At a minimum, the Exchange will adjust the S&P 500 Portfolio Index each calendar quarter. The Exchange will determine when additional adjustments will be made to the index in response to adjustments made to the S&P 500 Index. Generally, such additional adjustments will be made whenever an index stock is substituted or some other corporate event occurs that significantly affects an index stock's relative capitalization in the S&P 500 Index, such as the issuance of stock dividends or special cash distributions. Whenever an adjustment is made to the S&P 500 Portfolio Index, all intervening changes to the S&P 500 Index will be incorporated as well.⁴

Even with these two differences, the S&P 500 Portfolio Index closely tracks the S&P 500 Index. During the latter half of 1988, the "tracking" error between the closing values of the two indices never exceeded .02 index points.

² "S&P 500 Portfolio Index" is a trademark of the Standard & Poor's Corporation and has been licensed for use by the New York Stock Exchange, Inc. The S&P 500 Portfolio Index is based upon the S&P 500 Index pursuant to a license from the Standard & Poor's Corporation.

³ "S&P 500 Index" is a trademark of the Standard & Poor's Corporation and has been licensed for use by the New York Stock Exchange, Inc.

⁴ Index information will be readily available to investors. The Exchange will use S&P's Index Alert System to disseminate current information about the composition and capitalization weighting of the S&P 500 Portfolio Index. In addition, the Exchange will maintain in files available to the public current data on the composition of the component stock and their relative representation in the index and the method of calculating the index. The Exchange will also make available computer disks containing all current data on the state of the index as well as a facility for disseminating current data on the component stocks through commercial electronic mail.

Market Structure

The Exchange will employ a market structure consisting of "Competitive Basket Market-Makers." Exchange specialists, brokers and an ESP "Basket Book Broker." Competitive Basket Market-Makers, who can be both Exchange members and member organizations, must have \$10 million in capital. The Competitive Basket Market-Makers will be primarily responsible to ensure a deep and liquid ESP market, with their primary obligation being to maintain continuous two-sided quotations. Competitive Basket Market-Makers can perform their market-making responsibilities either from on the Floor or from their upstairs trading room.

Specialists in the component stocks will contribute to the liquidity of the ESP market. Whenever all Exchange-listed component stocks are open for trading, there will be a "Tier 1" market for one ESP calculated by summing the current quotations for each of the stocks according to the weighted value of each stock in the basket. The Basket Book Broker, whose main functions will be to maintain the limit order book (which will be open to all on the Floor and displayed on the terminals of the Competitive Basket Market-Makers upstairs) and to serve as auctioneer, will also have the limited dealer function of providing quotations for the "minibasket" of non-Exchange listed stocks. In addition, each component stock specialist and the Basket Book Broker will be required to provide a second "Tier 2" quotation for up to three ESPs.

Floor brokers will represent ESP orders in the same way they handle orders for individual stocks today.

The ESP trading rules provide for Floor trading integrated with upstairs market-makers through a terminal to an electronic system, based on the open limit order book. The next section discusses these rules one-by-one.

Summary of ESP Rules

The Exchange has taken the following approach to enabling its Rules to accommodate basket trading

(a) It has amended several existing Rules to accommodate issues that the introduction of basket trading raises: Rule 36 (Communications between Exchange and Members' Offices), Rule 104 (Dealings by Specialists), Rule 111 (Competitive Traders) and Rule 431 (Margin Requirements).

(b) It has proposed a new "800 series" of Rules ("Basket Rules") that apply solely to ESP trading.

(c) It has incorporated into the 800 series many of the Exchange's "Dealings and Settlements" Rules (Rules 45 through 299C).

(d) It has excluded from application to ESP, trading other of the Exchange's existing Rules. (See paragraph (a) of Rule 800 (Basket Trading: Applicability and Definitions).)

(e) It has imposed several regulations that govern "inter-market" issues arising from the interplay between the stock and ESP markets. (See paragraph (c) of Rule 800).

Rule-By-Rule Analysis

The Exchange's complete rule-by-rule analysis is available for inspection and copying at the places specified in Item IV below. Some of the more significant rules are discussed immediately below.

Rule 36 (Communications between Exchange and Members' Offices)

Rule 36 is amended to enable members to communicate with non-members off the Floor for the purpose of hedging ESPs with futures or options or laying off individual Amex and OTC stocks acquired in ESP trades.

Rule 104 (Dealings by Specialists)

Rule 104 is amended to enable specialists to participate in basket trading. Each specialist must support the ESP market by maintaining "Tier 1" and "Tier 2" quotations in each of his specialty basket stocks.

The ESP system will automatically establish the Tier 1 bid and offer for a basket's component stock by "catching" every 15 seconds the best published bid and offer in his market. The specialist must establish his Tier 2 bid and offer for the component stock at a level equal or inferior to the Tier 1 bid and offer. Initially, the Exchange anticipates establishing guidelines for Tier 2 quotations that take into account the normal depth of the stock's market. The ESP system will create aggregate Tier 1 and Tier 2 quotes represented in the ESP market.

When the ESP system sends an execution notice to the component stock specialist indicating the execution of a Tier 1 or Tier 2 basket trade, the specialist must assign the execution at the execution price to interest on his book or in the trading crowd in accordance with existing stock rules of priority and precedence, as well as report the price to the consolidated tape. Because the ESP system will "catch" his Tier 1 and Tier 2 quotes only once every 15 seconds, and because of the human and system time involved in entering an ESP trade and disseminating the execution notices, the Tier 1 or Tier 2

execution price indicated in an execution notice may be superior or inferior to the prevailing market quotation at the time the specialist receives the execution notice. Nevertheless, the execution price indicated in the execution notice always applies. If the execution price indicated in the notice is inferior to the prevailing market price, the specialist must assign the execution to the bid or offer then having priority at the price indicated in the notice. If the execution price indicated in the notice is superior, the specialist must take or supply the necessary shares. The specialist is also required to take or supply the necessary shares when the size of the interest on the book or in the trading crowd at or better than the execution price is insufficient or, in a non-firm market, when it is impractical for him to assign the execution to the book or trading crowd.

In the case of a notice for a Tier 1 execution, the specialist must assign, take or supply the number of shares of his specialty stock that one basket contains; in the case of a notice for a Tier 2 execution, the specialist must assign, take or supply the number of shares of his specialty stock that up to three baskets contain. The rule stipulates a 30-second suspension of his Tier 1 "bid" obligation after each ESP execution against the Tier 1 bid, and an independent 30-second suspension of his Tier 1 "offer" obligation after each ESP execution against the Tier 1 offer. Similar but independent 30-second suspensions of his Tier 2 bid and offer obligations occur after any ESP execution against a Tier 2 bid or offer.

Rule 104 also is amended to cross-reference Rule 800, which deals with interplay between this rule and the ESP rules.

Rule 111 (Competitive Traders)

Rule 111 is amended to add a new exception to that Rule's prohibition against proprietary stock trading by persons other than a Competitive Trader: a Competitive Basket Market-Maker may initiate proprietary trades to liquidate a position in a component stock that the Competitive Basket Market-Maker has established through basket transactions during the same trading session. This enhances the Competitive Basket Market-Maker's ability to liquidate unwanted basket stocks in individual stock transactions, whether acquired to accommodate customers, to meet his market-making obligations or otherwise.

Rule 431 (Margin Requirements)

An amendment to Rule 431 makes clear that a member organization may clear and carry a Competitive Basket Market-Maker's ESP trades upon such margin as the member organization and market-maker may agree so long as the resulting margin adequately covers the risk attendant to the Market Functions Account in which the ESPs are carried.

Rule 800 (Basket Trading: Applicability and Definitions)

Rule 800 performs five primary functions:

(1) Rule 800 excludes certain existing stock Rules from application in the ESP context.

(2) Paragraph (a) of Rule 800 substitutes terms to cause the incorporated stock Rules to properly apply in the ESP context.

(3) Any Exchange Rule that Rule 800 does not specifically exclude from application in the ESP context *does* apply to basket trading and to the members and member organizations that trade baskets.

(4) Paragraph (b) of Rule 800 defines several terms for use throughout the Basket Rules.

(5) Paragraph (c) of Rule 800 establishes six rules that deal with the impact of activity in baskets on activity in component stocks, and *vice versa*:

a. A member who holds or has knowledge of a customer's unexecuted order for one or more of a basket's component stocks may still initiate a basket transaction, despite anything to the contrary in Rule 92 (Limitations on Members' Trading Because of Customers' Orders).

b. A specialist may originate a basket order for a discretionary account even if the basket contains his specialty stock, despite anything to the contrary in Supplementary Material .20 of Rule 95 (Discretionary Transactions).

c. A member who holds or has granted an option on a basket's component stock may still initiate proprietary basket transactions despite anything to the contrary in Rule 96 (Limitation on Members' Trading Because of Options).

d. Rule 97 (Limitation on Members' Trading Because of Block Positioning) imposes tick tests limiting the ability of a member to trade if he has acquired a long stock position as a result of a "block transaction". Those tick tests do not apply if the "block transaction" derives from a member's basket transactions.

e. A stock specialist may initiate basket transactions even if the basket contains a specialty stock, despite

anything to the contrary in Rule 104 (Dealings by Specialists).

f. A specialist, Registered Competitive Market-Maker or Competitive Trader must include in any calculation of his aggregate stock position any stock that he has acquired by means of one or more basket transactions for the purposes of the stock trading limitations that Rules 104, 107 (Registered Competitive Market-Makers) and 112 (Competitive Traders) impose.

Rule 801 (Baskets To Be Traded)

Rule 801 does three things: It limits basket trading to baskets that the Exchange has approved; it requires that a basket's component stocks have been admitted to dealings for ESP purposes on an "issued", "when issued" or "when distributed" basis; and it gives the Exchange discretion to change the array of component stocks comprising a basket.

Rule 802 (Basket Units of Trading: Basket Bids and Offers)

Rule 802 specifies that one basket is the unit of ESP trading and states that bids and offers must be expressed in terms of index points and decimals. It also sets one-hundredth of one index point as the minimum variation between bids and offers, and affords the Exchange the flexibility to alter the manner of expressing basket bids and offers by substituting the use of fractions for decimals. The Rule also confirms that basket bids and offers made and accepted are binding, and establishes that only market and limit orders can be entered on the ESP display unit.

Supplementary Material .10 to Rule 802 specifies that certain orders do not apply to ESPs.

Supplementary Material .20 governs "Index-on-Close" basket orders. "Index-on-Close" orders, which may only be entered as matches, are executable at the close at the closing value of the index on which the basket is based. Members must enter Index-on-Close orders prior to the close.

Supplementary Material .30 and .40 introduce the concept of "split" orders, enabling a member to participate on the same side of the market with his customer as an accommodation to his customer's need for a customized basket. The member may agree to take or supply either (a) all shares of enumerated component stocks of a basket (a "vertical split") or (b) the same percentage of each component stock's basket shares, rounded to the nearest whole share (a "horizontal split"). The vertical split order allows a member to accommodate a customer

who determines that certain component stocks are not suitable for his portfolio. The horizontal split allows a member to accommodate a customer who wants all of the stocks in a basket, but not in a basket quantity.

Supplementary Material .40 limits to 100 the number of stocks that a member or member organization can take or supply when vertically splitting an order for a customer, whether as part of an agency cross pursuant to paragraph (d) of Rule 805 (Price Priority of Basket Bids and Offers) or as a facilitation pursuant to Rule 806 (Taking or Supplying Baskets Named in an Order).

Rule 805 (Priority of Basket Bids and Offers)

Rule 805 sets forth the rules of priority applicable to ESP bids and offers. The highest bid and lowest offer have priority in all cases. At the same price, Tier 1 and Tier 2 bids and offers have priority over all other bids and offers, so as to enhance the opportunity for public customers in the component stock markets to participate. Next, priority at a price is determined by the time of entry on the ESP display unit. Finally, a bid or offer from the trading crowd has priority over other bids or offers from the trading crowd at its price (though not over bids or offers on the display unit at its price) based on when the bid or offer was made. Where the sequence of trading crowd bids and offers cannot be determined, or where bids and offers in the trading crowd are made simultaneously, priority will be shared on a pro rata basis. The Rule also makes clear that, unlike stock trading, a basket sale does not remove all bids and offers. Paragraph (d) of the Rule allows a member to cross two agency orders without exposing either side, but only at a price that is better than the ESP display unit's best bid and best offer on the basket.

Rule 806 (Taking or Supplying Baskets Named in Order)

Rule 806 specifies that a Competitive Basket Market-Maker may only facilitate a customer's order at a price that is better than the best bid or offer on the ESP display unit, and only after announcing the facilitation price to other members in the trading crowd.

Another member may "break up" a Competitive Basket Market-Maker's facilitation trade by taking or supplying all of the baskets that the customer seeks at a price that is better for the customer than the facilitator's price. However, the rule provides the facilitating Competitive Basket Market-Maker with a "safe harbor": a member may not "break up" the facilitation if the

Proposed facilitation price is one "minimum variation" better than the prevailing quote on the customer's side of the market.

Rule 807 (Competitive Basket Market-Makers)

Rule 807 governs Competitive Basket Market-Makers. It is divided into two parts. Part A governs the registration, administration and financing of Competitive Basket Market-Makers. Part B governs their dealings.

Part A

Part A of Rule 807 allows members and member organizations to register as Competitive Basket Market-Makers by satisfying Exchange-prescribed registration requirements. Competitive Basket Market-Makers must maintain minimum capital equal to \$10 million of net liquid assets over and above other federal and Exchange capital requirements. A Competitive Basket Market-Maker's capital calculation must not include the capital required to carry or finance accounts other than the market-maker account.

Part B

The following obligations govern the activities of the Competitive Basket Market-Maker:

(a) A Competitive Basket Market-Maker may make a proprietary bid or offer only in a manner consistent with the maintenance of a fair and orderly market.

(b) A Competitive Basket Market-Maker must engage in proprietary dealings when there exists a lack of depth or a temporary disparity between ESP supply and demand.

(c) All proprietary transactions of a Competitive Basket Market-Maker must be effected in a reasonable and orderly manner in relation to the condition of the general market and the ESP market.

(d) A Competitive Basket Market-Maker must bid and offer on a continuous basis in accordance with Exchange-prescribed parameters, initially expected to be the greater of two index points and the spread between the aggregate bid and offer of the component stocks.

Rule 808 (Basket Book Brokers)

Under Rule 808, the Basket Book Broker presides over all ESP executions, executes orders entrusted to him, maintains the ESP display unit, arranges the opening of the ESP market, presides over the ESP call market, maintains a market in minibaskets, reports ESP trades to market data vendors and otherwise generally supervises the ESP

market. Either a member or a member organization may register as a Basket Book Broker. However, only members who have qualified to act as a Basket Book Broker may perform Basket Book Broker functions. Each Basket Book Broker must arrange to have a member qualified to act as a Basket Book Broker in attendance during all business hours.

A member or member organization registered or acting as or on behalf of a Competitive Basket Market-Maker may neither register nor act as a Basket Book Broker unless, in the case of a member organization, it performs its Competitive Basket Market-Maker functions in a segregated, Rule 98-type unit.

Under unusual circumstances, a Floor Governor may designate a member who has not registered or qualified as a Basket Book Broker to act in that capacity temporarily. The temporary Basket Book Broker is expected to assume the Basket Book Broker obligations and responsibilities of the member for whom he is substituting. The rule also provides for relief Basket Book Brokers.

In addition, Rule 806 requires a Basket Book Broker to promptly effect immediately-executable limit orders entrusted to him against the prevailing contra-side interest and to promptly place any other limit orders on the basket display unit.

Supplementary Material .20 requires the Basket Book Broker, as market-maker in the minibasket made up of a basket's non-NYSE listed stocks, to contribute Tier 1 and Tier 2 minibasket quotations for inclusion in the aggregate Tier 1 and Tier 2 quotations. The minibasket quotations must be reasonably related to the market in the individual minibasket stocks in accordance with Exchange-prescribed parameters. The Exchange's guidelines set the Tier 1 parameters in relation to the weighted sums of the bids and offers for the minibasket's component stocks, and the Tier 2 parameters in relation to Tier 1.

Rule 809 (Proprietary Basket Trades)

Rule 809 prohibits any member from initiating proprietary basket trades on the Floor unless the member is a Competitive Basket Market-Maker or is offsetting a basket transaction made in error. However, it does permit a member to accept proprietary orders initiated off the Floor, subject to the limitations that Rule 92 (Limitations on Members' Trading because of Customers' orders) imposes on the proprietary trades of members holding customers' orders.

Rule 810 (Basket Orders Initiated Off the Floor)

Rule 810 generally requires that all proprietary basket orders of a member or member organization not registered as a Competitive Basket Market-Maker be sent to the Floor through a clearing firm's order room or similar facilities. The Rule also defines "On-Floor" for the purpose of ESP trading.

Rule 815 (Basket Openings and Reopenings)

Rule 815 describes the procedures by which the Basket Book Broker will open or reopen trading in the ESP market. The rule incorporates opening procedures applicable to stock trading as set forth in Rule 115A (Orders at Opening or in Unusual Situations). In addition, it requires that, if matching buy and sell market orders create an imbalance, the Basket Book Broker must execute the opening at a single opening price (i.e., the lowest price (buy imbalance) or highest price (sell imbalance) at which limit orders on the ESP display unit will satisfy the imbalance), unless the imbalance is significant enough to warrant entry into a call market.

Rule 816 (Basket Call Markets; Basket Trading Halts)

Paragraph (a) of Rule 816 describes how call markets are initiated and conducted.

Paragraph (b) of Rule 816 confirms that ESP trading will halt when market activity triggers the "circuit breakers" of Rule 80B (Trading Halts Due to Extraordinary Market Volatility). That is ESP trading, like single-stock trading, will halt for one and two hour intervals when the Dow Jones Industrial Average drops 250 and 400 points, respectively.

In addition, the Exchange's Senior Officers and Floor Directors can halt ESP trading when the condition of the market so warrants.

Fees

The ESP fee schedule proposes fees intended to recover the Exchange's costs in developing and operating the ESP market. The initial fees are \$350 per unit per side (\$200 per unit per side for crosses) and a charge of \$12,000 per year in advance for a Competitive Basket Market-Maker's terminal.

(b) *Statutory Basis*—The basis under the Securities Exchange Act of 1934 ("1934 Act") for the ESP rules and guidelines is the requirement under section 6(b)(5) that an exchange have rules that are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market

and a national market system, and, in general, to protect investors and the public interest. The basis under the 1934 Act for the ESP fees is Section 6(b)(4), which permits the rules of an exchange to provide for the equitable allocation of reasonable dues, fees and other charges among the members, issuers and other persons using its services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the 1934 Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the *Federal Register* or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

- (A) By order approve the proposed rule change, or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the

Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before July 17, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

June 8, 1989.

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[Rel. No. 34-26902; File No. SR-PSE-89-13]

Self-Regulatory Organizations; Notice of Filing Proposed Rule Change by Pacific Stock Exchange, Inc., Relating to Verification of Compared Trades and Reconciliation of Uncompared Trades

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on May 22, 1989, the Pacific Stock Exchange Incorporated ("PSE" or "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Item 1. Text of the Proposed Rule Change

The PSE proposes to amend what is currently Options Floor Procedure Advice G-3 and incorporate it into Rule VI, Section 23, as Commentary .01. (Brackets indicate deletions and italics indicate additions.)

Verification of Compared Trades and Reconciliation of Uncompared Trades
Section 23 No Change.

Commentary:

.01 Rule VI, Section 23, requires clearing members to verify and reconcile compared and uncompared trades promptly in accordance with procedures established by the Exchange from time to time. Trades shall be routinely compared during the course of the trading session.

All executing members must be available for the settlement of uncompared trades throughout the trading day and for an appropriate period of time following the close of trading, either in person or through a designated representative empowered to negotiate settlement of any dispute in his name and for his account.

This time period will normally be established when the Trade Processing Department closes and the number of transactions on that day is announced to the trading floor. The minimum amount of time which members and/or their representatives will be required to remain after Trade Processing closes will be as follows:

0-8,000 transactions 45 minutes.
8,001 and over..... one hour, 15 minutes.

For purposes of complying with this provision, the authorized representative must be physically present on the Trading Floor during this time.

All authorized representatives shall also be required to be present on the Trading Floor each Saturday immediately prior to expiration for a period of one hour beginning at 6:00 a.m. Pacific time or for longer periods of time as may be determined from time to time by an Exchange representative. A PSE options staff member shall be responsible for determining that such representatives are present for this period.

While there may be occasional instances when a trade must remain uncompared overnight, and be resolved in conformance with Rule VI, Section 27, any member or member organization responsible for an undue number of such occurrences will be subject to disciplinary action by the appropriate Exchange Committee pursuant to Rule XX.

Advice G-3, concerning Trade Comparison Procedures, is to be deleted and incorporated into Rule VI, Section 23, Commentary .01 and has been included to indicate the relevant changes.

G-3

[Subject: Trade Comparison Procedures

[Section 23 of Rule VI] Rule VI, Section 23, requires clearing members to [promptly] verify and reconcile compared and uncompared trades promptly in accordance with procedures established by the Exchange from time to time. [The unique Trade Comparison System that has been developed by the Exchange for use on the Options Trading Floor will, if properly employed, ensure mutually satisfactory comparison

of all transactions within each trading day.]

[The great majority of] [t]rades shall be routinely compared during the course of the trading session[.], [but appropriate provisions must exist for exceptions arising from unusual volume or similar considerations.]

[Accordingly] All executing members must be available for the settlement of uncompared trades throughout the trading day and for an appropriate period of time following the close of trading, either in person or through a designated representative empowered to negotiate settlement of any dispute in his name and for his account.

This time period will normally be established when the [Data Entry] Trade Processing Department closes[,] and the number of transactions on that day is announced to the trading floor[, and Preliminary Compared and Uncompared Trade Reports ("Reports") are distributed]. The minimum amount of time which members and/or their representatives will be required to remain after [the distribution of such Reports] Trade Processing closes will be as follows:

[0-6,000 transactions ... 15 minutes].
[8,001] 0-8,000 [30] 45 minutes.
[transactions].
8,001 and over..... one hour, 15 minutes.

For purposes of complying with this provision, the authorized representative must be physically present on the Trading Floor during this time.

All authorized representatives shall also be required to be present on the Trading Floor each Saturday immediately prior to expiration for a period of one hour beginning at 6:00 a.m. Pacific time or for longer periods of time as may be determined from time to time by an Exchange representative. A PSE options staff member shall be responsible for determining that such representatives are present for this period.

The Options Floor Trading Committee has determined that there may be a fine of from \$100.00 to \$5,000.00 for failure to comply with these procedures. Subsequent violations of these procedures may be cause for higher fines or other disciplinary actions.

While there may be occasional instances when a trades must remain uncompared overnight, and be resolved in conformance with Section 27 of Rule VI, any member or member organization who or which shall be responsible for an undue number of such occurrences will be subject to disciplinary action by the

Appropriate Exchange [Options Floor Trading] Committee pursuant to Rule XX.

[In any case where a member, member organization or associated person is sought to be disciplined pursuant to this Advice, the Exchange shall bring specific charges, notify such member, organization or associated person of such charges, give such person an opportunity to defend against such charges, and keep a record. A determination by the Exchange to impose a disciplinary sanction shall be supported by a statement setting forth:

(1) Any act or practice in which such member, member organization or associated person has been found to have engaged, or which such member, member organization or associated person has been found to have omitted.

(2) The specific provision of the rules of the Exchange which any such act or practice, or omission to act, is deemed to violate.

(3) The sanction imposed and the reasons therefor.]

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the Rule Change is twofold. The first substantive change is to revise the trade comparison procedures by extending the minimum amounts of time which a member/member firm and/or their representative will be required to remain on the options floor after the close of trade processing. The minimum time has been increased to 45 minutes for 0-8,000 transactions. Furthermore, the proposed rule change provides that the time period will commence prior to the distribution of the preliminary compared and uncomparated trade reports.

The second purpose of the proposed rule change is to delete Options Floor Procedure Advice G-3 and incorporated it into Rule VI, Section 23 as Commentary .01. This is in keeping with the Exchange's initiative to phase out

OFFPAs by utilizing commentaries to the rule sections.

The PSE believes that this proposal is entirely consistent with Section 6(b)(5) of the 1934 Act because it will foster coordination with persons engaged in the clearing, setting and processing information with respect to the facilitating transactions in Securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) Commission will:

- (A) By order approve such proposed rule change; or
- (B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested person's are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file

number in the caption above and should be submitted on or before July 6, 1989.

For the Commission by the Division of Market Regulation, to delegated authority.

Jonathan G. Katz,

Secretary.

June 7, 1989.

[FR Doc. 89-14199 Filed 6-14-89; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26901; File No. SR-PSE-89-08]

Self-Regulatory Organizations; Notice of Filing Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to the Summary Sanctioning of Members by Floor Official

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 15, 1989, the Pacific Stock Exchange Incorporated ("PSE" or the "Exchange") filed with the Securities and Exchange Commission the proposed rule change as described in Item I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Item 1. Text of the Proposed Rule Change

The Pacific Stock Exchange Incorporated ("PSE" or "Exchange"), proposes to amend Rule VI, Section 39, and delete Options Floor Procedure Advice E-4, to provide for the summary sanctioning of PSE members, by floor officials, pursuant to the issuance of a floor citation. (Brackets indicate language to be deleted, italics indicates new language).

Admission to and Conduct on the Options Trading Floor

Section 39.

- (a) No Change.
- (b) Conduct on the Floor. Upon the determination of *two Floor Officials* or of the Options Floor Trading Committee that [the] a member's conduct on the Options Trading Floor of the Exchange is such as to impair the maintenance of a fair and orderly market, or to impair public confidence in the operations of the Exchange, a member of the Exchange may be fined pursuant to the Constitution and Rules of the Exchange. This shall also apply to a member's

failure to adequately supervise an employee to ensure his compliance with this rule. A member adversely affected by a determination made under this Section may obtain review thereof in accordance with the provisions of Rule XX. Fines imposed by Floor Officials or the Options Floor Trading Committee hereunder shall not preclude further disciplinary action by an appropriate committee of the Exchange pursuant to the Constitution and Rules of the Exchange.

Commentary:

- .01 to .04 No Change.
- .05 In the issuance of a floor citation, the following procedure must be observed:
 - (i) the two Floor Officials will apprise the individual cited of the alleged violation;
 - (ii) the Floor Officials will then notify the Compliance Department of the alleged violation, and request information regarding prior similar violations by the individual cited;
 - (iii) the Floor Officials will indicate on the citation either the amount of the fine to be imposed, or that the matter will be referred to the Options Floor Trading Committee;
 - (iv) the Floor Officials will ask the member to indicate by his signature on the citation that he acknowledges receipt of said citation;
 - (v) the Floor Officials will give the top copy of the citation to the person alleged to have committed the infraction;
 - (vi) the Floor Officials will give the remaining copies of the citation to the OBO in attendance for his signature;
 - (vii) the OBO will then forward the citation to the Compliance Department for processing.
- .06 In the instance where two Floor Officials believe that a violation of PSE rules has occurred or may have occurred, but fail to issue a floor citation before the close of trading on the day of the alleged violation, either Floor Official shall, in writing, report the incident and surrounding circumstances to the Surveillance Department, with a copy to the Compliance Department and to the individual cited, within 24 hours after the close of trading on the day of the alleged violation. Thereafter, the Exchange may, for a reasonable and necessary period of time, investigate the incident and the surrounding circumstances, and apprise the appropriate Floor Officials of the results of said investigation.
- .07 In the instance where the Floor Officials do not become aware of a

violation until the Surveillance/ Compliance Departments have discovered the violation and notified the Floor Officials, a floor citation may, for the violations stated below, be issued by the Floor Officials at the time they are so notified. The Floor Officials will then be responsible for issuing a citation and/or report. The violations for which this commentary shall apply are the following:

- (i) Rule VI, Section 55(.01) Member failed to timestamp an execution in which he participated as a seller;
- (ii) Rule VI, Section 66(a) Member placed, or permitted placement of an order with an OBO for an account in which such member or his organization, any other member or member organization, or any non-member broker/dealer has an interest.

[E-4

Subject: Guidelines for Issuance of Options Floor Citations

Floor Citations are issued, generally, upon the determination of a Floor Official that the conduct of a person authorized to be on the Trading Floor has violated PSE Rules and/or procedures or otherwise has impaired the maintenance of a fair and orderly market or public confidence in the operation of the Exchange.

The Floor Official issuing a Floor Citation must (1) apprise the person accused of violating PSE Rules and/or procedures of the offense charged, and (2) ask the person to indicate by his signature on the citation that he acknowledges receipt of said citation.

If a Floor Official believes a violation of PSE rules and/or procedures has occurred or may have occurred but fails, for whatever reason, to issue a citation before the close of trading on the day of the alleged or possible violation, the Floor Official shall report in writing the incident and circumstances surrounding it to the Surveillance Department, with a copy to the Compliance Department and to the individual cited within 24 hours after the Floor Official becomes aware of the alleged violation.

When a Floor Official, in accordance with paragraph three above, reports to the Surveillance and Compliance Departments an alleged or possible violation of PSE Rules and/or procedures, the Exchange, during a necessary and reasonable time period, may investigate the incident and surrounding circumstances before apprising the subject Floor Official of the disposition of the matter.

If a Floor Official does not become aware of certain violations designated

in this Advice E-4 until the Surveillance/Compliance Departments have discovered them, a Floor Citation may be issued at the time of notification to the Floor Official. The Official so notified will then be obligated to issue the citation, and/or report, as required in the preceding paragraphs. The Option Floor Trading Committee has designated the following violation as appropriate for this procedure.

Rule VI, Section 55(.01) Member failed to time-stamp an execution in which he participated as a seller.

Rule VI, Section 66(a) Member placed, or permitted placement of an order with an Order Book Official for an account in which such member or his organization, any other member or member organization, or any non-member broker/dealer has an interest.

The issuance of a Floor citation for conduct alleged to be in violation of PSE Rules and/or procedures, and any disciplinary action by the Options Floor Trading Committee pursuant to the citation, shall not preclude further action by an appropriate Committee of the Exchange.

Accordingly, the Options Floor Trading Committee has determined that the following procedures will be adhered to upon the issuance of such citation:

- (a) The Floor Official issuing such citation will give the top copy of the citation to the person alleged to have committed the infraction;
- (b) The Floor Official will give the remaining copies of the citation to the OBO in attendance for his signature and referral to the manager;
- (c) The OBO manager will then forward the citation to the Director of Surveillance for processing and referral to the Compliance Department for presentation at the next Options Floor Trading Committee meeting].

II. Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement on the Purpose of, and Statutory Basis for the Proposed Rule Change

The PSE proposes to amend Rule VI, Section 39, to provide for the summary sanctioning of PSE members, by Floor Officials, pursuant to the issuance of a floor citation. In the amending of this rule, Options Floor Procedure Advice E-4 has been deleted, with the consolidation of comparable language into Section 39 as Commentaries .05 through .07. The purpose for such consolidation is to facilitate the PSE's present plan to eventually merge all the Advices into the commentary sections of the Rules of the Board of Governors. Although the proposed language of Commentaries .05 to .07 does not mirror E-4 verbatim, the substance of E-4 has remained unchanged.

The purpose of the proposed rule change is to eliminate certain unnecessary and time-consuming procedures which currently exist in the processing of floor citations. Under the existing system at the PSE, floor citations are issued to a member, member organization, or employee of a member organization when charged with an alleged violation of Exchange rules. The citation is then forwarded to Exchange staff for a complete investigation consisting of witness interviews, rule interpretation, documentary evidence evaluations, and other necessary research. At the completion of the investigation, a memorandum outlining the study is presented to the Options Floor Trading Committee ("Committee") for its evaluation and determination as to disposition of the matter. A finding of guilt against the cited member results in the imposition of a fine in accordance with the Committee's "Recommended Fine Schedule."

Under the proposed amendment to Section 39, the processing of floor citations is greatly simplified and the unnecessary, arduous steps noted above are eliminated. As amended, the Rule provides citing Floor Officials with the discretion, upon the alleged occurrence of a violation, to conduct an immediate investigation and impose an automatic fine according to the same fine schedule as employed by the Committee. Furthermore, due to their location on the trading floor, the Floor Officials have a greater ability to investigate and evaluate the alleged violation. In all circumstances, particularly instances involving egregious or complicating

factors, the Floor Officials retain the discretion to refer the matter to the Committee for its determination. A copy of the Options Floor Citation which the Exchange proposes to employ, should this Rule Filing be approved, may be obtained by contacting the Exchange.

The Rule, as amended, does not diminish the due process rights of the individual cited. Similar to the current procedure, whereby the member may appeal the sanction imposed by the Committee, under the proposed procedure the member may appeal the sanction imposed by the Floor Officials, pursuant to Rule XX, Section 11.

Furthermore, the proposed rule change incorporates certain specified safeguards which prevent arbitrary or capricious impositions of fines by Floor Officials. The rule, as amended, requires the participation of two Floor Officials for the issuance of a citation and imposition of a fine. Also, the proposed rule change mandates that the citing Floor Officials confer with Staff before issuing the citation and fine. Moreover, to aid in the systematic functioning of the summary sanctioning procedure, and to correct any problems which may arise therefrom, a monthly recap of those citations handled summarily shall be submitted to the Committee for its review and discussion.

In addition, in order to protect against arbitrary or capricious determinations of sanction amounts, the citing Floor Officials will have, at their disposal, a "Recommended Fine Schedule." Attached as Exhibit I to the proposed rule change is a proposed amendment to the existing Recommended Fine Schedule. Approved by the PSE Board of Governors on April 27, 1988, most of the recommended fines for trading violations have been increased by 100%, and the sanctions for non-trading violations, such as disruptive action and standard of dress, have remained unchanged. The purpose for the increased sanctions is to promote public confidence in the operations of the Exchange by discouraging violative conduct. Furthermore, it has been the recent policy of other self-regulatory organizations to impose higher sanctions for minor rule violations.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change imposes a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of the publication of this notice in the Federal Register or within such longer period: (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding; or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve such proposed rule change; or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned, self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before July 6, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: June 7, 1989.

EXHIBIT I—FLOOR CITATION FINE SCHEDULE

(Within a twelve-month period)

	First	Second	Third
1. Floor Broker failed to properly record the time of receipt, change in limit, or increase in size of an order. (Rule VI, Sec. 42)			
Existing Fine.....	\$50.00.....	\$100.00.....	\$250.00.....
Proposed Fine.....	\$100.00.....	\$200.00.....	\$500.00.....
2. Floor Broker failed to use due diligence in the handling or execution of an order. (Rule VI, Sec. 62(a), OFPA A-8)			
Existing Fine.....	\$50.00.....	\$100.00.....	\$250.00.....
Proposed Fine.....	\$250.00.....	\$500.00.....	\$750.00.....
3. Floor Broker improperly executed a cross transaction. (Rule VI, Sec. 63, OFPA A-8)			
Existing Fine.....	\$50.00.....	\$100.00.....	\$250.00.....
Proposed Fine.....	\$100.00.....	\$200.00.....	\$500.00.....
4. Member failed to give up the name of the clearing member by public outcry when requesting a quote and size of the market or after effecting a trade. (Rule VI, Sec. 40, OFPA D-9)			
Existing Fine.....	\$50.00.....	\$100.00.....	\$250.00.....
Proposed Fine.....	Unchanged.....		
5. Market Maker or Floor Broker violated procedures concerning the Market Maker use of a Floor Broker to effect transactions. (Rule VI, Sec. Nos. 62(a), 64, OFPA B-6, OFPA A-8)			
Existing Fine.....	\$50.00.....	\$100.00.....	\$250.00.....
Proposed Fine.....	\$100.00.....	\$200.00.....	\$500.00.....
6. Market Maker failed to respond to demands for bids and/or offers. (Rule VI, Sec. 79)			
Existing Fine.....	\$250.00.....	\$500.00.....	\$750.00.....
Proposed Fine.....	\$250.00.....	\$500.00.....	\$750.00.....
7. Market Maker failed to respond to a call for Market Makers by an Order Book Official. (Rule VI, Sec. 67, OFPA B-7)			
Existing Fine.....	\$50.00.....	\$100.00.....	\$250.00.....
Proposed Fine.....	\$100.00.....	\$200.00.....	\$500.00.....
8. Improper communication on the Floor by use of hand signals or other means or devices. (Rule VI, Sec. Nos. 39(b), 47, 62 and OFPA F-5)			
Existing Fine.....	\$50.00.....	\$100.00.....	\$250.00.....
Proposed Fine.....	\$100.00.....	\$200.00.....	\$500.00.....
9. Improper vocalization of trade by Member. (Rule VI, Sec. Nos. 47, 55(01), OFPA G-10)			
Existing Fine.....	\$50.00.....	\$100.00.....	\$250.00.....
Proposed Fine.....	\$250.00.....	\$500.00.....	\$750.00.....
10. Disruptive action while on the trading floor. (Rule VI, Sec. Nos. 36, 62(a) and OFPA Nos. A-1, F-4)			
Existing Fine.....	\$50.00.....	\$100.00.....	\$250.00.....
Proposed Fine.....	Unchanged.....		
11. Member failed to time-stamp an execution in which he participated. (Rule VI, Sec. 55(01), OFPA G-12)			
Existing Fine.....	\$25.00.....	\$50.00.....	\$100.00.....
Proposed Fine.....	\$50.00.....	\$100.00.....	\$200.00.....
12. Member violated a standard of conduct or dress on the trading floor. (Rule VI, Sec. 39, OFPA F-4)			
Existing Fine.....	\$25.00.....	\$50.00.....	\$100.00.....
Proposed Fine.....	Unchanged.....		
13. Member failed to act in a professional manner. (Rule VI, Sec. 39, OFPA F-4)			
Existing Fine.....	\$50.00.....	\$100.00.....	\$250.00.....
Proposed Fine.....	Unchanged.....		
14. Member placed a non-public order in the Book. (Rule VI, Sec. 66(a))			
Existing Sanction.....	Informal Letter of Caution.....		
Proposed Fine.....	\$25.00.....	\$50.00.....	\$100.00.....

[FR Doc. 89-14200 Filed 6-14-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34-26900; File No. SR-PHLX-89-11]

Self-Regulatory Organization; Proposed Rule Change By the Philadelphia Stock Exchange, Inc. Relating to Responsibility to Display Best Bids and Offers

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on March 23, 1989, the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-

regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange"), pursuant to Rule 19b-4, hereby proposes to amend its Options Floor Procedure Advice A-1 in accordance with PHLX Rule 970: (New text is italicized; deleted text is bracketed).

A-1 Responsibility of Displaying Best Bids and Offers

A Specialist shall use due diligence to [ascertain] ensure that the best

available bid and offer [on his book] is displayed for those option series in which he is assigned. [When requested to do so, a Specialist shall use due diligence to ascertain that the best bid and offer in the trading crowd is displayed.]

Bids and offers for the Specialist's own account, bids and offers on the book, and bids and offers established in the crowd are deemed available for display purposes.

Fine Schedule:

1st occurrence—\$50.00.
2nd occurrence—\$100.00.
3rd occurrence—\$250.00.
4th occurrence and thereafter—Sanction is discretionary with Business Conduct Committee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

The purpose of the proposed rule change is to clarify the responsibility of specialists to display the best bids and offers available on the floor regardless of whether those bids and offers are from a member in the crowd, order on the book, or for the specialist's own proprietary account. This amendment effectively replaces requirements that the specialist only display the best bid and offer on his book or, when asked to do so, from the crowd.

The proposed rule change is consistent with section 6(b)(5) of the Act in that it will promote just and equitable principles of trade, protect investors and promote the public interest by assuring that best bid and offer quotations are displayed on the options and foreign currency options floors from whatever source in the trading crowd. Additionally, the proposal is consistent with section 11A(a)(1)(C) (ii) and (iv) of the Act in that it will promote fair competition among brokers and dealers and the practicability of brokers executing investors' orders in the best market.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal

Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or;

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted on or before July 6, 1989.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: June 7, 1989.

[FR Doc. 89-14202 Filed 6-14-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 34-26899; File No. PHLX 89-20]

Self-Regulatory Organizations; Proposed Rule Change By the Philadelphia Stock Exchange, Inc. Relating to Revision of PHLX Rule 970 and Implementation of New Equity and Options Floor Procedure Advices

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934, 15 U.S.C. 78s(b)(1), notice is hereby given that on May 22, 1989 the Philadelphia Stock Exchange, Inc. filed with the Securities and Exchange Commission

the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Philadelphia Stock Exchange, Inc. ("PHLX" or the "Exchange"), pursuant to Rule 19b-4 of the Securities Exchange Act of 1934 (the "Act"), proposes to (1) amend PHLX Rule 970 and (2) adopt Options Floor Procedure Advice F-8¹ as follows, respectively:

(1) PHLX Rule 970, entitled "Options Floor Procedure Advices: Violations, Penalties, and Procedures", shall be made applicable to the Equity Floor as well as the Options Floor of PHLX by the deletion of the word "Options" wherever it appears in PHLX Rule 970. The proposed text of PHLX Rule 970, as amended, is attached hereto as Exhibit 1.

(2) The text of the proposed Options Floor Procedure Advice F-8 is set forth as follows:

F-8 Failure to Comply with an Exchange Inquiry

Each Member, member organization or associated person is required to promptly comply with any request of information made by the Exchange's Market Surveillance Department in connection with any investigation within the Exchange's disciplinary jurisdiction.

For the purpose of this rule, information received within ten (10) business days from the date of the original request shall be deemed to meet the requirement of prompt compliance.

The Exchange may, under extenuating circumstances grant extensions to allow for responses beyond the ten (10) business day requirement. Requests for extensions must be submitted in writing to the Market Surveillance Department, prior to the due date of the outstanding request.

Miscellaneous

Fine Schedule:

- 1st occurrence—Warning.
- 2nd occurrence—\$1,000.
- 3rd occurrence—\$2,500.

¹ Upon approval of the proposed amendment to PHLX Rule 970 by the Securities and Exchange Commission, the provisions of Options Floor Procedure Advice F-8 would also apply to the PHLX Equity Floor but would thereupon also be designated as Equity Floor Procedure Advice EM-1.

4th occurrence—Sanction is discretionary with Business Conduct Committee.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for the Proposed Rule Change

On June 4, 1986, the Commission approved SR-PHLX-86-11 [see Securities Exchange Act Rel. No. 23296 (June 4, 1986)] which adopted PHLX Rule 970. Rule 970 establishes a disciplinary scheme for minor rule infractions. The Rule authorizes the PHLX to promulgate "advices" with accompanying set fine schedules that enable the PHLX Market Surveillance Department staff to serve an alleged violator with a Notice of Fine.

The implementation of this minor rule violation plan has benefited the Exchange in several ways: (a) Violators of advices are summarily cited for violations without the Exchange's Business Conduct Committee needing to exercise its discretion on a case-by-case basis (though in every case the Committee has discretion to authorize formal disciplinary action under PHLX Rule 960.2); (b) the imposition of pre-set sanctions for violation of an advice promotes uniform and fair treatment of alleged violators; and (c) if an alleged violator does not contest issuance of an advice, the sanction is predetermined (no greater than \$2,500 in all cases) and the violation is reportable to the Commission in a quarterly, abbreviated fashion.

By its official terms, Rule 970 enables "option" floor procedure advices and thus only applies to infractions committed on PHLX's equity options or currency options floor by options floor participants. To date, the Rule's disciplinary scheme has worked smoothly, so that the Exchange has determined to extend the scheme to its equity floor. Accordingly, PHLX proposes to amend Rule 970 to provide

for a means of implementing equity floor procedure advices. Akin to implementing options floor procedure advices, the Exchange will file all specific equity floor procedure advices with the Commission as proposed rule changes for the Commission's review and approval. In this regard, the PHLX is hereby also submitting the proposed floor procedure advice, designated both as F-8 and EM-1, whose terms will be applicable to both the options and equity floors, respectively, and their participants.

The purpose of the proposed floor procedure advice is to expedite the investigation process of the PHLX Market Surveillance Department by effectively and quickly enabling the Exchange to reprimand failures to respond in a timely fashion to Surveillance Department information requests.

In accordance with the proposed, more generic nature of PHLX Rule 970, further rule changes regarding equity floor procedure advices shall be appropriately designated as Equity Specialist ("ES"), Equity Floor Broker ("EF") and Equity Miscellaneous ("EM") Floor Procedure Advices.

The proposed rule change is consistent with section 6(b)(1) of the Act in that it will facilitate the enforcement of compliance by PHLX members and persons associated with its members, with the provisions of the Act, the rules and regulations thereunder, and the rules of PHLX. In addition, the proposed rule change is consistent with section 6(b)(6) of the Act in that violators of the Exchange's rules will be appropriately disciplined. Finally, the proposal is consistent with section 6(b)(7) of the Act in that it provides a fair procedure for disciplining members and persons associated with members.

B. Self-Regulatory Organizations Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such

longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or;

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by [insert date 21 days after the date of this publication].

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

Dated: June 7, 1989.

Exhibit No. 1 (Brackets indicate deletions.)

[Options] Floor Procedure Advices; Violations, Penalties, and Procedures

Rule 970. (a) In lieu of commencing a "disciplinary proceeding" as that term is used in Exchange Rules 960.1-960.12, the Exchange may, subject to requirements set forth in this Rule, impose a fine, not to exceed \$2,500.00, on any member, member organization, or any partner, officer, director or person employed by or associated with any member or member organization, for any violation of a[n Option] Floor Procedure Advice of the Exchange, which violation the Exchange shall have determined is minor in nature. Any fine imposed pursuant to this Rule and not contested

shall not be publicly reported to the Exchange membership except as may be required by Rule 19d-1 under the Securities Exchange Act of 1934, and as may be required by any other regulatory authority.

(b) In any action taken by the Exchange pursuant to this Rule, the person against whom a fine is imposed shall be served with a written statement, signed by an authorized official of the Exchange's Market Surveillance Department on behalf of the Business Conduct Committee, setting forth (1) the [Options] Floor Procedure Advice(s) alleged to have been violated; (ii) the act or omission constituting each such violation; (iii) the fine imposed for each violation; and (iv) the date by which such determination becomes final and such fine becomes due and payable to the Exchange, or rather, when such determination must be contested, as provided in paragraph (d) hereunder, such date to be not less than seven business days after the date of service of the written statement.

(c) If the person against whom a fine is imposed pursuant to this Rule pays the fine, such payment shall be deemed to be a waiver by such person of his right to a disciplinary proceeding under Exchange Rules 960.1-960.12 and any review of the matter by the Business Conduct Committee, an Exchange Hearing Panel, the Disciplinary Review Committee, or the Exchange Board of Governors.

(d) Any person against whom a fine is imposed pursuant to this Rule may contest the Exchange's determination by filing with the Department of the Exchange taking the action not later than the date by which such determination must be contested a written response meeting the requirements of an "Answer" as provided in Rule 960.4, at which point the matter shall be referred to the Business Conduct Committee for their consideration and determination.

(e) The Committee may then (a) decide that the matter be dismissed and the notice of alleged violation be rescinded; (b) decide that the notice, as issued, is valid, whereupon the alleged violator could either pay the fine or contest the matter before a hearing panel; (c) decide that the notice, as issued, should be modified to specify either a higher or lower fine than the one on the notice as issued, whereupon the alleged violator could either pay the new fine or contest the matter before a hearing panel; or (d) decide that the matter merits formal disciplinary action and authorize issuance of a Complaint, pursuant to Exchange Rule 960.2.

(f) If a disciplinary proceeding thereafter results, and the Hearing Panel determines that he has violated the Advice(s) as alleged, the Hearing Panel shall (a) be free to impose any disciplinary sanction provided for in Exchange Rules 960.1-960.12 and (b) determine whether the violation is minor in nature. If determined to be minor in nature, the violation(s) giving rise to the penalty shall not be publicly reported by the Exchange to its membership, except as may be required pursuant to Rule 19d-1, or as may be required by any other regulatory authority; if determined not to be minor in nature, the decision of the Hearing Panel and any penalty imposed shall be publicly reported to the Exchange membership in addition to any filing required by Rule 19d-1, or any other regulatory authority, once such decision becomes "final" under Exchange Rules 960.1-960.12.

[FR Doc. 89-14203 Filed 6-14-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16984; 811-4856]

Bankers Security Variable Life Separate Account III

June 7, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of proposal to terminate registration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Bankers Security Variable Life Separate Account II ("Applicant").
Relevant 1940 Act Sections: Section 8(f).

Summary of Application: Applicant seeks an order under Section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The Application was filed on January 3, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on July 3, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549.

Applicant, 4601 Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rappa, Attorney (202) 272-2622 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, a separate account of Bankers Security Life Insurance Society, is registered as an open-end management investment company under the 1940 Act. Applicant's registration statement, filed on September 29, 1986, was declared effective on June 5, 1987.

2. On February 18, 1988, the Management Committee of Applicant authorized an Agreement and Plan of Reorganization (the "Plan"). On April 28, 1988, an exemptive order under the 1940 Act was granted by the SEC regarding the Plan (Investment Company Act No. 16384). The Plan was approved by Applicant's policyholders on April 28, 1989.

3. On April 29, 1988, Applicant transferred all of its assets and liabilities to the Bond Portfolio USLICO Series Fund, a Massachusetts business trust registered with the SEC as an open-end management investment company. Simultaneously with the transfer of assets and liabilities, Applicant was combined as a sub-account (the "Bond Sub-Account") with Bankers Security Variable Life Separate Account I. In exchange for Applicant's assets, USLICO Series Fund assumed all obligations and liabilities of Applicant and issued shares of its Bond Portfolio, which shares were recorded as assets of the Bond Sub-Account of Bankers Security Variable Life Separate Account I. The number of shares issued was determined by dividing the value of the net assets of Applicant by \$10.00, which was the initial per share value of the Bond Portfolio shares.

4. No debts of Applicant remain outstanding. There are no policyowners having an interest in Applicant at the time of filing of this Application. Applicant is not a party to any current or pending litigation or administrative proceeding at the time of filing of this Application. Applicant is not engaged,

and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-14195 Filed 6-14-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16985; 811-4857]

Bankers Security Variable Life Separate Account IV

June 7, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of proposal to terminate registration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Bankers Security Variable Life Separate Account IV ("Applicant").
Relevant 1940 Act Sections: Section 8(f).

Summary of Application: Applicant seeks an order under Section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The Application was filed on January 3, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this Application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on July 3, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 4601 Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rappa, Attorney (202) 272-2622 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person or the

SEC's commercial copier, which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations

1. Applicant, a separate account of Bankers Security Life Insurance Society, is registered as an open-end management investment company under the 1940 Act. Applicant's registration statement, filed on September 29, 1986, was declared effective on June 5, 1987.

2. On February 18, 1988, the Management Committee of Applicant authorized an Agreement and Plan of Reorganization (the "Plan"). On April 28, 1988, an exemptive order under the 1940 Act was granted by the SEC regarding the Plan (Investment Company Act Release No. 16384). The Plan was approved by Applicant's policyholders on April 28, 1989.

3. On April 29, 1988, the Applicant transferred all of its assets and liabilities to the Asset Allocation Portfolio of USLICO Series Fund, a Massachusetts business trust registered with the SEC as an open-end management investment company. Simultaneously with the transfer of assets and liabilities, Applicant was combined as a sub-account (the "Asset Allocation Sub-Account") with Bankers Security Variable Life Separate Account I. In exchange for Applicant's assets, USLICO Series Fund assumed all obligations and liabilities of Applicant and issued shares of its Asset Allocation Portfolio, which shares were recorded as assets of the Asset Allocation Sub-Account of Bankers Security Variable Life Separate Account I. The number of shares issued was determined by dividing the value of the net assets of Applicant by \$10.00, which was the initial per share value of the Asset Allocation Portfolio shares.

4. No debts of Applicant remain outstanding. There are no policyowners having an interest in Applicant at the time of filing of this Application. Applicant is not a party to any current or pending litigation or administrative proceeding at the time of filing of this Application. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-14196 Filed 6-14-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16989; 811-3482]

Bankers Security Variable Life Separate Account II

June 7, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of proposal to terminate registration under the Investment Company Act of 1940 (the "1940 Act").

Applicant: Bankers Security Variable Life Separate Account II ("Applicant").

Relevant 1940 Act Sections: Section 8(f).

Summary of Application: Applicant seeks an order under Section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The Application was filed on January 3, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the Application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on July 3, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 4601 Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Nancy M. Rappa, Attorney (202) 272-2622 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. Applicant, a separate account of Bankers Security Life Insurance Society, is registered as an open-end management investment company under the 1940 Act. Applicant's registration statement, filed on June 7, 1982, was declared effective on July 13, 1982.

BEST COPY AVAILABLE

2. On February 18, 1988, the Management Committee of Applicant authorized an Agreement and Plan of Reorganization (the "Plan"). On April 28, 1988, an exemptive order under the 1940 Act was granted by the SEC regarding the Plan (Investment Company Act Release No. 16384). The Plan was approved by Applicant's policyholders on April 28, 1988.

3. On April 29, 1988, Applicant transferred all of its assets and liabilities to the Money Market Portfolio of USLICO Series Fund, a Massachusetts business trust registered with the SEC as an open-end management investment company. Simultaneously with the transfer of assets and liabilities, Applicant was combined as a sub-account (the "Money Market Sub-Account") with Bankers Security Variable Life Separate Account I. In exchange for Applicant's assets, USLICO Series Fund assumed all obligations and liabilities of Applicant and issued shares of its Money Market Portfolio, which shares were recorded as assets of the Money Market Sub-Account of Bankers Security Variable Life Separate Account I. The number of shares issued was determined by dividing the value of the net assets of Applicant by \$1.00, which was the initial per share value of the Money Market Portfolio shares.

4. No debts of Applicant remain outstanding. There are no policyowners having an interest in Applicant at the time of filing of this Application. Applicant is not a party to any current or pending litigation or administrative proceeding at the time of filing of this Application. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary

[FR Doc. 89-14197 Filed 6-14-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16991; File No. 812-7207]

Ordering Granting Exemptions; Crown America Life Insurance Company et al.

June 8, 1989.

Crown America Life Insurance Company ("Crown America"); Crown America Separate Account B of Crown America ("Account B"); American Crown Life Insurance Company ("American Crown"); American Crown

Separate Account B of American Crown ("Account BA") (Account B and Account BA, collectively the "Accounts"); C.A.L. Investment Services, Inc.; and Dreyfus Service Corporation filed an application on December 28, 1988 and an amendment thereto on March 31, 1989, for an order of the Commission pursuant to Section 6(c) of the Investment Company Act of 1940 (the "Act") exempting them from the provisions of sections 26(a)(2)(C) and 27(c)(2) of the Act to the extent necessary to permit the deduction of a mortality and expense risk charge from the assets of the Accounts under a deferred variable annuity contract and an immediate variable annuity certain contract and to permit payment to Crown America and American Crown of a guaranteed death benefit charge from the accumulation value in the respective Account under the deferred variable annuity contract.

A notice of the filing of the application was issued on May 10, 1989, (Investment Company Act Release No. IC-16948). The notice gave interested persons an opportunity to request a hearing and stating that an order disposing of the matter would be issued as of course unless a hearing should be ordered. No request for a hearing has been received, and the Commission has not ordered a hearing.

The matter has been considered and it is found that the granting of the requested exemptions is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Accordingly, *It is ordered*, pursuant to section 6(c) of the Act, that the requested exemption from sections 26(a)(2)(C) and 27(c)(2) of the Act, be, and hereby are, granted, effective forthwith.

For the Commission, by the Division of the Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary

[FR Doc. 89-14246 Filed 6-14-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16992; 812-7264]

Pacific Fidelity Life Insurance Co. et al.

June 8, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

Applicants: Pacific Fidelity Life Insurance Company ("Pacific Fidelity"), PFL Endeavor Variable Annuity Account ("Variable Account"), and MidAmerica Management Corporation.

Relevant 1940 Act Sections: Exemption requested under Section 6(c) from Sections 26(a)(2) and 27(c)(2).

Summary of Application: Applicants seek an order to permit the deduction of a 1.25% charge for mortality and expense risks from the assets of the Account.

Filing Date: The application was filed on March 2, 1989 and amended on May 26, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on July 3, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve the applicants with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or, in the case of an attorney-at-law, by certificate. Request notifications of the date of a hearing by writing to the Secretary of the SEC.

ADDRESS: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Pacific Fidelity Life Insurance Company, 4333 Edgewood Road, NE., Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Staff Attorney, (202) 272-3046 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Office of Insurance Products, Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 253-4300).

Applicants' Representations

1. The Variable Account was established in connection with the proposed issuance of flexible premium variable annuity contracts ("Contracts").

2. The Variable Account will invest in shares of the Endeavor Series Trust ("Series Fund"). The Series Fund is a newly organized, open-end, diversified management investment company with a number of series, or portfolios. The Variable Account has a number of

subaccounts, each of which invests solely in a specific corresponding portfolio of the Series Fund.

3. Pacific Fidelity will deduct a contract maintenance charge of \$35 per Contract Year to compensate Pacific Fidelity for the administrative services provided to Contract owners. Pacific Fidelity also deducts a daily administrative expense charge from the assets of each subaccount of the Variable Account equal to an effective annual rate of .15% of the net assets of the subaccount. Pacific Fidelity does not anticipate any profit from these charges. Pacific Fidelity will monitor its administrative expenses and the proceeds of these charges on at least an annual basis, to ensure compliance with Rule 26a-1 under the Act.

4. Pacific Fidelity currently does not deduct sales charges at the time of investment. However, a contingent deferred sales charge of up to 7% of the amount withdrawn is imposed on certain full surrenders or partial withdrawals of contract value to cover expenses relating to the sale of the Contracts, including commissions to registered representatives and other promotional expenses. The aggregate contingent deferred sales charges are guaranteed never to exceed 8.5% of the premium payments.

5. Pacific Fidelity imposes a daily charge to compensate it for bearing certain mortality and expense risks in connection with the Contracts. This charge is equal to an effective annual rate of 1.25% of the value of the net assets in the Variable Account. Of that amount, approximately .45% is attributable to mortality risks, and approximately .80% is attributable to expense risks. Pacific Fidelity guarantees that this charge will never increase.

6. The mortality risk borne by Pacific Fidelity arises from its contractual obligation to make annuity payments (determined in accordance with the annuity tables and other provisions contained in the Contract) regardless of how long all Annuitants or any individual may live. The expense risk assumed by Pacific Fidelity is the risk that Pacific Fidelity's actual administration cost will exceed the amount recovered through the administrative and contract maintenance charges. Pacific Fidelity also incurs a risk in connection with the death benefit guarantee. On the owner's death, Pacific Fidelity will pay the greater of (a) the contract value, or (b) premium payments (net of withdrawals) plus 4.0% annual interest. There is no extra charge for this guarantee.

7. Pacific Fidelity represents that the charge of 1.25% for mortality and expense risks assumed by Pacific Fidelity is within the range of industry practice with respect to comparable annuity products. This representation is based upon Pacific Fidelity's analysis of publicly available information about similar industry products, taking into consideration such factors as current charge levels, the existence of charge level guarantees, and guaranteed annuity rates. Pacific Fidelity will maintain at its administrative offices, available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

8. Applicants acknowledge that the surrender charge may be insufficient to cover all costs relating to the distribution of the Contracts. Applicants also acknowledge that if a profit is realized from the mortality and expense risk charge, all or a portion of such profit may be viewed by the Commission as being offset by distribution expenses not reimbursed by the sales charge. Pacific Fidelity has concluded that there is a reasonable likelihood that the proposed distribution financing arrangements will benefit the Variable Account and the Contract owners. The basis for such conclusion is set forth in a memorandum which will be maintained by Pacific Fidelity at its administrative offices and will be available to the Commission.

9. Pacific Fidelity represents that the Variable Account will only invest in management investment companies which undertake, in the event such company adopts a plan under Rule 12b-1 to finance distribution expenses, to have a board of directors (or trustees), a majority of whom are not interested persons of the company, formulate and approve any such plan under Rule 12b-1.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary

[FR Doc. 89-14244 Filed 6-14-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. 35-24899]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

June 8, 1989.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested

persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by July 3, 1989 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Filtration Sciences Corporation (31-836)

Filtration Sciences Corporation ("FSC"), 400 West 45th Street, Chattanooga, Tennessee 37409, a New York corporation and a subsidiary of Filtration Sciences, Inc., a Delaware corporation, has filed an application pursuant to section 2(a)(7) of the Act.

FSC requests an order of the Commission declaring FSC not to be a holding company in connection with its ownership of 14.06% of the outstanding voting securities of Beebe Island Corporation ("BIC"), an electric utility company. Hydra-Co Enterprises, Inc. ("H-C"), a New York corporation and a subsidiary company of Niagara Mohawk Power Corporation, an exempt holding company, and the City of Watertown, New York, own the remaining outstanding voting securities of BIC, 87.78% and 3.16% respectively. FSC states that it cannot veto or block corporate action by BIC because FSC owns only 14.06% of the voting securities of BIC.

FSC manufactures various types of filtration media. FSC, then known as Knowlton Brothers, Inc., acquired the shares in connection with the organization of BIC, which was formed to provide electric energy to its shareholders. FSC no longer uses any of the power generated by BIC. All of the energy generated by BIC is delivered by it to H-C.

The Commission granted an order declaring BIC not to be a subsidiary of the predecessor of FSC. See *Beebe Island Corp.*, 7 S.E.C. 991 (1940). FSC seeks an order declaring it not to be a holding company of BIC pursuant to Section 2(a)(7), for the same reasons that the Commission relied on in *Beebe Island* in granting the order pursuant to Section 2(a)(8) that BIC was not a subsidiary of FSC's predecessor, namely, that FSC does not control or exert a controlling influence over BIC.

General Public Utilities Corporation (70-7479)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, has filed a post-effective amendment to its application-declaration pursuant to sections 9(a), 10 and 12(c) of the Act and Rule 42 thereunder.

By order dated December 29, 1987 (HCAR No. 24550), March 31, 1988 (HCAR No. 24612) and August 5, 1988 (HCAR No. 24661), the Commission, among other things, authorized GPU to repurchase from time to time through December 31, 1992 up to eight million shares of its common stock, par value \$2.50 per share. The timing of those repurchases depends upon existing market conditions and the anticipated capital needs of GPU and its subsidiaries. At June 2, 1989, GPU had purchased 6,926,832 shares of its common stock.

GPU now proposes to increase to eleven million the total number of shares of common stock it may repurchase through December 31, 1992. In all other respects, the transactions as heretofore authorized by the Commission herein would remain unchanged. GPU has determined that the current cost of common stock equity is higher than the current cost of borrowed funds used to effect such repurchases.

Savannah Electric and Power Company (70-7497)

Savannah Electric and Power Company ("SEPCO"), 800 Bay Street, East Savannah, Georgia 31401, a subsidiary of The Southern Company, a registered holding company, has filed a post-effective amendment to its application-declaration subject to sections 6(a), 6(b) and 7 of the Act.

By prior Commission order in this matter, SEPCO was authorized to issue and sell from time to time, prior to April 1, 1990, short-term notes to nine banks up to an aggregate principal amount of \$25.5 million at any one time outstanding (HCAR No. 24849, May 24,

1988). SEPCO now proposes to amend the agreements with the same nine banks for committed lines of credit totaling \$40 million, on the same terms and conditions.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-14214 Filed 6-14-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16993; 812-7258]

The Rodney Square Benchmark U.S. Treasury Fund et al; Notice of Application

June 8, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Approval under the Investment Company Act of 1940 ("1940 Act").

Applicants: The Rodney Square Benchmark U.S. Treasury Fund, The Rodney Square International Securities Fund, Inc., The Rodney Square Multi-Manager Fund, The Rodney Square Fund, The Rodney Square Tax-Exempt Fund (collectively, the "Funds"), Scudder Fund Distributors, Inc. ("SFD"), Wilmington Trust Company ("Wilmington Trust"), Rodney Square Management Corporation ("RSMC"), and each future investment company or additional portfolio of an existing Fund for which Wilmington Trust or RSMC or their affiliates serve as investment adviser and for which SFD or its affiliates serve as principal underwriter (the "Additional Funds").

Relevant 1940 Act Section: Order requested under Section 11(a) of the 1940 Act.

Summary of Application: Applicants see approval to permit exchanges of shares among the Funds at other than their respective net asset values at the time of the exchange.

Filing Date: The application was filed on February 28, 1989, and amended on May 24, 1989, and June 7, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 3, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests

should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Funds, Wilmington Trust, and RSMC, One Rodney Square North, Wilmington, Delaware 19800; SFD, 175 Federal Street, Boston, Massachusetts 02110.

FOR FURTHER INFORMATION CONTACT: Victor R. Siclari, Staff Attorney, at (202) 272-3567, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following if a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier which can be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations:

1. Each Fund is an open-end, management investment company registered under the 1940 Act.
2. Wilmington Trust is a bank chartered by the State of Delaware which is not a member of the Federal Reserve System. Wilmington Trust is investment adviser to The Rodney Square Benchmark U.S. Treasury Fund and the Rodney Square International Equity Fund. Wilmington Trust also serves as one of four portfolio advisers to The Value Portfolio of The Rodney Square Multi-Manager Fund.
3. RSMC is a wholly-owned subsidiary of Wilmington Trust, and is an investment adviser registered under the Investment Advisers Act of 1940. RSMC is investment adviser to The Rodney Square Fund, The Rodney Square Tax-Exempt Fund, and The Rodney Square Multi-Manager Fund.
4. SFD, a broker-dealer registered under the Securities Exchange Act of 1934, acts as distributor for each Fund and for funds advised by Scudder, Stevens & Clark, Inc.
5. Applicants seek approval under Section 11(a) of the 1940 Act to the extent necessary to permit exchanges of shares among the Funds and Additional Funds on a basis other than their respective net asset values at the time of the exchange consistent with revised proposed Rule 11a-3 under the 1940 Act, as it may be further revised or adopted.

Applicants' Legal Conclusions

1. Applicants submit that the approval requested is appropriate and in the public interest, and is consistent with the policies underlying the provisions of the 1940 Act.
2. In proposing revised Rule 11a-3, the SEC determined to permit mutual funds within the same family of funds and their principal underwriters to impose certain charges at the time of an exchange under certain conditions. The requested approval would provide the same relief that would be provided under revised proposed Rule 11a-3 as it currently exists and as it may be further revised or adopted.

Applicants' Conditions

If the requested order is granted, Applicants agree to the following conditions:

1. Applicants will comply with the provisions of revised proposed Rule 11a-3 under the 1940 Act, Investment Company Act Release No. 16504 (July 29, 1988) [53 F.R. 30299 (Aug. 11, 1988)], as it currently exists and as it may be further revised or adopted.
2. Applicants will obtain an amended order prior to any modification of the exchange offer in a manner inconsistent with the provisions of revised proposed Rule 11a-3 under the 1940 Act as it currently exists and as it may be further revised or adopted, except that an amended order is not required to terminate the exchange offer.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-14245 Filed 6-14-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16986; 811-4858]

United Services Variable Life Separate Account II

June 7, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: United Services Variable Life Separate Account II ("Applicant").
Relevant 1940 Act Sections: Order requested under Section 8(f).

Summary of Application: Applicant seeks an order under Section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on January 3, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on July 3, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 950 North Glebe Road, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney (202) 272-3046 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. Applicant, a separate account of United Services Life Insurance Company, is registered as an open-end, management investment company under the 1940 Act. Applicant's registration statement, filed on September 29, 1986, was declared effective on June 5, 1987.
2. On February 18, 1988, the Management Committee of Applicant authorized an Agreement and Plan of Reorganization (the "Plan"). On April 28, 1988, an exemptive order under the 1940 Act was granted by the SEC regarding the Plan (Investment Company Act Release No. 16384). The Plan was approved by Applicant's policyholders on April 28, 1988.
3. On April 29, 1988, pursuant to the Plan, Applicant transferred all of its assets and liabilities to the Money Market Portfolio of USLI Series Fund, a Massachusetts business trust registered with the SEC as an open-end, management investment company. Simultaneously with the transfer of assets and liabilities, Applicant was combined as a sub-account (the "Money Market Sub-Account") with United Services Variable Life Separate Account

I. In exchange for Applicant's assets, USLI Series Fund assumed all obligations and liabilities of Applicant and issued shares of its Money Market Portfolio, which shares were recorded as assets of the Money Market Sub-Account of United Services Variable Life Separate Account I. The number of shares issued was determined by dividing the value of the net assets of Applicant by \$1.00, which was the initial per share value of the Money Market Portfolio shares.

4. No debts of applicant remain outstanding. There are no policyowners having an interest in Applicant at the time of filing of this Application. Applicant is not a party to any current or pending litigation or administrative proceeding at the time of filing of this Application. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-14182 Filed 6-14-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16987; 811-4859]

United Services Variable Life Separate Account III

June 7, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: United Services Variable Life Separate Account III ("Applicant").
Relevant 1940 Act Sections: Order requested under Section 8(f).

Summary of Application: Applicant seeks an order under Section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on January 3, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on July 3, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by

mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 950 North Glebe Road, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney (202) 272-3046 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. Applicant, a separate account of United Services Life Insurance Company, is registered as an open-end, management investment company under the 1940 Act. Applicant's registration statement, filed on September 29, 1988, was declared effective on June 5, 1987.

2. On February 18, 1988, the Management Committee of Applicant authorized an Agreement and Plan of Reorganization (the "Plan"). On April 28, 1988, an exemptive order under the 1940 Act was granted by the SEC regarding the Plan (Investment Company Act Release No. 16384). The Plan was approved by Applicant's policyholders on April 28, 1988.

3. On April 29, 1988, pursuant to the Plan, Applicant transferred all of its assets and liabilities to the Bond Portfolio of USLICO Series Fund, a Massachusetts business trust registered with the SEC as an open-end, management investment company. Simultaneously with the transfer of assets and liabilities, Applicant was combined as a sub-account (the "Bond Sub-Account") with United Services Variable Life Separate Account

1. In exchange for Applicant's assets, USLICO Series Fund assumed all obligations and liabilities of Applicant and issued shares of its Bond Portfolio, which shares were recorded as assets of the Bond Sub-Account of United Services Variable Life Separate Account I. The number of shares issued was determined by dividing the value of the net assets of Applicant by \$10.00, which was the initial per share value of the Bond Portfolio shares.

4. No debts of Applicant remain outstanding. There are no policyowners having an interest in Applicant at the time of filing of this Application. Applicant is not a party to any current or pending litigation or administrative proceeding at the time of filing of this Application. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary

[FR Doc. 89-14193 Filed 6-14-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16968; 811-4862]

United Services Variable Life Separate Account IV

June 7, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 (the "1940 Act").

Applicant: United Services Variable Life Separate Account IV ("Applicant").
Relevant 1940 Act Sections: Order requested under Section 8(f).

Summary of Application: Applicant seeks an order under Section 8(f) of the 1940 Act declaring that it has ceased to be an investment company.

Filing Date: The application was filed on January 3, 1989.

Hearing or Notification of Hearing: If no hearing is ordered, the application will be granted. Any interested person may request a hearing on this application, or ask to be notified if a hearing is ordered. Any requests must be received by the SEC by 5:30 p.m. on July 3, 1989. Request a hearing in writing, giving the nature of your interest, the reason for the request, and the issues you contest. Serve Applicant with the request, either personally or by mail, and also send it to the Secretary of the SEC, along with proof of service by affidavit, or for lawyers, by certificate. Request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 950 North Glebe Road, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Joyce M. Pickholz, Attorney (202) 272-3046 or Clifford E. Kirsch, Special Counsel (202) 272-2061 (Division of

Investment Management, Office of Insurance Products and Legal Compliance).

SUPPLEMENTARY INFORMATION:

Following is a summary of the application; the complete application is available for a fee from either the SEC's Public Reference Branch in person or the SEC's commercial copier, which may be contacted at (800) 231-3282 (in Maryland (301) 258-4300).

Applicant's Representations:

1. Applicant, a separate account of United Services Life Insurance Company, is registered as an open-end, management investment company under the 1940 Act. Applicant's registration statement, filed on September 29, 1988, was declared effective on June 5, 1987.

2. On February 18, 1988, the Management Committee of Applicant authorized an Agreement and Plan of Reorganization (the "Plan"). On April 28, 1988, an exemptive order under the 1940 Act was granted by the SEC regarding the Plan (Investment Company Act Release No. 16384). The Plan was approved by Applicant's policyholders on April 28, 1988.

3. On April 29, 1988, pursuant to the Plan, Applicant transferred all of its assets and liabilities to the Asset Allocation Portfolio of USLICO Series Fund, a Massachusetts business trust registered with the SEC as an open-end, management investment company. Simultaneously with the transfer of assets and liabilities, Applicant was combined as a sub-account (the "Asset Allocation Sub-Account") with United Services Variable Life Separate Account I. In exchange for Applicant's assets, USLICO Series Fund assumed all obligations and liabilities of Applicant and issued shares of its Asset Allocation Portfolio, which shares were recorded as assets of the Asset Allocation Sub-Account of United Services Variable Life Separate Account I. The number of shares issued was determined by dividing the value of the net assets of Applicant by \$10.00, which was the initial per share value of the Asset Allocation Portfolio shares.

4. No debts of Applicant remain outstanding. There are no policyowners having an interest in Applicant at the time of filing of this Application. Applicant is not a party to any current or pending litigation or administrative proceeding at the time of filing of this Application. Applicant is not engaged, and does not propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary

[FR Doc. 89-14194 Filed 6-14-89; 8:45 am]
BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area No. 2353; Amdt. 3]

Texas (And Contiguous Counties in the State of Oklahoma); Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with the Notices of Amendment to the President's declaration, dated May 31, June 2, and June 7, 1989, to include Anderson, Angelina, Bell, Cass, Cherokee, Collin, Coryell, Denton, Ellis, Grayson, Gregg, Hardin, Harrison, Henderson, Hill, Houston, Jack, Jasper, Jefferson, Liberty, Limestone, McCulloch, Montgomery, Navarro, Newton, Orange, Panola, Polk, San Jacinto, Upshur, Van Zandt, Waller, Wichita, Wise, and Young Counties, in the State of Texas, as a result of damages from severe storms, tornadoes, and flooding beginning on May 4, 1989.

In addition, applications for economic injury from small businesses located in the contiguous counties of Archer, Austin, Baylor, Bowie, Brown, Camp, Coleman, Concho, Freestone, Grimes, Hamilton, Lampasas, Leon, Madison, Mason, Menard, Morris, Rains, Robertson, San Saba, Throckmorton, Trinity, Tyler, Walker, Washington, and Wilbarger, in the State of Texas, and Cotton, Marshall, and Tillman Counties, in the State of Oklahoma, may be filed until the specified date at the previously designated location.

Any counties contiguous to the above-named primary counties and not listed herein have previously been named as contiguous or primary counties for the same occurrence.

All other information remains the same; i.e., the termination date for filing applications for physical damage is the close of business on July 17, 1989, and for economic injury until the close of business on February 20, 1990.

[Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008.]

Date: June 5, 1989.

Bernard Kulik,
Deputy Associate Administrator for Disaster Assistance.

[FR Doc. 89-14171 Filed 6-14-89; 8:45 am]
BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

[Docket No. 46337]

Japan Charter Authorization Proceeding (1989/1990)

This proceeding has been assigned to Chief Administrative Law Judge William A. Kane, Jr. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50 Room 9228, Department of Transportation, 400 Seventh Street, SW., Washington DC 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,

Chief Administrative Law Judge.

[FR Doc. 89-14233 Filed 6-14-89; 8:45 am]

BILLING CODE 4910-62-M

Office of the Secretary

[(Order 89-6-19) Docket 46266]

Application of Casino Express for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding TEM Enterprises, Inc. d/b/a Casino Express fit and awarding it a certificate of public convenience and necessity to engage in domestic scheduled air transportation.

DATES: Persons wishing to file objections should do so no later than June 18, 1989.

ADDRESSES: Objections and answers to objections should be filed in Docket 46266 and addressed to the Documentary Services Division (C-55, Room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT:

Mrs. Janet A. Davis, Air Carrier Fitness Division (P-56, Room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-9721.

Dated: June 8, 1989.

Patrick V. Murphy, Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-14159 Filed 6-14-89; 8:45 am]

BILLING CODE 4910-62-M

[Order 89-6-20; Docket 46337]

Order Instituting Japan Charter Authorization Proceeding (1989/1990)

AGENCY: Department of Transportation.

ACTION: Institution of the Japan Charter Authorization Proceeding (1989/1990).

SUMMARY: U.S. air carriers can operate only 300 one-way charter flights per year between the United States and Japan under the terms of an Interim Aviation Agreement dated September 7, 1982. The aeronautical authorities of each country allocate the charter flights among their carriers. As we have done for the past two years, the Department has decided to institute an evidentiary proceeding before an Administrative Law Judge to determine how these flights should be allocated among U.S. carriers for the October 1, 1989-September 30, 1990 period, and what procedures should be used to reallocate flights returned during the charter year. The Department is inviting interested direct air carriers to file applications to operate the Japan charters at issue.

DATES: Applications (including service proposals and supporting information), petitions for reconsideration of Order 89-6-20 are due June 21, 1989; answers and any requests for an oral evidentiary hearing shall be due June 28, 1989.

ADDRESS: Applications, supporting information, petitions for leave to intervene, petitions for reconsideration and requests for an oral evidentiary hearing should be filed in Docket 46337, addressed to the Documentary Services Division, U.S. Department of Transportation, 400 Seventh Street, SW., Room 4107, Washington, DC 20590, and should also be served on the Office of Hearings, Room 9228, at the same address.

Dated: June 8, 1989.

Patrick V. Murphy Jr.,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 89-14160 Filed 6-14-89; 8:45 am]

BILLING CODE 4910-62-M

Federal Aviation Administration

[File No. FAA P-8110-2]

Proposed Changes to FAA P-8110-2, Airship Design Criteria (ADC)

AGENCY: Federal Aviation Administration (FAA). DOT.

ACTION: Notice of availability of proposed changes to FAA P-8110-2, Airship Design Criteria (ADC); request for comments.

SUMMARY: Federal Aviation Administration report FAA P-8110-2.

Airship Design Criteria (ADC), issued November 2, 1987, contains the first acceptable design criteria for type certification of airships. While applying the ADC to actual type certification projects, the FAA has discovered portions of the report that require clarification or revision. This notice announces the FAA's intent to change portions of the ADC and requests comments on the intended changes.

DATE: Comments must be received on or before August 14, 1989.

ADDRESS: Comments on the proposed changes to FAA P-8110-2, Airship Design Criteria (ADC), may be mailed or delivered to: Federal Aviation Administration; Aircraft Certification Service; Aircraft Engineering Division; Policy and Procedures Branch, AIR-110; 800 Independence Avenue, SW., Room 335; Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT: Mr. Lyle C. Davis, Aerospace Engineer, Policy and Procedures Branch, AIR-110. Telephone: (202) 267-8583.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to submit such written data, views, or arguments as they may desire. Communications should identify the report number (FAA P-8110-2) and be submitted to the address specified above. All communications received on or before the closing date for comments will be considered before the ADC is revised.

Background

Prior to the revision of section 21.17(b) of the Federal Aviation Regulations (FAR), in Amendment 21-80, effective April 13, 1987, airworthiness criteria for the type certification of airships were not covered in the FAR. Federal Aviation Administration report P-8110-2, Airship Design Criteria (ADC), issued November 2, 1987, contains the first acceptable design criteria for type certification of airships. The airship design criteria contained in the report are suitable for the U.S. type certification of nonrigid, near-equilibrium, conventional airships. The criteria are based primarily on FAR Part 23—Airworthiness Standards: Normal, Utility, Acrobatic, and Commuter Category Airplanes, U.S. Navy detail design specifications for airships, and additional criteria developed by the FAA and the National Aeronautics and Space Administration.

The ADC are only one means of showing compliance with section 21.17(b). The associated advisory circular, AC 21.17-1, Type

Certification—Airships, describes the procedures that an applicant may follow for development and approval of its own airship design criteria in the event that the airworthiness criteria prescribed in the ADC are inadequate or otherwise inappropriate as a certification basis of an airship due to its unique design or design features.

Related FAR

Applicants for approval of airship design criteria should also be aware of the provisions contained in the following related FAR:

- Section 21.5—Airplane or Rotorcraft Flight Manual.
- Section 21.17—Designation of applicable regulations.
- Section 23.—Airworthiness Standards: Normal, Utility, Acrobatic, and Commuter Category Airplanes.
- Part 33—Airworthiness Standards: Aircraft Engines.
- Part 35—Airworthiness Standards: Propellers.
- Part 45, Subpart C—Nationality and Registration Marks.
- Section 91.31—Civil Aircraft flight manual, marking, and placard requirements.
- Section 91.33—Powered civil aircraft with standard category U.S. airworthiness certificates; instruments equipment requirements.

How To Obtain Copies

A copy of the proposed changes to the ADC may be obtained by contacting the person under "FOR FURTHER INFORMATION CONTACT".

Issued in Washington, DC, on June 8, 1989.
William J. Sullivan,
Assistant Manager, Aircraft Certification Service.

[FR Doc. 89-14234 Filed 6-14-89; 8:45 am]
BILLING CODE 4910-13-M

Advisory Circular 21-24, Extending a Production Certificate to a Facility Located in a Bilateral Airworthiness Agreement Country.

AGENCY: Federal Aviation Administration (FAA), DOT.
ACTION: Notice.

SUMMARY: This notice announces the availability of Advisory Circular (AC) 21-24, Extending a Production Certificate to a Facility Located in a Bilateral Airworthiness Agreement Country. Advisory Circular 21-24 provides information and guidance to production certificate holders or applicants concerning: (1) Federal

Aviation Administration production certificate holders located in the United States that plan to extend their PC to include a facility located in another country; (2) and the issuance of a PC to an applicant located in the United States when the applicant is engaged in a multinational coproduction program whereby major manufacturing facilities will be located in other countries. This AC further provides for extending a technical standard order authorization (TSOA) to include the production of auxiliary power units (APU) at a facility located in another country, in accordance with the criteria contained in this AC for a PC holder.

ADDRESS: Copies of AC 21-24 can be obtained from the following: Federal Aviation Administration, Public Inquiry Center, APA-230, 800 Independence Avenue SW., Washington, DC 20591.

Issued in Washington, DC on May 12, 1989.

John K. McGrath,
Acting Assistant Director, Aircraft Certification Service
[FR Doc. 89-14236 Filed 6-14-89; 8:45 am]

BILLING CODE 4910-13-M

Noise Exposure Map Notice; Receipt of Noise Compatibility Program and Request for Review, Birmingham Municipal Airport, Birmingham, AL

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Birmingham Airport Authority for the Birmingham Municipal Airport, under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR Part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for the Birmingham Municipal Airport under Part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before November 28, 1989.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is June 1, 1989. The public comment period ends July 31, 1989.

FOR FURTHER INFORMATION CONTACT: Elton E. Jay, Civil Engineer, Jackson

Airports District Office, 120 North Hangar Drive, Suite B, Jackson, Mississippi 39208-2306; telephone number (601) 965-4628. Comments on the proposed noise compatibility program should also be submitted to this address.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for the Birmingham Municipal Airport are in compliance with applicable requirements of Part 150, effective June 1, 1989. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before November 28, 1989. This notice also announces the availability of this program for public review and comment.

Under Section 103 of Title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulation (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The Birmingham Airport Authority submitted to the FAA on March 6, 1987, the FAR Part 150 Noise Exposure Map and Compatibility Program, Birmingham Airport, which was produced during the period June 1985 to March 1987. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and the surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Birmingham Airport Authority. The specific maps under consideration are

Base Year 1987 Noise Exposure Map and the Forecast Year 1992 Noise Exposure Map. The FAA has determined that these maps for the Birmingham Municipal Airport are in compliance with applicable requirements. This determination is effective on June 1, 1989. FAA's determination on an airport operator's noise exposure maps is limited to finding that the maps were developed in accordance with the procedure contained in appendix A of FAR Part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land-use control and planning responsibilities of local government. These local responsibilities are not changed in any way under Part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under section 150.21 of FAR Part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Birmingham Municipal Airport, also effective on June 1, 1989. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before November 28, 1989.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR Part 150, § 150.33. The primary

considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land-use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps and the proposed noise compatibility program are available for examination at the following locations: Federal Aviation Administration, 800 Independence Avenue SW., Room 617, Washington, DC 20591.

Airports District Office, 120 North Hangar Drive, Suite B, Jackson Mississippi 39208-2306; Birmingham Airport Authority, 5900 Messer-Airport Highway, Birmingham, Alabama 35212.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Jackson, Mississippi, June 1, 1989.
Newton L. Taylor,
Manager, Airports District Office.

[FR Doc. 89-14237 Filed 6-14-89; 8:45 am]
BILLING CODE 4910-13-M

Federal Highway Administration

Environmental Impact Statement: Wilkes-Yadkin Counties, NC

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Wilkes and Yadkin Counties, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth L. Bellamy, Division Administrator, Federal Highway Administration, 4505 Falls of the Neuse Road, Suite 470, Raleigh, North Carolina 27609, Telephone (919) 790-2950.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS)

for a highway project covering the proposed improvements and possible relocation of US 421 from SR 2433 east of Wilkesboro in Wilkes County to I-77 in Yadkin County, a distance of approximately 11 miles. The proposed action consists of improving the existing roadway to either a four-lane divided expressway or freeway or constructing a four-lane divided expressway on new location. The proposed project is needed to serve traffic demand in the area and will help spur economic development in the area. It will provide a much needed alternative route for US 421 traffic and will relieve the congestion, delay, and inconvenience currently being experienced along this highway.

Alternatives under consideration include (1) the "no-build", (2) improving existing US 421, (3) construction of a freeway or expressway along the existing US 421 alignment, and (4) construction of an expressway on new location.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State, and local agencies. Public meetings and meetings with local officials will be held in the project area. A corridor public hearing and a design public hearing will be held. Information on the time and location of the public meetings and public hearings will be provided in the local news media. The draft EIS will be available for public and agency review and comment at the time of the corridor public hearing. No formal scoping meeting is planned at this time.

To insure that the full range of issues relating to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning

and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: June 7, 1989.

Roy C. Shelton,
District Engineer, FHWA, Raleigh, North Carolina.

[FR Doc. 89-14280 Filed 6-14-89; 8:45 am]
BILLING CODE 4910-22-M

Uniform Relocation and Real Property Acquisition for Federal and Federally-Assisted Programs; Fixed Payment for Moving Expenses; Residential Moves; American Samoa, Commonwealth of the Northern Mariana Islands, and Guam

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice.

SUMMARY: The purpose of this notice is to supplement the moving expense and dislocation allowance schedule, published March 2, 1989 (54 FR 8951), that established amounts that are available to persons displaced by Federal and federally assisted projects, pursuant to section 202(b) (42 U.S.C. 4622(b)) of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (Uniform Act). This notice adds payment schedules for American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam.

EFFECTIVE DATE: The provisions of this notice are effective June 15, 1989.

FOR FURTHER INFORMATION CONTACT: Barbara J. Satorius, Policy Development Branch, Office of Right-of-Way (202-366-1371); or Reid Alsop, Office of the Chief Counsel (202-366-1371), Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., except legal holidays.

SUPPLEMENTARY INFORMATION: Section 202(b) of the Uniform Act provides that a displaced individual or family may elect to be paid for moving expenses on the basis of a moving expense and dislocation allowance schedule established by the head of the lead agency as an alternative to being paid for moving and related expenses actually incurred. The FHWA has been designated as the Federal government's lead agency for implementing the Uniform Act, and implementing regulations at 49 CFR 24.302 provide that the FHWA approves the schedule.

On March 2, 1989 (54 FR 8951), the FHWA published a Residential Moving Expense and Dislocation Allowance Payment Schedule that covered all the 50 States as well as the District of Columbia, Puerto Rico, and the Virgin Islands. Since publication of that schedule, it has been brought to the attention of the FHWA that Federal or federally assisted projects involving the acquisition of real property and/or the displacement of persons; and hence covered by the Uniform Act, may be undertaken in American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam. (These jurisdictions are included in the Uniform Act's definition of "State" in section 101(2) (42 U.S.C. 4601(2)).

We are, therefore, supplementing the current March 2 schedule to include the following payment information for American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

(42 U.S.C. 4601; 49 CFR 24.302(a)).

Issued on: June 9, 1989.

R.D. Morgan,
Executive Director.

RESIDENTIAL MOVING EXPENSE AND DISLOCATION ALLOWANCE PAYMENT SCHEDULE

State	Occupant owns furniture ¹ *								Occupant does not own furniture ²	
	Number of rooms of furniture								First room	Each additional room
	1	2	3	4	5	6	7	8		
American Samoa	250	350	450	550	625	700	775	850	75	25
Commonwealth of the Northern Mariana Islands	250	350	450	550	625	700	775	850	75	25
Guam	250	350	450	550	625	700	775	850	75	25

Exceptions:

¹ Persons whose residential move is performed by agency. \$50

² Move of a mobile home from site, actual cost; reasonable amount may be added for packing and securing personal property for the move at agency discretion.

³ Occupant of dormitory, \$50

[FR Doc. 89-14271 Filed 6-14-89; 8:45 am]

BILLING CODE 4910-22-M

National Highway Traffic Safety Administration

[Docket No. 89-09, Notice 01]

Driving Range Determination for Dual Fuel Passenger Automobiles As Required by the Alternative Motor Fuels Act of 1988

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: The purpose of this request for comments is to announce that NHTSA is considering the proposal of a minimum driving range for two groups of dual energy passenger automobiles: those operating on alcohol and either gasoline or diesel fuel, and for those operating on natural gas and either gasoline or diesel fuel. The minimum driving range would apply when the fuel in use was either alcohol or natural gas. Comments are requested in a number of areas to assist the agency in developing the proposal.

DATE: Comments must be received on or before July 17, 1989.

ADDRESSES: Comments on this notice must refer to the docket and notice numbers set forth above and then be submitted (preferably 10 copies) to the Docket Section, National Highway Traffic Safety Administration, Room 5109, 400 Seventh Street, SW., Washington, DC 20590. (Docket hours are 8 a.m. to 4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mr. Orron Kee, Office of Market Incentives, NRM-21, Room 5320, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366-0846.

SUPPLEMENTARY INFORMATION: The Alternative Motor Fuels Act of 1988 (Pub. L. 100-494, October 14, 1988) has two essential purposes: (1) To encourage the development and widespread use of methanol, ethanol, and natural gas as transportation fuels by consumers; and (2) to promote the production of methanol, ethanol, and natural gas powered motor vehicles.

In seeking to carry out these goals, the Act attempts to balance two competing objectives: (1) The offering of incentives for the production of alternative fuel cars; and (2) The establishment of a minimum driving range for alternative fuel cars so as to avoid discouraging motorists from fueling their dual energy cars with the alternative fuel.

Section 6(a) of the Act requires that

the Secretary of Transportation establish, within 18 months of enactment, a minimum driving range of no less than 200 miles for dual energy automobiles when operating on alcohol and an unspecified minimum range for natural gas dual energy automobiles when operating on natural gas. This minimum range requirement pertains only to passenger cars and does not apply to light trucks.

To institute the driving range stipulated by section 6(a), the agency is engaged in a series of efforts to establish a minimum driving range for dual energy automobiles (those operating on alcohol and either gasoline or diesel fuel) and for natural gas dual energy automobiles (those operating on natural gas and either gasoline or diesel fuel).

For reference, NHTSA has conducted a quantitative study of the driving range of conventional gasoline fueled passenger cars using the 25 top selling cars for Model Year 1988. This study was based primarily on fuel tank capacity and the lowest combined fuel economy rating for each of these cars, as used by the Environmental Protection Agency (EPA) in the calculation of the average fuel economy for the manufacturers. All cars in the study used gasoline for fuel. The following data were assembled for each car: EPA vehicle size class, 1988 sales, 1988 sales with "corporate cousins" (related models; e.g., Ford Taurus and Mercury Sable), lowest EPA combined fuel economy rating, and fuel tank capacity. (See table.) The lowest EPA rating for each car is typically found with the largest engine option and an automatic transmission. These 25 vehicles represented about 51 percent of the total passenger car sales for 1988. When corporate cousins were included, they represented about 63 percent of 1988 car sales.

From these data, NHTSA calculated the driving range of each automobile from the product of the lowest EPA combined fuel economy rating and the fuel tank capacity. Then, the automobiles were categorized into four driving range groups: (a) Less than 350 miles, (b) 350-399 miles, (c) 400-449 miles, and (d) 450 miles or more. Only one model, a subcompact, had a driving range of less than 350 miles. Its fuel tank capacity was 15.4 gallons. Twelve models had driving ranges of 350 to 399 miles. This group of vehicles spanned a range of sizes from subcompact to large with fuel tank capacities ranging from 10.6 to 18.0 gallons and averaging 14.7 gallons. Six models had driving ranges of 400 to 449 miles. This group of

vehicles was predominantly midsize with fuel tank capacities ranging from 13.2 to 18.0 gallons and averaging 15.2 gallons. Six models maintained minimum driving ranges of 450 miles or more with fuel tank capacities ranging from 15.9 to 24.5 gallons and averaging 19.2 gallons. This group included compact to large passenger cars.

Overall, the popular gasoline-fueled models in each driving range group varied considerably in terms of size, EPA combined fuel economy rating, and fuel tank capacity. The average minimum driving range for all 25 models was 405 miles, ranging from a low of 345 miles to a high of 549 miles. Nineteen (or 76 percent) of the models had a driving range of 416 miles or less.

The setting of a minimum driving range for dual energy automobiles must balance the needs of the consumer with the technical and economic considerations that are faced by the manufacturers. A low minimum driving range requirement might encourage the production of dual fueled cars, but lead to dual fueled cars being designed with such a low alternative fuel driving range that consumers do not buy them or, even if they buy them, infrequently operate them on the alternative fuel. Conversely, an excessively stringent minimum driving range requirement might discourage the production of dual-fueled cars and unnecessarily compromise other vehicle attributes and aspects of performance. Manufacturers would be discouraged by overly-stringent minimum range because a vehicle which does not meet the minimum driving range for its type is by definition excluded from the definition of dual energy or natural gas dual energy vehicle, and is thus unlikely to be built since the manufacturer would not receive any of the benefits or incentives provided by the Act.

From the viewpoint of the consumer, the necessary driving range may be dictated by the convenience of a range that permits a typical workweek travel distance, or a daily travel distance for a fleet car. Also, if the majority of consumers would use a dual energy vehicle in an urban area with more refueling stations or in a fleet application with a central refueling station, a large driving range may be less critical.

To aid the agency in relating the data on driving range for gasoline-fueled vehicles to the unique characteristics of dual fuel passenger automobiles, we are asking a number of questions in the following areas on the use of dual

energy passenger automobiles and natural gas dual energy passenger automobiles: consumer acceptability, economic practicability, technology, environmental impact, safety, driveability, and performance.

Information on other factors is welcome. The data provided in response to these questions will be considered by NHTSA in developing a proposed minimum driving range for the previously specified dual fuel automobiles. The data will also aid the agency in making preliminary judgments about such fundamental matters as the extent to which manufacturers would seek to achieve the selected range in designing dual energy passenger automobiles, the production volumes or schedules for those vehicles, the cost and other implications of different ranges, and the likely consumer response to different ranges. For easy reference, the questions are numbered consecutively throughout the document.

In providing a comment on a particular matter or in responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or opinions, including but not limited to test data, statistical and cost data, and the source of such information. The agency is particularly interested in quantitative evaluations of anticipated environmental impacts and energy conservation impacts.

NHTSA requests information and comments on the following questions:

1. How did manufacturers arrive at the driving ranges for their current gasoline-fueled passenger cars? Did they use surveys or competitive comparisons? Is there any trend toward increased or decreased driving ranges?

2. Is it more useful to the consumer to establish the driving range based on (a) an unadjusted combined EPA/highway fuel economy value as specified in the corporate average fuel economy regulation or (b) an adjusted combined city/highway fuel economy value which better represents actual fuel economy experienced by the consumer? The adjusted fuel economy values are nominally 15 percent lower than the unadjusted values when adjustment factors of 10 percent for city driving and 22 percent for highway driving are applied. The adjusted fuel economy values are listed in EPA's "Gas Mileage Guide" and appear on the fuel economy label on the vehicle.

3. Would dual energy vehicles be generally utilized by consumers residing in urban areas and by fleets where it would be practical to provide for refueling at centralized facilities as opposed to consumers in rural areas?

Please discuss the basis for your answer and specify whether your answer applies to alcohol or natural gas alternative fuels.

4. What driving range does the consumer expect from the passenger cars that he operates? Does the range vary with the size or typical use of the car; e.g., a subcompact car as compared to a large station wagon, or a car typically used for city commuting compared to one used primarily for urban and intercity driving? Does the expected driving range vary with the economic or social profile of the car operator; e.g., are younger drivers satisfied with smaller ranges or do high-income drivers demand greater driving ranges? Would the consumer be willing to accept a lower driving range in a vehicle with the added flexibility of dual fuel capability or would the consumer expect greater driving range with the alternative fuel in anticipation of fewer distribution points for alternative fuel? What is the minimum driving range acceptable to consumers? Please specify whether your answers apply to alcohol or natural gas alternative fuels.

5. Do vehicle manufacturers consider availability of fuel distribution points in establishing driving ranges? Please specify whether your answer applies to alcohol or natural gas alternative fuels.

6. Describe any trade-off of fuel tank size with cost that would dictate an upper limit for fuel tank size for economic practicability. Does the economic practicability of large fuel tank sizes differ for alcohol and natural gas fuel systems? Are there any economies of scale that would encourage larger fuel tanks for either alcohol or natural gas dual fueled cars? Please specify whether your answer applies to alcohol or natural gas alternative fuels.

7. Describe any technological limit on the size of fuel tank that can reasonably be used on dual fueled passenger cars that operate on either alcohol or natural gas. What determines this limit? Please specify whether your answer applies to alcohol or natural gas alternative fuels.

8. Does the specific driving range or fuel tank size of dual fueled cars create any environmental impacts that could be mitigated by choosing a different range or tank size? Please discuss the basis for your answer and specify whether your answer applies to alcohol or natural gas alternative fuels.

9. For larger fuel tanks for either alcohol or natural gas fuel, please discuss any significant safety or fire problems for the occupants of the dual fueled car or any object with which the car may collide. Is there an optimum tank size for either alcohol or natural

gas fuel that would minimize potential safety problems? Please explain your answer and specify whether it applies to alcohol or natural gas alternative fuels.

10. Would the driveability (i.e., handling and performance) of a dual fueled car be penalized by a requirement for a driving range comparable to that for typical gasoline-fueled cars? Will there be significant changes in either handling or performance of a dual fueled vehicle, as the on-board fuel quantity changes from a full tank to a nearly empty tank, that could endanger the safety of the occupants? Would the safety risks of any changes in performance or handling be reduced to a more acceptable level with a smaller tank size? Can an optimum driving range standard for dual fueled vehicles be established from driveability considerations? Please explain your answers and specify whether they apply to alcohol or natural gas alternative fuels.

11. Is it likely that dual energy passenger car applications may emphasize increased performance capabilities available with the alternative fuel and consequently result in lower consumer expectations for driving range. Please discuss your answer and specify whether it applies to alcohol or natural gas alternative fuels.

12. How do style or appearance considerations limit the size of the fuel tank that can be accommodated for natural gas or alcohol alternative fuels? Please specify whether your answer applies to alcohol or natural gas alternative fuels.

13. What other factors, if any, should the agency consider in establishing the driving range for dual fueled passenger cars when operated on alcohol or natural gas? Please specify whether your answer applies to alcohol or natural gas alternative fuels.

14. What do you recommend as the minimum driving range for dual fueled passenger cars when operating on alcohol or natural gas? Please specify whether your answer applies to alcohol or natural gas alternative fuels.

NHTSA solicits public comments on this notice. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the

complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the

agency's confidential business information regulation, 49 CFR Part 512.

All comments received before the close of business on the comment closing date indicated above will be considered. Comments in response to this request for comments will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons

continue to examine the docket for new material.

Those persons desiring to be notified upon receipt on their comments in the docket should enclose a self-addressed, stamped envelope with their comments, the docket supervisor will return the postcard by mail.

Issued on June 9, 1989.

Barry Felrice,
Associate Administrator for Rulemaking.

25 TOP SELLING CARS FOR MY 1988

Driving range (miles)	Make/model	EPA vehicle classes (car)	1988 sales**	Per-cent of total	1988 sales with corporate cousins*	Per-cent of total	Lowest combined fuel economy rating, mpg	Fuel tank capacity (U.S. gals.)	Low driving range (miles)
Less than 350.	Ford Mustang	Subcompact	170,080	1.6	170,080	1.6	22.4	15.4	345.0
350-399	Average						22.4	15.4	345
	Hyundai Excel	Subcompact	264,282	2.5	285,895	2.7	33.8	10.6	358.3
	Pontiac Grand Am	Compact	231,010	2.2	395,473	3.7	26.5	13.6	360.4
	Chev. Cavalier	Compact	306,287	2.9	432,927	4.1	26.5	13.6	360.4
	Chev. Corsica/Beretta	Compact	380,301	3.6	380,301	3.6	26.5	13.6	360.4
	Honda Civic	Subcompact	173,759	1.8	173,759	1.8	30.6	11.9	364.1
	Mercury Sable	Mid-size	119,218	1.1	493,845	4.6	22.9	16.0	366.4
	Ford Taurus	Mid-size	374,627	3.5	***	***	22.9	16.0	366.4
	Toyota Corolla	Subcompact	159,040	1.5	159,040	1.5	28.3	13.2	373.6
	Ford Tempo	Compact	285,141	2.7	377,864	3.8	24.4	15.4	375.8
	Toyota Camry	Compact	227,140	2.1	227,140	2.1	24.5	15.9	389.6
	Lincoln Town Car	Large	121,674	1.1	121,674	1.1	21.9	18.0	394.2
	Mercury Grand Marquis	Large	114,385	1.1	228,597	2.1	21.9	18.0	394.2
400-449	Average						25.9	14.7	372.0
	Nissan Sentra	Subcompact	247,109	2.3	247,109	2.3	31.2	13.2	411.8
	Cadillac DeVille (fwd)	Mid-size	160,291	1.5	318,092	3.0	22.9	18.0	412.2
	Ford Escort	Compact	387,815	3.6	387,815	3.6	32.0	13.0	416.0
	Buick Century	Mid-size	252,861	2.4	845,444	7.9	26.5	15.7	416.1
	Olds Cutlass	Mid-size	131,994	1.2			26.5	15.7	416.1
	Chev. Celebrity	Mid-size	237,386	2.2			26.5	15.7	416.1
450 or more	Average						27.6	15.2	414.7
	Buick Regal (W-body)	Mid-size	115,609	1.1	312,164	2.9	27.3	16.6	453.2
	Olds Delta 88	Large	158,205	1.5	407,340	3.8	26.8	18.0	478.8
	Buick LeSabre	Large	141,440	1.3			26.6	18.0	478.8
	Ford Thunderbird	Compact	117,868	1.1	218,827	2.1	22.4	22.1	495.0
	Chev. Caprice	Large	172,993	1.6	172,993	1.6	22.4	24.5	548.8
	Average						25.7	19.2	486.2
	Total		5,413,156	50.9	6,719,042	63.2			
	Overall Average						25.4	16.1	404.5

*Corporate Cousins may include other makes/models listed in this table and/or other MY 1988 vehicles.

**Source: Ward's Automotive Report, January 9, 1989.

***The 1988 Sales and the percentage of total are listed with its Corporate Cousins immediately above.

[FR Doc. 89-14205 Filed 6-14-89; 8:45 am]
BILLING CODE 4910-59-M

Research and Special Programs Administration

Applications for Exemptions; Hazardous Material

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of Applicants for Exemptions.

SUMMARY: In accordance with the procedures governing the application

for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle, 2—Rail freight, 3—Cargo vessel, 4—Cargo-only aircraft, 5—Passenger-carrying aircraft

DATES: Comments must be received on or before July 17, 1989.

Address comments to: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590. Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8428, Nassif Building, 400 7th Street SW., Washington, DC.

New Exemptions

Application number	Applicant	Regulation(s) affected	Nature of exemption thereof
10187-N	Hexcel Corporation, Dublin, CA	49 CFR 172.400(a).	To authorize shipment of limited quantities of toluene diisocyanate, a Class B poison, in solution polyethylene cartridges in heat sealed foil lined spun bound polyolefin bags, 24 cartridges in a 175 lb test double-faced fibroboard box lined with a 2 mil polyethylene bag without labeling. (mode 1)
10188-N	Chevron U.S.A., Inc., San Francisco, CA	49 CFR 173.119	To authorize shipment of crude oil petroleum classed as a flammable liquid in non-DOT specification, 5-gallons 12-gauge wall-thickness stainless steel containers not to exceed 4 containers in a steel frame, fiberglass reinforced transport cart. (modes 1, 3)
10190-N	U.S. Department of the Army, Falls Church, VA	49 CFR 172.101, 175.3.	To authorize shipment of loose lithium sulfur dioxide batteries in metal containers meeting the requirements of mil spec. MIL-D-18878 and similar to the DOT Specifications 17H or 17C containers packed 4 batteries per container in vermiculite. (modes 1, 2, 3, 4, 5)
10193-N	HLA Engineers, Inc., Dallas, TX	49 CFR 173.315, 178.245-1(2)(b).	To manufacture, mark and sell portable tanks comparable to DOT specification 51 except the inlet and outlet openings will be located at the lower side of the tank, for shipment of anhydrous ammonia and LP gas. (modes 1, 2, 3)
10194-N	International Trading House Inc., Houston, TX	49 CFR 173.315	To authorize shipment of chlorine classed as a non-flammable gas in non-DOT specification portable tanks in an ISO frame. (modes 1, 2, 3)
10195-N	Catalyst Resources, Inc., Pasadena, TX	49 CFR 173.34(e), 173.34(f).	To authorize an increase in hydrostatic test interval from 5 years to 15 years for DOT specification 4BW225 and 4BW240 cylinder used for the shipment of certain flammable or corrosive materials. (modes 1, 2, 3)
10197-N	Morton Thiokol, Inc., Brigham City, UT	49 CFR 173.92	To authorize shipment of an igniter, rocket motor, Class B explosive in a specially designed non-DOT specification plywood box. (mode 1)

This notice of receipt of application for new exemptions is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1606; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 9, 1989.
J. Suzanne Hedgepeth,
Chief, Exemptions Branch, Office of
Hazardous Materials Transportation.
[FR Do. 89-14229 Filed 6-14-89; 8:45 am]
BILLING CODE 4910-80-M

Applications for Renewal or Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for renewal or modification of exemptions or

application to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR Part 107, Subpart B), notice is hereby given that the Office of Hazardous Materials Transportation has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier Federal Register publications, they are not repeated here. Except as otherwise noted, renewal application are for extension of the exemption terms only. Where changes are requested (e.g. to provide for additional hazardous materials, packaging design changes,

additional mode of transportation, etc.) they are described in footnotes to the application number. Application numbers with the suffix "X" denote renewal; application numbers with the suffix "P" denote party to. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before June 30, 1989.

ADDRESS COMMENTS TO: Dockets Branch, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate.

FOR FURTHER INFORMATION: Copies of the applications are available for inspection in the Dockets Branch, Room 8428, Nassif Building, 400 7th Street, SW., Washington, DC.

Application	Applicant	Renewal of exemption
3415-X	U.S. Department of Defense, Falls Church, VA	3415
4354-X	Pennwalt Corporation, Buffalo, NY	4354
4354-X	Vanchem, Inc., Lockport, NY	4354
4354-X	PPG Industries, Incorporated, Pittsburgh, PA	4354
4453-X	Woodard Explosives, Inc., Albuquerque, NM	4453
4661-X	Foots Mineral Company, Malvern, PA	4661
6657-X	Liquid Air Corporation, Walnut Creek, CA	6657
6672-X	Colt Industries/Chandler Evans, Inc., West Hartford, CT	6672
6759-X	Atlas Powder Company, Dallas, TX	6759
6874-X	Goldstone Supply Corp., Sparks, NV	6874
6902-X	Halocarbon Products Corporation, North Augusta, SC	6902
6902-X	Great Lakes Chemical Corporation, El Dorado, AR	6902

Application	Applicant	Renewal of exemption
7035-X	Owens-Illinois Plastic Products Inc., Toledo, OH	7035
7458-X	Ekohwerks Company, Eastlake, OH (See Footnote 1)	7458
8208-X	Jet Propulsion Laboratory (JPL), Pasadena, CA	8028
8209-X	Coastal Planes Airways, Incorporated, Warner Robins, GA	8209
8214-X	Morton Thiokol, Inc./Automotive Products Div., Ogden, UT (See Footnote 2)	8214
8215-X	Olin Corporation/Winchester Group, East Alton, IL (See Footnote 3)	8215
8230-X	Fisher Scientific Company, Fair Lawn, NJ	8230
8239-X	Westinghouse Electric Corporation, Pittsburgh, PA	8239
8307-X	U.S. Department of Energy, Washington, DC	8307
8445-X	S & W Waste, Inc., South Keamy, NJ	8445
8445-X	Merrell Dow Pharmaceuticals Inc., Cincinnati, OH	8445
8453-X	Rhone-Poulenc AG Company, Research Triangle Park, NC	8453
8453-X	Austin Powder Company, Cleveland, OH	8453
8518-X	Atlas Powder Company, Dallas, TX	8518
8519-X	Universal Engineering Incorporated, Concord, CA	8519
8645-X	Polish Ocean Lines, Gdynia, Poland	8645
8693-X	Austin Powder Company, Cleveland, OH	8693
8706-X	Matheson Gas Products, Socasus, NJ	8706
8771-X	Prairie State Equipment, Inc., Sioux Falls, SD (See Footnote 4)	8771
8978-X	Chase Packaging Corporation, Greenwich, CT (See Footnote 5)	8978
8995-X	Battery Engineering, Inc., Hyde Park, MA	8995
9023-X	Olin Corporation, Brook Park, OH (See Footnote 6)	9023
9067-X	Chemical Industries of Northern Greece (SICNG), Thessaloniki, Greece	9067
9082-X	Walco Truck Riggings, Inc., Odessa, TX	9082
9140-X	Rhone-Poulenc Ag Company, Research Triangle Park, NC	9140
9181-X	Crown Rotational Molded Products, Inc., Marked Tree, AR	9181
9181-X	Whittaker-Yardney Power Systems, Waltham, MA	9181
9316-X	U.S. Department of Defense, Falls Church, VA	9316
9346-X	Fluoroware Inc., Chaska, MN (See Footnote 7)	9346
9347-X	Wilco Corporation, Bradford, PA	9347
9367-X	Precision General, Inc., Houston, TX	9367
9400-X	Stone Container Corporation, Schaumburg, IL	9400
9402-X	Poly Cal Plastics, Inc., French Camp, CA	9402
9416-X	Exsil SA (France), Versailles, France	9416
9416-X	Mobay Corporation, Kansas City, MO	9416
9421-X	CIBA-GEIGY Corporation, Ardsley, NY	9421
9449-X	Taylor-Wharton, Division of Harsco Corporation, Harrisburg, PA	9449
9462-X	Rhone-Poulenc Ag Company, Research Triangle Park, NC	9462
9466-X	Aztec Metal Fabricating Co., Odessa, TX	9466
9481-X	Rhone-Poulenc Ag Company, Research Triangle Park, NC	9481
9485-X	C-I-L, Inc., North York, Ontario, CN	9485
9488-X	Kaw Valley, Inc., Leavenworth, KS	9488
9499-X	Conference of Radiation Control Program Directors, Frankfort, KY	9499
9528-X	Cleveland Container Corporation, Cleveland, OH	9528
9529-X	U.S. Department of Defense, Falls Church, VA	9529
9529-X	Viskase Corporation, Chicago, IL	9529
9558-X	Woodward Explosives, Inc., Albuquerque, NM	9558
9558-X	Fluoroware, Inc., Chaska, MN (See Footnote 8)	9558
9558-X	Fluoroware, Inc., Chaska, MN (See Footnote 9)	9558
9713-X	Acadia Industries, Inc., Crowley, LA	9713
9715-X	Pennwalt Corporation, Buffalo, NY	9715
9727-X	Sherex Chemical Company, Inc., Dublin, OH	9727
9733-X	Rheem Container Corporation, Kingwood, TX	9733
9770-X	AMSPEC Chemical Corporation, Gloucester City, NJ	9770
9775-X	Essex Environmental Industries, Inc., Hurst, TX (See Footnote 10)	9775
9783-X	Helios Container Systems, Inc., Addison, IL	9783
9790-X	Taylor-Wharton, Division of Harsco Corporation, Indianapolis, IN	9790
9806-X	Stone Container Corporation/Bag Division, Schaumburg, IL	9806
9900-X	Natic, Inc., Chicago, IL (See Footnote 11)	9900
9951-X	Olin Ordnance, St. Petersburg, FL	9951
9985-X	Taylor-Wharton Division of Harsco Corporation, Indianapolis, IN (See Footnote 12)	9985
10145-X	Automatic Sprinkler Corporation of America, Cleveland, OH (See Footnote 13)	10145
10188-X	E.I. du Pont de Nemours and Company, Wilmington, DE	10188

- (1) To renew, and to authorize shipment of certain commodities presently shipped in DOT Specification 3E cylinders and update cylinder criteria.
- (2) To authorize the addition of a new bulk pack for automobile module assemblies classed as flammable solids.
- (3) To renew and authorize shipment of scrap smokeless powder, wet with 30% water, classed as flammable solid instead of scrap propellant explosive, Class B explosive.
- (4) To authorize use of a full opening rear door feature on the non-DOT Specification cargo tanks used for the shipment of liquid and semi-solid.
- (5) To renew and authorize increase in capacity of bulk bag (2,200 pounds) instead of 2,000 pounds.
- (6) To authorize the addition of blowing agent formulations and transportation of products in a dual cargo tank configuration complying with DOT Specification MC-331.
- (7) To authorize the addition of 72% Perchloric acid classed as an oxidizer and/or corrosive.
- (8) To authorize the addition of 72% Perchloric acid classed as an oxidizer and/or corrosive.
- (9) To authorize the reduction of the teflon PFA line r wall thickness from .100 + .100, = -.030 to .100 + .100, .059 lining the polyethylene portable tanks.
- (10) To authorize use of a polyethylene salvage drum as a primary container for shipment of certain hazardous materials.
- (11) To authorize shipment of those hazardous materials (solids) presently authorized in DOT Specification 21C drums as additional commodities subject to compatibility with polyethylene top head.
- (12) Request deletion of requirement pertaining to delivery time during loading and unloading must not exceed 10 minutes and the fill hose must not contain product during transportation.
- (13) To authorize cargo vessel, passenger carrying aircraft, cargo aircraft and rail freight as additional modes of transportation.

Application No.	Applicant	Parties to exemption
4453-P	Explo, Inc., Cuddy, PA	4453
4453-P	Ren-Lol, Inc., Cuddy, PA	4453
4453-P	Blasting Products, Inc., Cuddy, PA	4453
4453-P	H.L. & A.G. Balsinger, Inc., Cuddy, PA	4453
4453-P	Mountaineer Explosives, Inc., Cuddy, PA	4453
4850-P	Penwood Wireline, Inc./A Computalog Company, Houston, TX	4850
4850-P	Drilling Measurements Inc. (DMI), Broussard, LA	4850
7052-P	Dukane Corporation/Seacom Division, St. Charles, IL	7052
7052-P	VMS Consulting Engineers, Woodmere, NY	7052
7052-P	Environmental Pacific Corporation, Lake Oswego, OR	7052
7607-P	Groundwater Technology, Inc. Concord, CA	7607
7943-P	Freight Specialists/Div. of VANA Enterprises, Inc., La Verne, CA	7943
8426-P	Power Master Inc. (PMI), Fontana, CA	8426
8426-P	Ancon Environmental Services, Wilmington, CA	8426
8445-P	Merrell Dow Pharmaceuticals, Cincinnati, OH	8445
8518-P	Ancon Environmental Services, Wilmington, CA	8518
8723-P	Explo, Inc., Cuddy, PA	8723
8723-P	H.L. & A.G. Balsinger, Inc., Cuddy, PA	8723
8723-P	Mountaineer Explosives, Inc., Cuddy, PA	8723
8723-P	Ren-Lol, Inc., Cuddy, PA	8723
8723-P	Blasting Products, Inc., Cuddy, PA	8723
8779-P	Acme Resin Corporation, Westchester, IL	8779
8811-P	Hercules Incorporated, Wilmington, DE	8811
8811-P	Aqualon Company, Wilmington, DE	8811
8845-P	Drilling Measurements Inc. (DMI), Broussard, LA	8845
8988-P	Penwood Wireline, Inc./A Computalog Company, Houston, TX	8988
8988-P	Drilling Measurements Inc. (DMI), Broussard, LA	8988
9066-P	Rolls-Royce Motor Cars Inc., Lyndhurst, NJ	9066
9108-P	SNPE Inc., Princeton, NJ	9108
9222-P	Terra First, Inc., Vernon, AL	9222
9262-P	Penwood Wireline, Inc./A Computalog Company, Houston, TX	9262
9262-P	Drilling Measurements Inc. (DMI), Broussard, LA	9262
9549-P	Penwood Wireline, Inc./A Computalog Company, Houston, TX	9549
9571-P	GSX Services, Inc., Laurel, MD	9571
9723-P	SET Environmental, Inc., Wheeling, IL	9723
9769-P	CECOS International, Inc., Livingston, LA	9769
9769-P	Great Lakes Environmental Services, Inc., Warren, MI	9769
9785-P	Tropical Shipping and Construction Co., Ltd., Nassau, Bahamas	9785
9953-P	Jevic Transportation, Inc., Willingboro, NJ	9953
10086-P	Jaguar Cars Limited, Whitley, Coventry, EN	10086

This notice of receipt of applications for renewal of exemptions and for party to an exemption is published in accordance with Part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on June 9, 1989.
J. Suzanne Hedgepeth,

Chief, Exemptions Branch, Office of Hazardous Materials Transportation.

[FR Doc. 89-14231 Filed 6-14-89; 8:45 am]

BILLING CODE 4810-00-M

UNITED STATES INFORMATION AGENCY

Meeting of Advisory Board for Radio Broadcasting to Cuba

The Advisory Board for Radio Broadcasting to Cuba will conduct a meeting on June 21, 1989, in Room 3557, 400 Sixth Street, SW., Washington, DC. Below is the intended agenda.

Wednesday, June 21, 1989

Part One—Closed to the Public

- 10:30 a.m. 1. Report by the Director of Radio Marti
11:15 a.m. 2. TV Marti
12:00 noon 3. Status of selection of executive director

Part Two—Open to the Public

- 12:15 p.m. 4. Audience Research
12:30 p.m. 5. Public testimony period
Items one through three, which will be discussed from 10:30 a.m. to 12:15 p.m., will be closed to the public. Items one and two involve discussion of classified information. Closing such deliberations to the public is justified under 5 U.S.C. 552b(c)(1). Item three relates solely to internal personnel rules and practices. Authority for closing such deliberations is provided by 5 U.S.C. 552b(c)(2).

Members of the public interested in attending the meeting should contact

Kathy Litwak at (202) 485-7013 to make prior arrangements, as access to the building is controlled.

Dated: June 8, 1989.

Bruce S. Gelb,
Director.

Determination to Close Portions of Advisory Board Meeting of June 21, 1989

Based on information provided to me by the Advisory Board for Radio Broadcasting to Cuba, I hereby determine that the 10:30 a.m. to 12:15 p.m. portion of the meeting may be closed to the public.

The Advisory Board has requested that this part of the June 21, 1989 meeting be closed because it will involve a discussion of classified information (5 U.S.C. 552b(c)(1)) and of matters which relate solely to the internal personnel rules and practices of an agency (5 U.S.C. 552b(c)(2)).

Bruce S. Gelb,
Director.

Dated: June 8, 1989.

[FR Doc. 89-14278 Filed 6-14-89; 8:45 am]

BILLING CODE 8230-01-M

Voice of America; Public Meeting Cancellation

Date for Public Meeting originally scheduled to be held on June 16, 1989 in Washington, DC at 301 4th Street, SW., Room 800 from 10:00 a.m. to 1:00 p.m.

AGENCY: Voice of America, United States Information Agency.

ACTION: Postponement of meeting until further notice.

SUMMARY: This notice cancels the June 16, 1989 meeting of USIA's Voice of America Broadcast Advisory Committee published in the Federal Register, May 30, 1989 (54 FR 23023) until further notice.

Dated: June 8, 1989.

Ledra L. Dildy,
Management Analyst, Federal Register Liaison.

[FR Doc. 89-14277 Filed 6-14-89; 8:45 am]

BILLING CODE 8230-01-M

Sunshine Act Meetings

Federal Register
Vol. 54, No. 114
Thursday, June 15, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 2:30 p.m., Tuesday, June 20, 1989.

PLACE: 2033 K Street NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254-6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 89-14394 Filed 6-13-89; 2:27 pm]

BILLING CODE 6361-01-M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, June 20, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 28, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration. Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, June 22, 1989, 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth Floor).

STATUS: This meeting will be open to the public.

MATTERS TO BE CONSIDERED:

Setting of Dates for Future Meetings. Correction and Approval of Minutes.

Draft AO 1989-07:

R.S. Petterson on behalf of New Jersey Bell Federal PAC

Draft AO 1989-09:

W.H.L. Mullins on behalf of The General Dynamics Voluntary Political Contribution Plan

Regulations:

Revision of 11 C.F.R. 114.8(f): Promulgation of Final Rule.

Final Audit Report:

Haig for President

Status of Presidential Audits

Administrative Matters

PERSON TO CONTACT FOR INFORMATION:

Mr. Fred Eiland, Information Officer, Telephone: 202-376-3155.

Marjorie W. Emmons,

Secretary of the Commission.

[FR Doc. 89-14383 Filed 6-13-89; 2:05 pm]

BILLING CODE 6715-01-M

Corrections

Federal Register
Vol. 54, No. 114
Thursday, June 15, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 273

[Amdt. No. 315]

Food Stamp Program; Disaster Assistance Act, Nondiscretionary Provisions of the Hunger Prevention Act, and Technical Corrections

Correction

In rule document 89-13294 beginning on page 24149 in the issue of Tuesday,

June 6, 1989, make the following correction:

On page 24152 in the 1st column, in the 11th line, "not" should read, "now".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Southeastern Power Administration

Order Confirming and Approving Power Rates on an Interim Basis; Georgia-Alabama System of Projects

Correction

In notice document 89-13289 beginning on page 24026 in the issue of Monday, June 5, 1989, make the following correction:

On page 24029, in the first column, in the table, in the last line, "\$-1.11" should read "\$-.11".

BILLING CODE 1505-01-D

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 708

Mergers of Federally-Insured Credit Unions: Voluntary Termination or Conversion of Insured Status

Correction

In proposed rule document 89-12216 beginning on page 21968 in the issue of Monday, May 22, 1989, make the following corrections:

On page 21969 in the third column, in the last paragraph, in the fourth line, "insurance" was misspelled and "not" should read "now".

BILLING CODE 1505-01-D

Passport Register

Thursday
June 15, 1989

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 129

Security Programs for Foreign Air
Carriers; Security Measures Implemented
by Government Authorities at Foreign
Airports; Notice of Implementation Policy

BEST COPY AVAILABLE

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 129

Security Programs for Foreign Air Carriers; Security Measures Implemented by Government Authorities at Foreign Airports; Implementation Policy**ACTION:** Notice of implementation policy.

SUMMARY: This notice sets forth an implementation policy regarding the final rule which requires foreign air carriers to submit and to use a security program acceptable to the Administrator. With respect to that portion of a proposed security program dealing with identified airports that are a last point of departure to the United States, a foreign air carrier may submit a proposed security program that either specifies the procedures implemented for its operations to the United States at those airports or refers the FAA to the appropriate government authorities that implement those procedures.

FOR FURTHER INFORMATION CONTACT: Irene Howie, (202)267-3515.

SUPPLEMENTARY INFORMATION: Part 129 of the Federal Aviation Regulations governs the operation of foreign air carriers that hold a permit issued by the Department of Transportation (DOT) under Section 402 of the Federal Aviation Act or that hold another appropriate economic or exemption authority issued by DOT. On March 13, 1989, the FAA issued a final rule (54 FR 11116; March 16, 1989) amending Section 129.25 to require foreign air carriers that land or take off in the United States to submit a written security program to the FAA that is acceptable to the Administrator. The rule applies to foreign air carrier operations at U.S. airports and at foreign airports that are a last point of departure prior to landing in the United States.

Questions have been raised about the implementation of the rule. Specifically, certain foreign governments have expressed concern about the FAA seeking security programs from foreign air carriers which would include the

procedures at foreign airports where government authorities, not carriers, implement security measures. These governments believe that the more appropriate source of security programs for these operations is the responsible government agency. This issue was raised during international civil aviation security talks between the Secretary of Transportation and several of his European counterparts in April 1989. The same concern has been expressed by several governments in written communications to the Department of State and the Department of Transportation delivered after publication of the final rule.

The applicability of the final rule to foreign air carrier operations at foreign airports that are a last point of departure to the United States is necessary for the FAA to assure that foreign air carrier operations into U.S. territory are secure. The FAA continues to believe that the final rule is consistent with its statutory responsibilities and U.S. international obligations. The final rule is an exercise of authority recognized in the Convention on International Civil Aviation (Chicago Convention) and U.S. air transport agreements and is not intended to undermine the sovereignty of other nations.

The FAA has determined that the expressed concern can be accommodated in a manner consistent with the terms and intent of the final rule. A foreign carrier must submit a security program to the FAA that outlines its security procedures at U.S. airports and, with respect to its operations to the United States, at foreign airports that are a last point of departure to the United States.

However, for operations at airports that are a last point of departure to the United States and where a government authority on the carrier's behalf performs certain security procedures, a foreign air carrier may refer the FAA to the government authority that performs those security procedures in its initial submission of a proposed security program. The FAA believes that referral to a government authority, thereby providing a mechanism by which the FAA can obtain the necessary information, is sufficient to meet the requirement to submit a proposed

program to the FAA for review. The FAA then will look first to the named government authority to obtain the necessary information on which to review and determine acceptance of a foreign air carrier's proposed security program.

The FAA will act promptly to request the information from the named government authority within the time period provided in the rule for FAA review of the proposed security program since receipt of this information is a predicate to FAA's acceptance of a foreign air carrier's security program. Upon receipt of the information, which identifies the substantive security requirements applicable to operations from that airport, the FAA will consider the procedures to be part of the carrier's proposed security program. The FAA then will review the carrier's proposed security program, including the integrated material received from government authorities, to determine the acceptability of the carrier's security program. If the carrier chooses to refer the FAA to a government authority for information, instead of including those security procedures in its proposed program, the carrier should include the following information in its proposed program: (1) The name and location of each airport where a government authority implements security procedures; (2) a description of the aviation security functions performed for the carrier with respect to its operations to the United States by the government authority; and (3) the name and address of the government authority as well as the name of an individual from whom the FAA should request the information.

The FAA expects to work closely with foreign air carriers and civil aviation security authorities in other countries to ensure that security measures implemented by foreign air carriers for operations into, from, and within the United States are adequate to meet the threat against civil aviation.

Issued in Washington, DC on June 9, 1989.

Monte R. Belger,
Associate Administrator for Aviation Standards.

[FR Doc. 89-14172 Filed 6-9-89; 4:28 pm]

BILLING CODE 4910-13-M

Test Report Federal Register

Thursday
June 15, 1989

Part III

Office of Management and Budget

Second Advance Notice of Further Policy
Development on Dissemination of
Information

OFFICE OF MANAGEMENT AND BUDGET

Second Advance Notice of Further Policy Development on Dissemination of Information

June 9, 1989.

SUMMARY: The Office of Management and Budget (OMB) solicits further public comment in the development of policy concerning the dissemination of information by executive branch agencies. This notice summarizes public comments received to OMB's notice of January 4, 1989, regarding proposed changes to OMB Circular No. A-130, Management of Federal Information Resources; presents OMB reactions to the comments; states preliminary conclusions; and requests further comment. For the reasons indicated, the notice of January 4, 1989, is withdrawn. **DATE:** Comments from the public should be submitted no later than August 14, 1989.

ADDRESS: Comments should be addressed to: J. Timothy Sprehe, Office of Information and Regulatory Affairs, Room 3235 New Executive Office Building, Office of Management and Budget, Washington, DC 20503. Telephone: (202) 395-4814.

SUPPLEMENTARY INFORMATION: On January 4, 1989, the Office of Management and Budget (OMB) published for comment a notice (hereafter referred to as the January 1989 notice) entitled Advance Notice of Further Policy Development on Dissemination of Information (54 FR 214-220). OMB originally set the deadline for comments on the January 1989 notice as March 6, 1989. In response to many requests, OMB announced that the deadline was extended until April 10, 1989 (54 FR 12038, March 23, 1989).

OMB received 228 letters of comment on the January 1989 notice. Five percent of the letters were from Members of Congress; nine percent from Federal agencies; 10 percent from state and local government agencies; 66 percent from librarians; and 10 percent from private individuals or other nongovernmental organizations. The complete set of comments is available for inspection and copying in the docket reading room at the Office of Management and Budget, Room 3201 New Executive Office Building, 725 17th Street, NW., Washington, DC 20503. Persons desiring access to the comments may telephone (202) 395-6880 to arrange for entry to the building.

This second advance notice presents OMB's summary of comments on the

January 1989 notice, OMB's reaction to the comments, and preliminary conclusions. The public is invited to comment further on the contents of this second advance notice.

Summary of Comments

General Comments

A majority of commentators expressed views concerning the overall contents and tone of OMB's January 1989 notice. The most common opinion was that the January 1989 notice and OMB Circular No. A-130 were heavily biased, concentrating so much on private sector prerogatives that OMB had failed to elaborate a positive role for Federal agencies in the dissemination of government information, even in situations where dissemination of such information was basic to agencies' missions. The most favorable comments on this general point concluded that a public/private sector sharing of responsibility for information dissemination is good public policy and good economics, but that the notice failed to capture any such positive theme.

Two other frequently expressed general comments were: that OMB should withdraw the January 1989 notice, lest Federal agencies begin to implement the notice as established policy; and that OMB should proceed no further with revisions to OMB Circular No. A-130 until Congress acted on the reauthorization of the Paperwork Reduction Act.

Another general comment was that the proposed policy, as well as OMB Circular No. A-130, is silent on the role of the States in information resources management policy. With respect to information dissemination policy, commentators noted that the States are both partners with the Federal Government in dissemination and a major users group for federally disseminated information.

OMB Reaction: OMB did not intend that either OMB Circular No. A-130 or the January 1989 notice should express bias in favor of private sector prerogatives in a manner that would denigrate the central role that Federal agencies' play in Federal information dissemination. Appendix IV of Circular A-130 analyzed generic and specific statutory requirements affecting agencies' information dissemination activities, as well as dissemination responsibilities arising from proper performance of agency functions as determined by heads of agencies. Because comments indicate that OMB's basic policy on these matters may not have been well communicated, OMB

plans to review and revise the pertinent portions of OMB Circular No. A-130, namely Section 7, Basic Considerations and Assumptions, Section 8(a), Information Management, and corresponding sections of Appendix IV; and also to reconsider fully the content and tone of the January 1989 notice (see below).

As to the comment that OMB should withdraw the January 1989 notice, the form of that notice was neither a final policy nor a proposed policy, but an advance notice of proposed policy. That is, the notice was two steps from final policy, and therefore did not constitute either a statement of policy or even necessarily a statement of intended policy. Because comments indicated that the notice gave rise to substantial concern and some confusion among the public, OMB herewith withdraws the advance notice published January 4, 1989.

Other comments indicate that the objection was not to OMB's formulating policy on electronic dissemination. Commentators desired some policy on the subject, especially to help address the increasingly complex issues posed by changing technology, but in the opinion of many, not policy as they understood it. The Paperwork Reduction Act directs OMB to develop and implement uniform and consistent information resources management policies, so that undertaking further work on information dissemination policy is a responsibility under OMB's statutory mandate. OMB is mindful of congressional and public interest in this subject. OMB intends to continue work on developing information dissemination policy consistent with its mandate.

With respect to the role of the States, OMB agrees that the January 1989 notice and OMB Circular A-130 do not adequately treat the role of the States. In revising the Circular and the notice, OMB intends to work with State organizations to ensure that the role of the States is appropriately articulated.

Comprehensiveness and Enforcement

The January 1989 notice asked two general questions:

- Are the policy and accompanying analysis sufficiently comprehensive? Are there other major topics pertaining to information dissemination that should be treated?
- Is the procedural guidance provided sufficient to ensure enforcement of the policies? More broadly, how should OMB ensure enforcement of the policies?

Regarding the first question, some commentators answered in the affirmative, stating that the notice was thoughtful and coherent. Some stated that the analysis was generally sound but that the notice had a negative tone. Many others complained that the notice did little to illuminate how terms such as "value-added," "unfair competition," and "adequate notice" should be defined and used.

As to other major topics, many commentators pointed to the omission of any treatment of the Federal depository library program. Some commentators wanted a fuller discussion of how differences in information format or media affected various policy statements. Others wished for renewed discussion of the concepts of information access and information dissemination.

Regarding the question on procedural guidance, most who answered said that the notice did not provide sufficient guidance. They believed that the notice was no better than Circular No. A-130 with respect to enforcement and that both documents may be generally unenforceable.

Of the few who offered specific comments on procedural guidance for enforcement, their views fell into two groups. One group of commentators believed that OMB should take an affirmative role in approving or disapproving agency information dissemination products and evaluating private sector products, and that OMB should approve or disapprove agency dissemination plans or at least arbitrate disputes over such plans.

The other group of commentators believed that, while it should not micromanage, OMB should act to strengthen agency efforts at enforcement. Their suggestions included requiring public appeal mechanisms, or even making the policy into a regulation so that the public might seek relief through judicial or administrative proceedings.

OMB Reaction: OMB agrees that additional topics must be considered, as this notice elsewhere indicates. As to enforcement, OMB disagrees with the view that OMB should take a more active role of reviewing and approving or disapproving agencies' information dissemination programs. As Circular No. A-130 establishes in Section 9a (1), the locus of responsibility for actual management of Federal information resources is the head of each agency. In revising information dissemination policy, OMB plans to strengthen the policy framework of agency enforcement responsibilities.

Incorporation of OMB Circular No. A-3

The January 1989 notice proposed first to incorporate OMB Circular No. A-3, Government Publications, into OMB Circular No. A-130. The notice introduced certain changes to definitions in Circular No. A-3, and specified some functions that agency publications control systems are to perform, but proposed to leave the remainder of the contents of Circular No. A-3 unchanged.

The most common view expressed concerning the treatment of Circular No. A-3 was objection to the proposed elimination of the exclusion of statistical periodicals from the reporting requirements of the Circular. Commentators argued that the very rationale for reporting is management control by persons outside the statistical agencies, and therefore the change would open Federal statistics to real or apparent tampering, both of which must be guarded against.

As to the desirability of incorporating Circular No. A-3 into Circular No. A-130, most comments dealt with the effects of incorporation rather than arguing for or against it. Two Federal agencies objected to incorporation, arguing that the separate identity and visibility of Circular No. A-3 are important to effective publications management within the agencies.

In different ways, a number of commentators noted that incorporating Circular No. A-3 with only minor changes in definitions, inclusions, exclusions, and process would introduce new terms and policy formulations that appear different from and inconsistent with those found in Circular No. A-130; and that as a consequence it was not possible to join the two Circulars without substantial revision and harmonization of the two.

Several commentators pointed out that 44 U.S.C. 1108, the legal basis of Circular No. A-3, refers only to periodicals, and stated that OMB was extending its jurisdiction to other information products, especially electronic ones, without a statutory foundation.

Other commentators, particularly Federal agencies, focused on the contents of Circular No. A-3, pointing out that under the Paperwork Reduction Act OMB exercises detailed control over information collections and that similar control over information dissemination, as provided in Circular No. A-3, was excessive and unnecessary.

Commentators also objected to the inclusion of internal agency newsletters under the definition of periodical, since

such publications are not intended for public distribution.

Commentators questioned why OMB did not include, under the definition of information dissemination products, audiovisual activities, which are covered by OMB Circular No. A-114. With reference to this term, some commentators questioned OMB's statutory authority for extending the definition to cover electronic information products.

OMB Reaction: Following are OMB reactions to comments on incorporation of OMB Circular No. A-3.

—OMB agrees that Federal statistical publications must be protected from both actual and apparent tampering, and that therefore the exclusion of statistical publications from management control reporting should not be dropped but should be continued; that is, the policy in existing Circular No. A-3 should be retained.

—OMB believes Circular No. A-3, or any revision thereto, should be incorporated into Circular No. A-130. The reason is that a basic purpose of the Paperwork Reduction Act is to coordinate, integrate, and make uniform Federal information policies and practices. (44 U.S.C. 3501) OMB views the joining of the two Circulars as a step toward coordination and integration of Federal information policy, and believes that the Paperwork Reduction Act and other authorities cited in Section 3 of Circular No. A-130 are adequate legal foundation for extending coverage to include information products other than periodicals.

—OMB agrees that 44 U.S.C. 1108 refers only to periodicals and is not a statutory basis for requiring reporting on electronic information products. However, the Paperwork Reduction Act and other authorities cited in Section 3 of Circular No. A-130 are an adequate basis for requiring such reporting.

—OMB believes that Circular No. A-3 should be incorporated into Circular No. A-130 only after substantial revision to Circular No. A-3.

—OMB agrees that audiovisual activities may logically belong under the definition of "information dissemination product," a logic that would also dictate the joining of OMB Circular Nos. A-114 and A-130. However, because agencies experienced administrative difficulties in extending reporting coverage to include electronic information products, OMB is

inclined to defer until a later date the consideration of including audiovisual activities within the meaning of information dissemination product and joining the two Circulars.

—OMB believes any revision to the contents of Circular No. A-3 should reduce the exercise of OMB control over the details of agency information dissemination programs.

—OMB agrees that internal newsletters should not be included within the definition of the term periodical.

After further consideration, OMB proposes to take the following actions with respect to Circular No. A-3, actions which effectively incorporate suggestions made by commentators.

—Agencies will be required to maintain current comprehensive inventories of information dissemination products. However, the inventories will not be submitted to OMB and will not be individually examined on a routine basis by OMB. OMB plans to require that agencies annually submit their inventories to a single point, possibly the National Technical Information Service, for compilation and publication as a government-wide index for locating government information. OMB intends to establish an appropriate interagency group to determine the content of the inventory.

—OMB intends to reduce annual reporting to OMB to a single table of obligations data for agency information dissemination products (the equivalent of Exhibit 2 in OMB Bulletin No. 88-10, issued April 22, 1988) that would satisfy the requirements of 44 U.S.C. 1108. When submitting the table, agency heads will be required to certify that:

- (a) The agency's information dissemination products are necessary for the proper performance of agency functions (to satisfy 44 U.S.C. 1108); and
- (b) The agency has in place an effective management system for information dissemination products, including a current inventory.

—For FY 1989, OMB plans to issue a bulletin within the next 60 days detailing proposed changes to OMB Circular No. A-3 and requesting the single table and certifications. OMB intends to write to agencies in response to the FY 1989 bulletin, indicating whether their responses are in conformity with 44 U.S.C. 1108. For subsequent years, OMB

plans to incorporate reporting into the annual budget process.

Adequate Notice

The January 1989 notice proposed requiring agencies: (1) To make determinations as to which of their information dissemination products are significant and what would constitute adequate notice for initiating or terminating such products; and (2) to establish procedures for providing adequate notice. The analysis of policy provided examples of significant products and forms of notice.

Relatively fewer comments were received on this section of the notice than on others, and many of those were from Federal agencies. In general, whether in support of or critical of the adequate notice concept, commentators suggested that OMB give more specific guidance both on definitions and process. Some commentators addressed themselves to issues of timeliness, suggesting precise timeframes for agency notices or requesting more specific guidance on timeframes for different kinds of products. Some pointed out that advance notice was often precluded by the fact that decisions to terminate information dissemination products arose directly from the annual budget process and that budget decisions may not be published in advance. A number challenged OMB's characterization of significant and nonsignificant products. Some pointed out, for example, that in a decision to terminate a product because of low public interest, as evidenced by diminished demand, agencies should also take into account the product's usage by the depository libraries.

OMB Reaction: OMB's intent in the January 1989 notice was to reinforce the concept of adequate notice by providing lengthy examples concerning adequate notice, but then to propose that agencies develop their own procedures in accord with their own circumstances.

OMB does not believe it should fix timeliness and other procedural issues more precisely, believing that these are matters better left to the agencies because the agencies are in the best position to take into account agency missions and the nature of the information dissemination products in question. OMB expects to require that agencies establish procedures consistent with general guidelines, but will leave detailed procedural specifications to the agencies.

OMB agrees that, in formulating procedures for adequate notice, agencies should take into account the fullest available information, such as depository library usage of information

dissemination products. OMB recognizes that budget decisions may affect an agency's ability to provide adequate notice, and considers this a special condition that agencies may wish to list as an exception to their procedures.

Electronic Dissemination

The January 1989 notice proposed that agencies should examine their information dissemination products to determine whether conditions favor electronic dissemination, and suggested what some of the conditions might be. The notice also stated that agencies should avoid disseminating products that place the Government in unfair competition with the private sector, and that agencies should give preference to basic products and avoid disseminating value-added electronic information products.

This section of the notice generated the most comment. A majority of the commentators took this section as an assault on public policy principles concerning the free flow of information. First, commentators questioned whether the notice took into account the legitimate role of government agencies in the dissemination of government information and the rights of citizens to adequate and preferably convenient access to that information. According to some commentators, the policy as proposed, by impeding agency information dissemination activities, would constitute an obstacle to agencies in carrying out their dissemination mandates.

Second, commentators questioned the statutory basis for a proposed policy which they believed favored the privatization of government information dissemination products. Some voiced the belief that the proposed policy was in conflict with those portions of Title 44 governing Federal printing. They questioned a distinction between electronic information products and other government information products, many asserting that the chapters of Title 44 dealing with printing extend to electronic products and that OMB is wrong to suggest otherwise. (To the extent this last comment is a reference to the section of the January 1989 notice concerning user fees, see the section on user fees below.)

Third, commentators voiced their concerns about too great a reliance on the private sector for the dissemination of government information, particularly in electronic form. They noted the uncertainty of corporate continuity and the lack of accountability and obligation to perform as compared with Federal

agencies. They pointed to the risk that, if given too strong a role, private firms might exercise control over the content of public domain information, releasing only that information that would turn a profit. They objected to the possibility that private firms could exact high prices and high profits from the sale of information created with public funds. Commentators believed that the proposed policy could amount to a public subsidy for commercial interests and could effectively create price barriers to government information.

Fourth, commentators focused on the matter of unfair competition, with some alleging that the proposed policy should foster cooperation between the public and private sectors rather than competition, and others holding the view that competition between the two sectors was basically healthy.

Fifth, some commentators focused on the special case of Federal statistical agencies, arguing that these agencies reason for existence is to disseminate general purpose statistics and that the proposed policies fail to take account of, and could inhibit, their special missions.

Sixth, a paragraph in the analysis section of the notice presented an example dealing with CD-ROM (Compact Disk—Read Only Memory). This paragraph occasioned the most comment of any feature of the notice. Commentators took exception to the idea that an agency might disseminate a CD-ROM without any added value; that is, without tailoring it to specific user needs. They argued that such an action would be inconsistent with the purpose of information dissemination: some value must be added to any information to enable it to be used. Commentators also objected strenuously to the suggestion that software development is an inappropriate activity for agencies.

Seventh, some commentators on the other hand pointed to examples where they believed agencies were disseminating value-added products in competition with the private sector. They expressed the fear that such agency actions would drive away private sector investment from, and ultimately stifle, emergent technologies.

Eighth, comments discussed the responsibility of the Federal Government to guarantee equitable access to government information and alleged that overdependence on the private sector would lead to higher prices for users which, in turn, would undermine equitable access and lead to formation of an information elite composed of those who can afford the higher prices. Several commentators raised the example of a particular agency's automated system. They

stressed the positive effects on national competitiveness that the high quality, readily accessible information from the system would provide. They also expressed fears that OMB policy would prohibit the agency from allowing public access to the system except through private vendors that might offer only the profitable portions of the system's database at high cost to the public.

Ninth, commentators alleged that in the January 1989 notice OMB was proposing to differentiate policy for electronic information from policy for printed information. They maintained that the format or media of information should not dictate policy, but that one information policy should apply to all formats or media.

Last, many commentators criticized the proposed policy on electronic dissemination because there was no discussion of the Federal depository library program. Some also mentioned that the National Technical Information Service should be discussed. In their view, any electronic dissemination policy must include these two institutional vehicles for making government information available to the public.

OMB Reaction: First, OMB wishes to make clear that its fundamental philosophy is that government information is a public asset; that is, with the exception of national security matters and such other areas as may be prescribed by law, it is the obligation of government to make such information readily available to the public on equal terms to all citizens; that to the extent the flow of information from the government to the public can be enhanced by the participation of the private sector, such participation should be encouraged; and that participation by the private sector supplements but does not replace the obligations of government. These principles apply whatever the form, printed, electronic, or other in which the information has been collected or stored. OMB did not intend that either OMB Circular No. A-130 or the January 1989 notice should have the effect of dissuading agencies from carrying out activities they believe are necessary for the proper performance of agency functions. OMB will re-examine OMB Circular No. A-130 and the January 1989 notice to ensure that these points are adequately addressed.

Second, as regards the statutory basis, OMB's information resources management policy is based on the Paperwork Reduction Act and on other statutory authorities, as cited in Section 3 of OMB Circular No. A-130. An OMB Circular is unlike a regulation

promulgated pursuant to the notice and comment requirements of the Administrative Procedure Act. A Circular does not confer rights or impose obligations on private individuals or organizations. Rather, an OMB Circular imposes binding Administration guidance on executive branch agencies as to how policies and statutes are to be implemented.

Third, as regards reliance on the private sector to disseminate government information, OMB did not intend, either in Circular No. A-130 or in the January 1989 notice, that Federal agencies or the public should be made to rely primarily on the private sector for the dissemination of government information.

Fourth, as regards unfair competition between the public and private sectors, OMB believes that discussions surrounding Circular No. A-130 and the January 1989 notice have polarized debate in ways that may obscure and impede important areas of cooperation between the public and private sectors. In revising the Circular and the notice, OMB will attempt to frame the policy in language that avoids polarization and fosters cooperation.

Fifth, OMB recognizes, as for example at 5 CFR 1320.7(o) and elsewhere, that Federal statistical agencies are special cases in some respects. OMB's intent is to formulate information policy that will apply to all executive branch agencies while taking into account the special circumstances of statistical agencies.

Sixth, as regards the CD-ROM example in the analysis section of the January 1989 notice, OMB agrees that the example was poorly drawn. OMB agrees that government information dissemination products should be tailored to users' needs, and that software development is often a legitimate Federal activity.

Seventh, OMB believes that, all other things being considered, agencies ought to act in a manner that will encourage rather than inhibit private sector investment in emergent technologies.

Eighth, OMB agrees with the view that the Government has a responsibility to guarantee equitable access to government information. As to the concern that overdependence on the private sector could result in higher prices for users, OMB notes the requirement in Circular No. A-130 that agencies shall disseminate information products "in a manner that ensures that members of the public whom the agency has an obligation to reach have a reasonable ability to acquire the information." (Section 8a (11)(b)) The discussion of this policy highlights the

need to avoid unreasonably high prices for information products.

Ninth, as noted, OMB agrees that a single information policy should apply to government information regardless of format or media.

Last, with respect to the Federal depository libraries and the National Technical Information Services (NTIS), OMB agrees that these are institutional vehicles whose availability should be considered by all government information dissemination programs. In redrafting the policy, OMB will discuss the depository libraries and NTIS. In prescribing the functions of agencies' information dissemination management systems, OMB would consider requiring that agencies ensure that the appropriate information products are made available to the depository libraries.

OMB notes that the depository library program is the administrative responsibility of the Government Printing Office, and therefore does not intend to propose policy for the depository library program as such. In revising OMB Circular No. A-130 and the January notice, OMB does intend to address the question of executive branch agencies' supplying government publications to the depository library program.

User Charges

The January 1989 notice suggested a change in user charges policy as compared with the existing policy found in OMB Circular No. A-25, User Charges. The change consisted of treating government information products as fundamentally different from other goods and services. OMB proposed a ceiling on charges for information products, asserting that, with relatively rare exception, user charges for government information products should never be set higher than a level sufficient to recover the costs of disseminating, not collecting the information. The proposed policy, therefore, would generally preclude user charges that might attempt to recover costs of collecting and processing the information, and would preclude using other standards such as the market value of the information.

For many commentators, it appeared that the term user charges and any discussion thereof connoted higher prices to the public. Some commentators objected to the discussion in the notice's analysis section of "full cost of dissemination," and asserted that application of full cost of dissemination will raise the prices paid by end users in the public. Other commentators raised the objection that user charges are a

form of double taxation. The taxpayer, having paid via taxes for the government to create or collect the information, is said to be paying a second time when assessed a user charge. A third set of comments stated that decisions on whether to charge and how much to charge should be based on the nature of the information, circumstances surrounding the particular information product, and the agency's dissemination mission.

In the analysis of user charges, the notice had stated that decisions on pricing and sale of printed government documents were reserved to the Superintendent of Documents, and that therefore the executive branch agencies had discretion only in the setting of user charges for electronic information products. Some commentators took direct issue with this statement, alleging that the statement was incorrect as a matter of law. Other commentators took this statement to mean that OMB was asserting electronic information products were not subject to Chapter 19 of Title 44, U.S. Code, concerning the depository libraries. Still others believed that this statement signaled a bifurcation in information policy with one policy applying to printed information products and another policy applying to electronic products; commentators opposed any such split.

OMB Reaction: The intent of the user charges section of the notice was to propose an across-the-board ceiling on user charges for government information products, except in certain carefully defined cases. Far from raising prices, OMB intended to reassure the public that prices would not be raised above the costs of dissemination. In effect, agencies would be precluded from using information products as a profit center or budgeting mechanism. The public has generally not objected to paying a sales price for GPO publications; the user charge OMB contemplates for other government information products is comparable. Charging for reproduction and distribution of electronic information products, the usual basis for user charges for these products; is consistent with a cost-of-dissemination policy.

As to double taxation, OMB notes that user charges policy has a basis in statute (31 U.S.C. 9701), and the Congress has not viewed user charges as double taxation because they are applied when the recipient receives special benefits. With regard to basing user charges on the nature of the information, the product circumstances, and the agency's mission, OMB believes that this viewpoint is accommodated in the policy of balancing user charges

against the need to ensure that products reach the public for whom they are intended.

OMB notes also that OMB Circular No. A-25, User Charges, makes explicit provision for the waiver of user charges when the cost of collecting the fees would be an unduly large part of receipts. The January notice indicated that agencies should balance the requirement for user charges against the need to ensure that information products reach certain members of the public, and that this could be a basis for reducing or eliminating the charges.

With respect to Chapter 17 of Title 44, U.S. Code, OMB asserted only that the Superintendent of Documents prices and sells printed government documents and that executive branch agencies may set prices for electronic information products. Executive branch agencies have priced and sold electronic information products for several decades without legal or policy challenge.

OMB made no statement and drew no firm conclusions as to whether or not Chapter 19 of Title 44, dealing with the depository libraries, applies to electronic information products. The definition of "government publication" in 44 U.S.C. 1901 is: "informational matter which is published as an individual document . . ." OMB does not understand that this definition on its face includes electronic data files, software, online information services, or the like. Section 1711 of Title 44, for example, requires the Superintendent of Documents "to prepare a catalog of Government publications which shall show the documents printed during the preceding month . . ." (emphasis added). This statutory language supports OMB's exclusion of non-printed electronic information from the definition of government publication. Therefore, OMB believes it is not clear that agencies at present have a legal obligation to make electronic information products available to depository libraries. Nevertheless, OMB believes that, as a matter of policy, many such products should be made available to the depository libraries in the same manner as printed materials, and intends to redraft the proposed policy to reflect this view.

Immediate Action and Preliminary Conclusions About the Next Steps

OMB will proceed with the development of a new draft policy statement that will reformulate both information collection and information dissemination policy, including the pertinent sections of OMB Circular No.

A-130, the January 1989 notice, and the notice of August 7, 1987, concerning electronic collection of information. OMB in due course will publish the new draft policy statement for comment.

The foregoing summary of comments leads OMB to certain preliminary conclusions about the proper role for executive branch agencies in government information dissemination, and the boundaries between Federal and nonfederal roles. OMB proposes that these conclusions form the basis for OMB's revision of information dissemination policy in OMB Circular No. A-130.

1. The nation benefits from the fact that government information is disseminated by Federal agencies and also by many nonfederal parties, including State and local government agencies, educational and other nonprofit institutions, and for-profit organizations.

2. Over and above their responsibilities to provide access to information under the Freedom of Information Act, the Privacy Act, and the Government in the Sunshine Act, Federal agencies have a general responsibility to disseminate information:

- As appropriate to the pursuit of their mission and program objectives; and
- In the interest of assuring that the public is appropriately informed.

3. Agencies must discharge their information dissemination responsibilities in a manner that:

- Assures the public reasonable and equitable access to government information; and
- Is efficient and economical.

4. Agencies should discharge their information dissemination responsibilities by taking full advantage of all dissemination channels, foremost among which are the Federal depository libraries, but also including other Federal agencies, State and local government agencies, educational and other nonprofit institutions, and for-profit organizations.

5. With respect to the roles of Federal and nonfederal entities, agency dissemination responsibilities can be analyzed as a set of decisions:

- Whether to disseminate a particular government information product or service: a decision made by the Federal agency involved;
- What to disseminate, i.e., the content of a government information product or service: a decision made by the Federal agency;
- When to disseminate, i.e., the timing and frequency of a product or service: a decision made by the Federal agency;
- How to disseminate, i.e., the strategy for getting a product or service to users, including format or medium: a decision made by the Federal agency;

- What price to charge for the product or service: a decision made by the Federal agency;
- Who carries out the primary or official dissemination activities, after the preceding questions are answered: a decision made by the Federal agency, which may result in activities by the Federal agency or by nonfederal parties;
- Who carries out secondary dissemination, once primary or official dissemination has been accomplished: a decision made by any interested party, Federal or nonfederal.

OMB requests public comment on the foregoing, particularly with respect to OMB's reaction to comments and preliminary conclusions. OMB also solicits positive formulations of policy statements with respect to the topics treated herein; that is, where members of the public believe the OMB formulation is inadequate or incomplete, OMB invites members of the public to offer their own formulations. OMB invites comments as to whether it would be useful for OMB to hold a public hearing on these issues.

S. Jay Plager,

Administrator, Office of Information and Regulatory Affairs.

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laws, telephone numbers, and finding aids, appears
in the Reader Aids section at the end of this issue.

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Presidential Documents

Title 3—

The President

Memorandum of June 9, 1989

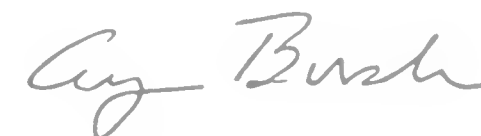
Delegation of Reporting Function

Memorandum for the Secretary of Defense

By virtue of the authority vested in me by the Constitution and laws of the United States, including Section 301 of Title 3 of the United States Code, I authorize you to submit to the Congress the report summarizing the results of the review of the principles and concepts of the compensation system for members of the uniformed services, as required by P.L. 89-132, Sec. 2(a), August 21, 1965 (37 U.S.C. 1008(b)).

You are authorized and directed to publish this memorandum in the **Federal Register**.

THE WHITE HOUSE,
Washington, June 9, 1989.



[FR Doc. 89-14514
Filed 6-14-89; 3:55 pm]
Billing code 3135-01-M

Rules and Regulations

Federal Register

Vol. 54, No. 115

Friday, June 16, 1989

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510. The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 737

Post Employment Conflict of Interest

AGENCY: Office of Personnel Management.

ACTION: Final regulation.

SUMMARY: The Office of Personnel Management is issuing a final regulation under the Ethics In Government Act of 1978 which reflects the determination by the Director of the Office of Government Ethics that the several offices and councils within the Executive Office of the President no longer meet the requirements for designation as "separate statutory agencies" under 18 U.S.C. 207(e) for the purpose of limiting the application of the post employment restrictions contained in 18 U.S.C. 207(c).

EFFECTIVE DATE: June 16, 1989 for individuals appointed to positions within the Executive Office of the President on or after June 16, 1989. The Director of the Office of Government Ethics has determined that this regulation constitutes a substantive change that adversely affects employees who held positions within the Executive Office of the President prior to June 16, 1989. Under 5 CFR 737.29, this change, therefore, is effective as to such persons only if they continue to hold positions within the Executive Office of the President for 5 months after June 16, 1989.

ADDRESS: Office of Government Ethics, P.O. Box 14108, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Leslie Wilcox, (202) 523-5757.

SUPPLEMENTARY INFORMATION: Subsection 207(e) of title 18 U.S.C. gives the Director of the Office of Government Ethics authority to designate statutory agencies or bureaus within a parent

department or agency as separate for the purpose of limiting the post employment restrictions of 18 U.S.C. 207(c) applicable to former senior employees. Procedures and standards under which a parent agency may seek designation of separate statutory components are set forth in 5 CFR 737.13(c). The effect of designation by the Director is to limit the restriction of 18 U.S.C. 207(c) to contacts by a former senior employee with the statutory component in which he/she served. Such designation, however, does not benefit former heads of the separate subordinate agencies or former senior employees of the parent agency whose official responsibilities included supervision of the subordinate agency.

In 1983, in response to a request from the Counsel to the President, the Director of the Office of Government Ethics designated the following offices and councils within the Executive Office of the President as separate statutory agencies:

Office of Management and Budget
Council of Economic Advisers
National Security Council
United States Trade Representative
Council on Environmental Quality
Office of Science and Technology Policy
Office of Administration
White House Office and the Office of Policy Development
Office of the Vice President

That determination is implemented in 5 CFR 737.31.

On April 12, 1989, the Counsel to the President notified the Director of the Office of Government Ethics that the Executive Office of the President should be considered as a single agency for purposes of section 207(e). The letter noted that determinations of distinctness under that provision are informed by the purpose of section 207(c), which is "directed at unfair influence being exerted by a former official with the persons with whom he had worked", S. Rep. No. 95-170, 95th Cong., 1st Sess. 153 (1977); and that the spirit and purposes of section 207(c) and (e) dictated that separateness could be determined with reference to such factors as proximity and scope of interaction and not merely interchangeability of functions. It accordingly concluded that the Executive Office of the President, with its uniquely extensive responsibilities and degree of interaction, should be

considered as a single agency for purposes of section 207(e). It also noted, however, that this conclusion flowed from the present organization of the Executive Office of the President and was accordingly subject to change, and that it stemmed from the Executive Office of the President's function as a unique locus of policy making for the entire spectrum of issues confronting the Government, rather than from any conclusion that the functions of its particular components are interchangeable. Pursuant to these Presidential determinations, 5 CFR 737.31 is amended to delete the Executive Office of the President and its subagencies from the listing of separate statutory components.

Pursuant to section 553 of title 5 of the United States Code, I find that good cause exists to make this amendment effective in less than 30 days for persons entering on duty in senior employee positions within the Executive Office of the President on or after June 16, 1989. Under 5 CFR 737.29 this regulation does not adversely affect persons holding senior employee positions in the Executive Office of the President prior to June 16, 1989 unless they remain in such positions for an additional 5 months. Thus, the change has an immediate impact only upon a limited class of persons who would not ordinarily have formed specific expectations as to their rights upon leaving government employment and who would be unlikely to leave office and be affected by the change within less than 30 days after June 16, 1989.

E.O. 12291, Federal Regulations

The Office of Government Ethics has determined that this is not a major rule as defined under section 1(B) of E.O. 12291.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it affects only Federal employees.

List of Subjects in 5 CFR Part 737

Conflicts of interest, Government employees.

U.S. Office of Personnel Management.
Frank Q. Nebeker,
Director, Office of Government Ethics.

Accordingly, the Office of Personnel Management is amending 5 CFR 737.31 as follows:

PART 737—[AMENDED]

1. The authority citation for Part 737 continues to read as follows:

Authority: Titles II and IV of Pub. L. 95-521 (October 26, 1978), as amended by Pub. L. 96-19 (June 13, 1979), 5 U.S.C. Appendix; Pub. L. 96-150 (November 11, 1983); 18 U.S.C. 207.

§ 737.31 [Amended]

2. Section 737.31 is amended by removing "Parent Agency: EXECUTIVE OFFICE OF THE PRESIDENT" and the listing under it down to and including the "Office of the Vice President."

(FR Doc. 89-14330 Filed 6-15-89; 8:45 am)

BILLING CODE 6325-01-M

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Part 250

Donation of Food for Use in the United States, Its Territories, Possessions and Areas Under Its Jurisdiction

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule correction.

SUMMARY: This docket corrects a final rule on the State processing portion of the food distribution program that appeared in the *Federal Register* of Wednesday, February 22, 1989 (46 FR 7521-7528). This action is necessary to correct technical errors in citations within the Final Rule.

FOR FURTHER INFORMATION CONTACT: Susan E. Proden, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22303 or telephone (703) 756-3660.

The following corrections are made in FR Doc. (FR Doc. 89-4043) appearing on pages 7521-7528 in the issue of February 22, 1989:

§ 250.19 [Corrected]

1. On page 7525 in the third column in § 250.19(b)(2)(vi)(A), "(b)(2)(ii) (A) through (E)" is corrected to read "(b)(2)(i)-(v)".

2. On page 7525 in the third column, in § 250.19(b)(2)(vi)(B), "§ 250.15(m)" is corrected to read "§ 250.30(m)".

§ 250.30 [Corrected]

3. On page 7526 in the first column in § 250.30, the material designated as paragraph (d)(2) should have been the concluding two sentences of paragraph (d)(1)(iii) and the reference therein to "§ 250.30(b)" is corrected to read "§ 250.19(b)"; and in column two, paragraphs "(d)(3)" and "(d)(4)" are correctly designated as paragraphs "(d)(2)" and "(d)(3)".

4. On page 7526 in the second column, in § 250.30(e)(1), "(d)(2)" is corrected to read "(d)(1)(iii)".

Dated: June 9, 1989.

G. Scott Dunn,
Acting Administrator.

(FR Doc. 89-14362 Filed 6-15-89; 8:45 am)

BILLING CODE 3410-30-M

Agricultural Marketing Service

7 CFR Part 910

[Lemon Regulation 670]

Lemons Grown in California and Arizona; Limitation of Handling

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Regulation 670 establishes the quantity of fresh California-Arizona lemons that may be shipped to market to 400,000 cartons during the period June 18 through June 24, 1989. Such action is needed to balance the supply of fresh lemons with market demand for the period specified, due to the marketing situation confronting the lemon industry.

DATES: Regulation 670 (§ 910.970) is effective for the period June 18 through June 24, 1989.

FOR FURTHER INFORMATION CONTACT: Beatriz Rodriguez, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, Room 2523, South Building, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 475-3861.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under criteria contained therein.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

The purpose of the RFA is to fit regulatory action to the scale of business subject to such actions in order

that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Agricultural Marketing Agreement Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 85 handlers of lemons grown in California and Arizona subject to regulation under the lemon marketing order and approximately 2,500 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.2] as those having annual gross revenues for the last three years of less than \$500,000, and small agricultural service firms are defined as those whose gross annual receipts are less than \$3,500,000. The majority of handlers and producers of California-Arizona lemons may be classified as small entities.

This regulation is issued under Marketing Order No. 910, as amended [7 CFR Part 910], regulating the handling of lemons grown in California and Arizona. The order is effective under the Agricultural Marketing Agreement Act (the "Act," 7 U.S.C. 601-674), as amended. This action is based upon the recommendation and information submitted by the Lemon Administrative Committee (Committee) and upon other available information. It is found that this action will tend to effectuate the declared policy of the Act.

This regulation is consistent with the California-Arizona lemon marketing policy for 1988-89. The Committee met publicly on June 13, 1989, in Los Angeles, California, to consider the current and prospective conditions of supply and demand and unanimously recommended a quantity of lemons deemed advisable to be handled during the specified week. The Committee reports that demand for lemons is strong.

Pursuant to 5 U.S.C. 553, it is further found that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice and engage in further public procedure with respect to this action and that good cause exists for not postponing the effective date of this action until 30 days after publication in the *Federal Register* because of insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared purposes of the Act. Interested persons were given an opportunity to submit information and views on the regulation at an open

meeting. It is necessary, in order to effectuate the declared purposes of the Act, to make these regulatory provisions effective as specified, and handlers have been apprised of such provisions and the effective time.

List of Subjects in 7 CFR Part 910

Marketing agreements and orders, California, Arizona, Lemons.

For the reasons set forth in the preamble, 7 CFR Part 910 is revised as follows:

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

1. The authority citation for 7 CFR Part 910 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

2. Section 910.970 is added to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 910.970 Lemon regulation 670.

The quantity of lemons grown in California and Arizona which may be handled during the period June 18, 1989, through June 24, 1989, is established at 400,000 cartons.

Dated: June 14, 1989.

Robert C. Keeney,
Deputy Director, Fruit and Vegetable Division.

(FR Doc. 89-14487 Filed 6-15-89; 8:45 am)

BILLING CODE 3410-02-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 524

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration.
ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for a NADA from National Dermaceutical Products, Inc., to Pan American Pharmaceuticals, Inc.
EFFECTIVE DATE: June 16, 1989.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV-130), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1414.

SUPPLEMENTARY INFORMATION: Pan American Pharmaceuticals, Inc., 4156 Danvers Ct. SE., Grand Rapids, MI 49508, has informed FDA that it has acquired NADA 31-555 which provides for topical use of a drug product containing trypsin, balsam, and castor oil on external wounds of horses, cattle, dogs, and cats to assist healing. National Dermaceutical Products, Inc., the former sponsor, has confirmed the change of sponsor. Accordingly, the agency is amending the list of sponsors of approved NADA's in 21 CFR 510.600(c) to remove the entries for National Dermaceutical Products, Inc. (the firm no longer sponsors an approved NADA) and to add entries for Pan American Pharmaceuticals, Inc. Additionally, 21 CFR 524.2620 is amended to reflect the change of sponsor.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 524

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, Parts 510 and 524 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR Part 510 continues to read as follows:

Authority: Sections 512, 701(a) (21 U.S.C. 360b, 371(a)); 21 CFR 5.10 and 5.83.

2. Section 510.600 is amended in paragraph (c)(1) by removing the entry for "National Dermaceutical Products, Inc.," and by alphabetically adding the new entry "Pan American Pharmaceuticals, Inc.," and in paragraph (c)(2) by removing the entry for "051268" and by numerically adding the entry "052799" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

• • • • •
 (c) • • •
 (1) • • •

Firm name and address	Drug labeler code
• • • • •	•
Pan American Pharmaceuticals, Inc., 4156 Danvers Ct. SE., Grand Rapids, MI 49508.	052799
• • • • •	•
(2) • • •	
Drug labeler code	Firm name and address
• • • • •	•
052799	Pan American Pharmaceuticals, Inc., 4156 Danvers Ct. SE., Grand Rapids, MI 49508.
• • • • •	•

PART 524—OPHTHALMIC AND TOPICAL DOSAGE FORM NEW ANIMAL DRUGS NOT SUBJECT TO CERTIFICATION

3. The authority citation for 21 CFR Part 524 continues to read as follows:

Authority: Section 512(i), 82 Stat. 347 (21 U.S.C. 360b(i)); 21 CFR 5.10 and 5.83.

§ 524.2620 [Amended]

4. Section 524.2620 *Liquid crystalline trypsin, Peru balsam, castor oil* is amended in paragraph (b)(2) by removing "051268" and adding in its place "052799".

Date: June 12, 1989.

Robert C. Livingston,
Deputy Director, Office of New Animal Drug Evaluation Center for Veterinary Medicine.
 (FR Doc. 89-14344 Filed 6-15-89; 8:45 am)
 BILLING CODE 4160-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

National Highway Traffic Safety Administration

23 CFR Part 659

(FHWA Docket No. 88-5)

Certification of Speed Limit Enforcement; Revision of Procedures

AGENCY: Federal Highway Administration/National Highway Traffic Safety Administration, DOT.
ACTION: Final rule.

SUMMARY: This document simplifies the procedure for determining State compliance with the provisions of Federal law regarding maximum speed limits and for determining the amount and timing of any reduction of Federal-aid highway funds to those States that

are found to have not complied. The rule also updates the current regulation to reflect statutory changes, describes the reservation of obligational authority in the event that a final determination on a State's compliance is not issued by the date subsequent apportionments are made, and clarifies the provisions concerning apportionment of withheld funds to States that have subsequently complied with the statute.

DATES: These revisions to 23 CFR Part 659 are effective July 17, 1989.

FOR FURTHER INFORMATION CONTACT: In OST: Samuel E. Whitehorn, Office of Assistant General Counsel for Regulations and Enforcement at (202) 366-9307; in FHWA: Mr. Harry Skinner, HTO-30, (202) 366-2186, or Mr. David C. Oliver, Safety Law Division, (202) 366-1356; in NHTSA: Mr. Clayton Hall, NTS-40, (202) 366-4913, or Ms. Kathy DeMeter, General Law Division, (202) 366-1834, all at the Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION:

Background

The Department of Transportation (Department or DOT) is responsible for ensuring that each State enforce a maximum 55 miles per hour (MPH) speed limit on those roads posted at 55 MPH. The Surface Transportation and Relocation Assistance Act of 1987, Pub. L. 100-17 (April 2, 1987), and section 329(a) of Pub. L. 100-202 (December 22, 1987) permitted States to increase the maximum allowable speed limit to 65 MPH on certain portions of the Interstate System and other similarly designed highways. Neither statute, however, changes the requirement that States submit information and continue to enforce the 55 MPH speed limit on roads posted at 55 MPH.

States are required to certify to the Department that they are enforcing the 55 MPH speed limit (or 65 MPH, as appropriate) on their public highways (23 U.S.C. 141 and 154). The States must also provide data to support that certification, including information on the percentage of motor vehicles exceeding the 55 MPH speed limit on roads posted at that limit (section 154(e)). Section 154(f) provides that the Department shall reduce (up to ten percent) a State's Federal-aid apportionments for the Primary, Secondary, and Urban highway programs (23 U.S.C. 104(b) (1), (2), and (6)), for the fiscal year that begins subsequent to the submission of data showing that more than 50 percent of the motor vehicles traveling on that State's highways which are posted at 55 MPH

exceed that limit. Section 154(g) gives the Secretary discretion to delay the imposition of sanctions in hardship cases, and section 154(h) provides that any funds withheld under this section shall be promptly apportioned if the percentage of vehicles exceeding the 55 MPH limit falls to 50 percent or below in a succeeding year. The statute does not require the Department to hold a hearing before reducing a State's apportionments.

Section 351 of the Department of Transportation and Related Agencies Appropriation Act of 1989, Pub. L. 100-457, enacted September 30, 1988, precludes the Secretary from enforcing section 154(f) with respect to data collected in fiscal years 1986, 1987 and 1988. The legislative history of this provision indicates that it was intended to give Congress time to continue its reexamination of the issues associated with the existing national maximum speed limit laws, without burdening the States with non-compliance proceedings whose outcome might be altered by future legislative amendments.

Current Federal Highway Administration (FHWA) and National Highway Traffic Safety Administration (NHTSA) implementing regulations, 23 CFR Part 659, provide procedures for State certification of compliance. (FHWA and NHTSA are operating administrations within DOT.) Under those regulations, each State develops a plan to monitor speeds which is subject to FHWA review and approval. By January 1 of each year, each State must certify its compliance for the preceding fiscal year and submit information to support that certification.

Under present regulations, if the State-submitted data indicates apparent noncompliance, the State is afforded a number of opportunities to explain the certification and data, before any apportionment reductions are made. The State may first request an informal hearing to show cause why it should not be found in noncompliance or to attempt to resolve the matter informally. If the matter is not resolved informally, the State may request a formal hearing. If no request for a hearing is made, the Administrators will forward a proposed determination to the Secretary.

If a State does request a formal hearing, it is held before an administrative law judge (ALJ). The ALJ then issues a recommended decision on compliance.

Following review of either the ALJ's recommended decision or the Administrators' proposed determination, the Secretary makes a final determination on compliance. If the Secretary determines that a State is not

in compliance, the Administrators notify the State of that determination and of the proposed reduction in apportioned funds. The State may request an informal meeting with the Administrators to discuss the sanction and/or a possible hardship deferral. After that meeting, a final decision on sanctions and hardship deferral is issued.

The NPRM and Public Comments

On March 11, 1988, FHWA and NHTSA issued a Notice of Proposed Rulemaking (NPRM) (48 FR 7943) that proposed specific changes to simplify the compliance determination and apportionment reduction process and to make technical modifications in response to recent statutory amendments. In response to that NPRM, the Department received comments from several State highway and transportation departments, two state police departments and one consumer group. The majority of the commenters—including the Hawaii Department of Transportation, Maryland Department of Transportation, Georgia Department of Transportation, Michigan Office of Highway Safety Planning, Texas State Department of Highway and Public Transportation, and the Oregon Departments of State Police and Transportation—supported the proposed simplification of the procedures. For example, the Texas State Department of Highways and Public Transportation stated that the procedural changes will benefit the State by allowing relevant input earlier in the process, eliminating unnecessary steps, and concentrating on the primary factors that relate to speed limit compliance, enforcement, and safety.

In contrast, the Massachusetts Department of Public Works, the California Departments of Highway Patrol and Transportation, the North Dakota State Highway Department, the State of New York Department of Transportation, and the Center For Auto Safety (CFAS) submitted comments opposing the proposed changes. Comments concerning specific proposals in the NPRM are discussed in the pertinent sections.

Several comments addressed matters that would require legislative changes. For example, some commenters questioned the general validity of a Federal role in speed limit enforcement. Another party argued that the urban boundary limit in § 659.7 is an unrealistic point at which to require a reduction in speed. The Texas Department of Highways and Public

Transportation recommended that the Department develop a system to provide adjustments for states that have raised speed limits on certain highways to 65 MPH versus those states that have not. Since resolution of these concerns would require statutory changes, the Department is unable to address them in this rulemaking, regardless of merit.

The California Departments of Highway Patrol and Transportation argued that the Department should withhold final rulemaking until Congress completed its consideration of pending bills that addressed speed limit compliance. Since those comments were filed, Congress has acted. Although Pub. L. 100-457 provides that there will be no enforcement for alleged noncompliance during fiscal years 1988-1989, it is possible that a State might be in noncompliance in fiscal year 1989 or beyond. In light of that possibility, it is appropriate to have these revised procedures in place to assure that there are no unnecessary delays at that time.

Section-By-Section Analysis of Changes

Section 659.15 Certification Content

Section 154(e) provides that each State shall submit to the Secretary such data as the Secretary determines is necessary to support its certification under section 141, including data representing statewide driver noncompliance with the 55 MPH speed limit. The data is to be submitted "in accordance with criteria to be established by the Secretary, including criteria which take into account the variability of speedometer readings"

When a final rule implementing this provision was published (45 FR 64488; September 29, 1980), speedometer variability was acknowledged, but no specific procedures to account for it were put in regulatory form. Discussion of speedometer variability was confined to the rule's supplementary information section. That narrative indicated that methodologies available to implement the concept would be published and distributed at a later date. Until the NPRM, however, no further discussion of this topic appeared in the *Federal Register*. Instead, beginning in 1980, the speedometer variability adjustment process has been handled, on an annual basis, via memorandum from FHWA Headquarters to the FHWA field offices, with the appropriate information then passed on to the States. The States then made the appropriate adjustment prior to submission of their annual certification of speed limit enforcement required by 23 U.S.C. 141.

FHWA and NHTSA have determined that it would be appropriate to publish these speedometer variability adjustment procedures in the Code of Federal Regulations, so that they will be readily available to the public. Therefore, we have amended 23 CFR 659.15(d) to set forth the entire process whereby a State produces a statewide value for the percentage of vehicles exceeding 55 MPH. That subsection is as proposed in the NPRM, except the letter "H" has been substituted for "G" in paragraph (d)(2) to reduce any possible confusion.

The California Departments of Highway Patrol and Transportation, citing a study by the National Academy of Sciences, argued that the speedometer variability adjustment process contained in the NPRM is "seriously flawed". They also argued that the statute does not specifically authorize the adjustments for statistical and equipment error and that the second adjustment in § 659.15(d)(1) should use a confidence level of 99% instead of 95%. We have reviewed this adjustment methodology and continue to believe that it is appropriate. Furthermore, a 95% confidence level is widely used in statistical analyses.

Section 659.19 Effect of Failure To Certify or To Meet Compliance Standards

Much of existing § 659.19 implements the earlier statutory scheme, which included a phased-in compliance process. The 1981 amendment to 23 U.S.C. 154 (section 1108(a) of Pub. L. 97-35) replaced the phased-in compliance requirement (which set different compliance standards for different years) with a straightforward compliance standard of 50 percent. Thus, States now must demonstrate that the percentage of motor vehicles exceeding 55 MPH on roads posted at that speed is not greater than 50 percent. The regulation has been revised to reflect the statutory amendments.

The California Department of Highway Patrol pointed out that the statute does not specifically provide for a 100 percent sanction, i.e., withholding of project approvals, when a State is not "adequately enforcing" the 55 MPH limit. However, 23 CFR 659.19(a) currently could be construed as providing for such a sanction, despite the fact that there is no definition for the quoted phrase. Since some might think that this ambiguous provision could apply in the event that more than 50 percent of the vehicles operated above 55 MPH, and since the statute clearly limits the sanction in that circumstance to 10 percent, we have revised the

regulation to eliminate the "not adequately enforcing" language, in order to more closely align the regulation with the statute.

Subsection (d) revises the provision covering the apportionment of funds that had been withheld from a State in prior years. The applicable statutory provision provides that the Secretary shall promptly apportion to a State any funds that have been withheld pursuant to subsection (f) " . . . if he determines that the percentage of motor vehicles in such State exceeding fifty-five miles per hour has dropped to the level specified for the fiscal year for which the funds were withheld." 23 U.S.C. 154(h).

The "level specified for the fiscal year" language, which was incorporated in the existing regulation, is based on the Federal-Aid Highway Amendments of 1974 (Pub. L. 93-643) and section 205 of the Surface Transportation Assistance Act of 1978 (Pub. L. 95-599), and refers to the former phased-in compliance process. The Department, therefore, has amended this language to reflect the fact that under current law the uniform compliance level is 50 percent.

Section 154(h) provides that the Department shall apportion to a State any funds that have been withheld because of the State's noncompliance if it determines that the State has come into compliance in a later year. New § 659.19(d) clarifies that funds apportioned under this provision are subject to the limitations established by 23 U.S.C. 118(b)(1), which provides that sums apportioned to the three Federal-aid systems from which sums can be withheld under the speed limit law are available for expenditure "for a period of three years after the close of the fiscal year for which such sums are authorized and any amounts so apportioned remaining unexpended at the end of the such period lapse." Thus, funds withheld from a State will be apportioned only if the Department determines, based upon an analysis of speed monitoring data for a complete fiscal year, that the State has come into compliance such that the withheld funds will be available for expenditure.

New § 659.19(e) describes the action that will be taken by the Department in the event that the procedures of § 659.21 are not completed by the date on which apportionments are made for the following fiscal year (normally October 1). In part because of the complexity of the current Part 659, on a number of occasions during the past few years the Department has not been able to render a final determination on the issues of whether and by how much a State's

apportionments should be reduced by that date. In order to assure that a proper sanction can be imposed in the event that the State is found to be in non-compliance, the Department has apportioned Federal-aid funds for that State, but reserved from obligation an amount equal to 10 percent of the State's primary, secondary, and urban apportionments for that fiscal year.

This step was taken because a State's apportionments cannot be reduced until a final determination is made that it was not in compliance. Yet if the Department did not take the precautionary step of reserving these funds, a situation could arise wherein a State would have obligated all of its apportionments prior to a final decision. Then, if the Department subsequently concluded that the State had not complied, it would be unable to fulfill its statutory obligation to withhold funds from that State.

CFAS submitted comments challenging the procedural and substantive validity of § 659.19(e). CFAS claimed that this provision was a "means for authorizing administrative delay in order to postpone decisions and avoid imposing mandatory statutory penalties * * * [and] is a blatant attempt at posturing in order to improve the agencies' legal position in court." CFAS also argued that "[t]he introduction of the reservation from obligation into DOT regulations attempts to justify prior unauthorized agency practice that violates the statutory scheme." DOT obviously disagrees. The Department believes that the funds reservation procedure is a proper response, consistent with the statute, to circumstances in which a final decision on compliance and sanctions cannot be made prior to the next scheduled apportionment of funds. The revised regulation merely codifies this process in the regulations.

The California Departments of Highway Patrol and Transportation urged the Department to not withhold apportionments until after a final sanction decision is made. They argued that it would be more equitable to withhold apportionments for the year following a final noncompliance decision. However, in view of the statutory language, we cannot simply ignore the pendency of an enforcement proceeding. The reservation process allows the Department to take appropriate action after a final decision is made.

Section 659.21 Procedures

Based on our past experiences with the current procedures, we are adopting a less formal and more streamlined

process that will allow a more prompt resolution of compliance and funding issues, while still affording each State an ample opportunity to present its position to the Department. The major difference from the old rule involves the elimination of the formal hearing process, as outlined more fully below.

The new regulation eliminates steps that have simply proven to be nonproductive, based on the Department's experience. The issue of compliance is generally self-evident, since it is based upon data compiled by the State (and adjusted in accordance with FHWA procedures). If a State wishes to present additional information to the Department on the issue of compliance, it will still be able to do so in an informal, non-hearing context. With respect to the amount and timing of any sanctions for noncompliance, the new rule will provide the same opportunity for the States to provide information and arguments as under the existing rule. Moreover, under the new procedure, the States will be able to address the issue of sanctions prior to the final determination on compliance.

Therefore, the following procedures will be used, beginning with certifications involving fiscal year 1989:

If the information available to the FHWA and NHTSA Administrators indicates that a State does not appear to be in compliance, the Administrators will send a proposed noncompliance determination to the Governor. This decision would usually be based on data submitted by the State, but the Administrators may also consider other data if it seems appropriate, such as if there is a reason to doubt the accuracy of the State's submission.

A State will have 30 days from the date of receipt of the Administrators' letter to request an opportunity to show cause why it should not be found in noncompliance, discuss a possible sanction, and/or discuss a possible hardship deferral. If a State wishes, an informal meeting will be held with the Administrators and/or their representatives. A transcript of that meeting will be prepared. The State can offer any relevant information, including materials concerning compliance,

enforcement, hardship, and sanction levels. In lieu of requesting a meeting, within the 30-day period the State can present written information to the Administrators concerning compliance, enforcement, sanctions, and deferrals. (If the State agrees that it is not in compliance, the meeting or letter would focus on the amount and/or timing of the sanction.) If a State believes it needs more than 30 days to prepare its response, it may request an extension of

time. Such a request should be submitted to the Administrators, jointly, along with the basis for the State's request.

On the basis of the information provided, the Secretary will issue a final decision, in writing, regarding the State's compliance and, if applicable, the amount and timing of any reduction of apportionments. The decision will set forth the basis for the determination, and a copy will be sent to the State.

This procedural change will afford all States an adequate opportunity to attempt to demonstrate to the Department that the data submitted with the annual certification do not tell the entire story, and to submit any other relevant information that a State wishes the Department to consider on the issues of what the sanction should be and whether any sanction should be deferred.

The proposal to revise § 659.21 was the focus of most of the comments on the NPRM. Two commenters, who generally supported the procedural changes, urged the Department to specify a time frame for States to prepare their case. This suggestion has been incorporated. One of these parties also recommended that the Department specify (1) that FHWA and NHTSA will jointly make the written notification of proposed determination within 45 days of receipt of the affected State's certification, (2) the particular official or office to which requests for an informal hearing or documents are to be submitted, (3) which past and current operational programs are to be included in the scope of review, (4) the particular Department official to whom the information is to be submitted, and (5) that the Department will send the State a copy of its final decision. The Department has accommodated most of these suggestions in the revised regulation. However, we do not believe it would be appropriate to restrict agency decisionmaking to a rigid time limit. In view of the variety of issues that might arise, particularly with respect to the level and timing of sanctions for noncompliance, we have decided to retain flexibility in this area.

The California Departments of Highway Patrol and Transportation urged the Department to retain its existing procedures, arguing that the proposed changes fail to provide a State an adequate opportunity to appeal a decision to impose sanctions. The new rule, however, provides the States the same opportunity to offer information and arguments on the sanction issue as the old rule; neither provides an opportunity for administrative appeal of

the sanction determination. Moreover, an affected State may still obtain judicial review of the Department's determination.

California also urged the Department to make several significant substantive changes with respect to the determination of an appropriate sanction. They argued that withholding funding for safety projects is inconsistent with highway safety and that the Department should return withheld or reserved funds to a State if those funds are to be expended on safety-related projects. They also argued that States should be allowed to make innovative proposals for improving safety in lieu of sanctions. We do not believe that the regulation needs to be changed as California suggests. The Secretary will consider the issues raised by California in determining the level of sanction to impose in the event of noncompliance; however, the Department does not have the discretion under the law to consider foregoing a penalty altogether in the event of noncompliance.

The North Dakota State Highway Department opposed the proposed change in procedures, arguing that it favors a lengthier process because it delays the loss of funds, and that if the hearing is eliminated, there will be insufficient time for the States to construct a case in their own defense. The Department is aware of North Dakota's policy view that the entire sanction mechanism is ineffective, counterproductive, and should be repealed. However, the sanctioning mechanism is mandated by statute, which DOT is required to administer to the best of its ability. Therefore, we cannot agree that procedures should be constructed to create delay in administrative decisionmaking in order to intentionally defer the imposition of sanctions. With respect to North Dakota's second point, the Department has concluded that 30 days affords States an adequate amount of time to prepare their case. However, a State may obtain an extension of that period if it can show that one is warranted.

The State of New York Department of Transportation expressed concern that the proposed procedural changes will abridge a State's right to a formal hearing, and urged the Department to allow a State to request a formal hearing in addition to an informal hearing. Section 154, however, does not confer a statutory right to a formal APA hearing prior to the imposition of sanctions. Under the APA, the Department has the flexibility to fashion other, more appropriate procedures to comply with

the statutes governing the national maximum speed limit.

CFAS argued that the NPRM would change the compliance decision process in that it would "alter the criteria on which the compliance finding is predicated." It was never our intent to alter the substantive criteria for compliance determinations. However, to remove any confusion, the Department has revised the language of the final rule to clarify that information properly relating to the amount and timing of a possible sanction will not be considered in determining whether a State is in compliance.

CFAS also argued that due process considerations demand that the Department provide a formal hearing on the record; that the Department should set definite time limits for agency action; and that all final decisions should be in writing and state the reasons for the determination. The Department has revised the language of section 659.21(e) to incorporate the latter suggestion. However, for the reasons discussed above, we disagree that it is necessary to set definite time limits for agency action. With respect to due process, the Department is not required by statute or due process considerations to provide a formal on-the-record hearing. In fact, to continue to do so would unnecessarily exacerbate the delays in reaching a final decision that CFAS has opposed in the past. Moreover, since a State may obtain judicial review of the Secretary's final determination, its due process rights are fully preserved.

Administrative Law Judges

In the NPRM, the Department requested comments on whether a separate provision was desirable to specifically authorize the Administrators, at their option, to utilize Administrative Law Judges (ALJs) to determine questions of fact. The Department received comments both supporting and opposing such action.

The Hawaii Department of Transportation and the North Dakota State Highway Department opposed using ALJs to determine questions of fact. Hawaii commented that it would add unnecessary cost to the process, and North Dakota stated that it was unnecessary, since the States supply the certification data.

The Massachusetts Department of Public Works and the Oregon Department of State Police supported a separate provision authorizing the use of ALJs. Massachusetts argued that because ALJs were the only impartial arbitrators within the process, their role should be expanded to include the deciding of both compliance and

sanction issues. Oregon also urged the Department to use ALJs to determine questions of fact regarding sanctions.

The Department agrees with the commenters opposing the use of an ALJ. We do not believe that there will be significant factual disputes. Since the sanction determination process is ultimately committed to the Secretary's discretion, we believe that an ALJ would not serve a useful role in that area.

Miscellaneous

Section 174 of Pub. L. 100-17 (April 2, 1987) and section 329(a) of Pub. L. 100-202 (December 22, 1987) authorize the States to increase, without loss of Federal-aid funds, the maximum speed limit to 65 MPH on Interstate and certain other highways of similar design located outside of urbanized areas of 50,000 population or more. These provisions required certain technical changes to the regulation, and these have been made where necessary. Finally, other technical changes have been made where appropriate, where operating experience has demonstrated a need for further clarification.

Regulatory Evaluation/Flexibility Act

The Department has determined that this rule is not a "major rule" under Executive Order 12291. However, because of the public's interest in speed limit enforcement, it is considered a significant regulation under the Department's regulatory policies and procedures. Although CFAS argued that the Department must author a detailed regulatory evaluation, such an evaluation is not required, since the changes to the current regulation effected by this amendment are procedural in nature or are merely technical to reflect statutory changes.

CFAS also argued that the Department should have extended the comment period an additional 60 days. CFAS accused the Department "of rushing through important policy changes that are unsupported in statute, prior to the decisions of the Federal courts on the merits of litigation against the U.S. DOT on its administration of the 55 MPH national speed limit law."

The Department believes that all interested parties have had an adequate opportunity to present their views on these issues. Moreover, this amendment does not constitute a "policy change." It merely streamlines an unwieldy, overly complex procedural scheme that has proven to be unnecessary. With respect to CFAS's litigation concerns, these changes are of course prospective only. Moreover, on May 23, 1989, the United States District Court for the District of

Columbia issued an order dismissing the CFAS complaint. The Court found that section 351 of the Department of Transportation and Related Agency Appropriations Act for Fiscal Year 1989, which precludes enforcement of the speed limit law against States with respect to Fiscal Years 1986, 1987 and 1988, mooted any changes to the timeliness of the Department's enforcement efforts with respect to those years. It then concluded that the possibility that CFAS would be subjected to similar delays in the future was too speculative to warrant retaining jurisdiction.

Because this rule prescribes procedural requirements for implementation of the statute, and because its economic impact, if any, will result from the operation of the statute and not this rule, under the criteria of the Regulatory Flexibility Act, it is certified that this action will not have a significant economic impact on a substantial number of small entities.

Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and have been assigned OMB control number 2125-0027.

FHWA and NHTSA have considered the environmental implications of this rule, in accordance with the National Environmental Policy Act and determined that it will not significantly affect the human environment.

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

In consideration of the foregoing, the FHWA and NHTSA hereby amend Chapter I of Title 23, Code of Federal Regulations as set forth below:

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

List of Subjects in 23 CFR Part 659

Grant programs-transportation, Highways and roads, Motor vehicles, Reporting and recordkeeping requirements, Speed limit, Traffic regulations.

Issued on June 7, 1989.

R.D. Morgan,
Executive Director, Federal Highway Administration.

Jeffrey R. Miller,
Acting Administrator, National Highway Traffic Safety Administration.

PART 659—CERTIFICATION OF SPEED LIMIT ENFORCEMENT

The FHWA and the NHTSA amend 23 CFR Part 659 as follows:

1. The authority citation for 23 CFR Part 659 is revised as follows:

Authority: 23 U.S.C. 118, 141, 154, and 315, 49 CFR 1.46(b) and 1.50.

2. Section 659.5 is amended by adding a paragraph (e) to read as follows:

§ 659.5 Definitions.

(e) "An area of 50,000 population or more" is the same as the term "urbanized area" as defined in 23 U.S.C. 101(a).

3. Section 659.7 is amended by revising paragraph (a) as follows:

§ 659.7 Adoption of a national maximum speed limit.

(a) The maximum speed limit on a highway either on the Interstate System, or designated for participation in the demonstration program established by section 329 (a) of Pub. L. 100-202, and located outside of an urbanized area of 50,000 population or more, shall be 65 mph or less. The maximum speed limit on all other highways in the State shall be 55 mph or less. Emergency and police motor vehicles may be authorized to operate at higher speeds when necessary to protect the public health or safety.

4. In § 659.9, paragraph (b)(5)(ii), (b)(7)(i), (b)(7)(ii), and (c)(2) are revised and a parenthetical is added at the end of the section to read as follows:

§ 659.9 Formulation of a plan for monitoring speeds.

(b) * * *

(5) * * *

(ii) A 24-hour monitoring period shall be the minimum duration of any individual sampling session.

(7) * * *

(i) Schedule—a detailed schedule shall distribute speed monitoring sessions evenly among the days of the week and the three month periods of the year ending December 31, March 31, June 30, and September 30.

(ii) Field data collection—the goal is to obtain, during each monitoring session, a representative record of the traffic speeds that normally occur in a given segment. Therefore, the choice of a data collection site within a given segment should reflect the geometric design conditions of the segment. In addition, the collection of data should not be attempted and data will not be acceptable in determining compliance, if conditions at a site are such that the normal flow of traffic is substantially restricted by activities such as roadway construction or maintenance operations, extreme weather conditions, temporary lane closings, or the presence of non-routine enforcement activity.

(c) * * *

(2) Adjustments to the number of sampling locations in a state.

(Approved by the Office of Management and Budget under control number 2125-0027)

5. Section 659.13 is revised to read as follows:

§ 659.13 Certification requirement.

Each State shall certify to the Secretary of Transportation before January 1 of each year that it is enforcing the National Maximum Speed Limit on all public highways in accordance with 23 U.S.C. 154. The certification shall be supported by information on activities and results achieved during the 12-month period ending on September 30 preceding the January 1 date by which certification is required.

6. In § 659.15 paragraphs (a) and (d) are revised to read as follows:

§ 659.15 Certification content.

(a)(1) A statement by the Governor of the State, or an official designated by the Governor, that the National Maximum Speed Limit on public highways in the State is being enforced. The certifying statement shall be worded as follows:

(Name of certifying official), (position title), of the (State or Commonwealth) of _____, do hereby certify that the (State or Commonwealth) of _____, is enforcing the National Maximum Speed Limit.

(2) If this statement is made by an official other than the Governor, a copy of the document designating the official, signed by the Governor, shall also be included in the certification made under this part

(d) The statewide percentage of vehicles exceeding the 55 mph speed

limit as derived from the speed sampling plan discussed in § 659.9, and adjusted to take into account variability of speedometer readings. The allowable adjustment shall be calculated using either of the two following procedures:

(1) This procedure includes separate adjustments for each of three potential error sources. First, Speedometer Variability.

Let:

A = the percent of vehicles exceeding 55 mph derived from the speed sampling plan required by § 659.9.

B = the percent exceeding 60 mph derived from the speed sampling plan required by § 659.9.

C = (A - B)

Let:

D = the percent exceeding 55 mph, adjusted for the first part of speedometer variability.

D = .7(C) + B

Second, Statistical Error.

Let:

E = the percent exceeding 55 mph, adjusted for the first and second part of speedometer variability.

E = D - (.95_n) s(Pst).

Where (.95_n) and s(Pst) are as defined in the SMPPM.

Third, Speed Monitoring Equipment Error

Let:

F = a correction for speed measuring equipment error. (Derivation and use of an equipment error correction is subject to approval by the FHWA.)

G = the percent exceeding 55 mph, fully adjusted to account for variability of speedometer readings.

G = E - F

(2) This procedure accounts for all three error sources discussed in paragraph (d)(1) with a single adjustment.

Let:

A = the percent of vehicles exceeding 55 mph derived from the speed sampling plan required by § 659.9.

B = the percent exceeding 60 mph derived from the speed sampling plan required by § 659.9.

H = the percent exceeding 55 mph, fully adjusted to account for variability of speedometer readings using a single adjustment.

$$H = \frac{A + B}{2}$$

7. In § 659.17, paragraph (c) is revised and a parenthetical is added at the end of the section to read as follows:

§ 659.17 Certification and statistical submittal.

(c) As described in § 659.15(d), the statewide percentage of vehicles exceeding 55 mph is the only direct result of the speed monitoring program that is required for inclusion in the annual certification. However, additional summary statistics from the speed monitoring program are necessary in order to provide a complete review of each State's speed monitoring program. Therefore, a report of the average speed, median speed, 85th percentile speed, and percent of vehicles exceeding 55, 60, and 65 miles per hour shall be submitted by each State to the FHWA Division Administrator on a quarterly basis for the 3 month periods ending December 31, March 31, June 30, and September 30 of each year. The submittal for the July-September quarter shall, in addition to the quarterly report, include a summary report of the entire year's speed monitoring data (starting from the previous October 1).

(Approved by the Office of Management and Budget under control number 2125-0027)

7. Section 659.19 is amended by revising paragraphs (a), (b), and (d), and adding paragraph (e), to read as follows:

§ 659.19 Effect of failure to certify or to meet the compliance standards.

(a) If a State fails to certify as required by § 659.13, no Federal-aid highway project shall be approved under 23 U.S.C. 106 in that State.

(b) Except as provided by subsection (e), notwithstanding the proper submission of a certification and information supporting the enforcement activities of any State, if the Department determines that the percentage of motor vehicles exceeding 55 mph on roads posted at 55 mph is greater than 50 percent, funds apportioned to that State under 23 U.S.C. 104(b)(1), 104(b)(2), and 104(b)(6) shall be reduced an aggregate amount of up to 10 percent for the fiscal year subsequent to the fiscal year in which the certification is submitted, or for the following fiscal year in the event of a hardship determination.

(d) Funds withheld pursuant to this part shall be apportioned to a State, subject to availability of such funds under 23 U.S.C. 118(b)(1), upon a determination by the Department that the percentage of motor vehicles exceeding 55 mph on roads posted at 55 mph in such State, as adjusted in accordance with § 659.15(d), has dropped to 50 percent or lower. One

complete fiscal year's speed monitoring results will be required to make such a determination.

(e) If a final decision under the procedures of § 659.21 has not been made for any State before the beginning of the fiscal year following the certification required by this part, the Secretary may apportion 100 percent of the funds for that fiscal year to that State. However, ten percent of the funds apportioned to such a State under 23 U.S.C. 104(b)(1), 104(b)(2) and 104(b)(6) shall be reserved from obligation, pending a final decision under § 659.21.

8. Section 659.21 is revised to read as follows:

§ 659.21 Procedures.

(a) If the data submitted by a State, or other information available to the Department, shows that the percentage, as adjusted, of motor vehicles exceeding 55 mph on roads posted at 55 mph in the State is greater than 50 percent, the Administrators of the FHWA and NHTSA shall make a proposed determination of noncompliance and shall notify the Governor of the State of that proposed determination by certified mail.

(b) Within 30 days from the date of receipt of the Administrators' letter, the State may request a meeting to discuss compliance status and, if applicable, the amount and timing of any reduction of apportionments. The meeting will be held with the Administrators and/or their representatives. A transcript of that meeting will be prepared. If the State does not request a meeting, it may, within 30 days of its receipt of the letter, submit a written response for consideration by the Department. Documents also may be submitted prior to, or at, the meeting if one is requested. The request for a meeting and/or additional written documentation shall be submitted to the Administrators of the NHTSA and the FHWA, jointly. Requests for extension of time to comply with these response requirements shall also be submitted to the Administrators, and shall include a statement of the basis for the request.

(c) If a State wishes to request a hardship deferral and/or request that its apportionments be reduced by an amount less than ten percent in the event of a determination of noncompliance, it shall advise the Administrators of the basis for its request at or prior to the meeting referred to in subsection (b) of this section or in its written response to the Administrators' letter.

(d) The State may offer any information that it considers helpful to the Department's consideration of the matter of sanctions, including, but not limited to, legislative actions, budgetary considerations, judicial actions, past and current operational enforcement programs, as well as proposals for specific new programs.

(e) On the basis of the information provided by the State and other information in the possession of the Department, the Secretary will issue a final decision, in writing, regarding the State's compliance and, if applicable, the amount and timing of any reduction of apportionments. A copy of that decision will be transmitted promptly to the State.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL-3601-2]

Approval and Promulgation of Implementation Plans; Revision to the State of New Jersey Implementation Plan for Ozone

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is approving the State Implementation Plan (SIP) revisions submitted by the State of New Jersey. This revision will reduce emissions of volatile organic compounds from gasoline by limiting the Reid Vapor Pressure (RVP) of gasoline sold between June 30 and September 15 in 1989 and between May 1 and September 15 of each year thereafter to 9 pounds per square inch. EPA is also finding that the New Jersey RVP regulations are "necessary to achieve" the national ambient air quality standard (NAAQS) for ozone and are therefore excepted from preemption under section 211 of the Clean Air Act. The intended effect of this action is to make necessary progress towards attainment of the ozone standard as expeditiously as practicable as required under the Clean Air Act.

EFFECTIVE DATE: This action will be effective June 30, 1989. The Administrator has determined that there is good cause, within the meaning of 5 U.S.C. 553(d)(3), to make this action effective less than 30 days after publication. The industry has been on notice since the Administrator approved

the Massachusetts RVP SIP (54 FR 19173; May 4, 1989) that the Administrator was inclined to approve inconsistent state RVP rules to the extent necessary to provide for attainment. Making this action effective on the same date as the Massachusetts, Connecticut and Rhode Island RVP rules provides the industry with a uniform effective date for all the state rules limiting RVP to 9.0 psi in the northeast. In addition, postponing the effective date beyond June 30 would undermine the State's ability to achieve the reductions in 1989 summer ozone concentrations for which the RVP program was intended.

ADDRESSES: Copies of the State submittal are available at the following addresses for inspection during normal business hours:

Environmental Protection Agency, Region II Office, Air Programs Branch, 26 Federal Plaza, Room 1005, New York, New York 10278.

Environmental Protection Agency, Public Information Reference Unit, 401 M Street SW., Washington, DC 20460. New Jersey Department of Environmental Protection, Division of Environmental Quality, Bureau of Air Pollution Control, 401 East State Street, Trenton, New Jersey 08625.

FOR FURTHER INFORMATION CONTACT: Mr. William S. Baker, Chief, Air Programs Branch, Environmental Protection Agency, 26 Federal Plaza, Room 1005, New York, New York 10278, (212) 264-2517.

SUPPLEMENTARY INFORMATION:

Introduction

This notice describes EPA's decision to approve revisions to the New Jersey SIP which limit the volatility of gasoline from June 30 to September 15 in 1989 and from May 1 to September 15 every year thereafter. The remainder of this preamble is divided into four sections. The first provides the background for this action, with respect to both chronology and the broad issues involved. The second section presents today's action and EPA's rationale. The third section summarizes the comments received on the proposed action and EPA's responses to them. The final section discusses the enforceability of New Jersey's regulation with regard to the test methods as discussed in EPA's proposed rulemaking notice.

Background

On November 12, 1987, the Commissioners of the Northeast States for Coordinated Air Use Management (NESCAUM) signed a Memorandum of Understanding expressing their

intention to reduce the Reid Vapor Pressure (RVP) of gasoline to 10 pounds per square inch (psi) starting in the summer of 1988 and to 9 psi in the summer of 1989 and continuing every ozone season thereafter. Since there were delays in adopting necessary regulations, the 1988 limit of 10 psi was eliminated and New Jersey passed a regulation limiting the RVP of gasoline to 9 psi from May 1 to September 15 starting in 1989 and continuing each year thereafter. On January 27, 1989, New Jersey submitted a SIP revision to EPA for approval to implement this provision.

On March 22, 1989, EPA published a notice (54 FR 11868) taking final action on national regulation of RVP, to take effect this summer. The maximum allowed summertime RVP in New Jersey under the federal regulation is 10.5 psi. Under section 211(c)(4)(A) of the Clean Air Act (the Act), EPA's final action preempted inconsistent state control of RVP, except in California. In its final action, EPA noted that states could be exempted from preemption only if EPA finds it is "necessary" to achieve the National Ambient Air Quality Standards (NAAQS) as provided in section 211(c)(4)(C) of the Act. Section 211(c)(4)(C) of the Act states: "A State may prescribe and enforce, for purposes of motor vehicle emission control, a control or prohibition respecting the use of a fuel or fuel additive in a motor vehicle or motor vehicle engine if an applicable implementation plan for such State under Section 110 so provides. The Administrator may approve such provision in an implementation plan, or promulgate an implementation plan containing such a provision, only if he finds that the State control or prohibition is necessary to achieve the national primary or secondary ambient air quality standard which the plan implements." In its March 22, 1989 notice, EPA made specific note of the NESCAUM states' initiatives and the conditions for EPA approval of state RVP regulations.

On March 28, 1989, EPA published a notice (54 FR 12654) proposing approval of the New Jersey SIP revision. EPA also proposed to find that these revisions were "necessary" to achieve the NAAQS for ozone within the meaning of section 211(c)(4)(C) of the Act and, thus, meet the requirements for an exception to federal preemption.

Description of Today's Action

EPA today approves revisions to the New Jersey SIP which limits gasoline volatility to 9 psi between June 30 and September 15 in 1989 and between May

1 and September 15 in each year thereafter. The New Jersey program includes authority for the State to issue waivers to individual suppliers if necessary to avoid supply dislocations. EPA is approving the program as a whole, including any waivers the State might issue under this authority. This aspect of EPA's approval is discussed in full under section 9 of the next portion of this notice describing EPA's response to comments.

EPA is also explicitly finding that the New Jersey revisions are "necessary to achieve" the NAAQS within the meaning of section 211(c)(4)(C) of the Act. This means that New Jersey's RVP regulations are not preempted by the federal RVP regulations promulgated on March 22, 1989.

EPA's rationale for this action and its effective date are presented below. In this context many issues raised by commenters on the proposal will be addressed. The remaining comments will be discussed in the next portion of this notice.

In approving the New Jersey RVP SIP revisions, EPA must consider requirements imposed by two different sections of the Clean Air Act. As with all SIP revisions, Section 110 provides the requirements for approval into the SIP. In this case, since EPA has promulgated federal RVP regulations, section 211(c)(4)(A) preempts inconsistent state control. However, section 211(c)(4)(C) provides that the Administrator may except a state RVP control program from preemption if he finds it is "necessary" to achieve the NAAQS. Thus, the New Jersey revisions must satisfy both section 110 and section 211 requirements to gain approval.

EPA has concluded that the New Jersey RVP regulations are "necessary" to achieve the ozone NAAQS. In reaching this conclusion EPA has followed the test first articulated in approving the Maricopa County, Arizona SIP (53 FR 17413 (May 18, 1988) and 53 FR 30228 (August 10, 1988)) and later presented in the proposed approval of the New Jersey revisions. EPA stated that if, after accounting for the possible reductions from all other reasonably available control measures, New Jersey could demonstrate that RVP controls are still required to achieve the standard, then RVP controls are necessary within the meaning of section 211(c)(4)(C). EPA will not interpret that provision to require a state to impose more drastic measures such as driving prohibitions or source shutdowns before it can adopt its own fuel control program.

As discussed in the notice of proposed rulemaking (NPR), the record indicates

that New Jersey needs volatile organic compound (VOC) emission reductions on the order of at least 31.9 percent from 1987 inventory levels to achieve the standard. The State reviewed approximately 22 measures suggested by EPA as reasonable in addition to RVP control to 9 psi and found they could together potentially achieve a 26.4 percent reduction from 1987 levels. As indicated at proposal, while EPA's regulation of gasoline to 10.5 psi reduces the emission reduction attributable to the State regulation, it does not affect the bottom line—a shortfall will still exist. EPA's technical review of the data presented in the State submission and by the commenters affirms the conclusion that a shortfall will exist even with all reasonable State and federal measures.

EPA continues to believe that the fact that the State RVP regulation might not by itself fill the shortfall and hence by itself achieve the standard does not mean the rule is not "necessary to achieve" the NAAQS. It is simple logic that "necessary" is not the same as "sufficient." EPA believes that the "necessary to achieve" standard must be interpreted to apply to measures which are needed to reduce ambient levels when no other measures that EPA or the State has found reasonable are available to achieve this reduction. Beyond such identified "reasonable" measures, EPA need look at other measures before RVP control, only if it has clear evidence that RVP control would have greater adverse impacts than those alternatives. EPA has no such evidence here. Therefore, EPA can defer to New Jersey's apparent view that RVP control is the next less costly (or is itself a reasonable) measure. Thus, EPA concludes that New Jersey's RVP regulations are "necessary" to achieve the NAAQS.

Summary of Public Comments and EPA's Responses

The major issues discussed in the comments are: (1) What constitutes a finding of "necessary to achieve" the standard under section 211(c)(4)(C); (2) whether there has been an adequate technical demonstration that controlling RVP to 9 psi is "necessary" (i.e. whether the threshold for exemption from preemption has been crossed); (3) the scope of EPA's discretion assuming a finding that State RVP controls are necessary to achieve the standard; (4) what effect the 9 RVP limit in New Jersey will have on the cost and supply of gasoline in the State and the Northeast; (5) driveability and safety concerns; (6) whether there is an ozone problem in New Jersey; (7) whether the

State has an adequate enforcement program or sufficient resources to implement the State regulations; (8) whether the State provided "reasonable opportunity" for public comment; (9) what exemptions or waivers from the State regulations should be allowed; (10) the appropriate timing for making the State regulation effective; and (11) whether EPA should withdraw or repropose this action or reopen the public comment period in light of EPA's recent promulgation of federal RVP regulations and other alleged deficiencies in EPA's proposed action. Each issue is explored in detail below.

1. What constitutes a finding of "necessary to achieve" the standard under section 211(c)(4)(C) of the Act?

a. Making the "Necessary" Finding Without a Demonstration of Attainment

Comments: One group of comments questioned EPA's ability to make a finding that New Jersey's RVP regulation is necessary to attain the ozone standard without going through the complete planning process involved in approving a state's response to EPA's finding that the current SIP is substantially inadequate to achieve the standard (the "SIP call"). Several comments stated that EPA cannot approve New Jersey's RVP regulation as a SIP revision without finding that the SIP as a whole achieves attainment of the NAAQS for ozone. Related comments questioned EPA's ability to determine whether New Jersey's RVP controls are necessary without a new updated inventory of VOC sources which EPA will require from the states with ozone nonattainment areas as part of their response to the SIP calls.

Response: Through its SIP calls, EPA has imposed on states like New Jersey an obligation to revise their ozone SIPs and demonstrate attainment of the standard. The thrust of these comments is that EPA cannot make a finding of necessity without the states' first having gone through the new planning process and developing a new demonstration of attainment. EPA does not interpret section 211(c)(4)(C) to require a complete demonstration of attainment in order to approve a measure which will contribute to attainment.

Forcing a state to demonstrate attainment before allowing it to adopt stricter fuel controls would yield perverse results. Areas with the worst ozone nonattainment problems, which have the most difficulty assembling a demonstration of attainment, would be disabled for perhaps several years from adopting clearly necessary controls

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which were stricter than the national RVP controls. Several commenters noted that New Jersey so far has not been able to identify any combination of control measures which would bring the State into attainment. It is precisely in areas like New Jersey, with an especially difficult nonattainment problem, where the expeditious implementation of new controls, and hence the finding of necessity under section 211(c)(4)(C), is most appropriate.

Beyond that, it is reasonable for EPA to use the best information it now has available to determine whether New Jersey's RVP program will be necessary to achieve the standard without having to wait for New Jersey to complete its planning response to the SIP call, including its updated inventory. As explained below, the VOC inventory and reduction figures New Jersey submitted to EPA were based on reasonably reliable models EPA has used in the past. Such figures are always capable of refinement, but in the Agency's judgment the expenditure of time required to do so is not worth the marginally improved accuracy. See *Vermont Yankee Nuclear Power v. N.R.D.C.*, 435 U.S. 519, 554-555 (1978).

EPA has not yet set a date certain by which New Jersey must attain the ozone standard. Congress may address the widespread nonattainment problem in the amendments to the Act now being considered. In the meantime EPA has also proposed its own policy for how to deal with SIP planning for nonattainment areas in the post-1987 period (52 FR 45104, November 24, 1987). The air quality analysis New Jersey submitted made it clear that RVP control beyond the federal requirements will be necessary to any attainment plan, whether the attainment date that Congress or EPA selects is imminent or long-term. Moreover, there is widespread agreement among EPA and the states in the Northeast that major VOC reductions, probably exceeding the 31.9 percent estimated by EPA in this case, will be required to get close to attaining the ozone standard. Nothing in the air quality data from the summer of 1988, which have become available in quality-assured form since publication of the proposal, indicates that the reduction requirement projected by the New Jersey analysis overstates the reduction necessary to achieve the standard. Beyond that, the history of ozone planning over the last decade makes it clear that reduction targets are seldom overestimated.

Furthermore, EPA's approval of this revision now is consistent with section 110(a)(2)(A) of the Act, which requires

attainment "as expeditiously as practicable." Interpreting section 211(c)(4)(C) to require a complete attainment demonstration before EPA can approve (and a state can implement) a fuel control that the state has determined to be practicable and that would advance the attainment date would effectively put section 211(c)(4)(C) in conflict with section 110(a)(2)(A). It is doubtful that Congress intended EPA to choose an interpretation that would create such a conflict.

b. The Standard EPA has Applied to Determine Whether Fuel Controls are Necessary Compared With Other Controls

Comments: Several commenters maintained that EPA had not adequately analyzed whether there are other control strategies reasonably available which New Jersey should implement before resorting to RVP controls inconsistent with the federal regulation. EPA will address these comments in section 2c below. Other comments concerned the standard that EPA should use to determine whether RVP controls are necessary compared to other controls.

Response: In the proposal for this action, EPA used the approach it first announced when approving the Maricopa County Arizona SIP (53 FR 17413 (May 18, 1988); 53 FR 30228 (August 10, 1988)) to determine whether RVP controls beyond the federal program are necessary to attain the ozone standard in New Jersey. Under that approach, if after accounting for the possible reductions from all other reasonable control measures, New Jersey could demonstrate that RVP controls are still required to achieve the standard, then RVP controls are necessary within the meaning of section 211(c)(4)(C). For the reasons stated in the Arizona action and the New Jersey proposal, EPA will not interpret section 211(c)(4)(C) to require a state to impose more drastic measures such as driving prohibitions or source shutdowns before it can adopt its own fuel control program.

New Jersey has demonstrated to EPA that implementing all the control measures which EPA now believes to be reasonably available to New Jersey for VOC control (including measures that the State has already adopted and is now beginning to implement) would not achieve compliance with the ozone standard. The roster of control measures New Jersey examined corresponds to the list of controls EPA has identified for states to implement in response to the ozone SIP calls, and represents EPA's

best judgment as to the controls which could now be reasonably implemented. See EPA's proposed post-1987 ozone policy (52 FR 45104, appendix C, November 24, 1987). After examining all controls EPA has determined to be reasonable, a state is free to make its own determination as to what control measures should next be employed.

One comment maintained that EPA's method for determining what is necessary is too vague because it would allow EPA to approve state fuel controls "simply because alternative measures are more inconvenient, unpopular, or costly." As discussed in section 2c below, EPA examined reasonable alternative controls which New Jersey could implement and determined they would not achieve enough reduction to achieve the standard. EPA also has determined that remaining controls such as gas rationing, driving reductions, and source shutdowns are so drastic that the State may resort to fuel controls first. This judgment concerning what is too drastic is a complicated policy determination requiring the Administrator to weigh precisely those factors which the commenter would exclude from his consideration—whether the remaining alternatives are costly or unpopular. In *Amoco Oil Co. v. Environmental Protection Agency*, 501 F.2d 722, 740-741, the court distinguished between the factual foundation which EPA must provide in its administrative decisions and policy judgments which are an integral part of the findings Congress requires the Administrator to make under the Act:

Where by contrast, the regulations turn on choices of policy, on an assessment of risks, or on predictions dealing with matters on the frontiers of scientific knowledge, we will demand adequate reasons and explanations, but not "findings" of the sort familiar from the world of adjudication.

Id. at 741. EPA's and New Jersey's analysis of reasonably available controls is based on a factual record supported by the best analytical tools the agencies had available to them at the time. EPA's judgment that State fuel regulation is a less drastic course than gas rationing and other unpopular controls so far not implemented in any SIP is clearly a matter on the frontier of air pollution control planning, and therefore cannot (and need not) be supported by the same technical record as, for example, EPA's determination that New Jersey needs at least a 31.9 percent reduction from its 1987 inventory to attain the standard.

2. Have New Jersey and EPA made an adequate technical demonstration that controlling RVP to 9 psi is "necessary" to attain the NAAQS?

a. Adequacy of Emission Inventory

Comments: Several petroleum industry commenters argued that the emission inventory used in the technical demonstration is inadequate. They pointed out that EPA has already requested that New Jersey prepare a new inventory as part of its response to the SIP call. Therefore it is argued that New Jersey's reliance on the old inventory is inappropriate.

Response: As described in EPA's Technical Support Document (TSD), the emission inventory used by New Jersey and reviewed by EPA is based on EPA's "Compilation of Air Pollutant Emission Factors," known by its document number "AP-42." This document and its updates are EPA's longstanding guidance for determining emissions for inventory purposes and has served as the basis for ozone SIP inventories since the mid-1970s. Mobile source emissions were estimated using the then current version of EPA's mobile source emissions model, MOBILE3, consistent with standard EPA guidance. While EPA has called for many states, including New Jersey, to update their inventories for post-1987 SIP planning purposes, the Agency has continued to use existing inventories in evaluating current control proposals. EPA expects the New Jersey inventory, not due until late 1989, to show higher emissions than the current inventory since it is expected to include more sources and improved quality assurance. Thus, if the current inventory is lacking, it understates current emissions and errs such that the likely percentage reduction needed to attain the standard is also understated.

As stated in the NPR, EPA believes that if there is an error in quantifying the emission reductions resulting from control to 9 psi, those reductions are understated. If the newly released mobile source emission model, MOBILE4, which includes the effects of running losses, were used, one would expect the reduction in tons of VOCs to increase significantly. Furthermore, contrary to the commenters' belief, the estimated emission reduction is based on reductions achieved during only the four and one-half months each year the regulation is effective. This approach may understate the reduction since 9 psi fuel may be in the distribution system up to two additional months on each end of the regulatory season.

Also, contrary to the commenters' claims, EPA's TSD does contain an estimate of the emission reduction

achieved by going from EPA's 10.5 psi limit to New Jersey's 9 psi limit. EPA estimated a 2.3 percent reduction from the 1987 inventory. This estimate does account for nonlinearity in emission reductions with decreasing RVP limits.

b. Appropriateness of the Modeling Demonstration

Comments: While some commenters agreed that modeling was necessary to evaluate the air quality benefit of the RVP reduction, they objected to EPA's reliance on the Regional Oxidant Model (ROM). The commenters also raised concerns about the appropriate hydrocarbon to nitrogen-oxides (NOx) ratios to be used in such modeling. A third modeling issue concerns New Jersey's and EPA's inability to associate a quantified increment of improved air quality with the control of RVP to 9 psi.

Response: The claim that the ROM does not provide the spatial resolution needed for accurate prediction in individual urban areas loses sight of the fact that we are evaluating a statewide program. The Urban Airshed Model suggested by the commenters is appropriate for large urban areas but would have to be run over at least two different geographic domains to cover the entire state. Caught between the two available model scales, it is EPA's technical judgment that the ROM is an appropriate tool to use in evaluating future reductions needed for New Jersey.

EPA understands the concern that past strategies have focused almost exclusively on controlling VOCs instead of NOx. As indicated in EPA's proposed post-1987 ozone strategy, future control scenarios are likely to include NOx. However, it is highly unlikely that NOx control alone will suffice. The best technical information available to EPA at this time concerning the Northeast ozone problem points to the need for substantial VOC reductions and at least modest NOx reductions in the future to attain the ozone standard.

The last modeling issue concerned New Jersey's and EPA's inability to associate a quantified increment of improved air quality with the control of RVP to 9 psi. While such a modeling exercise would be ideal, it is unlikely that one would have much confidence in the outcome of such a sensitivity test. The atmosphere's response to emission reductions of ozone precursors is highly nonlinear such that small increments of reduction may show little or no effect on their own. However, when the reductions from the State's many strategies are aggregated, the total impact becomes quantifiable. Thus, even

though New Jersey and EPA cannot pinpoint where the air quality will improve by what amount on what day, we are confident that there will be a net improvement in ozone levels if New Jersey were to decrease VOC emissions by 2.3 percent.

c. Consideration of Other Alternatives

Comments: Commenters expressed concern that New Jersey and EPA have failed to consider other significant alternative control measures that could lead to attainment, including Stage II vapor recovery systems, controls on municipal landfills, source categories that are listed in EPA's proposed post-1987 strategy and a host of transportation control measures (TCMs). Other comments inquired as to how New Jersey and EPA arrived at the reductions for the control strategies that were presented in the NPR and TSD.

Response: EPA believes that sufficient alternatives were considered. EPA and the State have considered the emission reduction potential of 22 different point and area source categories corresponding to most of those suggested by EPA in its proposed post-1987 ozone policy (52 FR 45104, appendix C, November 24, 1987). Not surprisingly, some of the source categories are not applicable (as noted in the TSD) because there are no major sources in those categories in New Jersey or because the State has already adopted controls for those categories.

As noted in the NPR, most of the relevant categories have potential reductions that are very small and, when combined, total less than 0.6 percent of the 1987 inventory. While, as one commenter noted, some of EPA's proposed post-1987 categories were not evaluated by the State (such as traffic maintenance paint), based on EPA's experience with these categories in other states, it is anticipated the contribution from them would be significantly less than one percent. As mentioned in the NPR, other strategies previously identified by the State as having the greatest potential for significant future VOC reductions that have not been fully implemented would produce emission reductions on the order of 25.8 percent, for a combined total reduction of 26.4 percent in conjunction with the minor categories mentioned above. This would still leave a shortfall of 5.5 percent.

Two commenters noted that the proposal did not account for the emissions reductions from Stage II vapor recovery systems or from controls on emissions from municipal landfills. New Jersey adopted Stage II controls on

February 22, 1988 and controls on emissions from municipal landfills on June 1, 1987. Since both regulations have been submitted to EPA as SIP revision requests and are currently being implemented by the State, the shortfall discussed in the NPR was calculated above and beyond the reductions attributable to these controls.

It is true that New Jersey has not implemented the types of TCMS suggested by EPA in its proposed post-1987 ozone strategy. However, based on EPA's experience with the implementation of these measures in other areas, we expect that New Jersey would only achieve an additional 2.0 percent reduction by adopting similar strategies. New Jersey would still have an estimated shortfall of approximately 3.5 percent.

While EPA recognizes that other TCMS may be needed in New Jersey, the remainder are difficult to quantify, yield small reductions individually, and, as evidenced by the public reaction to the EPA-promulgated implementation plans containing such measures in the 1970's (see H.R. Rep. No. 95-294, 95 Cong. 1st Sess., reprinted in 4 Legislative History of the Clean Air Act Amendments of 1977, at 2748-55 (1978)), generally can be expected to have more significant adverse effects on the public as a whole than RVP controls would. To be sure, if there were sufficient evidence for EPA to conclude that the state's RVP controls would result in significantly more severe impacts than other measures that neither EPA nor the state has yet identified as "reasonable" for the state to implement, then it might well be appropriate for the Agency to account for the emission reductions that those other measures would achieve before determining the shortfall against which to judge the RVP controls. The Agency does not believe, however, that the State's RVP control would produce significantly more severe effects than such alternatives (e.g., than a trip reduction ordinance of the type that Arizona found reasonable for application in Phoenix and Tucson).

The shortfall demonstration presented in EPA's NPR and TSD was the outcome of a comprehensive review of the air quality and State Implementation Plans for the ozone and carbon monoxide nonattainment areas of New York and New Jersey which was performed by the Air and Waste Management Division of EPA Region II. This review, entitled "An Evaluation of the Programs to Attain the Ozone and Carbon Monoxide Standards in New Jersey and New York," examined air quality data for the period 1981 through 1986, modeling studies, and

SIP commitments to determine air quality trends and predict the ability of each state to attain the standards.

In sum, New Jersey and EPA have indeed examined a broad range of potential emission reduction strategies and have still identified a significant shortfall in the level of emission reductions likely to be needed to achieve the ozone standard.

3. What is the scope of EPA's discretion assuming a finding that State RVP controls are necessary to achieve the standard?

a. Permissible Bases for EPA's Decision To Approve State RVP Controls

Comments: Several commenters asserted that even where EPA has determined that state fuel controls are necessary to achieve the standard, EPA may nevertheless disapprove those controls if EPA determines that the economic or fuel supply impacts of the state's regulation are unreasonable. These commenters suggested that EPA may give significant consideration to costs because section 211(c)(4)(C) provides that the Administrator "may" approve a SIP revision imposing state fuel controls once he makes the finding of necessity. Conversely, other commenters maintained that EPA may not disapprove the New Jersey SIP revision based on economic grounds, once EPA has made the finding of necessity.

Response: EPA believes that it must consider cost to some limited extent whenever the Administrator decides whether to make a finding under section 211(c)(4)(C) that a fuel measure is "necessary" for attainment. As discussed above, to determine whether state fuel controls are necessary, EPA must look first at whether other measures that it determines are reasonable (and, perhaps, other measures the state has adopted) will by themselves achieve timely attainment. Arguably, an alternative measure is "reasonable" only if its effects are less drastic than the effects of the fuel controls. Clearly the cost and supply impact of the state fuel controls will be a factor in any such judgment.

EPA does not interpret the use of "may" in section 211(c)(4)(C) to give the Administrator unfettered discretion to disapprove the SIP revision on economic grounds once he has made the finding that state fuel controls are necessary to achieve the standard. Section 211(c)(4)(C) must be read in the context of the preemption created in section 211(c)(4)(A), which prohibits states from adopting inconsistent fuel controls in their SIPs, or anywhere else, for air

pollution control purposes. In the face of this prohibition, the sole effect of the "may" in section 211(c)(4)(C) is to authorize the Administrator to overcome a provision (section 211(c)(4)(A)) that would otherwise bar him from approving the SIP revision. The use of "may" in section 211(c)(4)(C) does not eliminate the obligation that section 110(a)(3)(A) places on the Administrator to approve the SIP revision, provided it meets the requirements of section 110(a)(2). See *Train v. Natural Resources Defense Council, Inc.*, 421 U.S. 60, 98 (1975). Section 110(a)(2) requires the Administrator to approve a SIP revision if, among other things, it may be necessary to insure attainment and maintenance of the standard. Section 110(a)(2)(B). EPA may not consider the economic impact of a necessary SIP revision under section 110(a)(2); under that provision, it is for the state to determine what economic costs are appropriate to achieve the standards. *Union Electric Co. v. E.P.A.*, 427 U.S. 246, 256-258 (1976). Beyond that, it would be incongruous for Congress to give EPA more discretion to reject a SIP revision for reasons unrelated to the goal of achieving the standard as quickly as possible precisely where EPA has determined that a SIP revision is necessary to achieve the standard. Therefore, once EPA makes the finding that state fuel controls are necessary to achieve the standard, a finding which includes a determination that such fuel controls are more reasonable than other available measures, EPA may not reject a state's SIP proposal simply for economic reasons.

One commenter cited *Motor Vehicle Manufacturers Association v. E.P.A.*, 768 F.2d 385, 389-390 (D.C. Cir. 1985), for the proposition that the use of "may" under section 211 commits the decision to the discretion of the Administrator. In *MVMA* the court was examining EPA's decision to grant a waiver under section 211(f)(4) of the Act for the use of fuel additives not substantially similar to those in the fuel EPA uses to certify the emissions from automobiles. The court was not examining section 211(c)(4)(C), which allows EPA, upon making a particular finding not mentioned in section 211(f)(4), to act on a SIP revision submitted by a state after full hearing at the state level and subject to the requirements of sections 110(a)(2) and (3)(A).

b. Intent of Federal Preemption Under Section 211

Comments: Several commenters insisted that EPA should disapprove

New Jersey's RVP controls because Congress intended to avoid a patchwork of different state fuel controls in favor of a uniformly regulated national market for fuels. These commenters expressed concern that the exception in section 211(c)(4)(C) to the rule of preemption under section 211(c)(4)(A) would eventually swallow the rule. Several comments urged EPA not to act inconsistently with its decision not to limit gasoline to 9 psi in 1989 in the federal RVP control program.

On the other hand, several comments were aimed at urging EPA to support the regional approach to RVP control that the NESCAUM states are undertaking. One commenter pointed out that where Congress has not acted to address the ozone nonattainment problem, it is reasonable to let the states do all they can to attain.

Response: It is clear that section 211(c)(4)(A) indicates that Congress desired to maintain a nationally regulated market for fuels. It is equally clear that section 211(c)(4)(C) indicates Congress recognized that there will be states where the air quality problem is so severe that the interest in a nationally regulated market must bow to the need for additional state controls on fuel content. EPA has not been able to find any legislative history which illuminates with any detail beyond the language of the Act how EPA should strike this balance.

It is reasonable to infer that Congress was aware that the air quality needs of particular states might create varying fuel content requirements, and that Congress accepted that risk in favor of protecting the public health. Several commenters cited *Exxon Corp. v. City of New York*, 548 F.2d 1088 (2d Cir. 1977), as precedent that a uniformly regulated fuel market is the overriding purpose behind section 211(c)(4). In *Exxon* the court, however, was not faced with a claim for an exception to preemption under section 211(c)(4)(C), and specifically left it to EPA to determine whether such an exception is appropriate:

The Act sensibly provides for an exception from its comprehensive preemption of local regulation of motor vehicle fuels only when such regulation is a provision in a state implementation plan approved by the Administrator who has the competence to make the needed professional engineering and energy conservation decisions.

Id. at 1096. Once EPA has made a finding of necessity under section 211(c)(4)(C), it is reasonable for EPA to interpret the Act to place paramount importance on protecting public health and achieving the standard.

EPA believes that the oil industry's concern that the exception will swallow the rule is overstated. As described above, EPA will approve inconsistent state fuel controls only where the state can demonstrate that exhausting all other reasonable alternatives will not achieve the standard, taking costs into account in determining reasonableness. This demonstration is not a trivial hurdle, and it is highly unlikely that every state with an ozone nonattainment area could make such a showing. Furthermore, a state is unlikely to burden its citizens with the potentially higher cost of lower RVP fuel unless the air quality needs are compelling. Finally, regional initiatives such as NESCAUM's help avoid a wide variety of state controls. In this case, the New Jersey RVP program is virtually identical to the RVP programs already approved for Massachusetts, Rhode Island, and Connecticut, and, thus, provides supply requirements consistent with other Northeast states.

EPA also believes that its decision not to impose a limit of 9 psi by 1989 in EPA's RVP control program does not preclude EPA from approving New Jersey's SIP revision. When developing its federal RVP control program, EPA imposed controls across the nation, and had to determine the level of RVP control which supply sources for the entire continental United States could reasonably meet. Further, although EPA was able to make this determination as to particular regions within the country, EPA did not intend to account for the particular air quality needs of each state.

4. What effect will the 9 RVP limit in New Jersey have on the cost and supply of gasoline?

Comments: Several commenters stated that New Jersey's regulation would strain the distribution system and could cause some significant supply dislocation and cost increases. Several stated that even if refiners had the capacity to produce 9 psi gasoline, there would be logistical problems requiring the need for additional storage tanks for the gasoline and excess butane. Other comments suggested that foreign imports at 9 psi might not be available. Most of the oil company commenters stated that there will be some need for capital improvements at refineries to meet the 9 psi standard. Several commenters stated that there will likely be a cost impact to the New Jersey standard and other commenters stated that they were concerned about the increased cost. One other comment stated that the estimates of increased cost do not reflect the extra cost

increase that could accompany a significant supply disruption.

Proponents cited two studies as support for the position that supply is not a problem.

Response: The potential supply problems arise out of two factors. First, decreasing the volatility of gasoline requires increased refinery capacity. It is certain that implementation of 9 psi volatility in the NESCAUM states will create a refining capacity reduction in the amount of gasoline capable of being produced at each refinery. This is true of both domestic and foreign suppliers. Second, the problem may be further exacerbated by the expected increased demand for gasoline in the summer months.

Various studies have been conducted to determine how much refining capacity will be lost from implementation of 9 psi volatility in the NESCAUM states, how much demand for gasoline is likely to increase in the summer of 1989, and what effect these factors will have on gasoline supply capabilities. The two studies done for NESCAUM and the one done for EPA are inconclusive. There appear to be numerous factors which make precise prediction of these effects impossible. However, under the EPA study (Sobotka study), estimates indicate that the volatility standard may be feasible without serious supply problems.

The Sobotka study cites the Department of Energy (DOE) as predicting that demand for gasoline should increase only in the range of 1 to 1.5 percent this summer. This estimate is also supported by other studies including one reported at a National Petroleum Refiners Association conference. The study also estimates that approximately a five percent refining capacity shortfall will occur at domestic refineries because of the volatility regulations in the Northeast states. The study estimates that with a 1.2 percent increase in demand for gasoline in the summer, U.S. refineries would be able to make up for a five percent domestic shortfall, and a ten percent import shortfall, without construction of new facilities or installation of additional equipment. Although various factors make it impossible to accurately predict the refining shortfall of imported gasoline, there is no strong evidence indicating that it will exceed ten percent. Thus, the Sobotka study suggests that it is likely that the resulting refinery capacity shortfalls from a 9 psi standard in 1989 should not result in supply shortfalls.

In the unlikely event of unforeseen supply disruptions, the State of New

Jersey has assured EPA that they have the authority to take immediate steps to provide needed waivers or exceptions to the program. The State has committed to carefully monitor the supply situation this year and take appropriate action, as may be necessary, to ensure that supply problems do not occur as a result of its State RVP control program. See also the response to section 9 later in this notice for more discussion of State waivers or exceptions.

5. What effect will 9 RVP gasoline have on driveability in cold weather and on vehicle safety?

Comments: Several commenters expressed concern that the 9 RVP fuel would cause hard starting, hesitation, and stalling in automobiles during the early spring and late fall. They stated that gasoline will have to enter the distribution system in March and will not be out until October in order to comply with the regulation. Other comments, including several from automobile manufacturers, indicated that there should be no adverse effect from the use of 9 RVP fuel.

Response: We believe that the nature of the gasoline distribution system makes it very unlikely that 9 RVP fuel will be available to consumers in March or early April, even if the blending-down process by that time has begun to reduce RVP. Continued availability of low-RVP fuel is even less likely by late October because the blending-up process will occur rapidly at the close of the control period. Nevertheless, the experience of California, which has required 9 RVP fuel for many years, appears to demonstrate that widespread driveability or fuel safety problems will not occur in the Northeast. We know of no evidence of extensive problems in California, despite significant operation at cool temperatures and high elevations.

As further evidence of this conclusion, one can compare the true vapor pressure (TVP) experienced in fuel tanks at different times during the year. For example, when corrected for elevation, gasoline in Billings, Montana at its January 1988 average RVP of 13.0 psi and at the historic low January temperature of -30 degrees Fahrenheit would result in a true vapor pressure of 1.0 psi. Similarly, for New Jersey, the analogous RVP and temperature of 10.0 psi RVP and -12 degrees F. would also result in a TVP of 1.0 psi. In contrast, 8.5 psi RVP fuel at an analogous New Jersey temperature of 18 degrees F. would result in a TVP of 1.8 psi, 80 percent higher than the winter figure. We conclude from this that if low-volatility

fuel were to reach consumers during very low temperature weather, any degradation in driveability would be no greater (and would likely be less) than that experienced currently during the winter.

Conversely, low-volatility fuel should improve vehicle driveability in very hot weather by reducing the occurrence of such conditions as vapor lock and fuel foaming.

6. Is there really a severe ozone problem in New Jersey or the Northeast?

Comments: A number of industry commenters, in urging EPA to disapprove the SIP revision, claimed that the air is really becoming cleaner and cleaner over time and that the ozone standard is being met more than 99% of the year. Environmental groups countered these claims with data from 1987 and 1988 which show a worsening of the ozone problem since 1986. They noted that 1988 was one of the worst ozone seasons on record across the Northeast.

Response: EPA is firmly convinced that there is a serious ozone problem in the Northeast. EPA's conviction was evidenced by last year's SIP calls to New Jersey and most other Northeast states. This SIP call was based on 1985-1987 ozone monitoring data which ranked New Jersey among the worst ozone nonattainment areas in the country. EPA's concern is further heightened by the 1988 ozone season. The ozone standard was exceeded more frequently, at more sites, and at higher levels in 1988 than in 1987.

7. Has New Jersey demonstrated that it has an adequate enforcement program or adequate resources to implement the RVP regulation, as required by section 110 of the Act?

Comments: One commenter questioned whether New Jersey has developed an adequate program for enforcement of the regulation. Another commenter noted that New Jersey is the only NESCAUM state that would enforce its regulation at the retail level.

Response: EPA does not agree with the commenters' enforcement concerns. The state's decision to extend its RVP enforcement program down to the retail level reflects a concern that there may be the opportunity to increase the RVP of gasoline that has already left the refinery or bulk terminal by blending the gasoline with a higher RVP fuel before it reaches the retailer. This is a reasonable concern for the state since it is bordered by two states (Delaware and Pennsylvania) which will have different RVP fuel requirements. Opportunities to

blend the differing RVP gasoline en route to the retailer to yield a noncomplying fuel would exist. In fact, EPA concluded in its national rulemaking that testing at all points in the distribution system would provide the "best safeguard" against distribution of noncompliant gasoline and would result in the "greatest likelihood" of achieving environmental results. Further, in comments submitted on EPA's proposed approvals of the Massachusetts, Connecticut and Rhode Island 9 RVP regulations (none of which enforce at the retail level), several petroleum industry commenters argued that an enforcement program that reaches the retail level is a minimum standard for the effective enforcement of RVP limits. EPA does not believe that the state's regulation will have a significant economic effect on retailers since they will not be required to test each shipment of gasoline received. Under the state's regulation, retailers are required only to keep complete and accurate records of all gasoline shipments, which is not an undue burden.

New Jersey has stated that it has adequate resources to conduct an enforcement program in support of the rule. The New Jersey Department of Environmental Protection (NJDEP) has developed an enforcement protocol which includes a prescribed schedule of announced and unannounced inspections. EPA must note that in the comparable arena of enforcement through Delayed Compliance Orders (DCOs), courts have held that EPA may not second guess the state's choice of enforcement mechanisms so long as the chosen system is a reasonable one. *Bethlehem Steel Corp. v. U.S. E.P.A.*, 638 F.2d 994, 1005-1006 (7th Cir. 1980); *appealed, Bethlehem Steel v. Gorsuch*, 726 F.2d 356 (7th Cir. 1984), reh. den., en banc, vacated on reh., 732 F.2d 97 (7th Cir. 1984), withdrawn and *appealed*, 742 F.2d 1028 (7th Cir. 1984).

Furthermore, even if New Jersey's enforcement scheme was inadequate to support a finding, ultimately, that the state's eventually complete ozone SIP update meets all of the requirements in section 110(a)(2), EPA could still approve the rule under section 110(a)(3). That is because, even with an inadequate enforcement program, the rule would still strengthen the pre-existing SIP and hence, under the rationale in *Michigan v. Thomas*, 805 F.2d 176, 186 (6th Cir. 1986), be approvable for that limited purpose.

8. Has New Jersey Satisfied the Act's Public Notice and Hearing Requirements?

Comments: Several comments received questioned whether the New Jersey SIP revision was adopted after "reasonable notice and public hearing." While acknowledging that public hearings were held, they alleged that the decision to limit RVP to 9 psi was actually made by NESCAUM some time before public hearings on the New Jersey RVP regulation, and that therefore any hearing nominally provided was substantively inadequate. On the other hand, NESCAUM commented that ozone pollution problems, especially in the Northeast, are clearly regional problems and must therefore be dealt with through consistent regulations.

Other comments questioned whether notice and hearing was provided on the SIP revision or just a State regulation. They believe it was unclear from the public notices and materials available before the hearing that the RVP rule was actually intended to be submitted as a revision to the SIP.

Response: As to the first claim, EPA's TSD provides the date that the public notice was published and contains an itemization of the public hearing dates. Although there is no summary statement that the public participation requirements for hearing and notice were met, the record does speak to that effect.

EPA finds concerns that the public hearings were largely meaningless and thus not "reasonable" to be misplaced. It is inferred that New Jersey and the other NESCAUM states had predetermined the outcome of the hearings before and without regard to the hearings held in those states. EPA is not at all convinced that the process was predetermined. If the commenters were aggrieved on this matter we would have expected them to challenge the state's proceedings under state law, as API has done in New York. However, no party challenged New Jersey's proceedings.

EPA acknowledges that New Jersey did initiate rulemaking on RVP control pursuant to an agreement on RVP control with the other Northeast states. However, having initiated the rulemaking on that basis, the state then proceeded to promulgate the regulations through its full administrative process, giving adequate notice and opportunity for public hearing on the proposed regulations.

As a policy matter EPA agrees that the ozone problem in the Northeast is a problem of regional magnitude and has

held several meetings with top EPA and state environmental officials in EPA Regions I, II, and III to determine what concerted efforts the states could take on their own to deal with issues of regional, but not necessarily national, scope. Therefore EPA believes that it is appropriate for the northeastern states to regulate ozone precursors in a consistent fashion. However, each state must provide for adequate public participation in the promulgation of individual regulations, including assessing and responding to all submitted comments, as New Jersey has done in connection with its RVP regulations. As discussed more fully below, EPA reviewed the state's public participation procedures and determined that the state provided adequate opportunity for public input in connection with development of the RVP rules.

A commenter argued specifically that the state's hearing procedures were not adequate to comply with section 110 of the Act or EPA's hearing regulations at 40 CFR section 51.102. The operative language in both the statute and the regulation is "reasonable notice and public hearing." The commenter asserted that New Jersey predetermined its final decision on RVP regulation and thus the hearing provided was not reasonable.

However, EPA interprets the language of both the statute and the implementing regulations as requiring the state to provide, first, reasonable notice of a public hearing, and second, a public hearing. EPA does not believe that the law requires the Agency to review the hearing record and determine whether the hearing provided was itself "reasonable."

EPA's interpretation of the hearing requirement is clearly reflected in the regulations at 40 CFR 51.102. The regulations go into substantial detail on the manner in which states must provide notice of a hearing in order for that notice to be considered reasonable. See 40 CFR 51.102(d); see also 40 CFR 51.102(g)(2). However, the regulations make absolutely no mention of specific requirements for conduct of public hearings. The state need only certify that it in fact held a public hearing, which New Jersey clearly did, and need not provide any detailed information on the conduct of the hearing.

This is appropriate because the reasonableness of public notice can be assessed objectively by reviewing the amount and variety of notice methods used. Assessing the reasonableness of a hearing on the other hand would be a highly subjective determination done retrospectively that would unnecessarily

infringe on the state's discretion in conducting its hearings. Of course, if EPA received concrete evidence that the hearing did not provide adequate opportunity for public participation, it could find that the hearing did not meet the intent of EPA's regulation. EPA has, however, received no such evidence.

The commenters further claimed that a state must specifically identify a proposed regulation as a future SIP revision prior to scheduling a public hearing on the regulation. However, neither the statute nor EPA's regulations contain any such explicit requirement. The purpose of a public hearing is to receive public input on the substance of proposed regulations, not on whether the state may or may not submit the regulations as a SIP revision. For years EPA has approved SIP revisions with no analysis of whether the state had publicly announced its intent to eventually submit a proposed regulation as a SIP revision at the state public hearing stage.

Generally it should be totally irrelevant to public commenters whether a regulation with which they will be required to comply as a matter of state law might also become an aspect of federal law. At the time New Jersey held its public hearings on the RVP rules, prior to federal preemption, commenters should similarly have had no concern as to whether the proposed State rule would eventually become federal law as well. Only where a state regulation would otherwise be preempted by existing federal law and therefore unenforceable would the public have a need to know that the state intended to seek federal approval of the regulation for purposes of preemption waiver in preparing comments at the state hearing level. This was not the case at the time of the state hearing on the New Jersey RVP rule. Moreover, given EPA's then outstanding proposal to regulate RVP and thus preempt state RVP regulation, it should have been apparent to commenters at the time of the public hearing that New Jersey would submit the rule as a SIP revision to insure enforceability in the event of EPA final RVP regulation and preemption.

9. Should Waivers or Exemptions From the State Regulations be Granted to Suppliers who Cannot Provide 9 RVP Gasoline?

Comments: Commenters expressed concern with potential inequities resulting from supplier-specific requests for waivers. They stated that the use of supplier-specific waiver provisions could diminish the calculated benefits of the rule by allowing higher RVP gasoline

into the system, and financially disadvantage those companies which are able to comply. They also expressed concern that the use of waivers and exemptions introduces uncertainties about whether the volatility regulations will be applied fairly and equitably to all gasoline suppliers.

The commenters concluded that if waivers or exemptions are to be used, they must apply to all suppliers and significant penalties should be attached. In addition, one commenter noted that EPA has to consider how it will respond to supplier-specific waiver requests; and EPA "is urged to adopt a policy on waivers which is consistent with its own RVP regulatory program."

Response: EPA is aware that New Jersey intends to grant waivers to individual suppliers if necessary to avoid serious supply dislocations during the initial stages of its RVP program. Although EPA did not focus on this aspect of the program in its NPR, commenters were also aware of the State's intentions and the issue was fully aired in the public comments. EPA is approving the New Jersey RVP program as a whole, which includes the ability of the state to issue waivers as appropriate. EPA is in essence pre-approving any waivers that New Jersey might grant as part of the overall RVP program being approved into the New Jersey SIP today. New Jersey will not be required to submit each waiver to EPA as a SIP revision before it may take effect.

EPA is currently able to pre-approve any waivers that New Jersey may grant because the RVP program is a discretionary program that the state has submitted to generate additional emission reductions and move the state closer to attainment of the ozone NAAQS. EPA is not pre-approving waivers from a federally required program or a program to which EPA has already assigned specific emission reduction credits as part of an overall attainment demonstration. EPA could not pre-approve waivers in such situations because they would constitute SIP relaxations. Here, whatever emission reductions New Jersey obtains from the RVP program, even after any waivers have been granted, will tighten the existing SIP and improve air quality.

EPA notes that its pre-approval of any waivers New Jersey may grant under the RVP program differs dramatically from approval of a generic permitting program such as a new source review or bubble program. In those cases, EPA authorizes states to approve relaxations of otherwise applicable SIP requirements provided that the state follows SIP approved procedures

calculated to insure that all such waivers are accounted for in the SIP attainment demonstration and are issued using replicable evaluation techniques. Here, since EPA is not currently relying on the New Jersey RVP program for any defined emission reduction credit toward an approved attainment demonstration, EPA need not now analyze the criteria by which New Jersey will issue any waivers. New Jersey is free to issue waivers on the basis of its own state criteria, consistent with any requirements of its state administrative procedures act.

When New Jersey does submit its completed post-1987 attainment demonstration, EPA will assign specific emission reduction credits to the RVP program, taking account of any supplier-specific waivers the state may have issued by that time. Once EPA has approved the New Jersey post-1987 SIP, it will take whatever rulemaking action is necessary to ensure that any further waivers under the RVP program, which at that point would be considered SIP relaxations, would be submitted to EPA for approval as individual SIP revisions.

Finally, EPA notes that any suppliers who receive waivers from New Jersey must still comply with the federal RVP limit of 10.5 psi.

10. How soon after the date of final approval of the New Jersey revisions should the RVP regulations be made effective?

Comments: A great deal of the comments received commented on the timing of EPA's final action. Those favoring EPA approval of the SIP revision generally favored EPA acting quickly to make the regulations effective by their May 1 starting date or as close to that as possible. These commenters note that the Colonial Pipeline, which supplies 20 percent of the Northeast's gasoline, has been shipping 9 RVP fuel to the Northeast since March 1, 1989. They also pointed out that those suppliers who have made a good faith effort to comply with the May 1st date would be at a competitive disadvantage relative to those with cheaper, higher volatility gasoline if the date is extended.

Those opposing EPA approval of the SIP revision generally asked that if we did approve it we must provide the petroleum industry with realistic and sufficient lead-time to enable 9 psi gasoline to be distributed throughout the distribution system. These commenters cited EPA's allowing 70 and 100 days for the recently promulgated national regulations to become effective at the terminal and retail level respectively as precedent for such a decision. A third

path, suggested by one commenter, would be for EPA to make its final approval conditional on the state's deferral of the compliance date for its regulation.

Response: The timing issue is one of the most difficult ones posed by this action. Since EPA has had control of the timing of the final federal RVP action, the decision on the previously granted Massachusetts, Rhode Island, and Connecticut RVP SIP revisions, and the decision on the New Jersey RVP revision, it is important that we insure that both the federal and state programs start with a maximum likelihood of success and a minimum possibility of supply disruption.

EPA must consider several issues in deciding when to make the rule effective. The first issue is when the industry was put on notice that it would have to supply 9 psi gasoline to New Jersey. Since the New Jersey rule was passed in 1988, the industry was on notice since then of the State's intention to control RVP to 9 psi. However, the New Jersey rule was preempted on March 22, 1989 by the promulgation of the federal volatility requirements.

Another issue to consider is the lead-time that would be necessary to enable 9 psi gasoline to get through the distribution system. The record indicates that the industry thought that it would take from 60 to 70 days to achieve compliance at the terminals in New Jersey. The record also indicates that the Colonial Pipeline, which supplies at least 20 percent of the gasoline in the Northeast, has been shipping 9 psi gasoline since March 1, 1989.

The final issue involves the air quality consequences of delaying the effective date. EPA should not delay action on a SIP revision in such a manner as would thwart the State's intent in requesting the SIP revision. New Jersey's submittal of the RVP SIP revision in January was clearly aimed at getting its regulatory program in place for the 1989 ozone season. Thus, it is important to have the effective date as early as possible in order to maximize the air quality benefits of the program in 1989.

In deciding to make this action effective on June 30, 1989, EPA has attempted to balance these competing interests. EPA believes that this effective date will both minimize possible difficulties the industry might encounter with a shorter lead-time and provide citizens in the Northeast as much relief as is practical during most of the 1989 ozone season. Although some suppliers may have made a good faith effort to comply with the May 1 effective

date specified in the New Jersey proposal, they were under no obligation to do so once EPA preempted the New Jersey requirement by promulgating federal RVP controls on March 22, 1989. The Agency cannot, therefore, select an earlier effective date for all suppliers based on the voluntary action of a few, especially considering that the time between the March 22 federal rulemaking and today's publication is critical to the refiner/supplier planning and implementation process regarding fuel delivery for the coming summer.

However, because refiners have already begun to prepare for the sale of 9 RVP fuel as a result of EPA's approval of the Massachusetts, Rhode Island, and Connecticut RVP SIPs and in light of the fact that these states share many links in the gasoline distribution network with New Jersey, the Agency does not believe that an additional 60 to 70 days lead-time is warranted. This starting date in New Jersey, therefore, mirrors the starting date in Massachusetts, Rhode Island, and Connecticut.

11. Should EPA reopen the comment period or withdraw and repropose this SIP revision in light of EPA's final action on the national RVP regulation and other alleged defects in the March proposal?

Comments: EPA received divergent comments on the appropriate process for and timing of a final action on New Jersey's SIP revision. Several commenters argued that EPA should take final action as soon as possible. On the other hand, other commenters felt that because of numerous allegedly unresolved issues raised in their substantive comments, EPA should at a minimum repropose action on the revision to deal with these issues before proceeding to final action.

Response: EPA concludes that given its interpretation of the relevant law and the seasonal nature of the New Jersey revisions, the Agency should proceed expeditiously to final action based on the record currently before it. EPA is unpersuaded by the claim that circumstances have so changed since the proposed approval of the New Jersey revisions that we should reopen the comment period or withdraw and repropose this action. EPA's NPR for the New Jersey RVP program explicitly discussed EPA's final action on the national RVP program relevant to final action on the State program. EPA clearly presented the path which EPA proposed to follow and the conclusions which we proposed to reach in light of the final promulgation of federal RVP regulations. Furthermore, in the final Federal Register notice on the national RVP

program, EPA explicitly discussed consideration of different state RVP control programs.

In this case EPA concludes that it is not necessary to issue a reproposal prior to taking final action. EPA believes that it has adequately responded to all of the substantive comments raised by commenters in the substantive discussions presented above. Obviously, additional analysis on such technical issues could always be conducted. However, administrative agencies generally have the discretion to determine when issues have been aired sufficiently and to close the record and proceed to final action, consistent of course with the need to act in a reasoned, non-arbitrary fashion (*Vermont Yankee Nuclear Power v. N.R.D.C.*, 435 U.S. 519, 554-555 (1978)).

Further, EPA should not delay action on a SIP revision in such a manner that would thwart the State's intent in requesting the SIP revision. In this case, New Jersey has submitted a seasonal requirement that since currently preempted must be approved in a timely fashion in order to effectuate the state's intent that the regulations provide emission reduction benefits in the upcoming summer ozone season. Therefore, EPA should make best efforts to act on the information available to it now to the extent that it is adequate or else the agency would thwart the State's intent with regard to the 1989 ozone season. Since EPA has concluded that the existing record is sufficient, EPA can proceed to final action at this time based on that record.

Enforcement

EPA's proposed approval of the New Jersey SIP revision indicated that there was a problem with the test method section. The regulation required that testing be performed in accordance with the American Society for Testing and Materials (ASTM) method D-323. EPA stated that the State must revise its test method section to include the EPA recognized methods contained in EPA's national volatility rule which are based on an ASTM proposed modification to D-323 known as Annex 2. On April 27, 1989, EPA received comments from the NJDEP which indicated that the State cannot amend its RVP rule through normal legislative procedures in time for this year's volatility control period. The New Jersey Department of Environmental Protection stated that it will adhere to D-323 (which is still a valid ASTM testing procedure and is being used by other NESCAUM states) for the 1989 control period and committed to amend its test methodology to cite the EPA recognized

methods in 1990 and subsequent years. EPA finds that its concerns related to the test methods were addressed sufficiently by the State and that the test methods section is approvable.

Final Action

EPA is approving this revision to the New Jersey Ozone State Implementation Plan to control gasoline volatility, including any waivers New Jersey may grant under the program. EPA has also made the finding that the New Jersey SIP revision meets the requirements of section 211(c)(4)(C) of the Act for an exception to federal preemption.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit within 60 days of publication. This action may not be challenged later in proceedings to enforce its requirements [See section 307(b)(2)].

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Ozone, Incorporation by reference.

Note: Incorporation by reference of the State Implementation Plan for the State of New York was approved by the Director of the Federal Register on July 1, 1982.

EPA is today approving the New Jersey SIP revision pertaining to its State gasoline volatility program.

Date: June 6, 1989.

William K. Reilly,
Administrator.

For the reasons set forth in the preamble, Part 52 of Chapter I of Title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

Subpart FF—New Jersey

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. Section 52.1570 is amended by adding new paragraph (c)(45) to read as follows:

§ 52.1570 Identification of Plan.

(c) . . .

(45) Revisions to the New Jersey State Implementation Plan (SIP) for ozone submitted on January 27, 1989 by the New Jersey State Department of Environmental Protection (NJDEP) for its

state gasoline volatility program, including any waivers that may be granted under the program by the state. In 1989, the control period will begin on June 30.

(i) *Incorporation by reference:* Subchapter 25 of Chapter 27, Title 7 of the New Jersey Administrative Code

entitled "Control and Prohibition of Air Pollution by Vehicular Fuels," adopted on January 27, 1989 and effective on February 21, 1989.

(ii) *Additional material:* April 27, 1989 letter from Christopher Daggett, NJDEP, to William Muszynski, EPA Region II.

3. Section 52.1605 is amended by adding a new entry Subchapter 25 under Title 7, Chapter 27 in numerical order as follows:

§ 52.1605 EPA-approved New Jersey State regulations.

State regulation	State effective date	EPA approved date	Comments
Title 7, Chapter 27	2/21/89	[FR date and citation of this document]	Effective date 6/30/89.
Subchapter 25, "Control and Prohibition of Air Pollution by Vehicular Fuels".			

[FR Doc. 89-14227 Filed 6-15-89; 8:45 am]
BILLING CODE 6560-50-M

40 CFR Part 52

[SC-012b; FRL-3602-6]

Approval and Promulgation of Implementation Plans; South Carolina; Volatile Organic Compound (VOC) Emissions

AGENCY: Environmental Protection Agency.

ACTION: Withdrawal of final rule.

SUMMARY: On April 17, 1989 (54 FR 15181), EPA disapproved without prior proposal the May 24, 1985, version of revisions made by South Carolina in its Air Pollution Control Regulations and Standards. These revisions contained deficiencies within the Volatile Organic Compound (VOC) regulations. EPA subsequently received adverse comments on the action. Accordingly, the Agency is withdrawing its direct-final disapproval. Elsewhere in today's Federal Register, EPA is proposing to disapprove the May 24, 1985, version of revisions made by South Carolina and providing an opportunity to comment on the proposal.

DATE: This action is effective on June 16, 1989.

ADDRESSES: Copies of the materials submitted by South Carolina may be examined during normal business hours at the following locations:

Air Programs Branch, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365.

South Carolina Department of Health and Environmental Control, 2800 Bull Street, Columbia, South Carolina 29201.

FOR FURTHER INFORMATION CONTACT: Diane Altman, EPA Region IV, Air Programs Branch, at the Atlanta address above or call 404/347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On June 5, 1985, the South Carolina Department of Health and Environmental Control submitted to EPA for approval revisions to the volatile organic compound (VOC) provisions of the South Carolina Air Pollution Control Regulations and Standards. These revisions were adopted by the South Carolina Board of Health and Environmental Control on December 20, 1984, and were forwarded to the State Legislature for approval. The revisions became State-effective on May 24, 1985. Based on the information submitted, EPA found several of the revisions to be deficient and therefore disapproved them without prior proposal (54 FR 15181 April 17, 1989).

In the final rulemaking, EPA advised the public that the effective date of the action was deferred for 60 days (until June 16, 1989) to provide an opportunity to submit comments on it. EPA announced that if notice was received within 30 days of the publication of the final rule that someone wanted to submit adverse or critical comments, the final action would be withdrawn and a new rulemaking would be begun by proposing a 30-day comment period. EPA had earlier published a general notice explaining this special procedure (46 FR 44477, September 4, 1981).

EPA has received adverse comments on this action. Accordingly, the Agency is today withdrawing its disapproval.

Elsewhere in today's Federal Register, EPA is proposing disapproval of this plan and soliciting comments on the proposal.

EPA is withdrawing this action without providing prior notice and opportunity for comment. The Agency

finds that it has good cause within the meaning of 5 U.S.C. 553(b) to proceed without notice and comment. Notice and comment would be impracticable in this case because EPA needs to withdraw its approval as quickly as possible in order to consider the comments which the public has submitted or may wish to submit. Moreover, further notice is not necessary because EPA has already informed the public that it would follow this procedure if it received a request for an opportunity to comment. For the same reasons, EPA finds that it has good cause under 5 U.S.C. 553(d) to make this withdrawal immediately effective.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution, Hydrocarbons, Intergovernmental relations, Ozone.

Authority: 42 U.S.C. 7401-7642.

Date: June 8, 1989.

Greer C. Tidwell,
Regional Administrator.

Therefore the addition of new § 52.2126 appearing at 54 FR 15182, April 17, 1989, which was to become effective on June 16, 1989, is withdrawn.

[FR Doc. 89-14384 Filed 6-15-89; 8:45 am]

BILLING CODE 6560-50-M

40 CFR Part 52

[FRL-3602-9]

Approval and Promulgation of Implementation Plan, State of Texas, Particulate Matter (PM₁₀) Group II Areas

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This Federal Register notice approves a revision to the Texas State Implementation Plan (SIP) that commits the Texas Air Control Board (TACB) to conduct particulate matter ambient air monitoring, data analyses, reporting, and submittal of control strategies (if any necessary) for the areas which were identified as particulate matter (PM₁₀) Group II areas in the Federal Register notice of August 7, 1987 (52 FR 29383). This revision is partially in response to the requirements of the PM₁₀ National Ambient Air Quality Standards that were promulgated by the EPA in the Federal Register notice of July 1, 1987 (52 FR 24634). This action today only approves the Texas PM₁₀ Group II SIPs (committal SIPs) for the areas cited in this notice. The EPA will publish its action on the remaining PM₁₀ including El Paso PM₁₀ plan (Group I SIP) under separate notices at a later date.

Today's notice is published to advise the public that the EPA is approving the Texas State PM₁₀ Group II SIPs. The rationale for this approval is contained in this notice.

DATE: This action will be effective on August 15, 1989. Unless notice is received within 30 days that adverse or critical comments will be submitted.

ADDRESSES: Copies of the State's submittal and other information are available for inspection during normal business hours at the following locations. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

SIP New Source Section, Air Programs Branch, Air, Pesticides and Toxics Division, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, Telephone: (214) 655-7214.

Texas Air Control Board, Technical Support and Regulation Development, 6330 Highway 290 East, Austin, Texas 78723, Telephone: (512) 451-5711.

FOR FURTHER INFORMATION CONTACT: Mr. J. Behnam, P.E.; SIP New Source Section, Air Programs Branch, Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202, telephone: (214) 655-7214.

SUPPLEMENTARY INFORMATION:

Background

The Clean Air Act requires the EPA Administrator to set and periodically reexamine national ambient air quality standards. Section 108 of the Act directs the Administrator to identify widespread pollutants that endanger

public health or welfare and to issue air quality criteria for them. The intent of these air quality criteria is to reflect the latest scientific information useful in indicating the kind and extent of all identifiable effects on public health or welfare that may be expected from the presence of a pollutant in the ambient air. In addition, section 109 requires the Administrator to establish "primary" standards to protect public health and "secondary" standards to protect public welfare for pollutants identified under section 108. Once the Federal standards have been set, section 110 of the Act requires that States submit State Implementation Plans (SIP), which contain control measures needed to attain the health based standards within specific statutory deadlines and to attain standards for welfare effects within a reasonable time.

Statutory Requirements

The Clean Air Act (amended August 1977) establishes a joint State and Federal program to control air pollution. Under sections 106 and 109 of the Act, the EPA is responsible for issuing air quality criteria and promulgating National Ambient Air Quality Standards (NAAQS). The States have primary responsibility for implementing the NAAQS. Under section 110 of the Act, each State must develop and submit to EPA a plan that provides for attainment and maintenance of each NAAQS as expeditiously as practicable within three years of the approved date of SIP. The State is required to adopt and submit a SIP revision to the EPA within nine months after the promulgation or revision of a primary NAAQS. The EPA must review each SIP and approve or disapprove its provisions. If the State fails to submit a plan, or the EPA finds the plan inadequate, a Federal program may be instituted in place.

In fulfilling the requirements of the Act, the EPA promulgated the particulate matter (PM₁₀) rules on July 1, 1987. The PM₁₀ rules replaced the former standards for total suspended particulate matter (TSP) with a new indicator that includes particulate matters with the aerodynamic diameters less than or equal to a nominal 10 micrometers (PM₁₀) as measured by a reference method established by the EPA. The new 24-hour primary (health-based) standards limit PM₁₀ to 150 micrograms per cubic meter of air. In addition to the 24-hour standard, a new annual standard is set at 50 micrograms per cubic meter.

PM₁₀ SIP Requirements

The EPA implemented the PM₁₀ NAAQS under section 110 of the Act.

The States and EPA began developing a monitoring network in 1983 to determine the concentrations of PM₁₀ at various locations. Initially, the network targeted areas with high concentrations of total suspended particulates (TSP). Since the quantity of good quality ambient PM₁₀ data was limited, yet the States had a significant amount of TSP data, EPA developed a procedure for determining the probability that an area would violate the PM₁₀ NAAQS. The EPA has placed all the counties in the nation into three groups based on their probability of violating the PM₁₀ NAAQS. Under this scheme, the area of each state was classified as Group I, II, or III. The Group I areas are those areas with a high probability of not attaining the standards, Group II are those areas where existing air quality data are not sufficient to determine if they are attaining the standards, and Group III areas are those with a high probability of attaining the NAAQS without revisions to the existing control strategies. Under this scheme, the entire State of Texas was classified as Group III area except for Dallas, Harris, Lubbock, and Nueces Counties which were classified as Group II areas and El Paso County was identified as a Group I area. The list of PM₁₀ Group I and Group II areas was published in the Federal Register notice of August 7, 1987 (52 FR 29383).

The States are required to submit SIPs for all areas in Group II within nine months of NAAQS promulgation, but these SIPs need not contain full control strategies and demonstrations of attainment and maintenance. Instead, States may submit "committal" SIPs that supplement the existing SIPs with enforceable commitments to: (a) Gather ambient PM₁₀ data, at least to an extent consistent with minimum EPA requirements and guidance; (b) Analyze and verify the ambient PM₁₀ data and report 24-hour PM₁₀ NAAQS exceedances to the Regional Office within 45 days of each exceedance; (c) When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available or when an annual arithmetic mean above the level of the annual PM₁₀ NAAQS becomes available, acknowledge that a nonattainment problem exists and immediately notify the Regional Office; (d) Within 30 days of the notification referred to in (c) above, or within 37 months of promulgation, whichever comes first, determine whether the measures in the existing SIP will assure timely attainment and maintenance of the primary PM₁₀ standards, and immediately notify the Regional Office;

and (e) Within 6 months of the notification referred to in (d) above, adopt and submit to EPA a PM₁₀ control strategy that assures attainment as expeditiously as practicable but no later than three years from approval of the committal SIP.

State Submission

The EPA has identified four Group II areas in the State of Texas; namely, Dallas, Harris, Lubbock, and Nueces counties. On July 18, 1988, the Governor of Texas submitted a comprehensive SIP revision for meeting the requirements of the PM₁₀ program (52 FR 24634) including the four Group II areas. Before the Governor's submission, the TACB adopted the PM₁₀ Group II plan revision on May 13, 1988. The PM₁₀ Group II SIP revision contained (1) area description including boundaries of the Group II areas within each county, (2) monitoring and quality assurance plan, (3) commitments on the procedures and milestones for meeting the Federal mandate, and (4) a letter from the Governor that commits the TACB for carrying out the requirements of PM₁₀ Group II SIPs. The Governor's letter fully commits the State to comply with the PM₁₀ Group II requirements, and the content of this letter is stated below:

*** In the July 1, 1987 issue of the Federal Register, the U.S. Environmental Protection Agency announced the requirement that each state submit a committal SIP for PM₁₀ Group II areas instead of full control strategies. States were also required to submit demonstrations of attainment and maintenance of the PM₁₀ National Ambient Air Quality Standards. The TACB is committed to carrying out the activities contained in the enclosed proposed SIP to satisfy those requirements ***

The specific commitments for monitoring, data analysis, and reporting of the PM₁₀ Group II areas are given in the SIP and quoted as follow:

*** with regard to the four PM₁₀ Group II areas in Texas discussed above, the TACB makes these commitments.

(1) The TACB will gather ambient PM₁₀ data, at least to an extent consistent with minimum EPA requirements and guidance specified in 40 CFR Parts 50, 51, 52, 53, 58, PM₁₀ SIP Development Guidance, and other applicable EPA guidance documents.

(2) The state will analyze and verify the ambient PM₁₀ and report 24-hour PM₁₀ NAAQS exceedances to the Region 6 Office within 45 days of each exceedance.

(3) When an appropriate number of verifiable 24-hour NAAQS exceedances becomes available (see § 2.0 of the PM₁₀ SIP Development Guidance) or when an annual arithmetic mean (AAM) above the level of the annual PM₁₀ NAAQS becomes available, the TACB will acknowledge that a nonattainment problem exists and immediately notify the Region 6 Office.

(4) Within 30 days of the notification referred to in (3) above, or within 37 months of promulgation, whichever comes first, the TACB will determine whether the measures in the existing SIP assure timely attainment and maintenance of the primary PM₁₀ standards, and will notify the Region 6 Office.

(5) In addressing the requirements in (4) above, the TACB shall consider the following factors in determining the adequacy of the existing SIPs:

(a) Air quality data—Time is allotted for up to 3 years of PM₁₀ data to be collected if an NAAQS is not violated sooner. At the end of that time, the available PM₁₀ data shall be examined to determine if attainment can be demonstrated in accordance with Appendix K of 40 CFR Part 50 or the Guideline on Exceptions to Data Requirements for Determining Attainment of Particulate Matter Standards in the absence of adequate PM₁₀ data.

(b) The present control strategy—The existing control strategy shall be evaluated to determine if it is fully implemented; if it is adequately enforced; if start-up, shutdown, and malfunction regulations are adequate to prevent circumvention of the emission limitations, and if it can adequately attain and maintain the PM₁₀ NAAQS if the above conditions are met. The evaluation shall include the use of dispersion and receptor modeling techniques where appropriate.

(c) Emissions data—The emission inventories shall be evaluated to determine if emissions can increase significantly because actual emissions are far below allowable emissions for the area, if sources with operating permits are not operating or are operating at reduced capacity and if "banked" emissions could impact future air quality.

(6) Within 6 months of the notification referred to in (4) above, the TACB will adopt and submit to EPA a PM₁₀ control strategy that assures attainment as expeditiously as practicable but no later than 3 years from approval of the committal SIP. As provided in section 110(e) of the FCAA, the TACB may request an additional 2 years to reach attainment for any Group II area where monitoring data has demonstrated a nonattainment situation.

Additionally, the TACB will collect and submit to EPA a PM₁₀ emissions inventory from all Group II areas by August 31, 1990. This will provide both actual and allowable emissions in each area. A schedule of PM₁₀ emissions inventory submittal is provided in Table 3. The existing control strategies for particulate matter in TACB Regulation I will be retained until a need for more stringent controls is indicated. Applications for new or modified sources of PM₁₀ will be reviewed in accordance with PSD rules.

All the above referenced commitments will assure the maintenance of PM₁₀ in the designated Group II areas ***

The Governor's submission of July 18, 1988, also included the revisions required under the PM₁₀ Group III, monitoring network, other regulatory changes, and a request for redesignation of the total suspended particulate matter

nonattainment areas to the unclassifiable status; however, today's action only approves the PM₁₀ Group II SIPs (committal SIPs) for the areas cited earlier in this notice. The EPA will publish its action on the remaining PM₁₀ SIPs including El Paso Group I SIP under separate notices at a later date.

Final Action

The EPA has reviewed the State's submittal and determined that the State commitments and procedures are adequate for monitoring, data analysis, reporting, and subsequently submitting a SIP revision (if any required) for the PM₁₀ Group II areas. The TACB has defined the Group II areas within the counties cited in this notice in accordance with the EPA PM₁₀ SIP Development Guideline (June 1987), EPA 450/2-86-001. The area boundaries as defined in the SIP satisfy the requirements of the PM₁₀ Group II committal SIPs. In addition, the EPA finds that the State commitments are in conformance with the specific requirements of the PM₁₀ Group II areas of the July 1, 1987, Federal Register notice (52 FR 24634). However, the EPA wants to clarify paragraph number 6 of the State commitments, as quoted in this notice, that refers to the possibility of State requesting extension under section 110(e) of the Clean Air Act beyond the maximum three year period allowed in section 110(a)(2)(A) of the Act. Section 110(e) of the Act allows the Administrator of EPA to grant a two year extension to the State in certain cases if the requirements of this section of the Act are satisfied by the State. The Administrator can not grant any extension solely by a request unless the conditions specified under section 110(e) are completely and clearly supported by actual data, documentation, and other evidence that the area in question can not attain the PM₁₀ NAAQS within the three year period. Therefore, the EPA, with clarification stated above, is approving the Texas PM₁₀ Group II SIPs for the defined areas of Dallas, Harris, Lubbock, and Nueces counties.

The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective 60 days from the date of publication unless, within 30 days of its publication, notice is received that adverse or critical comments will be submitted. If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action and another will begin a new

rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective on August 15, 1989.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States

Court of Appeals for the appropriate circuit by August 15, 1989. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2)).

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709).

Incorporation by reference of the Texas State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

This rulemaking is issued under the authority of section 110 of the Clean Air Act, 42 U.S.C. 7410.

List of Subjects in 40 CFR Part 52

Air pollution control and Particulate matter.

Date: June 5, 1989.

Joseph D. Winkle,
Acting Regional Administrator.

Title 40, Part 52 of the Code of Federal Regulations is being amended as follows:

PART 52—[AMENDED]

Subpart SS—Texas

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401-7642.

2. The table in § 52.2279 is revised to read as follows:

§ 52.2279 Attainment dates for national standards.

Air quality control region	Pollutant								
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Ozone	Lead	PM ₁₀
	Primary	Secondary	Primary	Secondary					
Abilene-Wichita Falls Intrastate (AQCR 210).	b	b	b	b	a	a	a	e	h
Amarillo-Lubbock Intrastate (AQCR 211):									
a. Lubbock County	b	b	b	b	a	a	a	e	h
b. Portion of Lubbock County									i
c. Remainder of AQCR	b	b	b	b	a	a	a	e	h
Austin-Waco Intrastate (AQCR 212)	b	b	a	a	a	a	5/31/77	e	h
Brownsville-Laredo Intrastate (AQCR 213):									
a. Cameron County	¹ c	¹ d	a	a	a	a	a	e	h
b. Remainder of AQCR	b	b	a	a	a	a	a	e	h
Corpus Christi-Victoria Intrastate (AQCR 214):									
a. Nueces County	¹ c	¹ d	b	b	a	a	c	e	h
b. Portion of Nueces County									i
c. Victoria County	b	b	b	b	a	a	c	e	h
d. Remainder of AQCR	b	b	b	b	a	a	5/31/77	e	h
Midland-Odessa-San Angelo Intrastate (AQCR 216):									
a. Ector County	b	b	b	b	a	a	c	e	h
b. Remainder of AQCR	b	b	b	b	a	a	a	e	h
Metropolitan Houston-Galveston Intrastate (AQCR 216):									
a. Brazoria County	b	b	b	b	a	a	c	e	h
b. Galveston County	b	b	b	b	a	a	c	e	h
c. Harris County	¹ c	¹ d	b	b	a	a	d	e	h
d. Portion of Harris County									i
e. Remainder of AQCR	b	b	b	b	a	a	5/31/77	e	h
Metropolitan Dallas/Fort Worth Intrastate (AQCR 215):									
a. Dallas County	¹ c	¹ d	a	a	a	a	c	6/30/85	h
b. Portion of Dallas County									i
c. Tarrant County	¹ c	¹ d	a	a	a	a	c	e	h
d. Remainder of AQCR	b	b	a	a	a	a	d	e	h
Metropolitan San Antonio Intrastate (AQCR 217):									
a. Bexar County	b	b	b	b	a	a	c	e	h
Southern Louisiana-Southeast Texas Interstate (AQCR 106).									
El Paso-Las Cruces-Alamogordo Interstate (AQCR 153):									
a. El Paso County	¹ c	¹ d	b	b	a	¹ c	c	f	h
b. In the City of El Paso, for an area immediately around ASARCO smelter, 0.5 km to the West and South, 2.0 km to the North and East, and 1.5 km to the Southeast from the smelter's copper stack.									g
c. Portion of El Paso County									h
d. Remainder of AQCR	b	b	b	b	a	b	5/31/77	e	h

Air quality control region	Pollutant							
	Particulate matter		Sulfur oxides		Nitrogen dioxide	Carbon monoxide	Ozone	Lead
	Primary	Secondary	Primary	Secondary				
Shreveport-Texarkana-Tyler Interstate (AQCR 022):								
a. Gregg County	b	b	a	a	a	a	c	a
b. Remainder of AQCR	b	b	a	a	a	a	a	h

Note 1: Dates or footnotes which are italicized are prescribed by the Administrator because the plan does not provide a specific date.
 Note 2: Sources subject to plan requirements and attainment dates established under section 110(a)(2)(A) prior to the 1977 Clean Air Act Amendments remain obligated to comply with those requirements by earlier deadlines. The earlier attainment dates are set out at 40 CFR 52.2279 (1978).

- ¹ Portions of the county or counties.
 a. Air quality levels presently below secondary standards.
 b. July 1975.
 c. December 31, 1982.
 d. December 31, 1987.
 e. November 5, 1982.
 f. August 14, 1987.
 g. No action taken.
 h. Air quality levels presently below primary standards.
 i. Three years from effective date of plan approval.

3. A new § 52.2306 is added to read as follows:

§ 52.2306 Particulate Matter (PM₁₀) Group II SIP Commitments.

On July 18, 1988, the Governor of Texas submitted a revision to the State Implementation Plan (SIP) that contained commitments for implementing all of the required activities including monitoring, reporting, emission inventory, and other tasks that may be necessary to satisfy the requirements of the PM₁₀ Group II SIPs. The Texas Air Control Board adopted these revisions on May 13, 1988. The State of Texas has committed to comply with the PM₁₀ Group II SIP requirements, as articulated in the Federal Register notice of July 1, 1987 (52 FR 24670), for the defined areas of Dallas, Harris, Lubbock, and Nueces counties as provided in the Texas PM₁₀ Group II SIPs. In addition to the SIP, a letter from the Governor of Texas, dated July 18, 1988, stated that:

" * * In the July 1, 1987 issue of the Federal Register, the U.S. Environmental Protection Agency announced the requirement that each state submit a committal SIP for PM₁₀ Group II areas instead of full control strategies. States were also required to submit demonstrations of attainment and maintenance of the PM₁₀ National Ambient Air Quality Standards. The TACB is committed to carrying out the activities contained in the enclosed proposed SIP to satisfy those requirements * * *."

[FR Doc. 89-14386 Filed 6-15-89; 8:45 am]

BILLING CODE 6560-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 661

[Docket No. 90515-9115]

Ocean Salmon Fisheries Off the Coasts of Washington, Oregon, and California

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: NOAA announces the closure of two commercial salmon fisheries in the exclusive economic zone (EEZ) from the Queets River, Washington, to Cape Falcon, Oregon, and from Humbug Mountain, Oregon, to Punta Gorda, California, at midnight, June 8, 1989, to ensure that the chinook salmon quotas for each subarea are not exceeded. The Director, Northwest Region, NMFS (Regional Director), has determined that the commercial fishery quota of 39,500 chinook salmon for the subarea from the Queets River, Washington, to Cape Falcon, Oregon, and the commercial fishery quota of 17,700 chinook for the subarea from Humbug Mountain, Oregon, to Punta Gorda, California, will be reached by June 8, 1989. The closure is necessary to conform to the preseason announcement of 1989 management measures. This action is intended to ensure conservation of chinook salmon.
EFFECTIVE DATE: Closure of the EEZ from the Queets River, Washington, to

Cape Falcon, Oregon, and from Humbug Mountain, Oregon, to Punta Gorda, California, to commercial salmon fishing was effective at 2400 hours local time, June 8, 1989. Actual notice to affected fishermen was given prior to that time through a special telephone hotline and U.S. Coast Guard Notice to Mariners broadcasts as provided by 50 CFR 661.20, 661.21, and 661.23 (as amended May 1, 1989).

ADDRESSES: Comments may be mailed to Rolland A. Schmitten, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way N.E., BIN C15700, Seattle, WA 98115-0070; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 300 S. Ferry Street, Terminal Island, CA 90731-7415. Information relevant to this notice has been compiled in aggregate form and is available for public review during business hours at the office of the NMFS Northwest Regional Director.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206-526-6140, or Rodney R. McInnis at 213-514-6199.

SUPPLEMENTARY INFORMATION: Regulations governing the ocean salmon fisheries at 50 CFR Part 661 specify at § 661.21(a)(1) that "When a quota for the commercial or the recreational fishery, or both, for any salmon species in any portion of the fishery management area is projected by the Regional Director to be reached on or by a certain date, the Secretary will, by notice issued under § 661.23, close the commercial or recreational fishery, or both, for all

salmon species in the portion of the fishery management area to which the quota applies as of the date the quota is projected to be reached."

Regulations implementing Amendment 9 to the Fishery Management Plan for Commercial and Recreational Salmon Fisheries off the Coasts of Washington, Oregon, and California were effective May 1, 1989, and modified notice procedures for inseason regulatory actions. These regulations amended 50 CFR 661.20, 661.21, and 661.23 to provide for immediate and actual notice to fishermen of such inseason actions through telephone hotlines and U.S. Coast Guard broadcasts and to establish the effective dates and times for these actions through the notices issued by telephone hotlines and U.S. Coast Guard broadcasts.

Management measures for 1989 were effective on May 1, 1989 (54 FR 19798, May 8, 1989). The 1989 commercial fishery for all salmon except coho in the subarea from the Queets River, Washington, to Cape Falcon, Oregon, commenced on May 1, 1989, and was scheduled to continue through the earlier of June 15, 1989 or the attainment of a subarea quota of 39,500 chinook salmon. The 1989 commercial fishery for all salmon species in the subarea from Humbug Mountain, Oregon, to Punta Gorda, California, commenced on June 5, 1989, and was scheduled to continue through the earlier of June 16, 1989 or the attainment of a subarea quota of 17,700

chinook salmon, an overall catch quota of 474,000 coho salmon south of Cape Falcon, Oregon, a catch ceiling of 349,000 coho salmon south of Cascade Head, Oregon, or a catch ceiling of 69,000 coho salmon south of Orford Reef Red Buoy, Oregon. Based on the best available information, the commercial fishery catch in the subareas from the Queets River, Washington, to Cape Falcon, Oregon, and from Humbug Mountain, Oregon, to Punta Gorda, California, are projected to reach their respective chinook salmon quotas of 39,500 and 17,700 fish by midnight, June 8, 1989. Therefore, the fishery in these two subareas must be closed to further fishing.

In accordance with the revised inseason notice procedures of 50 CFR 661.20, 661.21, and 661.23, actual notice to fishermen was given prior to 2400 hours local time, June 8, 1989 by telephone hotline number (206) 526-6667 and by U.S. Coast Guard Notice to Mariners broadcasts on Channel 16 VHF-FM and 2182 KHz. NOAA issues this notice of the closure of the commercial salmon fisheries in the EEZ from the Queets River, Washington, to Cape Falcon, Oregon, and from Humbug Mountain, Oregon, to Punta Gorda, California, which was effective midnight, June 8, 1989. This notice does not apply to treaty Indian fisheries or to other fisheries which may be operating in other areas.

The Regional Director consulted with representatives of the Pacific Fishery

Management Council, the Washington Department of Fisheries, the Oregon Department of Fish and Wildlife, and the California Department of Fish and Game regarding a closure of the commercial fisheries between the Queets River, Washington, and Cape Falcon, Oregon, and between Humbug Mountain, Oregon, and Punta Gorda, California. The States of Washington, Oregon, and California will manage the commercial fisheries in State waters adjacent to these areas of the EEZ in accordance with this federal action.

Because of the need for immediate action, the Secretary of Commerce has determined that good cause exists for this notice to be issued without affording a prior opportunity for public comment. Therefore, public comments on this notice will be accepted for 15 days after filing with the Office of the Federal Register, through June 28, 1989.

Other Matters

This action is authorized by 50 CFR 661.23 and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 661

Fisheries, Fishing, Indians.

(16 U.S.C. 1801 *et seq.*)

Dated: June 12, 1989.

Richard H. Schaefer,
 Director, Office of Fisheries Conservation and Management.

[FR Doc. 89-14329 Filed 6-13-89; 8:45 am]

BILLING CODE 3510-22-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

7 CFR Part 1942

Industrial Development Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend the Agency's policies and procedures governing the administration of Industrial Development Grants. This action is necessary to clarify the requirements for the financing of small and emerging private business enterprises through the Industrial Development Grant Program. The net effect of this action will result in increased enterprise development and job creation in distressed rural communities.

EFFECTIVE DATE: July 17, 1989.

FOR FURTHER INFORMATION CONTACT: Bonnie S. Justice, Senior Loan Specialist, Community Facilities Division, Farmers Home Administration, U.S. Department of Agriculture, Room 6320, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250; Telephone: (202) 382-1490.

SUPPLEMENTARY INFORMATION:

Classification

This action has been reviewed under USDA procedures established in Departmental Regulation 1512-1 which implements Executive Order 12291, and has been determined to be nonmajor since the annual effect on the economy is less than \$100 million and there will be no increase in costs or prices for consumers, individual industries, organizations, governmental agencies or geographic regions. There will be no significant adverse effects on competition, employment, investment, productivity innovation or on the ability

of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The reporting and recordkeeping requirements contained in this proposed regulation have been submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1980.

Environmental Impact Statement

This document has been reviewed in accordance with FmHA Instruction 1940-G, "Environmental Program." FmHA has determined that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Pub. L. 91-190, an Environmental Impact Statement is not required.

Regulatory Flexibility Act

The Administrator, Farmers Home Administration, has determined this action will not have a significant economic impact on a substantial number of small entities, because the action, will not affect a significant number of small entities as defined by the Regulatory Flexibility Act (5 U.S.C. 601).

Program Affected

This program, Industrial Development Grants, is listed in the Catalog of Federal Domestic Assistance under Number 10.424. The FmHA program and projects which are affected by this instruction are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. FmHA conducts intergovernmental consultation in the manner delineated in FmHA Instruction 1940-J.

List of Subjects in 7 CFR Part 1942

Business and industry; Grant programs—Housing and community development; Industrial park; Rural areas.

Accordingly, Chapter XVIII, Title 7, Code of Federal Regulations is amended as follows:

PART 1942—ASSOCIATIONS

1. The authority citation for Part 1942 is revised to read as follows:

Federal Register

Vol. 54, No. 115

Friday, June 16, 1989

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart G—Industrial Development Grants

2. Section 1942.305 is amended by revising paragraph (b)(2) and adding paragraph (b)(3)(iv)(C) to read as follows:

§ 1942.305 Eligibility and priority.

(b)
(2) *State Office review.* All applications will be reviewed and scored for funding priority. Eligible applicants that cannot be funded should be advised by the State Director that funds are not available, and requested to advise whether they wish to have their application maintained in an active file for future consideration.

(3)
(iv)
(C) For grants to establish a revolving fund points will be distributed if the Grant request contains proposed third party loan/grant recipients—25 points.

3. Section 1942.306 is amended by adding new paragraph (a)(7) to read as follows:

§ 1942.306 Purposes of grants.

(a)
(7) Providing financial assistance to third parties through a loan or a pass through grant.

4. Section 1942.307 is amended by revising paragraph (a)(1) to read as follows:

§ 1942.307 Limitations on use of grant funds.

(a) Funds will not be used:
(1) To produce agriculture products through growing, cultivation and harvesting either directly or through horizontally integrated livestock operations except for commercial nurseries, timber operations or limited agricultural production related to technical assistance projects.

5. Section 1942.310 is amended by revising paragraph (d) to read as follows:

§ 1942.310 Other considerations.

(d) *Management assistance.* Grant recipients will be supervised as necessary to assure that projects are completed in accordance with approved plans and specifications and that funds are expended for approved purposes. Grants made under this Subpart will be administered under and are subject to 7 CFR 3015, 7 CFR 3016, and 7 CFR 3017, as appropriate, and established FmHA guidelines.

6. Section 1942.311 is amended by removing paragraph (a)(2), and redesignating paragraph (a)(3) as paragraph (a)(2) and by revising paragraph (a)(1) to read as follows:

§ 1942.311 Application processing.

(a) Preapplications and applications.
(1) The application review and approval procedures outlined in § 1942.2 of Subpart A of Part 1942 of this Chapter will be followed as appropriate. The State Director should assist the applicant in application assembly and processing. The applicant shall use SF 424, "Application for Federal Assistance," (for construction or nonconstruction programs as applicable) when requesting financial assistance under this program.

7. Section 1942.313 is added to read as follows:

§ 1942.313 Plan to provide financial assistance to third parties.

(a) For applications involving establishment of a revolving fund to provide financial assistance to third parties the applicant shall develop a plan which outlines the purpose and administration of the fund. The plan will include:

- (1) Planned projects to be financed.
- (2) Sources of all non ID funds.
- (3) Amount of technical assistance (if any).
- (4) Purpose of the loans/grants.
- (5) Number of jobs to be created/saved with each project.
- (6) Project priority and length of time involved in completion of each project.
- (7) Other information required by the State Office.

(b) Each third party project receiving funds will be reviewed for eligibility. When the applicant does not have a list of projects to be completed the applicant should advise the FmHA at the time a preapplication is submitted.

8. Section 1942.314 is revised to read as follows:

§ 1942.314 Grants to provide financial assistance to third parties and technical assistance programs.

For applications involving a purpose other than a construction project to be owned by the applicant, the applicant shall develop a Scope of Work. The Scope of Work will be used to measure the performance of the grantee. As a minimum the Scope of Work should contain the following:

(a) The specific purposes for which grant funds will be utilized, i.e., Technical Assistance, Revolving Fund, etc.

(b) Timeframes or dates by which action surrounding the use of funds will be accomplished.

(c) Who will be carrying out the purpose for which the grant is made (key personnel should be identified).

(d) How the grant purposes will be accomplished.

(e) Documentation regarding the availability and amount of other funds to be used in conjunction with the funds from the ID program.

(f) For grants involving a revolving fund the scope of work should include those items listed in a through e above as well as the following:

(1) Information which will establish/identify the need for the revolving loan fund.

(2) Financial statements which will demonstrate the financial ability of the applicant to administer the revolving loan fund. As a minimum the financial statements will include: (i) Balance sheet; (ii) Income statement.

(3) Detail on the applicants experience in operating a revolving loan fund.

9. Section 1942.348 is added to read as follows:

§ 1942.348 Exception authority.

The Administrator may, in individual cases, make an exception to any requirement or provision of this subpart which is not inconsistent with the authorizing statute, an applicable law or decision of the Comptroller General, if the Administrator determines that application of the requirement or provision would adversely affect the Government's interest and show how the adverse impact will be eliminated or minimized if the exception is made.

Dated: May 26, 1989.

Neal Sox Johnson,
Acting Administrator, Farmers Home Administration.

[FR Doc. 89-14309 Filed 6-15-89; 8:45 am]
BILLING CODE 3410-07-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSMRE is announcing the receipt of a proposed amendment to the New Mexico permanent regulatory program (hereinafter, the New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to inspection and enforcement, experimental practices, the use of explosives, prime farmland, backfilling and grading, stream buffer zones and fish and wildlife, excess spoil, revegetation, coal exploration, areas unsuitable for coal mining, hydrology, coal mine waste, permitting, operation plans, coal processing plants, and topsoil. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the New Mexico program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., m.d.t. July 17, 1989. If requested, a public hearing on the proposed amendment will be held on July 11, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on July 3, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of

the proposed amendment by contacting OSMRE's Albuquerque Field Office.

Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, New Mexico 87102, Telephone: (505) 766-1486.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343-5492.

New Mexico Energy & Minerals Department, Mining & Minerals Division, 525 Camino de los Marquez, Santa Fe, NM 87503, Telephone: (505) 827-5970.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, at the address or telephone number listed in "ADDRESSES."

SUPPLEMENTARY INFORMATION

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program, can be found in the December 31, 1980, *Federal Register* (45 FR 86489). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.12, 931.13, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated May 18, 1989 (Administrative Record No. NM4-97), New Mexico submitted a proposed amendment to its program pursuant to SMCRA. New Mexico submitted the proposed amendment at its own initiative, and also in response to an August 14, 1988, letter that OSMRE sent in accordance with 30 CFR 732.17(c). New Mexico proposes to amend the following sections to Coal Surface Mining Commission (CSMC) Rule 80-1:

Inspection and Enforcement

New Mexico proposes revisions to Sections 31-17 and 31-18. In addition, two policy statements were submitted concerning inspection and enforcement.

Experimental Practices

New Mexico proposes revisions to Sections 10-13, 13-11, and 13-12.

Use of Explosives

New Mexico proposes revisions to Sections 9-13, 20-11, 20-61, 20-62, 20-63, 20-64, 20-65, 20-66, 20-67, and 20-68.

Prime Farmland

New Mexico proposes revisions to Sections 8-27, 10-17, 24-11, 24-12, and 24-15.

Backfilling and Grading

New Mexico proposes revisions to Sections 20-102 and 28-12.

Stream Buffer Zones and Fish and Wildlife

New Mexico proposes revisions to Sections 8-20, 9-16, 20-57, and 20-97.

Excess Spoil

New Mexico proposes revisions to Sections 1-5, 20-71, and 20-102.

Revegetation

New Mexico proposes revisions to Sections 20-111, 20-112, and 20-116.

Coal Exploration

New Mexico proposes revisions to Sections 6-11, 6-12, and 6-13. New Mexico also proposes to add a new Section 6-10.

Areas Unsuitable for Coal Mining

New Mexico proposes revisions to Sections 2-11, 2-12, 4-15, and 8-24.

Hydrology

New Mexico proposes revisions to Sections 1-5, 8-15, 8-16, 9-21, 13-12, 20-41, 20-43, 20-43, 20-44, and 20-52.

Coal Mine Waste

New Mexico proposes revisions to Sections 1-5, 20-82, and 20-91.

Permitting

New Mexico proposes revisions to Sections 7-14, 11-11, 11-15, 11-27, and 13-18.

Operation Plans

New Mexico proposes revisions to Section 9-14.

Coal Processing Plants

New Mexico proposes revisions to Section 1-5.

Topsoil

New Mexico proposes revisions to Section 8-14.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed

adequate, it will become part of the New Mexico program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Albuquerque Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m., m.d.t. on July 3, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Date: June 7, 1989.

Allen D. Klein,
Acting Assistant Director, Western Field Operations.

[FR Doc. 89-14350 Filed 6-15-89; 8:45 am]

BILLING CODE 4310-05-M

30 CFR Part 931

New Mexico Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; Public Comment Period and Opportunity for Public Hearing on Proposed Amendment.

SUMMARY: OSMRE is announcing the receipt of a proposed amendment to the New Mexico permanent regulatory program (hereinafter, the New Mexico program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to the definition of affected area, previously mined areas, fish and wildlife, performance bonds, and civil penalties. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the New Mexico program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4:00 p.m., m.d.t. on or before July 17, 1989. If requested, a public hearing on the proposed amendment will be held on July 11, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., m.d.t. on July 3, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. Robert H. Hagen at the address listed below.

Copies of the New Mexico program, the proposed amendment, and all written comments received in response to this notice, will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Albuquerque Field Office.

Mr. Robert H. Hagen, Director, Albuquerque Field Office, Office of Surface Mining Reclamation and Enforcement, 625 Silver Avenue, SW., Suite 310, Albuquerque, New Mexico 87102, Telephone: (505) 766-1486.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 "L" Street, NW., Washington, DC 20240, Telephone: (202) 343-5492.

New Mexico Energy & Minerals Department, Mining & Minerals Division, 525 Camino de los Marquez, Santa Fe, NM 87503, Telephone: (505) 827-5970.

FOR FURTHER INFORMATION CONTACT: Mr. Robert H. Hagen, Director, Albuquerque Field Office, at the address or telephone number listed in "ADDRESSES."

SUPPLEMENTARY INFORMATION

I. Background on the New Mexico Program

On December 31, 1980, the Secretary of the Interior conditionally approved the New Mexico program. General background information on the New Mexico program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the New Mexico program can be found in the December 31, 1980, *Federal Register* (45 FR 86489). Subsequent actions concerning New Mexico's program and program amendments can be found at 30 CFR 931.12, 931.13, 931.15, 931.16, and 931.30.

II. Proposed Amendment

By letter dated May 25, 1989 (Administrative Record No. NM499), New Mexico submitted a proposed amendment to its program pursuant to SMCRA. New Mexico submitted the proposed amendment in response to a November 3, 1988, letter that OSMRE sent in accordance with 30 CFR 732.17(c). New Mexico proposes to amend Coal Surface Mining Commission (CSMC) Rule 80-1 at the following sections:

Affected Area. New Mexico has submitted a policy statement concerning the definition of affected area.

Previously Mined Area. New Mexico proposes revisions to Sections 1-5 and 11-19.

Fish and Wildlife. New Mexico proposes revisions to Sections 8-20, 9-16, and 20-97. It also submitted a permitting procedures policy statement for fish and wildlife consultation.

Performance Bonds. New Mexico proposes revisions to Sections 1-5, 14-23, 14-40.

Civil Penalties. New Mexico proposes to add Sections 31-21, 31-22, 31-23, and 31-24.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the New Mexico program.

Written Comments. Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES," or at locations other than the Albuquerque Field Office, will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing. Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m., m.d.t. on July 3, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to testify have been heard. Persons in the audience who have not been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting. If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under

"ADDRESSES." A written summary of each meeting will be made a part of the Administrative Record.

List of Subjects in 30 CFR Part 931

Coal mining, Intergovernmental relations, Surface mining, Underground mining.

Allen D. Klein,
Acting Assistant Director, Western Field Operations.

Date: June 7, 1989.

[FR Doc. 89-14351 Filed 6-15-89; 8:45 am]

BILLING CODE 4310-06-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[SC-012b; FRL-3602]

Approval and Promulgation of Implementation Plans; South Carolina; Volatile Organic Compound (VOC) Emissions

AGENCY: Environmental Protection Agency.

ACTION: Proposal rule.

SUMMARY: EPA today proposes to disapprove the May 24, 1985, version of revisions made by South Carolina in its Air Pollution Control Regulations and Standards and submitted to EPA on June 5, 1985. These revisions contained deficiencies within the State's Volatile Organic Compound (VOC) regulations. EPA is proposing to disapprove the following regulations that have been identified as being deficient: Regulations 62.1, Section I, 39., Regulation 62.5, Standard No. 5, Section I, Part A.1., A.9, A.22, A.38, A.39, A.51, A.75., Section II, Part C.1., Section I, Part A.75., Section II, Parts A through H and Parts N through T., Section I, Part F., Section I, Part E. The deficiencies identified within each regulation proposed for disapproval are discussed in detail in the Supplementary Information section of this notice. Today's proposed disapproval action provides the basis for correcting the deficiencies identified within South Carolina's State Implementation Plan (SIP). The public is invited to submit comments on this proposal.

DATE: To be considered, comments must be received on or before July 17, 1989.

ADDRESS: Copies of the materials submitted by South Carolina may be examined during normal business hours at the following locations.

Air Programs Branch, Environmental Protection Agency, Region IV, 345 Courtland Street NE, Atlanta, Georgia 30365

South Carolina Department of Health and Environmental Control, 2600 Bull Street, Columbia, South Carolina 29201

Comments may be submitted to the Atlanta, Georgia address

FOR FURTHER INFORMATION CONTACT: Diane Altman, EPA Region, IV, Air Programs Branch, at the Atlanta address above or call 404/347-2864 or FTS 257-2864.

SUPPLEMENTARY INFORMATION: On June 5, 1985, the South Carolina Department of Health and Environmental Control Submitted to EPA for approval revisions to the volatile organic compound (VOC) provisions of the South Carolina Air Pollution Control Regulations and Standards. These revisions were adopted by the South Carolina Board of Health and Environmental Control on December 20, 1984, and were forwarded to the State Legislature for approval. The revisions became State-effective on May 24, 1985. Based on the information submitted, EPA attempted to disapprove them without prior proposal (54 FR 72 April 17, 1989).

In the direct-final disapproval, EPA advised the public that the effective date of the action was deferred for 60 days (until June 16, 1989) to provide an opportunity to submit comments on it. EPA announced that if notice was received within 30 days of the publication of the final rule that someone wanted to submit adverse or critical comments, the final action would be withdrawn and a new rulemaking would be begun by proposing a 30-day comment period. EPA had earlier published a general notice explaining this special procedure (46 FR 44477, September 4, 1981).

EPA has received adverse comments on this plan. Accordingly, EPA is taking final action elsewhere in today's *Federal Register* to withdraw the April 17, 1989 direct-final disapproval and is in this notice proposing the disapproval for public comment. This proposed disapproval is based on the following considerations:

On May 3, 1988, EPA released the latest data on the degree to which areas throughout the nation have attained the NAAQ. On May 26, 1988, the Honorable Carroll A. Campbell was notified that the South Carolina SIP is substantially inadequate to achieve the ozone NAAQS, pursuant to section 110(a)(2)(H) of the Clean Air Act, 42 U.S.C. 7410(a)(2)(H). In this letter, EPA requested that South Carolina respond to the "SIP call" in two phases—the first phase, within 60 days upon receipt of EPA's letter to the States agency (South Carolina Department of Health and

Environmental Control) which outlined in detail the SIP call response, and the second phase following the issuance of the final Ozone/CO policy. The first phase requires that the State initiate certain fundamental activities necessary to continue to make progress in attaining the ozone or CO NAAQS. The required activities include the correction of identified discrepancies between EPA's existing policy and the State's SIP or pending SIP submittal.

On September 9, 1988, EPA requested that South Carolina correct the identified deviations within their SIP. On October 12, 1988, South Carolina notified EPA that regulatory revisions within their SIP must be done either under a State initiative or the need to meet federal requirements. In order for the regulatory revisions to meet the test of being federal requirements, South Carolina must be able to cite the specific *Federal Register* notification of a deficiency. South Carolina additionally stated in their October 12, 1988, letter to EPA that the State-initiated revisions involve a more lengthy process, including ratification by the South Carolina General Assembly.

In order to facilitate correction of all EPA-identified deviations within the South Carolina VOC regulations, EPA is today proposing disapproval of the following regulations that have been identified as being deficient:

1. Regulation 62.1, Section I, 39.—A vapor pressure of 0.1 mm Hg should not be used to define VOC. Such a definition would exempt compounds of low volatility which under certain processes, would volatilize and therefore participate in photochemical reactions.

2. Regulation 62.5, Standard No. 5, Section I, Part A.1, A.9, A.22, A.38, A.39, A.51, A.75.—These various coating definitions need to specifically include "functional coatings" as well as protective or decorative films.

3. Regulation 62.5, Standard No. 5, Section II, Part C.1.—This regulation for the surface coating of paper, vinyl and fabric does not specifically apply to saturation processes and must therefore be revised to include them.

4. Regulation 62.5, Standard No. 5, Section I, Part A.75.—The vinyl coating definition must be revised to make clear that organosol and plastisol coatings cannot be used to bubble emissions from vinyl printing and topcoating.

5. Regulation 62.5, Standard No. 5, Section II, Part A, B, C, D, E, F, G, H, N, O, P, Q, R, S, T.—In the provision for specific sources several concerns have been identified. They are as follows:

(i) The regulations within Section II, Parts A through H and Parts N through T

need to be revised to clearly state compliance period (e.g., hourly, daily) and averaging method (arithmetic or weighted).

(ii) Capture systems are required as a method of control technology for the following surface coating regulations: Section II—Provisions for Specific Sources Part A.2.e., B.2.e., C.2.e., D.2.e., E.2.e., Part F.3.e., G.3.e., H.3.e.

(iii) Regulations which require capture efficiency systems must specify test methods.

6. Regulation 62.5, Standard No. 5, Section I, Part F, Recordkeeping, Reporting, Monitoring—The recordkeeping requirement provisions as stated in the May 25, 1988, OAQPS document entitled, "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations," should be included within this regulation.

7. Regulation 62.5, Standard No. 5, Section I, Part E, Volatile Organic Compound Compliance Testing—It is not clear in the VOC compliance testing requirement that the most recent test methods must be used. The regulation must be revised to state this.

The public is invited to submit written comments on this proposal; EPA will consider all comments received within 30 days of this date before taking final action on the disapproval of revisions submitted by South Carolina.

Under 5 U.S.C. 605(b), I certify that this disapproval will not have a significant economic impact on a substantial number of small entities because its purpose is to provide the State the basis for correcting its SIP.

The Office of Management and Budget has waived review of this regulation normally required under section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone.

Authority: U.S.C. 7401-7642.

Dated: June 8, 1989.

Greer C. Tidwell,
Regional Administrator.

[FR Doc. 89-14385 Filed 6-15-89; 8:45 am]

BILLING CODE 6580-50-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

Atlantic Bluefin Tuna Fishery; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: NMFS will hold a series of public hearings and provide a comment period to solicit public input into the proposed changes to the regulations governing the Atlantic bluefin tuna fishery. The two proposed changes are intended (1) to provide for the maximum opportunity to utilize the resource and (2) to preserve the traditional methods of fishing. Individuals and organizations may comment in writing to NMFS if they are unable to attend the hearings.

DATES: See **SUPPLEMENTARY INFORMATION** for dates, times, and locations of the hearings.

ADDRESS: Comments should be addressed to Richard Roe, Regional Director, NMFS, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930. Mark the outside of the envelope "Comments on Atlantic Bluefin Tuna Regulations."

FOR FURTHER INFORMATION CONTACT: Kathi L. Rodrigues, 508-281-9324.

SUPPLEMENTARY INFORMATION: The current regulations which govern the Atlantic bluefin tuna fishery allow the Assistant Administrator, on or about September 1, to adjust the daily catch limit for the General category to a maximum of three giant Atlantic bluefin tuna (ABT) per day per vessel. This rule would remove the reference to the September 1 date in the regulation allowing the Assistant Administrator to adjust the daily catch limit upward or downward at any time during the season as circumstances warrant.

In 1988 NMFS received a petition from a number of harpoon fishermen to prohibit the use of spotter aircraft in all but the Purse Seine category. The petitioners believe that the proliferation of spotter aircraft, particularly in the Harpoon Boat category, is changing the traditional nature of the fishery. On March 31, 1988 (53 FR 10415), NMFS published a notice in the *Federal Register* soliciting comments on the petition. Many comments were received, the majority of which supported the prohibition.

After a review of all the information presented on this issue, NMFS believes that it is in the best interests of the fishery to prohibit the use of spotter aircraft to aid in the harvest of ABT, except in the Purse Seine category. NMFS believes that the growing use of these aircraft changes the traditional nature of both the Harpoon Boat and General categories. The use of these aircraft together with the large increase of vessels permitted in this category, has greatly accelerated the rate at which the

quota is caught. It is believed that a number of boats are attracted to this category because of the lack of a daily catch limit and the possibility of enhancing the catch through the use of an airplane.

NMFS is also concerned that the use of aircraft will concentrate the catch among fewer vessels. Information provided to the Agency indicates that roughly 80 percent of the Harpoon Boat category in 1988 was harvested by vessels assisted by aircraft. These specific issues will be discussed at the public hearings.

All public hearings will begin at 7:00 p.m. The dates and locations of the hearings are scheduled as follows:

June 30, 1989—Treadway Inn, Newport, Rhode Island

July 3, 1989—NOAA Fisheries, One Blackburn Drive, Gloucester, Massachusetts

July 5, 1989—Holiday Inn, Riverhead, New York

July 6, 1989—Holiday Inn, Portland, Maine

July 7, 1989—Quality Inn (formerly Sheraton), Falmouth, Massachusetts

Dated: June 13, 1989

Richard H. Schaefer,
Director, Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-14390 Filed 6-15-89; 8:45 am]

BILLING CODE 3510-22-M

50 CFR Part 642

[Docket No. 90639-9139]

RIN 0648-AC55

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA issues this proposed rule to implement Amendment 4 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). This proposed rule would reallocate Atlantic migratory group Spanish mackerel. The intended effect of this proposed rule is to more equitably allocate Atlantic migratory group Spanish mackerel between recreational and commercial users.

DATE: Written comments must be received on or before July 31, 1989.

ADDRESSES: Comments may be sent to, and copies of the draft Environmental

BEST COPY AVAILABLE

Assessment/Regulatory Impact Review may be obtained from: Mark F. Godcharles, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813-893-3722.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the FMP, prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils), and its implementing regulations at 50 CFR Part 642, under authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Amendment 4 addresses the allocation of total allowable catch (TAC) for Atlantic migratory group Spanish mackerel (76 percent commercial and 24 percent recreational) which has contributed to early recreational closures and adverse socioeconomic impacts. For Atlantic migratory group Spanish mackerel, Amendment 4 addresses this problem by establishing a procedure to change the allocation to 50 percent recreational and 50 percent commercial as the TAC increases.

Draft Amendment 4 was prepared and distributed to interested parties in September and October, 1988. Public hearings were held on the draft amendment in 10 cities from Key West, FL to Manteo, NC in October 1988. After consideration of the comments received at the public hearings and Council meetings, written public comments, and comments from their Scientific and Statistical Committees and Advisory Panels, the Councils made their final selection of preferred options at the April 1989 joint Council meeting. The issues, their impacts, and the rationale for the Councils' preferred options are summarized below. A more complete analysis appears in Amendment 4, the availability of which was published in the *Federal Register* (54 FR 23238, May 31, 1989).

Background

The current allocation of TAC of 76 percent to commercial fishermen and 24 percent to recreational fishermen in the Atlantic migratory group Spanish mackerel fishery does not reflect the allocation that existed during the early to mid 1970's when the fishery was not overfished. The current allocation was based on recreational catch data from 1979-85, a period during which the resource was overfished and when

recreational catches and participation were low due to the status of the resource. This allocation has contributed to the early implementation of zero bag limits for the recreational fishery which results in negative socioeconomic impacts to recreational fishermen.

Issue 1. Atlantic Migratory Group Spanish Mackerel Commercial and Recreational Allocations

Current regulations establish an allocation of TAC of 76 percent commercial and 24 percent recreational based on catch data from 1979-85. The Councils concluded that this is inappropriate because the resource was overfished and the recreational share depressed during this time period. New allocations are proposed to more equitably allocate Atlantic migratory group Spanish mackerel between recreational and commercial users.

The Councils considered three options: Option 1 (status quo)—continue the 76 percent commercial and 24 percent recreational allocation; Option 2—reallocate based on estimated average ratios of catches in the period from 1967-74; and Option 3—reallocate 50 percent commercial and 50 percent recreational.

The Councils concluded that the current allocation (76 percent commercial and 24 percent recreational) is inappropriate and selected Option 3 because:

1. The Atlantic migratory group Spanish mackerel resource was overfished and the resulting recreational catches depressed during the years 1979-85 which were used to establish the current allocation.
2. Commercial catches increased during the mid 1970's and the distribution of the resource between recreational and commercial users changed with more being taken commercially. This is also the time when the abundance of the resource began to decline and become more geographically compressed. Recreational catches in Georgia, South Carolina and North Carolina were affected and in these States recreational harvest had previously accounted for the majority of the harvest.

3. The Councils believe, based on the expert knowledge of State fishery directors and other Council members directly associated with the fishery, that recreational catches were higher in the 1970's but quantitative information to support this conclusion is limited. The limited quantitative data from the early 1970's indicates that the Atlantic migratory group Spanish mackerel resource was distributed equally (i.e., 50/50) between the recreational and

commercial user groups. Qualitative information such as input from fishermen and the recent reemergence of catches north of North Carolina, indicate that Spanish mackerel are now repopulating this area, as they have in the past, thereby lending support to the Councils' conclusion of higher recreational catches during the 1970's.

4. Now that the Atlantic migratory group Spanish mackerel resource is reduced and harvest capacity and demand of both user groups has expanded to the point that either group could harvest all or most of the available resource, the Councils believe it is more equitable to allocate the resource equally between users.

5. Based on the above, the Councils concluded that a 50/50 allocation would result in benefits greater than costs and maximize the net socioeconomic benefits available from the Atlantic migratory group Spanish mackerel resource.

Issue 2. Method of Implementing Revised Allocations of Atlantic Migratory Group Spanish Mackerel

The Councils considered five options: Option 1—implement the 50/50 reallocation with an effective date when TAC is relatively low and relatively late in the fishing year; Option 2—implement the revised ratios to be effective with the seasonal adjustment for the next fishing year; Option 3—implement the reallocation only as the TAC is increased by providing the increase to the gaining group until the new 50/50 ratio is established. No reduction in any group's allocation would occur unless TAC was subsequently reduced, in which case the existing ratio would apply to the reduced TAC; Option 4—same as Option 3 except that, in the event of a reduction in TAC, the existing ratio would be applied to the amount of the reduction; and Option 5—implement the reallocation only for the TAC increase above the level which results in a 3.04-million pound commercial allocation, by providing 90 percent of any increase to the recreational allocation and 10 percent to the commercial allocation until the new ratio is established. No reduction in any group's allocation would occur unless the TAC was subsequently reduced, in which case the ratio in place at that time would apply. However, the 50/50 ratio would be implemented no later than the 1994/95 fishing year. The Councils selected Option 5 because this mechanism best moderates any negative socioeconomic impacts the reallocation may have on the commercial sector and provides a gradual redistribution (as long as the TAC changes gradually)

without decreasing any group's existing quota. This implementation procedure establishes a base level of 3.04 million pounds for the commercial fishery, that is, 76 percent of the TAC for the 1988/89 fishing year. The Councils have recommended a TAC of 3 million pounds for the 1989/90 fishing year. The increase in the TAC of 2.0 million pounds is to be shared with 10 percent (0.2 million pounds) going to the commercial allocation and 90 percent (1.8 million pounds) going to the recreational allocation. The resulting allocations for the 1989/90 fishing year, assuming increased TAC and Amendment 4 are approved, would be: TAC=6.0 million pounds
Commercial allocation=3.24 million pounds (54 percent)
Recreational allocation=2.76 million pounds (46 percent)

It is the Councils' intent that these allocations take effect when Amendment 4 is approved and implemented. Throughout the procedural development and preparation of Amendment 4, it had been the Councils' expressed intent that the revised allocations be in place prior to the 1989/90 fishing year. Unfortunately, due to procedural delays, this was not possible. However, the Councils have concluded that, based on the urgent nature of reallocation under increasing TACs, this action is justified and have requested that the final rule specifying TACs and allocations for the 1989/90 fishing year indicate that Amendment 4 proposes to alter the Atlantic Spanish mackerel allocations.

If Amendment 4 is approved, implementation would be needed by the beginning of November. Since the majority of the commercial harvest does not occur until December/January each year, commercial catches should not exceed the 3.24-million pound level prior to implementation of Amendment 4. If unforeseen circumstances were to occur, and the commercial harvest were to exceed the 3.24-million pound level before Amendment 4 is implemented, it is the intent of the Councils that the commercial fishery be closed and the remaining TAC be applied to the recreational allocation upon implementation of Amendment 4.

The Councils concluded that this implementation procedure is fair and equitable to the commercial sector because a commercial allocation of 3.24 million pounds would exceed the average of the 1970-74 catches (3,098,600 pounds), the period prior to the large increase in commercial catches of the mid to late 1970's. The Atlantic migratory group Spanish mackerel

resource is believed to have not been overfished during this time period and allocating the commercial sector a base amount exceeding what they were catching at that time would be fair to them. Allocating most of the remainder to the recreational sector, would also be fair to that user group. In addition, providing 10 percent of the increase to the commercial sector allows them to share in the benefits of rebuilding the resource while still progressing toward the 50/50 allocation.

A commercial quota of 3.24 million pounds for the 1989/90 fishing year would be a reduction of 41 percent from the 1979-86 average catch or 23 percent from the average of 1981-86. It only represents a reduction of 1 percent from the 1984-86 average catch but a 13 percent increase over the 1986-87 average catch. Foregone earnings to the commercial sector can be estimated by comparing the allocation with the 78/24 ratio (4.56 million pounds) to the allocation with the interim ratio (3.24 million pounds). The difference is 1.32 million pounds with an estimated ex-vessel value of approximately \$450,000. On the recreational side, the methodology to analyze the benefits from doubling the allocation has been developed but work in this area has not been conducted. However, estimates of total annual gains of between \$2.5 and \$25.5 million were obtained for Gulf king mackerel by doubling the allocation.

The Councils concluded that the resulting impact on the commercial sector will not be significant during the period when the recreational allocation is allowed to increase to the level of the commercial allocation. In actuality, because of the increase in TAC proposed for this fishing year (1989/90), the value of the commercial allocation should increase over last fishing year (1988/89) by approximately \$68,000.

The proposed changes to 50 CFR 642.21 in this action are an illustration of the preferred methodology explained above. The illustration is based on the implementation of a TAC of 6.0 million pounds for Atlantic group Spanish mackerel for the 1989/90 fishing year that is being proposed in a separate proceeding (see 54 FR 24920, June 12, 1989). NOAA proposes to use the preferred methodology to derive the final changes to 50 CFR 642.21. If no increased TAC is implemented, no changes are proposed to be made to 50 CFR 642.21.

Classification

Section 304(a)(1)(D)(ii) of the Magnuson Act, as amended by Pub. L. 99-659, requires the Secretary of Commerce (Secretary) to publish

regulations proposed by a Council within 15 days of receipt of an FMP amendment and regulations. At this time, the Secretary has not determined that Amendment 4, which this proposed rule would implement, is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law. The Secretary, in making that determination, will take into account the data, views, and comments received during the comment period.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this proposed rule is not a "major rule" requiring the preparation of a regulatory impact analysis under E.O. 12291. This proposed rule, if adopted, is not likely to result in an annual effect on the economy of \$100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or a significant adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Councils prepared a regulatory impact review which concludes that this rule will have the economic effects discussed above in the analysis of the management measures of Amendment 4. A copy of the review may be obtained at the address listed above.

This proposed rule is exempt from the procedures of E.O. 12291 under section 8(a)(2) of that order. It is being reported to the Director, Office of Management and Budget, with an explanation of why it is not possible to follow the procedures of that order.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, will not have a significant economic impact on a substantial number of small entities for the following reasons. The commercial sector will be allocated an amount in excess of their average catch from 1970-74 when the resource was not overfished. In addition, the current allocation represents a 13 percent increase over the 1986-87 average catch. As a result, a regulatory flexibility analysis was not prepared.

The Councils determined that this rule will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of North Carolina, South Carolina, Florida, Alabama, Mississippi, and Louisiana. Georgia and Texas do not have

approved coastal zone management programs. This determination has been submitted for review by the responsible State agencies under section 307 of the Coastal Zone Management Act.

The Councils prepared an environmental assessment (EA) that discusses the impact on the environment as a result of this rule. A copy of the EA may be obtained at the address listed above and comments on it are requested.

This proposed rule does not contain a collection of information requirement for purposes of the Paperwork Reduction Act.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 642

Fisheries, Fishing.

Dated: June 12, 1989.

James E. Douglas, Jr.,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

As is explained in the preamble, 50 CFR Part 642 is proposed to be amended as follows:

PART 642—COASTAL MIGRATORY PELAGIC RESOURCES OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for Part 642 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 642.21 [Amended]

2. In § 642.21, in paragraph (c)(2) the number "3.04" is revised to read "3.24" and in paragraph (d)(2) the number "0.96" is revised to read "2.76".

[FR Doc. 89-14300 Filed 6-12-89; 3:33 pm]

BILLING CODE 3510-22-M

Notices

Federal Register

Vol. 54, No. 115

Friday, June 16, 1989

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 89-103]

Notice of Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR Part 340, which regulates the introduction of certain genetically engineered organisms and products.

FOR FURTHER INFORMATION CONTACT: Mary Petrie, Program Analyst, Biotechnology, Biologics, and Environmental Protection, Biotechnology Permit Unit, Animal and Plant Health Inspection Service, U.S. Department of Agriculture, Room 844, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR Part 340,

"Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) in the United States, certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications to release genetically engineered organisms into the environment:

Application number	Applicant	Date received	Organism	Field test location
89-136-01	Pioneer Hi-Bred International, Inc.,	05-16-89	Alfalfa plants genetically engineered to contain the coat protein of Alfalfa Mosaic Virus.	Iowa.
89-136-04	Calgene, Inc.	05-16-89	Tobacco plants genetically engineered to express glyphosate herbicide tolerance.	California.

Done in Washington, DC, this 12th day of June 1989.

James W. Glosser,
Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 89-14372 Filed 6-15-89; 8:45 am]

BILLING CODE 3410-34-M

Soil Conservation Service

Upper Tiffin Watershed, Ohio and Michigan; Environmental Impact Statement

AGENCY: Soil Conservation Service.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR Part 1500); and the Soil Conservation Service Guidelines (7 CFR Part 650); the Soil Conservation Service,

U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Upper Tiffin Watershed, Fulton, Williams, Defiance, and Henry Counties, Ohio, and Hillsdale and Lenawee Counties, Michigan.

FOR FURTHER INFORMATION CONTACT: Joseph C. Branco, State Conservationist, Soil Conservation Service, 200 North High Street, Room 522, Columbus, Ohio 43215, telephone 614-469-6962.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Joseph C. Branco, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Finding of No Significant Impact for Upper Tiffin Watershed, Fulton, Williams, Defiance, and Henry Counties, Ohio, Hillsdale and Lenawee Counties, Michigan

Introduction

The Upper Tiffin Watershed is a federally assisted action authorized for planning under Pub. L. 83-566, the Watershed Protection and Flood Prevention Act. An environmental assessment was undertaken in conjunction with the development of the watershed plan. This assessment was conducted in consultation with local, state, and federal agencies as well as with interested organizations and individuals. Data developed during the assessment are available for public review at the following location: U.S. Department of Agriculture, Soil Conservation Service, 200 North High Street, Room 522, Columbus, Ohio 43215.

Recommended Action

Proposed is the development of conservation plans that will provide for land treatment measures to be applied on farms for reduction of erosion and sedimentation, and flood protection of agricultural land. The plan consists of 64,750 acres of conservation tillage, 37,400 acres of cover crops, 398,000 feet of field windbreaks, 10,200 acres of crop residue use, 500 acres of grassed waterways, 1,100 grade stabilization structures, 70 acres of cropland conversion, and accelerated technical assistance for land treatment.

The project concerns a plan for flood control and watershed protection. The planned works of improvement include 64,750 acres of conservation tillage, 37,400 acres of cover crops, 398,000 feet of field windbreaks, 10,200 acres of crop residue use, 500 acres of grassed waterways, 1,100 grade stabilization structures, 70 acres of cropland conversion, and accelerated technical assistance.

The Notice of Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various federal, state, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Robert L. Burris.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the Federal Register.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with state and local officials.)

Joseph C. Branco,
State Conservotionist.

Date: June 8, 1989.

[FR Doc. 89-14122 Filed 6-15-89; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Permits; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of issuance of an experimental fishing permit.

SUMMARY: This notice announces the

issuance of an experimental fishing permit to harvest groundfish with domestic trawl vessels using detachable codends of various mesh sizes in the exclusive economic zone off the coasts of Washington, Oregon, and California. The permit authorizes experimental fishing practices that otherwise would be prohibited by Federal regulations. This action is authorized by the Pacific Coast Groundfish Fishery Management Plan and its implementing regulations.

EFFECTIVE DATES: June 15, 1989, through December 31, 1989.

ADDRESSES: Rolland A. Schmitt, Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Bldg. 1, Seattle, WA 98115; or E. Charles Fullerton, Director, Southwest Region, National Marine Fisheries Service, 3000 S. Ferry Street, Terminal Island, CA 90731.

FOR FURTHER INFORMATION CONTACT: William L. Robinson, 206-526-6140; or Rodney R. McInnis, 213-514-6199.

SUPPLEMENTARY INFORMATION: The Pacific Coast Groundfish Fishery Management Plan (FMP) and its implementing regulations at 50 CFR Part 663 specify that experimental fishing permits (EFPs) may be issued to authorize fishing that would otherwise be prohibited by the FMP and regulations. The procedures for issuing EFPs are contained in the regulations at 50 CFR 663.10.

An EFP application to harvest groundfish with bottom trawl gear using detachable codends of various mesh sizes in the exclusive economic zone (EEZ) off the coasts of Washington, Oregon, and California was received on March 23, 1989. The application represents the third of four phases of the West Coast Groundfish Mesh Size Study, and the second of two years of field work that began in 1988. The major goal of the experimental fishery is to compare the composition of catches under current mesh size regulations that implement the FMP, to catches that result from the use of different mesh sizes. Current groundfish regulations at 50 CFR 663.26 prohibit the use of a mesh size smaller than four and one-half inches in bottom trawls and prohibit detachable codends if the vessel is carrying a net with smaller than four and one-half inch mesh. In addition, in order to obtain meaningful results in comparing the relative effectiveness of gear regulations to trip limits, the applicant requested that the EFP waive current trip poundage limits and groundfish quota restrictions for vessels engaged in experimental fishing under the permit. A notice acknowledging receipt of the application, describing the

proposal, and requesting public comment was published in the Federal Register on April 5, 1989 (54 FR 13731). No written comments were received. The application was considered by the Pacific Fishery Management Council, including the directors of the fishery management agencies of Washington, Oregon, California, and Idaho, at its April, 1989 public meeting in Portland, Oregon. The Council recommended that NMFS issue an EFP, as requested by the applicant, except that each experimental fishing trip should be subject to the prevailing trip frequency restrictions. The NMFS has incorporated the Council recommendations in the terms and conditions of the EFP that was issued under the provisions of 50 CFR 663.10.

The EFP was issued to Dr. Ellen Pikitch, University of Washington, on May 8, 1989. The EFP authorizes 50 domestic trawl vessels to engage in experimental fishing under the direction of Dr. Pikitch, according to the terms and conditions of the permit, from June 1, 1989, through December 31, 1989, in the EEZ off the coasts of Washington, Oregon, and California. Under the terms and conditions of the permit, an observer from the University of Washington must be aboard each vessel during experimental fishing and present during the unloading of fish taken from each experimental trip. The permitted vessels are authorized to use detachable codends of various mesh sizes when involved in experimental fishing as directed by the permit holder. The prevailing groundfish trip poundage limitations or optimum yield (quota) closures do not apply to each experimental fishing trip; however, the prevailing trip frequency limits will apply. The permittee is required to provide advance notification to NMFS of each departure and arrival of vessels conducting experimental fishing. The permittee plans to schedule up to 50 experimental fishing trips under the EFP. The permittee will prepare a comprehensive report on the results of the experimental fishery under a project supported by a Saltonstall-Kennedy grant entitled "West Coast Groundfish Mesh Size Study."

Further details or a copy of the permit may be obtained from a NMFS Regional Director at the above addresses.

Authority: 16 U.S.C. 1801 et seq.

Dated: June 12, 1989.

David S. Crestin,
Acting Director, Office of Fishery Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-14302 Filed 6-15-89; 8:45 am]

BILLING CODE 3512-22-M

Permits; Foreign Fishing

This document publishes for public review and comment a summary of applications received by the Secretary of State. The applications request permits for foreign vessels to fish in the Exclusive Economic Zone under the Magnuson Fishery Conservation and Management Act (Magnuson Act, 16 U.S.C. 1801 et seq.). Send comments on applications to:

NOAA—National Marine Fisheries Service, Office of Fisheries Conservation and Management, Operations Support and Analysis Division, 1335 East West Highway, Silver Spring, Maryland 20910.

or, to the appropriate Regional Fishery Management Council reviewing applications, as listed below:

Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway (Route 1), Saugus, MA 01906, 617/231-0422.

John C. Bryson, Executive Director, Mid-Atlantic Fishery Management Council, Federal Building, Room 2115, 320 South New Street, Dover, DE 19901, 302/674-2331.

Robert K. Mahood, Executive Director, South Atlantic Fishery Management Council, Southpark Building, Suite 306, 1 Southpark Circle, Charleston, SC 29407, 803/571-4366.

Miguel A. Rolon, Executive Director, Caribbean Fishery Management Council, Banco De Ponce Building, Suite 1108, Hato Rey, PR 00918, 809/753-6910.

Wayne E. Swingle, Executive Director, Gulf of Mexico Fishery Management Council, Lincoln Center, Suite 881, 5401 West Kennedy Blvd., Tampa, FL 33609, 813/228-2815.

Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Building, Suite 420, 2000 S.W. First Avenue, Portland, OR 97201, 503/328-6352.

Clarence Pautzke, Executive Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510, 907/271-2809.

Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, Room 1405, Honolulu, HI 96813, 808/523-1368.

For further information contact John D. Kelly or Robert A. Dickinson (Office of Fisheries Conservation and Management, 301-427-2339).

The Magnuson Act requires the Secretary of State to publish a notice of receipt of applications for foreign fishing permits summarizing the contents of the applications in the Federal Register. The National Marine Fisheries Service, under the authority granted in a memorandum of understanding with the Department of State effective November 29, 1983, issues this notice on behalf of the Secretary of State.

Individual vessel applications summarized below were received from the Governments of Iceland (IC), Japan (JA), the Polish People's Republic (PL), and the Union of Soviet Socialist Republics (UR).

Dated: June 9, 1989.

David S. Crestin,
Deputy Director, Office of Fisheries Conservation and Management

Fishery codes and designations of Regional Fishery Management Councils which review applications for individual fisheries are as follows:

Code Fishery	Regional fishery management councils
ABS Atlantic Billfish and Sharks.	New England, Mid-Atlantic, South Atlantic, Gulf of Mexico, Caribbean, North Pacific.
BSA Bering Sea and Aleutian Islands Groundfish.	North Pacific.
GOA Gulf of Alaska Groundfish.	North Pacific.
NWA Northwest Atlantic Ocean.	New England, Mid-Atlantic.
SNA Snail (Bering Sea)...	North Pacific.
WOC Pacific Coast Groundfish (Washington, Oregon and California).	Pacific.
PBS Pacific Billfishes, Oceanic Sharks, Wahoo, and Mahi-mahi.	Western Pacific.

Activity codes which specify categories of fishing operations applied for are as follows:

Activity code	Fishing operations
1.....	Catching, processing and other support.
2.....	Processing and other support only.
3.....	Other support only.
*.....	Vessel supporting U.S. vessels (Joint Venture (JV)).
**.....	Cargo transport vessels with fish finding equipment on board receive an activity code "2" to enable them to scout as well as perform other support activities.
Pending.....	Number to be assigned at a later date.

The Government of the Union of Soviet Socialist Republics submitted an application to take 2,800 metric tons (mt) (meat weight) of sea snails in a directed fishery and 200 mt (meat weight) of sea snails in a JV operation in the Bering Sea. The designated U.S. partner for the JV is Alaska Joint venture Seafoods, Inc.

Vessel (vessel type)	Application/permit	Fishery-Activity (* = joint venture)
Andri I (Factory Ship).....	IC-89-0006.....	GOA-2* BSA-2*
Yoshi Maru No. 38 (Small Stern Trawler).....	JA-89-0229.....	GOA-1* BSA-1*
Andromeda (Large Stern Trawler).....	PL-89-0088.....	NWA-3
18 Syezd Viksm (Large Stern Trawler).....	UR-89-0817.....	WOC-2*
Alexandr Maksutov (Large Stern Trawler).....	UR-89-0553.....	WOC-2*
Arhimed (Large Stern Trawler).....	UR-89-0810.....	WOC-2*
Arktika (Factory Ship).....	UR-89-0845.....	NWA-3
Baganovo (Large Stern Trawler).....	UR-89-0758.....	WOC-2*
Boksit (Large Stern Trawler).....	UR-89-0841.....	WOC-2*
Chelkar (Medium Stern Trawler).....	UR-89-0849.....	SNA-1*
Cheremkhovo (Medium Stern Trawler).....	UR-89-0850.....	SNA-1*
Dimant (Cargo/Transport Vessel).....	UR-89-0449.....	NWA-3
Etalon (Cargo/Transport Vessel).....	UR-89-0848.....	NWA-3
Finskiy Zaliv (Cargo/Transport Vessel).....	UR-89-0438.....	WOC-3
Gelesi (Large Stern Trawler).....	UR-89-0842.....	WOC-2*
Iohannes Vares (Factory Ship).....	UR-PENDING.....	NWA-3
Ivan Ajvazovskij (Cargo/Transport Vessel).....	UR-89-0361.....	NWA-3
Ivan Korzunov (Large Stern Trawler).....	UR-89-0848.....	WOC-2*
Ivan Lyudnikov (Large Stern Trawler).....	UR-89-0837.....	WOC-2*
Izumrudnyi (Large Stern Trawler).....	UR-89-0747.....	WOC-2*
Kizir (Large Stern Trawler).....	UR-89-0081.....	WOC-2*
Minusinsk (Tanker Fuel/Water).....	UR-PENDING.....	NWA-3
Nadezhda (Large Stern Trawler).....	UR-89-0061.....	WOC-2*
Neftekamsk (Tanker Fuel/Water).....	UR-89-0354.....	NWA-3
Ostrov Kotlin (Cargo/Transport Vessel).....	UR-89-0454.....	WOC-3
Paavals (Large Stern Trawler).....	UR-89-0811.....	WOC-2*
Pionersk (Factory Ship).....	UR-89-0847.....	NWA-3
Pisatel (Large Stern Trawler).....	UR-89-0561.....	WOC-2*
Pokrovsk (Medium Stern Trawler).....	UR-PENDING.....	SNA-1*
Propegandist (Large Stern Trawler).....	UR-89-0220.....	WOC-2*
Publicist (Large Stern Trawler).....	UR-89-0069.....	WOC-2*
Riga (Factory Ship).....	UR-89-0814.....	NWA-3
Rubinovyi (Large Stern Trawler).....	UR-89-0716.....	WOC-2*
Sayenskie Gory (Cargo/Transport Vessel).....	UR-89-0262.....	WOC-3
Tatarstan (Cargo/Transport Vessel).....	UR-89-0803.....	WOC-3 GOA-3 BSA-3
Tavria (Cargo/Transport Vessel).....	UR-89-0843.....	WOC-3 GOA-3 BSA-3
Telishaj (Large Stern Trawler).....	UR-89-0840.....	WOC-2*
Triton (Large Stern Trawler).....	UR-89-0839.....	WOC-2*
Ust Kan (Tanker Fuel/Water).....	UR-89-0844.....	WOC-3 GOA-3 BSA-3
Vasily Grechishnikov (Large Stern Trawler).....	UR-89-0812.....	WOC-2*
Vytina (Large Stern Trawler).....	UR-89-0631.....	WOC-2*

[FR Doc. 89-14301 Filed 6-15-89; 8:45 am]
BILLING CODE 3510-22-M

National Technical Information Service

Intent To Grant Exclusive Patent License; Austin Powder Co.

The National Technical Information Service (NTIS), U.S. Department of Commerce, intends to grant to Austin Powder Company, having a place of

business at 25800 Science Park Drive, Cleveland, Ohio 44122, an exclusive license in the United States to practice the invention entitled, "Non-Incendive Rock Breaking Explosive Charge," U.S. Patent Application Serial Number 6-480,793, now U.S. Patent Number 4,537,133. The patent rights in this invention have been assigned to the United States of America, as represented by the Secretary of Interior.

The intended exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The intended license

may be granted unless, within sixty days from the date of this published notice, NTIS receives written evidence and argument which establishes that the grant of the intended license would not serve the public interest.

Inquiries, comments, and other materials relating to the proposed license must be submitted to Charles A. Bevelacqua, Director, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151.

A copy of the instant patent may be purchased from the Commissioner of

Patents, U.S. Patent & Trademark Office, Washington, DC 20231.

Douglas J. Campion,
Associate Director, Office of Federal Patent Licensing, National Technical Information Service, Department of Commerce.

[FR Doc. 89-14347 Filed 6-15-89; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR PURCHASE FROM THE BLIND AND OTHER SEVERELY HANDICAPPED

Procurement List 1989 Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Additions to procurement list.

SUMMARY: This action adds to Procurement List 1989 commodities to be produced by workshops for the blind or other severely handicapped.

EFFECTIVE DATE: July 17, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: On April 17, 21 and 28, 1989, the Committee for Purchase from the Blind and Other Severely Handicapped published notice (54 FR 15244, 16148 and 18324) of

proposed additions to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018). No comments were received in direct response to the published notice. However, during the comment period, the Committee received a letter from the Governor of a State requesting that a portion of the annual Federal requirement for this and other dressings be shared with an Indian Tribe. According to the letter, the Tribe was in the process of developing the capability to produce this and other dressings. The Committee has decided to add the entire portion because under its regulations it is required to make a decision based upon the impact of a proposed addition on the current or most recent supplier for the item and not on a potential supplier. The Committee also noted that taking the approach proposed by the Governor would not assure that the Indian Tribe in question would receive a contract for the remaining portion of the annual requirement. After consideration of the material presented to it concerning capability of qualified workshops to produce the commodities at fair market prices and impact of the additions on

the current or most recent contractors, the Committee has determined that the commodities listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.8.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

a. The actions will not result in any additional reporting, recordkeeping or other compliance requirements.

b. The actions will not have a serious economic impact on any contractors for the commodities listed.

c. The actions will result in authorizing small entities to produce the commodities procured by the Government.

Accordingly, the following commodities are hereby added to Procurement List 1989:

Bandage, Gauze, Compressed, Camouflaged
6510-00-200-3180
6510-00-200-3190
Compress and Bandage, Camouflaged
6510-00-200-3075
6510-00-200-3080
Cotton, Purified
6510-00-201-3000

E. R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 89-14345 Filed 6-15-89; 8:45 am]

BILLING CODE 6820-33-M

Procurement List 1989 Proposed Additions

AGENCY: Committee for Purchase from the Blind and Other Severely Handicapped.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to Procurement List 1989 services to be provided by workshops for the blind or other severely handicapped.

Comments must be received on or before: July 17, 1989.

ADDRESS: Committee for Purchase from the Blind and Other Severely Handicapped, Crystal Square 5, Suite 1107, 1755 Jefferson Davis Highway, Arlington, Virginia 22202-3509.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 557-1145.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.8. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the

proposed additions, all entities of the Federal Government will be required to procure the services listed below from workshops for the blind or other severely handicapped.

It is proposed to add the following services to Procurement List 1989, which was published on November 15, 1988 (53 FR 46018):

Services

Commissary Shelf Stocking and Custodial, Fort Gillem, Georgia.

Commissary Shelf Stocking and Custodial, Fort Sam Houston, Texas.

Janitorial/Custodial, Federal Building and U.S. Courthouse, 507 State Street Hammond, Indiana.

Janitorial/Custodial, Federal Building and U.S. Courthouse, 131 East Fourth Street, Davenport, Iowa.

Janitorial/Custodial, Edward Zorinsky Federal Building, U.S. Post Office and Courthouse, Omaha, Nebraska.

Janitorial/Custodial, U.S. Army Reserve Center, 547 Philadelphia Ave., Reading, Pennsylvania.

Janitorial/Custodial, Building 891, Logistical Systems Operations Center, Hill Air Force Base, Utah.

E. R. Alley, Jr.,
Deputy Executive Director.

[FR Doc. 89-14346 Filed 6-15-89; 8:45 am]

BILLING CODE 6820-33-M

DEPARTMENT OF DEFENSE
Department of the Army
Science Board; Meeting

In accordance with section 19(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), announcement is made of the following Committee Meeting:

Name of the Committee: Army Science Board (ASB).

Date of the Meeting: 6 July 1989.

Time: 0800-16700 hours.

Place: McLean, Virginia.

Agenda: The Army Science Board 1989 Summer Study on Maintaining State-of-the-Art in the Army Command and Control System will meet in executive session to discuss issues regarding proposed R&D efforts in the Army Command and Control System. This meeting will be closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraph (1) thereof, and Title 5, U.S.C., Appendix 2, subsection 19(d). Contract the Army Science Board Administrative Officer, Sally Warner, for further information at (202)-695-3039 or 695-7046.

Sally A. Warner,
Administrative Officer, Army Science Board.

[FR Doc. 89-14348 Filed 6-15-89; 8:45 am]

BILLING CODE 3710-8-M

DEPARTMENT OF EDUCATION

National Advisory Committee on Accreditation and Institutional Eligibility; Amendment to Notice of Public Meeting

SUMMARY: This amends the notice of a public meeting of the National Advisory Committee on Accreditation and Institutional Eligibility, published in the *Federal Register* on Thursday, June 1, 1989, in Volume 54, No. 104, page 23513.

DATES: June 27—8:30 a.m. until 5:30 p.m. June 28—8:30 a.m. until 5:30 p.m.

ADDRESSES:

Location: The location has been changed from: The Embassy Square Suites Hotel, 2000 N Street, NW, Washington, D.C. 20036

To: The Holiday Inn Crowne Plaza (The Washington Room), 300 Army Navy Drive, Arlington, Virginia 22202

FOR FURTHER INFORMATION CONTACT:

Dr. W. Stanley Kruger, National Advisory Committee on Accreditation and Institutional Eligibility, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 3082 ROB-3), Washington, DC 20202-5152. Telephone: 202-732-5661.

SUPPLEMENTARY INFORMATION: The public is being given less than 15 days' notice due to a change in the location of the meeting.

Signed in Washington, DC on June 14, 1989.
James B. Williams,

Acting Assistant Secretary for Postsecondary Education.

[FR Doc. 89-14575 Filed 6-15-89; 8:45 am]

BILLING CODE 4000-01-M

Office of Elementary and Secondary Education**Intent To Repay to the Michigan State Department of Education, Funds Recovered as a Result of a Final Audit Determination.**

AGENCY: Department of Education.

ACTION: Intent to award grantback funds.

SUMMARY: Under section 456 of the General Education Provisions Act (GEPA) (1982), the Secretary of Education (Secretary) intends to repay to a State educational agency (SEA), the Michigan State Department of Education, an amount equal to 75 percent of the funds recovered by the Department of Education as a result of a final determination. This notice describes the SEA's plan for the use of

the repaid funds and the terms and conditions under which the Secretary intends to make these funds available and invites comments on the proposed grantback.

DATE: All written comments must be received on or before July 17, 1989.

ADDRESS: All written comments should be submitted to William L. Stormer, Director, Division of Program Support, Office of Migrant Education, U.S. Department of Education, 400 Maryland Avenue, SW. (Room 2151), Washington, DC 20202-6135.

FOR FURTHER INFORMATION CONTACT: Mr. William L. Stormer. Telephone (202) 732-4757.

SUPPLEMENTARY INFORMATION:**A. Background**

On September 29, 1986, the Department of Education recovered \$288,852, within this amount \$274,236 was attributed to the Migrant Education Program in satisfaction of an Office of Inspector General's Report on State administrative costs under Title I of the Elementary and Secondary Education Act for the period October 1, 1977 through September 30, 1980. The primary objective of the audit was to determine whether administrative costs incurred and charged to the Title I State Migrant Education Program grant were reasonable, allocable, and allowable and had been expended in a manner consistent with the governing statute and regulations.

The auditors found that the SEA had assigned Migrant Education program funds for State administrative functions that violated the statutory and regulatory requirements governing the use of program funds made available under former section 141 of Title I of the Elementary and Secondary Education Act of 1965, as amended by the Education Amendments of 1978 (Pub. L. 95-561). In particular Departmental regulations, in 45 CFR 116d (1978), permitted an SEA to use Migrant Education funds to pay the administrative costs of those functions that are unique to the Migrant Education program or that are the same or similar to the functions performed by LEAs in the State.

B. Authority for Awarding a Grantback

Section 456(a) of GEPA (1982), 20 U.S.C. 1234(a), provides that whenever the Secretary has recovered funds, following a final audit determination, with respect to an applicable program, the Secretary may consider those funds

to be additional funds available for the program and may arrange to repay to the SEA or LEA affected by that determination an amount not to exceed 75 percent of the recovered funds. The Secretary may enter into this so-called "grantback" arrangement if the Secretary determines that—

(1) Practices and procedures of the SEA that resulted in the audit determination have been corrected, and that the SEA is, in all other respects, in compliance with the requirements of the applicable program;

(2) the SEA has submitted to the Secretary a plan for the use of the funds to be awarded under the grantback arrangement which meets the requirements of the applicable program, and, to the extent possible, benefits the population that was affected by the failure to comply or by the misexpenditures that resulted in the audit exceptions; and

(3) Use of funds to be awarded under the grantback arrangement in accordance with the SEA's plan would serve to achieve the purposes of the program under which the funds were originally granted.

C. Plan for Use of Funds Awarded Under a Grantback Arrangement

Pursuant to section 456(a)(2) of GEPA (1982), the SEA has applied for a grantback of \$205,667 and has submitted a plan to use the grantback funds to meet the special educational needs of eligible migratory children in programs administered under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965, as amended (Chapter 1) U.S.C. 3801 *et seq.* The final determination included audit exceptions to the use of Title I Migrant Education Program funds for administrative costs by the Michigan Department of Education. The State's proposal for the use of grantback funds reflects the requirements in Chapter 1. The SEA plan proposes to use the grantback funds to supplement the regular Chapter 1 Migrant Education Program to expand the educational opportunities for secondary school-aged students attending summer school in order that they may receive additional instruction in specific secondary school courses necessary for graduation in their home State. The SEA proposes that the local operating agencies offering summer migrant education programs will use the grantback funds for secondary school educational and support services permitted under the regulations.

D. The Secretary's Determination

The Secretary has carefully reviewed the plan submitted by the SEA. Based upon that review, the Secretary has determined that the conditions under Section 456 of GEPA (1982) have been met. These determinations are based upon the best information available to the Secretary at the present time. If this information is not accurate or complete, the Secretary is not precluded from taking appropriate administrative action.

E. Notice of the Secretary's Intent To Enter Into a Grantback Arrangement

Section 456(d) of GEPA (1982) requires that, at least 30 days before entering into an arrangement to award funds under a grantback, the Secretary must publish in the *Federal Register* a notice of intent to do so, and the terms and conditions under which the payment will be made.

In accordance with section 456(d) of GEPA (1982), notice is hereby given that the Secretary intends to make funds available to the Michigan Department of Education under a grantback arrangement. The grantback would be in the amount of \$205,667, which is nearly 75 percent—the maximum percentage authorized by the statute—of the funds recovered by the Department as a result of the audit.

F. Terms and Conditions Under Which Payments Under a Grantback Arrangement Will Be Made

The SEA agrees to comply with the following terms and conditions under which payment under a grantback arrangement would be made:

(1) The funds awarded under the grantback must be spent in accordance with—

(a) All applicable statutory and regulatory requirements;

(b) The plan the SEA submitted and any amendments to that plan are approved in advance by the Secretary; and

(c) The budgets submitted with the plan and any amendments to the budgets are approved in advance by the Secretary.

(2) All funds received under the grantback arrangement must be obligated by September 30, 1989, in accordance with section 456(c) of GEPA (1982) and the SEA's plan.

(3) The SEA will, not later than January 1, 1990, submit a report to the Secretary which—

(a) Indicates that the funds awarded under the grantback have been spent in accordance with the proposed plan and approved budgets, and

(b) Describes the results and effectiveness of the project for which the funds were spent.

(4) Separate accounting records must be maintained documenting the expenditures of funds awarded under the grantback arrangement.

(Catalog of Federal Assistance Number 84.011, Migrant Education Program, Basic State Grant Formula Grant Program)

Dated: June 12, 1989.

Lauro F. Cavazos,

Secretary of Education.

[FR Doc. 89-14306 Filed 6-15-89; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Financial Assistance Award; Intent To Award Grant to TRD Corp.

AGENCY: U.S. Department of Energy.

ACTION: Notice of Unsolicited Financial Assistance Award.

SUMMARY: The Department of Energy announces that pursuant to 10 CFR 600.14, it is making a financial assistance award based on an unsolicited application under Grant Number DE-FG01-89CE15410 to TRD Corporation.

Scope

The funding for this grant will allow the grantee to develop, design and build an advanced prototype for a condensing mode of a gas-fired, high efficiency, residential furnace.

The purpose of this project is to improve the energy efficiency over conventional furnaces by at least 3-5 percent.

Eligibility

Based on receipt of an unsolicited application, eligibility of this award is being limited to TRD Corporation. The project represents a unique idea for which a competitive solicitation would be inappropriate. This project has high technical merit and represents an innovative technology which has a strong possibility of allowing for future reductions in the nation's energy consumption.

The term of this grant shall be 24 months from the effective date of award. The estimated cost of this grant is \$80,040.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Office of Procurement Operations, Attn: Phyllis

Morgan, MA-453.2, 1000 Independence Avenue SW., Washington, DC 20585.

Thomas S. Keefe,

Director, Contract Operations Division "B", Office of Procurement Operations.

[FR Doc. 89-14388 Filed 6-15-89; 8:45 am]

BILLING CODE 6450-01-M

Federal Energy Regulatory Commission

[Docket Nos. QF86-1038-002 et al.]

Hennepin Energy Resources Co., Limited Partnership, et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Hennepin Energy Resource Co., Limited Partnership

[Docket No. QF86-1038-002]

June 9, 1989.

On May 26, 1989, Hennepin Energy Resources Co., Limited Partnership (Applicant), of 4520 Executive Park Drive, P.O. Box 4577, Montgomery, Alabama 36103-4577, submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The small power production facility will be located in Minneapolis, Minnesota. The facility as originally proposed was to consist of three waterwall steam generators and a steam turbine generator. The primary energy source will be municipal solid waste.

The original application was filed on September 12, 1986 and granted on December 17, 1986 (37 FERC ¶62,239). The recertification is requested due to the decrease of a waterwall steam generator from three to two, increase in the net electric power production capacity from 29.3 MW to 31.7 MW, addition of a .72 mile transmission line and a change of ownership from Hennepin Energy Resource Co., Limited Partnership to United States Trust Company of New York as Owner Trustee for one or more investors, including a wholly owned subsidiary of General Electric Capital Corporation, as owner Participant.

Comment date: Thirty days from publication in the *Federal Register*, in accordance with Standard Paragraph E at the end of this notice.

2. City of Holyoke Gas and Electric Department, City of Westfield Gas and Electric Light Department, Marblehead Municipal Light Department, Middleborough Municipal Gas and Electric Department, North Attleboro Electric Department, Peabody Municipal Light Plant, Shrewsbury Electric Light Department, Templeton Municipal Light Plant Town of Boylston Municipal Light Department, Town of Hudson Light and Power Department, Town of Littleton Municipal Light and Water Department, Town of Wakefield Municipal Light Department and West Boylston Municipal Lighting Plant v. Boston Edison Company

[Docket No. EL87-13-004]

June 9, 1989.

Take notice that on May 22, 1989, the Boston Edison Company of Boston, Massachusetts 02199 (Edison) filed with the Commission a compliance billing report in accordance with the requirements of the Commission's order of March 23, 1989, in the above-referenced proceeding. Edison states that copies of the filing have been served on all persons listed on the Commission's official service list.

Comment date: June 23, 1989, in accordance with Standard Paragraph E at the end of this notice.

3. Hennepin Energy Resource Co., Limited Partnership

[Docket No. ER89-462-000]

June 12, 1989.

Take notice that on May 26, 1989, Hennepin Energy Resource Co., Limited Partnership (Hennepin), 4520 Executive Park Drive, P.O. Box 4577, Montgomery, Alabama 36103-4577, tendered for filing with the Federal Energy Regulatory Commission (Commission) its proposed initial rate schedule for sales of electric power to Northern States Power Company (NSP) from a qualifying small power production facility.

The Hennepin facility, located in Minneapolis, Minnesota, will use biomass in the form of municipal solid waste as its primary energy source. The facility was certified as a qualifying small power production facility by Order of the Director of Electric Regulation on December 17, 1986, 37 FERC ¶ 62,239 (1986). Recertification is being sought in that docket due to modification of the power production capacity to 31.7 MW net and a proposed change in ownership of the facility through a sale and leaseback transaction. As a qualifying facility in excess of 30 MW, Hennepin is subject to the Federal Power Act and related regulations.

Hennepin's proposed initial rate is set forth in Appendix 2 to the Resource Recovery Electric Sale Agreement between NSP and Hennepin tendered for filing. In addition to Commission acceptance of the proposed rates, Hennepin requests waiver of certain Commission Regulations regarding cost-of-service documentation, accounting and reporting requirements and various corporate regulations. Regarding the proposed change in ownership, Hennepin also seeks (1) Commission authorization under sections 203 and 204 of the Federal Power Act for the sale and leaseback transaction; and (2) a disclaimer of jurisdiction over the Owner Trustee and Owner Participant exempting them from regulation as public utilities. United Trust Company of New York will purchase the facility as Owner Trustee, for one or more institutional investors including a wholly owned subsidiary of General Electric Capital Corporation. Hennepin, as Lessee, will operate the facility. A copy of the filing was served on NSP as Hennepin's sole jurisdictional customer.

Comment date: June 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Century Power Corporation (formerly known as Alamito Company)

[Docket No. ER89-464-000]

June 12, 1989.

Take notice that on May 26, 1989, Century Power Corporation (formerly known as Alamito Company) tendered for filing the following submittals:

(1) A Notice of Cancellation of the Ten Year Power Sale Agreement with San Diego Gas & Electric Company, which terminates in accordance with its terms at midnight May 31, 1989. Century Power Corporation requests waiver of the notice requirements so that the applicable rate schedule will terminate concurrently with the underlying contract.

(2) An April 12, 1989 letter agreement with San Diego Gas & Electric Company amending the parties' 1989 Power Sales Agreement to provide that Century Power Corporation will be responsible for losses to the point of delivery to San Diego Gas & Electric Company. Waiver of notice is requested so that the letter agreement may become effective on May 30, 1989, the effective date designated by the Commission for the 1989 Power Sales Agreement.

(3) A May 1, 1989 letter agreement with the Western Area Power Administration (WAPA) providing for the sale of nonfirm, surplus energy from June 1 through September 30, 1989. It is expected that Century Power

Corporation will supply about 30 GWh in June 16, 19 GWh in July and August, and 15 GWh in September. Century Power Corporation asks for waiver of notice to permit an effective date of June 1, 1989, consistent with the agreement.

Comment date: June 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

5. Green Mountain Power Corporation

[Docket No. ER89-465-000]

June 12, 1989.

Take notice that on May 26, 1989, Green Mountain Power Corporation tendered for filing a proposed Electric Service Agreement for wholesale electric service by GMP to the Hardwick Electric Department, Town of Hardwick, Vermont pursuant to Green Mountain's FERC Electric Tariff Power Rate W. GMP has requested waiver of the 60-day notice requirement set forth in Section 35.3 of the Commission's regulations in order to permit service under the Electric Service Agreement to commence on July 1, 1989.

Comment date: June 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa Public Service Company

[Docket No. ER89-466-000]

June 12, 1989.

Take notice that on May 30, 1989, Iowa Public Service Company, tendered for filing an executed Firm Capacity Sales Agreement, dated April 24, 1989, whereby Iowa Public Service Company (IPS) will sell to Iowa Power & Light Company (Iowa Power) 50 megawatts (MW) firm peaking capacity and associated energy for a period commencing May 1, 1989 and ending October 31, 1989. IPS requests that the negotiated Agreement be made effective as of May 1, 1989.

Comment date: June 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

7. Pacific Gas and Electric Company

[Docket No. ER89-468-000]

June 12, 1989.

Take notice that on May 30, 1989, Pacific Gas and Electric Company (PG&E) tendered for filing two rate changes effective April 1, 1979 and April 1, 1984 which affects the Arvin-Edison Water Storage District (Arvin). These changes were made pursuant of Paragraph 6 of the original letter agreement (Agreement) between Arvin and PG&E dated December 22, 1967 regarding monthly billing for metering services provided by PG&E to Arvin.

Comment date: June 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

8. Central Illinois Public Service Company

[Docket No. ER89-458-000]

June 12, 1989.

Take notice that on May 25, 1989, Central Illinois Public Service Company (CIPS) tendered for filing a new Coordination Power Agreement between American Municipal Power-Ohio, Inc. (AMP-O) and Central Illinois Public Service Company, dated May 1, 1989.

CIPS requests an effective date of May 1, 1989, and therefore requests a waiver of the Commission's notice requirements.

The Coordination Power Agreement is intended to replace, in its entirety, the presently effective Short Term Agreement between CIPS and AMP-O. The Coordination Power Agreement contains proposed service schedules for Short Term Power and Limited Term Power.

Copies of this filing have been sent to American Municipal Power-Ohio, Inc., the Public Utilities Commission of Ohio and the Illinois Commerce Commission.

Comment date: June 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

9. Iowa Public Service Company

[Docket No. ER89-467-000]

June 12, 1989.

Take notice that on May 30, 1989, Iowa Public Service Company (IPS) tendered for filing an executed Firm Capacity Sales Agreement dated March 29, 1989 whereby IPS will supply Citizens Electric Corporation (CEC) with short-term power and associated energy commencing June 1, 1989 and continuing through September 30, 1989. IPS requests that the negotiated Agreement be made effective as of June 1, 1989.

Comment date: June 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Pool

[Docket No. ER89-463-000]

June 12, 1989.

Take notice that on May 26, 1989, the New England Power Pool (NEPOOL) tendered for filing an additional signature page to the NEPOOL Agreement dated September 1, 1971, as amended, signed by EUA Power Corporation. EUA Power Corporation has its principal office in Boston, Massachusetts.

NEPOOL indicates that the New England Power Pool Agreement has previously been filed with the

Commission as a rate schedule (designated NEPOOL FPC No. 1), and that EUA Power Corporation is filing over 90 other electric utilities as a member in the pool. NEPOOL further states that the filed signature page does not change the NEPOOL Agreement in any manner, other than to make EUA Power Corporation a member of the pool.

NEPOOL requests an effective date of August 1, 1989, for commencement of participation in the power pool by EUA Power Corporation.

Comment date: June 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

11. PacifiCorp, Doing Business as Pacific Power & Light Company and Utah Power & Light Company

[Docket No. ER89-356-000]

June 12, 1989.

Take notice that on June 2, 1989, PacifiCorp, doing business as Pacific Power & Light Company and Utah Power & Light Company (PacifiCorp), tendered for filing, in accordance with 18 CFR 35.12 of the Commission's Rules and Regulations, an amendment to its filing of the South Idaho Exchange Agreement (Agreement), Contract No. DE-MS79-89-B92524 dated February 13, 1989 under the docket referenced above.

PacifiCorp renews its request, pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations, that a waiver of prior notice be granted and that the rate schedule become effective on February 13, 1989, corresponding to the effective date of the Agreement.

Copies of this filing have been supplied to Bonneville Power Administration and the Idaho Public Utility Commission.

Comment date: June 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

12. AEP Generating Company

[Docket No. ER89-470-000]

June 12, 1989.

Take notice that on May 30, 1989, AEP Generating Company (AEGCO) filed with the Commission proposed changes to a unit power agreement between AEGCO and Indiana Michigan Power Company (I&M), for the sale of power and energy from the Rockport generating plant.

The changes are, for the most part, necessary in light of certain agreements entered into by AEGCO on March 17, 1989, to sell and lease back Rockport Unit No. 2 (Rockport 2). AEGCO proposes to change the term of the unit power agreement to correspond to the

lease agreements, to explicitly include rental lease payments in the cost-of-service formula rate and to properly allocate the effects of the sale/leaseback transaction to Rockport 2. Estimated revenues for the year 1990 under the sale/leaseback transaction and the associated billing changes proposed herein are \$39,824,000 lower than under the present ownership and billing arrangements.

In addition, AEGCO seeks to adopt the 75 day coal inventory limitation to Rockport 2 and to delete the equity reopener provision, in accordance with Commission policy.

The changes are proposed to be effective upon the commercial operation date of Rockport 2, presently expected to occur in December 1989. Copies of the filing were served upon the public service Commissions in the states of Kentucky, Indiana and Michigan.

Comment date: June 26, 1989, in accordance with Standard paragraph E at the end of this notice.

13. Empire District Electric Company

[Docket No. ER89-469-000]

June 12, 1989.

Take notice that the Empire District Electric Company, on May 30, 1989, tendered for filing proposed changes in its contract for Wholesale Electric Service with the City of Monett, Missouri.

The proposed changes would allow the terms and conditions of the present contract to remain in effect until April 28, 2009.

Copies of the filing were served upon the City of Monett.

Comment date: June 26, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.
Lois D. Cashell,
Secretary.
 [FR Doc. 89-14316 Filed 6-15-89; 8:45 am]
 BILLING CODE 6717-01-M

[Docket Nos. ER89-10-000 et al.]

Kansas Power and Light Company et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

Take notice that the following filings have been made with the Commission:

1. Kansas Power and Light Company

[Docket No. ER89-10-000]

June 8, 1989.

Take notice that on May 26, 1989, the Kansas Power and Light Company (KPL) tendered for filing certain Rate Schedules under which KPL will transmit power and energy from the Jeffrey Energy Center, over its transmission facilities, to transmission interconnections with Kansas Gas and Electric Company, Centel Corporation-Western Power Division, and Missouri Public Service Company.

Comment date: June 22, 1989, in accordance with Standard Paragraph E at the end of this notice.

2. Green Mountain Power Corporation

[Docket No. EL89-33-000]

June 9, 1989.

Take notice that on May 26, 1989, Green Mountain Power Corporation (GMP) filed pursuant to Rule 207 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure a Petition for a Declaratory Order finding that (1) GMP's lease of certain gas turbines owned by International Business Machines Corporation is not subject to the Commission's jurisdiction under Section 203 of the Federal Power Act, and (2) the execution and performance of the lease by IBM will not cause IBM to become a "public utility" subject to regulation by the Commission under Part II of the Federal Power Act.

GMP states that the lease of the gas turbines from IBM will enable it to avoid procuring additional peaking capacity at a higher cost than the lease payments, and will help to diversify its resources. GMP requests that the Commission act on its request as expeditiously as possible in order to permit construction of facilities needed to connect the gas turbines to its electric system before the commencement of its 1989-90 peak demand period.

Comment date: June 30, 1989, in accordance with Standard Paragraph E at the end of this notice

3. Torco Energy Marketing, Inc.

[Docket No. EL89-32-000]

June 9, 1989.

Take notice that on May 30, 1989, Torco Marketing, Inc. (Torco) tendered for filing a petition for declaratory order pursuant to sections 101(e) and 207(a)(1) of the Commission's Rules of Practice and Procedure, requesting the Commission to clarify the scope of Sections 201 and 203 of Part II of the Federal Power Act, and to waive the application of or grant blanket approval under certain of the Commission's regulations.

Torco seeks clarification and waivers with respect to its proposed electric energy transactions. Torco's intent to receive the same clarifications and waivers granted in *Citizens Energy*, Docket No. EL88-2-000 and *Howell Gas Management*, Docket No. EL87-50-000.

Torco intends to enter into wholesale transactions in which it will act as intermediary between two utilities. Such transactions will involve the purchase by Torco of wholesale electric power and energy from utilities with excess generating capacity for resale to electric utilities. Torco will act as an intermediary in such transactions, and will earn a margin on each sale. Torco will not own or operate electric generation or transmission facilities. Torco seeks clarification that funds created by such transactions are not "facilities" within the meaning of section 203 of the Federal Power Act. Torco also requests clarification that its activities as a broker, where it does not purchase and sell electricity, are not subject to Commission jurisdiction.

In addition, Torco requests waiver of or blanket approvals under various regulations of the Commission in order to limit the administrative burden. Torco submits that the regulations under which it requests waiver or blanket approval are designed for franchised utilities with service obligations, and are not useful to the Commission in this case. Such request for waivers or approvals pertains to the Commission's accounting and periodic reporting requirements, Parts 41, 50, 101, and 141; regulations concerning interlocking directorships and officers, Part 45 and 48; regulations concerning future issuances of securities and assumptions of liability, Part 34; and rate schedule filing requirements, Subparts B and C of Part 35.

Comment date: June 30, 1989, in accordance with Standard Paragraph E at the end of this notice.

4. Northern California Power Agency v. Pacific Gas and Electric Company

[Docket No. EL89-34-000]

June 9, 1989.

Take notice that on May 31, 1989, Northern California Power Agency (NCPA) tendered for filing a complaint and request for declaratory relief against Pacific Gas and Electric Company (PG&E). NCPA states that the complaint concerns the terms of an Interconnection Agreement (on file with the Commission as PG&E Rate Schedule No. 84) among PG&E, NCPA, and various members of NCPA.

NCPA states that certain of PG&E's actions and practices in billing under the Interconnection Agreement are in violation of the Interconnection Agreement, unjust and unreasonable, and warrant relief. NCPA requests that the Commission declare that the PG&E charges at issue violate the Interconnection Agreement and that the Commission order PG&E to cease and desist from seeking to collect sums in excess of, and without regard to, the filed rate. NCPA also requests that the Commission find that the requirement imposed upon NCPA by the Interconnection Agreement to maintain a security deposit of \$25,000,000 is unjust, unreasonable, unconscionable, and should be terminated. NCPA also requests that the Commission order PG&E to refund with interest payments received by PG&E inconsistent with the terms of the Interconnection Agreement.

Comment date: July 10, 1989, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 89-14317 Filed 6-15-89; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP89-1557-000 et al.]

United Gas Pipe Line Co. et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. United Gas Pipe Line Co.

[Docket No. CP89-1557-000]

June 9, 1989.

Take notice that on June 1, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1557-000, a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) and the Natural Gas Policy Act (18 CFR 284.223) for authorization to provide a transportation service for Exxon Corporation (Exxon), a producer of natural gas, under United's blanket certificate issued in Docket No. CP88-6-000 pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

United proposes to transport, on an interruptible basis, up to 61,800 MMBtu of natural gas equivalent per day for Exxon pursuant to a transportation agreement dated June 22, 1988, between United and Exxon. United would receive natural gas at a receipt point in Louisiana, and redeliver equivalent volumes of gas at various delivery points in Louisiana.

United further states that the estimated average daily and annual quantities would be 61,800 MMBtu and 22,557,000 MMBtu respectively. Service under § 284.223(a) commenced September 8, 1988, as reported in Docket No. ST89-3503-000, it is stated.

Comment date: July 24, 1989, in accordance with Standard Paragraph C at the end of this notice.

2. Williston Basin Interstate Pipeline Co.

[Docket No. CP89-1550]

June 9, 1989.

Take notice that on June 1, 1989, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 200, 304 East Rosser Avenue, Bismarck, North Dakota 58501, filed in Docket No. CP89-1550-000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the

Natural Gas Act for authorization to add metering and appurtenant facilities under the blanket certificate issued in Docket No. CP82-487-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Williston Basin seeks authorization to construct a sales tap, metering and appurtenant facilities to deliver up to 150 Mcf per year of natural gas to Montana-Dakota Utilities Company for use in providing gas service for space heating purposes for a church. Williston Basin states that the volumes to be delivered are within the certificated entitlement of the customer. Williston Basin states that the estimated cost of the facilities is \$756.

Comment date: July 24, 1989, in accordance with Standard Paragraph C at the end of this notice.

3. Tennessee Gas Pipeline Co.

[Docket No. CP89-1570-000]

June 9, 1989.

Take notice that on June 5, 1989, Tennessee Gas Pipeline Company (Applicant), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1570-000 a request, pursuant to § 284.223 of the Commission's Regulations, for authorization to provide a transportation service for FEC Marketing, Inc. (FEC), a marketing company, under Applicant's blanket certificate issued in Docket No. CP87-115-000 on June 18, 1987, pursuant to section 7(c) of the Natural Gas Act, all as more fully set out in the request on file with the Commission and open to public inspection.

Applicant states that pursuant to a transportation agreement dated April 19, 1989, and an amendment dated April 21, 1989, it proposes to transport natural gas for FEC, from receipt points located offshore Louisiana, and in the States of Louisiana, Mississippi, and Alabama. The points of delivery are located in the States of Louisiana, Mississippi, Alabama, and Tennessee.

The Applicant further states that the maximum daily quantity under the contract is 50,000 dekatherms, while it estimates that average day and annual transportation volumes initially will be approximately 50,000 dekatherms and 18,250,000 dekatherms, respectively. Service under § 284.223(a) commenced May 1, 1989, as reported in Docket No. ST89-3645-000 (filed May 26, 1989).

Comment date: July 24, 1989, in accordance with Standard Paragraph C at the end of this notice.

4. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-1491-000]

June 9, 1989.

Take notice that on May 23, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1491-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide a firm transportation service for Bowling Green Gas Company (Bowling), a local distributor, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated April 1, 1989, under its Rate Schedule PT, it proposes to transport up to 1,916 dekatherms (dt) per day equivalent of natural gas for Bowling. Panhandle states that it would receive the gas from Arkla and Transok in Custer County, Oklahoma, and Oklahoma Natural Gas Company in Dewey County, Oklahoma. It is further stated that Panhandle would transport and deliver such gas, less fuel used and unaccounted for line loss, to Bowling in Pike County, Missouri.

Panhandle advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89-3226. Panhandle further advises that it would transport 1,916 dt on an average day and 699,340 dt annually.

Comment date: July 24, 1989, in accordance with Standard Paragraph C at the end of this notice.

5. Stingray Pipeline Co.

[Docket No. CP89-1575-000]

June 9, 1989.

Take notice that on June 5, 1989, Stingray Pipeline Company (Stingray), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1575-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Elf Aquitaine, Inc. (EAI), a producer, under the blanket certificate issued by the Commission's Order No. 509, pursuant to section 7 of the Natural Gas Act, corresponding to the rates, terms and conditions filed in Docket No. RP89-70-000, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Stingray states that pursuant to a transportation agreement dated April 12,

1989, under its Rate Schedule ITS, it proposes to transport up to 15,000 dekatherms (dt) per day equivalent of natural gas for EAL Stingray states that it would transport the gas from various receipt points on its system as shown in Exhibit "A" of the transportation agreement and would deliver the gas, less fuel used and unaccounted for line loss, to Holly Beach and the OXY-NGL plant, both located in Cameron Parish, Louisiana, and Stingray-HIOS Exchange (EHI-A330), located offshore Texas.

Stingray advises that service under § 284.223(a) commenced April 14, 1989, as reported in Docket No. ST89-3202. Stingray further advises that it would transport 2,000 dt on an average day and 730,000 dt annually.

Comment date: July 24, 1989, in accordance with Standard Paragraph C at the end of this notice.

6. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-1462-000]

June 9, 1989.

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1462-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide firm transportation service for the Amgas, Inc. (Amgas), a shipper and marketer of natural gas, under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that, it proposes to transport up to 230 dekatherms (dt) per day equivalent of natural gas for Amgas' behalf. Panhandle states that it would transport the gas from various receipt points on its system, and deliver such gas, less fuel used and unaccounted for line loss, to Illinois Power—Champaign—Savoy in Champaign County, Illinois.

Panhandle advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89-3290. Panhandle further advises that it would transport 115 dt on an average day and 41,975 dt annually.

Comment date: July 24, 1989, in accordance with Standard Paragraph C at the end of this notice.

7. ANR Pipeline Co.

[Docket No. CP89-1562-000]

June 9, 1989.

Take notice that on June 2, 1989, ANR Pipeline Company (ANR), 500

Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP89-1562-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to transport natural gas for Cornerstone Production, Inc. (Cornerstone), a marketer of natural gas, under ANR's blanket certificate issued in Docket No. CP88-532-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

ANR proposes to transport on an interruptible basis up to 150,000 dt equivalent of natural gas on a peak day, 150,000 dt equivalent on an average day and 57,750,000 dt equivalent on an annual basis for Cornerstone. ANR states that it would perform the transportation service for Cornerstone under ANR's Rate Schedule ITS. ANR indicates that it would transport the gas from receipt points in the offshore Louisiana, Louisiana and Texas gathering areas, to delivery points located in the offshore Louisiana gathering area.

It is explained that the service commenced April 22, 1989, under the automatic authorization provisions of § 284.223 of the Commission's Regulations, as reported in Docket No. ST89-3528. ANR indicates that no new facilities would be necessary to provide the subject service.

Comment date: July 24, 1989, in accordance with Standard Paragraph C at the end of this notice.

8. Associated Natural Gas Co., a Division of Arkansas Western Gas Co.

[Docket No. CP89-1487-000]

June 9, 1989.

Take notice that on May 22, 1989, Associated Natural Gas Company, a Division of Arkansas Western Gas Company (Associated), 1001 Sain Street, Fayetteville, Arkansas 72703, filed in Docket No. CP89-1487-000 an application pursuant to section 7(f) of the Natural Gas Act to add Scott and Mississippi Counties, Missouri and parts of New Madrid and Stoddard Counties, Missouri to its existing service area, all as more fully described in the application which is on file with the Commission and open to public inspection.

Associated states that it would construct pipeline facilities to connect its currently isolated local distribution system in the proposed service area to its local distribution system in its existing service area. Associated asserts that the integration of the two areas would provide increased operational flexibility and reliability of service at a

minimal cost and also facilitate future supply planning.

Comment date: June 30, 1989, in accordance with Standard Paragraph F at the end of this notice.

9. Tennessee Gas Pipeline Co.

[Docket No. CP89-1548-000]

June 9, 1989.

Take notice that on May 31, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon its part of an exchange service between Tennessee and Trunkline Gas Company (Trunkline) performed pursuant to authorization received in Docket No. CP80-53. In that docket, Tennessee and Trunkline were authorized to exchange up to 5,000 Mcf per day on a gas for gas basis, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Pursuant to the terms of the Gas Exchange Agreement dated June 22, 1979 (Agreement) Trunkline gave notice of its intent to terminate the Agreement effective November 1, 1988. In Docket No. CP89-1157-000, Trunkline filed an application pursuant to section 7(b) of the Natural Gas Act for an order authorizing the abandonment of its part of the exchange service.

Comment date: June 30, 1989, in accordance with Standard Paragraph F at the end of the notice.

10. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-1482-000]

June 12, 1989.

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1482-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide interruptible transportation service for Mountain Industrial Gas Company (Mountain), a shipper and marketer under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated March 31, 1989, under its Rate Schedule PT, it proposes to transport up to 2,000 dekatherms (dt) per day equivalent of natural gas for Mountain. Panhandle

states that it would transport the gas from various receipt points on its system, and deliver such gas, less fuel used and unaccounted for line loss, to Morton County, Kansas.

Panhandle advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89-3295. Panhandle further advises that it would transport 600 dt on an average day and 219,000 dt annually.

Comment date: June 27, 1989, in accordance with Standard paragraph G at the end of this notice.

11. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP89-1583-000]

June 12, 1989.

Take notice that on June 7, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1583-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Arco Natural Gas Marketing, Inc. (Arco), a marketer, under the blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated April 1, 1989, under its Rate Schedule IT-1, it proposes to transport up to 200,000 MMBtu per day equivalent of natural gas for Arco. Northern states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to multiple delivery points also shown in Appendix "A" of the agreement. Northern also states that the proposed service may involve the compression of gas at its Fort Buford Compressor Station for delivery to Northern Border Pipeline Company.

Northern advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89-3232-000 (filed April 27, 1989). Northern further advises that it would transport 150,000 MMBtu on an average day and 73,000,000 MMBtu annually.

Comment date: June 27, 1989 in accordance with Standard Paragraph C at the end of the notice.

12. Northern Natural Gas Co., Division of Enron Corp.

[Docket No. CP89-1585-000]

June 12, 1989.

Take notice that on June 7, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1585-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for West Texas Gas, Inc. (West Texas), a producer, under the blanket certificate issued in Docket No. CP86-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated May 3, 1989, under its Rate Schedule IT-1, it proposes to transport up to 30,000 MMBtu per day equivalent of natural gas for West Texas. Northern states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to multiple delivery points also shown in Appendix "A" of the agreement.

Northern advises that service under § 284.223(a) commenced May 3, 1989, as reported in Docket No. ST89-3705-000 (filed May 31, 1989). Northern further advises that it would transport 22,500 MMBtu on an average day and 10,950,000 MMBtu annually.

Comment date: July 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

13. Tennessee Gas Pipeline Co.

[Docket No. CP89-1563-000]

June 12, 1989.

Take notice that on June 2, 1989, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP89-1563-000 a request pursuant to § 157.205 of the Commission's Regulations for authorization to provide transportation service on behalf of Tejas Hydrocarbon Company (Tejas), under Tennessee's blanket certificate issued in Docket No. CP87-115-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Tennessee requests authorization to transport, on an interruptible basis, up to a maximum of 125,000 dt of natural gas per day for Tejas from receipt points located in Louisiana, offshore Louisiana

and Texas to delivery points located in several states off Tennessee's system. Tennessee anticipates transporting, on an average day 125,000 dt and an annual volume of 46,625,000 dt.

Tennessee states that the transportation of natural gas for commenced May 1, 1989, as reported in Docket No. ST89-3544-000, for a 120-day period pursuant to § 284.223(a) of the Commission's Regulations and the blanket certificate issued to Tennessee in Docket No. CP87-115-000.

Comment date: July 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

14. United Gas Pipe Line Co.

[Docket No. CP89-1552-000]

June 12, 1989.

Take notice that on June 1, 1989, United Gas Pipe Line Company (United), P.O. Box 1478, Houston, Texas 77251-1478, filed in Docket No. CP89-1552-000 a request pursuant to §§ 157.205 and 284.223 of the Commission's Regulations for authorization to provide interruptible transportation service on behalf of Conoco Inc. as agent for E. I. DuPont de Nemours and Company, an end user of natural gas under United's blanket certificate issued in Docket No. CP86-6-000 pursuant to section 7 of the Natural Gas act, all as more fully set forth in the request on file with the Commission and open to public inspection.

United States that it would transport 15,450 MMBtu on a peak and average day and 5,639,250 MMBtu on an annual basis.

United further states that it has commenced service under the 120-day automatic authorization and reported such service in Docket No. ST89-3417, pursuant to § 284.223(a) of the Regulations.

Comment date: July 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

15. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-1480-000]

June 12, 1989.

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1480-000 a request, as supplemented June 7, 1989, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide firm transportation service for the City of Fulton (Fulton), a shipper and local distribution company under the blanket certificate issued in Docket No. CP86-585-000, pursuant to section 7 of

the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated April 1, 1989, under its Rate Schedule PT, it proposes to transport up to 8,386 dekatherms (dt) per day equivalent of natural gas for Fulton. Panhandle states that it would transport the gas from receipt points on its system in Oklahoma, and deliver such gas, less fuel used and unaccounted for line loss, to the City of Fulton in Callaway County, Missouri.

Panhandle advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89-3113. Panhandle further advises that it would transport 2,170 dt on an average day and 792,050 dt annually.

Comment date: July 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

16. Panhandle Eastern Pipe Line Co.

[Docket No. CP89-1470-000]

June 12, 1989.

Take notice that on May 22, 1989, Panhandle Eastern Pipe Line Company (Panhandle), P. O. Box 1642, Houston, Texas 77251-1642, filed in Docket No. CP89-1470-000 a request, as supplemented June 7, 1989, pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide firm transportation service for the Village of Pleasant Hill (Pleasant Hill), a shipper and local distribution company under the blanket certificate issued in Docket No. CP88-585-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Panhandle states that pursuant to a transportation agreement dated April 1, 1989, under its Rate Schedule PT, it proposes to transport up to 839 dekatherms (dt) per day equivalent of natural gas for Pleasant Hill. Panhandle states that it would transport the gas from a receipt point on its system in Kansas, and deliver such gas, less fuel used and unaccounted for line loss, to the Village of Pleasant Hill in Pike County, Illinois.

Panhandle advises that service under § 284.223(a) commenced April 1, 1989, as reported in Docket No. ST89-3086. Panhandle further advises that it would transport 151 dt on an average day and 55,115 dt annually.

Comment date: July 27, 1989, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for the applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for

authorization pursuant to section 7 of the Natural Gas Act.

Lois B. Cashell,
Secretary.

[FR Doc. 89-14318 Filed 6-15-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP72-110-049 et al.]

Algonquin Gas Transmission Co. et al.; Filing of Pipeline Refund Reports

June 12, 1989.

Take notice that the pipelines listed in the Appendix hereto have submitted to the Commission for filing proposed refund reports. The date of filing and docket number are also shown in the Appendix.

Any person wishing to do so may submit comments in writing concerning the subject refund reports. All such comments should be filed with or mailed to the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, on or before July 3, 1989. Copies of the respective filings are on file with the Commission and available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

Filing Date	Company	Docket No.
7/28/87	Algonquin Gas Transmission Co.	RP72-110-049
9/20/88	Ozark Gas Transmission System.	IN86-6-002
12/30/88	Algonquin Gas Transmission Co.	RP72-110-048
3/2/89	Midwestern Gas Transmission Corp.	RP89-35-003
5/17/89	Ozark Gas Transmission System.	IN86-6-003
5/18/89	Williams Natural Gas Co.	RP86-68-013
5/25/89	Northwest Pipeline Corp.	RP89-1-009

[FR Doc. 89-14324 Filed 6-15-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP87-389-003]

National Fuel Gas Supply Corp.; Petition To Amend

June 12, 1989.

Take notice that on May 30, 1989, National Fuel Gas Supply Corporation (National Fuel), Ten Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP87-389-003, a petition, as supplemented June 7, 1989, to amend the certificate of public convenience and

necessity issued in Docket No. CP87-389-000, as amended, so as to authorize, for an additional one-year period commencing September 24, 1989, the transportation on an interruptible basis of up to 37,399 Mcf per day on behalf of National Fuel Distribution Corporation (Distribution) for the account of 93 of its existing customers. National Fuel also seeks authorization to transport up to 11,209 Mcf per day for the account of 61 additional customers of Distribution for a like term. In addition, National Fuel seeks authorization to transport additional volumes and/or modify receipt or delivery points with respect to certain end users covered by National Fuel's certificates issued in Docket Nos. CP88-759-000, as amended and modified, and CP88-225-000, as amended and modified. Finally, National Fuel seeks an additional one-year term beyond the authorization granted to National Fuel in Docket No. CP88-225-002. All of these requests are more fully set forth in the petition and open to public inspection.

It is stated that National Fuel was authorized on September 23, 1988, in Docket No. CP87-389-000 to transport up to 35,414 Mcf of natural gas per day on behalf of Distribution for the account of 113 customers of Distribution, including 1,000 Mcf per day on behalf of Distribution for the account of Rochester Gas and Electric Corporation. It is stated that on December 18, 1988, and April 27, 1989, the Commission in Docket Nos. CP88-759-000 and CP88-225-002, *et al.*, respectively, authorized National Fuel to transport additional volumes of gas and/or modify the receipt or delivery points applicable to certain of these customers.

National Fuel now requests to further amend the certificates issued in Docket No. CP87-389-000, as amended and modified, so as to extend the term of the interruptible transportation of up to 37,399 Mcf per day on behalf of Distribution for the account of 93 of the original customers (Appendix A) ¹ and to add 61 new end-user customers using up to 11,209 Mcf per day (Appendix B).¹

In addition, National Fuel requests authorization to modify existing certificates in Docket Nos. CP88-759-000, as amended, and CP88-225-000, as amended, in order to increase the transportation volumes authorized therein for 34 end-user customers of Distribution by up to 11,677 Mcf per day (Appendix C(1)) ¹ and to change receipt/delivery points for 66 end-user customers (Appendix C(2)) ¹.

¹ Appendices A,B,C(1), and C(2) can be picked up in the Office of Public Reference, as they will not be published in the Federal Register.

National Fuel also seeks to extend the term of the authorization issued in Docket No. CP88-225-002 by an additional one year. Details such as receipt/delivery points and sellers are available in National Fuel's application.

National Fuel proposes no change in the authorized rates and proposes no new facilities to implement the change in service.

Any person desiring to be heard or to make any protest with reference to said petition to amend should on or before July 3, 1989, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-14325 Filed 6-15-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP89-188-000 and RP89-188-001]

Natural Gas Pipeline Co. of America; Changes In FERC Gas Tariff

June 12, 1989.

Take notice that on June 7, 1989, Natural Gas Pipeline Company of America (Natural) filed Substitute Original Sheet Nos. 173 and 174 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective June 1, 1989.

Natural states that the purpose of this filing is flow-through the upstream transition costs allocated to it by Colorado Interstate Gas Company (CIG), Natural's upstream pipeline supplier, in Docket No. RP89-178-000. Natural proposes to flow-through the costs to its customers by using the direct-billing method of recovery. Costs will be allocated among Natural's customers based on past purchase deficiencies using the same Base and Deficiency Periods as CIG used in its filing. Natural's tariff incorporates procedures to permit recovery of future transition costs assessed by CIG and its

upstream suppliers or by other upstream pipeline suppliers to Natural.

Natural requests any waivers of the Commission's Regulations as are necessary to allow the tariff sheets to become effective June 1, 1989. A copy of the filing was mailed to Natural's jurisdictional sales customers and interested state regulatory agencies.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed on or before June 19, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-14319 Filed 6-15-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. TM89-4-26-000 and RP89-189-000]

Natural Gas Pipeline Co. of America; Changes In FERC Gas Tariff

June 12, 1989.

Take notice that on June 7, 1989, Natural Gas Pipeline Company of America (Natural) submitted for filing Sixth Revised Sheet Nos. 169 and 170 to be a part of its FERC Gas Tariff, Third Revised Volume No. 1, to be effective July 1, 1989.

Natural states that the purpose of this filing are to (1) recover transition costs related to contracts in litigation at March 31, 1989; (2) revise the accrued interest for the month of May 1989 to reflect actual transition costs incurred in April 1989; and (3) include accrued interest for the month of June 1989. Interest is accrued only on transition costs included for recovery in Natural's prior filings under this proceeding.

Natural requests that the Commission grant any waivers it deems necessary to allow the tariff sheets to become effective July 1, 1989. A copy of the filing was mailed to Natural's jurisdictional sales customers and interested state regulatory agencies, and all parties set out on the official service list in Docket No. RP88-94-000.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211. All such motions or protests must be filed on or before June 19, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-14323 Filed 6-15-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. CP89-1577-000]

**Northern Natural Gas Company
Division of Enron Corp.; Request
Under Blanket Authorization**

June 12, 1989.

Take notice that on June 6, 1989, Northern Natural Gas Company, Division of Enron Corp. (Northern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251-1188, filed in Docket No. CP89-1577-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to provide an interruptible transportation service for Excalibur Energy Corporation (Excalibur), a marketer, under the blanket certificate issued in Docket No. CP88-435-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that pursuant to a transportation agreement dated April 7, 1989, under its Rate Schedule IT-1, it proposes to transport up to 200,000 MMBtu per day equivalent of natural gas for Excalibur. Northern states that it would transport the gas from multiple receipt points as shown in Appendix "A" of the transportation agreement and would deliver the gas to multiple delivery points also shown in Appendix "A" of the agreement. Northern also states that the proposed service may involve the compression of gas at its Fort Buford Compressor Station for delivery to Northern Border Pipeline Company.

Northern advises that service under § 284.223(a) commenced April 7, 1989, as reported in Docket No. ST89-3402-000

(filed May 8, 1989). Northern further advises that it would transport 150,000 MMBtu on an average day and 73,000,000 MMBtu annually.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-14328 Filed 6-15-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-190-000]

**Northwest Pipeline Corp.; Proposed
Change in FERC Gas Tariff**

June 12, 1989.

Take notice that on June 6, 1989, Northwest Pipeline Corporation ("Northwest") submitted Third Revised Sheet No. 31 to be a part of Rate Schedule SGS-1, in its FERC Gas Tariff, First Revised Volume No. 1.

Northwest has requested approval to revise the "Availability" provision of Rate Schedule SGS-1, to ensure availability of SGS-1 services to existing SGS-1 customers. Northwest requests waivers to permit a February 1, 1989 effective date for the aforementioned sheet.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 19, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public

inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-14320 Filed 6-15-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. RP89-191-000]

**Northwest Pipeline Corp.; Proposed
Changes in FERC Gas Tariff**

June 12, 1989.

Take notice that on June 6, 1989, Northwest Pipeline Corporation ("Northwest") submitted for filing, to be part of its FERC Gas Tariff, the following tariff sheets:

First Revised Volume No. 1
Fourth Revised Sheet No. 101

Original Volume No. 1-A
Seventeenth Revised Sheet No. 201
Second Revised Sheet No. 304
Original Sheet No. 305
Sheet Nos. 306 through 310
First Revised Sheet No. 316
Original Sheet No. 316-A
Second Revised Sheet No. 401
Second Revised Sheet No. 403 and 404
First Revised Sheet Nos. 405 through 407
Second Revised Sheet No. 418

Northwest states that these tariff sheets were revised in order to update certain operating provisions to enhance Northwest's ability to provide more efficient transportation service.

Northwest requests a waiver to permit an effective date of July 1, 1989 for the tendered sheets.

A copy of this filing has been mailed to all jurisdictional customers and affected state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 19, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-14321 Filed 6-15-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket No. TQ89-3-9-000]

**Tennessee Gas Pipeline Co.; Rate
Change Under Tariff Rate Adjustment
Provisions**

June 12, 1989

Take notice that on June 8, 1989, Tennessee Gas Pipeline Company (Tennessee) tendered for filing the following tariff sheets to its FERC Gas Tariff to be effective July 1, 1989:

Second Revised Volume No. 1

Item A: Substitute Thirteenth Revised Sheet No. 20; Substitute Tenth Revised Sheet No. 20A; Substitute Fifteenth Revised Sheet No. 21.

Item B: Fourth Revised Sheet Nos. 31 through 38.

Original Volume No. 2

Item C: Substitute Fourteenth Revised Sheet No. 5; Substitute Thirteenth Revised Sheet No. 6.

Tennessee states that the revisions listed as Item A reflect PGA current rate adjustments pursuant to section 2 of Article XXIII of the General Terms and Conditions of Tennessee's Tariff.

Tennessee states that the revisions listed as Item B reflect (1) amortization of Order 94 production-related costs pursuant to the settlement agreement approved by the Commission's Order on June 14, 1985 in Docket Nos. CP84-441, *et al.* and (2) recovery of Order 473 compressor fuel costs pursuant to Article XXIX of the General Terms and Conditions.

Tennessee states that the revisions listed as Item C adjust transportation rate schedules to reflect changes in the cost of gas used for fuel pursuant to section 5 of Article XXIII of the General Terms and Conditions.

Tennessee states that copies of the filing have been mailed to all of its customers and affected state regulatory commissions. Any persons desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, Washington DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before June 19, 1989. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene; provided, however, that any person who had previously filed a motion to intervene in this proceeding is not required to file a further motion. Copies of this filing are on file with the

Commission and are available for public inspection.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-14322 Filed 6-15-89; 8:45 am]
BILLING CODE 6717-01-M

[Docket Nos. RP88-67-000, RP88-81-000,
and RP88-221-000]

**Texas Eastern Transmission Corp.;
Informal Settlement Conference**

June 9, 1989.

Take notice that a settlement conference will be convened in this proceeding on June 29, 1989, at 2:00 p.m., at the offices of the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, for the purpose of discussing the procedural dates in the above-referenced dockets.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(c) is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Dennis H. Melvin (202) 357-8076.

Linwood A. Watson, Jr.,
Acting Secretary.

[FR Doc. 89-14327 Filed 6-15-89; 8:45 am]
BILLING CODE 6717-01-M

DEPARTMENT OF ENERGY

Southeastern Power Administration

**Order Confirming and Approving
Power Rates on an Interim Basis;
Correction**

AGENCY: Southeastern Power Administration (Southeastern), Energy.

ACTION: Correction of notice approving rate schedules on an interim basis of the Georgia-Alabama projects' rates.

SUMMARY: In the Federal Register of June 5, 1989, on page 24028, Southeastern Power Administration published a rate order for the Georgia-Alabama System of Projects. Eight rate schedules were inadvertently omitted from the publication and are included herein. The rate schedules are ALA-3-B, MISS-2-B, GU-1-B, ALA-1-F, MISS-1-F, SC-3-A, CAR-3-A, and SCE-2-A.

FOR FURTHER INFORMATION CONTACT:

Leon Jourlmon, Jr., Director, Power Marketing, Southeastern Power Administration, Department of

Energy, Samuel Elbert Building, Elberton, Georgia 30835.
Rodney L. Adelman, WDC, Director, Washington Liaison Office, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

Issued in Elberton, Georgia, June 9, 1989.

Harry C. Geisinger,
Administrator.

Wholesale Power Rate Schedule ALA-3-B

Availability

This rate schedule shall be available to public bodies and cooperatives (any one of which is hereinafter called the Customer) in Alabama, owning distribution systems, to whom power may be wheeled pursuant to contracts between the government and the Alabama Power Company (hereinafter called the Company).

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer and to any deficiency energy purchased by the Government from the Companies.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on the Company's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity, energy, transmission and other transmission sold under this rate schedule for the periods specified shall be:

Capacity Charge: Per kilowatt of total contract demand for the period:
June 1989 through September 1990.....\$1.74
Energy Charge: Mills per kilowatt-hours..... 8.50
Other Transmission Charge: Per kilowatt of total contract demand.....\$2.00
Transmission Charge: Per kilowatt of total contract demand.....\$1.44

This rate is subject to annual adjustment on January 1, and will be computed subject to the Appendix C attached to the Government-Company contract, less

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\$11 per kilowatt for use of facilities revenues from the Southern Companies.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less five and one-half (5.5) percent losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\frac{\text{Number of kilowatts unavailable for at least 12 hours in any calendar day}}{\text{Monthly capacity charge}} \times \frac{\text{Number of days in billing month}}{\text{Number of days in billing month}}$$

June 1, 1989.

Wholesale Power Rate Schedule MISS-2-B

Availability

This rate schedule shall be available to cooperatives (any one of which is hereinafter called the Customer) in Mississippi, owning distribution systems, to whom power may be wheeled pursuant to contracts between the Government and, respectively, the Mississippi Power Company, (hereinafter called the Company).

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer and to any deficiency energy purchased by the Government from the Companies.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on the Company's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity, energy, transmission and other transmission sold under this rate schedule for the periods specified shall be:

Capacity Charge: Per kilowatt of total contract demand for the period:	
June 1989 through September 1990.....	\$1.74
Energy Charge: Mills per kilowatt-hour.....	8.50
Other Transmission Charge: Per kilowatt of total contract demand.....	\$.20
Transmission Charge: Per kilowatt of total contract demand.....	\$.71

This rate is subject to annual adjustment on January 1, and will be computed subject to the Appendix C attached to the Government-Company contract, less \$11 per kilowatt for use of facilities revenues from the Southern Companies.

Contract Demand

The contract demand is the amount of

capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less five and one-half (5.5) percent losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\frac{\text{Number of kilowatts unavailable for at least 12 hours in any calendar day}}{\text{Monthly capacity charge}} \times \frac{\text{Number of days in billing month}}{\text{Number of days in billing month}}$$

June 1, 1989.

Wholesale Power Rate Schedule GU-1-B

Availability

This rate schedule shall be available to cooperatives (any one of which is hereinafter called the Customer) in

Florida, owning distribution systems, to whom power may be wheeled pursuant to contracts between the Government and, respectively, the Gulf Power Company, (hereinafter called the Company).

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer and to any deficiency energy purchased by the Government from the Companies.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on the Company's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity, energy, transmission and other transmission sold under this rate schedule for the periods specified shall be:

Capacity Charge: Per kilowatt of total contract demand for the period:	
June 1989 through September 1990.....	\$1.74
Energy Charge: Mills per kilowatt-hour.....	8.50
Other Transmission Charge: Per kilowatt of total contract demand.....	\$.20
Transmission Charge: Per kilowatt of total contract demand.....	\$1.52

This rate is subject to annual adjustment on January 1, and will be computed subject to the Appendix C attached to the Government-Company contract, less \$11 per kilowatt for use of facilities revenues from the Southern Companies.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company

(less five and one-half (5.5) percent losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\frac{\text{Number of kilowatts unavailable for at least 12 hours in any calendar day}}{\text{Monthly capacity charge}} \times \frac{\text{Number of days in billing month}}{\text{Number of days in billing month}}$$

June 1, 1989.

Wholesale Power Rate Schedule ALA-1-F

Availability

This rate schedule shall be available to the Alabama Electric Cooperative, Incorporated (hereinafter called the Cooperative).

Applicability

This rate schedule shall be applicable to power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters, and Richard B. Russell Projects and sold under contract between the Cooperative and the Government.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase

alternating current at a nominal frequency of 60 Hertz and shall be delivered at the Walter F. George Project or other points of interconnection between the Cooperative and Alabama Power Company.

Monthly Rate

The monthly rate for capacity, energy, and other transmission sold under this rate schedule shall be:

Capacity Charge: Per kilowatt of total contract demand.....	\$1.59
Energy Charge: Mills per kilowatt-hour for scheduled energy.....	8.50
Other Transmission Charge: Per kilowatt of contract demand.....	\$.20

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Cooperative is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Cooperative and the Cooperative will purchase from the Government those quantities of energy specified by contract as available to the Cooperative for scheduling on a weekly basis. Energy quantities for a billing month shall be the energy scheduled by the Cooperative for the month.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Power Factor

The Cooperative shall take capacity and energy from the Government at such power factor as will best serve the Cooperative's system from time to time; provided, that the Cooperative shall not impose a power factor of less than .85 lagging on the Government's facilities which requires operation contrary to good operating practice or results in overload or impairment of such facilities.

Service Interruption

When capacity and energy delivery to the Cooperative's system for the account of the Government is reduced or interrupted and such reduction is not due to conditions on the Cooperative's system or has not been planned and agreed to in advance, the demand charge for the month for capacity made available shall be reduced as to the kilowatts of such capacity which have

been interrupted or reduced in accordance with the following formula:

$$\frac{\text{Number of kilowatts unavailable for at least 12 hours in any calendar day}}{\text{Monthly Capacity Charge}} \times \text{Number of days in billing month}$$

June 1, 1989.

Wholesale Power Rate Schedule MISS-1-F

Availability

This rate schedule shall be available to the South Mississippi Electric Power Association (hereinafter called the Customer) in Mississippi, owning distribution systems, to whom power may be wheeled pursuant to contracts between the Government and the Mississippi Power Company (hereinafter called the Company), or Alabama Electric Cooperative, Inc. (hereinafter called AEC).

Applicability

This rate schedule shall be applicable to the sale of wholesale of power and accompanying energy generated at the Allatoona, Buford, J. Strom Thurmond, Walter F. George, Hartwell, Millers Ferry, West Point, Robert F. Henry, Carters and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer and to any deficiency energy purchased by the Government from the Companies.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on the Company's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity, energy, transmission and other transmission sold under this rate schedule for the periods specified shall be:

Capacity Charge: Per Kilowatt of total contract demand for the period:	
June 1989 through September 1990.....	\$1.59
Energy Charge: Mills per kilowatt-hour.....	8.50
Other Transmission Charge: Per kilowatt of total contract demand.....	\$20
Transmission Charge: Per kilowatt of total contract demand.....	\$49

This rate is subject to annual adjustment on January 1, and will be computed

subject to the Appendix C attached to the Government-Company contract, less \$11 per kilowatt for use of facilities revenues from the Southern Companies.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less five and one-half (5.5) percent losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the last day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\frac{\text{Number of kilowatts unavailable for at least 12 hours in any calendar day}}{\text{Monthly Capacity Charge}} \times \text{Number of days in billing month}$$

June 1, 1989.

Wholesale Power Rate Schedule SC-3-A

Availability

This rate schedule shall be available to the following customers whose requirements or a portion thereof the Government shall contract to supply by delivery from the South Carolina Public Service Authority's (hereinafter called the Authority) system: Town of Bamberg, S.C. and City of Georgetown, S.C.

Applicability

This rate schedule shall be applicable to power and accompanying energy generated at the J. Strom Thurmond or the Richard B. Russell Projects (hereinafter called the Projects) and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on the Authority's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity, energy, transmission and other transmission sold under this rate schedule shall be:

Capacity Charge: Per kilowatt of total contract demand.....	\$1.66
Energy Charge: Mills per kilowatt-hour.....	8.50
Other Transmission Charge: Per kilowatt of total contract demand.....	\$20
Transmission Charge: Per kilowatt of total contract demand.....	\$1.34

The transmission rate is subject to annual adjustment on July 1, and will be computed subject to the formula A attached to the Government-Authority contract.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the Authority (less two (2) percent losses). The Customer's contract demand and

accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this rate schedule shall end at 12:00 midnight on the 20th day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Authority on its side of the delivery point.

Service Interruption

When energy delivery to the Customer's system for the account of the Government is reduced or interrupted, and such reduction or interruption is not due to conditions on the Customer's system, the demand charge for the month shall be appropriately reduced as to kilowatts of such capacity which have been interrupted or reduced for each day in accordance with the following formula:

$$\frac{\text{Number of kilowatts unavailable for at least 12 hours in any calendar day}}{\text{Monthly Capacity Charge}} \times \text{Number of days in billing month}$$

June 1, 1989.

Wholesale Power Rate Schedule CAR-3-A

Availability

This rate schedule shall be available to the attached list of public bodies and cooperatives (any one of which is hereinafter called the Customer) in North Carolina and South Carolina to whom power may be wheeled pursuant to contract between the Duke Power Company (hereinafter called the Company) and the Government.

Applicability

This rate schedule shall be applicable to power and accompanying energy generated at the Hartwell, J. Strom Thurmond, and the Richard B. Russell Projects (hereinafter called the Projects) and sold in wholesale quantities.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase

alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on the Company's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity, energy, transmission and other transmission sold under this rate schedule shall be:

Capacity Charge: Per kilowatt of total contract demand.....	\$1.95
Energy Charge: Mills per kilowatt-hour.....	8.50
Other Transmission Charge: Per kilowatt of total contract demand.....	\$20
Transmission Charge: Per kilowatt of total contract demand.....	\$1.44

The rate is subject to annual adjustment on January 21 and will be computed subject to the formula in Appendix A attached to the Government-Company contract.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the customer and the customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less six and one-half (6.5) percent losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the 20th day of each calendar month.

Conditions of Service

The customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed

by and at the expense of the Company on its side of the delivery point.
June 1, 1989.

Wholesale Power Rate Schedule SCE-2-A

Availability

This rate schedule shall be available to the following public bodies (any one of which is hereinafter called the Customer) in South Carolina, owning distribution systems, to whom power may be wheeled pursuant to contracts between the Government and the South Carolina Electric & Gas Company (hereinafter called the Company): Town of McCormick, City of Orangeburg, and Town of Winnsboro.

Applicability

This rate schedule shall be applicable to the sale at wholesale of power and accompanying energy generated at the J. Strom Thurmond, Hartwell, and Richard B. Russell Projects and sold under appropriate contracts between the Government and the Customer.

Character of Service

The electric capacity and energy supplied hereunder will be three-phase alternating current at a nominal frequency of 60 Hertz delivered at the delivery points of the Customer on the Company's transmission and distribution system. The voltage of delivery will be maintained within the limits established by the state regulatory commission.

Monthly Rate

The monthly rate for capacity, energy, transmission and other transmission sold under this rate schedule for the periods specified shall be:

Capacity Charge: Per kilowatt of total contract demand.....	\$1.96
Energy Charge: Mills per kilowatt-hour.....	8.50
Other Transmission Charge: Per kilowatt of total contract demand.....	\$20
Transmission Charge: Per kilowatt of total contract demand.....	\$1.78

The rate is subject to annual adjustment on May 21 of each year and will be computed subject to the formula in Appendix A attached to the Government-Company contract.

Contract Demand

The contract demand is the amount of capacity in kilowatts stated in the contract which the Government is obligated to supply and the Customer is entitled to receive.

Energy To Be Furnished by the Government

The Government will sell to the Customer and the Customer will purchase from the Government energy each billing month equivalent to a percentage specified by contract of the energy made available to the company (less five and one-half (5.5) percent losses). The Customer's contract demand and accompanying energy will be allocated proportionately to its individual delivery points served from the Company's system.

Billing Month

The billing month for power sold under this schedule shall end at 12:00 midnight on the 20th day of each calendar month.

Conditions of Service

The Customer shall at its own expense provide, install, and maintain on its side of each delivery point the equipment necessary to protect and control its own system. In so doing, the installation, adjustment, and setting of all such control and protective equipment at or near the point of delivery shall be coordinated with that which is installed by and at the expense of the Company on its side of the delivery point.

June 1, 1989.

[FR Doc. 89-14389 Filed 6-15-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-3599-8]

Designation of an Ocean Dredged Material Disposal Site (ODMDS) off Humboldt Bay, Humboldt County, California; Intent To Prepare an Environmental Impact Statement

AGENCY: U.S. Environmental Protection Agency (EPA), Region 9.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) on the designation of an ODMDS for dredged material off Humboldt Bay, Humboldt County, California.

PURPOSE: The U.S. EPA, Region 9, in cooperation with the San Francisco District of the U.S. Army Corps of Engineers (Corps), will prepare a Draft EIS (DEIS) for the designation of an ODMDS for dredged material off Humboldt Bay, Humboldt County, California. An EIS is needed to provide the information necessary to designate a suitable site for disposal of dredged material. This Notice of Intent is issued

pursuant to Section 102 of the Marine Protection, Research and Sanctuaries Act (MPRSA) of 1972, and 40 CFR Part 228 (Criteria for the Management of Disposal Sites for Ocean Dumping).

FOR FURTHER INFORMATION CONTACT: Shannon FitzGerald; Oceans and Estuaries Section (W-7-1); U.S. Environmental Protection Agency, Region 9; 215 Fremont Street; San Francisco, California, 94105; telephone number (415) 974-8275, or FTS 454-8275.

SUMMARY: Designation of the Humboldt Bay ODMDS is needed to provide a suitable disposal site or sites for dredged material removed from Humboldt Bay. Disposal of dredged material at any ODMDS is not permitted unless EPA and the Corps determine that the material is acceptable for disposal under EPA's Ocean Dumping criteria at 40 CFR 225 and 40 CFR 227. The Corps issues permits under section 103 of MPRSA subject to EPA review.

In preparation for an ODMDS designation EIS, EPA and the Corps are developing sampling plans which will include trawls, benthic grabs, current studies, and sampling the physical and chemical properties of the sediment and water column. A Corps sponsored survey of the local commercial fishermen is being conducted by WESCO to determine the location of important fisheries. The Corps will complete all environmental and economic studies related to the Humboldt Bay site in support of EIS preparation. EPA is responsible for reviewing the information used in preparation of the DEIS and publishing the document. The Corps will assist EPA in responding to any comments received on the DEIS and subsequent site designation work.

Need For Action: The Corps of Engineers, San Francisco District has requested that EPA designate an ODMDS offshore of Humboldt Bay, Humboldt County, California. An EIS is required to provide the necessary information to evaluate disposal alternatives and to designate the preferred ODMDS. If the proposed dredged material from Humboldt Bay meets the criteria for ocean disposal in 40 CFR 225 and 227, then the material may be disposed at the designated site or sites.

Alternatives: The EIS will characterize environmental parameters, assess environmental impacts and evaluate a reasonable range of alternatives to determine whether designation of an ocean disposal site is acceptable. The alternatives include: (1) No Action, (2) Upland Disposal, (3) Historical Ocean Dumping Sites, and (4)

Other Ocean Disposal Sites Within the Zone of Siting Feasibility.

Scoping: A Corps sponsored workshop was held on April 19, 1989 with EPA, local fishermen, Federal and state resource agencies, academic experts, and other parties interested in the designation of the ocean disposal site. A scoping meeting for the general public is scheduled on June 28, 1989 from 4:00 to 6:00 p.m. The meeting will be held in the Meeting Room of the Humboldt Bay Harbor, Recreation and Conservation District Office at Woodley Island Marina in Eureka, California. Written comments on this Notice of Intent should be sent to the contact person listed above no later than 45 days after the date of publication.

Estimated Date of Release: The DEIS will be made available about July 1991.

Responsible Official: Daniel W. McGovern, Regional Administrator, Region 9.

Dated: June 12, 1989.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 89-14379 Filed 6-15-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3603-1]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 382-5073 or (202) 382-5075.

Availability of Environmental Impact Statements; Filed June 5, 1989 Through June 9, 1989; Pursuant to 40 CFR 1506.9.

EIS No. 890148, DSuppl, CDB, CA, Azusa Central Business District Redevelopment Project Area, Parcel A/ Site 1, Increased Office and Commercial Space Construction, CDB Grant/Section 108 Loan Guarantee, City of Azusa, Los Angeles County, CA, Due: July 31, 1989, Contact: Robb Steel (818) 334-5125.

EIS No. 890150, FSuppl, FHW, MD, MD-32 Relocation and Upgrade of Related Facilities, MD-108 to Pindell School Road, Funding and 404 Permit, Howard County, MD, Due: July 17, 1989, Contact: Herman Rodrigo (301) 962-4132.

EIS No. 890151, Final, FHW, MD, US 50/Salisbury Bypass Construction, US 50 East of Rockwalkin Road to the US 50 and US 13 Bypass Interchange, Funding and 404 Permit, Wicomico County, MD, Due: July 17, 1989, Contact: Herman Rodrigo (301) 962-4010.

EIS No. 890152, Final, BLM, AZ, San Pedro River Riparian Resource Management Plan, Implementation, San Simon Resource Area, Safford District,

Cochise County, AZ, Due: July 17, 1989, Contact: Vernon Saline (602) 428-4040.

EIS No. 890153, DSuppl, FHW, MA, Central Artery/I-93 and Third Harbor Tunnel/I-90, South Boston Haul Road, Construction, Dorchester Avenue to Congress Street, Funding, 404 Permit and NPDES Permit, City of Boston, Suffolk County, MA, Due: July 31, 1989, Contact: Alexander Almeida (617) 494-2319.

EIS No. 890154, Final, FHW, HI, Alii Highway Construction, Kailue-Kona to Keauhou, Funding, Hawaii County, HI, Due: July 17, 1989, Contact: William Lake (808) 546-5150.

EIS No. 890155, Draft, OSM, AZ, Black Mesa and Kayenta Coal Mines, Mining and Reclamation Operations Permit, Life-of-Mine Mining Plan and 404 Permit, Hopi and Navajo Reservations, Navajo County, AZ, Due: August 18, 1989, Contact: Sarah Bransom (303) 844-2891.

Amended Notices

EIS No. 890078, Draft, NPS, AK, Denali National Park and Preserve, Mining Operations Management Plan, Implementation, AK, Due: August 14, 1989, Contact: Floyd W. Sharrock (907) 257-2616. Published FR 4-14-89—Review period extended.

EIS No. 890079, Draft, NPS, AK, Yukon-Charley Rivers National Preserve, Mining Operations Management Plan, Implementation, AK, Due: August 14, 1989, Contact: Floyd W. Sharrock (907) 257-2616. Published FR 4-14-89—Review period extended.

EIS No. 890080, Draft, NPS, AK, Wrangell-St. Elias National Park and Preserve, Mining Operations Management Plan, Implementation, AK, Due: August 14, 1989, Contact: Floyd W. Sharrock (907) 257-2616. Published FR 4-14-89—Review period extended.

Dated: June 13, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-14380 Filed 6-15-89; 8:45 am]

BILLING CODE 6560-50-M

[ER-FRL-3603-2]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared May 29, 1989 through June 2, 1989 pursuant to the Environmental Review Process (ERP), under Section 309 of the Clean Air Act and Section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 382-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 14, 1989 [54 FR 15006].

Draft EISs

ERP No.: D-AFS-J61075-WY, Rating EC2, Mountain Meadow Guest Ranch Expansion, Site Development Plan Approval, Special Use Permit Renewal, Medicine Bow National Forest, Albany, County, WY.

Summary: EPA requests additional information regarding geology, hydrology, soil analysis, location and depth of drinking water supplies in respect to the sewage system, and the mushroom *Boletus Edulis*. Additionally since the preferred alternative has not been selected, all 10 alternatives should be fully analyzed.

ERP No.: D-AFS-L65130-AK, Rating EC2, Big Islands Management Area, Resource Management Plan, Implementation, Hawkins, Hinchinbrook, Montague, Green, Little Green and Wooded Islands and The Needle, Prince Williams Sound, AK.

Summary: EPA's review of the draft EIS has identified effects on anadromous fisheries which may require changes to road construction or application of additional mitigation measures or monitoring.

ERP No.: D-BOP-K81019-CA, Rating EC2, Taft Federal Correctional Institution, Construction and Operation, Kern County, CA.

Summary: EPA expressed concerns regarding the proposed project's potential adverse impacts on wetlands and other special aquatic sites. EPA requested that the final EIS discuss whether any proposed project sites are contaminated with hazardous substances and whether the proposed project's construction or operation would involve hazardous materials.

ERP No.: DA-COE-H36016-IA, Rating LO, West Des Moines and Des Moines Flood Control Project, Authorized Plan Reevaluation, Polk County, IA.

Summary: EPA suggests the planned borrow site ponding areas be designed to function as wetland/water storage areas rather than deepwater ponds.

ERP No.: D-NPS-E40718-GA, Rating EC1, US 27/GA-1/LaFayette Road Relocation, US 27 near County Road-144 on the south and GA-2 at US 27 on the north, Approval and 404 Permit, Walker and Catoosa Counties, GA.

Summary: EPA urges conservation of existing forested areas given the projects potential to increase noise levels. The forested area provides a variety of functions such as noise reduction, wildlife habitat, minimization of impacts on parklands and

improvements to visual aesthetics along the highway.

Regulations

ERP No.: R-AFS-A02227-00, 36 CFR Parts 211, 228, and 281; Oil and Gas Resources (54 FR 3326).

Summary: EPA believes that the proposed rules have the potential to effectively protect resources within the National Forest System. Earlier opportunity for public and agency input into the review process for determining the suitability of lands for leasing should be provided. Revisions to the proposed rules regarding surface resource protection and the process for developing surface plans of operation are also needed.

Dated: June 13, 1989.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 89-14381 Filed 6-15-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3602-8]

Risk Assessment Guideline Meeting

AGENCY: Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: This notice announces a scientific workshop, sponsored by the Environmental Protection Agency (EPA), for analysis and review of issues relating to the use of human evidence under EPA's Guidelines for Carcinogen Risk Assessment (51 FR 33992, September 24, 1986). The meeting will be held at the Georgetown Omni Hotel in Washington, DC.

DATES: The workshop will begin on Monday, June 26 at 8:30 a.m. and end on Tuesday, June 27 at approximately 1:00 p.m. Members of the public may attend as observers.

ADDRESSES: Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, contact ERG's Workshop "Hotline" at 617-648-7898. Your registration will be verbally confirmed within 24 hours, and written confirmation will follow. For other logistical information contact Ms. Kate Schalk, Eastern Research Group, Inc., 6 Whittemore Street, Arlington, Massachusetts, 02174, Tel. (617) 648-7611/7800 by [five working days from date of notice]. Space is limited.

FOR FURTHER INFORMATION CONTACT: Shirley Thomas, U.S. Environmental Protection Agency, RD-689, 401 M Street SW., Washington DC, 20460, Tel. (202) 475-6743 (FTS: 475-6743).

SUPPLEMENTARY INFORMATION: This workshop is one of several preliminary steps in the current review of EPA's Guidelines for Carcinogen Risk Assessment. Other activities have included a request to the public for information on use of the guidelines (53 FR 32656, 26 August 1988), and a workshop on issues relating to the use of data from animal studies in predicting human cancer risk (53 FR 49920, 12 December 1988). This workshop is described in a recently published report (54 FR 16403, 24 April 1989).

EPA is assembling a panel of scientifically qualified persons to consider issues relating to the use of human data in risk assessment. Workshop panelists will address technical issues such as criteria for evaluating data from human studies and methods for using such data for risk assessment purposes. Panelists will exchange information on the technical basis for risk assessment guidance and the use of this information in possible amendments to the Agency's Guidelines for Carcinogen Risk Assessment. Approximately 18 experts in human epidemiology and related disciplines are expected to participate as panelists.

EPA will use the workshop discussions as part of its information gathering effort to assess the advisability of revising the Agency's Carcinogen Risk Assessment Guidelines. If the Agency proposes any changes in those guidelines, ample opportunity will be provided for public review and submission of written comments.

Dated: June 9, 1989.

Erich Bretthauer,
Acting Assistant Administrator for Research and Development.

[FR Doc. 89-14378 Filed 6-15-89; 8:45 am]

BILLING CODE 5600-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

June 9, 1989.

The Federal Communications Commission has submitted the following information collection requirements to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501-3520).

Copies of the submissions may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street

NW., Suite 140, Washington, DC 20037. Persons wishing to comment on these information, collections should contact Eyvette Flynn, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contact Jerry Cowden, Federal Communications Commission, (202) 632-7513.

OMB Number: 3060-0368

Title: Section 97.521, VEC Question Pools

Action: Extension

Respondents: Individuals or households and non-profit institutions

Frequency of Response: Recordkeeping requirement

Estimated Annual Burden: 3 recordkeepers; 480 hours; 160 hours average burden per recordkeeper

Needs and Uses: Rule is needed to permit Volunteer Examiner Coordinators to maintain amateur examination question pools used to make up amateur radio operator examinations.

OMB Number: 3060-0149

Title: Part 63—Section 214 Application and Supplemental Information Requirements (Sections 63.01-63.601)

Action: Reinstatement

Respondents: Businesses (including small businesses)

Frequency of Response: On occasion and semi-annual reporting

Estimated Annual Burden: 510 responses; 6,120 hours; 12 hours average burden per response

Needs and Uses: Information required by 47 CFR Part 63 is needed to determine if facilities operation or service initiation or discontinuance by existing or new telecommunication common carriers meets public convenience and necessity standard of the Communications Act of 1934, as amended.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-14331 Filed 6-15-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

(FEMA-832-DR)

Major Disaster and Related Determinations; Alaska

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Alaska (FEMA-832-DR), dated June 10, 1989, and related determinations.

DATED: June 10, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice

Notice is hereby given that, in a letter dated June 10, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq., Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Alaska, resulting from flooding beginning on May 1, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93-288, as amended by Pub. L. 100-707. I, therefore, declare that such a major disaster exists in the State of Alaska.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance and Public Assistance in the designated areas. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288, as amended by Pub. L. 100-707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Richard A. Buck of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Alaska to have been affected adversely by this declared major disaster:

All political jurisdictions and Alaska native villages along the Yukon and Kuskokwim Rivers and associated tributaries for Individual Assistance and Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 89-14374 Filed 6-15-89; 8:45 am]

BILLING CODE 6718-02-M

(FEMA-829-DR)

Amendment to Notice of a Major Disaster Declaration; Louisiana

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Louisiana (FEMA-829-DR), dated May 20, 1989, and related determinations.

DATED: June 12, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3614.

Notice:

The notice of a major disaster for the State of Louisiana dated May 20, 1989, is hereby amended to include Public Assistance in the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of May 20, 1989:

The parishes of Beauregard, Bienville, Claiborne, Lincoln, Natchitoches, Ouachita, Red River, Sabine, Vernon, and Winn for Public Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

Grant C. Peterson,

Associate Director State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-14375 Filed 6-15-89; 8:45 am]

BILLING CODE 6718-02-M

(FEMA-831-DR)

Major Disaster and Related Determinations; Ohio

AGENCY: Federal Emergency Management Agency.

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Ohio (FEMA-831-DR), dated June 10, 1989, and related determinations.

DATED: June 10, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance

Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice

Notice is hereby given that, in a letter dated June 10, 1989, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq., Pub. L. 93-288, as amended by Pub. L. 100-707), as follows:

I have determined that the damage in certain areas of the State of Ohio, resulting from severe storms and flooding beginning on May 23, 1989, is of sufficient severity and magnitude to warrant a major disaster declaration under Pub. L. 93-288, as amended by Pub. L. 100-707. I, therefore, declare that such a major disaster exists in the State of Ohio.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated areas. You are also authorized to provide Public Assistance in the affected areas, if requested and necessary. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under Pub. L. 93-288, as amended by Pub. L. 100-707, for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Phil Zaferopulos of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Ohio to have been affected adversely by this declared major disaster:

The counties of Butler, Cuyahoga, Geauga, Greene, Lake, Lorain, Mercer, Montgomery, Preble, and Warren for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Julius W. Becton, Jr.,

Director, Federal Emergency Management Agency.

[FR Doc. 89-14376 Filed 6-15-89; 8:45 am]

BILLING CODE 6718-02-M

(FEMA-828-DR)

Amendment to Notice of a Major Disaster Declaration; Texas

AGENCY: Federal Emergency Management Agency

ACTION: Notice

SUMMARY: This notice amends the notice of a major disaster for the State of Texas (FEMA-828-DR), dated May 19, 1989, and related determinations.

DATED: June 7, 1989.

FOR FURTHER INFORMATION CONTACT: Neva K. Elliott, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472 (202) 646-3614.

Notice

Notice is hereby given that the incident period for this disaster is closed effective June 7, 1989.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

George H. Orrell,

Acting Associate Director, State and Local Programs and Support, Federal Emergency Management Agency.

[FR Doc. 89-14377 Filed 6-15-89; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 232-011244

Title: American Transport Line, Ltd./Topgallant Lines, Inc. Space Charter Agreement

Parties: American Transport Line, Ltd. Topgallant Lines, Inc.

Synopsis: The proposed Agreement would permit the parties to charter space on each other's vessels and to

rationalize sailings between ports in Europe and the United States.

By Order of the Federal Maritime Commission.

Dated: June 12, 1989.

Joseph C. Polking,

Secretary

[FR Doc. 89-14340 Filed 6-15-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

June 9, 1989.

Background

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board of Governors of the Federal Reserve System (Board) its approval authority under the Paperwork Reduction Act of 1980, as per 5 CFR 1320.9, "to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board under conditions set forth in 5 CFR 1320.9." Board-approved collection of information will be incorporated into the official OMB inventory of currently approved collections of information. A copy of the SF 83 and supporting statement and the approved collection of information instrument(s) will be placed into OMB's public docket files. The following report, which is being handled under this delegated authority, has received initial Board approval and is hereby published for comment. At the end of the comment period, the proposed information collection, along with an analysis of comments and recommendations received, will be submitted to the Board for final approval under OMB delegated authority.

DATE: Comments must be received within fifteen calendar days of the date of publication in the *Federal Register*.
ADDRESS: Comments, which should refer to the OMB Docket number should be addressed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or delivered to room B-2223 between 8:45 a.m. and 5:15 p.m. Comments received may be inspected in room B-1122 between 8:45 and 5:15 p.m. except as provided in § 261(a) of the Board's Rules Regarding Availability of Information, 12 CFR 261.6(a).

A copy of the comments may also be submitted to the OMB Desk Officer for the Board: Gary Waxman, Office of Information and Regulatory Affairs,

Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: A copy of the request for clearance (SF 83), supporting statement, and other documents that will be placed into OMB's public docket files once approved may be requested from the agency clearance officer, whose name appears below. Federal Reserve Board Clearance Officer—Frederick J. Schroeder—Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202-452-3822).

Proposal To Approve Under OMB Delegated Authority the Extension, With Minor Revision, of the Following Report

1. *Report title:* Weekly Report of Foreign Branch Liabilities to, and Custody Holdings for, U.S. Addresses.

Agency form number: FR 2077.

OMB Docket number: 7100-0176.

Frequency: Weekly.

Reporters: Foreign branches of U.S. banks.

Annual reporting hours: 699.

Estimated average time per response: 13 minutes (37 minutes for respondents completing both items, 7 minutes for respondents completing item 1 only).

Number of respondents: 82 (12 respondents completing both items on the form, 50 respondents completing item 1 only).

Small businesses are not affected.

General Description of Report

This information collection is voluntary [12 U.S.C. 248(a)(2)] and is given confidential treatment [5 U.S.C. 552b(4)].

This report collects weekly data from a sample of foreign branches of U.S. banks on certain types of dollar-denominated time deposits and certificates of deposit. These data are essential in calculating the money aggregate M3. The two proposed revisions would (1) increase the minimum dollar levels in two existing reporting criteria and (2) create a third criteria.

Board of Governors of the Federal Reserve System, June 9, 1989.

William W. Wiles,
Secretary of the Board.

[FR Doc. 89-14338 Filed 6-15-89; 8:45 am]

BILLING CODE 6210-01-M

BMC Bankcorp, Inc.; Application To Engage de Novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1)

of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing. Identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than June 30, 1989.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *BMC Bankcorp, Inc.*, Benton, Kentucky; to engage *de novo* through its subsidiary, BMC Bankcorp Real Estate and Investments, Inc., Benton, Kentucky, in a limited partnership with Benton Industrial Foundation, a non-profit tax exempt subsidiary of the city of Benton, Kentucky, to engage in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y. These activities will be conducted in Marshall County, Kentucky.

Board of Governors of the Federal Reserve System June 12, 1989.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 89-14334 Filed 6-15-89; 8:45 am]

BILLING CODE 6210-01-M

Change in Bank Control; Acquisition of Shares of Banks or Bank Holding Companies

The notificant listed below has applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than June 30, 1989.

A. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *James W. and Marjorie M. Eggers*, Omaha, Nebraska; to acquire 24.07 percent of the voting shares of Midlands Financial Services, Inc., Omaha, Nebraska, and thereby indirectly acquire Nebraska State Bank of Omaha, Omaha, Nebraska.

Board of Governors of the Federal Reserve System, June 12, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14336 Filed 6-15-89; 8:45 am]

BILLING CODE 6210-01-M

Correction; First Interstate Bank of Fargo, N.A. and Affiliates ESOP

This notice corrects a previous *Federal Register* notice (FR Doc. 89-11164) published at page 20198 of the issue for Wednesday, May 10, 1989.

Under the Federal Reserve Bank of Minneapolis, the entry for First Interstate Bank of Fargo, N.A., and Affiliates ESOP is amended to read as follows:

1. *First Interstate Bank of Fargo, N.A. and Affiliates ESOP*, Fargo, North Dakota; to acquire an additional 10.62 percent of the voting shares of First Interstate of North Dakota, Inc., for a total of 24.23 percent and thereby indirectly acquire First Interstate Bank of Fargo, Fargo, North Dakota.

Comments on this application must be received by June 30, 1989.

Board of Governors of the Federal Reserve System, June 12, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14339 Filed 6-15-89; 8:45 am]

BILLING CODE 6210-01-M

Fleet/Norstar Financial Group, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23 (a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23 (a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than July 7, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Fleet/Norstar Financial Group, Inc.*, Providence, Rhode Island; to transfer certain brokerage accounts from Shatkin Financial Services, Inc., Chicago, Illinois, to Norstar Brokerage

Corporation, New York, New York, an existing subsidiary of Fleet/Norstar, and thereby continue to engage in securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, June 12, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14335 Filed 6-15-89; 8:45 am]

BILLING CODE 6210-01-M

Multibank Financial Corp. et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than July 6, 1989.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. *Multibank Financial Corp.*, Dedham, Massachusetts; to retain ownership of 5.32 percent of the voting shares of Andover Bancorp, Inc., Andover, Massachusetts, and Andover Savings Bank, Andover, Massachusetts; 5.64 percent of the voting shares of The Waltham Corporation, Waltham, Massachusetts, and Waltham Savings Bank, Waltham, Massachusetts; and 6.70 percent of the voting shares of First Woburn Bancorp, Inc., Woburn, Massachusetts, and Woburn Five Cents Savings Bank, Woburn, Massachusetts.

All of the subsidiary banks engage in Massachusetts Savings Bank Life Insurance.

B. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *Growth Financial Corporation*, Harding Township, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Growth Bank, Harding Township, New Jersey.

C. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *Guaranty Bancshares Corporation*, Shamokin, Pennsylvania; to acquire 40 percent of the voting shares of Guaranty Bank of Princeton, Princeton, New Jersey, a *de novo* bank.

D. Federal Reserve Bank of Atlanta (Robert E. Heck, Vice President) 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. *CB&T Bancshares, Inc.*, Columbus, Georgia; to merge with Vanguard Banks, Inc., Valparaiso, Florida, and thereby indirectly acquire Vanguard Bank and Trust Company, Valparaiso, Florida.

2. *First Clayton Bancshares, Inc.*, Clayton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of First Clayton Bank & Trust Company, Clayton, Georgia, a *de novo* bank.

3. *SouthTrust of Jackson County, Inc.*, Marianna, Florida, and SouthTrust Corporation, Birmingham, Alabama; to merge with Florida Central Banks, Inc., Chipley, Florida, and thereby indirectly acquire Bank of Washington County, Chipley, Florida; and Florida Community Banks, Inc., Bonifay, Florida, and thereby indirectly acquire First Bank of Holmes County, Bonifay, Florida.

E. Federal Reserve Bank of Kansas City (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *Gold Bancshares, Inc.*, Marysville, Kansas; to merge with Commanche Bancshares, Inc., Marysville, Kansas, and thereby indirectly acquire The Peoples State Bank, Coldwater, Kansas; and Oketo Bancshares, Inc., Marysville, Kansas, and thereby indirectly acquire Blue Valley National Bank, Marysville, Kansas, a national bank which sells general insurance in Marysville, a town with a population of less than 5,000. Comments on this application must be received by June 30, 1989.

2. *NBS Holdings, Inc.*, Parker, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Bergen Park National

Bank, Evergreen, Colorado, and Douglas County National Bank, Parker, Colorado, both of which engage in the sale of credit-related life and accident and health insurance only.

3. *Shidler Bancshares, Inc.*, Shidler, Oklahoma; to acquire 100 percent of the voting shares of Security Bank and Trust Company of Ponca City, Ponca City, Oklahoma, which engages in the sale of credit-related life and accident and health insurance only. Comments on this application must be received by June 30, 1989.

4. *Wauneta Falls Bancorp, Inc.*, Wauneta, Nebraska; to become a bank holding company by acquiring 100 percent of the voting shares of Wauneta Falls Bank, Wauneta Falls, Nebraska. Comments on this application must be received by June 30, 1989.

F. Federal Reserve Bank of Dallas (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Greater Southwest Bancshares, Inc. Employee Stock Ownership Plan and Trust*, Irving, Texas; to become a bank holding company by acquiring 33.74 percent of the voting shares of Greater Southwest Bancshares, Inc., Irving, Texas, and thereby indirectly acquire Bank of the West, Irving, Texas.

Board of Governors of the Federal Reserve System, June 12, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14337 Filed 6-15-89; 8:45 am]

BILLING CODE 5210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[Program Announcement No. 935]

Availability of Funds; Environmental Health Education Activities for Educating Physicians and Health Professionals Concerned With Human Exposure of Environmentally Hazardous Substances

Introduction

The Agency for Toxic Substances and Disease Registry (ATSDR) announces availability of funds for Cooperative Agreements with State Departments of Health and/or State Departments of Environment to build State capacity for educating health professionals on how to deal with health issues related to non workplace hazardous substances in the environment.

Authority

This program is authorized under section 104(i)(15) and 104(i)(14) of the

Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA) (42 U.S.C. 9601 et seq) and Title 31 U.S.C. 6305.

Eligible Applicants

Eligible applicants include the following:

1. The official public health agencies of States, the District of Columbia, American Samoa, the Commonwealth of Puerto Rico, the Virgin Islands, the Federated States of Micronesia, Guam, the Northern Mariana Islands, the Republic of the Marshall Islands and the Republic of Palau.

2. The State Departments of Health and/or State Departments of Environment currently supporting program activities for the education and training of public or private physicians and other health professionals concerned with human exposure to hazardous substances in the environment.

Competition will be limited to only those entities specified above due to the legislative requirements of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended (42 U.S.C. 9601 et seq). Section 104(i)(15) of CERCLA states:

The activities of the Administrator of ATSDR described in this subsection. . . . shall be carried out by the Administrator of ATSDR, either directly or through cooperative agreements with States (or political subdivisions thereof) which the Administrator of ATSDR determines are capable of carrying out such activities.

Availability of Funds

A minimum of \$200,000 will be available in Fiscal Year 1989 and \$200,000 in Fiscal Year 1990 to fund one to eight awards. The awards will range from approximately \$25,000 to \$35,000 with the average award being approximately \$30,000. The awards will begin on or about September 1, 1989, and are usually made for a 12-month budget period within a project period of 1 to 2 years. Continuation awards within the project period are made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of these awards is to identify and assist State health provider education efforts in developing appropriate educational materials (including short courses) on the medical surveillance, screening, and methods of diagnosis and treatment of injury or disease, related to exposure to

hazardous substances found in the (non workplace) environment.

Program Requirements

To satisfy the above requirement, the following activities will be performed during the project period.

A. Recipient Activities

1. Enhance the development, implementation and evaluation of educational materials or methods to improve the skills and knowledge of health care providers concerning exposure to hazardous substances.

2. Promote the development of promising new educational activities and instructional methods to educate health care providers so as to demonstrate their effectiveness in other settings.

3. Assist in the development of promising new materials and/or methods utilized by the health care providers in communicating and counseling their patients with regard to health risks concerning exposure to hazardous substances.

4. Promote the development of methods or materials to improve the knowledge and skills of health care providers in taking an "environmental exposure history" as an integral part of their patient workup.

5. Promote the demonstration of successful informational resources to furnish health care providers needed information concerning hazardous substances.

B. ATSDR Activities

1. Collaborate with the identified State activity in generalizing the demonstrated effectiveness of the program in other appropriate settings.

2. Collaborate with the identified State activity regarding the best and most important mechanisms to enhance essential skill and knowledge components concerning medical surveillance, screening, treating and preventing injury or disease related to exposure to hazardous substances.

3. Collaborate with the identified State activity in identifying new approaches to health communications for health care practitioners in counseling their patients concerned about the exposure to hazardous substances.

4. Participate in State based workshops, conferences and seminars to exchange current information, opinions, and findings concerning the diagnosis, treatment and prevention of illness or

injury associated with exposure to hazardous substances.

Evaluation Criteria

Applications will be reviewed and evaluated according to the following criteria:

1. The Applicant's understanding of the need or problem to be addressed and the purpose of this cooperative agreement.

2. The ability to provide the staff, knowledge, financial and other resources required to perform the applicant's responsibilities in this project, and the approach to be used in carrying out those responsibilities.

3. The extent to which the applicant understands the objectives of the project; the steps to be taken in planning and implementing this project, and the respective responsibilities of the applicant, ATSDR and any other entities for carrying out those steps.

4. The proposed schedule for accomplishing each of the activities to be carried out in this project, and a clearly defined method for evaluating the accomplishment.

5. The qualifications and appropriateness of proposed program staff, and time allocated for them to accomplish program activities; the support staff available for the performance of this project; and the facilities, space and equipment available for performance of this project.

6. The proposed plan for administering this project and the name, qualifications, and time allocations of the individual whom the applicant proposes to make responsible for its administration.

7. The estimated cost to the Government of the project is reasonable, a detailed budget is provided which indicates (1) anticipated costs for personnel, travel, communications and postage, equipment, and supplies and (2) the sources of funds to meet those needs.

Executive Order 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Domestic Assistance number assigned to this program is 13.161, Health Programs for Toxic Substances and Disease Registry.

Application Submission and Deadline

The original and two copies of the application PHS Form 5161-1 (Rev. 3/89)

must be submitted to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control/ATSDR, 255 Paces Ferry Road, N.E., Room 300, Mail Stop E-14, Atlanta, Georgia 30305 on or before July 3, 1989. By formal agreement, the CDC Grants Office will act on behalf of and for ATSDR on this matter.

1. *Deadline:* Applications shall be considered as meeting the deadline if they are either:

a. Received on/or before the deadline date, or

b. Sent on or before the deadline date and received in time for submission to the independent review group. (Applicants must request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

2. *Late Applications:* Applications which do not meet the criteria in 1.a. or b. above are considered late applications. Late applications will not be considered in the current competition and will be returned to the applicant.

Where To Obtain Additional Information

Information on application procedures, copies of application forms, and other material may be obtained from Harvey Rowe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Mailstop E14, Atlanta, Georgia 30305, or by calling (404) 842-6797 or FTS 236-6797.

Announcement Number 935, "Environmental Health Education Programs for Training Physicians and Health Professionals Concerned with Human Exposure of Environmental Hazardous Substances" must be referenced in all requests for information pertaining to these projects.

Technical assistance may be obtained from Max Lum, Ed.D., Office of Extramural Program Branch, Agency for Toxic Substances and Disease Registry, (404) 488-4630 or FTS 236-4630.

Dated: June 9, 1989.

Waller R. Dowdle,
Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 89-14332 Filed 6-15-89; 8:45 am]

BILLING CODE 4160-70-M

Centers for Disease Control

Agency for Toxic Substances and Disease Registry

[Announcement No. 943]

Association of Schools of Public Health

Introduction

The Centers for Disease Control (CDC) and the Agency for Toxic Substances and Disease Registry (ATSDR) announce the availability of funds in Fiscal Year 1989 for a cooperative agreement with the Association of Schools of Public Health (ASPH), to improve the interaction between public health academicians and public health practitioners.

Authority

This program is authorized under section 301(a) of the Public Health Service Act [42 U.S.C. 241(a)], as amended, and under Section 104(d)(1) and 104(l)(14) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). Program regulations are set forth in 42 CFR Part 52.

Eligible Applicants

Assistance will be provided only to the Association of Schools of Public Health (ASPH) for this project. No other applications will be solicited or will be accepted.

ASPH represents the 24 accredited schools of public health in the United States. These schools represent the primary educational system that trains personnel needed to operate the Nation's public health, disease prevention and health promotion programs. It is critical that the schools of public health and the practitioners of public health in Federal, State and local Governments cooperate and share their experience and expertise to enable the theoretical and practical perspectives of public health to be melded into comprehensive curricula for teaching health promotion, health protection, preventive health service delivery and health education to future public health workers. These interchanges must be developed and coordinated by a single organization to assure consistent approaches to the preparation of public health workers and their performance in controlling today's major health problems. It has long been recognized that the quality of public health personnel plays a critical role in the prevention and control of disease. The

ASPH's principal purpose is to promote and improve the education and training of professional public health personnel. ASPH is the only organization that can comprehensively affect the development and implementation of improved curriculums for teaching public health workers in all 24 accredited schools of public health.

Availability of Funds

It is anticipated that approximately \$1,000,000 will be available in Fiscal Year 1989 to fund the cooperative agreement beginning September 28, 1989, for a 12-month budget period and a 5-year project period. Continuation awards within the project period are made on the basis of satisfactory progress and availability of funds.

Purpose

The purpose of this cooperative agreement is to assist ASPH in improving the interaction between public health academicians and public health practitioners, and in enhancing the preparation of public health workers.

Program Requirements

The specific Cooperative Activities, Application Content and Evaluation Criteria, and Funding Priorities are set forth in the Request for Application (RFA) Program Announcement.

E.O. 12372 Review

Applications are not subject to review as governed by Executive Order 12372, Intergovernmental Review of Federal Programs.

CFDA Number

The Catalog of Federal Domestic Assistance number is 13.283.

Application Submission and Deadline

The Association of Schools of Public Health has been notified of the availability of funds for this project and must submit an original and two copies of the application Form PHS-5161-1 (Rev. 3/89) to Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, Atlanta, Georgia 30305, on or before July 1, 1989.

Where to Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please reference Program Announcement Number 943, entitled "Association of Schools of Public Health," and contact the following:

Business: Harvey Rowe, Grants Management Specialist, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control, 255 East Paces Ferry Road, NE., Room 300, MS-E14, Atlanta, Georgia 30305, telephone (404) 842-6575.

Technical: Thomas R. Balderson, Cooperative Agreement Coordinator, Training and Laboratory Program Office, Centers for Disease Control, 1600 Clifton Road, NE., MS-E20, Atlanta, Georgia 30333, telephone (404) 639-1936.

Dated: June 9, 1989.

Walter R. Dowdle,

Acting Director, Centers for Disease Control and Acting Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 89-14333 Filed 6-15-89; 8:45 am]

BILLING CODE 4160-18-M

Food and Drug Administration

[Docket No. 89F-0185]

Hoechst Celanese Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Hoechst Celanese Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of benzimidazolone (C.I. pigment yellow 180) as a colorant in high-density polyethylene intended for food-contact use.

FOR FURTHER INFORMATION CONTACT: Richard H. White, Center for Food Safety and Applied Nutrition (HFF-335), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-472-5690.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 8B4135) has been filed by Hoechst Celanese Corp., 500 Washington St., Conventry, RI 02816, proposing that § 178.3297 *Colorants for polymers* (21 CFR 178.3297) be amended to provide for the safe use of benzimidazolone (C.I. pigment yellow 180) as a colorant in high-density polyethylene intended for food-contact use.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's findings of no significant impact and the evidence supporting that finding will be

published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: June 7, 1989

Fred R. Shank,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 89-14343 Filed 6-15-89; 8:45 am]

BILLING CODE 4160-01-M

[FDA 225-89-2001]

Memorandum of Understanding Between the Food and Drug Administration, Department of Health and Human Services and the Ministry of Economy Development and Reconstruction, Subsecretariat of Fisheries, Republic of Chile

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA, Department of Health and Human Services, and the Ministry of Economy, Development, and Reconstruction, Subsecretariat of Fisheries, Republic of Chile. This MOU affirms the parties' intention to assure that fresh and frozen oysters, clams and mussels exported from Chile to the United States are safe and have been processed and labeled in accordance with the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, the Public Health Service Act, and other relevant statutes.

DATE: The agreement became effective May 18, 1989.

FOR FURTHER INFORMATION CONTACT: Walter J. Kustka, Intergovernmental and Industry Affairs Staff (HFC-50), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1583.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the Federal Register, the agency is publishing notice of this memorandum of understanding.

Dated: June 12, 1989.

Alan L. Hoeting,

Acting Associate Commissioner for Regulatory Affairs.

Memorandum of Understanding Regarding Cooperation in Ensuring the Safety and Wholesomeness of Fresh and Frozen Oysters, Clams, and Mussels Exported to the United States of America from the Republic of Chile

I. Purpose

The Food and Drug Administration (FDA) of the Department of Health and Human Services, of the United States of America, and the Ministry of Economy, Development, and Reconstruction, Subsecretariat of Fisheries, National Service for Fisheries (SERNAP), Republic of Chile, affirm by this document their intention to cooperate to assure that fresh and frozen oysters, clams, and mussels exported from Chile to the United States are safe and wholesome, and that they have been harvested, shucked, transported, and labeled in accordance with the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, the Public Health Service Act, and other relevant statutes of the United States, the National Shellfish Sanitation Program (NSSP) of the United States, and the Sanitation Program for Molluscan Bivalves of Chile.

A convention (an agreement) noted as Exempt Resolution No. 302 was signed between the Chilean Ministry of Health and the Ministry of Economy, Development, and Reconstruction on March 29, 1988, and describes the responsibilities of these two Chilean agencies and their functions regarding the implementation of the Sanitation Program for Molluscan Bivalves of Chile.

II. Background

The development of the Sanitation Program for Molluscan Bivalves of Chile originated in 1977, with the Government of Chile requesting that the Food and Drug Administration visit Chile to evaluate its program for compliance with the requirements of the National Shellfish Sanitation Program.

The Government of Chile, in collaboration with its fisheries industry, has endeavored since 1977 to meet all administrative and technical requirements of the National Shellfish Sanitation Program, the Federal Food, Drug, and Cosmetic Act, the Fair Packaging and Labeling Act, the Public Health Service Act, and other related U.S. statutes that concern the export of shellfish to the United States.

Significant accomplishments made by the Government of Chile include: training of Chilean shellfish sanitation personnel both in the United States and

Chile, development of legislation for the certification of shellfish for export, and the signature of a convention between the Chilean Ministry of Health and the Ministry of Economy, Development, and Reconstruction that describes the responsibilities of each Ministry in the implementation of the Sanitation Program for Molluscan Bivalves of Chile.

III. Substance of Agreement

A. Definitions

For the purpose of this Memorandum of Understanding, both parties agree to the following definitions:

1. Central file—The location where the shellfish sanitation authority stores and maintains program information, data, and reports.
2. Enforcement Agency—The National Service for Fisheries within the Chilean Ministry of Economy, Development, and Reconstruction is the agency having regulatory authority over the classification, production, harvesting, processing, transport, and export of certified shellfish to the United States under the terms of this memorandum.
3. Lot—A collection of shellfish of no more than one day's harvest, from a single defined growing area, produced under conditions as nearly uniform as possible, placed in primary containers or units of the same size, type, and style, and identified by a common container code or marking.
4. Marine Biotoxins—Natural toxins produced by marine dinoflagellates, such as *Gonyaulax catenella*, *G. tamarensis*, and *Ptychodiscus brevis* (formerly *Cymnodinium brevis*), and concentrated by shellfish during the feeding process.
5. Shellfish—All edible species of molluscan bivalves except scallop, from the Pectinidae family. Only shellfish that are to be offered for import into the United States as fresh or frozen products are covered under this Memorandum of Understanding.

B. Shared Responsibilities

Both parties will: 1. Provide current and relevant information on the following:

- a. Methods and procedures for sampling;
- b. Methods of analysis;
- c. Methods of confirmation;
- d. Reference standards and norms;
- e. Administrative guidelines and specification standards;

- f. Tolerances and nomenclature on sanitary aspects and inspectional procedures;
2. Inform each other on a timely basis of the following:
- Proposed modification of existing U.S. or Chilean Federal and state regulations;
 - Proposed new U.S. or Chilean Federal regulations
 - Name a liaison officer who will coordinate all of the activities of the program in relation to this Memorandum of Understanding. The liaison officers will be responsible for facilitating exchanges of information and for expeditiously notifying the other party of all matters requiring prompt attention. Each party agrees to notify the other if a new liaison officer is appointed.
 - Use English as the language for the technical documents and information exchanged under this Memorandum of Understanding.

C. Responsibilities of the Government of Chile

- The Ministry of Economy, Development, and Reconstruction, Subsecretariat of Fisheries, National Service for Fisheries shall have overall responsibility for the coordination and implementation of the Sanitation Program for Molluscan Bivalves of Chile and develop and maintain interagency agreements and protocols with other government enforcement agencies to implement the NSSP controls as necessary. The National Service for Fisheries will be the liaison with the Food and Drug Administration and maintain compliance with the administrative/operational and technical aspects of the NSSP and Sanitation Program for Molluscan Bivalves of Chile.
- The National Service for Fisheries, as the enforcement agency, shall:
 - Maintain NSSP required legal, administrative, and sanitary controls over shellfish exported by certified Chilean dealers by ensuring that the Chilean Program for Molluscan Bivalves can:
 - Classify Molluscan bivalve growing areas based on comprehensive sanitation surveys;
 - Prepare sanitation survey reports and maintain survey data in a control file;
 - Update survey data annually and periodically review the classification status of each harvest area;
 - Approve and supervise harvesting and relaying operations and provide proper labeling and identification of source of shellstock;
 - Restrict harvesting of shellstock from unapproved areas and take

- appropriate enforcement action against violations; and
- Oversee certification laboratories approved to participate in the shellfish sanitation control program.
- Inspect firms processing fresh or frozen shellfish for export to ensure compliance with NSSP controls.
- On an annual basis, (1) Certify dealers exporting fresh or frozen shellfish to the U.S., (2) certify that such dealers comply with NSSP requirements, and (3) notify FDA of the name, location, and certification number of those firms on Form FD-3038B, "Shellfish Certification."
- Cancel the certification of any firm operating out of compliance with the requirements of the NSSP, utilizing shellfish from nonapproved areas, or shipping shellfish that do not conform to the requirements of the Federal Food, Drug, and Cosmetic Act and the Public Health Service Act.
- Ensure that all containers of each lot of fresh or frozen shellfish certified for export are identified with the shipper's address, certification number, and lot number or code, together with all other information required by the Federal Food, Drug and Cosmetic Act, the Public Health Service Act, and the Fair Packaging and Labeling Act.
- Ensure that all shipping containers of live and fresh-shucked shellfish exported to the U.S. bear the following instructions on the use and disposal of such shellfish in the form of a "NOTICE TO RECIPIENTS," including:
 - Live shellfish shall not be relayed into U.S. waters for any purpose.
 - Live shellfish shall not be held in wet holding and storage systems where water could transport undesirable organisms into the environment.
 - In order to minimize risk of introducing undesirable or exotic organisms into the environment, waste shell material shall not be discarded into U.S. waters.
 - Dead or unacceptable shellfish and shellfish products shall not be discarded into waste treatment or disposal systems whereby improperly treated water or waste could contaminate the marine environment.
- Provide results of research investigations conducted on live shellfish (tissue and shell material) taken from approved growing areas designated for shellfish harvest for export to the U.S.
- Upon request from the U.S., provide samples of live shellfish (sample is fifty (50) shellfish) over a 2-year period (quarterly—spring, summer, fall, and winter) for inspection and analysis from each growing area designated for shellfish harvest for export to the U.S.

i. Maintain a central file of program records including but not necessarily limited to sanitation survey reports, inspection reports, laboratory evaluation reports, and enforcement actions. These records are to be made available to FDA for review upon request.

j. Provide inspection results, as appropriate, and other program information, including FDA evaluation reports, interpretations, and laboratory quality assurance program information, to Regional Chilean National Service for Fisheries offices and other government agencies that have responsibilities in the Chilean Program for Molluscan Bivalves.

k. Review periodically, but at least annually, the level of conformity to NSSP requirements that is being enforced by National Service for Fisheries and the Institute of Public Health and provide a report of the review to FDA as necessary, or at least annually.

l. Provide FDA with information about current or potential public health problems affecting shellfish intended for export to the United States.

m. Make travel arrangements in Chile for, and conduct joint inspections with, FDA evaluation officers at FDA's request. Meet transportation expenses in Chile of FDA officials making inspections in accordance with this memorandum.

3. The Chilean Ministry of Health, through its Health Services and the Institute of Public Health, is directly responsible for the prohibition of the harvesting of shellfish from areas in response to contamination emergencies and for reopening such prohibited areas after water quality data demonstrates the area meets approved criteria.

4. The Institute of Public Health shall serve as the official laboratory of reference for the certification of all other Chilean laboratories wishing to participate in the shellfish sanitation program and will:

a. Certify that all laboratories participating in the Molluscan Bivalve Program of Chile maintain appropriate infrastructure, technical materials, equipment, and trained personnel to carry out required NSSP sampling and analytical procedures.

b. Periodically evaluate certified laboratories to verify compliance with all NSSP requirements and the maintenance of laboratory quality assurance procedures.

c. Develop and maintain a monitoring program for paralytic shellfish poison in those areas where shellfish are harvested for export to the United States.

d. Maintain a split-sample (cross-sampling) program between designated shellfish laboratories for evaluating uniform laboratory practices.

D. Responsibilities of the FDA

FDA will: 1. Publish the names, location, and certification numbers of firms that have been certified by the Chilean National Service for Fisheries if the Food and Drug Administration has determined that the Chilean Sanitation Program for Molluscan Bivalves is in conformance with the National Shellfish Sanitation Program. This information will appear in the Monthly Interstate Certified Shellfish Shippers List.

2. Train Chilean technical personnel on administrative procedures and classification of shellfish growing areas. Such training will be provided at the request of the Chilean National Service for Fisheries if funds are available for this purpose.

3. Inform the Chilean National Service for Fisheries whenever certified shellfish shipments from Chile are detained by FDA under the authority of the Federal Food, Drug and Cosmetic Act, as amended, or the Public Health Service Act. FDA will supply the following information:

- Name of the commodity, lot, and certification number;
- Name and address of the shipper;
- Reason for the detention;
- Sampling procedures;
- Methods of analysis and confirmation;
- Administrative procedures; and
- Date and other pertinent information on the shipping label.

4. Make travel arrangements for and pay round trip transportation expenses of the FDA observation team between the United States and Chile. FDA will also pay all per diem of its observation team.

5. Collaborate in the training of the official reference laboratory in procedures for identification of marine contaminants in growing areas (e.g., paralytic shellfish poisoning, pesticides, and heavy metals). Such training will be provided at the request of the Chilean National Service for Fisheries if funds are available for this purpose.

6. Exchange with the Chilean National Service for Fisheries appropriate information concerning questions by U.S. state and local health officials regarding the certification, safety, and wholesomeness of shellfish being offered for entry into the United States from Chile. FDA will, if requested by the Government of Chile, seek to communicate with the state and local authorities in the United States on issues that may adversely affect the

importation of Chilean shellfish to the United States.

IV. Participating Parties

A. Ministry of Economy Development and Reconstruction, Subsecretariat of Fisheries, National Service for Fisheries, Teatinos No. 120 Piso 11, Santiago, Chile.

B. Food and Drug Administration, Department of Health and Human Services, 5600 Fishers Lane, Rockville, Md 20857.

V. Liaison Officers

A. For the Government of Chile: Commercial Attache, Embassy of Chile, 1732 Massachusetts Avenue, Washington, DC 20036.

B. For the Food and Drug Administration: Chief, Shellfish Sanitation Branch, (Currently David M. Dressel), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C Street, SW., Washington, DC 20204, (202) 485-0149.

VI. Period of Agreement

This agreement becomes effective upon signature by both parties and will continue for a period of ten years. It may be renewed or revised by mutual written consent or revoked by either party upon a thirty day advance written notice to the other.

The Document has been Executed on Behalf of the Parties by Their Duly Authorized Officials.

Approved and Accepted for the Food and Drug Administration of the United States of America.

James S. Benson,
Acting Deputy Commissioner of Food and Drugs.

Date: May 18, 1989.

Approved and Accepted for the Ministry of Economy, Development and Reconstruction of the Republic of Chile.

Octavio Errazuriz,
Ambassador of Chile.

Date: May 18, 1989.

[FR Doc. 89-14342 Filed 6-15-89; 8:45 am]

BILLING CODE 4160-01-M

Health Resources and Services Administration

Program Announcement and Proposed Funding Preferences for Scholarships for the Undergraduate Education of Professional Nurses Grant Program

The Health Resources and Services Administration announces that applications will be accepted for the Fiscal Year 1989 Scholarships for the

Undergraduate Education of Professional Nurses Grant Program under the authority of section 843 of the Public Health Service Act, as added by Pub. L. 100-607, and invited comments on the proposed funding preferences.

Approximately \$1,600,000 is available in Fiscal Year 1989 for competing awards. This is a new program in FY 1989. It is estimated that 320 scholarships will be made in FY 1989, averaging \$5,000 per award. Continuations of scholarship awards will be based on funding availability for FY 1990. The period of fund availability will be for each academic year, and a recipient must meet a statutory service obligation as indicated below.

Purpose

The Scholarships for the Undergraduate Education of Professional Nurses Grant Program is designed to provide financial assistance to individuals who are enrolled or accepted for enrollment as undergraduate nursing students in diploma, associate, or baccalaureate degree programs or in programs of nursing education leading to first degrees in professional nursing and who are in financial need with respect to attending these schools. A scholarship recipient must agree to serve full-time upon graduation as a registered nurse for a period of not less than two years in an Indian Health Service health center, or a Native Hawaiian health center, or a public hospital, or a migrant health center, or a community health center, or a certified nursing facility, or a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses.

Eligible Grant Applicants

To be eligible for a grant, an applicant must be a public or private nonprofit school which is accredited for the training of professional nurses and is located in a State.

Proposed Funding Preference

It is proposed that for Fiscal Year 1989 only, preference in the award of these scholarship grants will be given to applicants which evidence that they exceed the 3-year average enrollment of underrepresented minority students (i.e., Black, Hispanic, American Indian, Alaskan Native, Native Hawaiian, Asian/Pacific Islander), in undergraduate nursing programs. For the 1985-88 school year underrepresented minorities reflected 11.4 percent of undergraduate nursing students. These population groups continue to be underrepresented in the nursing

profession. Their representation should be increased to ensure equitable opportunities to a career in nursing.

Proposed Future Funding Preference

No funds are proposed for this program in the President's Budget for 1990. However, it is proposed, should appropriations be made, that preference in awarding future grant funds be given to grantees with previous recipients still enrolled, so that recipients may finish their undergraduate nursing education started under this scholarship program. Applicants would need to compete for funds for new recipients.

Interested persons are invited to comment on the proposed funding preferences. Normally, the comment period would be 60 days. However, due to the need to implement any changes, this comment period has been reduced to 30 days. All comments received on or before July 17, 1989 will be considered before final funding preferences are established.

Written comments should be addressed to Director, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8-23, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying in the Division of Student Assistance, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5:00 p.m.

Eligible Students

To be eligible for a grant an individual must:

(1) Be enrolled or accepted for enrollment as a full-time nursing student in a program leading to a degree or diploma, which prepares individuals to qualify for licensure to practice as a registered/professional nurse in a State;

(2) Be in financial need with respect to attending such nursing school;

(3) Be a resident of the United States and either a U.S. citizen, a U.S. national, an alien lawfully admitted for permanent residence in the U.S., a citizen of the Commonwealth of the Northern Mariana Islands, a citizen of the Trust Territory of the Pacific Islands, Republic of Palau, or a citizen of the Republic of the Marshall Islands or the Federated States of Micronesia; and

(4) Sign the contract prescribed by the Secretary setting forth terms and conditions of the scholarship, including an agreement to serve as a full-time registered nurse upon graduation for a period of not less than two years in an

Indian Health Service health center, or a Native Hawaiian health center, or a public hospital, or a migrant health center, or a community health center, or a certified nursing facility, or in a rural health clinic, or in a health facility determined by the Secretary to have a critical shortage of nurses.

Preference in the Selection of Scholarship Recipients

In accordance with the statute, the Department proposes to require schools:

(1) To give preference in awarding scholarships to individuals from disadvantaged backgrounds as determined in accordance with criteria prescribed by the Secretary under section 827(a) of the Act which are as follows:

(a) the individual comes from an environment that has inhibited the individual from obtaining the knowledge, skills, and abilities required to enroll in and graduate from a school of nursing; or

(b) the individual comes from a family with an annual income below a level based on low-income thresholds by family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and multiplied by a factor to be determined by the Secretary for adaptation to this program. The Secretary periodically will publish in the *Federal Register* such factor and income levels as adjusted; and

(2) To assure that a scholarship provided for full-time attendance will not, for any year of such attendance, exceed the amount of the tuition and any fees for the year involved; and

(3) To require scholarship applicants to sign a contract.

The following income figures determine what constitutes a low income family for purposes of Scholarships for the Undergraduate Education of Professional Nurses Grant Program for Fiscal Year 1990.

Size of Parents Family ¹	Income Level ²
1.....	\$7,900
2.....	10,300
3.....	12,300
4.....	15,700
5.....	18,500
6 or more.....	20,800

¹ Includes only dependents listed on Federal income tax forms.
² Rounded to \$100. Adjusted gross income for calendar year 1988.

Application Deadline

One grant cycle will be held annually for the Scholarships for the Undergraduate Education of

Professional Nurses Grant Program. To receive consideration for Fiscal Year 1989 funds, applications must meet the deadline of July 31, 1989.

Applications shall be considered as meeting the deadline if they are either:

(1) Received on or before the deadline date; or

(2) Postmarked on or before the deadline date and received in time for submission for review. A legible dated receipt from a commercial carrier or U.S. Postal Service will be accepted in lieu of a postmark. Private metered postmarks shall not be acceptable as proof of timely mailing.

Applications received after the deadline will be returned to the applicant.

The standard application form PHS 6025-1, HRSA Competing Training Grant Application, and General Instructions have been approved by the Office of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915-0060. The supplement for this program is being submitted for review.

Requests for application materials and requests for technical assistance and information should be directed to: Student and Institutional Support Branch, Division of Student Assistance, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, Room 8-34, 5600 Fishers Lane, Rockville, Maryland 20857. Telephone: (301) 443-4778.

Completed applications should be returned to the Division of Student Assistance at the above address.

This program is listed at 13.182 in the *Catalog of Federal Domestic Assistance*. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented by 45 CFR Part 100).

Dated: May 22, 1989.

John H. Kelso,
Acting Administrator.
(FR Doc. 89-14341 Filed 6-15-89; 8:45 am)
BILLING CODE 4160-15-M

National Institutes of Health

National Cancer Institute: Meeting

Pursuant to Pub. L. 92-463, notice is hereby given of the meeting of the Cancer Control Grant Review Committee, National Cancer Institute, on June 28-30, 1989, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, Maryland 20852.

This meeting will be open to the public on June 28 from 8 p.m. to 8:30

p.m., to review administrative details and other cancer control review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Pub. L. 92-463, the meeting will be closed to the public on June 28 from approximately 8:30 p.m. to recess; on June 29 from 8 a.m. to recess; and again on June 30 from 8 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Mrs. Winifred Lumsden, The Committee Management Officer, National Cancer Institute, Building 31, Room 10A06, National Institutes of Health, Bethesda, Maryland 20892 (301/496-5708) will provide summaries of the meeting and rosters of committee members, upon request.

Dr. Carolyn Strete, Executive Secretary, Cancer Control Grant Review Committee, National Cancer Institute, Westwood Building, Room 810, National Institutes of Health, Bethesda, Maryland 20892 (301/496-2378) will furnish substantive program information.

Dated: June 9, 1989.

Betty J. Beveridge,
Committee Management Officer, NIH.
(FR Doc. 89-14470 Filed 6-15-89; 8:45 am)
BILLING CODE 4140-01-M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection packages it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. Chapter 35). The following are those packages submitted to OMB since the last list was published on Friday, June 2, 1989.

(Call Reports Clearance Officer on 202-245-2100 for copies of package)

1. Cholesterol, Fat and Fatty Acids Labeling, 21 CFR Part 101-0910-0224—This regulation establishes the requirements for manufacturers in voluntarily placing information concerning cholesterol, fat or fatty acids

content in foods on the label or labeling of a food. (21 CFR 101.25 (b) and (c) and 101.9).

Respondents: Businesses or other for-profit, small businesses or organizations;

Burden: 1 hour.

This submission is for the language concerning labeling statements for the cholesterol and fat and fatty acid content of food. Response burden associated with these label requirements is included in 0910-0177 (Nutrition Labeling).

2. Annual Morbidity Reporting Series—0920-0007—Annual summary reports of nationally notifiable diseases are submitted to CDC from all States and U.S. territories. These data summaries provide number of cases of certain diseases by county, age, sex and month of occurrence.

Respondents: State or local governments;

Number of Respondents: 57;

Number of Responses per Respondent: 2.05;

Average Burden per Response: 3.65 hours;

Estimated Annual Burden: 427 hours.

3. Surveillance of Chronic Fatigue Syndrome—NEW—As surveillance and followup system for chronic fatigue syndrome will be conducted in the cities of Atlanta, Georgia, Grand Rapids, Michigan, Reno, Nevada, and Wichita, Kansas. The purpose of the survey is to establish incidence and prevalence of the syndrome and describe the illness.

Respondents: Individuals or households;

Number of Respondents: 1,120;

Number of Responses per Respondent: 3;

Average Burden per Response: 737 hours;

Estimated Annual Burden: 2,478 hours.

OMB Desk Officer: Shannah Koss-McCallum.

Written comments and recommendations for the proposed information collections should be sent directly to the OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, Room 3208, Washington, DC 20503.

Date: June 12, 1989.

James M. Friedman,
Acting Deputy Assistant Secretary for Health (Planning and Evaluation).
(FR Doc. 89-14349 Filed 6-15-89; 8:45 am)
BILLING CODE 4160-17-M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Pub. L. 96-511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the *Federal Register* on June 9, 1989.

(Call Reports Clearance Officer on (301) 965-4149 for copies of package)

1. Domestic Service Questionnaire—0960-0047—The information collected on the form SSA-7155 is used by the Social Security Administration to determine if the domestic services of an individual performed in the home of a son or daughter are covered employment under the Social Security Act. The respondents are the employers of claimants for benefits whose entitlement depends upon their domestic services employment.

Number of Respondents: 20,000
Frequency of Response: 1
Average Burden Per Response: 30 minutes

Estimated Annual Burden: 10,000

2. Request For Reconsideration—Disability Cessation—0960-0349—The information collected on the form SSA-789 is used by the Social Security Administration to schedule hearings and develop additional evidence for individuals who have received an initial or revised determination that their disability ceased, did not exist or is no longer disabling.

Number of Respondents: 34,000
Frequency of Response: 1
Average Burden Per Response: 12 minutes

Estimated Annual Burden: 6,800 hours

3. The SSA Automated Solicitation Mailing List and the SSA Automated Solicitation List for Building Maintenance—0960-XXXX—The information collected on the forms SSA-4123/SSA-4124 is used by the Social Security Administration to maintain interested vendors on an automated solicitation mailing list.

Number of Respondents: 4,000
Frequency of Response: 1
Average Burden Per Response: 5 minutes

Estimated Annual Burden: 333

4. SSA-Initiated Personal Earnings and Benefit Estimate Statement Questionnaires—New—The information

collected on these forms will be used by the Social Security Administration to ascertain the value of providing personal Social Security information to individuals who have not requested it. The respondents will be non-beneficiaries between the ages of 19 and 64 who are selected to participate in this survey.

Number of Respondents: 12,750
Frequency of Response: 1
Average Burden Per Response: 10 minutes

Estimated Annual Burden: 2,242 hours
OMB Desk Officer: Justin Kopca.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address:

OMB Reports Management Branch,
New Executive Office Building, Room
3208, Washington, DC 20503.

Date: June 12, 1989.

Ron Compston,
Social Security Administration, Reports
Clearance Officer.

[FR Doc. 89-14355 Filed 6-15-89; 8:45 am]
BILLING CODE 4190-11-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for
Housing-Federal Housing
Commissioner

[Docket No. N-89-1982; FR-2644]

Nehemiah Housing Opportunity Grants Program; Fund Availability

AGENCY: Office of the Assistant
Secretary for Housing-Federal Housing
Commissioner, HUD.

ACTION: Notice of fund availability.

SUMMARY: Title VI of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) established the Nehemiah Housing Opportunity Grants Program (NHOP). Under NHOP, HUD is authorized to make grants to nonprofit organizations to enable them to provide loans to families purchasing homes that are constructed or substantially rehabilitated in accordance with a HUD-approved program. On May 22, 1989 (54 FR 22248, HUD published a final rule establishing the requirements for NHOP. This notice announces the availability of \$20 million in funds appropriated for NHOP in the Housing and Urban Development—Independent Agencies Appropriations Act, 1989 (Pub. L. 100-404, approved August 19, 1988). These

funds are available for obligation on July 1, 1989. This notice solicits applications for assistance.

DATES: This notice is effective on June 16, 1989. Applications are due August 15, 1989.

FOR FURTHER INFORMATION CONTACT: Morris Carter, Director, Single Family Development Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, Room 9272, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 755-6720. Hearing or speech-impaired individuals may call HUD's TDD number (202) 428-0015. (These telephone numbers are not toll-free.) Application packages (requests for grant application) may be obtained at the above address.

A. Background

Title VI of the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) established the Nehemiah Housing Opportunity Grants Program (NHOP). Under NHOP, HUD is authorized to make grants to nonprofit organizations to enable them to provide loans to families purchasing homes that are constructed or substantially rehabilitated in accordance with a HUD-approved program. The loans to the family: may not exceed \$15,000; bear no interest; are secured by a second mortgage held by the Secretary; and are repayable to the Secretary upon the sale, lease, or transfer of the property. On May 22, 1989 (54 FR 22248), HUD published a final rule establishing the requirements for NHOP. The final rule is effective on July 13, 1989.

In the Department of Housing and Urban Development—Independent Agencies Appropriations Act, 1989 (Pub. L. 100-404, approved August 19, 1988), \$20 million was appropriated for NHOP. These funds are available for obligation on July 1, 1989. This notice announces the availability of the \$20 million for NHOP and solicits applications for the use of these funds. The application procedures and filing deadlines are set forth in paragraph B below.

B. Application Procedures

An application package (request for grant application) describing the information that applicants for NHOP assistance must submit will be made available upon the written request of any party made to: Single Family Development Division, Office of Insured Single Family Housing, Department of Housing and Urban Development, Room 9272, 451 Seventh Street SW., Washington, DC 20410. Applications must be submitted to this address on the

forms prescribed by HUD and must be hand delivered and received, or postmarked, no later than August 15, 1989.

Following the expiration of the August 15, 1989 deadline, HUD headquarters will review, rate and rank applications consistent with the procedures announced in the final rule. Applicants awarded a NHOP grant will be notified of their selection as soon as practicable following the completion of the selection process.

C. Selection Procedures

In accordance with § 280.200(d) of the final rules, HUD announces that the maximum number of points that may be awarded under each of the ranking criterion are:

1. Contributions of land (§ 280.220(b)(1))—20 points.
2. Other contributions (§ 280.220(b)(2))—15 points. Under this criterion, applicants that will receive non-Federal financial and other contributions under a State-designated enterprise zone program will be awarded additional points. HUD has decided to award an additional two points to such applications. Accordingly, the maximum number of points that may be awarded under this criterion to an applicant that will not receive contributions under a State-designated enterprise zone program is 13 points. The maximum number of points that may be awarded to an applicant that will receive such contributions is 15 points.
3. Cost effectiveness (§ 280.220(b)(3))—15 points.
4. Neighborhood blight (§ 280.220(b)(4))—20 points.
5. Construction cost (§ 280.220(b)(5))—15 points.
6. Local resident involvement (§ 280.220(b)(6))—15 points.

Additionally, HUD intends to use the appropriate quarterly local cost multipliers listed in the Residential Cost Handbook published by Marshall and Swift Publication Company to adjust for construction costs between market areas as required under ranking criteria § 280.220(b) (3) and (5).

D. Other Information

The information collection contained in this NOFA have been submitted to the Office of Management and Budget for review under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520) and assigned OMB control number 2502-0385. Public reporting burden for this collection of information is estimated to include the time for reviewing instructions,

searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Information on the estimated public reporting burden is provided with the final rule published May 22, 1989 (54 FR 22248). Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street SW., Room 10276, Washington DC 20410 and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington DC 20503.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR Part 50, which implement section 102(2)(C) of the National (Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection during regular business hours (7:30 a.m. to 5:30 p.m. weekdays) in the Office of the Rules Docket Clerk, Room 10276, at the address listed above.

The Catalog of Federal Domestic Assistance program number is 14.179.

Authority: Sec. 811, Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Date: May 2, 1989.

James E. Schoenberger,
General Deputy Assistant Secretary for
Housing Deputy Federal Housing
Commissioner.

[FR Doc. 89-14312 Filed 6-15-89; 8:45 am]
BILLING CODE 4210-27-M

DEPARTMENT OF THE INTERIOR

(AA-620-09-4111-12-2410)

Bureau of Land Management

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance office at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Bureau's

clearance officer and to the Office of Management and Budget, Paperwork Reduction Project (1004-0034), Washington, DC 20503, telephone 202-395-7340.

Title: Oil and Gas Lease Transfers by Assignment or Operating Rights (Sublease).

OMB Approval Number: 1004-0034.

Abstract: Respondents supply information on forms which are submitted by an applicant wishing to assign/transfer an interest in an oil and gas or geothermal lease.

Bureau Form Numbers: 3000-3, 3000-3a.

Frequency: On occasion.

Description of Respondents:

Individuals, small businesses, large corporations.

Estimated Completion Time: ½ hour.

Annual Responses: 60,000.

Annual Burden Hours: 30,000.

Bureau Clearance Officer: [Alternate] Rick Iovaine (202) 653-8853.

Date: May 30, 1989.

George F. Brown,
Deputy Assistant Director, Energy and
Mineral Resources/Fluids.

[FR Doc. 89-14352 Filed 6-15-89; 8:45am]
BILLING CODE 4310-34-M

[UT-942-09-4212-19; U-65095]

Public Lands Held in Trust for the Ute Mountain Ute Indian Tribe

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice.

SUMMARY: Notice is hereby given that, pursuant to Pub. L. 100-708 (102 Stat. 4714) dated November 23, 1988, certain lands, as depicted on maps contained in the Ute Mountain Ute Indian Agency Office, Bureau of Indian Affairs, Towaoc, Co. 81334, the Tribal Headquarters of the Ute Mountain Ute Indian Tribe, Towaoc, Co. 81334, the Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, UT 84111, and the Moab District Office, Bureau of Land Management, 82 East Dogwood, Moab, UT. 84532, are held in trust by the United States for the benefit of the Ute Mountain Ute Indian Tribe and are part of the Tribe's reservation.

FOR FURTHER INFORMATION CONTACT: J. Darwin Snell, Utah State Office, Bureau of Land Management, 324 South State Street, Salt Lake City, UT 84111, 801-539-4102.

The public lands are described as follows:

Salt Lake Meridian, Utah

T. 36 S., T. 21 E.
Sec. 7, NE¼SW¼.

The described land aggregate 40 acres in San Juan County.

Robert Lopez,
Acting Chief, Branch of Lands and Minerals
Operations.

[FR Doc. 89-14354 Filed 6-15-89; 8:45 am]
BILLING CODE 4310-00-M

[CA-21603]

Realty Action; Exchange of Public and Private Lands, Riverside County, California

AGENCY: Bureau of Land Management,
Interior.

ACTION: Notice of Realty Action;
Exchange of Public and Private Lands,
CA-21603.

SUMMARY: The following described public land has been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Legal Description

Riverside County
San Bernardino Meridian, California
Township 6 South, Range 20 East
Section 33: Lots 2, 3, and 4, N¼NW¼ and
N¼S¼NW¼.
Containing 203.34 acres, more or less.

In exchange for this land, the United States will acquire the following described non-federal lands in Riverside County from Newport Harbor Development Company, Incorporated:

San Bernardino Meridian, California

Parcel No. 1:
Township 6 South, Range 20 East
Section 32: S¼SE¼
Parcel No. 2:
Township 6 South, Range 14 East
Section 16: E¼W¼, W¼SE¼; Excepting all
oil, gas, oil shale, phosphate, sodium, gold,
silver and all other mineral deposits
reserved by the State of California.
Containing 320 acres, more or less.

The purpose of the exchange is to acquire non-federal lands within or adjoining designated Areas of Critical Environmental Concern (ACEC). The ACEC's (Chuckwalla Bench and Chuckwalla Valley Dune Thicket) provide critical habitat for desert tortoise and other sensitive desert

* A final approved survey plat of the selected public land will be prepared by the Cadastral Survey prior to patent issuance. The public and/or private acreage or values will be adjusted based upon the acreage of the selected land determined by final survey.

BEST COPY AVAILABLE

wildlife. The exchange would create a more logical and efficient land management pattern and would enhance the Bureau of Land Management's goal to acquire private lands within critical wildlife habitat areas. The public interest will be served by completing this exchange.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved by payment to the United States by Newport Harbor Development Company, Incorporated of funds in an amount not to exceed 25 percent of the total value of the land to be transferred out of Federal ownership.

The land to be transferred from the United States will be subject to the following reservations:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, pursuant to the Act of August 30, 1890 (26 Stat. 391; 43 U.S.C. 945).

2. Those rights for an existing Federal Aid Highway granted to CALTRANS, by right-of-way grant R-136, pursuant to the Act of August 27, 1958 (23 U.S.C. 107(d)).

3. Those rights for an existing Federal Aid Highway and water drainage area granted to CALTRANS, by right-of-way grant LA-054204, pursuant to the Act of November 9, 1921.

In addition to the above reservations, transfer of the land from the United States to Newport Harbor Development Company will also be subject to the following rights of third parties:

1. Those rights for an existing overhead telephone line right-of-way granted to Southern California Edison (SCE) Company, its successors or assigns, by right-of-way grant CA-18386, pursuant to Title V of the Act of October 21, 1976 (43 U.S.C. 1761-71).

2. Those rights for an existing electric power line right-of-way granted to SCE, its successors, or assigns, by right-of-way grant CA-19160, pursuant to the Act of February 15, 1901 (31 Stat. 790).

3. Those rights for an existing underground communications line right-of-way granted to the Continental Telephone Company of California, its successors or assigns, by right-of-way grant CA-20252, pursuant to Title V of the Act of October 21, 1976 (43 U.S.C. 1761-71).

4. Those rights for an existing telephone line, capacitor site, and access road granted to SCE, its successors or assigns, by right-of-way grant CA-4163, pursuant to Title V of the Act of October 21, 1976 (43 U.S.C. 1761-71).

5. Those rights for an existing underground communications line granted to American Telephone and

Telegraph Communication of California, its successors or assigns, by right-of-way grant CA-16385, pursuant to Title V of the Act of October 21, 1976 (43 U.S.C. 1761-71).

6. Those rights for an existing electrical power transmission line granted to SCE, its successors or assigns, by right-of-way grant CA-20241, pursuant to Title V of the Act of October 21, 1976 (43 U.S.C. 1761-71).

7. Those rights for an existing underground oil and gas pipe line granted to the Southern California Gas Company, its successors or assigns, by right-of-way grant LA-0107395, pursuant to the Act of February 25, 1920 (30 U.S.C. 186).

8. Those rights for an existing underground oil and gas pipe line granted to the Southern California Gas Company, its successors or assigns, by right-of-way grant LA-0107395, pursuant to Title V of the Act of October 21, 1976 (43 U.S.C. 1761-71).

9. Those rights for an existing road granted to the California Department of Corrections, by right-of-way grant CA-19090, pursuant to Title V of the Act of October 21, 1976 (43 U.S.C. 1761-71).

10. Those rights for an existing access road granted to Mr. Spiros Demetruilas, his successors or assigns, by right-of-way grant CA-15527, pursuant to Title V of the Act of October 21, 1976 (43 U.S.C. 1761-71).

11. Those rights for an existing underground communications line granted to U.S. Sprint Communications Company, by right-of-way grant CA-18888, pursuant to Title V of the Act of October 21, 1976 (43 U.S.C. 1761-71).

12. Those rights of the current grazing lessee, Joe Auza, to graze 5 Animal Unit Months (AUM) of his existing grazing lease, Ford Dry Lake Ephemeral Grazing Allotment (Allotment No. 6044), until July 31, 1991, unless the lessee waives that portion of his grazing lease affected by the proposed exchange. In the event a waiver is not submitted by the lessee, the Newport Harbor Development Company is entitled to receive annual grazing fees from the lessee for that portion of the lease affected by title transfer in an amount not to exceed that which is authorized under the Federal Grazing Fee published in the *Federal Register*.

The offered private land will be acquired subject to the following third party rights and reservations:

Parcel No. 2:

1. An easement in favor of the public over any portion of the herein described property included within public roads.

2. A right-of-way fifteen feet within the boundaries of the herein described property also proving rights appurtenant to every acre therein for water in or on the property located on said Section 16 herein described, as granted to Myer Silverman and Frances M. Silverman, husband and wife, by deed recorded June 23, 1960 as Instrument No. 55882 of Official Records of Riverside County, California.

3. A reservation for the right to drill for and extract such deposits of oil and gas, or gas, and to prospect for, mine, and remove such deposits of other minerals from said lands as may be required therefor, upon compliance with the conditions and subject to the provisions and limitations of Chapter 5, Part I, Division of 6 of the Public Resources Code, and further reserved to the people the absolute right to finish thereon as provided by Section 25 of Article I of the Constitution of the State of California, as reserved in the State of California patent, recorded February 10, 1958 as Instrument No. 9682 of the Official Records of Riverside County, California.

Publication of this notice in the *Federal Register* segregates the public land from the operation of the public land laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or two years from the date of publication, whichever occurs first. For further information concerning this exchange, including the environmental assessment and land report, contact Peter A. Kempenich, BLM Palm Springs-South Coast Resource Area Office, 400 South Farrell Drive, Suite B-205, Palm Springs, California 92262.

For a period of 45 days after publication of this notice in the *Federal Register*, interested parties may submit comments to the District Manager, California Desert District, 1695 Spruce Street, Riverside, California 92507. Any adverse comments will be evaluated by the State Director, who may vacate or modify this realty action issue a final determination. In the absence of any action by the State Director, this realty action will become the final determination of the Department of the Interior.

Date: June 13, 1989.

H. W. Riecken,

Acting District Manager.

[FR Doc. 89-14415 Filed 6-15-89; 8:45 am]

BILLING CODE 4310-40-M

Fish and Wildlife Service

Incidental Take Permit Application and Notice of Intent To Prepare an Environmental Impact Statement on the Incidental Take Proposal for the Comanche Trail Road Project, Travis County, TX

AGENCY: Fish and Wildlife Service (FWS), Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that FWS is considering an application submitted by Travis County Public Improvements and Transportation Department (PITD) to take federally listed endangered black-capped vireos (*Vireo atricapillus*). The term "take" is herein used as defined in the Endangered Species Act of 1973, as amended, and implementing regulations. The proposed take would occur under the provisions of Section 10(a) of the Endangered Species Act, and would be incidental to the widening and realignment of Comanche Trail, a county maintained road in northwestern Travis County, Texas. The FWS intends to gather information necessary for the preparation of an Environmental Impact Statement (EIS) for the incidental take application. This notice is being furnished as required by the Endangered Species Act Regulations (50 CFR 17.22) and National Environmental Policy Act Regulations (40 CFR 1501.7). The FWS is soliciting participation in this scoping process and comments on PITD's proposal, including the direct, indirect, and cumulative impacts that implementation of the proposal would have on endangered species and other environmental resources. A public meeting will also be held.

DATES: Written comments should be received on or before July 17, 1989. A public meeting will be held in Travis County, Texas, on Thursday, June 29, 1989.

ADDRESSES: Comments should be addressed to Robert M. Short, Field Supervisor, United States Department of the Interior, Fish and Wildlife Service, 819 Taylor Street, Room 9A33, Fort Worth, Texas 76102. The public meeting on June 29, 1989, will be held at 7:00 pm at Travis County Precinct 2 Road and Bridge Office, 13303 Low Water Crossing Road, Austin, Texas 78732 (1/2 mile from Ranch to Market Road 620 at Mansfield Dam).

FOR FURTHER INFORMATION CONTACT: David A. Tilton, U.S. Fish and Wildlife Service, 819 Taylor Street, Room 9A33, Fort Worth, Texas 76102, telephone 817/334-2961.

SUPPLEMENTARY INFORMATION:

The black-capped vireo was listed as endangered by the FWS in November 1987. Section 9 of the Endangered Species Act of 1973, as amended (ESA), prohibits "taking" federally listed species. Section 10(a) of the ESA allows the FWS to permit incidental take of federally listed species upon approval of an application supported by a Habitat Conservation Plan for the affected species. The Habitat Conservation Plan must ensure that any take does not jeopardize the continued existence of the species. On March 31, 1989, the FWS received a section 10(a) application and supporting documents (*Final Report: Environmental Assessment, Biological Assessment and Habitat Conservation Plan for Black-capped Vireo and Bee Creek Cave Harvestman—Comanche Trail Project (CIP No. 2-016) and Bullick Hollow Road Project (CIP No. 2-020), Travis County, Texas*) from the PITD.

The PITD finds that the Bee Creek Cave Harvestman would not be affected by the proposed projects, and the Bullick Hollow Road Project would not affect the black-capped vireo. However, construction of the proposed Comanche Trail project, which is proposed to be completed in two phases, would require clearing of woody vegetation in black-capped vireo nesting territories. Black-capped vireo nesting territories are established during late March through early September in several areas in western Travis County, and other areas in Texas and Oklahoma. Substantial clearing of woody vegetation and construction activity within documented territories constitute "taking" as defined by the ESA and implementing regulations.

Project Descriptions

The Comanche Trail project is proposed to be completed in two phases. Phase One involves relocating the existing intersection of Comanche Trail and Ranch to Market Road 620 (RM 620) to a point approximately 825 feet to the east. At the new intersection, Comanche Trail would consist of four lanes divided by a raised median, for a total right-of-way width of approximately 120 feet. Phase One also involves widening and realignment of approximately 4,000 feet of the existing roadway from RM 620 to the Oasis Restaurant. North of the intersection, the new road would have a paved surface approximately 58 feet wide and a 90-foot-wide maintained right-of-way. Construction of Phase One of the proposed Comanche Trail project would require clearing of some woody vegetation in five black-capped vireo territories documented during the 1987 and 1988 nesting seasons. The proposed

right-of-way would also occur approximately 35 feet west of a sinkhole known to be inhabited by the Bee Creek Cave Harvestman (*Texella reddeni*), a cave-dwelling invertebrate, which was listed as endangered by the FWS in September 1988. Phase Two involves widening, to conform to Travis County roadway standards, from the Oasis Restaurant to Oasis Bluff Drive. Construction of Phase Two would have no direct impact on currently listed endangered or threatened species.

The purpose of the proposed action is to alleviate hazardous conditions at the intersection of existing Comanche Trail with RM 620, and along Comanche Trail to the west. Due partly to the present location of the intersection at the top of a steep grade, visibility is limited and PITD has determined the site is unsuitable for a traffic signal. The hazardous condition results in traffic jams, particularly on summer weekends when traffic loads to and from parks, a residential area, and a restaurant are high.

The PITD has evaluated three alternatives to the proposed project. Alternative #1 would involve realignment to the east requiring a bridge of 1500 feet at a total cost of over ten million dollars. This alternative would also have a direct impact on at least one black-capped vireo territory. Therefore, the PITD has rejected this alternative. Alternative #2 would avoid direct impact to black-capped vireo territories. However, PITD has determined this alternative would be unacceptable because: (a) it would impact prime habitat of the golden-cheeked warbler, a candidate for Federal listing, (b) the road would intersect black-capped vireo habitat "supporting two or more territories", (c) the alignment is scenic property, and (d) the tract is not available without a condemnation suit and potentially high cost. Alternative #3, the "No Action" alternative, is deemed infeasible due to the need for relocating the intersection of Comanche Trail with RM 620.

The Bullick Hollow Road project is also proposed for construction in two phases. Phase One would require some widening and realignment of existing Bullick Hollow Road from RM 620 to Oasis Bluff Drive. Phase Two is presently proposed as an overlay of the existing roadway, from Oasis Bluff Drive to Anderson Mill Road. The total length of the roadway improvements would be approximately 16,000 feet. Recent sightings of black-capped vireos at the intersection of existing Bullick Hollow Road and RM 620 indicate this species may use habitat that would be

impacted, however no established breeding territories have been documented within the proposed right-of-way in recent years.

Proposed Conservation Measures For Endangered Species

The PITD finds that there will be no adverse effects on the Bee Creek Cave Harvestman, provided that protective measures are implemented. The proposed protective measures are: (1) The cave located near the proposed Comanche Trail right-of-way will be acquired or dedicated as a conservation easement, (2) trees and vegetation contributing organic matter to the cave will be protected, (3) a silt fence will be placed around the cave opening until the surrounding area is revegetated, (4) a berm and borrow ditch will be constructed to divert roadway runoff, (5) construction equipment and material storage in the immediate vicinity of the cave will be avoided, and (6) construction workers will be informed of the location of the cave and of precautionary measures.

The PITD's Habitat Conservation Plan provides measures to lessen adverse effects on the black-capped vireo resulting from construction of Phase One of the Comanche Trail Project, and to avoid additional adverse effects from the construction of Comanche Trail and the Bullick Hollow project. The proposed conservation measures are: (1) Schedule construction to coincide with absence of black-capped vireos from nesting territories, (2) commit Travis County to participate in development of a regional habitat conservation plan, (3) band and monitor black-capped vireo, (4) construct and arrange for the maintenance and operation of 12 traps to control brown-headed cowbirds (nest parasites of the black-capped vireo), (5) develop and implement an improved strategy for brown-headed cowbird control, (6) dedicate four permanent management tracts (Comanche Peak Joint Venture—76 acres, Horizon Park—22 acres, the abandoned segment of Comanche Trail—3.3 acres, and the Eanes School Site—7.2 acres), including habitat occupied by six to eight territories in 1987–1988, (7) enhance or restore black-capped vireo habitat in the four management tracts, (8) sponsor a public education program in area neighborhoods, and (9) implement modified park management practices at Hippie Hollow Park, where black-capped vireo presently nest.

To ensure that the full range of issues related to the proposed action are identified and addressed, comments and suggestions are invited from all interested parties. The FWS will

consider all comments received in making its determination regarding whether to grant the permit requested by PITD. Environmental review will be conducted in accordance with the requirements of the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4371 et seq.), NEPA Regulations (40 CFR 1500–1508), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 et seq.), ESA Regulations (50 CFR 17), other appropriate Federal regulations, and FWS procedures for compliance with those regulations. Interested persons may comment within 30 days of the date of this publication by submitting written views, arguments or data to the FWS at the above address. Copies of pertinent documents are available for inspection by the public during normal business hours at the FWS address provided above, or at the office of D'Ann Johnson, Assistant County Attorney, Third Floor, the Stokes Building, 314 West 11th Street, Austin, Texas, telephone 512/473–9415.

We estimate the Draft EIS will be made available to the public by October 1, 1989.

Date: June 12, 1989.

R.K. Robinson,
Chief, Branch of Permits, Office of
Management Authority.
[FR Doc. 89–14307 Filed 6–15–89; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Martin Luther King, Jr., National Historic Site; Meeting

AGENCY: National Park Service; Martin Luther King, Jr., National Historic Site.
ACTION: Notice of advisory commission meeting.

SUMMARY: Notice is hereby given in accordance with the Federal Advisory Commission Act that a meeting of the Martin Luther King, Jr., National Historic Site Advisory Commission will be held at 10:30 a.m. at the following location and date.

DATE: June 28, 1989.

ADDRESS: The Martin Luther King, Jr., Center for Nonviolent Social Change, Inc., Freedom Hall Complex, Room 261, 449 Auburn Avenue NE., Atlanta, Georgia 30312.

FOR FURTHER INFORMATION CONTACT: Mr. Randolph Scott, Superintendent, Martin Luther King, Jr., National Historic Site, 522 Auburn Avenue, NE., Atlanta, Georgia 30312.

SUPPLEMENTARY INFORMATION: The purpose of the Martin Luther King, Jr.,

National Historic Site Advisory Commission is to advise the Secretary of the Interior or his designee on matters of planning and administration of the Martin Luther King, Jr., National Historic Site and Preservation District. The members of the Advisory Commission are as follows:

Ms. Portia Scott, Chairperson
Mr. William W. Allison
Mr. Arthur J. Clement
Mr. John Cox
Ms. Barbara Faga
Mrs. Christine King Farris
Mrs. Valena Henderson
Mr. C. Randy Humphrey
Dr. Elizabeth A. Lyon
Rev. Joseph L. Roberts
Mrs. Coretta Scott King, Ex-Officio Member
Director, National Park Service, Ex-Officio Member

The matters to be discussed at this meeting will include the status of park development and interpretive activities.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Any member of the public may file with the Commission a written statement concerning the matters to be discussed. Written statements may also be submitted to the Superintendent at the address above. Minutes of the meeting will be available at Park Headquarters for public inspection approximately 4 weeks after the meeting.

W. Thomas Brown,
Acting Regional Director, Southeast Region.
Date: June 8, 1989.

[FR Doc. 89–14298 Filed 6–15–89; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 88–97]

Clinton Dewitt Nutt, D.O., Houston, TX; Hearing

Notice is hereby given that on September 19, 1988, the Drug Enforcement Administration, Department of Justice, issued to Clinton Dewitt Nutt, D.O., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AN0874897, and deny any pending applications.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in

this matter will be held on Thursday, June 15, 1989, commencing at 11:30 a.m., at the Westside Command Center, 3202 S. Dairy Ashford Road, Houston, Texas.

Dated: June 9, 1989.

John C. Lawn,
Administrator, Drug Enforcement
Administration.

[FR Doc. 89–14395 Filed 6–15–89; 8:45 am]

BILLING CODE 4410–08–M

DEPARTMENT OF LABOR

Employment and Training Administration

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a)

of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the

Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 26, 1989.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than June 26, 1989.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 601 D Street, NW., Washington, DC 20213.

Signed at Washington, DC this 30th day of May 1989.

Glenn M. Zech,

Acting Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition number	Articles produced
Accurate Parts Co., Ace Electric Co. (UAW)	Kokomo, IN	5/30/89	5/9/89	22,954	Starter motors
Atlas Wireline Service (Workers)	Cody, WY	5/30/89	5/14/89	22,955	Oil and gas
Atlas Wireline Service (Workers)	Casper, WY	5/30/89	5/14/89	22,956	Oil and gas
Atlas Wireline Service (Workers)	Gillette, WY	5/30/89	5/14/89	22,957	Oil and gas
Babcock & Wilcox, Co. (USWA)	Beaver Falls, PA	5/30/89	5/8/89	22,958	Seamless tubing
Bausch & Lomb, Inc. (Workers)	Rochester, NY	5/30/89	5/1/89	22,959	Optical and ophthalmic instruments
C&A Wallcoverings, Inc. (Workers)	Cheektowaga, NY	5/30/89	5/11/89	22,960	Wallpaper
Continental Plastic & Chemical, Inc. (Company)	Avenel, NJ	5/30/89	5/12/89	22,961	Vinyl sheeting
E.W. Bowman, Inc. (USWA)	Union Town, PA	5/30/89	5/9/89	22,962	Glass making machinery
Economy Color Card (Workers)	Roselle, NJ	5/30/89	5/9/89	22,963	Books
GTE Products, Corp. U.S. Lighting/Consumer Div. (Company)	Montoursville, PA	5/30/89	5/11/89	22,964	Lighting products
Gerber Babywear (Workers)	Three Oaks, MI	5/30/89	5/8/89	22,965	Baby bibs and training pants
Hanna Instruments (Workers)	Woonsocket, RI	5/30/89	5/9/89	22,966	Medical and chemical instruments
Howard Martin Knitting Mills, Inc. (ILGWU)	Ridgefield, NJ	5/30/89	5/15/89	22,967	Ladies' knit and woven sportswear
Idea Courier/Service (Workers)	Phoenix, AZ	5/30/89	5/10/89	22,968	Terminals (computers)
Institute for Scientific Information (Workers)	Cherry Hill, NJ	5/30/89	5/1/89	22,969	Data entry
Kolo Cutting Room (ILGWU)	Ridgefield, NJ	5/30/89	5/15/89	22,970	Knits and woven sportswear
Lumened Corp. (Workers)	Woodbridge, NJ	5/30/89	5/11/89	22,971	Ladies handbags
M&G Convey, Inc. (Workers)	New Stanton, PA	5/30/89	5/15/89	22,972	Autos
Oxford Superconducting Technology, Inc. (Workers)	Carteret, NJ	5/30/89	5/4/89	22,973	Superconducting magnets and wire
Pancratz Co. (HVAC)	Casper, WY	5/30/89	5/9/89	22,974	Installation of roofs, heating, air condition etc.
Pearson-Sibert Oil Co. of Texas (Workers)	Ira, TX	5/30/89	5/3/89	22,975	Oil and gas
Raytron-d.b.a. C.E.F. Co. (Workers)	West New York, NJ	5/30/89	5/12/89	22,976	Fuses
Sally Gee, Inc. (ILGWU)	Ridgefield, NJ	5/30/89	5/15/89	22,977	Knit and woven sportswear
Tech-Services/TXX Operations (Workers)	Breckenridge, TX	5/30/89	5/10/89	22,978	Oil and gas
Textron, Inc. Randall Div. (Workers)	Cambridge, OH	5/30/89	5/9/89	22,979	Auto parts
Therma-TRU (Workers)	Van Buren, AR	5/30/89	5/10/89	22,980	Door lights
Trico Industries, Inc. (Workers)	Sidney, MT	5/30/89	5/12/89	22,981	Oil and gas
Wabash Datatech Inc. (Company)	Paoli, IN	5/30/89	5/16/89	22,982	Microdisks and floppy diskettes

[FR Doc. 89–14359 Filed 6–15–89; 8:45 am]

BILLING CODE 4510–30–M

[TA-W-21-179; Livingston, TX et al.]

Exploration Employment Service Inc.

In the matter of Exploration Employment Service, Inc.

TA-W-21,179; Livingston, Texas

TA-W-21,179A; Bay City, Michigan

TA-W-21,179B; All Other Locations in Michigan

TA-W-21,179C; All Other Locations in Texas

TA-W-21,179D; All Locations in California

TA-W-21,179E; All Locations in Colorado

TA-W-21,179F; All Locations in Arkansas

TA-W-21,179G; All Locations in Louisiana

TA-W-21,179H; All Locations in Mississippi

TA-W-21,179I; All Locations in Montana

TA-W-21,179J; All Locations in New Mexico

TA-W-21,179K; All Locations in North Carolina

TA-W-21,179L; All Locations in Nevada

TA-W-21,179M; All Locations in Oklahoma

TA-W-21,179N; All Locations in Utah

TA-W-21,179O; All Locations in Washington

TA-W-21,179P; All Locations in Wyoming

TA-W-21,179Q; All Locations in Idaho

TA-W-21,179R; All Locations in Florida

TA-W-21,179S; All Locations in Kentucky

Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 29, 1988 applicable to all workers of Exploration Employment Service, Inc., Livingston, Texas. The Certification Notice was amended on March 16, 1989 to include all workers of the subject firm in Bay City, Michigan.

Based on new information from the company, additional workers were separated from Exploration Employment Service, Inc., in the States of California, Colorado, Arkansas, Louisiana, Mississippi, Montana, New Mexico, North Carolina, Nevada, Oklahoma, Utah, Washington, Wyoming, Idaho, Florida and Kentucky. The notice, therefore is amended by including all locations of Exploration Employment Service, Inc., in the listed locations.

The amended notice applicable to TA-W-21,179 is hereby issued as follows:

All workers of Exploration Employment Service, Inc., Livingston, Texas; Bay City, Michigan; and in all other locations in Texas and Michigan; and in all locations of California; Colorado; Arkansas; Louisiana; Mississippi; Montana; New Mexico; North Carolina; Nevada; Oklahoma; Utah; Washington; Wyoming; Idaho; Florida and Kentucky who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 5th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-14357 Filed 6-15-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,441]

Jet Oilfield Equipment Rental & Service Inc., Dickinson, North Dakota; Amended Certification Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on January 18, 1989 applicable to all workers of Jet Oilfield Equipment Rental & Service Inc., Dickinson, North Dakota.

Based on new information from the company, additional workers were separated from Jet Oilfield Equipment Rental & Service Inc., Dickinson, North Dakota in October 1985. The subject firm's revenues declined substantially in the fourth quarter of 1985 compared to the same quarter in 1984. The notice, therefore is amended by including a new impact date for workers of Jet Oilfield Equipment Rental & Service, Inc., Dickinson, North Dakota.

The amended notice applicable to TA-W-21,441 is hereby issued as follows:

All workers of Jet Oilfield Equipment Rental & Service Incorporated, Dickinson, North Dakota who became totally or partially separated from employment on or after October 1, 1985 are eligible to apply for adjustment assistance under section 222 of the Trade Act of 1974.

Signed at Washington, DC, this 5th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-14358 Filed 6-15-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-22,052]

Ohio L & M Co., Inc., Reno, Ohio; Determinations on Reconsideration

Pursuant to a remand by the U.S. Court of International Trade, dated May 3, 1989, in *Former Employees of Ohio L & M Co., Inc., v. Secretary of Labor* (USCIT 89-02-00085) the Department makes the following determination on reconsideration for workers of Ohio L & M, Reno, Ohio separated from

employment after December 31, 1987.

The Department's certification of workers at Ohio L & M Inc., Reno, Ohio was for the period from October 1, 1985 to December 31, 1987. This certification was based on the fact that 80 percent of L & M's drilling operations were for unaffiliated oil and gas firms. That termination date in the subject certification, TA-W-22,052, reflected the fact that after that date Ohio L & M ceased drilling for independent firms and was acquired by Alliance Petroleum. Thus, Ohio L & M became part of an integrated oil and gas operation and as such is not eligible for the retroactive provisions of section 1421(a)(1)(B) of the Omnibus Trade and Competitiveness Act.

The Department requested the remand to include additional findings to determine whether the increased import criterion was met during the period when the subject firm was part of an integrated operation.

The Department surveyed the customers of Ohio L & M in order to determine whether imports "contributed importantly" to the worker separations. The survey on reconsideration shows that the subject firm's gas customers, which accounted for over 100 percent of the firm's gas sales decline in 1988, did not import gas or oil in 1987 or 1988. The survey also showed that none of the subject firm's oil customers imported oil or gas in 1987 or 1988. Accordingly, there is no basis for certifying workers in the period after December 31, 1987 because the "contributed importantly" test was not met. Further, other findings show that Ohio L & M actually had an increase of oil sales and production in 1988.

Other findings on reconsideration show that in mid-1988 the parent company of Ohio L & M decided to consolidate the administrative functions of the entire company and relocate the corporate headquarters to Canton, Ohio. As a result of this decision, Ohio L & M's office in Marietta was closed. A management decision to transfer the activities of its workers to another domestic location would not form a basis for certification.

Conclusion

After reconsideration, I affirm the Department's termination date of December 31, 1987 in the notice of certification of eligibility to apply for adjustment assistance to workers and former workers of Ohio L & M Inc., Reno, Ohio and conclude that all workers of Ohio L & M, Reno, Ohio who were laid off after December 31, 1987 are

denied eligibility to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 2nd day of June 1989.

Barbara Ann Farmer,

Director, Office of Program Management, UIS.

[FR Doc. 89-14360 Filed 6-15-89; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-21,029 A Corpus Christi, TX et al.]

Schlumberger Well Services, Coastal West Division; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of Schlumberger Well Services, Coastal West Division, TA-W-21,029 Headquartered in Corpus Christi and Operating in the Following Districts

TA-W-21,029A Corpus Christi, Texas

TA-W-21,029B Alice, Texas

TA-W-21,029C Brenham, Texas

TA-W-21,029D Edinburg, Texas

TA-W-21,029E Liberty, Texas

TA-W-21,029F Laredo, Texas

TA-W-21,029G Pleasanton, Texas

TA-W-21,029H Victoria, Texas

TA-W-21,029I Wharton, Texas

Schlumberger Offshore Services

TA-W-21,138 Corpus Christi, Texas

TA-W-21,138A All Other Locations in Texas

TA-W-21,138B All Locations in Louisiana

TA-W-21,138C All Locations in Mississippi

TA-W-21,138D All Locations in Alabama

TA-W-21,138E All Locations in Florida

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on November 18, 1988 applicable to all workers of Schlumberger Well Services and Schlumberger Offshore Services both of Corpus Christi, Texas. The Certification Notice was amended on April 27, 1989 to include all workers of Schlumberger Well Services in Alice, Texas; Brenham, Texas; Edinburg, Texas; Liberty, Texas; Laredo, Texas; Pleasanton, Texas; Victoria, Texas and Wharton, Texas.

Based on new information from the company, additional workers were separated from Schlumberger Offshore Services operating at various locations in Texas, Louisiana, Mississippi, Alabama and Florida. The notice, therefore is amended by including all locations of Schlumberger Offshore Services in Texas, Louisiana, Mississippi, Alabama and Florida.

The amended notice applicable to TA-W-21,029 and TA-W-21,138 is hereby issued as follows:

All workers of Schlumberger Well Services' Coastal West Division headquartered in Corpus Christi, Texas and operating in the following district offices in Texas: Corpus Christi, Alice, Brenham, Edinburg, Liberty, Laredo, Pleasanton, Victoria and Wharton and Schlumberger Offshore Services in Corpus Christi, Texas and in all other locations of Texas and in all locations of Louisiana, Mississippi, Alabama and Florida who became totally or partially separated from employment on or after October 1, 1985 and before July 1, 1988 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 5th day of June 1989.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 89-14356 Filed 6-15-89; 8:45 am]

BILLING CODE 4510-30-M

Employment Standards Administration, Wage and Hour Division**Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions**

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR Part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR Part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract

work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and superseded decisions thereto, contain no expiration dates and are effective from their date of notice in the *Federal Register*, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR Parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR Part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue NW., Room S-3504, Washington, DC 20210.

Corrections to General Wage Determination Decisions

Pursuant to the provisions of the Regulations set forth in Title 29 of the Code of Federal Regulations, Part 1, section 1.6(d), the Administrator of the Wage and Hour Division may correct any wage determination that contains clerical errors.

Corrections being issued in the Government Printing Office document entitled "General Wage Determinations

Issued Under the Davis-Bacon and Related Acts" are indicated by Volume and are included immediately following the transmittal sheet(s) for the appropriate Volume(s).

Volume II

Wage Decision No. MI88-2, Modifications 2 through 5

Wage Decision No. MI89-2, through Modification 4

Pursuant to the Regulations, 29 CFR Part 1, section 1.6(d), such corrections shall be included in any bid specifications containing the wage determinations, or in any on-going contracts containing the wage determinations in question, retroactively to the start of construction.

New General Wage Determination Decisions

The numbers of the decisions being added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume, State, and page number(s).

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Virginia:

VA89-19	pp. 1178a-1178b
VA89-25	pp. 1188a-1188d
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VA89-28	pp. 1188i-1188j
VA89-29	pp. 1188k-1188l
VA89-30	pp. 1188m-1188n
VA89-31	pp. 1188o-1188p
VA89-32	pp. 1188q-1188r
VA89-33	pp. 1188s-1188t
VA89-34	pp. 1188u-1188v
VA89-35	pp. 1188w-1188x
VA89-36	pp. 1188aa-1188bb
VA89-37	pp. 1188cc-1188dd
VA89-38	pp. 1188ee-1188ff
VA89-39	pp. 1188gg-1188hh
VA89-40	pp. 1188ii-1188jj

Modifications to General Wage Determination Decisions

The numbers of the decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume, State, and page number(s). Dates of publication in the Federal Register are in parentheses following the decisions being modified.

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KY89-2 (Jan. 6, 1989).... p. 284

New York:

NY89-11 (Jan. 6, 1989).... p. 782

NY89-12 (Jan. 6, 1989).... p. 790

NY89-13 (Jan. 6, 1989).... pp. 800, 803

NY89-14 (Jan. 6, 1989).... p. 808

NY89-15 (Jan. 6, 1989).... p. 812

NY89-17 (Jan. 6, 1989).... p. 819

Pennsylvania:

PA89-4 (Jan. 6, 1989).... pp. 871-872

PA89-9 (Jan. 6, 1989).... pp. 926-928

PA89-10 (Jan. 6, 1989).... pp. 934-935

PA89-12 (Jan. 6, 1989).... pp. 942-943

PA89-14 (Jan. 6, 1989).... pp. 950-951

PA89-17 (Jan. 6, 1989).... pp. 964-968

PA89-18 (Jan. 6, 1989).... pp. 970-972

PA89-21 (Jan. 6, 1989).... pp. 990-991

PA89-23 (Jan. 6, 1989).... pp. 1006-1008

PA89-24 (Jan. 6, 1989).... pp. 1012-1013

Volume II

Arkansas:

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AR89-5 (Jan. 6, 1989).... p. 14

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Nebraska, NE89-3 (Jan. 6, 1989).... p. 724

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California, CA89-4 (Jan. 6, 1989).... p. 81

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Mine Safety and Health Administration

[Docket No. M-89-79-C]

Amax Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Amax Coal Company, P.O. Box 3005, Gillette, Wyoming 82717-3005 has filed a petition to modify the application of 30 CFR 77.216-3(a) (water, sediment, or slurry impoundments and impounding structures; inspection requirements; correction of hazards; program requirements) to its Eagle Butte Mine (I.D. No. 48-01078) located in Campbell County, Wyoming for South Revlon Reservoir (I.D. No. 1211-WY-09-01078-02), East Revlon Reservoir (I.D. No. 1211-WY-09-01078-03), Sediment EB109 Reservoir (I.D. No. 1211-WY-09-01078-04), and for Diversion Reservoir (I.D. No. 1211-WY-09-01078-05). The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that all water, sediment, or slurry impoundments be examined by a qualified person designated by the person owning, operating or controlling the impounding structure at intervals not exceeding seven days for appearances of structural weakness and other hazardous conditions.

2. As an alternate method, petitioner proposes to inspect the reservoirs on a quarterly basis when they are dry and to inspect the reservoirs on a weekly basis when they retain one acre-foot or more of water. The reservoirs also would be immediately inspected after any measurable snow melt or rainfall.

3. In support of this request, petitioner states that the reservoirs have not shown "appearances of structural weakness and other hazardous conditions."

4. For these reasons, petitioner requests a modification of the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 17, 1989. Copies of the petition are available for inspection at that address.

Signed at Washington, DC this 9th day of June, 1989.

Robert V. Setera,

Acting Director, Division of Wage Determinations.

[FR Doc. 14123 Filed 6-15-89; 8:45 am]

BILLING CODE 4510-27-M

Date: June 8, 1989.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 89-14363 Filed 6-15-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-80-C]

Amax Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Amax Coal Company, 251 North Illinois Street, P.O. Box 967, Indianapolis, Indiana 46206-0967 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley wires, trolley feeder wires, high-voltage cables and transformers) to its Wabash Mine (I.D. No. 11-00877) located in Wabash County, Illinois. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that trolley wires and trolley feeder wires, high-voltage cables and transformers not be located in by the last open crosscut and be kept at least 150 feet from pillar workings.

2. Petitioner states that the recent trend in longwall mine design indicates that longwall mining systems will increase in width. This increase in width will require additional horsepower to power the longwall system. In order to supply power to such a system from a power source limited to 1,000 volts, the following problems arise:

(a) The ampacity requirements at 1,000 volts are such that very large and heavy cables are required. The large and heavy cables cause congested work space and handling problems that can result in accidents associated with sprains and strains;

(b) Poor voltage regulation can result in motor overheating and lack of torque applied to the face conveyor; and

(c) At 1,000 volts, the interrupting limits of the available circuit breakers are approached resulting in a diminished safety factor.

3. As an alternate method, petitioner proposed to use 4,200 or 2,400 volts to supply power to high-voltage equipment and associated power cables at the longwall face with specific conditions as outlined in the petition.

4. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These

comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 17, 1989.

Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 8, 1989.

[FR Doc. 89-14364 Filed 6-15-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-89-C]

Ashley Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Ashley Coal Company, Route 1, Box 297, Gray, Kentucky 40734 has filed a petition to modify the application of 30 CFR 75.313 (methane monitor) to its Mine No. 1 (I.D. No. 15-16071) located in Knox County, Kentucky. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a methane monitor be installed on electric face cutting equipment, continuous mining machines, longwall face equipment and loading machines. The monitor is required to be properly maintained and frequently tested.

2. No methane has been detected in the mine.

3. The three-wheel tractors are permissible DC-powered machines, without hydraulics. Approximately 30-40% of the coal is hand loaded into a drag-type bucket. Approximately 20% of the time that the tractor is in use, it is used as a mantrip and supply vehicle.

4. As an alternate method, petitioner proposes to use handheld continuous oxygen and methane monitors instead of methane monitors on three-wheel tractors. In further support of this request, petitioner states that:

(a) Each three-wheel tractor would be equipped with a handheld continuous monitoring methane and oxygen detector and all persons would be trained in the use of the detector;

(b) Prior to allowing the coal loading tractor in the face area, a gas test would be performed to determine the methane concentration in the atmosphere. When the elapsed time between trips does not exceed 20 minutes, the air quality would be monitored continuously after each

trip. This would provide continuous monitoring of the mine atmosphere for methane to assure the detection of any methane buildup between trips;

(c) If one percent methane is detected, the operator would manually deenergize the battery tractor immediately. Production would cease and would not resume until the methane level is lower than one percent;

(d) A spare continuous monitor would be available to assure that all coal hauling tractors would be equipped with a continuous monitor;

(e) Each monitor would be removed from the mine at the end of the shift, and would be inspected and charged by a qualified person. The monitor would also be calibrated monthly; and

(f) No alterations or modifications would be made in addition to the manufacturer's specification.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 17, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

Date: June 8, 1989.

[FR Doc. 89-14365 Filed 6-15-89; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-89-86-C]

H.L.W. Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

H.L.W. Coal Company, 14 Maple Street, Pine Grove, Pennsylvania 17963 has filed a petition to modify the application of 30 CFR 75.301 (air quality, quantity, and velocity) to its No. 2 Slope (I.D. No. 36-07269) located in Schuylkill County, Pennsylvania. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. A petition concerns the requirement that the minimum quantity of air reaching the last open crosscut in any pair or set of developing entries and the

last open crosscut in any pair or set of rooms be 9,000 cubic feet a minute, and the minimum quantity of air reaching the intake end of a pillar line be 9,000 cubic feet a minute. The minimum quantity is required to be 3,000 cubic feet a minute.

2. Air sample analysis history reveals that harmful quantities of methane are nonexistent in the mine. Ignition, explosion, and mine fire history are nonexistent for the mine. There is no history of harmful quantities of carbon monoxide and other noxious or poisonous gases.

3. Mine dust sampling programs have revealed extremely low concentrations of respirable dust.

4. Requiring extremely high velocities in small cross-sectional airways and manways in friable anthracite veins for control purposes, particularly in steeply pitching mines, present a very dangerous flying object hazard to the miners and cause extremely uncomfortable damp and cold conditions in the mine.

5. As an alternate method, petitioner proposes that:

(a) The minimum quantity of air reaching each working face be 1,500 cubic feet per minute;

(b) The minimum quantity of air reaching the last open crosscut in any pair or set of developing entries be 5,000 cubic feet per minute;

(c) The minimum quantity of air reaching the intake end of a pillar line be 5,000 cubic feet per minute, or whatever additional quantity of air that may be required in any of these areas to maintain a safe and healthful mine atmosphere.

6. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203.

All comments must be postmarked or received in that office on or before July 17, 1989. Copies of the petition are available for inspection at that address.

Dated: June 8, 1989.

Patricia W. Silvey,
Director, Office of Standards, Regulations
and Variances.

[FR Doc. 89-14366 Filed 6-5-89; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-89-83-C]

J & B Coal Co., Inc.; Petition for Modification of Application of Mandatory Safety Standard

J & B Coal Company, Inc., P.O. Box 400, Tracy City, Tennessee 37387 has filed a petition to modify the application of 30 CFR 75.902 (low- and medium-voltage ground check monitor circuits) to its No. 41 Mine (I.D. No. 40-02875) located in Sequatchie County Tennessee. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that low- and medium-voltage resistance grounded systems include a fail-safe ground check circuit to assure continuity. The ground check will cause the circuit breaker to open when either the ground or pilot check wire is broken.

2. As an alternate method, petitioner proposes to install a bare (non-insulated) conductor as a safety ground conductor with specific conditions and equipment as outlined in the petition.

3. The operator would instruct and train all qualified personnel, prior to the assignment of duties, as to the proper method of installing and maintaining the alternative grounding system within 30 days after approval and at six month intervals. Employees who are absent during these periods would be trained within five working days after returning to work.

4. A permanent record of the name of each employee and the dates when each received initial training and reinstruction would be available for inspection by MSHA personnel.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July 17, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations
and Variances.

Dated: June 7, 1989.

[FR Doc. 89-14367 Filed 6-15-89; 8:45 am]
BILLING CODE 4510-43-M

[Docket No. M-89-88-C]

Roblee Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Roblee Coal Company, P.O. Box 2198, Buckhannon, West Virginia 26201 has filed a petition to modify the application of 30 CFR 75.503 (permissible electric face equipment; maintenance) to its Tallmans Run No. 1 Mine (I.D. No. 46-07407) located in Barbour County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that a locked padlock be used to secure battery plugs to machine-mounted battery receptacles on permissible, mobile, battery-powered machines.

2. As an alternate method, petitioner proposes to use a spring-loaded metal locking device in lieu of padlocks. The spring-loaded device would be designed, installed and used to prevent the threaded rings that secure the battery plugs to the battery receptacles from unintentionally loosening and would be attached to prevent accidental loss. In addition, the fabricated metal brackets would be securely attached to the battery receptacles to prevent accidental loss of the brackets.

3. The spring-loaded metal locking devices would be easier to maintain than padlocks because there are no keys to be lost and dirt cannot get into the workings as with a padlock.

4. Operators of permissible, mobile, battery-powered machines affected by this modification would be trained in the proper use of the locking device, the hazards of breaking battery-plug connections under load, and the hazards of breaking battery-plug connections in areas of the mine where electric equipment is required to be permissible.

5. Petitioner states that the proposed alternate method will provide the same degree of safety for the miners affected as that afforded by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, Room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before July

17, 1989. Copies of the petition are available for inspection at that address.

Patricia W. Silvey,

Director, Office of Standards, Regulations
and Variances.

Date: June 9, 1989.

[FR Doc. 89-14368 Filed 6-15-89; 8:45 am]

BILLING CODE 4510-43-M

Occupational Safety and Health Administration

[Docket No. NRTL-2-88]

Dash, Straus and Goodhue, Inc.; Recognition as a Nationally Recognized Testing Laboratory

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on the Dash, Straus and Goodhue, Inc., application for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT: James J. Concannon, Director, Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3853, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

Notice is hereby given that Dash, Straus and Goodhue, Inc., which made application for recognition pursuant to 29 CFR 1910.7, has been recognized as a Nationally Recognized Testing Laboratory for the equipment or materials listed below.

The address of the laboratory covered by this recognition is: Dash, Straus and Goodhue, Inc., 593 Massachusetts Avenue, Boxborough, Massachusetts 01719.

Background

Dash, Straus and Goodhue, Inc., was formed in 1980 initially for the purpose of undertaking tests to determine equipment compliance with Federal Communications Commission (FCC) regulations. In this effort, the Company succeeded business activities begun by Dash, Straus Associates in 1977.

The Product Safety Division of Dash, Straus and Goodhue, Inc. was formed in January 1986 for purposes of providing its client base with services designed to

support its client's requirements for Underwriters' laboratories, Inc. (UL), Canadian Standards Association (CSA), and Technischer Überwachungs-Verein (TUV) electrical safety listing certification and licensing.

The Company is listed by the Federal Communications Commission and accredited by the U.S. Department of Commerce, and the National Institute of Standards and Technology (NIST), formerly the National Bureau of Standards, under the National Voluntary Laboratory Accreditation Program (NVLAP). The applicant is an active member of the American National Standards Institute (ANSI), the Electronic Industries Association (EIA), and the National Fire Protection Association (NFPA).

Dash, Straus and Goodhue, Inc. (DS&G) applied to OSHA for recognition as a Nationally Recognized Testing Laboratory in April 1988. The application was subsequently revised and additional data provided as requested. An on-site evaluation was conducted (Ex. 2B(1)) and the results were discussed with the applicant who responded with appropriate corrective actions and clarifications to recommendations made as a result of the survey (Ex. 2B(2)). A final on-site evaluation of DS&G's testing facility and administrative and technical practices and the corrective actions taken by DS&G in response to this evaluation (Ex. 2B), and the OSHA staff recommendation, was subsequently forwarded to the Assistant Secretary for a preliminary finding on the application. A notice of DS&G's application together with a positive preliminary finding was published in the *Federal Register* on December 16, 1988 (53 FR 50603-04). Interested parties were invited to submit comments.

There were seven responses to the *Federal Register* notice of the DS&G application and preliminary finding (Docket No. NRTL-2-88). Exhibits 3-1 through 3-6 attested to the credibility of the applicant, agreed with the positive preliminary finding, and recommended recognition as a nationally recognized testing laboratory. The other comment, Exhibit 3-7, will be discussed more fully below.

The Occupational Safety and Health Administration has evaluated the record in relation to the regulations set out in 29 CFR 1910.7 and makes the following findings:

Capability

Section 1910.7(b)(1) states that for each specified item of equipment or material to be listed, labeled or

accepted, the testing laboratory must have the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform appropriate testing.

The on-site review report indicates that DS&G does have testing equipment, facilities, and personnel appropriate for the areas of recognition it seeks and its present workload. The laboratory has more than 30 pieces of identified test equipment it uses to perform the testing required by the four standards it will use. The test standards to be used identify the necessary parameters which are specified in the standard. DS&G's equipment can measure these parameters specified in the standard. It maintains an inventory list of test equipment which includes the type of equipment, manufacturer, model and serial numbers, and calibration type.

One respondent expressed concern that certain necessary equipment may not be owned and available at the site (Ex. 3-7, p. 4).

DS&G has demonstrated that it has all equipment needed to test the products for which it seeks recognition under the test standards it intends to use. Therefore, at the present time, DS&G has no need to lease equipment.

The Product Safety Division, which is located at the Boxborough, Massachusetts address of the applicant, consists of 20 employees, as follows:

- 1—President
- 1—Vice President of Sales/Marketing
- 1—Vice President for Legal/Administrative
- 1—Vice President for Engineering
- 8—Clerical/Administrative
- 6—Engineers
- 2—Technicians

DS&G has submitted copies of the job responsibilities and qualifications for each of the technical positions listed above and the employees, in OSHA's opinion, appear to be qualified by training or experience for performing testing in the areas for which DS&G seeks recognition.

DS&G leases 7,000 square feet of floor space in a 2-story commercial/retail building. Product testing is conducted within a 640 square foot room. Visitor entrance to the facility is monitored by laboratory personnel occupying the area during working hours. The facility also has security alarm and fire sprinkler systems. The physical facilities appear to be adequate for the volume and type of testing for which DS&G has requested recognition.

One respondent (Ex. 3-7, p. 4) questioned the ability of DS&G to accomplish the work associated with the testing and listing services involving the indicated product categories alleging that it is "a very small organization with limited facility, test equipment, and staff resources".

The on-site review has demonstrated to OSHA's satisfaction that DS&G has adequate facilities, personnel, and test equipment to accomplish the services required for its present workload in the applied-for product categories. It is DS&G's intention to continuously maintain adequate facilities (including personnel and equipment) to deal with their workload and they will expand their facilities as necessary if the workload significantly increases. OSHA will, of course, continue to monitor the operation of the laboratory as part of its oversight function. Any expansion of product categories would necessitate the presentation of a formal application to OSHA. With regard to a commentator's inference (Ex. 3-7, p. 5) that DS&G will use contract or part-time employees in its follow-up program, DS&G has stated that it has no plans to employ any members of either group.

The on-site review report revealed that DS&G has a comprehensive calibration program for its test equipment which was up-graded subsequent to the on-site review report (see Corrective Action Report (Ex. 2B(2)). Although outside vendor calibration services are used, the Quality Assurance Manager retains the responsibility for the identification, scheduling and shipping of this equipment. There is a written equipment calibration program which includes periodic calibration, labels to indicate calibration status, and records of calibration, repairs and maintenance of test equipment. A computer data base tracks the calibration status of all test equipment which needs periodic calibration.

Another respondent (Ex. 3-7, p. 5) viewed the applicant "suggesting remedies" to a client as a conflict of interest and a "significant and important deficiency". The commentator felt that such practice indicated the applicant's "greater propensity for consultation than testing".

While the extent of consultation provided might, in some cases, impede a laboratory's objectivity and even its independence, OSHA does not view DS&G's present practice of dialogue with clients as a conflict of interest. DS&G appears to offer the same service as Underwriters Laboratories Inc. That is, offering an explanation of the standards and assisting its client in

arriving at a solution that will meet the requirements of the standards. It is left up to the client, however, to implement such a solution.

OSHA does agree with the commentator in theory, at least, that the standard does not contemplate a situation where a laboratory would be evaluating its own design. However, whether a given laboratory's practice is acceptable under 29 CFR 1910.7 is a question of fact tied to the particular circumstances of a given case. OSHA reserves the right to revisit this issue in the future should DS&G's practice in this area change significantly.

DS&G test engineers utilize written test procedures (guides) to describe and evaluate the construction of a sample of the product submitted for testing. These procedures are indexed to specific sections of the standards. The procedures are detailed in the on-site review report. See the On-Site Evaluation (Ex. 2B(1), p. 2), and the Corrective Action Report (Ex. 2B(2), p. 1).

The applicant has a number of procedures in place to help assure consistent test protocol and interpretations. For example, DS&G has a procedure in place to record technical policy interpretations pertaining to a test standard and to disseminate this information to the staff (see Corrective Action Report (Ex. 2B(2), p. 2). OSHA considers these procedures to be adequate.

Although at the time of the on-site review DS&G had no designated Quality Assurance Manager, the Vice President of Engineering had the quality assurance responsibilities to review and approve the work of the staff engineers and technicians related to product approvals. This same individual also conducted regular performance reviews of staff members to assure adherence to standards and procedures, in lieu of a formal internal audit program. While OSHA considered this adequate for the present workforce and workload, it noted the informality of this procedure and recommended formalizing certain aspects of the program to assure objective evaluations of performance if the laboratory expands or the workload increases (see the On-Site Evaluation, Ex. 2B(1), p. 5). DS&G has since implemented these recommendations and modified these aspects of its program (see the Corrective Action Report (Ex. 2B(2), p. 2). A Quality Assurance Manager has been appointed with the responsibility for test equipment calibration, review of form reports and test records, and for the initiation and maintenance of the Follow-Up Services Program. A formal

audit team has also been designated to randomly select and review reports and test records to insure that proper procedures have been followed and that test data is reproducible.

Type of Testing

The standard contemplates that testing done by NRTLs fall into one of two categories: testing to determine conformance with appropriate test standards, or experimental testing where there might not be one specific test standard covering the new product or material. DS&G has applied for recognition in the first category.

Follow-Up Procedures

Section 1910.7(b)(2) requires that the NRTL shall provide certain follow-up procedures to the extent necessary for the particular equipment or material to be listed, labeled or accepted. These include implementation of control procedures for identifying the listed or labeled equipment or materials, inspecting the production run at factories to assure conformance with test standards, and conducting field inspections to monitor and assure the proper use of the label. One commentator (Ex. 3-7, p. 5) stated that "the applicant indicates that such a (follow-up) program currently does not exist". This same commentator states further that there is no description in the follow-up agreement on legal action regarding the misuse of the listing mark and of public notification regarding hazardous products; that the follow-up program of DS&G only addresses products from stock; and that the applicant indicates that it "may" request samples from the manufacturing line, which tends to weaken the program.

Although DS&G has not previously listed products, it has written follow-up procedures to verify that the product at the manufacturing site, as it is currently assembled, is identical to samples of the product that have been evaluated and tested. An agreement must be signed by the submitter/client which, among other stipulations, permits DS&G to conduct follow-up service inspections of listed products at the manufacturing site. The approval mark authorized by DS&G cannot be applied to the product until after the first inspection is carried out.

Such inspections will be conducted at three-month intervals from the date of the approval. Unresolved discrepancies found during the follow-up procedures can result in the forfeiture of the right to apply the label, removal of already affixed labels, and possible recall of products sold with the label. DS&G has the right to notify vendors, authorities,

potential users, and others of an improper or unauthorized use of its mark.

DS&G's follow-up services agreement stipulates that it shall have free, unannounced, and immediate access to the factories and other facilities wherein the products, or any component thereof, may be fabricated, processed, finished, stored or located, at all times during business hours or when the factory or storage facilities are in operation, in order that such representative may properly perform the follow-up service. DS&G has also stated that it was always its intent to conduct unannounced factory follow-up inspections, and to require a review of samples from the manufacturing line (see Ex. 4, p. 5).

Field inspections may be necessary under various circumstances. The determination on whether to conduct these field inspections routinely, sporadically, or not at all for a given product, will depend upon the results of the factory follow-up and other relevant considerations. As an example, field inspections may be appropriate when the laboratory has reason to believe that its mark or label is being improperly used. Such belief could result from observed events or information from complainants. Another situation necessitating a field inspection could arise where it is impractical to conduct regular factory inspections because of a limited production schedule. It is expected that the decision on conducting field inspections will be continually reevaluated to fit the circumstances. DS&G, in the written terms and conditions of its follow-up services, states that it will make periodic examinations or tests of products at the factory and may, from time to time, select samples from the factory, the open market, or elsewhere to be sent to a DS&G testing station for examination or test to determine compliance with DS&G's requirements.

The on-site review demonstrated that DS&G has experience with a follow-up program to correct product problems and insure the integrity of the label. Moreover, OSHA will periodically review the follow-up procedures to evaluate their efficacy.

Independence

Section 1910.7(b)(3) requires that the NRTL be completely independent of employers subject to the tested equipment requirements and of any manufacturer or vendor of equipment or materials being tested. The applicant stated in its application that it is a privately held company jointly owned in equal shares by its three officers. It operates as an independent testing

laboratory and has no fiduciary relationship or association with its vendors, suppliers, or clients except as a facility engaged to perform regulatory and compliance testing. Moreover, no officer of DS&G owns any stock in any manufacturer whose products DS&G tests.

DS&G has stated that it will maintain this same level of independence throughout its existence as a Nationally Recognized Testing Laboratory.

Creditable Reports/Complaint Handling

Section 1910.7(b)(4) provides that an OSHA recognized NRTL must maintain effective procedures for producing creditable findings and reports that are objective and without bias. The laboratory, in order to be recognized, must also maintain effective procedures for handling complaints under a fair and reasonable system.

The DS&G application as well as the on-site review report indicate that DS&G does maintain effective procedures for producing creditable findings and reports that are objective. As part of the review, several test reports were reviewed and found to be consistent with the intent of § 1910.7(b)(4)(i) to produce creditable findings and reports. This requirement is, however, essentially procedural in nature (see 53 FR 12111, 4/12/88). OSHA believes that its evaluation of DS&G's capabilities, including its personnel, equipment, facilities, calibration program, and quality assurance program, as well as its independence, among other things, indicates that there are appropriate procedures being implemented to produce objective test reports that are without bias.

The requirement that a laboratory have a fair and reasonable system for handling complaints was intended to allow interested parties an avenue of redress when, for example, it is believed that an item has been improperly labeled or that an inappropriate test procedure has been applied. It was not intended to interfere with any laboratory's recognized responsibility to decide whether to approve, list, label, or certify any particular type of equipment or material which it had tested. Indeed, many of the ANSI test standards include in the preface a statement specifically indicating that an item may not be acceptable even though it may meet all the test criteria. Rather, 29 CFR 1910.7(b)(4)(ii) was intended to help settle complaints and disputes after an item has been approved, listed, labeled, or certified. DS&G has a program to assure that the complaints of any interested party, including users of the product, will be fairly handled and

resolved. Its procedure requires that the complaint first be presented for resolution in house. If the dispute cannot be resolved, there is a procedure for referring the issue to an impartial third person for resolution.

One respondent (Ex. 3-7, p. 5) objected to DS&G's dispute handling procedure on the basis that the results would lack consistency as different parties would be involved and different arbitrators could be selected. The essential ingredient in this requirement is that all interested persons have access to a dispute handling system which is both "fair and reasonable" (of *ASME v. Hydrolevel* 456 U.S. 556, 102 S.Ct. 1935 (1982)). Arbitration and mediation are long recognized and satisfactory methods of resolving disputes between private parties and are consistent with 29 CFR 1910.7(b)(4)(ii).

Test Standards

Section 1910.7 requires that a nationally recognized testing laboratory use "appropriate test standards". The standard defines an appropriate test standard as a document which specifies the safety requirements for specific equipment or a class of equipment and is recognized in the United States as providing an adequate level of safety, compatible with and maintained current with periodic revisions of applicable national codes, and developed by a standards developing organization under a system of providing for broad input from interested parties § 1910.7(c)(1), (2), and (3)). The standard also designates as "appropriate" any standard that is currently designated as an ANSI safety designated product standard or an ASTM test standard used for evaluation of products or materials. (See § 1910.7(c)(4)).

Laboratories may also use other test standards that the Assistant Secretary of Labor has evaluated to determine that such standard provides an adequate level of safety. (See § 1910.7(d)). In this case, DS&G has indicated that it will use the ANSI/UL and UL test standards listed below. The ANSI standard (ANSI/UL #1012—Power Supplies) is an appropriate test standard within the meaning of 29 CFR 1910.0(b) and (c)(4). As to the other test standards DS&G has applied to use (UL #478, UL #1459, and UL #544), OSHA has examined the status of the Underwriters Laboratories Inc. (UL) Standards for Safety and, in particular, the method of their development, revision and implementation and has determined that they are appropriate test standards under the criteria described in 29 CFR

1910.7 (1), (2), and (3). That is, these standards specify the safety requirements for specific equipment or classes of equipment and are recognized in the United States as safety standards providing adequate levels of safety; are compatible with and remain current with periodic revisions of applicable national codes and installation standards; and are developed by a standards developing organization (i.e. UL) under a method providing for input and consideration of views of industry groups, experts, users, consumers, governmental authorities, and others having broad experience in the safety fields involved.

One of the commentators (Ex. 3-7, pp. 3-4) stated that the test standards "are listed without their date of issue" and raised the spectre of inconsistency; they believe "there is need for assurance of testing to latest versions of the standard". DS&G indicated that part of its testing includes a Revision Subscription Service to automatically obtain the latest revisions of the standards (see on-site review report). The procedures identified by DS&G indicate its capability to test to the latest revision of the test standard. This is the same level of assurance that would be required of other recognized laboratories. The procedures to be followed in the event of test standard changes are adequately stated in Appendix A of 29 CFR 1910.7.

Other Issues

One of the respondents (Ex. 3-7) raised a number of issues that were not directly relevant to the issue of DS&G meeting the definition of an NRTL as set forth in 29 CFR 1910.7. These comments were general criticisms of the standard. For example, one such comment focused on the need to designate and use a single test standard for each product. (Ex. 3-7, pp. 1-2). This issue had been raised by the same respondent during the rulemaking proceeding and was discussed and resolved in the preamble to the final rule (see 53 CFR 12108-12109, 4/12/88). Since these general issues were raised and resolved during the promulgation of the standard it is not now timely to comment on them.

Another comment (Ex. 3-7, p. 4) indicated that no information was provided relative to the testing and approval of components.

The NRTL Program does not address whether one NRTL must accept another NRTL's listing or recognition of a component. Instead, the laboratory listing the overall product acceptance, listing, or recognition, is responsible for assuring that the components used in the product meet the applicable test

standards. In DS&G's case, where a recognized component is required DS&G will require that that component be labelled with the recognition mark of a nationally recognized testing laboratory. The component vendor will then be required to supply DS&G with evidence of component recognition. Finally, the component vendor will be required to supply DS&G with a copy of the "Conditions of Acceptability", which describes the tests that need to be performed upon the component in the end product. (See Ex. 4, pp. 2-3).

Another issue raised by a commentator (Ex. 3-7, pp. 5-6) concerned test and evaluation consistency among all NRTLs.

This would be an ideal state which may be achieved in the future when laboratories exchange information on a regular basis. This is not being accomplished by the nationally recognized testing laboratories presently in their standards or interpretations. In addition, consistent interpretation of standards between the two presently recognized Nationally Recognized Testing Laboratories is not the case in every instance.

Final Decision and Order

Based upon a preponderance of the evidence resulting from an examination of the complete application, the supporting documentation, the OSHA staff finding including the on-site review report, and the comments presented during the public review and comment period, OSHA finds that Dash, Straus and Goodhue, Inc., has met the requirements of 29 CFR 1910.7 to be recognized by OSHA as a Nationally Recognized Testing Laboratory to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, it is ordered that the Dash, Straus and Goodhue, Inc., be recognized as a Nationally Recognized Testing Laboratory subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR Part 1910, require testing, listing, labeling, approval, acceptance, or certification, by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following test standards for the testing and certification of equipment or materials included within the scope of these standards.

DS&G has stated that all the standards in these categories are used to test equipment or materials which may be used in environments under OSHA's jurisdiction:

UL#478—Information-Processing and Business Equipment
UL#1459—Telephone Equipment
UL#544—Electric Medical and Dental Equipment

ANSI/UL #1012—Power Supplies.

Dash, Straus and Goodhue, Inc., also must abide by the following conditions of its recognition, in addition to those already required by 29 CFR 1910.7:

The Occupational Safety and Health Administration shall be allowed access to DS&G's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If DS&G has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

DS&G shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, DS&G agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

DS&G will continue to meet the requirements for recognition in all areas for which it has applied; and

DS&G will cooperate with OSHA at all times to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

EFFECTIVE DATE: This recognition will become effective on June 16, 1989, and will be valid for a period of five years from that date, until June 16, 1994, unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC this 13th day of June, 1989.

Alan C. McMillan,
Acting Assistant Secretary.

[FR Doc. 89-14402 Filed 6-15-89; 8:45 am]

BILLING CODE 4510-26-M

Nevada State Standards; Approval

1. *Background:* Part 1953 of Title 29, Code of Federal Regulations, prescribes procedures under section 18 of the Occupational Safety and Health Act of 1970 (hereinafter called the Act) by which the Regional Administrator for Occupational Safety and Health (hereafter called Regional

Administrator), under a delegation of authority from the Assistant Secretary of Labor for Occupational Safety and Health (hereafter called the Assistant Secretary) (29 CFR 1953.4) will review and approve standards promulgated pursuant to a State plan which has been approved in accordance with section 18(e) of the Act and 29 CFR Part 1902. On January 4, 1974, notice was published in the *Federal Register* (39 FR 1008) of the approval of the Nevada plan and the adoption of Subpart W to Part 1952 of Title 29 containing the decision. The Nevada plan provides for the adoption of Federal standards as State standards by reference.

By letters dated April 17, 1989, and April 28, 1989, from Nancy C. Barnhart to Frank Strasheim and incorporated as part of the plan, the State submitted State standard revisions identical to 29 CFR 1910.1000, Air Contaminants (January 19, 1989, 54 FR 2332) and Hazardous Waste Operations and Emergency Response (March 6, 1989, 54 FR 9294).

These standards are contained in the Division of Occupational Safety and Health Standards for General Industry. The subject standards, 29 CFR 1910.1000, Air Contaminants and 29 CFR 1910.120, Hazardous Waste Operations and Emergency Response were adopted by reference on March 1, 1989, and March 6, 1989 respectively, pursuant to Nevada State law, § 618.295.

2. *Decision.* Having reviewed the State submission in comparison with the Federal standards, it has been determined that the standards are identical to the Federal standards and accordingly are approved.

3. *Location of Supplement for Inspection and Copying.* A copy of the standards supplement, along with the approved plan, may be inspected and copied during normal business hours at the following locations: Office of the Regional Administrator, Occupational Safety and Health Administration, 71 Stevenson Street, Room 415, San Francisco, CA 94105; and Director, Division of Occupational Safety and Health, 1370 South Curry Street, Carson City, Nevada 89710; and Directorate of Federal-State Operations, 200 Constitution Avenue, NW., Washington, DC 20210.

4. *Public Participation.* Under 29 CFR 1953.2(c), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. The Assistant Secretary finds that good cause exists for not publishing the supplement to the Nevada State plan as a proposed change and making the Regional

Administrator's approval effective upon publication for the following reasons:

1. The standards are identical to the Federal Standards which were promulgated in accordance with Federal law including meeting requirements for public participation.

2. The standards were adopted in accordance with procedural requirements of State law and further participation would be unnecessary.

This decision is effective June 18, 1989. (Sec. 18, Pub. L. 91-596, 84 Stat. 1608 (29 U.S.C. 667). Signed at San Francisco, California this 15th day of May, 1989.)

Frank Strasheim,
Regional Administrator.

[FR Doc. 89-14361 Filed 6-15-89; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting of Humanities Panel

AGENCY: National Endowment for the Humanities.

ACTION: Notice of Meetings.

SUMMARY: Pursuant to the provisions of the Advisory Committee Act (Pub. L. 92-463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

FOR FURTHER INFORMATION: Stephen J. McCleary, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 786-0322.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; or (3) information the disclosure of which would significantly frustrate implementation of proposed agency; pursuant to authority granted by the Chairman's Delegation of Authority to

Close Advisory Committee Meetings, dated January 15, 1978, I have determined that these meetings will be closed to the public pursuant to subsections (c), (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

1. *Date:* July 6, 1989, *Time:* 8:30 a.m. to 5:00 p.m., *Room:* 315, *Program:* This meeting will review applications in Elementary and Secondary Education in the Humanities, submitted to the Division of Education Programs, for projects beginning after December 1, 1989.

2. *Date:* July 6-7, 1989, *Time:* 9:00 a.m. to 5:00 p.m., *Room:* 415, *Program:* This meeting will review applications in Museums and Historical Organizations, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1989.

3. *Date:* July 10-11, 1989, *Time:* 9:00 a.m. to 5:00 p.m., *Room:* 430, *Program:* This meeting will review applications in Research Scholarship, Graduate Education, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1989.

4. *Date:* July 17-18, 1989, *Time:* 9:00 a.m. to 5:00 p.m., *Room:* 430, *Program:* This meeting will review applications in Public Outreach, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1989.

5. *Date:* July 24-25, 1989, *Time:* 9:00 a.m. to 5:00 p.m., *Room:* 430, *Program:* This meeting will review applications in Museums and Historical Organizations, submitted to the Office of Challenge Grants, for projects beginning after December 1, 1989.

6. *Date:* July 7, 1989, *Time:* 10:00 a.m. to 1:00 p.m., *Room:* 316-2, *Program:* This meeting will review applications in Regrants, submitted to the Division of Research Programs, for projects beginning after December 1, 1989.

Stephen J. McCleary,
Advisory Committee, Management Officer.

[FR Doc. 89-14382 Filed 6-15-89; 8:45 am]

BILLING CODE 7536-01-M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards Subcommittee on Human Factors; Cancellation

The ACRS Subcommittee meeting on Human Factors scheduled to be held on June 15, 1989 has been cancelled. The

notice of this meeting was previously published in the **Federal Register** on Monday, June 12, 1989 (54 FR 24974).

Date: June 12, 1989.

Gary R. Quiltschreiber,
Chief, Project Review Branch No. 2.
[FR Doc. 89-14391 Filed 6-15-89; 8:45 am]
BILLING CODE 7590-01-M

[Docket No. 030-28641 License No. 42-23539-01AF EA 88-87 USAF Permit No. 34-00472-02]

Department of the Air Force, Wright-Patterson Air Force Base; Order Imposing Civil Monetary Penalties

I

The Department of the Air Force (licensee) is the holder of License No. 42-23539-01AF issued by the Nuclear Regulatory Commission (NRC/Commission) on June 26, 1985. The license authorizes the licensee to possess byproduct material, source material, and special nuclear material for uses authorized by the U.S. Air Force Radioisotope Committee and in accordance with the conditions specified therein.

II

An inspection of the licensee's activities was conducted during the period October 24, 1986 through February 11, 1987. The results of this inspection indicated that the licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalties was served upon the licensee by letter dated June 17, 1988. The Notice stated the nature of the violations, the provisions of the NRC's requirements that the licensee had violated, and the amount of the civil penalties proposed for the violations. The licensee responded to the Notice of Violation and Proposed Imposition of Civil Penalties by letters dated July 15, 1988. In its response, the licensee denied one violation, stated that it can neither admit nor deny that a second violation occurred, and set forth several reasons why in its view the civil penalties should not be imposed.

III

After consideration of the licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the Deputy Executive Director for Materials Safety, Safeguards, and Operations Support has determined, as set forth in the Appendix to this Order, that the violations

occurred as stated and that the penalty proposed for the violations designated in the Notice of Violation and Proposed Imposition of Civil Penalties should be imposed.

IV

In view of the foregoing and pursuant to Section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It Is Hereby Ordered That:*

The licensee pay civil penalties in the amount of One Hundred Two Thousand Five Hundred Dollars (\$102,500) within 30 days of the date of this Order, by check, draft, or money order, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

The licensee may request a hearing within 30 days of the date of this Order. A request for a hearing shall be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. A copy of the hearing request also shall be sent to the Assistant General Counsel for Enforcement, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Regional Administrator, Region III, U.S. Nuclear Regulatory Commission, 799 Roosevelt Road, Glen Ellyn, Illinois 60137, and to the Regional Administrator, Region IV, U.S. Nuclear Regulatory Commission, 611 Ryan Plaza, Suite 1000, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the licensee was in violation of the Commission's requirements as set forth in the Notice of Violation and Proposed Imposition of Civil Penalties referenced in Section II above; and

(b) Whether, on the basis of such violations, this Order should be sustained.

For the Nuclear Regulatory Commission,
Hugh L. Thompson, Jr.,
Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support.

Dated at Rockville, Maryland this 8th day of June 1989.

Appendix—Evaluation and Conclusion

On June 17, 1988, a Notice of Violation and Proposed Imposition of Civil Penalties (NOV) was issued for violations identified during an NRC inspection. The Department of the Air Force responded to the Notice on July 15, 1988. In its response, the licensee denied one violation, stated that it can neither admit nor deny that a second violation occurred, and set forth several reasons why in its view the civil penalties should not be imposed. The NRC's evaluation and conclusions regarding the licensee's arguments are as follows:

Violation A

Restatement of Violation A

10 CFR 20.403 (b)(3) and (b)(4) require the licensee to contact the NRC within 24 hours of discovery of an event involving licensed material possessed by the licensee that may have caused or threatens to cause a loss of one day or more of the operation of any facility affected, or damage to property in excess of \$2,000.

Contrary to the above, the licensee failed to notify the NRC within 24 hours of discovery of an event involving licensed material possessed by the licensee that may have caused or threatens to cause a loss of one day or more of the operation of any facility affected, or damage in excess of \$2,000. On September 19, 1986, members of Wright-Patterson's Bio-Environmental Engineering Group initially concealed from both NRC and Air Force personnel an americium-241 spill, which occurred on September 18, 1986 in a facility used as a waste storage area. Although the licensee did contact NRC officials on September 28, 1986, the Air Force did not relay to the NRC accurate information, which was known to Brooks Air Force Base, so that the NRC could make an accurate assessment of the event. Moreover, on October 6, 1986 an entry was made into the same facility which resulted in the overexposure cited in Violation B and additional contamination. Nevertheless, neither the initial event nor the second event was accurately reported to the NRC until November 7, 1986. These events caused the licensee to take action to prohibit the use of its waste storage area for more than one day and caused damage to property as demonstrated by the decontamination costs in excess of \$2,000.

This is a Severity Level I violation (Supplement IV) Civil Penalty—\$100,000

Summary of Licensee's Response

The licensee denies that a report was required with regard to the matters which occurred on either September 18 or October 6, 1986. In this connection, the licensee argues that the reporting regulation is ambiguous regarding what constitutes an "event," "loss of facility," and "damage to property." The

licensee further argues that the regulation is unenforceably vague, and that there was no need to report the incident since the facility continued to be used as a storage facility and the costs required for cleanup did not constitute "damage." The licensee also denies that there was an intent or attempt to deliberately provide inaccurate or incomplete information to the NRC or to mislead NRC officials with respect to either incident or an intent to restrict NRC personnel from receiving information germane to the performance of NRC duties.

NRC's Evaluation of Licensee's Response

The NRC disagrees that the reporting requirements as applied to these incidents are vague, and maintains that the events which occurred on September 18 and October 6, 1986 did indeed constitute events which required 24 hour notification.

On August 20, 1986, an NRC Region III (NRC-RIII) special inspection was conducted to evaluate allegations by John C. Haynes. The allegations were that: (1) During a 1972-1974 time period, Haynes transferred an unknown quantity of unencapsulated americium-241 to the Radiation Safety Officer (RSO) at Wright-Patterson Air Force Base (WPAFB) without the knowledge of WPAFB management; and (2) the RSO informed Haynes that during the 1972-1974 time period, 100 curies of americium-241 were found and transferred to the Monsanto Corporation of Dayton, Ohio.

During an August 20, 1986 interview, the WPAFB RSO stated that he had never received any radioactive material for disposal from the alleged and denied that americium-241 was found and transferred to the Monsanto Corporation. The RSO also provided a written statement to NRC inspectors confirming his oral statement. The inspectors reviewed waste handling records in an attempt to validate the RSO's testimony. No indication was found of transactions with Mr. Haynes.

On September 18, 1986, the RSO, along with other WPAFB personnel, entered Building 4060, a radioactive waste storage building, to conduct an inventory. During this entry, an americium-241 release occurred while opening a barrel to identify its contents. That barrel contained the material that had been illegally received from the alleged by the RSO. The entry resulted in personnel contamination that required several showers for decontamination. Both the Director and Deputy Director, WPAFB Bio-Environmental Engineering (BEE) Group, were notified of the event on September 18, 1986.

A meeting of the BEE Group took place on September 19, 1986. During that meeting, the event, its reportability, and methods for cleanup were discussed. The Director, BEE, instructed the other members not to report the event to anyone, including other groups in the Air Force. A plan for illicit disposal of the material, consisting of mislabeling waste barrels, was also discussed. When the Director, BEE, learned during the meeting that the meeting was being tape recorded for the purpose of preparing meeting minutes, he ordered that the portion of the tape dealing with the contamination event be destroyed.

Outside the meeting, the Director, BEE, requested the Deputy Director, BEE, to consult with the WPAFB Medical Physicist regarding appropriate followup activities.

On September 22, 1986, the Deputy Director, BEE, assumed command of BEE Group as the Director was on temporary duty in St. Louis, Missouri. As instructed that day by the Director, the Deputy Director discussed the event with the Medical Physicist for WPAFB Medical Center and asked for his recommended course of action. The Medical Physicist suggested that BEE should notify the Base Commander and determine the identity of the isotope. On September 26, 1986, the Medical Physicist realized that the Deputy Director had not made any notifications and had not determined the isotope. The Medical Physicist took it upon himself to identify the isotope and report the event to the Base Commander and the Medical Center Director. Later that day, it was determined that the isotope was americium-241.

After the Base Commander was briefed on September 26, the Base Commander initiated a comprehensive response to the event. The following actions were directed by the Base Commander: (1) Immediately determine if contamination existed external to the building; (2) seal the building; (3) cordon off the area; (4) restrict access to the building; (5) contact the USAF Radioisotope Committee by telephone for notification purposes; (6) acquire the use of the Air Force Radiological Assistance Team (AFRAT) for cleanup operations; and (7) prepare a suitable decontamination plan for implementation, including times and milestones. It was also directed that the appropriate authorities and organizations should be informed.

At 3:30 p.m., on September 26, 1986, the Medical Physicist, WPAFB informed the Executive Secretary of the USAF Radioisotope Committee at Brooks AFB of the problem and the Executive Secretary assured him that the required notifications to the NRC would be made. The Executive Secretary had been informed by the Medical Physicist that the event was a high-level spill of radioactive material in a building and that the material was americium-241, but might also include plutonium-239. The Executive Secretary then directed a staff member to inform the NRC Region IV (NRC-RIV) about these facts. Although a telephone call to NRC-RIV was made, the information provided to NRC officials was that the event consisted of leakage of low-level waste drums and was scheduled to be minor. NRC officials were also told that the event was under review and more details would be forthcoming. The identity of the isotope and high-level nature of the spill was not mentioned.

On September 29, 1986, as determined from interviews and the notes of individuals, the Director and Deputy Director of the BEE Group, were aware of the involvement of Haynes and the illicit nature of the material that had been spilled. The Base Commander stated that the number one priority of WPAFB at that time was the contamination event. Also, on September 29 or October 2, 1986, the Executive Secretary briefed his replacement on the event, as he was reporting to a new duty assignment.

On October 3, 1986, an NRC-RIV official who had been involved in the September 26, 1986, phone call contacted the new Executive Secretary, since no further information had been received from NRC. The event was described by the new Executive Secretary to the NRC official as being minor in nature. He also told the NRC official that the contamination was localized and there did not appear to be a major problem. At this point, the new Executive Secretary knew that the cleanup operation would cost at least \$100,000, yet he did not mention this to the NRC representatives.

Another telephone call to NRC-RIV officials was made on October 6, 1986. Again, Air Force personnel contacted described the events as minor in nature and did not mention the isotope. Also, on this date, Air Force health physics personnel entered Building 4060 to evaluate radion levels. A significant uptake of americium-241 to one individual (8.07 nanocuries) and additional contamination resulted from this entry.

Because of continuing escalation of the event, the new Executive Secretary decided to call NRC-RIV on October 10, 1986, and discuss the event in further detail. Although during this telephone call he informed NRC-RIV of the identity of the material, he did not discuss the extent of the spill and the amount of money needed to clean up the problem. The NRC-RIV official asked the new Executive Secretary if NRC reporting requirements had been reviewed and was told that they had been reviewed and a report was not required.

Neither the September 18 nor the October 6, 1986, event was accurately reported to the NRC until November 7, 1986, and these events caused the loss of operation of Building 4060 for more than one day and resulted in damage to property, as demonstrated by the decontamination costs, in excess of \$2,000. The licensee argues that the storage aspect of the facility continued to be unaffected. NRC disagrees with the licensee's conclusion. Routine use, as understood by NRC, consisted of waste barrels entering, being stored, and exiting the facility. Individuals would enter and exit the facility with minimal anti-contamination clothing. After the events of September 18 and October 6, 1986, the licensee controlled the facility in the following manner: (1) On October 4-5, a security watch was provided to prevent individuals from even approaching Building 4060 and measures were taken to prevent reentry, and (2) from October 14-23, the licensee had to order new equipment necessary for reentry. Such equipment was previously unnecessary. No barrels were added or removed after the September 18 event until the new equipment necessary for reentry was received.

Barrels were eventually removed in response to the event. The most striking argument for loss of the facility is the final determination by the licensee that the building could no longer serve a useful purpose and had to be destroyed. Although this action occurred some time after the event, sufficient information immediately following the event demonstrated that

Building 4060's function as intended prior to the event was clearly lost.

Furthermore, NRC officials were misled by USAF officials. Personnel from the Radioisotope Committee did not provide adequate information to the NRC Region IV office and the Director of BEE, and upper-level base individual, instructed his employees not to discuss the event with anyone outside the BEE Group. Such actions on the part of the licensee, through its employees, are unacceptable and were in disregard of the NRC's responsibility for public health and safety.

Violation B

Restatement of Violation B

10 CFR 20.103(a)(1) limits the quarterly uptake of radioactive materials in air by individuals in restricted areas to amounts derived from the concentration limits in 10 CFR Part 20, Appendix B, Table I, Column I, using the formula in 10 CFR 20.103(a)(1) Footnote 3. The derived quarterly limit for uptake of soluble americium-241 in air is 3.8 nanocuries.

Contrary to the above, on October 6, 1986, an individual working in a restricted area inhaled or ingested approximately 8.07 nanocuries of soluble americium-241.

This is a Severity Level III violation (Supplement IV). Civil penalty—\$2,500.

Summary of Licensee's Response

The licensee claims that at the time of its response (July 15, 1988) it could neither admit nor deny that an individual in a restricted area received an exposure to radiation in excess of the regulatory limits set forth in 10 CFR 20.103(a)(1). Its basis for making this claim is that an independent contractor had been obtained by the Air Force to assess bioassay data for the individual in question and to date the results of the assessment are pending.

NRC's Evaluation of Licensee's Response

The NRC conclusion that the individual in question exceeded the regulatory limits of exposure to americium-241 by a factor of approximately two was based on information received from the licensee. Specifically, on December 7, 1987, a formal report from the licensee was sent to the NRC stating that the report was a final summary report of bioassay results. The licensee's own report stated that the individual did exceed the quarterly MPC limits by a factor of approximately two. The NRC's review of the data at that time confirmed the licensee's conclusion. Therefore, based on the information currently available, the NRC maintains that the individual received an exposure to americium-241 in excess of the regulatory limit. If, at some time in the future, further data are submitted in conflict with this information, the NRC may reevaluate its conclusion. To date, no further assessment data have been submitted to the NRC.

Summary of Licensee's Arguments for Mitigation or Elimination of the Civil Penalty

The licensee makes several assertions in support of its argument that the civil penalty should be mitigated or eliminated. These can be summarized as follows: (1) The level of the

penalty for Violation A, without consideration of the factors provided in the Enforcement Policy, is arbitrary and capricious; (2) Mr. Lewis, who accepted and stored waste at Wright-Patterson Air Force Base, acted in a purely personal capacity, and without the knowledge of his superiors, and his conduct has never been condoned by the licensee; (3) imposition of civil penalties upon the Air Force would punish the victim of the misconduct, and serve no valid purpose, and it is unfair to the Air Force, previously a highly satisfactory licensee, to term the Air Force "deceptive" under the ambiguous circumstance which existed; (4) credit should be given for the licensee's prompt identification and reporting of both events (as soon as management became aware of the events, they were reported and each significant change in the situation was promptly passed on to the NRC), corrective action, and exemplary past performance; (5) since Region III failed to inform Region IV or the Radioisotope Committee of allegations by J.C. Haynes that americium-241 had been delivered to Mr. Lewis, the Radioisotope Committee was not sensitive to Region III's concern that they could not account for several curies of americium-241, and this contributed to Lewis' having unsupervised access to Building 4060; and (6) the levying of a civil penalty by one federal agency upon another is unconstitutional.

NRC's Evaluation of Licensee's Arguments

Violation A is Arbitrary and Capricious

The level of the penalty for Violation A is not arbitrary and capricious but is in accordance with the NRC's Enforcement Policy 10 CFR Part 2, Appendix C (Policy). Violation A, the failure to file a report, would normally be categorized at Severity Level III in accordance with Supplement IV.C.3 of the Policy. However, that severity level was increased to Severity Level I pursuant to Section V.B of the Policy which states that "in cases involving willfulness, flagrant NRC-identified violations, repeated poor performance in the area of concern, or serious breakdown in management controls, NRC intends to apply its full enforcement authority where such action is warranted, including issuing appropriate orders and assessing civil penalties for continuing violations on a per day basis, up to the statutory limit of \$100,000 per violation, per day." Thus, the staff concluded that Violation A involved a willful attempt to conceal these events by a number of USAF personnel and that the NRC should exercise its enforcement discretion and increase the penalty for Violation A to \$100,000.

Mr. Lewis Acted in a Purely Personal Capacity

NRC does not agree that Mr. Lewis acted in his own capacity without knowledge of his superiors. Based upon statements made during the NRC investigation, the NRC has determined that Mr. Lewis was accompanied by his superior, now retired Colonel Milner, during the receipt of the material. Furthermore, even if Mr. Lewis had acted alone, as stated in Section V.A of NRC's Enforcement Policy, the NRC holds licensees responsible for the actions of their

employees. This is especially appropriate where the person is the Radiation Safety Officer who is responsible for radiation protection. In addition, with respect to the reporting violation, it is clear that several USAF officials were responsible for failing to adequately inform NRC.

Imposition of Civil Penalties Upon the USAF Would Punish the Victim

The failure of USAF officials to provide adequate information to the NRC Region IV office did not involve lower level base personnel, but personnel from the Radioisotope Committee. Additionally, on September 19, 1986, the Director of Bio-Environmental Engineering, an upper-level base individual, when questioned as to the reportability of the September 18 event, stated that he was not going to inquire as to whether the event necessitated reporting. He also instructed his employees not to discuss the event with anyone outside the BEE Group. The Deputy Director, BEE, when instructed to report the event and determine the isotope, made no attempt to follow such instructions. Individuals at Brooks Air Force Base clearly had information which NRC officials needed in order to respond properly to the event, but failed to communicate such information to the NRC in a timely fashion. Such actions on the part of the licensee, through its employees, are not acceptable and were in disregard of its and the NRC's responsibility for public health and safety.

Credit Should be Given for Reporting, Corrective Actions and Past Performance

The NRC also does not find that the licensee's reporting of the events, corrective actions, or prior performance warrant mitigation of the civil penalties. With regard to the licensee's reporting of these events, neither the September 18 nor the October 6, 1986 event was accurately reported to the NRC until November 7, 1986. As stated above, the NRC concluded that Violation A involved a willful attempt to conceal these events by a number of USAF personnel and it should exercise discretion and escalate the base civil penalty. In reaching the decision to exercise this discretion, the NRC recognized the licensee's corrective actions and its prior good enforcement history. While the Enforcement Policy allows for mitigation of civil penalties for such factors as corrective actions and enforcement history, because of the seriousness of this matter, mitigation is not considered appropriate in this case.

Contrary to the licensee's assertion that it kept the NRC apprised of any changes in the situation, the NRC was not informed that bioassay data was still being reviewed until the licensee filed its response to the NOV in July 1988. Until then, the NRC was of the impression until receipt of that response that a final determination had been made of the individual's exposure. In particular, on December 7, 1987, a formal report from the licensee was sent to the NRC stating that the report was a final (emphasis added) summary report of the bioassay results.

Region III Did Not Notify Region IV or the Radioisotope Committee of the Haynes-Lewis Connection

With regard to the licensee's allegations that Region III did not notify the Radioisotope Committee of the Haynes-Lewis connection, NRC did not notify the Committee of the allegations because it did not appear to have an immediate impact on health and safety. During the Haynes confiscation in 1985, the NRC believed that the majority of the americium-241 in Haynes' possession had been accounted for based on scientific analyses conducted on the confiscated material and estimates from the many radiological surveys conducted. In addition, the NRC believed that the material, if indeed transferred, was in small quantities and had been disposed of through the Air Force. Although the regulatory responsibility for the broad scope license did not become Region IV's until October 1, 1986, Region III should have advised Region IV of the allegations and the subsequent findings. However, had NRC Region III discussed this matter with Region IV, Region III would have told Region IV that the majority of the radioactive material had been recovered, but that there were reservations about the RSO's statement concerning whether he had received material from Haynes. The NRC had no reason to believe that curie amounts of radioactive material were unaccounted for, as alleged by the United States Air Force.

In addition, NRC believes that it is erroneous to state that the licensee was not informed of the Haynes-Lewis allegation. During the August 20, 1986 inspection prior to the event, NRC inspectors questioned WPAFB officials about the allegation. Before the NRC inspectors left the base, they discussed the matter with high-level base officials. It was clearly understood by the Deputy Base Civil Engineer, acting for the Base Commander, that NRC was concerned about the Haynes-Lewis connection and tried to obtain information to substantiate the allegation.

On October 1, 1986, several days after the base commander had been informed of the contamination event, the Region III Branch Chief in charge of the inspectors who performed the August 20, 1986 inspection called to discuss the inspection. The base commander informed the Branch Chief that USAF was, indeed, contemplating further investigation of the allegations.

NRC believes that high-level officials at the specific USAF base connected with the allegations were adequately informed in advance of the events. It appears that base personnel failed to adequately brief Radioisotope Committee personnel about NRC concerns.

Imposition of a Civil Penalty by One Federal Agency Upon Another is Unconstitutional

With regard to the licensee's generalized statement and its March 17, 1989 letter to the Department of Justice that imposition of a civil penalty by one federal agency upon another is unconstitutional, the civil penalty action taken against the United States Air Force was in accordance with the NRC's Enforcement Policy which is based on the Atomic Energy Act of 1954. The Act gives

NRC the authority to regulate all activities under its jurisdiction in order to protect the public health and safety. The Atomic Energy Act of 1954 does not differentiate between Federal and private licensees in NRC's authority to issue civil penalties. The language of the Atomic Energy Act authorizes civil penalties against any "person," which is defined to include "any . . . government agency other than the Commission. . . ."

The Atomic Energy Act in our view is not unconstitutional. The applicability of section 234 of the Act to Execute Branch agencies is discussed in some detail in the letter and memorandum sent by the NRC's General Counsel to the Department of Justice on April 18, 1989, copies of which were sent to the Air Force's General Counsel. Therefore, consistent with prior NRC enforcement actions regarding other federal agencies and the Atomic Energy Act, the civil penalty is being imposed.

NRC Conclusion

After reviewing the licensee's response to the Notice of Violation and Proposed Imposition of Civil Penalty, the NRC staff has concluded that the violations occurred as stated in the Notice, and that the licensee has not provided a basis for mitigation of the civil penalties. Accordingly, a civil penalty in the amount of One Hundred Two Thousand Five Hundred Dollars (\$102,500) should be imposed.

[FR Doc. 89-14370 Filed 6-15-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Information Collection for OMB Review

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (title 44 U.S. Code Chapter 35), this notice announces a collection of information from the public that has been submitted to OMB for clearance. It will be a blanket clearance to cover information collection from applicants, deans, and references in the selection of Presidential Management Interns to comply with Executive Order 12364 signed by President Reagan on May 24, 1982. We estimate 2350 respondents will expend 1533 burden hours annually to file these forms. For copies of this proposal, call Grace Butler on (202) 632-0259.

DATE: Comments on this proposal should be received on or before June 26, 1989.

ADDRESSES: Send or deliver comments to—C. Ronald Truworthy, Agency Clearance Officer, U.S. Office of Personnel Management, 1900 E Street,

NW., Room 6410, Washington, DC 20415, and Joseph Lackey, Information Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, Room 3002, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT: Patricia Paige (202) 632-0601.

U.S. Office of Personnel Management.

James M. Strock,

Acting Director.

[FR Doc. 89-14369 Filed 6-15-89; 8:45 am]

BILLING CODE 6325-01-M

PEACE CORPS

Information Collection Request Under OMB Review

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.) this notice announces that the information collection request abstracted below has been forwarded to the Office of Management and Budget for review and is available for public review and comment. A copy of the information collection may be obtained from Ms. Martha Saldinger, Office of Private Sector Relations/Development Education, Peace Corps, 1990 K Street, NW., Washington, DC 20526. Ms. Saldinger may be called at 202-254-8406. Comments on this form should be addressed to Ms. Francine Picoult, Desk Officer, Office of Management and Budget, Washington, DC 20503.

Information Collection Abstract

(1) *Title:* Peace Corps Partnership Donor Forms.

(2) *Need for and Use of the Information:* To gather the names, addresses and telephone numbers of people who have expressed interest in the Peace Corps Partnership Program. This list will be used to send information about new projects, meetings or conferences that might interest the current or potential donor.

(3) *Respondents:* Schools, businesses, civic organizations, corporations and individuals who have requested more information about the Partnership Program.

(4) *Burden on the public:*

a. Annual reporting burden: 332 hours.
b. Annual recordkeeping burden: 0 hours.

c. Estimated average burden hours per response: 5 minutes.

d. Frequency of response: on occasion.

e. Estimated number of likely respondents: 4,000.

This notice is issued in Washington, DC, on June 1, 1989.

Margaret H. Thome,
Associate Director for Management.

[FR Doc. 89-14297 Filed 6-15-89; 8:45 am]

BILLING CODE 9051-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-26909; File No. SR-NASD-89-14]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Qualification Examination Waiting Periods

The National Association of Securities Dealers, Inc. ("NASD") submitted on March 21, 1989, and amended on April 25, 1989, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder to amend Part VI of Schedule C to the NASD By-Laws to establish waiting periods between attempts to pass qualification examinations.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 26771, May 1, 1989) and by publication in the *Federal Register* (54 FR 19620, May 8, 1989). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: June 8, 1989.

Jonathan G. Katz,
Secretary.
[FR Doc. 89-14306 Filed 6-15-89; 8:45 am]
BILLING CODE 8010-01-M

DEPARTMENT OF STATE

Shipping Coordinating Committee; Subcommittee on Safety of Life at Sea Working Group on Radiocommunications; Meetings

The Working Group on Radiocommunications of the Subcommittee on Safety of Life at Sea will conduct open meetings at 0930 on the following dates: September 21, 1989; October 19, 1989; November 16, 1989; and December 21, 1989. These meetings will be held in room 9230 of the Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590-0001.

The purpose of these meetings is to discuss the Global Maritime Distress and Safety System (GMDSS), and to prepare for the 35th Session of the International Maritime Organization Subcommittee on Radiocommunications. Agenda items also include GMDSS implementation in the U.S., cost of maritime safety services, improved dissemination of maritime safety information, and Chapter 9 of the Torremolinos International Convention for the Safety of Fishing Vessels.

Members of the public may attend these meetings up to the seating capacity of the room.

For further information contact Mr. Ronald J. Grandmaison, U.S. Coast Guard Headquarters (G-TTS-3), 2100 Second Street, SW., Washington, DC 20593-0001. Telephone: (202) 267-1389.

Date: June 1, 1989.

Thomas J. Wajda,
Chairman, Shipping Coordinating Committee.
[FR Doc. 89-14353 Filed 6-15-89; 8:45 am]
BILLING CODE 4710-07-M

DEPARTMENT OF TRANSPORTATION

[Docket 46338]

Hermens/Markair Express, Inc.; Assignment of Proceeding

This proceeding has been assigned to Administrative Law Judge Ronnie A. Yoder. All future pleadings and other communications regarding the proceeding shall be served on him at the Office of Hearings, M-50, Room 9228, Department of Transportation, 400 Seventh Street, SW., Washington DC 20590. Telephone: (202) 366-2142.

William A. Kane, Jr.,
Chief Administrative Law Judge.
[FR Doc. 89-14314 Filed 6-15-89; 8:45 am]
BILLING CODE 4010-02-M

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended June 9, 1989

The following applications for certificates of public convenience and necessity and foreign air carrier permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for answers, conforming application, or motion to modify scope are set forth below for each application. Following the answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket No.: 46329.

Date Filed: June 6, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 5, 1989.

Description: Application of United Air Lines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Economic Regulations applies for a certificate of public convenience and necessity to serve Warsaw, Poland from Chicago.

Docket No.: 46331.

Date Filed: June 7, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 5, 1989.

Description: Application of American Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Economic Regulations applies for an amendment of its certificate of public convenience and necessity for Route 137 so as to authorize nonstop air service between Chicago, Illinois and Warsaw, Poland.

Docket No.: 46333.

Date Filed: June 7, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 5, 1989.

Description: Application of American Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Economic Regulations applies for an amendment of its certificate of public convenience and necessity for Route 137 so as to authorize nonstop air service between Chicago, Illinois and Moscow, Union of Soviet Socialist Republics.

Docket No.: 45944.

Date Filed: June 7, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 5, 1989.

Description: Application of Mid Pacific Air Corporation pursuant to

Section 401(D) and 401(D)(3) of the Act and Subpart Q of the Rules of Practice requests the transfer of Mid Pacific Airlines, Inc. certificates of public convenience and necessity to MPAC.

Docket No.: 45945.

Date Filed: June 7, 1989.

Due Date for Answers, Conforming Applications, or Motion to Modify Scope: July 5, 1989.

Description: Application of Mid Pacific Air Corporation pursuant to Section 401(D) and 401(D)(3) of the Act and Subpart Q of the Rules of Practice requests the transfer of Mid Pacific Airlines, Inc. certificates of public convenience and necessity to MPAC.

Phyllis T. Kaylor,
Chief, Documentary Services Division.

[FR Doc. 89-14315 Filed 6-15-89; 8:45 am]

BILLING CODE 4010-02-M

Coast Guard

[CGD 89-047]

National Boating Safety Advisory Council; Applications for Appointment

AGENCY: Coast Guard, DOT.

ACTION: Request for applicants.

SUMMARY: The U.S. Coast Guard is seeking applicants for appointment to membership on the National Boating Safety Advisory Council (NBSAC). The Council is a 21 member Federal advisory committee that advises the Coast Guard on matters related to recreational boating safety. Members for the Council are drawn equally from the following sectors of the boating community: State officials responsible for State boating safety programs; recreational boat and associated equipment manufacturers; and boating organizations and the general public. Members are appointed by the Secretary of Transportation. Applicants are considered for membership on the basis of their expertise, knowledge, and experience in boating safety. The terms of appointment are staggered so that seven vacancies occur each year.

Applications are being sought for membership vacancies that will occur as follows: Three (3) members from the recreational boat and associated equipment manufacturers; two (2) members from national recreational boating organizations and from the general public; and two (2) members from State officials responsible for State boating safety programs. To achieve the balance of membership required by the Federal Advisory Committee Act, the Coast Guard is especially interested in

receiving applications from minorities and women.

The Council normally meets twice each year at a location selected by the Coast Guard. When attending meetings of the Council, members are provided travel expenses and per diem.

DATE: Requests for application forms should be received no later than September 29, 1989.

ADDRESS: Requests for application forms should be sent to Commandant (G-NAB/12), U.S. Coast Guard Headquarters, Washington, DC 20593-0001; telephone: (202) 267-0997.

FOR FURTHER INFORMATION CONTACT: Captain W.S. Griswold, Executive Director, National Boating Safety Advisory Council (G-NAB), Room 1202, U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001; (202) 267-1077.

Dated: June 9, 1989.

Robert T. Nelson,
Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services.
[FR Doc. 89-14313 Filed 6-15-89; 8:45 am]
BILLING CODE 4910-14-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Date: June 12, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2409, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices

OMB Number: New.
Form Number: TD F 90-21.5, TD F 90-21.5a, TD F 90-21.5b.

Type of Review: New Collection.
Title: Survey of Depreciation of Assets Used in the Manufacture of Fabricated Metal Products.
Description: The purpose of this study is to collect data that will allow the determination of the class life for assets used in the manufacture of fabricated metal products. The study will affect producers of fabricated metal products.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 375.
Estimated Burden Hours Per Response: 12 hours.

Frequency of Response: Unless changes in technology require otherwise, reporting will be required only once.
Estimated Total Reporting Burden: 4,500 hours.

Clearance Officer: Dale A. Morgan (202) 343-0283, Departmental Offices, Room 2409, Main Treasury Building, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Department Reports Management Officer.
[FR Doc. 89-14303 Filed 6-15-89; 8:45 am]
BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 12, 1989.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1079.

Form Number: 9041.

Type of Review: Resubmission.

Title: Application for Electronic/Magnetic Tape Filing of Forms 1041, 1065, 5500-C or 5500-R.

Description: Form 9041 will be filed by fiduciaries, partnerships, and plan sponsors/administrators as an application to file their returns electronically or on magnetic tape; and by software firms, service bureaus, and electronic transmitters, to develop auxiliary services.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents: 3,000.

BEST COPY AVAILABLE

Estimated Burden Hours Per Response: 18 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 900 hours.

Clearance Officer: Garrick Shear (202) 535-4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 89-14304 Filed 6-15-89; 8:45 am]

BILLING CODE 4810-35-M

Public Information Collection Requirements Submitted to OMB for Review

Date: June 12, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0094.

Form Number: None.

Type of Review: Extension.

Title: Customs Regulations.

Description: The Drawback Regulations supplement Drawback Law, and provide, among other things, specific procedures for claimants as to what type of records and forms are needed for compliance with the law. Part 191 details the records which must be maintained for three years after payment of drawback.

Respondent: Business or other for-profit, Small businesses or organizations.

Estimated Number of Recordkeepers: 3,500.

Estimated Burden Hours Per Recordkeeper: 7 hours.

Frequency of Response: Recordkeeping.

Estimated Total Recordkeeping Burden: 24,500 hours.

OMB Number: 1515-0166

Form Number: None.

Type of Review: Extension.

Title: Import Sanctions Against Toshiba Machine Company and the Kongsberg Company

Description: The declaration will be used by importers of products of Toshiba Machine Company and the Kongsberg Trading Company for requesting an exception to the three year prohibition on the importation of all products which were produced by these companies.

Respondent: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 2.

Estimated Burden Hours Per Response: 41 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,475 hours.

Clearance Officer: Dennis Dore (202) 535-9267, U.S. Customs Service, Paperwork Management Branch, Room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer.
[FR Doc. 89-14305 Filed 6-15-89; 8:45 am]

BILLING CODE 4810-35-M

DEPARTMENT OF VETERANS AFFAIRS

Privacy Act of 1974; Amendment to Report of New Matching Program

AGENCY: Department of Veterans Affairs.

ACTION: Amendment to Notice of Report of New Matching Program—Department of Veterans Affairs and Pension Records/State and Local Wage, Tax, and Employment Security Records.

SUMMARY: On May 2, 1988 (53 FR 15616-17), the Department of Veterans Affairs (VA), which was then known as the Veterans Administration (see 54 FR 10476 for change of nomenclature effective March 15, 1989), published a notice that it was initiating a series of computer matches of VA Compensation and Pension records with State and local wage, tax, and employment security records. VA is amending the notice to correct a typographical error, to make an addition to section b.(1), and to revise section b.(2) of the report.

EFFECTIVE DATE: July 17, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. J. Gary Hickman, Director, Compensation and Pension Service (21), Veterans Benefits Administration, 810 Vermont Avenue NW., Washington, DC 20420, (202) 233-2284.

SUPPLEMENTARY INFORMATION: The computer matches in the notice of matching program which appeared May 2, 1988 (53 FR 15616), were designed to identify individuals who may be ineligible for, or not fully entitled to, veterans benefits and to identify those instances in which it appears that recipients may not have reported all employment and/or income received.

The computer matching will be performed by State or local agencies by comparing a magnetic tape file of beneficiary social security numbers from VA compensation and pension files with their wage, tax, or employment security files. The social security numbers of veterans' spouses, if available from individual VA compensation and pension files, also will be supplied for matching.

VA is amending the notice to provide that financial data obtained may also be used to determine appropriate action for recovering overpayments of any VA gratuitous benefit, delinquent indebtedness under the home loan guaranty and health services programs, and debts not involving benefits under laws administered by VA.

VA is amending the notice as follows:

(a) Under the heading b.(1), "Purpose," a sentence is added at the end, as follows: Data obtained from the matches may be used to determine the appropriate action to be taken in recovery of debts owed to VA.

(b) Under the heading g., "States and other Geographical Entities To Be Included in the Match," the State of California is added to the list provided.

(c) The text under the heading b.(2), "Procedures," is revised to read as it appears below.

The computer matching will be performed by State or local agencies by comparing a magnetic tape file of beneficiary social security numbers from VA compensation and pension files with their wage, tax, or employment security files. The social security numbers of veterans' spouses, if available from individual VA compensation and pension files, also will be supplied for matching. In those pension programs known as Improved Pension and section 306 Pension, the income of a veteran's spouse must be considered in determining entitlement to benefits, and in improved Pension the spouse's income also is a factor in determining the rate payable. The State or local agencies will send VA a magnetic tape file containing names, social security numbers, wage and employment histories, and identification of employers for all match hits. In this computer matching program, a "hit" is

defined as the identification of an individual in the records that are being matched or compared with each other and results when any VA-provided social security number matches a social security number recorded in the State or local file being matched. When it is necessary to verify the identity of beneficiaries who appear in State or local files, VA may furnish additional identifying data such as date of birth, place of birth, sex, etc. In accordance with Title 38, United States Code, the names and addresses of veterans and beneficiaries will not be made available to State or local agencies except in connection with a proceeding for the collection of a debt owed to the United States and resulting from the receipt of VA benefits.

Hits resulting from these matches will be treated as follows: The VBA, through a series of computer edits, first will verify against VA records the identity of the persons listed as hits and then review the information obtained through the match. If the review indicates that information provided to VA in applying for a benefit may not have been accurate, or that a change in a beneficiary's eligibility may have occurred that has not been reported to VA, the information and identity of the

person involved will be referred to the VA regional office of jurisdiction for adjudicative review and determination of a need for follow-up action. Employers or other knowledgeable sources may be contacted in the verification process. A reduction, suspension, or termination of benefits payments may ensue when the circumstances warrant and after due process has been afforded to the beneficiary. Action to recover overpayments also may be taken.

The financial data obtained may be used to determine appropriate action for recovering overpayments of any VA gratuitous benefit, delinquent indebtedness under the home loan guaranty and health services programs, and debts not involving benefits under laws administered by VA.

If referral for litigation is appropriate, the financial data will be disclosed to VA District Counsels, the U.S. Department of Justice, or private attorneys acting as agents of either VA or the Department of Justice. Disclosure will be made only to the agency supervising the litigation and, if necessary, to the private attorney, if any, to whom the litigation is assigned.

Prior to release of financial data to the Department of Justice or private

attorneys, VBA will obtain written agreements, where necessary, with the party pursuing collection specifying (1) that the financial data will remain the property of VA and will be returned to VA upon completion or termination of collection efforts; (2) that it will be used only to pursue collection of debts due VA and not for any other private or commercial purposes; and (3) that the data will not be duplicated or disseminated by the party pursuing collection without the written authorization of VBA.

When there are reasonable grounds to believe that there has been a violation of criminal law, the matter will be referred to the VA Office of Inspector General (OIG) for investigation and prosecutive consideration.

For the purposes of these matches, the term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, Guam, and the Virgin Islands.

Copies of this notice have been provided to both Houses of Congress and the Office of Management and Budget.

Approved: June 13, 1989.

Edward J. Derwinski,
Secretary of Veterans Affairs.

[FR Doc. 89-14387 Filed 6-15-89; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

TIME AND DATE: 10:00 a.m., Wednesday, June 21, 1989.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Proposed 1990 Federal Reserve Board budget guideline.
2. Proposed 1990 Federal Reserve Board budget objective.
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for \$5 per cassette by calling (202) 452-3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 14, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14416 Filed 6-14-89; 9:53 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS.

TIME AND DATE: Approximately 11:00 a.m., Wednesday, June 21, 1989, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Policy regarding annual leave program for officers.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne,

Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: June 14, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14417 Filed 6-14-89; 9:53 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE SYSTEM BOARD OF GOVERNORS

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 54 FR 24787, June 9, 1989.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 10:00 a.m., Wednesday, June 14, 1989.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting:

Bank supervisory matter.

CONTACT PERSON FOR MORE INFORMATION:

Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: June 14, 1989.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 89-14463 Filed 6-14-89; 2:18 pm]

BILLING CODE 6210-01-M

NEIGHBORHOOD REINVESTMENT CORPORATION

Eleventh Annual Meeting of the Board of Directors

TIME AND DATE: 4:00 p.m.—Tuesday, June 27, 1989.

PLACE: Neighborhood Reinvestment Corporation, 1325 G Street, NW., Eighth Floor—Board Room, Washington, DC 20005.

STATUS: Open.

CONTACT PERSON FOR MORE INFORMATION:

Martha A. Diaz-Ortiz, Assistant Secretary, 376-2400.

AGENDA:

- I. Call to Order and Remarks of Chairman
- II. Approval of Minutes, February 21, 1988
- III. Election of Chairman
- IV. Election of Vice Chairman
- V. Appointment of Audit Committee
- VI. Appointment of Personnel Committee
- VII. Appointment of Budget Committee
- VIII. Election of Officers
- IX. Executive Director's Activity Report
- X. Audit Committee Report

Federal Register

Vol. 54, No. 115

Friday, June 16, 1989

—Recommendation of Outside Auditors XI. Treasurer's Report

Carol J. McCabe,

Secretary.

Martha A. Diaz-Ortiz,

Assistant Secretary.

[FR Doc. 89-14462 Filed 6-14-89; 2:18 pm]

BILLING CODE 7570-02-M

POSTAL RATE COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, June 22, 1989.

PLACE: Conference Room, 1333 H Street NW., Washington, DC 20268.

STATUS: Open.

MATTERS TO BE CONSIDERED: Election of a Vice Chairman.

CONTACT PERSON FOR MORE INFORMATION:

Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

Charles L. Clapp,

Secretary.

[FR Doc. 89-14410 Filed 6-13-89; 4:20 pm]

BILLING CODE 7715-01-M

POSTAL RATE COMMISSION

TIME AND DATE: 10:30 a.m., Thursday, June 22, 1989.

PLACE: Conference Room, 1333 H Street, NW., Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: To discuss a Decision in Docket No. MC88-2.

CONTACT PERSON FOR MORE INFORMATION:

Charles L. Clapp, Secretary, Postal Rate Commission, Room 300, 1333 H Street, NW., Washington, DC 20268-0001, Telephone (202) 789-6840.

[FR Doc. 89-14411 Filed 6-13-89; 4:20 pm]

BILLING CODE 7715-01-M

SECURITIES AND EXCHANGE COMMISSION Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meeting during the week of June 19, 1989.

A closed meeting will be held on Thursday, June 22, 1989, at 1:00 p.m.

The Commissioners, Counsel to the Commissioners, the Secretary to the

Commission, and recording secretaries will attend the closed meeting. Certain staff members who are responsible for the calendared matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552(b) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Grundfest, as duty officer, voted to consider the items listed for the closed meeting in closed session.

The subject matter of the closed meeting scheduled for Thursday, June 22, 1989, at 1:00 p.m., will be:

Settlement of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Litigation matters.
Institution of administrative proceedings of an enforcement nature.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272-2091.

Jonathan G. Katz,

Secretary.

June 13, 1989.

[FR Doc. 14518 Filed 6-14-89; 8:45 am]

BILLING CODE 8010-01-M

Corrections

Federal Register
Vol. 54, No. 115
Friday, June 16, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 355

[Docket No. 90390-9090]

Countervailing Duties

Correction

In proposed rule document 89-10560 beginning on page 23366 in the issue of Wednesday, May 31, 1989, make the following correction:

In the first column under **DATE**, "[insert date 60 days after date of publication in Federal Register]" should read "July 31, 1989".

BILLING CODE 1505-01-D

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. P.L. 89-2-000 et al.]

Interstate Natural Gas Pipeline Rate Design; Black Marlin Pipeline Co. et al.

Correction

In notice document 89-13479 beginning on page 24382 in the issue of Wednesday, June 7, 1989, make the following corrections:

On page 24382, in the second column, in the table, under "Docket Nos.", the fifth and sixth entries should read "RP86-168-000" and "RP86-167-000" respectively.

BILLING CODE 1505-01-D

INTERSTATE COMMERCE COMMISSION

[Docket No. MC-C-30157]

St. Johnsbury Trucking Co., Inc.; Petition for Declaratory Order

Correction

In notice document 89-13783 appearing on page 24765 in the issue of

Friday, June 9, 1989, in the heading, the docket number was incorrect and should read as set forth above.

BILLING CODE 1505-01-D

NUCLEAR REGULATORY COMMISSION

10 CFR Part 170

RIN 3150-AC61

Early Site Permits; Standard Design Certifications; and Combined Licenses for Nuclear Power Reactors

Correction

In rule document 89-8832 beginning on page 15372 in the issue of Tuesday, April 18, 1989, make the following correction:

§ 170.21 [Corrected]

On page 15400, in the first column, in the table, the heading ".Nuclear Power Reactors" should read "A.Nuclear Power Reactors".

BILLING CODE 1505-01-D

Friday
June 16, 1989

Part II

Department of Agriculture
Forest Service

Department of the Interior
Bureau of Indian Affairs
Bureau of Land Management
Fish and Wildlife Service
National Park Service

Final Report and Recommendations of
the Fire Management Policy Review
Team and Summary of Public Comments;
Notice

federal register

DEPARTMENT OF AGRICULTURE

Forest Service

DEPARTMENT OF THE INTERIOR

National Park Service, Fish and Wildlife Service, Bureau of Land Management, Bureau of Indian Affairs

Final Report and Recommendations of the Fire Management Policy Review Team and Summary of Public Comments

AGENCIES: Forest Service, Agriculture; National Park Service, Fish and Wildlife Service, Bureau of Land Management, Bureau of Indian Affairs, Interior.

ACTION: Notice of availability of final report and recommendations of the Fire Management Policy Review Team concerning Federal fire management policy for national parks and federally designated wilderness areas.

SUMMARY: On September 28, 1988 the Secretaries of the Department of Agriculture and the Department of the Interior appointed the interagency Fire Management Policy Review Team to investigate and recommend modifications to agencies' current fire management policies for national parks and federally designated wilderness areas. Pursuant to that directive, the Team held eleven public hearings throughout the Nation regarding its draft report of December 15, 1988. Written and oral comments were received and reviewed, and the draft report was subsequently revised. The Team's final report and recommendations is herewith published. In addition, a summary of the public comments gathered during the review of the draft report is also published. The report recommendations will be used by Federal land management agencies in modifying their fire management policies.

ADDRESS: Copies of the final report are available from: Director, Public Affairs Office, Forest Service-USDA, South Building, 12th & Independence Avenue SW., Washington, DC 20250, (202) 447-3760; or Chief, Office of Public Affairs, National Park Service, P.O. Box 37127, Main Interior Building-Mail Stop 3043, Washington, DC 20013-7127.

SUPPLEMENTARY INFORMATION:

Final Report on Fire Management Policy
May 5, 1989.

Table of Contents

Summary

Background

Establishment of the National Fire Management Policy Review Team
Concerns and Views

Policy Options
Federal Fire Policies
History and Experience With Natural Fire Programs
Findings
Recommendations
Issues Needing Further Analysis
Appendix

Summary

The Fire Management Policy Review Team was established on September 28, 1988 to review national policies and their application for fire management in national parks and wilderness and to recommend actions to address the problems experienced during the 1988 fire season. The Team draft report was submitted to the Secretaries of the Interior and Agriculture on December 15, 1988. A 60 day public review and comment period, incorporating a series of public hearings, began with publication of that report in the *Federal Register* on December 20, 1988. Having reviewed and considered the public comments, this final report is submitted in culmination of the Team's charter.

The Fire Management Policy Review Team finds that:

- The objectives of prescribed natural fire programs in national parks and wildernesses are sound, but the policies need to be refined, strengthened, and reaffirmed. These policies permit fires to burn under predetermined conditions.
- Many current fire management plans do not meet current policies; the prescriptions in them are inadequate; and decision-making needs to be tightened.
- There are risks inherent in managing wildland fires. These risks can be reduced by careful planning and preparation. Use of planned burning and other efforts to reduce hazard fuels near high value structures and to create fuel breaks along boundaries help to reduce risks from both prescribed natural fires and wildfires.
- The ecological effects of prescribed natural fire support resource objectives in parks and wilderness, but in some cases the social and economic effects may be unacceptable. Prescribed natural fires may affect permitted uses of parks and wilderness, such as recreation, and impact outside areas through such phenomena as smoke and stream sedimentation.
- Dissemination of information before and during prescribed natural fires needs to be improved. There needs to be greater public participation in the development of fire management plans.
- Internal management processes, such as training more personnel, developing uniform terminology, and utilizing similar budget structures, would significantly improve fire management.

- Claims were heard that some managers support "naturalness" above all else, allowing fires to burn outside of prescription requirements without appropriate suppression actions.

The Team recommends that:

- Prescribed natural fire policies in the agencies be reaffirmed and strengthened.
- Fire management plans be reviewed to assure that current policy requirements are met and expanded to include interagency planning, stronger prescriptions, and additional decision criteria.
- Line officers certify daily that adequate resources are available to ensure that prescribed fires will remain within prescription, given reasonably foreseeable weather conditions and fire behavior.
- Agencies develop contingency plans to constrain the use of prescribed fire in the event or anticipation of unfavorable weather or fire conditions, or when necessary to balance competing demands for scarce fire suppression resources.
- Agencies consider opportunities to use management ignited prescribed fires to complement prescribed natural fire programs and to reduce hazard fuels.
- Agencies utilize the National Environmental Policy Act requirements in fire management planning to increase opportunities for public involvement and coordination with state and local government.
- Agencies provide more and better training to assure an adequate supply of knowledgeable personnel for fire management programs.
- Agencies review funding methods for prescribed fire programs and fire suppression to improve interagency program effectiveness.
- Additional research and analysis relating to weather, fire behavior, fire history, fire information integration, post-fire effects, and other topics be carried out so that future fire management programs can be carried out more effectively and with less risk.
- Allegations of misuse of policy be promptly investigated and acted upon as may be appropriate.

Background

The 1988 fire season was severe in many parts of the western United States. Near record acreages were burned over, and more than one-half billion dollars were expended on suppression efforts. Additional resources will be required for rehabilitation and other follow-up needs.

Although the western United States experienced wildland fires exceeding recent history, the extraordinary fire situation in 1988 in the Greater Yellowstone Area was the focal point for public concern and agency criticism. Yellowstone National Park enjoys a special place in the hearts of Americans and, indeed, people worldwide. Vivid accounts of the Yellowstone fires appeared daily on television and in the newspapers from July through September. Visitor use was interrupted; smoke episodes disturbed local communities; and some summer businesses were hurt. A total of 249 separate fires were counted during the summer in the Greater Yellowstone Area, burning over a million acres. Twenty-eight of the 249 fires began as prescribed natural fires as permitted under current Department of the Interior (USDI) and Department of Agriculture (USDA) policy. Controversy arose over the adequacy of fire suppression. We have to ask ourselves:

- Is the policy allowing fire to play its natural ecological role in parks and wilderness under certain conditions flawed or inappropriate? What are the alternatives, and what are their effects?
- Should more of the fires have been declared wildfires and suppressed earlier, particularly given the drought? Should early suppression action have been more vigorous?
- Are surrounding communities being put at risks unacceptable to them by natural prescribed fire programs or from policies that restrict fire suppression tactics? Or do management ignited prescribed fires and prescribed natural fires result in an appreciable net reduction in risks?
- Are offsite effects, such as smoke and air and water pollution, acceptable, and are they adequately assessed in planning for these programs? How do they compare to offsite effects to that which would occur without such programs?
- Is the public aware of the ramifications of current policy and alternatives, such as immediate suppression of all fires or letting all fires burn unchecked?
- Did Federal and State agencies spend too much money on suppressing the fires? Would they have spent less if prescribed natural fire programs had not been implemented or if there had been better public understanding of and support for natural fires?
- Are agencies perceived as incompetent when large, numerous fires occur that partially result from natural prescribed fire programs or from policies that restrict fire suppression tactics?

- To what extent has a long-term credibility and communication problem been created between the public and agencies, and, if so, how can it be corrected?

Is the large array of successful fire management programs across the nation now at risk? Activity in the Greater Yellowstone Area in 1988 has triggered public debate and professional concern about current fire policies in Federal land management agencies nationwide. Wildland fire management is a high risk activity. There are many areas of the United States where similar wildland fire disasters could occur. This risk is increasing in many areas due to the combination of fuel accumulation and the continuing development of private and commercial interests in flammable, wildland settings. Therefore, it is timely to take a national look at current wildland fire policies, their application, and implementation plans to ensure that the risks and costs to society are acceptable, in light of the alternatives.

Establishment of National Fire Management Policy Review Team

The Secretaries of Interior and Agriculture established a Fire Management Policy Review Team on September 28, 1988. This multi-agency team, co-chaired by Interior and Agriculture representatives, was assigned the task of reviewing the current national park and wilderness fire management policies and action plans of all agencies within both Departments and recommending changes needed to address the problems experienced during the 1988 fire season. The Team met regularly with representatives of the National Fire Protection Association, the Western Governors Association, and the academic community. The Team was also directed to consult with representatives of knowledgeable organizations and individuals to arrive at proposed changes. The Team's report was originally submitted on December 15, 1988. A 60 day public comment phase began with publication of the Team's report in the *Federal Register* on December 20. The Team prepared this final report after thorough review of oral and written public and agency comments. Revised policy and application requirements will be implemented prior to the 1989 western fire season.

The goals of the Fire Management Policy Review Team were:

- To identify issues and concerns which arose during the 1988 fire season related to fire management policy and its application;

- To gather information from a cross-section of knowledgeable parties about current fire policy and its application;

- To develop recommendations for appropriate changes in fire policy and improvements in application; and

- To identify areas of needed additional study and analyses.

The Team began with the premise that its charter did not include detailed evaluation of the overall management direction for national parks and wildernesses and therefore focussed just on fire management policies. For example, wilderness areas and, to a more varied degree, national parks have been designated as special areas where "natural" processes can occur in perpetuity with minimum influence of human activities. This basic direction, arising from the National Park Service Organic Act of 1916 and the Wilderness Act of 1964, is usually interpreted to allow natural disturbances, such as insect infestations, disease, blowdowns, and fire, to occur without human intervention. Examining other policies that define and guide "natural" processes was not part of the Team's assignment.

With the submission of this report, the Team considers its assignment to be completed. We would be remiss if we did not recognize the contributions of our staff directors, David Behler and John Chambers, and many others who made it possible to complete this report. In particular, John Gerard of the National Fire Protection Association, Paul Cunningham, Vice President of the Western Governors Association, Dr. Robert Lee of the University of Washington, and Dr. Ronald Wakimoto of the University of Montana were helpful in facilitating the supply of information about fire management policies and their applications from outside organizations and academia.

Concerns and Views

As stated in the Team's charter, "the objective of the review process is to determine the appropriate fire policies for national parks and wildernesses which addresses the concerns expressed by citizens and public officials about the management of fires of these lands as a result of the Yellowstone fire situation."

To gather information about those concerns, individual members of the Team, assisted by representatives of the National Fire Protection Association, the Western Governors Association, and the academic community, met with or called a number of knowledgeable persons, including governors, local government officials, concessioners and outfitters, individuals with businesses in nearby

communities, organizations with an interest in parks and wildernesses, academicians, and others. The Team also reviewed letters, summaries of correspondence, and many newspaper and journal articles related to fire management policy.

The concerns can be summarized as follows:

- Definition of prescribed fire conditions and limitations was inadequate.
 - There was little opportunity for citizen participation in the development of fire management plans.
 - The interdependence of park/wilderness and nearby communities was ignored in the implementation of fire management programs.
 - Adequate communication and information before and during fires, whether wildfires or prescribed, was lacking.
 - There appeared to be waste in the application of fire management policies, in natural resources that might have been utilized rather than burned, in the on- and off-site effects of fire on available recreation sites, wildlife habitat and forage, soil erosion, and damage to watershed, and in the costs of firefighting.
 - An inadequate number of management ignited prescribed fires have been conducted to significantly reduce the amount of hazard fuels.
 - There were unnecessary interagency conflicts.
 - Authority for action in fire management needed to remain with line officials in the field, not centralized in Washington.
- There are also concerns with strongly held conflicting views. The three principal areas are:
- The definition of "naturalness" and its application in driving fire management policy;
 - the extent to which management ignited prescribed fires are used to reduce hazard fuels in the Northern Rockies; and
 - whether the fires in 1988 were allowed to burn more extensively than they should have before suppression actions were taken.

Not all comments were critical of Federal efforts to manage fire:

- The role of fire in managing vegetation and wildlife habitat was noted by many.
- The bravery and competence of fire suppression personnel were frequently extolled.
- Examples were mentioned of individual and agency actions to inform the public, to protect life and property, and to minimize disruptions during and after the fires.

- There are many positive effects from prescribed natural fires. Overreaction to the events of 1988 should not be used to justify severe curtailment of their use.

Policy Options

Fire management policy options range from immediate control of all fires to allowing all wildland fires to burn. The team considered the full range following its discussion with interested parties and agency personnel.

The great majority of comment from knowledgeable people indicated support for the careful use of management ignited prescribed fires and prescribed natural fires, in accordance with publicly reviewed management plans. There was also general agreement that such policy must be executed in ways that give the fullest possible assurance that human lives and property or special resources will not be lost or seriously impaired.

Federal Fire Policies

Traditionally, the fire policies of Federal land management agencies were to control all wildland fires as promptly as possible. When initial attack failed in controlling a fire the first day, personnel and equipment were organized to control the fire by 10:00 a.m. the succeeding day.

Current fire management policies among the Federal agencies reflect similar evolutions and are similar in scope and intent. Fire management programs and activities are conducted in support of land and resource management plans and objectives. Two kinds of wildland fires are recognized: prescribed fires and wildfires. Prescribed fires may be ignited by managers, or naturally occurring fires may be allowed to burn, under specified conditions to achieve established management objectives. Any other fire is considered a wildfire, and appropriate suppression action is taken on all wildfires. Suppression strategies considered in determining the appropriate action range from prompt control, minimizing acreage burned, to more indirect suppression action to contain or confine wildfires when these alternatives are less costly than immediate control in terms of suppression cost, damage from fire, and other adverse impacts.

These policies as applied to parks and wildernesses, implemented in 1968-85, allow for the prescribed use of fire, either by natural causes or management ignited, in support of land management objectives. The suppression of all wildfires is required, using economically efficient and environmentally

compatible methods. All prescribed fires require pre-planning and decision criteria addressing expected fire behavior and effects.

Prescribed fires may be used to achieve agency land or resource management objectives defined in fire management plans. The following considerations are to be addressed in such plans: management objectives for the area, historic fire occurrence, natural role of fire, proposed degree of suppression, expected fire behavior, acceptable suppression techniques, adequate buffer zones, smoke management, and effects on adjacent land owners.

Prescribed fires are to be conducted only when the following conditions are met:

- They are conducted by qualified personnel under written prescriptions (prescribed fire plan).
 - They are monitored to assure they remain within prescription.
- Prescribed fires that exceed the limits of an approved fire plan will be reclassified as a wildfire. Once classified as a wildfire, the fire will be suppressed and can not be returned to prescribed fire status.

The important implications of these policies for parks and wilderness areas are:

- It allows managers to restore and maintain the natural role of fire on land when the land management objective is to perpetuate natural processes and values.
 - Fire can be used as an important management tool to reduce fuel accumulation, control fire hazard around developments and along boundaries, and to meet other management needs.
 - All fires are treated as wildfires, subject to appropriate suppression action, unless a plan is in place that describes the conditions under which prescribed fire will be allowed to burn. Both natural and management-caused ignition are allowed.
 - A prescribed fire must be declared a wildfire when it exceeds prescribed conditions.
 - There is flexibility for fire management plans to address the unique characteristics and objectives of specific parks and wildernesses.
- Fire management plans for national parks and wilderness areas are subject to National Environmental Policy Act (NEPA) compliance.

History and Experience With Natural Fire Programs

Following prescribed burning experience in the Everglades in the

1950's, the National Park Service began to change its fire suppression and prescribed burning policies in 1968 to accept a more natural role of fire in park ecosystems. Lightning-caused fires were allowed to burn under specified conditions in Sequoia-Kings Canyon National Parks that year, followed by a similar program in another 7 parks between 1968 and 1972. In the decade that followed, another 26 parks began some parts of the prescribed fire program (Appendix, Table 1).

The purpose for this policy change was to restore fire to a more natural ecological role. "Naturalness" is defined as those dynamic processes and components which would likely exist today, and go on functioning, if technological humankind had not altered them. (For those concerned about "exclusion of man from nature," the term "wildness" may be more satisfactory; but it is not likely to displace the word "naturalness" in the common vernacular.)

No ecosystem today is totally unaltered by technological humankind. However, extensive areas in which the achievement and maintenance of naturalness is a basic purpose are increasingly important to humankind. These areas are found primarily in national parks and wildernesses. They serve as invaluable scientific benchmarks; and the uniqueness imparted by their natural qualities is irreplaceable as a source of human inspiration and enjoyment. Those natural qualities differ in each area. They are compromised by the effects of necessary and appropriate provisions for enjoyment of parks, the impacts of other uses under legislative mandates governing non-park wilderness and by potential adverse impacts outside of unit boundaries. Each unit in its management plan describes how it will attain the objective of naturalness.

In those parks and wildernesses where fire has been a historic component of the environment, it is critical to management objectives to continue that influence. Any attempts to exclude fire from these lands can lead to major unnatural changes in vegetation and wildlife from that which would occur without fire suppression, as well as creating fuel accumulation that can lead to uncontrollable, sometimes very damaging, wildfire. Current fire management policy allows for inclusion of naturally occurring fire on these lands, to the extent possible, as well as the use of management ignited prescribed burns to bring these areas back into a more natural condition of fire hazard and occurrence, and to

reduce the risk of damage from fire to improvements within these areas and to improvements and resources on adjacent lands.

Lightning fire are permitted to burn in designated zones within 46 areas managed by the National Park Service. Nearly 58 million acres of national parks are classified natural fire zones, including 50 million acres in Alaska alone. A total of 58 national park areas use management-ignited prescribed burns to simulate the role of natural fire in certain ecosystems.

The USDA Forest Service also began allowing lightning-caused fires to play a more natural role in wilderness in 1972, when exceptions to the policy of suppressing all fires were approved by the Chief. By 1976, policy exceptions allowing lightning-caused fires to burn under carefully prescribed conditions had been put into effect in parts of the Selway-Bitterroot, Gila, and Teton wildernesses of Idaho, New Mexico and Wyoming.

In 1978, authority to approve wilderness fire management plans was delegated to Regional Foresters as part of a revised policy that called for "fire management programs" as contrasted with previous "fire control programs." This revision—which is current policy—provided for "well-planned and executed fire protection and fire use programs that are cost effective and responsive to land and resource management goals and objectives".

Forest Service wilderness fire management policy was again revised in 1985, following public review and comment, clarifying wilderness fire management objectives and the use of prescribed fire within wilderness. Forest Service ignited prescribed fires were authorized when necessary to meet the objectives of (1) allowing lightning fires to play their natural role to the extent possible and (2) reducing the risk of wildfire within wilderness to life and property, and to life, property, and resources outside of wilderness to an acceptable level.

The Bureau of Land Management uses prescribed fire extensively to meet resource and fire management objectives. However, the use is almost exclusively through planned management ignitions. Prescribed natural fire is generally not used due to the predominance of fuel types having a high rate of spread (i.e. grass and brush) commonly found on Bureau-administered lands. Those few fire management plans that identify prescribed natural fire as a management strategy do so for lands located adjacent to wilderness managed by other

agencies. The operational plans for these prescribed natural fire areas were developed through coordinated fire planning efforts with the adjacent federal wilderness management agency.

The Bureau of Land Management issued its first policy for the management of lands designated as wilderness study areas in 1979. This policy, which addressed fire management practices, was revised in 1987. Fire management policy for designated wilderness areas was issued in 1981.

The Fish and Wildlife Service manages seventy designated wilderness areas containing approximately 19 million acres; 97 percent of this acreage is in national wildlife refuges located in Alaska. Fires on these refuge wilderness areas are dealt with under the provisions of the Alaska Interagency Fire Plans, which were prepared in cooperation with Federal and State agencies as well as Alaskan Native Corporations. The experience of the period 1982-1988 demonstrates that fires which occur within these wilderness areas have been adequately handled to meet the objectives outlined in these coordinated plans.

Although the Bureau of Indian Affairs has only one Federally designated wilderness area, several tribes have designated areas within their reservations as tribal wilderness. Management of these tribal wilderness areas are based on tribally developed or approved plans and, in most instances, follow closely that outlined in the Wilderness Act of 1964. Lightning-caused fires occurring within these designated areas may be allowed to burn provided they meet all requirements and constraints outlined in the area specific fire management plans. In addition, the use of management ignited prescribed fires to reduce natural fuel buildup has been widely practiced since the early 1940's. Records indicate that only one lightning-caused fire has occurred within the single Federally designated wilderness area on Indian lands, burning an area of approximately 350 acres. No attempt has been made, to date, to separate data on fires occurring on tribally designated wilderness areas from other fires occurring within reservation boundaries.

Results in National Parks

Since the beginning of these programs in 1968 until 1987, more than 1600 lightning-caused fires have been permitted to burn more than 320,000 acres of national park land. Only one serious problem had developed—the Ouzel Fire on the Rocky Mountain

National Park which threatened the adjacent community of Allens Park, Colorado. At the same time, more than 1400 prescribed burns were ignited by the park staff in 48 national park areas that covered more than 325,000 acres. The burns were designed mainly to manage vegetation by simulating the natural role of fire in reducing fuel accumulations in order to modify plant succession and to help maintain ecosystem processes. Some of the benchmark fire management programs in national parks are those found in Sequoia-Kings Canyon and Yosemite National Parks in the Sierra Nevada, the Everglades National Park in Florida and Yellowstone and Grand Teton National Parks in the Rockies.

Results in National Forest Wilderness

Since 1972 when the USDA Forest Service began permitting lightning-caused fires to play a more natural role in wilderness, 503 prescribed natural fires have burned nearly 210,000 acres within wilderness areas in the Northern and Intermountain Regions, the Forest Service Regions having the most active prescribed natural fire management programs. Of these fires, 23 became wildfires burning an additional 544,000 acres (14 of these escaped prescribed natural fires occurred in 1988). Four management ignited prescribed fires, burning 4,424 acres, have been conducted by the Forest Service in three different wilderness areas since these were first permitted in 1985. (Appendix, Table 2 and 3.)

Findings

After review of policies, guidelines, fire management plans, draft fire reviews of the 1988 Greater Yellowstone fires, and information obtained from written and oral communication with both Federal personnel and knowledgeable citizens, the Team has determined the following:

1. The prescribed natural fire policy in Federal agencies was designed to allow fires to play a more natural role in national parks and wilderness areas. There have been many notable successes in application of this policy. However, in some cases this policy has been interpreted to allow managers to manage prescribed natural fires with essentially no prescriptions.

- Restoration and maintenance of naturalness and natural processes are used as primary objectives of wilderness and national park prescribed fire programs. Exclusive focus on these objectives can lead to inadequate consideration for the positive and negative impacts of fire on uses such as

recreation, wildlife habitat, grazing, and water quality.

- Current fire policy or guidelines are subject to abuse in that plans are developed and implemented that don't meet the literal requirements of policy.

- Some park and wilderness managers are reluctant to define size limits and specific prescriptions limiting prescribed natural fires.

- Misuses of the prescribed natural fire program could eliminate the program itself—and lose the benefits that derive from it.

2. The Team heard from agency employees who would welcome an expansion of policy to allow for fires to burn free of prescriptions and without being declared wildfires as long as such fires are not expected to cross administrative boundaries of a park or wilderness or endanger human life and property.

3. Although there are many outstanding examples of fire management plans in all agencies, the team found that some plans do not meet current agency or departmental policy and contain inadequate prescriptions.

- Some plans do not include the required set of prescription criteria for prescribed natural fire programs.

- Some plans do not adequately address suppression resource availability, values at risk outside of parks and wilderness, and the number of fires that can be managed at one time.

- Plans do not address cumulative effects of drought and other potentially important considerations.

4. Some fire management prescriptions do not place adequate limits on fire management decisions.

- Some prescribed fires that were ultimately declared wildfires were interpreted to be within prescription until they reached an arbitrary limitation of a boundary of a park or wilderness boundary.

- Insufficient attention has been given to values at risk, both inside and outside parks and wilderness boundaries.

- There was insufficient consideration of the cumulative risks associated with multiple fires, large fires, or fires with especially active perimeters.

- Insufficient attention was given to the potential cost and damage associated with a prescribed fire later becoming a wildfire requiring suppression action.

5. Beyond being brought up to current standards, fire management programs would be strengthened by a combination of improved decision criteria in plans, additional fire expertise, and more direct line officer involvement.

- Critical decision points (e.g. decision trees) are often not identified in plans.

- Lack of resident fire expertise in some locations is critical.

- Lack of coordination of policy application for prescribed natural fire programs among and within agencies results in disparate treatment of fires and inconsistent decisions.

- Documentation of decisions is often lacking and does not demonstrate the involvement of some agency line officers.

- Some fire management plans do not include the latest technology.

- Plans are not complete in terms of indicators of long-term drought and impact on shared suppression resources.

- Variations in planning and decision processes result in decisions that appear illogical, create political and public concern for competence of the agencies, and render decisions to limit fire size ineffective.

- Prescribed natural fire programs do not adequately consider the impact on other interagency programs and resources.

6. The severity of the 1988 fire season in some areas of the West (the most severe on record in the Greater Yellowstone Area) revealed the risks inherent in managing wildland fires. These risks can include high fire suppression costs as well as unacceptable social, environmental and economic impacts, and natural resource losses. The extraordinary weather conditions of last summer resulted in fire behavior that limited the effectiveness of fire suppression decisions and actions, and at times put managers in the position of being responsible for situations beyond their control. Recognition of the fire weather situation and trends, in some cases, was hampered by the departure of fire management plans from policy by not including prescriptions which would have provided managers a better basis for recognizing the severity of the situation.

7. Prescribed fire using planned management ignitions complements the use of, and reduces the risk from, prescribed natural fires to achieve management objectives. However, there are factors constraining the use of management ignited prescribed fire in some areas.

- Management ignited prescribed fires have been used successfully in some national parks and wilderness to meet management objectives, reduce hazard fuel build-up, and establish fuel breaks.

- Management ignited prescribed fires have not been used in some cases due to the perceived risks from the results of high intensity crowning fires. Also, up-front budgetary costs have limited the use of management ignited prescribed fires; these have rarely been used in wilderness.

- Some people strongly support management ignited prescribed fires as a substitute for prescribed natural fires; others believe strongly that appropriate objectives cannot be achieved without prescribed natural fire.

8. The reduction of hazard fuels around structural developments, parks/wilderness boundaries, and private inholdings enhances the ability to protect these values at risk and reduces costs of wildfire suppression and prescribed natural fire.

9. Agency personnel development and training programs are not maintaining the number of personnel and levels of knowledge required to ensure proper and consistent application of policies and procedures.

- There is an inadequate number of professional managers in field locations with an understanding of fire management and fire management policies and practices.

- Some line officers are not requiring adherence to standards contained in fire management plans.

- Inconsistent application of required processes, such as the Escaped Fire Situation Analysis, leads to poor decisions.

- Some incident management teams, fire professionals, and line officers lack knowledge of suppression tactics necessary under extreme conditions.

- Consideration of suppression costs and potential damage related to fire suppression alternatives and decisions is not adequately documented in Escaped Fire Situation Analyses.

- Some agency fire staffs are not able to maintain expertise in fire management because of infrequent fire occurrences at their location and lack of career mobility or opportunity to gain experience in other locations.

10. The environmental effects of prescribed natural fires within wilderness and park boundaries are usually consistent with natural resource objectives for these lands. However, in some cases the social and economic impacts outside these boundaries may be unacceptable due to smoke, threats to public safety, reduced tourism, loss of income and jobs, and altered water quality and quantity.

11. Inconsistent dissemination of information, inadequate public participation, and a perception of failure to consider some social, environmental,

and economic impacts on local businesses and communities are strong issues with the public and political leaders.

- There is a great diversity of views within and outside agencies regarding the basis and the primary objectives of prescribed natural fire programs.

- Adequate public involvement may not have occurred in the development of some prescribed natural fire management plans and the public may not have fully understood the risks inherent in prescribed natural fire management.

- The primary message communicated by agencies continued to be the biological value of prescribed natural fire to vegetation and wildlife even after the fires had been declared to be wildfires.

- There was a lack of uniform, consistent, adequate information on the location of the fires, planned fire management actions, and their implications for the public in terms of road closures, smoke, and other effects on local populations and visitors.

12. Budget structure and funding in the Departments of Agriculture and Interior create the following effects:

- The level of expertise and professionalism needed for the broad spectrum of fire management and use program may not be available to support management objectives in all agencies.

- Dissimilarities between the two departments in the ways in which programs are funded and differences in agencies' terminology inhibit the ability to cooperate and coordinate in prescribed fire programs on mutual boundaries.

- These also cause disparate treatment of naturally occurring fires in determining whether they are designated as prescribed fires or wildfires. Forest Service and Bureau of Land Management policies require that prescribed fires be managed with appropriated funds from the benefiting program. The National Park Service manages prescribed natural fires with emergency funds.

- Hazard fuel reduction programs have not been adequately funded in some cases.

- Very limited appropriated funds are allocated to develop expertise and apply prescribed fire in parks and wildernesses.

- There is an inadequate number of professionals in Federal agencies in fire management programs. Fire management planning and application is a collateral duty at some major parks.

- Agency budgets for suppression activities have declined in real dollars in recent years.

- National Park Service is completing an analysis of normal fire year operations, FIREPRO III, in order to define essential minimum wildland fire program needs.

13. Lack of clear definition and inconsistent implementation of "light hand on the land" suppression tactics raise serious questions over the management of fires in 1988.

- The public, employees, and cooperators became confused by mixed messages about the intensity of suppression efforts and the objectives to be achieved.

- Incident commanders received unclear direction about the use of certain suppression tactics, which were sometimes in conflict with the selected suppression alternative.

14. Research and analysis are needed to provide tools for management of fire management programs.

- Normal climatic patterns are ordinarily used for projections, yet prolonged drought periods may result in changes in weather patterns that have an abnormal effect on fires and cause an inability to project fire behavior accurately.

- There is little agreement on whether management objectives can be achieved through management ignited prescribed fires when they result in high intensity crown fire.

- Analyses of fire history, occurrence, size, and effects are insufficient for many areas.

- Reliable methods for long-term weather prediction do not exist.

- There are a number of issues concerning the natural fire regime and fire management in subalpine ecosystems vegetated predominantly by lodgepole pine. These include such topics as whether fire behavior and effects from the 1988 fires were as predicted from pre-1988 research and modelling, whether prescribed burning in these ecosystems can be implemented to establish mosaics that would inhibit large scale, uncontrollable fires, and whether conservation of biotic diversity on a shorter scale (less than 300 to 400 years) is feasible and/or desirable.

15. The Review Team finds that the multi-agency program by which fire management is accomplished cooperatively on Federal and State lands in Alaska is consistent with Federal policies. It has proven successful and is improved through frequent review and modification, a process which should continue, with public involvement as recommended in this report.

16. The Team heard claims that some managers with philosophies advocating

naturalness above all else intentionally allow fires to burn outside of prescriptions and do not take the appropriate suppression actions required on a wildfire—allegations that these fires are allowed to burn freely as long as the fire is not expected to leave the boundary of a park or wilderness. These allegations were not supported by anything in the draft fire reviews received to date. The Team did not have the mandate to investigate and verify or disprove the allegations.

Recommendations

- The Team recommends that the Secretaries of Agriculture and the Interior implement the following policy and direction:
1. Existing USDI and USDA fire management policies governing wilderness and parks must be strengthened and reaffirmed to limit their application to legitimate prescribed fire programs. Clarification is needed to prevent inappropriate use of fundamentally sound policies.
 2. The agencies reaffirm their policies that fires are either prescribed fires or wildfires. The agencies reject as impractical and unprofessional the practice that fires can be allowed to burn free of prescriptions or appropriate suppression action.
 3. USDA and USDI agencies will periodically review fire management plans for parks and wilderness for compliance with current policy, direction, and the additional requirements recommended by this report. No prescribed natural fires are to be allowed until fire management plans meet these standards.
 4. Current fire management plans must be strengthened by:
 - a. Developing joint agency fire management plans, agreements, or addendums to existing plans for those areas where fires could cross administrative boundaries. Periodic joint review of these plans should occur. These will include agreement on processes and criteria to be used to make decisions on prescribed vs. wildfire and suppression strategies and tactics.
 - b. Including a comprehensive set of criteria which will be used in deciding whether or not to allow natural ignitions to burn as prescribed fires. In addition to those criteria currently required and commonly used, the following factors will be considered:
 - (1) Energy release component.
 - (2) 1000-hour fuel or duff moisture content.
 - (3) Appropriate consideration of the national and regional fire situation, including the numbers of fires and

- c. Clearly describing the decision process and factors to be addressed before a fire is declared a prescribed natural fire.
- d. Including criteria to be used in declaring a prescribed fire a wildfire. There must be interagency agreement on these factors in areas where fire may move across administrative boundaries and shared suppression resources may be required.
- e. Clearly identifying areas that need protection from fire, such as developments within or adjacent to wilderness and park boundaries. Fire management plans should also include actions that are to be taken, such as hazard fuel reduction or installing fuel breaks, to protect such developments or areas.
- f. Clearly stating the management objectives being addressed by the prescribed natural fire program, including identification of specific values gained as a result of allowing natural fires to burn unsuppressed within prescribed conditions and areas.
- g. Clearly describing the process to be used to ensure adequate public involvement and coordination with local governments in both plan development and implementation.
5. Agencies will cooperatively develop regional and national contingency plans and procedures and provide the appropriate program monitoring. In direction, including curtailment of prescribed fire activities when necessary because of competition for national and regional fire suppression resources.
6. The responsible line officer or designee shall certify in writing daily that a fire is within prescription and adequate resources are available to ensure that each prescribed natural fire will remain within prescription through the ensuing 24-hour period, given reasonably foreseeable weather conditions and fire behavior. If the fire cannot be kept within prescription with available forces and funds, it shall be declared a wildfire and appropriate suppression action initiated.
7. Agencies must re-evaluate the opportunities to use management ignited prescribed fire to achieve management objectives and to complement

- prescribed natural fire programs. Additionally, hazard fuels must be reduced to protect selected areas, particularly developments within and adjacent to boundaries, from prescribed natural fire and high wildfire risk. Fuels will be treated along park and wilderness boundaries or internally where there are high values at risk.
8. Fire program management will be improved by establishing properly staffed regional and unit level organizations.
 - a. Agencies will ensure the availability of qualified staff and knowledgeable line officers for developing, implementing, and managing prescribed fire programs.
 - b. National Park Service regional offices will establish a full-time regional fire coordinator to develop and oversee park programs in accordance with FIREPRO III, where appropriate.
 - c. Agencies will implement the concept of highly trained, well-equipped and mobile tactical teams to provide on-the-ground monitoring and management of prescribed natural fires in national parks and wilderness.
 - d. Agencies will ensure the strengthened policy is understood and implemented by all appropriate personnel.
 - e. Agency managers will assure that personnel develop a thorough understanding of the management objectives for the lands they are managing.
 - f. The National Park Service is to complete an analysis of normal fire year operations, FIREPRO III, in order to define essential minimum wildland fire program needs and to take action to meet those needs.
 9. Additional interagency emphasis will be given to addressing opportunities for improving fire management programs.
 - a. The National Wildfire Coordinating Group (NWCG) charter should be expanded specifically to include prescribed fire program coordination.
 - b. The NWCG should take the lead in developing common terminology for prescribed burning programs and describing wildfire suppression alternatives.
 - c. Agencies will develop joint criteria for selecting appropriate suppression tactics in wilderness and parks.
 - d. Agencies will improve public and agency understanding and acceptance of using appropriate suppression tactics that meet fire management objectives and minimize the adverse impact on wilderness values and park resources.

10. Agencies will ensure NEPA compliance for fire management plans. Agencies will increase opportunities for public involvement and coordination with state and local government when revising or developing fire management plans.
11. Interpretation and public information before and during fires will be improved.
 - a. Agencies will ensure that timely, accurate, and consistent information is provided for the public on the purpose, presence, and status of prescribed natural fires, as well as impacts on the community due to closed roads, trails, smoke, back country restrictions, and other effects.
 - b. Interpretive and fire status messages are for different purposes, and agencies should strive to keep them separate and distinct. There should also be a distinction between the information needs for prescribed fires and wildfires.
 - c. Agencies should ensure that the public is informed of the risks involved in fire management programs.
 - d. Agencies will use common terminology for prescribed natural fire programs.
12. USDI and USDA will review the methods of funding prescribed fire and fire protection programs with the objective of improving interagency program effectiveness. Planning and suppression activities should be financed by program funds rather than through emergency fund transfers and supplementals.
13. There is a need for additional research related to fire management programs.
 - a. USDI and USDA will develop coordinated research programs utilizing the unique capabilities of both organizations.
 - b. The feasibility of prescribed burning forests using stand replacement fire will be investigated and tested by implementing an appropriate interagency field research program.
 - c. Research will be increased to improve the ability to predict severe fire

- behavior, conduct long-term weather forecasting, and identify past abnormal events.
- d. Efforts will be undertaken to develop and implement an expert system that integrates a wide array of fuel, topographic, weather, climatological, fire behavior, post-fire effects, and other information and readily displays such information in an interactive mode for the user at a computer terminal. This expert system would help to assure that important variables are not overlooked as decisions are made regarding long duration fires.
 - e. Efforts will also be undertaken to develop comprehensive data bases for part and wilderness resources and provide for state of the art analyses and display as well as an efficient, continuous monitoring system to insure timely update of information.
 - f. Development of additional emission factors for wildland fuels and better methods for projecting air quality impacts of prescribed and wildfires are needed, since smoke and air pollution are major considerations in deciding when to terminate prescribed natural fires and in scheduling management ignited prescribed fires.
 14. If any Federal bureau engages in prescribed natural fire programs in Alaska, that bureau is responsible for adherence to the standards established as a result of these recommendations. The well-established terminology describing levels of wildfire suppression in Alaska should not be changed for the sake of conformity with the broader categories used elsewhere.
 15. The agencies will cooperate fully in determining whether allegations of misuse of policy are true and take measures to ensure that any such practices not occur in the future.

Issues Needing Further Analyses

Following are fire management policy issues that would require more time than the team had available to work out suitable solutions. Resolution of these issues is not critical to fire management

- readiness for the 1989 fire season, but they should be pursued during the further evolution and improvement of Federal fire management policy and application. They are:
1. Validation of the relationship between current fire management information system components (i.e., drought index, energy release component, 1000 hour fuel moisture, etc.) with actual fire occurrence, severity and size is needed.
 2. Development of compatible interagency fire planning methods.
 3. Determination of the effect of budgetary constraints and funding sources on fire management programs.
 4. Determination of the current and future effects of residential and commercial development on the ability to design and implement prescribed fire programs, including examination of the interrelationship between fire management plans and local planning and zoning functions.
 5. Inventory of forest types and locations subject to infrequent but intense large fires, their historic occurrence in terms of drought cycles, and definition of policies to be applied in each case relative to desired results to be achieved.
 6. Examination of the adequacy and consistency of application of current fire suppression and prescribed fire cost analysis and risk assessment procedures.
 7. Development of interagency guidelines for "light hand on the land" suppression tactics by the National Wildlife Coordinating Group.
 8. Development of a better understanding of agency objectives as they relate to fire planning standards and decision criteria.
 9. Reexamination as to whether human-caused fires (not ignited by management) should be managed as prescribed fires in certain well-defined circumstances.
 10. Additional studies of fire history, occurrence, and size in parks and wilderness.

Appendix—Historical Data of Prescribed Fire Programs of the USFS and NPS

TABLE 1.—PRESCRIBED FIRE OCCURRENCE, THE NATIONAL PARK SERVICE, 1968–87

[Data obtained from NPS Wildland Fire Management Computer System, 1988]

NPS units by region	Prescribed Fire				
	Area size acres	Lightning ignitions		Management ignitions	
		Number	Acres	Number	Acres
Alaska Region					
Bering Land Bridge.....	2,784,960	6	452		
Denali.....	6,028,091	23	44,110		
Gates of the Arctic.....	8,472,517	23	8,560		
Noatak.....	6,574,481	13	28,951		

TABLE 1.—PRESCRIBED FIRE OCCURRENCE, THE NATIONAL PARK SERVICE, 1968–87—Continued

[Data obtained from NPS Wildland Fire Management Computer System, 1988]

NPS units by region	Prescribed Fire				
	Area size acres	Lightning ignitions		Management ignitions	
		Number	Acres	Number	Acres
Wrangell-St. Elias	13,188,325	7	134		
Yukon-Charley Rivers	2,523,509	13	44,778		
Mid-Atlantic Region					
Delaware Water Gap	66,637			2	11
Midwest Region					
Fort Larned	718			20	672
George Washington Carver	210			14	66
Herbert Hoover	187			7	50
Homestead	195			20	327
Indiana Dunes	13,815			8	333
Isle Royale	571,780	6	1		
Ozark	80,788			69	889
Pipestone	282			25	708
Scotts Bluff	2,997			6	1,871
National Capital Region					
George Washington Memorial Parkway	7,131			2	1
Rock Creek	1,754			5	1
North Atlantic Region					
Cape Cod	43,556			8	3
Pacific Northwest Region					
Crater Lake	183,224	44	682	21	5,402
John Day Fossil Beds	14,014			3	15
North Cascades	504,781	58	231		
Olympic	921,935	3	179		
San Juan Island	1,752			3	1
Whitman Mission	98			6	105
Rocky Mountain Region					
Badlands	243,302			5	4,543
Dinosaur	211,142	193	4,176	2	1,441
Fort Laramie	833			4	165
Glacier	1,013,572	4	2		
Grand Teton	310,521	32	7,758		
Rocky Mountain	265,200	6	1,051		
Wind Cave	28,292	6	309	26	7,630
Yellowstone	2,219,785	152	34,140		
Zion	146,598	24	335	5	37
Southeast Region					
Big Cypress	570,000	37	9,829	168	68,253
Biscayne	173,039			4	17
Blue Ridge Parkway	85,993			3	4
Cape Hatteras	90,319			7	99
Chickamauga and Chattanooga	8,103			5	2
Cumberland Island	36,415			8	216
Everglades ¹	1,398,938	337	128,255	245	185,337
Shiloh	3,848			3	11
Southwest Region					
Arkansas Post	389			9	52
Bandelier	32,737	5	34	21	311
Big Bend	735,416	26	462	8	24
Big Thicket	85,774	4	40	33	6,225
Buffalo	94,219			13	285
Carlsbad Caverns	48,755	14	3,063	7	80
Fort Union	721			2	2
Jean Lafitte	20,000			2	77
Lake Meredith	44,978			10	160
Lyndon B. Johnson	1,571			4	109
Sunset Crater	3,040	2	1		
Wupatki	35,253	2	4		
Western Region					
Golden Gate	73,117			6	17
Grand Canyon	1,218,375	81	3,723	19	3,148
Joshua Tree	559,954	4	20	3	12
Lassen Volcanic	106,372	18	9		
Lava Beds	46,560	3	32	4	461
Pinnacles	16,265	8	1,893	86	7,861
Point Reyes	71,046	12	653	57	2,504
Redwood	110,178	2	2	6	135

TABLE 1.—PRESCRIBED FIRE OCCURRENCE, THE NATIONAL PARK SERVICE, 1968–87—Continued

[Data obtained from NPS Wildland Fire Management Computer System, 1988]

NPS units by region	Prescribed Fire				
	Area size acres	Lightning ignitions		Management ignitions	
		Number	Acres	Number	Acres
Saguaro	83,574	36	42	3	105
Santa Monica Mountains	150,000			3	105
Sequoia and Kings Canyon	863,683	384	32,518	48	8,247
Whiskeytown	42,503			8	99
Yosemite	761,170	333	34,998	75	26,802
Totals		1,921	391,538	1,131	334,931

¹ Research begun in 1951.

Table 2—Forest Service Wilderness Fire Management Program History and Accomplishments

(Regions 1 and 4)

The following information is provided for wilderness areas in Regions 1 and 4. These two Regions have the most active wilderness prescribed fire programs in the Forest Service.

WILDERNESS FIRE MANAGEMENT HISTORY, 1972–88

	Number prescribed natural fires	Acres burned	Number that became wildfires	Acres burned	Number wildfires suppressed	Acres burned
R-1	378	160,583	9	324,126	1,402	291,967
R-4	135	49,035	14	219,813	616	550,685
Total	503	209,618	23	543,939	2,018	842,652

TABLE 3. FOREST SERVICE IGNITED
PRESCRIBED FIRES IN WILDERNESSUnited States Department of Agriculture/
Forest Service.

	Year	Number fires	Acres burned
<i>Region 3</i>			
Chincahuas Wilderness	1988	1	606
<i>Region 8</i>			
Bradwell Bay Wilderness	1988	2	3,000
<i>Region 9</i>			
Hercules Glades Wilderness	1987	1	818
Total—All Regions		4	4,424

Note: Some prescribed burning was done in the LaVentana Wilderness in California prior to 1985 as authorized through legislation establishing this wilderness.

Summary of Public Comments on the
Fire Management Policy Report

April 1989.

United States Department of the Interior/
National Park Service.

Introduction

The Fire Management Policy Review Team was established in September 1988 to review national policies and their application for fire management in national parks and wilderness and to recommend actions to address the problems experienced during the 1988 fire season. The goal of the review team is to have improved fire management policies in effect by the end of May 1989.

The team's report was released for public review in mid-December 1988. Responses were received in the form of oral testimony at 11 public meetings held nationwide in February 1989 and letters submitted during the review period. The deadline for receipt of letters was February 21, 1989; however, all letters received by March 3 were coded and summarized. Responses totaled 408 and came from individuals, organizations, governmental entities, commercial firms, chambers of

commerce, and academics in 39 states, the District of Columbia, and Canada. Appendix A lists the agencies, organizations, and businesses that responded; appendix B lists the public meeting sites and dates as well as the number of people who attended and who spoke.

Summary Methods

Working together, the National Park Service and the Forest Service coded and summarized the public comments during a two-week period in early March 1989. All written and oral comments were cataloged and stored using a computerized database management system; information on individuals and organizations that submitted comments was also entered into the system. (The number of comments was considerably larger than the number of responses because letters and oral responses generally contained comments on several subjects.) The comments were then reviewed and coded based on category and subject of comment and support for or opposition to the policy and the review team's recommendations. Specific suggestions were listed and coded at this time.

After the database was completed, similar comments were grouped using the database management system, and the grouped comments were summarized. The system was also used to help identify important concerns and issues, determine general opinion trends, compile specific comments and suggestions on the report and recommendations, and summarize

information on individuals and organizations that submitted comments.

The coded comments were not quantified because this was not a voting exercise. Further, most comments contained caveats or qualifiers. For example, many people who indicated opposition to the policy were not totally against it; rather, they disagreed with a part or parts of the policy, or with its implementation, or with some other aspect. Similarly, many supporting comments included reservations ("I support the policy except for . . .") or favored the policy but found fault with the implementation.

A large number of people submitted specific comments and suggestions concerning the review team's report and recommendations. These comments and suggestions are included in appendix C.

Summary Results

Overview

Most people commenting on the fire management policy supported the review team's recommendations concerning the use of prescribed natural fires and planned ignitions under specified conditions, although a substantial number of comments stated that the criteria for prescribed burns are too stringent. Those opposed to the policy for prescribed burns generally felt that it does not adequately consider the risks to property and human safety. Commenters strongly supported the recommendations for increased interagency cooperation and coordination and more research, and many stressed the need for more and better public involvement; most people felt that the policy needed to be strengthened or modified concerning fire management plans, suppression methods and tactics, training, and costs and funding.

General comments about the fire management policy and recommendations are summarized below; more specific comments are included in subsequent sections. A large number of comments were received that dealt specifically with the 1988 fires in the greater Yellowstone area. These comments are included at the end of the summary.

Most of the comments supporting the report indicated that the review team's recommendations were in-depth, complete, and sound. Many people commented that they were expecting a more politicized report and were pleasantly surprised with the objectivity of the recommendations. A very large number stated that they were glad to see fundamental natural fire policy "reaffirmed" by the recommendations.

Many cautioned that agencies and policy makers should not overreact to the fires of 1988; one person stated that "the summer of 1988 was both inevitable and unprecedented in Yellowstone's recorded history. Thus, policy revisions based on last year's events will be invalid for many years to come."

Of the people opposing or disagreeing with the team's recommendations, a large number categorized the report as too narrow in scope, too generalized, and "fraught with bureaucratic jargon." Many people claimed that it failed to clearly pinpoint problems and managerial deficiencies and was difficult to respond to because of the generalizations and bureaucratic style of writing. Other felt that the lack of substantiating evidence, analysis and quantification detracted from the credibility of the report. One commenter indicated that the lack of specific guidelines or directions severely limited the report's value. Another noted that the process used by the team to arrive at the findings was not addressed in the report. Several people felt that the report treated fire policy as an isolated issue and failed to take into account other management policies, land management plans, and the Wilderness Act; these people thought that changes in fire management policy might require changes in other land use decisions.

There were a significant number of comments that supported the current policy and recognized the role of prescribed fire in western forest ecosystems but felt that the manner of implementing that policy needed investigation and change. Some felt that decisions regarding fire programs should be made locally, "not in Washington."

Opinions were mixed regarding policy and the concerns of people living near parks and wilderness areas. A number of commenters felt that the policy must consider the potential impacts on surrounding communities and landowners; others felt that the concerns of local business people should not influence fire policy. One person recommended establishing fire agreements between the parks and neighboring private landowners; one suggested the creation of local fire districts that would establish policy for all lands within their geographic borders.

A number of the respondents felt that the public meetings were not adequately advertised, and that there were too few of them across the country to enable many people to attend. Some indicated that copies of the report were difficult to find, and one person said that if the agencies were serious about public participation, they needed to make it

easier for people to participate. (See appendix B for the methods used to publicize the meetings.)

Prescribed Natural Fires and Planned Ignitions

Comments were generally in favor of prescribed natural fires and planned ignitions in parks and wilderness areas. A significant number of people felt that there should not be so many restrictions on prescribed fires—that too few natural fires are allowed to burn—and many objected to the specific criteria required in the recommendations for limiting the size and number of fires. A large number of people were concerned that specific size limitations on fires within management plans would, at great cost, require managers to reclassify fires as wildfires that were otherwise within prescription and meeting management objectives. Many commenters opposed the suggested moratorium on prescribed natural fires, regarding it as an unnecessary overreaction to last summer's fires. Others objected to the daily certification required in the recommendations; one felt that it could defeat its own purpose by becoming too routine.

Many people expressed support for the use of more planned ignitions. A significant number were puzzled by what they considered to be the agencies' over-reliance on natural ignitions for prescribed fires. Many felt that timely man-caused ignitions might be a way of avoiding the yearly "boom or bust" situation in wildland fires. Some commenters encouraged agencies to allow unplanned human-caused ignitions to burn if they are otherwise within prescription.

A number of people who commented on the use of prescribed fire emphasized the need for defensible prescriptions and early public involvement. Many stated that fires should be closely monitored and controlled to avoid property damage and that the government should notify property owners in advance of prescribed burns.

Some people felt that we should consider alternatives to burning that better utilize our natural resources, such as logging. Several suggested using livestock to keep the fuels down, and some thought that mechanical treatments are appropriate.

A number of commenters expressed opposition to what they called the "let-burn" policy because, as one person put it, "it is as much a non-policy as it is a policy." These people said that the policy implies that the place, time, conditions, and methods of control have not been predetermined and suggests that man has no managerial

responsibility and places theories first and concerns of the public, parks, and resources last.

Other comments included the following:

Prescribed natural fire is preferable to planned ignition.

Prescribed natural fire shouldn't be done under last year's conditions.

Prescribed natural fire should be used around developed areas in parks, but should be controlled and managed properly.

Prescribed natural fire is appropriate as long as consideration is given to fire behavior factors, topography, density and type, fuel moisture, weather conditions, source, 1,000-hour fuels, and regional drought indices.

Comments concerning fire in wilderness areas were generally in favor of using prescribed fire to restore the landscape mosaic and increase wildlife diversity. One person wrote that prescribed fire should be used in wilderness only to improve wildlife habitat; another was concerned with how fire fit with the concept of wilderness. One commenter stated that "federal agencies have a duty to preserve the wilderness character of designated areas and to use the least disruptive means available to carry out this task." The comment further indicated that if suppression of wildfires interferes with a fire-dependent ecosystem, then the Forest Service is in violation of a legal mandate to preserve the natural character of the wilderness.

Several comments stated that a "no management" concept has seriously degraded wilderness resources, and management plans should be developed. One commenter supported legislation that will "require control of fire, noxious weeds, insects and diseases where they pose a threat to adjacent multiple-use areas and private property on the wilderness area itself." Another person specifically stated that management plans should be in place before allowing nonprescribed fires to burn out.

One commenter supported planned ignitions in wilderness to reduce the fuel buildup and restore (fire-generated) heterogeneity, which influenced the size and shape of natural fires prior to 1900. Another felt that Forest Service policy for planned ignitions in wilderness is so stiff that "it is essentially impossible for such burns to be a part of wilderness."

Fire Management Plans

Of the people commenting about fire management plans, the great majority felt that the recommendations needed to be strengthened concerning how to carry out and implement planning and what the plans should contain. Many

people had specific comments. Among them:

The plans should be prepared by qualified, certified, experienced personnel, including fire behavior specialists.

They should be implemented consistently by the various government entities covered by the plan.

They should be specific, yet flexible. They should prescribe for minimum impact in suppression techniques.

They should balance the role of natural fire against threats to natural resources, watersheds, scenic and recreational values, public safety, and property.

They should consider businesses on park boundaries but should not prohibit the use of prescribed burning because trade might be reduced during the burn; restricting burning could increase later risk.

They should incorporate state smoke management plans.

A number of people also expressed the opinion that decisions involving containment should be made by trained, professional experts using documented management procedures and that competent, professional managers should be in charge and should be held accountable for their actions. One person recommended using the same process for approving prescribed fire as is used for approving forest plans—through amendments—and pointed out that one of the keys to the amendment process is public involvement.

One commenter had several questions for consideration:

Can fire plans, in fact, be written to accommodate the level of detail which is recommended by the review?

Can managers really be expected to foresee the consequences and cumulative effects of all possible fire scenarios?

And, if they are required to do so, will the ultimate result then be much more fire suppression in the future than we have had in past years?

And what will be the environmental and economic effects of these increased suppression efforts?

Suppression Methods and Tactics

A number of commenters supported the concept of "light hand on the land" in managing wilderness fires. Quite a few, however, felt that this concept was worthless without further definition and stronger guidelines accompanying it. They felt that everyone from firefighter to the highest line officer must clearly understand what minimum impact on resources means. Some people felt that if "light hand" tactics are used, specific interagency guidelines are needed. The

existing National Interagency Incident Management System (NIIMS) was suggested as a useful framework for interagency cooperation.

Of those who disagreed with the "light hand on the land" concept, many felt that the policy needed to be reviewed or reconsidered. A number of people indicated that although this policy may be environmentally sound for large areas under government control, it is inappropriate where there is a mix of landownership or where substantial economic benefits are derived by local communities. The "light hand" approach was also seen as inappropriate for many large wildfires.

There were a number of objections to using political boundaries as fire breaks, as suggested in the recommendations, rather than biological boundaries. Suggestions included using roads, lakes, rivers, and topographic divides. One person felt that if we wait until a fire reaches a park or wilderness boundary before declaring it a wildfire, we may not have the opportunity to take successful suppression action. Another said that fire breaks along boundaries could become an obstacle to future additions to wilderness areas.

A large number of commenters expressed opposition to building roads into roadless areas for suppression of fires. One stated that under no circumstances should there be timbering or road building in wilderness. Some favored the use of heavy equipment as a suppression tactic, some opposed it.

Post-fire activity was recommended, that is, continuing efforts in monitoring and controlling earth movements, debris, flooding, and wildlife food loss. In regard to revegetation, one person felt that it is "entirely inappropriate"; others thought that minimal reseeding and replanting should be done, several specifying along roadways, near facilities, and in recreation areas and some recommending native grasses and trees.

Many of the comments about firefighting tactics dealt with the need for improved communications between managers and front-line officers. It was perceived that in Yellowstone last year there was a general lack of communication concerning suppression activities.

Training

Although some commenters commended firefighting personnel and their efforts, a great number of suggestions dealt with getting additional training for personnel at all levels, perhaps by the military. Some were specific, calling on the agencies to

strengthen training of firefighters so that they recognize and react to extreme weather conditions and use proper suppression techniques. Some saw a need for specialized personnel such as hotshot crews; others favored the utilization of local personnel.

Interagency Cooperation

A recurring comment was a call for increased cooperation and coordination among federal and state agencies where fires could cross administrative boundaries. Saying "an individual park is not an isolated, pristine, ecological bubble," one respondent echoed the thoughts of many by emphasizing the need for interagency coordination, cooperation, and communication. These comments were made in reference to the 1988 fires as well as to developing fire management plans. Many stressed the importance of including state and local fire agencies and state wildlife agencies in planning. A few commenters stated that a "unified" federal policy is essential to fire management; some went even further to suggest that there be one federal fire management agency.

Public Information and Involvement

Many commenters stressed the need to strengthen public information and involvement. There was also a general feeling that public information programs should include education aimed at improving awareness of fire management as an ecological tool.

Specific comments on public information and involvement included the following:

Clearly state the fire policies for specific areas; people should not be led to expect protection when none is planned.

Improve information to the public before, during, and after fires; include data on how decisions were made.

Implement NEPA compliance and public review.

Provide better opportunities for public involvement during formulation of fire management plans (community advisory boards were recommended for this purpose).

Develop common terminology to convey information to the public.

Several people felt that the report's recommendation on public interpretation must be strengthened—that last summer the news media and the majority of the public showed little understanding of wildland fire policy and could not differentiate between it and policies relating to general fire suppression.

Many commenters thought that public information officers should be better informed, saying that they did a poor job

on the 1988 fires. A specific idea was to develop a cadre of fire information officers who know and understand the fire business, both prescription and wildfire. Some called for better funding for interpretation as well as accurate, in-depth, and timely information before, during, and after fires.

A number of people said that the team failed to acknowledge the long-term influence of public information campaigns promoting fire suppression, in particular Smokey the Bear, and that such information has contributed to the public's ignorance of the benefits of fire and consequently restricts public acceptance of prescribed fire as a viable management tool.

Several comments indicated that the public also does not understand the social effects of fire or the feasibility and effectiveness of suppression actions. They stated that correcting this lack of public knowledge on the benefits of fire is imperative and recommended that an education program be launched to counter Smokey's message and teach the value of fire.

Costs and Funding

A large number of commenters felt that there is a need for additional funding—for research, for reducing fire potential, for implementing the recommendations, for perpetuating natural and wilderness ideals, and for suppression (with mention of training for firefighters, fuels management, and controlling prescribed burns).

Many comments concerned the high cost of fighting fires, in dollars, lives, and resources. A number called for a review of costs, demanding accountability as well as a reduction in expenditures and maximizing the use of suppression money. Some said that costs versus benefits of fire control should be addressed by the decision makers. One writer put it simply, "I think money being spent on fires that are not threats is a lack of good financial spending," and questioned motives in putting out fires when the resources saved are not worth the suppression costs. Many comments addressed the protection of structures and other facilities and indicated that it is "foolish" to spend millions on structures worth only thousands; some felt that "localized pre-attack" and fuel reduction around developments are appropriate actions. A few commenters stated that agencies should actively discourage development in parks and should phase out existing developments within and bordering parks. One person suggested better zoning to keep buildings out of fire-prone areas "so we

don't waste money on needless suppression."

A number of commenters discussed the manner in which fires are being paid for. Recommendations included not using firefighting funds for unplanned ignitions and not using timber and mineral receipts for future fire costs. There were equal numbers of comments for and against using Knutson-Vandenberg funds from the timber program. One person stated that planning and suppression activities should be financed by program funds rather than emergency fund transfers and supplements.

Research

The team's recommendations regarding more research received numerous positive responses, with people calling for increased research and development of advanced technology for predicting, fighting, and monitoring fires. Specifically, many commenters felt that the dynamics of stand replacement fires were poorly understood and needed increased research emphasis. Others felt that increased research on fire dynamics must be coupled with more study of fire effects on vegetation and wildlife. One person was less confident regarding the utility of additional research, stating that he had "grave concerns with assumptions that man can ever manage wildland fire, simulating a natural process we have not nearly begun to understand."

Some people advocated additional research on fuel and weather, fire behavior, exploration and use of new and different firefighting techniques (including those that do not involve heavy intrusion and costly intervention), analysis of forest types, fire history and occurrence in times of drought, and the use of geographical barriers as fire breaks.

Greater Yellowstone Area

Almost all of the commenters expressed opinions on the Yellowstone fires and how they were managed. These comments have been consolidated and summarized for reference in evaluating fire policy and the review team's recommendations.

Concerning fire suppression activities, many people commended Yellowstone's firefighters and management for doing a good job and taking proper action, particularly in saving historic structures. However, there were also many negative comments, which centered on faulty objectives; a lack of communication at all levels; a lack of clear chain of command, especially

interagency; and a reluctance of some individuals to apply full suppression tactics. An alternate view on the last point was that political pressure replaced logic at the management level by demanding full suppression. One person suggested that it would have helped if Yellowstone had had a prescribed burning program. Two comments indicated that the Forest Service should have used local resources and knowledge more effectively; although good commanders were seen at the unified area command, it was felt that NPS management should also have been included. The military was described as ineffective because crews and aircraft were not assigned to individual fires. Endangerment to firefighters' lives was criticized, as was the lack of ability to control fires of this magnitude, particularly by the methods used.

Several commenters expressed concern about the firefighting tactics. Some thought suppression efforts should have begun earlier, particularly given the extreme weather conditions, the difficult topography, and heavy fuel loads. Several people commented that damage to soils and vegetation was far worse from suppression than from the fires. A number were concerned that air pollution caused by the fires exceeded federal air pollution requirements, causing severe respiratory ailments and adversely affecting crops and livestock.

There were split views on the relationships and responsibilities of federal land managers and nearby landowners and residents. A large number of commenters felt that, in general, fire management officials in the greater Yellowstone area demonstrated a complete disregard for the health, safety, and livelihood of those in the surrounding communities and that homes and businesses should have been protected. Some felt that commercial operators should have had preference in sustaining their livelihood; a number supported compensation to concessioners, agriculturalists, timber companies, and other business people and homeowners whose properties were threatened or destroyed by the fires. On the other hand, many commenters felt that the concerns of local business people and landowners should not influence fire policies and that people who choose to live in a "dreamland vacation spot" should not receive compensation of any type. Several stated that adjacent communities that are financially dependent on the users of public lands must accept the negative aspects as well as the benefits of their location. An example comment:

"Structures that are built in forested wildland ecosystems are knowingly placed in harm's way. They are at their own risk and society does not owe them fire protection." Some people went even further, saying that those who lost property should reimburse the government for the money spent trying to protect them.

Several commenters saw the need for a promotional campaign for Yellowstone, to convey to the public that it was still a top recreational place to visit. One wrote: "We believe very strongly that the Federal Government, through the Departments of Agriculture and Interior, has an obligation to cooperate with the surrounding states and communities to help mitigate the impact of the unprecedented media coverage afforded the Greater Yellowstone Fires of 1988. This cooperation should take the form of hard dollars for marketing and promotion of the 'new' Yellowstone story." Another wanted the government to commit \$1 million a year for five years to promote travel to Yellowstone and also called for the federal departments to coordinate with state travel commissions and gateway chambers of commerce.

There were a few comments that pertained to nonfire issues in Yellowstone National Park and the Yellowstone ecosystem. Several people said they would like to see the Yellowstone ecosystem managed as a whole without administrative boundaries. Others said that there was a need for better coordination between the Park Service and Forest Service in managing fires and wildlife habitat. Some people felt that the park was not being properly managed and that management policies should be reassessed.

Appendix A: Comments Received

Written and oral comments were received from the following government agencies, organizations, and businesses.

Congressional

Subcommittee on National Parks and

Public Lands

Senator Steven Symms
Senator Malcolm Wallop
Senator Alan Simpson

International

Canadian Embassy

Federal Agencies

United States Department of the Interior
Bureau of Land Management
Bureau of Indian Affairs
National Park Service

Arkansas Post National Memorial
Bandelier National Monument
Big Thicket National Preserve
Big Bend National Park
Buffalo National River
Chickasaw National Recreation Area
Curecanti National Recreation Area
Guadalupe Mountains National Park
Hot Springs National Park
Indiana Dunes National Lakeshore
Jean Lafitte National Historical Park and Preserve

Lassen Volcanic National Park
Lyndon B. Johnson National Historical Park

Sequoia/Kings Canyon National Parks
Southeast Regional Office
Southwest Regional Office
Statue of Liberty National Monument
Wupatki/Sunset Crater National Monuments

United States Department of Agriculture
Forest Service

Boise National Forest
Custer National Forest
Gallatin National Forest
Kootenai National Forest
Nez Perce National Forest
Region 1
Region 3
Region 5
Region 6
Sawtooth National Forest

United States Environmental Protection Agency

State and Local Agencies

Alaska Department of Natural Resources, Division of Forestry
California Department of Forestry and Fire Protection
California State Board of Forest Fire Fighting
Cody Chamber of Commerce, Wyoming
Commonwealth of Virginia, Office of the Governor
Commonwealth of Massachusetts
County of Park, Wyoming
County of Musselshell, Montana
Five County Association of Governments, Utah
Florida Department of Natural Resources
Illinois Department of Conservation
Mississippi Forestry Commission
Missoula Fire Department
Nebraska Forest Service
New Jersey Department of Environmental Protection
Oregon Forestry Department, Office of State Forester
Park County, Colorado
Shelby County Environmental Improvement Commission
State of Wyoming, Office of the Governor

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State of South Carolina, Office of the Governor
State of Alaska, Office of the Governor
State of North Dakota, State Fire Marshall
Texas Forest Service
Upper Grant Creek
Wyoming Game & Fish Department
Wyoming Travel Commission
Wyoming House of Representatives
Wyoming State Forestry Division
Wyoming State Archives
Wyoming Economic & Development Stabilization Board
Wyoming Public Service Commission

Academics

California Institute of Technology
California Academy of Science
Colorado State University
Michigan State University
Montana State University
Tall Timbers Research Station
Teton Science School
University of Montana
University of Minnesota
Western Montana College

Organizations

America Wilderness Coalition
American Farm Bureau Federation
American Sheep Industry Association
Association of National Grasslands
Blue Ribbon Coalition
California Farm Bureau Federation
California Wilderness Coalition
Cody Lumber Company

Contra Costa Resource Conservation District
Contract Fire Fighting Appropriate Design
Dubois Alliance
Earth First!
Florida Wildlife Federation
Florida Farm Bureau Federation
Forests Unlimited
Foundation for North American Wild Sheep
Greater Yellowstone Coalition
Idaho Farm Bureau
Idaho Outfitters & Guides
Idaho Conservation League
Inter-Mountain Forest Industry Association
J.H. Outfitters & Guide
Jackson Hole Alliance
Montana Audubon Council
Mother Lode Miners Association
Mountain States Legal Foundation
National Forest Products Association
National Association of Conservation District
National Campers & Hikers Association
National Association of State Foresters
Nevada Farm Bureau
Northwest Wyoming Resource Council
Northwest Independent Forest Manufacturers
Pahaska Teepee
Public Lands Committee
Public Lands Foundation
Public Lands Council
Public Land Users Association

Public Lands Foundation of Billings, Montana
Public Timber for the Timber Association of California
Rangeland Consulting
Rural Alaska Community Action Program
Sacred Pipe Indian Mission
Sierra Club
Sierra Club, North Plains
Sierra Club, Montana Chapter
Sierra Club Legal Defense Fund
Snake River Audubon Society
Society of American Foresters
Stone Forest Industries, Inc.
Teton County Heritage Society
Uinta County Farm Bureau
Western Mountain Fish & Game Association
Western Wood Products Association
Weyerhaeuser, Corporate Headquarters
Wilderness Society
Wildlife Society, Idaho Chapter
Wildlife Society, Wyoming Chapter
Wind River Multiple Use Advocates
Wyoming Farm Bureau
Wyoming Wildlife Federation
Wyoming Heritage Society
Wyoming Travel Commission
Wyoming Outfitters Association
Yellowstone Park Preservation Council

Appendix B: Public Meetings on Fire Management Team Recommendations

A total of 750 people attended the 11 meetings, and 127 spoke.

Meeting location	Date	Number attending	Number speaking	Method of public notice
Missoula, MT	2/1/89	63	19	Press release sent to 825 on the press release mailing list (print media, radio, and TV), mostly in Montana, North Dakota, and South Dakota. Legal ads ran in nine major newspapers in Montana and Idaho.
Tallahassee, FL	2/1/89	41	9	Press release sent to about 300 contacts on mailing list, including statewide newspapers and radio and TV stations. The three stations in Tallahassee were contacted in person. Legal ads ran in local area newspapers.
Sacramento, CA	2/1/89	42	9	Press release sent to about 50 newspaper, radio, and TV outlets around the state. Legal ads ran in San Francisco Chronicle, San Francisco Examiner, Sacramento Bee, and Redding Record-Searchlight.
Washington, DC	2/2/89	34	3	Press release sent to regular distribution list, which includes newspapers, wire services, radio, and TV.
Denver, CO	2/6/89	20	3	Press release sent by the Rocky Mountain Regional Office (Park Service) to approximately 300 organizations, advisory committees, newspapers, and radio and TV stations in Montana, North Dakota, South Dakota, Wyoming, Utah, and Colorado.
Jackson, WY	2/7/89	125	18	Publicity handled by Denver office, National Park Service. Nothing additional was done by Grand Teton National Park locally.
Anchorage, AK	2/7/89	20	5	Press release sent to about 200 radio and TV stations, newspapers, conservation groups, other agencies, etc., and to libraries that post the information. Legal ads ran in the three largest dailies.
Idaho Falls, ID	2/8/89	65	20	Press release sent to all media in Idaho, Washington, and Oregon. Legal ad ran in the Idaho Falls paper one day.
Seattle, WA	2/9/89	25	3	Press release sent to all media in Idaho, Washington, and Oregon from the Seattle office. Legal ad ran in the Seattle Times and Post Intelligence for one day.
Albuquerque, NM	2/9/89	20	3	Press release sent to all New Mexico media. Legal ad ran in the Albuquerque Journal February 6, 7, and 8.
Cody, WY	2/14/89	300	37	Press release sent to local radio stations (5) and newspapers (4). Legal ads ran in two local newspapers.

Appendix C: Comments and Suggestions on Specific Parts of the Report

Summary

The first item in the summary, "The Objectives of Policies * * *" is not supported by the report. The objectives of the Policies cannot be sound when the Policies themselves are not.

Summary, column 1, paragraph 3—The objectives of the policies governing prescribed natural fire programs were not stated, except as inferred here and there in the report text. Until clearly stated and subjected to review by interested parties, describing them as "sound" is premature and may be highly inaccurate.

Findings

6—Because the Team never determined whether the Yellowstone fires of 1988 could have been successfully controlled, and ignored the contribution of past fire suppression to the magnitude of these fires, Finding 6 is unfounded.

10—The Team failed to address the quantity of water and its impacts.

11—Paragraph 4, "The primary message communicated * * *"—This is the perfect example of how arbitrary limits within a prescription can create contradictions. It is highly inconceivable for a prescription fire with positive biological values to cross an arbitrary or prescription value and be declared a wildfire (bad) and yet the effect of fire on-site is unchanged throughout.

13—If incident commanders received unclear direction about the use of certain suppression tactics, was this a failure to clarify or a result of line officers not being sufficiently trained or knowledgeable regarding suppression tactics?

Recommendations

1—What will define a "legitimate prescribed fire program?"

1—The Team fails to tell us how those policies should be changed and what limitation should be imposed.

2—The Team fails to state how precise the constraints for prescribed fires are.

2—For the most part, the policies are well understood by most fire personnel, but perhaps not so well understood by some managers.

3—This type of review should be a standard operating procedure.

4—This change is unrealistic and more a semantic than effective change.

4a—We are in basic agreement, but differences in basic management directions among the Forest Service, Park Service, and BLM need to be

acknowledged in all planning and coordination. As an example, while present Park Service management direction does not concern itself with timber harvesting, coordinated planning and policies need to be concerned with protection of the commercial timber harvest base. Fires originating in the Park could destroy this base as it did on the Shoshone during the 1988 fire season.

4a—We would strongly encourage development of permanent legislation permitting reimbursement. Such legislation would more fully realize the intent of the Canada/US Reciprocal Forest Fire Fighting Assistance Arrangement.

4b—Items 1-7—Contemplating establishing limits of numbers of fires within an administrative unit and size of fires would be very arbitrary and an artificial constraint. The proper use of the other criterion suggested already covers the situation.

4b—Some very specific recommendations, such as those contained in Recommendation 4b, should be eliminated. The detail is inconsistent with other recommendations and they duplicate a role more appropriate to the task force.

4b—I urge that the committee report be broadened to include the following specific suggestions regarding its recommendations and unresolved issues: Recommendation 4(b): Add a part 8 to read: "Potential Impacts to natural communities and processes caused by preventing fire from acting as an agent of change."

4b(5)—Needs clarification.

4b(7)—We are concerned * * * that Recommendation 4b(7) could lead to excessive restrictions on the National Fire Program.

4f—Add a phrase encouraging development of a concept of values to be gained due to presence of a prescribed natural fire: "(f) Clearly stating the management objectives being addressed by the prescribed natural fires program, including identification of specific values gained as a result of allowing natural fire to burn unsuppressed within the prescription conditions and areas."

4g—Does public involvement and coordination with local government refer to plan development or plan implementation?

5—Are the contingency plans developed independently or cooperatively by the agencies? Will the activities of one agency affect the operations of another agency?

5—If we miss our acreage estimate, is control mandated? Size of fire should

not be the only input in selecting tactics and strategy.

6—We question the implication in recommendation No. 6 that a prescribed fire can be "returned to prescription." To most readers, this implies that a prescribed fire can temporarily exceed prescription while avoiding reclassification as a wildfire, which the team earlier states is unacceptable.

* * * We recommend that the statement be revised to state that "If the fire exceeds or threatens to exceed prescription and cannot be kept within prescription with available forces and funds, it shall be declared a wildfire and appropriate suppression action initiated."

6—If resources are not available, is a fire out of prescription? Will resources be held from suppression assignments to ensure their availability for prescribed fires? Exactly what will be accomplished by the line officers daily certifying adequate resource availability is not clear other than to show that resource availability was considered. Other things which should be considered are just as important, i.e. off site effects, public safety, etc.

7—The use of planned ignitions within wilderness to treat fuels would likely involve a lengthy NEPA and appeals process here in this region but at least in some cases it may well be worth the effort.

7—One should include evaluation of whether planned ignition burning would really stop wildfire or even reduce the habitat's flammability, with specificity for each plant community. Also, management objectives are not defined. Is this letting the natural process happen or is it manipulation?

7—We are concerned with Recommendation 7 to use planned burning and other efforts to create fire breaks along the boundaries. Land unit boundaries are often political, but not biological boundaries.

7—The option should be retained to conduct planned ignitions for fuel treatment purposes along defensible boundaries inside or outside of wilderness are not necessarily on administrative boundaries.

8a—Will this happen by making it a training requirement or selection criteria? If the latter is done, it could tend to affect affirmative action, so be careful.

8c—Finding qualified people will be difficult. This review item needs to be further thought out.

8—Add a subparagraph (g) to encourage keeping a balanced program: "(g) In meeting this recommendation, agencies will not reduce existing funding

and personnel capabilities regarding natural resource management and research. Rather, agencies will seek to increase those capabilities to ensure their contributions to natural resource decision making and program implementation remain in balance with the increased capability for fire control."

9c—[This] concerns agencies developing joint criteria for selecting appropriate suppression tactics in the wilderness and parks. The phrase "minimal impact" should be inserted after "appropriate".

9c—It is not clear exactly what this statement means.

9d—Are we talking about improved understanding within agencies, between agencies, by the public, or all three?

10—Does this mean we have to make a determination if the NEPA process was adequately followed for plans presently approved?

10—Recommendation 10 implies NEPA process is not always followed, and doesn't acknowledge USDA's land management planning process and public involvement that occurs.

11—We concur with recommendation No. 11 concerning improved interpretation but feel that it should be strengthened. It really doesn't stress the critical need to develop and execute the proactive interpretation and public education which is needed to counter the incredibly successful "Smokey the Bear" program of the last few decades—which now seems to be providing us with negative problems as well. We feel that messages such as the "Light Hand" concept have not been adequately presented to the public in terms of positive impacts upon the environment, savings in tax dollars, etc., and that the same long-term energy must be put into these messages as the previous suppression messages received.

12—An excellent recommendation in that wilderness prescribed fire programs are not funded at a level to support the entire program.

12—Long-range fiscal planning will be difficult, since the fire potential varies with region, weather patterns, fuel conditions, and a variety of other factors. We don't see any practical way of avoiding the need for emergency and/or supplemental funding.

13f—Although this recommendation correctly recognizes that smoke and air pollution are important considerations for fire prescriptions, the policy should not lose sight of the benefits of controlled burning.

Issues Needing Further Analysis

3—This issue statement needs to be broadened to ensure a balanced assessment of the relationship of fire

management programs to other agency programs. Rewrite to read: "Determination of the effect of budgetary constraints and funding sources on fire management programs and on the relationship fire management program needs in comparison to the needs of other equally important natural resource program components."

Other Comments and Suggestions

Overview

The report didn't differentiate between varying operating procedures and policies of different agencies, but made general statements, leading the reader to believe they operate the same.

The report doesn't reflect the integration of the total fire management program, i.e., prescribed and wildfire policies, and organization and management, including the interagency cooperative fire community.

Adoption [of the policy] will compromise progress Alaska agencies have made with our interagency fire management program. * * * The review addresses only national parks and federally designated wilderness areas. In Alaska, a comprehensive interagency fire management plan organizes fire protection levels by resource values and natural fuel breaks across administrative boundaries on all ownerships. Proposed policies vary among federal land agencies and will present difficult operations requirements. We urge you to consider a standard policy for all federal land.

The fire management program would be enhanced by developing a better understanding of agency objectives, fire planning standards and decision criteria. In addition, an inventory of forest types and location subject to infrequent but intense large fires, their historic occurrence in terms of drought cycles, and definition of policies to be applied to each case relative to the desired results should be developed as soon as possible.

The recommendations contain no discussion of relationship between land management objectives for an area and fire protection objectives.

Within the policy we've got to establish a stronger set of guidelines for determining the relevant benefits of suppression versus allowing a prescribed fire to burn or in some cases a wildfire—at least if not to burn freely, to burn under somewhat less totally controlled conditions than might otherwise occur.

The goal of fire policy should be preserving forest ecosystems rather than preventing fire per se. Concessionaires should be notified of this policy, and

that government fire protection for their buildings will be very limited. The \$150 million the government spent fighting the Yellowstone fires was a waste of money and another addition to our momentous federal budget deficit.

The report fails to address destruction of natural resources, lost business opportunities, and long-term adverse effects of wildlife. This failure to confront these issues renders the recommendations and the "let-it-burn" policy as irrational, and based on emotion rather than fact.

The fire management policy goal should state "To permit as many lightning-caused fires as possible to burn within the prescribed natural burn area."

The Oregon State Department of Forestry recommends that a National Review be conducted on the "Appropriate Suppression Response" and the "Light Hand on the Land" federal policies, particularly as it pertains to other federal lands, i.e., production grounds, scenic areas, intermingled resources, roadless areas, and special habitats. The review only looked at the fire management policy in national parks and wilderness areas.

Our national parks should be preserved as 100% whole, fully functioning, self-sustaining ecosystems following their own respective cycles and evolutions. * * * Parks should and indeed could serve as more accessible adjuncts to our fledgling and still pitiful wilderness system. They should not be "managed" into safe, fairly predictable Disneyland of plants and human-acclimatized or even human-dependent animals.

Prescribed Natural Fire and Planned Ignitions

If the report is suggesting that fires should be suppressed if they are projected to go beyond a certain size, I disagree. Size by itself is an incomplete indicator of the impacts of a burn. It would be far better to base management decisions upon the ultimate geographic area projected to burn and the impacts on other resources.

Several terms are used which generate questions about proposed operational requirements. These are: "Natural fire," "Prescribed fire," and "Natural prescribed fire." Their meanings are extremely important when defining suppression actions. The national definitions should be compatible with protection categories of Alaska Interagency Fire Plans to protect established management objectives. I urge you to carefully review the definitions.

It should be recognized that occasional high-intensity fires will occur under severe weather conditions. These naturally occurring fires are a potent force for ecological change and play an essential role in maintaining the health and biological diversity of the ecosystem.

The use of prescribed fires to manage wilderness areas is desperately needed. * * * It has been impossible to get federal agencies concerned about the role of fire in natural succession. As a result, crucial habitats for species like bighorn sheep are being lost because of vegetative changes, primarily conifer invasion.

Suggest that the term "human ignited" fires implies all man-caused; and that a better term would be "management ignited," to describe prescribed fires.

I think it would be beneficial to institute a regular prescribed burning program around properties to reduce the likelihood of catastrophic losses where inholdings do occur.

Planned ignition cannot be a substitute for natural fire and be consistent with wilderness objectives. It serves a useful purpose as a supplement or interim measure in attempting to restore natural fuel loadings.

Reduce natural fuels around towns.

Fire Management Plans

We need to be careful not to remove the decision making responsibility from the on-the-ground line officer yet develop and maintain or regain credibility with the public.

It is requested that the Fire Management Policy allow and provide for maintenance of adequate rights-of-way for utility facilities. Staff field inspections have shown that, in many cases, proper tree and fuel clearance has not been maintained in and along these rights-of-way. These rights-of-way must be kept free from trees and fuel to aid in the prevention of outages.

In addition to the current proposal, I recommend that decision criteria be included that will terminate prescribed burning and suppress lightning fires when wildfire conditions exist.

Define what fires we will control and whose methods can be used. Concentrate on initial responses to all fires. Stop profiteering on forest fires.

We need clarification of our role and responsibilities for public safety.

If resource availability other than what is adequate for current prescription becomes a criterion which would result in changing the status to "wildfire", then we might want to allow a return to "prescribed" status when that resource availability changed to more favorable.

The role of fire manager needs to be clarified.

Use consultants—use retired federal employees who have the expertise in fire management and have set up their own businesses. Use them for planning and reviewing plans, for inspections, and for reviews of accomplishment and performance.

The concept of planning for and implementing procedures for fires less than 100% risk-free is not addressed. Risk assessment is a central issue with prescribed burns and should be addressed.

Fire management plans could be improved by developing criteria uniform to all government agencies involved in wildlands management. This would be useful when fires cross administrative boundaries.

The Boise Interagency Fire Center could provide more direction and assistance in the form of a model Fire Management Plan. Such a model would streamline NPS fire management by standardizing in areas such as terminology and the EFSA.

Suppression Methods and Tactics

Private property owners should be allowed the right to protect their property (buildings, facilities, vehicles, livestock, machinery, etc.). This means that these property owners should have every right to respond to fires that they come across.

I am sure that if no possible danger to human life and a treat to towns is concerned, the fire should be left alone, but watched and kept back by a twenty mile radius, in order to be controlled with enough time.

Fires need to be managed under the theory that they will jump administrative boundaries, not in the hope that they won't.

We need an attitude change with regard to shelter deployment. There is a serious negative connotation connected with shelter deployment. This caused unnecessary injuries in 1988.

The report glossed over errors in judgment, allegations of poor firefighting procedures, hassles between firefighters and the Park Service, bad management decisions, lack of coordination between agencies.

Manually built firelines should be cut down to the mineral soil and not just through the duff.

If we have mature timber stands that no longer support the kinds of plant and animal life we would like them to support, then open these stands of timber to logging and pile and burn the topplings to satisfy the needs for burn off. This makes use of the wood and renews the forest through regeneration.

Salvage logging should not be allowed in the national park because such would completely interrupt vital nutrient cycles, and in areas of the national forest such as wilderness and roadless areas, steep terrain, salvage logging should be curtailed and closely managed where feasible.

Limiting and controlling access to the forests is another essential tool in protecting against fires, and the fewer portals there are, the easier it is to control.

Training

We need to strengthen training of firefighters in the recognition of and proper reaction to extreme weather conditions.

Special hard hitting fire fighting teams of some 50 persons each should be organized and trained. Several teams should be on hand in each of our large National Parks and be available for emergencies throughout the system. Some 25% would be available for other work such as trail building and structures construction and maintenance.

Interagency Cooperation

There is a need to develop and adopt a unified and coordinated approach to fire management between the Forest Service and the NPS * * * the Yellowstone ecosystem should be managed as such, the entire ecosystem, rather than fragmented because of administrative boundaries.

It may be that some units do not have enough fire activity to maintain skills necessary for the occasional fire bust. We need to institutionalize a system so that a unit with a fire bust can call for fire management help as easily as it calls for another engine or crew.

Public Information and Involvement

The NPS should continue to accept wilderness and environmental education as part of its duties. It is not the responsibility of the NPS to protect the public from natural phenomena such as fire. Instead, NPS should educate the public about the risks they may encounter in dealing with such factors.

The report does little to recommend that Parks containing significant hazardous fuels review their present organization and public relations program.

We suggest improvement and better funded public information and wildland fire interpretation before, during, and after major fires.

We feel there is one aspect of the team's finding that needs to be more

strongly addressed and that is education.

Costs and Funding

The whole cost picture must be examined, including potential costs and damages associated with a prescribed fire that later becomes a wildfire which requires aggressive suppression action. Cost statements must include federal suppression monitoring costs, and cooperating agency increased suppression costs resulting from reduction in local resources. The Department is also concerned with the higher per-acre suppression costs experienced by federal agencies.

We need to put our effort and funding into the relatively cheap action of fire proofing small areas around structures rather than attempting to change the fire history of the entire west.

Sufficient personnel and financial resources should be dedicated to this review task to expedite the process and minimize interruptions.

Research

Fire cycle data is nonexistent for many of the wilderness areas in Wyoming. Collection and analysis of such data, particularly its relationship to different successional stages, should be a prerequisite for preparation of Fire Management Plans and also a high priority for funding.

Recommended continued research and implementation of remote sensing/geographic information system technologies for use in assessing the fuels conditions, prescribing fuels management, and modeling real time fire behavior.

Other research recommendations:
Identify the influence of smoke columns on fire growth and behavior and on spotting.

Identify meteorological thresholds that result in rapid changes of fire behavior.

Develop a system to identify drought conditions that forecasts potential fire season severity.

Verify current fire behavior predictive systems; enlarge database to increase applicability of predictive systems if possible.

Develop or identify models to predict winds over high elevation terrain.

Identify factors causing transition from surface fire to crown fire.

Develop a system for predicting growth of large fires.

Identify the impact of fire exclusion on fire severity and the wildland/urban interface.

Greater Yellowstone Area

The fire team must go back and answer the President's question of the pre-fire management policies which caused the size and intensity of these fires.

We encourage further review and development of alternative means of analyzing the damage and off-site effects of suppression activities as well as of the fires themselves.

The National Park Service and its citizen advocacies should not demand the creation of protective buffers on adjoining lands to insure the continuation of their management philosophy unless they are prepared to accept full accountability for their operational impacts on their neighbors, both public and private.

The report was "unbalanced" to blame managers and fire management policies for the severity of the 1988 fire season.

The greater Yellowstone ecosystem after the fire needs no timber salvaging, no logging, no new access roads, no firebreaks and no new "improvements" for visitors. What it really needs right now is the reintroduction of the Gray Wolf, the removal of the Fishing Bridge development, \$120,000,000.00 for land

acquisition to match the \$120,000,000.00 wasted in August's fruitless public relations effort to stop a needed, natural process and after all of those things are accomplished, it needs, finally, to be left the hell alone to follow its own natural processes without our interference.

Anything you can do to advance the preservation (or even restoration) of Yellowstone in the direction of what it once was rather than in the direction of what the Winnebago set and the periphery of local ranchers, hunters, miners, loggers and developers want it to be I would greatly appreciate. More importantly, so too will posterity.

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Clayton Yeutter,

Secretary of Agriculture.

Manuel Lujan Jr.,

Secretary of the Interior.

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BILLING CODE 4310-70-M

federal register

Friday
June 16, 1989

Part III

Department of Transportation

Federal Aviation Administration

14 CFR Part 91

Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System; Transponder With Automatic Altitude Reporting Capability Requirement; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 91

[Docket No. 25753; Amdt No. 91-210]

Air Traffic Control Radar Beacon System and Mode S Transponder Requirements in the National Airspace System; Transponder With Automatic Altitude Reporting Capability Requirement

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective dates.

SUMMARY: This action responds to a petition filed by the Experimental Aircraft Association (EAA), Aircraft Owners and Pilots Association (AOPA), and Helicopter Association International (HAI) concerning Mode S and Mode C transponder requirements. The Mode S transponder aspect of that petition is partially granted herein with a final rule that revises the dates associated with the installation of Mode S transponders. This final rule allows certain aircraft operators to install non-Mode S transponders in aircraft until July 1, 1992, instead of until January 1, 1992, provided that such transponders are manufactured prior to January 1, 1991, instead of prior to January 1, 1990. A manufacturer's comment to the petition which cites a delay in the production of general aviation type Mode S transponders necessitates this final rule action. This action also denies that portion of the petition concerning Mode C transponders.

EFFECTIVE DATE: June 16, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. Reginald C. Matthews, Air Traffic Rules Branch, ATO-230, Airspace-Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-8783. Copies of this document may be obtained by submitting a request to the Federal Aviation Administration, Office of Public Affairs, APA-200, 800 Independence Avenue, SW., Washington, DC 20591; or by calling (202) 267-3479. Communications must identify the amendment or docket number of the document.

SUPPLEMENTARY INFORMATION:**Background**

On December 28, 1988, the FAA published in the *Federal Register* (53 FR 52428) a summary of a petition for rulemaking received from the Aircraft Owners and Pilots Association (AOPA).

Experimental Aircraft Association (EAA), and Helicopter Association International (HAI). That petition seeks to reduce the size of the area commonly referred to as the Mode C Veil (30-mile radius of a terminal control area (TCA) primary airport) where aircraft are required to be equipped with an altitude encoding (Mode C) transponder. Specifically, the rules the petitioners seek to change require, effective July 1, 1989, that aircraft operating (1) within 30 miles of any TCA or (2) at and above 10,000 feet above mean sea level (MSL) to be equipped with a Mode C transponder (these two requirements are hereinafter referred to as "the Mode C rule"). The petitioners' request would modify the Mode C rule by replacing all Mode C Veils with "buffers" around and below each TCA. Such buffers would be defined as a one-mile area beyond the TCA lateral boundaries and a 500-foot buffer below the TCA floors. Aircraft not having a Mode C transponder would be able to operate outside and below the buffers.

Additionally, the petitioners seek to establish a minimum altitude, higher than that established by the Mode C rule, above which an aircraft must be equipped with a Mode C transponder. Effective July 1, 1989, aircraft used for operations at and above 10,000 feet MSL must be equipped with a Mode C transponder. The petitioners' request would modify the Mode C rule to require such equipment only on aircraft operating above 10,500 feet MSL.

Further, the petitioners requested a delay of certain effective dates associated with Mode S transponder installation. Current regulations require that: (1) Non-Mode S transponders, manufactured after January 1, 1990, may not be installed in an aircraft; and (2) after January 1, 1992, all newly installed aircraft transponders meet the requirements of the technical standard order (TSO) for airborne Mode S transponder equipment (these two requirements are hereafter referred to as "the Mode S rule"). The petitioners seek to allow the installation of non-Mode S transponders in aircraft, provided that such transponders are manufactured prior to January 1, 1994, rather than prior to January 1, 1990, and to continue to allow installation of non-Mode S transponders indefinitely or until the transponder inventory is depleted, rather than until January 1, 1992.

Comments on the Petition

Approximately 12,000 comments on the AOPA/EAA/HAI petition were received in the docket. A vast majority of these commenters were in favor of the proposals in the petition. The

following is a categorization and discussion of those comments.

Transponder Manufacturer Comments

On December 23, 1988, Bendix/King General Aviation Avionics Division, a subsidiary of Allied-Signal Aerospace Company, petitioned the FAA for an exemption from a perceived non-Mode S transponder-manufacturing termination date. That date, January 1, 1990, is contained in § 91.24 of the Federal Aviation Regulations and indirectly affects the manufacturers of transponders.

On March 18, 1989, representatives from the FAA met with the manufacturer and a representative from its industrial association to discuss the petition. During that discussion, the attendees were advised that the rules pertaining to Mode S transponder installation are not directly addressed to manufacturers. Based on this meeting and discussion therein, the manufacturer subsequently notified the FAA to accept its petition as comments on the AOPA/EAA/HAI petition for rulemaking.

According to the manufacturer, a general aviation type Mode S transponder will not be produced in sufficient quantity to equip the fleet until approximately May 1992. Further, the manufacturer stated, that since an aircraft operator is prohibited from installing a non-Mode S transponder which is manufactured after January 1, 1990, and because there will not be a sufficient stockpile of non-Mode S transponders manufactured prior to that date, an owner of a general aviation aircraft without a transponder may not be able to purchase a transponder. Accordingly, the manufacturer requested that the FAA delay the January 1, 1990, date for one year. However, the manufacturer stated that there will be a sufficient supply of air transport type Mode S transponders to allow Parts 121, 127, and 137 operators to be in compliance with existing regulations.

Upon consideration of the comments received in response to the petition, data supplied by the manufacturer, and information contained in the petition, the FAA finds that the agency's efforts to modernize the National Airspace System would not be compromised by revising the regulations dealing with the manufacturing of air traffic radar beacon system and Mode S transponders. Therefore, the FAA is revising the regulations to allow certain aircraft operators to install non-Mode S transponders until July 1, 1992, provided such transponders are manufactured prior to January 1, 1991.

ATC Radar Coverage

There were comments that questioned why the FAA does not utilize the altitude-determining function of radar systems planned for use in the air traffic control (ATC) system in the near future. Other commenters suggested that the FAA use radar systems such as the 3-D radar system used in the Los Angeles, California, area to detect TCA intruders.

There are no radar systems currently available that provide accurate height information and are suitable for use at terminal radar approach control facilities. The air route surveillance radar-4 (ARSR-4), a new long-range radar system designed for use by both the FAA and the Department of Defense (DoD), is capable of determining and reporting target height. This system is accurate within plus or minus 5,000 feet of true altitude, 90 percent of the time, as measured in any 5-nautical-mile range interval to a range of 175 nautical miles. However, air traffic controllers must provide aircraft vertical separation by minimum of 1,000 feet (or 2,000 feet above 29,000 feet above MSL); therefore, data derived from the height detection function of the ARSR-4 cannot be used to effect such separation.

Notwithstanding its height accuracy limitation, the FAA will use the other functions of the ARSR-4 for en route ATC. The FAA must depend on the altitude information derived from altitude encoding transponders until advancements in technology produce a system which can detect true altitude of aircraft with the necessary accuracy and reliability for ATC separation.

Additionally, the FAA recently evaluated a military tactical 3-dimensional radar system (3-D radar) in the Los Angeles, California, area. That equipment was evaluated for possible use in the ATC system. This evaluation indicated that the equipment has several limitations, e.g., it is capable of only 90 degrees of azimuth coverage, and the display is separate from the normal controller display. These limitations make the system unsuitable for ATC.

Controlled Airspace and Availability of ATC Services in the Veil

Some commenters stated that the majority of near midair collisions occurs in controlled airspace and, therefore, wondered why the FAA would designate more controlled airspace with the Mode C Veil. Other commenters expressed amazement that the FAA would designate the Mode C Veil when the controllers are already overworked and cannot handle any more traffic.

The Mode C rule did not expand the areas within which ATC services are

provided. Further, that rule did not convert any uncontrolled airspace to controlled airspace, nor has the FAA expanded ATC services over those operations in proximity to the affected airports. Aircraft operating in a Mode C Veil need only conduct such operations with a Mode C transponder. By operating with this equipment, the controller is furnished with information on the altitude of most aircraft within the area.

En Route Transponder Requirements

Most commenters supported that portion of the petition which would only require a Mode C transponder for aircraft operations above 10,500 feet MSL. These commenters wanted to preclude pilots conducting such operations in aircraft without a Mode C transponder from being confronted with 8,500 feet MSL as the ceiling for westbound headings. Other commenters stated that the 250-knot speed limit below 10,000 feet MSL and the increased visibility requirement above 10,000 feet MSL precluded the need of a floor below 12,500 feet MSL for the en route Mode C transponder requirement since pilots of aircraft operating below 12,500 feet MSL would be operating either at slower speeds and/or with visibility of 5 miles or more. Such operators, it was argued, would be able to see and avoid other aircraft without intervention from ATC.

While the increased visibility minimum above 10,000 feet MSL does provide a benefit to aircraft operating above that altitude, the FAA believes that the absence of a 250-knot speed limit above 10,000 feet MSL, with its associated impact on a pilot's ability to see and avoid other aircraft, is sufficient basis for a ceiling for en route non-Mode C equipped aircraft operations of 10,000 feet MSL. To illustrate, aircraft operating above 10,000 feet MSL, at speeds in excess of 250 knots and under the jurisdiction of ATC, receive more accurate advisories concerning noncontrolled aircraft when the noncontrolled aircraft is equipped with Mode C. Conversely, noncontrolled aircraft receive indirect benefit of ATC advisories to controlled aircraft when the pilot of the controlled aircraft is aware of the altitude as well as the position of the noncontrolled aircraft. The FAA believes that the elimination of this feature, as requested by the petitioners and supported by commenters, would result in an unwarranted reduction in the level of safety that would be provided by those aspects of the rule that will be implemented on July 1, 1989.

Replace the Mode C Veil With a Buffer

The vast majority of commenters supported the petitioners' suggested one-mile area beyond the TCA lateral boundaries and a 500-foot buffer below the TCA floors instead of the Mode C Veil.

The FAA believes that this aspect of the petition, if adopted, would not provide the desired degree of safety as does the Mode C Veil. If the suggested buffers were to be adopted, a controller could not determine if an aircraft without Mode C equipment is operating in or out of the TCA. Further, the FAA believes that when nearly all aircraft are equipped with Mode C transponders in a laterally defined airspace area, controllers will be provided with continuous and more complete traffic information. This allows altitude, distance, and azimuth information to be correlated and control instructions to be issued to assure that safe distances are provided between controlled and noncontrolled aircraft. In addition, radio communications are reduced as unnecessary traffic advisories concerning noncontrolled aircraft are eliminated when those aircraft are equipped with a Mode C transponder. This is true whether such aircraft are in uncontrolled or controlled airspace. In effect the petitioners' buffers would eliminate the primary safety benefit of the rule by eliminating information on many aircraft below the TCA airspace.

The petition, if adopted, would diminish the high level of safety that the FAA is obligated to maintain, i.e., to maintain the greatest degree of safety for the greatest number of people. Specifically, under the petition, those aircraft without a Mode C transponder operating below a 500-foot vertical buffer or outside a one-mile horizontal buffer in the areas below the actual TCA would still be observed on the controller's radar display as being inside the TCA. However, such aircraft operating within the same areas with the required equipment would appear on the controller's radar display with correlated altitude information.

Alternatives to the petition.

The FAA revisited various options which were considered during development of the amendment as well as several alternatives to the TCA-related proposal contained in the petition. Various configurations which would allow aircraft operations without a Mode C transponder in proximity of a TCA boundary or beneath a specific altitude were considered. For example, limiting the Mode C Veil airspace to that

airspace directly beneath the TCA, eliminating the Mode C transponder requirement in that portion of the Mode C Veil below 3,000 feet AGL between the outermost lateral TCA boundary and the edge of the Mode C Veil, reducing the Mode C Veil radius from 30 to 20 miles, etc. While the number of aircraft affected by the rule would be reduced by each option, the adoption of any of them would result in radar targets being displayed without altitude information on controller radar scopes. Therefore, for the same reasons stated above regarding the petitioner's proposal, these alternatives are also unacceptable.

Other Comments

There were other comments which duplicated comments received during the rulemaking process of Amendment No. 91-203 and which were not relevant to the petition at hand. Those comments expressed concerns regarding impacts on ATC operations and controller workload, ATC automation systems, access to airspace affected by the Mode C Veil, authorized deviations, radar coverage, and equipment costs associated with the amendment. All of these issues were previously addressed in the amendment. However, in regard to access to airspace affected by a Mode C Veil, authorized deviations, and radar coverage, discussion of the FAA's policy governing access to the affected airspace is warranted. That policy pertains to the processing of requests for authorization to deviate from the Mode C transponder requirement in a Mode C Veil. Essentially, air traffic facility managers will give the maximum consideration practicable to such requests to allow pilots of non-equipped aircraft to conduct operations:

1. To, from, and at airports in the fringe of a Mode C Veil.
2. When such an aircraft has an electrical system that cannot power a transponder.
3. When such aircraft have insufficient space available to install the required equipment.
4. In areas of no radar coverage.
5. When an operator has purchased and scheduled installation of the required equipment, during the interim pending installation.

Pilots may contact the appropriate ATC facility or flight standards field office for more detailed information about how to obtain such authorizations. Furthermore, the FAA acknowledges the helpful manner in which various user organizations have volunteered their services and publications to assist the FAA in disseminating information to pilots. Such assistance greatly complements

the FAA's efforts to further the pilot's understanding of the regulatory requirements and FAA policies. Some organizations have already published a summary of the FAA's policy governing exceptions to the Mode C Veil requirements.

Conclusion

For the reasons stated above, the FAA is not adopting that portion of the AOPA/EAA/HAI petition that would replace the Mode C Veil with the petitioners' recommended buffers and the raising of the en route altitude above which a Mode C transponder is required. However, regarding the Mode S transponder aspect, the FAA is partially granting the petition by amending the regulations to allow the installation of non-Mode S transponders until July 1, 1992, provided that such transponders are manufactured prior to January 1, 1991.

Economic Evaluation

A full regulatory evaluation was prepared for the final rule in Docket No. 23799 and placed in the regulatory docket. This action to amend the effective dates of one part of that rule does not have a significant effect on the information and conclusions contained in that evaluation. Accordingly, the existing regulatory evaluation remains valid and no further evaluation is required. Also, for the reasons contained in the regulatory evaluation in the docket, I certify that this action will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

For the reasons set forth above, the FAA has determined that this amendment (1) is not a major rule under Executive Order 12291, and (2) is considered significant under DOT Regulatory Policies and Procedures (44 FR 11034, February 28, 1979).

The Rule

This rule amends Section 91.24 of the Federal Aviation Regulations relating to the installation of aircraft transponders. The effect of the rule is to allow certain aircraft operators to install non-Mode S transponders in aircraft until July 1, 1992, instead of until January 1, 1992, provided that such transponders are manufactured prior to January 1, 1991, instead of prior to January 1, 1990.

In order to notify those operators most affected by this action, this amendment must be issued prior to July 1, 1989. This does not allow time for publication of a notice of proposed rulemaking for public comment dealing with the issues. For this reason, I find that notice and public

procedure under 5 U.S.C. 553(b) are impracticable and contrary to the public interest. For the same reasons, I find that good cause exists for making this amendment effective in less than 30 days.

Federalism Determination

The amendment set forth herein will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule will not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 14 CFR Part 91

ATC transponder, Automatic altitude reporting equipment and use.

Adoption of the Amendment

For the reasons set out above, the FAA is amending 14 CFR Part 91 of the Federal Aviation Regulations as follows:

PART 91—AIR TRAFFIC AND GENERAL OPERATING RULES—(AMENDED)

1. The authority citation for Part 91 continues to read as follows:

Authority: 49 U.S.C. 1301(7), 1303, 1344, 1348, 1352 through 1355, 1401, 1421 through 1431, 1471, 1472, 1502, 1510, 1522, and 2121 through 2125; Articles 12, 29, 31, and 32(a) of the Convention on International Civil Aviation (61 Stat. 1180); 42 U.S.C. 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g) (Revised Pub. L. 97-449, January 12, 1983).

2. By revising § 91.24(a) to read as follows:

§ 91.24 ATC transponder and altitude reporting equipment and use.

(a) *All airspace: U.S.-registered civil aircraft.* For operations not conducted under Parts 121, 127, or 135 of this chapter, ATC transponder equipment installed within the time periods indicated below must meet the performance and environmental requirements of the following TSO's:

- (1) *Through July 1, 1992:*
 - (i) Any class of TSO-C74b or any class of TSO-C74c as appropriate, provided that the equipment was manufactured before January 1, 1991; or
 - (ii) The appropriate class of TSO-C112 (Mode S).
- (2) *After July 1, 1992:* The appropriate class of TSO-C112 (Mode S). For the purposes of paragraph (a)(2) of this section, "installation" does not include—

- (i) Temporary installation of TSO-C74b or TSO-C74c substitute equipment, as appropriate, during maintenance of the permanent equipment;
- (ii) Reinstallation of equipment after temporary removal for maintenance; or
- (iii) For fleet operations, installation of equipment in a fleet aircraft after removal of the equipment for maintenance from another aircraft in the same operator's fleet.

Issued in Washington, DC, on June 12, 1989.

Robert E. Whittington,

Acting Administrator.

[FR Doc. 89-14299 Filed 6-12-89; 8:45 am]

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federal register

Friday
June 16, 1989

Part IV

**Department of Defense
General Services
Administration**

**National Aeronautics and
Space Administration**

48 CFR Parts 30 and 52
Federal Acquisition Regulation (FAR);
Cost Accounting Standards Cost Impact
Proposals

DEPARTMENT OF DEFENSE

GENERAL SERVICES
ADMINISTRATIONNATIONAL AERONAUTICS AND
SPACE ADMINISTRATION

48 CFR Parts 30 and 52

Federal Acquisition Regulation (FAR);
Cost Accounting Standards Cost
Impact Proposals

AGENCIES: Department of Defense (DoD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).
ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulatory Council are considering a revision to Federal Acquisition Regulation (FAR) 30.602 and the clause at 52.230-4 to clarify the procedures for submission of cost impact proposals and the authority of the Administrative Contracting Officer (ACO) to withhold a portion of payments when the contractor does not submit the cost impact proposal in a timely manner.

DATE: Comments should be submitted to the FAR Secretariat at the address shown below on or before August 15, 1989 to be considered in the formulation of a final rule.

ADDRESS: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, Room 4041, Washington, DC 20405. Please cite FAR Case 89-34 in all correspondence related to this issue.

FOR FURTHER INFORMATION CONTACT: Margaret A. Willis, FAR Secretariat, Room 4041, GS Building, Washington, DC 20405, (202) 523-4755.

SUPPLEMENTARY INFORMATION:**A. Regulatory Flexibility Act**

The proposed rule is not expected to have significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601, et seq.) because the subject of this proposal is administration of the cost accounting standards and those standards do not apply to small businesses. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR sections will also be considered in accordance with Section 610 of the Act. Such

comments must be submitted separately and cite 89-010 in correspondence pertaining to FAR Case 89-34.

B. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed revision does not impose any reporting or recordkeeping requirements which require the approval of OMB under 44 U.S.C. 3501, et seq.

List of Subjects in 48 CFR Parts 30 and 52

Government procurement.

Dated: June 8, 1989.

Harry S. Roelinski,

Acting Director, Office of Federal Acquisition and Regulatory Policy.

Therefore, 48 CFR Parts 30 and 52 are amended as set forth below:

1. The authority citation for 48 CFR Parts 30 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. Chapter 137; and 42 U.S.C. 2473(c).

**PART 30—COST ACCOUNTING
STANDARDS**

2. Section 30.602-1 is revised to read as follows:

30.602-1 Equitable adjustment for new or modified standards.

(a) *New or modified standards.* (1) The clause at 52.230-1, Cost Accounting Standards Notices and Certification (National Defense), requires offerors to state whether or not the award of the contemplated contract would require a change to established cost accounting practices affecting existing contracts and subcontracts. The contracting officer shall ensure that the contractor's response to the notice is made known to the cognizant ACO.

(2) Contracts and subcontracts containing the clause at 52.230-3, Cost Accounting Standards, may require equitable adjustments to comply with new or modified CAS. Such adjustments are limited to contracts and subcontracts awarded before the effective date of each new or modified standard. A new or modified standard becomes applicable prospectively to these contracts and subcontracts when a new national defense contract or subcontract containing the clause at 52.230-3, Cost Accounting Standards, is awarded on or after the effective date of the new standard.

(3) Contracting officers shall encourage contractors to submit to the cognizant ACO any change in accounting practice in anticipation of complying with a new or modified standard as soon as practical after the

new or modified standard has been incorporated into the FAR.

(b) *Accounting changes.* (1) The clause at 52.230-4, Administration of Cost Accounting Standards, requires the contractor to submit a description of any change in cost accounting practices required to comply with a new CAS within 60 days (or other mutually agreed to date) after award of a contract requiring the change.

(2) The cognizant ACO shall review the proposed change concurrently for adequacy and compliance (see 30.202-7). If the change meets both tests, the ACO shall notify the contractor and request submission of a cost impact proposal.

(c) *Contract price adjustments.* (1) The cognizant ACO shall promptly analyze the cost impact proposal with the assistance of the auditor, determine the impact, and negotiate the contract price adjustments on behalf of all Government agencies. The ACO shall invite contracting offices to participate in negotiations of adjustments when the price of any of their contracts may be increased or decreased by \$10,000 or more. At the conclusion of negotiations, the ACO shall—

(i) Execute supplemental agreements to contracts of the ACO's own agency (and, if additional funds are required, request them from the appropriate contracting officer);

(ii) Prepare a negotiation memorandum and send copies to cognizant auditors and contracting officers of other agencies having prime contracts affected by the negotiation (those agencies shall execute supplemental agreements in the amounts negotiated); and

(iii) Furnish copies of the memorandum indicating the effect on costs to the ACO of the next higher tier subcontractor or prime contractor, as appropriate, if a subcontract is to be adjusted. This memorandum shall be the basis for negotiation between the subcontractor and the next higher tier subcontractor or prime contractor and for execution of a supplemental agreement to the subcontract.

(2) If the parties fail to agree on the cost or price adjustment, the ACO may make a unilateral adjustment, subject to contractor appeal as provided in the clause at 52.233-1, Disputes.

(d) *Remedies for contractor failure to make required submissions.* (1) If the contractor does not submit the accounting change description or the required cost impact (in the form and manner specified) the ACO may withhold an amount not to exceed 10 percent of each subsequent payment request related to the contractor's CAS-

covered prime contracts, until submission(s) has been furnished by the contractor.

(2) The ACO, with the assistance of the auditor, may also estimate the cost impact on contracts and subcontracts containing the clause at 52.230-3, Cost Accounting Standards. If the ACO determines that an adjustment is required (see 30.602), the ACO shall request the contractor to agree to the cost or price adjustment. The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the ACO may make a unilateral adjustment, subject to contractor appeal as provided in the clause at 52.233-1, Disputes.

3. Section 30.602-2 is revised to read as follows:

30.602-2 Noncompliance with CAS requirements.

(a) *Determination of noncompliance.* (1) Within 15 days of the receipt of a report of alleged noncompliance from the auditor, the cognizant ACO shall make an initial finding of compliance or noncompliance and advise the auditor.

(2) If an initial finding of noncompliance is made, the ACO shall immediately notify the contractor in writing of the exact nature of the noncompliance and allow 30 days within which to agree or to submit reasons why the existing practices are considered to be in compliance.

(3) If the contractor agrees with the initial finding of noncompliance, the ACO shall notify the contractor and the auditor of the determination of noncompliance.

(4) If the contractor disagrees with the initial noncompliance finding, the cognizant ACO shall review the reasons why the contractor considers the existing practices to be in compliance and make a determination of compliance or noncompliance. The ACO shall notify the contractor and the auditor of the determination.

(b) *Accounting change.* (1) The clause at 52.230-4, Administration of Cost Accounting Standards, requires the contractor to correct all noncompliances determined by the ACO and to submit a complete description of any accounting change needed to correct the noncompliance.

(2) The cognizant ACO shall review the accounting change concurrently for adequacy and compliance (see 30.202-7). If the change is both adequate and in compliance, the ACO shall notify the contractor and request a cost impact proposal.

(c) *Contract price adjustment.* (1) The ACO shall request a cost impact

proposal within the time specified in the clause at 52.230-4, Administration of Cost Accounting Standards, unless prior knowledge available to the ACO or to the auditor discloses that the impact is not material (see 30.602).

(2) Upon receipt of the cost impact proposal, the ACO shall then follow the procedures in 30.602-1(c)(1).

(d) *Remedies for contractor failure to make required submissions.* (1) If the contractor fails to submit the required accounting change or the cost impact proposal (in the form and manner specified), the ACO may withhold an amount not to exceed 10 percent of each subsequent payment request related to the contractor's CAS-covered prime contracts until the submission(s) has been furnished by the contractor.

(2) The ACO, with the assistance of the auditor, may also estimate the cost impact of the noncompliance on contracts and subcontracts containing the clause at 52.230-3, Cost Accounting Standards.

(i) If the ACO determines that the noncompliance results in materially increased costs to the Government (see 30.602), the ACO shall notify the contractor and request agreement as to the cost or price adjustment, together with any applicable interest. The contractor shall also be advised that in the event no agreement on the cost or price adjustment is reached within 20 days, the ACO may make a unilateral adjustment subject to contractor appeal as provided in the clause at 52.233-1, Disputes.

(ii) If the ACO estimates there is no material increase in costs as a result of the noncompliance, the ACO shall notify the contractor in writing that the contractor is in noncompliance, that corrective action should be taken, and that if such noncompliance subsequently results in materially increased costs to the Government, the provisions of the clause at 52.230-3, Cost Accounting Standards, and/or the clause at 52.230-5, Disclosure and Consistency of Cost Accounting Practices, will be enforced.

4. Section 30.602-3 is revised to read as follows:

30.602-3 Voluntary changes.

(a) *General.* (1) The contractor may voluntarily change its disclosure statement or cost accounting practices.

(2) The contract price may be adjusted to voluntary changes if the ACO determines that the change is desirable and not detrimental to the Government.

(b) *Accounting change.* (1) The clause at 52.230-4, Administration of Cost Accounting Standards, requires the contractor to notify the cognizant ACO not less than 60 days (or such other date

as may be mutually agreed to) before implementation of the voluntary change.

(2) The cognizant ACO shall review the accounting change concurrently for adequacy and compliance (see 30.202-7). If the change meets both tests, the ACO shall notify the contractor and request submission of a cost impact proposal.

(c) *Contract price adjustment.* (1) With the assistance of the auditor, the ACO shall promptly analyze the cost impact proposal to determine whether or not the proposed change will result in increased costs being paid by the Government. The ACO shall consider all of the contractor's affected CAS-covered contracts and subcontracts, but any cost changes to higher-tier subcontracts or contracts of other contractors over and above the cost of the subcontract adjustment shall not be considered.

(2) Increased costs resulting from a voluntary change may be allowed only if the ACO determines that the change is desirable and not detrimental to the Government. The ACO shall then follow the procedures in 30.602-1(c)(2).

(d) *Remedies for contractor failure to make required submissions.* (1) If the contractor does not submit the notice of a voluntary change or the cost impact proposal in the form and time specified, the cognizant ACO may withhold an amount not to exceed 10 percent of each subsequent payment request related to the contractor's CAS-covered prime contracts, until the proposal has been furnished by the contractor.

(2) The ACO, with the assistance of the auditor, may also estimate the cost impact on contracts and subcontracts containing the clause at 52.230-3, Cost Accounting Standards. If the ACO determines that an adjustment is appropriate, the ACO shall request the contractor to agree to the cost or price adjustment. The contractor shall also be advised that, in the event no agreement on the cost or price adjustment is reached within 20 days, the ACO may make a unilateral adjustment subject to contractor appeal, as provided in the clause at 52.233-1 Disputes.

**PART 52—SOLICITATION
PROVISIONS AND CONTRACT
CLAUSES**

5. Section 52.230-4 is amended by removing in the title of the clause the date "(SEP 1987)" and inserting the date "(JUN 1989)"; by revising paragraphs (a)(3) and (b); by redesignating existing paragraph (c) as (d) and adding new paragraph (e); and by redesignating existing paragraphs (d), (e), and (f) as (e), (f), and (g) to read as follows:

52.230-4 Administration of Cost Accounting Standards.

(a) . . .

(3) For any failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) at FAR 52.230-3, Cost Accounting Standards, or by subparagraph (a)(4) at FAR 52.230-5, Disclosure and Consistency of Cost Accounting Practices, within 60 days (or such other date as may be mutually agreed to) after the date the Contractor is notified by the Contracting Officer of the determination of noncompliance.

(b) Submit a cost impact proposal in the form and manner specified by the cognizant Contracting Officer within 60 days (or such other date as may be mutually agreed to) after the date of determination of the adequacy and compliance of a change submitted pursuant to paragraph (a) of this clause. The cost impact proposal shall be in sufficient detail to permit evaluation, determination, and negotiation of the cost

impact upon each separate CAS-covered contract and subcontract.

(1) Cost impact proposals submitted for changes in cost accounting practices required to comply with a new CAS in accordance with subparagraph (a)(3) and subdivision (a)(4)(i) at 52.230-3, Cost Accounting Standards, shall identify each additional standard and all contracts and subcontracts containing the clause in this contract entitled Cost Accounting Standards, which have an award date before the effective date of that standard.

(2) Cost impact proposals submitted for any change in cost accounting practices proposed in accordance with subdivisions (a)(4)(ii) or (a)(4)(iii) at 52.230-3, Cost Accounting Standards, or with subparagraph (a)(3) at FAR 52.230-5, Disclosure and Consistency of Cost Accounting Practices, shall identify all contracts and subcontracts containing the clauses at FAR 52.230-3, Cost Accounting Standards, and FAR 52.230-5, Disclosure and Consistency of Cost Accounting Practices.

(3) Cost impact proposals submitted for failure to comply with an applicable CAS or to follow a disclosed practice as contemplated by subparagraph (a)(5) at 52.230-3, Cost Accounting Standards, or by subparagraph (a)(4) at FAR 52.230-5, Disclosure and Consistency of Cost Accounting Practices, shall identify the cost impact on each separate CAS covered contract from the date of failure to comply until the noncompliance is corrected.

(c) If the submissions required by paragraphs (a) and (b) of this clause are not submitted within the specified time, or any extension granted by the cognizant Contracting Officer, an amount not to exceed 10 percent of each payment made after that date may be withheld until such time as a proposal has been provided in the form and manner specified by the cognizant Contracting Officer.

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federal register

Friday,
June 16, 1989

Part V

Department of Health and Human Services

Social Security Administration

Privacy Act of 1974; Notice of Computer
Matching Programs

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

Privacy Act of 1974; Computer Matching Programs

AGENCY: Social Security Administration (SSA), Department of Health and Human Services (HHS).

ACTION: Publication of Notice of Computer Matching Programs to Comply with Public Law (Pub. L.) 100-503, the Computer Matching and Privacy Protection Act of 1988.

SUMMARY: We are publishing notices of all of the computer matching programs that SSA conducts that are subject to the requirements of Pub. L. 100-503. The purpose of this publication is to meet the reporting and publication requirements of Pub. L. 100-503.

DATES: We filed a report of SSA's matching programs that are subject to Pub. L. 100-503 with the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives and Office of Information and Regulatory Affairs, Office of Management and Budget on June 14, 1989. The matching programs are effective as indicated in each of the notices that appear in this publication below.

ADDRESSES: Interested parties may comment on this notice by writing to the SSA Privacy Officer, Social Security Administration, 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The SSA Privacy Officer at the address above.

SUPPLEMENTARY INFORMATION:

A. General

Pub. L. 100-503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. The law regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State and local government records. The amendments require Federal agencies involved in computer matching programs to:

- (1) Negotiate written agreements with source agencies;
- (2) Provide notification to applicants and beneficiaries that their records are subject to matching;

(3) Verify match findings before reducing, suspending or terminating an individual's benefits or payments;

(4) Furnish detailed reports to Congress; and

(5) Establish a Data Integrity Board (DIB) that must approve match agreements.

Pub. L. 100-503 requires that we implement the above requirements by July 19, 1989.

B. SSA Computer Matches Subject to Pub. L. 100-503

We have taken action to ensure that all of SSA's computer matching programs which were being conducted prior to enactment of Pub. L. 100-503 comply with the requirements of the law. Included below is a listing and brief description of certain matches that SSA will be conducting as of July 19, 1989 or later. Also included in this publication are detailed notices of each of the matches.

(1) SSA State/Local Federal Exchange (SAFE)

Purpose: To enable SSA to determine eligibility for, and entitlement to, Social Security title II Retirement, Survivors, and Disability Insurance (RSDI) benefits and Supplemental Security Income (SSI) payments. Also, to disclose information to Federal, State and local government agencies are required or permitted by Federal law for their administration of income-maintenance and health-maintenance programs.

(2) SSA Matching with State and Federal Prison Records

Purpose: To identify certain prisoners receiving title II RSDI and/or title XVI SSI payments who may be ineligible to receive payments.

(3) SSA Matching with Internal Revenue Service (IRS)—IRS/Supplemental Security Income Record (SSR) Interface

Purpose: To detect previously unreported unearned income and resources for SSI recipients.

(4) SSA Matching with Department of Labor—Part C Black Lung (BL)

Purpose: To detect and prevent Disability Insurance (DI) overpayments.

(5) SSA Matching with State and Federal Workers' Compensation Agencies

Purpose: To determine the amount of DI and BL benefit and SSI payment offset due to receipt of workers' compensation payments.

(6) SSA Matching with Department of Defense, Defense Manpower Data Center

Purpose: To identify SSI recipients receiving military pensions.

(7) SSA Matching with Office of Personnel Management (OPM)—SSR/OPM

Purpose: To identify SSI recipients with unreported unearned income from civil service pensions.

(8) SSA Matching with OPM

Purpose: To identify individuals whose civil service pension benefits must be offset by the amount of Social Security title II Retirement, Survivors and Disability (RSDI) benefits calculated using military service after 1956. The purpose of this match is to identify these beneficiaries. Also, to verify earning data furnished to OPM by civil service retirees and annuitants.

(9) SSA Matching with OPM—Master Beneficiary Record (MBR)/OPM Government Pension Offset

Purpose: To identify auxiliary title II RSDI beneficiaries who also are receiving a Federal Government pension benefit as a retired civil service employee.

(10) SSA Matching with OPM—MBR/OPM Public Disability Offset

Purpose: To identify individuals who are receiving title II DI benefits who are also receiving a Federal Government pension benefit.

(11) SSA Matching with OPM—MBR/OPM Windfall Elimination Provision

Purpose: To identify title II RSDI beneficiaries who also are receiving a Federal Government pension benefit.

(12) SSA Matching with OPM—MBR/OPM Federal Employees Retirement Systems (FERS)

Purpose: To identify civil service retirees who are receiving FERS disability annuities and title II RSDI benefits.

(13) SSA Matching with Department of the Treasury, Bureau of Public Debt Savings Bond Registration Records

Purpose: To identify SSI recipients who have not reported ownership of series E and EE savings bonds, and to determine the impact of bond ownership on SSI eligibility.

(14) SSA Matching with Department of Veterans Affairs (DVA)—MBR/DVA

Purpose: To enable DVA to verify Social Security numbers and adjust veterans benefit rates.

(15) SSA Matching with DVA—SSR/DVA

Purpose: To identify SSI recipients who receive veterans benefits and to update the SSI payment records for unearned income.

(16) SSA Matching with Railroad Retirement Board (RRB)—MBR/RRB

Purpose: To assist in adjudicating claims for benefits under title II of the Social Security Act and programs administered by RRB. Data is exchanged

so that the correct benefit amount can be paid.

(17) SSA Matching with RRB—SSR/RRB

Purpose: To identify SSI recipients who also may receive RRB pension payments.

Dated: June 14, 1989.

Dorcas R. Hardy,

Commissioner of Social Security.

Notice of Computer Matching Program, Social Security Administration (SSA) Matching With State/Local Records in the State and Federal Exchange (Safe) Program

A. Participating Agencies

SSA and State/local governmental agencies.

B. Purpose of the Matching Program

The SAFE match has a two-fold purpose as follows:

(1) SSA is authorized by section 1137(a)(4)(B) of the Social Security Act (the Act) to obtain information from States and the Internal Revenue Service that may affect an individual's—

—Eligibility for, or amount of, payment under the title XVI Supplemental Security Income (SSI) program, and

—Continuing entitlement to, or amount of, title II Retirement, Survivors, or Disability Insurance (RSDI) programs under the Social Security Act (the Act).

(2) SSA provides information to Federal, State, and local agencies as follows:

(a) Social Security benefit information is released to Federal, State, and local agencies for determining eligibility for, or the amount of, payments or continuing entitlement to benefits/ payments under State/locally-administered income-maintenance programs (e.g., Aid to Families with Dependent Children, general assistance, and Medicaid); and

(b) Internal Revenue Service tax information is released to:

—State and local agencies for administering certain programs pursuant to 26 U.S.C. 6103(l)(7) (i.e., Aid to Families with Dependent Children under Part A of title IV of the Social Security Act (the Act), Medicaid under title XIX of the Act, unemployment compensation under section 3304 of the Internal Revenue Code, the food stamp program under the Food Stamp Act of 1977, and any State program under a plan approved under title I, X, XIV, or XVI of the Act); and

—State and local child support enforcement agencies for

administering the child support enforcement program pursuant to 26 U.S.C. 6103(l)(8).

Generally, SSA is the matching agency under the SAFE matching program. However, in some cases, SSA may furnish information to a Federal or State agency which will conduct a matching operation.

C. Authority for Conducting the Matching Program

Sections 205, 1137, and 1631(e)(1)(B) of the Act (42 U.S.C. 405, 1320b-7, and 1383(e)(1)(B)) and 26 U.S.C. 6103(l)(7) and (8).

D. Categories of Records and Individuals Covered by the Match

The SSA records are payment data pertaining to applicants for, and recipients of, title II RSDI benefits and title XVI SSI payments. The RSDI records are maintained in the Master Beneficiary Record system (last published in the FR on May 1, 1986, page 16223); the SSI records are maintained in the Supplemental Security Income Record (last published in the FR on October 13, 1982, page 45635). The State and/or local files include records of benefit payments such as State pensions, workers' compensation, general assistance, wage records, and tax files. The IRS tax information consists of net earnings from self-employment (as defined in 26 U.S.C. 1402), wages (as defined in 26 U.S.C. 3121(a) or 3401(a)), and payments of retirement income reported to SSA pursuant to 26 U.S.C. 6103(l)(1) or (l)(5). This information is maintained in the SSA Earnings Recording and Self-Employment Income System (last published in the FR on June 7, 1984, page 23697).

E. Inclusive Dates of the Matching Program

The matching program will begin on July 19, 1989 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments by July 17, 1989, to the SSA Privacy Officer, Room 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

Notice of Computer Matching Program Social Security Administration (SSA) Matching With State and Federal Prison Records

A. Participating Agencies

SSA, the Federal Bureau of Prisons (FBP), Department of Justice, and State prison systems.

B. Purpose of the Matching Program

The purpose of this matching program is to obtain data from State and Federal prisoner systems to identify individuals who are subject to the:

(1) Title II Retirement, Survivors, and Disability Insurance (RSDI) prisoner benefit suspension under section 202(x) of the Social Security Act (the Act), and

(2) Title XVI Supplementary Security Income (SSI) eligibility restrictions to individuals in public institutions pursuant to section 1611(e)(1)(A) of the Act.

C. Authority for Conducting the Match

Sections 202(x), 1611(e)(1)(A), and 1631(f) of the Act.

D. Categories of Records and Individuals Covered by the Match

SSA will match identifying information received from the FBP Central Records System, Justice/BOP-005 and State-maintained prison records data with data in the Master Beneficiary Record (MBR) (last published in the Federal Register (FR) at 51 FR 16223, May 1, 1986) and Supplementary Security Income Record (SSR) (last published in the FR at 47 FR 45635, October 13, 1982). The SSA MBR and SSR contain identifying and payment information about individuals applying for benefits/payments under the title II and title XVI programs. The FBP and State records contain information about prisoner incarceration such as the prisoner's name, Social Security number, date of birth, sex, date of confinement, and length of sentence (used to determine felony and nonfelony convictions).

E. Inclusive Dates of the Match

The matching program will begin on July 19, 1989 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

F. Address for receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments by July 17, 1989, to the SSA Privacy Officer, Room 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

Building, 6401 Security Boulevard,
Baltimore, Maryland 21235.

**Notice of Computer Matching Program
Social Security Administration (SSA)
Matching With Internal Revenue
Service (IRS) Records IRS/
Supplemental Security Income (SSI)
Interface**

A. Participating Agencies
SSA and IRS.

B. Purpose of the Matching Program

The SSI program has, as one of its factors for determining initial and continuing eligibility for payment, a limit on the amount of resources (e.g., savings accounts, stock, etc.) an individual may own. Additional, unearned income such as interest, rents, royalties, dividends, winnings, unemployment compensation, etc., must be used in considering the SSI payment amount. The purpose of this matching program is to obtain tax information relating to unearned income from IRS to verify eligibility for, or the correct amount of, SSI payments.

**C. Authority for Conducting the
Matching Program**

Section 1631(e) of the Social Security Act (42 U.S.C. 1383(e)) and 26 U.S.C. 6103(1)(7)(D)(iii).

**D. Categories of Records and
Individuals Covered by the Match.**

SSA records consist of payment data about SSI recipients maintained in the Supplemental Security Income Record system of records (last published in the *Federal Register* (FR) on October 13, 1982, page 45635). The IRS records consist of unearned income data maintained in the IRS Information Return Master File.

E. Inclusive Dates of the Match

The matching program will begin on July 19, 1989 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

**F. Address for Receipt of Public
Comments or Inquiries**

Individuals wishing to comment on this matching program should submit comments by July 17, 1989, to the SSA Privacy Officer, Room 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

**Notice of Computer Matching Program
Social Security Administration (SSA)
Matching With Department of Labor
(DOL) Records**

A. Participating Agencies

SSA and DOL.

B. Purpose of the Matching Program

DOL pays Part C Black Lung (BL) benefits to individuals who may also receive title II disability under the Social Security Act (the Act). Part C BL payments come within the purview of section 224 of the Act and must be considered the same as other workers' compensation payments in applying an offset to Social Security benefits. The purpose of this match is for SSA to obtain Part C Black Lung (BL) benefit and payment data from DOL to match against SSA's records of disabled workers to determine which workers are subject to SSA's offset. SSA will match the DOL data to verify information provided by the SSA beneficiary to ensure that the reduction in Social Security benefits is based on the current Part C BL amount.

**C. Authority for Conducting the
Matching Program**

Section 224 of the Act (42 U.S.C. 424).

**D. Categories of Records and
Individuals Covered by the Match**

DOL furnishes SSA an extract of its Office of Workers' Compensation Programs Black Lung Claimant Information File DOL/ESA-8 (last published in the FR on July 13, 1982, page 30365). SSA matches this extract with its Master Beneficiary Record (MBR), HHS/SSA/OSR, 09-60-0090 (last published in the *Federal Register* (FR) on May 1, 1986, page 16223). The DOL extract files contains identifying and entitlement and payment information about Part C BL beneficiaries. The MBR contains all pertinent payment data about Social Security beneficiaries.

E. Inclusive Dates of the Match

The matching program will begin on July 19, 1989 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

**F. Address for Receipt of Public
Comments or Inquiries**

Individuals wishing to comment on this matching program should submit comments by July 17, 1989, to the SSA Privacy Officer, Room 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

**Notice of Computer Matching Program
Social Security Administration (SSA)
Matching With State and Federal
Workers' Compensation (WC) Records**

A. Participating Agencies

SSA, State agencies administering WC programs, and the Department of Labor (DOL).

B. Purpose of the Matching Program

SSA uses State and Federal WC data to verify title II Disability Insurance and Black Lung (BL) offset applications as well as title XVI Supplemental Security Income (SSI) unearned income adjustments. State and Federal WC data obtained through the matching program permits timely, proper payment of title II, title XVI, and BL benefits and assists SSA in detecting and preventing erroneous payments.

**C. Authority for Conducting the
Matching Program**

Sections 224, 1631(e)(1)(B), and 1631(f) of the Social Security Act (42 U.S.C. 424a, 1383(e)(1)(B), and 1383(f)) and section 412(b) of the Black Lung Benefits Act.

**D. Categories of Records and
Individuals Covered by the Match**

State WC agencies and DOL furnish SSA extracts of their payment files containing identifying data (e.g., name, Social Security number, and date of birth) and pertinent WC data (e.g., date of award, type of WC, basis of the award, payment history, lump sum information, and the WC claim number). These data are matched against SSA's title II, title XVI, and BL payments records. The DOL data are included in its Office of Worker's Compensation Programs Black Lung Claimant Information File (DOL/ESA-8) (last published in the FR on July 13, 1982, page 30365). SSA's data are maintained in the Black Lung Payment system (last published in the FR on March 25, 1987, page 9543), Master Beneficiary Record (last published in the FR on May 1, 1986, page 16223), and Supplemental Security Income Record (last published in the FR on October 13, 1982, page 45635).

E. Inclusive Dates of the Match

The matching program will begin on July 19, 1989 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

**F. Address for Receipt of Public
Comments or Inquiries**

Individuals wishing to comment on this matching program should submit comments by July 17, 1989, to the SSA Privacy Officer, Room 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

**Notice of Computer Matching Program
Social Security Administration (SSA)
Supplemental Security Income Record
(SSR) Matching With Department of
Defense (DOD) Defense Manpower Data
Center (DMDC) Records**

A. Participating Agencies

SSA and DOD.

B. Purpose of the Matching Program

Section 1631(e)(1)(B) of the Social Security Act (the Act) requires SSA to verify the allegations of applicants and recipients for Supplemental Security Income (SSI) payments before making a determination of eligibility or payment amount. Section 1631(f) of the Act requires Federal agencies to furnish SSA with information necessary to verify SSI eligibility. The purpose of this matching program is for SSA to obtain DMDC military (Army, Navy, Air Force, and Marine Corps) retirement and survivor payment amounts to verify and, as necessary, update military income data on the SSR for SSI applicants and/or recipients who are simultaneously entitled to military retirement/survivor payments. The data obtained from DMDC will ensure that SSA has accurate information on which to base eligibility determinations for the SSI program.

**C. Authority for Conducting the
Matching Program**

Section 1631(e)(1)(B) and 1631(f) of the Act (42 U.S.C. 1383(e)(1)(B) and 1383(f)).

**D. Categories of Records and
Individuals Covered by the Match**

The SSA records consist of SSI payment information about SSI recipients on the SSR (last published in the *Federal Register* on October 13, 1982, page 45635). The DOD records consist of military retirement/survivor payment records in the DMDC data base.

E. Inclusive Dates of the Match

The matching program will begin on July 19, 1989 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be

extended for an additional 12 months thereafter.

**F. Address for Receipt of Public
Comments or Inquiries**

Individuals wishing to comment on this matching program should submit comments by July 17, 1989, to the SSA Privacy Officer, Room 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

**Notice of Computer Matching
Program, Social Security
Administration (SSA), Supplemental
Security Income Record (SSR)
Matching With Office of Personnel
Management (OPM) Records**

A. Participating Agencies

SSA and OPM.

B. Purpose of the Matching Program

Section 1631(e)(1)(B) of the Social Security Act (the Act) requires SSA to verify the allegations of applicants and recipients for Supplemental Security Income (SSI) payments before making a determination of eligibility or payment amount. Section 1631(f) of the Act requires Federal agencies to furnish SSA with information necessary to verify SSI eligibility. The purpose of this match is for SSA to obtain OPM data to verify the accuracy of eligibility factors for the SSI program.

**C. Authority for Conducting the
Matching Program**

Section 1631(e)(1)(B) and 1631(f) of the Act (42 U.S.C. 1383(e)(1)(B) and 1383(f)).

**D. Categories of Records and
Individuals Covered by the Match**

The SSA records consist of SSI payment records maintained in the Supplemental Security Income Record system (last published in the FR on October 13, 1982, page 45635). The OPM records consist of civil service benefit and payment data maintained in the system of records entitled OPM/Central—1 Civil Service Retirement and Insurance Record.

E. Inclusive Dates of the Match

The matching program will begin on July 19, 1989 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

**F. Address for Receipt of Public
Comments or Inquiries**

Individuals wishing to comment on this matching program should submit comments by July 17, 1989, to the SSA Privacy Officer, Room 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

**Notice of Computer Matching
Program, Social Security
Administration (SSA), Matching With
Office of Personnel Management
(OPM)**

A. Participating Agencies

SSA and OPM.

B. Purpose of the Matching Program

Pub. L. 97-253 requires OPM to reduce civil service pension benefits by offsetting Social Security title II Retirement, Survivors and Disability (RSDI) benefits calculated using military service after 1956. The purpose of this portion of the match is to identify these beneficiaries.

Additionally, chapters 83 and 84 of title 5, United States Code (U.S.C.) requires OPM to verify earnings data supplied by civil service retirees and annuitants. Section 6103(l)(11) of the Internal Revenue Code requires SSA to disclose tax information to OPM to administer programs under chapters 83 and 84 of title 5, United States Code. The purpose of this portion of the match is for SSA to verify earnings data furnished directly to OPM by civil service retirees and annuitants.

**C. Authority for Conducting the
Matching Program**

Pub. L. 97-253, Chapters 83 and 84, Title 5, U.S.C. and 26 U.S.C. 6103(l)(11).

**D. Categories of Records and
Individuals Covered by the Match**

The SSA records involved in the match are title II RSDI payment data maintained in the Master Beneficiary Record (MBR) system (last published in the *Federal Register* (FR) on May 1, 1986, page 16223) and earnings, self-employment and other data which constitute tax information pursuant to 26 U.S.C. 6103 earnings data maintained in the Earnings Recording and Self-Employment Income system (last published in the FR on June 7, 1984, page 23697). The MBR maintains records about individuals who are claimants for, or beneficiaries of, title II RSDI benefits. The Earnings Record system maintains records of individuals' wages or self-employment income from employment covered under Social Security. The OPM records consist of annuity data from its

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system of records entitled OPM/Central—1 Civil Service Retirement and Insurance Record.

E. Inclusive Dates of the Match

The matching program will begin on July 19, 1989 or 30 days after agreements to which the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments by July 17, 1989, to the SSA Privacy Officer, Room 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

Notice of Computer Matching Program, Social Security Administration (SSA), Master Beneficiary Record (MBR) Matching with Office of Personnel Management (OPM) Records, Government Pension Offset (GPO)

A. Participating Agencies

SSA and OPM.

B. Purpose of the Matching Program

Section 202 of the Social Security Act (the Act) requires that SSA reduce the Social Security benefits of certain beneficiaries entitled to Social Security spouses' benefits who are also entitled to a government pension based on their own noncovered earnings. This reduction is referred to as the GPO. SSA will match OPM's civil service and payment data with SSA's records of beneficiaries receiving spouses' benefits to determine those who are subject to the GPO. SSA will match the OPM data to verify information provided by the SSA beneficiary at the time he/she initially applies for Social Security benefits and on a continuing basis to ensure that the reduction in Social Security benefits is based on the current pension amount.

C. Authority for Conducting the Matching Program

Section 202 of the Social Security Act (42 U.S.C. 402).

D. Categories of Records and Individuals Covered by the Match

The SSA records involved in the match are payment records maintained in the Master Beneficiary Record (MBR) system (last published in the Federal

Register (FR) on May 1, 1988, page 16223). The MBR maintains records about individuals who are claimants for, or beneficiaries of, title II Retirement, Survivors, or Disability Insurance benefits. The OPM records consist of benefit and pension data from its system of records entitled OPM/Central—1 Civil Service Retirement and Insurance Record.

E. Inclusive Dates of the Match

The matching program will begin on July 19, 1989 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments by July 17, 1989, to the SSA Privacy Officer, Room 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

Notice of Computer Matching Program, Social Security Administration (SSA), Master Beneficiary Record (MBR) Matching with Office of Personnel Management (OPM) Records, Public Disability Offset

A. Participating Agencies

SSA and OPM.

B. Purpose of the Matching Program

Section 224 of the Social Security Act (the Act) provides for the reduction of Social Security disability insurance (DI) benefits when the disabled worker is also entitled to a public disability benefit (PDB). This reduction is referred to as the PDB offset. A civil service disability benefit is considered a PDB. Section 224(h)(1) of the Act requires any Federal agency to provide SSA with information in its possession that SSA may require for the purposes of making a timely determination of the amount of reduction under section 224 of the Act.

This matching program is used to obtain OPM records of civil service disability benefits for matching with SSA DI benefits to identify DI beneficiaries whose benefits should be reduced because the disabled worker is receiving a civil service disability annuity benefit. SSA uses the OPM data to verify information provided by the SSA disabled worker at the time of initially applying for Social Security benefits and on a continuing basis to

ensure the reduction in Social Security DI benefits is based on the current civil service disability benefit amount.

C. Authority for Conducting the Matching Program

Section 224 of the Act (42 U.S.C. 424(a)).

D. Categories of Records and Individuals Covered by the Match

The SSA records involved in the match are DI payment records maintained in the Master Beneficiary Record (MBR) system (last published in the Federal Register (FR) on May 1, 1988, page 16223). The MBR maintains records about individuals who are claimants for, or beneficiaries of, title II Retirement, Survivors, or Disability Insurance benefits. The OPM records consist of disability data from the system of records entitled OPM/Central—1 Civil Service Retirement and Insurance Records about Disability Annuitants.

E. Inclusive Dates of the Match

The matching program will begin on July 19, 1989 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments by July 17, 1989, to the SSA Privacy Officer, Room 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

Notice of Computer Matching Program, Social Security Administration (SSA), Master Beneficiary Record (MBR) Matching with Office of Personnel Management (OPM) Records Windfall Elimination Provision (WEP)

A. Participating Agencies

SSA and OPM.

B. Purpose of the Matching Program

Sections 214(a)(7) and 215(d)(5) of the Social Security Act (the Act) provide for a modified benefit computation to be used for certain beneficiaries who are concurrently entitled to both Social Security benefits and a civil service annuity. The purpose of this match is for SSA to obtain OPM civil service annuity data for matching with SSA records pertaining to disabled and retired beneficiaries to identify those

beneficiaries who may be dually entitled. The OPM data is necessary to adjudicate properly Social Security claims affected by the WEP. SSA will use the OPM data to verify the pension or annuity information provided directly to SSA by the retirees/annuitants.

C. Authority for Conducting the Matching Program

Section 215 of the Act (42 U.S.C. 415).

D. Categories of Records and Individuals Covered by the Match

The SSA records involved in the match are payment records maintained in the Master Beneficiary Record (MBR) system (last published in the Federal Register (FR) on May 1, 1988, page 16223). The MBR maintains records about individuals who are claimants for, or beneficiaries of, title II Retirement, Survivors, or Disability Insurance benefits. The OPM records consist of benefit and pension data from its system of records entitled OPM/Central—1 Civil Service Retirement and Insurance Record.

E. Inclusive Dates of the Match

The matching program will begin on July 19, 1989 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments by July 17, 1989, to the SSA Privacy Officer, Room 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

Notice of Computer Matching Program, Social Security Administration (SSA), Master Beneficiary Record (MBR) Matching with Office of Personnel Management (OPM) Federal Employees Retirement Systems (FERS) Records

A. Participating Agencies

SSA and OPM.

B. Purpose of the Matching Program

Chapters 83 and 84 of title 5, United States Code require that OPM verify Social Security benefit information supplied by civil service retirees and annuitants. This law also requires SSA to disclose information to OPM. The purpose of the match is for SSA to identify individuals dually entitled under OPM and Social Security programs and furnish information to OPM to verify information provided by civil service retirees and annuitants.

C. Authority for Conducting the Matching Program

Chapters 83 and 84, Title 5, U.S.C.

D. Categories of Records and Individuals Covered by the Match

The SSA records involved in the match are title II Retirement, Survivors, and Disability Insurance (RSDI) payment data maintained in the Master Beneficiary Record (MBR) system (last published in the Federal Register (FR) on May 1, 1988, page 16223). The MBR maintains records about individuals who are claimants for, or beneficiaries of, title II RSDI benefits. The OPM records consist of annuity data from its system of records entitled OPM/Central—1 Civil Service Retirement and Insurance Record.

E. Inclusive Dates of the Match

The matching program will begin on July 19, 1989 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments by July 17, 1989, to the SSA Privacy Officer, Room 3-D-1, Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

Notice of Computer Matching Program, Social Security Administration (SSA) Supplemental Security Income Record (SSR) Matching with Department of the Treasury Bureau of Public Debt (BPD) Savings Bond Registration Records

A. Participating Agencies

SSA and BPD.

B. Purpose of the Matching Program

Section 1631(e)(1)(B) of the Social Security Act (the Act) requires SSA to verify the allegations of applicants and recipients for Supplemental Security Income (SSI) payments before making a determination of eligibility or payment amount. Section 1631(f) of the Act requires Federal agencies to furnish SSA with information necessary to verify SSI eligibility. The purpose of this match is for SSA to obtain BPD savings bond registration information to verify eligibility for, or amount of, SSI payments.

C. Authority for Conducting the Matching Program

Section 1631(e)(1)(B) and 1631(f) of the Act (42 U.S.C. 1383(e)(1)(B) and 1383(f)).

D. Categories of Records and Individuals Covered by the Match

The SSA records consist of SSI payment records maintained in the Supplemental Security Income Record system (last published in the FR on October 13, 1982, page 45635). The BPD records consist of identifying and savings bond registration information.

E. Inclusive Dates of the Match

The matching program will begin on July 19, 1989 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments by July 17, 1989, to the SSA Privacy Officer, Room 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

Notice of Computer Matching Program, Social Security Administration (SSA) Master Beneficiary Record (MBR) Matching with Department of Veterans Affairs (DVA) Records

A. Participating Agencies

SSA and DVA.

B. Purpose of the Matching Program

Section 3006 of title 38 U.S.C. requires Federal agencies to provide information to DVA to verify the allegations of beneficiaries for DVA payments before making a determination of eligibility or payment amount. The purpose of this match is to provide DVA with SSA information for determining eligibility for DVA-administered benefits.

C. Authority for Conducting the Matching Program

38 U.S.C. 3006.

D. Categories of Records and Individuals Covered by the Match

The SSA records involved in the match are payment records maintained in the MBR system (last published in the Federal Register (FR) on May 1, 1988, page 16223). The MBR contains records about individuals who are claimants for, or beneficiaries of title II Retirement, Survivors, or Disability Insurance benefits. The DVA records are compensation and pension (C&P) data in the DVA system of records entitled Compensation, Pension, Education, and Rehabilitation Record-VA (last published in the Federal Register (FR) at 47 FR 372). DVA's C&P data consist of

information pertaining to benefits paid by DVA on the basis of an individual's military service.

E. Inclusive Dates of the Match

The matching program will begin in December 1989 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will end in January 1991.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments by July 17, 1989, to the SSA Privacy Officer, Room 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

Notice of Computer Matching Program, Social Security Administration (SSA), Supplemental Security Income Record (SSR) Matching with Department of Veterans Affairs (DVA) Records

A. Participating Agencies

SSA and DVA.

B. Purpose of the Matching Program

Section 1631(e)(1)(B) of the Social Security Act (the Act) requires SSA to verify the allegations of applicants and recipients for Supplemental Security Income (SSI) payments before making a determination of eligibility or payment amount. Section 1631(f) of the Act requires Federal agencies to furnish SSA with information necessary to verify SSI eligibility. The purpose of this match is to identify Supplemental Security Income recipients who receive DVA-administered benefits. SSA will use the information in determining eligibility for, or amount of, SSI payments.

C. Authority for Conducting the Matching Program

Section 1631(e)(1)(B) and 1631(f) of the Act (42 U.S.C. 1383(e)(1)(B) and 1383(f)).

D. Categories of Records and Individuals Covered by the Match

SSA matches DVA's compensation and pension (C&P) data in the DVA system of records entitled Compensation, Pension, Education, and Rehabilitation Record-VA (last published in the Federal Register (FR) at 47 FR 372) with its Supplemental Security Income Record system (last published in the FR on October 13, 1981, page 45635). DVA's C&P data consists of information pertaining to benefits paid by VA on the basis of an individual's military service. SSA's SSR contains identifying and payment information

about individuals who have applied for SSI payments.

E. Inclusive Dates of the Match

The matching program will begin on August 1, 1989 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments by July 17, 1989, to the SSA Privacy Officer, Room 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

Notice of Computer Matching Program, Social Security Administration (SSA) Master Beneficiary Record (MBR) Matching with Railroad Retirement Board (RRB) Records

A. Participating Agencies

SSA and RRB.

B. Purpose of the Matching Program

Section 18 of the Railroad Retirement Act (RRA) requires that earnings treated as compensation under the RRA be considered as wages under the Social Security Act (the Act) for purposes of determining entitlement under the Act if the number holder has less than 120 months of railroad service. The purpose of this matching program is for SSA to obtain RRB earnings records for matching with SSA's earnings records on Retirement, Survivors, and Disability Insurance (RSDI) beneficiaries. SSA will use the data to establish entitlement to, and amount of, Social Security benefits.

In addition, under section 7 of the RRA, SSA provides earnings and other data to RRB to determine the correct payment of RRB benefits.

C. Authority for Conducting the Matching Program

Sections 202 and 205 of the Act (42 U.S.C. 402 and 405) and 45 U.S.C. 231.

D. Categories of Records and Individuals Covered by the Match

The RRB records consist of identifying information and railroad earnings from its Service and Compensation Record file. SSA's records consists of RSDI data maintained in the Master Beneficiary Record (MBR) system (last published in the Federal Register (FR) on May 1, 1988,

page 16223). The MBR maintains records about individuals who are claimants for, or beneficiaries of, RSDI benefits.

E. Inclusive Dates of the Match

The matching program will begin on July 19, 1989 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments by July 17, 1989, to the SSA Privacy Officer, Room 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

Notice of Computer Matching Program, Social Security Administration (SSA) Supplemental Security Income Record (SSR) Matching with Railroad Retirement Board (RRB) Records

A. Participating Agencies

SSA and RRB.

B. Purpose of the Matching Program

Section 1631(e)(1)(B) of the Social Security Act (the Act) requires SSA to verify the allegations of applicants and recipients for Supplemental Security Income (SSI) payments before making a determination of eligibility or payment amount. Section 1631(f) of the Act requires Federal agencies to furnish SSA with information necessary to verify SSI eligibility. The purpose of this match is to identify SSI recipients who receive RRB pension payments amounts. The RRB data will provide SSA with information necessary to verify the accuracy of eligibility factors for the SSI program.

C. Authority for Conducting the Matching Program

Sections 1631(e)(1)(B) and 1631(f) of the Act (42 U.S.C. 1383(e)(1)(B) and 1383(f)).

D. Categories of Records and Individuals Covered by the Match

The RRB records consist of identifying and pension payment data. The SSA records consist of SSI identifying and payment records maintained in the SSR system of records (last published in the Federal Register on October 13, 1982, page 45635).

E. Inclusive Dates of the Match

The matching program will begin on July 19, 1989 or 30 days after agreements by the parties participating in the match have been submitted to Congress and the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments by July 17, 1989, to the SSA Privacy Officer, Room 3-D-1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

[FR Doc. 89-14454 Filed 6-15-89; 8:45 am]

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federal register

Friday
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Part VI

The President

Proclamation 5990—Baltic Freedom Day,
1989

Federal Register
Vol. 54, No. 115
Friday, June 16, 1989

Presidential Documents

Title 3—
The President

Proclamation 5990 of June 14, 1989
Baltic Freedom Day, 1989

By the President of the United States of America

A Proclamation

Fifty years ago on August 23, 1939, the foreign ministers of the Soviet Union and Nazi Germany signed the infamous Molotov-Ribbentrop pact. The secret protocols to this treaty condemned the independent Baltic States of Estonia, Latvia, and Lithuania to the foreign domination they still endure today.

Less than 1 year after the signing of the Molotov-Ribbentrop pact, the Soviet Union invaded the three Baltic Republics and imposed a regime antithetical to the ideas of national sovereignty and individual liberty. The suffering of the Baltic people was exacerbated when Nazi forces drove through these states during the beginning of the Nazi-Soviet War and established a brutal administration. When the Red Army recaptured the Baltic States during World War II, it reinstituted a reign of terror under the Soviet secret police. Hundreds of thousands of innocent men, women, and children were deported to Siberia; thousands of others perished in armed resistance to the attack upon their national independence and individual rights. By the end of World War II, the Baltic States had lost 20 percent of their population.

Since their forcible annexation by the Soviet Union in 1940, the people of Lithuania, Latvia, and Estonia have suffered political oppression, religious persecution, and repression of their national consciousness. Their cultural heritage has been denigrated and suppressed, and russification has threatened their survival as distinct ethnic groups. An aggressive program of industrialization has posed hazards to their health as well as the environment. Members of the clergy and lay religious leaders have been systematically harassed and imprisoned for activities deemed unacceptable by the authorities.

However, half a century of repression has not broken the spirit of the Baltic peoples. Today, their longing and hopes for liberty remain strong. Hundreds of thousands of Estonian, Latvian, and Lithuanian men and women have publicly demonstrated their desire for freedom and democracy, calling for national autonomy and control over their own affairs.

The future looks brighter today than at any other time in the Baltic States' post-war experience. The undeniable voice of Baltic people is being heard. Some religious shrines—desecrated by the Communist government and used to house concerts, artwork, and even a museum of atheism—have been returned to the churches. Members of the clergy have been allowed to take up their pastoral duties. The unique languages, national flags, and patriotic songs of the three countries have been restored. Some political prisoners have been released.

These are important steps, but justice demands that more be taken. Recent improvements in human rights practices by the ruling Communist officials are not complete, nor have they been institutionalized. The people of Lithuania, Latvia, and Estonia both demand and deserve lasting guarantees of their fundamental rights.

The Government of the United States does not and will not recognize the unilateral incorporation by force of arms of the Baltic States into the Soviet Union. Of this observance of Baltic Freedom Day, we express our solidarity

with them and call upon the Soviet Union to listen to their calls for freedom and self-determination.

By Senate Joint Resolution 63, the Congress has designated June 14, 1989, as "Baltic Freedom Day" and has requested the President to issue a proclamation in observance of this event.

NOW, THEREFORE, I, GEORGE BUSH, President of the United States of America, do hereby proclaim June 14, 1989, as Baltic Freedom Day. I call upon the people of the United States to observe this day with appropriate remembrances and ceremonies and to reaffirm their commitment to principles of liberty and freedom for all oppressed people.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of June, in the year of our Lord ~~nineteen~~ hundred and eighty-nine, and of the Independence of the United States of America the two hundred and thirteenth.

George Bush

[FR Doc. 89-14548
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Billing code 3195-01-M

Friday
June 16, 1989

Part VII

Department of Health and Human Services

Food and Drug Administration

Temporary Deferment of Activities
Relating to Medical Device Submissions;
Notice

federal register

**DEPARTMENT OF HEALTH AND
HUMAN SERVICES****Food and Drug Administration****Temporary Deferment of Activities
Relating to Medical Device
Submissions****AGENCY:** Food and Drug Administration.**ACTION:** Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the Office of Device Evaluation (ODE), Center for Devices and Radiological Health (CDRH) will be moving from its Silver Spring, MD location to Rockville, MD in early July 1989. During the period required for relocation of files, equipment, and agency personnel, the agency will not officially receive premarket notifications, premarket approval applications, or investigational device exemption applications nor will the agency continue its review of pending submissions. The statutory review period on pending submissions will be suspended during this period needed for relocation of ODE. ODE will renew work on and will officially receive submissions after the relocation is completed. FDA estimates that the deferment period will be about 10 days, but it may vary, depending on the circumstances of the move. Following the move, FDA will publish a notice providing the new address for submissions and identifying the exact period during which action on new and existing submissions was temporarily deferred.

FOR FURTHER INFORMATION CONTACT:

Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-4874.

SUPPLEMENTARY INFORMATION: ODE is responsible for many CDRH activities under sections 510, 513, 515, and 520 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360, 360c, 360e, and 360j). These activities include:

1. Advising the Director, CDRH, and other FDA officials on all medical device submissions, such as premarket notification submissions under section 510(k) of the act, device classifications under section 513 of the act, premarket approval applications (PMA's) and product development protocols (PDP's) under section 515 of the act, and clinical investigations under section 520 of the act;
2. Determining substantial equivalence for premarket notification submissions;
3. Planning, conducting, and coordinating CDRH actions regarding PMA's, PDP's, and investigational device exemption approvals, denials, or withdrawals of approval;
4. Monitoring sponsors' compliance with regulatory requirements; and
5. Conducting a continuing review, surveillance, and medical evaluation of the labeling, clinical experience, and required reports submitted by sponsors holding approved applications.

In an effort to consolidate CDRH offices, FDA is moving ODE and other CDRH offices from their present Silver Spring, MD location to Rockville, MD. This move will occur in early July 1989.

Because FDA will be moving all staff, equipment, and files, the office will be unable to start or continue work on new and existing submissions and reports until its new offices are ready. Therefore, FDA plans to temporarily defer action on the items listed above.

FDA anticipates that this period will be about 10 days, more or less, depending on the circumstances of the move. During this period, FDA will continue to accept mail, but will not officially log it in and commence review submissions. Any statutory review period will not commence until the relocation is completed and ODE functions resume. Also, the statutory review periods on pending submissions will be suspended during the relocation period. The Center will of course attempt to minimize the period during which regular procedures are suspended. Following the move, FDA will publish a notice providing the new address for submissions and identifying the exact period during which action on new and existing submissions was temporarily deferred.

Persons who may be affected by this temporary deferment should contact FDA with any questions they may have regarding ODE's move to the Rockville, MD area. These persons should call CDRH's Division of Small Manufacturers Assistance at 800-638-2041 (in MD, 301-443-6597).

Dated: June 14, 1989

Ronald G. Chesemore,
*Acting Associate Commissioner for
Regulatory Affairs.*

[FR Doc. 89-14558 Filed 6-15-89; 11:28 am]
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 88-NM-185-AD; Amdt. 39-6234]

Airworthiness Directives; Boeing Model 737 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment revises an existing airworthiness directive (AD), applicable to certain Boeing Model 737 series airplanes, which currently requires inspection of the elevator tab inboard hinge support structure to detect fatigue cracking which could result in vibration and possible flutter. The FAA has determined that additional airplanes were manufactured to the same design and are subject to the same failure. This amendment expands the applicability of the existing AD to require inspection of additional airplanes.

DATE: Effective July 24, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Mr. Steven C. Fox, Airframe Branch, ANM-120S; telephone (206) 431-1923. Mailing address: FAA, Northwest Mountain Region, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to revise AD 78-11-05, Amendment 39-2630 (41 FR 22343; June 3, 1976), to expand the applicability of the existing AD to require inspection of additional affected airplanes, was published in the Federal Register on January 24, 1989 (54 FR 3474).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The manufacturer requested that the recent revision to Boeing Alert Service Bulletin 737-55A1020, be incorporated in the final rule. The FAA has reviewed and approved Revision 3 of the service bulletin, dated December 22, 1988, and the final rule has been revised to allow inspection in accordance with the later revision to the service bulletin.

The manufacturer also requested that the terminating modification described in Boeing Service Bulletin 737-55-1022 be used as an acceptable means of compliance as described in Boeing Service Bulletin 737-55A1020, Section III, Part II, Revision 3. The FAA concurs that this is an acceptable means of compliance since the Boeing 737 Service Bulletin 737-55-1022, describes installation of an improved spar and the improved "tee" clip defined in Revision 3 of Boeing Alert Service Bulletin 737-55A1020, Section III, Part II, paragraph D. Paragraph D. of the final rule has been revised accordingly. These changes provide operators with additional FAA-approved options for compliance with the rule.

The other commenter requested that the special flight permits be issued in accordance with FAR 21.197 instead of FAR 21.97. The FAA concurs and has corrected this typographical error in paragraph F. of the final rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the following rule, with the changes previously noted. These changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA has determined that long term continued operational safety will be better assured by actual modification of the airframe to remove the source of the problem, rather than by repetitive

inspections. Therefore, the FAA has issued additional rulemaking which proposes to require operators to accomplish one of the modifications identified in paragraph D. of this final rule and, thus, terminate the repetitive inspection requirement. The proposed rule, contained in Docket 88-NM-67-AD (54 FR 22304; May 23, 1989), is a result of the recommendations of the Aging Aircraft Task Force, sponsored by the Air Transport Association (ATA) of America, the Aerospace Industries Association (AIA), and the FAA; it proposes the installation of numerous terminating modifications related to a number of service bulletins applicable to Model 737 airplanes, to be accomplished within 4 years of 75,000 flight cycles, whichever occurs later.

There are approximately 491 Model 737 series airplanes of the affected design in the worldwide fleet. It is estimated that 5 additional airplanes of U.S. registry would be affected by this AD, that it would take approximately 98 manhours per airplane to accomplish the required actions, and that the average labor cost would be \$40 per manhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$19,600.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft evaluation prepared for this action is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39 [AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by revising AD 76-11-05, Amendment 39-2630 (41 FR 22343; June 3, 1976), as amended by Amendments 39-2667 and 39-2708, as follows:

Boeing: Applies to Boeing Model 737 series airplanes, line number 001 through 491, certificated in any categories. Compliance required as indicated, unless previously accomplished.

To prevent hazardous flutter of the elevator/horizontal stabilizer, accomplish the following:

A. Upon receipt of a pilot report of vibration in the longitudinal control system, prior to further flight, accomplish the inspection required by paragraph C., below. If the relative deflections are less than specified in paragraph C., below, prior to further flight, investigate for the cause of vibration in accordance with existing procedures.

B. In addition to paragraph A., above, within the next 300 hours time-in-service after the effective date of this AD, unless accomplished within the last 700 hours time-in-service, and at intervals thereafter not to exceed 1,000 hours time-in-service, conduct the inspection required by paragraph C., below.

C. Inspect for excessive deflection of the elevator tab, right and left hand, in accordance with the inspection procedures specified in Section III, Part I, paragraphs C. and D., of Boeing Alert Service Bulletin 737-55A1020, Revision 1, dated August 20, 1976; Revision 2, dated February 11, 1977; or Revision 3, dated December 22, 1988. If the elevator tab-to-elevator relative deflection exceeds 1/16 inch, prior to further flight, modify the elevator in accordance with paragraph D., below.

D. Installation of one of the modifications specified in Boeing Alert Service Bulletin 737-55A1020, Revision 1, dated August 20, 1976; Revision 2, dated February 11, 1977; or Revision 3, dated December 22, 1988; Section III, Part II, including installation of the bolt retainer clips or the preventive modification specified in Boeing Alert Service Bulletin 737-55-1022, Section III, Part II, dated April 15, 1987, is considered terminating action for the inspection requirements of this AD.

E. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

F. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes having cracked parts to a base in order to comply with the requirements of this AD. The application for a special flight permit must contain a limitation stating that the airplane must be operated within limits specified in Boeing Operation Manual Bulletin 76-2.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or at the Seattle Aircraft Certification Office, FAA, Northwest Mountain Region, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 24, 1989.

Issued in Seattle, Washington, on June 7, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 89-14449 Filed 6-16-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 39

[Docket No. 88-NM-188-AD; Amdt. 39-6238]

Airworthiness Directives; Boeing Model 757 Series Airplanes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 757 series airplanes, which requires modifications to the Takeoff Configuration Warning System (TOCWS) to provide redundant Flap/Slat Electronic Unit (FSEU) inputs. This amendment is prompted by reports of false warnings which have occurred during application of takeoff power and during takeoff roll. This condition, if not corrected, could lead to aborted takeoffs

at high speed due to a takeoff configuration false warning.

DATES: Effective July 24, 1989.

ADDRESSES: The applicable service information may be obtained from Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. This information may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or the Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT:

John P. Dimtroff, Systems and Equipment Branch, ANM-130S; telephone (206) 431-1938. Mailing address: FAA Northwest Mountain Region, Seattle Aircraft Certification Office, 17900 Pacific Highway South, C-68966, Seattle, Washington 98168.

SUPPLEMENTARY INFORMATION: A proposal to amend Part 39 of the Federal Aviation Regulations to include an airworthiness directive, applicable to certain Boeing Model 757 series airplanes, which requires modifications to provide redundant Flap/Slat Electronic Unit (FSEU) inputs to the Takeoff Configuration Warning System (TOCWS), was published in the *Federal Register* on January 13, 1989 (54 FR 1389).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The Air Transport Association (ATA) of America, commenting on behalf of three of its members, stated that their airplanes were already in compliance with the proposed rule, and therefore had no objections.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require adoption of the rule as proposed.

There are approximately 58 Model 757 series airplanes of the affected design in the worldwide fleet. It is estimated that 28 airplanes of U.S. registry will be affected by this AD, that it will take approximately 20 manhours per airplane to accomplish the required actions, and that the average labor cost will be \$40 per manhour. The cost of required parts is estimated to be \$50 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be \$23,800.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities, under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and is contained in the regulatory docket. A copy of it may be obtained from the Rules Docket.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends Part 39 of the Federal Aviation Regulations as follows:

PART 39—[AMENDED]

1. The authority citation for Part 39 continues to read as follows:

Authority: 49 U.S.C. 1354(a), 1421 and 1423; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Applies to Model 757 series airplanes specified in Boeing Alert Service Bulletin 757-27A0063, Revision 1, dated May 17, 1985, certificated in any category. Compliance required within the next 12 months after the effective date of the AD, unless previously accomplished.

To prevent the occurrence of takeoff configuration false warnings, accomplish the following:

A. Modify the circuitry of the Takeoff Configuration Warning Systems (TOCWS) in accordance with Boeing Alert Service Bulletin 757-27A0063, Revision 1, dated May 17, 1985.

B. An alternate means of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Seattle Aircraft Certification Office, FAA, Northwest Mountain Region.

Note: The request should be forwarded through an FAA Principal Maintenance Inspector (PMI), who will either concur or comment and then send it to the Manager, Seattle Aircraft Certification Office.

C. Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

All persons affected by this directive who have not already received the appropriate service documents from the manufacturer may obtain copies upon request to Boeing Commercial Airplanes, P.O. Box 3707, Seattle, Washington 98124. These documents may be examined at the FAA, Northwest Mountain Region, Transport Airplane Directorate, 17900 Pacific Highway South, Seattle, Washington, or Seattle Aircraft Certification Office, 9010 East Marginal Way South, Seattle, Washington.

This amendment becomes effective July 24, 1989.

Issued in Seattle, Washington, on June 7, 1989.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.
[FR Doc. 89-14450 Filed 6-16-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 97

[Docket No. 25938; Amdt. No. 1402]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA-200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS-420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267-8277.

SUPPLEMENTARY INFORMATION: This amendment to Part 97 of the Federal Aviation Regulations (14 CFR Part 97) prescribes new, amended, suspended, or revoked Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR Part 51, and § 97.20 of the Federal Aviation Regulations (FARs). The applicable FAA Forms are identified as FAA Forms 8260-3, 8260-4, and 8260-5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the *Federal Register* expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form document is unnecessary. The

provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to Part 97 is effective on the date of publication and contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs is unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Approaches, Standard instrument, Incorporation by reference.
Robert L. Goodrich,
Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, Part 97 of the Federal Aviation Regulations (14 CFR Part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 g.m.t. on the date specified, as follows:

PART 97—[AMENDED]

1. The authority citation for Part 97 continues to read as follows:

Authority: 49 U.S.C. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) [revised Pub. L. 97-449, Jan. 12, 1983; and 14 CFR 11.49(b)(2)]

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * Effective September 21, 1989

Palatka, FL—Kay Larkin, NDB RWY 9, Amdt. 1
Many, LA—Hart, NDB RWY 12, Amdt. 4
Litchfield, MN—Litchfield Muni, VOR-A, Orig
Litchfield, MN—Litchfield Muni, VOR RWY 38, Amdt. 4, CANCELLED
Litchfield, MN—Litchfield Muni, VOR/DME RWY 15, Amdt. 3, CANCELLED
Litchfield, MN—Litchfield Muni, RNAV RWY 13, Orig
Litchfield, MN—Litchfield Muni, RNAV RWY 31, Orig
Rutherfordon, NC—Rutherford County, NDB RWY 36, Amdt. 4

* * * Effective August 24, 1989

Asheville, NC—Asheville Regional, ILS RWY 34, Amdt. 23
Shelbyville, TN—Bomar Fld—Shelbyville Muni, VOR RWY 18, Amdt. 3
Shelbyville, TN—Bomar Fld—Shelbyville Muni, VOR RWY 36, Amdt. 13
Shelbyville, TN—Bomar Fld—Shelbyville Muni, VOR/DME RWY 18, Amdt. 2
Stamford, TX—Arledge Field, NDB RWY 35, Orig

* * * Effective July 27, 1989

Yuma, AZ—Yuma, Mcas Yuma Intl, VOR RWY 17, Amdt. 4
Brawley, CA—Brawley Muni, VOR/DME-A, Orig
Brawley, CA—Brawley Muni, VOR/DME-B, Orig
Hayward, CA—Hayward Air Terminal, LOC/DME RWY, 28L, Amdt. 1

San Francisco, CA—San Francisco Intl, ILS RWY 19L, Amdt. 18
San Jose, CA—San Jose Intl, VOR RWY 12L/R, Amdt. 17, CANCELLED
San Jose, CA—San Jose Intl, VOR RWY 12R, Orig
San Jose, CA—San Jose Intl, LOC/DME RWY 30L, Amdt. 7
San Jose, CA—San Jose Intl, NDB/DME RWY 30L, Amdt. 1
San Jose, CA—San Jose Intl, ILS RWY 12R, Amdt. 3
San Jose, CA—San Jose Intl, ILS RWY 30L, Amdt. 18
Colorado Springs, CO—City of Colorado Springs Muni, NDB RWY 35, Amdt. 24
Colorado Springs, CO—City of Colorado Springs Muni, ILS RWY 17, Amdt. 3
Colorado Springs, CO—City of Colorado Springs Muni, ILS RWY 35, Amdt. 33

* * * Effective June 8, 1989

Klamath Falls, OR—Kingsley Field, VOR/DME or TACAN RWY 14, Amdt. 3

* * * Effective June 7, 1989

Ruston, LA—Ruston Muni, VOR/DME-A, Amdt. 10

* * * Effective June 1, 1989

Fort Wayne, IN—Fort Wayne Muni/Baer Fld/, ILS RWY 5, Amdt. 13
Detroit, MI—Detroit Metropolitan Wayne County, ILS RWY, 3R, Amdt. 11

[FR Doc. 89-14451 Filed 6-16-89; 8:45 am]
BILLING CODE 4910-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

Office of the Assistant Secretary for Community Planning and Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 111, 200, 570, 905, and 960

[Docket No. N-89-2004]

Revised Effective Dates; Corrections

AGENCY: Office of the Secretary; Office of the Assistant Secretary for Fair Housing and Equal Opportunity; Office of the Assistant Secretary for Housing—Federal Housing Commissioner; Office of the Assistant Secretary for Community Planning and Development; and Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of revised effective dates; corrections.

SUMMARY: The Department of Housing and Urban Development Act requires HUD to wait 30 calendar days of continuous session of Congress before it makes a published rule effective. The Department computed and announced, at the time of publication, the effective dates for the final and interim rules listed in the "Supplementary Information" section of this document. Because Congress recessed earlier than scheduled for a "conditional adjournment," the Department must revise its previously published effective dates. This document announces the new dates.

DATES: See the individual amendments below.

FOR FURTHER INFORMATION CONTACT: Grady J. Norris, Assistant General Counsel for Regulations, Department of Housing and Urban Development, Room 10278, 451 Seventh Street SW., Washington, DC 20410. Telephone: (202) 755-7055. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION: Section 7(o)(3) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(o)) requires HUD to delay the effectiveness of a published rule until 30 days of continuous session of Congress have elapsed. HUD computes the effective date for a particular rule by counting 30 session days of Congress (which excludes recesses for holidays) from the day after the date of publication of the final or interim rule. This method relies on the published schedule of Congress. This year, Congress decided to begin its Memorial Day recess earlier than the published schedule. For this reason, HUD must delay the effective date of several rules until 30 continuous session days of Congress have elapsed.

Accordingly, the Department amends 24 CFR Chapters I, II, III, and IX as follows:

PART III—[AMENDED]

1. In FR Doc. 89-10981, 24 CFR Part 111, Fair Housing Assistance Program, Final Rule [Docket No. R-89-1404; FR-2403], on page 20094, in the issue of Tuesday, May 9, 1989, the announced effective date of June 19, 1989 is corrected to read as follows:
EFFECTIVE DATE: June 20, 1989.

PART 200—[AMENDED]

2. In FR Doc. 89-10982, 24 CFR Part 200, Scope and Nature of FHA Appraisals and Property Inspections,

Final Rule [Docket No. R-89-1355; FR-2025], on page 19888, in the issue of Tuesday, May 9, 1989, the announced effective date of June 19, 1989 is corrected to read as follows:
EFFECTIVE DATE: June 20, 1989.

PART 570—[AMENDED]

3. In FR Doc. 89-11815, 24 CFR Part 570, Urban Development Action Grant; Implementation of Prohibitions on Use for Business Relocations, Final Rule [Docket No. R-89-1384; FR-2500], on page 21166, in the issue of Tuesday, May 16, 1989, the announced effective date of June 30, 1989 is corrected to read as follows:

EFFECTIVE DATE: July 11, 1989.

4. In FR Doc. 89-11736, 24 CFR Part 570, Urban Development Action Grants (UDAG) Program; Changes to Project Selection System, Interim Rule [Docket No. R-89-1440; FR-2647], on page 21388, in the issue of Wednesday, May 17, 1989, the announced effective date of June 30, 1989 is corrected to read as follows:

DATES: Effective date: July 12, 1989.

Comment due date: June 16, 1989.

PARTS 905 AND 960—[AMENDED]

5. In FR Doc. 89-11436, 24 CFR Parts 905 and 960, Preference for Elderly Families and Discretionary Preference for Near Elderly Families in Public Housing Projects for Elderly Families, Final Rule [Docket No. R-89-1417; FR-2505], on page 20758, in the issue of Friday, May 12, 1989, the announced effective date of June 20, 1989 is corrected to read as follows:
EFFECTIVE DATE: June 23, 1989.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: June 13, 1989.

Grady J. Norris,
Assistant General Counsel for Regulations.

[FR Doc. 89-14436 Filed 6-16-89; 8:45 am]
BILLING CODE 4210-01-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPTS-42002J; FRL-3603-6]

Fluoroalkenes; Program Review Concerning Mutagenicity and Oncogenicity Testing Under Final Test Rule; Solicitation for Interested Parties

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Toxic Substances Control Act (TSCA), on June 8, 1987 (52 FR 21516), EPA issued a final rule requiring testing for certain health effects for the following fluoroalkenes: Vinyl fluoride (VF; CAS No. 75-02-5), vinylidene fluoride (VDF; CAS No. 75-38-7), hexafluoropropene (HFP; CAS No. 116-15-4) and tetrafluoroethane (TFE; CAS No. 116-14-3). Included in the rule was a commitment by EPA to allow a public review prior to proceeding with Tier III mutagenicity testing (the mouse visible specific locus test (MVSL) or heritable translocation test) or oncogenicity testing. This review is specific to VF and HFP, the two fluoroalkenes for which such testing requirements have been triggered by testing completed under the rule. This notice announces a public meeting to discuss such testing for VF and HFP, and requests all persons desiring to have the status of "interested 89T-357 parties" in participating in discussions to notify EPA of their interest.

DATES: Submit written notice of interest to be designated an "interested party" for the purposes of participating in the public meeting on or before July 12, 1989. The public meeting will be held on July 19, 1989, at 1 p.m. in Rm. NE-103, 401 M Street SW., Washington, DC.

ADDRESS: Submit written request to be an "interested party" in triplicate, identified by the document control number (OPTS-42002J) to: TSCA Public Docket Office (TS-793), Office of Pesticides and Toxic Substances, Environmental Protection Agency, Rm. NE-G004, 401 M Street SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS-799), Office of Toxic Substances, Environmental Protection Agency, Rm. EB-44, 401 M Street SW., Washington, DC 20460, (202) 554-1404, TDD (202) 554-0551.

Persons interested in attending the public meeting should notify EPA by telephone on or before July 18, 1989.

SUPPLEMENTARY INFORMATION: In the Federal Register of June 8, 1987 (52 FR 21516), EPA issued a final test rule under section 4(a) of TSCA to require health effects testing of VF, VDF, HFP, and TFE. In the final rule, EPA required mutagenicity tests which could trigger either oncogenicity or additional (Tier III) mutagenicity gene testing. In the case of VF, testing was positive for gene mutation effects in the *Drosophila* sex-linked recessive lethal assay (SLRL), triggering testing in the MVSL assay. Similarly, HFP was positive in both the in vivo cytogenetics and the mouse

m micronucleus assays, triggering oncogenicity testing. Results of testing on VDF and TFE did not trigger additional testing.

The mutagenicity tests cited for HFP were actually performed prior to publication of the fluoroalkenes final rule, and are summarized therein, but oncogenicity testing for HFP was deferred until after the subchronic assay for HFP required in the final rule was completed and a public program review was held. In the case of the MVSL test requirement for VF, EPA intends to delay requiring test initiation until after a proposed rule published on December 23, 1988, concerning the MVSL and an alternate test, the mouse biochemical specific locus test (MBSL), results in a final rule. Finalization of the MVSL rule is expected in the fall or winter of 1989. VF and VDF are currently undergoing oncogenicity testing as required under the Fluoroalkenes Final Rule.

EPA is publishing this notice to announce a public program review to allow interested parties opportunity to comment on EPA's conclusions regarding testing requirements for VF, for Tier III mutagenicity testing in the MVSL, and for HFP, in the oncogenicity assay.

I. Identification of Interested Parties

Those individuals and groups who respond to EPA's notice by the deadlines established in the notice will have the status of "interested parties" for the purpose of this public program review and will have the opportunity to participate in it. Individuals and groups desiring to have the status of "interested parties" for the public program review for MVSL testing of VF and oncogenicity testing of HFP should submit a written request to the Agency at the address given above on or before July 12, 1989.

II. Public Meeting

A public meeting will be held at 1 p.m. on July 19, 1989, in Rm. 103, Northeast Mall, EPA Headquarters, 401 M St., SW., Washington, DC, to review the MVSL and oncogenicity testing requirements for VF and HFP, respectively. Persons interested in attending this meeting should notify the EPA TSCA Assistance Office by telephone at the number listed above on or before July 18, 1989.

III. Relevant Available Studies

In accordance with the requirements of the Fluoroalkenes Final Rule, all studies completed in fulfillment of the testing requirements of the rule must be submitted to EPA, and all of the studies are then available to the public.

Furthermore, EPA established a rulemaking record for the rule, which included documents and references in support of the rule. This entire docket, except for Confidential Business Information (CBI), is also available to the public. For the purposes of this public program review, the following studies are of particular interest, and can be obtained from the TSCA Public Docket Office at the address given in this notice.

(1) E.I. duPont de Nemours & Company. Evaluation of Hexafluoropropylene in the In Vitro Assay for Chromosome Aberrations in Chinese Hamster Ovary (CHO) Cells. Submitted to U.S. EPA. (July 23, 1988).

(2) E.I. duPont de Nemours & Company. Mutagenicity Evaluation of Hexafluoropropylene in the CHO/HPRT Assay. Submitted to U.S. EPA. (February 3, 1988).

(3) E.I. duPont de Nemours & Company. Ninety-Day Inhalation Toxicity Study in Rats and Mice with Hexafluoropropylene. Submitted to U.S. EPA by the Chemical Manufacturers Association. (January 23, 1989).

(4) E.I. duPont de Nemours & Company. Mutagenicity Test on Vinyl Fluoride; *Drosophila* Melanogaster Sex-Linked Recessive Lethal Test. Submitted to U.S. EPA by the Chemical Manufacturers Association (August 15, 1988).

Authority: 15 U.S.C. 2603.

Dated: May 24, 1989.

Gary E. Timm,

Acting Director, Existing Chemical Assessment Division, Office of Toxic Substances.

[FR Doc. 89-14459 Filed 6-16-89; 8:45 am]

BILLING CODE 5500-50-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 88-131; RM-5949, RM-5949]

Radio Broadcasting Services; Mason City and Iowa City, Iowa

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of KRNA, Inc., substitutes Channel 231C1 for Channel 230C1 at Iowa City, Iowa, and modifies its license for Station KRNA(FM) to specify operation on the adjacent channel. At

the request of B-Y Communications, Inc., the Commission substitutes Channel 230C1 for Channel 228A at Mason City, Iowa, and modifies its license for Station KNIQ to specify operation on the higher powered channel. Channel 231C1 can be allotted to Iowa City with a site restriction of 21.1 kilometers (13 miles) west to accommodate its desired site. The coordinates for this allotment are North Latitude 41-42-12 and West Longitude 91-46-54. Channel 230C1 can be allotted to Mason City in compliance with the Commission's minimum distance separation requirements and can be used at the present transmitter site of Station KNIQ. The coordinates for this allotment are North Latitude 43-08-50 and West Longitude 93-14-39. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-8530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 88-131, adopted May 22, 1989, and released June 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§73.202 [Amended]

2. Section 73.202(b), the FM Table of Allotments, is amended by revising the entry for Iowa City, Iowa, by removing Channel 230C1 and adding Channel 231C1. The entry for Mason City, Iowa, is revised by removing Channel 228A and adding Channel 230C1.

Federal Communications Commission.

Karl A. Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-14427 Filed 6-16-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-389; RM-6366]

Radio Broadcasting Services; Bozeman, Montana

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel *271C2 to Bozeman, Montana, reserving the channel for noncommercial educational use, in response to a petition filed by Eastern Montana College. The coordinates for Channel *271C2 at Bozeman are 45-40-54 and 111-02-18. With this action, this proceeding is terminated.

EFFECTIVE DATE: July 28, 1989.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-389, adopted May 22, 1989, and released June 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§73.202 [Amended]

2. In §73.202(b), the Table of FM Allotments under Bozeman, Montana, is amended by adding Channel *271C2. Federal Communications Commission.

Karl Kensinger,

Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-14428 Filed 6-16-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 76

[MM Docket 85-349, GEN Docket No. 87-107, RM-6152; FCC 89-162]

Carriage of TV Signals on Cable Systems and Input Selector Switches Used in Conjunction With Cable Television Service

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The action taken herein deletes, from the Commission's rules, all mandatory carriage requirements for cable systems. It also reinstates the input selector switch offer and consumer information requirements for cable systems. This action is taken in order to comply with the United States Court of Appeals decision in *Century Communications Corp. v. FCC*, December 11, 1987.

DATES: Effective Date: July 14, 1989.

Compliance Date: Cable systems will now have to comply with these requirements by November 1, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Scott Roberts, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order in MM Docket No. 85-349, GEN Docket 87-107, and RM-6152 adopted May 18, 1989, and released May 30, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of the Order

1. On December 11, 1987, the United States Court of Appeals for the District of Columbia Circuit invalidated the Commission's interim must carry rules for cable television systems, as adopted pursuant to MM Docket No. 85-349, in *Century Communications Corp. v. FCC (Century)*, No. 86-1683, 835 F. 2d 292 (D.C. Cir., December 11, 1987). It was unclear, however, whether the court's ruling invalidated all aspects of the Commission's order in that proceeding, that is, whether the ruling extended beyond the interim mandatory carriage obligations to include the input selector switch and consumer education requirements imposed by 47 CFR 76.66.

Therefore, the Commission, on December 23, 1987, filed a motion for clarification of the Century decision with the United States Court of Appeals in order to resolve this matter. In conjunction with that filing, the Commission stayed the requirements of Section 76.66 pending court clarification.

2. On January 29, 1988 the court issued an Order, No. 86-1683, 837 F. 2d 517, clarifying that its decision in *Century* does not invalidate the input selector switch and consumer education requirements that were also adopted pursuant to the must carry proceeding. Therein, the court instructed the Commission on remand to make appropriate adjustment to its rules in light of the invalidation of the interim must carry rules.

3. In compliance with the court's ruling and instructions, we are eliminating all those portions of our interim rules pertaining to the mandatory carriage of television broadcast signals on cable systems and are revising other sections of our rules, in particular, those in Section 76.66 pertaining to the input selector switch and consumer education requirements, to eliminate reference to must carry requirements.

4. As part of our action herein, we are revising the date by which cable systems must comply with the input selector switch offer and consumer education requirements, as set forth in §76.66. In order to provide sufficient lead time that is required by the billing systems used by many cable systems, those systems that have not yet mailed to subscribers the switch offer and consumer education information required under the provisions of §76.66 that were in effect prior to the stay of the compliance date, will have until November 1, 1989, to fulfill those requirements. Cable systems that have complied with the provisions of §76.66 in effect prior to the stay, will not be required to do a supplemental mailing, but will have to include the new informational requirement in their next annual consumer information mailing. This information should be provided to all new subscribers, however, as promptly as possible and commence for all subscribers no later than November 1, 1989.

5. Accordingly, *It is ordered* that §76.5 and §§76.55 through 76.70 of the Commission's rules are amended, as shown below, effective July 14, 1989. *It is further ordered* That the Petition for Rule Making (RM-6152) filed jointly by the Association of Independent Television Stations, Inc. and the National Association of Public

Television Stations is dismissed as moot. *It is further ordered* That cable systems that have already complied with the provisions of § 78.66 in effect prior to the December 23, 1987 stay of the rules, need not do a supplemental mailing to comply with the revised rules. Finally, *It is ordered* That the Petition for Supplemental Inquiry or Issuance of a Further Notice of Proposed Rule Making filed by Mr. Richard S. Leghorn is denied. Authority for these actions is provided in sections 4(i) and 303 of the Communications Act of 1934, as amended.

List of Subjects in 47 CFR Part 76

Cable television.

PART 76—(AMENDED)

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

1. The authority citation for Part 76 continues to read as follows:

Authority: 47 U.S.C. 154, 303, and 521.

§ 76.5 [Amended]

2. Section 76.5 is amended by removing paragraphs (d), (j), (jj), (kk) and (ll) in their entirety and redesignating paragraphs (e) through (i) as (d) through (h), and paragraphs (k) through (nn) as (i) through (ii).

3. Section 76.53 is amended by revising the first sentence to read as follows:

§ 76.53 Reference points.

The following list of reference points shall be used to identify the boundaries of the major and smaller television markets (defined in § 78.5).

§ 76.55 [Removed]

4. Section 76.55 is removed in its entirety.

§ 76.56 [Removed]

5. Section 76.56 is removed in its entirety.

§ 76.58 [Removed]

6. Section 76.58 is removed in its entirety.

7. Section 76.60 is revised in its entirety to read as follows:

§ 76.60 Carriage of other television signals.

A cable system may carry the signals of any television station including low power television stations, television translator stations, foreign television stations, subscription television broadcasts, satellite distributed program services, direct broadcast satellite stations and programming from any other source. A cable system may also carry any ancillary service transmission

on the vertical blanking interval or the aural baseband of any television broadcast signal including, but not limited to, multichannel television sound and teletext.

8. Section 76.62 is revised in its entirety to read as follows:

§ 76.62 Manner of carriage.

Where a television broadcast signal is carried by a cable system, the signal shall be carried without material degradation and programs broadcast shall be carried in full, without deletion or alteration of any portion thereof.

§ 76.64 [Removed]

9. Section 76.64 is removed in its entirety.

10. Section 76.66 is amended by revising paragraphs (c) introductory text and (c)(1); and, removing paragraph (c)(2) and making it reserved to read as follows:

§ 76.66 Input selector switches and consumer education.

(c) The cable system operator shall provide the following information to each subscriber at the time of installation of cable service and to existing subscribers, in writing, by November 1, 1989, and annually thereafter to all subscribers. Operators may use whatever language they deem appropriate to convey the following:

(1) The cable system is not required to carry any off-the-air broadcast signal; but, of course, may choose to do so; thus,

(2) [Reserved]

11. Section 76.70 is revised to read as follows:

§ 76.70 Exemption from input selector switch rules.

(a) In any case of cable systems serving communities where no portion of the community is covered by the predicted Grade B contour of at least one full service broadcast television station, or non-commercial educational television translator station operating with 5 or more watts output power and where the signals of no such broadcast stations are "significantly viewed" in the county where such a cable system is located, the cable system shall be exempt from the provisions of § 76.66. Cable systems may be eligible for this exemption where they demonstrate with engineering studies prepared in accordance with § 73.686 of this chapter or other showings that broadcast signals meeting the above criteria are not actually viewable within the community.

(b) Where a new full service broadcast television station, or new

non-commercial educational television translator station with 5 or more watts, or an existing such station of either type with newly upgraded facilities provides predicted Grade B service to a community served by a cable system previously exempt under paragraph (a) of this section, or the signal of any such broadcast station is newly determined to be "significantly viewed" in the county where such a cable system is located, the cable system at that time is required to comply fully with the provisions of § 76.66. Cable systems may retain their exemption under paragraph (a) of this section where they demonstrate with engineering studies prepared in accordance with § 73.686 of this chapter or other showings that broadcast signals meeting the above criteria are not actually viewable within the community.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-14425 Filed 6-16-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Part 192

[Docket No. PS-97]

RIN 2137-AB 20

Confirmation or Revision of Maximum Allowable Operating Pressure; Alternative Method; Correction

AGENCY: Office of Pipeline Safety (OPS), Research and Special Programs Administration, DOT.

ACTION: Notice of correct amendment number.

SUMMARY: This notice corrects the amendment number of final rule document 89-13388 published in the Federal Register on Tuesday, June 6, 1989 (54 FR 24173). In the document heading on page 24173, the amendment number, "Amdt. 192-60A," is changed to read "Amdt. 192-63."

FOR FURTHER INFORMATION CONTACT: L.M. Furrow 366-2392.

Issued in Washington, DC on June 13, 1989.

Richard L. Beam,

Director, Office of Pipeline Safety.

[FR Doc. 89-14398 Filed 6-16-89; 8:45 am]

BILLING CODE 4910-00-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 81132-9033]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of closure.

SUMMARY: The Director, Alaska Region, NMFS (Regional Director), has determined that the total allowable catch (TAC) of pelagic shelf rockfish in the Eastern Regulatory Area of the Gulf of Alaska has been reached. The Secretary of Commerce (Secretary) is prohibiting directed fishing for and further retention of pelagic shelf rockfish by vessels fishing in this area from 12:00 noon, Alaska Daylight Time (a.d.t.), on June 13, 1989, through December 31, 1989.

DATES: Effective from 12:00 noon, a.d.t., on June 13, until midnight, Alaska Standard Time, December 31, 1989.

ADDRESSES: Comments should be addressed to Steven Pennoyer, Director, Alaska Region (Regional Director), National Marine Fisheries Service, P.O. Box 21668, Juneau, Alaska 99802-1668.

FOR FURTHER INFORMATION CONTACT: Janet E. Smoker, Fishery Management Biologist, 907-586-7230.

SUPPLEMENTARY INFORMATION: The Fishery Management Plan for

Groundfish of the Gulf of Alaska (FMP) governs the groundfish fishery in the exclusive economic zone in the Gulf of Alaska under the Magnuson Fishery Conservation and Management Act. Regulations implementing the FMP are at 50 CFR Part 672. Section 672.20(a) of the regulations establishes an optimum yield (OY) range of 116,000-800,000 metric tons (mt) for all groundfish species in the Gulf of Alaska. Total allowable catches (TACs) for target species and species groups are specified annually within the OY range and apportioned among the regulatory areas and districts.

The 1989 TAC specified for pelagic shelf rockfish in the Eastern Regulatory area is 400 mt (54 FR 6524, February 13, 1989). "Pelagic shelf rockfish" include the following five species of Sebastes: black rockfish (*S. melanops*), blue rockfish (*S. mystinus*), dusky rockfish (*S. ciliatus*), widow rockfish (*S. entomelas*) and yellowtail rockfish (*S. flavidus*). The Regional Director reports that vessels have landed 505 mt of pelagic shelf rockfish through June 8 in the Eastern Regulatory Area; the entire TAC has been harvested.

Therefore, pursuant to § 672.20(c)(2)(i), the Secretary is prohibiting further fishing for the retention of pelagic shelf rockfish effective 12:00 noon, a.d.t., June 13, 1989. Any pelagic shelf rockfish caught in the Eastern Regulatory area after that date must be treated as prohibited species and discarded at sea.

Overharvesting of pelagic shelf rockfish will result unless this notice

takes effect promptly. Therefore, NOAA finds for good cause that prior opportunity for public comment on this notice is contrary to the public interest and its effective date should not be delayed.

Public comments on the necessity for this action are invited for a period of 15 days after the effective date of this notice. Public comments on this notice of closure may be submitted to the Regional Director at the address above until June 28, 1989. If written comments are received which oppose or protest this action, the Secretary will reconsider the necessity of this action, and, as soon as practicable after that reconsideration, will publish in the Federal Register a notice either of continued effectiveness of the adjustment, responding to comments received, or modifying or rescinding the adjustment.

Classification

This action is taken under §§ 672.22 and 672.24, and is in compliance with Executive Order 12291.

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: June 13, 1989.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 89-14403 Filed 6-13-89; 4:30 am]

BILLING CODE 3510-22-M

Proposed Rules

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

Commodity Credit Corporation

7 CFR Parts 709, 1403, 1404, 1408

Debt Settlement Policies and Procedures

AGENCY: Agricultural Stabilization and Conservation Service, Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend 7 CFR Parts 709, 1403 and 1408 which relate to the administration of Agricultural Stabilization and Conservation Service (ASCS) and Commodity Credit Corporation (CCC) programs in order to set forth the policies and procedures of CCC and ASCS regarding delinquent debts arising out of domestic transactions and the assignment of payments. This proposed rule would set forth the policies and procedures CCC will use to settle debts owed to CCC and other agencies of the United States. To the extent practicable, the proposed rule would provide that CCC policies and procedures would conform to the general guidelines set forth in the Federal Claims Collection Act, as amended by the Debt Collection Act of 1982 (31 U.S.C. 3711, *et seq.*). To the extent practicable, CCC would also follow the provisions of the Federal Claims Collection Standards (4 CFR Parts 101-105) with respect to administrative actions undertaken by CCC to settle claims. In addition, this proposed rule would set forth the manner in which CCC and ASCS payments may be assigned at 7 CFR Part 1404 and delete the current provisions at 7 CFR Part 709.

DATES: Comments must be received by July 19, 1989.

ADDRESS: Comments concerning this proposed regulation should be addressed to: Director, Fiscal Division,

ASCS, U.S. Department of Agriculture, P.O. Box 2415, Washington, DC 20013. All comments submitted in response to this proposed rule will be available for public inspection, in Room 6094, South Building, 14th and Independence Avenue, SW., Washington, DC, between 8:30 am and 4:00 pm, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Paula Roney, Claims Administration and Contract Procedures Branch, Fiscal Division, ASCS, (202) 447-4061.

SUPPLEMENTARY INFORMATION: This proposed rule has been reviewed in conformance with Executive Order 12291 and Departmental Regulation 1512-1 and has been classified as "not major" because it will not result in: (1) An annual effect on the economy of \$100 million or more; (2) a major increase in costs and prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This action does not constitute a review as to need, currency, clarity, and effectiveness of these regulations under DR 1512-1. No sunset review date has been set for this regulation because review is ongoing.

This action will not increase the Federal paperwork burden for individuals, small businesses, and others and will not have a significant impact on a substantial number of small entities. Furthermore, neither ASCS nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this proposed rule. Therefore this action is exempt from the provision of the Regulatory Flexibility Act and no Regulatory Flexibility Analysis was prepared.

This action will not have a significant impact specifically upon area and community development; therefore, review as established by Executive Order 12372 (July 14, 1982) was not used to assure that units of local government are informed of this action.

The Federal Claims Collection Act of 1966 (the Act), as amended by the Debt Collection Act of 1982, (31 U.S.C. 3711, *et*

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seq.), and the joint regulations promulgated thereunder by the Comptroller General and the Attorney General (4 CFR 101-105) provide minimum standards for the administrative collection of claims by the United States. The Act also provides that nothing therein shall diminish the existing authority of the head of an agency to settle, compromise, or close claims. The CCC Charter Act, as amended (15 U.S.C. 714, *et seq.*), provides that CCC shall have authority to make final and conclusive settlement and adjustment of any claims by or against it irrespective of the amount at issue. CCC is, therefore, not subject to the provisions of the Federal Claims Collection Act or its implementing regulations. However, it has been CCC policy to follow the Federal Claims Collection Standards (FCCS) to the maximum practicable extent. The FCCS require each federal agency to take aggressive action to collect debts owed it, and to cooperate with other federal agencies in their debt collection activities. Federal agencies are required to promulgate regulations consistent with the standards.

Currently, CCC follows procedures at 7 CFR Part 13 for the offset or withholding of amounts approved by ASCS county committees for disbursement to agricultural producers. In all other cases, offset, withholdings, and stop payment policies at 7 CFR Part 1408 are applicable. For procedures governing referrals of claims to the Department of Justice or the General Accounting Office the procedures in FCCS (4 CFR Parts 101-105) may be followed. The regulations at 7 CFR Part 1403 currently govern CCC policies regarding the assessment of late payment charges, referral of delinquent debts to credit reporting agencies, and referral of delinquent debts to IRS for tax refund offset.

This proposed rule would delete 7 CFR Part 1408 which sets forth the setoff, withholding and stop payment policies of CCC and establish under a single heading at 7 CFR Part 1403, CCC policies and procedures governing the administrative collection, discharge, and referral of debts.

The proposed rule would also protect the right of CCC and ASCS to collect delinquent debts when payments have been assigned by allowing offset of any debts owed to CCC or ASCS by an

assignor before payment is made to an assignee in accordance with the provisions of agricultural programs administered by county and State ASC committees. Currently, offset may only be made of those debts entered on the applicable debt register prior to the date an assignment was accepted by CCC or ASCS. This change in policy would deter the circumvention of offset by such practices as the assignment of payments to friends, relatives, partners, or subsidiary corporations, as well as increase the ability of CCC and ASCS to recoup delinquent debts. This change would apply only to those debts owed to CCC and ASCS; the current procedures would continue to apply to requests for offset received from other federal agencies.

Under the proposed rule, the late payment interest rate CCC would use would be a departure from the standard late payment rate prescribed by 31 U.S.C. 3717, which is based on the Treasury Department's current value of funds rate. The Treasury Department has approved this alternative method of assessing late payment interest. Currently, the late payment interest rate is set by CCC in a notice published in the *Federal Register*. Such rate has been set at a fixed 13 percent and remained constant in spite of a dramatic fluctuation in interest rates in the past six years. This proposed rule would provide that the late payment rate assessed on delinquent debts would be based upon the rate CCC pays Treasury for funds. The late payment rate will be assessed at a rate three percentage points higher than the Treasury rate that is in effect on the date the debt becomes delinquent. In addition, for debts which remain delinquent for ninety (90) days, an additional six percentage points will be assessed.

This proposed rule is necessary to protect the financial integrity of many federal agricultural programs by ensuring the Government will be able to collect, or otherwise settle, debts owed it by various individuals, organizations, and corporations.

In addition, this proposed rule would delete 7 CFR Part 709, which sets forth the manner in which ASCS and CCC payments may be assigned, and set forth at 7 CFR Part 1404 the criteria applicable to the assignment of ASCS and CCC program payments.

List of Subjects

7 CFR Part 709

Assignment of payment.

7 CFR Part 1403

Interest on delinquent debts.

7 CFR Part 1404

Assignment of payment.

7 CFR Part 1408

Setoff, Withholding and stop payment policies.

Accordingly, Title 7 of the Code of Federal Regulations is amended as follows:

PART 709—[REMOVED]

1. 7 CFR Part 709 is removed.
2. 7 CFR Part 1403 is revised to read as follows:

PART 1403—DEBT SETTLEMENT POLICIES AND PROCEDURES

- Sec.
- | | |
|---------|---|
| 1403.1 | Applicability. |
| 1403.2 | Administration. |
| 1403.3 | Definitions. |
| 1403.4 | Demand for payment of debts. |
| 1403.5 | Collection by payment in full. |
| 1403.6 | Collection by installment payments. |
| 1403.7 | Collection by administrative offset. |
| 1403.8 | Withholding. |
| 1403.9 | Late payment interest and administrative charges. |
| 1403.10 | Waiver of late payment interest and administrative charges. |
| 1403.11 | Administrative appeal. |
| 1403.12 | Additional administrative collection action. |
| 1403.13 | Contact with debtor's employing agency. |
| 1403.14 | Prior provision of rights with respect to debt. |
| 1403.15 | Discharge of Debts. |
| 1403.16 | Referral of delinquent debts to credit reporting agencies. |
| 1403.17 | Referral of debts to Department of Justice. |
| 1403.18 | Referring of delinquent debts to IRS for tax refund offset. |
| 1403.19 | Reporting of discharged debts to IRS. |
| 1403.20 | Referral of debts to private collection agencies. |
- Authority: 15 U.S.C. 714b and 714c; 31 U.S.C. 3711-3716 and 3720A.

§ 1403.1 Applicability.

Except as may otherwise be provided by statute, this part sets forth the manner in which the Commodity Credit Corporation (CCC) will settle and collect debts by and against CCC arising out of domestic transactions.

§ 1403.2 Administration.

(a) The regulations in this part will be administered under the general supervision and direction of the Executive Vice President, CCC and the Administrator, ASCS. At the State and county level, the regulations in this part will be administered by the Agricultural Stabilization and Conservation State and county committees (herein referred

to as "State and county committees", respectively).

(b) State executive directors, county executive directors and State and county committees do not have authority to modify or waive any of the provisions of this part.

(c) The State committee may take any action authorized or required by this part to be taken by the county committee which has not been taken by such committee. The State committee may also:

- (1) Correct or require a county committee to correct any action taken by such county committee which is not in accordance with this part; or
- (2) Require a county committee to withhold taking any action which is not in accordance with this part.

(d) No delegation herein to a State or county committee shall preclude the Executive Vice President, CCC, and the Administrator, ASCS, or a designee, from determining any question arising under this part or from reversing or modifying any determination made by a State or county committee.

§ 1403.3 Definitions.

The following definitions shall be applicable to this part:

"*Accountant certified financial statement*" means an account of the assets, liabilities, income and expenses of a debtor, executed in accordance with generally accepted accounting principles and attested to as accurate by a certified public accountant, a bank, or other such qualified individual or entity and by the debtor, under penalty of perjury.

"*Administrative charges*" means the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

"*Administrative offset*" means deducting money payable or held by the United States Government, or any agency thereof, to satisfy in whole or in part a debt owed the Government, or any agency thereof.

"*ASCS*" means the Agricultural Stabilization and Conservation Service of USDA.

"*CCC*" means the Commodity Credit Corporation.

"*Claim*" means an amount of money or property which has been determined by CCC, after a notice of delinquency and a demand for the payment of the

debt has been made by CCC, to be owed to CCC by any person other than a Federal agency.

"Credit reporting agency" means:

(1) A reporting agency as defined at 4 CFR 102.5(a), or

(2) Any entity which has entered into an agreement with the Department of Agriculture (USDA) concerning the referral of credit information.

"Debt" means any amount owed to CCC or owed by CCC which has not been satisfied through payment or otherwise.

"Debt register" refers to the account, balance sheet, file, ledger, data file, or similar record of debts owed to CCC, ASCS, or any other Government Agency with respect to which collection action is being pursued, and which is maintained in an ASCS office.

"Debtor-certified financial statement" means an account of the assets, liabilities, income and expenses of a debtor, executed in accordance with generally accepted accounting principles and attested to as accurate by the debtor, under penalty of perjury.

"Delinquent debt" means: (1) Any debt owed to CCC that has not been paid by the date specified in the applicable statute, regulation, contract, or agreement; or (2) Any debt that has not been paid by the date specified in an initial notification of indebtedness mailed or hand-delivered pursuant to § 1403.4.

"Discharged debt" means any debt, or part thereof, which CCC has determined is uncollectible.

"Late payment interest rate" means the amount of interest charged on delinquent debts and claims. The late payment interest rate shall be determined as of the date a debt becomes delinquent and shall be a rate three (3) percentage points above the monthly borrowing rate of interest that CCC pays to the United States Treasury for funds.

"Person" means an individual, partnership, association, corporation, estate or trust, or other business enterprise or other legal entity and, whenever applicable, the Federal Government or a State government, or any agency thereof.

"Salary offset" means the deduction of money from the current pay account of a present or former Government employee payable by the United States Government to, or held by the Government for, such person to satisfy a debt that person owes the Government.

"Settlement" means any final disposition of a debt or claim.

"System of records" means a group of any records under the control of CCC or ASCS from which information is

retrieved by the name of the individual, organization or other entity or by some identifying number, symbol, or other identification assigned to the individual, organization or other entity.

"Withholding" means the taking of action to temporarily prevent the payment of all amounts to a debtor under one or more contracts or programs.

§ 1403.4 Demand for payment of debts.

(a) When a debt is due CCC, the debtor shall be mailed or hand-delivered an initial written demand for payment of such amount. If the debt is not paid in full by the date specified in the initial demand letter, or if a repayment schedule acceptable to CCC has not been arranged with the debtor, then the initial demand shall be followed by two subsequent written demands at not more than 30-day intervals, unless it is determined by CCC that further demands would be futile and the debtor's response does not require rebuttal. The initial or subsequent demand letters shall specify the following:

(1) The basis for and the amount of the debt determined to be due CCC, including the principal, applicable interest, costs and other charges;

(2) CCC's intent to establish an account on a debt register 30 days after the date of the letter, or other applicable period of time, if the debt is not paid within that time;

(3) The applicable late payment interest rate.

(i) If a late payment interest rate is specified in the contract, agreement or program regulation, the debtor shall be informed of that rate and the date from which the late payment interest has been accruing;

(ii) If a late payment interest rate is not specified in the contract, agreement or program regulation, the debtor shall be informed of the applicable late payment interest rate set out in § 1403.9.

(4) CCC's intent to collect the debt 30 days from the date of the initial demand letter, or other applicable period of time, by administrative offset from any CCC or ASCS payments due or to become due to the debtor, and that the claim may be reported to other agencies of the Federal government for offset from any amounts due or to become due to the debtor;

(5) If not previously provided, the debtor's right to request administrative review by an authorized CCC official, and the proper procedure for making such request. If the request relates to the:

(i) Existence or amount of the debt, it must be made within 15 days from the date of the letter;

(ii) Appropriateness of reporting to a credit reporting agency, it must be made within 30 days from the date of the letter; or

(iii) Appropriateness of referral to IRS for tax refund offset, it must be made within 60 days from the date of the letter.

(6) The debtor's right to a full explanation of the debt and to dispute any information in the records of CCC concerning the debt;

(7) That CCC maintains the right to initiate legal action to collect the amount of the debt;

(8) That if any portion of the debt remains unpaid or if a repayment schedule satisfactory to CCC has not been arranged 90 days after the due date specified in the initial demand letter, then an increased interest rate shall be assessed on the unpaid balance of the debt as prescribed in § 1403.9(e);

(9) CCC's intent, if applicable, under § 1403.16, to report any delinquent debt to a credit reporting agency no sooner than 60 days from the date of the letter;

(10) CCC's intent, if applicable, under § 1403.18, to refer any delinquent debt to the Internal Revenue Service, no sooner than 60 days from the date of the letter, to be considered for offset against any tax refund due or to become due the debtor.

(b) When CCC deems it necessary to protect the Government's interest, written demand may be preceded by other appropriate actions.

§ 1403.5 Collection by payment in full.

(a) Except as CCC may provide in accordance with § 1403.6, CCC shall collect debts owed to the Government, including applicable interest, penalties, and administrative costs, in full, whenever feasible whether the debt is being collected by administrative offset or by another method, including voluntary payment. If a debt is paid in one lump sum after the due date, CCC will impose late payment interest, as provided in § 1403.9, unless such interest is waived as provided in § 1403.10.

(b) Except as may otherwise be provided by CCC in individual program regulations, contracts or agreements, if a debt is determined to exist after the completion of an administrative appeal, the interest rate applicable to the debt on the date written notice of the initial determination from which the appeal arose was mailed or hand-delivered to the debtor shall continue to apply from the date of the notice to the issuance of the final administrative determination. If

no other interest rate is applicable, interest at the rate charged by the U.S. Treasury for funds borrowed by CCC on the date written notice of the initial determination was mailed or hand delivered shall be assessed from the date of the notice to the issuance of the final administrative determination. If the debt is not paid within 30 days of such determination, CCC will assess late payment interest as prescribed in §§ 1403.9 and 1403.10 from the date of the final determination.

§ 1403.6 Collection by installment payments.

(a) Payments in installments may be arranged, at CCC's discretion, if a debtor furnishes satisfactory evidence of inability to pay a claim in full by the specified date. The size and frequency of installment payments shall:

(1) Bear a reasonable relation to the size of the debt and the debtor's ability to pay; and

(2) Normally be of sufficient size and frequency to liquidate the debt in not more than three years.

(b) Except as otherwise determined by CCC, no installment arrangement will be considered unless the debtor submits a debtor certified financial statement which reflects the debtor's assets, liabilities, income, and expenses. CCC may require an accountant-certified financial statement in lieu of a debtor-certified financial statement. The financial statement shall not be required to be submitted sooner than 15 business days following its request by CCC.

(c) All installment payment agreements shall be in writing and may require the payment of interest at the late payment interest rate in effect on the date such agreement is executed. The installment agreement shall specify all the terms of the arrangement and include provision for accelerating the debt in the event the debtor defaults. A confession of judgment provision may be included in the agreement.

(d) CCC may deem a repayment plan to be abrogated if the debtor fails to comply with its terms.

(e) If the debtor's financial statement or other information discloses the ownership of assets which are not encumbered, the debtor may be required to secure the payment of an installment note by executing a security agreement and financing agreement which provides CCC a security interest in the assets until the debt is paid in full.

(f) If the debtor owes more than one debt to CCC, CCC may allow the debtor to designate the manner in which a voluntary installment payment is to be applied. If the debtor does not designate the application of a voluntary

installment or partial payment, the payment will be applied to such debts as determined by CCC.

§ 1403.7 Collection by administrative offset.

(a) The provisions of this section shall apply to all debts due CCC except as otherwise provided in this part and Part 1404 of this chapter. This section is not applicable to:

(1) CCC requests for administrative offset against money payable to a debtor from the Civil Service Retirement and Disability Fund and CCC requests for salary offset against a present or former employee of the Federal Government which shall be made in accordance with regulations at Part 3 of this title;

(2) CCC requests for administrative offset against a Federal income tax refund payable to a debtor which shall be made in accordance with § 1403.18;

(3) Cases in which CCC must adjust, by increasing or decreasing, a payment which is to be paid under a contract in order to properly make other payments due by CCC; and

(4) Any case in which collection of the type of debt involved by administrative offset is explicitly provided for or prohibited by statute.

(b) Debts due CCC shall be collected by administrative offset from amounts payable by CCC when:

(1) The debtor has been provided written notification of the basis and amount of the debt and has been given an opportunity to make payment. Such written notification and opportunity includes notice of the right to pursue an administrative appeal in accordance with Part 780 of this title or any other applicable appeal procedures;

(2) The debtor has been provided an opportunity to request to inspect and copy the records of CCC related to the debt;

(3) The debtor has been notified in writing that the debt will be collected by administrative offset if not paid;

(4) The debt has not been delinquent for more than ten years or legal action to enforce the debt has not been barred by an applicable period of limitation, whichever is later; and

(5) The debtor has not disputed the validity or the amount of the debt, or, if disputed:

(i) The debtor has completed the administrative appeal procedure at Part 780 of this Title or any other applicable appeal procedure, or

(ii) An authorized CCC claims official or claims officer:

(A) Determines that there is no reasonable basis to support the debtor's position; or

(B) Approves the offset and certifies in writing that a repayment agreement satisfactory to CCC cannot be effected and court adjudication as to the proper payee or other program operations is not required.

(c) Administrative offset shall also be effected against amounts payable by CCC:

(1) When requested or approved by the Department of Justice; or

(2) When a person is indebted under a judgment in favor of CCC.

(d) Debts due CCC from carriers for overcharges shall be offset against amounts due such carriers under freight bills involving shipments if:

(1) The carrier, without reasonable justification, has declined payment of the debt or has failed to pay the debt after being given a reasonable opportunity to make payment; and

(2) The period of limitation prescribed at 49 U.S.C. 11706(f) has not expired.

(e) Debts due CCC from carriers for loss or damage shall be offset against amounts due such carriers under freight bills involving shipments if:

(1) Demand for payment was made on the carrier within the period of time specified in the bill of lading;

(2) The carrier has declined payment of the debt without reasonable justification; and

(3) The period of limitation prescribed in the bill of lading has not expired.

(f) Any overcharge or loss or damage debt due CCC on which the applicable period of limitation has run may be offset against any amounts owing by CCC to the carrier which are subject to a defense of limitation.

(g) A payment due any person may be offset where there is a breach of a contract or a violation of CCC program requirements, and offset is considered necessary, by CCC, to protect the financial interests of the Government.

(h) In the case of any procurement contract with CCC which provides for invoicing at the time of shipment with delivery to be made at designated destination points where:

(1) Payment is made to the contractor prior to receipt of evidence of delivery, and

(2) CCC thereafter determines that the Contractor is indebted to CCC because of losses sustained from damage to or deterioration of the commodity while in transit and prior to delivery, CCC may offset such indebtedness against amounts due and payable to the Contractor under any other contract with CCC providing the Contractor has not assigned the proceeds of such contract in accordance with Part 1404 of this chapter.

(i) CCC may effect administrative offset against a payment to be made to a debtor prior to completion of the procedures required by (b) (1)-(3) of this section if:

(1) Failure to take the offset would substantially prejudice CCC's ability to collect the debt; and

(2) The time before the payment is to be made does not reasonably permit the completion of those procedures.

(j)(1) Debts due any agency other than CCC shall be offset against amounts payable by CCC to a debtor where the U.S. Department of Justice, the General Accounting Office, or the other agency has submitted a written request for offset which is mailed or hand-delivered to the appropriate ASCS State office, Kansas City Management office or Kansas City Commodity office. Such written request must:

(i) Bear the signature of an authorized representative of the requesting agency;

(ii) Include a certification that all requirements of the law and the regulations for collection of the debt and for requesting offset have been complied with;

(iii) State the name, address (including county), and, where legally available, the social security number of the debtor, and a brief description of the basis of the debt, including identification of the judgment, if any.

(iv) State the amount of the debt separately as to principal, interest, penalties, and administrative costs. Interest, if any, shall be computed on a daily basis to a date shown in the request. The amount to be offset shall not exceed the principal sum owed by the debtor, plus interest computed in accordance with the request, and any late payment charge interest, penalties and administrative costs that have been assessed;

(v) Certify that the debtor has not filed for bankruptcy. If the debtor has filed for bankruptcy, a copy of the order of the bankruptcy court relieving the agency from the automatic stay must be included; and

(vi) State the name, address, and telephone number of a contact person within the agency and the address to which payment should be sent.

(2) Unless prohibited by law, the head of an agency, or a designee, may defer or subordinate in whole or in part the right of the agency to recover through offset all or part of any indebtedness to such agency, or may withdraw a request for offset. Notice of such action must be sent to the appropriate ASCS office.

(k)(1) After CCC has complied with the provisions of this part, CCC shall request other agencies of the

Government to offset amounts payable by them to persons indebted to CCC.

(2) In the case of a request to IRS for a tax refund offset, the provisions at § 1403.18 shall apply.

(l)(1) Debts shall be collected by offset in the following order of priority without regard to the date of the request for such collection:

(i) Debts to CCC.

(ii) Debts to other agencies of the Department of Agriculture as determined by CCC.

(iii) Debts to other agencies as determined by CCC.

(2) In the case of multiple debts involving the same debtor, CCC may, at its discretion, deviate from the usual order of priority in applying recovered amounts to debts owed other agencies when considered to be in the Government's best interest. Such decision shall be made by CCC based on the facts and circumstances of the particular case.

(m)(1) No amounts payable to a debtor by CCC shall be paid to an assignee until there have been collected any amounts owed by the debtor except as provided in this section.

(2) With respect to a payment which is assigned in accordance with Part 1404 of this Chapter by execution of Form CCC-38, such payment shall be subject to offset for any debt owed to CCC or ASCS without regard to the date notice of assignment was accepted by CCC or ASCS.

(3) With respect to a payment which is assigned in accordance with Part 1404 of this Chapter by execution of Form CCC-252, offset shall be made: (i) Of any debt of the assignor entered on the debt register of the applicable ASCS office prior to the filing of such form with CCC or ASCS, or (ii) at anytime regardless of the date of filing of such form with CCC or ASCS if the debt which is the basis for the offset arises under the same contract under which the payment is earned by the assignor.

(4) Offset shall be made, if the Internal Revenue Service so requests or has served a Notice of levy, of any amounts for which the assignor is indebted to the United States for taxes, for which a notice of lien was filed in accordance with the provisions of the Internal Revenue Code prior to the date the notice of assignment was accepted by CCC or ASCS. The burden of determining whether a notice of lien has been filed shall be upon the assignee.

(5) With respect to all other Federal agencies, offset shall be made of any amounts due any other Federal agency which are entered on the debt register of the appropriate ASCS office prior to the

date the notice of assignment was accepted by CCC or ASCS.

(6) Any amount due and payable to the assignor which remains after deduction of amounts paid to the assignee shall be available for offset.

(n) Amounts recovered by offset for CCC and ASCS debts but later found not to be owed to the Government shall be promptly refunded.

(o) Interest shall not be paid on amounts offset but later found not to be owed to the Government unless required by statute, regulation, contract, agreement, or as may be determined by the Executive Vice President, CCC or a designee.

(p) The debtor shall be notified whenever any offset action has been taken.

(q) Offsets made pursuant to this section shall not deprive a debtor of any right he might otherwise have to contest the debt involved in the offset action either by administrative appeal or by legal action.

(r) Any action authorized by the provisions of this section may be taken against amounts payable to a debtor who operates under more than one name, provided there is identical ownership, or CCC determines that the debtor has established an entity for the purpose of avoiding the payment of the claim or debt.

(s) The amount to be offset shall not exceed the actual or estimated amount of the debt, including interest, administrative charges, and penalties, unless the Department of Justice requests that a larger specified amount be offset.

(t) Offset action will not be taken against payments when:

(1) The payment represents loan or purchase proceeds for a commodity which is subject to the rights of the holder of a prior valid enforceable lien. However, any amount that exceeds the amount of the prior lien shall be available for offset.

(2) A debt has been discharged as provided in § 1403.15.

(3) The amount payable to the debtor is used to satisfy a prior lien on property pledged as collateral for a CCC loan or sold to CCC. However, any amount exceeding the amount of the prior lien shall be available for offset.

(4) CCC determines such action will unduly interfere with the administration of a CCC or ASCS program.

(5) The debt has been delinquent for more than ten years or legal action to enforce the debt due CCC is barred by an applicable period of limitation, whichever is later.

§ 1403.8 Withholding.

(a) Withholding of a payment prior to the completion of an applicable offset procedure shall be made from amounts payable to a debtor by CCC to ensure that the interests of CCC and the United States will be protected as provided in this section.

(b) A payment may be withheld to protect the interests of CCC or the United States only if CCC determines that:

(1) There has been a serious breach of contract or violation of program requirements and the withholding action is considered necessary to protect the financial interests of CCC;

(2) There is substantial evidence of violations of criminal or civil frauds statutes and criminal prosecution or civil frauds action is of primary importance to program operations of CCC;

(3) Prior experience with the debtor indicates that collection will be difficult if amounts payable to the debtor are not withheld;

(4) There is doubt that the debtor will be financially able to pay a judgment on the claim of CCC;

(5) The facts available are insufficient to determine the amount to be offset or the proper payee;

(6) A judgment on a claim of CCC has been obtained; or

(7) A request has been made by the Department of Justice.

(c) Except for debts due CCC or ASCS, withholding action by CCC on amounts payable to debtors of other Government agencies may not be made unless requested by the Department of Justice.

§ 1403.9 Late payment interest and administrative charges.

(a)(1) The provisions of this section are applicable to all persons whose debt to CCC becomes delinquent unless the debtor and CCC agree otherwise.

(2) Late payment interest provisions of this section shall not apply:

(i) To debts owed by Federal agencies and State and local governments.

(ii) Interest on debts owed by such entities shall be charged in accordance with applicable statutes or, if none are applicable, at the rate of interest charged by the U.S. Treasury for funds borrowed by CCC on the day the debt became delinquent;

(iii) If an applicable statute, regulation, agreement or contract either prohibits the charging of such interest or specifies the interest or charges applicable to the debt involved;

(iv) If the late payment interest is waived by CCC.

(b) CCC will assess late payment interest on the full amount of delinquent debts. For purposes of this section, the term "full amount of the delinquent debt" means the sum of the principal, accrued regular loan interest or accrued program interest, and any other charges which are otherwise due and owing to CCC on the delinquent debt at the time the late payment interest is assessed, except as provided in paragraphs (a)(2) and (d)(3) of this section.

(c)(1) The late payment interest shall be expressed as an annual rate of interest which CCC charges on delinquent debts. The late payment interest rate shall be three (3) percentage points above the monthly borrowing rate of interest that CCC pays to the United States Treasury for funds, determined as of the date specified in paragraphs (d)(1) and (d)(2) of this section.

(d)(1) When a debt results from a statute, regulation, contract or other agreement with specific provisions for late payment interest and payment due date, late payment interest shall accrue on the amount of the debt from the first day the debt became delinquent, unless otherwise provided by statute.

(2) With respect to debts not resulting from a statute, regulation, contract or agreement containing specific provisions for late payment interest and payment due date, late payment interest shall begin to accrue from the date on which notice of the debt is first mailed or hand-delivered to the debtor.

(3) The rate of late payment interest initially assessed will be fixed for the duration of the indebtedness, except when a debtor has defaulted on a repayment agreement and seeks to enter into a new agreement. CCC may then set a new rate of interest which reflects the rate of interest that CCC pays to the United States Treasury for funds at the time the new agreement is executed. All charges which accrued, but which were not collected, under the defaulted agreement shall be added to the principal to be paid under a new repayment agreement.

(4) The late payment interest on delinquent debts will accrue on a daily basis.

(e) Except as specified in paragraph (a)(2) of this section, an additional interest rate of six (6) percent per annum will be assessed on any portion of a debt which remains unpaid ninety (90) days after the date described in paragraphs (d)(1) or (d)(2) of this section, if no repayment schedule satisfactory to CCC has been agreed upon. Such rate will be assessed retroactively from the date of delinquency and applied on a daily

basis to all amounts due on the debt including the principal balance of the debt plus regular interest, late payment interest and other charges. Such rate shall continue to accrue until the delinquent debt has been paid.

(f) CCC shall assess as administrative charges the additional costs of processing delinquent debts against the debtor, to the extent such costs are attributable to the delinquency. Such costs include, but are not limited to, costs incurred in obtaining a credit report, costs of employing commercial firms to locate debtor, costs of employing contractors for collection services, costs of selling collateral or property to satisfy the debt.

(g) When a debt is paid in partial or installment payments, payments will be applied first to additional interest assessed in accordance with paragraph (e) of this section and administrative charges, second to assessed late payment interest, and third to outstanding principal.

§ 1403.10 Waiver of late payment interest and administrative charges.

(a) CCC shall waive the collection of late payment interest and administrative charges on a debt or any portion of a debt which is paid within 30 days after the date on which late payment interest began to accrue.

(b) Assessment and collection of late payment interest, additional interest and administrative charges under this part may be waived by CCC in full or in part, if it is determined that such action is in the best interest of CCC.

§ 1403.11 Administrative appeal.

If the opportunity to appeal the determination has not previously been provided under Parts 24 or 780 of this title or any other appeal procedure, a debtor may obtain an administrative review under Part 780 of this title of CCC's determination concerning the existence or amount of a debt, if a request is filed with the authority who made the determination within 15 days of the date of CCC's initial demand letter.

§ 1403.12 Additional administrative collection action.

Nothing contained in this part shall preclude the use of any other administrative remedy which may be available to CCC to collect debts owed to the Government.

§ 1403.13 Contact with debtor's employing agency.

When a debtor is employed by the Federal Government or is a member of the military establishment or the Coast

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Guard, and collection by offset cannot be accomplished in accordance with 5 U.S.C. 5514, CCC will contact the employing agency to arrange for payment of the debt by allotment or otherwise, in accordance with section 206 of Executive Order No. 11222, May 8, 1965, 30 FR 6469.

§ 1403.14 Prior provision of rights with respect to debt.

CCC will not provide an administrative appeal with respect to issues which were subject to administrative review at the debtor's request as provided under another statute or regulation before:

- (a) Effecting administrative offset;
- (b) Referring the debt to private collection or credit reporting agencies;
- (c) Referring the debt to OPM for salary offset against the current pay of a present or former Government employee; or
- (d) Referring the debt to IRS for tax refund offset.

§ 1403.15 Discharge of debts.

(a) Except as required by other applicable regulation or statute, a debt or part thereof owed CCC shall be discharged and the records and accounts on that debt closed in the following situations:

- (1) When an obligation or part thereof is discharged in bankruptcy;
- (2) When an obligation or part thereof is the subject of a final judgment entered by a court of competent jurisdiction which is adverse to CCC;
- (3) When a debt or part thereof is compromised and paid, the amount of such compromise;

(4) When collection of a debt by administrative offset is barred in accordance with § 1403.7(t)(5).

(b) A debt or part thereof owed CCC may be discharged and the records and accounts on that debt closed when the Controller, CCC, has determined that such action is in the best interest of CCC.

(c) A claims official or claims officer may discharge a delinquent debt if such debt arises under the terms of the authority delegated to such official or officer in the following circumstances:

- (1) The delinquent debt is owed an entity which has been liquidated or dissolved and no legal remedy is feasible.
- (2) The delinquent debt is owed by an individual who:

(i) Is declared legally insane or incompetent;

(ii) Possessed of no assets or other means of payment; and

(iii) Possessed of no reasonable prospects of being able to pay the debt in the future.

(3) The delinquent debt was incurred by an individual who is deceased, and from whose estate recovery cannot be made.

(d) Debts discharged in accordance with this section may be reported to the Internal Revenue Service pursuant to § 1403.19.

§ 1403.16 Referral of delinquent debts to credit reporting agencies.

(a) This section specifies the procedures that will be followed by CCC and the rights that will be afforded to debtors when CCC reports delinquent debts to credit reporting agencies.

(b) Before disclosing information to a credit reporting agency in accordance with this part, CCC shall review the claim and determine that it is valid and delinquent.

(c) Before a debt may be referred to a credit reporting agency, the debtor must be notified, pursuant to § 1403.4, of CCC's intent to make such a report. Such notification shall include:

(1) CCC's intent to disclose to a credit reporting agency that the debtor is responsible for the debt, and that such disclosure will be made not less than 60 days after notification to such debtor.

(2) The information intended to be disclosed to the credit reporting agency under paragraph (g)(1) of this section.

(3) The debtor's right to enter a repayment agreement on the debt, including, at the discretion of CCC, installment payments, and that if such an agreement is reached, the debt will not be referred to a credit reporting agency.

(4) The debtor's right to review of this action in accordance with paragraph (i) of this section.

(d) The debtor shall be notified, in writing at the debtor's last known address, when CCC has reported any delinquent debt to a credit reporting agency.

(e)(1) CCC shall notify each credit reporting agency to which an original disclosure of delinquent debt information was made of any substantial change in the condition or amount of the claim.

(2) CCC shall promptly verify or correct, as appropriate, information about the debt on request of a credit reporting agency. The records of the debtor shall reflect any correction resulting from such request.

(f) Information reported to a credit reporting agency on delinquent debts shall be derived from systems of records maintained by CCC.

(g) CCC shall limit delinquent debt information disclosed to credit reporting agencies to:

(1) The name, address, taxpayer identification number, and other information necessary to establish the identity of the debtor;

(2) The amount, status, and history of the claim; and

(3) The program under which the claim arose.

(h) Reasonable action shall be taken to locate a debtor for whom CCC does not have a current address before reporting delinquent debt information to a credit reporting agency.

(i)(1) Before disclosing delinquent debt information to a credit reporting agency, CCC shall, upon request of the debtor, provide for a review of the debt, including an opportunity for reconsideration of the initial decision concerning the existence or amount of the claim, in accordance with § 1403.11. This review shall only consider defenses or arguments which were not available or could not have been available at any previous appeal proceeding permitted under § 1403.11.

(2) Upon receipt of a request for review within 30 days from the date of notice to the debtor of intent to refer delinquent debt information to a credit reporting agency, CCC shall suspend its schedule for disclosure to a credit reporting agency until a final decision regarding the appropriateness of disclosure to a credit reporting agency is made.

(3) Upon completion of the review, the reviewing official shall transmit to the debtor a written notification of the decision. If appropriate, the debtor shall be notified of the scheduled date on or after which the debt will be referred to the credit reporting agency. The debtor will also be notified of any changes from the initial notification in the information to be disclosed.

(j)(1) In accordance with guidelines established by the Executive Vice President, CCC, the responsible claims official shall report to credit reporting agencies delinquent debt information specified in paragraph (g) of this section.

(2) The agreements entered into by USDA and credit reporting agencies shall provide the necessary assurances to CCC that the credit reporting agencies to which information will be provided are in compliance with the provisions of all the laws and regulations of the United States relating to providing credit information.

(3) CCC shall not report delinquent debt information to credit reporting agencies when:

(i) The debtor has entered a repayment agreement covering the debt with CCC, and such agreement is still valid; or

(ii) CCC has suspended its schedule for disclosure of delinquent debt information pursuant to paragraph (i)(2).

(k) Disclosures made under this section shall be in accordance with the requirements of the Privacy Act, as amended (5 U.S.C. 552a).

§ 1403.17 Referral of debts to Department of Justice.

Debts which cannot be collected in accordance with these regulations may be referred to the Department of Justice for collection action.

§ 1403.18 Referring delinquent debts to IRS for tax refund offset.

CCC may refer legally enforceable delinquent debts to IRS to be offset against tax refunds due to debtors under 26 U.S.C. 6402, in accordance with the provisions of 31 U.S.C. 3720A and Treasury Department regulations.

§ 1403.19 Reporting discharged debts to IRS.

(a) In accordance with IRS regulations, CCC shall report to IRS as discharged debts on IRS Form 1099-G only the amounts specified in paragraph (b) of this section.

(b) The following discharged debts may be reported to IRS:

(1) The amount of a debt discharged under a compromise agreement between CCC and the debtor, except for compromises made due to doubt about the Government's ability to prove its case in court for the full amount of the debt.

(2) The amount of a debt discharged by the running of the statutory period of limitation for collecting the debt by administrative offset specified in 31 U.S.C. 3716.

(3) The amount of a debt discharged by CCC in accordance with § 1403.15(b).

§ 1403.20 Referral of debts to private collection agencies.

If CCC's collection efforts have been unsuccessful after 90 days and the delinquent debt remains unpaid, CCC may refer the debt to a private collection agency for collection.

3. The following new Part 1404 is added to Chapter XIV of the Code of Federal Regulations:

PART 1404—ASSIGNMENT OF PAYMENTS

Sec.

1404.1 General statement.

1404.2 Definitions.

1404.3 Payments which may be assigned.

Sec.

1404.4 Execution of assignment form.

1404.5 Payment assigned not to be discounted.

1404.6 Payment to the assignee.

1404.7 Misrepresentations.

1404.8 Liability of the Secretary or disbursing agents.

1404.9 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Authority: 15 U.S.C. 714b and 714c; 16 U.S.C. 590h(g).

§ 1404.1 General statement.

This part sets forth the manner in which a person may assign a cash payment which is made by the Agricultural Stabilization and Conservation Service (ASCS) or the Commodity Credit Corporation (CCC). Such payments may only be assigned in the manner set forth in this part.

§ 1404.2 Definitions.

(a)(1) "Assignee" means any person, including any agency of the Federal Government, to whom an assignment of an ASCS or CCC payment is made in accordance with this part.

(2) "Assignor" means any person who is the recipient of a payment from ASCS or CCC who assigns the payment to another person in accordance with this part.

(3) "Payment" means a cash payment and excludes (i) any payment made in accordance with Part 1470 of this title; and (ii) price support loan or purchase agreement proceeds.

(b) The terms defined in Parts 719, 1413, 1421 and 1427 shall also be applicable to this part.

§ 1404.3 Payments which may be assigned.

(a) Except as otherwise provided in this part or in individual program regulations, and contracts and agreements entered into by ASCS or CCC, any payment due a person from ASCS or CCC may be assigned.

(b)(1) A payment which is made to a producer in accordance with 7 CFR Parts 701 and 1413 may not be assigned to pay or secure any preexisting indebtedness.

(2) Payments made in accordance with 7 CFR Parts 701 and 1413 may be assigned only as security for cash or advances to finance making a crop, handling or marketing an agricultural commodity, or performing a conservation practice, for the current crop year. To finance making a crop means (i) to finance the planting, cultivating, or harvesting of a crop, including the purchase of equipment required therefor and the payment of cash rent for land used therefor, or (ii) to provide food, clothing, and other

necessities required by the producer or persons dependent upon the producer.

(3) Nothing contained herein shall be construed to authorize an assignment given to secure the payment of the whole or any part of the purchase price of a farm or the payment of the whole or any part of a fixed commodity rent for a farm.

§ 1404.4 Execution of assignment form.

(a)(1) The assignment of any ASCS or CCC payment must be made by the execution of Form CCC-36 or Forms CCC-251 and CCC-252. Form CCC-36 is applicable to payments made under programs administered in accordance with 7 CFR Parts 701, 704, 1413, 1430, 1468, 1472 and 1475. Such form is also applicable to any other program which is administered by a county ASC committee. Forms CCC-251 and 252 are applicable to all other CCC programs and contracts.

(2)(i) To be recognized by ASCS or CCC, Form CCC-36 must be filed in the county ASCS office prior to the time the county committee approves the making of the payment covered by the assignment. To be recognized by ASCS or CCC, Forms CCC-251 and 252 must be filed with the ASCS or CCC office from which the payment will be made prior to the making of the payment. Such a form may not be filed with ASCS or CCC if the payment to be assigned is the subject of an administrative appeal.

(ii) Form CCC-36 or Forms CCC-251 and 252 must be signed by both the assignor and the assignee. With respect to Form CCC-36, the assignor's signature must be witnessed by a member of the county ASC committee for the county where the farm is located, or by an employee of the county committee, unless the assignee is a bank whose deposits are insured by the Federal Deposit Insurance Corporation, the Farmers Home Administration, or a production credit association supervised by the Farm Credit Administration, in which case the assignment may be witnessed by a bonded officer of such lending institution.

(3) The assignor and the assignee shall promptly notify the appropriate ASCS or CCC office of any change affecting the assignment.

§ 1404.5 Payment assigned not to be discounted.

(a) With respect to assignments made by execution of Form CCC-36, if interest is charged by the assignee on the amount advanced, the rate of interest must not be in excess of the maximum rate lawfully chargeable under the law of the State where the farm is located

(b) The payment assigned shall not be discounted by charging the assignor more than the current cash price for any supplies furnished or in any other manner whatsoever. Interest may be deducted by the assignee in advance from any cash advancement.

§ 1404.6 Payment to the assignee.

(a)(1) The assignee shall be paid the smaller of the amount specified on Form CCC-36 or CCC-251 or the amount of the payment earned under the program covered by the assignment. Any indebtedness owed by the assignor to CCC, ASCS, or any other agency of the United States shall be subject to offset.

(2) Any indebtedness owed by the assignor to CCC or ASCS shall be offset from any payment which is owed by CCC or ASCS without regard to the date of filing of a Form CCC-36 with the applicable ASCS or CCC office. Except as provided in paragraph (a)(4) of this section, any indebtedness owed by the assignor to CCC or ASCS shall be offset from any payment which is owed by CCC or ASCS if such indebtedness was entered on the debt register of the applicable ASCS or CCC office prior to the date of the filing of Forms CCC-251 and 252 with the applicable ASCS or CCC office.

(3) Any indebtedness owed by the assignor to any agency of the United States other than CCC or ASCS which was entered on the debt register of the applicable ASCS or CCC office prior to the date of filing of the Form CCC-36 or Forms CCC-251 and 252 with such office shall be offset prior to the making of any payment to the assignee.

(4) Any indebtedness arising under a contract between the assignor and ASCS or CCC which is the subject of the assignment shall be offset from the payment prior to the making of any payment to the assignee without regard to the date of the filing of Form CCC-36 or Forms CCC-251 and 252 with the appropriate ASCS or CCC office.

(b) If ASCS or CCC makes a payment to the assignee which is in excess of the amount stated on Form CCC-36 or Forms CCC-251 and 252, the assignee shall refund to ASCS or CCC any amount by which the payment made to the assignee exceeds the amount specified on such form.

§ 1404.7 Misrepresentations.

If ASCS or CCC has reason to believe that any material misrepresentation was made by the assignor or the assignee in executing Forms CCC-36, CCC-251 or CCC-252, ASCS or CCC shall forthwith give notice thereof to the assignor and the assignee. If, after investigation and opportunity for the assignor and

assignee to be heard, ASCS or CCC finds that any material misrepresentation was in fact made, ASCS or CCC shall notify the assignor and the assignee of such finding, and void such assignment, and insofar as concerns ASCS, CCC or any other agency of the United States, the assignment shall be of no effect.

§ 1404.8 Liability of the Secretary or disbursing agents.

Neither the United States, the CCC, the Secretary nor any disbursing agent shall be liable in any suit if payment is made to the assignor without regard to the existence of any assignment, and nothing contained herein shall be construed to authorize any suit against the United States, the CCC, the Secretary or any disbursing agent if payment is not made to the assignee, or if payment is made to only one of several assignees.

§ 1404.9 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

The information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 35 and have been assigned OMB control number

PART 1408—[REMOVED]

4. 7 CFR Part 1408 is removed.

Signed at Washington, DC, on June 9, 1989.
Vern Neppi,
Acting Administrator, Agricultural Stabilization and Conservation Service,
Executive Vice President, Commodity Credit Corporation.

[FR Doc. 89-14310 Filed 6-16-89; 8:45 am]

BILLING CODE 3410-05-M

Agricultural Marketing Service

7 CFR Part 1076

[DA-89-022]

Milk in the Eastern South Dakota Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend portions of the Eastern South Dakota Federal milk order. The provisions relate to the limits on the amount of milk not needed for fluid (bottling) use that may be moved directly from farms to nonpool manufacturing plants and still be priced under the order. Suspension of the

provisions was requested by a cooperative association representing most of the producers supplying the market to prevent uneconomic movements of milk. The proposed suspension would be for the months of August 1989 through February 1990.

DATES: Comments are due on or before July 5, 1989.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing. This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of milk in the Eastern South Dakota marketing area is being considered for August 1989 through February 1990:

In § 1076.13, paragraphs (c)(2) and (3).

All persons who want to send written data, views, or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20250-6456, by the 15th day after publication of this notice in the Federal Register. The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)). The period for filing comments is limited to 15 days

because a longer period would not provide the time needed to make the rule effective by August 1989, the first month of the period which limits diversions to 35 percent.

Statement of Consideration

Land O' Lakes Inc. (LOL), an association of producers that supplies most of the market's fluid milk needs and handles most of the market's reserve milk supplies, requested the suspension. The suspension would remove for August 1989 through February 1990 the limit on the amount of producer milk that a cooperative association or other handlers may divert from pool plants to nonpool plants. A similar suspension was in effect 1988-1989.

The order now provides that a cooperative association may divert up to 35 percent of its total member milk received at all pool plants or diverted therefrom during the months of August through February. Similarly, the operator of a pool plant may divert up to 35 percent of its receipts of producer milk (for which the operator of such plant is the handler during the month) during the months of August through February.

LOL indicates that operation of the 35-percent diversion limit during August through February would mean that at least 65 percent of its milk would have to be delivered to pool plants. LOL estimates, moreover, that only approximately 50 percent of its milk will be needed at distributing plants. The balance would have to be delivered to pool plants, unloaded, reloaded and then shipped to other plants merely to qualify the milk for pooling. The additional handling and hauling costs would be incurred by LOL with no offsetting benefits to other market participants, according to LOL. In addition, the cooperative states, additional pumpings of milk can be expected to cause deterioration in its quality.

LOL states that even in the absence of diversion limitations, the cooperative must continue to deliver at least 35 percent of its producer receipts to pool distributing plants in order to pool all milk. The cooperative affirms its commitment to supplying the total needs of Eastern South Dakota distributing plants.

List of Subjects in 7 CFR Part 1076

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1076 continues to read as follows:

Authority: Secs. 1-19, 48 stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on June 13, 1989.

J. Patrick Boyle,
Administrator.

[FR Doc. 89-14400 Filed 6-16-89; 8:45 am]

BILLING CODE 3410-02-M

7 CFR Part 1139

[DA-89-024]

Milk in the Great Basin Marketing Area; Notice of Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This notice invites written comments on a proposal to suspend indefinitely the Great Basin order's limit on the amount of milk that may be purchased by a producer-handler from pool plants or other order plants. The proposed suspension was requested by a producer-handler under the Great Basin Federal milk order.

DATES: Comments are due on or before July 5, 1989.

ADDRESSES: Comments (two copies) should be filed with the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, (202) 447-7183.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601-612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers.

This proposed rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512-1 and has been determined to be a "non-major" rule under the criteria contained therein.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), the suspension of the following provisions of the order regulating the handling of

milk in the Great Basin marketing area is being considered for an indefinite period beginning with the month of July 1989:

In § 1139.10(b)(1)(ii), the words "in an amount that is not in excess of the larger of 5,000 pounds or 5 percent of such person's Class I disposition during the month."

All persons who want to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090-6456, the 15th day after publication of this notice in the Federal Register. The period for filing comments is limited to 15 days because a longer period would not provide the time needed to complete the required procedures and include July 1989 in the suspension period. It is important that July be included in order to satisfy the demand for fluid milk products by groups and facilities with seasonal needs.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

The proposed suspension would remove indefinitely from the Great Basin milk order the limit on the amount of milk that a producer-handler may receive from pool plants or other order plants and still maintain its producer-handler status. The suspension was requested by Glen E. Brown, owner of Brown Dairy, Inc., a producer-handler located in Coalville, Utah.

Mr. Brown asserts that it is virtually impossible to manage a dairy herd in a manner that allows a producer-handler to market all of its production in a regular manner, and that removal of the limit on purchases is the only logical way to provide a producer-handler the means of marketing all of his production. Such a solution, he states, would eliminate the need to dump surplus milk onto the market and would foster orderly marketing to the consumer.

Mr. Brown points out that a producer-handler has no way of knowing the full extent of his allowable purchases until the current month is completed, limiting his ability to purchase the entire 5 percent of his route dispositions that is permitted. Further, he states, the limit makes it difficult to provide fluid milk products to groups and facilities with seasonal needs, such as boy scout camps.

The producer-handler states that the percentage of the milk distributed in the Great Basin market that is handled by producer-handlers has decreased over time, and that there are no indications that producer-handlers in the Great Basin market represent a threat of any disorderly marketing conditions. Further, he indicates that he knows of no undesirable marketing conditions or increase in number of producer-handlers in markets without limits on the amount of milk that producer-handlers are allowed to purchase.

Mr. Brown asserts that the prices for which the producer-handler sells milk are not the lowest or highest in the market, and do not adversely affect orderly marketing in the Great Basin marketing area. He states that paying the order's Class I price for raw milk would not provide producer-handlers any unusual opportunity to upset the market structure, and that prices received by producers whose milk is pooled under the order would not be negatively affected by the proposed suspension.

Finally, Mr. Brown cites the Regulatory Flexibility Act (5 U.S.C. 601-612) to argue that the requested suspension would represent a very positive action on behalf of small entities affected by the provisions of the Great Basin milk order.

List of Subjects in 7 CFR Part 1139

Milk marketing orders, Milk, Dairy products.

The authority citation for 7 CFR Part 1139 continues to read as follows:

Authority: Secs. 1-19, 48 Stat. 31, as amended; 7 U.S.C. 601-674.

Signed at Washington, DC, on June 13, 1989.

J. Patrick Boyle,

Administrator.

[FR Doc. 89-14401 Filed 6-16-89; 8:45 am]

BILLING CODE 3410-02-M

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 88-025E]

RIN 0583-AA49

Additional Methods for Destroying Trichinae

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule; extension of comment period.

SUMMARY: On April 20, 1989 (54 FR 15946), the Food Safety and Inspection Service (FSIS) published a proposed rule

to amend the Federal meat inspection regulations by amending two present trichinae destruction methods, combining two present controlled temperature drying tables, rescinding an approved trichina destruction method, and providing a new trichina destruction method for hams and pork shoulders. In addition FSIS proposed to ease drying requirements for oval sausages.

The comment period ends on June 19, 1989. FSIS has received requests to extend the comment period for an additional 60 days. FSIS is granting these requests and extending the comment period for an additional 60 days.

DATES: Comments must be received on or before August 18, 1989.

ADDRESSES: Written comments to: Policy Office, Attn: Linda Carey, FSIS Hearing Clerk, Room 3171-South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Bill Dennis, Director, Processed Products Inspection Division, Technical Services, U.S. Department of Agriculture, Washington, DC 20250, (202) 447-3840.

SUPPLEMENTARY INFORMATION: On April 20, 1989 (54 FR 15946), FSIS published a proposed rule to amend the Federal meat inspection regulations (9 CFR 318.10) by amending trichina destruction Method No. 3 for hams and pork shoulders to allow more variety in the production of country hams, including the use of ambient temperature drying. The proposed change would also combine two present controlled temperature drying tables. Further, FSIS proposed to amend trichina destruction Method No. 1 for hams and pork shoulders to allow establishments to use a drying time and temperature combination prescribed in the controlled temperature drying table in proposed Method No. 3. In addition, FSIS proposed to rescind one of the approved trichina destruction methods (Method No. 2) because establishments no longer use it. FSIS also proposed a new specific trichina destruction method for hams and pork shoulders (Method No. 4) which would permit establishments to substitute potassium chloride for salt in the curing mixture based on data substantiating that specific process. Finally, FSIS also proposed to ease the drying requirements for oval sausages found in Table 3a based on the application of basic physical principles and on data submitted by a manufacturer.

FSIS has received requests to extend the comment period so that additional

information can be gathered and submitted to FSIS. FSIS is interested in receiving additional information and is, therefore, extending the comment period for an additional 60 days.

Done at Washington, DC, on June 15, 1989.

Lester M. Crawford,

Administrator Food Safety and Inspection Service.

[FR Doc. 89-14544 Filed 6-16-89; 8:45 am]

BILLING CODE 3410-0M-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-ASW-05]

Proposed Removal of Control Zone: Corpus Christi NALF Cabaniss Field, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to remove the control zone located at Corpus Christi Navy Auxiliary Landing Field (NALF) Cabaniss Field, TX. The FAA has been informed by the Department of the Navy that all standard instrument approach procedures (SIAPs) to NALF Cabaniss Field have been canceled, thus negating the need for a control zone. The intended effect of this proposal is to release that controlled airspace no longer required due to the cancellation of the SIAPs. Coincident with this proposal would be the changing of the airport status from instrument flight rules (IFR) to visual flight rules (VFR).

DATES: Comments must be received on or before July 31, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Airspace and Procedures Branch, Air Traffic Division, Southwest Region, Docket No. 89-ASW-05, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the Office of the Regional Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Bruce C. Beard, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: (817) 624-5561.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASW-05." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Regional Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, Airspace and Procedures Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.171 of the Federal Aviation Regulations (14 CFR Part 71) by removing the control zone located at Corpus Christi NALF Cabaniss Field, TX. The FAA has been informed by the Department of the Navy that all SIAPs serving NALF Cabaniss Field have been canceled, thus negating the need for a

control zone and making this proposal necessary. Additionally, both current and future plans require NALF Cabaniss Field to be utilized strictly as a VFR landing field for military aircraft. The intended effect of this proposal is to release that controlled airspace no longer required due to the cancellation of all SIAPs serving NALF Cabaniss Field. Coincident with this proposal would be the changing of the status of NALF Cabaniss Field from IFR to VFR. Section 71.171 of Part 71 of the Federal Aviation Regulations was republished in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Control zones.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the FAA proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, January 12, 1983); 14 CFR 11.69.

§ 71.171 [Amended]

2. Section 71.171 is amended as follows: Corpus Christi NALF Cabaniss Field, TX [Remove]

Issued in Fort Worth, TX, on June 5, 1989.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 89-14448 Filed 6-16-89; 8:45 am]

BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-AWP-15]

Proposed Revision of Ukiah, CA, Transition Areas

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise transition areas at Ukiah, CA. This proposed action will provide controlled airspace for the execution of instrument approach procedures to Ukiah Municipal Airport, Ukiah, CA.

DATES: Comments must be received on or before August 11, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Attn: Manager, Airspace and Procedures Branch, AWP-530, Docket No. 89-AWP-15, Air Traffic Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009.

The official docket may be examined in the Office of the Regional Counsel, Western-Pacific Region, Federal Aviation Administration, Room 6W14, 15000 Aviation Boulevard, Lawndale, California.

An informal docket may also be examined during normal business hours at the Office of the Manager, Airspace and Procedures Branch, Air Traffic Division at the above address.

FOR FURTHER INFORMATION CONTACT:

Jon L. Semanek, Airspace and Procedures Specialist, Airspace and Procedures Branch, AWP-530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261, telephone (213) 297-0433.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit

with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-AWP-15." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Airspace and Procedures Branch, Air Traffic Division, 15000 Aviation Boulevard, Lawndale, California 90261, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Airspace and Procedures Branch, P.O. Box 92007, Worldway Postal Center, Los Angeles, California 90009. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2a which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to revise transition areas at Ukiah, CA. This proposed action will provide controlled airspace for the execution of instrument approach procedures to Ukiah Municipal Airport, Ukiah, CA. Section 71.181 of Part 71 of the Federal Aviation Regulations was published in Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures [44 FR 11034; February 26, 1979]; and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic

procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1345(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, Jan. 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Ukiah, CA [Revised]

That airspace extending upward from 700 feet above the surface within a 5-mile radius of the Ukiah Municipal Airport (lat. 39°07'34"N., long. 123°11'59"W.); and within 2.5 miles each side of the Ukiah localizer course extending from the 5-mile radius area to 26 miles north of Runway 15 threshold; that airspace extending upward from 1,200 feet above the surface within a 20-mile radius of the Mendocino, CA, VORTAC bounded on the E by the W edge of V-25, that airspace S of Ukiah bounded on the E by the W edge of V-25, on the S by lat. 38°43'30"N., on the W by long. 123°23'15"W., and that airspace between the 20- and 24-mile arcs of the Red Bluff, CA, VORTAC bounded on the NW by the NW edge of V-199 and on the SE by the SE edge of V-25; that airspace extending upward from 7,500 feet MSL between the 24- and 45-mile arcs of the Red Bluff, CA, VORTAC bounded on the NW by the NW edge of V-199 and on the SE by the SE edge of V-25; that airspace extending upward from 8,500 feet MSL bounded on the NE by a 45-mile arc of the Red Bluff VORTAC, on the SE by the SE edge of V-25, on the S and SW by the N edge of V-200 and a 20-mile arc of the Mendocino VORTAC, and on the NW by the NW edge of V-199; that airspace extending upward from 9,500 feet MSL bounded on the SE by the NW edge of V-199, on the W by the E edge of V-27, and on the N by a line 9 miles S of and parallel to the Red Bluff VORTAC 291° and Fortuna VORTAC 110° radials, excluding the airspace bounded by a line from lat. 39°32'00"N., long. 123°27'00"W., to lat. 39°32'00"N., long. 123°11'30"W., to lat. 39°21'30"N., long. 123°04'45"W., to lat. 39°18'45"N., long. 123°07'00"W., then via the

20 mile radius of the Mendocino, CA, VORTAC to lat. 39°20'30"N., long. 123°20'15"W., to lat. 39°32'00"N., long. 123°27'00"W. This 1,200 foot control area excludes the Ukiah Airport 700 foot transition area extension. That airspace extending upward from 5,300 feet MSL bounded on the E by the SW edge of V-27 and on the W by the W/SW edge of V-494.

Issued in Los Angeles, California, on June 2, 1989.

Jacqueline L. Smith,
Manager, Air Traffic Division, Western-Pacific Region.

[FR Doc. 89-14447 Filed 6-16-89; 8:45 am]
BILLING CODE 4910-13-M

14 CFR Part 71

[Airspace Docket No. 89-ASO-26]

Proposed Amendment to Transition Area, Orlando, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Orlando, FL, transition area by adding an arrival area extension northeast of the Orlando Executive Airport. This action is necessary to provide airspace protection for Instrument Flight Rules (IFR) aircraft executing the Instrument Landing System (ILS) Runway 25 Localizer approach. This procedure is being modified in order to accommodate a new ILS Standard Instrument Approach Procedure at Orlando International Airport.

DATES: Comments must be received on or before: July 21, 1989.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, telephone: (404) 763-7646.

FOR FURTHER INFORMATION CONTACT: James G. Walters, Airspace Section, Airspace and Procedures Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone: (404) 763-7646.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking

by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 89-ASO-26." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, Room 652, 3400 Norman Berry Drive, East Point, Georgia 30344, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, Airspace and Procedures Branch (ASO-530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to § 71.181 of Part 71 of the Federal Aviation Regulations (14 CFR Part 71) to amend the Orlando, FL, transition area. This action would add an arrival area extension northeast of the Orlando Executive Airport to provide airspace protection for aircraft executing the ILS Runway 25 localizer approach. Section 71.181 of Part 71 of

the Federal Aviation Regulations was republished in FAA Handbook 7400.6E dated January 3, 1989.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR 71

Aviation safety, Transition areas.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me, the Federal Aviation Administration proposes to amend Part 71 of the Federal Aviation Regulations (14 CFR Part 71) as follows:

PART 71—DESIGNATION OF FEDERAL AIRWAYS, AREA LOW ROUTES, CONTROLLED AIRSPACE, AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 1348(a), 1354(a), 1510; E.O. 10854; 49 U.S.C. 106(g) (Rev. Pub. L. 97-449, Jan. 12, 1983); 14 CFR 11.69.

§ 71.181 [Amended]

2. Section 71.181 is amended as follows:

Orlando, FL [Amended]

Following the phrase in the existing description which states, "... 14 miles northwest of the VORTAC," add the following: "within five miles each side of the ILS localizer northeast course extending from the 8.5-mile radius area to 10 miles northeast of the airport;"

Issued in East Point, Georgia, on June 5, 1989.

Don Cass,
Acting Manager, Air Traffic Division,
Southern Region.

[FR Doc. 89-14446 Filed 6-16-89; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1910 and 1926

[Docket No. H040]

RIN 1218-AA58

Occupational Exposure to 4,4'-Methylenedianiline (MDA)

AGENCY: Occupational Safety and Health Administration (OSHA), Labor.
ACTION: Proposed rule.

SUMMARY: On May 12, 1989, OSHA published a proposed rule on MDA (54 FR 20872). Among other things, the notice invited public comment and hearing requests to be postmarked no later than June 26, 1989—a date 45 days after the publication date.

Simultaneously with this release, OSHA issued a press release which indicated that this filing date was July 11, 1989—a date 60 days after the publication date. The news services used the press release as their source of information and indicated a filing date of July 11, 1989. In order to promote greater public participation in this rulemaking and avoid any confusion that might otherwise ensue, OSHA hereby extends the public participation date 15 days to July 11, 1989.

DATES: Comments and requests for a hearing concerning the proposed standard must be postmarked on or before July 11, 1989.

ADDRESSES: Comments are to be submitted to the Docket Officer, Docket No. H040, Occupational Safety and Health Administration, Room N2634, 200 Constitution Avenue, NW., Washington, DC 20210. Requests for a hearing are to be submitted to Mr. Tom Hall, OSHA, U.S. Department of Labor, Room N-3647, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, Director, Office of Public Affairs, OSHA, Rm. N-3641, 200 Constitution Avenue, NW., Washington, DC 20210, Telephone (202) 523-8151.

This document was prepared under the direction of Alan C. McMillan, Acting Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 12th day of June 1989.

Alan C. McMillan,
Acting Assistant Secretary of Labor for
Occupational Safety and Health.

[FR Doc. 89-14423 Filed 6-16-89; 8:45 am]

BILLING CODE 4510-26-M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 925

Missouri Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSMRE), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment:

SUMMARY: OSMRE is announcing receipt of a proposed amendment to the Missouri permanent regulatory program (hereinafter, the "Missouri program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment pertains to prime farmland, areas unsuitable, geology, operations plans, reclamation plans, permit conditions, fish and wildlife resource information, subsidence control, and informal assessment conferences. The amendment is intended to revise the State program to be consistent with the corresponding Federal standards.

This notice sets forth the times and locations that the Missouri program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received on or before 4:00 p.m., c.d.t. July 19, 1989. If requested, a public hearing on the proposed amendments will be held on July 14, 1989. Requests to present oral testimony at the hearing must be received by 4:00 p.m., c.d.t. on July 5, 1989.

ADDRESSES: Written comments should be mailed or hand delivered to Mr. William J. Kovacic at the address listed below.

Copies of the Missouri program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSMRE's Kansas City Field Office.

Mr. William J. Kovacic, Director, Kansas City Field Office, Office of Surface Mining Reclamation and Enforcement, 1103 Grand Avenue, Room 502, Kansas

City, MO 64106, Telephone: (816) 374-6405.

Office of Surface Mining Reclamation and Enforcement, Administrative Record Office, Room 5131, 1100 L Street, NW., Washington, DC 20240, Telephone: (202) 343-5492.

Missouri Department of Natural Resources, Land Reclamation Program, 205 Jefferson Street, P.O. Box 176, Jefferson City, MO 65102, Telephone: (314) 751-4041.

FOR FURTHER INFORMATION CONTACT: Mr. William J. Kovacic, Director, Kansas City Field Office (816) 374-6405.

SUPPLEMENTARY INFORMATION:**I. Background on the Missouri Program**

On November 21, 1980, the Secretary of Interior conditionally approved the Missouri program. General background information on the Missouri program, including the Secretary's findings, the disposition of comments, and the conditions of approval of the Missouri program can be found in the November 21, 1980, *Federal Register* (45 FR 77017). Subsequent actions concerning Missouri's program and program amendments can be found at 30 CFR 925.12, 925.15, and 925.16.

II. Proposed Amendment

By letter dated June 5, 1989, (Administrative Record No. MO-436) Missouri submitted a proposed amendment to its program pursuant to SMCRA. Missouri submitted the proposed amendment in response to a June 11, 1988, letter from OSMRE in accordance with 30 CFR Part 732 requiring certain provisions of the State program to be updated for consistency with the Federal regulations through July 1, 1983, to satisfy deficiencies noted in a July 18, 1988, issue letter from OSMRE, and to satisfy deficiencies noted in a November 29, 1988, issue letter from OSMRE.

The regulations that Missouri proposes to amend are: 10 CSR 40-2.110(1)(B)2. and 3, and 40-6.060(4)(A) 2. and 3, Interim and Permanent Program Prime Farmland Permit Requirements; 10 CSR 40-5.010(2)(C) Areas Where Mining Is Prohibited or Limited; 10 CSR 40-6.040 (5)(A) and (5)(B)1. Geology Description; 10 CSR 40-6.050, (5)(C) and 40-6.120(H)(C), Surface and Underground Operations Plan—Maps and Plans; 10 CSR 40-6.050(9) (A-E) and 40-6.120(5) (A-E), Surface and Underground Reclamation Plan—Protection of Hydrologic Balance; 10 CSR 40-6.070(12)(D), Conditions on Permits; 10 CSR 40-6.110(11) (A) and (B), Underground Fish and Wildlife Resource Information; 10 CSR 40-

6.120(2)(B)3. Underground Operations Plan—General Requirements; 10 CSR 40-6.120(11) (A)1 and (E), Underground Subsidence Control Plan; and 10 CSR 40-8.040(8)(K) Procedures for Informal Assessment Conferences.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSMRE is now seeking comment on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Missouri program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commenter's recommendations. Comments received after the time indicated under "DATES" or at locations other than the Kansas City Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under "FOR FURTHER INFORMATION CONTACT" by 4:00 p.m., c.d.t. July 5, 1989. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at a public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSMRE officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment having been heard. Persons in the audience who have been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSMRE representatives to discuss the proposed amendment may request a meeting by contacting the person listed under "FOR FURTHER

INFORMATION CONTACT." All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under "ADDRESSES." A written summary of each meeting will be made a part of the administrative record.

List of Subjects in 30 CFR Part 925

Coal Mining, Intergovernmental relations, Surface mining, Underground mining.

Date: June 9, 1989.

Raymond L. Lowrie,
Assistant Director, Western Field Operations.
[FR Doc. 89-14437 Filed 6-16-89; 8:45 am]

BILLING CODE 4310-06-M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 21

RIN 2900-AE03

Veterans Education; Implementation of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 and New GI Bill Continuation Act of 1987

AGENCY: Department of Veterans Affairs.

ACTION: Proposed regulations.

SUMMARY: These rules would implement the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 and the New GI Bill Continuation Act of 1987. The Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 contains many provisions which affect the administration of the new educational assistance program for veterans and servicemembers. These include provision for apprenticeship and other on-job training and correspondence training in this program; minor changes to the criteria which must be met in order to establish eligibility for the program; a requirement that certain veterans be counseled before choosing a program of education; and a change concerning nonduplication of Federal programs. The New GI Bill Continuation Act of 1987 makes this program permanent, and changes its name to the Montgomery GI Bill.

DATES: Comments must be received on or before July 19, 1989. Comments will be available for public inspection until July 31, 1989. It is proposed that the effective dates of the amended regulations coincide with the effective dates of the laws upon which they are based, except for § 21.7152 which is proposed to be effective 30 days after

final publication in the *Federal Register*. However, it is proposed to make the amendments to §§ 21.7000(a), 21.7040(a), 21.7042(a)(1), 21.7042(b)(1), 21.7042(d)(1), 21.7042(e)(1), and 21.7044(c)(1) retroactively effective on June 1, 1987, the effective date of the New GI Bill Continuation Act. It is proposed to make the amendments to all other sections retroactively effective on October 28, 1986, the effective date of the relevant sections of the Veterans' Benefits Improvement and Health-Care Authorization Act.

ADDRESSES: Send written comments to: Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection only in the Veterans Services Unit, room 132 of the above address, between the hours of 8 a.m. to 4:30 p.m., Monday through Friday (except holidays) until July 31, 1989.

FOR FURTHER INFORMATION CONTACT:

Alan Zoeckler, Acting Assistant Director for Education Policy and Program Administration, Vocational Rehabilitation and Education Service, Veterans Benefits Administration, (202) 233-2668.

SUPPLEMENTARY INFORMATION: Several regulations are amended in order to implement provisions of the Veterans' Benefits Improvement and Health-Care Authorization Act of 1986 (Pub. L. 99-576), and the New GI Bill Continuation Act of 1987 (Pub. L. 100-48). These provisions permit apprenticeship and on-job training and correspondence training in the Montgomery GI Bill. The provisions also prohibit receipt of benefits under two or more of the education programs administered by VA. This will result in a sharp reduction in benefits to a few veterans.

VA finds that good cause exists for making the amendments to §§ 21.7000(a), 21.7040(a), 21.7042(a)(1), 21.7042(b)(1), 21.7042(d)(1), 21.7042(e)(1), and 21.7044(c)(1), like the law which they implement, retroactively effective on June 1, 1987. Except for § 21.7152, VA finds that good cause exists for making the remainder of these regulations, like the sections of the law they implement, retroactively effective on October 28, 1986. To achieve the maximum benefit of the legislation for the affected individuals, it is necessary to implement these provisions of law as soon as possible. A delayed effective date would be contrary statutory design; would complicate administration of these provisions of law; and might result in denial of a benefit to a veteran or servicemember who is entitled by law to

it, or in the granting of a benefit to a veteran or servicemember who is not entitled to it.

VA has determined that these proposed regulations do not contain a major rule as that term is defined by E.O. 12291, entitled Federal Regulation. The regulations will not have a \$100 million annual effect on the economy, and will not cause a major increase in costs or prices for anyone. They will have no significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The Secretary of Veterans Affairs has certified that these proposed regulations, if promulgated, will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act (RFA), 5 U.S.C. 601-612. Pursuant to 5 U.S.C. 605(b), the proposed regulations, therefore, are exempt from the initial and final regulatory flexibility analyses requirements of §§ 603 and 604.

This certification can be made because the regulations affect only individuals. They will have no significant economic impact on small entities, i.e., small businesses, small private and nonprofit organizations and small governmental jurisdictions.

A Catalog of Federal Domestic Assistance number has not been assigned for the program affected by these regulations.

List of Subjects in 38 CFR Part 21

Civil rights, Claims, Education, Grant programs—education, Loan programs—education, Reporting and recordkeeping requirements, Schools, Veterans, Vocational education, Vocational rehabilitation.

Approved: March 28, 1989.

Edward J. Derwinski.

Secretary of Veterans Affairs.

38 CFR Part 21, Vocational Rehabilitation and Education, is proposed to be amended as follows.

PART 21—[AMENDED]

1. In § 21.7000, paragraphs (b) (2) and (3) and the authority citation are revised and (b) (4), (5), and (6) are added to read as follows:

§ 21.7000 Establishment of educational assistance program.

(b) . . .

(2) To extend the benefits of a higher education to qualifying men and women

who might not otherwise be able to afford such an education;

(3) To provide for vocational readjustment and to restore lost educational opportunities to those servicemen and women who served on active duty after June 30, 1985.

(4) To promote and assist the All-Volunteer Force program and the Total Force Concept of the Armed Forces by establishing a new program of educational assistance based upon service on active duty or a combination of service on active duty and in the Selected Reserve (including the National Guard) to aid in the recruitment and retention of highly qualified personnel for both the active and reserve components of the Armed Forces;

(5) To give special emphasis to providing educational assistance benefits to aid in the retention of personnel in the Armed Forces; and

(6) To enhance the nation's competitiveness through the development of a more highly educated and productive work force.

(Authority: 38 U.S.C. 1401; Pub. L. 98-525, Pub. L. 100-48)

2. In § 21.7020, paragraphs (b)(2) and (b)(23) and their authority citations are revised, paragraph (b)(25)(i) is revised, and paragraphs (b) (35) through (37) are added to read as follows:

§ 21.7020 Definitions.

(b) * * *

(2) *Attendance.* The term "attendance" means the presence of a veteran or servicemember—

(i) In the class where the approved course is being taught in which he or she is enrolled, or

(ii) At a training establishment, or

(iii) Any other place of instruction, training or study designated by the educational institution or training establishment where the veteran or servicemember is enrolled and is pursuing a program of education.

(Authority: 38 U.S.C. 1434, 1780(g))

(23) *Program of education.* A program of education—

(i) Is any unit course or subject or combination of courses or subjects which is pursued by a veteran or servicemember at an educational institution, and which is required by the Administrator of the Small Business Administration as a condition to obtaining financial assistance under the provisions of 15 U.S.C. 836; or

(ii) Is a combination of subjects or unit courses pursued at an educational institution. The combination generally is accepted as necessary to meet

requirements for a predetermined educational, professional or vocational objective. It may consist of subjects or courses which fulfill requirements for more than one objective if all objectives pursued are generally recognized as being related to a single career field; and

(iii) Includes an approved full-time program of apprenticeship or of other on-job training.

(Authority: 38 U.S.C. 1402(3), 1652(b); Pub. L. 98-525, Pub. L. 99-576)

(25) *Pursuit.* (i) The term "pursuit" means to work, while enrolled, toward the objective of a program of education. This work must be in accordance with approved institutional policy and regulations, and applicable criteria of Title 38, United States Code; must be necessary to reach the program's objective; and must be accomplished through—

(A) Resident courses (including teacher training courses and similar courses which VA considers to be resident training),

(B) Independent study courses,

(C) Correspondence courses,

(D) An apprenticeship or other on-job training program,

(E) A graduate program of research in absentia, or

(F) Medical-dental internships and residencies, nursing courses and other medical-dental specialty courses.

(35) *Established charge.* The term "established charge" means the lesser of—

(i) The charge for the correspondence course or courses determined on the basis of the lowest extended time payment plan offered by the educational institution and approved by the appropriate State approving agency, or

(ii) The actual cost to the servicemember or veteran.

(Authority: 38 U.S.C. 1434, 1786(a)(1))

(36) *Date of affirmance.* The term "date of affirmance" means the date (after the expiration of ten days after a veteran or servicemember signs an enrollment agreement for a correspondence course), on which the veteran or servicemember signs and submits to VA a written agreement affirming the enrollment agreement.

(Authority: 38 U.S.C. 1434, 1786)

(37) *Training establishment.* The term "training establishment" means any establishment providing apprentice or other on-job training, including those under the supervision of a college or university or any State department of education, or any State apprenticeship agency or any State board of vocational

education, or any joint apprenticeship committee, or the Bureau of Apprenticeship and Training established in accordance with 29 U.S.C. Chapter 4C, or any agency of the Federal Government authorized to supervise such training.

(Authority: 38 U.S.C. 1434, 1787)

3. In § 21.7040, paragraph (a) is revised to read as follows:

§ 21.7040 Eligibility for basic educational assistance.

(a) Some individuals who first become members of the Armed Forces or who first enter on active duty as a member of the Armed Forces after June 30, 1985, and

4. In § 21.7042, paragraphs (a)(1) introductory text, (a)(5)(iii) and its authority citation, (b)(1) introductory text, (c) and its authority citation, (d)(1)(i), and (e)(1) are revised to read as follows:

§ 21.7042 Basic eligibility requirements.

(a) * * *

(1) The individual must after June 30, 1985, either—

(5) * * *

(iii) For convenience of the Government—

(A) After completing at least 20 continuous months of active duty if his or her initial obligated period of active duty is less than three years, or

(B) After completing 30 continuous months of active duty if his or her initial obligated period of active duty is at least three years.

(Authority: 38 U.S.C. 1411; Pub. L. 98-525, Pub. L. 99-576)

(b) * * *

(1) The individual must, after June 30, 1985, either—

(c) *Dual eligibility.* (1) An individual who has established eligibility under paragraph (a) of this section through serving at least two years of continuous active duty of an initial obligated period of active duty of less than three years, as provided in paragraph (a)(2) of this section, may attempt to establish eligibility under paragraph (b) of this section through service in the Selected Reserve. If this veteran fails to establish eligibility under paragraph (b) of this section, he or she will retain eligibility established under paragraph (a) of this section.

(2) An individual must elect whether or not he or she wishes service in the Selected Reserve to be credited towards establishing eligibility under 38 U.S.C. Chapter 30 or under 10 U.S.C. Chapter 106 when—

(i) The individual is—

(A) A veteran who has established eligibility for basic educational assistance through meeting the provisions of paragraph (b) of this section, and

(B) Also a reservist who has established eligibility for benefits under 10 U.S.C. Chapter 106 through meeting the requirements of § 21.7540 of this part, or

(ii) The individual is a member of the National Guard or Air National Guard who has established eligibility for basic educational assistance provided under 38 U.S.C. Chapter 30 through activation under a provision of law other than 32 U.S.C. 316, 502, 503, 504 or 505.

(3) A veteran may revoke his or her election provided he or she has not negotiated a check for benefits under either 38 U.S.C. Chapter 30 or 10 U.S.C. Chapter 106. Once the veteran has negotiated a check under either chapter, the election is irrevocable.

(Authority: 38 U.S.C. 1433(c), 10 U.S.C. 2132; Pub. L. 98-525, Pub. L. 99-576)

(d) * * *

(1) * * *

(i) After June 30, 1985, either—

(e) * * *

(1) An individual who, after June 30, 1985, first becomes a member of the Armed Forces or first enters on active duty as a member of the Armed Forces, may elect not to receive educational assistance under 38 U.S.C. Chapter 30. This election must be made at the time the individual initially enters on active duty as a member of the Armed Forces. An individual who makes such an election is not eligible for educational assistance under 38 U.S.C. Chapter 30.

5. In § 21.7044, paragraph (a)(5)(vi) is revised, paragraph (a)(6) is added, the authority citation at the end of paragraph (a) is revised, and paragraph (c)(1)(i) introductory text is revised to read as follows:

§ 21.7044 Persons with 38 U.S.C. Chapter 34 eligibility.

(a) * * *

(5) * * *

(vi) Be released from active duty for further service in a reserve component of the Armed Forces after service on active duty characterized by the

Secretary concerned as honorable service.

(6) The individual must have been on active duty on October 19, 1984, and without a break in service since October 19, 1984.

(Authority: 38 U.S.C. 1411; Pub. L. 98-525, Pub. L. 99-145, Pub. L. 99-576)

(c) * * *

(1) * * *

(i) After June 30, 1985, either—

6. In § 21.7050, paragraphs (b) and (c) are redesignated as paragraphs (c) and (d) respectively, the introductory text of paragraph (a) and its authority citation are revised and new paragraph (b) is added to read as follows:

§ 21.7050 Ending dates of eligibility.

(a) *Ten-year time limitation.* Except as provided in paragraph (b) of this section and in § 21.7051 of this part VA will not provide basic educational assistance or supplemental educational assistance to a veteran or servicemember after the later of the following:

(Authority: 38 U.S.C. 1431 (a) and (e); Pub. L. 98-525, Pub. L. 100-323)

(b) *Reduction of ten-year eligibility period.* A veteran who had eligibility for educational assistance under 38 U.S.C. Chapter 34 and who is eligible for educational assistance under 38 U.S.C. Chapter 30 as provided in § 21.7044 of this part shall have his or her ten-year period of eligibility reduced by the number of days he or she was not on active duty during the period beginning on January 1, 1977, and ending on October 18, 1984.

(Authority: 38 U.S.C. 1431(e); Pub. L. 100-323)

7. In § 21.7076, the introductory text and the authority citation for paragraph (a) are revised, paragraph (b)(1) introductory text is revised, and paragraphs (b)(3) through (b)(6) are added and the authority citation at the end of paragraph (b) is revised to read as follows:

§ 21.7076 Entitlement charges.

(a) *Overview.* VA will make charges against entitlement as stated in this section. Charges will be made against the entitlement the veteran or servicemember has to educational assistance under 38 U.S.C. Chapter 30. After December 31, 1989, there will be a charge (for record purposes only) against the entitlement, if any, which he or she may have under 38 U.S.C. Chapter 34. The charges against entitlement under 38 U.S.C. Chapter 34 will not count against the 48 months of

total entitlement under both 38 U.S.C. Chapters 30 and 34 to which the veteran or servicemember may be entitled. (See § 21.4020(a) of this part.) Except for those pursuing correspondence training or apprenticeship or other on-job training, charges are based upon the principle that a veteran or servicemember who trains full time for one day should be charged one day of entitlement. The provisions of this section apply to—

(Authority: 38 U.S.C. 1413; Pub. L. 98-525, Pub. L. 99-576)

(b) *Determining entitlement charge.*

(1) Except for those pursuing correspondence training or apprenticeship or other on-job training VA will make a charge against entitlement—

(3) For each month that a veteran is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training VA will make a charge against chapter 30 entitlement of—

(i) .75 of a month in the case of payments made during the first six months of the veteran's pursuit of the program of apprenticeship or other on-job training,

(ii) .55 of a month in the case of payments made during the second six months of the veteran's pursuit of the program of apprenticeship or other on-job training, and

(iii) .35 of a month in the case of payments made following the first twelve months of the veteran's pursuit of apprenticeship or other on-job training.

(4) For each month that a veteran is paid a monthly educational assistance allowance while undergoing apprenticeship or other on-job training VA will make a record purpose charge against chapter 34 entitlement, if any, of one month for each month of benefits paid to him or her.

(5) When a veteran or servicemember is pursuing a program of education by correspondence, VA will make a charge against entitlement for each payment made to him or her. The charge—

(i) Will be made in months and decimal fractions of a month, and

(ii) Will be determined by dividing the amount of the payment by an amount equal to the rate of educational assistance otherwise applicable to him or her for full-time training (disregarding in the case of a servicemember the cost of course comparison).

(6) When a veteran or servicemember is pursuing a program of education

partly in residence and partly by correspondence, VA will make a charge against entitlement—

(i) For the residence portion of the program as provided in paragraphs (b) (1) and (2) of this section, and

(ii) For the correspondence portion of the program as provided in paragraph (b)(5) of this section.

(Authority: 38 U.S.C. 1432(c), 1434(c); Pub. L. 99-576)

8. In § 21.7100, paragraphs (b) and (d) and their authority citations are revised to read as follows:

§ 21.7100 Counseling.

(b) *Required counseling.* (1) In any case in which VA has rated the veteran as being incompetent, the veteran must be counseled before selecting a program of education or training. The requirement that counseling be provided is met when—

(i) The veteran has had one or more personal interviews with the counselor;

(ii) The counselor has jointly developed with the veteran recommendations for selecting a program; and

(iii) These recommendations have been reviewed with the veteran.

(2) The veteran may follow the recommendations developed in the course of counseling, but is not required to do so.

(3) VA will take no further action on a veteran's application for assistance under 38 U.S.C. Chapter 30 when he or she—

(i) Fails to report;

(ii) Fails to cooperate in the counseling process; or

(iii) Does not complete counseling to the extent required under paragraph (b)(1) of this section.

(4) Counseling is not required for any other individual eligible for educational assistance established under 38 U.S.C. Chapter 30.

(Authority: 38 U.S.C. 1432, 1663; Pub. L. 98-525, Pub. L. 99-576)

(d) *Provision of counseling.* VA shall provide counseling as needed for the purposes identified in paragraphs (a) and (c) of this section upon request of the individual. In addition, VA shall provide counseling as needed for the purposes identified in paragraph (b) of this section following the veteran's request for counseling, the veteran's initial application for benefits or any communication from the veteran or guardian indicating that the veteran wishes to change his or her program. VA shall take appropriate steps (including

individual notification where feasible) to acquaint all participants with the availability and advantages of counseling services.

(Authority: 38 U.S.C. 1434, 1663; Pub. L. 98-525, Pub. L. 99-576)

9. Section 21.7103 is revised and a cross-reference is added to read as follows:

§ 21.7103 Travel expenses.

(a) *Travel for veterans and servicemembers.* (1) Except as provided in paragraph (a)(2) of this section, VA shall determine and pay the necessary cost of travel to and from the place of counseling for individuals who are required to receive counseling if—

(i) The VA determines that the individual is unable to defray the cost based upon his or her annual declaration and certification; or

(ii) The individual has a compensable service-connected disability.

(2) VA shall not pay for the travel expenses for a veteran who is not residing in a State.

(Authority: 38 U.S.C. 111)

(b) *Travel for attendants.* (1) VA will authorize payment of travel expenses for an attendant while the individual is traveling when—

(i) The individual, because of a severe disability, requires the services of an attendant when traveling, and

(ii) VA is paying the necessary cost of the individual's travel on the basis of the criteria stated in paragraph (a) of this section.

(2) VA will not pay the attendant a fee for travel expenses if he or she is a relative as defined in § 21.374 of this part.

(Authority: 38 U.S.C. 111)

(c) *Payment of travel expenses prohibited for most veterans.* VA shall not pay for any costs of travel to and from the place of counseling for anyone who requests counseling under 38 U.S.C. Chapter 30.

(Authority: 38 U.S.C. 111)

Cross-Reference: § 21.374, Authorization for travel of attendants.

10. In § 21.7112, the introductory text of paragraph (a) and the authority citation at the end of paragraph (a) are revised to read as follows:

§ 21.7112 Programs of education combining two or more types of courses

(a) *Concurrent enrollment.* When a veteran or servicemember cannot successfully schedule his or her complete program at one educational institution, VA may approve a program

of concurrent enrollment. When requesting such a program the veteran, or servicemember must show that his or her complete program of education is not available at the educational institution in which he or she will pursue the major portion of his or her program (the primary educational institution), or that it cannot be scheduled successfully within the period in which he or she plans to complete his or her program. When the standards for measurement of the courses pursued concurrently in the two educational institutions are different, the concurrent enrollment shall be measured by converting the measurement of courses being pursued at the second educational institution under the standard applicable to such institution to its equivalent measurement under the standard required for full-time courses applicable to the primary educational institution. For a complete discussion of measurement of concurrent enrollments see § 21.7172 of this part.

(Authority: 38 U.S.C. 1434, 1788)

11. In § 21.7122, paragraph (e)(6) is removed and paragraph (e)(7) is redesignated as new paragraph (e)(6); paragraph (e)(5) and the authority citation for paragraph (e) are revised to read as follows:

§ 21.7122 Courses precluded.

(e) * * *

(5) A course from which the veteran or servicemember withdrew without mitigating circumstances, or

(Authority: 38 U.S.C. 1402(3), 1434, 1772(a), 1780(a))

12. In § 21.7131, paragraph (c) and its authority citation are revised to read as follows:

§ 21.7131 Commencing dates.

(c) *Certification by educational institution or training establishment—course does not lead to a standard college degree.* (1) When a veteran or servicemember enrolls in a course which does not lead to a standard college degree and which is offered in residence, the commencing date of the award of educational assistance shall be the first date of the veteran's or servicemember's class attendance.

(2) When a veteran or servicemember enrolls in a course which is offered by correspondence, the commencing date of the award of educational assistance shall be the later of—

(i) The date the first lesson was sent,

or

(ii) The date of affirmance.

(3) When a veteran enrolls in a program of apprenticeship or other on-job training, the commencing date of the award of educational assistance shall be the first date of employment in the training position.

(Authority: 38 U.S.C. 1414, 1423; Pub. L. 98-525, Pub. L. 99-576)

13. In § 21.7135, paragraph (e)(2)(ii) is revised, paragraphs (e) (3) and (4) are added, and the authority citation for paragraph (e) is revised to read as follows:

§ 21.7135 Discontinuance dates.

(e) * * *

(2) * * *

(ii) Independent study: official date of change in status under the practices of the educational institution.

(3) When a veteran or servicemember withdraws from a correspondence course, VA will terminate educational assistance effective the date the last lesson is serviced.

(4) When a veteran or servicemember withdraws from an apprenticeship or other on-job training, VA will terminate educational assistance effective the date of last training.

(Authority: 38 U.S.C. 1434, 1780(a); Pub. L. 98-525, Pub. L. 99-576)

14. Section 21.7136 is revised to read as follows:

§ 21.7136 Rates of payment of basic educational assistance.

(a) *Rates.* (1) Except as otherwise provided in this section and § 21.7137 of this part, the monthly rate of basic educational assistance payable to a veteran is the rate stated in this table. The rates in this table also apply to a veteran who formerly was eligible under 38 U.S.C. Chapter 34, and who has received a record-purpose charge against his or her entitlement under that chapter equal to the entitlement he or she had remaining on December 31, 1989.

Training	Monthly rate
Full time.....	\$300
¾ time.....	225
½ time.....	150
Less than ½ but more than:	
¼ time.....	150 See § 21.7136(d)
¼ time or less.....	75 See § 21.7136(d)

(Authority: 38 U.S.C. 1415(c); Pub. L. 98-525)

(2) Except as otherwise provided in this section, the monthly rate of basic educational assistance payable to a veteran who is pursuing an apprenticeship or other on-job training is the rate stated in this table. The rates in this table also apply to a veteran pursuing such training who formerly was eligible under 38 U.S.C. Chapter 34, and who has received a record-purpose charge against his or her entitlement under that chapter equal to the entitlement he or she had remaining on December 31, 1989.

Training period	Monthly rate
First 6 months of pursuit of program.....	\$225.00
Second 6 months of pursuit of program.....	165.00
Remaining pursuit of program.....	105.00

(Authority: 38 U.S.C. 1432(c); Pub. L. 99-576)

(b) *Rates for veterans whose initial obligated period of active duty is less than three years.* (1) Except as otherwise provided in this section, the monthly rate of basic educational assistance payable to a veteran whose initial obligated period of active duty is less than three years and who has not served and is not committed to serve in the Selected Reserve for a period of four years is the amount stated in this table.

Training	Monthly rate
Full time.....	\$250.00
¾ time.....	187.50
½ time.....	125.00
Less than ½ but more than:	
¼ time.....	125.00 See § 21.7136(d)
¼ time or less.....	62.50 See § 21.7136(d)

(Authority: 38 U.S.C. 1415(c); Pub. L. 98-525)

(2) Except as otherwise provided in this section, the monthly rate of educational assistance payable to a veteran whose initial obligated period of active duty is less than three years and who has not served and is not committed to serve in the Selected Reserve for a period of four years, and who is pursuing an apprenticeship or other on-job training is the rate stated in this table.

Training period	Monthly rate
First 6 months of pursuit of program.....	\$187.5
Second 6 months of pursuit of program.....	137.50
Remaining pursuit of program.....	67.50

(Authority: 38 U.S.C. 1432(c); Pub. L. 99-576)

(c) *Increase in basic educational assistance rates ("kicker").* The Secretary concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a critical shortage of personnel or for which it is difficult to recruit. The amount of the increase is set by the Secretary concerned, but—

(1) For individuals other than those pursuing an apprenticeship or other on-job training program, it may not exceed—

(i) \$400 per month for full-time training,

(ii) \$300 per month for three-quarter-time training,

(iii) \$200 per month for one-half-time training or for training which is less than one-half, but more than one-quarter-time, or

(iv) \$100 per month for one-quarter-time training or less.

(2) For individuals pursuing an apprenticeship or other on-job training it may not exceed—

(i) \$300 per month during the first six months of training,

(ii) \$220 per month during the second six months of training, and

(iii) \$140 per month during the remaining months of training.

(Authority: 38 U.S.C. 1415(c), 1432(c))

15. In § 21.7137, paragraphs (a), (b), and (d) and their authority citations are revised to read as follows:

§ 21.7137 Rates of payment of basic educational assistance for individuals with remaining entitlement under 38 U.S.C. Chapter 34.

(a) *Minimum rates.* Effective January 1, 1990, VA will pay basic educational assistance at an increased rate to veterans who were eligible for educational assistance allowance under 38 U.S.C. Chapter 34. The veterans must establish eligibility for educational assistance under § 21.7044 of this part, and must still have remaining entitlement under 38 U.S.C. Chapter 34.

(1) Except as otherwise provided in this section, the monthly rate of basic educational assistance will be the rate taken from the following table.

Training	Monthly rate			
	No dependents	One dependent	Two dependents	Additional for each additional dependent
Full time.....	\$488.00	\$524.00	\$555.00	\$16.00
¾ time.....	366.50	393.00	416.50	12.00
½ time.....	244.00	262.00	277.50	8.50
Less than ½ but more than: ¼ time.....	244.00	(1)	(1)	(1)
¼ time or less.....	122.00	(1)	(1)	(1)

1 See § 21.7137(b).

(Authority: 38 U.S.C 1415(c); Pub. L. 98-525)

(2) For veterans pursuing an apprenticeship or other on-job training: the monthly rate of basic educational assistance will be the rate taken from the following table.

Training period	Monthly rate			
	No dependents	One dependent	Two dependents	Additional amount for additional dependents
1st 6 mos. of pursuit of program.....	\$327.75	\$340.13	\$351.00	\$5.25
2nd 6 mos. of pursuit of program.....	221.38	230.73	238.43	3.85
3rd 6 mos. of pursuit of program.....	128.80	134.93	139.65	2.45
Remaining pursuit of program.....	116.90	122.68	127.93	2.45

(Authority: 38 U.S.C. 1415(c), 1434, 1786(a)(2); Pub. L. 99-576)

(b) *Less than one-half-time training.* The monthly rate for a veteran who is pursuing a course on a less than one-half-time basis is the lesser of—

(1) The monthly rate stated in paragraph (a)(1) of this section, or

(2) The monthly rate of the cost of the course.

(Authority: 38 U.S.C. 1432; Pub. L. 98-525, Pub. L. 99-576)

(d) *Increase in basic educational assistance rates ("kicker").* The Secretary concerned may increase the amount of basic educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a

critical shortage of personnel or for which it is difficult to recruit. The increase may not be applied to a servicemember whose monthly rate is determined by paragraph (c)(1) of this section, but it can serve to raise the ceiling on monthly rates stated in paragraphs (b)(1) and (c)(2) of this section. The amount of the increase is set by the Secretary concerned, but—

(1) For individuals other than those pursuing an apprenticeship or other on-job training program, it may not exceed—

(i) \$400 per month for full-time training,

(ii) \$300 per month for three-quarter-time training,

(iii) \$200 per month for one-half-time training or for training which is less than one-half but more than one-quarter-time, or

(iv) \$100 per month for one-quarter-time training or less.

(2) For individuals pursuing an apprenticeship or other on-job training it may not exceed—

(i) \$300 per month for the first six months of training,

(ii) \$220 per month for the second six months of training, and

(iii) \$140 per month for the remaining months of training.

(Authority: 38 U.S.C. 1415, 1432)

16. In § 21.7138, paragraphs (a) and (b) and their authority citations and the heading for paragraph (c) are revised to read as follows:

§ 21.7138 Rates of supplemental educational assistance.

(a) *Rates of supplemental educational assistance for veterans.* (1) Except for a veteran pursuing an apprenticeship or other on-job training program, the rate of supplemental educational assistance payable to a veteran is the rate stated in this table.

Training	Monthly rate
Full time.....	\$300
¾ time.....	225
½ time.....	150
Less than ½ but more than: ¼ time.....	150 See § 21.7138 (c)
¼ time or less.....	75 See § 21.7138 (c)

(Authority: 38 U.S.C 1415(c); Pub. L. 98-525)

(2) For a veteran pursuing apprenticeship or other on-job training the rate of supplemental educational assistance payable to a veteran is as provided in this table.

Training period	Monthly rate
First 6 months of pursuit of program.....	\$225.00
Second 6 months of pursuit of program.....	165.00
Remaining pursuit of program.....	105.00

(Authority: 38 U.S.C. 1415(c), 1432(c); Pub. L. 99-576)

(b) *Increase in supplemental educational assistance rates ("kicker").* The Secretary concerned may increase the amount of supplemental educational assistance payable to an individual who has a skill or specialty which the Secretary concerned designates as having a critical shortage of personnel or for which it is difficult to recruit. The amount of the increase is set by the Secretary concerned, but—

(1) For an individual other than one pursuing an apprenticeship or other on-job training it may not exceed—

(i) \$300 per month for full-time training,

(ii) \$225 per month for three-quarter-time training,

(iii) \$150 per month for one-half-time training and for training which is less than one-half-time, but more than one-quarter-time, or

(iv) \$75 per month for one-quarter-time training or less.

(2) For an individual pursuing an apprenticeship or other on-job training it may not exceed

(i) \$225 per month for the first six months of training,

(ii) \$165 per month for the second six months of training, and

(iii) \$105 per month for the remaining months of training.

(Authority: 38 U.S.C. 1422(b), 1432(c))

(c) *Rates of supplemental educational assistance for less than one-half-time training and for servicemembers.*

17. In § 21.7139, the introductory text for paragraph (a) and the authority citation for paragraph (a) are revised, and paragraphs (i) and (j) are added to read as follows:

§ 21.7139 Conditions which result in reduced rates.

(a) *Absences.* A veteran or servicemember enrolled in a course not leading to a standard college degree (other than one to which § 21.4270(a), footnote 6 applies) will have his or her educational assistance reduced for any day of absence which exceeds the maximum allowable absences permitted in this paragraph.

(Authority: 38 U.S.C. 1434, 1780; Pub. L. 99-576)

(i) *Payment for correspondence courses.* The amount of payment due a veteran or servicemember who is pursuing a correspondence course or the correspondence portion of a correspondence-residence course is 55 percent of the established charge which the educational institution requires nonveterans to pay for the lessons that the veteran or servicemember has had completed and serviced and for which payment is due.

(Authority: 38 U.S.C. 1434, 1786(a)(2))

(j) *Failure to work sufficient hours of apprenticeship and other on-job training.* (1) For any month in which an eligible veteran pursuing an apprenticeship or other on-job training program fails to complete 120 hours of training the VA shall reduce the rates specified in §§ 21.7136(a)(2), 21.7136(b)(2) and 21.7137(b)(2) of this part proportionally. In this computation the VA shall round the number of hours worked to the nearest multiple of eight.

(2) For the purpose of this paragraph "hours worked" include only—

(i) The training hours the veteran worked, and

(ii) All hours of the veteran's related training which occurred during the standard workweek and for which the veteran received wages. (See § 21.4270(b), footnote 5 as to the requirements for full-time training.)

(Authority: 38 U.S.C. 1434, 1787(b)(3))

18. In § 21.7140, paragraph (b) is redesignated as paragraph (d); paragraph (c) is redesignated as paragraph (e); paragraph (a) is revised; new paragraphs (b), (c), and (f) are added to read as follows:

§ 21.7140 Certifications and release of payments.

(a) *Advance payments.* (1) VA shall make payments of educational assistance in advance when—

(i) The veteran or servicemember has specifically requested such a payment;

(ii) The educational institution at which the veteran or servicemember is accepted or enrolled has agreed to, and can satisfactorily carry out the provisions of 38 U.S.C. 1780(d)(4)(B) and (C) and (5) pertaining to receipt, delivery or return of checks and certifications of delivery and enrollment;

(iii) The Director of the VA field facility of jurisdiction has not acted under paragraph (a)(4) of this section to prevent advance payments being made to the veteran's or servicemember's educational institution;

(iv) There is no evidence in the veteran's or servicemember's claim file showing that he or she is not eligible for an advance payment;

(v) The period for which the veteran or servicemember has requested a payment either is preceded by an interval of nonpayment for 30 days or more or is the beginning of a school year; and

(vi) The educational institution or the veteran has submitted the certification required by § 21.7151 of this part.

(2) The amount of advance payment is the educational assistance for the month or fraction thereof in which the term or course will begin plus the educational assistance for the following month.

(3) Advance payments will be mailed to the educational institution for delivery to the veteran or servicemember. The educational institution shall not deliver the advance payment check more than 30 days in advance of the first date of the period for which the advance payment is made.

(4) The Director of the VA field facility of jurisdiction may direct that advance payments not be made to individuals attending an educational institution if—

(i) The educational institution demonstrates an inability to comply with the requirements of paragraph (a)(3) of this section, or

(ii) The educational institution fails to provide adequately for the safekeeping of the advance payment checks before delivery to the veteran or servicemember or return to VA, or

(iii) The Director determines, based on compelling evidence, that the educational institution has demonstrated its inability to discharge its responsibilities under the advance payment program.

(Authority: 38 U.S.C. 1434, 1780(d))

(b) *Lump-sum payments.* (1) A certification of enrollment from an educational institution will be sufficient to release payment of educational assistance to a veteran or servicemember for an entire quarter, semester or term no later than the last day of the month following the month in which VA received the certification when the veteran or servicemember is training on a less than half-time basis.

(2) VA will make lump sum payments of educational assistance when the veteran's or servicemember's enrollment or attendance is first certified after he or she completes his or her enrollment period.

(Authority: 38 U.S.C. 1434, 1780(f))

(c) *Other payments.* An individual must be pursuing a program of

education in order to receive payments. To ensure that this is the case the provisions of this paragraph must be met.

(1) VA will pay educational assistance to a veteran or servicemember (other than one pursuing a program of apprenticeship or other on-job training or a correspondence course, one who qualifies for an advance payment or one who qualifies for a lumpsum payment) only after—

(i) The educational institution has certified his or her enrollment as provided in § 21.7152 of this part;

(ii) VA has received from the individual a verification of the enrollment; and

(iii) In the case of a veteran or servicemember pursuing a course not leading to a standard college degree, other than one to which § 21.4270(a), footnote 6 applies, a report from the veteran or servicemember of each day of absence from scheduled attendance. The report will be endorsed by the educational institution. If the veteran is enrolled concurrently in more than one educational institution, the primary educational institution will endorse the report. For a discussion of each of these certifications, see §§ 21.7152 and 21.7154 of this part.

(2) VA will pay educational assistance to a veteran pursuing a program of apprenticeship or other on-job training only after—

(i) The training establishment has certified his or her enrollment in the training program as provided in § 21.7152 of this part; and

(ii) VA has received from the veteran and the training establishment a certification of hours worked.

(3) VA will pay educational assistance to a veteran or servicemember who is pursuing a correspondence course only after—

(i) The educational institution has certified his or her enrollment;

(ii) VA has received from the veteran or servicemember a certification as to the number of lessons completed and serviced by the educational institution, and

(iii) VA has received from the educational institution a certification or an endorsement on the veteran's or servicemember's certificate, as to the number of lessons completed by the veteran or servicemember and serviced by the educational institution.

(Authority: 38 U.S.C. 1434, 1780(b))

(f) *Limitations on payments.* VA will not apportion educational assistance.

(Authority: 38 U.S.C. 1434, 1780)

19. In § 21.7142, paragraph (a) and its authority citation are revised to read as follows:

§ 21.7142 Nonduplication of educational assistance.

(a) *Payments of educational assistance shall not be duplicated.* An individual, entitled to educational assistance under 38 U.S.C. Chapter 34, who establishes entitlement under 38 U.S.C. Chapter 30, shall not be eligible to receive educational assistance under 38 U.S.C. Chapter 30 before January 1, 1990. An individual who is entitled to educational assistance under 38 U.S.C. Chapter 30 and any of the provisions of law listed in this paragraph must elect which benefit he or she will receive for the program of education he or she wishes to pursue. The provisions of law are:

- (1) 38 U.S.C. Chapter 31,
- (2) 38 U.S.C. Chapter 32,
- (3) 38 U.S.C. Chapter 35,
- (4) 10 U.S.C. Chapter 106,
- (5) 10 U.S.C. Chapter 107, and
- (6) The Hostage Relief Act of 1980, (Pub. L. 96-499 and 5 U.S.C. 5561 note).

(Authority: 38 U.S.C. 1433)

20. Section 21.7145 is added to read as follows:

§ 21.7145 Veteran-student services.

(a) *Eligibility.* Veterans pursuing full-time programs of education or training under chapter 30 are eligible to receive a work-study allowance.

(Authority: 38 U.S.C. 1434, 1685; Pub. L. 99-576)

(b) *Selection criteria.* Whenever feasible VA will give priority in selection for this allowance to veterans with service-connected disabilities rated at 30 percent or more. The VA shall consider the following additional selection criteria:

- (1) Need of the veteran to augment his or her educational assistance allowance;
- (2) Availability to the veteran of transportation to the place where his or her services are to be performed;
- (3) Motivation of the veteran; and
- (4) Compatibility of the work assignment to the veteran's physical condition.

(Authority: 38 U.S.C. 1434, 1685; Pub. L. 99-576)

(c) *Utilization.* Veteran-student services may be utilized in connection with—

- (1) Outreach services programs as carried out under the supervision of a VA employee;
- (2) Preparation and processing of necessary papers and other documents

at educational institutions or regional offices or facilities of VA;

- (3) Hospital and domiciliary care and medical treatment at VA facilities; and
- (4) Any other appropriate activity of VA.

(Authority: 38 U.S.C. 1434, 1685; Pub. L. 99-576)

(d) *Rate of payment.* (1) In return for the veteran's agreement to perform services for VA totaling 250 hours during an enrollment period, VA will pay an allowance in an amount equal to the higher of—

- (i) The hourly minimum wage in effect under section 6(a) of the Fair Labor Standards Act of 1938 times 250, or
 - (ii) \$625.
- (2) VA will pay proportionately less to veterans who agree to perform a lesser number of hours of services.

(Authority: 38 U.S.C. 1434, 1685; Pub. L. 99-576)

(e) *Payment in advance.* VA will pay in advance an amount equal to 40 percent of the total amount payable under the contract.

(Authority: 38 U.S.C. 1434, 1685; Pub. L. 99-576)

(f) *Veteran reduces rate of training.* In the event the veteran ceases to be a full-time student before completing an agreement, the veteran, with the approval of the Director of the VA field facility, or designee, may be permitted to complete the portions of an agreement in the same or immediately following term, quarter or semester in which the veteran ceases to be a full-time student.

(Authority: 38 U.S.C. 1434, 1685; Pub. L. 99-576)

(g) *Veteran terminates training.* (1) If the veteran terminates all training before completing an agreement, the Director of the VA field facility or designee—

- (i) May permit him or her to complete the portion of the agreement represented by the money VA has advanced the veteran for which he or she has performed no service, but
 - (ii) Will not permit him or her to complete that portion of an agreement for which no advance has been made.
- (2) The veteran must complete the portion of an agreement in the same or immediately following term, quarter or semester in which the veteran terminates training.

(Authority: 38 U.S.C. 1434, 1685; Pub. L. 99-576)

(h) *Indebtedness for unperformed service.* (1) If the veteran has received an advance for hours of unperformed service, and VA has evidence that he or

she does not intend to perform that service, the advance—

- (i) Will be a debt due the United States, and
- (ii) Will be subject to recovery the same as any other debt due the United States.

(2) The amount of indebtedness for each hour of unperformed service shall equal the hourly wage that formed the basis for the contract.

(Authority: 38 U.S.C. 1434, 1685; Pub. L. 99-576)

(i) *Survey.* VA will conduct an annual survey of its regional offices to determine the number of veterans whose services can be utilized effectively.

(Authority: 38 U.S.C. 1434, 1685; Pub. L. 99-576)

21. Section 21.7151 is added to read as follows:

§ 21.7151 Advance payment certifications.

All certifications required by this paragraph shall be in a form and shall contain such information as specified by the Secretary.

(a) *Certification needed before an advance payment can be made.* In order for a veteran or service member to receive an advance payment of educational assistance, the application or other document must be signed by the veteran or the enrollment certification must be signed by an authorized official of the educational institution.

(Authority: 38 U.S.C. 1434, 1780(d))

(b) *Advance payments.* All verifications required by this paragraph shall be in a form and shall contain such information as specified by the Secretary.

(1) For each individual receiving an advance payment an educational institution must—

- (i) Verify enrollment for the individual; and
- (ii) Verify the delivery of the advance payment check to the individual.

(2) Once the educational institution has initially verified the enrollment of the individual, the individual, not the educational institution, must make subsequent verifications in order to release further payment for that enrollment as provided in § 21.7154(a) of this part.

(Authority: 38 U.S.C. 1434, 1780(d))

22. In § 21.7152, paragraph (a) and its authority citation are revised to read as follows:

§ 21.7152 Certification of enrollment.

(a) Except as provided in § 21.7151 of this part, the educational institution must certify the veteran's or servicemember's enrollment before he or she may receive educational assistance. This certification shall be in a form and shall contain such information as specified by the Secretary.

(Authority: 38 U.S.C. 1432, 1434, 1682(g), 1780, 1787)

23. Sections 21.7154 and 21.7156 are revised to read as follows:

§ 21.7154 Pursuit and absences.

As stated in § 21.7140(a) of this part except when an individual is pursuing a correspondence course an individual must submit a verification to VA each month of his or her enrollment during the period for which the individual is to be paid. This verification shall be in a form specified by the Secretary.

(a) *Requirements for all veterans and servicemembers.* (1) The monthly verification for all veterans and servicemembers will include a report on the following items when applicable:

- (i) Actual attendance,
- (ii) Continued enrollment in and pursuit of the course,
- (iii) The individual's unsatisfactory conduct or progress,
- (iv) Date of interruption or termination of training,
- (v) Changes in the number of credit hours or in the number of clock hours of attendance,
- (vi) Nonpunitive grades, and
- (vii) Any other changes or modifications in the course as certified at enrollment.

(2) The verification of enrollment must—

- (i) Contain the information required for release of payment,
- (ii) Be signed by the veteran or servicemember on or after the final date of the reporting period, and
- (iii) Clearly show the date on which it was signed.

(Authority: 38 U.S.C. 1434, 1784; Pub. L. 99-525, Pub. L. 99-576)

(b) *Additional requirements when the course does not lead to a standard college degree.* (1) The veteran or servicemember must certify attendance monthly by reporting each day of absence from scheduled attendance as defined in § 21.7139(a) of this part when—

- (i) The course in which he or she is enrolled does not lead to a standard college degree;
- (ii) The course does not qualify for measurement on a credit-hour basis as provided in § 21.4270(a), footnote 6.

(2) For the purposes of this certification the educational institution must—

- (i) Convert partial days of absence to full days of absence as provided in § 21.7139(a) of this part.
- (ii) Verify the full days of absence reported, and
- (iii) Endorse the report.

(c) *Additional requirements for apprenticeships and other on-job training programs.* (1) When a veteran is pursuing an apprenticeship or other on-job training he or she must certify training monthly by reporting the number of hours worked.

(2) The information provided by the veteran must be verified by the training establishment.

(Authority: 38 U.S.C. 1434, 1780(a))

§ 21.7156 Other required reports from educational institutions.

Each veteran or servicemember must report without delay to the Department of Veterans Affairs any change in his or her hours of credit or attendance, any change in his or her pursuit and any interruption or termination of his or her attendance. Each educational institution must report without delay such information on the entrance, reentrance, change in hours of credit or attendance, pursuit, interruption and termination of attendance of each veteran or servicemember enrolled in an approved course as the Secretary may require and using a form specified by the Secretary.

(a) *Interruptions, terminations and changes in hours of credit or attendance.* When a veteran or servicemember interrupts or terminates his or her training for any reason, including unsatisfactory conduct or progress, or when he or she changes the number of hours of credit or attendance, the educational institution must report this fact to the VA.

(1) If the change in status or change in number of hours of credit or attendance occurs on a day other than one indicated by paragraph (a) (2) or (3) of this section, the educational institution will initiate a report of the change in time for VA to receive it within 30 days of the date on which the change occurs. If the veteran or servicemember is enrolled in a course which does not lead to a standard college degree and for which a monthly certification of attendance is required, the educational institution instead may report the change on the monthly certification of attendance for the month in which the change occurred.

(2) If the educational institution has certified the veteran's or servicemember's enrollment for more

than one term, quarter or semester and the veteran or servicemember interrupts his or her training at the end of a term, quarter or semester within the certified enrollment period, the educational institution shall report the change in status to VA in time for VA to receive the report within 30 days of the last officially scheduled registration date for the next term, quarter or semester. If the veteran or servicemember is enrolled in a course which does not lead to a standard college degree and for which a monthly certification of attendance is required, the educational institution instead may report the change on the monthly certification of attendance for the month in which the change occurred.

(3) If the change in status or change in the number of hours of credit or attendance occurs during the 30 days of a drop-add period, the educational institution must report the change in status or change in the number of hours of credit or attendance to VA in time for VA to receive the report within 30 days from the last date of the drop-add period or 60 days from the first day of the enrollment period, whichever occurs first.

(Authority: 38 U.S.C. 1434, 1784)

(b) *Nonpunitive grades.* (1) An educational institution may assign a nonpunitive grade for a course or subject in which the veteran or servicemember is enrolled even though the veteran or eligible person does not withdraw from the course or subject. When this occurs, the educational institution must report the assignment of the nonpunitive grade in a form prescribed by the Secretary in time for VA to receive it before the earlier of the following dates is reached:

- (i) Thirty days from the date on which the educational institution assigns the grade, or
- (ii) Sixty days from the last day of the enrollment period for which the nonpunitive grade is assigned.

(2) If the veteran or servicemember is enrolled in a course which does not lead to a standard college degree and for which a monthly certification of attendance is required, the educational institution may use the monthly certification of attendance to report nonpunitive grades provided VA will receive the report within the time period stated in paragraph (b)(1) of this section.

(Authority: 38 U.S.C. 1434, 1784)

(c) *Attendance records.* Nothing in this section or in any section in 38 CFR Part 21 shall be construed as requiring any institution of higher learning to maintain daily attendance records for

any course leading to a standard college degree.

(Authority: 38 U.S.C. 1434, 1785)

24. In § 21.7158, paragraph (b) and its authority citation are revised to read as follows:

§ 21.7158 False, late, or missing reports.

(b) *Educational institution or training establishment.* (1) VA may hold an educational institution or training establishment liable for overpayments which result from the educational institution's or training establishment's willful or negligent failure to report excessive absences from a course or discontinuance or interruption of a course by a veteran or servicemember or from willful or negligent false certification by the educational institution or training establishment. See § 21.7144(b).

(2) When an educational institution or training establishment willfully and knowingly submits a false report or certification, VA may disapprove a course for further enrollments and may discontinue educational assistance to veterans and servicemembers already enrolled. VA will apply the provisions of §§ 21.4202(b), 21.4207 and 21.4208 of this part in the same manner as they are applied in making similar determinations regarding enrollments under 38 U.S.C. Chapter 34.

(Authority: 38 U.S.C. 1434, 1790; Pub. L. 98-525, Pub. L. 99-576)

25. Section 21.7159 and its authority citation are revised to read as follows:

§ 21.7159 Reporting fee.

In determining the amount of the reporting fee payable to educational institutions or joint apprenticeship training committees acting as training establishments for furnishing required reports, VA will apply the provisions of § 21.4206 of this part in the same manner as they are in the administration of 38 U.S.C. Chapters 34 and 36.

(Authority: 38 U.S.C. 1434, 1784; Pub. L. 98-525, Pub. L. 99-576)

26. In § 21.7170, paragraph (a) is revised and an authority citation is added to read as follows:

§ 21.7170 Course measurement.

(a) Section 21.4270 (except those portions of paragraph (a) and footnotes dealing with high school, cooperative and farm cooperative training)—Measurement of courses,

(Authority: 38 U.S.C. 1434, 1788)

27. Section 21.7172 is added to read as follows:

§ 21.7172 Measurement of concurrent enrollments.

(a) *Conversion of units of measurement required.* Where a veteran enrolls concurrently in courses offered by two schools and the standards for the measurement of the courses pursued concurrently in the two schools are different, VA will measure the veteran's enrollment by converting the units of measurement for courses in the second school to their equivalent in units of measurement required for the courses in the program of education which the veteran is pursuing at the primary institution. This conversion will be accomplished as follows.

(1) If VA measures the course at the primary institution on a credit-hour basis (including a course which does not lead to a standard college degree, which is being measured on a credit-hour basis as provided in footnote 6 to § 21.4270(a)) of this part, and

(i) VA measures the course in the second school on a mixed basis as provided in § 21.4270(b) of this part, VA will add to the credit hours the veteran is pursuing at the primary institution the credit hours attributable to any course the veteran is pursuing at the second school which VA could measure on a credit-hour basis. The clock hours attributable to the other courses pursued at the second school will be converted to credit hours; or

(ii) VA measures the courses at the second school on a clock-hour basis, the clock hours will be converted to credit hours.

(2) If VA measures the course at the primary institution on a mixed basis as provided in § 21.4270(b) of this part, and

(i) VA measures the course at the second school on a credit-hour basis, the credit hours pursued at the second school will be added to the credit hours the veteran is pursuing at the primary institution and the resulting credit hours will be used in making the calculations required by § 21.4270(b) of this part; or

(ii) VA measures the courses at the second school on a clock-hour basis, the clock hours being pursued at the second school will be added to those pursued at the primary institution before making the calculations required by § 21.4270(b) of this part.

(3) If VA measures the courses pursued at the primary institution on a credit-hour basis, and

(i) VA measures the courses pursued at the second school on a mixed basis, the courses pursued at the second school which VA can measure on credit-

hour basis for at least one program at the second school will be converted to clock hours and the resulting clock hours added to determine the veteran's training time; or

(ii) VA measures the courses pursued at the second school on a credit-hour basis, including courses which qualify for credit-hour measurement on the basis of footnote 6 to § 21.4270(a) of this part, VA will convert the credit hours to clock hours to determine the veteran's training time.

(Authority: 38 U.S.C. 1434, 1788)

(b) *Conversion of clock hours to credit hours.* If the provisions of paragraph (a) of this section require VA to convert clock hours to credit hours, it will do so by—

(1) Dividing the number of credit hours which VA considers to be full-time at the educational institution whose courses are measured on a credit-hour basis by the number of clock hours which are full-time at the educational institution whose courses are measured on a clock-hour basis; and

(2) Multiplying each clock hour of attendance by the decimal determined in paragraph (b)(1) of this section. VA will drop all fractional hours.

(Authority: 38 U.S.C. 1434, 1788)

(c) *Conversion of credit hours to clock hours.* If the provisions of paragraph (a) of this section require VA to convert credit hours to clock hours, it will do so by—

(1) Dividing the number of clock hours which VA considers to be full-time at the educational institution whose courses are measured on a clock-hour basis by the number of credit hours which are full-time at the educational institution whose courses are measured on a credit-hour basis; and

(2) Multiplying each credit hour by the number determined in paragraph (c)(1) of this section. VA will drop all fractional hours.

(Authority: 38 U.S.C. 1434, 1788)

(d) *Standards for measurement the same.* Where the standards for measurement of the courses pursued concurrently in the two schools are the same, VA will measure the veteran's enrollment by adding together the units of measurement for the courses in the second school and the units of measurement for the courses in the primary institution. The standard for full time will be the full-time standard for the courses at the primary institution. If courses at both schools are measured on a mixed basis so that the provisions of § 21.4270(b) of this part must be applied

to the enrollment, VA will separately add the credit hours and the clock hours first, and then apply the provisions of § 21.4270(b) of this part. In applying these provisions VA will use the standard for full time at the primary institution.

(Authority: 38 U.S.C. 1434, 1788)

28. In § 21.7220, paragraphs (b)(1), (b)(6), and (b)(9) are revised to read as follows:

§ 21.7220 Course approval.

(b) * * *

(1) § 21.4250 (except paragraphs (a) and (c)(1))—Approval of courses,

(6) § 21.4258—Notice of approval,

(9) § 21.4265 (except paragraph (f)(1))—Practical training approved as institutional training,

29. In § 21.7222, paragraphs (h) and (i) are removed and paragraphs (d), (e), (f), and (g) and the authority citation for the section are revised to read as follows:

§ 21.7222 Courses and enrollments which may not be approved.

(d) A course, or combination of courses, consisting of instruction offered by an educational institution alternating with instruction in a business or industrial establishment, commonly called a cooperative course;

(e) A course, or a combination of courses consisting of institutional agricultural courses and concurrent agricultural employment, commonly called a farm cooperative course;

(f) An independent study course which does not lead to standard college degree; or

(g) A refresher, remedial or deficiency course.

(Authority: 38 U.S.C. 1434, 1873; Pub. L. 98-525, Pub. L. 99-576)

30. In § 21.7310, paragraph (b)(3) is revised to read as follows:

§ 21.7310 Civil rights.

(b) * * *

(3) § 21.4302—Proprietary vocational schools and training establishments,

(FR Doc. 89-14141 Filed 6-18-89; 8:45 am)
BILLING CODE 9320-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 89-124, RM-6663]

Radio Broadcasting Services; Madisonville, TN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Major Broadcasting Corporation proposing the allotment of Channel 258A to Madisonville, Tennessee, as that community's first local FM service. A site restriction of 5.3 kilometers (3.3 miles) south of the city is required. The coordinates are 35-28-23 and 84-22-14.

DATES: Comments must be filed on or before August 4, 1989, and reply comments on or before August 21, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Robert S. Stone, Esquire, McCampbell & Young, Suite 2021 Plaza Tower, P. O. Box 550, Knoxville, TN 37901-0550 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-124, adopted May 22, 1989, and released June 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 89-14429 Filed 6-16-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-131, RM-6702]

Radio Broadcasting Services; Grand Coulee, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Wheeler Broadcasting, Inc., licensee of Station KEYG-FM, Channel 253C2, Grand Coulee, Washington, proposing the substitution of Channel 253C for Channel 253C2 at Grand Coulee and modification of the station's license to specify operation on the higher class co-channel. The substitution can be accomplished in compliance with the Commission's minimum separation requirements at the site specified in the petition. The coordinates are 47-52-48 and 118-58-20. Canadian concurrence must be obtained.

DATES: Comments must be filed on or before August 4, 1989, and reply comments on or before August 21, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Barry A. Friedman, Esquire, Wilner & Scheiner, 1200 New Hampshire Avenue, NW., Suite 300, Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-131, adopted May 23, 1989, and released June 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's

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copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 89-14431 Filed 6-16-89; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 89-129, RM-6675]

Radio Broadcasting Services; Lake Geneva, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Southern Wisconsin Company, Inc., proposing the allotment of Channel 241A to Lake Geneva, Wisconsin, as that community's first local FM service. A site restriction of 2 kilometers (1.2 miles) northwest of the city is required. The coordinates are 41-36-50 and 88-26-51. Canadian concurrence must be obtained for the proposal.

DATES: Comments must be filed on or before August 4, 1989, and reply comments on or before August 21, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioners, or their counsel or consultant, as follows: Donald E. Martin, Esquire, Spencer W. Welsbroth, Esquire, Donald E. Martin, P.C., Suite 200, 2000 L Street, NW., Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 89-129, adopted May 23, 1989, and released June 13, 1989. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Karl A. Kensinger,
Chief, Allocations Branch, Policy and Rules
Division, Mass Media Bureau.

[FR Doc. 89-14430 Filed 6-16-89; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB-26

Endangered and Threatened Wildlife and Plants; Proposed Determination of Experimental Population Status for an Introduced Population of Guam Rails on Rota in the Commonwealth of the Northern Mariana Islands

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Guam rail, an endangered species endemic to Guam, has been extirpated from its entire historical range primarily as a result of predation by the introduced brown tree snake (*Boiga irregularis*). Studies on the snake suggest that it will be many years before techniques can be developed to

control or eliminate snakes on Guam. The habitat on Guam has been made unsuitable for the rail for the indefinite future due to predation by the snake.

The U.S. Fish and Wildlife Service (Service), in cooperation with the Guam Division of Aquatic and Wildlife Resources (Guam Division) and the Commonwealth Division of Fish and Wildlife (Commonwealth Division), proposes to introduce up to 500 captive-bred Guam rails (*Rallus owstoni*) onto the island of Rota in the Commonwealth of the Northern Mariana Islands over a 5-year period. Although a population of rails now exists in captivity, these birds may lose their ability to survive in the wild after several generations. The establishment of a wild population on Rota would assure that a source of wild birds would be available for future reintroduction to Guam when the brown tree snake has been controlled or eradicated.

The Service proposes that the Rota population be designated a nonessential experimental population according to section 10(j) of the Endangered Species Act of 1973, as amended (Act). The species is currently protected at 13 different captive propagation facilities and nonessential status would provide for flexibility in managing the Rota population.

Accordingly, a special rule describing circumstances under which taking of introduced Guam rails would be permitted is being proposed in conjunction with this proposal to establish the nonessential experimental population.

Permitted management actions involving take within the meaning of the Act would include recapture of rails to replace transmitters, provide veterinary care, return animals to captivity that are severely injured or diseased, or to recapture for reintroduction to Guam.

DATES: Comments on this proposed rule and the draft Environmental Assessment must be received by July 19, 1989.

ADDRESSES: Comments should be sent to the Field Supervisor, Environmental Services, Pacific Islands Office, U.S. Fish and Wildlife Service, 300 Ala Moana Boulevard, Room 6307, Honolulu, HI 96813. (Telephone: (808) 541-2749 or FTS 551-2749). A draft Environmental Assessment, a draft Finding of No Significant Impact, and other materials relating to this proposed rule are available for public inspection by appointment during normal business hours at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Ernest Kosaka, Field Supervisor,

Environmental Services at the above address (telephone: (808) 541-2749 or FTS 551-2749).

SUPPLEMENTARY INFORMATION:

Background

Guam, 13 degrees 30 minutes north latitude and 145 degrees east longitude, is 49 kilometers (km) (30 miles) long and 7 to 15 km (1 to 9 miles) wide with an area of approximately 550 square km (212 square miles). It is the largest and most developed island in Micronesia. The entire island is encircled by a fringing reef except at small areas comprised of limestone cliffs. A narrow central portion separates the island into a northern, fairly level limestone plateau, and a southern, mountainous area of volcanic origin. The vegetation has been vastly altered by humans, and much of the original forest has been removed. In general, the northern limestone substrate supports a diverse forest, while the southern volcanic portion consists of extensive savannas on the exposed uplands with native "ravine" forests in the comparatively undisturbed, narrow valleys.

The endemic flightless Guam rail formerly occurred island-wide. It was one of the few native birds that occurred more frequently in weedy fields, scrubby second growth, and mixed forests than in uniform tracts of mature forest. Availability of habitat was not a limiting factor; in fact, man's disturbance of the forests might have created habitat for the rail.

The rail population declined drastically between 1963 and 1973, and by the mid 1970's had disappeared from southern Guam. Bird surveys conducted in June 1981 indicated that a population of about 2,000 rails still persisted in northern Guam. By the summer of 1986, however, the species was considered virtually extirpated from the wild.

Several inimical factors are believed to have caused the demise of the Guam rail, but most important was predation on eggs and young by the brown tree snake. Earlier investigations had eliminated excessive taking, pesticides and herbicides, inter-specific competition, and avian diseases as the causes for the rail's drastic declines in the 1980's and 1970's. More recent studies clearly implicate the snake as the most important factor in the demise of the rail as well as the other native forest birds of Guam.

The ubiquitous distribution and high density of brown tree snakes has now so altered the primary habitat of the Guam rail that this habitat is no longer suitable for sustaining the rail. The basic habitat components required by the rail

on Guam have essentially been made unavailable for the indefinite future due to the pervasive threat of the brown tree snake.

When it was evident that the rail faced imminent extinction, the Guam Division, a consortium of zoos under the auspices of the American Association of Zoological Parks and Aquariums (AAZPA), and the Service embarked on a captive propagation program by capturing as many rails as possible. Agreements were entered into whereby cooperating zoos agreed to develop techniques for propagating the rail in captivity as well as maintaining a viable population with maximum genetic diversity. The captive flock presently consists of more than 112 rails which are being propagated at 13 facilities: the Division's facilities on Guam; National Zoological Park, Front Royal, Virginia; Bronx Zoo, New York, New York; Cincinnati Zoo, Cincinnati, Ohio; Pittsburgh Aviary, Pittsburgh, Pennsylvania; Sedgewick County Zoo and Botanical Garden, Wichita, Kansas; Lowry Park Zoological Garden, Tampa, Florida; Riverbanks Zoological Park, Columbia, South Carolina; Greater Baton Rouge Zoo, Baton Rouge, Louisiana; Trevor Teaching Zoo, Millbrook, New York; Philadelphia Zoological Gardens, Philadelphia, Pennsylvania; San Diego Zoo, San Diego, California; and Kansas City Zoological Garden, Kansas City, Missouri. The number of facilities propagating rails is expected to increase as more zoos in various parts of the country are enlisted as cooperators.

The rail has been so prolific in captivity that it will be possible to use some of the excess progeny for release programs without jeopardizing the continued existence of this species or causing deterioration in genetic diversity of the captive flock. It is estimated that the mainland zoos could produce up to 100 birds for release annually without adversely affecting the remaining captive stock.

The draft Guam and Rota Endangered Forest Birds Recovery Plan (which is in the final stages of the Service approval process) recommends establishment of self-sustaining populations of the Guam rail in other suitable sites outside its historic range because there is no assurance that the snake will be controlled or eliminated on Guam in the foreseeable future. This proposal is intended to result in the release and establishment of Guam rails in previously disturbed but suitable habitats on Rota (i.e., habitats similar to those on Guam prior to the introduction of the snake). Further, this population would be managed with the long-term

objective of providing a source of "wild" rails for reestablishment on Guam when the brown tree snake can be eliminated or controlled. Captive-held rails, while capable of reproducing and surviving in captivity, may, after several generations, lose their ability to survive in the wild. A population of rails on Rota would assure that a source of rails capable of surviving in the wild would be available for reintroduction to Guam. This project is believed to be an effective means for promoting long-term conservation and recovery of the rail.

Status of Experimental Population

The Service proposes that the experimental population of Guam rails on Rota be designated as a nonessential experimental population according to the provisions of section 10(j) of the Act. The population would be treated as a threatened species, rather than an endangered species, for the purposes of section 4(d) and 9 of the Act.

The nonessential status would be appropriate for the following reasons: (1) Although the Guam rail is virtually extinct in the wild, robust captive flocks have been established on Guam and in 12 cooperating zoos and aviaries on the mainland; (2) care and maintenance of the captive flocks are of the highest order and it is not likely that disease or other sources of mortality are likely to threaten the survival of the species; and (3) the Guam rail breeds readily in captivity, resulting in the availability of rails in excess of needs for the captive flock which can be made available for release. The taking of approximately 500 rails over the 5-year duration of this project from these sources of captive-reared progeny would not threaten the survival of this species even if all of the animals released into the wild were to succumb to natural or man-caused mortality.

Designating the Rota population as a nonessential experimental population would enable the Service to propose a special rule which would authorize considerable discretion in managing the population. The proposed protective regulations would be necessary and advisable to provide for the conservation of the rail, especially during the initial stages of the translocation program.

The proposed special rule would stipulate that agents of the Commonwealth Division, the Guam Division, and the Service would be authorized to take animals which need special care or which are causing depredation problems. Taking "problem" rails by killing would be avoided and resorted to only if there

were no other viable alternatives. Live capture and release into other suitable remote habitats would be the preferred form of take whenever possible.

The special rule would also have a provision that would allow for special take by private individuals if the experimental population becomes well established on Rota. This special take would be allowed under regulations drafted by the Commonwealth of the Northern Marianas once the Service has determined that the rail has become well established and occupies all suitable habitat island-wide. These flexible rules would help gain and maintain public support for the project.

The Commonwealth Division has the statutory authority to protect and conserve listed species. As a cooperator in this experimental translocation project, it has agreed to protect the Guam rails proposed for establishment on Rota by promulgating regulations to prohibit the taking of rails, in the Commonwealth. It also has two staff members, a Conservation Officer and a Wildlife Technician, residing on Rota. The Service is satisfied that the Commonwealth's regulatory mechanisms and staff presence are sufficient to provide for conservation of the rail.

Location of Experimental Population

Rota, 50 km (31 miles) north of Guam, is one of the three main islands in the Commonwealth. It is located at 14 degrees 10 minutes north latitude and 145 degrees 12 minutes east longitude. It is 20 km (12 miles) long by 6 km (4 miles) wide with an area of approximately 85 square km (33 square miles). Rota is the third largest island in the Commonwealth after Saipan (the largest) and Tinian. A high plateau dominates the western half of the island, with steep cliffs to the north, west, and south that terminate in a narrow coastal shelf. The eastern side of the plateau is characterized by a gentle slope to a large eastern plain. The steep slopes of the upper plateau support well-developed native forests. Taipingot Peninsula juts out from the extreme western tip of the island.

Most lowland areas were used for agricultural purposes in the past. Sugarcane was grown over most of the level areas of Rota during the Japanese Administration prior to World War II. Many of these fields are now re-vegetated with second-growth forests comprised of native and introduced species. Portions of this area are being opened for grazing, for growing agricultural crops, and for residential home sites. The brown tree snake is not found on Rota, and the many weedy

fields and second-growth forests should provide good habitat for the rail. Experimental releases would be made on Commonwealth-owned lands or on lands belonging to cooperating landowners.

Section 10(j) of the Act requires that an experimental population be geographically isolated from any existing population. The establishment of an experimental population on Rota would comply with this rule. Even if the rail were still extant on Guam, Rota is separated from Guam by 50 km (31 miles) of open ocean and it is unlikely that the flightless rail could cross this geographic barrier.

Rota is outside the known historical range of the Guam rail (although it is probable that some type of rail at one time occurred on Rota). Prior to the establishment of an experimental population outside of its probable historic range, the Service must determine that the primary habitat of the species has been unsuitably and irreversibly altered or destroyed. Although the basic habitat components required by the rail on Guam have not been "irreversibly" altered or destroyed in the strict sense, they have essentially been made unavailable to the rail for the indefinite future due to the pervasive threat of the brown tree snake. There is hope that it will eventually be possible to control or eradicate the brown tree snake on Guam, but there is no assurance that this will be possible in the foreseeable future. This indefinite alteration of the rail's primary habitat is tantamount to the unsuitable and irreversible alteration or destruction of its primary habitat.

Management

Although this experimental translocation project would be conducted cooperatively by the Guam Division, the Commonwealth Division, and the Service, the Guam Division would be the lead agency and would be primarily responsible for its implementation. The Commonwealth Division may provide assistance in maintenance of the release site or in monitoring the release. The Service would coordinate and expedite any procedural matters relating to the project. Follow-up evaluation of the releases would be conducted by Dr. Stuart Pimm and selected graduate students from the University of Tennessee pursuant to a cooperative agreement between the University and the Guam Division. Studies would focus on dispersal patterns, mortality, reproductive success, overall success of the releases, and general health of the population.

Guam rails selected for release in this experimental translocation project would be tested to ensure that they are disease-free before being transported to Rota for release during the rainy season. A Quarantine Entry Permit for Poultry and Birds (Form CNMI-AHI-001) required by the Commonwealth would accompany all shipments of rails. If deemed prudent because of potential avian disease considerations, only progeny produced by the captive flock on Guam could be used for the proposed releases.

Approximately 50 to 100 captive-reared rails comprised of about an even sex ratio would be released annually. The rails would be released using two methods: (1) Half of the rails would be captured from the release pens and transported 1 km away before being released directly into the wild; (2) the remaining half would be permitted to leave the pens at "will" through doors left open for this purpose. Subsequent releases may consist of rails of varying ages to determine whether any age group is more likely to survive and colonize Rota.

All of the rails would be banded before release with numbered aluminum and color-coded bands. Between 25 and 30 rails per year would also have radio transmitters attached to facilitate determination of dispersal patterns, movements, home range, and mortality. Radio monitoring would be most intense during the first two months after release, followed by monthly or semi-monthly tracking.

A public information and education program would be conducted before rails are brought to Rota and during the actual establishment of the experimental population. The Mayor of Rota's wish to help a "neighbor" would serve as the theme for sustaining public support for the project. The program would encourage the public to report sightings of rails throughout the island. These observations would help determine dispersal and survival of released rails.

The Guam Division would provide annual reports on the results of their and the University of Tennessee follow-up studies. The cooperators would meet annually to assess the status of the experimental project so that any appropriate changes and/or adjustments could be made. A more comprehensive assessment of this project would be made at the end of the 5th year, and a public meeting would be held on Rota to assess public attitudes. The three cooperators would then recommend future direction for the project, including feasibility of limited subsistence taking if the rail becomes well established and

occupies all suitable habitats island-wide.

The Service believes that this project would result in the establishment of a "wild" population of rails which could be used to reestablish the species on Guam when the brown tree snake is eliminated or controlled. For this reason the Service finds that the release and establishment of an experimental population of Guam rails on Rota would further the conservation of this species. (See section 10(j)(2)(A) of the Act; 50 CFR 17.81(b).)

Public Comments Solicited

The Service intends that any rule finally adopted be as effective as possible. Therefore, comments or recommendations concerning any aspects of this proposed rule or its accompanying draft Environmental Assessment are hereby invited to be submitted from the public, concerned government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible and must be received at the above address within 30 days after publication of this proposed rule in the Federal Register. If appropriate, a public meeting may be conducted with interested members of the public.

Final promulgation of a rule to implement this proposed action will take into consideration any comments or additional information received by the Service. The regulation shall, to the maximum extent practicable, represent an agreement between the U.S. Fish and Wildlife Service, the affected State and

3. It is proposed that 50 CFR 17.84 be amended by adding new paragraph (f) as follows:

§ 17.84 Special rules—vertebrates.

(f) *Guam Rail (Rallus owstoni)*. (1) The Guam rail population identified in paragraph (f)(7) of this section is a nonessential experimental population.

(2) No person shall take this species, except:

Federal agencies, and persons holding any interest in land which may be affected by establishment of an experimental population.

National Environmental Policy Act

A draft Environmental Assessment (EA) and a draft Finding of No Significant Impact (FONSI) have been prepared pursuant to the National Environmental Policy Act. The draft EA and FONSI are available to the public for review and comments at the Service's Pacific Islands Office at the above address. The draft EA will form the basis for a decision as to whether this proposal is a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969 (implemented at 40 CFR Parts 1500-1508).

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Service has determined that this would not be a major rule as defined by Executive Order 12291. The rule as proposed does not contain any information collection or record keeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511). The rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96-354). The introduction sites would be on comparatively undeveloped areas on the island of Rota. The introduction of a nonessential

(i) In accordance with a valid permit issued by the Service under § 17.32 for educational purposes, scientific purposes, the enhancement of propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Act; or

(ii) As authorized by the laws and regulations of the Commonwealth of the Northern Mariana Islands, after the Service has made the determination that

experimental population into this area is not expected to have any adverse impact on public use of the immediate and surrounding area. No private entities would be affected by this action.

Author

The principal author of this proposal is Ernest Kosaka, Field Supervisor, Environmental Services, U.S. Fish and Wildlife Service, Pacific Islands Office, Honolulu, Hawaii [(808) 541-2749].

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (Agriculture).

Proposed Regulation Promulgation

Accordingly, it is hereby proposed to amend Part 17, Chapter B of Chapter I, Title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for Part 17 continues to read as follows:

Authority: Pub. L. 93-205, 87 Stat. 884; Pub. L. 94-359, 90 Stat. 911; Pub. L. 95-632, 92 Stat. 3751; Pub. L. 96-159, 93 Stat. 1225; and Pub. L. 97-304, 96 Stat. 1411; Pub. L. 100-478, 102 Stat. 2306; Pub. L. 100-653, 102 Stat. 3825, (16 U.S.C. 1531 *et seq.*); Pub. L. 99-625, 100 Stat. 3500 (1986), unless otherwise noted.

2. It is proposed to amend § 17.11(h) by revising the existing entry for this species as shown below:

§ 17.11 Endangered and threatened wildlife.

(h)

the experimental population has become well established and occupies all suitable habitat island-wide.

(3) Any employee of the Service, the Commonwealth of the Northern Mariana Islands Division of Fish and Wildlife, or the Guam Division of Aquatic and Wildlife Resources who is designated for such purposes, may take a Guam rail without a permit if such action is necessary to:

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Species rules
Common name	Scientific name						
Birds							
Rail, Guam.....	<i>Rallus owstoni</i>	Western Pacific Ocean, USA.	Western Pacific Ocean, USA.	E	146E, 156	N/A	N/A
Rail, Guam.....	<i>Rallus owstoni</i>	Western Pacific Ocean, USA.	Rota.....	XN	146E, 156	N/A	17.84(f)

- (i) Aid a sick, injured, or orphaned specimen;
 - (ii) Dispose of a dead specimen;
 - (iii) Salvage a dead specimen which may be useful for scientific study;
 - (iv) Take an animal which is responsible for depredations to personal property if it has not been possible to otherwise eliminate such depredations and/or loss of personal property, provided that such taking must be done in a humane manner and may involve injuring or killing the bird only if it has not been possible to eliminate depredations by live capturing and releasing the specimen unharmed in other suitable habitats; or
 - (v) Take birds for approved reintroduction on Guam.
- (4) Any violation of applicable Commonwealth of the Northern Mariana Islands Division of Fish and Wildlife conservation laws or regulations with respect to the taking of this species (other than taking as described in paragraph (f)(2)(ii) of this section) will

also be a violation of the Endangered Species Act.

(5) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any such species taken in violation of these regulations or in violation of applicable Commonwealth of the Northern Mariana Islands Division of Fish and Wildlife laws or regulations or the Endangered Species Act.

(6) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (f) (2) through (5) of this section.

(7) The sites for introduction of Guam rails on Rota, Commonwealth of the Northern Mariana Islands, are on an island separated from Guam by 50 kilometers of ocean. The last known observation of an individual of this species occurred near the northern tip of Guam which is closest to the island of Rota. No intermingling of these populations will occur since this species

has been extirpated in the wild on Guam. The Rota release sites are of necessity outside the historic range of the Guam rail, as described in this proposed rule, because its primary range has been unsuitably and indefinitely altered by the brown tree snake.

(8) The nonessential experimental population on Rota will be checked periodically by staff of the Commonwealth of Northern Mariana Islands Division of Fish and Wildlife and cooperating staff from the University of Tennessee to determine dispersal patterns, mortality, and reproductive success. The overall success of the releases and general health of the population will also be assessed.

* * * * *

Dated: May 10, 1989.

Maryanne C. Bach,
Acting Assistant Secretary for Fish and Wildlife and Parks.

[FR Doc. 89-14407 Filed 6-16-89; 8:45 am]

BILLING CODE 4310-55-M

Notices

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF COMMERCE

Bureau of Export Administration
[Docket No. 90359-9059]

Foreign Availability Assessment;
Aramid Yarn (Kevlar)

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of foreign availability determination.

SUMMARY: The Office of Foreign Availability (OFA) of the Bureau of Export Administration is required by section 5(f) and (h) of the Export Administration Act of 1979 (EAA), as amended, to initiate and review claims of foreign availability on items controlled for export for national security purposes.

OFA has completed an assessment on aramid yarn (kevlar), which is controlled under Export Control Commodity Number (ECCN) 1746A and ECCN 1763A of the Commodity Control List. Based on this assessment, the Department of Commerce has not found foreign availability for this commodity.

FOR FURTHER INFORMATION CONTACT: William Parker, Office of Foreign Availability, Department of Commerce, Washington, DC 20230, Telephone: (202) 377-3564.

SUPPLEMENTARY INFORMATION:

Background

The Office of Foreign Availability has completed an assessment on the foreign availability of aramid yarn (kevlar). This commodity is used in the manufacture of advanced composite materials controlled for national security purposes under ECCN 1746A and ECCN 1763A of the Commodity Control List. The purpose of the assessment was to investigate the extent of availability of this commodity and to determine if, and to what extent, the export controls must be removed.

The Office of Foreign Availability has completed its assessment of the availability of aramid yarn (kevlar) from non-U.S. sources. It has not found foreign availability and has recommended that the controls not be changed. Therefore, the Bureau of Export Administration will not publish regulations removing the national security controls on aramid yarn (kevlar).

If OFA receives substantive new evidence affecting this foreign availability determination, the assessment will be re-evaluated. Inquiries concerning the scope of this assessment may be directed to the Office of Foreign Availability at the above address.

Dated: June 14, 1989.

James M. LeMunyon,
Deputy Assistant Secretary for Export Administration.

[FR Doc. 89-14419 Filed 6-16-89; 8:45 am]

BILLING CODE 3510-DT-M

Computer Peripherals, Components and Related Test Equipment, Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Peripherals, Components, and Related Test Equipment Technical Advisory Committee will be held July 11, 1989, 9:30 a.m., Herbert C. Hoover Building, Room 1617-F, 14th Street and Constitution Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to computer peripherals, components and related test equipment or technology.

Agenda

General Session

- 1. Opening Remarks by the Chairman & Commerce Representative.
- 2. Introduction of Members and Visitors.
- 3. Presentation of Papers of Comments by the Public.
- 4. Report on Progress of GFW/G-COM Eligibility of Removable Disk Packs.
- 5. Report on Possible Involvement of the Committee with High Definition TV (HDTV).

- 6. Report on Findings of a 10 Megabyte Bulgarian Disk Drive.
- 7. Report on OEM Sales to the Bloc.
- 8. Discussion on Suitability of Note 9 and Note 12 Parameters for Graphics Workstations.
- 9. Cipher Presentation Follow-Up form the May 16 Meeting.
- 10. Presentation of the Committee Outline and the 1989 Work Plan and Annual Report.

Executive Session

11. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control programs and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 10, 1988, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittee thereof, dealing with the classified materials listed in 5 U.S.C. 552(c)(1) shall be exempt from the provisions relating to public meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, Room 6628, U.S. Department of Commerce, Washington, DC. For further information or copies of the minutes call Ruth D. Fitts, 202-377-4959.

Dated: June 13, 1989.

Betty A. Ferrell,
Director, Technical Advisory Committee Unit, Office of Technology and Policy Analyses.

[FR Doc. 89-14421 Filed 6-16-89; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[App. No. 89-0008]

Export Trade Certificates of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of issuance of an export trade certificate of review.

SUMMARY: The Department of Commerce has issued an Export Trade Certificate of Review to FEXCORP, Inc. This notice summarizes the conduct for which certification has been granted.

FOR FURTHER INFORMATION CONTACT: George Muller, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 377-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") (Pub. L. 97-290) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. The regulations implementing Title III are found at 15 CFR Part 325 (50 FR 1804, January 11, 1985).

The Office of Export Trading Company Affairs is issuing this notice pursuant to 15 CFR 325.6(b), which requires the Department of Commerce to publish a summary of a Certificate in the *Federal Register*. Under section 305(a) of the Act and 15 CFR 325.11(a), any person aggrieved by the Secretary's determination may, within 30 days of the date of this notice, bring an action in any appropriate district court of the United States to set aside the determination on the ground that the determination is erroneous.

Description of Certified Conduct

Export Trade

Products

Wood chips (both hardwood and softwood), including residue wood chips and roundwood wood chips.

Export Trade Facilitation Services (as They Relate to the Export of Products)

All Export Trade Facilitation Services, including consulting; international market research; advertising; marketing; insurance; product research and design exclusively for export; legal assistance; transportation, including trade documentation and freight forwarding; communication and processing of foreign orders; warehousing; foreign exchange; financing; and taking title to goods.

Export Markets

The Export Markets include all parts of the world except the United States

(the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Members (in Addition to Applicant)

Coosaw Chip Co., Inc., Coosawhatchie, South Carolina; Dempsey Wood Products, Inc., Orangeburg, South Carolina; W.M. Sheppard Lumber Co., Inc., Brooklet, Georgia; and Thompson Hardwoods, Inc., Hazelhurst, Georgia.

Export Trade Activities and Methods of Operation

To engage in Export Trade in the Export Markets:

1. On its own behalf and for its own account, FEXCORP may:

a. Bid for the sale of, and contract to sell, Products to buyers in the Export Markets;

b. Obtain quotes and purchase Products from its Members and, as necessary, from other domestic suppliers individually, for the sole purpose of export to buyers in the Export Markets; and

c. Upon receiving or anticipating a request from a buyer in the Export Markets for the price of Products, FEXCORP may ask one or more of its Members or other domestic suppliers individually to supply a price quotation to FEXCORP for Products, may aggregate the price and supply data received, may add its own mark-up to the composite price, and may transmit a price quotation based on such composite price and mark-up to the buyer. Upon placement of an order by a buyer, FEXCORP may purchase Products and ship Products to the buyer.

2. FEXCORP may provide Export Trade Facilitation Services to its Members and individually to other domestic suppliers.

3. FEXCORP may prohibit its Members from selling, assigning, or placing any encumbrance or lien upon their shares in FEXCORP, without first giving written notice to FEXCORP of the proposed transfer and giving FEXCORP the option to repurchase the shares.

4. FEXCORP and its Members may exchange:

a. Information relating solely to the Export Trade in the Export Markets (such as present and projected capacity, production, inventories, costs, prices, sales, orders, terms of marketing or sale, and strategies or methods of operation) of FEXCORP or any Member;

b. Information (such as selling strategies, prices, projected demand,

and customary terms of sale) solely about the Export Markets;

c. Information on costs specific to exporting to the Export Markets (such as ocean freight, inland freight to the terminal or port, terminal or port storage, wharfage, handling charges, insurance, agents' commissions, export sales documentation and service, and export sales financing); and

d. Information that is generally available to the trade or public.

A copy of each certificate will be kept in the International Trade Administration's Freedom of Information Records Inspection Facility, Room 4102, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230.

Dated: June 13, 1989.

George Muller,
Acting Director, Office of Export Trading
Company Affairs.

[FR Doc. 89-14392 Filed 6-16-89; 8:45 am]
BILLING CODE 3510-DR-M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Request for Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of request for panel review of amendment to final results of Antidumping Duty Administrative Review made by International Trade Administration, Import Administration, respecting replacement parts for self-propelled bituminous paving equipment from Canada filed by Allatt Paving Equipment Division of Ingersoll-Rand Canada, Inc. (formerly Fortress Allatt, Ltd.) and/or Northern Fortress Ltd. with the United States section of the binational secretariat on June 7, 1989.

SUMMARY: On June 7, 1989, Allatt Paving Equipment Division of Ingersoll-Rand Canada, Inc. (formerly Fortress Allatt, Ltd.) and/or Northern Fortress Ltd. filed a Request for Panel Review with the United States Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free-Trade Agreement. Panel review was requested of the Amendment to Final Results of an Antidumping Duty Administrative Review, respecting Replacement Parts for Self-Propelled Bituminous Paving Equipment from Canada, Import Administration File Number A-122-057, made by the International Trade Administration, Import Administration.

The Amendment to the Final Results was published on May 8, 1989 [54 FR 19581], (the Final Results were published on March 27, 1989 [54 FR 12467]). The Binational Secretariat has assigned File Number USA 89-1904-05 to this Request for Panel Review.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, Acting U.S. Secretary, Binational Secretariat, Suite 4012, 14th and Constitution Avenue; Washington, DC 20230, (202) 377-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the U.S.-Canada Free-Trade Agreement ("Agreement") establishes a mechanism for replacing domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel will be established to act in place of national courts to expeditiously review the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and Government of Canada established *Rules of Procedure for Article 1904 Binational Panel Reviews* ("Rules"). These Rules were published in the *Federal Register* on December 30, 1988, [53 FR 53212]. The panel review in this matter will be conducted in accordance with these Rules.

Rule 35(2) requires the Secretary to publish Notice of the receipt of a Request for Panel Review stating that a Request for Panel Review was filed with the United States Section of the Binational Secretariat on June 7, 1989, pursuant to Article 1904 of the Agreement.

Rule 35(1)(c) of the Rules provides that:

(a) A Party or interested person may challenge the final determination in whole or in part by filing a Complaint in accordance with Rule 39 within 30 days after the filing of the first Request for Panel Review (the deadline for filing a Complaint is July 7, 1989);

(b) A Party, investigating authority or interested person that does not file a Complaint may participate in the panel review by filing a Notice of Appearance in accordance with Rule 40 within 45 days after the filing of the first Request for Panel Review (the deadline for filing a Notice of Appearance is July 24, 1989); and

(c) The panel review shall be limited to the allegations of error of fact or law, including the jurisdiction of the investigating authority, that are set out in the Complaints filed in the panel review and the procedural and substantive defenses raised in the panel review.

Dated: June 13, 1989.

James R. Holbein,
Acting U.S. Secretary, FTA Binational
Secretariat.
[FR Doc. 89-14420 Filed 6-16-89; 8:45 am]
BILLING CODE 3510-DA-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Asian Roundtable Conference

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the United States Commission on Civil Rights will convene an Asian Roundtable Conference at 9:00 a.m. on June 23, 1989, and adjourn at 5:00 p.m., in the Kellogg Conference Center, at the Columbia University, 420 West 118th Street, New York, NY 10027. The purpose of the conference is to elicit input to help set the Commission's agenda for the 1990s on Asian civil rights issues.

Persons desiring additional information should contact Harriet O. Duleep, Project Director, (202) 376-8582. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Staff Director's office at least five (5) days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, June 12, 1989.

Melvin L. Jenkins,
Acting Staff Director.
[FR Doc. 89-14413 Filed 6-16-89; 8:45 am]
BILLING CODE 6335-01-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Request for Bilateral Textile Consultations With the Government of Korea

June 14, 1989.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Kimbhang Pham, International Trade Specialist, Office of Textile and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on categories on which consultations have been requested, call (202) 377-3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the

Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On May 25, 1989, the Government of the United States requested consultations with the Government of Korea regarding imports of babies' garments and clothing accessories in Category 239, produced or manufactured in Korea. This request was made on the basis of the current bilateral textile agreement between the Governments of the United States and Korea.

The United States reserves the right to control imports at the established level. The United States remains committed to finding a solution concerning this category. Should such a solution be reached in consultations with the Government of Korea, further notice will be published in the *Federal Register*.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see *Federal Register* notice 53 FR 44937, published on November 7, 1988).

Anyone wishing to comment or provide data or information regarding the treatment of Category 239 under the agreement with the Government of Korea, or in any aspect thereof, or to comment on domestic production or availability of products included in this category, is invited to submit 10 copies of such comments or information to Auggie D. Tantillo, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, Room 143100, U.S. Department of Commerce, 14th and Constitution Avenue, NW, Washington, DC.

Further comment may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

Auggie D. Tantillo,
Chairman, Committee for the Implementation
of Textile Agreements.

[FR Doc. 89-14422 Filed 6-16-89; 8:45 am]
BILLING CODE 3510-DR-M

DEPARTMENT OF DEFENSE

Department of the Navy

Government-Owned Inventions;
Availability for Licensing

AGENCY: Department of the Navy, DOD.
ACTION: Notice of availability of invention for licensing.

SUMMARY: The invention listed below is assigned to the United States Government as represented by the Secretary of the Navy and is made available for licensing by the Department of the Navy.

Copy of patent cited is available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for \$1.50 each. Requests for copy of patent must include the patent number.

DATE: June 19, 1989.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCIP), Arlington, Virginia 22217-5000, telephone (202) 696-4001. Patent 4,255,810: Jam Resistant Frequency Modulation System; filed 13 January 1965; patented 10 March 1981.

Dated: June 14, 1989.

Sandra M. Kay,

Department of the Navy, Alternate Federal Register Liaison Officer.

[FR Doc. 89-14424 Filed 6-16-89; 8:45 am]

BILLING CODE 3010-AE-M

DEPARTMENT OF ENERGY

Assistant Secretary for International
Affairs and Energy EmergenciesProposed Subsequent Arrangement;
Peaceful Uses of Atomic Energy; USA
and EURATOM

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160) notice is hereby given of a proposed "subsequent arrangement" under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreement involves approval of the following sale:

Contract Number S-EU-959, for the sale of 1 gram of uranium depleted in the isotope uranium-235, 3 grams of uranium enriched to an average of 2 percent in the isotope uranium-235, and 1 gram of uranium enriched to 49 percent in the isotope uranium-235 to the

Netherlands Energy Research Foundation for use as standard reference materials.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: June 14, 1989.

Richard H. Williamson,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 89-14467 Filed 6-16-89; 8:45 am]

BILLING CODE 6450-01-M

Proposed Subsequent Arrangement;
Civil and Peaceful Useful of Atomic
Energy; USA and EURATOM

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of a proposed "subsequent arrangement" under the Agreement for Cooperation between the Government of the United States of America and the Government of Spain concerning Civil Uses of Atomic Energy, as amended, and the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above mentioned agreements involves approval of the following retransfer:

RTD/EU(SP)-20 for the transfer of 367.107 kilograms of uranium, containing 2.933 kilograms of the isotope uranium-235 (0.8 percent enrichment), in the form of uranyl nitrate, for use as fuel for electric power generation.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

For the Department of Energy.

Date: June 14, 1989.

Richard H. Williamson,

Deputy Assistant Secretary for International Affairs.

[FR Doc. 89-14468 Filed 6-16-89; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION
AGENCY

[OPTS-140115; FRL-3603-5]

Pesticides Data; Disclosure to
Congress and the General Accounting
Office

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has provided certain information to the General Accounting Office (GAO) and to the House Subcommittee on Environment, Energy and Natural Resources which was submitted to EPA under sections 7 and 17 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). The Subcommittee and GAO requested this information in connection with the Subcommittee's review of EPA's implementation of the pesticide export provisions of section 17 of FIFRA. Some of the information provided to the Subcommittee and to GAO may be entitled to treatment as confidential business information.

FOR FURTHER INFORMATION CONTACT: Sherell A. Sterling, Compliance Division (EN-342), Office of Compliance Monitoring, Environmental Protection Agency, 401 M St. SW., Washington, DC 20460, (202) 382-7314.

SUPPLEMENTARY INFORMATION: EPA has received requests from the GAO and the Environment, Energy and Natural Resources Subcommittee of the House Committee on Government Operations for certain information submitted to EPA by pesticide manufacturers. Specifically, GAO and the Subcommittee have requested certain production information submitted to EPA under section 7 of FIFRA and certain export notification information submitted under section 17 of FIFRA. EPA has provided the requested information to GAO and to the Subcommittee.

Under section 7 of FIFRA, pesticide producers are required to identify the types, amounts, and active ingredients of pesticides which they produce and sell in a given year. This information was provided to GAO and the Subcommittee for pesticides exported from the United States in the years 1985, 1986, or 1987. Under section 17(a), exporters of unregistered pesticides must notify EPA of the export, providing a statement from the purchaser acknowledging that the pesticide is unregistered and a certification that export did not take place prior to receipt of a signed acknowledgement statement. This information was also made

available to GAO and the Subcommittee for those years.

The Subcommittee has requested this information in connection with its review of EPA's implementation of the pesticide export provisions of section 17 of FIFRA. GAO is assisting the Subcommittee in its review. EPA is required to disclose the requested information to GAO and to the Subcommittee under its regulations at 40 CFR 2.209(b), made applicable to FIFRA information through 40 CFR 2.307(h)(1).

Some of the information provided to GAO and to the Subcommittee may be entitled to treatment as confidential business information. Accordingly, EPA is providing this notice to all affected businesses. In accordance with 40 CFR 2.209(b), EPA has notified GAO and the Subcommittee staff that certain of this information may be business confidential.

Dated: June 3, 1989.

Victor J. Kimm,

Acting Assistant Administrator for Pesticides and Toxic Substances.

[FR Doc. 89-14458 Filed 6-16-89; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3603-4]

Extension of the Period for Action on
a Recommended Section 404(c)
Determination to Prohibit the
Specification or Use of an Area as a
Disposal Site; Ware Creek

AGENCY: Office of Water, Environmental Protection Agency (EPA).

ACTION: Notice of an extension to the period for action on a recommended section 404(c) determination.

SUMMARY: On March 15, 1989, EPA Headquarters received Regional documentation including an administrative record supporting a recommended determination to prohibit or restrict the use or specification of the area known as Ware Creek. The subject site is proposed as a disposal site for fill material necessary for the construction of a water supply impoundment to serve James City County, Virginia. In accordance with EPA's section 404(c) regulations, EPA Headquarters initiated final consultation with the Corps of Engineers, the owners of record and the section 404 permit applicant for the proposed project. The purpose of this consultation was to provide appropriate parties a final opportunity to demonstrate to the satisfaction of the Assistant Administrator for Water, that

corrective action would be taken to prevent an unacceptable adverse effect(s) from the proposed discharge. In a subsequent meeting which took place on April 13, 1989, representatives of James City County raised two major issues which they felt necessitated consideration during EPA Headquarters review of the Regional recommended determination. Specifically, counsel representing James City County asserted that the administrative record submitted to EPA Headquarters by EPA Region III did not include appropriate documents contained in the Corps of Engineers record for the Ware Creek project. Representatives of James City County also suggested that in reaching a final determination on the section 404(c) action, EPA must consider the effects of its action on the potential use of any water supply provided by the proposed Ware Creek impoundment for satisfying regional water supply needs.

In response to the concerns raised by the representatives of James City County, EPA extended the time limit to June 16, 1989 to provide sufficient time to obtain and review additional documents from the Corps of Engineers administrative record on this case. The extension was announced in the Federal Register on May 16, 1989 (54 FR 21125). EPA has determined that additional time is required to review the documents from the Corps record to ensure a thorough examination of all issues relevant to EPA's section 404(c) action prior to rendering a final decision with regard to the Ware Creek proposal. EPA therefore has determined that good cause exists to extend the time limit for preparation of a final determination on the recommended determination to prohibit or restrict the use or specification of the area known as Ware Creek. EPA's deadline for a finding on the recommended determination is being extended until close of business, July 10, 1989. This time extension is made under the EPA authority found in 40 CFR 231.8.

FOR FURTHER INFORMATION, CONTACT:

Kirk Stark, Chief, Elevated Cases Team, Office of Wetlands Protection—U.S. EPA, 401 M Street, Washington, DC 20460, (202) 475-7799

Dated: June 13, 1989.

William A. Whittington,

Acting Assistant Administrator for Water.

[FR Doc. 89-14460 Filed 6-16-89; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS
COMMISSION

[DA 89-664]

Advisory Committee on Advanced
Television Service

June 14, 1989.

A meeting of the Advisory Committee on Advanced Television Service will be held on: July 19, 1989, 2:00 p.m., Commission Meeting Room (Room 856), 1919 M Street NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction.
2. Approval of the last meeting's minutes.
3. Financial report.
4. Progress reports of the three subcommittees.
5. Progress reports from testing laboratories.
6. Consideration of draft testing plans.
7. Date and location of next Steering Committee meeting.
8. Other business.
9. Adjournment.

All interested persons are invited to attend. Those interested also may submit written statements at the meeting. Oral statements and discussion will be permitted under the direction of the Advisory Committee Chairman.

Any questions regarding this meeting should be directed to Richard E. Wiley at (202) 429-7010 or Alex D. Felker at (202) 632-6460.

Federal Communications Commission

Donna R. Searcy,

Secretary.

[FR Doc. 89-14483 Filed 6-16-89; 8:45 am]

BILLING CODE 6712-01-M

[DA 89-663]

Advisory Committee on Advanced
Television Service Steering Committee

June 14, 1989.

A meeting of the Steering Committee of the Advisory Committee on Advanced Television Service will be held on: July 10, 1989, 2:00 p.m., Federal Communications Commission, Commission Meeting Room, Room 856, 1919 M Street NW., Washington, DC.

The agenda for the meeting will consist of:

1. Introduction.
2. Approval of the last meeting's minutes.
3. Financial report.

4. Progress reports of the three subcommittees.
5. Progress reports from testing laboratories.

6. Consideration of draft testing plans.
7. Date and location of next Steering Committee meeting.
8. Other business.
9. Adjournment.

Interested parties may submit written statements at this meeting. Oral statements and discussion will be permitted under the direction of the Steering Committee Chairman.

Any questions regarding this meeting should be directed to Richard E. Wiley at (202) 429-7010 or David R. Siddall at (202) 632-6460.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-14482 Filed 6-16-89; 8:45 am]

BILLING CODE 6712-01-M

Travel Reimbursement Program, January 1, 1989-March 31, 1989; Summary Report; Corrected

The following corrections are hereby made to the Summary Report which first appeared in the *Federal Register*/Vol. 54, No. 92/Monday, May 15, 1989:

Total Number of Sponsored Events: 18.

Total Number of Sponsoring Organizations: 20.

Total Number of Commissioners/ Employees Attending: 37.

Total Amount of Reimbursement Expected:

Transportation	\$11,895.00
Subsistence	9,793.21
Other Expenses	1,660.74
Total	23,348.95

Travel Reimbursement Program Individual Event Report Errata:

(1) Replace the prior Event Report with the following:

Sponsoring Organization: NYNEX Service Company, 120 Bloomingdale Road, White Plains, NY 10605.

Date of the Event: January 16, 1989.

Description of the Event: To attend the Information Industry Liaison Committee (IILC) Meeting.

Commissioners Attending: None.

Other Employees Attending: Thomas J. Sugrue—Chief, Policy and Program Planning Division, Common Carrier Bureau.

Amount of Reimbursement:

Transportation	\$292.00
Subsistence	261.50

Other Expenses	48.60
Total	602.10

(2) Add the following Event Report:

Sponsoring Organization: U. S. West,

1600 7th Avenue, Seattle, WA 98191.

Date of the Event: January 16, 1989.

Description of the Event: To attend

the Information Industry Liaison

Committee (IILC) Technical Working

Meeting.

Commissioners Attending: None.

Other Employees Attending: Raymond

L. Dujack—Electronics Engineer,

Common Carrier Bureau.

Amount of Reimbursement:

Transportation	\$308.00
Subsistence	215.00
Other Expenses	56.33
Total	577.33

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 89-14484 Filed 6-16-89; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL HOME LOAN BANK BOARD

Civic Savings Bank, Portsmouth, OH; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 406(c)(1)(B)(i)(I) of the National Housing Act, as amended, 12 U.S.C. 1729(c)(1)(B)(i)(I) (1982), the Federal Home Loan Bank Board was duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Civic Savings Bank, Portsmouth, Ohio on June 7, 1989.

Dated: June 12, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-14472 Filed 6-16-89; 8:45 am]

BILLING CODE 6720-01-M

Horizon Financial, FA, Southampton, PA; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in Section 5(d)(6)(A)(i), of the Home Owner's Loan Act of 1933, as amended, 12 U.S.C. 1464(d)(6)(A)(i), and 12 U.S.C. 1701c(c)(2)(1982), as amended, the Federal Home Loan Bank Board has duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Horizon Financial, FA, Southampton, PA, on June 7, 1989.

Dated: June 12, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-14473 Filed 6-16-89; 8:45 am]

BILLING CODE 6720-01-M

Midwest Savings Assoc., FA, Minneapolis, MN; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Midwest Savings Association, Minneapolis, Minnesota on May 4, 1989.

Dated: June 12, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-14474 Filed 6-16-89; 8:45 am]

BILLING CODE 6720-01-M

Murray Federal Savings and Loan Assoc., Dallas, TX; Appointment of Conservator

Notice is hereby given that pursuant to the authority contained in section 5(d)(6)(A) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(A) (1982), the Federal Home Loan Bank Board duly appointed the Federal Savings and Loan Insurance Corporation as sole conservator for Murray Federal Savings and Loan Association, Dallas, Texas on May 4, 1989.

Dated: June 12, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-14475 Filed 6-16-89; 8:45 am]

BILLING CODE 6720-01-M

FSLIC Insurance Premium

[No. 89-1539]

Date: June 8, 1989.

AGENCY: Federal Home Loan Board.

ACTION: Notice.

SUMMARY: The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("FSLIC" or "Corporation"), has adopted a resolution pursuant to which the

Corporation orders the assessment against each insured institution of an additional premium for FSLIC insurance in an amount equal to one quarter of one-eighth of one percent (one thirty-second of one percent) of the total amount of the accounts of the insured members of each insured institution determined as of March 31, 1989.

EFFECTIVE DATE: June 19, 1989.

FOR FURTHER INFORMATION CONTACT:

Mary A. Creedon, Executive Director, FSLIC, (202) 416-2029; or Deborah Siegel, Attorney, Office of General Counsel (202) 906-6848, Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

Whereas, The Federal Home Loan Bank Board ("Bank Board"), as operating head of the Federal Savings and Loan Insurance Corporation ("Corporation" or "FSLIC"), may authorize the Corporation, pursuant to section 404(c) of the National Housing Act, as amended ("NHA"), 12 U.S.C. 1727(c) (1982), to assess against each institution the accounts of which are insured by the Corporation pursuant to section 403 of the NHA, 12 U.S.C. 1726 (1982) ("insured institution"), additional premiums for such insurance until the amount of such premiums equals the amount of all losses and expenses of the Corporation, *provided* That the total amount so assessed in any one year against any insured institution shall not exceed one eighth of one per centum of the total amount of the accounts of the insured members of such institution and *provided further* That the amount of the additional premium for the calendar year 1989 may not exceed one-sixteenth of one percentum of the total amount of the accounts of the insured members of such institution unless the Bank Board determines that severe pressures on the Corporation exist which necessitate an infusion of additional funds; and

Whereas, The Bank Board, as operating head of the Corporation, by Resolution No. 85-142, dated February 22, 1985, by Resolution No. 85-437, dated June 5, 1985, by Resolution No. 85-770, dated August 28, 1985, by Resolution No. 85-1142, dated December 9, 1985, by Resolution No. 86-213, dated March 6, 1986, by Resolution No. 86-582, dated June 10, 1986, by Resolution No. 86-941, dated September 2, 1986, by Resolution No. 86-1253, dated December 15, 1986, by Resolution No. 87-281, dated March 16, 1987, by Resolution No. 87-610, dated May 27, 1987, by Resolution No. 87-950, dated September 9, 1987, by Resolution No. 87-1254, dated December 14, 1987, by Resolution No. 88-256, dated April 7, 1988, by Resolution No. 88-537, dated

June 29, 1988, by Resolution No. 88-981, dated September 15, 1988, by Resolution No. 89-1287, dated December 7, 1988, and by Resolution No. 89-1028, dated March 15, 1989, ordered assessment against each insured institution of an additional premium for insurance in an amount equal to one thirty-second of one per centum of the total amount of the accounts of the insured members of each insured institution determined as of December 31, 1984, for the first assessment, as of March 31, 1985, for the second, as of June 30, 1985, for the third, as of September 30, 1985, for the fourth, as of December 31, 1985, for the fifth, as of March 31, 1986, for the sixth, as of June 30, 1986, for the seventh, as of September 30, 1986, for the eighth, as of December 31, 1986, for the ninth, as of March 31, 1987, for the tenth, as of June 30, 1987, for the eleventh, as of September 30, 1987, for the twelfth, as of December 31, 1987, for the thirteenth as of March 31, 1988, for the fourteenth, as of June 30, 1988, for the fifteenth, as of September 30, 1988 for the sixteenth, and as of December 31, 1988 for the seventeenth; and

Whereas, The Bank Board has considered memoranda of the Corporate Accounting Branch and the Chief Financial and Administrative Officer, Office of the FSLIC, (a copy of which memoranda are in the Minute Exhibit file), describing the impact of the collection of the additional premiums for insurance assessed pursuant to Resolution No. 85-143, dated February 22, 1985, Resolution No. 85-437, dated June 5, 1985, Resolution No. 85-770, dated August 28, 1985, Resolution No. 85-1142, dated December 9, 1985, Resolution No. 86-213, dated March 6, 1986, Resolution No. 86-582, dated June 10, 1986, Resolution No. 86-941, dated September 2, 1986, Resolution No. 86-1253, dated December 15, 1986, Resolution No. 87-281, dated March 16, 1987, Resolution No. 87-610, dated May 27, 1987, Resolution No. 87-950, dated September 9, 1987, Resolution No. 87-1254, dated December 14, 1987, Resolution No. 88-256, dated April 7, 1988, Resolution No. 88-537, dated June 29, 1988, Resolution No. 88-981, dated September 15, 1988, Resolution No. 88-1267, dated December 7, 1988, and Resolution No. 89-1028, dated March 15, 1989, upon the Corporation's insurance reserves:

Now, therefore, it is resolved, That on the basis of the administrative record, the Bank Board finds and determines that the Corporation has incurred substantial losses during calendar years 1981 through the first quarter of 1989; and

Resolved further, That the Bank Board finds and determines that:

1. Losses and expenses incurred by the Corporation, as defined in Resolution No. 85-142, require the assessment of additional insurance premiums pursuant to Section 404(c) of the NHA in addition to the additional insurance premiums assessed pursuant to Resolutions No. 85-142, No. 85-437, No. 85-770, No. 85-1142, No. 86-213, No. 86-582, No. 86-941, No. 86-1253, No. 87-281, No. 87-610, No. 87-950, No. 87-1254, No. 88-256, No. 88-537, No. 88-981, No. 88-1267, and No. 89-1028 in order to maintain the insurance reserves of the Corporation at a level adequate to meet in part the Corporation's losses and expenses and to protect the insured members of insured institutions;

2. Severe pressures on the Corporation exist which necessitate an infusion of additional funds;

3. Postponement of a reduction in the assessment of an additional premium, as provided in section 404(c)(2) of the NHA, will improve the financing environment for selling obligations of the Financing Corporation organized pursuant to the Federal Savings and Loan Insurance Corporation Recapitalization Act of 1987;

4. It is appropriate, therefore, to provide for assessment of an additional insurance premium at this time, pursuant to section 404(a)(2) and 404(c)(1) of the NHA, by order of this Corporation; and

Resolved further, That the Corporation hereby orders the assessment against each insured institution of an additional premium for insurance for the second quarter of 1989, in an amount equal to one thirty-second of one percentum of the total amount of the accounts of the insured members of such insured institution determined as of March 31, 1989; and

Resolved further, That the additional insurance premium assessed pursuant to this Resolution shall be payable on or about June 30, 1989; and

Resolved further, That the Executive Director or the Principal Deputy Director of the FSLIC, or a designee of either of them ("Director"), shall determine the amount of the additional premium due, including an offset of one quarter of twenty percent (five percent) of each insured institution's pro rata share of the statutorily prescribed amount as provided in section 404(e)(2) of the NHA, to be paid on or about June 30, 1989, by each insured institution, and shall notify each institution of such amount at least fifteen (15) days prior to the date such amount is due; and

Resolved further. That the Director, on behalf of the Corporation, is hereby authorized to take all other actions necessary or appropriate to determine and collect the additional insurance premium authorized and ordered by this Resolution; and

Resolved further. That the Secretary shall forward this Resolution for publication in the **Federal Register**.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-14471 Filed 6-16-89; 8:45 am]

BILLING CODE 6720-01-M

Midwest Federal Savings and Loan Association, Minneapolis, MN; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for Midwest Savings and Loan Association of Minneapolis, Minneapolis, Minnesota ("Association") with the FSLIC as sole receiver for the Association on May 4, 1989.

Dated: June 12, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-14478 Filed 6-16-89; 8:45 am]

BILLING CODE 6720-01-M

Murray Savings Association, Dallas, TX; Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(6)(D) of the Home Owners' Loan Act, as amended, 12 U.S.C. 1464(d)(6)(D) (1982), the Federal Home Loan Bank Board duly replaced the Federal Savings and Loan Insurance Corporation ("FSLIC") as Conservator for Murray Savings Association, Dallas, Texas ("Association") with the FSLIC as sole receiver for the Association on May 4, 1989.

Dated: June 12, 1989.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-14477 Filed 6-16-89; 8:45 am]

BILLING CODE 6720-01-M

[No. AC-770; FHLBB No. 2787]

Pioneer Savings Bank, Lynwood, WA, Final Action Approval of Conversion Application

Date: June 7, 1989.

Notice is hereby given that on May 15, 1989, the Office of the General Counsel of the Federal Home Loan Bank Board, acting pursuant to the authority delegated to the General Counsel or his designee, approved the application of Pioneer Savings Bank, Lynwood, Washington for permission to convert to the stock form of organization. Copies of the application are available for inspection at the Office of the Secretariate at the Federal Home Loan Bank Board, 1700 G Street, NW., Washington, DC 20552, and at the Office of the Supervisory Agent at the Federal Home Loan Bank of Seattle, 1501 4th Avenue, 19th Floor, Seattle, Washington, 98101-1693.

By the Federal Home Loan Bank Board.

John F. Ghizzoni,

Assistant Secretary.

[FR Doc. 89-14478 Filed 6-16-89; 8:45 am]

BILLING CODE 6720-01-M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200229-001.

Title: Manchester Terminal Corporation Terminal Agreement.

Parties: Manchester Terminal Corporation (MTC); Scott Marine Services, Inc. (SMS).

Synopsis: The Agreement provides that SMS will pay MTC a facility use charge of \$1.00 per 2000 pounds in lieu of wharf demurrage for all steel pipes received at MTC's terminal facility to be

measured, sorted, bundled, and handled by SMS under the basic agreement.

By Order of the Federal Maritime Commission.

Dated: June 13, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-14404 Filed 6-16-89; 8:45 am]

BILLING CODE 6730-01-M

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., Room 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224-200255.

Title: City of Los Angeles Terminal Agreement.

Parties: City of Los Angeles (CLA), California Stevedore Ballast Company (CSBC).

Synopsis: The Agreement provides CSBC with a nonexclusive berth assignment covering an area of approximately 30 acres including 1,500 lineal feet of wharf of berthing vessels and assembling, distributing, loading and unloading goods on or from such vessels. The compensation to be paid CLA for such use is a minimum monthly guarantee of \$160,000 with a 50/50 percent monthly revenue sharing structure for wharfage, dockage, storage and demurrage fees until the CLA has received \$200,000. The parties agree to a 25/75 percent sharing thereafter with CLA receiving the 25 percent share.

Agreement No.: 224-200147-001.

Title: Jacksonville Port Authority Terminal Lease Agreement.

Parties: Jacksonville Port Authority (Authority) Sea-Land Service, Inc.

Synopsis: The Agreement amends Article 8(b) of the original lease to establish (1) rental charges for approximately 48 acres of property and facilities thereon located at the

Authority's Blount Island Terminal and; (2) provisions for additional rental charges in accordance with the Agreement's Exhibit A, Schedule of Fee and Charges, as different phases of improvements upon the leased premises are completed.

By Order of the Federal Maritime Commission.

Dated: June 14, 1989.

Joseph C. Polking,

Secretary.

[FR Doc. 89-14469 Filed 6-16-89; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL TRADE COMMISSION

Presale Availability Rule; Information Collection Requirement

AGENCY: Federal Trade Commission.

ACTION: Notice of application to OMB under the Paperwork Reduction Act, 44 U.S.C. 3501-3518, for clearance of information collection requirements contained in the Presale Availability Rule, 16 CFR Part 702. A three-year extension of the existing clearance, OMB Control No. 3084-0056, is being requested.

SUMMARY: The Presale Availability Rule implements the Magnuson-Moss Warranty Act, 15 U.S.C. 2302(b)(1)(A) (1982). It requires retailers selling consumer products that cost more than \$15 and carry written warranties to

make warranties available to prospective purchasers on request. The rule also requires manufacturers of such products to provide retailers the information needed to comply with the presale availability requirement. The supporting statement submitted with the request conforms to the substance of the previous submission. For the purposes of this request, it is assumed that some 700,000 retailers are affected by the rule. Such retailers will devote, in the aggregate, not more than 960,000 hours ensuring compliance with Rule 702. The supporting statement also estimates that some 11,000 manufacturers will devote approximately 50,000 hours per year to rule compliance.

DATE: Comments on this application must be submitted on or before July 19, 1989.

ADDRESS: Send comments to Mr. Don Arbuckle, FTC Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3228, Washington, DC 20503. Copies of the application may be obtained from Public Reference Branch, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Christian S. White, Assistant General Counsel, Federal Trade Commission, Washington, DC 20580, (202) 326-2476.

By direction of the Commission.

Kevin J. Arquit,

General Counsel.

[FR Doc. 89-14464 Filed 6-16-89; 8:45 am]

BILLING CODE 6750-01-M

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

June 12, 1989.

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvement Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period:

Transactions Granted Early Termination Between: 052989 and 060989

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
Owens & Minor, Inc., Hygeia N.V., National Medical Supply Corporation	89-1663	05/30/89
Edwards Dunlop and Company Limited, The Meade Corporation, Seaboard Paper Company	87-1488	05/30/89
William Dean Singleton, Knight-Ridder, Inc., Twin Coast Newspapers, Inc.	89-1617	05/31/89
Pansophic Systems Incorporated, Genigraphics Corporation, Genigraphics Corporation	89-1631	05/31/89
Fred R. Adams, Jr., Cargill, Incorporated, Shell Egg Business of Sunny Fresh Foods, Inc.	89-1742	05/31/89
Primus Capital Fund II Limited Partnership, Harsco Corporation, Astro Metallurgical Division of Harsco Corporation	89-1751	05/31/89
The Middleby Corporation, Whitman Corporation, Hussmann Corporation	89-1761	05/31/89
Toolal Group Plc, Dimensions, Inc., Dimensions, Inc.	89-1807	05/31/89
Law Companies Group, Inc., W. David Kimbrell and Janet Kimbrell, Hall-Kimbrell Environmental Services, Inc.	89-1755	06/01/89
W. David Kimbrell and Janet Kimbrell, Law Companies Group, Inc., Law Companies Group, Inc.	89-1756	06/01/89
U.S. Province of the Cong. of Srs. of Bon Secours-Paris, Sisters of Charity of Our Lady of Mercy, St. Frances Xavier Hospital and Divine Savior Hospital	89-1769	06/01/89
Borden, Inc., Moore's Quality Snack Foods, Inc., Moore's Quality Snack Foods, Inc.	89-1771	06/01/89
Eastman Kodak Company, Jack E. Brown, Insilco Corporation	89-1710	06/02/89
Eastman Kodak Company, Cyril Wagner, Jr., Insilco Corporation	89-1711	06/02/89
Comdata Holdings Corporation, American Express Company, First Data Resources, Inc. & FundsNet, Inc.	89-1746	06/02/89
Sandoz Ltd., Vaughan Products, Inc., Vaughan Products, Inc.	89-1764	06/02/89
FSWG Associates, Stride Rite Corporation, Stride Rite Corporation	89-1791	06/02/89
Omnicom Group Inc., Boase Massimi Pollitt plc, BMP North America Inc.	89-1794	06/02/89
Huntington Bancshares Incorporated, Mid-America Federal Savings and Loan Association, Mid-America Federal Savings and Loan Association	89-1684	06/05/89
Conseco, Inc., Temple-Inland Inc., National Fidelity Life Insurance Company	89-1765	06/05/89
Dana Corporation, The Superior Electric Company, The Superior Electric Company	89-1799	06/05/89
Dana Corporation, The Superior Electric Company, The Superior Electric Company	89-1800	06/05/89
Russell V. Umphenour, Jr., Winners Corporation, Chick, Inc.	89-1812	06/05/89
Blackwood Hodge P.L.C., H.F. Mason Equipment Corporation, H.F. Mason Equipment Corporation	89-1836	06/05/89
Stephen Levin, PepsiCo, Inc., PepsiCo, Inc.	89-1842	06/05/89
PepsiCo, Inc., Stephen Levin, Enn Investment Corp. and Romet Corp.	89-1843	06/05/89

Name of Acquiring Person, Name of Acquired Person, Name of Acquired Entity	PMN No.	Date terminated
George K. Broady, Antech Corp., Aritech Corp. (Distribution Division).....	89-1848	06/05/89
Amerada Hess Corporation, Transco Energy Company, TXPO Operating Company.....	89-1851	06/05/89
The Liberty Corporation, Primerica Corporation, Tried Life Insurance Corporation.....	89-1670	06/06/89
Bridgestone Corporation, TS Industries, Inc., Thermal Systems, Inc.....	89-1699	06/06/89
Aktiebolaget Volvo, Ford Motor Company, Park Ridge Corporation.....	89-1795	06/06/89
Trust under the Will of Testament Alfred G. Mendelson, Rymer Foods Inc., Murry's Inc.....	89-1815	06/06/89
Pioneer International Limited, Billy G. Yarbrough, Solano Concrete Company, Inc.....	89-1837	06/06/89
Sutter Health, Auburn Faith Community Hospital, Incorporated, Auburn Faith Community Hospital, Incorporated.....	89-1664	06/07/89
Kenneth R. Thomson, The Lawyers Co-operative Publishing Company, The Lawyers Co-operative Publishing Company.....	89-1698	06/07/89
Salomon Inc., Spirit Holding Co., Inc., Spirit Holding Co., Inc.....	89-1728	06/07/89
GB-Inno-BM S.A., Spirit Holding Co., Inc., Spirit Holding Co., Inc.....	89-1729	06/07/89
Salomon, Inc., Interco Incorporated, Central Hardware Company.....	89-1738	06/07/89
The Common Fund, Stride Rite Corporation, Stride Rite Corporation.....	89-1790	06/07/89
Jann and Jane Wenner, c/o Straight Arrow Publishers, Inc., Warner Communications, Inc., Lorimar Telepictures Magazines, Inc.....	89-1821	06/07/89
Golder, Thoma, Cressay Fund III Limited Partnership, GBP Industries, Inc., GBP Industries, Inc.....	89-1853	06/07/89
American Financial Corporation, Bernard E. Munk (89-1818) Michael P. Aquilina (89-1), Penndel Energy Corporation.....	89-1818	06/08/89
American Financial Corporation, Michael P. Aquilina, Penndel Energy Corporation.....	89-1819	06/08/89
Deere & Company, Cooper Industries, Inc., Funk Manufacturing Company.....	89-1820	06/08/89
Hunting Associated Industries Plc, Irvin Industries (DEL) Inc., Irvin Industries (DEL) Inc.....	89-1822	06/08/89
Memil Lynch & Co., Inc., Stanadyne Holdings Corp., Stanadyne, Inc. (Western Steel Division).....	89-1834	06/08/89
Tyco Toys, Inc., View-Master Ideal Group, Inc., View-Master Ideal Group, Inc.....	89-1839	06/08/89
Robert S. Jepson, Jr., Marietta H. Caron Trust, Caron International, Inc.....	89-1852	06/08/89
O.R. Lababedi, IPOCO Corporation, The Whitestone Division of IPOCO Corporation.....	89-1854	06/08/89
Pitcairn Group L.P., Daniel J. Sullivan, Pangborn Holdings, Inc.....	89-1859	06/08/89
Pitcairn Group L.P., Bitrix N.V., Pangborn Holdings, Inc.....	89-1860	06/08/89
Courtaulds plc, Wheeling Stamping Company, Wheeling Stamping Company.....	89-1758	06/09/89
Blackstone Capital Partners, L.P. Edgcomb Corporation, L.P. Edgcomb Corporation.....	89-1766	06/09/89
Blackstone Capital Partners, L.P. Edgcomb Corporation, L.P. Edgcomb Corporation.....	89-1793	06/09/89
Cellular Information Systems, Inc., Century Communications Corp., Bounce Communications, Inc.....	89-1817	06/09/89
Chrysler Corporation, Thrifty Rent-A-Car System, Inc., Thrifty Rent-A-Car System, Inc.....	89-1823	06/09/89
Addington Resources, Inc., Orlando C. Schiappa, American Industrial Resources & Ohio Coal Construction.....	89-1827	06/09/89
Osborn Jay Call, Great Western Resources, Inc., GW Petroleum Inc.....	89-1864	06/09/89
Marville Corporation, Caroline Hunt Trust Estate, Rosewood Resources, Inc.....	89-1889	06/09/89
Liberty Mutual Insurance Company, SteinRoe Equity Trust, SteinRoe Equity Trust.....	89-1912	06/09/89

FOR FURTHER INFORMATION CONTACT:
Sandra M. Peay, Contact
Representative, Premerger Notification
Office, Bureau of Competition, Room
303, Federal Trade Commission,
Washington, DC 20580. (202) 326-3100.

By direction of the Commission.

Donald S. Clark,
Secretary.
[FR Doc. 89-14465 Filed 6-16-89; 8:45 am]
BILLING CODE 6750-01-M

DEPARTMENT OF THE INTERIOR

Minerals Management Service

Information Collection Submitted to
the Office of Management and Budget
for Review Under the Paperwork
Reduction Act

The proposal for the collection of
information listed below has been
submitted to the Office of Management
and Budget for approval under the
provisions of the Paperwork Reduction
Act (44 U.S.C. Chapter 35). Copies of the
proposed collection of information and
related forms and explanatory material
may be obtained by contacting the
Bureau Clearance Office at the phone
number listed below. Comments and
suggestions on the requirement should

be made directly to the Bureau
Clearance Officer, Minerals
Management Service, Mail Stop 632, 381
Elden Street, Herndon, Virginia 22070-
4817 and to the Office of Management
and Budget Interior Department Desk
Officer, Paperwork Reduction Project
(1010-XXXX), Washington, DC 20503,
telephone (202) 395-7340 with copies to
Gerald D. Rhodes; Chief, Branch of
Rules, Orders, and Standards; Offshore
Rules and Operations Division; Minerals
Management Service; Mail Stop 648, 381
Elden Street, Herndon, Virginia 22070-
4817.

Title: Oil and Gas and Sulphur
Operations in the Outer Continental
Shelf (OCS), 30 CFR Part 250.

OMB Approval Number: 1010-XXXX.
Abstract: Rules governing oil, gas, and
sulphur operations in the OCS were
consolidated, updated, and published as
30 CFR Part 250 which became effective
May 31, 1988. Subparts A, D, E, H, and L
of the revised rule contain narrative
information collection requirements
concerning the conduct of oil and gas
and sulphur operations in the OCS
which have been approved by OMB.
These narrative information collection
requirements did not distinguish
between sulphur operations and oil and
gas operations. The Minerals
Management Service proposes to adjust
these information collection

requirements by relocating a total of 422
hours into a new proposed Subpart P
which is being established for sulphur
operations to deal with these activities
with great specificity. The information is
necessary to ascertain the adequacy of
sulphur operations in order to minimize
hazards and increase the level of safety
of equipment and procedures in drilling,
well-completion, well-workover, and
production operations.

Bureau Form Number: None.
Frequency: On occasion.
Description of Respondents: Lessees
of OCS sulphur leases.
Estimated Completion Time: 6.9
hours.

Annual Responses (Reports): 18.
Annual Burden Hours (Reporting):
124.
Annual Burden Hours
(Recordkeeping): 298.
Annual Burden Hours: 422.
Bureau Clearance Officer: Dorothy
Christopher, (703) 787-1239.

Dated: May 6, 1989.

William D. Bettenbreg,
Associate Director for Offshore Minerals
Management.

[FR Doc. 89-14442 Filed 6-16-89; 8:45 am]
BILLING CODE 4310-MR-M

Office of the Secretary

Great Lakes Coastal Barrier Act of
1988; Availability of Revised, Final
Maps Identifying Undeveloped Coastal
Barriers Along the Shore of the Great
Lakes

AGENCY: Department of the Interior.
ACTION: Notice of availability.

SUMMARY: Under the provisions of Pub.
L. 100-707, the Secretary of the Interior
is required to make recommendations to
the Congress and prepare and transmit
to the Congress revised, final maps
identifying undeveloped, unprotected
coastal barriers along the Great Lakes
shoreline appropriate for inclusion in the
Coastal Barrier Resources System
(System). This notice announces the
availability of the final maps that have
been transmitted to Congress. Congress
will determine which areas, if any, will
be included in the System.

ADDRESS: Great Lakes Coastal Barriers
Study Group, U.S. Department of the
Interior, National Park Service—0473,
Washington, DC 20113-7127.

FOR FURTHER INFORMATION: Dr. Albert
G. Greene, Jr., Great Lakes Coastal
Barriers Coordinator, National Park
Service, Washington, DC 20013-7127,
(202) 343-5881.

SUPPLEMENTARY INFORMATION: On
November 23, 1988, President Reagan
signed into law the Disaster Relief and
Emergency Assistance Amendments Act
(Pub. L. 100-707). Section 204 of the Act,
entitled "Great Lakes Coastal Barrier
Act of 1988," amends the Coastal Barrier
Resources Act of 1982 to include "those
undeveloped coastal barriers along the
shore areas of the Great Lakes that are
designated by Congress by law after
considering the recommendations of the
Secretary.

Section 4 of the Coastal Barrier
Resources Act (CBRA) established a
Coastal Barrier Resources System
(System) consisting of 188 undeveloped
coastal barrier units along the shorelines
of the Atlantic Ocean and the Gulf of
Mexico. Sections 5 and 6 of the CBRA
prohibit all new Federal expenditures
and financial assistance within units of
the System unless specifically exempted
by the CBRA.

The Great Lakes Coastal Barrier Act
of 1988 requires the Secretary of the
Interior, to recommend to Congress and
prepare maps identifying the boundaries
of undeveloped coastal barriers along
the shore areas of the Great Lakes that
the Secretary considers appropriate for
inclusion in the System. Before
recommending any undeveloped coastal
barrier units, the Secretary is required to
update and consider the draft inventory

maps issued for public comment in
January 1985 and consult with and
provide opportunity for comment by
appropriate U.S. Government agencies,
State agencies of the States bordering
the Great Lakes, and the public.

The 117 areas delineated on 88 draft
inventory maps were made available for
review and comment on January 12, 1989
(see *Federal Register*, 54 FR 1250). These
draft maps had been revised from those
issued in 1985 based on aerial
photography specifically taken for this
study and comments received during the
1985 comment period. Comments on the
maps released on January 12, 1989,
originally were to be received no later
than February 6, 1989, but the comment
period was extended through March 14,
1989, (See *Federal Register*, 54 FR 4914).

Under the 1988 Act, the Secretary may
not recommend for inclusion in the
System any areas that are publicly
owned and protected by Federal, State,
or local government law or held by a
privately-owned organization primarily
for wildlife refuge, sanctuary,
recreational, or natural resource
conservation purposes. The 1988 Act
also provides that the limitations on the
use of Federal expenditures or financial
assistance within those units designated
by Congress will not apply to existing
highways located within the State of
Michigan.

The criteria used for delineating the
undeveloped coastal barriers on the
draft and final maps are those set forth
in the Coastal Barrier Resources Act of
1982 and the March 4, 1985, *Federal
Register* (42 FR 8698).

The following areas were excluded or
modified as a result of information
received during the comment period:

New York—excluded, NY-10;
modified NY-11, NY-14, NY-15 and NY-
18.

Ohio—modified, OH-1 and OH-06.

Michigan—excluded, MI-11, MI-19,
MI-40 and MI-60; modified, MI-01, MI-
02, MI-12, MI-15, MI-18, MI-32, MI-38,
MI-48, MI-50, MI-51, MI-61, MI-67 and
MI-68.

Wisconsin—modified, WI-07 and WI-
08.

The number of units which met
criteria for undeveloped coastal barriers
along the Great Lakes shoreline is now
112.

Maps may be inspected by
appointment in Room 3327, Main

Interior Building, 1800 C Street, NW.,
Washington, DC, (202) 343-5881.

Date: June 8, 1989.

Becky Norton Dunlop,
Assistant Secretary for Fish and Wildlife and
Parks.

[FR Doc. 89-14480 Filed 6-16-89; 8:45 am]

BILLING CODE 4310-70-M

Bureau of Land Management

[AA-230-04-6310-11-2410]

Information Collection Submitted to
the Office of Management and Budget
for Review Under the Paperwork
Reduction Act

The proposal for the collection of
information listed below has been
submitted to the Office of Management
and Budget for approval under the
provisions of the Paperwork Reduction
Act (44 U.S.C. Chapter 35). Copies of the
proposed collection of information and
related forms and explanatory material
may be obtained by contacting the
Bureau's clearance office at the phone
number listed below. Comments and
suggestions on the requirements should
be made directly to the Bureau's
clearance officer and to the Office of
Management and Budget, Paperwork
Reduction Project (1004-0113)
Washington, DC 20503, telephone (202)
395-7340.

Title: Timber Sale Contracting, 43 CFR
5442.1

OMB Approval Number: (1004-0113)

Abstract: These forms are used by
prospective purchasers of Bureau of
Land Management timber. This
information allows the Bureau to
determine the high bidder on sealed
bid sales and whether bidders are
qualified to bid on oral auction sales.

Bureau Form Number: 5440-9

Frequency: Occasionally

Description of Respondents: Individuals,
small business, large corporations.

Estimated Completion Time: 1.25 hours
each response

Annual Responses: 500

Annual Burden Hours: 625

Bureau Clearance Officer: (Alternate)
Rich Iovaine (202) 653-8853

Date: May 26, 1989.

Billy R. Templeton,
Assistant Director, Land and Renewable
Resources.

[FR Doc. 89-14438 Filed 6-16-89; 8:45 am]

BILLING CODE 4310-84-M

[AA-230-04-6310-11-2410]

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contracting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirements should be made directly to the Bureau's clearance officer and to the Office of Management and Budget, Paperwork Reduction Act (1004-0146) Washington, DC 20503, telephone (202) 395-7340.

Title: Timber Sale Export Restrictions, 43 CFR 5400.0-3

OMB Approval Number: (1004-0146)

Abstract: These forms are used by purchasers of the Bureau of Land Management timber sales to determine compliance with export restrictions.

Bureau Form Number: 5460-15

Frequency: Occasionally.

Description of Respondents: Individuals, companies and corporations that have purchased Bureau of Land Management timber sales.

Estimated Completion Time: One half hour per response.

Annual Responses: 300

Annual Burden Hours: 150

Bureau Clearance Officer: (Alternate) Rick Iovaine (202) 653-8853

Date: May 26, 1989.

Billy R. Templeton,

Acting Assistant Director, Land and Renewable Resources.

[FR Doc. 89-14439 Filed 6-16-89; 8:45 am]

BILLING CODE 4310-04-M

National Park Service**Revision of Park Boundary; Manassas National Battlefield Park**

Whereas, Pub. L. 100-647, section 10002, dated November 10, 1988, and referred to as the "Manassas National Battlefield Park Amendments of 1988" requires the Secretary of the Interior to publish in the *Federal Register* a detailed description and map depicting the boundaries of the land acquired by Pub. L. 100-647 and included within the boundaries of Manassas National Battlefield Park;

Therefore pursuant to section 10002 of Pub. L. 100-647, notice is hereby given

that the boundary of Manassas National Battlefield Park has been revised to include the 566.77 acres, more or less, identified and described as all that certain tract or parcel of land lying and being situated in Prince William County, Virginia, and being more particularly described as the area which is south of the right-of-way line of U.S. Route 29, north of the right-of-way line of Route 705, and west of the right-of-way line of Route 622. The area included within the boundary is shown on map No. 379/80,023, which is on file and available for inspection in the office of the National Park Service, Department of the Interior. Copies may be obtained from the Land Resources Division, Mid-Atlantic Region, National Park Service, 143, South Third Street, Philadelphia, Pennsylvania 19108.

Date June 8, 1989.

Ronald N. Wrye,

Regional Director, National Capital Region.

[FR Doc. 89-11479 Filed 6-16-89; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31478]

Istra Corp.—Assignment of Lease and Interchange Agreement Exemption—Ogeechee Railway Co.

Istra Corporation (Istra) and Ogeechee Railway Company (Ogeechee) filed a notice of exemption for the assignment to Ogeechee of a lease and related interchange agreement, as amended and clarified, between Istra and the Central of Georgia Railroad Company (CG) for the operation of two CG lines in Georgia. The lines are: (1) A 29.2-mile line between milepost W-57.5, at Dover, GA, and milepost W-86.7, at Metter, GA; and (2) a 21.1-mile line between milepost SA-57.5, at Sylvania, GA, and milepost SA-36.4, at Ardmore, GA. The lease between Istra and CG was authorized in Finance Docket No. 31449, *Istra Corporation—Lease and Operation Exemption—Central of Georgia Railroad Company* (not printed), served May 24, 1989. James E. Isbell, Sr., and Trac-Work, Inc., each own 50 percent of Istra. Istra in turn, owns 33.3 percent of Ogeechee, while James E. Isbell, Sr., and Trac-Work, Inc., own 44.4 percent.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). The transaction will not result in adverse changes in service

levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family.

As a condition to use of this exemption, any rail employees of Istra or Ogeechee who may be affected by the transaction will be protected pursuant to *Mendocino Coast Ry., Inc.—Lease and Operate*, 354 I.C.C. 732 (1978) and 360 I.C.C. 653 (1980).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: John M. Robinson, 9616 Old Spring Road, Kensington, MD 20895.

Date: June 9, 1989.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. McGee,

Secretary.

[FR Doc. 89-14373 Filed 6-16-89; 8:45 am]

BILLING CODE 7035-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION**Records Schedules; Availability and Request for Comments**

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that: (1) Propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATE: Requests for copies must be received in writing on or before August 3, 1989. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESS: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights and interests of the Government and of private persons directly affected by the Government's activities, and historical or other value.

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Defense Intelligence Agency, Directorate for Technical Services and Support (N1-373-89-6). Routine administrative support and logistics/engineering records.

2. Defense Nuclear Agency (N1-374-88-2). Facilitative Research and Development Life Cycle Management records. (Program planning files, R&D Project Case files and Test reports are retained as permanent records.)

3. Defense Nuclear Agency (N1-374-89-23). Routine training course announcements and printed training aids.

4. Defense Nuclear Agency (N1-374-89-24). Nonappropriated funds accounting files.

5. Department of Defense, Joint Staff (N1-218-89-2). Routine and facilitative electronic records and related printouts.

6. Department of Justice, Federal Bureau of Investigation (N1-65-89-3). The FBI schedule is classified in the interest of national security pursuant to Executive Order 12356.

7. Department of Justice, U.S. Marshals Service (N1-118-89-1). Special assignment files, 1968-71, consisting of summary accounts of expenses incurred by Deputy Marshals in carrying out special assignments in such areas as trial assistance, witness security, court security, and enforcement of court orders.

8. Executive Office of the President, Office of Administration (N1-364-88-1). Records of the U.S. Trade Representative. Comprehensive schedule providing for destruction of routine and facilitative records (policy documentation is permanent).

9. Department of the Treasury, Bureau of Alcohol, Tobacco and Firearms, Office of Law Enforcement, headquarters and subordinate field offices (N1-436-88-4). Reduction in retention period for quarterly certification files and time and activity summary files relating to administratively uncontrollable overtime.

Dated: June 7, 1989.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 89-14412 Filed 6-16-89; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL SCIENCE FOUNDATION**Permit Issued Under the Antarctic Conservation Act of 1978**

AGENCY: National Science Foundation.

ACTION: Notice of permit issued under the Antarctic Conservation Act of 1978, Pub. L. 95-541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice of permit issued.

FOR FURTHER INFORMATION CONTACT: Charles E. Myers, Permit Office, Division of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On April 24, 1989, the National Science Foundation published a notice in the *Federal Register* of a permit application received. A permit was issued to the following individual on June 9, 1989: Will Steger.

Charles E. Myers,

Permit Office, Division of Polar Programs.

[FR Doc. 89-14418 Filed 6-16-89; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-32 and DPR-37, issued to Virginia Electric and Power Company (the licensee), for operation of the Surry Power Station, Units 1 and 2, located in Surry County, Virginia.

Environmental Assessment**Identification of Proposed Action**

The proposed amendments would revise the provisions in the Technical Specifications (TS) by: (1) Raising the minimum requirement high level intake canal water level from 18 feet to 23 feet, (2) increasing the requirement from two to three emergency service water pumps to be operable with provisions for limited duration outages, and (3) providing operability and surveillance requirements for the new safety-related high level intake canal level actuation system.

The proposed action is in accordance with the licensee's application for amendment dated March 27, 1989.

The Need for the Proposed Action

The proposed changes to the TS are required to maintain a higher water level in the intake canal to ensure adequate flow through the component cooling water (CCW) system and other safety-related heat exchangers during accident conditions.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revisions to the TS. The proposed revisions would require the licensee to raise the water level in the intake canal from 18 to 23 feet; require three emergency service

water pumps to be operable; and cause isolation of the main condenser and certain service water isolation valves upon receipt of a signal from the safety-related canal low level actuation system. The proposed revisions will also require operability and surveillance requirements for the new safety-related canal water level actuation system. The proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed changes to the TS involve systems which are not located within the restricted area as defined in 10 CFR Part 20. These changes do not affect non-radiological plant effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

The Notice of Consideration of Issuance of Amendments and Opportunity for Hearing in connection with this action was published in the *Federal Register* on April 10, 1989 (54 FR 14303). No request for hearing or petition for leave to intervene was filed following this notice.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Surry Power Station, Units 1 and 2.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendments dated March 27, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 12th day of June 1989.

For the Nuclear Regulatory Commission.

Jan A. Norris,

Acting Director, Project Directorate II-2, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 89-14456 Filed 6-16-89; 8:45 am]

BILLING CODE 7590-01-M

Availability of Draft Technical Position on Tectonic Models in the Assessment of Performance of High-Level Radioactive Waste Repositories

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of availability.

SUMMARY: The Nuclear Regulatory Commission (NRC) is announcing the availability of the "Draft Technical Position on Tectonic Models in the Assessment of Performance of High-Level Radioactive Waste Repositories."

DATE: The comment period expires August 18, 1989.

ADDRESSES: Send comments to Chief, Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of this document may be obtained free of charge upon written request to Marlene Creviston, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, U.S. Nuclear Regulatory Commission, Mail Stop 4-H-3, Washington, DC 20555, Telephone 1/800/368-5642, Ext. 20440.

FOR FURTHER INFORMATION CONTACT: Kenneth Kalman, Project Manager, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, U.S. Nuclear Regulatory Commission,

Washington, DC 20555, Telephone 301/492-0428.

SUPPLEMENTARY INFORMATION: This Technical Position on tectonic models is undertaken to document the Division of High-Level Waste Management (DHLWM) staff's position on the requirement for the support and implementation of tectonic model(s) in performance allocation and performance assessment. The need for this Position stems from the DHLWM staff's concern about the use of models in performance allocation and performance assessment. In the Consultation Draft Site Characterization Plan and the Site Characterization Plan the U.S. Department of Energy (DOE) has indicated that it intends to use models in the performance assessment process. As a result, DOE is required, under 10 CFR Part 60 (§§ 60.21 and 60.101) to provide through support of those models. The objectives of this Position are to outline the regulatory requirements for support of tectonic models, to discuss the implementation of the requirements, and to suggest the process for integrating tectonic models into data collection activities of the site characterization program. Adherence to this Technical Position will result in use of tectonic models that are acceptable to the DHLWM staff and will help to assure the adequacy of the information provided in support of the License Application.

Dated at Rockville, Maryland, this 12th day of June 1989.

For the Nuclear Regulatory Commission.

John J. Lineham,

Director, Repository Licensing and Quality Assurance Project Directorate, Division of High-Level Waste Management, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 89-14455 Filed 6-16-89; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 72-6, 50-325/324]

Carolina Power and Light Co.; Consideration of Issuance of a Materials License for the Storage of Spent Fuel and Opportunity for a Hearing

The Nuclear Regulatory Commission (the Commission) is considering an application dated April 27, 1989, for a materials license, under the provisions of 10 CFR Part 72, from Carolina Power and Light Company (CP&L or the applicant) to possess spent fuel and other radioactive materials associated with spent fuel storage in an independent spent fuel storage installation (ISFSI) located in Brunswick

County, North Carolina. If granted, the license will authorize the applicant to store spent fuel from CP&L's H. B. Robinson Steam Electric Plant Unit No. 2 in a dry storage concrete module system at the applicant's Brunswick Steam Electric Plant site (Operating Licenses DPR-71 and 62). The fuel assemblies are presently stored in the Brunswick Steam Electric Plant Units 1 and 2 spent fuel pools. Pursuant to the provision of 10 CFR Part 72, the term of the license for the ISFSI would be twenty (20) years.

Prior to issuance of the requested license, the Commission will have made the findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The issuance of the materials license will not be approved until the Commission has reviewed the proposal and has concluded that approval of the license and the amendments will not be inimical to the common defense and security and will not constitute an unreasonable risk to the health and safety of the public. The NRC will complete an environmental evaluation, in accordance with 10 CFR Part 51, to determine if the preparation of an environmental impact statement is warranted or if an environmental assessment and Finding of No Significant Impact are appropriate. This action will be the subject of a subsequent notice in the *Federal Register*.

Pursuant to 10 CFR 2.105 and 2.1107, by July 19, 1989, the licensee may file a request for a hearing; and any person whose interest may be affected by this proceeding may file a request for a hearing in the form of a petition for leave to intervene with respect to the subject materials license in accordance with the provisions of 10 CFR 2.714. If a request for hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel will rule on the request and/or petition, and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order. In the event that no request for hearing or petition for leave to intervene is filed by the above date, the Commission may, upon satisfactory completion of all evaluations, issue the materials license without further prior notice.

A petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding and how that interest may be affected by the

results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order that may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene and should identify whether such aspect relates to the requested materials license or to the proposed reactor license amendments. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend a petition, without prior approval of the presiding officer at any time up to 15 days prior to the holding of the first prehearing conference, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, the petitioner shall file a supplement to the petition to intervene which must include a list of contentions that are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Richard E. Cunningham, Director, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards:

Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this *Federal Register* notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and Mr. R. E. Jones, General Counsel, Carolina Power and Light Company, P.O. Box 1551, Raleigh, North Carolina 27602.

Not timely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

The Commission hereby provides notice that this proceeding concerns an application for a license falling within the scope of section 134 of the Nuclear Waste Policy Act of 1982 (NWPA), 42 U.S.C. 10154. Under section 134 of NWPA, the Commission, at the request of any petitioner or any party to the proceeding, must use hybrid hearing procedures with respect to "any matter which the Commission determines to be in controversy among the parties." The hybrid procedures in section 134 provide for oral argument on matters in controversy, preceded by discovery under the Commission's rules, and the designation, following argument, of only those factual issues that involve a genuine and substantial dispute, together with any remaining questions of law, to be resolved in an adjudicatory hearing. Actual adjudicatory hearings are to be held on only those issues found to meet the criteria of section 134 and set for hearing after oral argument.

The Commission's rules implementing section 134 of the NWPA are found in 10 CFR Part 2, subpart K, "Hybrid Hearing Procedures for Expansion of Spent Nuclear Fuel Storage Capacity at Civilian Nuclear Power Reactors," (published at 50 FR 41662, October 15, 1985). Under those rules, any party to the proceeding may invoke the hybrid hearing procedures by filing with the presiding officer a written request for oral argument under 10 CFR 2.1109. To be timely, the request must be filed within ten (10) days of an order granting a request for hearing or petition to intervene. (As outlined above, the Commission's rules in 10 CFR Part 2, subpart G continue to govern the filing of requests for a hearing or petitions to intervene, as well as the admission of

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contentions.) The presiding officer may grant an untimely request for oral argument only upon a showing of good cause by the requesting party for the failure to file on time and after providing the other parties an opportunity to respond to the untimely request. If the presiding officer grants a request for oral argument, any hearing held on the application shall be conducted in accordance with the hybrid hearing procedures. In essence, those procedures limit the time available for discovery and require that an oral argument be held to determine whether any contentions must be resolved in an adjudicatory hearing. If no party to the proceeding requests oral argument, or if all untimely requests for oral argument are denied, then the usual procedures in 10 CFR Part 2, subpart G apply.

For further details with respect to this action, see the application dated April 27, 1989, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room at the William Madison Randall Library, University of North Carolina, 601 S. College Road, Wilmington, North Carolina 28403-3297. The Commission's license and Safety Evaluation Report, when issued, may be inspected at the above locations.

Dated at Rockville, Maryland, this 13th day of June.

For the Nuclear Regulatory Commission.

Leland C. Rouse,

Chief, Fuel Cycle Safety Branch, Division of Industrial and Medical Nuclear Safety.

[FR Doc. 89-14457 Filed 6-18-89; 8:45 am]

BILLING CODE 7590-01-M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee; Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92-463), notice is hereby given that meetings of the Federal Prevailing Rate Advisory Committee will be held on—

Wednesday, July 12, 1989

Wednesday, July 19, 1989

Wednesday, July 26, 1989

Wednesday, August 2, 1989

Wednesday, August 9, 1989

These meetings will start at 10 a.m. and will be held in Room 5A06A, Office of Personnel Management Building, 1900 E Street, NW., Washington, DC.

The Federal Prevailing Rate Advisory Committee is composed of a Chairman, representatives from five labor unions

holding exclusive bargaining rights for Federal blue-collar employees, and representatives from five Federal agencies. Entitlement to membership of the Committee is provided for in 5 U.S.C. 5347.

The Committee's primary responsibility is to review the Prevailing Rate System and other matters pertinent to establishing prevailing rates under subchapter IV, chapter 53, 5 U.S.C., as amended, and from time to time advise the Office of Personnel Management.

These scheduled meetings will start in open session with both labor and management representatives attending. During the meeting either the labor members or the management members may caucus separately with the Chairman to devise strategy and formulate positions. Premature disclosure of the matters discussed in these caucuses would unacceptably impair the ability of the Committee to reach a consensus on the matters being considered and would disrupt substantially the disposition of its business. Therefore, these caucuses will be closed to the public because of a determination made by the Director of the Office of Personnel Management under the provisions of section 10(d) of the Federal Advisory Committee Act (Pub. L. 92-463) and 5 U.S.C. 552(c)(9)(B). These caucuses may, depending on the issues involved, constitute a substantial portion of the meeting.

Annually, the Committee publishes for the Office of Personnel Management, the President, and Congress a comprehensive report of pay issues discussed, concluded recommendations, and related activities. These reports are available to the public, upon written request to the Committee's Secretary.

The public is invited to submit material in writing to the Chairman on Federal Wage System pay matters felt to be deserving of the Committee's attention. Additional information on these meetings may be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, Room 1340, 1900 E Street, NW., Washington, DC 20415 (202) 632-9710.

Thomas E. Anfinson,

Chairman, Federal Prevailing Rate Advisory Committee.

June 12, 1989.

[FR Doc. 89-14414, Filed 6-18-89; 8:45 am]

BILLING CODE 9325-01-M

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors Meeting

AGENCY: Pennsylvania Avenue Development Corporation.

ACTION: The Pennsylvania Avenue Development Corporation announces a forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, June 21, 1989, at 10:00 a.m.

ADDRESS: The meeting will be held at the PADC Conference Room, 1331 Pennsylvania Avenue, NW., Suite 1220 North, Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Regulations Part 901, and is open to the public.

Dated: June 9, 1989.

M.J. Brodie,

Executive Director.

[FR Doc. 89-14444 Filed 6-18-89; 8:45 am]

BILLING CODE 7603-01-M

PENSION BENEFIT GUARANTY CORPORATION

Request for OMB Approval of Collection of Information; Schedule A to Form 1

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of collection of information submitted for OMB approval.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") has requested approval by the Office of Management and Budget ("OMB") of a revised Schedule A to the PBGC Form 1, Annual Premium Payment. (The Form 1 and Schedule A together with the Form 1-ES (used for estimated premium payments by large plans) and instructions comprise the PBGC "Premium Payment Package".) The Schedule A is used by single-employer plans to calculate the variable rate portion of the PBGC premium. In order to be able to issue the revised Schedule A in time for 1989 premium payments, the PBGC has requested expedited review by OMB, pursuant to 5 CFR § 1320.18. As part of the expedited review process, the PBGC is hereby publishing the revised Schedule A and instructions for public comment. To facilitate the public's review of the Schedule A, the PBGC is publishing the entire Premium Payment Package, although there are no substantive

changes in either the Form 1-ES or the Form 1 from their 1988 versions. Both the Form 1-ES and Form 1 have been approved by OMB through May 31, 1991.

DATES: Comment must be submitted on or before June 29, 1989. Comments received after the deadline will be considered by the PBGC in preparing the 1990 Schedule A.

ADDRESSES: All written comments (at least three copies) should be addressed

to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for the Pension Benefit Guaranty Corporation, 3208 New Executive Office Building, Washington, DC 20503, with a copy to the Pension Benefit Guaranty Corporation, Office of the General Counsel (Code 22500) 2020 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Ronald Goldstein, Senior Counsel,

Office of the General Counsel (Code 22510), 2020 K Street, NW., Washington, DC 20006; telephone (202) 778-8850 (202-778-8859 for TTY and TDD) (not toll-free numbers).

Issued at Washington, DC, this 13th day of June 1989.

Kathleen P. Utgoff,

Executive Director.

BILLING CODE 7708-01-M

PBGC Form 1

Pension Benefit
Guaranty Corporation

1989

Annual Premium Payment

For Plan Years Beginning in Calendar Year 1989

See the 1989 Premium Payment Package for the Instructions for Form 1

Approved OMB 1212-0009

Expires 5/31/91

For PBGC Use Only

1. Plan Sponsor Check for Address Change ☐

(a) Name _____
(b) Address _____
(c) City _____ (d) State _____ (e) Zip _____

2. Plan Administrator

(a) Name _____
(b) Address _____
(c) City _____ (d) State _____ (e) Zip _____

3. Plan Sponsor's
Employer Identification Number (EIN) Plan Number (PN)
(a) (b)
Enter 9 Digit EIN Enter 3 digit PN
(c) Does EIN/PN match entry on 1988 Form 5500?
Yes ☐ No ☐ If no, attach explanation.

4. If either the EIN or PN in item 3 is NOT the same as on prior premium filing, enter both prior EIN and prior PN.
(a) (b)
Enter 9 Digit EIN Enter 3 digit PN
(c) ☐ EIN/PN Change or (d) ☐ Change Due to Merger
(e) ☐ Effective Date (Month/Day/Year)

5. Coverage Status (Check only one)
(a) ☐ Covered
(b) ☐ Uncertain (If uncertain you must file. See instructions.)

6. Filing Status (Check any applicable)
(a) First plan filing ☐ Yes ☐ No
(b) Terminated plan ☐ Yes ☐ No
If yes, enter applicable month/day/year of:
(1) Date assets distributed
(2) Date trustee appointed under ERISA section 4042

7. Plan Date
Month Day Year

8. Industry Code
Enter 4 digits

9. Name of Plan _____

10. Name and telephone number of plan contact
(a) Name _____
(b) Area Code and phone number

11. Plan type: (Check appropriate box to indicate type of plan and type of filing.)
(a) ☐ Multiemployer Plan (b) ☐ Single-Employer Plan (includes Multiple Employer Plan)

12. This premium is for the plan year beginning (Month/Day/Year)
If the plan year has changed since last filing with PBGC, check here ☐

13. Enter PARTICIPANT COUNT for plan year specified in Line 12
(If this count does not equal the count on your 1988 Form 5500, enter the count from your 1988 Form 5500.)

14. MULTIEmployer plans: Multiply line 13 by the \$2.60 premium rate and enter amount

15. SINGLE-EMPLOYER plans: Compute your premium as indicated below.
(a) Flat rate portion: Multiply the participant count on line 13 by \$16
(b) Variable rate portion: From Schedule A, line 9
(c) Total Premium: Add lines 15(a) and 15(b). Enter amount

16. Enter premium amount previously paid for this premium payment year (including any amount for which you claimed a credit on line 18 of your 1988 Form 1)

17. Enter net amount of premium due. If amount on line 14 or 15(c) is larger than the amount paid on line 15, subtract line 16 from line 14 or 15(c) and enter amount due on line 17

Enter amount of check payable to Pension Benefit Guaranty Corporation: \$ _____
Mail Form 1 and check to: Pension Benefit Guaranty Corporation, P.O. Box 105655, Atlanta, GA 30348-5655
Note: Each plan requires a separate Form 1 and a separate check. Put the EIN/PN shown in item 3 on the check.
(For delivery services requiring street address, see Part D1 of instructions.)

18. Overpayment. If amount on line 16 is larger than the amount on line 14 or 15(c), enter amount of overpayment: \$ _____
Do you want overpayment refunded to you or credited against next year's premium? Check one: ☐ refund ☐ credit.

19. If you have any attachments, other than Schedule A, check here: ☐ Put plan name (item 9) and EIN/PN (item 3) on each sheet.

20. Multiemployer Plan Declaration (Single-Employer plans refer to Schedule A): Under penalties of perjury (18 U.S.C. 1001), I declare that I have examined this filing, and to the best of my knowledge and belief it is true, correct and complete.

Signature of Multiemployer Plan Administrator

Date

SCHEDULE A

(PBGC Form 1)
1989

Single-Employer Plan

Variable Rate Portion of the Premium

(See Part H for General Instructions and Part I for Line-By-Line Instructions)

Approved OMB 1212-

Expires

EIN/PN From: (a) Form 1 Line 3: (b) 1988 Form 5500:

Plan Name: _____

Section One. Filing Method. All Single-Employer plans must complete this section.

1. Filing Method: Check only one box. See Section Four for required certifications.
- (a) ☐ General Rule: (Enrolled Actuary must certify on line 11.)
(1) Enter date as of which Unfunded Vested Benefits were determined (month/day/year) _____
(2) If you used the special accrued benefits rule for plans with 500 or more participants for line 2(a), check here ☐. Go to line 2.
- (b) Alternative Calculation Method: Check a box and go to line 2.
(1) ☐ Plans with fewer than 500 Participants.
(2) ☐ Plans with 500 or more Participants. (Enrolled Actuary must certify on line 11.)
- (c) Plans Not Required To Determine Unfunded Vested Benefits: Check a box and go to line 9 and enter \$0.
(1) ☐ No Vested Participants. (Plan Administrator must initial line 10(a).)
(2) ☐ 412(i) Plans. (Plan Administrator must initial line 10(b).)
(3) ☐ Fully Funded Plans with fewer than 500 Participants. (Enrolled Actuary must certify on line 11.)
(4) ☐ Plans Terminating in Standard Terminations with a pre-1989 Plan Year proposed termination date:
Enter termination date (month/day/year): _____
(d) ☐ Plans Terminating in Distress or Involuntary Termination with a pre-1989 Plan Year termination date:
Enter termination date (month/day/year): _____
(Enrolled Actuary must certify on line 11 if the plan has 500 or more participants.) Go to line 2.

Section Two. Unfunded Vested Benefits. Complete this section if you checked line 1(a), 1(b) or 1(d).

2. Present Value of Vested Benefits: Plan values are determined as of (month/day/year) ____/____/____.
The assumed retirement age is ____ years. The adjusted values are based on a Required Interest Rate of ____% and an accrual factor of ____.
- | | (a) Plan Vested Benefits | (b) Adjusted Value of Vested Benefits |
|---|--------------------------|---------------------------------------|
| | Value | Interest Rate |
| (1) Retirees and beneficiaries receiving payments | \$ _____ | % _____ |
| (2) Participants not receiving payments | \$ _____ | % _____ |
| (3) Total (line (1) plus line (2)) | \$ _____ | _____ |
3. Value of Plan Assets:
(a) Enter value of plan assets as of (month/day/year): ____/____/____ \$ _____
(b) Enter contribution receivables included in line 3(a) \$ _____
(c) Discounted paid contributions.
(Note: For plans with fewer than 500 participants, this line is optional; you may go to line 3(d)) \$ _____
(d) Enter adjusted value of plan assets (line 3(a) minus line 3(b) plus line 3(c)) \$ _____

4. Adjusted Unfunded Vested Benefits:
Enter adjusted unfunded vested benefits. (If line 4 is \$0, go to line 9; if not, go to line 5) \$ _____
5. Multiply line 4 by 0.006 and enter \$ _____
6. Divide line 5 by the participant count from Form 1 line 13 (enter count: _____) \$ _____
7. Enter the \$34 standard per participant cap or, if qualified, a reduced cap as low as \$19 \$ _____
8. Enter the lesser of the amounts on line 6 or 7 \$ _____

Section Three. Variable Rate Portion Of The Premium. All Single-Employer plans must complete this section.

9. Enter here and on Form 1 line 15(b) either:
(a) Line 8 multiplied by the participant count from Form 1 line 13 (enter count: _____) or,
(b) If any box on line 1(c) was checked or if line 4 was \$0, enter \$0 \$ _____

1989 Premium Payment Package

Pension Benefit Guaranty Corporation How To Complete PBGC Premium Payment Forms

PAPERWORK REDUCTION ACT NOTICE -

We need this information to determine the amount of premium due to the PBGC under Title IV of ERISA. You are required to give us this information. Confidentiality is that supplied by the Privacy Act and the Freedom of Information Act.

The estimated times needed to complete and file the Form 1-ES the Form 1 and, for single-employer plans, Schedule A are listed below. These times are averages for the plans in each of the listed categories. These times will vary depending on the circumstances of a given plan. Because these times include time for the preparer to familiarize himself or herself with the forms and instructions, the PBGC expects the average times to decrease in future premium payment years.

FORM AND PLAN TYPE		AVERAGE TIME
Form 1-ES		
Single-Employer Plans	10,000 plans	0.5 hour
Multiemployer Plans	1,080 plans	0.5 hour
Form 1 and Schedule A		
Single-Employer Plans		
Plans with Under 100 Participants		
Fully funded	68,000 plans	1.0 hour
Underfunded	17,000 plans	2.0 hours
Plans with 100 or More Participants		
Fully funded	20,000 plans	1.0 hour
Underfunded	5,000 plans	
- Using General Rule or ACM with Significant Events		10.9 hours
- Using ACM - no Significant Events		2.4 hours
Multiemployer Plans	2,400 plans	0.5 hour

If you have comments concerning the accuracy of these time estimates or suggestions for making the forms simpler, please send your comments to Pension Benefit Guaranty Corporation, Office of the General Counsel, (22500), 2020 K Street, NW, Washington, DC 20006-1806 and Office of Management and Budget, OIRA, Attention Desk Officer - PBGC, 3208 New Executive Office Building, Washington, DC 20503.

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Part A INTRODUCTION

1. What Are PBGC Form 1 And Form 1-ES?

The Form 1 (including Schedule A to Form 1) and Form 1-ES are forms used to pay premiums to the Pension Benefit Guaranty Corporation (PBGC) as required by sections 4006 and 4007 of the Employee Retirement Income Security Act, as amended (ERISA) and the PBGC's Payment of Premiums regulation (29 CFR Part 2610).

The Form 1-ES is used by all plans that reported 500 or more participants on their 1988 PBGC Form 1 to make their initial 1989 premium payments (only the flat rate portion of the premium for single-employer plans) and permits the initial premium calculation to be based on an estimated participant count. These plans use the Form 1 to make a subsequent reconciliation filing and, for single-employer plans, to pay the variable rate portion of the premium, both based on an actual participant count. (Note: If all the information needed to file Form 1 is known before the First Filing Due Date, you should file a Form 1 instead of a Form 1-ES. If you file a Form 1-ES, you will still be required to file a Form 1 by the Final Filing Due Date.) Plans with fewer than 500 participants file the Form 1 only, with their total premium payment, by the Final Filing Due Date.

It is the responsibility of the plan administrator to obtain and complete the PBGC Form 1 and Form 1-ES, as applicable, and make the premium payment each year. The PBGC will permit the use of re-typed or other facsimile forms. However, any such forms must present the same information in the same location as on the PBGC forms. (Any signatures or initials required from the plan administrator or enrolled actuary must be filed in original form.) The instructions in this pamphlet describe how to complete Form 1 and Form 1-ES and make the premium payment due.

2. Definitions

In these instructions-

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended (29 U.S.C. 1001, et seq.).

"Code" means the Internal Revenue Code of 1986, as amended.

"First Filing Due Date" means the last day of the 2nd full calendar month following the close of the preceding plan year, except that, in the case of plans changing plan years, it is the later of the last day of the 2nd full calendar month following the close of the preceding plan year or 30 days following the date on which a plan amendment was adopted changing the plan year. See Part C for plans that must file a Form 1-ES on a "First Filing Due Date".

"Final Filing Due Date" means the 15th day of the 8th full calendar month following the month in which the plan year began except:

a. In the case of plans filing for the first time it is the latest of the following dates-

(i) the 15th day of the 8th full calendar month following the month in which the plan year began, or if

later, in which the plan became effective for benefit accruals for future service,

(ii) 90 days after the date of the plan's adoption,

(iii) 90 days after the date on which the plan became covered under ERISA section 4021.

b. In the case of plans changing plan years, it is the later of the 15th day of the 8th full calendar month following the month in which the plan year began, or 30 days after the date on which a plan amendment was adopted changing the plan year.

See Part C for plans that must file a Form 1 on a "Final Filing Due Date".

"Filing Due Date" means either of the filing dates defined above.

"Form 1" means the Annual Premium Payment Form 1 issued by the PBGC and includes, for single-employer plans, the Schedule A.

"Form 1-ES" means the Estimated Premium Payment Form 1-ES issued by the PBGC for estimating the flat rate portion of the premium for single-employer plans and the total premiums for multiemployer plans.

"Schedule A" means the schedule to the Form 1 which is used by single-employer plans only to calculate unfunded vested benefits and compute the variable rate portion of the premium.

"Flat rate portion of the premium" means the portion of the single-employer premium determined by multiplying the flat rate premium charge by the number of participants in the plan on the last day of the preceding plan year or, for a new or newly covered plan, the first day of the current plan year. The flat rate charge for single-employer plans for plan years beginning in 1988 or later is \$16 per participant.

"Variable rate portion of the premium" means the portion of the single-employer premium based on a plan's unfunded vested benefits and determined by multiplying the variable rate charge by the number of plan participants. The variable rate charge is \$6 for every \$1,000 (or fraction thereof) of unfunded vested benefits, with that product divided by the number of plan participants. The variable rate charge is subject to a cap of, generally, \$34 per participant.

"Premium payment year" means the plan year for which the premium is being paid.

"Premium regulation" means the PBGC's regulation on Payment of Premiums (29 CFR Part 2610). The Form 1-ES and Form 1 and these instructions are issued under and implement the premium regulation.

"Form 5500 series" means Form 5500, 5500C, and 5500R, Annual Return/Report of Employee Benefit Plan, jointly developed by the Internal Revenue Service, the Department of Labor and The PBGC (Copies of this form may be obtained from the Department of Labor or the Internal Revenue Service.)

"We" or "us" means the Pension Benefit Guaranty Corporation.

"You" or "your" means the administrator of a pension plan.

"Plan administrator" means: (a) the person specifically so designated by the terms of the instrument under which the plan is operated; or (b) if an administrator is not so designated, the plan sponsor.

"EIN" means Employer Identification Number. It is always a 9-digit number assigned by the Internal Revenue Service for income tax purposes.

"PN" means Plan Number. This is always a 3-digit number. The plan sponsor assigns this number to distinguish among employee benefit plans established or maintained by the same plan sponsor. A plan sponsor usually starts

numbering pension plans at "001" and uses consecutive Plan Numbers for each additional plan. Once a PN is assigned, always use it to identify the same plan. If a plan is terminated, retire the PN - do not use it for another plan.

3. Recordkeeping Requirements; PBGC Audits

For plans years beginning on or after January 1, 1988, plan administrators are required to retain all plan records that are necessary to support or validate PBGC premium payments. The records must include calculations and other data prepared by the plan's actuary or, for a plan described in section 412(i) of the Internal Revenue Code, by the insurer from which the insurance contracts are purchased. The records are to be kept for six years after the premium due date.

Records that must be retained include, but are not limited to, records that establish the number of plan participants, that reconcile the calculation of the plan's unfunded vested benefits with the actuarial valuation upon which the calculation was based, and, for plans that assert entitlement to the reduction in the cap on the variable rate portion of the premium, that demonstrates the methods and assumptions used by the plan during the base period with respect to calculating its maximum deductible contribution pursuant to section 404 of the Code. Records retained pursuant to this paragraph must be made available to the PBGC upon request for inspection and photocopying.

The PBGC may audit any premium payment. If PBGC determines upon audit that the full amount of the premium due was not paid, late payment interest charges under §2610.7 of the premium regulation and the late payment penalty charges under §2610.8 of the premium regulation shall apply to the unpaid balance from the premium due date to the date of payment. If, in the judgment of the PBGC, the plan's records fail to establish the number of participants with respect to whom premiums were required for any premium payment year, the PBGC may rely on data it obtains from other sources (including the Internal Revenue Service and the Department of Labor) for presumptively establishing the number of plan participants for premium computation purposes. Similarly, if, in the PBGC's judgment, the plan's records fail to establish that the unfunded vested benefits were the amount reported in the premium filing, the variable rate portion of the premium owed with respect to that premium payment may be deemed to be the maximum \$34 per participant charge.

Part B WHO MUST FILE

1. General Rule

The plan administrator of each single-employer plan and multiemployer plan covered under section 4021 of ERISA is required annually to file the Form 1 and, if applicable, Form 1-ES and pay the premium due. If you are uncertain whether your plan is covered under section 4021, you should request a coverage determination by writing to us at the address shown in Part D. A request for a coverage determination does not extend the due date for any premium that is finally determined to be due. If we determine that the plan is not a covered plan, we will refund any premium paid.

2. Terminating Plans

a. **Obligation To File.** The obligation to file the PBGC Form 1-ES and Form 1 and make the required premium payments continues until the end of the plan year in which either -

(i) the plan's assets are distributed in accordance with section 4041(b) of ERISA governing standard terminations (and distress terminations with assets sufficient to pay guaranteed benefits) or section 4041A of ERISA governing multiemployer plan terminations, or

(ii) a trustee, generally the PBGC, is appointed for a terminating plan under ERISA section 4042.

b. **Refunds.** Any required premium payments are for a full plan year. You may not prorate the premium for the plan's final (short) plan year. However, you may request a refund for that plan year. The PBGC will determine the amount of the refund by prorating the premium for the short plan year on a monthly basis (treating a part of a month as a full month). For this purpose, the PBGC will treat the short plan year as ending -

(i) where a single-employer plan's assets are distributed in accordance with section 4041(b)(3) of ERISA (for either a standard or distress termination), the later of:

(A) the asset distribution date; or

(B) 30 days prior to the date the PBGC receives the plan's post-distribution certification.

(ii) where a multiemployer plan's assets are distributed in accordance with section 4041A of ERISA, the asset distribution date; or

(iii) where a trustee is appointed under ERISA section 4042, the date of appointment.

To request a refund, write separately to the address shown in Part D, Item 2. Enclose a copy of the Form 1 that you filed. We will calculate the amount of your refund.

If a plan terminates and a new plan is established, premiums are due for the terminated plan as described above, and premiums are also due for the new plan from the first day of its first plan year (see Part C, Item 2).

Example 1 A plan with a plan year beginning January 1, 1988, and ending December 31, 1988, terminates in a standard termination on September 30, 1988. On April 7, 1989, all assets are distributed and the PBGC is notified within 30 days. Since the terminating plan is sufficient to pay all benefit liabilities, no trusteeship is involved. The plan administrator must file and make the premium payments for the 1988 plan year and for the 1989 plan year. However, the plan administrator may request a refund for the short 1989 plan year, January 1, 1989 - April 7, 1989. A refund will be made for the period of May - December 1989.

Example 2 A plan with a plan year beginning July 1, 1988 and ending on June 30, 1989, terminates in a distress termination on April 29, 1989. On July 31, 1989, a trustee is appointed to administer the plan under ERISA section 4042. This plan is required to file and make premium payments for both the 1988 and 1989 plan years, because a trustee was not appointed until after the beginning of the 1989 plan year. However, the plan administrator may request a refund for the short 1989 plan year, July 1, 1989 - July 31, 1989. A refund will be made for the period of August 1989 - June 1990.

Part C WHEN TO FILE

1. General Rule

The table below shows the filing due dates for the 1989 premium payment year.

Premium Payment Year Begins	Filing Due Dates		Form 1 Filing Due Date
	Form 1-ES Due Date By Day of Month Plan Year Begins 1st Day	Form 1-ES Due Date By Day of Month Plan Year Begins 2nd-End	
Jan 1989	02/28/89	03/31/89	09/15/89
Feb 1989	03/31/89	05/01/89	10/16/89
Mar 1989	05/01/89	05/31/89	11/15/89
Apr 1989	05/31/89	06/30/89	12/15/89
May 1989	06/30/89	07/31/89	01/16/90
Jun 1989	07/31/89	08/31/89	02/15/90
Jul 1989	08/31/89	10/02/89	03/15/90
Aug 1989	10/02/89	10/31/89	04/16/90
Sep 1989	10/31/89	11/30/89	05/15/90
Oct 1989	11/30/89	01/02/90	06/15/90
Nov 1989	01/02/90	01/31/90	07/16/90
Dec 1989	01/31/90	02/28/90	08/15/90

Your due date for filing the Form 1 and, if applicable, Form 1-ES and paying the premium owed depends on the number of plan participants as of the last day of the second plan year preceding the premium payment year. This number is the participant count required to be reported on the Form 1 for the plan year preceding the year for which you make the filing (i.e., for 1989 premiums, the participant count on the 1988 Form 1). **NOTE:** The participant count date for purposes of determining your Filing Due Date is different from the participant count date used for computing the premium (see Part G).

Plans that were required to report 500 or more participants on the preceding year's Form 1 must generally file a Form 1-ES by the last day of the second full calendar month following the close of the preceding plan year ("First Filing Due Date") and a Form 1 by the 15th day of the eighth full calendar month following the month in which the plan year began ("Final Filing Due Date"). For single-employer plans, only the flat rate portion of the premium is due by the First Filing Due Date; the variable rate portion is due by the Final Filing Due Date. For multiemployer plans, the entire premium is due by the First Filing Due Date.

Plans that reported fewer than 500 participants on the preceding year's Form 1 are required to file the Form 1 and pay the entire premium due by the 15th day of the 8th full calendar month following the month in which the plan year began.

The premium owed for a plan year is based on the number of plan participants as of the last day of the preceding plan year. However, plans may not have an accurate participant count before the First Filing Due Date. For this reason, the Form 1-ES permits plans to compute the amount owed on the basis of an estimated participant count. However, we remind you that for plans with 500 or more participants, the total flat rate portion of the premium, in the case of a single-employer plan, or the entire premium, in the case of a multiemployer plan, is due by the First Filing Due Date. If the full amount due is not paid by that date, the

plan will be subject to late payment interest and penalty charges (see Part F).

You may avoid a late payment penalty charge (but not the interest) (see Part F) for the flat rate portion of the premium if you do two things:

a. First, you must pay 100 percent of the premium amount due on the plan's Final Filing Due Date for the \$16 per participant flat rate portion of the single-employer premium or the \$2.60 per participant multiemployer total premium; and

b. Second, the premium based on an estimated participant count that you pay with the Form 1-ES by the First Filing Due Date must equal at least the lesser of:

(i) 90 percent of the premium amount due on the plan's Final Due Date for the \$16 per participant flat rate portion of the single-employer premium or the \$2.60 per participant multiemployer premium; or

(ii) an amount equal to the participant count for the PBGC Form 1 for the year before this premium payment year multiplied by \$16 for single-employer plans and \$2.60 for multiemployer plans.

If you have an accurate participant count by the First Filing Due Date, you should pay the amount owed by that date. If you do this, you will avoid the interest and penalty charges. If you have all the information needed to file Form 1 on or before the First Filing Due Date, you should file a Form 1. If you file a Form 1-ES, you will still be required to file a Form 1 by the Final Filing Due Date. (A single-employer plan that files a Form 1 with its first payment but does not include the variable rate portion of the premium, will have to file another Form 1, identified as an "Amended Filing," with that payment by the Final Filing Due Date.)

2. Plans Filing For The First Time

a. **First Filing Due Date.** New and newly covered plans are not required to pay an estimated premium by a First Filing Due Date.

b. **Final Filing Due Date.** For all new and newly covered plans, regardless of the number of plan participants, that have NOT previously been required to file a Form 1 and pay premiums to us, the Final Filing Due Date is the latest of the following dates:

(i) the 15th day of the 8th full calendar month following the month in which the plan year began, or if later, following the month in which the plan first became effective for benefit accruals for future service (see Examples 1 and 2),

(ii) 90 days after the date of the plan's adoption (see Example 3), or

(iii) 90 days after the date on which the plan became covered under ERISA section 4021 (see Example 4).

c. **Refunds.** Any required premium payments are for a full plan year. Thus, you must pay a full year's premium payment for the plan's first plan year, even if it is a short plan year (e.g., a new plan maintained on a calendar year basis becomes effective for benefit accruals for future service on July 1, 1989). However, you may request a refund for the plan's first (short) plan year by writing separately to the address shown in Part D, Item 2. Enclose a copy of the Form 1 that you filed. We will calculate the amount of the refund by prorating the premium for the short plan year on a monthly basis (treating a part of a month as a full month.)

Example 1 A new plan has a plan year beginning January 1, 1989, and ending December 31, 1989. The plan was adopted October 1, 1988, and became effective for benefit accruals January 1, 1989. The Final Filing Due Date is September 15, 1989.

Example 2 A new plan is adopted on December 1, 1989, and has a July 1 - June 30 plan year. The plan became effective for benefit accruals for future service on December 1, 1989. The Final Filing Due Date for the plan's first year, July 1, 1989, through June 30, 1990, is August 15, 1990. The plan owes a premium for all of 1989, and may request a refund for the period of December 1989 through June 1990.

Example 3 A new plan has a plan year beginning January 1, 1989, and ending December 31, 1989. The plan was adopted on September 14, 1989, with a retroactive effective date of January 1, 1989. The Final Filing Due Date is December 13, 1989.

Example 4 A professional service employer maintains a plan with a plan year beginning on January 1, 1989, and ending December 31, 1989. If this type of plan has always had fewer than 25 participants it is not a covered plan under ERISA section 4021. On October 14, 1989, the plan, which always had under 25 participants, now has 26 participants. It is now a covered plan and will continue to be a covered plan regardless of the plan's future participant count. The Final Filing Due Date is January 12, 1990.

3. Plans Filing For the Second Time

The due date rules for plans filing for their second (or second covered) plan year are the same as the General Rule under Item 1, with one exception. For these plans, the determination of whether the plan has 500 or more participants is made as of the first day of the preceding plan year, i.e., the first day of the plan's first (or first covered) plan year. For plans in their second premium payment year, this is the participant count required to be reported on the preceding year's Form 1.

Example 1 A single-employer plan has a plan year beginning on July 1st and ending on June 30th. It had a participant count of 950 as of the first day of its first year, July 1, 1988. The First Filing Due Date for the plan's 1989 (its second) plan year is August 31, 1989, and the plan must generally file a Form 1-ES by that date, using an estimated participant count for determining the flat rate portion of the premium. The plan must file its Form 1 and pay any outstanding balance of the flat rate portion of the premium plus the variable rate portion by the Final Filing Due Date, which is March 15, 1990.

Example 2 A multiemployer plan has a plan year beginning on July 15th and ending on July 14th. It had a participant count of 1,500 as of the first day of the plan's first year, July 15, 1988. The First Filing Due Date for the plan's 1989 (its second) plan year is October 2, 1989, and the plan must generally file a Form 1-ES on that date, using an estimated participant count for determining the amount of the premium. The plan must make a final, reconciliation filing on Form 1 by the Final Filing Due Date, which is March 15, 1990.

Example 1 A plan had a participant count of 300 as of the first day of the plan's first year. This plan has a plan year beginning on April 1st and ending on March 31st. For the plan year beginning April 1, 1989 (its second plan year), the plan must file Form 1 by the Final Filing Due Date, which is December 15, 1989.

4. Plans Changing Plan Years

a. Due Dates. Plans that change their plan year as the result of a plan amendment must, for the short plan year, follow the due date rules described in Items 1, 2, and 3 above, as applicable.

(i) For the plan year following the short plan year, the First Filing Due Date is the later of:

(A) the last day of the second full calendar month following the close of the short plan year, or

(B) 30 days after the date on which the plan amendment changing the plan year is adopted.

(ii) For the plan year following the short plan year, the Final Filing Due Date is the later of:

(A) the 15th day of the 8th full calendar month following the month in which the plan year begins, or

(B) 30 days after the date on which the plan amendment changing the plan year is adopted.

b. Refunds. Each plan year's premium filing(s) and payment(s) must reflect and be based on a full 12-month plan year. You may not prorate the premium for the short plan year. When a change in plan year resulting from a plan amendment results in a duplicate or overlapping premium payment, you may request a refund. To request a refund, write separately to the address shown in Part D, Item 2. Enclose copies of the relevant Form 1s that you filed. We will then calculate the amount of your refund by prorating the premium for the short plan year on a monthly basis (treating a part of a month as a full month).

Example 1 By plan amendment adopted on December 1, 1988, a plan changes from a plan year beginning January 1 to a plan year beginning June 1. This results in a short plan year beginning January 1, 1989, and ending May 31, 1989. The plan always has fewer than 500 participants. The Final Filing Due Date for the short plan year is September 15, 1989. The Final Filing Due Date for the new plan year beginning on June 1, 1989, is February 15, 1990. The plan owes a full year's premium for the short plan year, and may request a refund for the period June through December of 1989.

Example 2 By plan amendment adopted on October 1, 1989, and made retroactively effective to February 1, 1989, a plan changes from a plan year beginning on January 1 to a plan year beginning on February 1. The plan always has fewer than 500 participants. The Final Filing Due Date for the plan year that began on January 1, 1989, is September 15, 1989. The Final Filing Due Date for the new plan year, which began February 1, 1989, is October 31, 1989. The plan owes a full year's premium for the short plan year, and may request a refund for the period February through December of 1989.

Example 3 By plan amendment adopted on May 31, 1989, and made retroactively effective to April 1, 1989, a plan changes from a plan year beginning January 1 to a plan year beginning April 1. The plan always has 500 or more participants. The First Filing Due Date for the short plan year is February 28, 1989, and

the Final Filing Due Date is September 15, 1989. The First Filing Due Date for the new plan year, which began April 1, 1989, is May 31, 1989, and the Final Filing Due Date is December 15, 1989. The plan owes a full year's premium for the short plan year, and may request a refund for the period April through December of 1989.

5. Saturday, Sunday And Federal Holiday

a. Filing Due Dates. In computing any period of time described in the premium regulation and these instructions, the day of the event or default from which the period of time begins to run is not counted. The last day of the period is counted, unless it falls on a Saturday, Sunday or Federal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday or Federal holiday.

Example Plans with plan years beginning on February 1, 1989, normally would have a Final Filing Due Date of October 15, 1989. Because that day is a Sunday, the due date is Monday, October 16, 1989.

b. Interest and Penalty Charges. When computing late payment interest and penalty charges, Saturdays, Sundays and Federal holidays are included.

6. Postmark Date Is Controlling

We will consider that you filed Form 1-ES or Form 1 and your premium payment on the date on which the mailing envelope is postmarked by the United States Postal Service. If the envelope does not contain a legible Postal Service postmark, we will consider that you filed the form and payment on the date that is three days before the date on which we receive it. We will disregard any private postage meter date.

7. Relationship Between PBGC Form 1 And Form 5500 Series

a. Due Dates. For many plans, the deadline for filing the PBGC Form 1 and the Form 5500 series may coincide. This occurs when a corporate plan sponsor takes the automatic 6-month extension for filing its corporate tax return. This extension automatically extends the due date for filing the Form 5500 series to the tax due date.

Example A calendar year plan has a Final Filing Due Date for the PBGC Form 1 of September 15th. The corporate tax deadline for a calendar year tax year is March 15th, and the corporate plan sponsor takes the automatic extension to September 15th. This would make the due date for the Form 5500 series (which is normally July 31st for a calendar year plan) also September 15th. NOTE: Extensions of time to file the Form 5500 series do not extend the Filing Due Dates for the PBGC forms.

b. Participant Count. Further, the participant count for premium computation purposes for the PBGC Form 1 and the participant count for the Form 5500 series filed in the same year (1989 Form 1 and 1988 Form 5500) are generally determined as of the same date, i.e., the last day of the plan year preceding the year of the filing, and therefore, these numbers should generally be the same.

c. Plan Years Covered By Forms. However, there is a CRITICAL DIFFERENCE between the two filings. The Form 1 is filed for the current plan year and the Form 5500 series is filed for the previous plan year.

Part D ADDRESSES

1. Where To File Form 1-ES And Form 1

a. Mail Service. Mail Form 1-ES and Form 1 with your premium payment(s) to:

Pension Benefit Guaranty Corporation
P.O. Box 105655

Atlanta, GA 30348-5655

Do not use this address for any purpose except to mail Form 1-ES and Form 1 and your premium payment(s).

b. Delivery Service. Alternatively, if you use a mail delivery service that does not deliver to a P.O. Box, the Form 1-ES and Form 1, along with your premium payment, may be hand-delivered to:

Retail Lockbox Processing Center
PBGC Lockbox 105655

1740 Phoenix Highway

College Park, GA 30349

2. Where To Obtain Form 1-ES And Form 1

a. PBGC Mailing. We will mail a Premium Payment Package containing a Form 1-ES and Form 1 and a Schedule A to the plan sponsor of each plan that filed a Form 1 the previous year. We will mail these forms to the address shown in Item 1 of the Form 1, at least 45 days before the expected Filing Due Date.

b. Form Requests.

(i) Plan Administrator. If you do not receive a package, it is your responsibility to obtain it. To do so or if you need extra copies, contact:

Pension Benefit Guaranty Corporation
FOD/Premium Operations Division (33700)

2020 K Street NW

Washington, DC 20006-1860

Phone: (202) 778-8825

This is not a toll-free number. We cannot accept collect calls.

You may also obtain extra copies of the Premium Payment Package and forms from the Pension and Welfare Benefits Administration of the U.S. Department of Labor (see addresses following the instructions).

(ii) Pension Practitioner. If you are a pension practitioner serving many covered plans, you may wish to receive a single copy (for duplicating) or a bulk shipment of the Premium Payment Package and forms. If so, complete the order blank at the end of this Premium Payment Package. Check the appropriate box at the bottom of the order blank.

c. Facsimile. You may photocopy Form 1-ES and Schedule A. If you send us a photocopy, it must be signed in ink. We will not accept a photocopy of your signature. The PBGC will permit the use of re-typed or other facsimile forms. However, any such forms must present the same information in the same location as on the PBGC forms.

d. Forms For Prior Years. If you are filing for previous years, you may use the current Form 1 and other premium forms, but at the top of the form, you should write the year for which you are filing. However, if the forms are not the same, be sure to include all information required on the previous form.

3. Where To Get Help

In Filing The Form 1-ES Or Form 1

If you have any questions concerning your filing, including questions about the variable rate portion of the

single-employer premium, you should contact us at the address or phone number given in Item 2 above.

4. Where To Get A Coverage Determination

If you have any questions concerning whether your plan is covered or wish to obtain a coverage determination, contact:

Pension Benefit Guaranty Corporation
IOD/Coverage and Inquires Branch (25400)

2020 K Street NW

Washington, DC 20006-1860

Phone: (202) 778-8800

This is not a toll-free number. We cannot accept collect calls.

Part E HOW TO CORRECT A FILING

1. Check Without A Form 1-ES Or Form 1

If you inadvertently sent in your check without the Form 1-ES or Form 1, as applicable, send the correct form to the address shown in Part D, Item 2.

2. Form Without A Check

If you have inadvertently sent us Form 1-ES or Form 1 without enclosing your check, we will return your form to you. Enclose your check with the returned form and mail them to the address shown in Part D, Item 1.

3. Amended Filing-Premium Underpayment

If you discover after you have filed a Form 1 with us that you have inadvertently made an error in your participant count or in the calculation of the variable rate portion of the premium due, you may use the extra forms in this booklet to file an amended form. Print or type at the top of the Form 1 and Schedule A "AMENDED FILING". Fill in the Form 1 and Schedule A as you would for your annual filing. Enter the correct total in Item 15(a) for the flat rate portion of the premium and the correct variable rate amount in Item 15(b) and enter the total of Items 15(a) and 15(b) in Item 15(c). (For multiemployer plans, enter the corrected premium amount in Item 14.) Subtract from this result the amount previously paid as shown in Item 16 and enter the difference in Item 17. Write the amount of your check for the net amount of the premium due in the space provided for "CHECK for \$_____" on the Form 1. Mail your amended Form 1 and Schedule A and check to the address shown in Part D, Item 1.

4. Amended Filing-Premium Overpayment

If you discover after you have filed a Form 1 with us that you overpaid your premium, follow the instructions in Item 3, except that the difference between the amount owed and the amount previously paid should be entered in Item 18. Also, you must check the appropriate box indicating whether you want this amount refunded to you or credited against your premium for next year. If you fail to check either of the boxes, we will automatically credit the overpayment against next year's premium. Mail your amended Form 1 and Schedule A to the address shown in Part D, Item 2.

5. How to Correct An Address

See Part G, Item 1 in the instructions if you need to correct your address and are doing so at the same time you are making your premium filing.

However, to keep our records current and to ensure that your forms will be mailed to the correct address, you should provide us with your current address as soon as a change has occurred. You may do so by contacting us either in writing or by phone using the information found in Part D, Item 2.

Part F LATE PAYMENT CHARGES

If we receive a premium payment after the Filing Due Date, we will bill the plan for the appropriate Late Payment Charges. The charges include both interest and penalty charges. The charges are based on the outstanding premium amount due at the Filing Due Date.

1. Interest Charges

The Late Payment Interest Charge is set by ERISA and cannot be waived by us. The interest rate charged is established periodically (currently on a quarterly basis) and the interest rates are published in Appendix A to the premium regulation.

Late Payment Interest Charges will be assessed for any premium amount not paid when due, whether because of an estimated participant count or an erroneous participant count or other mistake in computing the premium owed.

2. Penalty Charges

The Late Payment Penalty Charge is established by us, subject to ERISA's restriction that the penalty not exceed 100 percent of the unpaid amount. Currently, the Late Payment Penalty Charge is the greater of:

- 5 percent per month (or fraction thereof) of the unpaid premium, or
 - \$25.00,
- but not more than 100 percent of the unpaid premium. (Penalty charges for premiums due for plan years prior to 1984 may be found in §2610.8 of the premium regulation.)

3. PBGC Waivers

Prior to the Filing Due Date, if you can show substantial hardship and that you will be able to pay the premium within 60 days after the Filing Due Date, you may request us to waive the Late Payment Penalty Charge. If we grant your request, we will waive the Late Payment Penalty Charge for up to 60 days. Waivers may also be granted based on any other demonstration of good cause.

To request a waiver, write separately to:
Pension Benefit Guaranty Corporation
FOD/Financial Programs Division (33600)
2020 K Street NW
Washington, DC 20006-1860

It is YOUR responsibility as plan administrator to obtain the necessary forms and submit filings on time. We will NOT waive late payment charges resulting from your failure to do so.

4. IRS Extensions

NOTE: If the Internal Revenue Service has granted the plan an extension of the due date for filing the Form 5500

series, this does NOT extend the Filing Due Date for Form 1.

5. Minimizing Late Payment Charges

If you are having difficulty determining the actual participant count prior to the First Filing Due Date, see Part C, Item 1 "Participant Count," on how to file using an estimated participant count. This will minimize the assessment of Late Payment Charges to the plan.

If you are having difficulty determining your plan's premium prior to the Final Filing Due Date, you can file the Form 1 using an estimate. You can then file an Amended Form 1 reflecting the actual figure (see Part E for procedure). This will minimize the assessment of Late Payment Charges to the plan.

If you file a Form 1-ES for your plan by its First Filing Due Date, you may be able to avoid a Late Payment Penalty Charge with respect to that payment (see Part C). However, if the flat-rate amounts paid with your Form 1-ES and Form 1 total less than the flat rate portion of your premium for a single-employer plan (or the total premium for a multiemployer plan), then you will be charged a Late Payment Penalty Charge (as well as an Interest Charge) on the shortfall from the Form 1-ES First Filing Due Date until the shortfall is paid.

Part G LINE-BY-LINE INSTRUCTIONS FOR FORM 1

The "Item" numbers below refer to the Item or Line numbers on the Form 1.

Item 1 Name Of Plan Sponsor

Enter the name and address of the plan sponsor.

If the address or name printed on the cover of the PBGC Premium Payment Package has changed since your last filing, enter the correct address in the space provided and check the box in the upper right hand corner of Item 1.

It is very important that the address shown in Item 1 be correct, since this is the address we will use to mail your next Premium Payment Package.

The term "plan sponsor" means:

- the employer(s), in the case of a single-employer pension plan;
- the employee organization, in the case of a plan established or maintained by an employee organization; or
- in the case of a plan established or maintained by two or more employers and one or more employee organizations, the association, committee, joint board of trustees, or other similar group of representatives of the parties who establish or maintain the plan.

Item 2 Name Of Plan Administrator

Enter the name and address of the plan administrator.

Item 3 Plan Sponsor's EIN and PN

Item 3(a) EIN For The Plan Sponsor

Enter the EIN for the plan sponsor. Be sure that the EIN entered here is the same as the EIN entered on the Form 5500 series for the plan year preceding the premium payment year.

For plans with more than one employer that meet the definition of a multiemployer plan, enter the EIN assigned to

the joint board of trustees. In the case of a plan to which more than one employer contributes (other than a multiemployer plan), enter the EIN of the plan sponsor identified in Item 1. In the case of a controlled group plan, enter the EIN of the parent or, if there is no parent, of the largest employer.

Item 3(b) Plan Number

Enter the Plan Number (PN) for the plan. Be sure that the PN entered here is the same as the PN entered on the Form 5500 series for the plan year preceding the premium payment year.

Item 3(c) Does EIN/PN Match Form 5500?

Does the EIN in item 3(a) and the PN in item 3(b) match exactly the EIN and PN entered on the Form 5500 series for the plan year preceding the premium payment year? Check the "Yes" or "No" box. If no, attach an explanation including the EIN/PN used for the Form 5500 filing, and for single-employer plans, enter that EIN/PN on the top of the Schedule A.

Item 4 Change In EIN Or PN

This item should be completed to report a change in EIN or PN since your last Form 1 or Form 1-ES filing. The EIN of the plan sponsor or the PN may change for a number of reasons, including the acquisition of a division or of an entire company, or because of a mistake in your previous Form 1 filing.

Item 4(a) Change In EIN

Enter the previous EIN in the space provided.

Item 4(b) Change In PN

Enter the previous PN in the space provided.

Item 4(c) EIN/PN Change

If the EIN or PN has changed for any reason other than a plan merger, check the box in Item 4(c), "EIN/PN Change."

Item 4(d) Merger Change

If the EIN or PN has changed because your plan merged with another plan, check the box in Item 4(d), "Change Due to Merger." (If more than one plan has merged into the plan whose EIN/PN is entered in Item 3, attach a separate sheet listing the EIN/PN's that were merged and provide any necessary explanation.)

Item 4(e) Effective Date

Enter the effective date of the change in EIN/PN.

Item 5 Coverage Status

If the plan is covered under section 4021 of ERISA, check 5(a) "Covered".

If you are not certain if the plan is covered, check 5(b) "Uncertain." See Part B, Item 1, and Part D, Item 4, of these instructions.

If you check "Uncertain," you must complete Form 1 and pay the appropriate premium as if the plan were covered. Attach a separate sheet to explain the reason why you checked "Uncertain."

Item 6 Filing Status

Item 6(a) First Plan Filing

Check the "Yes" box if you are filing for the first time, and the "No" box if you are filing for a second or subsequent time.

Item 6(b) Terminated Plan

Check the "Yes" box if you have issued notices of intent to terminate to affected parties (with respect to a single-employer plan), or you have filed a Notice of Termination with PBGC (with respect to a multiemployer plan).

If you check "Yes", enter the date the assets were distributed on line 6(b)(1) or enter the date a trustee was appointed under section 4042 of ERISA on line 6(b)(2). If neither event has occurred then enter "UNKNOWN" in the space provided for the dates.

NOTE: You must continue to file Form 1 and Form 1-ES, if applicable, and pay premiums through and including the plan year in which all assets are distributed or a trustee to administer the plan is appointed under section 4042. See Part B, Item 2, of these instructions.

Item 7 Plan Date

Enter the plan date. For new or continuing plans covered under section 4021 of ERISA, enter the later of -

- the date on which the plan was formally adopted (see Example 1), or
- the date on which the plan became effective with respect to benefit accruals for future service (see Example 2).

For existing plans not previously covered under section 4021 of ERISA, enter the date on which the plan became covered under that section (see Example 3).

If the plan has been amended or completely restated, show the original plan date.

Example 1 A plan with a calendar year plan year was adopted on October 1, 1989, with benefit accruals for future service retroactively effective to January 1, 1989. The plan date is October 1, 1989.

Example 2 A new plan with a calendar year plan year was adopted on November 3, 1988. The plan became effective for benefit accruals for future service on January 1, 1989. The plan date is January 1, 1989.

Example 3 A professional service employer maintains a plan that always has had 20 participants. This type of plan is not a covered plan under ERISA section 4021, provided it never has had more than 25 participants. However, on October 10, 1989, the plan for the first time has 26 participants. As of that date, it is a covered plan and will continue to be a covered plan regardless of the plan's future participant count. The plan date is October 10, 1989.

Item 8 Industry Code

Enter the 4 digit code that best describes the nature of the employer's business. If more than one employer is involved, enter the industry code for the predominant business activity of all employers. Choose one code from the list at the back of this package.

Item 9 Name Of Plan

Enter the complete name of the plan as stated in the plan document. For example, "The ABC Company Pension Plan for Salaried Personnel."

Item 10 Name And Phone Number Of Plan Contact

Enter the name and phone number of the person we may contact if we have any questions concerning this filing. If Form 1 was completed by a plan consultant, you may enter the consultant's name and phone number.

Item 11 Plan Type

Check the appropriate box to show plan type. For purposes of determining plan type, all trades or businesses (whether or not incorporated) that are under common control are considered to be one employer.

Item 11(a) Multiemployer Plans

Check Item 11(a), "Multiemployer Plan," if the plan is a multiemployer plan.

All plans that file the Form 5500 series for the preceding plan year as a "Multiemployer Plan" should file the PBGC Form 1 for the current plan year as a multiemployer plan. If the two filings do not both report a multiemployer plan, you must provide an explanation on a separate sheet attached to the Form 1. All other Form 5500 series plan type categories are considered as single-employer plans for the PBGC Form 1 filing.

For any plan year beginning on or after September 26, 1980, a multiemployer plan is a plan -

- a. to which more than one employer is required to contribute,
- b. which is maintained pursuant to one or more collective bargaining agreements between one or more employee organizations and more than one employer, and
- c. which satisfies such other requirements as the Secretary of Labor may prescribe by regulation.

(The above definition does not apply to a plan that elected on or before September 26, 1981, with PBGC's approval, not to be treated as a multiemployer plan (see ERISA section 4303). Such a plan is treated as a single-employer plan.)

The plan administrator of a multiemployer plan MUST file a Form 1 and, if applicable, Form 1-ES and pay a premium for the plan as a whole. The administrator CANNOT file a separate Form 1 (or Form 1-ES) and pay a premium for each individual employer.

Item 11(b) Single-Employer Plans

Check Item 11(b), "Single-Employer Plan," if the plan does not meet the above definition of multiemployer plan.

A single-employer plan includes a "multiple employer plan." A multiple employer plan is a plan -

- a. to which more than one employer contributes, and
- b. that does NOT satisfy the definition of multiemployer plan, or that elected on or before September 26, 1981, with PBGC's approval, not to be treated as a multiemployer plan (see ERISA section 4303).

If several employers participate in a program of benefits wherein the funds attributable to each employer are available only to pay benefits to that employer's employees, then the plan administrator MUST file a separate Form 1, and, if applicable, Form 1-ES and pay a premium for each individual employer.

If several employers participate in a program of benefits wherein the funds attributable to each employer are available to pay benefits to all participants, then the plan administrator MUST file a Form 1, and, if applicable, Form 1-ES and pay a premium for the plan as a whole. Separate filings and premiums CANNOT be submitted for each individual employer.

If separate plans are maintained for different groups of employees, regardless of whether each has the same sponsor or the sponsors are part of the same controlled group, then the plan administrator(s) MUST file a separate Form 1, and if applicable, Form 1-ES and pay a premium for each plan.

Item 12 Plan Year

Enter the beginning date of the plan year for which you are making the premium payment.

If the month and day on which the plan year begins is not the same as that shown on the last Form 1 you filed with us, then check the box in Item 12. Attach a separate sheet with a brief explanation for the change.

Item 13 Participant Count

Enter the total number of participants covered by the plan. This is the number on which the plan's premium is based.

a. Participant Definition

For the purposes of Item 13, a "participant" is an individual who is included in one of the categories below:

(i) Active.

(A) Any individual who is currently in employment covered by the plan and who is earning or retaining credited service under the plan. This category includes any individual who is considered covered under Code minimum coverage rules but does not have accrued benefits.

(B) Any non-vested individual who is not currently in employment covered by the plan but who is earning or retaining credited service under the plan. This category does not include a non-vested former employee who has incurred a break in service the greater of one year or the break in service period specified in the plan.

(ii) Inactive

(A) Inactive Receiving Benefits. Any individual who is retired or separated from employment covered by the plan and who is receiving benefits under the plan. This category does not include an individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

(B) Inactive Entitled to Future Benefits. Any individual who is retired or separated from employment covered by the plan and who is entitled to begin receiving benefits under the plan in the future. This category does not include an individual to whom an insurer has made an irrevocable commitment to pay all the benefits to which the individual is entitled under the plan.

(iii) Deceased.

Any deceased individual who has one or more beneficiaries who are receiving or entitled to receive benefits under the plan. This category does not include an individual if an insurer has made an irrevocable commitment to pay all the benefits to which the beneficiaries of that individual are entitled under the plan.

b. Participant Count

Count the number of plan participants as of the LAST DAY OF THE PRECEDING PLAN YEAR (see Examples 1 and 2), except as follows:

(i) New or Newly Covered Plans. If this is a new plan or a newly covered plan, count participants as of the first day of the plan year for which you are making the premium payment, or the first day the plan became effective for benefit accruals for future service, if that is later (see Example 3).

(ii) Certain Mergers or Spinoffs. If the plan is the transferee plan in a merger or the transferor plan in a spinoff and the transaction meets the conditions described in (A) and (B) below, count participants as of the first day of the plan year for which you are making the premium payment (see Examples 4 and 5). A plan merger or spinoff (as defined in the regulations under section 414(l) of the Code) is covered by this rule if -

(A) a merger is effective on the first day of the transferee (the continuing) plan's plan year, or a spinoff is effective on the first day of the transferor plan's plan year, and

(B) the merger or spinoff is not *de minimis*, as defined in the regulations under section 414(l) of the Code with respect to single-employer plans, or under the PBGC's regulation under section 4231 of ERISA (29 CFR Part 2672) with respect to multiemployer plans.

Example 1 A continuing plan has a plan year beginning September 1, 1989, and ending August 31, 1990. Determine the participant count as of August 31, 1989.

Example 2 A continuing plan changes its plan year from a calendar year to a plan year that begins June 1, 1989. For the plan year beginning January 1, 1989, determine the participant count as of December 31, 1988. For the plan year beginning June 1, 1989, determine the participant count as of May 31, 1989.

Example 3 A new plan has a plan year beginning January 1, 1990, and ending December 31, 1990. Determine the participant count as of January 1, 1990.

Example 4 Plan A has a calendar year plan year and Plan B has a July 1-June 30 plan year. Effective January 1, 1989, Plan B merges into Plan A (and the merger is not *de minimis*). Plan A determines its participant count as of January 1, 1989. (Since Plan B did not exist at any time during 1989, it does not owe a premium for the 1989 plan year.)

Example 5 Plan A has a calendar year plan year. Effective January 1, 1989, Plan A spins off assets and liabilities to form a new plan, Plan B (and the spinoff is not *de minimis*). Plan A determines its participant count as of January 1, 1989. (Plan B also determines its participant count as of January 1, 1989, since it is a new plan that became effective on that date.)

c. Relationship To Form 5500

You must also enter the participant count reported on the plan's Form 5500 series for the plan year preceding the premium payment year, if it is different from the entry in the box in Item 13. This does not apply to new plans since they

are not required to file a Form 5500 series for the year preceding their first plan year.

The participant count you enter in Item 13 of the PBGC Form 1 is usually the same as (but may be less than) the participant count reported on the plan's Form 5500 series for the preceding plan year.

The Form 5500 participant count may be higher because, for premium purposes, you are not required to count nonvested participants who have left covered employment and have incurred a one year break-in-service (or the break-in-service period specified in the plan, if longer).

If the Form 5500 series participant count is higher than the premium participant count, you may enter in Item 13 the participant count you reported in the Form 5500 series. Entering the higher Form 5500 series participant count will increase the variable rate portion of the premium payable by single-employer plans.

Item 14 Premium Due For Multiemployer Plans

Multiply the participant count you entered in Item 13 by \$2.60. Enter the result in Item 14. This is the total premium due the PBGC.

Item 15 Premium Due For Single-Employer Plans**Item 15(a) Flat Rate Portion**

Multiply the participant count you entered in Item 13 by \$16 and enter the result in Item 15(a). This is the flat rate portion of the premium that you owe.

Item 15(b) Variable Rate Portion

In Item 15(b) enter the amount entered in line 9 of Schedule A. This is the amount you must pay for the variable rate portion of the premium.

Item 15(c) Total Premiums

Add Items 15(a) and 15(b) and enter the result in Item 15(c) of the Form 1. This is the total premium due the PBGC.

Item 16 Premium Amount Previously Paid

If you filed a Form 1-ES and paid any amount of the premium owed for the same plan year for which you are filing this Form 1, enter amount paid. In addition, if you claimed a credit on line 18 of your 1988 Form 1, include the amount of the credit on line 16.

Item 17 Premium Due The PBGC

If this is a multiemployer plan and the amount you entered in Item 14 exceeds the amount entered in Item 16, subtract the amount entered in Item 16 from the amount entered in Item 14 and enter the result in Item 17 of Form 1. This is the amount you owe the PBGC.

If this is a single-employer plan and the amount you entered in Item 15(c) exceeds the amount entered in Item 16, subtract the amount entered in Item 16 from the amount entered in Item 15(c) and enter the result in Item 17 of the Form 1. This is the amount you owe the PBGC.

Enclose with the Form 1 a check for the amount shown in Item 17 payable to the Pension Benefit Guaranty Corporation. Enter the amount of the check payable in the space provided. Write the EIN/PN you entered in Item 3

on the check. To assure proper crediting of your premium payment, each Form 1 for each EIN/PN must be filed with a check for the exact amount due for the plan. Do not combine payments for different plans in one check.

Item 18 Amount Of Overpayment

If this is a multiemployer plan and the amount you entered in Item 14 is less than the amount entered in Item 16, subtract the amount entered in Item 14 from the amount entered in Item 16 and enter the result in Item 18. This is the amount of your overpayment.

If this is a single-employer plan and the amount you entered in Item 15(c) is less than the amount entered in Item 16, subtract the amount entered in Item 15(c) from the amount entered in Item 16 and enter the result in Item 18. This is the amount of your overpayment.

You may either request a refund of the overpayment or have that amount credited against your plan's premium for the next plan year. Check the appropriate box indicating your choice beneath Item 18. If you do not check a box, PBGC will automatically credit your overpayment against next year's premium for the plan. An overpayment on one plan cannot be applied to an underpayment on one or more other plans.

Item 19 Additional Information

If you have used attachments other than the Schedule A to explain any of your answers, check the box. Be sure to show the plan name and the EIN/PN at the top of each sheet.

Item 20 Certification Of Multiemployer Plan Administrator

As plan administrator of a multiemployer plan, you must sign the Form 1 in this space. We may return any filing that does not have your signature. Single-employer plans - see Items 10 and 11 of Schedule A to Form 1.

Part H GENERAL INSTRUCTIONS, SCHEDULE A

The instructions in this part give you the general instructions and requirements for filling out the Schedule A that must be attached to each Form 1 for each single-employer plan.

A key point to filling out the Schedule A is the requirement for you to select a "Filing Method" for your plan. Your plan may be eligible for more than one filing method. However, you may select only one filing method. Under some filing methods, it may take more time to complete the Schedule A than under others. Some methods require the services of an enrolled actuary.

In order that you may take advantage of the filing method that best suits your needs, we urge you to review this part carefully before completing the Schedule A.

The specific instructions for each line of the Schedule A are in Part I, Line-By-Line-Instructions for Schedule A.

1. General Requirements

All single-employer plans must complete Schedule A of PBGC Form 1. You will use Schedule A to determine the amount of the variable rate portion of the premium. For some plans, the amount will be \$0. The variable rate portion, including a \$0 amount, must be entered on both the Schedule A, line 9, and on the PBGC Form 1, Line 15(b).

You, and in some cases an enrolled actuary, must certify that the variable rate portion is correct even if the amount is \$0.

The per participant variable rate portion of the premium is \$6 per \$1,000, or fraction thereof, of unfunded vested benefits as of the last day of the plan year preceding the premium payment year, divided by the number of plan participants. The vested benefits must be valued using an interest rate required by ERISA. (See Part H7.)

The variable rate portion may not exceed \$34 per participant. The \$34 maximum figure is reduced by \$3 for each of the five plan years preceding the plan year beginning in 1988 for which the maximum deductible contributions to the plan were made.

2. Failure To File Schedule A

If you fail to file a completed and signed Schedule A, the variable rate amount due will be the maximum \$34 per participant charge and you will be billed for that amount plus penalties and interest, as applicable.

3. Computation Date For The Variable Rate Portion Of The Premium

The date for the computation or determination of the variable rate portion for the premium is generally the last day of the plan year preceding the premium payment year and is the same date as the participant count date.

However, for new or newly covered plans, plans that are transferee plans in a merger (other than a *de minimis* merger) that is effective on the first day of the plan's premium payment year, and plans that are transferor plans in a spinoff (other than a *de minimis* spinoff) that is effective on the first day of the plan's premium payment year, the "first day of the premium payment year (or, in the case of a new or newly covered plan, the date on which the plan became effective for benefit accruals for future service, if later)" should be substituted for the "last day of the plan year preceding the premium payment year" whenever that latter date is used in Parts II and I of these instructions. This exception is the same as the exception for the participant count date for the same situations; see the instructions under Part G, Item 13, for additional information and examples.

4. Filing Methods

You determine the variable rate portion of the premium on Schedule A under the "General Rule" or under an optional filing method.

All single-employers plans are eligible to use the "General Rule." The General Rule requires a determination of vested benefits and assets and a determination of unfunded vested benefits by an enrolled actuary as of the last day of the plan year preceding the premium payment year. (For a more complete description of the requirements, see 5.a. below.)

To avoid the expense that might be involved in using the General Rule, you may wish to consider using an optional filing method.

The optional filing methods are:

- Alternative Calculation Method. (See 5.b. below.)
- Plans with no vested participants. (See 5.c(i) below.)
- Section 412(j) plans. (See 5.c(ii) below.)
- Fully funded small plans (under 500 participants). (See 5.c(iii) below.)
- Plans terminating in standard terminations. (See 5.c(iv) below.)
- Plans terminating in distress or involuntary terminations. (See 5.c(v) below.)

Review the requirements for each method to see if you can or wish to use it. The first optional filing method - the Alternative Calculation Method - requires only an adjustment of amounts determined as of the first day of the plan year preceding the premium payment year that were reported in the plan's Form 5500, Schedule B.

If you file under optional filing methods b. through e., you do not have to determine or calculate unfunded vested benefits and you do not have to pay a variable rate portion of the premium. Optional filing method f. is a variation of the Alternative Calculation Method for plans terminating in distress or involuntary terminations. It uses the Schedule B for the termination plan year or, if unavailable, for the preceding plan year.

5. Requirements For Filing Method Selection

Listed below are the requirements for the filing methods and the location of the line-by-line instructions for completing Schedule A under each of the filing methods.

All the filing methods require the plan administrator to certify to the correct completion of Form 1 and Schedule A, and that any information given to the enrolled actuary is true, correct and complete. Additional certifications are noted below.

a. *General Rule.* Under the General Rule, an enrolled actuary determines the amount of unfunded vested benefits as of the last day of the plan year preceding the premium payment year, in accordance with generally accepted actuarial principles and practices. A plan's unfunded vested benefits equal the excess of: (1) the plan's current liability (within the meaning of ERISA section 302(d)(7)) determined by taking into account only vested benefits and valued at the Required Interest Rate described in Part H7. of these instructions, over (2) the actuarial value of the plan's assets determined in accordance with ERISA section 302(c)(2) without a reduction for any credit balance in the plan's funding standard account.

(i) *General Requirements:* The determination under the General Rule must reflect the plan's population and provisions as of the last day of the plan year preceding the premium payment year. The enrolled actuary must make the determination using the same actuarial assumptions and methods used by the plan for purposes of determining the minimum funding contributions under section 302 of ERISA and section 412 of the Code for the plan year preceding the premium payment year (or, in the case of a new or newly covered plan, for the premium payment year), except to the extent that other actuarial assumptions are specifically prescribed by these instructions or are necessary to reflect the occurrence of a significant event described in Part II.6. below, between the date of the funding valuation and the last day of the plan year preceding the premium payment year. (If the plan does a funding valuation as of the last day of the plan year preceding the premium payment year, no separate adjustment for significant events is needed.)

The value of vested benefits must be determined using an interest rate prescribed by ERISA. This interest rate is 80% of the annual yield on 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 or H.15, for the calendar month preceding the calendar month in which the plan year begins. (See Part H7. of these instructions for further information on the Required Interest Rate.)

Under this rule, the determination of the unfunded vested benefits may be based on a plan funding valuation done as of the first day of the premium payment year, provided that --

(A) the actuarial assumptions and methods used are those used by the plan for purposes of determining the minimum funding contributions under section 302 of the Act and section 412 of the Code for the premium payment year, except to the extent that other actuarial assumptions are specifically prescribed by these instructions or are required to make the adjustment described in paragraph (B) below; and

(B) if an enrolled actuary determines that there is a material difference between the values determined under the valuation and the values that would have been determined as of the last day of the preceding plan year, the valuation results are adjusted to reflect appropriately the values as of the last day of the preceding plan year. (This adjustment need not be made if the unadjusted valuation would result in greater unfunded vested benefits.)

(ii) *Certification Requirement* (in addition to general plan administrator certification): In all cases under the General Rule, an enrolled actuary must certify to the determination of the variable rate portion of the premium. In addition --

(A) in the case of a large plan (500 or more participants), if the enrolled actuary

-- determines that the actuarial value of plan assets equals or exceeds the value of all accrued benefits (valued at the Required Interest Rate described in Part H7. of these instructions); and

-- elects to report the value of accrued benefits in lieu of the value of vested benefits in line 2(a) of Schedule A, the enrolled actuary must certify to having done so on line 11(a) of Schedule A.

(B) If -- each interest rate used by the plan to value current liability was not greater than the Required Interest Rate described in Part H7. of these instructions; and -- the enrolled actuary reports the value of vested benefits at the plan's interest rate(s) on line 2(b) of Schedule A, the enrolled actuary must certify to the above on line 11(c) of Schedule A.

(C) In the case of a plan maintained by a nonprofit entity, if an enrolled actuary determines that the plan qualifies for the per participant cap reduction under the special rule for nonprofit entities, the enrolled actuary must so certify on line 11(d) of Schedule A.

(iii) *Size Requirement:* Plans with any number of participants may use this method.

(iv) *Instructions:* For line-by-line instructions for completing Schedule A, see Part I, Subpart 1 of these instructions.

(v) *Schedule A Filing Method:* Check the box on line 1(a).

b. *Alternative Calculation Method.* This method is a simplified method intended to approximate the more precise determinations of the General Rule. It uses two formulae to

calculate unfunded vested benefits as of the last day of the plan year preceding the premium payment year.

The first formula adjusts the value of vested benefits for participants in pay status and deferred vested participants as reported in Schedule B of the Form 5500 as of the first day of the plan year preceding the premium payment year, using the Required Interest Rate prescribed by ERISA. Part H7. of these instructions explains where to find the Required Interest Rate.

The second formula adjusts the resulting unfunded vested benefits figure for the passage of time from the first day of the plan year preceding the premium payment year to the last day of the plan year preceding the premium payment year. The adjustment is necessary because, for premium purposes, unfunded vested benefits are determined as of the last day of the plan year preceding the premium payment year. See the line-by-line instructions in Part I, Subpart 2, lines 2(b) and 4, for the two formulae.

If the Alternative Calculation Method is used by a plan that has 500 or more participants as of the last day of the plan year preceding the premium payment year, an enrolled actuary must adjust the unfunded vested benefits to reflect the occurrence of any significant event during the plan year preceding the premium payment year. See Part H6. for a list of significant events.

(i) General Requirements: To use the Alternative Calculation Method, a plan must have filed a Form 5500, Schedule B, for the plan year preceding the premium payment year, that has -

(A) vested benefit values reported on lines 6d(i) and 6d(ii);

(B) the interest rates used to determine the vested benefit values reported on line 12c;

(C) the assumed retirement age reported on line 12d; and

(D) assets reported on line 8b or 6c.

(ii) Certification Requirements (in addition to general plan administrator certification): If -

(A) each interest rate used to determine the entries in lines 6d(i) and 6d(ii) of the Schedule B was not greater than the interest rate described in Part H7. of these instructions; and

(B) the plan administrator reports the value of vested benefits at the plan's rate(s) in line 2(b) of Schedule A,

the plan administrator must certify to the above on line 10(c) of Schedule A.

For plans with 500 or more participants, an enrolled actuary must certify that the unfunded vested benefits have been adjusted for the occurrence, if any, of a significant event and that the adjustment is consistent with generally accepted actuarial principles and practices.

In the case of a plan maintained by a nonprofit entity that is claiming entitlement to the cap reduction, an enrolled actuary must certify on line 11(d) that the plan meets the requirements for doing so, as described under the instructions for line 7 in Subpart 2 of Part I.

(iii) Size Requirements: Plans with any number of participants may use this method. However, plans with 500 or more participants that use this method must report unfunded vested benefits that reflect the occurrence, if any, of significant events listed in Part H6.

(iv) Instructions: For line-by-line instructions for completing Schedule A, see Part I, Subpart 2, of these instructions.

(v) Schedule A Filing Method: Check the applicable box on line 1(b). If your plan has fewer than

500 participants, check the box on line 1(b)(1). If your plan has 500 or more participants, check the box on line 1(b)(2).

c. Plans Not Required to Determine Unfunded Vested Benefits. Certain categories of plans are not required to determine or report vested benefits, assets or unfunded vested benefits on Schedule A. These plans are required only to complete lines 1 and 9 on the Schedule A indicating that the plan comes within one of the exempted categories and to provide the appropriate plan administrator or enrolled actuary certification.

(i) Plans with No Vested Participants. If a plan has no vested participants as of the last day of the plan year preceding the premium payment year, the plan administrator may use this filing method and report \$0 unfunded vested benefits on the Schedule A.

(A) General Requirements: To use this rule a plan must have had no vested participants as of the last day of the plan year preceding the premium payment year. PBGC will accept that if there are no vested participants, there are no vested benefits and no unfunded vested benefits.

(B) Certification Requirement (in addition to general plan administrator certification): The plan administrator must certify that there were no vested participants.

(C) Size Requirement: Plans with any number of participants may use this method.

(D) Instructions: For line-by-line instructions for completing Schedule A, see Part I, Subpart 3, of these instructions.

(E) Schedule A Filing Method: Check the box on Schedule A, line 1(c)(1).

(ii) Section 412(i) Plans. Plans described in section 412(i) of the Internal Revenue Code and regulations thereunder are not subject to the variable rate premium charge and report \$0 unfunded vested benefits on Schedule A.

(A) General Requirements: To use the section 412(i) plan rule, a plan must be a plan described in section 412(i) of the Code and the regulations thereunder at all times during the plan year preceding the premium payment year. If the plan is a new or newly covered plan, it must be a 412(i) plan at all times during the premium payment year through the due date for the variable rate portion of the premium.

(B) Certification Requirement (in addition to general plan administrator certification): The plan administrator must certify that the plan is a 412(i) plan.

(C) Size Requirement: Plans with any number of participants may use this method.

(D) Instructions: For line-by-line instructions for completing Schedule A, see Part I, Subpart 4, of these instructions.

(E) Schedule A Filing Method: Check the box on Schedule A, line 1(c)(2).

(iii) Fully Funded Small Plans. Under this rule, an enrolled actuary certifies that the plan has no unfunded vested benefits. No computations of unfunded vested benefits need be reported. The enrolled actuary simply reports \$0 unfunded vested benefits on Schedule A.

(A) General Requirements: To use this rule, a plan must have fewer than 500 participants as of the last day of the plan year preceding the premium payment year and no unfunded vested benefits as of

that date (valued at the Required Interest Rate described in Part H7. of these instructions).

(B) Certification Requirements (in addition to general plan administrator certification): The enrolled actuary must certify that the plan had fewer than 500 participants and that the plan had no unfunded vested benefits as of the last day of the plan year preceding the premium payment year (valued at the Required Interest Rate described in Part H7. of these instructions).

(C) Size Requirement: Only plans with fewer than 500 participants on the last day of the plan year preceding the premium payment year can use this method.

(D) Instructions: For line-by-line instructions for completing Schedule A, see Part I, Subpart 5, of these instructions.

(E) Schedule A Filing Method: Check the box on Schedule A, line 1(c)(3).

(iv) Plans Terminating in Standard Terminations. Under this exemption, plans terminating in standard terminations are not subject to the variable rate premium charge and report \$0 unfunded vested benefits on Schedule A.

(A) General Requirement: Plans that issued a notice of intent to terminate in a standard termination in accordance with section 4041(a)(2) of ERISA, setting forth a proposed date of termination (i.e., the 60-day prospective date) on or before the last day of the plan year preceding the premium payment year may use this method.

If the plan does not ultimately make a final distribution of assets in full satisfaction of its obligations under the standard termination, the right to use this filing method will be revoked and the premium(s) that would otherwise have been required will be due retroactive to the applicable due date(s).

(B) Certification Requirement (in addition to general plan administrator certification): None. Only the general plan administrator certification is required.

(C) Size Requirement: Plans with any number of participants may use this method.

(D) Instructions: For line-by-line instructions for completing Schedule A, see Part I, Subpart 6, of these instructions.

(E) Schedule A Filing Method: Check the box on Schedule A, line 1(c)(4).

(v) Plans Terminating in Distress Or Involuntary Terminations. Under this special rule, plans terminating in distress or involuntary terminations may use a modified version of the Alternative Calculation Method.

(A) General Requirements: The following plans may use this method:

- Plans that issue notices of intent to terminate in a distress termination in accordance with ERISA section 4041(a)(2) setting forth a proposed termination date on or before the last day of the plan year preceding the premium payment year; or
- Plans for which the PBGC has initiated proceedings for an involuntary termination and has sought a termination date on or before the last day of the plan year preceding the premium payment year.

Some plans terminating in distress or involuntary terminations may not have filed the

Schedule B for the plan year preceding the premium payment year and therefore would not be able to use the Alternative Calculation Method to calculate unfunded vested benefits. This filing method allows such plans to calculate unfunded vested benefits under a variation of the Alternative Calculation Method that uses vested benefit values and asset values from an earlier Schedule B than under the Alternative Calculation Method. The Schedule B used under this special rule must be for the plan year that includes (in the case of an involuntary termination) the termination date sought by the PBGC, or, if no Schedule B is filed for that plan year, the Schedule B for the preceding plan year. The Schedule B must have the entries required for the Alternative Calculation Method, as described in Part H5.b(i) of these instructions. (Note: Line item references are to the 1988 Schedule B. If your Schedule B is for an earlier year with different line numbers, use the corresponding entries.)

Note: This method assumes (in the case of a distress termination) that the PBGC has not disapproved the termination or (in the case of an involuntary termination) that the PBGC's petition for involuntary termination has not been denied, dismissed or withdrawn. At such time as any of these events occurs, the plan will be treated as an ongoing plan and must file amended premium forms using another permitted filing method.

(B) Certification Requirement (in addition to general plan administrator certification): Same as for Alternative Calculation Method. (See Part H5.b(ii) of these instructions.)

(C) Size Requirement: Same as for Alternative Calculation Method. (See Part H5.b(iii) of these instructions.)

(D) Instructions: For line-by-line instructions for completing Schedule A, see Part I, Subpart 7, of these instructions.

(E) Schedule A Filing Method: Check the box on Schedule A, line 1(d).

6. Significant Events

a. General Rule. Plans filing under the General Rule must use actuarial assumptions and methods that reflect the occurrence, if any, of a significant event listed below between the date of the funding valuation for the plan year preceding the premium payment year and the last day of the plan year preceding the premium payment year.

b. Alternative Calculation Method. Plans with 500 or more participants filing under the Alternative Calculation Method are required to reflect in the value of unfunded vested benefits as of the last day of the plan year preceding the premium payment year of the occurrence, if any, of a significant event listed below during the plan year preceding the premium payment year.

c. Distress Or Involuntary Terminations. Plans with 500 or more participants filing under the method for plans terminating in distress or involuntary terminations are required to reflect in the value of unfunded vested benefits as of the last day of the plan year preceding the premium payment year the occurrence, if any, of a significant event listed below between the first day of the plan year for which the Schedule B being used was filed and the last day of the plan year preceding the premium payment year.

d. Significant Events. In each of the above circumstances, the plan's enrolled actuary must make appropriate adjustments to reflect the occurrence of any significant event.

The Significant Events are:

(1) an increase in the plan's actuarial costs (consisting of the plan's normal cost under section 412(b)(2)(A) of the Code, amortization charges under section 412(b)(2)(B) of the Code, and amortization credits under section 412(b)(3)(B) of the Code) attributable to a plan amendment, unless the cost increase attributable to the amendment is less than 5% of the actuarial costs determined without regard to the amendment;

(2) the extension of coverage under the plan to a new group of employees resulting in an increase of 5% or more in the plan's liability for accrued benefits;

(3) a plan merger, consolidation or spinoff that is not de minimis pursuant to the regulations under section 414(l) of the Code;

(4) the shutdown of any facility, plant, store, etc., that creates immediate eligibility for benefits that would not otherwise be immediately payable for participants separating from service;

(5) the offer by the plan for a temporary period to permit participants to retire at benefit levels greater than that to which they would otherwise be entitled;

(6) a cost-of-living increase for retirees resulting in an increase of 5% or more in the plan's liability for accrued benefits; and

(7) any other event or trend that results in a material increase in the value of unfunded vested benefits.

7. Required Interest Rate For Valuing Vested Benefits Under The General Rule, Alternative Calculation Method, And The Distress And Involuntary Terminations Method

The following table - taken from Appendix B to the PBGC's premium regulation - lists the Required Interest Rates to be used in valuing a plan's vested benefits under the General Rule, the Alternative Calculation Method, and the method for plans terminating in distress or involuntary terminations. The table contains all interest rates available when these instructions were printed.

PBGC will update Appendix B in the *Federal Register* on a quarterly basis, by publishing the rates for November through January on or about January 15, for February through April on or about April 15, for May through July on or about July 15, and for August through October on or about October 15. In addition, the PBGC will issue a Technical Update for Interest Rates for Valuing Vested Benefits for PBGC's Variable Rate Premium. The Technical Update will be mailed monthly to pension practitioners who ask for it from PBGC's Communication and Public Affairs Department, 2020 K Street, NW, Washington, DC 20006-1806 (202) 778-8840.

Plan administrators are also notified of the Required Interest Rate for the premium payment year on the mailing label on these instructions. The top line of the mailing label on your premium payment package shows the Required Interest Rate for your plan. The rate is determined by the month in which your plan year begins. Check the month on the mailing label to make sure it corresponds to the first month of your plan year.

For Premium Payment Year Beginning In	The Required Interest Rate is ¹
January 1989	7.21
February 1989	7.14
March 1989	7.21
April 1989	7.34
May 1989	7.22
June 1989	7.06

¹ The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15, for the calendar month preceding the calendar month in which the premium payment year begins.

Example If the first month of the premium payment year is January 1989, use the Appendix B required interest rate for January 1989, of 7.21 percent.

Part I LINE-BY-LINE INSTRUCTIONS FOR SCHEDULE A

The instructions in this Part are divided into a separate "Subpart" for each one of the "Filing Methods" shown on line 1 of Schedule A.

To see which filing method your plan may use, see Part H5., Requirements for Filing Method Selection.

You will only need to follow the instructions in the Subpart for the filing method you select. Each Subpart has all the instructions you will need to fill out each line on the Schedule A for the filing method you use.

Some filing methods do not require that all lines on the Schedule A be completed. So for those methods, we have only provided instructions for the lines that do need to be completed.

Below is an index to the Subparts in this part. On the left under "FILING METHOD" are the filing methods with the appropriate box for you to check on Schedule A, line 1, to indicate your choice. On the right under "SUBPART" is the appropriate Subpart in this Part with the line-by-line instructions.

Index to Part I Subparts

FILING METHOD (Box to check on line 1)	SUBPART
a. General Rule: (Box (a) on line 1)	Subpart 1
b. Alternative Calculation Method:	
(1) Plans with fewer than 500 participants. (Box (b)(1) on line 1)	Subpart 2
(2) Plans with 500 or more participants. (Box (b)(2) on line 1)	Subpart 2
c. Plans not required to determine unfunded vested benefits:	
(1) Plans with No Vested Participants. (Box (c)(1) on line 1)	Subpart 3
(2) 412(l) Plans. (Box (c)(2) on line 1)	Subpart 4
(3) Fully Funded Plans with fewer than 500 participants. (Box (c)(3) on line 1)	Subpart 5
(4) Plans Terminating in Standard Terminations. (Box (c)(4) on line 1)	Subpart 6

d. Plans Terminating in Distress or Involuntary Terminations.
(Box (d) on line 1) Subpart 7

Subpart 1 GENERAL RULE

Be sure to read Part H5.a. carefully, in addition to the following line-by-line instructions.

Line 1 Filing Method

If you use the General Rule, you must check the box on line 1(a). If you use the accrued benefits rule for plans with 500 or more participants for line 2(a), check the box on line 1 and have the enrolled actuary initial the box on line 11(a) as part of the required certification for all plans using the General Rule.

Line 2 Present Value Of Vested Benefits

You must report on line 2 the value of the plan's vested benefits. The value of a plan's vested benefits for premium purposes equals the amount of a plan's current liability (within the meaning of section 302(d)(7) of ERISA) determined by taking into account only vested benefits. You must report on line 2(a) the value of vested benefits using the plan's interest rate for determining current liability, and on line 2(b) the value of vested benefits using the Required Interest Rate.

Relief Rule Accrued Benefit Relief Rule For Large Plans

This is a special rule providing relief from determining vested benefits for certain plans that had 500 or more participants on the last day of the plan year preceding the premium payment year.

If an enrolled actuary determines that the Total Value of Plan Assets on line 3(d) equals or exceeds the value of all benefits accrued under the plan (using plan assumptions, except that the benefits must be valued at the Required Interest Rate as defined in the instructions to Line 2(b)), the enrolled actuary need not determine the value of the plan's vested benefits. The actuary may instead report on lines 2(a) the value of accrued benefits using the plan's assumptions and on 2(b) the value of accrued benefits adjusted only for the Required Interest Rate.

If you use this rule, check the box on line 1(a)(2) and have the enrolled actuary initial box (a) on line 11.

Relief Rule Interest Adjustment Relief Rule

If the Required Interest Rate for your plan is equal to or greater than the plan interest rate (or, in the case of multiple interest rates, all rates) used to value the benefits entered on line 2(a), you may enter on line 2(b) the same amounts you entered on line 2(a).

If you use this relief rule for line 2(b), the enrolled actuary for the plan must initial box (c) on line 11.

Determination Date

Enter the date as of which vested benefits were valued for premium purposes. The valuation date must be either the first day of the premium payment year or the last day of the plan year preceding the premium payment year.

Assumed Retirement Age

Enter the assumed retirement age used to determine the present value of vested benefits for participants and beneficiaries not receiving payments.

Required Interest Rate

Enter the Required Interest Rate (See Part H7. of these instructions) that must be used by the plan to value vested benefits for premium purposes.

Accrual Factor

The accrual factor refers to the benefit accrual adjustment factor which does not apply to plans using the General Rule. Do not enter anything in this space.

Line 2(a)(1) Plan Value of Vested Benefits - Those Receiving Payments

In the "Value" column, enter the present value of vested benefits for retirees and beneficiaries receiving payments.

In the "Interest Rate" column, enter the interest rate used to determine that present value. (If more than one interest rate was used, the rate entered must be a weighted average composite rate.)

Line 2(a)(2) Plan Value of Vested Benefits - Those Not Receiving Payments

In the "Value" column, enter the present value of vested benefits for participants and beneficiaries not receiving payments. This includes all active vested participants and separated participants with deferred vested benefits.

In the "Interest Rate" column, enter the interest rate used to determine that present value. This includes all active vested participants and separated participants with deferred vested benefits. (If more than one interest rate was used, the rate entered must be a weighted average composite rate.)

Line 2(a)(3) Total Plan Value Of Vested Benefits

Enter the total amount of the present value of vested benefits determined with the plan's actuarial assumptions. This is the total of line 2(a)(1) plus line 2(a)(2).

Line 2(b) Adjusted Value Of Vested Benefits

You must report on line 2(b) the adjusted value of vested benefits using the Required Interest Rate entered on line 2. The determination of the adjusted value must meet all the requirements set forth in Part H5.a. of these instructions.

Line 2(b)(1) Adjusted Value Of Vested Benefits - Those Receiving Payments

Enter the adjusted present value of vested benefits for retirees and beneficiaries receiving payments, determined by adjusting the amount on line 2(a)(1) in accordance with the requirements set forth in Part H5.a. of these instructions.

**Line 2(b)(2) Adjusted Value
Of Vested Benefits -
Those Not Receiving Payments**

Enter the adjusted present value of vested benefits for participants *not* receiving payments, determined by adjusting the amount on line 2(a)(2) in accordance with the requirements set forth in Part 115.a. of these instructions.

Line 2(b)(3) Total Adjusted Vested Benefits

Enter the total amount of the present value of adjusted vested benefits. This is the sum of line 2(b)(1) plus line 2(b)(2).

Line 3 Value Of Plan Assets

**Line 3(a) Value Of Plan Assets
As Of Determination Date**

Enter the date as of which assets were valued for premium purposes. The date must be the same as the determination date you entered on line 2.

Enter the actuarial value of the plan's assets determined in accordance with ERISA section 302(c)(2) without a reduction for any credit balance in the funding standard account. You may not include on line 3(a) contributions for the premium payment year or later, whether or not made. Adjust all receipts and disbursements for interest.

**Line 3(b) Contribution Receivables
In Line 3(a)**

Enter the sum of employer and employee contribution receivables that were included in the line 3(a) amount.

Line 3(c) Discounted Paid Contributions

For plans with fewer than 500 participants, this line is optional; you may go to line 3(d). If you do not complete this line, you may understate the adjusted value of assets you will report on line 3(d). If this would affect the amount of the variable rate premium that the plan owes, you may wish to complete line 3(c).

Enter on line 3(c) the discounted value, as of the determination date entered on line 3, of those employer and employee contributions for plan years prior to the premium payment year that were either reported on line 3(b) (because they were included as receivables in the line 3(a) amount) or that were not included (as receivables or otherwise) in the Line 3(a) amount. However, do not include in line 3(c) either any contributions that are for the premium payment year or any contributions that have not been paid on or before the earlier of the premium due date or the date the premium is paid.

The plan asset valuation rate must be used to discount contributions, on a simple or compound basis in accordance with the plan's discounting rules.

Line 3(d) Adjusted Value Of Plan Assets

Enter the sum of line 3(a), minus line 3(b), plus line 3(c).

Line 4 Adjusted Unfunded Vested Benefits

The adjusted unfunded vested benefits is the excess, if any, of the Total Adjusted Vested Benefits entered on line

2(b)(3) over the Adjusted Value of Plan Assets entered on line 3(d).

If line 2(b)(3) is less than line 3(d), enter \$0 here and go to line 9 and enter \$0; if not, subtract line 3(d) from line 2(b)(3), round up to the next \$1,000, and enter here.

An enrolled actuary must certify that the determination of unfunded vested benefits was made in a manner consistent with generally accepted actuarial principles and practices. The certification is made by signing and completing line 11.

Line 5 Multiply Line 4 By 0.006

Multiply the adjusted unfunded vested benefit amount on line 4 by 0.006 and enter on line 5.

**Line 6 Divide Line 5 By
The Participant Count**

Enter the participant count from Form 1, line 13. Divide the amount on line 5 by this number and enter. Round to the nearest cent. This is the initial per participant variable rate portion of the premium, but it may be reduced by the calculation on line 7.

Line 7 Per Participant Cap

The instructions for line 7 are the same as under the Alternative Calculation Method. See Part I, Subpart 2, line 7.

Line 8 The Lesser Of Line 6 Or 7

Enter the lesser of line 6 or line 7. This is the per participant variable rate portion of your premium payment.

**Line 9 Variable Rate Portion
Of The Premium**

Enter on line 9 and on Form 1, line 15(b), the variable rate portion of the premium. You have two alternatives:

(a) If you have a plan with Adjusted Unfunded Vested Benefits shown on line 4, enter the line 8 amount multiplied by the participant count from Form 1, Line 13. Also enter the participant count on line 9(a).

(b) If you have a plan that has *NO* Adjusted Unfunded Vested Benefits shown on line 4, enter \$0.

Line 10 Plan Administrator Certification

As plan administrator, you must personally sign and date the certification in the space provided. We may return any filing that does not have your signature. Under the General Rule, the plan administrator is not required to initial any of the boxes on line 10.

Line 11 Enrolled Actuary Certification

An enrolled actuary must personally sign, date and enter his or her enrollment number and address in the space provided on the certification on line 11. If the box on line 1(a) was checked indicating the Accrued Benefit Relief Rule for line 2 was used, an enrolled actuary must initial box (a) on line 11. If the Interest Adjustment Relief Rule was used for line 2, an enrolled actuary must initial box (c) on line 11. If the line 7 special rule no. 5 for the reduced per participant cap for nonprofit entities was used, an enrolled actuary must initial box (d) on line 11.

**Subpart 2 ALTERNATIVE
CALCULATION METHOD**

Line 1 Filing Method

If you use the Alternative Calculation Method, you must check one of the boxes on line 1(b).

If your plan has fewer than 500 participants, check box 1(b)(1).

If your plan has 500 or more participants, check box 1(b)(2). You will need to have your enrolled actuary sign the certification on line 11.

Line 2 Present Value Of Vested Benefits

Determination Date

Enter the date as of which the vested benefits for the 1988 Form 5500, Schedule B, line 6d, were valued. That date must be the first day of the 1988 plan year. If it is not, you cannot use the Alternative Calculation Method.

Assumed Retirement Age

Enter the assumed retirement age used to determine the present value of vested benefits for participants and beneficiaries *not* receiving payments. The entry must be the same as the retirement age actuarial assumption reported on the 1988 Form 5500, Schedule B, line 12d, column A, Pre-retirement.

Required Interest Rate

Enter the Required Interest Rate (see Part H7. of these instructions) that must be used to determine the adjusted present value of vested benefits.

Accrual Factor

The accrual factor refers to the benefit accrual adjustment factor of 1.07 that you use in the "Line 2(b)(3) Procedure."

**Line 2(a)(1) Plan Value Of
Vested Benefits -
Those Receiving Payments**

In the "Value" column, enter the present value of vested benefits for retirees and beneficiaries receiving payments, determined as of the first day of the 1988 plan year. The amount entered must be the same as the amount reported on the 1988 Form 5500, Schedule B, line 6d(i), "Present value of vested benefits as of the beginning of the plan year for retired participants and beneficiaries receiving payments."

In the "Interest Rate" column, enter the plan interest rate used to determine the present value of vested benefits for retirees and beneficiaries receiving payments. The interest rate must be the same as the rate reported on the 1988 Form 5500, Schedule B, line 12c, column A, Post-retirement.

**Line 2(a)(2) Plan Value Of
Vested Benefits -
Those Not Receiving Payments**

In the "Value" column, enter the present value of vested benefits for participants *not* receiving payments, determined as of the first day of the 1988 plan year. This includes all active vested participants and separated participants with deferred vested benefits. The amount entered must be the same as the amount reported on the 1988 Form 5500, Schedule B, line 6d(ii), "Present value of vested benefits as of

the beginning of the plan year for other participants for the 1988 plan year."

In the "Interest Rate" column, enter the plan interest rate used to determine the present value of vested benefits for participants *not* receiving payments. The interest rate must be the same as the rate reported on the 1988 Form 5500, Schedule B, line 12c, column A, Pre-retirement.

**Line 2(a)(3) Total Plan Value
Of Vested Benefits**

Enter the total amount of the present value of vested benefits determined with the plan's actuarial assumptions. This is the total of line 2(a)(1) plus line 2(a)(2). The amount entered must be the same as the amount on the Form 5500, Schedule B, line 6d(iii), "Total present value of vested benefits as of the beginning of the 1988 plan year."

**Line 2(b)(1) Adjusted Value
Of Vested Benefits -
Those Receiving Payments**

Enter the adjusted present value of vested benefits for retirees and beneficiaries receiving payments, determined by adjusting the amount on line 2(a)(1) to value the benefits using the Required Interest Rate. To adjust the value of the benefits, you must use the formula in the "Line 2(b) Procedure" following line 2(b)(3) below.

**Line 2(b)(2) Adjusted Value
Of Vested Benefits -
Those Not Receiving Payments**

Enter the adjusted present value of vested benefits for participants *not* receiving payments, determined by adjusting the amount on line 2(a)(2) to add benefit accruals for the plan year preceding the premium payment year and to value the benefits using the Required Interest Rate. The adjustment for benefit accruals is 7% of the amount on line 6d(ii) of the Schedule B. To add the benefit accruals and to adjust the value of the benefits using the Required Interest Rate, you must use the formula in the "Line 2(b) Procedure" following line 2(b)(3) (unless you qualify for the Interest Adjustment Relief Rule described below).

**Line 2(b)(3) Total Adjusted
Vested Benefits**

Enter the total adjusted vested benefits. This amount is the total of line 2(b)(1) plus line 2(b)(2).

**Line 2(b) Procedure -
How To Compute Adjusted Vested Benefits**

Relief Rule If the Required Interest Rate for your plan entered on line 2(b) is equal to or greater than *both* plan interest rates entered on lines 2(a)(1) and 2(a)(2), you do not have to use the formula below to calculate the adjusted value of vested benefits. However, you must adjust the amount entered on line 2(a)(2) by multiplying it by 1.07, the benefit accrual adjustment factor. Enter on line 2(b)(1) the same amount you entered on line 2(a)(1), and enter on line 2(b)(2) the adjusted line 2(a)(2) amount.

If you use this relief rule for line 2(b), you must initial box (c) on Line 10.

Procedure Use the formula below to compute the adjusted value of vested benefits that you must enter on line 2(b)(1), line 2(b)(2) and line 2(b)(3). Enter all interest rates in the formula as in the following example: Enter 6.75 percent as ".0675", not as ".0675".

The formula adjusts the values of vested benefits for retired participants and beneficiaries receiving benefit payments and for other participants not receiving benefits that you entered on line 2(a)(1) and line 2(a)(2) from your 1988 Form 5500, Schedule B. The formula adjusts your plan values to reflect the Required Interest Rate. The formula also adjusts for benefit accruals during the plan year preceding the premium payment year. You may wish to use the spaces provided as a work sheet.

One part of the formula, the expression $.94(RIR - BIR)$, may result in a fractional exponent and will result in a negative exponent when your plan interest rate is higher than the Required Interest Rate. You may use an optional procedure to substitute a factor for this expression. See "Line 2(b) Procedure - How To Use Substitution Factors for the term $.94(RIR - BIR)$ " below.

Formula for Total Adjusted Vested Benefits (line 2(b)(3)):

$$VB_{adj} = VB_{6d(i)} \times .94(RIR - BIR) + (VB_{6d(ii)} \times .94(RIR - BIR) \times ((100 + BIA) / (100 + RIR))^{(ARA - 50)})$$

Note: The VB 6d(ii) amount is not the amount entered on line 6d(ii) of the preceding year's Schedule B; it is, rather, the amount entered on line 6d(ii) of the preceding year's Schedule B multiplied by 1.07 (the benefit accrual adjustment factor) to reflect accruals during the preceding plan year.

a. Line 2(b)(1) amount - Adjusted Vested Benefits for retirees and beneficiaries receiving payments.

$$\text{Line 2(b)(1)} = VB_{6d(i)} \times .94(RIR - BIR)$$

b. Line 2(b)(2) amount - Adjusted Vested Benefits for participants not receiving payments.

$$\text{Line 2(b)(2)} = VB_{6d(ii)} \times .94(RIR - BIR) \times ((100 + BIA) / (100 + RIR))^{(ARA - 50)}$$

c. Definitions.

1. VB_{adj} is the adjusted vested benefits amount (as of the first day of the plan year preceding the premium payment year) under the Alternative Calculation Method \$ _____
2. $VB_{6d(i)}$ is the amount entered on line 2(a)(1) \$ _____
3. $VB_{6d(ii)}$ is the amount entered on line 2(a)(2) multiplied by 1.07 \$ _____
4. RIR is the Required Interest Rate entered on line 2 % _____
5. BIR is the interest rate entered on line 2(a)(1) in the "Interest Rate" column % _____
6. BIA is the interest rate entered on line 2(a)(2) in the "Interest Rate" column % _____
7. ARA is the assumed retirement age entered on line 2 years _____

Procedure How To Use Substitution Factors for the term, $.94(RIR - BIR)$

You may use "substitution factors" in the Alternative Calculation Method interest rate adjustment formula to replace the term $.94(RIR - BIR)$. The use of the factors is not required; it is optional.

The use of the "substitution factors" may slightly overstate the present value of vested benefits and might overstate the amount of the variable rate portion of the premium. The PBGC has rounded all substitution factors up or down to produce the higher value of vested benefits. The impact of this rounding is minimal. At most, the rounding would overstate the value of vested benefits by less than 1%.

The substitution factors are in Appendix 1. Use the substitution factor in Table A when RIR is equal to or greater than BIR rounded to the nearest hundredth. Use the substitution factor in Table B when BIR, rounded to the nearest hundredth, is greater than RIR.

Line 3 Value of Plan Assets

Line 3(a) Value Of Plan Assets As Of Determination Date

Enter the first day of the 1988 plan year. This is the date as of which you must report the value of plan assets.

Enter the value of assets as reported on the 1988 Schedule B, line 8b, if the date reported on the 1988 Schedule B, line 8b, is the first day of the 1988 plan year. But, if that date is not the first day of the 1988 plan year, enter the value of assets as of the first day of the 1988 plan year, as reported on line 6c of the same Schedule B.

Line 3(b) Contribution Receivables In Line 3(a)

Enter the sum of employer and employee contribution receivables that were included in the line 3(a) amount. For plans that file a 1988 Form 5500, this amount is the sum of Item 34b(i)(a) and 34b(ii)(a), "Current value of plan assets, receivables for employer and participant contributions as of the beginning of the plan year."

For plans that do not file a Form 5500, you may either calculate the contribution receivables amount (you must keep a record of your calculations) or you may enter the amount reported on Form 5500C, Item 30b, column (a), "Current value of plan assets, receivables as of the beginning of the plan year." Note: If the Item 30b, column (a), figure includes items in addition to contribution receivables, this will understate the adjusted value of assets you will report on line 3(d).

Line 3(c) Discounted Paid Contributions

For plans with fewer than 500 participants, this line is optional; you may go to line 3(d). If you do not complete this line, you may understate the adjusted value of assets you will report on line 3(d). If this would affect the amount of the variable rate premium that the plan owes, you may wish to complete line 3(c).

Enter on line 3(c) the discounted value of those employer and employee contributions paid for plan years prior to the premium payment year that were reported on line 3(b) (because they were included as receivables in the line 3(a) amount) or that were not included (as receivables or otherwise) in the line 3(a) amount. Do not include in line 3(c) any contributions that are for the premium payment year

or any contributions that have not been paid on or before the earlier of the due date for the variable rate portion of the premium or the date that premium is paid.

The contributions must be discounted back to the first day of the 1988 plan year, and the discount rate you must use is the Required Interest Rate (RIR) entered on line 2. To discount your contributions, you must use the formula in the "Line 3 Procedure" below.

Procedure Line 3 Procedure - How To Discount Contributions

You must use the formula below to discount each contribution included in line 3(c) from the date paid back to the date entered on line 3(a). The discounted contributions are entered on line 3(c).

The "discounted contribution" is computed by dividing the contribution paid by the "discount interest rate factor" for the discount period. The computation of the "discount interest rate factor" is based on the Required Interest Rate (RIR) entered on line 2. Thus, for example, if the RIR is 7.36%, "the discount interest rate factor" is 1.0736. The "discount period" is the number of days from the date the contribution was paid back to the date entered on line 3(a). As the exponent in the formula, the "discount period" adjusts the "discount interest rate factor" for periods of different durations. One year is 365/365 or 1. (The formula assumes a 365-day year.)

$$\text{Discounted Contribution (DC)} = \text{Contribution} / \left[\left(1 + (RIR / 100) \right)^{(DP / 365)} \right]$$

where:

1. RIR is the Required Interest Rate entered on line 2 % _____
2. DP is the discount period expressed as the number of days from the date the contribution was paid back to the date entered on line 3(c); for example, one year and 183 days would be 548 days _____

Example A calendar year plan paying its 1989 premium made a \$1,000 contribution on July 1, 1989 for the 1988 plan year. The discount period is July 1, 1989 to January 1, 1988, or 548 days. The RIR for plan years beginning in January 1989 is 7.21%.

When Contribution = \$1,000, RIR = 7.21% and the Discount Period (DP) = 548, the amount of the Discounted Contribution (DC) is computed as follows:

$$DC = \$1,000 / \left[\left(1 + (7.21/100) \right)^{(548 / 365)} \right]$$

$$DC = \$1,000 / \left[\left(1 + 0.0721 \right)^{(1.50137)} \right]$$

$$DC = \$1,000 / \left[\left(1.0721 \right)^{(1.50137)} \right]$$

$$DC = \$1,000 / 1.11018$$

$$DC = \$900.75$$

If the discount period for your plan includes a partial year, you may use simple interest for the partial year and this formula for the full year(s), if any, in the discount period.

Line 3(d) Adjusted Value Of Plan Assets

Enter the sum of line 3(a) minus line 3(b) plus line 3(c).

Line 4 Adjusted Unfunded Vested Benefits

The Adjusted Unfunded Vested Benefits is the excess, if any, of the Total Adjusted Vested Benefits entered on line 2(b)(3) over the Adjusted Plan Assets entered on line 3(d), further adjusted for the passage of time from the determination date entered on line 2 to the last day of the 1988 plan year. To determine Adjusted Unfunded Vested Benefits, use the "Line 4 Procedure" below. You may wish to use the space provided as a work sheet.

Plans with fewer than 500 participants compute the Adjusted Unfunded Vested Benefits by using Step 1 and Step 2 of the "Line 4 Procedure" below and entering the result (UVB_{adj}) on line 4.

Plans with 500 or more participants compute the Adjusted Unfunded Vested Benefits by using Step 1, Step 2 and Step 3 of the "Line 4 Procedure" below and entering the result (UVB_{adj}) on line 4.

Procedure Line 4 Procedure - How To Compute Adjusted Unfunded Vested Benefits

Step 1. Unfunded Vested Benefits.

A. If line 3(d), Adjusted Value of Plan Assets, is equal to or greater than line 2(b)(3), Total Adjusted Vested Benefits, you have no Adjusted Unfunded Vested Benefits; enter \$0 on line 4 and go to line 9.

B. If line 3(d), Adjusted Value of Plan Assets is less than line 2(b)(3), Adjusted Total Value of Benefits, you do have Total Adjusted Vested Benefits. Compute the amount of Unfunded Vested Benefits as of the determination date entered on line 2 as follows:

1. Total Adjusted Vested Benefits from line 2(b)(3) \$ _____
2. Minus: Adjusted Value of Plan Assets from line 3(d) \$ _____
3. Unfunded Vested Benefits (1 minus 2) \$ _____
4. Go to Step 2

Step 2. Passage Of Time.

Adjust the Unfunded Vested Benefits entered above to reflect the passage of time from the determination date entered on line 2 using the following formula:

$$UVB_{adj} = (UVB_{adj} - A_{adj}) \times (1 + RIR / 100)^Y;$$

- where -
1. UVB_{adj} is the amount of the plan's Adjusted Unfunded Vested Benefits on which the variable rate portion of the premium will be assessed.
NOTE: Round up to the next \$1,000 and enter on line 4 . . . \$ _____
 2. VB_{adj} is the value of the Total Adjusted Vested Benefits entered on line 2(b)(3) \$ _____
 3. A_{adj} is the Adjusted Value Of Plan Assets entered on line 3(d) \$ _____
 4. RIR is the Required Interest Rate entered on line 2 % _____

5. Y is deemed to be equal to 1 (unless the plan year preceding the premium payment year is a short plan year, in which case Y is the number of days in the short plan year (counting both the first day and the last day of the short plan year) divided by 365, expressed as a decimal fraction of 1.0 with two digits to the right of the decimal point) years

If you have a plan with fewer than 500 participants, skip Step 3 below and go to line 5; otherwise, you must proceed to Step 3.

Step 3. Significant Event Adjustment.

If you have a plan with 500 or more participants, an enrolled actuary must certify to either A or B below by completing the certification on line 11 (including, in particular, box (e) of Line 11) of the Schedule A.

a. No significant event, as described in Part H6, of these instructions, occurred during the plan year preceding the premium payment year. If this is the case, enter UVB_{adj} from Step 2 above on line 4.

b. One or more significant events have occurred during the plan year preceding the premium payment year, and the enrolled actuary has made appropriate adjustments to UVB_{adj} from Step 2 above to reflect the occurrence of the significant event in accordance with generally accepted actuarial principles and practices. If this is the case, you may use the following worksheet:

1. Enter UVB_{adj} from Step 2 above . . . \$ _____
2. Enter the adjustment to UVB_{adj} to reflect significant events (if negative, place in parentheses) \$ _____
3. Add 1 and 2, round up to the next \$1,000, and enter here and on line 4 . . . \$ _____

Line 5 Multiply Line 4 By 0.006

Multiply the Adjusted Unfunded Vested Benefits amount on line 4 by 0.006 and enter on line 5.

Line 6 Divide Line 5 By The Participant Count

Enter the participant count from Form 1 line 13. Divide the amount on line 5 by this number and enter. Round to the nearest cent. This is the initial per participant variable rate portion of the premium, but it may be reduced by the calculation on line 7.

Line 7 Per Participant Cap

Enter the standard \$34 per participant cap; or, if the plan is qualified (as described below), you may enter the reduced per participant cap that may be as low as \$19. If the entry on line 6 is less than \$19, there is no need to determine a reduced per participant cap and you should enter \$34 on line 7.

The \$34 per participant cap may be reduced if your plan meets the qualification rules in the "Line 7 Procedure".

The cap reduction is \$3 per plan year for each of the last five plan years beginning before January 1, 1988, in which the plan received the maximum allowable tax deductible contribution under section 404 of the Code.

The most the cap may be reduced is \$15 (\$3 per year times 5 years = \$15), which would reduce the cap from \$34 to \$19.

To determine if your plan qualifies for a cap reduction and the amount of the reduction, you must use the Line 7 Procedure - How To Compute The Reduced Per Participant Cap. You may use the spaces in the procedure as a work sheet. Do not send the work sheet to PBGC. Keep the work sheet (or the numbers computed in it) in your records. PBGC may require that you submit this information at a later date.

Procedure

Line 7 Procedure - How To Compute The Reduced Per Participant Cap

In order to determine if a plan qualifies for the reduction, you must use rules 1 through 5 of this procedure. If the plan qualifies, determine the reduced per participant cap under the steps that follow these rules.

Rules for Determining Qualification

Rule 1. Determination of maximum deductible contribution.

The determination of whether contributions were in an amount not less than the maximum amount allowable as a deduction under section 404 of the Code shall be based on the methods of computing the maximum deductible contribution under section 404, including actuarial assumptions and funding methods, used by the plan and the contributing sponsor or contributing sponsors (provided such assumptions and methods met the requirements for reasonableness under section 412 of the Code) with respect to each of the last five plan years commencing before January 1, 1988.

Rule 2. Rounding of *de minimis* amounts.

Any contribution that would have been at least equal to the maximum deductible amount but for the fact that the contribution amount was rounded down, shall be deemed for the purposes of this procedure to be in an amount not less than the maximum deductible amount if the following conditions are met:

- A. In the case of maximum deductible amounts up to \$100,000, the contribution amount was rounded down to no less than the next lower multiple of \$100.
- B. In the case of maximum deductible amounts greater than \$100,000, the contribution amount was rounded down to no less than the next lower multiple of \$1,000.

Rule 3. Defined benefit and defined contribution plans.

There is a limitation on the determination of the maximum deductible contribution for sponsors maintaining both defined benefit and defined contribution plans with common participants.

If a contributing sponsor is subject to the limitation on deductions described in section 404(a)(7)(A) of the Code (relating to total deductions in connection with one or more defined contribution plans and one or more defined benefit plans with common participants in each) and if the contributing sponsor or contributing sponsors made contributions to the plan with respect to which the premium is being determined in an amount less than the maximum deductible amount (determined without regard to the Code section 404(a)(7)(A) limitation), amounts contributed to a defined contribution plan (or plans), or to a defined benefit

plan (or plans) not covered by Title IV of the Act pursuant to section 4021 of the Act, must be disregarded in determining whether the amounts contributed equalled the maximum deductible contribution under section 404 of the Code. If the contributing sponsor maintains more than one defined benefit plan covered by Title IV of the Act pursuant to section 4021 of the Act, the determination shall be made by aggregating the amounts contributed to all such plans and comparing that total to the section 404(a)(7)(A) limitation.

Rule 4. When plan year and taxable year do not coincide.

There is a special rule for determining the maximum deductible contribution in certain cases when the plan year and the contributing sponsor's taxable year do not coincide.

If a contributing sponsor determined the maximum deductible contribution for a taxable year by using a weighted average of the maximum deductible contributions for the plan years falling within the taxable year pursuant to 26 CFR § 1.404(a)-14(c)(3), the determination under this procedure of whether the contribution for a plan year was the maximum deductible amount shall be made by aggregating all contributions for that plan year, irrespective of the taxable year in which they were applied. If the total amount of contributions is less than the maximum deductible amount under Code section 404 (without applying the limitation in Code section 404(a)(7)(A)) determined on the basis of the plan year, the contribution shall be treated as being the maximum deductible amount under this procedure only if the portion of the contribution applied in each taxable year in which the plan year fell equalled the maximum deductible amount (with respect to that plan year) for that taxable year under the limitation in section 404(a)(7)(A).

Rule 5. Special rule for nonprofit entities.

A plan maintained by a nonprofit entity shall be deemed, for purposes of this procedure, to have received the maximum deductible amount for a plan year if an enrolled actuary certifies that the contributions made to the plan for that plan year were in an amount not less than the maximum amount that would have been allowable as a deduction under section 404 of the Code, as determined under Rule 1 through Rule 4 of this procedure, if the contributing sponsor(s) of the plan was a (were) for-profit entity(ies).

The enrolled actuary must initial the box on line 11(d) if this rule is used.

Computation Of The Reduced Per Participant Cap

- Step 1. Check the appropriate box or boxes below to indicate the plan years for which the maximum allowable tax deductible contribution under section 404 of the Code was made to the plan and enter the number of boxes checked:

1983	1984	1985	1986	1987	Total Years
☐	☐	☐	☐	☐	_____

- Step 2. Multiply the total years from Step 1 by \$3 and enter here . \$ _____

- Step 3. Per Participant Cap on the variable rate portion of the premium: Subtract the amount

from Step 2 from \$34 and

enter here and on line 7 \$ _____

Line 8 The Lesser Of Line 6 Or 7

Enter the lesser of line 6 or line 7. This is the per participant variable rate portion of your premium payment.

Line 9 Variable Rate Portion Of The Premium

Enter on line 9 and on Form 1, line 15(b), the variable rate portion of the premium. You have two alternatives:

(a) If you have a plan with Adjusted Unfunded Vested Benefits shown on line 4, enter the line 8 amount multiplied by the participant count from Form 1, line 13. Also enter the participant count on line 9(a).

(b) If you have a plan that has NO Adjusted Unfunded Vested Benefits shown on line 4, enter \$0.

Line 10 Plan Administrator Certification

As plan administrator, you must personally sign and date the certification in the space provided. In addition, if you used the Interest Adjustment Relief Rule (see line 2 instructions), you must initial box (c) on line 10. We may return any filing that does not have your signature.

Line 11 Enrolled Actuary Certification

If the plan has 500 or more participants or if the plan uses the special rule for nonprofit entities (see Rule 5 of the "Line 7 Procedure"), an enrolled actuary must personally sign, date and enter his or her enrollment number and address in the space provided on the certification, and must initial box (d) and/or box (e) on line 11, as applicable.

Subpart 3 NO VESTED PARTICIPANTS

Line 1 Filing Method

If you use the No Vested Participants filing method, you must check the box on line 1(c)(1) and initial line 10(a). Go to line 9.

Line 9 Variable Rate Portion Of The Premium

Enter \$0.

Line 10 Plan Administrator Certification

As plan administrator, you must personally sign and date the certification in the space provided. We may return any filing that does not have your signature. Initial the box on line 10(a).

Line 11 Enrolled Actuary Certification

An enrolled actuary's certification is not required under this filing method.

Subpart 4 SECTION 412(i) PLANS

Line 1 Filing Method

If you use the filing method for section 412(i) plans, you must check the box on line 1(c)(2), initial line 10(b), and go to line 9.

**Line 9 Variable Rate Portion
Of The Premium**

Enter \$0.

Line 10 Plan Administrator Certification

As plan administrator, you must personally sign and date the certification in the space provided. We may return any filing that does not have your signature. Initial the box on line 10(b).

Line 11 Enrolled Actuary Certification

An enrolled actuary's certification is not required under this filing method.

**Subpart 5 FULLY FUNDED
SMALL PLANS****Line 1 Filing Method**

If you use the filing method for fully funded plans with fewer than 500 participants, you must check the box on line 1(c)(3) and an enrolled actuary must complete line 11(b). Go to line 9.

**Line 9 Variable Rate Portion
Of The Premium**

Enter \$0.

Line 10 Plan Administrator Certification

As plan administrator, you must personally sign and date the certification in the space provided. We may return any filing that does not have your signature.

Line 11 Enrolled Actuary Certification

An enrolled actuary must complete certification on line 11 and must initial the box on line 11(b).

Subpart 6 STANDARD TERMINATIONS**Line 1 Filing Method**

If you use the method for plans terminating in standard terminations, you must check the box on line 1(c)(4) and enter the proposed date of plan termination on line 1(c)(4). Go to line 9.

(Note: See Part A2. for rules on when your premium obligation ends.)

**Line 9 Variable Rate Portion
Of The Premium**

Enter \$0.

Line 10 Plan Administrator Certification

As plan administrator, you must personally sign and date the certification in the space provided. We may return any filing that does not have your signature.

Line 11 Enrolled Actuary Certification

An enrolled actuary's certification is not required under this filing method.

**Subpart 7 PLANS TERMINATING
IN DISTRESS OR
INVOLUNTARY
TERMINATIONS****Line 1 Filing Method**

If you use the method for plans terminating in a distress or involuntary termination, check the box on line 1(d) and enter the proposed date of termination (in a distress termination) or the date of termination sought by the PBGC (in an involuntary termination). (These dates are both referred to below as the "DOPT".)

(Note: See Part A2. for rules on when your premium obligation ends.)

Lines 2 Through Line 11

The line-by-line instructions for lines 2 through 11 of the Schedule A are the same as under the Alternative Calculation Method (See Part 1, Subpart 2, of these instructions) subject to the modifications described below. Under this Distress/Involuntary Termination Method, you will generally be using data from a Schedule B for a plan year earlier than the plan year preceding the premium payment year. (If you are able to use the same Schedule B as under the Alternative Calculation Method, which is the 1988 Schedule B for the 1989 premium payment year, the Distress/Involuntary Termination Method and the Alternative Calculation Method are almost identical; the only difference is that the Distress/Involuntary Termination Method may result in a smaller adjustment for accruals during the plan year preceding the premium payment year, since it would adjust only up to the DOPT. See below.) The modifications are generally designed to reflect and to adjust for the fact that the Schedule B data were determined as of an earlier date. The modifications are as follows:

Modification 1.

Substitute the first day of the plan year of the Schedule B you are using for the first day of the Alternative Calculation Method Schedule B year.

Example A calendar year plan paying its 1989 premium. The plan has a DOPT of September 1, 1989 and is using data from its 1987 Schedule B to calculate the variable rate portion of its premium. For this plan --

- the determination date to be entered on line 2 must be January 1, 1987;
- the Plan Value of Vested Benefits to be entered in the "Value" column of line 2(a), as well as the Adjusted Value of Vested Benefits to be entered on line 2(b), must be determined as of January 1, 1987;
- the determination date to be entered on line 3 must be January 1, 1987;
- the Value of Plan Assets to be entered in line 3(a) must be determined as of January 1, 1987;
- the Contribution Receivables to be entered on line 3(b) are those that were included as receivables in the line 3(a) entry as of January 1, 1987;
- the Discounted Paid Contributions to be entered on line 3(c) are those contributions for plan years prior to the premium payment year that were either included as receivables, or not included (as receivables or otherwise), in the line 3(a) entry as of January 1, 1987 (provided they were

paid on or before the earlier of the date the 1989 premium is due or paid);

g. the Discounted Paid Contributions to be entered on line 3(c) must be discounted from the date paid back to January 1, 1987;

h. the Adjusted Value of Plan Assets to be entered on line 3(d) must be determined as of January 1, 1987;

i. the Adjusted Unfunded Vested Benefits to be entered on line 4 is determined as of the last day of the plan year preceding the premium payment year, i.e., December 31, 1988;

j. for a plan with 500 or more participants, the Adjusted Unfunded Vested Benefits to be entered on line 4 must reflect any significant events occurring between January 1, 1987, and December 31, 1988.

Modification 2.

Substitute "the sum of 1 plus the product of .07 times the number of years (rounded to the nearest hundredth of a year) from the date of the Schedule B data to the DOPT for the "1.07 benefit accrual adjustment factor" in the "Line 2(b)(3) Relief Rule" and the interest rate adjustment formula under the "Line 2(b)(3) Procedure."

To compute the number of years, count the number of days from and including the date of the Schedule B data to and including the DOPT and divide by 365.

Under the Alternative Calculation Method, the "1.07 benefit accrual adjustment factor" referred to under the "Line 2(b)(3) Procedure" serves as a surrogate for accruals during the plan year preceding the premium payment year. This surrogate assumes that there has been exactly one year of accruals (e.g., in the case of a calendar year plan paying its 1989 premium, accruals from January 1, 1988, through December 31, 1988). Under the Distress/Involuntary Termination Method, however, the accrual period will run from the date of the Schedule B data to the DOPT.

Using the rule stated in Modification 2, and continuing with the hypothetical plan in Modification 1 --

a. Determine $VB_{6d(ii)}$ in the "Line 2(b)(3) Procedure" by multiplying the amount entered on line 6d(ii) of the Schedule B you are using by the following benefit accrual adjustment factor (AC) instead of 1.07 --

$$AC = 1 + (.07 \times (\text{the number of days from January 1, 1987 to September 1, 1988}) / 365)$$

$$AC = 1 + (.07 \times 1.67)$$

$$AC = 1 + .12$$

$$AC = 1.12$$

b. If the plan is using the "Line 2(b)(3) Relief Rule", the Schedule A line 2(b)(2) amount is determined by multiplying the Schedule A line 2(a)(2) amount by 1.12. If the plan cannot use the Relief Rule, the $VB_{6d(ii)}$ amount (c.3. under the "Line 2(b)(3) Procedure") is multiplied by 1.12.

c. Enter the benefit accrual adjustment factor of 1.12 as the accrual factor on Schedule A line 2.

Modification 3.

Substitute "the number of years (rounded to the nearest hundredth of a year) between the date of the Schedule B data and the last day of the plan year preceding the premium payment year" for the exponent "Y" in the time adjustment formula under the "Line 4 Procedure."

To compute the number of years, count the number of days from and including the date of the Schedule B data to and including the last day of the plan year preceding the premium payment year and divide by 365 in Step 2 of the "Line 4 Procedure."

Under the Alternative Calculation Method, the exponent, "Y," in the time adjustment formula in Step 2 of the "Line 4 Procedure" represents the length of time from the date of the Schedule B data to the last day of the plan year preceding the premium payment year. Because that length of time is generally exactly one year under the Alternative Calculation Method, Y is defined simply as (generally) being "equal to 1". The length of time under the Distress/Involuntary Termination Method will generally be longer than 1 year. Thus, using the rule stated in Modification 3, and continuing with the hypothetical plan in Modification 1, "Y" would equal 2 (the number of years between January 1, 1987, and December 31, 1988).

APPENDIX 1 Optional Substitution Factors for the term ".94(RIR-BIR)"

You may use optional "substitution factors" in the Alternative Calculation Method interest rate adjustment formula to replace the term ".94(RIR-BIR)". The use of the factors is not required; it is optional. The instructions for the formula and for use of the tables below are in Part I, Subpart 2, Line 2.

Use the substitution factor in Table A when RIR is equal to or greater than BIR rounded to the nearest hundredth. Use the substitution factor in Table B when BIR, rounded to the nearest hundredth, is greater than RIR.

TABLE A
When RIR Is Equal To Or Greater Than BIR

If RIR minus BIR (rounded to nearest hundredth) is:		The substitution factor is --	If RIR minus BIR (rounded to nearest hundredth) is:		The substitution factor is --
At least	But less than		At least	But less than	
0.00	0.10	1.0000	3.00	3.10	0.8306
0.10	0.20	0.9938	3.10	3.20	0.8255
0.20	0.30	0.9877	3.20	3.30	0.8204
0.30	0.40	0.9816	3.30	3.40	0.8153
0.40	0.50	0.9756	3.40	3.50	0.8103
0.50	0.60	0.9695	3.50	3.60	0.8053
0.60	0.70	0.9636	3.60	3.70	0.8003
0.70	0.80	0.9576	3.70	3.80	0.7954
0.80	0.90	0.9517	3.80	3.90	0.7905
0.90	1.00	0.9458	3.90	4.00	0.7856
1.00	1.10	0.9400	4.00	4.10	0.7807
1.10	1.20	0.9342	4.10	4.20	0.7759
1.20	1.30	0.9284	4.20	4.30	0.7711
1.30	1.40	0.9227	4.30	4.40	0.7664
1.40	1.50	0.9170	4.40	4.50	0.7617
1.50	1.60	0.9114	4.50	4.60	0.7570
1.60	1.70	0.9057	4.60	4.70	0.7523
1.70	1.80	0.9002	4.70	4.80	0.7477
1.80	1.90	0.8946	4.80	4.90	0.7430
1.90	2.00	0.8891	4.90	5.00	0.7385
2.00	2.10	0.8836	5.00	5.10	0.7339
2.10	2.20	0.8781	5.10	5.20	0.7294
2.20	2.30	0.8727	5.20	5.30	0.7249
2.30	2.40	0.8673	5.30	5.40	0.7204
2.40	2.50	0.8620	5.40	5.50	0.7160
2.50	2.60	0.8567	5.50	5.60	0.7115
2.60	2.70	0.8514	5.60	5.70	0.7072
2.70	2.80	0.8461	5.70	5.80	0.7028
2.80	2.90	0.8409	5.80	5.90	0.6985
2.90	3.00	0.8357	5.90	6.00	0.6942

TABLE B
When BIR Is Greater Than RIR

If BIR minus RIR (rounded to nearest hundredth) is:		The substitution factor is --	If BIR minus RIR (rounded to nearest hundredth) is:		The substitution factor is --
At least	But less than		At least	But less than	
0.01	0.10	1.0062	3.00	3.10	1.2114
0.10	0.20	1.0125	3.10	3.20	1.2190
0.20	0.30	1.0187	3.20	3.30	1.2265
0.30	0.40	1.0251	3.30	3.40	1.2341
0.40	0.50	1.0314	3.40	3.50	1.2418
0.50	0.60	1.0378	3.50	3.60	1.2495
0.60	0.70	1.0443	3.60	3.70	1.2573
0.70	0.80	1.0507	3.70	3.80	1.2651
0.80	0.90	1.0573	3.80	3.90	1.2729
0.90	1.00	1.0638	3.90	4.00	1.2808
1.00	1.10	1.0704	4.00	4.10	1.2888
1.10	1.20	1.0771	4.10	4.20	1.2968
1.20	1.30	1.0838	4.20	4.30	1.3048
1.30	1.40	1.0905	4.30	4.40	1.3129
1.40	1.50	1.0973	4.40	4.50	1.3211
1.50	1.60	1.1041	4.50	4.60	1.3293
1.60	1.70	1.1109	4.60	4.70	1.3375
1.70	1.80	1.1178	4.70	4.80	1.3458
1.80	1.90	1.1248	4.80	4.90	1.3542
1.90	2.00	1.1317	4.90	5.00	1.3626
2.00	2.10	1.1388	5.00	5.10	1.3710
2.10	2.20	1.1458	5.10	5.20	1.3795
2.20	2.30	1.1529	5.20	5.30	1.3881
2.30	2.40	1.1601	5.30	5.40	1.3967
2.40	2.50	1.1673	5.40	5.50	1.4054
2.50	2.60	1.1745	5.50	5.60	1.4141
2.60	2.70	1.1818	5.60	5.70	1.4229
2.70	2.80	1.1892	5.70	5.80	1.4317
2.80	2.90	1.1965	5.80	5.90	1.4406
2.90	3.00	1.2040	5.90	6.00	1.4495

Codes for Principal Business Activity and Principal Product or Service.

These industry titles and definitions are based, in general, on the Enterprise Standard Industrial Classification system developed by the Office of Management and Budget, Executive Office of the President, to classify enterprises by type of activity in which they are engaged. The system follows closely the Standard Industrial Classification used to classify establishments.

AGRICULTURE, FORESTRY, AND FISHING

Code
Farms:
0120 Field crop.
0150 Fruit, tree nut, and vegetable.
0180 Horticultural specialty.
0230 Livestock.
0270 Animal specialty.
Agricultural services and forestry:
0740 Veterinary services.
0750 Animal services, except veterinary.
0780 Landscape and horticultural services.
0790 Other agricultural services.
0800 Forestry.
Fishing, hunting, and trapping:
0930 Commercial fishing, hatcheries and preserves.
0970 Hunting, trapping, and game propagation.

MINING

Metal mining:
1010 Iron ores.
1070 Copper, lead and zinc, gold and silver ores.
1098 Other metal mining.
1150 Coal mining.
Oil and gas extraction:
1330 Crude petroleum, natural gas, and natural gas liquids.
1380 Oil and gas field services.
Nonmetallic mineral (except fuels) mining:
1430 Dimension, crushed and broken stone; sand and gravel.
1498 Other nonmetallic minerals, except fuels.

CONSTRUCTION

General building contractors and operative builders:
1510 General building contractors.
1531 Operative builders.
Heavy construction contractors:
1611 Highway and street construction.
1620 Heavy construction, except highway.
Special trade contractors:
1711 Plumbing, heating, and air conditioning.
1721 Painting, paper hanging, and decorating.
1731 Electrical work.
1740 Masonry, stonework, and plastering.
1750 Carpentering and flooring.
1761 Roofing and sheet metal work.
1771 Concrete work.
1781 Water well drilling.
1790 Miscellaneous special trade contractors.

MANUFACTURING

Food and kindred products:
2010 Meat products.
2020 Dairy products.
2030 Preserved fruits and vegetables.
2040 Grain mill products.
2050 Bakery products.
2060 Sugar and confectionery products.
2081 Malt liquors and malt.
2088 Alcoholic beverages, except malt liquors and malt.
2089 Bottled soft drinks, and flavoring.
2096 Other food and kindred products.
2100 Tobacco manufacturers.

Textile mill products:
2228 Weaving mills and textile finishing.
2250 Knitting mills.
2298 Other textile mill products.
Apparel and other textile products:
2315 Men's and boy's clothing.
2345 Women's and children's clothing.
2388 Hats, caps, millinery, fur goods, and other apparel and accessories.
2390 Misc. fabricated textile products.
Lumber and wood products, except furniture:
2415 Logging camps and logging contractors, sawmills and planing mills.
2430 Millwork, plywood, and related products.
2498 Other wood products, including wood buildings and mobile homes.
2500 Furniture and fixtures.
Paper and allied products:
2625 Pulp, paper, and board mills.
2699 Other paper products.
Printing, publishing, and allied industries:
2710 Newspapers.
2720 Periodicals.
2735 Books, greeting cards, and misc. publishing.
2799 Commercial and other printing, and printing trade services.
Chemicals and allied products:
2815 Industrial chemicals, plastics materials and synthetics.
2830 Drugs.
2840 Soap, cleaners, and toilet goods.
2850 Paints and allied products.
2898 Agricultural and other chemical products.
Petroleum refining and related industries (including those integrated with extraction):
2910 Petroleum refining (including those integrated with extraction).
2998 Other petroleum and coal products.
Rubber and misc. plastics products:
3050 Rubber products; plastics footwear, hose and belting.
3070 Misc. plastics products.
Leather and leather products:
3140 Footwear, except rubber.
3198 Other leather and leather products.
Stone, clay, glass, and concrete products:
3225 Glass products.
3240 Cement, hydraulic.
3270 Concrete, gypsum, and plaster products.
3298 Other nonmetallic mineral products.
Primary metal industries:
3370 Ferrous metal industries; misc. primary metal products.
3380 Nonferrous metal industries.
Fabricated metal products, except machinery and transportation equipment:
3410 Metal cans and shipping containers.
3428 Cutlery, hand tools, and hardware; screw machine products, bolts, and similar products.
3430 Plumbing and heating, except electric and warm air.
3440 Fabricated structural metal products.
3460 Metal forgings and stampings.

3470 Coating, engraving, and allied services.
3480 Ordnance and accessories, except vehicles and guided missiles.
3490 Misc. fabricated metal products.
Machinery, except electrical:
3520 Farm machinery.
3530 Construction, mining, and materials handling machinery and equipment.
3540 Metalworking machinery.
3550 Special industry machinery, except metalworking machinery.
3560 General industrial machinery.
3570 Office, computing, and accounting machines.
3598 Engines and turbines, service industry machinery, and other machinery, except electrical.
Electrical and electronic machinery, equipment, and supplies:
3630 Household appliances.
3665 Radio, television, and communication equipment.
3670 Electronic components and accessories.
3698 Other electric equipment.
Transportation equipment:
3710 Motor vehicles and equipment.
3725 Aircraft, guided missiles and parts.
3730 Ship and boat building and repairing.
3798 Other transportation equipment.
Measuring and controlling instruments; photographic and medical goods, watches and clocks:
3815 Scientific instruments and measuring devices; watches and clocks.
3845 Optical, medical, and ophthalmic goods.
3860 Photographic equipment and supplies.
3998 Other manufacturing products.
TRANSPORTATION, ELECTRIC, GAS, AND SANITARY SERVICES
Transportation:
4000 Railroad transportation.
Local and interurban passenger transit:
4121 Taxicabs.
4189 Other passenger transportation.
Trucking and warehousing:
4210 Trucking, local and long distance.
4289 Public warehousing and trucking terminals.
Other transportation including transportation services:
4400 Water transportation.
4500 Transportation by air.
4600 Pipelines, except natural gas.
4722 Passenger transportation arrangement.
4723 Freight transportation arrangement.
4799 Other transportation services.
Communication:
4825 Telephone, telegraph, and other communication services.
4830 Radio and television broadcasting.
Electric, gas, and sanitary services:
4910 Electric services.
4920 Gas production and distribution.
4930 Combination utility services.
4990 Water supply and other sanitary services.

BILLING CODE 7708-01-C

SECURITIES AND EXCHANGE COMMISSION

(File No. 1-8593)

Issuer Delisting; Application To Withdraw From Listing A.L. Laboratories, Inc. Class A Common Stock, \$.20 Par Value

June 9, 1989.

A.L. Laboratories, Inc. ("Company"), has filed an application with the Securities and Exchange Commission pursuant to section 12(d) of the Securities Exchange Act of 1934 and Rule 12d2-2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange ("AMEX").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

The Company's Common Stock recently was listed on the New York Stock Exchange ("NYSE"). Trading in the Company's stock on the NYSE commenced on May 30, 1989. In making decision to withdraw its Common Stock from listing on the AMEX, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its Common Stock on the NYSE and the AMEX. The Company does not see any particular advantage in the dual trading of its Common Stock and believes that dual listing would fragment the market for its Common Stock.

Any interested person may, on or before June 30, 1989, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-14441 Filed 6-16-89; 8:45 am]
BILLING CODE 8010-01-M

[Release No. IC-16995; 812-7060]

Cowen Funds, Inc., Standby Reserve Fund, Inc., Standby Tax-Exempt Reserve Fund, Inc. and Cowen & Co.; Application

June 9, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

Applicant: Cowen Funds, Inc., Standby Reserve Fund, Inc., Standby Tax-Exempt Reserve Fund, Inc. and Cowen & Co. ("Applicants").

Relevant 1940 Act Sections: Exemption requested under section 11(a) from the provisions of section 11(a) of the Act.

Summary of Application: Applicants seek approval of offers to exchange certain shares on a basis that may be at other than their respective net assets values at the time of exchange.

Filing Date: The application was filed on July 5, 1988, amendments were filed on April 21, 1989 and on May 22, 1989.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 5, 1989, and should be accompanied by proof of service on the Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, Financial Square, New York, New York 10005-3597.

FOR FURTHER INFORMATION CONTACT: Cecilia C. Kalish, Staff Attorney (202) 272-3035 or Stephanie M. Monaco, Branch Chief (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: Following is a summary of the Application; the complete Application is available for a fee from either the SEC's Public Reference Branch in person, or the SEC's commercial copier (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. The application states that Applicants request an order pursuant to section 11(a) of the Act exempting Applicants from section 11(a) of the Act to the extent necessary to permit exchanges of shares of Cowen Opportunity Fund (the "Fund"), a series of Cowen Funds, Inc. (the "Company"), for shares of Standby Reserve Fund, Inc. and Standby Tax-Exempt Reserve Fund, Inc., money market mutual funds for which Cowen & Co. ("Cowen") serves as distributor and investment manager, on a basis that may be at other than their respective net asset values at the time of the exchange. Applicants request that any order issued by the SEC in response to the application also be applicable to any other series offered by the Company and any investment companies for which Cowen or an affiliate thereof in the future may serve as investment manager or distributor, provided that the shares are sold on a no-load basis or with a front-end sales charge in a manner substantially similar to the manner described herein with respect to the Fund.

2. Applicants represent that the Company is a registered, open-end, diversified management investment company incorporated under the laws of the State of Maryland. Shares of the Fund are offered by Cowen, which is registered with the SEC as a broker-dealer under the Securities Exchange Act of 1934 and as an investment adviser under the Investment Advisers Act of 1940, as amended. As distributor of the shares of the Fund, Cowen maintains a continuous public offering of shares of the Fund at its current net asset value plus a maximum sales charge equal to 4.85% of the public offering price (5.10% of the net amount invested). In addition to serving as the Fund's distributor, Cowen, through its investment management division, Cowen Asset Management, also serves as investment manager of the Fund.

3. Applicants represent that the exchange offers will operate consistently with revised proposed Rule 11a-3 as it currently exists, and the exchange offers will be amended, if necessary to be consistent with the Rule as it may be further revised and adopted.

4. Applicants acknowledge that the grant of the order requested by the application will not imply SEC approval, authorization or acquiescence in any particular level or form of charges imposed by Cowen or the Fund on investors other than the assessment of sales charges and an administrative fee

on exchanges, as contemplated by revised proposed Rule 11a-3. In addition, the Applicants will comply with all provisions of law, including any regulations promulgated by either the SEC or the National Association of Securities Dealers, Inc., applicable to such charges.

Applicants' Conditions

Applicants will comply with the following conditions:

1. Applicants will comply with the provisions of revised proposed Rule 11a-3 under the Act as it currently exists and as it may be further revised or adopted.

2. Applicants will obtain an amended order prior to any modification of the exchange offer in a manner inconsistent with the provisions of revised proposed Rule 11a-3 under the Act as it currently exists and as it may be further revised or adopted, except that an amended order is not required to terminate the exchange offer.

For the Commission by the Division of Investment Management, pursuant to delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-14405 Filed 6-16-89; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-16994; 812-7297]

Schroder Capital Funds, Inc., et al. Application

June 9, 1989.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("1940 Act").

Applicants: Schroder Capital Funds, Inc. ("Schroder Capital"), Fund Source, Schroder Capital Management International Inc. ("Schroder") and Schroder Holdings, Inc. (collectively, the "Applicants").

Relevant 1940 Act Sections: Order requested under section 17(b) that would exempt certain proposed transactions from the provisions of section 17(a).

Summary of Application: Applicants seek an order permitting certain transactions under which two newly created series of Schroder Capital would each acquire the respective assets and liabilities of one of two series of Fund Source, International Equity Trust and Global Bond Trust (the "Fund Source Funds"), in exchange for shares of the applicable series of Schroder Capital, which shares would be distributed in

liquidation to the shareholders of the applicable Fund Source series.

Filing Date: The application was filed on April 14, 1989, and was amended and restated on May 19, 1989. An additional amendment, described in a letter to the staff from Applicants' counsel dated June 8, 1989, and the substance of which is thus included herein, will be filed during the notice period.

Hearing or Notification of Hearing: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on July 5, 1989, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Mark J. Smith, Schroder Capital Management International Inc., 787 Seventh Avenue, New York, New York 10019.

FOR FURTHER INFORMATION CONTACT: Jeremy N. Rubenstein, Staff Attorney, at (202) 272-2847, or Stephanie M. Monaco, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee by either going to the SEC's Public Reference Branch or contacting the SEC's commercial copier at (800) 231-3282 (in Maryland (301) 258-4300).

Applicants' Representations

1. Schroder Capital, a Maryland corporation, and Fund Source, a Massachusetts business trust (collectively, the "Funds"), are series companies registered under the 1940 Act as open-end management investment companies. Schroder is the investment adviser to the Funds. Fund Source and the one existing series of Schroder Capital, an affiliate of Schroder, Schroder Holdings, Inc., owns 100% of the total outstanding voting securities of Global Bond Trust.

2. Applicants propose that two newly created series of Schroder Capital each acquire all of the respective assets (consisting of securities and cash) and

liabilities of one of the Fund Source Funds in exchange for shares of the common stock of the applicable Schroder Capital series. Applicants seek an exemption under section 17(b) from the provisions of section 17(a) to permit the transactions necessary to effect the proposed reorganization. Consummation of the reorganization is also subject to other conditions, including approval by the shareholders of the Fund Source Funds and receipt of an opinion of counsel as to tax matters.

3. All series of Fund Source, including the Fund Source Funds, are administered and distributed by Furman Selz Mager Dietz & Birney Incorporated. Following the proposed transaction, Schroder and its affiliates would administer and distribute the Fund Source Funds; provided that the Fund Source Funds would be self-distributed using Schroder personnel until such time as Schroder Capital Distributors, Inc., a wholly owned subsidiary of Schroder, is fully qualified as a registered broker-dealer.

4. The purpose of the proposed reorganization is to place three series that are currently advised by Schroder within a single investment company, in which all series will be advised, distributed and administered by Schroder or an affiliated company of Schroder. Applicants believe that being part of an investment company in which all portfolios are advised, administered and distributed by Schroder and its affiliated companies would simplify the administrative, management and distribution functions of the Fund Source Funds. As a result, Applicants expect that per share expenses would be reduced and that certain management and trading functions would be rendered more efficient. Applicants also expect that the reputation and expertise of Schroder and its affiliated companies in international investment management could be better employed to the benefit of the Fund Source Funds if they served as administrator and distributor as well as investment adviser.

5. Under an Agreement and Plan of Reorganization between Schroder Capital and Fund Source, Schroder Capital would create two additional series. One series would have investment objectives and policies identical to International Equity Trust. The other series would have objectives and policies identical to Global Bond Trust. Each of the new series of Schroder Capital would acquire all of the assets, subject to all of the liabilities, of the corresponding Fund Source Fund in exchange for shares of common stock

of the appropriate series of Schroder Capital.

6. Following the exchange of the Fund Source Funds' assets for Schroder Capital shares, Fund Source would terminate its two series previously represented by the Fund Source Funds. The Fund Source Funds would make a liquidating distribution of the shares of Schroder Capital by instructing Schroder Capital to record each Fund Source Fund shareholder as the record holder of an identical number of shares of the applicable series of Schroder Capital. There would be no adjustment reflecting unrealized appreciation or depreciation, because, under applicable tax law, Schroder Capital would have the same basis as the Fund Source Funds in the assets it received in the reorganization.

7. Each party to the reorganization would bear its own expenses. However, both of the Fund Source Funds are operated under expense limitations that have resulted in waivers of advisory and administrative fees in substantial amounts. These expense limitations would be in effect when any expenses of the reorganization are incurred. The Funds' expense levels are currently well in excess of the expense limitations, and will be for the foreseeable future. As a result, the Funds will not incur any additional expense because of the reorganization.

8. As of March 31, 1989, Fund Source's series had net assets of \$457,553,000, and Global Bond Trust and International Equity Trust had net assets of \$5,192,000 and \$36,678,000, respectively. As of March 31, 1989, the net assets of the single existing series of Schroder Capital, Schroder U.S. Equity Fund, were \$23,541,098.

9. Although the Fund Source Funds would become part of a series investment company with smaller total net assets, Applicants believe that no material or significant disadvantages to the Funds would result. First, Schroder expects to be able to reduce per share expenses of each Fund Source Fund following the reorganization without sacrificing performance, and has already negotiated a new custodial contract with lower fee levels to take effect after the reorganization. Second, because of the small size of the Fund Source Funds and because they operate under the expense limitations, no economies related to the sharing of expenses of a series company are currently realized by the Fund Source Fund. Finally, Applicants believe that even disregarding the expense limitations, the expense of the Fund Source Funds

would not be affected materially by the reorganization.

10. Rule 17a-8 provides, in pertinent part, that a merger, consolidation or sale of substantially all of the assets involving registered investment companies which may be affiliated persons, or affiliated persons of affiliated persons, solely by reason of having a common investment adviser, common directors, and/or common officers shall be exempt from the provisions of section 17(a) if the directors of each such company, including a majority of the directors that are not interested persons of any participating investment company, determine:

a. That participation in the transaction is in the best interest of that company; and

b. That the interests of the existing shareholders of that registered investment company will not be diluted as a result of its effecting the transaction;

provided; That such findings, and the basis on which they are made, are recorded fully in the minute books of each company.

11. Applicants submit that the proposed transactions would be exempt from the provisions of section 17(a) by virtue of Rule 17a-8 under the 1940 Act but for the ownership of Global Bond Trust shares by an affiliated person of Schroder. Accordingly, Schroder Capital and Fund Source are affiliated by a reason other than a common investment adviser, common director and/or common officers and the Rule 17a-8 exemption is not available.

12. The trustees of Fund Source and the Directors of Schroder Capital have made the determinations which would have been required under Rule 17a-8, which have been or will be recorded fully in the minutes of Fund Source and Schroder Capital. The trustees of Fund Source, including the non-interested trustees, considered the following factors, among others: (a) The capabilities and resources of Schroder and its affiliated companies in investment management, marketing and shareholder servicing; (b) current and projected expense ratios of the Fund Source Funds; (c) the terms and conditions of the reorganization and whether dilution of shareholders interests would result; (d) the tax consequences of the reorganization; (e) Schroder's prior investment company business and its commitment to maintain and enhance its present position; and (f) the prospect of

enhanced administration and distribution. The directors of Schroder Capital, including the non-interested directors, considered the following factors, among others: (a) The fact that Schroder had been recapitalized as a series company to offer shareholders investment alternatives and possible economies of scale; (b) that the investment objectives, policies and restrictions, and the assets and liabilities, or Schroder U.S. Equity Fund would not be affected; and (c) that the reorganization would not result in any tax consequences or changes in services to Schroder U.S. Equity Fund or its shareholders.

Applicants' Conditions

Applicants consent to the inclusion of the following items as express conditions to any order issued on the application:

1. The Fund Source Funds will be advised, administered and distributed for at least one year subsequent to the reorganization at the same annual fee rates, and under substantially identical contractual terms, as they are being advised, administered and distributed prior to the reorganization.

2. Expense limitations at least as restrictive as those currently in effect for each of the Fund Source Funds will remain in effect for a period of at least one year subsequent to the reorganization.

3. Schroder will waive all or a portion of its fees for each of the Fund Source Funds for any fiscal year in which reorganization expenses are incurred, and any reorganization expense incurred by either such Fund shall not result in an increase in its total annual expenses.

Applicants submit that, in accordance with section 17(b) of the 1940 Act, the terms of the proposed transaction are reasonable and fair and do not involve overreaching by any of the Applicants or any affiliate of Schroder, and that the proposed transaction is consistent with the investment policies of each Fund Applicant and the purposes of the 1940 Act.

For the Commission, by the Division of Investment Management, under delegated authority.

Jonathan G. Katz,
Secretary.

[FR Doc. 89-14406 Filed 6-16-89; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE-89-25]

Petition for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR Part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR Chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATE: Comments on petitions received must identify the petition docket number involved and must be received on or before July 10, 1989.

ADDRESS: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC-10), Petition Docket No. 3, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC, on June 12, 1989.

Deborah E. Swank,
Acting Manager, Program Management Staff,
Office of the Chief Counsel.

Petitions for Exemption

Docket No.: 22469

Petitioner: Parks College of Saint Louis University

Regulations Affected: 14 CFR Part 141, Appendixes A, C, D, and F

Description of Relief Sought: To extend Exemption No. 3495, as amended, that allows petitioner to train students to a performance standard rather than minimum flight time requirements, except for solo cross country. Exemption No. 3495, as amended, will expire on August 31, 1989.

Docket No.: 23875

Petitioner: Beech Aircraft Corporation
Sections of the FAR Affected: 14 CFR 45.25(b)(2)

Description of Relief Sought: To extend Exemption No. 4061C that allows petitioner to display 12-inch-high N-Numbers on the outboard surface of the engine nacelles that are on an integral part of the wing pods. Exemption No. 4061C will expire on December 31, 1989.

Docket No.: 25168

Petitioner: Evergreen International Airlines, Inc.

Sections of the FAR Affected: 14 CFR 121.583(a)(8)

Description of Relief Sought: To extend Exemption No. 4856 that allows petitioner to continue to transport employees and dependents on its DC-8-60 (DC-8) cargo flights. Exemption No. 4856 will expire on September 30, 1989.

Docket No.: 069CE

Petitioner: Beech
Sections of the FAR Affected: 14 CFR 23.841(b)(6)

Description of Relief Sought: To allow the B300 airplane to operate with a higher cabin pressure altitude than 10,000 feet without a warning indication at the pilot station.

Docket No.: 25056

Petitioner: Mesaba Aviation, Inc.
Regulations Affected: 14 CFR 121.371(a) and 121.378

Description of Relief Sought/Disposition: To extend Exemption No. 4804 that allows petitioner to use on its Netherlands-built Fokker F-27 aircraft certain engines, components, and spare parts that have been repaired, overhauled, or inspected by persons outside of the United States who do not hold U.S. airman certificates.

Grant, May 25, 1989, Exemption No. 4804A

Docket No.: 25674

Petitioner: Alitalia Airlines
Sections of the FAR Affected: 14 CFR 21.197

Description of Relief Sought/Disposition: To allow petitioner to utilize a continuing special flight permit with authorization for its five U.S.-registered DC-9-32 aircraft.

Partial Grant, June 1, 1989, Exemption No. 25674

Docket No.: 25750

Petitioner: Troy Air
Sections of the FAR Affected: 14 CFR 43.3(g)

Description of Relief Sought/Disposition: To allow trained and qualified pilots employed by petitioner to remove and install passenger seats and seat belts of aircraft used in petitioner's Part 135 operations.

Grant, June 5, 1989, Exemption No. 5056

Docket No.: 25801

Petitioner: King TV5
Sections of the FAR Affected: 14 CFR 45.29

Description of Relief Sought/Disposition: To allow the use of smaller aircraft registration numbers in place of the 12-inch-high N-numbers required by the regulations.

Denial, June 9, 1989, Exemption No. 5058

Docket Nos.: 25922 and 25928

Petitioner: Westates Airlines, Inc., and Arrow Air
Sections of the FAR Affected: 14 CFR 121.343(b)

Description of Relief Sought/Disposition: To allow petitioners to operate airplanes without compliance with digital flight recorder requirements for varying periods of time after May 26, 1989, the date before which compliance must be accomplished under the regulations.

Grant, June 8, 1989, Exemption No. 5057

[FR Doc. 89-14453 Filed 6-16-89; 8:45 am]
BILLING CODE 4910-13-M

Radio Technical Commission for Aeronautics (RTCA); Special Committee 164—Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. I), notice is hereby given for the third meeting of RTCA Special Committee 164 on Minimum Operational Performance Standards for Aircraft Audio Systems and Equipment to be held July 10-12, 1989, in the RTCA Conference Room, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005, commencing at 9:30 a.m.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) approval of the minutes of the second meeting, RTCA Paper No. 116-89/SC164-9; (3) technical presentation; (4) review of task

assignments from last meeting; (5) review proposed changes to RTCA/DO-170, RTCA Paper No. 120-89/SC164-10; (6) continue review of existing document (RTCA/DO-170); (7) working group sessions; (8) assignment of tasks; (9) other business; and (10) date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, One McPherson Square, 1425 K Street, NW., Suite 500, Washington, DC 20005; (202) 682-0266. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on June 9, 1989.

Geoffrey R. McIntyre,

Designated Officer.

[FR Doc. 89-14452 Filed 6-16-89; 8:45 am]

BILLING CODE 4810-13-M

Maritime Administration

Approval of Applicant as Mortgagee; Harris Trust and Savings Bank

Notice is hereby given that Harris Trust and Savings Bank, with offices at 111 West Monroe Street, Chicago, Illinois 60690, has been approved as Mortgagee pursuant to Pub. L. 100-710 and 46 CFR 221.43.

Dated: June 13, 1989.

By Order of the Maritime Administrator.

James E. Saari,

Secretary.

[FR Doc. 89-14397 Filed 6-16-89; 8:45 am]

BILLING CODE 4810-81-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 12, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the

Treasury, Room 2224, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512-0006

Form Number: ATF F 3310.4

Type of Review: Extension

Title: Report of Multiple Sales or Other

Disposition of Pistols and Revolvers

Description: This form is used by ATF to develop investigative leads and patterns of criminal activity. It identifies possible handgun traffickers in the illegal market. Its use along the border identifies possible international traffickers.

Estimated Number of Respondents: 10,000

Estimated Burden Hours Per Response: 12 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 8,000 hours

OMB Number: 1512-0042

Form Number: ATF F 7 (5310.12)

Type of Review: Extension

Title: Application for License, Under 18 U.S.C. Chapter 44, Firearms

Description: This form is used by the public when applying for a Federal firearms license for activities as a dealer, importer, manufacturer, or collector. The information requested on the form establishes eligibility for the license.

Estimated Number of Respondents: 35,000

Estimated Burden Hours Per Response: 57 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 33,250 hours

OMB Number: 1512-0384

Form Number: ATF REC 5620/2

Type of Review: Extension

Title: Airlines Withdrawing Stock From Customs Custody

Description: Airlines may withdraw tax-exempt distilled spirits, wine and beer from Customs custody for foreign flights. Required record shows amount of spirits and wines withdrawn, date withdrawn and flight identification; also has Customs certification. Enables ATF to verify that tax is not due; allows distilled spirits and wines to be traced and maintains accountability. Protects tax revenues.

Estimated Number of Recordkeepers: 25

Estimated Burden Hours Per

Recordkeeper: 100 hours

Frequency of Response: On occasion

Estimated Total Recordkeeping Burden: 2,500 hours

Clearance Officer: Robert Masarsky (202) 566-7077, Bureau of Alcohol, Tobacco and Firearms, Room 7011,

1200 Pennsylvania Avenue, NW, Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 89-14408 Filed 6-16-89; 8:45 am]

BILLING CODE 4810-25-M

Public Information Collection Requirements Submitted to OMB for Review

Dated: June 12, 1989.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Pub. L. 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 2224, 15th and Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557-0120

Form Number: None

Type of Review: Extension

Title: Securities Offering Disclosure Rules

Description: The collected information is needed by the general public to make informed investment decisions. The affected public consists of national banks that issue securities.

Respondents: Business or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 75

Estimated Burden Hours Per

Respondent: 12 hours 6 minutes

Frequency of Response: On occasion

Estimated Total Reporting Burden: 2,120 hours

OMB Number: 1557-0176

Form Number: None

Type of Review: Extension

Title: Record and Disclosure

Requirements—Federal Regulations B, E, Z and M

Description: Burden allocated to Comptroller of the Currency by the Office of Management and Budget. This burden is attributable to Federal Regulations B (Equal Credit Opportunity), E (Electronic Funds

Transfer, Z (Truth-in-Lending) and M (Consumer Leasing).

Respondents: Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 4,500

Estimated Burden Hours Per

Respondent: 1 hour

Frequency of Response: On occasion

Estimated Total Reporting Burden: 5,798,350 hours

Clearance Officer: John Ference (202)

447-1177, Comptroller of the Currency, 5th Floor, L'Enfant Plaza, Washington, DC 20219.

OMB Reviewer: Gary Waxman (202)

395-7340, Office of Management and Budget, Room 3208, New Executive

Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 89-14409 Filed 6-16-89; 8:45 am]

BILLING CODE 4810-25-M

Fiscal Service

[Dept. Circ. 570, 1988—Rev., Supp. No. 17]

Surety Companies Acceptable on Federal Bonds; Termination of Authority; Century Surety Co.

Notice is hereby given that the Certificate of Authority issued by the Treasury to Century Surety Company of Columbus, Ohio, under the United States Code, Title 31, sections 9304-9308, to qualify as an acceptable surety

on Federal bonds is being terminated effective today.

The Company was last listed as an acceptable surety on Federal bonds at 53 FR 25058, July 1, 1988, and then suspended effective November 22, 1988, per Supp. No. 4 at 53 FR 48365, dated November 30, 1988.

Questions concerning this notice may be directed to the Department of the Treasury, Financial Management Service, Finance Division, Surety Bond Branch, Washington, DC 20227, telephone (202) 287-3921.

Dated: June 12, 1989.

Mitchell A. Levine,

Assistant Commissioner, Comptroller, Financial Management Service.

[FR Doc. 89-14440 Filed 6-16-89; 8:45 am]

BILLING CODE 4810-35-M

Sunshine Act Meetings

Federal Register

Vol. 54, No. 116

Monday, June 19, 1989

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

DATE AND TIME: 2:00 p.m. (Eastern Time) Monday, June 26, 1989.

PLACE: Clarence M. Mitchell, Jr., Conference Room, No. 200-C on the Second Floor of the Columbia Plaza Office Building, 2401 "E" Street, NW., Washington, DC 20507.

STATUS: Part of the Meeting will be Open to the Public and Part will be Closed to the Public.

MATTERS TO BE CONSIDERED:

Open Session

1. Announcement of Notation Vote(s).
2. A Report on Commission Operations—(Given by the Office of Inspector General).
3. Proposed Final Rule Concerning ADEA Statute of Limitations Tolling for Private Litigants.

Closed Session

Litigation Authorization: General Counsel Recommendations.

Note: Any matter not discussed or concluded may be carried over to a later meeting. (In addition to publishing notices on EEOC Commission meetings in the Federal Register, the Commission also provides a recorded announcement a full week in advance on future Commission sessions. Please telephone (202) 634-6748 at any time for information on these meetings.)

CONTACT PERSON FOR MORE

INFORMATION: Frances M. Hart, Executive Officer on (202) 634-6748.

Dated: June 14, 1989.

Frances M. Hart,

Executive Officer, Executive Secretariat.

This Notice Issued June 14, 1989.

[FR Doc. 89-14593 Filed 6-15-89; 3:52 pm]

BILLING CODE 6750-06-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 2:04 p.m. on Tuesday, June 13, 1989, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session, by telephone conference call, to consider: (1) An administrative enforcement proceeding; (2) a delegation of authority relating to administrative

enforcement proceedings; (3) matters relating to the possible closing of certain insured banks; (4) a recommendation concerning the Corporation's assistance agreement pursuant to section 13(c) of the Federal Deposit Insurance Act with an insured bank; and (5) a recommendation regarding the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Director C. C. Hope, Jr. (Appointive), seconded by Director Robert L. Clarke (Comptroller of the Currency), concurred in by Chairman L. William Seidman, that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(2), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

Dated: June 14, 1989.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 89-14587 Filed 6-15-89; 1:24 pm]

BILLING CODE 6714-01-M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1417]

TIME AND DATE: 10 a.m. (E.D.T.), June 21, 1989.

PLACE: TVA Chattanooga Office Complex Auditorium, 1101 Market Street, Chattanooga, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on May 3, 1989.

Action Items

New Business

A—Budget and Financing

A1. Arrangements for Early Payment of 1981 Series D, 1982 Series C, and up to \$200 Million of 1982 Series B Bonds.

A2. Modification to the Capital Budget Finance From Power Proceeds and Borrowings for Fiscal Year 1989 to Provide a 161-kV Delivery Point to Cleveland Utilities at the Proposed South Cleveland Substation.

A3. Modification to the Capital Budget Finance From Power Proceeds and Borrowings for Fiscal Year 1989 to Include

Funds to Loop the Cherokee-Pigeon Forge 161-kV Transmission Line into Douglas Hydro.

A4. Modification to the Capital Budget Financed From Power Proceeds and Borrowings for Fiscal Year 1989 to Improve Service to the Collinsville 161-kV Substation.

C—Power Items

C1. Renewal Power Contract with Smithville, Tennessee.

C2. Replacement Power Contract with Northcentral Mississippi EPA.

E—Real Property Transactions

E1.* Sale of Approximately 5.67 Acres of Land of Wheeler Reservoir in Morgan County, Alabama.

E2. Sale of the Jackson, Tennessee, Power Service Center Property in Madison County, Tennessee.

E3. Letter Agreement with the Industrial Development Board of McMinnville and Warren County, Tennessee, for 161-kV Transmission Line.

E4. Sale of Permanent Easement Affecting Approximately 6.5 Acres of Land in Hamilton County, Tennessee.

E5. Letter Agreements with Reynolds Metals Company and The Industrial Development Board of Colbert County, Alabama, for Relocation of 161-kV Switching Facilities.

E6. Grant of Permanent Easement Affecting Approximately 0.6 Acre of Kentucky Reservoir Land in Decatur County, Tennessee.

E7. Deed Modification Affecting Approximately 9.3 Acres of Land on Fort Loudoun Reservoir in Knox County, Tennessee.

F—Unclassified

F1.* Contract No. TV-77925A with U.S. Department of the Air Force, Engineering and Services Center, for Groundwater Transport Validation.

F2. Revision to TVA Code X Nuclear Safety.

F3. Supplement No. 3 to Personal Services Contract No. TV-74012A with Excel Services Corporation.

F4. Supplement No. 4 to Personal Services Contract No. TV-71409A with Thomas A. Ippolito.

F5. Contract No. TV-78082A with Northeast Mississippi Regional Water Supply District for Surface Water Supply System.

F6. Arrangements for Making Available TVA's Reserve Telecommunications Capacity to Outside Users.

F7. Patent License Agreements for Compacting Plate Locking Device.

F8. Changes in Certifying Officers.

* Items approved by individual Board members. This would give formal ratification to the Board's action.

F9. Employee Discipline Policy—TVA Code III Employee Discipline.

CONTACT PERSON FOR MORE

INFORMATION: Alan Carmichael, Manager of Public Affairs, or a member of his staff can respond to requests for information about this meeting. Call (615) 632-8000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479-4412.

Dated: June 14, 1989.

Edward S. Christenbury,

General Counsel and Secretary.

[FR Doc. 89-14542 Filed 6-15-89; 10:07 am]

BILLING CODE 6120-01-M

Corrections

Federal Register

Vol. 54, No. 118

Monday, June 19, 1989

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF AGRICULTURE

Federal Grain Inspection Service

7 CFR Part 810

United States Standards for Wheat

Correction

In proposed rule document 89-13397 beginning on page 24176 in the issue of Tuesday, June 6, 1989, make the following corrections:

§ 10.2202 [Corrected]

1. On page 24177, in the third column, in § 810.2202 (a)(6)(ii), in the fourth line, "white club wheat" should read "other soft white wheats".

2. On the same page, in the same column, in § 810.2202 (a)(6)(iii), in the third line, "other soft white wheats" should read "white club wheat".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

[OPP-34002; FRL 3575-9]

Pesticides Required To Be Reregistered; List B

Correction

In notice document 89-12572 beginning on page 22706 in the issue of Thursday, May 25, 1989, make the following correction:

On page 22706, in the first column, under **FOR FURTHER INFORMATION**

CONTACT, in the third line, "(H75008C)" should read "(H75008C)".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 89-AGL-9]

Proposed Alteration of VOR Federal Airway; Illinois

Correction

In proposed rule document 89-12430 beginning on page 22447 in the issue of Wednesday, May 24, 1989, make the following correction:

On page 22447, in the third column, in the document heading, the docket number was incorrect and should read as set forth above.

BILLING CODE 1505-01-D

Monday
June 19, 1989

Part II

Department of
TransportationResearch and Special Programs
Administration

49 CFR Parts 171 and 175

Detailed Hazardous Materials Incident
Reports; Final Rule

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

49 CFR Parts 171 and 175

[Docket No. HM-36B; Amdt. Nos. 171-101, 175-43]

RIN 2137-AA51

Detailed Hazardous Materials Incident Reports

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: These amendments implement several changes to RSPA's system for collecting information on incidents involving the transportation of hazardous materials. Briefly, these amendments:

1. Revise the hazardous materials incident report form—DOT F 5800.1—to provide more meaningful and comprehensive incident data, especially in terms of incident causation and consequence;
2. Require carriers to maintain a copy of the incident report forms submitted to RSPA for a period of two years;
3. Require an incident report form to be submitted to RSPA within 30 days of the date of the incident (the current reporting requirement is 15 days);
4. Expand the present requirement that RSPA be notified of certain events including evacuations, closure of major transportation arteries or facilities, unscheduled events involving aircraft transporting hazardous materials, and fires associated with shipments of radioactive materials.
5. Clarify the present requirement that RSPA be notified of certain events involving radioactive materials and etiologic agents.
6. Require all carriers involved in a hazardous materials incident to provide assistance to an authorized representative of the Department of Transportation (DOT) in any subsequent investigations or special studies which DOT might undertake in connection with the incident.

EFFECTIVE DATE: January 1, 1990. The current (DOT F. 5800.1) form may be continued in use until the effective date of this rule. However, compliance with the regulations as amended is authorized immediately.

FOR FURTHER INFORMATION CONTACT: Joseph S. Nalevanko, (202) 366-4484, Policy Development and Information Systems Division, or Marilyn E. Morris, (202) 366-4488, Standards Division,

Office of Hazardous Materials Transportation, 400 7th Street SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: On March 16, 1984, RSPA published an advance notice of proposed rulemaking (ANPRM) in the *Federal Register* (49 FR 10048) which proposed to change the hazardous materials incident reporting requirements. On March 27, 1987, RSPA published a notice of proposed rulemaking (NPRM) in the *Federal Register* (52 FR 9996) inviting comments on several specific proposed changes to its system of collecting information on incidents involving the transportation of hazardous materials. These changes are intended to enhance the value of the incident report form (DOT F 5800.1) as a means for the DOT to evaluate the effectiveness of its regulatory program, and to determine the need for regulatory changes to address new or emerging hazardous materials transportation safety problems. It is also intended to facilitate and enhance the ease of completing the hazardous materials incident report form for those who are required to submit this form to DOT.

In response to the NPRM, RSPA received written comments from two government agencies and 13 members of the public. All comments have been considered in preparing this final rule. Significant changes in this final rule from the proposals published in the NPRM are discussed in detail below. Information contained in the Supplementary Information section of the ANPRM and NPRM is hereby incorporated in this final rule by reference, except as it may be superseded herein. The public reporting burden for this collection of information is estimated to average one hour per response, including the time for reviewing instructions and existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to: Information Systems Manager, Office of Hazardous Materials Transportation, DHM-63, Research and Special Programs Administration, U.S. Department of Transportation, 400 7th Street SW., Washington, DC 20590; and to the Office of Management and Budget (OMB), Paperwork Reduction Project (2137-0039), Washington, DC 20503.

Summary of Changes From NPRM

In response to the comments received and reviewed by RSPA, the final rule reflects several changes to the proposals contained in the NPRM.

Section 171.15 Immediate Notice of Certain Hazardous Materials Incidents

The NPRM had proposed to amend § 171.15 (and § 175.45 concerning incidents involving aircraft) to include three additional criteria for the immediate (i.e., telephonic) notification of the Department of certain types of hazardous materials incidents.

The first of the criteria pertains to incidents involving the evacuation of one or more properties adjacent to the property on which the incident occurs. One commenter found the language of this proposed reporting requirement to be ambiguous. This commenter stated that an "airport is usually a contiguous property of many square miles and would presumably, therefore, not require the notification if evacuated," i.e., if people in one area of an airport were evacuated to another area of the airport, the notification presumably would not be required. In response to this comment, paragraph (a)(6) of § 171.15 has been reworded to eliminate references to adjacent properties. The language of the proposed rule implied incorrectly that the Department need not be immediately notified of incidents where, for example, the general public in one area of an airport were evacuated to another area of the airport, or even of instances in which people are evacuated from an airport to property or properties adjacent to the airport that, in turn, are not evacuated. This final rule clarifies that paragraph (a)(6) applies only to incidents resulting in evacuations of the general public that are the direct result of hazardous materials. The purpose of limiting the scope of this reporting requirement to evacuations of the general public is to preclude the reporting of events wherein the initial response of either emergency response or supervisory personnel is to clear an area until the presence and the nature of a hazardous material is identified and the scope of the public risk is more adequately defined. Several commenters suggested that this safety purpose could be more effectively accomplished by limiting the reporting requirement to evacuations lasting a certain length of time. RSPA agrees with these comments and has accordingly modified the reporting requirement to accommodate them. Incidents involving evacuations of the general public with a duration of less than one hour will not require the immediate notification of the Department. It should be noted that, as written, the final rule does not require the immediate notification of the Department if members of the general public are evacuated from an area on

the erroneous assumption that a hazardous material is present or involved, even if the duration of the evacuation exceeds one hour.

A number of commenters objected to the requirement that the Department be given immediate notification of incidents involving evacuations where there is no release or spill of a hazardous material. The basis for this objection is summarized by one commenter who noted that:

"... local officials often order evacuations when no threat of physical injury or property damage exists. Evacuations are frequently ordered out of an abundance of caution. For example, an evacuation is usually ordered when a train derailed containing hazardous materials, even if no hazardous material is released as a result of the derailment. The decision to evacuate, while understandable from the perspective of local officials, is not sufficiently related to safety issues to require carriers to satisfy the notification requirement contained in the proposed rule, § 171.15(a)(6).

RSPA does not agree with this line of reasoning. The Department's need to be immediately informed of certain types of evacuations does not depend on whether, in hindsight, a particular decision to evacuate an area was disproportionate to the actual risks involved in an incident. As pointed out in the Department's Emergency Response Guidebook (Guidebook for Initial Response to Hazard Materials Incidents, DOT P 5800.4), an "evacuation is, by itself, a process of significant risk for the persons being evacuated." The risk associated with a hazardous materials incident is directly related to the probability of the release or spill of the material and the number of people exposed to the release or spill. When a tank car or a cargo tank truck overturns, the probability of a release of the hazardous material is certainly greater than otherwise, and the risk associated with such events can be reduced if the number of people exposed to the potential release of the material is also reduced (i.e., by means of an evacuation). Finally, RSPA finds no merit in the argument that evacuations are never warranted unless there has been an actual release of a hazardous material. A tank car carrying a flammable gas can for a time be engulfed by fire and still not leak; but certainly an evacuation would be appropriate in such a situation. Therefore, RSPA cannot accept the suggestion that the reporting requirement for evacuations be limited only to instances in which there has been an actual release of the hazardous material.

The NPRM proposed to amend § 171.15 to require the immediate notification of the Department for all incidents involving the closure or shutdown of one or more major transportation arteries or facilities for one hour or more. The phrase "major transportation arteries or facilities" includes, at the minimum, segments of interstate highways; bridges or tunnels providing access to interstate highways; airports where scheduled passenger operations are conducted; commercially navigable waterways; and railroad mainline track. Several commenters opposed this reporting criterion on the grounds that it is unduly broad and unnecessary from a safety standpoint, especially if no release or spill of a hazardous materials occurs. RSPA believes that there are significant safety concerns involved in decisions to shut down or close major transportation arteries and facilities that are the direct result of hazardous materials. Some of the more obvious safety concerns involved with the shut down or closure of major transportation arteries and facilities are: The prevention of the general public from entering the area affected by the incident; diversions and delays in the routing of other hazardous materials; and the fact that incidents that result in the shut down of major transportation arteries or facilities are, by their very nature, more severe and entail greater public safety concerns than incidents that do not result in such disruptions. These safety concerns are not definable solely in terms of whether or not there has been a release of hazardous materials. Even for incidents involving fatalities or injuries it is not necessarily the case that such incidents entail the involuntary release of the hazardous material from its container. People have been killed or injured while cleaning tanks that contained hazardous materials or by opening domes or manholes of cargo tanks and tank cars containing hazardous materials. These are incidents that may not entail the unintentional release of the hazardous material.

One commenter objected to the reporting criterion on the grounds that it would require "a rail carrier to immediately report practically every derailment because a rail line is often closed for more than an hour when a train derailed." This objection is apparently based on a misreading of § 171.15(a). While it is true that derailments almost always result in rail lines being closed for more than an hour solely because of the safety concerns and mechanical problems involved with clearing the track, it is not always the case that rail lines are closed "as the

direct result of hazardous materials". If a rail line is closed as the direct result of hazardous materials for less than an hour, then carriers are not required to immediately notify the Department even if hazardous materials are present, unless other reporting criteria require such notification.

The NPRM had proposed to amend § 171.15 to require the immediate notification of the Department for all incidents involving deviation of an aircraft from its planned course or its scheduled landing. The only comment received on this reporting criterion pointed out that the criterion should also pertain to flights that are terminated before take-off (i.e., a turnaround) due to hazardous materials, and to certain other events, such as flights declaring an emergency due to hazardous materials, even though a flight did not deviate from its planned route, or entail an unscheduled landing. RSPA agrees, and has changed this reporting requirement to pertain to all incidents in which as a direct result of hazardous materials, the operational flight pattern or routine of an aircraft is altered.

In reviewing the comments received in response to the proposed changes to § 171.15 (and § 175.45), RSPA believes the distinction should be clarified between incidents in which something happens as a direct result of hazardous materials (e.g., a death caused by exposure to a hazardous material) and two other types of incidents. These are incidents in which either something happens to the hazardous material itself such as its being spilled or something occurs in the presence of the hazardous material such as the occurrence of a fire.

Concerning the occurrence of fires and the presence of radioactive materials, § 171.15(a)(4) as presently worded requires the immediate notification of the Department for "each incident * * * in which as a direct result of hazardous materials: * * * fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material." In the case of fires this reporting requirement can be incorrectly interpreted as applying only to instances in which a hazardous material (which may not be a radioactive material) has caused a fire, i.e., the fire is a direct result of a hazardous material. The Department must be immediately notified regardless of whether or not the fire, or breakage, or spillage, or suspected radioactive contamination is the direct result of a hazardous material. In light of these considerations, which also apply to incidents involving etiologic agents, § 171.15 has been

reworded to clarify its intended scope and coverage.

Section 171.16 Detailed Hazardous Materials Incident Reports

The NPRM proposed to revise the hazardous materials incident report form—DOT F 5800.1—to provide more meaningful and comprehensive data on incidents, especially in terms of causation and consequence factors. In general, the proposed revision of the report form was designed to retain as many features as possible of the current report form, not only because many of the data fields on the current report form are essential, but also because of the wide experience and familiarity the industry has with this form. The improvement in the analytic usefulness of the form was accomplished by carefully and more logically reorganizing data fields and by providing a much broader array of choices to be marked as factors that best describe the nature of the incident. In the past, this type of information was largely provided by carriers who submitted lengthy narrative descriptions of the incident. RSPA believes that this change to the report form will significantly facilitate the completion of the form, provide a more systematic description of the incident, and decrease the time and effort involved in entering the information into RSPA's computerized incident data base. With one exception, all commenters favored a revision of the current incident report form.

A number of commenters suggested that several new data fields be added to the report form and that other proposed and existing data fields be clarified. These suggestions have been carefully evaluated and, where appropriate, have been incorporated into the report form (exhibit #1) and discussed in the guidance document for preparing the form (exhibit #2). For example, the new report form now requires those submitting the form to check the appropriate block that best describes the land use and the type of community at the site of the incident. On the other hand, the proposed data field pertaining to the estimated ambient temperature at the time of the incident has been deleted from the report form. RSPA believes that such estimates are not likely to be very accurate and will be duplicated by information requested elsewhere on the report form (e.g., instances of package failures due to heat or freezing).

Many commenters took exception to the proposed requirement that copies of other required reports be submitted to RSPA along with the incident report form. RSPA agrees and has deleted the

requirement accordingly. This action, however, does not affect the current requirement in § 171.16(a)(1) that a copy of the hazardous waste manifest be attached to the incident report form when the incident involves a hazardous waste; nor does it affect the current requirement in § 175.45(c) that, for incidents involving aircraft, a separate copy of the incident report form be sent to the FAA Civil Aviation Security Office nearest the incident.

The NPRM proposed to require that photographs be taken of the damage to packaging and accompany all report forms for all incidents resulting in a fatality or an injury requiring hospitalization caused by the release of a hazardous material from bulk packaging such as portable tanks, cargo tanks, rail tank cars (see § 171.8 for a precise definition of "bulk packaging"). Two commenters opposed this requirement. The American Trucking Association, Inc. (ATA) urged that photographs of incidents be furnished at the option of the carrier; the National Tank Truck Carriers Inc., (NTTC) believed that the proposed requirement that carriers assist the Department in any investigation or special studies relating to an incident (see discussion on § 171.21, *infra.*) would provide a better means for obtaining information on how a package failed than that provided by a photograph.

In light of these comments, RSPA has decided to retain the present language on the current incident report form that photographs and diagrams of the particulars of an incident should be, but are not required to be, submitted for clarification along with the report form itself.

Several commenters urged that RSPA give consideration to incorporating into Part 171 of 49 CFR, a specific set of instructions for completing Form 5800.1, in a manner similar to 49 CFR 394.20, which provides instructions for the preparation of the Motor Carrier Accident Report form MCS-50T. This suggestion has not been accepted. Currently, RSPA publishes a detailed, seven-page document entitled "Guidelines for Preparing Hazardous Materials Incident Reports." This guide is intended to assist carriers in accurately completing the hazardous materials incident report, Form 5800.1, and is available to the public upon request to the RSPA. In conjunction with this rulemaking, the guide has been extensively revised and expanded (see exhibit #2). RSPA's experience has shown that possible future revisions, clarifications and additional instructional assistance in completing

the incident report form are more easily accommodated and accomplished through a guidelines document than by incorporating such material into the body of the regulations. However, an informational note has been added at the end of § 171.16 to advise interested persons as to the availability of the guidelines free of charge upon request to RSPA.

The NPRM proposed that the current 15-day period for submitting incident report forms be increased to 30 days in order to provide more time to gather data and complete the report form as accurately as possible. Generally, commenters were either silent about this proposal or were in support of it. One commenter, however, urged RSPA to clarify the requirement that the information to be submitted within 30 days of the date of the incident be the best information available within 30 days. RSPA has not accepted this comment. Information that can reasonably be expected to be available within 30 days is, by definition, the best information available. No useful purpose is served by creating an implied distinction between the best information available and information that is less than the best. It is true that better information on the consequences of an incident, especially in terms of health effects or the estimated dollar amount of damage, may become available after 30 days. But RSPA has not proposed a requirement that carriers monitor the consequences of an incident beyond 30 days and subsequently submit this information to RSPA even though carriers on their own initiative may wish, and are encouraged, to do so.

This final rule also reflects two further revisions to § 171.16. The phrase "as a direct result of hazardous materials" has been deleted from § 171.16(a) as no longer applicable in view of the need to distinguish between incidents and consequences which are the "direct result of hazardous materials" and incidents involving the mere presence of hazardous materials. Section 171.16(a)(2) has been changed to reflect the fact that Part H of the current report (Form F 5800.1) has become section VIII in the revised report form.

The comments relating to the proposed change to § 171.16 concerning the requirement that carriers maintain a copy of each incident report for a period of two years are reviewed in the discussion under § 171.21 below, because this record retention requirement is related to the requirements of that section.

Section 171.21 Assistance in Investigations and Special Studies

As proposed in the NPRM, paragraph (a) of § 171.21 would require that hazardous materials carriers make all records and information pertaining to any incident available, upon request, to an authorized representative of the Department of Transportation. Further, under this paragraph, a carrier of hazardous materials is required to give an authorized representative or special agent of the Department all reasonable assistance in the investigation of any incident. One commenter expressed concern about the interpretation of the phrase "reasonable assistance," pointing out that it is possible that a carrier's understanding of this phrase could differ from that of the representative or agent of the Department. In order to avoid such differences of opinion, the commenter suggested that paragraph (a) of § 171.21 be limited to the requirement that carriers make any existing records available to authorized representatives of the Department. RSPA has not accepted this comment. The language of § 171.21 is virtually identical to the language of § 394.15 of the Federal Motor Carrier Safety Regulations (49 CFR Parts 390-397). Section 394.15 has been in force for a number of years, and the Federal Highway Administration (FHWA) reports that the interpretation of the term "reasonable assistance" has not been a source of contention between the FHWA and motor carriers subject to its jurisdiction. Moreover, the requirement establishes a "reasonableness" test which has wide currency and broad judicial acceptance concerning matters that cannot be specified in advance.

As proposed in the NPRM, under paragraph (b)(1) of § 171.21, carriers would be required to respond with 15 days, or within such other time as specified by the Department, to inquiries by the Department in connection with any Department studies of hazardous material incidents. A number of commenters urged that this paragraph be changed to permit a 30-day or longer response period. These commenters point to the possibility that a carrier might be unable to respond to such an inquiry within 15 days, especially if the inquiry involved a large number of documents. RSPA believes that the proposed 15 day limitation could be too restrictive, and a 30 day period has been adopted in the final rule.

Since the incident report forms will be of significant importance in any investigations or special studies conducted by the Department under

§ 171.21, the NPRM had proposed to revise § 171.16 to require all carriers to maintain a copy at their principal places of business of each incident report form submitted to the Department for a period of two years. The American Trucking Association (ATA) was joined by another commenter in taking strong exception to this proposed requirement on the grounds that this imposes an unreasonable paperwork burden on carriers, that the absence of such a requirement in the current regulations has created no apparent problem, that the retention of the incident report form by the carrier serves no useful purpose to the carrier or to the Department, and that the requirement results in the duplication of information. RSPA disagrees with these comments for several reasons.

First, regarding the paperwork burden on carriers, in general, given that failure to comply with the hazardous materials incident reporting requirements can result in a civil penalty, it is doubtful that prudent carriers would not keep copies of the reports they submit to the Department in their own files. Moreover, 49 CFR 394.13 requires motor carriers to maintain " . . . a copy of each report that the carrier has filed pursuant to § 394.9, with a state agency, or with an insurer, with respect to any reportable accident entered in the accident register." Some of these accident reports will also entail hazardous materials incidents that are required to be kept by motor carriers under § 394.13(c) for a period of three years. It should also be noted that the Federal Railroad Administration (FRA) requires each railroad to maintain a duplicate of each form it submits to the FRA under 49 CFR 225.21 for at least two years.

Second, § 171.16 requires that the hazardous materials incident report form be provided to the Department in duplicate. The incremental paperwork burden of a carrier's preparing the incident report form in triplicate, with one copy for the carrier's own records, is minimal.

Third, hazardous materials incident report forms can be and have been used as evidence in court. RSPA does not believe that carriers can or would be content with the idea that RSPA be the sole possessor of such records. This disposes of the claim that the retention of the incident report form by the carrier is of no use to the carrier, even apart from the insight and benefit a carrier can derive from studying its own record of hazardous materials incidents.

Fourth, the contention that the absence of a record retention requirement in the current regulations

has created no apparent problems is beside the point: it is precisely to prevent future problems, especially in terms of the enforceability of § 171.21, that is the principal reason for the record retention requirement. Without such a requirement, the investigations and special studies envisioned in § 171.21 would be very difficult, if not impossible, to implement. This requirement will also aid in the verification of the accuracy of the reports submitted to RSPA, thus demonstrating that the requirement is not only useful, but necessary.

Finally, while the requirement does result in a duplication of information, this duplication has the result of increasing the availability and accessibility of information. It does not duplicate efforts to obtain information.

As proposed in the NPRM, a copy of each incident report was to be retained at the carrier's principal place of business. However, as pointed out by the ATA, under 49 CFR 394.13, motor carriers may maintain their accident registers at regional or terminal offices, upon written request to, and with the approval of, Director, Regional Motor Carrier Safety, FHWA. At the urging of the ATA, RSPA has modified the requirement that a copy of the incident report form be retained at the carrier's principal place of business to include "other places as authorized and approved in writing by an agency of the Department of Transportation."

Additional Public Comments

In response to the NPRM, RSPA also received a number of comments on issues which, although they concern RSPA's Hazardous Materials Information System (HMIS), were either fully discussed and resolved in the preamble to the NPRM or were not the subject of any particular proposed amendments in the NPRM. Although it is not obligated to respond to such comments, RSPA believes that the acknowledgment and a short discussion of these comments are worthwhile.

The Air Transport Association of America commented that the NPRM included no proposal to exempt air carriers from the current requirement under paragraphs (c) and (d) of § 171.16 to report a hazardous material incident involving a consumer commodity; a battery, electric storage, wet, filled with acid or alkali; or paint and paint-related material when shipped in packagings of five gallons or less. This commenter could find no justification that supports the "continued requirements to report incidents that occur aboard aircraft which under all other circumstances

DOT clearly believes to be trivial." In response to these comments, RSPA notes that the exception provided by paragraphs (c) and (d) of § 171.16 does not apply to incidents involving the transportation of hazardous waste. Also, RSPA believes that there is a fundamental difference in the risk of transporting hazardous materials aboard aircraft versus other modes of transportation. A simple, but non-trivial, instance of this difference is illustrated by the fact that, generally, unlike a truck driver, a pilot cannot simply stop his vehicle to determine what is causing the smoke or fumes emitting from the cargo hold. Moreover, the rapidity with which pressure and temperature changes can occur aboard aircraft is vastly different from what can occur aboard vehicles and vessels in surface transportation.

The Association of American Railroads (AAR), in connection with the requirement in § 171.15 that carriers report certain hazardous materials incidents by telephone at the earliest possible moment, noted that:

"... for certain incidents two phone calls have to be made, to RSPA (49 CFR 171.15) and the National Response Center (40 CFR 300.37), and the Federal Railroad Administration and the National Transportation Safety Board (49 CFR 225.9 and 840.3). FRA and NTSB have coordinated their requirements so that only one phone call has to be made to satisfy their requirements, although their actual notification requirements are independent of each other. Similarly, RSPA and EPA have coordinated their requirements so that only one phone call has to be made to satisfy their requirements, although their requirements are also independent of each other. We see no reason why RSPA, NTSB, FRA, and NRC cannot develop one set of notification requirements for transportation incidents.

These comments are well taken, and RSPA, as time and response permit, will explore the feasibility of a "one call" notification system under § 171.15 which would simplify the carrier notification requirements.

The National Tank Truck Carriers, Inc. (NTTC) has commented on two issues that were discussed in the preamble of the NPRM. The first issue pertains to the requirement in § 171.15(a) to report all unintentional releases of hazardous materials, regardless of the amount of the material released. The NTTC believes the RSPA should establish "a minimum product loss amount threshold to trigger" this reporting requirement. RSPA does not agree. Essentially, as explained in the preamble to the NPRM, such a reporting requirement would severely diminish the usefulness of the hazardous materials incident reporting system. The second issue raised by the NTTC

pertains to the question of who is responsible for reporting incidents occurring during loading/unloading operations that are directed by or under the control of shippers or consignees. It is the carrier who is required to report each incident that occurs during the course of transportation (including loading, unloading, and storage incidental thereto), regardless of who is in control of the loading/unloading operations. However, the reporting requirement does not apply if the carrier is not physically present at the site of the incident (and not required to be) and has no knowledge of the incident ("knowledge" is defined in 49 CFR 107.299).

The ATA commented that the incident report form—DOT F 5800.1—provides information that is of value to DOT as well as to carriers, shippers, and container manufacturers, and urged RSPA to make this information more available to the public in terms of increased published reports and analyses based on the incident reports it receives. Currently, RSPA publishes an annual report on hazardous materials transportation which, among other things, provides summary statistics on hazardous materials transportation incidents. RSPA will also soon be publishing a separate document devoted entirely to the presentation of statistics on hazardous materials transportation incidents.

Administrative Notices

a. *Paperwork Reduction Act.* The information collection requirements contained in this rule were submitted for approval to OMB under provision of the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). The information collection requirements in the final rule were approved by OMB and assigned control number —.

b. *Executive Order 12291.* RSPA has determined that this rulemaking: (1) Is not a "major rule" under Executive Order 12291; (2) is "significant" under DOT's regulatory policies and procedures (44 FR 11034); (3) will not affect not-for-profit enterprises or small governmental jurisdictions; and (4) does not require an environmental impact statement under the National Environmental Policy Act (42 U.S.C. 4321 *et seq.*). A regulatory evaluation is available for review in the docket.

c. *Regulatory Flexibility Act.* The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires a review of certain rules proposed after January 1, 1981 for their effects on small businesses, organizations, and governmental bodies. I certify that this regulation will not

have a significant economic impact on a substantial number of small entities.

d. *Executive Order 12612.* This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

e. A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Regulatory Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used to cross reference this action with the Unified Regulatory Agenda.

List of Subjects

49 CFR Part 171

Hazardous materials transportation, General information, Regulations, and Definitions.

49 CFR Part 175

Hazardous materials transportation, Carriage by aircraft.

In consideration of the foregoing, 49 CFR Part 171 and Part 175 are amended as follows:

PART 171—GENERAL INFORMATION, REGULATIONS, AND DEFINITIONS

1. The authority citation for Part 171 continues to read as follows:

Authority: 49 U.S.C. 1802, 1803, 1804, 1808; 49 CFR Part 1, unless otherwise noted.

2. In § 171.15, paragraph (a) is revised to read as follows:

§ 171.15 Immediate notice of certain hazardous materials incidents.

(a) At the earliest practicable moment, each carrier who transports hazardous materials (including hazardous wastes) shall give notice in accordance with paragraph (b) of this section after each incident that occurs during the course of transportation (including loading, unloading and temporary storage) in which—

- (1) As a direct result of hazardous materials—
 - (i) A person is killed; or
 - (ii) A person receives injuries requiring his or her hospitalization; or
 - (iii) Estimated carrier or other property damage exceeds \$50,000; or
 - (iv) An evacuation of the general public occurs lasting one or more hours; or

(v) One or more major transportation arteries or facilities are closed or shut down for one hour or more; or

(vi) The operational flight pattern or routine of an aircraft is altered; or

- (2) Fire, breakage, spillage, or suspected radioactive contamination occurs involving shipment of radioactive material (see also §§ 174.45, 175.45, 176.48, and 177.807 of this subchapter); or

(3) Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents; or

(4) A situation exists of such a nature (e.g., a continuing danger to life exists at the scene of the incident) that, in the judgment of the carrier, it should be reported to the Department even though it does not meet the criteria of paragraph (a) (1), (2) or (3) of this section.

3. In § 171.16, paragraphs (a) and (b) are revised, and a "Note" is added at the end of the section to read as follows:

§ 171.16 Detailed hazardous materials incident reports.

(a) Each carrier who transports hazardous materials shall report in writing, in duplicate, on DOT Form F 5800.1 (Rev. 6/89) to the Department within 30 days of the date of discovery, each incident that occurs during the course of transportation (including loading, unloading, and temporary storage) in which any of the circumstances set forth in § 171.15(a) occurs or there has been an unintentional release of hazardous materials from a package (including a tank) or any quantity of hazardous waste has been discharged during transportation. If a report pertains to a hazardous waste discharge:

(1) A copy of the hazardous waste manifest for the waste must be attached to the report; and

(2) An estimate of the quantity of the waste removed from the scene, the name and address of the facility to which it was taken, and the manner of disposition of any removed waste must be entered in Section IX of the report form (Form F 5800.1) (Rev. 6/89).

(b) Each carrier making a report under this section shall send the report to the Information Systems Manager, DHM-63, Research and Special Programs Administration, Department of Transportation, Washington, DC 20590; a copy of the report shall be retained, for a period of two years, at the carrier's principal place of business, or at other places as authorized and approved in

writing by an agency of the Department of Transportation.

Note: A guideline document for assisting in the completion of DOT Form F 5800.1 (Rev. 6/89) may be obtained from the Office of Hazardous Materials Transportation, DHM-51, U.S. Department of Transportation, Washington, DC 20590.

4. In Part 171, a new § 171.21 is added to read as follows:

§ 171.21 Assistance in investigations and special studies.

(a) A carrier who is responsible for reporting an incident under the provisions of § 171.16 shall make all records and information pertaining to the incident available to an authorized representative or special agent of the Department of Transportation upon request. The carrier shall give an authorized representative or special agent of the Department of Transportation reasonable assistance in the investigation of the incident.

(b) If the Department of Transportation makes an inquiry to a carrier of hazardous materials in connection with a study of incidents, the carrier shall—

(1) Respond to the inquiry within 30 days after its receipt or within such other time as the inquiry may specify; and

(2) Provide full, true, and correct answers to any questions included in the inquiry.

5. The incident reporting form (DOT Form F 5800.1) is revised to read as indicated in the attached exhibit #1. (The form will not appear in the Code of Federal Regulations.)

PART 175—CARRIAGE BY AIRCRAFT

6. The authority citation for Part 175 continues to read as follows:

Authority: 49 U.S.C. 1803, 1804, 1807, 1808; 49 CFR Part 1, unless otherwise noted.

7. In § 175.45, paragraph (a), the introductory text of paragraph (b) and the first sentence of paragraph (c) are revised to read as follows:

§ 175.45 Reporting hazardous materials incidents.

(a) Each operator who transports hazardous materials shall report to the nearest FAA Civil Aviation Security Office by telephone at the earliest practicable moment after each incident that occurs during the course of transportation (including loading, unloading or temporary storage) in which—

(1) As direct result of hazardous materials—

- (i) A person is killed; or
- (ii) A person receives injuries requiring hospitalization; or
- (iii) Estimated carrier or other property damage, exceeds \$50,000; or
- (iv) An evacuation of the general public occurs lasting one or more hours; or

(v) One or more major transportation arteries or facilities are closed or shutdown for two hours or more; or

(vi) The operational flight pattern or routine of an aircraft is altered; or

(2) Fire, breakage, or spillage or suspected radioactive contamination occurs involving shipment of radioactive materials (see § 175.700(b)); or

(3) Fire, breakage, spillage, or suspected contamination occurs involving shipment of etiologic agents (in addition to the report required by paragraph (a) of this section, a report on an incident involving etiologic agents should be telephoned directly to the Director, Center for Disease Control, U.S. Public Health, Atlanta, Georgia, area code 404-633-5313); or

(4) A situation exists of such a nature (e.g., a continuing danger to life exists at the scene of the incident) that, in the judgment of the carrier, it should be reported to the Department even though it does not meet the criteria of paragraph (a) (1), (2) or (3) of this section.

(b) If the operator conforms to the provisions of this section, the carrier requirements of § 171.15, except § 171.15(c), of this subchapter shall be deemed to have been satisfied. The following information shall be furnished in each report.

(c) Each operator who transports hazardous materials shall report in writing, in duplicate, on DOT Form F 5800.1 (Rev. 6/89) within 30 days of the date of discovery, each incident that occurs during the course of transportation (including loading, unloading or storage incidental thereto) in which any of the circumstances set forth in paragraph (a) of this section occurs or there has been unintentional release of hazardous materials from a package.

Issued in Washington, DC on May 23, 1989, under the authority delegated in 49 CFR Part 1.

Travis P. Dungan,
Administrator, Research and Special
Programs Administration.

Exhibit 1

BILLING CODE 4910-60-M

DEPARTMENT OF TRANSPORTATION
HAZARDOUS MATERIALS INCIDENT REPORT

REQUIREMENTS: The regulations requiring reporting of hazardous materials incidents are contained in the Code of Federal Regulations (CFR), Title 49, Parts 100 to 179 (governing the transport of hazardous materials by rail, air, water and highway). Failure to comply with the reporting requirements contained therein can result in a civil penalty.

A Guide for Preparing the Hazardous Materials Incident Report is available from the Information Systems Manager, Office of Hazardous Materials Transportation, DMH-43, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

PUBLIC REPORTING BURDEN FOR THIS COLLECTION OF INFORMATION IS ESTIMATED TO AVERAGE 1 HOUR PER RESPONSE, INCLUDING THE TIME FOR REVIEWING INSTRUCTIONS, SEARCHING EXISTING DATA SOURCES, GATHERING AND MAINTAINING THE DATA NEEDED, AND COMPLETING AND REVIEWING THE COLLECTION OF INFORMATION. SEND COMMENTS REGARDING THIS BURDEN ESTIMATE OR ANY OTHER ASPECT OF THIS COLLECTION OF INFORMATION, INCLUDING SUGGESTIONS FOR REDUCING THIS BURDEN, TO INFORMATION SYSTEMS MANAGER, OFFICE OF HAZARDOUS MATERIALS TRANSPORTATION, DMH-43, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, U.S. DEPARTMENT OF TRANSPORTATION, WASHINGTON, DC 20590; AND TO THE OFFICE OF INFORMATION AND REGULATORY AFFAIRS, OFFICE OF MANAGEMENT AND BUDGET, WASHINGTON, DC 20503.

TEAR HERE

DEPARTMENT OF TRANSPORTATION HAZARDOUS MATERIALS INCIDENT REPORT				
INSTRUCTIONS: Submit this report in duplicate to the Information Systems Manager, Office of Hazardous Materials Transportation, DMH-43, Research and Special Programs Administration, U.S. Department of Transportation, Washington, D.C. 20590. If space provided for any item is inadequate, complete that item under Section IX, leaving to the entry number being completed. Copies of this form, in limited quantities, may be obtained from the Information Systems Manager, Office of Hazardous Materials Transportation. Additional copies in this prescribed format may be reproduced and used, if on the same size and kind of paper.				
I. MODE, DATE, AND LOCATION OF INCIDENT				
1. MODE OF TRANSPORTATION ☐ AIR ☐ HIGHWAY ☐ RAIL ☐ WATER ☐ OTHER _____				
2. DATE AND TIME OF INCIDENT Use Military Time: e.g. 8:30am = 0830 noon = 1200; 6pm = 1800; midnight = 2400. Date: ____/____/____ TIME: ____:____:____				
3. LOCATION OF INCIDENT (include airport name in ROUTE/STREET if incident occurs at an airport) CITY: _____ STATE: _____ COUNTY: _____ ROUTE/STREET: _____				
II. DESCRIPTION OF CARRIER, COMPANY, OR INDIVIDUAL REPORTING				
4. FULL NAME		5. ADDRESS (Principal place of business)		
6. LIST YOUR OMC MOTOR CARRIER LICENSE NUMBER, REPORTING RAILROAD ALPHABETIC CODE, MERCHANT VESSEL NAME AND ID NUMBER OR OTHER REPORTING CODE OR NUMBER				
III. SHIPMENT INFORMATION (From Shipping Paper or Packaging)				
7. SHIPPER NAME AND ADDRESS (Principal place of business)		8. CONSIGNEE NAME AND ADDRESS (Principal place of business)		
9. ORIGIN ADDRESS (if different from Shipper address)		10. DESTINATION ADDRESS (if different from Consignee address)		
11. SHIPPING PAPER/HAWBILL IDENTIFICATION NO.				
IV. HAZARDOUS MATERIAL(S) SPILLED (NOTE: REFERENCE 49 CFR SECTION 172.101)				
12. PROPER SHIPPING NAME	13. CHEMICAL/TRADE NAME	14. HAZARD CLASS	15. IDENTIFICATION NUMBER e.g. UN 2764, NA 2030	
16. IS MATERIAL A HAZARDOUS SUBSTANCE? ☐ YES ☐ NO		17. WAS THE RD MET? ☐ YES ☐ NO		
V. CONSEQUENCES OF INCIDENT, DUE TO THE HAZARDOUS MATERIAL				
18. ESTIMATED QUANTITY HAZARDOUS MATERIAL RELEASED (include units of measurement)		19. FATALITIES	20. HOSPITALIZED INJURIES	21. NON-HOSPITALIZED INJURIES
22. NUMBER OF PEOPLE EVACUATED				
23. ESTIMATED DOLLAR AMOUNT OF LOSS AND/OR PROPERTY DAMAGE, INCLUDING COST OF DECONTAMINATION OR CLEANUP (Round off in 5th digit)				
A. PRODUCT LOSS	B. CARRIER DAMAGE	C. PUBLIC/PRIVATE PROPERTY DAMAGE	D. DECONTAMINATION/ CLEANUP	E. OTHER
24. CONSEQUENCES ASSOCIATED WITH THE INCIDENT ☐ VAPOR (GAS) DISPERSION ☐ MATERIAL ENTERED WATERWAY/SEWER ☐ SPILLAGE ☐ FIRE ☐ EXPLOSION ☐ ENVIRONMENTAL DAMAGE ☐ NONE ☐ OTHER				
VI. TRANSPORT ENVIRONMENT				
25. INDICATE TYPE(S) OF VEHICLE(S) INVOLVED: ☐ CARGO TANK ☐ VAN TRUCK/TRAILER ☐ FLAT BED TRUCK/TRAILER ☐ TANK CAR ☐ RAIL CAR ☐ TOPC/COPC ☐ AIRCRAFT ☐ BARGE ☐ SHIP ☐ OTHER				
26. TRANSPORTATION PHASE DURING WHICH INCIDENT OCCURRED OR WAS DISCOVERED: ☐ EN ROUTE BETWEEN ORIGIN/DESTINATION ☐ LOADING ☐ UNLOADING ☐ TEMPORARY STORAGE/TERMINAL				
27. LAND USE AT INCIDENT SITE ☐ INDUSTRIAL ☐ COMMERCIAL ☐ RESIDENTIAL ☐ AGRICULTURAL ☐ UNDEVELOPED				
28. COMMUNITY TYPE AT SITE ☐ URBAN ☐ SUBURBAN ☐ RURAL				
29. WAS THE SPILL THE RESULT OF A VEHICLE ACCIDENT/DERAILMENT? ☐ YES ☐ NO				
IF YES AND APPLICABLE, ANSWER PARTS A THRU C.				
A. ESTIMATED SPEED	B. HIGHWAY TYPE ☐ DIVIDED/HIGHWAY ACCESS ☐ UNDIVIDED	C. TOTAL NUMBER OF LANES ONE TWO THREE FOUR OR MORE	SPACE FOR DOT USE ONLY	

FORM DOT F 5800.1 Rev. 6/89

THIS FORM MAY BE REPRODUCED

TEAR HERE

VII. PACKAGING INFORMATION: If the package is overpacked (consists of several packages, e.g. glass jars within a fiberboard box), begin with Column A for information on the innermost package.						
ITEM	A	B	C			
30. TYPE OF PACKAGING INCLUDING INNER RECEPTACLES (e.g. Steel drum, tank car)						
31. CAPACITY OR WEIGHT PER UNIT PACKAGE (e.g. 55 gallons, 65 lbs)						
32. NUMBER OF PACKAGES OF SAME TYPE WHICH FAILED IN IDENTICAL MANNER						
33. NUMBER OF PACKAGES OF SAME TYPE IN SHIPMENT						
34. PACKAGE SPECIFICATION IDENTIFICATION (e.g. DOT 17E, DOT 105A100, UN 1A1 or none)						
35. ANY OTHER PACKAGING MARKINGS (e.g. STC 18/16-55-88, Y1 4/15067)						
36. NAME AND ADDRESS, SYMBOL OR REGISTRATION NUMBER OF PACKAGING MANUFACTURER						
37. SERIAL NUMBER OF CYLINDERS, PORTABLE TANKS, CARGO TANKS, TANK CARS						
38. TYPE OF LABELING OR PLACARDING APPLIED						
39. IF RECONDITIONED OR REQUALIFIED	A. REGISTRATION NUMBER OR SYMBOL	B. DATE OF LAST TEST OR INSPECTION				
40. EXEMPTION-APPROVAL/COMPETENT AUTHORITY NUMBER IF APPLICABLE (e.g. DOT E1012)						
VIII. DESCRIPTION OF PACKAGING FAILURE: Check all applicable boxes for the package(s) identified above.						
41. ACTION CONTRIBUTING TO PACKAGING FAILURE		42. OBJECT CAUSING FAILURE				
A	B	C	A	B	C	
a	☐	☐	TRANSPORT VEHICLE COLLISION	i	☐	☐
b	☐	☐	TRANSPORT VEHICLE OVERTURN	j	☐	☐
c	☐	☐	OVERLOADING/OVERFILLING	k	☐	☐
d	☐	☐	LOOSE FITTINGS, VALVES	l	☐	☐
e	☐	☐	DEFECTIVE FITTINGS, VALVES	m	☐	☐
f	☐	☐	DROPPED	n	☐	☐
g	☐	☐	STRUCK/RAMMED	o	☐	☐
h	☐	☐	IMPROPER LOADING	p	☐	☐
i	☐	☐	IMPROPER BLOCKING	q	☐	☐
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Register Federal

Monday
June 19, 1989

Part III

Office of Management and Budget

Privacy Act of 1974; Final Guidance
Interpreting the Provisions of Public Law
100-503, Computer Matching and Privacy
Act of 1988; Notices

OFFICE OF MANAGEMENT AND BUDGET

Privacy Act of 1974; Final Guidance Interpreting the Provisions of Public Law 100-503, the Computer Matching and Privacy Protection Act of 1988

AGENCY: Office of Management and Budget.

ACTION: Issuance of final guidance.

SUMMARY: These Guidelines implement the provisions of Pub. L. 100-503, the Computer Matching and Privacy Protection Act of 1988. This Act amends the Privacy Act of 1974 to establish procedural safeguards affecting agencies' use of Privacy Act records in performing certain types of computerized matching programs. The Act requires agencies to conclude written agreements specifying the terms under which matches are to be done. It also provides due process rights for record subjects to prevent agencies from taking adverse actions unless they have independently verified the results of a match and given the subject 30 days advance notice. Oversight is accomplished in a variety of ways: by having agencies (a) publish matching agreements, (b) report matching programs to OMB and Congress; and (c) establish internal boards to approve their matching activity. The Act becomes effective on July 19, 1989.

EFFECTIVE DATE: These Guidelines are effective June 19, 1989.

FOR FURTHER INFORMATION CONTACT: Robert N. Veeder, Office of Management and Budget, Office of Information and Regulatory Affairs, Information Policy Branch, Telephone (202) 395-4814.

SUPPLEMENTARY INFORMATION: Pub. L. 100-503, the Computer Matching and Privacy Protection Act of 1988 was enacted on October 18, 1988. It will become effective on July 19, 1989. The Act requires OMB to issue guidance on interpreting and implementing its provisions no later than the eighth month after enactment, or June 19, 1989.

On April 19, 1989, OMB published for public comment proposed interpretive guidance. The notice especially invited comment on the applicability of the Act to two examples of matching activity:

- The entering of information received orally into an automated data base for the purpose of determining eligibility for a Federal benefit;
- The automation by a Federal agency of data from a Federal non-automated system of records.

The proposal also solicited examples of routine administrative matches using Federal personnel or payroll records that should be excluded from the Act's

coverage, and matches for which Data Integrity Boards should waive the Act's benefit/cost requirement.

At the expiration of the comment period, OMB had received comments from 42 respondents. These fell into five categories:

- The Congress (2)
- Federal agencies (24)
- State agencies (14)
- Public Interest Groups (1)
- Public Employee Unions (1)

In addition to providing comments on the specific areas requested, most commentators also chose to comment more broadly on the guidance.

Although the following guidance is published in final form, OMB realizes that the implementation of this complex Act will undoubtedly require the issuance of additional and clarifying guidance and intends to monitor the agencies' implementation closely to that end.

Section By Section Analysis

Section 5a(1)(a)—Matching Program Definition

Caution Against Eluding the Act's Requirements

Several commentators advised OMB to explicitly warn agencies, both Federal and State, against engaging in sophistry or subterfuge, to avoid the reach of the Act. They pointed out, for example, that a Federal agency might combine two disparate systems of records containing payroll and personnel records of Federal employees into a single system and match data sets within the new system. This activity would not be covered, although a match between the two separate systems would have been. In other cases, agencies might convert automated records to paper records to perform a manual match, albeit one of more limited scope. OMB thinks these recommendations are pertinent and has added cautionary advice to the matching program definition section to caution agencies not to engage in activities intended to frustrate the normal application of the Act.

Distinction Between Federal to Federal and Federal to Non-Federal Matches

OMB, in making a literal interpretation of the statutory definition of a matching program, distinguished between Federal-to-Federal and Federal-to-non-Federal matches. In the former case, the necessary components were that there were two or more automated systems of records and that the comparison of records in these systems was done via a computer. This is essentially the classic definition of a matching program that OMB put forth in

guidance issued in 1979 and revised in 1982. It is the definition that the General Accounting Office has asserted in its study of the costs and benefits of conducting matching programs: Computer Matching: Assessing its Costs and Benefits, GAO/PEMD-87-2, November 1986.

In defining the Federal/non-Federal match, however, OMB read the statute as applying to both automated and non-automated records so long as the comparison was done via computer. Several commentators objected to placing a heavier administrative burden on State and local agencies engaged in matching with Federal agencies than on Federal agencies matching with each other. One commentator suggested that the OMB reading was in error and that the modifier "automated" could properly and reasonably be read as modifying all of the data bases involved.

Other commentators pointed out that the clear intent of the Act was to deal with situations where large numbers of individuals were subjected to automated scrutiny with potentially adverse consequences, and that in actual practice, that meant automated comparisons of automated data bases. Certainly the Privacy Act itself contains an expression of Congressional concern on precisely this point: that use of computers could "greatly magnify the harm" to an individual.

After careful consideration of these arguments, OMB has revised the definition to clarify that in both Federal-to-Federal and Federal-to-non-Federal matching programs what is involved is the automated comparison of two or more automated record sets, whether systems of records or non-Federal records. In taking this position, OMB is extremely concerned that agencies not adopt data exchange practices that deliberately avoid the reach of the Act where compliance would otherwise be required. The guidance has been revised to cite this concern and give examples of such improper practices.

State Agencies' Concerns

A number of State respondents asserted that matches between the Social Security Administration and State agencies in which SSA merely provided information with which to update a benefits file to reflect an across-the-board cost-of-living allowance change should not be considered a matching program under the Act. They asserted that the match, if one occurred, was really done at SSA, and disclosure to the States of COLA information did not involve a computerized comparison of two

independent record sources. OMB is sympathetic to the concerns of the States, but unpersuaded by this analysis. The record as maintained by the state agency is a State record, not a Federal record. The matching process involves comparing information provided by a Federal source to that record using a computer to perform the comparison. There are potentially adverse consequences for the record subject. Eligibility for a Federal benefit program is involved. Clearly, this is a Federal-to-non-Federal matching program contemplated by the Act.

It should be noted that States are free to update their files for across-the-board cost-of-living adjustments without matching with Federal records. Since the COLA percentages are known in advance, are uniform, and are automatic, States can compute these COLA's themselves. Actions taken based on benefit levels recomputed by the States without the involvement of a Federal system of records matching program would be subject to the laws and regulations governing such programs rather than the Matching Act.

An additional State concern relates to how to conduct the independent verification required by the Act for these kinds of matches. That is discussed below.

Entering of Information Received Orally

A final consideration in the definition of what constitutes a matching program for purposes of the Act is the response of the commentators to specific questions OMB raised in its proposed guidance. Specifically, we asked whether when a State benefits clerk takes information received orally from an applicant and enters it into an automated Federal Privacy Act system of records the provisions of the Matching Act come into play. A majority of respondents thought that to the extent that no record existed at the State level, such a query would not be covered. However, if the query produced a record that the State would ultimately maintain, it was covered. Since it is unlikely that a State would never memorialize such a query, this issue is perhaps more academic than real. In any case, the guidance has been amended to add this example.

Section 5a(1)(d)—Matching Purpose

Elements of Matching Purpose

Several commentators found OMB's discussion of the elements of the purpose section less clear than OMB intended. The section has been redrafted.

Ultimate Purpose

Two commentators took exception to OMB's assertion that peripheral consequences of a matching program, even if having an ultimate adverse result, could be discounted in determining whether a match was covered. They urged instead that OMB broadly construe the purpose section to take in the ultimate purpose of the match (by which OMB assumes they mean any ultimate consequence, whether intended or unintended). OMB is unpersuaded by this rationale. The thrust of the Act is to cover matching programs whose purpose is clear and deliberate and intended to accomplish one of three stated purposes: to determine eligibility for a Federal benefit, compliance with benefit program requirements, or to effect recovery of improper payments or delinquent debts from current or former beneficiaries. The more tenuous the nexus between the operation of the program and these purposes is the harder it is to find any applicability of the Act. Having said that, however, OMB remains concerned that agencies not avoid the reach of the Act by disguising the real purpose of their matching programs.

Section 5a(3)—Exclusions From the Matching Definition

Statistical Matches for Research Purposes

Two commentators criticized the inclusion of "pilot matches" in this excluded category. In the past, agencies have done pilot matches using a small data subset to determine whether it would be productive to perform a match of the entire dataset. Given the requirement in the Act for benefit/cost analysis, OMB thinks that pilot matches are a reasonable approach to determining whether to engage in a broader matching activity. OMB does not think that this kind of information gathering activity should be subject to the administrative requirements that attach to regular matches so long as the agency keeps these matches solely in a statistical information gathering channel. Nevertheless, OMB is sensitive to the concerns raised and has amended the guidance to require Data Integrity Board approval of all pilot matches. It is at this point that the Board can decide whether to conduct a matching program and comply with the Act's full requirements, or a pilot program. If a full matching program, the results of the match may be used to take adverse action. If a pilot program, they may not.

Law Enforcement Agency Exclusion

One agency recommended that the guidance specifically cite the Inspector General (IG) as a law enforcement agency. OMB failed to realize that commentators would be unaware that the Inspector General Act gave the Inspector criminal law enforcement responsibilities. While we are hesitant to include a comprehensive list of eligibles we have amended the guidance to cite that part of the IG office that performs criminal law enforcement activities as eligible for the exclusion.

Two commentators were concerned that the proposed guidance on the law enforcement exclusion was too brief. OMB has expanded the discussion in the final version to make it clear that that exception may only be taken by an agency or component that is designated by statute (either Federal or State) as having a criminal law enforcement responsibility as its primary purpose and that it may only claim the exclusion after the initiation of an investigation of a named person or persons in order to gather evidence.

Routine Administrative Matches Involving Federal Personnel Records

One commentator suggested that OMB define the word "predominantly" as used in the exclusion. OMB has included a definition of this word to mean that the data base either be established to contain records about Federal employees, or that the majority of records in the data base be about such employees.

Two commentators urged that OMB provide additional examples of what is covered by the exclusion. OMB has amended the guidance to reflect this consideration.

Section 5a(1)(c)—Federal Benefit Program

Former Beneficiaries

One commentator noted that the guidance was silent as to the Act's coverage of former beneficiaries and urged that OMB explicitly cite them. OMB agrees. The Act provides as one of its purposes the recouping of Federal benefits payments. Certainly this process could involve those who are no longer beneficiaries but remain in default. The guidance has been amended to include this category of beneficiaries.

Section 5a.b.c—Agency Responsibilities/Definitions

Expand Discussion of Agencies' Roles/Responsibilities

Several commentators suggested that OMB expand the definition section to clarify the roles and responsibilities of the recipient, source, and Non-Federal agencies, especially in terms of which is responsible for publishing matching notices in the **Federal Register**. OMB agrees and has expanded this section.

Section 6a—Giving Prior Notice

Direct Notice Only

One commentator strongly urged OMB to state that the Act requires direct notice to the record subject, and that **Federal Register** constructive notice is insufficient to meet this requirement. OMB has considered this comment, and agrees that the section requires direct notice at the time of application. It does not, however, require direct notice at other times. Examination of the statutory wording shows that the Act calls merely for "notice" subsequent to the direct notice at the time of application. This is understandable, since the point at which it is most critical to provide notice is at the point when the individual has the option of providing or withholding information. Notice at this point permits the applicant to make an informed choice about participating. Moreover, for matching programs whose purpose is to locate individuals in order, for example, to recoup payments improperly granted, direct notice may well be impossible. OMB thinks that the guidance as written gives agencies the flexibility to deal with the many circumstances involved in conducting matching programs. However, OMB intends to monitor agencies' activities to ensure that constructive notice does not become an administratively convenient substitute for direct notice when direct notice is achievable without an unreasonable expenditure of resources.

Cite Section (e)(3) Requirement

Two commentators cited the Privacy Act's (e)(3) notice as one appropriate place for the matching notice and urged OMB to cite it as such in the guidance. OMB agrees and has done so.

Federal/State Responsibilities

One State agency asserted that the Federal agency should do the notice. OMB thinks that if a Federal form is involved in the application for a benefit, it is within the power of the Federal agency creating the form to provide the notice and it should do so. For periodic

notice, however, Federal agencies may wish to accomplish this requirement through the State or local governmental benefit providers. OMB has included a discussion of this issue in the section on agency definitions and roles and responsibilities.

Section 6b—Constructing Matching Agreements

Existing Agreement Carryover

One commentator suggested that the guidance assert that existing agreements could suffice until the program was due for renewal and only at that time should they be revised to include the terms of the Matching Act. Similarly, a State commentator suggested that the existing State/Federal agreements should be sufficient. It is OMB's interpretation that the statute clearly requires that by the effective date of the Act, any matching programs conducted by an agency must have agreements approved by the Data Integrity Boards. The statute sets out the terms of those agreements. To the extent that existing agreements include these elements, they will suffice. If they do not, any missing elements must be agreed to by the participants.

Duplication and Redislosure

Two commentators strongly urged OMB to expand the discussion of this section to substantially restrict any subsequent use of the matching data by the recipient agency. Both cited the "essential purpose" wording of the statute as being more restrictive than the "compatibility standard" that applies to routine use disclosures. OMB agrees and has expanded the discussion of this point in the guidance.

Section 6b—Publication Requirements

Inclusion of System(s) of Records

One commentator suggested that the matching notice identify the system or systems of records from which records will be matched. OMB agrees and has adopted this suggestion.

Section 6f—Independent Verification, Notice and Wait Period, Opportunity to Contest Adverse Finding

Combining the Independent Verification and Statutory Notice Requirements

Federal benefits program matching as well as the matching of Federal employee records occurs across a wide spectrum of purposes and consequences. It would be of dubious utility to apply the verification requirements equally to all matches and argue that a match that results in an adverse consequence of the loss of, for example, a tuition assistance payment should receive the same due

process procedures as one that results in the loss of an AFDC payment or Food Stamp Program eligibility. This is not to say that agencies can ignore or minimize these requirements for matches that result in less severe consequences; but only that they should bring some degree of reasonableness to the process of verifying data.

Conservation of agency resources dictates that the procedures for affording due process be flexible and suited to the data being verified and the consequence to the individual of making a mistake. In some cases, if the source agency has established a high degree of confidence in the quality of its data and it can demonstrate that its quality control processes are rigorous, the recipient agency may choose to expend fewer resources in independently verifying the data than otherwise. Indeed, several commentators urged OMB to make it clear that in certain circumstances, the verification and notice and wait steps can be combined into one. OMB agrees and has amended the sections to permit this occurrence; but, to make it clear that agencies should think through carefully when to use this compression and not consider it a routine process. To ensure that this consideration takes place, OMB has amended the guidance to require that the Data Integrity Boards make a formal determination of when to compress these two due process steps. OMB will collect these decisions as part of the reporting process.

Time Period for Notice

One commentator suggested that because the waiting period provided by the Matching Act was 30 days (or more if program statutes or regulations provided a longer period), the guidance should reflect this minimum period and not arbitrarily add transit time. On reflection, OMB agrees and has amended the section.

Coercing Record Subjects

One commentator expressed concern lest agencies attempt to coerce subjects into accepting the agencies adverse finding. The solution offered was to prohibit agencies from taking any action until the expiration of the 30 days notice and wait period. In order to forestall some speculative behavior on the part of the agency, this solution could put the government in the position of providing a benefit it knows improper to a recipient who has acknowledged his ineligibility. OMB has not adopted the suggestion but has included a caution to agencies against coercing individuals into agreeing with the finding.

Section 7a—Data Integrity Board Operation Location

Two commentators were unclear about whether State and local agencies were required to have such boards. OMB has amended the guidance to make it clear that the Data Integrity Board requirement applies only to Federal agencies. Another commentator suggested that having approval by both a source and a recipient Board was unnecessary. OMB disagrees. A significant purpose of the Act is to ensure that all parties to a matching program have enough information to make a reasoned decision about participating and that each understands the process whereby the data will be matched. One should note that there are civil remedies provisions in the Privacy Act as well as criminal penalties for wrongful acts. It is in the interest of all parties to ensure that the Privacy Act requirements are adequately met.

Operation

One commentator urged OMB to flatly prohibit delegation of approval of matching agreements. OMB agrees and has amended the guidance to make it clear that approvals (and denials) must be done by the Board itself. Another commentator suggested OMB establish a time limitation for Board determinations. OMB thinks this is a management matter best left to agency discretion but has added an instruction to agencies that they ensure expeditious consideration.

Review and Reports

One commentator recommended OMB expand the review and report requirements of the Data Integrity Boards. OMB agrees but is in the process of revising Circular No. A-130, Appendix I, to include these requirements. The commentator also suggested that OMB tell agencies to treat the annual review period as beginning on the effective date of the Act. OMB will include this suggestion in the revision.

Section 7c—Benefit Cost Requirement Waivers of Requirement

One commentator recommended that OMB make it clear that the benefit-cost requirement be waived for matches done either pursuant to a statutory requirement or for a law enforcement purpose. OMB disagrees. The statute permits waiver for statutory matches, but only for the first year. The intent of the drafters was to recognize that the presumption the Act imposes of a favorable benefit-cost ratio was irrelevant in the face of a statutory

mandate to match. Nevertheless, the Act requires a benefit-cost determination in subsequent years in order to provide information to Congress about required matches that are not achieving a cost-beneficial result. As to law enforcement matches, the statute already excludes a significant portion of such matches from all of the Act's requirements. Another commentator recommended that the requirement for all matches done to recoup payments be waived since the results, i.e., ultimate recoveries, are generally uncertain. This suggestion brings up an important point about conducting these assessments: there will be a range of data available to agencies in performing benefit-cost analysis, some of which will be helpful and some of which will be merely speculative. Where data in an agency's hands clearly indicates an unfavorable ratio, prudent management dictates abandoning the match. Where the reverse is true, agencies should conduct the match. Where the data is unclear, agencies should gather data to permit a better analysis. This may mean conducting a program on the basis of data that, while speculative, suggests that the result will be favorable, and then subjecting the results of the match to careful analysis to determine if that is the case. OMB expects that for the first year, benefit-cost analysis will be a less rigorous process than for subsequent years. Two commentators suggested that waivers be granted only where the analysis was impossible to do or would be unhelpful. OMB has not adopted this suggestion finding this standard to be too subjective to provide a solid basis on which to waive the requirement. OMB will include as a reflection of Congressional intent, a statement that waivers should be granted sparingly if at all.

Benefit-Cost Checklist and Methodology

Two commentators urged that a checklist providing a step-by-step methodology for accomplishing benefit-cost analysis be appended to the guidance. OMB agrees that this should be done and is working on such a checklist but is doubtful that it will be ready in time to be added to the final guidance. Rather than delay publication past the statutory deadline, OMB will issue the checklist as soon as it is available in the same manner as it issues the guidance itself. OMB will also cite the CAO Report, Computer Matching: Assessing its Costs and Benefits, GAO/PEMD-87-2, November 1986, in the section.

Other Comments

Disclosures for Matching

Several commentators urged OMB to discuss the ways in which records could be disclosed for a matching program. One in particular wanted to know if there was an exception in section (b) of the Privacy Act for matching disclosures. OMB has added a discussion of the procedural requirements to the matching agreements section. It notes that agencies must find an exception to the written consent rule in section (b) or obtain the written consent of the record subject to the disclosure; there is no specific exception for a matching program.

Denial of an IG Proposal

One commentator urged that the guidance make it clear that disapproval of an Inspector General proposed match could take place only because of a defect in the matching agreement. OMB agrees that the proper role of the Board is not to engage in management decisions about the utility of conducting matching programs, but to ensure that such programs are carried out in strict compliance with the terms of the Privacy Act, as amended by Pub. L. 100-503, and "all relevant statutes, regulations and guidelines." Nevertheless, it is the responsibility of the Board to ensure that each of the terms of the agreements are complied with. That determination may require them to go beneath the written agreement to examine the matching process itself. For example, if the agreement indicates that matching subjects have been given individualized notice at the time of the application on the application form itself, the Board may wish to examine the form to see if this notice is adequate.

Training

One commentator suggested that OMB set up training in the Act's provisions. OMB agrees and is working on a training program that will address this suggestion.

Office of Management and Budget Guidelines on the Conduct of Matching Programs

1. *Purpose:* These Guidelines augment and should be used with the "Office of Management and Budget (OMB) Guidelines on the Administration of the Privacy Act of 1974," issued on July 1, 1975, and supplemented on November 21, 1975, and Appendix I to OMB Circular No. A-130, published on December 24, 1985 (see 50 FR 52738).

They are intended to help agencies relate the procedural requirements of the Privacy Act (as amended by Pub. L. 100-503, the Computer Matching and Privacy Protection Act of 1988—hereinafter referred to as the Computer Matching Act), with the operational requirements of automated matching programs. These are policy guidelines applicable to the extent permitted by law. They do not authorize activities that are not permitted by law; nor do they prohibit activities expressly required to be performed by law. Complying with these Guidelines, nonetheless, does not relieve a Federal agency of the obligation to comply with the provisions of the Privacy Act, including any provisions not cited in these Guidelines.

2. *Authority:* Section 6 of Pub. L. 100-503, The Computer Matching and Privacy Protection Act of 1988, requires OMB to issue implementation guidance on the Amendments.

3. *Scope:* These guidelines apply primarily to all Federal agencies subject to the Privacy Act of 1974. For this purpose, the Privacy Act relies upon the definition in the Freedom of Information Act (FOIA) 5 U.S.C. 552 at (e): "any executive department, military department, government corporation, government controlled corporation, or other establishment in the executive branch of the government (including the Executive Office of the President), or any independent regulatory agency." For the purposes of these guidelines, components of departments, e.g., the Health Care Financing Administration of the Department of Health and Human Services, are not considered individual agencies.

Note that the definition incorporates the "agency" definition used in the Administrative Procedure Act (5 U.S.C. 551 at (1)) which also contains a series of categories that are not covered, including State and local governments.

The Computer Matching Act amendment, however, brings State and local governments within the ambit of the Privacy Act when they are engaging in certain types of matching activities; but only in conjunction with a Federal agency that is itself subject to the Privacy Act, and only when a Federal system of records is involved in the match.

In general, a State or local agency or agent thereof, that is either: (1) Providing records to a Federal agency for use in a matching program covered by the Act; or (2) receiving records from a Federal agency's system of records for use in a matching program covered by the Act, must comply with certain of the Act's provisions. What State and local

governments must do to meet the requirements of the Act is explained in paragraph 9 below.

4. *Effective Date:* These guidelines are effective on June 19, 1989.

5. *Definitions:* The Computer Matching Act is an amendment of the Privacy Act of 1974 and the provisions of the former should be read within the context of the latter, and all the terms originally defined in the Privacy Act of 1974 apply.

It is especially important to note that the Computer Matching Act does not extend Privacy Act coverage to those not originally included. Thus, the subjects of Federal systems of records covered by the Computer Matching Act are "individuals," i.e., U.S. citizens and aliens lawfully admitted for permanent residence.

Two definitions that are especially relevant to matching programs are:

—"Record" which the Privacy Act defines as an item of information about an individual, including his or her name or some other identifier; and,

—"System of Records" which is a collection of such "records" from which an agency retrieves information by reference to an individual identifier.

In addition, the Computer Matching Act provides the following new terms:

a. *Matching Program.* At its simplest, a matching program is the comparison of records using a computer. The records must themselves exist in automated form in order to perform the match. Manual comparisons of, for example, printouts of two automated data bases, are not included within this definition. Note, however, participating agencies should not create data sharing methods merely to avoid the reach of the Act where the Act's application would otherwise be reasonable and proper. A matching program covers not only the actual computerized comparison, but the investigative followup and ultimate action, if any.

The Computer Matching Act covers two kinds of matching programs: (1) Matches involving Federal benefits programs and, (2) matches using records from Federal personnel or payroll systems of records.

(1) *Federal Benefits Matches.* The Act defines a Federal benefits matching program as:

"any computerized comparison of two or more automated systems of records or a system of records with non-Federal records, by applicants for, recipients or beneficiaries of, participants in, or providers of services with respect to, cash or in-kind assistance or payments under Federal benefit programs * * * [i.e., any program administered or

funded by the Federal government, or by any agent or State on behalf of the Federal government, providing cash or in-kind assistance in the form of payments, grants, loans, or loan guarantees to individuals]. * * * for the purpose of establishing or verifying the eligibility of or continuing compliance with statutory and regulatory requirements, or [for the purpose of] recouping payments or delinquent debts under such Federal benefit programs." (See 5 U.S.C. 552a(a)(9) and (12).)

The elements of this definition are discussed below:

(a) *Computerized Comparison of Data.* The record comparison must be a computerized comparison involving records from:

- Two or more automated systems of records (i.e., systems of records maintained by Federal agencies that are subject to the Privacy Act); or
- A Federal agency's automated system of records and automated records maintained by a non-Federal (i.e., State or local government) agency or agent thereof. To be covered, matches of these records must be computerized. Some examples of computerized matches include the following:

A State benefits clerk accesses an automated Federal system of records and enters data received from an applicant and maintained in automated form by the State. The clerk matches this information with the Federal information, makes an eligibility determination and updates the State data base.

A State benefits clerk enters data about applicants for a Federal benefit program into an automated data base. At the end of the week, the State agency sends current applicant tapes to the Federal benefits agency which matches them against its own automated system of records and reports the results to the State.

A Federal agency operating a benefits program sends a tape of defaulters to the Office of Personnel Management to match against an OPM automated system of records containing information about Federal retirees in order to locate defaulters.

(b) *Categories of Subjects Covered.* The Computer Matching Act provisions cover only the following categories of record subjects:

- Applicants for Federal benefit programs (i.e., individuals initially applying for benefits);
- Program beneficiaries (i.e., individual program participants who are currently receiving or formerly received benefits);

—Providers of services to support such programs (i.e., those who are not the primary beneficiaries of Federal benefits programs, but may derive income from them—health care providers, for example).

(c) *Types of Programs Covered.* Only Federal benefit programs providing cash or in-kind assistance to individuals are covered by this definition. State programs are not covered. Federal programs not involving cash or in-kind assistance are not covered. Programs using records about subjects who are not individuals as defined by section (a)(2) of the Privacy Act—U.S. citizens or aliens lawfully admitted for permanent residence—are not covered.

(d) *Matching Purpose.* The match must have as its purpose one or more of the following:

- Establishing or verifying initial or continuing eligibility for Federal benefit programs; or
- Verifying compliance with the requirements—either statutory or regulatory—of such programs; or
- Recouping payments or delinquent debts under such Federal benefit programs.

It should be noted that the four elements, (i.e., computerized comparison, categories of subjects, Federal benefit program, and matching purpose) all must be present before a matching program is covered under the provisions of the Computer Matching Act. Thus, for example, if the Department of Education matched a student loan recipient data base with a Veterans Administration (VA) education benefit recipient data base for the purpose of ensuring that both agencies were maintaining the most current and accurate home address information, that would not be covered since the "matching purpose" is not one of the three enumerated above. If, however, the purpose of the match were to identify recipients who were receiving benefits in excess of those to which they were entitled, the match would be covered.

Moreover, elements that are peripheral to the match, even if within the definitions above will not raise a match to the Act's coverage. For example, the Federal Parent Locator Service conducts matches to locate absentee parents who are not paying child support. Such matches may result in the identified spouse being ordered to commence payments, and some of those payments may go to recoup payments made from a Federal benefit program such as Aid to Families with Dependent Children. Because the recoupment is not the primary purpose of the match, but

only an incidental consequence, such matches would not be covered.

(2) *Federal Personnel or Payroll Records Matches.* The Computer Matching Act also includes matches comparing records from automated Federal personnel or payroll systems of records, or such records and automated records of State and local governments. Again, it should be noted that the comparison must be done by using a computer; manual comparisons are not covered. Matches in this category must be done for other than "routine administrative purposes" as defined in paragraph 5a(3)(e) below. In some instances, a covered match may take place within a single agency. For example, an agency may wish to determine whether any of its own personnel are participating in a benefit program administered by the agency, and are not in compliance with the program's eligibility requirements. This internal match will certainly result in an adverse action if ineligibility is discovered. Therefore, it is covered by the requirements of the Computer Matching Act. Again, agencies should not attempt to avoid the reach of the Act by, for example, improperly combining dissimilar systems into a single system, matching data within the system to make an eligibility determination, and arguing that the match is not covered because only one system of records is involved.

(3) *Exclusions from the Definition of a Matching Program.* The following are not included under the definition of matching programs. Agencies operating such programs are not required to comply with the provisions of the Computer Matching Act, although they may be required to comply with any other applicable provisions of the Privacy Act.

(a) *Statistical Matches Whose Purpose is Solely to Produce Aggregate Data Stripped of Personal Identifiers.* This does not mean that the data bases used in the match must be stripped prior to the match, but only that the results of the match must not contain individually identifiable data. Implicit in this exception is that this kind of match is not done to take action against specific individuals; although, it is possible that the statistical inferences drawn from the data may have consequences for the subjects of the match as members of a class or group. For example, a continuing matching program that shows one geographical area consistently experiencing a higher default rate than others may result in more rigorous scrutiny of applicants from that area, but would not be a covered matching program.

(b) *Statistical Matches Whose Purpose is in Support of Any Research or Statistical Project.* The results of these matches need not be stripped of identifiers, but they must not be used to make decisions that affect the rights, benefits or privileges of specific individuals. Again, it should be noted that this provision is not intended to prohibit using any data developed in these matches to make decisions about a Federal benefit program in general that may ultimately affect beneficiaries.

(c) *Pilot Matches.* This exclusion could also cover so-called "pilot matches," i.e., small scale matches whose purpose is to gather benefit/cost data on which to premise a decision about engaging in a full-fledged matching program. Because of concern about possible misuse of these matching programs to avoid full compliance with the Matching act, OMB will require that pilot matches must be approved by the agency Data Integrity Boards. It is at this point that the agency can decide whether to conduct a statistical data gathering match without consequences to the subjects or a full-fledged program where results will be used to take specific action against record subjects.

(d) *Law Enforcement Investigative Matches Whose Purpose is to Gather Evidence Against a Named Person or Persons in an Existing Investigation.* Certain matches performed in support of civil or criminal law enforcement activities that otherwise would be covered because they seek to establish or verify Federal benefit eligibility or use Federal personnel or payroll records, are excluded from coverage by this section. To be eligible for exclusion, the match must be done by an agency or component whose principal statutory function involves the enforcement of criminal laws, i.e., an agency that is eligible to exempt certain of its record systems under section (j)(2) of the Privacy Act such as the Federal Bureau of Investigation, the Drug Enforcement Agency, or components of agencies' Office of Inspectors General.

The match must flow from an investigation already underway which focuses on a named person or named persons; "fishing expeditions" in which the subjects are identified generically as "program beneficiaries," are not eligible for this exclusion (note that the investigation may be into either criminal or civil law violations). The use of the phrase "person or persons" in this context broadens the exclusion to include subjects that are other than "individuals" as defined by the Privacy Act. Thus, for example a business entity could be the named subject of the

investigation, while the records matched could be those of customers or clients. This does not mean however, that the rights afforded by the Privacy Act are extended by this section to other than "individuals."

Finally, the match must be for the purpose of gathering evidence against the named person or persons.

(e) *Tax Administration Matches.* There are four specific categories exclusions for matches using "tax information." While that term is not defined in the Computer Matching Act, the Report accompanying the House version of the Act, H.R. 4699, cites "tax returns" and "tax return information" as the tax information that is covered by the exclusion. Those terms are defined in Section 6103 of Title 28 U.S.C. at (b)(1)-(b)(3). It is clear from these sections that the information covered is under the control of the Internal Revenue Service (IRS) of the Department of the Treasury since the definitions speak of information that is "filed with the Secretary" or "received by, prepared by, furnished to, or collected by the Secretary." Moreover, Section 6103(a) prohibits Federal, State and local governmental employees from disclosing tax information except as authorized by the Internal Revenue Code. This is not to say that all information in the possession of the IRS is covered by the exclusion; only tax information. Thus, for example, personnel records relating to the management of the IRS workforce would not be covered.

The exclusion covers the following:

—Matches done pursuant to Section 6103(d) of the Tax Code. These matches involve disclosures of taxpayer return information to State tax officials. For matches covered by this exclusion, neither the Federal disclosing entity nor the State recipient need comply with the provisions of the Computer Matching Act.

—Matches done for the purposes of "tax administration" as that term is defined in Section 6103(b)(4) of the Internal Revenue Code: "The term 'tax administration' means the administration, management, conduct, direction, and supervision of the execution and application of the internal revenue laws or related statutes (or equivalent laws and statutes of a State) and tax conventions to which the United States is a party; and the development and formulation of Federal tax policy relating to existing or proposed internal revenue laws, related statutes, and tax conventions; and includes assessment, collection,

enforcement, litigation, publication, and statistical gathering functions under such laws, statutes or conventions." While this definition is very broad and covers a great deal of discretionary activities on the part of IRS management, it is not intended to exempt all IRS activities from the Act's coverage; only those that truly relate to administration of the nation's tax system (as opposed to management of the IRS workforce, for example). Thus, the exclusion will permit the IRS to continue to match tax returns with interest and dividend statements, for example. It should be noted that the Bureau of Alcohol, Firearms, and Tobacco of the Treasury Department also has collection and enforcement authority under the Internal Revenue Code, and tax administration is, therefore, a part of that agency's responsibilities as well.

—Tax refund offset matches done pursuant to the Deficit Reduction Act of 1984 (DEFRA). That Act contains procedures for affording matching subjects due process that are analogous to those contained in these guidelines.

—Tax refund offset matches conducted pursuant to statutes other than the DEFRA provided OMB finds the due process provisions of those statutes "substantially similar" to those of the DEFRA. OMB will periodically revise these guidelines to add such programs as such statutes are enacted. Agencies should notify OMB promptly when they think an existing statute provides an exemption in this category.

(f) *Routine Administrative Matches Using Federal Personnel Records.* These are matches between a Federal agency and other Federal agencies or between a Federal agency and non-Federal agencies for administrative purposes that use data bases that contain records predominantly relating to Federal personnel. The term predominantly means that the percentage of records in the system that are about Federal employees must be greater than of any other category therein contained. In some cases, Federal employees will predominate because of absolute numbers; in others, because they represent the largest single category. The term "federal personnel" is defined by the Act as: "officers and employees of the Government of the United States, members of the uniformed services (including members of the Reserve components), individuals entitled to receive immediate or deferred retirement benefits under any retirement program of the Government of the United States (including survivor

benefits)." It should be noted that by including individuals eligible for survivor benefits in the category, the Act covers individuals who may never have been employed by the Federal government.

Matches whose purpose is to take "any adverse financial, personnel, disciplinary or other adverse action against Federal personnel" * * * whose records are involved in the match, are not excluded from the Act's coverage.

Examples of matches that are excluded include an agency's disclosure of time and attendance information on all agency employees to the Department of the Treasury in order to prepare the agency's payroll; or disclosure of Department of Defense (DoD) Reserve Officer identifying information to a State in order to validate and update addresses of Reservists residing in the State; or disclosure of retiree annuity files from the DoD to the Department of Veterans Affairs in order to determine the percentage of total annuity each agency is responsible for paying.

Note that this exclusion does not bring under the Act's coverage matches that may ultimately result in an adverse action. It only requires that their purpose not be intended to result in an adverse action. Thus, in the DoD/State reservist match example, the consequence of the match may well be that a reservist is dropped from the program because no address can be found for him or her. This result, however negative, would not bring the match under the Act's coverage since its primary purpose was only to update an address listing.

(g) *Internal Agency Matches Using Only Records From the Agency's System of Records.* Internal agency matching is excluded on the same basis as Federal personnel record matching above: provided no adverse intent as to a Federal employee motivates the match. Section (b)(1) of the Privacy Act permits agencies to disseminate Privacy Act records to agency employees on an official need-to-know basis. This exclusionary provision does not disturb that principle, except where Federal personnel records are involved. Thus, for example, the Social Security Administration could match with the Health Care Financing Administration to detect and ultimately recoup overpayments for a specific Department of Health and Human Services program. That match would not be covered by the provisions of the Computer Matching Act.

Moreover, the mere presence of Federal employee records in the data bases being matched would not

necessarily bring the match under the Act's coverage. To be covered, the records would have to be predominantly those relating to Federal employees and the primary intent would have to be to take an adverse action of some kind against the Federal employees specifically. If the Department of Education matched its student loan defaulter file against its own employee data base in order to detect and take action against Education employees who have defaulted, that match would be covered by the Act. The same department matching its undergraduate student loan defaulter file against its medical school loan defaulter file in order to determine the incidence of repeat defaulters, would not be covered, even though some of those in the data base might be Federal employees.

(h) *Background Investigation and Foreign Counter-intelligence Matches.* Matches done in the course of performing a background check for security clearances of Federal personnel or Federal contractor personnel are not covered. Nor are matches done for the purpose of foreign counter-intelligence.

b. *Recipient Agency.* Recipient agencies are Federal agencies (or their contractors) that receive records from the Privacy Act systems of records of other Federal agencies or from State and local governments to be used in matching programs.

Responsibilities. Recipient agencies are responsible for publishing matching notices in the Federal Register pursuant to the requirements of the Matching Act described below. Where a recipient agency is not the actual beneficiary of the matching program, it may negotiate with the actual beneficiary agency for reimbursement of the costs incurred in publishing. A recipient agency that is the beneficiary of the program should take the lead in performing a benefit-cost analysis and share that analysis with source agencies to help their Data Integrity Boards make a determination about providing data for the match. Recipient agencies are also responsible for making the matching program report to OMB and the Congress discussed below.

c. *Source Agency.* A source agency is a Federal agency that discloses records from a system of records to another Federal agency to a State or local governmental agency to be used in a matching program. It is also a State or local governmental agency that discloses records to a Federal agency to be used in a matching program. The Computer Matching Act does not cover matching between non-Federal entities. A Federal source agency is required to have its own Data Integrity Board

approve the agreement controlling the match; Non-Federal agencies are not required to have such boards. Source agencies are not responsible for publishing the notice of the match or reporting the match to OMB and Congress.

d. *Non-Federal Agency.* A non-Federal agency is a State or local governmental agency that receives records contained in a system of records from a Federal agency to be used in a matching program. State and local agencies are not responsible for publishing notices in the Federal Register or making reports to OMB and the Congress. Nor are they required to establish Data Integrity Boards to approve matching agreements. They should be prepared to provide to Federal source agencies data needed by those agencies to carry out their reporting and other responsibilities, e.g., benefit-cost analysis.

e. *Federal Benefit Program.* See paragraph 5a(1)(c) above.

6. *Conducting Matching Programs.* The following applies to Federal agencies. Requirements pertaining to non-Federal agencies are in paragraph 9 below.

Agencies undertaking matching programs covered by the Computer Matching Act will need to make sure that they comply with the following requirements:

a. *Comply with Privacy Act Systems of Records and Disclosure Provisions:* Federal agencies must ensure that they identify the systems of records involved in the matching programs and have published the necessary notices. Moreover, because the Matching Act does not itself authorize disclosures from systems of records for the purposes of conducting matching programs, agencies must justify any disclosures under section (b) of the Privacy Act. This means obtaining the written consent of the record subjects to the disclosure or relying on one of the 12 exceptions to the written consent rule. To rely on exception (b)(3), for a routine use, agencies must have published their intent to disclose in the Federal Register 30 days prior to any actual disclosure.

b. *Give Prior Notice to Record Subjects.* There are two ways in which record subjects can receive notice that their records may be matched:

—By direct notice when there is some form of contact between the government and the subject, e.g., information on the application form when they apply for a benefit or in a notice that arrives with a benefit that they receive;

—By constructive notice, e.g.,

publication of systems notices, routine use disclosures, and matching programs in the Federal Register.

For front-end eligibility verification programs whose purpose is to validate an applicant's initial eligibility for a benefit and later to determine continued eligibility, agencies should provide direct notice by amending the application form where necessary to enlarge the statement provided pursuant to section (e)(3) of the Privacy Act so that applicants are put on notice that the information they provide may be verified through a computer match. Agencies should also provide periodic notice whenever the application is renewed, or at the least, during the period the match is authorized to take place, in a notice accompanying the benefit. Providers of services should be given notice on the form on which they apply for reimbursement for services provided.

In some cases, constructive notice may have to suffice. For example, a Federal agency that discloses records to a State or local government in support of a non-Federal matching program is not obligated to provide direct notice to each of the record subjects; Federal Register publication in this instance is sufficient. Moreover, in some instances, it may not be possible to provide direct notice—in matches done to locate individuals, in emergency situations where health and safety reasons argue for a swift completion of the match; or in investigative matches where direct notice immediately prior to a match would provide the subject an opportunity to alter behavior.

In any case, notice to the record subject should be done well before a matching program commences. It should be part of the normal process of implementing a Federal benefits program.

c. *Matching Notices—Publication Requirements.* Agencies must publish notices of the establishment or alteration of matching programs in the Federal Register at least 30 days prior to conducting such programs. Only one notice is required and the recipient Federal agency in a match between Federal agencies or in a match in which a non-Federal agency discloses records to a Federal agency is responsible for publishing such notices. Where a State or local agency is the recipient of records from a Federal agency's system of records, the Federal source agency is responsible for publishing the notice. Such notices should contain the following information:

- Name of participating agency or agencies;
- Purpose of the match;
- Authority for conducting the matching program. (It should be noted that the Computer Matching Act provides no independent authority for carrying out any matching activity);
- Categories or records and individuals covered;
- Inclusive dates of the matching program;
- Address for receipt of public comments or inquiries.

Copies of proposed matching notices must accompany reports of proposed matches submitted pursuant to section (r) of the Privacy Act as amended. See OMB Circular No. A-130, Appendix I, as amended.

d. *Preparing and Executing Matching Agreements.* Agencies should allow sufficient lead time to ensure that matching agreements can be negotiated and signed in time to secure Data Integrity Board decisions. Federal agencies receiving records from or disclosing records to non-Federal agencies for use in matching programs are responsible for preparing the matching agreements and should solicit relevant data from non-Federal agencies where necessary. In cases where matching takes place entirely within an agency under the Federal personnel or payroll matching provisions, the agency may satisfy the matching agreement requirements by preparing a Memorandum of Understanding between the system of records managers involved, and presenting that to the Data Integrity Board for consideration.

Agreements must contain the following:

- Purpose and Legal Authority.* Since the Computer Matching Act provides no independent authority for the operation of matching programs, agencies should cite a specific Federal or State statutory or regulatory basis for undertaking such programs.
- Justification and Expected Results.* An explanation of why computer matching as opposed to some other administrative activity is being proposed and what the expected results will be.
- Records Description.* An identification of the system of records or non-Federal records, the number of records, and what data elements will be included in the match. Projected starting and completion dates for the program should also be provided. Agencies should specifically identify the Federal system or systems of records involved.
- Notice Procedures.* A description of the individual and general periodic

notice procedures. See paragraph 6.a., above.

—*Verification Procedures.* A description of the methods the agency will use to independently verify the information obtained through the matching program. See paragraph 6.f., below.

—*Disposition of Matched Items.* A statement that information generated through the match, will be destroyed as soon as it has served the matching program's purpose and any legal retention requirements the agency establishes in conjunction with the National Archives and Records Administration or other cognizant authority.

—*Security Procedures.* A description of the administrative and technical safeguards to be used in protecting the information. They should be commensurate with the level of sensitivity of the data.

—*Records Usage, Duplication and Redisclosure Restrictions.* A description of any specific restrictions imposed by either the source agency or by statute or regulation on collateral uses of the records used in the matching program. The agreement should specify how long a recipient agency may keep records provided for a matching program, and when they will be returned to the source agency or destroyed. In general, recipient agencies should not subsequently disclose records obtained for a matching program and under the terms of a matching agreement for other purposes absent a specific statutory requirement or where the disclosure is essential to the conduct of a matching program. The essential standard is a strict test that is more restrictive than the "compatibility" standard the Privacy Act establishes for disclosures made pursuant to section (b)(3): "for a routine use." Thus, under the essential standard, the results of the match may be disclosed for follow-up and verification or for civil or criminal law enforcement investigation or prosecution if the match uncovers activity that warrants such a result. This is not to say that agencies may never use the results of a matching program to make other eligibility determinations. For example, in the case of State/SSA COLA adjustment matches, States may use the results of this match to adjust payment levels for other benefits programs. If they do so, however, the subsequent uses must be included as part of the overall matching program as to the matching agreements, Federal Register notice, and the reporting requirements.

Moreover, the Act's due process requirements will apply to the subsequent adjustments as well.

—*Records Accuracy Assessments.* Any information relating to the quality of the records to be used in the matching program. Record accuracy is important from two standpoints. In the first case, the worse the quality of the data, the less likely a matching program will have a cost-beneficial result. In the second case, the Privacy Act requires Federal agencies to maintain records they maintain in systems of records to a standard of accuracy that will reasonably assure fairness in any determination made on the basis of the record. Thus an agency receiving records from another Federal agency or from a non-Federal agency needs to know information about the accuracy of such records in order to comply with the law. Moreover, the Privacy Act also requires agencies to take reasonable steps to ensure the accuracy of records that are disclosed to non-Federal recipients.

—*Comptroller General Access.* A statement that the Comptroller General may have access to all records of a recipient agency or non-Federal agency necessary to monitor or verify compliance with the agreement. It should be understood that this requirement permits the Comptroller General to inspect State and local records used in matching programs covered by these agreements.

e. *Securing Approval of Data Integrity Boards.* Before an agency may participate in a matching program, the agency's Data Integrity Board must have evaluated the proposed match and approved the terms of the matching agreement. Agencies should ensure that boards consider matching proposals presented to them expeditiously so as not to cause bureaucratic delays to necessary programs. (See paragraph 7.d. below, for appeals of Board disapprovals).

f. *Reports to OMB and Congress.* See OMB Circular No. A-130, Appendix I as amended.

g. *Providing Due Process to Matching Subjects.* The Computer Matching Act prescribes certain due process requirements that the subjects of matching programs must be afforded when matches uncover adverse information about them.

—*Verification of Adverse Information.* Agencies may not premise adverse action upon the raw results of a computer match. Any adverse

information so developed must be subjected to investigation and verification before action is taken. Federal benefits program matching as well as the matching of Federal employee records occurs across a wide spectrum of purposes and consequences. It would be of dubious utility to apply the verification requirements equally to all matches and argue that a match that results in an adverse consequence of the loss of, for example, a tuition assistance payment should receive the same due process procedures as one that results in the loss of an AFDC payment or Food Stamp Program eligibility. This is not to say that agencies can ignore or minimize these requirements for matches that result in less severe consequences; but only that they should bring some degree of reasonableness to the process of verifying data.

Conservation of agency resources dictates that the procedures for affording due process be flexible and suited to the data being verified and the consequence to the individual of making a mistake. In some cases, if the source agency has established a high degree of confidence in the quality of its data and it can demonstrate that its quality control processes are rigorous, the recipient agency may choose to expend fewer resources in independently verifying the data than otherwise. In such cases, it may be appropriate to combine the verification and notice requirements into a single step, especially if the record subject is the best source for verification. In certain circumstances, therefore, the verification and notice and wait steps can be combined into one. However, agencies should think through carefully when to use this compression and not consider it a routine process.

To ensure that this consideration take place, it will be the responsibility of the Data Integrity Boards to make a formal determination as to when it is appropriate to compress the verification and notice and wait periods into a single period. OMB intends to collect these decisions as part of the reporting process.

In many cases, the individual record subject is the best source for determining a finding's validity, and he or she should be contacted where practicable. In other cases, the payer of a benefit will have the most accurate record relating to payment and should be contacted for verification. Note that, in some cases, contacting the subject initially may permit him or her to conceal data relevant to a decision; and,

in those cases, an agency may elect to examine other sources. Absolute confirmation is not required; a reasonable verification process that yields confirmatory data will provide the agency with a reasonable basis for taking action.

As to applicants for Federal benefits programs whose eligibility is being verified through a matching program, agencies may not make a final determination until they have completed the due process steps the Act requires. This does not mean, however, that they are required to place an applicant on the rolls pending a determination, but only that they may not make a final decision.

For matching subjects receiving benefits, however, agencies may not suspend or reduce payments until the due process steps have been completed.

—*Notice and Opportunity to Contest.*

Agencies are required to notify matching subjects of adverse information uncovered and give them an opportunity to explain prior to making a final determination. Again, this does not mean that an applicant must be put on the rolls pending his or her explanation, but only that the agency may not make a final determination. Current benefits recipients, however, may not have those benefits suspended or reduced pending the expiration of this period.

Individuals may have 30 days to respond to a notice of adverse action, unless a statute or regulation grants a longer period. The period runs from the date of the notice until 30 calendar days later, including transit time.

If an individual contacts the agency within the notice period and indicates his or her acceptance of the validity of the adverse information, agencies may take immediate action to deny or terminate. However, agencies are cautioned against attempting to coerce a record subject into accepting the result. Agencies may also take action if the period expires without contact.

If the Federal benefit program involved in the match has its own due process requirements, those requirements may suffice for the purposes of the Computer Matching Act, provided they are at least as strong as that Act's provisions.

In any case, if an agency determines that there is likely to be a potentially significant effect on public health or safety, it may take appropriate action, notwithstanding these due process provisions.

7. *Establishing Data Integrity Boards:* The Computer Matching Act requires that each Federal agency that acts as either a source or recipient in a

matching program, establish a Data Integrity Board to oversee the agency's participation. Non-Federal governmental entities are not required to have such boards. It should be noted that the fact that records about an agency's personnel are used in a matching program does not automatically trigger this requirement. Because, for example, the Office of Personnel Management (OPM) asserts government-wide ownership of the system of records containing the Federal employee Official Personnel Folder (OPF), disclosures from this system of records involve OPM, not the employing agency. There are many small agencies that will never directly disclose records from their own systems of records for matching purposes and they are thus not required to establish Data Integrity Boards.

a. *Location and Staffing.* While the Act specifies neither the organizational level at which the Boards are to be established, nor their makeup (with two exceptions), it is clear from the context of the Data Integrity Board section that Congress expected agencies to place the Boards at the top of the organization and staff them with senior personnel. It is the intent of these guidelines not to dictate a specific structure but to suggest ways of complying with this expectation.

—*Location.* As to location, because the Boards are to serve a coordinating function, it would be inappropriate to locate them at other than the departmental level (or its agency equivalent). This is not to say that subordinate boards at component levels may not be useful to do the preliminary work necessary to provide a matching program proposal to the senior Board for approval. Indeed, in large agencies with many matching programs, this will likely be the rule. But, the approval should come from the top, and this argues for the placement suggested above.

—*Staffing.* The Act requires that the Board consist of senior agency officials designated by the agency head. The only two mandatory members are the Inspector General of the agency (if any) who may not serve as Chairman, and the senior official responsible for the implementation of the Privacy Act who has been designated pursuant to 44 U.S.C. 3506(b). OMB recommends that the agency Privacy Act Officer be designated as the Board's Secretary. —*Operation.* While much of the work of the Board may be delegated to less senior members—for example, the compilation of reports, advising of program officials, and maintaining

and disseminating information about the accuracy and reliability of data used in matching—the approval of matching agreements may not be delegated.

The Board should meet often enough to ensure that agency matching programs are carried out efficiently, expeditiously and in conformance with the Privacy Act, as amended.

b. *Review Responsibilities.* Because matching agreements are key to the implementation of the Computer Matching Act, the Act makes their review the foremost responsibility of the Boards. Boards are responsible for approving or disapproving matching programs based upon their assessment of the adequacy of these agreements. They should ensure that their reasons for either approving or denying are well documented. Agency officials proposing matching programs should ensure that they provide the Data Integrity Board with all of the information relevant and necessary to permit it to make an informed decision, including, where appropriate, a benefit/cost analysis. Note that both the Federal source and recipient agencies must have the matching agreement ratified by their boards.

—*Review of Proposals to Conduct or Participate in Matching Programs.* The Board must review the matching agreements that support each proposed matching program and find them in conformance with the provisions of the Computer Matching Act as well as any other relevant statutes, regulations, or guidelines. Boards are specifically responsible for determining when to compress the due process steps of verification and notice and wait into a single step. A matching agreement should remain in force for only so long as necessary to accomplish the specific matching purpose; indeed, it automatically expires at the end of 18 months unless within 3 months prior to the actual expiration date, the Data Integrity Board finds that the program will be conducted without change and each party certifies that the program has been conducted in compliance with the matching agreement. Under this finding, the Board may extend the agreement for 1 additional year.

—*Annual Review.* The Act requires Data Integrity Boards to conduct an annual review of all matching programs in which the agency has participated as either a source or recipient agency. This review has two focuses: to determine whether the matches have been, or are being, conducted in accordance with the

appropriate authorities and under the terms of the matching agreements; and, to assess the utility of the programs in terms of their costs and benefits. The Act suggests that this latter review as it pertains to recurring programs, should result in a basis for continuing participation in, or operation of, such programs. The Computer Matching Act also requires the Boards to review annually agency recordkeeping and disposal policies and practices for conformance with the Act's provisions. These reviews should take place within the context of the annual review referenced above. In addition, the Boards may review and report on matching activities not covered by the Computer Matching Act.

c. *Benefit/Cost Analysis.* The Computer Matching Act requires that a benefit/cost analysis be a part of an agency decision to conduct or participate in a matching program. The requirement occurs in two places: in matching agreements which must include a justification of the proposed match with a "specific estimate of any savings"; and, in the Data Integrity Board review process.

The intent of this requirement is not to create a presumption that when agencies balance individual rights and cost savings, the latter should inevitably prevail. Rather, it is to ensure that sound management practices are followed when agencies use records from Privacy Act systems of records in matching programs. Particularly in a time when competition for scarce resources is especially intense, it is not in the government's interests to engage in matching activities that drain agency resources that could be better spent elsewhere. Agencies should use the benefit/cost requirement as an opportunity to reexamine programs and weed out those that produce only marginal results.

While the Act appears to require a favorable benefit/cost ratio as an element of approval of a matching program, agencies should be cautious about applying this interpretation in too literal a fashion. For example, the first year in which a matching program is conducted may show a dramatic benefit/cost ratio. However, after it has been conducted on a regular basis (with attendant publicity), its deterrent effect may result in much less favorable ratios. Elimination of such a program, however, may well result in a return to the prematch benefit/cost ratio. The agency should consider not only the actual savings attributable to such a program, but the consequences of abandoning it.

For proposed matches without an operational history, benefit/cost analyses will of necessity be speculative. While they should be based upon the best data available, reasonable estimates are acceptable at this stage. Nevertheless, agencies should design their programs so as to ensure the collection of data that will permit more accurate assessments to be made. As more and more data become available, it should be possible to make more informed assumptions about the benefits and costs of matching. One source of information about conducting benefit-cost analysis as it relates to matching programs is the GAO Report, "Computer Matching, Assessing its Costs and Benefits," GAO/PEMD-87-2, November, 1986. Agencies may wish to consult this report as they develop methodologies for performing this analysis.

Because matching is done for a variety of reasons, not all matching programs are appropriate candidates for benefit/cost analysis. The Computer Matching Act tacitly recognizes this point by permitting Data Integrity Boards to waive the benefit/cost requirement if they determine in writing that such an analysis is not required. It should be noted, however, that the Congress expected that such waivers would be used sparingly. The Act itself supplies one such waiver: if a match is specifically required by statute, the initial review by the Board need not consider the benefits and costs of the match. Note that this exclusion does not extend to matches undertaken at the discretion of the agency. However, the Act goes on to require that when the matching agreement is renegotiated, a benefit/cost analysis covering the preceding matches must be done. Note that the Act does not require the showing of a favorable ratio for the match to be continued, only that an analysis be done. The intention is to provide Congress with information to help it evaluate the effectiveness of statutory matching requirements with a view to revising or eliminating them where appropriate.

Other examples of matches in which the establishment of a favorable benefit/cost ratio would be inappropriate are:

- A match of a system of records containing information about nurses employed at VA hospitals with records maintained by State nurse licensing boards to identify VA nurses with "impaired licenses", i.e., those who have had some disciplinary action taken against them.
- A match whose purpose is to identify and correct erroneous data, e.g.,

Project Clean Data which was run to correct and eliminate erroneous Social Security Numbers.

- Selective Service System matching to identify 18-year-olds for draft registration purposes.

d. *Appeals of Denials.* If a Board disapproves a matching agreement, the Computer Matching Act permits any party to the agreement to appeal that disapproval to the Director of the Office of Management and Budget. While this literally means that a recipient agency (whether Federal or non-Federal) could appeal the refusal of a source agency to approve an agreement, the actual results of such cross agency appeals, even if successful, are unlikely to result in the implementation of a matching program since the source agency may still properly refuse to disclose the necessary Privacy Act records. Nothing in the appeal process is intended to result in one agency being able to force another agency to participate unwillingly in a matching program.

Accordingly, OMB will only entertain appeals from senior agency officials who are parties to a proposed matching agreement that has been disapproved by the agency's own Data Integrity Board. By senior officials, OMB means the Inspector General of an agency or the head of an operating division carrying out the matching program.

The appeal should be forwarded to the Director, Office of Management and Budget, Washington, DC 20503 within 30 days following the Board's written disapproval. The following documentation should accompany the appeal:

- Copies of all of the documentation accompanying the initial matching agreement proposal;
- A copy of the Board's disapproval and reasons therefor;
- Evidence supporting the cost-effectiveness of the match;
- Any other information relevant to a decision, e.g., timing considerations, the public interest served by the match, etc.

The Director will promptly notify Congress of receipt of an appeal and of his or her decision. A decision to approve a matching agreement will not be effective until 30 days after it is so reported to Congress. The decision of the Director shall be based upon the information submitted.

OMB expects that this appeal process will be rarely used. One way to ensure its rarity is for agencies to present only well thoughtout and thoroughly documented proposals to the Boards for decisions.

e. *Information Maintenance and Dissemination Responsibilities.* The Act anticipates that the Data Integrity Boards will be an information resource on matching for the agency. Thus, while the full Board may actually convene only a few times each year to consider matching program proposals, the Act requires a continuing presence to carry out these additional functions. The Board, therefore, should designate a representative to answer questions on matching both from within the agency and from outside entities. This point of contact should be able to advise on what actions are needed to comply with the provisions of the Computer Matching Act, and to collect and disseminate information on the quality of the records used in matching programs.

8. *General Reporting Requirements:* The reporting requirements of the Data Integrity Boards will be contained in OMB Circular No. A-130, Appendix I. Matching reports are to be included in the general Privacy Act implementation reporting requirements outlined in that Circular.

9. *Specific Responsibilities of Non-Federal Agencies:* It is not the intent of this Act to affect, nor do its provisions reach, State and local governments using their own records for matching purposes. Nor does the Act reach State or local matching programs using records from Federal systems of records for purposes other than those defined in the Act as for a "matching program."

Thus, for example, a Federal agency could disclose information about beneficiaries of a Federal program to a State agency in order to permit the State to conduct a matching program to determine eligibility for a State public assistance program. So long as the purpose was to validate eligibility for the State as opposed to the Federal benefit program, the Computer Matching Act would not come into play.

If however, the Federal agency disclosed the names and income levels of its own Federal employees to a State under these circumstances, the matching requirements would have to be met since this match would be covered

under the "Federal employee personnel and payroll" provisions.

Non-Federal agencies intending to participate in covered matching programs are required to do the following:

- Execute matching agreements prepared by a Federal agency or agencies involved in the matching program;
- Provide data to Federal agencies on the costs and benefits of matching programs;
- Certify that they will not take adverse action against an individual as a result of any information developed in a matching program unless the information has been independently verified and until 30 days after the individual has been notified of the findings and given an opportunity to contest them.
- For renewals of matching programs, certify that the terms of the agreement have been followed.

10. *Sanctions:* The Computer Matching Act specifies that neither a Federal nor a non-Federal agency may disclose a record for use in a matching program if either has reason to believe the recipient is not meeting the terms of the matching agreement or the due process requirements of the Computer Matching Act. This provision does not create an affirmative duty on the part of a source agency to investigate a recipient agency's level of compliance. However, if a source agency receives information that would lead it to conclude that the recipient agency was not in compliance, it must consult with that agency before continuing to participate in the matching program.

Moreover, it should be noted that the civil remedies provisions of the Privacy Act are available to matching record subjects who can demonstrate that they have been harmed by an agency's violation of the Privacy Act or its own regulations. A successful litigant is entitled under the Privacy Act to receive at least \$1,000 and reasonable attorney's fees. Given the large numbers of record subjects typically involved in a matching program, agencies should be especially diligent in guarding against actions that would create liabilities.

S. Jay Plager,
Administrator, Office of Information and Regulatory Affairs.

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Part IV

Department of Commerce

National Oceanic and Atmospheric
Administration

50 CFR Part 229

The Taking of Marine Mammals Incidental
to Commercial Fishing Operations;
Interim Exemption for Commercial
Fisheries; Proposed Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 229

[Docket No. 81140-9105]

RIN 0648-AC65

Regulations Governing the Taking of Marine Mammals Incidental to Commercial Fishing Operations; Interim Exemption for Commercial Fisheries

AGENCY: National Marine Fisheries Service (NOAA Fisheries), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NOAA Fisheries issues a proposed rule that would govern the reporting of the take of marine mammals incidental to commercial fishing operations and requests public comments. These regulations would implement the portion of the recent amendments to the Marine Mammal Protection Act of 1972 (MMPA) which requires commercial fishermen to report the take of marine mammals in the course of commercial fishing. The intended effect of this rule is to establish a program and report/log format through which commercial fishing vessel owners engaged in Category I, Category II, and Category III fisheries may report the taking of marine mammals as required by the recent amendments to the MMPA.

DATES: Comments on this proposed rule must be received by July 19, 1989.

ADDRESS: Send comments to Dr. Nancy Foster, Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Highway, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Herbert W. Kaufman, Office of Protected Resources, 301-427-2319; Douglas Beach, Northeast Region, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930, 508-281-9254; Charles Oravetz, Southeast Region, National Marine Fisheries Service, 9450 Koger Blvd., St. Petersburg, FL 33702, 813-893-3386; James Lecky, Southwest Region, National Marine Fisheries Service, 300 S. Ferry St., Terminal Island, CA 90731, 213-514-6664; Brent Norberg, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE, Seattle, WA 98115, 206-526-6110; Dr. Steve Zimmerman, Alaska Region, National Marine Fisheries Service, 709 W. 9th. St., Fed. Bldg. 453, P.O. Box 21668, Juneau, AK 99802, 907-586-7233.

SUPPLEMENTARY INFORMATION:

Background

Before the 1988 amendments, the MMPA prohibited the take of marine mammals incidental to commercial fishing operations unless authorized by a General Permit or a small take exemption. In order to issue a General Permit, NOAA Fisheries was required to determine that the population stock from which a marine mammal was to be taken was within its optimum sustainable population (OSP) and that the marine mammal stock would not be disadvantaged by the incidental take. If these determinations could not be made, a permit could not be issued for that particular marine mammal stock. Early in 1988 it became apparent that the necessary determinations to renew certain General Permits could not be made and many fishermen would be forced to forgo fishing altogether or risk substantial penalties for violating the MMPA. To address this problem, the Congress amended the MMPA based on a proposal developed by representatives of the fishing industry and conservation community.

Section 114, added by Pub. L. 100-711 on November 23, 1988, replaces certain provisions of the MMPA for granting incidental take authorizations (including small take exemptions) to most commercial fishermen with an interim exemption system until October 1, 1993. Section 114 gives commercial fishermen a 5-year exemption from the incidental taking prohibition of the MMPA, provided that certain conditions are met. The primary objective of this interim system is to provide a means to obtain reliable information about interactions between commercial fishing activities and marine mammals while allowing commercial fishing operations to continue despite NOAA Fisheries' current inability to issue General Permits for many fisheries. The information collected in conjunction with the exemption system and information on the status and trends of marine mammal populations would be used to develop a long-term program to govern the taking of marine mammals associated with commercial fisheries. The Secretary of Commerce is required to provide the Congress a proposed system of authorizing incidental takes by January 1, 1992.

On January 27, 1989, NOAA Fisheries published an advance notice of proposed rulemaking and proposed List of Fisheries associated with the exemption system (54 FR 4154) and requested comments. A final List of Fisheries categorizing fisheries as either Category I (a frequent incidental taking

of marine mammals), Category II (an occasional incidental taking of marine mammals), or Category III (a remote likelihood of, or no known incidental taking of, marine mammals) (54 FR 16072) and an interim rule governing the exemption system (54 FR 21810) have also been published by NOAA Fisheries. The interim rule requires that vessel owners or their authorized agents engaged in a Category I or Category II fishery register with and obtain an Exemption Certificate from NOAA Fisheries to engage lawfully in any Category I or II fishery. This initial Exemption Certificate will be valid from July 21, 1989, to December 31, 1990, provided reporting requirements are met. Subsequent Exemption Certificates would be issued on a calendar year basis (i.e., January 1 to December 31) and be issued only if reporting requirements and other conditions of the Exemption Certificate were met.

The 1988 amendments require that vessel owners holding an exemption certificate begin compiling information regarding incidental takings of marine mammals as of July 21, 1989. This information shall be reported at the close of each fishing season or annually to the Secretary of Commerce. Such reports shall include the following:

- (1) The type of fishery engaged in by the owner's vessel;
- (2) The date and approximate time of any incidental taking of a marine mammal;
- (3) The area in which the incidental taking occurred;
- (4) The fishing gear used at the time of the incidental taking;
- (5) The species of fish involved; and for each incidental taking
- (6) The number of marine mammals involved;
- (7) The species of marine mammals involved; and whether the marine mammals were
- (8) Deterred from gear or catch;
- (9) Incidentally injured;
- (10) Incidentally killed; or
- (11) Lethally removed to protect gear, catch, or human life.

In addition, the 1988 amendments require vessel owners in Category III fisheries to report all lethal takings of marine mammals. Based on Congressional guidance, NOAA Fisheries' interpretation of the 1988 amendments, public comment and meetings and consultations with State and Federal agencies, Regional Fishery Management Councils, Indian treaty tribes, and other interested parties, NOAA Fisheries issues this proposed rule that would govern the reporting of the take of marine mammals incidental

to commercial fishing operations under the authority of section 112 and section 114(k) of the MMPA.

Comments and Responses

NOAA Fisheries received several comments concerning the reporting system when it published its advance notice of proposed rulemaking and proposed List of Fisheries (54 FR 4154). These comments are summarized below along with NOAA Fisheries' responses. These comments were considered in developing this proposed rule.

1. Commenters recommended that the reporting system be easy for the fishermen to use, such as using existing logbooks or fish tickets, and should clearly explain how a fisherman who participates in both a Category I and Category II fishery should report. One commenter also suggested that NOAA stress the need to report gear damage and fish losses as well as incidental taking. One commenter recommended that NOAA Fisheries develop a reporting form, in consultation with fishermen and fishing groups, to be used in Category I or II fisheries.

NOAA Fisheries has developed a proposed report/log form to be used in Category I or Category II fisheries (see Appendix), and has been discussing the form with fishing groups and other interested parties. Reports would require information on: The fishery, fishing effort, gear type, and fish species involved; the marine mammal species (or description of the animal, if species is not known), number, date, and location of marine mammal incidental takes (including takes by harassment); type of interaction and any injury to the marine mammal; a description of any intentional takes, i.e., efforts to deter animals to protect gear, catch, or human life by non-lethal or lethal means; and any loss of fish or gear caused by marine mammals. With prior approval by NOAA Fisheries, alternate report forms, issued by individual states or Fishery Management Councils, which collect the information required by NOAA Fisheries, would be accepted.

2. One commenter recommended that fishermen should be required to maintain the following detailed information: The types and quantities of fishing gear carried; where, when, and how fishing gear was deployed and retrieved; the species and quantities of fish, birds, and mammals caught in each set; any fish loss, fish damage, or gear damage caused by marine mammals; ancillary information, such as weather conditions or currents, thought to have contributed to the interactions with marine mammals.

Some of this information would be required; however, NOAA Fisheries does not believe that Section 114 of the MMPA requires all fishermen to maintain such detailed records. Collection of additional detailed information, however, may be incorporated in an alternate verification program.

3. One commenter recommended that fishermen be required to report all takings, not just entanglement, serious injury, or death, since they may not be qualified to judge what is "serious" and all information and data are necessary to assess the magnitude of the incidental take problem. Another commenter believed that only entanglements, serious injuries, or deaths should be considered to be incidental takes for reporting purposes.

Section 114(c) requires fishermen to report "whether the marine mammals were deterred from gear or catch, incidentally killed, or lethally removed to protect gear, catch, or human life." Therefore, NOAA Fisheries proposes to require the reporting of all takings, including harassment, that occur incidental to a Category I or Category II fishery.

4. Commenters were fearful how the report data would be used, and that isolated instances might subject a fishery to unnecessary restrictions. Another commenter was fearful that the lack of mortality reports in Category III fisheries will be interpreted as a failure to report (rather than the lack of taking) which will prompt stricter requirements in the future.

Report data would be evaluated in conjunction with data from observer and alternative verification programs and other available information. NOAA Fisheries does not intend to restrict fisheries unless the best available information indicates that marine mammal stocks are being adversely affected. Because Category III fisheries have a remote likelihood of taking a marine mammal, NOAA Fisheries expects few such reports.

Reporting Requirements

Exemption Certificate holders would be required to maintain accurate daily logs of fishing effort, incidental takes of marine mammals, and other information determined necessary by the Assistant Administrator in such form as prescribed by NOAA Fisheries. A current report/log form would have to be kept on board covering the current fishing trip and would have to be made available for inspection upon request by any state or federal enforcement agent authorized to enforce the MMPA or designated agent of NOAA Fisheries.

NOAA Fisheries would provide report/log forms for recording the information required to all Exemption Certificate holders for use in maintaining records and filing reports.

These reports, consisting of a copy of the required daily log, would be required for each vessel engaged in a Category I and Category II fishery, whether or not marine mammals were taken. Reports would be submitted at the end of each fishing season or an annual report would be submitted to NOAA Fisheries on or before December 31 of each year covering all Category I and II fisheries for which each Exemption Certificate holder is registered. The submission of reports on a regular basis throughout the year, however, would be encouraged. Exemption Certificate renewal requests would include these reports, if not previously submitted, or a new Exemption Certificate would not be issued. If a fishing vessel was not used in a Category I or Category II fishery during a calendar year for which it was registered, a report to that effect would be required. With prior approval by NOAA Fisheries, alternate report forms, issued by individual states or Fishery Management Councils, which collect the information required by NOAA Fisheries, would be accepted.

Marine mammal report/log forms would require information on: The fishery, fishing effort, gear type and fish species involved; the marine mammal species (or description of the animal, if species is not known), number, date, and location of marine mammal incidental takes (including takes by harassment); type of interaction and any injury to the marine mammal; a description of any intentional takes, i.e., efforts to deter animals to protect gear, catch, or human life by non-lethal or lethal means; and any loss of fish or gear caused by marine mammals. The proposed report/log form which would be used to collect this information is included as an Appendix.

Vessel owners engaged in Category III fisheries would report all lethal incidental takings of marine mammals by contacting the nearest NOAA Fisheries Office within 10 days of the return from the fishing trip during which the incidental take occurred. NOAA Fisheries would then incorporate this information into its data management system.

Information Management

NOAA Fisheries is developing an information management system to compile, store, process, and analyze data received from fishermen's reports, observer and verification programs, and

other sources. To protect the confidentiality of this data, information from the system will be made available to the public only in an aggregate form which does not directly or indirectly disclose the identity or business of any person. Such information would be available on a continuing basis, no later than six months after receipt. Depending on the nature of information requests, appropriate user fees may be charged for the information.

To maintain the confidentiality of individual vessel owner reports, only their Exemption Certificate number, Coast Guard documentation number, state registration number, and the fisheries the vessel was engaged in would be required on the individual report/log forms. Further, confidential or proprietary information would not be disclosed except:

(1) To Federal employees requiring such information, including to Federal contractors that are authorized to collect, process or analyze report or observer data and that are bound by the restrictions on public release of such data;

(2) To State employees under agreement with NOAA Fisheries that prevents public disclosure of the identity or business of any person;

(3) When required by court order; or
(4) In the case of scientific information involving fisheries, to employees of Regional Fishery Management Councils.

Under exceptions (1) and (3) above, information from observers or from fishermen reports indicating a violation of the MMPA, regulations, or terms and conditions of Exemption Certificates may be used in civil or criminal enforcement proceedings.

Classification

The Assistant Administrator has determined that implementation of the regulations of 50 CFR Part 229 will not have a significant impact on the human environment. NOAA Fisheries has prepared an environmental assessment (EA) on this action. The finding of that EA was that no significant impact on the human environment will occur as a result of this rule and that no environmental impact statement was required. The EA is available upon request (see **FOR FURTHER INFORMATION CONTACT**).

The Under Secretary for Oceans and Atmosphere, Department of Commerce, has determined that this rule is not a major rule requiring a regulatory impact analysis under Executive Order 12291. This rule would not result in (1) an annual major increase in costs or prices for consumers, individual industries, or government agencies; (2) an annual

effect on the economy of \$100 million or more; or (3) a significant adverse effect on competition, employment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the addition of 50 CFR 229.06(c) and 229.07(b) to the regulations will not have a significant economic impact on a substantial number of small entities. NOAA Fisheries has reviewed the proposed rule and has initially determined that the economic impact of this rule is limited to the amount of time necessary for registered fishermen to enter daily whether they had an interaction with any marine mammals. NOAA Fisheries estimates that on average this will require 2.5 minutes per day fished for fishermen operating in Category I or II fisheries. NOAA Fisheries estimates that on average commercial fishermen operating in Category III fisheries will spend 20 minutes per year to record and report the incidental take of marine mammals. As a result, a regulatory flexibility analysis was not prepared.

This rule contains a collection of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and has been submitted to the Office of Management and Budget for approval. The collection which is subject to the Paperwork Reduction Act is found at 50 CFR 229.06(c) and 229.07(b). Public reporting burden for this collection of information is estimated to average 2.5 minutes per day fished for fishermen operating in Category I or II fisheries to report the incidental take of marine mammals. These estimates include the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. NOAA Fisheries estimates that on average commercial fishermen operating in Category III fisheries will spend 20 minutes per year to record and report the incidental take of marine mammals. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service, MMPA Exemption Task Force, 1335 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn. NOAA Desk Officer).

NOAA Fisheries has determined that this rule does not directly affect the

coastal zone of any State that has an approved coastal zone management program under the Coastal Zone Management Act (CZMA). These actions are being taken under the MMPA which grants exclusive authority to the Federal government to regulate the takings of marine mammals. This rule imposes additional registration and reporting requirements on a small segment of the fishing industry but the nature of these requirements by themselves do not have a direct effect on the coastal zone of any state. This determination has been submitted for review by the responsible State agencies under section 307 of the CZMA.

This rule has been determined not to contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 229

Fisheries, Fishing vessels, Marine mammals, Reporting and recordkeeping.

Regulation Promulgation

For the reasons set out in the preamble, 50 CFR is proposed to be amended as follows:

PART 229—[AMENDED]

1. The authority citation for 50 CFR Part 229 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. A new paragraph (c)(2) is added to § 229.6 as follows:

§ 229.6 Issuance of exemption certificates.

(c) * * *

(2) *Reports.* (i) All Exemption Certificate holders must ensure that daily logs of fishing effort and incidental takes of marine mammals are accurately maintained on board the fishing vessel in such form as prescribed by the Assistant Administrator. Marine mammal report/log forms will require information on: The fishery, fishing effort, gear type and fish species involved; the marine mammal species (or description of the animal, if species is not known), number, date, and location of marine mammal incidental takes (including takes by harassment); type of interaction and any injury to the marine mammal; a description of any intentional takes, i.e., efforts to deter animals to protect gear, catch, or human life by non-lethal or lethal means; and any loss of fish or gear caused by marine mammals. With prior approval by the National Marine Fisheries Service, alternate report forms, issued

by individual states or Fishery Management Councils, which collect the information required by the National Marine Fisheries Service, would be accepted.

(ii) A current report/log must be kept on board and must be made available for inspection upon request by any state or federal enforcement agent authorized to enforce the Act or any designated agent of the National Marine Fisheries Service.

(iii) A report, consisting of a copy of the required log, must be submitted to the National Marine Fisheries Service at the end of each fishing season or on or before December 31 of each year. This log shall include information for all

Category I or II fisheries for which each Exemption Certificate holder is registered, whether or not any marine mammal was taken. If a fishing vessel was not used in a Category I or Category II fishery for which it was registered, a report to that effect must be submitted.

2. A new paragraph (b) is added to § 229.7 as follows:

§ 229.7 Requirements for Category III fisheries.

(b) Vessel owners must report all lethal takes of marine mammals to the nearest National Marine Fisheries

Service office within 10 days of return from the fishing trip during which the incidental take occurred. The report must include the marine mammal species involved (or a description of the animal, if species is not known), date, location, and circumstances leading up to the taking.

Date: June 13, 1989.

James E. Douglas, Jr.,
Deputy Assistant Administrator for Fisheries,
National Oceanic and Atmospheric
Administration.

Appendix

Note: The following Appendix will not appear in the Code of Federal Regulations.
BILLING CODE 3510-22-M

If you intend to fish in 1991 and want to renew your exemption certificate, please check this box. ☐

MARINE MAMMAL LOG

CONFIDENTIAL

EXEMPTION NO. _____ CG DOCUMENTATION NO. _____ STATE REGISTRATION NO. _____
(must be included to receive renewal)

FISHERY: _____ (from list of fisheries)

1. This form must be kept current and available for inspection.
2. Complete a line for each day fished.
3. Report hours fished by the number of hours your fishing gear was used.
4. Report area fished in latitude/longitude, loran, distance from landmark, or by fishing management area.
5. Submit completed forms to your Regional Office at any time, however, all report forms must be received no later than December 31.

DATE	HOURS FISHED	FISH SPECIES	AREA FISHED	MARINE MAMMAL SPECIES OR DESCRIPTION	GEAR INTERACTIONS			DETERRENCE FROM GEAR OR CATCH			LOSS DUE TO MARINE MAMMALS		HARASSEMNT EFFECTIVE	
					TOTAL IN GEAR	NO. INJURED	NO. KILLED	TOTAL NO. HARASSED	NO. INJURED	NO. KILLED	NO. FISH LOST	GEAR LOST	YES	NO

Public reporting burden for this collection of information is estimated to average 2.5 minutes per trip per day to compile information pertaining to incidental takes of marine mammals. This estimate includes the time for reviewing instructions, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the National Marine Fisheries Service, F/PR, 1335 East-West Highway, Silver Spring, MD 20910, and to the Office of Management and Budget, Paperwork Reduction Project (0648-XXXX) Washington, D.C. 20503.

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

New units issued during the week are announced on the back cover of the daily Federal Register as they become available.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

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⁵ The July 1, 1985 edition of 32 CFR Parts 1-189 contains a note only for Parts 1-39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1-39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

⁶ No amendments to this volume were promulgated during the period July 1, 1986 to June 30, 1988. The CFR volume issued as of July 1, 1986, should be retained.

⁷ The July 1, 1985 edition of 41 CFR Chapters 1-100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

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